

FILED
KING COUNTY, WASHINGTON
MAR 8 2013
DEPARTMENT OF
JUDICIAL ADMINISTRATION

EXP07

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

CITY OF BELLEVUE, a municipal corporation,

Petitioner,

vs.

PORT OF SEATTLE, a municipal corporation; CITY OF SEATTLE, a municipal corporation; PUGET SOUND ENERGY, INC., a Washington corporation; CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, otherwise known as "SOUND TRANSIT", a regional transit authority; and KING COUNTY, a home rule charter county,

Respondents.

NO. 12-2-17740-6 SEA

AGREED ORDER FOR IMMEDIATE POSSESSION AND USE, AND ORDER OF DISBURSEMENT

[CLERK'S ACTION REQUIRED]

The parties to this action, by and through their respective attorneys of record, agree to entry of the subjoined Order for Immediate Possession and Use and Order for Disbursement.

ORDER FOR IMMEDIATE POSSESSION AND USE

1. The City of Bellevue ("the City") has filed this action in order to acquire by eminent domain the Take Property, as initially described in the Petition and as now modified in Section 12 below. The Take Property will be used for the NE 4th Extension Project (specifically, for the purpose of extending a new arterial public street between

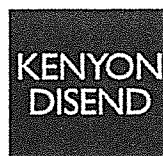
AGREED ORDER FOR IMMEDIATE POSSESSION AND USE, AND ORDER OF DISBURSEMENT - 1

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1 116th Avenue NE and the eastern boundary of the former BNSF railway corridor,
2 including the improvement or installation of bike lanes, and the related construction or
3 addition of curb, gutter and sidewalk, retaining walls, traffic signals, illumination,
4 landscaping, irrigation, storm drainage and detention, and other utility infrastructure as
5 needed) (the "City Project"), as described in the Petition filed in this case.

6 2. Effective as of February 13, 2013, by deed filed under King County Recording
7 No. 20130213001645, King County ("the County") acquired from the Port of Seattle fee
8 title to that portion of the Woodinville Subdivision that contains the Take Property. The
9 Port of Seattle accordingly has no remaining interest in the Take Property, and the Port of
10 Seattle has been dismissed from this case. King County's fee title to the Take Property
11 also encompasses those interests (a) in underground sewer pipeline(s) on the Subject
12 Property as disclosed by instruments recorded under King County Recording Nos.
13 5832816, 5832817, 6037794, and 9312282785 (the "County Sewer Easement"); and (b)
14 in easement(s), lease(s) or permits, including terms and provisions which may be
15 contained therein, for wastewater facilities as disclosed by document recorded on April
16 11, 2012, under King County Recording No. 20120411001174.

17
18 3. The City acknowledges that the Take Property, together with certain other
19 property commonly referred to as the South Rail Line portion of the Woodinville
20 Subdivision formerly owned by BNSF Railway Company, has been "Railbanked" under
21 16 U.S.C. §1247(d) and its implementing regulations, including but not limited to 49
22 C.F.R. §1152.29 (collectively, the "Railbanking Legislation"). The City further
23 acknowledges that pursuant to that certain Trail Use Agreement between BNSF Railway
24 Company and King County, dated December 18, 2009, and pursuant to that certain
25



1 Notice of Interim Trail Use (“NITU”) issued by the Surface Transportation Board in STB
2 Docket No. AB-6 (Sub-No. 456X) (Service Date November 28, 2008), the County is the
3 designated Interim Trail Sponsor for the Railbanked portions of the Woodinville
4 Subdivision, which status subjects the County to certain legal obligations under the
5 Railbanking Legislation and related to the Take Property (the “Railbanking
6 Obligations”), including but not limited to trail-related obligations. The City
7 acknowledges that but for the City Project, the County could have constructed a trail on
8 the Take Property at grade without any street crossing.

9 4. Sound Transit has an interest in the Take Property as set forth in that certain
10 High Capacity Transportation Easement Agreement recorded under King County
11 Recording No. 20120411001174 (the “Sound Transit Easement”). Sound Transit’s
12 interest in the Take Property has been accommodated by separate agreement, and Sound
13 Transit has been dismissed from this case.

14 5. Puget Sound Energy, Inc. (“PSE”) has an interest in the Take Property as set
15 forth in that certain South Rail Line Easement recorded under King County Recording
16 No. 20101221000998 (the “PSE Easement”). PSE’s interest in the Take Property has
17 been accommodated by separate agreement, and PSE has been dismissed from this case.

18 6. King County has not developed an improved trail on any portion of the Take
19 Property. Future facilities to be developed by King County pursuant to the rights granted
20 in the documents described above shall be referred to herein collectively as “Future
21 Facilities.”
22

23 7. The City acknowledges the public uses identified in the Trail Use Agreement
24 and NITU, and the County Sewer Easement. As generally set forth below, the City
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1 Project will be coordinated with and will accommodate King County's Future Facilities.

2 8. King County acknowledges that as described in the Petition, and further
3 detailed in the Exhibits attached thereto and as now modified in Section 12 below, the
4 City Project would not render its intended uses of the Future Facilities impracticable, and
5 further acknowledges that construction and operation of the City Project may result in
6 increased costs of development of the Future Facilities. In order to accommodate
7 construction of the City Project and the development of the Future Facilities, the City
8 hereby makes the following affirmative promises to King County, and undertakes the
9 following duties and obligations to King County, all of which are made and undertaken
10 by the City as an exercise of the City's business or proprietary powers, and not an
11 exercise of the City's governmental or other core legislative powers:

12 A. King County.

13 (i.) The City hereby agrees to indemnify the County from any and
14 all additional trail development costs that are directly related to the County's design,
15 permitting, and construction of a trail crossing of the City Project (the "Trail Crossing").
16 For purposes of this Agreed Order, the Trail Crossing shall be developed and designed in
17 the manner set forth in Section 8.A.(ii.) below, and the additional trail development costs
18 shall be the net additional costs reasonably necessary to design, permit, and construct the
19 Trail Crossing that the County would not have incurred but for construction of the City's
20 Project on the Take Property (the "Additional Costs"). Additional Costs include, but are
21 not limited to, the cost for time spent by County staff, consultants, and contractors in
22 consultation with the City as contemplated in paragraph (ii.) of this Section 8.A. King
23 County acknowledges that it would incur these same types of costs (including County
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1 staff, consultant and contractor time on design, development and permitting issues) on its
2 Future Facilities without the City's Project. Payment of "Additional Costs" by Bellevue
3 to King County under this Section 8 shall be limited to only those incremental costs in
4 excess of such costs that King County would have incurred for its Future Facilities in the
5 absence of the City's Project.

6 (ii.) The City and the County acknowledge that the location and
7 design of the trail and the Trail Crossing, including the nature and number of users
8 anticipated for the trail, have yet to be determined. The City acknowledges the County's
9 working presumption that a grade-separated Trail Crossing will be required. The County
10 acknowledges the City's interest in considering the feasibility of a Trail Crossing at
11 grade. The City and the County will cooperate to develop a Trail Crossing that allows for
12 the safe and reasonable operation and maintenance of both the future trail and the City
13 Project, considering all relevant standards, guidelines, rules and regulations applicable to
14 the trail at the time of design of that portion of the trail that includes the Trail Crossing.
15 The County agrees that it will consider the feasibility of a Trail Crossing at grade. The
16 County will select a Trail Crossing design after consultation with the City, and will take
17 into account the nature and number of anticipated future trail users, the necessary
18 integration of the Trail Crossing into the trail system developed by the County for the
19 entire corridor, and the City's needs for safe operation and consistent and efficient traffic
20 flow on NE 4th Street. The City agrees that the final decision as to feasibility and
21 selection of a Trail Crossing design will lie with the County in its sole discretion and
22 judgment, in light of the factors described herein, and the City further agrees that if the
23 County determines that an at-grade Trail Crossing is infeasible, then the City will pay the
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1 Additional Costs for a grade-separated Trail Crossing, as such additional costs are
2 defined and limited in Section 8.A.(i.) above. If the County agrees that more than one
3 Trail Crossing design is feasible and would meet the criteria described in this Section
4 8.A., then the City shall be obligated only to pay for the feasible Trail Crossing design
5 with the lowest Additional Costs.

6 (iii.) The City and County have coordinated on the development of
7 the City Project, including City Project design and construction measures to protect
8 certain sewer facilities where they are currently located within the County Sewer
9 Easement. Such sewer facilities will not be relocated as part of the City Project, and will
10 remain in place. The County agrees to cooperate with the City to allow for the
11 monitoring and inspection of the sewer facilities, including the installation of a camera in
12 the sewer line at City's expense, prior to and during construction of the City Project. The
13 parties presently estimate that the City Project is unlikely to cause the County's existing
14 wastewater pipe to settle more than 3/4 inch. In full and complete payment for the
15 presently estimated damages to such sewer facilities from the City Project, including but
16 not limited to loss of capacity resulting from any settlement that does not materially
17 reduce the capacity of the sewer facilities within the County Sewer Easement, the City
18 shall pay \$234,253 to King County ("the Sewer Impact Fee"). The Sewer Impact Fee is
19 separate from, and in addition to, the Possession Payment described in Section 12 of this
20 Agreed Order.
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22 (iv.) If the City Project is constructed substantially as described in
23 the Petition and in the exhibits attached thereto (modified as described in Section 12,
24 below) without material deviation from the specifications and design contemplated
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1 therein, then the City's obligations in this Section 8.A. and Section 12 constitute the full
2 and complete just compensation due to King County from the filing of this case, except
3 as to the Possession Payment and except as set forth in Section 9, below. The Possession
4 Payment represents the City's estimated value of the Take Property described in Section
5 12, below. King County reserves the right to demand additional monetary compensation
6 upon review of the modified exhibits described in Section 12, below, upon review of the
7 City's appraisal, or upon review of other information or materials that may affect the
8 determination of value of the Take Property; and the City agrees to negotiate in good
9 faith if the County demands such additional compensation. If, however, the constructed
10 City Project materially deviates from the Petition and the exhibits attached thereto
11 (modified as described in Section 12, below), or if the City Project results in excess
12 settlement of the sewer facilities causing a material reduction in capacity or utility of the
13 sewer facilities, or otherwise results in material physical damage to those sewer facilities
14 or other County-owned facilities within the Take Property that could not have been cured
15 or prevented by the County installing the pipe lining contemplated in calculating the
16 Sewer Impact Fee, then nothing in this Agreed Order shall prevent King County from
17 seeking new, different, or additional compensation from the City for any and all material
18 new, different, or additional impacts to the County's property, property rights, or existing
19 facilities or Future Facilities. King County and the City of Bellevue reserve all of their
20 respective rights, causes of action, and defenses as to any such material new, different, or
21 additional City Project impacts to its property, property rights, or existing facilities or
22 Future Facilities.
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1 (v.) Upon legislative authorization by the Metropolitan King
2 County Council, the City and the County shall jointly submit to the Court a proposed
3 form of a Decree of Appropriation in the above-captioned matter, which decree shall
4 appropriate to the City a non-exclusive easement over, under, across and through the
5 Take Property for the City Project contemplated in the Petition and the exhibits attached
6 thereto as such exhibits are modified in Section 12 below, and for no other purpose or use
7 (the "City Project Easement"). The Decree of Appropriation shall include the terms and
8 conditions set forth in Sections 8.A.(i.), 8.A.(ii.), and Section 9 of this Agreed Order, and
9 shall further provide that any easements granted by King County within the City Project
10 Easement area shall not interfere with the purposes and uses granted in the City Project
11 Easement. The Decree of Appropriation shall further state that the City Project Easement
12 shall automatically terminate upon the City's abandonment of the public street crossing
13 contemplated in the Petition.
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15 (vi.) Following the Court's entry of the Decree of Appropriation,
16 the County shall record the Decree of Appropriation at its own expense.

17 (vii.) If the Metropolitan King County Council or the Bellevue
18 City Council does not authorize the Decree of Appropriation, then the City and the
19 County may proceed to trial; provided, that the City and the County hereby agree that any
20 Decree of Appropriation entered by the Court after trial in this above-captioned matter
21 shall include the terms and conditions set forth in Sections 8.A.(i.), 8.A.(ii.), and 9 of this
22 Agreed Order.
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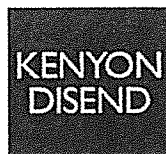
9. Reactivation of Freight Rail.

A. The City acknowledges that the City Project will modify the grade of the existing rail bed on the Take Property. The City acknowledges that such modification could, potentially, result in King County (as the Interim Trail Sponsor) being obligated to bear costs or expenses to restore or improve the Take Property for reactivated freight rail service (“Reactivation Costs”).

B. Therefore, in consideration of these potential future impacts of the City Project, the City hereby agrees that if the County, after the parties have complied with all terms and conditions of the Trail Use Agreement, the PSE Easement and the Sound Transit Easement, is required as a result of its Railbanking Obligations to bear costs or expenses to restore or improve the Take Property for reactivated freight rail service, then the City shall indemnify King County for the minimum net additional County costs or expenses reasonably necessary to satisfy the County’s Railbanking Obligations and that the County would not have incurred but for construction of the City’s Project on the Take Property; provided, however, that the City is not required to indemnify the County to the extent that such minimum net additional costs or expenses are paid or required to be paid, in whole or in part, by the person or entity requesting reactivation of freight rail service or by another third party.

C. The City’s contractual duties and obligations under this Section 9 are in addition to, and separate from the City’s promises, duties, and obligations to King County under Section 8.A. Nothing in this Section 9 shall prevent King County from seeking additional compensation from the City for new, different, or additional City Project-related impacts as contemplated in Paragraph 8.A.(iv.).

AGREED ORDER FOR IMMEDIATE
POSSESSION AND USE, AND ORDER OF
DISBURSEMENT - 9



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10. Additional Terms.

1
2 A. As an exercise of Bellevue's business or proprietary powers,
3 Bellevue's contractual obligations under this Agreed Order are binding on future City
4 Councils. The City of Bellevue has the authority to enter into this contractual
5 relationship pursuant to RCW 35A.11.010, and King County has specifically relied on
6 that authority in agreeing to grant immediate possession and use of the Take Property to
7 the City as set forth herein.

8 B. The parties recognize that additional terms may remain to be
9 negotiated, including coordination of development plans for the Future Facilities and
10 notice and payment terms for the costs described, and will be included in a separate
11 agreement or in the form of Decree of Appropriation contemplated in Section 8.A.(v).
12 The City acknowledges that the Metropolitan King County Council must authorize the
13 form of Decree of Appropriation contemplated in Section 8.A.(v).

14 C. In consideration of King County's agreement to entry of this Agreed
15 Order, the City has requested and the Court has continued the trial date of the above-
16 captioned matter to September 30, 2013.

17
18 11. This Agreed Order for Immediate Possession and Use also constitutes the
19 adjudication of public use and necessity for the City Project.

20 12. At such time as the City deposits the sum of Two Hundred Two Thousand
21 Thirty Dollars (\$202,030.00) ("Possession Payment") into the registry of the court in
22 accordance with RCW 8.25.070 as its offer to acquire the Take Property for the City
23 Project as described in the Petition and as now modified in this Section 12 ("Date of
24 Deposit"), and also deposits the Sewer Impact Fee set forth in Section 8.A.(iii.) in the
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1 additional sum of Two Hundred Thirty-Four Thousand Two Hundred and Fifty-Three
2 Dollars (\$234,253) into the registry of the court, the City shall have and is hereby
3 awarded and granted, immediate possession and use of the Take Property as described in
4 the Petition and exhibits attached thereto, as those exhibits are now modified by this
5 Section 12, including Exhibit B (Roadway Easement of approximately 16,222 square
6 feet, which remains as set forth in the Petition), Exhibit C (Utility Easement of
7 approximately 7,375 square feet as set forth in the Petition, will not be appropriated at all
8 to the City), and Exhibit D (Temporary Construction Easement of approximately 11,258
9 square feet, rather than 28,850 square feet as set forth in the Petition), all of which is
10 depicted on Exhibit E (collectively, the "Take Property"), located in Bellevue,
11 Washington (King County King County Parcel No. 332505-9029).

12
13 13. The date of legal possession and use shall be the later of the date of entry by
14 the Court of this Agreed Order or the Date of Deposit by the City with the Court of the
15 Possession Payment and the Sewer Impact Fee.

16 14. If this matter proceeds to trial then:

17 A. The fair market value of the Take Property shall be determined as of
18 the date of legal possession and use;

19 B. Interest, if any, shall be awarded to the County on the difference, if
20 any, between the Possession Payment of Two Hundred Two Thousand Thirty Dollars
21 (\$202,030.00) deposited pursuant to this Stipulation and Order and the final award of Just
22 Compensation as determined at trial by the court or jury, as the case may be; and

23 C. Interest, if any, shall be calculated, at the statutory rate, from the Date
24 of Deposit through to the date of payment of the final award of Just Compensation as
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1 determined at trial by the court or jury, as the case may be.

2 ORDER FOR DISBURSEMENT

3 1. The Possession Payment in the amount of Two Hundred Two Thousand Thirty
4 Dollars (\$202,030.00), less the Clerk's handling fee, shall be disbursed to King County,
5 as the vested owner, by check payable to King County Treasury, and mailed to King
6 County Treasury, 500 4th Avenue, Room 600, Seattle, WA 98104, Attention Scott
7 Matheson.

8 2. The Sewer Impact Fee in the amount of Two Hundred Thirty-Four Thousand
9 Two Hundred and Fifty-Three Dollars (\$234,253), less the Clerk's handling fee, shall be
10 disbursed to the King County Wastewater Treatment Division by check payable to the
11 King County Wastewater Treatment Division, and mailed to King County Wastewater
12 Treatment Division, Attention Bill Wilbert, 201 S. Jackson Street Suite 512, Seattle, WA
13 98104.

14 DONE IN OPEN COURT this ____ day of 3/8, 2013.

15
16 MBradburn-John
17 ~~Judge Monica J. Benton~~

18 Presented by:

19
20 KENYON DISEND, PLLC

21 By Michael R. Kenyon
22 Michael R. Kenyon
23 WSBA No. 15802
24 Kari L. Sand
25 WSBA No. 27355
Attorneys for Petitioner City of
Bellevue

AGREED ORDER FOR IMMEDIATE
POSSESSION AND USE, AND ORDER OF
DISBURSEMENT - 12



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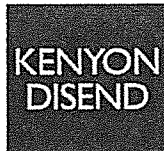
Copy Received; Agreed and Approved for Entry:

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By Michael Kym 15802 for, *by email authorization*

Verna Bromley
WSBA No. 24703
Andrew Marcuse
WSBA No. 27552
Senior Deputy Prosecuting Attorneys

AGREED ORDER FOR IMMEDIATE
POSSESSION AND USE, AND ORDER OF
DISBURSEMENT - 13



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