



Legislation Text

File #: 2013-0356, **Version:** 1

Clerk 09/24/2013

AN ORDINANCE approving and adopting the agreed judgment and decree of appropriation negotiated between King County and the city of Bellevue in that certain eminent domain proceeding captioned as City of Bellevue v. Port of Seattle et al., King County Superior Court Cause No. 12-2-17740-6 SEA, authorizing the executive to implement the terms of the agreed judgment and decree of appropriation upon entry by the superior court and other appropriate measures.

STATEMENT OF FACTS:

1. On April 16, 2012, the city council of the city of Bellevue ("the city") adopted Ordinance No. 6051 which authorized the acquisition of certain property and property rights ("the Take property") necessary for construction of phase 1 of the city's NE 4th Street extension project, specifically to extend a new arterial public street between 116th Avenue NE and the eastern boundary of the former Burlington Northern Santa Fe ("BNSF") Railway Company railway corridor, including the improvement or installation of bike lanes, and the related construction or addition of curb, gutter and sidewalk, retaining walls, traffic signals, illumination, landscaping, irrigation, storm drainage and detention and other utility infrastructure as needed ("the city project").
2. As of April 16, 2012, the Port of Seattle owned fee title to that portion of the Woodinville subdivision that contains the Take property and King County had utility easements and a trail easement in the Take property. Effective as of February 13, 2013, by deed filed under King

County Recording No. 20130213001645, King County acquired fee title to the Take property from the Port of Seattle. King County and the city subsequently negotiated an agreed judgment and decree of appropriation substantially in the form of Attachment A to this ordinance.

3. After negotiations between King County and the city, the Take property described in the petition filed in the city's eminent domain case and in city Ordinance 6051 has been modified.

The Take property subject to the agreed judgment and decree of appropriation is comprised only of: a nonexclusive roadway easement in the form of Exhibit A to Attachment A to this ordinance ("the city project easement"), as to that portion of the Take property legally described in that Exhibit A; and a temporary construction easement in the form of Exhibit B to Attachment A to this ordinance ("the temporary construction easement"), as to that portion of the Take property legally described in that Exhibit B. The city project easement and the temporary construction easement are depicted in Exhibit C to Attachment A to this ordinance ("the project easement area"). The legal description of the Take property appropriated to the city by and through Attachment A to this ordinance supersedes and controls over the legal description of the Take property in the city's eminent domain petition and city of Bellevue Ordinance 6051.

4. The city project will cross over the county's Eastside Sewer Interceptor. The city and King County agree that the city's project could potentially cause the eastside sewer interceptor to settle up to three-quarters of one inch, which could potentially result in an incremental loss of sewer capacity. An analysis performed by the engineering firm Parsons Brinkerhoff and reviewed by the wastewater treatment division of the King County department of natural resources and parks indicates that if the interceptor settles and the incremental loss of capacity occurs, then it could be restored by slip-lining the interceptor. The Parsons Brinkerhoff analysis estimates that the direct cost to slip-line the interceptor would be approximately two hundred thirty-four thousand two hundred fifty-three dollars.

5. King County granted the city possession and use of the Take property under the terms of an agreed order for immediate possession and use and order of disbursement entered by King County superior court on March 8, 2013 ("the possession and use order"). Pursuant to the possession and use order, the city of Bellevue deposited into the court's registry as its offer to acquire the Take property, the sum of two hundred two thousand thirty dollars, which amount has been disbursed to King County. Further, pursuant to the possession and use order, the city of Bellevue also deposited into the court's registry the sum of two hundred thirty-four thousand two hundred fifty-three dollars as an agreed sewer impact fee, which amount has also been disbursed to King County. King County has acknowledged receipt of the same.

6. Under Section 4 of the agreed judgment and decree of appropriation set forth in Attachment A to this ordinance, the city acknowledges that the Take property, together with the remainder of the subject property and certain other property commonly referred to as the south rail line portion of the Woodinville subdivision formerly owned by BNSF Railway Company, has been railbanked under 16 U.S.C. Sec. 1247(d) and its implementing regulations, including but not limited to 49 C.F.R. Sec. 1152.29 ("the railbanking legislation"). The city further acknowledges that pursuant to that certain trail use agreement between BNSF Railway Company and King County, dated December 18, 2009, and pursuant to that certain notice of interim trail use issued by the Surface Transportation Board in STB Docket No. AB-6 (Sub-No. 456X) (service date November 28, 2008), the county is the designated interim trail sponsor for the railbanked portions of the Woodinville subdivision, which status subjects King County to certain legal obligations under the railbanking legislation and related to the Take property, including but not limited to trail-related obligations.

7. Section 5.A. of the agreed judgment and decree of appropriation attached as Attachment A to this ordinance states that as an exercise of the city of Bellevue's business or proprietary powers,

the city's contractual duties and obligations under the agreed judgment and decree are binding on future city councils. Section 5.A. of the agreed judgment and decree also recites that the city of Bellevue has the authority to enter into this contractual relationship pursuant to RCW 35A.11.010, and that King County has specifically relied on that authority in negotiating and agreeing to the agreed judgment and decree of appropriation set forth in Attachment A to this ordinance.

8. Section 5.B. of the agreed judgment and decree of appropriation states that the city of Bellevue has paid and King County has received full and final just compensation for the appropriation of the Take property described in Exhibits A and B to Attachment A to this ordinance. Section 5.A. further states that no further amounts shall be due from the city of Bellevue, except as provided under paragraphs 6 and 9 of Attachment A to this ordinance.

9. Upon entry of the agreed judgment and decree of appropriation, the Take property comprised of the easement rights described in Exhibits A and B to Attachment A to this ordinance will be granted to and appropriated by the city of Bellevue through documents to be recorded substantially in the form of Exhibits A and B attached to Attachment A to this ordinance.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The agreed judgment and decree of appropriation negotiated between King County and the city of Bellevue in City of Bellevue v. Port of Seattle et. al, King County Superior Court Cause No. 12-2-17740-6 SEA, which judgment and decree is Attachment A to this ordinance⁰ and by this reference made a part of this ordinance, is hereby approved and adopted.

SECTION 2. The executive is authorized to instruct the prosecuting attorney to execute the agreed judgment and decree of appropriation substantially in the form of Attachment A to this ordinance and to file the executed judgment and decree with the superior court.

SECTION 3. Upon final approval of the agreed judgment and decree of appropriation by the superior

court in and for King County, Washington, the executive is authorized to implement the terms of the agreed judgment and decree through grant of a permanent easement and a temporary construction easement to the city substantially in the form of Exhibits A and B to Attachment A to this ordinance and through other measures necessary to implement the terms of the agreed judgment and decree of appropriation.