

MEMORANDUM OF UNDERSTANDING

Regarding Eastrail Fiber Optic Project

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made by and among King County, a home rule charter county and political subdivision of the State of Washington (“King County”); Central Puget Sound Regional Transit Authority, a regional transit authority operating pursuant to Chapter 81.112 RCW (“Sound Transit”); Puget Sound Energy, Inc., a Washington public utility corporation (“PSE”); the City of Woodinville, a Washington municipal corporation (“Woodinville”); the City of Redmond, a Washington municipal corporation (“Redmond”), and the City of Kirkland, a Washington municipal corporation (“Kirkland”), each a “Party” and collectively the “Parties.”

RECITALS

- A. The Eastrail (previously the “Eastside Rail Corridor”) is a former BNSF Railway Company rail line segment running from milepost (“MP”) 5.0 in the City of Renton in King County to MP 38.25 in the City of Snohomish in Snohomish County, together with a spur line (the “Redmond Spur”) extending from MP 0.0 in the City of Woodinville to MP 7.3 the City of Redmond in King County.
- B. The Port of Seattle acquired the Eastrail from the BNSF Railway Company in 2009. Previously, in 2008, a portion of the Eastrail from MP 5.0 in Renton to MP 23.8 in Woodinville, along with the Redmond Spur, had been “railbanked” pursuant to the National Trails System Act, 16 USC §1247(d) and its implementing regulations, with King County (and later the City of Redmond as to its portion of the Redmond Spur) as the interim trail user. As of the date of this MOU, the remainder of the Eastrail from MP 23.8 in Woodinville to MP 38.25 in the City of Snohomish remains subject to interstate freight rail use although active freight service is presently embargoed (i.e. temporarily but indefinitely halted).
- C. Between 2010 and 2015, the Parties each acquired from the Port of Seattle various property interests in the Eastrail within King County, from Renton to Woodinville (the “Main Line”), and in the Redmond Spur. The property rights of each Party are generally summarized in **Exhibit A**.
- D. Consistent with railbanking, several of the Parties plan to develop, or are presently developing, the railbanked segments of the Eastrail corridor for recreational, transportation, and utility uses.
- E. The Parties recognize that a range of current and future municipal, county, public sector, business, and nonprofit needs could be served by installing new fiber optic infrastructure in the Eastrail, and the Parties desire to jointly pursue a plan to design, install, construct, operate, and maintain such infrastructure within the portion of the Eastrail located within the geographic boundaries of King County.

NOW, THEREFORE, the Parties have reached the following understanding:

1. Purpose; Project Concept.

1.1 The Parties have envisioned and intend to work to complete a series of actions and transactions for their mutual benefit. The Parties wish to set forth their understandings in this Memorandum of Understanding (“MOU”) with respect to their respective interests in those actions and transactions. This MOU is a non-binding document that creates no rights and imposes no legally binding obligations on any Party. While the Parties are committed to working cooperatively, expeditiously, and efficiently to further the Eastrail fiber project concept using this MOU as a guide, the processes described in this MOU are tentative and subject to review and modification as the Parties move forward with their discussions.

1.2 The Parties denoted as “fee” owners in Exhibit A to this MOU (collectively, the “Owner Parties”) have worked collaboratively to address the availability of communications infrastructure for both public and private use. Together, the Owner Parties have identified multiple use cases for communications infrastructure, particularly in the business and residential areas along the Eastrail including, but not limited to, the cities of Renton, Newcastle, Bellevue, Kirkland, Redmond, and Woodinville. To address this need, the Owner Parties intend to contract with a vendor to install conduit and high-count fiber infrastructure to enable high-quality fiber services along the Eastrail to facilitate private sector investment and services to businesses and residential areas adjoining the Eastrail, cities and King County.

1.3 As currently conceived, King County intends to issue a request for proposals (“RFP”) to seek a professional firm or consortium of firms (the “Vendor”) for the specific purpose of designing, constructing, maintaining, and operating approximately 28 route miles of new underground (or, as engineering design or permitting may require, aerial) conduit and fiber optic cable in the Eastrail (the “Fiber Work”). The 28 miles of fiber infrastructure would extend from roughly MP 5 to MP 26 along the main line and MP 0 to MP 7 along the Redmond Spur. The fiber would pass through the cities of Renton, Newcastle, Bellevue, Kirkland, Redmond, and Woodinville. The fiber infrastructure would generally consist of four (4) conduits, each such conduit being four (4) inches in diameter. A minimum of one of the four conduits would be designated for municipal use by the Parties and other public or quasi-public entities, and a minimum of five (5) innerducts would be placed in that municipal conduit, with a single 288-count fiber optic cable placed in one of the five innerducts in the municipal conduit. Access vaults would be placed at strategically identified locations along the corridor where required for fiber installation and slack storage. In response to the RFP, prospective vendors would propose business models to design, construct, operate, and maintain this infrastructure, with the option to utilize the remaining capacity and extract benefits such as revenue sharing with other fee owners from it.

2. Request for Proposals (RFP) Process and Timeline.

2.1 The Parties will identify staff who will work cooperatively and in good faith to collaborate with King County to develop the RFP to select a Vendor to design, construct, maintain, and operate fiber infrastructure within the Eastrail corridor consistent with the project concept described in Section 1.3 of this MOU.

2.2 With the Parties' input, King County will endeavor to complete development of the RFP by late-September, 2021. Provided that the late-September, 2021 RFP development goal is met, King County intends to issue the RFP in November 2021. Among other things, the RFP will specify the criteria by which a Vendor will be selected and the makeup of the selection committee, which may include one or more representatives of the Parties.

2.3 After the RFP solicitation period ends, presently anticipated for late December 2021, King County will lead the selection committee to evaluate and score all proposals consistent with the evaluation process and scoring criteria established in the RFP. At the conclusion of that process, the successful Vendor will enter into one or more contracts with the Owner Parties for performance of the Fiber Work.

3. Development of Uniform Real Estate Instrument or Alternative Model; Protection of Property Rights; Legislative Approvals.

3.1 The Parties acknowledge that as presently contemplated, the RFP process could result in a variety of proposals embodying different business models for the Fiber Work and that depending on the business model in the proposal selected through the RFP, the Vendor selected to carry out the Fiber Work may require some sort of property interest or interests in the Eastrail. To promote efficiency in pursuit of the Fiber Work, the Owner Parties agree to work collaboratively and in good faith to develop a uniform lease, license, or other real estate instrument that could be executed by each Owner Party and by the selected Vendor if and when a contract for the Fiber Work is executed. The Owner Parties will endeavor to complete such common real property instrument or template by June 30, 2021. Alternatively, the Owner Parties may explore the option of leasing real property interests to King County for sublease or assignment to the selected Vendor in support of the Fiber Work.

3.2 The Parties agree that any property interest or interests made available to the successful Vendor will be subordinate to all prior existing property rights in the Eastrail corridor, including but not limited to the Parties' rights identified in Exhibit A to this MOU.

3.3. The Parties agree that the successful Vendor will bear all costs and expense to relocate any fiber infrastructure installed pursuant to the Fiber Work in the event that such relocation becomes necessary as a result of one or more of the Parties desiring to exercise their prior existing property rights in the Eastrail.

3.4 The Parties acknowledge that council, board, or commission authorization may be required as a matter of law before one or more of the Parties may execute any real property instrument to implement or allow the Fiber Work in the Eastrail, and neither the RFP nor this MOU may alter any such requirement.

3.5 The Parties agree that the property-related requirements set forth in Sections 3.2, 3.3, and 3.4 of this MOU will be stated in the RFP and as terms or conditions of any final contract awarded for the Fiber Work.

4. Initial Investments; Revenue Sharing Model.

4.1 The Parties acknowledge that the cities of Redmond and Kirkland have already installed or are in the process of installing fiber conduit in the Eastrail. The Parties intend that if those Owner Parties make their conduit available for the Fiber Work then they would receive compensation, credit, an offset, or other form of consideration for making that conduit available to the Vendor for the Fiber Work, and that their in-kind investment would be repaid or otherwise compensated before other Owner Parties would receive any revenue or other payment from the Vendor in connection with the Fiber Work. The Parties agree that a similar principle would apply to any other Party or Owner Party that materially contributes to the initial Fiber Work. The Parties intend that the contract with the Vendor will include terms relating to such contributions and compensation.

4.2 The Owner Parties intend to negotiate a revenue-sharing plan or model to fairly allocate revenue or other benefits from the Fiber Work among them. The Owner Parties intend to complete the revenue-sharing plan or model not later than the date that the RFP is issued as described in Section 2.1. The Owner Parties contemplate that the revenue-sharing plan or model may be based on their relative share of investment in the Fiber Work, or the length of the Eastrail that they respectively control, or some other reasonable basis rationally related to the Fiber Work and the Owner Parties' respective involvement in the Fiber Work, and taking into account the cost-recovery principles stated in Section 4.1 of this MOU.

4.3 The Parties will collaborate in good faith to investigate and pursue funding sources including but not limited to Federal funding opportunities.

5. Railbanking.

Consistent with Recital B, the Parties recognize that pursuant to railbanking, all interim uses of the railbanked Eastrail from milepost 5.0-23.8 on the main line and on all of the Redmond Spur are subject to future reconstruction and reactivation of the railbanked right-of-way for interstate freight rail service. The Parties agree that if reconstruction and reactivation of any railbanked portion of the Main Line or Redmond Spur occurs, and if such reconstruction and reactivation requires removal or relocation of the fiber infrastructure installed pursuant to the Fiber Work, then the successful Vendor or its successor should be responsible for all costs and expenses associated with the removal or relocation of fiber infrastructure to accommodate such restoration of interstate freight rail service. The Parties intend that these reactivation-related deal points will be stated in the RFP and as a term or condition of any final contract awarded for the Fiber Work.

6. North of MP 23.8.

Consistent with Recital B above, the Parties recognize that at the present time the Eastrail remains subject to interstate freight rail use from MP 23.8 to MP 38.25. The Parties intend that any future Fiber Work conducted on that portion of the Eastrail shall be undertaken in a manner consistent with the then-applicable regulatory regime and any final, binding orders or decisions of the federal Surface Transportation Board (STB) in any proceedings pertaining to that portion of the Eastrail. The Parties intend that this STB compliance requirement will be stated in the RFP and as a term or condition of any final contract awarded for the Fiber Work.

7. Dispute Resolution.

The Parties agree to use their best efforts to resolve any disputes arising under this MOU using good-faith negotiations and to timely elevate any dispute that cannot be reasonably resolved at the staff level. The Parties agree to continue to work in good faith during the pendency of any dispute so that the purposes of this MOU are not frustrated. The Parties further agree to communicate regularly to discuss matters arising under this MOU and to prevent disputes from arising.

KING COUNTY, WASHINGTON

PUGET SOUND ENERGY, INC.

By: _____
Name, Title

By: _____
Name, Title

SOUND TRANSIT

CITY OF REDMOND, WASHINGTON

By: _____
Name, Title

By: _____
Name, Title

CITY OF WOODINVILLE, WASHINGTON

CITY OF KIRKLAND, WASHINGTON

By: _____
Name, Title

By: _____
Name, Title

EXHIBIT A
Property Rights in Eastrail Corridor

	King County	Sound Transit	PSE	Woodinville	Kirkland	Redmond
Main Line (MP*)						
5.0-12.4	7.4	7.4	7.4			
12.4-13.5	1.1	1.1	1.1			
13.5-14.8	1.3	1.3	1.3			
14.8-20.3	5.5	5.5	5.5		5.5	
20.3-23.8	3.5	3.5	3.5			
23.8-26.0	2.2		2.2	2.2		
Redmond Spur (MP*)						
0.0-3.4	3.4	3.4	3.4			
3.4-7.3	3.9	3.9	3.5-5.2			3.9

Easement	
Fee**	

* All milepost references are approximate, provided for convenience only, and subordinate to the relevant legal description in any recorded deed of conveyance, grant of easement, or similar real property instrument of record.

** “Fee” here is shorthand for all of the residual rights that BNSF conveyed to the Port of Seattle in 2009, less those specific easement rights conveyed by the Port to others (e.g. King County, PSE, Sound Transit, etc.). The interests labeled as “fee” here thus may amount to fee simple title to the corridor in some segments, or a railroad easement in others. This summary table is not a substitute for complete title work competently performed by a reputable title company or other resource.

***Easement rights being negotiated as of May 2021