

Exhibit A
Draft – MEMORANDUM OF UNDERSTANDING
Regarding Joint Appraisal of Woodinville Subdivision
KC Edits 2-17-10

This MEMORANDUM OF UNDERSTANDING ("MOU") is made by and among the Port of Seattle, a Washington municipal corporation ("Port"), Sound Transit, a Washington regional transit authority ("Sound Transit"), King County, a political subdivision of Washington ("King County"), the City of Redmond, a Washington municipal corporation ("Redmond"), the Cascade Water Alliance, a Washington non-profit corporation ("Cascade"), and Puget Sound Energy, Inc., a Washington corporation ("PSE") (collectively, the "Parties" and individually as a "Party") as of the ___ day of February, 2010.

WHEREAS:

- A. The Woodinville Subdivision consists of a main line corridor between Renton and Snohomish (approximately mile posts 5.0 and 38.4) and a spur corridor between Woodinville and Redmond (between approximately mile posts 0.0 and 7.3) ("Redmond Spur").
- B. The portion of the Woodinville Subdivision north of mile post 23.8 in Woodinville to milepost 38.4 in Snohomish County is referred to as the "Freight Portion"; and
- C. The portion of the Redmond Spur between approximately milepost 0.0 and the point at which the Spur crosses the boundary of the City of Redmond at approximately milepost 3.2, is referred to as the "County Portion of the Redmond Spur"; and
- D. The portion of the Redmond Spur between the point at which the Spur crosses the boundary of the City of Redmond at approximately milepost 3.2 and approximately milepost 7.3 is referred to as the "City Portion of the Redmond Spur."
- E. The portion of the Woodinville Subdivision south of Woodinville, excluding the Redmond Spur, is referred to as the "Southern Portion."
- F. The Port, King County and BNSF closed a purchase and sale agreement and donation agreement on December 18, 2009 for the acquisition and partial railbanking of the Woodinville Subdivision ("Closing"); and
- G. At Closing, the Port paid to BNSF a purchase price of \$81, 449,000; and
- H. At Closing, the Port acquired the Freight Portion of the Woodinville Subdivision subject to continuing freight railroad service and acquired the rest of the Subdivision in railbanked status; and

I. At Closing, the County acquired from the Port for \$1,903,000 a Public Multipurpose Easement for the County's use of the Redmond Spur and Southern Portion of the Woodinville Subdivision, and the County entered into a Trail Use Agreement with BNSF whereby the County assumed the responsibility of the trail sponsor under federal railbanking law, 16 U.S.C. Section 1247(d), for the Redmond Spur and Southern Portion of the Woodinville Subdivision; and

J. Prior to Closing, the Port and King County identified additional regional partners, including Sound Transit, City of Redmond, Cascade Water Alliance and Puget Sound Energy, who had an interest in obtaining rights to use and sharing in the cost of acquiring the Woodinville Subdivision for public ownership; and

K. On November 5, 2009, the Port and King County entered into a Memorandum of Understanding ("November 2009 MOU") with the above-referenced additional regional partners to set forth the Parties' mutual understandings with respect to completing future transactions whereby the regional partners would purchase from the Port interests in the Woodinville Subdivision and thus share in the cost of acquiring it; and

L. As anticipated in the November 2009 MOU, The parties intend to further define and negotiate an allocation of interests in the Woodinville Subdivision; and

M. In advance of the conveyance of interests described above, the Parties wish to jointly obtain an updated appraisal of the Woodinville Subdivision from S. Murray Brackett, MAI ("Appraiser"), who previously prepared a Self-Contained Appraisal Report of the Woodinville Subdivision that was completed on May 29, 2008.

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

Section 1. Purpose.

The Parties have envisioned and are working to complete the above described transactions related to the Woodinville Subdivision for their mutual benefit and for the benefit of the public. The Parties wish to cooperate in obtaining an updated appraisal of the Woodinville Subdivision by setting forth their understanding regarding appraisal scope of work, which party shall serve as the point of contact for the Appraiser, which parties are intended users of the appraisal report, the process for review and comment on the appraisal, allocation of appraisal costs, and the process for resolution of potential disagreements between the Parties.

Section 2. Appraisal Scope of Work.

The Parties shall meet and/or otherwise confer regarding the details of an appraisal scope of work. The Parties agree as follows:

- a. The Appraiser shall prepare an updated self-contained appraisal report containing an opinion of market value for the Woodinville Subdivision based on the condition in which it was acquired by the Port of Seattle as well as support for that value conclusion.
- b. The Appraiser shall allocate the value of the Woodinville Subdivision among the four separate segments of the Woodinville Subdivision, i.e. the Freight Portion; the County Portion of the Redmond Spur subject to the existing Railroad Right of Way License; the City Portion of the Redmond Spur; and the Southern Portion.
- c. The Parties shall cooperate to provide direction to the Appraiser so that the Appraiser can complete the above-referenced report by March 31, 2010.
- d. Further, the Parties shall cooperate and make their reasonable best efforts to identify and negotiate the terms of the real property interests that each Party will acquire by April 5, 2010. Once those real property interests are determined, the Parties shall promptly provide the Appraiser with a description of those interests so that the Appraiser can prepare an addendum to the above-referenced report. Said addendum, which may also be referred to as the second phase report, shall allocate the value of the Woodinville Subdivision among the identified real property interests or otherwise provide an opinion of market value for such interests. If timing permits, the second phase report may be included as part of the initial report, rather than as an addendum.
- e. The Scope of Work for the appraisal is attached hereto as Exhibit A. The estimated costs for the appraisal are set forth in this Scope of Work. This Scope of Work may be amended only through the unanimous agreement of the Parties as set forth in Section 5.

Section 3. King County to be Client and Point of Contact for Appraiser.

King County shall be the Appraiser's Client and Point of Contact for purposes of the appraisal assignment.

Section 4. Other Parties to be Intended Users of Appraisal Report.

Parties other than King County shall be treated as intended users of any appraisal report prepared by the Appraiser in accordance with this MOU. All Parties shall have the right to rely on such appraisal report.

Section 5. Commitment to Achieve Consensus on Direction to Appraiser.

All material communications with the Appraiser shall be agreed to unanimously by the Parties. In their dealings with each other and the Appraiser, the Parties shall act in a manner consistent with their commitment to achieve unanimity in any material communication made to the Appraiser. The unanimity requirement shall not be applicable to any non-material communications. Material communications concern issues such as the scope of work, assumptions, or direction on other substantive issues related to the appraisal. Non-material communications concern issues such as meeting scheduling, billing details and other non-substantive issues. The unanimity requirement shall also not be applicable to the terms of the contract between the County and the Appraiser, which contract will be a matter agreed to only by the County and the Appraiser.

Section 6. Process for Review and Comment.

When there are any questions from a Party or the Appraiser about the scope of work, assumptions or direction with regard to any substantive issues concerning the appraisal, or when any Party or the Appraiser desires to communicate with the Parties regarding the appraisal process, the Party or the Appraiser shall contact the King County primary contact person as identified below the signature of King County in this MOU. King County shall then share the question or communication with the other Parties. If the answer to the question or the response to the communication can be appropriately handled via email, King County shall email the answer/response to the Party or Appraiser, as appropriate, and copy the other Parties. If the answer/response requires further discussion, King County shall convene a meeting of the Parties, and as appropriate, with the Appraiser.

Once the Appraiser has prepared a draft appraisal report, the Appraiser shall distribute it to the Parties. The Parties shall provide comments to the County to be forwarded to the Appraiser as a single set of comments. If the Parties are not unanimous as to the content of the singlet set of comments, the County shall convene a meeting of the Parties with the Appraiser.

If the Parties are unable to reach unanimous agreement under this Section 6, then any Party may invoke the Dispute Resolution procedures in Sections 8 (a) and (b) in the manner set forth therein.

Section 7. Cost Allocation for Appraisal Services.

The cost of the appraisal report and related services of the Appraiser shall be allocated as follows with respect to the first phase of the appraisal report which shall address the items in Section 2(a) and (b):

- a. Port -11%
- b. King County -34%
- c. Sound Transit - 17%
- d. City of Redmond - 10%
- e. Cascade Water Alliance -11%

f. Puget Sound Energy – 17%

With respect to the second phase of the appraisal report, which shall allocate the value of the Woodinville Subdivision among the Parties' identified real property interests or otherwise provide an opinion of market value for such interests, the cost of that second phase of the report and related services of the Appraiser shall be borne by only those Parties participating in the second phase. It is acknowledged by the Parties that the second phase will not allocate a value to the Freight Portion and that the Port will not share in the cost of the second phase or the related services of the Appraiser. Unless otherwise agreed by those Parties, the cost of the second phase of the report will be allocated in equal shares among the Parties participating in the second phase.

In addition to the appraisal reports contemplated herein, any Party may, based on its particular needs, request that the Appraiser perform additional appraisal work or allocations of value, or to provide additional explanation as to why the interests may be valued higher or lower based on a different set of assumptions. It is anticipated, for example, that for internal accounting purposes the County may request separate values for discrete interests it may acquire with money from separate funding sources. It shall be the responsibility of the requesting Party and the Appraiser to reach separate contractual arrangements for such work.

The Appraiser shall invoice the County, and the County will promptly invoice the Parties for their respective shares of the Appraiser's Invoice. The Parties shall remit payment to the County within forty-five (45) days of receiving an invoice.

Section 8. Dispute Resolution.

The following Dispute Resolution provisions shall apply to any disputes between the Parties arising out of this MOU.

a. Each Party may invoke the Dispute Resolution procedures of this MOU. Within seven (7) days after a written request from a Party, the Chief Executive Officer, Executive Director, President, Vice President or his/her designee, of each Party shall meet with his/her counterparts representing the other Parties ("Party Consultation"). This seven (7) day period may be extended for an additional seven (7) days at the request of any Party. If the dispute is not resolved by the Party Consultation, the Parties may agree to additional meetings.

b. If a dispute is not resolved under the procedure set forth in Section 8.1, 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 written request for mediation in writing to the other Parties. Mediation shall be completed within thirty (30) days of any request for mediation. The Parties shall share equally the costs of the mediation. Any mediation under this MOU shall be held in King County, Washington.

- c. The Parties shall not commence litigation on a dispute unless the alternative dispute resolution processes in Sections 8(a) and 8(b) have been completed.

Section 9. Cooperation to Close Transactions by May 15, 2010.

The Parties commit to cooperate and use their reasonable best efforts so that the transactions conveying the real property interests of the Parties in the Woodinville Subdivision may close by May 15, 2010. This MOU is not, however, a binding agreement for the Parties to convey or acquire the real property interests that are contemplated in the transactions described herein. Such conveyances and acquisitions will be contracted for in binding agreements to be negotiated by the Parties. Such agreements will be subject to approval by each Party's legislative body or governing board. Nothing in this MOU shall be interpreted as preventing the Port from proceeding to close the sale of any segment of the Corridor with any Party, regardless of whether that Party has withdrawn from this MOU.

Section 10. General Terms

- a. **Public Disclosure.** If any Party receives a Public Disclosure Request for documents related to this MOU or the appraisal work contemplated herein, that Party will promptly give notice of such request to the other Parties.
- b. **Term and Termination.** This MOU will remain in full force and effect until the appraisal reports contemplated herein are completed. Any Party may, upon fifteen (15) days written notice to the other Parties, withdraw from this MOU, without cause. The withdrawing Party shall be released from any responsibility to perform obligations under this MOU, except such withdrawing Party shall be obligated to pay its share of costs as allocated under Section 7, including costs for work already completed and for future work for which that Party is already obligated to pay. If a Party withdraws from this MOU, that Party shall no longer be entitled to any rights or benefits in this MOU, and shall not be a client or intended user in any appraisal report completed after the withdrawal. Such Party shall, if it so requests, receive copies of any appraisal report and related materials, including without limitation materials relied upon by the Appraiser, for which such Party has paid its share of costs as allocated under Section 7. Such Party may also contract separately with the Appraiser, and the Appraiser may rely on any materials used in conjunction with any appraisal or valuation work done under this MOU. If the County withdraws from this MOU, then it shall terminate its contract with the Appraiser and any other Party may enter into a new contract with the Appraiser and fulfill the obligations of the County in this MOU.
- c. **Notice.** The Parties' addresses for notices under this MOU shall be the physical and electronic addresses of the primary contacts as set forth below the signature of each Party, until the Party provides written notice of substitute primary contact information to the other Party. Notice and copies of

documents may be provided by email or hand delivery, and if so provided shall be effective on the day received if received on a Working Day by 5:00 PM Pacific time, and if later then effective on the next Working Day. If provided by U.S. mail, any notice or other communication shall be effective on the second Working Day after deposit in the U.S. mail, postage prepaid, addressed in accordance with this Section. For purposes of this MOU, a "Working Day" is a day that is not a Saturday, Sunday, or holiday.

d. Remedies. This MOU shall not result in any monetary liability, in damages or otherwise, from either Party to the other, except for the obligations to share the costs of Appraisal under Section 7. Except for monetary obligations under Section 7 of this MOU, any suit to enforce the terms of this MOU or any obligation hereunder shall be limited to equitable remedies not involving payment of money. Any such suit shall be brought in King County Superior Court.

e. This MOU may be executed in counterparts, each of which shall constitute an original and which together shall constitute a single agreement. This MOU may be modified only by written agreement of the Parties. This MOU is for the benefit of only the Parties hereto, and shall not give rise to any claim or remedy for any other person or entity.

The Port of Seattle, a
Washington municipal corporation

By: _____

Date: _____, 2010

Name: _____

Title: _____

Port of Seattle Contact:

Name: _____

Title: _____

Address: _____

phone: _____ fax: _____

email: _____

Sound Transit, a

Washington regional transit authority

By: _____ Date: _____, 2010

Name: _____

Title: _____

Sound Transit Contact:

Name: _____

Title: _____

Address: _____

phone: _____ fax: _____

email: _____

King County, a

political subdivision of Washington

By: _____ Date: _____, 2010

Name: _____

Title: _____

King County Contact:

Name: _____

Title: _____

Address: _____

phone: _____ fax: _____

email: _____

The City of Redmond, a

Washington municipal corporation

By: _____

Date: _____, 2010

Name: _____

Title: _____

City of Redmond Contact:

Name: _____

Title: _____

Address: _____

phone: _____ fax: _____

email: _____

Cascade Water Alliance, a

Washington non-profit corporation

By: _____

Date: _____, 2010

Name: _____

Title: _____

Cascade Water Alliance Contact:

Name: _____

Title: _____

Address: _____

phone: _____ fax: _____

email: _____

Puget Sound Energy, a
Washington corporation

By: _____

Date: _____, 2010

Name: _____

Title: _____

Puget Sound Energy Contact:

Name: _____

Title: _____

Address: _____

phone: _____ fax: _____

email: _____

Exhibit A

Scope of Work

DRAFT