

EXHIBIT B
To
Resolution No. 3662

**REGIONAL PUBLIC TRAIL EASEMENT
(EASTSIDE RAIL CORRIDOR MP 23.8 – MP 27.4)**

THIS REGIONAL PUBLIC TRAIL EASEMENT (“**Easement**”) is granted to KING COUNTY, a home rule charter county and political subdivision of the State of Washington (“**County**”) by PORT OF SEATTLE, a Washington state municipal corporation (“**Port**”) for the purposes hereinafter set forth, effective as of the date of execution. County and Port are each referred to herein from time to time as a “Party” and together as the “Parties”.

RECITALS

- A. Port is the owner of certain real property located in portions of both King County and Snohomish County, Washington, extending from approximately MP 23.8 to MP 27.4 as legally described in Exhibit A attached hereto (the “**Right of Way Property**”). Port acquired the Right of Way Property, together with certain adjacent real property, from BNSF Railway Company (“**BNSF**”) pursuant to that certain Quit Claim Deed executed December 18, 2009 and recorded in the real estate records of King County, Washington as instrument number 20091218001536 and in the real estate records of Snohomish County, Washington as instrument number 200912210438 (“**Right of Way Deed**”).
- B. BNSF reserved in the Right of Way Deed an exclusive easement for freight rail purposes (the “**Reserved Freight Easement**”) over the Right of Way Property as well as certain adjacent real property. BNSF thereafter conveyed its rights under the Reserved Freight Easement to GNP Rly. Inc., a Washington corporation, (“**GNP**”), pursuant to that certain Quit Claim Deed dated as of December 18, 2009 and recorded in the real estate records of King County, Washington as instrument number _____ and in the real estate records of Snohomish County, Washington as instrument number 200912210430 (“**Freight Easement Deed**”). GNP’s rights in and to the Reserved Freight Easement are subject to certain covenants running with the land in favor of Port and its successors and assigns as set forth in the Right of Way Deed.

Port has agreed to grant County a perpetual, non-exclusive easement over, under, along, across and through the Easement Area and perpetual, nonexclusive easement over portions of the Right of Way Property for development, construction, maintenance, repair and replacement of the Trail and Trail Facilities subject to the terms and conditions set forth in this Easement. County has agreed and hereby acknowledges that its Easement rights are subject to the Reserved Freight Easement as well as the terms and conditions of that certain Operations and Maintenance Agreement between Port and GNP dated as of December 18, 2009 (the “**O&M Agreement**”), pursuant to which GNP and its permitted assignees and successors (“**Freight Operator**”) are entitled to use portions of the Right

of Way Property for Freight and Excursion Rail Services (defined below). This Easement is further subject to all matters affecting the Right of Way Property as of the Effective Date, whether of record or not, including but not limited to (i) matters which would be disclosed by a current accurate survey of the Property; and (ii) rights granted to third parties pursuant to any third party lease, license, permit, occupancy agreement or other agreement demising space in or providing for the use or occupancy of the Property (“**Third Party Leases, Licenses and Contracts**”).

NOW, THEREFORE, for \$10.00 and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Port, Port hereby grants to County a perpetual, non-exclusive easement over, under, along, across and through the Right of Way Property, subject to and upon the following terms and conditions:

TERMS AND CONDITIONS

1. **Grant of Easement.**

A. **Grant.** Port grants to County a perpetual, non-exclusive, easement generally not to exceed thirty (30) feet in width (the “**Easement**”) over, under, along, across and through that portion of the Right of Way Property as described and depicted in Exhibit B attached hereto (the “**Easement Area**”) for the purpose of the Trail and Trail Facilities identified herein. The Easement Area shall be wider than thirty (30) feet as and where necessary to support or facilitate Trail or Trail Facilities infrastructure, including but not limited to slopes, fills, cuts retaining walls, abutments, culverts and other drainage structures, bridges, tunnels, and grade separation or other structures or improvements to separate the Trail from any active rail facilities or operations.

B. **Location.** The Easement Area is within that portion of the Right of Way Property extending between approximately MP 23.8 and MP 27.4, a distance of approximately 3.6 miles. Port and County agree and acknowledge that pending further evaluation of the physical constraints of the Right of Way Property and the related feasibility of location of the Trail and Trail Facilities infrastructure, it will not be practical to determine and describe the exact size and location of the Easement Area within the Right of Way Property as of the effective date of this Easement. County shall make the initial proposal for the size and location of the Easement Area, and Port and County shall thereafter negotiate in a good faith and reasonable manner to reach an agreement consistent with County’s proposal, any Third Party Leases, Licenses and Contracts and Freight Operator’s rights in and to the Right of Way Property. County acknowledges and agrees that Port will consult with Freight Operator when reviewing County’s proposal for the size and location of the Easement Area and to ensure that the Easement Area proposed by County will not interfere with the operation of Freight and Excursion Rail Service within the Easement Area and the Right of Way Property. The Parties’ agreement as to the Easement Area shall be made within eighteen (18) months after the initiation of negotiations, and if such agreement is not made within the 18-month period, then either party may start the Dispute Resolution process under Section 14 below; provided, however, that the Parties may by mutual

written agreement extend the 18-month period. The Parties acknowledge and agree that until such time as this Easement is amended to provide a revised legal description of the Easement Area under Section 1.C of this Easement, all references to Easement Area under this Easement shall be read to mean the Right of Way Property. The Parties also acknowledge and agree that County may establish the Easement Area under this Section 1 in phases.

C. Amendment. Upon substantial completion of the Trail and Trail Facilities, County shall prepare an as-built survey showing the location and dimensions of the Trail and Trail Facilities and shall prepare and submit to Port for review an amendment to this Easement that sets forth the final legal description of the Easement Area for recording in the real property records of King County, Washington. County shall be solely responsible for all costs associated with finalizing and recording the amended Easement (except for costs incurred by Port in review of such amended Easement) and shall ensure that Port receives a conformed copy of such recording. The Parties acknowledge and agree that County may substantially complete Trail and Trail Facilities and prepare and submit corresponding amendments to this Easement in phases.

2. Purpose/Use. County shall have the right to use and enjoy the Easement Area to install, construct, own, use, operate, maintain, inspect, repair, replace, renovate, improve, remove, manage, and enhance a public hard- and/or soft-surface regional trail (“**Trail**”), including restroom and picnic facilities, information kiosks, curbs, ramps, steps, railings, and other surface structures which, as to side slopes, cuts, fills, stream or road crossings, and wetland areas, may include fills, pilings, retaining walls, support structures, bridges, tunnels and culverts and related improvements for public recreational purposes, including but not limited to equestrian, pedestrian, bird-watching, nature study, bicycling, hiking or other non-motorized uses. County shall also have the right to use power-driven equipment and vehicles within the Easement Area for Trail-related purposes, including but not limited to inspection, repair and maintenance, construction, policing, life safety, emergencies, and recreational use by mobility-impaired persons. County shall have the right to cut, remove and dispose of any and all brush, trees, or vegetation in the Easement Area, and to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, trees, or other vegetation in the Easement Area; TOGETHER WITH the right to install, construct, own, use, operate, maintain, inspect, repair, replace, renovate, improve, remove, manage, and enhance underground utilities, including, but not limited to, the rights of ingress and egress across the Right of Way Property to access the Easement Area from the surface for any Trail or Trail-related uses, but not for general County utility purposes, as County may now or hereafter deem appropriate, including the addition, removal, or replacement of the foregoing improvements at County's election, either in whole or in part with either like or different size Trail improvements. Notwithstanding the foregoing, and subject to the Freight Operator’s right to operate Freight and Excursion Rail Services on the Right of Way without interference, in the event County anticipates that its Trail development, construction or maintenance requires use of portions of the Right of Way Property outside the Easement Area to temporarily stage equipment and material, Port and County agree to negotiate a temporary construction easement granting County the necessary rights in a manner that does not unreasonably interfere with the rights of holders of Third Party Leases, Licenses and Contracts and Subsequent Third Party Uses.

3. **Trail Facilities.** Trail-related facilities permitted within the Easement Area (“**Trail Facilities**”) shall include those Trail and Trail-related facilities and other improvements described in Section 1. and 2. above, and further including but not limited to: signs to mark the Trail or provide information related to the Trail and for interpretive purposes; access ways, fencing, gates and barriers to allow for and control Trail access; and benches, picnic tables, wastebaskets, bicycle racks, and other improvements consistent with regional multipurpose trails. In addition, County, after consultation with Freight Operator, shall have the right to install barriers or landscaping to separate the Trail from the track or other improvements associated with the Freight and Excursion Rail Services, including but not limited to vegetation, grade separation, fencing, ditches or concrete or other barriers. Port and County hereby agree that the examples of Trail Facilities recited throughout this section are for descriptive purposes and are not intended as an exhaustive list. County’s rights to install Trail Facilities shall be broadly interpreted so as to enhance public access to and safe and pleasurable experience of the Trail that does not interfere with Freight and Excursion Rail Services on the Right of Way Property, including the Easement Area.

4. **Public Access.** The Trail shall be for use by the public as a regional recreational trail, and no person or entity shall be entitled to charge a fee for access to or use of the Trail or Trail Facilities without prior written approval of County.

5. **Freight and Excursion Rail Services.** County acknowledges that as of the execution date of this Easement, the Right of Way Property is not “railbanked” (as defined and described in Section 8(d) of the National Trails System Act, also known as the “Rails to Trails Act”, 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29) and is presently subject to active Freight Rail Service as described herein, with Excursion Rail Service a permitted, though not yet active use. County further acknowledges that Port reserves the right to permit other freight or passenger rail service within the Right of Way Property. County acknowledges that its Easement rights as set forth herein shall be subject at all times to and shall not preclude current or future Freight and Excursion Rail Services within the Right of Way Property nor the use or maintenance rights and obligations of Freight Operator pursuant to the O&M Agreement. As used in this Easement, “**Freight Rail Service**” means common carrier freight rail operations and the head and tail operations associated therewith; and “**Excursion Rail Service**” means the deployment and operation of trains for excursion passenger service and not for commuter rail passenger service.

6. **Third Party Rights.** County acknowledges that its Easement rights as set forth herein shall be subject at all times to and shall not unreasonably interfere with or preclude the exercise of any Third Party Leases, Licenses or Contracts.

7. **Right to Assign, Etc.** With Port’s approval, which shall not be unreasonably withheld, conditioned or delayed, County may grant sub-easements, issue licenses, and assign, apportion, or otherwise transfer its Easement rights in whole or in part to third parties.

8. Port's Use of Easement Area; Third Party Uses.

A. Port's Use of Easement Area. Port reserves the right to use the Easement Area for (i) those uses set forth in the O&M Agreement, and (ii) any other purpose not inconsistent with County's non-exclusive rights set forth herein. In addition, Port may make improvements within the Easement Area that are not part of or do not relate to the Trail (collectively, "**Port Improvements**") provided that Port shall coordinate with County to (i) prevent unreasonable interference with County's Easement rights, (ii) ensure reasonable integration of the Trail, Trail Facilities and Port Improvements, (iii) prevent any health or safety risks, (iv) avoid or minimize to the greatest extent possible any disruption to the Trail uses, and (v) in the event of alteration resulting from Port Improvement, restore the Trail and Trail Facilities to a condition substantially similar to that existing prior to the alteration.

B. Subsequent Third Party Uses. From and after the date that the Parties execute this Easement, Port and its heirs, successors and assigns shall include, in each and every deed or other instrument conveying any title to or granting any easements, leases, licenses, permits, franchises, occupancy agreement or any other agreement demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Easement Area (collectively, "**Subsequent Third Party Use**"), language making such conveyance or grant for Subsequent Third Party Use expressly subject to and subordinate to this Easement for the benefit of County, provided however, that any such deed or other instrument shall conclusively be held to be subject to and subordinate to this Easement for the benefit of County regardless of whether the express language required by this Section 8.B. is included therein. Freight and Excursion Rail Services shall not be a Subsequent Third Party Use subject to the terms of this Section 8.B.

C. Subsequent Rail Uses. Every deed or other instrument conveying any title to or granting any easements, leases, licenses, permits, franchises, occupancy agreement or any other agreement demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Easement Area for Excursion Rail Service after the date that the Parties execute this Easement will be a "**Subsequent Rail Use**" subject to the terms of Section 9.E of this Easement. Freight Rail Services shall not be a Subsequent Rail Use subject to the terms of this Section 8.C or Section 9 of this Easement.

9. Interference.

A. Notice of Construction. Prior to a Subsequent Third Party Use constructing any new improvements in the Easement Area that has been agreed to by the Parties under Section 1.B. of this Easement (such party referred to as the "**Constructing Party**"), the Constructing Party shall be required to send notice to County containing a description of the activities and any construction plans or surveys of the proposed improvements. County shall have sixty (60) days to review and respond. If County fails to respond within sixty (60) days from receipt of notice, the construction plans are deemed approved.

B. Notice of Interference. If County, in its reasonable discretion, determines that the improvements proposed in the Easement Area by the Constructing Party unreasonably interfere with the development or use of any existing or planned Trail or Trail Facilities within an Easement Area that has been agreed to by the Parties under Section 1.B. of this Easement, then County shall provide the Constructing Party with a notice (the “**Dispute Notice**”) within the sixty (60) day timeframe specified in Section 9. A., specifying the basis for the claim that the Constructing Party’s proposed improvements in the Easement Area are or will be an unreasonable interference. If County and the Constructing Party are unable to resolve the dispute within thirty (30) days, they shall implement the following process:

(i) Management Escalation. County and Constructing Party shall each, within ten (10) business days, nominate a senior officer or director to meet to attempt to resolve the dispute (“**Management Escalation**”). The nominated individuals shall meet within twenty (20) business days after their nomination. Any dispute resolved through the Management Escalation process shall be documented in writing signed by the designated representatives of County and the Constructing Party.

(ii) Mediation. Disputes not settled by Management Escalation shall be submitted to mediation. Venue for the mediation shall be Seattle, Washington. The mediator shall have experience in civil engineering disputes. If County and Constructing Party are unable to agree on a mediator, one shall be appointed by the American Arbitration Association (“**AAA**”). The mediator shall be impartial in fact and appearance, not an advocate of either party. The mediation shall be completed no later than thirty (30) days after the request for mediation. If, after eight (8) hours of good faith mediation, County and Constructing Party are unable to resolve the dispute, the mediation shall be terminated unless County and Constructing Party otherwise agree to extend the mediation time. County and Constructing Party shall each be responsible for its own costs and expenses, including attorney’s fees, incurred pursuant to this subsection. Cost of the mediator and other common costs shall be divided equally between County and Constructing Party.

(iii) Litigation/Venue. Disputes not settled by mediation shall be decided by further action or legal proceeding in the Superior Court in King County, Washington, as the sole and exclusive venue for such action or proceeding.

C. Emergency Situations. Notwithstanding the foregoing, any duly authorized party may take such reasonable actions as are necessary to address a situation that threatens the health and safety of the general public prior to complying with the notice provisions of this Easement. In such event, and as soon as practicable, the acting party shall notify all other affected parties of the actions taken, and any corrections or subsequent action shall be governed by this Section.

D. Costs Associated with Construction. The Constructing Party shall bear all costs associated with and ancillary to construction of such party’s improvements in the Easement Area, including any associated mitigation, repair or replacement of the Trail or Trail Facilities.

E. Subsequent Rail Use. Prior to a Subsequent Rail Use constructing any new improvements in the Easement Area that has been agreed to by the Parties under Section 1.B. of this Easement (such party referred to as the “**Constructing Rail Party**”), the Constructing Rail Party shall be required to send notice to County containing a description of the activities and any construction plans or surveys of the proposed improvements. County shall have sixty (60) days to review and respond. If County fails to respond within sixty (60) days from receipt of notice, County shall have no further opportunity to review or object to the improvements proposed by the Constructing Rail Party. If County, in its reasonable discretion, determines that the improvements proposed in the Easement Area by the Constructing Rail Party unreasonably interfere with the development or use of any existing or planned Trail or Trail Facilities within an Easement Area that has been agreed to by the Parties under Section 1.B. of this Easement, then County shall provide the Constructing Rail Party with a notice (the “**Negotiation Notice**”) within the sixty (60) day timeframe specified in in this Section 9.E. Thereafter, the County and the Constructing Rail Party will diligently and in good faith negotiate for at least sixty (60) days to reach agreement on a plan that would reasonably accommodate both the existing or planned Trail or Trail Facilities and the proposed Subsequent Rail Use improvements. If after conducting such negotiations the County and the Constructing Rail Party are unable to agree on a plan, then the Subsequent Rail Use may proceed with the improvements at its sole cost and expense.

10. Immunity Under Applicable Law. Nothing in this Easement limits the ability of Port or County to avail themselves of the protection offered by any applicable law affording immunity to Port or County, including, to the extent applicable, RCW 4.24.210, as amended from time to time.

11. Insurance. County shall carry the following policy of insurance with respect to their activities undertaken within the Easement Area or Right of Way Property:

A. Liability Insurance. (i) Port and County each agree to maintain reasonable and customary liability insurance (or self insurance) for personal injury, death and property damage arising out of or relating to such Party’s use, occupancy and possession of, or acts or omissions on or about, the Easement Area and/or Right of Way Property, as applicable, and shall provide the other Party with satisfactory evidence of such insurance (or self insurance) upon request. (ii) Port further agrees to require any rail operator not subject to the terms of the O&M Agreement to maintain the insurance (or self insurance) required in Section 11.A.(i) and 11.B for the protection of the Port and the County as additional insureds.

B. Indemnification and Waivers. To the extent of any applicable commercial insurance policies, Port and County waive their respective rights of recovery, claims, actions or causes of action against the other for any loss or damage to their respective real property interests or any personal property of such Party. Each Party shall cause each commercial insurance policy obtained by it to provide that the insurance company waives all right to recovery by way of subrogation against the other Party; provided, however, that this Section 11.B. shall be inapplicable if it would have the effect of invalidating any insurance coverage of Port or County.

This Section 11.B shall not in any way apply to or serve to diminish or alter the provisions of Section 13 of this Easement.

12. Indemnification. Port shall pay, protect, pay the defense costs of, indemnify and hold County and its successors and assigns harmless from and against any and all loss, liability, claim damage and expense suffered by or incurred by reason of Port's failure to perform any obligation required of it by this Easement. County shall pay, protect, pay the defense costs of, indemnify and hold Port and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of County's failure to perform any obligation required of it by this Easement. Solely to give full force and effect to the indemnities contained herein and not for the benefit of any third party, each Party specifically and expressly waives any immunity it may have under Washington State Industrial Act, RCW Title 51, and acknowledges that this waiver was mutually negotiated by the Parties herein. In no event shall either Party's obligations under this Easement be limited to the extent of any insurance available or provided by the obligated Party.

13. Hazardous Substances.

A. Except to the extent Port or its officers, employees, agents or contractors cause new releases of Hazardous Substances (as defined in the Right of Way Deed) following the effective date of this Easement, County waives, releases and discharges forever Port from any and all present or future claims or demands and any and all damages, losses, injuries, liabilities, causes of action (including without limitation, causes of action in tort), costs and expenses (including without limitation fines, penalties and judgments and attorney's fees) of any and every kind or character, known or unknown (collectively "**Losses**") that County might have asserted against Port arising from or in any way related to environmental conditions in, at, on, under or originating from the Right of Way Property or the alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Right of Way Property. Losses shall include without limitation (i) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law (as defined in the Right of Way Deed), that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (ii) Losses for injury or death of any person, and (iii) Losses arising under any Environmental Law enacted after the effective date of this Easement.

B. Except to the extent County or its officers, employees, agents or contractors cause new releases of Hazardous Substances following the effective date of this Easement, Port waives, releases and discharges forever County from any and all Losses that Port might have asserted against County arising from or in any way related to environmental conditions in, at, on, under or originating from the Right of Way Property, including Losses related to any alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Right of Way Property. Losses shall include without limitation (i) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of

or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (ii) Losses for injury or death of any person, and (iii) Losses arising under any Environmental Law enacted after the effective date of this Easement. Port's waiver, release and discharge of County pursuant to the provisions of this Section 13 shall not apply with respect to Losses incurred by Port for Easement Areas, provided the release or other environmental conditions that caused or contributed to such Losses occur following the date the Easement Area has been agreed to by the Parties under Section 1.B. of this Easement.

C. In the event Hazardous Substances are discovered on the Property, Port or County, as the case may be, shall promptly give notice to the other Party of such discovery and shall cooperate in good faith to carry out the terms of this Agreement and, if either Party requests, shall cooperate in good faith to seek to recover the costs of remediation from BNSF as provided for under the environmental covenants in the Right of Way Deed and in the Purchase and Sale Agreement, as amended, between Port, County and BNSF dated May 12, 2008. If County requests that Port cooperate in good faith to seek to recover the costs of remediation from BNSF, then County will reimburse Port for the reasonable costs Port incurs in such cooperation, and will indemnify, defend and hold harmless Port from all liability arising from any claim, suit or arbitration brought by BNSF related such request, which duty to indemnify, defend and hold harmless will apply to any claim, suit or arbitration initiated by Port, at County's request, to seek to recover the costs of remediation.

D. Except to the extent set forth in this Section 13, nothing contained in this Easement Agreement is intended to waive or release any right either Party may have under Environmental Laws, agreements or deeds to seek indemnity, contribution or other forms of recovery or relief from any third party, including, but not limited to BNSF, for Losses arising from or in any way relating to the environmental condition of the Right of Way Property or the release of Hazardous Substances on the Right of Way Property.

The provisions of this Section 13 shall survive the expiration or other termination of this Easement.

14. Dispute Resolution. Subject to the exceptions set forth in Sections 14. D and E below, any claim, dispute or other matter arising out of or related to this Easement, including any inability of Port and County to make joint determinations called for by this Easement ("**Disputes**") shall be exclusively subject to the following alternative dispute resolution procedure as a condition precedent to the institution of legal or equitable proceedings by either party. This requirement cannot be waived except by an explicit written waiver signed by Port and County This Section 14 on alternative dispute resolution shall apply to Disputes between Port and County regarding this Easement and shall not apply to any other matters between them and shall not apply to their respective heirs, legal representatives, successors and assigns or to third parties (including third party beneficiaries, if any), unless such parties to a Dispute agree to alternative dispute resolution.

A. Informal Process. Port and County shall negotiate in good faith and use their best efforts to resolve any Disputes that may develop under this Easement. Port's Chief Executive Officer (or his/her designee) and the King County Executive (or his/her designee) along with any staff or technical persons either party desires, shall meet within seven (7) days after written request from either Party and attempt to resolve a Dispute. The Parties may agree to extend the time provided for in this Section for an additional seven (7) days.

B. Mediation. If a Dispute is not resolved under the procedure set forth in this Section, 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 request for mediation in writing to the other party. Mediation shall proceed in advance of legal or equitable proceedings. Any mediation under this Easement shall be held in Seattle, Washington. The Parties shall share equally in the costs of the mediation. Any contractual or statutory deadlines, including without limitation statutes of limitation, shall be tolled pending mediation for a period of sixty (60) days from the date of the mediation request, unless tolled for a longer period by agreement of the Parties. Final authority for settlement may be subject to the approval of the Parties' respective legislative bodies. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

C. Right to Litigate Contingent on Prior Effort to Mediate. Except as allowed under Section 14.D, the Parties shall not commence litigation on a Dispute unless the Dispute has been properly raised and considered in the above mediation procedure.

D. Immediate Action. If Port and County reasonably determine that circumstances require immediate action to protect public health, safety or welfare, or to prevent or mitigate significant property loss or damage, then either party may pursue any immediate remedy available at law or in equity without having to follow these alternative dispute resolution procedures in this Section 14, and then pursue such alternative dispute resolution procedures.

E. Matters Not Subject to Alternative Dispute Resolution. This Section 14. on alternative dispute resolution procedures shall not apply to matters relating to Interference, which matters are governed under Section 9. This Section 14 on alternative dispute resolution shall not apply to any dispute between the Parties that also relates to a dispute with BNSF or any dispute between Port and County concerning Hazardous Substances, including disputes pursuant to 13 of this Easement.

F. Remedies. In addition to the specific remedies set forth in this Easement, and except for the limitations on remedies for Interference in Section 9. of this Easement and the limitations on remedies for Hazardous Substances set forth in Section 13. of this Easement, Port and County, following the alternative dispute resolution procedure called for herein, shall be entitled to all remedies in law or equity. Further, if Port and County are unable to make any joint determination called for by this Easement and are unable to resolve the Dispute through the alternative dispute resolution procedure called for herein, then Port and County agree that a court shall have the authority to decide the terms of the joint determination in question.

15. Taxes. County shall be solely responsible to pay on a current basis any taxes and assessments relating to its interests in the Easement Area, if any, including without limitation real property ad valorem taxes, surface water management fees, special benefit assessments and other governmental impositions (collectively, “**Taxes**”) that may apply to its Easement interests, its activities within the Easement Area, or its Trail Facilities. Port shall be solely responsible to pay on a current basis any Taxes that may apply to its fee interest or its activities within the Easement Area, or its improvements to the Easement Area, and to require any third party with an interest in the Easement Area to pay on a current basis any Taxes that may apply to their respective interests or activities or improvements to the Easement Area; provided, however, that nothing contained herein shall modify the Parties’ rights to contest any such tax, and a Party shall not be deemed in default of this Section as long as it shall, in good faith, be contesting the validity or amount of any such taxes.

16. Easement Runs With the Land and Binds Successors. The burden of this Easement shall run with the land that makes up the Right of Way Property and the benefit of this Easement shall run with the land and interests in land that make up the King County park, trail and recreation system. This Easement is appurtenant to the land that makes up the King County park, trail and recreation system. This Easement is binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

17. Notice. Any and all notices or other communications required or permitted to be given under any of the provisions of this Easement shall be in writing and shall be deemed to have been duly given (A) upon receipt when personally delivered or sent by overnight courier or (B) two (2) days after deposit in the United States mail if by certified or registered mail, return receipt requested, and properly addressed as follows:

Port: Port of Seattle
Managing Director
Real Estate Division
P.O. Box 1209
Seattle, WA 98111
Telephone: 206-787-3722

County: King County Parks and Recreation Division
Department of Natural Resources and Parks
201 S. Jackson Street #700
Seattle, WA 98104
Telephone: 206-296-8631

18. Attorney Fees. In any action brought to enforce or interpret the terms of this Easement, each Party shall bear its own costs and attorney fees and expenses incurred in said action, including on appeal, whether or not suit is commenced.

19. **Breach.** In the event of any breach or threatened breach of this Easement by either Port or County, and except for Interference governed by Section 9., the non-breaching Party shall have the right to sue for damages and/or for specific performance and/or to enjoin such breach or threatened breach.

20. **No Termination Upon Breach.** No breach of this Easement shall entitle either Port or County to cancel, rescind or otherwise terminate this Easement; provided, however, that this provision shall not limit or otherwise affect any other right or remedy which Port or County may have hereunder by reason of any breach of this Easement.

21. **Governing Law; Venue.** This Easement shall be governed by the laws of the State of Washington, without reference to its conflicts of law rules or choice of law provisions. Venue for any dispute resolution or litigation shall be in King County Superior Court, Washington.

22. **Entire Agreement, Waivers and Amendments.** This Easement contains the entire understanding of Port and County hereto relating to the subject matter herein contained. The waiver by one Party hereto of a breach of any provision of this Easement shall not operate or be construed as a waiver of any subsequent breach. No waiver shall be effective unless set forth in writing. If any term or provision of this Easement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby and shall remain in full force and effect. This Easement shall not be amended except by written instrument signed by Port and County or their respective successors and assigns and recorded in the real property records of King County, Washington.

23. **Police Powers Not Affected.** Nothing contained in this Easement will be considered to diminish King County's governmental or police powers.

24. **Computation of Time.** The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last, unless the last day is a Saturday, Sunday, or a federal or state holiday, and then it is also excluded.

25. **Construction.** Each term and provision of this Easement constitutes a separate undertaking, covenant or promise. In the event that any term or provision hereof is determined to be unenforceable, invalid, or illegal in any respect, the remaining terms and provisions shall continue to be enforceable and valid.

PORT OF SEATTLE

By: _____

Name: _____

Title: _____

KING COUNTY

By: _____

Name: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF RIGHT OF WAY PROPERTY

Woodinville to Brightwater Treatment Plant
(Easement Segment)
SNOHOMISH COUNTY

That portion of that certain 100.00 foot wide Branch Line right of way, being 50.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the West Half of the Northeast Quarter of the Southwest Quarter, Section 26, Township 27 North, Range 5 East, W.M., bounded Northerly by the North line of the Northeast Quarter of the Southwest Quarter of said Section 26, and bounded Westerly by the West line of said Northwest Quarter of the Northeast Quarter of the Southwest Quarter, Section 26; also,

That portion of that certain 200.00 foot wide Branch Line right of way, being 100.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the West Half of the Southwest Quarter, Section 26, and the Northwest Quarter of the Northwest Quarter, Section 35, all in Township 27 North, Range 5 East, W.M., bounded on the East by the East line of said West Half of the Southwest Quarter of Section 26, and bounded on the South by the South line of said Northwest Quarter of the Northwest Quarter, Section 35, **EXCEPTING THEREFROM**, that portion lying Westerly of a line parallel and/or concentric with and distant 50 feet Westerly from, measured at right angles and/or radially to said Railway Company's Main Track centerline as originally located and constructed, bounded on the North by the North line of said Section 35, and bounded on the South by a line radial to said Main Track centerline at a point 530.00 feet South of the North line of said Section 35, as measured along said Main Track centerline; also,

That portion of that certain 100.00 foot wide Branch Line right of way, being 50.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the Southwest Quarter of the Northwest Quarter Section 35, the Southeast Quarter of the Southeast Quarter of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter Section 34, all in Township 27 North, Range 5 East, W.M., bounded on the North by the North line of said Southwest Quarter of the Northwest Quarter Section 35, and bounded on the South by the South line of said Northeast Quarter of the Southeast Quarter Section 34; also,

That portion of that certain 50.00 foot wide Branch Line right of way, being 25.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the Southeast Quarter of the Southeast Quarter Section 34, Township 27 North, Range 5 East, W.M., bounded on the North by the North line of said Southeast Quarter of the Southeast Quarter Section 34, and bounded on the South by a line radial to said Railway Company's Main Track centerline, as originally located and constructed, at a point distant 600 feet Southwesterly of said North line of said Southeast Quarter of the Southeast Quarter Section 34, as measured along said Main Track centerline; also,

That portion of that certain 100.00 foot wide Branch Line right of way, being 50.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the South Half of the Southeast Quarter and the Southeast Quarter of the Southwest Quarter Section 34, Township 27 North, Range 5 East, W.M., bounded on the North by a line radial to said Railway Company's Main Track centerline, as originally located and constructed at a point distant 600 feet Southwesterly of said North line of said Southeast Quarter of the Southeast Quarter Section 34, as measured along said Main Track centerline, and bounded on the South by the South line of said Section 34, said line also being the South line of Snohomish County, Washington.

Woodinville to Brightwater Treatment Plant
(Easement Segment)
KING COUNTY

That portion of that certain 100.00 foot wide Branch Line right of way, being 50.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Lots 2, 3, the South Half Of the North Half, and the East half of the Southwest Quarter Section 3, the Northwest Quarter of Section 10, all in Township 26 North, Range 5 East, W.M., bounded on the North by the North line of said Section 3, said line also being the North line of King County, Washington, and bounded on the West by the West line of said Northwest Quarter Section 10, **EXCEPTING THEREFROM**, that portion lying Easterly of a line parallel with and distant 20 feet Easterly from, measured at right angles to said Railway Company's Main Track centerline, as now located and constructed, bounded on the North by the South line of 8th Street, according to the recorded plat of Bear Creek Addition to Day City, Washington and bounded on the South by a line perpendicular to said Railway Company's Main Track centerline distant 450.00 feet Southerly from the North line of said East Half of the Southwest Quarter Section 3, as measured along said Main Track centerline; also,

A 100 foot wide strip of land being that portion of that certain 100 foot wide strip of land described in deed dated June 8, 1887 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded June 14, 1887 in Book 42 of Deeds, Page 410, records of King County, Washington, that portion of that certain 100.00 foot wide strip of land described in deed dated July 26, 1890 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded November 10, 1890 in Book 112 of Deeds, Pages 556, records of King County, Washington, lying in Section 9 Township 26 North, Range 5 East, W.M., bounded on the East by the East line of said Section 9, and bounded on the West by the Northeasterly projection of the Northwesterly line of the proposed Seattle Belt Line Branch of the Northern Pacific Railway as the same is now located and as it is described in deed dated July 24, 1903 from Frank A. Woodin and Anna Woodin to Northern Pacific Railway Company recorded July 30, 1903 in Book 370 of deeds, Page 89, records of King County, Washington, thence Northeasterly along said Northeasterly projection along the same radius to a point on the Northerly line of the present right of way of the Northern Pacific Railway.

That certain 0.32 acre tract of land described in deed dated July 24, 1903 from Frank A. Woodin and Anna Woodin to Northern Pacific Railway Company recorded July 30, 1903 in Book 370 of

deeds, Page 89, records of King County, Washington, said 0.32 acre tract being described in said deed for reference as follows:

“All that portion of the Southeast Quarter of the Northeast Quarter of Section 9, Township 26 North, Range 5 East, W.M., described by mete and bounds as follows:

Beginning at the point where the Southeasterly line of the present right of way of the Northern Pacific Railway intersects the South line of said Southeast Quarter of the Northeast Quarter and running thence East along the South line of said Southeast Quarter of the Northeast Quarter a distance of 190 feet, more or less, to a point which is 50 feet distant from, when measured at right angles to, the center line of the proposed Seattle Belt Line Branch of the Northern Pacific Railway as the same is now located, staked out and to be constructed over and across said Government subdivision;

Thence running Northeasterly and parallel with and 50 feet distant from said center line of the Seattle Belt Line Branch a distance of 400 feet, more or less, to a point in the Southeasterly line of the present right of way of the Northern Pacific Railway, thence Southwesterly along said right of way line to point of beginning; also,

A 100 foot wide strip of land lying in the North Half of the Southeast Quarter of Section 9, Township 26 North, Range 5 East, W.M., being that certain 1.91 acre tract of land described in deed dated May 19, 1903 from Mary B. Hansen and Anders Hansen to Northern Pacific Railway Company recorded May 28, 1903 in Volume 361 of deeds, Page 48, records of King County, Washington and that certain 0.92 acre tract of land described in deed dated July 1, 1903 from A.J. Milton and Anna Milton to Northern Pacific Railway Company recorded July 10, 1903 in Volume 363 of deeds, Page 211, records of King County, Washington, said 100 foot wide strip being described as follows:

That certain 0.03 acre triangular tract of land described in deed dated June 4, 1923 from Mary B. Hansen and A. Hansen to Northern Pacific Railway Company recorded June 8, 1923 in Volume 1192 of deeds, Page 539, records of King County, Washington, said 0.03 acre tract being described in said deed for reference as follows:

That certain triangular portion of the Northeast Quarter of the Southeast Quarter of Section 9, Township 26 North, Range 5 East, W.M., lying Easterly of and between the rights of way of the Northern Pacific Railroad Company for its Snoqualmie Branch and its Lake Washington Belt Line and Westerly of a line parallel with and distant 25 feet Easterly, measured at right angles from the center line of the proposed wye track connection between said branch lines as the same is now located, staked out and to be constructed over and across said premises; also,

That portion of that certain 100.00 foot wide Branch Line right of way, being 50.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across that portion of the North Half of the Southeast Quarter of Section 9, Township 26 North, Range 5 East, W.M., King County, Washington lying Northerly of the Southwesterly boundary of that certain 100 foot wide tract of land described in deed dated May 4, 1887 from Mary B. Jaderholm

to Seattle Lake Shore and Eastern Railway company, recorded May 5, 1887 in Volume 40 of deeds, Page 288, records of King County, Washington.

EXHIBIT A

EXHIBIT B

EASEMENT AREA

Woodinville to Brightwater Treatment Plant
(Easement Segment)
SNOHOMISH COUNTY

That portion of that certain 100.00 foot wide Branch Line right of way, being 50.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the West Half of the Northeast Quarter of the Southwest Quarter, Section 26, Township 27 North, Range 5 East, W.M., bounded Northerly by the North line of the Northeast Quarter of the Southwest Quarter of said Section 26, and bounded Westerly by the West line of said Northwest Quarter of the Northeast Quarter of the Southwest Quarter, Section 26; also,

That portion of that certain 200.00 foot wide Branch Line right of way, being 100.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the West Half of the Southwest Quarter, Section 26, and the Northwest Quarter of the Northwest Quarter, Section 35, all in Township 27 North, Range 5 East, W.M., bounded on the East by the East line of said West Half of the Southwest Quarter of Section 26, and bounded on the South by the South line of said Northwest Quarter of the Northwest Quarter, Section 35, **EXCEPTING THEREFROM**, that portion lying Westerly of a line parallel and/or concentric with and distant 50 feet Westerly from, measured at right angles and/or radially to said Railway Company's Main Track centerline as originally located and constructed, bounded on the North by the North line of said Section 35, and bounded on the South by a line radial to said Main Track centerline at a point 530.00 feet South of the North line of said Section 35, as measured along said Main Track centerline; also,

That portion of that certain 100.00 foot wide Branch Line right of way, being 50.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the Southwest Quarter of the Northwest Quarter Section 35, the Southeast Quarter of the Southeast Quarter of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter Section 34, all in Township 27 North, Range 5 East, W.M., bounded on the North by the North line of said Southwest Quarter of the Northwest Quarter Section 35, and bounded on the South by the South line of said Northeast Quarter of the Southeast Quarter Section 34; also,

That portion of that certain 50.00 foot wide Branch Line right of way, being 25.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the Southeast Quarter of the Southeast Quarter Section 34, Township 27 North, Range 5 East, W.M., bounded on the North by the North line of said Southeast Quarter of the Southeast Quarter Section 34, and bounded on the South by a line radial to said Railway Company's Main Track centerline, as originally located and constructed, at a point distant 600 feet Southwesterly of said North line of said Southeast Quarter of the Southeast Quarter Section 34, as measured along said Main Track centerline; also,

EXHIBIT B

That portion of that certain 100.00 foot wide Branch Line right of way, being 50.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the South Half of the Southeast Quarter and the Southeast Quarter of the Southwest Quarter Section 34, Township 27 North, Range 5 East, W.M., bounded on the North by a line radial to said Railway Company's Main Track centerline, as originally located and constructed at a point distant 600 feet Southwesterly of said North line of said Southeast Quarter of the Southeast Quarter Section 34, as measured along said Main Track centerline, and bounded on the South by the South line of said Section 34, said line also being the South line of Snohomish County, Washington.

Woodinville to Brightwater Treatment Plant
(Easement Segment)
KING COUNTY

That portion of that certain 100.00 foot wide Branch Line right of way, being 50.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Lots 2, 3, the South Half Of the North Half, and the East half of the Southwest Quarter Section 3, the Northwest Quarter of Section 10, all in Township 26 North, Range 5 East, W.M., bounded on the North by the North line of said Section 3, said line also being the North line of King County, Washington, and bounded on the West by the West line of said Northwest Quarter Section 10, **EXCEPTING THEREFROM**, that portion lying Easterly of a line parallel with and distant 20 feet Easterly from, measured at right angles to said Railway Company's Main Track centerline, as now located and constructed, bounded on the North by the South line of 8th Street, according to the recorded plat of Bear Creek Addition to Day City, Washington and bounded on the South by a line perpendicular to said Railway Company's Main Track centerline distant 450.00 feet Southerly from the North line of said East Half of the Southwest Quarter Section 3, as measured along said Main Track centerline; also,

A 100 foot wide strip of land being that portion of that certain 100 foot wide strip of land described in deed dated June 8, 1887 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded June 14, 1887 in Book 42 of Deeds, Page 410, records of King County, Washington, that portion of that certain 100.00 foot wide strip of land described in deed dated July 26, 1890 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded November 10, 1890 in Book 112 of Deeds, Pages 556, records of King County, Washington, lying in Section 9 Township 26 North, Range 5 East, W.M., bounded on the East by the East line of said Section 9, and bounded on the West by the Northeasterly projection of the Northwesterly line of the proposed Seattle Belt Line Branch of the Northern Pacific Railway as the same is now located and as it is described in deed dated July 24, 1903 from Frank A. Woodin and Anna Woodin to Northern Pacific Railway Company recorded July 30, 1903 in Book 370 of deeds, Page 89, records of King County, Washington, thence Northeasterly along said Northeasterly projection along the same radius to a point on the Northerly line of the present right of way of the Northern Pacific Railway.

That certain 0.32 acre tract of land described in deed dated July 24, 1903 from Frank A. Woodin

and Anna Woodin to Northern Pacific Railway Company recorded July 30, 1903 in Book 370 of deeds, Page 89, records of King County, Washington, said 0.32 acre tract being described in said deed for reference as follows:

“All that portion of the Southeast Quarter of the Northeast Quarter of Section 9, Township 26 North, Range 5 East, W.M., described by mete and bounds as follows:

Beginning at the point where the Southeasterly line of the present right of way of the Northern Pacific Railway intersects the South line of said Southeast Quarter of the Northeast Quarter and running thence East along the South line of said Southeast Quarter of the Northeast Quarter a distance of 190 feet, more or less, to a point which is 50 feet distant from, when measured at right angles to, the center line of the proposed Seattle Belt Line Branch of the Northern Pacific Railway as the same is now located, staked out and to be constructed over and across said Government subdivision;

Thence running Northeasterly and parallel with and 50 feet distant from said center line of the Seattle Belt Line Branch a distance of 400 feet, more or less, to a point in the Southeasterly line of the present right of way of the Northern Pacific Railway, thence Southwesterly along said right of way line to point of beginning; also,

A 100 foot wide strip of land lying in the North Half of the Southeast Quarter of Section 9, Township 26 North, Range 5 East, W.M., being that certain 1.91 acre tract of land described in deed dated May 19, 1903 from Mary B. Hansen and Anders Hansen to Northern Pacific Railway Company recorded May 28, 1903 in Volume 361 of deeds, Page 48, records of King County, Washington and that certain 0.92 acre tract of land described in deed dated July 1, 1903 from A.J. Milton and Anna Milton to Northern Pacific Railway Company recorded July 10, 1903 in Volume 363 of deeds, Page 211, records of King County, Washington, said 100 foot wide strip being described as follows:

That certain 0.03 acre triangular tract of land described in deed dated June 4, 1923 from Mary B. Hansen and A. Hansen to Northern Pacific Railway Company recorded June 8, 1923 in Volume 1192 of deeds, Page 539, records of King County, Washington, said 0.03 acre tract being described in said deed for reference as follows:

That certain triangular portion of the Northeast Quarter of the Southeast Quarter of Section 9, Township 26 North, Range 5 East, W.M., lying Easterly of and between the rights of way of the Northern Pacific Railroad Company for its Snoqualmie Branch and its Lake Washington Belt Line and Westerly of a line parallel with and distant 25 feet Easterly, measured at right angles from the center line of the proposed wye track connection between said branch lines as the same is now located, staked out and to be constructed over and across said premises; also,

That portion of that certain 100.00 foot wide Branch Line right of way, being 50.00 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across that portion of the North Half of the Southeast Quarter of Section 9, Township 26 North, Range 5 East, W.M., King County, Washington lying Northerly of the Southwesterly boundary of that certain 100 foot wide tract of land described in deed dated May 4, 1887 from Mary B. Jaderholm

to Seattle Lake Shore and Eastern Railway company, recorded May 5, 1887 in Volume 40 of deeds, Page 288, records of King County, Washington.

EXHIBIT B