

RESOLUTION R-5495

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING A MEMORANDUM OF UNDERSTANDING WITH PROPERTY AND EASEMENT HOLDERS OF THE EASTRAIL CORRIDOR INCLUDING KING COUNTY, SOUND TRANSIT, PUGET SOUND ENERGY, AND THE CITIES OF WOODINVILLE, REDMOND, AND KIRKLAND TO WORK TOGETHER TO ADDRESS THE INSTALLATION, OWNERSHIP AND MAINTENANCE COMMUNICATIONS INFRASTRUCTURE FOR BOTH PUBLIC AND PRIVATE USE ALONG THE EASTRAIL CORRIDOR.

1           WHEREAS, the Eastrail Corridor ("Eastrail") is a 42-mile regional  
2 network of trails, currently used for recreation, transportation, and  
3 utilities. The Eastrail was created from a former Burlington Northern  
4 Santa Fe ("BNSF") Railway Company rail line segment that runs from  
5 milepost ("MP") 5.0 in the City of Renton in King County to MP 38.25 in  
6 the City of Snohomish in Snohomish County, together with a spur line  
7 (the "Redmond Spur") extending from MP 0.0 in the City of Woodinville  
8 to MP 7.3 in the City of Redmond in King County; and  
9

10           WHEREAS, the Cross Kirkland Corridor (CKC) is the City's 5.75-  
11 mile section of the 42-mile Eastrail Corridor, composed of a ten-foot-  
12 wide crushed gravel trail that runs from the South Kirkland Park & Ride  
13 through the Totem Lake Business District; and  
14

15           WHEREAS, the City purchased the CKC on April 13, 2012, subject  
16 to existing easements held by King County, Sound Transit, and Puget  
17 Sound Energy ("PSE"); and  
18

19           WHEREAS, the Cities of Woodinville and Redmond also own  
20 portions of the Eastrail in their respective jurisdictions, subject to the  
21 same existing easements referenced above; and  
22

23           WHEREAS, King County, Kirkland, Woodinville, and Redmond  
24 are all fee owners of portions of the Eastrail and are hereafter referred  
25 to as the "Owner Parties"; and  
26

27           WHEREAS, the Owner Parties recognize that a range of current  
28 and future municipal, county, public sector, business, and nonprofit  
29 needs could be served by installing new fiber optic infrastructure in the  
30 Eastrail, and desire to jointly pursue a plan to design, install, construct,  
31 operate, and maintain such infrastructure within the portion of the  
32 Eastrail located within the geographic boundaries of King County; and  
33

34           WHEREAS, the Owner Parties have identified multiple use cases  
35 for communications infrastructure, particularly in the business and  
36 residential areas along the Eastrail including, but not limited to, the cities  
37 of Renton, Newcastle, Bellevue, Kirkland, Redmond, and Woodinville;  
38 and

39 WHEREAS, the Owner Parties intend to contract with a vendor  
40 to install conduit and high-count fiber infrastructure to enable high-  
41 quality fiber services along the Eastrail to facilitate private sector  
42 investment and services to businesses and residential areas adjoining  
43 the Eastrail, cities and King County; and  
44

45 WHEREAS, the Owner Parties desire to enter into a non-binding  
46 Memorandum of Understanding (MOU) to set forth the parameters of  
47 their joint intention to design, install, construct, operate, and maintain  
48 new fiber optic cable along the Eastrail; and  
49

50 WHEREAS, the City of Kirkland intends to and will maintain all  
51 ownership rights and sovereignty; and  
52

53 WHEREAS, this is a non-binding agreement. The City of Kirkland  
54 will collaborate to seek opportunities but will only agree if the  
55 opportunities meet Kirkland's goals and values.  
56

57 NOW, THEREFORE, be it resolved by the City Council of the City  
58 of Kirkland as follows:  
59

60 Section 1. The City Manager is hereby authorized and directed  
61 to execute on behalf of the City a Memorandum of Understanding  
62 substantially similar to that attached as Exhibit A, which is entitled  
63 "Memorandum of Understanding Regarding Eastrail Fiber Optic Project."  
64

65 Passed by majority vote of the Kirkland City Council in open  
66 meeting on the 05 day of October, 2021.  
67

68 Signed in authentication thereof this 05 day of October, 2021.

  
\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

  
\_\_\_\_\_  
Kathi Anderson, City Clerk

## Eastrail Fiber Development Overview and DRAFT MOU

## ATTACHMENT A

## Eastrail Fiber Development Overview

**I. Eastrail Fiber Development Project**

The Eastrail is a regional trail that will connect the Eastside like never-before and provide the cities of Renton, Bellevue, Kirkland, Woodinville, and Redmond with new opportunities for non-motorized recreation and transportation. The opportunities are many, whether it is expanding our transportation options, creating economic and cultural opportunities, protecting natural resources, maintaining access to scenic vistas, or providing recreation around the beautiful Northwest. In addition, King County along with other Eastrail owners investigated the feasibility of placing fiber along the 28.7 miles section of the Eastrail. Fiber studies completed during 2019 included a fiber feasibility study that estimated the cost to build fiber infrastructure between \$10-\$12 million and the return on investment study gauged favorable private sector interest in access to fiber if it was built.

**II. Project Justification**

The Eastrail Corridor is being development into a high-quality pedestrian and bicycle trail with potential for additional transportation, utility and smart city uses. These new and future uses make the communications infrastructure development essential and imperative to the long-term success of the Eastrail. This is a legacy development; meaning building conduit and fiber now and before (more than \$61 million or 24 projects currently planned) are completed. Eliminating the need to tear up and rebuild newly completed projects to place conduit and fiber in the Eastrail. Completing this project now with a dig once strategy, this project will future proof the Eastrail for planned and unanticipated future requirements.

**III. Project Team**

King County IT, and Eastrail Principal Staff Team member representing property owners (King County, Sound Transit, and the Cities of Redmond, Kirkland, and Woodinville); plus easement holders (Puget Sound Energy, King County, and Sound Transit); and right-of-way permit authorities (Cities of Renton and Bellevue).

**IV. Project Timeframe**

- 01/01/2021 – 12/31/2024

**V. Current Scope of Project**

This project presents the opportunity to build conduit and fiber optic infrastructure within the Eastrail Corridor through a significant (28.7-mile) portion of King County's fast-growing metropolitan areas (Woodinville, Kirkland, Redmond, Bellevue, Renton, and unincorporated parts of King County).

**VI. Project Team Current Activities include**

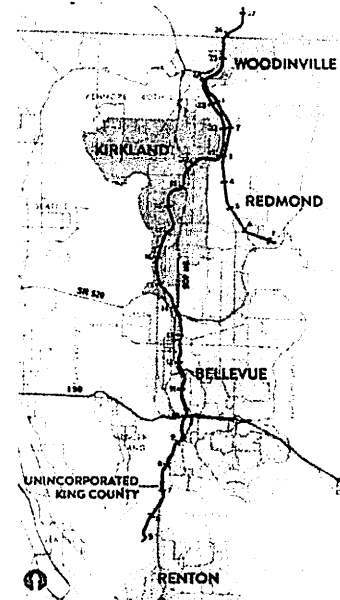
1. Developing a non-binding memorandum of understanding
2. A request for proposal for the project
3. Investment and revenue share agreements
4. Vendor contract/lease agreement

**VII. Oversight**

The Parties acknowledge that council, board, or commission prior reviews and 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 the MOU may alter any such requirement.

**VIII. Project benefits and Outcomes**

Fiber Optics will provide the communication infrastructure to support regional planned and future activities along the Eastrail Corridor. New opportunities to use the fiber optics to support trail & community projects. Including non-motorized recreation, transportation, and trail enhancements, including internet access, smart lighting, smart trail sensors, public safety, traffic crossing signals, and wildlife video streaming.



The 2019 feasibility study by consultant CTC Energy and Technology identified fiber optic infrastructure as an economic development benefit. As part of the Return on Investment study, talking with more than 12 private companies in the region (real estate developers, aircraft manufactures, telecom companies, and architectural firms), there are indications that additional infrastructure capacity is needed along the Eastrail. In addition, our RFP will determine the potential of this infrastructure to generate revenue by leasing property rights and spare fiber to private partners. The return on investment analysis, concluded, "The potential revenue opportunity is robust, as is the significant value and avoided cost derived by public sector users over time. "The consultants expect that revenues will cover operational expenses and debt service.

#### **IX. Budget Estimate**

The consultants (CTC) high-level cost estimate of \$6 - \$12.6 million dollars to construct a 28.7-mile telecommunication infrastructure. \$12.6 million represents the conceptual specifications consisting of four, four-inch conduits within the Eastrail main line and one, one-inch conduit in the Redmond spur.

#### **X. Funding, Cost Recovery and Revenue Sharing**

King County and/or Eastrail Partners need more time to identify and make plans for potential funding sources in case a public model ends up being the top choice. Possible funding options (e.g., Eastrail Owners, bond, ARPA through Federal government or other federal funding sources). Our plans for securing funding will depend on the results from the RFP and the funding and the amount required for the project. Last year, Eastrail Regional Advisory Council (RAC) members expressed support for the project. Next month (2021), conversations will begin with Eastrail partners to develop a cost recovery and revenue share agreement including (past and future) investments in the Eastrail.

The Parties will collaborate in good faith to investigate and pursue [funding sources, including but not limited to Federal funding opportunities]. We anticipate all will equitably share fiber for individual public use based on cost recovery and revenue share model.

#### **XI. Project Priorities**

The intent is to advertise an RFP that includes the following priorities, which are consistent with the Eastrail Owners' input: (1) Increase the capacity for service to underserved and/or unserved areas of the County; (2) Balance upfront and ongoing costs with maximizing service; (3) Encourage equitable economic development; (4) Address privacy and data security; (5) Preserve or advance the potential for a municipal-owned broadband system; and (6) Provide benefits or enhancements for Eastrail users; (7) Support partnerships that enable extensions from the Eastrail Fiber main route to last mile connections.

#### **XII. Equity and Social Justice Impact**

Findings from King County 2020 Broadband Access Study - Key takeaways from the 2020 study shows the vast majority (72%) of King County residents encounter one or more obstacles to having a successful internet experience.

Differences in lack of access to the internet are observed across high impact groups.

- 19% of insecurely housed groups do not to have internet access at their place of residence.
- 20% of households with incomes under \$25,000 do not have internet access where they live.
- 13% of residents living with a disability do not have internet access where they live.
- 13% of residents that speak a language other than English do not have internet access where they live.

In addition to the obstacles highlighted within the King County 2020 Broadband Access Study. The COVID-19 Pandemic has heightened the issues many families across the community face with lack of access to internet access, technology, and digital skills training

## EXHIBIT A

### 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:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

SOUND TRANSIT

CITY OF REDMOND, WASHINGTON

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

CITY OF WOODINVILLE, WASHINGTON

CITY OF KIRKLAND, WASHINGTON

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**EXHIBIT A**  
**Property Rights in Eastrail Corridor**

	King County	Sound Transit	PSE	Woodinville	Kirkland	Redmond
<b>Main Line (MP*)</b>						
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		
<b>Redmond Spur (MP*)</b>						
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