

**USE AGREEMENT**

between

**King County**, by and through the **Parks and Recreation Division** of its **Department of Natural Resources and Parks**,

and

**the City of Kirkland**

for the

**Construction of a Crossing at 134<sup>th</sup> Court NE Extended**

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This Use Agreement ("Agreement") is dated for reference purposes \_\_\_\_\_, 2022 (the "Effective Date"), and is entered into by and between King County, through the Parks and Recreation Division of its Department of Natural Resources and Parks (the "County"), and the City of Kirkland (the "City") (collectively, the "Parties"), for the design, construction, operation, and maintenance of a new public roadway crossing (the "Crossing") on land along the King County owned portion of the Eastrail Corridor (the "Corridor") that when complete will extend 134<sup>th</sup> Court NE located within the City.

In consideration of the promises, covenants, and other provisions set forth in this Agreement, the Parties agree as follows.

**1. BACKGROUND**

1.1 The County, a home rule charter county and political subdivision of the State of Washington, and the owner of the Corridor at the Site, has the authority to enter into this Agreement pursuant to the King County Code 4.56.150.E.

1.2 The City is a non-charter optional municipal code city incorporated under the laws of the State of Washington, with authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens and for other lawful purposes.

1.3 Both the County and the City are, among other jurisdictions who are not parties to this Agreement, owner jurisdictions of portions of the Eastrail Corridor.

1.4 Subject to easements by other entities (Puget Sound Energy, Sound Transit, and the King County, Department of Natural Resources and Parks, Wastewater Treatment Division), the City owns portions of the Eastrail Corridor located within the City limits, known as the Cross Kirkland

Corridor (“the CKC”); and the County owns portions of the Eastrail Corridor that are located both outside of and within the City limits of Kirkland (“the King County Corridor”).

1.5 The City understands that the King County Corridor is subject to an easement held by Puget Sound Energy (**EXHIBIT A** – South Rail Line Easement, King County Recording Number 20101221000998), a Reciprocal Coordination and Cooperation Covenant Agreement between Puget Sound Energy and King County (**EXHIBIT B** – Reciprocal Coordination and Cooperation Covenant Agreement, King County Recording Number 20130213001647), an easement held by Sound Transit (**EXHIBIT C** – High Capacity Transportation Easement Agreement, King County Recording Number 20120411001174), and an easement originally held by the Municipality of Metropolitan Seattle, now held by the King County Wastewater Treatment Division (**EXHIBIT D** – Easement). The City understands that in furtherance of these instruments King County will submit the City’s plans to Puget Sound Energy, Sound Transit and the King County Wastewater Treatment Division (Wastewater) for review and approval, and further understands that Puget Sound Energy, Sound Transit, or Wastewater (“Easement Holders”) may in certain instances require the City’s improvements to be relocated or removed at City’s sole cost and expense. The City may be billed directly by Sound Transit, Wastewater, or PSE for costs associated with reviewing the plans. The City agrees to comply with the terms of these instruments and any other preexisting easements, leases, licenses, or other agreements permitting use of the corridor.

1.6 The City understands, acknowledges, and agrees that the Corridor that is the subject of this Agreement is part of an interstate freight rail corridor that has been "railbanked" subject to interim trail use under 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). As a result of the Corridor’s railbanked status, interstate freight rail service may be reactivated over this Corridor, which in turn may result in the demolition, destruction, removal, or relocation of any improvements that the City may make to the Corridor. The City understands, acknowledges, and agrees that the City shall bear all risk of loss of any and all improvements that the City may make to the Corridor, and that if interstate freight rail service is reactivated, then this Agreement shall expire and the City may be required to demolish, remove, or relocate the City’s improvements at City’s sole cost and expense, or to negotiate with the person or entity that reactivates rail service to arrange for the City’s continued use of the Corridor.

1.7 The October 2013 “Recommendations for the Eastside Rail Corridor” (since renamed the Eastrail), adopted by the Eastrail Regional Advisory Council, highlight that the Eastrail should be a multi-use corridor that supports mobility and transportation connections, economic opportunities, cultural opportunities, natural areas, scenic vistas, historic legacy, public health, public safety, equity, and sustainability.

1.8 The May, 2019 “Completing the Eastrail” Funding Commission Report reiterates that the historic railroad line, will be “more than a trail” and will be a “multi-use corridor enhancing transportation for the region and supporting utility infrastructure” and “a centerpiece for urban and economic development, offering substantial advantages for local businesses competing to recruit and retain top talent”.

1.9 A multi-decade business owner in the City, Lee Johnson Chevrolet, which owns and operates auto dealerships in the City and the County, and whose different lines of auto sales provide

substantial sales tax to the City and the County, is in negotiations with Google, Inc. to sell its current auto dealership property near the proposed Sound Transit I-405 and NE 85<sup>th</sup> Street Bus Rapid Transit station for redevelopment as Class A technology office space that is a more appropriate land use and will provide thousands of jobs for the region located close to high capacity transit service.

1.10 Lee Johnson Chevrolet (“the Developer”) has purchased or will purchase parcels of real property in the Totem Lake area of the City to retain the auto dealership business in the City and the County, including King County Parcel Number 2726059043, located at 12545 13<sup>th</sup> Avenue NE, Kirkland, Washington, 98034 and King County Parcel Number 2726059101 (which together comprise “the Site”).

1.11 The Site lies adjacent to a portion of the King County Corridor and requires access across the King County portion of the Eastrail Corridor at 134<sup>th</sup> Court NE in order for business to be conducted on the Site.

1.12 The City wishes to enter into a thirty (30) year renewable use agreement with the County for the City to design, construct, operate, and maintain the Crossing at a new northerly extension of 134<sup>th</sup> Court NE, crossing the King County Corridor and providing access to the Site, such that the Site can be accessed in a manner that meets the requirements to protect the public health, safety, and welfare, including facilitating police and fire emergency response.

1.13 The County desires to promote the safety and high-quality experience of trail users and therefore intends to not increase the current number of trail crossings in the King County Corridor through this Agreement and has the legal authority to extinguish existing crossings.

1.14 The City and County entered into a Memorandum of Understanding on July 20, 2021, **Exhibit E** – Memorandum of Understanding, that identified the need for this Agreement that would require legislative approval.

## **2. PURPOSE/SCOPE/DESIGN ELEMENTS**

2.1 The purpose of this Agreement is to set forth the rights, responsibilities, and obligations of the Parties relating to the scope of this Agreement, which is limited to the design, construction, operation, and maintenance of the Crossing on a portion of land along the King County Corridor (the “Property”) that when complete will extend 134<sup>th</sup> Court NE, located within the City as depicted in EXHIBIT F - Illustrative Cross Section

2.2 The Crossing shall be designed as a minor two-lane new public roadway with two (2) ten-foot-wide travel lanes, in addition to eight-foot buffered bike lanes and sidewalks in each direction at 134<sup>th</sup> Court NE Kirkland, Washington on the Property in the King County Corridor, as defined by the City’s Complete Streets Ordinance. As part of Exhibit F, the City shall include a cross section of the Crossing that identifies the minimum acceptable impact to the King County Corridor.

2.3 The Crossing will be consistent with the standards of the American Association of State Highway and Transportation Officials (“AASHTO”), Washington State Department of

Transportation (“WSDOT”) guidance, and the railbanking obligations imposed through Section 8(d) of the National Trail Systems Act (16 U.S.C. §1247(d) and 49 C.F.R. §1152.29).

2.4 The Crossing will be designed and constructed to prioritize Eastrail non-motorized use when possible. Changes to design shall be proposed as part of the review process. Costs for changes to the project design identified during construction shall be borne by the proposing Party. After completion of the Crossing, for future modifications intended to protect public health and safety due to changing conditions or standards, either Party may propose changes to the design of the Crossing. Design features and cost allocation of these future improvements will be negotiated by the Parties.

2.5 The County will close the existing crossing of the King County Corridor located on the alignment of 135<sup>th</sup> Avenue. The closure of the crossing at 135<sup>th</sup> Avenue, shall be accomplished in accordance with the County’s discretionary legal authority to extinguish the crossing of the Eastrail that currently provides access to King County Parcel No. 2726059092. The City will use its relevant authorities, policies, programs, and/or other capacities, to ensure that 135<sup>th</sup> Avenue, a private road that is identified as a potential new public roadway in the City’s Transportation Master Plan (2015), is closed and not converted to a public road. The County and City closures are to be complete no later than the opening of the new Crossing at 134<sup>th</sup> Court NE.

2.6 The City will enter into a binding agreement with the Developer, and provide a draft of this agreement to the County for review, with the following requirements:

2.6.1 The Developer shall agree that deliveries and staff will not access the Site from the Crossing absent an emergency but will instead enter the Site from NE 126<sup>th</sup> Place, and that such emergency access will be discontinued in a timely manner as the traffic over the King County Corridor is intended to be primarily customer traffic.

2.6.2 The Developer shall adhere to the railbanking standards set forth in Section 8(d) of the National Trail Systems Act (16 U.S.C. §1247(d) and 49 C.F.R. §1152.29) in construction and design of the Crossing.

2.6.3 The Developer shall agree to enable access connecting the Crossing to the building occupying a parcel adjacent to the Developer’s parcel, King County Parcel No. 2726059092, and to build a paved connection that allows vehicular access between the public roadway to said parcel. The City or Developer will coordinate with the owner of King County Parcel No. 2726059092 to ensure that the proposed new access will accommodate the anticipated long-term access needs of the parcel.

2.6.4 The Developer shall work with the City to design a public road connection from the Site to NE 126<sup>th</sup> in order to maintain lower traffic volumes at the Crossing while allowing police and fire vehicle access for emergency response.

2.7 Businesses that were impacted by the closure of the existing crossing at the alignment of 135<sup>th</sup> Avenue will not have to comply with the binding agreement of the Developer.

2.8 The City will be obligated to ensure that the Developer complies with the terms of the agreement.

**3. MITIGATION**

3.1 The City and County agree that they have shared goals to open a safe trail from the CKC to the north side of the Willows Road crossing of the Eastrail Corridor as soon as possible.

3.2 To that end, the City shall reimburse the County up to \$600,000 for actual costs associated with rail removal and construction of an interim, gravel trail between 132<sup>nd</sup> Place NE and 139<sup>th</sup> Avenue NE/Willows Road, where the Eastrail Corridor connects with the City’s Willows Road Connector project. The contribution may be provided by the City, by the Developer, or a combination of the City and the Developer. King County will provide the City with documentation demonstrating the amount of the costs and the City will reimburse the County within 60 days.

3.3 The County will construct and operate interim trail crossings of the Eastrail Corridor at 132<sup>nd</sup> Place NE and Willows Road consistent with applicable City (including the City’s Complete Streets Ordinance), County Regional Trail, WSDOT, AASHTO, and the railbanking standards set forth in Section 8(d) of the National Trail Systems Act (16 U.S.C. §1247(d) and 49 C.F.R. §1152.29 to be complete as soon as feasible and no later than 2023.

**4. EFFECTIVE DATE/DURATION**

4.1 Effective Date. This Agreement will be effective on the date when signed by an authorized representative of each Party following authorization by the Metropolitan King County Council and the Kirkland City Council (“Effective Date”).

4.2 Term. The term of this Agreement will be thirty (30) years from the Effective Date, unless extended or terminated earlier by either Party pursuant to the terms herein.

4.3 Extensions. It is understood and agreed that at least one year prior to the expiration date of this Agreement and one year prior to the expiration of any subsequent term, the City will request a review by the County of the uses afforded the City under this Agreement. The County may grant the City an extension of the Agreement for subsequent five (5) year terms via an Amendment to this Agreement.

**5. DESIGN AND CONSTRUCTION OF THE CROSSING**

5.1 General Obligation Regarding Construction. The City will be solely responsible for the construction of the Crossing and related improvements. However, the City will coordinate with the County to make sure any new construction or improvements are completed in compliance with the County’s needs, preferences, internal standards, and operational requirements. The City will not disturb the ground or install pavement, gravel, landscaping, buildings, or structures of any kind in or on the Property without prior written consent from the County, which may be conditioned in the County’s sole discretion and will be subject to the requirements stated below.

**5.2 Cultural Resources.** Prior to any ground disturbing activities on County property, the City shall consult with the County's Archeologist to determine the need for cultural resources monitoring. The City shall be required to comply with any recommendations made by the Archeologist, which may include but are not limited to a cultural resource study conducted by a qualified, County-approved archeologist at the City's expense.

**5.3 Plan Review and Approval.** The City will not request construction bids or undertake any construction or installation of improvements of the Crossing until the County approves in writing all plans and specifications, including landscaping elements (the "Plans and Specifications"). The City will provide conceptual alternatives analysis that includes but is not limited to traffic crossing data, traffic data, and access needs from the existing easement holder at King County Parcel 2726059092. Documentation shall be consistent with requirements for City and any other permits. The City will submit plans and specifications for the Crossing at 30%, 60% 90% and 100% design in the development process, and more often if the City chooses to do so. Changes to be made to the design during construction will also be provided to the County for its review and acceptance. The County will have thirty (30) days to review submitted plans and specifications to ensure compatibility with the Eastrail Corridor and submit comments or request additional information, which the City will provide in a timely manner.

Prior to finalization of design, the City understands that the County will submit the City's plans of the Crossing for review and comment by the existing Easement Holders, PSE, Sound Transit and Wastewater, as referenced in Section 1.5 of this Agreement, and provide any comments from these entities to the City.

**5.4 Minimum Plan Requirements.** At a minimum, the Plans and Specifications for the Crossing will specifically address the management of construction impacts on site, including but not limited to stockpiling of materials and equipment storage, erosion and sediment control, disposition of dewatering and wastewater discharges, safety barriers, signage, and similar matters. The Plans and Specifications will also specifically address a safe detour for Eastrail trail users.

**5.5 Construction.** The City, its agents, and/or contractors will perform all work on the Crossing in accordance with the Plans and Specifications approved by the County. The City, its agents, and/or contractors will install barriers, signage, and/or other appropriate devices or infrastructure to prohibit the public from entering the Crossing where construction or improvements have occurred until after the County inspects the Crossing for the sole purpose of determining whether construction conforms to the Plans and Specifications that the County has previously approved. The City will give the County reasonable prior notice of all pre-construction and construction meetings and of the commencement of construction, so that the County has the option of attending such meetings and inspecting the Crossing during construction. During construction, the City will submit any change orders that substantively address design or operational modifications to the County for its review and approval prior to any work on such change orders proceeding. The County will have thirty (30) working days to either respond with comments, or if the issue requires coordination, to request additional time to review the impacts of the proposed change order. The County will make reasonable efforts to perform timely review and coordination in order to minimize construction delays. Following construction, the City, its agents, and/or contractors shall

restore the Corridor property altered by the construction to the same as or better condition, including the restoration of any drainage systems. The City, its agents, and/or contractors shall restore disturbed gravel areas of the Corridor and compact such areas to 95%. The City, its agents, and/or contractors shall not dump or dispose of construction debris and surplus material on County land at any time. The City agrees to provide as-built plans of the Crossing to the County within thirty (30) days of Crossing completion.

**5.6 Safety.** If, at any time, the City's authorized use of, or improvement, alteration, or construction on the Corridor creates a condition that could pose a danger to trail users, the City shall promptly post temporary signage, install King County Parks-approved barricades or fencing, and take other Parks-approved or -required measures to facilitate continued safe public use of the Corridor.

**5.7 Public Notice.** The City will be solely responsible for ensuring that the adjacent property owners and Eastrail users are appropriately notified about planned construction activities. The City will be the primary point of contact for the public for all Crossing-related construction; however, the City will provide the County 14-day advance notice of all public communications involving the Crossing and will provide the County the opportunity to review and comment about written public notices and to participate in public meetings at the County's discretion.

**5.8 Construction Costs.** The City, its agents and/or contractors, will construct the Crossing and all related improvements at its sole cost and expense; *provided*, the County may be responsible for certain costs pursuant to Section 2.4 of this Agreement. Additionally, if the County's actions or inactions cause significant construction delays, then the County shall be responsible for any costs related to such construction delays.

**5.9 Compliance with Law.** The City will complete all construction in compliance with all applicable federal, state, and local laws and regulations. The County will not assume responsibility for or control over the working conditions and safety practices of employees, contractors, or subcontractors hired by the City to perform any work on the Crossing, and nothing in this Agreement, including the County's plan review and approval, will be construed to place a duty, express or implied, on the County to control or be responsible for such activities of the City. The City further acknowledges and agrees that the County's reviews and/or inspections of plans and construction of the Crossing is for the County's internal requirements and purposes only and will not be construed as any type of certification, warranty, or other approval with respect to the City's compliance with any and all applicable federal, state, and local laws, ordinances, and building codes.

## **6. RECREATIONAL TRAIL OPERATION AND MAINTENANCE**

**6.1 Maintenance.** The City will operate and maintain the Crossing during the term of this Agreement at its sole cost and expense. In addition to maintaining the Crossing and all related improvements (signals, safety striping, pavement condition, stormwater facilities, etc.), the City will be the initial point of contact for public maintenance requests and complaints associated with the Crossing and will provide the County a contact for referring Crossing related maintenance requests and complaints as appropriate.

6.2 Surface Water Management Fees. The City shall be responsible, at its sole cost and expense, for all surface water management fees related to the construction, operation, and maintenance of the Crossing and all related improvements.

6.3 King County Access. The County will at all times have unlimited access to the King County Corridor at the subject crossing. Prior to installing such items as barriers, gates, or bollards (as approved by the County) to 134<sup>th</sup> Court, NE, the City will provide the County the ability to have its own padlock or other locking devices on such structures.

6.4 Temporary Crossing Closures. The City understands that the County's operation, repair, maintenance, inspection, and construction of the Eastrail in the King County Corridor, acts of nature, and other activities, may, on occasion, require the temporary closure of the King County Corridor. Except in the case of an emergency, the County shall use commercially reasonable efforts to minimize the length of time of any closure of the Crossing and shall provide a minimum of 10 (ten) working days' notice to the City of impending closures. The County will install gates, barriers, or other signage in the case of the County required temporary closures. The City may, at any time, close 134<sup>th</sup> Court, NE for reasons of construction, maintenance, development, operation, or improvement of the Crossing, provided that the County shall at all times have the right to enter the King County Corridor for any purpose whatsoever connected with the carrying on of the business of the County. King County will be responsible for installing its own closure devices in the case of King County required King County Corridor closures.

6.5 King County Construction or Repair of Eastrail Corridor. The County will notify the City if there are plans to construct new facilities on portions of the Property and will use commercially reasonable efforts to design facilities that accommodate the Crossing without relocation; provided that the County will not be required to compromise cost effectiveness, reliability, capacity, safety, other utility system requirements or any other requirements deemed necessary for its projected needs. The City will reimburse the County for costs and expenses the County incurs as a result of accommodating or relocating the Crossing. These costs and expenses may include, but are not limited to increased costs for design, construction, maintenance, operation and/or relocation incurred to accommodate the Crossing or Crossing-related mitigation.

6.6 Construction in Eastrail Corridor by Easement Holders. The County will notify the City if there are plans by the Easement Holders referenced in Section 1.5 to construct new facilities on portions of the Property at the Crossing. The City will reimburse the County for costs and expenses charged by the Easement Holders as a result of accommodating the Crossing. These costs and expenses may include, but are not limited to increased costs for design, construction, maintenance, operation and/or relocation incurred to accommodate the Crossing or Crossing-related mitigation.

## **7. RELOCATION, REMOVAL OR TERMINATION OF CROSSING**

7.1 Railbanking. The Parties understand, acknowledge, and agree that the Eastrail Corridor is part of an interstate freight rail corridor that has been "railbanked" subject to interim trail use under 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). As a result of the Eastrail Corridor's railbanked status, interstate freight rail service may be reactivated over the corridor, which in turn may result in the demolition,

destruction, removal, or relocation of any improvements that the City may make to the corridor. The City understands, acknowledges, and agrees that the City shall bear all risk of loss of any and all improvements that City may make to the corridor, and that if interstate freight rail service is reactivated, then the use agreement shall expire and the City may be required to demolish, remove, or relocate the City's improvements at the City's sole cost and expense, or to negotiate with the person or entity that reactivates rail service to arrange for the City's continued use of the corridor.

7.2 Easement Holders. Other than in the case of railroad reactivation as set forth in Section 7.1, the County will determine whether any portion of the Crossing must be removed, relocated, or terminated only in response to the underlying property rights of the existing Easement Holders specified in Section 1.5 and detailed in Exhibits B, C, D, and E. In that instance, the County will send written notice to the City that the Easement Holders require the Crossing to be removed, relocated or terminated, and the Parties shall engage in a good faith negotiation to find a reasonable alternative to removal, relocation, or termination of the Crossing. During these negotiations the City must determine whether it will require these costs to be paid for by other responsible parties as a condition of redevelopment. Once negotiations are concluded, the City shall relocate or close the affected portion of the Property for the Crossing consistent with the County's negotiations with the Easement Holders. After receipt of written notice from the County, the City will be responsible for notifying the public of the impending Crossing relocation or closure. The City will coordinate with the County about appropriate closure activities, which may include placement of fences or barricades, installation of trail closure/detour signage, removal of Crossing improvements, or other actions. If the Crossing is required to be removed, relocated or terminated pursuant to this Section, then the City will pay all costs and expenses associated with the relocation, termination, or removal of the Crossing from any portion of the Property in order to restore the affected portion of the Property to the condition existing immediately prior to the execution of this Agreement or consistent with the terms of the negotiations reached by the Parties. If the City fails to take steps to close the Crossing as negotiated by the Parties, the County may take any necessary steps to close, remove, relocate, or terminate the Crossing at the expense of the City. The City's obligation to pay costs shall survive termination of this Agreement.

## **8. EARLY TERMINATION OF AGREEMENT**

In addition to termination for default under Section 9, the City may terminate this Agreement upon six (6) months' written notice to the County. Upon such notification, the City will immediately take steps to advise the public of the impending closure of the Crossing. The City will coordinate with the County about appropriate Crossing closure activities, which may include placement of fences or barricades, installation of trail closure/detour signage, removal of Crossing improvements, or other actions, and shall restore the Property as set forth in Section 7 above.

## **9. DEFAULT**

"Default" means the failure of either Party to perform any obligation or to comply with any term under this Agreement, and to fail to cure such non-performance or failure to comply within thirty (30) days after written notice from the other Party. However, a Party will not be in Default if the failure

to perform or comply is such that it cannot reasonably be cured within thirty (30) days and the Party commences a cure within thirty days (30) after notice and diligently pursues the cure to completion. If either the City or the County disagree regarding whether non-performance or non-compliance has occurred, or if the Parties cannot agree on a cure or a reasonable time frame for implementing the cure, prior to terminating this Agreement, the disagreement will first be referred to the City Director of Public Works and the Director of King County Department of Natural Resources and Parks (DNRP) for a negotiated resolution. If the City Director of Public Works and the DNRP Director cannot reach resolution, the Party claiming the other Party is in Default may choose to immediately terminate the Agreement and pursue any remedies allowable at law or equity. Additionally, upon termination of this Agreement as set forth in this section, the City shall restore the Property as required under Section 7; otherwise, the County will be entitled to perform any work required to remove and close the Crossing, and the County's costs will be paid by the City within 30 days of receipt of an invoice from the County. The County's failure to exercise such right at any time will not waive its right to terminate for any future breach or default or to exercise any available self-help remedy.

## **10. INSURANCE**

10.1 Insurance. The City shall procure and maintain for the duration of this Agreement, insurance or coverage against claims for injuries to persons or damage to property which may arise from, or in connection with the rights and privileges granted by this Agreement and/or the performance of work hereunder by the City, its agents, representatives, employees, contractors, and/or subcontractors. Upon request of the County, the City shall furnish proof of the City's coverage of insurance and its Contractor's certificates of insurance and policy endorsements.

The City is responsible for ensuring compliance with all the insurance requirements stated herein. Failure by the City, its agents, representatives, employees, contractors, and/or subcontractors to comply with the insurance requirements stated herein shall constitute a default of this Agreement.

Each insurance policy shall be written on an "occurrence" basis; excepting insurance for professional liability (errors and omissions) and/or pollution liability. Professional liability (errors and omissions) or pollution liability required by this Agreement is acceptable on a "claims-made" basis. If any insurance required under this Agreement is purchased on a "claims-made" basis, the coverage provided under that insurance shall be maintained through: (i) consecutive policy renewals for not less than three (3) years from the date of completion of the work for the Crossing or, if such renewals are unavailable, (ii) the purchase of a tail/extended reporting period for not less than three (3) years from the date of completion of the work for the Crossing. All insurance written on a "claims made" basis must have its policy inception or retroactive date be no later than the Effective Date of this Agreement, unless otherwise approved in writing by the County's Risk Management Office.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this

provision shall affect and/or alter the application of any other provision contained within this Agreement.

By requiring such minimum insurance coverage, the County shall not be deemed or construed to have assessed the risks that may be applicable to the City or its contractors, and/or subcontractors under this contract. The City, its contractors, and/or subcontractors shall assess their own risks and, if they deem appropriate and/or prudent, maintain greater limits and/or broader coverage.

**10.2 Minimum Scope and Limits of Insurance**

Coverage shall be at least as broad as and with limits no less than the following:

- (A) Commercial General Liability: \$2,000,000 per occurrence and \$4,000,000 in the aggregate for bodily injury, personal and advertising injury, and property damage. Coverage shall be at least as broad as that afforded under ISO form number CG 00 01. Such insurance shall include coverage for, but not limited to, premises liability, products-completed operations, ongoing operations, and contractual liability. Limits may be satisfied by a single primary limit or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy and satisfy all other requirements applicable to liability insurance including but not limited to additional insured status for the County.
- (B) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as that afforded under ISO form number CA 00 01 covering business auto coverage, symbol 1 “any auto”; or the appropriate coverage provided by symbols 2, 7, 9, or 9.
- (C) Workers Compensation: Workers Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or “Other States” state law, or the statutory requirements of the state of residency.
- (D) Employers Liability or “Stop Gap”: Coverage with minimum limits of \$1,000,000 each occurrence and shall be at least as broad as the indemnification protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the general liability policy.

Municipal or State Agency Provision. If this Agreement is entered into with a Municipal Corporation or an agency of the State of Washington, the Municipal Corporation may maintain a fully funded self-insurance program for its liability exposures in this Agreement. The City agrees to provide the County with at least thirty (30) days prior written notice of any material change in the City’s self-funded insurance program and will provide a letter of self-insurance as adequate proof of coverage. If the City decides to no longer maintain a self-insurance program for its liabilities, the City must promptly notify the County and provide certificates of insurance and corresponding endorsements evidencing the insurance requirements in this Agreement have been satisfied.

**10.3 Minimum Scope and Limits of Insurance – Construction and Design Period**

Prior to the commencement of Design and/or Construction and until Construction is complete, City shall cause its contractor(s) and any subcontractor(s) to procure and maintain insurance against claims for injuries to persons or damage to property which may arise from, or in connection with the activities related to this Agreement. The City and the County shall be included as additional insured, for full coverage and policy limits on liability policies except Professional Liability (errors and omissions) and Workers Compensation.

County is not responsible for payment of the cost of such insurance. City's Contractor(s) and any Subcontractor(s) shall maintain coverage and limits no less than the following:

- (A) Commercial General Liability: \$2,000,000 per occurrence and \$4,000,000 in the aggregate for bodily injury, personal and advertising injury, and property damage. Coverage shall be at least as broad as that afforded under ISO form number CG 00 01. Such insurance shall include coverage for, but not limited to, premises liability, products-completed operations, ongoing operations, and contractual liability. Limits may be satisfied by a single primary limit or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy and satisfy all other requirements applicable to liability insurance including but not limited to additional insured status for the County.
- (B) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as that afforded under ISO form number CA 00 01 covering business auto coverage, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 9, or 9.
- (C) Professional Liability (errors and omissions): \$1,000,000 per claim and in the aggregate. In the event that services delivered pursuant to this Agreement either directly or indirectly involve or require professional services, Professional Liability (errors and omissions) coverage shall be provided.
- (D) Pollution Liability: \$1,000,000 per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, clean-up costs and the loss of use of tangible property that has not been physical injured or destroyed.
- (E) Workers Compensation: Workers Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or "Other States" state law, or the statutory requirements of the state of residency.
- (F) Employers Liability or "Stop Gap": Coverage with minimum limits of \$1,000,000 each occurrence and shall be at least as broad as the indemnification protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

**10.4 Deductibles and Self-Insured Retentions**. Any deductible and/or self-insured retention of the policies shall not in any way limit County's right to coverage under the required insurance, or to

City's or any Contractor, and/or Subcontractor's liability to the County, and shall in all instances be the sole responsibility of the City and any Contractor or Subcontractor, even if no claim has actually been made or asserted against City, its Contractor or Subcontractor.

**10.5 Other Insurance Provisions.** The insurance policies required in this permit are to contain, or be endorsed to contain the following provisions

(A) All Liability policies except Professional Liability (errors and omissions) and Workers Compensation:

- a. The County, its officials, employees, and agents shall be covered as additional insured, for full coverage and policy limits, as respects liability arising out of ongoing and completed work, or other activities performed by or on behalf of the City or its agents, representatives, employees, Contractor(s), or Subcontractor(s) in connection with this Agreement. Additional insured status shall include Products-Completed Operations.

(B) With respect to all liability policies (except Workers Compensation):

- a. Coverage shall be primary insurance as respects the County, its officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officials, employees or agents shall not contribute with the City's or any Contractor or Subcontractor's insurance or benefit the City, any Contractor, Subcontractor, or their respective insurers in any way.
- b. Insurance shall expressly state that it applies separately to each insured and additional insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(C) All Policies:

- a. Coverage shall not be suspended, voided, canceled, or materially changed until after thirty (30) days prior written notice has been given to the County. In the event of said cancellation or intent not to renew, City shall obtain and furnish the County evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date. Failure to provide proof of insurance could result in revocation or termination of this Agreement.

**10.6 Acceptability of Insurers.** Unless otherwise approved by the County, insurance is to be placed with insurers with an A.M. Best rating of no less than A: VIII, or, if not rated with A.M. Best, with minimum surpluses the equivalent of A.M. Best surplus size VIII. The County agrees that the City's coverage under this section will be provided by its self-insurer Washington Cities Insurance Authority (WCIA).

**10.7 Verification of Coverage.** If requested by the County, then the City shall furnish the King County Real Property Division with proof of coverage, including endorsements, under this section. The County reserves the right to require complete, certified copies of all required insurance policies, which may be redacted of confidential or proprietary information, at any time.

County's receipt or acceptance of proof of coverage under this section at any time without

comment or objection, or County's failure to request certified copies of such coverage does not waive, alter, modify, or invalidate any of the insurance requirements set forth in this Section or, consequently, constitute County's acceptance of the adequacy of such insurance or preclude or prevent any action by County against the City, its contractors, and/or subcontractors for breach of the requirements of this Section.

## 11. GENERAL LEGAL PROVISIONS

11.1 Compliance with Law. The City and the County shall comply, and shall ensure their contractors and employees comply, with all federal, state, and local laws, regulations, and ordinances applicable to the work and services performed under this Agreement.

11.2 Parties. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of either Party or any of either Party's contractors or subcontractors shall be deemed, or represent themselves to be, employees of the other Party.

11.3 Laws and Venue. This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of King County in Seattle, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

11.4 Headings. Section titles or other headings contained in this Agreement are for convenience only and shall not be part of this Agreement, nor be considered in its interpretation.

11.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall constitute one and the same instrument.

11.6 No Third-Party Beneficiaries. This Agreement is entered into solely for the mutual benefit of the Parties. This Agreement is not entered into with the intent that it shall benefit any other person and no other such person shall be entitled to be treated as a third-party beneficiary of this Agreement.

11.7 No Waiver. Neither payment nor performance by a Party shall be construed as a waiver of the other Party's rights or remedies against the Party. Failure to require full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter. No term or condition shall be waived, modified, or deleted except by an instrument, in writing, signed by the Parties.

11.8 Entire Agreement. This Agreement shall constitute all terms, conditions, and provisions agreed upon by the Parties. No modification or amendment of this Agreement shall be valid or effective unless evidenced by an amendment in writing signed by both Parties.

11.9 Interpretation. This Agreement is and shall be deemed jointly drafted and written by each of the Parties to it, and it shall not be construed or interpreted against any of the entities originating or preparing it.

11.10 Severability. If any provisions of this Agreement are held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated.

11.11 Hold Harmless and Indemnification. The City shall indemnify and hold harmless King County, its officers, officials, agents, and employees, from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatsoever kind or nature arising out of, in connection with, or incident to the City's exercise of any right or obligation under this Agreement, except to the extent caused by the negligence of King County. The City agrees that it is fully responsible for the acts and omissions of its contractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. In addition, the City shall assume the defense of King County and its officers and employees in all litigation, claims, or proceedings arising out of, in connection with, or incidental to such obligation, and shall pay all defense expenses, including reasonable attorney's fees, expert fees, and costs incurred by King County on account of such litigation or claims. This indemnification obligation shall include, but is not limited to, all claims against King County by an employee or former employee of the City or its contractors, and the City, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects King County only, under any industrial insurance act, including Title 51 RCW, other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event of litigation between the Parties to enforce the rights under this section, reasonable attorney fees shall be allowed to the substantially prevailing Party.

The City shall require any contractor performing work pursuant to this Agreement to indemnify, defend, and hold harmless King County, its officers, officials, agents, and employees to the same extent the City is required to indemnify, defend and hold harmless King County as specified above.

11.12 Anti-Discrimination- In all hiring or employment made possible or resulting from this Agreement, there shall be no discrimination against any employee or applicant for employment because of race, color, ancestry, religion, national origin, age, sex, sexual orientation, marital status, or the presence of any sensory, mental or physical handicap in an otherwise qualified handicapped person unless based upon a bona fide occupational qualification, and this requirement shall apply to but not be limited to the following employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. No person shall be denied, or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of race, color, ancestry, religion, national origin, age (except minimum age and retirement provisions), sex, sexual orientation, marital status, parental status, the presence of any sensory, mental or physical handicap, or the use of a trained guide-dog by a blind or deaf person. Any violation of this provision shall be considered a violation of a material provision of this

Agreement and shall be grounds for cancellation, termination or suspension in whole or in part of the Agreement by the County and may result in ineligibility for further County agreements or permits.

11.13 Force Majeure. If either Party cannot perform any of its obligations due to events beyond its reasonable control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond a Party’s reasonable control include, but are not limited to, acts of nature, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or materials, government regulations or restrictions, lawsuits filed challenging one or more permits or other agreements necessary for implementation of the Crossing project, and weather conditions.

11.14 Exhibits. All Exhibits referenced in this Agreement, as described in Section 1.5, are incorporated by reference as if fully set forth.

EXHIBIT A – South Rail Line Easement (Puget Sound Energy)

EXHIBIT B - Reciprocal Coordination and Cooperation Covenant Agreement (Puget Sound Energy)

EXHIBIT C – High Capacity Transportation Easement Agreement (Sound Transit)

EXHIBIT D – Easement

EXHIBIT E - Memorandum of Agreement

EXHIBIT F – Illustrative Cross Section

IN WITNESS WHEREOF, the Parties have executed this Agreement, effective on the latest date shown below. The signatories below represent and warrant that they possess the authority to execute this Agreement and bind their respective entities.

<p>KING COUNTY Warren Jimenez Director, King County Parks &amp; Recreation Division</p> <p>Date Signed:</p> <p>Approved as to form</p>	<p>THE CITY OF KIRKLAND</p>
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Deputy Prosecuting Attorney  Date Signed:	
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# **EXHIBIT A**



20101221000998

FIRST AMERICAN EAS 87.00  
PAGE-001 OF 026  
12/21/2010 13:45  
KING COUNTY, WA

**RETURN ADDRESS:**

Puget Sound Energy, Inc.  
Attn: Right of Way Department  
P.O. Box 97034 (EST-06W)  
Bellevue, WA 98009-9734

**E2471595**

12/21/2010 13:44  
KING COUNTY, WA  
TAX \$10.00  
SALE \$0.00

PAGE-001 OF 001

**SOUTH RAIL LINE EASEMENT**

REFERENCE #: N/A

GRANTOR: Port of Seattle

GRANTEE: Puget Sound Energy, Inc.

SHORT LEGAL: BNSF Railway Company's Woodinville to Kennydale, Washington Branch Line right-of-way lying within the following: PTN Sections 15, 16, 22, 27, 28, 32, 33, T26N-R05E, WM; PTN Sections 5, 8, 17, 20, 21, 28, 33, T25N-R05E, WM; PTN Sections 4, 9, 16, 17, 20, 29, 31, 32, T24N-R05E, WM; and PTN Section 6, T23N-R05E, WM

This instrument filed for record by First American Title Insurance Company as an accommodation only, it has not been examined as to its execution or as to its effect upon the title.

216  
468826

**ASSESSOR'S PROPERTY TAX PARCEL NOS.:**

152605-9023	202505-9034
162605-9164	212505-9020
162605-9021	282505-9038
222605-9030	332505-9029
272605-9019	042405-9024
282605-9027	092405-9032
322605-9030	162405-9033
332605-9024	172405-9008
388690-3065	202405-9014
052505-9033	292405-9005
398270-1763	322405-9005
082505-9059	312405-9004
172505-9053	062305-9005

For and in consideration of One Dollar (\$1.00) and other valuable consideration in hand paid, **PORT OF SEATTLE**, a Washington municipal corporation (“Grantor”), hereby conveys and warrants to **PUGET SOUND ENERGY, INC.**, a Washington corporation (“Grantee”), for the purposes hereinafter set forth in this agreement (“Agreement”), a nonexclusive, perpetual easement over, under, along, across and through the following described real property (the “Easement Area”) in King County, Washington:

See legal description attached hereto as Exhibit A and incorporated herein by this reference.

1. **Purpose.** Grantee shall have the right to use and enjoy the Easement Area for the following purposes:

(a) To construct, operate, maintain, repair, replace, improve, remove, enlarge, and use the Easement Area for one or more utility systems for purposes of transmission, distribution and sale of electricity. Such systems may include, but are not limited to:

i. **Overhead facilities.** Poles, towers and other support structures with crossarms, braces, guys and anchors; electric transmission and distribution lines; fiber optic cable and other lines, cables and facilities for communications; transformers, street lights, meters, fixtures, attachments and any and all other facilities or appurtenances necessary or convenient to any or all of the foregoing; and

ii. **Underground facilities.** Conduits, lines, cables, vaults, switches and transformers for electricity; fiber optic cable and other lines, cables and facilities for communications; semi-buried or ground-mounted facilities and pads, manholes, meters, fixtures, attachments and any and all other facilities or appurtenances necessary or convenient to any or all of the foregoing.

(b) To construct, operate, maintain, repair, replace, improve, remove, enlarge, and use the Easement Area for Grantee’s utility systems for purposes of transmission, distribution and sale of gas (“Gas Facilities”). Such Gas Facilities may include, but are not limited to underground facilities such as pipes, pipelines, mains, laterals, conduits, regulators and feeders for gas; semi-buried or ground-mounted facilities and pads, manholes, meters, fixtures, attachments and any and all other facilities or appurtenances necessary or convenient to any or all of Grantee’s Gas Facilities.

(c) Pedestrian and vehicular ingress and egress to perform the rights granted hereunder.

Except as otherwise expressly set forth herein, no other uses, purposes, rights or conveyances are implied or granted hereunder.

Grantee's use of the Easement Area and this Agreement is subject to existing or previously granted licenses and easements to third parties as set forth at Exhibit F (List of Known Third Party Leases/Licenses) to the May 12, 2008, Donation Agreement (Woodinville Subdivision – South Rail Line) between the Port, BNSF Railway Company and King County.

Grantee shall have the right of access over and across the Easement Area to enable Grantee to exercise its rights hereunder, subject to reasonable security measures (provided, however, that such security measures shall not unreasonably impede Grantee's ability to access its facilities at all times).

**2. Easement Area Clearing; Maintenance; Restoration.**

(a) Grantee shall have the right to cut, remove and dispose of any and all brush, trees or other vegetation in the Easement Area that may interfere with Grantee's facilities. Grantee shall also have the right 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.

(b) Notwithstanding the rights of Grantee in Section 2(a), Grantor (either by itself or by King County, Washington, a political subdivision and body corporate and politic of the State of Washington (the "County") pursuant to the County's obligations under that certain Trail Use Agreement dated December 18, 2009 (the "TUA"), by and between the County and BNSF Railway Company) shall generally be responsible for maintenance of any roads, trails, paths (and/or similar type improvements), and/or rail tracks located in the Easement Area. Provided, however, that in the event that damage to any such improvements results from Grantee's negligent use of the Easement Area, then Grantee shall restore such property to the condition in which it existed prior to the time of damage. In the event that Grantee disturbs the Easement Area in connection with any construction, repair, maintenance, replacement, relocation, or reconstruction work on its facilities, Grantee shall restore the Easement Area to the condition in which it existed at the commencement of such activity.

**3. Grantor's Use of Easement Area; Subsequent Third Party Uses.** Grantor reserves the right to use the Easement Area for (i) those uses set forth in the TUA, (ii) those uses relating to "railbanking" the Easement Area, which uses are specifically set forth in that certain Public Multipurpose Easement by and between Grantor and the County recorded December 18, 2009, under King County Recorder's file No. 20091218001538, and (iii) any other purpose not inconsistent with Grantee's rights herein. In the event that Grantor, on or after the date of this Agreement, provides any easements, leases, permits, franchises, occupancy agreements, licenses or other agreements 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"), such Subsequent Third Party Use shall be subject to Grantee's rights under this Agreement.

#### 4. **Interference.**

(a) **Notice of Construction.** Prior to a party (including any third party who has been granted a Subsequent Third Party Use) constructing any new improvements in the Easement Area (such party referred to as the "Constructing Party"), the Constructing Party shall send notice to the Grantor and Grantee, as applicable (the "Non-Constructing Party"), containing a description of the activities and any construction plans or surveys of the proposed improvements. The Non-Constructing Party shall have thirty (30) days to review and respond. If the Non-Constructing Party fails to respond within thirty (30) days from receipt of notice, the construction plans are deemed approved. For purposes of this Section 4, the Non-Constructing Party shall only mean Grantor or Grantee (as applicable) and shall not include any third party who has been granted a Subsequent Third Party Use.

(b) **Notice of Interference.** If the Non-Constructing Party, in its reasonable discretion, determines that the proposed use of the Easement Area by the Constructing Party interferes with the Non-Constructing Party's then existing facilities or improvements, then the Non-Constructing Party shall provide the Constructing Party with a notice (the "Dispute Notice") within the thirty (30) day timeframe specified in Section 4(a), specifying with particularity the basis for the claim that the Constructing Party's use of the Easement Area is or will be an interference. If the parties are unable to resolve the dispute within thirty (30) days, they shall follow the following process:

i. *Management Escalation.* Each party shall, 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 by appropriate written documentation executed by both Grantor and Grantee.

ii. *Mediation.* Disputes not settled by Management Escalation shall be submitted to mediation. The mediator shall have experience in utility or civil engineering disputes. If the parties 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, the parties are unable to resolve the dispute, it shall be settled by binding arbitration in accordance with the following subparagraph, unless the parties otherwise agree to extend the mediation time. Each party shall be responsible for its own costs and expenses, including attorneys' fees, incurred pursuant to this subparagraph. Cost of the mediator and other common costs shall be divided equally between the parties.

iii. *Arbitration.* Disputes not settled by mediation shall be decided by arbitration in accordance with the AAA rules, as modified herein, unless the parties mutually

agree to other arbitration procedures. Notice of the demand for arbitration shall be filed in writing with the other party and with the AAA. The demand shall be made within thirty (30) days after the date that either party or the mediator declares that the mediation is concluded. This agreement to arbitrate shall be specifically enforceable under prevailing state or federal arbitration law. A single arbitrator experienced in utility or civil engineering disputes, shall arbitrate the dispute, provided that if the parties cannot agree on an arbitrator within ten (10) days following a party's initial demand for arbitration, each party shall select an arbitrator and the two arbitrators so selected shall select a third arbitrator experienced in utility or civil engineering standards, and the three arbitrators shall then arbitrate the dispute.

1. Except as may be otherwise agreed by the parties to this Agreement, the arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules with Expedited Procedures, in effect at that time, as modified by this Section. There shall be no dispositive motion practice. As may be shown to be necessary to ensure a fair hearing, the arbitrator(s) may authorize limited discovery and may enter pre-hearing orders regarding (without limitation) scheduling, document exchange, witness disclosure and issues to be heard. The arbitrator(s) shall not be bound by the rules of evidence or of civil procedure, but may consider such writings and oral presentations as reasonable business people would use in the conduct of their day-to-day affairs, and may require the parties to submit some or all of their case by written declaration or such other manner of presentation as the arbitrator(s) may determine to be appropriate. The parties intend to limit live testimony and cross-examination except to the extent necessary to ensure a fair hearing on material issues.

2. The arbitrator(s) shall take such steps as may be necessary to hold a private hearing within ten (10) days following the date the arbitrator has been selected and to conclude the hearing within two (2) days; and the arbitrator's written decision shall be made not later than seven (7) calendar days after the hearing. The parties have included these time limits in order to expedite the proceeding, but they are not jurisdictional, and the arbitrator(s) may for good cause allow reasonable extension or delays, which shall not affect the validity of the award. The written decisions shall contain a brief statement of the claim(s) determined and the award made on each claim. In making the decision and award, the arbitrator(s) shall apply applicable substantive law. Absent fraud, collusion or willful misconduct by the arbitrator(s), the award shall be final, and judgment may be entered in any court having jurisdiction thereof. The arbitrator(s) may award injunctive relief or any other remedy available from a judge, including the joinder of parties or consolidation of this arbitration with any other involving common issues of law or fact or which may promote judicial economy, and may award attorneys' fees and costs to the prevailing party but shall not have the power to award punitive or exemplary damages. Venue of any arbitration conducted pursuant to this paragraph shall be in Seattle or Bellevue, Washington.

iv. *Applicable Standards.* For any question of whether a facility unreasonably interferes with another use, the generally accepted engineering standards and practices and those standards and requirements set forth in Chapter 480-93 of the Washington

Administrative Code (and any amendments or supplements thereto) and National Electrical Safety Code and National Pipeline Safety Act shall be determinative, provided any and all conditions thereof are satisfied.

(c) **Emergency Situations.** Notwithstanding the foregoing, a 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 Agreement including, without limitation, Sections 4, 5 and 11 of this Agreement. In such event, and as soon as practicable, the party shall notify the other party 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 constructing any new improvements in the Easement Area.

5. **Insurance.** Grantee agrees to maintain reasonable and customary liability insurance for personal injury, death, and property damage arising out of, or having to do with Grantee's use, occupancy, and possession of, or acts or omission on or about, the Easement Area, and will provide the Grantor with satisfactory evidence of such insurance upon Grantor's request.

6. **Compliance with Laws, Regulations, Work Standards.** Grantee shall at all times exercise its rights herein in accordance with the requirements (as from time to time amended) of any public authority having jurisdiction over Grantee or its operations, and all applicable statutes, orders, rules and regulations, including all applicable environmental laws, permit and approval requirements, and commercially reasonable construction and operation practices, as well as those certain obligations imposed under § 8(d) of the National Trails System Act, also known as the Rails-to-Trails Act, 16 U.S.C. § 1247(d), its implementing regulation, 49 C.F.R. § 1152.29, and the Notice of Interim Trail Use (the "NITU") issued by the Surface and Transportation Board (the "STB").

7. **Reactivation; Trail Development.** Grantor and Grantee understand and acknowledge that if the STB receives a request to use all or any portion of the Easement Area for federally regulated interstate freight rail service, then Grantor and Grantee may each be required to make available some or all of their respective interests in the Easement Area to accommodate reactivated freight rail service. Grantor and Grantee agree that if the STB receives a request for approval to use the Easement Area for reactivated freight rail service, then Grantor and Grantee will cooperate to cause the party making such request (a) to bear all costs to restore or improve the Easement Area for reactivated freight rail service, (b) to bear responsibility to take all steps necessary before the STB and any other regulatory agency, governmental or quasi-governmental body having jurisdiction over such work, to cause the relevant NITU to be vacated, in whole or in part, as necessary, and (c) to compensate Grantor and Grantee for the fair market value of any and all of their respective rights or interests in the Easement Area, or in improvements thereon

that may be destroyed, lost, compromised, or otherwise reduced in value or function when the Easement Area or any portion of it is put to use for reactivated freight rail service.

In the event the County elects not to proceed with Trail Development (as defined in the TUA) and takes action to terminate the TUA, Grantor shall (i) engage a substitute Interim Trail User consistent with all current and future STB requirements and (ii) take such action to satisfy any and all Railbanking Obligations and Custodial Activities as defined in, and pursuant to, the TUA.

8. **Indemnification.** Grantor shall pay, protect, pay the defense costs of, indemnify and hold Grantee and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) Grantor's negligence; (b) Grantor's failure to make available its interests in the Easement Area to accommodate reactivated freight rail service; (c) the breach of any representation, warranty or agreement of the Grantor set forth in this Agreement; (d) the failure of Grantor to perform any obligation required by this Agreement; and (e) the class action lawsuit, *Lane v. Port of Seattle*, Case No. 10-2-25591-5. Grantee shall pay, protect, pay the defense costs of, indemnify and hold Grantor and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of Grantee's negligence and/or Grantee's failure to make available its interests in the Easement Area to accommodate reactivated freight rail service. 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 hereunder be limited to the extent of any insurance available to or provided by the obligated party. The provisions of this paragraph shall survive Closing.

9. **Binding Successors; Assignment.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Either party may freely assign, apportion or otherwise transfer any or all of its rights, benefits, privileges and interests arising in and under this Agreement.

10. **Limitations.** This Agreement is subject to those certain existing or previously granted licenses and easements to third parties as set forth in Exhibit B attached hereto and incorporated herein by reference.

11. **Notice.** Any notice required herein or permitted to be given or served by either party hereto upon the other shall be deemed given or served in accordance with the provisions of this Agreement, if personally served, delivered by national overnight courier (such as Fed Ex, UPS, DHL), if sent via facsimile or if mailed by United States Registered or Certified Mail, postage prepaid, properly addressed as follows:

If to Grantee: Puget Sound Energy, Inc.  
Attn: Right of Way Department  
PO Box 97034 (EST-06W)  
Bellevue, WA 98009-9734  
Telephone: 425-456-2645  
Facsimile: 425-462-3519

If to Grantor: Port of Seattle  
Real Estate Division  
P.O. Box 1209  
Seattle, WA 98111  
Telephone: 206-787-3722  
Facsimile: 206-787-3280

12. **Breach.** Excepting any disputes relating to interference with facilities, which shall be handled in accordance with Section 4, in the event of any breach or threatened breach of this Agreement, the non-defaulting party shall have the right to sue for damages and/or for specific performance and/or to enjoin such breach or threatened breach.

13. **Attorneys' Fees.** The prevailing party in any action brought to enforce or interpret the terms of this Agreement pursuant to Section 12 shall be entitled to recover its costs and reasonable attorneys' fees incurred in said action, including on appeal.

14. **No Merger of Estates.** The easement(s) granted herein shall not extinguish or terminate by operation of the doctrine of merger or otherwise due to the existing or future common ownership of the real property described herein.

15. **Complete Agreement.** This Agreement and that certain Easement Purchase and Sale Agreement by and between the parties of even date herewith contain the entire agreement of the parties with respect to this subject matter and supersedes all prior or contemporaneous writings or discussions relating to the easement(s) provided for herein. This Agreement may not be amended except by a written document executed after the date hereof by the duly authorized representatives of Grantor and Grantee.

16. **Choice of Law.** This Agreement shall be governed by the laws of the State of Washington.

17. **Time of the Essence.** Time is of the essence of this Agreement and the performance of all obligations hereunder.

18. **Warranty and Representation of Authority.** The parties each represent to the other that the person or persons executing this Agreement have authority to do so and to bind the parties hereunder. All consents, permissions and approvals related to entry into this Agreement, and the obligations hereunder, have been obtained. Grantor further represents and warrants to

Grantee that (i) Grantor has taken all corporate action necessary to authorize the execution and delivery by Grantor of this Agreement and the performance of its obligations hereunder, including, without limitation, any resolutions, governmental approvals or other actions as may be required by applicable law or statute (including, without limitation, RCW Title 53); (ii) Grantor has not received any written notice of and Grantor has no knowledge of any actual or pending litigation, proceeding or claim by any organization, person, individual or governmental agency against Grantor that could materially impair Grantor's ability to perform its obligations under this Agreement, or that assert that Grantor does not have sufficient ownership interest to convey this easement; and (iii) To Grantor's actual knowledge the Easement Area is not subject to any leases, tenancies or rights of persons in possession, franchises, occupying agreements, unrecorded easements or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting the Easement Area (collectively "Third Party Rights") other than the List of Known Third Party Leases/Licenses in Exhibit F to the May 12, 2008 Purchase and Sale Agreement between the Port, BNSF Railway Company and King County. Provided, however, the following:

(i) Grantee acknowledges that Grantor has previously disclosed to Grantee the existence of the class action lawsuit, *Lane v. Port of Seattle*, Case No. 10-2-25591-5;

(ii) Grantee acknowledges that Grantor has previously disclosed the adverse possession claim in the quiet title action, *Ao-Zhou v. BNSF Railway Company et al.*, Case No. 09-2-44773-0 KNT, and the proposed settlement of the adverse possession claim whereby the Port would, by quit claim deed, convey to Ao-Zhou a portion, 25 feet in width, of the Port property acquired from BNSF, adjacent to the Ao-Zhou residence located at 6333 Hazelwood Lane, in Bellevue, Washington; and whereby the Port would grant an easement for ingress and egress to the Ao Zhou property on the existing Hazelwood Lane and for Ao-Zhou's use, maintenance, repair and replacement of existing utilities within that easement area; and

(iii) Grantee acknowledges that Grantor does not warrant beyond its actual knowledge that there are no other Third Party Rights.

19. **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each party shall be considered a separate owner, and no party shall have the right to act as an agent for another party, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

20. **Singular and Plural.** Whenever required by the context of this Agreement, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

21. **Severability.** Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions thereof or the application thereof to any other person and the same shall remain in full force and effect.

22. **Captions and Capitalized Terms.** The captions preceding the text of each section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

23. **Non-Waiver.** The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

24. **Counterparts.** This Agreement may be executed in one or more counterparts.

**SIGNATURES APPEAR ON FOLLOWING PAGE**

DATED this 21<sup>st</sup> day of December, 2010.

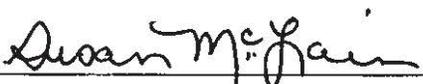
GRANTOR:

GRANTEE:

**PORT OF SEATTLE,**  
a Washington municipal corporation

**PUGET SOUND ENERGY, INC.,**  
a Washington corporation

By   
Name: Tay Yoshitani  
Title: Chief Executive Officer

By   
Name: Susan McLain  
Title: Senior Vice President, Operations

**ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGE**

*Unofficial Copy*

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Tay Yoshitani is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the Chief Executive Officer of the Port of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: December 20, 2010.



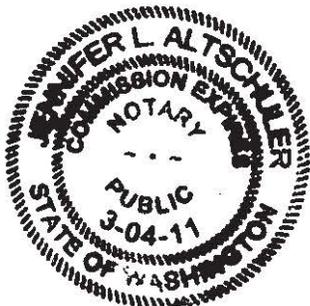
Julie Kathryn Thomas  
Print Name: Julie Kathryn Thomas

NOTARY PUBLIC in and for the State of  
Washington, residing at Bothell, WA  
My commission expires: 1-22-11

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Susan McLain is the person who appeared before me and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute this instrument and acknowledged it as the Senior Vice President, Operations, of Puget Sound Energy, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: December 20, 2010.



Jennifer L. Altschuler  
Print Name: Jennifer L. Altschuler

NOTARY PUBLIC in and for the State of  
Washington, residing at Belleveue  
My commission expires: March 4, 2011

## EXHIBIT A

### DESCRIPTION OF PROPERTY

#### SOUTH

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville (MP 23.45) to Kennydale (MP 5.0), Washington Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across King County, Washington, more particularly described as follows, to-wit:

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the NE $\frac{1}{4}$  Section 16, and the W $\frac{1}{2}$  Section 15, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said NE $\frac{1}{4}$  Section 16, and bounded on the South by South line of said W $\frac{1}{2}$  Section 15; also,

That portion of that certain 50.0 foot wide Branch Line right of way, being 25.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 22, Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said Section 22, and bounded on the South by South line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 22; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the E $\frac{1}{2}$  Section 22, the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 27, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said E $\frac{1}{2}$  Section 22, and bounded on the South by South line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 27; also,

That certain 4.43 acre tract of land described in deed dated April 3, 1903 from Nellie Nelson to Northern Pacific Railway Company recorded April 3, 1903 in Book 342 of Deeds, Page 371, records of King County, Washington, said 4.43 acre tract being described in said deed for record as follows:

"All that portion of the Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section 27, Township 26 North, Range 5 East, lying between the easterly line of the present right of way of the Northern Pacific Railway Company, which line is 50 feet distant southeasterly from the center line of the railroad track of said company, as now located and constructed over and across said premises and a line drawn parallel to and 50 feet distant southeasterly from, when measured at right angles to the center line of the proposed railroad track as now staked out and to be constructed, over and across said premises;

“Also all that portion of said Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section 27, Township 26, lying within 50 feet of that certain straight line which connects the center line of the present track of the Northern Pacific Railway Company line with the center line of the proposed track of the Northern Pacific Railway Company line and being tangent to the curves of both of said center lines, containing in all 4.43 acres, be the same more or less.” EXCEPTING THEREFROM, Lot 3, King County Short Plat Number 1078060, recorded under King County Recording Number 8003270855, being a subdivision of: That portion of the southeast quarter of the northwest quarter of Section 27, Township 26 North, Range 5 East, W.M., King County, Washington, lying northerly and westerly of the northerly and westerly right of way of the Northern Pacific Railway Company’s “Seattle Belt Line”, and south of the southerly right of way line of that road conveyed to King County by deed recorded under Recording Number 2695175 and northeasterly of a line described as follows: Beginning at the northwest corner of the southeast quarter of the northwest quarter of said Section 27; thence south 1°58’24” west along the west line of the southeast quarter of the northwest quarter of said Section 27, a distance of 265 feet; thence north 65°33’39” east 444.80 feet to the true point of beginning of the following described line; thence south 18°15’21” east, 640 feet, more or less, to the northerly right of way line of said Northern Pacific Railway Company’s “Seattle Belt Line”, said northerly right of way line being 50’ Northeast of the center line of the maintrack as now constructed and the terminus of said line; also,

That certain 0.05 acre tract of land described in deed dated August 25, 1904 from Otto Weppeler et al. to Northern Pacific Railway Company recorded September 7, 1904 in Book 375, Page 507, records of King County, Washington, said 0.05 acre tract being described in said deed for reference as follows:

“All that piece or parcel of land in the southeast quarter of the northwest quarter (SE/4 of NW/4) of Section twenty-seven (27), Township twenty-six (26), Range five (5) east, W. M. which lies northwesterly of the original Seattle Belt Line right of way as described in deed recorded in Volume 116 of Deeds, Page 289, Records of King County, and within fifty (50) feet of the center line of the revised location of the track of the Seattle Belt Line as the same is now surveyed and being constructed over and across said subdivision, containing 5/100 acres, more or less.”; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the SW¼NW¼ Section 27 the S½NE¼, NW¼SE¼, SW¼ Section 28, W½NW¼, NW¼SW¼ Section 33, SE¼ Section 32, all in Township 26 North, Range 5 East, W. M., bounded on the East by the East line of said SW¼NW¼ Section 27, and bounded on the South by South line of said SE ¼ Section 32, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 26, 1998 as Document No. 9805260805, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 30, 1998 as Document No. 9807301468, records

of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 26, 1998 as Document No. 9805260791, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated January 6, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2000 as Document No. 20000211000454, records of King County, Washington; also,

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 3, 4, 5, 6, 11, 12, 13, 14, 18, 19, 23, 24, 25 and 26, the vacated alley between Blocks 13 and 14, and vacated Arlington Avenue between Blocks 14 and 19, as said Blocks and Streets are shown on plat of Lake Avenue Addition to Kirkland as recorded in Volume 6 of Plats, Page 86, Records of said County, together with any right, title and interest, if any, to those portions of Victoria Avenue, Harrison Avenue, Moreton Avenue; Jefferson Avenue, and Washington Avenue and Maple Street and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way, **EXCEPTING THEREFROM**, that portion of Lot 3, Block 5, Lake Avenue Addition to Kirkland, according to the official plat thereof in the office of the Auditor of King County, Washington lying between two lines drawn parallel with and distant, respectively, 34.0 feet and 50.0 feet Westerly of, as measured at right angles from The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway) Main Track centerline as now located and constructed upon, over, and across said Block 5; also,

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 220, 223, 224, 232, 233, 238, and 241 as said Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of King County Plats, at page 5, together with any right, title and interest, if any, to those portions of Massachusetts Avenue, Madison Avenue, Michigan Avenue, Olympia Avenue, Piccadilly Avenue, Cascade Avenue, Clarkson Avenue, Fir Street, and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way; also,

That portion of Lots 1, 2, 4, 37, and all of Lots 3, 38, and 39, Block 227 as said Lots and Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of King County Plats, at page 5, which lie Northeasterly of a line parallel with and distant 50 feet Southwesterly from, measured at right angles to said Railway Company's Main Track centerline as now located and constructed and Southwesterly of a line parallel with and distant 50 feet Northeasterly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the,

S½SE¼ Section 5, NW¼NE¼, E½NW¼, E½SW¼, Section 8, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South right of way line of Clarkson Avenue, City of Kirkland, Washington, and bounded on the West by the West line of said E½SW¼, Section 8, **EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 26, 1998 as Document No. 9805260787, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated May 15, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded August 5, 1999 as Document No. 19990805001402, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281544, records of King County, Washington; also,

That certain 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington, said 0.23 acre tract being described in said deed for reference as follows:

“Commencing at a point in the east line of Lot four (4), Section eight (8), Township twenty-five (25) North, Range five (5) east, W.M., that is 395 feet north of the southeast corner of said lot, and running thence west parallel with the south line of said Lot four (4) 67 feet, more or less, to a point that 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 Company as the same is now located, staked out and to be constructed across said Section eight (8); thence running northeasterly parallel with said railway center line 200 feet; thence westerly at right angles to said railway center line 30 feet; thence northeasterly parallel with said railway center line, and 80 feet distant therefrom, 130 feet, more or less, to the east line of said Lot four (4); thence south along said east line of said Lot four (4) 322 feet, more or less, to the point of beginning; containing 0.23 acres, more or less.”; also,

That certain strip of land described in deed dated March 3, 1904 from Seattle and Shanghai Investment Company to Northern Pacific Railway Company recorded March 9, 1904 in Book 387, Page 243, records of King County, Washington, said strip being described in said deed for reference as follows:

“A strip of land Two Hundred twenty-five (225) feet in width across that certain parcel of land designated as Tract “B” in deed from the Kirkland Land and Improvement Company to H. A. Noble, dated July 13, 1899 of record in the Auditor’s office of King County, Washington in Volume 245 of Deeds, at page 41, reference thereto being had. Said strip of land hereby conveyed, having for its boundaries two lines that are parallel with and respectively distant One Hundred (100) feet easterly from, and One Hundred Twenty-Five (125) feet westerly from, when measured at right angles to, the center line of the Seattle Belt Line branch of the NORTHERN

PACIFIC RAILWAY COMPANY, as the same is now constructed and located across said Tract "B", which said Tract "B" is located in Section 17 of Township 25, North of Range 5 east of the Willamette Meridian"; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 4, Section 8, Government Lots 1, 2, and 3, the E $\frac{1}{2}$ SW $\frac{1}{4}$  Section 17, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$  Section 20, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South line of that certain hereinabove described 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington and the East line of said Government Lot 4, Section 8, and bounded on the South by the South line of said NE $\frac{1}{4}$  Section 20, together with such additional widths as may be necessary to catch the slope of the fill in the N $\frac{1}{2}$  of said Government Lot 2, Section 17 as delineated in the 7th described parcel in deed dated June 20, 1903 from Kirkland Land and Improvement Company to Northern Pacific Railway Company recorded June 26, 1903 in Book 352, Page 582, records of King County, Washington. **EXCEPTING THEREFROM**, that portion of said 100.0 foot wide right of way lying within said hereinabove described parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H. A. Noble, dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41; also,

That certain tract of land described in deed dated December 26, 1952 from Alma F. Robinson and William G. Robinson et al. to Northern Pacific Railway Company recorded January 14, 1953 in Book 3220 of Deeds, Page 301, in the records of the Auditor's office of King County, Washington, said tract of land being described in said deed for reference as follows:

"That portion of the south half of the northeast quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ ) of Section 20, Township 25 North, Range 5 East of the Willamette Meridian, described as follows: Commencing at the center of said section; thence north 0 degrees 18 minutes 24 seconds west along the north and south quarter line of said section 738.60 feet to the center of the county road; thence along said road south 77 degrees 7 minutes east 500.00 feet; thence south 71 degrees 54 minutes east 308.27 feet, more or less; thence north 34 degrees 38 minutes east 18.00 feet to a stake in the north margin of said road; thence north 34 degrees 38 minutes east 609.40 feet, more or less, to the southwesterly margin of the Grantee's right of way, said margin being concentric with and distant 50 feet southwesterly, measured radially, from the center line of the main track of the Grantee's Belt Line as now constructed; thence southeasterly along said margin approximately 150 feet to a point distant 50 feet southwesterly, measured along the radius of the curve of said center line, from station 511 plus 50 in said center line (which station is distant 2337.6 feet southeasterly measured along said center line, from the north line of said section), the last-described point being the true point of beginning; thence southeasterly and southerly along said margin to a point distant 50 feet westerly, measured along the radius of said curve, from station 515 plus 60 in said center line; thence northwesterly in a straight line to a point distant 110 feet

southwesterly measured along the radius of said curve, from station 514 plus 28 in said center line; thence northwesterly in a straight line to a point distant 110 feet southwesterly, measured along the radius of said curve, from station 513 plus 28 in said center line; thence northerly in a straight line to the true point of beginning.”; also,

That portion of that certain 100.0 foot wide Branch Line right of way at said Railway Company’s Northrup Station, being 50.0 feet on each side of said Branch Line’s Main Track centerline, as originally located and constructed, upon, over and across Blocks 12, 13, 14, 15, 16, 21, 22, 23 and 24, all within Kirkland Syndicate First Addition to Seattle, together with any right, title and interest, if any, to those portions of Maple Street, Nelson Street, Bixby Street, Kirkland Avenue, Hawks Avenue and Fransen Avenue which lie within said 100.0 foot wide Branch Line right of way; also,

Those portion of Lots 10, 11, and 12, Block 14, Lots 1, 2, 3, and 4, Block 23 and Lot 10, Block 24, all within Kirkland Syndicate First Addition to Seattle, lying Southwesterly of a line parallel with and distant 50 feet Southwesterly from, measured at right angles to said Railway Company’s Main Track centerline as originally located and constructed; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Railway Company’s Main Track centerline, as originally located and constructed, upon, over and across the SE¼SE¼ Section 20, and the SW¼SW¼ Section 21, all in Township 25 North, Range 5 East, W. M., bounded on the North by the North line of said SE¼SE¼ Section 20, and bounded on the South by the South line of said SW¼SW¼ Section 21, together with any right, title and interest, if any, to those portions of Fransen Avenue, Jordan Avenue, Elkoos Avenue, and Railroad Avenue, which lie within said 100.0 foot wide Branch Line right of way; also,

That portion of Block 7, of Kirkland Syndicate’s Second Addition to Kirkland Washington, situate in the SE¼SE¼ Section 20, and that portion of said Railway Company’s property situate in the SW¼SW¼ Section 21, and in the NW¼NW¼ Section 28, all in Township 25 North, Range 5 East, W. M., lying Easterly of a line parallel with and distant 50.0 feet Westerly from, measured at right angles and/or radially to said Railway Company’s Main Track centerline as now located and constructed and Westerly of a line parallel with and distant 50.0 feet Westerly from, measured at right angles to said Railway Company’s Main Track centerline as originally located and constructed, bounded on the West by the West line of said Block 7 and its Northerly prolongation, and bounded on the South by the intersection of said parallel lines, together with any right, title and interest, if any, to Houghton Street and Railroad Avenue of Kirkland Syndicate’s Second Addition to Kirkland Washington; also,

That certain 0.63 acre tract of land described in deed dated November 13, 1904 from Nathan P. Dodge Et Ux. to the Northern Pacific Railway Company recorded February 9, 1905 in Volume 408 of Deeds, Page 263, records of King County, Washington, said 0.63 acre being described in said deed for reference as follows:

“That part of southwest quarter of southwest quarter (SW/4 of SW/4), Section twenty-one (21), Township twenty-five (25) north, Range five (5) east, W. M., described by metes and bounds as follows:

“Beginning at a point in the south line of said Section twenty-one (21) fifty (50) feet east from, when measured at right angles to, the original right of way of Seattle Belt Line Branch of the Northern Pacific Railway Company, as conveyed by deed executed by Roscoe Dunn and Ann Dunn his wife, dated Oct. 4th, 1890 and recorded Dec. 4th, 1890 in volume 116 of deeds, page 114, and running thence north 8° 40' west parallel with and 50 feet distant easterly from said original right of way line a distance of 270 feet to a point of curve; thence northwesterly along a curve to the left having a radius of 716.8 feet, a distance of 492.7 feet; thence north 48° 5' west a distance of 135 feet more or less, to a point on the said easterly line of the original right of way of said railway; thence southeasterly along said original easterly right of way line on a curve to the right having a radius of 859 feet, a distance of 591 feet; thence continuing along said easterly right of way line south 8° 40' east, a distance of 260 feet, more or less, to an intersection of said right of way line with the southern boundary line of said section 21; thence east 50.5 feet, more or less, to point of beginning, containing 0.63 acres, more or less, situated in the County of King, State of Washington.”; also,

That certain strip of land described in deed dated August 3, 1904 from John Zwiefelhofer and Aloisia Zwiefelhofer to Northern Pacific Railway Company recorded August 6, 1904 in Book 404 of Deeds, Page 44, records of King County, Washington, said strip of land being described in said deed for reference as follows:

“A strip of land fifty (50) feet wide lying immediately east of the right of way of said Railway Company and extending South from the North line of Section 28, Township 25 North Range 5 East a distance of Six Hundred feet (600) and containing 0.69 acres in the Northwest Quarter of the Northwest quarter (NW¼NW¼) of Section 28 Tp 25 N R 5 E WM.”, **EXCEPTING THEREFROM**, that portion of said 50 foot wide strip lying Northerly of a line parallel to and 400.0 feet Southerly of the North line of said NW¼NW¼ of Section 28; also,

Parcel 3, of City of Bellevue Short Plat No. 80-16, according to the Short Plat recorded under King County Recording No. 8101239001, **EXCEPTING THEREFROM**, that certain tract of land described in deed dated December 13, 1996 from Burlington Northern Railroad Company to Fibres International, recorded December 13, 1996 as Document No. 9612130870, records of King County, Washington; also,

Tract B, of City of Bellevue Short Plat No. 80-16, according to the Short Plat recorded under King County Recording No. 8101239001; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Railway Company's Main Track centerline, as now located and constructed, upon, over and across W½W½ Section 28, W½NW¼ Section 33, all in Township 25 North, Range 5

East, W. M., bounded on the North by the North line of said W $\frac{1}{2}$ W $\frac{1}{2}$  Section 28, and bounded on the South by the South line of said W $\frac{1}{2}$ NW $\frac{1}{4}$  Section 33, **EXCEPTING THEREFROM**, that portion of said 100.0 foot wide right of way lying Easterly of a line parallel with and distant 35 feet Easterly from, measured at right angles to said Railway Company's Main Track centerline as now located and constructed and Northerly of a line parallel to and 400.0 feet Southerly of the North line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 28, **ALSO EXCEPTING THEREFROM**, that portion of said 100 foot wide Branch Line right of way lying within that certain tract of land described in Special Warranty Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2000 as Document No. 20000522001155, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805221787, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated June 8, 2001 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded January 3, 2003 as Document No. 20030103001327, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded December 28, 1998 as Document No. 9812282942, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated March 17, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded October 4, 2000 as Document No. 20001004000767, records of King County, Washington; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Lots 1, 2, 3, 4 and 8 of Strawberry Lawn, King County Washington, recorded in Volume 4 of Plats, page 30 $\frac{1}{2}$ , King County, Washington recorder, together with such additional widths as are necessary to catch the slopes of the cuts and fills of the roadbed of said Railway in said Lots 1 and 8 of Strawberry Lawn, King County Washington, as delineated in deed dated August 31, 1903 from Henry Hewitt, Jr. and Rocena L. Hewitt to the Northern Pacific Railway Company, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 26, 1998 as Document No. 9805260792, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281537, records of King County, Washington; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the W $\frac{1}{2}$  Section 4, Government Lots 1 and 4, E $\frac{1}{2}$ W $\frac{1}{2}$  Section 9, Government Lot 1, SW $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 16, Government Lots 4 and 5 Section 17, Government Lots 1, 2, 3 and 4 Section 20, Government Lots 1, 2, 3, 4 and 5 Section 29, all in Township 24 North, Range 5

East, W. M., bounded on the North by the North line of W½ Section 4, and bounded on the South by the South line of said Government Lot 5, Section 29, together with such additional widths or strips of land as are necessary to catch the slopes of the cuts and fills of the roadbed of said Railway in the NW¼NW¼ of said Section 4, which said roadbed is to be constructed having a width at grade of 22 feet and the cuts to have a slope of one to one and the fills to have a slope of one and one half to one, as delineated in deed dated September 8, 1903 from Lake Washington Land Company to Northern Pacific Railway Company, recorded in Volume 386 of Deeds, Page 147, records of King County, Washington, EXCEPTING THEREFROM, that certain tract of land described in Correction Special Warranty Deed dated April 30, 2001 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2001 as Document No. 20010522000186, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281547, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281545, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281546, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281543, records of King County, Washington, ALSO EXCEPTING THEREFROM that certain tract of land described in deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 30, 2001 as Document No. 20010430000977, records of King County, Washington, ALSO EXCEPTING THEREFROM that certain tract of land described in deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded December 15, 1998 as Document No. 9812151238, records of King County, Washington; also,

That certain Tract I and that certain Tract II described in deed dated September 19, 1967 from State of Washington to Northern Pacific Railway Company filed for record December 13, 1967 in Book 5023, Page 546, Auditor's No. 6278130, records of King County, Washington, said Tracts being described in said deed for reference as follows:

“Tract I: (Fee)

“All those portion of the Southeast quarter of the Northwest quarter and the Northeast quarter of the Southwest quarter, Section 9, Township 24 North, Range 5 East, W.M., lying Westerly of the existing 100 foot right of way of the Northern Pacific Railway Company and Easterly of a line described as follows: Beginning at a point opposite Station REL. R.R. 737+00 on the Relocated Railroad Center Line (as hereinafter described) and 50 feet Westerly therefrom when measured radially thereto (which point also lies on the Westerly line of said existing railroad right of way);

thence Southerly parallel with said relocated railroad center line to a point opposite REL. R.R. 739+00 thereon; thence Southwesterly in a straight line to a point opposite REL. R.R. 740+00 on said relocated railroad center line and 130 feet Westerly therefrom when measured radially thereto; thence Southerly parallel with said relocated railroad center line a distance of 350 feet, more or less, to an intersection with the Northerly right of way line of State Highway Project entitled Primary State Highway No. 2 (SR 90), East Channel Bridge to Richards Road (as hereinafter described); thence North  $84^{\circ}13'42''$  East along said Northerly right of way line a distance of 125 feet, more or less to an intersection with said Westerly line of said existing railroad right of way and the end of this line description:

“Tract II: (Fee)

“All those portion of Lots 13 and 14, Block 1, Mercer Addition, according to the plat thereof recorded in Volume 17 of Plats, page 8, records of King County and of the Northeast quarter of the Southwest quarter, Section 9, Township 24 North, Range 5 East, W.M., lying Northwesterly of the existing 100 foot right of way of the Northern Pacific Railway Company and Southeasterly of a line described as follows: Beginning at the Southeast corner of said Lot 13, which point also lies on the Northwesterly line of said existing railroad right of way; thence Northeasterly in a straight line to a point opposite REL. R.R. 753+00 on the Relocated Railroad Center Line (as hereinafter described) and 50 feet Northwesterly therefrom when measured at right angles thereto; thence Northeasterly in a straight line to a point opposite REL. R.R. 752+00 on said relocated railroad center line and 90 feet Northwesterly therefrom when measured at right angles thereto; thence Northeasterly parallel with said relocated railroad center line a distance of 120 feet, more or less, to an intersection with the Southerly right of way line of State Highway Project entitled Primary State Highway No. 2 (SR 90), East Channel Bridge to Richards Road (as hereinafter described); thence South  $79^{\circ}37'46''$  East a distance of 105 feet, more or less, to an intersection with said Westerly line of said existing railroad right of way and the end of this line description: ...

...“RELOCATED RAILROAD CENTER LINE DESCRIPTION:

“Beginning at Railroad Station 734+80 on the existing main line center line of the Northern Pacific Railway Company’s Track in the Southeast quarter of the Northwest quarter, Section 9, Township 24 North, Range 5 East, W.M., in the vicinity of Factoria, Washington, which point equals Relocated Railroad Station (hereinafter referred to as REL. R.R.) 734+80; thence South  $20^{\circ}44'04''$  East a distance of 21.1 feet to REL. R.R. 735+01.10 T.S.; thence on the arc of an increasing spiral curve to the right having an “A” value of 5 a distance of 80 feet to REL. R.R. 735+81.10 S.C.; thence on the arc of a  $4^{\circ}$  circular curve to the right thru a central angle of  $49^{\circ}18'$  a distance of 1232.50 feet to REL. R.R. 748+13.60 C.S.; thence on the arc of a decreasing spiral curve to the right having an “A” value of 5, a distance of 80 feet to R.R. 743+93.60 S.T.; thence South  $31^{\circ}46'$  West a distance of 683.96 feet to REL. R.R. 755+77.56 T.S.; thence on the arc of an increasing spiral curve to the left having an “A” value of 5 a distance of 80 feet to REL. R.R. 756+57.56 S.C. which point equals Railroad Station 756+91.53 ahead on said existing main line

center line of track in the Southeast quarter of the Southwest quarter, Section 9, and the end of this center line description.

“SOUTHERLY RIGHT OF WAY LINE OF PRIMARY STATE HIGHWAY NO. 2 (SR 90), EAST CHANNEL BRIDGE TO RICHARDS ROAD:

“Beginning at the Southwest corner of Lot 21, Block 4, Mercer Addition, according to the plat thereof recorded in Volume 17 of Plats, page 8, records of King County, and running thence North 79°37'46” West a distance of 324.08 feet.

“NORTHERLY RIGHT OF WAY LINE OF PRIMARY STATE HIGHWAY NO. 2 (SR 90), EAST CHANNEL BRIDGE TO RICHARDS ROAD:

“Beginning at REL. R.R. 746+28.83 P.O.C. on the Relocated Railroad Center Line (as above described); thence South 84°03'37” West a distance of 344.01 feet; thence North 5°56'23” West a distance of 212.5 feet; thence North 80°02'48” East a distance of 109.27 feet; thence North 5°56'23” West a distance of 25 feet; thence North 70°51'54” East a distance of 196.18 feet to the true point of beginning of this line description; thence North 84°13'42” East a distance of 294.43 feet.”; also

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 1, Section 32, Township 24 North, Range 5 East, W. M., King County, Washington, bounded on the North and South by the North and South lines of said Government Lot 1; also,

That certain 100.0 foot wide Branch Line right of way, upon, over and across Government Lot 2, Section 32, and Government Lots 3 and 4 Section 31, all in Township 24 North, Range 5 East, W. M., King County, Washington, as described in Deed dated September 8, 1903 from Lake Washington Belt Line Company to Northern Pacific Railway Company, recorded in Volume 386 of Deeds, Page 147, records of King County, Washington. **EXCEPTING THEREFROM**, that certain tract of land described in deed dated September 14, 2001 from The Burlington Northern and Santa Fe Railway Company to Barbee Forest Products, Inc., **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in deed dated March 23, 1936 from Northern Pacific Railway Company to Frank Walloch, lying within said Government Lot 2, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated May 8, 1990 from Burlington Northern Railroad Company to Robert J. Phelps and Nancy C. Phelps, recorded as document 9005101552, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated March 19, 1992 from Burlington Northern Railroad Company to Gilbert A. Schoos and Alice G. Schoos; **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 1, 1937 from Northern Pacific Railway Company to Carl Jorgensen and Christine Jorgensen, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in

Quitclaim Deed dated February 28, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 21, 1999 as Document Number 9904210268, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 26, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000619, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 5, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000620, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000618, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000621, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded October 30, 2000 as Document Number 20001030000428, records of King County, Washington; also,

That certain tract of land described in deed dated March 17, 1904 from The Lake Washington Land Company to Northern Pacific Railway Company, situated in Lot 3, Section 31, Township 24 North, Range 5 East, W. M., King County, Washington, said tract being described in said deed for reference as follows:

“All that portion of said Lot three (3) lying between the eastern line of the right of way of the Northern Pacific Railway Company over and across said lot and a line drawn parallel with and twelve and one-half (12-1/2) feet distant easterly from the center line of said Seattle Belt Line Branch of the Northern Pacific Company as the same is now temporarily located and constructed over and across said lot, and containing one-fourth of an acre, more or less ...”

**EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 21, 1999 as Document Number 9904210268, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 26, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000619, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 5, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000620, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim

Deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000618, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000621, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded October 30, 2000 as Document Number 20001030000428, records of King County, Washington; also,

That portion of said Railway Company's property situated in Government Lot 1, Section 6, Township 23 North, Range 5 East, W. M., King County, Washington, lying Southwesterly of a line parallel with and distant 50.0 feet Northeasterly from, measured at right angles to said Railway Company's Branch Line Main Track centerline as originally located and constructed, and Northeasterly of the Southwesterly boundary of that certain 100 foot strip described in Judgment and decree of Appropriation, No. 40536, dated February 8, 1904 in the Superior Court of the State of Washington in and for the County of King, bounded on the North by the North line of said Lot 1, Section 6, and bounded on the South by a line radial to said Railway Company's Main Track centerline, as now located and constructed at a point distant 65.5 feet Northwesterly of the East line of said Lot 1, Section 6, as measured along said Main Track centerline.

**EXHIBIT B**

Exhibit removed for recording purposes.

A copy of the Exhibit is on file with:

Riddell Williams P.S.  
Attn.: Kyle Branum  
1001 Fourth Avenue, Ste. 4500  
Seattle, WA 98154-1192

Phone: (206) 624-3600

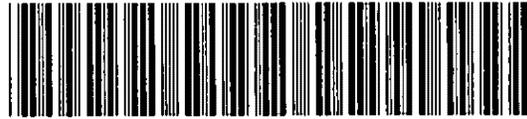
Unofficial Copy

# **EXHIBIT B**

1ST Am  
WPAK 1157758  
(77) 148

**RETURN ADDRESS:**

KING COUNTY PROSECUTOR'S OFFICE  
KING COUNTY COURTHOUSE, SUITE W400  
516 THIRD AVENUE  
SEATTLE, WA 98104  
ATTN: PETER G. RAMELS



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**RECIPROCAL COORDINATION AND COOPERATION COVENANT AGREEMENT**

GRANTOR/GRANTEE: PUGET SOUND ENERGY, INC.

GRANTEE/GRANTOR: KING COUNTY

ABBREVIATED LEGAL DESCRIPTION: PTN of BNSF Railway Company's Woodinville to  
Kennydale, Washington Branch Line right-of-way  
lying within the following:

Parcel A: PTN Section 9, T26N-R05E, WM

Parcel B: PTN Sections 15, 16, 22 & 27, T26N-R05E, WM;  
PTN Sections 20, 21 & 33, T25N-R05E, WM:

*Said documents were filed of record as an accommodation only. It has not been examined as to proper execution or as to its effect upon title.* PTN Sections 4, 9, 16, 17, 20, 29, 31 & 32, T24N-R05E, WM; and PTN Section 6, T23N-R05E, WM  
AND

Parcel C: PTN of BNSF Railway Company's Redmond Spur  
Right of Way lying within the following:  
Sections 9, 15, 16, 22 & 27, T26N-R05E, WM

**ASSESSOR'S TAX PARCEL NOS.**

Parcel A: 092605-9043

Parcel B: 152605-9023; 162605-9021; 222605-9030;  
272605-9019; 202505-9034 (ptn); 212505-9020;  
332505-9029 (ptn); 042405-9024; 092405-9032;  
162405-9033; 172405-9008; 202405-9014;  
292405-9005; 322405-9005; 312405-9004; 092405-  
9215; 544830-0075; 202405-9119; 062305-9005  
(ptn)

Parcel C: 092605-9043; 152605-9023; 162605-9164;  
222605-9030; 272605-9019

## RECIPROCAL COORDINATION AND COOPERATION COVENANT AGREEMENT

THIS RECIPROCAL COORDINATION AND COOPERATION COVENANT AGREEMENT (“**Covenant Agreement**”), dated as of February 13, 2013, is made by KING COUNTY, a political subdivision of Washington (the “**County**”), and PUGET SOUND ENERGY, INC., a Washington corporation (“**PSE**”).

### RECITALS

A. The County acquired from the Port of Seattle (the “**Port**”) the fee interest in certain real property commonly described as the portion of the Eastside Rail Corridor Property located within King County, State of Washington (the “**Corridor Property**”). The Corridor Property is legally described in Exhibit A and depicted in Exhibit B attached hereto and incorporated herein.

B. In addition to being the fee owner of the Corridor Property, the County is also the “**Interim Trail User**” for railbanking purposes. As the Interim Trail User, the County is subject to certain legal obligations (the “**Railbanking Obligations**”) imposed through 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 (the “**Railbanking Legislation**”), the Notice of Interim Trail Use for the Corridor Property issued by the STB, the Trail Use Agreement (the “**TUA**”) entered into between BNSF and the County, and the Statement of Willingness to Accept Financial Responsibility.

C. Consistent with the Railbanking Legislation and the County’s obligations as the Interim Trail User, the County intends to develop, operate, maintain, repair, improve and replace a public hard- and/or soft-surface regional trail along with Trail Related Improvements (defined below) within the Corridor Property for public pedestrian, bicycle and other non-motorized uses (the “**Trail**”).

D. The County intends to use certain subsurface portions (and related and necessary surface portions) of the Corridor Property for operating, maintaining, repairing, improving, removing replacing and expanding the County’s wastewater facilities that are currently located within the Corridor Property as of the date of this Covenant Agreement (the “**Existing Wastewater Facilities**”), and to add additional wastewater facilities that are needed by the County’s Wastewater Treatment Division (“**Additional Wastewater Facilities**”).

E. PSE acquired from the Port that certain easement encumbering the Corridor Property (the “**Easement Area**”), more particularly described as the South Rail Line Easement, recorded in the public records of King County, Washington, on December 21, 2010, under recording number 20101221000998, as amended for the sole purpose of correcting a legal description scrivener’s error through the amendment recorded in the public records of King County, Washington, on February 12, 2013 under recording number 20130212002422 (the “**PSE Easement**”).

F. The purpose of this Covenant Agreement is to further clarify and to coordinate PSE’s and the County’s planning and development activities within the Corridor Property.

NOW, THEREFORE, PSE and the County, in consideration of each other's duties and obligations under this Covenant Agreement and in exchange for other good and valuable consideration described herein, the sufficiency of which is hereby acknowledged, do hereby agree as follows:

1. Trail Use. The County holds the right to use the Corridor Property for the installation, development, construction, operation, maintenance, repair, improvement, replacement and removal of a Trail consistent with the TUA and any and all Railbanking Obligations and Railbanking Legislation ("Trail Use"). The County may designate a Planned Trail Area (defined below) or a Trail Alignment Area (defined below) (together, "Trail Areas"). As reasonably necessary in the reasonable judgment of the County to meet the County's Regional Trail Guidelines, Trail Areas may be up to thirty (30) feet wide; provided, however, as further reasonably necessary in the reasonable judgment of the County to meet the County's Regional Trail Guidelines, portions of the Trail Areas may be wider than thirty (30) feet where additional width is required (a) to accommodate slopes for cuts and fills for the Trail; (b) to allow ingress and egress to the Trail and restroom, parking and other Trail-related facilities; (c) to install abutments, pilings, or other structural elements of trail bridges or tunnels; (d) to allow grade or other physical separation of the Trail and any active rail lines or other uses on the Corridor Property; or (e) to install storm water drainage or detention facilities or other facilities required by a permitting agency in support of or as mitigation for the Trail (collectively "Trail Related Improvements").

2. Public Multipurpose Easement. The parties acknowledge and agree that when the County acquired the Corridor Property, that certain Public Multipurpose Easement by and between the Port and the County recorded December 18, 2009, under King County Recorder's file No. 20091218001538, may have terminated through the doctrine of merger, and, that due to such possible termination, the terms of the Public Multipurpose Easement may no longer apply to the Corridor Property, and that such possible termination does not diminish or interfere with the reserved rights of the County to use the Property for Trail Use and Railbanking as set forth in this Covenant Agreement and the PSE Easement.

3. Railbanking. The County holds the right to use the Corridor Property for any and all Railbanking Obligations of the County, including Trail Use and custodial activities over the length and width of the Corridor Property as required by, and consistent with, any and all Railbanking Obligations and Railbanking Legislation. Additionally, PSE and the County agree to the following terms with regard to the provisions of Section 7 of the PSE Easement.

a. In Section 7 of the PSE Easement, PSE and the Port agreed that "[i]n the event the County elects not to proceed with Trail Development (as defined in the TUA) and takes action to terminate the TUA, Grantor shall (i) engage a substitute Interim Trail User consistent with all current and future STB requirements and (ii) take such action to satisfy any and all Railbanking Obligations and Custodial Activities as defined in, and pursuant to, the TUA." As between PSE and the County, these terms shall not be applicable, but rather the parties agree as follows:

In the event the County determines in its reasonable judgment that it is no longer reasonably practicable to carry out Railbanking Obligations due to actions taken by a third party legally establishing fee simple or other property interest ownership through no unreasonable action or

inaction of the County of all or a portion of the Corridor Property that leads to abandonment, due to abandonment outside the Corridor Property of a segment of rail line connecting the Corridor Property to the national rail system, or due to catastrophic physical damage to the Property that would require exorbitant costs to address (the "Railbanking Termination Event"), then the County shall notify PSE in writing no less than 180 days before the date that the County intends to notify the STB that the County will no longer serve as the Interim Trail User for the portion of the Corridor Property for which the County has determined in its reasonable judgment that it is no longer reasonably practicable to carry out Railbanking Obligations because of the Railbanking Termination Event ("Identified Portion"), and to request that the County's Railbanking Obligations be extinguished as to the Identified Portion pursuant to the Railbanking Legislation. If requested by PSE, the County shall cooperate with PSE to transfer to a substitute Interim Trail User its Interim Trail User status and the property rights necessary for an Interim Trail User to carry out the Railbanking Obligations on the Identified Portion. The County shall transfer such property rights at no cost to the substitute Interim Trail User so long as the property rights would revert to the County if Railbanking ever terminates and the Identified Portion is abandoned.

b. PSE and the County recognize and agree as follows: (i) that a portion of the Corridor Property between mileposts 10.6 and 11.25 (the "**Wilburton Segment**") has not been subject to Interim Trail Use and the Railbanking Obligations, but rather was abandoned with the approval of the STB prior to the Port's acquisition of the Corridor Property, (ii) that the Wilburton Segment is a critical link in the maintenance of the remainder of the Corridor Property in compliance with the Railbanking Obligations, and, therefore, (iii) that the Wilburton Segment is subject to the terms and conditions of this Covenant Agreement as if it was subject to Interim Trail Use and the Railbanking Obligations.

#### 4. Planned Trail Area and Trail Alignment Area.

a. In order to assist both parties in planning efforts, the County may at any time designate a "**Planned Trail Area**" on the Corridor Property consistent with the standards for Trail Areas set forth in Section 1 of this Covenant Agreement by providing written notice of the Planned Trail Area to PSE. The County may designate a Planned Trail Area in phases and shall use reasonable and good-faith efforts to designate the Planned Trail Area for all of the Corridor Property on or before June 1, 2016. If reasonably necessary in the reasonable judgment of the County to meet the County's Regional Trail Guidelines or to improve the functionality of a Planned Trail Area, the County may modify portions of the Planned Trail Area by providing written notice of the modification to PSE as the County's development plans progress, and such modification shall be considered part of the Planned Trail Area.

b. Prior to PSE constructing a new facility in the Planned Trail Area, PSE shall send a notice to the County containing a description of the activities and any construction plans or surveys of the proposed new facility. Within thirty (30) days of receiving such notice, the County may deliver a notice to PSE stating that, in the County's reasonable discretion, the proposed facility will unreasonably interfere with the County's Trail Use and suggest reasonable changes to PSE's proposal that would eliminate the unreasonable interference. If PSE installs the proposed facility without implementing the County's suggested changes and if the County, in its reasonable discretion, later

determines that the facility as installed in fact unreasonably interferes with the County's Trail Use and notifies PSE of the same in writing, then PSE shall be responsible, at PSE's cost, for the reasonably necessary relocation of the PSE facility at such time as is necessary to eliminate the interference. Any dispute as to whether such relocation may be required shall be resolved under Section 4(e) of this Covenant Agreement. However, if the County does not deliver any notice suggesting reasonable changes within thirty (30) days of receiving PSE's notice described above, PSE's proposed facility shall be deemed to have been approved by the County and shall be a Planned Facility (as defined below) of PSE.

c. Promptly after completing a planning process that results in planning level site plans, planning level views of the Trail, typical cross-sections and other planning level details ("**Trail Plan**"), the County shall designate a trail alignment area ("**Trail Alignment Area**") for the Corridor Property as identified in the planning process and consistent with the standards for Trail Areas set forth in Section 1 of this Covenant Agreement by providing written notice of this alignment to PSE, which notice shall reasonably detail at a planning level the alignment and all proposed improvements, facilities, structures, slopes for cuts and fills for the Trail, necessary ingress and egress to the Trail, abutments, pilings, or other structural elements of any trail bridges or tunnels, the physical separation of the Trail to any active rail lines or other uses on the Corridor Property, and any storm water drainage or detention facilities or other facilities required by a permitting agency in support of or as mitigation for the Trail within such alignment. Upon providing such notice to PSE, the Trail Alignment Area shall be deemed a Planned Facility of the County, governed by Section 6 of this Covenant Agreement, and the Planned Trail Area in the segment of the Corridor Property subject to the Trail Alignment Area shall be superseded by the Trail Alignment Area. After completing an amendment to a Trail Plan, the County may also modify the Trail Alignment Area by providing written notice of the modification to PSE and such modification shall be considered a part of the Trail Alignment Area, but within that portion of the Trail Alignment Area any Trail shall receive protection under this Covenant Agreement only to the extent such improvements qualify as a Planned Facility under Section 6(b) of this Covenant Agreement. The County may designate a Trail Alignment Area in phases and shall use reasonable and good-faith efforts to designate the Trail Alignment Area for twenty-five percent (25%) of the Corridor Property on or before June 1, 2020, for fifty percent (50%) of the Corridor Property on or before June 1, 2022, for seventy-five percent (75%) of the Corridor Property on or before June 1, 2024, and for the entire Corridor Property on or before June 1, 2026.

d. If after using reasonable and good-faith efforts to meet the timelines for designating a Planned Trail Area or a Trail Alignment Area under Section 4(a) or (c) of this Covenant Agreement the County has not been able to achieve the timelines, then the County may request in writing to PSE an extension of these timelines in two-year increments, and such extension shall not be unreasonably withheld, conditioned or delayed by PSE.

e. Any dispute arising out of this Section 4 shall be resolved as follows: (i) a party raising a dispute shall deliver written notice specifying with particularity the basis for the dispute; and, (ii) if the parties are unable to resolve the dispute within thirty (30) days, the dispute resolution process provided for in Sections 4(b)i.-iv. of the PSE Easement shall apply.

5. Wastewater Facilities.

a. The Existing Wastewater Facilities are located in the Corridor Property in the locations set forth on Exhibit C attached hereto and incorporated herein. Those facilities are authorized by a variety of instruments and agreements listed on Exhibit D attached hereto and incorporated herein ("**Wastewater Instruments**"). To the extent that Exhibits C and D identify Existing Wastewater Facilities or Wastewater Instruments for facilities that are not located in the Corridor Property, those facilities are not governed by or subject to this Agreement. The County will continue to have the rights and obligations set forth in the Wastewater Instruments vis-à-vis PSE even if such rights would otherwise be terminated through the doctrine of merger. The County shall not have the right to assign such Wastewater Instruments without PSE's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

b. In addition, the County hereby designates a twenty (20) foot wide "**Utility Area**" centered on the Existing Wastewater Facilities for the County's Existing Wastewater Facilities and Additional Wastewater Facilities (along with related and necessary surface intrusions). Within, but only within, this Utility Area, PSE shall make a reasonable and good faith effort to avoid proposing a new facility that would unreasonably interfere with the ability of the County to install, operate, maintain, repair, improve, remove, replace and expand Existing Wastewater Facilities and Additional Wastewater Facilities, provided that such Additional Wastewater Facilities are Planned Facilities ("**Wastewater Use**"). An Additional Wastewater Facility that qualifies as a Planned Facility will be treated as a Planned Facility under Section 6.

c. Prior to PSE constructing a new subsurface facility in the Utility Area, PSE shall send a notice to the County containing a description of the activities and any construction plans or surveys of the proposed new facility. Within thirty (30) days of receiving such notice, the County may deliver a notice to PSE stating that, in the County's reasonable discretion, the proposed facility will unreasonably interfere with the County's Wastewater Use and suggest reasonable changes to PSE's proposal that would eliminate the unreasonable interference. If PSE installs the proposed facility without implementing the County's suggested changes and if the County, in its reasonable discretion, later determines that the facility as installed in fact unreasonably interferes with the County's Wastewater Use and notifies PSE of the same, then PSE shall be responsible, at PSE's cost, for the reasonably necessary relocation of the PSE facility at such time as is necessary to eliminate the interference. Any dispute as to whether such relocation may be required shall be resolved under Section 5(d) of this Covenant Agreement. However, if the County does not deliver any notice suggesting reasonable changes within thirty (30) days of receiving PSE's notice described above, PSE's proposed facility shall be deemed to have been approved by the County and shall be a Planned Facility of PSE.

d. Any dispute arising out of this Section 5 shall be resolved as follows: (i) a party raising a dispute shall deliver written notice specifying with particularity the basis for the dispute; and (ii) if the parties are unable to resolve the dispute within thirty (30) days, the dispute resolution process provided for in Sections 4(b)i.-iv. of the PSE Easement shall apply.

6. Coordination of Development Activities. Prior to either party constructing any new facility or improvements in the Easement Area, the parties shall follow the steps set forth in Section 4 of the PSE Easement relating to Interference, except that the terms of Section 4 shall be augmented with the following additional provisions:

a. In addition to the grounds for asserting interference set forth in Section 4(b) of the PSE Easement, if the Non-Constructing Party, in its reasonable discretion, determines that the proposed use of the Easement Area by the Constructing Party unreasonably interferes with the Non-Constructing Party's Planned Facilities (defined below), then the Non-Constructing Party shall provide the Constructing Party with a Dispute Notice within the thirty (30) day timeframe specified in Section 4(a) of the PSE Easement, specifying with particularity the basis for the claim that the Constructing Party's use of the Easement Area is or will be an interference. If the parties are unable to resolve the dispute within thirty (30) days, they shall follow the dispute resolution process set forth in Section 4(b)i.-iv. of the PSE Easement.

b. For the purposes of this Covenant Agreement, "**Planned Facilities**" or a "**Planned Facility**" shall mean utilities, facilities, improvements, rebuilds, re-alignments and/or upgrades that, as of the date of the Dispute Notice, are (i) being developed by PSE or the County (as applicable) in accordance with the standard operating procedures of that entity *or* included in PSE's or the County's (as applicable) then-current written planning documents and (ii) designed to a thirty percent (30%) design level according to the applicable entity's standard operating procedures.

c. In addition to the standards for interference set forth in Section 4(b)iv. of the PSE Easement as being determinative, the following additional standards or their future functional equivalents shall also be considered and shall be equally determinative: the King County Regional Trail Development Guidelines, AASHTO Guide for the Development of Bicycle Facilities, Washington State Department of Transportation Manual M 22-01-07 Ch. 1515, Shared-Use Paths, the Manual of Uniform Traffic Control Devices, and the Department of Ecology's Criteria for Sewage Design (Orange Book).

d. The parties acknowledge and agree that use of the term "interference" throughout the PSE Easement means "unreasonable interference."

e. The parties encourage one another to informally consult and cooperate with one another in developing plans for facilities as early and often as reasonably possible in order to minimize cost and to most efficiently plan for shared use of the Corridor Property.

f. PSE Review Costs for Additional Wastewater Facilities. Upon PSE's written notice, the County shall pay to PSE PSE's Review Costs related to Additional Wastewater Facilities. "Review Costs" means the reasonable and necessary costs, including without limitation man-hours, taxes, transportation and any other cost allocations consistent with PSE's internal cost accounting procedures and/or direct out-of-pocket expenses, incurred by or on behalf of PSE under Section 4 of the PSE Easement and Section 6 of this Covenant Agreement in connection with reviewing and/or responding to any notices received by PSE from the County for constructing any new improvements that are Additional Wastewater Facilities. Review Costs shall not include costs incurred by PSE in

Mediation under Section 4(b)ii. of the PSE Easement or Arbitration under Section 4(b)iii. of the PSE Easement and shall also not include legal expenses. Any dispute about Review Costs shall be subject to resolution through the process provided for in Sections 4(b)i.-iv of the PSE Easement.

7. Relocation Rights.

a. County's Rights. In the event that it is reasonably necessary, as determined in the reasonable discretion of the County, for the operation, use, maintenance, repair, construction, installation, reconstruction, expansion or replacement of the County's Trails, Existing Wastewater Facilities, and Additional Wastewater Facilities built or to be built subject to the limitations set forth in this Covenant Agreement and the PSE Easement to relocate PSE's facilities within the Corridor Property, the County may relocate PSE's facilities provided the following conditions are satisfied: (i) the County shall provide at least twelve (12) months' prior written notice to PSE reasonably detailing the proposed relocation and the proposed construction schedule for such relocation, including timeframes for the County's delivery of detailed construction plans and schedule; (ii) the applicable PSE facilities shall be relocated to another location within the Easement Area; (iii) the County shall, at its sole cost and expense, be responsible for any and all costs incurred by PSE as a result of such relocation; (iv) the proposed relocation, and applicable construction schedule, shall not unreasonably (as determined in the reasonable discretion of PSE) affect, jeopardize or impact the structural integrity, capacity, reliability or design criteria of any PSE facilities; (v) PSE shall manage and control any such relocation work, including the hiring and management of contractors; and (vi) the County shall indemnify PSE from and against any liability incurred by PSE arising from actions taken by the County relating to such relocation, but nothing herein shall require the County to indemnify PSE for that portion of any such liability attributable to the negligence of PSE, its employees, agents or contractors. Requests by the County and determinations by PSE under this Section that are not resolved within ninety (90) days of the written request shall be governed by the dispute resolution process set forth in Sections 4(b)i.-iv. Of the PSE Easement.

b. PSE's Rights. In the event that it is reasonably necessary, as determined in the reasonable discretion of PSE, for the operation, use, maintenance, repair, construction, installation, reconstruction, expansion or replacement of PSE's gas and/or electric facilities to relocate any County facilities within the Corridor Property, PSE may relocate County facilities provided the following conditions are satisfied: (i) PSE shall provide at least twelve (12) months' prior written notice to the County reasonably detailing the proposed relocation and the proposed construction schedule for such relocation, including timeframes for PSE's delivery of detailed construction plans and schedule; (ii) the applicable County facilities shall be relocated to another location within the Corridor Property; (iii) PSE shall, at its sole cost and expense, be responsible for any and all costs incurred by the County as a result of such relocation; (iv) the proposed relocation, and applicable construction schedule, shall not unreasonably (as determined in the reasonable discretion of the County) affect, jeopardize or impact the structural integrity, capacity, reliability or design criteria of the County facilities; (v) the County shall manage and control any such relocation work, including the hiring and management of contractors; and (vi) PSE shall indemnify the County from and against any liability incurred by the County arising from actions taken by PSE relating to such relocation, but nothing herein shall require PSE to indemnify the County for that portion of any such liability attributable to the negligence of the County, its employees, agents or contractors. Requests by PSE and determinations by the County

under this Section that are not resolved within ninety (90) days of the written request shall be governed by the dispute resolution process provided for in Sections 4(b)i.-iv. Of the PSE Easement. PSE shall not, however, have the right to relocate a developed Trail or its related facilities that are in public use, unless the Trail and its related facilities can be relocated in such a way as to continue to meet the County's Regional Trail Guidelines. PSE may disrupt Trail Use for construction of PSE's facilities so long as PSE takes reasonable steps to minimize the duration of such disruption and provides reasonable alternative routes for Trail users.

8. Removal of Brush, Trees and Vegetation. Section 2(a) of the PSE Easement authorizes PSE to cut, remove and dispose of brush, trees and other vegetation. In addition to the provisions set forth therein, PSE's authority to cut, remove and dispose of any and all brush, trees or other vegetation shall be exercised only within a thirty (30) foot wide footprint around its facilities or within any other portion of the Corridor Property if the brush, trees, and/or other vegetation in that portion of the Corridor Property would unreasonably interfere with PSE's facilities or threaten the health and safety of the general public, all in accordance with applicable standard electricity and gas utility practices and procedures. To the extent brush, trees and other vegetation subject to PSE's rights in this paragraph are located within Trail Areas, PSE shall obtain the County's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided that the County's approval shall not be required in addressing an emergency situation in accordance with applicable standard utility practices and procedures.

9. As Built. After completion of any new construction of either PSE's facilities or the County's facilities, the Constructing Party shall provide the Non-Constructing Party with as-built drawings showing the location and depth or height, as applicable, of the improvements installed by the Constructing Party within the Corridor Property.

10. Insurance and Indemnification Provisions. PSE and the County agree to the following additional terms with regard to the insurance and indemnification provisions in the PSE Easement.

a. The County may satisfy the insurance requirements of Section 5 of the PSE Easement by providing proof of self-insurance.

b. Section 8 of the PSE Easement is amended and restated as follows:

“8. **Indemnification.** Grantor shall pay, protect, pay the defense costs of, indemnify and hold Grantee and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) Grantor's negligence; (b) Grantor's failure to make available its interests in the Easement Area to accommodate reactivated freight rail service; (c) Grantor's failure to perform any obligation required by this Agreement; and (d) the breach of any representation, warranty or agreement of Grantor set forth in this Agreement.

Grantee shall pay, protect, pay the defense costs of, indemnify and hold Grantor and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) Grantee's negligence; (b) Grantee's failure

to make available its interests in the Easement Area to accommodate reactivated freight rail service; and (c) Grantee's failure to perform any obligation required by this Agreement; and (d) the breach of any representation, warranty or agreement of Grantee set forth in this Agreement.

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 hereunder be limited to the extent of any insurance available to or provided by the obligated party. The provisions of this paragraph shall survive Closing."

c. All of Grantor's warranties and representations set forth in Section 18 of the PSE Easement are hereby replaced by the following warranties and representations as to this Covenant Agreement:

(i) The parties each represents to the other that the person or persons executing this Covenant Agreement have authority to do so and to bind the parties hereunder. All consents, permissions and approvals related to entry into this Covenant Agreement, and the obligations hereunder, have been obtained. Each party further represents and warrants to the other that the party has taken all corporate action necessary to authorize the execution and delivery by that party of this Covenant Agreement and the performance of its obligations hereunder, including, without limitation, any resolutions, governmental approvals or other actions as may be required by applicable law or statute. The County further represents and warrants to PSE that (1) to the County's actual knowledge the County has not received any written notice of, and the County has no knowledge of, any actual or pending litigation, proceeding or claim by an organization, person, individual or governmental agency against the County (A) that could materially impair the County's ability to perform its obligations under this Covenant Agreement or (B) that could assert that that the County does not have sufficient ownership interest to grant this Covenant Agreement, and (2) to the County's actual knowledge the Easement Area as defined in the PSE Easement in the Corridor Property is not subject to any leases, tenancies or rights of persons in possession, franchises, occupying agreements, unrecorded easements or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting the Easement Area (collectively "**Third Party Rights**") other than as set forth in the Title Commitments dated as shown in Exhibit E attached hereto and incorporated herein and "List of Known Third Party Rights" dated February 7, 2013 and on file in the offices of the parties. Provided, however, that other than as set forth in Section 10.c. of this Covenant Agreement, the County does not make nor is it responsible for any title warranty of any kind with regard to the PSE Easement or this Covenant Agreement. Provided further, however, the following:

(a) Each party acknowledges the existence of the class action lawsuit, Lane v. Port of Seattle, Case No. 10-2-25591-5;

(b) Each party acknowledges the adverse possession claim in the quiet title action, Ao-Zhou v. BNSF Railway Company, et al., Case No. 09-2-44773-0 KNT, which was

dismissed on April 22, 2011, and the subsequent petition made by plaintiff therein in STB Docket No. 35539, which was decided on June 4, 2012 (service date June 6, 2012);

(c) The parties acknowledge that two condemnation lawsuits have been filed in King County Superior Court, one under Cause No. 12-2-17740-6 SEA in that certain case captioned City of Bellevue v. Port of Seattle, et al., and another under Cause No. 12-2-19166-2 SEA in that certain case captioned City of Bellevue v. Bellevue 116<sup>th</sup> Avenue LLC, et al.

(ii) The representations and warranties of the County in Section 10.c. of this Covenant Agreement based on having "no knowledge" or to the County's "actual knowledge" are based on the knowledge of Steve Salyer, the Section Manager of the Real Estate Services Section of King County, based on his actual knowledge with no duty to make further inquiries or investigations.

11. Miscellaneous.

a. Any notice required herein or permitted to be given or served by either party hereto upon the other shall be deemed given or served in accordance with the provisions of this Covenant Agreement, if personally served, delivered by national overnight courier (such as Fed Ex, UPS, DHL), if sent via facsimile or if mailed by United States Registered or Certified Mail, postage prepaid, properly addressed as follows:

PSE:	Puget Sound Energy, Inc. Attn: Right of Way Department PO Box 97034 (EST-06W) Bellevue, WA 98009-9734 Telephone: 425-456-2645 Facsimile: 425-462-3519	Puget Sound Energy, Inc. Attn: Energy Production Department PO Box 97034 Bellevue, WA 98009-9734 Telephone: 425-462-3022 Facsimile: 425-462-3223
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County: King County  
Department of Natural Resources and Parks  
Attn: Deputy Director  
201 S Jackson St, Ste. 700  
Seattle, WA 98104  
Telephone: 206-296-6500  
Facsimile: 206-296-3749

b. No Partnership. This Covenant Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the parties or to impose any partnership obligations or other liability thereon. No party shall have any right, power, or authority to enter into any agreement or undertaking for or on behalf of, to act as, or be an agent or representative of, any other party.

c. Nonwaiver. The failure of any party to insist upon or enforce strict performance by the other parties of any of the provisions of this Covenant Agreement, or failure to

exercise any rights or remedies under this Covenant Agreement, shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provisions or rights in that or any other instance; rather the same shall remain in full force and effect.

d. Counterparts; Amendment or Modification. This Covenant Agreement may be executed in counterparts, each of which shall constitute an original and which together shall constitute a single agreement. This Covenant Agreement may be modified only by written agreement of the parties. This Covenant Agreement 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.

e. Interpretation.

i. All capitalized terms have the same meanings as set forth in the PSE Easement unless the term is otherwise specifically defined in this Covenant Agreement.

ii. This Covenant Agreement and the PSE Easement set forth the entire agreement between the parties with respect to the subject matter hereof, and are intended by the parties to be read in harmony with one another. There are no understandings or agreements between the parties respecting the subject matter hereof, written or oral, other than as set forth in those documents.

iii. This Covenant Agreement is not intended to affect the reserved rights of the County in the Corridor Property or the rights of PSE in the PSE Easement except to the extent specifically addressed by the subject matter of this Covenant Agreement.

f. Breach. Remedies for any breach of this Covenant Agreement shall be the same as set forth in Section 12 of the PSE Easement.

g. Binding Successors; Termination; Assignment.

i. Binding on Successors and Runs with Land. Subject to the termination clause set forth in Section 11.g.ii. below, PSE and the County agree, covenant and declare that each party's interests in, but only within, the Corridor Property are subject to the restrictive covenants contained herein, which covenants shall run with the land in perpetuity and burden the parties' respective interests in, but only within, the Corridor Property for the benefit of each party and each party's respective interests in, but only within, the Corridor Property. PSE and the County further agree, covenant and declare that the covenants and conditions contained herein touch and concern the land and shall bind, and the benefits shall inure to, respectively, each party and its successors and assigns and all subsequent owners or tenants of any portion of each party's interests in, but only within, the Corridor Property. Notwithstanding anything to the contrary contained in this Covenant Agreement, Section 5 of this Covenant Agreement shall be enforceable only by and between PSE and the County against each other as to the Wastewater Use, and not to wastewater facilities and/or uses owned, leased, licensed, or operated by any third party.

ii. Termination. This Covenant Agreement shall terminate as to any portion of the Corridor Property that is conveyed by the County to an entity that is not a government

or non-profit entity acquiring an interest in the Corridor Property for the purpose of conducting Trail Use.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

King County  
a political subdivision of Washington

Puget Sound Energy, Inc.  
a Washington corporation

By: *Stephen L. Salves*  
Name: *Stephen L. Salves*  
Its: *Manager, Real Estate Services*

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

[NOTARY PAGE FOLLOWS]

or non-profit entity acquiring an interest in the Corridor Property for the purpose of conducting Trail Use.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

King County  
a political subdivision of Washington

Puget Sound Energy, Inc.  
a Washington corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: Susan McLean  
Name: SUSAN MCLAVI  
Its: SR VP DELIVERY OPERATIONS

[NOTARY PAGE FOLLOWS]

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that SUSAN SUE McLAIN is the person who appeared before me and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument and acknowledged it as the \_\_\_\_\_ of **King County** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: FEBRUARY 8, 2013.

DENISE C. STEENDAHL  
Notary Public  
State of Washington  
My Commission Expires  
November 14, 2013

[Signature]  
Print Name: DENISE STEENDAHL  
NOTARY PUBLIC in and for the State of  
Washington, residing at SEATTLE  
My commission expires: 11/14/2013

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that SUSAN McLAIN is the person who appeared before me and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument and acknowledged it as the SR VP Delivery Ops of **Puget Sound Energy, Inc.** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: FEBRUARY 8, 2013.

DENISE C. STEENDAHL  
Notary Public  
State of Washington  
My Commission Expires  
November 14, 2013

[Signature]  
Print Name: DENISE STEENDAHL  
NOTARY PUBLIC in and for the State of  
Washington, residing at SEATTLE  
My commission expires: 11/14/2013

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Steve Salyer is the person who appeared before me and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument and acknowledged it as the PES manager of **King County** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 2/08, 2013.



[Signature]  
Print Name: Marc A. Davies  
NOTARY PUBLIC in and for the State of  
Washington, residing at Kirkland, WA  
My commission expires: 3/2/14

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument and acknowledged it as the \_\_\_\_\_ of **Puget Sound Energy, Inc.** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, 2013.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## EXHIBIT A

### Corridor Property Legal Description

#### PARCEL A:

#### MP 23.45 - 23.8 Woodinville to Kenndale

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville to Kenndale, Washington Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across King County, Washington, more particularly described as follows, to-wit:

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 9, Township 26 North, Range 5 East, W. M., King County, Washington lying Southerly of the Northeasterly 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 said County; also,

That certain 4.02 acre tract of land described in deed dated November 13, 1903 from Emanuel Neilsen and Grete Neilsen to Northern Pacific Railway Company recorded November 16, 1903 in Volume 358 of Deeds, Page 543, records of King County, Washington, said 4.02 acre tract being described in said deed for reference as follows:

"A strip of land over and across the south half of the southeast quarter (S/2 of SE/4) of Section 9, Township twenty-six (26) north, Range five (5) east, W.M., consisting of a strip of land one hundred ten (110) feet wide, being fifty (50) feet wide on the southwesterly side of the center line of the proposed Seattle Belt line railroad of the Northern Pacific Railway Company, as the same is surveyed and staked out across said premises, and sixty (60) feet in width on the northeasterly side of said center line; and an additional strip of land twenty (20) feet in width on the northeasterly side of said above described strip from Station 29 of said railroad center line extending to the south line of said Section 9, a distance of 580 feet, said additional strip being 20 feet wide and 580 feet long; containing 4.02 acres, more or less." EXCEPTING THEREFROM, All that portion of the Southwesterly 35.0 feet of Parcels "A" and "B" of Boundary Line Adjustment Number S92L0145R, King County, Washington, according to the recorded plat thereof.

**PARCEL B:**

**MP 23.45 –Woodinville to Kennydale MP 5.0  
(Except Sound Transit and City of Kirkland Segments)**

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville (MP 23.45) to Kennydale (MP 5.0), Washington Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across King County, Washington, more particularly described as follows, to-wit:

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the NE $\frac{1}{4}$  Section 16, and the W $\frac{1}{2}$  Section 15, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said NE $\frac{1}{4}$  Section 16, and bounded on the South by South line of said W $\frac{1}{2}$  Section 15; also,

That portion of that certain 50.0 foot wide Branch Line right of way, being 25.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 22, Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said Section 22, and bounded on the South by South line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 22; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the E $\frac{1}{2}$  Section 22, the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 27, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said E $\frac{1}{2}$  Section 22, and bounded on the South by South line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 27; also,

That certain 4.43 acre tract of land described in deed dated April 3, 1903 from Nellie Nelson to Northern Pacific Railway Company recorded April 3, 1903 in Book 342 of Deeds, Page 371, records of King County, Washington, said 4.43 acre tract being described in said deed for record as follows:

“All that portion of the Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section 27, Township 26 North, Range 5 East, lying between the easterly line of the present right of way of the Northern Pacific Railway Company, which line is 50 feet distant southeasterly from the center line of the railroad track of said company, as now located and constructed over and across said premises and a line drawn parallel to and 50 feet distant southeasterly from, when measured at right angles to the center line of the proposed railroad track as now staked out and to be constructed, over and across said premises;

“Also all that portion of said Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section 27, Township 26, lying within 50 feet of that certain straight line which connects the center line of the present track of the Northern Pacific Railway Company line with the center line of the

proposed track of the Northern Pacific Railway Company line and being tangent to the curves of both of said center lines, containing in all 4.43 acres, be the same more or less.” EXCEPTING THEREFROM, Lot 3, King County Short Plat Number 1078060, recorded under King County Recording Number 8003270855, being a subdivision of: That portion of the southeast quarter of the northwest quarter of Section 27, Township 26 North, Range 5 East, W.M., King County, Washington, lying northerly and westerly of the northerly and westerly right of way of the Northern Pacific Railway Company’s “Seattle Belt Line”, and south of the southerly right of way line of that road conveyed to King County by deed recorded under Recording Number 2695175 and northeasterly of a line described as follows: Beginning at the northwest corner of the southeast quarter of the northwest quarter of said Section 27; thence south 1°58’24” west along the west line of the southeast quarter of the northwest quarter of said Section 27, a distance of 265 feet; thence north 65°33’39” east 444.80 feet to the true point of beginning of the following described line; thence south 18°15’21” east, 640 feet, more or less, to the northerly right of way line of said Northern Pacific Railway Company’s “Seattle Belt Line”, said northerly right of way line being 50’ Northeast of the center line of the maintrack as now constructed and the terminus of said line.; also,

That certain 0.05 acre tract of land described in deed dated August 25, 1904 from Otto Wepler et al. to Northern Pacific Railway Company recorded September 7, 1904 in Book 375, Page 507, records of King County, Washington, said 0.05 acre tract being described in said deed for reference as follows:

“All that piece or parcel of land in the southeast quarter of the northwest quarter (SE/4 of NW/4) of Section twenty-seven (27), Township twenty-six (26), Range five (5) east, W. M. which lies northwesterly of the original Seattle Belt Line right of way as described in deed recorded in Volume 116 of Deeds, Page 289, Records of King County, and within fifty (50) feet of the center line of the revised location of the track of the Seattle Belt Line as the same is now surveyed and being constructed over and across said subdivision, containing 5/100 acres, more or less.”; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the SW¼NW¼ Section 27 the S½NE¼, NW¼SE¼, SW¼ Section 28, W½NW¼, NW¼SW¼ Section 33, SE¼ Section 32, all in Township 26 North, Range 5 East, W. M., bounded on the East by the East line of said SW¼NW¼ Section 27, and bounded on the South by South line of said SE¼ Section 32, EXCEPTING THEREFROM, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 26, 1998 as Document No. 9805260805, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 30, 1998 as Document No. 9807301468, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 26, 1998 as Document No. 9805260791, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Correction Quitclaim Deed dated January 6, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2000 as Document No. 20000211000454, records of King County, Washington, ; also,

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 3, 4, 5, 6, 11, 12, 13, 14, 18, 19, 23, 24, 25 and 26, the vacated alley between Blocks 13 and 14, and vacated Arlington Avenue between Blocks 14 and 19, as said Blocks and Streets are shown on plat of Lake Avenue Addition to Kirkland as recorded in Volume 6 of Plats, Page 86, Records of said County, together with any right title and interest, if any to those portions of Victoria Avenue, Harrison Avenue, Moreton Avenue; Jefferson Avenue, and Washington Avenue and Maple Street and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way, EXCEPTING THEREFROM, that portion of Lot 3, Block 5, Lake Avenue Addition to Kirkland, according to the official plat thereof in the office of the Auditor of King County, Washington lying between two lines drawn parallel with and distant, respectively, 34.0 feet and 50.0 feet Westerly of, as measured at right angles from The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway) Main Track centerline as now located and constructed upon, over, and across said Block 5; also,

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 220, 223, 224, 232, 233, 238, and 241 as said Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of King County Plats, at page 5, together with any right title and interest, if any to those portions of Massachusetts Avenue, Madison Avenue, Michigan Avenue, Olympia Avenue, Piccadilly Avenue, Cascade Avenue, Clarkson Avenue, Fir Street, and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way; also,

That portion of Lots 1, 2, 4, 37, and all of Lots 3, 38, and 39, Block 227 as said Lots and Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of King County Plats, at page 5, which lie Northeasterly of a line parallel with and distant 50 feet Southwesterly from, measured at right angles to said Railway Company's Main Track centerline as now located and constructed and Southwesterly of a line parallel with and distant 50 feet Northeasterly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the, S $\frac{1}{2}$ SE $\frac{1}{4}$  Section 5, NW $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , Section 8, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South right of way line of Clarkson Avenue, City of Kirkland, Washington, and bounded on the West by the West line of said E $\frac{1}{2}$ SW $\frac{1}{4}$ , Section 8, EXCEPTING THEREFROM, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 26, 1998 as Document No. 9805260787, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Correction Quitclaim Deed dated May 15, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded August 5, 1999 as Document No. 19990805001402, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Deed dated February 24, 1998 from The

Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281544, records of King County, Washington, also;

That certain 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 3, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington, said 0.23 acre tract being described in said deed for reference as follows:

“Commencing at a point in the east line of Lot four (4), Section eight (8), Township twenty-five (25) North, Range five (5) east, W.M., that is 395 feet north of the southeast corner of said lot, and running thence west parallel with the south line of said Lot four (4) 67 feet, more or less, to a point that 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 Company as the same is now located, staked out and to be constructed across said Section eight (8); thence running northeasterly parallel with said railway center line 200 feet; thence westerly at right angles to said railway center line 30 feet; thence northeasterly parallel with said railway center line, and 80 feet distant therefrom, 130 feet, more or less, to the east line of said Lot four (4); thence south along said east line of said Lot four (4) 322 feet, more or less, to the point of beginning; containing 0.23 acres, more or less.”; also,

That certain strip of land described in deed dated March 3, 1904 from Seattle and Shanghai Investment Company to Northern Pacific Railway Company recorded March 9, 1904 in Book 387, Page 243, records of King County, Washington, said strip being described in said deed for reference as follows:

“A strip of land Two Hundred twenty-five (225) feet in width across that certain parcel of land designated as Tract “B” in deed from the Kirkland Land and Improvement Company to H. A. Noble, dated July 13, 1899 of record in the Auditor’s office of King County, Washington in Volume 245 of Deeds, at page 41, reference thereto being had. Said strip of land hereby conveyed, having for its boundaries two lines that are parallel with and respectively distant One Hundred (100) feet easterly from, and One Hundred Twenty-Five (125) feet westerly from, when measured at right angles to, the center line of the Seattle Belt Line branch of the NORTHERN PACIFIC RAILWAY COMPANY, as the same is now constructed and located across said Tract “B”, which said Tract “B” is located in Section 17 of Township 25, North of Range 5 east of the Willamette Meridian”; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 4, Section 8, Government Lots 1, 2, and 3, the E½SW¼ Section 17, and the NE¼NW¼, NE¼ Section 20, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South line of that certain hereinabove described 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 3, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington and the East line of said Government Lot 4, Section 8, and bounded on the South by the South line of said NE¼ Section 20, together with such additional widths as may be necessary to catch the slope of the fill in the N½ of said Government Lot 2, Section 17 as delineated in the 7th described parcel in deed dated June 20, 1903 from Kirkland Land and Improvement Company to Northern Pacific Railway Company recorded June 26, 1903 in Book

352, Page 582, records of King County, Washington. EXCEPTING THEREFROM, that portion of said 100.0 foot wide right of way lying within said hereinabove described parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H. A. Noble, dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41.; also,

That certain tract of land described in deed dated December 26, 1952 from Alma F. Robinson and William G. Robinson et al. to Northern Pacific Railway Company recorded January 14, 1953 in Book 3220 of Deeds, Page 301, in the records of the Auditor's office of King County, Washington, said tract of land being described in said deed for reference as follows:

"That portion of the south half of the northeast quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ ) of Section 20, Township 25 North, Range 5 East of the Willamette Meridian, described as follows: Commencing at the center of said section; thence north 0 degrees 18 minutes 24 seconds west along the north and south quarter line of said section 738.60 feet to the center of the county road; thence along said road south 77 degrees 7 minutes east 500.00 feet; thence south 71 degrees 54 minutes east 308.27 feet, more or less; thence north 34 degrees 38 minutes east 18.00 feet to a stake in the north margin of said road; thence north 34 degrees 38 minutes east 609.40 feet, more or less, to the southwesterly margin of the Grantee's right of way, said margin being concentric with and distant 50 feet southwesterly, measured radially, from the center line of the main track of the Grantee's Belt Line as now constructed; thence southeasterly along said margin approximately 150 feet to a point distant 50 feet southwesterly, measured along the radius of the curve of said center line, from station 511 plus 50 in said center line (which station is distant 2337.6 feet southeasterly measured along said center line, from the north line of said section), the last-described point being the true point of beginning; thence southeasterly and southerly along said margin to a point distant 50 feet westerly, measured along the radius of said curve, from station 515 plus 60 in said center line; thence northwesterly in a straight line to a point distant 110 feet southwesterly measured along the radius of said curve, from station 514 plus 28 in said center line; thence northwesterly in a straight line to a point distant 110 feet southwesterly, measured along the radius of said curve, from station 513 plus 28 in said center line; thence northerly in a straight line to the true point of beginning.", also,

That portion of that certain 100.0 foot wide Branch Line right of way at said Railway Company's Northrup Station, being 50.0 feet on each side of said Branch Line's Main Track centerline, as originally located and constructed, upon, over and across Blocks 12, 13, 14, 15, 16, 21, 22, 23 and 24, all within Kirkland Syndicate First Addition to Seattle, together with any right title and interest, if any to those portions of Maple Street, Nelson Street, Bixby Street, Kirkland Avenue, Hawks Avenue and Fransen Avenue which lie within said 100.0 foot wide Branch Line right of way; also,

Those portion of Lots 10, 11, and 12, Block 14, Lots 1, 2, 3, and 4, Block 23 and Lot 10, Block 24, all within Kirkland Syndicate First Addition to Seattle, lying Southwesterly of a line parallel with and distant 50 feet Southwesterly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Railway Company's Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 20, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 21, all in Township 25 North, Range 5 East, W. M., bounded on the North by the North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 20, and bounded on the South by the South line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 21, together with any right title and interest, if any to those portions of Fransen Avenue, Jordan Avenue, Elkoos Avenue, and Railroad Avenue, which lie within said 100.0 foot wide Branch Line right of way; also,

That portion of Block 7, of Kirkland Syndicate's Second Addition to Kirkland Washington, situate in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 20, and that portion of said Railway Company's property situate in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 21, and in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 28, all in Township 25 North, Range 5 East, W. M., lying Easterly of a line parallel with and distant 50.0 feet Westerly from, measured at right angles and/or radially to said Railway Company's Main Track centerline as now located and constructed and Westerly of a line parallel with and distant 50.0 feet Westerly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed, bounded on the West by the West line of said Block 7 and its Northerly prolongation, and bounded on the South by the intersection of said parallel lines, together with any right, title and interest, if any, to Houghton Street and Railroad Avenue of Kirkland Syndicate's Second Addition to Kirkland Washington; also,

That certain 0.63 acre tract of land described in deed dated November 13, 1904 from Nathan P. Dodge Et Ux. to the Northern Pacific Railway Company recorded February 9, 1905 in Volume 408 of Deeds, Page 263, records of King County, Washington, said 0.63 acre being described in said deed for reference as follows:

"That part of southwest quarter of southwest quarter (SW/4 of SW/4), Section twenty-one (21), Township twenty-five (25) north, Range five (5) east, W. M., described by metes and bounds as follows:

"Beginning at a point in the south line of said Section twenty-one (21) fifty (50) feet east from, when measured at right angles to, the original right of way of Seattle Belt Line Branch of the Northern Pacific Railway Company, as conveyed by deed executed by Roscoe Dunn and Ann Dunn his wife, dated Oct. 4th, 1890 and recorded Dec. 4th, 1890 in volume 116 of deeds, page 114, and running thence north 8° 40' west parallel with and 50 feet distant easterly from said original right of way line a distance of 270 feet to a point of curve; thence northwesterly along a curve to the left having a radius of 716.8 feet, a distance of 492.7 feet; thence north 48° 5' west a distance of 135 feet more or less, to a point on the said easterly line of the original right of way of said railway; thence southeasterly along said original easterly right of way line on a curve to the right having a radius of 859 feet, a distance of 591 feet; thence continuing along said easterly right of way line south 8° 40' east, a distance of 260 feet, more or less, to an intersection of said right of way line with the southern boundary line of said section 21; thence east 50.5 feet, more or less, to point of beginning, containing 0.63 acres, more or less, situated in the County of King, State of Washington."; also,

That certain strip of land described in deed dated August 3, 1904 from John Zwiefelhofer and Aloisia Zwiefelhofer to Northern Pacific Railway Company recorded August 6, 1904 in Book 404 of Deeds,

Page 44, records of King County, Washington, said strip of land being described in said deed for reference as follows:

“A strip of land fifty (50) feet wide lying immediately east of the right of way of said Railway Company and extending South from the North line of Section 28, Township 25 North Range 5 East a distance of Six Hundred feet (600) and containing 0.69 acres in the Northwest Quarter of the Northwest quarter (NW¼NW¼) of Section 28 Tp 25 N R 5 E WM.”, EXCEPTING THEREFROM, that portion of said 50 foot wide strip lying Northerly of a line parallel to and 400.0 feet Southerly of the North line of said NW¼NW¼ of Section 28 ; also,

Parcel 3, of City of Bellevue Short Plat No. 80-16, according to the Short Plat recorded under King County Recording No. 8101239001, EXCEPTING THEREFROM, that certain tract of land described in deed dated December 13, 1996 from Burlington Northern Railroad Company to Fibres International, recorded December 13, 1996 as Document No. 9612130870, records of King County, Washington; also,

Tract B, of City of Bellevue Short Plat No. 80-16, according to the Short Plat recorded under King County Recording No. 8101239001; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Railway Company’s Main Track centerline, as now located and constructed, upon, over and across the W½W½ Section 28, W½NW¼ Section 33, all in Township 25 North, Range 5 East, W. M., bounded on the North by the North line of said W½W½ Section 28, and bounded on the South by the South line of said W½NW¼ Section 33, EXCEPTING THEREFROM, that portion of said 100.0 foot wide right of way lying Easterly of a line parallel with and distant 35 feet Easterly from, measured at right angles to said Railway Company’s Main Track centerline as now located and constructed and Northerly of a line parallel to and 400.0 feet Southerly of the North line of said NW¼NW¼ of Section 28, ALSO EXCEPTING THEREFROM, that portion of said 100 foot wide Branch Line right of way lying within that certain tract of land described in Special Warranty Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2000 as Document No. 20000522001155, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805221787, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Correction Special Warranty Deed dated June 8, 2001 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded January 3, 2003 as Document No. 20030103001327, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Correction Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded December 28, 1998 as Document No. 9812282942, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Correction Special Warranty Deed dated March 17, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded October 4, 2000 as Document No. 20001004000767, records of King County, Washington, also; .

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Lots 1, 2, 3, 4 and 8 of Strawberry Lawn, King County Washington, recorded in Volume 4 of Plats, page 30½, King County, Washington recorder, together with such additional widths as are necessary to catch the slopes of the cuts and fills of the roadbed of said Railway in said Lots 1 and 8 of Strawberry Lawn, King County Washington, as delineated in deed dated August 31, 1903 from Henry Hewitt, Jr. and Rocena L. Hewitt to the Northern Pacific Railway Company, EXCEPTING THEREFROM, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 26, 1998 as Document No. 9805260792, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281537, records of King County, Washington, also;

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the W½ Section 4, Government Lots 1 and 4, E½W½ Section 9, Government Lot 1, SW¼NW¼, NW¼SW¼ Section 16, Government Lots 4 and 5 Section 17, Government Lots 1, 2, 3 and 4 Section 20, Government Lots 1, 2, 3, 4 and 5 Section 29, all in Township 24 North, Range 5 East, W. M., bounded on the North by the North line of W½ Section 4, and bounded on the South by the South line of said Government Lot 5, Section 29, together with such additional widths or strips of land as are necessary to catch the slopes of the cuts and fills of the roadbed of said Railway in the NW¼NW¼ of said Section 4, which said roadbed is to be constructed having a width at grade of 22 feet and the cuts to have a slope of one to one and the fills to have a slope of one and one half to one, as delineated in deed dated September 8, 1903 from Lake Washington Land Company to Northern Pacific Railway Company, recorded in Volume 386 of Deeds, Page 147, records of King County, Washington, EXCEPTING THEREFROM, that certain tract of land described in Correction Special Warranty Deed dated April 30, 2001 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2001 as Document No. 20010522000186, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281547, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281545, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281546, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281543, records of King County, Washington, ALSO EXCEPTING THEREFROM that certain tract of land described in deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 30, 2001 as Document No.

20010430000977, records of King County, Washington, ALSO EXCEPTING THEREFROM that certain tract of land described in deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded December 15, 1998 as Document No. 9812151238, records of King County, Washington; also,

That certain Tract I and that certain Tract II described in deed dated September 19, 1967 from State of Washington to Northern Pacific Railway Company filed for record December 13, 1967 in Book 5023, Page 546, Auditor's No. 6278130, records of King County, Washington, said Tracts being described in said deed for reference as follows:

“Tract I: (Fee)

“All those portions of the Southeast quarter of the Northwest quarter and the Northeast quarter of the Southwest quarter, Section 9, Township 24 North, Range 5 East, W.M., lying Westerly of the existing 100 foot right of way of the Northern Pacific Railway Company and Easterly of a line described as follows: Beginning at a point opposite Station REL. R.R. 737+00 on the Relocated Railroad Center Line (as hereinafter described) and 50 feet Westerly therefrom when measured radially thereto (which point also lies on the Westerly line of said existing railroad right of way); thence Southerly parallel with said relocated railroad center line to a point opposite REL. R.R. 739+00 thereon; thence Southwesterly in a straight line to a point opposite REL. R.R. 740+00 on said relocated railroad center line and 130 feet Westerly therefrom when measured radially thereto; thence Southerly parallel with said relocated railroad center line a distance of 350 feet, more or less, to an intersection with the Northerly right of way line of State Highway Project entitled Primary State Highway No. 2 (SR 90), East Channel Bridge to Richards Road (as hereinafter described); thence North  $84^{\circ}13'42''$  East along said Northerly right of way line a distance of 125 feet, more or less to an intersection with said Westerly line of said existing railroad right of way and the end of this line description:

“Tract II: (Fee)

“All those portions of Lots 13 and 14, Block 1, Mercer Addition, according to the plat thereof recorded in Volume 17 of Plats, page 8, records of King County and of the Northeast quarter of the Southwest quarter, Section 9, Township 24 North, Range 5 East, W.M., lying Northwesterly of the existing 100 foot right of way of the Northern Pacific Railway Company and Southeasterly of a line described as follows: Beginning at the Southeast corner of said Lot 13, which point also lies on the Northwesterly line of said existing railroad right of way; thence Northeasterly in a straight line to a point opposite REL. R.R. 753+00 on the Relocated Railroad Center Line (as hereinafter described) and 50 feet Northwesterly therefrom when measured at right angles thereto; thence Northeasterly in a straight line to a point opposite REL. R.R. 752+00 on said relocated railroad center line and 90 feet Northwesterly therefrom when measured at right angles thereto; thence Northeasterly parallel with said relocated railroad center line a distance of 120 feet, more or less, to an intersection with the Southerly right of way line of State Highway Project entitled Primary State Highway No. 2 (SR 90), East Channel Bridge to Richards Road (as hereinafter described); thence South  $79^{\circ}37'46''$  East a distance of 105 feet, more or less, to an intersection with said Westerly line of said existing railroad right of way and the end of this line description:

...”RELOCATED RAILROAD CENTER LINE DESCRIPTION:

“Beginning at Railroad Station 734+80 on the existing main line center line of the Northern Pacific Railway Company’s Track in the Southeast quarter of the Northwest quarter, Section 9, Township 24 North, Range 5 East, W.M., in the vicinity of Fctoria, Washington, which point equals Relocated Railroad Station (hereinafter referred to as REL. R.R.) 734+80; thence South 20°44’04” East a distance of 21.1 feet to REL. R.R. 735+01.10 T.S.; thence on the arc of an increasing spiral curve to the right having an “A” value of 5 a distance of 80 feet to REL. R.R. 735+81.10 S.C.; thence on the arc of a 4° circular curve to the right thru a central angle of 49°18’ a distance of 1232.50 feet to REL. R.R. 748+13.60 C.S.; thence on the arc of a decreasing spiral curve to the right having an “A” value of 5, a distance of 80 feet to R.R. 743+93.60 S.T.; thence South 31°46’ West a distance of 683.96 feet to REL. R.R. 755+77.56 T.S.; thence on the arc of an increasing spiral curve to the left having an “A” value of 5 a distance of 80 feet to REL. R.R. 756+57.56 S.C. which point equals Railroad Station 756+91.53 ahead on said existing main line center line of track in the Southeast quarter of the Southwest quarter, Section 9, and the end of this center line description.

“SOUTHERLY RIGHT OF WAY LINE OF PRIMARY STATE HIGHWAY NO. 2 (SR 90), EAST CHANNEL BRIDGE TO RICHARDS ROAD:

“Beginning at the Southwest corner of Lot 21, Block 4, Mercer Addition, according to the plat thereof recorded in Volume 17 of Plats, page 8, records of King County, and running thence North 79°37’46” West a distance of 324.08 feet.

“NORTHERLY RIGHT OF WAY LINE OF PRIMARY STATE HIGHWAY NO. 2 (SR 90), EAST CHANNEL BRIDGE TO RICHARDS ROAD:

“Beginning at REL. R.R. 746+28.83 P.O.C. on the Relocated Railroad Center Line (as above described); thence South 84°03’37” West a distance of 344.01 feet; thence North 5°56’23” West a distance of 212.5 feet; thence North 80°02’48” East a distance of 109.27 feet; thence North 5°56’23” West a distance of 25 feet; thence North 70°51’54” East a distance of 196.18 feet to the true point of beginning of this line description; thence North 84°13’42” East a distance of 294.43 feet.”; also

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 1, Section 32, Township 24 North, Range 5 East, W. M., King County, Washington, bounded on the North and South by the North and South lines of said Government Lot 1; also,

That certain 100.0 foot wide Branch Line right of way, upon, over and across Government Lot 2, Section 32, and Government Lots 3 and 4 Section 31, all in Township 24 North, Range 5 East, W. M., King County, Washington, as described in Deed dated September 8, 1903 from Lake Washington Belt Line Company to Northern Pacific Railway Company, recorded in Volume 386 of Deeds, Page 147, records of King County, Washington. EXCEPTING THEREFROM, that certain tract of land described in deed dated September 14, 2001 from The Burlington Northern and Santa Fe Railway

Company to Barbee Forest Products, Inc., recorded September 26, 2001 as document No. 20010926000601, ALSO EXCEPTING THEREFROM, that portion of that certain tract of land described in deed dated March 23, 1936 from Northern Pacific Railway Company to Frank Walloch recorded on July 8, 1936 in volume 1689 of deeds, Page 620 lying within said Government Lot 2, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated May 8, 1990 from Burlington Northern Railroad Company to Robert J. Phelps and Nancy C. Phelps, recorded as document 9005101552, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated March 19, 1992 from Burlington Northern Railroad Company to Gilbert A. Schoos and Alice G. Shoos; recorded April 1, 1992 as document No. 9204011755 also, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated February 1, 1937 from Northern Pacific Railway Company to Carl Jorgensen and Christine Jorgensen, recorded March 1, 1937 in volume 1721 of deeds, Page 63 ALSO EXCEPTING THEREFROM, that portion of that certain tract of land described in Quitclaim Deed dated February 28, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 21, 1999 as Document Number 9904210268, records of King County, Washington, ALSO EXCEPTING THEREFROM, that portion of that certain tract of land described in Correction Deed dated May 26, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000619, records of King County, Washington, ALSO EXCEPTING THEREFROM, that portion of that certain tract of land described in Correction Deed dated May 5, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000620, records of King County, Washington, ALSO EXCEPTING THEREFROM, that portion of that certain tract of land described in Quitclaim Deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000618, records of King County, Washington, ALSO EXCEPTING THEREFROM, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000621, records of King County, Washington, ALSO EXCEPTING THEREFROM, that portion of that certain tract of land described in Correction Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded October 30, 2000 as Document Number 20001030000428, records of King County, Washington; also,

That certain tract of land described in deed dated March 17, 1904 from The Lake Washington Land Company to Northern Pacific Railway Company, recorded April 1, 1904 in Volume 374 of deeds, Page 635 situated in Lot 3, Section 31, Township 24 North, Range 5 East, W. M., King County, Washington, said tract being described in said deed for reference as follows:

“All that portion of said Lot three (3) lying between the eastern line of the right of way of the Northern Pacific Railway Company over and across said lot and a line drawn parallel with and twelve and one-half (12-1/2) feet distant easterly from the center line of said Seattle Belt Line Branch of the Northern Pacific Company as the same is now temporarily located and constructed over and across said lot, and containing on-fourth of an acre, more or less ...” EXCEPTING THEREFROM, that portion of that certain tract of land described in Quitclaim Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 21, 1999 as Document

Number 9904210268, records of King County, Washington, ALSO EXCEPTING THEREFROM, that portion of that certain tract of land described in Correction Deed dated May 26, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000619, records of King County, Washington, ALSO EXCEPTING THEREFROM, that portion of that certain tract of land described in Correction Deed dated May 5, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000620, records of King County, Washington, ALSO EXCEPTING THEREFROM, that portion of that certain tract of land described in Quitclaim Deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000618, records of King County, Washington, ALSO EXCEPTING THEREFROM, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000621, records of King County, Washington, ALSO EXCEPTING THEREFROM, that portion of that certain tract of land described in Correction Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded October 30, 2000 as Document Number 20001030000428, records of King County, Washington; also,

That portion of said Railway Company's property situated in Government Lot 1, Section 6, Township 23 North, Range 5 East, W. M., King County, Washington, lying Southwesterly of a line parallel with and distant 50.0 feet Northeasterly from, measured at right angles to said Railway Company's Branch Line Main Track centerline as originally located and constructed, and Northeasterly of the Southwesterly boundary of that certain 100 foot strip described in Judgment and decree of Appropriation, No. 40536, dated February 8, 1904 in the Superior Court of the State of Washington in and for the County of King, bounded on the North by the North line of said Lot 1, Section 6, and bounded on the South by a line radial to said Railway Company's Main Track centerline, as now located and constructed at a point distant 65.5 feet Northwesterly of the East line of said Lot 1, Section 6, as measured along said Main Track centerline.

Together with an easement for a railway right of way over those second class shorelands as described in "Judgment and Decree of Appropriation" dated February 8, 1904, and entered in King County Superior Court Cause No. 40536, a certified copy of which was recorded under Recording No. 287565, bounded on the South by a line radial to said Railway Company's Main Track centerline, as now located and constructed at a point distant 65.5 feet Northwesterly of the East line of said Lot 1, Section 6, Township 23 North, Range 5 East.

**EXCEPTING FROM THE ABOVE THE FOLLOWING TWO SEGMENTS THEREOF AS CONVEYED TO SOUND TRANSIT AND THE CITY OF KIRKLAND DESCRIBED AS FOLLOWS:**

**1.) EXCEPTING FROM SAID BNSF RAILWAY COMPANY'S (FORMERLY NORTHERN PACIFIC RAILWAY COMPANY) WOODINVILLE (MP 23.45) TO KENNYDALE (MP 5.0), WASHINGTON BRANCH LINE RIGHT OF WAY AS DESCRIBED ABOVE THAT PORTION THEREOF CONVEYED TO SOUND TRANSIT PURSUANT TO DEED**

**RECORDED APRIL 11, 2012, UNDER RECORDING NO. 20120411001173, AND DESCRIBED AS FOLLOWS:**

All that portion of the former BNSF Railway Company's Woodinville to Kennydale Washington Branch Line right of way lying within the W1/2W1/2 Section 28, and, lying within the north 700 feet of the W1/2NW1/4 Section 33, all in Township 25 North, Range 5 East, W.M.

All of which is a portion of the former BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville (MP 23.45) to Kennydale (MP 5.0), Washington Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across King County, Washington, more particularly described as follows, to-wit:

That Portion of Block 7, of Kirkland Syndicate's Second Addition to Kirkland Washington, situate in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 20, and that portion of said Railway Company's property situate in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 21, and in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 28, all in Township 25 North, Range 5 East, W. M., lying Easterly of a line parallel with and distant 50.0 feet Westerly from, measured at right angles and/or radially to said Railway Company's Main Track centerline as now located and constructed and Westerly of a line parallel with and distant 50.0 feet Westerly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed, bounded on the West by the West line of said Block 7 and its Northerly prolongation, and bounded on the South by the intersection of said parallel lines, together with any right, title and interest, if any, to Houghton Street and Railroad Avenue of Kirkland Syndicate's Second Addition to Kirkland Washington; also,

That certain strip of land described in deed dated August 3, 1904 from John Zwiefelhofer and Aloisia Zwiefelhofer to Northern Pacific Railway Company recorded August 6, 1904 in Book 404 of Deeds, Page 44, under recording No. 305888 records of King County, Washington, said strip of land being described in said deed for reference as follows:

"A strip of land fifty (50) feet wide lying immediately east of the right of way of said Railway Company and extending South from the North line of Section 28, Township 25 North Range 5 East a distance of Six Hundred feet (600) and containing 0.69 acres in the Northwest Quarter of the Northwest quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ ) of Section 28 Tp 25 N R 5 E WM.", EXCEPTING THEREFROM, that portion of said 50 foot wide strip lying Northerly of a line parallel to and 400.0 feet Southerly of the North line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 28 ; also,

Parcel 3, of City of Bellevue Short Plat No. 80-16, according to the Short Plat recorded under King County Recording No. 8101239001, EXCEPTING THEREFROM, that certain tract of land described in deed dated December 13, 1996 from Burlington Northern Railroad Company to Fibres International, recorded December 13, 1996 as Document No. 9612130870, records of King County, Washington; also,

Tract B, of City of Bellevue Short Plat No. 80-16 according to the Short Plat recorded under King County Recording No. 8101239001, also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Railway Company's Main Track centerline, as now located and constructed, upon, over and across the W $\frac{1}{2}$ W $\frac{1}{2}$  Section 28, W $\frac{1}{2}$ NW $\frac{1}{4}$  Section 33, all in Township 25 North, Range 5 East, W. M., bounded on the North by the North line of said W $\frac{1}{2}$ W $\frac{1}{2}$  Section 28, and bounded on the South by the South line of said W $\frac{1}{2}$ NW $\frac{1}{4}$  Section 33, EXCEPTING THEREFROM, that portion of said 100.0 foot wide right of way lying Easterly of a line parallel with and distant 35 feet Easterly from, measured at right angles to said Railway Company's Main Track centerline as now located and constructed and Northerly of a line parallel to and 400.0 feet Southerly of the North line of said of NW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 28, ALSO EXCEPTING THEREFROM, that portion of said 100 foot wide Branch Line right of way lying within that certain tract of land described in Special Warranty Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2000 as Document No. 20000522001155, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805221787, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Correction Special Warranty Deed dated June 8, 2001 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded January 3, 2003 as Document No. 20030103001327, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Correction Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded December 28, 1998 as Document No. 9812282942, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Correction Special Warranty Deed dated March 17, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded October 4, 2000 as Document No. 20001004000767, records of King County, Washington.

**2.) ALSO EXCEPTING FROM SAID BNSF RAILWAY COMPANY'S (FORMERLY NORTHERN PACIFIC RAILWAY COMPANY) WOODINVILLE (MP 23.45) TO KENNYDALE (MP 5.0), WASHINGTON BRANCH LINE RIGHT OF WAY AS DESCRIBED ABOVE THAT PORTION THEREOF CONVEYED TO THE CITY OF KIRKLAND PURSUANT TO DEED RECORDED APRIL 13, 2012, UNDER RECORDING NO. 20120413001315 AND DESCRIBED AS FOLLOWS:**

That portion of Sections 5, 8, 17 and 20, Township 25 North, Range 5 East, W.M. and Sections 28, 32 and 33, Township 26 North, Range 5 East, W.M., in King County, Washington, lying within the eight (8) tracts of land described as follows:

**Tract 1**

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed upon, over and across the S $\frac{1}{2}$ ,NE $\frac{1}{4}$  and the NW $\frac{1}{4}$ ,SE $\frac{1}{4}$  and the SW $\frac{1}{4}$  of Section 28, the W $\frac{1}{2}$ ,NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ ,SW $\frac{1}{4}$  of Section 33, the SE $\frac{1}{4}$  of Section 32, all in Township 26 North, Range 5 East, W.M., bounded on the East by a line that is parallel with and 42.00 feet west of, when measured at right angles to, the centerline of 132nd

Avenue NE (aka Slater Avenue NE or 132nd Place NE) as surveyed under King County Survey No. 28-26-5-19 and bounded on the South by South line of said SE¼ of Section 32, EXCEPTING THEREFROM, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 26, 1998 as Document No. 9805260805, records of King County, Washington; ALSO EXCEPTING THEREFROM, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 30, 1998 as Document No. 9807301468, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 26, 1998 as Document No. 9805260791, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Correction Quitclaim Deed dated January 6, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2000 as Document No. 20000211000454, records of King County, Washington;

#### Tract 2

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 3, 4, 5, 6, 11, 12, 13, 14, 18, 19, 23, 24, 25 and 26, the vacated alley between Blocks 13 and 14, and vacated Arlington Avenue between Blocks 14 and 19, as said Blocks and Streets are shown on plat of Lake Avenue Addition to Kirkland as recorded in Volume 6 of Plats, Page 86, Records of said King County, together with any right title and interest, if any to those portions of Victoria Avenue, Harrison Avenue, Moreton Avenue, Jefferson Avenue, and Washington Avenue and Maple Street and alleys within said Blocks which lie within said 100.0 feet wide Branch Line right of way, EXCEPTING THEREFROM, that portion of Lot 3; Block 5, Lake Avenue Addition to Kirkland, according to the official plat thereof in the office of the Auditor of King County, Washington lying between two lines drawn parallel with and distant, respectively, 34.0 feet and 50.0 feet Westerly of, as measured at right angles from The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway) Main Track centerline as now located and constructed upon, over, and across said Block 5;

#### Tract 3

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 220, 223, 224, 232, 233, 238, and 241 as said Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of Plats at Page 5, records of said King County, together with any right title and interest, if any to those portions of Massachusetts Avenue, Madison Avenue, Michigan Avenue, Olympia Avenue, Piccadilly Avenue, Cascade Avenue, Clarkson Avenue, Fir Street, and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way;

#### Tract 4

That portion of Lots 1, 2, 4, 37, and all of Lots 3, 38, and 39, Block 227 as said Lots and Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of Plats, at Page 5, records of said

King County, which lie Northeasterly of a line parallel with and distant 50 feet Southwesterly from measured at right angles to said Railway Company's Main Track centerline as now located and constructed and Southwesterly of a line parallel with and distant 50 feet Northeasterly from, measured at right angle to said Railway Company's Main Track centerline as originally located and constructed;

#### Tract 5

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline; as now located and constructed upon, over and across the S $\frac{1}{2}$ ,SE $\frac{1}{4}$  of Section 5, NW $\frac{1}{4}$ ,NE $\frac{1}{4}$  and the E $\frac{1}{2}$ ,NW $\frac{1}{4}$  and the E $\frac{1}{2}$ ,SW $\frac{1}{4}$  of Section. 8, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South right-of-way line of Clarkson Avenue, City of Kirkland, Washington, and bounded on the West by the West line of said E $\frac{1}{2}$ ,SW $\frac{1}{4}$  of Section 8, EXCEPTING THEREFROM, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 26, 1998 as Document No. 9805260787, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in Correction Quitclaim Deed dated May 15, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded August 5, 1999 as Document No. 19990805001402, records of King County, Washington, ALSO EXCEPTING THEREFROM that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281544, records of King County, Washington,

#### Tract 6

That certain 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington, said 0.23 acre tract being described in said deed for reference as follows:

"Commencing at a point in the east line of Lot four (4), Section eight (8), Township twenty-five (25) North, Range five (5) east, W.M., that is 395 feet north of the southeast corner of said lot, and running thence west parallel with the south line of said Lot four (4) 67 feet, more or less, to a point that 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 Company as the same is now located, staked out and to be constructed across said Section eight (8); thence running northeasterly parallel with said railway center line 200 feet; thence westerly at right angles to said railway center line 30 feet; thence northeasterly parallel with said railway center line, and 80 feet distant therefrom, 130 feet, more or less, to the east line of said Lot four (4); thence south along said east line of said lot four (4) 322 feet, more or less, to the point of beginning; containing 0.23 acres, more or less.";

#### Tract 7

That certain strip of land described in deed dated March 3, 1904 from Seattle and Shanghai Investment Company to Northern Pacific Railroad Company recorded March 9, 1904 in Book 387, Page 243, records of King County, Washington, said strip being described in said deed for reference as follows:

"A strip of land Two Hundred twenty-five (225) feet in width across that certain parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H.A. Noble, dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41, reference thereto being had. Said strip of land hereby conveyed, having for its boundaries two lines that are parallel with and respectively distant One Hundred (100) feet easterly from, and One Hundred Twenty-Five (125) feet westerly from, when measured at right angles to, the center line of the Seattle Belt Line branch of the NORTHERN PACIFIC RAILWAY COMPANY, as the same is now constructed and located across said Tract "B", which said Tract "B" is located in Section 17, Township 25 North, Range 5 East, Willamette Meridian";

**Tract 8**

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 4 of Section 8, Government Lots 1, 2, and 3 and the E $\frac{1}{2}$ ,SW $\frac{1}{4}$  of Section 17, and the NE $\frac{1}{4}$ ,NW $\frac{1}{4}$  and the NE $\frac{1}{4}$  of Section 20, all in Township 25 North, Range 5 East, W.M., bounded on the North by the South line of that certain herein above described 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington and the East line of said Government Lot 4 of Section 8, and bounded on the South by the westerly margin of 108th Avenue NE as described in the Quit Claim Deed from State of Washington to the City of Bellevue recorded under Recording Number 9303190367, records of said King County, together with such additional widths as may be necessary to catch the slope of the fill in N $\frac{1}{2}$  of said Government Lot 2, Section 17 as delineated in the 7th described parcel in deed dated June 20, 1903 from Kirkland Land and Improvement Company to Northern Pacific Railway Company recorded June 26, 1903 in Book 352, Page 582, records of King County, Washington. EXCEPTING THEREFROM, that portion of said 100.0 foot wide right of way lying within said hereinabove described parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H.A. Noble dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41.

(Tracts 1 – 8 being a portion of the parcel of land conveyed by BNSF Railroad Company to the Port of Seattle by Quit Claim Deed recorded under Recording Number 20091218001535, records of said King County.)

**PARCEL C:**

**MP 0.00 – 3.4 Redmond Spur**

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) Redmond Spur Right of Way, varying in width on each side of said Railway Company's Main Track

centerline, as now located and constructed, between Woodinville (Milepost 0.0) to Redmond (Milepost 3.4), King County, Washington, more particularly described as follows, to-wit:

That certain tract of land described in deed dated December 28, 1931 from John DeYoung and Ellen DeYoung to Northern Pacific Railway Company recorded in Volume 1511 of Deeds, Page 495, records of King County, Washington, lying in the N/2 of SE/4 Section 9, Township 26 North, Range 5 East, W. M., EXCEPTING THEREFROM, that portion of that certain tract of land described in deed dated November 17, 1998 from The Burlington Northern and Santa Fe Railway Company to Tjossem Properties IV, LLC and Tjossem Properties V, LLC, recorded December 24, 1998 as Instrument No. 9812240021, which lies within said tract described in deed dated December 28, 1931; also,

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the E $\frac{1}{2}$  Section 9, the NE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 16, the NW $\frac{1}{4}$  Section 15, all in Township 26 North, Range 5 East, W. M., bounded Northerly by a line concentric with and distant 50.0 feet Southwesterly from, measured radially to said Railway Company's Seattle to Sumas Main Track centerline as now located and constructed, and bounded Southerly by the South line of said NW $\frac{1}{4}$  Section 15, EXCEPTING THEREFROM, that portion of that certain tract of land described in deed dated November 17, 1998 from The Burlington Northern and Santa Fe Railway Company to Tjossem Properties IV, LLC and Tjossem Properties V, LLC, recorded December 23, 1998 as Instrument No. 9812240021, which lies within said 100.0 foot wide right of way, ALSO EXCEPTING THEREFROM, that portion of that certain 100.0 foot wide Seattle Belt Line right of way 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, ALSO EXCEPTING THEREFROM, the Northeasterly 25.0 feet of said 100.0 foot wide Redmond Spur right of way, bounded on the South by the South line of said E $\frac{1}{2}$  Section 9 and bounded Northwesterly by a line perpendicular to said Railway Company's Main Track centerline, at a point distant 1,060.0 feet Northwesterly of said South line of the E $\frac{1}{2}$  Section 9, as measured along said Main Track centerline, being that certain tract of land described in Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2003 as Document No. 20030211000429, records of King County, Washington; also,

That portion of that certain 50.0 foot wide Redmond Spur right of way, being 25.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SW $\frac{1}{4}$  Section 15, Township 26 North, Range 5 East, W. M., bounded Northerly and Easterly by the North and East lines of said SW $\frac{1}{4}$  Section 15; also,

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 15, Township 26 North, Range 5 East, W. M., bounded Westerly and Southerly by the West and South lines of said SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 15; also,

That portion of that certain 30.0 foot wide Redmond Spur right of way, being 15.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the W $\frac{1}{2}$ NE $\frac{1}{4}$

Section 22, Township 26 North, Range 5 East, W. M., bounded Northerly and Southerly by the North and South lines of said  $W\frac{1}{2}NE\frac{1}{4}$  Section 22; also,

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the  $NW\frac{1}{4}SE\frac{1}{4}$  of Section 22, Township 26 North, Range 5 East, W. M., bounded Northerly and Southerly by the North and South lines of said  $NW\frac{1}{4}SE\frac{1}{4}$  of Section 22; also,

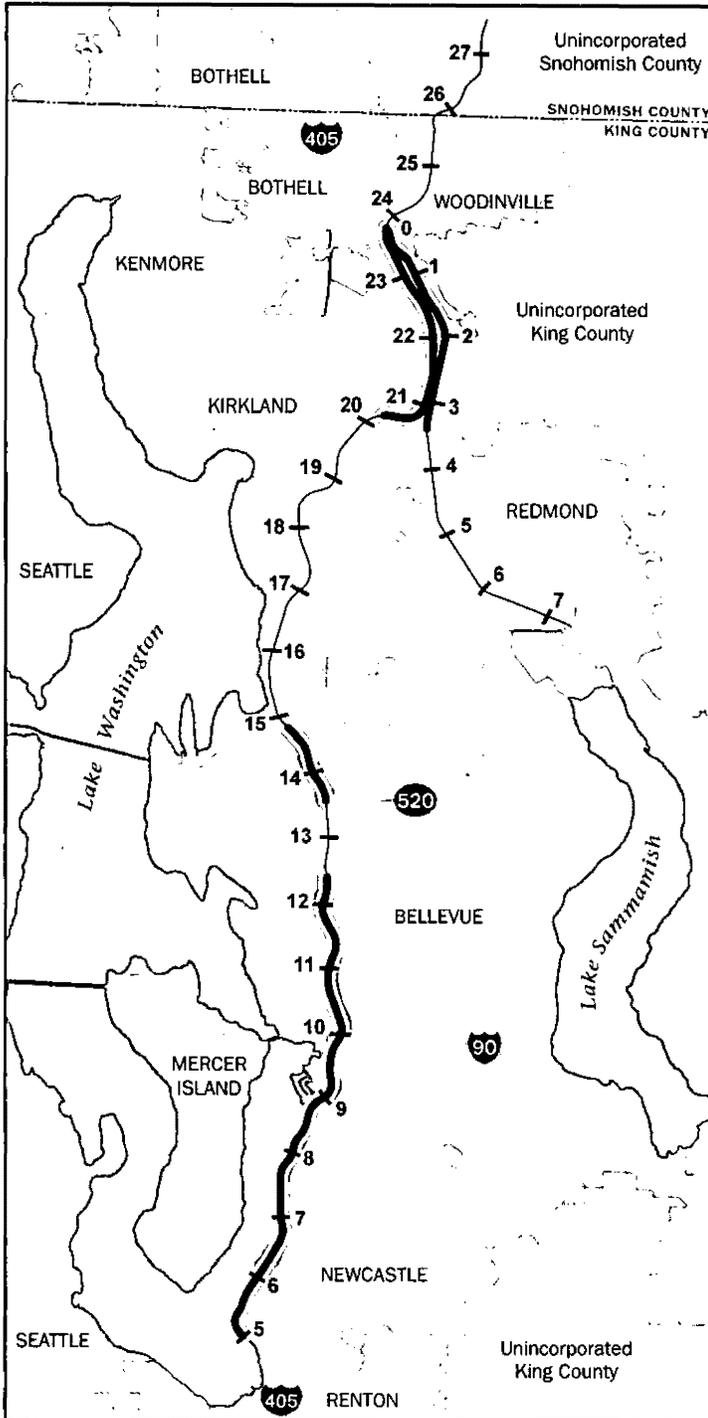
That portion of that certain 50.0 foot wide Redmond Spur right of way, being 25.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the  $SW\frac{1}{4}SE\frac{1}{4}$  of Section 22, and the  $W\frac{1}{2}NE\frac{1}{4}$  Section 27, Township 26 North, Range 5 East, W. M., bounded Northerly by the North line of said  $SW\frac{1}{4}SE\frac{1}{4}$  of Section 22, and bounded Westerly by the West line of said  $W\frac{1}{2}NE\frac{1}{4}$  Section 27; also,

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the  $SE\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$  Section 27, Township 26 North, Range 5 East, W. M., bounded Easterly and Southerly by the East and South lines of said  $SE\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$  Section 27; also,

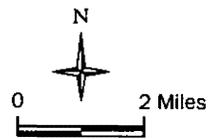
That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the  $S\frac{1}{2}$  Section 27, Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said  $S\frac{1}{2}$  Section 27 and on the South by the South margin of Northeast 124th Street extended.

**EXHIBIT B**  
**Corridor Property Depiction**

# Exhibit B Corridor Property



- Corridor Property
- Mileposts
- Other Portions of Eastside Rail Corridor
- CITY Incorporated Area
- Freeway



**Note: Width of Corridor Property is exaggerated for information display purposes.**

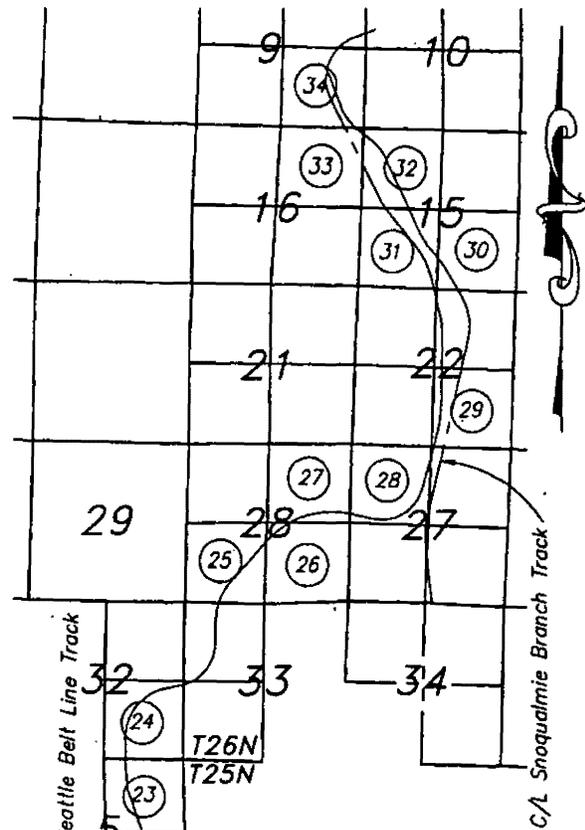
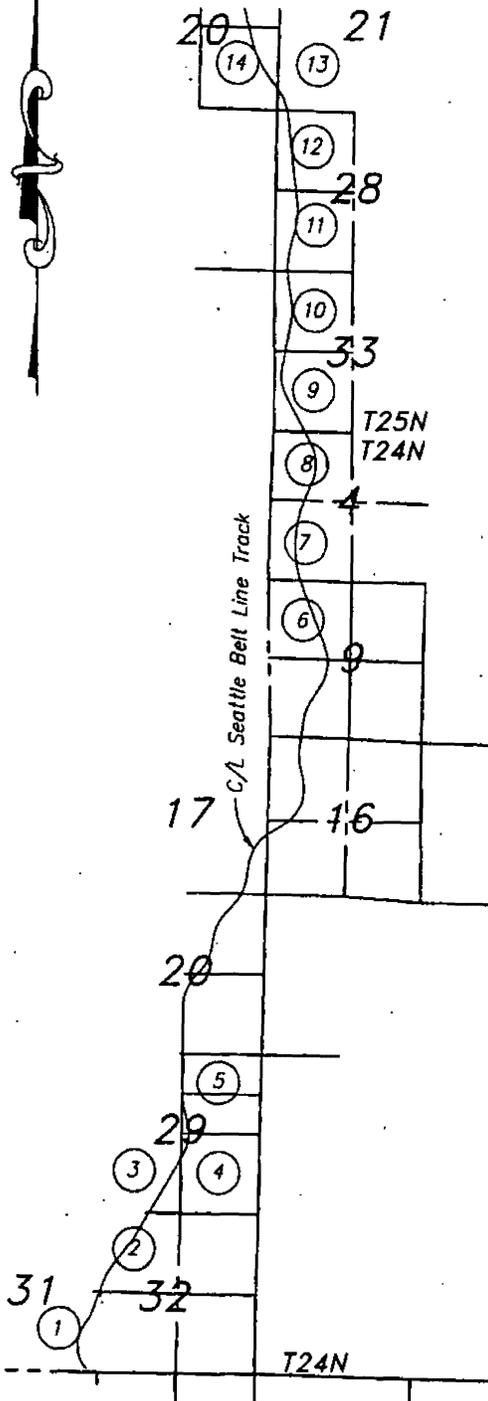
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File: 1208\_2793eastsideCORRmap.ai wgab

**EXHIBIT C**

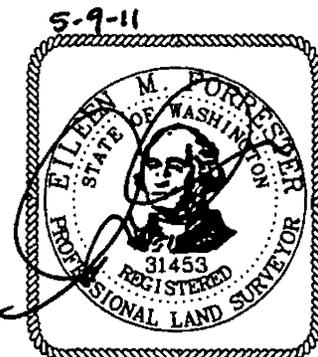
**Existing Wastewater Facilities**

SEE BELOW RIGHT



LEGEND

- Ⓢ EXHIBIT SHEET #
- 17 SECTION NUMBER



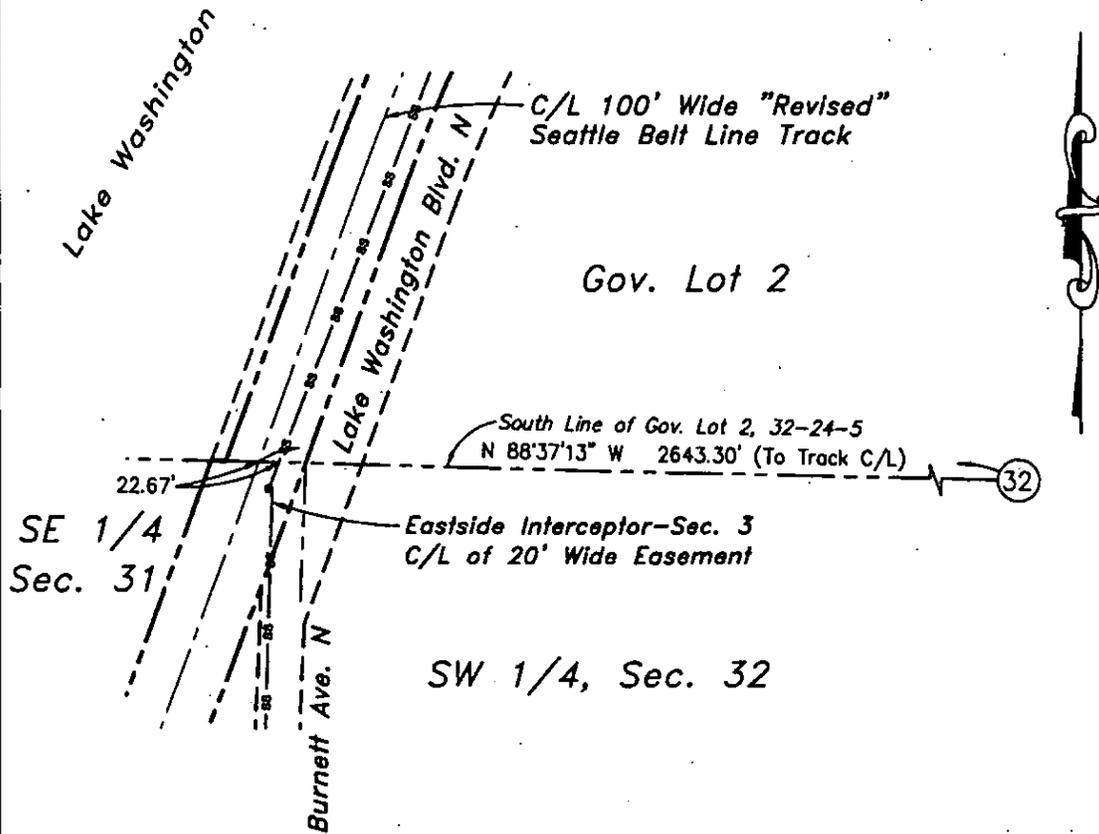
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**True NORTH**  
 LAND SURVEYING, INC.  
 815 S. Weller Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.532.0800

Date: 5-06-11  
 Scale: 1" = 6000'  
 Job No. J10-64.00

**EXHIBIT INDEX MAP**  
 BNSF Eastside Rail Corridor

SE 1/4, SEC. 31, T 24 N, R 5 E, W.M.  
 RENTON, KING COUNTY, WASHINGTON



Sheet 1 of 34

**True**  
**NORTH**  
 LAND SURVEYING, INC.

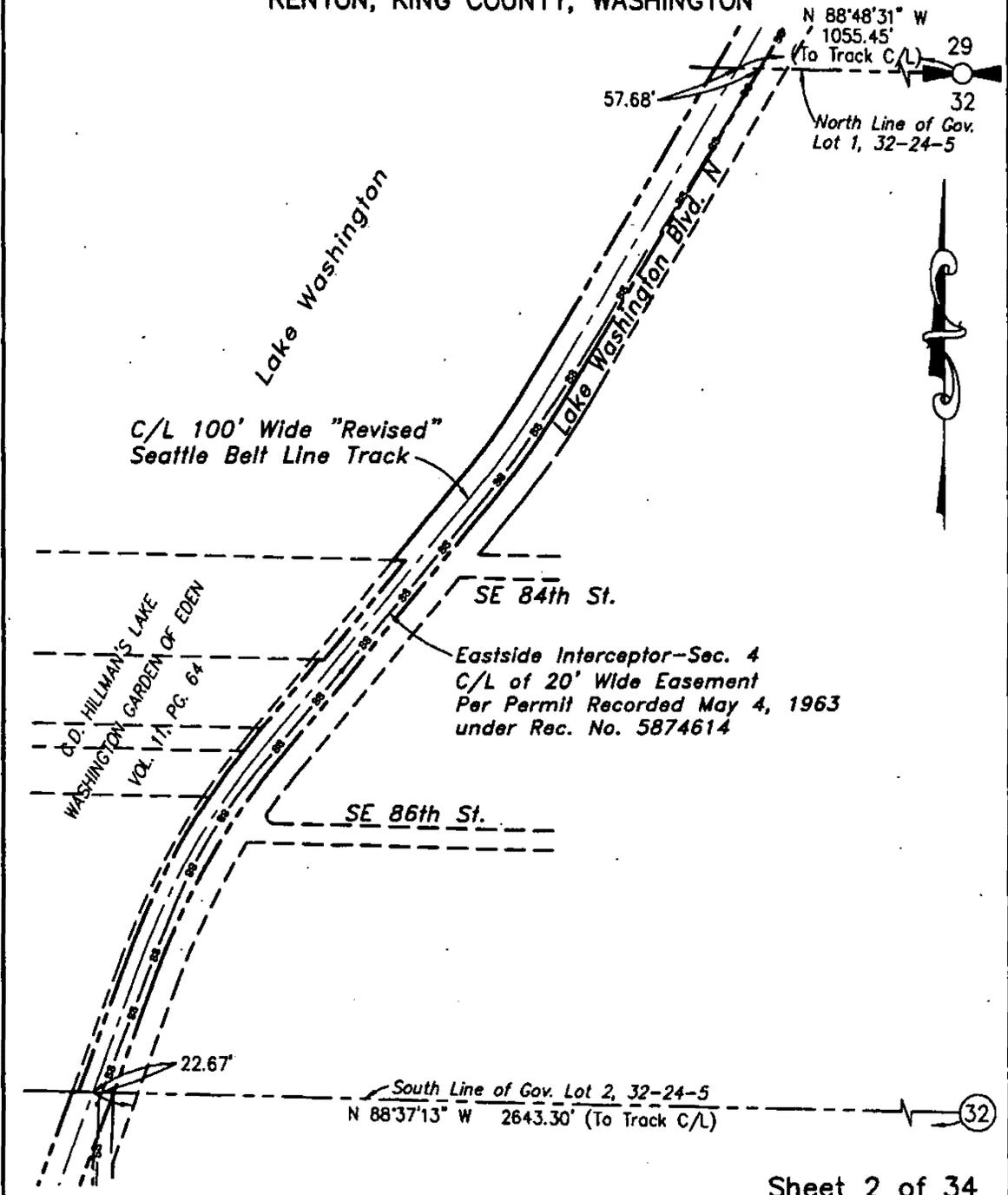
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 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

Date:	5-06-11
Scale:	1" = 200'
Job No.	J10-64.00

**Exhibit**

Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

NW 1/4, SEC. 32, T 24 N, R 5 E, W.M.  
 RENTON, KING COUNTY, WASHINGTON



Sheet 2 of 34

**True**  
**NORTH**  
 LAND SURVEYING, INC.

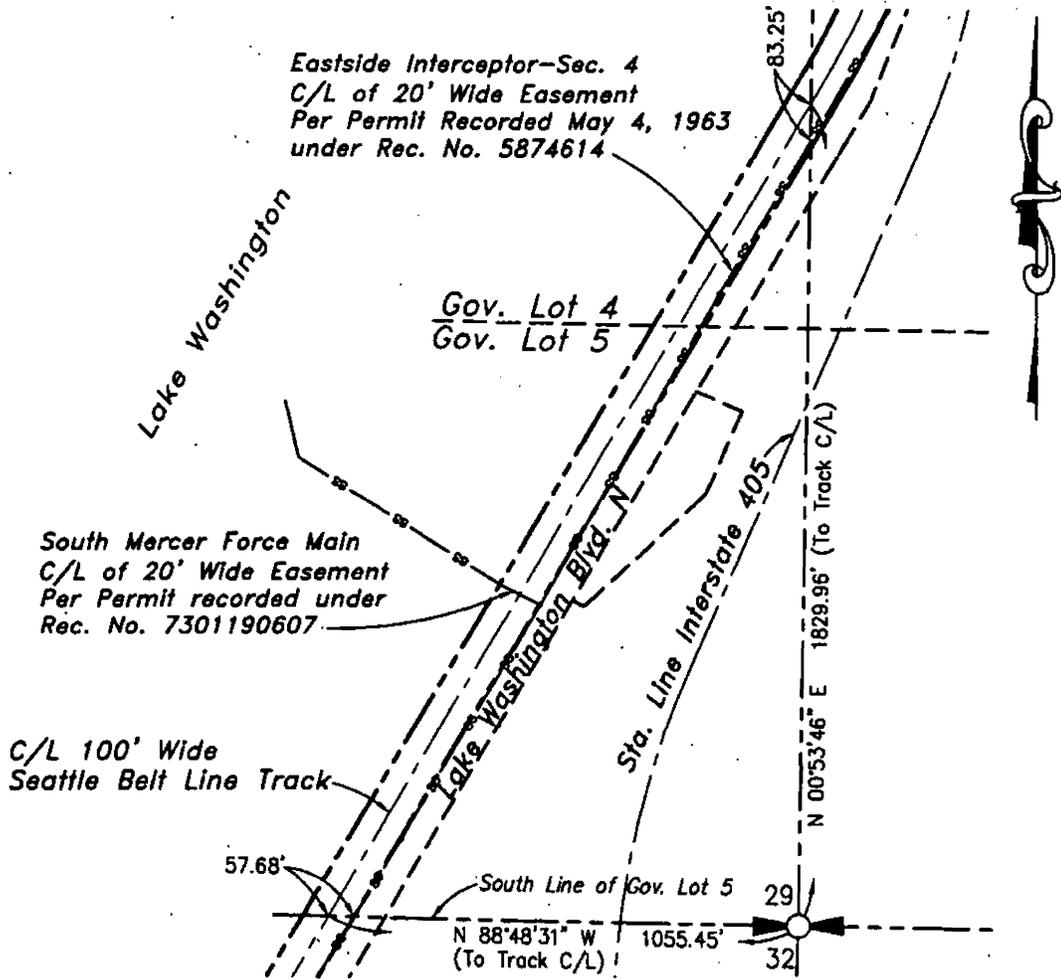
616 S. Weller Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

Date:  
 5-06-11  
 Scale:  
 1" = 400'  
 Job No.  
 J10-64.00

**Exhibit**

Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

SW 1/4, SEC. 29, T 24 N, R 5 E, W.M.  
 RENTON, KING COUNTY, WASHINGTON



Sheet 3 of 34

**True NORTH**  
 LAND SURVEYING, INC.

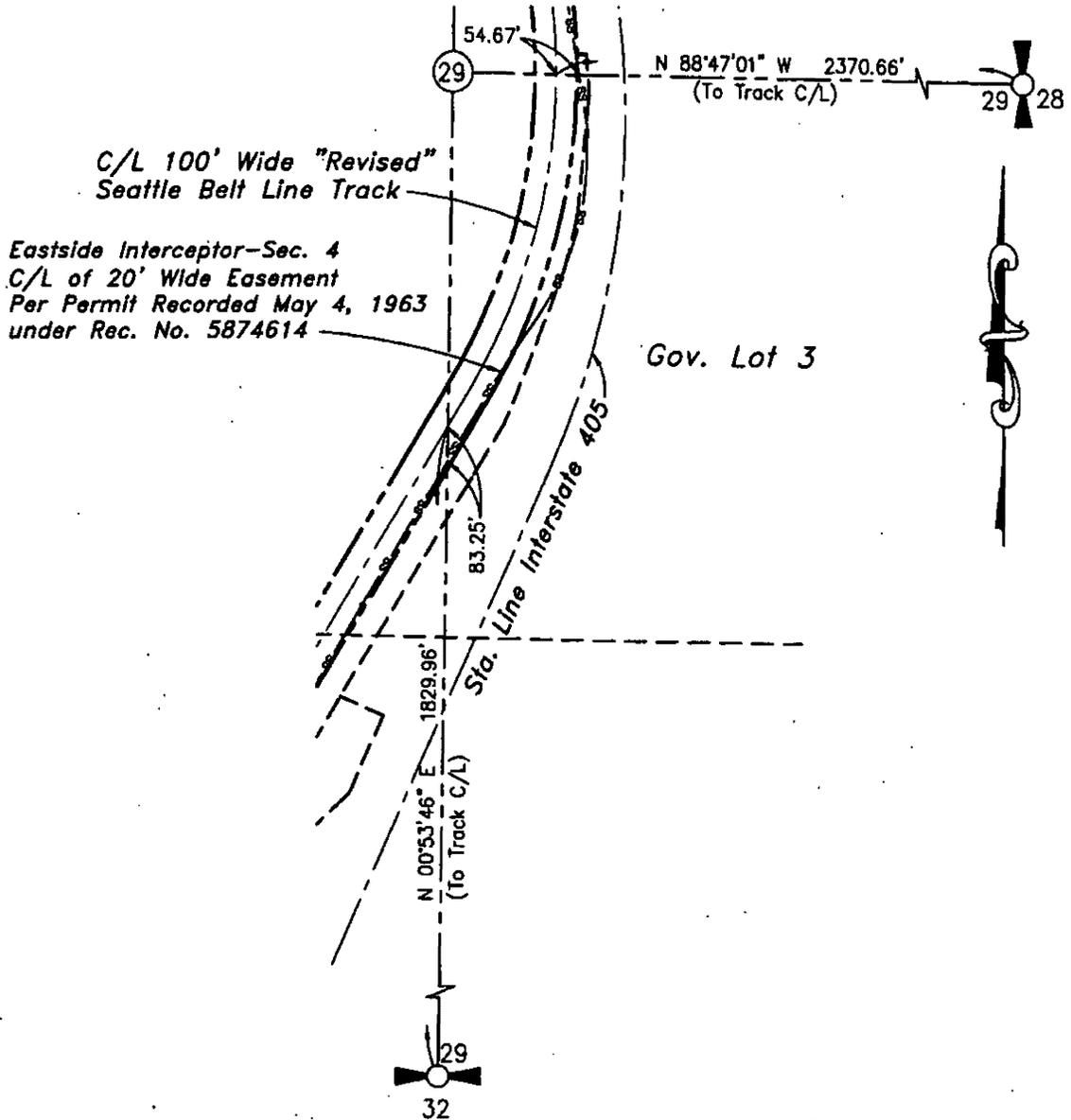
815 S. Weller Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

Date: 5-06-11  
 Scale: 1" = 400'  
 Job No. J10-64.00

**Exhibit**

Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

SE 1/4, SEC. 29, T 24 N, R 5 E, W.M.  
 RENTON, KING COUNTY, WASHINGTON

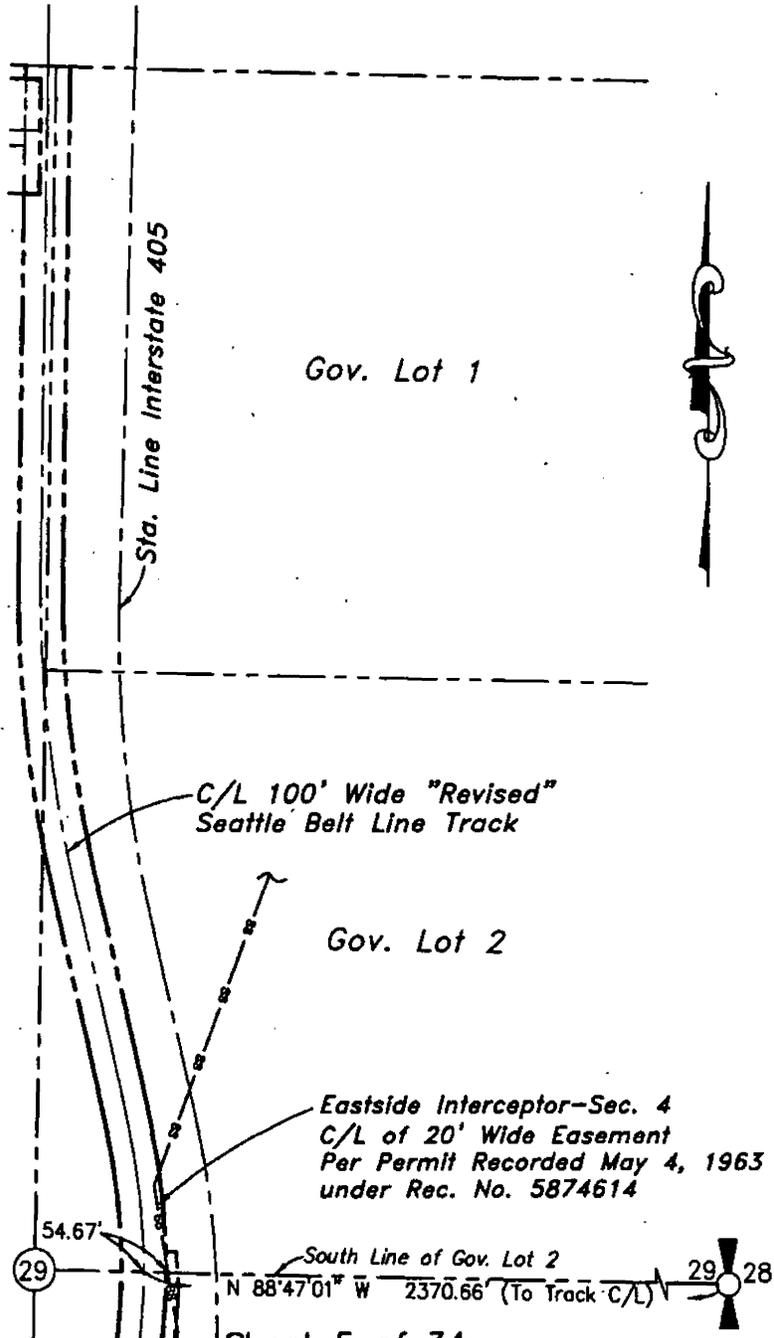


Sheet 4 of 34

<b>True NORTH</b> LAND SURVEYING, INC. 815 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date:	5-06-11	<b>Exhibit</b>  Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor
	Scale:	1" = 400'	
	Job No.:	J10-64.00	

NE 1/4, SEC. 29, T 24 N, R 5 E, W.M.  
 NEWCASTLE, KING COUNTY, WASHINGTON

Lake Washington



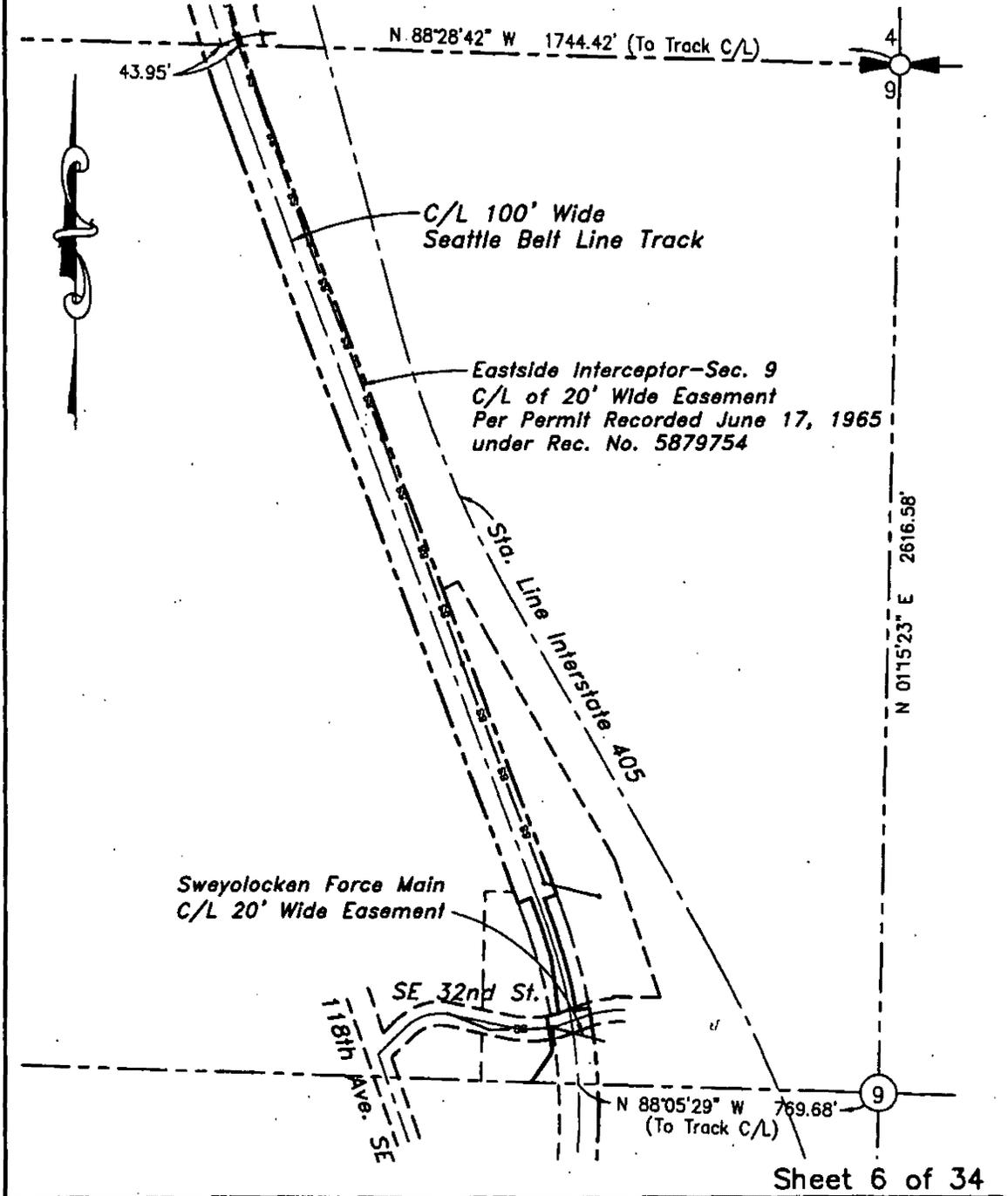
Sheet 5 of 34

**True NORTH**  
 LAND SURVEYING, INC.  
 815 S. Walter Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

Date: 5-06-11  
 Scale: 1" = 400'  
 Job No. J10-64.00

**Exhibit**  
 Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

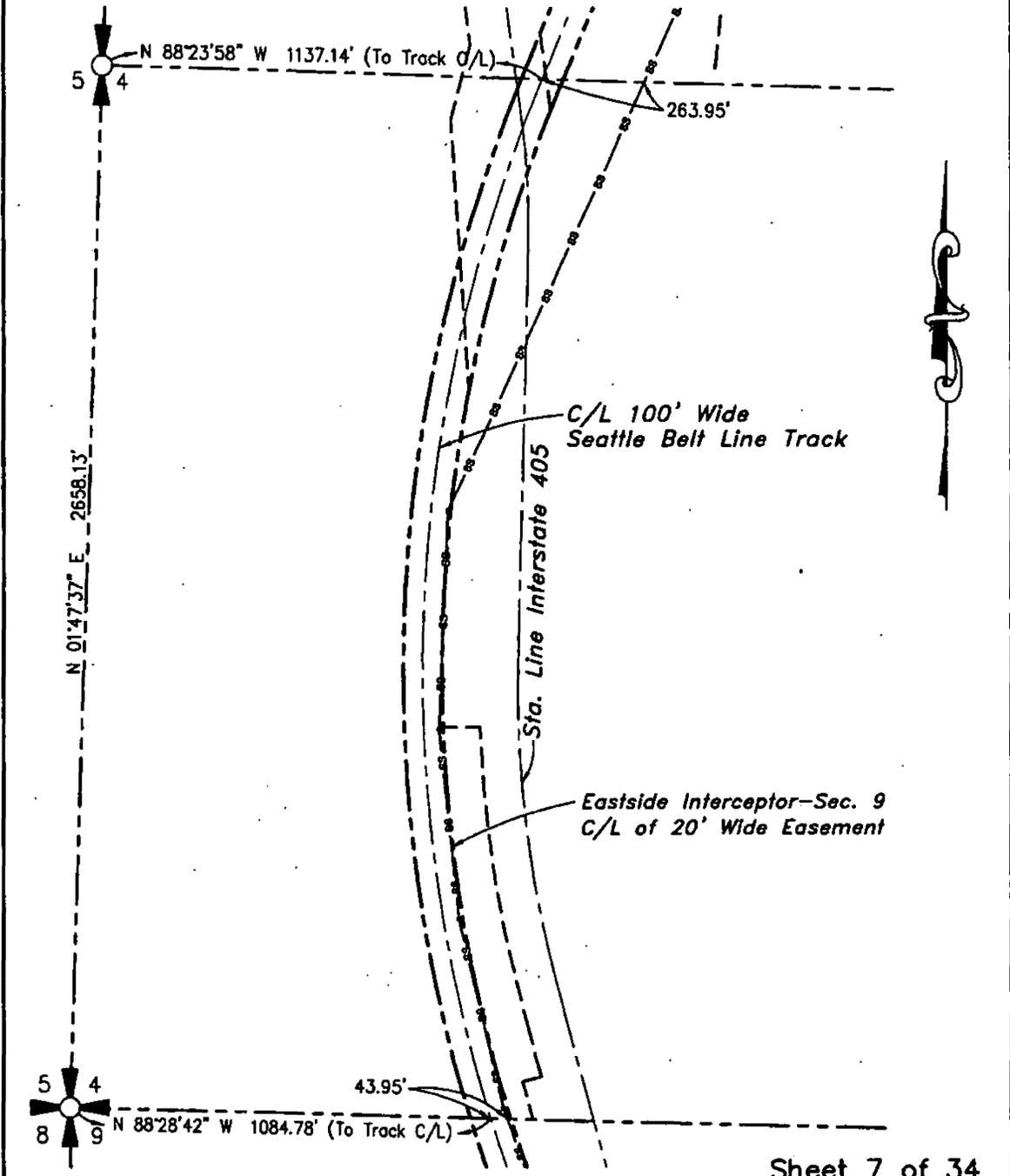
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 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 6 of 34

<b>True NORTH</b> LAND SURVEYING, INC. 615 S. Walker Street Suite 200 Seattle, WA 98104-3023 206.332.0900	Date:	5-06-11	<b>Exhibit</b>  Existing Sewer Easement  BNSF Eastside Rail Corridor - Eastside Interceptor & Swaylocken
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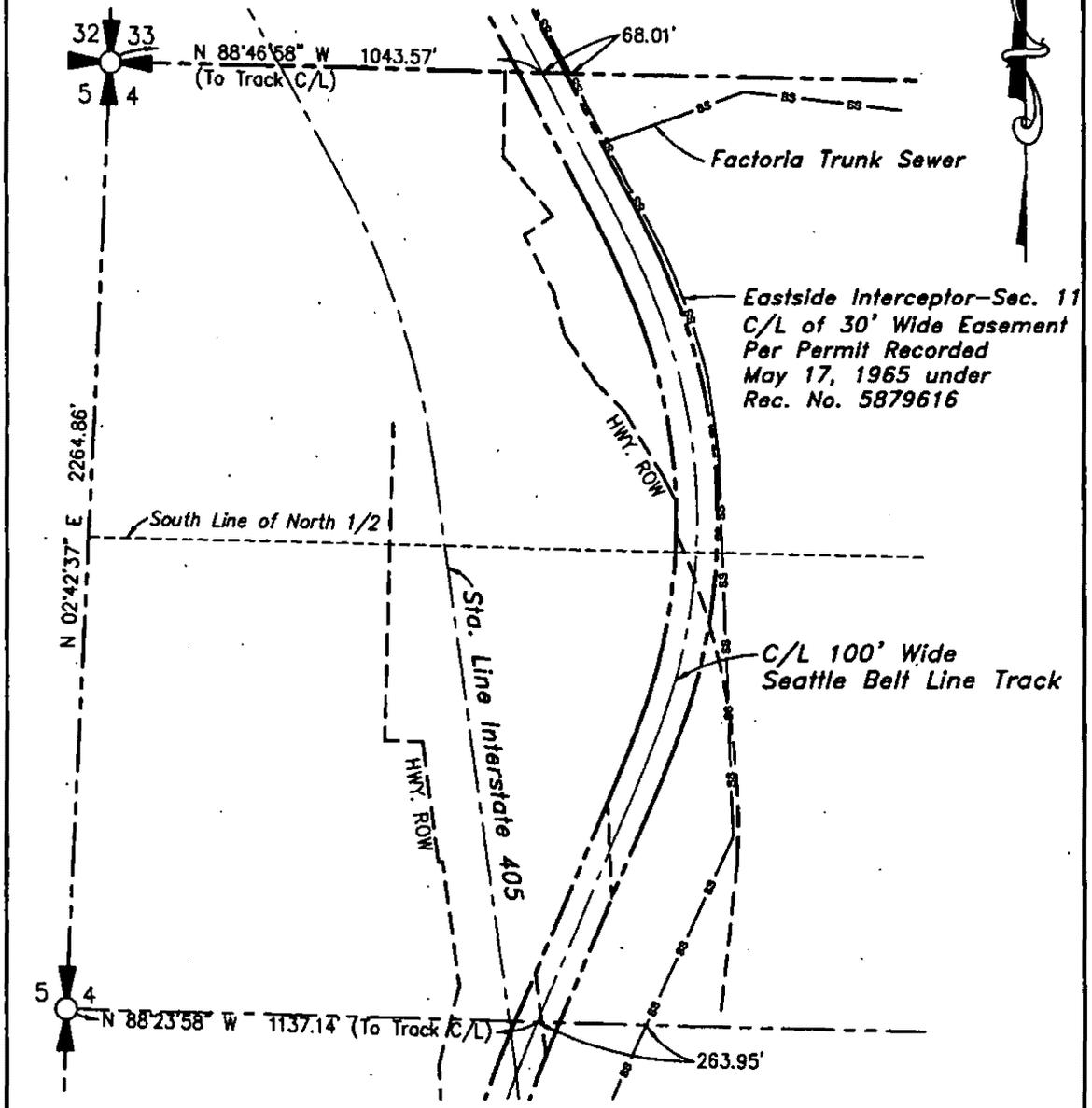
SW 1/4, SEC. 4, T 24 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 7 of 34

<p><b>True NORTH</b>                  LAND SURVEYING, INC.</p> <p>815 S. Water Street                  Suite 200                  Seattle, WA 98104-3023                  206.332.0800</p>	Date:	5-06-11	<p><b>Exhibit</b></p> <p>Existing Sewer Easement</p> <p>BNSF Eastside Rail Corridor - Eastside Interceptor</p>
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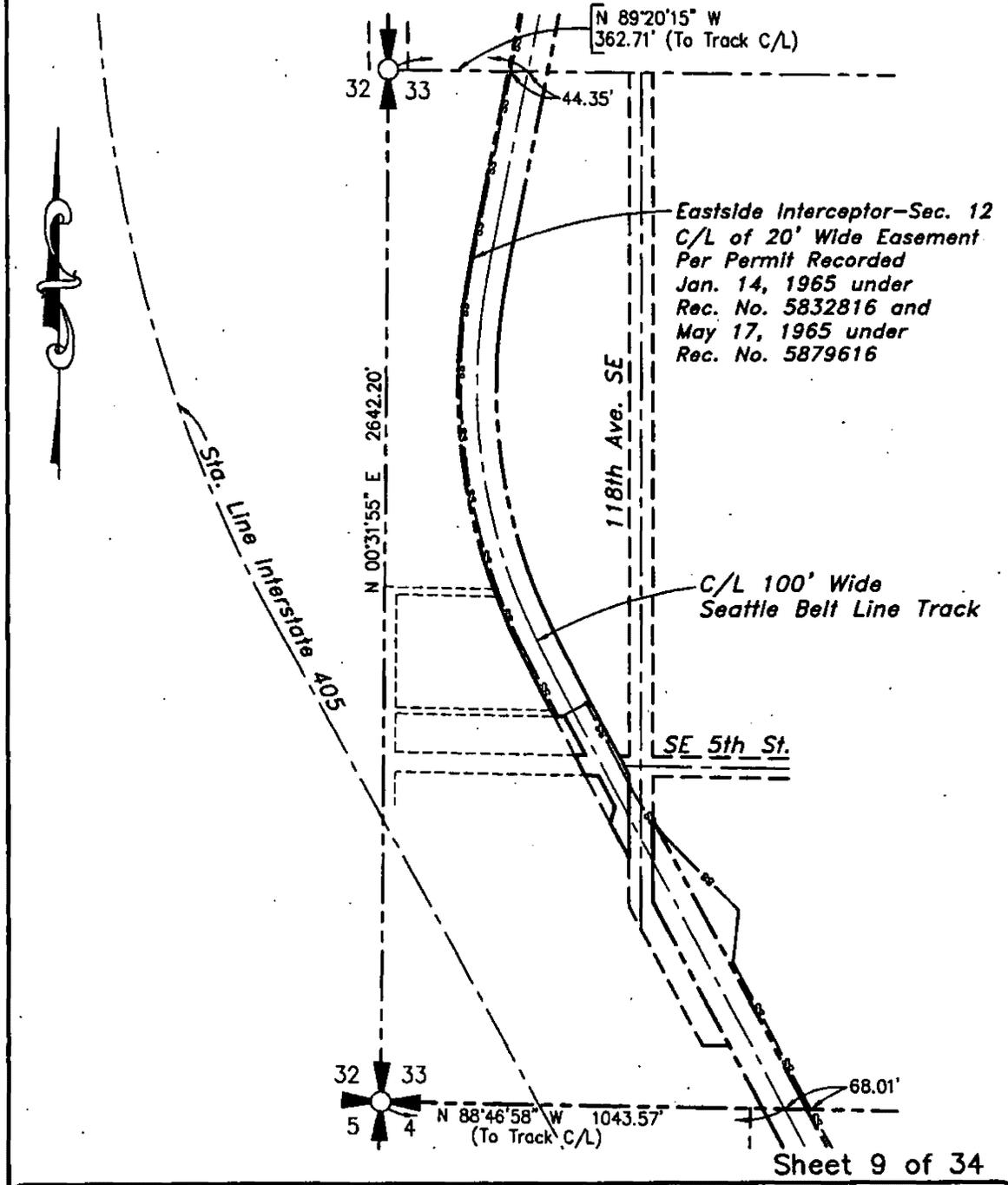
NW 1/4, SEC. 4, T 24 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 8 of 34

<p>815 S. Weder Street          Suite 200          Seattle, WA 98104-3023          206.332.0800</p>	Date:	5-06-11	<b>Exhibit</b>  Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor
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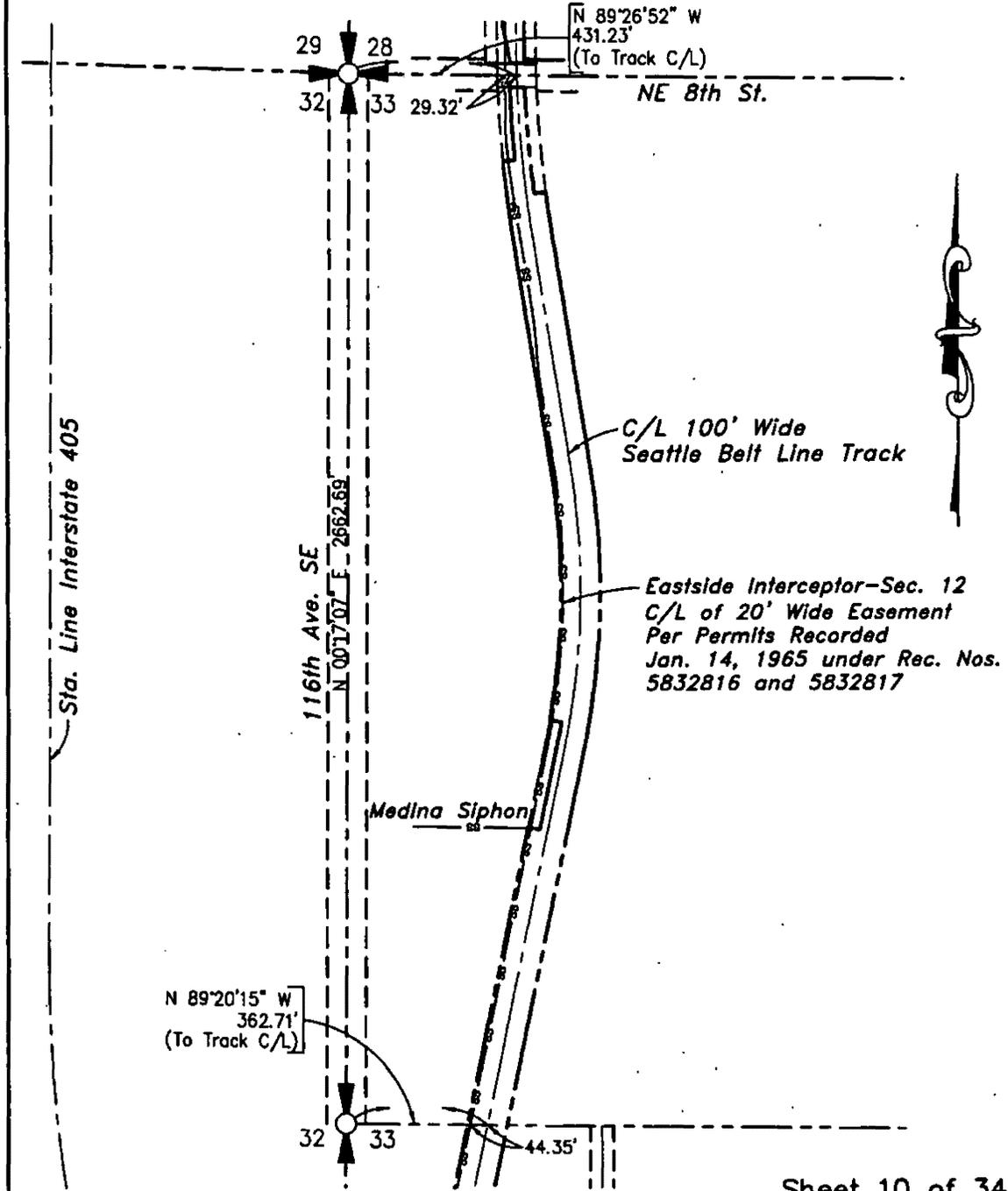
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 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 9 of 34

<b>True NORTH</b> LAND SURVEYING, INC. 815 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date:	5-06-11	<b>Exhibit</b>  Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor
	Scale:	1" = 400'	
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NW 1/4, SEC. 33, T 25 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 10 of 34

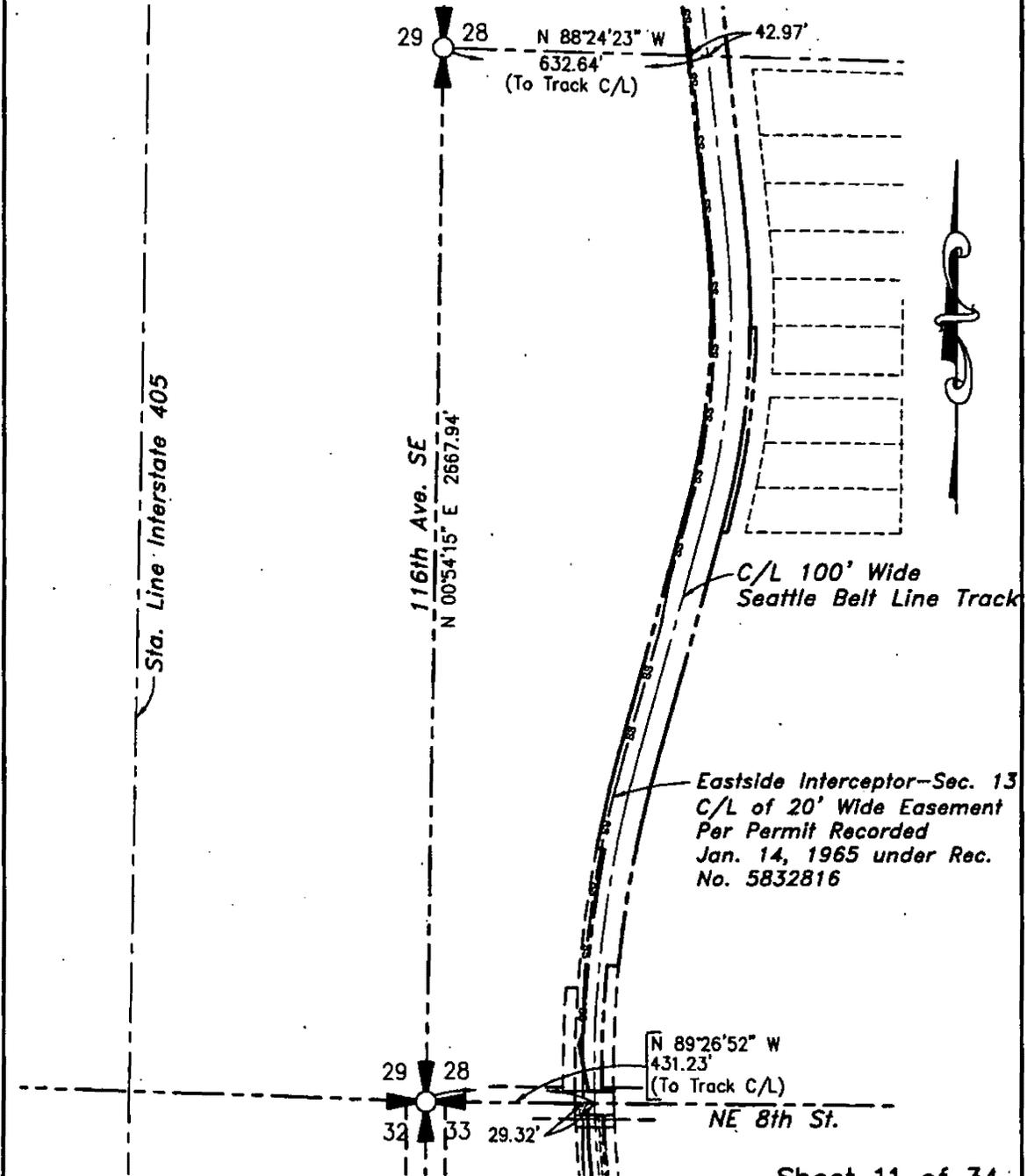
**True NORTH**  
 LAND SURVEYING, INC.  
 815 S. Weber Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

Date: 5-06-11  
 Scale: 1" = 400'  
 Job No. J10-64.00

**Exhibit**

Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

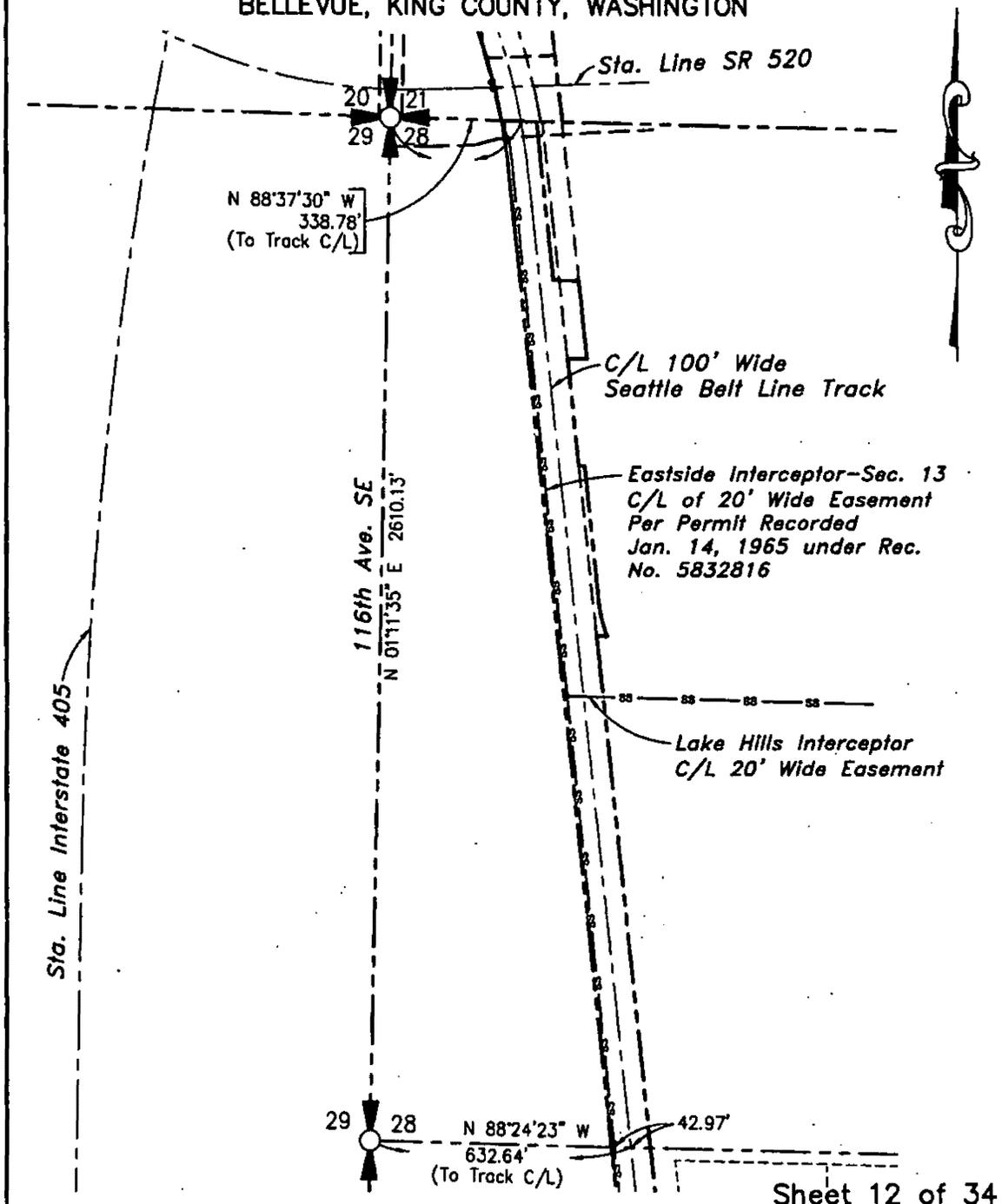
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 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 11 of 34

<b>True NORTH</b> LAND SURVEYING, INC. 815 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date:	5-06-11	<b>Exhibit</b>  Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor
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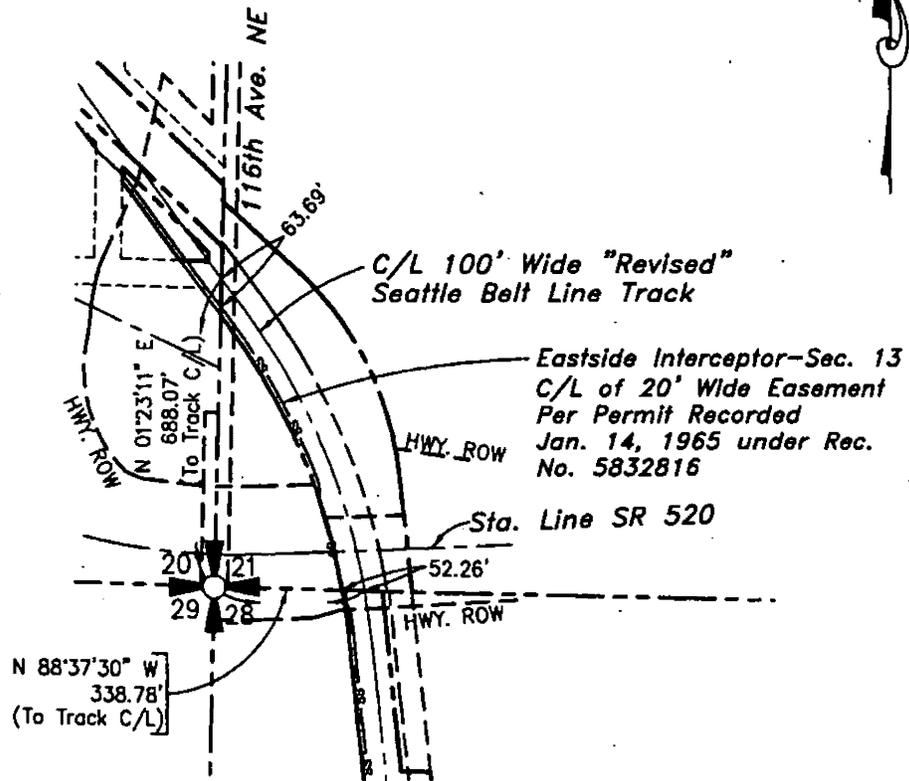
NW 1/4, SEC. 28, T 25 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 12 of 34

<p><b>True NORTH</b>                  LAND SURVEYING, INC.</p> <p>816 S. Weller Street                  Suite 200                  Seattle, WA 98104-3023                  206.332.0800</p>	Date:	5-06-11	<p><b>Exhibit</b></p> <p>Existing Sewer Easement                  BNSF Eastside Rail Corridor - Eastside Interceptor</p>
	Scale:	1" = 400'	
	Job No.	J10-64.00	

SW 1/4, SEC. 21, T 25 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 13 of 34

**True**  
**NORTH**  
 LAND SURVEYING, INC.

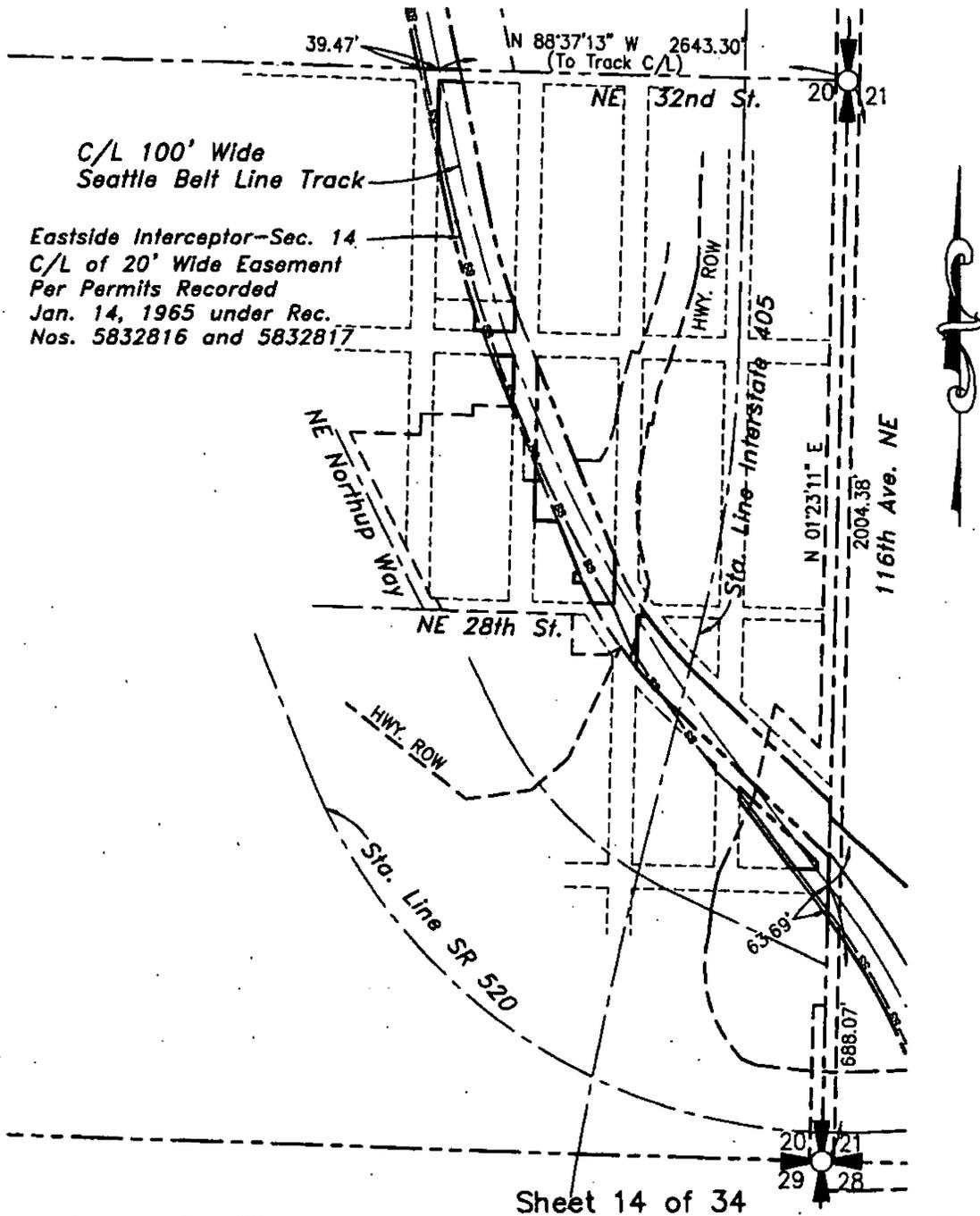
815 S. Weller Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

Date:  
 5-06-11  
 Scale:  
 1" = 400'  
 Job No.  
 .110-64.00

Exhibit

Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

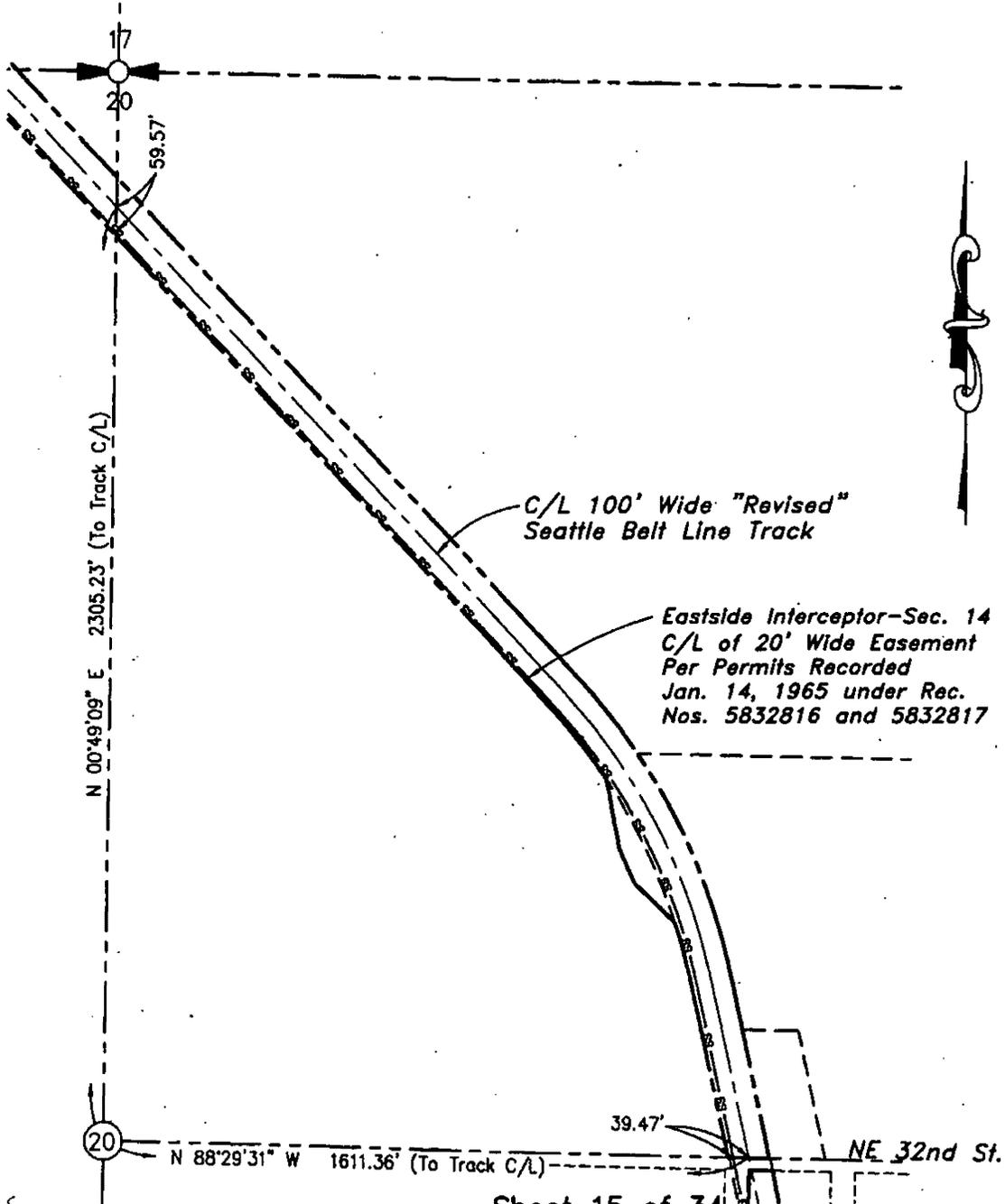
SE 1/4, SEC. 20, T 25 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 14 of 34

<p><b>True NORTH</b>                  LAND SURVEYING, INC.</p> <p>815 S. Waller Street                  Suite 200                  Seattle, WA 98104-3023                  206.332.0800</p>	Date:	5-06-11	<p><b>Exhibit</b></p> <p>Existing Sewer Easement</p> <p>BNSF Eastside Rail Corridor - Eastside Interceptor</p>
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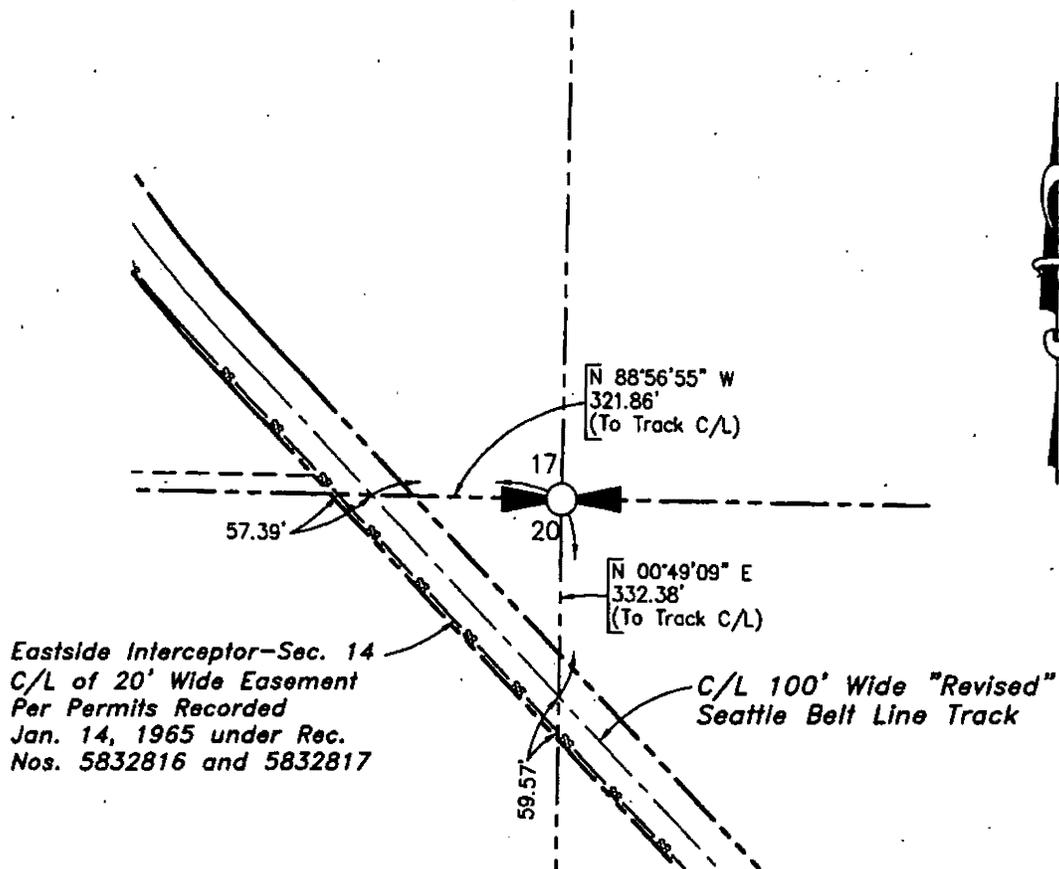
NE 1/4, SEC. 20, T 25 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 15 of 34

<b>True NORTH</b> LAND SURVEYING, INC. 615 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date:	5-06-11	<b>Exhibit</b>  Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor
	Scale:	1" = 400'	
	Job No.	110-64.00	

NW 1/4, SEC. 20, T 25 N, R 5 E, W.M.  
 KIRKLAND, KING COUNTY, WASHINGTON



Eastside Interceptor—Sec. 14  
 C/L of 20' Wide Easement  
 Per Permits Recorded  
 Jan. 14, 1965 under Rec.  
 Nos. 5832816 and 5832817

C/L 100' Wide "Revised"  
 Seattle Belt Line Track

Sheet 16 of 34

**True**  
**NORTH**  
 LAND SURVEYING, INC.

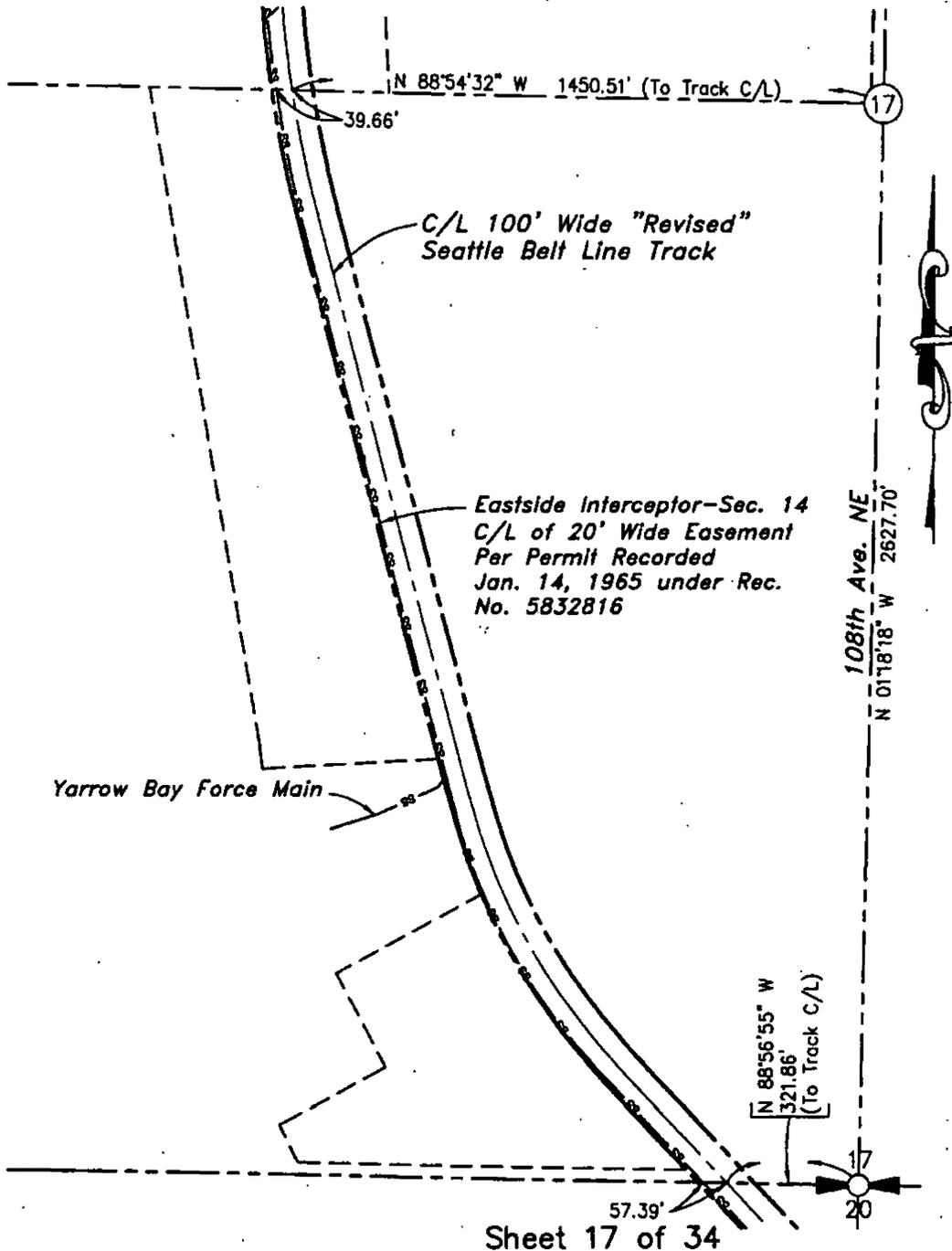
815 S. Weller Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

Date:  
 5-06-11  
 Scale:  
 1" = 300'  
 Job No.  
 J10-64.00

**Exhibit**

Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

SW 1/4, SEC. 17, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



**True NORTH**  
LAND SURVEYING, INC.

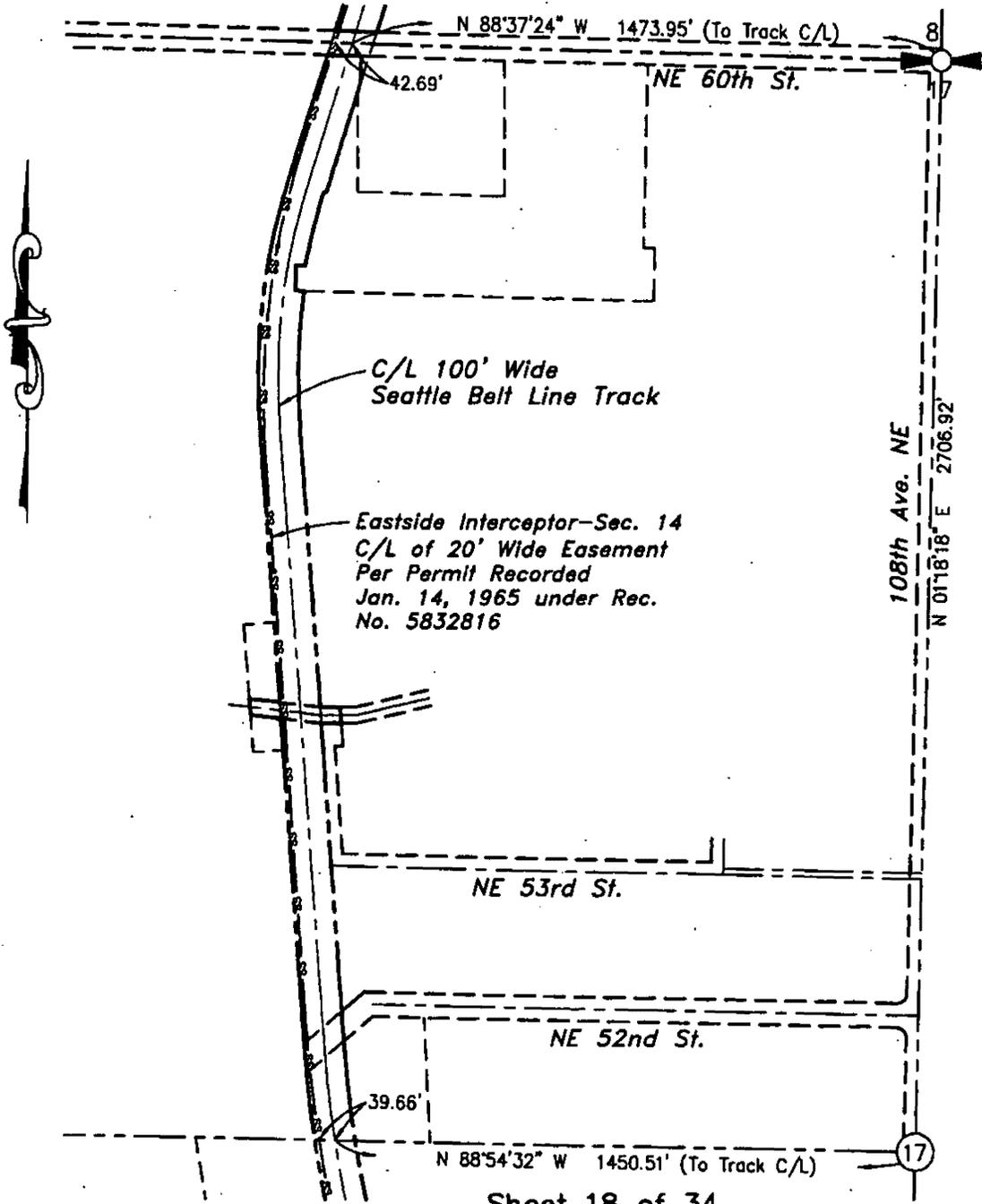
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Suite 200  
Seattle, WA 98104-3023  
206.332.0800

Date: 5-06-11  
Scale: 1" = 400'  
Job No. J10-64.00

**Exhibit**

Existing Sewer Easement  
BNSF Eastside Rail Corridor - Eastside Interceptor

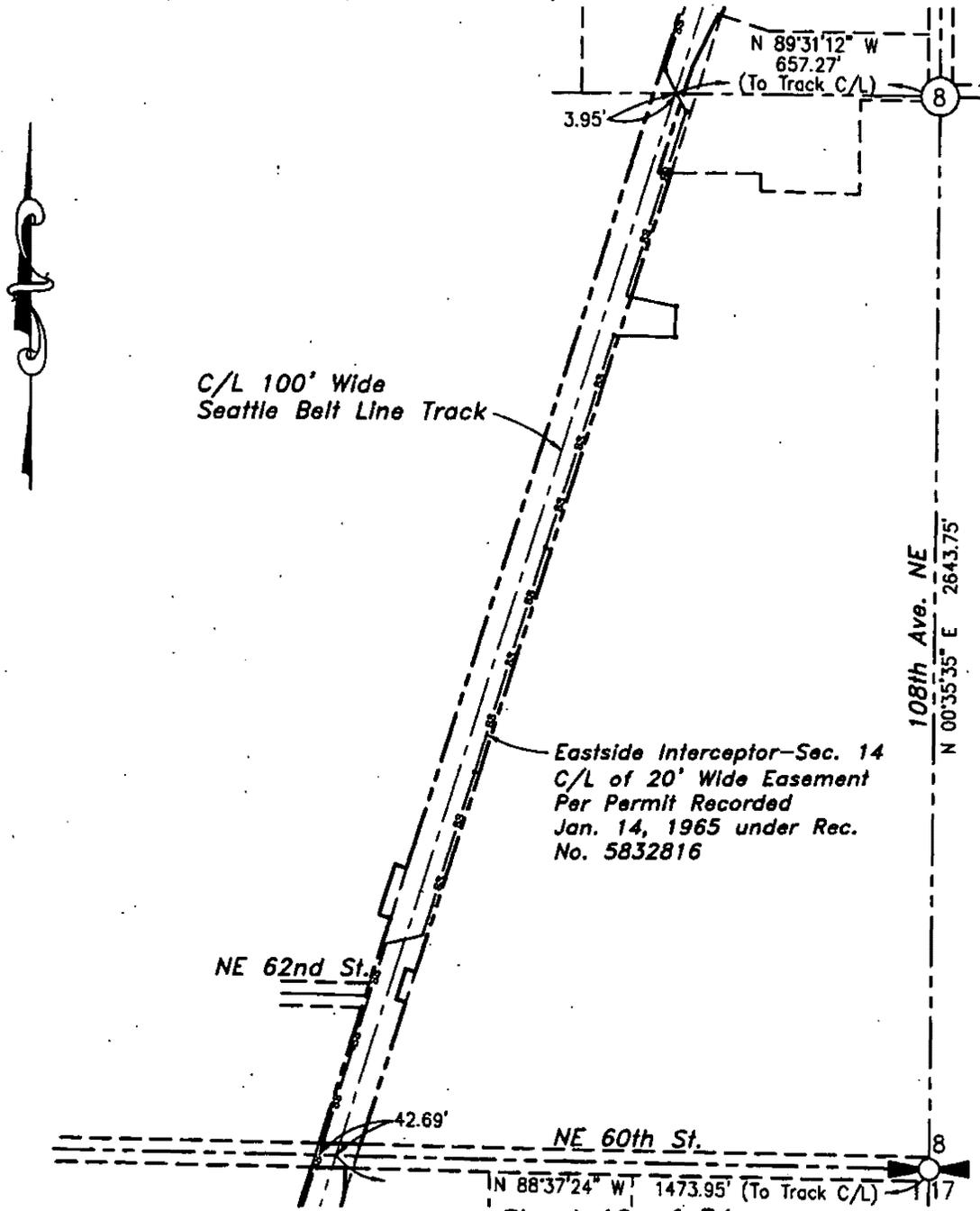
NW 1/4, SEC. 17, T 25 N, R 5 E, W.M.  
 KIRKLAND, KING COUNTY, WASHINGTON



Sheet 18 of 34

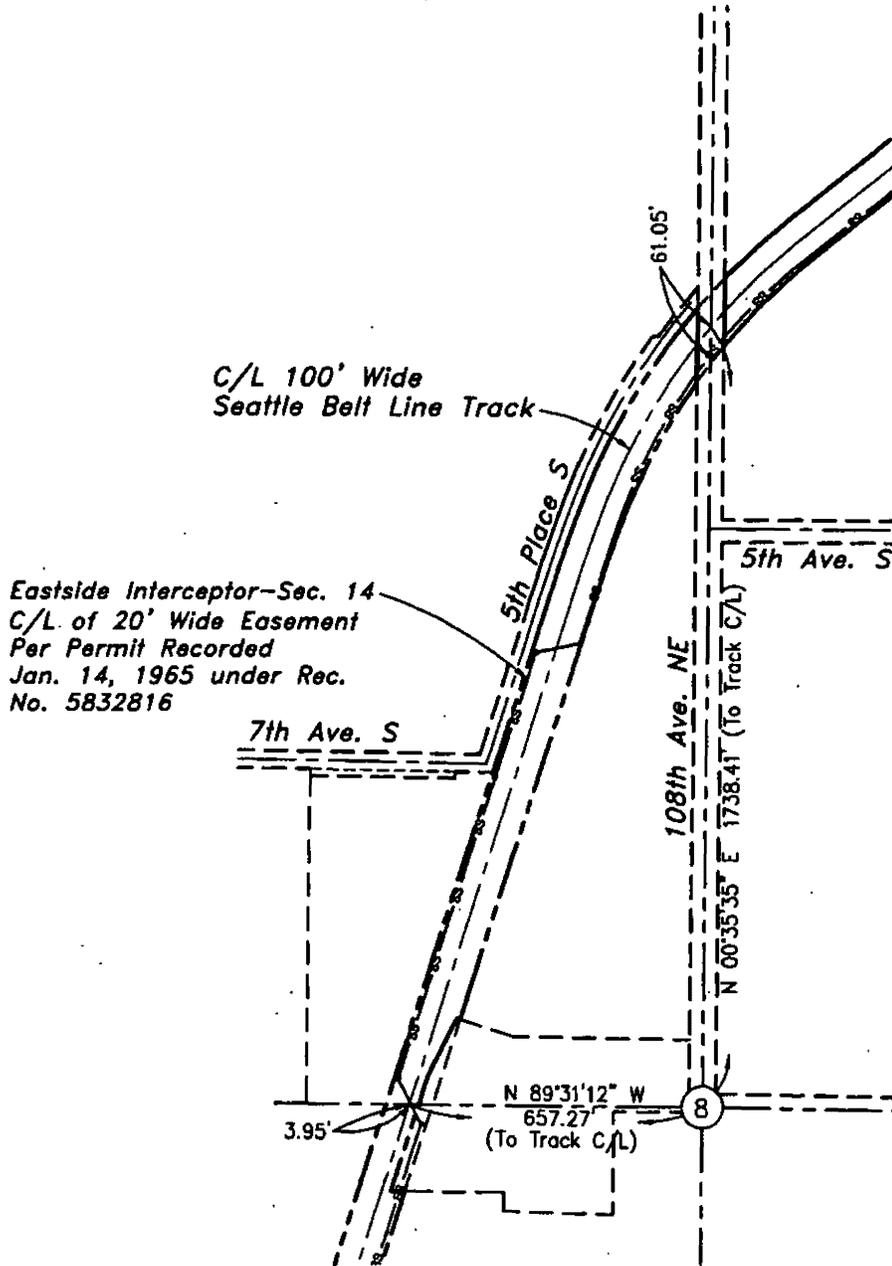
<b>True NORTH</b> LAND SURVEYING, INC. 815 S. Wedder Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date:	5-06-11	<b>Exhibit</b>  Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor
	Scale:	1" = 400'	
	Job No.	J10-64.00	

SW 1/4, SEC. 8, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



<b>True NORTH</b> LAND SURVEYING, INC. 815 S. Walker Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date:	5-06-11	Exhibit  Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor
	Scale:	1" = 400'	
	Job No.	J10-64.00	

NW 1/4, SEC. 08, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



Sheet 20 of 34

**True**  
**NORTH**  
LAND SURVEYING, INC.

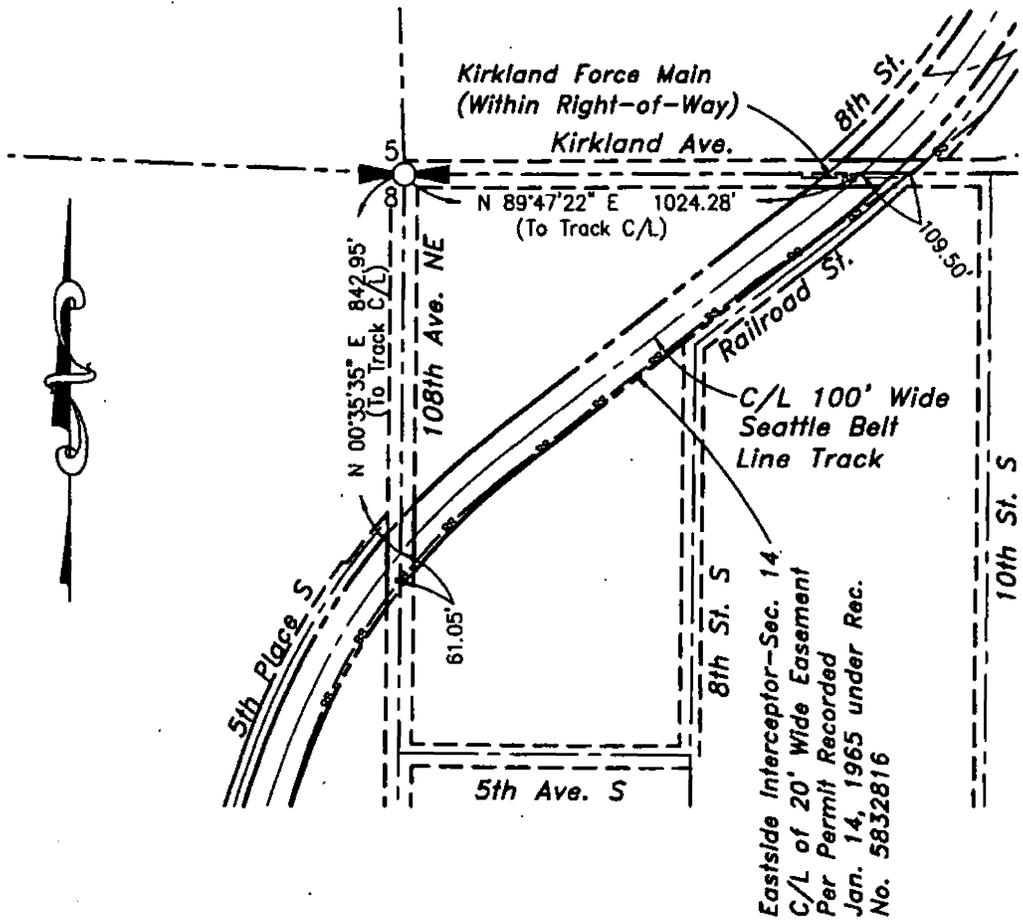
615 S. Waller Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0800

Date:  
5-06-11  
Scale:  
1" = 400'  
Job No.  
J10-64.00

Exhibit

Existing Sewer Easement  
BNSF Eastside Rail Corridor - Eastside Interceptor

NE 1/4, SEC. 8, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



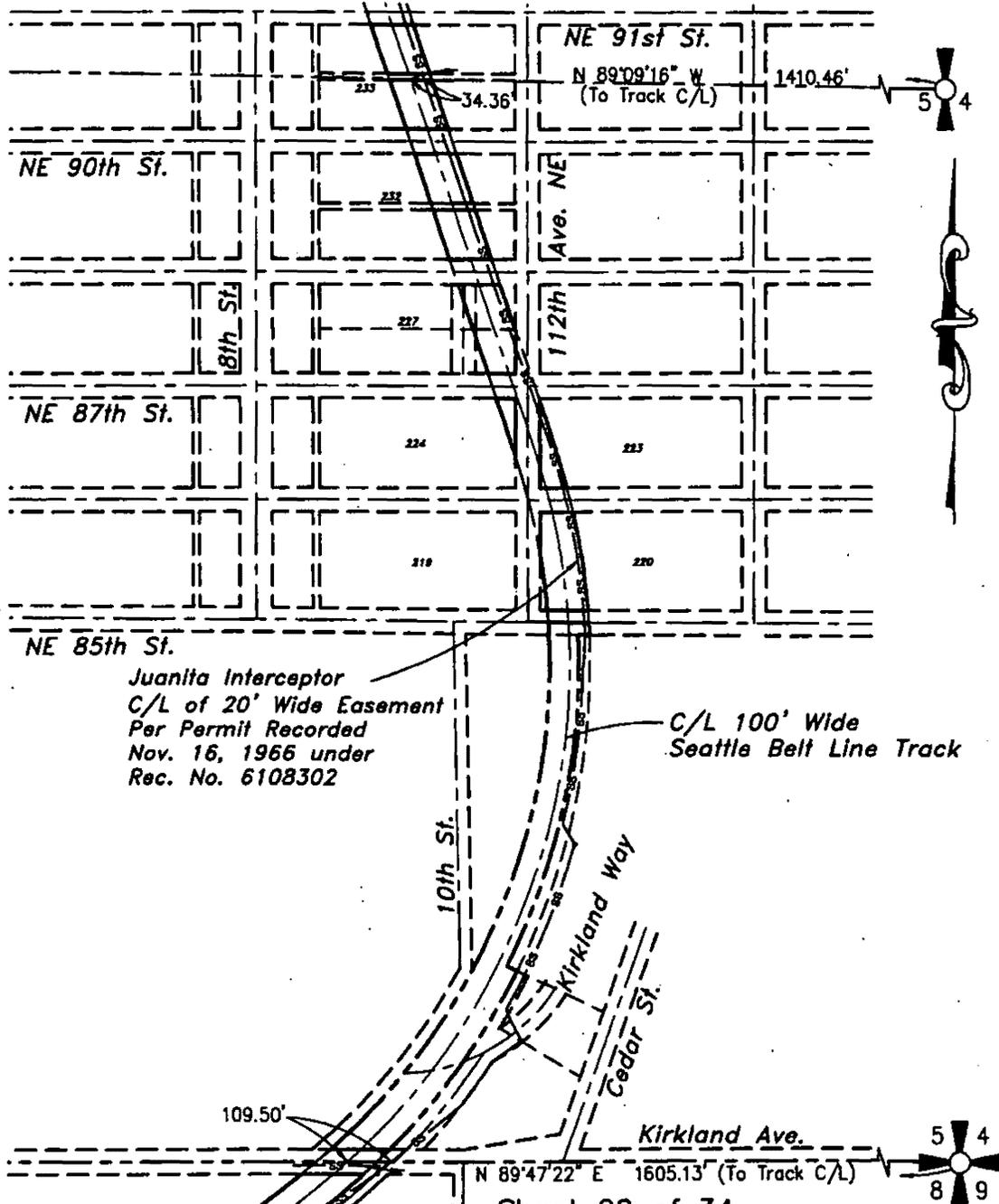
Sheet 21 of 34

**True NORTH**  
LAND SURVEYING, INC.  
815 S. Water Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0800

Date: 5-06-11  
Scale: 1" = 400'  
Job No. J10-64.00

**Exhibit**  
Existing Sewer Easement  
BNSF Eastside Rail Corridor - Eastside Interceptor

SE 1/4, SEC. 5, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



Sheet 22 of 34

**True NORTH**  
LAND SURVEYING, INC.

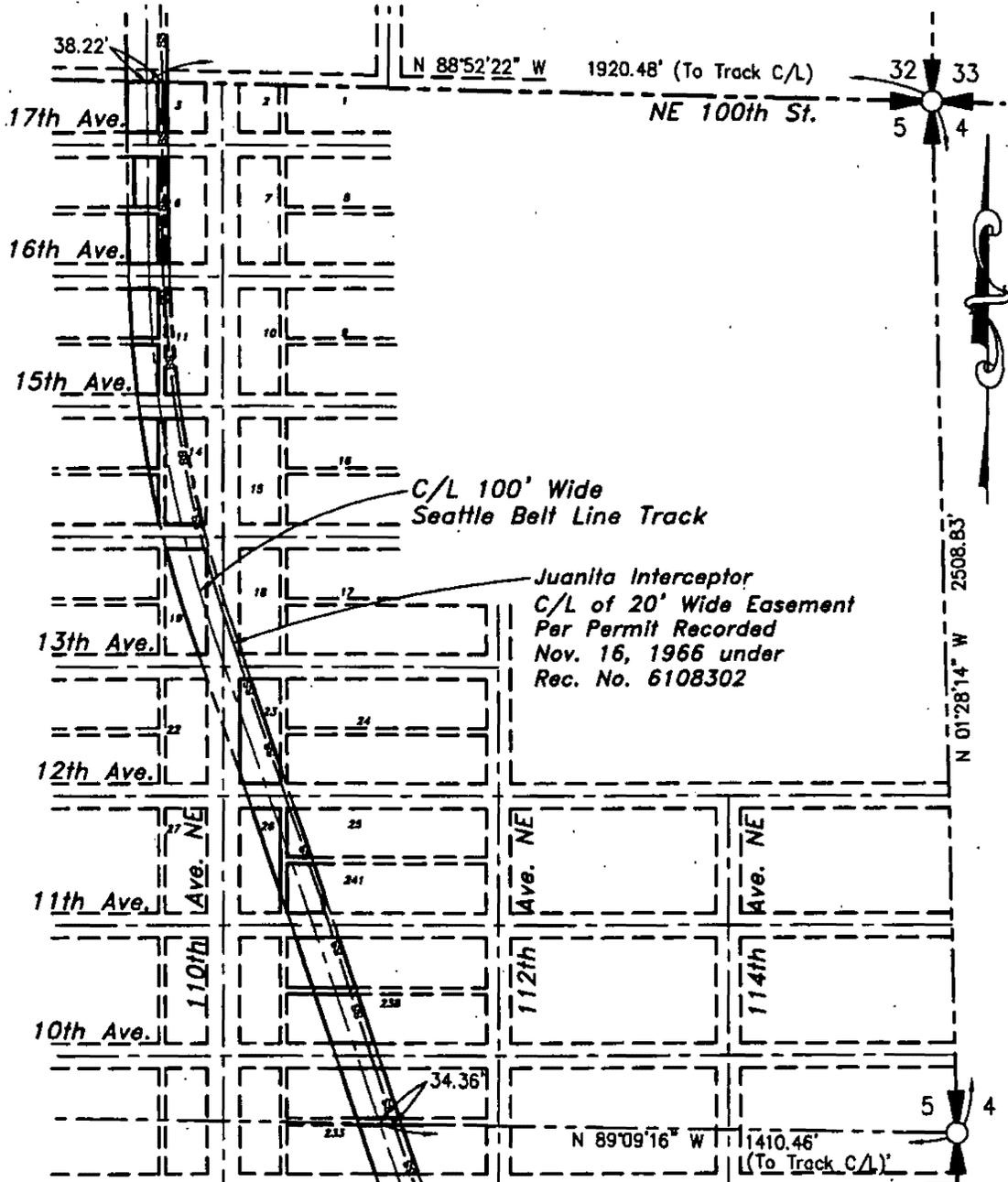
615 S. Waller Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0800

Date:  
5-06-11  
Scale:  
1" = 400'  
Job No.  
110-64.00

Exhibit

Existing Sewer Easement  
BNSF Eastside Rail Corridor - Juanita Interceptor

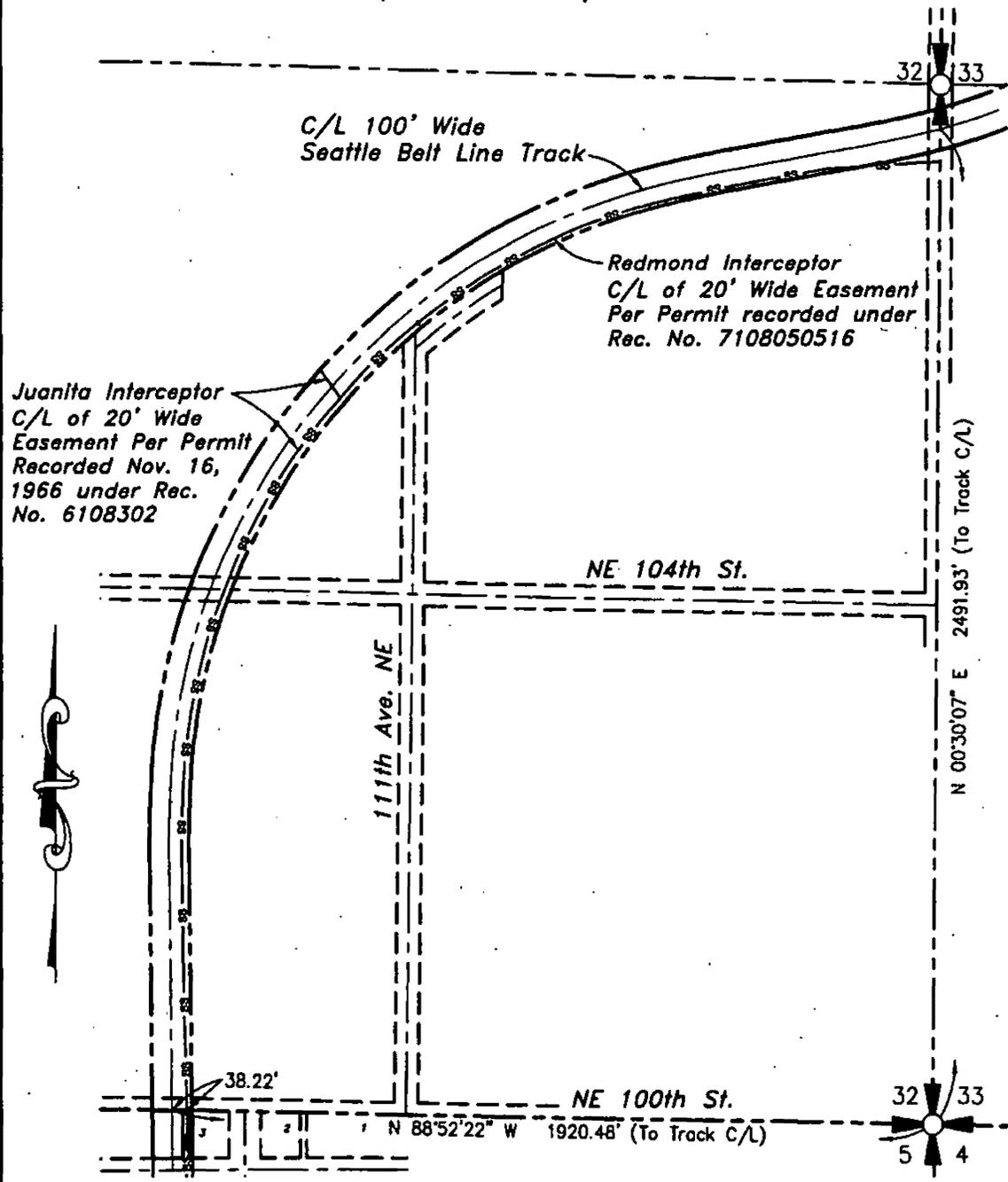
NE 1/4, SEC. 5, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



Sheet 23 of 34

<p><b>True NORTH</b> LAND SURVEYING, INC.</p> <p>816 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800</p>	Date:	5-06-11	<p><b>Exhibit</b></p> <p>Existing Sewer Easement</p> <p>BNSF Eastside Rail Corridor - Juanita Interceptor</p>
	Scale:	1" = 400'	
	Job No.:	J10-64.00	

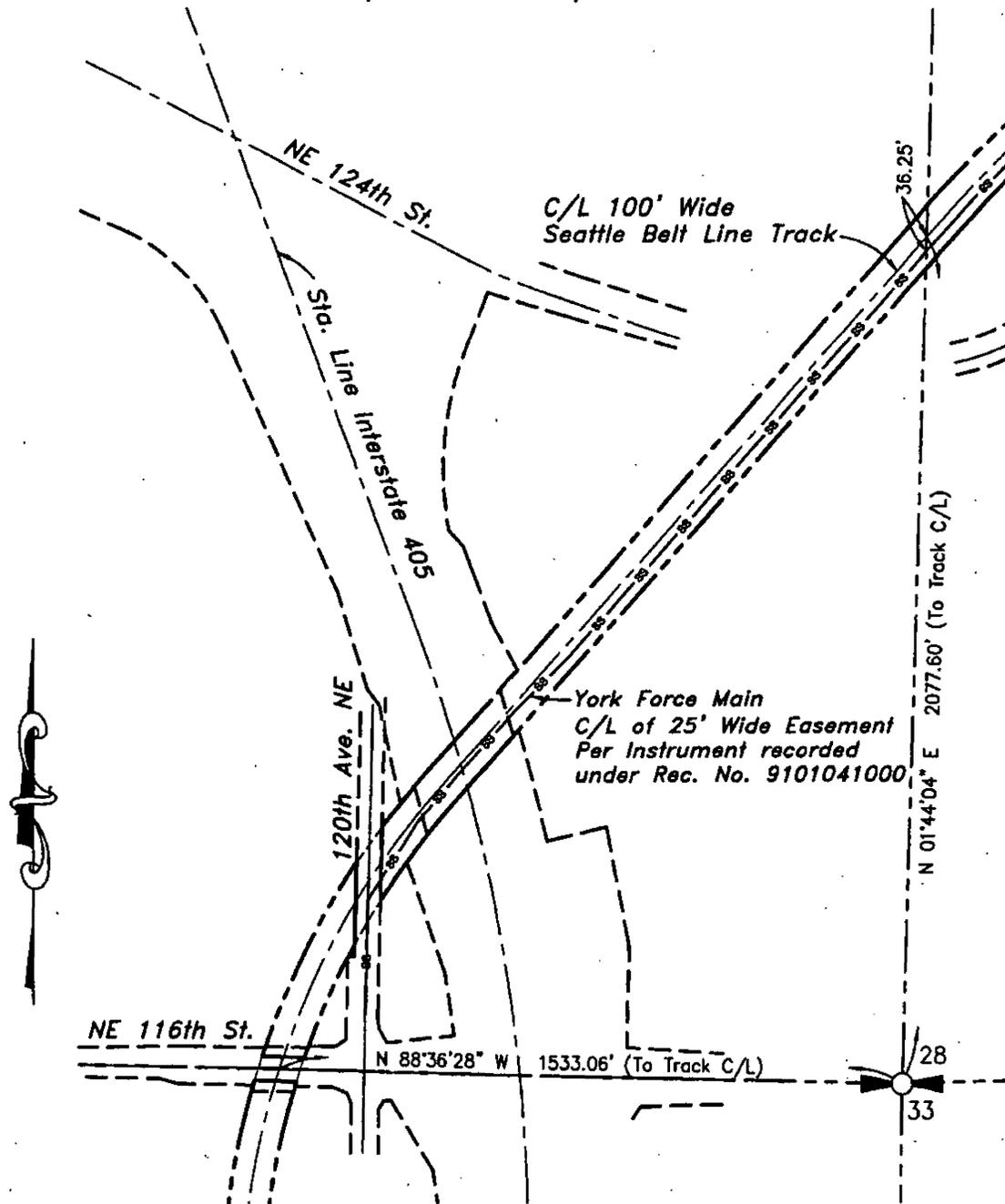
SE 1/4, SEC. 32, T 26 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



Sheet 24 of 34

<p><b>True NORTH</b> LAND SURVEYING, INC.</p> <p>615 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800</p>	Date:	5-06-11	<p><b>Exhibit</b></p> <p>Existing Sewer Easement</p> <p>BNSF Eastside Rail Corridor - Juanita &amp; Redmond Interceptor</p>
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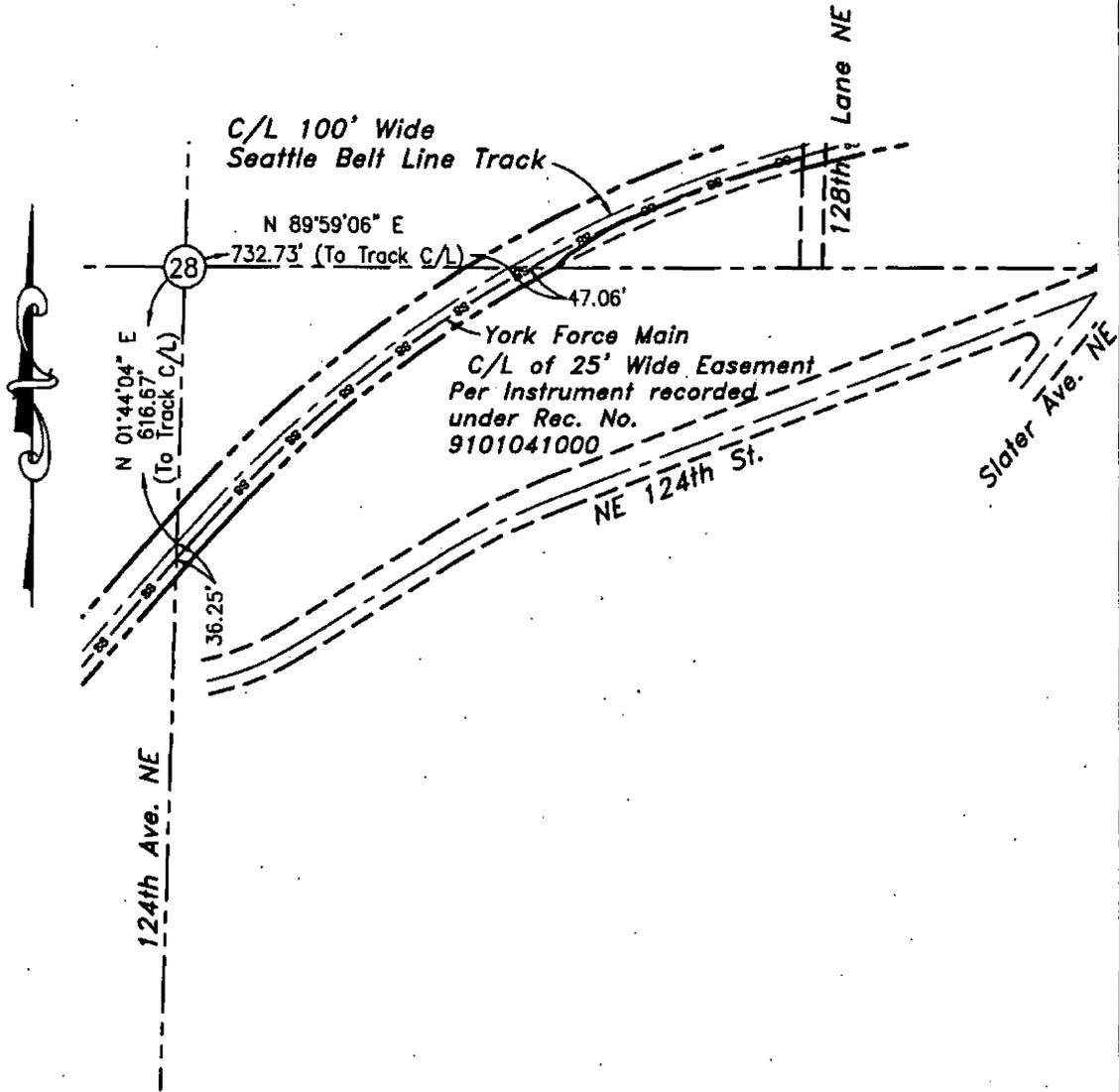
SW 1/4, SEC. 28, T 26 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



Sheet 25 of 34

<p><b>True NORTH</b> LAND SURVEYING, INC.</p> <p>815 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800</p>	Date:	5-06-11	<p><b>Exhibit</b></p> <p>Existing Sewer Easement</p> <p>BNSF Eastside Rail Corridor - York Force Main</p>
	Scale:	1" = 400'	
	Job No.	J10-64.00	

SE 1/4, SEC. 28, T 26 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



Sheet 26 of 34

**True**  
**NORTH**  
LAND SURVEYING, INC.

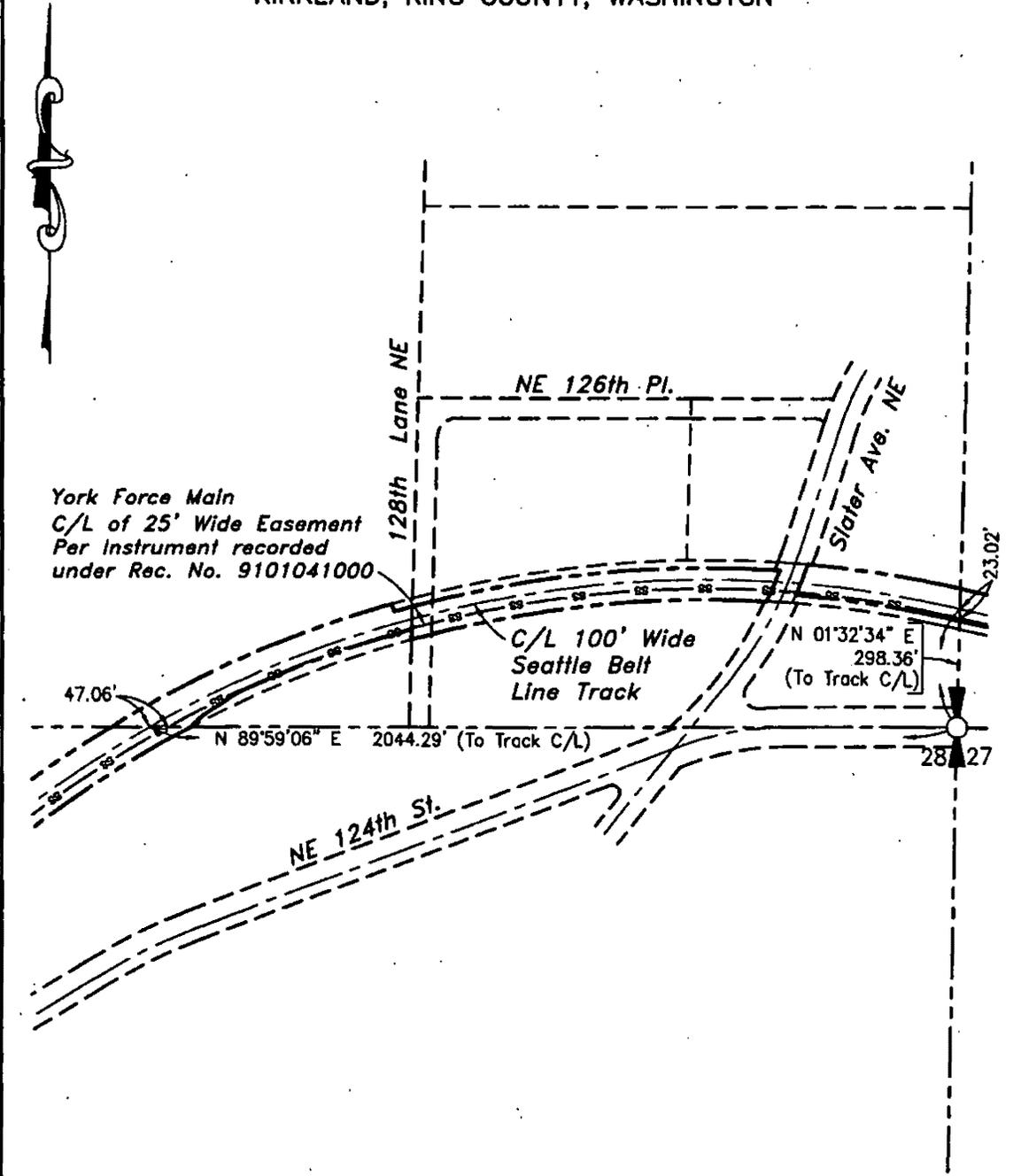
815 S. Weller Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0800

Date:  
5-06-11  
Scale:  
1" = 400'  
Job No.  
J10-64.00

**Exhibit**

Existing Sewer Easement  
BNSF Eastside Rail Corridor - York Force Main

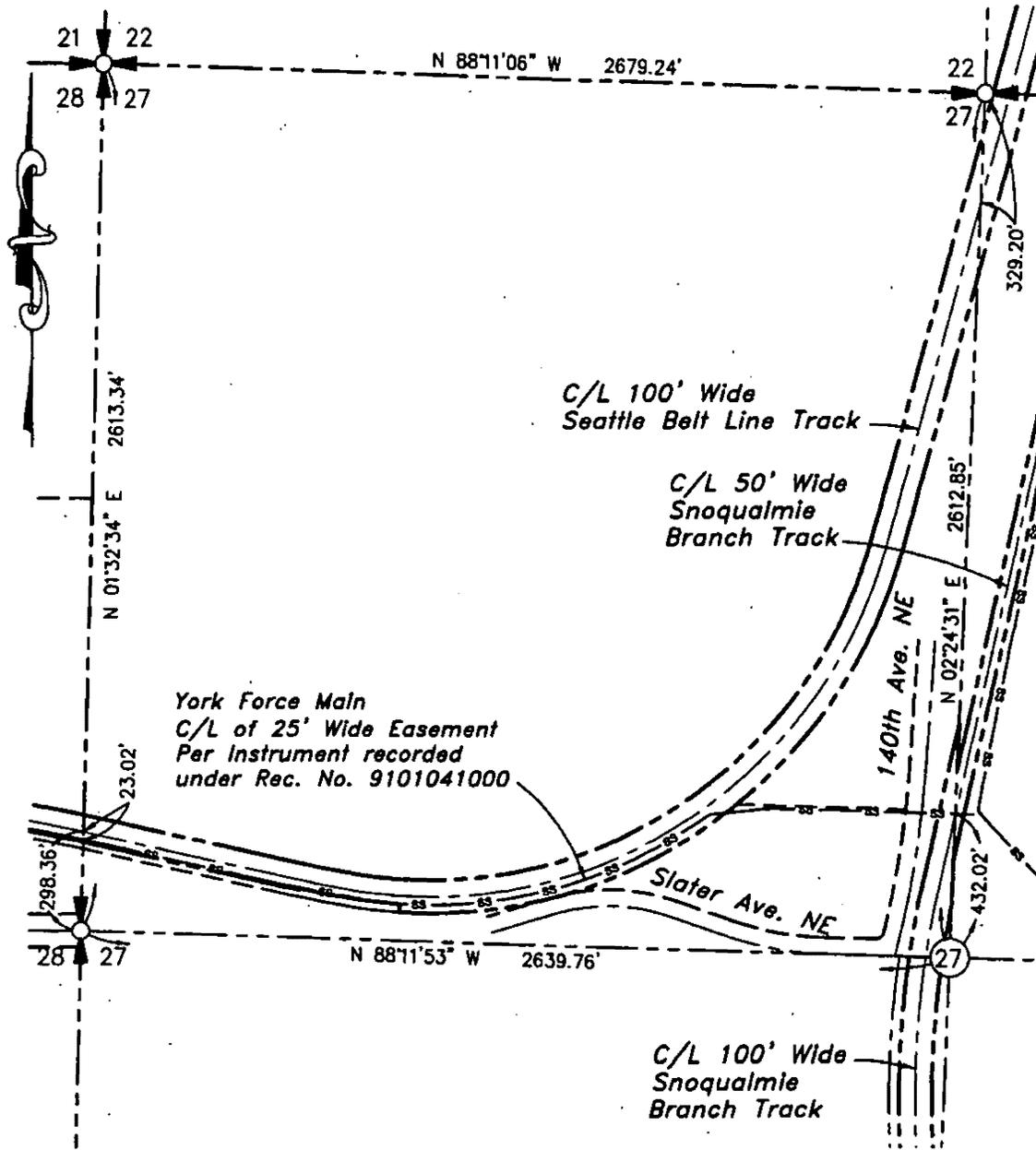
NE 1/4, SEC. 28, T 26 N, R 5 E, W.M.  
 KIRKLAND, KING COUNTY, WASHINGTON



Sheet 27 of 34

<b>True NORTH</b> LAND SURVEYING, INC.	815 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date: 5-06-11	<b>Exhibit</b>  Existing Sewer Easement BNSF Eastside Rail Corridor - York Force Main
		Scale: 1" = 400'	
		Job No. J10-64.00	

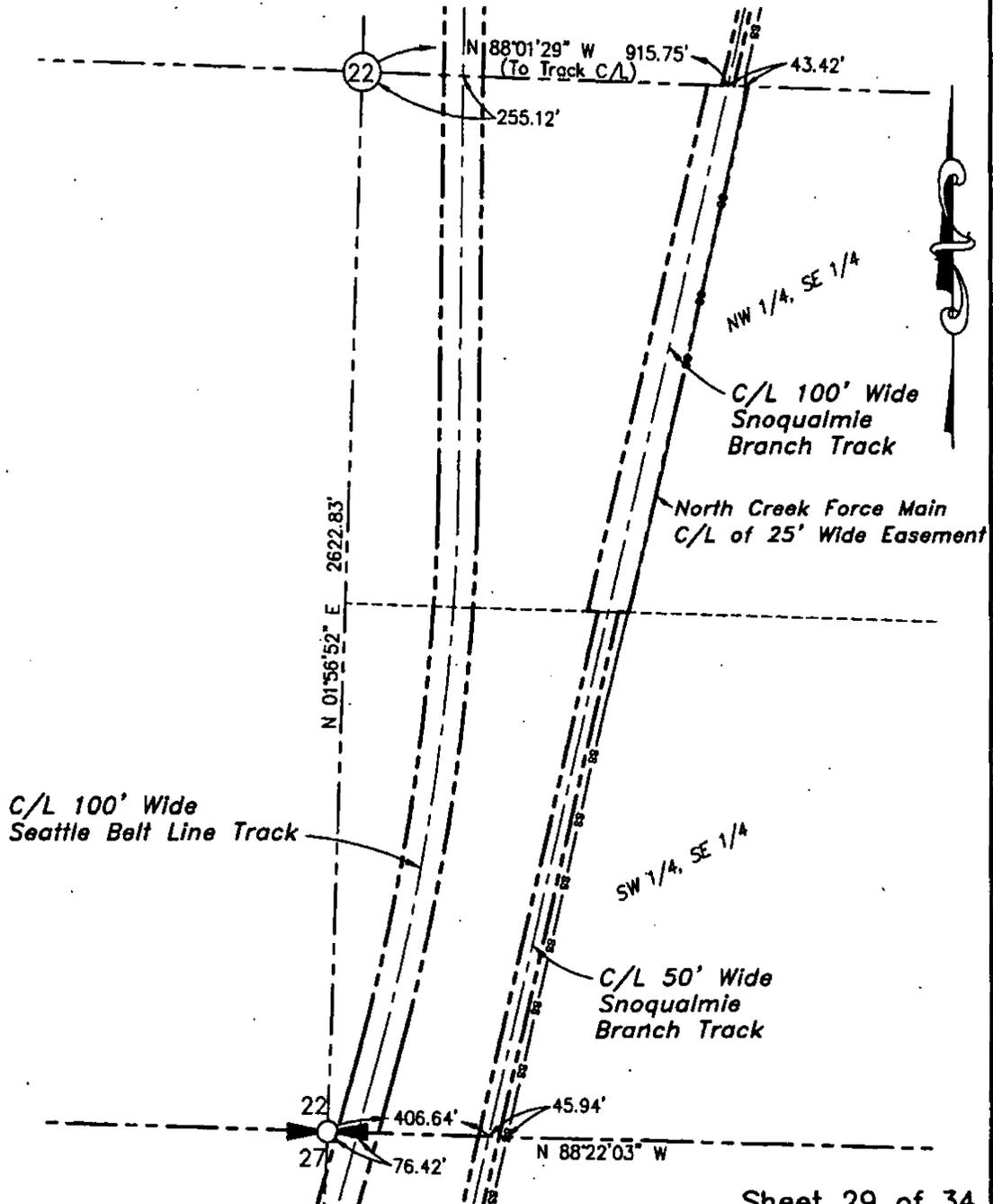
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 REDMOND, KING COUNTY, WASHINGTON



Sheet 28 of 34

<p>815 S. Weber Street          Suite 200          Seattle, WA 98104-3023          206.332.0900</p>	Date:	5-06-11	<b>Exhibit</b>  Existing Sewer Easement BNSF Eastside Rail Corridor - York Force Main
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	Job No.:	J10-64.00	

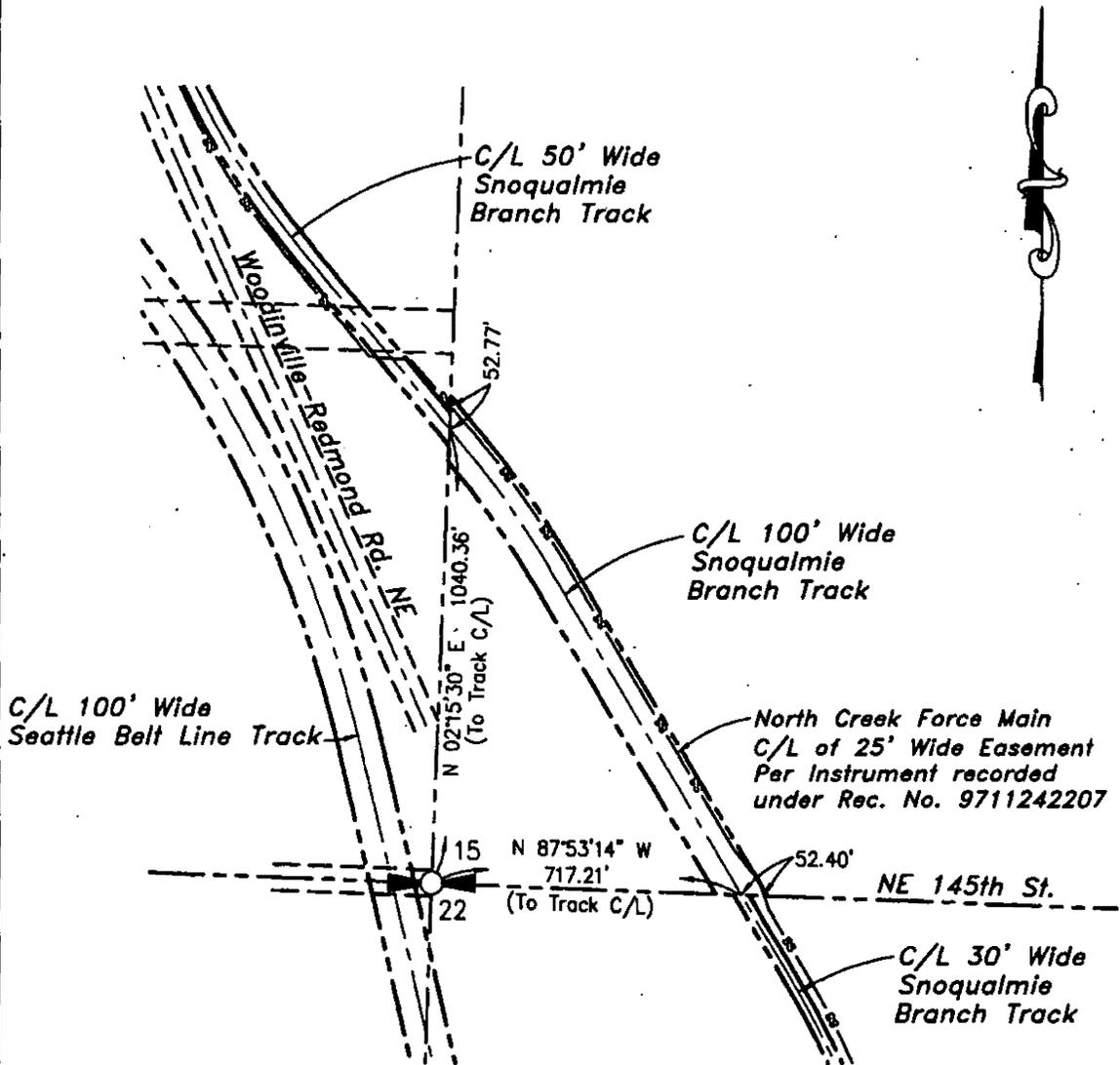
SE 1/4, SEC. 22, T 26 N, R 5 E, W.M.  
 REDMOND, KING COUNTY, WASHINGTON



Sheet 29 of 34

<p><b>True NORTH</b>                  LAND SURVEYING, INC.</p>	<p>815 S. Waller Street                  Suite 200                  Seattle, WA 98104-3023                  206.332.0800</p>	Date:	5-06-11	<p><b>Exhibit</b>                  Existing Sewer Easement                  BNSF Eastside Rail Corridor - North Creek Force Main</p>
		Scale:	1" = 400'	
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SE 1/4, SEC. 15, T 26 N, R 5 E, W.M.  
 WOODINVILLE, KING COUNTY, WASHINGTON



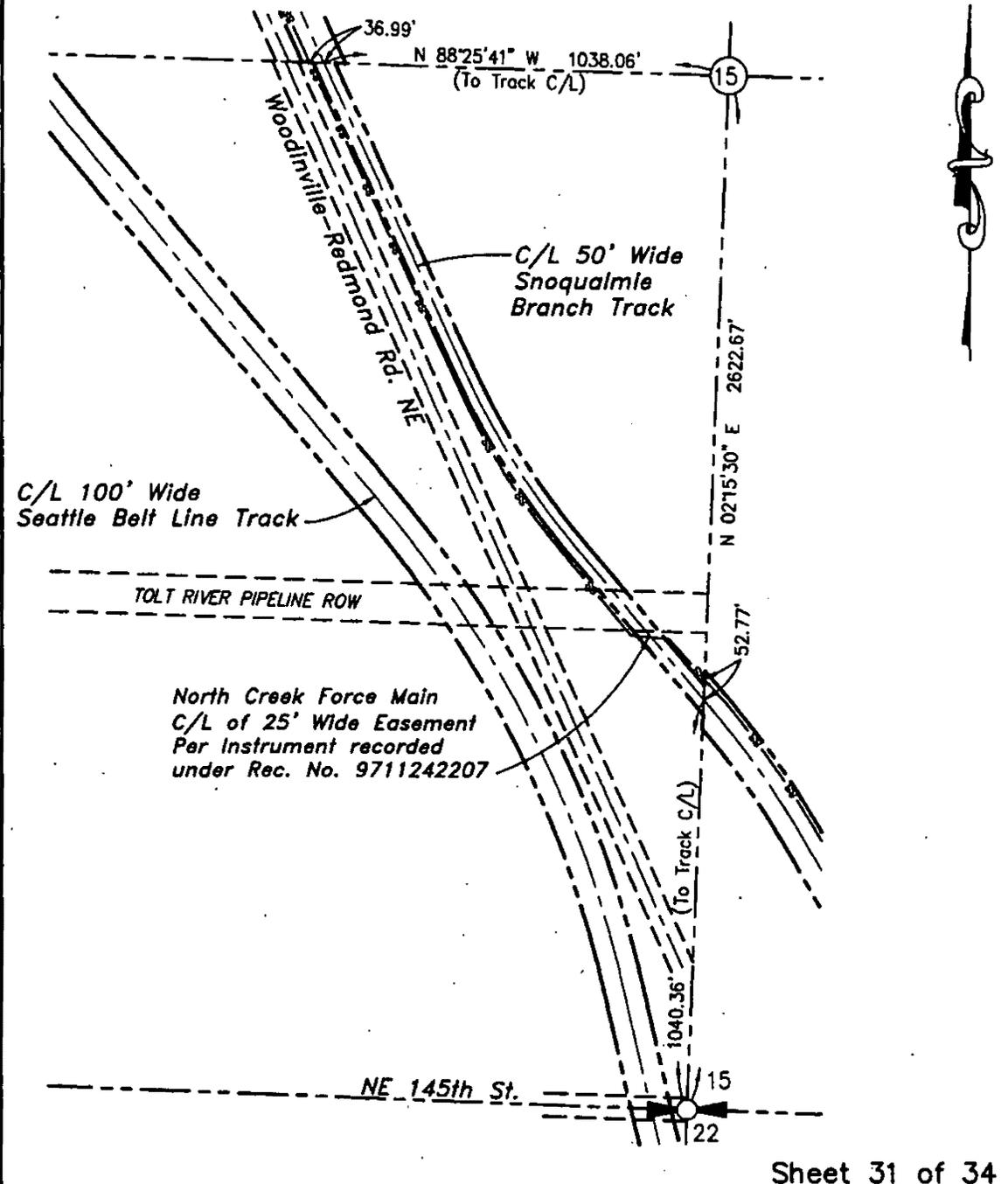
Sheet 30 of 34

**True NORTH**  
 LAND SURVEYING, INC.  
 815 S. Weller Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

Date: 5-06-11  
 Scale: 1" = 400'  
 Job No. J10-64.00

**Exhibit**  
 Existing Sewer Easement  
 BNSF Eastside Rail Corridor - North Creek Force Main

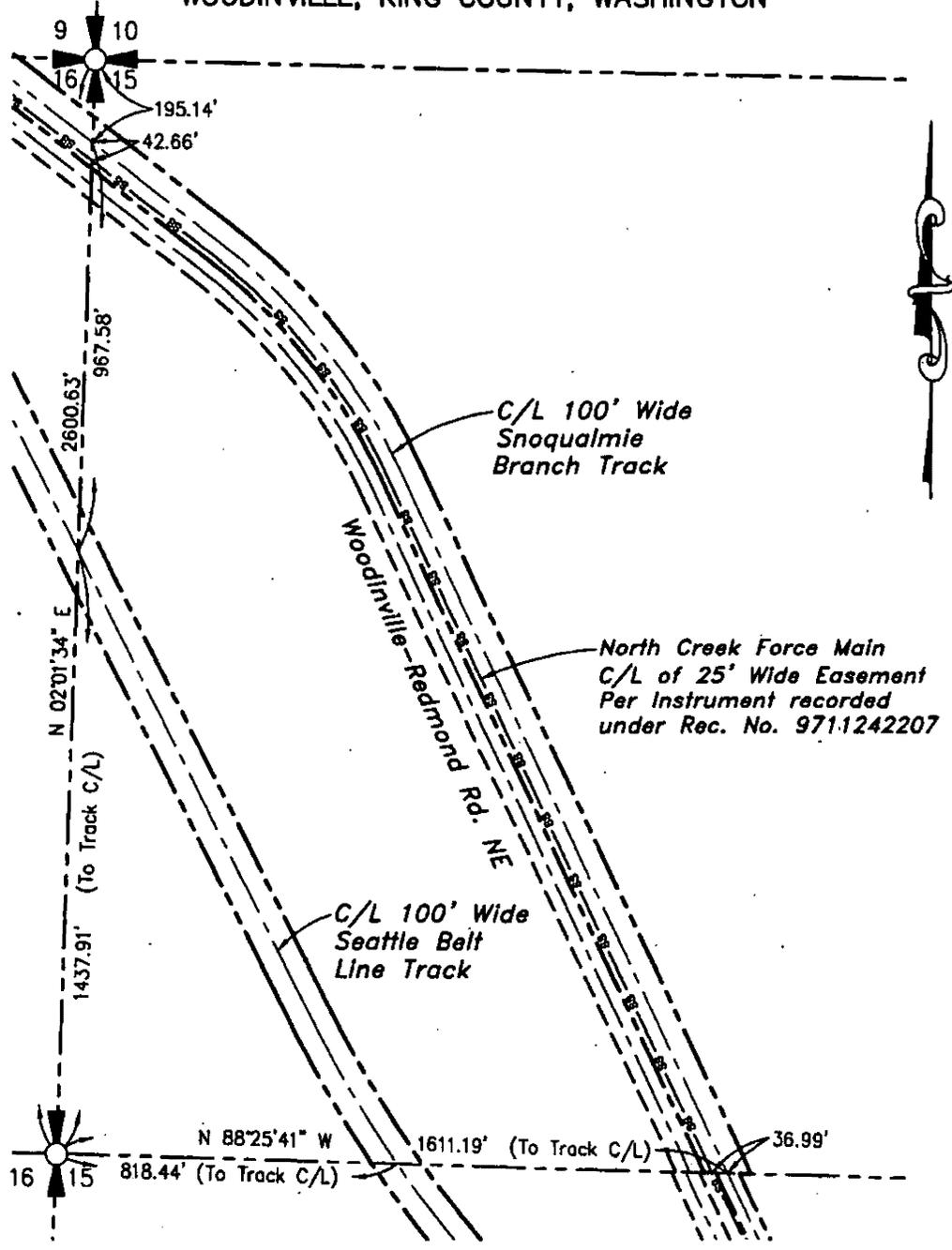
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WOODINVILLE, KING COUNTY, WASHINGTON



Sheet 31 of 34

<p><b>True NORTH</b> LAND SURVEYING, INC.</p> <p>815 S. Walter Street Suite 200 Seattle, WA 98104-3023 206.332.0800</p>	Date:	5-06-11	<p><b>Exhibit</b></p> <p>Existing Sewer Easement</p> <p>BNSF Eastside Rail Corridor - North Creek Force Main</p>
	Scale:	1" = 400'	
	Job No.	J10-64.00	

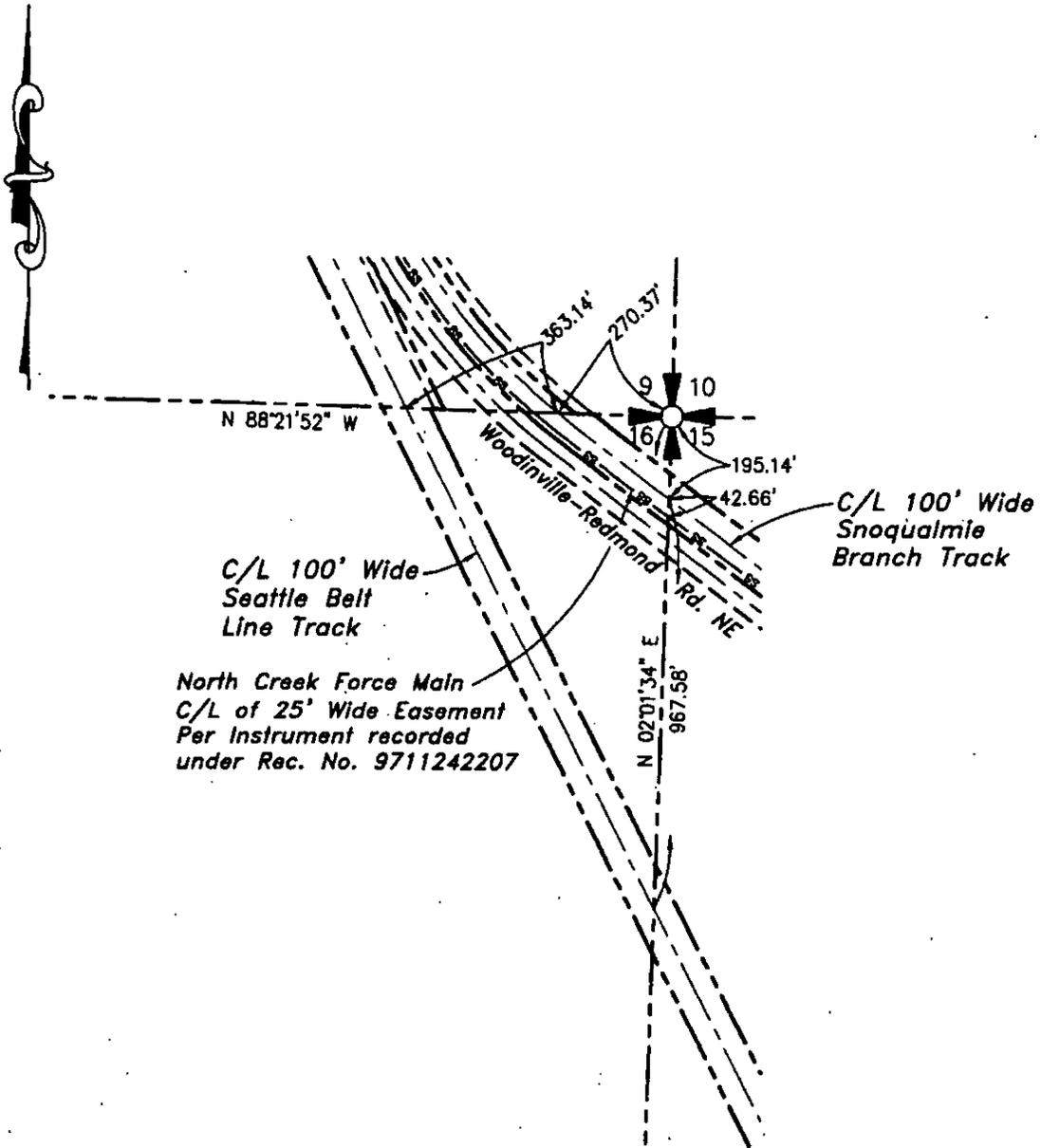
NW 1/4, SEC. 15, T 26 N, R 5 E, W.M.  
WOODINVILLE, KING COUNTY, WASHINGTON



Sheet 32 of 34

<p><b>True NORTH</b> LAND SURVEYING, INC.</p> <p>815 S. Water Street Suite 200 Seattle, WA 98104-3023 206.332.0800</p>	Date:	5-06-11	<p><b>Exhibit</b></p> <p>Existing Sewer Easement</p> <p>BNSF Eastside Rail Corridor - North Creek Force Main</p>
	Scale:	1" = 400'	
	Job No.	J10-64.00	

NE 1/4, SEC. 16, T 26 N, R 5 E, W.M.  
WOODINVILLE, KING COUNTY, WASHINGTON



Sheet 33 of 34

**True**  
**NORTH**  
LAND SURVEYING, INC.

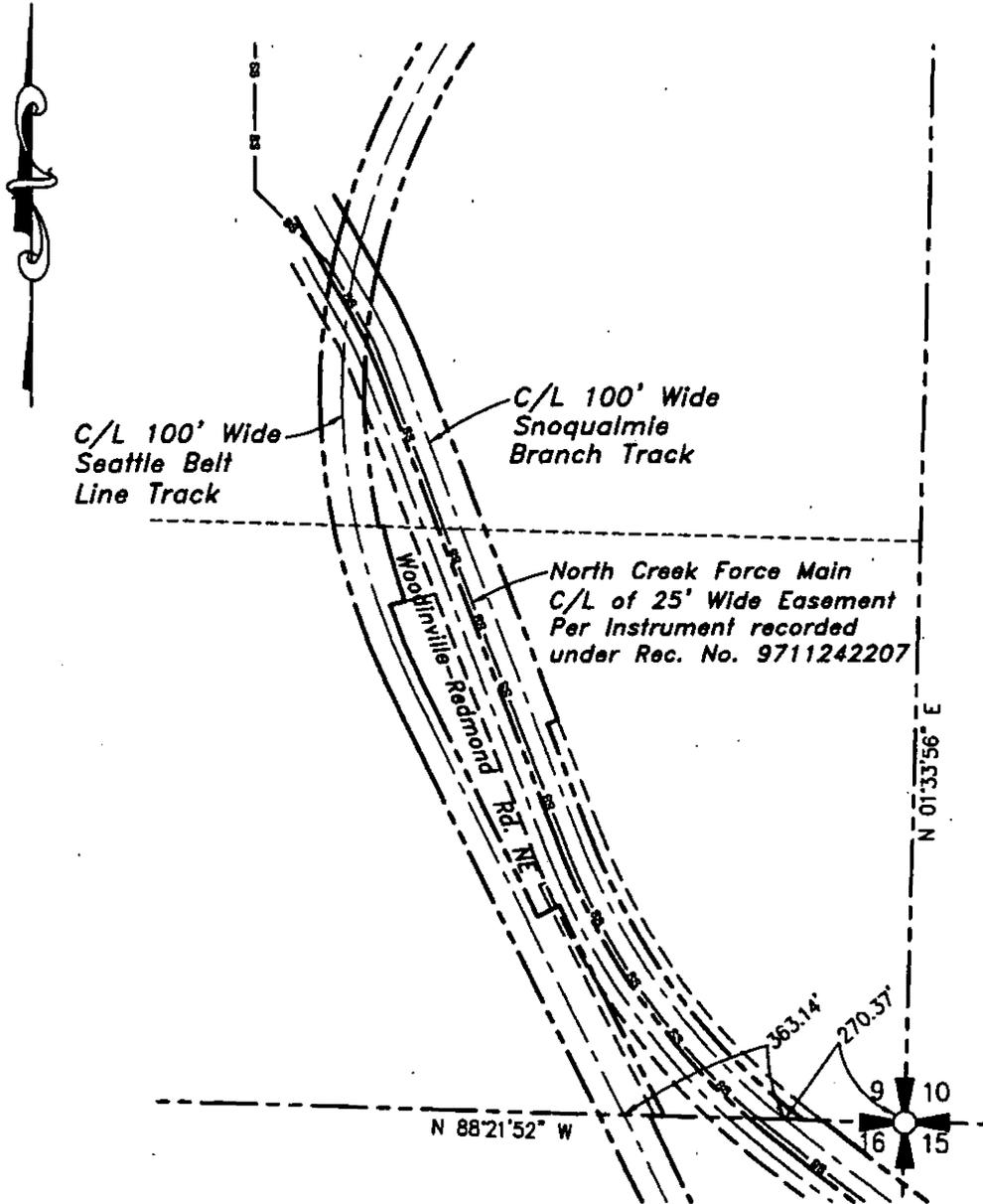
815 S. Weller Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0800

Date:	3-06-11
Scale:	1" = 400'
Job No.	J10-64.00

Exhibit

Existing Sewer Easement  
BNSF Eastside Rail Corridor - North Creek Force Main

SE 1/4, SEC. 9, T 26 N, R 5 E, W.M.  
 WOODINVILLE, KING COUNTY, WASHINGTON



Sheet 34 of 34

<b>True NORTH</b> LAND SURVEYING, INC. 815 S. Water Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date:	5-06-11	<b>Exhibit</b>  Existing Sewer Easement BNSF Eastside Rail Corridor - North Creek Force Main
	Scale:	1" = 400'	
	Job No.	J10-64.00	

**EXHIBIT D**  
**Wastewater Instruments**

## WTD Facilities in Eastside Rail Corridor

TrueNorth Exhibit #	Section-Township-Range	Facility Name	Permit #	Easement #
1	SE 31-24-05	ESI 3		
2	NW 32-24-05	ESI 4	5874614 93923	
3	SW 29-24-05	ESI 4	5874614 95126	7301190607
4	SE 29-24-05	ESI 4	5874614	
5	NE 29-24-05	ESI 4	5874614	
6	NW 09-24-05	ESI 9 and Sweyolocken Force Main Crossing	93095 (Xing) 5879754	
7	SW 04-24-05	ESI 9	93095	
8	NW 04-24-05	ESI 11	5879616	
9	SW 33-25-05	ESI 11 & 12	5832816 5879616	
10	NW 33-25-05	ESI 12	5832816 5832817	
11	SW 28-25-05	ESI 13	5832816	
12	NW 28-25-05	ESI 13 & Lake Hills Line Crossing	5832816 5903146 (Xing)	
13	SW 21-25-05	ESI 13	5832816	
14	SE 20-25-05	ESI 14	5832816 5832817	
15	NE 20-25-05	ESI 14	5832816 5832817	
16	NW 20-25-05	ESI 14	5832816 5832817	
17	SW 17-25-05	ESI 14	5832816	
18	NW 17-25-05	ESI 14	5832816	
19	SW 08-25-05	ESI 14	5832816	
20	NW 08-25-05	ESI 14	5832816	
21	NE 08-25-05	ESI 14 & Kirkland Force Main Crossing	5832816 95260 (Xing)	
22	SE 05-25-05	Juanita Interceptor	6108302	
23	NE 05-25-05	Juanita Interceptor	6108302	
24	SE 32-26-05	Juanita Interceptor & Juanita Force Main & Redmond Interceptor	6108302 (J) 100225 (JFM) 7108050516 (R)	
25	SW 28-26-05	York Force Main		9101041000
26	SE 28-26-05	York Force Main		9101041000
27	NE 28-26-05	York Force Main		9101041000
28	NW 27-26-05	York Force Main		9101041000
29	SE 22-26-05	York Force Main		
30	SE 15-26-05	North Creek Force Main		9711242207
31	SW 15-26-05	North Creek Force Main		9711242207
32	NW 15-26-05	North Creek Force Main		9711242207
33	NE 16-26-05	North Creek Force Main		9711242207
34	SE 09-26-05	Woodinville Pump Station & North Creek Force Main	7108050520 7108050514	7111190552 9711242207

**Exhibit C-2**

## EXHIBIT E

### Title Commitments

First American Title Order Numbers and last updated Dates:

1157758/ Last Updated February 5, 2013  
1157759/ Last Updated February 5, 2013  
1157761/ Last Updated February 5, 2013  
1157762/ Last Updated February 5, 2013  
1157763/ Last Updated February 5, 2013  
1157764/ Last Updated February 5, 2013  
1157765/ Last Updated February 5, 2013  
1157766/ Last Updated February 5, 2013  
1157767/ Last Updated February 5, 2013  
1157768/ Last Updated February 5, 2013  
1157781/ Last Updated February 5, 2013  
1157782/ Last Updated February 5, 2013  
1157783/ Last Updated February 5, 2013  
1157786/ Last Updated February 5, 2013  
1157787/ Last Updated February 5, 2013  
1157788/ Last Updated February 5, 2013  
1157789/ Last Updated February 5, 2013  
1157790/ Last Updated February 5, 2013  
1157791/ Last Updated February 5, 2013  
1157792/ Last Updated February 5, 2013  
1157793/ Last Updated February 5, 2013  
1157794/ Last Updated February 5, 2013  
1157795/ Last Updated February 5, 2013  
1157796/ Last Updated February 5, 2013  
1157797/ Last Updated February 5, 2013  
1157798/ Last Updated February 5, 2013  
1157799/ Last Updated February 5, 2013  
1157800/ Last Updated February 5, 2013  
1157801/ Last Updated February 5, 2013  
1157802/ Last Updated January 25, 2013

# **EXHIBIT C**

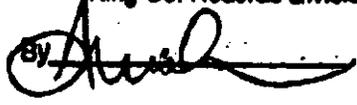
1ST AM  
PAK1147620  
98



20120411001174  
FIRST AMERICAN EAS 159.00  
PAGE-001 OF 098  
04/11/2012 15:10  
KING COUNTY, WA

After Recording Return To:  
Central Puget Sound Regional Transit Authority  
Union Station  
401 South Jackson Street  
Seattle, Washington 98104-2826  
Attn: Real Estate Division

EXCISE TAX NOT REQUIRED  
King Co. Records Division

By  Deputy

Amber Lee

HIGH CAPACITY TRANSPORTATION EASEMENT AGREEMENT  
(WOODINVILLE SUBDIVISION RAIL CORRIDOR)

GRANTOR: PORT OF SEATTLE

GRANTEE: CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

Legal Description:

Abbreviated form: Portions of Sections 9, 10, 15, 16, 22, 27, 28, 32, 33 of T26N, R5E; and  
Portions of Sections 5, 8, 17, 20, 21, 28, 33, T25N, R5E; and  
Portions of Sections 4, 9, 16, 17, 20, 29, 31, 32, T24N, R5E, W.M.  
Portion of Section 6, T23N, R5E

Additional legal on Exhibit A of document

Assessor's Property Tax Parcel Account Number(s):

092605-9043 (ptn); 162605-9070; 152605-9023 (ptn); 222605-9030 (ptn); 272605-9019 (ptn);  
282605-9027; 332605-9024; 322605-9030; 398270-1763; 388690-3065; 052505-9033; 082505-  
9059; 172505-9053; 202505-9034; 212505-9020; 332505-9029 (ptn); 042405-9024; 092405-  
9032; 162405-9033; 172405-9008; 202405-9014; 292405-9005; 322405-9005; 312405-9004;  
062305-9005;

Reference number(s) of Related Document(s): NONE

HIGH CAPACITY TRANSPORTATION EASEMENT AGREEMENT  
(WOODINVILLE SUBDIVISION RAIL CORRIDOR)

THIS HIGH CAPACITY TRANSPORTATION EASEMENT AGREEMENT (WOODINVILLE SUBDIVISION RAIL CORRIDOR) (the "Easement Agreement") is entered into as of the 14th day of APRIL, 2012 ("Effective Date") by the PORT OF SEATTLE, a Washington municipal corporation ("Port") in favor of CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority of the State of Washington and its successors and assigns as owners or operators of High Capacity Transit Facilities as hereinafter defined ("Sound Transit") with reference to the following facts:

RECITALS

A. Pursuant to Purchase and Sale Agreement and Donation Agreement, each dated as of May 12, 2008, by and among BNSF Railway Company, a Delaware corporation ("BNSF"), King County, a political subdivision of the State of Washington ("King County") and the Port (collectively, the "Acquisition Agreements"), the Port acquired an approximately one hundred (100) foot wide railroad corridor with rails in place, commonly known as the Woodville Subdivision, portions of which are more particularly described on Exhibit A attached hereto and depicted on the map attached hereto as Exhibit B and by this reference incorporated herein (the "Property") from BNSF.

B. The Property is "railbanked" in accordance with 16 U.S.C. 1247(d) to protect this rail transportation corridor and preserve it for future reactivation of rail service, and to allow interim regional recreational trail and other public uses and transportation uses while the Property is railbanked, including, but not limited to, rail or other transportation purposes other than interstate freight rail service ("Transportation Use"). King County was approved as an Interim Trail User for the Property by the Surface Transportation Board ("STB") for the purpose of "railbanking" the Property. King County, as the Interim Trail User, is subject to certain legal obligations related to the Property referred to herein as the "Railbanking Obligations".

C. The Port and King County entered into that certain Public Multipurpose Easement dated as of December 18, 2009 (the "Multipurpose Easement"), which among other things, sets forth King County's Railbanking Obligations with respect to the Property and grants King County certain rights to acquire, develop, maintain and operate a public hard or soft-surface regional trail for public pedestrian, bicycle or other non-motorized uses ("Trail") over portions of the Property in its capacity as the Interim Trail User for the Property, subject to the terms and conditions set forth in the Multipurpose Easement so long as such Trail will not prevent the use of the Property for Transportation Use outside of the Trail Area, and will be designed and developed to accommodate such Transportation Use. It is the express intention of the Parties to this Easement Agreement that the Property be used for regional recreational trail and other public uses and Transportation Uses and that the development of the Trail as authorized under the Multipurpose Easement not

prevent simultaneous Transportation Uses on the Property, but rather be designed and developed to accommodate such Transportation Uses.

D. On November 5, 2009, the Port entered into a Memorandum of Understanding (the "MOU") with King County, Sound Transit, Cascade Water Alliance, Puget Sound Energy and the City of Redmond (collectively, the "Regional Partners") setting forth the mutual understanding of the Regional Partners for the negotiation of future transactions whereby the Regional Partners would purchase interests in the Property from the Port for regional trail, Transportation Use, utility and other municipal purposes subject to the Railbanking Obligations.

E. Consistent with the MOU, the City of Redmond and the Port entered into a Real Estate Purchase and Sale Agreement dated June 22, 2010, whereby Redmond agreed to purchase a portion of the Property commonly referred to the Redmond Spur located within the city limits of Redmond (the "City Segment") and Redmond agreed to convey to Sound Transit an easement for transportation purposes in the City Segment at the time Sound Transit closes on a purchase of interests in the remaining portions of the Property owned by the Port.

F. Consistent with the MOU, King County is expected to acquire the Port's underlying interest in the Property contemporaneously or soon after Sound Transit's acquisition of this Easement Agreement. At the time King County acquires the underlying interest, the Multipurpose Easement will terminate through the doctrine of merger. The Port, Sound Transit and King County intend for the purposes of the Multipurpose Easement to be carried forward in the Easement Agreement, including without limitation through the provisions in Exhibit C hereto.

G. Sound Transit is a regional transit authority of the State of Washington created pursuant to chapters 81.104 and 81.112 RCW, with all powers necessary to implement a High Capacity Transit System within its boundaries in King, Pierce and Snohomish Counties, which High Capacity Transit System is integrated and coordinated with public transportation services currently provided by other public agencies. Sound Transit proposes to construct certain light rail facilities within the Bellevue Property (as defined in the Purchase and Sale Agreement between the Port and Sound Transit). Future regional transportation planning may result in recommendations for the development of additional high capacity transportation projects on the Property. Sound Transit desires to acquire a perpetual non-exclusive easement in, on, under, over, across and through the Property for the purpose of installation, construction, use, operation, maintenance and repair of one or more High Capacity Transit Facilities to be operated as part of Sound Transit's High Capacity Transit System. Use of the Property for construction and operation of one or more High Capacity Transit Facilities is a Transportation Use as defined under the Multipurpose Easement and this Easement Agreement, and the Port is willing to grant such an easement on the terms and conditions hereinafter set forth.

H. The Federal Transit Administration of the United States Department of Transportation has approved Sound Transit's acquisition of the easement rights set forth in this Easement Agreement as a protective acquisition of easement rights for potential future development of one or more High Capacity Transit Facilities.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### AGREEMENT

1) Recitals Incorporated; Definitions. Each of the recitals set forth above is incorporated into this Easement Agreement as though fully set forth. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in Schedule 1 attached hereto and by this reference incorporated herein. Except as otherwise expressly provided herein, all references in this Easement Agreement to the Port, King County or Sound Transit shall mean the Port, King County or Sound Transit, each solely in its capacity as owners of fee or easement interests in the Property.

2) Grant of High Capacity Transportation Easement.

A. The Port hereby grants to Sound Transit for the benefit of Sound Transit, its successors and assigns who have the right to own or operate a High Capacity Transit System and their respective officials, officers, employees, agents, contractors, subcontractors, licensees, invitees and Passengers, a perpetual non-exclusive easement (the "High Capacity Transportation Easement") appurtenant to Sound Transit's High Capacity Transit System, in, on, under, over, along, across and through the Property for high capacity transportation purposes, including the installation, construction, use, operation, inspection, maintenance, repair, replacement, enhancement, expansion, improvement or removal of one or more High Capacity Transit Facilities together with reasonable rights of access throughout the Property and for all purposes necessary, desirable or reasonably related to the development, construction or operation of a High Capacity Transit System, including placement of utilities and vaults, ingress and egress, construction, construction staging, Temporary Construction Easements and other temporary rights to use adjoining portions of the Property as may be necessary in order to use areas of the Property recorded in the real property records of King County as Easement Areas pursuant to this Easement Agreement, all according to and as more specifically allowed for under the terms of this Easement Agreement. The Easement Areas may be of varying widths; provided, however, that except where limited by topographical or physical features of the Property, the Parties intend that each Easement Area be not less than a minimum width of forty (40) feet and may exceed that width as may be necessary to accommodate stations and terminals and parking for Sound Transit, maintenance and operation-related uses associated with a High Capacity Transit Facility. Sound Transit's rights under this Easement Agreement include the further right to temporarily stage equipment and material on the Property in and around each Easement Area as reasonably necessary to construct, operate, inspect, maintain,

repair, replace, expand, improve or remove a High Capacity Transit Facility (each a "Temporary Construction Easement Area") according to and as more specifically allowed for under the terms of this Easement Agreement. Subject to Existing Third Party Rights (as defined in Section 3 below), this High Capacity Transportation Easement includes the right to invade or otherwise interfere with the Property with dust, noise, vibration, and other similar disturbances resulting from the normal operation, use, maintenance and repair of High Capacity Transit Facilities as part of Sound Transit's High Capacity Transit System, except for activities which result in damage to improvements, if any, located on the Property outside an Easement Area. The Parties agree that this High Capacity Transportation Easement is a Transportation Use as defined in the Multipurpose Easement.

B. This High Capacity Transportation Easement is intended to be perpetual and Sound Transit shall have the right to determine the precise location of the Easement Areas and the Temporary Construction Easement Areas on the Property from time to time in the manner specifically described in this Easement Agreement. Subject to Existing Third Party Rights, Sound Transit may locate its High Capacity Transit Facilities anywhere on the Property, including the portion of the Property where the railbed is presently located or any portion of the Property which has been developed by King County with a Trail subject to certain rights, duties and obligations to relocate such public trail improvements or provide an area for future construction of Trail improvements as set forth in the Multipurpose Easement or this Easement Agreement.

C. Section 7 of this Easement Agreement governs Sound Transit's right to designate an Easement Area and Temporary Construction Easement Areas on the Property. Prior to Sound Transit beginning construction of a High Capacity Transit Facility, the Parties shall amend this Easement Agreement in the manner described in Section 7 to set forth the precise location and legal description of each Temporary Construction Easement Area and each Easement Area on which the High Capacity Transit Facility, as constructed, is to be located. The Easement Area associated with each High Capacity Transit Facility will include that portion of the Property occupied by each High Capacity Transit Facility, together with such additional portions of the Property as may be reasonably necessary for its appurtenances, operations and continued utility and access requirements. Sound Transit may locate multiple High Capacity Transit Facilities on the Property, which need not be contiguous to one another, and consequently, the Easement Areas and Temporary Construction Easement Areas may include more than one location on the Property if Sound Transit elects to develop more than one High Capacity Transit Facility.

3) Title to Property.

A. The Port makes no warranty of the title as to the Property or the Easement Agreement. Port has advised Sound Transit that the Port may not hold fee simple title to the Property and that the Port's interest in all or part of the Property, if any, may rise only to the level of an easement for railroad purposes. The Port and Sound

Transit acknowledge and agree that the Property is railbanked pursuant to 16 U.S.C. 1247(d). Sound Transit's rights under this Easement Agreement are subject to the terms of the Multipurpose Easement, and preexisting recorded or unrecorded interests in the Property, including those fully executed easements, leases, permits, franchises, occupancy agreements, licenses or other agreements demising space in, or providing for the use or occupancy of the Property set forth on attached Schedule 2 (collectively, the "Existing Third Party Rights").

B. Any amendments or modifications of the Existing Third Party Rights, including any extensions that require approval of both the Port and a third party, shall be subject to the terms of this Easement Agreement and Sound Transit's rights hereunder and thereafter such Existing Third Party Rights shall constitute Subsequent Third Party Uses pursuant to the terms of this Easement Agreement.

C. The Port and Sound Transit acknowledge and agree that the Property may contain currently existing facilities that are not authorized by Existing Third Party Rights, that the Property may have encroachments on it, and that additional facilities or encroachments may in the future be located on the Property without permission from the Port (together, the "Unauthorized Uses"). Port shall have no duty to bring legal action to enforce the terms of this Easement Agreement against such Unauthorized Uses, but will reasonably cooperate with Sound Transit to address such Unauthorized Uses.

4) Consideration. The Port acknowledges receipt of full and complete consideration from Sound Transit for the High Capacity Transportation Easement granted pursuant to this Easement Agreement. Sound Transit shall not be required to pay for future use of any Temporary Construction Easement Area or any Easement Area, nor shall Sound Transit be required to contribute toward the cost of operation and maintenance of the Property (including, but not limited to Custodial Activities, as defined in the Multipurpose Easement, and the cost of taxes and insurance) except for any Temporary Construction Easement Area or any Easement Area.

5) Railbanking; Multipurpose Easement, and Interim Trail Use.

A. Sound Transit acknowledges that the Property has been "rail banked" in accordance with 16 U.S.C. 1247(d) to protect this rail transportation corridor and preserve it for future reactivation of freight rail service. King County was approved as an Interim Trail User for the Property by the Surface Transportation Board ("STB") for the purpose of "railbanking" the Property. King County, as the Interim Trail User, is subject to certain "Railbanking Obligations".

B. Simultaneous with the closing of the purchase of the Property by the Port from BNSF, the Port and King County entered into the Multipurpose Easement, which among other things, granted King County certain rights to acquire, develop, maintain and operate the Trail over a portion of the Property in its capacity as the Interim Trail User for the Property, subject to the terms and conditions set forth in the Multipurpose Easement so

long as such Trail will not prevent the use of the Property for Transportation Use outside of the Trail Area. Sound Transit has been provided with a copy of the Multipurpose Easement, and would not have entered into this Easement Agreement with the Port, but for its reliance on (a) the express intent set forth in the Multipurpose Easement that any development of a public trail authorized by the Multipurpose Easement will not prevent Transportation Uses on the Property, but rather will be designed and developed to accommodate Transportation Uses, and (b) the terms, covenants, conditions and limitations set forth in Section 2 and 3 of the Multipurpose Easement and the express intent of the parties thereto that the Multipurpose Easement creates covenants running with the land binding upon all present and future owners of the Property, and all persons who may thereafter develop, construct, operate, maintain, repair and/or improve a Trail on the Property. Subject to the reactivation of the Railbanked Segments for freight rail service, the Port shall take all action, and shall exercise all its rights under the Multipurpose Easement to require King County or other Interim Trail User to develop, construct, operate, maintain, repair and/or improve a Trail on the Property in accordance with the terms, covenants, conditions and limitations set forth in Sections 2 and 3 of the Multipurpose Easement and this Easement Agreement.

C. Subject to the reactivation of the Railbanked Segments for freight rail service, the Port shall take, and shall exercise its rights under the Multipurpose Easement to require King County to take, all action necessary to preserve the federal railbanked status of the Railbanked Segments. Sound Transit acknowledges that King County or other Authorized User of the Property may have the right to remove the existing rail tracks and related railroad improvements from the Property.

D. The Port shall not amend, modify or terminate the Multipurpose Easement or consent to a transfer or termination of King County's Interim Trail User Status and Railbanking Obligations without the prior written consent of Sound Transit, which consent shall not be unreasonably withheld, conditioned or delayed. In the event King County elects not to proceed with Trail Development and takes action to terminate the Trail Use Agreement pursuant to the Multipurpose Easement, the Port shall, as provided in the Multipurpose Easement, (i) engage a substitute Interim Trail User consistent with all current and future STB requirements, and (ii) take all actions necessary to satisfy any and all Railbanking Obligations and Custodial Activities with respect to the Property consistent with the terms and conditions of this Easement Agreement.

E. The Parties acknowledge that the following petitions have been filed with the STB, with regard to a portion of the Property:

(1) Petition to Vacate Notice of Interim Trail Use or Abandonment in STB Docket Nos. AB-6 (Sub.-No. 463X) and AB-6 (Sub.-No. 465X).

(2) Verified Petition for Exemption Pursuant to 49 U.S.C. 10502 in STB Docket No. FD-35407.

F.      Reactivation of Interstate Rail Service

(1)      Port agrees to promptly notify Sound Transit if it becomes aware that the STB has received any other request to reactivate freight rail service other than listed above, on all or any portion of the Property under the Railbanking Legislation or if King County notifies the Port that it intends to terminate its Interim Trail User status.

(2)      The Port and Sound Transit understand, acknowledge and agree that if the STB receives a request to reactivate or use of all or any portion of the Property for federally regulated interstate freight rail service, such as by means of a petition for reactivation and/or vacation of NITU, then the Port and Sound Transit will cooperate in order to respond appropriately to the request to the STB, any other applicable regulatory agency, governmental or quasi governmental body having jurisdiction or any court, and subject to Section 5F (3) each may be required to, and will if so required, make available some or all of their respective interests in the Property to accommodate reactivated freight rail service. The Port shall also require King County under the Public Multipurpose Easement dated December 18, 2009 to perform in accordance with its reactivation responsibilities in the Public Multipurpose Easement.

(3)      The Port and Sound Transit agree that if the STB receives a request for approval to use the Property for reactivated freight rail service, then the Port and Sound Transit in responding appropriately to the request to the STB, any other applicable regulatory agency, governmental or quasi governmental body having jurisdiction. or any court, will if reactivation is required, cooperate in order to cause the party making such request, including the Port or Sound Transit if either makes the request, (a) to bear all costs to restore or improve the Property for reactivated freight rail service; (b) bear responsibility to take all steps necessary to cause the relevant NITU to be vacated; and (c) to compensate the Port and Sound Transit for the fair market value of any and all of their respective rights or interests in the Property, or in improvements thereon that may be destroyed, lost, compromised, or otherwise reduced in value or function when the Property or any portion of it is put to use for reactivated freight rail service. However, the Parties acknowledge and agree that in the event portions of the Property may be destroyed, lost, compromised or otherwise reduced in value or function as a result of reactivated freight service, the Parties will protect, to the extent possible, Property subject to a Planned Easement Area, Notice of Selected Alignment, Temporary Construction Easement Area, and Easement Area, while first offering undeveloped areas of the Property or areas developed as a Trail for reactivated freight purposes to the extent feasible.

6)      Reserved Rights; Non-Exclusive Use.

A.      The easement rights granted Sound Transit under this Easement Agreement are non-exclusive. The Port reserves the right to use the Property for (i) those uses set forth in the TUA, (ii) those uses relating to "Railbanking" the Property which uses are specifically set forth in the Multipurpose Easement, (iii) the development, construction, operation, maintenance, repair and/or improvement of a Trail on the Property, (whether in

its capacity as the owner of the Property, as the Interim Trail User of the Property, or as the grantee or successor in interest to the grantee under the Multipurpose Easement), expressly subject to the terms, covenants, conditions and limitations set forth in Sections 2 and 3 of the Multipurpose Easement, and (iv) any purpose not inconsistent with the easement rights granted Sound Transit under this Easement Agreement. The Parties further agree that the terms, covenants, conditions and limitations set forth in Sections 2 and 3 of the Multipurpose Easement are incorporated into this Easement Agreement as though fully set forth herein and except as otherwise expressly provided herein, each of the Parties' rights, duties and obligations under this Easement Agreement and their respective rights to use the Property or grant others the rights to use the Property are expressly subject to the terms, covenants, conditions and limitations set forth in Sections 2 and 3 of the Multipurpose Easement as though fully set forth herein and shall continue to be fully enforceable by the Parties hereto in accordance with the terms set forth in the Multipurpose Easement on the Effective Date even if the Multipurpose Easement is hereafter amended, modified or terminated in whole or in part, voluntarily, involuntarily or by operation of law, except in the event of a merger resulting from King County's acquisition of all or a portion of the Property, in which case Exhibit C shall apply. The Parties agree that in determining their respective rights, duties and obligations under the Multipurpose Easement and this Easement Agreement: (a) the construction and operation of a High Capacity Transit Facility granted Sound Transit under this Easement Agreement is a Transportation Use, (b) Sound Transit is a Third Party Operator ("TPO"), and (c) Sound Transit shall have all of the rights of a TPO under the Multipurpose Easement with respect to its Transportation Use of the Property. The Port shall have the right to grant third parties ("Subsequent Third Party User(s)") other non-exclusive uses or occupancies of the Property after the Effective Date ("Subsequent Third Party Uses") so long as such Subsequent Third Party Uses do not unreasonably interfere with Sound Transit's rights under this Easement Agreement and are subject to this Easement Agreement.

7) Sound Transit Use of Property.

A. Use of Property Prior to Development of High Capacity Transit Facility:

(1) Sound Transit and its agents, employees, consultants, contractors, subcontractors and each of their respective agents and employees (collectively, the "Sound Transit Parties") and their equipment and vehicles shall have the right to enter upon the Property during reasonable hours agreed to by Port and Sound Transit for the purposes of preparing and conducting land surveys, economic and land use feasibility studies, structural inspections, soil, engineering, geotechnical and environmental and Hazardous Substances sampling, audits, inspections, studies and tests and any sampling, audits, inspections, studies or tests required by Sound Transit to determine the physical condition of the Property and the feasibility of the Property for the possible development, use and operation of a High Capacity Transit Facility with reasonable prior notice and coordination with King County and any other Authorized User. Such coordination shall include, but not be limited to, review by the Port of testing and/or sampling plans, sharing

sampling data if requested by the Port and allowing the Port to take split samples all at the Port's sole cost. Sound Transit shall use reasonable efforts to schedule and conduct such due diligence investigations and activities to minimize interference with other than authorized uses of the Property.

(2) Sound Transit and the Sound Transit Parties may also enter onto the Property at any time and from time to time for purposes of planning and design of one or more High Capacity Transit Facilities with reasonable prior notice and coordination with the Port, King County and any other Authorized User who has a right to use that portion of the Property designated by Sound Transit in its right of entry notice. Upon receipt of such right of entry notice, the Port, King County, the Authorized Users and Sound Transit shall negotiate the specific terms of a Right of Entry Agreement that shall apply to Sound Transit's use of the Property for such purpose and shall be consistent with the terms of this Easement Agreement.

(3) Sound Transit shall repair any damage to the Property or any improvements located on the Property which is caused by the acts or omissions of Sound Transit or any of the Sound Transit Parties during any such inspections, studies, sampling or tests. Sound Transit shall remove or cause the removal of all of its trash, debris, equipment and vehicles from the Property and shall cause the Remediation of any Releases or other environmental damage caused by Sound Transit or any of the Sound Transit Parties following completion of its due diligence and pre-development activities (including proper disposal of any ground water or soil sampling and capping of any monitoring wells installed on the Property)(provided that Sound Transit will not be required to cap monitoring wells if it intends to promptly commence construction of a High Capacity Transit Facility) and shall restore the Property to substantially the same condition as existed prior to any such inspection, study, sampling or test. Notwithstanding the foregoing, these obligations shall not extend to, and in no event shall Sound Transit or any of the Sound Transit Parties, be liable to the Port, any Authorized User or any third party for: (i) any diminution in the market value of the Property resulting from the information disclosed by any such investigation, study, sampling or test; or (ii) any negligence or misconduct of the Port, King County, any Authorized User or any agent, contractor, subcontractor, tenant, employee or consultant of the Port, King County or any Authorized User.

(4) This Section 7.A. shall apply to any entry on the Property by Sound Transit outside the area of a Temporary Construction Easement Area or Easement Area.

B. Sound Transit Use of Property to Develop a High Capacity Transit Facility on the Property:

(1) To initiate development of High Capacity Transit Facilities, Sound Transit shall notify the Port in writing ("Notice of Planned Easement Area") that it is evaluating or planning the placement of one or more High Capacity Transit Facilities within a Planned Easement Area. The designation of a Planned Easement Area

will remain in effect until the earlier of the following: (a) Sound Transit provides the Port with a Notice of Selected Alignment for all or a portion of a Planned Easement Area pursuant to Section 7 B (2), or (b) a date five (5) years from the date of Sound Transit's initial Notice of Planned Easement Area, in which case the Planned Easement Area will be terminated.

(2) Sound Transit may provide the Port written Notice of Selected Alignment. Subject to the provisions in Section 7B(3) below, the provisions in this Easement Agreement related to the Notice of Selected Alignment shall remain in effect until Sound Transit has recorded an Easement Area and/or Temporary Construction Easement Area within the area covered by the Notice of Selected Alignment, except that the Notice of Selected Alignment will terminate if Sound Transit abandons its plans to build High Capacity Transit Facilities within the area subject to the Notice of Selected Alignment.

(3) Sound Transit shall provide written notice to Port of its intention to develop a High Capacity Transit Facility on the Property ("Notice of Intent to Develop"), which notice shall identify the proposed timetable for development and construction of such High Capacity Transit Facility, including preliminary design plans, topographical details and a development layout, describe the portions of a previously identified Planned Easement Area that are to comprise the Temporary Construction Easement Area(s) and proposed Easement Area(s) and shall identify any utilities or other improvements, if any, known by Sound Transit to be located within the Temporary Construction Easement Area and Easement Area that will need to be relocated. Such notice shall be provided as far in advance as reasonably possible and at a minimum no less than 180 days prior to the anticipated construction start date.

(4) Sound Transit and the Port shall cooperatively develop a plan for Sound Transit's use of the Temporary Construction Easement Area and Easement Area and other areas of the Property that may be impacted by the development and construction of the High Capacity Transit Facility ("Development Plan"). The Development Plan shall comply with the terms of this Easement Agreement, and shall specifically address the impact of the proposed High Capacity Transit Facility on the Property and any existing facilities, coordination between Sound Transit's construction uses of the Property in the vicinity of the Temporary Construction Easement Area and Easement Area, procedures for providing notification as to the commencement and status of construction and start up of operations, Trail uses by the Port, King County or any other Authorized User, any proposed relocation of a Trail Area or Trail, and features such as routes of access, location for construction staging, temporary Trail rerouting, construction schedules, areas of Sound Transit exclusive uses, and measures to ensure the safety of other users of the Property in the vicinity of the Temporary Construction Easement Area and Easement Area. Sound Transit and the Port shall contemporaneously negotiate the terms of the Temporary Construction Easement, which shall include the terms of the Development Plan. If the Port and Sound Transit are unable to agree on a Development Plan and Temporary Construction Easement within sixty (60) days of the Notice of Intent

to Develop, either Party may initiate Dispute Resolution under Section 18A (3) of this Easement Agreement.

(5) After completion of the Development Plan and Temporary Construction Easement, and upon request by Sound Transit, Sound Transit and the Port shall execute and record in the King County real property records an amendment to this Easement Agreement to set forth the location of the Temporary Construction Easement Area and Easement Area, and shall execute and record the Temporary Construction Easement. These steps shall be accomplished prior to the date Sound Transit begins construction of the associated High Capacity Transit Facilities.

(6) Where consistent with the Port's rights under Existing Third Party Rights agreements, the Port will direct all utilities (including utility improvements owned by King County) to relocate their facilities to the extent necessary to accommodate the construction, operation and maintenance of a High Capacity Transit Facility. Such relocation shall, where permitted under Existing Third Party Rights agreements, be at the sole cost and expense of the affected utility except for utility improvements owned by King County and installed on the Property as of the Effective Date, in which case Sound Transit shall reimburse King County for its reasonable costs and expenses associated with relocation of such King County-owned utility improvements.

(7) When construction of the High Capacity Transit Facility is completed Sound Transit shall provide written notice of completion to Port and shall record a notice of termination of Temporary Construction Easement, and the Port and Sound Transit shall execute and record an amendment to this Easement Agreement to delete the applicable Temporary Construction Easement Area.

(8) To the extent necessary or desirable to design, develop, construct, operate, inspect, maintain or repair High Capacity Transit Facilities, Sound Transit may, at its sole cost and expense, remove and dispose of railroad infrastructure including ties and rails existing on the Property. If Port is the owner of the Property at the time such railroad improvements are removed by Sound Transit from the Property, Sound Transit shall pay the Port the salvage value of such railroad rails net of all costs and expenses associated with such removal or disposal (but excluding the costs of Remediation of any Hazardous Substances on the Property discovered during such removal) promptly following receipt thereof.

(9) From the time that Sound Transit records an Easement Area or Temporary Construction Easement Area, Sound Transit shall be permitted to fence or otherwise restrict access to the Temporary Construction Easement Area and Easement Area as required for safety and control of the construction site; *provided*, that Sound Transit shall provide reasonable access to the Port, any holders of Existing Third Party Rights and Subsequent Third Party Users in the Temporary Construction Easement Area and Easement Area.

(10) When operations of the High Capacity Transit Facility begins, Sound Transit shall have the right to control the access to the Easement Area,

establish rules and requirements for access to the trackway and associated stations, terminals and passenger boarding areas, *provided* Sound Transit shall provide reasonable access to facilities that remain in the Easement Area that belong to the Port, holders of Existing Third Party Rights and Subsequent Third Party Users.

(11) From the time that Sound Transit gives Notice of Selected Alignment or records an Easement Area or Temporary Construction Easement Area, neither the Port, its contractors, subcontractors, employees, tenants, subtenants or invitees, nor any Subsequent Third Party Users nor any of their respective successors and assigns, shall engage in any excavation, tunneling, construction, alteration, remodeling, expansion or other development in the vicinity of an area in which Sound Transit has provided a Notice of Selected Alignment, an Easement Area or Temporary Construction Area that would unreasonably interfere with, disturb, or endanger the construction of, or operation, use and maintenance of any High Capacity Transit Facilities under construction or already constructed, would create a public safety risk, or otherwise hinder or restrict Sound Transit's rights under this Easement Agreement.

(12) There shall be no construction or installation of Other Improvements (as defined in Section 8A) within any area in which Sound Transit has given a Notice of Selected Alignment, an Easement Area or Temporary Construction Easement Area without the prior written consent of Sound Transit, which consent shall not be unreasonably withheld if the conditions set forth in Sections 9B (2) and 9B (3) are met to the satisfaction of Sound Transit in the good faith exercise of its business judgment.

(13) Port acknowledges and understands that any construction of a High Capacity Transit Facility on the Property may be subject to a financial assistance contract between Sound Transit and the United States Department of Transportation and/or the Federal Transit Administration ("FTA"). Both Parties agree that the FTA or another funding agency may request amendments to this Easement Agreement to comply with its funding requirements. Port agrees to execute commercially reasonable amendments to this Easement Agreement requested by the FTA or other funding agency so long as such amendments do not increase the Port's risks or costs or otherwise cause economic detriment to the Port. In determining what is commercially reasonable, the Parties shall take into consideration the nature of the Property and its substantial benefit to the region as a regional recreation trail and use for other energy efficient Transportation Uses.

8) Review Process.

A. The Port, Subsequent Third Party Users and Sound Transit shall use the following process ("Review Process") wherever a review process is required for new facilities or expansions of existing facilities proposed within the Property by the Port or a Subsequent Third Party User (individually and collectively "Other Improvements"). Sound Transit may impose its standard review fee upon the proponent of an Other Improvement to cover the costs of its review, except that Sound Transit shall waive such fee as to Other Improvements proposed by the Port or King County.

(1) Prior to the Port, or a Subsequent Third Party installing any facilities on the Property (such party referred to as the “Proposing Party”) that are required to be reviewed under this Easement Agreement, the Proposing Party shall send notice to Sound Transit (“Reviewing Party”) containing a description of the activities including at a minimum preliminary design plans, topographical details, a development layout and any other information required by this Easement Agreement. Unless a different timeframe for review is specified elsewhere in this Easement Agreement, the Reviewing Party shall have thirty (30) days from receipt of the notice to review and respond in writing. If the Reviewing Party fails to timely respond, the plans are deemed approved.

(2) If the Reviewing Party determines that the proposed facilities do not satisfy the requirements of this Easement Agreement, the Reviewing Party may disapprove or approve with conditions the proposed facilities by providing the Proposing Party with a notice (the “Dispute Notice”) within the timeframe specified in Section 8A(1) above or other applicable timeframe, specifying with particularity the basis for the claim that the proposed facilities do not satisfy the requirements of this Easement Agreement. If the Reviewing Party determines that the proposed facilities do satisfy the requirements of this Easement Agreement, it may approve the facilities by not responding or by timely responding with an affirmative statement of approval.

(3) If the Proposing Party and the Reviewing Party are unable to resolve the dispute within thirty (30) days, they shall follow the dispute resolution process set forth in Section 16 of this Easement Agreement, provided that any Subsequent Third Party User shall immediately identify a Designated Representative. If the Proposing Party and the Reviewing Party are unable to timely resolve the dispute through the dispute resolution process in Section 16 or within such additional time as the Parties mutually agree, then in addition to the requirements stated therein, the Parties shall endeavor to resolve the 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, and mediation shall be conducted within thirty (30) days of such notice. The Parties agree that they shall have no right to seek relief as to the dispute in a court of law until and unless each of these procedural steps is exhausted. If any applicable statute of limitations will or may run during the time that may be required to exhaust the procedural steps set forth above, the Parties agree to seek an order to suspend any proceeding filed in a court of law while the procedural steps set forth above are satisfied.

9) Review of Proposed Other Improvements

A. As to any portion of the Property that is not designated as a Planned Easement Area or subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area, neither the Port nor any Subsequent Third Party User may install Other Improvements if the facilities are of such a magnitude that such facilities would impair the ability of Sound Transit to design, construct, use, operate, inspect, maintain or repair High Capacity Transit Facilities in a reasonably practicable manner on

the Property. "Reasonably practicable" as used in this Section 9A means capable of being implemented in a reliable and effective manner at a cost, including any expenses associated with relocation of facilities, that is not substantially higher than would typically be expected for similar projects taking into account the physical characteristics of and degree of development in the area. Under this standard, it generally would be reasonably practicable for Sound Transit to be obligated to share space with or relocate "Minor Improvements" such as driveways, domestic or distribution utilities, fiber optic cables, drainage improvements, bank stabilization structures, or landscaping improvements ("Minor Improvements") but might not be reasonably practicable for Sound Transit to share space with or be obligated to relocate "Major Improvements" such as a Trail and associated improvements, transmission utilities, highways, parking facilities or parking structures or improvements for which relocation could result in substantial severance damages or severance damages that amount to a full taking of a parcel outside the Property.

B. The following terms and conditions shall apply to a Party's review of proposed Other Improvements.

(1) As to any portion of the Property that is not designated as a Planned Easement Area or subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area:

(i) Only proposed Major Improvements shall be required to be submitted to Sound Transit for review and comment and the only basis for a comment by Sound Transit is that such proposed facility would impair the ability of Sound Transit to design, construct, use, operate, inspect, maintain or repair High Capacity Transit Facilities in a reasonably practicable manner on the Property. An Other Improvement that is a Minor Improvement may also, in the discretion of the Proposing Party and the Port, be submitted to Sound Transit for review and comment. The Port and the Proposing Party shall reasonably consider adopting and imposing any reasonable conditions that Sound Transit may request related to the installation of any Other Improvements.

(ii) If a proposed Other Improvement is submitted to Sound Transit for review and comment, the review process in Section 8.A shall apply, except that under Section 8.A(2) Sound Transit may not disapprove or approve with conditions, but instead may comment that it would disapprove or approve with conditions.

(iii) If such Other Improvement is approved either through a lack of comment or affirmative statement by Sound Transit, is conditioned as requested by Sound Transit in a comment, or is otherwise authorized under Section 9A of this Easement Agreement, the Port shall require in any license, permit, easement or other authorization for such Other Improvement that the Other Improvements shall be required to be promptly relocated at Sound Transit's request and at Sound Transit's expense. If an Other Improvement is installed in the Property that is not approved either through a lack of comment or affirmative statement by Sound Transit or is not conditioned as requested by Sound Transit in a comment, and is not otherwise authorized under Section 9.A, such Other Improvement shall be relocated at Sound Transit's request and at the expense of the

Proposing Party to the extent necessary to bring the Other Improvement into compliance with Section 9.A.

(2) As to any portion of the Property that is designated as a Planned Easement Area, proposed Other Improvements shall be submitted to Sound Transit for review and approval. With regard to such proposed Other Improvements, Sound Transit may disapprove of or condition the proposal if it would unreasonably interfere with the ability of Sound Transit to design, construct, use, operate, inspect, maintain or repair High Capacity Transit Facilities that are under evaluation or proposed in a Planned Easement Area. Sound Transit may also disapprove of or condition the proposal in order to (i) ensure reasonable integration of the proposed Other Improvements with proposed High Capacity Transit Facilities that are under evaluation or proposed in a Planned Easement Area and avoid likely relocation of proposed Other Improvements as a result of the construction of such High Capacity Transit Facilities; (ii) prevent any health or safety risk; or (iii) ensure restoration of the Property to a condition substantially similar to that existing prior to the alterations. The Port shall require in any license, permit, easement or other authorization of Other Improvements that Other Improvements installed with Sound Transit's consent in a Planned Easement Area shall be required to be promptly relocated at Sound Transit's request, and at Sound Transit's expense.

(3) As to any portion of the Property that is subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area, all proposed Other Improvements shall be submitted to Sound Transit for review and approval. With regard to such proposed Other Improvements, Sound Transit may disapprove of or condition the proposal on the bases set forth in Section 9B(2) above and in addition on the bases of failing to meet the requirements of Sections 7B(11) and (12). The Port shall require any Other Improvements installed in an area subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area with Sound Transit's approval to be promptly relocated at Sound Transit's request, and at Sound Transit's expense.

C. The Port may grant temporary use or occupancy rights to use the Property without Sound Transit's prior review, provided such agreements expire or may be terminated by the Port or Sound Transit, at no cost or expense to Sound Transit before Sound Transit records a Temporary Construction Easement Area or an Easement Area.

10) Easement Improvements. Sound Transit shall own any improvements it constructs within any Easement Area (collectively, the "Sound Transit Improvements"). Sound Transit shall be solely responsible for the costs of the development, operation, and maintenance of all Sound Transit Improvements. Neither the Port, King County nor any other Authorized User shall have any right, title or interest in any Sound Transit Improvements. Sound Transit shall have the right to install, improve, renovate, repair, remove or enhance the Sound Transit Improvements within a Temporary Construction Easement Area or Easement Area without the prior written consent of the Port, King County or any other Authorized User or participation in the Review Process.

11) Insurance. Each Party shall carry the following policies of insurance with respect to their activities undertaken on the Property or the Easement Area or a Temporary Construction Easement Area:

A. Liability Insurance. The Port and Sound Transit each agree to maintain reasonable and customary liability insurance (or self insurance) for personal injury, death and property damage arising out of or having to do with such Party's use, occupancy and possession of, or acts or omissions on or about, the Temporary Construction Easement Areas, Easement Areas and/or areas of the Property subject to Sound Transit's rights and obligations under Section 7 of this Easement Agreement, as applicable, and will provide the other Party with satisfactory evidence of such insurance (or self insurance) upon request.

B. Other Insurance. The Port shall require any entity utilizing the Property for Trail or Transportation Uses to name Sound Transit as an additional insured on any insurance policy maintained by such entity or required under the applicable TPO Agreement, provided that if the entity is self-insured this requirement will be waived so long as the Port has the right to obtain proof of self insurance.

C. Waiver. To the extent of any applicable commercial insurance policies, the Parties waive their respective rights of recovery, claims, actions or causes of action against the other Party 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 recover by way of subrogation against the other Party.

12) Property Condition Waivers/General Indemnification.

A. Waiver of Warranties. Subject to the Port's express representations, warranties and obligations under this Easement Agreement, **SOUND TRANSIT IS NOT RELYING ON, AND HEREBY WAIVES WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE PORT WITH RESPECT TO ANY MATTERS CONCERNING THE PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances, wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the Existing Third Party Agreements affecting the Property.

B. Indemnification by Sound Transit. Subject to the provisions of Sections 7, 12(C) and Section 14 of this Easement Agreement, Sound Transit shall, to the

extent permitted by law, indemnify and defend the Port against any claim, action, loss, damage, injury or expense (including attorney's fees with or without trial and on appeal) or proceeding brought, incurred or claimed by any person against the Port with respect to the use by Sound Transit of the Property pursuant to Section 7 of this Easement Agreement or the use by Sound Transit of the Property, any Temporary Construction Easement Area or any Easement Area, the use by Sound Transit of the Sound Transit Improvements in the operation of the High Capacity Transit System, the exercise by Sound Transit of its rights, or the failure of Sound Transit to perform its obligations, under this Easement Agreement or arising from the negligence of Sound Transit or its employees acting within the scope of their employment (including, but not limited to liability imposed by law or for breach of any statutory duty or administrative rule or regulation, or resulting in death or injury to any person or destruction of or damage to property); provided, however, that the Port shall not be entitled to such indemnification for any such claim, action, loss, damage, injury or expense to the extent caused by the negligence or concurrent negligence of the Port, its agents or employees. Sound Transit upon notice from the Port shall defend any such claim at its expense and with counsel reasonably satisfactory to the Port. This indemnification is for the sole benefit of the Port and shall not inure to the benefit of any third party.

C. Indemnification by the Port. Subject to the provisions of Sections 7, 12(B) and Section 14 of this Easement Agreement, the Port shall, to the extent permitted by law, indemnify and defend Sound Transit against any claim, action, loss, damage, injury or expense (including attorney's fees with or without trial and on appeal) or proceeding brought, incurred or claimed by any person against Sound Transit with respect to the Property (other than any Temporary Construction Easement Area or any Easement Area) or the exercise by the Port of its rights, or the failure of the Port to perform its obligations, under this Easement Agreement or arising from the negligence of the Port or its agents or employees acting within the scope of their agency or employment (including, but not limited to liability imposed by law or for breach of any statutory duty or administrative rule or regulation or resulting in death or injury to any person or destruction of or damage to property); provided, however, that Sound Transit shall not be entitled to such indemnification for any such claim, action, loss, damage, injury or expense to the extent caused by the negligence or concurrent negligence of Sound Transit, its agents or employees. The Port upon notice from Sound Transit shall defend any such claim at its expense and with counsel reasonably satisfactory to Sound Transit. This indemnification is for the sole benefit of Sound Transit and shall not inure to the benefit of any third party.

D. Additional Indemnification Provisions. Solely to give full force and effect to the indemnification provisions contained herein and not for the benefit of any other person, each Party specifically and expressly waives any immunity it may have under the Washington State Industrial Act, RCW Title 51 or any other industrial insurance, worker's compensation or similar laws of the State of Washington and acknowledges that this waiver was mutually negotiated by the Parties hereto as part of the consideration for this Easement Agreement. This provision shall not be interpreted or construed as a waiver of any Party's right to assert such immunity, defense or protection directly against any of its own employees. In no event shall either Party's indemnification obligations under this

Easement Agreement or the Purchase Agreement be limited to the extent of any insurance available to or provided by the obligated Party.

E. Survival. The indemnification provisions of this Section 12 shall survive the expiration or other termination of this Easement Agreement.

13) Condemnation. If all or any portion of any Easement Area or the Sound Transit Improvements are damaged or taken under power of eminent domain or sold to a condemning authority in lieu thereof, the rights and obligations of the Port and Sound Transit and shall be determined as follows:

A. Condemnation of All or Substantially All of any Easement Area or the Sound Transit Improvements. If there is a taking or damaging of all or any portion of any Easement Area or the Sound Transit Improvements located thereon by the exercise of any governmental power, whether by legal proceedings or otherwise by a governmental agency with jurisdiction, or a transfer by Port under threat of condemnation, or while legal proceedings for condemnation are pending (each, a "Condemnation") such that there can be no reasonable use of such Easement Area or the Sound Transit Improvements located thereon in the reasonable judgment of Sound Transit, then this Easement Agreement shall automatically terminate as to the affected Easement Area, on the date the condemning authority has the right to possession of the property being condemned. The condemnation award shall be allocated between the Port and Sound Transit as provided in Section 13D below.

B. Partial Condemnation. If only a portion of any Easement Area or the Sound Transit Improvements located thereon shall be taken in connection with a Condemnation and the remainder of the Easement Area and the Sound Transit Improvements located thereon not so taken can be made useable in the reasonable judgment of Sound Transit, then this Easement Agreement shall continue in full force and effect as to the remainder of the Easement Area or the Sound Transit Improvements, as applicable, and all of the terms and conditions of this Easement Agreement, shall continue in full force and effect.

C. Reactivation of Rail Service. Where the STB grants a railroad's request to reactivate rail service on all or any portion of the Property under applicable federal law, and the Port enters into an agreement with said railroad for the use of the affected Property subject to a reactivation order such that there can be no reasonable use of an Easement Area or the Sound Transit Improvements located thereon in the reasonable judgment of Sound Transit, then Sound Transit may give the Port fifteen (15) days written notice of its intent to terminate this Easement Agreement as to the affected Easement Area, effective on the date the railroad has the right to possession of the Property or portions thereof subject to a reactivation order. Any compensation payments paid by the railroad for the use of the Property subject to the reactivation order shall be allocated between the Port and Sound Transit as provided in Section 13.D below.

D. Condemnation Award. The Port is entitled to receive and keep all damages, awards or payment resulting from or paid on account of a Condemnation of all or

any portion of the Property, except as provided in the following sentence. Sound Transit is entitled to receive and keep all damages, awards or payments resulting from any loss or damage to the rights of Sound Transit under this Easement Agreement, including the loss of or damage to any Easement Area and/or the Sound Transit Improvements located therein, and any moving and relocation expenses to which Sound Transit may be entitled. In the event the condemning authority does not allocate the award between the taking of the fee title to the Property and any Easement Area on the one hand and the taking of Sound Transit's rights under this Easement Agreement, including the loss of or damage to any Easement Area and/or the Sound Transit Improvements on the other hand, either Party shall have the right to request the court for an allocation of the award. Sound Transit shall also be entitled, solely by a separate award that does not diminish any award to which Port would otherwise be entitled, to the cost of moving and relocating the Sound Transit Improvements (including any personal property used in connection therewith and located on the affected Easement Area) and any other award paid separately to Sound Transit.

14) Hazardous Substances.

A. Sound Transit acknowledges that the Property may contain Hazardous Substances and that Hazardous Substances Released onto the Property may have migrated onto neighboring properties or Hazardous Substances Released on neighboring properties may have migrated onto the Property prior to the Effective Date. Port acknowledges that Sound Transit has acquired the High Capacity Transportation Easement granted under this Easement Agreement as a protective acquisition of easement rights for potential future development of one or more High Capacity Transit Facilities, but has no present intention to develop a High Capacity Transit Facility on the Property and is otherwise not in possession or control of the Property as of the Effective Date.

B. Except to the extent the Port or its officers, employees, agents or contractors have caused new Releases of Hazardous Substances following the Effective Date, Sound Transit waives, releases and discharges forever the 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 attorneys fees) of any and every kind or character, known or unknown (collectively "Losses") that Sound Transit might have asserted against the Port arising from or in any way related to environmental conditions in, at, on, under or originating from the 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 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 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.

C. Subject to the provisions of Section 7, and except to the extent Sound Transit or its officers, employees, agents or contractors cause new Releases of Hazardous Substances following the Effective Date, the Port waives, releases and discharges forever Sound Transit from any and all Losses that the Port might have asserted against Sound Transit arising from or in any way related to environmental conditions in, at, on, under or originating from the Property other than Easement Areas and Temporary Construction Easement Areas, 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 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. The Port's waiver, release and discharge of Sound Transit pursuant to the provisions of this Section 14.C shall not apply with respect to Losses incurred by the Port for portions of the Property that are Easement Areas and Temporary Construction Easement Areas, *provided* the Releases or other environmental conditions that caused or contributed to such Losses occur following the date Sound Transit records in the real property records of King County such Easement Areas and Temporary Construction Easement Areas.

D. Nothing in this Easement Agreement shall be construed to waive or discharge any rights or claims Sound Transit may hold under the Environmental Laws, agreements or deeds to seek indemnity or contribution from BNSF or other parties other than the Port for Losses arising from or in any way related to environmental conditions on any Easement Area or Temporary Construction Easement Area. All waivers, releases and discharges of either Party to the extent provided in this Section 14 shall survive the expiration or other termination of this Easement Agreement.

E. The Port shall require any entity utilizing the Property from and after the Effective Date to assume responsibility for Remediation of any Releases of Hazardous Substances caused by that user of the Property on all or any portion of the Property.

F. In the event Hazardous Substances are discovered on the Property, the Port or Sound Transit, 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 Easement Agreement. Except to the extent set forth in Section 14(A) through 14 (D) above, 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 person, including, but not limited to BNSF, for Losses arising from or in any way relating to the environmental condition of the Property or the Release of Hazardous Substances on the Property.

15) Breach.

A. Remedies. In the event of any breach or threatened breach of this Easement Agreement, the non-defaulting party shall have the right to sue for damages and/or seek equitable remedies, including specific performance or injunctive relief.

B. No Termination of Easement Agreement for Breach. No breach of this Easement Agreement shall entitle either Party to cancel or otherwise rescind this Easement Agreement or the easement granted herein; provided, however, that this limitation shall not affect any other right or remedy that the non-defaulting Party may have by reason of any such breach or default by the other Party to this Easement Agreement.

16) Dispute Resolution. The Parties will work collaboratively in accordance with the following steps to resolve disagreements arising under this Easement Agreement. Disagreements will be resolved promptly and at the lowest level of authority. The Port and Sound Transit shall each designate a representative to resolve disputes under this Easement Agreement (each, a "Designated Representative") within thirty (30) days following execution of this Easement Agreement. The Designated Representatives shall use their best efforts to resolve disputes and issues arising out of or related to this Easement Agreement. Each Designated Representative shall notify the other in writing of any problem or dispute the Designated Representative believes needs formal resolution. This written notice shall include: (a) a description of the issue to be resolved; (b) a description of the difference between the Parties on the issue; and (c) a summary of steps taken by Designated Representatives to resolve the issue. The Designated Representatives shall meet within three (3) Business Days of receiving written notice of a dispute and attempt to resolve the dispute. In the event the Designated Representatives cannot resolve the dispute (and that dispute is not subject to some other formal appeal process), the Sound Transit Executive Director or his/her designee and the Chief Executive Officer of the Port or his/her designee shall meet within seven (7) Business Days of receiving notice from a Designated Representative and engage in good faith negotiations to resolve the dispute.

The Parties agree that they shall have no right to seek relief under this Easement Agreement in a court of law until and unless each of these procedural steps is exhausted. If any applicable statute of limitations will or may run during the time that that may be required to exhaust the procedural steps set forth above, the Parties agree to seek an order to suspend any proceeding filed in a court of law while the procedural steps set forth above are satisfied.

17) Priority of Easement; Assignment.

A. Priority of High Capacity Transportation Easement. The High Capacity Transportation Easement granted hereby shall have priority over any and all liens, encumbrances, easements, leases, subleases or other interests in the Property granted or acquired after the Effective Date and shall survive transfer of the fee ownership of, or the creation of any leasehold estate or easement affecting the Property.

B. Binding Effect; Assignment. The High Capacity Transportation Easement granted under this Easement Agreement and the rights duties, covenants, restrictions, agreements, limitations and obligations herein created shall constitute covenants running with the land, shall burden the Property, and such covenants shall be binding upon, and inure to the benefit of the Parties hereto and their respective successors, assigns, mortgagees, lessees, sublessees, and each and every person who shall at any time have a fee, leasehold, easement, license, permit, mortgage or other interest in the Property and, with respect to Sound Transit, any other successor owner or operator of all or any portion of the High Capacity Transit Facilities and/or the High Capacity Transit System. Either Party hereto may freely assign, apportion or otherwise transfer any or all of its rights, benefits, privileges and interests arising in and under this Easement Agreement so long as such transferee agrees in a recordable instrument to be bound by the terms of this Easement Agreement.

C. No Abandonment by Non-Use. Port acknowledges that Sound Transit's intent in entering into this Easement Agreement is to obtain protective easement rights for potential future development of one or more High Capacity Transit Facilities on the Property. Nothing contained in this Easement Agreement requires that Sound Transit develop a High Capacity Transit Facility on the Property at any particular time, or if a High Capacity Transit Facility is developed, to maintain any minimum level of transit service. No failure by Sound Transit to either develop or operate High Capacity Transit Facilities on the Property shall constitute an abandonment of its rights under this Easement Agreement or give the Port the right to terminate this Easement Agreement. Notwithstanding the foregoing, Sound Transit's duties and obligations under any Temporary Construction Easement Agreement, except for those that survive termination pursuant to Sections 7, 12, and 14, shall terminate upon the expiration of the term of any Temporary Construction Easement and the Parties shall record a mutually acceptable termination of such Temporary Construction Easement in the King County real property records.

18) Miscellaneous Provisions.

A. Captions. The captions and paragraph headings contained in this Easement Agreement are for convenience of reference only and in no way limit, describe, extend or define the scope or intent of this Easement Agreement nor the intent of any of the provisions hereof. As used in this Easement Agreement, the masculine shall include the feminine and neuter, the feminine shall include the masculine and neuter, the neuter shall include the masculine and feminine, the singular shall include the plural and the plural shall include the singular, as the context may require.

B. Entire Agreement. The Purchase Agreement, this Easement Agreement and the exhibits hereto and thereto, constitute the entire agreement between the Parties with respect to the High Capacity Transportation Easement granted under this Easement Agreement and supersede all prior and contemporaneous agreements and

understanding between the Parties hereto relating to the subject matter hereof. In the event there is any conflict between the terms and conditions of the Purchase Agreement and this Easement Agreement, this Easement Agreement shall control with respect to the easement rights intended to be granted Sound Transit under this Easement Agreement and the Purchase Agreement shall control with respect to the Bellevue Property (as defined in the Purchase Agreement).

C. Amendments; Waivers. No modification or amendment of this Easement Agreement may be made except by written agreement or as otherwise may be provided in this Easement Agreement. No failure by the Port or Sound Transit to insist upon the strict performance of any covenant, duty, agreement or condition of this Easement Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach of any other covenant, agreement, term or condition. Any Party hereto, by notice and only by notice as provided in Section 18 of this Easement Agreement may, but shall be under no obligation to, waive any of its rights or a condition to its obligations hereunder, or any duty, obligation or covenant of the other Party hereto. No waiver shall otherwise affect or alter this Easement Agreement and each and every covenant, agreement, term and condition of this Easement Agreement shall continue in full force and effect with respect to any other than existing or subsequent breach thereof.

D. Fair Construction. The provisions of this Easement Agreement shall be construed as a whole according to their common meaning, not strictly for or against any Party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Easement Agreement. Each Party hereto and its counsel has reviewed and revised this Easement Agreement and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Easement Agreement.

E. No Partnership or Joint Venture. It is not intended by this Easement Agreement to, and nothing contained in this Easement Agreement shall create any partnership, joint venture or other arrangement between the Port and Sound Transit except that of parties to an easement. No term or provision of this Easement Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

F. Severability. In case any one or more of the provisions contained in this Easement Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Easement Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

G. Estoppel Certificates. Each Party shall, within fifteen (15) days of a request from the other Party, execute and deliver to the requesting Party, a written

statement confirming to the knowledge of the responding party the status of matters under this Easement Agreement, whether all payments are current, whether any Party is in default in its obligations under this Easement Agreement and such other matters as the requesting Party may reasonably request.

H. Force Majeure. Notwithstanding anything contained in this Easement Agreement to the contrary, any delay in the performance of any obligation under this Easement Agreement shall be excused, if and so long as the performance of the obligation is prevented, delayed or otherwise hindered by acts of God, fire, earthquake, flood, explosion, actions of the elements, war, riots, mob violence, inability to procure labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, operation of laws, orders of governmental or military authorities or any other causes, whether similar or dissimilar to the foregoing, not within the control of such Party (other than lack or inability to procure money to fulfill its commitments and obligations under this Easement Agreement).

I. Notices. All notices, demands, requests, consents and approvals which may, or are required to be given by either Party to the other Party hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by nationally recognized overnight delivery service or by facsimile transmission, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid as follows:

If to Port: Port of Seattle  
Managing Director  
Real Estate Division  
P. O. Box 1209  
Seattle, WA 98111  
Facsimile: (206) 787-3280

With a copy to: Port of Seattle  
Law Department  
P.O. Box 1209  
Seattle, WA 98111  
Attn: General Counsel  
Facsimile: (206) 787-3205

If to Sound Transit: Central Puget Sound Regional Transit  
Authority  
Union Station  
401 South Jackson Street  
Seattle, WA 98104-2826  
Attn: Real Estate Division, Property  
Management  
Facsimile: (206) 398-5228

With a copy to: Central Puget Sound Regional Transit  
Authority  
Union Station  
401 South Jackson Street  
Seattle, WA 98104-2826  
Attn: Legal Department  
Facsimile: (206) 398-5222

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. All notices shall be deemed given three (3) Business Days following the date when mailed or one (1) Business Day following the date when delivered or faxed (provided the fax machine has issued a printed confirmation of receipt).

J. Consents and Approvals. Except where a different standard is expressly set forth in this Easement Agreement, in any case where the consent or approval of either Party is required by the terms of this Easement Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

K. No Liens. Neither the Port nor Sound Transit shall create or cause to be created any lien or encumbrance of any kind whatsoever upon the Property, the Temporary Construction Easement Areas or Easement Areas, the Sound Transit Improvements or Sound Transit's rights under this Easement Agreement. In the event any such lien or encumbrance is filed, the Port or Sound Transit, as applicable, agrees to promptly discharge or cause to be discharged, every such attachment, judgment, lien, charge or encumbrance of any nature which may be filed against the Property, the Easement Areas, the Sound Transit Improvements or which may unreasonably interfere with the exercise of Sound Transit's right to Temporary Construction Easement Areas or Easement Areas pursuant to this Easement Agreement, provided such party may reasonably and diligently contest such attachment, judgment, lien, charge or encumbrance.

L. Recordation. This Easement Agreement, and any and all amendments or modifications thereof shall be recorded in the real property records of King County, Washington, including any amendments required to set forth the location of any High Capacity Transit Facilities and the precise location of the Easement Area and

Temporary Construction Area for each such High Capacity Transit Facility before commencement of construction thereof.

M. No Waiver of Eminent Domain Power. Nothing contained in this Easement Agreement shall constitute or be construed as constituting any limitation upon either Party's right to exercise the power of eminent domain.

N. No Brokers. The Port and Sound Transit each represent to the other that neither is represented by any broker, agent or finder with respect to this Easement Agreement in any manner. Each Party agrees to indemnify and hold the other Party harmless from and against any and all liability costs, damages, causes of action or other proceedings instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party in any manner whatsoever in connection with this Easement Agreement, which indemnification shall survive the execution of this Easement Agreement or any termination of this Easement Agreement in whole or in part.

O. Attorney's Fees. In any suit arising out of this Easement Agreement, the prevailing party, or the party which substantially prevails, as determined by the court shall be awarded a reasonable amount for its attorney's fees and expenses of suit.

P. Counterparts. This Easement Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall together constitute but one original.

Q. Governing Law. This Easement Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington. In the event of any litigation to enforce or interpret the right, duties and obligations of the Parties set forth in this Easement Agreement, venue of any such legal action shall be in King County Washington.

R. No Merger of Estates. The easement granted herein shall not extinguish or terminate by operation of the doctrine of merger or otherwise due to the existence of future common ownership by Sound Transit of more than one real property interest in all or any portion of the Property.

S. Authority. The Parties signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

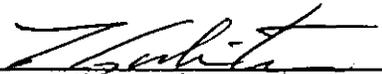
IN WITNESS WHEREOF, this Easement Agreement has been executed as of the date and year first hereinabove set forth.

**"Port"**

Approved as to Form:

**PORT OF SEATTLE,**  
a Washington municipal corporation

By:   
Name: Isabel R. Sabor  
Title: Deputy General Counsel

By:   
Name: Fay Yoshitani  
Title: Chief Executive Officer

**"Sound Transit"**

Approved as to Form:

**CENTRAL PUGET SOUND REGIONAL  
TRANSIT AUTHORITY,** a regional transit  
authority of the State of Washington

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

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

IN WITNESS WHEREOF, this Easement Agreement has been executed as of the date and year first hereinabove set forth.

**"Port"**

Approved as to Form:

**PORT OF SEATTLE,**  
a Washington municipal corporation

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

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

**"Sound Transit"**

Approved as to Form:

**CENTRAL PUGET SOUND REGIONAL  
TRANSIT AUTHORITY,** a regional transit  
authority of the State of Washington

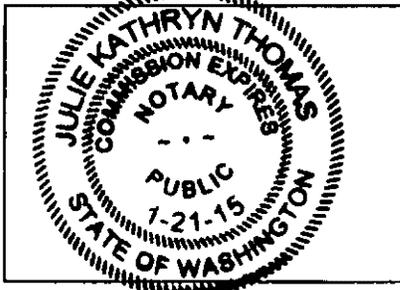
By: Jennifer Belk  
Name: Jennifer Belk  
Title: Senior Legal Counsel

By: Celia Kupersmith  
Name: Celia Kupersmith  
Title: Deputy CEO

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Tay Yoshitani  
is the person who appeared before me, and said person acknowledged that he/she signed this instrument,  
on oath stated that he/she was authorized to execute the instrument and acknowledged it as the  
Chief Executive Officer of the PORT OF SEATTLE, a Washington municipal  
corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the  
instrument.

Dated: April 10, 2012

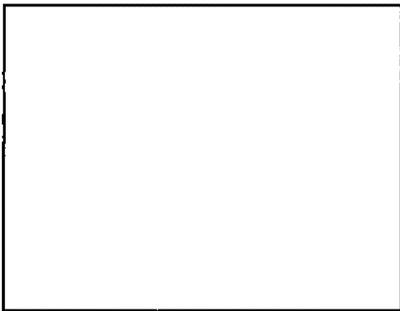


Julie Kathryn Thomas  
Notary Public  
Print Name Julie Kathryn Thomas  
My commission expires 1-21-15

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that he/she signed this instrument,  
on oath stated that he/she was authorized to execute the instrument and acknowledged it as the  
\_\_\_\_\_ of the CENTRAL PUGET SOUND REGIONAL TRANSIT  
AUTHORITY, a regional transit authority of the State of Washington to be the free and voluntary act of  
such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



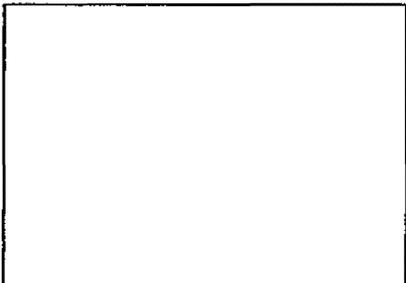
\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that he/she signed this instrument,  
on oath stated that he/she was authorized to execute the instrument and acknowledged it as the  
\_\_\_\_\_ of the PORT OF SEATTLE, a Washington municipal  
corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the  
instrument.

Dated: \_\_\_\_\_

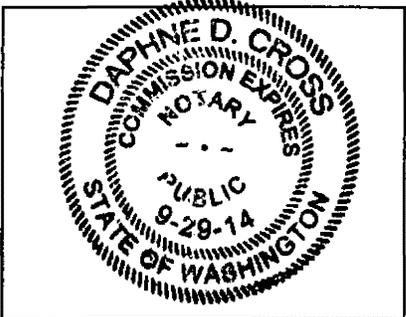


\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Celia Kupersmith  
is the person who appeared before me, and said person acknowledged that he/she signed this instrument,  
on oath stated that he/she was authorized to execute the instrument and acknowledged it as the  
Deputy Chief Executive Officer of the CENTRAL PUGET SOUND REGIONAL TRANSIT  
AUTHORITY, a regional transit authority of the State of Washington to be the free and voluntary act of  
such party for the uses and purposes mentioned in the instrument.

Dated: 9-9-12



(Use this space for notarial stamp/seal)

Daphne D. Cross  
\_\_\_\_\_  
Notary Public  
Print Name Daphne D. Cross  
My commission expires 9-29-14

## SCHEDULE 1

### DEFINITIONS

“Authorized User(s)” means holders of an easement or other right to use a portion of the Property, including holders of Existing Third Party Rights and Subsequent Third Party Users.

“Business Day” means any day except a Saturday, Sunday, legal holiday or a day on which commercial banks in Seattle, Washington are required or authorized to be closed.

“Crossing Structures” means bridges, trestles or other similar crossing structures located in or serving the Property.

“Easement Area” means all portions of the Property that Sound Transit records in the real property records of King County for development, operation, maintenance or repair of a High Capacity Transit Facility.

“Environmental Law or Laws” means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including, without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above or underground storage tanks and any similar or comparable state or federal law.

“Hazardous Substances” means any hazardous, toxic, radioactive or infectious substances, material or waste as defined, listed or regulated under any Environmental Law and includes, without limitation, petroleum oil and any of its fractions.

“High Capacity Transit Facilities” means surface, underground or overhead railways, including light railways, tramways, busways, buses, bus sets, entrained and lined buses or other means of local transportation, including escalators, moving sidewalks, personal rapid transit systems or other people-moving systems, transit station and related passenger amenities, inter-modal and other passenger transfer facilities and terminals, properties and such other facilities as may be necessary for passenger and vehicular access to and from such people-moving systems, stations, transfer facilities, terminals, parking for Sound Transit maintenance and operation-related uses and properties together with all related facilities, structures, fixtures, property, equipment and accessories necessary for a High Capacity Transit System, including rail track, equipment, maintenance facilities, customer assistance office, ticket dispensers, and Sound Transit information displays, bus layover facilities, utility lines, lighting, signage, ventilation structures, traction power substations, vaults and rights of access across the Property as may be necessary for construction, operation, inspection, maintenance, repair and enhancement of such High Capacity Transit Facilities. High Capacity Transit Facilities do not include public parking garages or public roads intended for use primarily by single-passenger automobile vehicles. A High

Capacity Transit Facility is a Transportation Use as defined in the Multipurpose Easement and this Easement Agreement.

“High Capacity Transit System” means a system of public transportation services within an urbanized region operating principally on exclusive rights of way and the supporting services and facilities necessary to implement such as system as further defined in RCW 81.104 RCW.

“Interim Trail User” means King County and any of its successors and assigns in its capacity as the holder of a Notice of Interim Trail Use issued by the Surface Transportation Board.

“King County Wastewater Facilities” means those wastewater facilities owned and operated by King County and located in the Property in the locations depicted on Exhibit C-1 and listed in Exhibit C-2, attached to this Easement Agreement.

“Notice of Selected Alignment” means a written notice from Sound Transit to the Port describing all or a portion of a previously designated Planned Easement Area that reflects Sound Transit's selection of its final alignment for the location of the High Capacity Transit Facilities.

“Party” means either the Port or Sound Transit, the parties to this Easement Agreement.

“Parties” means the Port and Sound Transit, collectively.

“Passenger” means any person who is not an employee of Sound Transit and who is on any Sound Transit High Capacity Transit Facility.

“Planned Easement Area” means a location on the Property under active consideration by Sound Transit or that is part of an environmental review process for evaluation as a possible location for High Capacity Transit Facilities.

“Railbanked Segments” has the same meaning as defined in the Trail Use Agreement and includes the Wilburton Segment.

"Railbanking Obligations" consist of those obligations imposed through 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 (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the “Railbanking Legislation”), the Notice of Interim Trail Use (“NITU”) for the Property issued by the STB; the Trail Use Agreement (“TUA”) entered into between BNSF and Grantee for the Property under which Grantee agrees to accept, exercise, and fulfill all of the legal rights, duties, and obligations of an Interim Trail User, and the Statement of Willingness to Accept Financial Responsibility (“SWAFR”).

"Regional Trail Guidelines" means the King County Regional Trails System Draft Development Guidelines dated February 2009 along with the Addendum's thereto dated March 24, 2009, March 25, 2009 and April 1, 2009, copies of which are available in the offices of the King County Parks Division and the offices of the Parties.

"Release" or "Released" shall mean any releasing, spilling, leaking, pumping, pouring, flooding, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of Hazardous Substances in or into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance, pollutant or contaminant).

"Remediation" means all activities performed in connection with or in anticipation of the assessment, cleanup, removal, mitigation, monitoring or containment of any Hazardous Substances to meet the requirements of applicable laws relating to the cleanup or remediation of Hazardous Substances in light of the reasonably intended use of the portion of the Property, or Easement Area, as applicable, at the time the Remediation commences. The term "Remediation" also includes the defense or prosecution of any proceedings before a court, administrative judge or tribunal or governmental agency and all negotiations with any governmental agency or its employees or consultants relating to the performance of Remediation, the reasonable fees and expenses (including reasonable attorneys' fees) of the Party performing the Remediation and its attorneys and consultants.

"Sound Transit Improvements" means improvements Sound Transit constructs within an Easement Area, including, without limitation, tracks and other High Capacity Transit Facilities.

"Sound Transit Transportation Use" means a use by Sound Transit within an Easement Area or Temporary Construction Easement Area pursuant to the provisions of the Easement Agreement.

"Temporary Construction Easement" means a temporary construction easement agreement entered into between Port and Sound Transit with respect to development or construction of High Capacity Transit Facilities on a portion of the Property.

"Trail Area" means that portion of the Property which may hereafter be designated for development, use, operation, maintenance, repair and improvement of a Trail in accordance with the terms, covenants, conditions and limitations set forth in Sections 2 and 3 of the Multipurpose Easement and Exhibit C to this Easement Agreement.

"Trail Development" means the initial construction or any substantial reconstruction of a Trail .

"TPO" means a person other than the Port or King County who has an agreement to use the Property for Transportation Use.

“TPO Agreement” means an agreement with a person other than the Port or King County to use the Property for Transportation Use.

“TUA” means that certain Trail Use Agreement dated December 18, 2009, by and between King County and BNSF.

SCHEDULE 2  
TO HIGH CAPACITY TRANSPORTATION EASEMENT AGREEMENT

EXISTING THIRD PARTY RIGHTS

A list of preexisting recorded or unrecorded interests in the Property, including those fully executed easements, leases, permits, franchises, occupancy agreements, licenses or other agreements demising space in, or providing for the use or occupancy of the Property can be found at the offices of:

SOUND TRANSIT  
Real Property Division  
401 South Jackson Street  
Seattle, WA 98104

Or

PORT OF SEATTLE  
Managing Director  
Real Estate Division  
P.O. Box 1209  
Seattle, WA 98111

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

**PARCEL A:**

**Woodinville to Kennydale**

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville to Kennydale, Washington Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across King County, Washington, more particularly described as follows, to-wit:

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the N½SE¼ of Section 9, Township 26 North, Range 5 East, W. M., King County, Washington lying Southerly of the Southwesterly boundary of that certain 100 foot wide tract of land described in deed dated June 14, 1887 from Mary B. Jaderholm to Seattle and West Coast Railway, recorded June 14, 1887 in Volume 41 of Deeds, Page 385, records of said County; also,

That certain 4.02 acre tract of land described in deed dated November 13, 1903 from Emanuel Nielsen and Grete Nielsen to Northern Pacific Railway Company recorded November 16, 1903 in Volume 358 of Deeds, Page 543, records of King County, Washington, said 4.02 acre tract being described in said deed for reference as follows:

"A strip of land over and across the south half of the southeast quarter (S/2 of SE/4) of Section 9, Township twenty-six (26) north, Range five (5) east, W.M., consisting of a strip of land one hundred ten (110) feet wide, being fifty (50) feet wide on the southwesterly side of the center line of the proposed Seattle Belt line railroad of the Northern Pacific Railway Company, as the same is surveyed and staked out across said premises, and sixty (60) feet in width on the northeasterly side of said center line; and an additional strip of land twenty (20) feet in width on the northeasterly side of said above described strip from Station 29 of said railroad center line extending to the south line of said Section 9, a distance of 580 feet, said additional strip being 20 feet wide and 580 feet long; containing 4.02 acres, more or less." EXCEPTING THEREFROM, All that portion of the Southwesterly 35.0 feet of Parcels "A" and "B" of Boundary Line Adjustment Number S92L0145R, King County, Washington, according to the recorded plat thereof.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

**PARCEL B:**

**Woodinville to Kenndale  
(Except Sound Transit's 1.1 mile section)**

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville (MP 23.45) to Kenndale (MP 5.0), Washington Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across King County, Washington, more particularly described as follows, to-wit:

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the NE $\frac{1}{4}$  Section 16, and the W $\frac{1}{2}$  Section 15, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said NE $\frac{1}{4}$  Section 16, and bounded on the South by South line of said W $\frac{1}{2}$  Section 15; also,

That portion of that certain 50.0 foot wide Branch Line right of way, being 25.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 22, Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said Section 22, and bounded on the South by South line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 22; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the E $\frac{1}{2}$  Section 22, the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 27, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said E $\frac{1}{2}$  Section 22, and bounded on the South by South line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 27; also,

That certain 4.43 acre tract of land described in deed dated April 3, 1903 from Nellie Nelson to Northern Pacific Railway Company recorded April 3, 1903 in Book 342 of Deeds, Page 371, records of King County, Washington, said 4.43 acre tract being described in said deed for record as follows:

"All that portion of the Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section 27, Township 26 North, Range 5 East, lying between the easterly line of the present right of way of the Northern Pacific Railway Company, which line is 50 feet distant southeasterly from the center line of the railroad track of said company, as now located and constructed over and across said premises and a line drawn parallel to and 50 feet distant southeasterly from, when measured at right angles to the center line of the proposed railroad track as now staked out and to be constructed, over and across said premises;

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“Also all that portion of said Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section 27, Township 26, lying within 50 feet of that certain straight line which connects the center line of the present track of the Northern Pacific Railway Company line with the center line of the proposed track of the Northern Pacific Railway Company line and being tangent to the curves of both of said center lines, containing in all 4.43 acres, be the same more or less.” **EXCEPTING THEREFROM**, Lot 3, King County Short Plat Number 1078060, recorded under King County Recording Number 8003270855, being a subdivision of: That portion of the southeast quarter of the northwest quarter of Section 27, Township 26 North, Range 5 East, W.M., King County, Washington, lying northerly and westerly of the northerly and westerly right of way of the Northern Pacific Railway Company’s “Seattle Belt Line”, and south of the southerly right of way line of that road conveyed to King County by deed recorded under Recording Number 2695175 and northeasterly of a line described as follows: Beginning at the northwest corner of the southeast quarter of the northwest quarter of said Section 27; thence south 1°58’24” west along the west line of the southeast quarter of the northwest quarter of said Section 27, a distance of 265 feet; thence north 65°33’39” east 444.80 feet to the true point of beginning of the following described line; thence south 18°15’21” east, 640 feet, more or less, to the northerly right of way line of said Northern Pacific Railway Company’s “Seattle Belt Line”, said northerly right of way line being 50’ Northeast of the center line of the maintrack as now constructed and the terminus of said line.; also,

That certain 0.05 acre tract of land described in deed dated August 25, 1904 from Otto Wepler et al. to Northern Pacific Railway Company recorded September 7, 1904 in Book 375, Page 507, records of King County, Washington, said 0.05 acre tract being described in said deed for reference as follows:

“All that piece or parcel of land in the southeast quarter of the northwest quarter (SE/4 of NW/4) of Section twenty-seven (27), Township twenty-six (26), Range five (5) east, W. M. which lies northwesterly of the original Seattle Belt Line right of way as described in deed recorded in Volume 116 of Deeds, Page 289, Records of King County, and within fifty (50) feet of the center line of the revised location of the track of the Seattle Belt Line as the same is now surveyed and being constructed over and across said subdivision, containing 5/100 acres, more or less.”; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the SW¼NW¼ Section 27 the S½NE¼, NW¼SE¼, SW¼ Section 28, W½NW¼, NW¼SW¼ Section 33, SE¼ Section 32, all in Township 26 North, Range 5 East, W. M., bounded on the East by the East line of said SW¼NW¼ Section 27, and bounded on the South by South line of said SE¼ Section 32, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No.

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9805260805, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 30, 1998 as Document No. 9807301468, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260791, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated January 6, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2000 as Document No. 20000211000454, records of King County, Washington, ; also,

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 3, 4, 5, 6, 11, 12, 13, 14, 18, 19, 23, 24, 25 and 26, the vacated alley between Blocks 13 and 14, and vacated Arlington Avenue between Blocks 14 and 19, as said Blocks and Streets are shown on plat of Lake Avenue Addition to Kirkland as recorded in Volume 6 of Plats, Page 86, Records of said County, together with any right title and interest, if any to those portions of Victoria Avenue, Harrison Avenue, Moreton Avenue; Jefferson Avenue, and Washington Avenue and Maple Street and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way, **EXCEPTING THEREFROM**, that portion of Lot 3, Block 5, Lake Avenue Addition to Kirkland, according to the official plat thereof in the office of the Auditor of King County, Washington lying between two lines drawn parallel with and distant, respectively, 34.0 feet and 50.0 feet Westerly of, as measured at right angles from The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway) Main Track centerline as now located and constructed upon, over, and across said Block 5; also,

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 220, 223, 224, 232, 233, 238, and 241 as said Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of King County Plats, at page 5, together with any right title and interest, if any to those portions of Massachusetts Avenue, Madison Avenue, Michigan Avenue, Olympia Avenue, Piccadilly Avenue, Cascade Avenue, Clarkson Avenue, Fir Street, and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way; also,

That portion of Lots 1, 2, 4, 37, and all of Lots 3, 38, and 39, Block 227 as said Lots and Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of King County Plats, at page 5, which lie Northeasterly of a line parallel with and distant 50 feet

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Southwesterly from, measured at right angles to said Railway Company's Main Track centerline as now located and constructed and Southwesterly of a line parallel with and distant 50 feet Northeasterly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the, S½SE¼ Section 5, NW¼NE¼, E½NW¼, E½SW¼, Section 8, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South right of way line of Clarkson Avenue, City of Kirkland, Washington, and bounded on the West by the West line of said E½SW¼, Section 8, **EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260787, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated May 15, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded August 5, 1999 as Document No. 19990805001402, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281544, records of King County, Washington, also;

That certain 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington, said 0.23 acre tract being described in said deed for reference as follows:

“Commencing at a point in the east line of Lot four (4), Section eight (8), Township twenty-five (25) North, Range five (5) east, W.M., that is 395 feet north of the southeast corner of said lot, and running thence west parallel with the south line of said Lot four (4) 67 feet, more or less, to a point that 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 Company as the same is now located, staked out and to be constructed across said Section eight (8); thence running northeasterly parallel with said railway center line 200 feet; thence westerly at right angles to said railway center line 30 feet; thence northeasterly parallel with said railway center line, and 80 feet distant therefrom, 130 feet, more or less, to the east line of said Lot four (4); thence south along said east line of said Lot four (4) 322 feet, more or less, to the point of beginning; containing 0.23 acres, more or less.”; also,

That certain strip of land described in deed dated March 3, 1904 from Seattle and Shanghai Investment Company to Northern Pacific Railway Company recorded March 9, 1904 in

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Book 387, Page 243, records of King County, Washington, said strip being described in said deed for reference as follows:

“A strip of land Two Hundred twenty-five (225) feet in width across that certain parcel of land designated as Tract “B” in deed from the Kirkland Land and Improvement Company to H. A. Noble, dated July 13, 1899 of record in the Auditor’s office of King County, Washington in Volume 245 of Deeds, at page 41, reference thereto being had. Said strip of land hereby conveyed, having for its boundaries two lines that are parallel with and respectively distant One Hundred (100) feet easterly from, and One Hundred Twenty-Five (125) feet westerly from, when measured at right angles to, the center line of the Seattle Belt Line branch of the NORTHERN PACIFIC RAILWAY COMPANY, as the same is now constructed and located across said Tract “B”, which said Tract “B” is located in Section 17 of Township 25, North of Range 5 east of the Willamette Meridian”; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 4, Section 8, Government Lots 1, 2, and 3, the E½SW¼ Section 17, and the NE¼NW¼, NE¼ Section 20, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South line of that certain hereinabove described 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington and the East line of said Government Lot 4, Section 8, and bounded on the South by the South line of said NE¼ Section 20, together with such additional widths as may be necessary to catch the slope of the fill in the N½ of said Government Lot 2, Section 17 as delineated in the 7th described parcel in deed dated June 20, 1903 from Kirkland Land and Improvement Company to Northern Pacific Railway Company recorded June 26, 1903 in Book 352, Page 582, records of King County, Washington. **EXCEPTING THEREFROM**, that portion of said 100.0 foot wide right of way lying within said hereinabove described parcel of land designated as Tract “B” in deed from the Kirkland Land and Improvement Company to H. A. Noble, dated July 13, 1899 of record in the Auditor’s office of King County, Washington in Volume 245 of Deeds, at page 41,; also,

That certain tract of land described in deed dated December 26, 1952 from Alma F. Robinson and William G. Robinson et al. to Northern Pacific Railway Company recorded January 14, 1953 in Book 3220 of Deeds, Page 301, in the records of the Auditor’s office of King County, Washington, said tract of land being described in said deed for reference as follows:

“That portion of the south half of the northeast quarter (S½NE¼) of Section 20, Township 25 North, Range 5 East of the Willamette Meridian, described as follows: Commencing at the center of said section; thence north 0 degrees 18 minutes 24 seconds west along the

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north and south quarter line of said section 738.60 feet to the center of the county road; thence along said road south 77 degrees 7 minutes east 500.00 feet; thence south 71 degrees 54 minutes east 308.27 feet, more or less; thence north 34 degrees 38 minutes east 18.00 feet to a stake in the north margin of said road; thence north 34 degrees 38 minutes east 609.40 feet, more or less, to the southwesterly margin of the Grantee's right of way, said margin being concentric with and distant 50 feet southwesterly, measured radially, from the center line of the main track of the Grantee's Belt Line as now constructed; thence southeasterly along said margin approximately 150 feet to a point distant 50 feet southwesterly, measured along the radius of the curve of said center line, from station 511 plus 50 in said center line (which station is distant 2337.6 feet southeasterly measured along said center line, from the north line of said section), the last-described point being the true point of beginning; thence southeasterly and southerly along said margin to a point distant 50 feet westerly, measured along the radius of said curve, from station 515 plus 60 in said center line; thence northwesterly in a straight line to a point distant 110 feet southwesterly measured along the radius of said curve, from station 514 plus 28 in said center line; thence northwesterly in a straight line to a point distant 110 feet southwesterly, measured along the radius of said curve, from station 513 plus 28 in said center line; thence northerly in a straight line to the true point of beginning.", also,

That portion of that certain 100.0 foot wide Branch Line right of way at said Railway Company's Northrup Station, being 50.0 feet on each side of said Branch Line's Main Track centerline, as originally located and constructed, upon, over and across Blocks 12, 13, 14, 15, 16, 21, 22, 23 and 24, all within Kirkland Syndicate First Addition to Seattle, together with any right title and interest, if any to those portions of Maple Street, Nelson Street, Bixby Street, Kirkland Avenue, Hawks Avenue and Fransen Avenue which lie within said 100.0 foot wide Branch Line right of way; also,

Those portion of Lots 10, 11, and 12, Block 14, Lots 1, 2, 3, and 4, Block 23 and Lot 10, Block 24, all within Kirkland Syndicate First Addition to Seattle, lying Southwesterly of a line parallel with and distant 50 feet Southwesterly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Railway Company's Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 20, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 21, all in Township 25 North, Range 5 East, W. M., bounded on the North by the North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 20, and bounded on the South by the South line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 21, together with any right title and interest, if any to those portions of Fransen Avenue, Jordan Avenue, Elkoos Avenue, and Railroad Avenue, which lie within said 100.0 foot wide Branch Line right of way; also,

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That portion of Block 7, of Kirkland Syndicate's Second Addition to Kirkland Washington, situate in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 20, and that portion of said Railway Company's property situate in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 21, and in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 28, all in Township 25 North, Range 5 East, W. M., lying Easterly of a line parallel with and distant 50.0 feet Westerly from, measured at right angles and/or radially to said Railway Company's Main Track centerline as now located and constructed and Westerly of a line parallel with and distant 50.0 feet Westerly from, measured at right angles to said Railway Company's Main Track centerline as originally located and constructed, bounded on the West by the West line of said Block 7 and its Northerly prolongation, and bounded on the South by the intersection of said parallel lines, together with any right, title and interest, if any, to Houghton Street and Railroad Avenue of Kirkland Syndicate's Second Addition to Kirkland Washington; also,

That certain 0.63 acre tract of land described in deed dated November 13, 1904 from Nathan P. Dodge Et Ux. to the Northern Pacific Railway Company recorded February 9, 1905 in Volume 408 of Deeds, Page 263, records of King County, Washington, said 0.63 acre being described in said deed for reference as follows:

"That part of southwest quarter of southwest quarter (SW/4 of SW/4), Section twenty-one (21), Township twenty-five (25) north, Range five (5) east, W. M., described by metes and bounds as follows:

"Beginning at a point in the south line of said Section twenty-one (21) fifty (50) feet east from, when measured at right angles to, the original right of way of Seattle Belt Line Branch of the Northern Pacific Railway Company, as conveyed by deed executed by Roscoe Dunn and Ann Dunn his wife, dated Oct. 4<sup>th</sup>, 1890 and recorded Dec. 4<sup>th</sup>, 1890 in volume 116 of deeds, page 114, and running thence north 8° 40' west parallel with and 50 feet distant easterly from said original right of way line a distance of 270 feet to a point of curve; thence northwesterly along a curve to the left having a radius of 716.8 feet, a distance of 492.7 feet; thence north 48° 5' west a distance of 135 feet more or less, to a point on the said easterly line of the original right of way of said railway; thence southeasterly along said original easterly right of way line on a curve to the right having a radius of 859 feet, a distance of 591 feet; thence continuing along said easterly right of way line south 8° 40' east, a distance of 260 feet, more or less, to an intersection of said right of way line with the southern boundary line of said section 21; thence east 50.5 feet, more or less, to point of beginning, containing 0.63 acres, more or less, situated in the County of King, State of Washington."; also,

That certain strip of land described in deed dated August 3, 1904 from John Zwiefelhofer and Aloisia Zwiefelhofer to Northern Pacific Railway Company recorded August 6, 1904 in Book 404 of Deeds, Page 44, records of King County, Washington, said strip of land being described in said deed for reference as follows:

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“A strip of land fifty (50) feet wide lying immediately east of the right of way of said Railway Company and extending South from the North line of Section 28, Township 25 North Range 5 East a distance of Six Hundred feet (600) and containing 0.69 acres in the Northwest Quarter of the Northwest quarter (NW¼NW¼) of Section 28 Tp 25 N R 5 E WM.”, **EXCEPTING THEREFROM**, that portion of said 50 foot wide strip lying Northerly of a line parallel to and 400.0 feet Southerly of the North line of said NW¼NW¼ of Section 28 ; also,

Parcel 3, of City of Bellevue Short Plat No. 80-16, according to the Short Plat recorded under King County Recording No. 8101239001, **EXCEPTING THEREFROM**, that certain tract of land described in deed dated December 13, 1996 from Burlington Northern Railroad Company to Fibres International, recorded December 13, 1996 as Document No. 9612130870, records of King County, Washington; also,

Tract B, of City of Bellevue Short Plat No. 80-16, according to the Short Plat recorded under King County Recording No. 8101239001; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Railway Company’s Main Track centerline, as now located and constructed, upon, over and across the W½W½ Section 28, W½NW¼ Section 33, all in Township 25 North, Range 5 East, W. M., bounded on the North by the North line of said W½W½ Section 28, and bounded on the South by the South line of said W½NW¼ Section 33, **EXCEPTING THEREFROM**, that portion of said 100.0 foot wide right of way lying Easterly of a line parallel with and distant 35 feet Easterly from, measured at right angles to said Railway Company’s Main Track centerline as now located and constructed and Northerly of a line parallel to and 400.0 feet Southerly of the North line of said NW¼NW¼ of Section 28, **ALSO EXCEPTING THEREFROM**, that portion of said 100 foot wide Branch Line right of way lying within that certain tract of land described in Special Warranty Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2000 as Document No. 20000522001155, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805221787, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated June 8, 2001 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded January 3, 2003 as Document No. 20030103001327, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded December 28, 1998 as Document No. 9812282942, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated March 17, 2000 from The Burlington Northern and Santa Fe

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Railway Company to ANT, LLC recorded October 4, 2000 as Document No. 20001004000767, records of King County, Washington, , also;

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Lots 1, 2, 3, 4 and 8 of Strawberry Lawn, King County Washington, recorded in Volume 4 of Plats, page 30½, King County, Washington recorder, together with such additional widths as are necessary to catch the slopes of the cuts and fills of the roadbed of said Railway in said Lots 1 and 8 of Strawberry Lawn, King County Washington, as delineated in deed dated August 31, 1903 from Henry Hewitt, Jr. and Rocena L. Hewitt to the Northern Pacific Railway Company, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260792, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281537, records of King County, Washington, also;

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the W½ Section 4, Government Lots 1 and 4, E½W½ Section 9, Government Lot 1, SW¼NW¼, NW¼SW¼ Section 16, Government Lots 4 and 5 Section 17, Government Lots 1, 2, 3 and 4 Section 20, Government Lots 1, 2, 3, 4 and 5 Section 29, all in Township 24 North, Range 5 East, W. M., bounded on the North by the North line of W½ Section 4, and bounded on the South by the South line of said Government Lot 5, Section 29, together with such additional widths or strips of land as are necessary to catch the slopes of the cuts and fills of the roadbed of said Railway in the NW¼NW¼ of said Section 4, which said roadbed is to be constructed having a width at grade of 22 feet and the cuts to have a slope of one to one and the fills to have a slope of one and one half to one, as delineated in deed dated September 8, 1903 from Lake Washington Land Company to Northern Pacific Railway Company, recorded in Volume 386 of Deeds, Page 147, records of King County, Washington, **EXCEPTING THEREFROM**, that certain tract of land described in Correction Special Warranty Deed dated April 30, 2001 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2001 as Document No. 20010522000186, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281547, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281545, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa

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Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281546, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281543, records of King County, Washington, **ALSO EXCEPTING THEREFROM** that certain tract of land described in deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 30, 2001 as Document No. 20010430000977, records of King County, Washington, **ALSO EXCEPTING THEREFROM** that certain tract of land described in deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded December 15, 1998 as Document No. 9812151238, records of King County, Washington; also,

That certain Tract I and that certain Tract II described in deed dated September 19, 1967 from State of Washington to Northern Pacific Railway Company filed for record December 13, 1967 in Book 5023, Page 546, Auditor's No. 6278130, records of King County, Washington, said Tracts being described in said deed for reference as follows:

#### "Tract I: (Fee)

"All those portion of the Southeast quarter of the Northwest quarter and the Northeast quarter of the Southwest quarter, Section 9, Township 24 North, Range 5 East, W.M., lying Westerly of the existing 100 foot right of way of the Northern Pacific Railway Company and Easterly of a line described as follows: Beginning at a point opposite Station REL. R.R. 737+00 on the Relocated Railroad Center Line (as hereinafter described) and 50 feet Westerly therefrom when measured radially thereto (which point also lies on the Westerly line of said existing railroad right of way); thence Southerly parallel with said relocated railroad center line to a point opposite REL. R.R. 739+00 thereon; thence Southwesterly in a straight line to a point opposite REL. R.R. 740+00 on said relocated railroad center line and 130 feet Westerly therefrom when measured radially thereto; thence Southerly parallel with said relocated railroad center line a distance of 350 feet, more or less, to an intersection with the Northerly right of way line of State Highway Project entitled Primary State Highway No. 2 (SR 90), East Channel Bridge to Richards Road (as hereinafter described); thence North 84°13'42" East along said Northerly right of way line a distance of 125 feet, more or less to an intersection with said Westerly line of said existing railroad right of way and the end of this line description:

#### "Tract II: (Fee)

"All those portion of Lots 13 and 14, Block 1, Mercer Addition, according to the plat thereof recorded in Volume 17 of Plats, page 8, records of King County and of the Northeast quarter of the Southwest quarter, Section 9, Township 24 North, Range 5 East, W.M., lying Northwesterly of the existing 100 foot right of way of the Northern Pacific

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Railway Company and Southeasterly of a line described as follows: Beginning at the Southeast corner of said Lot 13, which point also lies on the Northwesterly line of said existing railroad right of way; thence Northeasterly in a straight line to a point opposite REL. R.R. 753+00 on the Relocated Railroad Center Line (as hereinafter described) and 50 feet Northwesterly therefrom when measured at right angles thereto; thence Northeasterly in a straight line to a point opposite REL. R.R. 752+00 on said relocated railroad center line and 90 feet Northwesterly therefrom when measured at right angles thereto; thence Northeasterly parallel with said relocated railroad center line a distance of 120 feet, more or less, to an intersection with the Southerly right of way line of State Highway Project entitled Primary State Highway No. 2 (SR 90), East Channel Bridge to Richards Road (as hereinafter described); thence South 79°37'46" East a distance of 105 feet, more or less, to an intersection with said Westerly line of said existing railroad right of way and the end of this line description:

..."RELOCATED RAILROAD CENTER LINE DESCRIPTION:

"Beginning at Railroad Station 734+80 on the existing main line center line of the Northern Pacific Railway Company's Track in the Southeast quarter of the Northwest quarter, Section 9, Township 24 North, Range 5 East, W.M., in the vicinity of Factoria, Washington, which point equals Relocated Railroad Station (hereinafter referred to as REL. R.R.) 734+80; thence South 20°44'04" East a distance of 21.1 feet to REL. R.R. 735+01.10 T.S.; thence on the arc of an increasing spiral curve to the right having an "A" value of 5 a distance of 80 feet to REL. R.R. 735+81.10 S.C.; thence on the arc of a 4° circular curve to the right thru a central angle of 49°18' a distance of 1232.50 feet to REL. R.R. 748+13.60 C.S.; thence on the arc of a decreasing spiral curve to the right having an "A" value of 5, a distance of 80 feet to R.R. 743+93.60 S.T.; thence South 31°46' West a distance of 683.96 feet to REL. R.R. 755+77.56 T.S.; thence on the arc of an increasing spiral curve to the left having an "A" value of 5 a distance of 80 feet to REL. R.R. 756+57.56 S.C. which point equals Railroad Station 756+91.53 ahead on said existing main line center line of track in the Southeast quarter of the Southwest quarter, Section 9, and the end of this center line description.

"SOUTHERLY RIGHT OF WAY LINE OF PRIMARY STATE HIGHWAY NO. 2 (SR 90), EAST CHANNEL BRIDGE TO RICHARDS ROAD:

"Beginning at the Southwest corner of Lot 21, Block 4, Mercer Addition, according to the plat thereof recorded in Volume 17 of Plats, page 8, records of King County, and running thence North 79°37'46" West a distance of 324.08 feet.

"NORTHERLY RIGHT OF WAY LINE OF PRIMARY STATE HIGHWAY NO. 2 (SR 90), EAST CHANNEL BRIDGE TO RICHARDS ROAD:

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“Beginning at REL. R.R. 746+28.83 P.O.C. on the Relocated Railroad Center Line (as above described); thence South 84°03’37” West a distance of 344.01 feet; thence North 5°56’23” West a distance of 212.5 feet; thence North 80°02’48” East a distance of 109.27 feet; thence North 5°56’23” West a distance of 25 feet; thence North 70°51’54” East a distance of 196.18 feet to the true point of beginning of this line description; thence North 84°13’42” East a distance of 294.43 feet.”; also

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 1, Section 32, Township 24 North, Range 5 East, W. M., King County, Washington, bounded on the North and South by the North and South lines of said Government Lot 1; also,

That certain 100.0 foot wide Branch Line right of way, upon, over and across Government Lot 2, Section 32, and Government Lots 3 and 4 Section 31, all in Township 24 North, Range 5 East, W. M., King County, Washington, as described in Deed dated September 8, 1903 from Lake Washington Belt Line Company to Northern Pacific Railway Company, recorded in Volume 386 of Deeds, Page 147, records of King County, Washington. **EXCEPTING THEREFROM**, that certain tract of land described in deed dated September 14, 2001 from The Burlington Northern and Santa Fe Railway Company to Barbee Forest Products, Inc., **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in deed dated March 23, 1936 from Northern Pacific Railway Company to Frank Walloch, lying within said Government Lot 2, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated May 8, 1990 from Burlington Northern Railroad Company to Robert J. Phelps and Nancy C. Phelps, recorded as document 9005101552, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated March 19, 1992 from Burlington Northern Railroad Company to Gilbert A. Schoos and Alice G. Schoos; also, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in deed dated February 1, 1937 from Northern Pacific Railway Company to Carl Jorgensen and Christine Jorgensen, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated February 28, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 20, 1999 as Document Number 9904210268, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 26, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000619, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 5, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000620, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated June 26, 1998 from The Burlington Northern and Santa Fe

## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000618, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000621, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 24, 1998 as Document Number 20001030000428, records of King County, Washington; also,

That certain tract of land described in deed dated March 17, 1904 from The Lake Washington Land Company to Northern Pacific Railway Company, situated in Lot 3, Section 31, Township 24 North, Range 5 East, W. M., King County, Washington, said tract being described in said deed for reference as follows:

“All that portion of said Lot three (3) lying between the eastern line of the right of way of the Northern Pacific Railway Company over and across said lot and a line drawn parallel with and twelve and one-half (12-1/2) feet distant easterly from the center line of said Seattle Belt Line Branch of the Northern Pacific Company as the same is now temporarily located and constructed over and across said lot, and containing on-fourth of an acre, more or less ...” **EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated February 28, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 20, 1999 as Document Number 9904210268, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 26, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000619, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 5, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000620, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Quitclaim Deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000618, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded June 17, 1999 as Document Number 19990617000621, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in Correction Deed dated May 6, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 24, 1998 as Document Number 20001030000428, records of King County, Washington; also,

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

That portion of said Railway Company's property situated in Government Lot 1, Section 6, Township 23 North, Range 5 East, W. M., King County, Washington, lying Southwesterly of a line parallel with and distant 50.0 feet Northeasterly from, measured at right angles to said Railway Company's Branch Line Main Track centerline as originally located and constructed, and Northeasterly of the Southwesterly boundary of that certain 100 foot strip described in Judgment and decree of Appropriation, No. 40536, dated February 8, 1904 in the Superior Court of the State of Washington in and for the County of King, bounded on the North by the North line of said Lot 1, Section 6, and bounded on the South by a line radial to said Railway Company's Main Track centerline, as now located and constructed at a point distant 65.5 feet Northwesterly of the East line of said Lot 1, Section 6, as measured along said Main Track centerline

**EXCEPTING FROM SAID BNSF RAILWAY COMPANY'S (FORMERLY NORTHERN PACIFIC RAILWAY COMPANY) WOODINVILLE (MP 23.45) TO KENNYDALE (MP 5.0), WASHINGTON BRANCH LINE RIGHT OF WAY AS DESCRIBED ABOVE THAT PORTION THEREOF COVERING A 1.1 MILE SECTION CONVEYED TO SOUND TRANSIT PURSUANT TO DEED RECORDED APRIL 11, 2012, UNDER RECORDING NO. 2012041001173.**

**PARCEL C:**

**Redmond Spur**

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) Redmond Spur Right of Way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed, between Woodinville (Milepost 0.0) to Redmond (Milepost 3.4), King County, Washington, more particularly described as follows, to-wit:

That certain tract of land described in deed dated December 28, 1931 from John DeYoung and Ellen DeYoung to Northern Pacific Railway Company recorded in Volume 1511 of Deeds, Page 495, records of King County, Washington, lying in the N/2 of SE/4 Section 9, Township 26 North, Range 5 East, W. M., **EXCEPTING THEREFROM**, that portion of that certain tract of land described in deed dated November 17, 1998 from The Burlington Northern and Santa Fe Railway Company to Tjossem Properties IV, LLC and Tjossem Properties V, LLC, recorded December 23, 1998 as Instrument No. 9812240021, which lies within said tract described in deed dated December 28, 1931; also,

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### LEGAL DESCRIPTION OF PROPERTY

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the E½ Section 9, the NE¼NE¼ Section 16, the NW¼ Section 15, all in Township 26 North, 5 East, W. M., bounded Northerly by a line concentric with and distant 50.0 feet Southwesterly from, measured radially to said Railway Company's Seattle to Sumas Main Track centerline as now located and constructed, and bounded Southerly by the South line of said NW¼ Section 15, **EXCEPTING THEREFROM**, that portion of that certain tract of land described in deed dated November 17, 1998 from The Burlington Northern and Santa Fe Railway Company to Tjossem Properties IV, LLC and Tjossem Properties V, LLC, recorded December 23, 1998 as Instrument No. 9812240021, which lies within said 100.0 foot wide right of way, **ALSO EXCEPTING THEREFROM**, that portion of that certain 100.0 foot wide Seattle Belt Line right of way 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 Dees, Page 48, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, the Northeasterly 25.0 feet of said 100.0 foot wide Redmond Spur right of way, bounded on the South by the South line of said E½ Section 9 and bounded Northwesterly by a line perpendicular to said Railway Company's Main Track centerline, at a point distant 1,060.0 feet Northwesterly of said South line of the E½ Section 9, as measured along said Main Track centerline, being that certain tract of land described in Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2003 as Document No. 20030211000429, records of King County, Washington; also,

That portion of that certain 50.0 foot wide Redmond Spur right of way, being 25.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SW¼ Section 15, Township 26 North, 5 East, W. M., bounded Northerly and Easterly by the North and East lines of said SW¼ Section 15; also,

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SW¼SE¼ of Section 15, Township 26 North, 5 East, W. M., bounded Westerly and Southerly by the West and South lines of said SW¼SE¼ of Section 15; also,

That portion of that certain 30.0 foot wide Redmond Spur right of way, being 15.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the W½NE¼ Section 22, Township 26 North, 5 East, W. M., bounded Northerly and Southerly by the North and South lines of said W½NE¼ Section 22

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW¼SE¼ of Section 22, W. M., bounded Northerly and Southerly by the North and South lines of said NW¼SE¼ of Section 22; also,

EXHIBIT A

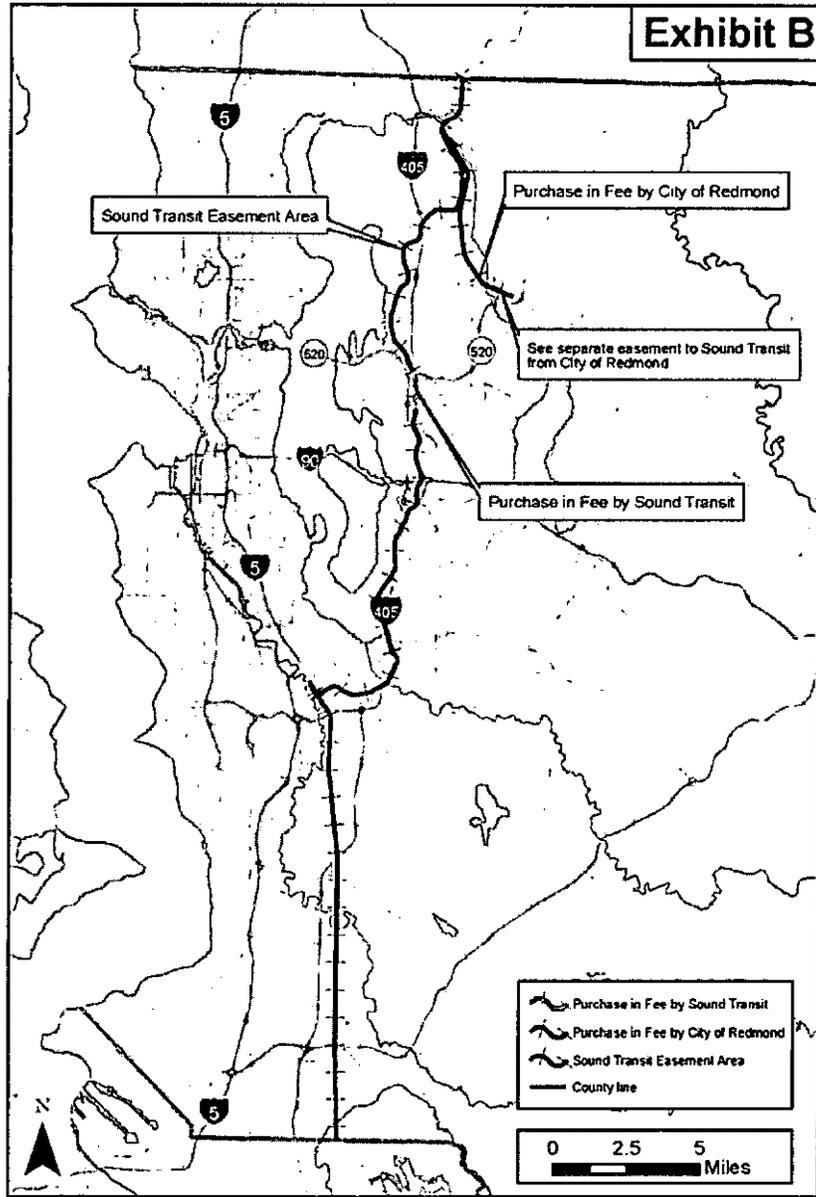
LEGAL DESCRIPTION OF PROPERTY

That portion of that certain 50.0 foot wide Redmond Spur right of way, being 25.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 22, and the W $\frac{1}{2}$ NE $\frac{1}{4}$  Section 27, Township 26 North, 5 East, W. M., bounded Northerly by the North line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 22, and bounded Westerly by the West line of said W $\frac{1}{2}$ NE $\frac{1}{4}$  Section 27; also,

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 27, Township 26 North, 5 East, W. M., bounded Easterly and Southerly by the East and South lines of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 27, also,

That portion of that certain 100.0 foot wide Redmond Spur right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the S $\frac{1}{2}$  Section 27, Township 26 North, 5 East, W. M., bounded on the North by the North line of said S $\frac{1}{2}$  Section 27 and on the South by the South margin of Northeast 124<sup>th</sup> Street extended.

EXHIBIT B  
MAP OF PROPERTY



## EXHIBIT C

### ADDITIONAL PROVISIONS

The following additional terms, covenants, conditions and limitations shall be permanently incorporated into the Easement Agreement as to any portion of the Property in which King County acquires the underlying interest in the Property from the Port and shall apply to the development of a Trail by any successor in interest to King County. In such case, in any conflict between the body of the Easement Agreement and this Exhibit C to the Easement Agreement, this Exhibit C to the Easement Agreement shall control; references in the Easement Agreement to the Port enforcing or carrying out the terms of the Multipurpose Easement shall have no effect.

The terms of this Exhibit C are intended to govern the relationship between King County and Sound Transit with regard to dual use of the Property for Trail and Transportation purposes, and with regard to certain County utilities within the Property. It does not otherwise affect the County's reserved rights in the Property or Sound Transit's rights under the Easement Agreement. As to any portion of the Property in which King County does not acquire the underlying interest in the Property, this Exhibit C shall have no effect.

#### **I. Scope of Trail Use**

**A.** King County in its discretion may establish a Trail Area of sufficient size to meet the County's Regional Trail Guidelines in any location on the Property. The Trail Area may include Crossing Structures. King County and Sound Transit acknowledge that all or substantial portions of the Trail Area may be thirty (30) feet wide and be located on the rail bed. The Trail Area may be used for public access and an interim or permanent public hard and/or soft-surface regional trail for public pedestrian, bicycle, or other non-motorized uses ("Trail"). The Parties acknowledge that the Trail Area could be wider where additional width is needed to accommodate all necessary slopes for cuts and fills for the Trail; to install abutments, pilings, or other structural elements of trail bridges or tunnels; to allow grade or other physical separation of the Trail and any active rail lines or other uses on the Property; or to install storm water drainage or detention facilities or other facilities required by a permitting agency in support of or as mitigation for the Trail. King County may establish, amend or add to a Trail Area for the purposes of this Easement, subject to the Review Process established for the review of Other Improvements.

**B.** King County may use the Trail Area for all purposes necessary or incidental to public access and King County's installation, construction, ownership, use, operation, maintenance, inspection, repair, replacement, renovation, improvement, removal and enhancement of a Trail, including, but not limited to, the ability to install, construct, operate, maintain, modify, repair, replace, improve, remove and use the Trail Area for public access and any Trail-related purposes as King County may now or hereafter deem appropriate, including the addition, removal or replacement of Trail improvements at King County's election, either in whole or in part with either like or different improvements. All Trail-related improvements of any kind that are now or hereafter acquired, constructed or

## EXHIBIT C

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installed by King County at King County's sole cost and expense within the Trail Area, or constructed by Sound Transit for King County pursuant to this Exhibit C shall be and shall at all times remain the property of King County. King County may also use areas outside the Trail Area on the Property, including within a Temporary Construction Easement Area or an Easement Area, for any ingress and egress associated with public access and all other uses associated with a Trail, *provided*, such use within an Easement Area or Temporary Construction Easement Area shall only be with Sound Transit's consent, which consent shall not be unreasonably withheld, conditioned, or delayed if the use would not unreasonably interfere with the construction or operation of a High Capacity Transit Facility.

C. King County may temporarily stage equipment and material on the Property in and around the Trail Area (including within an Easement Area or Temporary Construction Easement Area, with Sound Transit's prior consent, which consent shall not be unreasonably withheld, conditioned, or delayed if the use would not unreasonably interfere with the construction or operation of a High Capacity Transit Facility), as reasonably necessary to construct, operate, maintain, improve or remove the Trail. King County may construct, operate and maintain Trail crossings over, under, or across any railroad tracks or other transportation facilities associated with a Sound Transit Transportation Use on the Property, *provided* that such crossings shall be consistent with applicable law, trail or crossing design standards and shall not unreasonably interfere with any Sound Transit Transportation Uses on the Property, and *provided further* that the King County shall be responsible for performing and paying for Custodial Activities as defined in this Easement Agreement as to any of the crossing improvements, including any railroad tracks or other transportation facilities in the area of the crossing that are not located within Temporary Construction Easement Areas or Easement Areas.

D. Prior to King County establishing, amending or adding to a Trail Area, King County shall provide Sound Transit with (a) a description of the location of the Trail Area and (2) a copy of all plans and specifications for a proposed Trail if any have been prepared. Sound Transit shall review King County's proposed Trail Area as a proposed Other Improvement according to the Review Process except that Sound Transit shall have sixty (60) days to respond. As to any portion of the Property that is not designated as a Planned Easement Area or subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area and is thus subject to the standards of Section 9B(1) of the Easement Agreement, the proposed Trail Area may not be deemed to impair the ability of Sound Transit to design, construct, use, operate, inspect, maintain or repair High Capacity Transit Facilities in a reasonably practicable manner as that term is used in Section 9 of the Easement Agreement. However, Sound Transit may suggest reasonable changes to the County's proposal that would result in the future ability of Sound Transit and King County to carry out the Transportation and Trail uses in a manner that would reduce the need for Sound Transit to incur costs to relocate a Trail or Trail

## EXHIBIT C

### ADDITIONAL PROVISIONS

Area. King County will reasonably and in good faith consider implementing any such reasonable suggestions.

E. Prior to the commencement of any Trail Development or any other activity related to Trail Development, King County shall provide Sound Transit with (i) a description of the location of the Trail Area, (b) a copy of all plans and specifications for such proposed Trail Development, and (ii) a plan for coordinating the proposed Trail Development with any High Capacity Transit Facility that is existing or under evaluation or proposed within a Planned Easement Area, or area subject to a Notice of Selected Alignment, Temporary Construction Easement Area, or Easement Area. Sound Transit shall review King County's proposal as a proposed Other Improvement according to the Review Process. As to any portion of the Property that is not designated a Planned Easement Area, or subject to a Notice of Selected Alignment, Temporary Construction Easement Area or Easement Area, and is thus subject to the standards of Section 9B (1), the proposed Trail may not be deemed to impair the ability of Sound Transit to design, construct, use, operate, inspect, maintain or repair High Capacity Transit Facilities in a reasonably practicable manner as that term is used in Section 9 of the Easement Agreement. However, Sound Transit may suggest reasonable changes to the County's proposal that would result in the future ability of Sound Transit and King County to carry out the Transportation and Trail uses in a manner that would reduce the need for Sound Transit to incur costs to relocate a Trail or Trail Area. King County will reasonably and in good faith consider implementing any such reasonable suggestions.

F. If King County proposes a Trail Development within a Planned Easement Area the Parties shall, in addition to the requirements set forth in Sections D and E above, cooperate in good faith to mutually agree on the location of the Trail Area and Trail within the Planned Easement Area and consistent with the terms of the Easement Agreement in order to avoid delaying the County's Trail Development until such time as Sound Transit determines to record the Temporary Construction Easement Area and Easement Area.

G. The Parties encourage one another to informally consult and cooperate with one another in developing plans for Transportation Use and Trail facilities as early and often as reasonably possible in order to achieve the dual Transportation Use and Trail uses that are intended under the Easement Agreement at a reasonable cost. In light of the environmental review processes that public entities follow, the Parties may request comment from one another on alternatives under development for or consideration pursuant to such processes. In such case, the responding Party shall reasonably respond as appropriate under the circumstances considering the level of information available at the time. Any such response shall not be considered consent or approval under the terms of the Easement Agreement.

## EXHIBIT C

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**H.** In the event Sound Transit provides a Notice of Selected Alignment in an area where Trail Development has not commenced and Sound Transit does not provide King County with a Notice of Intent to Develop within one year after providing the Notice of Selected Alignment, Sound Transit and King County shall at King County's request consult to determine as precisely as possible the location of the Trail Area consistent with the Easement Agreement and the time at which King County can construct the Trail. To make this determination, Sound Transit and King County shall use currently available plans and information and will make a joint determination within sixty (60) days of King County initiating the process. If King County and Sound Transit are unable to make this joint determination within this sixty (60) day period, either party may initiate Dispute Resolution under Section 8A(3) of the Easement Agreement. In this joint determination process, Sound Transit and King County will consider the probable timeframe in which Sound Transit construction will occur, the likely impacts of Sound Transit construction on development of the Trail in any existing or relocated Trail Area, and whether it is reasonable to construct a temporary Trail within any existing Trail Area for future relocation during Sound Transit construction. If the development of Sound Transit's High Capacity Transit Facility within the area subject to a Notice of Selected Alignment will require Trail Area relocation outside the Property, Sound Transit shall provide the relocated Trail Area for use by King County no later than three (3) years after the Notice of Selected Alignment. The provisions in this Section H are in addition to the provisions of Sections I.D and E, and do not limit the ability of King County to also elect to proceed under Sections I.D and E.

**I.** King County shall, at its sole cost and expense, comply with all stormwater requirements for Trail Development to the extent any such requirements are applicable to King County's Trail Development

#### **II. Trail Use and Transportation Use of Property.**

King County understands, acknowledges, and agrees that Sound Transit may undertake Transportation Use of the Property consistent with the terms of this Easement Agreement

##### **A. Trail Area Relocation.**

(i) In the event Sound Transit provides a Notice of Intent to Develop a portion of the Property for a Sound Transit Transportation Use in a manner that would unreasonably interfere with King County's then existing Trail or Trail for which Trail Development has commenced on a portion of the Property, then Sound Transit shall relocate the Trail and Trail Area, at Sound Transit's sole cost and expense, in a condition and to another location consistent with King County's Regional Trail Guidelines in effect on the Effective Date, the development standards and conditions of other regional trails within King County, and the Railbanking Obligations, which other location may, to the

## EXHIBIT C

### ADDITIONAL PROVISIONS

extent consistent with the Railbanking Obligations be outside of the Property, *provided*, Sound Transit makes a good faith effort to designate a location that is reasonably close to the Property, and *provided further*, that the width and condition of the relocated Trail need not exceed the width and condition of the existing Trail regardless of the Regional Trail Guidelines or development standards and condition of other regional trails within King County. Such relocation shall include reasonable operational, safety, and/or aesthetic improvements and structures such as bridges, trestles, Crossing Structures, Trail crossings, ingress and egress areas, berms, grade separation, fencing and/or landscaping. If no Trail Development has commenced when Sound Transit provides a Notice of Intent to Develop, then Sound Transit shall establish at its sole cost and expense a Trail Area in another location consistent with King County's Regional Trail Guidelines in effect on the Effective Date, the development standards and conditions of other regional trails within King County, and the Railbanking Obligations, which other location may, to the extent consistent with the Railbanking Obligations be outside of the Property, *provided*, Sound Transit makes a good faith effort to designate a location that is reasonably close to the Property. In addition, the Trail Area location shall be of sufficient width and grade within which King County may develop or construct a trail that is consistent with King County's Regional Trail Guidelines in effect on the Effective Date, the development standards and conditions of other regional trails within King County, and the Railbanking Obligations, and within which may be located reasonable operational, safety, and/or aesthetic improvements and structures such as bridges, trestles, Crossing Structures, Trail crossings, ingress and egress areas, berms, grade separation, fencing and/or landscaping.

(ii) Notwithstanding the provisions of paragraph IIB (i), there may be rare circumstances requiring Sound Transit to relocate a Trail and/or Trail Area, where there is no reasonably practicable alternative for such relocation within the Property or outside the Property consistent with Section IIB(i) of this Exhibit C. In such an unusual case, the relocation may be to standards less than required by Section IIB(i) of this Exhibit C, so long as the Trail results in, and the Trail Area is sufficient for, a minimum ten feet of paved surface with at least one-foot wide shoulders on either side. "Reasonably practicable" as used in this Section IIB(ii) shall mean capable of being implemented in a reliable and effective manner at a cost, including any expenses associated with property acquisition, that is not substantially higher than would typically be expected for similar trail projects in areas of King County or other jurisdictions that have physical characteristics of and a degree of development similar to the area where Trail and/or Trail Area relocation is required.

(iii) In any Notice of Intent to Develop, Sound Transit shall propose the manner in which it will accomplish any relocation of a Trail Area and/or Trail. Sound Transit shall take reasonable steps to avoid disruption of Trail use during construction or other activities on an established Trail, and where disruption is not reasonably avoidable, it shall mitigate such disruption through the provision of detours or other means of bypassing the construction or other activity areas.

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### ADDITIONAL PROVISIONS

(iv) Notwithstanding provisions of this Paragraph B to the contrary, in no event shall Sound Transit be required to provide a relocated Trail Area or Trail in a width that exceeds the width of the Property from which the King County Trail Area or Trail is being displaced.

(v) Notwithstanding provisions of this Paragraph B to the contrary, Sound Transit shall not be responsible for relocating, or the cost of relocating, a Trail or Trail Area that is displaced, closed, removed or destroyed as a result of a reactivation order.

**B.** If a portion of the Property is subject to a Sound Transit Transportation Use when King County commences Trail Development, then King County shall be responsible for installing barriers to separate such portion of the Property from the Trail Area. If Sound Transit has commenced Transportation Use of a portion of the Property that is adjacent to a portion of Trail Area where Trail Development has commenced, then Sound Transit shall be responsible for installing barriers separating such portion of the Property from the Trail Area. King County and Sound Transit shall jointly determine the type and scope of barriers (e.g. jersey barriers, fencing, or grade separation) or other measures reasonably needed to separate the Trail Area from the Transportation Use, which barriers shall at a minimum meet any applicable regulatory standards; *provided*, that after initial barrier installation is completed, King County shall be responsible, at King County's sole cost and expense, to inspect, maintain and replace any barriers or other measures that will separate the Trail Area from the Sound Transit Transportation Use unless such barriers are within an Easement Area, in which case Sound Transit shall be responsible, at Sound Transit's sole cost and expense, to inspect, maintain and replace any barriers or other measures that will separate the Trail Area from the Sound Transit Transportation Use. Before either Sound Transit or King County may take any action that would require a joint determination under this Section II.B, it shall initiate negotiation of such joint determination through written notice to the other party accompanied by a detailed description of the proposed barriers. Thereafter Sound Transit and King County shall negotiate in a good faith and reasonable manner to reach agreement. The joint determination shall be made within sixty (60) days after the initiation of negotiation. If the joint determination is not made within that time, either Sound Transit or King County may start dispute resolution using the process set forth in Section 18A(3) of the Easement Agreement or other mutually acceptable dispute resolution process.

### **III. Custodial Activities.**

#### **A. Custodial Activities and Transportation Use.**

(i) "Custodial Activities" are those activities that a Property owner would reasonably take to manage the Property in order to keep the Property in a physical condition suitable for its use, to maintain the physical integrity of the Property, to prevent

## EXHIBIT C

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health and safety hazards, and to manage public access in a manner appropriate for the Property's use, which may range from allowing public access to prohibiting such access, depending on circumstances. Custodial Activities include both "Routine Maintenance" and "Capital Improvements." "Routine Maintenance" includes, but is not limited to, inspecting the property, litter and garbage pick up, brush and hazardous tree trimming or removal, drainage maintenance or repair, and fencing or signage maintenance: "Capital Improvements" includes capital investments in the Property that go beyond Routine Maintenance, including, but not limited to, the installation of fences, barriers, or signs, or the repair of a washout on the Property. Custodial Activities do not include any activities related to granting or managing easements, leases, permits, franchises, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Property, which activities shall be the sole responsibility of the County or the then fee owner of the Property .

(ii) A Sound Transit Transportation Use is undertaken when Sound Transit records an Easement Area or Temporary Construction Easement Area pursuant to the provisions of the Easement Agreement; and a Transportation Use is terminated when such use ceases and (a) Sound Transit records a termination of Easement Area or Temporary Construction Easement Area.

#### **B. Performance of Custodial Activities.**

Custodial Activities will be performed and paid for in the following manner depending on the uses present on the Property. The Party obligated to carry out Custodial Activities will conduct the Custodial Activities in a manner that complies with Railbanking Obligations, that complies with this Easement Agreement, and that meets that Party's needs for the use of the Property. Unless otherwise imposed by the terms of this Easement Agreement, as between the County and Sound Transit, the Party with the obligation to carry out Custodial Activities in this Section III.B is not responsible for ensuring that the Property is maintained in a condition that is suitable for the needs of the other Party.

(i) In any segment of the Property where there is no Sound Transit Transportation Use, King County shall be responsible for performing and paying for all Custodial Activities.

(ii) In any segment of the Property where there is Sound Transit Transportation Use, King County shall be responsible for performing and paying for all Custodial Activities on the Property except within a Temporary Construction Easement Area or Easement Area. Sound Transit shall be responsible for performing and paying for all Custodial Activities within a Easement Area or Temporary Construction Easement Area.

## EXHIBIT C

### ADDITIONAL PROVISIONS

#### **C. Custodial Activities Following Termination of Transportation Use.**

If and when Sound Transit Transportation Use is terminated on a segment of the Property, then King County shall resume performing Custodial Activities for such segment.

#### **D. Railbanking Obligations.**

(i) The Property shall be subject to the Railbanking Obligations so long as it remains in Railbanked status. King County shall comply with and Sound Transit shall not violate the Railbanking Obligations for so long as the Property remains in Railbanked status.

(ii) In the event King County determines that it is no longer reasonably practicable to carry out Railbanking Obligations because of actions taken by Sound Transit or any other entity using or claiming ownership of the Property, due to abandonment outside the Property of a segment of rail line connecting the Property to the national rail system, or due to catastrophic physical damage to the Property that would require exorbitant costs to address, then King County may notify Sound Transit in writing no less than 180 days before the date that it intends to notify the STB that King County will no longer serve as the Interim Trail User for all or a portion of the Property and to request that King County's Railbanking Obligations be extinguished as to the identified portion of the Property pursuant to the Railbanking Legislation. King County shall, if requested by Sound Transit, cooperate to transfer, as to the identified portion of the Property, its Interim Trail User status and the property rights necessary for an Interim Trail User to carry out the Railbanking Obligations to a replacement Interim Trail User. King County will transfer such property rights at no cost to the replacement Interim Trail User so long as the property rights would revert to King County if Railbanking ever terminates and the Property is abandoned.

(iii) If King County conveys the Property or an interest in the Property to another party for the purpose of that party developing and operating a Trail, King County may also transfer its Interim Trail User status to such transferee, *provided*, that such transferee agrees in a recordable instrument to be bound by the terms of this Easement Agreement, including specifically the terms of this Exhibit C.

(iv) The Parties recognize and agree that a portion of the Property between milepost 10.6 and 11.25 ("Wilburton Segment") has not been subject to Interim Trail Use and the Railbanking Obligations, but rather was abandoned with the approval of the STB prior to the Port's acquisition of the Property. The Wilburton Segment is a critical link in the maintenance of the remainder of the Property in compliance with the Railbanking Obligations. Therefore, the Wilburton Segment is

## EXHIBIT C

### ADDITIONAL PROVISIONS

subject to the terms of this Easement Agreement as if it was subject to Interim Trail Use and the Railbanking Obligations.

#### **E. Insurance and Indemnification.**

(i) Sound Transit shall name King County as an additional insured on any insurance policy maintained by Sound Transit related to any Sound Transit Transportation Use.

(ii) If Sound Transit uses the Property for rail-based or fixed guideway Sound Transit Transportation Use, it shall indemnify, hold harmless and defend King County from any and all obligations imposed by Railroad Unemployment Insurance Act (45 U.S.C.A. §§ 351 et seq.), Railroad Retirement Act (45 U.S.C. §231 et seq.), Railway Labor Act (45 U.S.C. Sec. 151 et. seq.), Federal Employers Liability Act (45 U.S.C. Sec 51 et. seq.), common carrier obligations pursuant to (49 U.S.C. Sec. 10101 et. seq.), and any Federal rail safety legislation, that arise from such Sound Transit Transportation Use of the Property.

#### **F. County Utility Rights.**

(i) There are currently King County Wastewater Facilities located in the Property in the locations set forth on Exhibit C-1, attached hereto and incorporated herein. Those facilities are authorized by a variety of instruments and agreements listed on Exhibit C-2, attached hereto and incorporated herein. King County will continue to have the rights and obligations set forth in such instruments and agreements vis-à-vis Sound Transit even if such rights would otherwise be terminated through the doctrine of merger. In addition, King County shall have the right, and Sound Transit shall not unreasonably interfere with the right to operate, maintain, repair, and replace the existing King County Wastewater Facilities on the Property. This section does not limit the ability of King County to exercise its reserved rights more generally to install new or expanded Wastewater facilities, subject to the Review Process.

(ii) In the event Sound Transit provides a Notice of Selected Alignment and Sound Transit does not provide King County with a Notice of Intent to Develop within one year after providing the Notice of Selected Alignment, then King County shall have the right to submit for review under the Review Process new or expanded Wastewater facilities that will be subject to the standards applicable to any portion of the Property that is designated as a Planned Easement Area under Section 9.B (2).

EXHIBIT C-1

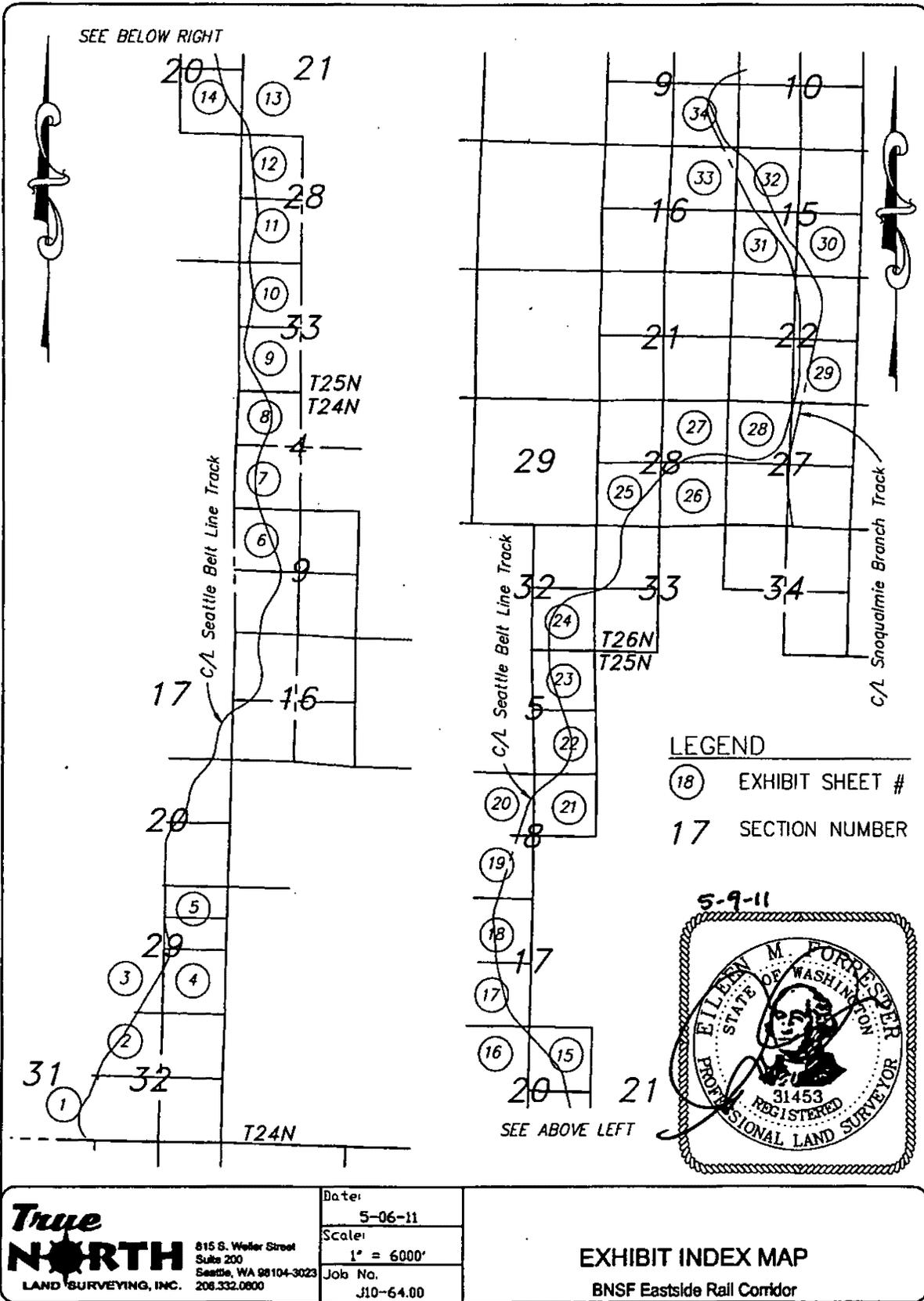
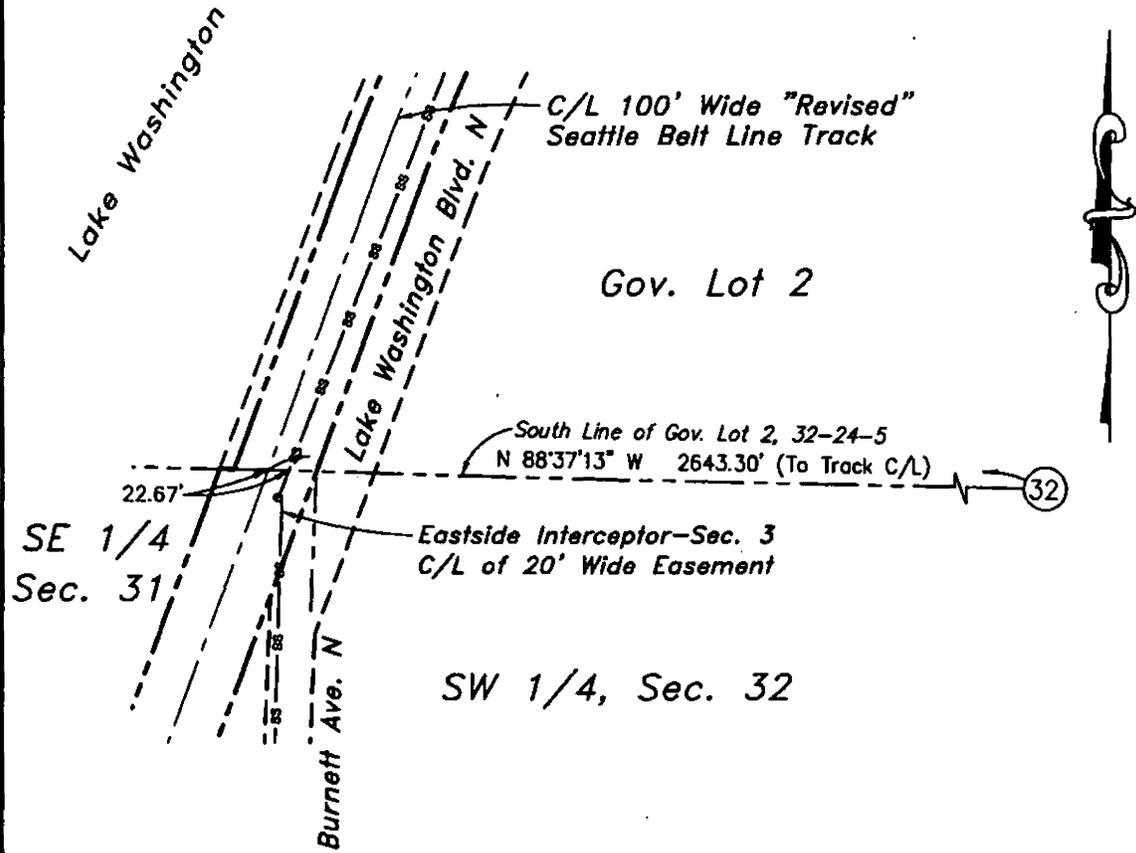


EXHIBIT C-1

SE 1/4, SEC. 31, T 24 N, R 5 E, W.M.  
 RENTON, KING COUNTY, WASHINGTON

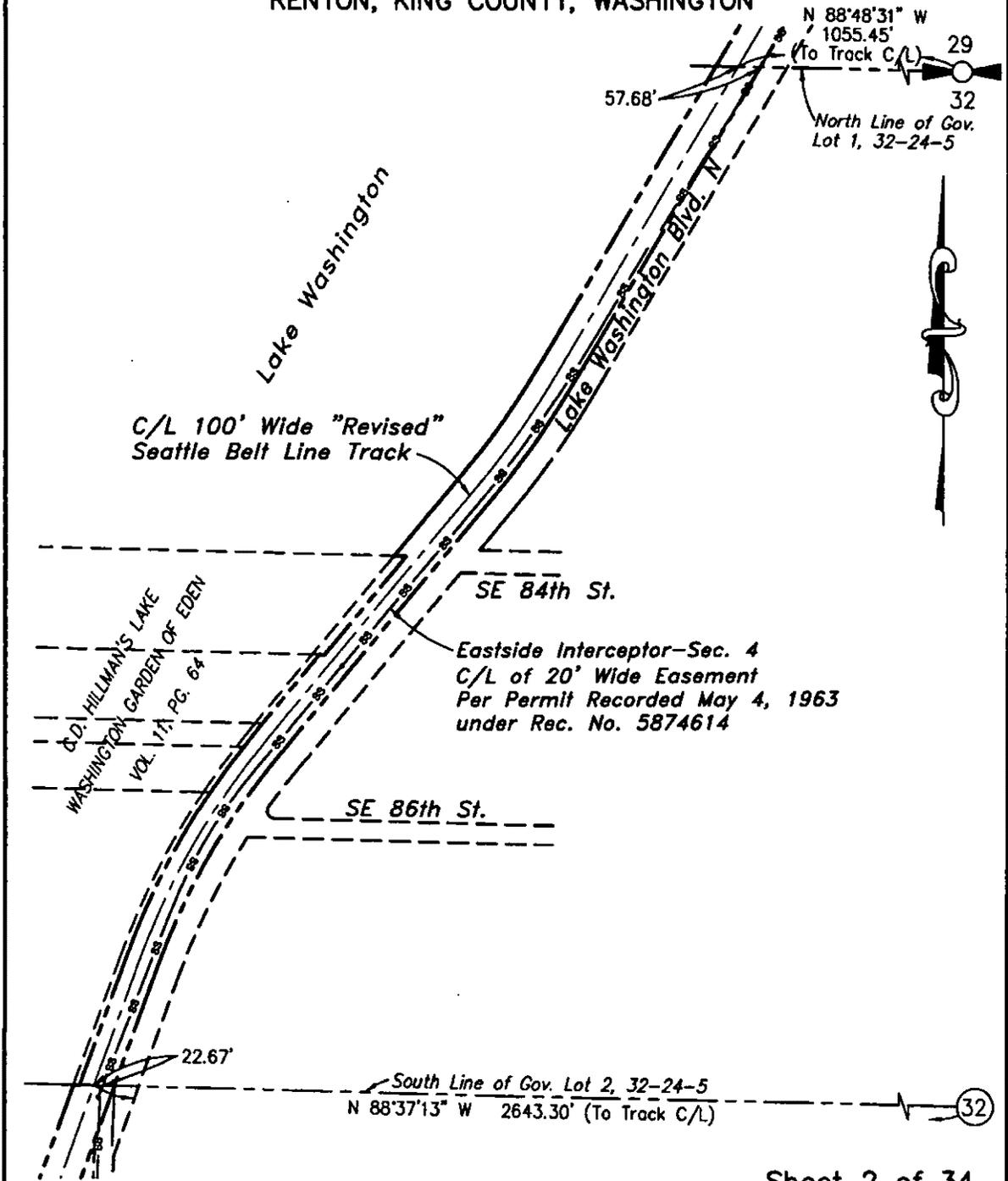


Sheet 1 of 34

<p>815 S. Weller Street                  Suite 200                  Seattle, WA 98104-3023                  206.332.0800</p>	Date:	5-06-11	<p align="center"><b>Exhibit</b></p> <p align="center">Existing Sewer Easement</p> <p align="center">BNSF Eastside Rail Corridor - Eastside Interceptor</p>
	Scale:	1" = 200'	
	Job No.	J10-64.00	

EXHIBIT C-1

NW 1/4, SEC. 32, T 24 N, R 5 E, W.M.  
 RENTON, KING COUNTY, WASHINGTON

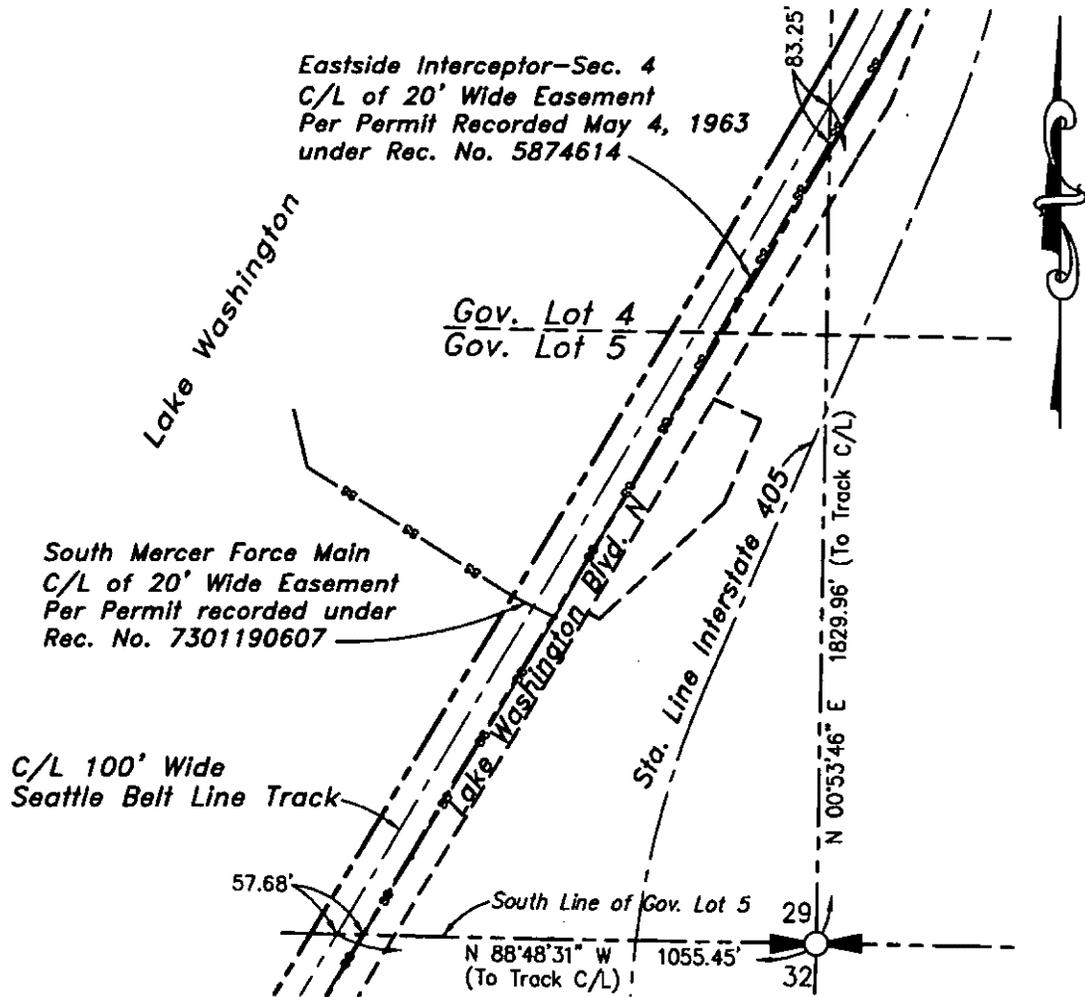


Sheet 2 of 34

<p><b>True NORTH</b>                  LAND SURVEYING, INC.</p>	815 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date: 5-06-11	<p><b>Exhibit</b></p> <p>Existing Sewer Easement                  BNSF Eastside Rail Corridor - Eastside Interceptor</p>
		Scale: 1" = 400'	
		Job No. J10-64.00	

EXHIBIT C-1

SW 1/4, SEC. 29, T 24 N, R 5 E, W.M.  
 RENTON, KING COUNTY, WASHINGTON



Sheet 3 of 34

**True NORTH**  
 LAND SURVEYING, INC.

815 S. Weller Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

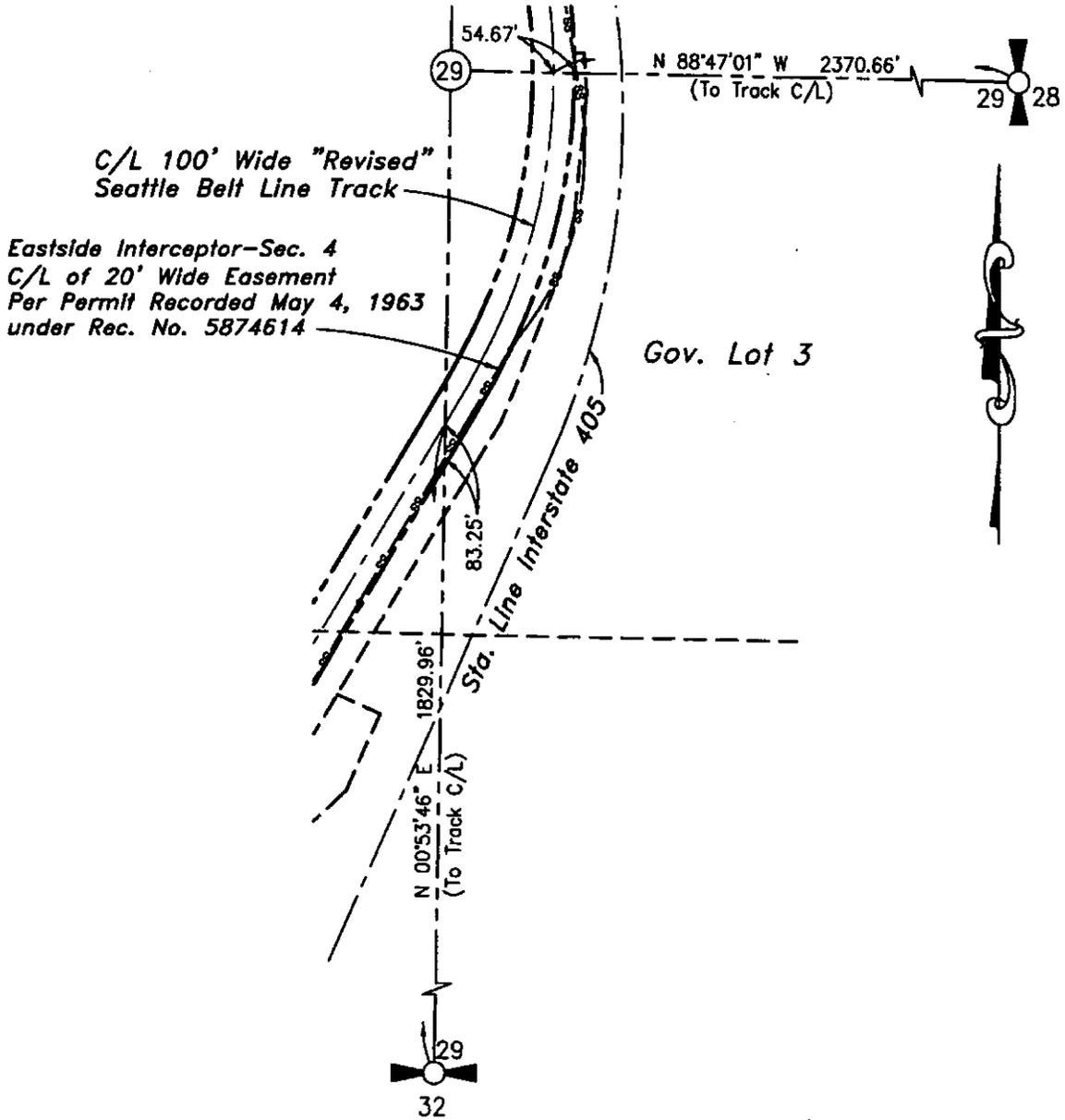
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 Job No. J10-64.00

Exhibit

Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

EXHIBIT C-1

SE 1/4, SEC. 29, T 24 N, R 5 E, W.M.  
 RENTON, KING COUNTY, WASHINGTON



Sheet 4 of 34

**True NORTH**  
 LAND SURVEYING, INC.

815 S. Weller Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0600

Date:  
 5-06-11  
 Scale:  
 1" = 400'  
 Job No.  
 J10-64.00

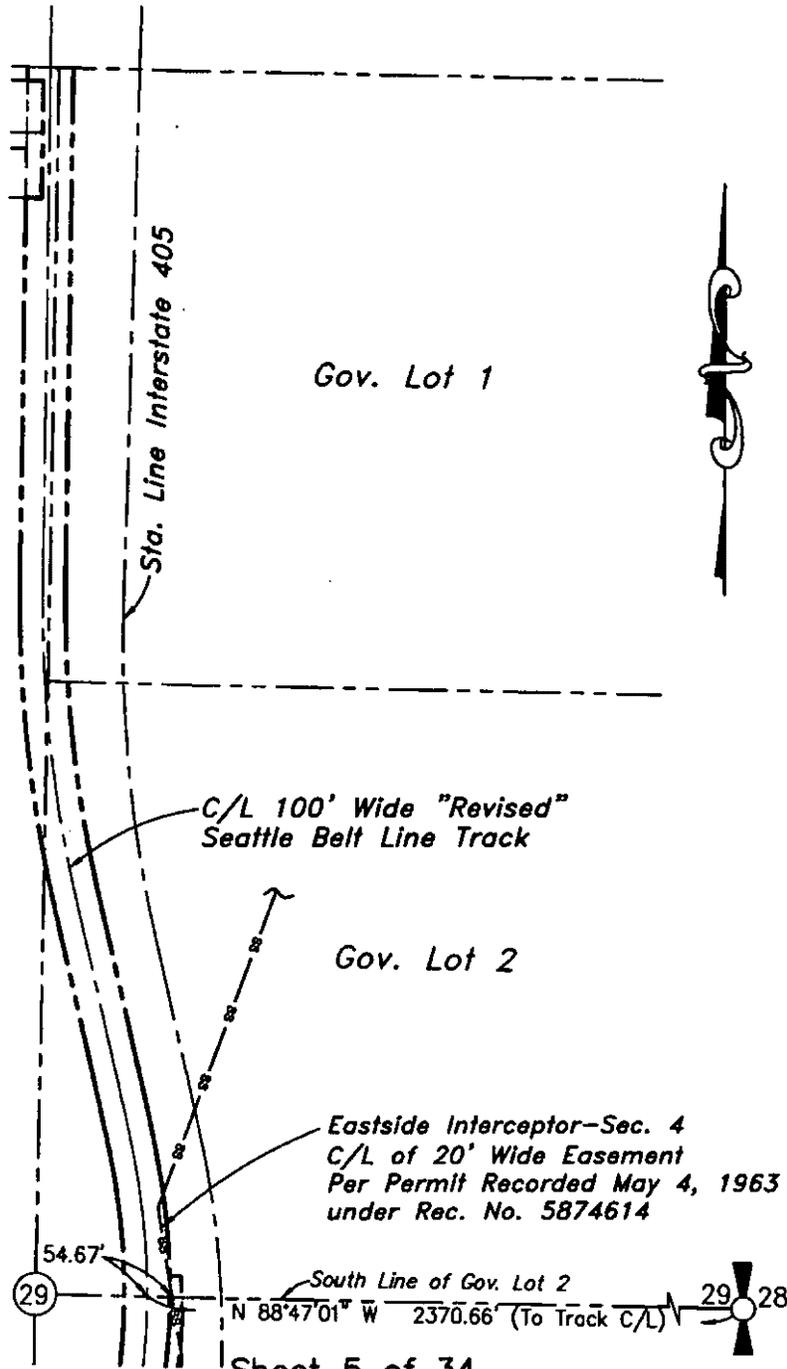
Exhibit

Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

EXHIBIT C-1

NE 1/4, SEC. 29, T 24 N, R 5 E, W.M.  
NEWCASTLE, KING COUNTY, WASHINGTON

Lake Washington



Sheet 5 of 34

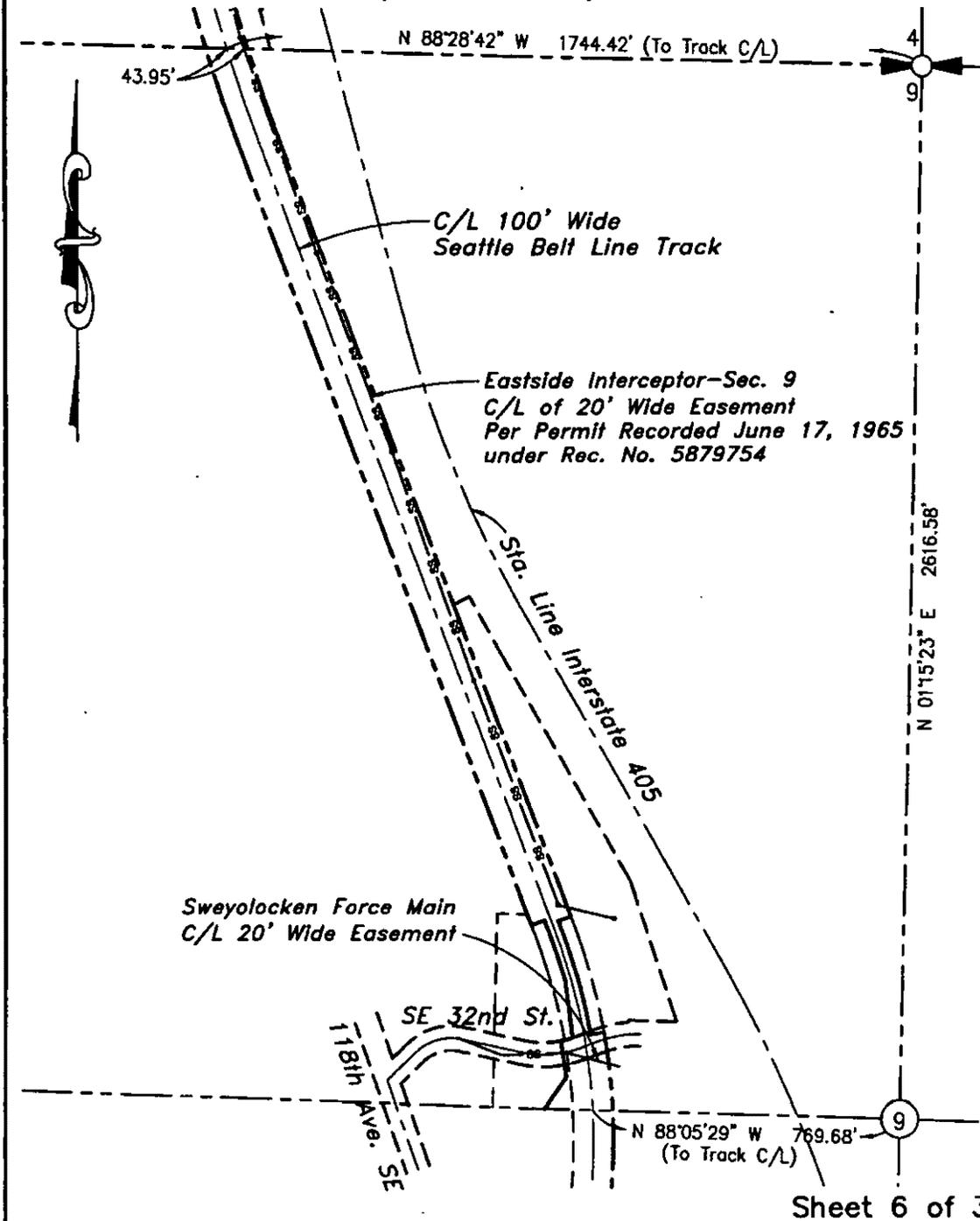
**True NORTH**  
LAND SURVEYING, INC.  
815 S. Weller Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0800

Date: 5-06-11  
Scale: 1" = 400'  
Job No. J10-64.00

Exhibit  
Existing Sewer Easement  
BNSF Eastside Rail Corridor - Eastside Interceptor

EXHIBIT C-1

NW 1/4, SEC. 9, T 24 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON

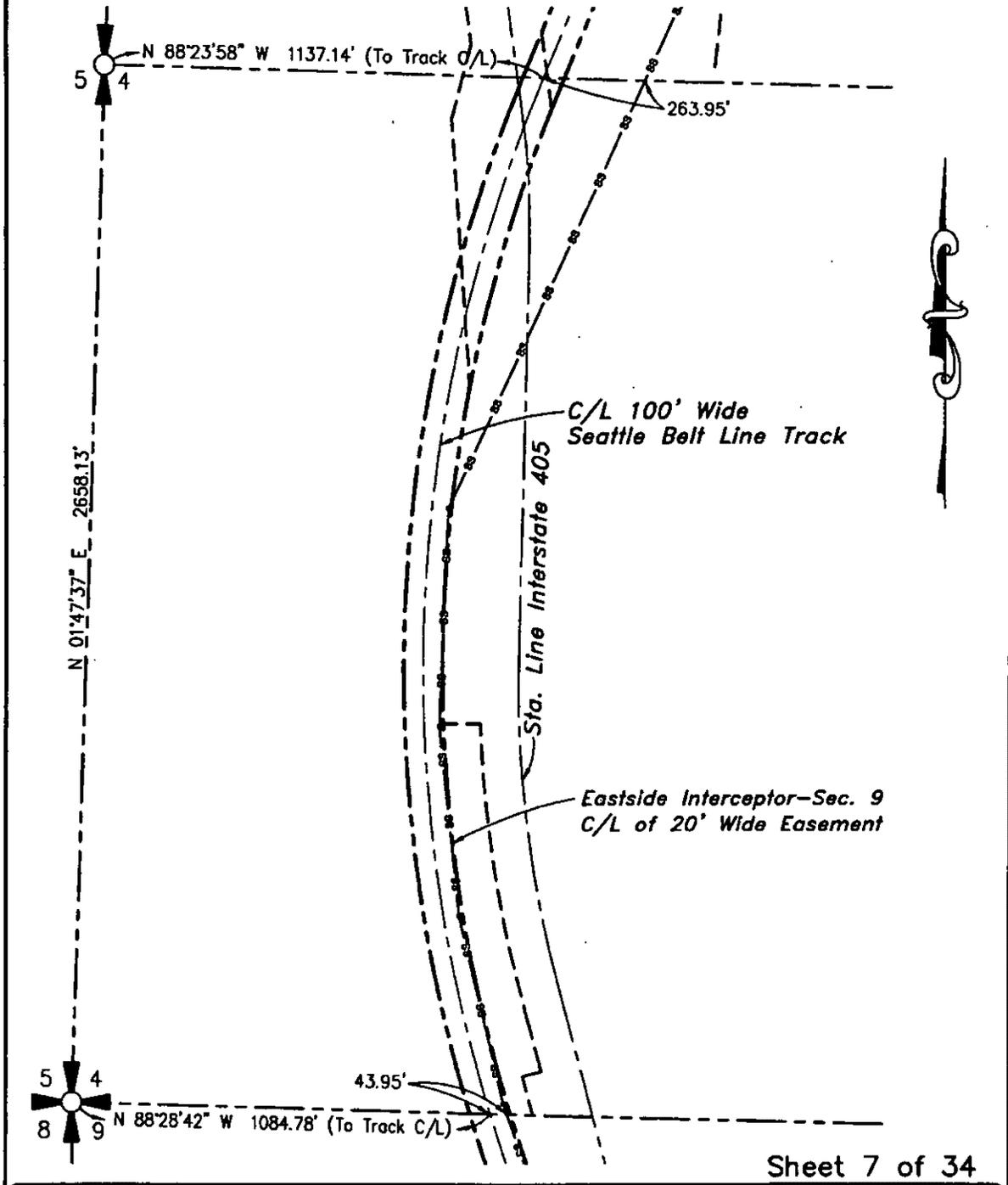


Sheet 6 of 34

<b>True NORTH</b> LAND SURVEYING, INC. 815 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date:	5-06-11	Exhibit Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor & Swaylocken
	Scale:	1" = 400'	
	Job No.	J10-64.00	

EXHIBIT C-1

SW 1/4, SEC. 4, T 24 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 7 of 34

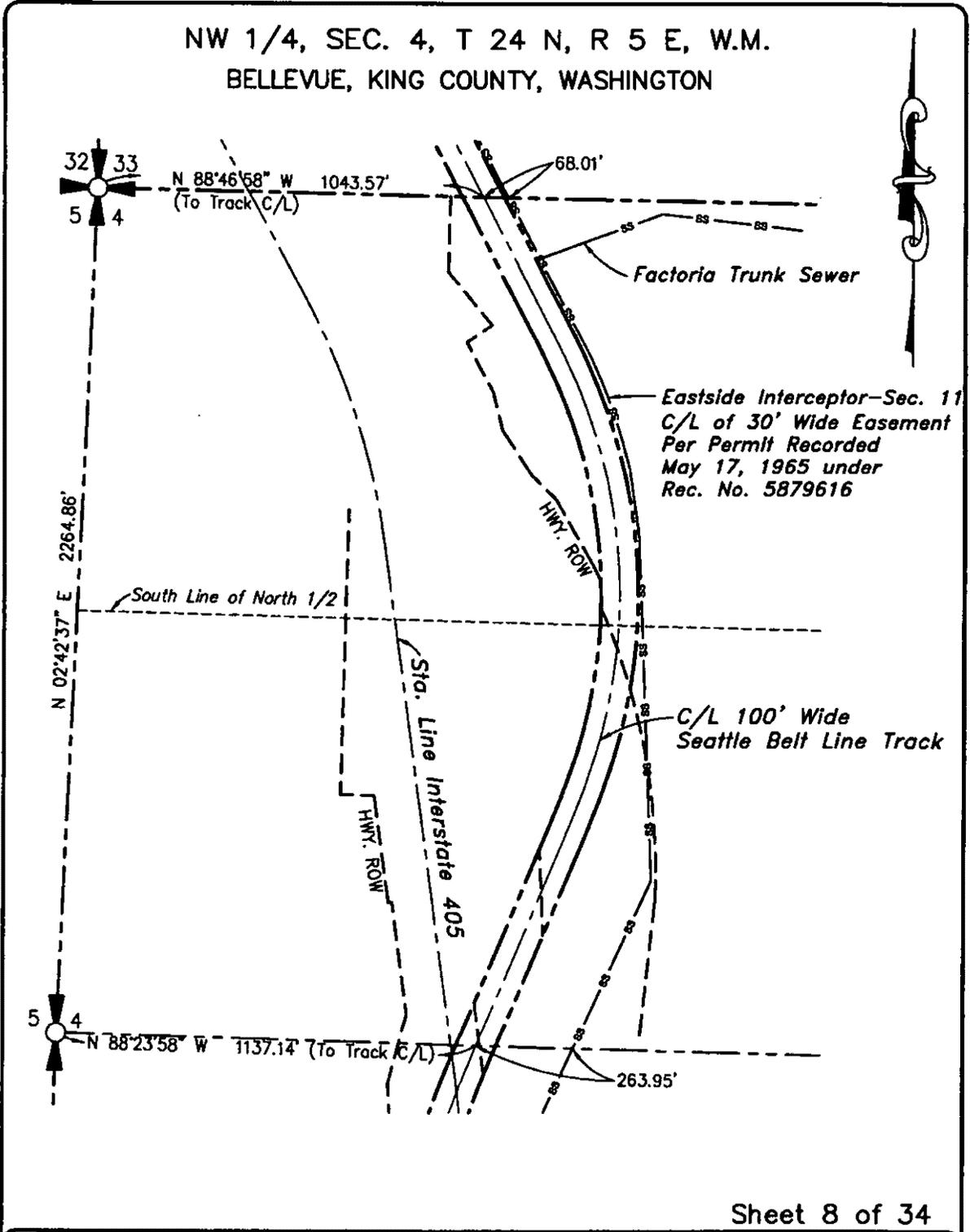
**True NORTH**  
 LAND SURVEYING, INC.  
 815 S. Weller Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

Date:	5-06-11
Scale:	1" = 400'
Job No.	J10-64.00

**Exhibit**  
 Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

EXHIBIT C-1

NW 1/4, SEC. 4, T 24 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON

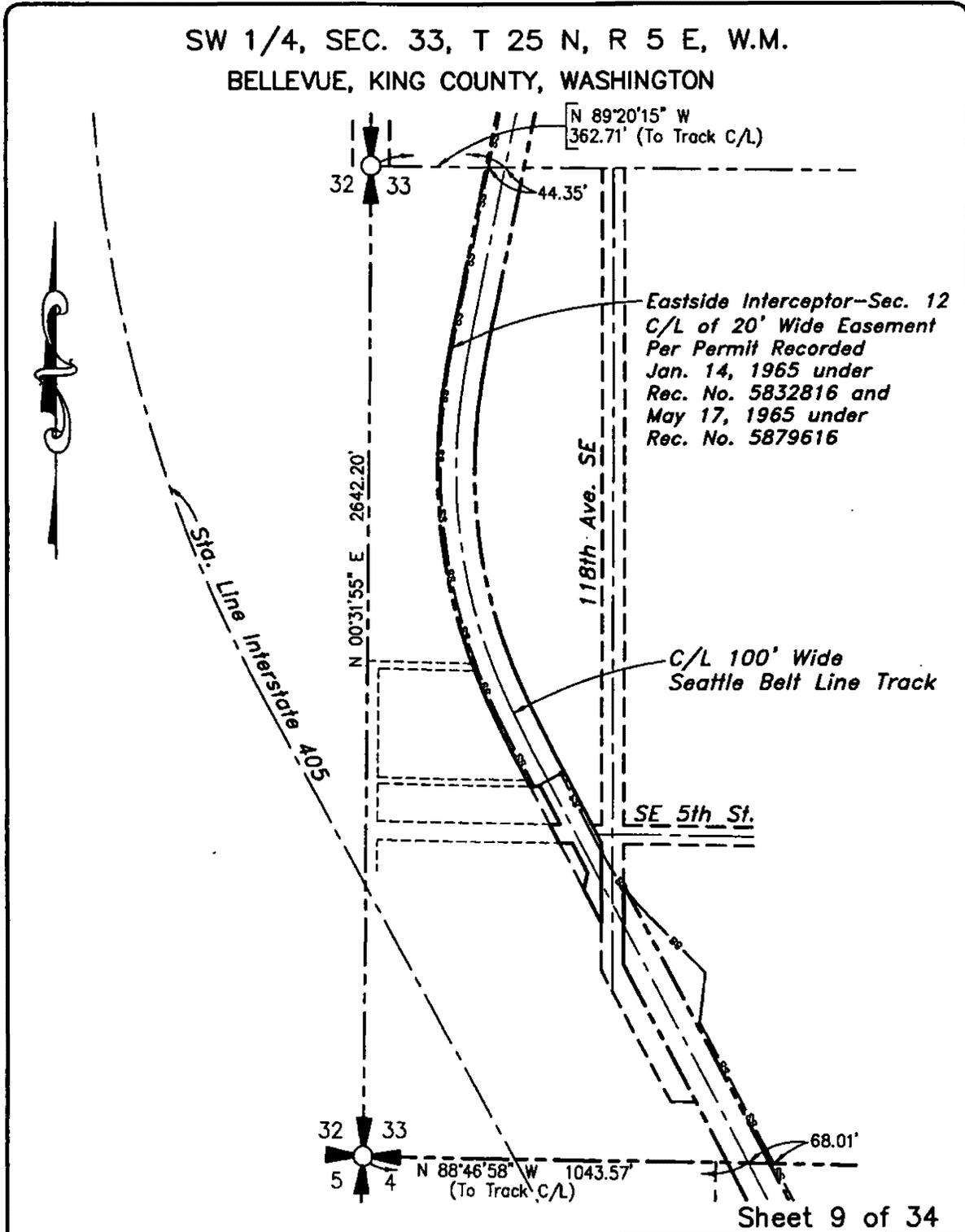


Sheet 8 of 34

<p>815 S. Waller Street                  Suite 200                  Seattle, WA 98104-3023                  206.332.0800</p>	Date:	5-06-11	Exhibit Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor
	Scale:	1" = 400'	
	Job No.:	J10-64.00	

EXHIBIT C-1

SW 1/4, SEC. 33, T 25 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 9 of 34

**True NORTH**  
 LAND SURVEYING, INC.

815 S. Walter Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0600

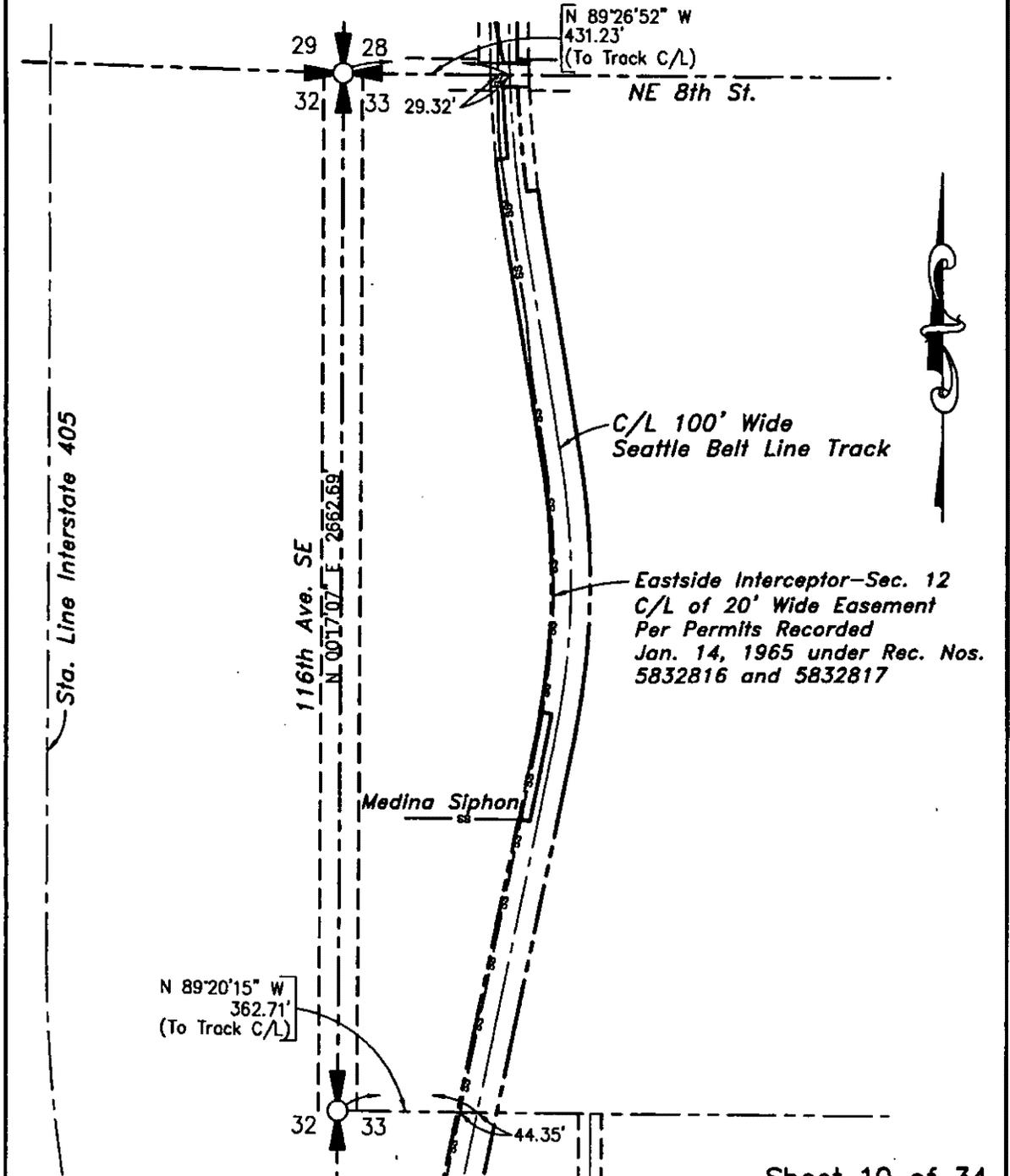
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 Job No. J10-64.00

Exhibit

Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

EXHIBIT C-1

NW 1/4, SEC. 33, T 25 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 10 of 34

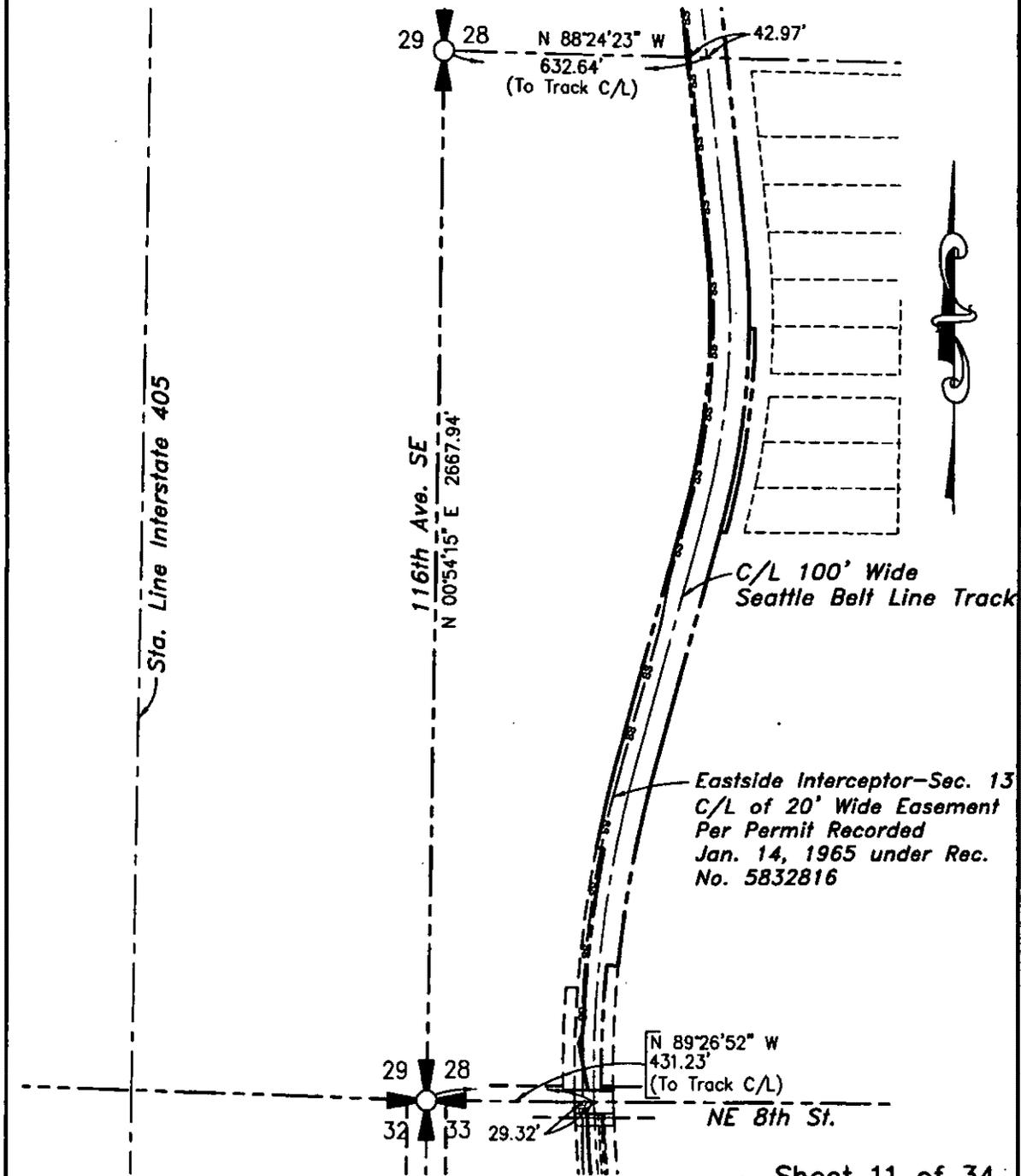
**True NORTH**  
 LAND SURVEYING, INC.  
 815 S. Waller Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

Date:	5-06-11
Scale:	1" = 400'
Job No.	J10-64.00

**Exhibit**  
 Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

EXHIBIT C-1

SW 1/4, SEC. 28, T 25 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON

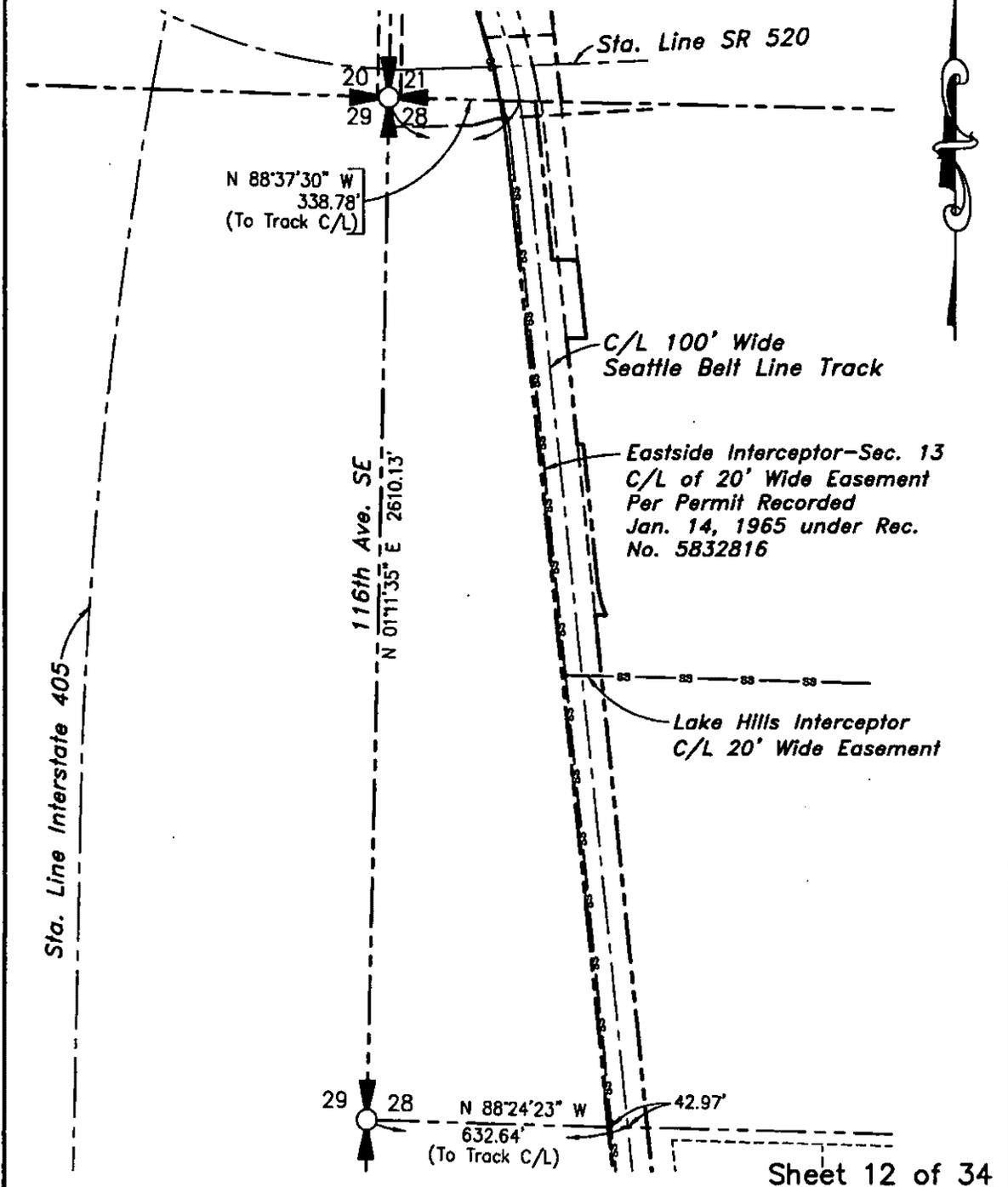


Sheet 11 of 34

<b>True NORTH</b> LAND SURVEYING, INC. 815 S. Waller Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date:	5-06-11	Exhibit Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor
	Scale:	1" = 400'	
	Job No.	J10-64.00	

EXHIBIT C-1

NW 1/4, SEC. 28, T 25 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 12 of 34

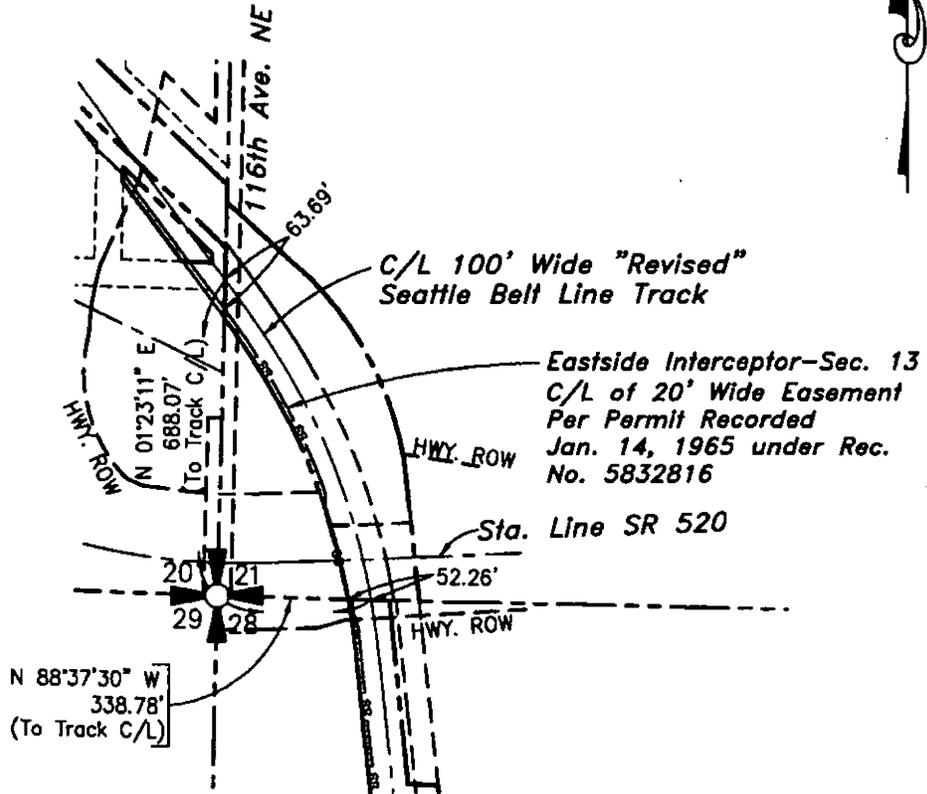
**True NORTH**  
 LAND SURVEYING, INC.  
 615 S. Waller Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

Date: 5-06-11  
 Scale: 1" = 400'  
 Job No. J10-64.00

**Exhibit**  
 Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

EXHIBIT C-1

SW 1/4, SEC. 21, T 25 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON



Sheet 13 of 34

**True NORTH**  
 LAND SURVEYING, INC.

815 S. Weller Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

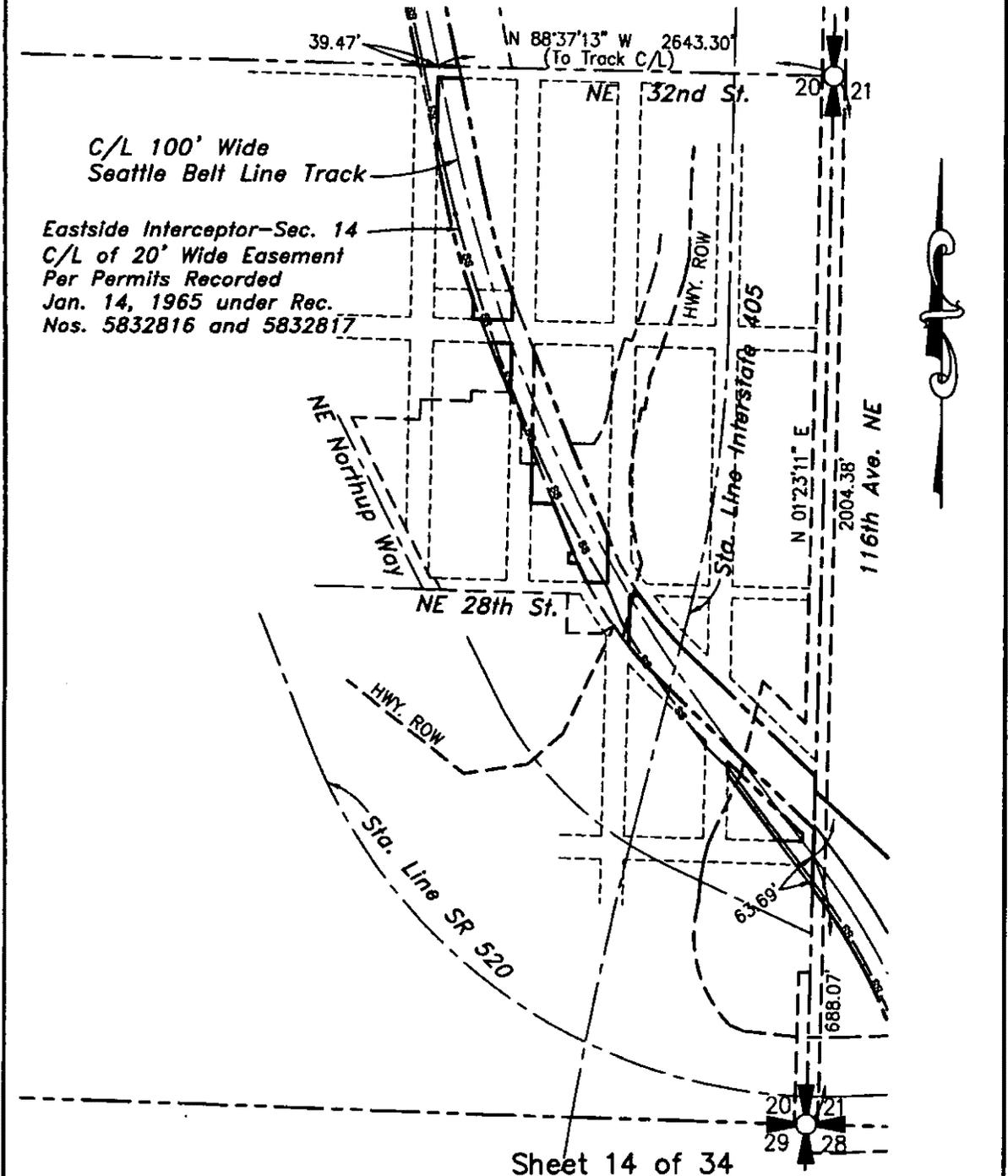
Date: 5-06-11  
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 Job No. J10-64.00

**Exhibit**

Existing Sewer Easement  
 BNSF Eastside Rail Corridor - Eastside Interceptor

EXHIBIT C-1

SE 1/4, SEC. 20, T 25 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON

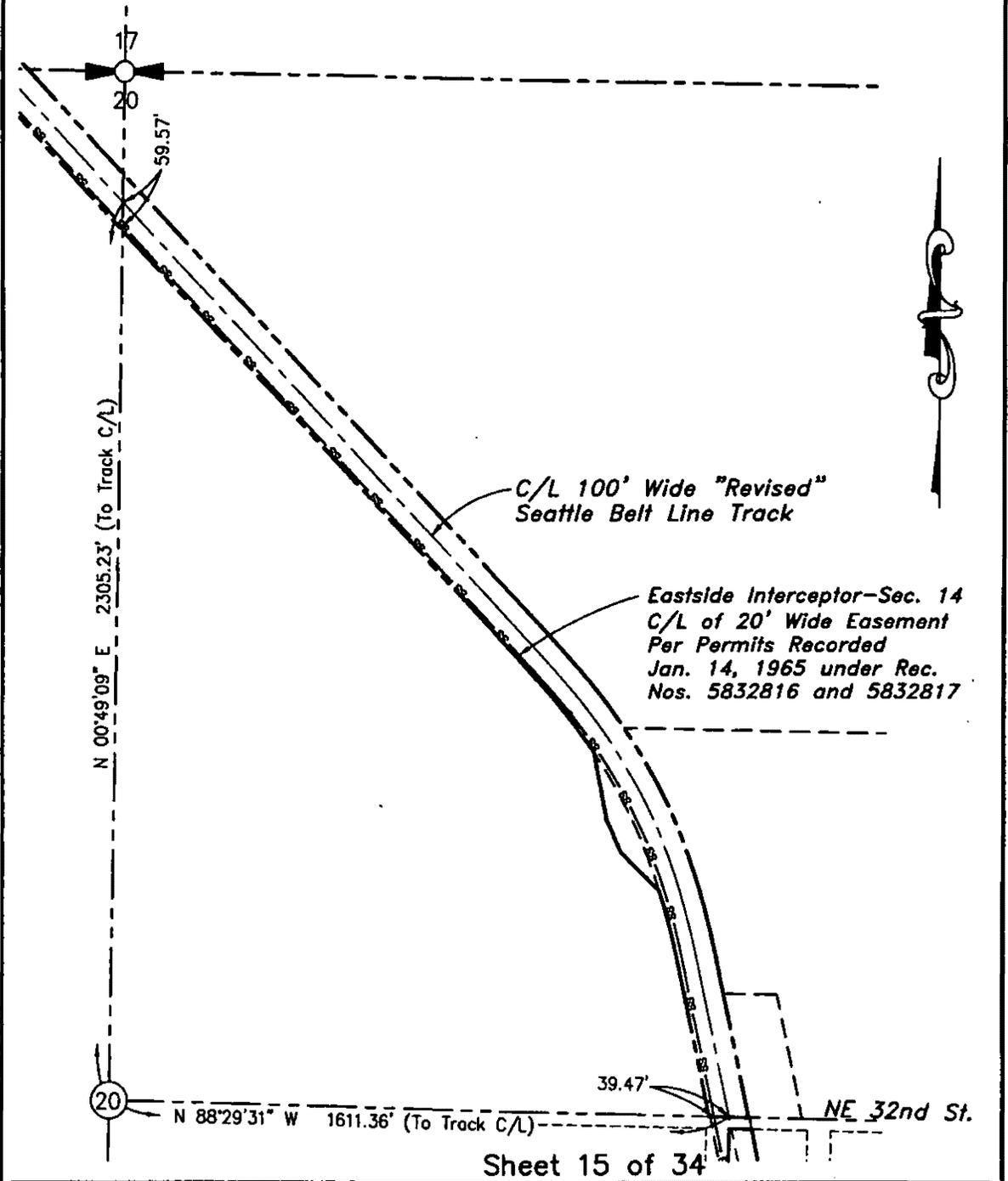


Sheet 14 of 34

<b>True NORTH</b> LAND SURVEYING, INC. 815 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date:	5-06-11	Exhibit Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor
	Scale:	1" = 400'	
	Job No.	J10-64.00	

EXHIBIT C-1

NE 1/4, SEC. 20, T 25 N, R 5 E, W.M.  
 BELLEVUE, KING COUNTY, WASHINGTON

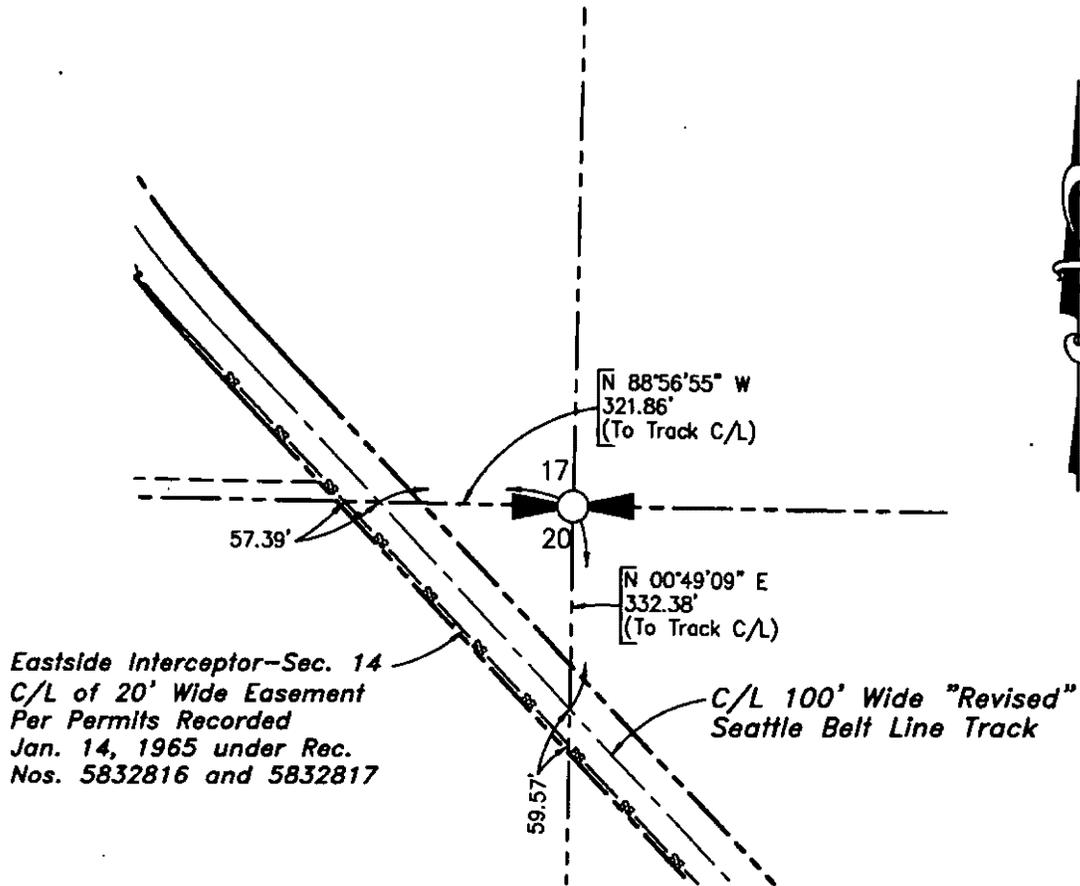


Sheet 15 of 34

<b>True NORTH</b> LAND SURVEYING, INC. 615 S. Weber Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date:	5-06-11	<b>Exhibit</b>  Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor
	Scale:	1" = 400'	
	Job No.	J10-64.00	

EXHIBIT C-1

NW 1/4, SEC. 20, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



Eastside Interceptor—Sec. 14  
C/L of 20' Wide Easement  
Per Permits Recorded  
Jan. 14, 1965 under Rec.  
Nos. 5832816 and 5832817

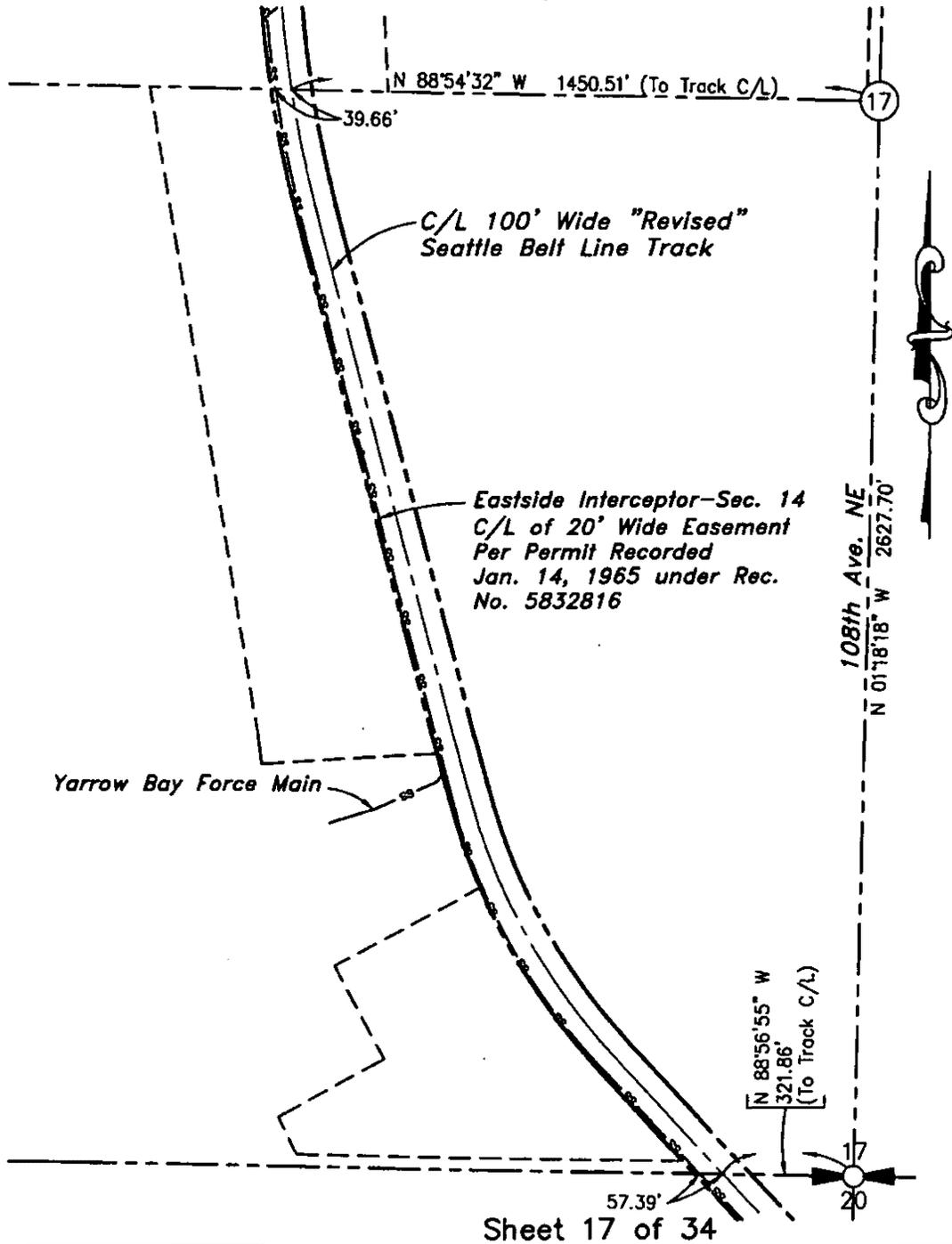
C/L 100' Wide "Revised"  
Seattle Belt Line Track

Sheet 16 of 34

<p>615 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0600</p>	Date:	5-06-11	<p><b>Exhibit</b></p> <p>Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor</p>
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EXHIBIT C-1

SW 1/4, SEC. 17, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON

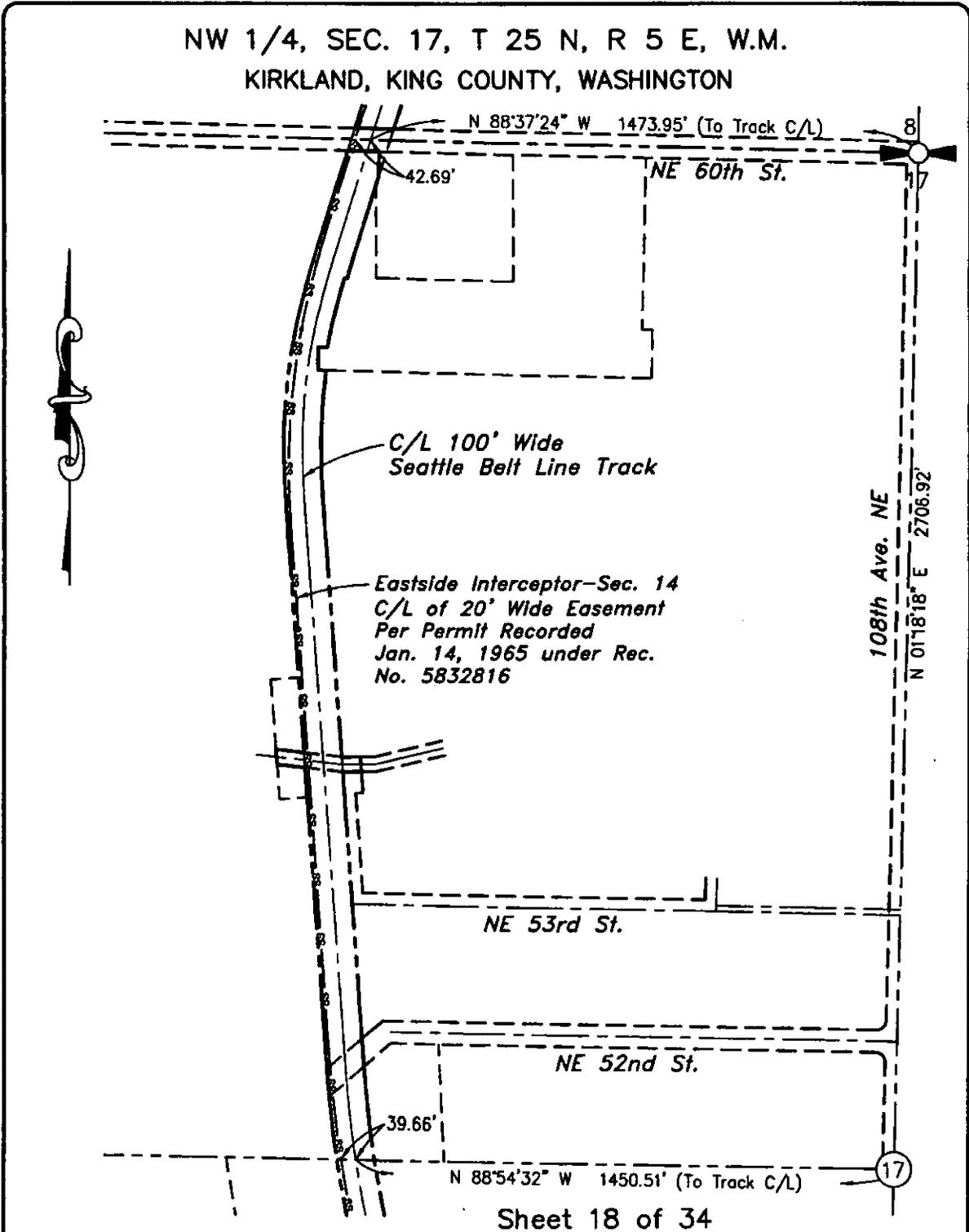


Sheet 17 of 34

<b>True NORTH</b> LAND SURVEYING, INC. 815 S. Waller Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date:	5-06-11	<b>Exhibit</b>  Existing Sewer Easement BNSF Eastside Rail Corridor - Eastside Interceptor
	Scale:	1" = 400'	
	Job No.	J10-64.00	

EXHIBIT C-1

NW 1/4, SEC. 17, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



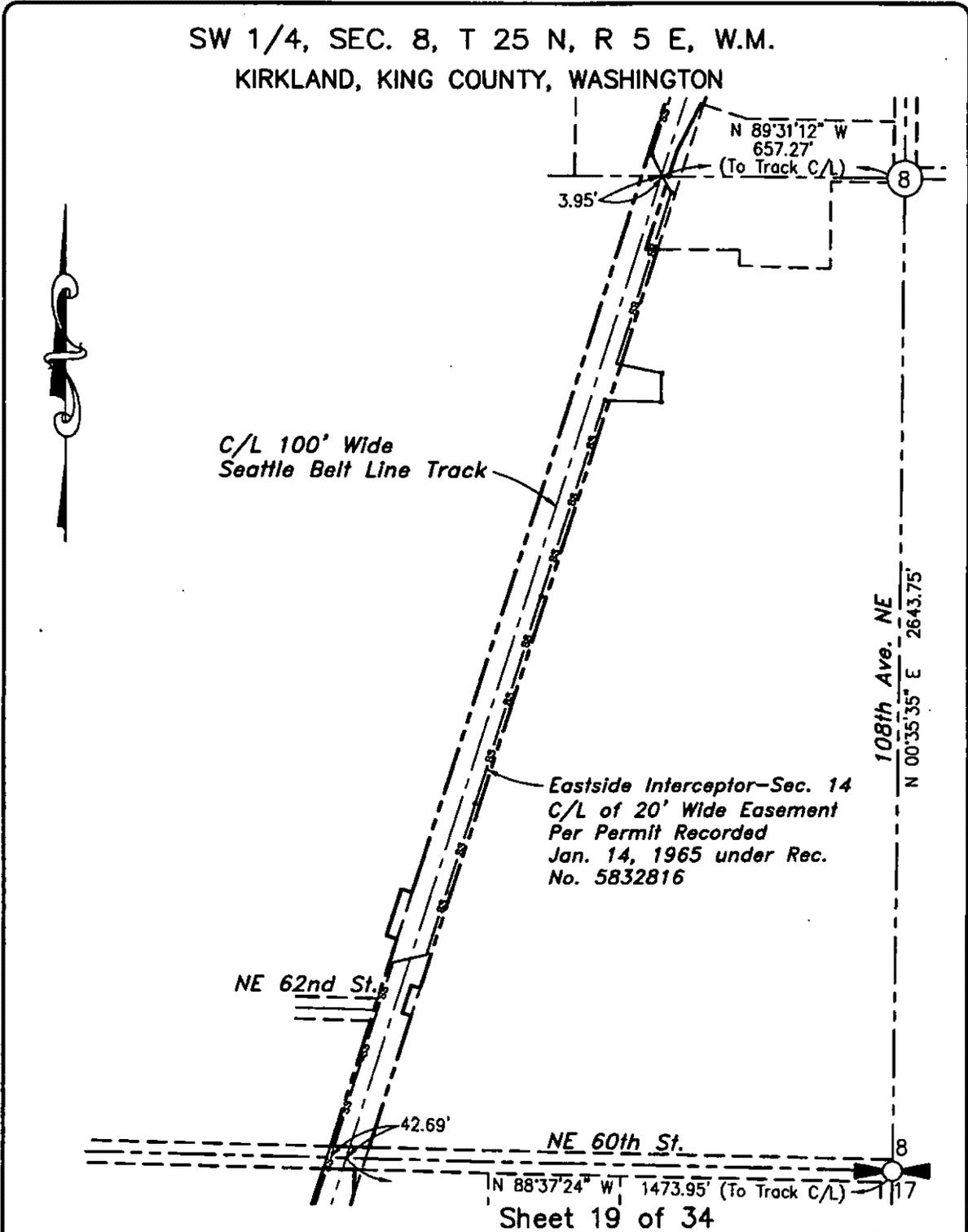
**True NORTH**  
LAND SURVEYING, INC.  
815 S. Wedder Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0600

Date: 5-06-11  
Scale: 1" = 400'  
Job No. J10-64.00

**Exhibit**  
Existing Sewer Easement  
BNSF Eastside Rail Corridor - Eastside Interceptor

EXHIBIT C-1

SW 1/4, SEC. 8, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



**True**  
**NORTH**  
LAND SURVEYING, INC.

815 S. Weller Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0800

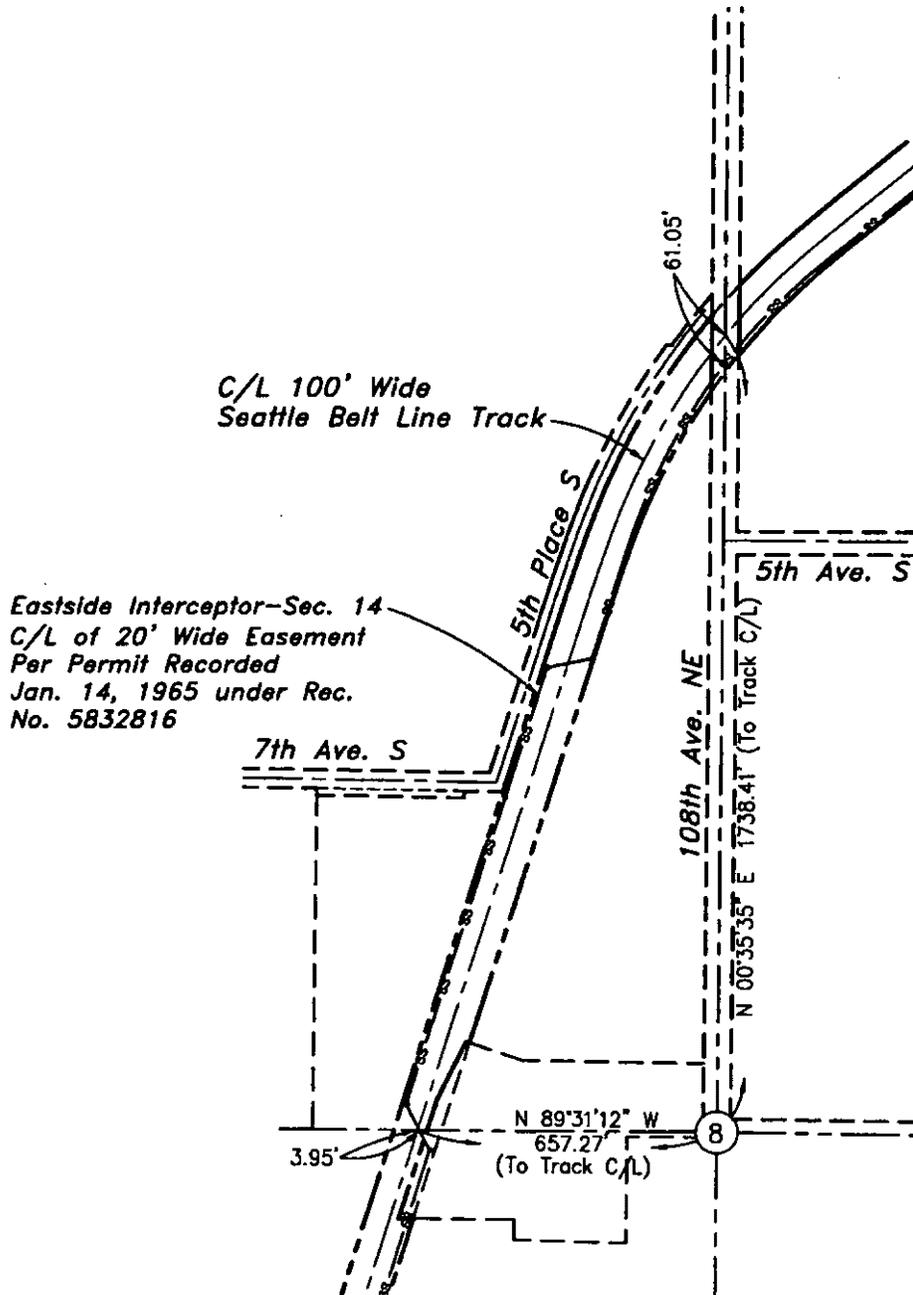
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Scale:  
1" = 400'  
Job No.  
J10-64.00

**Exhibit**

Existing Sewer Easement  
BNSF Eastside Rail Corridor - Eastside Interceptor

EXHIBIT C-1

NW 1/4, SEC. 08, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



Sheet 20 of 34

**True NORTH**  
LAND SURVEYING, INC.

815 S. Walker Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0800

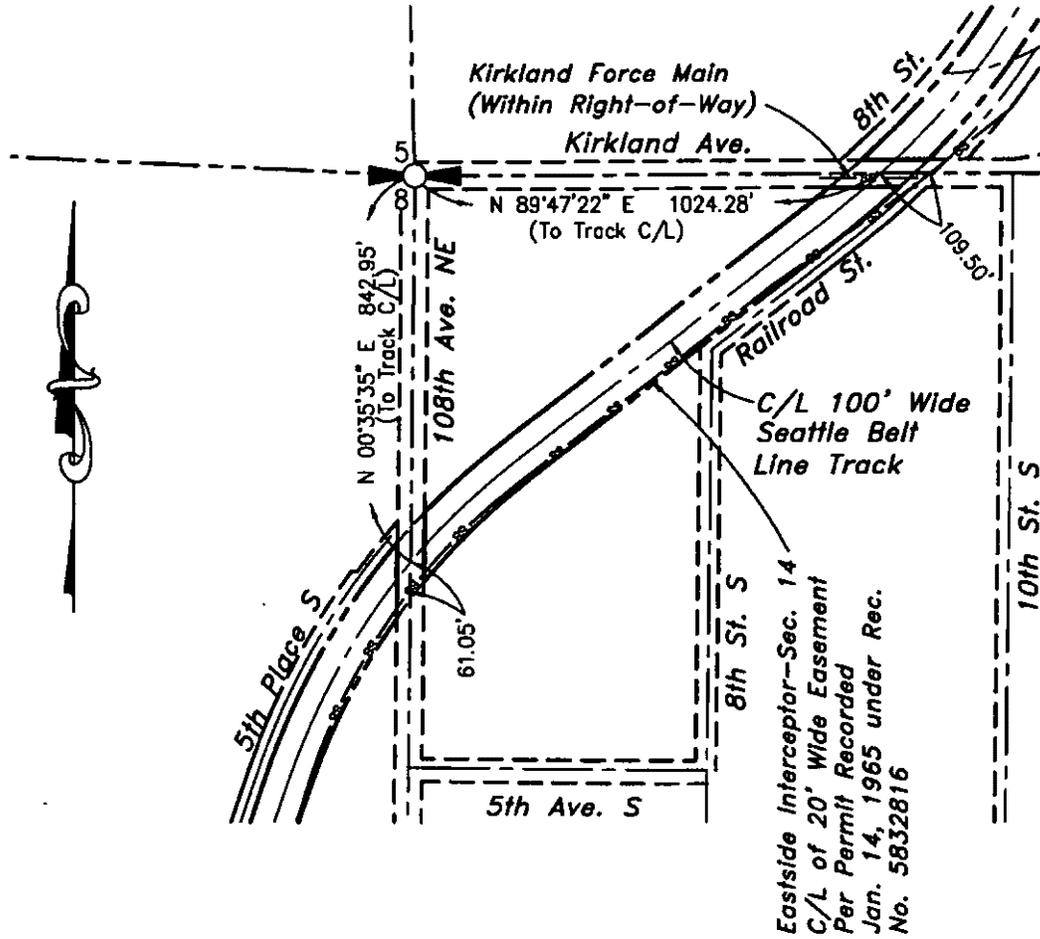
Date: 5-06-11  
Scale: 1" = 400'  
Job No. J10-64.00

Exhibit

Existing Sewer Easement  
BNSF Eastside Rail Corridor - Eastside Interceptor

EXHIBIT C-1

NE 1/4, SEC. 8, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON

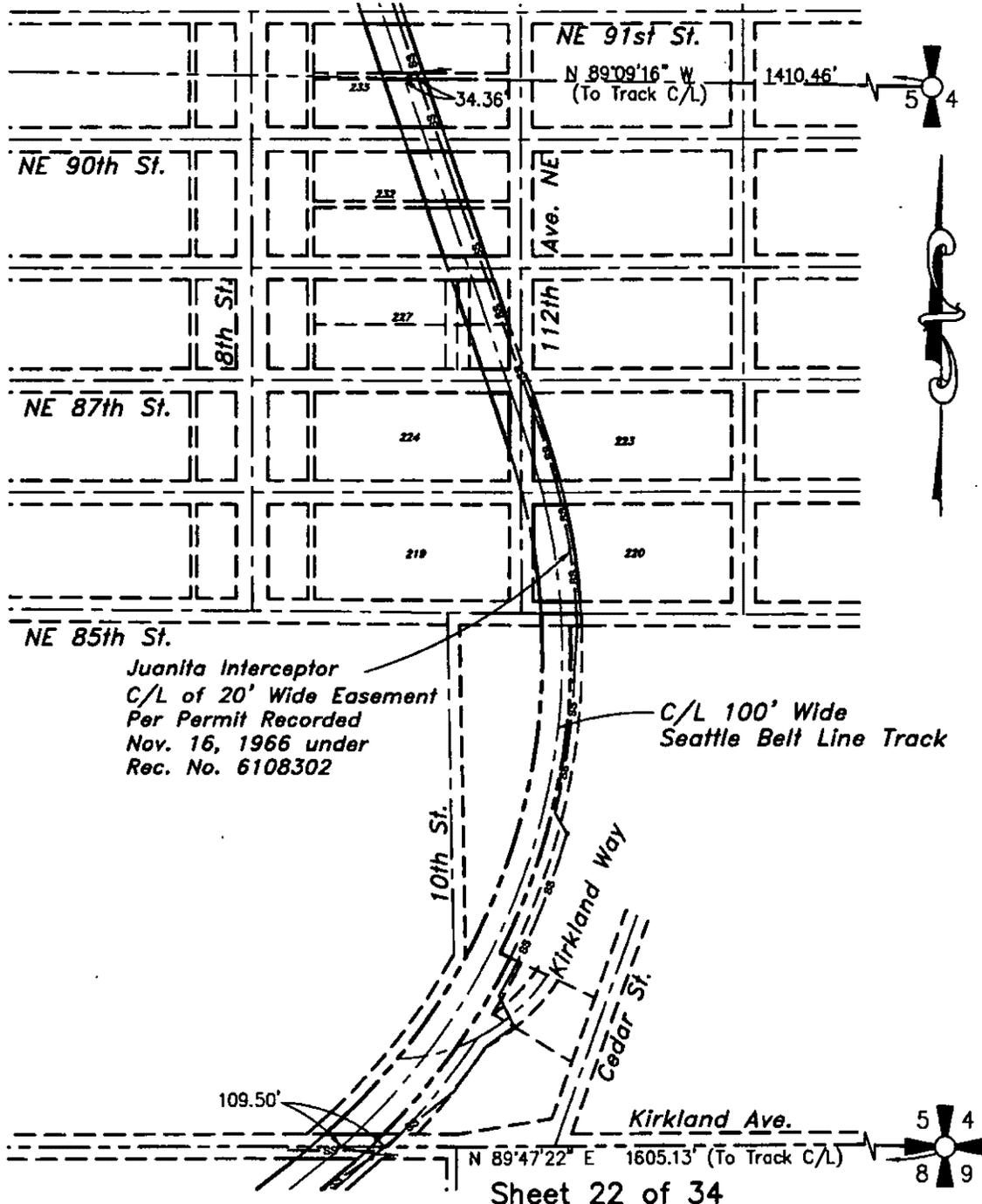


Sheet 21 of 34

<p><b>True NORTH</b> LAND SURVEYING, INC.</p> <p>815 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800</p>	Date:	5-06-11	<p><b>Exhibit</b></p> <p>Existing Sewer Easement</p> <p>BNSF Eastside Rail Corridor - Eastside Interceptor</p>
	Scale:	1" = 400'	
	Job No.	J10-64.00	

EXHIBIT C-1

SE 1/4, SEC. 5, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



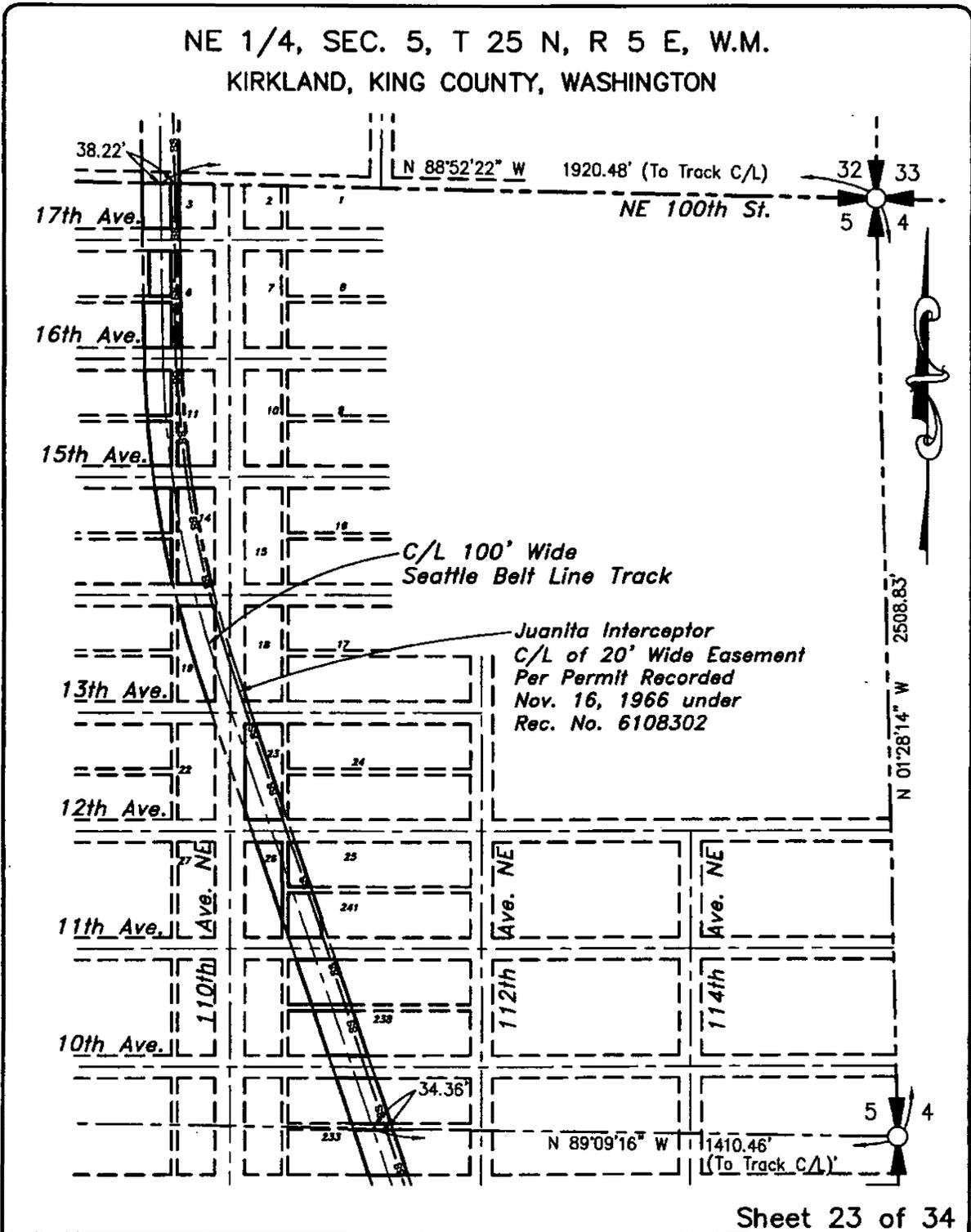
**True NORTH**  
LAND SURVEYING, INC.  
815 S. Waller Street  
Suite 200  
Seattle, WA 98104-3023  
208.332.0800

Date: 5-06-11  
Scale: 1" = 400'  
Job No. J10-64.00

**Exhibit**  
Existing Sewer Easement  
BNSF Eastside Rail Corridor - Juanita Interceptor

EXHIBIT C-1

NE 1/4, SEC. 5, T 25 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



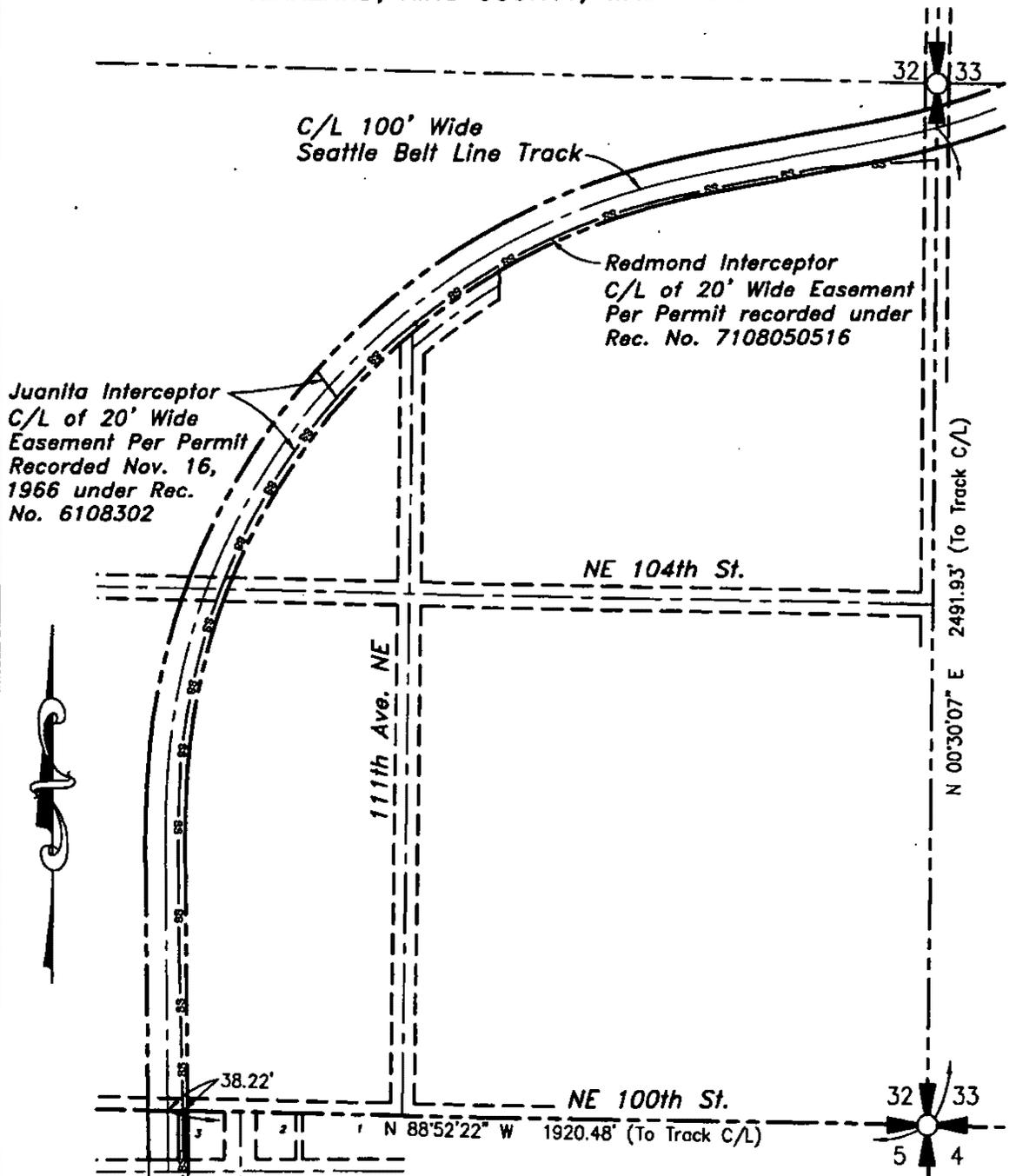
**True NORTH**  
LAND SURVEYING, INC.  
815 S. Weller Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0800

Date:  
5-06-11  
Scale:  
1" = 400'  
Job No.  
J10-64.00

**Exhibit**  
Existing Sewer Easement  
BNSF Eastside Rail Corridor - Juanita Interceptor

EXHIBIT C-1

SE 1/4, SEC. 32, T 26 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON

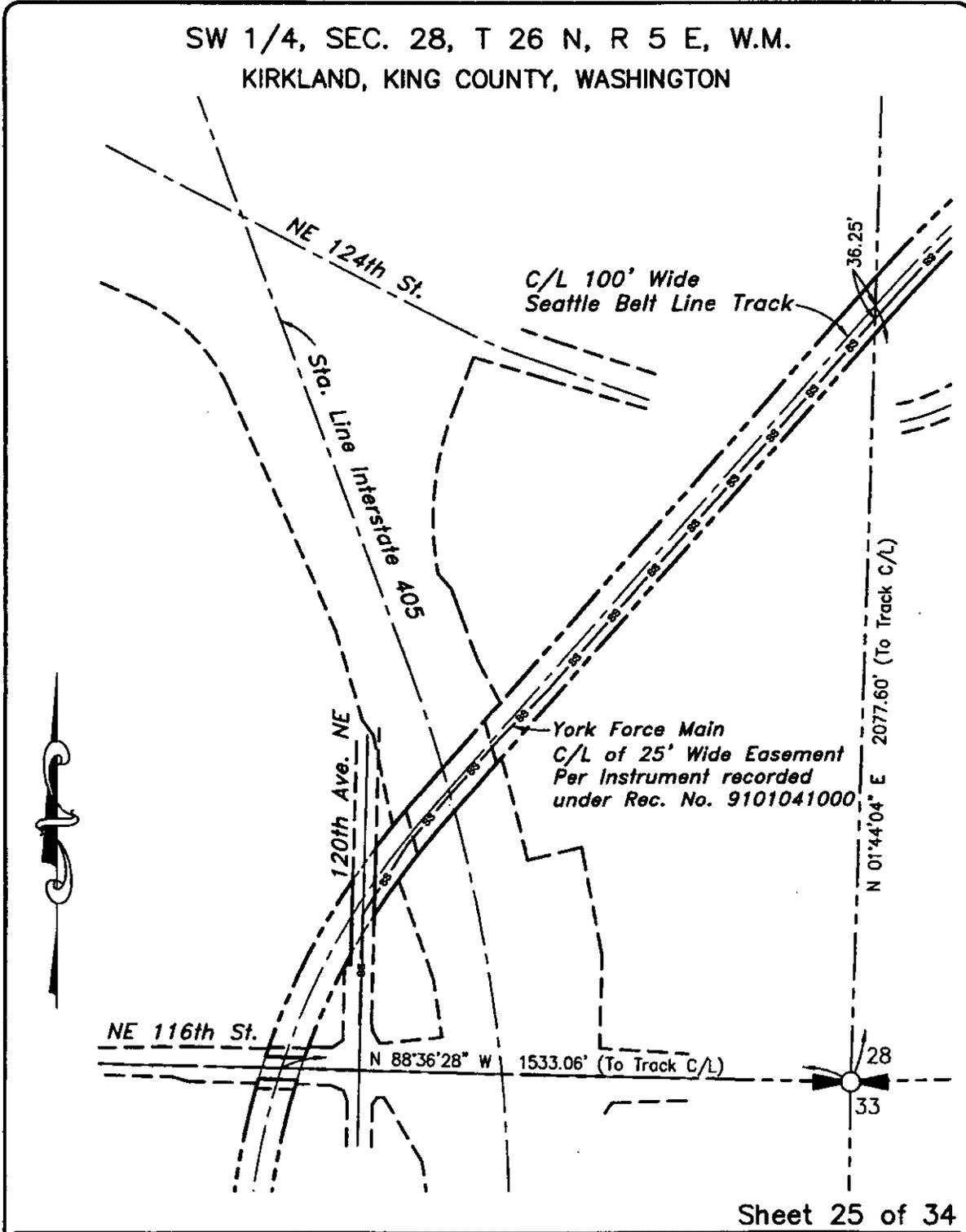


Sheet 24 of 34

<p><b>True NORTH</b> LAND SURVEYING, INC.</p> <p>815 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800</p>	Date:	5-06-11	<p><b>Exhibit</b></p> <p>Existing Sewer Easement</p> <p>BNSF Eastside Rail Corridor - Juanita &amp; Redmond Interceptor</p>
	Scale:	1" = 400'	
	Job No.	J10-64.00	

EXHIBIT C-1

SW 1/4, SEC. 28, T 26 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON

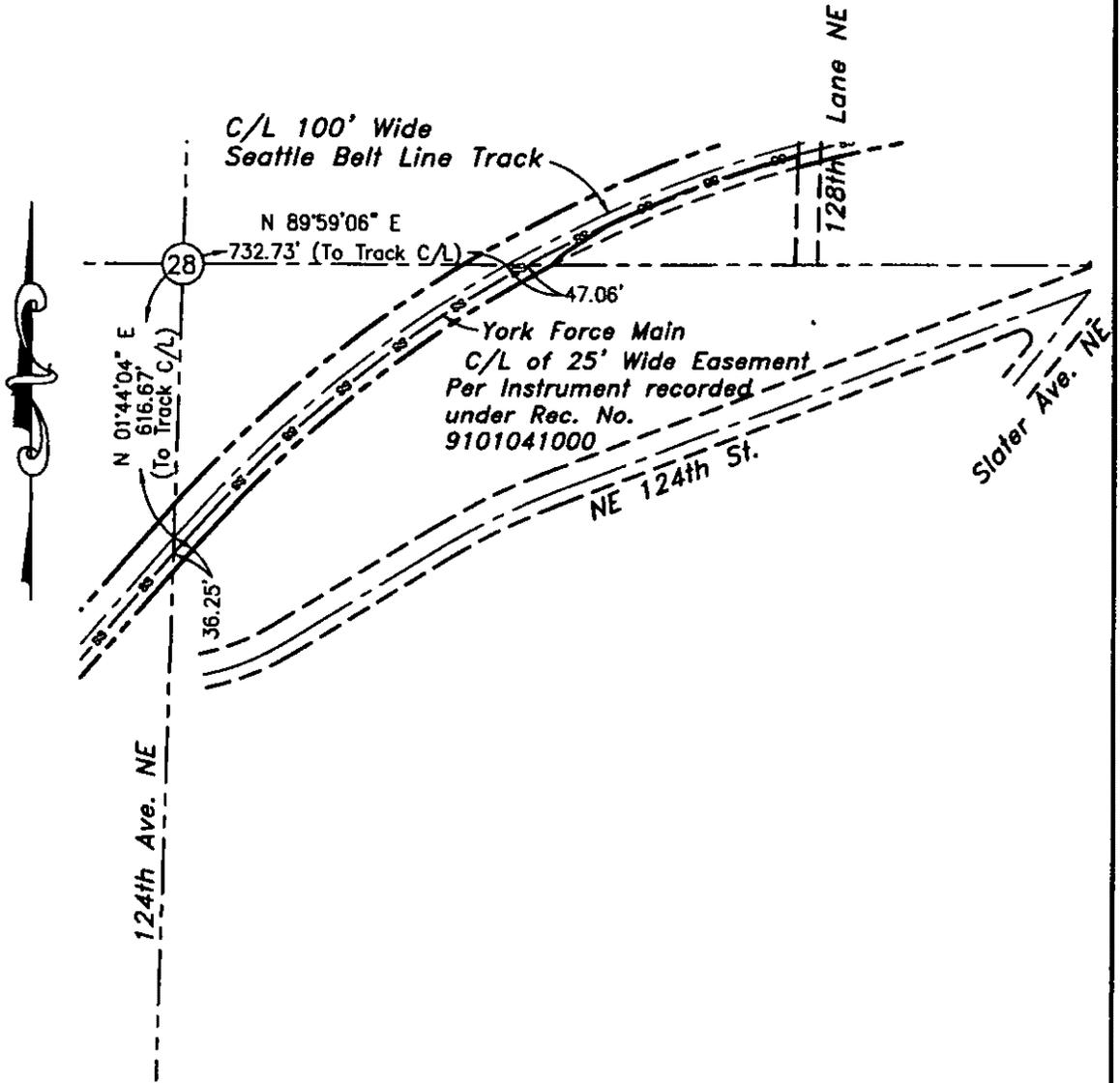


Sheet 25 of 34

<p>815 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800</p>	Date:	5-06-11	<p align="center"><b>Exhibit</b></p> <p align="center">Existing Sewer Easement BNSF Eastside Rail Corridor - York Force Main</p>
	Scale:	1" = 400'	
	Job No.	J10-64.00	

EXHIBIT C-1

SE 1/4, SEC. 28, T 26 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



Sheet 26 of 34

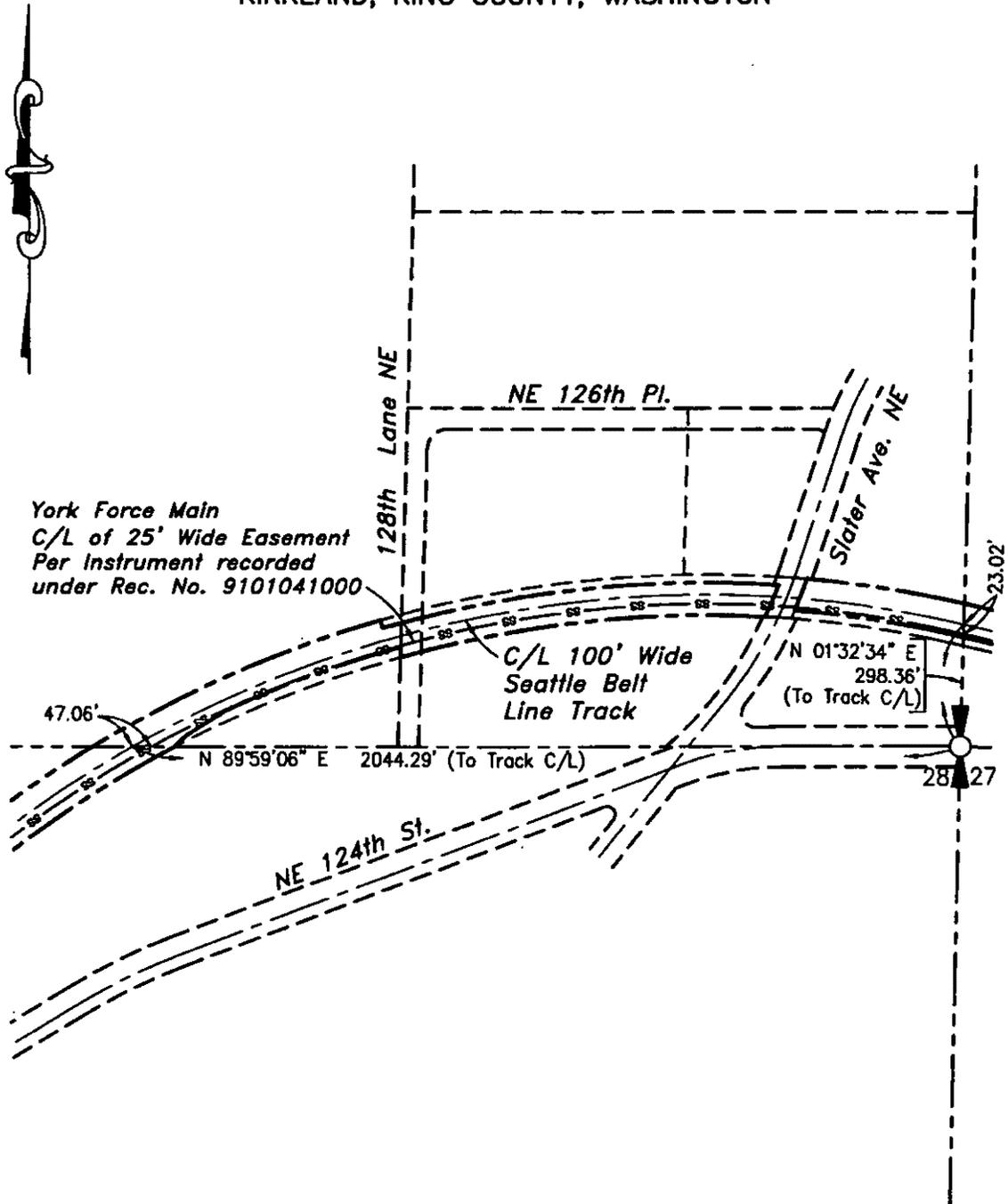
**True NORTH**  
LAND SURVEYING, INC.  
615 S. Weller Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0800

Date: 5-06-11  
Scale: 1" = 400'  
Job No. J10-64.00

**Exhibit**  
Existing Sewer Easement  
BNSF Eastside Rail Corridor - York Force Main

EXHIBIT C-1

NE 1/4, SEC. 28, T 26 N, R 5 E, W.M.  
KIRKLAND, KING COUNTY, WASHINGTON



Sheet 27 of 34

**True**  
**NORTH**  
LAND SURVEYING, INC.

615 S. Weller Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0800

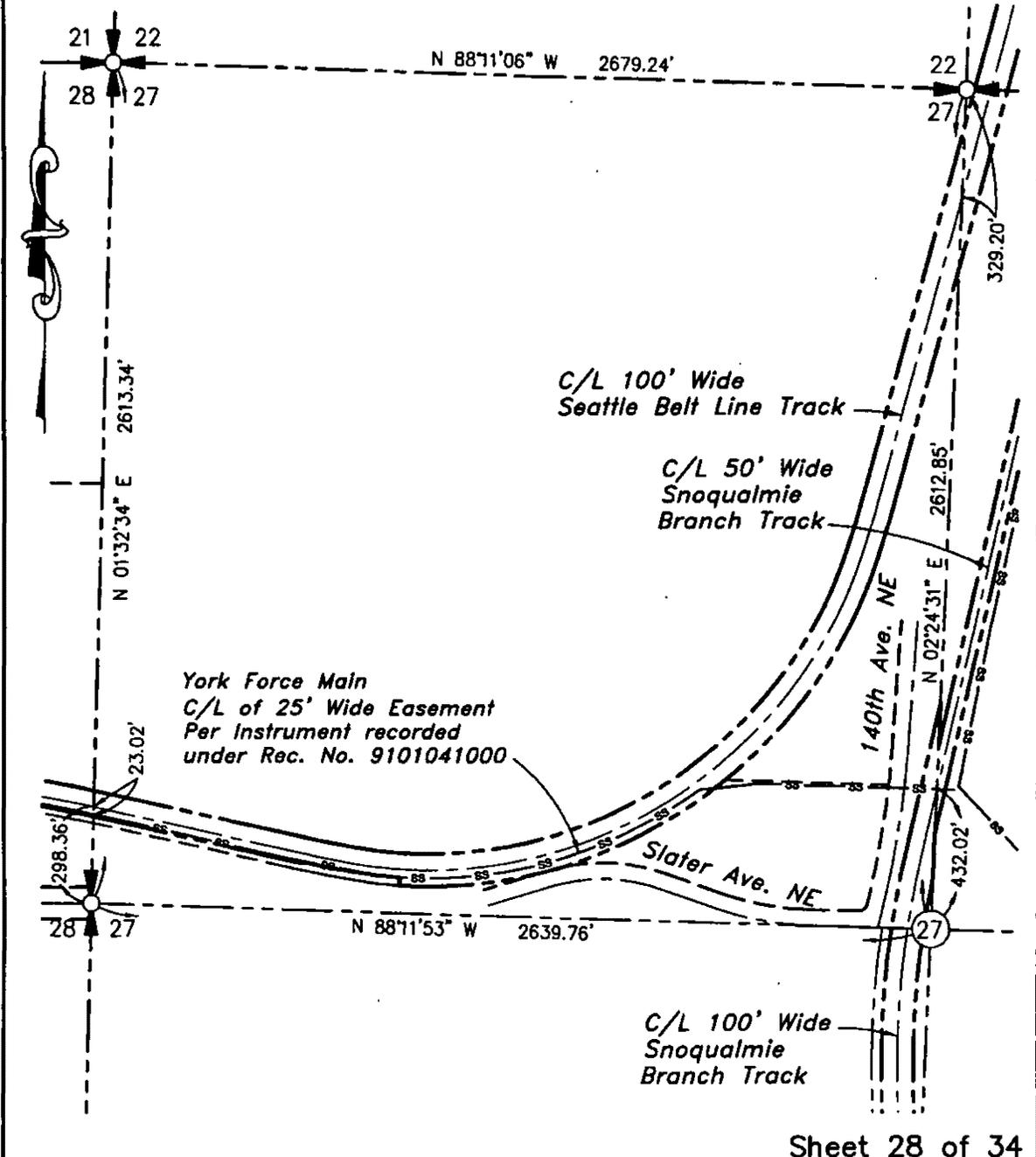
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Job No.  
J10-64.00

**Exhibit**

Existing Sewer Easement  
BNSF Eastside Rail Corridor - York Force Main

EXHIBIT C-1

NW 1/4, SEC. 27, T 26 N, R 5 E, W.M.  
 REDMOND, KING COUNTY, WASHINGTON

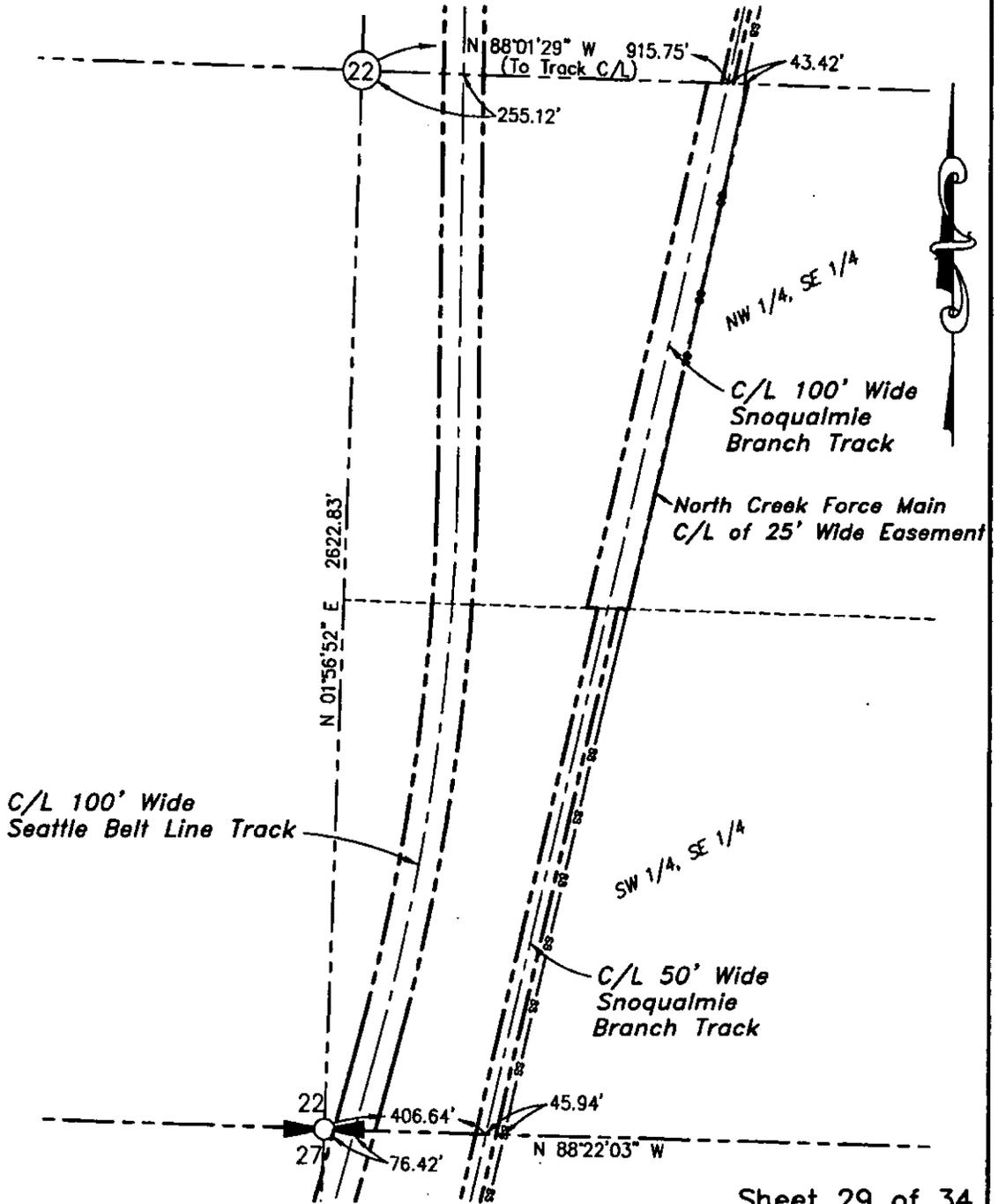


Sheet 28 of 34

<p>815 S. Weller Street                  Suite 200                  Seattle, WA 98104-3023                  206.332.0800</p>	Date:	5-06-11	<b>Exhibit</b>  Existing Sewer Easement BNSF Eastside Rail Corridor - York Force Main
	Scale:	1" = 500'	
	Job No.	J10-64.00	

EXHIBIT C-1

SE 1/4, SEC. 22, T 26 N, R 5 E, W.M.  
 REDMOND, KING COUNTY, WASHINGTON



Sheet 29 of 34

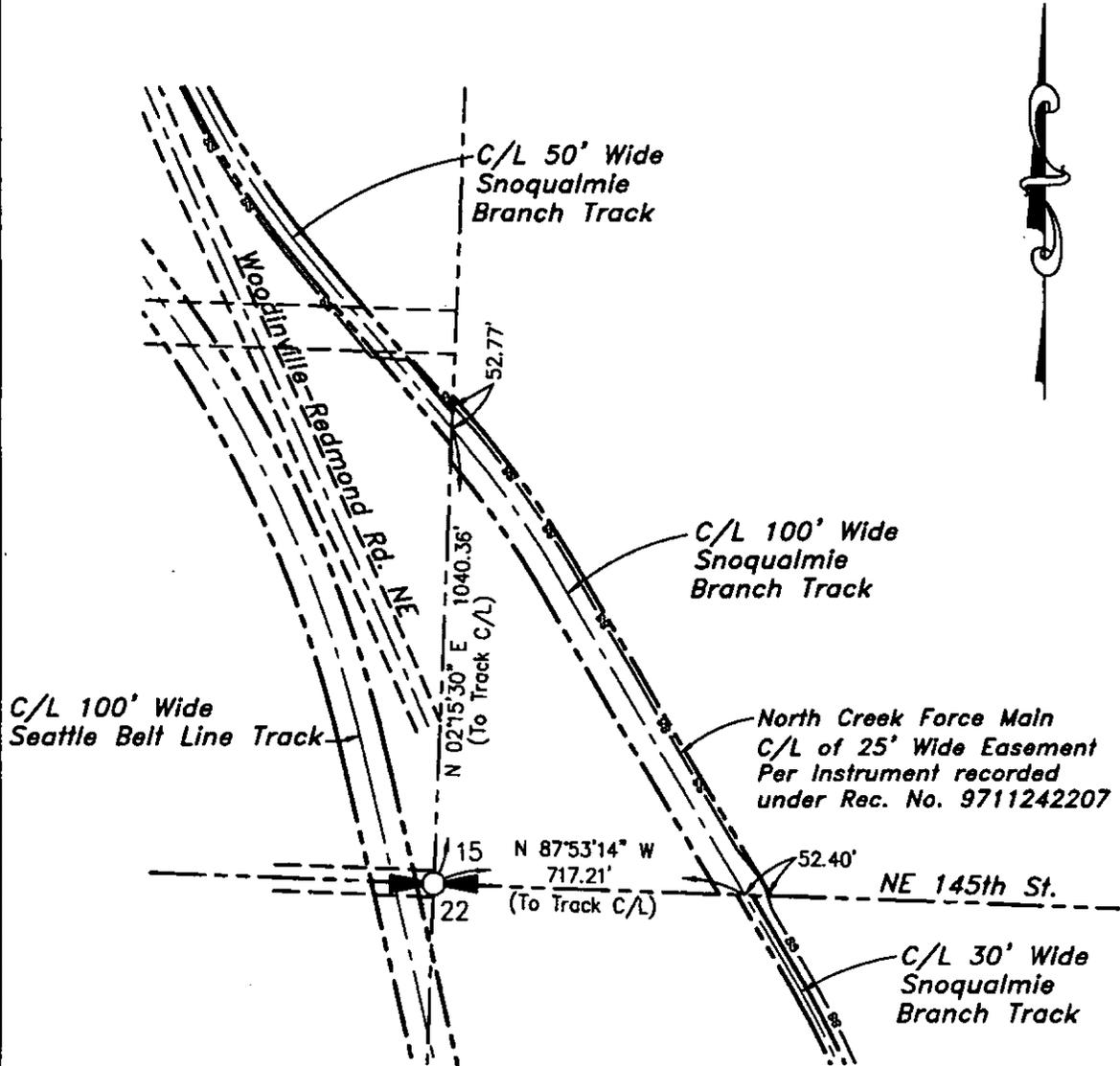
**True NORTH**  
 LAND SURVEYING, INC.  
 815 S. Waller Street  
 Suite 200  
 Seattle, WA 98104-3023  
 206.332.0800

Date: 5-06-11  
 Scale: 1" = 400'  
 Job No. J10-64.00

**Exhibit**  
 Existing Sewer Easement  
 BNSF Eastside Rail Corridor - North Creek Force Main

EXHIBIT C-1

SE 1/4, SEC. 15, T 26 N, R 5 E, W.M.  
WOODINVILLE, KING COUNTY, WASHINGTON

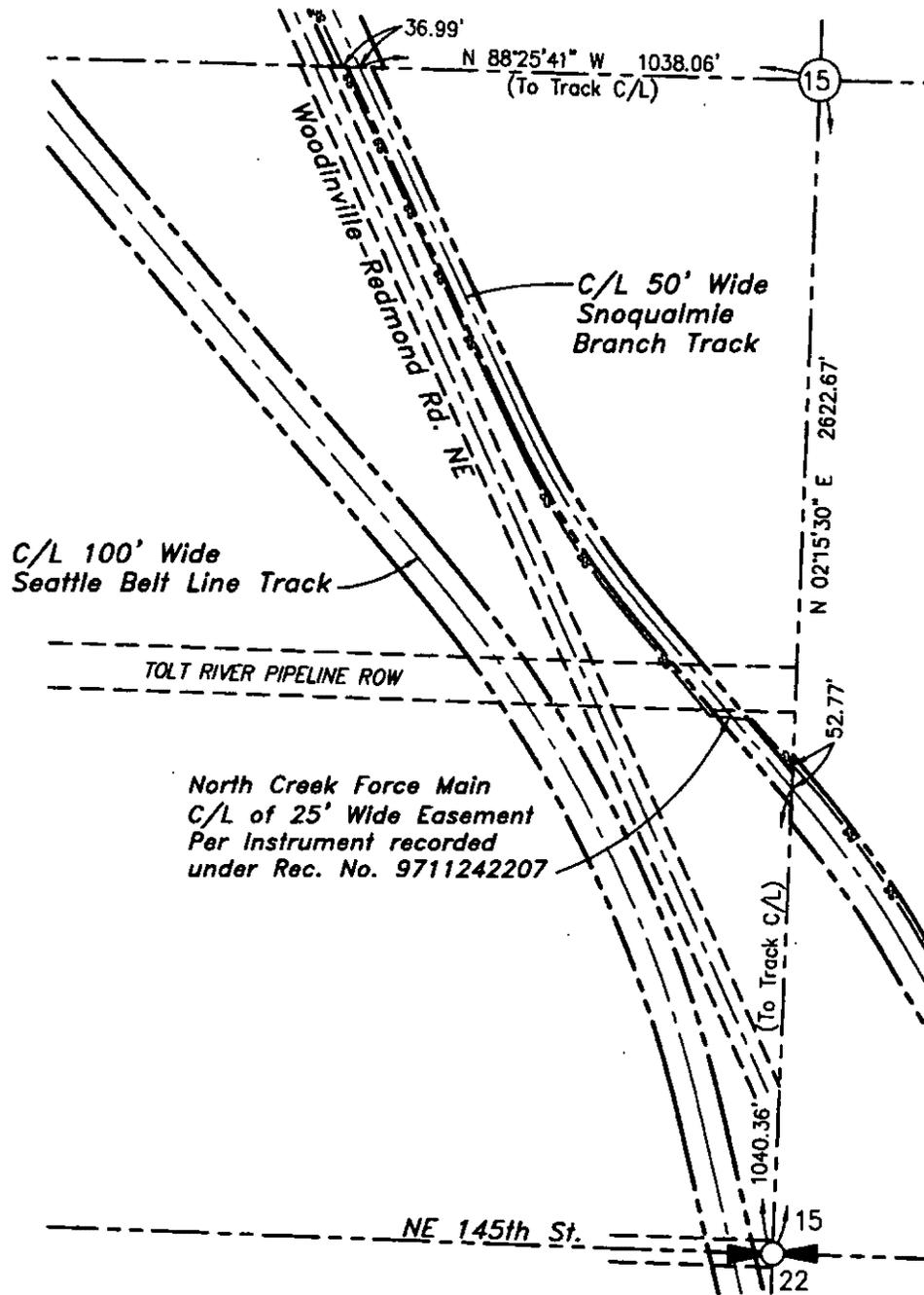


Sheet 30 of 34

<b>True NORTH</b> LAND SURVEYING, INC. 815 S. Weller Street Suite 200 Seattle, WA 98104-3023 206.332.0800	Date	5-06-11	<b>Exhibit</b>  Existing Sewer Easement BNSF Eastside Rail Corridor - North Creek Force Main
	Scale	1" = 400'	
	Job No.	J10-64.00	

EXHIBIT C-1

SW 1/4, SEC. 15, T 26 N, R 5 E, W.M.  
WOODINVILLE, KING COUNTY, WASHINGTON



Sheet 31 of 34

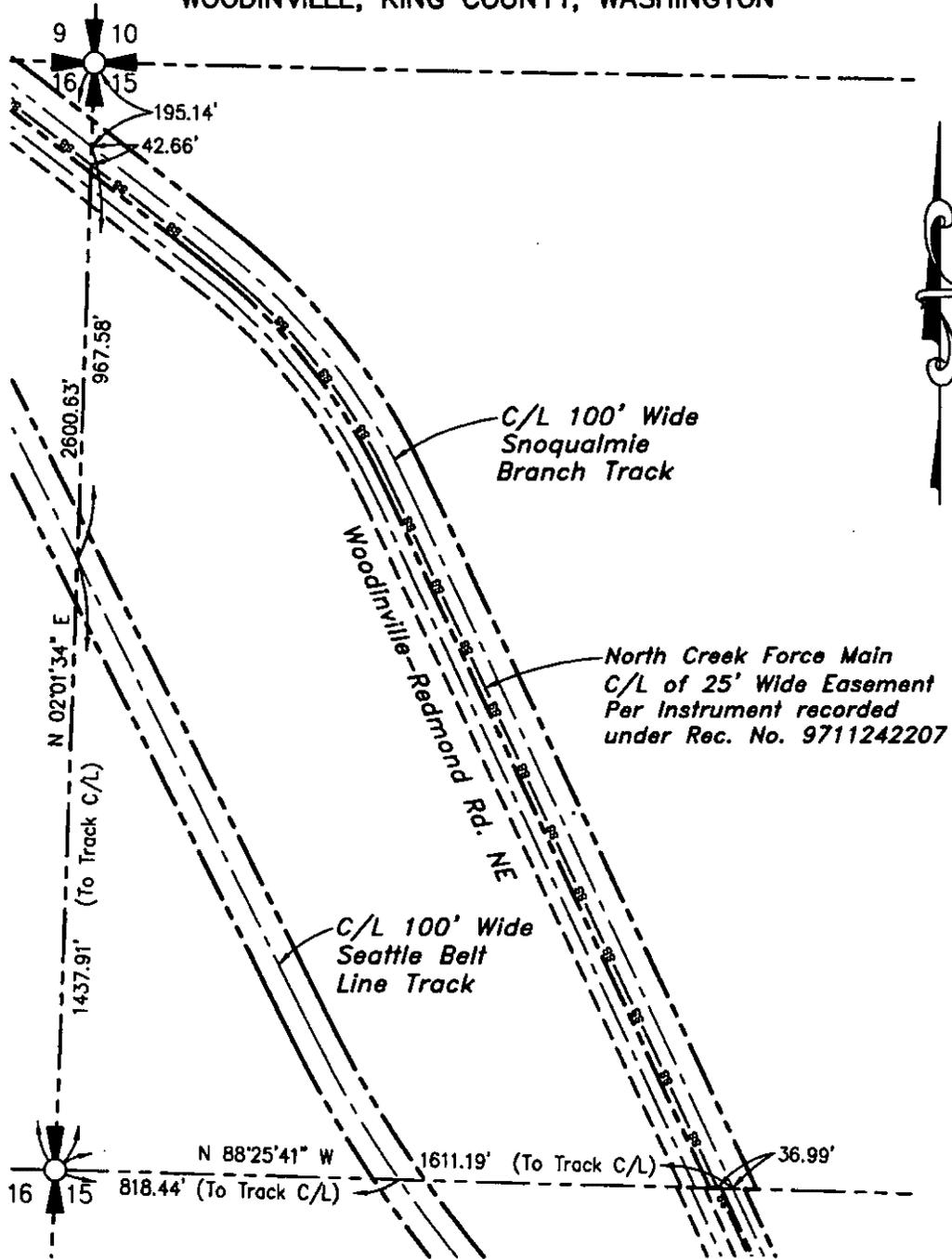
**True NORTH**  
LAND SURVEYING, INC.  
815 S. Weller Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0600

Date: 5-06-11  
Scale: 1" = 400'  
Job No. J10-64.00

**Exhibit**  
Existing Sewer Easement  
BNSF Eastside Rail Corridor - North Creek Force Main

EXHIBIT C-1

NW 1/4, SEC. 15, T 26 N, R 5 E, W.M.  
WOODINVILLE, KING COUNTY, WASHINGTON



Sheet 32 of 34

**True NORTH**  
LAND SURVEYING, INC.

815 S. Weller Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0600

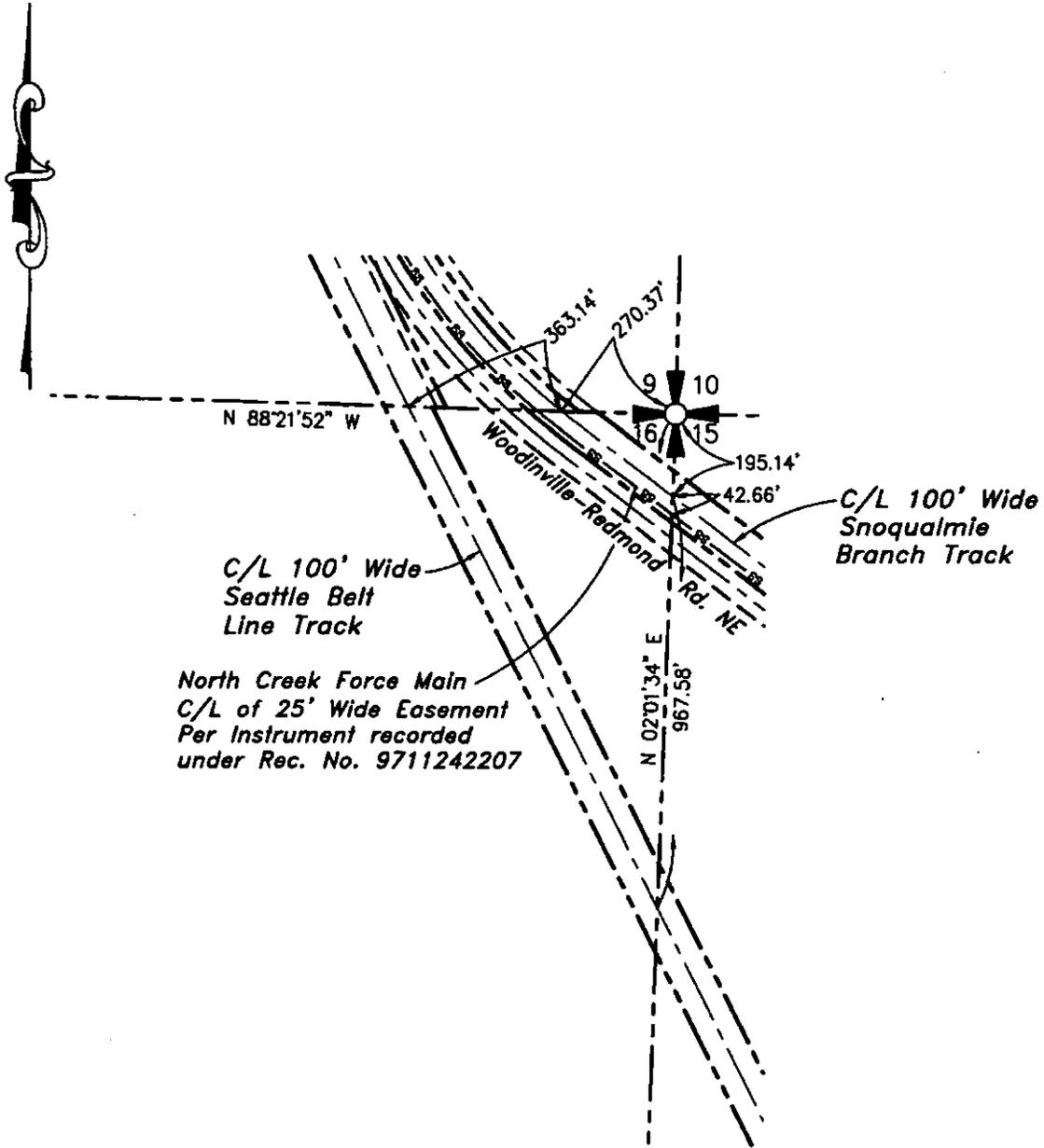
Date:  
**5-06-11**  
Scale:  
**1" = 400'**  
Job No.  
**J10-64.00**

**Exhibit**

**Existing Sewer Easement**  
BNSF Eastside Rail Corridor - North Creek Force Main

EXHIBIT C-1

NE 1/4, SEC. 16, T 26 N, R 5 E, W.M.  
WOODINVILLE, KING COUNTY, WASHINGTON

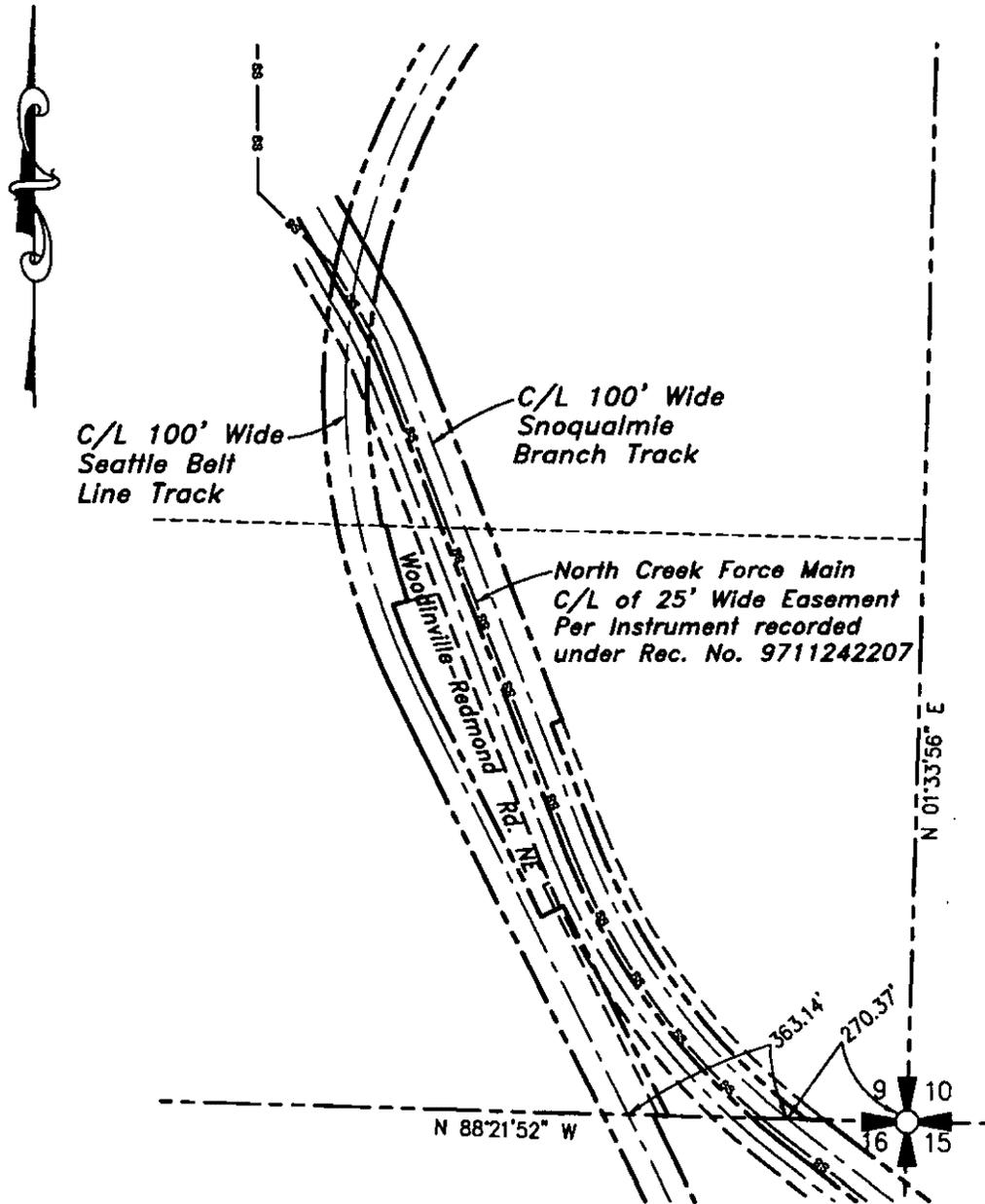


Sheet 33 of 34

<p>815 S. Waller Street Suite 200 Seattle, WA 98104-3023 206.332.0800</p>	Date:	5-06-11	<p><b>Exhibit</b></p> <p>Existing Sewer Easement</p> <p>BNSF Eastside Rail Corridor - North Creek Force Main</p>
	Scale:	1" = 400'	
	Job No.	J10-64.00	

EXHIBIT C-1

SE 1/4, SEC. 9, T 26 N, R 5 E, W.M.  
WOODINVILLE, KING COUNTY, WASHINGTON



Sheet 34 of 34

**True NORTH**  
LAND SURVEYING, INC.  
815 S. Water Street  
Suite 200  
Seattle, WA 98104-3023  
206.332.0900

Date: 5-06-11  
Scale: 1" = 400'  
Job No. J10-64.00

**Exhibit**  
Existing Sewer Easement  
BNSF Eastside Rail Corridor - North Creek Force Main

EXHIBIT C-2

<b>WTD Facilities in Eastside Rail Corridor</b>				
<b>TrueNorth Exhibit #</b>	<b>Section-Township-Range</b>	<b>Facility Name</b>	<b>Permit #</b>	<b>Easement #</b>
1	SE 31-24-05	ESI 3		
2	NW 32-24-05	ESI 4	5874614 93923	
3	SW 29-24-05	ESI 4	5874614 95126	7301190607
4	SE 29-24-05	ESI 4	5874614	
5	NE 29-24-05	ESI 4	5874614	
6	NW 09-24-05	ESI 9 and Sweyolocken Force Main Crossing	93095 (Xing) 5879754	
7	SW 04-24-05	ESI 9	93095	
8	NW 04-24-05	ESI 11	5879616	
9	SW 33-25-05	ESI 11 & 12	5832816 5879616	
10	NW 33-25-05	ESI 12	5832816 5832817	
11	SW 28-25-05	ESI 13	5832816	
12	NW 28-25-05	ESI 13 & Lake Hills Line Crossing	5832816 5903146 (Xing)	
13	SW 21-25-05	ESI 13	5832816	
14	SE 20-25-05	ESI 14	5832816 5832817	
15	NE 20-25-05	ESI 14	5832816 5832817	
16	NW 20-25-05	ESI 14	5832816 5832817	
17	SW 17-25-05	ESI 14	5832816	
18	NW 17-25-05	ESI 14	5832816	
19	SW 08-25-05	ESI 14	5832816	
20	NW 08-25-05	ESI 14	5832816	
21	NE 08-25-05	ESI 14 & Kirkland Force Main Crossing	5832816 95260 (Xing)	
22	SE 05-25-05	Juanita Interceptor	6108302	
23	NE 05-25-05	Juanita Interceptor	6108302	
24	SE 32-26-05	Juanita Interceptor & Juanita Force Main & Redmond Interceptor	6108302 (J) 100225 (JFM) 7108050516 (R)	
25	SW 28-26-05	York Force Main		9101041000
26	SE 28-26-05	York Force Main		9101041000
27	NE 28-26-05	York Force Main		9101041000
28	NW 27-26-05	York Force Main		9101041000
29	SE 22-26-05	York Force Main		
30	SE 15-26-05	North Creek Force Main		9711242207
31	SW 15-26-05	North Creek Force Main		9711242207
32	NW 15-26-05	North Creek Force Main		9711242207
33	NE 16-26-05	North Creek Force Main		9711242207
34	SE 09-26-05	Woodinville Pump Station & North Creek Force Main	7108050520 7108050514	7111190552 9711242207

**Exhibit C-2**

# **EXHIBIT D**

COPY OF  
ORIGINAL FILED

JAN 04 1991

9101041000

Director of Records

EASEMENT

~~KNOW ALL MEN BY THESE PRESENTS~~ <sup>& Elections</sup>, that BURLINGTON NORTHERN RAILROAD COMPANY (formerly named Burlington Northern Inc.), a Delaware corporation, whose address for purposes of this instrument is 2100 First Interstate Center, 999 Third Avenue, Seattle, Washington 98104, GRANTOR, for Three Hundred and Two Thousand and No/100 Dollars (\$302,000.00) to it paid by the MUNICIPALITY OF METROPOLITAN SEATTLE, a body politic, GRANTEE, and the promises of the Grantee hereinafter specified, does hereby remise, release and quitclaim unto the Grantee, subject to the terms and conditions hereinafter set forth, an EASEMENT to construct and thereafter maintain, repair, replace or remove an underground sanitary sewer force main line to include pipes, manholes, vents, lift stations or other necessary related appurtenances, hereinafter called sewer line, under, upon and across the following described premises, situated in King County, State of Washington, to-wit:

A 25 foot side strip of land lying in the Southerly half of Burlington Northern Railroad Companys 100 foot wide Belt Line right of way situated in the E $\frac{1}{4}$ SW $\frac{1}{4}$ , the NW $\frac{1}{4}$ SE $\frac{1}{4}$  and the S $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 28, and within the S $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 27, all in T26N, R5S, W.M., said King County, said 25 foot wide strip being more particularly described on sheets 1 and 2 of Exhibit "A" attached hereto and being a part hereof.

For an additional consideration of \$78,527.00, Easement hereby granted shall include a TEMPORARY EASEMENT for ingress and egress of equipment and personnel for CONSTRUCTION PURPOSES only. Said Temporary Easement consists of those portions of Grantors right of way situated in abovesaid Sections 27 and 28, as more particularly described on sheets 3 through 5 of said Exhibit "A". Temporary Easement herein granted shall expire two(2) years after the date of this instrument or at such earlier time as construction has been completed across lands of the Grantor.

RESERVING, however, unto the Grantor, its successors and assigns, the right to construct, maintain, use, operate, relocate, reconstruct and renew such tracks and facilities as it may at any time, and from time to time, desire within the limits of the land hereinbefore described, including the right and privilege to use said land for any and all purposes, not inconsistent with the use thereof for sewer line purposes.

The foregoing easement is made subject to and upon the following express conditions:

1. To existing interests in the above-described premises to whomsoever belonging and of whatsoever nature and any and all extensions and renewals thereof, including but not limited to underground pipe line or lines, or any type of wire line or lines, if any.

Entered in System

2. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of said sewer line shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing.

3. The Grantee shall bear the cost of removal, relocation or reconstruction of any and all right of way fences, telephone or telegraph poles, or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of said premises for said sewer line purposes

4. The Grantee shall, at its own cost and expense, make adjustment with industries or other lessees of Grantor for buildings or improvements that may have to be relocated, reconstructed or destroyed by reason of the construction and maintenance of said sewer line on said premises.

5. This instrument is granted according the the terms and conditions of that certain Letter Agreement between the Grantor and the Grantee dated September 14, 1990.

6. For any work performed in the State of Washington, nothing in this agreement is intended to be construed as an indemnification against the sole negligence of the Grantor, its officers, employees or agents. Moreover, for any work performed in the State of Washington, the Grantee specifically and expressly agrees to indemnify the Grantor against all loss, liability and damages, including environmental damage, hazardous materials damage, or penalties or fines that may be assessed, caused by or resulting from the concurrent negligence of (a) the Grantor or the Grantor's agents or employees, and (b) the Grantee or the Grantee's agents or employees, to the extent of the Grantee's negligence.

For any work performed in the State of Washington, the Grantee specifically and expressly waives any immunity it may have under Washington Industrial Insurance, Title 51 RCW, and acknowledges that this waiver was mutually negotiated by the parties hereto.

The Grantee further agrees that it has a duty to defend at its own expense, in the name and on behalf of the Grantor, all claims or suits for injuries or death of persons or damage to property arising or growing out of the work carried on under this contract, for which the Grantor is liable, or is alleged to be liable. However, upon a final determination in a court of law in which a percentage of negligence is attributed to the Grantor, the Grantor agrees to reimburse the Grantee in the same percentage for the costs involved in defending the suit.

For so long as this easement shall survive, all contracts between the Grantee and its contractor, for either the construction herein provided for or maintenance work on the sewer line within any easement area described herein or shown on the exhibit attached hereto, shall require the contractor to protect

and hold harmless the Grantor and any other railroad company occupying or using the Grantor's right of way or line of railroad against all loss, liability and damage arising from activities of the contractor, its forces or any of its subcontractors or agents; and shall further provide that the contractor shall:

A. Furnish to the Grantor a railroad protective liability policy in the form provided by FHPM 6-6-2-2, or as such form may be hereafter amended or supplanted, and any other pertinent instructions issued by the Federal Highway Administration, Department of Transportation. The combined single limit of said policy shall not be less than Two Million Dollars (\$2,000,000.00) for all damages arising out of bodily injuries to or death of any person or persons and for all damages arising out of loss or destruction of or injury or damage to property in any one occurrence, and, subject to that limit a total (or aggregate) limit of not less than Six Million Dollars (\$6,000,000.00), for all damages arising out of bodily injuries to or death of any person or persons and for all damages arising out of or loss or destruction of or injury or damage to property during the policy period. Said insurance policy executed by a corporation qualified to write the same in the State in which the work is to be performed, shall be in the form and substance satisfactory to the Grantor and shall be delivered to and approved by the Grantor's Regional Chief Engineer prior to the entry upon or use of its property by the contractor. This being a potentially perpetual easement, Grantor reserves the right to require higher limits of insurance in the future as may be commercially reasonable at the time.

B. Carry regular Contractor's Public Liability and Property Damage Insurance as specified in FHPM 6-6-2-2, or as such form may be hereafter supplanted or amended, and any other pertinent instructions issued by the Federal Highway Administration, Department of Transportation, providing for a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for all damages arising out of the bodily injuries to or death of one person, and, subject to that limit for each person, a total limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of bodily injuries to or death of two or more persons in any one accident; and providing for a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for all damages to or destruction of property in any one accident and subject to that limit a total (or aggregate) limit of not less than One Million Dollars (\$1,000,000.00) for all damages to or destruction of property during the policy period. A certified copy of the policy providing said Contractor's Public Liability and Property Damage Insurance executed by a corporation qualified to write the same in the State in which the work is to be performed, in form and substance satisfactory to the Grantor, shall be delivered to and approved by the Grantor's Regional Chief Engineer prior to the entry upon or use of the Grantor's property by the contractor. This being a potentially perpetual easement, Grantor reserves the right to require higher limits of insurance in the future as may be commercially reasonable at the time.

If the Grantee, its contractor, subcontractors or agents, in the performance of the work herein provided or by the failure to do or perform anything for which it is responsible under the provisions hereof, shall damage or destroy any property of the Grantor, such damage or destruction shall be corrected by the Grantee in the event its contractor or the insurance carriers fail to repair or restore the same.

7. If said described premises, or any part thereof, shall at any time cease to be used by said Grantee, or by the public, for the purpose, as aforesaid, or should they be converted to any other use whatsoever, or should the Grantee fail to

perform any of the conditions herein expressed, then and in any such event, all the right, title, interest, benefits and enjoyment of said Grantee, or of the public, in and to said premises, for any purposes whatsoever, shall immediately cease and the said Grantor, its successors and assigns, may, at its or their option, re-enter, retake and hold said described lands and premises as of the present estate of said Grantor without compensation to said Grantee, the public, or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage to any premises or the improvements thereon abutting on said easement area or any part thereof.

8. The Grantor does not warrant its title to said premises nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interest of others, including the tenants and licensees of the Grantor.

9. The Grantee or its contractor(s) shall telephone Grantor's Communication Network Control Center at (800) 533-2891 (a 24 hour number) to determine if fiber optic cable is buried anywhere on the premises; and if so, the Grantee or its contractor(s) will contact the Telecommunications Company(ies) involved, and make arrangements with the Telecommunications Company(ies) for protection of the fiber optic cable prior to beginning any work on the premises.

10. The Grantee shall, or shall require its contractor to, notify the Grantor's Regional Chief Engineer a sufficient time(48 hours) in advance whenever the Grantee or its contractor is about to perform work on or adjacent to Grantor's right of way and tracks to enable Grantor to furnish flagging and such other protective service as might be necessary and Grantee shall reimburse Grantor for the cost thereof.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

IN WITNESS WHEREOF, the said Burlington Northern Railroad Company has caused this instrument to be signed by its authorized officers, and the corporate seal affixed on the 20th day of DECEMBER, 1990.

ACCEPTED:  
MUNICIPALITY OF  
METROPOLITAN SEATTLE

BY [Signature]  
Title

BURLINGTON NORTHERN  
RAILROAD COMPANY

BY [Signature]  
J. H. Ilkka  
Director - Title Services

BY Executive Director  
Title

ATTEST:  
BY [Signature]  
Anita D. Wells  
Assistant Secretary

BN 9947 - Kirkland, WA.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 31<sup>st</sup> day of December, 1990, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared RICHARD K. SANDAAS and \_\_\_\_\_ to me known to be the EXECUTIVE DIRECTOR, and \_\_\_\_\_, respectively, of Municipality of Metropolitan Seattle, the body politic that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said body, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the seal of said body.

Witness my hand and official seal hereto affixed the day and year first above written.

Phyllis J. Oles  
Notary Public in and for the State of Washington  
Residing at: TACOMA  
My appointment expires: 10-18-94

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 20<sup>th</sup> day of DECEMBER, 1990, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared J. H. Ilkka and Anita D. Wells, to me known to be the Director - Title Services, and Assistant Secretary, respectively, of Burlington Northern Railroad Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

REWALL  
Notary Public in and for the State of Washington  
Residing at: SEATTLE, WA  
My appointment expires: 1-9-93

**LEGAL DESCRIPTION FOR  
PERMANENT EASEMENT  
FOR B.N.R.R.  
A7150-550-310/322**

*Permanent easement portion of Utility Easement Number A7150-550-310/322  
B.N.R.R.:*

A strip of land 25.00 feet in width lying within the Southeast Quarter of the Northwest Quarter of Section 27, Township 26 North, Range 5 East, W.M., in King County, Washington; lying within the right-of-way of the Burlington Northern Railroad Company (formerly the Northern Pacific Railway Company Belt Line), said strip bounded on its Northwesterly margin by a line "A" described as follows:

Commencing at the Northeast corner of Lot 2 of Short Plat No. R278020 as recorded under Recording Number 7906250893, records of King County; thence N88°14'07"W along the North line of said Lot 2 and its Westerly extension 416.11 feet; thence S83°49'32"W, 124.75 feet to a point on the Southeasterly right-of-way line of said railroad, said point being the True Point of Beginning of said line "A"; thence continuing S83°49'32"W to a terminus of the Northwesterly right-of-way line of said railroad; EXCEPT the Northwesterly 63.00 feet of said railroad right-of-way.

TOGETHER with that portion of the Southeast Quarter of the Northwest Quarter of Section 27, Township 26 North, Range 5 East, W.M., in King County, Washington, being more particularly described as follows:

The Northwesterly 25.00 feet of the Southeasterly 37.00 feet of said Railroad Company's Belt Line right-of-way, lying Southerly of a line drawn parallel with and 25.00 feet southeasterly of said line "A", as measured at right angles thereto.

TOGETHER with that portion of the Southwest Quarter of the Northwest Quarter of Section 27, Township 26 North, Range 5 East, W.M., in King County, Washington, being more particularly described as follows:

The Northerly 25.00 feet of the Southerly 37.00 feet of said Railroad Company's right-of-way.

TOGETHER with that portion of the Southeast Quarter of the Northeast Quarter of Section 28, Township 26 North, Range 5 East, W.M., in King County, Washington, being more particularly described as follows:

The Northerly 25.00 feet of the Southerly 37.00 feet of the said Railroad Company's right-of-way; EXCEPT that portion lying within the right-of-way of 132nd Place N.E.

Railroad Company's right-of-way and a point on a nontangent curve from which the center bears S58°20'57"E 1859.86 feet distant; thence along said right-of-way on curve to the left having a central angle of 01°33'53 and an arc length of 50.79 feet; thence N01°23'02"E 74.82 feet; thence N33°38'01"E 22.49 feet to the True Point of Beginning.

Containing 129,057 square feet more or less.

# Exhibit E

**Memorandum of Understanding between the City of Kirkland and King County  
Regarding use of The Eastrail Corridor to Access a Commercial Property  
in the City of Kirkland And Construction of new Trail Between 132<sup>nd</sup> Place NE  
and 139<sup>th</sup> Avenue NE/Willows Road**

This agreement by and between the City of Kirkland (“the City”) and King County (“the County”) (collectively, “the Parties”) is entered into for the purpose of providing the City with a 20- to 30-year renewable use agreement across a portion of the Eastrail Corridor at the extension of 134<sup>th</sup> Court NE located within the City and addressing related matters. This agreement shall be referred to herein as the “Memorandum of Understanding” or “Memorandum.”

*Whereas*, both the County and the City are, among other jurisdictions who are not parties to this Memorandum, owner jurisdictions of portions of the Eastrail Corridor; and

*Whereas*, subject to easements by other entities, the City owns portions of the Eastrail Corridor located within the City limits, known as the Cross Kirkland Corridor (“the CKC”); and the County owns portions of the Eastrail Corridor that are located both outside of and within the City limits of Kirkland;

*Whereas*, the October 2013 “Recommendations for the Eastside Rail Corridor” (since renamed the Eastrail) adopted by the Eastrail Regional Advisory Council highlight that the Eastrail should be a multi-use corridor that supports mobility and transportation connections, economic opportunities, cultural opportunities, natural areas, scenic vistas, historic legacy, public health, public safety, equity and sustainability;

*Whereas*, the May, 2019 “Completing the Eastrail” Funding Commission Report reiterates that the historic railroad line, will be “more than a trail” and will be a “multi-use corridor enhancing transportation for the region and supporting utility infrastructure” and “a centerpiece for urban and economic development, offering substantial advantages for local businesses competing to recruit and retain top talent”;

*Whereas*, a multi-decade business owner in the City, Lee Johnson Chevrolet, which owns and operates auto dealerships in the City and the County, and whose different lines of auto sales provide substantial sales tax to the City and the County, is in negotiations with Google, Inc. to sell its current auto dealership property near the proposed Sound Transit I-405 and NE 85<sup>th</sup> Street Bus Rapid Transit station

for redevelopment as Class A technology office space that is a more appropriate land use and will provide thousands of jobs for the region located close to high capacity transit service;

*Whereas*, Lee Johnson Chevrolet (“the Developer”) has purchased parcels of real property in the Totem Lake area of the City to retain the auto dealership business in the City and the County, including King County Parcel Number 2726059043, located at 12545 13<sup>th</sup> Avenue NE, Kirkland, Washington, 98034 and adjacent King County Parcel Number 2726059101 (which together comprise “the Site”);

*Whereas*, the Site lies adjacent to a portion of the County’s Eastrail Corridor ownership and requires access across the Eastrail Corridor at 134<sup>th</sup> Court NE in order for business to be conducted on the Site;

*Whereas*, the City wishes to enter into a 20- to 30-year renewable use agreement with the County for the City to create, use and maintain a new public roadway crossing (“the new public roadway crossing”) at a new northerly extension of 134<sup>th</sup> Court NE, crossing a County-owned segment of the Eastrail Corridor and providing access to the Site, such that the Site can be accessed in a manner that meets the requirements to protect the public health, safety and welfare, including facilitating police and fire emergency response times;

*Whereas*, the County desires to promote the safety and high-quality experience of trail users and therefore intends to not increase the number of trail crossings in the subject Eastrail Corridor area through this Memorandum and has the legal authority to extinguish existing crossings;

*Whereas*, Tod Johnson of LMJ Enterprises, representing the Developer, and the City received a letter of intent from the King County Department of Natural Resources dated November 27, 2019, describing the potential conditions for approval of such a long-term renewable use agreement that had been discussed by the three parties and this Memorandum is substantially similar to the letter but includes recent changes to reflect (i) emergency response considerations; (ii) that King County has since removed the railroad tracks and ties from the Eastrail Corridor in the vicinity of the Developer’s Site; and (iii) the County has begun construction of an interim trail at this same location;

*Whereas*, the Parties acknowledge that execution of this Memorandum is not a substitute for formal approvals, for example from respective legislative bodies, that may be required to achieve the necessary and desired certainty of commitments to elements included in this Memorandum.

*Now, therefore, by their signatures below, the City and County hereby agree as follows:*

**Roadway Element**

1. King County agrees to enter into a renewable 20- to 30-year use agreement with the City, subject to King County Council approval, for the purpose of construction, use and maintenance by the City of a minor, 2-lane new public roadway crossing at 134<sup>th</sup> Court NE, crossing a County-owned segment of the Eastrail Corridor and providing access to the Site. The new public roadway crossing of the constructed trail will be built at the approximate location identified in Exhibit A to this Memorandum, with said features and related features of the agreement also being illustrated in Exhibit A. The specific location of the public roadway crossing will be detailed in the use agreement.
  
2. The Parties understand, acknowledge, and agree that the Eastrail Corridor is part of an interstate freight rail corridor that has been "railbanked" subject to interim trail use under 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). As a result of the Eastrail Corridor's railbanked status, interstate freight rail service may be reactivated over the corridor, which in turn may result in the demolition, destruction, removal, or relocation of any improvements that the City may make to the corridor. The City understands, acknowledges, and agrees that the City shall bear all risk of loss of any and all improvements that City may make to the corridor, and that if interstate freight rail service is reactivated, then the use agreement shall expire and the City may be required to demolish, remove, or relocate the City's improvements at the City's sole cost and expense, or to negotiate with the person or entity that reactivates rail service to arrange for the City's continued use of the corridor.
  
3. The new public roadway crossing will include a crossing of the Eastrail Corridor consistent with the standards of the American Association of State Highway and Transportation Officials ("AASHTO"), Washington State Department of Transportation ("WSDOT") guidance, and the railbanking obligations imposed through Section 8(d) of the National Trail Systems Act (16 U.S.C. §1247(d) and 49 C.F.R. §1152.29).

4. Once the new public roadway crossing is open, use of the Eastrail Corridor will have priority over use of the roadway, with the roadway being stop controlled at the crossing.

**Traffic Element**

5. The City will enter into a binding agreement with the Developer that will require the Developer to agree that deliveries and staff will not access the Site from the new public roadway crossing of the Eastrail Corridor, but will instead enter the Site from NE 126<sup>th</sup> Place, as the auto dealership traffic over the Eastrail Corridor is intended to be primarily customer traffic. The City will proactively use its relevant authorities, policies, programs, and/or other capacity to support the closure of the existing crossing of the Eastrail Corridor in the County's ownership located on the alignment of 135<sup>th</sup> Avenue, a private road that is identified as a potential new public roadway in the City's Transportation Master Plan (2015). This closure is to be complete coincident in time with the opening of the new public roadway crossing at 134<sup>th</sup> Court NE. The closure shall be accomplished in accordance with the County's discretionary legal authority to extinguish the crossing of the Eastrail that currently provides access to King County Parcel No. 2726059092.
6. The City will enter into a binding agreement with the Developer that will require the Developer to adhere to the railbanking standards set forth in Section 8(d) of the National Trail Systems Act (16 U.S.C. §1247(d) and 49 C.F.R. §1152.29) in construction and design of the new crossing over the Eastrail Corridor.
7. The City will enter into a binding agreement with the Developer that will require the Developer to agree to enable access connecting the new public roadway crossing over the Eastrail Corridor to the building occupying a parcel adjacent to the Developer's parcel, King County Parcel No. 2726059092 and for the Developer to build a paved connection that allows vehicular access to the public roadway to and from said parcel. The City or Developer will coordinate with the owner of King County Parcel No. 2726059092 to ensure that the proposed new access will accommodate the anticipated long-term access needs of the parcel.
8. The City will partner with the Developer to design the public road connection across the Site to NE 126<sup>th</sup> in order to maintain lower traffic volumes at the new Eastrail Corridor crossing while allowing police and fire vehicles access for emergency response.

9. The City shall provide a draft use agreement for the new public roadway crossing to King County for review.

**Mitigation for Trail User Impacts/Willows Road**

10. The City and County agree that they have shared goals to open a safe trail from the CKC to the north side of the Willows Road crossing of the Eastrail Corridor as soon as possible.
11. To that end, the City shall reimburse King County up to \$600,000 for actual costs associated with rail removal and construction on an interim, gravel trail between 132<sup>nd</sup> Place NE and 139<sup>th</sup> Avenue NE/Willows Road, where the Eastrail Corridor trail connects with the City's Willows Road Connector project. The contribution may be provided by the City, by the Developer, or a combination of the City and the Developer. King County will provide the City with documentation demonstrating the amount of the costs and the City will reimburse the County within 60 days.
12. The City will construct and operate interim trail crossings of the Eastrail Corridor at 132<sup>nd</sup> Place NE and Willows Road consistent with applicable City standards and County regional trail standards, to be complete as soon as feasible and no later than 2023.

**Timing**

13. It is the Parties' intent to work toward negotiation and preparation of a final agreement diligently and in good faith, and that a final agreement incorporating the terms of the Memorandum be entered into by both Parties by no later than August 1, 2021, with the understanding that King County Council approval, which is required for final acceptance, will adhere to a timeline set by the Council.

**Additional Approvals**

14. The Parties will, if necessary, upon execution of this Memorandum timely initiate and complete any additional, formal approval processes needed to achieve the desired certainty of commitments for any element of this Memorandum.

**Additional Provisions:**

15. Retained Responsibility and Authority. Except as expressly provided for herein, the Parties retain the responsibility and authority for managing and maintaining their own respective portions of the Eastrail Corridor.
  
16. Liability. No liability will arise or be assumed between the Parties as a result of the Memorandum.
  
17. No Third Party Benefit. The Memorandum and/or agreements, aims and objectives stated herein are not intended to, and do not, create any rights in any named or unnamed third parties.
  
18. Dispute Resolution. If any dispute arises among the Parties which is not resolved by routine meetings or communications, the Parties agree to seek resolution of such dispute in good faith by meeting, as soon as feasible. If the Parties do not come to an agreement on the dispute, the Parties may agree to pursue mediation through a process to be mutually agreed upon, with the Parties to the dispute sharing equally the costs of mediation and assuming their own costs.
  
19. Notice. Any notice or communication required or permitted under this Memorandum shall be sufficiently given if delivered in person or by email to the following:  
  

The City – Kurt Triplett, Kirkland City Manager at [ktriplett@kirklandwa.gov](mailto:ktriplett@kirklandwa.gov)  
The County – Christie True, KC DNRP Director at [christie.true@kingcounty.gov](mailto:christie.true@kingcounty.gov)
  
20. Governing Law. This Memorandum shall be construed in accordance with the laws of the State of Washington.
  
21. Assignment. Neither Party may assign or transfer the responsibilities or agreements made herein without the prior written consent of the non-assigning Party, which approval shall not be unreasonably withheld.
  
22. Amendment. This Memorandum may only be amended or supplemented by agreement of both Parties in writing.

23. **Severability.** If any provision of this Memorandum is found to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Memorandum is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

IN WITNESS THEREOF, the Parties have executed this Memorandum, effective on the latest date shown below. The signatories below represent and warrant that they possess the authority to execute this Memorandum and bind their respective entities.

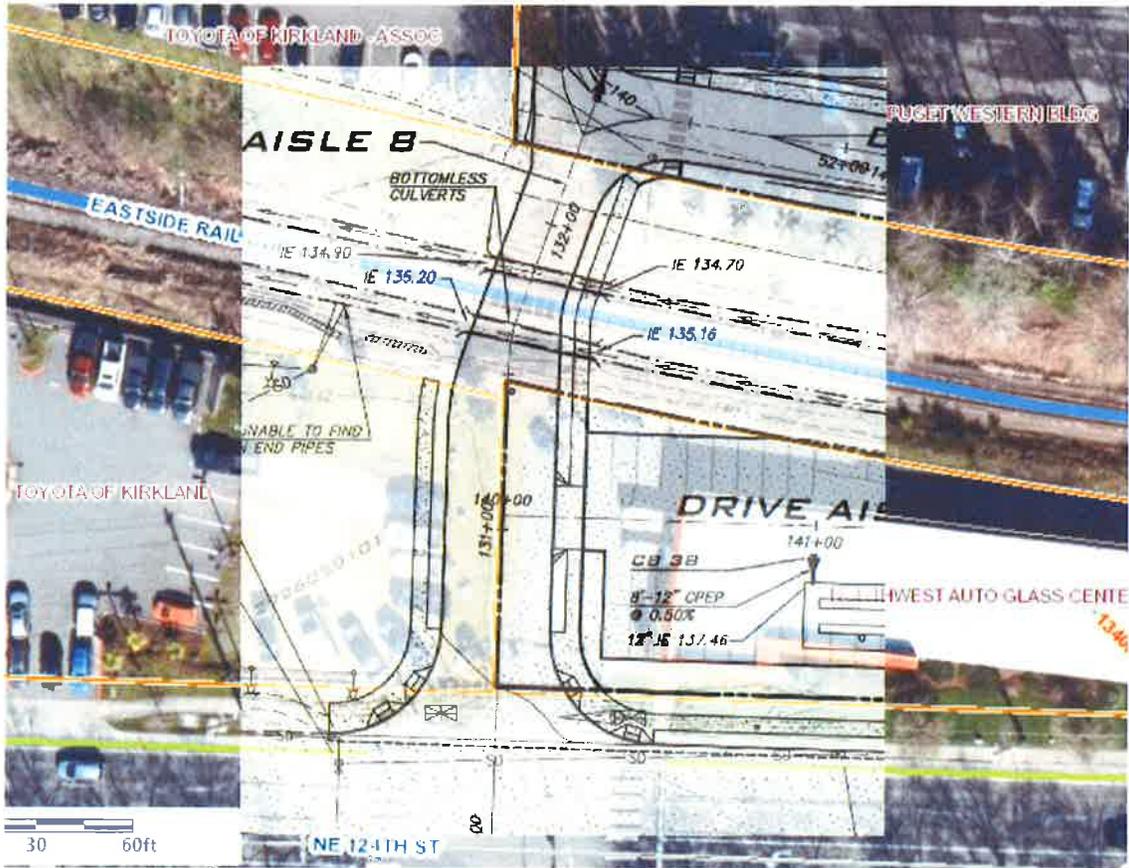
Dated this 27 day of July, 2021, at Kirkland, Washington

**City of Kirkland**  
By:   
Kurt Triplett  
Its: City Manager  
City Manager

Dated this 3 day of August, 2021, at Seattle, Washington

**King County**  
By:   
Its: Director, King County Parks & Recreation

# EXHIBIT A\*



\* The improvements shown are conceptual and the final design shall comply with City and County requirements

# Exhibit F

134<sup>th</sup> Court NE Kirkland, Washington

