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March 26, 2014

235695

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, D.C. 20423-0001

ENTERED  
Office of Proceedings  
March 27, 2014  
Part of  
Public Record

**Re: BNSF Railway Company – Abandonment Exemption – In King County, Washington,  
Finance Docket No. AB-6 (Sub-No. 465X)  
Ballard Terminal Railroad Company, LLC – Acquisition and Operation Exemption –  
Woodinville Subdivision – Verified Petition for Exemption Pursuant to 49 U.S.C. § 10502**

Dear Ms. Brown:

The Port of Seattle (“Port”) submits the following comments to clarify the record in light of statements made by Ballard Terminal Railroad Company, LLC (“Ballard”) in its “Reply to King County, Washington, City of Kirkland, Washington, and Puget Sound Regional Transit authority’s Opposition Comments,” dated March 21, 2014.

As noted in the Reply, the Port provided Ballard’s partner, Eastside Community Rail LLC (“Eastside”) with a letter of support to assist Eastside’s efforts to “access various capital funds related to freight and passenger rail improvements.” The Port’s letter was provided solely in connection with the settlement of arbitration proceedings brought by the Port due to Eastside’s breach of insurance and repair provisions under the Operations and Maintenance Agreement between the Port and Eastside that applies to the Freight Segment North of the Line (see attached Stipulated Judgment). The letter was not written or intended to support Ballard’s petition to reactivate freight service as Ballard incorrectly states in its Reply on pages 4-5. Further, the statement on page 10 of Ballard’s Reply that “The opportunity to create an inland port in Bellevue, which would support the Port of Seattle (as discussed in Mr. Behr’s study), underscores one of the reasons why the Port of Seattle is supportive of financing for Eastside’s projects,” is misleading and inaccurate. While Port personnel attended Mr. Behr’s presentation at the October 2013, METTRANS International Urban Freight Conference, the Port has not in any way adopted Mr. Behr’s views. Further, the Port is not at present studying or considering efforts related to the development of an inland port in Bellevue.

Sincerely,

Joe McWilliams  
Managing Director, Real Estate Division



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EXP07

**FILED**  
KING COUNTY, WASHINGTON  
FEB 25 2014  
DEPARTMENT OF  
JUDICIAL ADMINISTRATION

SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

PORT OF SEATTLE,  
Plaintiff,

vs.

EASTSIDE COMMUNITY RAIL, LLC, a  
Washington Limited Liability Company,  
Defendant.

) No. 14-2-054866-6 SEA  
STIPULATED JUDGMENT

BACKGROUND

A. The Port of Seattle ("Port") entered into an Operations and Maintenance Agreement ("O&M Agreement") dated December 18, 2009 with GNP RLY, Inc. ("GNP"), under which GNP had certain rights and obligations related to the provision of freight rail service along a 14.45 mile corridor from Woodinville, King County, Washington to Snohomish, Snohomish County, Washington. Eastside Community Rail, LLC ("ECR") is the successor in interest to the rights and obligations of GNP under the O&M Agreement.

B. On June 25, 2013 the Port commenced an arbitration proceeding against ECR through the American Arbitration Association, seeking relief from certain breaches of the O&M Agreement by ECR. The parties selected John Ruhl to act as the arbitrator, and an arbitration hearing was set to begin on January 22, 2014.

STIPULATED JUDGMENT -- 1

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Seattle, Washington 98121-1128  
(206) 624-8300/Fax: (206) 340-9599

1 C. On January 22, 2014, the parties entered into a Settlement Agreement, attached as  
2 Exhibit 1, hereto, which they agreed would be documented in the form of a stipulated judgment  
3 to be filed in Superior Court.

4 STIPULATION

5 Therefore, the parties stipulate that judgment shall be entered under RCW 7.04A.250 as  
6 follows, as if this was based on confirmation of an arbitration award.

7 1. ECR shall obtain and maintain at all times the following freight service general  
8 liability insurance:

9 a. \$5 million per occurrence,

10 b. The policy shall include general liability property damage and bodily injury  
11 coverage for operation of Freight Rail Service along with any related operation, maintenance and  
12 construction on or about the Corridor or Port Property, as those terms are defined in the O&M  
13 Agreement.

14 c. The policy shall also include pollution coverage whether incurred during  
15 operations or during maintenance and construction.

16 d. The policy shall include an endorsement providing automobile liability insurance  
17 of not less than \$1 million per occurrence for owned, non-owned, hired, leased, rented or  
18 borrowed vehicles.

19 e. ECR shall provide evidence of insurance to the Port, showing the Port as an  
20 additional insured for the Freight Rail Service and the automobile insurance endorsement.

21 f. The policy will include no Port deductible.

22 g. The policy will provide that it is primary and non-contributory with respect to any  
23 coverage the Port may have.

24 h. The policy shall include a waiver of subrogation rights against the Port.

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STIPULATED JUDGMENT -- 2

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1           2.     ECR shall provide the Port with a certificate of insurance and copy of the  
2 endorsements, reflecting that it has obtained the insurance described in paragraph 1 not later than  
3 5 p.m. on January 27, 2014.

4           3.     Ballard Terminal Railroad Company, LLC ("Ballard") shall obtain and maintain  
5 railroad general liability insurance with a minimum of \$2 million per occurrence for bodily injury  
6 and property damage, naming the Port as an additional insured. Ballard can meet this obligation  
7 using a claims made insurance coverage form provided that there has been continuity of coverage  
8 and the retroactive date on the policy is equal to or prior to the day the Port purchased the rail  
9 corridor from BNSF. Ballard shall obtain and maintain coverage for liability under the Federal  
10 Employers' Liability Act. ECR shall provide the Port with evidence of Ballard's insurance  
11 complying with this obligation.

12           4.     Should the Port not receive the endorsements and policy of insurance required by  
13 paragraph 1 by March 15, or should the Port not agree that the certificate of insurance and  
14 endorsement required by paragraph 2 comply with the requirements of paragraph 1 when it  
15 receives the insurance policy and endorsement, or should the Port receive notice that any of the  
16 insurance called for under this Agreement has been cancelled, the Port may procure insurance for  
17 itself to provide the comparable coverage, and a supplemental judgment, in the form attached as  
18 Exhibit 2, in the amount of the cost to the Port for such insurance shall be entered by the Court.  
19 The cost to the Port shall be shown by a declaration from the Port in support of the amount. ECR  
20 hereby waives notice of presentation of the supplemental judgment. Ballard and ECR shall  
21 provide information as needed by the Port in order to apply for such coverage.

22           5.     On or before February 21, 2014, ECR shall complete the replacement of the  
23 automatic warning device at the intersection of Yew Road and Broadway Avenue in Maltby,  
24 Washington.

25           6.     ECR shall contract by March 1, 2014 with Osmose Railroad Services, HDR, or  
26 another recognized bridge inspection expert, to inspect the bridges and trestles on the Corridor to

STIPULATED JUDGMENT -- 3

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1 determine whether there are any Priority 1 repairs needed. The contract will require the report to  
2 be provided to ECR and the Port by May 1, 2014. If any Priority 1 repairs are identified, ECR  
3 shall cease any operation on the identified bridge or trestle until the repairs have been completed.  
4

5 7. If ECR has not provided the Port with an executed contract for the bridge  
6 inspection called for in paragraph 6 by March 1, 2014, the Port may, if it chooses, contract for  
7 such an inspection. A supplemental judgment, in the form attached as Exhibit 3, in the amount  
8 of the cost to the Port for such inspection shall be entered by the Court. The cost to the Port shall  
9 be shown by a declaration from the Port in support of the amount. ECR hereby waives notice of  
10 presentation of the supplemental judgment.

11 8. On or before January 1, 2015, ECR shall complete all Priority 2 and 3 repairs  
12 identified in the June 24, 2010 Osmose Report or in the inspection required under paragraph 6  
13 above.

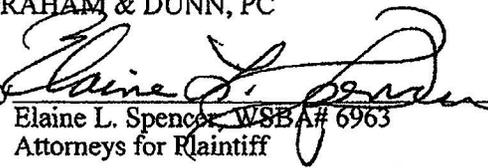
14 9. Prior to February 1, 2014 the Port will provide to counsel for ECR the concerns  
15 that were previously raised concerning the Agreement between ECR and Ballard. Between  
16 February 1, 2014 and March 1, 2014 the Port will enter into good faith discussions with ECR  
17 concerning the Port's concerns. Prior to March 1, 2014, ECR and Ballard will amend their  
18 agreement to resolve those concerns.

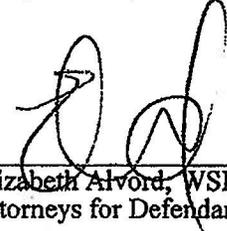
19 10. By February 1, 2014 the Port shall provide ECR with a letter similar to the letter  
20 that Snohomish County provided to the Surface Transportation Board in 2013, supporting ECR's  
21 request for funding.  
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2 Stipulated and Agreed to this 24<sup>th</sup> day of  
3 February, 2014 by:

Stipulated and Agreed to this \_\_\_ day of  
February, 2014 by:

4 GRAHAM & DUNN, PC

5  
6 By   
Elaine L. Spencer, WSBA# 6963  
7 Attorneys for Plaintiff

By   
Elizabeth Alvord, WSBA# 23571  
Attorneys for Defendant

8  
9  
10 JUDGMENT

11 Based on the Stipulation of the parties, judgment is hereby entered as follows:

- 12
- 13 1. ECR shall obtain and maintain at all times the following freight service general
- 14 liability insurance:
  - 15 a. \$5 million per occurrence,
  - 16 b. The policy shall include general liability property damage and bodily injury
  - 17 coverage for operation of Freight Rail Service along with any related operation, maintenance and
  - 18 construction on or about the Corridor or Port Property, as those terms are defined in the O&M
  - 19 Agreement.
  - 20 c. The policy shall also include pollution coverage whether incurred during
  - 21 operations or during maintenance and construction.
  - 22 d. The policy shall include an endorsement providing automobile liability insurance
  - 23 of not less than \$1 million per occurrence for owned, non-owned, hired, leased, rented or
  - 24 borrowed vehicles.
  - 25 e. ECR shall provide evidence of insurance to the Port, showing the Port as an
  - 26 additional insured for the Freight Rail Service and the automobile insurance endorsement.
  - f. The policy will include no Port deductible.

STIPULATED JUDGMENT -- 5

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1 g. The policy will provide that it is primary and non-contributory with respect to any  
2 coverage the Port may have.

3 h. The policy shall include a waiver of subrogation rights against the Port.

4 2. ECR shall provide the Port with a certificate of insurance and copy of the  
5 endorsements, reflecting that it has obtained the insurance described in paragraph 1 not later than  
6 5 p.m. on January 27, 2014.

7 3. Ballard Terminal Railroad Company, LLC ("Ballard") shall obtain and maintain  
8 railroad general liability insurance with a minimum of \$2 million per occurrence for bodily injury  
9 and property damage, naming the Port as an additional insured. Ballard can meet this obligation  
10 using a claims made insurance coverage form provided that there has been continuity of coverage  
11 and the retroactive date on the policy is equal to or prior to the day the Port purchased the rail  
12 corridor from BNSF. Ballard shall obtain and maintain coverage for liability under the Federal  
13 Employers' Liability Act. ECR shall provide the Port with evidence of Ballard's insurance  
14 complying with this obligation.

15 4. Should the Port not receive the endorsements and policy of insurance required by  
16 paragraph 1 by March 15, or should the Port not agree that the certificate of insurance and  
17 endorsement required by paragraph 2 comply with the requirements of paragraph 1 when it  
18 receives the insurance policy and endorsement, or should the Port receive notice that any of the  
19 insurance called for under this Agreement has been cancelled, the Port may procure insurance for  
20 itself to provide the comparable coverage, and a supplemental judgment, in the form attached as  
21 Exhibit 2, in the amount of the cost to the Port for such insurance shall be entered by the Court.  
22 The cost to the Port shall be shown by a declaration from the Port in support of the amount. The  
23 supplemental judgment may be entered without notice to ECR.

24 5. On or before February 21, 2014, ECR shall complete the replacement of the  
25 automatic warning device at the intersection of Yew Road and Broadway Avenue in Maltby,  
26 Washington.

STIPULATED JUDGMENT -- 6

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6. ECR shall contract by March 1, 2014 with Osmose Railroad Services, HDR, or another recognized bridge inspection expert, to inspect the bridges and trestles on the Corridor to determine whether there are any Priority 1 repairs needed. The contract will require the report to be provided to ECR and the Port by May 1, 2014. If any Priority 1 repairs are identified, ECR shall cease any operation on the identified bridge or trestle until the repairs have been completed.

7. If ECR has not provided the Port with an executed contract for the bridge inspection called for in paragraph 6 by March 1, 2014, the Port may, if it chooses, contract for such an inspection. A supplemental judgment, in the form attached as Exhibit 3, in the amount of the cost to the Port for such inspection shall be entered by the Court. The cost to the Port shall be shown by a declaration from the Port in support of the amount. The supplemental judgment may be entered without notice to ECR.

8. On or before January 1, 2015, ECR shall complete all Priority 2 and 3 repairs identified in the June 24, 2010 Osmose Report or in the inspection required under paragraph 6 above.

9. Prior to February 1, 2014 the Port will provide to counsel for ECR the concerns that were previously raised concerning the Agreement between ECR and Ballard. Between February 1, 2014 and March 1, 2014 the Port will enter into good faith discussions with ECR concerning the Port's concerns. Prior to March 1, 2014, ECR and Ballard will amend their agreement to resolve those concerns.

10. By February 1, 2014 the Port shall provide ECR with a letter similar to the letter that Snohomish County provided to the Surface Transportation Board in 2013, supporting ECR's request for funding.

Done in Open Court this \_\_\_\_ day of \_\_\_\_\_, 2014.

**CHAD ALLRED**

**FEB 24 2014**



\_\_\_\_\_  
JUDGE/COURT COMMISSIONER

STIPULATED JUDGMENT COURT COMMISSIONER

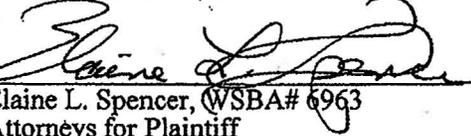
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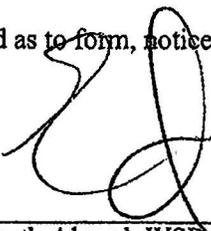
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Presented by:

Approved as to form, notice of presentation  
waived:

GRAHAM & DUNN, PC

By   
Elaine L. Spencer, WSBA# 6963  
Attorneys for Plaintiff

  
By \_\_\_\_\_  
Elizabeth Alvord, WSBA# 23571  
Attorneys for Defendant

**Exhibit 1 to the Stipulated Judgment**

## Settlement Agreement

1. This Agreement is enforceable under CR 2.
2. It will be documented in the form of a stipulated judgment to be filed in Superior Court.
3. ECR shall obtain and maintain at all times the following freight service general liability insurance:
  - a. \$5 million per occurrence
  - b. The policy shall include general liability property damage and bodily injury coverage for operation of Freight Rail Service along with any related operation, maintenance and construction on or about the Corridor and Port Property.
  - c. The policy shall also include pollution coverage whether incurred during operations or during maintenance or construction.
  - d. The policy shall include an endorsement providing automobile liability insurance of not less than \$1 million per occurrence for owned, non-owned, hired, leased, rented or borrowed vehicles.
  - e. ECR shall provide evidence of insurance to the Port, showing the Port as an additional insured for the Freight Rail Service and the automobile insurance endorsement.
  - f. The policy will include no Port deductible.
  - g. The policy will provide that it is primary and non-contributory with respect to any coverage the Port may have
  - h. The policy shall include a waiver of subrogation rights against the Port.
4. ECR shall provide the Port with a certificate of insurance and a copy of the endorsements, reflecting that it has obtained the insurance described in paragraph 3 not later than 5 p.m. on January 27, 2014.
5. Ballard Terminal Railroad Company, LLC ("Ballard") shall obtain and maintain railroad general liability insurance with a minimum of \$2 million per occurrence for bodily injury and property damage, naming the Port as an additional insured. Ballard can meet this obligation using a claims made insurance coverage form provided that there has been continuity of coverage and the retroactive date on the policy is equal to or prior to the day the Port purchased the rail corridor from BNSF. Ballard shall obtain and maintain coverage for liability under the Federal Employers' Liability Act. ECR shall provide the Port with evidence of Ballard's insurance complying with this obligation.
6. Should the Port not receive the certificate of insurance required by paragraph 4, or should the Port receive notice that any of the insurance called for under this Agreement has been cancelled, the Port may procure insurance for itself to provide the comparable coverage, and a supplemental judgment in the amount of the cost to the Port can be entered by the Port. Ballard and ECR shall provide information as needed by the Port in order to apply for such insurance.

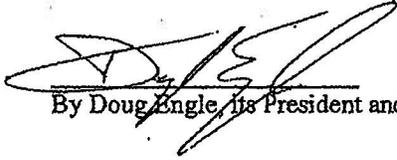
7. On or before February 21, 2014, ECR shall complete the replacement of the automatic warning device at the intersection of Yew Road and Broadway Avenue in Maltby.
8. ECR shall contract by March 1, 2014 with Osmose Railroad Services, HDR, or another recognized bridge inspection expert, to inspect the bridges and trestles on the Corridor to determine whether there are any Priority 1 repairs needed. The contract will require the report to be provided to ECR and the Port by May 1, 2014. If ECR has not provided the Port with such an executed contract by March 1, 2014, the Port may, if it chooses, contract for such an inspection, in which case judgment shall be entered against ECR for the cost incurred by the Port for the inspection. If any Priority 1 repairs are identified, ECR shall cease any operation on the identified bridge or trestle until the repairs have been completed.
9. On or before January 1, 2015, ECR shall complete all Priority 2 and 3 repairs identified in the June 24, 2010 Osmose Report or in the inspection required under paragraph 8 above.
10. Prior to February 1, 2014 the Port will provide to counsel for ECR the concerns that were previously raised concerning the Agreement between ECR and Ballard. Between February 1, 2014 and March 1, 2014 the Port will enter into good faith discussions with EC concerning the Port's concerns. Prior to March 1, 2014, ECR and Ballard will amend their agreement to resolve those concerns.
11. By February 1, 2014 the Port shall provide ECR with a letter similar to the letter that Snohomish County provided to the Surface Transportation Board in 2013, supporting ECR's request for funding.
12. The arbitrator will continue the arbitration hearing until April 1, 2014, and conduct such further preliminary hearings between the date of this Agreement and April 1, 2014 as the parties may request.
13. If there are any disagreements over the drafting of the stipulated judgment described in paragraph 2, they will be resolved by John Ruhl.

Agreed January 22, 2014.

Port of Seattle

  
By Isabel Safora, its Deputy General Counsel

Eastside Community Rail LLC

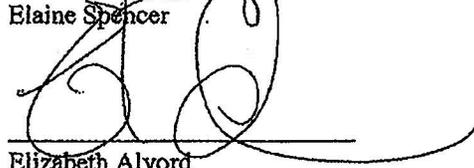


By Doug Angle, its President and CEO

Approved:



Elaine Spencer



Elizabeth Alvord

**Exhibit 2 to the Stipulated Judgment**



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SUPPLEMENTAL JUDGMENT IS ENTERED in favor of the Port in the amount of

\_\_\_\_\_.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014.

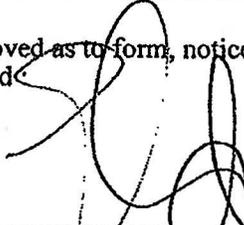
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JUDGE/COURT COMMISSIONER

Presented by:

Approved as to form, notice of presentation  
waived

GRAHAM & DUNN, PC

By   
Elaine L. Spencer, WSBA# 6963  
Attorneys for Plaintiff

  
By \_\_\_\_\_  
Elizabeth Alvord, WSBA# 23571  
Attorneys for Defendant

**Exhibit 3 to the Stipulated Judgment**

Exhibit 3

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SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

PORT OF SEATTLE,  
  
Plaintiff,

vs.

EASTSIDE COMMUNITY RAIL LLC, a  
Washington limited liability company,  
  
Defendant.

No.

SUPPLEMENTAL JUDGMENT

This Court entered a Stipulated Judgment on February \_\_, 2014, providing in paragraph 7 that if Defendant Eastside Community Rail LLC ("ECR") failed to provide the Port with an executed contract for the bridge inspection called for in paragraph 6 by March 1, 2014, the Port might, if it chose, contract for such an inspection, in which case on five days' notice to ECR a supplemental judgment in the amount of the cost to the Port, should be entered in the amount of the cost to the Port for that inspection. The Port has now shown by declaration that it has incurred \_\_\_\_\_ in cost to procure the inspection as provided for in paragraph 7 of the Stipulated Judgment. Now, therefore,

SUPPLEMENTAL JUDGMENT IS ENTERED in favor of the Port in the amount of

\_\_\_\_\_

SUPPLEMENTAL JUDGMENT -- 1

**GRAHAM & DUNN PC**  
Pier 70, 2801 Alaskan Way ~ Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax: (206) 340-9599

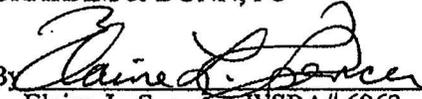
1 DATED this \_\_\_\_ day of \_\_\_\_\_, 2014.

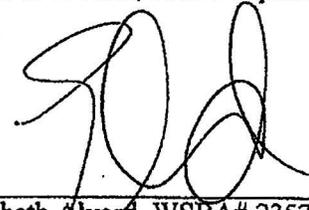
3 JUDGE/COURT COMMISSIONER

4 Presented by:

Approved as to form, notice of presentation  
waived:

5 GRAHAM & DUNN, PC

6   
7 By Elaine L. Speacer, WSBA# 6963  
8 Attorneys for Plaintiff

9   
By Elizabeth Alvord, WSBA# 23571  
Attorneys for Defendant

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SUPPLEMENTAL JUDGMENT -- 2

**GRAHAM & DUNN** PC  
Pier 70, 2801 Alaskan Way ~ Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax: (206) 340-9599

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused to be served a copy of the foregoing letter to the U. S. Surface Transportation Board dated March 26, 2014, from the Port of Seattle upon the following parties of record in the above referenced proceedings by electronic mail upon:

Pete Ramels  
Andrew Marcuse  
Office of the Prosecuting Attorney  
Civil Division  
W400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104  
[pete.ramels@kingcounty.gov](mailto:pete.ramels@kingcounty.gov)  
[andrew.marcuse@kingcounty.gov](mailto:andrew.marcuse@kingcounty.gov)  
Attorneys for King County

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Thomas J. Litwiler  
Thomas C. Paschalis  
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Authority  
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[Jennifer.belk@soundtransit.org](mailto:Jennifer.belk@soundtransit.org)  
Attorneys for Central Puget Sound RTA

Dated this 26th day of March, 2014.

A handwritten signature in blue ink, appearing to read "Ann DeKoster", written over a horizontal line.

Ann DeKoster  
Legal Administrator  
Port of Seattle