UTILITIES AND TRANSPORTATION COMMISSION

STATE OF WASHINGTON

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| CITY OF WOODINVILLE, a Washington municipal corporation,Plaintiff, vs.EASTSIDE COMMUNITY RAIL and BALLARD TERMINAL RAILROAD COMPANY, both Washington limited liability companies,Defendant. |  | ))))))))))))) | Dockets: TR-143902 and TR-143903KING COUNTY’S BRIEF TO CLARIFY CERTAIN POINTS OF FACT |

**I. Introduction.**

King County submits this brief to clarify a point of fact in the responsive brief filed by Eastside Community Rail and Ballard Terminal Railroad on October 2, 2015 (“Ballard’s Response”), and in so doing to form a more complete and accurate record in these proceedings. To the extent that submittal of this brief deviates from the Commission’s ordinary briefing process, King County respectfully requests that the Commission exercise its administrative discretion to grant King County leave to file this brief.

**II. The City acquired NE 195th Street and NE 190th Street upon incorporation in 1993.**

Page 2 of Ballard’s Response states that “[t]he 195th street crossing in Woodinville is totally the responsibility of the ‘Agency,’ King County.” A copy of a document apparently dating from 1989 is attached to Ballard’s Response as the first eleven pages of Exhibit B, purporting to be a copy of an agreement between King County and BNSF Railway Company and relating to the intersection of 195th Street and the Woodinville Subdivision rail line in Woodinville, Washington. The remainder of Exhibit B purports to be a copy of an easement from BNSF Railway Company to King County for a road crossing for 195th Street where it crosses the Woodinville Subdivision within the City of Woodinville, Washington (the “City”). *See* Ballard Response at Exhibit B. Exhibit C appears to be similar to Exhibit B, but is dated from 1991 and purports to address the intersection of the railroad line and NE 190th Street in the City. *See* Ballard Response at Exhibit C.[[1]](#footnote-1)

It is a matter of public record that the City of Woodinville incorporated effective March 31, 1993. See Declaration of Andrew Marcuse, attached hereto, at Exhibit A (City of Woodinville Resolution No. 31). The locations where the Woodinville Subdivision rail line intersects with NE 195th Street and NE 190th Street are within the City’s incorporated limits. See Marcuse Dec. Exhibit B (illustration of City of Woodinville streets and boundaries).

**III. The City’s incorporation relieved King County of responsibility for NE 195th Street and NE 190th Street within the City.**

By law, all county roads within a newly-incorporated city become city streets as of the official date of incorporation. *See* RCW 35.02.180; *see also* RCW 36.75.010(4), (6) (defining “city street” to mean “every highway or part thereof, located *within* the limits of incorporated cities and towns,” and defining “county road” to mean “every highway or part thereof, *outside* the limits of incorporated cities and towns and which has not been designated as a state highway”) (italics added).

As a result, and consistent with RCW 35.02.180, from and after the effective date of incorporation NE 195th Street and NE 190th Street became city streets within the City, and King County was relieved of any responsibility to maintain those streets within the City, including adjacent to the Woodinville Subdivision railroad crossings at NE 195th and NE 190th.[[2]](#footnote-2) *See* RCW 81.53.090.[[3]](#footnote-3)

**IV. King County does not own 195th Street or 190th Street in the City and has no duty to maintain them or any railroad crossings over them.**

These streets have been City property for over twenty-two years. King County expresses no opinion as to whether Ballard Terminal Railroad, Eastside Community Rail, the City, or some other entity is required to maintain the NE 195th Street railroad crossing, the NE 190th Street railroad crossing, or any other railroad crossing within the City, including the crossings at issue in these proceedings. King County merely desires to clarify for the record that King County presently has no duty to maintain NE 195th Street or NE 190th Street in the City, or to maintain any railroad crossing located upon those streets within the City.

 DATED this \_\_\_\_\_ day of October, 2015.

DANIEL T. SATTERBERG

King County Prosecuting Attorney

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. It is unclear whether Exhibits B and C to Ballard’s Response are properly before the Commission, because Ballard’s Response does not lay any evidentiary foundation for those exhibits, such as a declaration or other affidavit demonstrating that those exhibits are true and correct copies of the documents that they purport to represent. However, for purposes of this brief only, King County will assume for the sake of argument that the exhibits are what they appear to be and that they are admissible to establish the facts asserted in Ballard’s Response. [↑](#footnote-ref-1)
2. While King County may provide road maintenance services to the City on a contract basis (*see generally* RCW 35.77.020-.040; *see also* <http://www.kingcounty.gov/depts/transportation/roads/contract-cities.aspx> (visited October 8, 2015; listing cities for which King County provides road-related services on a contract basis, including the City), as explained in the main text of this brief, from and after the date of incorporation roads within city limits belong to the City, not King County. [↑](#footnote-ref-2)
3. *See also Olson v. City of Bellevue*, 93 Wn. App. 154, 163-64, 968 P.2d 894 (Div. I 1998) (adopting rule that “[w]here a municipality annexes a roadway from another municipality, the annexed municipality’s potential liability for any unsafe conditions in the roadway ends after the annexing municipality has been afforded a reasonable opportunity to discover and remedy the unsafe conditions;” determining that a nearly two-year period had afforded city a reasonable opportunity to discover the alleged unsafe condition at issue in that case). [↑](#footnote-ref-3)