CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117880

AN ORDINANCE granting King County Department of Natural Resources and Parks Wastewater Treatment Division permission to locate, construct, maintain, and operate underground injection control wells and associated green stormwater infrastructure systems on selected blocks within the project area bounded by 35th Avenue Southwest to the west, Southwest Othello Street to the north, 30th Avenue Southwest to the east, and Southwest Barton Street to the south; for an unlimited term; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

WHEREAS, King County Department of Natural Resources and Parks, Wastewater Treatment Division (KCWTD) has applied for permission to construct green stormwater infrastructure facilities including underground injection control (UIC) wells and associated green stormwater infrastructure systems to reduce stormwater flows to the combined sewer system and the frequency of combined sewer overflow (CSO) events at King County's Barton CSO outfall to Puget Sound; and

WHEREAS, KCWTD has determined that installation and implementation of the UIC wells and associated green stormwater infrastructure systems are KCWTD's preferred option for compliance with KCWTD's National Pollution Discharge Elimination System Waste Discharge Permit No. WA-002918-1 for the West Point Wastewater Treatment Plant, which requires that KCWTD limit CSO events to Puget Sound at the Barton Street Pump Station to no more than one overflow per year; and

WHEREAS, KCWTD will be regulated under the UIC well program of the Washington State Department of Ecology in Washington Administrative Code Chapter 173-218 and under other legal requirements; and

WHEREAS, construction of the UIC wells and associated green stormwater infrastructure systems will be entirely within the City right-of-way in accordance with City standards and Seattle Municipal Code Chapters 22.800-22.808, that requires projects to implement green stormwater infrastructure to the maximum extent feasible; and

WHEREAS, by Resolution 31442, the City of Seattle granted conceptual approval of the UIC wells and associated green stormwater infrastructure systems to KCWTD and deemed the UIC wells and associated green stormwater infrastructure systems are in the public interest; and

WHEREAS, the adoption of this ordinance is the culmination of the approval process for installation of UIC wells and associated green stormwater infrastructure systems, and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Permission. Subject to the terms and conditions of this ordinance, the City of Seattle (City) grants permission (also referred to in this ordinance as a permit) to King County Department of Natural Resources and Parks, Wastewater Treatment Division, and its successors and assigns as approved by the Director of the Seattle Department of Transportation (SDOT Director) and the Director of Seattle Public Utilities (SPU Director) according to Section 14 of this ordinance (the party named above and each approved successor and assign is referred to as Permittee); to locate, construct, maintain, and operate underground injection control wells, green stormwater infrastructure, including but not limited to bioretention, and all associated utility, and landscaping, (any part or portion of the system is individually GSI and the system is referred to in part and in whole collectively as the "GSI system" or the "GSI systems") within street rights-of-way or other public places (collectively Public Place) that are located within SW25, SW36, and NW36 in Township 24, Range 03 and more specifically within the boundaries starting at Southwest Henderson Street and continuing north along 35th Avenue Southwest to Southwest Othello Street, then east along Southwest Othello Street to 30th Avenue Southwest, then south along 30th Avenue Southwest to Southwest Barton Street, and then west along Southwest Barton Street to 35th Avenue Southwest to the point of the beginning, including all adjacent Public Places, as specifically described in Attachment A, Green Stormwater Infrastructure Drainage Area Map, to this ordinance.

The Permittee is and shall be the owner and operator of all the GSI systems, which shall remain the exclusive responsibility of the Permittee. The Permittee represents and warrants that it

has designed and is constructing the GSI systems to reduce stormwater flows to City combined sewers and thereby to reduce the frequency of combined sewer overflows to Puget Sound at the Barton Street combined sewer overflow (CSO) outfall that is owned and operated by the Permittee and located at Southwest Barton Street, west of Fauntleroy Way Southwest. The Permittee is and shall remain solely responsible for the Barton Street CSO outfall, combined sewer overflows from or associated with the outfall, and all related legal and compliance obligations.

Section 2. Term. The permission granted to the Permittee to locate, construct, maintain, and operate the GSI systems under this ordinance shall continue for so long as the GSI systems are used to reduce stormwater flows to City combined sewers and reduce the frequency of combined sewer overflows to Puget Sound at the Barton CSO outfall. This permission is subject to the right of the City to require the removal of the GSI systems for city transportation purposes or to revise by ordinance any of the terms and conditions of the permission granted by this ordinance. After five years from the effective date of this ordinance, the SDOT Director in consultation with the SPU Director shall assess the effectiveness of the GSI systems and determine if any amendments to this ordinance should be made. During the lifetime of the GSI system, the SDOT Director in consultation with the SPU Director may further assess the effectiveness of the GSI systems and determine if additional amendments to this ordinance are desired or necessary.

Section 3. Protection of utilities. The permission granted is subject to the Permittee bearing the expense of any protection, support, or relocation of existing utilities deemed necessary by the owners of the utilities; and the Permittee being responsible for any damage to the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of

the GSI systems and for any consequential damages that may result from any damage to utilities or interruption in service caused by any of the foregoing, including any additional regulatory obligations or requirements for the existing utilities that arise out of GSI system operations.

Section 4. Removal for transportation purposes. The permission granted is subject to use of the Public Place by the City and the public for transportation purposes. The City expressly reserves the right to deny or terminate the permission at any time prior to expiration of the initial term and require the Permittee to remove the GSI systems, or any part thereof or installation on the Public Place, at the Permittee's sole cost and expense in the event that:

(a) the City Council determines by ordinance that the space occupied by the GSI systems is necessary for any city transportation purpose or that the GSI systems interferes with any city transportation purpose; or

(b) the SDOT Director determines that use of the GSI systems has been abandoned; or,

(c) the SDOT Director determines that any term or condition of this ordinance has been violated, and the violation has not been corrected by the Permittee by the compliance date after a written request by the City to correct the violation, unless a notice to correct is not required due to an immediate threat to the health or safety of the public. City Council determination by ordinance that the space is needed for, or the GSI systems interfere with, a city transportation purpose is conclusive and final.

Section 5. Permittee's obligation to remove and restore. If the City terminates the permission granted, then within a reasonable time stated in an ordinance or order requiring removal of the GSI systems, or any part of the systems installed in the Public Place, the Permittee shall, at its own expense, timely remove the GSI systems and all of the Permittee's equipment and property from the Public Place. The Permittee shall replace and restore all

portions of the Public Place that may have been disturbed for any part of the GSI systems in as good condition for public use as existed prior to construction of the GSI systems and in at least as good condition in all respects as the abutting portions of the Public Place as required by Seattle Department of Transportation right-of-way restoration standards.

Failure to remove the GSI systems or any part of the systems installed in the Public Place as required by this section is a violation of Chapter 15.90 of the Seattle Municipal Code (SMC) or successor provision; however, applicability of Chapter 15.90 does not eliminate any other remedies available to the City under this ordinance or any other authority. If the Permittee does not timely fulfill its obligations under this section, the City may in its sole discretion remove the GSI systems; restore the Public Place at the Permittee's sole expense; and collect any expenses, together with a reasonable administrative fee, in any manner provided by law.

Upon the Permittee's completion of removal and restoration in accordance with this section, or upon the City's completion of the removal and restoration and the Permittee's payment to the City for the City's removal and restoration costs, the SDOT Director shall then issue a certification that the Permittee has fulfilled its removal and restoration obligations under this ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public interest, the SDOT Director may, in consultation with the SPU Director, conditionally or absolutely excuse the Permittee from compliance with all or any of the Permittee's obligations under this section.

Section 6. Repair or reconstruction. The GSI systems, along with their design, construction, and proper function, shall remain the exclusive responsibility of the Permittee, regardless of whether any maintenance or operation responsibility is eventually contracted out to other parties. The Permittee shall maintain the GSI systems in good and safe condition for the

protection of the public and in compliance with all applicable federal, State, County, and City laws and regulations. Permittee shall meet the minimum requirements of the City of Seattle Stormwater Flow Control and Water Quality Treatment Technical Requirements Manual, Appendix D (Facility Operations and Maintenance Requirements), or successor provision.

The Permittee shall have exclusive responsibility to prevent, control, promptly correct and remediate, and reduce the impact on the Public Place and other property from GSI malfunction, backups, overflows, flooding, subsurface instability, contamination, and all other adverse conditions and events related to the GSI systems. The Permittee shall provide notice to the SPU Director and SDOT Director immediately upon becoming aware of any such adverse condition or event that could affect the Public Place or other property. Notice shall be delivered or sent by a means and to an address each respective Director may specify in writing from time to time.

The Permittee shall obtain all required City permits and approvals to construct, reconstruct, repair, or maintain the GSI systems. The permit approvals shall include a written acceptance by the SDOT Director of the proposed GSI systems plans and specifications, that shall not change in any way the fact that the Permittee and not the City is solely responsible for the GSI systems including their design, location, construction, operation, and maintenance. The SDOT Director may, in the Director's judgment, order the GSI systems be reconstructed or repaired at the Permittee's cost and expense because of: the deterioration or unsafe condition of the GSI systems; the installation, construction, reconstruction, maintenance, operation, or repair of any municipally-owned public utilities; or for any other cause that gives rise to public health or safety concerns.

Section 7. Failure to correct unsafe condition. After written notice to the Permittee and failure of the Permittee to correct an unsafe condition within the time stated in the notice, the SDOT Director may order the GSI systems be closed or removed at the Permittee's sole expense if the SDOT Director deems that the GSI systems have become unsafe or create a risk of injury to the public. If there is an immediate threat to the health or safety of the public, a notice to correct is not required.

Section 8. Continuing obligations. Notwithstanding termination of the permission granted, or closure or removal of the GSI systems, the Permittee shall remain bound by all of its obligations under this ordinance until the SDOT Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance. Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by the obligations in Section 9 of this ordinance and shall remain liable for any unpaid fees assessed under Section 18 of this ordinance.

Section 9. Release, hold harmless, indemnification, and duty to defend and maintain. The Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description arising out of or by reason of the GSI systems or this ordinance, including but not limited to claims resulting from injury, damage, or loss to the Permittee or the Permittee's property.

The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents from and against all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only damages that may result from the sole negligence of the City that may accrue to, be asserted by,

or be suffered by any person or property including, without limitation, damage, death, or injury to members of the public or to the Permittee's officers, agents, employees, contractors, invitees, tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

(a) the existence, condition, construction, reconstruction, modification, maintenance, operation, use, or removal of the GSI systems or any portion of the system; or the use, occupation, or restoration of the Public Place or any portion of the Public Place by the Permittee or any other person or entity;

(b) anything that has been done or may at any time be done by the Permittee by reason of this ordinance; or

(c) the Permittee failing or refusing to strictly comply with every provision of this ordinance; or arising out of or by reason of the GSI systems or any portion of the system or this ordinance in any other way.

If any suit, action, or claim of the nature described above is filed, instituted, or begun against the City, the Permittee shall upon notice from the City defend the City, with counsel acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment within 90 days after the action or suit has been finally determined, if determined adversely to the City. If it is determined by a court of competent jurisdiction that Revised Code of Washington (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or result from the concurrent negligence of the City, its agents, contractors, or employees, and the Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Permittee or the Permittee's agents, contractors, or employees. For purposes of this indemnity, Permittee waives, with respect to the

City only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. The Permittee acknowledges and agrees that this Title 51 waiver has been mutually negotiated.

Section 10. Insurance. For as long as the Permittee exercises any permission granted by this ordinance and until the SDOT Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance, the Permittee shall obtain and maintain in full force and effect, at its own expense, insurance or self-insurance that protects the Permittee and the City from claims and risks of loss from perils that can be insured against under commercial general liability (CGL) insurance policies in conjunction with:

(a) construction, reconstruction, modification, operation, maintenance, use, existence, or removal of the GSI systems or any portion of the system, as well as restoration of any disturbed areas of the Public Place in connection with removal of the GSI systems;

(b) the Permittee's activity upon or the use or occupation of the Public Place described in Section 1 of this ordinance; and

(c) claims and risks in connection with activities performed by the Permittee by virtue of the permission granted by this ordinance.

Minimum insurance requirements are CGL insurance written on an occurrence form at least as broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance coverage to be placed with an insurer admitted and licensed to conduct business in Washington State or with a surplus lines carrier pursuant to RCW Chapter 48.15. If coverage is placed with any other insurer or is partially or wholly self-insured, the insurers or self-insurance is subject to the City's Risk Manager's approval.

Minimum limits of liability shall be $2,000,000 per Occurrence; $4,000,000 General Aggregate; $4,000,000 Products/Completed Operations Aggregate, including Premises Operation; Personal/Advertising Injury; Contractual Liability. Coverage shall include the "City of Seattle, its officers, officials, employees and agents" as additional insureds for primary and non-contributory limits of liability subject to a Separation of Insureds clause.

Within 60 days after the effective date of this ordinance, the Permittee shall provide to the City, or cause to be provided, certification of insurance coverage including a copy of the blanket or designated additional insured policy provisions according to the ISO CG 20 12 endorsement or equivalent. The insurance coverage certification shall be delivered or sent to the SDOT Director or to the Department of Transportation at an address as the Director may specify in writing from time to time. The Permittee shall promptly provide a certified complete copy of the insurance policy to the City upon request.

If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager may be submitted in lieu of the insurance coverage certification required by this ordinance, if approved in writing by the City's Risk Manager. The letter of certification must provide all information required by the City's Risk Manager and document, to the satisfaction of the City's Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in force. After a self-insurance certification is approved, the City may from time to time subsequently require updated or additional information. The approved self-insured Permittee must provide 30 days' prior notice of any cancellation or material adverse financial condition of its self-insurance program. The City may at any time revoke approval of self-insurance and require the Permittee to obtain and maintain insurance as specified in this ordinance.

In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the insurance required under this section until the SDOT Director and SPU Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.

Section 11. Contractor insurance. The Permittee shall contractually require that any and all of its contractors performing work contemplated by this permit name the "City of Seattle, its officers, officials, employees and agents" as additional insureds for primary and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance and/or self-insurance. The Permittee shall also include in all contract documents with its contractors a third-party beneficiary provision extending to the City construction indemnities and warranties granted to the Permittee.

Section 12. Performance bond. In the event that the Permittee seeks to assign or transfer the permission granted by this ordinance, the SDOT Director in consultation with the City Attorney's Office, may determine that a performance bond is necessary to adequately protect the City's interests, in which case the successor entity shall deliver to the SDOT Director for filing with the City Clerk, as a condition of approval of the assignment or transfer within 60 days of notification of such determination, a sufficient bond executed by a surety company authorized and qualified to do business in the State of Washington that is in the amount determined by the SDOT Director in consultation with the City Attorney's Office, and conditioned with a requirement that the successor entity shall comply with every provision of this ordinance and with every order the SDOT Director issues under this ordinance. The successor entity shall ensure that the bond remains in effect until the SDOT Director has issued a certification that the successor entity has fulfilled its removal and restoration obligations under Section 5. An

irrevocable letter of credit approved by the SDOT Director in consultation with the City Attorney's Office may be substituted for the bond.

Section 13. **Adjustment of insurance and bond requirements.** The SDOT Director may adjust minimum liability insurance levels and surety bond requirements during the term of this permission. If the SDOT Director determines that an adjustment is necessary to fully protect the interests of the City, the SDOT Director shall notify the Permittee of the new requirements in writing. The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted insurance and surety bond levels to the SDOT Director.

Section 14. **Consent required for any assignment or transfer.** The permission granted by this ordinance shall not be assignable or transferable by operation of law; nor shall the Permittee transfer, assign, mortgage, pledge or encumber the same without the SDOT Director's and SPU Director's consent that the SDOT Director and SPU Director shall not unreasonably withhold.

The Directors may approve assignment or transfer of the permission granted by this ordinance to a successor entity other than the City only if the successor or assignee has agreed in writing to be bound by all of the terms and conditions of the permission granted by this ordinance; has provided, at the time of the acceptance, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Section 18 of this ordinance.

Upon the SDOT Director's and SPU Director's approval of an assignment or transfer, the rights and obligations conferred on the Permittee by this ordinance shall be conferred on the successors and assigns. Any person or entity seeking approval for an assignment or transfer of

the permission granted by this ordinance shall provide the Directors with a description of the current and anticipated use of the GSI systems.

The obligations and conditions imposed on the Permittee by and through this ordinance are also imposed on the Permittee's successors and assigns, other than the City, regardless of whether the SDOT Director and SPU Director have approved assignment or transfer of the permission granted by this ordinance to such successors and/or assigns. All references in this ordinance to obligations or conditions imposed on the "Permittee" shall also be deemed to refer to the successors and assigns of the Permittee.

Section 15. Vegetation Management. The Permittee shall be responsible for all aspects of the GSI systems, including the establishment and long-term maintenance of all vegetation, landscaping, and trees installed, collectively identified here as "vegetation", as part of the GSI systems. The Permittee shall pay the City the amounts that may be charged by the City to inspect all aspects of the vegetation condition, including irrigation operation, to ensure that the vegetation management by the Permittee meets the SDOT's vegetation standards for public safety. No inspection or approval by the City of the vegetation shall be construed as a representation, warranty, or assurance to the Permittee or any other person as to the safety or soundness of any vegetation condition, nor as to compliance with this ordinance or any agreement or standard. Any failure by the City to require correction of any defect or condition of the vegetation shall not in any way limit the responsibility or liability of the Permittee.

Section 16. Inspection fees. The Permittee shall, as provided by SMC Chapter 15.76 or successor provision, pay the City the amounts that may be charged by the City to inspect the GSI systems during construction, reconstruction, repair, safety inspections, and at other times deemed necessary by the City. No inspection or approval by the City shall be construed as a representation,

warranty, or assurance to the Permittee or any other person as to the safety or soundness of any structure or condition, nor as to compliance with this ordinance or any agreement or standard. Any failure by the City to require correction of any defect or condition shall not in any way limit the responsibility or liability of the Permittee.

Section 17. Inspection reports. The Permittee shall submit to the SDOT Director, or to the Department of Transportation at an address specified by the SDOT Director, an inspection report that:

(a) describes the physical dimensions and condition of all elements;

(b) describes any damages or possible repairs and establishes a timeframe for making repairs;

(c) prioritizes all repairs and establishes a timeframe for making repairs; and

(d) is stamped by a professional engineer licensed in the State of Washington.

The report meeting the foregoing requirements shall be submitted in the event of a natural disaster or other event that may have damaged the GSI systems and shall be submitted by the date established by the SDOT Director.

Additionally, the Permittee shall conduct inspections and maintain records of complying with the operations and maintenance requirements required by Section 6 of this ordinance, and shall provide copies of the inspections and records to the SDOT Director upon the SDOT Director's request.

The Permittee has the duty of inspecting and maintaining the GSI systems, and the responsibility to submit inspection reports as required by the SDOT Director does not waive or alter any of the Permittee's other obligations under this ordinance.

The receipt of any reports by the SDOT Director shall not create any duties on the part of the SDOT Director. Any failure by the SDOT Director to require a report, or to require action after receipt of any report, shall not waive or limit the obligations of the Permittee.

Section 18. Annual fee. Beginning on January 1, 2014, and annually thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the SDOT Director, an annual fee of $132.61 based on the square footage of the UIC structures installed as part of GSI Drainage Area-Phase I-A, as depicted in Attachment A. In 2015, the annual fee shall be adjusted accordingly based on the construction of the UIC structures as part of the GSI Drainage Area-Phase I-B, as depicted in Attachment A. If it is determined that additional UIC structures will be constructed as part of GSI Drainage Area-Phase II, the annual fee shall be adjusted accordingly in 2016.

As part of the annual term permit fee, an additional fee of $688 shall be assessed for the first two years of the permit's annual fee assessment to cover the City's cost to map the GSI systems in the City's geographic information system. This fee is based on the $172 hourly rate established by the current SDOT Street Use Permit Fee Schedule and may be adjusted accordingly.

As provided for in vegetation management requirements in Section 15, an annual inspection fee from SDOT Urban Forestry Division shall be assessed as part of the annual term permit fee assessment for 3 years of each phase of the permit to ensure the establishment and healthy condition of the vegetation placed in the Public Place. This fee is based on the $172 hourly rate established by the current SDOT Street Use Permit Fee Schedule and may be adjusted accordingly. In 2015, an additional annual fee of $7,568 shall be assessed as part of GSI Drainage Area-Phase I-A per year for 3 years. In 2016, an additional fee of $7,568 shall be

assessed as part of GSI Drainage Area-Phase I-B per year for 3 years. If additional GSI systems are constructed as part of Phase II, additional inspection fees shall be assessed accordingly.

Adjustments to the annual term permit fee shall be made in accordance with a fee schedule adopted by the City Council and may be made every year. In the absence of a schedule, the Director may only increase or decrease the previous year's fee to reflect any inflationary changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by adjusting the previous year's fee by the percentage change between the two most recent year-end values available for the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the City Finance Director for credit to the Transportation Operating Fund.

Section 19. **Compliance with laws.** The Permittee shall construct, maintain, and operate the GSI systems in compliance with all applicable federal, state, County, and City laws and regulations. Without limitation, in all matters pertaining to the GSI systems, the Permittee shall comply with the City's laws prohibiting discrimination in employment and contracting including Seattle's Fair Employment Practices Ordinance, Chapter 14.04, and Fair Contracting Practices code, Chapter 14.10 (or successor provisions).

The Permittee and the City (Parties) acknowledge that the existing State municipal separate storm sewer National Pollutant Discharge Elimination System (NPDES MS4 Permit) and State waste discharge permit explicitly exempt UIC facilities from the permit requirements. Currently, there is no NPDES MS4 Permit or State waste discharge permit that is required for, applies to, covers, authorizes, or imposes any obligation relating to the GSI systems or the area that drains to the GSI systems depicted in Attachment A and hereinafter referred to as "GSI Drainage Area-Phase I."

After completing the GSI systems, the Parties will continue operations within the GSI Drainage Area - Phase I consistent with the terms of any current state and federal permits applicable to their respective operations. If a court, or state or federal agency, with jurisdiction determines that the GSI systems trigger requirements of an NPDES MS4 Permit or a State waste discharge permit that would not otherwise apply to storm water from GSI Drainage Area-Phase I, then the Parties agree to perform any of the newly-applied regulatory responsibilities within the GSI Drainage Area-Phase I consistent with the assignment of those responsibilities in Attachment B, Roles and Responsibilities for Compliance Activities.

If a court, or state or federal agency, with jurisdiction determines the GSI systems trigger the requirements of a NPDES MS4 permit or a State waste discharge permit within the GSI Drainage Area – Phase I that are not specified in or exceed activities described in Attachment B, the Parties shall jointly determine responsibility for payment and implementation of these new regulatory requirements. For purposes of determining who will perform and pay for these new requirements that are not addressed in Attachment B, the Parties shall negotiate which items the Permittee will perform itself at its own cost, which requirements Permittee will pay the City to perform, and which requirements the City will perform at its own cost. Any additional responsibilities or payment obligations not identified in this ordinance arising from newly-applied requirements that either party assumes responsibility for shall only be implemented after this ordinance has been amended to reflect the additional responsibilities.

The following general principles will guide the assignment of responsibilities for newly-applied requirements: (1) the Permittee will be responsible for costs associated with addressing violations of water quality standards specifically related to the Permittee's UIC discharge, (2) the City will be responsible for costs associated with codes for managing development and new

connections to the stormwater system, (3) the City will be responsible for operations and maintenance activities of City-owned stormwater infrastructure, not including the GSI or UIC facilities, (4) the County will be responsible for operations and maintenance activities for County-owned stormwater infrastructure, specifically the GSI and UIC facilities, (5) the County will be responsible for the cost of complying with new water quality regulations specifically related to the GSI and UIC facilities within the GSI Drainage Area – Phase I.

In no event shall the Permittee be required to perform or pay for any requirement that SPU is responsible for performing during the period beginning with the effective date of this ordinance and ending the date a newly-applied regulatory requirement takes effect under an NPDES MS4 permit or a State waste discharge permit within the GSI Drainage Area – Phase I that obligates the Permittee or County to perform such a requirement Responsibility for performing new regulatory requirements shall be consistent with this Section 19.

Similarly, in no event shall the City be required to perform or pay for any requirement that the Permittee or County is responsible for performing during the period beginning with the effective date of this ordinance and ending the day a newly-applied regulatory requirement takes effect under an NPDES MS4 permit or a State waste discharge permit within the GSI Drainage Area – Phase I that obligates the City to perform such requirement. Responsibility for performing new regulatory requirements shall be consistent with this Section 19.

Section 20. Phase II of the GSI Drainage Area. If the Permittee constructs any portion of Phase II of the GSI Drainage Area as depicted in Attachment A (the "GSI Drainage Area – Phase II"), then all of the provisions of this ordinance that apply to GSI Drainage Area – Phase I shall also apply to any portion of the GSI Drainage Area – Phase II that is constructed as part of the Barton project under this ordinance.

Section 21. Dispute Resolution. The Parties shall work collaboratively in accordance with the following steps to resolve disagreements arising from implementing the terms of this ordinance, specifically including those disagreements regarding the performance of activities necessary to comply with new requirements described in Section 19.

The Parties will use their best efforts to resolve disagreements promptly and at the lowest level of authority. The Party wishing to engage in dispute resolution shall notify the other Party in writing of the issues that the disputing Party believes needs resolution. This written notice shall include: (1) a description of the issue to be resolved; (2) a description of the difference in perspectives between the Parties on the issue; and (3) a summary of steps taken by the disputing Party to resolve the issue. The authorized representatives of the Parties shall meet within 10 business days of receiving the written notice and attempt to resolve the dispute. In the event they do not resolve it, then the appropriate City and County Director or their designees shall engage in good faith negotiations to resolve the dispute.

If the dispute is not resolved by these negotiations, the matter shall be submitted to a mutually agreeable mediator prior to initiating legal action. Any mediation shall be conducted in Seattle, Washington, and the costs of the mediation shall be shared equally by the Parties. The terms of this ordinance and attachments are not subject to mediation and may only be modified by legislation adopted by the City Council.

Section 22. Exhaustion. The Parties agree that they shall have no right to seek judicial relief under this ordinance until all of the procedural steps in Section 21 of this ordinance are exhausted; provided this requirement shall not apply if the applicable statute of limitations will run during the time that may be required to exhaust the procedural steps described above and the Parties have not executed a tolling agreement to stay running of the statute of limitations.

Section 23. Changes and Modifications. Either party may request changes, additions, or amendments to any portion of this ordinance, including Attachment B; however, no change, addition, or amendment shall be valid unless approved by City Council by separate ordinance.

Section 24. Acceptance of terms and conditions. The Permittee shall deliver to the SDOT Director its written signed acceptance of the terms of this ordinance, including authorization of the acceptance by King County Council ordinance, within 60 days after the effective date of this ordinance. The SDOT Director shall file the written acceptance with the City Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by this ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed and forfeited. The Permittee shall not commence construction of the GSI systems prior to the Permittee delivering its written signed acceptance of the terms of this ordinance and providing the certification of insurance coverage required by this ordinance.

Section 25. Section titles. Section titles are for convenient reference only and do not modify or limit the text of a section.

Section 26. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

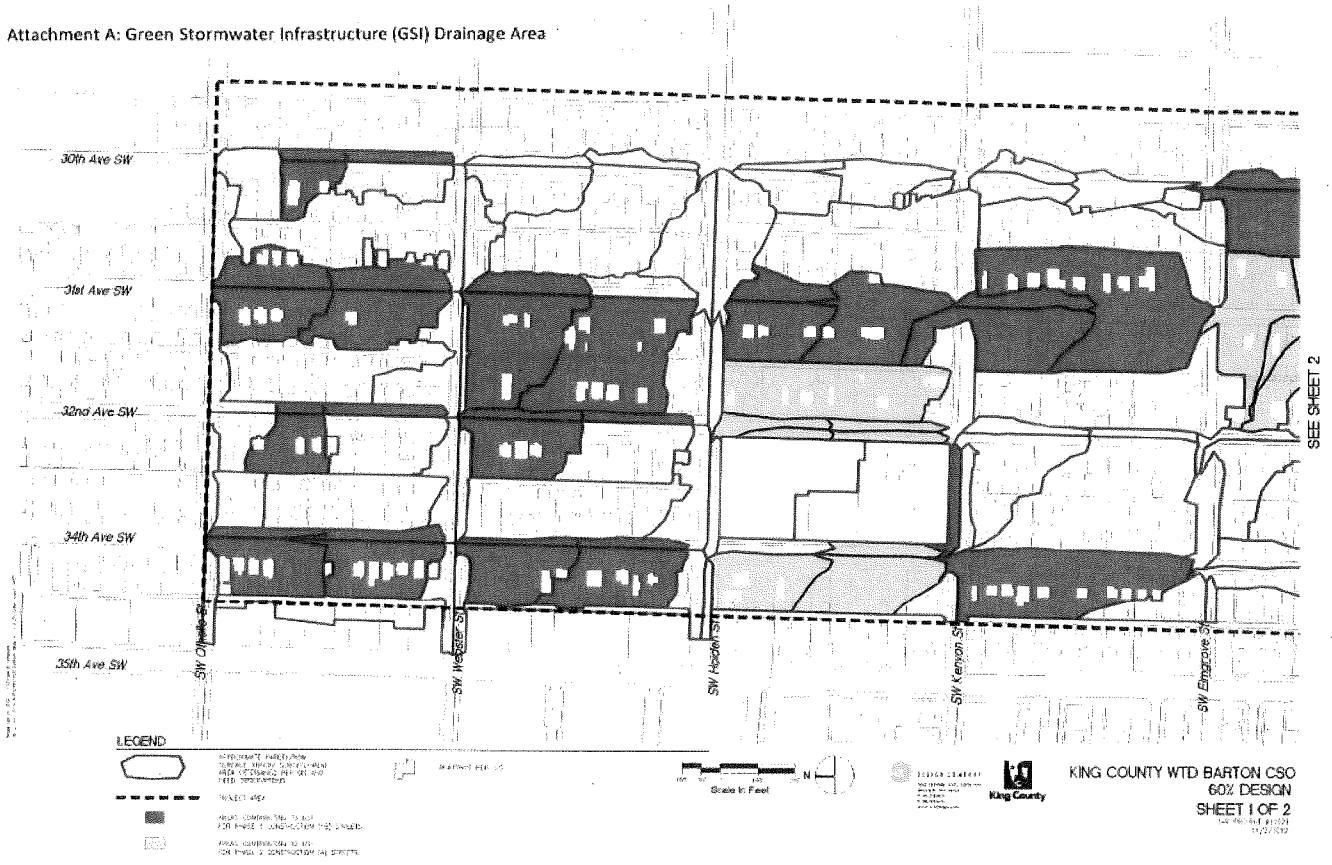
(Seal)

Attachments:

Attachment A- Green Stormwater Infrastructure Drainage Area Map
Attachment B- Roles and Responsibilities for Compliance Activities

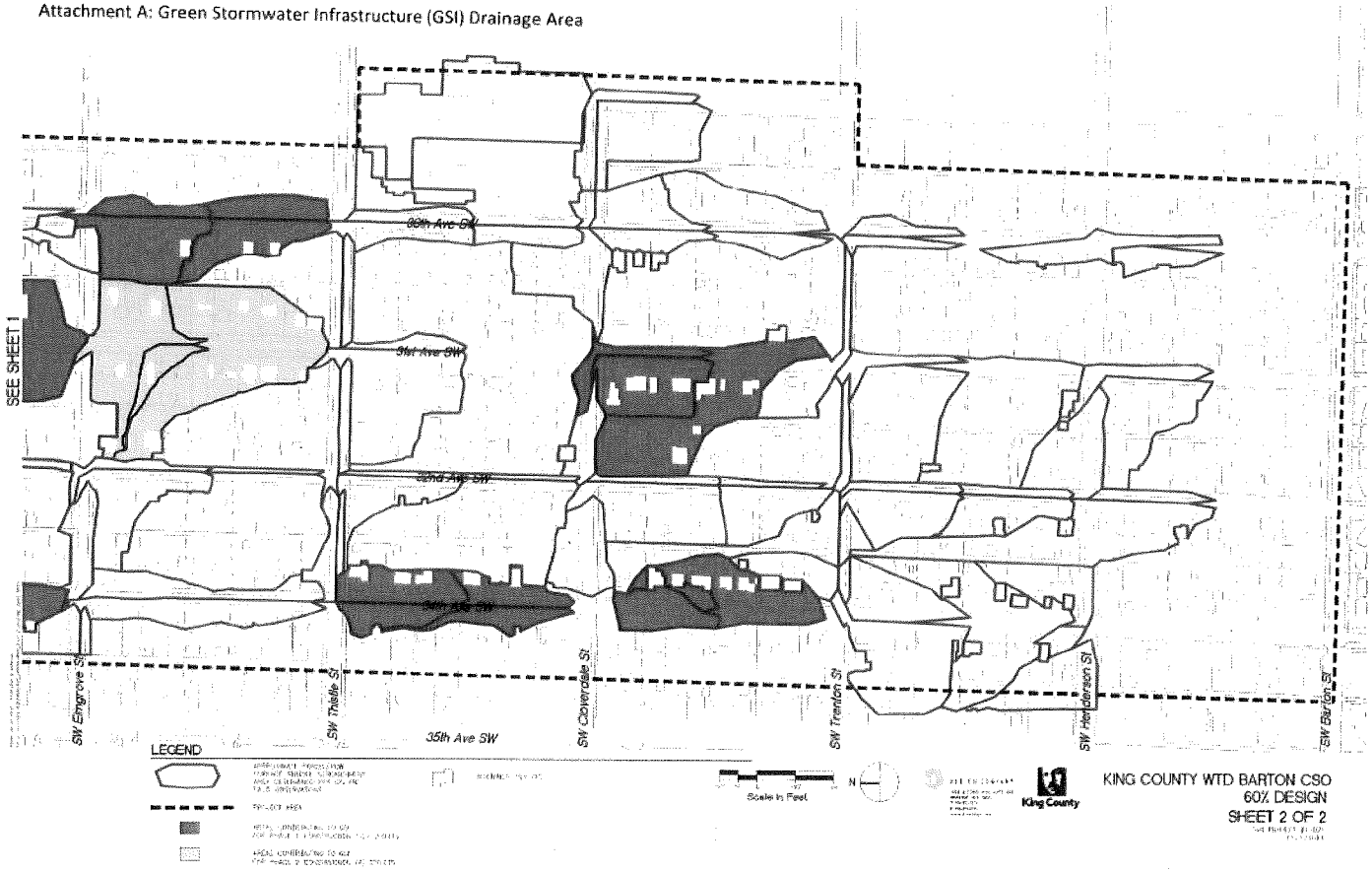
Angela Steel
SPU/SDOT King County Barton GSI ATT A
March 29, 2013
Version #1

Attachment A – Green Stormwater Infrastructure Drainage Area Map



Angela Steel
SPU/SDOT King County Barton GSI ATT A
March 29, 2013
Version #1

Attachment A: Green Stormwater Infrastructure (GSI) Drainage Area



Map is for informational purposes only and is not intended to modify or supplement the legal description(s) in the Ordinance.

Phase 1- Bioretention swales locations to be installed on downhill portion of 15 blocks Locations to be constructed over 2 years.

8 blocks constructed between February – May 2014
7 blocks constructed between February- May 2015

1) 34TH AVENUE SW - OTHELLO TO WEBSTER
2) 32ND AVENUE SW - OTHELLO TO WEBSTER
3) 31ST AVENUE SW - OTHELLO TO WEBSTER
4) 30TH AVENUE SW - OTHELLO TO WEBSTER
5) 34TH AVENUE SW - WEBSTER TO HOLDEN
6) 32ND AVENUE SW - WEBSTER TO HOLDEN
7) 31ST AVENUE SW - WEBSTER TO HOLDEN
8) 31ST AVENUE SW - HOLDEN TO KENYON
9) 34TH AVENUE SW - KENYON TO ELMGROVE
10) 31ST AVENUE SW - KENYON TO ELMGROVE
11) SW KENYON ST - 34TH TO 32ND
12) 30TH AVENUE SW - ELMGROVE TO THISTLE
13) 34TH AVENUE SW - CLOVERDALE TO TRENTON
14) 31ST AVENUE SW - CLOVERDALE TO TRENTON
15) 34TH AVENUE SW - THISTLE TO CLOVERDALE

Phase 2- If needed, locations to be constructed after 2015:

16) 34TH AVENUE SW- HOLDEN TO KENYON
17) 32TH AVENUE SW- HOLDEN TO KENYON
18) 32TH AVENUE SW - ELMGROVE TO THISTLE
19) 31TH AVENUE SW - ELMGROVE TO THISTLE

Attachment B- Roles and Responsibilities for Compliance Activities

Underground injection control ("UIC") facilities are permitted and managed by Washington Department of Ecology ("WDOE"). King County Department of Natural Resources and Parks Wastewater Treatment Division ("KWTCD") has obtained WDOE's approval for the Barton green stormwater infrastructure ("GSI") facilities discussed in the proposed ordinance.

Current State Municipal Separate Storm Sewer ("NPDES MS4") permits explicitly exempt UIC facilities from NPDES MS4 permit requirements. It is anticipated that KCWTD's UIC facility and associated GSI Drainage Area — Phases I and II will remain exempt from State Municipal Separate Storm Sewer permits. However, according to Section 18 of this proposed ordinance, if different permit requirements are imposed by a state agency, federal agency, or a court with jurisdiction, this Attachment B outlines the regulatory responsibilities that would be applied within the GSI Drainage Area — Phases I and II as defined in Attachment A to this ordinance.

In no event shall the Permittee be required to perform or pay for any requirements that Seattle Public Utilities ("SPU") is responsible for performing during the period beginning with the effective date of this ordinance and ending the date any newly applied regulatory requirement takes effect under an NPDES MS4 permit or a State waste discharge permit within the GSI Drainage Area — Phase I or II.

City of Seattle operations, maintenance, and regulatory responsibilities apply to existing and new public sewer infrastructure including gravity pipes, manholes, pipe ends, catch basins and associated lateral lines. KCWTD operations, maintenance, and regulatory responsibilities only apply to KCWTD-owned UIC facilities and the associated GSI Drainage Area.

Element (numbering references for NPDES MS4 permit)	**Description as applied to Drainage Area (Attachment A)**	**Responsibility for Funding and Implementation**
S4 - Compliance with Standards	Comply with water quality standards for the GSI Drainage Area, in connection with the KCWTD-owned UIC system. Notify WDOE of a water quality violation KCWTD becomes aware of associated with the UIC and associated GSI Drainage Area.	KCWTD
S5.A Stormwater Management Program	Develop a Storm Water Management Plan. Written documentation, activity tracking the number of inspections, the number of enforcement actions, cost tracking, and other pertinent activities for plan implementation.	SPU with input from KCWTD
S5.C.1 Legal Authority	Develop code and manuals to regulate development and prohibit non-stormwater discharges.	SPU
S5.C.2 Mapping	Map KCWTD-owned GSI systems and provide to SPU and Seattle Department of Transportation ("SDOT"). SPU will, however, be responsible for mapping for any infrastructure it owns and operates.	KCWTD
S5.C.4 Public Involvement and Participation	For any specific stormwater management required public involvement and participation within the GSI Drainage Area.	SPU with KCWTD
S5.C.5 Controlling Runoff from New Development, Redevelopment and Construction	Projects in Barton basin, if NPDES MS4 permit may trigger flow control, water quality treatment, and low-impact development requirements from code including (currently) GSI to the maximum extent feasible. Code and rule revision, permitting and enforcement.	City of Seattle (SPU / Department of Planning and Development ("DPD") / SDOT) depending on applicable jurisdiction
S5.C.7 Source Control*	Implement any required source control program within the GSI Drainage Area.	KCWTD responsible for business inspections.

	Implement related enforcement efforts within the GSI Drainage Area.	SPU responsible for enforcement.
S5.C.8 Illicit Discharge, Detection and Elimination	Implement program to detect non-stormwater discharges and illicit connections to the KCWTD-owned GSI system within the GSI Drainage Area. If found, SPU uses its enforcement authority to eliminate within 6-months. Water Quality Hotline and Spills program will also apply. If a spill occurs in the GSI Drainage Area, SPU conducts spill response. KCWTD performs any spill cleanup within their GSI facility.	KCWTD to perform illicit connection detection. SPU performs enforcement on any illicit connections. SPU performs spill response through current hotline. KCWTD performs spill cleanup within their GSI facility.
S5.C.9 Catch Basin Inspection and Maintenance	Annually inspect all catch basins and inlets and maintain those that exceed maintenance standards (168 Catch Basins in the Barton basin). (*Note: this does not include catch basins that are specific to the GSI/UIC facilities.)	SPU
S5.C.9 Water Quality Treatment and Flow Control Facility Inspection and Maintenance, Public owned.	Annually inspect all municipally-owned or -operated water-quality and flow-control facilities, and maintain those that exceed maintenance standards (1 SPU detention structure, multiple KCWTD UIC and GSI facilities). Current regulations require no inspections for UIC. GSI is being built to meet minimum requirement #5 and, therefore, requires no inspection.	SPU pays for and performs inspection/maintenance for its municipal-owned facilities. KCWTD pays for and performs any required inspection/maintenance for its KCWTD-owned GSI/UIC facilities.
S5.C.9 Private Water Quality Treatment and Flow Control Facility Inspection and Maintenance, Private owned.	Annually inspect all municipally-regulated water quality and flow control facilities, use enforcement authority to require maintenance (2 private detention structures).	SPU
S7 TMDLs	Comply with future Total Maximum Daily Load ("TMDL") requirements for GSI Drainage Area.	Not applicable. At point where a TMDL is required future negotiations will occur.
S9 Reporting	Activities in the GSI Drainage Area would be added to the Annual Report to WDOE.	SPU with KCWTD input
G3 Notification of Discharge Including Spills	Timely notify WDOE of discharges into or from KCWTD- owned UIC which constitute a threat to health, welfare or environment, and act to correct or minimize.	KCWTD
S5C3 Coordination, S5C6 Structural Stormwater Control, S5C10 Education and Outreach, and S8 Monitoring	.	Responsibilities for S5C3 Coordination, S5C6 Structural Stormwater Control, S5C10 Education and Outreach, and S8 Monitoring are currently City-wide programs that will remain SPU responsibilities.

*This permit pertains to current land use within the GSI Drainage Area. If the City of Seattle permits any non-residential use within the GSI Drainage Area that is not pre-existing at the effective date of this ordinance, the City and King County agree to coordinate roles and responsibilities consistent with this Attachment B.

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Department of Transportation	Angela Steel/684-5967	Christie Parker/684-5211

Legislation Title:

AN ORDINANCE granting King County Department of Natural Resources and Parks Wastewater Treatment Division permission to locate, construct, maintain, and operate underground injection control wells and associated green stormwater infrastructure systems on selected blocks within the project area bounded by 35th Avenue Southwest to the west, Southwest Othello Street to the north, 30th Avenue Southwest to the east, and Southwest Barton Street to the south; for an unlimited term; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

Summary of the Legislation:
This legislation grants the King County Department of Natural Resources and Parks, Wastewater Treatment Division (KCWTD) permission to locate, construct, maintain, and operate underground injection control (UIC) wells and associated green stormwater infrastructure systems to reduce stormwater flows to the combined sewer system and the frequency of combined sewer overflow (CSO) events at King County's Barton CSO outfall to Puget Sound.

KCWTD has determined that installing and implementing the UIC wells and associated green stormwater infrastructure systems are KCWTD's preferred option for complying KCWTD's National Pollution Discharge Elimination System Waste Discharge Permit No. WA-002918-1 for the West Point Wastewater Treatment Plant that requires KCWTD limit CSO events to Puget Sound at the Barton Street Pump Station to no more than one overflow per year.

KCWTD will be regulated under the UIC well program of the Washington State Department of Ecology in Washington Administrative Code Chapter 173-218 and under other legal requirements.

The UIC wells and associated green stormwater infrastructure systems will be constructed entirely within City right-of-way according to City standards and Seattle Municipal Code Chapters 22.800-22.808 that requires projects implement green stormwater infrastructure to the maximum extent feasible. The project site is on selected blocks within 35th Avenue SW to the west, Southwest Othello Street to the north, 30th Avenue Southwest to the east and Southwest Barton Street to the south. A map identifying this area can be found in Attachment A to the ordinance.

This permit is for an unlimited term for so long as the GSI systems are used to reduce stormwater flows to City combined sewers and reduce the frequency of combined sewer overflows to Puget Sound at the Barton CSO outfall, subject to the right of the City to require the removal of the GSI systems or to revise any of the terms and conditions of the permission granted by this permit. After five years from the effective date of this ordinance, the SDOT Director in consultation with the SPU Director shall assess the effectiveness of the GSI systems and determine if any amendments to this ordinance should be made. During the lifetime of the GSI system, the SDOT Director in consultation with the SPU Director may further assess the effectiveness of the GSI systems and determine if additional amendments to this ordinance are desired or necessary. The legislation has an insurance provision as recommended by the City's Risk Manager, specifies the conditions under which authorization is granted, and provides for acceptance of the permit and conditions.

The ordinance requires KCWTD pay the City an annual fee beginning on January 1, 2014 and annually thereafter. The $132.61 annual fee is based on the square footage of the UIC structures installed as part of GSI Drainage Area-Phase I-A as depicted in Attachment A to the ordinance. In 2015, the annual fee shall be adjusted based on the construction of the UIC structures as part of the GSI Drainage Area-Phase I-B as depicted in Attachment A. If it is determined that additional UIC structures will be constructed as part of GSI Drainage Area-Phase II, the annual fee shall be adjusted in 2016.

Adjustments to the annual fee may be made every year and if so made shall be calculated according to the term permit fee schedule adopted by Ordinance 123485. An Annual Fee Assessment Summary is attached for reference.

As part of the annual term permit fee, an additional $688 fee shall be assessed for the first two years of the permit's annual fee assessment to cover the City's cost to map the GSI systems in the City's geographic information system. This fee is based on the $172 hourly rate established by the current SDOT Street Use Permit Fee Schedule and may be adjusted accordingly.

As provided for in the vegetation management requirements in Section 15 of the ordinance, an annual inspection fee from SDOT Urban Forestry Division shall be assessed as part of the annual term permit fee assessment for three years of each phase of the permit to ensure the establishment and healthy condition of the vegetation placed in the Public Place. This fee is based on the $172 hourly rate established by the current SDOT Street Use Permit Fee Schedule and may be adjusted accordingly. In 2015, an additional annual fee of $7,568 shall be assessed as part of GSI Drainage Area-Phase I-A per year for three years. In 2016, an additional fee of $7,568 shall be assessed as part of GSI Drainage Area-Phase I-B per year for three years. If additional GSI systems are constructed as part of Phase II, additional inspection fees shall be assessed accordingly.

Background:
By Resolution 31442, the City granted conceptual approval for the GSI systems project.

Please check one of the following:

_X_ This legislation has financial implications.

Appropriations: N/A

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee and GSI System Fee	$0	$820.61
TOTAL			**$0**	**$820.61**

Revenue/Reimbursement Notes: N/A

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact: N/A

Do positions sunset in the future? No

Spending/Cash Flow: N/A

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?** If the legislation is not approved by City Council, KCWTD would be out of compliance with their NPDES permit.

b) **What is the financial cost of not implementing the legislation?** If the legislation is not enacted by the City Council, the City of Seattle will not receive the annual fee as described above. As previously stated, the City of Seattle has the option to adjust the fee amount on an annual basis.

c) **Does this legislation affect any departments besides the originating department?** No

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None

e) **Is a public hearing required for this legislation?** No

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No

g) **Does this legislation affect a piece of property?** Yes, an area map is attached to the ordinance for reference.

h) Other Issues: None

List attachments to the fiscal note below:

Attachment A – Annual Fee Assessment Summary

Attachment A - Annual Fee Assessment Summary

STREET USE ANNUAL FEE ASSESSMENT

Date: 6/21/13

Summary:
Land Value: $14.42/SF
2014 Permit Fee:
$132.61

I. Property Description:

The King County Department of Natural Resources and Parks, Wastewater Treatment Division has proposed the construction of underground injection control (UIC) wells and associated green stormwater infrastructure systems on selected blocks bounded by 35th Avenue SW to the west, SW Othello Street to the north, 29th Avenue SW to the east and SW Barton Street to the south. The project will be installed in two phases. The first will be completed in 2014 and the UIC structures will comprise **383.2 square feet**.

Applicant:
King County Department of Natural Resources and Parks, Wastewater Treatment Division

Abutting Parcels, Property Size, Assessed Value:

1. Parcel 8122100295, Square Feet 5,796

   Tax year 2013 Appraised Land Value $85,000

2. Parcel 9269200160, Square Feet 7,380

   Tax year 2013 Appraised Land Value $90,000

3. Parcel 4364200135, Square Feet 7,680

   Tax year 2013 Appraised Land Value $92,000

4. Parcel 8122100585, Square Feet 5,789

   Tax year 2013 Appraised Land Value $82,000

5. Parcel 9269200530, Square Feet 5,696

   Tax year 2013 Appraised Land Value $82,000

6. Parcel 1932300740, Square Feet 3,657

Tax year 2013 Appraised Land Value $72,000

7. Parcel 4363700105, Square Feet 7,500

   Tax year 2013 Appraised Land Value $92,000

8. Parcel 1932300245, Square Feet 160,736

   Tax year 2013 Appraised Land Value $2,571,700

Average 2013 tax assessed land value: $14.42/SF

II. Annual Fee Assessment:

The 2014 permit fee is calculated as follows:

($14.42/SF) X (383.2 SF) X (30%) X (8%) = $132.61 where 30% is the degree of alienation for a below-grade utility structure and 8% is the annual rate of return.

Fee methodology authorized under Ordinance 123485.

City of Seattle
Office of the Mayor

August 6, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that will grant to the King County Department of Natural Resources and Parks, Wastewater Treatment Division (KCWTD) permission to locate, construct, operate, and maintain underground injection control (UIC) wells and associated green stormwater infrastructure (GSI) systems on selected blocks comprising the Green Stormwater Infrastructure Drainage Area, bounded by 35th Avenue Southwest to the west, Southwest Othello Street to the north, 29th Avenue Southwest to the east, and Southwest Barton Street to the south.

The purpose of the UIC wells and GSI systems is to reduce stormwater flows for the GSI Drainage Area to the combined sewer system and the frequency of combined sewer overflow (CSO) events at KCWTD's Barton CSO outfall to Puget Sound. The GSI Drainage Area will be implemented and installed in two phases, if necessary.

Thank you for your consideration of this legislation. Should you have questions, please contact Angela Steel at 684-5967.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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