

ORDINANCE No. 122200

COUNCIL BILL No. 115774

*Licatao*

# The City of Seattle--Legislative Department

AN ORDINANCE relating to an agreement between the City Light Department and the Fleets and Facilities Department for use, maintenance, and habitat creation, restoration and enhancement at real property on the Duwamish River, authorizing the agreement and imposing a restrictive covenant against the real property.

Date Reported  
and Adopted

## REPORT OF COMMITTEE

Honorable President:

Your Committee on \_\_\_\_\_

to which was referred the within Council Bill No. \_\_\_\_\_  
report that we have considered the same and respectfully recommend that the same:

COMPTRROLLER FILE No. \_\_\_\_\_

Introduced: <i>10.30.06</i>	By:
Referred: <i>10.30.06</i>	To: <i>Full</i>
Referred:	To:
Referred:	To:
Reported: <i>11.20.06</i>	Second Reading:
Third Reading: <i>11.20.06</i>	Signed: <i>11.20.06</i>
Presented to Mayor: <i>11.20.06</i>	Approved: <i>11.22.06</i>
Returned to City Clerk: <i>11.22.06</i>	Published: <i>3 pgs - title only</i>
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

*11-20-06 Passed 9-0*

*Law Department*

Committee Chair

*dw*

**ORDINANCE 122300**

AN ORDINANCE relating to an agreement between the City Light Department and the Fleets and Facilities Department for use, maintenance, and habitat creation, restoration and enhancement at real property on the Duwamish River, authorizing the agreement and imposing a restrictive covenant against the real property.

WHEREAS, the City of Seattle is working cooperatively with the United States Army Corps of Engineers ("Corps") to resolve the permitting of property development activities by the City's Fleets and Facilities Department ("FFD") at the City of Seattle Joint Training Facility site at 9401 Myers Way South in Seattle, which resolution will include on-site and off-site environmental restoration and enhancement; and

WHEREAS, FFD has identified certain property currently under the jurisdiction of and used by Seattle City Light ("City Light"), located in the Hamm Creek watershed south of the Duwamish Substation enclosure on the Duwamish River at 10050 West Marginal Place South in Tukwila and unincorporated King County, as well suited for a project to create and restore intertidal habitat to support out-migrating juvenile salmon, to enhance shallow water habitat, and to increase upland connectivity and upland wildlife habitat value; and

WHEREAS, City Light has determined that the habitat project is compatible with City Light's continued use of property for electrical utility purposes; and

WHEREAS, the Corps has reviewed the attached Agreement for Property Use and Maintenance, and the Agreement is necessary to make possible resolution of matters pending between FFD and the Corps; and

WHEREAS, the City Council will consider a separate ordinance to authorize execution and implementation of a settlement agreement between the City of Seattle and the Corps and to impose a restrictive covenant against a wetland creation area on the Joint Training Facility property; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. City Light and FFD are hereby authorized to enter into, and to implement all the terms of, an Agreement for Property Use and Maintenance (the "Agreement"), substantially in the form attached to this ordinance as Attachment A, with any modification deemed



1 reasonably acceptable to both the Superintendent of City Light and the Director of FFD, relating  
2 to the real property described in the Exhibit A to the Agreement (the "Property").

3 Section 2. The City Council finds and declares that development of the habitat project  
4 described in the Agreement is compatible with City Light's continued use of the Property for  
5 electrical utility purposes.

6 Section 3. The Superintendent of City Light, or his designee, and the Director of FFD, or  
7 her designee, are hereby authorized on behalf of the City of Seattle to cause the Agreement to be  
8 recorded against the titles to each of the parcels comprising the Property. The Agreement  
9 provides that it shall be considered a real property covenant that runs with the land.  
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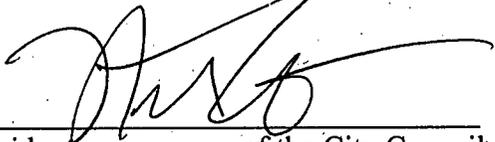
11 Section 4. The City of Seattle 2007 Proposed Budget includes the sum of One Hundred  
12 Thousand Dollars (\$100,000.00) to compensate for the appraised value of the restrictions placed  
13 on City Light's use of the Property by the Agreement, which sum is to be paid by FFD to City  
14 Light before execution of the Agreement for Property Use and Maintenance.  
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16 Section 5. Any act pursuant to the authority of this ordinance, and taken between its  
17 passage and effective date, is hereby ratified and confirmed.

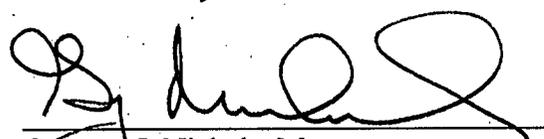
18 Section 6. This ordinance shall take effect and be in force thirty (30) days from and after  
19 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
20 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.  
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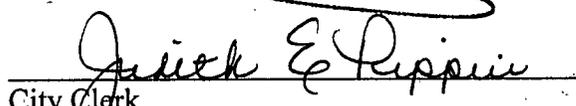
1 Passed by the City Council the 20<sup>th</sup> day of November, 2006, and signed by me in open  
2 session in authentication of its passage this 20<sup>th</sup> day of November, 2006.

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4   
5 \_\_\_\_\_  
6 President \_\_\_\_\_ of the City Council

7 Approved by me this 22<sup>nd</sup> day of November, 2006

8   
9 \_\_\_\_\_  
10 Gregory J. Nickels, Mayor

11 Filed by me this 22<sup>nd</sup> day of November, 2006

12   
13 \_\_\_\_\_  
14 City Clerk

15 (Seal)

16 Attachment 1: Agreement for Property Use and Maintenance  
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# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

October 24, 2006

Honorable Nick Licata  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Licata:

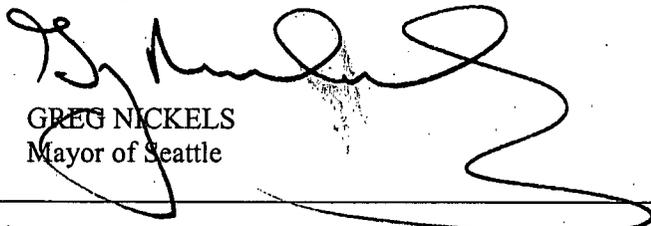
I am pleased to transmit the attached proposed Council Bill that allows the Fleets and Facilities Department (FFD) and Seattle City Light (SCL) to jointly use property south and east of the Duwamish Substation. The ordinance allows FFD and SCL to enter into, and implement the terms of, an Agreement for Property Use and Maintenance for property currently used by SCL, including recording a restrictive covenant against the title to real property. This agreement allows FFD to carry out an off-site mitigation plan that will provide substantial environmental benefit to fish and wildlife along the Duwamish and is a key element required for completion of the Joint Training Facility (JTF).

In 2004, the City of Seattle began construction on the JTF, a new complex that serves as a training location for the Seattle Fire Department, Seattle Department of Transportation, and Seattle Public Utilities. In order to complete construction on the JTF and in connection with past activity, the United States Army Corps of Engineers requires the City to obtain a Clean Water Act Section 404 permit from the Army Corps of Engineers. This legislation will enable the City to make environmental improvements in this area of the Duwamish and to obtain the necessary permits to complete the JTF.

This Council Bill is part of a larger package of legislation related the JTF, which includes the settlement agreement with the Army Corps of Engineers, an interfund loan extension, the Myers Way surplus property sale, and the termination of the Myers Way property use and development agreement (PUDA). I am requesting Council action on all of this legislation by the end of November in order to implement the City's expected settlement agreement with the Corps and resolve related Myers Way property issues. The costs to implement the Corps settlement agreement, complete construction of the JTF, and provide the City project manager training called for in the settlement agreement are included in the 2007 Proposed Budget I submitted to the Council in September.

Thank you for your consideration of this legislation. Should you have questions, please contact Brenda Bauer, Fleets and Facilities Director, at 684-0411.

Sincerely,



GREG NICKELS  
Mayor of Seattle

600 Fourth Avenue, 7<sup>th</sup> Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, Email: [mayors.office@seattle.gov](mailto:mayors.office@seattle.gov)

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### Agreement for Property Use and Maintenance

This Agreement for Property Use and Maintenance ("Agreement"), is made between The City of Seattle, City Light Department ("City Light"), and The City of Seattle, Fleets and Facilities Department ("FFD"), effective as of the \_\_\_ day of \_\_\_\_\_, 2006. The City of Seattle is a Washington municipal corporation.

#### RECITALS

A. The City owns real property located in King County, State of Washington, which is legally described on Exhibit "A" which is attached hereto and incorporated herein by this reference (the "Project Area").

B. FFD wishes to carry out a mitigation project known as the Joint Training Facility Off-Site Mitigation Project according to plans approved by the United States Army Corps of Engineers (the "Project") on the Project Area for purposes of habitat creation, restoration and enhancement in accordance with the terms of a settlement agreement entered into between the U.S. Army Corps of Engineers and FFD. The Project design incorporates estuarine wetland and upland wildlife habitat restoration through construction of a small cove on the west shore of the Duwamish River, adjacent riverbank restoration, and upland native vegetation. The Project is designed to create intertidal habitat to support out-migrating juvenile salmon, including a new area of brackish intertidal marsh and mudflat habitat and other shallow water habitat enhancements. The Project will also increase upland connectivity and upland wildlife habitat value. Elements of the design are removal of some existing rip rap along the shoreline, laying back some banks, installing large woody debris at the shoreline, removing invasive and non-native plants, and installing native vegetation to provide shade, organic matter input, and habitat for bird and small mammals.

C. It is the intent of the parties herein to create a permanent agreement for the use and maintenance of the Project Area for the Project but reserving to City Light the remaining property uses and access.

D. The Project Area, located south of City Light's Duwamish Substation, was acquired and is used for electric utility purposes. Five power transmission towers and associated overhead high voltage lines are located on the Project Area. City Light has determined that the uses of, and restrictions on, the Project Area described in this Agreement are compatible with the continued use of the property for electric utility purposes.

#### AGREEMENT

The parties hereby agree as follows:

**1) Agreement to Use the Project Area for the Project.** City Light, for and in consideration of the sum of ONE HUNDRED THOUSAND and no/100 Dollars (\$100,000.00) and other valuable consideration, receipt of which is hereby acknowledged, and FFD hereby agree to the terms and conditions set forth below, which shall give a perpetual right to FFD, and its successors and assigns, in, on, and across the Project Area, to construct, operate, maintain, repair, replace and monitor



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shoreline and upland habitat features, plantings, and any other improvements on the Project Area for fish and wildlife habitat improvements and other environmental benefits; including but not limited to the placement of and removal of materials or structures in the bed or banks that influence stream velocity or channel form; together with any necessary access for construction, operation, repair or replacement, maintenance, monitoring and other functions necessary to effectuate the Project in the Project Area, using contractors, agents and representatives of FFD's choice; allowing however to City Light, and its successors and assigns, the rights and privileges set forth in Section 3 below. Notwithstanding the generality of the foregoing, it is expressly understood that FFD shall use the Project Area only for the Project, which FFD shall construct, operate, maintain, repair and replace at FFD's sole cost and expense, substantially in accordance with the provisions of the aforementioned Settlement Agreement between the United States Army Corps of Engineers ("Corps") and FFD, and the Mitigation Plan, including any amendments, and with the approval of City Light to any Mitigation Plan amendment relating to the Project Area, which approval shall not be unreasonably withheld. A copy of the Settlement Agreement and the Mitigation Plan, identified as City of Seattle Joint Training Facility Wetland Mitigation Plan, as well as all amendments thereto, will be located and available for review and copying at Seattle Fleets and Facilities Department, Real Estate Services, 700 5th Avenue, Suite 5200, PO Box 94689, Seattle, WA 98124-4689. It is also understood by the parties that the Project will be subject to the terms, conditions and provisions required as a result of state and local permitting processes.

**2) Prohibited Uses of Project Area by City Light and FFD.** With the exception of all actions allowed by the provisions, terms and conditions of this Agreement, the parties agree not to alter the Project Area so as to cause adverse environmental impact to, or reduce the environmental benefit of, the Project, without the prior agreement of the Corps and the parties. The following activities and uses by City Light and FFD are expressly prohibited in the Project Area: (a) planting of trees or shrubs that obstruct the view through the perimeter fence from inside the Duwamish Substation (except for ground cover in the 12 foot copper ground grid area if it does not exceed one foot in height above a plane at the base of the fence, and vegetation planted in an area 12 – 22 feet from the fenceline if it does not exceed 4 feet in height above a plane at the base of the fence); (b) use of fertilizers, pesticides, herbicides or other chemicals; (c) planting of vegetation that is not indigenous to the Pacific Northwest; (d) any diversion or modification of any drainage feature (natural or manmade) within the Project Area that is not substantially in accordance with the Plan, without the approval of the Corps and the parties; (e) storing, releasing, discharging or depositing of any hazardous, dangerous or toxic waste or substance as now or hereafter defined by applicable law or regulation; (f) burning (or any use of fire), discharging of firearms, composting activities or storing of vehicles of any kind; (h) any use in violation of any applicable law or regulation, including, without limitation, dumping or littering. For the purposes of this Agreement, the parties can and should contact the Corps through the Chief of the Regulatory Branch, United States Army Corps of Engineers, Seattle District, P.O. Box 3755, Seattle, Washington 98124-3755, using Corps File Reference No. 200500505.

**3) City Light's Use of the Project Area.** City Light, and its successors and assigns, shall have the right to use the Project Area for any use (1) that is consistent with the Mitigation Plan referenced in Section 1 above and that is not expressly prohibited in this Agreement or (2) that is expressly stated in this Agreement. Without limiting the generality of the foregoing, City Light, and its successors and assigns, expressly is allowed to operate, maintain, construct and reconstruct: (a) existing Duwamish Substation perimeter fencing and associated ground grid, duct banks, overhead and underground power transmission and distribution facilities; (b) future Duwamish Substation perimeter fencing and associated ground grid and duct banks at the locations indicated on Exhibit "B" ( the "Survey Map") which is attached hereto and incorporated herein by this reference; and (c) future overhead and underground power transmission and distribution facilities located in "upland area" indicated on the Survey Map; in,

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on, over and under the Project Area. City Light shall have the right to limb, prune, trim, top, cut or remove by physical, mechanical or other nonprohibited means vegetation that exists in the Project Area within 30 feet of the lowest power lines, interferes with City Light's power transmission or distribution facilities, inhibits City Light access to its towers, or obstructs the view through the perimeter fence from inside the Duwamish Substation (except for ground cover in the 12 foot copper ground grid area if it does not exceed one foot in height above a plane at the base of the fence, and vegetation planted in an area 12 – 22 feet from the fenceline if it does not exceed 4 feet in height above a plane at the base of the fence), if FFD does not undertake these activities upon notification by City Light as provided in this Agreement. Without limiting the generality of the foregoing, the following City Light activities are expressly allowed in the Project Area. The timeframes and locations stated below and in Exhibit B for these activities are likely but not precise; as provided in Section 4 below, FFD will replace or repair plant damage within a reasonable time.

- 3.1 Install new fence in approximately the same location as the existing fence along south and east sides of substation, to meet security requirements, likely by the end of 2008. Construction access to the Project Area is allowed.
- 3.2 Install subsurface copper ground grid within approximately 12 feet of fence line, likely by the end of 2007. Construction access to the Project Area is allowed.
- 3.3 Install new underground duct bank (trench to contain electrical facilities) in one of the two locations identified in the survey, likely within the next 6-10 years. Construction access to the Project Area is allowed, and temporary construction zones are expected to be located on either side of the duct bank in the areas indicated in the Survey Map.
- 3.4 Maintain facilities, requiring truck access on upland area to towers and transmission lines as needed, but expected to be approximately three times each 10-15 years. City Light personnel will also walk the Project Area as necessary to operate the electric utility, but will attempt to minimize disruption to the environmental restoration.
- 3.5 Manage vegetation on five-year plan, which may be foregone if FFD's site maintenance plan fully meets City Light's objective of protecting towers and transmission lines.
- 3.6 For emergency purposes, City Light may access its transmission and distribution lines, duct bank, fences, grid, towers and facilities as deemed necessary.

**4) FFD's Use and Maintenance of the Project Area.**

**4.1 Implementation.** FFD, and its successors and assigns, is hereby allowed to construct the Project and plant vegetation substantially in accordance with the Mitigation Plan. Unless otherwise agreed by the parties, if initial Project construction is not substantially completed within five (5) years from the date of this Agreement, FFD shall be deemed to have abandoned the Project, all rights, privileges and authority granted herein shall terminate, and City Light shall reimburse FFD ONE HUNDRED THOUSAND Dollars (\$100,000.00) less any costs incurred by City Light to restore the Project Area to its condition on the date of this Agreement. For the purposes of this section, "substantially completed" shall mean having accomplished the significant initial phase of grading, planting, shoreline modifications and directly related scopes of work from the Plan, exclusive of monitoring.

**4.2 Maintenance.** FFD shall maintain, in good condition consistent with the purpose of the



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Project and with the Mitigation Plan, all vegetation, grading features and habitat structures constructed or placed by or for FFD within the Project Area. If as a result of the Project, vegetation in the Project Area exists within 30 feet of the lowest power lines, interferes with City Light's power transmission and distribution facilities, inhibits City Light access to its towers, or obstructs the view through the perimeter fence from inside the Duwamish Substation (except for ground cover in the 12 foot copper ground grid area if it does not exceed one foot in height above a plane at the base of the fence, and vegetation planted in an area 12 – 22 feet from the fenceline if it does not exceed 4 feet in height above a plane at the base of the fence), City Light shall have the right to remove by nonprohibited means or cut such vegetation only to the extent necessary to remove the interference or obstruction, after giving notice to FFD as provided in this Agreement and at the expense of FFD. If in the course of operating, maintaining, constructing or reconstructing existing and future Duwamish Substation facilities throughout the Project Area consistent with this Agreement, City Light, or its successors and assigns, damages or removes any plants, City Light shall give notice to FFD as provided in this Agreement, and FFD shall replace or repair such plant damage within a reasonable time. City Light shall not be liable for damage to the vegetation as a result of City Light's actions that are consistent with this Agreement.

**4.3 Notice.** In the exercise of its rights and except in the case of an emergency, City Light shall give FFD fifteen (15) days written notice prior to limbing, pruning, trimming, topping, cutting or removing vegetation and shall give FFD thirty (30) days written notice before the start of planned construction work that will alter the Project Area. When City Light has caused damage to the Project Area due to emergency or other entry, City Light shall give written notice to FFD within five (5) days of causing the damage or as soon as practicable if emergency prevents more prompt notice. In each case, written notice shall be in the form of electronic mail (email) communication. Notice to City Light shall be given to the Customer Service Energy Delivery Officer, Seattle City Light. Notice to FFD shall be given to the Director of the Fleets and Facilities Department. A party may change the party's person and address for receipt of notice by providing written notice to the other party. Between the effective date of this Agreement and December 31, 2016, FFD shall provide written notice to the Corps within a reasonable time (for example, no greater than two months) after it is notified by City Light of planned construction that will alter the Project Area or is notified that City Light has caused damage to the Project Area. In each such case, within a reasonable time after FFD has completed its actions in response to the City Light construction or damage, FFD shall provide a written report to the Corps explaining FFD's response, including any necessary replacement or repair of plant damage. In addition to the notice obligations of Section 4.3, there remains an ongoing notice and agreement obligation as specified in Section 2 for activities not allowed by this Agreement which would alter the project area so as to cause adverse environmental impact to, or reduce the environmental benefit of, the Project.

**4.4 Safety.** FFD shall, at its sole cost and expense, protect all poles or towers located in the Project Area from potential damage resulting from construction or operation of the Project in a manner approved by the Superintendent of Seattle City Light, and consistent with the Plan. FFD shall also, at its sole cost and expense, install signs or other devices deemed necessary by the Superintendent of Seattle City Light and stated in the Plan, to warn against potential hazards.

**5) Fund Responsibility.** City Light and FFD will cooperate to defend the City against any claims brought in connection with the Project or use of the Project Area under this Agreement. The City of Seattle General Fund will reimburse and make the City Light Fund whole against any and all claims, demands, suits, and judgments, including attorneys' fees and other costs of defense thereof, for injury to persons, death, or property damage that are caused by, arise out of or are related to FFD's acts or omissions with respect to the Project Area or this Agreement. The City Light Fund will reimburse and



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make the City of Seattle General Fund whole against any and all claims, demands, suits, and judgments, including attorneys' fees and other costs of defense thereof, for injury to persons, death, or property damage that are caused by, arise out of or are related to City Light's acts or omissions with respect to the Project Area or this Agreement.

**6) Control of Public Access.** Nothing in this Agreement shall be construed to grant access by members of the public to any portion of the Project Area.

**7) Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns and shall be considered a real property covenant that runs with the land.

**8) Notice of Possible Change in Jurisdictional Limits.** City Light and FFD acknowledge that the Project Area may eventually be annexed to the City of Seattle. When such annexation occurs, City of Seattle regulations will be applicable to the subsequent development of the Project Area.

**9) Entire Agreement.** This Agreement contains the entire agreement between the parties with regard to the matters set forth in it. Any modification to the Agreement shall be in writing and shall not take effect unless and until signed by the parties, provided, however, that no modification to Section 2 or Section 4.3 of this Agreement shall be effective without the prior written agreement of the Corps.

**10) Effectiveness.** This Agreement is contingent upon an ordinance of the Seattle City Council taking effect that authorizes this Agreement, and shall become effective immediately upon the latter of (a) the effective date of such ordinance or (b) the signature of all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2006.

THE CITY OF SEATTLE – Fleets and Facilities Department

\_\_\_\_\_

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

Title: \_\_\_\_\_

THE CITY OF SEATTLE – Seattle City Light Department

\_\_\_\_\_

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

Title: \_\_\_\_\_



**City of Seattle  
Agreement for Property Use and Maintenance**

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that Brenda Bauer is the person who appeared before me, and said person acknowledged that she signed this Agreement, on oath stated that she was authorized to execute the Agreement and acknowledged it as the Director of the Fleets & Facilities Department of THE CITY OF SEATTLE to be the free and voluntary act of such party for the uses and purposes mentioned in the Agreement.

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

\_\_\_\_\_  
(Notary Signature)  
\_\_\_\_\_  
(Print Name)

NOTARY PUBLIC in and for the State of Washington, residing at Seattle. My appointment expires \_\_\_\_\_.

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF \_\_\_\_\_     )

I certify that I know or have satisfactory evidence that Jorge Carrasco is the individual who appeared before me, and said individual acknowledged that (s)he signed this Agreement, on oath stated that (s)he was authorized to execute the Agreement and acknowledged it as the superintendent of Seattle City Light to be the free and voluntary act of such party for the uses and purposes mentioned in the Agreement.

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

\_\_\_\_\_  
(Notary Signature)  
\_\_\_\_\_  
(Print Name)

NOTARY PUBLIC in and for the State of Washington, residing at Seattle. My appointment expires \_\_\_\_\_.



**EXHIBIT "A"**

**Project Area –**

**Exhibit A-1 - Project Area Description (Professional Land Surveyor stamped, 10/11/06)**

**Exhibit A-2 - Project Area Diagram (Joint Training Facility, Off-Site Mitigation Project – CH2M Hill)**



## EXHIBIT A-1

### Project Area Description

An agreement for Property Use and Maintenance over portions of the following described parcels:

#### Parcel 1 (PM#230404-2-302G&H)

Tract 54, Moore's Five Acre Tracts, as recorded in Volume 9 of Plats, page 28, records of King County, Washington, lying northeasterly of West Marginal Way (Primary State Highway No. 1);

EXCEPT that portion deeded to the State of Washington under Auditor's File No. 5224977 and pursuant to the City of Seattle Ordinance No. 89535.

#### Parcel 2 (PM#230404-2-302I)

That portion of Tract 55, Moore's Five Acre Tracts, as recorded in Volume 9 of Plats, page 28, records of King County, Washington, lying northeasterly of West Marginal Way (Primary State Highway No. 1) described as follows:

Beginning at the point of intersection of the northerly line of Tract 55 with the easterly margin of West Marginal Way;

thence South 88°51'29" East, along said northerly line, 188.89 feet;

thence South 24°09'42" East, 129.91 feet;

thence South 01°41'29" East, 6.10 feet;

thence South 15°06'29" East, 246.80 feet;

thence North 88°16'15" West, 6.00 feet to the easterly margin of West Marginal Way;

thence northwesterly along said easterly margin 478.57 feet to the point of beginning;

EXCEPT that portion deeded to the State of Washington under Auditor's File No. 5224977 and pursuant to the City of Seattle Ordinance No. 89535.

#### Parcel 3 (PM#230404-2-302K)

That portion of vacated G. Fraeger Road, County Road No. 76, pursuant to King County Ordinance No. 5628 recorded under King County Recording No. 8110120538, lying adjacent to Tract 53 and Tract 54, Moore's Five Acre Tracts, as recorded in Volume 9 of Plats, page 28, records of King County, Washington.

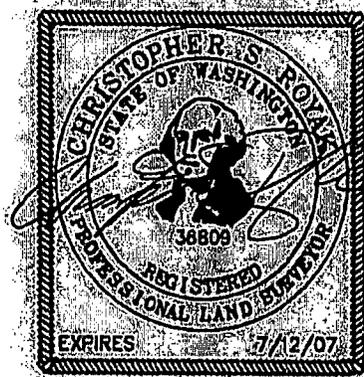
#### Parcel 4 (PM#230404-2-302)

The south 365.00 feet of Parcel B, King County Lot Boundary Line Adjustment No. L04L0089 recorded under King County Recording No. 20041221900011, lying easterly of the existing fence as shown on the attached Plan.

All situate in the northwest quarter of Section 4, Township 23 North, Range 4 East, W.M., in King County, Washington.

Said agreement area being more particularly described as follows;

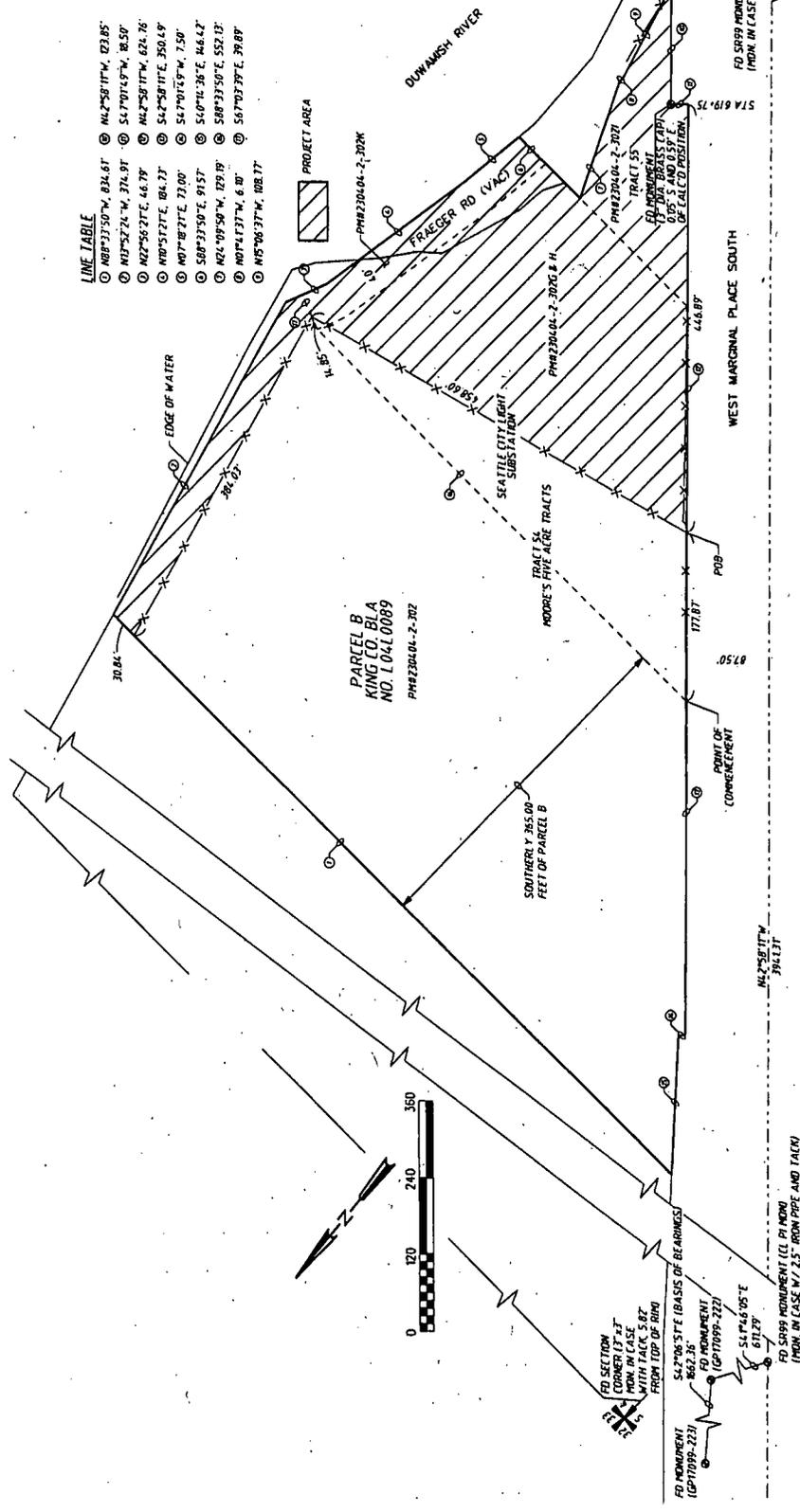
Commencing at the southwesterly corner of above described Parcel 4, said corner also being on the northeasterly margin of West Marginal Place South, thence S 42°58'11" E along said northeasterly margin, 177.87 feet to the POINT OF BEGINNING;  
thence continuing S 42°58'11" E, 446.89 feet;  
thence along said margin N 47°01'49" E, 18.50 feet;  
thence along said margin S 42°58'11" E, 123.85 feet;  
thence leaving said margin N 15°06'37" W, 108.77 feet along the easterly boundary of above described Parcel 2;  
thence N 1°41'37" W, 6.10 feet along the easterly boundary of above described Parcel 2;  
thence N 24°09'50" W, 129.19 feet along the easterly boundary of above described Parcel 2;  
thence S 88°33'50" E, 91.57 feet along the southerly boundary of above described Parcel 1;  
thence N 7°18'21" E, 73.00 feet along the easterly boundary of above described Parcel 3;  
thence N 10°51'21" E, 184.73 feet along the easterly boundary of above described Parcel 3;  
thence N 22°56'21" E, 27.43 feet along the easterly boundary of above described Parcel 3;  
thence N 22°56'21" E, 19.36 feet along the easterly boundary of above described Parcel 4;  
thence N 13°52'24" W, 374.91 feet along the easterly boundary of above described Parcel 4 to the north boundary of above described Parcel 4;  
thence along the north boundary of above described Parcel 4 N 88°33'50" W, 30.84 feet;  
thence leaving the north boundary of above described Parcel 4 S 13°41'19" E, 384.03 feet;  
thence S 76°05'35" W, 458.60 feet; and the POINT OF BEGINNING.



10/11/06

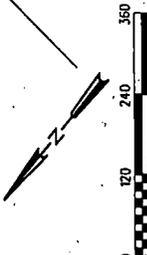


SE 1/4, NW 1/4, SECTION 4, TOWNSHIP 23 NORTH, RANGE 4 EAST, W.M.



**LINE TABLE**

① N88°33'50"W, 834.61'	② N42°58'17"W, 123.85'
③ N12°52'24"W, 374.91'	④ S47°01'49"W, 86.50'
⑤ N27°56'21"E, 466.79'	⑥ N42°58'17"W, 624.76'
⑦ N40°51'27"E, 884.73'	⑧ S44°58'11"E, 350.49'
⑨ N07°48'27"E, 73.00'	⑩ S47°01'49"W, 7.50'
⑪ S08°33'50"E, 915.7'	⑫ S40°46'38"E, 466.42'
⑬ N24°09'50"W, 129.19'	⑭ S08°33'50"E, 552.13'
⑮ N07°41'37"W, 6.10'	⑯ S07°03'37"E, 39.89'
⑰ N15°00'37"W, 108.77'	



**CH2MHILL**  
 1100 117TH AVE NE  
 BELLEVUE, WA 98004-4504  
 (425) 433-5000

DRAWN BY: J.R.P. CHECKED BY: C.S.R. JOB NO. 349645

**EXHIBIT A-2**  
**JOINT TRAINING FACILITY**  
**OFF-SITE MITIGATION PROJECT**  
 SHELTER, KING COUNTY, WASHINGTON

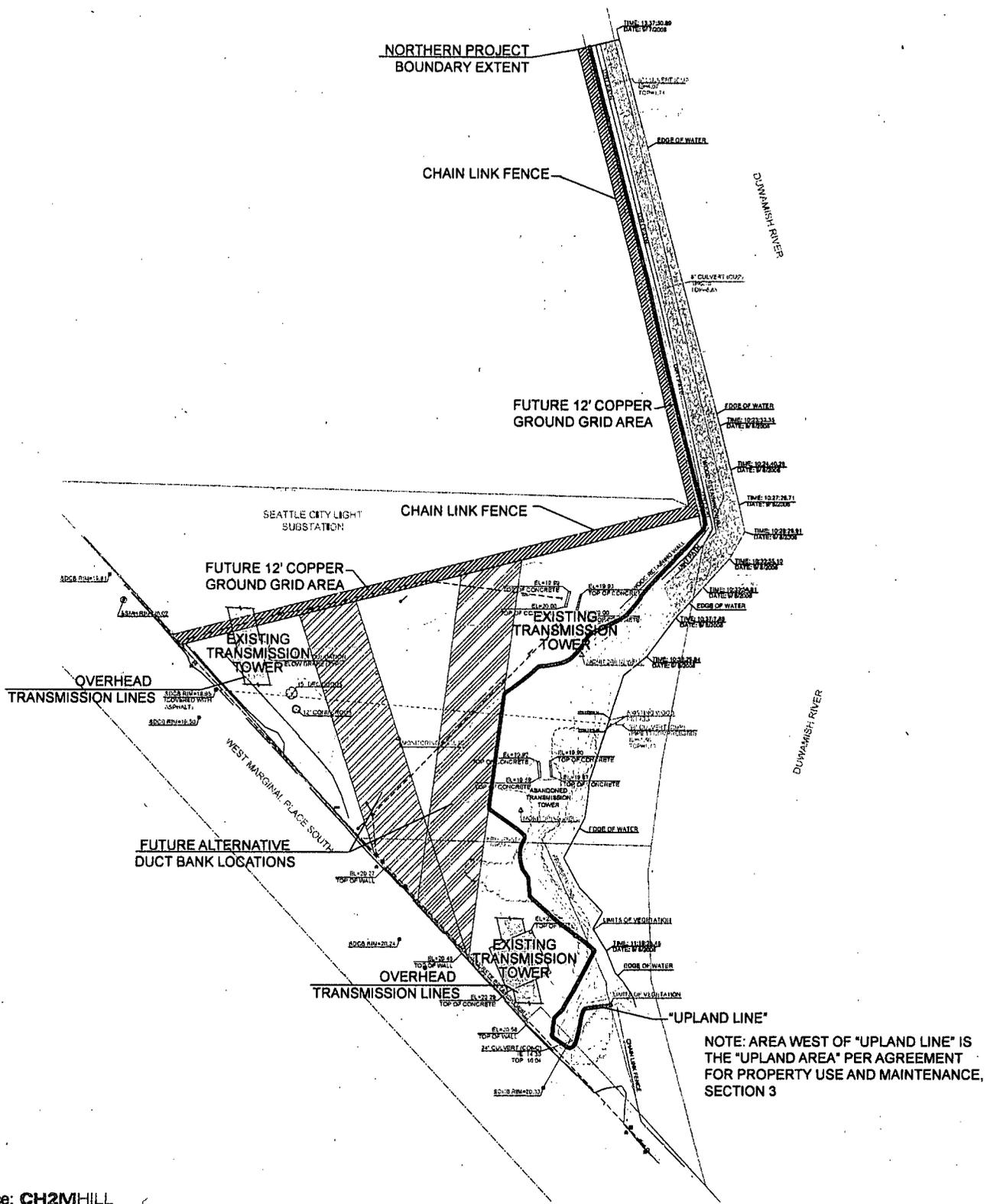
Exhibit A-2 to Att 1.



**EXHIBIT "B"**

**"Survey Map - For Illustrative Purposes Only – EXHIBIT B to Property Use Agreement (AMEC, October 2006)"**





"UPLAND LINE"  
 NOTE: AREA WEST OF "UPLAND LINE" IS THE "UPLAND AREA" PER AGREEMENT FOR PROPERTY USE AND MAINTENANCE, SECTION 3

Source: CH2MHILL

<b>AMEC Earth &amp; Environmental</b> 11335 NE 122nd Way, Suite 100 Kirkland, WA 98034				CLIENT: <b>CITY OF SEATTLE</b>		
PROJECT: <b>JOINT TRAINING FACILITY</b>				DATE: <b>OCTOBER 2006</b>		
TITLE: <b>Survey Map - For Illustrative Purposes Only - EXHIBIT B to Property Use Agreement</b>				PROJECT No: <b>591M153760</b>		
			REV. No: <b>A</b>		FIGURE No: <b>EXHIBIT B</b>	

*Exhibit B to att*

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Fleets and Facilities	Brenda Bauer 684-0411	Dwight Dively 684-0503

**Legislation Title:**

AN ORDINANCE relating to an agreement between the City Light Department and the Fleets and Facilities Department for use, maintenance, and habitat creation, restoration and enhancement at real property on the Duwamish River, authorizing the agreement and imposing a restrictive covenant against the real property.

• **Summary of the Legislation:**

Passage of this ordinance will allow Fleets and Facilities Department (FFD) and Seattle City Light (SCL) to enter into, and implement the terms of, an Agreement for Property Use and Maintenance that sets out the terms of joint use by FFD and SCL of land south and east of the SCL Duwamish Substation, including recording a restrictive covenant against the title to real property. SCL will use the site for electrical purposes as allowed by the agreement, and FFD will implement an off-site mitigation plan that will provide substantial environmental benefit and also allow the City to complete work on the Joint Training Facility (JTF). Restoration or maintenance related to the off-site mitigation plan will be the responsibility of FFD. Funding to implement the actions authorized in this legislation is contained in the 2007 budget proposal.

• **Background:**

In 2004, the City of Seattle began construction of the JTF, a new complex at 9401 Myers Way South, which serves as a training location for the Seattle Fire Department, Seattle Department of Transportation, and Seattle Public Utilities. The Joint Training Facility's secure campus consists of two buildings, a variety of training props, maintenance sheds, small parking areas, and landscaping. Classroom instruction is underway, and departments are conducting limited outdoor training on the props. However, in order to complete construction on the JTF and in connection with past activity, the United States Army Corps of Engineers requires the City to obtain a Clean Water Act Section 404 permit from the Army Corps of Engineers. The off-site mitigation enabled by this Agreement for Property Use and Maintenance is required for the permit, which is a key element required for completion of the JTF.

• *Please check one of the following:*

**This legislation has financial implications.**



Anticipated Revenue/Reimbursement: (For budget legislation that raises fees, please provide detail on each fee that is being raised, when it was last raised, how the proposed fee compares with similar fees in the region, etc.)

Fund Name and Number	Department	Revenue Source	2007 Revenue	2008 Revenue
NA: See Below				
TOTAL				

Notes:

- What is the financial cost of not implementing this legislation?

Not implementing this legislation could result in substantial additional cost for Clean Water Act compliance or prosecution under the Clean Water Act, which would jeopardize ongoing operation of the JTF.

Acquisition and related costs are estimated at \$150,000 for use of SCL's site, as outlined in part in the Property Use and Maintenance Agreement. Mitigation and construction on the City Light parcel is estimated at \$1,005,182. Additionally, there are related permitting and consultant and design costs that are in the funding proposal included in the Mayor's 2007 Proposed Budget.

This Council Bill is part of a larger package of legislation related to the JTF, which includes the settlement agreement with the Army Corps of Engineers; an interfund loan extension; the Myers Way surplus property sale; and the termination of the Myers Way property use and development agreement (PUDA). Passage of the Property Use and Maintenance Agreement legislation is necessary in order to complete the mitigation plan required by the Army Corps of Engineers for a Clean Water Act Section 404 permit that will allow the City to complete work on the JTF. Funding for this action is included in the Mayor's 2007 Proposed Budget.

- What are the possible alternatives to the legislation that could achieve the same or similar objectives?

None

- Is the legislation subject to public hearing requirements?

No

- Other Issues (including long-term implications of the legislation):

None

**Attachments: None**

**ORDINANCE** 122300

1  
2 AN ORDINANCE relating to an agreement between the City Light Department and the Fleets  
3 and Facilities Department for use, maintenance, and habitat creation, restoration and  
4 enhancement at real property on the Duwamish River, authorizing the agreement and  
imposing a restrictive covenant against the real property.

5 WHEREAS, the City of Seattle is working cooperatively with the United States Army Corps of  
6 Engineers ("Corps") to resolve the permitting of property development activities by the  
7 City's Fleets and Facilities Department ("FFD") at the City of Seattle Joint Training  
8 Facility site at 9401 Myers Way South in Seattle, which resolution will include on-site  
and off-site environmental restoration and enhancement; and

9 WHEREAS, FFD has identified certain property currently under the jurisdiction of and used by  
10 Seattle City Light ("City Light"), located in the Hamm Creek watershed south of the  
11 Duwamish Substation enclosure on the Duwamish River at 10050 West Marginal Place  
12 South in Tukwila and unincorporated King County, as well suited for a project to create  
13 and restore intertidal habitat to support out-migrating juvenile salmon, to enhance  
14 shallow water habitat, and to increase upland connectivity and upland wildlife habitat  
15 value; and

16 WHEREAS, City Light has determined that the habitat project is compatible with City Light's  
17 continued use of property for electrical utility purposes; and

18 WHEREAS, the Corps has reviewed the attached Agreement for Property Use and Maintenance,  
19 and the Agreement is necessary to make possible resolution of matters pending between  
20 FFD and the Corps; and

21 WHEREAS, the City Council will consider a separate ordinance to authorize execution and  
22 implementation of a settlement agreement between the City of Seattle and the Corps and  
23 to impose a restrictive covenant against a wetland creation area on the Joint Training  
24 Facility property; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

25 Section 1. City Light and FFD are hereby authorized to enter into, and to implement all  
26 the terms of, an Agreement for Property Use and Maintenance (the "Agreement"), substantially  
27 in the form attached to this ordinance as Attachment A, with any modification deemed  
28



1 reasonably acceptable to both the Superintendent of City Light and the Director of FFD, relating  
2 to the real property described in the Exhibit A to the Agreement (the "Property").

3 Section 2. The City Council finds and declares that development of the habitat project  
4 described in the Agreement is compatible with City Light's continued use of the Property for  
5 electrical utility purposes.

6 Section 3. The Superintendent of City Light, or his designee, and the Director of FFD, or  
7 her designee, are hereby authorized on behalf of the City of Seattle to cause the Agreement to be  
8 recorded against the titles to each of the parcels comprising the Property. The Agreement  
9 provides that it shall be considered a real property covenant that runs with the land.  
10

11 Section 4. The City of Seattle 2007 Proposed Budget includes the sum of One Hundred  
12 Thousand Dollars (\$100,000.00) to compensate for the appraised value of the restrictions placed  
13 on City Light's use of the Property by the Agreement, which sum is to be paid by FFD to City  
14 Light before execution of the Agreement for Property Use and Maintenance.  
15

16 Section 5. Any act pursuant to the authority of this ordinance, and taken between its  
17 passage and effective date, is hereby ratified and confirmed.

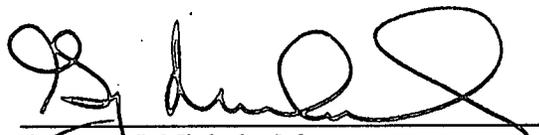
18 Section 6. This ordinance shall take effect and be in force thirty (30) days from and after  
19 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
20 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.  
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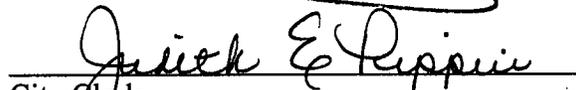
1 Passed by the City Council the 20<sup>th</sup> day of November, 2006, and signed by me in open  
2 session in authentication of its passage this 20<sup>th</sup> day of November, 2006.

3   
4 \_\_\_\_\_  
5 President \_\_\_\_\_ of the City Council

6 Approved by me this 22<sup>nd</sup> day of November, 2006

7   
8 \_\_\_\_\_  
9 Gregory J. Nickels, Mayor

10 Filed by me this 22<sup>nd</sup> day of November, 2006

11   
12 \_\_\_\_\_  
13 City Clerk

14 (Seal)

15  
16 Attachment 1: Agreement for Property Use and Maintenance  
17  
18  
19  
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28





# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

October 24, 2006

Honorable Nick Licata  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Licata:

I am pleased to transmit the attached proposed Council Bill that allows the Fleets and Facilities Department (FFD) and Seattle City Light (SCL) to jointly use property south and east of the Duwamish Substation. The ordinance allows FFD and SCL to enter into, and implement the terms of, an Agreement for Property Use and Maintenance for property currently used by SCL, including recording a restrictive covenant against the title to real property. This agreement allows FFD to carry out an off-site mitigation plan that will provide substantial environmental benefit to fish and wildlife along the Duwamish and is a key element required for completion of the Joint Training Facility (JTF).

In 2004, the City of Seattle began construction on the JTF, a new complex that serves as a training location for the Seattle Fire Department, Seattle Department of Transportation, and Seattle Public Utilities. In order to complete construction on the JTF and in connection with past activity, the United States Army Corps of Engineers requires the City to obtain a Clean Water Act Section 404 permit from the Army Corps of Engineers. This legislation will enable the City to make environmental improvements in this area of the Duwamish and to obtain the necessary permits to complete the JTF.

This Council Bill is part of a larger package of legislation related the JTF, which includes the settlement agreement with the Army Corps of Engineers, an interfund loan extension, the Myers Way surplus property sale, and the termination of the Myers Way property use and development agreement (PUDA). I am requesting Council action on all of this legislation by the end of November in order to implement the City's expected settlement agreement with the Corps and resolve related Myers Way property issues. The costs to implement the Corps settlement agreement, complete construction of the JTF, and provide the City project manager training called for in the settlement agreement are included in the 2007 Proposed Budget I submitted to the Council in September.

Thank you for your consideration of this legislation. Should you have questions, please contact Brenda Bauer, Fleets and Facilities Director, at 684-0411.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Nickels', written over a horizontal line.

GREG NICKELS  
Mayor of Seattle

600 Fourth Avenue, 7<sup>th</sup> Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, Email: [mayors.office@seattle.gov](mailto:mayors.office@seattle.gov)

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.



### Agreement for Property Use and Maintenance

This Agreement for Property Use and Maintenance ("Agreement"), is made between The City of Seattle, City Light Department ("City Light"), and The City of Seattle, Fleets and Facilities Department ("FFD"), effective as of the \_\_\_ day of \_\_\_\_\_, 2006. The City of Seattle is a Washington municipal corporation.

#### RECITALS

A. The City owns real property located in King County, State of Washington, which is legally described on Exhibit "A" which is attached hereto and incorporated herein by this reference (the "Project Area").

B. FFD wishes to carry out a mitigation project known as the Joint Training Facility Off-Site Mitigation Project according to plans approved by the United States Army Corps of Engineers (the "Project") on the Project Area for purposes of habitat creation, restoration and enhancement in accordance with the terms of a settlement agreement entered into between the U.S. Army Corps of Engineers and FFD. The Project design incorporates estuarine wetland and upland wildlife habitat restoration through construction of a small cove on the west shore of the Duwamish River, adjacent riverbank restoration, and upland native vegetation. The Project is designed to create intertidal habitat to support out-migrating juvenile salmon, including a new area of brackish intertidal marsh and mudflat habitat and other shallow water habitat enhancements. The Project will also increase upland connectivity and upland wildlife habitat value. Elements of the design are removal of some existing rip rap along the shoreline, laying back some banks, installing large woody debris at the shoreline, removing invasive and non-native plants, and installing native vegetation to provide shade, organic matter input, and habitat for bird and small mammals.

C. It is the intent of the parties herein to create a permanent agreement for the use and maintenance of the Project Area for the Project but reserving to City Light the remaining property uses and access.

D. The Project Area, located south of City Light's Duwamish Substation, was acquired and is used for electric utility purposes. Five power transmission towers and associated overhead high voltage lines are located on the Project Area. City Light has determined that the uses of, and restrictions on, the Project Area described in this Agreement are compatible with the continued use of the property for electric utility purposes.

#### AGREEMENT

The parties hereby agree as follows:

1) **Agreement to Use the Project Area for the Project.** City Light, for and in consideration of the sum of ONE HUNDRED THOUSAND and no/100 Dollars (\$100,000.00) and other valuable consideration, receipt of which is hereby acknowledged, and FFD hereby agree to the terms and conditions set forth below, which shall give a perpetual right to FFD, and its successors and assigns, in, on, and across the Project Area, to construct, operate, maintain, repair, replace and monitor



**City of Seattle**  
**Agreement for Property Use and Maintenance**

shoreline and upland habitat features, plantings, and any other improvements on the Project Area for fish and wildlife habitat improvements and other environmental benefits; including but not limited to the placement of and removal of materials or structures in the bed or banks that influence stream velocity or channel form; together with any necessary access for construction, operation, repair or replacement, maintenance, monitoring and other functions necessary to effectuate the Project in the Project Area, using contractors, agents and representatives of FFD's choice; allowing however to City Light, and its successors and assigns, the rights and privileges set forth in Section 3 below. Notwithstanding the generality of the foregoing, it is expressly understood that FFD shall use the Project Area only for the Project, which FFD shall construct, operate, maintain, repair and replace at FFD's sole cost and expense, substantially in accordance with the provisions of the aforementioned Settlement Agreement between the United States Army Corps of Engineers ("Corps") and FFD, and the Mitigation Plan, including any amendments, and with the approval of City Light to any Mitigation Plan amendment relating to the Project Area, which approval shall not be unreasonably withheld. A copy of the Settlement Agreement and the Mitigation Plan, identified as City of Seattle Joint Training Facility Wetland Mitigation Plan, as well as all amendments thereto, will be located and available for review and copying at Seattle Fleets and Facilities Department, Real Estate Services, 700 5th Avenue, Suite 5200, PO Box 94689, Seattle, WA 98124-4689. It is also understood by the parties that the Project will be subject to the terms, conditions and provisions required as a result of state and local permitting processes.

**2) Prohibited Uses of Project Area by City Light and FFD.** With the exception of all actions allowed by the provisions, terms and conditions of this Agreement, the parties agree not to alter the Project Area so as to cause adverse environmental impact to, or reduce the environmental benefit of, the Project, without the prior agreement of the Corps and the parties. The following activities and uses by City Light and FFD are expressly prohibited in the Project Area: (a) planting of trees or shrubs that obstruct the view through the perimeter fence from inside the Duwamish Substation (except for ground cover in the 12 foot copper ground grid area if it does not exceed one foot in height above a plane at the base of the fence, and vegetation planted in an area 12 – 22 feet from the fenceline if it does not exceed 4 feet in height above a plane at the base of the fence); (b) use of fertilizers, pesticides, herbicides or other chemicals; (c) planting of vegetation that is not indigenous to the Pacific Northwest; (d) any diversion or modification of any drainage feature (natural or manmade) within the Project Area that is not substantially in accordance with the Plan, without the approval of the Corps and the parties; (e) storing, releasing, discharging or depositing of any hazardous, dangerous or toxic waste or substance as now or hereafter defined by applicable law or regulation; (f) burning (or any use of fire), discharging of firearms, composting activities or storing of vehicles of any kind; (h) any use in violation of any applicable law or regulation, including, without limitation, dumping or littering. For the purposes of this Agreement, the parties can and should contact the Corps through the Chief of the Regulatory Branch, United States Army Corps of Engineers, Seattle District, P.O. Box 3755, Seattle, Washington 98124-3755, using Corps File Reference No. 200500505.

**3) City Light's Use of the Project Area.** City Light, and its successors and assigns, shall have the right to use the Project Area for any use (1) that is consistent with the Mitigation Plan referenced in Section 1 above and that is not expressly prohibited in this Agreement or (2) that is expressly stated in this Agreement. Without limiting the generality of the foregoing, City Light, and its successors and assigns, expressly is allowed to operate, maintain, construct and reconstruct: (a) existing Duwamish Substation perimeter fencing and associated ground grid, duct banks, overhead and underground power transmission and distribution facilities; (b) future Duwamish Substation perimeter fencing and associated ground grid and duct banks at the locations indicated on Exhibit "B" ( the "Survey Map") which is attached hereto and incorporated herein by this reference; and (c) future overhead and underground power transmission and distribution facilities located in "upland area" indicated on the Survey Map; in,

**City of Seattle  
Agreement for Property Use and Maintenance**

on, over and under the Project Area. City Light shall have the right to limb, prune, trim, top, cut or remove by physical, mechanical or other nonprohibited means vegetation that exists in the Project Area within 30 feet of the lowest power lines, interferes with City Light's power transmission or distribution facilities, inhibits City Light access to its towers, or obstructs the view through the perimeter fence from inside the Duwamish Substation (except for ground cover in the 12 foot copper ground grid area if it does not exceed one foot in height above a plane at the base of the fence, and vegetation planted in an area 12 – 22 feet from the fenceline if it does not exceed 4 feet in height above a plane at the base of the fence), if FFD does not undertake these activities upon notification by City Light as provided in this Agreement. Without limiting the generality of the foregoing, the following City Light activities are expressly allowed in the Project Area. The timeframes and locations stated below and in Exhibit B for these activities are likely but not precise; as provided in Section 4 below, FFD will replace or repair plant damage within a reasonable time.

- 3.1 Install new fence in approximately the same location as the existing fence along south and east sides of substation, to meet security requirements, likely by the end of 2008. Construction access to the Project Area is allowed.
- 3.2 Install subsurface copper ground grid within approximately 12 feet of fence line, likely by the end of 2007. Construction access to the Project Area is allowed.
- 3.3 Install new underground duct bank (trench to contain electrical facilities) in one of the two locations identified in the survey, likely within the next 6-10 years. Construction access to the Project Area is allowed, and temporary construction zones are expected to be located on either side of the duct bank in the areas indicated in the Survey Map.
- 3.4 Maintain facilities, requiring truck access on upland area to towers and transmission lines as needed, but expected to be approximately three times each 10-15 years. City Light personnel will also walk the Project Area as necessary to operate the electric utility, but will attempt to minimize disruption to the environmental restoration.
- 3.5 Manage vegetation on five-year plan, which may be foregone if FFD's site maintenance plan fully meets City Light's objective of protecting towers and transmission lines.
- 3.6 For emergency purposes, City Light may access its transmission and distribution lines, duct bank, fences, grid, towers and facilities as deemed necessary.

**4) FFD's Use and Maintenance of the Project Area.**

**4.1 Implementation.** FFD, and its successors and assigns, is hereby allowed to construct the Project and plant vegetation substantially in accordance with the Mitigation Plan. Unless otherwise agreed by the parties, if initial Project construction is not substantially completed within five (5) years from the date of this Agreement, FFD shall be deemed to have abandoned the Project, all rights, privileges and authority granted herein shall terminate, and City Light shall reimburse FFD ONE HUNDRED THOUSAND Dollars (\$100,000.00) less any costs incurred by City Light to restore the Project Area to its condition on the date of this Agreement. For the purposes of this section, "substantially completed" shall mean having accomplished the significant initial phase of grading, planting, shoreline modifications and directly related scopes of work from the Plan, exclusive of monitoring.

**4.2 Maintenance.** FFD shall maintain, in good condition consistent with the purpose of the



**City of Seattle  
Agreement for Property Use and Maintenance**

Project and with the Mitigation Plan, all vegetation, grading features and habitat structures constructed or placed by or for FFD within the Project Area. If as a result of the Project, vegetation in the Project Area exists within 30 feet of the lowest power lines, interferes with City Light's power transmission and distribution facilities, inhibits City Light access to its towers, or obstructs the view through the perimeter fence from inside the Duwamish Substation (except for ground cover in the 12 foot copper ground grid area if it does not exceed one foot in height above a plane at the base of the fence, and vegetation planted in an area 12 – 22 feet from the fenceline if it does not exceed 4 feet in height above a plane at the base of the fence), City Light shall have the right to remove by nonprohibited means or cut such vegetation only to the extent necessary to remove the interference or obstruction, after giving notice to FFD as provided in this Agreement and at the expense of FFD. If in the course of operating, maintaining, constructing or reconstructing existing and future Duwamish Substation facilities throughout the Project Area consistent with this Agreement, City Light, or its successors and assigns, damages or removes any plants, City Light shall give notice to FFD as provided in this Agreement, and FFD shall replace or repair such plant damage within a reasonable time. City Light shall not be liable for damage to the vegetation as a result of City Light's actions that are consistent with this Agreement.

**4.3 Notice.** In the exercise of its rights and except in the case of an emergency, City Light shall give FFD fifteen (15) days written notice prior to limbing, pruning, trimming, topping, cutting or removing vegetation and shall give FFD thirty (30) days written notice before the start of planned construction work that will alter the Project Area. When City Light has caused damage to the Project Area due to emergency or other entry, City Light shall give written notice to FFD within five (5) days of causing the damage or as soon as practicable if emergency prevents more prompt notice. In each case, written notice shall be in the form of electronic mail (email) communication. Notice to City Light shall be given to the Customer Service Energy Delivery Officer, Seattle City Light. Notice to FFD shall be given to the Director of the Fleets and Facilities Department. A party may change the party's person and address for receipt of notice by providing written notice to the other party. Between the effective date of this Agreement and December 31, 2016, FFD shall provide written notice to the Corps within a reasonable time (for example, no greater than two months) after it is notified by City Light of planned construction that will alter the Project Area or is notified that City Light has caused damage to the Project Area. In each such case, within a reasonable time after FFD has completed its actions in response to the City Light construction or damage, FFD shall provide a written report to the Corps explaining FFD's response, including any necessary replacement or repair of plant damage. In addition to the notice obligations of Section 4.3, there remains an ongoing notice and agreement obligation as specified in Section 2 for activities not allowed by this Agreement which would alter the project area so as to cause adverse environmental impact to, or reduce the environmental benefit of, the Project.

**4.4 Safety.** FFD shall, at its sole cost and expense, protect all poles or towers located in the Project Area from potential damage resulting from construction or operation of the Project in a manner approved by the Superintendent of Seattle City Light, and consistent with the Plan. FFD shall also, at its sole cost and expense, install signs or other devices deemed necessary by the Superintendent of Seattle City Light and stated in the Plan, to warn against potential hazards.

**5) Fund Responsibility.** City Light and FFD will cooperate to defend the City against any claims brought in connection with the Project or use of the Project Area under this Agreement. The City of Seattle General Fund will reimburse and make the City Light Fund whole against any and all claims, demands, suits, and judgments, including attorneys' fees and other costs of defense thereof, for injury to persons, death, or property damage that are caused by, arise out of or are related to FFD's acts or omissions with respect to the Project Area or this Agreement. The City Light Fund will reimburse and



**City of Seattle  
Agreement for Property Use and Maintenance**

make the City of Seattle General Fund whole against any and all claims, demands, suits, and judgments, including attorneys' fees and other costs of defense thereof, for injury to persons, death, or property damage that are caused by, arise out of or are related to City Light's acts or omissions with respect to the Project Area or this Agreement.

**6) Control of Public Access.** Nothing in this Agreement shall be construed to grant access by members of the public to any portion of the Project Area.

**7) Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns and shall be considered a real property covenant that runs with the land.

**8) Notice of Possible Change in Jurisdictional Limits.** City Light and FFD acknowledge that the Project Area may eventually be annexed to the City of Seattle. When such annexation occurs, City of Seattle regulations will be applicable to the subsequent development of the Project Area.

**9) Entire Agreement.** This Agreement contains the entire agreement between the parties with regard to the matters set forth in it. Any modification to the Agreement shall be in writing and shall not take effect unless and until signed by the parties, provided, however, that no modification to Section 2 or Section 4.3 of this Agreement shall be effective without the prior written agreement of the Corps.

**10) Effectiveness.** This Agreement is contingent upon an ordinance of the Seattle City Council taking effect that authorizes this Agreement, and shall become effective immediately upon the latter of (a) the effective date of such ordinance or (b) the signature of all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2006.

THE CITY OF SEATTLE – Fleets and Facilities Department

\_\_\_\_\_

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

Title: \_\_\_\_\_

THE CITY OF SEATTLE – Seattle City Light Department

\_\_\_\_\_

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

Title: \_\_\_\_\_



**City of Seattle  
Agreement for Property Use and Maintenance**

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that Brenda Bauer is the person who appeared before me, and said person acknowledged that she signed this Agreement, on oath stated that she was authorized to execute the Agreement and acknowledged it as the Director of the Fleets & Facilities Department of THE CITY OF SEATTLE to be the free and voluntary act of such party for the uses and purposes mentioned in the Agreement.

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

\_\_\_\_\_  
(Notary Signature)

\_\_\_\_\_  
(Print Name)

NOTARY PUBLIC in and for the State of Washington, residing at Seattle. My appointment expires \_\_\_\_\_.

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF \_\_\_\_\_     )

I certify that I know or have satisfactory evidence that Jorge Carrasco is the individual who appeared before me, and said individual acknowledged that (s)he signed this Agreement, on oath stated that (s)he was authorized to execute the Agreement and acknowledged it as the superintendent of Seattle City Light to be the free and voluntary act of such party for the uses and purposes mentioned in the Agreement.

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

\_\_\_\_\_  
(Notary Signature)

\_\_\_\_\_  
(Print Name)

NOTARY PUBLIC in and for the State of Washington, residing at Seattle. My appointment expires \_\_\_\_\_.



**EXHIBIT "A"**

**Project Area –**

**Exhibit A-1 - Project Area Description (Professional Land Surveyor stamped, 10/11/06)**

**Exhibit A-2 - Project Area Diagram (Joint Training Facility, Off-Site Mitigation Project – CH2M Hill)**



## EXHIBIT A-1

### Project Area Description

An agreement for Property Use and Maintenance over portions of the following described parcels:

#### Parcel 1 (PM#230404-2-302G&H)

Tract 54, Moore's Five Acre Tracts, as recorded in Volume 9 of Plats, page 28, records of King County, Washington, lying northeasterly of West Marginal Way (Primary State Highway No. 1);  
EXCEPT that portion deeded to the State of Washington under Auditor's File No. 5224977 and pursuant to the City of Seattle Ordinance No. 89535.

#### Parcel 2 (PM#230404-2-302I)

That portion of Tract 55, Moore's Five Acre Tracts, as recorded in Volume 9 of Plats, page 28, records of King County, Washington, lying northeasterly of West Marginal Way (Primary State Highway No. 1) described as follows:

Beginning at the point of intersection of the northerly line of Tract 55 with the easterly margin of West Marginal Way;  
thence South 88°51'29" East, along said northerly line, 188.89 feet;  
thence South 24°09'42" East, 129.91 feet;  
thence South 01°41'29" East, 6.10 feet;  
thence South 15°06'29" East, 246.80 feet;  
thence North 88°16'15" West, 6.00 feet to the easterly margin of West Marginal Way;  
thence northwesterly along said easterly margin 478.57 feet to the point of beginning;  
EXCEPT that portion deeded to the State of Washington under Auditor's File No. 5224977 and pursuant to the City of Seattle Ordinance No. 89535.

#### Parcel 3 (PM#230404-2-302K)

That portion of vacated G. Fraeger Road, County Road No. 76 pursuant to King County Ordinance No. 5628 recorded under King County Recording No. 8110120538, lying adjacent to Tract 53 and Tract 54, Moore's Five Acre Tracts, as recorded in Volume 9 of Plats, page 28, records of King County, Washington

#### Parcel 4 (PM#230404-2-302)

The south 365.00 feet of Parcel B, King County Lot Boundary Line Adjustment No. L04L0089 recorded under King County Recording No. 20041221900011, lying easterly of the existing fence as shown on the attached Plan.

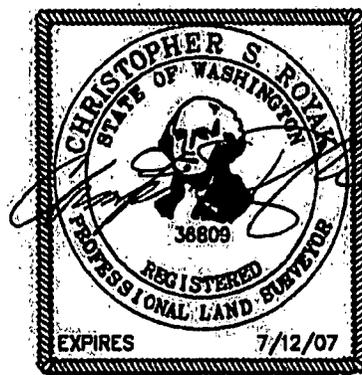
*Exhibit A-1 (page 1)*



All situate in the northwest quarter of Section 4, Township 23 North, Range 4 East, W.M., in King County, Washington.

Said agreement area being more particularly described as follows;

Commencing at the southwesterly corner of above described Parcel 4, said corner also being on the northeasterly margin of West Marginal Place South, thence S 42°58'11" E along said northeasterly margin, 177.87 feet to the POINT OF BEGINNING;  
thence continuing S 42°58'11" E, 446.89 feet;  
thence along said margin N 47°01'49" E, 18.50 feet;  
thence along said margin S 42°58'11" E, 123.85 feet;  
thence leaving said margin N 15°06'37" W, 108.77 feet along the easterly boundary of above described Parcel 2;  
thence N 1°41'37" W, 6.10 feet along the easterly boundary of above described Parcel 2;  
thence N 24°09'50" W, 129.19 feet along the easterly boundary of above described Parcel 2;  
thence S 88°33'50" E, 91.57 feet along the southerly boundary of above described Parcel 1;  
thence N 7°18'21" E, 73.00 feet along the easterly boundary of above described Parcel 3;  
thence N 10°51'21" E, 184.73 feet along the easterly boundary of above described Parcel 3;  
thence N 22°56'21" E, 27.43 feet along the easterly boundary of above described Parcel 3;  
thence N 22°56'21" E, 19.36 feet along the easterly boundary of above described Parcel 4;  
thence N 13°52'24" W, 374.91 feet along the easterly boundary of above described Parcel 4 to the north boundary of above described Parcel 4;  
thence along the north boundary of above described Parcel 4 N 88°33'50" W, 30.84 feet;  
thence leaving the north boundary of above described Parcel 4 S 13°41'19" E, 384.03 feet;  
thence S 76°05'35" W, 458.60 feet; and the POINT OF BEGINNING.



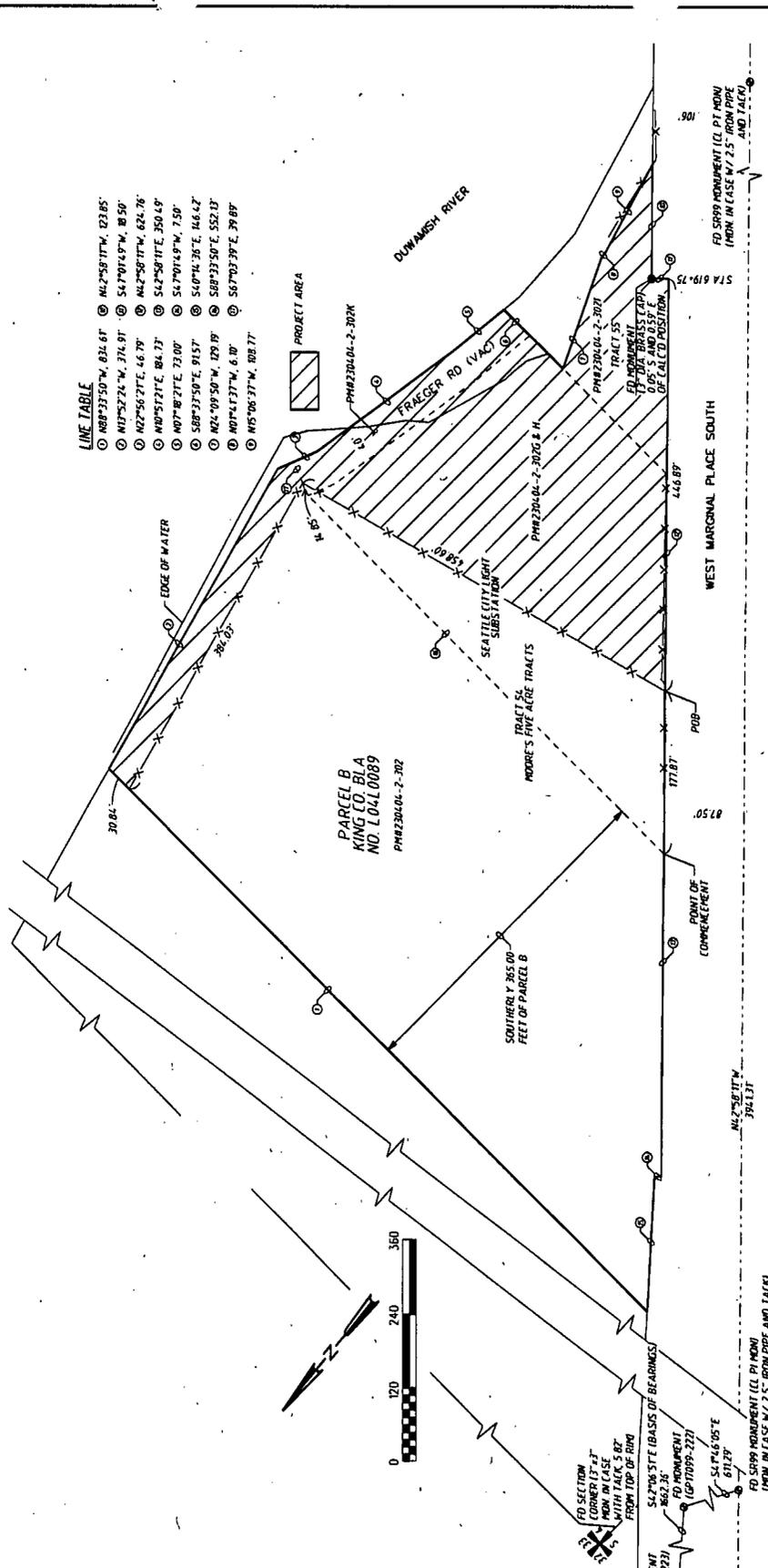
10/11/06



SE 1/4, NW 1/4, SECTION 4, TOWNSHIP 23 NORTH, RANGE 4 EAST, W.M.

**LINE TABLE**

① N88°33'50"W, 834.61'	① N42°58'11"W, 123.85'
② N17°52'24"W, 376.91'	② S47°01'49"W, 88.50'
③ N2°56'27"E, 46.79'	③ N42°58'11"W, 624.76'
④ N0°51'21"E, 84.73'	④ S42°58'11"E, 350.49'
⑤ N07°48'21"E, 73.00'	⑤ S47°01'49"W, 7.50'
⑥ S88°33'50"E, 715.7'	⑥ S40°44'36"E, 146.42'
⑦ N24°09'50"W, 129.19'	⑦ S88°33'50"E, 552.13'
⑧ N07°44'37"W, 4.80'	⑧ S87°03'39"E, 39.89'
⑨ N82°06'37"W, 808.77'	



**EXHIBIT A-2**  
**JOINT TRAINING FACILITY**  
**OFF-SITE MITIGATION PROJECT**  
 SHELTON, KING COUNTY, WASHINGTON



**CH2MHILL**  
 1100 117TH AVE NE  
 SUITE 400  
 BELLEVUE, WA 98004-4304  
 (425) 453-5000

DRAWN BY: J.R.P.    CHECKED BY: C.S.R.    JOB NO. 349645

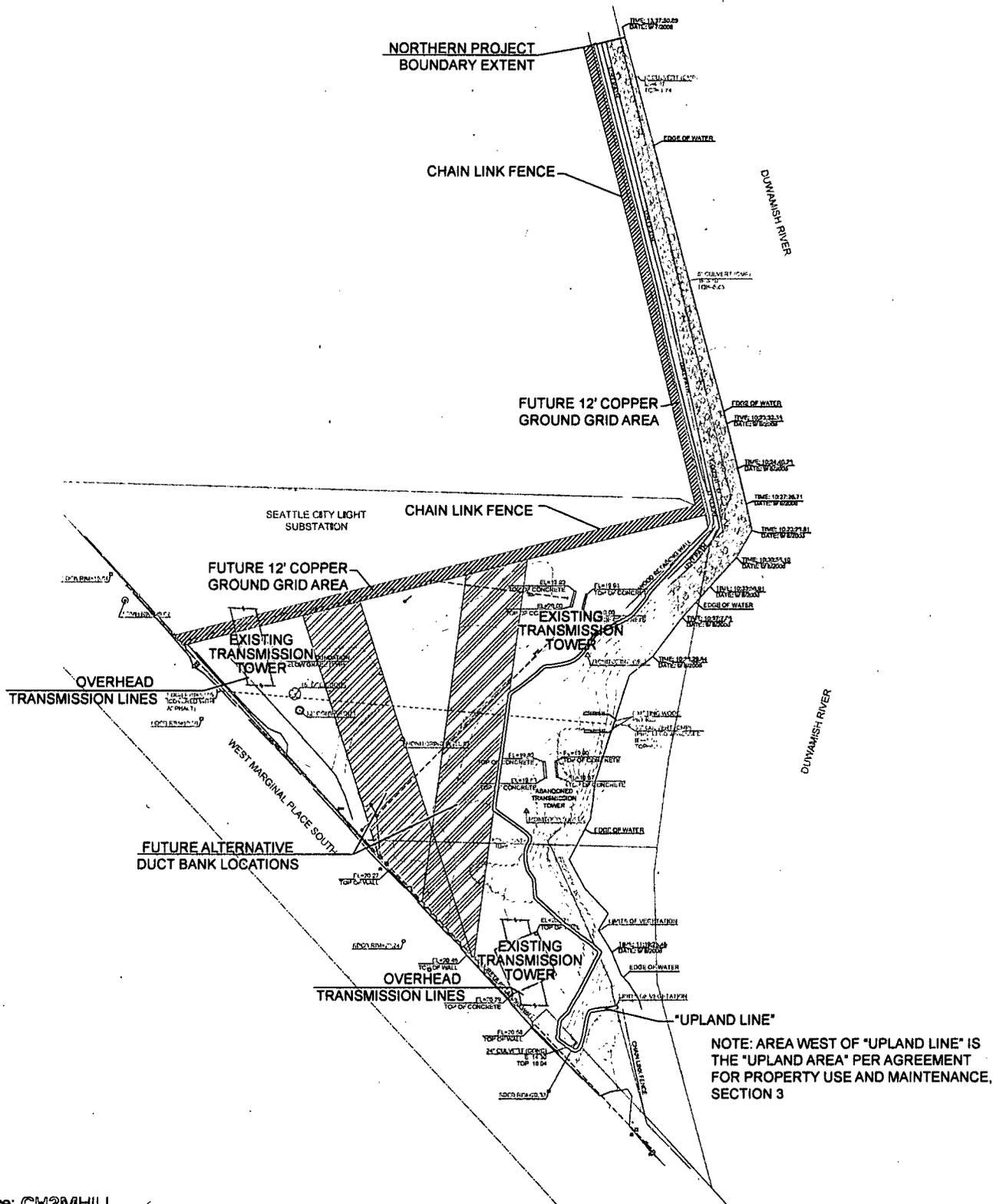
Exhibit A-2 to Rtt 1.



**EXHIBIT "B"**

**"Survey Map - For Illustrative Purposes Only – EXHIBIT B to Property Use Agreement (AMEC, October 2006)"**





Source: CH2MHILL

<b>AMEC Earth &amp; Environmental</b> 11335 NE 122nd Way, Suite 100 Kirkland, WA 98034				CLIENT: <b>CITY OF SEATTLE</b>	
PROJECT: <b>JOINT TRAINING FACILITY</b>				DATE: <b>OCTOBER 2006</b>	
TITLE: <b>Survey Map - For Illustrative Purposes Only - EXHIBIT B to Property Use Agreement</b>				PROJECT No: <b>591M153760</b>	
			REV. No: <b>A</b>		FIGURE No: <b>EXHIBIT B</b>

*Exhibit B to att* 

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Fleets and Facilities	Brenda Bauer 684-0411	Dwight Dively 684-0503

**Legislation Title:**

AN ORDINANCE relating to an agreement between the City Light Department and the Fleets and Facilities Department for use, maintenance, and habitat creation, restoration and enhancement at real property on the Duwamish River, authorizing the agreement and imposing a restrictive covenant against the real property.

• **Summary of the Legislation:**

Passage of this ordinance will allow Fleets and Facilities Department (FFD) and Seattle City Light (SCL) to enter into, and implement the terms of, an Agreement for Property Use and Maintenance that sets out the terms of joint use by FFD and SCL of land south and east of the SCL Duwamish Substation, including recording a restrictive covenant against the title to real property. SCL will use the site for electrical purposes as allowed by the agreement, and FFD will implement an off-site mitigation plan that will provide substantial environmental benefit and also allow the City to complete work on the Joint Training Facility (JTF). Restoration or maintenance related to the off-site mitigation plan will be the responsibility of FFD. Funding to implement the actions authorized in this legislation is contained in the 2007 budget proposal.

• **Background:**

In 2004, the City of Seattle began construction of the JTF, a new complex at 9401 Myers Way South, which serves as a training location for the Seattle Fire Department, Seattle Department of Transportation, and Seattle Public Utilities. The Joint Training Facility's secure campus consists of two buildings, a variety of training props, maintenance sheds, small parking areas, and landscaping. Classroom instruction is underway, and departments are conducting limited outdoor training on the props. However, in order to complete construction on the JTF and in connection with past activity, the United States Army Corps of Engineers requires the City to obtain a Clean Water Act Section 404 permit from the Army Corps of Engineers. The off-site mitigation enabled by this Agreement for Property Use and Maintenance is required for the permit, which is a key element required for completion of the JTF.

• *Please check one of the following:*

**This legislation has financial implications.**



Anticipated Revenue/Reimbursement: (For budget legislation that raises fees, please provide detail on each fee that is being raised, when it was last raised, how the proposed fee compares with similar fees in the region, etc.)

Fund Name and Number	Department	Revenue Source	2007 Revenue	2008 Revenue
NA: See Below				
TOTAL				

Notes:

• What is the financial cost of not implementing this legislation?

Not implementing this legislation could result in substantial additional cost for Clean Water Act compliance or prosecution under the Clean Water Act; which would jeopardize ongoing operation of the JTF.

Acquisition and related costs are estimated at \$150,000 for use of SCL's site, as outlined in part in the Property Use and Maintenance Agreement. Mitigation and construction on the City Light parcel is estimated at \$1,005,182. Additionally, there are related permitting and consultant and design costs that are in the funding proposal included in the Mayor's 2007 Proposed Budget.

This Council Bill is part of a larger package of legislation related to the JTF, which includes the settlement agreement with the Army Corps of Engineers; an interfund loan extension; the Myers Way surplus property sale; and the termination of the Myers Way property use and development agreement (PUDA). Passage of the Property Use and Maintenance Agreement legislation is necessary in order to complete the mitigation plan required by the Army Corps of Engineers for a Clean Water Act Section 404 permit that will allow the City to complete work on the JTF. Funding for this action is included in the Mayor's 2007 Proposed Budget.

• What are the possible alternatives to the legislation that could achieve the same or similar objectives?

None

• Is the legislation subject to public hearing requirements?

No

• Other Issues (including long-term implications of the legislation):

None

**Attachments: None**



STATE OF WASHINGTON - KING COUNTY

--SS.

205028  
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122298-122303

was published on

12/04/06

The amount of the fee charged for the foregoing publication is the sum of \$ 82.80, which amount has been paid in full.

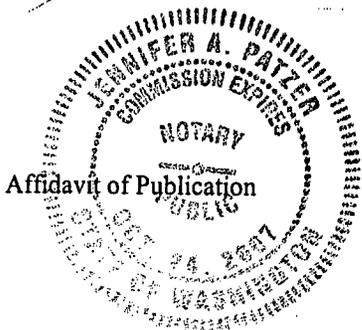
*[Handwritten signature]*

Subscribed and sworn to before me on

12/04/06

*[Handwritten signature]*

Notary public for the State of Washington,  
residing in Seattle



Affidavit of Publication

# State of Washington, King County

**City of Seattle**

**TITLE-ONLY PUBLICATION**

The full text of the following ordinances passed by the City Council on November 20, 2006, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

**ORDINANCE NO. 122308**

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

**ORDINANCE NO. 122302**

AN ORDINANCE authorizing, in 2006, acceptance of funding from non-City sources authorizing the heads of the Department of Parks and Recreation, the Human Services Department, the Office for Civil Rights, the Seattle Department of Transportation, the Seattle Fire Department, the Municipal Court, the Seattle Police Department, the Seattle Public Library and Seattle Public Utilities to accept specified grants and provide funding and to execute, deliver, and perform corresponding agreements.

**ORDINANCE NO. 122301**

AN ORDINANCE amending the 2006 Adopted Budget, including the 2006-2011 Capital Improvement Program (CIP) and the Position List, changing appropriations to various departments and budget control levels, and from various funds in the Budget, and creating and abrogating positions, all by a three-fourths vote of the City Council.

**ORDINANCE NO. 122300**

AN ORDINANCE relating to an agreement between the City Light Department and the Fleets and Facilities Department for use, maintenance, and habitat creation, restoration and enhancement of real property on the Duwamish River, authorizing the agreement and imposing a restrictive covenant against the real property.

**ORDINANCE NO. 122299**

AN ORDINANCE regarding a Settlement Agreement between the City of Seattle and the United States Army Corps of Engineers for Clean Water Act permitting for the Joint Training Facility at 8401 Myers Way South in Seattle, authorizing execution and implementation of an agreement and imposing a restrictive covenant against the real property.

**ORDINANCE NO. 122298**

AN ORDINANCE adopting a budget, including a capital improvement program and position modifications, for the City of Seattle for fiscal year 2007.

A Publication ordered by JUDITH PLEPPIN  
City Clerk

Date of publication in the Seattle Daily Journal of Commerce, December 4, 2006.  
Page 12/4 (206028)