Ordinance No. 122931

Council Bill No. 116451

AN ORDINANCE authorizing the Fleets and Facilities Department Director to execute a lease agreement with 2915 Fourth LLC, a Washington limited liability company, for office, display and classroom space at 2915 4th Avenue South in Seattle.

Related Legislation File:

Date Introduced and Referred: 2-9-09	To: (committee): Finance and Budget
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: 3.9.09	Date Presented to Mayor: 3/9/09
Date Signed by Mayor: 3.16.09	Date Returned to City Clerk: 3.17.09
Published by Title Only ✓ Published in Full Text 2	Date Vetoed by Mayor:
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: Jean Godden

Committee Action:

Date	Recommendation	Vote
3/5/08	Pass - SC, JG as amended © LM	SC, JG

This file is complete and ready for presentation to Full Council.

Full Council Action:

Date	Decision	Vote
3.9.09	Pass	6-0 (excused SD RM, TB)

Law Department

Law Department

City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

January 27, 2009

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill authorizing the Fleets and Facilities Department (FFD) to execute a lease agreement to provide Seattle City Light (SCL) with approximately 7,436 rentable square feet of office, display, and classroom space at 2915 4th Avenue South in the SODO neighborhood. The lease is for a seven-year term and the first-year rental rate is consistent with the market at $17.00 per square foot net of taxes, insurance and common area maintenance.

The lease is needed to relocate the SCL Lighting Design Lab due to financially infeasible terms presented by the previous landlord. A comprehensive property search conducted by FFD identified the best relocation option as 2915 4th Avenue South. Legislation is required, because both the amount of leased office space and lease term exceed FFD's statutory authority for leasing.

The new location provided by this legislation will enable the Lighting Design Lab to continue serving the public and pursuing energy conservation goals established by SCL and the City Council. Thank you for your consideration of this legislation. Should you have any questions, please contact Kyle Joyce at 684-7154 or Dave Goss at 233-5069.

Sincerely,

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749
Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: mayors.office@seattle.gov
An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.

ORDINANCE 122931

AN ORDINANCE authorizing the Fleets and Facilities Department Director to execute a lease agreement with 2915 Fourth LLC, a Washington limited liability company, for office, display and classroom space at 2915 4th Avenue South in Seattle.

WHEREAS, the Seattle Fleets and Facilities Department anticipates a continuing need for office, display and classroom space for Seattle City Light to continue to operate its Lighting Design Lab; and

WHEREAS, Seattle City Light's need for office, display and classroom space to house the Lighting Design Lab cannot be accommodated within City-owned buildings for the foreseeable future; and

WHEREAS, the property at 2915 4th Avenue South in Seattle meets Seattle City Light's operational requirements and is more cost effective than other alternative locations; and

WHEREAS, it is standard City practice for the Fleets and Facilities Department to procure leased office and other space on behalf of Seattle City Light, pay rent to the landlord for such leased space, and subsequently receive reimbursement from Seattle City Light; and

WHEREAS, City Council approval of this lease is required under Seattle Municipal Code 3.18.200 and 3.18.240, because the total office space leased in one calendar year exceeds 5,000 square feet and the lease term exceeds sixty calendar months; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Fleets and Facilities Director and recommended by the Mayor, said Director or her designee is hereby authorized to execute, for and on behalf of the City of Seattle, a lease agreement with 2915 Fourth LLC, a Washington limited liability company, substantially in the form of Exhibit "1" attached hereto, and providing for City of Seattle's tenancy and occupancy of a portion of the real property located at 2915 4th Avenue South in Seattle.

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Section 2. The rental payments contemplated by the terms of the lease agreement authorized in Section 1 hereof shall be charged to the appropriate expenditure allowance or allowances in the budget of the Fleets and Facilities Department.

Section 3. Any act consistent with the authority of this ordinance taken after the passage of this ordinance and prior to its effective date is hereby ratified and confirmed.

Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 9th day of March, 2009, and signed by me in open session in authentication of its passage this 9th day of March, 2009.

President _____ of the City Council

Approved by me this 16th day of March, 2009.

Gregory J. Nickels, Mayor

Filed by me this 17th day of March, 2009.

City Clerk

(Seal)

LH COUNCIL CLERK

[Exhibit 1: Lease Agreement]

LH COUNCIL CLERK

EXHIBIT 1
LEASE AGREEMENT
PART A - SIGNATURE FORM

1. PARTIES

THIS LEASE AGREEMENT, dated for reference purposes only this ____ day of _____, 200_, entered into by and between 2915 FOURTH LLC, a Washington limited liability company (hereinafter referred to as the "Lessor") and THE CITY OF SEATTLE, a municipal corporation of the State of Washington, as Lessee (hereinafter referred to as the "City"), WITNESSES THAT:

2. PREMISES

The Lessor hereby leases to the City, and the City hereby leases from the Lessor, approximately 7,436 rentable square feet (the "Premises") of that certain 15,266 square foot building (the "Building") situated on that certain parcel of improved real property commonly known as 2915 – 4th Avenue South, located in Seattle, King County, Washington, (the "Property") more particularly described on Exhibit A and shown and depicted on Exhibit B, both of which are attached hereto and made a part hereof.

In addition to the exclusive use of the Premises, the City shall have the non-exclusive right to use all common areas, parking, driveways, entranceways, sidewalks and other areas in or around the Building designated for the common use of tenants, occupants and invitees of the Building, hereinafter collectively referred to as the "Common Areas."

3. PURPOSES

Premises shall be used as a lighting design lab and for such other municipal purposes as the City may deem consistent therewith. The City may permit other governmental agencies approved by the City to use and occupy the Premises without the written consent of Landlord.

4. TERM, EARLY CANCELLATION & RENEWALS

The term of this Lease shall commence (the "Commencement Date") upon delivery of the Premises by Lessor following substantial completion of the work to be completed by Lessor in accordance with Exhibit C (the "Improvements") attached hereto and made a part hereof. The initial term of the Lease shall expire at the end of the eighty-fourth (84th) full calendar month following the Commencement Date.

As Tenant's sole financial contribution toward the "Improvements," the City shall pay the Lessor the sum of Forty-Seven Thousand Nine Hundred Forty-Three and 25/100 dollars ($47,943.25) within thirty (30) days of Lessor's written request following the Commencement Date as the City's contribution to the Improvements.

Notwithstanding anything in this Lease to the contrary, the City shall have a one time right to terminate this Lease at the end of the sixtieth (60th) month of the initial term upon giving not less than two hundred seventy (270) days written notice to Lessor and upon payment of a one-time termination fee of Seventy-Three Thousand Nine Hundred Forty-Two and 08/100 Dollars ($73,942.08), payable upon the termination of the Lease.

The City shall have the option to extend this Lease for one (1) additional

period of sixty (60) months, hereinafter called the "Extension Period," upon the same terms and conditions as provided herein, saving and excepting the amendment to Base Rent as provided for in this Lease. The phrases "term of this Lease" or "Lease term" as used herein shall include all properly exercised Extension Periods, if any. The City shall exercise the option to extend by giving written notice to Lessor not less than one hundred eighty (180) days prior to the expiration of the then current Lease term.

5. SHORT TERM LEASE

Lessor and City have entered into a Lease Agreement ("Short Term Lease") dated November 24, 2008 for the lease of approximately 3,646 square feet of the office portion of the Premises. As of the Commencement Date of this Lease in accordance with Section 4 above, the Short Term Lease shall terminate and be replaced by this Lease.

6. BASE RENT

In consideration of this Lease and the Lessor's performance of all covenants and agreements contained herein, the City covenants and agrees to make payments to Lessor, as the monthly rental for said Premises ("Base Rent"), payable in advance on the first day of each calendar month thereof, in accordance with the following table:

RENT PERIOD	MONTHLY RENT
Months 1 – 2	Abated
Months 3 – 12	$10,534.33
Months 13 – 24	$10,955.71
Months 25 – 36	$11,393.93
Months 37 – 48	$11,849.69
Months 49 – 60	$12,323.68
Months 61 – 72	$12,816.63
Months 73 – 84	$13,329.29

7. RENEWAL RENT

Should this Lease be extended for the Extension Period, the annual Base Rent payable hereunder shall be adjusted to the then current market rate for rental of similar space in the Seattle, Washington market as provided below:

The parties shall have thirty (30) days after Lessor receives the extension notice in which to agree on the annual rent for the Extension Period. If the parties agree on the annual rent for the Extension Period during that thirty (30) day period, they shall immediately execute an amendment to this Lease stating the annual rent, and the monthly installments thereof.

If the parties are unable to agree on the annual rent for the Extension Period within that period, then within ten (10) days after the expiration of that period each party, at its cost and by giving notice to the other party,

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shall appoint a licensed real estate appraiser with at least 5 years full-time commercial appraisal experience in the Seattle, Washington area to appraise and set the annual Base Rent for the Extension Period. If a party does not appoint an appraiser within the ten (10) day period and the other party has given notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall set the annual rent for the Extension Period. If the two appraisers are appointed by the parties as stated in this paragraph, they shall meet promptly and attempt to set the annual rent for the Extension Period. If the two appraisers are unable to agree within thirty (30) days after the second appraiser has been appointed, they shall select a third appraiser meeting the qualifications stated in this paragraph within ten (10) days after the last day the two appraisers are given to set the annual rent. If they are unable to agree on the third appraiser, one meeting those qualifications shall be appointed by Judicial Dispute Resolution in accordance with its rules. The third appraiser, however selected, shall be paid in advance by Lessor and the City, one-half share each, and shall be a person who has not previously acted in any capacity for either party, unless the parties otherwise agree.

Within 10 days after the selection of the third appraiser, the third appraiser shall select one of the two appraisals as the appraisal that most accurately reflects current market rate for rental of similar space in Seattle, Washington, which shall then become the annual rent for the Extension Period, payable in equal monthly installments in advance on the first day of each calendar month thereof.

Notwithstanding anything herein to the contrary, the appraisers shall exclude from their valuations the reasonable value of any leasehold improvements made by the City to the Premises during the Initial Term of this Lease, which value shall in no event be less than the unamortized costs of such improvements on the City's books as of the commencement of the Extension Period.

8. AGREEMENT CONTENTS

This Lease consists of the following:

-Lease Agreement, Part A and Part B
-Exhibit A – Legal Description of the Property
-Exhibit B – Diagram Showing the Premises on the Property
-Exhibit C – Improvements By Lessor

Each of which, by this reference, are incorporated herein, and embodies the entire agreement of the parties hereto. There are no other understandings or agreements, written or oral, between the parties relating to the subject matter hereof.

9. EFFECTUATION OF AGREEMENT

In order to be effective, this Lease must be (1) signed by an authorized representative of the Lessor and returned to the City at the address set forth below and (2) signed by the City's Director of the Fleets & Facilities Department pursuant to ordinance authority.

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IN WITNESS WHEREOF, the parties hereto have affixed their signature below:

LESSEE, THE CITY OF SEATTLE

By_____
Brenda Bauer
Fleets and Facilities Director

Authorizing Ordinance: _____

City's address for all communications:

Fleets and Facilities Department
700 5th Avenue, Suite 5200
P.O. Box 94689
Seattle, Washington 98124-4689

LESSOR, 2915 FOURTH LLC

By_____
William Low
Sr. Vice President – Real Estate

Lessor's address for all communications:

PO Box 24687
Seattle, WA 98124
Fax: 206.624.5412
Attn: William Low

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 instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Fleets & Facilities Director of THE CITY OF SEATTLE to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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 KING)

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

Dated: _____

_____
(Notary Signature)

_____
(Print Name)

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

LEASE AGREEMENT
PART B - GENERAL TERMS AND CONDITIONS

1. POSSESSION. In the event of the inability of the Lessor to deliver possession of the Premises, or any portion thereof, in accordance with the terms of this Lease within one hundred eighty (180) days of the full execution of this Lease, subject to force majeure, the City, at its option may elect to retain the Lease and insist upon possession or to cancel this Lease as a result of the Lessor's failure to deliver possession. In the event the City elects to cancel due to Lessor failing to take commercially reasonable steps to deliver the space, the Lessor shall be liable for incremental costs and other damages incurred by the City in acquiring comparable property. In the event the City elects to retain the Lease, the City shall not be liable for any rent or other expense related to the Premises until such time as the Lessor can deliver possession. In the event that, by mutual agreement, the City takes possession of the Premises, or any part thereof, prior to the commencement of the specified term of this Lease, the City shall pay as rent for that additional period that percentage of the monthly rent payable under Part A hereof, prorated on a daily basis, that is equivalent to the percentage of the floor area of the Premises actually occupied by the City during said period.

2. ACCESS. The City shall allow the Lessor or the Lessor's agent free access at all reasonable times to said Premises to inspect, clean, or make repairs, additions or alterations to the Premises or any connected property owned by or under the control of the Lessor. This provision shall not be construed as an agreement on the part of the Lessor to make such repairs, additions or alterations or a waiver of the City's right of quiet enjoyment. All such work by the Lessor shall be undertaken in a way so as to minimize interference with the City's use of the Premises.

3. UTILITIES AND OTHER SERVICES. The City shall directly pay all charges for utilities for which there is a separate meter specific to the Premises. Lessor, subject to reimbursement by the City in accordance with Section 6 of Part A of this Agreement, shall provide or shall otherwise pay for, when due, all costs for providing all utilities and other services on or to the Premises including but not limited to elevator service, electricity, gas, water, sewer, garbage, heating and cooling or air conditioning, janitorial, and security. The City shall pay all charges for utility installations and modifications thereto occasioned by the City's requirements.

4. ADDITIONAL RENT. Throughout the term of this Lease, the City covenants and agrees to pay to Lessor as additional rent the City's proportionate share of (i) the general real estate taxes levied on the Building and the Property, (ii) property insurance premiums on the Building, and (iii) CAM Charges (as hereinafter defined) incurred by Lessor (collectively, the "Additional Rent"). One-twelfth of the estimated annual Additional Rent shall be paid by the City to Lessor in advance together with the payment of Base Rent on the first day of each calendar month during the term of this Lease, with all charges being prorated for partial months and lease years. The estimated monthly Additional Rent for the Premises for calendar year 2009 is Two Thousand One Hundred Thirty-One and 65/100 Dollars ($2,131.65) per month. Estimated Additional Rent for each succeeding calendar year shall be based upon the actual Additional Rent during the preceding calendar year, provided that Lessor reserves the right to adjust the Additional Rent estimate upon receipt of the actual real estate and insurance bills.

Within two (2) months following the close of each calendar year, Lessor shall provide the City an accounting showing in reasonable detail all computations of the annual Additional Rent. The City shall have the right to conduct an audit of all of Lessors' books and records relating to the calculation of the City's share of Additional Rent. Such audit shall be conducted at a location agreed upon by the parties, provided, however, if the parties are unable to agree upon a location, then the audit shall be conducted at the Premises. In the event the accounting shows the total of the monthly payments made by the City is less than the amount of the City's proportionate share of

the Additional Rent due by the City hereunder, the additional amount due shall be paid by the City within thirty (30) days after completion of the audit. In the event that the accounting shows that the total of the monthly payments made by the City exceeds the amount of the City's proportionate share of the Additional Rent due by the City hereunder, the overpayment shall be refunded to the City within thirty (30) days after the completion of the audit. Further, if the City's audit reveals that the City has overpaid Additional Rent by greater than four percent (4%) of the actual amount due from the City for Additional Rent during the applicable calendar year, Lessor shall pay the reasonable costs of the City's audit.

The term "CAM Charges" as used herein shall mean all normal and customary costs and expenses incurred by Lessor for the routine maintenance, repair and operation of the Building and Common Areas, excluding only the following: (1) any insured casualties; (2) Lease negotiation expenses (including attorney's fees), leasing commissions, advertising expenses and tenant fit-out expenses; (3) interest or principal payments on any Mortgage (as hereinafter defined); (4) any depreciation allowance or expense; (5) any common area maintenance reserve payments; and (6) any Capital Improvements. The term "Capital Improvements" as used herein shall mean any costs and expenses associated with roof replacement, structural repairs, structural replacement or exterior paving replacement. Capital Improvements shall not include HVAC replacement or exterior paving overlaying, however such expenses shall be depreciated over the useful life of the asset in accordance with GAAP standards.

Notwithstanding anything herein to the contrary, the City's share of controllable CAM Charges shall not increase by more than four percent (4%) over the cost from the previous calendar year. For purposes of this Lease, controllable CAM Charges shall be defined as all administrative, preventative maintenance and common area maintenance expenses and shall exclude insurance premiums and real estate taxes.

5. CARE OF PREMISES. The Premises shall at all times be kept and used in accordance with the laws of the State of Washington and ordinances of The City of Seattle, and in accordance with all duly authorized directions, rules, and regulations of the Health Officer, Fire Marshall or other proper officer of The City of Seattle; and the City will not permit any waste, damage or injury to the Premises, use or permit in said Premises anything that will increase the rate of fire insurance thereon, maintain anything that may be dangerous to life or limb, permit any objectionable noise or odor to escape or to be emitted from said Premises, or permit anything to be done upon said Premises that in any way will tend to create a nuisance.

6. MAINTENANCE - REPAIRS. The Premises have been inspected by both parties and are accepted by the City in their existing condition as of the commencement date of this Lease, without reservation except for latent defects or faulty construction of the Premises not discoverable by inspection at the time of taking possession. Except as otherwise provided for herein, the Lessor, subject to reimbursement by the City as provided herein, shall keep and preserve the Premises in good repair, including but not limited to all structural parts of the Premises and the structure of which the Premises form a part. Throughout the term of the Lease, the City shall keep the interior, non-structural portions of the Premises in good condition or repair.

7. DAMAGE OR DESTRUCTION. In the event the Premises are damaged by fire, earthquake, act of war, or other extraordinary casualty to such an extent as to render the same untenantable in whole or in a substantial part thereof, or are destroyed, it shall be optional with the Lessor to repair or rebuild the same, and after the happening of any such event, the City shall give the Lessor or the Lessor's agent written notice thereof within forty-eight (48) hours of such occurrence. The Lessor shall have not more than sixty (60) days after the date of such notification to notify the City in writing of the Lessor's intentions to repair or rebuild said Premises; and if the Lessor elects to repair or rebuild said Premises, the Lessor shall prosecute the work of such repairing or rebuilding without unnecessary

delay. During any period in which the Premises are rendered unfit for occupancy because of any such casualty, the rent of said Premises shall be abated in the same ratio that the portion of the Premises rendered for the time being unfit for occupancy bears to the whole of the Premises. In the event the building in which the Premises are located is destroyed or is damaged (even though the Premises hereby leased is not damaged thereby) to such an extent that, in the opinion of the Lessor, it is not practicable to repair or rebuild, then the Lessor may, at its option, terminate the Lease by providing written notice thereof to the City within thirty (30) days after such damage or destruction has been determined to be irreparable.

8. COMPLIANCE WITH LAW

(a) General Requirement. The Lessor shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof.

(b) Licenses and Similar Authorizations. The Lessor and/or the City, when applicable, shall secure and maintain in full force and effect during the term of this Agreement, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

(c) Taxes. The Lessor shall pay, before delinquency, all taxes, levies and assessments on the Premises.

(d) Nondiscrimination and Affirmative Action. Without limiting the generality of the foregoing, the Lessor agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington and City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code ("SMC") as they may be amended from time to time, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.

9. INSURANCE. The Lessor acknowledges, accepts, and agrees that the Lessee is self-insured and Lessee will provide proof of such self-insurance upon the request of the Lessor.

10. INDEMNIFICATION. The Lessor shall indemnify and hold the City harmless from all claims for accident or injury caused to persons or property by the fault or neglect of the Lessor or any of its employees or agents; or occurring in, on, or about any portion of the structure of which the Premises form a part that is under the control of the Lessor; or caused by any fault or defect inherent in said structure or any defect in or malfunction thereof not discernable by reasonable inspection. The City will indemnify and hold the Lessor harmless from all claims for accident or injury caused to persons or property by the fault or neglect of the City or any of its employees or agents, to the extent of the fault or neglect of the City. All personal property of the City on said Premises shall be at the risk of and the responsibility of the City.

11. SIGNS. The City may place identification signs upon the Premises, subject to the prior approval of the Lessor; and permission to place such signs shall not be unreasonably withheld by the Lessor. The Lessor shall have the right to place and maintain "For Rent" signs in a conspicuous place on said Premises and to show the Premises to prospective tenants for thirty (30) days prior to the expiration of this Lease.

12. ALTERATIONS, ADDITIONS AND IMPROVEMENTS.

(a) The City shall not make or cause to be made any alteration, addition or improvement to said Premises without first obtaining the written consent of the Lessor for such work. Any alteration, addition or improvement that is made solely for the convenience of the City or any of its employees or agents, or of the program to be conducted on the Premises shall be at the sole cost and expense of the City or the program being conducted on the Premises except for an alteration, addition or improvement occasioned by inherent damage or a latent defect in the Premises or of the structure in which the Premises are located, the cost of which alteration, addition or improvement shall be as agreed upon by the City and the Lessor.

(b) The Lessor shall pay the cost of all alterations, additions, and improvements initiated for the Lessor's convenience, and save the City free and harmless from damage, loss or expense arising out of said alterations performed by the Lessor or on its behalf.

(c) If any of the alterations, additions and improvements as installed by the City may be removed without disturbance, molestation, or injury to the Premises, the City at its option, may remove or cause to be removed said improvements at the City's own expense.

(d) Notwithstanding anything contained in this Lease to the contrary, the City shall have the right, without the written consent of the Lessor, to operate and install any electrical equipment or machinery, or replace or relocate any electric light fixtures in accordance with its normal and customary activities as a lighting lab.

13. TERMINATION.

(a) Notwithstanding any other provision herein, in the event that either party to this Lease defaults in the performance of any of the terms, provisions, covenants and agreements to be kept, observed and performed as provided in the following sections:

Part A –	TERM RENT	Part B –	§3 UTILITIES AND OTHER SERVICES §4 CARE OF PREMISES §5 MAINTENANCE-REPAIRS §10 INDEMNIFICATION

and such default is not corrected within thirty (30) days after the receipt of written notice thereof from the other party, then the non-breaching party may, at its option, immediately terminate this Lease, without notice or other proceedings, and in such event the Lessor may also re-enter and take possession of the Premises. Damages may be claimed for a default in the performance of the other Lease obligations, but such default shall not be cause for termination of this Lease unless such default is repeated upon three or more occasions and a notice to comply is provided after each such instance.

(b) It is understood that funds for the payment of the rent herein are allocated out of monies received by the City from tax sources and/or other governmental entities and that funding for the program that occupies the Premises can be increased, changed, decreased, or eliminated by executive or legislative action. Therefore, it is agreed by the Lessor and the City that notwithstanding any other provision herein, in the event said funding and/or program is increased, changed, decreased, or eliminated, or in the judgment of the executive or legislative authority of the City, continuation of the Lease to its full term would be an unnecessary expenditure of public funds, then the City may terminate this Lease without further obligation to the Lessor, after the City has provided the Lessor with written notice of such termination at least ninety (90) days prior to the effective date thereof and documentation of such executive or legislative action..

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14. SURRENDER OF PREMISES. Upon the expiration or termination of this Lease, including any extensions thereof, whichever is earlier, the City shall quit and surrender said Premises and all keys thereto, without notice and in as good condition as received at the commencement of the term hereof except for ordinary wear and tear; damage or destruction by fire or other casualty or circumstances uncontrollable by the City; property damaged, removed, or destroyed by the Lessor or its agents; latent defects or faulty construction of the structure of which the Premises comprise a part, not discoverable by inspection at the time of taking possession; and alterations, additions or improvements made to the Premises by the City.

15. ADJUDICATION. This Lease shall be construed under all of the applicable laws, statutes, ordinances, rules and regulations of the United States of America, the State of Washington, and The City of Seattle. In the case of a dispute between the parties, jurisdiction over such dispute shall be with the Superior Court of King County, Washington.

16. NOTICES. All notices to be given by either of the parties hereto to the other party, including but not limited to invoices, shall be in writing and may either be delivered personally or may be deposited in the United States Mail, postage prepaid, as either certified or regular mail, addressed as specified in Part A hereof or to such other respective addresses as either party may from time to time designate in writing.

17. RELATIONSHIP. In no event shall the City be construed or held to have become in any way or for any purpose a partner, associate, or joint venturer of the Lessor or any party associated with the Lessor in the conduct of the Lessor's business or otherwise. This Lease does not constitute the Lessor as the agent or legal representative of the City for any purpose whatsoever.

18. AMENDMENTS. The parties hereto expressly reserve the right to renegotiate any and all of the provisions hereof from time to time as may be necessary and to amend this Lease accordingly; Provided, however, that no alteration or modification of the terms or conditions hereof shall be valid and binding unless made in writing and signed by the authorized representative of the parties hereto.

19. NO WAIVER OF DEFAULT. The City does not waive full compliance with the terms and conditions of this Lease by the payment of rent. No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept and observed by the other party shall be construed as, or operated as, a waiver of any subsequent default or of any of the terms, covenants, and conditions herein contained, to be performed, kept and observed by the other party.

20. BINDING EFFECT. This Lease shall be binding upon the heirs, successors, assigns, and all other parties legally empowered with signatory rights of any or all of the parties hereto.

21. INVALIDITY OF PROVISIONS. Should any term, provision, condition or other portion of this Lease be held to be inoperative, invalid or void, the same shall not affect any other term, provision, condition or other portion of this Lease; and the remainder of this Lease shall be effective as if such term, provision, condition or portion had not been contained herein.

CITY CLERK

EXHIBIT A

LOTS 2, 3 AND 4, BLOCK 298, SEATTLE TIDELANDS, IN KING COUNTY, WASHINGTON, AS SHOWN ON THE OFFICIAL MAPS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON.

EXHIBIT B

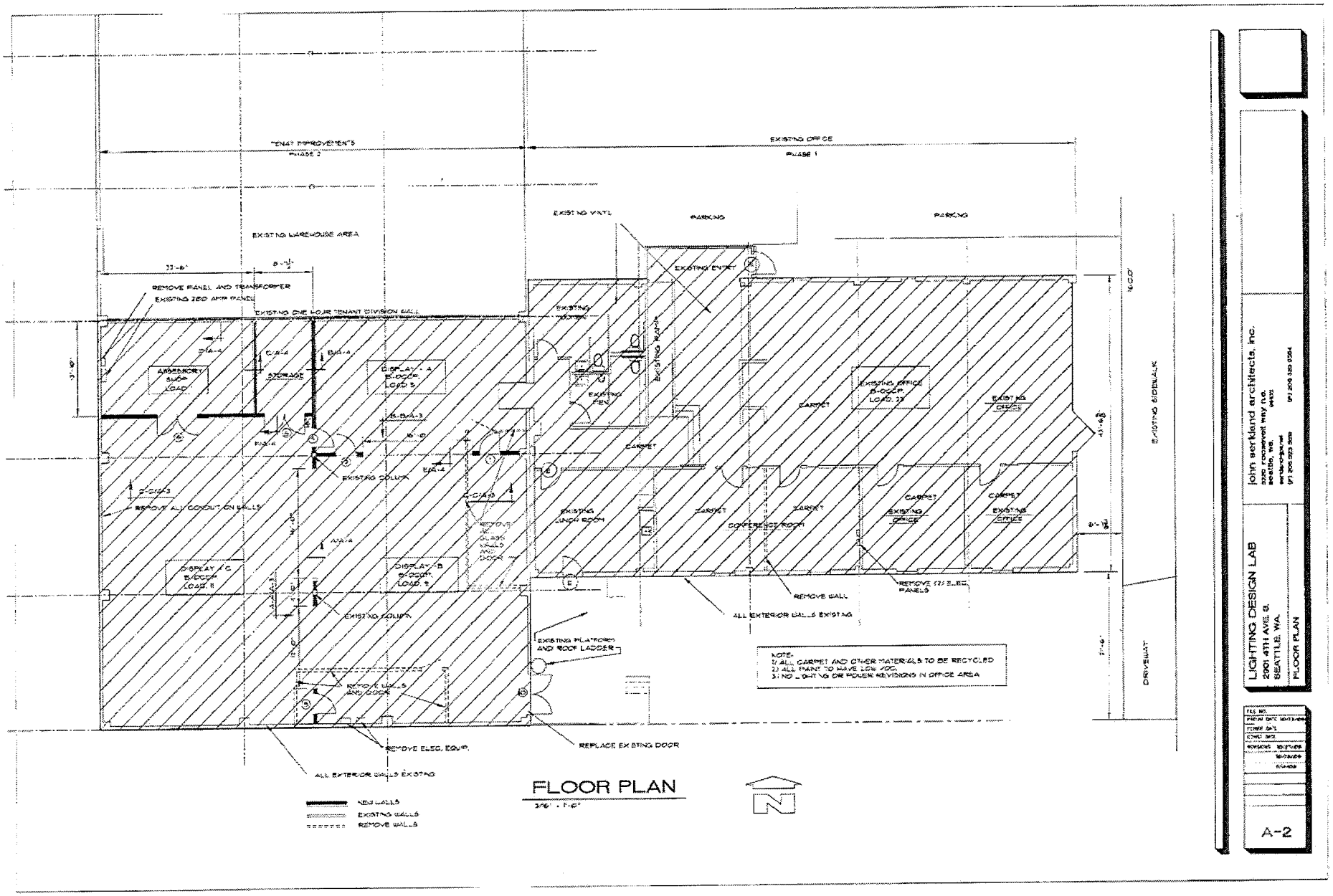
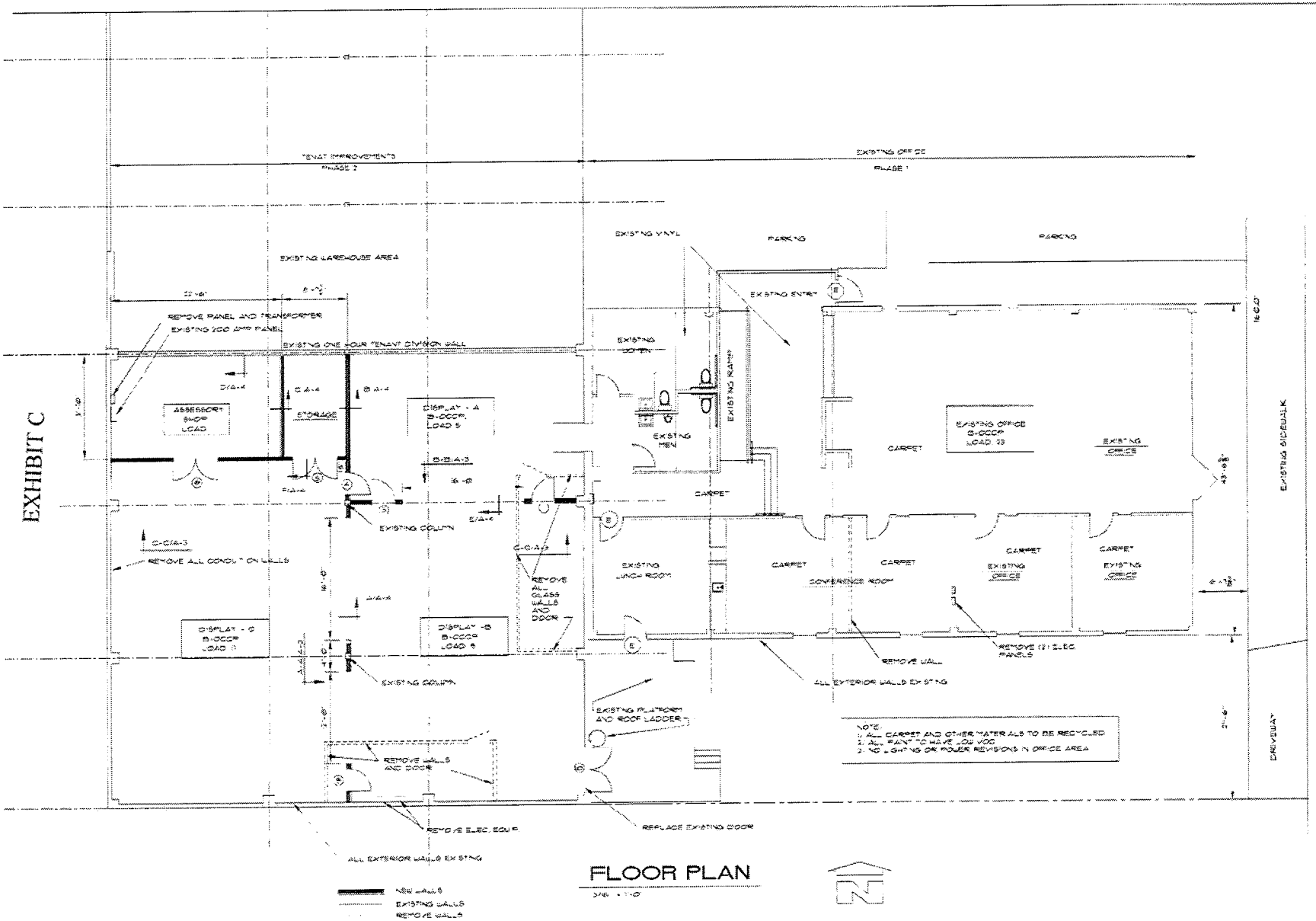

TENANT IMPROVEMENTS
PHASE 2
EXISTING OFFICE
PHASE 1
EXISTING WAREHOUSE AREA
REMOVE PANEL AND TRANSFORMER
EXISTING 200 AMP PANEL
EXISTING ONE HOUR TENANT DIVISION WALL
EXISTING VAULT
PARKING
PARKING
EXISTING ENTRY
EXISTING SIDEWALK
DRIVEWAY
STORAGE
DISPLAY - A
DISPLAY - B
DISPLAY - C
EXISTING COLUMN
REMOVE ALL CONDUIT ON WALLS
EXISTING LUNCH ROOM
CONFERENCE ROOM
CARPET
EXISTING OFFICE
REMOVE WALL
REMOVE (2) ELEC. PANELS
ALL EXTERIOR WALLS EXISTING
EXISTING PLATFORM AND ROOF LADDER
REMOVE WALLS AND DOOR
REMOVE ELEC. EQUIP.
REPLACE EXISTING DOOR
NOTE:
1) ALL CARPET AND OTHER MATERIALS TO BE RECYCLED
2) ALL PAINT TO HAVE LOW VOC.
3) NO LIGHTING OR POWER REVISIONS IN OFFICE AREA
NEW WALLS
EXISTING WALLS
REMOVE WALLS
FLOOR PLAN
3/16" = 1'-0"
LIGHTING DESIGN LAB
2001 4TH AVE. S.
SEATTLE, WA.
FLOOR PLAN
A-2

EXHIBIT C



FLOOR PLAN

SCALE: 1"=1'-0"

LIGHTING DESIGN LAB
2001 4TH AVE. S.
SEATTLE, WA.

FLOOR PLAN

FILE NO.
FILE SET DATE
PERMIT DATE
CONSTRUCTION DATE
REVISIONS

john sarkland architects, inc.
1020 roosevelt way n.e.
seattle, wa.
98115
sarkland@gmail
(p) 206 523 0631 (f) 206 523 0684

A-2

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Fleets and Facilities	Kyle Joyce / 4-7154	Kathryn Ewing / 3-9580

Legislation Title:

An ordinance authorizing the Fleets and Facilities Department Director to execute a lease agreement with 2915 Fourth LLC, a Washington limited liability company, for office, display and classroom space at 2915 4th Avenue South in Seattle.

- **Summary of the Legislation:**

  This legislation authorizes the Fleets and Facilities Department (FFD) to execute a lease agreement with 2915 Fourth LLC to provide 7,436 rentable square feet of office, display, and classroom space at 2915 4th Avenue in Seattle for a term of seven years. This lease requires legislation, because both total office space leased in one calendar year and lease term exceed FFD statutory authority for leasing under Seattle Municipal Code 3.18.240.

- **Background:**

  In 1988, Ordinance 114187 authorized Seattle City Light (SCL) to lease space for a Lighting Design Lab (LDL) as part of a Commercial Lighting Demonstration Project with the Bonneville Power Administration. The lease was extended by Ordinance 118846 in 1997 and again in 2000 by Ordinance 120141. The current lease expired effective December 31, 2008 and is not cost effectively renewable. Therefore, SCL intends to move the LDL to comparable and available space at 2915 4th Avenue South. SCL already occupies approximately 3,646 square feet of office space at the site on an interim basis in preparation for resuming LDL operations after the new long-term lease is executed.

  The lease rate under the new long-term lease is $17.00 per square foot, net of taxes, insurance and operating expenses. Operating expenses for the first year of the lease are estimated at $3.44 per square foot. Under the terms of the lease, the Landlord will complete improvements required by the LDL prior to lease commencement. The improvements are estimated to cost approximately $117,943, and SCL will reimburse the landlord $47,943 as SCL's contribution to this work. Any and all improvement costs exceeding the total planned amount are the Landlord's responsibility, unless those additional costs are due to change requests by SCL.

  Under the new lease, the City has the right to extend the lease term for an additional five-year period. The new rental rate would be the then current market rate for the space.

X **This legislation has financial implications.**

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2008 Appropriation	2009 Anticipated Appropriation
NA	NA	NA	NA	NA
TOTAL				

Notes: SCL has included the total new lease rental cost (below) in the SCL 2009-2010 Proposed Budget. The rental cost is not included in the FFD 2009-2010 Proposed Budget, and FFD will submit a budget supplemental request for equivalent pass-through budget authority sufficient to permit lease payments to the landlord.

Calculation of Lease Costs (Rent+Overhead (OH)+Operating Expenses) for SCL office, display and classroom space at 2905 4th Avenue South.

Table 1: SCL Rent payments in 2009 and 2010 covered by this legislation.

	2009	2010	
Cost	**March - Dec 2009**	**Jan - Feb 2010**	**March - Dec 2010**
Rent/month	$10,534.33	$10,534.33	$10,955.71
Rent/year	* $84,274.64	$21,068.66	$109,557.10
Annual Op Exp	** $21,316.53	** $4,391.20	** $21,956.00
FFD OH 3%	$3,167.74	$763.60	$3,945.40
Total	$108,758.91	$26,223.46	$135,458.50
		Total 2009+2010	$270,440.87

* Assumes lease commences March 1, 2009 and rent is abated for first two months of the lease. Therefore, SCL would pay rent for only eight months in 2009.

** Annual operatin g expense is based on landlord's estimate for the first year plus an FFD estimate of 3.0% increase in operating expense for the second year of the lease.

Anticipated Revenue/Reimbursement: Resulting From This Legislation:

Fund Name and Number	Department	Revenue Source	2008 Revenue	2009 Revenue
NA	NA	NA	NA	NA
TOTAL				

Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact:

None.

Spending/Cash Flow:

Fund Name & #	Department	Budget Control Level*	2008 Expenditures	2009 Anticipated Expenditures
NA	NA	NA	NA	NA
TOTAL	**NA**	**NA**	**NA**	**NA**

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

  Failure to implement this legislation would suspend LDL operations for lack of space. In addition, a later renewed property search for space for the LDL could result in higher lease rates for less desirable space.

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

  All available space suitable to house the LDL near downtown has been examined. No other sites that provide the necessary size, ceiling height, and rent structure to meet SCL's needs were identified.

- **Is the legislation subject to public hearing requirements:**

  No.

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

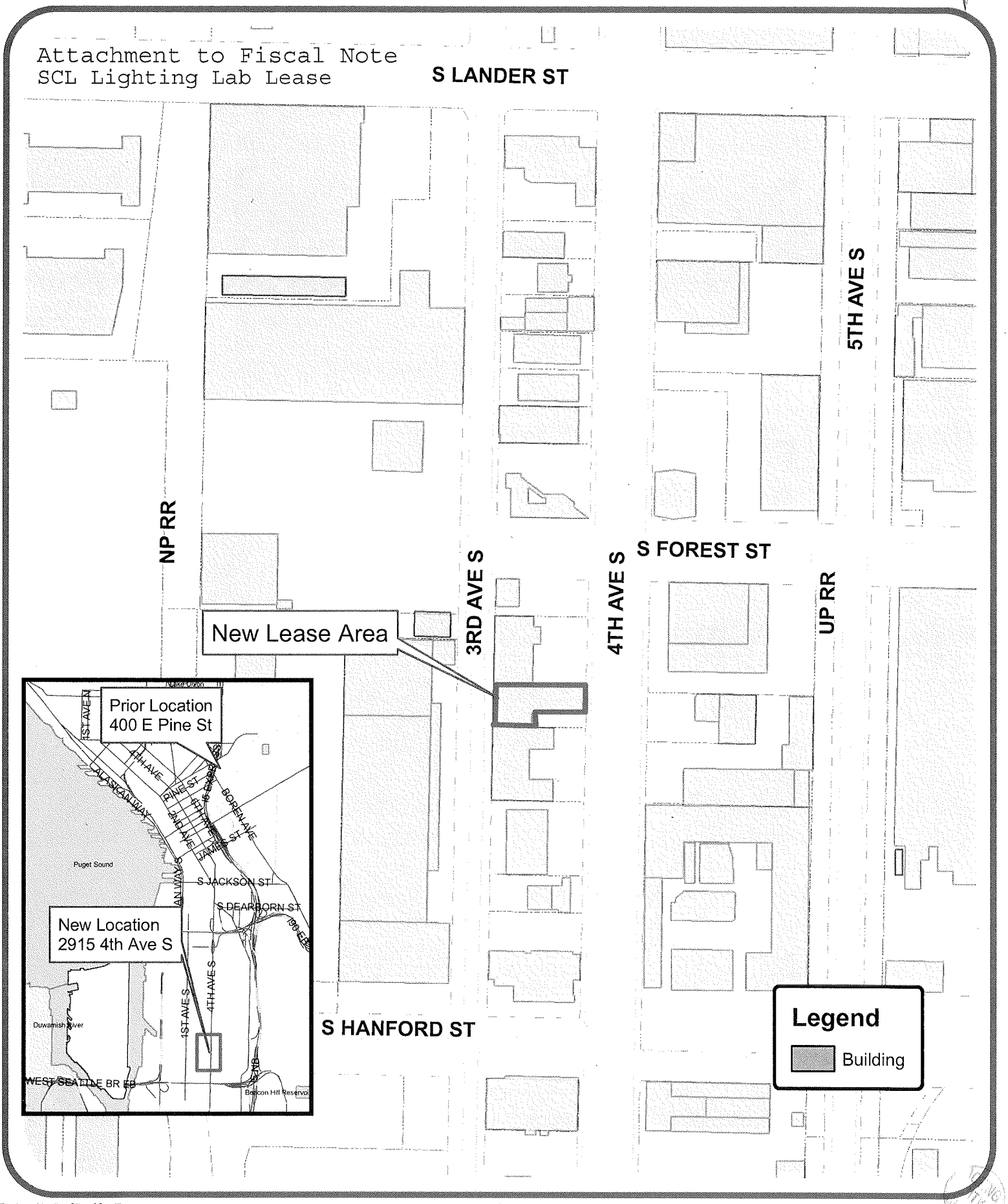
  None.

Please list attachments to the fiscal note below:

Map showing the location of the space to be leased.

City of Seattle Lighting Lab New Location Map

Attachment to Fiscal Note
SCL Lighting Lab Lease



Produced by the City of Seattle
Fleets & Facilities Department
Real Estate Services Division D. Bretzke

January 26 2009

0 300 Feet

All Rights Reserved.
No guarantee of any part implied,
including accuracy, completeness of fitness of use.

ORDINANCE _____

AN ORDINANCE authorizing the Fleets and Facilities Department Director to execute a lease agreement with 2915 Fourth LLC, a Washington limited liability company, for office, display and classroom space at 2915 4th Avenue South in Seattle.

WHEREAS, the Seattle Fleets and Facilities Department anticipates a continuing need for office, display and classroom space for Seattle City Light to continue to operate its Lighting Design Lab; and

WHEREAS, Seattle City Light's need for office, display and classroom space to house the Lighting Design Lab cannot be accommodated within City-owned buildings for the foreseeable future; and

WHEREAS, the property at 2915 4th Avenue South in Seattle meets Seattle City Light's operational requirements and is more cost effective than other alternative locations; and

WHEREAS, it is standard City practice for the Fleets and Facilities Department to procure leased office and other space on behalf of Seattle City Light, pay rent to the landlord for such leased space, and subsequently receive reimbursement from Seattle City Light; and

WHEREAS, City Council approval of this lease is required under Seattle Municipal Code 3.18.200 and 3.18.240, because the total office space leased in one calendar year exceeds 5,000 square feet and the lease term exceeds sixty calendar months; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Fleets and Facilities Director and recommended by the Mayor, said Director or her designee is hereby authorized to execute, for and on behalf of the City of Seattle, a lease agreement with 2915 Fourth LLC, a Washington limited liability company, substantially in the form of Exhibit "1" attached hereto, and providing for City of Seattle's tenancy and occupancy of a portion of the real property located at 2915 4th Avenue South in Seattle.

Section 2. The rental payments contemplated by the terms of the lease agreement authorized in Section 1 hereof shall be charged to the appropriate expenditure allowance or allowances in the budget of the Fleets and Facilities Department.

Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2009, and signed by me in open session in authentication of its passage this

_____ day of _____, 2009.

_____
President _____of the City Council

Approved by me this ____ day of _____, 2009.

_____
Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2009.

_____
City Clerk

(Seal)

[Exhibit 1: Lease Agreement]

STATE OF WASHINGTON – KING COUNTY

--ss.

236187 No. TITLE ONLY

CITY OF SEATTLE,CLERKS OFFICE

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 12th 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:122930,931&934

was published on

03/23/09

The amount of the fee charged for the foregoing publication is the sum of $ 84.90, which amount has been paid in full.

JENNIFER A. PATZER
COMMISSION EXPIRES
NOTARY
PUBLIC
OCT. 24, 2011
STATE OF WASHINGTON

Subscribed and sworn to before me on

03/23/09

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 March 9, 2009, and published here by title only, will be mailed upon request, or can be accessed at http://clerk.ci.seattle.wa.us. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 122934

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

ORDINANCE NO. 122931

AN ORDINANCE authorizing the Fleets and Facilities Department Director to execute a lease agreement with 2915 Fourth LLC, a Washington limited liability company, for office, display and classroom space at 2915 4th Avenue South in Seattle.

ORDINANCE NO. 122930

AN ORDINANCE accepting deeds for street and/or alley purposes and easements for sidewalk purposes; establishing, laying off, and widening portions of the following rights-of-way: the alley in H. L. Yesler's Donation Claim Numbers 42 and 47; McGraw Street abutting Block 11, Hunter's Lake Union Addition to the City of Seattle; the sidewalk adjoining Block 11, Hunter's Lake Union Addition to the City of Seattle; the alley in Block F, 4th Addition to the City of Seattle; the sidewalk adjoining Block F, 4th Addition to the City of Seattle; the alley in Block 6, Denny-Fuhrman Addition to the City of Seattle; the alley in Block 4, Rainier Boulevard Addition to the City of Seattle; NW 100th Street abutting Block 1, S. F. Barker's Home Addition No. 1; the alley in Block 10, Randell's 2nd Addition to the City of Seattle; the alley in Block 13, Eastern Addition to the Town of Seattle; the alley in Block 17, C. D. Hillman's Atlantic City Addition to the City of Seattle Division No. 2; S Wolcott Street abutting Blocks 17 and 18, C.D. Hillman's Atlantic City Addition to the City of Seattle Division No. 2; the sidewalk adjoining Block 19, Hill Tract Addition to the City of Seattle; the sidewalk adjoining Lot 2, Acre 1, Tract 30, The Maple Leaf Addition to Green Lake Circle; the alley in Block 14, South Park; the alley in Block 8, The Byron Addition to the City of Seattle; Wolcott Avenue South abutting Blocks 17 and 18, C.D. Hillman's Atlantic City Addition to the City of Seattle Division No. 2; the sidewalk adjoining Block 2, Weedin's Division of Greenlake Addition to Seattle; the alley in Block 51, Boston Co.'s Plat of West Seattle; the alley in Block 5, Pettit's University Addition to the City of Seattle.

Publication ordered by JUDITH PIPPIN, City Clerk

Date of publication in the Seattle Daily Journal of Commerce, March 23, 2009.

3/23(236187)