

ORDINANCE No. 121871

COUNCIL BILL No. 115324

AN ORDINANCE authorizing the Superintendent of Parks and Recreation to sign an Air Space Lease, Maintenance Agreement and Supplemental Agreement #2 to Agreement GM 376 with the Washington State Department of Transportation for use of land for Boren-Pike-Pine Park.

# The City of Seattle--Legislative Department

## REPORT OF COMMITTEE

Date Reported and Adopted \_\_\_\_\_

Honorable President:

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

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

Motion to adopt: DD, 2nd: JG  
DD, JG, PS Y=3, N=0 Abtain: 0

8-1-05 Passed 9-0

COMPROLLER FILE No. _____	
Introduced: <u>JUL 18 2005</u>	By: <u>DELLA</u>
Referred: <u>JUL 18 2005</u>	To: <u>Parks, Neighborhoods &amp; Education</u>
Referred:	To:
Referred:	To:
Reported: <u>8-1-05</u>	Second Reading:
Third Reading: <u>8-1-05</u>	Signed: <u>8-1-05</u>
Presented to Mayor: <u>8-2-05</u>	Approved: <u>8/8/05</u>
Returned to City Clerk: <u>8/8/05</u>	Published: <u>4p. FAX 8/11/05</u>
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

*Law Department*

Committee Chair

ORDINANCE 121871

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2  
3 AN ORDINANCE authorizing the Superintendent of Parks and Recreation to sign an Air Space  
4 Lease, Maintenance Agreement and Supplemental Agreement #2 to Agreement GM 376  
5 with the Washington State Department of Transportation for use of land for Boren-Pike-  
6 Pine Park.

7 WHEREAS, Boren-Pike-Pine Park was originally developed by Washington State Department of  
8 Transportation (State) as a "sit-in" park during the construction of the Interstate 5  
9 Freeway; and

10 WHEREAS, the City of Seattle (City), through its Department of Parks and Recreation has  
11 maintained and operated Boren-Pike-Pine Park through a Maintenance Agreement with  
12 the State; and

13 WHEREAS, the 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy (2000 Parks  
14 Levy) authorized an \$825,000 project for the re-development of the park site; and

15 WHEREAS, the City of Seattle intends to make substantial improvements to Boren-Pike-Pine  
16 Park and it is in the best interests of the City to secure the improvement investment with a  
17 long-term lease of the premises; and

18 WHEREAS, the City and the State have negotiated an Air Space Lease, Maintenance Agreement,  
19 and Supplemental Agreement #2 to Agreement GM 376 securing the site for ten years  
20 and allocating responsibility for certain maintenance tasks; and

21 WHEREAS, the execution of the Air Space Lease and Maintenance Agreement must be  
22 accomplished prior to the construction of the proposed improvements; NOW,  
23 THEREFORE,

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

25 Section 1. The Superintendent of Parks and Recreation, or his designee, is hereby  
26 authorized to sign an Air Space Lease, Maintenance Agreement GM 1412, and Supplemental  
27 Agreement #2 to Agreement GM 376 substantially in the form of Attachment 1, Exhibit B to  
28 Attachment 1, and Attachment 2 to this ordinance affecting real property described as: That



1 portion of the Seattle Freeway (SR 5) in NW ¼ Section 32, Township 25 North, Range 4 East,  
2 W.M. in King County, Washington, described as follows:

3 Commencing at the centerline intersection of Pike Street and Boren Avenue, thence S 59°20'11"  
4 W along the centerline of Pike Street a distance of 164.68 feet; thence N 30°39'49" W a distance  
5 of 37.00 feet to the northerly margin of Pike Street as established by Governor's Deed and  
6 accepted by City of Seattle Ordinance 111838, said intersection point being at SR 5 Station  
7 2229+03.45, R193 feet and is the True Point of Beginning (TPOB).  
8

9 Thence N 16°54'20" E along a line parallel with and distant 193 feet easterly of the SR 5 Control  
10 Line, a distance of 175.75 feet to an intersection with a line parallel with and distant 35 feet  
11 southwesterly of the centerline of Boren Avenue, said intersection point being at SR 5 Station  
12 2230+79.20, R193 feet;  
13

14 Thence S 30°38'57" E along said line parallel with and distant 35 feet southwesterly of the  
15 centerline of Boren Avenue, a distance of 118.58 feet to said northerly margin of Pike Street,  
16 being at SR 5 Station 2229+99.18, R280.50 feet;  
17

18 Thence S 59°20'11" W along said northerly margin of Pike Street a distance of 129.69 feet to the  
19 TPOB.

20 Containing 7689.6 square feet together with

21 That portion of the Seattle Freeway (SR 5) in NW ¼ Section 32, Township 25 North, Range 4  
22 East, W.M. in King County, Washington, described as follows:

23 Commencing at the centerline intersection of Pike Street and Boren Ave; thence N 30°38'57" W  
24 along the centerline of Boren Avenue, a distance of 152.74 feet; thence N 59°21'03" E a distance  
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Terry Dunning  
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6/16/05  
version #2a

1 of 33.00 feet to the east margin of Boren Avenue and an intersection with the southerly line of  
2 Lot 3, Block 48, as platted in 'The Town of Seattle as laid off by the Heirs of Sarah A. Bell' and  
3 recorded in Volume 1 of Plats, page 121, records of King County, Washington, said intersection  
4 point being at SR 5 Station 2231+27.47, R240.98 feet and is the True Point of Beginning.

5 Thence N 30°38'57" W a long said easterly margin of Boren Avenue a distance of 65.02 feet to  
6 an intersection with a line parallel with and distant 193 feet easterly of the control line for Seattle  
7 Freeway (SR 5), said point being at SR 5 Station 2231+71.35, R193 feet;

8 Thence N 16°54'20" E along said parallel line a distance of 258.40 feet to an intersection with  
9 the southerly margin of Pine Street at SR 5 Station 2234+29.75, R193 feet;

10 Thence N 59°21'34" E along said southerly margin of Pine Street a distance of 80.09 feet to an  
11 intersection of the westerly margin of Minor Avenue as established by Vacation Ordinance 5586  
12 at SR 5 Station 2234+88.85, R 247.06 feet;

13 Thence S 30°37'51" E along said westerly margin of Minor Avenue a distance of 10.76 feet to an  
14 intersection with a line parallel with and distant 255 feet easterly of said control line for Seattle  
15 Freeway, said intersection point being at SR 5 Station 2234+81.58, R255 feet;

16 Thence S 16°54'20" W along said parallel line a distance of 318.44 feet to an intersection with  
17 the southerly line of Lot 3, Block 48, as platted in 'The Town of Seattle as laid off by the Heirs of  
18 Sarah A. Bell' and recorded in Volume 1 of Plats, page 121, records of King County,

19 Washington, said point being at SR 5 Station 2231+42.81, R255 feet;

20 Thence S 59°20'03 W along said southerly line of Lot 3, a distance of 20.78 feet to the TPOB.

21 Containing 19618.9 sf  
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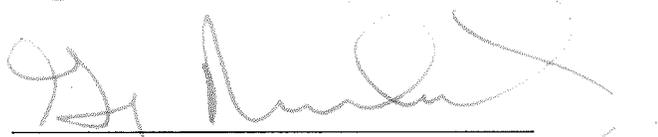
Section 2. Any act made consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

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 12<sup>th</sup> day of August, 2005, and signed by me in open session in authentication of its passage this 12<sup>th</sup> day of August, 2005.

  
\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this 8<sup>th</sup> day of August, 2005.

  
\_\_\_\_\_  
Gregory J. Nickels, Mayor

Filed by me this 11 day of Aug, 2005.

  
\_\_\_\_\_  
City Clerk

(Seal)



1 Attachment 1: Airspace Lease

2 Exhibits to Attachment 1:

3 Exhibit A – Boren Pike Pine Park photo

4 Exhibit B – Maintenance Agreement GM1412

5 Exhibit C – 01 to C-16 – Redevelopment Plans

6 Exhibit D – Maintenance Responsibility Matrix

7 Attachment 2: Supplemental Agreement No. 2 To Agreement GM 376

8 Exhibits to Attachment 2:

9 Exhibit 1 – GM 376 Agreement

10 Exhibit 2 – GM376, Supplemental #1, Airspace Lease

11 Exhibit A-2 – Sit In Park, 6<sup>th</sup> & Seneca St.

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Attachment 1

After recording return document to:  
State of Washington  
Department of Transportation  
Real Estate Services Office  
P O Box 47338  
Olympia, WA 98504-7338

Document Title:  
Reference Number of Related Document  
Landlord:  
Tenant(s):  
Legal Description  
Additional legal Description is on Page \_\_\_\_ of Document  
Assessor's Tax Parcel Number:

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RES 420  
Revised 8/02  
  
AA 1-11481  
IC: 1-17-06633



Revised 8/02  
RES 420

AA 1-11481  
IC: 1-17-06633  
Fed. Aid No. (V4)

SR 5, Seattle Freeway: Jackson Street to Olive Way

## AIRSPACE LEASE

THIS IS A LEASE made and entered into between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, ("WSDOT"), and the CITY OF SEATTLE, ("CITY") a municipal corporation, acting through its Department of Parks and Recreation;

WHEREAS, the land and premises to be leased were purchased in fee by WSDOT, for highway rights of way, with State Motor Vehicle Funds and Federal Aid highway funds, and are not presently needed exclusively for highway purposes; and

WHEREAS, WSDOT constructed the "sit-in park" now commonly known as Boren-Pike-Pine Park during construction of Interstate 5, in return for the City's ongoing maintenance of same; and

WHEREAS, the CITY desires to use the premises to be leased to construct, operate and maintain a public recreational area as part of their local park plan as an interim use until the land and premises to be leased are needed for a highway purpose; and

WHEREAS, the CITY has received additional parks funding and wishes to replace the deteriorated original State constructed improvements upon the Leased Premises, for which additional consideration is required; and

WHEREAS, the CITY shall maintain, pursuant to a separate Maintenance Agreement GM 1412 entered into concurrent with this Lease, WSDOT-owned real property located adjacent to the land and premises to be leased herein; and;

WHEREAS, WSDOT is granted authority to lease property under RCW 47.12.120; and

WHEREAS, the CITY has authority to lease property pursuant to Article 1, Section 1 of "The Charter of The City of Seattle" as adopted at the General Election of March 12, 1946 and as amended.



1 NOW THEREFORE in consideration of the terms, conditions, covenants and  
2 performances contained herein, IT IS MUTUALLY AGREED THAT:

3 1. **LEASED PREMISES.** WSDOT does hereby lease to the CITY, and the  
4 CITY does hereby lease from WSDOT, the premises ("Leased Premises" or "Premises") located  
5 in the NW¼ of the NW¼ and the SW¼ of the NW¼ in Section 32, Township 25 North, Range 4  
6 East, W.M., in King County, Washington, and known to be a portion of the highway right of way  
7 of SR 5, Seattle Freeway: Jackson Street to Olive Way, Sheet 6 of 6 sheets, and as further shown  
8 on **Exhibit A** attached hereto and by this reference incorporated herein.

9 The Leased Premises consist of ± 25,419 square feet of land.

10 2. **TERM.** The term of this lease ("Lease") shall be Ten (10) years,  
11 COMMENCING ON THE DATE OF EXECUTION OF THIS LEASE BY WSDOT  
12 ("Commencement Date").

13 3. **RENEWAL.** This Lease may be renewed by CITY for (1) additional Ten (10)  
14 year period ("Renewal Period"); Provided that; (A.) CITY is not in default and has not been in  
15 default during the term of this Lease; (B.) there is no other public need for the Leased Premises;  
16 (C.) CITY's continued use under this Lease does not impair the safety or operation of WSDOT  
17 's highway or facility, as solely determined by WSDOT; and (D.) the terms and conditions of  
18 this Lease conform to then existing state policies or practices, laws, regulations and contracts, or  
19 provided CITY is willing to amend this Lease to bring it into compliance with such policies,  
20 practices, laws, regulations, and contracts. The Renewal Period shall be on the same terms and  
21 conditions as set forth herein, except as modified by any changes in policies, practices, laws,  
22 regulations or contracts and as reflected in a written amendment signed by both parties. CITY  
23 shall give notice of its intent to renew this Lease for the Renewal Period at least ninety (90) days,  
24 but not more than six (6) months, prior to the expiration of this Lease, or any extension thereof.

25 4. **HOLDING OVER.** In the event CITY shall hold over or remain in possession  
26 of the Leased Premises with the consent of WSDOT after the expiration of the stated term of this  
27 Lease, or any written extension or renewal of the term of this Lease, such holding over or  
28 continued possession shall create a tenancy from month-to-month only, upon the same terms and  
29 conditions as are set forth herein; Provided, that WSDOT or CITY may, in addition to other  
30 remedies provided elsewhere herein, terminate this Lease for any reason with not less than  
31 twenty (20) days prior written notice.

32 5. **CONSIDERATION.**



1           A.     CITY's maintenance of the WSDOT-owned real property located adjacent  
2 to the Leased Premises under Maintenance Agreement GM 1412 in exchange for CITY's use of  
3 the Leased Premises is deemed a highway benefit equivalent in value to the economic rent for  
4 the Leased Premises. Maintenance Agreement GM 1412 is attached hereto as **Exhibit B**, and by  
5 this reference made a part hereof (hereinafter Maintenance Agreement).

6           B.     In the event the Maintenance Agreement is terminated, expires, or is  
7 modified, WSDOT shall have the right to review such change, and may require that this Lease be  
8 amended and CITY begin paying rent retroactive to the termination, expiration or modification  
9 to the Maintenance Agreement. Fair market rent will be determined by an appraiser agreed  
10 upon by WSDOT and CITY.

11           C.     In the event the Lease is modified to require rent payment, WSDOT's  
12 acceptance of late payment charges and/or any portion of the overdue payment shall in no event  
13 constitute an accord and satisfaction, compromise of such payment, or a waiver of CITY's  
14 default with respect to such overdue payment, nor prevent WSDOT from exercising any other  
15 rights and remedies granted in this Lease.

16           **6.     TERMINATION BY WSDOT.**

17           A.     WSDOT may terminate this Lease, without penalty or further liability as  
18 follows:

19                   (1)    Upon not less than thirty (30) days prior written notice to CITY, if  
20 CITY defaults, and fails to cure such default within that thirty (30) day period, or such longer  
21 period, as may be reasonably determined by WSDOT, if CITY is diligently working to cure the  
22 default;

23                   (2)    Upon not less than thirty (30) days prior written notice to CITY, if  
24 CITY does not begin construction of the improvements detailed in the Boren-Pike-Pine Park  
25 Redevelopment contract plans, PW #2004-004, Parks Contract #1641, attached hereto as **Exhibit**  
26 **C** and by this reference incorporated herein, within One Hundred and Twenty (120) days from  
27 the Commencement Date of this Lease, and complete the work within Three Hundred and Sixty  
28 Five (365) days of the beginning of said construction. WSDOT and CITY may mutually agree  
29 in writing to extend the above periods to accommodate conditions out of the control of either  
30 party, such as, but not limited to, weather, availability of equipment, and availability of utilities.



1 (3) Immediately, upon written notice, if WSDOT is required by court  
2 order, by legislative action, or by a governmental agency having jurisdiction to take some action,  
3 which would effectively prohibit CITY's use of the Leased Premises;

4 (4) Immediately, upon written notice, if a receiver is appointed to take  
5 possession of CITY's assets, CITY makes a general assignment for the benefit of creditors, or  
6 CITY becomes insolvent or takes or suffers action under the Bankruptcy Act;

7 (5) Upon not less than ninety (90) days prior written notice, unless an  
8 emergency exists, as determined by WSDOT, then immediately, if WSDOT determines that it is  
9 in the best interest of WSDOT to terminate this Lease; or

10 (6) Upon not less than thirty (30) days prior written notice if the  
11 Leased Premises has been abandoned, in the STATE's sole judgment, for a continuous period of  
12 ninety (90) days.

13 (7) Immediately upon termination of the Maintenance Agreement.

14 B. It is hereby acknowledged and agreed that the highway use of the Leased  
15 Premises is paramount to any other use, including CITY's interim use of the Leased Premises for  
16 a public recreational area.

17 C. Waiver or acceptance of any default of the terms of this Lease by WSDOT  
18 shall not operate as a release of CITY's responsibility for any prior or subsequent default.

19 D. If CITY defaults on any provision in this Lease, three (3) times within a  
20 twelve (12) month period, the third default shall be deemed "non-curable" and this Lease may be  
21 terminated by WSDOT on not less than thirty (30) days prior written notice.

22 **7. TERMINATION BY CITY.** CITY may terminate this Lease without  
23 penalty or further liability as follows:

24 A. Upon not less than ninety (90) days prior written notice for any reason;

25 B. Upon not less than thirty (30) days prior written notice, if WSDOT  
26 defaults and fails to cure such default within that thirty (30) day period, or such longer period, as  
27 may be reasonably determined by CITY, if WSDOT is diligently working to cure the default; or



1           C.     Immediately, upon written notice, if in CITY's judgment the Leased  
2 Premises is destroyed or damaged so as to substantially and adversely affect CITY's authorized  
3 use of the Leased Premises.

4           D.     Immediately upon written notice to WSDOT if the Maintenance  
5 Agreement is terminated.

6           E.     Immediately, upon written notice to WSDOT, if the CITY adopts a budget that  
7 does not provide sufficient funds to meet the obligations set forth herein or in the Maintenance  
8 Agreement, at which point the CITY will not interfere with WSDOT's ability to dispose of the  
9 Leased Premises.

10           **8.     NONAPPLICABILITY OF RELOCATION ASSISTANCE.**     CITY  
11 acknowledges that this Lease does not at any time entitle CITY to assistance under the Uniform  
12 Relocation and Real Property Acquisition Policy (Ch. 8.26 RCW).

13           **9.     ENCUMBRANCES.**     CITY shall not encumber the Leased Premises.

14           **10.    SUBSEQUENT USE FOR TRANSPORTATION PURPOSES.**

15           A.     CITY and WSDOT hereby affirm that the Leased Premises is part of the  
16 highway right of way of Interstate 5, and will remain so even after CITY is permitted to improve  
17 and use the Leased Premises for a public recreational area on an interim basis only, and that upon  
18 expiration or termination of this Lease for any reason, and the subsequent use of the Leased  
19 Premises for transportation or other purposes, such use will not be considered the use of any  
20 publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge within  
21 the meaning of 23 U.S.C. 138 and 49 U.S.C. 303.

22           B.     Within thirty (30) days of occupancy, CITY, at its expense, shall erect and  
23 maintain a permanent sign at a location on the Leased Premises approved by WSDOT stating as  
24 follows:

25           "      This public recreational area is located on highway right of way under an Agreement  
26 between City of Seattle, acting through its Department of Parks and Recreation and the  
27 Washington State Department of Transportation."

28           **11.    USE OF LEASED PREMISES.**



1           A.     No use other than the construction, operation, and maintenance of a public  
2 recreation area, as shown on **Exhibit C-01 to C-16**, is permitted without the prior written  
3 approval of WSDOT. CITY expressly agrees that it will not charge others to use the Leased  
4 Premises. No motorized vehicles will be allowed on the Leased Premises except for CITY's  
5 maintenance vehicles and emergency vehicles responding to an emergency on the Leased  
6 Premises. In using the Leased Premises, CITY shall comply with all applicable policies and  
7 regulations, including, but not limited to RCW 47.42 et seq. and WAC 468-66 et seq., heretofore  
8 adopted or hereafter promulgated by WSDOT relative to the location, operation, and  
9 maintenance of improvements located on the Leased Premises.

10           B.     Notwithstanding the foregoing, the CITY may issue event or use permits  
11 with the written concurrence of WSDOT for the use of all or a portion of the Leased Premises,  
12 provided the minimum requirements listed below and any other requirements deemed reasonably  
13 necessary by WSDOT are met.

14                   (1)     The event or use does not affect or impact the traveled lanes or the  
15 operation of Interstate 5, or its ramps, and is consistent with the park like atmosphere intended  
16 for the area;

17                   (2)     There is no charge by the CITY or the group authorized by the  
18 CITY to use the Leased Premises, for the use of the Leased Premises; Provided the CITY may  
19 charge event, use, permit or other fees that directly reimburse the CITY for services provided by  
20 the CITY that are directly associated with such event or activity (e.g., police or clean up  
21 services).

22                   (3)     The CITY, in the case of a CITY produced event, warrants that it  
23 is self-insured and provides acceptable evidence of its self-insurance status to WSDOT or, if the  
24 CITY is not self-insured, secures liability insurance in the form and amount reasonably  
25 determined necessary by WSDOT;

26                   (4)     The CITY-authorized group, in the case of other than CITY  
27 produced events, secures liability insurance in the form and amount reasonably determined  
28 necessary by WSDOT;

29                   (5)     The CITY agrees to defend, indemnify, save and hold harmless  
30 WSDOT and the Federal Highway Administration against all claims arising out of any special  
31 event activity. This obligation shall not include such claims which may be caused by the sole  
32 negligence of WSDOT, its authorized employees or contractors acting within the scope of their  
33 employment or contract, or the Federal Highway Administration authorized employees or



1 contractors acting within the scope of their employment or contract; provided, that if the claims  
2 are caused by or result from the concurrent negligence of (a) WSDOT, and the FHWA, and their  
3 authorized employees or contractors and (b) CITY, its assigns, subtenants, agents, contractors,  
4 licensees, invitees, or employees, this indemnity provision shall be valid and enforceable only to  
5 the extent of the negligence of CITY or its assigns, subtenants, agents, contractors, licensees,  
6 invitees, or employees.

7 (6) The CITY assumes responsibility for all clean up and repair of any  
8 damage resulting from the use or event.

9 C. CITY will not allow third parties to use the public recreational area for  
10 vehicular access to private property or improvements. The parties hereto acknowledge that the  
11 Leased Premises are unfenced public property and as such, incidental use may be made of the  
12 Leased Premises by neighbors and/or their invitees for pedestrian access to adjacent properties.  
13 WSDOT and CITY acknowledge that this incidental use does not create any third party rights.  
14 The CITY will defend any action brought by a third party asserting such rights. Furthermore, in  
15 using the Leased Premises, it is expressly agreed that CITY shall (A.) comply with all applicable  
16 federal, state and local laws, ordinances, and regulations, including environmental requirements  
17 that are in force or which may hereafter be in force, and (B.) secure all necessary permits and  
18 licenses for the uses of the Leased Premises authorized in this Lease. Access to the Leased  
19 Premises shall be from the adjacent public city streets. Direct access to ramps or traveled lanes  
20 of limited access highways is not permitted. All grading and construction plans and any changes  
21 thereof are subject to approval by WSDOT. CITY shall not commit or allow to be committed  
22 any waste upon the Leased Premises nor allow any public or private nuisance.

23 **12. SIGNS, DISPLAY LIGHTS, ADVERTISING MATERIALS.** Signs, display  
24 lights, or advertising media/materials are not permitted unless they comply with Ch. 47.42 RCW  
25 and Ch. 468-66 WAC and are completely detailed on a separate plan sheet which requires  
26 specific prior written approval by WSDOT.

27 **13. FENCES.**

28 A. Except as provided elsewhere herein, any WSDOT-owned fences in place  
29 at the time of execution of this Lease or relocated to separate the Leased Premises from the  
30 traveled roadway on limited access highways will be maintained by WSDOT for the duration of  
31 the Lease. Nothing is to be attached to WSDOT's fence without WSDOT's prior written  
32 approval. If any fence is damaged as a result of CITY's activities, CITY will immediately repair  
33 such damage at its cost and to WSDOT's satisfaction.



1           B.       CITY agrees to maintain the existing fence, west of the Leased Premises  
2 that separates the Leased Premises from that area covered by Maintenance Agreement GM 1412.

3           **14.    CONDITION OF THE PROPERTY.** WSDOT and CITY acknowledge that  
4 they have jointly examined the Leased Premises and CITY accepts said Leased Premises in its  
5 present condition as of the Commencement Date of this Lease.

6           **15.    MAINTENANCE.** CITY shall perform or cause to be performed at its expense  
7 all maintenance of the Leased Premises that will include, but not be limited to, those items  
8 shown on **Exhibit D**, attached hereto and incorporated herein, and keep the Leased Premises in  
9 good condition, both as to safety and appearance, to the satisfaction of WSDOT.

10           **16.    ENVIRONMENTAL REQUIREMENTS.**

11           A. CITY and WSDOT represent, warrant and agree that they will conduct their  
12 activities on and off the Leased Premises in compliance with all applicable environmental laws.  
13 As used in this Lease, Environmental Laws means all federal, state and local environmental  
14 laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions,  
15 authorizations or permits, including, but not limited to, the Resource Conservation and Recovery  
16 Act, 42 U.S.C. § 6901, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water  
17 Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community  
18 Right-to-Know Act, 42 U.S.C. § 11001, et seq., the Comprehensive Environmental Response,  
19 Compensation and Liability Act, 42 U.S.C. § 9601, et seq., the Toxic Substances Control Act, 15  
20 U.S.C. § 2601, et seq., the Oil Pollution Liability and Compensation Act, 33 U.S.C. § 2701, et  
21 seq., and Washington or any other comparable local, state, or federal statute or ordinance  
22 pertaining to the environment or natural resources and all regulations pertaining thereto,  
23 including all amendments and/or revisions to said laws and regulations.

24           B.       Toxic or hazardous substances are not allowed on the Leased Premises  
25 without the express written permission of WSDOT and under such terms and conditions as may  
26 be specified by the STATE. For the purposes of this Lease, "Hazardous Substances," shall  
27 include all those substances identified as hazardous under the Comprehensive Environmental  
28 Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., and the Washington  
29 Model Toxics Control Act, RCW 70.105D et seq., including all amendments and/or revisions to  
30 said laws and regulations, and shall include gasoline and other petroleum products. CITY is  
31 hereby authorized to bring onto the Leased Premises gasoline and petroleum products necessary  
32 to carryout the maintenance and operation requirements set forth in this Lease. In the event such  
33 permission is granted, the disposal of such materials must be done in a legal manner by CITY.



1           C.     CITY agrees to cooperate in any environmental investigations conducted  
2 by WSDOT staff or independent third parties where there is evidence of contamination on the  
3 Leased Premises, or where WSDOT is directed to conduct such audit by an agency or agencies  
4 having jurisdiction. CITY will reimburse WSDOT for the cost of such investigations, where the  
5 need for said investigation is determined to be caused by CITY's operations. CITY will provide  
6 WSDOT with notice of any inspections of the Leased Premises, notices of violations, and orders  
7 to clean up contamination. CITY will permit WSDOT to participate in all settlement or  
8 abatement discussions. In the event that CITY fails to take remedial measures as duly directed by  
9 a state, federal, or local regulatory agency within ninety (90) days of such notice, WSDOT may  
10 elect to perform such work, and CITY covenants and agrees to reimburse WSDOT for all direct  
11 and indirect costs associated with WSDOT's work where said contamination is determined to  
12 have resulted from CITY's use of the Leased Premises. CITY further agrees that the use of the  
13 Leased Premises shall be such that no hazardous or objectionable smoke, fumes, vapors, odors, or  
14 discharge of any kind shall rise above the grade of the right of way.

15           D.     For the purposes of this Lease, "Costs" shall include, but not be limited to,  
16 all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties,  
17 and attorney fees and other litigation costs incurred in complying with state or federal  
18 environmental laws, which shall include, but not be limited to, the Comprehensive  
19 Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; the Clean  
20 Water Act, 33 U.S.C. § 1251; the Clean Air Act, 42 U.S.C. § 7401; the Resource Conservation  
21 and Recovery Act, 42 U.S.C. § 6901; and the Washington Model Toxics Control Act, Ch.  
22 70.105D RCW, et seq., including all amendments and/or revisions to said laws and regulations.

23           E.     CITY agrees to defend, indemnify and hold harmless WSDOT from and  
24 against any and all claims, causes of action, demands and liability including, but not limited to,  
25 any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and  
26 attorneys' fees associated with the removal or remediation of any Hazardous Substances that  
27 have been released, or otherwise come to be located on the Leased Premises, including those that  
28 may have migrated from the Leased Premises through water or soil to other properties, including  
29 without limitation, the adjacent WSDOT property, and which are caused by or result from  
30 CITY's activities on the Leased Premises. CITY further agrees to retain, defend, indemnify and  
31 hold harmless WSDOT from any and all liability arising from the offsite disposal, handling,  
32 treatment, storage, or transportation of any such Hazardous Substances removed from said  
33 Leased Premises. This obligation shall not include such claims, actions, demands and liability as  
34 shown above, which may be caused by the sole negligence of WSDOT or its authorized agents  
35 or employees; provided, that if the claims, actions, demands or liability are caused by or result  
36 from the concurrent negligence of (a) WSDOT, its agents or employees and (b) CITY, its



1 assigns, subtenants, agents, contractors, licensees, invitees, or employees, this indemnity  
2 provision shall be valid and enforceable only to the extent of the negligence of CITY or its  
3 assigns, subtenants, agents, contractors, licensees, invitees or employees.

4 F. WSDOT agrees to defend, indemnify, and hold harmless the CITY from and  
5 against any and all claims, causes of action, demands and liability including, but not limited to,  
6 any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and  
7 attorneys' fees associated with the removal or remediation of any Hazardous Substances that  
8 have been released, or otherwise come to be located on the Leased Premises, including those that  
9 may have migrated from the Leased Premises through water or soil to other properties, which  
10 are caused by or result from WSDOT's activities on the Leased Premises. WSDOT further  
11 agrees to retain, defend, indemnify, and hold harmless the CITY from any and all liability arising  
12 from the offsite disposal, handling, treatment, storage or transportation of any such Hazardous  
13 Substances removed from the Leased Premises. This obligation shall not include such claims,  
14 actions, demands and liability as shown above, which may be caused by the sole negligence of  
15 the CITY or its assigns, subtenants, agents, contractors, licensees, invitees, or employees;  
16 provided, that if the claims, actions, demands or liability are caused by or result from the  
17 concurrent negligence of (a) WSDOT, its authorized agents or employees and (b) CITY, its  
18 assigns, subtenants, agents, contractors, licensees, invitees, or employees, this indemnity  
19 provision shall be valid and enforceable only to the extent of the negligence of WSDOT or its  
20 authorized agents or employees.

21 G. The provisions of this section shall survive the termination or expiration of  
22 this Lease.

23 **17. WSDOT'S RESERVATION OF RIGHT TO MAINTAIN AND GRANT**  
24 **UTILITY FRANCHISES AND PERMITS.**

25 A. WSDOT reserves the right for utility franchise and permit holders to enter  
26 upon the Leased Premises to maintain, repair and enhance existing facilities and install new  
27 utilities and, for itself, to grant utility franchises and/or permits across the Leased Premises.  
28 Such installation will be accomplished in such a manner as to minimize any disruption to CITY.  
29 WSDOT will provide the City with plans of said installation no less than ten (10) working days  
30 prior to the anticipated commencement of construction. The franchise/permit holder will be  
31 required to restore paving, landscaping, grading, or other improvements damaged by the  
32 installation. WSDOT also reserves the right to withdraw portions of the Leased Premises for  
33 uses such as, but not limited to, telecommunications transmission sites, which WSDOT  
34 determines to be reasonably compatible with CITY's authorized use of Leased Premises. In the



1 event such withdrawals occur, the City and WSDOT shall promptly modify or amend those  
2 elements, if any, of this Lease and Maintenance Agreement GM 1412 to reflect the changed  
3 conditions of the Leased Premises.

4 B. CITY shall not disturb markers installed by a franchise/permit  
5 holder and will contact and provide notice to any franchise/permit holder and all owners of  
6 underground facilities prior to any excavation. CITY shall contact WSDOT and call the  
7 Underground Utility Locating Service, or its successor organization, as part of its efforts to  
8 ascertain any and all owners of underground utility facilities and to locate the utility. CITY shall  
9 not damage legally installed underground utilities. CITY shall comply with all applicable  
10 provisions of Chapter 19.122 RCW relating to underground facilities.

11 **18. USE OF RIGHT OF WAY UNDER OR ADJACENT TO STRUCTURE.**

12 A. CITY agrees to provide protection against vehicular hits or other likely  
13 causes of damage arising from CITY's use of the Leased Premises to all retaining walls and to  
14 piers exposed to such potential damage under any elevated highway structure existing on the  
15 Leased Premises. Such wall and pier protection shall be provided to the satisfaction of WSDOT  
16 prior to occupancy.

17 B. CITY shall not weld any metal object to any metal member of any metal  
18 structure, nor drill or rivet into nor otherwise fasten anything to any pier or beam on any  
19 concrete, metal, or wood structure without WSDOT's specific written approval of detailed  
20 drawings for such welding, riveting, drilling, or fastening.

21 C. CITY shall at its own expense, and upon prior written approval from  
22 WSDOT, make any provisions it deems necessary to protect users of the proposed facility from  
23 any hazards resulting from use and operation of the highway.

24 **19. TAXES, ASSESSMENTS, AND UTILITIES.** CITY agrees to pay all  
25 assessments that benefit the Leased Premises and/or which may hereafter become a lien on the  
26 interest of CITY in accordance with RCW 79.44.010. CITY also agrees to pay all taxes that may  
27 hereafter be levied or imposed upon the interest of CITY or by reason of this Lease. CITY is  
28 responsible for and agrees to pay the cost of utilities, including, but not limited to, surcharges,  
29 fuel adjustments, rate adjustments and taxes that serve the Leased Premises.

30 **20. LIENS.**



1           A.     Nothing in this Lease shall be deemed to make CITY the agent of  
2 WSDOT for purposes of construction, repair, alteration, or installation of structures,  
3 improvements, equipment, or facilities on the Leased Premises. CITY acknowledges that  
4 WSDOT may not, and shall not, be subject to claims or liens for labor or materials in connection  
5 with such activities by CITY.

6           B.     CITY shall at all times indemnify and hold harmless WSDOT from all  
7 claims for labor or materials in connection with construction, repair, alteration, or installation of  
8 the CITY's structures, improvements, equipment, or facilities on or within the Leased Premises,  
9 and from the cost of defending against such claims, including attorney fees.

10          C.     In the event a lien is filed upon the Leased Premises due to an act or  
11 omission of CITY, its agents, contractors or employees, CITY shall:

- 12                   1.     Record a valid Release of Lien;
- 13                   2.     Deposit sufficient cash with WSDOT to cover the amount of the  
14 claim on the lien in question and authorize payment to the extent of said deposit to any  
15 subsequent judgment holder that may arise as a matter of public record from litigation with  
16 regard to lienholder claim; or
- 17                   3.     Procure and record a bond which releases the Leased Premises  
18 from the claim of the lien and from any action brought to foreclose the lien.

19          D.     Should CITY fail to accomplish 1, 2, or 3, above, within fifteen (15) days  
20 after the filing of such a lien, the Lease shall be in default.

21          **21. WSDOT'S RIGHT OF ENTRY AND INSPECTION.** WSDOT, for itself, its  
22 agents and contractors, and for the Federal Highway Administration, reserves the right to enter  
23 upon the Leased Premises at any time without notice to CITY for the purpose of inspection,  
24 maintenance, construction, or reconstruction of the highway facility or any element thereof, or to  
25 perform environmental audits as provided for elsewhere in this Lease. Any loss of the use of the  
26 Leased Premises by Lessee due to WSDOT's exercise of such right will not be compensated, and  
27 WSDOT shall in no way be responsible for any incidental or consequential damages due to such  
28 loss of use, if any, by CITY. WSDOT and FHWA may from time-to-time go upon the Leased  
29 Premises for the purpose of inspecting any, construction, or maintenance work being done by  
30 CITY. Further, this right shall not impose any obligation upon WSDOT to make inspections to  
31 ascertain safety of CITY's improvements or the condition of the Leased Premises. Entry upon



1 the Leased Premises for any other purpose by WSDOT and FHWA shall be conducted with  
2 reasonable notice to CITY and during the hours of 8:00 a.m. to 5:00 p.m.

3 **22. INSURANCE.**

4 A. CITY warrants that it is self-insured, and agrees to provide acceptable  
5 evidence of its self-insured status to WSDOT. CITY's insurance policy must provide liability  
6 coverage for the Leased Premises, including public liability coverage for bodily injury, property  
7 damage, and personal injury of not less than Two Million and no/100 Dollars (\$2,000,000.00)  
8 combined single limit per occurrence, with a general aggregate amount of not less than Four  
9 Million and no/100 Dollars (\$4,000,000.00) per policy period. CITY shall increase the policy  
10 limits at its sole cost, when and if WSDOT deems it necessary due to CITY's use of the Leased  
11 Premises.

12 B. CITY assumes all obligations for premium payment, and in the event of  
13 nonpayment, CITY is obligated to reimburse WSDOT the cost of maintaining the insurance  
14 coverage and any legal fees incurred in enforcing such reimbursement should CITY fail to pay  
15 the policy premiums.

16 C. Coverage, if obtained by CITY in compliance with this section, shall not  
17 be deemed as having relieved CITY of any liability in excess of such coverage.

18 D. In the event CITY, after commencement of this Lease, elects to terminate  
19 its self-insured status and secure commercial liability coverage, CITY will promptly notify  
20 WSDOT, and provide a certificate of insurance from an insurer licensed to conduct business in  
21 the State of Washington, in the amounts and types as set forth in **paragraph 22.A.** above.  
22 Further, CITY shall provide a certificate of insurance within Ten (10) days of receiving a written  
23 notice from WSDOT for an increase in the coverage amounts.

24 **23. HOLD HARMLESS/INDEMNIFICATION.**

25 A. CITY, its successors and assigns, will protect, save, and hold harmless  
26 WSDOT, its authorized agents and employees, from all claims, actions, costs, damages, or  
27 expenses of any nature whatsoever by reason of the acts or omissions of the CITY, its assigns,  
28 subtenants, agents, contractors, licensees, invitees, employees, or any person whomsoever,  
29 arising out of or in connection with any acts or activities related to this Lease, whether those  
30 claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the  
31 Leased Premises. CITY further agrees to defend WSDOT, its agents or employees, in any  
32 litigation, including payment of any costs or attorney's fees, for any claims or actions



1 commenced, arising out of, or in connection with acts or activities related to this Lease, whether  
2 those claims, actions, costs, damages, or expenses result from acts or activities occurring on or  
3 off the Leased Premises. This obligation shall not include such claims, actions, costs, damages,  
4 or expenses which may be caused by the sole negligence of WSDOT or its authorized agents or  
5 employees; provided, that if the claims or damages are caused by or result from the concurrent  
6 negligence of (a) WSDOT, its agents or employees and (b) CITY, its assigns, subtenants, agents,  
7 contractors, licensees, invitees, employees, or involves those actions covered by RCW 4.24.115,  
8 this indemnity provision shall be valid and enforceable only to the extent of the negligence of  
9 CITY or its assigns, subtenants, agents, contractors, licensees, invitees, employees.

10 B. To the extent authorized by law, WSDOT, its successors and assigns will  
11 protect, save, and hold harmless the CITY, its authorized agents and employees, from all claims,  
12 actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions  
13 of WSDOT, its agents or employees, arising out of or in connection with any acts or activities  
14 related to this Lease, whether those claims, actions, costs, damages, or expenses result from acts  
15 or activities occurring on or off the Leased Premises. WSDOT further agrees to defend the  
16 CITY, its authorized agents or employees, in any litigation, including payment of any costs or  
17 attorney's fees, for any claims or actions commenced, arising out of, or in connection with acts  
18 or activities related to this Lease, whether those claims, actions, costs, damages, or expenses  
19 result from acts or activities occurring on or off the Leased Premises. This obligation shall not  
20 include such claims, actions, costs, damages, or expenses which may be caused by the sole  
21 negligence of the CITY or its authorized agents or employees; provided, that if the claims or  
22 damages are caused by or result from the concurrent negligence of (a) WSDOT, its authorized  
23 agents or employees and (b) the CITY, its authorized agents or employees, or involves those  
24 actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only  
25 to the extent of the negligence of WSDOT or its authorized agents or employees.

26 C. The indemnification provisions contained in this section shall survive the  
27 termination or expiration of this Lease.

28 **24. PERSONAL PROPERTY.** WSDOT shall not be liable in any manner for, or on  
29 account of, any loss or damage sustained to any property of whatsoever kind stored, kept, or  
30 maintained on or about the Leased Premises, except for such claims or losses that may be caused  
31 by WSDOT or its authorized agents or employees. Upon termination or expiration of this Lease,  
32 WSDOT or its agent may remove all personal property of CITY remaining on the Leased  
33 Premises at CITY's expense and dispose of it in any manner WSDOT deems appropriate. CITY  
34 agrees to reimburse WSDOT for the costs of such removal and disposal within thirty (30) days of  
35 the date of WSDOT's invoice.



1           **25. ADDITIONAL CONSTRUCTION PROHIBITED.**       No new construction  
2 by CITY, other than as provided elsewhere herein, is permitted for the duration of this Lease,  
3 except as may be approved in advance and in writing by WSDOT.

4           **26. WSDOT'S APPROVAL OF DESIGN AND CONSTRUCTION.**       CITY  
5 covenants that any regrading or improvements to be constructed on the Leased Premises will not  
6 at any time during or after construction either damage, threaten to damage, or otherwise  
7 adversely affect any part or element of the highway facility or the operation thereof. WSDOT  
8 shall be furnished with two sets of complete plans, details, and specifications and any revisions  
9 thereto for grading and all improvements proposed to be placed on the Leased Premises. No  
10 work shall be done without the prior written approval of such plans by WSDOT. All  
11 construction work shall be done in conformity with the plans and specifications as approved.  
12 WSDOT may take any action necessary, including directing that work be temporarily stopped or  
13 that additional work be done, to ensure compliance with the plans and specifications, protection  
14 of all parts and elements of the highway facility, and compliance with WSDOT's construction  
15 and safety standards. The improvements shall be designed and constructed in a manner that will  
16 permit access to the highway facility for the purpose of inspection, maintenance, and  
17 construction by WSDOT.

18           **28. "AS-BUILT" PLANS.**       Within ninety (90) days following CITY's  
19 completion of underground utilities and/or buildings or other construction, CITY shall furnish  
20 WSDOT a complete set of reproducible "As-Built" plans. If said plans are not received within  
21 ninety (90) days, this will be considered a default, and this Lease may be terminated pursuant to  
22 Section 6 herein.

23           **29. NONDISCRIMINATION.**       CITY, for itself, its successors and assigns, as part  
24 of the consideration hereof, does hereby agree to comply with all applicable civil rights and  
25 antidiscrimination requirements, including, but not limited to, Chapter 49.60 RCW.

26           **30. ASSIGNMENT.**       Neither this Lease nor any rights created by it may be  
27 assigned, sublet, or transferred. In the event that CITY allows others to use any portion of the  
28 Leased Premises, whether by written or oral agreement without WSDOT's prior written  
29 approval, WSDOT, in addition to or in lieu of terminating this Lease for default, and in addition  
30 to any damages it may experience, may demand a share of any revenue generated by such  
31 unauthorized use. WSDOT shall set the amount of said share, and its decision shall be final and  
32 binding. WSDOT may demand such share at any time during the term of this Lease. CITY shall  
33 pay said share to WSDOT within thirty (30) days of demand. CITY agrees to pay said share  
34 retroactively to the date the unauthorized third party's use of the Leased Premises commenced.



1 Furthermore, such unauthorized assignment shall not relieve CITY hereunder from all of its  
2 obligations under this Lease, including but not limited to, payment of rent, if applicable, and  
3 maintenance of insurance.

4 **31. PERFORMANCE BY WSDOT.** If CITY defaults in the performance or  
5 observation of any covenant or agreement contained in this Lease, WSDOT, without notice if  
6 deemed by WSDOT that an emergency exists, or if no emergency exists, with thirty (30) days  
7 prior written notice, may direct CITY to stop work and may itself perform or cause to be  
8 performed such covenant or agreement and may enter upon the Leased Premises for such  
9 purpose. Such emergency shall include, but not be limited to, endangerment of life, the highway  
10 facility or failure of CITY to obtain in a timely manner the specified insurance coverage. CITY  
11 shall reimburse WSDOT the entire cost and expense of such performance by WSDOT within  
12 thirty (30) days of the date of WSDOT's invoice. Any act or thing done by WSDOT under the  
13 provisions of this section shall not be construed as a waiver of any agreement or condition herein  
14 contained or the performance thereof.

15 **32. DISPOSITION OF IMPROVEMENTS.** Upon termination of this Lease under  
16 any provision hereof, CITY agrees, if so directed by WSDOT, to obliterate the public  
17 recreational area, remove all improvements and personal property on the Leased Premises at  
18 CITY's expense, in a manner prescribed by WSDOT. In the event CITY fails to remove said  
19 improvements and/or personal property upon termination, WSDOT may remove and dispose of  
20 said improvements, as it deems appropriate and at CITY's expense. CITY shall reimburse  
21 WSDOT for all expenses incurred in such removal and disposal within thirty (30) days of the  
22 date of WSDOT's invoice for such costs.

23 **33. WSDOT ACCESS TO REMOVE IMPROVEMENTS.** In the event CITY  
24 fails to remove improvements or restore the Leased Premises to WSDOT's satisfaction, then if  
25 necessary or desirable in WSDOT's judgment for reasons of safety or economy, WSDOT or its  
26 agents shall have the right to cross any lands owned or otherwise controlled by CITY for the  
27 purpose of accomplishing said removal or restoration subject to applicable Street Use or other  
28 permitting requirements, which will not be unreasonably withheld, conditioned or delayed.

29 **34. RESTORATION OF SITE.** Prior to termination of this Lease, CITY agrees, if  
30 so directed by WSDOT, to restore the Leased Premises to its condition prior to CITY's  
31 occupancy, reasonable wear and tear excepted. This work is to be done at CITY's expense to the  
32 satisfaction of WSDOT.



1           **35. VACATION OF LEASED PREMISES.** Upon termination of this Lease,  
2 CITY shall cease its operations on and/or use of the Leased Premises. In the event CITY fails to  
3 vacate the Leased Premises on the date of termination, CITY shall be liable for any and all costs  
4 to WSDOT arising from such failure.

5           **36. BINDING CONTRACT.** This Lease shall not become binding upon WSDOT  
6 unless and until executed for WSDOT by the Secretary of Transportation or his duly authorized  
7 representative.

8           **37. ATTORNEYS' FEES.** In the event of any controversy, claim, or dispute  
9 arising out of this Lease, each party shall be solely responsible for the payment of its own legal  
10 expenses, including but not limited to, attorney's fees and costs.

11           **38. MODIFICATIONS.** This Lease, and the Maintenance Agreement contain all the  
12 agreements and conditions made between the parties hereto pertaining to the use of the Leased  
13 Premises herein described and may not be modified orally or in any other manner other than by a  
14 written agreement signed by all parties hereto. No failure on the part of a party to enforce any  
15 covenant or provision herein contained, nor any waiver of any right hereunder, unless in writing,  
16 shall discharge or invalidate such covenant or provision or affect the right of that party to enforce  
17 the same in the event of any subsequent breach or default.

18           **39. INTERPRETATION.** This Lease shall be governed by and interpreted in  
19 accordance with the laws of the State of Washington. The titles to paragraphs, sections, or other  
20 parts of this Lease are for convenience only and shall have no effect on the construction or  
21 interpretation of any part hereof.

22           **40. SEVERABILITY.** In case any one or more of the provisions contained in this  
23 Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such  
24 invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this  
25 Lease shall be construed as if such invalid, illegal or unenforceable provision had never been  
26 contained herein.

27           **41. VENUE.** CITY agrees that the venue of any action or suit concerning this  
28 Lease shall be in the Thurston County Superior Court and all actions or suits thereon shall be  
29 brought therein, unless applicable law requires otherwise.

30           **42. TOTALITY OF AGREEMENT.** It is understood that no guarantees,  
31 representations, promises, or statements expressed or implied have been made by either party



1 except to the extent that the same are expressed in this Lease, and the Maintenance Agreement  
2 identified as GM1412.

3 **43. NOTICES.** Wherever in this Lease written notices are to be given or made,  
4 they will be served, personally delivered or sent by certified or overnight mail addressed to the  
5 parties at the addresses listed below unless a different address has been designated in writing and  
6 delivered to the other party. The parties agree to accept service of process at said addresses

7 STATE: DEPARTMENT OF TRANSPORTATION  
8 Attn.: Assistant Director, Property Management Program  
9 310 Maple Park Avenue SE  
10 P. O. Box 4-7338  
11 Olympia, WA 98504-7338  
12

13 TENANT: CITY OF SEATTLE  
14 DEPARTMENT OF PARKS AND RECREATION  
15 Attn: Manager, Property and Acquisition Services  
16 800 Maynard Avenue South, 3<sup>rd</sup> Floor  
17 Seattle, Washington 98134-1336  
18  
19  
20

21 Signatures: Accepted and Approved by:  
22 STATE OF WASHINGTON  
23 DEPARTMENT OF TRANSPORTATION  
24  
25  
26 By \_\_\_\_\_ By \_\_\_\_\_  
27 Gerald L. Gallinger  
28 Title \_\_\_\_\_ Director, Real Estate Services  
29  
30 Date: \_\_\_\_\_ Date: \_\_\_\_\_

31  
32 APPROVED AS TO FORM  
33  
34 By: \_\_\_\_\_  
35 Assistant Attorney General



1

\_\_\_\_\_, 2005



1 STATE AGENCY ACKNOWLEDGMENT

2

3 STATE OF WASHINGTON )  
4 ) ss  
5 COUNTY OF )

6

7 On this \_\_\_\_\_ day of \_\_\_\_\_, 2005 before me  
8 personally appeared Gerald L. Gallinger, to me known to be the duly appointed Director, Real  
9 Estate Services, and that he executed the within and foregoing instrument and acknowledged the  
10 said instrument to be the free and voluntary act and deed of said State of Washington, for the  
11 uses and purposes therein set forth, and on oath states that he was authorized to execute said  
12 instrument.

13

14 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the  
15 \_\_\_\_\_ day of \_\_\_\_\_, 2005.

16

17

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

18

19

20

\_\_\_\_\_  
(Print or type name)

21

22

Notary Public in and for the State of Washington

23

residing at \_\_\_\_\_

24

My commission expires \_\_\_\_\_



1 CORPORATE ACKNOWLEDGMENT

2 STATE OF WASHINGTON )  
3 ) ss  
4 COUNTY OF )  
5

6 On this \_\_\_\_\_ day of \_\_\_\_\_, 2005 before me personally  
7 appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of  
8 the corporation that executed the foregoing instrument, and acknowledged said instrument to be  
9 the free and voluntary act and deed of said corporation, for the uses and purposes therein  
10 mentioned, and on oath stated that he/she was authorized to execute said instrument.

11  
12 GIVEN under my hand and official seal the day and year last above written.

13  
14 \_\_\_\_\_  
15 (Signature)  
16 \_\_\_\_\_  
17 (Print or type name)  
18 Notary Public in and for the State of Washington  
19 residing at \_\_\_\_\_  
20 My commission expires \_\_\_\_\_  
21  
22  
23

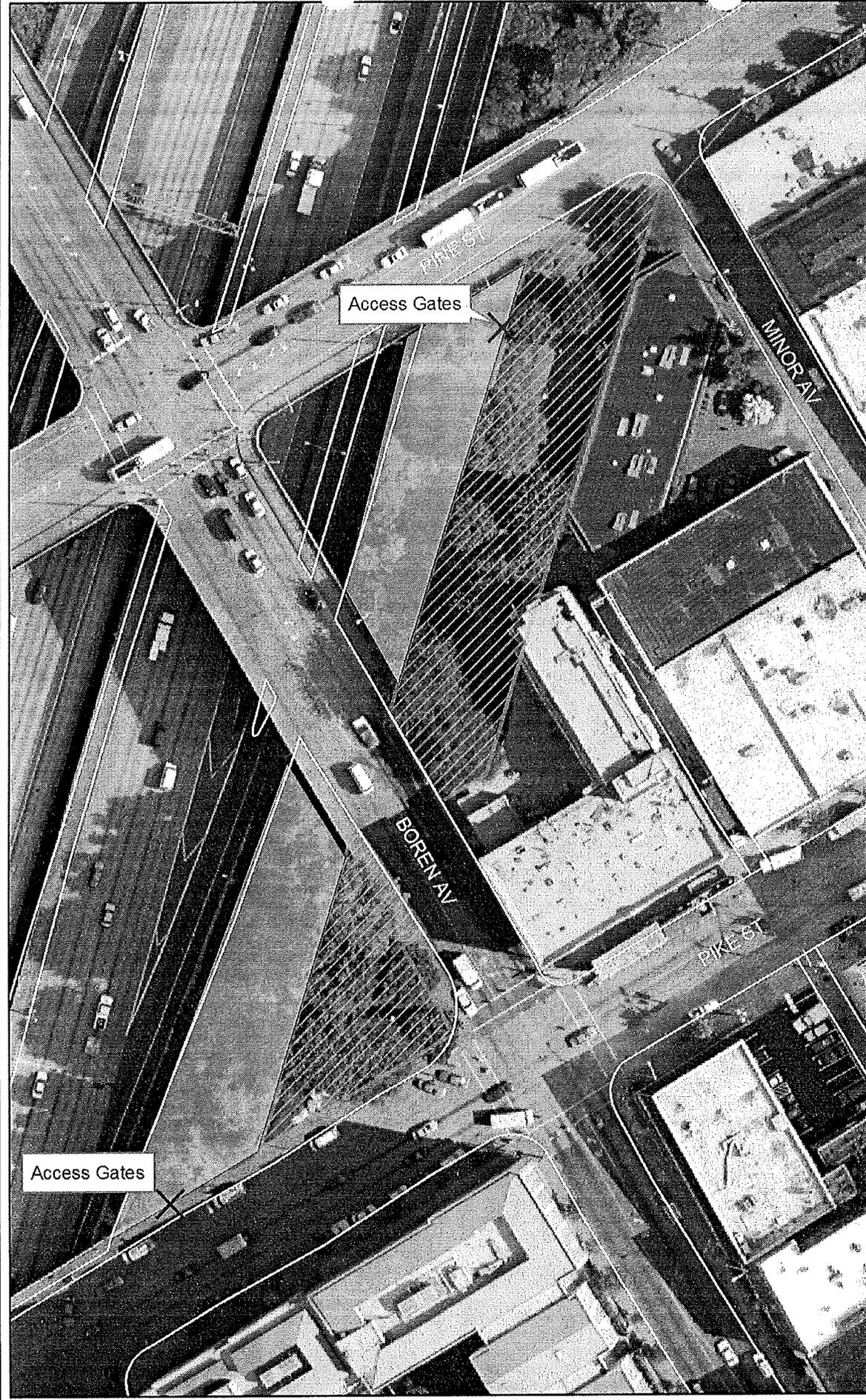




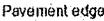
SEATTLE PARKS  
AND RECREATION

**Boren-Pike-Pine  
Park**

Exhibit A

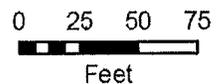


**Legend**

-  Maintenance Areas aka "Premises" per Maintenance Agreement GM1412
-  Park Lease Areas aka "Leased Premises" per Air Space Lease
-  Pavement edge



1 inch equals 75 feet



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No warranties of any sort, including accuracy, fitness or merchantability accompany this product.

Orthophoto source:  
Triathlon, July 1999  
Map date: June 27, 2005



Exhibit A to ATTACH 1 to DPR Boren-Pike-Pine Air Lease Ord

Exhibit "B"

GM 1412  
MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT, is entered into between the STATE OF WASHINGTON, through its DEPARTMENT OF TRANSPORTATION, an agency of the State of Washington (WSDOT) and the CITY OF SEATTLE, through its DEPARTMENT OF PARKS AND RECREATION, a municipal corporation and subdivision of the State of Washington (CITY).

RECITALS

WHEREAS, WSDOT owns in fee simple the real property located at Pine and Boren Avenue and Pike and Boren Avenue, Seattle, Washington, as more particularly shown in the attached **Exhibit A**, which by this reference is made a part hereof (Premises);

WHEREAS, concurrent with this Maintenance Agreement, the CITY and WSDOT have entered into Airspace Lease, AA1-11481, under which the CITY is leasing from WSDOT real property located adjacent to the Premises (Airspace Lease);

WHEREAS, WSDOT and the CITY have agreed that maintenance of the Premises provides a highway benefit equivalent in value to the economic rent for the property covered under the Airspace Lease;

WHEREAS, WSDOT and the CITY are authorized to enter into this Maintenance Agreement pursuant to RCW 47.28.140.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED THAT:

1. **PREMISES.** The Premises, and access to the Premises, covered by this Maintenance Agreement are as shown in **Exhibit A**.

2. **TERM.** The term of this Maintenance Agreement shall be ten (10) years, commencing on the date of execution by WSDOT (Commencement Date).

3. **RENEWAL.** This Maintenance Agreement may be renewed by the parties for one (1) additional ten year period (Renewal Period); Provided, the parties have renewed the Airspace Lease as provided therein.

4. **CONSIDERATION.** The maintenance services provided by the CITY under this Maintenance Agreement are in exchange for the CITY's use of other WSDOT real property under the Airspace Lease.



**5. TERMINATION.**

A. This Maintenance Agreement will terminate automatically upon the termination of the Airspace Lease as provided therein.

B. This Maintenance Agreement will terminate automatically in the event the parties execute a written amendment to the Airspace Lease that eliminates the maintenance of the Premises by the CITY as consideration for the Airspace Lease.

C. WSDOT may terminate this Maintenance Agreement, without penalty or further liability as follows:

(1) Upon not less than thirty (30) days written prior notice to the CITY, if the CITY defaults and fails to cure such default within that thirty (30) day period, or such longer period as may be reasonably determined by WSDOT, if the CITY is diligently working to cure the default;

(2) Immediately, upon written notice, if WSDOT is required by court order, by legislative action, or by a governmental agency having jurisdiction to take some action, which would effectively prohibit the CITY's maintenance of the Premises; or

(3) Upon not less than one hundred eighty (180) days prior written notice, unless an emergency exists, as determined by WSDOT, then immediately, if WSDOT determines that it is in the best interest of WSDOT to terminate this Maintenance Agreement.

D. The CITY may terminate this Maintenance Agreement without penalty or further liability as follows:

(1) Upon not less than ninety (90) days prior written notice to WSDOT; Provided, CITY has amended the Airspace Lease to provide alternative consideration thereunder prior to termination of this Agreement; or

(2) Upon not less than thirty (30) days prior written notice, if WSDOT defaults and fails to cure such default within that thirty (30) day period, or such longer period, as may be reasonably determined by CITY, if WSDOT is diligently working to cure the default.

**6. MAINTENANCE.**

A. The CITY agrees to maintain the Premises in accordance with WSDOT standards set forth in the WSDOT Maintenance Manual, and any amendments thereto, which by this reference are incorporated herein. Maintenance shall include, but not be limited to, those



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items listed on **Exhibit D to Attachment 1 "Airspace Lease"**, attached hereto and by this reference incorporated herein.

B. Fences shall be maintained by the CITY. If any fence is damaged as a result of the CITY's activities on the Premises, the CITY will promptly repair such damage at its cost to the WSDOT's satisfaction. If any fence is damaged as a result of the activities of WSDOT on the Premises, WSDOT will promptly repair such damage.

C. WSDOT reserves the right to periodically observe and inspect the maintenance work conducted by the CITY on the Premises. WSDOT shall provide written notice to the CITY, which shall include details of those elements or areas not in compliance with specifically referenced WSDOT maintenance requirements. The notice will set a specified reasonable period of time in which requested corrective action must be taken; Provided, that if an emergency exists, corrective action must be taken immediately. If corrective measures are not completed within the specified time period, WSDOT may either perform the maintenance as provided elsewhere herein, or issue a notice of default as provided elsewhere herein.

D. The CITY shall maintain books, records, documents and other evidence (collectively referred to as Records) that sufficiently and properly reflect the work performed under this Maintenance Agreement. These Records are subject to inspection, review, or audit by WSDOT, the Federal Highway Administration, the Office of the State Auditor, and other officials so authorized by law. All Records shall be retained for six (6) years after expiration of this Maintenance Agreement.

**7. UTILITY FRANCHISES.**

A. WSDOT will use its best efforts to require utility franchise and permit holders to give the CITY forty-eight (48) hours notice prior to entering upon the Premises for utility installation and maintenance purposes.

B. The CITY shall not disturb permanent markers installed by a franchise/permit holder and will contact and provide notice to any franchise/permit holder and all owners of underground facilities prior to any tilling of the soil or any other operation in which earth, rock or other material on or below the ground is moved or otherwise displaced to a vertical depth of twelve (12) inches or greater. Further, the CITY shall contact WSDOT and call the Underground Utility Locating Service, or its successor organization as part of its efforts to ascertain any and all owners of underground utility facilities and to locate the utility. The CITY shall comply with all applicable provisions of Chapter 19.122 RCW relating to underground facilities.



**8. ENVIRONMENTAL REQUIREMENTS.**

A. WSDOT and the CITY each represent, warrant and agree that it will conduct its activities related to the Premises, both on and off the Premises in compliance with all applicable environmental laws. As used in this Maintenance Agreement, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et. seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other comparable local, state, or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto, including all amendments and/or revisions to said laws and regulations.

B. Toxic or hazardous substances are not allowed on the Premises without the express written permission of WSDOT and under such terms and conditions as may be specified by WSDOT. For the purposes of this Agreement, "Hazardous Substances," shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., and the Washington Model Toxics Control Act, RCW 70.105D et seq., including all amendments and/or revisions to said laws and regulations, and shall include gasoline and other petroleum products. CITY is hereby authorized to bring on to the Premises gasoline and petroleum products necessary to carryout the maintenance requirements set forth in this Maintenance Agreement. In the event such permission is granted, the disposal of such materials must be done in a legal manner by the CITY.

C. The CITY agrees to cooperate in any environmental investigations conducted by WSDOT staff or independent third parties where there is evidence of contamination on the Premises, or where WSDOT is directed to conduct such audit by an agency or agencies having jurisdiction. The CITY will reimburse WSDOT for the cost of such investigations, where the need for said investigation is determined to be caused by the CITY's operations. The CITY will provide WSDOT with notice of any inspections of the Premises, notices of violations, and orders to clean up contamination. The CITY will permit WSDOT to participate in all settlement or abatement discussions. In the event that the CITY fails to take remedial measures as duly directed by a state, federal, or local regulatory agency within ninety (90) days of such notice, WSDOT may elect to perform such work, and the CITY covenants and agrees to reimburse WSDOT for all direct and indirect costs associated with WSDOT's work



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where said contamination is determined to have resulted from the authorized use of the Premises. The CITY further agrees that its uses of the Premises as authorized by this Maintenance Agreement shall be such that no hazardous or objectionable smoke, fumes, vapor, odors, or discharge of any kind shall rise above the grade of the right of way.

D. For the purposes of this section, "Costs" shall include, but not be limited to, all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include, but not be limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; the Clean Water Act, 33 U.S.C. § 1251; the Clean Air Act, 42 U.S.C. § 7401; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901; and the Washington Model Toxics Control Act, RCW 70.105D et seq., including all amendments and/or revisions to said laws and regulations.

E. The CITY agrees to defend, indemnify and hold harmless WSDOT from and against any and all claims, causes of action, demands and liability including, but not limited to, any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees associated with the removal or remediation of any Hazardous Substances that have been released, or otherwise come to be located on the Premises, including those that may have migrated from the Premises through water or soil to other properties, including, without limitation, the adjacent WSDOT property, and which are caused by or result from the CITY's activities on the Premises. CITY further agrees to retain, defend, indemnify and hold harmless WSDOT from any and all liability arising from the offsite disposal, handling, treatment, storage, or transportation of any such Hazardous Substances removed from said Premises.

F. WSDOT agrees to indemnify, defend and hold the CITY harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees associated with the existence of, and/or removal or remediation of any Hazardous Substances that have been released, or otherwise come to be located on the Premises, including those that may have migrated from the Premises through water or soil to the other properties, which are caused by or result from WSDOT's activities on the Premises. WSDOT further agrees to retain indemnify, defend, and hold harmless the CITY from any and all liability arising from the off site disposal, handling, treatment, storage or transportation of any such Hazardous Substances removed from the Premises.

G. The provisions of this section shall survive the termination or expiration of this Maintenance Agreement.

**9. INSURANCE.**



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A. The CITY warrants that it is self-insured, and agrees to provide acceptable evidence of its self-insured status to WSDOT within ten (10) days of execution of this Lease. The CITY shall be required to provide an insurance policy for liability coverage for the Premises, including public liability coverage for bodily injury, property damage, and personal injury of not less than Two Million and no/100 Dollars (\$2,000,000.00) combined single limit per occurrence, with a general aggregate amount of not less than Four Million and no/100 Dollars (\$4,000,000.00) per policy period. The CITY shall increase the policy limits at its sole cost, when and if WSDOT deems it necessary due to the CITY's use of the Premises.

B. In the event the CITY after commencement of this Maintenance Agreement, elects to terminate its self-insured status and secure commercial liability coverage, the CITY will promptly notify WSDOT, and provide a certificate of insurance from an insurer licensed to conduct business in the State of Washington, in the amounts and types as set forth in **paragraph 9.A.** above. Said certificate of insurance shall be delivered to WSDOT within ten (10) days of termination of the self-insurance coverage. The CITY shall increase the policy limits at its sole cost, when and if WSDOT deems it necessary due to the CITY's use of the Premises. Further, the CITY shall provide a certificate of insurance within ten (10) days of receiving a written notice from WSDOT for an increase in the coverage amounts.

C. The CITY assumes all obligations for premium payment, and in the event of nonpayment, the CITY is obligated to reimburse WSDOT the cost of maintaining the insurance coverage and any legal fees incurred in enforcing such reimbursement should the CITY fail to pay the policy premiums.

D. Coverage, obtained by the CITY in compliance with this section, shall not be deemed as having relieved the City of any liability in excess of such coverage.

**10. HOLD HARMLESS/INDEMNIFICATION.**

A. The CITY and its successors will protect, save, and hold harmless WSDOT, its authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of the CITY, its agents or employees, arising out of or in connection with any acts or activities related to this Maintenance Agreement, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Premises. The CITY further agrees to defend WSDOT, its agents or employees, in any litigation, including payment of any costs or attorney's fees, for any claims or actions commenced, arising out of, or in connection with acts or activities related to this Maintenance Agreement, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Premises. This obligation shall not include such claims, actions, costs, damages, or expenses which may be caused by the sole negligence of WSDOT or its authorized agents or employees; provided, that if the claims or damages are



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caused by or result from the concurrent negligence of (a) WSDOT, its agents or employees and (b) the CITY, its agents or employees, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the CITY or its agents or employees.

B. WSDOT and its successors will protect, save, and hold harmless the CITY, its authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of WSDOT, its agents or employees, arising out of or in connection with any acts or activities related to the Premises, whether those claims, actions, costs, damages, or expenses result from occurring on or off the Premises. WSDOT further agrees to defend the CITY, its agents or employees, in any litigation, including payment of any costs or attorney's fees, for any claims or actions commenced, arising out of, or in connection with acts or activities of WSDOT related to the Premises, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Premises. This obligation shall not include such claims, actions, costs, damages, or expenses which may be caused by the sole negligence of the CITY or its authorized agents or employees; provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) WSDOT, its agents or employees and (b) the CITY, its agents or employees, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of WSDOT's or its agents or employees.

C. The indemnification provisions contained in this section shall survive the termination or expiration of this Maintenance Agreement.

**11. PERSONAL PROPERTY.**

A. The CITY shall not keep, store or maintain any personal property on the Premises except as may be authorized in writing by WSDOT.

B. WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any personal property of whatsoever kind stored, kept, or maintained on or about the Premises, except for such claims or losses that may be caused by WSDOT or its authorized agents or employees. Upon termination of this Maintenance Agreement, WSDOT or its agent may remove all personal property of the CITY remaining on the Premises at the CITY's expense and dispose of it in any manner WSDOT deems appropriate. The CITY agrees to reimburse WSDOT for the costs of such removal and disposal within thirty (30) days of the date of WSDOT's invoice.

**12. NONDISCRIMINATION.** The CITY, as part of the consideration hereof, does hereby agree to comply with all applicable civil rights and antidiscrimination requirements, including, but not limited to, Chapter 49.60 RCW.



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13. **ASSIGNMENT.** This Maintenance Agreement cannot be assigned or transferred by the CITY.

14. **INDEPENDENT CAPACITY.** The employees or agents of each party who are engaged in the performance of this Maintenance Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

15. **PERFORMANCE BY STATE.** If the CITY defaults in the performance or observation of any covenant or agreement contained in this Maintenance Agreement, WSDOT, without notice if deemed by the STATE that an emergency exists, or if no emergency exists, with thirty (30) days prior written notice, may direct the CITY to stop work and may itself perform or cause to be performed such covenant or agreement. For the purposes of this Maintenance Agreement, an emergency shall include, but not be limited to, endangerment of life, the highway facility or failure of the CITY to provide proof of insurance and/or obtain in a timely manner the specified insurance coverage. The CITY shall reimburse WSDOT the entire cost and expense of such performance by WSDOT within thirty (30) days of the date of WSDOT's invoice. Any act or thing done by the WSDOT under the provisions of this section shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof.

16. **BINDING CONTRACT.** This Maintenance Agreement shall not become binding upon WSDOT unless and until executed for WSDOT by the Secretary of Transportation or his duly authorized representative.

17. **ATTORNEYS' FEES.** In the event of any controversy, claim, or dispute arising out of this Maintenance Agreement, each party shall be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs.

18. **MODIFICATIONS.** This Maintenance Agreement may not be modified orally or in any other manner other than by a written agreement signed by all parties hereto unless otherwise herein written. Failure on the part of WSDOT to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of WSDOT to enforce the same in the event of any subsequent breach or default.

19. **INTERPRETATION.** This Maintenance Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this Maintenance Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.



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**20. SEVERABILITY.** In case any one or more of the provisions contained in this Maintenance Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Maintenance Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**21. TOTALITY OF AGREEMENT.** This Maintenance Agreement in conjunction with the Airspace Lease contain all the agreements and conditions made between the parties hereto pertaining to the Premises herein described. It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by WSDOT except to the extent that the same are expressed in this Maintenance Agreement and the Airspace Lease.

**22. NOTICES.** Wherever in this Maintenance Agreement written notices are to be given or made, they will be served, personally delivered or sent by certified or overnight mail addressed to the parties at the address listed below unless a different address has been designated in writing and delivered to the other party. The CITY agrees to accept service of process at said address.

STATE: DEPARTMENT OF TRANSPORTATION  
Attn.: Assistant Director, Property Management Program  
310 Maple Park Avenue SE  
P. O. Box 4-7338  
Olympia, WA 98504-7338

Attn: Northwest Region Maintenance  
P.O. Box 330310, MS NB82-119  
Seattle, WA 98133-9710

TENANT: CITY OF SEATTLE  
DEPARTMENT OF PARKS AND RECREATION  
Attn: Michael Shiosaki  
Pro Parks Levy Program  
800 Maynard Avenue South, 3<sup>rd</sup> Floor  
Seattle, Washington 98134-1336

**23. DISPUTE RESOLUTION.**

A. The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Maintenance Agreement:

WSDOT:  
Director, Real Estate Services  
Washington State Department of Transportation



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P.O. Box 47338  
310 Maple Park Ave. SE  
Olympia, WA 98504-7338

CITY: Director of Planning and Development  
Seattle Parks and Recreation Department  
800 Maynard Ave. So., Suite 401  
Seattle, WA 98134-1336

B. The WSDOT Designated Representative and the CITY Designated Representative shall confer to resolve disputes that arise under this Maintenance Agreement as requested by the either party. The Designated Representatives shall use their best efforts and exercise good faith to resolve such disputes.

C. In the event the Designated Representatives are unable to resolve the dispute, the Northwest Region WSDOT Regional Administrator or her/his designee and the Director of Operations, Seattle Parks and Recreation Department, for the CITY or her/his designee shall confer and exercise good faith to resolve the dispute.

D. In the event the WSDOT Regional Administrator or her/his designee and Director of Operations, Seattle Parks and Recreation Department are unable to resolve the dispute, the parties may, if mutually agreed in writing, submit the matter to non-binding mediation. The parties shall then seek to mutually agree upon the mediation process, who shall serve as the mediator, and the time frame the parties are willing to discuss the disputed issue(s).

E. Each party shall bring to the mediation session, unless excused from doing so by the mediator, a representative from its side with full settlement authority. In addition, each party shall bring counsel and such other persons as needed to contribute to a resolution of the dispute. The mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conference from later discovery or use in evidence; Provided that any settlement executed by the parties shall not be considered confidential and may be disclosed. Each party shall pay its own costs for mediation and share equally in the cost of the mediator. The venue for the mediation shall be in Olympia, Washington, unless the parties mutually agree in writing to a different location.

F. If the parties cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful, then either party may institute a legal action in the County of Thurston, State of Washington, unless other venue is mutually agreed to in writing. The parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted.



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G. The dispute resolution provisions contained in this section shall survive the termination or expiration of this Maintenance Agreement.

24. VENUE. The CITY agrees that the venue of any action or suit concerning this Maintenance Agreement shall be in the Thurston County Superior Court and all actions or suits thereon shall be brought therein, unless applicable law requires otherwise.

25. AGREEMENT MANAGEMENT.

A. The Program Manager for each of the parties shall be responsible for administration of this Maintenance Agreement and shall be the contact person for all communications and billings regarding the administration of this Maintenance Agreement, which expressly excludes notices of default .

B. The Program Manager for the CITY is: Director of Operations, Seattle Parks and Recreation Department, 100 Dexter Ave., No., Seattle, WA 98109

C. The Program Manager for WSDOT is: Northwest Region Maintenance Manager, 15700 Dayton Ave., No., Seattle, WA 98133-5910

D. Either party may, from time to time, by notice in writing served upon the other party as required elsewhere herein, designate an additional and/or a different mailing address or an additional and/or different person to whom such notice, request, report or other communication are thereafter to be addressed.

Signatures:

CITY OF SEATTLE

STATE OF WASHINGTON

DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Gerald L. Gallinger  
Director, Real Estate Services

Date: \_\_\_\_\_

Date: \_\_\_\_\_





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STATE AGENCY ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005 before me personally appeared William S. Vlcek, P.E., to me known to be the duly appointed Assistant Regional Administrator, SnoKing Area, and that he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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

\_\_\_\_\_  
(Print or type name)

Notary Public in and for the State of Washington  
residing at \_\_\_\_\_

My commission expires \_\_\_\_\_



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CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

GIVEN under my hand and official seal the day and year last above written.

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

\_\_\_\_\_  
(Print or type name)

Notary Public in and for the State of Washington  
residing at \_\_\_\_\_

My commission expires \_\_\_\_\_







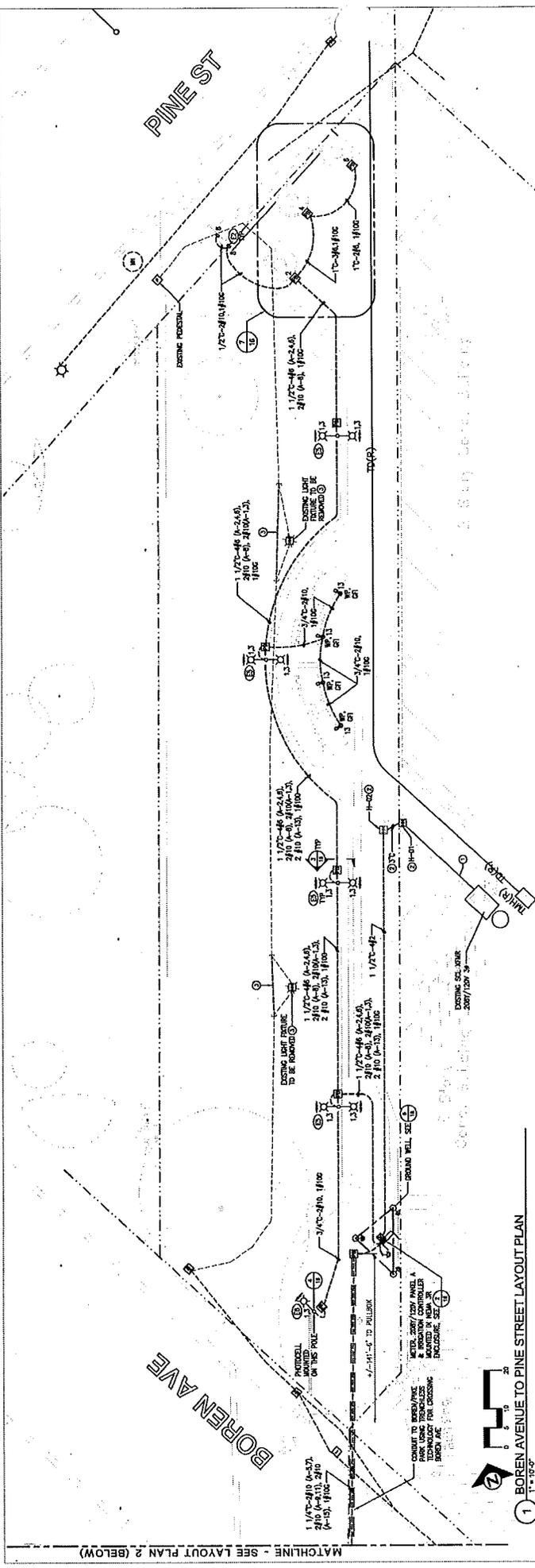












1 BOREN AVENUE TO PINE STREET LAYOUT PLAN  
1" = 10'

**LIGHTING FIXTURE SCHEDULE**

TYPE	DESCRIPTION	LAMPS	WATTS	MANUFACTURER CATALOGUE NUMBER	NOTING
B1	EXTENSIVE BELOUGARIN/ADJUSTABLE HAZ. FLOODLIGHT	1-100W/4H	125	PHOTONIC 273183 100W/4H 125W/4H	EX-1000
B2	1\"/>				

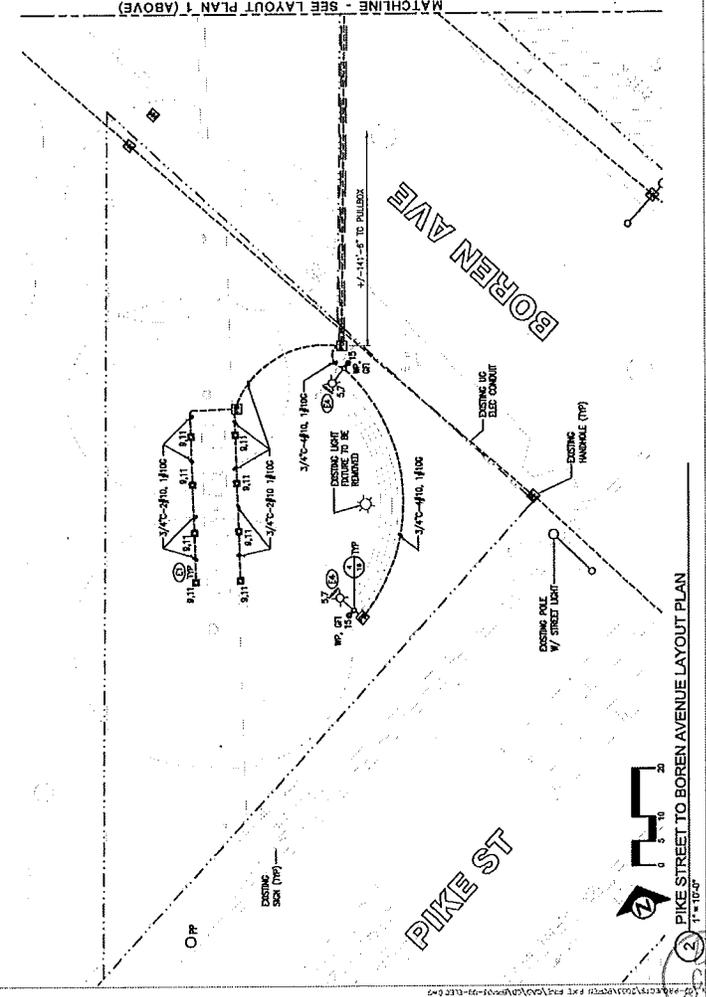
**LEGEND:**

- POLE MOUNTED PROVISIONARY LIGHT FIXTURE. ILLUMINATION DISTRIBUTION ORIENTATION AS SHOWN. TYPE AS NOTED.
- POLE MOUNTED PERMANENT LIGHT FIXTURE. ILLUMINATION DISTRIBUTION ORIENTATION AS SHOWN. TYPE AS NOTED.
- IN GRADE DIRECTIONAL ROADLIGHT. TYPE AS NOTED.
- RECESSED STUD LIGHT. TYPE AS NOTED.
- 120V, 1\"/>

**REFERENCE NOTES:**

- SEE DRAWING E.C.
- PROVIDE PER 17\"/>

**TYPICAL TRENCH SECTION**  
SCALE: 1\"/>



2 PIKE STREET TO BOREN AVENUE LAYOUT PLAN  
1" = 10'

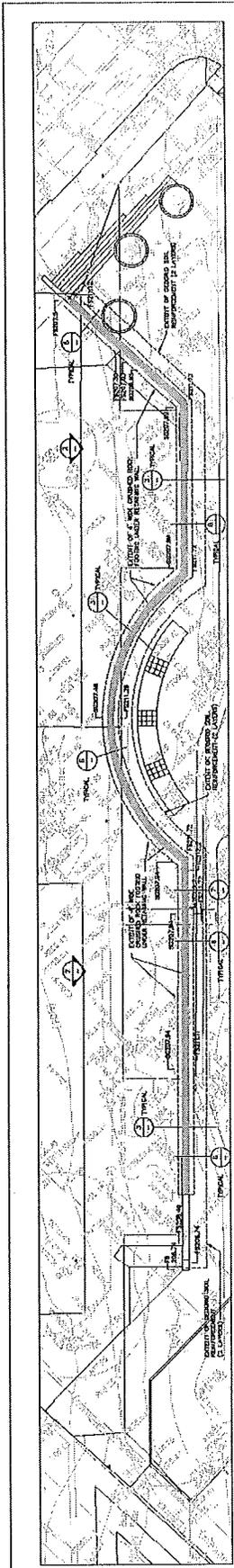
**CAUTION**  
NOT LESS THAN TWO (2) MEN SHALL BE EMPLOYED AT ALL TIMES DURING THE CONSTRUCTION OF THIS PROJECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF DENVER AND THE COLORADO UTILITIES BOARD. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE SAFETY OF ALL PERSONNEL AND THE PUBLIC. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF THE ENVIRONMENT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT UTILITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT STRUCTURES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT UTILITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT STRUCTURES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT UTILITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT STRUCTURES.

**MCGOWAN PROZ**  
1111 14th Street, Suite 1000  
Denver, CO 80202  
Tel: 303.733.1111  
Fax: 303.733.1112  
www.mcgowanproz.com

**BOREN-PIKE-PINE PARK REDEVELOPMENT ELECTRICAL PLAN**  
DATE: MARCH 2008  
SHEET: 9 OF 16  
SCALE: AS NOTED



Exhibit c-10 Retain Walls



**NOTES:**

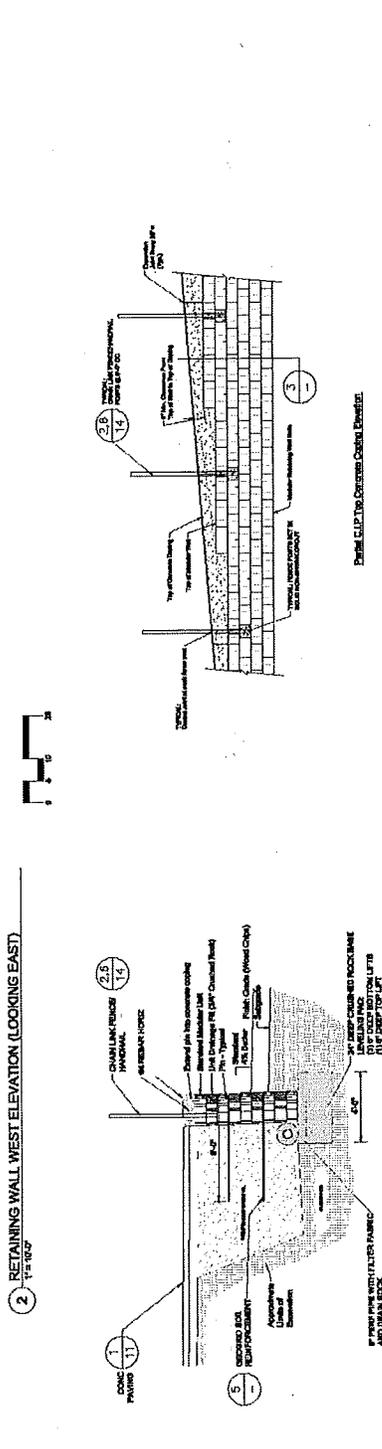
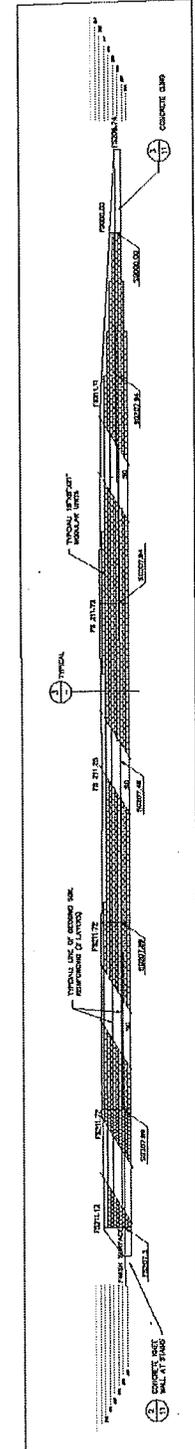
1. BORNEO CITY OF BUREAU OF PUBLIC WORKS AND UTILITIES HAS REVIEWED THIS PLAN AND APPROVES THE CONSTRUCTION OF THE WALLS SHOWN HEREON.
2. WALL SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE SPECIFICATIONS AND STANDARDS OF THE BUREAU OF PUBLIC WORKS AND UTILITIES.
3. ALL MATERIALS SHALL BE OF THE BEST QUALITY AND SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE BUREAU OF PUBLIC WORKS AND UTILITIES.
4. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.

**WALL NOTES:**

1. WALL SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE SPECIFICATIONS AND STANDARDS OF THE BUREAU OF PUBLIC WORKS AND UTILITIES.
2. ALL MATERIALS SHALL BE OF THE BEST QUALITY AND SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE BUREAU OF PUBLIC WORKS AND UTILITIES.

**LEGEND:**

- SW SUBSTRUCT
- FR FRESH GRADE
- FS FINISHED SURFACE
- TO TOP OF CURB



**CAUTION: CALL BEFORE YOU DIG!**

FOR INFORMATION ON THE LOCATION OF UNDERGROUND UTILITIES, CONTACT THE BUREAU OF PUBLIC WORKS AND UTILITIES AT 800-424-9000.

**BORNEO CITY OF BUREAU OF PUBLIC WORKS AND UTILITIES**

**REDEVELOPMENT**

**RETAINING WALL**

**DETAILS**

DATE: 10/15/18

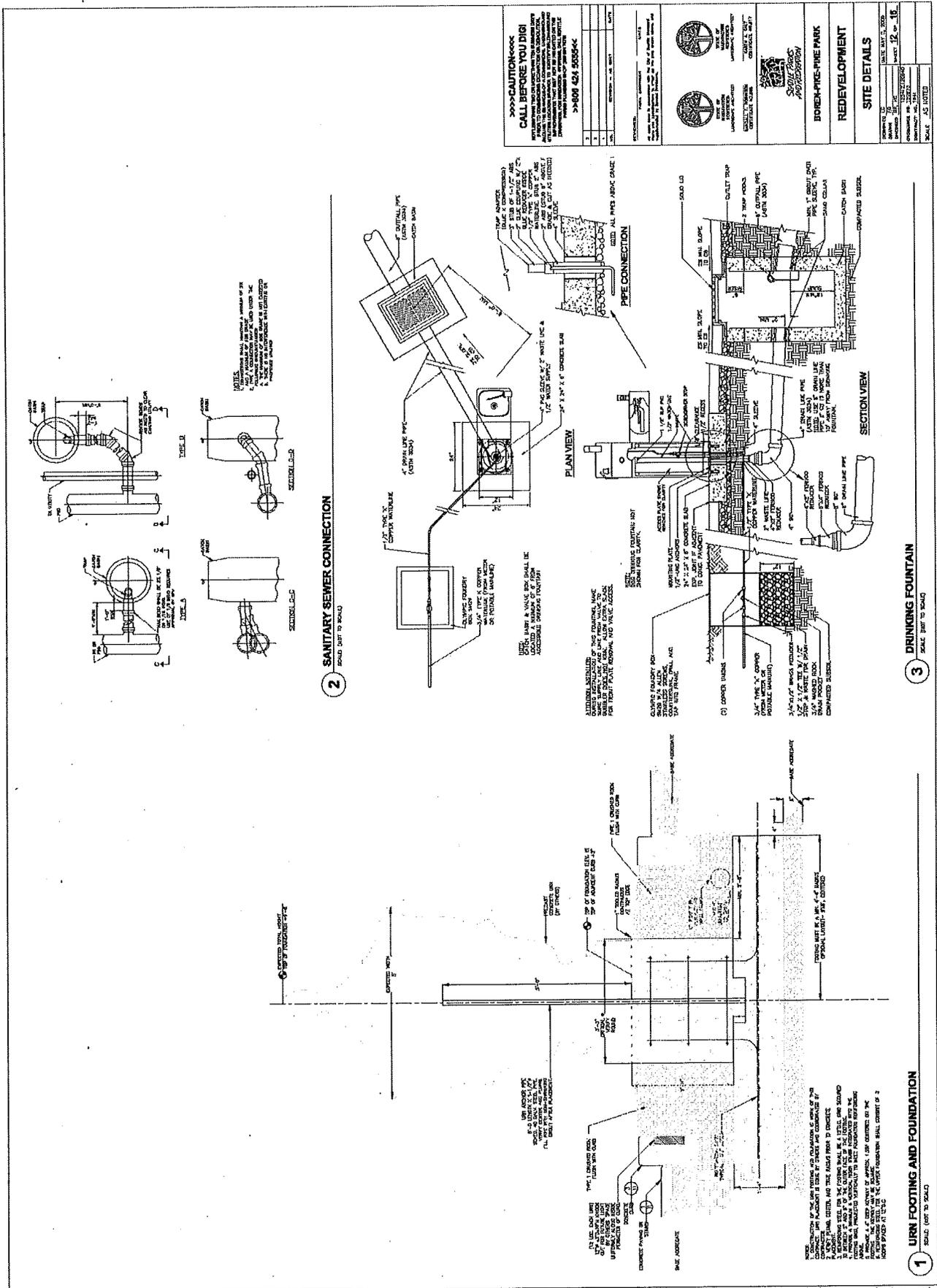
SCALE: AS NOTED



Exhibit c-10 to Attach I to DPR Boren Pike Pine Air Lease ORD



Exhibit e-12 site w/n



**CAUTION**  
CALL BEFORE YOU DIG  
800-4-A-DIG  
800-424-6267

**BOREN PIKE-PINE PARK REDEVELOPMENT**

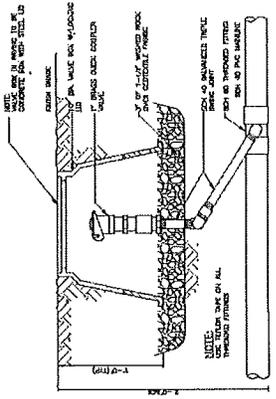
**SITE DETAILS**

DATE: 12/15/2011  
PROJECT: BOREN PIKE-PINE PARK REDEVELOPMENT  
SHEET: 12 OF 18  
SCALE: AS SHOWN

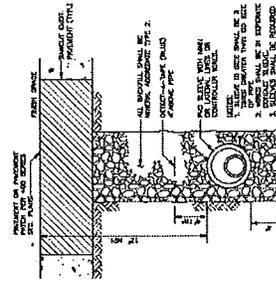


Exhibit e-12 to Attach 1 to DPR Boren Pike Pine Air Lease ORD

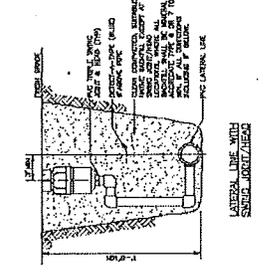
Exhibit c-13 Details Irrig.



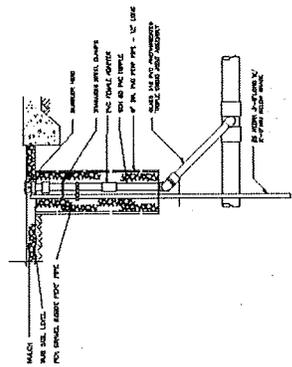
**1** MAINLINE TRENCHING  
PARTS DET. SEE DET. 100-10 (PART TO BEAD)



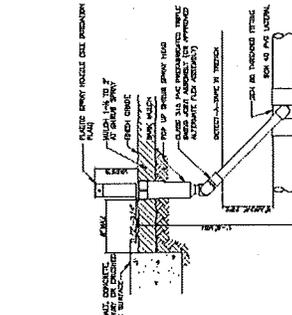
**2** LATERAL LINE TRENCHING  
PARTS DET. SEE DET. 100-10 (PART TO BEAD)



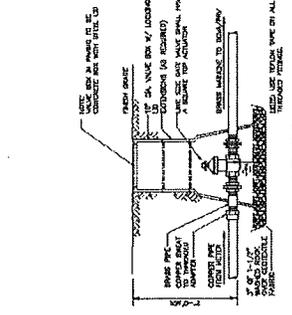
**3** LATERAL LINE TRENCHING  
PARTS DET. SEE DET. 100-10 (PART TO BEAD)



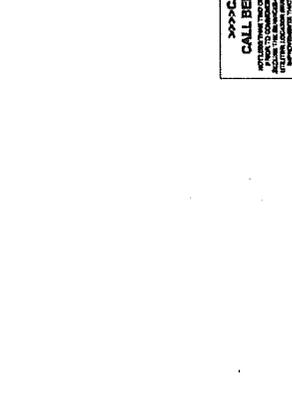
**4** QUICK-COUPLING VALVE  
PARTS DET. SEE DET. 100-10 (PART TO BEAD)



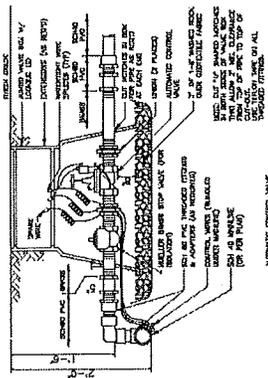
**5** BUBBLER HEAD @ TREE  
PARTS DET. SEE DET. 100-10 (PART TO BEAD)



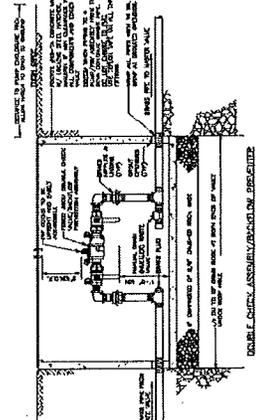
**6** POP-UP HEAD  
PARTS DET. SEE DET. 100-10 (PART TO BEAD)



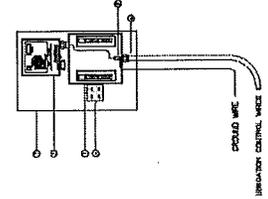
**7** GATE VALVE  
PARTS DET. SEE DET. 100-10 (PART TO BEAD)



**8** AUTOMATIC IRRIGATION CONTROL VALVE  
PARTS DET. SEE DET. 100-10 (PART TO BEAD)



**9** DOUBLE CHECK VALVE BACKFLOW PREVENTER  
PARTS DET. SEE DET. 100-10 (PART TO BEAD)



**10** IRRIGATION CONTROLLER  
PARTS DET. SEE DET. 100-10 (PART TO BEAD)

**CAUTION**  
CALL BEFORE YOU DIG  
A utility located in the area of this project may be affected by the proposed construction. It is the responsibility of the contractor to locate all utilities before excavation. If you are unsure of the location of any utility, call the utility company or the city of Denver. Do not dig until you have received approval from the utility company. Failure to do so may result in injury, property damage, or other consequences. For more information, call 800-424-5055.

**BOREN PIKE-PINE PARK REDEVELOPMENT**

**IRRIGATION DETAILS**

DATE: 12/15/10  
DRAWN BY: J. B. BROWN  
CHECKED BY: J. B. BROWN  
APPROVED BY: J. B. BROWN

SCALE: AS SHOWN



Exhibit c-13 to Attach 1 to DPR Boren Pike Pine Air Lease ORD







**EXHIBIT "D"**  
**MAINTENANCE RESPONSIBILITY MATRIX**

**STRUCTURAL PARK MAINTENANCE**

<u>TASK</u>	<u>CITY</u>	<u>STATE</u>
Sub-grade failure repair, incl. potholes cracking, and spalling	Yes	No
Root heave repair	Yes	No
Frost heave repair	Yes	No
Pavement overlays greater than 0.72 inches	Yes	No
Concrete repairs more than ¾" deep	Yes	No
Cleanup and repair of above grade landslide or washout	No	Yes
Structural maintenance and repair of WSDOT installed retaining walls, columns and other highway features	No	Yes

**NON-STRUCTURAL PARK MAINTENANCE**

<u>TASK</u>	<u>CITY</u>	<u>STATE</u>
Root pruning at sidewalk or pavement edge	Yes	No
Pothole or pavement patching	Yes	No
Pavement Crack Sealing or Repair	Yes	No
Pavement Seal Coats	Yes	No
Pavement overlays	Yes	No
Concrete repairs	Yes	No
Park channelization replacement and repair	Yes	No
Routine maintenance including sweeping, spall repairs, hand rail repair.	Yes	No



**EXHIBIT "D"**  
**MAINTENANCE RESPONSIBILITY MATRIX**

**CUSTODIAL PARK MAINTENANCE**

<u>TASK</u>	<u>CITY</u>	<u>STATE</u>
Clean park surface debris including sweeping, blowing and removal	Yes	No
Removal of STATE crew or STATE contractor-created debris	No	Yes
Removal of adjacent and overhead vegetation	Yes	No
Litter pickup and removal in defined lease area	Yes	No
Litter pickup and removal from receptacles	Yes	No
Transient control, enforcement & cleanup	Yes	No

**VANDALISM REPAIR & GRAFFITI REMOVAL**

<u>TASK</u>	<u>CITY</u>	<u>STATE</u>
Vandalism repair or graffiti removal from bollards, litter receptacles, benches, and park surface	Yes	No
Graffiti removal from wall surfaces within 15 feet vertical from trail or park surface	Yes	No
Graffiti removal from wall surfaces above 15 feet vertical from trail or park surface	Yes	No
Vandalism repair or graffiti removal on chain link right-of-way fence installed by the STATE	Yes	No

**PARK ACCESSORY MAINTENANCE**

<u>TASK</u>	<u>CITY</u>	<u>STATE</u>
Park bollard, fence and gate maintenance	Yes	No
Bench replacement and repair	Yes	No
Litter receptacle replacement and repair	Yes	No
Informational park signing replacement and repair	Yes	No
Pre and post-construction features or park accessories added by the CITY	Yes	No



**EXHIBIT "D"**  
**MAINTENANCE RESPONSIBILITY MATRIX**

**DRAINAGE STRUCTURE MAINTENANCE**

<u>TASK</u>	<u>CITY</u>	<u>STATE</u>
Maintain surface facilities including shallow ditches	Yes	No
Clean, maintain, repair and replace catch basins, culverts, and other permanent drainage facilities not used for or incidental to the park.	No	Yes
Clean and maintain catch basins, culverts, and other permanent drainage facilities which are installed to serve the park.	Yes	No

**EROSION**

<u>TASK</u>	<u>CITY</u>	<u>STATE</u>
Permanent Repairs made with 4" to 6" quarry spalls < 20 cy	Yes	No
Permanent Repairs requiring gabion walls or rip-rap >20 cy	No	Yes
Cleanup and repair of erosion at edge of paved surfaces, planting beds and landscape	Yes	No

**LANDSCAPING MAINTENANCE**

<u>TASK</u>	<u>CITY</u>	<u>STATE</u>
Landscaping installed by the CITY	Yes	No
Landscaping installed by the STATE which is still in a plant maintenance period	No	Yes
Landscaping installed by the STATE for which the CITY has accepted maintenance	Yes	No

**TREE & VEGETATION REMOVAL WITHIN THE STATE RIGHT OF WAY**

<u>TASK</u>	<u>CITY</u>	<u>STATE</u>
Removal of problem trees and vegetation < 3" caliper within 10 feet of the parks edge	Yes	No
Removal of problem trees and vegetation > 3" caliper within 10 feet of the parks edge	No *	Yes

\*Maybe removed by city with approval from WSDOT



**EXHIBIT "D"**  
**MAINTENANCE RESPONSIBILITY MATRIX**

**DAMAGE TO PARK FROM TREES OF SIGNIFICANCE**

<u>TASK</u>	<u>CITY</u>	<u>STATE</u>
If the STATE made the declaration of significance	No	Yes
If the CITY made the declaration of significance	Yes	No

**OFF-SITE CONDITIONS IMPACTING PARK**

<u>TASK</u>	<u>CITY</u>	<u>STATE</u>
Resolution and repair of problems impacting the park originating outside the STATE right-of-way from property owned, leased, taxed or otherwise within the jurisdiction of the CITY.	Yes	No

**S U P P L E M E N T A L   A G R E E M E N T   N O .   2**  
**T O**  
**A G R E E M E N T   G M   3 7 6**

This is SUPPLEMENTAL AGREEMENT No. 2 to that certain AGREEMENT GM 376, dated March 29, 1966 (see Exhibit 1), by and between the WASHINGTON STATE HIGHWAY COMMISSION, acting by and through the Director of Highways, hereinafter called the "State", and THE CITY OF SEATTLE, WASHINGTON, a municipal corporation, hereinafter called the "City" as amended by SUPPLEMENTAL AGREEMENT NO. 1 TO AGREEMENT GM 376, dated August 15, 1968 (see Exhibit 2).

RECITALS

WHEREAS the State and the City entered into AGREEMENT GM 376, dated March 29, 1966, setting forth the Parties' construction and maintenance obligations for sit-in park areas located in the City of Seattle at 5<sup>th</sup> Avenue at Columbia and Cherry, 6<sup>th</sup> and Seneca Street, Pine and Boren Avenue, and Pike and Boren Avenue; and

WHEREAS the State and the City entered into SUPPLEMENTAL AGREEMENT No. 1 to AGREEMENT GM 376, dated August 15, 1968, which amended AGREEMENT GM 376 by providing for additional landscape construction by the State, and additional areas to be maintained by the City.

WHEREAS the State and the City have mutually agreed to modify AGREEMENT GM 376, as previously amended, by removing the City's obligations therein for the maintenance of the sit-in park areas identified in said AGREEMENT as "Sit-in Park, Pine and Boren Ave.", and "Sit-in Park, Pike and Boren", which maintenance responsibilities are now addressed in Airspace Lease #AA1-11481, dated \_\_\_\_\_, and Maintenance Agreement, GM 1412, dated \_\_\_\_\_.



Attachment 2

NOW, THEREFORE, in consideration of the terms, conditions and covenants contained herein, the State and the City agree as follows:

1. Page 2 of Exhibit A of AGREEMENT GM 376 is amended and superseded by **Exhibit A-2**, attached hereto, and by this reference is incorporated herein.
2. All other terms, conditions, and covenants to AGREEMENT GM. 376, and as previously amended by SUPPLEMENTAL AGREEMENT NO. 1, unless specifically altered, modified or changed herein shall remain in full force and effect.
3. This SUPPLEMENTAL AGREEMENT No. 2 shall be effective upon execution by both parties, concurrent with the execution by both parties of AA1-11481 and GM 1412.

IN WITNESS WHEREOF, the parties intending to be legally bound, have executed this SUPPLEMENTAL AGREEMENT NO. 2 on the last date written below.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF SEATTLE

STATE OF WASHINGTON  
Department of Transportation

BY: \_\_\_\_\_

\_\_\_\_\_  
Gerald L. Gallinger  
Director, Real Estate Services

BY: \_\_\_\_\_

\_\_\_\_\_  
William S. Vlcek, P.E.  
Assistant Regional Administrator  
SnoKing Area



Attachment 2

APPROVED AS TO FORM

APPROVED AS TO FORM:

---

Assistant Attorney General



Attachment 2

STATE OF WASHINGTON)

: ss.

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2004 before me personally appeared \_\_\_\_\_ to me known to me to be the duly appointed \_\_\_\_\_ of the City of Seattle and that \_\_\_\_\_ he/she executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said City of Seattle, for the uses and purposes therein set forth, and on oath states that \_\_\_\_\_ he/she is authorized to execute said instrument.

GIVEN under my hand and official seal the day and year last above written.

\_\_\_\_\_  
(Signature)  
Notary Public in and for the State of Washington,  
Residing at \_\_\_\_\_  
  
My Appointment Expires \_\_\_\_\_



Attachment 2

STATE OF WASHINGTON)

: ss.

County of )

On this \_\_\_\_ day of \_\_\_\_\_, 2004, before me personally appeared Gerald L. Gallinger to me known to be the Director, Real Estate Services, Washington State Department of Transportation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Director, Real Estate Services Washington State Department of Transportation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument and that the seal affixed is the seal of said State of Washington.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of Washington,

Residing at \_\_\_\_\_

My Appointment Expires \_\_\_\_\_



STATE OF WASHINGTON)

: ss.

County of )

On this \_\_\_\_ day of \_\_\_\_\_, 2004 before me personally appeared William S. Vlcek, P.E., to me known to be the Assistant Regional Administrator, SnoKing Area, Washington State Department of Transportation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Assistant Regional Administrator, SnoKing Area, Washington State Department of Transportation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument and that the seal affixed is the seal of said State of Washington.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of Washington,  
Residing at \_\_\_\_\_  
My Appointment Expires \_\_\_\_\_



EXHIBIT 1

GM376

AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_, by and between THE WASHINGTON STATE HIGHWAY COMMISSION, acting by and through the Director of highways, hereinafter called the "State", and THE CITY OF SEATTLE, WASHINGTON, a municipal corporation, hereinafter called the "City", and;

WHEREAS the State has undertaken the construction of a limited access highway through the City of Seattle to be designated as Primary State highway No. 1, Seattle Freeway; and in the design of said Freeway, certain areas of State properties exist which lie between the limited access fence and certain City streets from Cherry Street to Pine Street which are excellent locations for public viewpoints or sit-in parks, and;

WHEREAS it has been mutually agreed by the City and State that it is in the best interest of both parties to have the State perform the construction and landscaping of the sit-in parks as a part of the Freeway construction in this area, and;

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated an made a part hereof;

IT IS MUTUALLY AGREED THAT:

I

The State through its construction contractor shall furnish all labor, material, equipment, and tools required to complete all work in the sit-in park areas, as shown on the attached plans, sheets 1 through 4, which by this reference are made a part of this agreement;

II

The State shall bear all costs and expense involved in the construction of the sit-in park areas, and shall further bear all costs and expense for the maintenance and upkeep of the improved areas during the plant establishment period as set forth in the State's contract special provisions;

III

From the date of expiration of the State's obligation to maintain the landscaped areas (the end of the plant establishment period) the City of Seattle shall assume the continuing the maintenance and upkeep of all facilities within the areas, including sprinkler systems and adjacent walks, and shall bear all costs and expense therefore



EXHIBIT 1

except that water usage charges for sprinkler irrigation shall be pro-rated according to the number of sprinkler heads in areas of City landscape maintenance;

IV

However, the State reserves the right to reclaim any or all of these sit-in park areas for improvements and construction necessary or beneficial to the Freeway system;

V

The State further reserves the right to examine and approve or disapprove any operation other than "regular or routine maintenance," which the City may propose to perform on the areas shown on the attached Exhibit Plans;

VI

The City does hereby release and agree to save and hold the State harmless from an and all causes of actions, suits of law or equity, or claim or demands, from any liability of any nature growing out of the performance of this agreement on the part of the City;

VII

And that, no liability shall be attached to the Stat by reason of entering into this agreement except as expressly provided herein.

IN CONSIDERATION of the mutual benefits accruing hereunder and,

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above mentioned.

CITY OF SEATTLE

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Comptroller

Executed pursuant to

STATE OF WASHINGTON  
WA STATE HIGHWAY COMMISSION

Ordinance No. \_\_\_\_\_

\_\_\_\_\_



EXHIBIT 2

**GM376, Supplemental #1, Air Space Lease**

**AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by and between THE WASHINGTON STATE HIGHWAY COMMISSION, acting by and through the Director of Highways, hereinafter called the "State", and THE CITY OF SEATTLE, WASHINGTON, a municipal corporation, hereinafter called the "City", and;

WHEREAS the State has undertaken the construction of a limited access highway through the City of Seattle to be designated as Primary State highway No. 1, Seattle Freeway; and in the design of said Freeway, certain areas of State properties exist which lie between the limited access fence and certain City streets from Cherry Street to Pine Street which are excellent locations for public viewpoints or sit-in parks, and;

WHEREAS it has been mutually agreed by the City and State that it is in the best interest of both parties to have the State perform the construction and landscaping of the sit-in parks as a part of the Freeway construction in this area, and;

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof,

IT IS MUTUALLY AGREED THAT:

I

The State through its construction contractor shall furnish all labor, material, equipment, and tools required to complete all work in the sit-in park areas, as shown on the attached plans, sheets 1 through 4, which by this reference are made a part of this agreement;

II

The State shall bear all costs and expense involved in the construction of the sit-in park areas, and shall further bear all costs and expense for the maintenance and upkeep of the improved areas during the plant establishment period as set forth in the State's contract special provisions;

III

From the date of expiration of the State's obligation to maintain the landscaped areas (the end of the plant establishment period) the City of Seattle shall assume the continuing maintenance and upkeep of all facilities within the areas, including sprinkler systems and adjacent walks, and shall bear all costs and expense therefore except that water usage charges for sprinkler irrigation shall be pro-rated according to the number of sprinkler heads in State landscaped areas as to the number of sprinkler heads in areas of City landscape maintenance.



EXHIBIT 2

IV

However, the State reserves the right to reclaim any or all of these sit-in park areas for improvements and construction necessary or beneficial to the Freeway system;

V

The State further reserves the right to examine and approve or disapprove any operation other than "regular or routine maintenance", which the City may propose to perform on the areas shown on the attached Exhibit Plans;

VI

The City does hereby release and agree to save and hold the State harmless from an and all causes of actions, suits of law or equity, or claim or demands, or from any liability of any nature growing out of the performance of this agreement on the part of the City;

VII

And that, no liability shall be attached to the State by reason of entering into this agreement except as expressly provided herein.

IN CONSIDERATION of the mutual benefits accruing hereunder and,

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above mentioned.

CITY OF SEATTLE

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_

\_\_\_\_\_

Executed pursuant to  
Ordinance No. 94605

STATE OF WASHINGTON  
WA STATE HIGHWAY COMMISSION

Approved as to form:

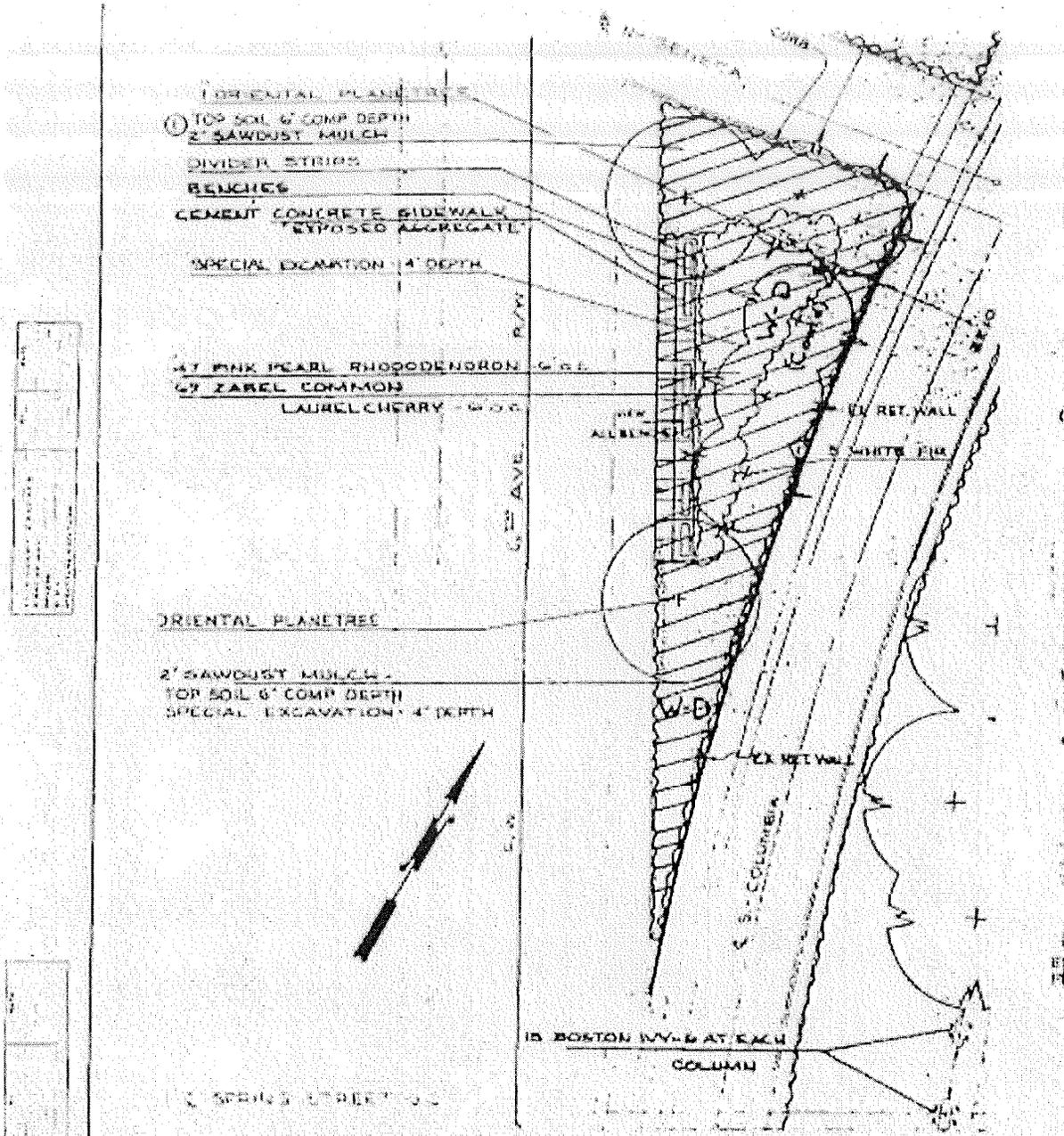
\_\_\_\_\_  
C. G. Prah, Director of Highways

NOV 22 1965

\_\_\_\_\_  
Assistant Attorney General



EXHIBIT A-2



SIT-IN PARK  
6TH & SENECA ST.  
EXHIBIT A-2



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Parks and Recreation	Terry Dunning 684-4860	Tyler Running Deer 684-8075

**Legislation Title:**

AN ORDINANCE authorizing the Superintendent of Parks and Recreation to sign an Air Space Lease, Maintenance Agreement and Supplemental Agreement #2 to Agreement GM 376 with the Washington State Department of Transportation for use of land for Boren-Pike-Pine Park.

• **Summary of the Legislation:**

The proposed legislation authorizes the Superintendent of Parks and Recreation to enter into an Air Space Lease with the Washington State Department of Transportation (WSDOT) for the space known as Boren-Pike-Pine Park (a.k.a. Four Columns Park). It also authorizes the Superintendent to execute a Maintenance Agreement and Supplemental Agreement GM 376 which are ancillary to the Lease and modify the prior management relationship that has existed on the site since 1968. This 10-year, renewable lease will secure the property for development consistent with the objectives of the 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy (2000 Parks Levy). There is no cash outlay for rent as the cost for this lease is offset against the City's continuing maintenance of the site.

• **Background:**

Boren-Pike-Pine Park was constructed in 1966 by WSDOT as part of the I-5 construction. The land on which the park sits is WSDOT land, but since the park's establishment, the Seattle Department of Parks and Recreation (DPR) has maintained the park under an agreement with WSDOT.

There is an existing CIP project to redevelop this park (Boren-Pike-Pine Redevelopment #K733067) funded by the 2000 Parks Levy. The Levy budget for this project is \$825,000. In addition, the Pike-Pine Urban Neighborhood Council has requested that \$250,000 in mitigation monies, collected by the Seattle Department of Transportation (SDOT) in response to the convention Center expansion, be contributed to this project. This funding was transferred from SDOT and appropriated to the Boren-Pike-Pine Park project in 2004 (Ordinance #121556). A design for the park was developed and put out to bid for construction in April 2004. The bids came in higher than the budget allowed for, and DPR began to redesign the park to meet the budget constraints. After 6 months of community process, from July through December 2004, the public helped develop a new design which includes an off-leash area. In April 2005, City Council approved the addition of the Boren-Pike-Pine Off-Leash Area (Ordinance #121788) to the Seattle Municipal Code.



The community and DPR staff have been concerned that the significant capital investment in the site be secured by an agreement with more force and detail than the previous maintenance agreement. The recommended Air Space Lease (the space is technically within the right of way of the freeway) offers a more formal, 10-year air space lease with the opportunity for a 10-year renewal that should provide the necessary protection for the City's investment. Actual re-construction of the park is scheduled to begin the end of July.

Operations and maintenance costs of the development that will occur subsequent to approval of the proposed lease were discussed in a Council briefing in November of 2003 along with other 2000 Parks Levy projects. It is anticipated that the annual operation and maintenance costs for Boren-Pike-Pine Park will be approximately \$23,500 per year.

The lease contains language that prevents the City from fee revenue for special events scheduled in the park in any amount that exceeds the cost incurred in operating the leased property. Should any revenues be derived that exceed operating costs, those monies must be transferred to the State.

- *Please check one of the following:*

**X** **This legislation does not have any financial implications.**

In 1966, under the original maintenance agreement GM 376, the City accepted O&M responsibility for WSDOT's property under the recommended air space lease area and the associated maintenance agreement GM 1412, mentioned in this new ordinance. The areas of responsibility listed in Exhibit D of Attachment 1 to this ordinance include the O&M responsibility areas defined in agreement GM 376, therefore, there are no new O&M costs or expectations beyond what DPR already has responsibility to maintain.





# City of Seattle

---

Gregory J. Nickels, Mayor

## Office of the Mayor

June 28, 2005

Honorable Jan Drago  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Drago:

I am pleased to transmit the attached proposed Council Bill that authorizes the Superintendent of Parks and Recreation to sign and execute a 10-year renewable Airspace Lease, Maintenance Agreement and Supplemental Agreement amending a prior Maintenance Agreement, with the Washington State Department of Transportation for Boren-Pike-Pine Park, (also known as "Four Columns Park") located in the Pike-Pine neighborhood.

Boren-Pike-Pine Park was constructed in its current form by the Washington State Department of Transportation in 1966. The City has operated and maintained the property under a maintenance agreement since that time. The 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy, included an allocation of \$825,000 for new landscaping, gathering spaces, and artwork to encourage greater use of the park. We are now ready to proceed with the Boren-Pike-Pine Park redevelopment project.

The proposed lease will help assure the community that the improvements on this State-owned land will be available to the public for the foreseeable future. Thank you for your consideration of this legislation. Should you have questions, please contact Terry Dunning at 684-4860.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Nickels".

GREG NICKELS  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



STATE OF WASHINGTON – KING COUNTY

--SS.

188982  
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:121871,873,875-877

was published on

08/12/05

The amount of the fee charged for the foregoing publication is the sum of \$ 79.50, which amount has been paid in full.

Subscribed and sworn to before me on

08/12/05

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 August 1, 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. 121873

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

#### ORDINANCE NO. 121871

AN ORDINANCE authorizing the Superintendent of Parks and Recreation to sign an Air Space Lease, Maintenance Agreement and Supplemental Agreement #2 to Agreement GM 376 with the Washington State Department of Transportation for use of land for Boren-Pike-Pine Park.

#### ORDINANCE NO. 121877

AN ORDINANCE relating to City streets, changing the name of a segment of Aurora Avenue North, under the Aurora Bridge, to Troll Avenue North and superseding Ordinance 102981 to the extent inconsistent.

#### ORDINANCE NO. 121876

AN ORDINANCE relating to the Northgate Coordinated Transportation Investment Plan (CTIP); authorizing the Director of the Seattle Department of Transportation or her designee to execute agreements with Central Puget Sound Regional Transit Authority, Washington State Department of Transportation, Wallace Properties, Inc., Mullally Development Company and Kauri Investments, Ltd., for planning funds; authorizing the acceptance and deposit of the funds to be received; and increasing an appropriation to the Seattle Department of Transportation in the 2005 Budget; all by a three-fourths vote of the City Council.

#### ORDINANCE NO. 121875

AN ORDINANCE relating to transferable development rights; authorizing the offering and sale of transferable development rights from the Benaroya Hall Music Center; and authorizing related agreements, deeds and actions.

Publication ordered by JUDITH PIPPIN,  
City Clerk

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