

MEMORANDUM OF UNDERSTANDING, DA2013-100
for
Operation and Maintenance of Underground Water, Drainage and Wastewater Facilities
in Vacated Terry Avenue North and Lake Union Park

This Memorandum of Understanding ("Agreement") is made and entered into as of the last date of the signature of the parties, between the Seattle Department of Parks and Recreation ("PARKS") and Seattle Public Utilities ("SPU"), collectively the "Parties":

WHEREAS, in May 2009 PARKS petitioned the Seattle City Council to vacate a portion of Terry Avenue North in Lake Union Park ("Vacation Area"), depicted in Attachment 1 and legally described in Seattle City Clerk File Number 310009 as:

That portion of the NE ¼ of Section 30, Township 25 North, Range 4 East, W.M., in King County, Washington, being a portion of Terry Avenue North as shown on Sheet 8 of 11 on the Map of Lake Union Harbor (1907). Maps of Lake Union Shorelands as surveyed and platted and approved by the Board of State Land Commissioners of the State of Washington (June 4th 1907 and filed with the City of Seattle on July 1st, 1907), the Supplemental Plat of Lake Union Shorelands (1933), and the Second Supplemental Maps of Lake Union Shorelands (1962), described as follows:

Terry Avenue North lying north of the northerly margin of Valley Street, between Lake Union Shore Lands Blocks 74 and 75, and lying south of the Lake Union State Inner Harbor Line.

Containing 51,812.2 sf

and

WHEREAS, the Seattle City Council's ("Council") conditional grant of vacation of the Vacation Area in December 2009 is conditioned on resolving SPU utility issues to the full satisfaction of SPU prior to the approval of the final vacation ordinance, with the Council directing that PARKS "shall work with the affected utilities and provide for protection of the utility facilities" through "easements, restrictive covenants, relocation agreements, or acquisition of the utilities, which shall be at the sole expense" of PARKS; and

WHEREAS, upon the effective date of the final vacation ordinance the Vacation Area will be incorporated into Lake Union Park, depicted in Attachment 2, a property under the jurisdiction and management of PARKS; and

WHEREAS, SPU currently operates and maintains underground water facilities and drainage and wastewater facilities located in the Vacation Area and Lake Union Park that serve only Lake Union Park; and

WHEREAS, it is the policy of SPU that responsibility for utility facilities, including drainage, wastewater, and water service facilities, that benefit only one property be transferred to the owner of the benefited property; and

WHEREAS, upon the effective date of the final vacation ordinance, SPU desires to transfer to PARKS all responsibility for the drainage, wastewater and water service facilities located in the Vacation Area and Lake Union Park with the exception of all water lines and appurtenances located in the western 30 feet of the southern 25 feet of the Vacation Area including a 6-inch water meter and a pipe union connecting the 6-inch water meter to the other water lines; and

WHEREAS, SPU and PARKS wish to enter into this Agreement to delineate responsibilities for the underground utilities within the Vacation Area and Lake Union Park;

NOW, THEREFORE, in consideration of the terms, conditions and performances contained herein,

EFFECTIVE ON THE EFFECTIVE DATE OF THE ORDINANCE VACATING THE VACATION AREA, IT IS MUTUALLY AGREED AS FOLLOWS:

1. PARKS Responsibility.

A. Water. PARKS accepts responsibility for all existing underground water facilities in the Vacation Area and Lake Union Park except the facilities described in Section 2. A. below ("PARKS Water Facilities").

B. Drainage and Wastewater. PARKS accepts responsibility for all existing underground drainage and wastewater facilities in the Vacation Area and Lake Union Park, including the outfall extending into Lake Union from the Vacation Area ("PARKS Drainage and Wastewater Facilities").

C. Location of PARKS Water, Drainage and Wastewater Facilities. Although the complete inventory of PARKS' Water Facilities and PARKS' Drainage and Wastewater Facilities is not known because Lake Union Park was previously owned by the United States Navy, Attachments 3 and 4 depict the inventory of existing drainage and wastewater facilities to the best of SPU's and PARKS' current knowledge. PARKS' acceptance of responsibility for drainage and wastewater facilities in Lake Union Park is not limited to the inventory depicted on Attachments 3 and 4.

D. Scope of Responsibility for PARKS Water, Drainage and Wastewater Facilities. PARKS is responsible, at its expense, for operation, maintenance, repair, improvement, alteration and replacement of PARKS Water Facilities and PARKS Drainage and Wastewater Facilities as well as installation of any new water and drainage and wastewater facilities deemed necessary by PARKS to serve the needs of the Vacation Area and Lake Union Park.

E. PARKS Responsibility for Damage to SPU Water Facilities. PARKS shall be responsible at all times, at its sole cost and expense, for the repair of any and all damage to the SPU Water Facilities (defined in Section 2.A. below) caused by PARKS, its employees or contractors.

2. SPU Responsibility.

A. Water. SPU retains and accepts responsibility for all water lines and appurtenances (“SPU Water Facilities”) located below the surface of the western 30 feet of the southern 25 feet of the Vacation Area (“SPU Use Area”) including a 6-inch water meter and a pipe union connecting the 6-inch water meter to the other water lines. The SPU Use Area is the subsurface area depicted on Attachment 5. SPU shall be responsible at all times, at its sole cost and expense, for safely operating and maintaining the SPU Water Facilities in good condition. Maintenance in good condition includes repair, improvement, alteration and replacement of the SPU Water Facilities.

B. Drainage and Wastewater. Under Mayoral Executive Order 01-08, SPU is the lead department for the City of Seattle (“City”) for matters related to overall permitting requirements for the City’s National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit (“NPDES Permit”) issued by the Washington State Department of Ecology (“Ecology”). The drainage outfalls extending into Lake Union from the Vacation Area and Lake Union Park (“Lake Union Outfalls”), which are part of PARKS Drainage and Wastewater Facilities, are covered by the City’s NPDES Permit. Per Executive Order 01-08, SPU will be responsible for providing PARKS with sufficient information and technical support relating to compliance with the NPDES Permit for PARKS Drainage and Wastewater Facilities, including the Lake Union Outfalls. PARKS shall be responsible for providing SPU all necessary information, reporting elements and supporting material necessary for the PARKS Drainage and Wastewater Facilities, including the Lake Union Outfalls, to comply with the reporting requirements and associated deadlines of the NPDES Permit.

C. SPU Responsibility for Damage. Except as provided in Section 4 below, SPU is responsible at all times, at its sole cost and expense, for all damage (including costs of repair or restoration or replacement as applicable) to the Vacation Area and Lake Union Park (including park improvements, paving, surface features, structures, furniture or vegetation) caused by malfunction of the SPU Water Facilities or acts or omissions of SPU or its employees or contractors in connection with exercise of rights or obligations under this Agreement (including access to or operation and maintenance of the SPU Water Facilities).

3. SPU Use of Lake Union Park and Vacation Area.

A. SPU Use of SPU Use Area. PARKS authorizes SPU to operate and maintain SPU Water Facilities in the SPU Use Area. Operation and maintenance includes, but is not limited to construction, reconstruction, alteration, improvement, inspection, operation, maintenance and repair.

B. SPU Access and Work. Lake Union Park is heavily used by the public with many scheduled special events. Consequently, SPU shall have pedestrian access to the SPU Use Area for inspection purposes at all times so long as due care is taken to protect the public. For all other access and activities, except emergency repairs, SPU shall coordinate with and obtain written permission from PARKS prior to any use or occupancy of the Vacation Area or Lake Union Park, including access by vehicles or heavy equipment. Except in case of emergency, SPU shall notify PARKS in writing at least five (5) working days in advance of any anticipated use or occupancy of the Vacation Area or Lake Union Park or access by vehicles or heavy equipment and shall specify the scope and duration of the use, occupancy or access. Written permission from PARKS means acknowledgement of SPU's desired use or occupancy or access by vehicles or heavy equipment and approval from PARKS in writing of scope of work, timing, duration and restoration. SPU shall complete all work as expeditiously as possible and, except as provided in Section 4 below, shall restore the Vacation Area and Lake Union Park to the condition existing prior to initiation of work to the extent feasible.

C. Fees. SPU will pay for PARKS staff time, at the prevailing rate for staff time under the revocable use fee schedule, to review SPU requests. SPU will not be obligated to pay PARKS any other fees to use or occupy the Vacation Area or Lake Union Park while working under the terms of this Agreement, including but not limited to application fees, daily use fees, or revocable use permit fees.

PARKS shall invoice SPU for these services. The invoice will include a break down listing the names of PARKS staff that reviewed the SPU requests, their salary rate, overhead rates and number of hours worked on the SPU request.

Invoices will be mailed to:

SPU Accounts Payable
PO Box 34018
Seattle WA 98124-4018

4. Limitations on PARKS Use of Vacation Area. PARKS shall not construct or install or permit the construction or installation of any structure, building, fence, wall, rockery, or obstruction of any kind in the SPU Use Area, nor plant or permit the planting of trees or shrubbery within the SPU Use Area without prior written permission from SPU. Unless otherwise agreed by SPU, PARKS shall be responsible for all costs of removal, relocation and reinstallation of any new structure or landscaping that interferes with SPU's operation and maintenance (as defined in Subsection 3.A. above) of the SPU Water Facilities.

PARKS shall not install or permit installation of new utility facilities, such as conduits, cables, pipelines, vaults, poles, posts, whether public or private, within five (5) horizontal feet of the SPU Water Facilities as depicted in Attachment 5. In addition, any utility facility crossing the SPU Water Facilities must be a minimum of 18 vertical inches away from the SPU Water Facilities. SPU will provide more detailed information about location of SPU Water Facilities upon request.

5. Notices. All notices, requests for approval and approvals shall be given in writing and shall be delivered by mail or fax to the appropriate party at the addresses below:

Seattle Department of Parks and Recreation
Manager, Property and Acquisition Services
800 Maynard Avenue South; 4th Floor
Seattle, WA 98134-1336
Fax: 206-233-7038

Seattle Public Utilities
Division Director, Facilities and Real Property Services
700 Fifth Avenue, Suite 4900
PO Box 34018
Seattle WA 98124-4018
Fax: 206-615-1215

6. Termination. This Agreement shall continue and be in force until SPU permanently removes or decommissions the SPU Water Facilities. At such time as SPU no longer requires the SPU Water Facilities, SPU shall be responsible for removing, or decommissioning the SPU Water Facilities in the SPU Use Area at its sole cost and expense.

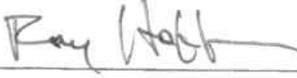
7. Dispute Resolution. The Parties agree that should any disagreement, disputes, damages or the need for further clarifications arise between the Parties in carrying out the Agreement, the Parties shall attempt to resolve the matter at the lowest possible administrative level. Only when necessary shall the dispute or matter be elevated to the respective appointed (Council approved) Department heads (Director or Superintendent) for resolution or approval.

8. Modification of Agreement. This Agreement may be modified by written amendment to this Agreement signed by both Parties.

SEATTLE DEPARTMENT OF PARKS
AND RECREATION

SEATTLE PUBLIC UTILITIES

By: 

By: 

Date: October 17, 2013

Date: 11/5/13

CHRISTOPHER WILLIAMS
Printed Name:

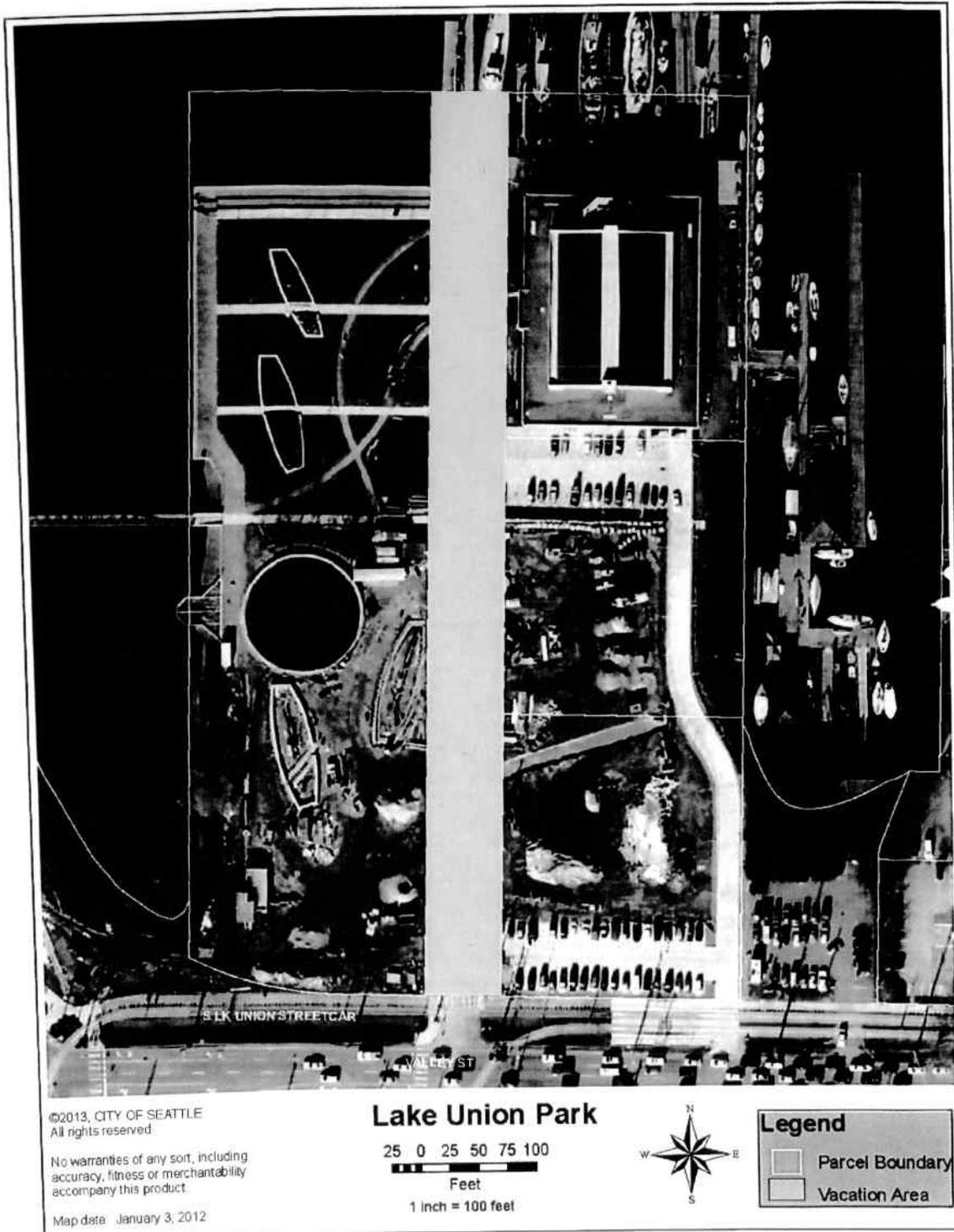
Ray Hoffman
Printed Name

ACTING SUPERINTENDENT
Title

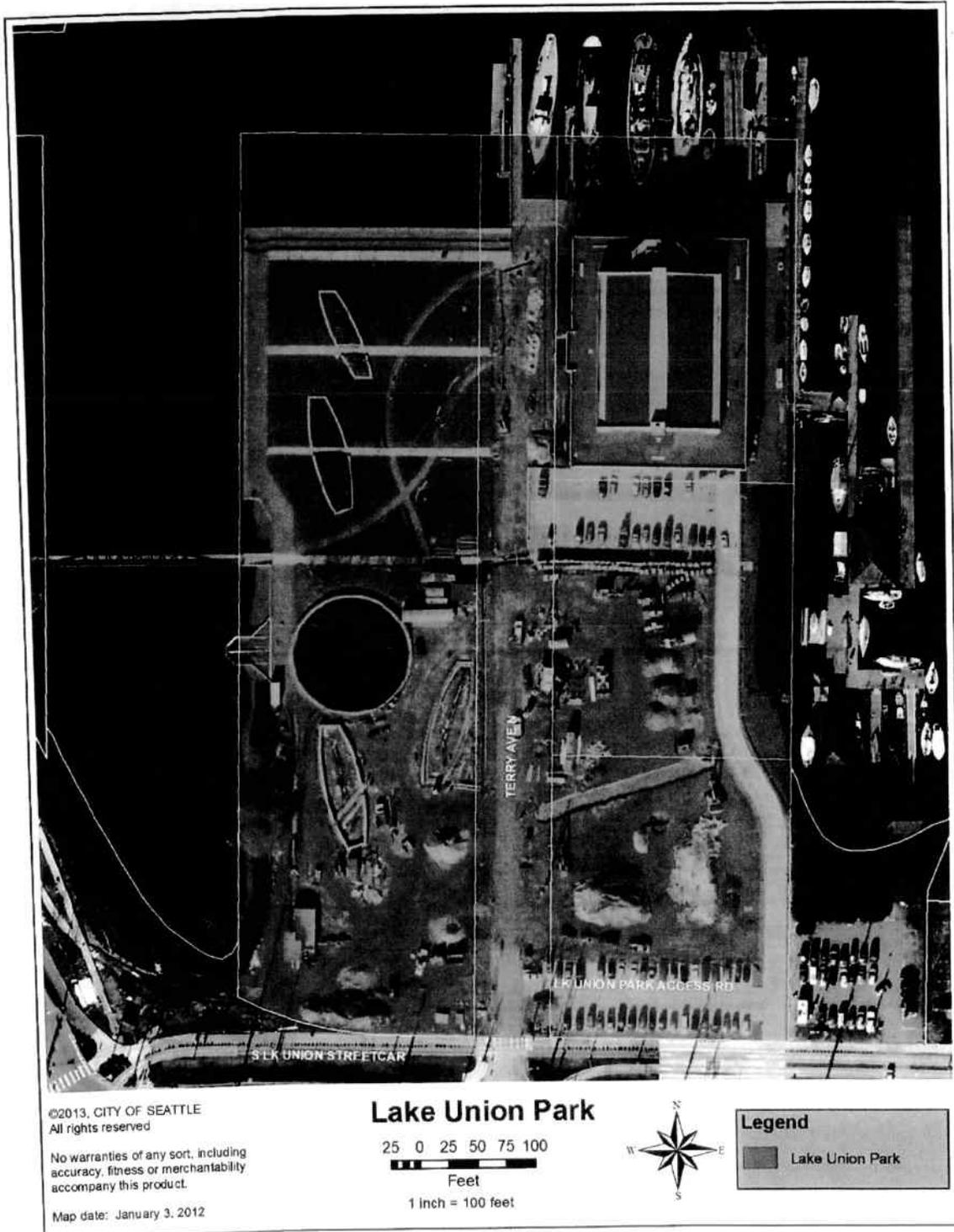
Director
Title

- Attachment 1: Vacation Area
- Attachment 2: Lake Union Park
- Attachment 3: Area Containing Water Facilities belonging to PARKS
- Attachment 4: Area Containing Drainage and Wastewater Facilities belonging to PARKS
- Attachment 5: SPU Area

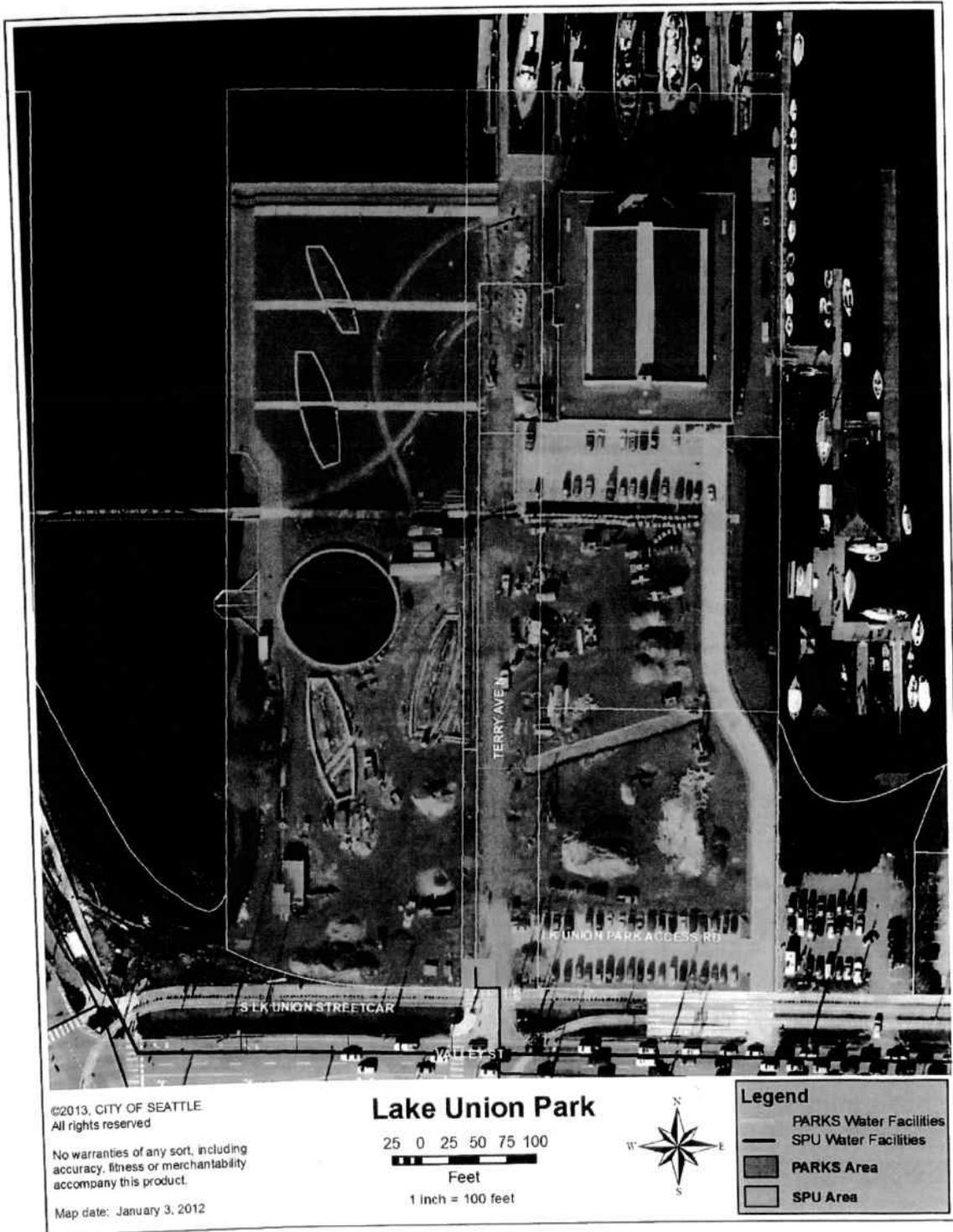
Attachment 1: Vacation Area



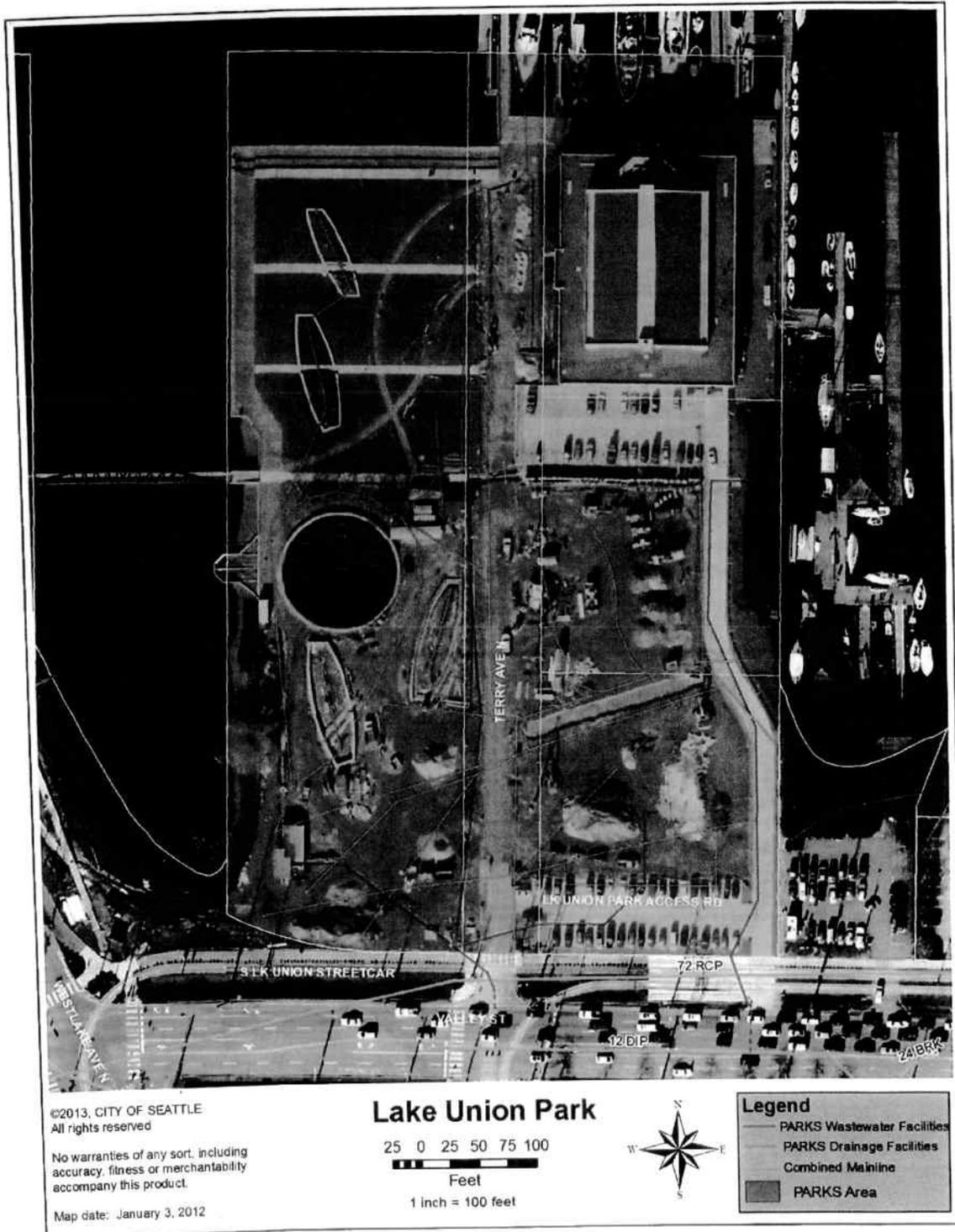
Attachment 2: Lake Union Park



Attachment 3: PARKS Water Facilities



Attachment 4: PARKS Drainage and Wastewater Facilities



Attachment 5: SPU Use Area

