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Stephen Karbowski
LAW,/SCL Burien Utility Relocation Agreement CIP#8401 ORD
July 28, 2011
Version #1a

ORDINANCE _____

AN ORDINANCE related to the City Light Department and a Utility Relocation Agreement with the City of Burien for the relocation and undergrounding of utility infrastructure for the 1st Avenue South Improvements – Phase 2 project in Burien; approving the release, indemnification and hold harmless provision in accordance with Section 8.2 of the Utility Relocation Agreement, and ratifying and confirming certain prior acts.

WHEREAS, City Light currently maintains and operates a portion of its utility infrastructure within the public rights-of-way within the City of Burien under a franchise grant given to City Light authorized by the City of Seattle Ordinance 119348 and the City of Burien Ordinance No. 247; and

WHEREAS, the City of Burien has authorized the 1st Avenue South Improvements – Phase 2 (from SW 146th Street to SW 140th Street) street improvement project ("the Project"), a public project that necessitates the relocation of City Light utility infrastructure located within the boundaries of the Project, as required by both the Franchise and Chapter 12.40 of the Burien Municipal Code ("BMC"); and

WHEREAS, the Utility Relocation Agreement entered into between City Light and the City of Burien provides at Section 8.2 that the City of Seattle's release and indemnification of the City of Burien and the respective rights and obligations contained therein shall only become effective upon approval by ordinance of the Seattle City Council; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of City Light, or his designee, is hereby authorized to execute, for and on the behalf of the City of Seattle the Burien Utility Relocation Agreement CIP#8401, substantially in the form of Exhibit "1" attached hereto, including the ability to enter into additional work orders as provided within the agreement. The Superintendent of City Light is further authorized to enter into amendments of the Burien Utility Relocation Agreement CIP#8401 Agreement, including extensions thereof, that the Superintendent deems to be in the best interests of the utility and its ratepayers, and which are consistent with this ordinance.

Section 2. The release, indemnification and hold harmless provision in Section 8.2 of the Utility Relocation Agreement By and Between The City of Seattle and City of Burien (1st Avenue S, SW 146th Street to SW 140th St Aerial Overhead Electric Utility Undergrounding Installation and Relocation Project), as set forth in Attachment 1, to facilitate relocation and undergrounding of City Light electric utility infrastructure for the City of Burien's 1st Avenue South Improvements – Phase 2 project, is hereby approved.

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

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

Passed by the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its passage this _____ day of _____, 2011.

_____
President _____of the City Council

Approved by me this ____ day of _____, 2011.

_____
Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____
Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Exhibit 1 - Burien Utility Relocation Agreement CIP# 8401

COUNCIL CLERK

UTILITY RELOCATION AGREEMENT

BY AND BETWEEN THE

CITY OF SEATTLE AND CITY OF BURIEN

(1st Avenue S, S. 146th Street to South 140th St Aerial Overhead Electric Utility Undergrounding Installation and Relocation Project)

This Agreement (the "**Utility Relocation Agreement**") between the City of Seattle, by and through its City Light Department ("**City Light**"), a municipal corporation located at 700 Fifth Avenue, Suite 3200, PO Box 34023, Seattle, WA 98124, and the City of Burien ("**Burien**"), a municipal corporation with its offices located at 400 SW 152nd Street, Suite 300, Burien, WA, 98166, (collectively the "**Parties**") sets forth the terms and work procedures for the design and construction of an underground electrical distribution system for a portion of the 1st Avenue South street improvement project from South 140th Street to South 146th Street in Burien, Washington, and a relocation of the existing overhead aerial system to the new underground system.

WHEREAS, the Burien City Council has authorized the 1st Avenue South from South 140th Street to South 146th St street improvement project in an area zoned Community Business, Urban Medium Density, and Urban High Density; and

WHEREAS, Burien has determined that its street improvement project is a public project and will necessitate the relocation of City Light utility infrastructure located within the boundaries of the project; and

WHEREAS, City Light currently maintains and operates its utility infrastructure within the public rights of way of Burien under a franchise grant given to City Light pursuant to City of Burien Ordinance No. 247 ("**Franchise**"); and

WHEREAS, City Light acknowledges and agrees that the terms and conditions of the Franchise govern City Light activities within the Public Rights-of-Way of Burien; and

WHEREAS, the Franchise provides at Section 6.10 that City Light agrees to relocate or remove its facilities from any Burien right-of-way without cost to Burien, subject to Section 7.5 herein (Reimbursement of City Light Costs), provided that Burien: 1) provide SCL written notice no sooner than 60 days prior to the start of Schedule B Work, and 2) provide SCL with copies of any plans and specifications of any proposed temporary of permanent relocation of SCL facilities as defined.

WHEREAS, the Franchise further provides in Section 7 that City Light understands and agrees that its activities within Burien rights-of-way within the Franchise Area must comply with future ordinances establishing minimum requirements and procedures for the underground installation of electrical and facilities; and

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WHEREAS, the Franchise further provides in Section 7.3 that SCL shall bear its proportionate share of all costs common to participants in any joint trenching project, while bearing the entire costs of all materials and labor necessary for the undergrounding of its facilities; and

WHEREAS, Ch. 12.40 of the Burien Municipal Code ("BMC") ("**Burien's Undergrounding Policy**") establishes the minimum requirements and procedures for the underground installation and relocation of electric and communication facilities; and

WHEREAS, City Light acknowledges that the requirements of Burien's Undergrounding Policy will apply to the new underground electrical utility infrastructure that will be installed by City Light to replace the existing City Light aerial utility infrastructure that must be removed as necessitated by Burien's road improvement project, unless such facilities are excepted from the undergrounding requirements by BMC 12.40.040; and

WHEREAS, City Light acknowledges that Burien has given notice to City Light and third party users of the necessity to remove existing aerial utility infrastructure in conformance with the requirements of Section 6.10.2.1 and 6.10.2.2 of the Franchise; and

WHEREAS, the Parties recognize that having multiple contractors on site to perform the City Light relocation and undergrounding work contemporaneous with Burien's street improvement project work will increase the potential for conflict, project delay, and increases in Project costs; and

WHEREAS, the parties further recognize that certain efficiencies and cost savings can be achieved by having Burien manage the work for the street improvements and the relocation and undergrounding of City Light's electrical facilities through a single general contractor; and

WHEREAS, City Light and Burien intend for this Utility Relocation Agreement to provide a detailed process for cooperation and coordination in the design, estimating, scheduling and construction of the electrical facilities undergrounding work through its completion in the most efficient and cost effective manner.

NOW THEREFORE, in consideration of the mutual benefits to be provided the parties through the terms and conditions expressed herein, it is hereby agreed and covenanted among the undersigned as follows:

AGREEMENT

Section 1. General Principles

1.1 Incorporation of Recitals: City Light and Burien agree that the above recitals are true and accurate and are incorporated in this Utility Relocation Agreement as though fully set forth herein.

1.2 Order of Precedence: This Utility Relocation Agreement is intended supplement the franchise agreement and to establish terms and work procedures for the relocation of certain City Light utility infrastructure necessitated by Burien's 1st Avenue South street improvements project from South 140th Street to South 146th Street. In the event that any term, condition, or provision of this Utility Relocation Agreement conflicts with a term,

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condition or provision of the Franchise, said Franchise will govern to the extent necessary to resolve the conflict. Further, except as may be otherwise provided in Chapter 12.40 BMC, in the event that any term, condition, or provision of this Utility Relocation Agreement conflicts with a term, condition or provision of the Chapter 12.40 BMC, the terms, conditions or provisions of Chapter 12.40 BMC will govern to the extent necessary to resolve the conflict. Said Utility Relocation Agreement shall not amend or circumvent said Franchise agreement.

1.3 Scope of Project: Burien has contracted with the firm Perteet, Inc. "**Consultant**" to design street improvements on 1st Avenue South from South 140th Street to South 146th Street (the "Project") that will include roadway widening to accommodate new sidewalks, bicycle lanes, turning lanes, retaining walls, drainage improvements, street lighting, traffic control and signalization devices and other associated work. Perteet, Inc will also prepare the civil infrastructure, service connections on private property, and street lighting design.

1.4 Cooperation: City Light and Burien agree to work together cooperatively in the process of design, estimating, scheduling and construction to bring the electrical undergrounding and relocation work pursuant to this Utility Relocation Agreement (the "Work") to completion in the most efficient and timely manner.

1.5 Additional Right of Way Required: Burien intends to construct the Project within the existing right-of-way. However, it is anticipated that additional property will be necessary for placement of equipment and facilities to make the undergrounding of the aerial overhead utilities possible. Burien acknowledges that the acquisition of additional property by Burien will expedite the Project and provide control to Burien over the property to be acquired. Therefore, Burien agrees that it will be wholly responsible for the acquisition of such additional property that the Parties agree is necessary for use by City Light for its electrical distribution system (the "**Additional Property**"). City Light agrees that it will provide Burien with a written request for the acquisition of Additional Property beyond that identified during the design phase and as to each such Additional Property, shall provide the location, description, and size of property required to relocate the facilities and equipment. Upon acquisition by Burien, each Additional Property shall become a part of the public right-of-way and the use thereof for placement of City Light's facilities and equipment as part of its electrical distribution system shall be governed by the Franchise. To the extent that any Additional Property is not within a Burien Street Right-of-Way, Burien shall grant City Light permanent easement rights over and through such non-right-of-way Additional Properties for the installation, maintenance, operation, replacement, and reconstruction of City Light facilities, and reasonable access to said City Light facilities.

1.6 Lighting System:

1.6.1. A new street and pedestrian lighting system will be installed by Burien. This system will be owned by Burien and maintained by City Light provided the Street and Pedestrian Lighting System lights and poles installed are those included in City Light's inventory per Section 8 of Exhibit A of Ordinance 247. If other lights and poles are chosen, City Light will perform maintenance labor only, with parts and supplies purchased and warehoused by Burien. Burien will coordinate with City Light to establish electrical service for this lighting system.

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1.6.2. City Light shall remove the existing streetlights from City Light-owned poles and return them to inventory as part of the overhead removal process. If streetlights are owned by Burien or another party, City Light will disconnect and remove the streetlights from the poles and Burien shall be responsible for transport, storage or disposal of the streetlights. City Light will not provide Temporary Street lighting during construction. City Light will provide power for temporary street lighting that has been approved by the City Light inspector.

1.7 Notice to Contractors: Burien understands that relocation of overhead power lines to underground along a busy and highly developed urban highway such as 1st Avenue South is a complex process. A certain amount of field engineering is normal with a corresponding need to adjust design, schedules and costs. Burien will take steps to inform the bidders of these considerations. Burien and City Light will coordinate and cooperate to avoid unnecessary delays in the review and approval of change orders related to the Work made necessary to adjust design, schedules and costs.

1.8 Delay: Burien and City Light will work cooperatively to bring the Work to completion on schedule and within budget. City Light will be responsive to schedule and cost concerns and will commit sufficient resources to support the Work and will work cooperatively to resolve any unanticipated design and construction issues related to the Work as they develop.

1.9 Civil Infrastructure: Burien will include the Civil Infrastructure as a separate Schedule B to its construction bid documents, a copy of which is attached hereto as Exhibit A. Burien will construct all City Light and Private Property Civil Infrastructure required to complete the Work. Burien shall, with the assistance of City Light, be responsible for coordinating with the private property owners for the Work to be performed on private property (the "Private Property Infrastructure Work"). (See also Section 6 Construction.) In the event that a private property owner refuses to underground or undergrounding of service is otherwise delayed, City Light may place a pole and route conduit to pole to maintain electric service to the customer. Such work shall be at Burien's request and expense.

1.10 Hard Surface Removal and Restoration Costs: Hard surface removal and restoration within City Light trenching and vault excavation limits of Schedule B work is considered a reimbursable cost from City Light. A hard surface similar to existing conditions within said construction limits will be required until such time that repaving, resurfacing and installing new sidewalks as a component of the overall Project improvements is to occur. Hard surface removal and restoration, if any, outside the Conversion Area will be City Light's responsibility, if caused by City Light, unless the need was not identified earlier and it is necessitated by the impact of the Project. City Light shall notify Burien if City Light discovers that such a need has arisen, so that appropriate change orders to the Project contract can be made.

1.11 Street Light Management/Maintenance: City Light and Burien are in the process of reaching agreement on the inventory of streetlights for which Burien will be billed into the future. Once the agreement on streetlight inventory is reached, City Light and Burien will negotiate a separate agreement assigning management and maintenance responsibilities to their respective organizations for streetlights either owned or rented by Burien. (See also Sections 4. Construction and 5. Financial)

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1.12 Sequencing of Conversion Work: City Light's most efficient sequencing for overhead to underground relocation and installation projects such as this is to begin electrical work only after all Civil Infrastructure design and construction is completed and accepted. City Light agrees to meet the schedule for the Work ("Project Schedule"). In the event the Civil Infrastructure work is substantially complete before the date City Light is to begin the Work in accordance with the Project Schedule, City Light agrees to begin work within ten (10) working days following its receipt of notice from Burien that the site is ready for Work to proceed and has been accepted in writing by the City Light Inspector and City Light Project Manager. In the event that the Work is delayed because —Burien's contractor has not completed the Civil Infrastructure, City Light agrees that it will begin work as soon as possible, but in no event more than twenty (20) working days after receiving notice from Burien that the Civil Infrastructure is ready for City Light to proceed and has been inspected and is Operationally Accepted by City Light.

Section 2. Definitions

The following terms are defined here as they are used in this Agreement:

"Aerial Electrical System": The over head electrical distribution system and service drops, including but not limited to cables, connections, terminations, transformers, switches, utility poles, and associated components.

"Aerial Infrastructure Removal Project": The removal of the existing City Light Aerial Electrical System in the Conversion Area.

"Bid Documents": Engineering design plans including those for Civil Infrastructure PS&E (definition stated below), Project specifications, bidder's forms and certificates, bid contract documents, required contract provisions for Federal-Aid construction contracts, unit price bid schedule for Schedules A, B, C, and D.

"City Light Civil Infrastructure Engineering Guidelines": The current engineering guidelines, construction guidelines, materials standards, and engineering operations and practices adopted by City Light that govern the design, location, alignment, depth, materials, and engineering specifications determined by City Light to be applicable to the Civil Infrastructure improvements for City Light Underground Electrical Systems.

"Civil Infrastructure": Underground infrastructure necessary to contain and facilitate City Light's Underground Electrical System, including but not limited to trenches, conduit, handholes, vaults, casing and other related equipment. Civil infrastructure does not include the Underground Electrical System.

"Civil Infrastructure Plans, Specifications, and Estimates or Civil Infrastructure PS&E": Engineering design plans that include Civil Infrastructure work, Washington State Department of Transportation and Seattle City Light Standard Specifications and Details, and construction cost estimates.

"Consultant": The City of Burien's consultant, Perteet, Inc.

"Contractor": Selected contractor from bidding process. Selected contractor is responsible for all subcontracted work.

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"Conversion Area": The 1st Avenue South corridor in Burien, Washington from approximately 175 feet east of South and Southwest 140th Street to approximately 120 feet west of South and Southwest 146th Street, including parcels served by the electrical distribution system along this corridor.

"Field Directive Change(s)": Design changes to agreed-upon "Work" as the result of field conditions.

"Final Acceptance": The determination by City Light after all Schedule B work has been completed, including having all vault and hand hold lids brought to grade and completion of all punch list work related to the Civil Infrastructure, that the Civil Infrastructure is in conformance with the approved plans and specifications for the Project. Final Acceptance shall also be dependent upon the receipt and approval of as-built drawings for the Civil Infrastructure by City Light. Final Acceptance shall be in the form of a letter to Burien's Project Manager or other designated representative.

"Operational Acceptance": The determination by City Light that the Civil Infrastructure is in material and substantial conformance with the approved plans and specifications for the Project and is ready for installation of the Underground Electrical System by City Light.

"Private Property Infrastructure": The underground infrastructure that is not a part of the Civil Infrastructure, including the service lines to be located on private property, and that is necessary to enable City Light to complete the underground service connection to those properties that had aerial service connections prior to commencement of the Project. Private Property Infrastructure is the responsibility of the private property owner.

"Private Property Infrastructure Work": The work that is necessary to design, construct and install the Private Property Infrastructure to enable City Light to complete the service connections at the "point of service termination point". Such work shall include any and all of the electrical underground work on each private property such as connections between the old overhead service at the weathered and the new underground cable, and pulling the underground cable to a "point of service termination point" in the ROW or utility easement, and providing a secondary handhole at the point of service termination point.

"Project": The design and construction of street improvements on 1st Avenue South between South 140th Street and South 146th Street in Burien, Washington being performed by the City of Burien.

"Schedule B Work": The work to be performed that is included in Schedule B to this Utility Relocation Agreement, also referred to as the Civil Infrastructure work.

"Third Party (ies)": The entities other than City Light whose aerial facilities and equipment are attached to utility poles within the Conversion Area, which poles are owned or jointly owned by City Light.

"Third Party Aerial Infrastructure Removal Project": The removal of all aerial facilities and equipment belonging to Third-Party (ies).

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"Underground Electrical System": The underground electrical distribution system and underground service lines, including but not limited to cables, connections, terminations, transformers, switches, and associated components.

"Underground Relocation and Installation Project": The design, construction and installation of the Underground Electrical System within the Conversion Area.

"Work": The work to be performed under this Utility Relocation Agreement

Section 3. Design Development and Review Process

3.1 Burien shall provide the basic layout of the Civil Infrastructure, including conduit and vault layout, conduit duct details, vault and handhole details, and engineering specifications for the material in accordance with City Light Civil Infrastructure Engineering Guidelines. City Light will provide Burien and the Consultant all current and complete City Light Civil Infrastructure Engineering Guidelines necessary to perform the Civil Infrastructure work, and will make its staff reasonably available to Burien and the Consultant to facilitate the completion of the Civil Infrastructure work.

3.2 Upon execution of this Utility Relocation Agreement, City Light will furnish Burien with a list of pole renters who have facilities on City Light's poles within the Conversion Area. Burien will be responsible for communicating the need to relocate these facilities with each pole renter, and coordinating with each renter for the relocation and undergrounding of the renter's facilities and equipment. City Light will provide notice to each pole renter of the need to relocate their facilities that may be required pursuant to any such agreements, rules or regulations City Light has that are applicable to such pole renters. City Light will cooperate with and assist Burien in Burien's efforts to facilitate the relocation of the facilities of the pole renters attached to City Light's Aerial Electric System and completion of the Third Party Aerial Infrastructure Removal Project.

3.3 Burien shall be responsible for completion of the Civil Infrastructure PS&E. The Consultant will coordinate with a designated City Light staff person to insure that the Civil Infrastructure PS&E incorporates appropriate specifications and detail that conform to City Light Civil Infrastructure Engineering Guidelines. City Light will be responsible for the detailed electric design of the Underground Electrical System and any design work necessary to complete the Aerial Infrastructure Removal Project.

3.4 The Civil Infrastructure PS&E must meet City Light Civil Infrastructure Engineering Guidelines using materials approved by City Light Material Standards. City Light shall provide Burien with the Civil Infrastructure Engineering Guidelines and all other pertinent guidelines, standards, and contract provisions within five (5) working days written notice to City Light that Burien is commencing design. Within five (5) working days of a submission by Burien or its consultant to Seattle City Light of a list of materials or equipment for use in the Civil Infrastructure PS&E or Work, City Light shall provide its approval and/or complete comments. If the submittal is not approved by City Light, the Parties will continue to refine the submittal using this process until the submittal is

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approved by City Light. City Light will not unreasonably withhold or delay its review and approval.

3.5 Design Review Process: Each of the following levels of design completion will be coordinated for each Party's review. In general, City Light will submit its Underground Electrical System design work two weeks prior to Burien's scheduled 60%, 90%, and 100% Civil Infrastructure PS&E distribution. Each party shall submit clear and complete cost estimates, design drawings, specifications, and the necessary supplemental information such as field reconnaissance studies and calculations commensurate with the design levels defined below. Incomplete submittals may result in delaying the review schedule and completion of the design. In the case of incomplete submittal, both Burien and City Light shall work together to correct and complete the submittal within five (5) working days and no later than ten (10) calendar days. (See 3.4 above)

3.5.1. 30%-Level Progress Design Submittal: This is complete as of the date of this Agreement.

3.5.2. 60%-Level Agency Design Review Submittal: This is complete as of the date of this Agreement.

3.5.3. 90%-Level Agency Design Review Submittal: This is complete as of the date of this Agreement.

3.5.4. 100%-Level Final Design Submittal: This is complete as of the date of this Agreement .

3.6 Design Review Submittal Schedule: Burien shall prepare and maintain a Project design schedule that indicates target submittal dates to City Light. The submittal schedule shall be updated as necessary to reflect the current schedule. Burien will provide City Light with schedule modifications in a timely manner.

3.7 Format: Submittals shall be transmitted in hard copy (two 24"x36" and three half-size sets) and digital forms in CADD and direct plot-to-PDF formats. Electronic files shall be in accordance with City Light's CADD (Computer Aided Design/Drafting) standards and compatible with AutoCAD 2004 unless otherwise agreed to by City Light and shall include clarifications from the Design Engineer to City Light.

3.8 Response to Comments: Each Party must address and respond in writing to every written design review comment. Responses shall be provided a minimum of three (3) working days before design coordination meetings for each submittal.

3.8.1. Burien shall work with City Light staff to resolve all issues through scheduling design coordination meetings as necessary, making additional plan sheet revisions, or advancing issues to the next level of project management to resolve the issues in a timely manner. Both City Light and Burien shall work

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collaboratively to get issues resolved prior to Burien delivering the Final Submittal to City Light for approval.

3.8.2. City Light's Designated Representative, or other official designated by City Light, shall resolve any inconsistencies among review comments by City Light departments and offices regarding the Project design submittals prior to the review comments being consolidated and transmitted in writing to Burien. City Light will provide consistent review comments in order to avoid unnecessary delays, change orders, or additional costs to the Conversion Project.

3.9 Upon completing the review of the 100% plan set and resolving any remaining issues, City Light shall approve in writing the 100% complete Civil Infrastructure PS&E. Burien agrees that it will not commence construction or request construction bids until City Light approves in writing the 100% Civil Infrastructure PS&E of Schedule B of the 1st Avenue South Phase 2 Bid Documents.

Section 4. Cost Estimates, Contractor Selection & Construction Schedule

4.1 Estimates: Burien shall have primary responsibility for developing cost estimates for construction and completion of the Civil Infrastructure work. City Light shall have primary responsibility for developing cost estimates for the Underground Relocation and Installation Project and the Aerial Infrastructure Removal Project. The estimates for the Civil Infrastructure, the Underground Relocation and Installation Project, and the Aerial Infrastructure Removal Project shall include a base level of planned overtime as well as an amount for unplanned overtime risk contingency. Burien and City Light shall consult each other and achieve a consensus regarding the cost estimates.

4.2 Bid Process:

4.2.1. Burien agrees to coordinate the bid process with City Light.

4.2.2. The Civil Infrastructure work will be advertised as Schedule B and will be included in the basis for award. Burien will include in the bid documents a requirement for the bidders to provide an itemized unit cost breakdown schedule for the Civil Infrastructure work. Following the opening of bids, Burien will provide City Light with the bid tabulations for review. City Light will provide comments to Burien within five (5) working days of receipt of the bid tabulations.

4.2.3. Prior to Burien's call for bids, Burien and City Light will agree on a tentative schedule identifying key milestones for Project work. Milestones will include completion and acceptance of Civil Infrastructure, completion of the Underground Relocation and Installation Project including energization of new underground circuits, completion of the Third Party Aerial Infrastructure Removal Project, completion of the customer service cutovers, and completion of the Aerial Infrastructure Removal Project.

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4.3 Construction Schedule:

4.3.1. Pre-Construction Conference: Promptly following the execution of the civil construction contract, a pre-construction conference shall be scheduled involving all participants in the Project to review the design, coordination requirements, work sequencing and related requirements. City Light will provide input during this discussion regarding key milestones for Civil Infrastructure and Underground Electrical System work, including completion and acceptance of Civil Infrastructure, energizing new underground circuits, customer service cutovers, and removal of the overhead power system.

4.3.2. Schedules and Updates: Burien's Contractor shall submit a preliminary progress schedule, weekly look-ahead schedules, and updates in hard and electronic media formats in accordance with the contract specifications. Burien will transmit these schedules to City Light for review and comment monthly, and City Light shall submit comments, if any within five (5) working days of receipt. City Light will provide input to discussions between Burien, the Consultant, and its contractor to develop and maintain a project master schedule showing the milestones and critical path.

4.3.2.1 During construction of the Schedule B Work, Burien and the Contractor will hold weekly construction meetings at the City or on-site. To obtain the most recent and/or first-hand information on the construction progress of the Schedule B Work, City Light will attend such meetings and will provide an initial schedule and verbal updates of said schedule. The time and locations of said meetings will be determined at the Pre-Construction Conference. See Section

4.3.3. Civil Infrastructure: Upon substantial completion of the Civil Infrastructure, Burien shall give written notice to City Light of such substantial completion. City Light will, within five (5) working days of receipt of such notice, commence an inspection of the Civil Infrastructure for compliance with the approved plans and specifications, and any approved amendments thereto. If City Light determines that the Civil Infrastructure is in material and substantial conformance with the approved plans and specifications, and is ready for installation of the Underground Electrical System, City Light shall give its written Operational Acceptance of the same. If City Light rejects the Civil Infrastructure, or any part thereof, it shall provide a written punch list to Burien, including an explanation of the reasons for its disapproval and the necessary corrections. Burien will cause its contractor to correct the problem as soon as practicable after receipt of such notice. The foregoing procedure will be repeated until City Light has given full Operational Acceptance of the Civil Infrastructure. Burien shall require the contactor to be responsible for protecting the Civil Infrastructure inside the project limits until Final Acceptance is given by City Light.

4.3.4. Underground Relocation and Installation Project: City Light will complete and energize the Underground Relocation and Installation Project within One

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Hundred Ten (110) working days of its written Operational Acceptance of the Civil Infrastructure. City Light will contemporaneously therewith, but no later than thirty (30) working days following completion of the Underground Relocation and Installation Project, except as provided for in Sections 4.9 or 4.10 of this Agreement, complete the service connections for all City Light Customers within said Conversion Area that have completed the Private Property Infrastructure Work.

4.3.5. Aerial Infrastructure Removal Project: City Light shall complete the Aerial Infrastructure Removal Project within thirty (30) working days following the completion of the Third Party Aerial Infrastructure Removal Project and private property service conversion, except as provided for in Sections 4.5 or 4.4 of this Agreement.

4.4 Design Revisions: Burien will immediately notify in writing the City Light inspector, as well as City Light's project manager, of any potential design revisions affecting the Civil Infrastructure and ensure that City Light reviews and approves those design revisions.

4.5 City Light project manager will immediately notify in writing Burien of any requests for change orders affecting the Civil Infrastructure work and ensure that Burien reviews and approves those change orders.

4.6 Each party agrees to review and respond to design revisions and/or change order submittals within five (5) working days unless additional information is required to make a determination of the effect on City Light facilities and services or Burien's district improvements.

4.7 Burien and City Light agree that although the Burien construction inspector is not responsible for primary inspection of City Light facilities, both Burien's and City Light's inspectors and their project managers will work cooperatively to bring the Work to completion on schedule and within budget.

4.8 In the event of an inspection or quality disagreement, the Burien Public Works Director and City Light's South Distribution Design Manager, or such person subsequently designated by City Light will be notified immediately for resolution. Resolution of disagreement shall be documented in written form (letter, memo, email) between Burien and City Light.

4.9 Contractor Delay; Disruption: Delays in completion of the Civil Infrastructure, caused by Burien, the Consultant, or the Contractor, may cause City Light to redirect its crew resources to other tasks, and City Light crew resources may not be immediately able to return, which may impact the Work or the Project Schedule. City Light shall immediately notify Burien's project manager, if City Light crews are removed from the Work, and shall return City Light crew resources to complete the Work within ten (10) working days and no more than twenty (20) working days.

4. 10 Force Majeure: Burien agrees that City Light's performance of its obligations under this Agreement shall be excused to the extent that such delay is the direct result of a "Force Majeure Event" such as a storm, earthquake, or other condition which necessitates the

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mobilization of City Light resources to restore utility service to its customers. City Light agrees to promptly notify the Burien project manager if and when City Light crews are to be removed from the Project and Work and both parties agree to use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event. Performance of any obligation affected by Force Majeure Event shall be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure Event.

Section 5. Staffing

Primary project contacts will be as follows as of execution of this Agreement:

City of Burien
Douglas R. Lamothe, P.E.
Relocation Coordinator
City of Burien Public Works
400 SW 152nd St, Suite 300
Burien, WA 98166
(206) 241-4647

City of Burien
Brian Victor, P.E.
Project Manager,
City of Burien Public Works
400 SW 152nd St, Suite 300
Burien, WA 98166
(206) 248-5533

City Light
Stephen Byers, PMP
Sr. Project Manager
PO Box 34023
700 5th Ave, Suite 3200, Rm 3454
(206) 684-3637

Section 6. Construction

6.1 Civil Infrastructure: Burien will construct the Civil Infrastructure in accordance with the plans and specifications approved by City Light and as otherwise provided herein.

6.2 Private Property Infrastructure:

6.2.1. Burien will contact and coordinate with property owners and customers within the Conversion Area (as identified by City Light) to facilitate the timely completion of the Private Property Infrastructure Work.

6.2.2. In furtherance of the Private Property Infrastructure Work, Burien intends to seek agreement from each such customer/property owner which agreement will either: (1) authorize Burien, and Burien's consultants and contractors, to perform some or all of the Private Property Infrastructure Work, or (2) provide that the private property owner will perform or cause to be performed the Private Property Infrastructure Work. All necessary work for City Light to complete its underground service connection work to those properties in the Conversion Area will be completed by Burien, Burien's consultants or contractors, or the private property owners prior to Operational Acceptance of the Civil Infrastructure by City Light.

6.2.3. City Light shall intercept and connect the service in the secondary handhole. The contractor performing the Private Property Infrastructure Work shall coordinate each service cutover work with the City Light electric service representative, five (5) working days in advance of the cutover.

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6.3 Aerial Infrastructure Removal Project:

6.3.1. City Light will perform the work necessary to complete the Aerial Infrastructure Removal Project in accordance with the Project Schedule and as set forth in Section 4.3 of this Utility Relocation Agreement.

6.3.2. City Light will coordinate with Burien and Burien's contractor to schedule the removal of the connections to the Burien streetlights at a mutually convenient time and place.

6.3.3. Burien will, with the cooperation and assistance of City Light, coordinate the removal of the Third Party facilities on the Aerial Electrical System to coincide with the removal of City Light overhead lines. City Light further agrees to cooperate with Burien in exercising any lawful authority that City Light may have to require such Third Parties to timely remove their facilities from the City Light and jointly-owned poles within the Conversion Area. Upon request by Burien, and to the extent legally permitted, City Light will provide Burien with copies of pole attachment agreements, if any, between the Third Parties and City Light, and any policies, procedures, rules or regulations that are applicable to the exercise of such authority.

6.3.4. City Light will be responsible for removing poles solely owned by City Light and requesting removal of utility poles in joint ownership with a telecommunications or other service provider. The telecommunication or other service provider shall have primary responsibility for removal of the poles that are joint ownership poles per City Light records. In the event that a Third Party does not remove such jointly-owned poles, and upon the request of Burien, City Light will remove the poles after all Third Parties have completed their wiring, service connections, and removed their lines and equipment from the poles. Burien agrees that this is not a project cost that is recoverable through City Light customer rates and will be done at Burien's expense.

6.3.5 SCL shall have the right to temporarily bypass any facilities that will be temporarily disconnected, relocated or removed.

6.4 Inspection:

6.4.1 Burien agrees that the general contractor employed by Burien will be directed to comply with the City Light requirements by Burien's Public Works Director or designee in accordance with the plans and specifications approved by City Light; provided however, that under no circumstance shall City Light or its employees, agents or contractors be responsible for or authorized to give direction to or direct work by the Contractor.

6.4.2 City Light understands and agrees that it shall have full and complete responsibility,

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at its sole cost and expense, for inspecting the Civil Infrastructure throughout the progress of the work performed by Burien's Contractor, to ensure that the Civil Infrastructure conforms to the approved plans and specifications and any amendments thereto and any other applicable City Light requirements. However, the foregoing shall in no way diminish the responsibility of Burien and Burien's Contractor or subcontractors to construct the Civil Infrastructure in accordance with the approved plans and specifications and any amendments thereto, as well as any other applicable City Light requirements. City Light agrees to provide sufficient staffing and resources to adequately and timely inspect the progress of work so as to conform to the work plan as updated at the weekly construction meetings as provided for in Section 4.3.2.1. City light further agrees that the City Light Project Manager or designee will regularly attend the weekly construction meetings for the Project. In the event that City Light inspectors identify work or materials that are not in accordance with the approved plans and specifications, City Light shall immediately notify the Burien Project Manager and provide a detailed description of the non-conformance or defect in work or materials. Except in cases of a Force Majeure Event as defined in Section 4.10, any work not adequately and timely inspected by City Light will be considered to be accepted, provided that the work is in accordance with the work plan established in the weekly construction meeting.

6.5 Field Directive Change(s): Each party agrees to immediately notify the other party in writing of any potential field design revisions and/or changes affecting the other's facilities. All changes that involve work related to the Underground Electrical System and/or Civil Infrastructure require notification and approval by and acknowledgement of both Parties. Any costs associated with work completed to the Underground Electrical System or Civil Infrastructure outside of the mutually approved plans and specifications and approved amendments thereto without City Light approval will be Burien's responsibility. All changes to the Underground Electrical System and/or the Civil Infrastructure approved by the City Light Project Manager or other authorized representative shall be reimbursable to Burien.

6.6 Burien's Project manager will be notified by City Light in writing of Operational Acceptance, with any exceptions, before City Light will commence installation of the Underground Electrical System. Once City Light issues Operational Acceptance for the Civil Infrastructure, City Light will then commence placement of cable along with the cutover of existing services. Burien and its Contractor will maintain physical ownership of the Civil Infrastructure and will repair or replace any damaged structure at their expense, unless such damage was caused by City Light or its contractors or subcontractors. The Contractor or its Subcontractor will continue to complete the duct bank punch list and both Burien's Engineer and the City Light Inspector will continue to verify that the open items are being completed.

6.7 Duct Bank. Once the duct bank is 100 % complete and all vault and hand hole lids brought to grade, a final walk through will be scheduled by Burien with the City Light

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inspector and with Burien's Engineer and Contractor. After all punch list items are completed and as-built drawings have been submitted to and accepted by City Light, City Light will provide a letter of Final Acceptance of Schedule B Work to Burien's Engineer. Burien's Engineer or designee will notify the Contractor that the Schedule B Work has been completed and Burien has received Final Acceptance from City Light.

6.8 Street Lighting and Signals: City Light and Burien will select service points for the Street and Pedestrian Lighting System as well as traffic signals designed by Burien's Consultant. City Light will install wiring between its power source and the service points and make final connections to energize the systems. Burien's Contractor will provide temporary highway lighting as necessary during construction.

6.9 Environmental Site Conditions. In the event that the Contractor in performing the Civil Infrastructure work discovers any materials that require special removal, treatment, handling, transport and/or disposal under any local, state or federal laws or regulations (including, but not limited to hazardous materials, hazardous waste, dangerous waste, toxic waste or contaminated soil or groundwater) within the neat line excavation of the Civil Infrastructure as depicted in the duct bank alignment in the approved plans for the Schedule B Work, the costs for removal, treatment, handling, transporting and disposal of such materials shall be considered part of the Civil Infrastructure Costs, and shall be recoverable by City Light from its customers in the City of Burien as provided for in Section 7.5 of this Utility Relocation Agreement. Any costs related to removal, treatment, handling, transport and/or disposal of hazardous materials, hazardous waste, dangerous waste, toxic waste or contaminated soil or groundwater existing outside of the actual neat line excavation of the Civil Infrastructure as depicted in the approved plans for such work shall not be part of the Civil Infrastructure Costs and shall be the responsibility of Burien. However, City Light and Burien shall retain all rights they may have under applicable state and federal laws to recover costs that either may incur related to the existence of such hazardous materials, hazardous, dangerous or toxic wastes, or contaminated soil or groundwater from any and all parties that may be responsible for such materials, wastes, or contamination discovered or uncovered during construction of the Civil Infrastructure.

Section 7. Financial

7.1 Costs for Work: The estimated cost for the Work related to this Agreement, as described in Schedule B, is $3,918,112 ("Estimated Costs"). The total engineering design cost portion of the Work is estimated to be $280,000 and is in addition to the Estimated Costs. The Estimated Costs are based on the City of Burien's engineering construction estimates of the Project and is subject to change based upon final bid review, award of all relevant Project work and change orders. City Light will reimburse Burien for the actual cost of engineering design and construction work for installation of the Civil Infrastructure, as listed in Schedule B. The actual costs charged to City Light will be determined based on itemized consultant invoices and Payment Requests from the General Contractor for actual work performed or completed. Burien will invoice City Light per section 7.3 below.

7.2 Project Management Costs: Burien will charge City Light 15% of the total construction cost of the Work as represented by the awarded bid for Burien's construction management services for the Civil Infrastructure required for completion of the project. These costs are eligible for reimbursement as described below in section 7.3.

7.3 Reimbursement of Civil Infrastructure Costs: Burien will submit itemized monthly invoices with backup documentation, which shall include relevant invoices and Payment Requests, for Project costs to City Light. Burien's invoices shall be sent to:

ATTN: Accounts Payable Seattle City Light
700 5th Ave Suite 3300
PO Box 34023
Seattle, WA 98124-4023

7.4 City Light will process the monthly invoice and issue a check payable to Burien within sixty (60) calendar days of receiving the request.

7.5 Reimbursement of City Light Costs: The full actual cost of the Work, including Civil Infrastructure costs, Underground Relocation and Installation Project costs, and Aerial Infrastructure Removal Project costs shall be recovered by City Light from its customers in the City of Burien through an increment to the rates charged to Burien customers. The increment shall be sufficient to reimburse City Light for all related pertinent project costs, plus interest at City Light's long-term borrowing rate, over a 25-year period.

7.6 Streetlights: All the payments for City Light costs related to the connection of electrical service to the lights and the traffic signals shall be coordinated through the appropriate City Light Electric Service Representative. These connection costs will not be billed to this project but will be billed by City Light to the City of Burien directly.

Section 8. Indemnification and Hold Harmless

8.1 Notwithstanding the expiration or early termination of this Agreement, and to the extent authorized by law, Burien releases and shall defend, indemnify and hold City Light harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to reasonable attorney fees) caused by or arising out of any act or omission or willful misconduct of Burien, its employees, contractors or subcontractors in their performance under this Agreement. During the performance of such activities, Burien's employees or contractors shall at all times remain employees or contractors, respectively, of Burien.

8.2 Notwithstanding the expiration or early termination of this Agreement, and to the extent authorized by law, City Light releases and shall defend, indemnify and hold Burien harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to reasonable attorney fees) caused by or arising out of any act or omission or willful misconduct of City Light, its employees, contractors or subcontractors in its performance under this Agreement. During the performance of such activities, City Light's employees or contractors shall at all times remain employees or contractors, respectively, of City Light. **The release, indemnification and hold**

harmless provision in this Section 8.2 and the respective rights and obligations contained therein shall only become effective and apply to this Utility Relocation Agreement upon approval by ordinance of the Seattle City Council. In the event that the Seattle City Council fails to approve by ordinance the release, indemnification and hold harmless provision in this Section 8.2, then the parties agree that Section 14.1 (Indemnification and Hold Harmless) of the Franchise shall be applicable to this Utility Relocation Agreement.

8.3 Title 51 RCW. Solely with respect to claims for indemnification arising out of City Light's Underground Relocation and Installation Project and City Light's Aerial Infrastructure Removal Project, Burien and City Light waive, as to each other only, and expressly not for the benefit of their employees or third parties, their immunity under Title 51 RCW, the Industrial Insurance Act, and acknowledges that this waiver has been mutually negotiated by the Parties. . Burien and City Light agree that their respective indemnity obligations extend to any claim, demand, or cause of action brought by, or on behalf of, any of their respective employees or agents. Burien further agrees that in the event that any employee or agent of Burien's contractors, subcontractors, consultants, or agents asserts a claim against City Light, Burien waives any right it may have to assert its Title 51 immunity as a defense against a City Light claim to Burien that otherwise would be covered by Burien's indemnity obligations to City Light.

8.4 No liability shall attach to either party by reason of entering into this Agreement except as expressly provided herein.

Section 9. Insurance

9.1 Burien shall require its Contractor to:

9.1.1. Maintain Commercial General Liability (CGL) insurance in force at all times during the performance of work under this Agreement.

9.1.2. Include the City of Seattle as an additional insured for primary and noncontributory limits of liability for the full valid and collectible limits of liability maintained by the Contractor, whether such limits are primary, excess, contingent, or otherwise; as respects CGL insurance, such additional insured status shall be provided under the ISO form CG 20 26 11 85 or equivalent that shall provide coverage for the date of occurrence rather than the date of claim.

9.1.3. Furnish certification of insurance evidencing compliance with the provisions of this Section to City Light via email at riskmanagement@seattle.gov or fax to (206) 470-1279.

Section 10. Third Party Beneficiary and Warranties
Burien shall include City Light as an intended third party beneficiary in Burien's contract(s) with its Contractor(s) and subcontractors, and will accordingly include City Light in the indemnification provisions contained in Burien's contract(s). Burien and City Light do not intend that this paragraph be interpreted to create any obligation, liability, or benefit to any party, other than Burien and City Light

for purposes of design and construction of the Civil Infrastructure as defined in this Agreement.

Section 11. Ownership of Facilities

Upon completion of the Civil Infrastructure work and upon City Light's acceptance as outlined herein, and except as otherwise stated in the Franchise or in subsequent agreements, City Light shall own, operate, and maintain the Civil Infrastructure and Underground Electrical System installed or provided pursuant to this Agreement.

EXECUTED, this the 17th day of MAY, 2011.

CITY OF BURIEN

Larry Blanchard
Burien Public Works Director

SEATTLE CITY LIGHT

Jorge Carrasco
Seattle City Light
Superintendent

COUNCIL CLERK

Form revised: July 12, 2011

FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	CBO Analyst/Phone:
City Light	Stephen Byers/206-684-3637	Calvin Chow/206-684-8587

Legislation Title: AN ORDINANCE related to the City Light Department and a Utility Relocation Agreement with the City of Burien for the relocation and undergrounding of utility infrastructure for the 1st Avenue South Improvements – Phase 2 project in Burien; approving the release, indemnification and hold harmless provision in accordance with Section 8.2 of the Utility Relocation Agreement, and ratifying and confirming certain prior acts.

Summary and background of the Legislation:

Summary of the Legislation:
This legislation approves indemnity language negotiated as part of the Utility Relocation Agreement (URA) for Phase 2 of the Burien 1st Ave South project. The indemnity language of the URA is narrower in scope than under the existing Franchise Agreement with Burien, and includes a parallel indemnity from Burien to City Light. This indemnity language reduces the City's potential liability..

Background:
The Burien undergrounding project set to begin 4th quarter 2011 is the 2nd phase of a multi phase corridor improvement project along 1st Avenue So in the City of Burien. The requirements of this project are dictated by the franchise agreement executed by the City of Seattle and the City of Burien in January 1999. The project is further governed by the Utility Relocation Agreement (URA) executed by both Cities in May 2011. The URA details the scope of City Light's work and more clearly defines the indemnity implications. All costs for this project will be recovered through City of Burien energy rates.

_X_ This legislation does not have any financial implications.

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

The financial implications of the new indemnity language, if any, would be to reduce City Light's potential exposure to liability.

b) What is the financial cost of not implementing the legislation?

None.

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c) Does this legislation affect any departments besides the originating department?

No.

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

Revert to the City of Burien Franchise Agreement which has no reciprocal indemnity language.

e) Is a public hearing required for this legislation?

No.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

g) Does this legislation affect a piece of property?

No.

h) Other Issues:

None.

List attachments to the fiscal note below:

COUNCIL CLERK

City of Seattle
Office of the Mayor

August 2, 2011

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

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill which provides legislative approval for the indemnity provision in the Utility Relocation Agreement between Seattle City Light and the City of Burien. The indemnity provision reduces Seattle City Light's exposure to potential liability and includes a reciprocal indemnity from the City of Burien for this project.

The Utility Relocation Agreement is for the second phase of a multi-phase relocation program for placing utilities underground in connection with the City of Burien's 1st Avenue South Street Improvement Project. By the terms of the existing franchise agreement and Burien ordinance, Seattle City Light is required to underground all new or revised electrical infrastructure in connection with City of Burien redevelopment and street improvement projects. Project costs will be recovered through City of Burien energy rates.

Thank you for your consideration of this legislation. Should you have questions, please contact Phil West, Customer Service and Energy Delivery Officer at 206-684-3718 or phil.west@seattle.gov.

Sincerely,

Michael McGinn
Mayor of Seattle

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov

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