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ORDINANCE

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AN ORDINANCE relating to Seattle Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into an easement agreement granting and conveying a permanent subsurface tunnel easement under portions of the Cheasty Greenspace to the Central Puget Sound Regional Transit Authority and to accept payment therefor; finding that the grant of a permanent subsurface tunnel easement meets the requirements of Ordinance 118477, adopting Initiative 42, to the extent applicable; ratifying and confirming the grant of temporary surface rights on portions of the Cheasty Greenspace to the Central Puget Sound Regional Transit Authority for temporary construction purposes and authorizing acceptance of payment therefor; and exempting the grant of temporary surface rights from the requirements of Ordinance 118477, to the extent applicable.

WHEREAS, in 1998 the Seattle City Council approved Ordinance 118927, which authorized the Mayor to execute a Memorandum of Agreement for Intergovernmental Cooperation for the Central Light Rail Transit Line ("MOA") with the Central Puget Sound Regional Transit Authority ("Sound Transit") relating to light rail system development and station area planning within Seattle; and

WHEREAS, the MOA identified common objectives of the City of Seattle ("City") and Sound Transit including but not limited to the following: development of a light rail system that effectively serves the transportation needs of citizens in the city and surrounding service area in a manner consistent with regional service goals within the budget and schedule adopted by Sound Transit; expedite review of necessary City approvals, minimize conflicts regarding such approvals, and quickly resolve such conflicts that do arise; and build effective, ongoing intergovernmental cooperation between Sound Transit and the City; and

WHEREAS, on April 10, 2000, the Seattle City Council adopted Resolution 30128, which approved the alignment, location of stations, and maintenance base location for the light rail system; and

WHEREAS, the alignment of the light rail system, as described in the Central Link Light Rail Beacon Hill Tunnel Plans (Contract # C710), passes below the surface of portions of the Cheasty Greenspace; and

WHEREAS, in order to meet Sound Transit's construction schedule, Sound Transit and the City entered into a Right of Entry Agreement (BH009) on March 30, 2004, as extended by letter agreement on November 3, 2004, for the temporary occupancy of surface portions of the Cheasty Greenspace and construction of a subsurface tunnel for the light rail system, as described in the Central Link Light Rail Beacon Hill Tunnel Plans (Contract # C710); and



1 WHEREAS, Sound Transit has finished construction and currently operates its light rail system
known as the Central Link Light Rail Project; and

2 WHEREAS, the City and Sound Transit have agreed on the terms and fair market value of the
3 subsurface tunnel easement and the fair market value of the temporary surface rights for
4 construction purposes; and

5 WHEREAS, the City Council has held a public hearing in accordance with the requirements of
6 Section 3 of Ordinance 118477, adopting Initiative 42; NOW, THEREFORE,

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

8 Section 1. The City Council hereby finds that the sale of a permanent subsurface tunnel
9 easement under a portion of the Cheasty Greenspace to the Central Puget Sound Regional Transit
10 Authority ("Sound Transit") for the operation of Sound Transit's Central Link Light Rail Project
11 ("Project") is necessary because there is no reasonable and practical alternative and such
12 subsurface easement is compatible with park use, thereby meeting the requirements of Ordinance
13 118477, to the extent applicable. To the extent that Ordinance 118477 is applicable to the grant
14 of temporary surface rights on a portion of the Cheasty Greenspace to Sound Transit in
15 connection with the construction of the Project, the requirements of Ordinance 118477 are
16 hereby superseded.
17

18 Section 2. The Superintendent of Parks and Recreation, or his respective designee, is
19 hereby authorized, on behalf of The City of Seattle, to enter into a Tunnel Easement Agreement
20 with Sound Transit, substantially in the form of Attachment 1 attached hereto and incorporated
21 by this reference, under the real property described in Attachment 1.
22

23 Section 3. Consideration for the grant of temporary surface rights on a portion of the
24 Cheasty Greenspace during construction of the Project and consideration for the permanent
25



Tunnel Easement described in Attachment 1, paid by Sound Transit, shall be deposited as follows:

Fund Name and Number	Department	Revenue Source	2011 Revenue	2012 Revenue
Parks and Recreation Fund 10200	Parks and Recreation	Sound Transit Tunnel Easement	\$ 8,400	0
Parks and Recreation Fund 10200	Parks and Recreation	Sound Transit Temporary Surface Rights	\$102,400	0
TOTAL			\$110,800	0

Section 4. Any act consistent with and prior to the effective date of this ordinance, including the grant of temporary surface rights on a portion of the Cheasty Greenspace to Sound Transit during the construction of the Project, is hereby ratified and confirmed.



1 Section 5. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

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

7 _____
8 _____
9 President _____ of the City Council

10
11 Approved by me this ____ day of _____, 2011.

12 _____
13 _____
14 Michael McGinn, Mayor

15
16 Filed by me this ____ day of _____, 2011.

17 _____
18 _____
19 Monica Martinez Simmons, City Clerk

20 (Seal)

21
22 Attachment 1: DPR Sound Transit Cheasty Ordinance: Tunnel Easement
23 Exhibit A to Attachment 1: Legal Description of Tunnel Easement
24 Exhibit B to Attachment 1: Illustration of Tunnel Easement
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26
27
28



Chip Nevins
DPR Sound Transit Cheasty ORD ATT 1
June 14, 2011
Version #2

DPR Sound Transit Cheasty Ordinance: Tunnel Easement



WHEN RECORDED RETURN TO:

Real Estate Division
Central Puget Sound Regional Transit Authority
401 South Jackson Street
Seattle, WA 98104-2826

Document Title:	Tunnel Easement Agreement
Reference Number of Related Document:	N/A
Grantor(s):	The City of Seattle, a municipal corporation
Grantee:	Central Puget Sound Regional Transit Authority
Abbreviated Legal Description:	Ptn. of Lots 4-10, Blk 32, T. Hanford's Add., Vol. 1, Pg. 205
Additional Legal Description:	Exhibit "A"
Assessor's Tax Parcel Number(s):	308500 1995

R/W No. BH-009

TUNNEL EASEMENT AGREEMENT

1. **Grant of Tunnel Easement.** THE CITY OF SEATTLE, a Washington municipal corporation ("Grantor"), for and in consideration of Eight Thousand Four Hundred and No/100 Dollars (\$8,400.00) in hand paid, hereby conveys to the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY ("Grantee"), a regional transit authority of the State of Washington, for the purposes described below, an exclusive permanent subsurface easement (the "Tunnel Easement") under the surface of and through a portion of Grantor's property. Grantor's property ("Grantor's Property") and the subsurface portion of Grantor's Property that is subject to the Tunnel Easement ("Tunnel Easement Area") are legally described in **Exhibit "A"** attached hereto and incorporated herein and illustrated in **Exhibit "B"**, all attached hereto and incorporated herein by reference. The



Tunnel Easement Area shall be a subsurface easement lying vertically between two horizontal planes at elevation 125 feet and elevation 63 feet, based on the North American Vertical Datum of 1988 (NAVD88), the top plane being approximately 25 feet below ground surface (BGS).

2. Purpose of Tunnel Easement. Grantee shall have the right to use the Tunnel Easement Area for all purposes necessary or incidental to Grantee's construction, operation, maintenance, use, modification, repair and replacement of underground tunnels and related public transportation facilities, including but not limited to the right to construct, operate, maintain, modify, repair, replace, improve, remove, and use said tunnels, tunnel supports, roof, floor, and all utility lines or wires within said tunnels, together with the right to operate light rail trains and other public transportation vehicles and equipment within said tunnel, and for any related uses as Grantee may now or hereafter deem appropriate. All structures, materials, facilities, mechanical and electrical systems, utilities, equipment, furnishings, or improvements of any kind that are acquired, constructed, or installed in or upon the Tunnel Easement Area shall be and shall at all times remain the property of Grantee.

3. Grantor's Use of Tunnel Easement Area. Grantor shall not use any portion of the Tunnel Easement Area without the prior written consent of Grantee, which shall not be unreasonably withheld.

4. Grantee's Use of Tunnel Easement Area. Grantee may use the Tunnel Easement Area for the purposes and in the manner described herein. Grantee's normal operation of its Link light rail project (the "Project") is not anticipated to cause noise or vibration noticeable upon Grantor's Property or to cause subsidence or damage of any kind to Grantor's Property. Grantee shall at all times maintain its improvements and facilities in the Tunnel Easement Area in good condition and repair and in accordance with all applicable laws and regulations and shall at all times maintain the structural integrity of the Tunnel Easement Area and the support of the surface of Grantor's Property. Grantee is responsible for all injury and damage, including consequential damage, to persons and property (real and personal) and improvements caused directly or indirectly by Grantee's exercise of Grantee's rights under this Tunnel Easement Agreement. Grantee's responsibility for such injury and damage shall include repair and restoration to original condition of any and all damage to the Grantor's real and personal property; and repair, replacement, or restoration to original condition of all damaged or destroyed structures, facilities, and improvements on the Grantor's Property, all at Grantee's sole cost and expense. In addition, if any voids are discovered within the Tunnel Easement Area or elsewhere within the predicted zone of influence of Grantee's tunneling activities, Grantee shall be responsible for expeditiously filling such voids and mitigating any related damage to Grantor's real or personal property.

5. Applicable Law and Indemnification. Grantee shall at all times exercise its rights under this Tunnel Easement Agreement in accordance with the requirements of all applicable laws, orders, rules, and regulations of any public authority having jurisdiction. In the event the impacts of Grantee's uses of the Tunnel Easement Area as described herein are demonstrated to be incorrect, or in the event of Grantee's failure to maintain structural integrity of the Tunnel Easement Area or support of the surface or subsurface of Grantor's Property, or in the event of injury or damage to persons or property resulting directly or indirectly from damage on or to Grantor's Property from Grantee's exercise of Grantee's rights under this Tunnel Easement Agreement, Grantee agrees to indemnify, hold harmless, and defend Grantor from and against all damages, claims, and liabilities to



Chip Nevins
DPR Sound Transit Cheasty ORD ATT 1
June 14, 2011
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the extent resulting therefrom, including attorney's fees and costs of suit, including any appeals thereof, except to the extent any of such damages, claims, or liabilities result from the negligence of Grantor.

6. Binding Effect. The Tunnel Easement is appurtenant to and shall run with all real property now owned or hereafter acquired by Grantee as part of the Project, which includes underground tunnels and related facilities operated by Grantee for high capacity transportation system purposes and shall inure to the benefit of Grantee, its successors, and assigns and shall be binding upon the Grantor's Property and Grantor, and their respective heirs, successors, and assigns.

7. Notices. Any notices required or permitted under this Tunnel Easement Agreement shall be given in writing and either personally delivered or sent by U.S. Mail, postage prepaid, to the addresses as indicated below:

To Grantee: Sound Transit
Real Estate Division
Union Station
401 S. Jackson St.
Seattle, WA 98104-2826

To Grantor: City of Seattle
Department of Parks and Recreation
800 Maynard Ave. S., 3rd Floor
Seattle, WA 98134
Attn: Property Management

8. Exhibits Incorporated. All exhibits attached hereto, as listed below, are expressly incorporated into and form a part of this Agreement.

Exhibit A. Legal Description of Grantor's Property and Tunnel Easement Area
Exhibit B. Illustration of Grantor's Property and Tunnel Easement

Dated as of the date fully executed by Grantor and Grantee.

GRANTOR:
CITY OF SEATTLE

BY: _____ Date

ITS: _____



Chip Nevins
DPR Sound Transit Cheasty ORD ATT 1
June 14, 2011
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Signature: _____

Notary Public in and for the State of Washington

Notary (print name): _____

Residing at: _____

My appointment expires: _____



Chip Nevins
DPR Sound Transit Cheasty ORD EXH A to ATT 1
July 11, 2011
Version#1

EXHIBIT A
Legal Description

Grantor's Entire Parcel (Servient):

LOTS 3 THROUGH 10 IN BLOCK 32 OF T. HANFORD'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO PLAT RECORDED IN VOLUME 1 OF PLATS AT PAGE(S) 205, IN KING COUNTY, WASHINGTON;

Easement Area Acquired by Grantee (Dominant):

THAT PORTION OF LOTS 4 THROUGH 10 IN BLOCK 32 OF T. HANFORD'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO PLAT RECORDED IN VOLUME 1 OF PLATS AT PAGE(S) 205, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK 32, BEING ALSO THE NORTHWEST CORNER OF SAID LOT 6;

THENCE S88°52'30"E ALONG THE NORTH LINE OF SAID BLOCK 32 A DISTANCE OF 84.05 FEET;

THENCE S74°51'18"E A DISTANCE OF 119.85 FEET TO THE EAST LINE OF SAID BLOCK 32, BEING ALSO THE EAST LINE OF SAID LOT 7, AT A POINT DISTANT 29.03 FEET FROM THE NORTHEAST CORNER OF SAID BLOCK AND LOT;

THENCE S01°08'55"W ALONG THE EAST LINE OF THE SAID BLOCK A DISTANCE OF 91.82 FEET;

THENCE N78°50'59"W A DISTANCE OF 203.38 FEET TO THE WEST LINE OF SAID BLOCK 32 AT A POINT DISTANT 85.45 FEET SOUTHERLY OF THE NORTHWEST CORNER OF SAID BLOCK;

THENCE N01°06'59"E ALONG THE WEST LINE OF THE SAID BLOCK A DISTANCE OF 85.45 FEET TO THE POINT OF BEGINNING.

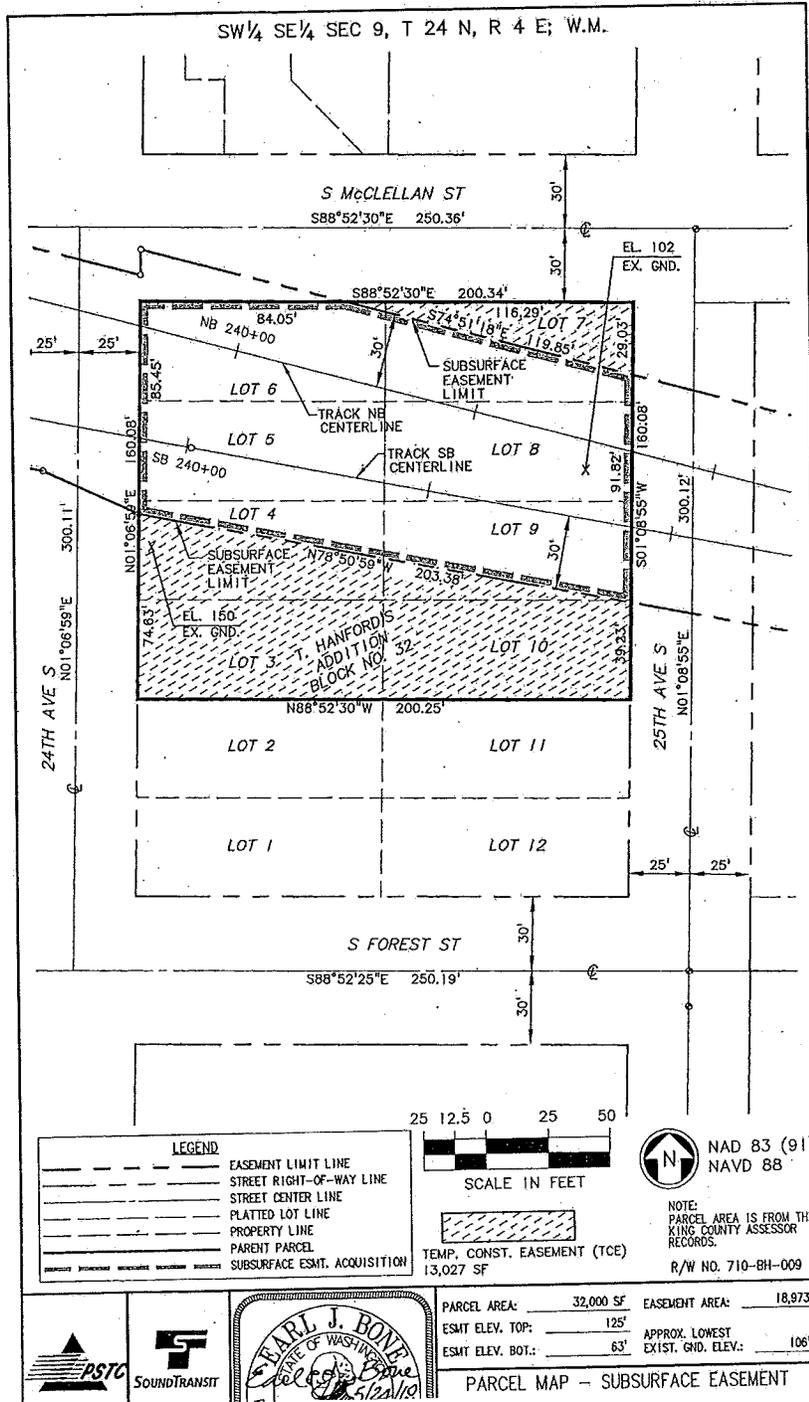
Containing an area of 18,973 square feet more or less.

AND SHALL BE A SUBSURFACE EASEMENT ONLY, LYING VERTICALLY BETWEEN TWO HORIZONTAL PLANES AT ELEVATION 125 FEET AND ELEVATION 63 FEET. SAID ELEVATIONS ARE EXPRESSED IN TERMS OF THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).



Chip Nevins
 DPR Sound Transit Cheasty ORD EXH B to ATT 1
 June 9, 2011
 Version #1

EXHIBIT B: Illustration of Tunnel Easement



EXH B to ATT 1 DPR Sound Transit Cheasty ORD



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Donald Harris/ 684-8018	Amy Williams/ 233-2651

Legislation Title:

AN ORDINANCE relating to Seattle Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into an easement agreement granting and conveying a permanent subsurface tunnel easement under portions of the Cheasty Greenspace to the Central Puget Sound Regional Transit Authority and to accept payment therefor; finding that the grant of a permanent subsurface tunnel easement meets the requirements of Ordinance 118477, adopting Initiative 42, to the extent applicable; ratifying and confirming the grant of temporary surface rights on portions of the Cheasty Greenspace to the Central Puget Sound Regional Transit Authority for temporary construction purposes and authorizing acceptance of payment therefor; and exempting the grant of temporary surface rights from the requirements of Ordinance 118477, to the extent applicable.

Summary of the Legislation:

The proposed ordinance authorizes the Superintendent of Parks and Recreation (DPR) to grant a subsurface tunnel easement to the Central Puget Sound Regional Transit Authority (Sound Transit) that will allow Sound Transit to operate light rail underneath a portion of the Cheasty Greenspace at McClellan Street, and to accept payment for those rights. The ordinance also ratifies and confirms the granting of temporary surface rights in the Cheasty Greenspace to Sound Transit for the construction of the tunnel, and accepts payment for those rights. Finally, the Ordinance includes findings for purposes of Ordinance 118477, adopting Initiative 42, concerning the grant of the tunnel easement, and exempts the grant of temporary surface rights from the requirements of Initiative 42.

Background:

The Sound Transit Beacon Hill Tunnel passes below the surface of the Cheasty Greenspace, which is City-owned park property. Before beginning construction, Sound Transit and the City entered into a six-month Right of Entry Agreement (Agreement) for the temporary occupancy of the park surface to accommodate the construction of the tunnel. The Agreement, which was effective as of March 30, 2004, was extended indefinitely by letter on November 3, 2004. Both parties assumed that the City would convey to Sound Transit the occupied portion of the property (surface and subsurface) in fee simple within 6 months.

Upon further analysis, DPR determined that the City could not sell the property to Sound Transit without first addressing the restrictions placed on the sale of the property as a result of the funding used to acquire it. The property was acquired using a combination of Washington State Outdoor Recreation funds and King County Conservation Futures funds. Both funding sources restrict the use of the property and require that the property be replaced with a property of equal or better quality if it is ever converted to another use or sold to another party.



Construction of the tunnel is complete, light rail is fully operational and DPR has determined that the most practical option is to convey to Sound Transit the subsurface rights necessary for the operation of the tunnel. However, before the City can convey the subsurface easement to Sound Transit, the City requires approval from the State to release the restrictions on the Cheasty Greenspace parcel and replace them on another property of equal or greater value. The conveyance of the subsurface easement does not trigger replacement property requirements from King County Conservation funds. The removal of the restrictions on the Cheasty Greenspace parcel and the placing of restrictions on another property of equal or greater value and similar utility are dealt with in companion legislation.

The conveyance of property (or property rights) owned or used for park purposes is restricted by Ordinance 118477, adopting Initiative 42. Initiative 42 does permit, by ordinance after a public hearing, a subsurface easement compatible with park use such as the one proposed in this ordinance.

The property rights of this proposed conveyance were appraised in accordance with applicable appraisal standards and regulations. The appraisal has been reviewed and accepted by City staff. The appraised value of the tunnel easement is \$8,400, and the value of the temporary use of the surface property of the Cheasty Greenspace for a period of 64 months for the construction of the tunnel is \$102,400. The funds received will be deposited in the Parks and Recreation Fund.

Please check one of the following:

This legislation does not have any financial implications.

This legislation has financial implications.

Appropriations: N/A

Fund Name and Number	Department	Budget Control Level*	2011 Appropriation	2012 Anticipated Appropriation
TOTAL	N/A	N/A	N/A	N/A

Appropriations Notes:



Anticipated Revenue/Reimbursement: Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2011 Revenue	2012 Revenue
Parks and Recreation Fund 10200	Parks and Recreation	Sound Transit Tunnel Easement	\$ 8,400	0
Parks and Recreation Fund 10200	Parks and Recreation	Sound Transit Temporary Surface Rights	\$102,400	0
TOTAL			\$110,800	

Revenue/Reimbursement Notes: The \$110,800 in revenue is a one-time payment for the value of the tunnel easement and temporary use of the surface property.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact: N/A

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2011 Positions	2011 FTE	2012 Positions*	2012 FTE*
TOTAL	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Position Notes:

Do positions sunset in the future? N/A

Spending/Cash Flow: N/A

Fund Name & #	Department	Budget Control Level*	2011 Expenditures	2012 Anticipated Expenditures
TOTAL	N/A	N/A	N/A	N/A

Spending/Cash Flow Notes:

What is the financial cost of not implementing the legislation?

The financial cost of not implementing this legislation is the loss of \$110,800 in revenue from the sale of the underground easement and payment for the temporary use of surface property.

Does this legislation affect any departments besides the originating department?

No



What are the possible alternatives to the legislation that could achieve the same or similar objectives? There are no viable alternatives.

Is the legislation subject to public hearing requirements?

Yes.

Other Issues: None.

List attachments to the fiscal note below:

None.





City of Seattle
Office of the Mayor

July 26, 2011

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

Dear Council President Conlin:

I am transmitting the attached proposed Council Bill authorizing the Superintendent of Parks and Recreation to sign and convey to Sound Transit an easement for a light rail tunnel under the Cheasty Greenspace. This easement conveys permanent subsurface rights to Sound Transit, approximately 25 feet below the Cheasty Greenspace, for operation of light rail facilities that connect downtown to the airport.

The proposed Council Bill is consistent with prior acts by the City to support the construction and operation of light rail. The property rights to be conveyed have been appraised, and the appraisal has been reviewed and accepted by City appraisal staff. The City will receive \$8,400 for the tunnel easement and \$102,400 for the temporary use of the surface for the construction of the tunnel. The tunnel does not have any surface impact on the Cheasty Greenspace.

This Council Bill will continue the cooperation between the City and Sound Transit as we move forward with the provision of more transit alternatives to serve the citizens of Seattle. Thank you for your consideration of this legislation. Should you have questions, please contact Donald Harris in the Department of Parks and Recreation at 684-8018.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

