

# 8  
117365

**ORDINANCE \_\_\_\_\_**

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept an extension and modification to certain lease and interlocal agreements with the City of Renton, Washington, and ratifying and confirming certain prior acts.

WHEREAS, the City of Seattle and the City of Renton on November 9, 1998, entered into an interlocal agreement and a lease agreement regarding Seattle's use of Renton's rights of way for water transmission lines and the use by Renton of property owned by Seattle, attached hereto as Attachment 1 and Attachment 2, respectively, as authorized by Seattle Ordinance 119202; and

WHEREAS, the Cities of Seattle and Renton desire to amend the Interlocal Agreement and Lease Agreement to extend the termination date of the Agreements; and

WHEREAS, the Cities of Seattle and Renton agree to revise the defined use of certain leased land in the Lease Agreement; NOW, THEREFORE,

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

**Section 1.** Section 3 of the Interlocal Agreement and Lease Agreement are each amended to extend the term of each agreement until January 1, 2062.

**Section 2.** Section 2 of the Lease Agreement is deleted in its entirety and replaced with the following:

2. Renton's Use of the Leased Land. Renton's use of Parcel A shall be for public vehicle parking, which may include sole dedicated parking for and access to the abutting north site which is planned to be redeveloped as a KCLS (King County Library System) library, and for a pedestrian crossing. During the construction of the library, portions of Parcel A may be fenced off and used as a staging area upon Seattle Public Utilities' written approval of the plans prior to using Parcel A for staging. Parcel B shall be used



1 for park grounds. The leased land shall be used for these purposes only. All designs for  
2 construction, improvements or repairs to the parking, access to the abutting north site or  
3 park uses shall be approved in writing by Seattle prior to construction, as more clearly  
4 defined in Section 7. A copy of detailed as-built plans shall be provided to Seattle within  
5 60 calendar days after construction is complete including any reconstruction plans.

6 **Section 3.** No other provision of the Interlocal Agreement or the Lease Agreement is  
7 affected by this amendment.  
8

9 **Section 4.** Any act consistent with the authority of this ordinance that is taken after  
10 passage of this ordinance, but prior to its effective date is hereby ratified and confirmed.

11 **Section 5.** This ordinance shall take effect and be in force 30 days after its approval by  
12 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
13 shall take effect as provided by Seattle Municipal Code Section 1.04.020.  
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1 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2011, and signed by  
2 me in open session in authentication of its passage this  
3 \_\_\_\_ day of \_\_\_\_\_, 2011.

4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 President \_\_\_\_\_ of the City Council

7  
8 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2011.

9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 Michael McGinn, Mayor

12  
13 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2011.

14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 Monica Martinez Simmons, City Clerk

17 (Seal)

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20 Attachment 1 – Interlocal Agreement  
21 Attachment 2 – Lease Agreement  
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*Return Address:*

City Clerk's Office  
City of Renton  
1055 South Grady Way  
Renton, WA 98055

## INTERLOCAL AGREEMENT

THIS AGREEMENT is entered into by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington, hereinafter called "Seattle", and the CITY OF RENTON, a municipal corporation of the State of Washington, hereinafter called "Renton", for and in consideration of the terms and conditions herein below set forth in greater detail, to:

- A. provide for the use of specific sections of Renton's rights-of-way for water transmission lines and appurtenances by Seattle;
- B. provide for the use by Renton of certain real property owned by Seattle; and

WHEREAS, Seattle owns and operates a system for the supply, transmission, and distribution of water, and sells and distributes water to its own inhabitants and also to other persons and customers outside the corporate limits of the City of Seattle; and

WHEREAS, Seattle has made application to Renton for renewal of that particular franchise granted pursuant to Renton Ordinance No. 903; and

WHEREAS, both cities have been in negotiations regarding the terms of the proposed franchise renewal in a good faith effort toward understanding and mitigating the problems and concerns raised by Renton relating to Seattle's large diameter water transmission lines which traverse the City of Renton; and

WHEREAS, Seattle owns in fee simple certain sections of the Cedar River Pipeline right-of-way; and

WHEREAS, the use by Renton of said areas will not interfere unreasonably with the use by Seattle of said rights-of-way for water pipeline purposes;

NOW, THEREFORE, it is mutually agreed by Seattle and Renton as follows:

## SECTION I. SEATTLE FACILITIES IN RENTON RIGHT-OF-WAY

### A. TERMS AND PRIVILEGE

There is hereby granted to Seattle from the date of acceptance hereof, the right, privilege, authority to operate, maintain, repair and reconstruct three water transmission lines together with the necessary appurtenances thereto, excluding service lines to any customer unless specifically approved by Renton, subject to the terms and conditions as set forth hereinafter in this Agreement, in those portions of Renton rights-of-way described as follows:

1. Cedar River Pipeline No. 1 (66-inch diameter) and Cedar River Pipeline No. 2 (51-1/2 inch diameter) across Houser Way South and in South Third Street from Houser Way South to the west margin of Burnett Avenue South.
2. Cedar River Pipeline No. 3 (66-inch diameter) in Mill Avenue South beginning at the northwesterly margin of Interstate 405 right-of-way and extending northerly to South Second Street, thence westerly in South Second Street to a point 100 feet west of the west margin of Logan Avenue South and the beginning of Seattle's fee-owned right-of-way.
3. Two 12-inch water mains located within Logan Avenue South, northerly of the Cedar River Pipelines to South Tobin Street, thence east on South Tobin Street to the Burlington Northern Railroad right-of way, thence north to the City of Renton Linear Park, as shown on the drawing attached as Exhibit "A". This portion is included herein under the condition, and in the event that Boeing transfers these water mains to the City of Seattle.

### B. RIGHTS AND CONDITIONS

#### 1. Repair and/or Replacement of Pipelines:

The existing Cedar River Pipelines have been in place and in service for up to ninety years. Considering the potential impact of the event of a failure, break, or major leak from these pipelines through the downtown core of Renton and the resultant damages to residents and businesses from such an event, Seattle shall take every reasonable and responsible action to reduce or eliminate such impact.

- a) **Emergency Response Plan** - Seattle shall submit to Renton, within 365 days of the date of this Agreement, an emergency response plan for all Seattle facilities covered by this Agreement.
- b) **Analysis of Condition** - Within two years of the date of this Agreement and every fifth year thereafter, Seattle shall provide Renton with a detailed engineering analysis of the strength and condition of the Cedar River Pipelines through Renton's downtown core.
- c) **Safety Improvements** - Seattle shall construct improvements on the pipelines for controlled drainage with adequate valving and conveyance to protect Renton's streets, homes, businesses, and other facilities in the event of a failure or emergency. Seattle



shall install, in a timely fashion, mainline shutoff valves west of Renton to be able to isolate the downtown core from drainage in case of a main break. Seattle shall initiate procedures to implement sufficient improvements in a timely manner to address any and all recommendations included in the above Analysis of Condition.

**d) Work Requirements:**

- 1) **Ingress and Egress** - Seattle, as Grantee herein, shall have the right of reasonable ingress to and egress from said water transmission lines for the purpose of repair, replacement, and maintenance thereof, but such right shall be subject to and consistent with the provisions of this Agreement and junior to the rights of the public for use of said avenues or streets. All necessary work required to be done by Seattle shall be completed with reasonable dispatch and with the least practicable interference with or inconvenience to the rights of the public, individuals, and affected businesses.
- 2) **Restoration** - Seattle shall restore all streets, alleys, sidewalks, and public grounds, upon completion of any excavation, installation, repair or replacement (the work), to their prior or better condition of safety, utility and type of construction, in which case (the work) shall conform to current Renton Trench Restoration Requirements and City of Renton Construction Standard Specifications and Plans and applicable codes and laws. In case any obstruction caused by Seattle shall remain longer than five days after notice to remove it, or in the case of neglect or failure by Seattle to protect any dangerous places by proper guards, barricades, or other precautions, Renton may remove or protect them at the expense of Seattle.

When notice has been provided to Seattle by Renton at least one year in advance of construction for planned paving, Seattle shall not be permitted to excavate into such pavement for a period of five years unless an emergency necessitates such or Renton permits such excavation.

- 3) **Moving or Relocating Appurtenances to Seattle Pipelines** - Whenever it shall become necessary in the grading or regrading, paving, or repaving, improving any highway, street, avenue, or alley in the City of Renton, or in the building of any sidewalks or improvements thereon, or in the construction of any sewer or water main, or in the laying down of any other duly authorized conduit owned or controlled by Renton, to move or remove any appurtenances (such as valve boxes, blow-off assemblies, etc.) to Seattle's water transmission lines, which are located above, at or in the proximity of the surface, Seattle shall, upon receiving reasonable notice from Renton, move or remove such appurtenances, except the water transmission lines, at its own cost and expense; and if Seattle shall fail, neglect, or refuse to move such appurtenances within a reasonable time, as determined by Renton, then same may be moved by Renton at the expense of Seattle.
- 4) **Permits** - Seattle shall secure all applicable and necessary permits from Renton and approval by Renton shall not be unreasonably withheld. It is understood that,



Attachment 1

during an emergency, requirements for permits would be modified in accordance with applicable laws, codes, and ordinances, as necessary, and, in the event that no such law, code, or ordinance affects the reconstruction during an emergency, the permit requirement stated herein shall be waived. During said reconstruction, Renton shall have the right to direct and control the locations for access to the work and stockpiling of materials and equipment. Restoration by Seattle shall be equal to or better than that which existed at the commencement of the reconstruction. Seattle shall notify Renton, in advance of any reconstruction, in writing, by submission of plans for such work. Major reconstruction activities shall require at least two years advance written notice by Seattle to Renton. Notice shall include submission of plans for work to Renton.

- 5) **As-Built Plans** - A copy of as-constructed plans, as available, which identify the pipelines and their appurtenances, as well as all interfering utilities, landmarks, and physical features, shall be provided to Renton by Seattle within 180 calendar days following execution of this Agreement. Following any reconstruction, Seattle shall provide a copy of as-constructed plans for such work to Renton in accordance with conditions noted herein. Locations shown on the as-constructed plans shall be referenced to known monuments and established survey control and pipeline locations shown shall be within the accuracy requirements in accordance with State statutes.
  - 6) **Inspection** - If major reconstruction occurs in Renton, then a Renton inspector will be present and the costs for said inspector and corresponding inspection shall be paid by Renton and reimbursed to Renton by Seattle in a timely manner following submittal of an invoice to Seattle.
  - 7) **Construction Access & Traffic Control** - Any operation or maintenance activity by Seattle shall not prevent normal access over Renton's streets without written permission from Renton. Traffic control costs incurred by Renton as a result of Seattle's operation or maintenance activities shall be reimbursed to Renton by Seattle. Seattle shall maintain access for emergency purposes at all times over those pipeline segments within the City Limits. For normal minor maintenance, oral approval may be given, and traffic control will be done by Seattle crews.
  - 8) **Alterations of Renton Facilities Requested by Seattle** - All alterations, moving, or adjusting of Renton's pipelines and appurtenances in the Renton right-of-way required by construction of improvements undertaken by Seattle shall be performed by Renton's Water Department or designee, at the sole cost and expense of Seattle. No construction work shall be undertaken or initiated on Renton's facilities without Renton's prior written approval.
- e) **Additional Pipelines** - The rights granted herein apply to the existing Seattle transmission pipelines only, as of the date of execution of this Agreement. Additional Seattle transmission pipelines will require an amendment to this Agreement or a separate agreement as determined by Renton, dependent upon the scope of work contemplated, its location, disruption of existing utilities and appurtenances, and other related factors.



2. **Response by Seattle for Planned Improvements by Renton** - Renton shall transmit to Seattle information regarding any street or any utility facility improvements placed in the proximity or across any of Seattle's water transmission lines, and Seattle shall review and transmit any comment to Renton within a period of 20 days after receipt of same.
3. **Cathodic Protection/Impressed Current**
  - a) **Existing Installations** - Where a Seattle pipeline is already cathodically protected by impressed current, Seattle shall provide a copy of the design report and as-constructed drawings for the city's records and review. These records should be transmitted within 180 days of the date of this Agreement. Seattle will review City of Renton water plans and other utility plans using metallic pipe that may have been installed since Seattle's cathodic protection (CP) system was installed, to identify and correct any possible problems. Renton will furnish all information it has on cathodic protection test stations (Seattle and Renton's) that Renton has installed in these areas of concern. If any additional test stations are needed in order to do a comprehensive analysis of Seattle's impressed current or CP system effects on Renton's utility systems, Seattle will install them. Upon completion of the initial and annual testing of the existing CP system, Seattle shall demonstrate to Renton that the CP System as installed on Seattle's facility will not adversely effect Renton's facilities and shall take corrective action, as necessary, to eliminate adverse effects on Renton's facilities. If corrective action is necessary, Seattle shall provide Renton a time schedule for corrections.

All Seattle pipelines that are cathodically protected shall be dielectrically isolated from Renton pipelines. Seattle shall provide a report demonstrating dielectric isolation from Renton pipelines, or a report showing no need to do so, within one year from the date of this Agreement. Prior to energizing or substantial adjustment of a rectifier, Seattle shall notify Renton, as well as provide a report demonstrating stray current evaluation to include measurement of the potential shift at: groundbed; at pipeline crossings; and where pipelines run parallel within 25 feet of a Seattle cathodically protected facility.

- b) **Test Stations** - When new test stations are installed by Seattle on Renton facilities, Seattle shall be required to have a Construction Permit from Renton. Renton shall have an inspector verify the installation to industry standards.
- c) **New Installations** - For new installations or additions to existing installations, Seattle shall provide plans and specifications to Renton for comment, as required for a normal permit process. Renton's review/comments of the CP system design will be limited to a check on the location of the proposed installation and identification of any potential physical or electrical conflicts with Renton facilities. Upon completion of the installation of a new or modified CP system, Seattle shall demonstrate to Renton that

the CP System installed on Seattle's facility will not adversely affect Renton's facilities and shall take corrective action, as necessary, to eliminate adverse effects on Renton's facilities.



- d) **Annual Testing** - In addition to demonstrating, with initial testing, that there are no adverse effects on Renton facilities, Seattle shall test Renton's facilities annually to show that no adverse effects exist. Renton shall be invited, in writing, two weeks in advance, when testing said facilities to verify and learn testing procedures. Seattle will be responsible for operating its CP system rectifiers in the area in sufficient combinations to determine existence of cathodic protection interference.
  - e) **Annual Reports** - Seattle agrees to submit an annual report which attests to the fact that no adverse effects have occurred on Renton's facilities. The report shall also include data on rectifier settings, DC amps/volts out put, pipe to soil potential measurements, and shunt readings at interference/cross bonds or across isolation joints.
  - f) **Liability For Damages** - Seattle shall be responsible to correct stray current problems that are detected during annual testing or at any other time, and shall be responsible in damages to Renton and/or to third parties for all stray current damage, as defined by a mutually acceptable Corrosion Engineer, that results from the operation of the Seattle cathodic protection system.
4. **Claims** - Seattle agrees to join with Renton in the defense of any and all claims or actions of any kind or description which may accrue to or be suffered by any person, persons, or property by reason of Seattle's use of said areas. In case of any suit or action brought against Renton by reason thereof, Seattle will, upon notice to it of the commencement thereof, join with Renton in defense of such suit or action. Any final judgment awarding damages shall be paid in whole or part or shared in such proportions as shall be fixed by the court or jury if the parties cannot agree.

#### C. SERVICE TRANSFERS

Seattle shall, upon request by Renton, in a reasonable time, conclude with Renton a plan for orderly transfer and takeover of service by Renton of those residential and industrial/commercial customers within Renton city limits or Renton's franchise area within the Skyway Coordinated Water System Plan all in accordance with State law and the Skyway Coordinated Water System Plan.

The transfers, cost of water, and billing procedures shall be done by separate Agreement.

#### D. POLLUTANTS AND HAZARDOUS SUBSTANCES

During the term of this Agreement, Seattle agrees to keep the right-of-way and facilities covered by this Agreement in compliance with any and all Environmental Laws and not cause or permit contamination from Hazardous Substances or Pollutants in violation of Environmental Laws. Upon notice or discovery of any release of any Hazardous Substance caused by Seattle or expressly authorized by Seattle to occur upon the right-of-way and facilities covered by this Agreement, Seattle shall immediately take all necessary steps to report, respond to, and clean up the same and restore the right-of-way and facilities covered by this Agreement to its preexisting condition in accordance with applicable Environmental Laws and Requirements and shall report any such release to Renton within 24 hours of discovery.



**E. HOLD HARMLESS, RELEASE AND LIABILITY INSURANCE**

1. **Seattle Indemnification:** Seattle agrees to indemnify, defend, and hold harmless Renton, its officers and employees, from and against any and all claims, demands, damages, losses, liens, penalties, fines, expenses of every kind and nature, including attorney's fees, and liability for the following:

Any claims or liability arising from an accident or injury or damage to property on or about the right-of-way and facilities covered by this Agreement caused by the wrongful or negligent acts or omissions of Seattle, its agents, tenants, licensees, invitees, employees, or other occupants of the right-of-way and facilities covered by this Agreement.

As between the parties and for the purposes of the foregoing obligations Seattle waives any immunity, defense or other protection that may be afforded by any workers compensation, industrial insurance or similar laws (including but not limited to the Washington Industrial Insurance Act, Title 51 of the Revised Code of Washington).

Any activities or use of the right-of-way and facilities covered by this Agreement by Seattle which cause or knowingly permit the release or the threatened release of any Hazardous Substance on the right-of-way and facilities covered by this Agreement.

This indemnification shall survive the termination of this Agreement.

This indemnification shall not apply to Hazardous Substances generated, discharged, or deposited on the right-of-way and facilities covered by this Agreement prior to the date of occupation granted by the initial franchise. Additionally, this indemnification shall not apply to Hazardous Substances generated, discharged, or deposited on the right-of-way and facilities covered by this Agreement after the date of occupation granted by the initial franchise which arise from Renton's activities on the right-of-way and facilities covered by this Agreement, and shall not apply to Hazardous Substances which migrate onto the right-of-way and facilities covered by this Agreement from off-site.

Renton, at its sole expense, may employ additional counsel of its choice to associate with counsel defending against any such claims, lawsuits, or administrative proceedings.

2. **Seattle's Insurance:** Seattle shall provide and keep in force and effect during the term hereof, public liability insurance with limits of not less than Five Million Dollars (\$ 5,000,000) covering injuries to persons, including death, and loss of or damage to real and personal property. Such insurance may be provided under Seattle's blanket comprehensive liability insurance policy. During the term of this Agreement, Renton shall be named as an additional insured under such insurance to the extent of Seattle's undertaking set forth in Section I. E. 1. Entitled "Seattle Indemnification" including any claims of accident, injury, or damage arising from Seattle's use of the right-of-way and facilities covered by this Agreement. A certificate evidencing such insurance coverage shall be delivered to Renton not less than fifteen (15) days prior to the execution of this Agreement. Such certificate of insurance will provide for fifteen (15) days advance notice in the event of cancellation.

If Seattle is self-insured, Seattle will provide Renton with evidence to that effect. Renton will



require any contractor and/or subcontractor to maintain insurance coverage in accordance with the preceding paragraph.

**F. DEFAULT**

If at any time during the term of this Agreement Seattle shall fail to comply with any of the other terms and conditions of this Agreement, Renton shall give written notice to Seattle of such default or otherwise to comply with the terms and provisions of this Agreement, as the case may be. If such default is not cured within thirty (30) days of Seattle's receipt of Renton's written notice as to the default, or within such period as Renton determines is reasonable if Renton determines that the condition caused by such default is a threat to public health and safety, or the environment, Renton shall have, in addition to such remedies as may be afforded by the laws of the State of Washington, the power and right to declare this Agreement terminated and reenter the right-of-way and facilities covered by this Agreement, but not withstanding such remedies or termination and reentry by Renton, Seattle covenants and agrees to make good to Renton any deficiency arising from the reentry, removal of personal property and/or improvements, and restoration of the right-of-way and facilities covered by this Agreement and to pay such deficiency upon demand to Renton.

**G. RIGHT TO REMEDY/DEFAULT INTEREST**

If Seattle fails to do any act or thing required to be done by Seattle under this Agreement, Renton shall notify Seattle of such failure, and give Seattle thirty (30) days to perform such act or thing, except for conditions which pose a threat to public health and safety, or the environment. In the event Seattle fails to perform within said thirty (30) days, Renton shall have the right at its sole option, but not the obligation, to do such act or thing on behalf of Seattle and upon notification of Renton's reasonable expenditure in connection therewith, Seattle shall immediately repay Renton the amount thereof plus interest at eight (8) percent per annum, from the date of Renton's invoice for said expenditure to the date of Seattle's repayment.

**SECTION II. RENTON FACILITIES IN SEATTLE RIGHT-OF-WAY**

**A. PREMISES**

By separate Agreement, Seattle shall grant Renton a 40 year lease for vehicle parking and park purposes in the area described below:

1. **Parcel "A" for Public Vehicle Parking, Access to the Abutting North Site and Pedestrian Crossing Purposes:** That portion of the City of Seattle, Cedar River Pipeline right-of-way located in Section 18, Township 23 North, Range 5 East, W.M., King County, Washington situated in Blocks 1 and 6 of the Plat of Smithers Sixth Addition to Renton, Volume 26 of Plats, page 47, records of King County, Washington, and Block 1 of the Plat of Motor Line Addition to Renton Volume 9 of Plats, page 50, records of King County, Washington, lying north of South Third Street between the east margin of Morris Avenue South and the west margin of Logan Avenue South, in Renton, Washington; and



2. **Parcel "B" for Park/Plaza Purposes:** That portion of the City of Seattle, Cedar River Pipeline right-of-way located in Section 18, Township 23 North, Range 5 East, W.M., King County, Washington situated in Block 2 of the Plat of Motor Line Addition to Renton Volume 9 of Plats, page 50, records of King County, Washington, lying north of South Third Street between the east margin of Logan Avenue South and the west margin of Burnett Avenue South, in Renton, Washington.

Seattle also grants to Renton permission and authority to use the following areas, as described below, extending existing uses granted in the aforesaid franchise granted pursuant to Renton Ordinance No. 903:

3. That portion of Seattle's 30-foot wide Cedar River Pipeline No. 3 right-of-way lying between the northerly and the southerly westbound lanes of South Second Street, beginning at a point 100 feet west of the west margin of Logan Avenue South for vehicle and pedestrian crossings, traffic control and lighting devices, and street lighting, underground utilities including conduit and landscaping. Any extended uses, beyond the prior permit granted under Ordinance 903, will need to be reviewed and approved by the City of Seattle.
4. Such space as required for an existing 12-inch diameter storm sewer along Seattle's Cedar River Pipeline right-of-way between Burnett Avenue South and the old Black River Channel. Any modification or reconstruction of the facilities will need to be reviewed and approved by the City of Seattle.
5. Those portions of Seattle's Cedar River Pipeline right-of-way in downtown Renton for the roadway crossings of Logan Avenue South, Morris Avenue South, Whitworth Avenue South, and Shattuck Avenue South, including underground utilities and other necessary appurtenances. Any modification or reconstruction of the facilities will need to be reviewed and approved by the City of Seattle.

## B. RIGHTS AND CONDITIONS

1. **Use of Seattle right-of-way** - SPU has sole authority to review and approve any and all uses of all SPU Cedar River Pipeline right-of-way within the City of Renton. This includes those parcels specified in Lease Agreement No. 327-815 (18-23-5 SE), as well as other right-of-way owned by SPU within Renton city limits. The City of Renton is not authorized to make arrangements with any private parties for use of the SPU right-of-way within the City of Renton.
2. **Compensation for Private Uses of right-of-way** - According to state law those uses by private parties of SPU right-of-way which are for private benefit must be compensated at fair market value. Hence, SPU must be compensated at the fair market value for any private use of the right-of-way. Said private party must enter into a long-term lease with SPU which specifies uses and compensation for the property in question.
3. **Unauthorized Uses** - For any unauthorized uses of SPU right-of way by the City of Renton, SPU may remove unauthorized facilities, vehicles, and/or structures at the expense of the City of Renton, with expenses to include the payment of any damages that occur during the removal of said structures and facilities.



4. **Garage Access to Parcel A** - The granting of garage access to Parcel A to tenants of the Dally Site is contingent upon the City of Renton owning the 18-foot-wide abutting property, lying between the Seattle right-of-way and the Dally site. Failure by the City of Renton to acquire this parcel of property (or equivalent property rights through a long-term lease) shall either result in denial of access to SPU right-of-way by the Dally Site tenants, or the granting of such access only through the terms of a lease entered into between SPU and Dally.

### **SECTION III. ABANDONMENT/EXPIRATION/TERMINATION**

This Agreement shall expire on December 31, 2038 unless terminated upon mutual agreement of Seattle and Renton prior to this date.

Seattle may give written notice of abandonment for any area identified in Section I, hereof. If Seattle determines the pipe(s) are no longer needed, Seattle shall notify Renton. Seattle shall remove the pipe(s) and restore the street to its prior condition at Renton's request.

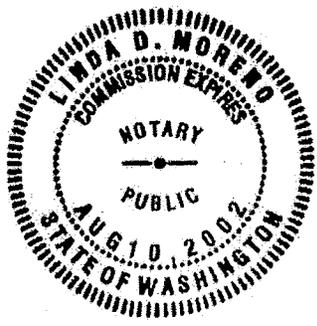
This Agreement shall not be assigned or transferred.

### **SECTION IV. NON-EXCLUSIVENESS**

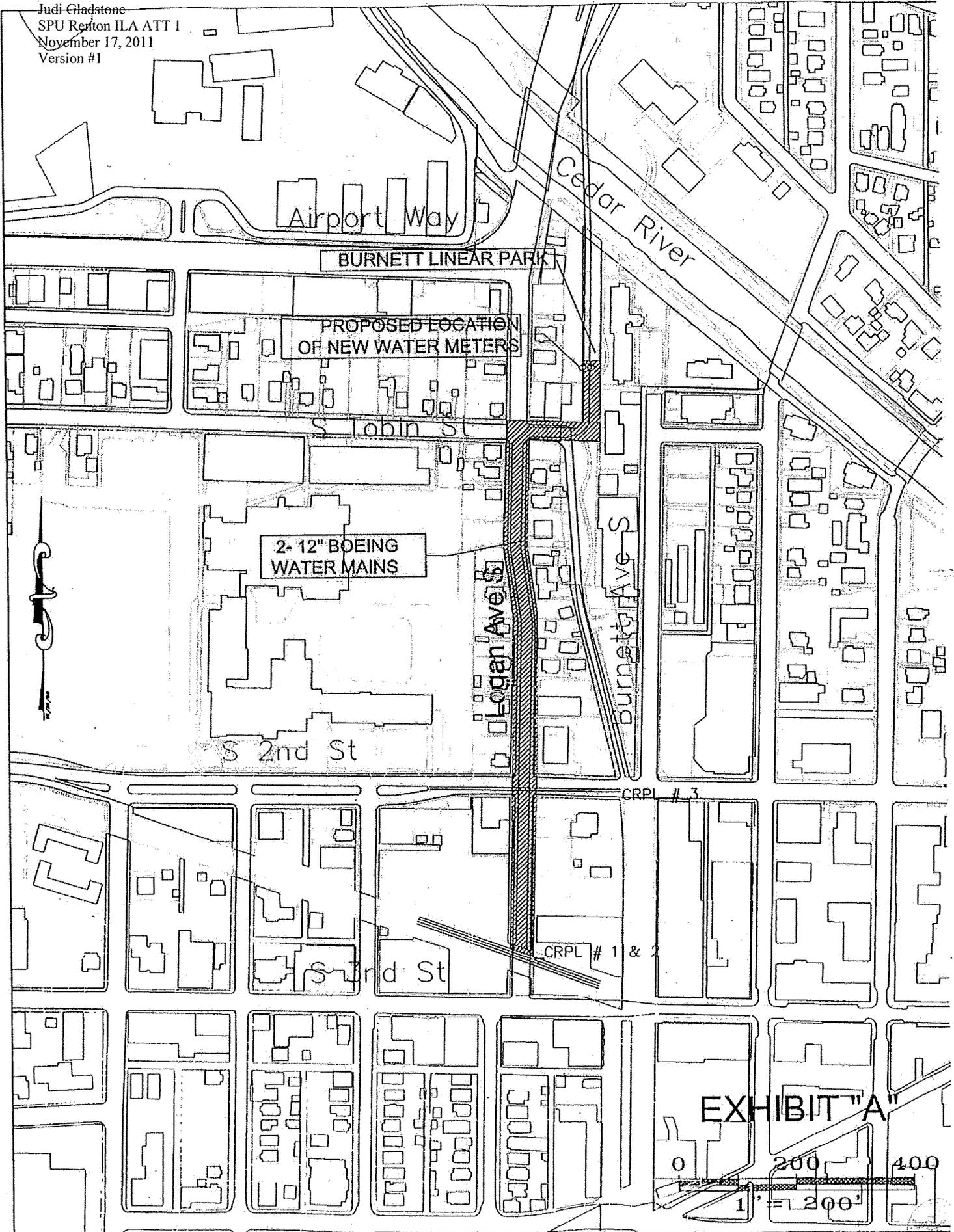
This Agreement is not exclusive and shall not preclude the City of Renton from granting franchises to other persons, companies or municipal corporations to use said streets, avenues and other public thoroughfares or any part thereof covered by the Agreement for the same purpose as herein authorized or for any other purpose authorized by law.



<p>IN WITNESS WHEREOF, Seattle has caused this Agreement to be executed by its Director of Seattle Public Utilities pursuant to Seattle City Ordinance No. 119202.</p>	
<p>CITY OF SEATTLE</p> <p><i>Diana Gale</i></p> <p>_____          Diana Gale          Director Seattle Public Utilities</p>	<p>CITY OF RENTON</p> <p><i>Jesse Tanner</i></p> <p>_____          Jesse Tanner, Mayor</p>
<p>Attest:</p> <p><i>Brenda Fritsvold</i></p> <p>_____          Brenda Fritsvold, Deputy City Clerk</p>	
<p>Notary Seal must be within box.</p>	<p>STATE OF WASHINGTON) SS          COUNTY OF KING )</p> <p>I certify that I know or have satisfactory evidence that <u>Jesse Tanner &amp; Brenda Fritsvold</u> signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in the instrument.</p> <p><i>Michele Neumann</i></p>
	<p>Notary Public in and for the State of Washington          Notary (Print) <u>Michele Neumann</u>          My appointment expires: <u>9/19/2001</u>          Dated: <u>11/5/98</u></p>
<p>Notary Seal must be within box.</p>	<p>STATE OF WASHINGTON) SS          COUNTY OF KING )</p> <p>I certify that I know or have satisfactory evidence that <u>Diana Gale</u> signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in the instrument.</p> <p><i>Linda D. Moreno</i></p>
	<p>Notary Public in and for the State of Washington          Notary (Print) <u>Linda D. Moreno</u>          My appointment expires: <u>8-10-02</u>          Dated: <u>11-9-98</u></p>



Judi Gladstone  
SPU Renton ILA ATT 1  
November 17, 2011  
Version #1



Attachment 2

LEASE AGREEMENT  
NO. 327-815  
(18-23-5 SE)

THIS LEASE AGREEMENT between THE CITY OF SEATTLE, SEATTLE PUBLIC UTILITIES, a municipal corporation, referred to in this Agreement as "Seattle" and THE CITY OF RENTON, a municipal corporation, referred to in this Agreement as "Renton" (hereinafter collectively be referred to as the "Parties.") WITNESSETH:

1. Premises. Seattle hereby leases to Renton, and Renton hereby leases from Seattle, the real property, herein called "Leased Land" of 36,609 square feet, situated in the City of Renton, King County, State of Washington, described as follows:

Parking Purposes:

Parcel A: That portion of the City of Seattle, Cedar River Pipeline Right of Way located in Section 18, Township 23 North, Range 5 East, W.M, King County, Washington situated in Blocks 1 and 6 of the Plat of Smithers Sixth Addition to Renton, Volume 26 of Plats, page 47, records of King County, WA., and Block 1 of the Plat of Motor Line Addition to Renton, Volume 9 of Plats, page 50, records of King County, WA., lying north of South Third Street between the east margin of Morris Avenue South and west margin of Logan Avenue South, in Renton, Washington, and;

Park Purposes:

Parcel B: That portion of the City of Seattle, Cedar River Pipeline Right of Way located in Section 18, Township 23 North, Range 5 East, W.M, King County, Washington situated in Block 2 of the Plat of Motor Line Addition to Renton, Volume 9 of Plats, page 50, records of King County, WA., lying north of South Third Street and between the east margin of Logan Avenue South and the west margin of Burneit Ave. South, in Renton, Washington, being approximately .

2. Renton's Use of the Leased Land. Renton's use of Parcel A shall be used for public vehicle parking, access to the abutting north site and pedestrian crossing; and Parcel B shall be for park grounds. These parcels shall be used for these purposes only. All parking, access to the abutting north site and park designs shall be approved in writing by Seattle prior to construction of said parking said access and park areas, as more clearly defined in Section 7. A copy of detailed as-built plans shall be provided to Seattle within 60 calendar days after construction is complete including any reconstruction plans.

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NOV 17 2011



3. Term. The term of this Agreement shall be for forty (40) years, commencing on November 1, 1998 and end in December 31, 2038, unless canceled earlier under conditions set forth in this Agreement.

3.1 Effective Date November 1, 1998 shall constitute and be referred hereafter as the "Effective Date" of this Lease, or if later, at such time as Seattle City Council and the Seattle Mayor approve said lease. Renton shall obtain full possession of the Leased Land on said Effective Date.

4. Rent. As consideration for the rights and privileges of this Lease Agreement, Seattle agrees to the abeyance of rent during the term of this Lease in exchange of a forty (40) year agreement, from Renton to Seattle, for the operation, maintenance, repair and reconstruction of Seattle's Cedar River Pipelines Nos. 1, 2 and 3 lying within and under the streets described below:

(a). Cedar River Pipeline No. 1 (66 inch diameter) and No. 2 (51-1/2 inch diameter) across Houser Way South and in South 3<sup>rd</sup> Street from Houser Way South to the west margin of Burnett Avenue South.

(b). Cedar River Pipeline No 3 (66 inch diameter) in Mill Avenue South beginning at the southerly margin of the railroad within Houser Way South and extending northerly to South 2<sup>nd</sup> Street, thence westerly in South 2<sup>nd</sup> Street to a point 100 feet west of the west margin of Logan Avenue South and the beginning of Seattle's fee-owned right-of-way.

(c) That portion of Logan Avenue South, northerly of the Cedar River Pipelines to the City of Renton Linear Park. This portion is included herein under the condition, and in the event, that Boeing transfers the water main in this right-of-way to the City of Seattle.

4.1 Renton may not sublet the property nor charge or collect money or fees for use of the property by others, except to cover costs for public events.

4.2 If at any time during the 40 year rental period Seattle sells, transfers or in anyway disposes of its ownership of said pipelines, Seattle may either revoke this lease or charge the then current fair market rental value.

5. Payment of Taxes, Utilities and Other Charges.

5.1 Utilities and Charges. Renton hereby covenants and agrees to pay, before delinquency, all charges for electricity, water, sewer, garbage removal, and all other public service or utility charges of every kind and type, charged, or imposed upon or against the Leased Land which are attributable to Renton's use.

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6. Use of Leased Land.

6.1. Renton agrees to fully comply with all applicable requirements of State and Federal laws having jurisdiction over the Leased Land in connection with the use of the Leased Land.

6.2 Pollutants and Hazardous Substances. During the term of this Permit Agreement, Renton agrees to keep the Leased Land in compliance with any and all Environmental Laws and not cause or permit the Leased Land to become contaminated with any Hazardous Substances or Pollutants in violation of Environmental Laws. Upon notice or discovery of any release of any Hazardous Substance caused by Renton or expressly authorized by Renton to occur upon the Leased Land, Renton shall, at its own cost, immediately take all necessary steps to report, respond to, and clean up the same and restore the Leased Land to its preexisting condition in accordance with applicable Environmental Laws and Requirements and shall report any such release, to Seattle within 24 hours of discovery.

7. Improvements.

7.1 Renton may repair and/or improve the vehicle parking area and install grass, small shrubs and other enhancements in the park area of said Leased Land, provided that plans for such improvements be approved by Seattle in writing prior to construction of any enhancements, improvements, installations or alterations. Seattle shall respond in writing to Renton within forty-five (45) days from Renton's submittal of plans to Seattle. Seattle's approval of said plans shall not be implied or held to constitute approval or compliance with environmental, safety and other applicable regulatory requirements. All work performed by Renton shall be performed in accordance with all applicable State and Federal regulations and requirements. For the protection of the pipelines Renton shall notify Seattle at 425-255-2242, two days before any work is performed on said Leased Land.

7.2 No buildings, structures or rockeries of any type shall be placed upon the Leased Land unless specifically approved in writing by Seattle

7.3 Vehicular equipment/machinery, wheeled or tracked, exceeding a gross weight of 32,000 pounds per axle (HS 20-44) will be prohibited within said easement area.

8. Acceptance and Care of Premises. Renton covenants and agrees that the Leased Land shall be occupied and used in an orderly, fit, and sanitary condition and that the Leased Land shall be left in the same or better condition at the expiration or earlier termination of this Lease as existed on the Effective Date.

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9. Surrender of Premises.

9.1 Renton agrees that at the expiration or earlier termination of this Lease, it will desist use of the Leased Land, including access to the abutting north property, and shall quit and surrender the Leased Land and deliver the Leased Land to Seattle. Renton will also remove, at its cost and expense, any or all improvements placed on the Leased Land by Renton if requested by Seattle.

9.2 At the conclusion of this Lease, Seattle shall, at its option, conduct a final site assessment to verify that the Leased Land's original environmental condition has been maintained during the Lease term. Renton shall fully remediate and restore any environmental damage to the Leased Land caused by Renton during the term of this Lease.

10. No Liens or Encumbrances. Renton agrees not to permit any lien or encumbrance from any source or for any purpose whatsoever to be placed against Seattle's interest in said Leased Land.

11. Hold Harmless, Release and Liability Insurance.

11.1 Renton's Indemnification. Renton, its successors, assigns, and guarantors agree to indemnify, defend, and hold harmless Seattle, its officers, and employees from and against any and all claims, demands, damages, losses, liens, penalties, fines, expenses of every kind and nature, including attorney's fees, and liability for the following:

11.1.1 Any claims or liability arising from accident or injury or damage to property on or about the Leased Land caused by Renton's use of said Leased Land, or by its agents, tenants, licensees, invitees, employees, or other occupants of the Leased Land.

11.1.2 As between the parties and for the purposes of the foregoing obligations Renton waives any immunity, defense or other protection that may be afforded by any workers compensation, industrial insurance or similar laws (including but not limited to, the Washington Industrial Insurance Act, Title 51 of the Revised Code of Washington).

11.1.3 Any activities or use of the Leased Land by Renton which cause or knowingly permit the release or the threatened release of any Hazardous Substance on the Leased Land.

11.1.4 This indemnification shall survive the termination of this Lease.

This indemnification shall not apply to Hazardous Substances generated, discharged, or deposited on the Leased Land prior to the Effective Date of this Lease. Additionally, this indemnification shall not apply to Hazardous Substances generated, discharged or deposited on the Leased Land

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after the Effective Date which arise from Seattle's activities on the Leased Land, and shall not apply to Hazardous Substances which migrate onto the Leased Land from off-site.

Seattle, at its sole expense may employ additional counsel of its choice to associate with counsel defending against any such claims, lawsuits, or administrative proceedings.

11.2 Renton's Insurance. Renton will provide and keep in full force and effect during the term of this Lease, public liability insurance with limits of not less than Five Million Dollars (\$5,000,000) covering injuries to persons, including death, and loss of or damage to real and personal property. Such insurance may be provided under Renton's blanket comprehensive liability insurance policy. During the term of this Lease, Seattle shall be named as an additional insured under such insurance to the extent of Renton's undertaking set forth in Section 11.1, entitled "Renton's Indemnification," including any claims of accident, injury, or damage arising from Renton's use of the Leased Land. A certificate evidencing such insurance coverage shall be delivered to Seattle not less than fifteen (15) days prior to the commencement of the Term hereof. Such certificate of insurance will provide for fifteen (15) days advance notice in the event of cancellation.

11.2.1 If Renton is self-insured Renton will provide Seattle with written evidence to that effect. Renton must require any contractor and/or subcontractor working or using this site on behalf of Renton, to maintain insurance coverage in accordance with Section 11.2.

12. Repair, Removal, Relocation.

12.1 Renton acknowledges that the explicit purpose of this property is for the operation, maintenance, repair, construction and reconstruction of water pipelines; all other uses are subordinate to this use. Seattle shall not be responsible for Renton's facilities when Seattle finds it necessary to repair, construct or reconstruct the pipelines, or in any way disrupt the right-of-way for the operation and maintenance of said pipelines, however, in case of excavation by Seattle, Seattle shall replace fill to grade. During such occurrences, Renton shall, at no expense to Seattle, replace, adjust, remove, relocate or reconstruct its facilities, including all landscaping, appurtenant facilities and service lines, within the Seattle right-of-way. Except in emergencies, Seattle will give Renton written notice of such requirement as soon as practicable. In emergency situations, Seattle shall have the right to tow vehicles off the right-of-way and to post signs or have Renton post signs accordingly.

12.2 As regards to Paragraph 12.1, Seattle will not be responsible or liable for the access to the site for any reason whatsoever.

13. Taking. In the event of an eminent domain taking, the Parties agree that Seattle shall be entitled to all condemnation awards granted for the taking of the land and improvements, except any sums awarded as compensation for the improvements placed on the Leased Land by Renton.

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14. Right of Termination.

14.1 In addition to the specific rights of Seattle or Renton to terminate this Lease as more particularly set forth in this Lease, at any time during the term of this Lease, Renton shall have a general right to terminate this Lease in the event that it determines, at its sole discretion, the Leased Land has become unsuitable for the uses designated in Section 2 above. In such event, Renton shall provide Seattle no less than sixty (60) days written notice prior to the proposed termination date, unless otherwise specified in this Lease, and surrender the property in accordance with Section 9 of this Lease. The indemnification, duties to comply with law and duties to restore property, provided under this Lease, shall survive termination.

14.2 In addition to the specific rights of Renton to terminate this Lease, at any time during the term of this Lease, Seattle shall have a right to terminate this Lease in the event it determines, at its sole discretion, Renton's use of the Leased Land does not meet regulatory requirements or standards.

15. Default. If at any time during the term of this Lease Renton shall fail to comply with any of the other terms and conditions of this Lease, Seattle shall give written notice to Renton of such default and request Renton to comply with the terms and provisions of this Lease, as the case may be. If such default is not cured within thirty (30) days of Renton's receipt of Seattle's written notice as to the default, or within such period as Seattle determines is reasonable if Seattle determines that the condition caused by such default is a threat to public health and safety, or the environment, Seattle shall have, in addition to such remedies as may be afforded by the laws of the State of Washington, the power and right to declare this Lease terminated and reenter the Leased Land, but notwithstanding such remedies or termination and reentry by Seattle, Renton covenants and agrees to make good to Seattle any deficiency arising from the reentry, removal of personal property and/or improvements, and restoration of the Leased Land and to pay such deficiency upon demand of Seattle.

16. Seattle May Perform. If Renton fails to do any act or thing required to be done by Renton under this Lease, Seattle shall notify Renton of such failure, and give Renton thirty (30) days to perform such act or thing, except for conditions which pose a threat to public health, safety or the environment. In the event Renton fails to perform within said thirty (30) days, Seattle shall have the right at its sole option, but not the obligation, to do such act or thing on behalf of Renton and upon notification of Seattle's reasonable expenditure in connection therewith, Renton shall immediately repay Seattle the amount thereof plus interest at the prevailing rent, per annum, from the date of Seattle's invoice for said expenditure to the date of Renton's repayment.

17. Attorneys' Fees. If any suit or legal action is instituted in connection with any controversy or default arising out of this Lease, the prevailing party shall be entitled to recover costs including such sum as the court may adjudge as reasonable attorney fees and reasonable attorneys' fees on appeal.

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18. Non-Waiver. The failure of either party to insist upon strict performance of any of the terms and provisions of this Lease shall not be construed as a waiver or relinquishment of any such terms or conditions, or of any other term or condition, but the same shall be and remain in full force and effect.

19. Notices. Any notice, consent, request, or other communication provided for in this Lease shall be in writing. Such notice, consent, request, or other communication shall be sent by mail to the Seattle, by mailing the same to Seattle at:

Seattle Public Utilities  
Real Property Services  
710 Second Avenue, 9th Floor  
Seattle, WA 98104

Such notice, consent, request or other communication shall be sent by mail to the Renton, by mailing the same to Renton at:

City of Renton  
Planning/Building/Public Works Department  
1055 South Grady Way  
Renton, WA 98055

Notices sent by mail shall be deemed to have been given when properly mailed; the postmark affixed by United States Post Office shall be conclusive evidence of the date of mailing. The party to receive the notice, consent, request, or other communication may hereafter designate another address to the other party, in which case the notice, consent, request or other communication shall be sent to that other address. Alternatively, such notice, consent, request or other communication may be personally delivered to the party to receive the same.

20. Extension. This Lease Agreement may be extended upon mutual agreement of the parties.

21. Assignment or Subletting. Renton may not sublet or assign this Lease Agreement.

22. Jurisdiction. This permit is intended to convey limited rights and interest only. None of the rights granted to Renton shall affect jurisdiction of Seattle over the Leased Land or the Lessors power to perform work on said land. Renton shall in no way interfere with the Lessors present or future use of said Leased Land.

23. Binding Effect. The covenants and agreements of this Lease shall be binding upon and inure to the benefit of Seattle and Renton and their heirs, executors, administrators, and successors.

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IN WITNESS WHEREOF, pursuant to the provisions of Ordinance 119202 of the City of Seattle, the parties hereto have executed this Lease thereunto duly authorized the day and year indicated below their signatures.

ACCEPTED BY CITY OF RENTON:

CITY OF SEATTLE:

Jesse Tanner  
Jesse Tanner  
Mayor, City of Renton

Diana Gale  
Diana Gale  
Director, Seattle Public Utilities

Date: November 5, 1998

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

ATTEST: Brenda Fritsvold  
Brenda Fritsvold, Deputy City Clerk

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TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

*Margaret Pegler*

_____	_____
_____	_____
_____	_____
_____	_____

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: \_\_\_\_\_

_____
_____
_____

\_\_\_\_\_  
PRESIDENT'S SIGNATURE

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STATE OF WASHINGTON - KING COUNTY

99186  
City of Seattle, City Clerk

-s.

No. TITLE ORDINA

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTOT: 119193, 195-204

was published on

11/06/98

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

*[Signature]*  
Subscribed and sworn to before me on  
11/07/98  
*[Signature]*  
Notary Public for the State of Washington,  
Residing in Seattle

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Affidavit of Publication

Printed on \_\_\_\_\_

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Seattle Public Utilities	Judi Gladstone 684-4642	Karen Grove 684-5805

**Legislation Title:** AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept an extension and modification to certain lease and interlocal agreements with the City of Renton, Washington, and ratifying and confirming certain prior acts.

**Summary of the Legislation:** The legislation extends the length of an interlocal agreement (ILA) and a lease agreement with the City of Renton so they match the expiration of the newly signed partial requirements water supply contracts Renton signed with SPU earlier this year. It also modifies the lease agreement to reflect Renton's intended use of SPU property.

**Background:** SPU has four major transmission pipelines that travel through Renton. In 1998, SPU negotiated an ILA that provided for the use of Renton's rights-of-way for water transmission lines and the use by Renton of property owned by Seattle. In addition, one of the terms of the ILA specified Seattle would grant Renton a lease for two parcels SPU owns in the City of Renton within which SPU has two transmission lines. The term of both the ILA and the lease agreement is 2038.

This ordinance extends the term of the ILA and lease agreement to 2062, which is the same expiration date as the Renton partial requirements water supply contract signed earlier this year. Given the significance of SPU's operations in Renton, SPU decided the new water supply contract provided an opportunity to secure a longer term for the ILA. By extending the term of the ILA, SPU avoids renewing discussions with Renton at a potentially less favorable time.

The proposed modification to the lease agreement also changes the use of one of the leased parcels from City of Renton parking to the construction area and parking for a planned library adjacent to the leased parcel, and a pedestrian crossing. This change will not impact SPU's access to the parcel. This modification and the term extension are the only provisions of the agreements that are affected by this ordinance.

Please check one of the following:

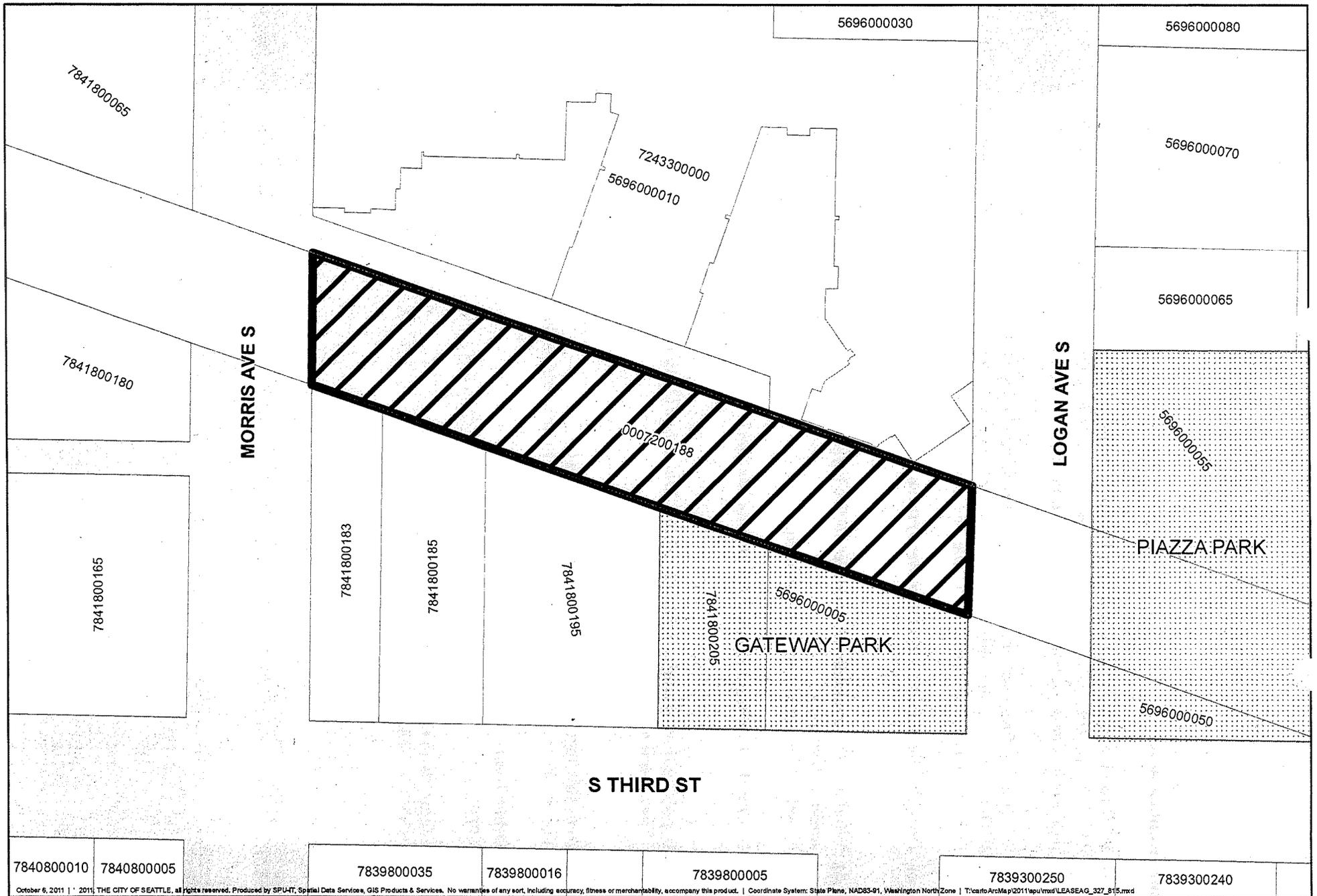
  X   **This legislation does not have any financial implications.**



**Other Implications:**

- a) **Does the legislation have indirect financial implications, or long-term implications?**  
The ILA obligates SPU to pay for relocation of transmission lines or mains when Renton requests it. These are indeterminate potential costs in the future.
- b) **What is the financial cost of not implementing the legislation?**  
Without the ILA, the City of Renton could attempt to impose other, potentially costly, requirements for operating the Cedar River pipelines.
- 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?**  
No other alternatives were considered.
- 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?**  
Yes. A map is attached for the parcel affected by this ordinance.
- h) **Other Issues:**  
None

**List attachments to the fiscal note below:**  
Exhibit A – Map of affected property



# LEASE AGREEMENT NO. 327-815 (PARCEL A)



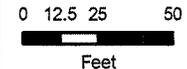
Area described in Lease Agreement



King County Park



King County Parcels with Pin Number





City of Seattle  
Office of the Mayor

November 22, 2011

Honorable Richard Conlin  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill authorizing Seattle Public Utilities to extend and modify two existing agreements with the City of Renton.

SPU and the City of Renton have an interlocal agreement allowing SPU to use Renton's rights of way for water transmission lines and a lease agreement allowing Renton to use property owned by SPU. These agreements expire in 2038. However, with Renton securing a new water supply contract with SPU earlier this year, there was an opportunity to negotiate a longer term for the interlocal agreement and lease agreement, thereby avoiding the need to do so at a future, potentially less favorable time.

This ordinance authorizes SPU to sign amendments to the interlocal and lease agreements, which would both be extended until January 1, 2062. The renegotiated lease agreement would also modify the use of one of the parcels SPU is leasing to Renton to include construction staging for a King County Library System library that is expected to be constructed in 2013, as well as the current use, which is parking.

By approving this legislation, SPU will have certainty into the distant future for its property and drinking water assets in Renton. Thank you for your consideration of this legislation. Should you have questions, please contact Judi Gladstone at 684-4642.

Sincerely,

Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

