

# 19

Pete Rude  
SPU/Parks Gas Works ORD  
June 26, 2012  
Version #4

**CITY OF SEATTLE**

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

COUNCIL BILL 117588

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AN ORDINANCE authorizing Seattle Public Utilities and Seattle Parks and Recreation to enter into a Settlement, Release and Cost Allocation Agreement with Puget Sound Energy, Inc.(PSE) for remediation of the combined Gas Works Park uplands and North Lake Union sediments; to enter into an Agreed Order or Consent Decree with the Washington State Department of Ecology or U.S. Environmental Protection Agency and PSE to undertake additional work at the Site consistent with the Agreement; and to seek and accept state Remedial Action Grants for cleanup work related to the Site.

WHEREAS, the Gas Works Park Uplands (Uplands) includes Gas Works Park, a City of Seattle public park, and the Seattle Police Department Harbor Patrol property; and

WHEREAS, the North Lake Union Sediments (Sediments) include aquatic sediments adjacent to the Uplands; and

WHEREAS, on July 15, 1996, the U.S. Environmental Protection Agency (EPA) formally deferred responsibility for the Uplands and the Sediments (collectively, the Gas Works Site or the Site), to the Washington State Department of Ecology (Ecology), while reserving the option to take over the Site at any time; and

WHEREAS, the City of Seattle and PSE are named Potentially Liable Parties for the release of hazardous substances to the Gas Works Park Uplands property under the Washington State Model Toxics Control Act (MTCA) Chapter 70.105D RCW, and both parties entered into an Agreed Order with Ecology in 1997 followed by a Consent Decree in 1999 (King County Superior Court Cause No. 99-2-52532-9SEA); and

WHEREAS, in 2000, the City of Seattle and PSE executed a settlement regarding implementation of the 1999 Consent Decree; and

WHEREAS, the City of Seattle and PSE have completed the work required by the 1999 Consent Decree; and

WHEREAS, on March 29, 2002, Ecology named the City of Seattle and PSE Potentially Liable Parties for the release of hazardous substances to the Sediments; and



1 WHEREAS, on March 18, 2005, the City of Seattle and PSE entered into an Agreed Order with  
2 Ecology for a Remedial Investigation and Feasibility Study (RI/FS) to investigate  
contamination in the Sediments and to identify options for remediation; and

3 WHEREAS, the Mayor's Office designated Seattle Public Utilities (SPU) as the lead department  
4 to manage a coordinated approach on behalf of other involved City departments; and

5 WHEREAS, on March 31, 2005, the City of Seattle and PSE entered into a Memorandum of  
6 Agreement to implement a joint approach to conducting the RI/FS for the Sediments and  
an interim cost-sharing arrangement for that work; and

7 WHEREAS, draft RI/FS reports for the Western (City-lead) and Eastern (PSE-lead) Study Areas  
8 of the Sediments were submitted in 2007 and 2006, respectively, but have yet to be  
9 finalized due to disagreements between Ecology and EPA; and

10 WHEREAS, the City of Seattle and PSE agree, given the current regulatory situation at the Gas  
Works Site, it would be more cost-effective for PSE alone to manage future work; and

11 WHEREAS, the City of Seattle, as a public agency, may apply for state grants under the  
12 authority of the Model Toxic Control Act (MTCA) to pay for up to 50% of its costs for  
13 some of the activities associated with the Gas Works Site; NOW, THEREFORE,

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

15 Section 1. SPU and Seattle Parks and Recreation (Parks) are hereby authorized to enter  
16 into a Settlement, Release and Cost Allocation Agreement (the Agreement) with PSE  
17 substantially in the form of Attachment 1 attached hereto for remediation of the Gas Works Site.

18 Section 2. SPU and Parks are further authorized to enter into an Agreed Order or  
19 Consent Decree with Ecology or EPA and PSE to undertake additional work at the Site  
20 consistent with the Agreement.  
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22 Section 3. SPU and Parks are also authorized to seek and to accept Remedial Action  
23 Grants from Ecology or other organizations for work related to the cleanup of the Gas Works  
24 Site.  
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1 Section 4. 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 \_\_\_\_\_, 2012, and  
5 signed by me in open session in authentication of its passage this  
6 \_\_\_\_ day of \_\_\_\_\_, 2012.

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9 \_\_\_\_\_  
10 President \_\_\_\_\_ of the City Council

11 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2012.

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13 \_\_\_\_\_  
14 Michael McGinn, Mayor

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16 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2012.

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19 Monica Martinez Simmons, City Clerk

20  
21 (Seal)

22  
23  
24  
25 Attachment 1 – Settlement, Release and Cost Allocation Agreement



**ATTACHMENT 1**

SETTLEMENT, RELEASE  
AND  
COST ALLOCATION AGREEMENT

DATED

\_\_\_\_, 2012

BY AND BETWEEN

THE CITY OF SEATTLE,  
ACTING BY AND THROUGH THE  
SEATTLE DEPARTMENT OF PARKS AND RECREATION  
AND SEATTLE PUBLIC UTILITIES

AND

PUGET SOUND ENERGY, INC.,  
A WASHINGTON CORPORATION



## SETTLEMENT, RELEASE

### AND

## COST ALLOCATION AGREEMENT

THIS SETTLEMENT, RELEASE AND COST ALLOCATION AGREEMENT (the "Agreement") is made and entered into as of \_\_\_\_\_, 2012, by and between THE CITY OF SEATTLE, a Washington municipal corporation (the "City"), acting by and through the SEATTLE DEPARTMENT OF PARKS AND RECREATION (the "Parks Department") and SEATTLE PUBLIC UTILITIES ("SPU"), and PUGET SOUND ENERGY, INC., a Washington corporation ("PSE"), for remediation of the combined Gas Works Park Uplands (the "Uplands") and North Lake Union Sediments (the "Sediments," and collectively, the "Site") and allocation of the related Shared Remedial Action Costs and responsibilities. The City and PSE are referred to in this Agreement as the Parties, and individually as a Party. The Site is described and depicted in Exhibit A, attached to and incorporated by reference into this Agreement.

### RECITALS

A. The City is the owner of the park commonly known as Gas Works Park (the "Park") located in the City of Seattle, in King County, Washington. The City purchased the Park property from a predecessor of PSE by contracts dated September 4, 1962, February 19, 1963 and June 28, 1973, and then developed the Park, which opened in 1976.

B. The City is also the owner of real property adjacent to the Park, operated by the Harbor Patrol of the Seattle Police Department ("Harbor Patrol Property").

C. A predecessor of PSE operated a manufactured gas plant ("MGP") on portions of the Park property from approximately 1906-1956, and intermittently for several years thereafter. During part of that time, a tar refinery was operated by third parties on property within the Uplands owned by the City.

D. On October 22, 1999, the Washington Department of Ecology ("Ecology") issued a proposed consent decree with the City and PSE for the environmental remediation of the Uplands and the Harbor Patrol Property.

E. On December 23, 1999 in King County Superior Court, pursuant to a Joint Motion by the City, PSE and Ecology, the Court entered the consent decree for the environmental remediation of the Uplands (the "1999 Consent Decree"). The 1999 Consent Decree required the City and PSE to: (i) design, install and operate an in-situ groundwater, air sparging and soil vapor extraction system in the southeast quadrant of the Park to remediate contaminated soil and groundwater; (ii) design and install a protective vegetated soil cover over unpaved open areas in the north-central and southeastern portions of the Park; (iii) perform compliance monitoring to determine the effectiveness of remedial actions including natural attenuation in the western portions of the Park; (iv) continue the removal of any upwelling tar sources; (v) continue free



product recovery within the southeast quadrant of the Park; and (vi) implement institutional controls and site use restrictions as described in the Cleanup Action Plan which was incorporated as Exhibit B to the 1999 Consent Decree. An amendment to the Consent Decree was entered by the Court on June 21, 2005. In this Agreement, references to the 1999 Consent Decree mean that Consent Decree as amended in 2005.

F. On November 29, 2000, a settlement between PSE and the City regarding implementation of the 1999 Consent Decree took effect ("2000 Settlement").

G. On or about March 29, 2002, Ecology gave written notice to the City and PSE that Ecology believed both the City and PSE were potentially liable for the release of hazardous substances to the Sediments. Neither the City nor PSE admitted liability for such releases, but both accepted status as, or have been administratively confirmed as, potentially liable parties.

H. On or about March 18, 2005, the City, PSE and Ecology entered into an Agreed Order, identified by Ecology docket No. DE 2008, for the investigation and study of the potential feasibility of remedial actions for cleanup of the Sediments ("2005 Agreed Order").

I. At various times during the past several years, the United States Environmental Protection Agency ("EPA") through its Region 10, has raised certain issues regarding the Parties' cleanup in the Uplands and has stated that the Parties should conduct additional work in the Uplands. The Parties understand that EPA reserved its authority to take over the Site in its "Deferral Agreement" with Ecology, dated July 15, 1996.

J. Neither Party admits any violation of law or any liability, such liability being expressly denied; however, the Parties acknowledge that under both CERCLA and MTCA, defined herein, joint and several liability could be imposed upon them on a strict liability basis, and accordingly, recognizing that legal status, the Parties agree in this contract to a year-by-year allocation of costs to address their legal obligations at the Site.

K. This Agreement sets forth the terms and conditions under which the Parties will (i) complete remediation of the Site and perform other related actions, including but not limited to monitoring and maintenance of the Site and (ii) allocate between themselves the payment of Shared Costs.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and PSE incorporate the foregoing Recitals and further agree as follows:

product recovery within the southeast quadrant of the Park; and (vi) implement institutional controls and site use restrictions as described in the Cleanup Action Plan which was incorporated as Exhibit B to the 1999 Consent Decree. An amendment to the Consent Decree was entered by the Court on June 21, 2005. In this Agreement, references to the 1999 Consent Decree mean that Consent Decree as amended in 2005.

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## AGREEMENT

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## ARTICLE I

### DEFINITIONS

**1.1 Definitions in General.** Capitalized terms used in this Agreement, including in the Recitals, shall have the specific meaning given to the term at the place in this Agreement that the term is defined, including in this Article I.

**1.2 Definition of 1999 Compliance Monitoring Obligations.** "1999 Compliance Monitoring Obligations" shall mean the compliance monitoring activities required under terms and provisions of the 1999 Consent Decree.

**1.3 Definition of 1999 O&M Obligations.** "1999 O&M Obligations" shall mean the operation and maintenance activities identified in the 1999 Consent Decree.

**1.4 Definition of Hazardous Substances.** "Hazardous Substances" shall have the meaning provided for that term in the Washington Model Toxics Control Act, presently codified at RCW 70.105D.020(10) and as amended or revised after the effective date of this Agreement.

**1.5 Definition of Environmental Law.** "Environmental Law" shall mean any environmental or health and safety-related law, regulation, rule, ordinance or directive at the federal, state, or local level, whether existing as of the date hereof, previously enforced or subsequently enacted.

**1.6 Definition of CERCLA.** "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*, and all regulations promulgated thereunder or pursuant thereto, including amendments after the effective date of this agreement.

**1.7 Definition of MTCA.** "MTCA" shall mean the Washington Model Toxics Control Act, Chapter 70.105D RCW and all regulations promulgated thereunder and pursuant thereto, including amendments after the effective date of this agreement.

**1.8 Shared Remedial Action Costs.** Shared Remedial Action Costs shall mean future costs incurred or expenditures made by PSE pursuant to this Agreement to investigate, identify, eliminate, cleanup, minimize or monitor any threat or potential threat posed by Hazardous Substances to human health and the environment at the Site, pursuant to CERCLA or MTCA, including but not limited to the costs to perform agreed order and consent decree requirements under this Agreement, including In Kind Replacement Costs as defined in this Agreement, and agency oversight costs that are charged to the Parties. Shared Remedial Action Costs shall not include: (i) penalties, fines, damages, fees or costs incurred or paid by the City to satisfy orders, judgments or decrees or to resolve violations in connection with the Park or Harbor Patrol Property, if PSE is not a party to the order, judgment or decree, and is not liable for the alleged violations; (ii) costs incurred by the City in connection with the 1999 Compliance Monitoring Obligations or the 1999 O&M Obligations; (iii) attorneys' fees and expenses; (iv) costs for the Parties' in-house staff, management, administration and expenses; and



(v) Kite Hill Costs, as defined in this Agreement: provided, however, that if PSE elects to use its own staff or the City's staff, such as design engineers and field crews, or either of the Parties' equipment to conduct remedial actions at the Site that are covered by this Agreement rather than contracting for the work, the costs of such staff or equipment are Shared Remedial Action Costs; provided, however, that neither Party's project manager for the Site, as listed on Schedule 1.8.1 attached and incorporated hereto, shall constitute a Shared Remedial Action Cost as defined in this Agreement. Certain costs incurred by PSE prior to the effective date of this agreement also are being allocated according to this Agreement and are listed on Schedule 1.8.2, attached hereto and incorporated herein.

**1.9 Definition of Kite Hill Costs.** Kite Hill Costs shall mean costs incurred to implement EPA or Ecology requirements to excavate contaminated material from the area in the Park commonly known as Kite Hill and depicted on Exhibit \_\_\_.

**1.10 Definition of In Kind Replacement Costs.** In Kind Replacement Costs shall mean costs to replace City facilities other than stormwater lines, outfalls and associated facilities located on the Site that are removed in whole or in part in order to perform remedial actions covered by this Agreement, with facilities of substantially the same type and quality. For example, if the Harbor Patrol's dock has to be removed in order to perform remedial actions for the Sediments, the cost to replace it with a dock of the same size and kind of materials would be In Kind Replacement Costs. If, instead of an exact replacement, the Harbor Patrol dock were replaced with a larger structure, or one built with more expensive materials, the additional costs due to the increased size or better materials would not be In Kind Replacement Costs. In Kind Replacement Costs shall not mean costs to replace historic parts of the Manufactured Gas Plant, such as the Cracking Towers. The City will bear all costs associated with such historic facilities.

## ARTICLE II

### OBLIGATIONS AND ROLES OF THE PARTIES

**2.1 Investigation and Cleanup.** Following execution of this Agreement and in accordance with the cost allocation provisions herein, PSE shall have sole responsibility for directing and completing the remaining investigation and cleanup of the Site, which will likely include completing the RI/FS (pursuant to the terms of the 2005 Agreed Order or a replacement order) and implementing the cleanup action plan for the Sediments, and which may include completing additional investigation and/or remedial work in the Uplands. The City shall not have a participatory role in the investigation and cleanup decision-making process for the Site, which PSE shall pursue in its sole discretion and judgment, except as provided for in section 2.7 of this Agreement

**2.2 Approach to Regulatory Agencies.** The Parties prefer that Ecology and EPA issue a joint Consent Decree covering either the Sediments or the entire Site so that the Parties will have greater assurance that their obligations are complete when the



joint Consent Decree has been implemented. PSE will seek from the regulatory agencies a joint Ecology/EPA Consent Decree for the Sediments or the entire Site and the City will support that request.

**2.3** If the regulatory agencies decline to issue or fail to proceed with a joint Consent Decree, then PSE shall pursue, in its sole discretion, consent decree negotiations with either one of the two agencies. Further, PSE may choose to pursue an amendment to the 1999 Consent Decree to cover the entire Site. For purposes of any such Consent Decree, the regulatory agencies may define the Site boundaries differently than the Parties have defined them for purposes of this Agreement. This Agreement applies to the Site as shown on Exhibit A, and to any additional areas where the Parties are required by EPA or Ecology to do remedial investigations or remedial actions related to the Site.

**2.4** If the regulatory agencies decline to issue or fail to proceed with a joint Consent Decree, then PSE may, in its sole discretion, ask EPA and/or Ecology to terminate the Deferral Agreement. The City will support PSE's decision concerning the Deferral Agreement.

**2.5** Both PSE and the City shall be named defendants on any future Consent Decree negotiated pursuant to this Agreement. The City shall have the option to be a named defendant on any future Agreed Order.

**2.6 Satisfaction of 2005 Agreed Order.** If the Parties continue to be bound by the 2005 Agreed Order, then upon satisfaction of the Parties' obligations under the 2005 Agreed Order, PSE shall obtain from Ecology on behalf of both the City and PSE a letter or other written notice of satisfaction.

**2.7 Parties' Respective Roles.** PSE shall negotiate with EPA and/or Ecology regarding the terms of a future Consent Decree or Agreed Order regarding the Site, including the Site boundaries, and any amendments to the existing Consent Decree or Agreed Order. PSE shall confer with the City during the negotiations regarding: 1) proposed Site boundaries and "re-opener" provisions in a future Consent Decree or Agreed Order; 2) proposed institutional controls in a future Consent Decree or Agreed Order; 3) ways to reduce disruption, either during remedial actions or afterwards, of current uses of the Park and the Harbor Patrol Property; 4) development of the final joint source control evaluation report to EPA or Ecology; 5) opportunities to improve the Park and/or the Harbor Patrol Property; 6) repair or replacement of the existing stormwater lines, outfalls and associated facilities, and any new related monitoring, treatment, or other obligations that the City will have; 7) any proposed expansion of the Site boundary; and 8) any agreements with other parties (such as the Washington Department of Natural Resources) that will be binding on the City. The "re-opener" and institutional control provisions of a future Consent Decree, any expansion of the Site boundary, and any agreements with other parties that will be binding on the City following completion of remedial activities, shall be subject to the City's approval, which shall not be unreasonably withheld. Any relocation or other change to existing City outfalls, and any new obligations related to the City's stormwater infrastructure



within the Site (such as new monitoring requirements or the installation of treatment measures) also shall be subject to the City's approval, which shall not be unreasonably withheld.

**2.8 Communication with Agencies.** PSE shall, on behalf of both Parties, conduct all communications with EPA and Ecology and any permitting agencies concerning the Site and matters related to obtaining future or amended Consent Decrees or Agreed Orders. PSE shall provide the City with copies of all substantive and material written communications including but not limited to data and technical reports provided to EPA, Ecology, permitting agencies and other potentially liable parties at the same time, if not earlier, that PSE transmits them to the addressee. PSE also shall provide the City with written or oral updates of activities and costs on a monthly basis and each quarter PSE will provide the City with a written summary of work performed and costs incurred to date and work and costs anticipated in the upcoming quarter.

**2.9 Monitoring Obligations.** The City covenants and agrees to continue to perform, or direct the performance of, at its sole cost and expense, the remaining 1999 Compliance Monitoring Obligations and 1999 O&M Obligations in accordance with the terms and provisions of the 1999 Consent Decree. The City shall retain sole responsibility for normal maintenance of its Park, Harbor Patrol Property, and associated utilities and infrastructure. Notwithstanding the foregoing, in the event that additional remedial work is required in the Uplands by EPA or Ecology directive, PSE shall perform such work pursuant to the terms of this Agreement, and PSE shall assume responsibility for any required compliance monitoring or maintenance associated with the additional remedial work.

**2.10 Grant Funds.** PSE shall cooperate with the City in the City's requests for grant funds from the State by ensuring the City is named on regulatory orders (unless otherwise requested by the City) and by providing required invoices and documentation to the City.

**2.11 Insurance.** PSE shall require contractors and consultants that PSE hires to fulfill PSE's obligations under this Agreement to name the City as an additional insured on any insurance policy that PSE requires the contractor or consultant to have.

### ARTICLE III

#### ALLOCATION OF COSTS

**3.1** With the exception of the remaining 1999 Compliance Monitoring Obligations and 1999 O&M Obligations in the Uplands, and except as provided in paragraphs 3.1.12, 3.2, 3.3, 3.4 and 3.5 below, PSE and the City agree to allocate all Shared Remedial Action Costs and In Kind Replacement Costs (collectively "Shared Costs") incurred after the effective date of this Agreement, in connection with the Site, on the following basis:



3.1.1 For that fraction of a year from the effective date of this Agreement through December 31, 2012 ("Year 1"), the Parties' estimate of Shared Costs is \$183,800.

3.1.2 The City shall, in conjunction with obtaining approval for its execution of this Agreement, also obtain, if such budget authority does not already exist, budget authority pursuant to substantive and procedural requirements of applicable law, to pay 20% of the Shared Costs for Year 1. The City's estimated payment obligation for Year 1 shall be expressed as the monetary amount of  $0.20 \times$  Shared Costs for Year 1, and shall be placed in a City budget authorization request for approval in accordance with substantive and procedural requirements of applicable law.

3.1.3 Subject to the City obtaining approval to pay its share of the estimated Shared Costs for Year 1 under subparagraph 3.1.2, PSE shall pay 80% of the Shared Costs for Year 1.

3.1.4 Not later than March 15 of every year following the effective date of this Agreement, PSE shall submit to the City an estimate of Shared Costs for the subsequent year, with reasonable supporting documentation. PSE shall also provide the City with an estimate of Shared Costs that will be incurred in each of the three following years. PSE will update the cost estimates on a quarterly basis.

3.1.5 Upon receipt of PSE's estimate of Shared Costs for each year following Year 1 ("Subsequent Year"), the City shall review PSE's estimate and either accept or reject PSE's estimate of Shared Costs as the basis to calculate the amount the City would be obligated to pay under this Agreement for such a Subsequent Year. If the City accepts PSE's estimate of Shared Costs for the Subsequent Year, it shall calculate its 20% payment obligation for the Subsequent Year based on PSE's estimate, and the City shall place that amount, plus any additional amount necessary to meet the City's obligations under this Agreement, in a City budget authorization request for approval in accordance with substantive and procedural requirements of applicable law. In the event that in any Subsequent Year, the City fails to fully approve the entire monetary amount that constitutes the City's 20% share of Shared Costs for that year, plus any additional amount necessary to meet the City's obligations under this Agreement in that year, this Agreement shall terminate and shall be of no further force and effect. If this Agreement terminates pursuant to this paragraph 3.1.5, either Party may use the Agreement as evidence in pursuing any action, claim or right of recovery that it is entitled or allowed to pursue under applicable law.

3.1.6 In each Subsequent Year, PSE shall pay 80% of the Shared Costs for that year, except as provided in paragraphs 3.1.8, 3.1.9 or 3.1.10 below.

3.1.7 In each Subsequent Year, until the obligations in Article II are fulfilled, the procedure set forth in paragraphs 3.1.4 and 3.1.5 shall be repeated.

3.1.8 In the event that the total costs incurred by the City to comply with the City's obligations under this Agreement exceed \$25,000,000 (twenty-five million

dollars), this Agreement may be terminated by either Party upon Notice received within sixty (days) of the City's costs exceeding \$25,000,000, and this Agreement then shall be of no further force or effect. Upon such a termination, either Party may pursue any action, claim or right of recovery, including against the other Party, that it is entitled or allowed to pursue under applicable law for cleanup costs incurred from the date of termination forward.

3.1.9 In the event that PSE determines that the City's share of costs in any Subsequent Year will exceed the amount appropriated, based on estimates provided by PSE, as the City's portion of the Shared Costs in the City's budget for that year, then PSE will provide the City with an updated estimate and City staff will seek a supplemental appropriation from the City Council. If the City Council does not authorize the requested supplemental appropriation, then PSE may either take steps to avoid incurring the excess costs until sufficient money is appropriated by the City for the following year, or proceed to incur the excess costs, which will be PSE's sole responsibility and which PSE shall not be able to recover from the City.

3.1.10 If this Agreement is not terminated according to 3.1.8, then the Parties shall execute an amendment to this Agreement setting forth a new monetary cap on the City's obligations.

3.1.11 In the event that the City fails to authorize payment of the costs the City is obligated to pay under this Agreement by December 31 of any year following the effective date of this Agreement, this Agreement shall terminate and shall from that moment be of no further force or effect. Upon such termination, either Party may pursue any action, claim or right of recovery, including against the other Party, that it is entitled or allowed to pursue under applicable law for cleanup costs incurred from the date of termination forward. If this Agreement is terminated pursuant to this paragraph or 3.1.8, either Party may use the Agreement as evidence in pursuing any action, claim or right of recovery that it is entitled or allowed to pursue under applicable law.

3.1.12 The City shall pay one hundred percent (100%) of Kite Hill Costs. PSE shall not try to influence EPA or Ecology to require remedial actions that would result in Kite Hill Costs.

**3.2** The City shall bear the entire cost of any consultant or technical expert it may choose to retain to monitor or review work that PSE is performing in connection with this Agreement.

**3.3** Except as expressly provided in this Agreement, the City shall bear all costs that are not related to negotiation and implementation of a Consent Decree, Agreed Order or for compliance with a unilateral order issued under MTCA or CERCLA for the Site, including costs for maintenance, safety measures and recreational improvements at the Park. Such costs are not Shared Remedial Action Costs and shall not be included in the maximum expenditure cap of subparagraph 3.1.8 or the cost allocations between the Parties set forth in this Article III.



**3.4** Any costs for additions or improvements to the Park and/or the Harbor Patrol Property shall be borne entirely by the City, provided, however, that any In Kind Replacement Costs shall be allocated between the Parties as provided in this Agreement.

**3.5** PSE will be responsible for any excavation or removal of any portion of the stormwater lines, outfalls and associated facilities at the Site and any adjacent contaminated soils, if done in connection with remedial actions performed under this Agreement and all associated costs will be Shared Remedial Action Costs, paid for eighty percent (80%) by PSE and twenty percent (20%) by the City. The City shall bear all responsibility and cost for reinstallation of the stormwater system, as needed, including but not limited to, design, engineering, procurement, materials and installation. If such work is needed, both Parties will use best efforts to coordinate activities, so PSE led cleanup efforts do not interfere with installation of new stormwater facilities and vice versa.

**3.6** Consistent with section 2.1, PSE is responsible for directing cleanup work at the Site. Accordingly, if during any of the City's work or operations on the Site hazardous substances are encountered, the City shall immediately stop work and contact PSE to determine what remedial action, if any, is required and appropriate responsibility for such action, and to coordinate any additional work with the ongoing cleanup. Any remedial action taken by the City prior to notifying PSE of the discovery of hazardous substances, except for emergency control and countermeasures, shall be entirely at the City's expense.

#### **ARTICLE IV**

##### **NRDA CREDITS**

**4.1** The Parties will confer regarding opportunities to create habitat on the Site that would provide them credit against any liability for damages to natural resources.

#### **ARTICLE V**

##### **LIMITED RELEASE**

**5.1** Notwithstanding anything to the contrary herein, the City hereby releases PSE and the City shall satisfy its obligations under applicable law for all matters or claims asserted against the City that are related in any way to the following: (a) any failure of the City's stormwater management facilities, including its outfalls, to comply with applicable law or permits, except for that remedial cost allocation between the Parties, set forth in Section 3.5 of this Agreement; (b) all environmental, health, structural and safety obligations and requirements in connection with the historical MGP buildings, artifacts and equipment on the Park property; (c) personal injury or tort claims in connection with public access to the Park or use of Park amenities; and (d) claims related to work performed at the Park by any entity other than PSE and its agents.

**5.2** Notwithstanding anything to the contrary herein, this Agreement shall not apply to any claim brought by a third-party, including regulatory agencies, alleging claims or pursuing recovery for the active transport, removal, hauling or physical relocation of soil containing or mixed with Hazardous Substances from the Uplands to another property or location, that occurred prior to the effective date of this Agreement. In the event of such a claim, the Parties' rights and liabilities, if any, shall be based upon applicable law.

**5.3** Notwithstanding anything to the contrary herein, the cost sharing provisions of this Agreement shall not apply to any claim brought by a third-party, including regulatory agencies, alleging claims or pursuing recovery for contamination that allegedly spread or migrated from the Site.

## ARTICLE VI

### PSE'S REPRESENTATIONS AND WARRANTIES

**6.1** Except as set forth in any disclosure schedule attached to this Agreement, PSE represents and warrants to Buyer that the statements contained in this Section 6.1 are correct and complete as of the date of this Agreement.

**6.1.1** Organization of PSE. PSE is a corporation duly organized, validly existing, and in good standing under the laws of the State of Washington.

**6.1.2** Authorization of Transaction. PSE has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. Without limiting the generality of the foregoing, the board of directors of PSE has duly authorized the execution, delivery, and performance of this Agreement by PSE. This Agreement constitutes the valid and legally binding obligation of PSE, enforceable in accordance with its terms and conditions.

**6.1.3** Non-contravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which PSE is subject or any provision of the charter or bylaws of PSE or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which PSE is a party or by which it is bound.

**6.1.4** Litigation. PSE has disclosed to the City each instance in which PSE is: (i) subject to any outstanding injunction, judgment, order, decree, ruling, or charge or (ii) a party or, to its knowledge is threatened to be made a party to any action, suit, proceeding, hearing, or investigation of, in, or before (or that could come before) any court or quasi-judicial or administrative agency of any federal, state, local jurisdiction regarding or in connection with the Site.

6.1.5 Due Diligence. PSE has either previously or in connection with this Agreement provided the City with all material information in its possession or control concerning Hazardous Substances known by PSE to be located at, on, under or moving from the Site.

## ARTICLE VII

### THE CITY'S REPRESENTATIONS AND WARRANTIES

7.1 Except as set forth in any disclosure schedule attached to this Agreement, the City represents and warrants to PSE that the statements contained in this Section 7.1 are correct and complete as of the date of this Agreement.

7.1.1 Organization of the City. The City is a municipal corporation duly organized, validly existing, and in good standing under the laws of the State of Washington.

7.1.2 Authorization of Transaction. The City has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Without limiting the generality of the foregoing, the City Council has duly authorized the execution, delivery, and performance of this Agreement by the City. This Agreement constitutes the valid and legally binding obligation of the City, enforceable in accordance with its terms and conditions. Notwithstanding the foregoing, PSE has had the opportunity to obtain independent legal advice and to make its own assessment of the City's authority to enter into this agreement.

7.1.3 Non-contravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the City is subject or any provision of the charter of the City or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the City is a party or by which it is bound. Notwithstanding the foregoing, PSE has had the opportunity to obtain independent legal advice and to make its own assessment of the legality of this agreement.

7.1.4 Litigation Regarding the Site. The City has disclosed to PSE each instance in which the City is: (i) subject to any outstanding injunction, judgment, order, decree, ruling, or charge or (ii) a party or, to its knowledge is threatened to be made a party to any action, suit, proceeding, hearing, or investigation of, in, or before (or that could come before) any court or quasi-judicial or administrative agency of any federal, state, or local jurisdiction regarding or in connection with the Site.

7.1.5 Legal Compliance: Permits. The City has complied, and is in compliance, in all material respects, with all applicable Environmental Laws (including



rules, regulations, codes, plans, injunctions, orders, decrees, rulings and charges thereunder) of federal, state and local governments applicable to the Site; is in possession of all permits, approvals, certificates, consents, registrations, orders, or other authorizations of any governmental authority necessary for it to comply with the requirements of all applicable Environmental Laws (the "Environmental Permits"); and is and has been in compliance with all Environmental Permits.

7.1.6 Due Diligence. The City has either previously or in connection with this Agreement provided PSE with all material information in its possession or control concerning Hazardous Substances known by the City to be located at, on, under or moving from the Site and all information requested by PSE in its due diligence requests, attached hereto as Schedule 7.1.6.

## ARTICLE VIII

### COVENANTS NOT TO SUE

8.1 In consideration of the City's covenants and agreements contained herein, PSE shall not, at any time hereafter, commence, maintain or prosecute any action at law or otherwise, or assert any claim against the City, its officers, agents, employees, and/or attorneys, either past or present, for any actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, and demands of whatever character in law or in equity arising out of or in any way relating to the presence of Hazardous Substances at, on, or under the Site, except for claims expressly excluded by this Agreement and claims based upon a failure to comply with this Agreement.

8.2 In consideration of PSE's covenants and agreements contained herein, the City shall not, at any time hereafter, commence, maintain or prosecute any action at law or otherwise, or assert any claim against PSE, its officers, shareholders, directors, agents, employees, and/or attorneys, either past or present, for any actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, and demands of whatever character in law or in equity arising out of or in any way relating to the presence of Hazardous Substances at, on, or under the Site, except for claims expressly excluded by this Agreement and claims based upon a failure to comply with this Agreement.

## ARTICLE IX

### MUTUAL RELEASES

9.1 **City's Release of PSE.** With the exception of the obligations required under this Agreement, the City hereby releases and forever discharges PSE, and its shareholders, subsidiaries, successors, representatives, assigns, agents, employees, officers, directors, and attorneys, and each of them (herein collectively referred to as the "PSE Releasees") of and from any and all claims, debts, liabilities, demands, obligations, costs, actions, causes of action known or unknown, vested or contingent, which it now owns or holds or has at any time owned or held against the PSE



Releasees, arising out of or in connection with the presence or future discovery of Hazardous Substances at, on, or under the Site, except that the Parties reserve their rights regarding natural resource damage claims at, on, under or from the Site, and their rights regarding contaminated material removed from the Site prior to the effective date of this Agreement, and their rights regarding damages caused by the other Party's negligence in performance of its obligations under this Agreement.

**9.2 PSE's Release of the City.** With the exception of the obligations required under this Agreement, PSE hereby releases and forever discharges the City, and its representatives, assigns, agents, employees, officers, and attorneys, and each of them (herein collectively referred to as the "City Releasees") of and from any and all claims, debts, liabilities, demands, obligations, costs, actions, causes of action known or unknown, vested or contingent, which it now owns or holds or has at any time owned or held against the City Releasees, arising out of or in connection with the presence or future discovery of Hazardous Substances at, on, or under the Site, except that the Parties reserve their rights regarding natural resource damage claims at, on, under or from the Site, and their rights regarding contaminated material removed from the Site prior to the effective date of this Agreement, and their rights regarding damages caused by the other Party's negligence in performance of its obligations under this Agreement.

## **ARTICLE X**

### **NO INDEMNIFICATION**

**10.1** PSE and the City shall not indemnify each other, nor do the Parties provide indemnification to any non-Party, except to the extent required by EPA or Ecology under the terms of the Consent Decree contemplated by this Agreement. As of the effective date of this Agreement, the Parties' Settlement, Release and Indemnity Agreement, dated November 29, 2000 ("the 2000 Settlement Agreement"), shall be null and void and of no further effect.

## **ARTICLE XI**

### **THIRD PARTY CLAIMS**

**11.1** In consideration of PSE's commitment to complete the investigation and cleanup of the Site, in accordance with the terms of this Agreement, the City shall assign to PSE all of its rights and interest in and to all third party claims related in any way to the presence of Hazardous Substances at, under, or on the Site, except for claims related to natural resource damages and/or claims related to Hazardous Substances that allegedly were transported or hauled from the Site prior to the effective date of this Agreement, or claims related to Hazardous Substances that allegedly spread or migrated beyond the Site. PSE shall immediately notify the City when it decides to pursue a third-party claim and give the City a reasonable opportunity before any claim is filed for the City to determine whether it wishes to join with PSE. Notwithstanding the foregoing, in the event that the City decides, in its sole discretion, to join with PSE to pursue a third party claim, the City shall be entitled to receive that



proportion of any net amounts recovered from the third party that is equal to the percentage share of Shared Costs plus litigation costs incurred to make and pursue the third party claim paid by the City relative to the total Shared Costs and litigation costs incurred by the Parties in the aggregate to make and pursue such third party claim. An illustrative example is attached and incorporated as Exhibit C.

## ARTICLE XII

### MISCELLANEOUS

**12.1 Notices.** Whenever under the provisions of this Agreement, it shall be necessary or desirable for one Party to serve any notice, request, demand, report or other communication on another Party, the same shall be in writing and shall not be effective for any purpose unless served (a) personally, (b) by independent, reputable, overnight commercial courier, (c) by facsimile transmission (i) where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), (ii) where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and (iii) where the facsimile transmission is immediately followed by service of the original of the subject item by personal delivery, overnight courier or first-class mail, or (d) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to PSE:

A. Personal delivery or other delivery  
requiring a street address:

Puget Sound Energy, Inc.  
10885 N.E. Fourth Street, PSE-12N  
Bellevue, WA 98004-5519

B. Mailing address:

P.O. Box 97034  
Bellevue, WA 98009-9734  
Attention: Steve Secrist  
General Counsel  
Fax: 425-462-3300

With a copy to:

Riddell Williams P.S.  
1001 Fourth Avenue, Suite 4500  
Seattle, WA 98154-1065  
Attention: Harry E. Grant  
Fax: 206-389-1708



If to the City then  
to: Seattle Public Utilities  
700 Fifth Avenue, Suite 4900  
Seattle, WA 98104-5004  
Attention: Director  
Fax: 206-684-4631

With a copy to: Seattle Department of Parks and Recreation  
City of Seattle  
Parks and Recreation Admin. Bldg.  
100 Dexter Ave. N.  
Seattle, WA 98109  
Attention: Superintendent  
Fax: 206-233-7023

With a further copy  
to: Seattle City Attorney  
City Hall, Fourth Floor  
600 Fourth Ave.  
P.O. Box 94769  
Seattle, WA 98124-4769  
Fax: 206-684-8284  
Attention: Laura Wishik

Any Party may, from time to time, by notice in writing served upon the other Party as aforesaid, designate an additional and/or a different mailing address in Washington or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally shall be deemed delivered upon receipt, if served by mail or independent courier shall be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the U.S. Postal Service or independent courier, and, if served by facsimile transmission, shall be deemed delivered on the date of receipt as shown on the received facsimile (provided the original is thereafter delivered as aforesaid).

**12.2 Public Communications.** The Parties shall coordinate in advance and cooperate in good faith in their public communications related in any way to this Agreement or the cleanup of the Site, including to news media, community organizations and citizens' groups.

**12.3 Relationship of Parties.** The relationship of PSE to the City shall be that of independent contractors, not agents, partners, joint venturers or employees.

**12.4 No Third Party Beneficiaries.** Except as specifically set forth herein, nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties toward, any person or entity not a party to this Agreement.



**12.5 No Admission of Liability.** It is expressly understood and agreed that neither Party admits any violation of law or any liability, such liability being expressly denied, and the execution or performance of this Agreement shall not be for any purpose construed as an admission of liability.

**12.6 No Assignment or Transfer.** The Parties represent and warrant that they have not assigned or transferred or purported to assign or transfer to any person, firm or corporation whatsoever, any claim, debt, liability, demand, obligation, cost, expense, action or cause of action herein released. If there is any claim, debt, liability, demand, obligation, cost, expense, action or cause of action based on or arising out of or in connection with any such transfer or assignment or purported transfer or assignment, the transferring or assigning Party agrees to release and hold the other Party harmless against such assigned or purportedly assigned claim, debt, liability, demand, obligation, cost, expense, action or cause of action, including reasonable attorney fees and costs incurred in connection therewith.

**12.7 Choice of Law.** This Agreement is made and entered into in the state of Washington and shall be interpreted, enforced and governed by and under the laws of the State of Washington. Venue shall be in King County, Washington.

**12.8 Construction; Advice of Counsel.** The Parties acknowledge that they have consulted with legal counsel of their own choosing in negotiating and entering this Agreement. The Parties further agree that this Agreement shall be construed without any presumption or rule requiring that it might be construed against the Party causing the Agreement or any part of it to be drafted.

**12.9 Authority to Execute.** Each Party executing this Agreement warrants and represents that it has the authority to and does bind the Party on whose behalf he or she signs. The Parties agree to execute such other documents as are necessary to give the other Party full benefit of the bargain expressed herein.

**12.10 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as the original instrument as if all the Parties to the counterparts had signed the same instrument. A signature transmitted by facsimile or electronic means including email shall be effective to bind any Party hereto, but each signatory shall also deliver an original, ink signature to legal counsel for the other Party to this Agreement.

**12.11 Severability of Agreement.** If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted, rather than voided, if possible without defeating material provisions of the Agreement, to achieve the intent of the Parties, and the balance of the Agreement shall remain in full force and effect.

**12.12 Attorneys' Fees and Expenses.** If either Party commences an action against the other Party arising out of or in connection with the enforcement of this Agreement, the prevailing Party in such action shall be entitled to have and recover from the other Party reasonable attorneys' fees and costs, including on appeal,



provided, however, each Party to this Agreement shall bear its own attorneys' fees, costs and expenses incurred in connection with the preparation and negotiation of this Agreement.

**12.13 Waiver.** No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee Party. No waiver by any Party of any right or remedy under this Agreement shall be deemed to be a waiver of any other subsequent right or remedy under this Agreement. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

**12.14 Construction and Interpretation of Agreement.** The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument. As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

**12.15 Entire Agreement; Integration; Amendment.** This Agreement with attachments and incorporations shall constitute the entire and exclusive agreement between the Parties relating to the specific matters covered in this Agreement. All prior or contemporaneous verbal or written agreements, understandings, representations and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose, except to the extent that the 1999 Consent Decree remains binding, enforceable and in effect. This Agreement may be altered, amended or revoked only by an instrument in writing signed by both Parties. No verbal agreement or implied covenant shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding. Both Parties are co-drafters of this Agreement.

*(signatures on following page)*



IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement on the date first written above.

CITY: THE CITY OF SEATTLE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: The Mayor of the City of Seattle

PSE: PUGET SOUND ENERGY, INC., a Washington corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

List of Exhibits

|                |  |
|----------------|--|
| Exhibit A      | (The Site)   |
| Exhibit B      | (Kite Hill)  |
| Exhibit C      | Illustrative Example for Section 11.1                      |
| Schedule 1.8.1 | Parties' Project Managers                                  |
| Schedule 1.8.2 | Costs Incurred by PSE to be Allocated under this Agreement |
| Schedule 7.1.6 | Due Diligence Document Request List                        |

## Exhibit A

### The Site

#### UPLANDS LEGAL DESCRIPTION

Those portions of upland property commonly known as Gas Works Park together with the abutting Waterway #19 and with the abutting Harbor Patrol, in the NE ¼ of Section 19, Township 25 North, Range 4 East, WM, and in the NW ¼ of Section 20, Township 25 North, Range 4 East, WM. ALL in the City of Seattle, County of King, State of Washington.

Commencing at the Section Corner common to Sections 17, 18, 19, & 20, thence S88°38'03" E on the extension easterly of the north line of Section 19, a distance of 8.01 feet to the intersection with the northerly margin of the former 50' Railroad ROW and the TPOB of this description.

Thence continuing S 88°38'03" E a distance of 239.10 feet to the line of Ordinary High Water, herein called "OHW", of Lake Union in Waterway #19 as platted in the unrecorded plat of Lake Union Shorelands, on file in the office of the Commissioner of Public Lands at Olympia, Washington,

thence southerly, westerly and northwesterly along the OHW of Lake Union an approximate distance of 2240 feet to the intersection with the southeasterly line of Waterway #20 Lake Union Shorelands,

thence leaving the OHW line of Lake Union, N 42°42'42" E along said southeasterly line of Waterway #20 a distance of 108.87 feet to the NE corner of Waterway #20,

thence N 54°34'36" W a distance of 29.45 feet to the northwesterly corner of Lot 1, Block 8, Burke's 1<sup>st</sup> Addition as recorded in volume 1 page 236 records of King County, Washington,

thence S 46°56'24"E along the northerly line of said Block 8 a distance of 60.00 feet, thence N 43°03'36" E, a distance of 60.00 feet to the southerly line of Block 2 Burke's 1<sup>st</sup> Add,

thence N 46°56'24" W along the southerly line of Block 2, a distance of 71.35 feet to the southwest corner of said Block 2,

thence N 47°30'23" E, a distance of 79.57 feet to the southeasterly corner of Block 1 Burke's 1<sup>st</sup> Add,

thence N 33°22'24" W along the westerly line of said Block 1 a distance of 194.51 feet to the intersection with the southerly margin of North Northlake Way,

thence S 88°27'54" E along said southerly margin a distance of 913.29 feet to the beginning of a curve,

thence easterly along a curve concave to the north, having a radial bearing of N1°32'06" E a radius of 385.32 feet a central angle of 14°17'36" and an arc distance of 96.12 feet to the intersection with the northerly margin of the former 50' Railroad ROW and a point of non-tangent compound curve,

thence northeasterly along the northerly margin of the former 50' Railroad ROW, being a curve concave to the northwest having a radial bearing of N 47°37'47" W a radius of



691.78 feet a central angle of  $1^{\circ}28'54''$  and an arc distance of 17.89 to the intersection with the north line of section 19 extended easterly and the TPOB.

Containing 897,184 sf more or less or 20.6+/-acres  
Bearings refer to Washington State Plane, North Zone

### SEDIMENTS LEGAL DESCRIPTION

Those submerged lands of Lake Union abutting a parcel of land commonly known as Gas Works Park, in the NE  $\frac{1}{4}$  of Section 19, Township 25 North, Range 4 East, WM, and in the NW  $\frac{1}{4}$  of Section 20, Township 25 North, Range 4 East, WM. ALL in the City of Seattle, County of King, State of Washington.

Commencing at the Section Corner common to Sections 17, 18, 19, & 20, thence  $S88^{\circ}38'03''$  E on the extension easterly of the north line of Section 19, a distance of 247.10 feet to the westerly Ordinary High Water line, herein called "OHW", of Lake Union in Waterway #19 and the TPOB of this description.

Thence continuing  $S 88^{\circ}38'03''$  E a distance of 194.47 feet to a non-tangent beginning of curve.

- Thence southerly along a curve concave to the west having a radial bearing of  $S 71^{\circ}12'46''$  W, a radius of 3568.50 feet a central angle of  $7^{\circ}38'22''$  and arc distance of 475.81 feet to a point of non-tangent compound curvature,
- Thence southwesterly along a curve concave to the northwest having a radial bearing of  $S 78^{\circ}12'46''$  W, a radius of 970 feet a central angle of  $63^{\circ}18'27''$  and arc distance of 1071.78 feet to a point of non-tangent compound curvature,
- Thence westerly along a curve concave to the north having a radial bearing of  $N 31^{\circ}25'00''$  W, a radius of 1600 feet a central angle of  $48^{\circ}33'00''$  and arc distance of 1355.77 feet to a point of non-tangent compound curvature,
- Thence westerly along a curve concave to the north having a radial bearing of  $N 16^{\circ}20'00''$  E, a radius of 1900 feet a central angle of  $17^{\circ}05'00''$  and arc distance of 566.50 feet to a point of non-tangent compound curvature,
- Thence northwesterly along a curve concave to the northeast having a radial bearing of  $N 33^{\circ}25'00''$  E, a radius of 870 feet a central angle of  $38^{\circ}46'00''$  and arc distance of 588.65 feet to a point of non-tangent compound curvature,
- Thence northwesterly along a curve concave to the northeast having a radial bearing of  $N 68^{\circ}00'00''$  E, a radius of 1300 feet a central angle of  $14^{\circ}56'39''$  and arc distance of 339.07 feet to a non-tangent end of curve,

thence  $N 42^{\circ}42'42''$  E a distance of 367.72 feet to the most westerly corner of King County Parcel #40880-4643,

thence  $S 47^{\circ}17'18''$  E a distance of 285.00 feet to the intersection with the northwesterly line of the south one-half of Lot 10, Block 101 unrecorded Plat of Lake Union Shorelands, on file in the office of the Commissioner of Public Lands at Olympia, Washington, extended southwesterly,



thence N 42°42'42" E a distance of 400.00 feet to the most westerly corner of the south one-half of Lot 10, Block 101 Lake Union Shorelands, being the most westerly corner of King County Parcel #40880-4670,  
thence N 42°42'42" E along the northeasterly line of said south one-half of Lot 10 a distance of 124.50 feet more or less to the line of OHW of Lake Union,  
Thence southeasterly, easterly and northerly along the line of OHW of Lake Union and of Waterway #19 an approximate distance of 2240 feet to the intersection with the extension easterly of the north line of Section 19 and the TPOB.

Containing 2,455,068 sf more or less or 56.4+/-acres  
Bearings refer to Washington State Plane, North Zone





## Exhibit B

### Kite Hill

#### LEGAL DESCRIPTION

A portion of a parcel of land commonly known as Gas Works Park, in the NE  $\frac{1}{4}$  of Section 19, Township 25 North, Range 4 East, WM, in the City of Seattle, County of King, State of Washington.

Commencing at an angle point in the Inner Harbor Line of Lake Union, designated as "31" on Lake Union Shorelands Plat,

Thence N  $47^{\circ}17'18''$  W along the Inner Harbor Line a distance of 216.87 feet to the most southerly corner of Block 45 Lake Union Shorelands,

Thence N  $47^{\circ}17'18''$  W continuing along the Inner Harbor Line a distance of 115.09 feet, Thence leaving the Inner Harbor Line N  $39^{\circ}43'00''$  E a distance of 24.15 feet to the line of Ordinary High Water, designated in this description as the shoreline of Lake Union, and the True Point of Beginning.

Thence N  $39^{\circ}43'00''$  E a distance of 100.39 feet,

Thence N  $23^{\circ}22'04''$  W a distance of 73.08 feet to the southerly line of Lot 4 Block 45 said Lake Union Shorelands,

Thence N  $44^{\circ}10'40''$  E along the southerly line of Lot 4, Block 45 and along the southerly line of Lot 4, Block 8, Burke's 1<sup>st</sup> Addition as recorded in volume 2, page 109 records of King County Washington, a distance of 83.00 feet to the most easterly corner of said Lot 4, Block 8,

Thence N  $46^{\circ}56'24''$  W along the northeasterly line of Block 8 a distance of 69.00 feet,

Thence N  $43^{\circ}03'36''$  E a distance of 45.51 feet to the beginning of a curve to the right,

Thence northeasterly along said curve, being concave to the southeast, having a radial bearing of S  $18^{\circ}26'01''$  E a radius of 204.00 feet a central angle of  $38^{\circ}30'25''$  and an arc distance of 137.10 feet to a point of compound curvature,

Thence along a curve concave to the south having a radial bearing of S  $20^{\circ}04'24''$  W a radius of 443.00 feet a central angle of  $15^{\circ}53'54''$  and arc distance of 122.92 feet to a point of reverse curvature,

Thence easterly along a curve concave to the north having a radial bearing of N  $35^{\circ}58'18''$  E a radius of 390.00 feet a central angle of  $15^{\circ}01'21''$  and an arc distance of 102.25 feet to a non tangent point of compound curvature,

Thence southerly along a curve concave to the east, having a radial bearing of S  $66^{\circ}45'20''$  E a radius of 847.49 feet a central angle of  $8^{\circ}19'00''$  and an arc distance of 123.01 feet to a point of compound curvature,

Thence along a curve concave to the east having a radial bearing of S  $75^{\circ}04'20''$  E a radius of 98.00 feet a central angle of  $54^{\circ}26'12''$  and an arc distance of 93.11 feet to a point of reverse curvature,

Thence along a curve concave to the west, having a radial bearing of S  $49^{\circ}59'13''$  W a radius of 80.00 feet a central angle of  $71^{\circ}44'35''$  and an arc distance of 100.18 to a point of tangency,

Thence S  $31^{\circ}43'48''$  W a distance of 101.27 feet more or less to the shoreline of Lake Union,

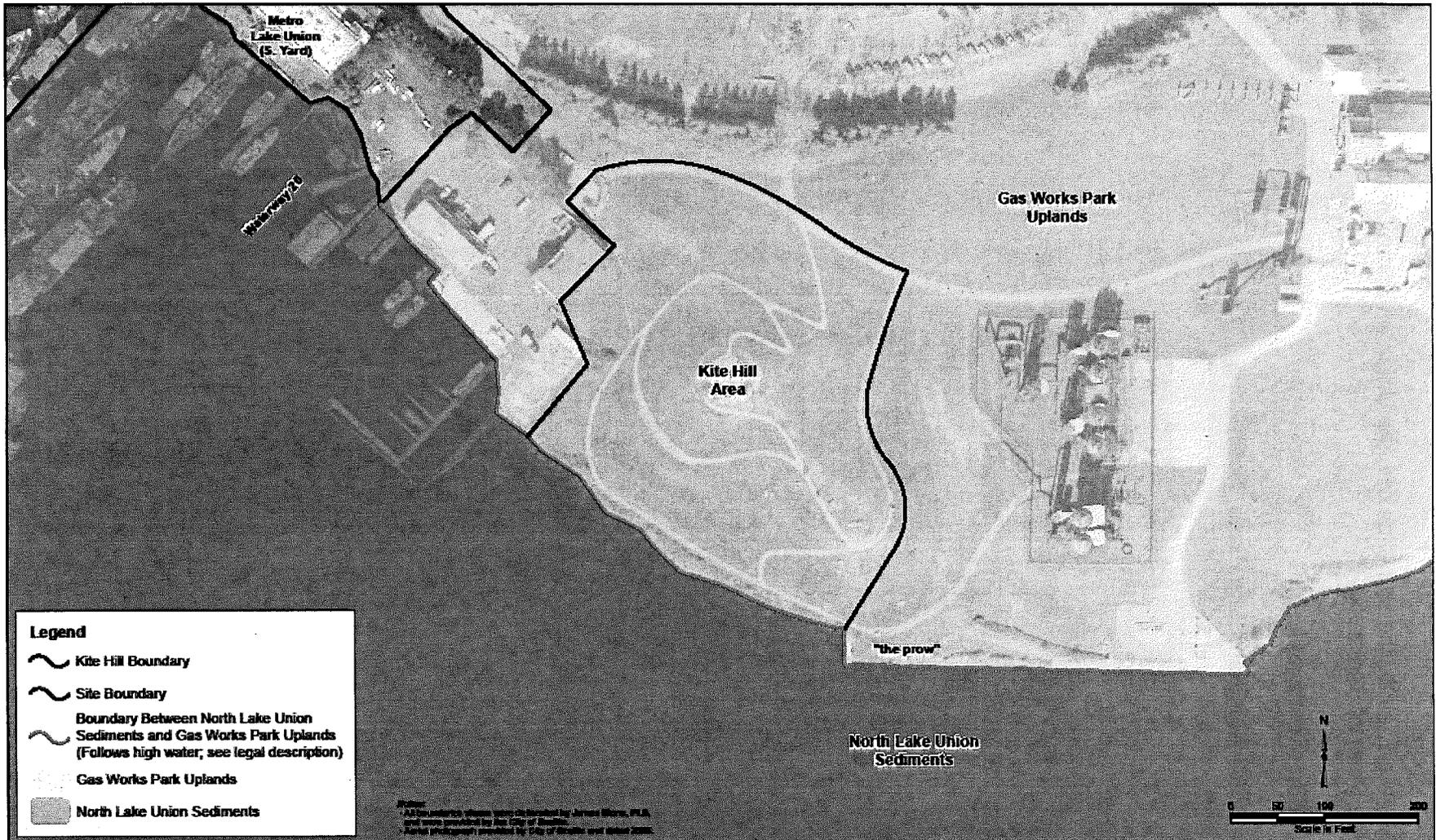


Thence northwesterly along the shoreline of Lake Union an approximate distance of 409 feet to the True Point of Beginning.

containing 137830 sf more or less

Bearings refer to Washington State Plane, North Zone





**FLOYD | SNIDER**  
 strategy • science • engineering

**Gas Works**

**Exhibit B**  
**Kite Hill Area**

Project: CCG-01546121/10121/Exhibit B - Kite Hill Area July 10 2012 Work: rwd  
 0154612



## Exhibit C

### Illustrative Example for Section 11.1

PSE and the City spend \$12 Million on remedial actions at the Site. They split those costs 80% PSE and 20% City. PSE decides to seek contribution from XYZ and spends \$200,000 preparing a claim. When PSE is ready to file its contribution lawsuit against XYZ, the City decides to join as a plaintiff. PSE spends an additional \$200,000 on the lawsuit and the City spends \$100,000 on the lawsuit. They then settle with XYZ for \$3 Million, \$500,000 of which is litigation costs.

Combined total out of pocket for both City and PSE: \$12,500,000.

PSE is out of pocket: 80% of \$12,000,000 = \$9,600,000, plus \$400,000 = \$10,000,000.

City is out of pocket: 20% of \$12,000,000 = \$2,400,000 plus \$100,000 = \$2,500,000.

City's percentage share of the total out of pocket = .20

City's share of the net settlement recovery =  $.20 \times \$2,500,000 = \$500,000$

PSE's share of the net settlement recovery = \$2,000,000



**Schedule 1.8.1**

**Parties' Project Managers**

For Seattle Public Utilities:

Pete Rude  
Phone: (206) 733-9179  
Email: Pete.Rude@seattle.gov

For Seattle Parks:

David Graves, AICP  
Senior Planner  
Phone: (206) 684-7048  
Email: David.Graves@seattle.gov

For Puget Sound Energy, Inc.:

John K. Rork  
Manager, Environmental Services  
Phone: (425) 456-2228  
Email: John.Rork@pse.com



**Schedule 1.8.2**

**Costs Incurred by PSE to be Allocated under this Agreement**

| <b>Invoice #</b> | <b>Date</b> | <b>Labor</b> | <b>Outside Direct Costs (ODC)</b> | <b>Total (Labor &amp; ODC)</b> |
|------------------|-------------|--------------|-----------------------------------|--------------------------------|
| 68712            | 07/06/07    | \$10,280.00  |                                   | \$10,280.00                    |
| 383747           | 07/27/07    | \$4,000.00   |                                   | \$ 4,000.00                    |
| 386372           | 08/24/07    | \$7,629.00   |                                   | \$7,629.00                     |
| 391689           | 10/12/07    | \$30,488.00  |                                   | \$30,488.00                    |
| 397461           | 12/04/07    | \$27,379.80  | \$25,031.66                       | \$52,411.46                    |
| 398554           | 12/18/07    | \$5,570.50   |                                   | \$5,570.50                     |
| 400221           | 01/07/08    | \$4,157.40   |                                   | \$4,157.40                     |
| 402922           | 02/01/08    | \$6,827.50   |                                   | \$6,827.50                     |
| 405099           | 02/28/08    | \$13,016.40  |                                   | \$13,016.40                    |
| 409881           | 04/11/08    | \$8,021.50   |                                   | \$8,021.50                     |
| 413237           | 05/16/08    | \$7,278.50   | \$15,213.55                       | \$22,492.05                    |
| 415630           | 06/05/08    | \$21,352.60  |                                   | \$21,352.60                    |
| 418688           | 07/09/08    | \$18,936.10  |                                   | \$18,936.10                    |
| 421775           | 08/06/08    | \$2,283.00   |                                   | \$2,283.00                     |
| 422703           | 08/26/08    | \$6,097.50   |                                   | \$6,097.50                     |
| 426987           | 10/09/08    | \$1,174.00   |                                   | \$1,174.00                     |
| 431124           | 11/11/08    | \$1,433.00   |                                   | \$1,433.00                     |
| 432383           | 12/03/08    | \$681.50     |                                   | \$681.50                       |
| <b>Total</b>     |             |              |                                   | <b>\$216,851.51</b>            |

ODC charges shown represent drilling and analysis of contamination in the uplands along the shoreline



**Schedule 7.1.6**

**Due Diligence Document Request List**

These requests concern and pertain to Gas Works Park (the "Park"), also referred to as the Gas Works Park Uplands (the "Uplands") and North Lake Union Sediments (the "Sediments"), collectively referred to as "the Site" and depicted on the attached exhibit.

Information requested regarding the Site should be understood to include any possessed by the City of Seattle, its departments, divisions and affiliated entities, including Seattle Public Utilities and Seattle Parks and Recreation, and consultants of any of those entities, and predecessors of such entities. This request does NOT include documents that the City obtained from PSE, or that were previously provided to PSE, including but not limited to documents that were provided to PSE's consultants, or for which PSE or its consultants were sent a courtesy copy.

The City is not required to provide drafts of documents in response to this request, provided, however, that if the City provides documents in response to Part 5, Environmental, that includes information not previously in PSE's possession, then PSE reserves the right to ask for drafts of those documents and the City will provide them.

**FINANCIAL CONSIDERATIONS**

**Req.  
No. Request**

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Financial statements, auditors' reports and auditors' letters for the City that include reference to the Site or financial matters in connection with the Site for each fiscal year and any interim periods in the current fiscal year during the last five years, together with all other material correspondence between the City and its auditors during such period that refers to or concerns the Site.

Attorneys' letters to auditors delivered with respect to the City during the past five years that refer to or address the Site, either by name or categorically.



**COMMERCIAL**

**Req.  
No. Request**

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All contracts, agreements and other documents regarding investigation of environmental conditions for the 1999 Consent Decree, for the current Agreed Order, or for remediation at the Site, between the City and other persons or entities currently in effect; a description of any such oral agreements; and any other documents that materially alter or amend such contracts, agreements and arrangements.

Any contracts, agreements, other documents, arrangements or understandings regarding the Site under which the City (i) has any surviving representations or warranties or any ongoing obligation to indemnify, defend or hold harmless any party, or (ii) is subject to any other material commitment, contingency or liability.

**LABOR RELATIONS**

**Req.  
No. Request**

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Copies of all complaints against the City filed in the past five years (or if still pending, whenever filed) in any state or Federal court pertaining to worker health, safety or disability related to actions or work performed at the Site or alleged exposure to toxics or hazardous substances at the Site.

**REAL PROPERTY**

**Req.  
No. Request**

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Schedules of any public works bonds or indemnities outstanding pertaining to or connected with the Site.

As-built drawings of any constructed or installed improvements in the Park, the Uplands or the Sediments, including associated infrastructure, stormwater systems, sewer systems, combined sewer systems and outfalls.

Any geotechnical analyses or reports concerning the Park, Uplands or Sediments, or any portion of those properties.



**ENVIRONMENTAL**

**Req.  
No. Request**

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All raw facts, data and/or analytical sampling results related to the Site, and associated non-privileged environmental or safety studies or reports prepared by, for or in the possession of the City, including any environmental compliance audits, environmental insurance investigations, letter reports, and studies of the subsurface or hydrogeological region underneath the Site, including any studies or reports obtained in conjunction with the purchase or sale of any part of the Site; provided, however, that for any such documents that the City withholds as privileged, the City shall identify such documents in a log.

All environmental regulatory matters, reports, citations or requests concerning any portion of the Site.

All non-privileged documents describing the extent to which the City has retained or acquired liabilities (including any agreements to indemnify, defend or hold harmless) relating to environmental issues arising from or related to the Site.

Documents or lists showing the location, size, contents and age of any underground tanks or underground storage facilities at the Site.

Data and documents describing the factual circumstances of the discharge and release of any hazardous substances, pollutants, toxics or toxic substances as defined by the Clean Air Act or the Clear Water Act at or from any portion of the Site and any operating permits, licenses, or any other regulatory correspondence regarding the City's release of such substances.

Data and other documents describing the factual circumstances of the discharge, release or disposal of any hazardous substance, as defined under CERCLA, at or from the Site whether the discharge, release or disposal was caused by the City, prior owners of the Site or third parties, including results of analyses of any soil samples or groundwater samples taken on the Site.

A list of all pending or threatened claims, actions and litigation, whether administrative or judicial, against the City that involve an alleged violation of any environmental or health and safety statute or regulation at the Site.



## **COMPLIANCE WITH NON-ENVIRONMENTAL LAWS**

**Req.  
No. Request**

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Documents relating to all pending or open governmental investigations or proceedings regarding the Site, pertaining to non-environmental law matters.

All Federal, state and local governmental or administrative permits, filings, licenses, approvals and consents related to the Site, pertaining to non-environmental law matters.

## **LITIGATION**

**Req.  
No. Request**

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List of all pending or threatened litigation, arbitration and/or government or administrative proceedings or investigations related to, including or in connection with the Site including:

- (a) Parties to the suit or proceeding.
- (b) Forum in which the suit or proceeding is pending.
- (c) Nature of claim in each suit or proceeding and amount of damages or nature of other remedy sought.
- (d) Principal pleadings.
- (e) Counsel handling such matter.
- (f) Status of such claim.

List of any inquiries from governmental agencies related to the Site concerning potential violations of laws, rules or regulations pending or during most recent five years.

Consent decrees, judgments, injunctions and other orders having a continuing or contingent effect on the Site or the City's operations at the Site.

List of all litigation or proceedings related to or in connection with the Site which have been settled, resolved or decided in the last five years, including final outcome of the litigation or proceedings.

Settlement agreements related to or in connection with the Site under which the City has any continuing or contingent obligation.

Copies of any regulatory notices, reports, citations or requests received by the City related to or in connection with the Site.



**FISCAL NOTE FOR CAPITAL PROJECTS ONLY**

| <b>Department:</b>                               | <b>Contact Person/Phone:</b>              | <b>CBO Analyst/Phone:</b>                    |
|--|---|--|
| Seattle Public Utilities<br>Parks and Recreation | Pete Rude/ 3-9179<br>David Graves/ 4-7048 | Karl Stickel/ 4-8085<br>Amy Williams/ 3-2651 |

**Legislation Title:**

AN ORDINANCE authorizing Seattle Public Utilities and Seattle Parks and Recreation to enter into a Settlement, Release and Cost Allocation Agreement with Puget Sound Energy, Inc. (PSE) for remediation of the combined Gas Works Park uplands and North Lake Union sediments; to enter into an Agreed Order or Consent Decree with the Washington State Department of Ecology or U.S. Environmental Protection Agency and PSE to undertake additional work at the Site consistent with the Agreement; and to seek and accept state Remedial Action Grants for cleanup work related to the Site.

This legislation relates to the City of Seattle's continued participation in cleanup actions at the Gas Works Park uplands (the park proper) and North Lake Union sediments, which comprise the cleanup Site.

**Summary and background of the Legislation:**

Gas Works Park and the Seattle Police Department's Harbor Patrol facility are situated on land that was historically part of or adjacent to a Manufactured Gas Plant (MGP) which processed coal and oil into gas that served as the primary fuel in the area for heating and light from 1907 until 1956. PSE is the successor to the owner/operator of the MGP. Operations on other industrial properties near the facility varied over the years, and included a plant for turning waste material from the MGP into a usable product. That plant was on property owned by the City of Seattle's Water Department. Soil, groundwater, and sediments at the Site were contaminated by waste from the MGP and associated operations.

In 1962, the City purchased the Gas Works Park property from PSE's predecessor. Gas Works Park was opened by 1976. The City of Seattle is a potentially responsible party (PRP) for cleanup of the Site due to:

- Historic City ownership (by the Water Department) of property that is now part of Gas Works Park and that was leased to a tar processing facility;
- Contaminants conveyed to the lake sediments through City storm drains; and
- City ownership of the Park and Harbor Patrol properties and a portion of the sediments.

The Washington State Department of Ecology (Ecology) is the lead agency for cleanup of the Site. The Environmental Protection Agency (EPA) formally deferred lead responsibility for the site to Ecology in 1996. However, the EPA can take over the site at any time.

In 1999, the City and PSE signed a Consent Decree with Ecology to remediate the uplands, which was completed in 2001. The City and PSE also executed a related settlement in 2000,



which included an indemnification by the City of PSE for potential additional cleanup work on the uplands. As part of the settlement, PSE provided \$1 million to the City to support remediation work on the site. All but \$90,000 has been spent, and the remaining funds will be used to fund additional consulting and environmental work in 2012 and 2013.

In 2005, PSE and the City signed an Agreed Order (AO) with Ecology to perform the Remedial Investigation/Feasibility Study (RI/FS) phase of work on the offshore contaminated sediments. The AO identified a "split" site. The split site allowed PSE and the City to control their own work but meant they each had a consultant team with much duplication of work and expense. Also in 2005, the City and PSE entered into a Memorandum of Agreement (MOA) to facilitate the joint effort on the sediments RI/FS and identified an interim cost-sharing arrangement whereby PSE would pay 75% of most of the sediments RI/FS costs. The agreement proposed in this legislation would supersede the terms in the 2005 MOA.

### **Basis for Proposed Legislation**

The current situation at the Site is as follows:

- EPA is highly critical of Ecology's decisions at the Site.
- The City and PSE have assisted Ecology in responding to the concerns raised by EPA, but EPA remains unwilling to review progress on the sediment cleanup until their questions about the uplands are addressed.
- The difficult relationship between EPA and Ecology has slowed the progress of the Sediment cleanup work and created great uncertainty for the City and PSE.
- Within the existing framework, it could take years for Ecology and EPA to resolve their differences at the Site, if they are able to do so. In the meantime PSE and the City are spending money with no certainty that their efforts will be worthwhile.

Given this situation, the City and PSE believed it would be more cost effective for PSE alone to manage the site and worked together on an agreement to make this change.

### **Agreement Framework and Cost Analysis**

The proposed agreement meets City and PSE needs to:

- Be broad enough to address all future costs for both the sediments and the uplands.
- End duplication of effort and expense by having PSE take the lead for future work at the site (except where City involvement is clearly necessary).
- Provide a simple and equitable means for sharing costs and eliminate the need for a lengthy and costly cost allocation process.

Pursuant to the proposed agreement, the cost split is 80%-PSE and 20%-City (as compared to the existing split for costs related to the sediments of 75%-PSE and 25%-City). The City retains sole financial responsibility for: 1) Replacement of the City's drainage lines and outfalls; 2) liability under the City's storm water permits; and 3) excavation of Kite Hill, in the unlikely event that EPA or Ecology requires it. The City's share of sediment costs is expected to be split 55%-SPU and 45%-General Fund; uplands costs are expected to be split 5%-SPU and 95%-General Fund.

The City performed a cost analysis, which addressed potential uplands and sediments costs, took into account the probable and worst case (most expensive) outcomes, and considered different



ways for managing costs. It is important to note that absolute cost estimates for site cleanup are very uncertain at this phase of site activities but what was developed is useful for long-term planning and relative comparison of cost-sharing options.

In summary, the agreement identifies the following obligations and roles for the City and PSE:

1. **Investigation and Cleanup.** PSE shall have sole responsibility for directing and completing the remaining investigation and cleanup of the Site.
2. **Approach to Regulatory Agencies.** PSE will seek from the regulatory agencies a joint Ecology/EPA Consent Decree for the sediments or the entire site.
3. **Parties' Respective Roles.** PSE will negotiate with EPA and/or Ecology the terms of future Site agreements or orders. The Agreement identifies key issues on which PSE will either confer with the City or gain the City's approval during agency negotiations.
4. **Communication with Agencies.** PSE will conduct all communications with EPA and Ecology and any permitting agencies concerning the Site.
5. **Monitoring Obligations.** The City will continue to perform and pay for the remaining 1999 Compliance Monitoring Obligations and 1999 O&M Obligations. The City will be responsible for normal maintenance of the Park and Harbor Patrol.
6. **Grant Funds.** PSE will cooperate with the City in the City's requests for grant funds from the State's Model Toxics Control Account to cover a portion of the City's share of costs.
7. **No Indemnification.** PSE and the City will not indemnify each other or any non-Party, except to the extent required by EPA or Ecology under the terms of the Consent Decree and the indemnification obligations under the 2000 Settlement Agreement, will be null and void.

To address the prohibition in RCW 35.32A.090 on making financial commitments that exceed current budget authority, the agreement is structured so estimated costs for the coming year must be approved by City Council during the annual budget process. Further, the City's total share of costs may not exceed \$25 million without City Council approval. The City and PSE discussed the potential applicability of Public Works contracting requirements to the remedial construction work and agreed that such potential requirements would be addressed as the scope and timing of the actual remedial work clarified, which is anticipated to be at least two to three years in the future.

| <b>Project Name:</b>       | <b>Project I.D.:</b> | <b>Project Location:</b>                      | <b>Start Date:</b> | <b>End Date:</b>     |
|----------------------------|----------------------|---|--------------------|----------------------|
| Gas Works Sediment Cleanup | Various*             | Lake Union (Gas Works Park and Harbor Patrol) | 2005               | Not yet determined** |
| Gas Works Park             | K73582               | 2101 N. Northlake                             | 2000               | TBD                  |



|             |  |     |  |  |
|-------------|--|-----|--|--|
| Remediation |  | Way |  |  |
|-------------|--|-----|--|--|

\* This project is contained in the Sediment Remediation Project/Activity group in the Drainage and Wastewater Fund of SPU.

Because of Parks and Harbor Patrol involvement, a portion of costs covered by this agreement will be charged to the City General Fund.

\*\* Dependent on resolution of the relationship of regulatory agencies (Ecology and EPA) at the site.

Please check any of the following that apply:

This legislation creates, funds, or anticipates a new CIP Project.

This legislation does not have any financial implications.

This legislation has financial implications.

**Appropriations:**

| Fund Name and Number  | Department | Budget Control Level* | Existing 2012 Appropriation | New 2012 Appropriation (if any) | 2013 Anticipated Appropriation |
|---|------------|-----------------------|-----------------------------|---------------------------------|--------------------------------|
| Drainage and Wastewater fund (44010)                                    | SPU        | C3503                 | \$632,399                   | None                            | \$345,900                      |
| Cumulative Reserve Subfund-Real Estate Excise Tax II Subaccount (00161) | Parks      | K73582                | \$70,000                    | None                            | \$140,000                      |
| Gasworks Park Contamination Remediation Fund (10220)                    | Parks      | K73582                | \$20,000                    | None                            | \$70,000                       |
| <b>TOTAL</b>  |            |                       | <b>\$722,399</b>            |                                 | <b>\$555,900</b>               |

\*See budget book to obtain the appropriate Budget Control Level for your department.

Appropriations Notes: This legislation does not request appropriation authority. Appropriations for 2012 were anticipated in the 2012 budget. Appropriation authority for 2013 will be submitted to Council in September 2012.



**Spending Plan and Future Appropriations for Capital Projects:**

| Spending Plan and Budget                                    | 2012      | 2013      | 2014      | 2015      | 2016        | 2017        | Total       |
|---|-----------|-----------|-----------|-----------|-------------|-------------|-------------|
| <b>Drainage and Wastewater Fund (44010)</b>                 |           |           |           |           |             |             |             |
| Spending Plan   | \$219,755 | \$345,900 | \$751,200 | \$751,300 | \$1,040,000 | \$1,800,000 | \$4,908,055 |
| Current Year Appropriation                                  | \$632,399 |           |           |           |             |             |             |
| Future Appropriations                                       |           | \$345,900 | \$751,200 | \$751,300 | \$1,040,000 | \$1,800,000 | \$3,770,000 |
| <b>Cumulative Reserve Subfund (00161)</b>                   |           |           |           |           |             |             |             |
| Spending Plan   | \$70,000  | \$140,000 | \$400,000 | \$560,000 | \$1,360,000 | \$2,400,000 | \$4,930,000 |
| Current Year Appropriation                                  | \$70,000  |           |           |           |             |             |             |
| Future Appropriations                                       |           | \$140,000 | \$400,000 | \$560,000 | \$1,360,000 | \$2,400,000 | \$4,930,000 |
| <b>Gasworks Park Contamination Remediation Fund (10220)</b> |           |           |           |           |             |             |             |
| Spending Plan   | \$20,000  | \$70,000  |           |           |             |             | \$90,000    |
| Current Year Appropriation                                  | \$20,000  |           |           |           |             |             |             |
| Future Appropriations                                       |           | \$70,000  |           |           |             |             | \$70,000    |

Spending Plan and Budget Notes:

The spending plan above represents anticipated costs for both SPU and Parks. Absolute cost estimates for Site cleanup are highly uncertain at this phase of site activities but are useful for long-term planning and relative comparison of cost-sharing options within the Agreement.

These figures may increase due to:

- Further studies EPA and Ecology may require,
- Further remediation if ordered by EPA or Ecology,
- Possible actions by other PRPs to recover costs they believe are attributable to Seattle
- Legal expenses for the City to recover costs from other PRPs.

The total may be reduced by:

- Grants
- Seattle's recovery of costs from other PRPs.

**Funding Source:**

| Funding Source (Fund Name and Number, if applicable) | 2012             | 2013             | 2014             | 2015             | 2016               | 2017               | Total              |
|--|------------------|------------------|------------------|------------------|--------------------|--------------------|--------------------|
| Drainage and Wastewater Fund (44010)                 | \$66,000         | \$116,000        | \$256,000        | \$295,000        | \$420,000          | \$703,000          | \$1,856,000        |
| Cumulative Reserve Subfund (00161)                   | \$70,000         | \$140,000        | \$400,000        | \$560,000        | \$1,360,000        | \$2,400,000        | \$4,930,000        |
| Gasworks Park Contamination Remediation Fund (10220) | \$20,000         | \$70,000         |                  |                  |                    |                    | \$90,000           |
| <b>TOTAL</b>   | <b>\$156,000</b> | <b>\$326,000</b> | <b>\$656,000</b> | <b>\$855,000</b> | <b>\$1,780,000</b> | <b>\$3,103,000</b> | <b>\$6,876,000</b> |



**Funding Source Notes:**

- The annual funding requirement above for the Drainage and Wastewater Fund is a combination of the annual debt service payment (see Bond Financing section below) on the bond financing portion of planned spending related to this project in current and prior years PLUS cash financing equal to 25 percent of projected current year annual CIP expense. Cash financing of the project (\$1.2 million over 6 years) is only applicable during years of capital spending. The \$253,000 in annual bond financing projected for 2017 will continue through the 30 year bond term, assuming no additional capital spending.
- The annual contribution from Parks will be funded with the Cumulative Reserve Subfund (CRS) and the Gasworks Park Contamination Remediation Fund in 2013. CRS will be the sole funding source in 2014 after the Remediation Fund is fully spent. For planning purposes, the legislation assumes that CRS will continue funding the project after 2014. However, the City Budget Office will determine whether an alternative financing strategy (i.e. bond financing) is necessary after 2014 based on the availability CRS/REET revenues to support the project.

**Bond Financing Required:**

| Type                                | Amount             | Assumed Interest Rate | Term     | Timing  | Expected Annual Debt Service/Payment |
|-------------------------------------|--------------------|-----------------------|----------|---------|--------------------------------------|
| Drainage & Wastewater Revenue Bonds | \$3,681,000        | 5.5%                  | 30 years | various | \$253,000                            |
| <b>TOTAL</b>                        | <b>\$3,681,000</b> | <b>5.5%</b>           |          |         | <b>\$253,000</b>                     |

**Bond Notes:**

Seattle Public Utilities is capitalizing this work. This bonded amount (\$3.7 million) represents 75% of the costs associated with the program (\$4.9 million). The remaining 25 percent (\$1.2 million) will be financed with cash between 2012 and 2017. SPU will include bond-funded costs in its normally scheduled Revenue Bond sales issued for the DWF CIP. 2012 and 2013 costs will be funded out of June 2012 bond proceeds. Annual debt service payments will increase from \$11,000 in 2012 to a total of \$253,000 by the end of the planning period (2017). Assuming no further project spending, the \$253,000 annual payments will apply from 2017 through the end of the 30 year bond term.

**Uses and Sources for Operation and Maintenance Costs for the Project:**

**Operation and Maintenance Notes:**

This legislation deals with an environmental cleanup and does not relate to a new facility. O & M costs for Park operations and Harbor Patrol operations are not expected to be affected by the remedial work to be done under this ordinance.



**Periodic Major Maintenance Costs for the Project:**

This legislation deals with an environmental cleanup and does not relate to a new facility. Major maintenance costs for Gas Works Park and Harbor Patrol facilities are not expected to be affected by the remedial work to be done under this ordinance.

**Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:**

No changes to positions and no FTE impacts expected.

**Other Implications:**

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

The regulatory agencies will require some amount of long term monitoring upon completion of the remedial action. The cost of this work is unknown but is not expected to be significant. However if monitoring indicates recontamination is occurring, additional remedial work could be required.

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

City cost analysis shows continuing cleanup activities within the existing regulatory framework and City-PSE co-lead will cost the City more than if this legislation is implemented. The cost for not implementing the legislation could range from \$1 million to about \$5 million more than if the legislation is implemented.

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

In addition to SPU and Parks, this legislation also affects the Harbor Patrol facility, which is managed by FAS. FAS and SPD have both been briefed about this proposed legislation.

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

Alternatives to the proposed legislation are:

- Continue to conduct the remedial work with PSE as previously approved. This option is likely to take longer and be more costly than the agreement being proposed.
- Go through a formal allocation process with PSE for final allocation. This option is likely to carry significant legal costs.

**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?**

Exhibit A of the proposed Agreement between the City and PSE, which is attached to the proposed legislation, shows the boundaries of the Site and the property parcels involved.





City of Seattle  
Office of the Mayor

August 21, 2012

Honorable Sally J. Clark  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that would authorize Seattle Public Utilities and Seattle Parks and Recreation to enter into an agreement with Puget Sound Energy (PSE) for remediation of contamination at Gas Works Park.

Gas Works Park is a centerpiece of our city landscape and provides open space and recreational enjoyment for tens of thousands of Seattle residents and visitors each year. Contamination on the land where the park is situated and in the sediments offshore were caused primarily by a former manufactured gas plant and supporting operations. In 2001, the City and its partners completed a thorough cleanup of the uplands area. The City, led by SPU, and PSE started preparing for the offshore sediment cleanup in 2005.

This proposed legislation would allow the City to enter into a settlement agreement with PSE that addresses future cleanup activities at the site and related costs and to seek and accept state grants. The agreement gives PSE sole responsibility for directing and completing the remaining investigation and cleanup while providing for City involvement where necessary regarding park use, Harbor Patrol operations, and drainage. It also defines an equitable and final allocation of future costs for cleanup activities at the site.

This legislation allows cleanup at the Gas Works Site to continue in a cost-effective way and insures a fair and equitable sharing of costs with our partner at the site. Thank you for your consideration of this legislation. Should you have questions, please contact Pete Rude at 733-9179.

Sincerely,

Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council