

Chip Nevins  
DPR Sound Transit Rainbow Point ORD  
May 29, 2013  
Version #2

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

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AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to grant and convey easement rights under portions of Rainbow Point Park to the Central Puget Sound Regional Transit Authority for the purposes of installing, repairing, maintaining, and operating tunnels for light rail service, and to accept payment therefor; and finding that the grant of a permanent subsurface easement meets the requirements of Ordinance 118477, adopting Initiative 42.

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

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

WHEREAS, on September 24, 2007, the Seattle City Council adopted Resolution 30993 (superseding Resolution 30128), which approved the alignment, location of stations, and maintenance base location for the light rail system; and

WHEREAS, the alignment of the light rail system, passes below the surface of portions of Rainbow Point Park; and

WHEREAS, Sound Transit will be constructing, and operating light rail tunnels under Rainbow Point Park, under the jurisdiction of the Department of Parks and Recreation, and Sound Transit requires permanent use of underground portions of the park for construction and light rail train operations; and

WHEREAS, the City and Sound Transit have agreed on the terms and fair market value of the subsurface tunnel easement; and

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



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

Section 1. The City Council hereby finds that the sale of a permanent subsurface easement at Rainbow Point Park to the Central Puget Sound Regional Transit Authority (“Sound Transit”) for the purposes of installing, repairing, maintaining, and operating tunnels for light rail service is necessary because there is no reasonable and practical alternative and such subsurface easement is compatible with park use, thereby meeting the requirements of Ordinance 118477.

Section 2. The Superintendent of Parks and Recreation, or his designee, is hereby authorized, on behalf of The City of Seattle, to enter into a tunnel easement agreement with Sound Transit, substantially in the form of Attachment 1, attached hereto and incorporated by this reference (“Tunnel Easement Agreement”), concerning the real property described in Attachment 1.

Section 3. Consideration for the Tunnel Easement Agreement paid by Sound Transit, as provided in Attachment 1, shall be deposited as follows:

<b>Fund Name and Number</b>	<b>Department</b>	<b>Revenue Source</b>	<b>2013 Revenue</b>	<b>2014 Revenue</b>
Parks and Recreation Fund (10200)	Parks and Recreation	Sale of easement	\$6,800	N/A
<b>TOTAL</b>			<b>\$6,800</b>	

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



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Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2013, and  
signed by me in open session in authentication of its passage this  
\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Michael McGinn, Mayor

Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Monica Martinez Simmons, City Clerk

(Seal)

- Attachment 1: Tunnel Easement Agreement
  - Exhibit A to Attachment 1: Legal Description of Grantor's Property and Tunnel Easement Area
  - Exhibit B to Attachment 1: Map of Grantor's Property and Tunnel Easement Area



**Attachment 1  
Tunnel Easement Agreement**



WHEN RECORDED RETURN TO:

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

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**TUNNEL EASEMENT AGREEMENT**

**Grantor(s):** City of Seattle, a municipal corporation

**Grantee:** Central Puget Sound Regional Transit Authority

**Abbreviated Legal Description:** BLK 12-13 LOT 1 & WALLINGFORD PARK ADD LOT 1 OF BLK 12 TGW 2-3-4 BLK 13 OF SD ADD ALL LY NLY OF FREEWAY

**Assessor's Tax Parcel No.(s):** 913710-0460

**ROW No.(s):** NG775

**1. Grant of Tunnel Easement.** THE CITY OF SEATTLE, a Washington municipal corporation ("Grantor"), for and in consideration of Six Thousand Eight Hundred and No/100 Dollars (\$6,800.00) in hand paid, hereby conveys to the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY ("Grantee"), a regional transit authority of the State of Washington, for the purposes described below, an exclusive permanent subsurface easement (the "Tunnel Easement") under the surface of and through a portion of Grantor's property. Grantor's property ("Grantor's Property") and the subsurface portion of Grantor's Property that is subject to the Tunnel Easement ("Tunnel Easement Area") are legally described in **Exhibit "A"** and illustrated in **Exhibit "B"** both attached hereto and incorporated herein by reference. The Tunnel Easement Area is a subsurface area lying between elevation 197' and elevation 134', North American Vertical Datum of 1988 (NAVD88), the top plane being approximately 87 feet below ground surface (BGS).

**2. Purpose of Tunnel Easement.** Grantee shall have the right to use the Tunnel Easement Area for all purposes necessary or incidental to Grantee's construction, operation, maintenance, use,



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

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

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

Grantee shall implement, at its expense, a settlement-monitoring program before commencement of construction activities, and Grantee shall maintain such settlement-monitoring program at its expense commencing no later than the start of construction of the tunnels under Grantor's Property and continuing until the later of four (4) months after construction of the tunnels under Grantor's Property is complete or May 31, 2018.

In the event that Grantee ceases to use the Tunnel Easement Area after boring of a tunnel or tunnels and prior to commencement of operation of its light rail trains, then Grantee shall decommission the tunnel(s) at its sole cost and expense by plugging the tunnel(s) at both ends of the Tunnel Easement Area and completely filling the tunnel(s) in the Tunnel Easement Area with controlled density fill (CDF).

**5. Applicable Law and Indemnification.** Grantee shall at all times exercise its rights under this Tunnel Easement Agreement in accordance with the requirements of all applicable laws, orders, rules and regulations of any public authority having jurisdiction. In the event the impacts of Grantee's uses of the Tunnel Easement Area as described herein are demonstrated to be incorrect, or



in the event of Grantee's failure to maintain structural integrity of the Tunnel Easement Area or support of the surface or subsurface of Grantor's Property, or in the event of injury or damage to persons or property resulting directly or indirectly from damage on or to Grantor's Property from Grantee's exercise of Grantee's rights under this Tunnel Easement Agreement, Grantee agrees to indemnify, hold harmless and defend Grantor from and against all damages, claims, and liabilities to the extent resulting therefrom, including attorney's fees and costs of suit, including any appeals thereof, except to the extent any of such damages, claims or liabilities result from the negligence of Grantor.

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

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

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

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

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

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

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

**GRANTOR:**  
CITY OF SEATTLE

BY: \_\_\_\_\_  
ITS: Superintendent of Parks and Recreation                      Date



R/W #: NG775

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**GRANTEE:**  
CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_ Date





**EXHIBIT A**  
**Legal Description of Grantor's Property and Tunnel Easement Area**

**Grantor's Entire Parcel (Servient):**  
(According to Statutory Warranty Deed, King County Recording No. 6726365)

ALL THAT PORTION OF LOT 1 IN BLOCK 12 OF WALLINGFORD'S PARK DIVISION OF GREEN LAKE ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 4 OF PLATS, PAGE 38, RECORDS OF KING COUNTY, WASHINGTON, LYING NORTHEASTERLY OF A LINE DRAWN PARALLEL WITH AND 255 FEET NORTHEASTERLY WHEN MEASURED AT RIGHT ANGLES AND/OR RADially FROM THE CENTERLINE SURVEY OF PRIMARY STATE HIGHWAY #1 (SR 5) SEATTLE FREEWAY, EAST 43RD STREET TO EAST 75TH STREET; ALSO ALL THAT PORTION OF LOTS 2, 3 AND 4 IN BLOCK 13 OF WALLINGFORD'S PARK DIVISION OF GREEN LAKE ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 4 OF PLATS, PAGE 38, RECORDS OF KING COUNTY, WASHINGTON, LYING NORTHERLY OF A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE LINE COMMON TO LOT 1 IN BLOCK 12 AND LOT 4 IN BLOCK 13 OF SAID PLAT, WHICH POINT IS 255 FEET EASTERLY, WHEN MEASURED RADially, FROM THE CENTERLINE OF PRIMARY STATE HIGHWAY NO.1 (SR 5), SEATTLE FREEWAY, EAST 43RD STREET TO EAST 75TH STREET, AND RUNNING THENCE NORTH 84°36'00" EAST 110 FEET MORE OR LESS, TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF SAID LOT 2 IN BLOCK 13, AND THE TERMINUS OF SAID LINE;

**Easement Area Acquired by Grantee (Dominant):**

**For Subsurface Tunnel:**

THAT PORTION OF LOT 1 IN BLOCK 12 OF WALLINGFORD'S PARK DIVISION OF GREEN LAKE ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 4 OF PLATS, PAGE 38, RECORDS OF KING COUNTY, WASHINGTON, LYING NORTHEASTERLY OF A LINE DRAWN PARALLEL WITH AND 255 FEET NORTHEASTERLY WHEN MEASURED AT RIGHT ANGLES AND/OR RADially FROM THE CENTERLINE SURVEY OF PRIMARY STATE HIGHWAY #1 (SR 5) SEATTLE FREEWAY, EAST 43RD STREET TO EAST 75TH STREET; ALSO THAT PORTION OF LOTS 2, 3 AND 4 IN BLOCK 13 OF WALLINGFORD'S PARK DIVISION OF GREEN LAKE ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 4 OF PLATS, PAGE 38, RECORDS OF KING COUNTY, WASHINGTON, LYING NORTHERLY OF A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE LINE COMMON TO LOT 1 IN BLOCK 12 AND LOT 4 IN BLOCK 13 OF SAID PLAT, WHICH POINT IS 255 FEET EASTERLY, WHEN MEASURED RADially, FROM THE CENTERLINE OF PRIMARY STATE HIGHWAY NO. 1 (SR 5), SEATTLE FREEWAY, EAST 43RD STREET TO EAST 75TH STREET, AND RUNNING THENCE NORTH 84°36'00" EAST 110 FEET MORE OR LESS, TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF SAID LOT 2 IN BLOCK 13, AND THE TERMINUS OF SAID LINE, LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHWESTERLY CORNER THEREOF, BEING THE NORTHWESTERLY CORNER OF SAID LOT 1;  
THENCE S49°36'55"E ALONG THE NORTHEASTERLY LINE THEREOF, THE SAME BEING THE SOUTH LINE OF NORTHEAST BANNER PLACE, A DISTANCE OF 31.74 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED LINE;  
THENCE S38°02'48"E A DISTANCE OF 64.58 FEET TO THE SOUTH LINE THEREOF AT A POINT 18.07 FEET SOUTHWESTERLY OF THE MOST EASTERLY CORNER THEREOF, BEING THE END OF THE HEREIN DESCRIBED LINE.

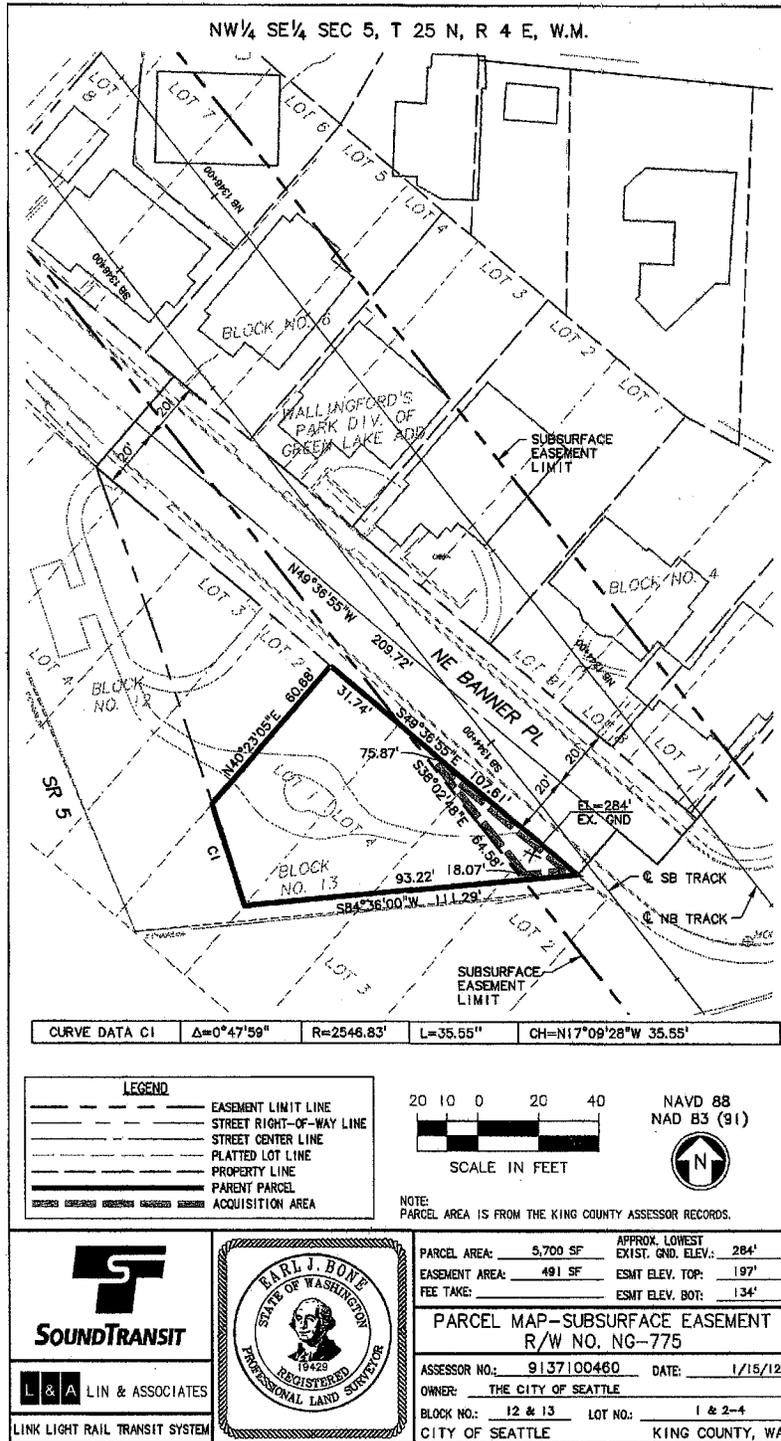
CONTAINING 491 SQUARE FEET MORE OR LESS.

AND SHALL BE A SUBSURFACE EASEMENT LYING VERTICALLY BETWEEN TWO HORIZONTAL PLANES AT ELEVATION 197 FEET AND ELEVATION 134 FEET, BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88), THE TOP PLANE BEING APPROXIMATELY 87 FEET BELOW THE EXISTING GROUND SURFACE.



## EXHIBIT B

### Map of Grantor's Property and Tunnel Easement Area



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Parks and Recreation	Donald Harris/684-8018	Jeff Muhm/684-8049

**Legislation Title:**

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to grant and convey easement rights under portions of Rainbow Point Park to the Central Puget Sound Regional Transit Authority for the purposes of installing, repairing, maintaining, and operating tunnels for light rail service, and to accept payment therefor; and finding that the grant of a permanent subsurface easement meets the requirements of Ordinance 118477, adopting Initiative 42.

**Summary of the Legislation:**

This legislation authorizes the Superintendent of Parks and Recreation to execute a tunnel easement agreement with Sound Transit authorizing construction, maintenance, and operation of a tunnel under Rainbow Point Park at NE Banner Place in northeast Seattle.

**Background:**

The proposed easement will be part of the North Link that will connect the University District to Northgate by light rail. Authorizing the tunnel easement agreement is consistent with several past acts of the City supporting the regional light rail system. Ordinance 118927, passed in 1998, authorized the execution of a Memorandum of Agreement (MOA) between Sound Transit and the City related to light rail development and station area planning within the city. The MOA articulated a mutual desire to work efficiently and cooperatively in many areas to facilitate the construction and operation of the light rail system. This legislation is consistent with the prior agreement.

Total compensation for the easement is \$6,800. The property rights have been appraised by an independent appraiser, and the appraisal has been reviewed and accepted by the City.

The tunnel will pass under Rainbow Point Park at NE Banner Place at a depth of approximately 87 feet from the top of the tunnel to the surface for 65 linear feet. There are no surface improvements at Rainbow Point Park, but Sound Transit will monitor the park to detect any surface settling or subsurface voids.

This legislation is subject to the requirements of Ordinance 118477 and therefore requires a public hearing and a finding that the use is necessary, has no reasonable and practical alternative and meets the criteria of Section 3 of Ordinance 118477, namely that this is a subsurface tunnel easement compatible with park use.



This legislation does not have any financial implications.

This legislation has financial implications.

**Appropriations:** N/A

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
<b>TOTAL</b>	N/A	N/A	N/A	N/A

Appropriations Notes:

**Anticipated Revenue/Reimbursement Resulting from this Legislation:**

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
Parks and Recreation Fund 10200	Parks and Recreation	Sale of easement	\$6,800	N/A
<b>TOTAL</b>			\$6,800	

Revenue/Reimbursement Notes: The \$6,800 in revenue is a one-time payment for the value of the tunnel easement.

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

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
<b>TOTAL</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Position Notes:

**Do positions sunset in the future?**

N/A



**Spending/Cash Flow: N/A**

<b>Fund Name &amp; #</b>	<b>Department</b>	<b>Budget Control Level*</b>	<b>2013 Expenditures</b>	<b>2014 Anticipated Expenditures</b>
<b>TOTAL</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>

Spending/Cash Flow Notes:

**Other Implications:**

- a) **Does the legislation have indirect financial implications, or long-term implications?**  
No
- b) **What is the financial cost of not implementing the legislation?**  
Loss of \$6,800 in revenue from the sale of the underground tunnel easement
- c) **Does this legislation affect any departments besides the originating department?**  
No
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None have been identified
- e) **Is a public hearing required for this legislation?**  
Yes
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**  
No
- g) **Does this legislation affect a piece of property?**  
Yes, map attached.
- h) **Other Issues:** None

**List attachments to the fiscal note below:**

Attachment 1: Map of Rainbow Point Park at NE Banner Place







**City of Seattle**  
Office of the Mayor

June 18, 2013

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

Dear Council President Clark:

I am transmitting the attached proposed Council Bill authorizing the Superintendent of Parks and Recreation to sign and convey a tunnel easement to Sound Transit for light rail tunnels under Rainbow Point Park at NE Banner Place in northeast Seattle. This easement will allow Sound Transit to tunnel under the park, and construct and operate part of the North Link Light Rail Project connecting the University District with Northgate.

The proposed Council Bill is consistent with prior acts by the City to support the construction and operation of light rail and the University Link. The property rights to be conveyed have been appraised, and the appraisal has been reviewed and accepted by City appraisal staff. The construction of the tunnels is not anticipated to have any surface impact on Rainbow Point Park.

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

Sincerely,

Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

