

#3

**CITY OF SEATTLE**

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

COUNCIL BILL 118262

1  
2  
3  
4 AN ORDINANCE relating to drainage, flood and habitat improvements being implemented  
5 through the Thornton Creek at 35<sup>th</sup> Ave NE project by Seattle Public Utilities along  
6 Thornton Creek on private and public lands; declaring easement rights related to  
7 Thornton Creek at 10706 35th Avenue Northeast surplus to the City's utility needs;  
8 authorizing relinquishment of the surplus easement; authorizing Seattle Department of  
9 Transportation to acquire, accept, and record, on behalf of the City of Seattle a permanent  
10 bridge maintenance easement from Seattle School District #1; placing such easement  
11 under the Seattle Department of Transportation's jurisdiction; transferring partial  
12 jurisdiction of a portion of property in the Southwest Quarter of Section 27, Township 26  
13 North, Range 4 East, W.M., from Seattle Public Utilities to the Seattle Department of  
14 Transportation for bridge footings and maintenance; approving a five year Memorandum  
15 of Agreement between the Seattle School District and Seattle Public Utilities for  
16 activities on school lands; and ratifying and confirming certain prior acts.

17  
18 WHEREAS, Seattle Public Utilities (SPU) is replacing a culvert under 35<sup>th</sup> Ave. NE on the south  
19 branch of Thornton Creek and re-aligning a portion of Thornton Creek on property  
20 owned by the Seattle School District (SSD) to address chronic flooding and associated  
21 impacts; and

22  
23 WHEREAS, transfers of property rights and other agreements are necessary for completion of  
24 the proposed drainage and habitat improvements; and

25  
26 WHEREAS, the City of Seattle acquired an easement for a storm drain for Thornton Creek over  
27 private property at 10706 35<sup>th</sup> Avenue NE in 1968; and

28  
29 WHEREAS, Thornton Creek has been relocated north of that storm drain easement and  
30 therefore, the storm drain easement right is no longer needed and is surplus to the City's  
31 needs; and

32  
33 WHEREAS, the City desires to relinquish the storm drain easement; and

34  
35 WHEREAS, the Seattle Department of Transportation (SDOT) and SPU have determined that a  
36 transfer of partial jurisdiction of a small area of a City-owned parcel (King Co. Parcel  
37 No. 2726049064) on the east side of the culvert under 35<sup>th</sup> Ave NE from SPU to SDOT is  
38 appropriate to facilitate the placement of bridge footings and on-going maintenance of the  
39 bridge and culvert by SDOT; and

40  
41 WHEREAS, the City requires an easement for permanent access to SSD property on the west  
42 side of the culvert under 35th Ave NE for maintenance by SDOT; and



1  
2 WHEREAS, a Memorandum of Agreement (MOA) between SPU and SSD is necessary for  
3 defining ongoing site access needs for monitoring and maintenance, short and long term  
4 maintenance obligations and financial compensation to SSD for loss of buildable land  
5 resulting from re-alignment of the creek and changes to riparian buffer zones; NOW,  
6 THEREFORE

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

8 Section 1. Pursuant to the provisions of RCW 35.94.040, and after public hearing, the  
9 storm drain easement at 10706 35<sup>th</sup> Avenue NE and recorded as King County Recording  
10 No. 6374599, as accepted by Ordinance 96816, is hereby found and declared to be no longer  
11 required for municipal utility purposes and is surplus to the City of Seattle's needs (Surplus  
12 Easement).

13 Section 2. The Director of SPU, or his designee, is authorized to execute and record, on  
14 behalf of the City of Seattle, a Relinquishment of Easement for the Surplus Easement,  
15 substantially in the form attached as Attachment 1.

16 Section 3. Such limited and partial jurisdiction of the real property legally described and  
17 depicted in Attachment 2, attached hereto and incorporated herein, as shall be necessary for: i)  
18 the limited purpose of placing bridge footings (Area A); and ii) the limited purposes of  
19 maintenance and repair of the bridge and culvert ("Area B", together with Area A ("Area")), is  
20 transferred from SPU to SDOT on the conditions that: (a) SDOT shall give SPU at least 5 days'  
21 notice of intent to access the Area for maintenance and repair, except in case of emergency, and  
22 shall coordinate with SPU for any work requiring plans or permits affecting Thornton Creek; (b)  
23 after any maintenance and repair, SDOT will restore the Area, at SDOT's expense, to at least the  
24 condition existing immediately prior to such maintenance and repair; and (c) SDOT shall not use  
25 any property outside of the Area without the prior written approval of SPU.  
26  
27  
28

1           Section 4. The City accepts the Maintenance Easement granted by SSD to the City of  
2 Seattle for bridge maintenance over the property legally described in and recorded under King  
3 County Recording No. 20140605000635, dated June 5, 2014, and attached as Attachment 3.

4           Section 5. The real property interest conveyed by the easement described in Section 4  
5 above is placed under SDOT's jurisdiction.

6           Section 6. The Director of Seattle Public Utilities, or his designee, is authorized to  
7 execute the Memorandum of Agreement with SSD, in the form attached hereto as Attachment 4,  
8 which grants site access for monitoring and maintenance for up to five years, defines respective  
9 maintenance obligations for SPU and SSD, and agrees to compensate SSD for loss of buildable  
10 land due to creek realignment and changes to riparian buffer zones.

11           Section 7. Any act consistent with the authority and prior to the effective date of this  
12 ordinance is ratified and confirmed.

1 Section 8. 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 \_\_\_\_\_, 2014, and  
5 signed by me in open session in authentication of its passage this  
6 \_\_\_\_ day of \_\_\_\_\_, 2014.

7 \_\_\_\_\_  
8  
9 President \_\_\_\_\_ of the City Council

10  
11 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2014.

12  
13 \_\_\_\_\_  
14 Edward B. Murray, Mayor

15  
16 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2014.

17  
18 \_\_\_\_\_  
19 Monica Martinez Simmons, City Clerk

20 (Seal)

- 21  
22  
23  
24  
25 Attachment 1 – Relinquishment of Easement  
26 Attachment 2 – legal Description for Partial Transfer of Jurisdiction from SPU to SDOT  
27 Attachment 3 – Permanent Bridge Maintenance Easement – Seattle School District property  
28 Attachment 4 – Memorandum of Agreement with Seattle School District

Betsy Lyons  
SPU Thornton Easement ORD ATT 1  
July 1, 2014  
Version #1

Attachment 1: Relinquishment of Easement

Recording Requested By And  
When Recorded Mail To:

Seattle Public Utilities  
Facilities and Real Property Services  
PO Box 34018  
Seattle WA 98124-4018

**RELINQUISHMENT OF EASEMENT**

Reference #s of Documents Released or Assigned:..... 6374599  
Grantor:..... City of Seattle  
Grantee:..... Cecil L & Ruth Neisinger  
Legal Description (abbreviated):..... Pt of Parcel A, City of Seattle Short Subdiv.  
8701076, Rec. 8706120917, King County  
Assessor's Tax Parcel ID#:..... Pt of 272604-9058

RW 1246-017

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, **THE CITY OF SEATTLE**, a municipal corporation of the State of Washington, ("City"), for and in consideration of mutual and offsetting benefits, receipt of which is hereby acknowledged, does hereby relinquish to **Cecil L & Ruth Neisinger**, husband and wife, all right, title and interest in that easement for a storm drain and appurtenances, dated May 24, 1968, recorded under King County Auditor's Number 6374599 and described as follows:

The east 30 feet of the west 60 feet of the north 15 feet of the south 125 feet of the west one-half of the northwest one-quarter of the southwest one-quarter of the southwest one-quarter of Section 27, Township 26 North, Range 4 East, Ws.M., in King County, Washington.



Attachment 2: Legal Description for Partial transfer of Jurisdiction from SPU to SDOT

AREA A – BRIDGE FOOTINGS

PARCEL 272604-9064

THAT PORTION OF THE NORTH 130 FEET OF THE S 255 FEET OF THE W HALF OF THE NW QUARTER OF THE SW QUARTER OF THE SW QUARTER OF SECTION 27, TOWNSHIP 26 NORTH, RANGE 4 EAST W.M., SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT A MONUMENT IN A CASE AT THE INTERSECTION OF THE CENTERLINE OF NE 110th STREET WITH THE CENTERLINE OF 35th AVENUE NE; THENCE S 02° 17' 45" W ALONG THE CENTERLINE OF 35th AVENUE NE A DISTANCE OF 441.84 FEET TO A POINT FROM WHICH A MONUMENT IN A CASE BEARS S 02° 17' 45" W 212.53 FEET DISTANT;

THENCE S 87° 42' 15" E, PERPENDICULAR TO THE CENTERLINE OF 35th AVENUE NE, A DISTANCE OF 30.00 FEET TO THE EASTERLY RIGHT OF WAY MARGIN OF SAID STREET AND THE POINT OF BEGINNING;

THENCE S 87° 42' 15" E A DISTANCE OF 1.00 FEET;

THENCE S 02° 17' 45" W A DISTANCE OF 66.15 FEET;

THENCE N 87° 42' 15" W A DISTANCE OF 1.00 FEET TO THE EASTERLY RIGHT OF WAY MARGIN OF 35th AVENUE NE;

THENCE N 02° 17' 45" E ALONG SAID RIGHT OF WAY MARGIN A DISTANCE OF 66.15 FEET TO THE POINT OF BEGINNING.

CONTAINING 66.1 SQUARE FEET, MORE OR LESS.

AREA B – BRIDGE MAINTENANCE

PARCEL 272604-9064

THAT PORTION OF THE NORTH 130 FEET OF THE S 255 FEET OF THE W HALF OF THE NW QUARTER OF THE SW QUARTER OF THE SW QUARTER OF SECTION 27, TOWNSHIP 26 NORTH, RANGE 4 EAST W.M., SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

Betsy Lyons  
SPU Thornton Easement ORD ATT 2  
July 1, 2014  
Version #1

COMMENCING AT A MONUMENT IN A CASE AT THE INTERSECTION OF THE CENTERLINE OF NE 110th STREET WITH THE CENTERLINE OF 35th AVENUE NE; THENCE S 02° 17' 45" W ALONG THE CENTERLINE OF 35th AVENUE NE A DISTANCE OF 433.06 FEET TO A POINT FROM WHICH A MONUMENT IN A CASE BEARS S 02° 17' 45" W 221.31 FEET DISTANT;

THENCE S 87° 42' 15" E, PERPENDICULAR TO THE CENTERLINE OF 35th AVENUE NE, A DISTANCE OF 30.00 FEET TO THE EASTERLY RIGHT OF WAY MARGIN OF SAID STREET AND THE POINT OF BEGINNING;

THENCE S 87° 42' 15" E A DISTANCE OF 9.00 FEET;

THENCE S 02° 17' 45" W A DISTANCE OF 83.57 FEET;

THENCE N 87° 42' 15" W A DISTANCE OF 9.00 FEET TO THE EASTERLY RIGHT OF WAY MARGIN OF 35th AVENUE NE;

THENCE N 02° 17' 45" E ALONG SAID RIGHT OF WAY MARGIN A DISTANCE OF 83.57 FEET TO THE POINT OF BEGINNING.

CONTAINING 752.1 SQUARE FEET, MORE OR LESS.

Attachment 3  
Permanent Bridge Maintenance Easement – Seattle School District Property

CONFORMED COPY

After recording return document to:

City of Seattle  
Department of Transportation  
700 5<sup>th</sup> Avenue – Suite 3800  
P.O. Box 34996  
Seattle, WA 98124-4996  
Attn: Mary Jung

**20140605000635**

SEA PUBLIC UTIL EAS 75.00  
PAGE-001 OF 004  
06/05/2014 11:21

**E2671759**

06/05/2014 11:21

TAX  
SALE

\$371.90  
\$17,082.00

PAGE-001 OF 001

*Document Title: Maintenance Easement*  
*Reference Number of Related Document: N/A*  
*Grantor(s): Seattle School District No. 1*  
*Grantee: City of Seattle*  
*Abbreviated Legal Description: Ptn of N 1/2 of SE 1/4 of SE 1/4 of Sec. 28, T26N, R4E, W.M., King County, Washington*  
*Additional Legal Description on Exhibit A Pages 3 and 4 of Document.*  
*Assessor's Tax Parcel Number(s): 282604-9152*

**MAINTENANCE EASEMENT**

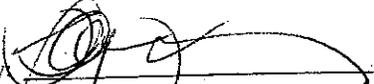
Project: Thornton Creek Confluence

The Grantor, **SEATTLE SCHOOL DISTRICT NO. 1**, a municipal corporation of the State of Washington, for and in consideration of the sum of SEVENTEEN THOUSAND EIGHTY-TWO (\$17,082) DOLLARS and other valuable consideration, hereby conveys and warrants to the **CITY OF SEATTLE**, a municipal corporation of the State of Washington, an Easement over, under, upon and across the hereinafter described lands, for the purpose of bridge maintenance, including but not limited to, inspecting, maintaining, repairing and reconstructing, situated in King County, State of Washington.

See Exhibit A attached hereto and made a part hereof. A depiction of the Easement area is shown as a rectangle beginning at POB (Point of Beginning) and ending at POB on Exhibit A (Sheet 1 of 2), and legally described on Exhibit A (Sheet 2 of 2). The Easement is adjacent to the bridge; the bridge is located within City right of way on 35<sup>th</sup> Avenue NE over Thornton Creek.

**MAINTENANCE EASEMENT**

**SEATTLE SCHOOL DISTRICT NO. 1,**  
a municipal corporation of the State of Washington

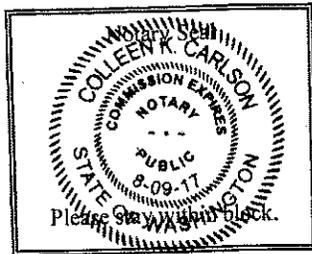
By   
Kathy Johnson  
Property Manager

Date: FEBRUARY 25, 2014

STATE OF WASHINGTON )  
  : §  
County of King                    )

On this 25<sup>th</sup> day of February, 2014, I certify that I know or have satisfactory evidence that KATHY JOHNSON is the person who appeared before me and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute this instrument as the Property Manager of SEATTLE SCHOOL DISTRICT NO. 1, a municipal corporation of the State of Washington, and acknowledged it to be the free and voluntary act of such party for the use and purpose mentioned in this instrument.

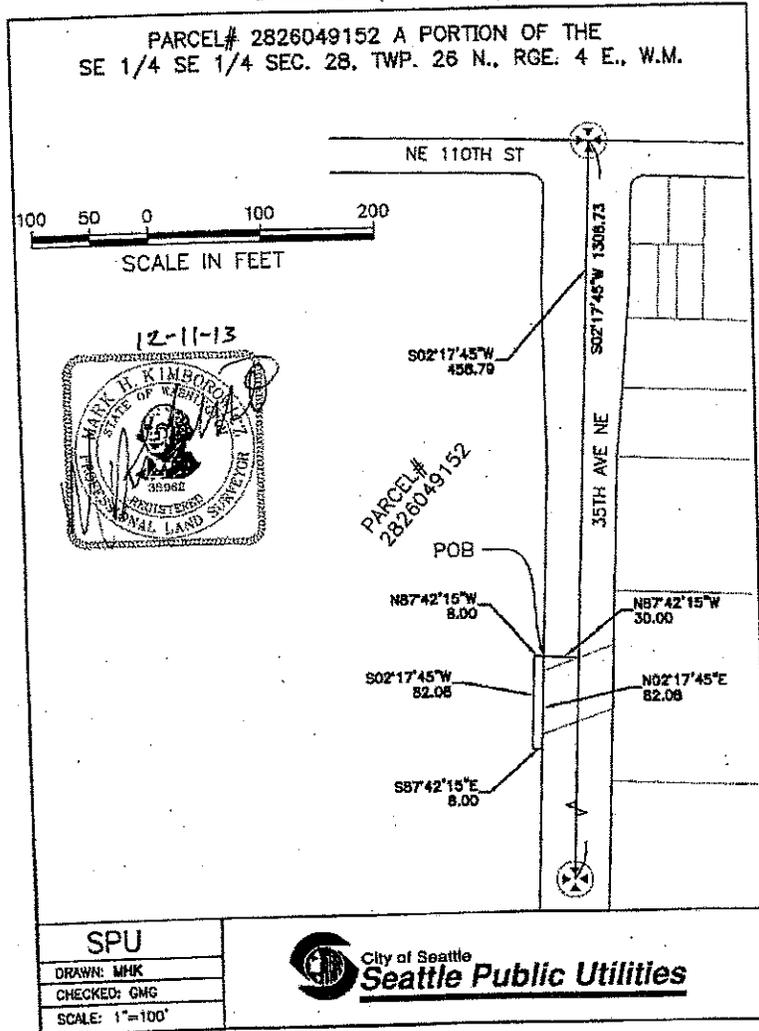
GIVEN under my hand and official seal the day and year last above written.



Colleen K Carlson  
Notary (print name) Colleen K Carlson  
Notary Public in and for the State of Washington,  
residing at Renton, WA  
My Appointment expires 8/9/2017

MAINTENANCE EASEMENT

EXHIBIT A (Sheet 1 of 2)



**MAINTENANCE EASEMENT**

EXHIBIT A (Sheet 2 of 2)

**EASEMENT**

**PARCEL 2826049152**

THAT PORTION OF N HALF OF THE SE QUARTER OF THE SE QUARTER OF SECTION 28, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT A MONUMENT IN A CASE AT THE INTERSECTION OF THE CENTERLINE OF NE 110<sup>TH</sup> ST WITH THE CENTERLINE OF 35<sup>TH</sup> AVENUE NE;

THENCE S 02° 17' 45" W ALONG THE CENTERLINE OF 35<sup>TH</sup> AVENUE NE A DISTANCE OF 458.79 FEET TO A POINT FROM WHICH A MONUMENT IN A CASE BEARS S 02° 17' 45" W 849.94 FEET DISTANT;

THENCE N 87° 42' 15" W PERPENDICULAR TO THE CENTERLINE OF 35<sup>TH</sup> AVENUE NE A DISTANCE OF 30.00 FEET TO THE WESTERLY RIGHT OF WAY MARGIN OF SAID STREET AND THE POINT OF BEGINNING;

THENCE N 87° 42' 15" W A DISTANCE OF 8.00 FEET;

THENCE S 02° 17' 45" W A DISTANCE OF 82.08 FEET;

THENCE S 87° 42' 15" E A DISTANCE OF 8.00 FEET TO THE WESTERLY RIGHT OF WAY MARGIN OF 35<sup>TH</sup> AVENUE NE;

THENCE ALONG SAID RIGHT OF WAY MARGIN N 02° 17' 45" E A DISTANCE OF 82.08 FEET TO THE POINT OF BEGINNING.

CONTAINING 667 SQUARE FEET, MORE OR LESS.



Attachment 4  
Memorandum of Agreement with Seattle School District

**MEMORANDUM OF AGREEMENT NO. 14-042-A BETWEEN  
THE CITY OF SEATTLE  
AND  
SEATTLE SCHOOL DISTRICT #1  
FOR**

**Thornton Creek Confluence Improvements Project on Nathan Hale High School Property**

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made by and between the City of Seattle ("City"), a municipal corporation of the State of Washington, acting through its Seattle Public Utilities Department ("SPU"), and Seattle School District #1, ("District").

**1. TERM OF AGREEMENT.**

The term of this Agreement shall begin when fully executed by all parties, and shall end on December 13, 2019, unless amended by written agreement or terminated earlier pursuant to the provisions hereof.

**2. BILLING AND PAYMENT.**

Total compensation under this Agreement shall be a fixed, lump-sum amount of Twenty Four Thousand, Nine Hundred Sixty Dollars (\$24,960) herein after referred to as the "Contract Amount," unless modified by a written amendment to this Agreement. SPU shall pay the Contract Amount in a single payment within 90 days of approval by the City Council in accordance with EXHIBIT B – TERMS AND CONDITIONS. No invoice will be required.

**3. SCOPE OF SERVICES.**

The purpose of this agreement is to: 1) Provide SPU or its contractors with site access to Nathan Hale High School property for the purposes of monitoring and maintaining the stream re-alignment project; 2) clarify respective roles and responsibilities for site maintenance and monitoring and 3) define compensation to be provided to Seattle School District #1 for changes in the locations and amounts of buildable lands resulting from the creek re-alignment as more fully described in EXHIBIT A – SCOPE OF WORK, attached hereto and made a part of this Agreement.

The Provider has already provided, through separate agreements: 1) temporary construction easements and a permanent bridge maintenance agreement which will be under the jurisdiction of the Seattle Department of Transportation.

**4. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS.**

All official notices under this Agreement shall be delivered to the following addresses (or such other addresses as either party may designate in writing):

SPU:	Provider:
Contact during construction period: Jason Sharpley, Project Manager (206) 615-0030 700 Fifth Ave, Suite 4900 PO Box 34018 Seattle, WA 98124-4018 Jason.sharpley@seattle.gov	Kathy Johnson, Facility Operations Program Manager Seattle School District #1 Property Management – MS 23-365 2445 3rd Avenue South Seattle, WA 98124-1165

<p><b>Contact beyond construction period: Betsy Lyons,</b> <b>Senior Capital Projects Coordinator (206) 233-2511</b> 700 Fifth Ave, Suite 4900 PO Box 34018 Seattle, WA 98124-4018 <a href="mailto:Betsy.lyons@seattle.gov">Betsy.lyons@seattle.gov</a></p>	
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5. **NO JOINT UNDERTAKING.**  
Nothing in this Agreement shall be construed to make or render the parties hereto partners, joint ventures or participants in any joint undertaking whatsoever.
6. **SCHEDULE.**  
The parties shall comply with the schedule appearing in ATTACHMENT A -- SCOPE OF WORK. Compliance with the schedule is important to successful completion of the Project. The SPU Project Coordinator and the District Facility Operations Program Manager shall promptly and regularly notify each other of any occurrences affecting the schedule and shall attempt to mutually agree upon an amended schedule if necessary or appropriate, to be effective upon execution of an Amendment to this Agreement in accordance with Section 15. Notwithstanding, failure to comply with the schedule shall constitute a Default and be grounds for termination unless or until any Amendment is executed.
7. **NO THIRD PARTY BENEFICIARIES.**  
This Agreement is entered into solely for the mutual benefit of the parties hereto. This Agreement is not entered into with the intent that it shall benefit either party's agents, assigns, consultants or contractors, and no such other person or entity shall be a third party beneficiary of this Agreement.
8. **PUBLICATION.**  
Each party may publish the results of the Project, and may acknowledge its respective role in and support of the Project.
9. **ASSIGNMENT.**  
This Agreement shall not be assigned in whole or in part by either party without the prior written approval of the other party.
10. **COMPLIANCE WITH LAW.**  
The parties to this Agreement shall comply with all Federal, State, and local laws and ordinances.
11. **DEFAULT AND TERMINATION.**  
Failure to keep or perform any material term or condition of this Agreement shall be a default hereunder (a "Default"). Upon a Default, the aggrieved party shall provide written notice to the defaulting party, specifying the nature of the Default, and the aggrieved party's intention to terminate this Agreement if the Default is not corrected within thirty (30) days of the date of the notice, or longer period if mutually agreed by the parties. If the defaulting party fails to cure within the stated period, the aggrieved party may thereafter terminate this Agreement without any further proceedings. The aggrieved party will have available to it all remedies provided at law and equity.
12. **SEVERABILITY.**

If any provision of this Agreement or any provision of any law, rule or document incorporated by reference into this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which legally can be given effect without the invalid provision. To this end, the provisions of this Agreement are declared to be severable.

**13. APPLICABLE LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The jurisdiction and venue of any action brought hereunder shall be in the Superior Court of King County.

**14. AUDIT.**

During the progress of the Project and for a period of no less than three years from the Completion Date, each party will keep and make available for each other's inspection and audit all records pertaining to the Project, including accounting records. The parties shall furnish to each other copies of these records upon request and shall maintain the records in accordance with work order accounting procedures prescribed by the Division of Municipal Corporations of the State Auditor's Office.

**15. AMENDMENT.**

This MOA shall not be amended or modified except in writing and signed by the Director of SPU or his designee and the Assistant Superintendent for Facilities of District hereto.

**16. ENTIRE AGREEMENT.**

This Agreement and any written attachments or Amendments thereto, constitutes the complete contractual agreement of the parties and any oral representations or understandings not incorporated herein are excluded.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having they representatives affix their signatures below.

**SEATTLE SCHOOL DISTRICT #1**

By [Signature] Date 5/29/14  
Signature Date

Dr. Lester Herndon

**ASSISTANT SUPERINTENDENT OF CAPITAL,  
FACILITIES AND ENROLLMENT**

**CITY OF SEATTLE  
SEATTLE PUBLIC UTILITIES**

By [Signature] Date 6/10/14  
Signature Date

Nancy Ahern

**DEPUTY DIRECTOR SEATTLE PUBLIC  
UTILITIES**

**EXHIBITS:**

- A -SCOPE OF WORK
- B -TERMS AND CONDITIONS

**FIGURES:**

1. CREEK REALIGNMENT AND PLANT ESTABLISHMENT PROJECT AREA (PROJECT AREA)
2. PROPOSED CREEK REALIGNMENT AND APPROXIMATE LOCATON OF ENVIRONMENTALLY CRITICAL AREA  
RIPAIRAN BUFFER AND EXPECTED NEW ORDINARY HIGH WATER MARK (OHWM)

EXHIBIT A

SCOPE OF WORK

<b>Provider:</b>	Seattle School District #1 (District)
<b>Contract No.:</b>	14-042-A
<b>Contract Title:</b>	Thornton Creek Confluence Improvements Project on Nathan Hale High School Property
<b>PROJECT BACKGROUND STATEMENT:</b>	
<p>Seattle Public Utilities (SPU) is undertaking the Thornton Creek Confluence Improvements Project to replace a culvert under 35th Ave NE on the south branch of Thornton Creek, which will remove a stream flow choke-point, significantly increase the creek floodplain storage area downstream of 35th Ave NE, and improve habitat for salmon and other riparian species.</p> <p>As part of this larger effort, SPU will also realign the south branch of Thornton Creek on Nathan Hale High School property which is the subject of this agreement. In addition to creek realignment, SPU will install habitat features on District property including log and rock weirs, large woody material and new riparian vegetation.</p> <p>These creek and culvert improvements mutually benefit SPU and the District by reducing flooding, flooding impacts and associated maintenance in the immediate project vicinity, and facilitating design and construction of future projects upstream on the south branch of Thornton Creek that will also benefit the Nathan Hale High School property. The creek re-alignment and increased floodplain area will result in changes to the ordinary high water mark (OHWM), creek area and amount and location of buildable lands on District property for which SPU will compensate the District.</p> <p>This MOA therefore: 1) defines monitoring and maintenance obligations during and after construction; 2) notification and approval process for SPU or contractors to gain necessary access to District property for monitoring and maintenance and 3) identifies agreed upon compensation SPU is to provide to the District for changes to the amount and location of buildable lands following creek re-alignment.</p>	

<b>TASK 1:</b>	Plant Establishment (Three year period beginning at completion of planting and estimated as October 2014- October 2017)
<b>TASK DESCRIPTION:</b>	
<p><u>District Roles and Responsibilities:</u></p> <p>1.1 District will provide access to SPU or its contractors for three years following completion of construction (scheduled through 2017) for plant establishment.</p> <p>1.2 District will maintain its property outside of the newly planted project landscape per its pre-project maintenance standards and legal requirements.</p> <p><u>SPU Roles and Responsibilities:</u> The three years following completion of construction is critical for plant establishment. During this period SPU or its contractors will:</p> <p>1.3 Maintain and replace as necessary, the riparian vegetation planted during construction within the</p>	

14-042-A

Thornton Creek Confluence Improvements Project on Nathan Hale High School Property

<p>project area (Figure 1) as required by HPA Permit # 132575-1 ("Permit") issued to SPU by the Washington Department of Fish and Wildlife on January 9, 2014. SPU or its contractor will pay for irrigation water which may be provided by temporary irrigation and/or water trucks or other means as determined during construction.</p> <p>1.4 Control invasive plants within the project area that threaten the newly planted native vegetation.</p>
<p><b>TASK ASSUMPTIONS:</b></p> <ol style="list-style-type: none"> <li>Standards for plant establishment, at the end of the 3-year plant optimization period, must meet Permit requirements for the project which require an 80% survival rate at the end of that period.</li> <li>Pesticides are not to be used except under very strict conditions and permits and as applied by a licensed applicator. Any proposed application by District in the project area during the 3-year plant establishment period must be approved by SPU prior to application.</li> <li>During the plant establishment period, SPU's goal for control of invasive plants within the stream channel are to eradicate Class A weeds as mandated by the State, and eliminate or reduce Class B and C weeds as resources allow.</li> </ol>
<p><b>MATERIALS TO BE PROVIDED:</b></p> <p>SPU will provide all necessary materials for monitoring plant establishment and is responsible for the cost and installation of any new replacement plantings in the riparian corridor.</p>
<p><b>TASK DELIVERABLES:</b></p> <ol style="list-style-type: none"> <li>Replacement of plants as necessary by SPU or its contractors during 3 year optimization period to meet Permit requirements.</li> </ol>

<b>TASK 2:</b>	Performance Monitoring (Five year period beginning at completion of restoration and estimated as October 2014-October 2019)
<b>TASK DESCRIPTION:</b>	
<u>District Roles and Responsibilities:</u>	
2.1 Provide access to SPU or its contractors for up to 5 years following completion of construction (scheduled through 2019).	
<u>SPU Roles and Responsibilities:</u>	
2.2 SPU will complete project performance monitoring over an initial 3-year period within the project area (Figure 1). Project performance monitoring will include an evaluation of physical, chemical and biological project parameters. Should additional funding become available monitoring will be extended for an additional 2 years, upon written notice to District.	
<b>TASK ASSUMPTIONS:</b>	
1. Monitoring will be done in accordance with a monitoring plan currently being developed by SPU and available to District upon request.	
<b>MATERIALS TO BE PROVIDED:</b>	
SPU is responsible for the cost, installation and removal of all monitoring equipment including but not limited to piezometers, a flow monitoring station and stilling wells which measure water levels at and below the surface.	
<b>TASK DELIVERABLES:</b>	
1. Final monitoring plan and monitoring report will be provided to District upon request.	

14-042-A  
 Thornton Creek Confluence Improvements Project on Nathan Hale High School Property

<b>TASK 3:</b>	Creek Optimization (Three year period beginning at completion of construction and estimated as October 2014- October 2017)
<b>TASK DESCRIPTION:</b>	
<p>3.1 <b>District Roles and Responsibilities:</b> District will allow SPU or its contractors access to the creek channel for three years following completion of construction (scheduled through 2017) to evaluate changes to the creek channel and to apply adaptive management strategies as needed to optimize creek performance, comply with Permit requirements and meet design specifications.</p> <p>3.2 Should any modifications be necessary, District will provide access to the site and perform required administrative support (e.g. review documents, meet with SPU or contractors etc.), at no additional cost to SPU.</p> <p>3.3 During the creek optimization period, District will notify SPU of any planned school activities adjacent to the creek channel and plant establishment area, to ensure such activities are consistent with Permit requirements and to avoid conflict with any planned SPU work.</p> <p><b>SPU Roles and Responsibilities:</b></p> <p>3.4 SPU contractors must register at the school office at the time of their site visit during the school year. Should school staff not be available, the District's Facility Office should be notified. If any noise making or construction related activity is necessary, prior notification to the school is required.</p> <p>3.5 SPU is required by Permits to maintain unimpeded fish passage related to the constructed project features. During the initial 3-year creek optimization period, SPU will inspect the creek channel and constructed features within the project area (Figure 1) annually, as well as after major storm events, to ensure Permit compliance, determine whether design specifications are met and if the system is on the anticipated development trajectory.</p> <p>3.6 SPU will notify the District Facility Operations Program Manager about any adaptive management actions that may be needed to optimize creek performance to meet Permit requirements and design specifications. Optimization of the creek channel may include the addition or removal of gravel or woody debris within the creek channel.</p> <p>3.7 SPU will be responsible for the cost and permitting of such adaptive management actions that are necessary to such ensure fish passage as required by Permit obligations for problems that can be attributable to the project, project design or SPU activities.</p>	
<b>TASK ASSUMPTIONS:</b>	
<ol style="list-style-type: none"> <li>1. The project is designed to be a natural system with limited on-going, active management. The creek channel is designed to withstand 100-year storm events and movement of the rock weirs and log weirs should not substantially affect integrity of the stream bank or flow dynamics. Some shifting of materials is to be expected.</li> <li>2. With the exception of SPU's responsibility for maintaining fish passage related to the constructed project features, District as landowner is responsible for all other creek maintenance needs including addressing other natural obstructions such as falling trees at its discretion or as may be required by applicable laws.</li> <li>3. Minor modifications (work that can be done easily by hand and can be authorized with a WDFW</li> </ol>	

concurrence letter or through existing permits) may be done by SPU or its contractors with advance written notification to District, subject to Permit requirements. Should major modifications to the constructed features, including the creek channel and weir structures be necessary, SPU will provide written notice to the District Facility Operations Program Manager of the proposed modifications and collaborate on scheduling. Major modifications may include those that require heavy equipment or that would affect District's use of the site and will require coordination with District before being implemented.

4. If any major modifications are needed they may be addressed through amendment of this MOA or through separate and subsequent agreements between SPU and District, as the parties may mutually agree.

**MATERIALS TO BE PROVIDED:**  
 TBD based on need

**TASK DELIVERABLES:**

1. Written notification by District to SPU of any school activities to occur immediately adjacent to the plant establishment area and creek.
2. Written notification by SPU to District Facility Operations Program Manager of any required or potential major modifications to the constructed features.

<b>TASK 4:</b>	On-going Maintenance
<b>TASK DESCRIPTION:</b>	
<u>District Roles and Responsibilities:</u>	
4.1 During the construction period, District will continue to maintain all school property as consistent with the school or District's customary landscape and maintenance obligations, except for areas within the construction site.	
4.2 Following completion of construction, District will resume maintenance of all school property consistent with the school's customary landscape and maintenance procedures, except where identified below as an SPU responsibility or if in conflict with project Permits.	
4.3 Beyond the 3-year creek optimization period, District will protect and maintain the restored area in a manner equal to the current level of management and per its pre-project maintenance standards and legal requirements.	
4.4 Beyond the 3-year creek optimization period, District agrees to provide SPU, with 5 days notice and with consent of the District, periodic access to the site, and at no additional cost to SPU, for the purpose of inspecting the creek and constructed features.	
4.5 Should any modifications of the constructed features be necessary beyond the 3-year creek optimization period, District will provide access to the site and perform limited administrative support (e.g. review documents, meet with SPU or contractors etc.), at no additional cost to SPU.	
<u>SPU Roles and Responsibilities:</u>	
4.6 During the construction period, SPU is responsible for maintaining the construction site, which is defined in the approved Temporary Construction Easement for the Construction Area and Haul Route.	
4.7 SPU is responsible for maintaining unimpeded fish passage related to the constructed project	

<p>features as required by Permits. Beyond the 3-year creek optimization period, SPU will periodically inspect the creek to evaluate the condition of the constructed features.</p> <p>4.8 SPU will be responsible for the cost and permitting of such adaptive management actions that are necessary to ensure fish passage as required by Permit obligations for problems that can be attributable to the project, project design or SPU activities.</p>	
<b>TASK ASSUMPTIONS:</b>	
<ol style="list-style-type: none"> <li>1. The project is designed to be a natural system with limited on-going, active management. The creek channel is designed to withstand 100-year storm events and movement of the rock weirs and log weirs should not substantially affect integrity of the stream bank or flow dynamics. Some shifting of materials is to be expected.</li> <li>2. With the exception of SPU's responsibility for maintaining fish passage related to the constructed project features, District, as landowner is responsible for all other routine (at District's discretion) and legally required creek maintenance or repair including addressing other natural obstructions such as falling trees.</li> <li>3. Minor modifications (work that can be done easily by hand) may be done by SPU or its contractors without advance written notification to District Facility Operations Program Manager, subject to Permit requirements. Should major modifications to the constructed features including the creek channel and weir structures be necessary, SPU will provide written notice to District Facility Operations Program Manager of the proposed modifications. Major modifications may include those that require heavy equipment or that would affect District's use of the site and will require coordination with District before being implemented.</li> <li>4. If and as any major modifications are needed they may be addressed through amendment of this MOA or through separate and subsequent agreements between SPU and District.</li> </ol>	
<b>MATERIALS TO BE PROVIDED:</b>	
TBD based on need	
<b>TASK DELIVERABLES:</b>	
<ol style="list-style-type: none"> <li>1. Completed inspection reports from SPU are available upon request from District.</li> <li>2. Written notice by SPU to District Facility Operations Program Manager of any recommended or required maintenance or adaptive management actions.</li> </ol>	

<b>TASK 5:</b>	Consent for Impacts of Creek Realignment and Compensation to Seattle School District #1 (\$24,960)
<b>TASK DESCRIPTION:</b>	
<p>5.1 District has consented and agreed to the realignment of the creek as shown on approved plans and Permits. District understands and agrees that the realignment of the creek results in changes to the riparian buffer boundaries as shown in Figure 2.</p> <p>5.2 SPU will compensate the Seattle School District #1 in a single lump sum payment amount of \$24,960 for changes to the amount and location of buildable lands on site resulting from changes in the creek extent and alignment.</p>	
<b>TASK ASSUMPTIONS:</b>	

1. The proposed changes to the creek location, extent and alignment will affect the potential future use of school property. The school district is not able to authorize such losses without compensation.
2. This compensation was mutually agreed to and based on an estimate of fair market value.
<b>MATERIALS TO BE PROVIDED:</b>
NA
<b>TASK DELIVERABLES:</b>
1. SPU shall make a single payment in the amount of \$24,960 to the Seattle School District #1 within 90 days of the approval by the Seattle City Council.

EXHIBIT B

(SPU MOA No. 14-042-A)

**TERMS AND CONDITIONS**

TERM OF THIS MOA		DOLLAR AMOUNT
START DATE	COMPLETION DATE	
Upon signature and approval by Council	December 13, 2019	\$ 24,960
<b>BILLING AND PAYMENT TERMS (Describe how Departments are to handle billing and payment for this work.)</b> (Additional billing and payment information can be attached as ATTACHMENT B-1)		
Upon approval of this MOA by the Seattle City Council, a single payment for the full dollar amount will be provided to the District.		
<b>NAME OF DEPARTMENT KEY PERSONNEL ESSENTIAL TO THE PROJECT</b>		
Jason Sharpley, Project Manager Betsy Lyons, Sr. Capital Projects Coordinator Deb Heiden, Field Operations and Maintenance		
<b>NAME AND ADDRESS OF SPU'S PROJECT MANAGER</b>		
Jason Sharpley, Project Manager (206) 615-0030; Jason.sharpley@seattle.gov 700 Fifth Ave, Suite 4900 PO Box 34018 Seattle, WA 98124-4018		
<b>District NAME AND ADDRESS FOR DELIVERY OF NOTICES</b>	<b>SPU'S NAME AND ADDRESS FOR DELIVERY OF NOTICES</b>	
Seattle Public Schools Attn: Property Management PO Box 34165, MS 23-365 Seattle, WA 98124	<b>During construction period: Jason Sharpley, Project Manager (At address listed above)</b>  <b>Beyond construction period: Betsy Lyons, Senior Capital Projects Coordinator (206) 233-2511</b> 700 Fifth Ave, Suite 4900 PO Box 34018 Seattle, WA 98124-4018	

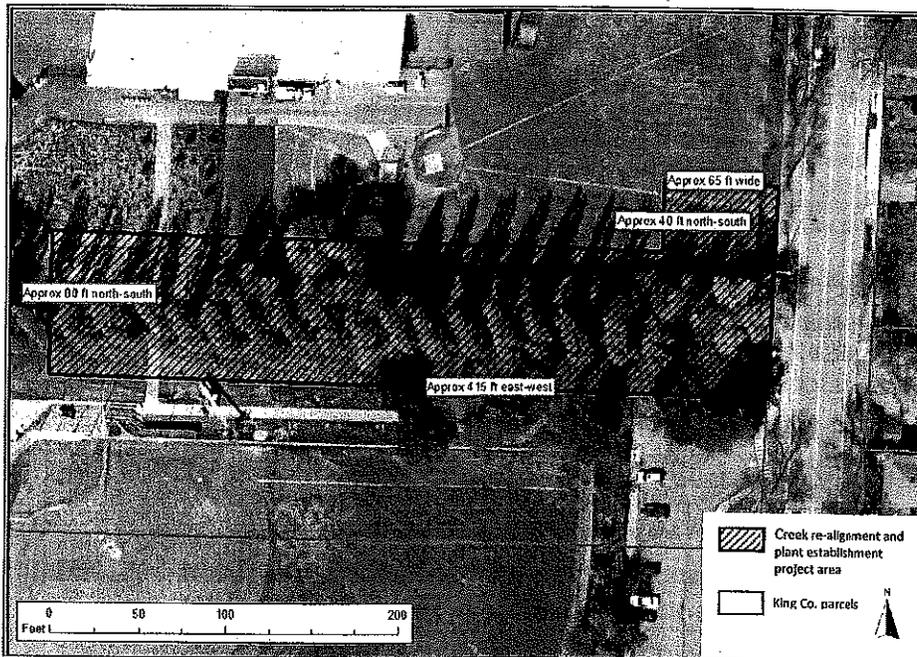
14-042-A

Thornton Creek Confluence Improvements Project on Nathan Hale High School Property

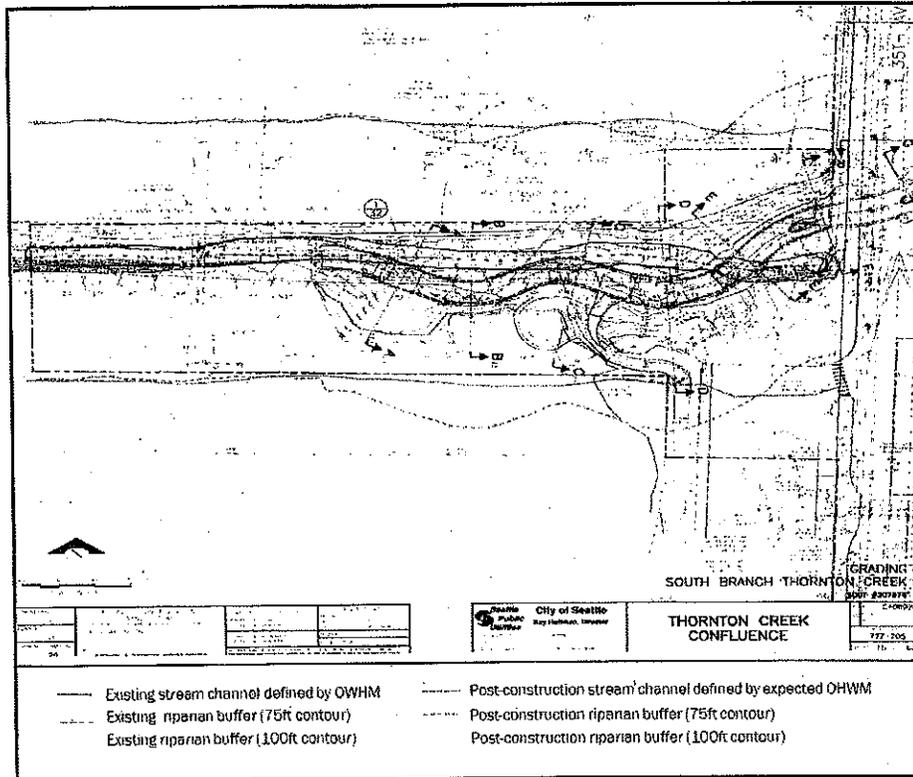
(SPU MOA No. 14-042-A)

**FIGURES**

**FIGURE 1. CREEK REALIGNMENT AND PLANT ESTABLISHMENT PROJECT AREA (PROJECT AREA)**



**FIGURE 2. PROPOSED CREEK REALIGNMENT AND APPROXIMATE LOCATION OF ENVIRONMENTALLY CRITICAL AREA RIPARIAN BUFFERS AND EXPECTED NEW ORDINARY HIGH WATER MARK (OHWM)**



**FISCAL NOTE FOR CAPITAL PROJECTS ONLY**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Seattle Public Utilities	Betsy Lyons/3-3511	Aaron Blumenthal/3-2656

**Legislation Title:**

AN ORDINANCE relating to drainage, flood and habitat improvements being implemented through the Thornton Creek at 35<sup>th</sup> Ave NE project by Seattle Public Utilities along Thornton Creek on private and public lands; declaring easement rights related to Thornton Creek at 10706 35th Avenue Northeast surplus to the City's utility needs; authorizing relinquishment of the surplus easement; authorizing Seattle Department of Transportation to acquire, accept, and record, on behalf of the City of Seattle a permanent bridge maintenance easement from Seattle School District #1; placing such easement under the Seattle Department of Transportation's jurisdiction; transferring partial jurisdiction of a portion of property in the Southwest Quarter of Section 27, Township 26 North, Range 4 East, W.M., from Seattle Public Utilities to the Seattle Department of Transportation for bridge footings and maintenance; approving a five year Memorandum of Agreement between the Seattle School District and Seattle Public Utilities for activities on school lands; and ratifying and confirming certain prior acts.

**Summary and background of the Legislation:**

To address drainage and localized flooding needs in the Thornton Creek watershed, SPU is replacing a culvert, re-aligning a section of Thornton Creek and creating additional floodplain habitat for the purpose of flood storage. The project is being coordinated with the Seattle Department of Transportation and is located on lands owned by the City and under the jurisdiction of SPU. This legislation relates to several property agreements required for project implementation. Due to permit requirements related to work in the creek, project construction had to occur during a narrow window of time which was completed under the terms of a temporary construction easement.

<b>Project Name:</b>	<b>Project I.D.:</b>	<b>Project Location:</b>	<b>Start Date:</b>	<b>End Date:</b>
Thornton Confluence Improvement	C3811 (C408023)	Nathan Hale High School; private property (parcel # 272604-9058); SPU property (parcel #2726049064)	June 2014	November 2014

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 2014 Appropriation	New 2014 Appropriation (if any)	2015 Anticipated Appropriation
Drainage & Wastewater Fund 44010	SPU- USM	C380	\$4,085,000	\$0	\$530,000
<b>TOTAL</b>					

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

Appropriations Notes:

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

Spending Plan and Budget	2014	2015	2016	2017	2018	2019	Total
Spending Plan	\$4,291,000						
Current Year Appropriation	\$4,085,000						
Future Appropriations		\$530,000					

Spending Plan and Budget Notes: Figures are from the 2014-2019 Adopted Capital Improvement Program. The proposed project to replace the existing culvert under 35th Ave. NE with a bridge and re-align the stream is included in the 2013-18 Adopted Drainage and Wastewater Fund capital appropriations (35<sup>th</sup> Ave. NE culvert C408023), within the Flooding, Sewer Backup & Landslides BCL (C380).

SPU will make a payment of \$24,960 to the Seattle School District (SSD) for changes to the amount and location of buildable lands on site resulting from changes in the creek extent and alignment. SSD has provided SPU with temporary construction easements which will cover the terms and conditions of the construction period of the project. SSD has also provided the City a permanent bridge maintenance easement and a Memorandum of Agreement which are associated with this legislation. The MOA defines the respective monitoring and maintenance obligations of SSD and SPU, and the financial compensation to be provided to SSD.

The consideration for the Partial Transfer of Jurisdiction between SDOT and SPU for the small area for bridge footings and maintenance is mutual and off-setting benefits to SPU, including facilitating the creek realignment project and reduced design costs associated with the location of the footings.

**Funding Source:**

<b>Funding Source (Fund Name and Number, if applicable)</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total</b>
DWF 44010	\$4,085,000	\$530,000					
<b>TOTAL</b>							

**Total Regular Positions Created, Modified, or Abrogated through this Legislation,  
 Including FTE Impact: None**

**Other Implications:**

- a) **Does the legislation have indirect financial implications, or long-term implications?**  
 The MOA identifies SPU obligations for maintaining the constructed project features (re-aligned creek channel, rock and log weirs, large woody material and vegetated riparian buffer) on property owned by the SSD to ensure compliance with permit regulations. Permit regulations (Hydraulic Permit Approval from WA Department of Fish and Wildlife) require the structures be fish passable in perpetuity and that there is 80% of installed plants alive at the end of the 3-year plant establishment period. Funds have been budgeted for maintenance and monitoring of the site for the 3-year plant establishment period.

Long-term commitments with financial obligations:

- SPU is responsible for periodic inspections during the first 3 years to ensure the constructed features on SSD and SPU properties remain fish passable. The project is designed function naturally, with as minimal, active management as can be expected in an urban environment.
  - Year 1-3 following construction monitoring and maintenance costs are included in the project budget.
  - Beyond the 3 year plant establishment period, periodic inspections will be covered through SPU's field operations and maintenance budget.
- SPU is responsible for ensuring the structures placed in stream including log and rock weirs remain fish-passable. Should such structures become future fish passage impediments, SPU would be required to fix to ensure fish passage.
- SDOT is responsible for permanent monitoring and maintenance of the bridge structure to ensure it is structurally sound and does not become a barrier to fish passage.

- b) **What is the financial cost of not implementing the legislation?**  
 Replacing or repairing the culvert under 35th Ave. NE is necessary due to a likelihood of failure and risk associated with failure of the culvert. The costs to the City for replacing and maintaining the bridge structure are therefore unavoidable, and significantly less than the costs for emergency repair due to a road failure.

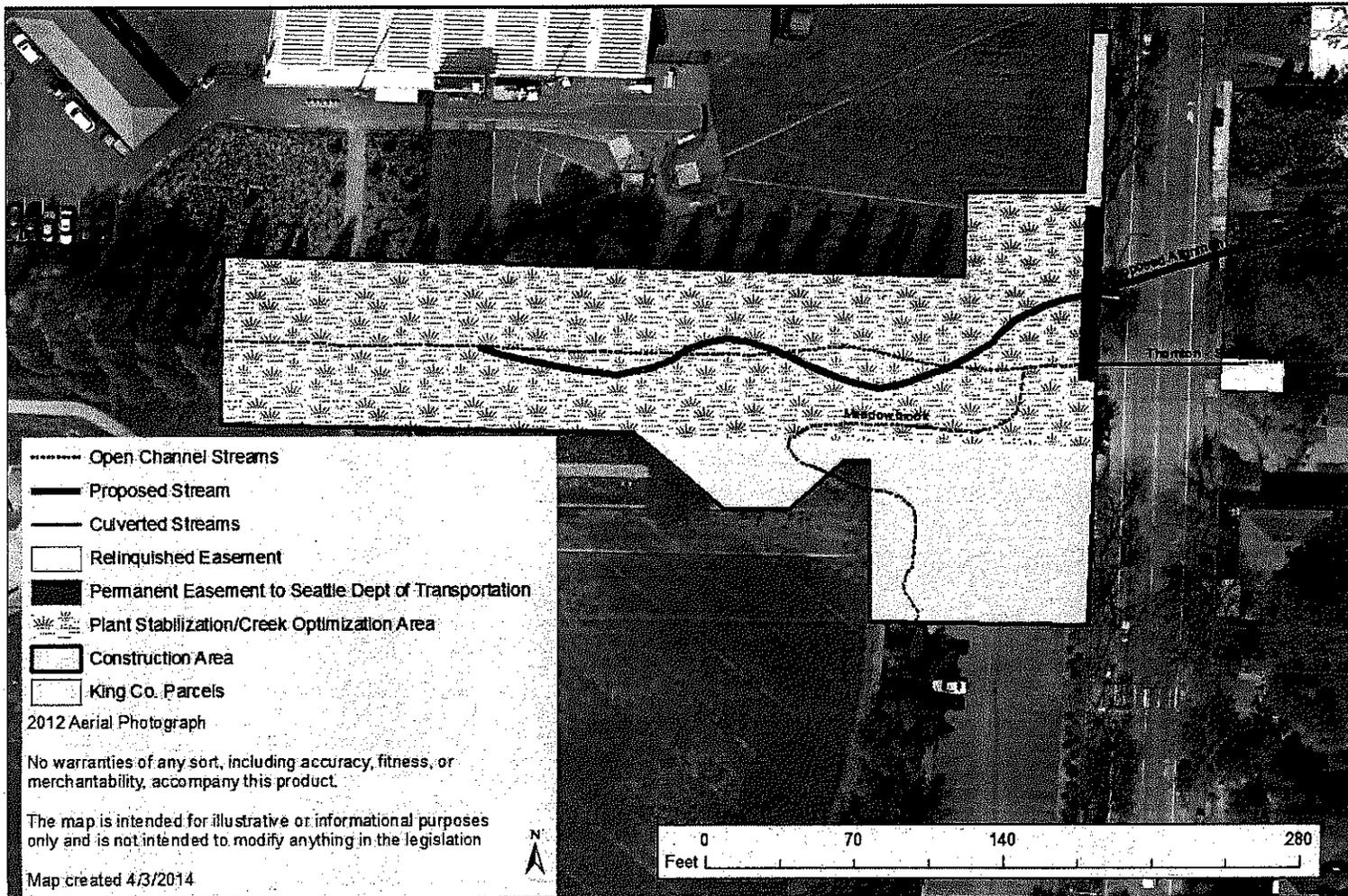
The improvements on SSD property increase the amount of flood storage area available making the system more resilience and capable of better handling dynamic conditions.

- c) **Does this legislation affect any departments besides the originating department?**  
The project is done in partnership with Seattle Department of Transportation, which will take on responsibility for bridge maintenance.
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**  
SPU considered multiple alternatives over multiple years and determined this design and approach is the best alternative. The culvert is failing and needs to be replaced. The current design maximizes the area of flood storage which is intended to reduce flooding impacts and will make the site more resilient to a wider range of future conditions (e.g. altered patterns and volume of precipitation due to climate change).
- 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* required for this legislation?**  
No
- g) **Does this legislation affect a piece of property?**  
Yes. See Exhibit A attached.
- h) **Other Issues:**

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

Exhibit A – 35<sup>th</sup> Ave. NE./Thornton Confluence Project Area Map

Exhibit A





**City of Seattle**  
**Edward B. Murray**  
Mayor

September 16, 2015

Honorable Tim Burgess  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill which would authorize several property agreements needed to complete drainage, flood and habitat improvements along Thornton Creek at 35th Ave NE. This project involves replacing an undersized culvert with a small bridge and re-aligning part of Thornton Creek on Seattle School District and Seattle Public Utilities property.

The area near the confluence of the north and south branches of Thornton Creek experiences stormwater-related flooding that frequently affects 35th Ave. N.E., nearby homes, Nathan Hale High School and the Meadowbrook Community Center. SPU previously purchased a number of flood-prone homes which were demolished to allow for creation of a larger floodplain area to store stormwater. In addition to restoring this floodplain to a more natural condition, this project will replace a culvert with a small bridge and improve creek habitat. To complete all of this work, SPU needs to implement a series of property agreements with the Seattle School District and the Seattle Department of Transportation and to declare a utility easement surplus to the City's needs.

If you have questions about this legislation, please feel free to contact SPU's project manager Jason Sharpley directly at 615-0300.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward B. Murray", written over a horizontal line.

Edward B. Murray  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council