



SEATTLE CITY COUNCIL

Legislative Summary

CB 119076

Record No.: CB 119076

Type: Ordinance (Ord)

Status: Passed

Version: 1

Ord. no: Ord 125414

In Control: City Clerk

File Created: 08/25/2017

Final Action:

Title: AN ORDINANCE relating to the City Light Department; authorizing the General Manager and Chief Executive Officer to grant a revised easement for access purposes over a portion of the City's fee-owned real property in the vicinity of East Marginal Way South and Duwamish Avenue South to JMDH Real Estate of Seattle, LLC; and ratifying and confirming certain prior acts.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Sawant

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments: Att 1 - Revised Easement Agreement, Mayor's Letter on Returning Bill Unsigned

Drafter: John.Bresnahan@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published:

Yes

No

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	08/29/2017	Mayor's leg transmitted to Council	City Clerk			
1	City Clerk	08/30/2017	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office						
	Notes:						
1	Council President's Office	09/07/2017	sent for review	Energy and Environment Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Energy and Environment Committee						
	Notes:						

- 1 Full Council 09/11/2017 referred Energy and Environment Committee
Action Text: The Council Bill (CB) was referred. to the Energy and Environment Committee
Notes:
- 1 Energy and Environment Committee 09/12/2017 pass Pass
Action Text: The Committee recommends that Full Council pass the Council Bill (CB).
Notes:
In Favor: 3 Chair Sawant, Vice Chair Juarez, Member González
Opposed: 0
- 1 Full Council 09/18/2017 passed Pass
Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:
In Favor: 7 Councilmember Bagshaw, Councilmember Burgess, Councilmember González , Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant
Opposed: 0
- 1 City Clerk 09/21/2017 submitted for Mayor Mayor's signature
- 1 Mayor 09/21/2017 returned City Clerk
- 1 Mayor 09/21/2017 returned unsigned
Action Text: The Ordinance (Ord) was returned unsigned.
Notes:
- 1 City Clerk 09/21/2017 attested by City Clerk
Action Text: The Ordinance (Ord) was attested by City Clerk.
Notes:
-



City of Seattle
Mayor Tim Burgess

September 21, 2017

Monica Martinez Simmons
Seattle City Clerk
600 4th Avenue, 3rd Floor
Seattle, WA 98124

Dear Ms. Martinez Simmons,

I support the content of Council Bill 119076 and voted for it as a member of the City Council on September 18, 2017. The City Attorney's Office has advised, to preserve the separation of the branches of City government, not to have a person that voted for the passage of a Bill as a Councilmember sign it as Mayor.

I am returning Council Bill 119076 without my signature, understanding that it will become law.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Burgess".

Tim Burgess
Mayor of Seattle

CITY OF SEATTLE

ORDINANCE 125414

COUNCIL BILL 119076

AN ORDINANCE relating to the City Light Department; authorizing the General Manager and Chief Executive Officer to grant a revised easement for access purposes over a portion of the City's fee-owned real property in the vicinity of East Marginal Way South and Duwamish Avenue South to JMDH Real Estate of Seattle, LLC; and ratifying and confirming certain prior acts.

WHEREAS, the East Marginal Way South Grade Separation Project is part of the Puget Sound Regional Freight Action Strategy (FAST), a multi-agency effort to improve the flow of railway and truck freight in the region; and

WHEREAS, as part of the East Marginal Way Grade Separation Project, the City Light Department was required to relocate certain overhead electric facilities on both City-owned property and on the abutting property of JMDH Real Estate of Seattle, LLC (JMDH) in the vicinity of East Marginal Way South and Duwamish Avenue South; and

WHEREAS, JMDH possessed an existing right of access across City of Seattle property reserved in a Quit Claim Deed recorded under King County Auditor's File No. 3618953; and

WHEREAS, JMDH and the City Light Department agreed to a mutually beneficial exchange of easements to allow the relocation of the City's overhead electric facilities and to allow JMDH to continue to exercise its rights to access its abutting property; and

WHEREAS, JMDH granted an easement to The City of Seattle for relocation of the City's overhead electric facilities on JMDH property under King County Recording No. 20080724000224; and

1 WHEREAS, in return for JDMH's grant of an easement to relocate the City's electric facilities
2 on JDMH property, the City Light Department recommends that The City of Seattle grant
3 to JDMH a revised access easement across the City's property; NOW, THEREFORE,

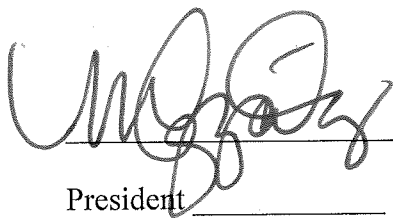
4 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

5 Section 1. The General Manager and Chief Executive Officer of Seattle City Light, or the
6 General Manager and Chief Executive Officer's designee, is authorized to execute for and on
7 behalf of The City of Seattle a Revised Easement Agreement, substantially in the form of
8 Attachment 1 hereto, through which: JMDH releases and relinquishes to The City of Seattle all
9 of JMDH's right, title, and interest reserved to the grantor, its successor, and assigns, in that Quit
10 Claim Deed recorded under King County Auditor's File Number 3618953, and The City of
11 Seattle grants to JMDH a revised easement for ingress and egress upon and across the City's real
12 property described in Attachment 1 hereto.

13 Section 2. Any act consistent with the authority of this ordinance taken prior to its
14 effective date is hereby ratified and confirmed.

1 Section 3. 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 18th day of September, 2017,
5 and signed by me in open session in authentication of its passage this 18th day of
6 September, 2017.

7 
8 _____

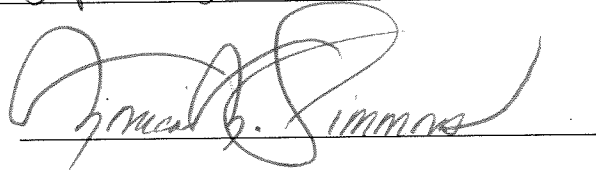
President _____ of the City Council

9 Approved by me this _____ day of _____, 2017.

Returned Unsigned
by Mayor

10 _____
11 Mayor, _____

12 Filed by me this 21st day of September, 2017.

13 
14 _____

Monica Martinez Simmons, City Clerk

15 (Seal)

16 Attachments:
17 Attachment 1 – Revised Easement Agreement

Attachment 1

Revised Easement Agreement

SEATTLE CITY LIGHT
Real Estate Services, SMT3012
700 Fifth Avenue, Suite 3300
PO Box 34023
Seattle, WA 98124-4023

REVISED EASEMENT AGREEMENT
P.M.#240418-4-E01; CF# _____
King County Assessor No. 182404-9064

THIS AGREEMENT, between the CITY OF SEATTLE, a municipal corporation, hereinafter referred to as the "City", and JMDH REAL ESTATE OF SEATTLE, LLC, a Delaware limited liability company, hereinafter referred to as the "Grantee", WITNESSETH:

That the City, for and in consideration of Ten and No/100 Dollars (\$10.00) and other valuable consideration, receipt of which is hereby acknowledged, hereby conveys and grants to Grantee, its successors and assigns, a revised easement for ingress and egress upon and across the following described property in connection with Grantee's use and occupancy of its adjacent property to the north and south:

That portion of Government Lot 2, Section 18, Township 24 North, Range 4 East, W.M., in King County, Washington, lying northeasterly of a line which is uniformly 30 feet northeasterly measured radially thereto from the northeasterly line of a strip of land conveyed to Oregon and Washington Railroad Company, by deed recorded in Volume 587 of Deeds, page 474, under Auditor's File No. 493783, in King County, Washington, and lying west of the west line of a strip of land conveyed to Northern Pacific Railway Company, by deed recorded in Volume 400 of Deeds, page 622, under Auditor's File No. 346338, in King County, Washington, and between lines which are parallel to and distant respectively, 1049.995 feet and 1089.995 feet south of the south line of West Spokane Street. ("Easement Area").

LEGAL DESCRIPTION
BY DF 26 JUN 2008

That, upon the recording of this Revised Easement Agreement and the effective date of the City Ordinance accepting it, all right, title and interest of the Grantee in that reserved right to cross and recross the Easement Area stated in that certain quit claim deed under King County Recording Number 3618953 is hereby released and relinquished by Grantee, its successors and assigns.

Subject to the following terms and conditions:

1. Grantee will not place or permit any buildings, structures or other improvements or store any materials or equipment within the Easement Area except those facilities or improvements that are in the plans approved by the Seattle Department of Planning and Development (“DPD”) under Project #MUP3004624 (“Plans”), which Grantee will be responsible for constructing and maintaining at its sole cost and expense. In accordance with the Plans, Grantee shall be allowed to pave and stripe the Easement Area for drive lanes and pedestrian access. No parking shall occur within the Easement Area.
2. Grantee will comply with any applicable state or local rules regarding pole support and protection and trenching around poles during any construction, improvement or maintenance within the Easement Area. Seattle City Light reserves the right to request a licensed engineer’s drawing or plan for pole support and protection prior to any construction or maintenance within the Easement Area that may involve activities such as excavation, grading, filling or trenching. Grantee will cooperate with Seattle City Light to ensure that the installation and maintenance of the curbing and bollard improvements by Grantee around City utility poles within the Easement Area meets the approved Plans and requirements of this Agreement.
3. In the event City requires removal or relocation of any approved facilities or improvements (other than paving) for municipal utility purposes, Grantee will promptly remove or relocate them at its sole cost and expense upon written notice from SCL. Grantee will submit proposed plans for the relocated facilities within the Easement Area for approval by the City.
4. Grantee, its agents, employees or invitees shall not at any time interfere with the City’s access to and use of its property except as otherwise provided for herein. Grantee will comply with all applicable local, state and federal laws, regulations, ordinances or permits, including any applicable safety clearance requirements related to electrical facilities.
5. Seattle City Light shall have the right at all times to temporarily suspend Grantee’s use of a portion of the Easement Area by the Grantee, its agents, employees or invitees, when in its reasonable discretion and with advance notice to Grantee, such temporary suspension of Grantee’s use of a portion of the Easement Area is deemed to be necessary for utility or municipal purposes, including, but not limited to construction and maintenance of any utility facilities. In the event of an emergency (such as an unanticipated downed power line), Seattle City Light may temporarily suspend access across the easement area, but only as long as necessary to address the emergency. To the extent reasonably practicable, Seattle City Light will endeavor to minimize the impact to Grantee’s use of the full Easement Area and its business operations, provide reasonable notice of such temporary suspensions, and to work with Grantee to cause such suspension activities to occur in a manner that will not adversely impact Grantee’s business. At all times, Grantee will have legal access to a public street, and Grantee, its agents, employees, customers and delivery providers shall have adequate access to deliver product to Grantee’s building and to move purchased product from Grantee’s building to vehicles. Seattle City Light shall be solely responsible for any alternative or rerouted access to Grantee’s Property and building that may be necessary during such periods of temporary suspension that requires

access over property other than the Easement Area or Grantee's adjacent property. Seattle City Light shall reopen the original access to and across the Easement Area and return it to its prior condition when the suspension period can be terminated, all at Seattle City Light's sole cost and expense.

6. In the event City disturbs or damages Grantee's approved facilities or improvements within the Easement Area during its utility operations, the City will restore such facilities or improvements to its prior condition at its expense.

7. Grantee agrees to assume all liability for any physical damage caused to the City's electrical facilities or property arising out of or resulting from Grantee's operations in or use of the Easement Area by Grantee, its agents, employees or invitees. Should any of the City's electrical facilities or property be damaged or disturbed by Grantee's operations or use of the Easement Area, the City may repair such facilities or property and the Grantee will pay the reasonable costs of such repair within 30 days of receipt of an invoice from the City.

8. Except in the normal course of business and construction, and in compliance with all applicable laws, Grantee covenants and agrees that neither it, nor its agents or employees, will store, dump, bury or transfer any hazardous substances, flammable materials, inoperable vehicles, chemicals, oils, fuels, or containers for said substances, chemicals, oils, fuels, etc., on the premises; and further agrees to observe all environmental laws of the State of Washington, City of Seattle, or any other governmental subdivision having regulatory authority over such activities on the premises. Grantee shall report any discovery of any hazardous substance to Seattle City Light within 24 hours of discovery. If City's property becomes contaminated as a result of actions hereunder by Grantee, its, employees, agents, invitees, or visitors, Grantee shall clean up and remediate such contamination as necessary to bring the property into compliance with applicable environmental laws. If Grantee does not so act in a prudent and prompt manner, the City reserves the right, but not the obligation, to act in place of Grantee and to clean up and remediate such contamination as the City deems necessary to ensure compliance. All reasonable costs and expenses incurred by the City in connection with any such clean up or remediation shall become immediately due and payable by Grantee upon the City's presentation of an invoice in accordance with applicable environmental laws.

9. (a) Grantee agrees to defend, indemnify and hold harmless the City of Seattle, its officers, employees and agents, from all claims, actions or damages of every kind and description, which may accrue from or be suffered by reason of Grantee's operations in or use of the Easement Area by Grantee, its agents, employees or invitees, or the performance of any work in connection with its operations or use; and in case of any such suit or action being brought against said City, or damages arising out of or by reason of any of the above causes, Grantee shall, upon notice to Grantee of commencement of such action, defend the same at Grantee's sole cost and expense and will fully satisfy any judgment after the said suit shall have been finally determined, if adversely to the City, excepting any and all claims, actions or damages of any kind which may accrue out of the negligence of the City of Seattle, City Light Department.

(b) To the extent allowed by law, the City of Seattle agrees to defend, indemnify and hold harmless the Grantee, its officers, employees and agents, from all claims, actions or damages of

every kind and description, which may accrue from or be suffered by reason of the City of Seattle's negligent operations in or use of the Easement Area by the City of Seattle, its agents, employees or invitees, or the negligent performance of any work in connection with its operations or use; and in case of any such suit or action being brought against Grantee, or damages arising out of or by reason of any of the above causes, the City of Seattle shall, upon notice to the City of Seattle of commencement of such action, defend the same at the City of Seattle's sole cost and expense and will fully satisfy any judgment after the said suit shall have been finally determined, if adversely to Grantee, excepting any and all claims, actions or damages of any kind which may accrue out of the negligence of Grantee.

(c) Waiver of Industrial Insurance Immunity: The parties agree to waive, solely with respect to this Agreement, their respective immunity under RCW Title 51, Industrial Insurance. The City and Grantee acknowledge that this waiver has been specifically negotiated. The indemnification obligation set forth in this section shall survive the expiration or earlier termination of this Agreement.

10. This Revised Easement will be perpetual.

IN WITNESS WHEREOF, the CITY OF SEATTLE has caused these presents to be executed by the duly authorized representative of its CITY LIGHT DEPARTMENT, pursuant to Ordinance _____ on this ____ day of _____, 2016.

CITY OF SEATTLE,
a Washington municipal corporation

By: _____

Printed Name: _____

Title: _____
City Light Department

JMDH REAL ESTATE OF SEATTLE, LLC,
a Delaware limited liability company

By: _____

Printed Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____ 20____, before me personally appeared _____, to me known to be the _____, and _____, to me known to be the _____ of JMDH REAL ESTATE OF SEATTLE, LLC, a Delaware limited liability company, the company that executed the within and foregoing instrument, and he/she/they acknowledged that said instrument was the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and he/she/they on oath stated that he/she/they was/were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Notary Public in and for the
State of _____,
residing at _____
My commission expires: _____

(seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ signed this instrument, and on oath stated that _____ was authorized to execute this instrument and acknowledged it as the _____ of the City Light Department of the City of Seattle and to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date _____

NOTARY PUBLIC in and for the
State of Washington,
residing at _____
My Commission Expires: _____

(seal)