

CITY OF SEATTLE
ORDINANCE 126328
COUNCIL BILL 120045

AN ORDINANCE relating to the City Light Department; declaring certain real property rights to be surplus to the needs of City Light; and authorizing the General Manager and Chief Executive Officer of City Light to execute an easement agreement with King County, allowing the temporary use of a portion of City Light property to resolve the encroachment of an existing structure located on the west side of Boeing Field within the Northeast Quarter of Section 29 Township 24 Range 4 and the Southeast Quarter of Section 29 Township 24 Range 4.

WHEREAS, City Light owns certain property between S. Myrtle St. and East Marginal Way S. in the Georgetown neighborhood of Seattle, on which City Light previously operated a flume for drainage of spent cooling water from the Georgetown Steam Plant to Slip 4 on the Duwamish Waterway until the flume was decommissioned in 2009 by City Light; and

WHEREAS, City Light is planning to request City Council approval of the transfer of jurisdiction of a portion of this property to the Seattle Department of Parks and Recreation (SPR) and to the Seattle Department of Transportation (SDOT) as part of the required public benefit portion of City Light’s petition to vacate a portion of Diagonal Ave. South; and

WHEREAS, a recent survey performed by City Light has indicated that a fence, part of a storage yard, a floodlight, and part of a storage building on adjacent King County (KC) property encroach onto a small portion of this City Light property and likely have existed in their current location for many years; and

WHEREAS, City Light and SPR have determined that it is in the interest of the City to resolve these encroachments prior to the jurisdiction for the property being transferred to SPR; and

1 WHEREAS, KC has agreed to remove the fence and floodlight from City Light property at KC's
2 expense in consideration for City Light providing KC a temporary easement for the 158
3 square foot encroachment by the corner of the storage building; and

4 WHEREAS, City Light has determined it has no further utility use for the 158 square feet of the
5 surface of this property and desires to grant KC a temporary easement for the building
6 encroachment; and

7 WHEREAS, the subsequent transfer of jurisdiction of the underlying property from City Light to
8 SPR would then be subject to the terms of this temporary easement; and

9 WHEREAS, the City Council has held a public hearing in accordance with the requirements of
10 RCW 35.94.040; NOW, THEREFORE,

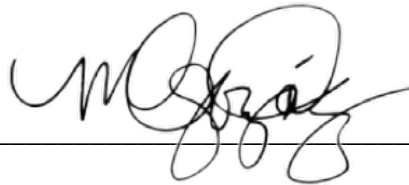
11 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

12 Section 1. After a public hearing and pursuant to RCW 35.94.040, those real property
13 rights described and depicted in the temporary easement agreement attached to this ordinance as
14 Attachment 1 are declared to be no longer required for electric utility service and are surplus to
15 the City's needs.

16 Section 2. The General Manager and Chief Executive Officer of City Light, or designee,
17 is authorized to execute and grant to King County, for and behalf of The City of Seattle, a
18 temporary easement agreement, substantially in the form of Attachment 1 to this ordinance.

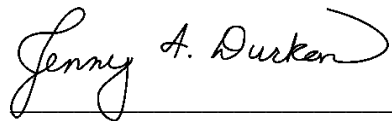
1 Section 3. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 10th day of May, 2021,
5 and signed by me in open session in authentication of its passage this 10th day of
6 May, 2021.

7 

8 President _____ of the City Council

9 Approved / returned unsigned / vetoed this 13th day of May, 2021.

10 

11 Jenny A. Durkan, Mayor

12 Filed by me this 13th day of May, 2021.

13 

14 Monica Martinez Simmons, City Clerk

15 (Seal)

16 Attachments:
17 Attachment 1 – Temporary Easement Agreement

Attachment 1- Temporary Easement Agreement

When recorded, return to:

SEATTLE CITY LIGHT
Real Estate Services
700 Fifth Avenue, SMT 3338
P.O. Box 34023
Seattle, WA 98124-4023

TEMPORARY EASEMENT FOR BUILDING ENCROACHMENT

Reference #:

Grantor: City of Seattle

Grantee: King County

Short Legal:

Additional Legal Description: See Exhibit A

Tax Parcel #: 7006700570, 2824049007

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, THE CITY OF SEATTLE, a Washington municipal corporation, acting by and through its CITY LIGHT DEPARTMENT (“Grantor”), hereby grants to King County, a political subdivision of the State of Washington, (Grantee), a temporary easement for an existing building encroachment for the purposes described below (“Easement”) on the Grantor’s real property described in Exhibit A (the “Property”). This Easement is appurtenant to and shall run with the land that makes up Grantee’s property described in Exhibit B.

Except as otherwise set forth herein, Grantee’s rights shall be exercised upon that portion of the Grantor’s Property occupied by a portion of the Grantee’s existing storage building as of the effective date of this Easement, (“the Building”) as depicted in Exhibit C attached hereto, and no other portion of the Grantor’s Property.

1. Purpose. Grantee and their current lessee, the Boeing Company (“Boeing”), shall have the right and privilege to use the Easement Area to accommodate that portion of the Building which encroaches onto the Property (the “Encroachment”) as of the Effective Date of this Easement, and to perform maintenance and repair of the Building, but not for replacement, enlargement, extension, or expansion of the Building. Grantee’s use of the Easement Area shall be limited to the term of the life of the Encroachment as a storage building within the existing footprint of the Building as of the effective date of the Easement, and such use shall be subject to and in accordance with the terms, conditions, and limitations set forth in this Easement. Grantee shall be responsible for ensuring that Boeing’s, its successors’ or assigns’ use and occupancy of the Easement Area at

all times is limited by and complies in all respects with the terms and conditions of this Easement. **The Grantor's intent is to permit the existence and use of the Encroachment for its life as a storage building within its existing footprint as of the effective date of this Easement, but to ultimately and permanently clear the Property of the Encroachment and Easement.**

2 Additional Terms and Conditions. Grantee and their successors, agents, and assigns, hereby agree to the following additional terms and conditions:

2.1 This Easement is for the life of the Building only, and if: 1) the Building is damaged beyond fifty percent (50%) of its then-fair market value, 2) if the Building is wholly destroyed or demolished, or 3) if the Encroachment is otherwise partly or wholly removed from the Easement Area, then this Easement shall automatically terminate along with all rights of the Grantee or Boeing to use the Easement Area, and no further building or structure or portion thereof shall be permitted, constructed or erected within the Easement Area.

2.2 The Encroachment shall not be modified or increased in footprint, area or height.

2.3 Grantor shall not be liable for any injury or damage to persons or property arising by reason of the Encroachment being permitted to remain within the Easement Area or by Grantee's or Boeing's use and occupancy of the Building, including but not limited to the Encroachment, or by Grantee's or Boeing's use of the Easement Area.

2.4 There shall be no storage, dumping, burying or transferring any hazardous substances, inoperable vehicles, chemicals, oils, fuels, flammable materials ("Hazardous Substances") or containers for said substances, within the Easement Area; provided that nothing herein shall prohibit the passage of vehicles containing or transporting Hazardous Substances across the Easement Area coincident to the ordinary and safe operation of said vehicles on Grantee's Property. Grantee, its successors, agents, lessees, and assigns shall comply with all environmental laws of the State of Washington or any other governmental subdivision or agency having regulatory authority over Grantor's Property with respect to Grantee's use of the Easement Area.

2.5 Grantee and its successors and assigns assume all risk of loss, damage or injury which may result from its use of the Easement Area, or the use of the Easement Area by its agents, employees, invitees, contractors, subcontractors, lessees, permittees or licensees (each, a "Grantee Party" and collectively, the "Grantee Parties"). Grantee and its successors, and assigns shall indemnify and hold harmless Grantor from all claims, actions, or damages of every kind and description, which may accrue from or be suffered by reason of any Grantee Party's, use of or presence in the Easement Area, the performance of any Grantee Party work in connection with the allowed use, or any Grantee Party's exercise of any rights granted in this Easement; and in case of any such suit or action being brought against Grantor, or damages arising out of or by reason of any of the above causes, Grantee shall, upon notice of commencement of such action, defend Grantor 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 Grantor, except to the extent of the sole negligence of the Grantor, its agents, or representatives.

2.6 Without limiting Grantee's obligations pursuant to Paragraph 2.5 of this Easement, Grantee shall indemnify and defend Grantor from any claims, damages, or liabilities arising directly or indirectly from Hazardous Substances that are released or discharged by Grantee or any Grantee Party related to their operations, use of or presence in the Easement Area, the performance of any Grantee Party work in connection with use of the Easement Area, or the exercise by any Grantee Party of any right granted by this Easement. The term "Hazardous Substances" includes all substances that are regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Solid Waste Disposal Act (SWDA) as amended by the Resource Conservation and Recovery Act (RCRA), The Toxic Substances Control Act (TSCA), and the Washington State Model Toxics Control Act (MTCA). The term "claims" related to released or discharged Hazardous Substances includes any claim that may be brought and any order that may be issued pursuant to one of the statutes listed above and associated regulations, and claims based upon common law causes of action for trespass, negligence, nuisance or other common law theories, claims for lost property value, claims for business losses, and claims for personal injuries arising from or related to Hazardous Substances.

2.7 Grantee shall at all times exercise its rights under this Easement in accordance with the requirements of all applicable statutes, orders, rules and regulations of any public authority having jurisdiction.

2.8 The Parties acknowledge that maintenance or repair of the exterior of the Building may be needed. In that event, Grantee may request Grantor's permission to enter Grantor's property immediately adjacent to the Easement Area to perform such necessary maintenance or repair to the exterior of the Encroachment portion of the Building. Grantor shall not unreasonably withhold such permission but may place reasonable restrictions on the timing, length, manner, and extent of Grantee's access. Such permission may be in form of a temporary permit or license, to be chosen by Grantor in its sole discretion.

2.9 Subject to the right of either party to use the dispute resolution process in Section 2.10, this Easement and all rights granted herein to Grantee shall automatically terminate in the event that: A) the Encroachment is in any way damaged, wholly destroyed, or removed from the Easement Area consistent with Section 2.1 of this Easement; or B) Grantee defaults on the obligations or violates any term or condition set forth in this Easement, and such default is not fully cured following thirty (30) days written notice from the Grantor to Grantee.

2.10 Grantor and Grantee agree to use their best efforts to resolve any disputes arising under this Easement using good-faith negotiations. Grantor and Grantee further agree to communicate regularly to discuss matters arising under this Easement and to prevent disputes

from arising. If a dispute cannot be resolved informally, then the Parties shall use the following dispute escalation process.

A. **STEP ONE.** Grantor and Grantee shall each identify a representative and shall confer and attempt to resolve the dispute within ten (10) business days of written notification by either Party.

B. **STEP TWO.** In the event that Grantor and Grantee are unable to resolve the dispute within ten (10) business days as provided in Step One, either Party may refer the dispute to the King County Airport Director and the Director of the City of Seattle Department having jurisdiction of the Property at the time or their designees. They shall confer and attempt to resolve the dispute within five (5) business days of receiving the referral.

C. **STEP THREE.** In the event the King County Airport Director and the Director of the City of Seattle Department having jurisdiction of the Property at the time or their designees are unable to resolve the dispute within five (5) business days as provided in Step Two, either party may refer the dispute to the King County Executive and the Mayor of Seattle or their designees. They shall confer and attempt to resolve the dispute within five (5) business days after receiving the referral.

If the Parties are unable to resolve the dispute utilizing the process set forth in Steps One through Three above, the Parties may, by mutual agreement, choose to submit the matter to a non-binding mediator. The Parties shall share equally in the cost of the mediator. Neither Party shall have the right to seek relief in a court of law until and unless Steps 1-3 above are exhausted. Grantor may not issue a notice of default to Grantee until and unless Steps 1-3 above are exhausted.

2.11 At all times during the course of the conflict or dispute resolution efforts, the Parties shall diligently continue to perform their respective responsibilities under this Easement.

2.12 This Easement and all amendments thereof shall be governed by and construed in accordance with the laws of the State of Washington applicable to contracts made and to be performed therein, without giving effect to its conflicts of law provisions or choice of law rules. In the event of any litigation arising out of or relating to this Easement, the Superior Court of King County, Washington shall have the exclusive jurisdiction and venue. If the Parties litigate any controversy, claim, or dispute arising out of or relating to this Easement, then each Party shall be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs.

2.13 This writing (including the Exhibits attached hereto) constitute the entire agreement of the Parties with respect to the subject matter hereof and may not be modified or amended except by a written agreement specifically referring to this Easement and signed by all Parties

hereto. All other agreements between the Parties regarding the subject matter of this Easement are hereby terminated and no longer applicable.

2.14 This Easement and each of its terms and provisions are deemed to have been explicitly negotiated between the Parties, and the language in all parts of this Easement will, in all cases, be construed according to its fair meaning and not strictly for or against either Party. Both Parties acknowledge and represent, as an express term of this Easement, that they have had the opportunity to obtain and utilize legal review of the terms and conditions outlined in this Easement.

3. Effective Date. This Easement shall become effective and binding upon execution by both Parties hereto and recording of this Easement.

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written.

Dated this _____ day of _____, 20____

GRANTOR:

CITY OF SEATTLE, a Washington municipal corporation
CITY LIGHT DEPARTMENT

By: _____

Printed Name: _____

Title: _____

GRANTEE:

By:

Acknowledged and accepted as to all conditions herein

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit “A”
Grantor’s Property

That portion of land within the Northeast Quarter of Section 29 Township 24 Range 4 and the Southeast Quarter of Section 29 Township 24 Range 4, lying easterly of the following described line:

Beginning at the point of intersection of the Government Meander Line and the southern line of South Myrtle Street; thence, southerly $S9^{\circ}49'16''W$ a distance of 108.333 feet; thence southerly $S1^{\circ}45'40''E$ a distance of 201.015 feet; and, thence $S9^{\circ}38'02''E$ a distance of 122.173 feet to a point that is coincident with the northerly boundary of East Marginal Way South; thence southeasterly $S49^{\circ}00'00''E$ a distance of 130.00 feet; thence northerly $N6^{\circ}57'48''W$ a distance of 309.801 feet; and, thence $N3^{\circ}34'03''E$ a distance of 218.131 feet; and, thence northeasterly $N12^{\circ}14'45''E$ to the southern line of South Myrtle Street; thence westerly to the point of beginning.

Exhibit “B”
Grantee’s Property

POR OF SECS 20-24-04 & 28-24-04 & 29-24-04 & 33-24-04 & 34-24-04 & 03-23-04 & 04-23-04 TGW PORS OF DAVIS MEADOW TRACTS & ELIZABETH ADD & VAC FAIRGROUNDS ADD & HORTONS 1ST SUBD OF GEORGETOWN & THE MEADOWS TRACTS & QUEEN ADD & QUEEN ADD SUPL - TGW PORS OF FOLG DONATION LAND CLAIMS - JOHN BUCKELY #42 & LUTHER M COLLINS #46 & TIMOTHY GROW #44 & #48 & SAMUEL A MAPLE #49 & FRANCIS MCNATT #38 & HENRY VAN ASSELT #50 TGW POR OF FILLED BED OF DUWAMISH RIVER OF -- BAAP OF NXN BTWN WLY MGN OF AIRPORT WAY SOUTH & SELY LN OF SD QUEEN ADD SUPL TH IN A GENERALLY SWLY DIRECTION ALG SD SELY LN TO SW COR TRACT A SD QUEEN ADD SUPL & SLY EXTN OF E LN OF W 1/2 SD LUTHER M COLLINS D L C TH S ALG SD SLY EXTN TO SLY LN OF NLY 1/2 OF SD FILLED BED OF DUWAMISH RIVER TH SWLY ALG SD SLY LN TO ELY MGN OF EAST MARGINAL WAY SOUTH TH CONT SELY ALG SD ELY MGN TO NXN WITH A LN PLT AND 825.00 FT S OF N LN OF JOHN BUCKLEY D L C #42 TH S 54-14-57 E TO ELY MGN OF FILLED BED OF DUWAMISH RIVER TH S 35-49-39 E 104.93 FT TO NLY EXTN OF WLY LN OF DAVIS MEADOW TRATS TH SLY ALG SD WLY LN TO N LN OF TRACT 8 OF THE MEADOWS TRACTS TH WLY ALG SD N LN N 89-16-16 W 197.97 FT TH S 29-52-38 E 520.79 FT TH N 89-58-17 W 230.59 FT TH N 29-52-38 W 524.20 FT TH N 89-16-16 W 179.98 FT TO ELY MGN OF EAST MARGINAL WAY SOUTH TH SLY ALG SD ELY MGN TO SLY LN OF TRACT 7 OF SD MEADOWS TRACTS TH ELY ALG SD S LN A DIST OF 474.62 FT TH S 29-52-38 E A DIST OF 2695.00 FT MORE OR LESS TH S 21-20-38 E TO N LN OF NORFOLK ST (CITY OF SEATTLE R/W) TH ELY ALG N MGN OF SD R/W TO EAST LN OF SECTION 04-23-04 TH CONT ELY & NELY ALG SD N MGN TO WLY MGN OF AIRPORT WAY SOUTH EXTN TH NWLY ALG SD WLY MGN TO P O B -- LESS POR OF SECTIONS 28-24-04 & 29-24-04 DAF - BEG AT 1/4 COR COMMON TO SD SECTIONS TH S ALG SEC LN 575.27 FT TO TPOB TH S 28-42-05 E 199.26 FT TH S 61-17-55 W 464.00 FT TH S 40-59-48 W TO NELY MGN OF EAST MARGINAL WAY SOUTH TH NWLY ALG SD MGN 492.927 FT TH N 40-59-48 E 569.836 FT TH N 28-42-05 W 483.276 FT TH N 61-17-55 E 187.06 FT TO NXN WITH E & W C/L OF SD SEC 29 TH CONT N 61-17-55 E 276.94 FT TH S 28-42-05 E 151.09 FT TO NXN WITH SD C/L TH CONT S 28-42-05 E 654.90 FT TO TPOB LESS TRIANGLE STRIP IN TRACT 4 OF DAVIS MEADOWS TRS-BEG AT SW COR TH N 19-03-01 W 4.00 FT TH SELY TAP ON N BDY OF MCNATT D L C 50.00 FT E OF BEG TH W 50.00 FT TO BEG --- SUBJ TO FORMER TRANS LN R/W - TGW POR BLKS 1 & 2 & 5 & 6 & 9 & 12 OF QUEEN ADD LY SELY OF SOUTH ALBRO PLACE & VAC STS & ALLEYS ADJ LESS STS - TGW POR LOT 5 BLK 6 SD QUEEN ADD LY NWLY OF S ALBRO PL - TGW ENTIRE REPLAT OF QUEEN ADD SUPL & VAC STS ADJ LESS C/M RGTS OVER POR LOT 1 BLK 5 SD QUEEN ADD LY NELY OF A LN FR PT 16.47 FT WEST OF NE COR TO PT 24.32 FT

S OF NE COR LESS C/M RGTS OVER LOTS 5-13 BLK 6 OF SD QUEEN ADD - LESS C/M RGTS OVER POR LOT 36 BLK 9 OF SD QUEEN ADD LY SWLY OF LN RNG FR PT 10.12 FT N OF SW COR SD LOT 36 TAP 6.85 FT E OF SD SW COR - LESS C/M RGTS OVER LOTS 1-13 & OVER LOTS 26-29 & OVER POR OF LOT 25 BLK 10 OF SD QUEEN ADD SUPL LY N OF LN - BEG ON EAST LN OF SD LOT 25 A DIST OF 1.56 FT N OF SE COR TH NWLY TAP ON N LN OF S 10.00 FT OF SD LOT 108.28 FT E OF W LN TH W PLW S LN 108.28 FT TO W LN OF SD LOT 25 - LESS POR TRACTS A B C & D SD QUEEN ADD SUPL & VAC ST ADJ & NLY 1/2 SD FILLED BED OF DUWAMISH RIVER DAF - BAAP ON NWLY LN SD TR B 100.00 FT SWLY FR MOST NLY COR TH S 33-36-10 E TO SLY LN SD NLY 1/2 TH SWLY ALG SD SLY LN TO E LN W 1/2 SD COLLINS D L C TH N ALG SD E LN TO NXN WITH C/L OF VAC SOUTH GREELY STREET TH NELY ALG SD C/L TAP N 33-36-10 W OF BEG TH S 33-36-10 E 30.00 FT TO BEG TGW POR W 1/2 SD COLLINS D L C LY ELY OF ELLIS AVENUE SOUTH (MABLE STREET) SLY OF ELIZABETH ADD & LY NLY OF TRACT DEEDED TO CITY OF SEATTLE BY ORD NO 38426 TGW POR SEC 29-24-04 LY ELY OF SD D L C & LY WLY OF WLY & NLY SHORELINE OF SD FILLED RIVER BED TGW POR SD HORTONS 1ST SOUTH ALBRO PLACE & VAC ST ADJ TGW BLK 1 & LOTS 1-6 & LOTS 11-15 BLK 2 OF SD ELIZABETH ADD & VAC POR SOUTH ELIZABETH ST ADJ

Exhibit “C”
Temporary Easement Area

The as built location of Grantee’s storage building, as now constructed and generally described and depicted below, within Grantor’s property described in Exhibit “A”

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 29,
TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., MORE PARTICULARLY DESCRIBED AS
FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE GOVERNMENT
MEANDER LINE AND THE SOUTHERN LINE OF SOUTH MYRTLE STREET AS
SHOWN ON THAT CERTAIN SURVEY AS RECORDED IN BOOK 409 OF SURVEYS,
PAGES 44 AND 45, RECORDS OF KING COUNTY;

THENCE S88°49'03"E ALONG SAID SOUTHERN LINE FOR 81.23 FEET;

THENCE S11°48'48"W FOR 44.75 FEET;

THENCE S04°46'40"W FOR 218.30 FEET;

THENCE S05°42'51"E FOR 130.64 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING S05°42'51"E FOR 27.89 FEET;

THENCE N32°45'57"W FOR 24.84 FEET;

THENCE N57°14'03"E FOR 12.68 FEET TO THE TRUE POINT OF BEGINNING.

SAID TRACT CONTAINS 158 SQUARE FEET, MORE OR LESS.

