

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	Acquisition of Permit from Seattle City Light for the Aurora Corridor Project
<b>DEPARTMENT:</b>	Public Works; City Attorney's Office
<b>PRESENTED BY:</b>	Kris Overleese, Capital Projects Manager; Ian Sievers, City Attorney

**PROBLEM/ISSUE STATEMENT:**

The City needs to acquire the rights for 11,715 square feet for roadway improvements, 6,697 square feet for amenity zone and 29,488 square feet for a temporary construction easement from Seattle City Light's transmission line right-of-way. SCL has agreed to grant Shoreline a permit for permanent rights for roadway and amenity/utility zone uses. Although Shoreline would typically secure these permanent rights through a statutory warranty deed, SCL only has a transmission line right-of-way easement over the property and can only grant a permit to operate within their transmission line right-of-way easement, not transfer ownership. These permanent rights as well as the temporary construction easement and rights to remove structures in the permanent use areas have been combined in a Permit.

**FINANCIAL IMPACT:**

The permit fee is \$810,980, which include the fair market value for the roadway expansion, the amenity/utility zone, the temporary construction easement and the site improvements removed by the project, most notably the James Alan Salon building at Aurora and 185<sup>th</sup>. The Permit will cover all acquisition needed for the Aurora N. 165<sup>th</sup> – N. 185<sup>th</sup> project and the next phase from N.185th to N. 192<sup>nd</sup>. The James Alan Salon building will continue to be occupied until the property is needed for the construction of the N. 185<sup>th</sup> –N. 192<sup>nd</sup> phase. Shoreline's payment of the value of the building will be deferred until it is vacated, with Seattle continuing to collect rent from the occupant. The total acquisition exceeds City Manager's \$325,000 purchase limit for Aurora authorized by the City Council.

**RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to enter into the Permit with Seattle City Light for permanent use of the roadway and amenity zone areas and temporary use of the temporary construction easement areas, as described and depicted in the Permit Agreement, attached as Exhibit A, in exchange for a payment of \$810,980.

Approved By:

City Manager 

City Attorney 

## INTRODUCTION

An in-depth title review of the Seattle City Light transmission right-of-way in the Project area revealed that SCL does not actually have fee ownership of the right-of-way. As a result, SCL cannot deed the underlying fee of that portion of the transmission line right-of-way needed for the Aurora Corridor Improvements Project. However, if SCL chose to perfect title, they would succeed in acquiring fee ownership of the property based on their solid adverse possession claim. Thus, there is negligible risk that any heirs of the underlying fee owners (from the early 1900s, when the right-of-way easement was first granted) would attempt to assert ownership and no risk of them succeeding. As a result, the City, SCL and WSDOT are agreed that the proposed Permit, which grants Shoreline permanent rights for that portion of the Aurora Corridor Improvements in the SCL transmission line right-of-way, is sufficient for certification of property for construction of the Aurora Project. No additional condemnation will be pursued for these properties.

## DISCUSSION

The property rights needed from SCL are designated as: (1) street improvements zone; (2) amenity/utility zone; and (3) temporary construction easement. Outlined below are the valuations attributed to each property right. In addition, the City has attributed a \$3.00/sf valuation for the asphalt and landscaping not installed by Shoreline located in the street/amenity/utility zones which will be removed by the project. The building occupied by the James Alan Salon is located primarily within the amenity/utility area needed for the Aurora Corridor Project, N. 185<sup>th</sup> – N. 192<sup>nd</sup> and will be removed by the Project, including the unusable building remnant outside this area within the transmission right of way. Negotiations with Seattle valued this structure at \$183,800.

### Street Improvements Zone

The Seattle properties have been appraised at \$38/sf, which reflects the downturn in the commercial real estate market. Since SCL is only granting a permit for permanent use of this area as a roadway, and not the underlying fee, a 15% deduction has been applied to the \$38/sf fee simple value, for a valuation of \$32.30/sf for the permit area used for permanent street improvements. The City needs property for additional roadway for the current Project to N. 185<sup>th</sup> and the Project extended to N. 192<sup>nd</sup>, expected to be constructed in 2010. The design for the Aurora Corridor Project, N. 165<sup>th</sup> – N. 185<sup>th</sup> delineates the Interurban Trail between N. 175<sup>th</sup> Street and N. 185<sup>th</sup> Street as the Aurora Avenue North sidewalk. Thus, only minor additional areas are needed for hydrant and light pole "pads" in the Seattle transmission right-of-way south of 185<sup>th</sup>. This permanent street improvement zone is 11,715/sf for a total of \$378,400 for this use area.

### Amenity/Utility/Sidewalk Zone

Although the Aurora Corridor Project N. 185<sup>th</sup> Street - N. 192<sup>nd</sup> Street segment is not being constructed until 2010, that portion of the Project does require construction of a sidewalk. Therefore, a 6,697/sf amenity/utility/sidewalk zone is needed from the three

SCL parcels identified north of N. 185<sup>th</sup> Street. The City is including this property in the Permit so that the City does not have to obtain a second Permit next year.

The amenity/utility zone has been given a 30% deduction from the fair market value given that (1) SCL is only granting the City use and not ownership of this area, albeit permanent use; and (2) Shoreline is not using this area as intensely as the street improvements area and SCL's rights are not significantly disrupted. This amounts to a valuation of \$26.60/sf, for a total of \$178,410.

#### Temporary Construction Easement

The TCE area is worth \$1.52/sf, which is essentially a lease value based on the fee valuation of \$38/sf. The City needs 29,488/sf of the transmission line right-of-way for a temporary construction easement to build the Project improvements, which amounts to \$44,830.

#### Site Improvements

Most of the existing site improvements located in the SCL transmission line for this portion of Aurora were constructed by the City of Shoreline for the Interurban Trail. However, there is asphalt constructed in the Project areas by current or prior Seattle tenants that must be compensated (Key Bank and James Alan Salon building). The agreed value for this improvement is \$3/sf for a total valuation for this site improvement of \$25,810.

The James Alan Salon is located in the amenity/utility zone for the N. 185<sup>th</sup> Street – N. 192<sup>nd</sup> Street portion of the Project. This building was abandoned by prior tenants and is now under a month-to-month lease. SCL has appraised the building at \$193,800 on an income approach using the current rent. This has been reduced based on the percentage of parcel otherwise compensated above for a total of \$183,800. The Salon would not need to vacate the building until certification is needed for N. 185<sup>th</sup> Street – N. 192<sup>nd</sup> Street, expected in Spring 2010. Shoreline's payment for this site improvement would be deferred to the date of vacation and Seattle will continue to collect rent.

Shoreline will be responsible for removing all site improvements with construction of the Project.

In sum, the total offer for the SCL property rights and associated site improvements is \$810,980. This amount exceeds the authority of the City Manager and must be approved by the City Council.

### RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to enter into the Permit with Seattle City Light for permanent use of the roadway and amenity zone areas and temporary use of the temporary construction easement areas, as described and depicted in the Permit, attached as Attachment A, in exchange for a payment of \$810,980.

## **ATTACHMENTS**

Attachment A: Permit Agreement, with legal descriptions and depictions.

Seattle City Light  
Real Estate Services  
700 Fifth Ave., Suite 3300, SMT 3012  
P.O. Box 34023  
Seattle, WA 98124-4023

PERMIT AGREEMENT  
P.M. #260407-1-301

King County Assessor's Parcel Nos. 062604-9028, -9060, 9061  
072604-9050, -9154, -9155, -9156

THIS PERMIT AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the CITY OF SEATTLE, a municipal corporation of the State of Washington, by and through its City Light Department, hereinafter called "Seattle", and the CITY OF SHORELINE, hereinafter called "Shoreline," grants Shoreline the use of a portion of Seattle's transmission line right-of-way described as follows:

Portions of the southeast quarter of Section 6 and the northeast quarter of Section 7, Township 26 North, Range 4 east, W.M., City of Shoreline, King County, Washington, as legally described in Exhibit 1 attached hereto, hereinafter called the "Property."

The use of the Property permitted by this Permit Agreement is for street, amenity and utility improvements, including a street, street lights, fire hydrants, street signs, vegetation, bus stops and sidewalks, future maintenance of these street, amenity, and utility improvements, and temporary construction activities for Shoreline's "Aurora Corridor Improvement Project," which shall include the N. 165<sup>th</sup> Street – N. 185<sup>th</sup> Street portion and the N. 185<sup>th</sup> Street – N. 192<sup>nd</sup> Street portion, hereinafter the "Project" as shown on Exhibits A and B, attached hereto and made a part hereof.

The permitted uses shall be limited to specific area of the Property as follows:

- 1) The street improvement zone shall occupy 11,715 square feet (SF) of the Property, as described and shown in Exhibit A and B to this Permit Agreement.
- 2) The amenity/utility improvement zone shall occupy 6,697SF of the Property, as described and shown in Exhibit A and B to this Permit Agreement.
- 3) The temporary construction activities zone shall occur in a 29,488SF area of the Property, as described and shown in Exhibits A and B to this Permit Agreement.
  - a. The duration of the temporary construction activities shall be for an aggregate total of 120 days for each portion of the Project, which may be intermittent, and shall not extend beyond 24 months after commencement of each portion of the Project, unless extended by the parties. The City shall provide the Owner notice of commencement of each portion of the Project and shall provide notice to the Owner prior to accessing the temporary construction activities zone.

Said permitted use of the Property is subject to the following terms and conditions:

**TERMS AND CONDITIONS**

1. Shoreline agrees to pay the following fees for the rights and privileges conferred by this Permit Agreement:

- a. The permit fee to be paid to Seattle for the use of the Property shall be Eight Hundred Ten Thousand Nine Hundred and Eighty Dollars and Zero Cents (\$810,980.00), payable in advance, except for One Hundred Eighty Three Thousand Eight Hundred Dollars and Zero Cents (\$183,800.00) which shall be paid upon demolition of the building located on King County Tax Parcel No. 0626049061. Shoreline shall have the right to enter the Property and demolish the building after sixty (60) days written notice to Seattle. Shoreline shall be responsible for all demolition costs associated with the building.
  - b. The administrative fee for granting this permit shall be waived.
  - c. To assure proper positing of payment Shoreline shall note on its check "Seattle City Light Permit P.M.# 260407-1-301," and include the payment stub from the invoice.
2. As long as Shoreline complies with the terms and conditions of this Permit Agreement, Seattle will not act to alter or extinguish the rights described herein or to cause the permanent street improvements to be removed or altered.
3. Shoreline agrees that it will not oppose any effort or action by Seattle to quiet title or assert adverse possession rights to the Property or any real property within Seattle City Light's Aurora Transmission Corridor within the city limits of Shoreline, should that be necessary or desired, in Seattle's sole discretion.
4. Shoreline agrees that it will not initiate condemnation proceedings for the Property or any portion thereof.
5. No building or structure shall be constructed or placed on the Property by Shoreline without prior coordination and written approval by Seattle.
6. No ponds, ditches, or open water retention facilities of any kind shall be constructed by Shoreline on the Property.
7. Shoreline shall, upon completion of the construction of any improvements described herein, remove all debris and restore the surface of the Property to as good condition or better than that which existed prior to the commencement of said construction.
8. Shoreline agrees not to place any fill against any transmission line poles or do any excavation within ten (10) feet of any pole footing without prior coordination and written approval by Seattle.
9. Shoreline shall not at any time unnecessarily interfere with the Seattle's access to and over the Property.
10. Seattle reserves the right to locate a transmission line support structure and any other necessary appurtenances on the Property except for that portion of the Property where impervious street surface may exist.
11. Shoreline agrees to assume all risk of loss, damage or injury which may result from Shoreline's use of the Property, except for any loss, damage or injury caused by Seattle's sole negligence. It is understood that any damage to Seattle's property caused by or resulting from Shoreline's use of the Property may be repaired by Seattle and the actual cost of such repair shall be charged against and be paid by Shoreline. Shoreline will be given the opportunity to fix damage caused by Shoreline prior to Seattle performing the work, except for emergency circumstances and electrical work.
12. This agreement is only for Seattle's permission for Shoreline's use of portions of the Property, and shall not be construed to replace or to be used in lieu of any permits, licenses, approval or consent which may be required, granted or supervised by any other agency or

subdivision of government with authority to license, regulate or supervise Shoreline's operations or land use.

13. Shoreline agrees to submit plans furnishing details of any future landscaping, construction, paving, grading, cuts or fills within the Property for review by the Superintendent of City Light, or his or her representatives. Shoreline may make changes to street signage and perform maintenance to infrastructure installed as part of the Project without additional Seattle review, provided that such changes or maintenance do not interfere with Seattle's facilities or use of the Property.

14. Vegetation on the Property will be limited to and maintained at a height below twelve (12) feet. If vegetation is not so maintained, Seattle has the right, once it has given Shoreline thirty (30) days written notice to perform maintenance, to trim or remove the vegetation and charge Shoreline for the cost of such work, and Seattle shall not be liable for any damage to any vegetation as a result of such trimming or removal.

15. The type of construction, materials and equipment used, manner of erection, construction, and maintenance of utility facilities shall comply with all applicable Federal, State and local laws and regulations. All construction work on the Property shall comply with all applicable Federal, State and local electrical safety regulations.

16. The placement of underground utility lines within the Property must be indicated above ground in a manner approved by the Superintendent of Seattle City Light.

17. Shoreline agrees not to allow vehicles within five (5) feet of any pole.

18. Shoreline agrees to indemnify and hold harmless Seattle from all claims, actions or damages of every kind and description, including all claims, actions or damages brought by Shoreline's employees, agents, representatives, contractors or tenants, which may accrue from or be suffered by reason of Shoreline's use of the Property or the performance of any work in connection with such use, except for those claims, actions or damages resulting from the negligence of Seattle. In case of any suit or action brought against Seattle arising out of or by reason of any of the above causes, Shoreline shall, upon notice to the Seattle of the commencement of such action, defend the same at no cost or expense to Seattle. Shoreline will fully satisfy any judgment in such action rendered adversely to Seattle, except to the extent of the negligence or willful misconduct of Seattle, Seattle City Light, or its agents or representatives. By this indemnity provision, Shoreline expressly waives any immunity it may have from claims by its employees under any industrial insurance or workers' compensation law arising out of workplace injuries in connection with Shoreline's use of the right of way. Said express waiver was mutually negotiated between Seattle and Shoreline.

19. Shoreline understands that scientific studies concerning potential health effects of power frequency electric and magnetic fields (EMF) have been and are being conducted. Shoreline assumes responsibility for all potential risks, actions or damages related to exposure to EMF and/or radio frequency radiation, connected with the construction, operation and maintenance of Shoreline's improvements. The indemnity and hold harmless provisions of this agreement apply to all claims, actions or damages related to EMF, and/or radio frequency radiation, in the same manner and to the same extent as they apply to all claims, actions or damages of every other kind and description.

20. If Shoreline's use of the Property should at any time become a hazard, as determined by the Superintendent of Seattle City Light, to the presently installed electrical facilities of Seattle or any facilities added or constructed in the future, either overhead or underground, or should such use as determined by the Superintendent interfere with the inspection, maintenance or repair of the same or with access along the right of way, Shoreline, upon thirty (30) days' written notice, will be required to remove or relocate such hazard or interference at no expense to Seattle. If Shoreline shall fail to remove or relocate such hazard or interference, Seattle may, at its election,

remove such hazard or interference without liability to Shoreline for loss, injury or damage Shoreline may thereby sustain, and the cost of such removal shall be paid by Shoreline to Seattle upon demand.

21. Should Seattle, in order to enforce any term or condition of this Permit Agreement, elect to bring an action in a court having jurisdiction to enforce this agreement, then Shoreline agrees that execution of this agreement shall serve to estop Shoreline from raising or asserting hardship, inequity or unreasonableness as a defense to enforcement of any term or condition of this agreement or the grant of injunctive relief to Seattle.

22. Shoreline covenants and agrees that neither it, nor its contractors or agents, 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 right of way, and agrees to observe all Federal, State and local environmental laws and regulations.

23. It is understood that any consent and grant given hereunder is subject to existing rights of other parties and the real property or other rights of Seattle for its electric transmission system. In consenting to the use of the Property for this purpose, Seattle does not waive or subordinate any of the rights and privileges granted to Seattle under its deeds or easements for transmission line purposes within the Property except Seattle agrees it will not install transmission/distribution poles on that portion of the Property upon which paved streets have been constructed by Shoreline.

24. The Superintendent of Seattle City Light, or his representatives, shall have the right at all times to inspect said premises for the purpose of observing the conditions thereof, and the manner of compliance by Shoreline with the terms and conditions of this agreement.

25. Shoreline and Seattle agree that this Permit Agreement shall be for an indefinite term, subject to the termination rights of the parties herein, and shall also be subject to ratification by the Seattle City Council in the form of an ordinance of the City of Seattle authorizing and approving this Permit Agreement. In the event that an ordinance of the City of Seattle authorizing and approving this Permit Agreement has not been passed and become effective by September 30, 2009, this Permit Agreement shall terminate, and neither party shall have any liability or further obligation to the other party.

GRANTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

SEATTLE CITY LIGHT

\_\_\_\_\_  
David L. Barber  
Real Estate Manager

ACCEPTED

CITY OF SHORELINE

By: \_\_\_\_\_