

Ordinance No. 123114

Council Bill No. 116656

AN ORDINANCE relating to the City's water system; declaring as surplus certain property rights in Seattle Public Utilities' Tolt Pipeline right of way; and authorizing the Director of Seattle Public Utilities ("SPU") to execute and convey an easement for such surplus property rights to Puget Sound Energy, Inc. ("PSE") for purposes of installing a natural gas pipeline in a portion of the Tolt Pipeline right of way.

CF No. _____

Date Introduced:	<u>9-21-09</u>	
Date 1st Referred:	To: (committee) <u>Environment Emergency Management + Util. Com</u>	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote: <u>8-0</u>	
Date Presented to Mayor:	Date Approved: <u>9-30-09</u>	
Date Returned to City Clerk:	Date Published: <u>3</u>	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department

Richard Conlin

Council Bill/Ordinance sponsored by: _____

Councilmember

Committee Action:

9/22/09 passed yes 3-0, ~~by~~ Conlin, McIver, Burgess

9-28-09 Passed 8-0 (Excused: McIver)

This file is complete and ready for presentation to Full Council.

Committee: RC 9/22/09
(initial/date)

Law Department

Law Dept. Review

OMP Review

City Clerk Review

Electronic Copy Loaded

Indexed

1 WHEREAS, PSE's preferred alternative for the new natural gas pipeline involves installing a
2 new 16 inch pipeline and a new gate station off of the Williams pipeline and a limit
3 station in the vicinity of 132nd Avenue NE and NE 124th Street, which will require an
4 easement on approximately 5.5 miles of the Tolt ROW; and

5 WHEREAS, SPU and PSE have negotiated an easement agreement setting forth the terms in
6 detail under which a natural gas pipeline may be constructed in the Tolt ROW, including
7 the compensation to which the City is entitled for conveying; NOW, THEREFORE,

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

9 Section 1. Pursuant to the provisions of RCW 35.94.040 and after public hearing, the real
10 property interests described in the Easement Agreement, attached hereto as Attachment 1, are
11 hereby found and declared to be no longer required for providing municipal utility service and to
12 be surplus to the City of Seattle's needs.

13 Section 2. After receiving fair market compensation in the amount of 4.7 million dollars
14 (\$4,700,000.00) from Puget Sound Energy, Inc., and depositing such amount into the Water
15 Fund, the Director of Seattle Public Utilities is authorized on behalf of the City of Seattle to
16 execute and convey to Puget Sound Energy, Inc., an Easement Agreement, substantially in the
17 form of Attachment 1. The Director is further authorized to execute and record all documents
18 necessary for such conveyance, including such conforming amendments and modifications, as
19 provided under the terms of the Easement Agreement.
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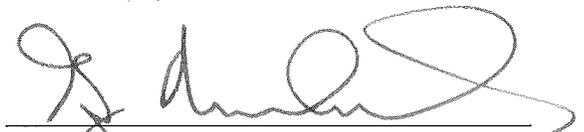


1 Section 3. This ordinance shall take effect and be in force thirty (30) days from and after
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

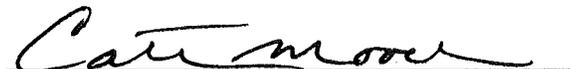
4 Passed by the City Council the 28th day of September, 2009, and
5 signed by me in open session in authentication of its passage this
6 28th day of September, 2009.

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9
10 
11 _____
12 President _____ of the City Council

13 Approved by me this 30th day of September, 2009.

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15 
16 _____
17 Gregory J. Nickels, Mayor

18 Filed by me this 1st day of October, 2009.

19
20 
21 _____
22 City Clerk

23
24 (Seal)

25 Attachment 1: Easement Agreement



Recording Requested By And
When Recorded Mail To:

City of Seattle SPU/Real Property
P.O. Box 34018
Seattle, WA 98124-4018

EASEMENT AGREEMENT

Reference #s of Document Released: NONE
Grantor: The City of Seattle and Successors
Grantee: Puget Sound Energy, Inc. and Successors
Legal Description (abbreviated):
Assessor's Tax Parcel ID#

RW Seattle Public
Utilities

This Easement Agreement ("Agreement") is made this ____ day of _____, 2009, by and between **The City of Seattle**, a municipal corporation of the State of Washington, acting by and through Seattle Public Utilities (the "City") and **Puget Sound Energy, Inc.**, a Washington corporation ("PSE").

EASEMENT

Section 1. Grant of Easement. For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which are hereby acknowledged, and the covenants and promises hereinafter set forth, the City hereby conveys and quitclaims, insofar as it has rights, title and interest, and/or hereinafter acquires rights, title or interest, to PSE, subject to the terms and conditions of this Agreement, the following real property interests in those portions of the City's Tolt Right-of-Way, located in King County, Washington, as described in Exhibit A (the "Tolt Right-of-Way").

1.1 **Pipeline Easement.** A nonexclusive, twenty-foot-wide perpetual easement (the "Pipeline Easement Area") with the right, privilege, and authority to install, construct, erect, alter, repair, operate and maintain a pressurized natural gas pipeline, no greater than twenty inches in diameter, to be located southerly and not within twenty-five feet of the City's water supply pipeline for the purposes set out in Section 2.1, and with the appurtenances otherwise set forth in this Easement. Following initial installation of the pipeline, a legal description of the Pipeline Easement Area shall be prepared by a licensed surveyor, describing an area 10 feet on either side of the centerline of the pipeline, as installed, except (a) in areas, if any, where the pipeline has been installed within either thirty-



five feet of the City's water supply pipeline, the Pipeline Easement Area shall be the area between twenty-five feet and forty-five feet southerly of the City's water supply pipeline, and (b) in areas, if any, where the pipeline has been installed within 10 feet of the southerly boundary of the Tolt Right-of-Way, the Pipeline Easement Area shall be the southerly 20 feet of the Tolt Right-of-Way. Once the Pipeline Easement Area has been established, the City and PSE shall execute an amendment to this easement with a precise legal description of the Pipeline Easement Area, and PSE shall, if requested by the City, release, convey and quitclaim rights of PSE under this Section 1.1 with respect to areas within the Tolt Right of Way that are not within the Pipeline Easement Area as so described. Exhibit B is a depiction of the Tolt Right-of-Way showing the area within which the Pipeline Easement may be established.

1.2. Gate Station Easement. A nonexclusive, forty-foot-wide perpetual easement to be located within eight hundred (800) feet from the right of way margin of 216th Avenue NE, the location of which shall be hereafter specified by PSE with the City's consent, not to be unreasonably conditioned, withheld, or delayed (the "Gate Station Easement Area"), with the right, privilege, and authority to install, construct, erect, alter, repair, operate and maintain such pipelines, facilities, and equipment, as may be necessary to allow the PSE natural gas pipeline to receive deliveries from a Gate Station located outside the Tolt Right-of-Way, for the purposes set out in Section 2.2. Once the Gate Station Easement Area has been established, the City and PSE shall execute an amendment to this easement with a precise legal description of the Gate Station Easement Area, and PSE shall, if requested by the City, release, convey and quitclaim rights of PSE under this Easement with respect to areas within eight hundred feet of the right of way margin of 216th Avenue NE that are not within the Gate Station Easement Area as so described.

1.3 Additional Easements for Stations and Regulators. Up to five (5) additional, nonexclusive easements, the location of which shall be hereafter specified by PSE with the City's consent, not to be unreasonably conditioned, withheld, or delayed (each, a "Lateral Easement Area"), with the right, privilege, and authority in each such Lateral Easement Area to install, construct, erect, alter, repair, operate and maintain pressurized natural gas pipelines not greater than twenty inches in diameter to transfer natural gas to and from adjacent future gate stations, limit stations or district regulators located outside of the Tolt Right-of-Way, as set forth in, Section 2.3 below. Such Lateral Easement Areas shall be no greater than forty (40) feet in width. Once a Lateral Easement Area has been established, the City and PSE shall execute an amendment to this easement with a precise legal description of such Lateral Easement Area.

1.4 Temporary Construction Easement. A nonexclusive, temporary easement upon the Tolt Right-of-Way (the "Construction Easement Area") for the purposes and to expire as set out in Section 2.4.

1.5 Access. The easements granted in Sections 1.1, 1.2, 1.3, and 1.4 include the right to reasonable access to the Pipeline Easement Area, the Gate Station Easement Area, the Lateral Easement Areas, and the Temporary Construction Easement Area from and over the Tolt Right-of-Way as set out in Section 5.



The City, its successors and assigns, shall have the right to use the Pipeline Easement Area, the Gate Station Easement Area, the Lateral Easement Areas, and the Temporary Construction Easement Area (collectively referred to hereinafter as the "Easement Areas") in any way and for any legal purpose not inconsistent with the rights herein granted to PSE and the terms and conditions of this Agreement.

Section 2. Purposes of the Easement. Subject to the terms and conditions of this Agreement, PSE shall have the right to use the Easement Areas for the following purposes (collectively, the "Easement Rights"):

2.1 Pipeline Easement Area. The surveying, construction, reconstruction, installation (including without limitation directional drilling), alteration, operation, maintenance, repair, protection, and removal or abandonment-in-place of a pressurized natural gas pipeline no greater than twenty inches in diameter, and such additional pipelines as may be necessary to facilitate deliveries to and from the Williams Gate Station, in accordance with the engineering plans and drawings approved by and on file with the City, whose approval shall not be unreasonably withheld, conditioned or delayed.

2.2 Gate Station Easement Area. PSE may use the Gate Station Easement Area for purpose of receiving delivery of natural gas from the Williams pipeline located adjacent to 216th Avenue NE. For purposes of receiving such deliveries, PSE may construct, install, operate, and maintain such additional pipelines, facilities, and equipment within the Gate Station Easement Area as may be necessary to access the Williams Gate Station located outside the Tolt Right-of-Way. In the event PSE intends to use the Gate Station Easement Area for receiving delivery of natural gas from the Williams pipeline, PSE shall provide the City with written notice of such intent and, prior to installing any additional pipelines, facilities, or equipment within the Gate Station Easement Area, obtain the approval of the location of such pipelines, facilities, or equipment from the City, whose approval shall not be unreasonably withheld, conditioned or delayed. PSE acknowledges that the City's preference for a potential Gate Station location is south of the Tolt Right-of-Way and adjacent to or west of 216th Avenue NE, rather than north of the Tolt Right-of-Way or east of 216th Avenue NE. However, provided that PSE demonstrates reasonable consideration of such order of preference, and appropriate engineering protection of any water supply line under-crossing, PSE may select a location of such facilities that will cross under or otherwise be located within twenty-five feet of the City's water supply pipeline. Upon completion of the installation of such additional pipelines within the Gate Station Easement Area, PSE shall prepare, record, and provide the City with a copy of as-built surveys confirming the location of the pipelines, and PSE shall simultaneously convey and quitclaim to the City any interest of PSE in or to that portion of the Tolt Right-of-Way east of 216th Avenue SE that is more than 40 feet measured laterally (as shown on such survey) from any of such pipelines or related facilities of PSE installed easterly of 216th Avenue .

2.3 Future Station and Regulator Connections. In the event PSE desires, in the future, to connect the natural gas pipeline to limiting stations, gate stations, or district regulators located outside the Tolt Right-of-Way, PSE shall give the City notice of the proposed location and width of the Lateral Easement Area for such connecting facilities and equipment, together with preliminary plans and specifications



for such connecting facilities and equipment. Thereafter, PSE shall also provide additional information related to such connecting facilities and equipment as the City may reasonably request within thirty (30) days of receipt of PSE's initial information to assist with the City's review of PSE's proposal. Following the City's receipt of such information, the City shall have thirty (30) days to review and approve (or condition approval upon modifications to) the location of the applicable Lateral Easement Area, which approval shall not be unreasonably conditioned, withheld, or delayed. The width of each such Lateral Easement Area shall be determined as follows: (i) for any proposed single lateral connecting pipeline, twenty (20) feet wide, and (ii) with respect to proposed lateral connections requiring two (2) pipelines running parallel to each other that are within (20) feet of one another, twenty (20) feet plus the proposed distance between the two connecting pipelines. Upon completion of the installation of such additional pipelines, PSE shall prepare, record, and provide the City with a copy of as-built surveys confirming the location of the pipelines.

2.4 Temporary Construction Easement Area. Activities required for or reasonably related to the initial construction and installation of the natural gas pipelines. The Temporary Construction Easement Area is located to allow PSE flexibility during its initial construction and installation of the pipelines within the Pipeline Easement Area. The Temporary Construction Easement allows PSE to make reasonable use of areas outside of the Pipeline Easement Area, Gate Station Easement Area, and Lateral Easement Areas, for example when necessary for the temporary staging of equipment and materials or when conditions require directional drilling. In no case, however, may PSE access or conduct any activities within twenty-five feet of the City's water supply pipeline without first obtaining the prior written approval of the Director of Seattle Public Utilities, whose approval shall not be unreasonably withheld, conditioned, or delayed. It shall not be unreasonable for the City to withhold or condition approval for water pipeline protection and safety.

PSE's rights under this Agreement to use the Temporary Construction Easement Area will expire upon the later of the completion of PSE's initial construction of the last of the pipelines, the approval of the construction by the independent inspector pursuant to Section 3.4.1., and the satisfaction of any monitoring or mitigation requirements of permits or approvals for such pipelines. However, no expiration of the Temporary Construction Easement Area, or PSE's rights under this Agreement to use the Temporary Construction Easement Area, shall be deemed to have occurred solely by reason of PSE's failure to initially install its pipelines within any period of time from the date hereof.

Section 3. Conditions and Limitations on Use. Except in the exercise of the Easement Rights, described in Section 2 above, PSE shall have no right under this Easement to enter upon the Easement Areas or make any other use thereof. Without limiting the generality of the foregoing, PSE shall at all times exercise its Easement Rights in compliance with the following conditions and limitations.

3.1 PSE shall act in a manner so as to prevent bodily harm to persons (whomsoever), damage to property (whatsoever), or unreasonable interference with the use and enjoyment of other persons' property. Precautionary measures shall include, without limitation, reasonable security measures necessary to prevent access to the Easement Areas during such times as the exercise of Easement Rights may cause the



Easement Areas to be in an unsafe condition and to protect the City's water supply pipeline and related facilities from damage or interference.

3.2 The City has historically used, and anticipates increased use of, the Tolt Right-of-Way in connection with the conveyance and delivery of water from one of the City's primary sources of supply on the Tolt River to serve the residences and businesses within the City and surrounding areas. PSE shall at all times exercise Easement Rights in a manner that will not disturb, interfere with, or otherwise impair the safe, continuous, and reliable operation of the City's water supply facilities and equipment or obstruct access to such facilities and equipment.

3.3 Compliance with Laws and Standards.

3.3.1 PSE shall at all times meet accepted industry standards and comply with all applicable laws of any governmental entity with jurisdiction over the PSE pipeline and its operation. This shall include all applicable laws, rules, and regulations existing at the effective date of this Agreement or that may be subsequently enacted by any governmental entity with jurisdiction over PSE, its pipeline and related facilities. In the case of any conflict between the terms of this Agreement and the terms of the City's ordinances, codes, regulations, standards and procedures, this Agreement shall govern.

3.3.2 All pipeline construction, maintenance, and operations undertaken by PSE, at PSE's direction or on PSE's behalf shall be completed in a workmanlike manner.

3.4 Construction and Maintenance.

3.4.1 Prior to the initial construction and installation of the pipeline system, PSE shall contract with an independent inspector who will have authority to stop PSE's construction activity within the Easement Areas pursuant to this Section 3.4.1. The inspector shall not be an employee of PSE, the City, or PSE's construction contractor. The individual contracted to perform the function of the inspector shall be selected by PSE, subject to approval by the City (not to be unreasonably conditioned, withheld, or delayed), and shall have appropriate experience and training in monitoring compliance and familiarity with applicable laws and regulations. The inspector shall monitor PSE construction activities within the Easement Areas and have the authority to stop any construction activities that the inspector reasonably believes are or could potentially be in violation of applicable federal, state, and local laws and regulations. The inspector shall monitor the construction activities to ensure construction and installation work is consistent with the plans and specifications. The inspector shall report any concerns or actions to be taken to correct any concerns to PSE and to the City. PSE shall immediately initiate the inspector's reasonable corrective actions, including stop work orders. In the event a stop work order is issued to PSE, work (other than remediation work) at the specific site in question shall not be restarted without prior approval by the inspector in consultation with the City. In the event of any failure on the part of PSE or its contractor to comply with the provisions of this subsection, the City may seek immediate injunctive relief without regard to the alternative dispute resolution provision of this Agreement.



3.4.2 Except in the case of an emergency, prior to commencing any substantial construction or maintenance activities in the Easement Areas, PSE shall first notify the City and provide such detailed plans, specifications and profiles of the intended work as the City may require. The City may require such additional information, plans, or specifications and may impose such reasonable conditions as are in the City's opinion necessary to protect the City's water supply facilities and equipment or the public's health and safety, or the environment during PSE's performance of such substantial construction or maintenance activities. For purposes of this subsection, the term "substantial construction or maintenance activities" means a construction or maintenance activity or series of related activities lasting more than two consecutive days or involving excavation or other surface disturbance activities requiring the temporary shutdown of the pipeline.

3.4.3 All construction and maintenance activities shall be performed in conformity with the maps and specifications filed with the City, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by PSE.

3.4.4 All pipe and other components of any facilities used in construction or maintenance activities within the Easement Areas shall comply with applicable federal regulations, as from time to time may be amended.

3.4.5 Substantial construction and maintenance activities shall only commence after the issuance of all applicable governmental permits or other required authorizations. However, in the event of an emergency requiring immediate action by PSE for the protection of its pipeline or facilities, the City's property or facilities, or other persons or property, PSE may proceed without first obtaining the normally required permits. In such event PSE must (1) take all necessary and prudent steps to protect, support, and keep safe from harm its pipeline and facilities, the City's property and facilities, and other persons or property, and the public health, safety, and the environment; and (2) as soon as possible thereafter, obtain the required permits and comply with any legally imposed mitigation requirements or other conditions in the after-the-fact permit.

3.4.6 Upon completion of construction or maintenance activities within the Easement Areas, PSE shall, without delay and at its sole expense, remove all debris and restore the surface as nearly as possible to as good or better condition as it was in before such activities began. PSE shall replace any property corner monuments, survey references or hubs that were disturbed or destroyed during PSE's performance of work in the exercise of its Easement Rights.

3.4.7 PSE shall continuously maintain its membership in the State of Washington's One Number Locator service under RCW 19.122, or an approved equivalent, and shall comply with all such applicable rules and regulations.

3.4.8 PSE shall provide reasonable notice to the City and to adjacent property owners prior to PSE's exercise of Easement Rights that may interfere with adjacent property owners' use and enjoyment of their property and shall exercise its Easement Rights in a manner that minimizes interference with adjacent property owners' use and enjoyment of their property.



3.4.9 PSE shall place markers demarcating the pipeline's location on the surface at least every 500 yards or points of inflection, or as may otherwise be required by WAC 480-93-124, to provide warning of the presence of the pipeline but in a manner that does not interfere with the City's access to or reasonable use of the Easement Areas. Additionally, PSE shall replace markers for the pipeline's location each time PSE digs to the pipeline for any reason.

3.4.10 PSE shall file with the City a survey or surveys depicting the location of the pipeline within the Pipeline Easement Area and shall provide the City with any revisions or amendments to the survey or surveys, as they may be developed, so that the City may maintain an accurate account of the pipeline's location within the Pipeline Easement Area.

3.4.11 PSE shall also provide detailed as-built design drawings showing the size, depth and location of all its pipes, valves, gauges, other service appurtenances and related equipment within the Pipeline Easement Area.

3.4.12 Within thirty (30) days of the completion of any substantial construction or maintenance activity within the Easement Areas, or as soon thereafter as is reasonably practicable, PSE shall provide the City updated and corrected as-built drawings and a survey showing the location, depth and other characteristics of the pipeline and related facilities within the Pipeline Easement Area.

3.4.13 Nothing in this Agreement shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of PSE's plans and designs or to ascertain whether PSE's proposed or actual construction, testing, maintenance, repairs, replacement or removal is adequate or sufficient or in conformance with the plans and specifications reviewed by the City.

3.4.14 PSE shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the Easement Areas, including safety of all persons and property during the performance of any work.

3.5 Operations, Maintenance, Inspection, and Testing.

PSE shall operate, maintain, inspect and test its pipeline, facilities, and related equipment in full compliance with the applicable provisions of all federal, state and local laws, regulations and standards, as now enacted or hereafter amended, and any other laws or regulations that may become applicable to PSE's pipeline, facilities, equipment, products, and business operations. This provision is not intended to require PSE to replace or retro-fit existing equipment or facilities, unless newly applicable regulations expressly require replacement or retro-fitting of existing equipment or facilities.

3.6 Encroachment Management.

3.6.1 No later than ninety (90) days before operating its natural gas pipeline, and periodically thereafter, PSE shall provide the City a written Encroachment Management Plan ("EMP") that demonstrates how PSE's pipeline, facilities, related equipment, and Easement Rights are to be protected against possible encroachment. This EMP shall, at a minimum, address the following subjects: (1) education and one-call involvement, as defined in Federal Regulations; and (2) an



encroachment management process demonstrating (a) PSE's process for monitoring activity in or near the Pipeline Easement Area, (b) PSE's field verification of the location of its pipeline and facilities within the Pipeline Easement Area, (c) PSE's encroachment tracking system, (d) PSE's review and coordination process for critical encroachments, and (e) control center notification of existing or active encroachments.

3.6.2 Upon notification to PSE of planned construction by another within ten (10) feet of the Pipeline Easement Area, PSE shall mark the precise location of its pipeline and facilities before the construction commences, provide a representative to inspect the construction when it commences, and periodically inspect thereafter to ensure that PSE's pipeline and facilities are not damaged by the construction.

3.7 Leaks, Ruptures, and Emergency Response Planning.

3.7.1 PSE shall have in place, at all times during the term of this Agreement, a system for remotely monitoring pipeline pressures across the Pipeline Easement Area.

3.7.2 During the term of this Agreement, PSE shall have a written emergency response plan and procedure for locating and responding to leaks and ruptures.

3.7.3 Upon entering this Agreement, PSE shall provide the City for its review and approval, a copy of PSE's emergency response plan and procedures, including, but not limited to, emergency rupture response. If the parties disagree as to the adequacy of PSE's emergency response plan, the parties will submit the plan to independent, third party review. If the review recommends that PSE make modifications or additions to the emergency response plan, PSE will consider the recommendations in good faith and provide the City with a written explanation in the event PSE does not agree to implement the recommendations. If the City and PSE fail to agree upon appropriate modifications or additions to the emergency response plan, then the issues shall be resolved through the Dispute Resolution provisions of Section 9.

3.7.4 PSE's emergency plans and procedures shall designate PSE's responsible local emergency response officials and a direct 24-hour emergency contact number for the control center operator. PSE shall, after being notified of an emergency, respond as soon as possible to protect the public's health and safety, and the environment, and cooperate with the City to protect the City's water supply facilities and equipment.

3.7.5 The parties agree to meet upon request to review the emergency plans and procedures.

3.7.6 PSE shall be solely responsible for all necessary costs incurred in responding to any leak, rupture, or other release from PSE's pipeline, facilities, or related equipment, including without limitation the detection and removal of any contaminants from air, earth or water, and all remediation costs; provided, however, that PSE reserves the right to seek contribution and recover such costs from other responsible parties.

3.7.7 If requested by the City in writing, PSE shall provide the City with a written summary concerning any leak or rupture within thirty (30) days of the event, which shall include at a minimum the leak or rupture's date, time, amount,



location, response, remediation and other entities PSE notified concerning the leak or rupture.

3.7.8 The City may ask an independent pipeline consultant to investigate any substantial leak or rupture. If the consultant recommends modifications or additions to PSE's emergency response plans or procedures, PSE will consider the recommendations in good faith and provide the City with a written explanation in the event PSE does not agree to implement the recommendations. If the City and PSE fail to agree upon appropriate modifications or additions to PSE's emergency response plans or procedures, then the issues shall be resolved through the Dispute Resolution provisions of Section 9.

3.8 Removal and Abandonment in Place.

3.8.1 In the event PSE's rights under this Agreement terminate pursuant to Section 8.2, PSE shall, within one hundred and eighty days (180) after such termination, either remove the pipeline, facilities, or equipment, or after removing its facilities and equipment, abandon the pipeline in place, as provided below.

3.8.2 Following the removal of all or a portion of its pipeline, facilities, or equipment, or any portion thereof, from the Easement Areas, PSE shall restore the Easement Areas to as good or better condition as they were in before the work began.

3.8.3 Removal and restoration work shall be done at PSE's sole cost and expense. PSE shall be responsible for any environmental review required for the removal its pipeline, facilities, or equipment, or any portion thereof, and the payment of any costs of the environmental review.

3.8.4 If PSE is required to remove its pipeline, facilities, or equipment, or any portion thereof, from the Easement Areas, and fails to do so or fails to adequately restore the Easement Areas, the City may, after reasonable notice to PSE, remove the pipeline, facilities, or equipment, or any portion thereof, from the Easement Areas, and restore the premises at PSE's expense. This remedy shall not be deemed to be exclusive and shall not prevent the City from seeking a judicial order directing PSE to remove its pipeline, facilities, or equipment and restore the Easement Areas.

3.8.5 In the event PSE decides to abandon its pipeline in place, PSE must purge its pipeline, facilities, and equipment, in accordance with all applicable regulatory requirements. PSE shall be responsible for any environmental review required for the abandonment of its pipeline, or any portion thereof, and the payment of any costs of such environmental review. PSE's abandonment of its pipeline, or any portion thereof, within the Easement Areas, shall not relieve PSE of any liability that may arise as a result of the continued presence of the pipeline within the Pipeline Easement Area.

3.8.6 The City and PSE expressly agree that paragraph 3.8.5 shall survive the expiration, revocation or termination of this Agreement.

Section 4. Reserved Rights. All rights other than those specifically granted to PSE in this Agreement are reserved to the City. PSE acknowledges that, subject to the limitations set forth in Section 5, and to the extent not inconsistent with the rights granted



to PSE in this Agreement, the City may use the Easement Areas for utility purposes or for any other purpose.

Section 5. Cooperative Utility Conduct.

5.1 The City shall not install structures or paved roads, place trees, shrubbery, rockery, or fences, perform any excavation, or store any heavy equipment or materials upon the Pipeline Easement Area, or permit any third party to perform any of the foregoing activities, without the prior written consent of PSE, which shall not be unreasonably withheld, conditioned, or delayed. PSE may reasonably withhold its consent if any of the foregoing activities is inconsistent with prudent utility practice or PSE's Easement Rights or otherwise poses a risk to the proper functionality of PSE's facilities located within the Pipeline Easement Area.

5.2 Based on as-built plans pertaining to the natural gas pipeline, the City shall allow PSE to review and approve, which approval shall not be unreasonably withheld, conditioned, or delayed, any plans to excavate within twenty (20) feet of the centerline of the natural gas pipeline or to change the grade, by either cut or fill, within twenty (20) feet of the natural gas pipeline. If the City lowers grade to less than three (3) feet cover, the City will provide a structural cover to protect the natural gas pipeline and appurtenances thereto, which cover shall be subject to PSE's advance approval, not to be unreasonably withheld, conditioned or delayed.

5.3 Neither the City nor PSE shall permit any blasting or discharge of other explosives within three hundred (300) feet of any of the other party's facilities without the express written approval of the other party.

5.4 Vehicular equipment and machinery, wheeled or tracked, exceeding a gross weight of 32,000 pounds per axle (HS 20-44) are prohibited within the Pipeline Easement Area; provided that, if loads exceeding such standards are required for the operation or maintenance of the City's facilities, PSE will within ten (10) working days of written notice from the City, or in the event of an emergency, such shorter period of time as is reasonably necessary under the circumstances, take steps as may be required to protect the natural gas pipeline and allow the City to transport such loads, at no cost to the City.

5.5 During construction activities, PSE shall have the right to temporarily close access roads within any portion of the Easement Areas as reasonably necessary to allow PSE to undertake its construction activities.

5.6 PSE shall have access to the Easement Areas twenty-four (24) hours per day, seven (7) days per week. Prior to accessing the Easement Areas for operation, maintenance, or repair activities, PSE shall provide the City prior written notice of the planned activities. Notwithstanding the foregoing, PSE shall not be required to provide advance notice of access to the City in the event of emergencies, but PSE shall endeavor to provide the City with notice of the access as soon as reasonably possible. Unless the parties otherwise agree, for purposes of securing and gaining access to the Tolt Right-of-Way, PSE shall provide the City with locks that the City will install on its gates, and PSE shall be responsible for maintaining its own set of keys to the locks it provides the City.



5.7 Operations Planning. While failure to do so shall not be a breach of this Agreement, the parties shall endeavor to meet periodically to confer regarding ongoing and planned activities that may affect either parties' interests in the Tolt Right-of-Way.

Section 6. Nonexclusivity.

6.1 Subject to Section 5, PSE's rights under this Agreement are nonexclusive, and the City may grant rights to others to use the Easement Areas for any purpose not inconsistent with PSE's rights hereunder, subject to the provisions of Section 6.2.

6.2 Pursuant to the grant of rights to others under this Section, the City shall provide PSE copies of the plans or the proposals for such proposed rights. PSE shall have thirty (30) days in which to submit any comments on such plans or proposals after receipt of the same; however, PSE shall make every effort to expedite its submission of comments to accommodate the City's (or grantee's) schedule. The City shall respond to PSE's comments prior to granting such rights. If necessary, in an emergency situation, PSE shall waive the condition that it receive written responses prior to the City's granting such rights. PSE's right to comment and require responses to such comments shall not be construed as granting PSE any right to condition or prevent the grant of such right; except that, to ensure the protection of the gas pipeline to the reasonable satisfaction of PSE, the City shall not grant permission to third parties for other public or private utilities to use or cross the Pipeline Easement Area without PSE's approval. Approval will not be unreasonably withheld, conditioned or delayed.

Section 7. Assignments and Delegation. This Agreement and the rights granted hererunder are personal to PSE and may not be assigned without the City's prior written consent, which shall not be unreasonably conditioned, withheld, or delayed, and any assignment of PSE's rights or interests in and under this Agreement without the City's prior consent shall be null, void, and without effect; provided, however, that PSE may without the City's consent (i) assign its rights hereunder to any corporate successor or assign (whether by merger, consolidation, acquisition of substantially all of PSE's assets, reorganization, or otherwise) or to any other corporation, limited liability company or other legally constituted entity, one of whose primary responsibilities is the transportation or distribution of natural gas to or for the benefit of the public, and (ii) transfer, pledge, encumber, or assign its rights in connection with any financing or other financial arrangement. Notwithstanding the foregoing, the City acknowledges that PSE may apportion its right to install additional pipelines for purposes of facilitating deliveries to and from the Williams Gate Station, as provided under Subsection 2.2 above, to Williams, provided that PSE will remain primarily liable to the City for Williams' exercise of its rights under this Agreement and provided further that Williams executes an acceptance of apportionment acknowledging that Williams will be subject to and comply with the terms of this Agreement applicable to the assigned rights.

Section 8. Violations, Remedies, and Termination.

8.1 Because this Agreement authorizes important public service infrastructure, the City may not terminate or rescind this Agreement even if its terms or conditions are breached. However, if PSE materially breaches or otherwise fails to



perform, comply with or otherwise observe any of the terms and conditions of this Agreement, or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within sixty (60) calendar days of the City's providing PSE written notice thereof, or, if not reasonably capable of being cured within sixty (60) calendar days, within such other reasonable period of time as the City may determine, the City shall have all other rights and remedies available under this Agreement and at law or in equity, including without limitation damages and specific performance. The remedies provided for in this Agreement are cumulative and not exclusive; the City's exercise of one authorized remedy shall not prevent the simultaneous or later exercise of another.

8.2 All PSE's rights hereunder shall terminate and revert to the City upon PSE's abandonment of the natural gas pipeline. PSE shall be presumed to have abandoned the natural gas pipeline if PSE ceases to use the natural gas pipeline for a period of sixty (60) successive months for the purposes specified in Section 2, unless PSE before the expiration of the 60-month period provides the City with written notice that PSE has deactivated the pipeline for a specific purpose and intends to reactivate the pipeline within twelve (12) months provided, however, that no abandonment shall be deemed to have occurred solely by reason of PSE's failure to initially install its natural gas pipeline, or any portion thereof, within or otherwise use the Easement Areas as permitted by this Agreement within any period of time from the date hereof.

8.3 Termination of this Agreement shall not release the City or PSE from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release PSE from any obligation to remove or abandon-in-place the pipeline and to restore the Easement Areas in accordance with the terms of this Agreement.

8.4 The City and PSE acknowledge that the covenants set forth herein are essential to this Agreement, and, but for the mutual agreements of the City and PSE to comply with such covenants, the City and PSE would not have entered into this Agreement. The City and PSE further acknowledge that they may not have an adequate remedy at law if the other party violates such covenant. Therefore, the City and PSE shall have the right, in addition to any other rights they may have, to obtain in any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach or otherwise to specifically enforce any of the covenants contained herein should the other party fail to perform them.

Section 9. Dispute Resolution.

9.1 In the event of a dispute between the City and PSE arising by reason of this Agreement, the dispute shall first be referred to the operational officers or representatives designated by the City and PSE to have oversight over the administration of this Agreement. The officers or representatives shall meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute.

9.2 If the parties are unable to resolve the dispute under the procedure set forth in this section, the parties hereby agree that the matter shall be referred to



mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. If the parties are unable to agree upon a mediator, the parties shall jointly obtain a list of seven (7) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a party fails to notify the other party of which mediator it has stricken within two (2) business days, the other party shall have the option of selecting the mediator from those mediators remaining on the list. Any expenses incidental to mediation shall be borne equally by the parties.

9.3 If the parties fail to achieve a resolution of the dispute through mediation, either party may then pursue any available judicial remedies or, if the Washington Utilities and Transportation Commission (the "WUTC") has primary jurisdiction over the subject matter of the dispute, the WUTC, provided that if the party seeking judicial redress does not substantially prevail in the WUTC or judicial action, it shall pay the other party's reasonable legal fees and costs incurred in the judicial action.

Section 10. Indemnification. PSE shall indemnify, defend and hold harmless the City from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by the City in defense thereof, to the extent arising out of or related to, directly or indirectly, the negligence or other fault on the part of PSE, its agents, contractors, servants, employees, representatives, licensees, invitees or visitors in PSE's use of the Easement Areas or the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of PSE's pipeline, facilities, or equipment, or any portion thereof, or from the existence of PSE's pipeline, facilities, or equipment, or any portion thereof, and the products contained in, transferred through, released or escaped from its pipeline, facilities, or equipment, or any portion thereof, including the reasonable costs of assessing such damages and any liability for costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; provided however, nothing herein shall require PSE to so indemnify and hold harmless the City to the extent of the negligence or other fault on the part of the City, its elected officials, directors, officers, agents, contractors, servants, employees, representatives, licensees, invitees or visitors or third parties. The City shall reimburse PSE for costs and expenses, including attorney's fees, that PSE incurs in defending any suit or action pursuant to this Section, to the extent the City, its elected officials, directors, officers, agents, servants, employees, representatives, licensees, invitees or visitors are adjudged negligent in a final, nonappealable judgment entered by a competent legal body. If any action or proceeding is brought against the City by reason of PSE's pipeline, facilities, or equipment, or any portion thereof, PSE shall defend the City at PSE's complete expense, provided that, for uninsured actions or proceedings, defense attorneys shall be approved by the City, which approval shall not be unreasonably conditioned, withheld, or delayed. As between the parties and for the purposes only of the foregoing obligations, the City and PSE waive any immunity, defense, or other protection that may be afforded by any workers' compensation, industrial insurance, or similar laws (including, but not limited to, RCW Title 51). This Section has been mutually negotiated by the parties.

CITY INITIALS _____

PSE INITIALS _____



Section 11. Insurance Requirements.

11.1 Throughout the course of this Agreement, PSE shall maintain, at its own cost, general liability insurance and/or self-insurance (“Insurance”) with policy limits of coverage in an amount not less than Ten Million Dollars (\$10,000,000). Such Insurance shall (i) include “the City of Seattle” as an additional insured for primary and non-contributory limits of liability for the total limits of liability available to PSE and its parent, whether such limits are primary, excess, contingent or otherwise, and (ii) shall cover PSE’s contractual liability, damage, claims and loss arising out of PSE’s operations under this Agreement including, but not limited to, defense costs and pollution liability that, at a minimum, covers liability from sudden and accidental occurrences. Prior to or concurrent with the execution of this Agreement, PSE shall provide, or shall cause to be provided, certification of such Insurance acceptable to the City stating the scope of coverage; such certification shall include at least a thirty (30) day prior written notice of cancellation, except at least ten (10) days prior written notice with respect to cancellation for non-payment of premium. Certification of Insurance shall be delivered electronically to the City by facsimile transmission to (206) 470-1279 or as an Adobe PDF attachment to an email to riskmanagement@seattle.gov.

11.2 The insurance provisions contained herein shall survive the termination of this Agreement and shall continue for as long as PSE's pipeline, facilities, or equipment, or any portion thereof, remain in or on the Easement Areas or until the parties execute a new Agreement which modifies or terminates these insurance provisions.

Section 12. Public Outreach.

12.1 Prior to initial construction within the Easement Areas, PSE shall prepare and implement a Public Outreach Plan that will include, at a minimum, the following elements:

(i) A schedule for the PSE’s community relations managers to meet with representatives of King County and the City of Woodinville no later than six months prior to the initiation of construction activities within their jurisdictional limits;

(ii) A schedule for open-house community meetings to occur no later than four months prior to the initiation of construction activities

(iii) The development of a mailing list of adjacent property owners and other interested community groups and associations; and

(iv) The issuance of notification letters to adjacent property owners and other interested community groups and associations advising them of the schedule for and the nature of planned construction activities and providing a local telephone number for more information.



12.2 PSE shall submit its Public Outreach Plan to the City for its review and comment no later than thirty (30) days prior to PSE's filing of its clearing and grading permit application with King County.

Section 13. Legal Relations.

13.1 Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency relationship, or joint venture or to impose a trust, partnership, or agency duty, obligation or liability on or with regard to any party. Each party shall be individually and severally liable for its own duties, obligations, and liabilities under this Agreement.

13.2 PSE accepts any privileges granted by the City to the Easement Areas in an "as is" condition. PSE agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of PSE's location of its pipeline, facilities, and equipment, or any portion thereof, within the Easement Areas or possible hazards or dangers arising from other uses of the City's Tolt Right-of-Way by the City or the general public. PSE shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of its pipeline, facilities, and equipment, or other related activities permitted under this Agreement.

13.3 This Agreement is not intended to acknowledge, create, imply or expand any duty or liability of the City with respect to any function in the exercise of its police power or for any other purpose.

13.4 This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington and the parties agree that in any action, except actions based on federal questions, venue shall lie exclusively in King County, Washington.

Section 14. Miscellaneous.

14.1 In the event that a court or agency of competent jurisdiction declares a material provision of this Agreement to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to such amendments or modifications as are appropriate to give effect to the intentions of the parties as reflected herein. If severance from this Agreement of the particular provisions determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Agreement, either party may apply to a court of competent jurisdiction to reform or reconstitute the Agreement to recapture the original intent of said particular provisions. All other provisions of the Agreement shall remain in effect at all times during which negotiations or a judicial action remains pending.

14.2 Whenever this Agreement sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of this Agreement.

14.3 In the event that PSE is prevented or delayed in the performance of any of its obligations under this Agreement by reasons beyond the reasonable control of PSE, then PSE's performance shall be excused during the Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence, PSE shall promptly



perform the affected obligations in an orderly and expedited manner or procure a substitute for such obligation or performance that is satisfactory to the City. PSE shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

14.4 The Section headings in this Agreement are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the Section to which they pertain.

14.5 By entering into this Agreement, the parties expressly do not intend to create any obligation or liability, or promise any performance to, any third party, nor have the parties created for any third party any right to enforce this Agreement.

14.6 This Agreement shall be binding upon and inure to the benefit of the respective successors and assignees of the parties.

14.7 Whenever this Agreement calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient at the address set forth in this Subsection, unless written notice of change of address is provided to the other party. If the date for making any payment or performing any act is a legal holiday, payment may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be directed to the parties as follows:

To the City: Seattle Public Utilities
Real Property, Claims and Facilities Services
P.O. Box 34018
Seattle, Washington 98124

To PSE: Puget Sound Energy, Inc.
Corporate Facilities Department,
The PSE Building
10885 NE 4th Street
10th Floor
Bellevue, Washington 98004

14.8 The parties each represent and warrant that they have full authority to enter into and to perform this Agreement, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Agreement, except such as may be routinely required and obtained in the ordinary course of business.

14.9 This Agreement and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. This Agreement can be amended, supplemented, modified or changed only by an agreement in writing which



makes specific reference to this Agreement or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.

14.10 There are no third party beneficiaries to the Agreement.

14.11 Exhibits A and B, attached hereto, are made a part of this Agreement by this reference.

EXECUTED as of the date first written above.

THE CITY OF SEATTLE

By: _____
Its: Director of Seattle Public Utilities

Date: _____

PUGET SOUND ENERGY, INC.

By: _____
Its: Director Corporate Facilities

Date: _____

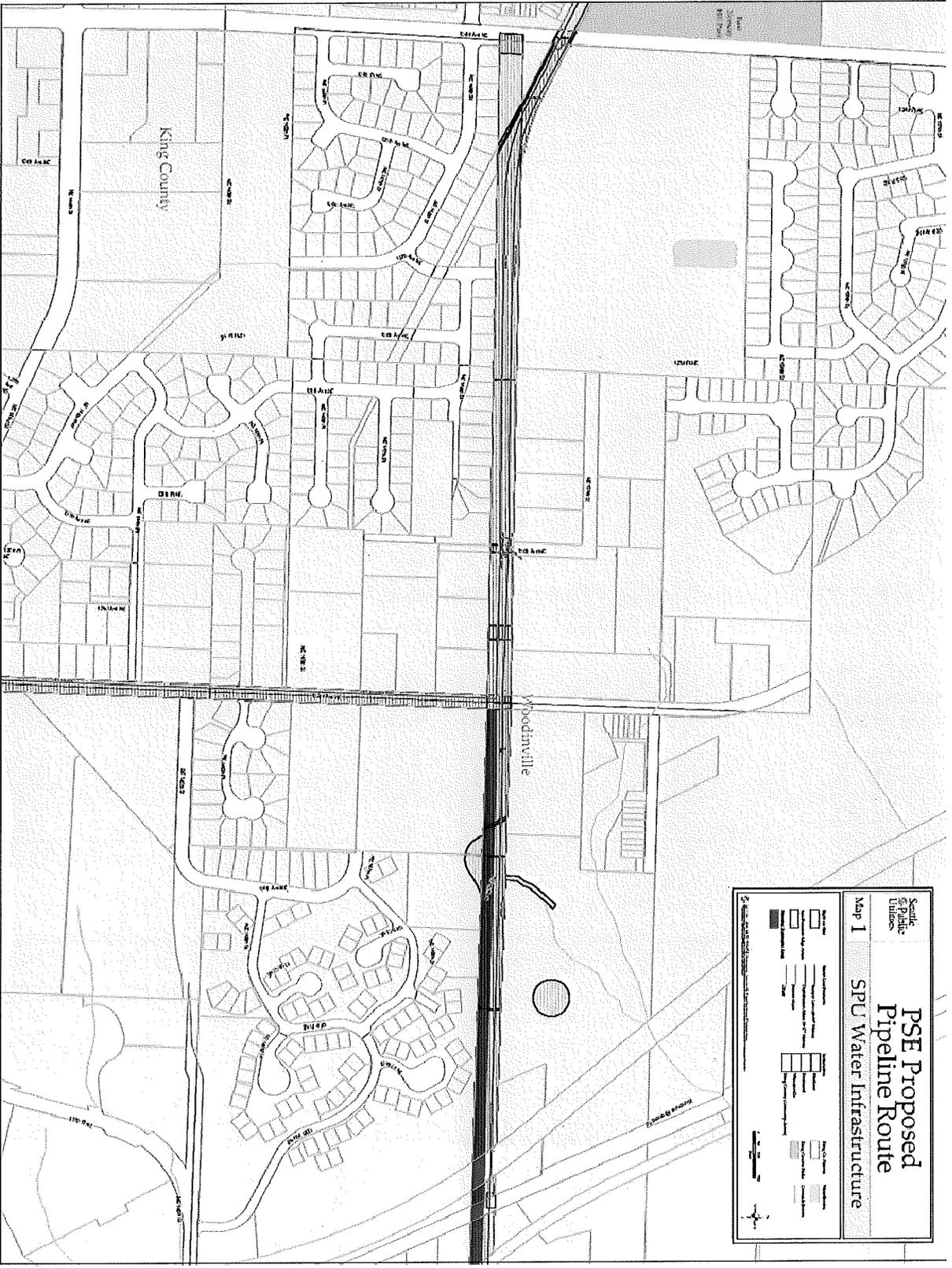


EXHIBIT A
Tolt Right-of-Way



EXHIBIT B
Tolt Right-of-Way with
Potential Locations for the Pipeline Easement Area





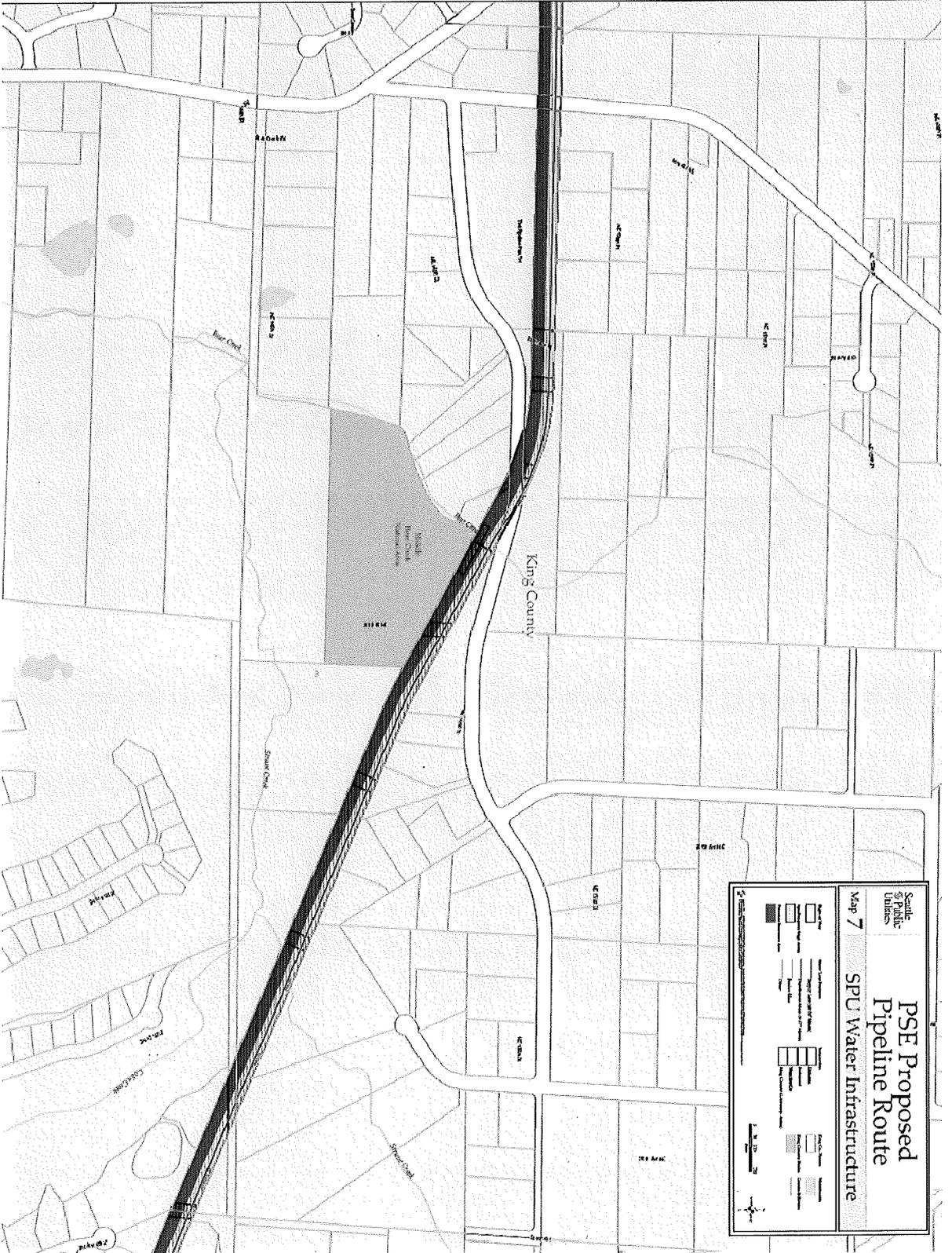
SPU-PSE Tolt Easement ORD Attachment 1



SPU-PSE Tolt Easement ORD Attachment 1



SPU-PSE Tolt Easement ORD Attachment 1



SPU-PSE Tolt Easement ORD Attachment 1

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Public Utilities	Keith Kurko 3-1516	John McCoy 615-0768

Legislation Title: AN ORDINANCE relating to the City's water system; declaring as surplus certain property rights in Seattle Public Utilities' Tolt Pipeline right of way; and authorizing the Director of Seattle Public Utilities ("SPU") to execute and convey an easement for such surplus property rights to Puget Sound Energy, Inc. ("PSE") for purposes of installing a natural gas pipeline in a portion of the Tolt Pipeline right of way.

• **Summary of the Legislation:**

The legislation would authorize the director of Seattle Public Utilities to enter into an easement agreement with Puget Sound Energy (PSE) allowing PSE to construct a new natural gas pipeline in the City's Tolt Pipeline right of way.

• **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

Puget Sound Energy is the state's largest energy utility, with a service area across 11 counties. The private utility has approximately one million electricity customers and about 740,000 natural gas customers. PSE is proposing to construct a six-mile, 16-inch high pressure natural gas pipeline to accommodate projected growth in customer demand in northeast King County. Approximately 5.5 miles of the new pipeline would be in City's Tolt Pipeline right of way.

The proposed PSE pipeline would begin east of Woodinville at 216th Ave NE and connect with a recently installed 12-inch section of pipeline near 132nd Ave NE in South Woodinville. The company would also install a new gate station on the east side of the project and a new limit station near the west side of the project. Gate stations and limit stations connect with long-distance pipelines and contain a complex of pressure reduction devices to reduce the pressure of gas so it can be safely distributed to retail customers.

PSE went through an extensive route selection process and considered a variety of potential alternatives. Among the criteria used to analyze these routes were safety, cost, constructability, environmental impacts, construction impacts and social impacts.

The easement agreement includes the following elements:

- **Pipeline Easement.** A nonexclusive, 20-foot-wide perpetual easement and authority to construct, repair, operate and maintain a pressurized natural gas pipeline, no greater than 20 inches in diameter. The pipeline could be located no closer than 25 feet from SPU's Tolt 1 Pipeline.
- **Gate Station Easement.** A nonexclusive, 40-foot-wide perpetual easement to be located within 800 feet of the right of way margin of 216th Avenue NE.



- **Additional Easements.** Up to five additional easements, the location of which to be determined later, to connect the natural gas pipeline to limiting stations, gate stations, or district regulators located outside the Tolt pipeline right of way in the event PSE determines a need in the future.
- **Temporary Construction Easement.** A temporary easement on the Tolt pipeline right of way to construct the gas pipeline.

The easement agreement contains a number of provisions to reduce risk to SPU's water utility assets. Puget is required to hire an independent inspector with stop-work authority (approved by the City) to monitor construction compliance with applicable laws, regulations, permits, plans and specifications. Additionally, PSE must operate, maintain, and frequently inspect and test its pipeline in compliance with applicable laws and regulations. The utility is also required to provide the City an Encroachment Management Plan to monitor and protect against potential encroachments as well as its emergency response plan and procedures. PSE's easement is perpetual unless it abandons the pipeline for 60 consecutive months. The pipeline is not considered abandoned if PSE does not initiate construction, or if PSE provides written notice to the City of pipeline 'deactivation' for 12 months or less. If pipeline is abandoned, the easement reverts to the City and PSE would be required to pay all abandonment costs.

In exchange for the rights listed above, PSE would pay SPU \$4.7 million.

- *Please check one of the following:*

This legislation does not have any financial implications. *(Stop here and delete the remainder of this document prior to saving and printing.)*

This legislation has financial implications. *(Please complete all relevant sections that follow.)*

Appropriations: *This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation, please provide details in the Notes section below.*

Fund Name and Number	Department	Budget Control Level*	2009 Appropriation	2010 Anticipated Appropriation
TOTAL				

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

Notes:

Anticipated Revenue/Reimbursement: Resulting From This Legislation: *This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.*



Fund Name and Number	Department	Revenue Source	2009 Revenue	2010 Revenue
Water Fund (43000)	Seattle Public Utilities	Easement sale	\$4,700,000	
TOTAL				

Notes: Sale of the easement for \$5 million is assumed in the 2009 and 2010 water rates.

Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact: *This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.*

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2009 Positions	2009 FTE	2010 Positions*	2010 FTE*
TOTAL							

* 2010 positions and FTE are total 2010 position changes resulting from this legislation, not incremental changes. Therefore, under 2010, please be sure to include any continuing positions from 2009.

Notes: No additional FTEs will be required.

- **Do positions sunset in the future?** (If yes, identify sunset date):

Spending/Cash Flow: *This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.*

Fund Name & #	Department	Budget Control Level*	2009 Expenditures	2010 Anticipated Expenditures
TOTAL				

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

Notes: N/A

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an



existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)

If this legislation is not enacted, SPU's Water Fund will not meet its financial policy targets in 2009. Based on current projections, the absence of this \$4.7 million in revenue would result in negative net income of \$4.7 million (target: positive), debt service coverage of about 1.5x (target: 1.7x), and cash-financed CIP of 10% (target 15%).

- **Does this legislation affect any departments besides the originating department?** *If so, please list the affected department(s), the nature of the impact (financial, operational, etc.), and indicate which staff members in the other department(s) are aware of this Bill.*

No.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

No alternatives were considered

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

Yes. A public hearing of the EEMU Committee is sufficient to meet the City's public hearing requirements for this legislation.

- **Other Issues** *(including long-term implications of the legislation):*
- **List attachments to the fiscal note below:** *(Please include headers with version numbers on all attachments, as well footers with the document's name (e.g., DOF Property Tax Fisc Att A)*





City of Seattle

Gregory J. Nickels, Mayor

Office of Mayor

August 25, 2009

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill authorizing the director of Seattle Public Utilities to enter into an agreement with Puget Sound Energy (PSE) allowing PSE to construct a natural gas pipeline in the City's Tolt pipeline right of way.

Beginning in 2007, Seattle Public Utilities (SPU) and PSE initiated discussions regarding PSE's desire to acquire an easement in the 25-mile Tolt Pipeline right of way. PSE needs to construct a new 16-inch natural gas pipeline to accommodate projected growth in customer demand, primarily in the northeast part of King County. Approximately 5.5 miles of the six mile pipeline would be in the Tolt right of way. The company conducted a thorough selection process that evaluated several routes and analyzed them based on a variety of criteria including safety, cost, environmental impacts and social impacts. The main virtue of the Tolt right of way alignment comes from the fact it is an existing water pipeline corridor with limited public access, which would optimize public safety and minimize community disruption. SPU has included provisions in the agreement to protect its assets, and PSE will be paying \$4.7 million for the easement.

This agreement is the product of outstanding collaboration between a public utility and a private utility that will assure a reliable supply of natural gas to residents of northeast King County while protecting the interests of SPU water ratepayers. If you have any questions, please call Keith Kurko at 233-1516.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels", written over a large, loopy flourish that extends across the page.

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: mayors.office@seattle.gov

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.



STATE OF WASHINGTON – KING COUNTY

--SS.

245697
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

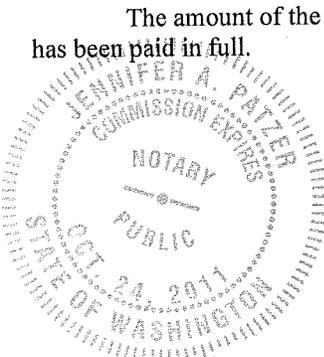
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:123108-09,11-16

was published on

10/08/09

The amount of the fee charged for the foregoing publication is the sum of \$ 134.43, which amount has been paid in full.



[Signature]

Subscribed and sworn to before me on
10/08/09
[Signature]

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on September 28, 2009, and published here by title only, will be mailed upon request, or can be accessed at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 123115

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 123114

AN ORDINANCE relating to the City's water system; declaring as surplus certain property rights in Seattle Public Utilities' Tolt Pipeline right of way; and authorizing the Director of Seattle Public Utilities ("SPU") to execute and convey an easement for such surplus property rights to Puget Sound Energy, Inc. ("PSE") for purposes of installing a natural gas pipeline in a portion of the Tolt Pipeline right of way.

ORDINANCE NO. 123113

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to execute a donation agreement and to accept a deed for the donated parcel of land in Seattle known as 9718 44th Avenue NE, King County Parcel No. 6418600050, to be used for utility purposes.

ORDINANCE NO. 123112

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to collect a franchise fee from retail customers in the City of Lake Forest Park, and revising water rates and charges and amending Seattle Municipal Code Chapter 21.04 in connection therewith, and ratifying and confirming certain prior acts.

ORDINANCE NO. 123111

AN ORDINANCE relating to a loan from the Washington Department of Ecology allocated through the American Recovery and Reinvestment Act of 2009 for the purpose of making water quality improvements in the Ballard combined system basin; accepting the loan funds and authorizing the Seattle Public Utilities' Director or his designee to execute related agreements.

ORDINANCE NO. 123109

AN ORDINANCE relating to City employment; authorizing the execution of a memorandum of understanding between the City of Seattle and the International Brotherhood of Electrical Workers, Local 46, increasing wages to the job title of Electrical Plans Examiner; providing payment for such increase; and ratifying and confirming prior acts.

ORDINANCE NO. 123108

AN ORDINANCE related to the Department of Information Technology and Department of Executive Administration; lifting a budget proviso restricting expenditures in the 2009 Adopted Budget relating to a Constituent Relationship Management (CRM) system; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123116

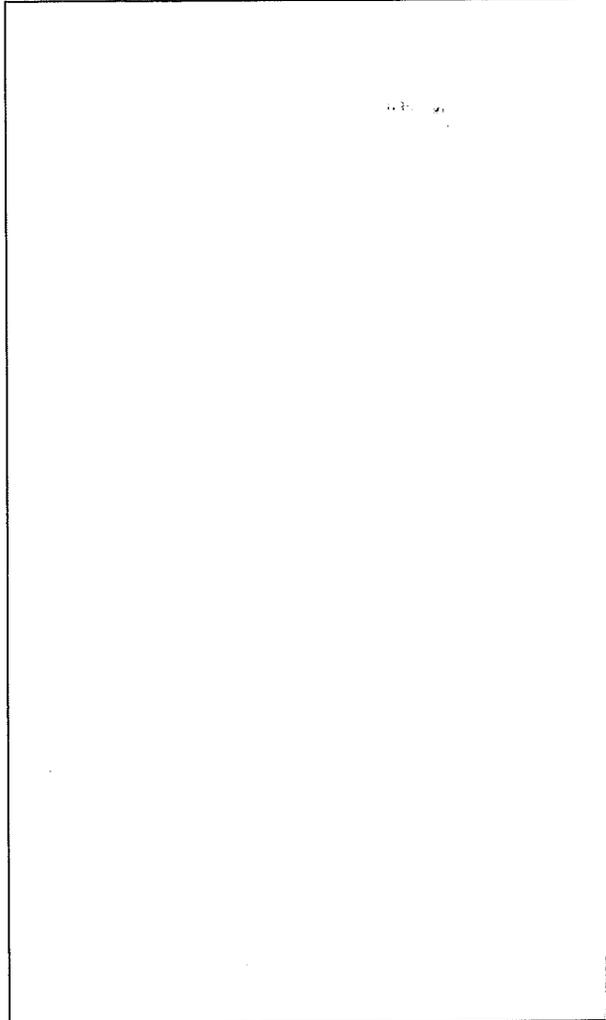
AN ORDINANCE accepting funds from the U.S. Department of Energy allocated through the American Recovery and Reinvestment Act of 2009 and the Energy Efficiency and Conservation Block Grant program; authorizing the Mayor or his designee to execute related agreements; amending the 2009 Adopted Budget to increase appropriations for Seattle City Light, the Department of Planning and Development, the Office of Housing, the Office of Sustainability and Environment, the Seattle Department of Transportation, and Finance General; creating an exempt position in the Office of Sustainability and Environment; and ratifying and confirming prior acts; all by a three-fourths vote of the City Council.

Publication ordered by the City Clerk

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State of Washington, King County



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P.O. Box 34018
Seattle, WA 98124-4018



EASEMENT AGREEMENT

Reference #s of Document Released: NONE
Grantor: The City of Seattle and Successors
Grantee: Puget Sound Energy, Inc. and Successors
Legal Description (abbreviated):
Assessor's Tax Parcel ID#

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By  Deputy

This Easement Agreement ("Agreement") is made this 9th day of DECEMBER, 2009, by and between **The City of Seattle**, a municipal corporation of the State of Washington, acting by and through Seattle Public Utilities (the "City") and **Puget Sound Energy, Inc.**, a Washington corporation ("PSE").

EASEMENT

Section 1. Grant of Easement. For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which are hereby acknowledged, and the covenants and promises hereinafter set forth, the City hereby conveys and quitclaims, insofar as it has rights, title and interest, and/or hereinafter acquires rights, title or interest, to PSE, subject to the terms and conditions of this Agreement, the following real property interests in those portions of the City's Tolt Right-of-Way, located in King County, Washington, as described in Exhibit A (the "Tolt Right-of-Way").

1.1 Pipeline Easement. A nonexclusive, twenty-foot-wide perpetual easement (the "Pipeline Easement Area") with the right, privilege, and authority to install, construct, erect, alter, repair, operate and maintain a pressurized natural gas pipeline, no greater than twenty inches in diameter, to be located southerly and not within twenty-five feet of the City's water supply pipeline for the purposes set out in Section 2.1, and with the appurtenances otherwise set forth in this Easement. Following initial installation of the pipeline, a legal description of the Pipeline Easement Area shall be prepared by a licensed surveyor, describing an area 10 feet on either side of the centerline of the pipeline, as installed, except (a) in areas, if any, where the pipeline has been installed within either thirty-

five feet of the City's water supply pipeline, the Pipeline Easement Area shall be the area between twenty-five feet and forty-five feet southerly of the City's water supply pipeline, and (b) in areas, if any, where the pipeline has been installed within 10 feet of the southerly boundary of the Tolt Right-of-Way, the Pipeline Easement Area shall be the southerly 20 feet of the Tolt Right-of-Way. Once the Pipeline Easement Area has been established, the City and PSE shall execute an amendment to this easement with a precise legal description of the Pipeline Easement Area, and PSE shall, if requested by the City, release, convey and quitclaim rights of PSE under this Section 1.1 with respect to areas within the Tolt Right of Way that are not within the Pipeline Easement Area as so described. Exhibit B is a depiction of the Tolt Right-of-Way showing the area within which the Pipeline Easement may be established.

1.2. Gate Station Easement. A nonexclusive, forty-foot-wide perpetual easement to be located within eight hundred (800) feet from the right of way margin of 216th Avenue NE, the location of which shall be hereafter specified by PSE with the City's consent, not to be unreasonably conditioned, withheld, or delayed (the "Gate Station Easement Area"), with the right, privilege, and authority to install, construct, erect, alter, repair, operate and maintain such pipelines, facilities, and equipment, as may be necessary to allow the PSE natural gas pipeline to receive deliveries from a Gate Station located outside the Tolt Right-of-Way, for the purposes set out in Section 2.2. Once the Gate Station Easement Area has been established, the City and PSE shall execute an amendment to this easement with a precise legal description of the Gate Station Easement Area, and PSE shall, if requested by the City, release, convey and quitclaim rights of PSE under this Easement with respect to areas within eight hundred feet of the right of way margin of 216th Avenue NE that are not within the Gate Station Easement Area as so described.

1.3 Additional Easements for Stations and Regulators. Up to five (5) additional, nonexclusive easements, the location of which shall be hereafter specified by PSE with the City's consent, not to be unreasonably conditioned, withheld, or delayed (each, a "Lateral Easement Area"), with the right, privilege, and authority in each such Lateral Easement Area to install, construct, erect, alter, repair, operate and maintain pressurized natural gas pipelines not greater than twenty inches in diameter to transfer natural gas to and from adjacent future gate stations, limit stations or district regulators located outside of the Tolt Right-of-Way, as set forth in, Section 2.3 below. Such Lateral Easement Areas shall be no greater than forty (40) feet in width. Once a Lateral Easement Area has been established, the City and PSE shall execute an amendment to this easement with a precise legal description of such Lateral Easement Area.

1.4 Temporary Construction Easement. A nonexclusive, temporary easement upon the Tolt Right-of-Way (the "Construction Easement Area") for the purposes and to expire as set out in Section 2.4.

1.5 Access. The easements granted in Sections 1.1, 1.2, 1.3, and 1.4 include the right to reasonable access to the Pipeline Easement Area, the Gate Station Easement Area, the Lateral Easement Areas, and the Temporary Construction Easement Area from and over the Tolt Right-of-Way as set out in Section 5.

The City, its successors and assigns, shall have the right to use the Pipeline Easement Area, the Gate Station Easement Area, the Lateral Easement Areas, and the Temporary Construction Easement Area (collectively referred to hereinafter as the "Easement Areas") in any way and for any legal purpose not inconsistent with the rights herein granted to PSE and the terms and conditions of this Agreement.

Section 2. Purposes of the Easement. Subject to the terms and conditions of this Agreement, PSE shall have the right to use the Easement Areas for the following purposes (collectively, the "Easement Rights"):

2.1 Pipeline Easement Area. The surveying, construction, reconstruction, installation (including without limitation directional drilling), alteration, operation, maintenance, repair, protection, and removal or abandonment-in-place of a pressurized natural gas pipeline no greater than twenty inches in diameter, and such additional pipelines as may be necessary to facilitate deliveries to and from the Williams Gate Station, in accordance with the engineering plans and drawings approved by and on file with the City, whose approval shall not be unreasonably withheld, conditioned or delayed.

2.2 Gate Station Easement Area. PSE may use the Gate Station Easement Area for purpose of receiving delivery of natural gas from the Williams pipeline located adjacent to 216th Avenue NE. For purposes of receiving such deliveries, PSE may construct, install, operate, and maintain such additional pipelines, facilities, and equipment within the Gate Station Easement Area as may be necessary to access the Williams Gate Station located outside the Tolt Right-of-Way. In the event PSE intends to use the Gate Station Easement Area for receiving delivery of natural gas from the Williams pipeline, PSE shall provide the City with written notice of such intent and, prior to installing any additional pipelines, facilities, or equipment within the Gate Station Easement Area, obtain the approval of the location of such pipelines, facilities, or equipment from the City, whose approval shall not be unreasonably withheld, conditioned or delayed. PSE acknowledges that the City's preference for a potential Gate Station location is south of the Tolt Right-of-Way and adjacent to or west of 216th Avenue NE, rather than north of the Tolt Right-of-Way or east of 216th Avenue NE. However, provided that PSE demonstrates reasonable consideration of such order of preference, and appropriate engineering protection of any water supply line under-crossing, PSE may select a location of such facilities that will cross under or otherwise be located within twenty-five feet of the City's water supply pipeline. Upon completion of the installation of such additional pipelines within the Gate Station Easement Area, PSE shall prepare, record, and provide the City with a copy of as-built surveys confirming the location of the pipelines, and PSE shall simultaneously convey and quitclaim to the City any interest of PSE in or to that portion of the Tolt Right-of-Way east of 216th Avenue SE that is more than 40 feet measured laterally (as shown on such survey) from any of such pipelines or related facilities of PSE installed easterly of 216th Avenue .

2.3 Future Station and Regulator Connections. In the event PSE desires, in the future, to connect the natural gas pipeline to limiting stations, gate stations, or district regulators located outside the Tolt Right-of-Way, PSE shall give the City notice of the proposed location and width of the Lateral Easement Area for such connecting facilities and equipment, together with preliminary plans and specifications

for such connecting facilities and equipment. Thereafter, PSE shall also provide additional information related to such connecting facilities and equipment as the City may reasonably request within thirty (30) days of receipt of PSE's initial information to assist with the City's review of PSE's proposal. Following the City's receipt of such information, the City shall have thirty (30) days to review and approve (or condition approval upon modifications to) the location of the applicable Lateral Easement Area, which approval shall not be unreasonably conditioned, withheld, or delayed. The width of each such Lateral Easement Area shall be determined as follows: (i) for any proposed single lateral connecting pipeline, twenty (20) feet wide, and (ii) with respect to proposed lateral connections requiring two (2) pipelines running parallel to each other that are within (20) feet of one another, twenty (20) feet plus the proposed distance between the two connecting pipelines. Upon completion of the installation of such additional pipelines, PSE shall prepare, record, and provide the City with a copy of as-built surveys confirming the location of the pipelines.

2.4 Temporary Construction Easement Area. Activities required for or reasonably related to the initial construction and installation of the natural gas pipelines. The Temporary Construction Easement Area is located to allow PSE flexibility during its initial construction and installation of the pipelines within the Pipeline Easement Area. The Temporary Construction Easement allows PSE to make reasonable use of areas outside of the Pipeline Easement Area, Gate Station Easement Area, and Lateral Easement Areas, for example when necessary for the temporary staging of equipment and materials or when conditions require directional drilling. In no case, however, may PSE access or conduct any activities within twenty-five feet of the City's water supply pipeline without first obtaining the prior written approval of the Director of Seattle Public Utilities, whose approval shall not be unreasonably withheld, conditioned, or delayed. It shall not be unreasonable for the City to withhold or condition approval for water pipeline protection and safety.

PSE's rights under this Agreement to use the Temporary Construction Easement Area will expire upon the later of the completion of PSE's initial construction of the last of the pipelines, the approval of the construction by the independent inspector pursuant to Section 3.4.1., and the satisfaction of any monitoring or mitigation requirements of permits or approvals for such pipelines. However, no expiration of the Temporary Construction Easement Area, or PSE's rights under this Agreement to use the Temporary Construction Easement Area, shall be deemed to have occurred solely by reason of PSE's failure to initially install its pipelines within any period of time from the date hereof.

Section 3. Conditions and Limitations on Use. Except in the exercise of the Easement Rights, described in Section 2 above, PSE shall have no right under this Easement to enter upon the Easement Areas or make any other use thereof. Without limiting the generality of the foregoing, PSE shall at all times exercise its Easement Rights in compliance with the following conditions and limitations.

3.1 PSE shall act in a manner so as to prevent bodily harm to persons (whomsoever), damage to property (whatsoever), or unreasonable interference with the use and enjoyment of other persons' property. Precautionary measures shall include, without limitation, reasonable security measures necessary to prevent access to the Easement Areas during such times as the exercise of Easement Rights may cause the

Easement Areas to be in an unsafe condition and to protect the City's water supply pipeline and related facilities from damage or interference.

3.2 The City has historically used, and anticipates increased use of, the Tolt Right-of-Way in connection with the conveyance and delivery of water from one of the City's primary sources of supply on the Tolt River to serve the residences and businesses within the City and surrounding areas. PSE shall at all times exercise Easement Rights in a manner that will not disturb, interfere with, or otherwise impair the safe, continuous, and reliable operation of the City's water supply facilities and equipment or obstruct access to such facilities and equipment.

3.3 Compliance with Laws and Standards.

3.3.1 PSE shall at all times meet accepted industry standards and comply with all applicable laws of any governmental entity with jurisdiction over the PSE pipeline and its operation. This shall include all applicable laws, rules, and regulations existing at the effective date of this Agreement or that may be subsequently enacted by any governmental entity with jurisdiction over PSE, its pipeline and related facilities. In the case of any conflict between the terms of this Agreement and the terms of the City's ordinances, codes, regulations, standards and procedures, this Agreement shall govern.

3.3.2 All pipeline construction, maintenance, and operations undertaken by PSE, at PSE's direction or on PSE's behalf shall be completed in a workmanlike manner.

3.4 Construction and Maintenance.

3.4.1 Prior to the initial construction and installation of the pipeline system, PSE shall contract with an independent inspector who will have authority to stop PSE's construction activity within the Easement Areas pursuant to this Section 3.4.1. The inspector shall not be an employee of PSE, the City, or PSE's construction contractor. The individual contracted to perform the function of the inspector shall be selected by PSE, subject to approval by the City (not to be unreasonably conditioned, withheld, or delayed), and shall have appropriate experience and training in monitoring compliance and familiarity with applicable laws and regulations. The inspector shall monitor PSE construction activities within the Easement Areas and have the authority to stop any construction activities that the inspector reasonably believes are or could potentially be in violation of applicable federal, state, and local laws and regulations. The inspector shall monitor the construction activities to ensure construction and installation work is consistent with the plans and specifications. The inspector shall report any concerns or actions to be taken to correct any concerns to PSE and to the City. PSE shall immediately initiate the inspector's reasonable corrective actions, including stop work orders. In the event a stop work order is issued to PSE, work (other than remediation work) at the specific site in question shall not be restarted without prior approval by the inspector in consultation with the City. In the event of any failure on the part of PSE or its contractor to comply with the provisions of this subsection, the City may seek immediate injunctive relief without regard to the alternative dispute resolution provision of this Agreement.

3.4.2 Except in the case of an emergency, prior to commencing any substantial construction or maintenance activities in the Easement Areas, PSE shall first notify the City and provide such detailed plans, specifications and profiles of the intended work as the City may require. The City may require such additional information, plans, or specifications and may impose such reasonable conditions as are in the City's opinion necessary to protect the City's water supply facilities and equipment or the public's health and safety, or the environment during PSE's performance of such substantial construction or maintenance activities. For purposes of this subsection, the term "substantial construction or maintenance activities" means a construction or maintenance activity or series of related activities lasting more than two consecutive days or involving excavation or other surface disturbance activities requiring the temporary shutdown of the pipeline.

3.4.3 All construction and maintenance activities shall be performed in conformity with the maps and specifications filed with the City, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by PSE.

3.4.4 All pipe and other components of any facilities used in construction or maintenance activities within the Easement Areas shall comply with applicable federal regulations, as from time to time may be amended.

3.4.5 Substantial construction and maintenance activities shall only commence after the issuance of all applicable governmental permits or other required authorizations. However, in the event of an emergency requiring immediate action by PSE for the protection of its pipeline or facilities, the City's property or facilities, or other persons or property, PSE may proceed without first obtaining the normally required permits. In such event PSE must (1) take all necessary and prudent steps to protect, support, and keep safe from harm its pipeline and facilities, the City's property and facilities, and other persons or property, and the public health, safety, and the environment; and (2) as soon as possible thereafter, obtain the required permits and comply with any legally imposed mitigation requirements or other conditions in the after-the-fact permit.

3.4.6 Upon completion of construction or maintenance activities within the Easement Areas, PSE shall, without delay and at its sole expense, remove all debris and restore the surface as nearly as possible to as good or better condition as it was in before such activities began. PSE shall replace any property corner monuments, survey references or hubs that were disturbed or destroyed during PSE's performance of work in the exercise of its Easement Rights.

3.4.7 PSE shall continuously maintain its membership in the State of Washington's One Number Locator service under RCW 19.122, or an approved equivalent, and shall comply with all such applicable rules and regulations.

3.4.8 PSE shall provide reasonable notice to the City and to adjacent property owners prior to PSE's exercise of Easement Rights that may interfere with adjacent property owners' use and enjoyment of their property and shall exercise its Easement Rights in a manner that minimizes interference with adjacent property owners' use and enjoyment of their property.

3.4.9 PSE shall place markers demarcating the pipeline's location on the surface at least every 500 yards or points of inflection, or as may otherwise be required by WAC 480-93-124, to provide warning of the presence of the pipeline but in a manner that does not interfere with the City's access to or reasonable use of the Easement Areas. Additionally, PSE shall replace markers for the pipeline's location each time PSE digs to the pipeline for any reason.

3.4.10 PSE shall file with the City a survey or surveys depicting the location of the pipeline within the Pipeline Easement Area and shall provide the City with any revisions or amendments to the survey or surveys, as they may be developed, so that the City may maintain an accurate account of the pipeline's location within the Pipeline Easement Area.

3.4.11 PSE shall also provide detailed as-built design drawings showing the size, depth and location of all its pipes, valves, gauges, other service appurtenances and related equipment within the Pipeline Easement Area.

3.4.12 Within thirty (30) days of the completion of any substantial construction or maintenance activity within the Easement Areas, or as soon thereafter as is reasonably practicable, PSE shall provide the City updated and corrected as-built drawings and a survey showing the location, depth and other characteristics of the pipeline and related facilities within the Pipeline Easement Area.

3.4.13 Nothing in this Agreement shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of PSE's plans and designs or to ascertain whether PSE's proposed or actual construction, testing, maintenance, repairs, replacement or removal is adequate or sufficient or in conformance with the plans and specifications reviewed by the City.

3.4.14 PSE shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the Easement Areas, including safety of all persons and property during the performance of any work.

3.5 Operations, Maintenance, Inspection, and Testing.

PSE shall operate, maintain, inspect and test its pipeline, facilities, and related equipment in full compliance with the applicable provisions of all federal, state and local laws, regulations and standards, as now enacted or hereafter amended, and any other laws or regulations that may become applicable to PSE's pipeline, facilities, equipment, products, and business operations. This provision is not intended to require PSE to replace or retro-fit existing equipment or facilities, unless newly applicable regulations expressly require replacement or retro-fitting of existing equipment or facilities.

3.6 Encroachment Management.

3.6.1 No later than ninety (90) days before operating its natural gas pipeline, and periodically thereafter, PSE shall provide the City a written Encroachment Management Plan ("EMP") that demonstrates how PSE's pipeline, facilities, related equipment, and Easement Rights are to be protected against possible encroachment. This EMP shall, at a minimum, address the following subjects: (1) education and one-call involvement, as defined in Federal Regulations; and (2) an

encroachment management process demonstrating (a) PSE's process for monitoring activity in or near the Pipeline Easement Area, (b) PSE's field verification of the location of its pipeline and facilities within the Pipeline Easement Area, (c) PSE's encroachment tracking system, (d) PSE's review and coordination process for critical encroachments, and (e) control center notification of existing or active encroachments.

3.6.2 Upon notification to PSE of planned construction by another within ten (10) feet of the Pipeline Easement Area, PSE shall mark the precise location of its pipeline and facilities before the construction commences, provide a representative to inspect the construction when it commences, and periodically inspect thereafter to ensure that PSE's pipeline and facilities are not damaged by the construction.

3.7 Leaks, Ruptures, and Emergency Response Planning.

3.7.1 PSE shall have in place, at all times during the term of this Agreement, a system for remotely monitoring pipeline pressures across the Pipeline Easement Area.

3.7.2 During the term of this Agreement, PSE shall have a written emergency response plan and procedure for locating and responding to leaks and ruptures.

3.7.3 Upon entering this Agreement, PSE shall provide the City for its review and approval, a copy of PSE's emergency response plan and procedures, including, but not limited to, emergency rupture response. If the parties disagree as to the adequacy of PSE's emergency response plan, the parties will submit the plan to independent, third party review. If the review recommends that PSE make modifications or additions to the emergency response plan, PSE will consider the recommendations in good faith and provide the City with a written explanation in the event PSE does not agree to implement the recommendations. If the City and PSE fail to agree upon appropriate modifications or additions to the emergency response plan, then the issues shall be resolved through the Dispute Resolution provisions of Section 9.

3.7.4 PSE's emergency plans and procedures shall designate PSE's responsible local emergency response officials and a direct 24-hour emergency contact number for the control center operator. PSE shall, after being notified of an emergency, respond as soon as possible to protect the public's health and safety, and the environment, and cooperate with the City to protect the City's water supply facilities and equipment.

3.7.5 The parties agree to meet upon request to review the emergency plans and procedures.

3.7.6 PSE shall be solely responsible for all necessary costs incurred in responding to any leak, rupture, or other release from PSE's pipeline, facilities, or related equipment, including without limitation the detection and removal of any contaminants from air, earth or water, and all remediation costs; provided, however, that PSE reserves the right to seek contribution and recover such costs from other responsible parties.

3.7.7 If requested by the City in writing, PSE shall provide the City with a written summary concerning any leak or rupture within thirty (30) days of the event, which shall include at a minimum the leak or rupture's date, time, amount,

location, response, remediation and other entities PSE notified concerning the leak or rupture.

3.7.8 The City may ask an independent pipeline consultant to investigate any substantial leak or rupture. If the consultant recommends modifications or additions to PSE's emergency response plans or procedures, PSE will consider the recommendations in good faith and provide the City with a written explanation in the event PSE does not agree to implement the recommendations. If the City and PSE fail to agree upon appropriate modifications or additions to PSE's emergency response plans or procedures, then the issues shall be resolved through the Dispute Resolution provisions of Section 9.

3.8 Removal and Abandonment in Place.

3.8.1 In the event PSE's rights under this Agreement terminate pursuant to Section 8.2, PSE shall, within one hundred and eighty days (180) after such termination, either remove the pipeline, facilities, or equipment, or after removing its facilities and equipment, abandon the pipeline in place, as provided below.

3.8.2 Following the removal of all or a portion of its pipeline, facilities, or equipment, or any portion thereof, from the Easement Areas, PSE shall restore the Easement Areas to as good or better condition as they were in before the work began.

3.8.3 Removal and restoration work shall be done at PSE's sole cost and expense. PSE shall be responsible for any environmental review required for the removal its pipeline, facilities, or equipment, or any portion thereof, and the payment of any costs of the environmental review.

3.8.4 If PSE is required to remove its pipeline, facilities, or equipment, or any portion thereof, from the Easement Areas, and fails to do so or fails to adequately restore the Easement Areas, the City may, after reasonable notice to PSE, remove the pipeline, facilities, or equipment, or any portion thereof, from the Easement Areas, and restore the premises at PSE's expense. This remedy shall not be deemed to be exclusive and shall not prevent the City from seeking a judicial order directing PSE to remove its pipeline, facilities, or equipment and restore the Easement Areas.

3.8.5 In the event PSE decides to abandon its pipeline in place, PSE must purge its pipeline, facilities, and equipment, in accordance with all applicable regulatory requirements. PSE shall be responsible for any environmental review required for the abandonment of its pipeline, or any portion thereof, and the payment of any costs of such environmental review. PSE's abandonment of its pipeline, or any portion thereof, within the Easement Areas, shall not relieve PSE of any liability that may arise as a result of the continued presence of the pipeline within the Pipeline Easement Area.

3.8.6 The City and PSE expressly agree that paragraph 3.8.5 shall survive the expiration, revocation or termination of this Agreement.

Section 4. Reserved Rights. All rights other than those specifically granted to PSE in this Agreement are reserved to the City. PSE acknowledges that, subject to the limitations set forth in Section 5, and to the extent not inconsistent with the rights granted

to PSE in this Agreement, the City may use the Easement Areas for utility purposes or for any other purpose.

Section 5. Cooperative Utility Conduct.

5.1 The City shall not install structures or paved roads, place trees, shrubbery, rockery, or fences, perform any excavation, or store any heavy equipment or materials upon the Pipeline Easement Area, or permit any third party to perform any of the foregoing activities, without the prior written consent of PSE, which shall not be unreasonably withheld, conditioned, or delayed. PSE may reasonably withhold its consent if any of the foregoing activities is inconsistent with prudent utility practice or PSE's Easement Rights or otherwise poses a risk to the proper functionality of PSE's facilities located within the Pipeline Easement Area.

5.2 Based on as-built plans pertaining to the natural gas pipeline, the City shall allow PSE to review and approve, which approval shall not be unreasonably withheld, conditioned, or delayed, any plans to excavate within twenty (20) feet of the centerline of the natural gas pipeline or to change the grade, by either cut or fill, within twenty (20) feet of the natural gas pipeline. If the City lowers grade to less than three (3) feet cover, the City will provide a structural cover to protect the natural gas pipeline and appurtenances thereto, which cover shall be subject to PSE's advance approval, not to be unreasonably withheld, conditioned or delayed.

5.3 Neither the City nor PSE shall permit any blasting or discharge of other explosives within three hundred (300) feet of any of the other party's facilities without the express written approval of the other party.

5.4 Vehicular equipment and machinery, wheeled or tracked, exceeding a gross weight of 32,000 pounds per axle (HS 20-44) are prohibited within the Pipeline Easement Area; provided that, if loads exceeding such standards are required for the operation or maintenance of the City's facilities, PSE will within ten (10) working days of written notice from the City, or in the event of an emergency, such shorter period of time as is reasonably necessary under the circumstances, take steps as may be required to protect the natural gas pipeline and allow the City to transport such loads, at no cost to the City.

5.5 During construction activities, PSE shall have the right to temporarily close access roads within any portion of the Easement Areas as reasonably necessary to allow PSE to undertake its construction activities.

5.6 PSE shall have access to the Easement Areas twenty-four (24) hours per day, seven (7) days per week. Prior to accessing the Easement Areas for operation, maintenance, or repair activities, PSE shall provide the City prior written notice of the planned activities. Notwithstanding the foregoing, PSE shall not be required to provide advance notice of access to the City in the event of emergencies, but PSE shall endeavor to provide the City with notice of the access as soon as reasonably possible. Unless the parties otherwise agree, for purposes of securing and gaining access to the Tolt Right-of-Way, PSE shall provide the City with locks that the City will install on its gates, and PSE shall be responsible for maintaining its own set of keys to the locks it provides the City.

5.7 Operations Planning. While failure to do so shall not be a breach of this Agreement, the parties shall endeavor to meet periodically to confer regarding ongoing and planned activities that may affect either parties' interests in the Tolt Right-of-Way.

Section 6. Nonexclusivity.

6.1 Subject to Section 5, PSE's rights under this Agreement are nonexclusive, and the City may grant rights to others to use the Easement Areas for any purpose not inconsistent with PSE's rights hereunder, subject to the provisions of Section 6.2.

6.2 Pursuant to the grant of rights to others under this Section, the City shall provide PSE copies of the plans or the proposals for such proposed rights. PSE shall have thirty (30) days in which to submit any comments on such plans or proposals after receipt of the same; however, PSE shall make every effort to expedite its submission of comments to accommodate the City's (or grantee's) schedule. The City shall respond to PSE's comments prior to granting such rights. If necessary, in an emergency situation, PSE shall waive the condition that it receive written responses prior to the City's granting such rights. PSE's right to comment and require responses to such comments shall not be construed as granting PSE any right to condition or prevent the grant of such right; except that, to ensure the protection of the gas pipeline to the reasonable satisfaction of PSE, the City shall not grant permission to third parties for other public or private utilities to use or cross the Pipeline Easement Area without PSE's approval. Approval will not be unreasonably withheld, conditioned or delayed.

Section 7. Assignments and Delegation. This Agreement and the rights granted hererunder are personal to PSE and may not be assigned without the City's prior written consent, which shall not be unreasonably conditioned, withheld, or delayed, and any assignment of PSE's rights or interests in and under this Agreement without the City's prior consent shall be null, void, and without effect; provided, however, that PSE may without the City's consent (i) assign its rights hereunder to any corporate successor or assign (whether by merger, consolidation, acquisition of substantially all of PSE's assets, reorganization, or otherwise) or to any other corporation, limited liability company or other legally constituted entity, one of whose primary responsibilities is the transportation or distribution of natural gas to or for the benefit of the public, and (ii) transfer, pledge, encumber, or assign its rights in connection with any financing or other financial arrangement. Notwithstanding the foregoing, the City acknowledges that PSE may apportion its right to install additional pipelines for purposes of facilitating deliveries to and from the Williams Gate Station, as provided under Subsection 2.2 above, to Williams, provided that PSE will remain primarily liable to the City for Williams' exercise of its rights under this Agreement and provided further that Williams executes an acceptance of apportionment acknowledging that Williams will be subject to and comply with the terms of this Agreement applicable to the assigned rights.

Section 8. Violations, Remedies, and Termination.

8.1 Because this Agreement authorizes important public service infrastructure, the City may not terminate or rescind this Agreement even if its terms or conditions are breached. However, if PSE materially breaches or otherwise fails to

perform, comply with or otherwise observe any of the terms and conditions of this Agreement, or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within sixty (60) calendar days of the City's providing PSE written notice thereof, or, if not reasonably capable of being cured within sixty (60) calendar days, within such other reasonable period of time as the City may determine, the City shall have all other rights and remedies available under this Agreement and at law or in equity, including without limitation damages and specific performance. The remedies provided for in this Agreement are cumulative and not exclusive; the City's exercise of one authorized remedy shall not prevent the simultaneous or later exercise of another.

8.2 All PSE's rights hereunder shall terminate and revert to the City upon PSE's abandonment of the natural gas pipeline. PSE shall be presumed to have abandoned the natural gas pipeline if PSE ceases to use the natural gas pipeline for a period of sixty (60) successive months for the purposes specified in Section 2, unless PSE before the expiration of the 60-month period provides the City with written notice that PSE has deactivated the pipeline for a specific purpose and intends to reactivate the pipeline within twelve (12) months provided, however, that no abandonment shall be deemed to have occurred solely by reason of PSE's failure to initially install its natural gas pipeline, or any portion thereof, within or otherwise use the Easement Areas as permitted by this Agreement within any period of time from the date hereof.

8.3 Termination of this Agreement shall not release the City or PSE from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release PSE from any obligation to remove or abandon-in-place the pipeline and to restore the Easement Areas in accordance with the terms of this Agreement.

8.4 The City and PSE acknowledge that the covenants set forth herein are essential to this Agreement, and, but for the mutual agreements of the City and PSE to comply with such covenants, the City and PSE would not have entered into this Agreement. The City and PSE further acknowledge that they may not have an adequate remedy at law if the other party violates such covenant. Therefore, the City and PSE shall have the right, in addition to any other rights they may have, to obtain in any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach or otherwise to specifically enforce any of the covenants contained herein should the other party fail to perform them.

Section 9. Dispute Resolution.

9.1 In the event of a dispute between the City and PSE arising by reason of this Agreement, the dispute shall first be referred to the operational officers or representatives designated by the City and PSE to have oversight over the administration of this Agreement. The officers or representatives shall meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute.

9.2 If the parties are unable to resolve the dispute under the procedure set forth in this section, the parties hereby agree that the matter shall be referred to

mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. If the parties are unable to agree upon a mediator, the parties shall jointly obtain a list of seven (7) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a party fails to notify the other party of which mediator it has stricken within two (2) business days, the other party shall have the option of selecting the mediator from those mediators remaining on the list. Any expenses incidental to mediation shall be borne equally by the parties.

9.3 If the parties fail to achieve a resolution of the dispute through mediation, either party may then pursue any available judicial remedies or, if the Washington Utilities and Transportation Commission (the "WUTC") has primary jurisdiction over the subject matter of the dispute, the WUTC, provided that if the party seeking judicial redress does not substantially prevail in the WUTC or judicial action, it shall pay the other party's reasonable legal fees and costs incurred in the judicial action.

Section 10. Indemnification. PSE shall indemnify, defend and hold harmless the City from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by the City in defense thereof, to the extent arising out of or related to, directly or indirectly, the negligence or other fault on the part of PSE, its agents, contractors, servants, employees, representatives, licensees, invitees or visitors in PSE's use of the Easement Areas or the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of PSE's pipeline, facilities, or equipment, or any portion thereof, or from the existence of PSE's pipeline, facilities, or equipment, or any portion thereof, and the products contained in, transferred through, released or escaped from its pipeline, facilities, or equipment, or any portion thereof, including the reasonable costs of assessing such damages and any liability for costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; provided however, nothing herein shall require PSE to so indemnify and hold harmless the City to the extent of the negligence or other fault on the part of the City, its elected officials, directors, officers, agents, contractors, servants, employees, representatives, licensees, invitees or visitors or third parties. The City shall reimburse PSE for costs and expenses, including attorney's fees, that PSE incurs in defending any suit or action pursuant to this Section, to the extent the City, its elected officials, directors, officers, agents, servants, employees, representatives, licensees, invitees or visitors are adjudged negligent in a final, nonappealable judgment entered by a competent legal body. If any action or proceeding is brought against the City by reason of PSE's pipeline, facilities, or equipment, or any portion thereof, PSE shall defend the City at PSE's complete expense, provided that, for uninsured actions or proceedings, defense attorneys shall be approved by the City, which approval shall not be unreasonably conditioned, withheld, or delayed. As between the parties and for the purposes only of the foregoing obligations, the City and PSE waive any immunity, defense, or other protection that may be afforded by any workers' compensation, industrial insurance, or similar laws (including, but not limited to, RCW Title 51). This Section has been mutually negotiated by the parties.

CITY INITIALS

PSE INITIALS

Section 11. Insurance Requirements.

11.1 Throughout the course of this Agreement, PSE shall maintain, at its own cost, general liability insurance and/or self-insurance ("Insurance") with policy limits of coverage in an amount not less than Ten Million Dollars (\$10,000,000). Such Insurance shall (i) include "the City of Seattle" as an additional insured for primary and non-contributory limits of liability for the total limits of liability available to PSE and its parent, whether such limits are primary, excess, contingent or otherwise, and (ii) shall cover PSE's contractual liability, damage, claims and loss arising out of PSE's operations under this Agreement including, but not limited to, defense costs and pollution liability that, at a minimum, covers liability from sudden and accidental occurrences. Prior to or concurrent with the execution of this Agreement, PSE shall provide, or shall cause to be provided, certification of such Insurance acceptable to the City stating the scope of coverage; such certification shall include at least a thirty (30) day prior written notice of cancellation, except at least ten (10) days prior written notice with respect to cancellation for non-payment of premium. Certification of Insurance shall be delivered electronically to the City by facsimile transmission to (206) 470-1279 or as an Adobe PDF attachment to an email to riskmanagement@seattle.gov.

11.2 The insurance provisions contained herein shall survive the termination of this Agreement and shall continue for as long as PSE's pipeline, facilities, or equipment, or any portion thereof, remain in or on the Easement Areas or until the parties execute a new Agreement which modifies or terminates these insurance provisions.

Section 12. Public Outreach.

12.1 Prior to initial construction within the Easement Areas, PSE shall prepare and implement a Public Outreach Plan that will include, at a minimum, the following elements:

(i) A schedule for the PSE's community relations managers to meet with representatives of King County and the City of Woodinville no later than six months prior to the initiation of construction activities within their jurisdictional limits;

(ii) A schedule for open-house community meetings to occur no later than four months prior to the initiation of construction activities

(iii) The development of a mailing list of adjacent property owners and other interested community groups and associations; and

(iv) The issuance of notification letters to adjacent property owners and other interested community groups and associations advising them of the schedule for and the nature of planned construction activities and providing a local telephone number for more information.

12.2 PSE shall submit its Public Outreach Plan to the City for its review and comment no later than thirty (30) days prior to PSE's filing of its clearing and grading permit application with King County.

Section 13. Legal Relations.

13.1 Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency relationship, or joint venture or to impose a trust, partnership, or agency duty, obligation or liability on or with regard to any party. Each party shall be individually and severally liable for its own duties, obligations, and liabilities under this Agreement.

13.2 PSE accepts any privileges granted by the City to the Easement Areas in an "as is" condition. PSE agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of PSE's location of its pipeline, facilities, and equipment, or any portion thereof, within the Easement Areas or possible hazards or dangers arising from other uses of the City's Tolt Right-of-Way by the City or the general public. PSE shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of its pipeline, facilities, and equipment, or other related activities permitted under this Agreement.

13.3 This Agreement is not intended to acknowledge, create, imply or expand any duty or liability of the City with respect to any function in the exercise of its police power or for any other purpose.

13.4 This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington and the parties agree that in any action, except actions based on federal questions, venue shall lie exclusively in King County, Washington.

Section 14. Miscellaneous.

14.1 In the event that a court or agency of competent jurisdiction declares a material provision of this Agreement to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to such amendments or modifications as are appropriate to give effect to the intentions of the parties as reflected herein. If severance from this Agreement of the particular provisions determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Agreement, either party may apply to a court of competent jurisdiction to reform or reconstitute the Agreement to recapture the original intent of said particular provisions. All other provisions of the Agreement shall remain in effect at all times during which negotiations or a judicial action remains pending.

14.2 Whenever this Agreement sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of this Agreement.

14.3 In the event that PSE is prevented or delayed in the performance of any of its obligations under this Agreement by reasons beyond the reasonable control of PSE, then PSE's performance shall be excused during the Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence, PSE shall promptly

perform the affected obligations in an orderly and expedited manner or procure a substitute for such obligation or performance that is satisfactory to the City. PSE shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

14.4 The Section headings in this Agreement are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the Section to which they pertain.

14.5 By entering into this Agreement, the parties expressly do not intend to create any obligation or liability, or promise any performance to, any third party, nor have the parties created for any third party any right to enforce this Agreement.

14.6 This Agreement shall be binding upon and inure to the benefit of the respective successors and assignees of the parties.

14.7 Whenever this Agreement calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient at the address set forth in this Subsection, unless written notice of change of address is provided to the other party. If the date for making any payment or performing any act is a legal holiday, payment may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be directed to the parties as follows:

To the City: Seattle Public Utilities
Real Property, Claims and Facilities Services
P.O. Box 34018
Seattle, Washington 98124

To PSE: Puget Sound Energy, Inc.
Corporate Facilities Department,
The PSE Building
10885 NE 4th Street
10th Floor
Bellevue, Washington 98004

14.8 The parties each represent and warrant that they have full authority to enter into and to perform this Agreement, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Agreement, except such as may be routinely required and obtained in the ordinary course of business.

14.9 This Agreement and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. This Agreement can be amended, supplemented, modified or changed only by an agreement in writing which

makes specific reference to this Agreement or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.

14.10 There are no third party beneficiaries to the Agreement.

14.11 Exhibits A and B, attached hereto, are made a part of this Agreement by this reference.

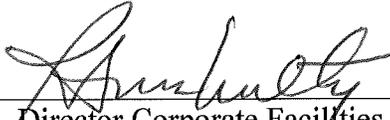
EXECUTED as of the date first written above.

THE CITY OF SEATTLE

By: 
Its: Director of Seattle Public Utilities

Date: 12/4/09

PUGET SOUND ENERGY, INC.

By: 
Its: Director Corporate Facilities

Date: 12/8/09

EXHIBIT A
Tolt Right of Way

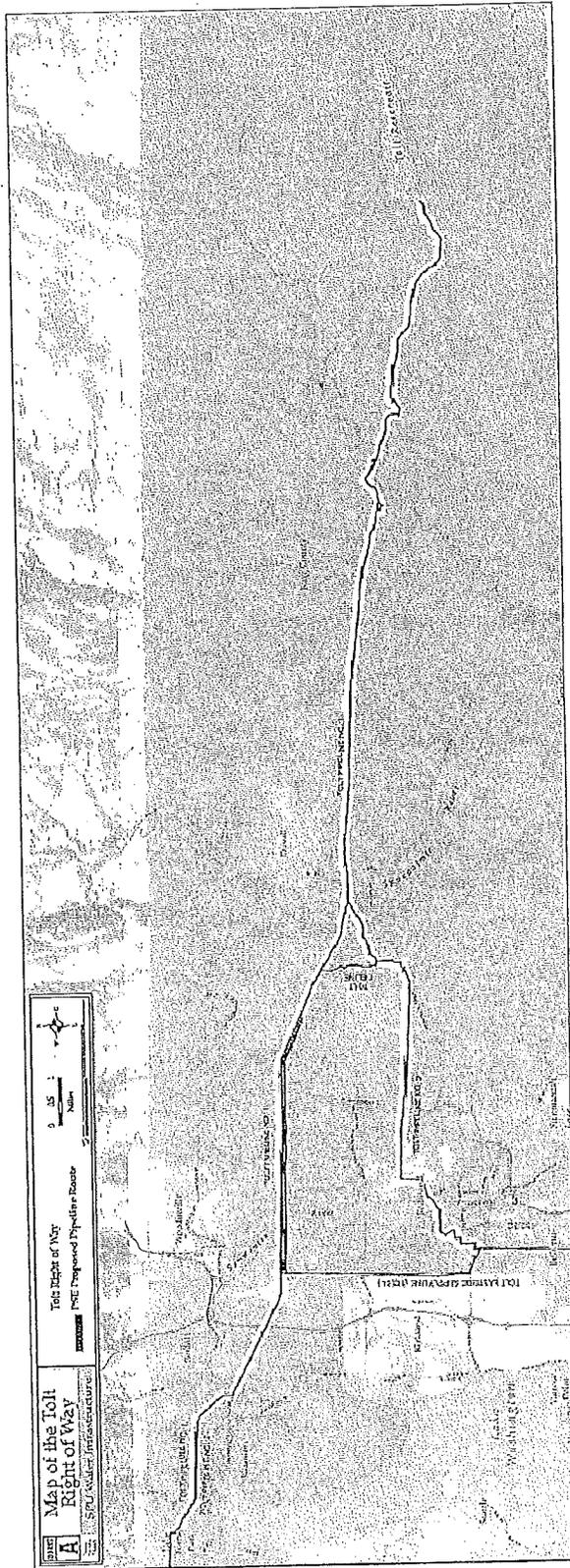


EXHIBIT B
Tolt Right of Way with Potential Locations for the Pipeline Easement Area

PSE Proposed Pipeline Route

Seattle Public Utilities

Map 1 SPU Water Infrastructure

