#8
117210

Robert Gambill
SPU Beacon Avenue S ORD
March 8, 2011
Version # 2

ORDINANCE _____

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to enter into an agreement granting a non-exclusive easement for access, ingress and egress over and across a portion of the City of Seattle's fee-owned Cedar River Pipeline property for the benefit of a single family residence located on adjacent property commonly known as 12660 Beacon Avenue South, Seattle, WA 98178, King County.

WHEREAS, the City of Seattle granted an easement to King County in 1961 for use of portions of the City's fee-owned Cedar River Pipeline property ("the City Property") for public road purposes; and

WHEREAS, three major drinking water supply pipelines are located within the City Property; and

WHEREAS, a portion of the City Property in the vicinity of 128th South in King County consists of a slope with shallow soil cover ("the Slope Area"); and

WHEREAS, King County has not routinely maintained the Slope Area as a road and the Slope Area does not appear as a road in the King County Road Index; and

WHEREAS, with King County's concurrence, Seattle Public Utilities blocked one end of the Slope Area to limit vehicular traffic on the Slope Area; and

WHEREAS, using the Slope Area as a public road is incompatible with Seattle Public Utilities' utility purpose; and

WHEREAS, the owner of property adjacent to the Slope Area has historically used that area for access to a single family residence; and

WHEREAS, King County plans to relinquish its road easement on the Slope Area; and

WHEREAS, the adjacent property could be subdivided and additional residences constructed there; and

COUNCIL CLERK

WHEREAS the City wishes to protect the safety of the drinking water supply pipelines from increases in vehicular traffic through a written easement that preserves ingress and egress to the adjacent property without expanding the burden on the City's property; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Director of Seattle Public Utilities or his designee is hereby authorized to execute for and on behalf of the City of Seattle an easement agreement with Jacqueline Adams substantially in the form of the Easement Agreement for Ingress and Egress attached hereto as Attachment 1, thereby granting a non-exclusive easement over and across the City's real property legally described in Attachment 1.

COUNCIL CLERK

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

Passed by the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its passage this

_____ day of _____, 2011.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2011.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1 – Easement Agreement for Ingress and Egress

COUNCIL CLERK

Attachment 1

Recording Requested By And
When Recorded Mail To:

City of Seattle SPU - WTR
700 5th Ave, Suite 4900
PO Box 34018
Seattle WA 98124-4018

Reference #s of Document Released or Assigned:	None
Grantor:.....	The City of Seattle, Seattle Public Utilities
Grantee:.....	Jacqueline L. Adams
Legal Description (abbreviated).....	Portion of The City of Seattle Cedar River Pipeline right of way located in the SE ¼ of the SE ¼ of the SE ¼ of Section 11, Township 23 North, Range 4 East, Willamette Meridian, King County, WA.
Assessor's Tax Parcel ID#:.....	Dominant Tenement: 1123049077. Servient Tenement: Portion of the City of Seattle owned Cedar River Pipeline right of way described herein.

12660 Beacon Avenue South, Seattle 98178 - SPU R/W File # 316-606

EASEMENT AGREEMENT FOR INGRESS AND EGRESS

This Easement Agreement ("Easement") is made by and between the **City of Seattle** ("**Grantor**"), a municipal corporation of the State of Washington , acting by and through its Seattle Public Utilities Department ("SPU") and **Jacqueline L. Adams**, as her separate estate ("**Grantee**").

Recitals

A. Grantor is the owner of the real property legally described in Section 1 below ("City Property") and Grantee is the owner of the real property legally described in Section 2 below ("Adjacent Property").

B. Seattle Public Utilities has three major drinking water supply pipelines that run under and through the City Property, which pipelines serve approximately 160,000 households and 20,000 office buildings.

C. In 1961, the City of Seattle granted King County an easement for road purposes in the area commonly referred to as Beacon Avenue South, which easement area included the City Property. The 1961 easement provides that if the County should cease to use the property for road purposes as evidenced by vacation, abandonment, or in another manner, the easement would terminate without necessity of action on the part of the City.

D. Due to steep grade and other factors, King County never completed a road in the location of the City Property, nor did King County include the City Property in the King

COUNCIL CLERK

Attachment 1

County road index. The City is in the process of working with King County to formally terminate the easement in the location of the City Property.

E. The City recognizes that Grantee has used the City Property for ingress and egress to Grantee's single family residence on the Adjacent Property.

F. Grantor and Grantee mutually desire to avoid future uncertainty and dispute regarding the rights and obligations of Grantee and Grantor with respect to the use of the City Property for ingress and egress, including Grantee's desire to preserve the right to subdivide Grantee's property and the City's desire to restrict access as needed to protect critical utility infrastructure.

Now therefore, in consideration of the mutual obligations and promises herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

EASEMENT GRANT AND AGREEMENT

1. **City Property.** The City is the owner of the following real property (the "City Property"):

   A 66.00 foot wide strip of land, located in the southeast quarter of Section 11, Township 23 North, Range 4 East, Willamette Meridian, King County, Washington, lying 33.00 feet on each side of the following described line:

   Commencing at the southeast corner of said section 11, a found punched 2 inch brass disk stamped "2007 24288" in a 4 inch square concrete monument inside a cast iron case at the intersection of the centerlines of S 128th Street and 68th Ave S; thence N 88° 50' 42" W along the south line of said section 11 a distance of 310.43 feet; thence N 13° 59' 16" W a distance of 31.08 feet to the northerly right of way margin of S 128th Street and the **Point of Beginning** of said centerline;

   Thence N 13° 59' 16" W a distance of 179.88 feet to the point of curvature of a 716.78 foot radius curve to the left which center bears S 76° 00' 44" W; thence northwesterly through a central angle of 7° 22' 06" a distance of 92.00 feet along the arc of said curve to the terminus of said centerline;

   The sidelines of said 66 foot strip to be extended or shortened to intersect the northerly right of way margin of S 128th Street; Containing 17,956 square feet or 0.41 acres, more or less, all as depicted on Exhibit A.

2. **Adjacent Property.** Grantee is the owner of the following real property (the "Adjacent Property"):

   That portion of the southeast quarter of the southeast quarter of Section

COUNCIL CLERK

Attachment 1

11, Township 23 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at a point on the south line of said section distant 170.1 feet west of the southeast corner thereof, which point is the true point of beginning of the tract herein described; thence north parallel to the east line of said section 341.15 feet; thence west parallel to the south line of said section 107.06 feet; thence south parallel to the east line of said section 68.15 feet; thence west parallel to the south line of said section 79.11 feet, more or less, to the easterly line of the City of Seattle Pipe Line right of way; thence southeasterly, along said right of way 283.65 feet, more or less, to the south line of said section; thence east, along said south line, 106.33 feet, more or less, to the point of beginning; EXCEPT the south 30 feet deeded to King County for road (South 128th Street).

3. **Grant of Easement; Scope and Purpose.** Subject to the terms and conditions herein, Grantor hereby grants to Grantee a non-exclusive easement on, over and across the paved portion ("Easement Area") of the City Property for the purpose of access, ingress, and egress to the Adjacent Property. The scope of the Easement hereby granted is limited to the right to use the paved surface area of the City Property, and only such rights are granted as are necessary for access, ingress and egress to one single family residence only on the Adjacent Property ("Easement Scope"). Should Grantee choose to subdivide Grantee's property, Grantee shall not utilize the Easement Area or City Property to provide access, ingress and egress to the newly created parcel(s), residences or structures in addition to the single family residence existing on the Adjacent Property as of the date of this Easement. The Easement Scope shall remain limited to access for one single-family residence and any subdivision shall not expand the burden and use over and across the City Property.

4. **Construction, Parking, Storage, Staging.** Grantee shall not undertake any construction or alterations over, upon or to the City Property. Grantee shall contact Seattle Public Utilities for permission prior to using the Easement Area for access to the Adjacent Property to make major construction repairs, maintenance, or improvements to the existing single family residence. As used in this Easement, "major" construction means construction requiring a permit. Seattle Public Utilities will determine in its reasonable discretion whether to permit the use. Grantee shall not use the City Property or Easement Area to stage, store or park vehicles, equipment or materials for any purpose.

5. **Restrictions**. The primary use and purpose of the City Property is for Seattle Public Utilities ("SPU") water supply pipelines. Grantor's willingness to grant this Easement is strictly conditioned upon use that will not jeopardize or interfere with the water supply lines and utility purposes. The following activities are prohibited on the City Property:

COUNCIL CLERK

Attachment 1

a) construction and any alteration of existing asphalt cover;
b) excavation;
c) any use by heavy equipment or equipment carrying heavy loads, except for garbage trucks, postal carriers, and delivery vans accessing the Easement Area to service the one single family residence existing as of the date of this easement; and
d) any use that interferes with the utility use, as determined in the reasonable discretion of the Director of Seattle Public Utilities.

6. **Condition.** Grantee accepts the Easement to use the paved portion of the City Property in the condition existing as of the date herein. Grantee acknowledges that the Grantor did not install the pavement/asphalt presently existing on the City Property, and Grantor makes no representations regarding the condition of the City Property or any existing improvements on the City Property.

7. **Maintenance.** At its own cost and expense, Grantor will maintain the existing asphalt in the Easement Area in a reasonably good condition. Grantor will be solely responsible for major maintenance of the City Property to the extent required for Grantor's own utility purposes. Grantor will **not** be responsible for any routine maintenance such as clearing of ice, snow or other hazards that may impact or affect Grantee's use of the City Property on a temporary basis. Grantee may clear ice, snow or other hazards that may impact or affect Grantee's access, ingress, and egress at Grantee's own expense; however, Grantee shall not apply chemical agents or use heavy equipment on the City Property for any purpose and Grantee will be responsible for any damage caused by Grantee.

8. **Reserved Rights**. Grantor reserves the right to use the City Property in any manner necessary for Grantor's utility purposes, including but not limited to the right to grant others the right to the use the City Property, and the right to maintain, construct, repair, replace or add to utility infrastructure in, on or under the City Property. Grantor reserves the right to temporarily interfere with Grantee's use under this Easement. Except in case of emergency, Grantor will provide Grantee with reasonable advance notice of any significant interference and will work to minimize interruption or interference with Grantee's access.

9. **Term of Easement.** The easement granted herein shall remain in full force and effect for the benefit of the Adjacent Property so long as the City Property is used for access and so long as any use is in compliance with the terms, conditions, and scope granted under this Easement. At such time as the City Property is no longer used for access to the Adjacent Property for a continuous twelve month period, or if the use violates the terms and conditions herein, this Easement shall terminate and all rights granted herein shall be extinguished without need of quiet title or other action by Grantor. If Grantor alleges a violation of the terms and conditions herein, Grantor shall give Grantee written notice of violation and opportunity to cure the violation within 30 days of such notice. Grantor reserves the right to suspend use of the Easement Area immediately in the event of imminent danger

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to Grantor's utility infrastructure, and Grantor reserves the right to terminate for repeated violations of this Easement or for Grantee's failure to cure any violation within the time required for cure.

10. **Release and Indemnification.** In consideration of the rights granted under this Agreement, Grantee hereby releases Grantor from any and all losses, claims, liabilities, actions or damages of any kind whatsoever arising in any way from Grantee's use of the City Property or use of the City Property by Grantee's servants, agents, employees, invitees, contractors or service providers. Additionally, Grantee will defend, indemnify and hold the Grantor, its officers, employees, agents and elected officials harmless from any and all losses, liabilities, claims, costs (including attorneys' fees), actions or damages of any sort or nature whatsoever incurred as a result of or arising out of Grantee's use of the City Property to the extent attributable to the negligent acts or omissions, or willful misconduct by Grantee, its servants, agents, employees, contractors, or invitees. Grantee's indemnification obligation shall not apply to any losses, liabilities, claims, costs, actions or damages caused by the sole negligence of Grantor, and in case of any loss, liability, claim, cost, action or damage that is caused by the joint or concurrent negligence of Grantee and Grantor, Grantee and Grantor shall each be responsible for such loss, liability, claim, cost action or damage in proportion to their respective negligence in the matter.

11. **Hazardous Materials.** Grantee shall not keep on or about the City Property any substance now or hereafter designated, or containing any component now or hereafter designated, as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"). Grantee shall not cause the City Property to become contaminated with any Hazardous Substance in violation of environmental laws. In the event that any property becomes contaminated as a result of the use of the City Property by the Grantee, its employees, agents, contractors, licensees or invitees, Grantee agrees to clean up and remediate damage to the City property and to bring it into compliance with the environmental laws. Grantee agrees to indemnify, release and hold harmless the Grantor from any environmental liability which may arise out of, result from, or be related to the past, present, or future presence or release of Hazardous Substance in or on the City Property caused by Grantee, its employees, agents, contractors, licensees or invitees.

12. **Governing Law.** This Easement Agreement shall be construed and governed under Washington Law. Venue for any action between the parties arising from the subject matter of this Easement Agreement will be in King County Superior Court.

13. **Severability**. If any provision of this Easement Agreement is found to be invalid, the remainder of the provisions of this Agreement that are not materially altered or invalidated shall remain in full force and effect.

COUNCIL CLERK

Attachment 1

14. Emergency Contact and Notices. For any emergency issue related to the Easement Area, or for requests under Section 4, Grantee may contact the Seattle Public Utilities Operations Response Center at 206-386-1800. Any other notice, demand or request required hereunder shall be given in writing to the party's address set forth below by any of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered, certified or first class mail, postage prepaid. Such addresses may be changed by notice to the other parties given in the same manner as above provided.

Grantor/City of Seattle:

Att: Manager
Real Property and Claims
Seattle Public Utilities
PO Box 34018
Seattle, WA 98124-4018

Grantee:

Jacqueline L. Adams
or future Occupant[s]
12600 Beacon Ave So
Seattle. WA 98178

COUNCIL CLERK

Attachment 1

DATED as of the day and year when signed by both parties below.

GRANTOR: THE CITY OF SEATTLE, a municipal corporation of the state of Washington

By: _____
Ray Hoffman
Director, Seattle Public Utilities

Date: _____

GRANTEE: Jacqueline L. Adams

By: _____

Date: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____,2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Ray Hoffman, to me known to be the Director of Seattle Public Utilities of the City of Seattle**, a Washington municipal corporation, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

_____

_____
(TYPE OR PRINT NAME)
Notary Public in and for the State
of Washington, residing at _____.
My Commission expires on _____.

[SEAL]

COUNCIL CLERK

Attachment 1

STATE OF WASHINGTON)
)ss
COUNTY OF KING)

On this ____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Jacqueline Adams**, known to me to be the person that executed the within and foregoing instrument, and acknowledged the said instrument to be her free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that ___ was authorized to execute said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

_____

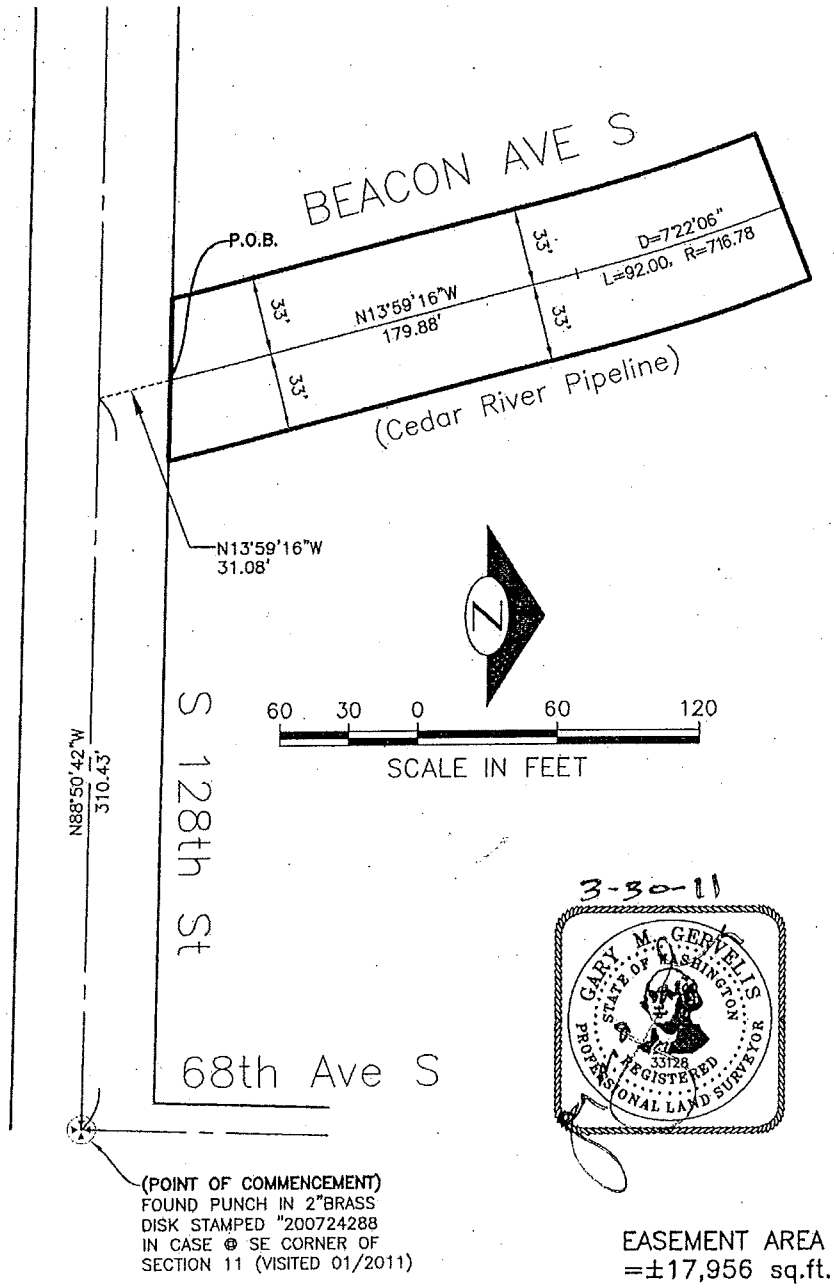
_____
(TYPE OR PRINT NAME)
Notary Public in and for the State
of Washington, residing at_____.
My Commission expires on _____.

[SEAL]

COUNCIL CLERK

Robert Gambill
SPU Beacon Ave S ATT 1 EXH A
March 8, 2011
Version #1

EXHIBIT "A"
SE 1/4 OF SECTION 11, TWP. 23 N., RNG. 4 E.W.M.
KING COUNTY, STATE OF WASHINGTON



3-30-11

GARY M. GERVELIS
STATE OF WASHINGTON
33128
REGISTERED
PROFESSIONAL LAND SURVEYOR

EASEMENT AREA
=±17,956 sq.ft.

DATE: 03/29/2011	SEATTLE PUBLIC UTILITY EXHIBIT "A" CEDAR RIVER PIPELINE
DRAWN: WRC	
CHECKED: GMG	
SCALE: 1"=60'	

COUNCIL CLERK

Form revised: August 9, 2010

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Sheila Strehle/ 684-5846	Karen Grove/ 684-5805

Legislation Title:
AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to enter into an agreement granting a non-exclusive easement for access, ingress and egress over and across a portion of the City of Seattle's fee-owned Cedar River Pipeline property for the benefit of a single family residence located on adjacent property commonly known as 12660 Beacon Avenue South, Seattle, WA 98178, King County.

Summary of the Legislation:
This legislation would authorize the Director of Seattle Public Utilities to grant an easement over a portion of the City of Seattle's Cedar River Pipeline right of way located just north of South 128th Street for access to property commonly known as 12660 Beacon Avenue South in unincorporated King County.

Background:
The City in 1961 granted King County a road easement on fee-owned SPU right of way, just south of the Seattle city limits. This right of way contains SPU's three Cedar River pipelines. The property is not open to through traffic but provides vehicular access to one residence (see attached reference map). Due to the steep slope and shallow soil cover over SPU's transmission pipelines in the area and the potential for the adjacent residential property to be subdivided, SPU decided to negotiate an easement agreement limiting access to its property. The agreement limits access to the existing single family use and prohibits use by additional residences. King County has agreed to relinquish its road easement in this area.

Please check one of the following:

__X__ **This legislation does not have any financial implications.**

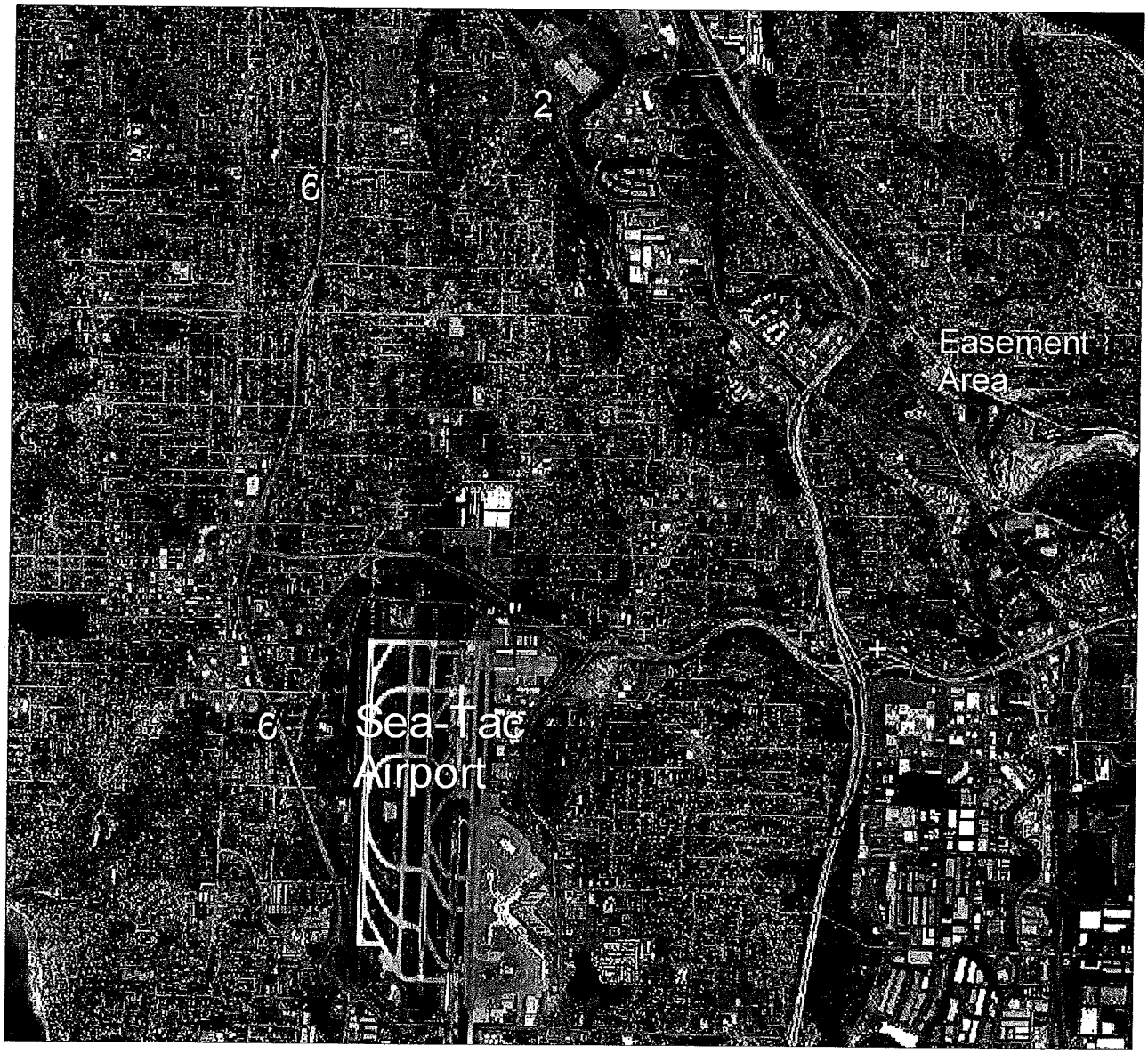
List attachments to the fiscal note below:
Exhibit A – Map of subject easement area

COUNCIL CLERK

Sheila Strehle
SPU Beacon Ave S FISC EXH A
March 31, 2011
Version #1

Exhibit A

The City of Seattle



Beacon Easement Area

Produced by the City of Seattle

May 17, 2011

THE CITY OF SEATTLE, 2005. All rights reserved

No guarantee of any sort implied, including accuracy, completeness, or fitness for use.

5000 0 5000 Feet

N W E S

nil: beacon easement area

COUNCIL CLERK

City of Seattle
Office of the Mayor

June 7, 2011

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 that would authorize the Director of Seattle Public Utilities to grant the owner of the property at 12660 Beacon Avenue South an easement to cross the City of Seattle's Cedar River Pipeline right of way.

The property affected by this legislation has a very steep grade and shallow soil cover. Three of SPU's water supply pipelines lie in the property. SPU wants to limit vehicular traffic on the right of way at this location and King County agreed to relinquish its road easement in the property provided the City reaches an agreement providing the homeowner access to her driveway. SPU believes continuing the current use does not threaten its pipelines. However, the property could be subdivided with a multi-family development constructed, with the attendant risk of increased vehicular traffic. The agreement therefore limits the homeowner to current single family usage and specifically prohibits vehicular use by additional property owners.

This legislation is the product of many months of discussion and it represents an amicable settlement that provides both parties the certainty and protections they require. Should you have questions, please contact Sheila Strehle at 684-5846.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov

COUNCIL CLERK