SEATTLE CITY COUNCIL

Legislative Summary

CB 118449

Record No.: CB 118449 **Type:** Ordinance (Ord) 124824 **Status:** Passed

Version: 1 **In Control:** City Clerk

File Created: 06/22/2015

Final Action: 08/07/2015

Title: AN ORDINANCE relating to the Seattle Public Utilities; declaring certain real property rights as being surplus to the City's municipal utility needs; granting a non-exclusive easement to Puget Sound Energy, for electrical power distribution purposes, a portion of the City's Tolt Pipeline right of way, located in the South One-half of Section 17 and the Northeast Quarter of Section 20, Township 26 North, Range 6 East, W.M., King County, Washington; and ratifying and confirming certain prior acts.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Bagshaw

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Drafter: bob.hennessey@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File **Legal Notice Published:** ☐ Yes ☐ No

Ver-sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	07/07/2015	Mayor's leg transmitted to Council	City Clerk			
	Action Text:	The Council Bill (CB) was Mayor's leg transmitted to Council. to the City Clerk					
	Notes:						
1	City Clerk	07/07/2015	sent for review	Council President's Office			
	Action Text:	The Council Bill (CB) was sent for review. to the Council President's Office					
	Notes:						
1	Council President's Office	07/08/2015	sent for review	Seattle Public Utilities and Neighborhoods Committee			
	Action Text:	The Council Bill (CB) was sent for review. to the Seattle Public Utilities and Neighborhoods Committee					

Notes:

1	Full Council	07/20/2015	referred	Seattle Public Utilities and Neighborhoods Committee	

Action Text: The Council Bill (CB) was referred. to the Seattle Public Utilities and Neighborhoods Committee

Notes:

1	Seattle Public Utilities and Neighborhoods Committee	07/28/2015	pass		Pass

Action Text: The Committee recommends that Full Council pass the Council Bill (CB).

In Favor: 3 Chair Bagshaw, Vice Chair Sawant, Member Harrell

Opposed: 0

1	Full Council	08/03/2015	passed		Pass

Action Text: The Council Bill (CB) was passed by the following vote and the President signed the Bill:

In Favor: 8 Councilmember Bagshaw, Council President Burgess, Councilmember Godden, Councilmember Harrell, Councilmember Licata, Councilmember O'Brien, Councilmember Okamoto, Councilmember Sawant

Opposed: 0

1	City Clerk	08/04/2015	submitted for Mayor's signature	Mayor	

Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor

Notes:

1	Mayor	08/07/2015	Signed		

Action Text: The Council Bill (CB) was Signed.

Notes:

1	Mayor	08/07/2015	returned	City Clerk	

Action Text: The Council Bill (CB) was returned. to the City Clerk

Notes:

1	City Clerk	08/07/2015	attested by City Clerk		

Action Text: The Ordinance (Ord) was attested by City Clerk.

Notes:

Bob Gambill
SPU PSE Tolt ROW ORD
#D1

CITY OF SEATTLE

ORDINANCE 124824

COUNCIL BILL 118449

AN ORDINANCE relating to the Seattle Public Utilities; declaring certain real property rights as being surplus to the City's municipal utility needs; granting a non-exclusive easement to Puget Sound Energy, for electrical power distribution purposes, a portion of the City's Tolt Pipeline right of way, located in the South One-half of Section 17 and the Northeast Quarter of Section 20, Township 26 North, Range 6 East, W.M., King County, Washington; and ratifying and confirming certain prior acts.

WHEREAS, Puget Sound Energy has requested that the City of Seattle grant to it a ten foot wide easement for electrical power distribution purposes, approximately 4,500 linear feet within the 100 foot wide Tolt pipeline right of way; and

WHEREAS, the easement area requested is surplus to the City's needs; and

WHEREAS, the Director of Seattle Public Utilities has recommended granting the easement;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Pursuant to the provisions of RCW 35.94.040 and after a public hearing, certain easement rights over real property used for subsurface water utility facilities located in King County, Washington, legally described herein, are hereby declared to be no longer required for providing public utility service and to be surplus to the City's municipal utility needs.

Section 2. Upon receipt of payment in the amount of $248,639, the Director of Seattle Public Utilities or the Director's designee is hereby authorized to execute for and on behalf of the City of Seattle an easement agreement with Puget Sound Energy, substantially in the form of the Easement Agreement, attached hereto as Attachment 1, granting a non-exclusive easement, generally ten feet in width, for electrical power distribution purposes, under, over and across approximately 4,500 lineal feet of the 100 foot wide Tolt pipeline right of way, legally described in Attachment 1 and according to the terms and conditions therein.

Section 3. Any act taken after passage but prior to the effective date of this ordinance and consistent with its authority is hereby ratified and confirmed.

Section 4. This ordinance shall take effect and be in force 30 days 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 3rd day of August, 2015, and signed by me in open session in authentication of its passage this 3rd day of August, 2015.

President _____ of the City Council

Approved by me this 7th day of August, 2015.

Edward B. Murray, Mayor

Filed by me this 7th day of August, 2015.

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Easement Agreement

Bob Gambill
SPU PSE Tolt ROW ORD ATT 1
Version #1

Recording Requested By And
When Recorded Mail To:

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

AGREEMENT

Reference #s of Document Released:	NONE
Grantor:	The City of Seattle and Successors
Grantee:	Puget Sound Energy, Inc. and Successors
Legal Description (abbreviated):	POR of TOLT RIVER PIPE LINE R/W OVER SEC 17-26-06
Assessor's Tax Parcel ID#	172606-9068

SPU-PSE Tolt Electric Power Easement SPU R/W #913-608

This Easement Agreement ("Agreement") is made this ____ day of _____, 2015, 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 Two Hundred Forty Eight Thousand Six Hundred Thirty Nine and no/100 Dollars ($248,639.00), and other good and valuable consideration, the receipt of which are hereby acknowledged, and the covenants and promises hereinafter set forth, the City hereby grants and conveys 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 Underground Electrical Easement. A nonexclusive, ten-foot-wide perpetual easement (the "Underground Electrical Easement Area") with the right, privilege, and authority to install, construct, erect, alter, repair, operate and maintain an underground electrical feeder, together with any and all other facilities or appurtenances necessary or convenient to the foregoing, to be located to the south of, and not within twenty-five feet of the City's water supply pipeline for the purposes set out in Section 2.1. Prior to the initial installation of the underground electrical feeder, a legal description of the Underground Electrical Easement Area shall be prepared by a licensed surveyor, describing an area five feet on either side of the centerline of the feeder. Exhibit B is a

depiction of the Tolt Right-of-Way showing the area within which the Underground Electrical Easement Area shall be established.

1.2 Temporary Construction Easement. A nonexclusive, temporary easement upon the Tolt Right-of-Way (the "Construction Easement Area") for the purposes set forth in Section 2.1 and to expire as set out in Section 2.2.

1.3 Access. The easements granted in Sections 1.1 and 1.2 include the right to reasonable access to the Underground Electrical Feeder Easement Area and the Temporary Construction Easement Area from and over the Tolt Right-of-Way as set out in Section 5.

1.4. City's Use. The City, its successors and assigns, shall have the right to use the Underground Electrical Easement Area 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 Underground Electrical Easement Area. The surveying, construction, reconstruction, installation (including without limitation directional drilling), alteration, operation, maintenance, repair, protection, and removal or abandonment-in-place of an underground electrical feeder, together with any and all other facilities or appurtenances necessary or convenient to the foregoing, 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 Temporary Construction Easement Area. Activities required for or reasonably related to the initial construction and installation of the underground electrical feeder. The Temporary Construction Easement Area is located to allow PSE flexibility during its initial construction and installation of the underground electrical feeder within the Underground Electrical Easement Area. The Temporary Construction Easement allows PSE to make reasonable use of areas outside of the Underground Electrical Easement Area, for example, when necessary for the temporary staging of equipment and materials. 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 underground electrical feeder, and the satisfaction of any monitoring or mitigation

requirements of permits or approvals for such underground electrical feeder. 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 underground electrical feeder 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 PSE's electrical facilities 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 and the operation of its 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 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 Except in the case of an emergency, prior to commencing any substantial construction or maintenance activities in the Easement Areas, including installation of the Underground Electrical Feeder contemplated herein, 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..

3.4.2 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.

3.4.3 All materials 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.

3.4.4 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 electrical 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 electrical 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.

3.4.5 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.

3.4.6 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.

3.4.7 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. PSE acknowledges that the City of Seattle has an agreement with King County Parks and Recreation for the use of the right of way as a Public Trail. No construction activities can take place within the Tolt Pipeline Right of Way without notice to, and coordination with, King County Parks and Recreation.

3.4.8 PSE shall also provide detailed as-built design drawings showing the size, depth and location of all its conduits, vaults, and other service appurtenances and related equipment within the Underground Electrical Easement Area.

3.4.9 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 underground electrical facilities within the Underground Electrical Easement Area.

3.4.10 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.

3.4.11 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 underground electrical 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 electrical system and its 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 Upon notification to PSE of planned construction by other parties within ten (10) feet of the Underground Electrical Easement Area, PSE shall mark the precise location of its underground electrical facilities before the construction commences, provide a representative to inspect the construction when it commences, and periodically inspect thereafter to ensure that PSE's facilities are not damaged by the construction.

3.7 Removal and Abandonment in Place.

3.7.1 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 underground electrical facilities, or abandon the underground electrical facilities in place, as provided below.

3.7.2 Following the removal of all or a portion of its underground electrical 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.

3.7.3 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 of its underground electrical facilities, or equipment, or any portion thereof, and the payment of any costs of the environmental review.

3.7.4 If PSE is required to remove its underground electrical 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 underground electrical 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 underground electrical facilities, or equipment and restore the Easement Areas.

3.7.5 In the event PSE decides to abandon its underground electrical facilities in place, PSE must de-energize all underground electrical facilities, and equipment, in accordance with all applicable regulatory requirements. PSE shall be responsible for any environmental review required for the abandonment of its underground electrical facilities, or any portion thereof, and the payment of any costs of such environmental review. PSE's abandonment of its underground electrical facilities, 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 abandoned conduit within the Underground Electrical Easement Area.

3.7.6 The City and PSE expressly agree that paragraph 3.7.5 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 Underground Electrical 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 Underground Electrical Easement Area.

5.2 Based on as-built plans pertaining to the underground electrical facilities, 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 underground electrical facilities or to change the grade, by either cut or fill, within twenty (20) feet of the underground electrical facilities. If the City lowers grade to less than three (3) feet cover, the City will provide a structural cover to protect the underground electrical facilities 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 Underground Electrical 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 underground electrical facilities 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 Tolt Pipeline Right of Way 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 underground electrical facilities 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 Underground Electrical 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 hereunder 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 electricity 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.

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 underground electrical facilities. PSE shall be presumed to have abandoned the underground electrical facilities if PSE ceases to use the underground electrical facilities for the purposes specified in Section 2 for a period of sixty (60) successive months, unless PSE before the expiration of the 60-month period provides the City with written notice that PSE has de-energized the underground electrical facilities for a specific purpose and intends to re-energize the underground electrical facilities 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 underground electrical facilities, 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 underground electrical facilities 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, remedies provided by the WUTC, provided that if the party seeking 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 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 underground electrical facilities, or equipment, or any portion thereof, or from the existence of PSE's underground electrical 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, non-appealable judgment entered by a competent legal body. If any action or proceeding is brought against the City by reason of PSE's underground electrical facilities, or equipment, or any portion thereof, PSE shall defend the City, 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 Two Million Dollars ($2,000,000). 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, 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 or Letter of Self-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 underground electrical 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. Legal Relations.

12.1 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.

12.2 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 underground electrical 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 underground electrical facilities, and equipment, or other related activities permitted under this Agreement.

12.3 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.

12.4 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 13. Miscellaneous.

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

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

13.7 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.
Real Estate Department
The PSE Building
10885 NE 4th Street
10th Floor
Bellevue, Washington 98004

13.8 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.

13.9 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.

13.10 There are no third party beneficiaries to the Agreement.

13.11 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: _____
Booga Gilbertson, Vice President, Operations

Date: _____

EXHIBIT A
EASEMENT DESCRIPTION
PAGE 1 OF 2

STRIPS OF LAND 10 FEET IN WIDTH BEING IN PORTIONS OF THE SOUTH HALF OF SECTION 17 AND THE NORTHEAST QUARTER OF SECTION 20 TOWNSHIP 26 NORTH, RANGE 6 EAST, W.M., KING COUNTY, WASHINGTON, BEING 5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINES:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 17, A 3" BRASS DISK IN CONCRETE MONUMENT MARKED "KING COUNTY SURVEY", FROM WHICH THE WEST QUARTER CORNER OF SAID SECTION BEARS NORTH 02°18'17" EAST 2664.82 FEET DISTANT AND FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION BEARS SOUTH 88°49'19" EAST 5248.43 FEET DISTANT; THENCE NORTH 02°18'17" EAST ALONG THE WEST LINE OF SAID SECTION A DISTANCE OF 1237.62 FEET; THENCE SOUTH 87°41'43" EAST A DISTANCE OF 323.95 FEET; THENCE NORTH 05°21'00" EAST A DISTANCE OF 33.83 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 5.00 FEET; THENCE NORTHERLY AND EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 86°02'55" A DISTANCE OF 7.51 FEET; THENCE SOUTH 88°36'05" EAST A DISTANCE OF 31.98 TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 88°36'05" EAST A DISTANCE OF 1202.76 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 965.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 17°50'27" A DISTANCE OF 300.48 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 600.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 8°52'40" A DISTANCE OF 92.97 FEET; THENCE SOUTH 61°52'58" EAST A DISTANCE OF 69.27 FEET;
THENCE SOUTH 60°14'32" EAST A DISTANCE OF 135.34 FEET;
THENCE SOUTH 60°56'27" EAST A DISTANCE OF 525.54 FEET;
THENCE SOUTH 89°11'54" EAST A DISTANCE OF 12.84 FEET;
THENCE SOUTH 60°53'38" EAST A DISTANCE OF 31.04 FEET TO A POINT HEREINAFTER KNOWN AS POINT "A";
THENCE SOUTH 60°53'38" EAST A DISTANCE OF 25.33 FEET TO A POINT HEREINAFTER KNOWN AS POINT "B";
THENCE SOUTH 60°53'22" EAST A DISTANCE OF 277.36 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEAST AND HAVING A RADIUS OF 1040.00 FEET;
THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 6°12'28" A DISTANCE OF 112.68 FEET;
THENCE SOUTH 67°05'51" EAST A DISTANCE OF 1058.89 FEET;
THENCE SOUTH 73°55'46" EAST A DISTANCE OF 41.95 FEET;
THENCE SOUTH 67°05'50" EAST A DISTANCE OF 233.68 FEET;
THENCE SOUTH 60°16'02" EAST A DISTANCE OF 41.95 FEET;
THENCE SOUTH 67°06'52" EAST A DISTANCE OF 176.42 FEET;

EXHIBIT A
EASEMENT DESCRIPTION
PAGE 2 OF 2

THENCE SOUTH 44°38'46" EAST A DISTANCE OF 50.51 FEET;
THENCE SOUTH 68°28'14" EAST A DISTANCE OF 81.88 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 10.00 FEET;
THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 68°06'43" A DISTANCE OF 11.89 FEET;
THENCE SOUTH 00°21'31" EAST A DISTANCE OF 17.94 FEET TO THE SOUTHERLY MARGIN OF THE TOLT PIPELINE RIGHT OF WAY AND THE TERMINUS OF SAID CENTERLINE, FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 17 BEARS NORTH 88°39'05" EAST 660.27 FEET DISTANT.

TOGETHER WITH;
COMMENCING AT AFORESAID POINT "A", BEING THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST FROM WHICH ITS CENTER BEARS NORTH 29°06'22" EAST, 15.00 FEET DISTANT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 118°44'13" A DISTANCE OF 31.09 TO THE TERMINUS OF SAID CENTERLINE.

TOGETHER WITH;
COMMENCING AT AFORESAID POINT "B" THENCE NORTH 00°22'09" EAST A DISTANCE OF 68.94 FEET TO THE NORTHERLY MARGIN OF THE TOLT PIPELINE RIGHT OF WAY AND THE TERMINUS OF SAID CENTERLINE.

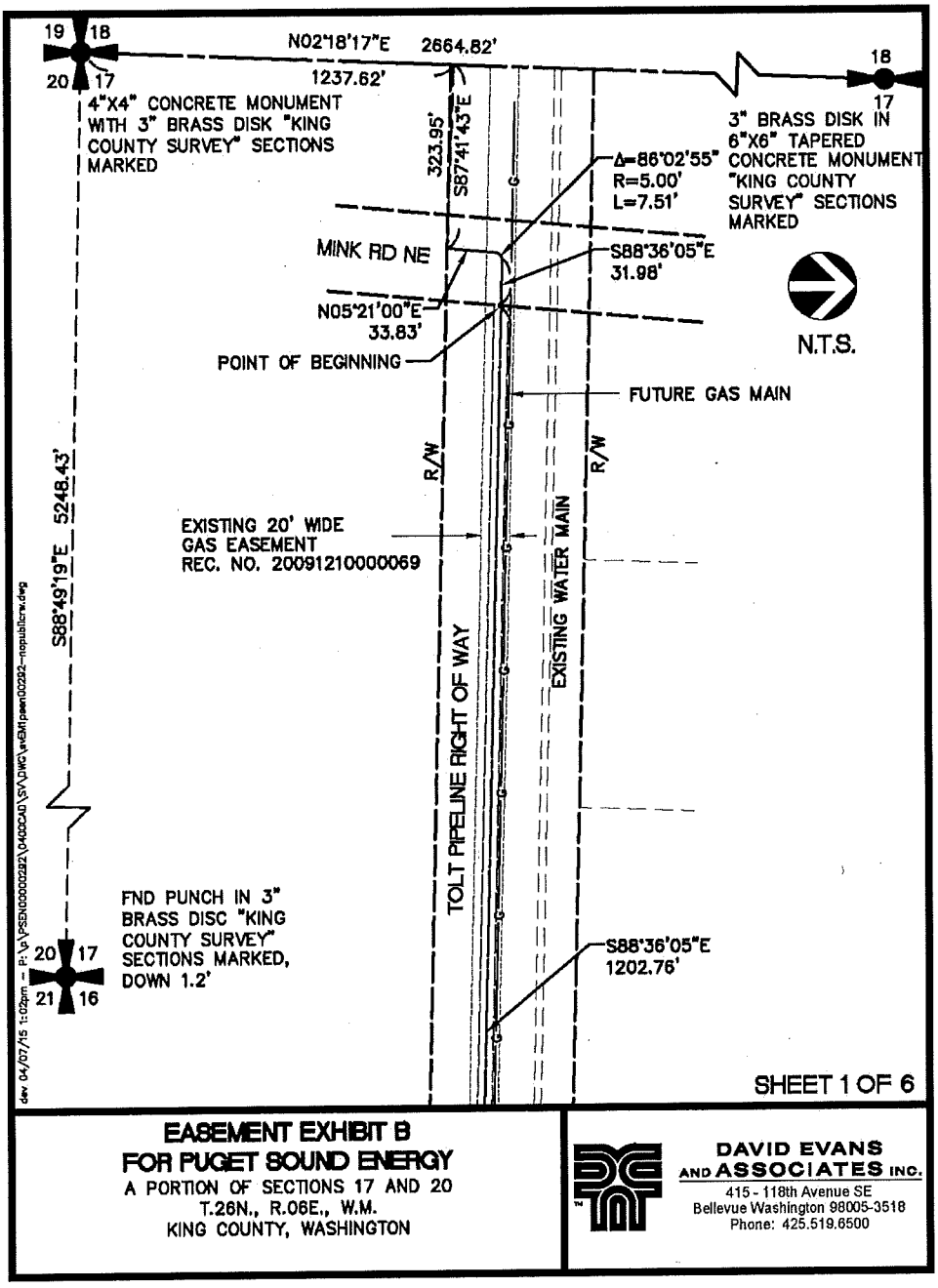
TOGETHER WITH;
COMMENCING AT AFORESAID POINT "B" THENCE SOUTH 06°40'46" EAST A DISTANCE OF 12.20 FEET; THENCE SOUTH 25°35'02" EAST A DISTANCE OF 28.93 FEET; THENCE SOUTH 51°53'35" EAST A DISTANCE OF 82.69 FEET TO THE SOUTHERLY MARGIN OF THE TOLT PIPELINE RIGHT OF WAY AND THE TERMINUS OF SAID CENTERLINE.

EXCEPT THEREFROM ANY PORTION LYING WITHIN NE 148TH STREET.

SAID STRIP SIDELINES TO BE SHORTENED OR LENGTHENED TO TERMINATE AT INTERIOR ANGLE POINTS, AT THE EASTERLY MARGIN OF MINK ROAD N.E. AND AT THE TOLT PIPELINE RIGHT OF WAY RIGHT OF WAY MARGINS.

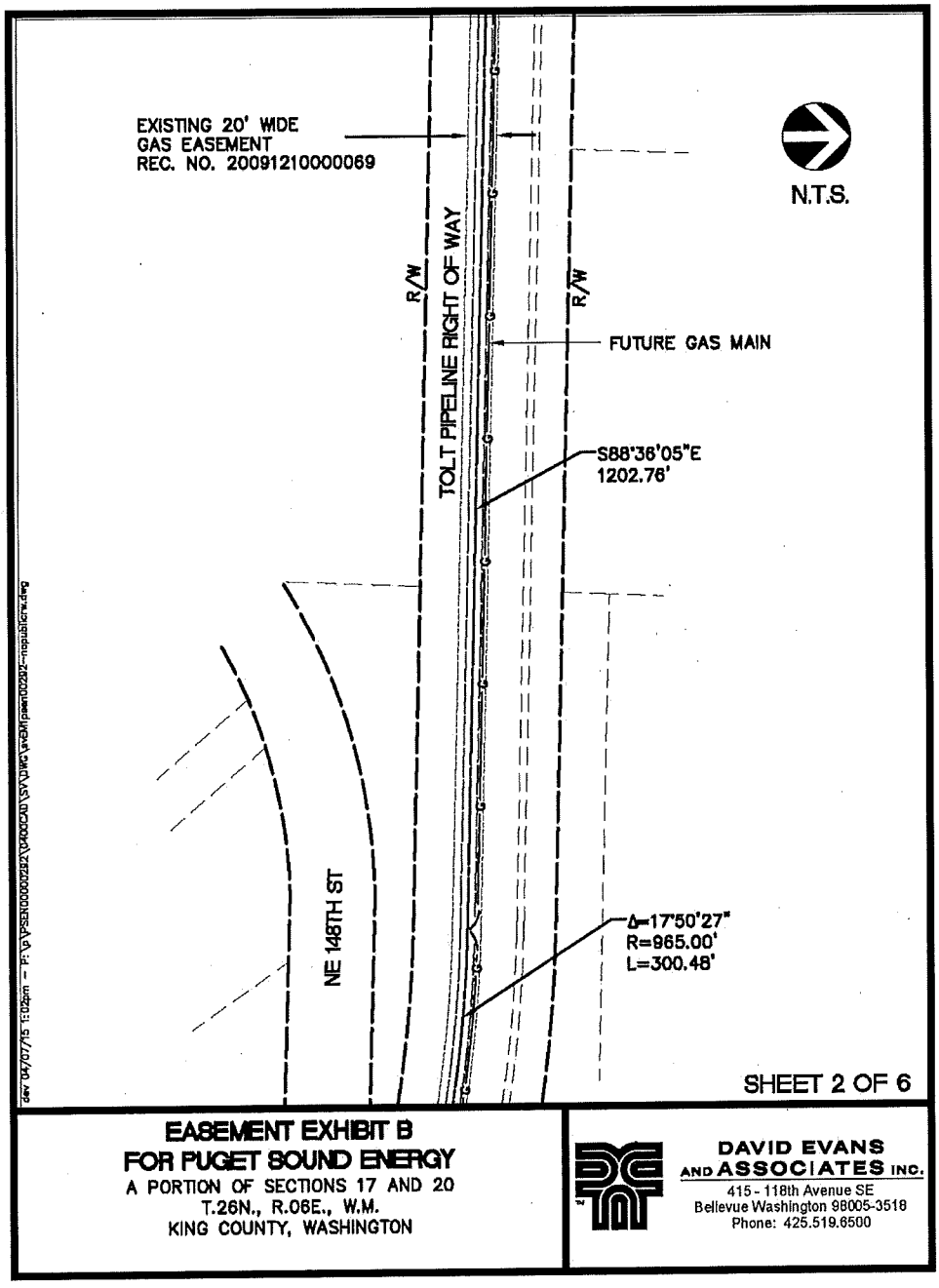
CONTAINING 42,319 SQUARE FEET, MORE OR LESS.

DAVID EVANS
AND ASSOCIATES INC.
415 - 118th Avenue SE
Bellevue Washington 98005-3518
Phone: 425.519.6500



EASEMENT EXHIBIT B
FOR PUGET SOUND ENERGY
A PORTION OF SECTIONS 17 AND 20
T.26N., R.06E., W.M.
KING COUNTY, WASHINGTON

DAVID EVANS AND ASSOCIATES INC.
415 - 118th Avenue SE
Bellevue Washington 98005-3518
Phone: 425.519.6500


EXISTING 20' WIDE
GAS EASEMENT
REC. NO. 20091210000069
N.T.S.
R/W
TOLT PIPELINE RIGHT OF WAY
R/W
FUTURE GAS MAIN
S88°36'05"E
1202.76'
NE 148TH ST
Δ=17°50'27"
R=965.00'
L=300.48'
SHEET 2 OF 6
EASEMENT EXHIBIT B
FOR PUGET SOUND ENERGY
A PORTION OF SECTIONS 17 AND 20
T.26N., R.06E., W.M.
KING COUNTY, WASHINGTON
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AND ASSOCIATES INC.
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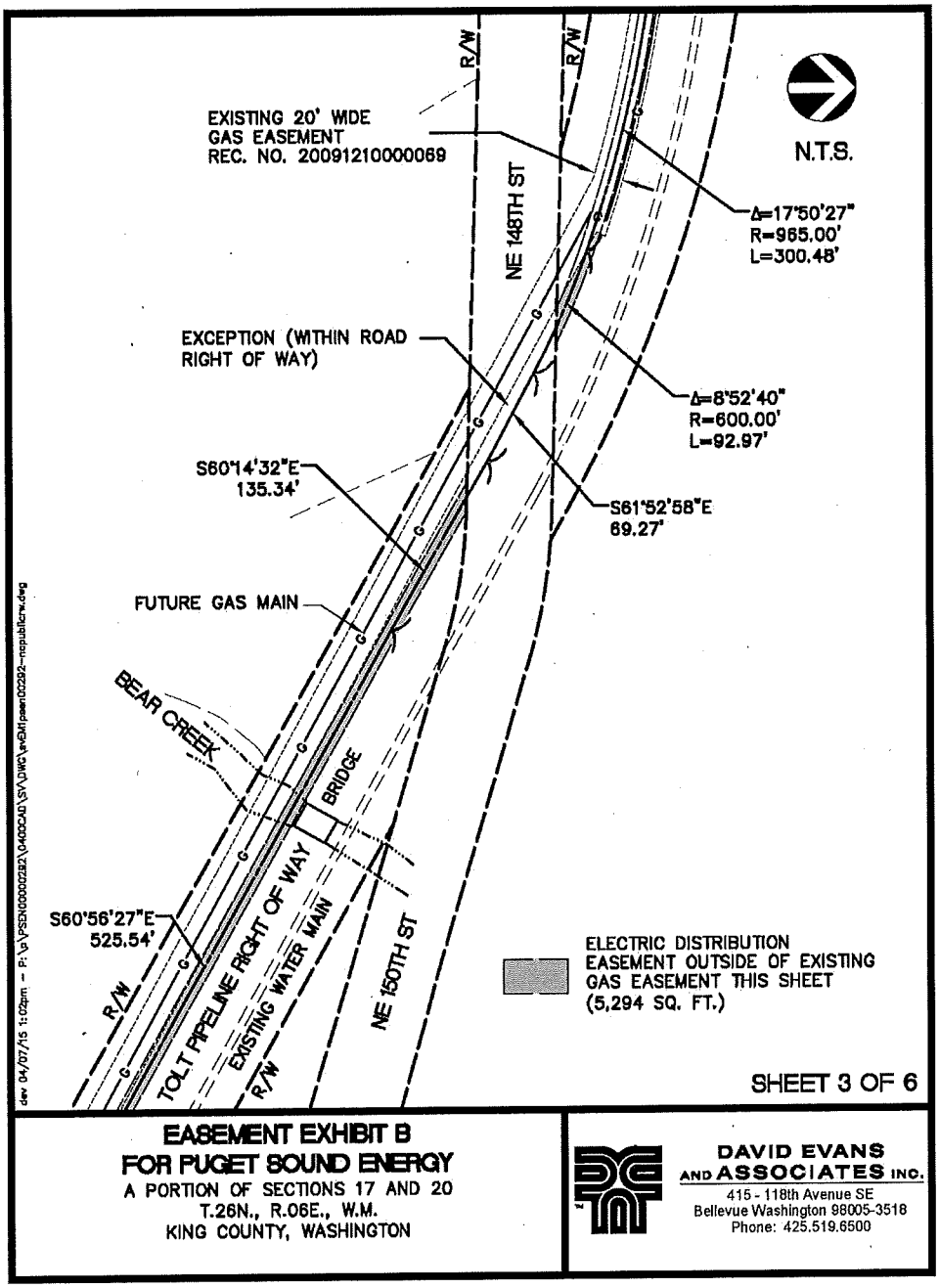
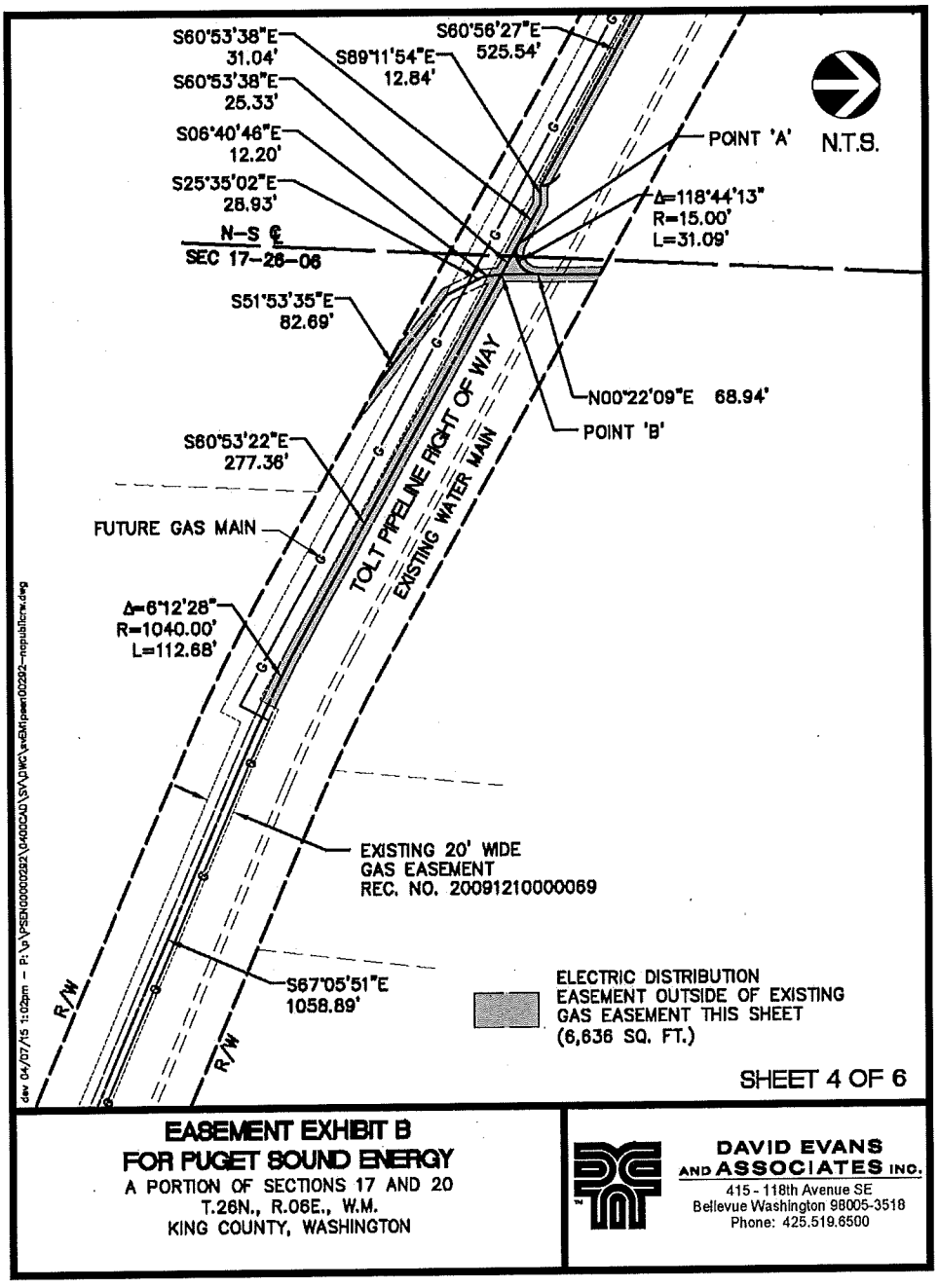
Bellevue Washington 98005-3518
Phone: 425.519.6500

Bob Gambill
SPU PSE Tolt ROW ORD ATT 1 EXH A
Version #1





EASEMENT EXHIBIT B
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Phone: 425.519.6500

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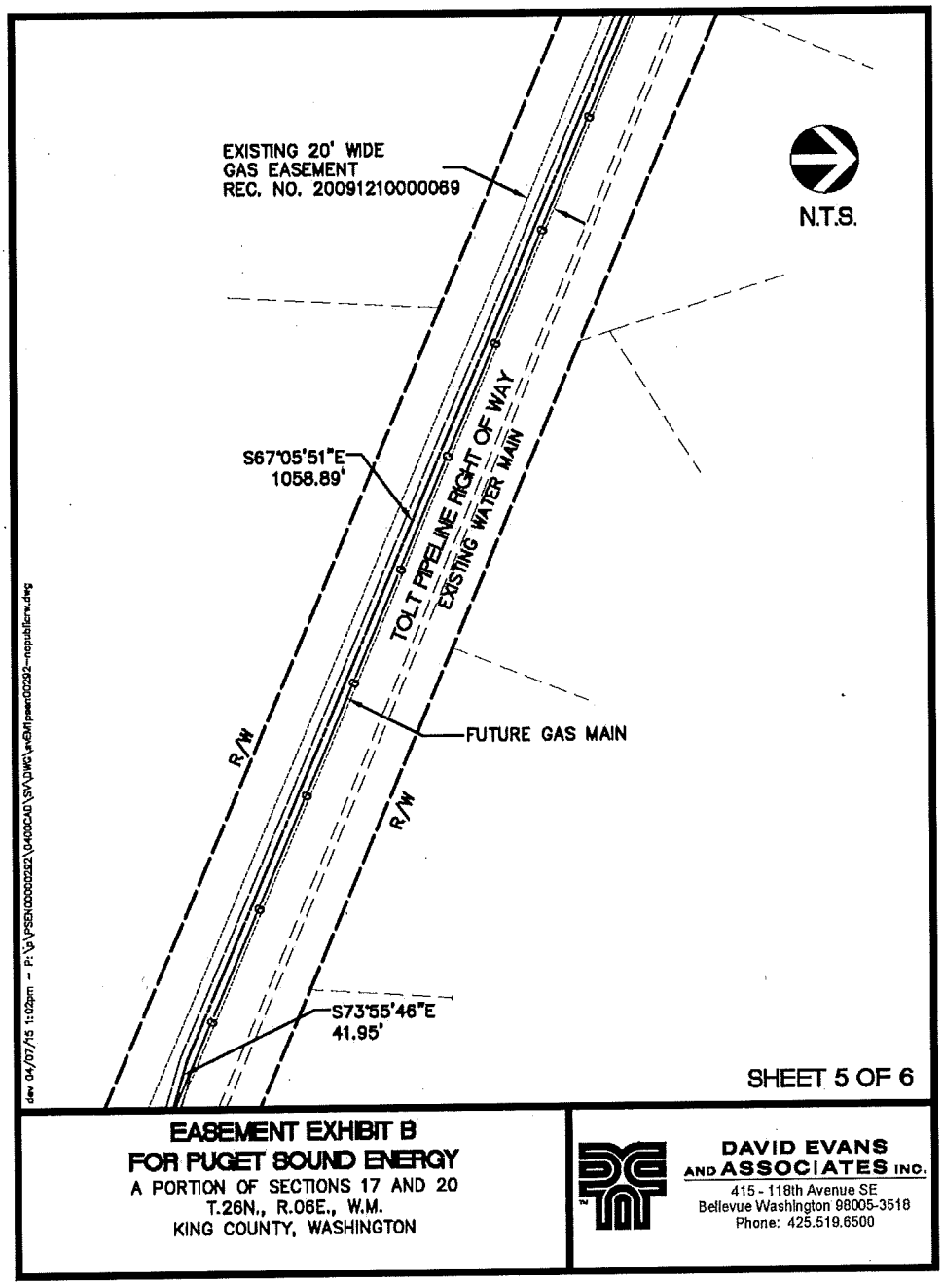
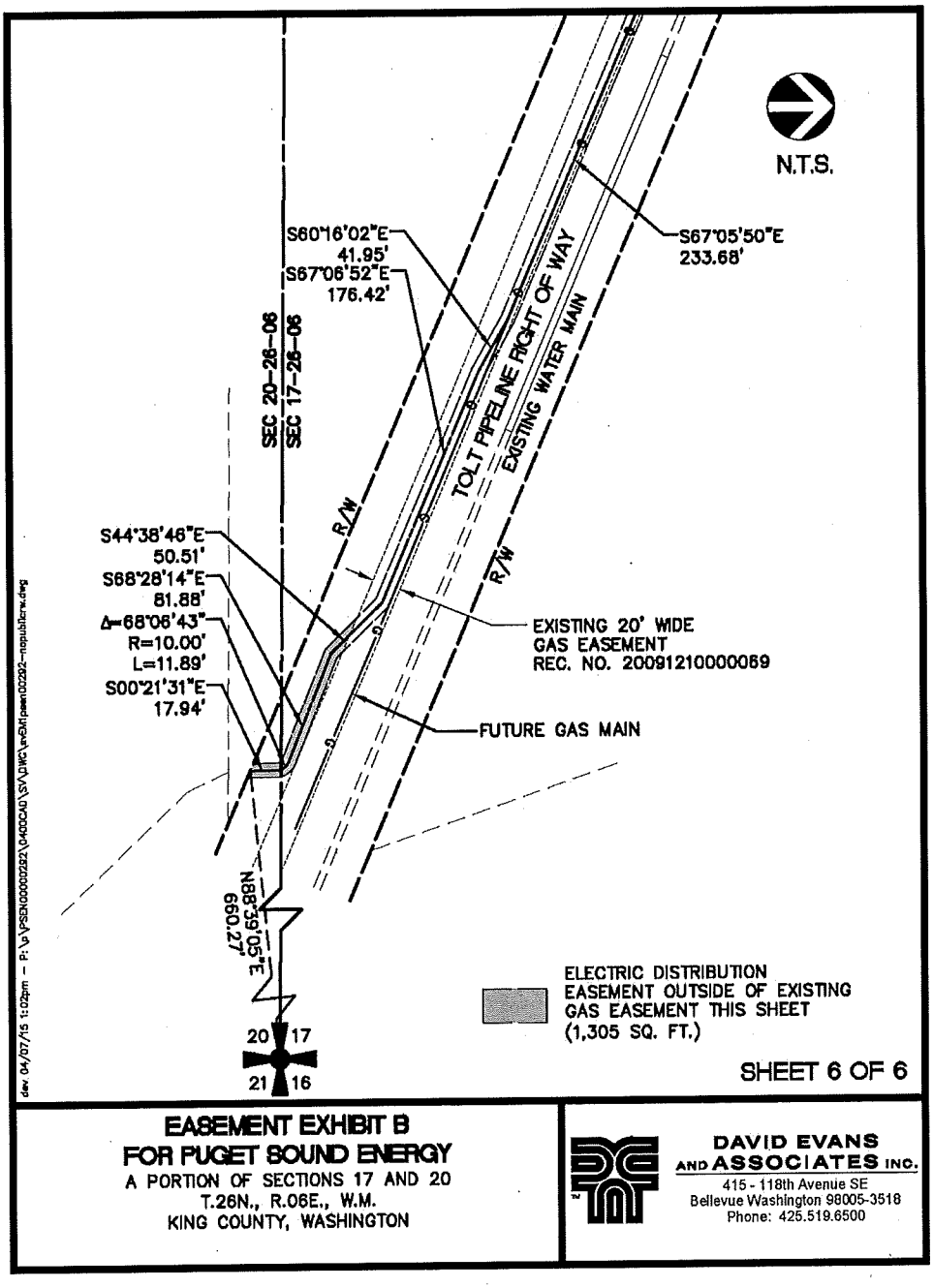
Version #1



Bob Gambill
SPU PSE Tolt ROW ORD ATT 1 EXH A
Version #1



EASEMENT EXHIBIT B
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T.26N., R.06E., W.M.
KING COUNTY, WASHINGTON

DAVID EVANS AND ASSOCIATES INC.
415 - 118th Avenue SE
Bellevue Washington 98005-3518
Phone: 425.519.6500

STATE OF WASHINGTON -- KING COUNTY

--ss.

327420 No.

CITY OF SEATTLE,CLERKS OFFICE

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:124822-825 TITLE ONLY

was published on

08/13/15

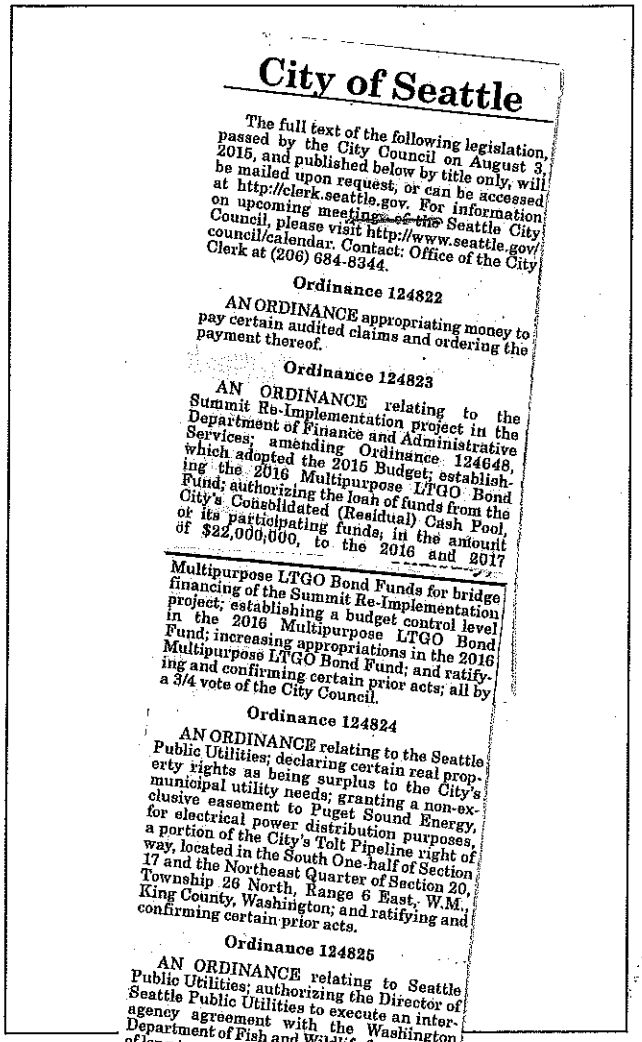
The amount of the fee charged for the foregoing publication is the sum of $85.25 which amount has been paid in full.

Subscribed and sworn to before me on

08/13/2015

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County



City of Seattle

The full text of the following legislation, passed by the City Council on August 3, 2015, and published below by title only, will be mailed upon request, or can be accessed at http://clerk.seattle.gov. For information on upcoming meetings of the Seattle City Council, please visit http://www.seattle.gov/council/calendar. Contact: Office of the City Clerk at (206) 684-8344.

Ordinance 124822

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

Ordinance 124823

AN ORDINANCE relating to the Summit Re-Implementation project in the Department of Finance and Administrative Services; amending Ordinance 124648, which adopted the 2015 Budget; establishing the 2016 Multipurpose LTGO Bond Fund; authorizing the loan of funds from the City's Consolidated (Residual) Cash Pool, or its participating funds, in the amount of $22,000,000, to the 2016 and 2017 Multipurpose LTGO Bond Funds for bridge financing of the Summit Re-Implementation project; establishing a budget control level in the 2016 Multipurpose LTGO Bond Fund; increasing appropriations in the 2016 Multipurpose LTGO Bond Fund; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

Ordinance 124824

AN ORDINANCE relating to the Seattle Public Utilities; declaring certain real property rights as being surplus to the City's municipal utility needs; granting a non-exclusive easement to Puget Sound Energy, for electrical power distribution purposes, a portion of the City's Tolt Pipeline right of way, located in the South One-half of Section 17 and the Northeast Quarter of Section 20, Township 26 North, Range 6 East, W.M., King County, Washington; and ratifying and confirming certain prior acts.

Ordinance 124825

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to execute an interagency agreement with the Washington Department of Fish and Wildlife for provision of long-term monitoring and evaluation activities for the Cedar River Hatchery Program; and ratifying and confirming prior acts.

Date of publication in the Seattle Daily Journal of Commerce, August 13, 2015.

8/13(327420)

Page 2 of affidavit