



SEATTLE CITY COUNCIL

Legislative Summary

CB 118878

Record No.: CB 118878

Type: Ordinance (Ord)

Status: Passed

Version: 1

Ord. no: Ord 125232

In Control: City Clerk

File Created: 10/17/2016

Final Action: 12/21/2016

Title: AN ORDINANCE relating to the Seattle Public Utilities Department; authorizing the Director of Seattle Public Utilities to grant the City of Kenmore limited permission to construct and manage a non-motorized, public recreational trail on a portion of utility property in the Tolt Pipeline Right of Way; and authorizing the Director to execute an agreement for this property use.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Herbold

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments: Att 1 - Tolt Pipeline Trail Permit Agreement

Drafter: bob.hennessey@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published:

Yes

No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	11/22/2016	Mayor's leg transmitted to Council	City Clerk			
1	City Clerk	11/22/2016	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	11/23/2016	sent for review	Civil Rights, Utilities, Economic Development, and Arts Committee			
Action Text: The Council Bill (CB) was sent for review. to the Civil Rights, Utilities, Economic Development, and Arts Committee							
Notes:							

Legislative Summary Continued (CB 118878)

1	Full Council	12/12/2016	referred	Civil Rights, Utilities, Economic Development, and Arts Committee	
1	Civil Rights, Utilities, Economic Development, and Arts Committee	12/13/2016	pass		Pass
	Action Text:	The Committee recommends that Full Council pass the Council Bill (CB).			
		In Favor: 1 Chair Herbold			
		Opposed: 0			
1	Full Council	12/16/2016	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, Councilmember Burgess, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien			
		Opposed: 0			
1	City Clerk	12/20/2016	submitted for Mayor's signature	Mayor	
1	Mayor	12/21/2016	Signed		
1	Mayor	12/21/2016	returned	City Clerk	
1	City Clerk	12/21/2016	attested by City Clerk		
	Action Text:	The Ordinance (Ord) was attested by City Clerk.			
	Notes:				

CITY OF SEATTLE

ORDINANCE 125232

COUNCIL BILL 118878

AN ORDINANCE relating to the Seattle Public Utilities Department; authorizing the Director of Seattle Public Utilities to grant the City of Kenmore limited permission to construct and manage a non-motorized, public recreational trail on a portion of utility property in the Tolt Pipeline Right of Way; and authorizing the Director to execute an agreement for this property use.

WHEREAS, The City of Seattle ("City"), acting by and through its Seattle Public Utilities Department ("SPU"), owns in fee real property in the City of Kenmore ("Kenmore") commonly referred to as the Tolt Pipeline Right of Way ("the Property"); and

WHEREAS, SPU granted Kenmore a non-exclusive road easement ("Easement") over a portion of the Property ("Easement Area") via Ordinance 120749 in 2002; and

WHEREAS, Kenmore has to date not built a road in the Easement Area but desires to retain the Easement; and

WHEREAS, Kenmore further wishes to develop a non-motorized public recreational trail in the Easement Area under a 20-year recreational trail agreement with the City in lieu of building a road in the Easement Area; and

WHEREAS, SPU is willing to grant Kenmore limited permission to construct and manage a recreational trail in the Easement Area, subject to certain conditions, which includes no unreasonable interference with SPU's use of the Property for its water supply system or other necessary utility purposes; and

WHEREAS, in consideration for SPU granting permission for Kenmore to construct and manage a public recreational trail on the Property in the Easement Area, Kenmore will maintain the recreational trail and related improvements at its sole cost and expense, and will also

1 defend, indemnify and hold harmless the City from any claims arising out of or in
2 connection with Kenmore’s occupancy, use or improvement of the Property; NOW,
3 THEREFORE,

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

5 Section 1. The Director of Seattle Public Utilities (“Director”), or the Director’s designee,
6 is authorized to execute, for and on behalf of The City of Seattle (“City”), a 20-year recreational
7 trail agreement with the City of Kenmore (“Kenmore”), substantially in the form of the
8 agreement attached hereto as Attachment 1, which grants from the City to Kenmore temporary,
9 revocable and non-exclusive permission to occupy and use a portion of City-owned utility
10 property in the Tolt Pipeline Right of Way (“Property”) for the construction and management of
11 a non-motorized public recreational trail.

12 Section 2. Nothing in this ordinance shall interfere with the City’s previous grant of a
13 road access easement to Kenmore via City Ordinance 120749 over the Property, provided that
14 the City’s permission to Kenmore to occupy and use the Property for the public recreational trail
15 authorized herein shall terminate if Kenmore exercises its easement rights, now or in the future,
16 to build a road on the Property.

17 Section 3. The Director is further authorized to extend the recreational trail agreement
18 authorized by this ordinance for up to an additional 20 years with such amendments or deletions
19 as the Director deems are in the best interest of Seattle Public Utilities and consistent with this
20 ordinance.

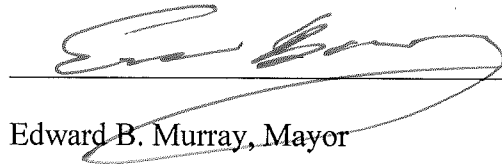
1 Section 4. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 16th day of December, 2016,
5 and signed by me in open session in authentication of its passage this 16th day of
6 December, 2016.

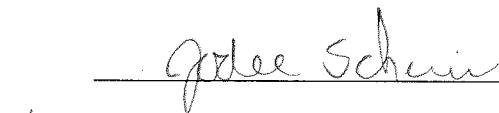
7 

8 President _____ of the City Council

9 Approved by me this 21st day of December, 2016.

10 
11 Edward B. Murray, Mayor

12 Filed by me this 21st day of December, 2016.

13 
14 for Monica Martinez Simmons, City Clerk

15 (Seal)

16

17 Attachments:

18 Attachment 1 – Seattle Public Utilities-City of Kenmore Tolt Pipeline Trail Permit Agreement

**SEATTLE PUBLIC UTILITIES-CITY OF KENMORE
TOLT PIPELINE TRAIL PERMIT AGREEMENT**

This Trail Permit Agreement (hereinafter referred to as “**Agreement**”) is entered into by and between the CITY OF SEATTLE (hereinafter referred to as the “**City**”), a municipal corporation of the State of Washington, acting by and through its Seattle Public Utilities department (hereinafter referred to as “**SPU**”), and the CITY of KENMORE, a municipal corporation of the state of Washington (hereinafter referred to as “**Kenmore**”). SPU and Kenmore are referred to in this Agreement collectively as the “**Parties**,” and individually as a “**Party**.”

RECITALS

WHEREAS, The City of Seattle, acting by and through its Seattle Public Utilities Department, owns certain fee real property located in King County, commonly referred to as the “Tolt Pipeline Right of Way,” and

WHEREAS, SPU owns, operates and maintains two major water supply lines, known as the Tolt I and the Tolt II pipelines (“Transmission Pipelines”), located in the Tolt Pipeline Right of Way, for the primary purpose of water supply transmission ; and

WHEREAS, Kenmore has requested use of a portion of the Tolt Pipeline Right of Way as described in Section 1.1 of this Agreement (“the Property”) to build and operate a public trail; and

WHEREAS, Kenmore acknowledges that the primary purpose of the Property is for the transmission and distribution of a public water supply system; and

WHEREAS, at the time of execution of this Agreement, SPU has no current plans to construct, install, replace or expand utility facilities in or on the Property within the next five years; and

WHEREAS, at the time of execution of this Agreement, SPU’s routine maintenance of the Property typically does not require use of heavy machinery between 68th AVE NE and 71st AVE NE; and

WHEREAS, SPU recognizes that Kenmore’s construction of a recreational trail is a public amenity and, as such, SPU wishes to cooperate with Kenmore by providing use of its property for the trail, and consideration of the trail use in its work in or on the Property; and

WHEREAS, SPU is willing to grant Kenmore limited permission and privilege to use the Property for recreational trail purposes, subject to the terms and conditions of this Agreement, and

WHEREAS, the City has previously granted to Kenmore an access easement across a portion of the Tolt Pipeline Right of Way for road access across the Property (hereinafter “the Easement”), by authorization of Ordinance 120749 and by recording, King County Record No. 20030108000286. While Kenmore has not or is not currently exercising its rights under the Easement, both parties intend and understand that Kenmore’s new request to build and operate a public trail over the Property, and any City permission herein this Agreement does not interfere with the Easement, and Kenmore agrees to close a trail on the Property in accordance with terms of this agreement prior to exercising the Easement;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, the sufficiency of which is hereby acknowledged by both Parties, the Parties agree as follows:

TERMS AND CONDITIONS

1. Permitted Use.

1.1 Grant. The City hereby grants to Kenmore limited and nonexclusive permission to use the below described real property (hereinafter "Trail Area" or "the Property") to access, construct, operate, and maintain for the public, a public Recreational Trail:

A. A portion of the City of Seattle's fee owned property commonly referred to as the Tolt Pipeline Right of Way, between 68th Avenue NE and 73rd Avenue NE, in the City of Kenmore, in King County, Washington, which portion of the Tolt Pipeline Right of Way is more particularly described and depicted on **Exhibit A** (Exhibit A depicts the portion of the property for which Seattle is granting permission to Kenmore to construct a public recreational trail; **Exhibit B** depicts the entire width of the affected Tolt Pipeline Right of Way in which the trail will be constructed).

1.2 Permitted Use. The City grants to Kenmore limited permission to use the Property for the construction, operation, maintenance and inspection of a publicly accessible Recreational Trail. While Kenmore maintains an existing right to use the Property under the Easement, both parties agree that nothing herein this Agreement conflicts or interferes with Kenmore's rights under the Easement. Both parties further agree that if Kenmore exercises its right to build a road on the Property as described under the Easement then the City's limited permission to Kenmore for Trail use on the Property shall terminate and Kenmore shall close the Trail prior to building a road in accordance with Sections 6.1 and 6.2 of this Agreement.

A. "Recreational Trail" or "Trail" means unimproved or improved pathways on portions of the Property that are made available for use by the public, free of charge, which shall include pedestrians, bicycles, domestic pets, equestrians, cross-country skiers, non-motorized wheeled recreational equipment, and motorized wheelchairs or other specialized equipment that accommodates use by disabled users. Recreational Trail shall not mean any informal trails connecting to the Property that were (or in the future shall be) constructed by private entities without SPU's express written approval.

B. Kenmore will not schedule any special event, such as a marathon, bike-a-thon, or any other event *likely to result* in increased numbers of people using any Recreational Trail without obtaining SPU's prior written permission. The permitted use does not give Kenmore the right to issue exclusive use permits to any third party, and Kenmore shall not issue third party permits for the use of the Property without written permission from SPU.

1.3 Non-exclusive Use. Kenmore's right under this Agreement to use the Property is non-exclusive and subject to SPU's right of discretionary revocation. SPU reserves the right to permit other entities or individuals to use any or all portions of the Property, including the right to permit other utilities to use any portion of the Property for the benefit of SPU or pursuant to law, orders, or requirements of any government entity with authority to make such orders. SPU will consider Kenmore's existing use of the Property for a public recreational trail as SPU decides whether to permit other uses of the Property. SPU will endeavor to provide at least sixty (60) days' notice to Kenmore prior to permitting other entities or individuals to use all or portions of the Property that may significantly affect the operation of the Recreational Trail. Except in case of emergency, SPU will make reasonable efforts to notify Kenmore about SPU's repair or maintenance activities on the Property if the activities will significantly impact Recreational Trail use for more than twenty-four hours. Kenmore will acquire no rights or interest in or to the Property under this Agreement.

- 1.4 Use by Motorized Vehicles. Except for motorized wheelchairs or other specialized equipment that accommodates use by disabled users, the use of motorized vehicles on the Property is only allowed under this Agreement as necessary for the construction, maintenance, operation, inspection, rehabilitation or repair of Recreational Trail facilities, and for providing police, security, fire and emergency services. This section 1.4 does not apply to SPU's use of motorized vehicles on the Property.
- 1.5 No Interference. If the Director of SPU or his or her designee determines that Kenmore's use of the Property for a Recreational Trail unreasonably interferes with SPU's or the City's use or enjoyment of the Property, or any adjoining City of Seattle properties, for water, utility or any other City purpose, including the sale of any portion of the Property or the sale of any adjoining City properties, Kenmore will reduce or eliminate the interference at Kenmore's sole cost and expense within thirty (30) days after written notice from the Director.

2. Effective Date; Term; Extensions.

- 2.1 Effective Date. This Agreement will be effective on the date last signed by an authorized representative of each Party following authorization by the Seattle City Council and the Kenmore City Council ("Effective Date").
- 2.2 Term. The term of this Agreement shall be twenty (20) years from the Effective Date unless extended or terminated pursuant to the terms herein.
- 2.3 Extensions. At least one year prior to the expiration date of the term of this Agreement and one year prior to the expiration of any extended term, at its option Kenmore may request an extension of this Agreement. If the Director or his or her designee determines that continued use by Kenmore is in the best interest of SPU, then the Director or his or her designee may extend this Agreement for one or more terms of such duration as the Director may determine, including potentially extending the agreement for another 20 year term, on the same terms and conditions herein, provided that the total of all terms and extensions shall not exceed forty years without further action by Seattle City Council.

3. Construction of Recreational Trails.

- 3.1 General Obligation Regarding Construction. Kenmore will be solely responsible for construction of Recreational Trail or Trail related improvements on the Property; however, Kenmore will work closely with SPU to make sure any new construction or improvements are completed in compliance with SPU needs, preferences, internal standards and operational requirements. Kenmore will not install pavement, new gravel, landscaping, buildings or structures of any kind in or on the Property without prior written consent from the Director of SPU, which may be conditioned in his or her discretion and will be subject to the requirements stated below. Replacing gravel on existing gravel pathways or roads as part of routine maintenance is addressed in Section 4.1.
- 3.2 Plan Review and Approval. Kenmore will not request construction bids or undertake any construction or installation of any modifications or improvements upon the Property without SPU's prior written approval, which shall include SPU's approval of all plans and specifications, including landscaping elements. Kenmore will submit plans and specifications at 30%, 90% and 100% in the design development process, and more often if Kenmore chooses to do so. SPU will have 30 calendar days to review submitted plans and specifications

and submit comments or request additional information, which Kenmore will provide in a timely manner.

- 3.3 Minimum Plan Requirements. At a minimum, the plans and specifications will specifically address the management of construction impacts on site, including but not limited to stockpiling of materials, equipment storage, erosion and sediment control, disposition of dewatering and wastewater discharges, safety barriers, temporary access detours and/or closures, signing, and similar matters. The plans and specifications will also specifically address the protection of the SPU transmission pipelines and other City facilities, both from construction impacts as well as any permanent weight load or other impacts deriving from any constructed Recreational Trail or improvements.
- 3.4 Construction. Kenmore, its officers, employees, agents, representatives, volunteers, and contractors, will perform all work on the Property in accordance with plans and specifications approved by SPU. Kenmore will install barriers, signage and any other appropriate device or infrastructure necessary to prohibit the public from entering the Property at Recreational Trail areas where construction or improvements are occurring and will leave such measures in place until after SPU inspects the Trail upon completion and determines the construction conforms to the plans, specifications, and SPU preferences, needs, internal standards and operational requirements. Kenmore agrees not to open the Trail for public use until SPU inspects the Trail to determine whether construction conforms to the plans, specifications, and Operational Requirements. Kenmore will give SPU reasonable prior notice of all pre-construction and construction meetings and of the commencement of construction, so that SPU has the option of attending such meetings and inspecting the Property during construction. During construction, Kenmore will submit any change orders that substantively address design or operational modifications to SPU for its review and approval prior to any work on such change orders proceeding. SPU will have 5 working days to either respond with comments, or if the issue requires coordination, to request additional time to review the impacts of the proposed change order. SPU will make reasonable efforts to perform timely review and coordination in order to minimize construction delays. Kenmore and its contractors will abide by state, federal and local codes regarding work, construction, and structures in proximity to water supply systems and will request and pay for safety watch(es) when required by City or other applicable codes or by SPU. Kenmore will complete all work within the Property in a neat and efficient manner. Kenmore will remove all debris and restore non-Recreational Trail portions of the Property affected by construction activities to their preconstruction condition, if possible, or to a reasonably similar condition. Kenmore agrees to provide line drawings of the Recreational Trail or improvements to SPU within sixty (60) days after completion of Trail work, and as-builts to SPU within six months. Kenmore will notify SPU thirty (30) days in advance of opening the Trail to the public.
- 3.5 Public Notice. Kenmore will be solely responsible for appropriately notifying adjacent property owners about planned construction activities and informing the public about plans to develop or open Recreational Trails. Kenmore will be the primary point of contact for the public for all Recreational Trail related construction; however, Kenmore will provide SPU advance notice of public communications involving the Property and will provide SPU the opportunity to review and comment about written public notices and to participate in public meetings at SPU's discretion. Kenmore may satisfy the advance notice requirement by providing a brief summary of planned communications, including the dates, times and locations of public meetings, at least thirty (30) days prior to the communications and meetings taking place. SPU may request review of written communications products, and will have ten (10) business days from receipt to provide comments. If SPU does not provide comments within ten (10) business days, SPU will have waived its right to comment.

- 3.6 Reimbursement of SPU Construction –Related Costs. Kenmore will complete all Recreational Trail construction and installation at its sole cost and expense. Kenmore will reimburse SPU for expenses associated with SPU’s review, approval and inspection of proposed and constructed Recreational Trail improvements in accordance with Section 5 of this Agreement.
- 3.7 Construction: Compliance with Law. Kenmore will complete all construction in compliance with all applicable federal, state, and local laws and regulations. SPU will not assume responsibility for or control over the working conditions and safety practices of employees, contractors, or subcontractors hired by Kenmore to perform any work on the Property, and nothing in this Agreement, including SPU’s plan review and approval, will be construed to place a duty, express or implied, on SPU to control or be responsible for such activities of Kenmore. Kenmore further acknowledges and agrees that SPU’s reviews and/or inspections of plans and construction of the Recreational Trails is for SPU’s internal requirements and purposes only, and will not be construed as any type of certification, warranty or other approval with respect to Kenmore’s compliance with any and all applicable federal, state and local laws, ordinances and building codes.

4. **Recreational Trail Operation and Maintenance.**

- 4.1 Maintenance. Kenmore will maintain the Trail and the Trail improvements, including drainage features installed as part of the Trail project, and will maintain the landscaping and grass in the entire width of the Tolt Pipeline Right-of-Way in which the Property is located, depicted in Exhibit B of this Agreement. This includes maintenance as set forth in this section and as outlined in the table below. Notwithstanding the above, SPU retains the right to perform additional or different maintenance on the Property to the extent required for utility or other purposes. With SPU’s prior written approval, Kenmore may perform different or additional maintenance on the Property as it deems appropriate for the recreational nature of the Property, provided that Kenmore does not interfere with SPU’s operations, or undermine or damage SPU’s facilities. During the term of this Agreement, at the SPU Director’s discretion, the Parties may agree in writing to change the maintenance responsibilities outlined in the table below. Kenmore will be the point of contact for Trail Area maintenance, requests, and Trail-related complaints, and will provide SPU with a Kenmore contact for such requests. Kenmore will respond to Trail maintenance requests and complaints in a timely manner. All maintenance tasks in the table below shall be performed at the sole expense of Kenmore, except that Kenmore and SPU shall be responsible for their respective labor costs of performing the annual, joint inspection of the Trail area.

Task Description	<u>Responsible Agency</u>	
	SPU	Kenmore
Mow grass		X
Clear brush, fallen trees		X
Maintain posts and bollards		X
Maintain asphalt and ¼ inch minus gravel		X
Respond to Trail complaints and maintenance requests		X
Maintain signage per section 4.3 of Agreement		X
Joint SPU-Kenmore annual inspection of Trail Area	X	X

- 4.2 Surface Water Management. Kenmore will take all steps necessary to minimize erosion caused by surface water from the Recreational Trail or due to the use of the Property for a recreational Trail. If in the reasonable opinion of the Director of SPU, such erosion affects the earth cover within the Property and appurtenant facilities, the Director may close the affected areas of the Recreational Trail until, in the reasonable opinion of the Director of SPU, the cause and effect of the erosion have been remedied by Kenmore. This section shall not apply to informal trails connecting to the Property that were constructed by private entities without Kenmore's approval.
- 4.3 Signage. Kenmore will install Trail signage at the Property as follows:
- A. Prior to posting signage, Kenmore will obtain SPU's prior written approval of the design, content and location of the sign, which approval may be reasonably withheld or conditioned by SPU. Some signage will include Trail use rules.
 - B. Following the initial approval process, Kenmore may routinely repair or replace Trail signage so long as the appearance and content of the signs do not substantially or materially change and so long as the location of the sign does not change. SPU must approve any location changes for signs.
 - C. Trail signage installed at Trail access locations will contain a working Kenmore telephone contact number to report Trail requests and complaints. If the contact number changes, Kenmore will replace signage with the new contact telephone number within thirty (30) days.
 - D. Kenmore will pay for, supply, and install any additional signs that SPU deems necessary to identify adequately the Trail Area or to warn Recreational Trail users away from utility facilities.
 - F. At its sole cost and expense, Kenmore will maintain all signs in reasonably good condition and at a minimum will ensure that the signs are accurate and legible.
 - G. Kenmore will install SPU-approved signage prior to opening any portion of the Recreational Trail.
- 4.4 Access. SPU will at all times have free access to the Property. This access may include but not be limited to access for the installation, operation, maintenance and repair of SPU's facilities, for the patrolling of the Property or for any other purpose. Kenmore shall obtain SPU's written permission prior to installing such items as barriers, gates or bollards, and Kenmore will provide SPU the ability to have its own padlock or other locking devices on such structures. Kenmore shall use its own clearly labeled locks to access the property, and shall provide SPU with keys to such devices.
- 4.5 Temporary Trail Closures. Kenmore understands that SPU's operation, repair, maintenance, inspection, and construction of its water supply system facilities, as well as field training, acts of nature, and other activities, may, on occasion, require the temporary closure of the Recreational Trail area. SPU agrees to minimize the length of time of any closure and to provide as much notice as possible to Kenmore of impending closures, except in case of closures necessitated by an emergency in which case SPU will notify Kenmore as soon as reasonably possible under the circumstances. SPU may install gates, barriers, or other signage in the case of SPU required temporary closures. Kenmore will obtain SPU approval for temporary Trail closures Kenmore deems necessary for maintenance or other purposes.

Kenmore will be responsible for installing its own closure devices, including signage, in the case of Kenmore-required Trail closures.

- 4.6 Damage to Trails, Facilities, or the Property. SPU will continue to use the Property for utility purposes, including use by heavy trucks and machinery for utility construction, installation, operation, and maintenance. SPU will not be held liable for any claims or damage to Recreational Trail improvements, appurtenances, or landscaping constructed or placed in, under, across, or upon the Property. In the event of SPU damage to Trail improvements, SPU will backfill any trenches or excavations, but will not repair damaged improvements. SPU will notify Kenmore if SPU damages Trail improvements. This paragraph does not limit Kenmore's ability to seek damages from other users of the Property, including SPU's licensees or permittees. Kenmore will promptly notify SPU if it discovers any damage to the Property or utility facilities. If damage to the Property occurs because of Recreational Trail use, Kenmore will pay to repair or restore the Property or facilities to a good condition. SPU will determine in its discretion whether SPU will perform the repairs or restoration or whether it will require Kenmore to do so, subject to SPU pre-approval of such repairs or restoration, and the schedule for such activities.
- 4.7 Construction or Repair of Utility System Facilities. SPU will notify Kenmore at least thirty (30) days in advance of constructing new utility system facilities on portions of the Property in use as a Recreational Trail, except in cases of emergency, in which case SPU will endeavor to notify Kenmore as soon as possible. SPU will make a good faith effort to discuss the planned facilities with Kenmore, and to design facilities that accommodate the existing Recreational Trail without relocation; provided that SPU will not be required to compromise cost effectiveness, reliability, capacity, safety, other utility system requirements or any other requirements deemed necessary for its projected needs. Kenmore will reimburse SPU for costs and expenses SPU incurs as a result of accommodating an existing or contemplated Recreational Trail. These costs and expenses may include, but are not limited to, increased costs for design, construction, maintenance and operation incurred to accommodate a Trail or a Trail-related mitigation.
- 4.8 Joint SPU – Kenmore Meeting and Emergency Contacts. Kenmore and SPU shall meet annually to discuss Recreational Trail operation and maintenance, and any planned Trail or SPU improvements. Kenmore and SPU will provide each other with current emergency contact information, including a phone number for after-hours emergencies.

5. **Reimbursement/Costs and Expenses.**

Costs and Expenses. Kenmore shall timely reimburse SPU for all applicable reimbursements, costs and expenses that SPU incurs associated with the Recreational Trail.

- 5.1 SPU agrees to conduct its customary plan review, inspection and administrative activities related to the design, construction, maintenance, and operation of the Trail, at no charge to Kenmore, except as provided for below. Customary plan review includes up to 16 staff-hours, construction/operations inspections include up to 8 staff-hours per year, and administrative activities include up to 8 staff-hours per year.
- 5.2 Kenmore agrees to reimburse all extraordinary costs and expenses, over the customary costs described above, incurred by SPU, if any, related to the design, construction, maintenance, and operation of the Trail; and further agrees to pay all costs of maintenance, operation, repair, rehabilitation, relocation, and removal of the Trail, and any other fees (such as surface

water management), assessments, or mitigation that result directly from the construction, operation, rehabilitation, relocation, or removal of the Trail.

- 5.3 Kenmore agrees to reimburse SPU all of its actual costs incurred for any utility system alterations, performed at Kenmore's request to accommodate the construction, operation, or relocation of the Trail.
- 5.4 SPU will issue invoices for its costs and expenses that are reimbursable under this agreement, and Kenmore will make payment to SPU within sixty (60) calendar days of receiving the invoice.

6. Relocation, Removal, or Termination of a Trail.

- 6.1 Kenmore will pay all costs and expenses, whether incurred by Kenmore or SPU, associated with the relocation, termination, or removal of the Trail from any portion of the Property. If SPU determines that the Recreational Trail or portion of the Recreational Trail must be removed and relocated from the Property or terminated, SPU will send written notice to Kenmore. After receipt of written notice from SPU, Kenmore will immediately notify the public of the impending Trail relocation or closure. Unless otherwise provided in SPU's notice, Kenmore will have 180 calendar days to relocate or close the affected portion of the Property for public use. Kenmore will coordinate with SPU about appropriate closure activities, which may include placement of fences or barricades, installation of Trail signage regarding closure and detour, removal of Trail improvements, or other actions. If Kenmore fails to take immediate steps to close the Trail within 180 calendar days of receipt of SPU's notice (or by the time specified in the notice), SPU may take any steps it reasonably determines are necessary to close, remove, relocate or terminate any Recreational Trail; such steps taken by SPU shall be at the expense of Kenmore. Notwithstanding any written notice sent by SPU to Kenmore, or any actions taken by Kenmore to relocate, remove or terminate the Trail, SPU retains at all times its discretionary right to revoke the permission and permitted use authorized in this Agreement.
- 6.2 To date, Kenmore has not exercised its rights under the Easement to construct and maintain an access road over the Property. Both parties agree that the terms and conditions in this Agreement do not interfere with Kenmore's rights granted under the Easement, in any manner. Both parties further agree that if Kenmore exercises its rights, now or in the future, to build a road on the Property as described under the Easement, then the City's limited permission for Trail use over the Property set forth in this Agreement shall automatically terminate and Kenmore shall close the Trail prior to construction of the road and in accordance with Section 6.1, and comply with all other applicable terms and conditions of this Agreement.

7. Early Termination of Agreement.

This Agreement will terminate upon expiration of its term and any SPU-approved extensions as set forth in this Agreement, or as otherwise set forth below or herein this Agreement:

- 7.1 Kenmore Termination Right. Kenmore may terminate this agreement for default, breach, or nonperformance upon 90 days written notice to the City. Kenmore may terminate this Agreement upon six (6) months written notice to SPU for all other reasons. Upon any termination notice by Kenmore to the City, Kenmore will immediately take steps to advise the public of the impending closure of the Recreational Trails, and by the termination date, will

install signs, fences, and/or barricades to close the Trail and establish a new route for the Trail off the Property, and adhering to all other applicable terms and conditions in the Agreement.

7.2 City Termination Right. At all times under this Agreement, the Director of SPU may terminate this Agreement for utility or discretionary purposes, which shall include without limitation, a change, modification, or expansion of utility system facilities, operations, or maintenance procedures, a regulatory requirement, a future need by the City of Seattle for the use of the Property or a portion thereof, an increased risk to public safety or potential liability to the City of Seattle and/or SPU, or a breach of this Agreement. In the event of termination by SPU, SPU will provide Kenmore with advance notice of 90 days or within a period that SPU determines is reasonable under the circumstances.

8. **Restoration of Property upon Termination or Expiration.**

Upon the termination or expiration of this Agreement or extensions thereof, or upon termination of the use of any portion of the Property for Recreational Trail purposes, Kenmore will remove all Recreational Trail related improvements, including but not limited to signs, structures, paving and Kenmore property in the portion terminated, unless otherwise directed by SPU. SPU and Kenmore will coordinate such activities beginning six (6) months prior to the expiration of this Agreement, or extensions thereof, or beginning upon receipt of notice of termination. Kenmore will pay all costs and expenses associated with the termination of the Recreational Trail use and the removal of any Trail improvements from any portion of the Property. If Kenmore fails to perform these obligations within one hundred eighty (180) days of the termination or expiration of the Agreement, SPU may perform them, and Kenmore will reimburse SPU's actual costs incurred in performing these obligations within thirty (30) days of receipt of invoice(s) from SPU. Kenmore's obligation to reimburse SPU will survive the termination of this Agreement.

9. **Compliance with Law.**

At all times, Kenmore's use and operation of the Property will comply with all applicable federal, state, and local laws, ordinances, codes, rules and regulations, including but not limited to laws prohibiting discrimination and Health and Safety Laws and Environmental Laws.

As used in this Agreement, "Health and Safety Law" means any applicable requirement of the Hazardous Waste Operations and Emergency Response (HAZWOPER) Program, codified at WAC 296-62-300 et seq., and any other applicable requirements under federal, state and local environment, health and safety laws, and regulations or ordinances.

"Environmental Laws" means any and all federal, state, or local statutes, codes, regulations, orders, and requirements issued thereunder, and common-law causes of action, whether federal, state or local, that apply to any toxic material or hazardous substance, pollutant, waste material, health and safety of persons or protection of the environment, including any amendments or supplements to such laws or regulations, including, but not limited to: the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., the Federal Water Pollution Control Act, 49 U.S.C. § 1801 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") 42 U.S.C. § 9601 et seq., the Washington Model Toxics Control Act (MTCA), RCW Ch. 70.105D, the Washington Hazardous Waste Management Act, RCW Ch. 70.105, the Washington Shoreline Management Act, RCW Ch. 90.58, and all local environmental codes and regulations including without limitation, storm water, drainage and wastewater, and sewer regulations and requirements.

10. **Prohibited Substances.**

- 10.1 No Prohibited Substances without SPU Approval. Kenmore understands and agrees that any hazardous, dangerous or toxic material, waste or substance, or other pollutant or contaminant, regulated under federal, state or local law, or any substance prohibited by SPU from discharge into a public drainage control system or into a public sewer system, drain, ditch or natural watercourse according to federal, state and local laws, as hereafter amended or supplemented (“**Prohibited Substances**”), are not allowed in or around the Property or any other City facilities without the express written permission of SPU. Petroleum products routinely used to operate motorized vehicles used by Kenmore in or around the Property will not be in violation of this Section so long as the use is consistent with Section 1.4 and Kenmore takes reasonable precautions to prevent leaking and spills.
- 10.2 Prior Approval. Prior approval may be obtained for bringing Prohibited Substances onto the Property for use during construction through the construction approval process. Prior approval may also be obtained for the use of petroleum products for emergency generation of electrical power during periods of outage. Kenmore will obtain SPU’s approval prior to initiating any other process requiring the use, handling or storage of Prohibited Substances on the Property or adjacent to any other City facilities. SPU may consider approving the specific use or activity, but only after Kenmore demonstrates to the satisfaction of SPU that Kenmore has all necessary permits, if any, for operation and a Prohibited Substances emergency response plan. Kenmore will be solely responsible for the use, handling and storage of any Prohibited Substance in compliance with all applicable law, and SPU’s approval of such use, handling or storage will not be construed as limiting Kenmore’s liability for a release of a Prohibited Substance, or as creating liability on the part of the City of Seattle.
- 10.3. Environmental Audits. Kenmore agrees to cooperate in any environmental audits, conducted by SPU’s staff or independent third parties, specifically related to Kenmore’s use or storage of Prohibited Substances on the Property. Kenmore agrees to reimburse SPU for the cost of such audits. Kenmore agrees to provide SPU with notice of every governmental inspection of the Property or any other affected City facilities on or within the Property, notice of violation, and order to clean up contamination, within five (5) days after receipt thereof by Kenmore. Kenmore agrees to permit SPU to participate in all settlement or abatement discussions. In the event Kenmore fails to take remedial measures, as required by any final administrative or judicial order, decrees, or other legal instrument signed by a state, federal, or local regulatory agency within the time specified by such order, decree or instrument, SPU may elect to perform such work, and Kenmore covenants and agrees to reimburse SPU for all costs associated with SPU’s work.

11. **Release, Indemnification, and Hold Harmless.**

- 11.1 Release and Indemnification. Kenmore releases and will defend, indemnify and hold harmless the City of Seattle, its directors, officers, elected officials, employees, agents, volunteers and assigns (collectively referred to as the “**Indemnitees**”) from and against any and all Claims arising out of or in connection with Kenmore’s occupancy, use or improvement of the Property, or that of any of its employees, agents, contractors, licensees, officers, guests, volunteers or invitees, or the use of the Property by the general public, including but not limited to Claims arising from Kenmore’s breach of its obligations hereunder, any act or omission of Kenmore or its agents, contractors, licensees, or invitees, and any Environmental Liability, unless caused by the sole negligence or intentional acts of the Indemnitees. “Claims” includes claims, losses, costs, liabilities, demands, actions, damages and expenses (including, but not limited to reasonable attorney’s fees). “Environmental Liability” means any and all liabilities, claims, lawsuits, costs, liens, obligations, expenses, attorney fees, fines, penalties,

damages, consequential damages, and losses, arising from the release of a Hazardous Substance or any non-compliance with Environmental Laws. An Environmental Liability may be based upon an Environmental Law, any cause of action, criminal or civil statute, permit requirements, court or administrative order. "Hazardous Substance" means any material that is regulated or restricted by an Environmental Law, including but not limited to, CERCLA and MTCA.

- 11.2 Waiver of Immunity under Title 51. Kenmore agrees that the foregoing indemnity specifically covers actions brought by its own employees and that this indemnity shall survive termination or expiration of this Agreement. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Kenmore's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide SPU with a full and complete indemnity from claims made by Kenmore and its employees. Kenmore shall promptly notify SPU of casualties or accidents occurring in or about the Property.
- 11.3 Application of RCW 4.24.115. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply to and for the benefit of the Indemnitees. If it is determined that RCW 4.24.115 applies to this Agreement, Kenmore agrees to defend, indemnify and hold harmless the Indemnitees to the maximum extent permitted thereunder, and specifically for Kenmore's negligence concurrent with that of the Indemnitees to the full extent of Kenmore's negligence.
- 11.4 Recreational Use. SPU is permitting the use of the Property conditioned, in part, upon Kenmore's agreement to make the Recreational Trail available to the public at no cost. To the extent that the Recreational Land Use Statute, RCW 4.24.200-.210, or other applicable law provides immunity to the City and Kenmore, the Parties do not intend the indemnity in this Section 12 to act as a waiver of such immunity.
- 11.5 Inclusion in Contracts. A hold harmless provision to protect the City, similar to this Section 11, shall be included in all contracts or other agreements entered into by Kenmore in connection with the permitted uses under this Agreement or with Kenmore's execution of its duties and obligations under this Agreement.
- 11.6 Notice of Claims or Actions. The City or SPU shall give Kenmore timely written notice of the making of any claim or of the commencement of any such action, suit or other proceeding covered by the indemnity in this section. In the event any such claim arises, the City or SPU may tender the defense thereof to Kenmore and thereupon Kenmore shall have the duty to defend, settle or compromise the claim, and the City shall cooperate fully therein.
- 11.7 Survival. The indemnification obligations under this Section shall survive the termination or expiration of this Agreement.

THE INDEMNIFICATION PROVISIONS OF THIS SECTION 11 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THE PARTIES.

12. Invalidity.

Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair, or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

14. **Nonwaiver.**

The failure of SPU to insist upon or enforce strict performance by Kenmore of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

15. **Assignment, Successors and Assigns.**

This Agreement is personal to the Parties. As a result, Kenmore will not assign, transfer, or otherwise dispose of any of the privileges granted under this Agreement without the prior written consent of SPU.

16. **Applicable Law; Venue.**

This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington and the sole venue for any action arising out of this Agreement shall be the Superior Court of King County, King County, Washington.

17. **Notices.**

All notices hereunder must be in writing and shall be deemed validly given if sent by United States mail, by personal delivery, or by overnight delivery by a nationally recognized carrier, addressed as follows (or to any other address that the party to be notified may have designated to the sender by like notice):

If to SPU:

Seattle Public Utilities
Attention: Division Director
Facilities and Real Property Services
700 Fifth Avenue, Floor 50
Seattle, WA 98104-5004

If to Kenmore:

City of Kenmore
Attention: Community Development Director
Community Development Department
18120 68th AVE NE/PO Box 82607
Kenmore WA 98028

18. **Headings.**

The titles of sections are for convenience only and do not define or limit the contents.

19. **Entire Agreement; Exhibits.**

Any exhibit referenced and attached to this Agreement shall be incorporated as part of the terms and conditions of this Agreement. This Agreement, including the incorporated exhibits, sets forth the entire agreement of the Parties. The following exhibits are made a part of this Agreement:

- A. **Exhibit A** – Trail Permit Legal Description and Exhibit Map
- B. **Exhibit B** – Tolt Pipeline Right of Way Legal Description

20. **Relationship of Parties.**

Nothing contained herein shall be construed as to make the parties hereto partners, associates, joint venturers, or participants in any legal relationship other than that of lessor and lessee. Neither party hereto shall have the power to contract or incur any obligation or liability in the name of the other party.

[Signature pages of the Parties follow on subsequent pages to this Agreement]

IN WITNESS WHEREOF, the City of Seattle has caused this agreement to be executed by its Director of Seattle Public Utilities pursuant to City of Seattle Ordinance _____ this _____ day of _____, 2015.

THE CITY OF SEATTLE

By _____
Mami Hara, Director, Seattle Public Utilities

STATE OF WASHINGTON)
) ss.
KING COUNTY)

I certify that I know or have satisfactory evidence that Ray Hoffman signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the DIRECTOR OF SEATTLE PUBLIC UTILITIES to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Name (printed) _____
Notary Public in and for the State of Washington,
residing at _____
My appointment expires _____

Att 1 - Tolt Pipeline Trail Permit Agreement
V1

This Agreement is hereby accepted for and on behalf of The City of Kenmore, a municipal corporation of the state of Washington, which by such acceptance agrees to assume and be bound by all of the terms and conditions herein contained.

THE CITY OF KENMORE, a political subdivision of the
State of Washington

By _____

Title _____

Date _____

STATE OF WASHINGTON)
) ss.
KING COUNTY)

I certify that I know that _____ signed this instrument, on oath stated that _____ was authorized by the _____ of KING COUNTY to execute the instrument, and acknowledged it as the _____ of King County, Washington, to be the free and voluntary act of such county for the uses and purposes mentioned in the instrument.

Dated: _____

Name (printed) _____
Notary Public in and for the State of Washington,
residing at _____
My appointment expires _____

EXHIBIT A

TRAIL PERMIT ACROSS A PORTION OF TAX PARCEL NO. 011410-1565

TRAIL PERMIT AREA LEGAL DESCRIPTION

THAT PORTION OF THE TOLT RIVER PIPELINE PROPERTY AS CONDEMNED BY THE CITY OF SEATTLE IN KING COUNTY SUPERIOR COURT CAUSE NO. 514489, AS PROVIDED BY ORDINANCE NO. 86134, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 12, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M.;
 THENCE SOUTH 87°57'48" EAST 55.54 FEET ALONG THE NORTH LINE OF SAID SECTION TO THE POINT OF BEGINNING;
 THENCE NORTH 02°01'12" EAST 21.61 FEET;
 THENCE SOUTH 88°25'58" EAST 548.57 FEET;
 THENCE NORTH 67°10'54" EAST 9.26 FEET TO THE NORTH LINE OF THE SOUTH 30 FEET OF SECTION 1, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M. ;
 THENCE SOUTH 87°57'48" EAST 647.96 FEET ALONG SAID NORTH LINE OF THE SOUTH 30 FEET OF SAID SECTION 1 TO THE EAST MARGIN OF 71ST AVE. NE AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 93.66 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 57°04'56" WEST;
 THENCE SOUTHEASTERLY 46.31 FEET ALONG SAID CURVE AND EAST MARGIN THROUGH A CENTRAL ANGLE OF 28°19'40" TO THE NORTH LINE OF SAID SECTION 12;
 THENCE SOUTH 87°57'48" EAST 24.03 FEET ALONG SAID NORTH LINE OF SAID SECTION 12 TO THE WEST LINE OF STAR PLACE AS SHOWN ON THE PLAT OF ALDERWOOD MANOR NUMBER 14 ACCORDING TO THE PLAT THEREOF FILED IN VOLUME 26 OF PLATS, ON PAGE 4, RECORDS OF KING COUNTY, WASHINGTON;
 THENCE SOUTH 02°14'40" WEST 10.00 FEET ALONG SAID WEST LINE TO THE SOUTH LINE OF SAID STAR PLACE;
 THENCE SOUTH 87°57'48" EAST 207.61 FEET ALONG SAID SOUTH LINE TO THE WEST MARGIN OF 73RD AVE. NE AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 1176.30 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS NORTH 63°08'30" WEST ;
 THENCE SOUTHWESTERLY 16.66 FEET ALONG SAID CURVE AND WEST MARGIN THROUGH A CENTRAL ANGLE OF 00°48'41";
 THENCE NORTH 87°57'48" WEST 107.22 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 1007.00 FEET;
 THENCE WESTERLY 95.18 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°24'56";
 THENCE NORTH 82°32'52" WEST 172.06 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 993.00 FEET;
 THENCE WESTERLY 93.86 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°24'56" TO THE NORTH LINE OF SAID SECTION 12;
 THENCE NORTH 87°57'48" WEST 368.10 FEET ALONG SAID NORTH LINE OF SAID SECTION 12;
 THENCE SOUTH 01°32'32" EAST 16.96 FEET;
 THENCE NORTH 87°35'56" WEST 16.07 FEET;
 THENCE NORTH 01°32'49" WEST 16.85 FEET TO THE NORTH LINE OF SAID SECTION 12;
 THENCE NORTH 87°57'48" WEST 612.84 FEET ALONG SAID NORTH LINE OF SAID SECTION 12 TO THE POINT OF BEGINNING.

HAVING AN AREA OF 38,748 SQ. FT. (0.89 ACRES)

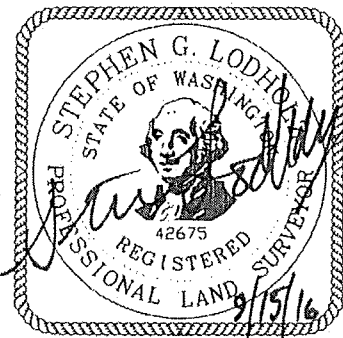
LINE TABLE

LINE	BEARING	DISTANCE
L1	N02°01'12"E	21.61'
L2	S88°25'58"E	548.57'
L3	N67°10'54"E	9.26'
L4	S87°57'48"E	647.96'
L5	S87°57'48"E	24.03'
L6	S02°14'40"W	10.00'
L7	S87°57'48"E	207.61'
L8	N87°57'48"W	107.22'
L9	N82°32'52"W	172.06'
L10	N87°57'48"W	368.10'
L11	S01°32'32"E	16.96'
L12	N87°35'56"W	16.07'
L13	N01°32'49"W	16.85'
L14	N87°57'48"W	612.84'

SEE SHEET 2
FOR EXHIBIT MAP

CURVE TABLE

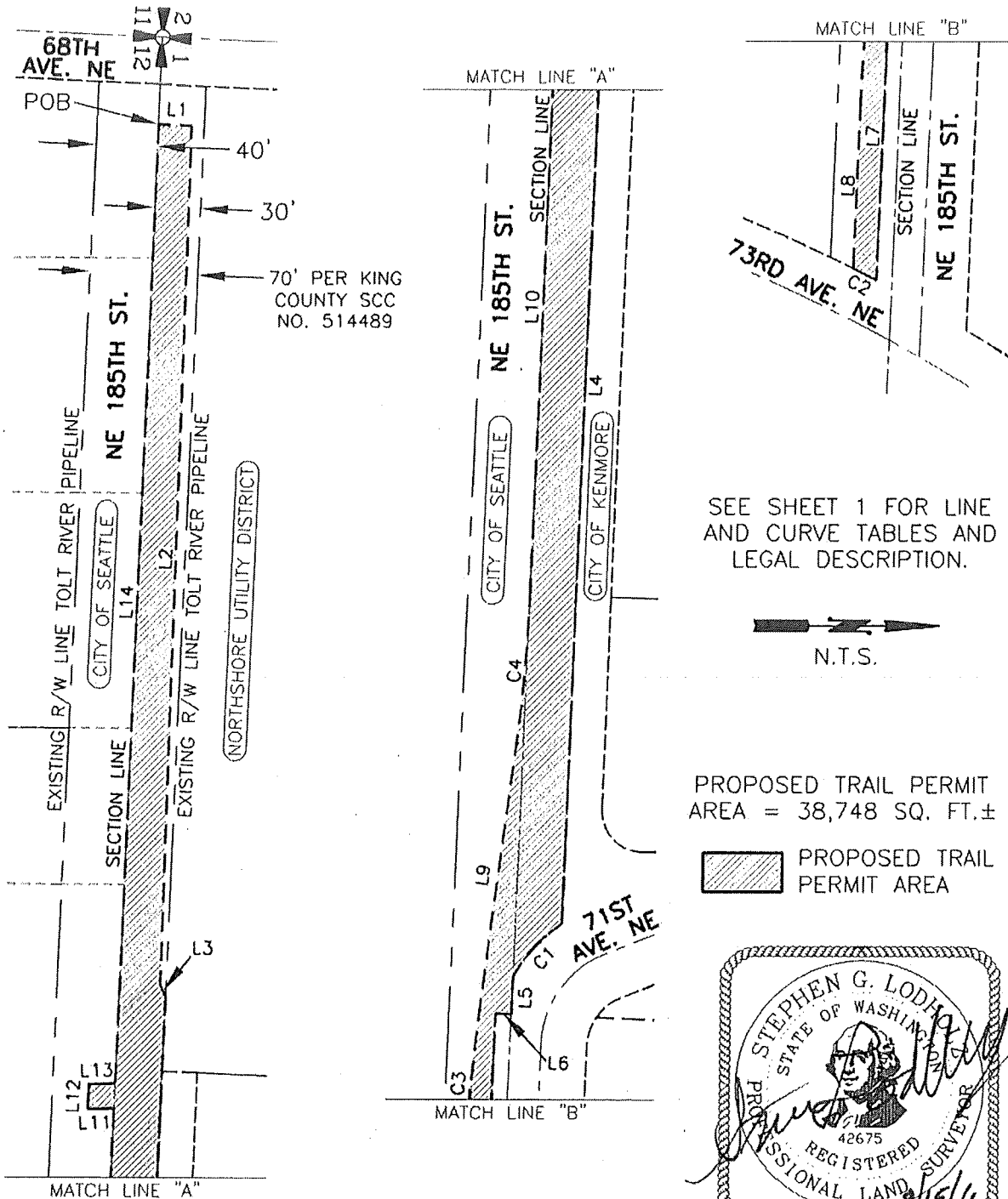
CURVE	ARC LENGTH	RADIUS	DELTA ANGLE
C1	46.31'	93.66'	28°19'40"
C2	16.66'	1176.30'	0°48'41"
C3	95.18'	1007.00'	5°24'56"
C4	93.86'	993.00'	5°24'56"



TRAIL PERMIT LEGAL DESCRIPTION & EXHIBIT MAP WITHIN ASSESSOR'S PARCEL NO. 011410-1565 For: City of Kenmore
DATE: SEPT. 15, 2016 Sheet 1 of 2

Perteet 425-252-7700 1-800-615-9900 2707 Colby Avenue, Suite 900 Everett, Washington 98201
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EXHIBIT A

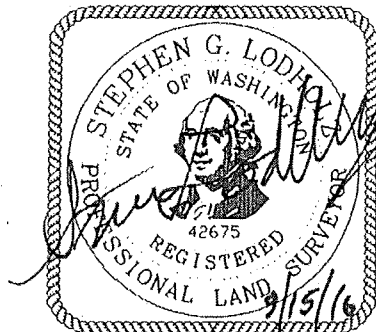


SEE SHEET 1 FOR LINE AND CURVE TABLES AND LEGAL DESCRIPTION.



PROPOSED TRAIL PERMIT AREA = 38,748 SQ. FT. ±

 PROPOSED TRAIL PERMIT AREA



TRAIL PERMIT EXHIBIT MAP WITHIN ASSESSOR'S PARCEL NO. 011410-1565	
For: City of Kenmore	
DATE: SEPT. 15, 2016	Sheet 2 of 2



Pertee
 425-252-7700 | 1-800-615-9900
 2707 Colby Avenue, Suite 900
 Everett, Washington 98201

EXHIBIT B

TOLT PIPELINE RIGHT OF WAY LEGAL DESCRIPTION

LEGAL DESCRIPTION: TOLT PIPELINE RIGHT OF WAY

The North 40.00 Feet in Width of Lots 1, 6, 7, 8, 9, 10, 11, 12, 13, and 14, Block 10 of Alderwood Manor Number 14 according to the Plat thereof filed in Volume 26 of Plats, on Page 4 Records of King County, Washington;

Together with the South 30 Feet in Width of the Southwest Quarter of the Southwest Quarter of Section 1, Township 26 North, Range 4 East, W.M. in the City of Kenmore, County of King, State of Washington;

Except any portion thereof lying within 68th Avenue NE and 71st Avenue NE.