

**When recorded mail to:**  
City of Seattle SPU - WTR  
700 5th Ave, Suite 4900  
PO Box 34018  
Seattle WA 98124-4018

### EASEMENT

Reference #s of Document Released or Assigned: None

GRANTOR:.....City of Seattle, Seattle Public Utilities

GRANTEE:.....Elizabeth Simmons-O'Neill & John Joseph O'Neill

Legal Description (abbreviated): Portion of The City of Seattle Tolt Pipeline right of way in the SE 1/4 of Section 3, Twp. 26 North, Range 4 East, W.M., King County, WA. Complete legal description is described on **Exhibit A** and depicted on **Exhibit B**, signed and dated by surveyor Eileen M. Forrester on November 11, 2014.

Assessor's Tax Parcel ID#:.....Portion of 0326049122 to provide access to 4400900040

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SPU - O'Neill Driveway Easement, 19229 47<sup>th</sup> Ave NE, in the City of Lake Forest Park 98156  
SPU R/W File #205-425

### RECITALS:

Whereas, the **City of Seattle**, a municipal corporation of the State of Washington (herein "the CITY," or "GRANTOR"), owns the 70 foot wide TOLT Pipeline right of way, (herein "TOLT R/W"), situated in the County of King, State of Washington, in SE Quarter of Section 3, Township 26 North, Range 4 East, W.M.; and

Whereas, the CITY operates municipal water transmission pipelines and appurtenances within said TOLT R/W by and through Seattle Public Utilities (herein "SPU"), and

Whereas, the CITY requires that the TOLT R/W and the water transmission pipelines be protected; and

Whereas, **Elizabeth Simmons-O'Neill** and **John Joseph O'Neill** (herein "GRANTEE") own property, commonly known as 19229 47<sup>th</sup> Ave NE, in the City of Lake Forest Park 98156, which is adjacent to and abutting the TOLT R/W, situated in the County of King, State of Washington, in the SE Quarter of Section 3, Township 26 North, Range 4 East, W.M.; and

Whereas, GRANTEE has requested from the CITY an easement for existing utility service lines, and the maintenance and use of a driveway access across a portion of the TOLT R/W for ingress and egress to serve the GRANTEE's property; and

Whereas, the CITY is willing to grant requested easement under certain terms and conditions; and

Whereas, GRANTEE voluntarily agrees to the limited scope of the non-exclusive easement pursuant to the terms and conditions described herein; and

Whereas, the CITY and GRANTEE mutually desire to avoid future uncertainty and dispute regarding the rights and obligations of GRANTOR and GRANTEE with respect to the use of the CITY's TOLT R/W for utility services, and ingress and egress driveway access, including the CITY's desire to restrict access as needed to protect critical the CITY infrastructure;

### **AGREEMENT**

NOW THEREFORE, for and in consideration of three thousand three hundred and fifty and 0/100 Dollars (\$3,350.00), and the covenants and agreements hereinafter set forth, and other valuable consideration, the CITY and GRANTEE agree as follows:

#### **A. EASEMENT GRANT AND AGREEMENT**

1. Subject to the purpose, terms, conditions, and restrictions herein described, the City of Seattle, acting by and through Seattle Public Utilities, hereby grants to GRANTEE a non-exclusive easement, which shall run with the land, for existing utility service lines, and the maintenance and use of a driveway access over and across a portion of the CITY's TOLT R/W to serve the GRANTEE's property, as legally described and depicted in **Exhibit A – "Legal Description Access Easement Within City of Seattle Property,"** and **Exhibit B** – both signed and dated by surveyor Eileen M. Forrester on 11-12-14; which are incorporated, attached and made a part of this Easement and Agreement (herein "Agreement"). The non-exclusive driveway easement across the CITY's TOLT right of way and GRANTEE's property, which is depicted on the attached **Exhibit A** and **Exhibit B** shall herein be referred to as the "Easement Area."
2. All references to the CITY's activities or use of the Easement Area or property rights therein, shall also refer and apply to CITY officers, employees, agents, consultants, contractors, representatives, invitees, or licensees, or Seattle Public Utilities.
3. All references to GRANTEE's activities or use of the Easement Area, shall also apply to GRANTEE's successors, heirs, assigns, tenants, and invitees.

#### **B. RIGHTS RESERVED BY THE CITY/GRANTOR**

1. The CITY reserves the right to operate its municipal utility systems, including but not limited to the right to install, repair, replace, maintain, operate and make lateral connections to any of its electrical transmission and distribution facilities, water supply lines and related facilities or other CITY improvements within the Easement Area. CITY shall not be liable for the costs of relocation or of any GRANTEE improvements located within the Easement Area by reason of such CITY work or operations.
2. The CITY reserves the right to enter upon Easement Area at any and all times for the purpose of the security, operation, maintenance, or reconstruction of the existing and future CITY facilities. This may result in the Easement Area being unusable for a period of time, or GRANTEE's improvements being disturbed. GRANTEE is responsible to restore GRANTEE's own improvements at no expense to the CITY.
3. The CITY reserves the rights, in its ownership of the underlying fee interest in the Easement Area, to use or occupy the Easement Area for other municipal purposes and the right to grant or deny permission to third parties to use or occupy the Easement Area, including use by non-City utility agencies; provided that such use or occupancy shall not unreasonably conflict with the rights granted to GRANTEE herein; and provided that any such entity shall be required to restore the Easement Area to its condition prior to any activities undertaken by the third party.
4. The CITY reserves the right and discretion to suspend or limit GRANTEE's use of the Easement Area if the Director of Seattle Public Utilities reasonably determines there have been or have been violations of the terms and conditions of this Agreement, there is an imminent danger to the CITY's water transmission pipeline or utility infrastructure, or if the GRANTEE's use interferes with the CITY's use.

#### **C. CORRECTION OF VIOLATIONS, OR REPAIR OF DAMAGES BY GRANTEE**

1. GRANTOR shall give GRANTEE written notice of a violation of the Agreement. The Grantee shall have the opportunity to cure the violation within 30-days or other reasonable period of time as determined by the Director of Seattle Public Utilities.
2. CITY reserves the right to take immediate and necessary actions to repair and remedy damages or conditions that threaten public health, safety or the environment.
3. GRANTOR shall give GRANTEE written notice of damages or conditions that do not require immediate action. GRANTEE shall have 30 days to repair the damages or conditions, or make an acceptable agreement with the CITY to repair the damages or conditions. Any any event, GRANTEE shall have a commercially reasonable time period to complete such repairs.
4. All repairs shall be completed to the condition of not less than prior to the damage.

5. The GRANTEE is responsible for the sole cost and expense of any repair of damages or conditions caused by the GRANTEE, or by the GRANTEE's use of the TOLT R/W of GRANTEE.
6. If GRANTEE has not remedied any condition, or made an acceptable agreement with the CITY to remedy any condition in the written notice, within thirty (30) days of notification by CITY, CITY reserves the right to perform such work.
7. The GRANTEE understands that if the CITY shall seek reimbursement for all reasonable costs incurred to repair the damages or conditions. GRANTEE shall pay, or make arrangements with SPU for payment of said costs within thirty (30) days of receipt of an invoice. Any late payments by GRANTEE to the CITY will be charged 1% per month interest.

#### **D. EXISTING USES AND RIGHTS**

1. The primary use and purpose of the CITY's property and CITY's TOLT R/W is for Seattle Public Utilities to operate a water transmission pipeline and appurtenances. The CITY's grant of the non-exclusive easement to GRANTEE is strictly conditioned upon use that will not jeopardize or interfere with water supply lines and utility purposes.
2. The Easement Area may be subject to other authorized uses and existing rights, and GRANTEE shall not unreasonably interfere with access or use by such other authorized users.

#### **E. GRANTEE'S USE OF THE EASEMENT AREA**

1. GRANTEE's use of the Easement Area is for only the limited purposes herein described.
2. GRANTEE'S use of the Easement Area is limited to serving one single-family residence on GRANTEE's adjacent property. Rezoning, subdivision or use of the premises for multiple families shall not expand the burden and use over and across the CITY's TOLT R/W.
3. GRANTEE shall acquire no right or interest in the Easement Area, or to the occupancy of the same, or any part thereof, other than as herein described.
4. GRANTEE's use of the Easement Area shall not unreasonably interfere with the security, use and integrity of the CITY's municipal utility systems within and adjacent to the Easement Area.
5. GRANTEE shall maintain the Easement Area in a safe, passable, orderly and fit condition at all times.

## **F. COMPLIANCE WITH LAWS AND REGULATIONS**

1. GRANTEE's use of the Easement Area is subject to all applicable rules, regulations and laws governing the construction, operation and maintenance of such use, including without limitation applicable environmental laws.
2. GRANTEE has not relied on the CITY for assessing site conditions or determining the suitability of the site conditions to accommodate GRANTEE's present or prospective construction activities within the Easement Area.

## **G. GRANTEE'S CONSTRUCTION ACTIVITIES WITHIN THE EASEMENT AREA**

1. GRANTEE must obtain written permission by the Seattle Public Utilities before undertaking any repairs, maintenance or engaging in any other use of the Easement Area other than the use authorized by this Agreement.
2. GRANTEE shall immediately contact Seattle Public Utilities Resource Center at (206) 386-1800, if an emergency occurs that affects GRANTEE's use or activities within the Easement Area.
3. The CITY reserves the right to stop work or modify any approved plans, if the CITY reasonably determines that work authorized is not being performed as approved, or if there is a safety issue, or the CITY reasonably believes that the CITY facilities or the facilities of others are at risk.
4. GRANTEE shall be solely liable for all costs, repairs, maintenance, or any other improvements placed within the Easement Area by the GRANTEE.
5. GRANTEE shall repair and correct any damages to CITY owned property within the Easement Area caused or involving GRANTEE's use of the non-exclusive easement, including without limitation any damage to the CITY TOLT R/W, SPU water transmission pipeline or utilities or improvements located therein. GRANTEE shall make repairs within thirty (30) days of written notification to GRANTEE by the CITY of the existence of damage, at the sole cost and expense of GRANTEE and to the CITY's satisfaction, unless such repairs are not reasonably capable of being accomplished within such 30-day period, in which case GRANTEE shall have a commercially reasonable time period to complete such repairs.
6. If GRANTEE has not corrected, or made an acceptable agreement with the CITY to correct any condition within the Easement Area caused by GRANTEE, which the CITY reasonably determines is unacceptable, within thirty (30) days of notification by CITY, CITY reserves the right to perform such work, and all reasonable costs incurred shall be paid by GRANTEE within thirty (30) days of receipt of an invoice for the work.

7. Any late payments by GRANTEE to the CITY will be charged 1% per month interest.
8. CITY reserves the right to take immediate and necessary actions to remedy conditions caused by GRANTEE in the Easement Area that threaten public health, safety or the environment and to seek reimbursement or recovery payment from GRANTEE; such payment shall be tendered to CITY by GRANTEE within 30 days from the date of CITY's written notice seeking payment.

#### **H. ROAD AND DRAINAGE SYSTEM**

1. GRANTEE shall be responsible for the design, construction, maintenance and safety of the driveway, together with related storm drainage facilities, which shall be at no cost or expense to CITY except for any maintenance or repairs caused by the negligence of CITY or its authorized users.
2. GRANTEE is responsible for the design of the driveway and storm drainage facilities to meet the specifications of any agency or subdivision of government having jurisdiction.

#### **I. UTILITIES**

1. Existing utility service lines, if any, that serve the GRANTEE's property are allowed to remain "as-is." Any new utilities of any kind, whether the responsibility of the GRANTEE or a utility provider are specifically not permitted in the Easement Area
2. The replacement of any existing utilities within the CITY's Tolt right of way, including the Easement Area, must be approved by Seattle Public Utilities.
3. Installations of any new utilities within the CITY's Tolt right of way, including the Easement Area must be approved and permitted in writing separately by SPU. SPU will charge its then applicable fees for administration of the application and writing the permit, plan review, and operational oversight of the proposed installation.

#### **E. TERMINATION OF EASEMENT**

1. The CITY reserves the right to terminate this easement at such time as the Easement Area is no longer used for utilities or access to serve the GRANTEE's property.
2. This easement cannot be terminated without the passing of a City of Seattle Ordinance.
3. No termination of this Agreement shall release GRANTEE from any liability or obligations with respect to any matter occurring prior to such termination of the Agreement.

#### **F. RELEASE AND INDEMNIFICATION**

1. In consideration of the rights granted under this Agreement, GRANTEE shall release, defend, indemnify and hold harmless the City of Seattle and its officials, employees, agents, licensees, contractors, consultants and representatives (collectively, the “Indemnitees”) from and against any and all claims, liens, demands, actions, costs, losses, expenses, harm, damages, and liability of any kind or character (collectively, “Claims”), including any damage or injury to any person or property, asserted or arising from, on account of, or caused by (i) GRANTEE’s exercise of its rights or obligations under this Agreement, (ii) the acts or omissions of GRANTEE or GRANTEE’s employees, agents, consultants, contractors, representatives, licensees or invitees in or upon the Easement Area, or (iii) the existence of, damage to, or failure of any of GRANTEE's improvements both on and off the Easement Area; provided, however, nothing herein shall require GRANTEE to indemnify and hold harmless the Indemnitees from Claims arising out of any damage or injury to any person or property to the extent caused by or resulting from the Indemnitees’ gross negligence.
2. GRANTEE shall indemnify, defend and hold harmless Indemnitees from any and all liabilities, losses, damages, costs, expenses or claims of any kind or nature (including, without limitation, reasonable attorneys' fees and any liability for costs of investigation, abatement, remediation, cleanup, fines, penalties, or other damages arising under any environmental laws) arising out of or in connection with the disposal, release or discharge, migration, handling, or transportation of hazardous materials or substances, as that term may be defined by applicable local, state or federal law on or from any portion of GRANTEE’s Property, or activities, uses or operations within the Easement Area, except to the extent caused by the City's municipal operations.
3. The Indemnifications set forth in this agreement shall survive the expiration or termination of this easement to the fullest extent and time permitted under the law.

GRANTOR AND GRANTEE ACKNOWLEDGE THAT THE ABOVE INDEMNIFICATION PROVISIONS WERE SPECIFICALLY NEGOTIATED AND VOLUNTARILY AGREED UPON BY EACH PARTY.

#### **G. GOVERNING LAW**

1. This easement agreement shall be construed and governed under Washington Law. Venue for any action between the parties arising from the subject matter of this easement agreement will be in King County Superior Court.

#### **H. SEVERABILITY**

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

2. This Easement Agreement and each of the terms, provisions, conditions and covenants herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

## I. CONTACTS

For any emergency issue related to the Easement Area, GRANTEE may contact the Seattle Public Utilities Operations Response Center at the number listed below. Any other notice, demand or request required hereunder shall be given in writing to the City's address as set forth below by any of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered certified or first class mail, postage pre-paid.

### **CITY OF SEATTLE – SEATTLE PUBLIC UTILITIES:**

Mailing Address:	Location Address:
Seattle Public Utilites	Seattle Public Utilites
PO Box 34018	700 Fith Avenue,Suite 4900
Seattle WA 98124-4018	Seattle WA 98124-4018

Emergency and 24 Hour Contact:	
SPU Operations Response Center	206-386-1800

Property Rights:	
Director, Facilities and Real Property Services	206-386-1814
or: Sr. Real Property Agent	206-684-5969

Water Operations:	425-684-7984	Office
Transmission Manager	206-684-8295	
or: Cedar Headworks Crew Chief		

Security:	Security Specialist	206-386-9061
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Plan Review: Mail to: SPU Engineering Plan Review, at the mailing address above

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**IN WITNESS WHEREOF**, the City of Seattle, a municipal corporation of the State of Washington, has caused this instrument to be signed by its authorized officers, and the corporate seal affixed on the \_\_\_\_ day of \_\_\_\_\_, 2016.

This Easement is hereby authorized and granted pursuant to:

City of Seattle Ordinance: \_\_\_\_\_

**THE CITY OF SEATTLE**

**GRANTEE**

\_\_\_\_\_  
Ray Hoffman, Director  
Seattle Public Utilities

\_\_\_\_\_  
Elizabeth Simmons-O’Neill

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
John Joseph O’Neill

Date: \_\_\_\_\_

**City of Seattle, Seattle Public Utilities Acknowledgment**

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF KING        )

THIS IS TO CERTIFY that on this day, before me the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Ray Hoffman** to me known to be the Director of Seattle Public Utilities that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said agency, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary (print name) \_\_\_\_\_

Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_

\_\_\_\_\_

Att 1 - Easement Agreement  
V1

My appointment expires \_\_\_\_\_

**GRANTEE Acknowledgement**

STATE OF WASHINGTON )  
 )  
COUNTY OF KING ) ss.

I certify that I know or have satisfactory evidence that **Error! Bookmark not defined. Elizabeth Simmons-O'Neill**, is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary (print name)\_\_\_\_\_  
Notary Public in and for the State of Washington,  
residing at\_\_\_\_\_  
\_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 )  
COUNTY OF KING ) ss.

I certify that I know or have satisfactory evidence that **Error! Bookmark not defined. John Joseph O'Neill**, is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary (print name)\_\_\_\_\_  
Notary Public in and for the State of Washington,  
residing at\_\_\_\_\_  
\_\_\_\_\_

Att 1 - Easement Agreement  
V1

\_\_\_\_\_

My appointment expires \_\_\_\_\_

## Exhibit A

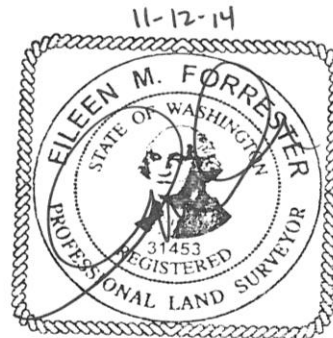
### LEGAL DESCRIPTION ACCESS EASEMENT WITHIN CITY OF SEATTLE PROPERTY

That certain parcel of land situated in the City of Lake Forest Park, County of King, State of Washington, within the City of Seattle Pipe Line Right of Way shown on the plat of Longridge No. 2, recorded in Volume 80 of Plats, Page 17, records of said county, and within the Northwest Quarter of the Southeast Quarter of Section 3, Township 26 North, Range 4 East, W.M., described as follows:

**Commencing** at the southeast corner of Lot 4 of said plat;  
thence along the northeasterly line of said lot, North 52°55'23" West 7.54 feet to the **True Point of Beginning**;  
thence continuing along said northeasterly line, North 52°55'23" West 23.86 feet;  
thence South 77°42'24" East 39.15 feet;  
thence South 73°37'34" East 27.51 feet to the northerly right-of-way line of 47th Avenue NE and a point on a curve concave northerly and having a radius of 42.14 feet, a radial line of said curve from said point bears North 07°24'10" West;  
thence along said northerly right-of-way line and said curve westerly 2.51 feet through a central angle of 03°24'55";  
thence tangent from said curve, continuing along said northerly right-of-way line, South 86°00'45" West 26.03 feet;  
thence North 73°37'34" West 0.42 feet;  
thence North 77°42'24" West 17.14 feet to the **True Point of Beginning**.

**Containing:** 422 Square Feet, more or less.

**Exhibit B** attached and by this reference made a part hereof.



**Exhibit B**

