

## EASEMENT PURCHASE AND SALE AGREEMENT

THIS EASEMENT PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into as of \_\_\_\_\_, 2010 (the “Effective Date”), by and between the PORT OF SEATTLE, a municipal corporation of the State of Washington (the “Port”), and PUGET SOUND ENERGY, INC., a Washington corporation (“PSE”).

### RECITALS

A. The Port is the owner of certain real property located in King County, Washington, and Snohomish County, Washington, commonly known as the Woodinville Subdivision (the “Property”), and legally described on Exhibit A attached hereto and incorporated herein by this reference. The Property does not include that property commonly known as the City Segment of the Woodinville Subdivision, which property has been sold by the Port to the City of Redmond, a municipal corporation of the State of Washington, pursuant to that certain [\[insert deed and recording number\]](#).

B. PSE desires to acquire certain easement rights over, under, along, across and through the Property from the Port, and the Port desires to convey such easement rights to PSE.

C. This Agreement was approved by the Port Commission of the Port of Seattle on \_\_\_\_\_, 20\_\_\_\_.

NOW, THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### AGREEMENT

1. **The Easement Rights.** The Port shall sell to PSE, and PSE shall purchase from the Port, those certain easement rights as further described in Exhibit B and Exhibit C attached hereto (collectively, the “Easement Rights”). Exhibit B shall be referred to herein as the “North Rail Line Easement.” Exhibit C shall be referred to herein as the “South Rail Line Easement.” The North Rail Line Easement and the South Rail Line Easement shall be collectively referred to herein as the “Easements.”

2. **Purchase Price.** PSE shall pay to the Port a total purchase price of \_\_\_\_\_ (\$\_\_\_\_\_) for the Easement Rights (the “Purchase Price”). The parties hereby agree to allocate the Purchase Price as follows:

\$\_\_\_\_\_ for the North Rail Line Easement; and

\$\_\_\_\_\_ for the South Rail Line Easement.

### 3. Closing Conditions.

3.1 PSE's obligation to purchase the Easements shall be subject to the following conditions that must be satisfied as of Closing or such earlier date as specified below:

3.1.2 All representations and warranties of the Port contained herein shall be true, accurate and complete in all material respects at the time of Closing as if made again at such time; and

3.1.3 The Port shall have performed all obligations to be performed by the Port under this Agreement on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance);

If the conditions set forth in this Paragraph 3.1 are not satisfied as of Closing and PSE does not waive the same, PSE may terminate this Agreement by giving written notice to the Port, and thereafter neither party shall have any further liability to the other under this Agreement.

3.2 The Port's obligation to sell the Easements shall be subject to the following conditions that must be satisfied as of Closing:

3.2.1 All representations and warranties of PSE contained herein shall be true, accurate and complete in all material respects at the time of Closing as if made again at such time; and

3.2.2 PSE shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance).

If the conditions set forth in this Paragraph 3.2 are not satisfied as of Closing and the Port does not waive the same, the Port may terminate this Agreement by giving written notice to PSE, and thereafter neither party shall have any further liability to the other under this Agreement.

4. **Reimbursement.** If, at any time subsequent to Closing, (i) a final judicial decree (or similar judicial order or government action), (ii) an agreement to which the Port is party, and/or (iii) a reactivation of freight (or similar action or process) nullifies, changes or alters all or any portion of the Port's Ownership, rights and/or acquisition of the Property and, consequently, affects all or any portion of the Easement Rights, upon fifteen (15) days' written notice from PSE, the Port shall deliver to PSE the full amount of the Purchase Price (the "Full Reimbursement"); provided, however, if such action nullifies only a portion of the Port's acquisition of the Property, and, consequently, a portion of the Easement Rights, PSE shall cause its appraiser to value the portion of the Easement Rights affected by such action (the "Appraised Value"), and PSE shall reduce the Full Reimbursement by an amount equal to the Appraised Value (the "Adjusted Reimbursement"). The Port and PSE shall share equally in the cost of the appraisal to determine the Appraised Value. Upon PSE's receipt of the Full Reimbursement or the Adjusted Reimbursement (as applicable) pursuant to the terms and conditions of this

paragraph, PSE shall waive any right to assert that the Port has breached its representations and warranties set forth in this Agreement. The provisions of this paragraph shall survive Closing.

Subject to the terms and conditions of this Agreement, PSE acknowledges that the Port may not hold fee simple title to portions of the Property but rather may only hold easement rights (the "Port's Ownership"), and, subject to PSE's rights to reimbursement set forth in this Section 4, PSE is willing to accept the Port's granting of Easement Rights on this basis.

**5. Covenants, Representations and Warranties of the Port.** The Port hereby makes the following representations and warranties, which representations and warranties shall be deemed made by the Port to PSE as of the Date of Closing:

5.1 From the Effective Date to the Date of Closing, the Port will notify PSE of each event of which the Port becomes aware that affects the Property or any part thereof, promptly upon learning of the occurrence of such event.

5.2 The Port has taken all corporate action necessary to authorize the execution and delivery by the Port of this Agreement and the performance of its obligations hereunder, including, without limitation, any resolutions, governmental approvals or other actions as may be required by applicable law or statute (including, without limitation, RCW Title 53); (ii) the Port has the necessary right, title and interests in the Property to grant the Easement Rights and (iii) the Property is railbanked pursuant to 16 U.S.C. § 1247(d), and that this status permits the Port to convey the Easement Rights.

5.3 The Port is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the "Code"), and shall deliver to PSE on the Date of Closing an affidavit evidencing such fact and such other documents as may be required under the Code.

5.4 Except as provided in Exhibit D, there is no litigation pending against the Port that pertains to the Property or the Port's ownership thereof.

5.5 The Port has not received, and the Port has no knowledge of, any written notice from any governmental authority alleging any uncured existing violation of any applicable governmental laws, statutes, ordinances, rules, codes, regulations or orders, including any environmental laws, affecting the Property.

**6. Covenants, Representations and Warranties of PSE.** PSE covenants and agrees as follows:

6.1 From the Effective Date to the Date of Closing, PSE will timely perform all of its monetary and non-monetary obligations required by the terms of this Agreement to be performed by PSE.

6.2 PSE is a Washington corporation, duly organized and validly existing under the laws of the State of Washington, has all requisite power and authority to execute and

deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby.

**7. Closing.**

7.1 Time and Place. The closing of this sale (“Closing”) shall take place at the offices of \_\_\_\_\_, located at \_\_\_\_\_, Seattle, Washington, escrow agent for the closing of this transaction (“Escrow Agent”), on or before December \_\_\_\_, 2010 (the “Date of Closing”).

7.2 Port Obligations. At or before Closing, the Port shall deliver to Escrow Agent, for delivery to PSE, the following documents, all of which shall be duly executed and witnessed and/or notarized as necessary:

7.2.1 Easements. The Easements in substantially the forms attached hereto as Exhibit B and Exhibit C;

7.2.2 Excise Tax Affidavit. An appropriate excise tax affidavit, signed and notarized by the responsible and authorized officials of the Port;

7.2.3 Other Documents. Such other documents and funds as may be required to close this transaction.

7.3 PSE’s Obligations. At or before Closing, PSE shall deliver to Escrow Agent, for delivery to the Port, the following, and all required documents shall be duly executed and witnessed and/or notarized as necessary:

7.3.1. Purchase Price. The Purchase Price;

7.3.2 Excise Tax Affidavit. An appropriate excise tax affidavit, signed and notarized by PSE; and

7.3.3 Other Documents. Such other documents and funds as may be required to close this transaction.

7.5 Closing Costs. The Port and PSE shall share equally the escrow fees and other closing costs with respect to the sale of the Easement Rights. In the event PSE desires to obtain title insurance for the Easement Rights, PSE shall be solely responsible for the cost of title insurance premiums, title endorsements, extended coverage or other title coverage requested by PSE.

7.6 Recording. On the Closing Date, the Port shall record the Easements and applicable excise tax affidavits.

**8. Indemnification.**

8.1 By Port. Subject to and without in any way limiting the provisions of Paragraph 4 of this Agreement, the Port shall pay, protect, pay the defense costs of, indemnify and hold PSE and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of the Port set forth in this Agreement; (b) the failure of the Port to perform any obligation required by this Agreement to be performed by the Port; (c) liabilities arising out of the ownership, maintenance and/or operation of the Property by the Port prior to the Closing; and/or (d) that certain class action lawsuit, *Lane v. Port of Seattle*, Case No. 10-2-25591-5.

8.2 By PSE. PSE shall pay, protect, pay the defense costs of, indemnify and hold the Port and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of PSE set forth in this Agreement and/or (b) failure of PSE to perform any obligation required by this Agreement to be performed by PSE.

**9. Default.**

9.1 By Port. If there is an event of default under this Agreement by the Port, PSE will be entitled (a) to seek specific performance of the Port's obligations under this Agreement or (b) to terminate this Agreement by written notice to the Port and Escrow Agent. If PSE terminates this Agreement, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, other than that the Port shall pay any costs of terminating the escrow.

9.2 By PSE. If there is an event of default under this Agreement by PSE, the Port will be entitled (a) to seek specific performance of PSE's obligations under this Agreement or (b) to terminate this Agreement by written notice to PSE and Escrow Agent. If the Port terminates this Agreement, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, other than that PSE shall pay any costs of terminating the escrow.

10. **Notices.** All notices to be given by each party to the other pursuant to this Agreement shall be delivered in person, by facsimile or deposited in the United States mail, properly addressed, postage fully prepaid, for delivery by certified or registered mail, return receipt requested. Notices given by personal delivery or facsimile shall be deemed effective upon receipt (provided notice by facsimile is on a business day and receipt is acknowledged); notices given by mail shall be deemed effective on the third business day after deposit. Notices may be given at the following addresses and facsimile numbers, until further notice by either party:

**To the Port:**

Port of Seattle  
Attn: Managing Director

**To PSE:**

\_\_\_\_\_  
\_\_\_\_\_

Real Estate Division  
P. O. Box 1209  
Seattle, WA 98111  
(206) 787-3722

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**11. Miscellaneous.**

11.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Washington.

11.2 Entire Agreement. This Agreement and the Easements constitute the entire agreement between the parties concerning the sale of the Easement Rights, and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties.

11.3 Modification or Amendment. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the parties hereto.

11.4 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

11.5 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties. PSE or the Port shall not assign this Agreement, or any part thereof, without the other party's prior written consent, which consent may be withheld in the other party's sole and absolute discretion.

11.6 Event Date. If any event date falls on a Saturday, Sunday or legal holiday, then the time for performance shall be extended until the next business day.

11.7 Non-Waiver. No term or condition of this Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition.

11.8 Exhibits. This Agreement contains the following Exhibits which are attached and made a part of this Agreement: Exhibits A, B, C and D.

11.9 Brokers. Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee based on the purchase and sale contemplated by this Agreement.

11.10 Time. Time is of the essence of this Agreement.

11.11 Attorneys Fees/Litigation Expenses. Each party shall pay its own attorneys' fees with respect to this Agreement and Closing. In any controversy, claim or dispute arising out of, or relating to, this Agreement, the substantially prevailing party shall be entitled to recover its costs and expenses of suit, including reasonable attorneys' fees.

11.12 Construction. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it.

11.13 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

11.14 Survival. The covenants and indemnifications made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof. The representations and warranties made in this Agreement shall not merge into the Deed but shall survive the Closing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

**PUGET SOUND ENERGY:**

**PORT OF SEATTLE:**

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

DRAFT



**EXHIBIT B**

**NORTH RAIL LINE EASEMENT**

DRAFT

**EXHIBIT C**  
**SOUTH RAIL LINE EASEMENT**

DRAFT

**EXHIBIT D**  
**LITIGATION**

DRAFT

**RETURN ADDRESS:**

Puget Sound Energy, Inc.  
Corporate Facilities Dept., PSE10S  
P.O. Box 97034  
Bellevue, WA 98009-9734  
Attn: Wbressler

Item No. : 6a\_Supp\_2\_North\_Easement  
Date of Meeting: December 7, 2010

**NORTH RAIL LINE EASEMENT**

REFERENCE #: \_\_\_\_\_

GRANTOR: **Port of Seattle**

GRANTEE: **Puget Sound Energy, Inc.**

SHORT LEGAL: \_\_\_\_\_

ASSESSOR'S PROPERTY TAX PARCEL: \_\_\_\_\_

For and in consideration of One Dollar (\$1.00) and other valuable consideration in hand paid, **PORT OF SEATTLE**, a Washington municipal corporation ("Grantor"), hereby conveys and warrants to **PUGET SOUND ENERGY, INC.**, a Washington corporation ("Grantee"), for the purposes hereinafter set forth in this agreement ("Agreement"), a nonexclusive, perpetual easement over, under, along, across and through the following described real property (the "Easement Area") in King County, Washington:

[See Exhibit A]

1. **Purpose.** Grantee shall have the right to use and enjoy the Easement Area for the following purposes:

(a) To construct, operate, maintain, repair, replace, improve, remove, enlarge, and use the Easement Area for one or more utility systems for purposes of transmission, distribution and sale of electricity. Such systems may include, but are not limited to:

i. **Overhead facilities.** Poles, towers and other support structures with crossarms, braces, guys and anchors; electric transmission and distribution lines; fiber optic cable and other lines, cables and facilities for communications; transformers, street lights, meters, fixtures, attachments and any and all other facilities or appurtenances necessary or convenient to any or all of the foregoing; and

ii. **Underground facilities.** Conduits, lines, cables, vaults, switches and transformers for electricity; fiber optic cable and other lines, cables and facilities for communications; semi-buried or ground-mounted facilities and pads, manholes, meters, fixtures, attachments and any and all other facilities or appurtenances necessary or convenient to any or all of the foregoing.

(b) To construct, operate, maintain, repair, replace, improve, remove, enlarge, and use the Easement Area for Grantee's utility systems for purposes of transmission, distribution and sale of gas ("Gas Facilities"). Such Gas Facilities may include, but are not limited to underground facilities such as pipes, pipelines, mains, laterals, conduits, regulators and feeders for gas; semi-buried or ground-mounted facilities and pads, manholes, meters, fixtures, attachments and any and all other facilities or appurtenances necessary or convenient to any or all of Grantee's Gas Facilities.

(c) Pedestrian and vehicular ingress and egress to perform the rights granted hereunder.

Except as otherwise expressly set forth herein, no other uses, purposes, rights or conveyances are implied or granted hereunder.

Grantee shall have the right of access over and across the Easement Area to enable Grantee to exercise its rights hereunder, subject to reasonable security measures (provided, however, that such security measures shall not unreasonably impede Grantee's ability to access its facilities at all times).

## 2. **Easement Area Clearing; Maintenance; Restoration.**

(a) Grantee shall have the right to cut, remove and dispose of any and all brush, trees or other vegetation in the Easement Area that may interfere with Grantee's facilities. Grantee shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, trees or other vegetation in the Easement Area.

(b) Notwithstanding the rights of Grantee in Section 2(a), Grantor (either by itself or pursuant to that certain O&M Agreement defined in Section 3 below) shall generally be responsible for maintenance of any roads and/or rail tracks located in the Easement Area. Provided, however, that in the event that damage to any roads and/or rail tracks results from Grantee's use of the Easement Area, other than ordinary wear and tear, then Grantee shall restore such property to the condition in which it existed prior to the time of damage. In the event that Grantee disturbs other areas of the Easement Area in connection with any repair, maintenance,

replacement, relocation, or reconstruction work on its facilities, Grantee shall restore the Easement Area to the condition in which it existed at the commencement of such activity.

3. **Grantor's Use of Easement Area.** Grantor reserves the right to use the Easement Area for (i) those uses set forth in that certain Operations and Maintenance Agreement (the "O&M Agreement") by and between the Port and GNP Rly Inc., a Washington corporation ("GNP") (which agreement is referenced in that certain Memorandum of Operation and Maintenance Agreement recorded December 18, 2009, under King County Recorder's file No. 20091218001539), (ii) those uses relating to freight rail operation by GNP, which uses are specifically set forth in Exhibit B attached hereto and incorporated herein by reference, and (iii) any other purpose not inconsistent with Grantee's rights herein. In the event that Grantor, on or after the date of this Agreement, provides any easements, leases, permits, franchises, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Easement Area (collectively, "Subsequent Third Party Use"), such Subsequent Third Party Use shall be subject to Grantee's rights under this Agreement.

4. **Interference.**

(a) **Notice of Construction.** Prior to a party (including any third party who has been granted a Subsequent Third Party Use) constructing any new improvements in the Easement Area (such party referred to as the "Constructing Party"), the Constructing Party shall send notice to Grantor and Grantee, as applicable (the "Non-Constructing Party"), containing a description of the activities and any construction plans or surveys of the proposed improvements. The Non-Constructing Party shall have thirty (30) days to review and respond. If the Non-Constructing Party fails to respond within thirty (30) days from receipt of notice, the construction plans are deemed approved. For purposes of this Section 4, the Non-Constructing Party shall only mean Grantor or Grantee (as applicable) and shall not include any third party who has been granted a Subsequent Third Party Use.

(b) **Notice of Interference.** If the Non-Constructing Party, in its reasonable discretion, determines that the proposed use of the Easement Area by the Constructing Party interferes with the Non-Constructing Party's then existing facilities or improvements, then the Non-Constructing Party shall provide the Constructing Party with a notice (the "Dispute Notice"), within the thirty (30) day timeframe specified in Section 4(a), specifying with particularity the basis for the claim that the Constructing Party's use of the Easement Area is or will be an interference. If the parties are unable to resolve the dispute within thirty (30) days, they shall follow the following process:

i. **Management Escalation.** Each party shall, within ten (10) business days, nominate a senior officer or director to meet to attempt to resolve the dispute ("Management Escalation"). The nominated individuals shall meet within twenty (20) business days after their nomination. Any dispute resolved through the Management Escalation process shall be documented by appropriate written documentation executed by both Grantor and Grantee.

ii. *Mediation.* Disputes not settled by Management Escalation shall be submitted to mediation. The mediator shall have experience in utility or civil engineering disputes. If the parties are unable to agree on a mediator one shall be appointed by the American Arbitration Association (“AAA”). The mediator shall be impartial in fact and appearance, not an advocate of either party. The mediation shall be completed no later than thirty (30) days after the request for mediation. If, after eight (8) hours of good faith mediation, the parties are unable to resolve the dispute, it shall be settled by binding arbitration in accordance with the following subparagraph, unless the parties otherwise agree to extend the mediation time. Each party shall be responsible for its own costs and expenses, including attorneys’ fees, incurred pursuant to this subparagraph. Cost of the mediator and other common costs shall be divided equally between the parties.

iii. *Arbitration.* Disputes not settled by mediation shall be decided by arbitration in accordance with the AAA rules, as modified herein, unless the parties mutually agree to other arbitration procedures. Notice of the demand for arbitration shall be filed in writing with the other party and with the AAA. The demand shall be made within thirty (30) days after the date that either party or the mediator declares that the mediation is concluded. This agreement to arbitrate shall be specifically enforceable under prevailing state or federal arbitration law. A single arbitrator experienced in utility or civil engineering disputes, shall arbitrate the dispute, provided that if the parties cannot agree on an arbitrator within ten (10) days following a party’s initial demand for arbitration, each party shall select an arbitrator and the two arbitrators so selected shall select a third arbitrator experienced in utility or civil engineering standards, and the three arbitrators shall then arbitrate the dispute.

1. Except as may be otherwise agreed by the parties to this Agreement, the arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules with Expedited Procedures, in effect at that time, as modified by this Section. There shall be no dispositive motion practice. As may be shown to be necessary to ensure a fair hearing, the arbitrator(s) may authorize limited discovery and may enter pre-hearing orders regarding (without limitation) scheduling, document exchange, witness disclosure and issues to be heard. The arbitrator(s) shall not be bound by the rules of evidence or of civil procedure, but may consider such writings and oral presentations as reasonable business people would use in the conduct of their day-to-day affairs, and may require the parties to submit some or all of their case by written declaration or such other manner of presentation as the arbitrator(s) may determine to be appropriate. The parties intend to limit live testimony and cross-examination except to the extent necessary to ensure a fair hearing on material issues.

2. The arbitrator(s) shall take such steps as may be necessary to hold a private hearing within ten (10) days following the date the arbitrator has been selected and to conclude the hearing within two (2) days; and the arbitrator’s written decision shall be made not later than seven (7) calendar days after the hearing. The parties have included these time limits in order to expedite the proceeding, but they are not jurisdictional, and the arbitrator(s) may for good cause allow reasonable extension or delays, which shall not affect the validity of the award. The written decisions shall contain a brief statement of the claim(s) determined and the award made on each claim. In making the decision and award, the arbitrator(s) shall apply applicable substantive law. Absent fraud, collusion or willful

misconduct by the arbitrator(s), the award shall be final, and judgment may be entered in any court having jurisdiction thereof. The arbitrator(s) may award injunctive relief or any other remedy available from a judge, including the joinder of parties or consolidation of this arbitration with any other involving common issues of law or fact or which may promote judicial economy, and may award attorneys' fees and costs to the prevailing party but shall not have the power to award punitive or exemplary damages. Venue of any arbitration conducted pursuant to this paragraph shall be in Seattle or Bellevue, Washington.

iv. *Applicable Standards.* For any question of whether a facility unreasonably interferes with another use, the generally accepted engineering standards and practices and those standards and requirements set forth in Chapter 480-93 of the Washington Administrative Code (and any amendments or supplements thereto) and National Electrical Safety Code and National Pipeline Safety Act shall be determinative, provided any and all conditions thereof are satisfied.

(c) **Emergency Situations.** Notwithstanding the foregoing, a party may take such reasonable actions as are necessary to address a situation that threatens the health and safety of the general public prior to complying with the notice provisions of this Agreement including, without limitation, Sections 4, 5 and 11 of this Agreement. In such event, and as soon as practicable, the party shall notify the other party of the actions taken, and any corrections or subsequent action shall be governed by this Section.

## 5. **Notice/Cooperation with GNP.**

(a) Grantor shall provide GNP with a copy of this Agreement as well as telephonic notice of it at least 48 hours in advance of the execution and recording of this Agreement.

(b) Provided GNP uses reasonable efforts to cooperate with Grantee in Grantee's exercise of its rights hereunder, Grantee shall use reasonable efforts to cooperate with GNP in GNP's exercise of its rights under the O&M Agreement.

(c) Prior to a party constructing any new improvement in the Easement Area, the Constructing Party shall provide at least 48 hours' telephonic notice to GNP prior to entry into the Easement Area. The Constructing Party shall also provide such additional notice as may be needed to effectively communicate with GNP. Such notice shall be given to GNP at the following address, telephone and email:

GNP Rly., Inc.  
Attn: Thomas Payne  
403 Garfield St., #20  
Tacoma, WA 98444  
Telephone: (253) 459-9702.  
Email: tompayne@telus.net



(d) Prior to a party performing any construction within twenty (20) feet of the rail corridor track center, the Constructing Party shall contact GNP and make arrangements with GNP for flagging.

(e) Notwithstanding anything to the contrary contained in this Agreement, any provisions, restrictions, requirements, rights or obligations concerning or related to the O&M Agreement that are set forth in this Agreement (including, without limitation, the requirements and restrictions set forth in Sections 3 and 5) shall be null and void and of no further force and effect upon termination or expiration of the O&M Agreement.

6. **Insurance.** Grantee agrees to maintain reasonable and customary liability insurance for personal injury, death, and property damage arising out of, or having to do with Grantee's use, occupancy, and possession of, or acts or omission on or about, the Easement Area, and will provide the Grantor with satisfactory evidence of such insurance upon Grantor's request.

7. **Indemnity.** Grantor shall pay, protect, pay the defense cost of, indemnify and hold Grantee and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) Grantor's negligence; (b) the breach of any representation, warranty or agreement of Grantor set forth in this Agreement; (c) Grantor's failure to perform any obligation required by this Agreement; and (d) the class action lawsuit, *Lane v. Port of Seattle*, Case No. 10-2-25591-5. Grantee shall pay, protect, pay the defense cost of, indemnify and hold Grantor and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of Grantee's negligence. Solely to give full force and effect to the indemnities contained herein and not for the benefit of any third party, each party specifically and expressly waives any immunity it may have under Washington State Industrial Act, RCW Title 51, and acknowledges that this waiver was mutually negotiated by the parties herein. In no event shall either party's obligations hereunder be limited to the extent of any insurance available to or provided by the obligated party.

8. **Compliance with Laws, Regulations, Work Standards.** Grantee shall at all times exercise its rights herein in accordance with the requirements (as from time to time amended) of any public authority having jurisdiction over Grantee or its operations, and all applicable statutes, orders, rules and regulations, including all applicable environmental laws, permit and approval requirements, and commercially reasonable construction and operation practices.

9. **Binding Successors; Assignment.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Either party may freely assign, apportion or otherwise transfer any or all of its rights, benefits, privileges and interests arising in and under this Agreement.

10. **Limitations.** This Agreement is subject to those certain existing or previously granted licenses and easements set forth in Exhibit C attached hereto and incorporated herein by reference.

11. **Notice.** Any notice required herein or permitted to be given or served by either party hereto upon the other shall be deemed given or served in accordance with the provisions of this Agreement, if personally served, delivered by national overnight courier (such as Fed Ex, UPS, DHL), if sent via facsimile or if mailed by United States Registered or Certified Mail, postage prepaid, properly addressed as follows:

If to Grantee:	Puget Sound Energy, Inc. Attn: Right of Way Department PO Box 97034 (EST-06W) Bellevue, WA 98009-9734 Telephone: 425-456-2645 Facsimile: 425-462-3519	Puget Sound Energy, Inc. Attn: Energy Production Department PO Box 97034 Bellevue, WA 98009-9734 Telephone: 425-462-3022 Facsimile: 425-462-3223
If to Grantor:	Port of Seattle Real Estate Division P.O. Box 1209 Seattle, WA 98111 Telephone: 206-787-3722 Facsimile: _____	

12. **Breach.** Excepting any disputes relating to interference with facilities, which shall be handled in accordance with Section 4, in the event of any breach or threatened breach of this Agreement, the non-defaulting party shall have the right to sue for damages and/or for specific performance and/or to enjoin such breach or threatened breach.

13. **Attorneys' Fees.** The prevailing party in any action brought to enforce or interpret the terms of this Agreement pursuant to Section 11 shall be entitled to recover its costs and reasonable attorneys' fees incurred in said action, including on appeal.

14. **No Merger of Estates.** The easement(s) granted herein shall not extinguish or terminate by operation of the doctrine of merger or otherwise due to the existing or future common ownership of the real property described herein.

15. **Complete Agreement.** This Agreement contains the entire agreement of the parties with respect to this subject matter and supersedes all prior or contemporaneous writings or discussions relating to the easement(s) provided for herein. This Agreement may not be amended except by a written document executed after the date hereof by the duly authorized representatives of Grantor and Grantee.

16. **Choice of Law.** This Agreement shall be governed by the laws of the State of Washington.

17. **Time of the Essence.** Time is of the essence of this Agreement and the performance of all obligations hereunder.

18. **Warranty and Representation of Authority.** The parties each represent to the other that the person or persons executing this Agreement have authority to do so and to bind the

parties hereunder. All consents, permissions and approvals related to entry into this Agreement, and the obligations hereunder, have been obtained.

19. **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each party shall be considered a separate owner, and no party shall have the right to act as an agent for another party, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

20. **Singular and Plural.** Whenever required by the context of this Agreement, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

21. **Severability.** Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions thereof or the application thereof to any other person and the same shall remain in full force and effect.

22. **Captions and Capitalized Terms.** The captions preceding the text of each section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

23. **Non-Waiver.** The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

24. **Counterparts.** This Agreement may be executed in one or more counterparts.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

GRANTOR:

**PORT OF SEATTLE,**  
a Washington municipal corporation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GRANTEE:

**PUGET SOUND ENERGY, INC.,**  
a Washington corporation

By \_\_\_\_\_  
Name: Roger S. McNulty  
Title: Director of Corporate Facilities

|

**ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGE**

DRAFT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the \_\_\_\_\_ of the Port of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, 2010.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Roger S. McNulty is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the Director of Corporate Facilities of Puget Sound Energy, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, 2010.

\_\_\_\_\_  
Print Name: Kyle L. Branum

NOTARY PUBLIC in and for the State of  
Washington, residing at Seattle  
My commission expires: 5-09-11

|

**EXHIBIT A**

DRAFT

|

**EXHIBIT B**

DRAFT

|

**EXHIBIT C**

DRAFT



**RETURN ADDRESS:**

Puget Sound Energy, Inc.  
Corporate Facilities Dept., PSE10S  
P.O. Box 97034  
Bellevue, WA 98009-9734  
Attn: Wbressler

**Item No.:** 6a Supp 3 South Easement  
**Date of Meeting:** December 7, 2010

**SOUTH RAIL LINE EASEMENT**

REFERENCE #: \_\_\_\_\_

GRANTOR: **Port of Seattle**

GRANTEE: **Puget Sound Energy, Inc.**

SHORT LEGAL: \_\_\_\_\_

ASSESSOR'S PROPERTY TAX PARCEL: \_\_\_\_\_

For and in consideration of One Dollar (\$1.00) and other valuable consideration in hand paid, **PORT OF SEATTLE**, a Washington municipal corporation ("Grantor"), hereby conveys and warrants to **PUGET SOUND ENERGY, INC.**, a Washington corporation ("Grantee"), for the purposes hereinafter set forth in this agreement ("Agreement"), a nonexclusive, perpetual easement over, under, along, across and through the following described real property (the "Easement Area") in King County, Washington:

[See Exhibit A]

1. **Purpose.** Grantee shall have the right to use and enjoy the Easement Area for the following purposes:

(a) To construct, operate, maintain, repair, replace, improve, remove, enlarge, and use the Easement Area for one or more utility systems for purposes of transmission, distribution and sale of electricity. Such systems may include, but are not limited to:

i. **Overhead facilities.** Poles, towers and other support structures with crossarms, braces, guys and anchors; electric transmission and distribution lines; fiber optic cable and other lines, cables and facilities for communications; transformers, street lights, meters, fixtures, attachments and any and all other facilities or appurtenances necessary or convenient to any or all of the foregoing; and

ii. **Underground facilities.** Conduits, lines, cables, vaults, switches and transformers for electricity; fiber optic cable and other lines, cables and facilities for communications; semi-buried or ground-mounted facilities and pads, manholes, meters, fixtures, attachments and any and all other facilities or appurtenances necessary or convenient to any or all of the foregoing.

(b) To construct, operate, maintain, repair, replace, improve, remove, enlarge, and use the Easement Area for Grantee's utility systems for purposes of transmission, distribution and sale of gas ("Gas Facilities"). Such Gas Facilities may include, but are not limited to underground facilities such as pipes, pipelines, mains, laterals, conduits, regulators and feeders for gas; semi-buried or ground-mounted facilities and pads, manholes, meters, fixtures, attachments and any and all other facilities or appurtenances necessary or convenient to any or all of Grantee's Gas Facilities.

(c) Pedestrian and vehicular ingress and egress to perform the rights granted hereunder.

Except as otherwise expressly set forth herein, no other uses, purposes, rights or conveyances are implied or granted hereunder.

Grantee's use of the Easement Area and this Agreement is subject to existing or previously granted licenses and easements set forth at Exhibit F (List of Known Third Party Leases/Licenses) to the May 12, 2008 Purchase and Sale Agreement between the Port, BNSF Railway Company and King County.

Grantee shall have the right of access over and across the Easement Area to enable Grantee to exercise its rights hereunder, subject to reasonable security measures (provided, however, that such security measures shall not unreasonably impede Grantee's ability to access its facilities at all times).

## 2. **Easement Area Clearing; Maintenance; Restoration.**

(a) Grantee shall have the right to cut, remove and dispose of any and all brush, trees or other vegetation in the Easement Area that may interfere with Grantee's facilities. Grantee shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, trees or other vegetation in the Easement Area.

(b) Notwithstanding the rights of Grantee in Section 2(a), Grantor (either by itself or by King County, Washington, a political subdivision and body corporate and politic of the State of Washington (the "County")) pursuant to the County's obligations under that certain

Trail Use Agreement dated December 18, 2009 (the “TUA”), by and between the County and BNSF Railway Company) shall generally be responsible for maintenance of any roads, trails, paths (and/or similar type improvements), and/or rail tracks located in the Easement Area. Provided, however, that in the event that damage to any such improvements results from Grantee’s negligent use of the Easement Area, then Grantee shall restore such property to the condition in which it existed prior to the time of damage. In the event that Grantee disturbs the Easement Area in connection with any construction, repair, maintenance, replacement, relocation, or reconstruction work on its facilities, Grantee shall restore the Easement Area to the condition in which it existed at the commencement of such activity.

3. **Grantor’s Use of Easement Area; Subsequent Third Party Uses.** Grantor reserves the right to use the Easement Area for (i) those uses set forth in the TUA, (ii) those uses relating to “railbanking” the Easement Area, which uses are specifically set forth in that certain Public Multipurpose Easement by and between Grantor and the County recorded December 18, 2009, under King County Recorder’s file No. 20091218001538, and (iii) any other purpose not inconsistent with Grantee’s rights herein. In the event that Grantor, on or after the date of this Agreement, provides any easements, leases, permits, franchises, occupancy agreements, licenses or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Easement Area (collectively, “Subsequent Third Party Use”), such Subsequent Third Party Use shall be subject to Grantee’s rights under this Agreement.

4. **Interference.**

(a) **Notice of Construction.** Prior to a party (including any third party who has been granted a Subsequent Third Party Use) constructing any new improvements in the Easement Area (such party referred to as the “Constructing Party”), the Constructing Party shall send notice to the Grantor and Grantee, as applicable (the “Non-Constructing Party”), containing a description of the activities and any construction plans or surveys of the proposed improvements. The Non-Constructing Party shall have thirty (30) days to review and respond. If the Non-Constructing Party fails to respond within thirty (30) days from receipt of notice, the construction plans are deemed approved. For purposes of this Section 4, the Non-Constructing Party shall only mean Grantor or Grantee (as applicable) and shall not include any third party who has been granted a Subsequent Third Party Use.

(b) **Notice of Interference.** If the Non-Constructing Party, in its reasonable discretion, determines that the proposed use of the Easement Area by the Constructing Party interferes with the Non-Constructing Party’s then existing facilities or improvements, then the Non-Constructing Party shall provide the Constructing Party with a notice (the “Dispute Notice”) within the thirty (30) day timeframe specified in Section 4(a), specifying with particularity the basis for the claim that the Constructing Party’s use of the Easement Area is or will be an interference. If the parties are unable to resolve the dispute within thirty (30) days, they shall follow the following process:

i. *Management Escalation.* Each party shall, within ten (10) business days, nominate a senior officer or director to meet to attempt to resolve the dispute (“Management Escalation”). The nominated individuals shall meet within twenty (20) business

days after their nomination. Any dispute resolved through the Management Escalation process shall be documented by appropriate written documentation executed by both Grantor and Grantee.

ii. *Mediation.* Disputes not settled by Management Escalation shall be submitted to mediation. The mediator shall have experience in utility or civil engineering disputes. If the parties are unable to agree on a mediator, one shall be appointed by the American Arbitration Association (“AAA”). The mediator shall be impartial in fact and appearance, not an advocate of either party. The mediation shall be completed no later than thirty (30) days after the request for mediation. If, after eight (8) hours of good faith mediation, the parties are unable to resolve the dispute, it shall be settled by binding arbitration in accordance with the following subparagraph, unless the parties otherwise agree to extend the mediation time. Each party shall be responsible for its own costs and expenses, including attorneys’ fees, incurred pursuant to this subparagraph. Cost of the mediator and other common costs shall be divided equally between the parties.

iii. *Arbitration.* Disputes not settled by mediation shall be decided by arbitration in accordance with the AAA rules, as modified herein, unless the parties mutually agree to other arbitration procedures. Notice of the demand for arbitration shall be filed in writing with the other party and with the AAA. The demand shall be made within thirty (30) days after the date that either party or the mediator declares that the mediation is concluded. This agreement to arbitrate shall be specifically enforceable under prevailing state or federal arbitration law. A single arbitrator experienced in utility or civil engineering disputes, shall arbitrate the dispute, provided that if the parties cannot agree on an arbitrator within ten (10) days following a party’s initial demand for arbitration, each party shall select an arbitrator and the two arbitrators so selected shall select a third arbitrator experienced in utility or civil engineering standards, and the three arbitrators shall then arbitrate the dispute.

1. Except as may be otherwise agreed by the parties to this Agreement, the arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules with Expedited Procedures, in effect at that time, as modified by this Section. There shall be no dispositive motion practice. As may be shown to be necessary to ensure a fair hearing, the arbitrator(s) may authorize limited discovery and may enter pre-hearing orders regarding (without limitation) scheduling, document exchange, witness disclosure and issues to be heard. The arbitrator(s) shall not be bound by the rules of evidence or of civil procedure, but may consider such writings and oral presentations as reasonable business people would use in the conduct of their day-to-day affairs, and may require the parties to submit some or all of their case by written declaration or such other manner of presentation as the arbitrator(s) may determine to be appropriate. The parties intend to limit live testimony and cross-examination except to the extent necessary to ensure a fair hearing on material issues.

2. The arbitrator(s) shall take such steps as may be necessary to hold a private hearing within ten (10) days following the date the arbitrator has been selected and to conclude the hearing within two (2) days; and the arbitrator’s written decision shall be made not later than seven (7) calendar days after the hearing. The parties have included these time limits in order to expedite the proceeding, but they are not jurisdictional, and the

arbitrator(s) may for good cause allow reasonable extension or delays, which shall not affect the validity of the award. The written decisions shall contain a brief statement of the claim(s) determined and the award made on each claim. In making the decision and award, the arbitrator(s) shall apply applicable substantive law. Absent fraud, collusion or willful misconduct by the arbitrator(s), the award shall be final, and judgment may be entered in any court having jurisdiction thereof. The arbitrator(s) may award injunctive relief or any other remedy available from a judge, including the joinder of parties or consolidation of this arbitration with any other involving common issues of law or fact or which may promote judicial economy, and may award attorneys' fees and costs to the prevailing party but shall not have the power to award punitive or exemplary damages. Venue of any arbitration conducted pursuant to this paragraph shall be in Seattle or Bellevue, Washington.

iv. *Applicable Standards.* For any question of whether a facility unreasonably interferes with another use, the generally accepted engineering standards and practices and those standards and requirements set forth in Chapter 480-93 of the Washington Administrative Code (and any amendments or supplements thereto) and National Electrical Safety Code and National Pipeline Safety Act shall be determinative, provided any and all conditions thereof are satisfied.

(c) **Emergency Situations.** Notwithstanding the foregoing, a party may take such reasonable actions as are necessary to address a situation that threatens the health and safety of the general public prior to complying with the notice provisions of this Agreement including, without limitation, Sections 4, 5 and 11 of this Agreement. In such event, and as soon as practicable, the party shall notify the other party of the actions taken, and any corrections or subsequent action shall be governed by this Section.

(d) **Costs Associated with Construction.** The Constructing Party shall bear all costs associated with and ancillary to constructing any new improvements in the Easement Area.

5. **Insurance.** Grantee agrees to maintain reasonable and customary liability insurance for personal injury, death, and property damage arising out of, or having to do with Grantee's use, occupancy, and possession of, or acts or omission on or about, the Easement Area, and will provide the Grantor with satisfactory evidence of such insurance upon Grantor's request.

6. **Compliance with Laws, Regulations, Work Standards.** Grantee shall at all times exercise its rights herein in accordance with the requirements (as from time to time amended) of any public authority having jurisdiction over Grantee or its operations, and all applicable statutes, orders, rules and regulations, including all applicable environmental laws, permit and approval requirements, and commercially reasonable construction and operation practices, as well as those certain obligations imposed under § 8(d) of the National Trails System Act, also known as the Rails-to-Trails Act, 16 U.S.C. § 1247(d), its implementing regulation, 49 C.F.R. § 1152.29, and the Notice of Interim Trail Use (the "NITU") issued by the Surface and Transportation Board (the "STB").

7. **Reactivation; Trail Development.** Grantor and Grantee understand and acknowledge that if the STB receives a request to use all or any portion of the Easement Area for federally regulated interstate freight rail service, then Grantor and Grantee may each be required to make available some or all of their respective interests in the Easement Area to accommodate reactivated freight rail service. Grantor and Grantee agree that if the STB receives a request for approval to use the Easement Area for reactivated freight rail service, then Grantor and Grantee will cooperate to cause the party making such request (a) to bear all costs to restore or improve the Easement Area for reactivated freight rail service, (b) to bear responsibility to take all steps necessary before the STB and any other regulatory agency, governmental or quasi-governmental body having jurisdiction over such work, to cause the relevant NITU to be vacated, in whole or in part, as necessary, and (c) to compensate Grantor and Grantee for the fair market value of any and all of their respective rights or interests in the Easement Area, or in improvements thereon that may be destroyed, lost, compromised, or otherwise reduced in value or function when the Easement Area or any portion of it is put to use for reactivated freight rail service.

In the event the County elects not to proceed with Trail Development (as defined in the TUA) and takes action to terminate the TUA, Grantor shall (i) engage a substitute Interim Trail User consistent with all current and future STB requirements and (ii) take such action to satisfy any and all Railbanking Obligations and Custodial Activities as defined in, and pursuant to, the TUA.

8. **Indemnification.** Grantor shall pay, protect, pay the defense costs of, indemnify and hold Grantee and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) Grantor's negligence; (b) Grantor's failure to make available its interests in the Easement Area to accommodate reactivated freight rail service; (c) the breach of any representation, warranty or agreement of the Grantor set forth in this Agreement; (d) the failure of Grantor to perform any obligation required by this Agreement; and (e) the class action lawsuit, *Lane v. Port of Seattle*, Case No. 10-2-25591-5. Grantee shall pay, protect, pay the defense costs of, indemnify and hold Grantor and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of Grantee's negligence and/or Grantee's failure to make available its interests in the Easement Area to accommodate reactivated freight rail service. Solely to give full force and effect to the indemnities contained herein and not for the benefit of any third party, each party specifically and expressly waives any immunity it may have under Washington State Industrial Act, RCW Title 51, and acknowledges that this waiver was mutually negotiated by the parties herein. In no event shall either party's obligations hereunder be limited to the extent of any insurance available to or provided by the obligated party. The provisions of this paragraph shall survive Closing.

9. **Binding Successors; Assignment.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Either party may freely assign, apportion or otherwise transfer any or all of its rights, benefits, privileges and interests arising in and under this Agreement.

10. **Limitations.** This Agreement is subject to those certain existing or previously granted licenses and easements set forth in Exhibit B attached hereto and incorporated herein by reference.

11. **Notice.** Any notice required herein or permitted to be given or served by either party hereto upon the other shall be deemed given or served in accordance with the provisions of this Agreement, if personally served, delivered by national overnight courier (such as Fed Ex, UPS, DHL), if sent via facsimile or if mailed by United States Registered or Certified Mail, postage prepaid, properly addressed as follows:

If to Grantee:	Puget Sound Energy, Inc. Attn: Right of Way Department PO Box 97034 (EST-06W) Bellevue, WA 98009-9734 Telephone: 425-456-2645 Facsimile: 425-462-3519	Puget Sound Energy, Inc. Attn: Energy Production Department PO Box 97034 Bellevue, WA 98009-9734 Telephone: 425-462-3022 Facsimile: 425-462-3223
If to Grantor:	Port of Seattle Real Estate Division P.O. Box 1209 Seattle, WA 98111 Telephone: 206-787-3722 Facsimile: _____	

12. **Breach.** Excepting any disputes relating to interference with facilities, which shall be handled in accordance with Section 4, in the event of any breach or threatened breach of this Agreement, the non-defaulting party shall have the right to sue for damages and/or for specific performance and/or to enjoin such breach or threatened breach.

13. **Attorneys' Fees.** The prevailing party in any action brought to enforce or interpret the terms of this Agreement pursuant to Section 12 shall be entitled to recover its costs and reasonable attorneys' fees incurred in said action, including on appeal.

14. **No Merger of Estates.** The easement(s) granted herein shall not extinguish or terminate by operation of the doctrine of merger or otherwise due to the existing or future common ownership of the real property described herein.

15. **Complete Agreement.** This Agreement and that certain Easement Purchase and Sale Agreement by and between the parties of even date herewith contain the entire agreement of the parties with respect to this subject matter and supersedes all prior or contemporaneous writings or discussions relating to the easement(s) provided for herein. This Agreement may not be amended except by a written document executed after the date hereof by the duly authorized representatives of Grantor and Grantee.

16. **Choice of Law.** This Agreement shall be governed by the laws of the State of Washington.

17. **Time of the Essence.** Time is of the essence of this Agreement and the performance of all obligations hereunder.

18. **Warranty and Representation of Authority.** The parties each represent to the other that the person or persons executing this Agreement have authority to do so and to bind the parties hereunder. All consents, permissions and approvals related to entry into this Agreement, and the obligations hereunder, have been obtained. Grantor further represents and warrants to Grantee that (i) Grantor has taken all corporate action necessary to authorize the execution and delivery by Grantor of this Agreement and the performance of its obligations hereunder, including, without limitation, any resolutions, governmental approvals or other actions as may be required by applicable law or statute (including, without limitation, RCW Title 53); (ii) Grantor has not received any written notice of and Grantor has no knowledge of any actual or pending litigation, proceeding or claim by any organization, person, individual or governmental agency against Grantor that could materially impair Grantor's ability to perform its obligations under this Agreement, or that assert that Grantor does not have sufficient ownership interest to convey this easement; and (iii) To Grantor's actual knowledge the Easement Area is not subject to any leases, tenancies or rights of persons in possession, franchises, occupying agreements, unrecorded easements or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting the Easement Area (collectively "Third Party Rights") other than the List of Known Third Party Leases/Licenses in Exhibit F to the May 12, 2008 Purchase and Sale Agreement between the Port, BNSF Railway Company and King County. Provided, however, the following:

(i) Grantee acknowledges that Grantor has previously disclosed to Grantee the existence of the class action lawsuit, *Lane v. Port of Seattle*, Case No. 10-2-25591-5;

(ii) Grantee acknowledges that Grantor has previously disclosed the adverse possession claim in the quiet title action, *Ao-Zhou v. BNSF Railway Company et al.*, Case No. 09-2-44773-0 KNT, and the proposed settlement of the adverse possession claim whereby the Port would, by quit claim deed, convey to Ao-Zhou a portion, 25 feet in width, of the Port property acquired from BNSF, adjacent to the Ao-Zhou residence located at 6333 Hazelwood Lane, in Bellevue, Washington; and whereby the Port would grant an easement for ingress and egress to the Ao Zhou property on the existing Hazelwood Lane and for Ao-Zhou's use, maintenance, repair and replacement of existing utilities within that easement area; and

(iii) Grantee acknowledges that Grantor does not warrant beyond its actual knowledge that there are not other Third Party Rights.

19. **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each party shall be considered a separate owner, and no party shall have the right to act as an agent for another party, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.



20. **Singular and Plural.** Whenever required by the context of this Agreement, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

21. **Severability.** Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions thereof or the application thereof to any other person and the same shall remain in full force and effect.

22. **Captions and Capitalized Terms.** The captions preceding the text of each section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

23. **Non-Waiver.** The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

24. **Counterparts.** This Agreement may be executed in one or more counterparts.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

GRANTOR:

GRANTEE:

**PORT OF SEATTLE,**  
a Washington municipal corporation

**PUGET SOUND ENERGY, INC.,**  
a Washington corporation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: Roger S. McNulty  
Title: Director of Corporate Facilities

**ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGE**

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF KING                )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the \_\_\_\_\_ of the Port of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, 2010.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF KING                )

I certify that I know or have satisfactory evidence that Roger S. McNulty is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the Director of Corporate Facilities of Puget Sound Energy, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, 2010.

\_\_\_\_\_  
Print Name: Kyle L. Branum  
NOTARY PUBLIC in and for the State of  
Washington, residing at Seattle  
My commission expires: 5-09-11

**EXHIBIT A**

DRAFT

**EXHIBIT B**

DRAFT