

Multnomah County Official Records  
R Weldon, Deputy Clerk

2012-044522



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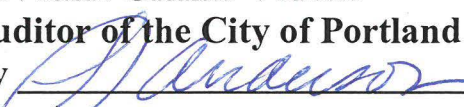
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**CITY OF PORTLAND**  
**Office of the City Auditor**  
**1221 SW Fourth Avenue, Room 140**  
**Portland, OR 97204-1900**

**I hereby certify this Ordinance No. 183678 to be a complete and exact copy of the original as the same appears on file and of record in my office and in my care and custody on April 10, 2012.**

**LaVonne Griffin-Valade**  
**Auditor of the City of Portland**  
By   
**Deputy**

10

## ORDINANCE No. 183678

\*Authorize Consent Agreement with Portland General Electric Company for construction of the portion of the Portland Streetcar Loop OMSI Viaduct, which is within an easement between the Oregon Museum of Science and Industry and Portland General Electric Company (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City of Portland (City) currently is constructing the Portland Streetcar Loop Project (Project), which will extend Streetcar service across the Broadway Bridge and south to the Oregon Museum of Science and Industry (OMSI).
2. A new streetcar-only viaduct will be constructed from approximately SE Martin Luther King Jr. Boulevard and Harrison Street over the Union Pacific Rail Lines to a terminus serving OMSI on SE Water Avenue just north of SE Caruthers Street (OMSI Viaduct).
3. The OMSI Viaduct requires the City to purchase property from OMSI (the Property), with said offer presented to OMSI on February 17, 2010. On March 2, 2010, OMSI granted a Permit of Entry to the City to allow early access onto the Property to begin construction of the OMSI Viaduct in accordance with the Project Plans and Specifications.
4. OMSI and Portland General Electric Company (PGE) entered into an Electric Transmission Line Easement, dated January 16, 1987 (Easement), which requires that OMSI not build or erect any structure or improvement upon, over or under the Easement without the prior written consent of PGE. A portion of the OMSI Viaduct is contained within the Easement area.
5. The Easement further provides that it inures to the benefit of and finds the parties hereto, their heirs, devisees, administrators, executors, successors and assigns.
6. PGE and the City desire to take the necessary actions to allow the City to construct the OMSI viaduct in conformance with the Easement.

NOW, THEREFORE, the Council directs

- a. That the Mayor and the City Auditor to enter into the Consent Agreement with the Portland General Electric Company, substantially in accordance with the agreement attached to the original of this Ordinance.
- b. The City's Project Manager is hereby authorized to negotiate, agree to and execute, on behalf of the City, any amendment to the Consent Agreement, which does not involve compensation.

183678

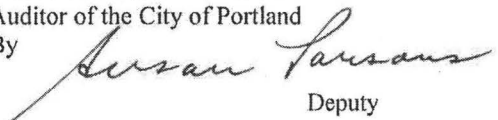
Section 2. The Council declares an emergency exists in order to meet the schedule for construction of the OMSI Viaduct; therefore, this Ordinance shall be in full force and effect from and after its passage by Council.

Passed by the Council, APR 14 2010

Mayor Sam Adams  
Prepared by: Vicky Diede:slg  
Date Prepared: March 30, 2010

**LaVonne Griffin-Valade**  
Auditor of the City of Portland

By

  
Deputy

**CONSENT AGREEMENT FOR CONSTRUCTION  
OF THE PORTION OF THE PORTLAND STREETCAR OMSI VIADUCT  
LOCATED WITHIN THE ELECTRIC TRANSMISSION LINE EASEMENT AREA**

This CONSENT AGREEMENT FOR CONSTRUCTION OF THE PORTION OF THE PORTLAND STREETCAR OMSI VIADUCT LOCATED WITHIN THE ELECTRIC TRANSMISSION LINE EASEMENT AREA ("Agreement") is between PORTLAND GENERAL ELECTRIC COMPANY ("PGE") and the CITY OF PORTLAND ("City"), collectively hereinafter referred to as "the Parties".

**RECITALS**

A. The City owns, and since July 2001, has operated the Portland Streetcar system ("Streetcar") with assistance from Portland Streetcar, Inc., a private 501(c)(3) non-profit corporation.

B. The City currently is constructing the Portland Streetcar Loop Project ("Project"), which will extend Streetcar service across the Broadway Bridge and south to the Oregon Museum of Science and Industry ("OMSI").

C. A new streetcar-only viaduct will be constructed from approximately SE Martin Luther King Jr. Blvd. and Harrison Street over the Union Pacific Rail Lines to a terminus serving OMSI located on SE Water Avenue just north of SE Caruthers Street (the "OMSI Viaduct").

D. The OMSI Viaduct requires the City to purchase property from OMSI, as shown on the attached Exhibit A (the "Property"), with said offer presented to OMSI on February 17, 2010. On March 2, 2010, OMSI granted a Permit of Entry to the City to allow early access onto the Property to begin construction of the OMSI Viaduct in accordance with the Project Plans and Specifications.

E. OMSI and PGE entered into an Electric Transmission Line Easement, dated January 16, 1987 ("Easement"), which requires that OMSI not build or erect any structure or improvement upon, over or under the easement as shown in Exhibit B ("Easement Area") without the prior written consent of PGE. A portion of the OMSI Viaduct is contained in the Easement Area, as also shown on Exhibit B.

F. The Easement further provides that it inures to the benefit of and binds the parties hereto, their heirs, devisees, administrators, executors, successors and assigns.

G. The Parties desire to take the necessary actions to allow the City to construct the OMSI Viaduct in conformance with the Easement.

## AGREEMENT

### ARTICLE 1 – EFFECTIVE DATE

The term of this Agreement shall be effective from April 1, 2010.

### ARTICLE II - PORTLAND GENERAL ELECTRIC RESPONSIBILITIES/RIGHTS

1. PGE shall provide to the City written consent to construct the OMSI Viaduct upon, over or under the Easement Area, based on a review of the Issued for Construction Project Plans and Specifications dated November 2009 for the OMSI Viaduct and based on the terms and conditions of this Agreement. Plans and Specifications will be reviewed to assure that, among other things, clearances are adequate and that all appurtenances on the OMSI Viaduct are constructed of non-conductive material or appropriately grounded according to the requirements established by the National Electrical Safety Code. The City shall not materially modify that portion of the OMSI Viaduct within the Easement Area without the prior written consent of PGE, which may be withheld if PGE reasonably determines that such modification(s) may interfere with PGE's operational, safety or security concerns related to the Easement Area.

2. PGE reserves the right to enter upon the Easement Area to erect, maintain, repair, rebuild, operate and patrol electric power transmission and telecommunication lines, structures and appurtenant signal or communication lines, and all uses directly or indirectly necessary hereto. PGE shall provide adequate notice to the City prior to such activities and shall not unduly interfere with the operation of the Portland Streetcar. Such uses shall include the necessary erection of poles, towers, transmission structures, wires, cables, guys, supports and appurtenances and the protection thereof from fire and other hazards. Such uses shall also include the present and future right to enter and control brush, timber, structures and fire hazards.

### ARTICLE III - CITY OF PORTLAND RESPONSIBILITIES DURING CONSTRUCTION

1. As the owner of the Portland Streetcar System, the City will serve as the lead agency for the construction of the Project. The City and its general contractor shall each provide adequate notice to PGE prior to any construction related activities within the Easement Area and shall not unduly interfere with PGE's operations within the Easement Area.

2. Contractor's Insurance. Prior to beginning work covered by this Agreement, the City shall confirm in writing to PGE that City's general contractor has obtained and will maintain a commercial insurance policy that provides (a) for a combined single limit of not less than \$2,000,000 per each incident or occurrence and with an annual aggregate limit of not less

than \$5,000,000 and (b) for PGE, its officers, employees and agents to be named as additional insureds for work related to that portion of the OMSI Viaduct being constructed with the Easement Area. In addition, the City's Contractor shall maintain workers' compensation insurance in compliance with the laws of the State of Oregon. The fact that insurance is obtained by the City's contractor, or by the City on behalf of the City's Contractor, will not be deemed to release or diminish the liability of the City's Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by PGE from the City's Contractor or any third party will not be limited by the amount of the required insurance coverage.

3. Contractor's Indemnity. Prior to beginning work covered by this Agreement, the City shall deliver to PGE a written agreement in a form and content reasonably acceptable to PGE under which the City's general contractor agrees to defend, indemnify and hold harmless PGE, its officers, employees and agents from any and all claims, losses, damages, attorney fees, costs and liabilities arising out of accidents, unforeseen difficulties or the intentional reckless or negligent acts or omissions in the performance of the work covered by this Agreement or activity within the Easement Area. PGE shall, at its option, have the direct right to enforce such indemnification agreement against the City's general contractor.

4. Restriction on Use. City and its contractor shall in their use and entry upon the Easement Area observe all rules, regulations and laws now in effect by any municipality, county state or federal authority having jurisdiction over the Easement Area, as they relate to this Agreement as well as PGE's operational, safety and security standards.

#### ARTICLE IV – GENERAL PROVISIONS

1. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors and permitted assigns.

2. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered (including by means of professional messenger service) or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received only upon the date of actual receipt thereof (or when delivery thereof is refused by the addressee), as follows:

PGE: Property Services Manager  
Phone: (503) 464-8127  
Portland General Electric Company  
121 SW Salmon St.  
Portland OR 97204

City: Vicky L. Diede  
Phone: 503/823-7137  
Portland Bureau of Transportation  
1120 SW 5<sup>th</sup> Avenue, Room 800  
Portland OR 97204

3. Change of Address. Notice of change of address shall be given by written notice in the manner specific in Section 2.

4. Consequential Damages.

4.1 In no event shall the City of Portland or its officers, employees, agents or contractors be liable for any lost profits, lost savings, incidental damages or consequential damages in connection with or arising out of this Agreement.

4.2 In no event shall the PGE or its officers, employees or agents be liable for any lost profits, lost savings, incidental damages or consequential damages in connection with or arising out of this Agreement.

5.0 Headings. The headings used in this Agreement are solely for convenience or reference, are not part of this Agreement and are not to be considered in constructing or interpreting this Agreement.

6.0 Counterparts. This Agreement may be executed by the parties in separate counterparts, including telecopied counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

7.0 Severability. The provisions of this Agreement are severable, and if one or more provisions are determined to be unenforceable, in full or in part, by a court of competent jurisdiction, the validity of the remaining provisions, including any partially unenforceable provisions, to the extent enforceable, shall not be affected in any respect whatsoever.

8.0 Time of Essence. Time is of the essence for each and every provision of this Agreement.

9.0 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever.

10.0 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon. Further, the Parties stipulate that this Agreement is deemed to have been made and entered into by them in the State of Oregon. Exclusive venue for any action shall be in Multnomah County, Oregon.

11.0 Cathodic Protection/Grounding. The City acknowledges that PGE operates power transmission and distribution lines within the Easement Area. The City acknowledges that metallic structures which come into contact with any forms of electrically conducting environments (i.e., environments containing enough ions to conduct electricity such as soils, seawater and basically all natural waters) will corrode and deteriorate at an accelerated pace. The City shall be responsible for determining, implementing, monitoring, and maintaining all

means of grounding and cathodic protection with respect to any of the City's personnel or properties in or along the Easement Area.

12.0 Entire Agreement. This Agreement constitutes the entire Agreement between the Parties on the subject matter hereof. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties.

13.0 Prohibited Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decisions relating to his Agreement, which affects his/her personal interests or the interest of any corporation, partnership or association in which her/she is directly or indirectly interested.

**APPROVALS:**

 **PORTLAND GENERAL ELECTRIC COMPANY**

**CITY OF PORTLAND**

By: 

By: 

Title: Mgr

Title: Mayor


Date: 4/23/10

Date: 4.16.10

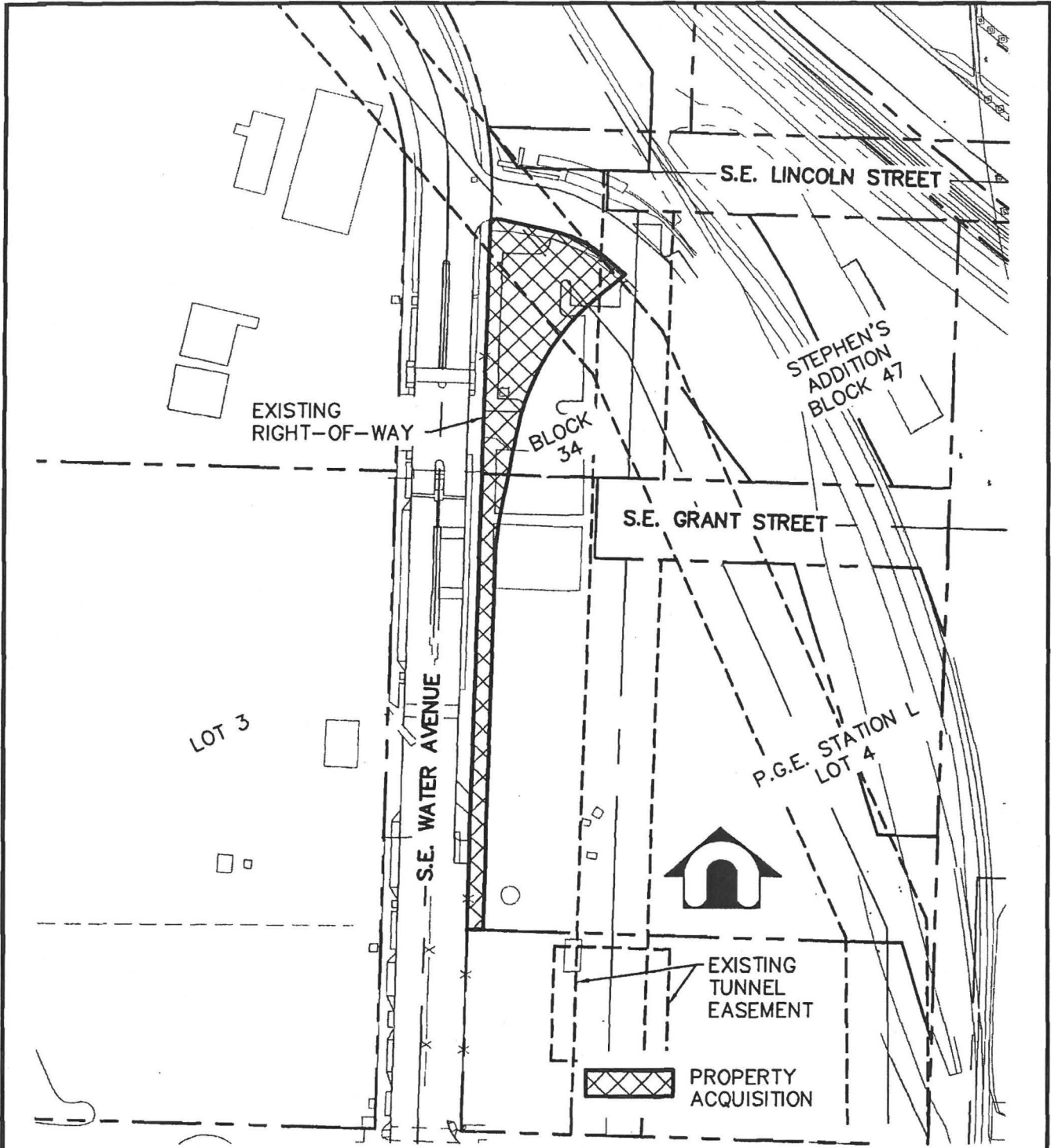
By:   
AUDITOR

**Approved as to Form:**

By: \_\_\_\_\_

By: 





**DAVID EVANS AND ASSOCIATES INC.**

2100 Southwest River Parkway  
 Portland Oregon 97201  
 Phone: 503.223.6663

PROJECT

EXHIBIT "A"

SHEET

TITLE

PORTLAND STREETCAR LOOP

1

DWG. REF.

SvEm15Ursx0041

PROJECT

URSX0041-50

SCALE

1" = 100'

AMENDMENT NO.

0.0

DRAWN BY

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DESIGN BY

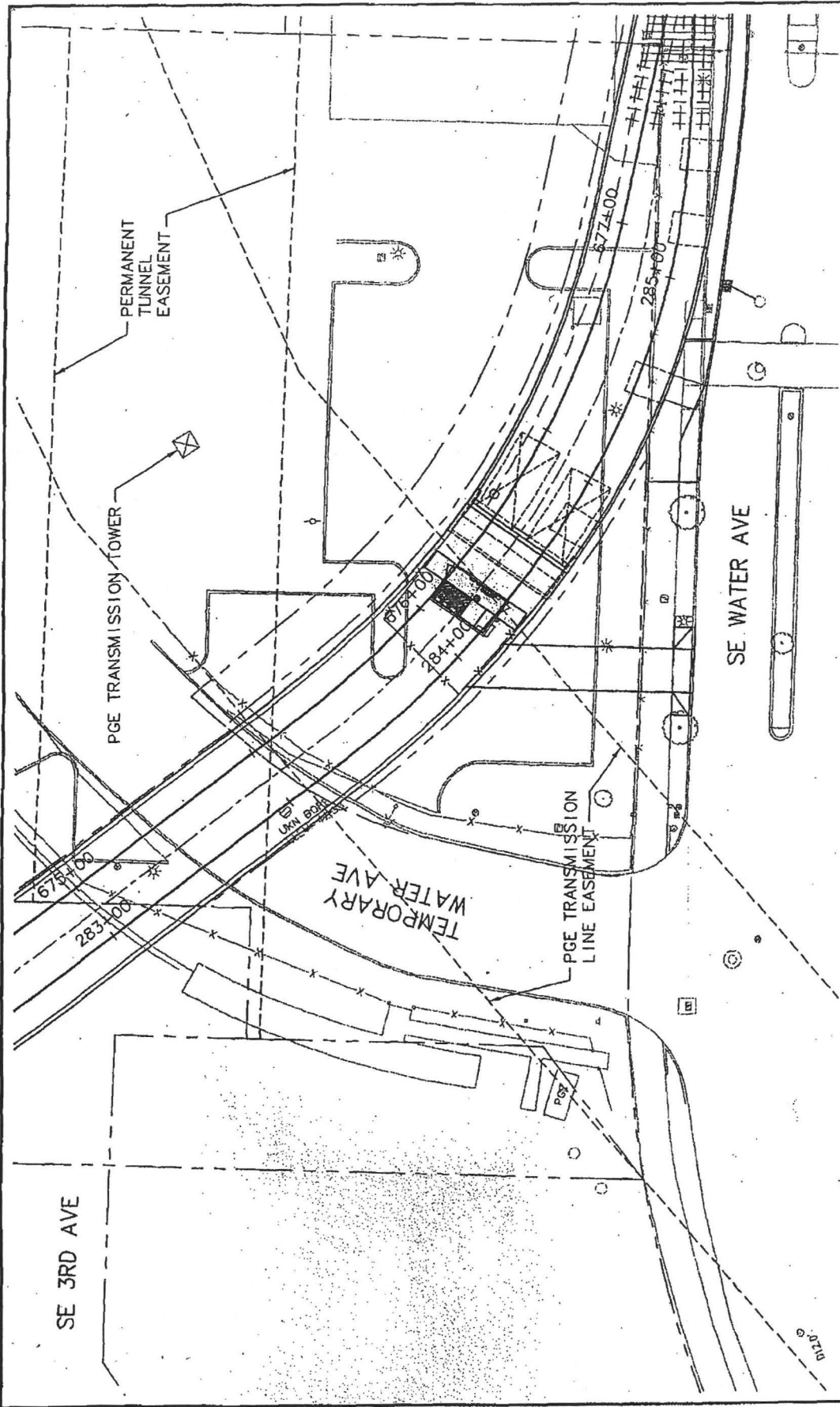
PNS

APPROVED BY

DATE

4/1/10

EXHIBIT B



PERMANENT TUNNEL EASEMENT

PGE TRANSMISSION TOWER

TEMPORARY WATER AVE

PGE TRANSMISSION LINE EASEMENT

SE WATER AVE

SE 3RD AVE

STREETCAR LOOP PROJECT  
OMSI/PGE EASEMENT

Scale	1"=20'
Revision	
Contract No.	

