AGENDA BILL APPROVAL FORM

Agenda Subject Public Hearing – Public Way Agreement		**Date:** January 12, 2009
Department: Public Works	**Attachments:** Public Way Agreement & Map	**Budget Impact:** $0

Administrative Recommendation:

City Council conduct the public hearing on the NW Pipeline G.P. Public Way Agreement #08-27. (For further action on this item, see Resolution No. 4335 under Item VIII.B.1.)

Background Summary:

Per Auburn City Code Chapter 20.04.010, a public way agreement shall be required of any commercial utility or telecommunications provider who desires to occupy specific public ways of the city for the sole purpose of providing commercial utility or telecommunications services to persons or areas outside the city.

NW Pipeline G.P. currently operates a high pressure natural gas pipeline through Auburn. They have applied to the City for a Public Way Agreement for the right of entry, use, and occupation of certain public rights-of-way within the City of Auburn for two existing natural gas pipeline facilities, a 30-inch and a 36-inch pipeline. The majority of the 30-inch pipeline was constructed in 1971, except approximately 4,500' that was constructed in 2005. The 36-inch pipeline was constructed in 2003. These pipelines are for transmission purposes and do not service area residents. There are approximately 703 parcels located inside the Auburn city limits within a quarter mile of those portions of the pipeline subject to the Public Way Agreement. Approximately 405 of those parcels have a residential address associated with them.

O3.10.9

Reviewed by Council & Committees:		**Reviewed by Departments & Divisions:**	
☐ Arts Commission	COUNCIL COMMITTEES:	☐ Building	☐ M&O
☐ Airport	☐ Finance	☐ Cemetery	☐ Mayor
☐ Hearing Examiner	☐ Municipal Serv.	☐ Finance	☐ Parks
☐ Human Services	☐ Planning & CD	☐ Fire	☐ Planning
☐ Park Board	☒ Public Works	☒ Legal	☐ Police
☐ Planning Comm.	☐ Other _____	☒ Public Works	☐ Human Resources

Action:
Committee Approval: ☐Yes ☐No
Council Approval: ☐Yes ☐No Call for Public Hearing ___/___/____
Referred to _____ Until ___/___/____
Tabled _____ Until ___/___/____

Councilmember: Wagner	**Staff:** Dowdy
Meeting Date: January 20, 2009	**Item Number:** II.A.1

The Public Way Agreement covers these existing facilities in Auburn and requires the applicant to carry a minimum of $100,000,000 in insurance. Additionally, the agreement requires that the applicant maintain a security bond with the City ensuring that they will remain in compliance with the terms of the agreement. As a provision of the public way agreement, upon the request of the City, Northwest Pipeline G.P. shall meet with the VRFA, the Auburn Police Department and the City's Emergency Management Office to coordinate emergency management operations and at least once a year, at the City's request, participate in emergency preparedness drills or planning sessions. Northwest Pipeline G.P. shall also provide to the City, upon acceptance of this agreement, a copy of its emergency response plans and procedures. Please note that under federal law the City has no authority over the safety and maintenance of the pipelines, which is regulated by the U.S. Department of Transportation Pipeline Safety Regulations and Federal Energy Regulatory Commission (FERC). The City's authority over the pipelines is strictly limited to regulating their physical presence in the City's rights-of-way.

CITY OF AUBURN AGREEMENT
WITH NORTHWEST PIPELINE G.P.

This Agreement is entered into by and between the City of Auburn, a Washington municipal corporation ("City") and Northwest Pipeline G.P., a Delaware general partnership ("NWP").

WHEREAS, NWP has applied to the City for a non-exclusive Public Way Agreement for the right of entry, use, and occupation of certain public right(s)-of-way within the City of Auburn, expressly to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, upon, along and/or across those right(s)-of-way; and

WHEREAS, the City has reviewed NWP's application and determined that the location of NWP's facilities within the requested right(s)-of-way is in the best interest of the City and the citizens of Auburn,

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the parties hereto agree as follows:

That the right, privilege, authority, and non-exclusive Public Way Agreement be, and the same are hereby given and granted to NWP, its successors and assigns to install, construct, operate, repair, relocate, maintain, and remove natural gas Facilities in, upon, under, along, and across certain roads in the City defined below as the Public Way.

This Agreement is granted upon the following express terms and conditions, to-wit:

Section 1. Definitions. Where used in this Public Way Agreement the following terms shall mean:

1.1 "Agreement" means this Public Way Agreement.

1.2 "City" means the City of Auburn, a municipal corporation of the State of Washington, and its respective successors and assigns.

1.3 "NWP Facilities" means, collectively, any and all natural gas systems owned or operated by NWP, including but not limited to gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters meter-reading devise, fixtures, communication systems, and any and all other equipment appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing for the purpose of transmission of natural gas, whether the same be located over or under ground.

1.4 "Public Way" means the below listed rights-of-way for public roads, streets, avenues, alleys, and highways of the City as now laid out, platted, dedicated, acquired or improved as shown on "Exhibit B":

Academy Drive
Lemon Tree Lane
Auburn Way South (Hwy. 164)
Bridget Avenue S.E.
53rd Street S.E.
Randall Avenue S.E.
Lake Tapps Parkway
65th Street S.E./Grady Ct. S.E.
Elaine Ct SE
Sumner Tapps Highway E.
Old Man Thomas Road

1.5 Hazardous Substance shall specifically include, but shall not be limited to, petroleum and petroleum products and their by-products, residue, and remainder in whatever form or state.

1.6 "NWP" means Northwest Pipeline G.P., a Delaware general partnership and its respective successors and assigns.

1.7 "Operate" or "Operations" shall mean the operation, use, and maintenance of NWP Facilities, pursuant to the terms of this Agreement.

1.8 "Party" or "Parties" means collectively the City and NWP, and individually either the City or NWP.

1.9 "Public Works Project" means, any City capital improvement or the construction, relocation, expansion, repair, maintenance, or removal of any part of the Public Way or City-owned facilities located on or in the Public Way for: parks; streets; sidewalks; curbs; pedestrian and/or vehicle traffic; sewers, storm water drains; water facilities, and; City owned fiber optic cable, conduit or network facilities.

1.10 "Third Party" means any person, party, or entity other than the City and NWP.

1.11 "FERC" means the Federal Energy Regulatory Commission, or such other successor regulatory agency having jurisdiction over interstate pipeline companies.

Section 2. Grant of Agreement

2.1 Pursuant to the laws of the State of Washington, the City hereby grants to NWP, subject to the terms and conditions as set forth herein, a Public Way Agreement for a period of five (5) years commencing upon the effective date of this Agreement. This Agreement is granted upon the express condition that within thirty (30) days after the adoption of this Agreement by the Auburn City Council, NWP shall file with the City Clerk a written acceptance of the same in the form

set forth in Exhibit A attached hereto and incorporated by reference. If NWP fails to do so within the time frame above, this Agreement shall be null and void.

This Agreement may be renewed for four additional five year periods upon submission and approval of the application specified under ACC 20.04.120, as it now exists or is amended, within the timeframe set forth therein 180 days prior to expiration of the then-current term, or such lesser timeframe as may be provided. Any materials submitted by the NWP for a previous application may be considered by the City in reviewing a current application, and the NWP shall only submit those materials deemed necessary by the City to address changes in the NWP Facilities or NWP Services, or to reflect specific reporting periods mandated by the ACC.

2.2 This Agreement is intended to convey only a limited right and interest and is not a warranty of title or interest in the City streets or rights-of-way.

2.3 NWP shall, in carrying out activities under the rights, privileges, and authority granted by this Agreement comply with the provisions of all applicable City codes, ordinances, regulations, standards, procedures, permits, or policies currently in effect or subsequently amended or enacted, except as said such laws, City codes, ordinances, regulations, standards, procedures, permits, policies, or laws may be inconsistent with or preempted or superseded by applicable federal law.

2.4 NWP shall, in carrying out activities under the rights, privileges, and authority granted by this Agreement, comply with all applicable state and federal laws and regulations currently in effect or subsequently amended or enacted and with all state laws, except as such state laws may be inconsistent with or preempted or superseded by federal law.

Section 3. Non-Public Way Area City Property

3.1 This Agreement shall not convey any right to NWP to install NWP Facilities on or to otherwise use City-owned or leased properties, easements, or rights-of-way, outside the Public Way.

Section 4. Nonexclusive Agreement

4.1 This Agreement is not, and shall not be deemed to be, an exclusive Public Way Agreement. This Agreement shall not in any manner prohibit the City from granting other and further Public Way Agreements or Franchises upon, under, and across the Public Way that do not hinder or interfere with NWP's rights under this Agreement. This Agreement shall not prohibit or prevent the City from using the Public Way for any lawful purpose or affect the jurisdiction of the City over the same or any part thereof.

Section 5. Installation/Noninterference of Facilities/Restoration

5.1 All work performed by NWP within the Public Way shall be performed in accordance with the permit(s) issued by the City, in compliance with the City Code and Standards, together with all applicable federal laws and regulations, and the laws and regulations of the State of Washington, the provisions of any applicable City codes, ordinances, regulations, standards and procedures as now exist or as may be hereafter amended or superseded. Work within the Public Way which directly affects NWP's construction, operation, and maintenance of NWP Facilities shall be performed in accordance with Federal law and regulation.

5.2 NWP Facilities shall be located and maintained within the Public Way so as not to interfere with the free passage of pedestrian and/or vehicle traffic therein, or with the reasonable ingress or egress to the properties abutting the Public Way as they exist at the time of installation of the NWP Facilities.

5.3 NWP shall restore the surface of the Public Way that is disturbed or damaged by the performance of this Agreement to at least the same condition as existed immediately prior to any such work. The City shall have final approval of the condition of the Public Way after restoration pursuant to the provisions of applicable City codes, ordinances, regulations, standards, policies, and procedures as now exist or as may be hereafter amended or superseded.

5.4 The City may at any time perform or have performed any and all work that it considers necessary to restore to a safe condition any area within the Public Way disturbed by NWP in the performance of this Agreement. NWP shall pay all reasonable costs of such work upon demand of the City.

5.5 NWP shall post a performance bond in the amount of $2,000,000 (two million dollars) to ensure satisfactory restoration of the Public Way prior to the initiation of NWP's work therein.

5.6 Pursuant to ACC Chapter 20.10, the NWP shall provide the City with a security bond as specified in ACC Section 20.10.250, in a form and substance acceptable to the City, securing NWP's faithful compliance with the terms of this Public Way Agreement. Such guarantees shall be in the amount of fifty thousand dollars ($50,000.00).

5.7 All survey monuments which are disturbed or displaced by NWP in its performance of any work under this Agreement shall be referenced and restored by NWP, as per WAC 332-120, as from time to time amended, and all pertinent federal, state, and local standards and specifications.

5.8 In the event NWP permanently ceases use of any of the NWP Facilities within the Public Way, NWP shall (subject to any necessary approval(s) and/or order(s) to be provided by the Federal Energy Regulatory Commission concerning abandonment) within one hundred and eighty (180) days or within such additional

time as is agreed to between the parties after such permanent cessation of use, remove such Facilities at the sole cost and expense of NWP; provided that with the express written consent of the City, NWP may leave such Facilities in place subject to the conditions set forth in this section. Any such Facilities to be left in place shall be made inert by purging all natural gas from such Facilities (including displacement of natural gas with an appropriate inert gas) and disconnecting and sealing such Facilities, all in compliance with applicable regulations and industry standards. The City's consent shall not relieve NWP of the obligation and/or costs to subsequently remove or alter such Facilities in the event the City reasonably determines that such removal or alteration is necessary or advisable for the health and safety of the public, in which case NWP shall perform such work at no cost to the City. The obligations contained in this Section shall survive the expiration, revocation, or termination of this Agreement.

Section 6. Relocation of Facilities

6.1 Whenever the City causes the construction of any Public Works Project within the Public Way and such construction necessitates the relocation of NWP's Facilities from their existing location to a new location within the Public Way, such relocation shall be accomplished by NWP at no cost to the City. Such alternate location for relocation of NWP's facilities shall be determined and approved jointly by the City and NWP at no cost to the City. To the extent practicable, the City may (but is not required to) provide an alternate location for such relocation of NWP's facilities at no additional cost to NWP.

6.2 In the event an emergency posing a threat to public safety or welfare requires the relocation of NWP's Facilities within the Public Way, the City shall give NWP notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City (and subject to the issuance of any necessary order(s) of the Federal Energy Regulatory Commission), NWP shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities.

6.3 Whenever any Third Party requires and requests the relocation of NWP's Facilities to accommodate work of such Third Party within the Public Way, NWP shall have the right as a condition of any such relocation to require payment by the Third Party to NWP, at a time and upon terms acceptable to NWP, for any and all costs and expenses incurred by NWP in the relocation of NWP's Facilities. Any contractor doing work pursuant to contract with the City shall not be considered a Third Party for purposes of this section.

6.4 Any condition or requirement imposed by the City upon any Third Party (including, but not limited to, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of NWP's Facilities within the Public Way shall be a condition or requirement causing relocation of NWP's Facilities to occur subject to the

provisions of Section 6.3 above; provided, however in the event the City reasonably determines and notifies NWP that the primary purpose of imposing such condition or requirement upon such Third party is to cause or facilitate the construction of a Public Works Project to be undertaken within a segment of the Public Way on the City's behalf and consistent with the City's Capital Facility Plan; Transportation Improvement Program, then only those costs and expenses incurred by NWP in reconnecting such relocated Facilities with other Facilities shall be paid to NWP by such Third Party, and NWP shall otherwise relocate its Facilities within such segment of the Public Way in accordance with this Agreement.

6.5 As to any relocation of NWP's Facilities whereby the cost and expense thereof is to be borne by NWP in accordance with this Section 6, NWP may, after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's receipt from NWP of such written alternatives, the City shall evaluate such alternatives and shall advise NWP in writing if one or more of such alternatives are suitable to accommodate the work which would otherwise necessitate relocation of NWP's Facilities. In evaluating such alternatives, the City shall give each alternative proposed by NWP full and fair consideration with due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. In the event the City reasonably determines that such alternatives are not appropriate, NWP shall relocate its Facilities as otherwise provided in this Agreement.

6.6 Nothing in this Section 6 shall require NWP to bear any cost or expense in connection with the relocation of any Facilities under benefit of easement independent of this Agreement or other rights not arising under this Agreement, nor shall anything in this Section 6 require the City to bear any such cost or expense. Nothing in this Section 6 shall be construed to be a waiver of any right of either NWP or the City to contest any claim or assertion by the other of responsibility to pay such cost or expense.

Section 7. Vacation of City Streets

7.1 If, at any time, the City shall vacate any City street and/or right-of-way which is subject to the rights granted by this Agreement and said vacation shall be for the purpose of acquiring the fee or other property interest in said road and/or rights-of-way for the use of the City, in either its proprietary or governmental capacity, then the City Council may at its option and by giving two hundred fifty (250) days' written notice to NWP, terminate this Agreement with reference to such City road and/or rights-of-way so vacated, and the City shall not be liable for any damages or loss to NWP by reason of such termination.

7.2 Prior to vacation of any City roads and/or rights-of-way, the City will make best efforts to (but shall not be required to) grant to NWP an easement or other

property right sufficient in size and scope for the existing Facilities contained in the vacated road and/or right-of-way.

Section 8. Records of Installation and Planning

8.1 Upon the City's request, NWP shall provide to the City copies of any plans prepared by NWP for initial installation, improvements, relocations and conversions to its Facilities within the Agreement Area; provided, however, any such plans so submitted shall be for informational purposes only and shall not obligate NWP to undertake any specific improvements within the Public Way, nor shall such plan be construed as a proposal to undertake any specific improvements within the Public Way. To the extent permitted by applicable law, and as otherwise provided herein, the City will attempt to keep said plans confidential and protected from public disclosure inasmuch as they contain Critical Energy Infrastructure and Safety Sensitive Information which are protected from public disclosure under federal law.

8.2 Upon the City's request, NWP shall provide to the City copies of available drawings in use by NWP showing the location of its Facilities at specific locations within the Public Way. As to any such drawings so provided, NWP does not warrant the accuracy thereof and, to the extent the locations of Facilities are shown, such Facilities are shown in their approximate location. To the extent permitted by applicable law, and as otherwise provided herein, the City will attempt to keep said drawings confidential and protected from public disclosure inasmuch as they contain Critical Energy Infrastructure and Safety Sensitive Information which are protected from Public disclosure under federal law..

8.3 Upon the City's reasonable request, in connection with the design of any Public Works Project, NWP shall verify the location of its underground Facilities within the Public Way by excavating (e.g., potholing) at no expense to the City. In the event NWP performs such excavation, the City shall not require any restoration of the disturbed area in excess of restoration to the same condition as existed immediately prior to the excavation.

8.4 Any drawings and/or information concerning the location of NWP's Facilities provided by NWP are considered to contain Critical Energy Infrastructure and Safety Sensitive Information under federal law and shall be used by the City solely for management of the Public Way. The City shall take all reasonable steps necessary to prevent disclosure or dissemination of such drawings and/or information to any Third Party, without the prior express consent of NWP, to the extent permitted by law; provided that NWP expressly acknowledges and agrees that all and/or parts of any and all such drawings and/or information received by the City from NWP may be subject to public disclosure, pursuant to Washington State law (including, RCW 42.56). While the City will take reasonable steps to attempt to prevent the disclosure of drawings, information, and/or materials that the City believes to be confidential, the City cannot and does not represent and/or

guarantee that any specific drawings and/or information will not be released, even if the release of such drawings and/or information may be (or may arguably be) exempt or otherwise preventable by law.

8.5 Notwithstanding the foregoing, nothing in this Section 9 is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of the NWP Facilities.

Section 9. Coordination, Shared Excavations

9.1 NWP and the City shall each exercise best reasonable efforts to coordinate any construction work that either may undertake within the Public Way so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Public Way informed of its intent to undertake such construction work. NWP and the City shall further exercise best reasonable efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Public Way.

9.2 If, at any time or from time to time, either NWP or the City shall cause excavations to be made within the Public Way, the party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties.

Section 10. Default; Remedies, and Dispute Resolution

10.1 If there is any dispute or alleged default with respect to performance under this Agreement, the City shall notify NWP in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within seven (7) days of its receipt of such notice, NWP shall provide written response to the City that shall acknowledge receipt of such notice and state NWP's intentions with respect to how NWP shall respond to such notice. NWP shall further have thirty (30) days (the "cure period") from its receipt of such notice to:

A. Respond to the City, contesting the City's assertion(s) as to the dispute or any alleged default and requesting a meeting, or;

B. Resolve the dispute or cure the default, or;

C. Notify the City that NWP cannot resolve the dispute or cure the default within thirty (30) days, due to the nature of the dispute or alleged default. Notwithstanding such notice, NWP shall promptly take all reasonable steps to begin to resolve the dispute or cure the default and notify the City

in writing and in detail as to the actions that will be taken by NWP and the projected completion date. In such case, the City may set a meeting in accordance with Section 10.2.

10.2 If any dispute is not resolved or any alleged default is not cured or a meeting is not requested or set in accordance with Section 10.1, then the City shall promptly schedule a meeting between the City and NWP to discuss the dispute or any alleged default. The City shall notify NWP of the meeting in writing and such meeting shall take place not less than ten (10) days after NWP's receipt of notice of the meeting. Each Party shall appoint a representative who shall attend the meeting and be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. Any dispute (including any dispute concerning the existence of or any corrective action to be taken to cure any alleged default) that is not resolved within ten (10) days following the conclusion of the meeting shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute or any alleged default through other legal means consistent with this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

10.3 If, at the conclusion of the steps provided for in Section 11.1 and 11.2 above, the City and NWP are unable to settle the dispute or agree upon the existence of a default or the corrective action to be taken to cure any alleged default, the City or NWP (as NWP may have authority to do so) may:

A. Take any enforcement or corrective action provided for in City code, as from time to time amended; provided such action is not otherwise in conflict with the provisions of this Agreement, and State and/or Federal law, and/or;

B. Declare an immediate forfeiture of this Agreement for a breach of any material obligations under this Agreement and/or;

C. Take such other action to which it is entitled under this Agreement or any applicable law.

D. Pursue any Alternative Remedies as provided in Section 11.

10.4 In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this agreement, the venue of such action or litigation shall be in the Superior Court of the State of Washington in and for the County of King. This provision shall not affect NWP's right to bring necessary

actions in federal court under the Natural Gas Act or other federal law should it be required to exercise its right of eminent domain or exercise other rights and privileges granted to it under federal law. This Agreement shall be governed by applicable Federal law, and the laws of the State of Washington.

10.5 Unless otherwise agreed by the City and NWP in writing, the City and NWP shall, as may be reasonably practicable, continue to perform their respective obligations under this Agreement during the pendency of any dispute.

Section 11. Alternative Remedies

No provision of this Agreement shall be deemed to bar the right of the City or NWP to seek or obtain judicial relief from a violation of any provision of the Agreement or any rule, regulation, requirement or directive promulgated thereunder for non-arbitrable claims. Neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City or NWP to recover monetary damages for such violations by the other party, or to seek and obtain judicial enforcement of the other Party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

Section 12. Indemnification

12.1 NWP shall indemnify, defend and hold the City, its appointed and elective officials, agents, officers, employees, and volunteers harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorney's fees, made against the City, its agents, officers or employees on account of injury, harm, death or damage to persons or property which is caused by, in whole, or in part, and then only to the extent of the negligent acts or omissions of NWP or its agents, servants, employees, contractors, or subcontractors in the exercise of the rights granted to NWP by this Agreement. Provided, however, such indemnification shall not extend to that portion of any claims, demands liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorney's fees caused by the sole negligence of the City, its appointed and elective officials, agents, officers, employees, and volunteers.

12.2 NWP shall indemnify, defend and hold the City, its appointed and elective officials, agents, officers, employees, and volunteers harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorney's fees, made against the City on account of violation of any environmental laws applicable to the NWP Facilities, or from any release of natural gas or Hazardous Substances on or from the NWP Facilities. This indemnity includes, but is not limited to: (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances,

including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; and (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws.

12.3 NWP's indemnification obligations include assuming potential liability for actions brought by NWP's own employees and the employees of NWP's agents, representatives, contractors, and subcontractors even though NWP might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of NWP's exercise of the rights set forth in this Agreement. The obligations of NWP under this section have been mutually negotiated by the Parties, and NWP acknowledges that the City would not enter into this Agreement without NWP's waiver. To the extent required to provide this indemnification and this indemnification only, NWP waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

12.4 In the event any claim is filed with the City, for which the City intends to assert its rights under this Section 13, the City shall notify NWP thereof within a reasonable time, and NWP shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim as it pertains to NWP's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees; provided that, prior to any settlement, NWP shall consult with the City regarding any proposals or offers to settle the claim. In the event any suit or action is started against the City for which the City intends to assert its rights under this Section 13,, the City shall likewise notify NWP thereof, and NWP shall have the right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to NWP's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees; provided that, prior to any settlement, NWP shall consult with the City regarding any proposals or offers to settle the matter.

12.5 Acceptance by the City of any work performed by NWP under this Agreement shall not be grounds for avoidance of this Section 13.

Section 13. Emergency Management, Leaks, Ruptures, and Emergency Response.

13.1 Annually, upon the request of the City, NWP shall meet with the Valley Regional Fire Authority, the Auburn Police Department, and the City's Emergency Management Office to coordinate emergency management operations and, at least once a year, at the request of the City, NWP personnel shall actively participate with the Valley Regional Fire Authority and the City in emergency preparedness drills or planning sessions.

13.2 NWP shall have in place, at all times during the term of this Agreement, a system for remotely monitoring pressures and flows across the Agreement Area. .

13.3 During the term of this Agreement, NWP shall have a written emergency response plan and procedure for locating leaks and ruptures and for shutting down valves as rapidly as possible.

13.4 Upon acceptance of this Agreement, NWP shall provide, for the City's approval and acceptance, a copy of its emergency response plans and procedures, including, but not limited to, emergency rupture response. If the parties disagree as to the adequacy of NWP's emergency response plan, the parties will submit the plan to independent, third party review. If the review recommends that NWP make modifications or additions to NWP's emergency response plan, NWP covenants to consider said recommendations in good faith. If NWP declines to follow the recommendations, NWP shall provide a written report to the City explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute resolution provisions contained herein to resolve any dispute over the whether to follow the recommendations. Upon completion of the review of NWP's emergency plans and procedures set forth in this section, NWP shall provide a copy of the plans and procedures to the City and to the Valley Regional Fire Authority

13.5 NWP's emergency plans and procedures shall designate NWP's responsible local emergency response officials and a direct twenty four (24) hour emergency contact number for the control center operator. NWP shall, after being notified of an emergency, cooperate with the City and make every effort to respond as soon as possible to protect the public's health, safety and welfare.

13.6 NWP shall be solely responsible for all its necessary costs incurred in responding to any leak, rupture or other release of natural gas from NWP's Facilities, including, but not limited to, detection and removal of any contaminants from air, earth or water, and all remediation costs.

13.7 If requested by the City in writing, NWP shall provide a written summary concerning any leak or rupture within thirty (30) days of the event, including, but not limited to, the leak or rupture's date, time, amount, location, response, remediation and other agencies NWP has notified.

13.8 The City may request that any substantial leak or rupture be investigated by an independent pipeline consultant selected by the City. NWP shall be solely responsible for paying all of the consultant's costs and expenses incurred in investigating the occurrence and reporting the findings. NWP shall meet and confer with the independent consultant following the consultant's investigation to address whether any modifications or additions to NWP's pipeline(s) and/or Facilities may be warranted.

13.9 If the consultant recommends that NWP make modifications or additions to NWP's pipeline(s) and/or Facilities, NWP covenants to consider said recommendations in good faith. If NWP declines to follow the consultant's recommendations, NWP shall provide a written report to the City explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute resolution provisions contained herein to resolve any dispute over whether to follow the consultant's recommendations.

Section 14. Assignment of Agreement

NWP, and its successors in interest, may not assign or otherwise transfer its rights, privileges, and authority conferred by this Agreement without the prior written authorization and approval of the City, except in the event that an entity acquires the majority of NWP's assets or stock in a transaction and determines to continue NWP's business as a going concern. The City hereby authorizes and approves the mortgage by NWP (or NWP's successors in interest) of its rights, privileges, and authority in and under this Agreement to the trustee for its bondholders.

Section 15. Severability and Survival

15.1 If any term, provision, condition or portion of this Agreement shall be held to be invalid such invalidity shall not affect the validity of the remaining portions of this Agreement which shall continue in full force and effect. The headings of the sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

15.2 All provisions, conditions and requirements of this Agreement that may be reasonably construed to survive the termination or expiration of this Agreement shall survive the termination or expiration of the Agreement. Subject to Section 15 above, the Parties' respective rights and interests under this Agreement shall inure to the benefit of their respective successors and assigns.

Section 16. Amendments to Agreement

16.1 This Agreement may be amended only by mutual agreement thereto, set forth in writing in the form of an Agreement, signed by both Parties, which specifically states that it is an amendment to this Agreement and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Agreement (including, without limitation the Sections addressing indemnification and insurance) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by NWP of any and all of its rights, benefits, privileges, obligations or

duties in and under this Agreement, unless such permit, approval, license, agreement or other document specifically:

A. References this Agreement; and

B. States that it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Agreement.

Section 17. Relationship of the Parties

17.1 Nothing in this Agreement shall be construed to create or confer any right or remedy upon any person(s) other than the City and NWP. No action may be commenced or prosecuted against any Party by any Third Party claiming as a Third Party beneficiary of this Agreement. This Agreement shall not release or discharge any obligation or liability of any Third Party to either Party.

17.2 Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency relationship, or joint venture or to impose a trust, partnership, or agency duty, obligation or liability on or with regard to any party. Each party shall be individually and severally liable for its own duties, obligations, and liabilities under this Agreement.

17.3 NWP accepts any privileges granted by the City to the Public Way and public Rights-of-Way in an "as is" condition. NWP agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of NWP's location of facilities or the facilities themselves in public property or rights of way or possible hazards or dangers arising from other uses of the public rights of way or other public property by the City or the general public. NWP shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of the pipeline or other activities permitted under this Agreement.

17.4 Except as specifically provided herein, this Agreement shall not create any duty of the City or any of its officials, employees or agents and no liability shall arise from any action or failure to act by the City or any of its officials, employees or agents in the exercise of powers reserved to the City. Further, this Agreement is not intended to acknowledge, create, imply or expand any duty or liability of the City with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in the City shall be deemed a duty to the general public and not to any specific party, group or entity.

Section 18. Insurance

18.1 NWP shall procure and maintain for the duration of the Agreement, insurance, or provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights,

privileges and authority granted hereunder to NWP, its agents, representatives or employees. NWP shall provide evidence of self-insurance and/or an insurance certificate, that, excepts as respects the Workers' Compensation insurance, names the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insured's, to the City prior to the commencement of any work or installation of any Facilities pursuant to this Agreement. Such self-insurance and/or insurance certificate shall evidence the following minimum insurance. All required insurance shall be obtained from companies rated "A-" or better in "A.M. Best's Insurance Guide," or an equivalent rating by similar rating agencies, and shall be from insurers authorized to transact business in the State of Washington. In no event shall the limits of any of the insurance policies be construed as limiting the liability of NWP.

A. Commercial general/excess liability insurance including coverage for premises - operations, explosions and collapse hazard, underground hazard and products completed hazard and sudden and accidental pollution, with combined single limits not less than $100,000,000 (one hundred million dollars) per occurrence and in the aggregate for bodily injury or death and property damage.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of $2,000,000 (two million dollars) for each accident.

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $2,000,000 (two million dollars).

If coverage is purchased on a "claims made" basis, then NWP shall warrant continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date termination of this Agreement, and/or conversion from a "claims made" form to an "occurrence" coverage form. The required liability limits may be met under a primary or an excess policy, or any combination thereof.

18.2 Any deductibles or self-insured retentions must be declared to the City, if requested by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of NWP. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

18.3 NWP's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of NWP's insurance and shall not contribute with it.

18.4 In addition to the coverage requirements set forth in this Section, the certificate of insurance shall provide that:

"The policies providing the above described insurance will not be canceled before the expiration date thereof, without the issuing company giving sixty (60) days written notice to the certificate holder."

In the event of said cancellation or intent not to renew, NWP shall obtain and furnish to the City evidence of replacement insurance policies meeting the requirements of this Section 19 by the cancellation date.

Section 19. Compliance with Laws and Standards.

19.1 In carrying out any authorized activities under the privileges granted herein, NWP shall meet accepted industry standards and comply with all applicable laws, rules, and regulations, of any governmental entity with jurisdiction over the pipeline and its operation (specifically including, but not limited to, all requirements, rules, regulations, and orders of FERC). This shall include all applicable laws, rules and regulations existing at the Effective Date of this Agreement or that may be subsequently enacted by any governmental entity with jurisdiction over NWP and/or the pipeline(s) and Facilities.

19.2 In the case of any conflict between the terms of this Agreement and the terms of the City's ordinances, codes, regulations, standards and procedures, this Agreement shall govern.

Section 20. Operations, Maintenance, Inspection, and Testing.

NWP shall be solely responsible for all costs, expenses, and liability for the operation, maintenance, and testing of all pipeline(s) and all Facilities within the Agreement Area, and NWP shall operate, maintain, inspect, and test the Facilities in full compliance with all applicable federal, state, and local laws, rules, regulations, and industry standards, as now enacted or hereinafter amended, and any other future laws or regulations that are applicable to NWP, the Facilities, and business operations.

Section 21. Force Majeure

In the event that either Party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a Third party; or any failure or delay in the performance by the other party, or a Third Party who is not

an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with this Agreement. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event. The occurrence of a Force Majeure Event shall not alter or impair any of the provisions concerning liability and/or insurance as provided in this Agreement.

Section 22. Effective Date

This Agreement shall be effective on _____, 2008.

Section 23. Miscellaneous.

23.1 In the event that a Court or agency of competent jurisdiction declares a material provision of this Agreement to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to such amendments or modifications as are appropriate actions so as to give effect to the intentions of the parties as reflected herein. If severance from this Agreement of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Agreement, either party may apply to a Court of competent jurisdiction to reform or reconstitute the Agreement so as to recapture the original intent of said particular provision(s). All other provisions of the Agreement shall remain in effect at all times during which negotiations or a judicial action remains pending.

23.2 Whenever this Agreement sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of this Agreement.

23.3 The Section headings in this Agreement are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the Section to which they pertain.

23.4 This Agreement and all of the terms and provisions shall be binding upon and inure to the benefit of the respective successors and assignees of the parties.

23.5 The parties each represent and warrant that they have full authority to enter into and to perform this Agreement, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Agreement, except such as may be routinely required and obtained in the ordinary course of business.

23.6 Whenever this Agreement calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient at the address set forth in this Section, unless written notice of change of address is provided to the other party. If the date for making any payment or performing any act is a legal holiday, payment may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be provided to the parties as follows:

To the City:

Public Works Director
City of Auburn
25 West Main Street
Auburn, WA 98001-4998
Telephone: (253) 931-3010; Fax: (253) 931-3048

City Clerk
City of Auburn
25 West Main Street
Auburn, WA 98001-4998

To NWP:

Northwest Pipeline G.P.
Attn: Land Department
22909 N.E. Redmond-Fall City Road
Redmond, WA 98053

Northwest Pipeline G.P.
Attn: Land Department
295 Chipeta Way
Salt Lake City, UT 84108

23.7 This Agreement and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. This Agreement can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to the Agreement or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought. All previous Agreements between the parties pertaining to NWP's operation of its pipeline(s) and/or Facilities are hereby superseded.

23.8 NWP shall, within thirty (30) days after the City's passage of this Agreement, file with the City, its unconditional written acceptance of all the terms and conditions of this Agreement. If NWP shall fail to so file and provide its written acceptance within such period, then the rights and privileges granted hereunder shall be deemed forfeited.

DATED this _____ day of _____, 2009.

CITY OF AUBURN

_____

PETER B. LEWIS
MAYOR

ATTEST:

_____
Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM:

_____
Daniel B. Heid,
City Attorney

K:\2040104\00017\20125_BJF\20125A234Q

EXHIBIT "A"

STATEMENT OF ACCEPTANCE

Northwest Pipeline Corporation, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Public Way Agreement attached hereto and incorporated herein by this reference.

NORTHWEST PIPELINE CORPORATION

By: _____ Date: _____
Name:
Title:

STATE OF)
)ss.
COUNTY OF)

On this ____ day of _____, 2009, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of Northwest Pipeline Corporation, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

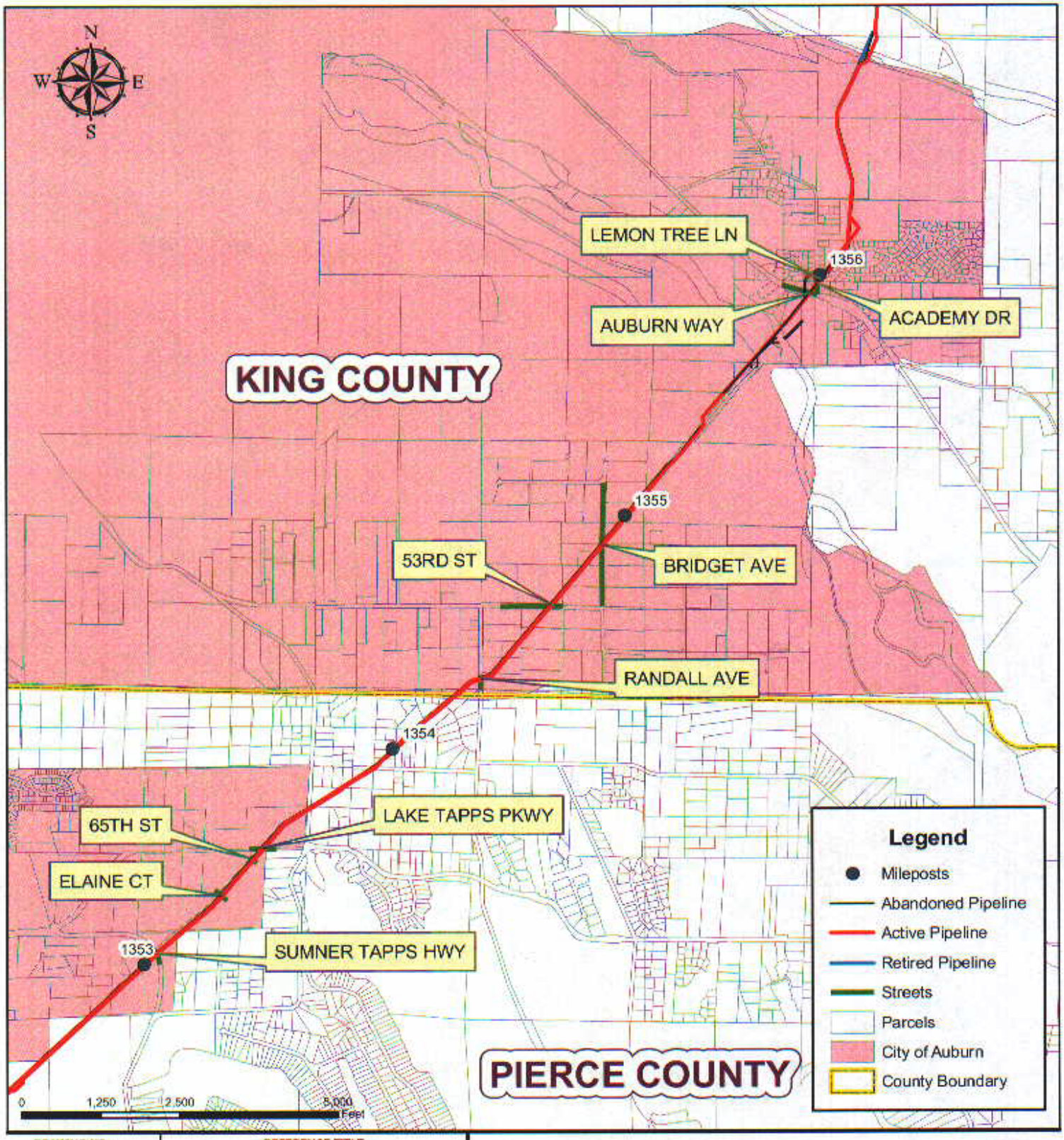
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

_____
Signature

_____
NOTARY PUBLIC in and for the State of
_____, residing at _____

MY COMMISSION EXPIRES: _____

Exhibit "B"



DRAWING NO.	REFERENCE TITLE

NORTHWEST PIPELINE GP
LOCATION MAP
STREET DATA
CITY OF AUBURN
KING & PIERCE COUNTIES, WASHINGTON

Williams GAS PIPELINE

NO.	DATE	BY	REVISION NUMBER	W.O. NO.	CHK.	APP.

DWG. BY: CCS	DATE: 10/8/08	ISSUED FOR BID:	SCALE: 1:25,000	
CHK BY:	DATE:	ISSUED FOR CONTS:		
APPR. BY:	DATE:	DRAWING NUMBER: Auburn	SHEET 1 OF 1	
		K:\Mapping Projects\Auburn_City of\Mapping\ArcGIS\auburn.mxd		