

RESOLUTION NO. 2188

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE MAYOR TO SIGN FOR THE CITY OF KIRKLAND A CONTRACT BETWEEN THE CITY, GENERAL TELEPHONE COMPANY, AND PUGET SOUND POWER AND LIGHT COMPANY, REGARDING USE AND MAINTENANCE OF THE MARKET STREET "UTILIWALK".

BE IT RESOLVED by the City Council of the City of Kirkland as follows:

WHEREAS, the City of Kirkland and Puget Sound Power and Light Company have entered into an agreement providing for the conversion of existing overhead electrical and telephone facilities to an underground system between Market Street - Central Way to N.E. 106th Street, and

WHEREAS, along the east side of Market Street the existing overhead utility facilities will be relocated underground into a combined concrete utility vault and sidewalk system known as "utiliwalk", and

WHEREAS, the City of Kirkland, General Telephone Company of the Northwest, Inc., and Puget Sound Power and Light Company desire to set forth their rights and obligations with respect to the utilization and maintenance of said utiliwalk, now, therefore,

Section 1. The Mayor is authorized and directed to sign on behalf of the City of Kirkland the agreement, copy of which is attached to the original of this resolution as Exhibit A, and by this reference incorporated herein.

Section 2. The City Manager is authorized and directed to designate the particular city official or employee to whom maintenance notices shall be sent pursuant to Section 9 of said agreement and to advise the other parties to the agreement in writing of said designation.

ADOPTED by majority vote of the Kirkland City Council in regular meeting on the 21st day of May, 1973.

William C. Woods
Mayor

Attest:

J. J. Adams
Director of Administration and Finance
(ex officio City Clerk)

A G R E E M E N T

THIS AGREEMENT, made this 21st day of May, 1973,
by and between the CITY OF KIRKLAND, a municipal corporation, GENERAL
TELEPHONE COMPANY OF THE NORTHWEST, INC., a Washington corporation,
and PUGET SOUND POWER & LIGHT COMPANY, a Washington corporation
(hereafter respectively referred to as "KIRKLAND," "GENERAL," and
"PSPL");

WHEREAS, KIRKLAND and PSPL have entered into an agreement
attached hereto and incorporated herein as Exhibit A for the
conversion of existing overhead electrical distribution system and
existing telephone distribution system to an underground system between
Market Street - Central Way to Northeast 106th Street, Kirkland,
Washington (with side taps); and

WHEREAS, the above-mentioned existing electrical and
telephone distribution systems will be relocated underground into
a distribution system known as a utiliwalk as shown in the plans and
specifications attached hereto as part of Exhibit A, and

WHEREAS, the parties hereto desire to set forth their
rights and obligations with respect to the utilization of the said
utiliwalk;

IT IS HEREBY AGREED by and between the parties as follows:

1. EFFECTIVE DATE. This agreement will take effect upon
the completion of the installation within the utiliwalk of the
electric and telephone distribution systems described in Exhibit A.

2. OWNERSHIP AND UTILIZATION. It is hereby agreed by
and between the parties that the cap and/or sidewalk portion of the
utiliwalk will be owned by KIRKLAND. It is further agreed by and
between the parties that GENERAL and PSPL will jointly own the vault
or box portion onto which the cap is placed. It is anticipated
that GENERAL and PSPL will enter into a separate agreement for the
joint use of the vault and box; but in any event it is agreed that

GENERAL will be entitled to possession and use of the vault located in the west one-half of the utililwalk to be located on Market Street between Central Way and Northeast 106th Street, Kirkland, Washington, with side taps and its telephone distribution system; and that PSPL will be entitled to possession and use of the vault located in the east one-half of the utililwalk on Market Street between Central Way and Northeast 106th Street, Kirkland, Washington.

3. MAINTENANCE AND RESTORATION OF PROPERTY. GENERAL and PSPL shall be responsible for the maintenance of that portion of the vault which it is entitled to possession of under the terms of the preceding paragraph, and will protect and preserve the same from damage or destruction; PROVIDED, that the responsibility for paying for the damage, including the cost to repair and/or restore the property thereof or the interference of the use thereof, will be governed by paragraph 5 below.

4. CAPS AND SIDEWALKS. As between the parties, KIRKLAND will be responsible for the maintenance of the cap and sidewalks on all sections of the utililwalk. The cap is defined as that portion of concrete material to be placed upon and over the two vaults as shown on the diagram attached hereto as Exhibit B and as also shown on the plans and specifications attached to Exhibit A hereto. As between the parties, KIRKLAND will provide for adequate protection and preservation of the cap and sidewalks and preserve and maintain the same, and as between the parties will preserve and protect the same from damage, destruction, or interference that would interfere with the use or utilization of the vaults in the utililwalk by GENERAL and/or PSPL; provided, however, that KIRKLAND shall not, as between the parties, be responsible for damage resulting from intentional or negligent acts of the general public or other third parties, but KIRKLAND shall, as between the parties, be responsible to repair such damage to the caps and sidewalks.

5. RESPONSIBILITY FOR DAMAGE. Each of the parties hereto

shall be liable to the other parties for all damages and injuries which they cause by reason of improper maintenance as required by this agreement or negligent acts of any of their servants, employees, contractors, or subcontractors, causing damage to the utililwalk and in addition for any damage caused by any breach or violation of the provisions of this agreement or any of their duties or obligations they would otherwise have, either under this agreement or otherwise.

In addition, each of the parties hereto will protect the telephone or electrical distribution facilities of the other parties hereto in maintaining, repairing, or restoring any of their own facilities or the portion of the utililwalk or vaults contained therein which they are entitled to possession of or are responsible for maintaining.

Each of the parties hereto agrees to protect the other parties hereto and hold them harmless from any claims, actions, or damages of every kind and description which may accrue to or be suffered by any person or persons, corporations, or property by reason of the failure of a party or parties to perform their obligations under the terms of this agreement.

Each party shall secure and maintain with responsible insurers such insurance as is customarily maintained by such parties with respect to their responsibilities and obligations assumed under this paragraph. Each party shall make available to the other parties certificates of such insurance when in force.

6. ASSIGNMENT OF WARRANTY. It is hereby understood and agreed that Concrete Conduit Company, Inc. will supply the utililwalk to be built in accordance with Exhibit A attached hereto. It is understood and agreed by and between all the parties hereto that each party to this agreement will be a beneficiary of the warranties of design and quality given by Concrete Conduit Company, Inc. to PSPL as the prime contractor for the installation of the utililwalk and that PSPL will secure a warranty from Concrete Conduit Company,

Inc. for GENERAL and KIRKLAND warranting the utiliwalk with respect to design and quality and under the same terms and conditions as the warranty to be given by Concrete Conduit Company, Inc. to PSPL with respect thereto.

7. NOTICE TO CONTRACTORS AND OWNERS. KIRKLAND hereby agrees that it will notify each person obtaining a building permit or requesting the establishment of or relocation of a curb cut in the vicinity of the utiliwalk to be located on Market Street, of the existence of the utiliwalk and will notify such individuals as to the nature of the utiliwalk and will advise any such individuals that the utiliwalk or any portion thereof cannot be altered, destroyed, or damaged, and that any such individuals should, before making any excavations, cuts, or fills in close proximity to the utiliwalk contact both GENERAL and PSPL or their appropriate representatives, and the building inspector of KIRKLAND; and in addition, will inform any such individuals that they should have their plans and specifications transmitted to GENERAL and PSPL if they plan to relocate or reestablish a curb cut or do any excavation or grading of any nature in close proximity to the utiliwalk.

8. NOTICES. In addition, KIRKLAND agrees to place in a location conspicuous to individuals applying for a building permit a notice with respect to the existence of and the nature of the utiliwalk and will also provide a handout to each person building on Market Street setting forth all of the above information contained in the prior paragraph, and further stating that if there are any questions whatsoever with regard to the utiliwalk, its nature or contents, that they request further information from KIRKLAND, GENERAL, and PSPL.

It is agreed by and between the parties that GENERAL and PSPL shall pay for the cost of the handout to be provided under the terms of this paragraph.

9. NOTICE OF MAINTENANCE. It is agreed by and between

the parties hereto that each party will give the other party reasonable notice prior to the time any maintenance work is done which would require the removal of any of the caps on the utililwalk; PROVIDED, that nothing in this paragraph shall prohibit a party from performing emergency repair or maintenance work without giving such notice.

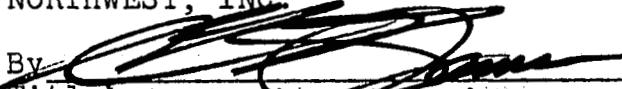
It is further agreed that each of the parties shall designate in writing a particular person, officer, or position and the title thereof to whom the notice required under the terms of this paragraph shall be sent.

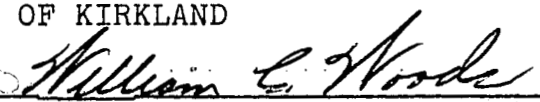
10. LEASE OR DISPOSITION. In the event either GENERAL or PSPL has reason to abandon its facilities located within the utililwalk, it may lease out, rent, sell, or otherwise dispose of its rights to utilize that portion of the utililwalk it is authorized to use under the terms of this agreement; PROVIDED, that any party or entity not a party to this agreement shall first be required to obtain the approval of KIRKLAND to use the facility; PROVIDED FURTHER, that no successor or assignee may make any use of the utililwalk which would interfere in any material way with the rights of the other parties to this agreement in utilizing the utililwalk.

11. CONFLICT. If this agreement is in any way inconsistent with the agreement to be executed as Exhibit A, this agreement shall supersede the agreement to be executed as Exhibit A, regardless of when each of the respective agreements is executed.

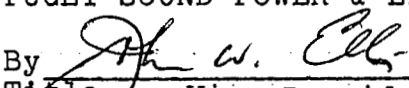
EXECUTED the date first above written.

GENERAL TELEPHONE COMPANY OF THE CITY OF KIRKLAND
NORTHWEST, INC.

By 
Title Vice President General Manager

By 
Title Mayor

PUGET SOUND POWER & LIGHT COMPANY

By 
Title Vice President-
Utility Management

AGREEMENT

THIS AGREEMENT made this 16th day of OCT, 1972

by and between the KIRKLAND, a municipal corporation ("City" herein), and PUGET SOUND POWER AND LIGHT COMPANY, a Washington corporation ("Puget" herein).

RECITALS

A. Puget is a public service company engaged in the sale and distribution of electric energy and, pursuant to its franchise from CITY, presently distributes electric energy within the CITY through an overhead distribution system owned by Puget. Said service includes the following area:

CENTRAL WAY - 3rd Street to Market Street and side taps

MARKET STREET - Central Way to N.E. 106th

Said areas are herein sometimes referred to collectively as the "Conversion Area" which is more specifically identified and outlined in red on the map attached hereto as Exhibit "A" which is hereby made a part hereof.

B. The said portions of the streets in the Conversion Area are arterial streets which the CITY projects will carry an average of 10,000 vehicles or more per day within a reasonable time.

C. Because of said traffic load the CITY has planned a street widening project in the Conversion Area involving the addition of at least one full lane for vehicular traffic on the said portions of the

described streets which street widening project necessitates the relocation of Puget's overhead distribution facilities.

D. CITY has proposed that such relocation of electrical facilities be installed underground by Puget in accordance with the provisions of Puget's filed Tariff Schedule 71 relating to conversions from overhead to underground distribution service for commercial areas.

The parties agree as follows:

AGREEMENTS

1. Puget shall furnish and install within the Conversion Area, in accordance with its standard specifications, an underground electric distribution system. Puget shall by contract or other arrangement with General Telephone Company, convert all existing telephone, utility facilities within said conversion area from overhead to underground. The cost of such telephone utility facility conversion is included within the consideration set forth in clause 4 below to be paid by the City to Puget Power for complete performance of its duties under this contract.

2. Puget shall remove the existing overhead electric distribution system including poles and wires after all property owners to be served by the Main Distribution System have connected their service to the Main Distribution System and after the removal of the facilities of any other utilities which may be connected to the poles of said overhead system or as otherwise directed by the CITY. CITY acknowledges the necessity of having the existing overhead system remain in its present location until removal of the same can be accomplished pursuant to the foregoing provisions.

3. CITY shall provide at its cost and expense the following throughout the Conversion Area:

- a. Breakup of all streets and sidewalks.
- b. All trench, excavation, backfill and restoration of streets and sidewalks following the installation of the Main Distribution System.

4. After Puget completes its performance of its duties pursuant to paragraph 1 hereof, CITY shall promptly pay Puget the amount

NINETY-ONE THOUSAND ONE HUNDRED AND FIVE AND 00/100 DOLLARS

(\$91,105.00)

as full payment. However, as Puget completes portions of the project, interim payments will be requested equal to the percentage of the work completed, with 90% to be paid when Underground Distribution System is energized. The remaining 10% to be paid when the overhead lines have been removed.

5. From the foregoing, the amount payable by the CITY is computed in accordance with Puget's filed Tariff Schedule 71 plus telephone costs as follows:

Project Charge 8350 feet X \$4.50	=	\$37,575.00
LID Sidewalk 7100 feet X \$1.00	=	<u>7,100.00</u>
Total Charge by Puget	=	\$44,675.00
General Telephone Charges	=	<u>46,430.00</u>
<u>TOTAL</u>		<u>\$91,105.00</u>

6. The Main Distribution System shall at all times be owned and maintained by Puget.

7. The conversion of electrical and telephone utility facilities from overhead to underground within the conversion area as herein designated had been in part financed through the creation of a Local Improvement District known as City of Kirkland Local Improvement District No. 108 for the conversion of over head utility facilities to underground. In the creation of said district the work ordered to be performed and for which assessments are levied against the property within said district includes the installation of electrical and telephone service facilities underground from the service connection at the structures to the property lines of owners of real property as well as to all real property to be served by the underground main electrical distribution system and underground telephone service system to be so converted under the terms of this contract and lying within the public right-of-way, therefore, the City shall by separate contractual arrangements provide for the installation of underground electrical and telephone service connection lines to the structure located on the real property adjacent to the public street in which said underground utility facilities conversion project is located.

8. It is recognized that Puget's Tariff Schedule 71 provides that the owners of real property to be served by the Main Distribution System shall, at their expense, provide space for all underground electrical facilities which must be located on privately owned property and that said owners shall grant such operating rights as may be necessary therefore.

CITY shall assume responsibility for the procurement of such space and such easements as may reasonably be required by Puget, provided, however, that Puget shall initially use its best efforts to obtain the same without the intervention of CITY.

9. CITY shall be responsible for coordinating the installation of all aspects of the street widening project and shall give Puget reasonable prior notice as to when the Main Distribution System may be installed with a minimum of interference from the installation of other improvements. Puget shall not be required to install the Main Distribution System until the area in which said system is to be installed has been established to grade.

10. Puget will make every effort to minimize the effect of disrupting accesses to adjoining properties. All work on this project shall be performed during Puget's normal working hours. Should the CITY request that work be performed at times other than the regular working hours, the overtime costs shall be borne by the CITY.

Puget shall use reasonable diligence in meeting its obligations hereunder, but shall not be liable for any delays resulting from circumstances beyond its control.

EXECUTED as of the date first above written.

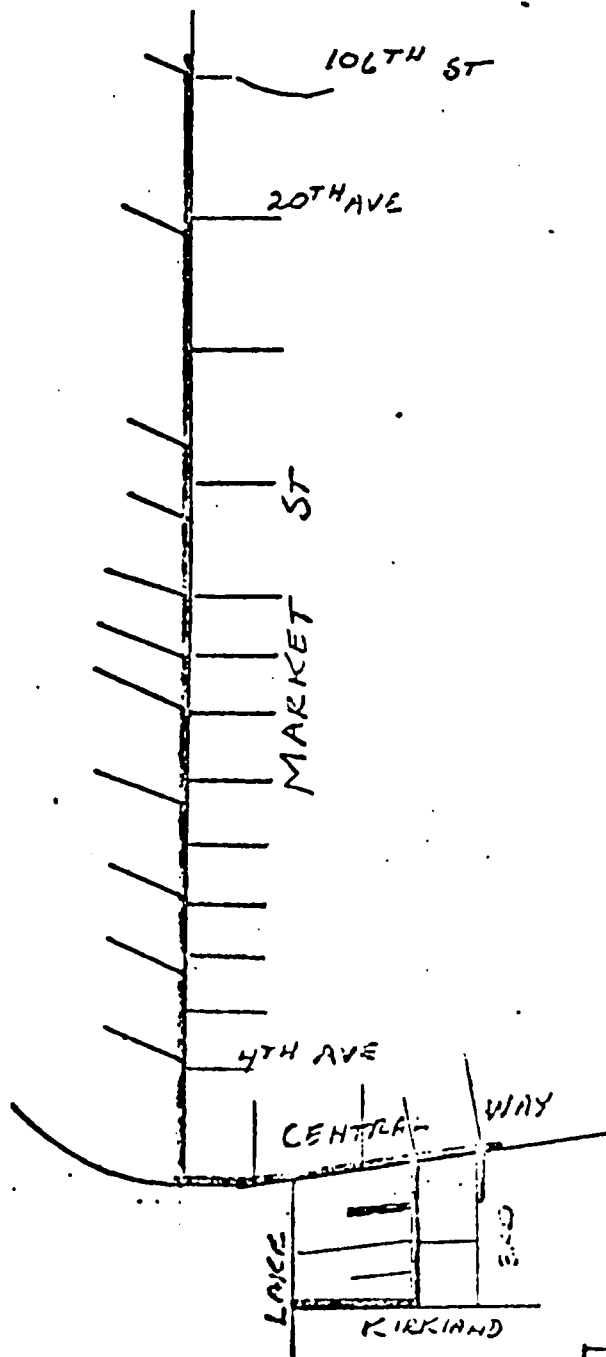
ATTEST:
T. J. Adrain
ITS: Clirk

BY: William E. Wood
ITS: MAYOR

PUGET SOUND POWER AND LIGHT COMPANY
BY: R. L. Swartz
ITS: DIRECTOR OF RATES & CONTRACTS.

ACKNOWLEDGED
GENERAL TELEPHONE
BY: [Signature]
ITS: Vice President-General Manager

DATE: _____



CITY OF KIRKLAND
MARKET ST CONVERSION
EXHIBIT "A"

'57/72 JJC