

ORDINANCE NO. 1999-12-079

AN ORDINANCE GRANTING OLYMPIC PIPE LINE COMPANY AN INTERIM FRANCHISE FOR A PETROLEUM PIPELINE IN THE CITY OF BELLINGHAM'S RIGHTS OF WAY AND PUBLIC STREETS

WHEREAS, Olympic Pipe Line Company (hereinafter "Grantee") has applied for a franchise to operate a petroleum pipeline through the City of Bellingham (hereinafter "Grantor"); and,

WHEREAS, the City of Bellingham's Charter authorizes the City to grant franchises for the use of City rights of way and public streets; and,

WHEREAS, the City Council has approved a Master Agreement between the City and Grantee to enter into this interim Franchise Agreement for Grantee to operate a petroleum pipeline through the City of Bellingham's rights of way and public streets pursuant to the terms and conditions specified herein;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN AS FOLLOWS:

In consideration of ONE THOUSAND UNITED STATES DOLLARS (\$1,000.00) and for other good and valuable consideration, which amount includes compensation for the temporary right set forth herein, and in consideration of the Grantee's performance of the covenants, terms and conditions hereinafter set forth, Grantor hereby conveys and grants to Grantee the following:

A non-exclusive temporary franchise across, in, through, upon and under Grantor's rights of way and public streets as described in Exhibit A, which is attached hereto and expressly incorporated herein by this reference, for the purpose of installing, constructing, testing, operating, maintaining, repairing, replacing and using a petroleum pipeline (hereinafter "Pipeline"), together with a non-exclusive temporary reasonable right of ingress and egress for the foregoing purposes and for the period of the duration described herein.

For purposes of this Franchise Agreement only, the phrase "Grantor's property" shall include, but not be limited to, the rights of way and public streets as defined in Exhibit A.

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The foregoing is granted subject to and conditioned upon the following terms, conditions, and covenants, which the parties hereby promise to faithfully and fully observe and perform:

1. Costs of Construction and Maintenance. Grantee shall be responsible for and promptly pay all costs and expenses of construction and maintenance of the Pipeline. Grantee agrees to hold Grantor harmless and defend Grantor from any and all liens arising directly or indirectly from any work performed, materials ordered or other obligations incurred by Grantee.
2. Specifications. Grantee shall construct the Pipeline in accordance with United States Department of Transportation requirements, the Pipeline Safety Immediate Action Plan, industry standards and federal and state regulations, which are expressly incorporated herein by reference.
3. Compliance with Laws and Regulations. Grantee shall at all times comply with all applicable federal, state and local statutes, codes, ordinances and all federal and state administrative orders, rules and regulations, as they may from time to time be amended, of any public authority having jurisdiction over Grantee and/or the Pipeline.
4. Review of Plans. Prior to any alteration, integrity testing, repair, replacement or removal of the Pipeline or any other substantial activity by Grantee on Grantor's property, Grantee shall provide written notification and plans and specifications for said work to Grantor for review. Grantee shall not commence any such work without Grantor's prior review of the plans by Grantor's Public Works Department for consistency with this

Agreement, provided that in the event of an emergency requiring immediate action by

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Grantee for the protection of the Pipeline, Grantor's property or other persons or property, Grantee may take such action upon such notice to Grantor as is reasonable under the circumstances. Nothing in this Agreement shall be deemed to impose any duty or obligation on Grantor to determine the adequacy or sufficiency of Grantee's plans and designs or to ascertain whether Grantee's construction, testing, maintenance, repairs, replacement or removal is in conformance with the plans and specifications reviewed by Grantor.

5. As-Built Survey. Within thirty (30) days of completing any alteration, repair, replacement or removal of the Pipeline or any other substantial activity on Grantor's property, Grantee shall provide Grantor with as-built drawings (and a survey, if appropriate) showing that the location, depth and other characteristics of the Pipeline conforms to the parties' plans and are consistent with the Master Agreement, the License Agreement and this Franchise Agreement.
6. Coordination of Activities. Grantee shall coordinate the dates of any alteration, repair, replacement or removal or other substantial activity by Grantee on Grantor's property with Grantor's Public Works Department, or such other Grantor employee as Grantor may periodically designate. Grantee shall provide Grantor with at least three (3) days' prior written notice of its intent to enter Grantor's property to commence said activity; provided that in the event of an emergency requiring immediate action by Grantee for the protection of the Pipeline, Grantor's property or other persons or property, Grantee may take such action upon such notice to Grantor as is reasonable under the circumstances.

7. Work Standards. All work to be performed by Grantee on Grantor's property shall be in accordance with the plans as submitted to Grantor and shall be completed in a careful and workmanlike manner, free from all claims or liens. Upon completion of the Pipeline's construction on Grantor's property, and upon completion of any and all subsequent work by Grantee on Grantor's property, Grantee shall remove all debris and restore the surface of Grantor's property as nearly as possible to the condition in which it was at the commencement of such work, and shall replace any property corner monuments, survey references, or hubs which were disturbed or destroyed during Grantee's work on Grantor's property.
8. Grantor's Access. Grantee shall ensure Grantor has continued access to the franchised area during periods in which Grantee is conducting construction or other activities on Grantor's property. Grantor covenants that it will not jeopardize job site safety in accessing the franchised area under this provision.
9. Grantee's Access. Notwithstanding that Grantee is granted the right of ingress to and egress from the franchised property, Grantee shall not exercise its right of ingress and egress in such locations as may from time to time be reasonably designated by Grantor and Grantee's right of ingress and egress shall be exercised pursuant to such reasonable rules and regulations as Grantor may specify. Grantor shall at all times have the right to erect fences on, over and/or across the franchised area or any part thereof and to occupy the franchised area with Grantor's facilities and equipment, provided Grantor provides Grantee

alternate access to the property, and that Grantor does not substantially interfere with Grantee's franchised use.

10. Grantor's Representatives. Grantor will appoint one or more representatives who will see that Grantee's work on Grantor's property does not unreasonably jeopardize Grantor's operations, facilities or use of Grantor's property. Grantee shall not conduct any work nor fill over any work unless it has given Grantor at least one (1) business day notice to allow Grantor's representatives to be present at Grantee's work, except in the event of an emergency requiring Grantee's immediate action, in which case Grantee shall notify Grantor as soon as possible. Grantee and Grantee's contractors, subcontractors or agents shall promptly and fully comply with all reasonable orders and directions of Grantor's representatives, including, without limitation, cessation of work, and Grantee's contracts shall so provide. Nothing in this provision shall be deemed to impose or create any obligations or duties upon Grantor.

11. Grantee's Activities. Grantee shall exercise its rights hereunder so as to minimize, and avoid if reasonably possible, interference with Grantor's use of its property, including but not limited to the franchised area for park, water, sewer, utility or other municipal purposes. Grantee shall at all times conduct its activities on Grantor's property so as not to interfere with, obstruct or endanger Grantor's use of the property. Markers demarcating the location of the pipeline shall be placed on the surface so as to provide clear warning of the presence of the pipeline but in a manner that does not interfere with trails or other public uses in the area.

12. Grantor's Activities. Nothing contained herein shall prevent or preclude Grantor from undertaking construction, installation or use of Grantor's property as Grantor deems necessary, and which does not substantially interfere with Grantee's use, and Grantor shall not be liable to Grantee, or to Grantee's employees, agents, contractors, subcontractors and users of the Pipeline, for any loss or injury resulting from any damage or destruction of the Pipeline directly or indirectly caused by Grantor's use of the franchised area or Grantor's facilities on the franchised area. Upon notification to Grantee of construction by another within five (5) feet of Grantee's Pipeline, Grantee shall provide a representative to inspect the construction to see that Grantee's Pipeline is not damaged from the construction. The person or entity doing the construction shall comply with Grantee's representative's reasonable orders and directions in order to prevent damage to the pipeline.

13. Term. This Franchise Agreement shall expire on May 4, 2000, unless sooner terminated or modified as provided herein.

14. Termination.

14.1 Grantor may terminate this Franchise Agreement prior to May 4, 2000, upon the occurrence of any of the following events:

- A. If Grantee materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms and conditions of this Franchise Agreement, the Master Agreement or Safety Action Plan, or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within twenty (20) calendar days of Grantor's providing Grantee written notice thereof, or, if

not reasonably capable of being cured within twenty (20) calendar days, within such other reasonable period of time as the parties may agree upon.

- B. The uncontained release of any petroleum product from the Pipeline totaling more than one barrel above ground or five barrels below ground within the City of Bellingham or if any such release of the Pipeline's petroleum product flows or migrates into the City of Bellingham, unless Grantee establishes that such release was not caused or contributed to in any way by the negligence or fault of the Grantee, its agents or contractors.
- C. This Agreement shall not be terminated except upon a majority vote of the City Council, after reasonable notice to Grantee and an opportunity to be heard, provided that if exigent circumstances necessitate immediate termination, the hearing may be held as soon as possible after the termination.

14.2 In the event of termination under section 14 of this Agreement, Grantee shall immediately discontinue operation of the Pipeline through the franchised area, and Grantor may in such case declare a forfeiture of the franchise and enforce such forfeiture in the manner provided by law or this Agreement. In the event that Olympic's rights to the use of the licensed or franchised areas have definitively ceased, or if Olympic abandons the pipeline or any portion thereof, Olympic shall within 180 days after abandonment or cessation of the right to use the licensed or franchised areas, remove the pipeline or secure

the pipeline in such a manner as to cause it to be as safe as is reasonably possible, by

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removing all liquid hydrocarbons, purging vapors, displacing the contents of the line with an appropriate inert material and sealing the pipe ends with a suitable end closure, in compliance with all applicable regulations and industry standards and providing for periodic monitoring of the abandoned line for as long as the pipe remains in the ground; provided that portions of the pipeline which are above ground shall be removed. In the event of the removal of all or a portion of the Pipeline, Grantee shall restore Grantor's property and the licensed or franchised area to a condition that existed prior to the installation of Grantee's facilities. Such property restoration work shall be done at Grantee's sole cost and expense and to Grantor's reasonable satisfaction. If Grantee is required to remove or secure the Pipeline and fails to do so and to restore the premises or take such other mutually agreed upon action, Grantor may, after reasonable notice to Grantee, remove the Pipeline, restore the premises or take such other action as is reasonably necessary at Grantee's expense and Grantor shall not be liable therefor.

14.3 Grantor's right to terminate this Agreement is in addition to and not in limitation of any other remedy of Grantor at law or equity. Grantor's failure to exercise such remedy at any time shall not waive Grantor's right to terminate or assert any other remedy at law or equity for any future breach or default of Grantee.

14.4 Termination of this Agreement shall not release Grantee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release Grantee from any obligation to remove the Pipeline from Grantor's property and restore the premises.

15. Non-exclusive Agreement. This franchise is non-exclusive. Grantor reserves all rights to its property, including, without limitation, the right to grant franchises, easements, licenses and permits to others subject to the rights granted in this Franchise Agreement, provided that Grantor shall not grant any other franchise, license, easement or permit which would substantially interfere with Grantee's use.

16. Indemnification.

16.1 *General Indemnification.* Grantee shall indemnify, defend and hold harmless Grantor from any and all liability, loss, damage, cost, expense, and claim whatsoever, whether at law or in equity, arising out of or related to, directly or indirectly, the construction, operation, use, location, testing, repair, maintenance, removal, abandonment or damage to Grantee's Pipeline, or from the existence of Grantee's Pipeline and other facilities, and of the products contained in, transferred through, released or escaped from said Pipeline and facilities, from any and all causes whatsoever, including, but not limited to, the sole or concurrent fault of the Grantor, Grantee or third parties. If any action or proceeding is brought against Grantor by reason of the Pipeline or its facilities, Grantee shall defend the Grantor at the Grantee's complete expense, provided that, for uninsured actions or proceedings, defense attorneys shall be approved by Grantor which approval shall not be unreasonably withheld.

16.2 *Environmental Indemnification.* Grantee shall indemnify, defend and save Grantor harmless from and against any and all liability, loss, damage, expense, actions and

claims, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by Grantor in defense thereof, arising directly or indirectly from (a) Grantee's breach of any environmental laws applicable to the Pipeline or (b) from any release of a hazardous substance on or from the Pipeline or (c) other activity related to this License by Grantee, its agents, contractors or subcontractors. 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; (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

16.3 *Definitions.*

A. "Hazardous Substance" means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant, including all substances designated under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. § 136 et seq.; the Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D RCW; all as amended from time to time; or any

other federal, state, or local statute, code, or ordinance or lawful rule, regulation, order, decree, or other governmental authority as now or at any time hereafter in effect. The term shall specifically include petroleum and petroleum products. The term shall also be interpreted to include any substance which, after release into the environment, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities.

B. "Environmental Laws" shall include the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D RCW; all as amended from time to time; or any other federal, state, or local statute, code, or ordinance or federal or state administrative rule, regulation, ordinance, order, decree, or other governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment.

17. Insurance. During this Agreement, Grantee shall provide and maintain, at its own cost, insurance in the minimum amount of FIFTY MILLION UNITED STATES DOLLARS

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(\$50,000,000.00) each occurrence, which shall be raised to at least ONE HUNDRED MILLION UNITED STATES DOLLARS (\$100,000,000.00) each occurrence not later than October 31, 1999, in a form and with a carrier reasonably acceptable to the Grantor, naming Grantor as an additional insured, to cover any and all insurable liability, damage, claims and loss as set forth in Section 16.1 above, and, to the extent such coverage is reasonably available in the commercial marketplace, all liability, damage, claims and loss as set forth in Section 16.2 above, except for liability for fines and penalties for violation of environmental laws and as otherwise provided below. Insurance coverage shall include, but is not limited to, all defense costs. Such insurance shall include, but is not limited to, pollution liability coverage at least as broad as the coverage currently in place under Olympic's existing policy, at a minimum covering liability from sudden and accidental occurrences, subject to time element reporting requirements, and such other applicable pollution coverage as is reasonably available in the commercial marketplace. Proof of insurance and a copy of the insurance policy, including, but not limited to, coverage terms and claims procedures, shall be provided to the Grantor prior to the beginning of any substantial work, testing or construction or reconstruction on the Pipeline. Said insurance shall contain a provision that it shall not be cancelled without a minimum of thirty days prior written notice to the Grantor. This indemnity and insurance provision shall survive the termination of this Agreement and shall continue for as long as the Grantee's facilities shall remain in or on the franchised or licensed area or until the parties execute a new

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license, easement or franchise agreement which modifies or terminates these indemnity or insurance provisions.

18. Taxes. Grantee shall promptly pay any and all taxes, including those that may be levied as a result of this Agreement or relating to Grantee's Pipeline.

19. Assignment. Grantee shall not assign its rights hereunder without the consent of the City, which consent shall not be unreasonable withheld.

20. Feasibility Study. Grantee is undertaking to study the feasibility of relocating the Pipeline outside the City of Bellingham. Currently, Grantee will be constructing and operating the Pipeline in the existing route, which is denominated in Exhibit B. However, within one hundred and fifty (150) calendar days, or such other time the parties may mutually agree to, following the feasibility study's completion, and assuming that a franchise and license are in place between the parties with a term of ten (10) years or more, Grantee shall either relocate the Pipeline to the deep bore route, which is denominated as "Proposed Horizontal Drill" in Exhibit C, or relocate its pipeline outside the City of Bellingham within five years of the date of the study. Provided this paragraph shall not apply if Grantee is prohibited from relocating due to an order or directive from a governmental entity with jurisdiction over Grantee and the pipeline.

21. Modification. Any modification, change or alteration to this Agreement shall only be effective if completed in writing and executed by authorized representatives of each party.

22. Notice. Any notice required to be given under the terms of this Agreement shall be directed to the party at the address set forth below:

City: City of Bellingham, 210 Lottie Street, Bellingham, WA 98225


Attn: Public Works Director

Olympic: Olympic Pipe Line Co., P. O. Box 1800, 23 Lind Ave. S.W.

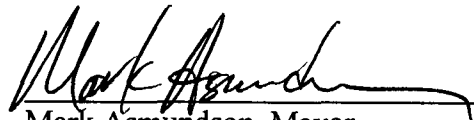
Renton, WA 98057

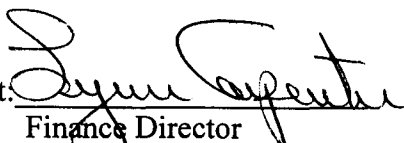
Attn: Frank Hopf

PASSED BY THE COUNCIL this 6th day of DECEMBER, 1999.


Gene Knutson, Council President

APPROVED BY ME this 14th day of December, 1999.


Mark Asmundson, Mayor

Attest: 
Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

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ACCEPTANCE:

The terms and conditions of the foregoing franchise (Ordinance No. 1999-12-079) are hereby accepted by Grantee, Olympic Pipe Line Company, this _____ day of _____, 1999.

OLYMPIC PIPE LINE COMPANY

Name: _____
Title: _____

SUBSCRIBED AND SWORN TO before me the undersigned notary public this _____ day of _____, 1999.

Name: _____
Notary Public in and for the State of
Washington
Expires: _____

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EXHIBIT A

SUNSET DRIVE: That part thereof lying between the Easterly line of Vining Street and a line parallel to and 60 feet Westerly therefrom; being 60 feet in length across said Sunset Drive.

VINING STREET: That part thereof lying between the Southerly line of Sunset Drive and the centerline of Orchard Drive traversing said section of Vining Street 1129 feet. Also that part thereof lying between the South line of Alabama Street and a point opposite Vining Place traversing said section of Vining Street 1425 feet.

ALABAMA STREET: That part thereof lying between the Easterly line of Vining Street and a line parallel to and 60 feet Westerly therefrom, being 60 feet in length across said Alabama Street.

LAKEWAY DRIVE: That part thereof lying between the lines parallel to and situate 15 feet East of and 35 feet West of the following described lines:

Beginning at a point in the North right of way of Lakeway Drive, said point being 480.70 feet North and 444.00 feet West of the ¼ section corner of Sections 28 and 33 in Township 38 North, Range 3 East

Thence: South 2 degrees 02' West 60 feet to a point in the South right of way of Lakeway Drive, said point being 420.74 feet North and 441.87 feet West of said ¼ section corner of Sections 28 and 33, being 60 feet in length across said Lakeway Drive.

A STRIP OF LAND 50 feet in width lying between the lines parallel to and situate 15 feet Easterly of and 35 feet Westerly of, measured at right angles from the following line:

Beginning at a point in the North line of Section 16, Township 37 North, Range 3 East of W.M., Whatcom County, Washington, said pint being Westerly 15 feet from an iron pipe set for the Northeast corner of the Northwest ¼ of said Section 16.

Thence: South 2 degrees 20' East, 2304 feet to a point

Thence: South 11 degrees 00' East, 2033 feet to a point

Thence: South 16 degrees 30' East, 50 feet more or less to a point in the North right of way of State Highway No. 1 and line being in all 4387 feet in length more or less.

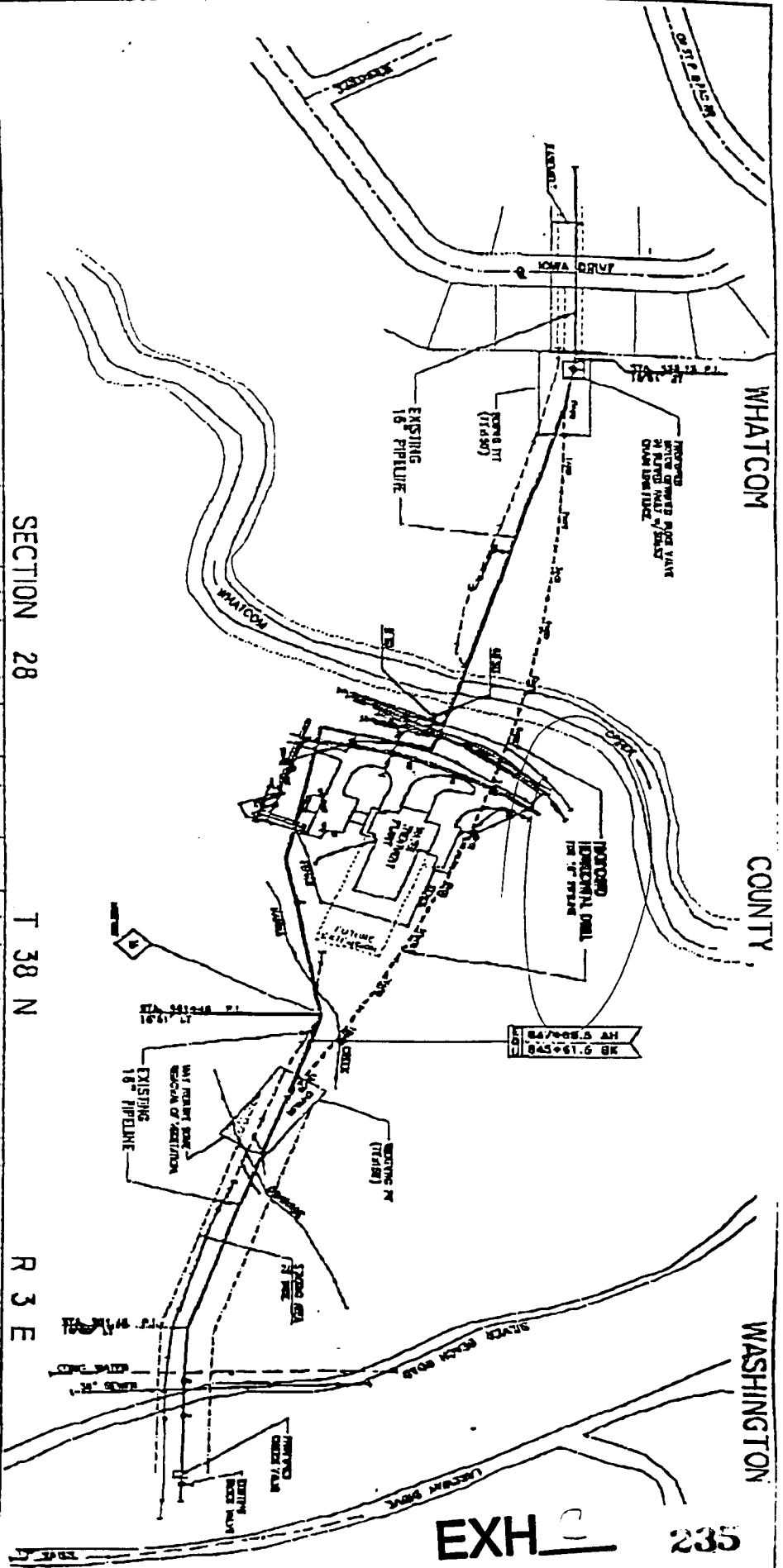
EXHIBIT B

A strip of land 50 feet in width lying between the lines parallel to and situated 15 feet Easterly of and 35 feet Westerly of, measured at right angles, from the following described line:

Beginning at a point 35 feet East of a concrete monument set for the Center of Section 28, Township 38 North, Range 3 East of W.M., Whatcom County Washington:

- Thence: South 00 degrees 52' West 57 feet to a point
- Thence: South 17 degrees 11' West 732 feet to a point
- Thence: North 72 degrees 49' West 160 feet to a point
- Thence: South 17 degrees 11' West 200 feet to a point
- Thence: South 10 degrees 32' East 353 feet to a point
- Thence: South 17 degrees 11' West 421 feet to a point
- Thence: South 15 degrees 11' West 100 feet to a point
- Thence: South 2 degrees 02' West 438 feet to a point

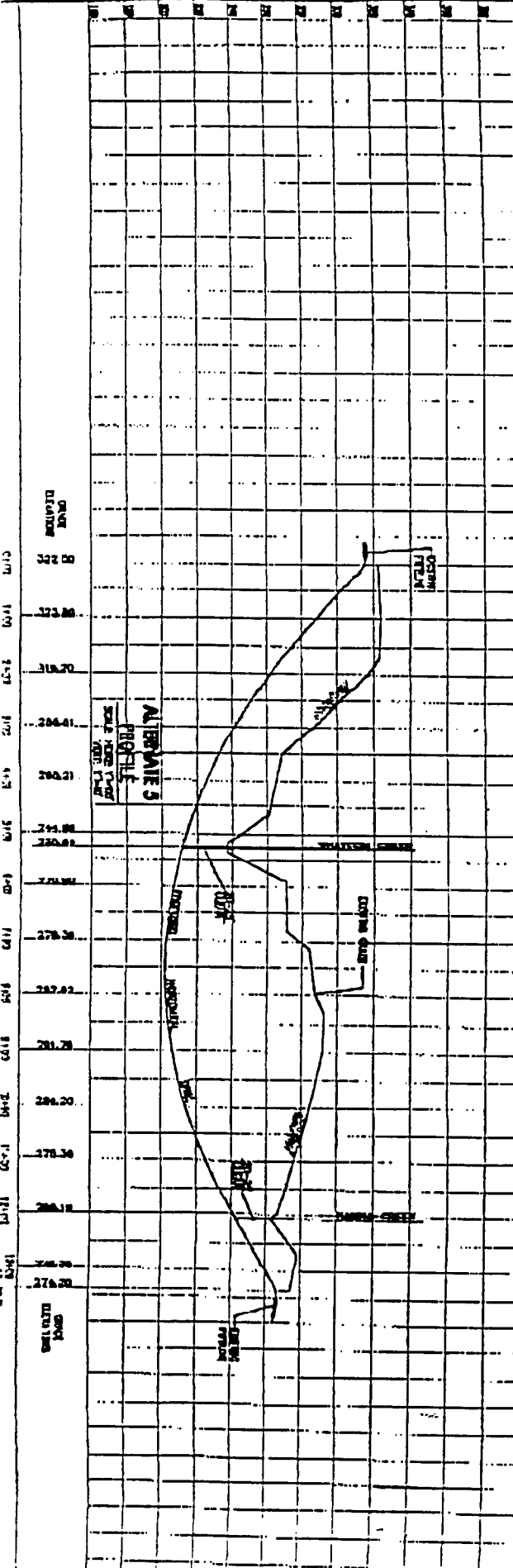
in the North line of Lakeway Drive, said point being 480.70 feet North and 444.00 feet West of the quarter section corner of Sections 28 and 33 in Township 38 North, Range 3 East, being in all 2461 feet in length, more or less.



SECTION 28

T 38 N

R 3 E



EXH 235