

WHEN RECORDED RETURN TO:
Tacoma Public Utilities
Real Property Services
PO Box 11007, Tacoma, WA 98411

**CITY OF TACOMA
DEPARTMENT OF PUBLIC WORKS
TACOMA RAIL MOUNTAIN DIVISON
EASEMENT NO. 49**

Reference No. P2014-175
Grantor: City of Tacoma, a Municipal Corporation of the State of Washington
Grantee: Sierra Pacific Industries
Legal Description: Portion of the Southeast Quarter (SE ¼) of the Northwest Quarter (NW ¼), and the Southwest (SW ¼) of the Northeast (NE ¼) of Section 02, Township 18 North, Range 3 East, W.M
Tax Parcel No.: Adjacent to 031802-1021

For good and valuable consideration and the promises contained herein the City of Tacoma, a Municipal Corporation of the State of Washington, its successors and/or assigns (hereinafter "Grantor") and Sierra Pacific Industries, dba Sierra Pacific Industries, Inc., a California corporation, its successors and/or assigns, (hereinafter "Grantee"), enter into this Easement Agreement for Private Road Crossing and Utilities (hereinafter "Agreement"), on this _____ day of _____, 2015, and agree, grant and covenant as follows:

I. BACKGROUND

A. Burdened Property: Grantor is the owner of the real property, which is utilized for railroad operations, in the SE ¼ NW ¼, and the SW ¼ NE ¼, of Section 02, Township

18, Range 3 East in Pierce County, Washington, a legal description and map of which are attached as Exhibit A (hereinafter the "Grantor's Property").

- B. Benefitted Property:** Grantee is the owner of real property legally described in Exhibit B (hereinafter collectively the "Benefitted Property").

II. EASEMENT TERMS & CONDITIONS

- A. Grant of Easement:** Grantor grants to Grantee a perpetual nonexclusive easement ("Easement"), appurtenant to the Benefitted Property, over, under, and across that portion of Grantor's Property as described and depicted in Exhibit A ("Easement Area") for the purpose of providing ingress, egress and utilities to and from the Benefitted Property.

- B. Use of Ingress, Egress and Utilities Easement:** Grantee shall use the Easement in a manner that will not unreasonably interfere with the use of the Grantor's Property by Grantor, or any of Grantor's guests or invitees and such as not to in any way interfere with or impair the use of the right of way, tracks, or other facilities of the Grantor, or in any way interfere with, obstruct or endanger railroad operations.

- C. Consideration.** Grantor grants the herein described Easement to the Grantee for Twenty Thousand Dollars (\$20,000.00). The payment must be submitted to the address below before final approval and recordation. Checks shall be made payable to the "City Treasurer," and all payments, unless otherwise designated by the Grantor, shall be mailed or delivered to the following address:

Real Property Services
Tacoma Public Utilities
3628 South 35th Street
Tacoma, WA 98409

- D. Railroad Activities:** Grantee accepts and acknowledges that the Grantor's Property is used for active and daily railroad operations including upgrading, repairing, or replacing the railroad, regularly operating railroad cars and machinery upon and across Grantor's Property, and any and all other operations necessary or related to railroad operations or purposes and Grantee assumes all risks of using said road and utilities. Specifically, Grantee assumes the risk of death, personal injuries, and property damage resulting from: (1) collisions with trains, (2) collisions with other vehicles using said road, or (3) the presence or use of said road and utilities. Grantee understands that Grantor owns additional land in the vicinity of the easement hereby conveyed, which it uses for railroad purposes, including, but not limited to, the loading, unloading, and switching of railroad cars. Grantee recognizes that such railroad operations may adversely affect the aesthetic characteristics of the area; may produce noise, dust, and vibration at any hour of the day or night; and may temporarily block the railroad crossing hereinabove described. To minimize potential conflicts between Grantee's use of the road and utilities and Grantor's use of its railroad, Grantee agrees, as a covenant running with the easement rights hereby conveyed, that Grantee, its heirs and assigns, will not protest, prohibit or contest any of Grantor's railroad activities or operations in the vicinity; provided however, that this covenant is not to be considered as an abrogation of the

Grantee's right to protect, support or comment on proposed uses of adjoining lands to the same extent as available to other adjoining land owners. Grantor shall be under no obligation to construct, reconstruct or maintain any fences along its railroad right of way. Grantor makes no representation as to the present or future condition of Grantor's Property or the character of the traffic on its railroad tracks and railroad right of way, and Grantee, its heirs and assigns, assume all risk of damage to property or injury to Grantee, its heirs and assigns, in connection with the exercise of rights hereunder. Nothing herein shall be construed to restrict or limit Grantor's ability to use or restrict or limit the scope of its use its property for any and all of its ongoing rail operations.

Except to the extent that this Easement otherwise expressly provides, and subject to the rights of the Grantee as granted herein, the Grantor intends to continue the use of the area in which the Crossing is located as a Rail Corridor and other related activities and retains the right (1) to use and maintain the entire Rail Corridor; (2) to dispose of all or any part of the Rail Corridor, including, but not limited to, the air space, surface, and subsurface area of the Crossing; and (3) to construct, maintain, repair, operate, and to change, modify, add, or relocate railway tracks, signals, communications systems, pipelines, electric lines, other railway facilities, and/or recreational and governmental facilities in, on, upon, over, under, along, across, or through any or all parts of the Crossing, or permit others to do so for the Grantor or for other public or private improvement projects, all or any of which may be freely done at any time or times by the Grantor or others with the Grantor's permission, without liability to the Grantor to any other party for compensation or damages.

E. Right of Entry Agreement/Maintenance:

- i. This Easement does not grant permission for the Grantee and/or its Contractor to construct or replace any road or utilities. To obtain permission to construct or replace crossing structures or facilities, the Grantee and/or its Contractor shall submit to the Grantor an application for a Right of Entry Agreement, which will include plans specifications for the construction of the road or utilities to be approved by the Grantor as to the design, location, alignment and grade of the road or utilities.

Grantee and/or its Contractor may not commence construction or maintenance of the road or utilities until said Right of Entry Agreement is granted; provided that the Grantor shall not unreasonably withhold or delay its approval.

Grantee agrees to construct, maintain, and repair its road and utilities at a minimum to meet the American Railway Engineering and Maintenance Association Specifications ("AREMA") and Tacoma Rail Standards.

Any modification to the construction plans and specifications that materially alters that portion of the plans approved by the Grantor shall, in the same manner, be approved of in advance by the Grantor.

- ii. Grantee will, at its sole cost and expense, maintain, repair, and renew said road, crossing, the approaches, utilities and drainage for the road ("Maintenance"). Maintenance shall performed in such a manner so as to prevent water, mud or debris

from entering the track zone area. All material used and all work performed hereunder will be of a quality as will meet the approval of the Grantor's designated Railroad Roadmaster. Grantee will, at its sole cost and expense, keep the weeds, brush, and other vegetation on each side of the said road, cut and mowed so as to provide adequate crossing visibility. Grantee, its heirs or assigns, acknowledges that maintenance of the road, crossing, approaches and utilities by Grantor is not implied by anything in this Easement or to be expected by Grantee. No paving, surfacing or chemical treatment of the road on this Easement will be performed by anyone entitled to use said road without prior written permission of Grantor.

F. Crossing Protection

- i. Sole responsibility for protecting the road or utilities from the standpoint of safety and policing the road shall rest exclusively on Grantee at all times and under all circumstances.
- ii. Grantee shall, at its sole cost and expense, erect, maintain and renew appropriate signs, or notices, satisfactory to Grantor setting forth the fact that the road is private and shall take whatever further steps as may be necessary to prevent unauthorized persons from entering upon or using the road for any purpose whatsoever.
- iii. Grantee shall erect and be responsible for maintaining railroad crossing signage at all times on both sides of the crossing consistent with current U.S. Department of Transportation, Federal Highway Administration's Manual on Uniform Traffic Control standards. Such signage shall be pre-approved or obtained from the Grantor at Grantee's sole expense. If Grantee fails to keep signage up and/or maintained, then the Grantor may elect to erect such signage and bill Grantee such cost.
- iv. Grantor may at any time install, maintain and renew railroad - road grade crossing signs, and Grantee shall pay all costs and expenses of the installation, maintenance and renewal thereof.
- v. If it is deemed necessary by Grantor or any federal, state, or municipal authority or other governing body, Grantee shall, at its sole risk, cost and expense, erect, maintain, repair and renew appropriate lock-type gates on both sides of the road satisfactory to Grantor, which shall be suitably situated and kept closed and locked at all times when the road is not in actual use.
- vi. If it is deemed necessary by Grantor or any federal, state, or municipal authority or other governing body, to install automatic protection at the road, said automatic crossing protection shall be installed, and subsequently inspected and maintained (to include repair, replacement, and removal if required) as prescribed by federal regulations. All costs in this paragraph are at the sole cost and expense of Grantee.
- vii. In the event any cathodic electrolysis or other electrical grounding system is installed in connection with the Crossing which, in the opinion of Grantor, interferes with train signals in any way, telephone lines, cables, pipelines, or other facilities of the Grantor, Grantee, upon being informed by Grantor of such interference, shall forthwith discontinue operation of and remove said grounding system, or take such steps as may be

necessary to avoid and eliminate all such interference. Grantee further agrees to indemnify and save harmless the Grantor from and against all damages, claims, losses, suits, or expenses in any manner arising from or growing out of interference with the signals, telephone, cable, pipeline or other facilities of the Railway by the operation, use, or existence of any such grounding system

- G. Dedication:** Grantee shall not and will not permit said road to be used as a public road.
- H. Indemnification:** The Grantee hereby agrees to indemnify, defend and save harmless the Grantor, its officers, employees, agents and volunteers from and against any and all claims, demands, lawsuits, damages, liabilities, losses and expenses (including reasonable attorneys' fees and costs) arising directly or indirectly out of (1) this Easement and/or any rights granted thereby, (2) any act or omission of any third parties using the crossing or Easement or (3) any act or omission of the Grantee, its agents, contractors, licensees or guests in using the Easement and/or installing or using the crossing or involving the subject matter of this Easement. The foregoing shall expressly apply to any and all actual or alleged injury to persons (including death) and/or damage to property, except to the extent such injury or damage results from the fault of the Grantor, its officers, employees, agents or volunteers. The term "fault" as used herein shall have the meaning set forth in RCW 4.22.015, as that statute may hereafter be amended.

Assumption of Risk: Grantee understands and agrees that the normal course of use of the railroad for rail and other activities by the Grantor may involve construction, maintenance, and repair of rail facilities that have the potential to cause interruption to the use of the crossing or Easement. Grantee understands that there is danger from the movement of trains and transportation of materials, products, goods, and other cargo that may fall from passing trains. Grantee assumes the risk thereof and will exercise due care and caution with respect to Grantee's use of the crossing and Easement.

- I. Reservation by Grantor:** Grantor reserves all rights of ownership in and to all portions of the Grantor's Property that are not inconsistent with the Easement, including, without limitation, the right to grant further easements on, over or across the Grantor's Property. Grantor further reserves the right to use the Easement for all uses not interfering with the use permitted by the Grantee under this Agreement.

IV. GENERAL PROVISIONS

- A. Waiver or Modification:** The Grantor and Grantee may only waive, cancel, change, modify or amend this Agreement through a writing signed by Grantor and Grantee.
- B. Unenforceability:** If a Court finds any provision of this Agreement to be void and unenforceable, the remaining provisions of this Agreement shall be binding upon the Grantor and Grantee.
- C. Failure to Enforce:** The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure of the Railway to enforce prompt compliance, and the Railway's failure to enforce shall not constitute a waiver of rights or acquiescence in the Grantee's conduct.

- D. Applicable Law:** This Agreement shall be governed by the laws of the State of Washington, and any action regarding this Agreement shall be filed in Pierce County Superior Court.
- E. Entire Agreement:** This Agreement, including all other documents referred to herein, contains the entire understanding of the Grantor and Grantee with respect to the Easement. This Agreement supersedes all prior agreements and understandings between or among the Grantor and Grantee with respect to the Easement.
- F. Binding on Successors:** The provisions of this Agreement shall extend to, bind, and inure to the benefit of the Grantor and Grantee to this Agreement and their respective heirs, Personal Representatives, successors, and assigns.
- G. Runs with the Land:** This Agreement shall be deemed a covenant running with the land and shall be binding upon, and inure to the benefit of, the Grantor and Grantee and their respective successors in interest.
- H. Recordation:** This Agreement shall be recorded in the real estate records for Pierce County at the Grantee's cost.
- I. Attorney Fees:** If the Grantor and/or Grantee to this Agreement institutes a suit against another party concerning this Agreement, the prevailing party is entitled to reasonable attorney fees and expenses (including any fees on appeal or through use of Alternative Dispute Resolution processes).
- J. No Warranty:** The Grantor does not warrant its title to the Easement Area nor does Grantor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interests of others, including the tenants and licensees of the Grantor.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement, as of the day and year first above written.

GRANTOR:

CITY OF TACOMA

ATTEST:

By: _____
Marilyn Strickland, Mayor

Doris Sorum, City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Marilyn Strickland is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the MAYOR of the City of Tacoma, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned herein.

Subscribed and sworn before me this _____ day of _____, 2015.

NOTARY PUBLIC in and for the
State of Washington
Residing at _____

My Commission expires: _____.

GRANTOR (CONT.):

Approved By:

Kurtis D. Kingsolver
Public Works Director/City Engineer

Dale King
Superintendent – Tacoma Rail

Kyle Kellem
Roadmaster – Tacoma Rail

Andrew Cherullo
Finance Director – City of Tacoma

Saada Gegoux
Risk Manager – City of Tacoma

Legal Description Approved:

Leonard J. Webster, P.L.S.
Chief Surveyor – City of Tacoma

Approved as to form:

By: _____
Michael W. Smith
Deputy City Attorney

GRANTEE:

M.D. Emmerson
Chief Financial Officer

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that M.D Emmerson is the person who appeared before me, and said person acknowledged that he signed this instrument, and on oath stated that he is authorized to execute the instrument and acknowledged it as the Chief Financial Officer for Sierra Pacific Industries, to be the free and voluntary act and deed of such company for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2015

NOTARY PUBLIC in and for
the State of Washington.
Residing at _____
My commission expires _____

EXHIBIT A – PAGE 1

LEGAL DESCRIPTION

EXHIBIT "A" RAILROAD CROSSING EASEMENT

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 18 NORTH, RANGE 3 EAST, OF THE WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEING A 80 FOOT WIDE STRIP OF LAND LYING 40 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED PROPERTY;
THENCE SOUTH 89°28'28" EAST, ALONG THE SOUTH LINE THEREOF, A DISTANCE OF 928.78 FEET TO THE NORTHWESTERLY RIGHT OF WAY CONVEYED TO THE TACOMA RAILROAD COMPANY BY DEED RECORDED NOVEMBER 16, 1907 UNDER RECORDING NUMBER 255211;
THENCE NORTH 45°35'09" EAST, ALONG SAID RIGHT OF WAY, A DISTANCE OF 308.67 FEET TO THE **TRUE POINT OF BEGINNING**;
THENCE SOUTH 44°24'51" EAST, A DISTANCE OF 100.00 FEET TO THE SOUTHEASTERLY RIGHT OF WAY OF SAID DEED AND THE END OF SAID CENTERLINE.

SIDELINES SHALL BE EXTENDED AND/OR TRUNCATED TO INTERSECT AT BOUNDARY LINES AND INTERSECTIONS.

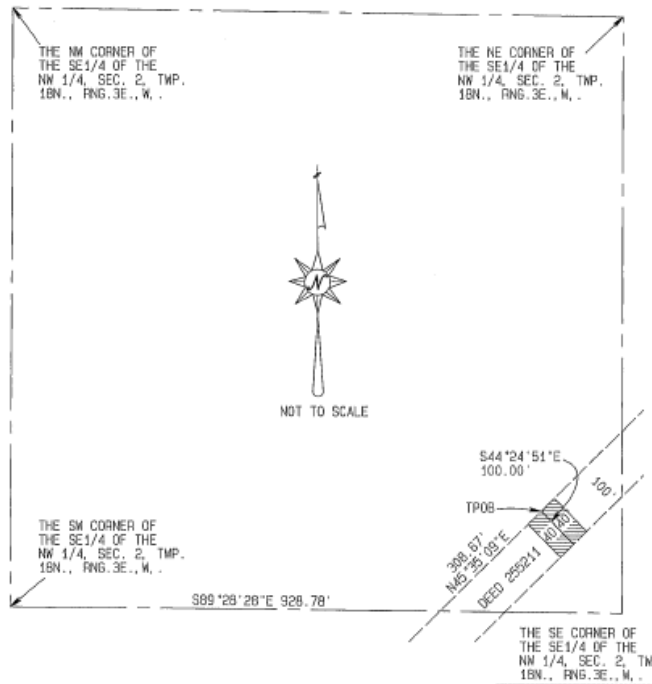


CONTOUR
ENGINEERING • LLC

3309 56th Street Northwest, Suite 106, Gig Harbor, WA 98335. ph 253-857-5454. fax 253-509-0044

EXHIBIT A – PAGE 2
MAP OF EASEMENT

RAILROAD CROSSING
EASEMENT



CONTOUR
ENGINEERING • LLC
CIVIL ENGINEERS • SURVEYORS • LAND PLANNERS
3309 46th Street NW, Suite 105 Gig Harbor, WA 98335
Phone: 253-857-5454 Fax: 253-509-0044 info@contourpllc.com



1

EXHIBIT "B"

BENEFITTED PROPERTY

GOVERNMENT LOT 2 AND THE EAST HALF OF GOVERNMENT LOT 3 AND THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER ALL IN SECTION 2, TOWNSHIP 18 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN; EXCEPT THAT PORTION OF THE EAST HALF OF SAID GOVERNMENT LOT 3 AND THAT PORTION OF SAID GOVERNMENT LOT 2 LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE: COMMENCING AT THE INTERSECTION OF THE WEST LINE OF THE EAST HALF OF SAID GOVERNMENT LOT 3 WITH THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 2 AND THE TRUE POINT OF BEGINNING OF SAID LINE; THENCE SOUTH 87°51'59" EAST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE EASTERLY EXTENSION THEREOF A DISTANCE OF 891.66 FEET; THENCE NORTH 44°02'03" EAST A DISTANCE OF 1624.06 FEET, MORE OR LESS TO THE INTERSECTION OF THE EAST LINE OF SAID GOVERNMENT LOT 2 WITH A LINE DRAWN PARALLEL WITH AND 20.00 FEET SOUTHERLY OF THE NORTH LINE OF SAID GOVERNMENT LOT 2 AND THE TERMINUS OF SAID LINE; ALSO EXCEPT THE RIGHT OF WAY CONVEYED TO THE TACOMA EASTERN RAILROAD COMPANY BY DEED RECORDED NOVEMBER 16, 1907 UNDER RECORDING NO. 255211 AND ALSO EXCEPT COUNTY ROADS.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.