

After recording return to:
Public Works and Utilities
Attn: Jason B. Weekes, P.E.
9850 64th Street West
University Place, WA 98467

Above this line reserved for recording information.

**PERPETUAL PUBLIC
SANITARY SEWER EASEMENT
Tarragon LLC (Rosemont PDD) (SWLE# 807592)**

Reference #: **P2015-099**

Grantor: **City of Tacoma**

Grantor's Tax Parcel ID#: **N/A**

Grantee/Beneficiary: **Pierce County**

Description: A portion of the SE ¼ of Section 25, Township 19N, Range 3E, W.M, Pierce Co., WA.

For and in consideration of benefits to the general public health, safety and welfare and other good and valuable consideration, and for benefits to be derived by the Grantor herein, receipt of which is hereby acknowledged, Grantor, **City of Tacoma**, a municipal corporation and political subdivision of the State of Washington, hereby grants to Grantee, **Pierce County**, a municipal corporation and political subdivision of the State of Washington, their successors and assigns, a perpetual, non-exclusive easement for construction, improvement, maintenance, and repair of a sanitary sewer pipeline and any associated appurtenances, including a manhole structure with landing area and retaining wall ("Sewer System") under, over, and through the following described real property ("Easement Area"), said Easement Area being a portion of the Grantor's above-described property ("Grantor's Parcel"), in Pierce County, Washington, and legally described as follows:

GRANTOR'S PARCEL:

THAT PORTION OF THE TACOMA RAIL – MOUNTAIN DIVISION RAILROAD RIGHT OF WAY
IN THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 19 NORTH, RANGE 3 EAST,
W.M., IN PIERCE COUNTY, WASHINGTON.

EASEMENT AREA:

See Exhibit "A" for the legal description of the public sewer easement, attached hereto and by this reference

made a part hereof. See Exhibit “B” for a graphical depiction of the public sewer easement, attached hereto and by this reference made a part hereof.

The foregoing Easement is made subject to and upon the following express conditions:

1. The Easement herein granted is for the Sewer System only. Without limitation to the foregoing, this grant does not include the right to install or allow the installation of other utilities of any nature, including, without limitation, fiber optics, cable television, electrical, gas or liquid distribution, and telephone lines in, over, under, along and/or across the Easement Area.
2. Prior to initial construction of the Sewer System the Grantee and/or Grantee’s contractor(s) shall submit to the Grantor an application in a form to be provided by the Grantor, which will include plans and specifications for said activities and applicable fees to be designated by the Grantor. Grantee and/or Grantee’s contractor(s) may not commence said activities until a Right-of-Entry Agreement to do so shall have been issued by the Grantor. Issuance of said Right-of-Entry Agreement shall not be unreasonably withheld by the Grantor.
3. In the event Grantee desires to maintain, repair, remove and/or replace the Sewer System within the Easement Area, except in the event of an Emergency as defined below, the Grantee and/or Grantee’s contractor(s) shall submit to the Grantor an application in a form to be provided by the Grantor, which will include plans and specifications for said activities and applicable fees to be designated by the Grantor. Grantee and/or Grantee’s contractor(s) may not commence said activities until a Right-of-Entry Agreement to do so shall have been issued by the Grantor. Issuance of said Right-of-Entry Agreement shall not be unreasonably withheld by the Grantor. The Grantee and/or Grantee’s contractor(s) shall not be required to obtain a Right-of-Entry Agreement from Grantor if the maintenance involves use of the manhole structure without any ground disturbance OR if any maintenance of and/or repair work to the Sewer System and associated appurtenances within the Easement Area shall occur no closer than 25 feet from the centerline of the closest railroad track (measured perpendicularly) and shall not involve any ground disturbance.
4. As used in this Easement, the term “Emergency” shall mean a sudden and generally unexpected occurrence which presents an imminent threat of harm to persons or property and which requires immediate action to prevent such harm. In the event of an Emergency, and for purposes of taking immediate corrective action, Grantee and/or Grantee’s contractor(s) shall contact the Grantor’s Rail Supervisor of Operations at (253) 396-3161 as soon as possible. Grantee acknowledges that it accepts the entire risk of its presence in the Easement Area in any circumstance where it has not notified the Grantor in accordance with the foregoing. In all cases, notice to the Grantor shall be given as far in advance as practicable prior to entry or as soon as practicable after entry upon the Easement Area. Grantee shall promptly reimburse the Grantor for its reasonable and direct costs incurred in responding to an Emergency that is caused, created by, or attributable to the presence, construction, maintenance, or operation of the Sewer System in the Easement Area.
5. If the Easement Area, or any part thereof, shall at any time cease to be used by Grantee or by the public for the aforesaid purposes, or should the Easement Area be converted to any other use whatsoever, or should the Grantee fail to remedy a violation of any of the conditions herein

expressed within 60 days after written notice from Grantor of any such violation, then and in any such event, all the right, title, interest, benefits and enjoyment of said Grantee or of the public in and to the Easement Area, for any purpose whatsoever, shall immediately cease and Grantor, its successors and assigns, may, at its or their option, re-enter, retake possession of, and hold the Easement Area without compensation to Grantee, the public, or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage to any premises or the improvements thereon abutting on said Easement Area or any part thereof.

6. 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.
7. To the fullest extent allowed by law, the Grantee agrees to indemnify, defend, and hold harmless Grantor, its officers and employees, from any and all claims for damages or loss to Grantor's operations or property and from any and all claims or litigation arising in connection with the easement rights granted. This includes damages, loss, and personal injury (including death) to property or persons including injuries or death to Grantee, or Grantee's agents, contractors, or employees, which may be caused or occasioned by the existence, operation, use, or maintenance of any and all improvements to the Easement Area and/or in any way associated with the Easement Area or the rights herein granted, caused or occasioned by an act, deed, or omission of the Grantee, Grantee's agents, employees, guests, customers, or invitees. In this regard, Grantee hereby waives immunity under Title 51 RCW, Industrial Insurance Laws of the State of Washington.
8. Grantee and its agents, contractors, and subcontractors shall defend, indemnify, and hold harmless Grantor and its respective officials, officers, members, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage, or discovery of any Hazardous Substances on, under, or adjacent to the Easement Area or Grantor's Parcel attributable to Grantee's use of or activities on the Easement Area. "Hazardous Substances" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. This Section 8 shall survive termination of this Perpetual Public Sanitary Sewer Easement.
9. This easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.

IN WITNESS WHEREOF this easement is executed as of this _____ day of _____, 2015.

City of Tacoma, a municipal corporation,

By: _____
Marilyn Strickland,
Mayor

Attested:

By: _____
Doris Sorum,
City Clerk

By: _____
Kurtis D. Kingsolver, P.E.,
Public Works Director/City Engineer

Approved:

Legal Description Approved:

By: _____
Dale King, Superintendent
Tacoma Rail

By: _____
Leonard J. Webster, P.L.S.,
Chief Surveyor

By: _____
Kyle Kellem, Roadmaster
Tacoma Rail

Approved as to form:

By: _____
Assistant/Deputy City Attorney

By: _____
Andy Cherullo,
Finance Director

By: _____
Saada Gegoux,
Risk Manager

Pierce County, a municipal corporation,

Approved as to Form By:

Accepted By:

Pierce County Deputy Prosecuting Attorney

Pierce County Executive

Date: _____

Date: _____

STATE OF WASHINGTON)
 : ss
COUNTY OF PIERCE)

On this _____ day of _____, 2015 before me personally appeared **Marilyn Strickland**, to me known to be the duly elected and qualified Mayor of the City of Tacoma, Washington, who executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said City, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument by resolution of the Mayor and Councilmembers of said City, and that the seal affixed is the official seal of said City.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington, residing at _____

My commission expires _____

STATE OF WASHINGTON)
 : ss
COUNTY OF PIERCE)

On this _____ day of _____, 2015 before me personally appeared **Kurtis D. Kingsolver, P.E.**, to me known to be the Public Works Director/City Engineer of the City of Tacoma, Washington, who executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said City, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington, residing at _____

My commission expires _____

EXHIBIT "A"

SEWER EASEMENT

LEGAL DESCRIPTION

Being a portion of the Southeast quarter of the Southeast quarter of Section 25, Township 19 North, Range 3 East, W.M., in Pierce County, Washington, more fully described as follows:

COMMENCING at the Southeast corner of said Section 25;

THENCE North 87°11'09" West, along the south line of said Section 25, a distance of 826.67 feet, to the westerly margin of Tacoma Rail Mountain Division right-of-way;

THENCE North 22°11'47" West, along said westerly margin, 77.24 feet, to the northerly margin of 176th Street East and the TRUE POINT OF BEGINNING;

THENCE, continuing North 22°11'47" West, along said westerly margin, 19.49 feet;

THENCE South 86°48'19" East, 22.14 feet;

THENCE South 22°11'47" East, 19.33 feet, to said northerly margin;

THENCE North 87°11'09" West, along said northerly margin, 22.07 feet, to the TRUE POINT OF BEGINNING.

C.E.S. NW INC.
CIVIL ENGINEERING & SURVEYING

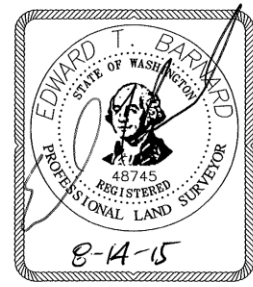
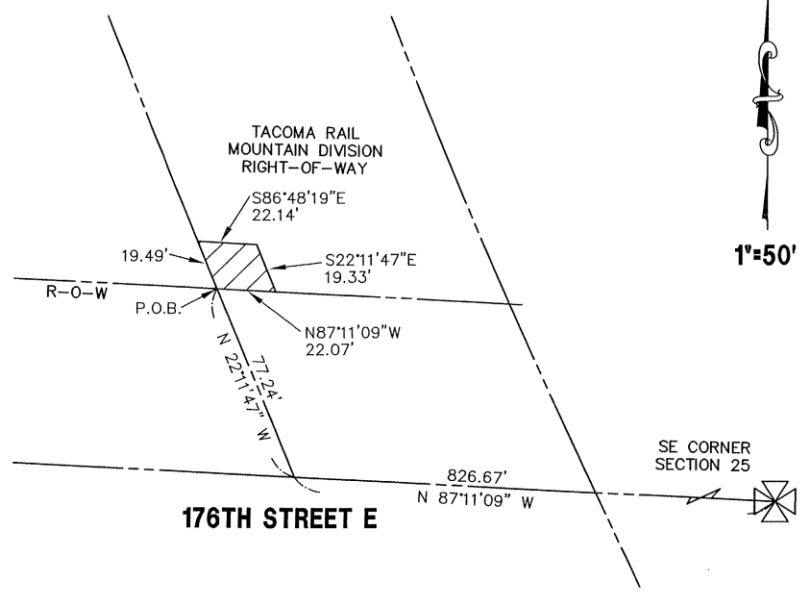
310 - 29TH ST. NE, SUITE 101 Bus: (253) 848-4282
PUYALLUP, WA 98372 Fax: (253) 848-4278

TACOMA
SEWER EASEMENT

A PORTION OF SE 1/4 OF THE SE 1/4
SECTION 25 T19N R3E W.M.,
PIERCE COUNTY, WA

SEWER EASEMENT

EXHIBIT B



PROJECT # 04128