

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 DIVISION
EASEMENT NO. E57**

Reference No. P2019-130 GWM
Grantor: City of Tacoma
Grantee: Roy Meadows Development Group LLC
Legal Description: Portion of the Northwest Quarter (NW ¼) of Section 03, Township 17 North, Range 2 East, W.M.
County: Pierce
Tax Parcel No.: None Assigned – Operating Railroad Right-of-Way

EASEMENT AGREEMENT

For good and valuable consideration and the promises contained herein the City of Tacoma, a municipal corporation and political subdivision of the State of Washington, its successors and/or assigns (hereinafter “Grantor”) and Roy Meadows Development Group LLC, a Washington limited liability company, its successors and/or assigns (hereinafter “Grantee”), enter into this Easement Agreement for a private crossing (hereinafter “Easement Agreement”), on _____, 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 and right-of-way, located in the NW ¼ of Section 03, Township 17 North, Range 2 East of the Willamette Meridian in Pierce County, Washington, the legal description attached hereto as Exhibit A.1 and graphical depiction attached hereto as Exhibit A.2 (hereinafter the “Grantor’s Property”).

- B. Benefitted Property:** Grantee is the owner of real property legally described in Exhibit B.1 attached hereto and graphically depicted in Exhibit B.2 attached hereto (hereinafter the "Benefitted Property"). Grantee intends to develop the Benefitted Property for single family residential homes. Grantor is willing to Grant this easement for a private access road for said Benefitted Property.
- C. Others Granted an Easement to Grantor's Property:** Parties entering this Easement Agreement acknowledge that there are other holders of rights to use Grantor's property, and such holders may have substantially the same obligations under their easement agreement(s) with Grantor. Accordingly, references herein to expressions such as the "sole" obligations of Grantee, or at Grantee's "sole cost and expense," "sole risk, cost and expense," "sole responsibility and liability" and similar phrases, shall be interpreted as referring to Grantee's pro rata share of Grantee's obligation, risk, cost, expense, responsibility or liability, as the case may be, as shared with other easement holders having substantially the same obligations.

II. EASEMENT TERMS & CONDITIONS

- A. Grant of Easement:** Grantor grants and conveys to Grantee a perpetual nonexclusive easement (the "Easement"), appurtenant to the Benefitted Property, over, under, and across the Grantor's Property (the "Easement Area") for the purpose of providing a private road for vehicular and pedestrian ingress to, egress from, and utilities to the Benefitted Property, and solely as a connection to and within the established limits of 292nd Street South, a private street, and its connection to State Route 507, a public highway. The ingress, egress, and utilities shall be restricted to the described Easement Area only. No other use of the Easement Area is granted other than Grantee's right to use the Easement for the permitted purpose, nor shall Grantee enlarge the use thereof. Grantee must obtain a Right of Entry Agreement as detailed herein in order to construct or maintain improvements within the Easement Area. Construction or maintenance may not commence until a Right of Entry Agreement is granted as specified below.
- 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 in such a manner as to not 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-five Thousand and No/100 Dollars (\$25,000.00). The payment must be submitted to the address below before final approval and recordation of this Easement Agreement. Payee shall be the "City of Tacoma Treasurer," and all payments, unless otherwise designated by 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:

- i. Grantor owns and controls the above-described Easement Area consistent with and as part of its Tacoma Rail – Mountain Division Railroad Right-of-Way. The rights granted herein are subordinate to, and subject to, the paramount right of Grantor to use said Easement Area for uses reasonably deemed necessary or convenient to Grantor. Grantee shall not damage or materially interfere with Grantor's use of the Easement Area and Grantor's structures or facilities located therein. Except as otherwise may be specifically provided for herein, no structures of any type may be placed on the Easement Area by Grantee, nor shall the Easement Area be barricaded, fenced or blocked by Grantee in any way.
- ii. Grantee accepts and acknowledges that Grantor's Property is used for active and continuous railroad operations including construction, maintenance, repair, and replacement of the railroad, regularly and irregularly 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. Grantee assumes all risks of using Grantor's Property and the private crossing and utilities granted by the Easement. Specifically, Grantee assumes the risk of death, personal injury, and property damage resulting from: (1) collisions with trains, (2) the presence and use of the railroad and associated improvements and appurtenances thereto, (3) collisions with other vehicles using said road, or (4) the presence and use of said road and utilities.
- iii. Grantee understands that Grantor owns additional land in the vicinity of and adjoining to the Easement Area, 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 access to and use of the Easement Area. Grantor shall strive and use its best efforts to promptly remove any blockage from the Easement Area and limit any blockage of the Easement Area to the least amount of time reasonably possible.
- iv. To minimize potential conflicts between Grantee's use of the private crossing and utilities and Grantor's operation 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.
- v. Grantor shall be under no obligation to construct, maintain, repair, or replace any fences along its railroad right-of-way, unless damaged through the sole negligence of Grantor.
- vi. 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. 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 any of its rights hereunder. Nothing herein shall be construed to restrict or limit Grantor's ability to use,

or restrict or limit the scope of such use, its property for any or all of its railroad operations.

- vii. Except to the extent that this Easement Agreement otherwise expressly provides, and subject to the rights of Grantee as granted herein, Grantor intends to continue the use of Grantor's Property 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, replace, 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, upon, over, under, along, across, or through any or all parts of the crossing, or permit or grant 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 or consent, on Grantor's Property without liability to the Grantee to any other party for compensation or damages.
- viii. Grantee assumes all risks and costs associated with any interference with Grantee's use of the Easement due to railroad right-of-way closures and blockages caused by events outside of Grantor's reasonable control including, but not limited to, environmental regulation, natural disaster including fire, flood, snow, slides, tree windthrow, or road washout, but not including closures and blockages due to Grantor's sole negligence.
- ix. Grantor may, in its sole discretion, direct Grantee to remove and relocate or replace, within the Easement Area, its authorized improvements in order to accommodate Grantor's construction, improvement, change, or operation of its railroad and right-of-way. Removal and relocation or replacement of said authorized improvements shall be at the sole cost and expense of Grantee.

E. Right of Entry Agreement/Maintenance:

- i. This Easement Agreement does not grant permission for Grantee and/or its contractor to construct, maintain, repair, relocate or replace any private crossing improvements. To obtain permission to construct, maintain, repair, relocate or replace crossing structures or facilities, Grantee and/or its contractor shall submit to Grantor an application for a Right of Entry Agreement, including any required fees, which shall include plans and specifications for the construction of the private crossing improvements, for the review and approval by Grantor as to the design, location, alignment and grade of the private crossing improvements.
- ii. Grantee and/or its contractor may not commence construction, maintenance, repair, relocation, or replacement of the private crossing improvements until said Right of Entry Agreement is fully executed by the parties thereto and all required reasonable fees paid to Grantor; provided that Grantor shall not unreasonably withhold or delay its approval. Grantee shall be solely responsible for and pay all costs associated with the construction, maintenance, repair, relocation, or replacement of any of Grantee's existing or future authorized improvements occurring on or impacting the Easement Area. Improvements installed by Grantee shall, at Grantor's sole option, be removed at

the termination or expiration of the Easement Agreement at Grantee's sole cost and expense.

- iii. A safe distance shall be maintained between construction equipment and utility infrastructure in accordance with federal, state, or local statute, ordinance, rule, regulation, or other law and Grantor's standards. No adverse impact is allowed to wetlands, if any, on Grantor's property. If construction impacts are unavoidable, reasonable mitigation for direct impacts must be approved, in writing, by Grantor. Runoff from the Easement Area shall not be directed onto Grantor's adjacent property. Pooling of water on the Easement Area and Grantor's adjacent property shall be prevented, along with creation of wetlands in previously dry areas, or any other actions which could impact the water quality of existing wetlands, if any. No blasting shall be done on the Easement Area.
- iv. Grantor's review, approval, or consent to any proposals, applications, drawings, and/or plans shall not be deemed to be consent, authorization, acknowledgment, certification, warranty, or representation that Grantee has obtained all required authorizations or that said proposals, applications, drawings, or plans are in any way sufficient or appropriate for the intended purpose, or that said proposals, applications, drawings, or plans comply with regulatory, design, or engineering standards.
- v. Any modification to the construction plans and specifications that materially alters that portion of the plans and specifications previously approved by Grantor shall, in the same manner, require the same review and approval in advance by Grantor.
- vi. Grantee shall, at its sole pro rata cost and expense, construct, maintain, alter, repair, and replace said private crossing improvements, including the roadway, approaches, utilities and drainage ("Maintenance"). All material used and all work performed hereunder shall be of a quality as to meet the approval of the Grantor's designated Railroad Roadmaster. Grantee shall, at its sole pro rata cost and expense, keep the weeds, brush, and other vegetation on Grantee's Property cut and mowed so as to provide adequate crossing visibility as reasonably determined by the Railroad Roadmaster. Grantee, its heirs or assigns, acknowledges that Maintenance by Grantor is not implied nor to be expected by Grantee. No Maintenance within the Easement Area will be performed without prior written permission of Grantor.
- vii. Grantee shall form a homeowners association to conduct, operate, and provide for a maintenance fund for the maintenance, per the relevant terms herein, of the authorized road and crossing. Said fund shall be adequate to fund the maintenance and cleanup. Grantor reserves the right, after reasonable notice and an opportunity to cure, to perform any necessary maintenance and/or cleanup necessary and invoice the Grantor, its successors or assigns, or the homeowners association for said costs and expenses.

F. Crossing Protection:

- i. Sole responsibility for protecting Grantee's private crossing improvements shall rest exclusively with Grantee at all times and under all circumstances. Grantor shall advise Grantee of applicable regulations and standards that must be met.

- ii. Grantor shall have the sole responsibility to install, maintain and replace any required signs located within the Easement Area, and Grantee shall, at Grantor's sole option, reimburse Grantor for all reasonable costs and expenses of the installation, maintenance and replacement thereof.
- iii. If it is deemed necessary by any authorized federal, state, or municipal authority or other governing body, Grantee, at its sole risk, cost and expense, shall erect, maintain, repair or replace appropriate lock-type gates satisfactory to such authority or governing body on both sides of the Easement Area prohibiting access thereto for road use. The lock-type gates shall be suitably configured for convenience to the holders of rights to the Easement Area, such as key card or other easily accessible electronic system. The gates shall be suitably situated and kept closed and locked at as such times as determined by such authority or governing body. Keys shall be provided to Grantor and Grantee for Grantor and Grantee access and use.
- iv. If it is deemed necessary by Grantor or any federal, state, or municipal authority or other governing body, to install automatic crossing protection, 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 incurred to comply with the requirements of this paragraph are the sole responsibility and liability of Grantee.
- v. In the event any cathodic electrolysis or other electrical grounding system is installed by Grantee 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 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 Grantor by the operation, use, or existence of any such grounding system.

G. Prohibition of Public Use or Dedication: Grantee shall not and will not permit said private crossing or road to be used as a public street or road, or dedicate same for public use, without prior written consent of Grantor. Normal residential use by the Grantee, its successors, and their respective guests, contractors and invitees shall not violate this provision.

H. Indemnification:

- i. Grantee, its successors and assigns, to the fullest extent allowed by law, agrees to indemnify, defend, and hold harmless Grantor, its officers and employees, from any and all claims for damages or loss actually incurred by Grantor, and to its operations and property, from any and all claims or litigation arising in connection with this Easement Agreement, Grantee's exercise of its rights under the Easement, and Grantee's use of the Easement Area. The foregoing indemnity shall include damages, loss, and personal injury (including death) to property or persons, including injuries or death to any person or entity, to Grantee, or to Grantee's agents, contractors, or employees to the extent

caused or occasioned by (a) Grantee's use of the Easement or Easement Area; (b) the rights granted under the Easement; (c) the existence, operation or maintenance of Grantee's Property located on or in the Easement Area; or (d) any act, deed, or omission of Grantee, Grantee's agents, employees, guests, customers, or invitees while on the Easement Area or while exercising rights under the Easement. In this regard, Grantee hereby waives immunity under Title 51 RCW, Industrial Insurance Laws to the extent applicable and waivable. This indemnification has been mutually negotiated. Notwithstanding anything to the contrary contained in this Easement Agreement, the foregoing indemnity shall not apply to the extent any such claims, losses, liabilities, damages and/or personal injury are caused by the sole or gross negligence or willful misconduct of Grantor or Grantor's agents, employees and/or contractors.

- ii. Grantee, 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, or storage of any Hazardous Substances on, under, or adjacent to the Easement Area or Grantor's Property attributable to Grantee's use of the Easement or 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 indemnification has been mutually negotiated and shall survive termination of the Easement and Easement Agreement. Notwithstanding anything to the contrary contained in this Easement Agreement, in no event shall Grantee have any responsibility or liability for, nor shall the foregoing indemnity apply to, any Hazardous Substances that (i) were in existence on or about the Easement Area as of the date of execution of this Easement Agreement, and/or (ii) have been released, stored, or otherwise introduced by Grantor, Grantor's agents, employees and/or contractors or by any other third party.
 - iii. Grantee expressly releases the Grantor from any and all claims for damages to the improvements installed or authorized by the Grantee pursuant to the rights granted herein arising from any operation of the Grantor on its said Railroad Right-of-Way, except to the extent such damages are the result of Grantor's negligence or the negligence of Grantor's contractors, subcontractors or agents.
 - iv. All indemnifications and releases provided to Grantor by Grantee wheresoever detailed in this Easement Agreement shall survive termination of this Easement Agreement and the Easement granted thereby.
- I. **Assumption of Risk:** Grantee understands and agrees that the normal course of use of Grantor's Property for railroad and other activities by Grantor may involve construction, maintenance, repair, and replacement of railroad facilities that have the potential to cause interruption to the use of the crossing or Easement Area. 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 Easement Area.

- J. Reservation by Grantor:** Grantor reserves all rights of ownership in and to all portions of Grantor's Property that are not inconsistent with the Easement, including, without limitation, the right to grant further easements in, upon, over, under, and across Grantor's Property. Grantor further reserves the right to use the Easement Area for all uses not interfering with the uses permitted to Grantee under this Easement Agreement.
- K. Regulations:** This Easement Agreement, Easement, Grantee, and Grantor, are at all times subject to provisions and requirements of federal, state, and local agencies and any future rules and regulations of these agencies or their successors or assigns. Grantee shall use, and at all times maintain, the road crossing and appropriate signalization in accordance with all applicable local, state, and federal laws, rules, and regulations governing the construction, operation, and maintenance of the road crossing of the Grantor's railroad as current or hereinafter may be enacted. The rights granted herein are subject to any lawful rules or regulations now in effect or which hereafter might become effective which are imposed upon the Easement Area by any regulating authority, including the City of Tacoma and Tacoma Rail. Grantor reserves the right at any and all times to prescribe additional reasonable and non-discriminatory rules and regulations for the conduct, operation, and maintenance of any or all the rights and privileges granted under the terms of this Easement Agreement.
- L. Grantee Representation for 292nd Street South:** Grantee hereby represents and warrants that it has or will obtain all necessary legal rights to access and use 292nd Street South in order to exercise all rights to be conveyed by the Easement. Grantee shall indemnify Grantor for any claims of damage made by any person or entity asserting an interest in 292nd Street South for use of the Easement by Grantee. Should Grantee permanently lose the legal right to access and use 292nd Street South, such loss shall be considered as Abandonment as provided under General Provisions herein.
- M. Development and Sale of Benefitted Property:**
- i. Grantee intends to develop the Benefitted Property with a residential subdivision which may be sold after obtaining preliminary plat approval, with subsequent sale of the resulting residential lots. This Easement Agreement and the Easement granted thereby shall survive such further subdivision and transfer of interest and shall be a covenant running with the benefitted property.
 - ii. The face of the preliminary plat shall contain substantially the following language unless otherwise approved by Grantor:

"The lots herein are subject to the terms and provisions of the Easement Agreement dated between the City of Tacoma as Grantor and Roy Meadows Development Group LLC as Grantee, which terms and provisions shall constitute a covenant running with each lot and binding upon the Grantee and each successive Grantee of each lot as set forth in the Easement Agreement."

- iii. The face of the final plat shall contain substantially the following language unless otherwise approved by Grantor:

“The lots herein are subject to the terms and provisions of the Easement Agreement, whose terms and provisions shall constitute a covenant running with each lot and binding upon the Grantee and each successive Grantee of each lot as set forth in the Easement Agreement. The Grantee, successors, or assigns shall form a homeowners association or other association to conduct, operate and provide for a common maintenance fund for the maintenance and other costs required under said Easement Agreement.”

- iv. Each deed to each lot shall contain substantially the following language unless otherwise approved by Grantor:

“The real property described herein is subject to the terms and provisions of the Easement Agreement dated between the City of Tacoma as Grantor and Roy Meadows Development Group LLC as Grantee, which terms and provisions shall constitute a covenant running with the real property described herein and shall be binding upon the Grantee and each successive Grantee of the real property described herein as set forth in the Easement Agreement.”

- v. Grantor reserves the right to create any liens against the Benefitted Property, to the extent allowed by law, to collect the aforesaid damages, costs, expenses, and fees.

III. GENERAL PROVISIONS

- A. Waiver or Modification:** Grantor and Grantee may only waive, cancel, change, modify or amend this Easement Agreement through a writing signed by Grantor and Grantee.
- B. Unenforceability:** If a court of competent jurisdiction finds any provision of this Easement Agreement to be void and unenforceable, the remaining provisions of this Easement Agreement shall be binding upon Grantor and Grantee.
- C. Failure to Enforce:** Grantee shall not be relieved of any of its obligations to comply promptly with any provision of this Easement Agreement by reason of any failure of Grantor to enforce prompt compliance, and Grantor’s failure to enforce shall not constitute a waiver of rights or acquiescence in the Grantee’s conduct.
- D. Applicable Law:** This Easement Agreement shall be governed by the laws of the State of Washington, and any action regarding this Easement Agreement shall be filed in and not removed from the Pierce County Superior Court.
- E. Entire Agreement:** This Easement Agreement, including all other documents referred to herein, contains the entire understanding of Grantor and Grantee with respect to the Easement. This Easement Agreement supersedes all prior agreements and understandings between or among Grantor and Grantee with respect to the Easement.
- F. Binding Effect:** The terms and provisions of this Easement Agreement shall constitute covenants running with the land and shall be binding upon and inure to the benefit of

Grantor and Grantee and their respective devisees, heirs, personal representatives, successors, and assigns.

- G. Recordation:** This Easement Agreement shall be recorded in the real estate records of the Pierce County Auditor at the Grantee's cost.
- H. Attorney Fees:** If Grantor and/or Grantee institutes a suit against the other party concerning this Easement 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).
- I. No Warranty:** Grantor does not warrant its title to the Easement Area, nor the authority to grant the herein-described use of the Easement Area, nor does Grantor undertake to defend Grantee in the peaceable possession, use or enjoyment thereof. Grantee agrees to secure any other rights that are needed for its respective lawful use of said Easement Area. Grantor expressly disclaims any representation or warranty that the Easement Area is suitable for any use. The rights herein granted shall be subject to any prior agreements or contracts made or entered into by Grantor and further shall be subject to any subsequent agreements between city, state, or federal wildlife, fish, ecology, energy, or other regulatory agency having jurisdiction over the City of Tacoma's hydroelectric, transmission, water supply, and railway systems.
- J. Term:** The term of this Easement Agreement shall commence on the date of execution and recording and shall run in perpetuity unless terminated pursuant to the terms and conditions set forth herein.
- K. Waste:** Grantee shall not cause nor permit any filling activity to occur in or on the Easement Area, except as approved by Grantor. Grantee shall not deposit refuse, garbage, or other waste matter or use, store, generate, process, transport, handle, release or dispose of any Hazardous Substances, or other pollutants in or on the Easement Area except in accordance with all applicable laws.
- L. Non-Exclusive Rights:** The Easement is non-exclusive, and shall not prohibit Grantor from granting other rights of like or other nature to others, nor shall it prevent Grantor from using any of the Easement Area or affect its right to full supervision and control over all or any part of the Easement Area, none of which is hereby surrendered, in order to install, maintain, and operate the railroad and right-of-way as a necessity or for convenience purposes.
- M. Exclusive Grantor Control and Access in Cases of Emergency:** Grantor shall have the right to assert exclusive temporary control over access and use of the Easement Area as reasonably necessary for purposes of conducting emergency repairs and/or maintenance to the railroad or right-of-way. Grantee hereby expressly acknowledges this right and agrees to hold Grantor harmless against any claims, demands or damages related to reasonable temporary denial of access and use of the Easement Area hereunder.

N. Remedies:

a. Default. In the event Grantee materially breaches any term of this Easement Agreement, Grantor shall send to the Grantee written notice of the breach and a demand to cure. The notice shall contain the nature of the breach and a statement of what is necessary to cure the breach. The Grantee shall have a reasonable opportunity to cure any such breach of at least one hundred eighty (180) days, or such longer time, as mutually agreed upon by the Parties if the Grantee within that time takes diligent and continuous steps to cure the breach. If Grantee fails to cure the breach within such time, or such additional time as may be allowed by Grantor, then Grantor may proceed with any available judicial remedy it may have.

b. Abandonment. If the Easement Area, or any part thereof, shall at any time cease to be used by Grantee for the aforesaid purposes, within 60 days after written notice from Grantor of any such abandonment, then and in any such event, all right, title, interest, benefits and enjoyment Grantee has in and to the Easement Area, for any purpose whatsoever, shall immediately cease and Grantor, its successors and assigns, may, in its or their option, re-enter, retake possession of, and hold the Easement Area without compensation to Grantee 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.

c. Covenants. Notwithstanding anything to the contrary herein, the herein terms and conditions are a covenant running with the land appurtenant to the easement granted herein, and full performance of said terms and conditions is required.

O. Miscellaneous:

a. Notices. Any and all notices, demands or requests required or permitted hereunder shall be in writing and delivered through personal delivery or email transmission (with receipt confirmed via reply by the recipient) or two (2) business days after being deposited in the U. S. Mail, registered or certified, return receipt requested, postage prepaid, or one (1) business day after being deposited with any commercial air courier or express service, addressed as follows:

Grantor: City of Tacoma
c/o Tacoma Public Utilities
Real Property Services
3628 South 35th Street
ABS - 2nd Floor
Tacoma, WA 98409
Attention: Greg Muller, Real Estate Officer
Telephone: 253.502.8256
E-mail: gmuller@cityoftacoma.org

Grantee: Roy Meadows Development Group LLC
1000 Second Avenue, Suite 3200
Seattle, WA 98104
Attention: Camille Minogue
Telephone: 206.829.9947
E-mail: camille@truthandjustice.legal

Grantor and Grantee may modify the above contact information by written notice addressed and delivered to the other.

- b. Further Assurances.** The parties agree to execute such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Easement Agreement.
- c. Exhibits.** All exhibits attached to this Easement Agreement are incorporated in and made a part of this Easement Agreement by reference.
- d. Electronic Signatures.** This Easement Agreement may be executed by use of electronic signatures via DocuSign.
- e. Counterparts.** This Easement Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- f. Severability.** If any clause, sentence, or other portion of the terms, conditions and covenants of this Easement Agreement are held, to any extent, to be invalid or unenforceable, the remainder of this Easement Agreement shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

(Remainder of Page Intentionally Left Blank)

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:

Victoria Woodards, Mayor

Doris Sorum, City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On _____, before me personally appeared Victoria Woodards, to me known to be the Mayor of the City of Tacoma that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of such municipal corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

PLACE NOTARY SEAL IN BOX



Notary Public in and for the
State of Washington

Residing in _____

By:

Kurtis D. Kingsolver, P.E.
Public Works Director/City Engineer – City of Tacoma

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On _____, 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 that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of such municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

PLACE NOTARY SEAL IN BOX



Notary Public in and for the
State of Washington

Residing in _____

GRANTOR (CONT.):

Approved By:

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:

Gary Allen, P.L.S.
Chief Surveyor – City of Tacoma

Approved as to form:

By: _____
Michael W. Smith,
Deputy City Attorney – City of Tacoma

GRANTEE:

Accepted by:

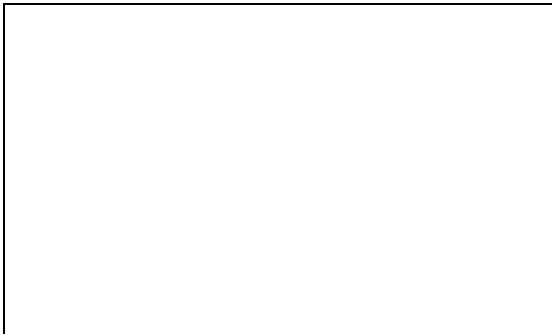
Don Bartlett, Manager
Roy Meadows Development Group LLC

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On _____, before me personally appeared Don Bartlett, to me known to be the Manager of Roy Meadows Development Group LLC that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of such company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

PLACE NOTARY SEAL IN BOX



Notary Public in and for the
State of Washington

Residing in _____

Accepted by:

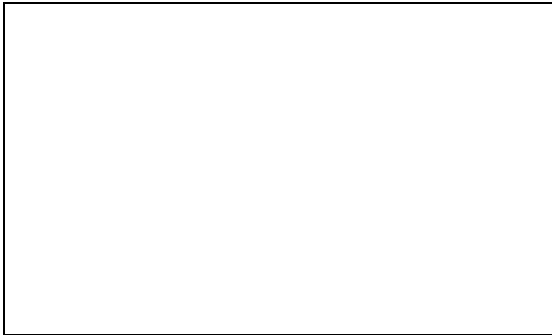
Dan Young, Manager
Roy Meadows Development Group LLC

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On _____, before me personally appeared Dan Young, to me known to be the Manager of Roy Meadows Development Group LLC that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of such company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

PLACE NOTARY SEAL IN BOX



Notary Public in and for the
State of Washington

Residing in _____

**City of Tacoma - Department of Public Works
Tacoma Rail Mountain Division Easement No. 57**

**Northwest Quarter (NW¼) of Section 3, Township 17 North, Range 2 East, W.M.,
in the City of Roy, Pierce County, Washington**

**EXHIBIT 'A.1'
EASEMENT DESCRIPTION**

A STRIP OF LAND 50 FEET IN WIDTH BEING A PORTION OF THE FRANCIS GRAVILLE DONATION LAND CLAIM NO. 38 WHICH IS PARTIALLY WITHIN IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 17 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, TOWN OF ROY, PIERCE COUNTY, LYING 25 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE, WHICH INTERSECTS WITH THE CENTERLINE OF THE RIGHT-OF-WAY OF THE CHEHALIS WESTERN RAILROAD AT RIGHT ANGLES AT APPROXIMATELY ENGINEER'S STATION 634+53.56:

COMMENCING AT THE NORTHEAST CORNER OF SAID GRAVILLE DONATION LAND CLAIM;
THENCE NORTH 64°34'32" WEST ALONG THE NORTH LINE OF SAID LAND CLAIM, 2897.09 FEET TO THE EASTERN MARGIN OF SAID CHEHALIS WESTERN RAILROAD RIGHT-OF-WAY AND A POINT ON A NON-TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 1859.81 FEET, FROM WHICH THE RADIUS POINT BEARS SOUTH 70°03'24" EAST;
THENCE ALONG SAID EASTERLY MARGIN AND THE ARC OF SAID CURVE SOUTHERLY 385.33 FEET THROUGH A CENTRAL ANGLE OF 11°52'15" TO ENGINEER'S STATION 633+78.21;
THENCE SOUTH 08°04'20" WEST ALONG SAID EASTERLY MARGIN 75.36 FEET TO THE INTERSECTION OF SAID EASTERLY MARGIN AND THE CENTERLINE OF A 50 FOOT PRIVATE INGRESS, EGRESS AND UTILITIES EASEMENT GRANTED UNDER AFN 200608040169, RECORDS OF PIERCE COUNTY, WASHINGTON, SAID POINT ALSO BEARING NORTH 08°04'20" EAST, 932.50 FEET FROM THE SOUTHWEST CORNER OF LOT 3, TOWN OF ROY SHORT PLAT RECORDED OCTOBER 11, 2006, UNDER AUDITOR'S FILE NO. 200610115003, RECORDS OF THE PIERCE COUNTY AUDITOR, SAID POINT ALSO BEING THE **POINT OF BEGINNING**;
THENCE NORTH 81°55'40" WEST AT RIGHT ANGLES TO SAID MARGIN, 100.00 FEET TO THE WESTERLY MARGIN OF AFORESAID RAILROAD RIGHT-OF-WAY AND THE TERMINUS OF THIS DESCRIBED CENTERLINE.



TIMOTHY J. MCDANIEL, P.L.S.
WASHINGTON STATE REGISTRATION NO. 45792

2601 South 35th St. #200 | Tacoma, WA 98409 | apexengineering.net | (253) 473-4494



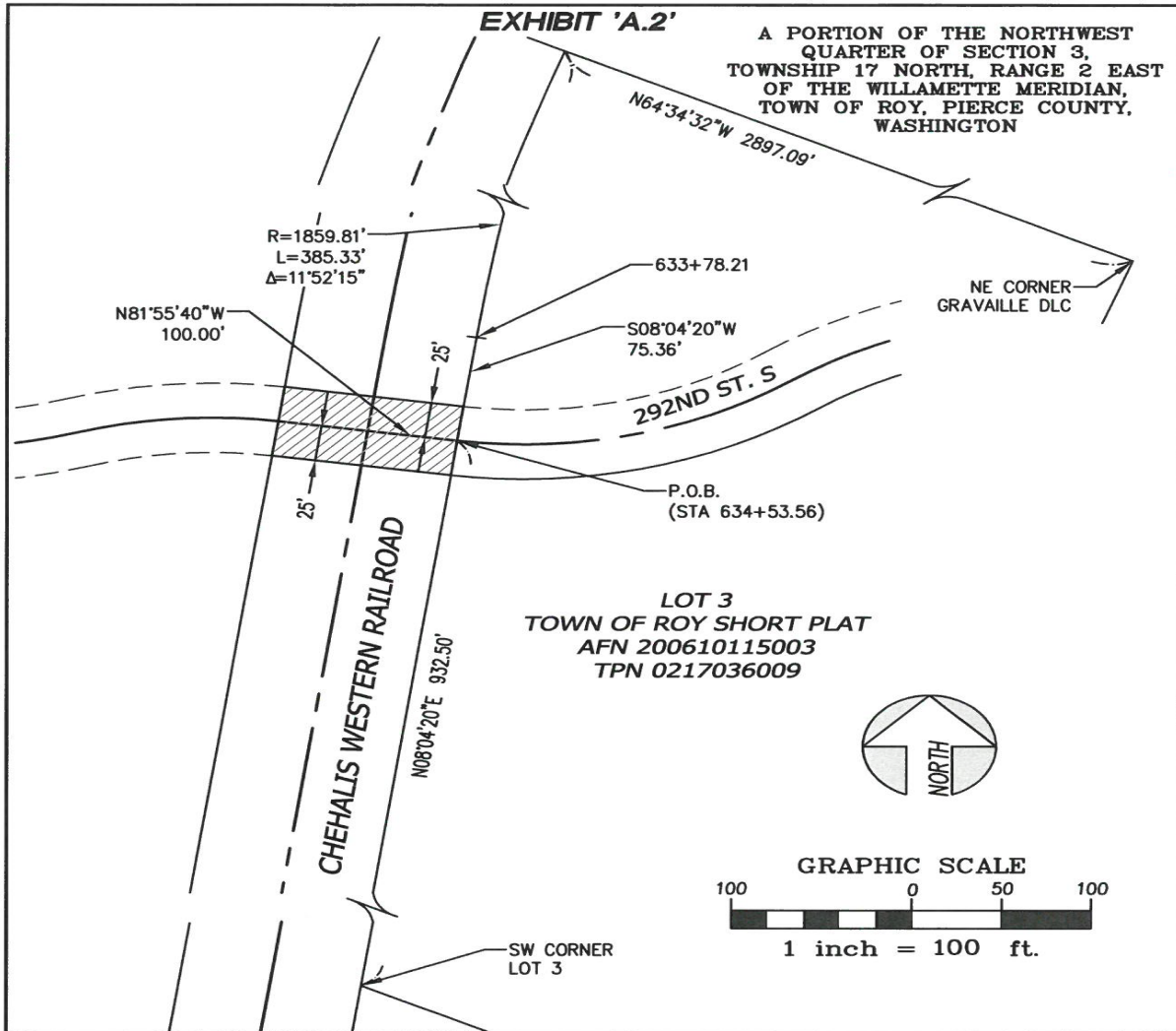
REAL PROPERTY SERVICES

E57

EXHIBIT A.1

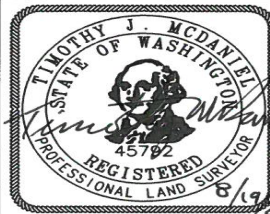
**City of Tacoma - Department of Public Works
Tacoma Rail Mountain Division Easement No. 57**

**Northwest Quarter (NW¼) of Section 3, Township 17 North, Range 2 East, W.M.,
in the City of Roy, Pierce County, Washington**



**PRIVATE CROSSING
EASEMENT NO. 57
ROY MEADOWS**

APEX JOB NO: 34816	DATE: 08/18/2020
DRAWN BY: TJM	CHECKED BY: TJM
DWG. NO: 34816-EXH.DWG	SCALE: 1"=100'



Apex
Engineering PLLC

2601 South 35th, Suite 200
Tacoma, Washington 98409-7479
(253) 473-4494 FAX: (253) 473-0599
© APEX ENGINEERING PLLC 2018

REAL PROPERTY SERVICES ILLUSTRATION

E57

Not to scale – illustrative purposes only

EXHIBIT A.2

**City of Tacoma - Department of Public Works
Tacoma Rail Mountain Division Easement No. 57**

**Northwest Quarter (NW¼) of Section 3, Township 17 North, Range 2 East, W.M.,
in the City of Roy, Pierce County, Washington**

**EXHIBIT 'B.1'
BENEFITTED PROPERTY**

LOT 3, TOWN OF ROY SHORT PLAT RECORDED OCTOBER 11, 2006, UNDER AUDITOR'S FILE
NO. 200610115003, RECORDS OF THE PIERCE COUNTY AUDITOR.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.



TIMOTHY J. MCDANIEL, P.L.S.
WASHINGTON STATE REGISTRATION NO. 45792

REAL PROPERTY SERVICES

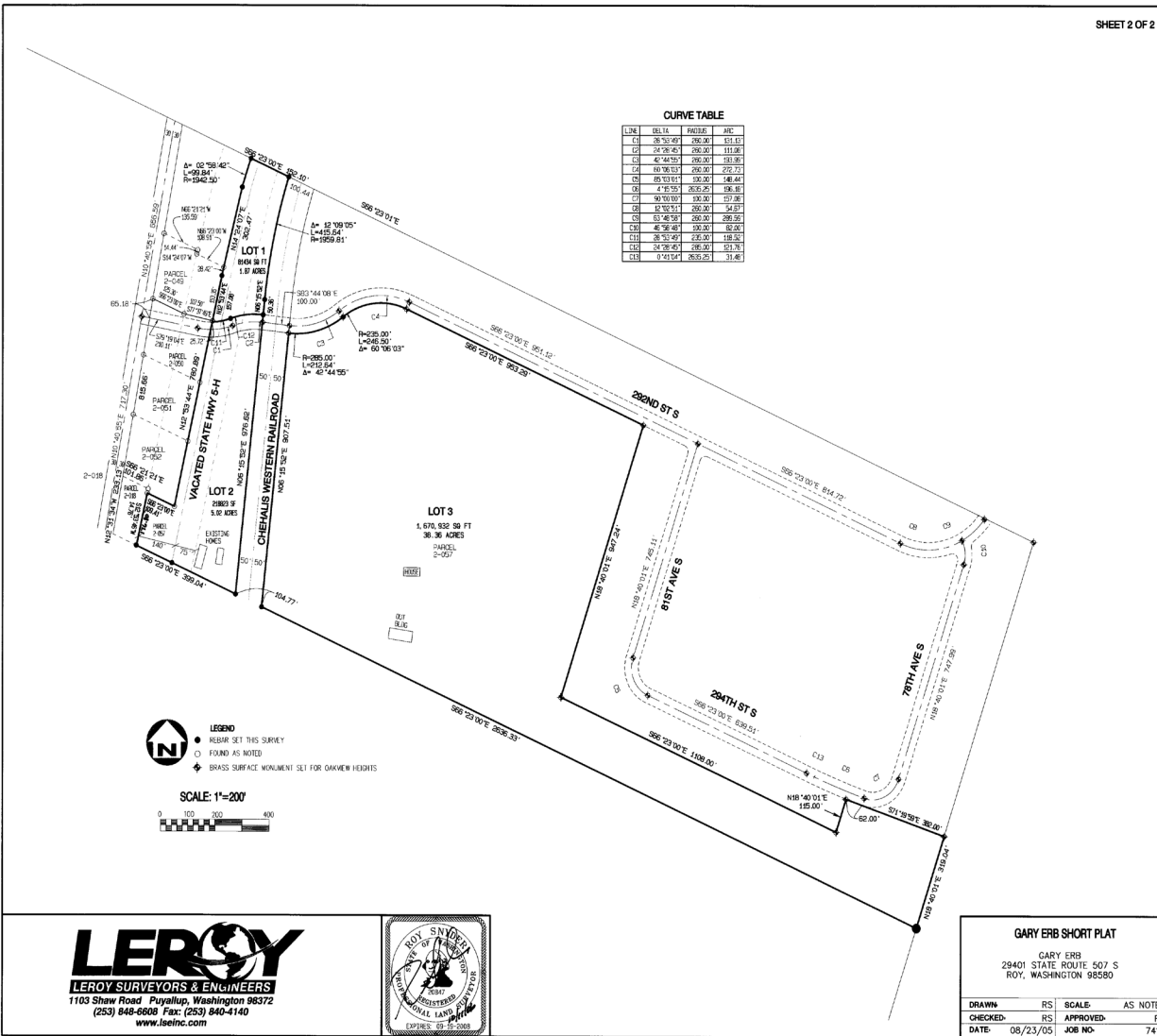
E57

EXHIBIT B.1

City of Tacoma - Department of Public Works Tacoma Rail Mountain Division Easement No. 57

Northwest Quarter (NW¼) of Section 3, Township 17 North, Range 2 East, W.M.,
in the City of Roy, Pierce County, Washington

SHEET 2 OF 2



E57

Not to scale – illustrative purposes only

EXHIBIT B.2