

Pierce County Planning and Public Works
2702 S 42nd St., Suite 109
Tacoma, WA 98409-7315
Attention: Linda Olson, Right-of-Way Agent

PERPETUAL RIGHT OF WAY EASEMENT

Grantor: CITY OF TACOMA

Grantee: Pierce County

Abbreviated Legal: Portion of the Southwest Quarter of Section 31, Township 19 North, Range 4 East and Portion of Government Lot 3 of Section 8, Township 18 North, Range 4 East

Tax Parcel No.: None Assigned – Operating Railroad Right-of-Way

P2021-151 / E58

THE GRANTOR, CITY OF TACOMA, a municipal corporation and political subdivision of the State of Washington, its successors and/or assigns, for good and valuable consideration and in further consideration of the general public welfare and of the peculiar and special benefits to accrue to Grantor therefrom, does by these presents grant and convey to Pierce County (“County” and “Grantee”) a municipal corporation and political subdivision of the State of Washington, (collectively the “Parties” or individually “Party”), for the use of the public as a county road, a perpetual, non-exclusive easement (the “Easement”), allowing County, its agents and assigns, ingress and egress over, under, and across the following described property situated in Pierce County, Washington, together with any after -acquired title therein, to wit:

SEE ATTACHED EXHIBIT “A” & “B” & “C”

The real property described above is hereinafter referred to as the “Easement Area”. The lands herein described contain an area of 18,503 square feet.

For the purpose of maintaining, operating, repairing a grade-separated (below-grade) crossing, consisting of roadway, slopes, sidewalks, drainage facilities, utilities, and all other associated structures for use as a county road, together with the right of County, its agents and assigns, to enter upon said premises at any time with all necessary staff, material, and equipment for the purposes of maintaining, operating, repairing the county road, subject to the terms and conditions outlined herein.

Terms and Conditions of the Easement

I. Railroad Activities. 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 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.

Grantee accepts and acknowledges that Easement Area 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 Easement Area, and any and all other

operations necessary or related to railroad operations or purposes. Grantee assumes all risks of using the Easement Area and the grade-separated (below-grade) crossing consisting of, roadway, slopes, sidewalks, drainage facilities, utilities, and all other associated structure and right-of-way uses granted by the Easement consistent with state and federal laws. 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.

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. To minimize potential conflicts between Grantee's use of the grade-separated (below-grade) crossing consisting of, roadway, slopes, sidewalks, drainage facilities, utilities, and all other associated structures and right-of-way uses and Grantor's operation of its railroad, Grantee agrees, as a covenant running with the easement rights hereby conveyed, that Grantee, its successors 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 makes no representation as to the present or future condition of the Easement Area or the character of the traffic on its railroad tracks and railroad right-of-way. Grantee, its successors and assigns, assume all risk of damage to property or injury to Grantee, its successors 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, including Grantor's right to require the Grantee to close the roadway to allow the Grantor to inspect or maintain the railroad and/or its associated appurtenances

Except to the extent that this Easement otherwise expressly provides, and subject to the rights of Grantee to maintain, operate, repair a grade-separated (below-grade) crossing, consisting of roadway, slopes, sidewalks, drainage facilities, utilities, and all other associated structures for use as a county road, as granted herein, 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, replace, operate, and to change, modify, add, or relocate railway tracks, signals, communications systems, pipelines, electric lines, bridge components, 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, without liability to the Grantee or to any other party for compensation or damages.

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. Grantor is not obligated to repair or unblock the railroad right-of-way or any part of the Easement Area if Grantor determines the route is no longer safe or viable.

II. 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.

III. Nonliability. Grantor shall not be liable to County or to any third parties entering upon the Easement Area related to or in furtherance of any act or thing done in connection with the use of the Easement Area. County, on behalf of itself and its employees, personnel, contractors, agents, invitees, or licensees expressly assumes all risks associated with the use of the Easement Area.

IV. Indemnification. County shall indemnify, defend, and hold harmless the Grantor, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising directly or indirectly out of any act or omission of County, its agents, contractors, licensees, invitees, guests or the general public and involving the subject matter of this Easement, and the construction, operation, maintenance, repair, and replacement of the improvements to the Easement Area. The foregoing shall 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 and its officers, employees, agents or volunteers. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the Grantor.

Grantee expressly releases 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 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.

V. Environmental Liability. By accepting this grant of Easement, County assumes no liability for existing site conditions including any Hazardous Substances that may be present on, in, or under the Easement Area prior to the execution of this Easement; except that County shall pay for the removal of and disposal of all soil, whether or not the soil includes Hazardous Substances, if County removes any soil. County assumes sole liability and shall be responsible for any remedial action costs incurred due to the release, or exacerbation of the release, of Hazardous Substances by County, its officers, agents, employees, volunteers, subcontractors, invitees, licensees, or guests. A "Hazardous Substance" as used in this Easement shall mean the presence of any substance or group of substances on or in the soil of the Easement Area which, by its presence, triggers a remedial investigation or action, or which requires any excavated materials to be disposed of as anything other than clean fill. The meaning of "Hazardous Substance" shall also include without limitation, any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup. The terms of this Hazardous Substances provision have been mutually negotiated.

VI. 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. 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, including

Grantor's right to require the Grantee to close the roadway to allow the Grantor to inspect or maintain the railroad and/or its associated appurtenances. Grantor shall give notice at least 10 days prior to road closure for inspection and or maintenance. This notice requirement does not apply to immediate safety hazards or emergencies.

VII. 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 grade separated crossing and appropriate signage 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.

VIII. Right of Entry Agreement/Maintenance.

i. This Easement does not grant permission for the County and/or its contractor to maintain, or repair any portion of the grade-separated (below-grade) crossing, consisting of roadways, slopes, sidewalks, drainage facilities, utilities, and all other associated structure and right-of-way uses located above the bottom of the bridge girder. To obtain permission to maintain or repair any portion of the grade-separated (below-grade) crossing, consisting of roadway, slopes, sidewalks, drainage facilities, utilities, and all other associated structure and right-of-way uses located above the bottom of the bridge girder, County 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 review and approval by Grantor.

Grantee and/or its contractor may not commence maintenance or repair the grade-separated (below-grade) crossing, consisting of roadway, slopes, sidewalks, drainage facilities, utilities, and all other associated structure and right-of-way uses located above the bottom of the bridge girder, until said Right of Entry Agreement is fully executed by the parties thereto and all required 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 maintaining or repairing any existing or future authorized improvements occurring on or impacting the Easement Area.

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, mitigation 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 (ii) 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.

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. The public roadway must meet Pierce County design standards.

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.

ii. Grantee shall, at its sole cost and expense, construct, maintain, alter, repair, replace said grade-separated (below-grade) crossing, consisting of roadway, slopes, sidewalks, drainage facilities, utilities, and all other associated structures for right-of-way uses. The Grantor agrees to maintain railroad related critical infrastructure, limited to the railroad bridge, piers and girders, with the exception of graffiti removal from the piers, which will be the responsibility of the Grantee. 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 cost and expense, perform vegetation abatement, below the bottom of the bridge girder, within the Easement Area as determined necessary by the Grantor.

IX. Taking. If the Easement Area, or any portion thereof, should be taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (collectively, "Taking"), this Easement shall terminate when the physical taking of the Easement Area occurs and Grantor shall have no liability to Grantee for its loss of use of the Easement Area. If any portion of the Easement Area is subject to a Taking, Grantee may terminate occupation and use of such portion of the Easement Area, but continue use and occupation as to the remaining Easement Area but without abatement of any obligations due Grantor herein. Grantor shall receive the entire award for any Taking of the Easement Area or portion thereof, with no compensation due Grantee.

X. Binding on Successors. The terms and conditions of this Easement shall constitute real covenants that run with the land and are binding upon heirs, successors and assigns.

XI. Assignment. County shall not assign, subcontract, delegate, or transfer any obligation, interest, claim or any right of franchise to or under this Easement without the prior written consent of the Grantor. Further, depending upon the circumstance and at Grantor's sole discretion, prior written consent may require the Grantee's franchisee to submit to Grantor an application for a Permit and/or Right of Entry Agreement, including any required fees.

XII. Effective Date. This Easement shall become effective on the date it is recorded by the Pierce County Auditor's Office.

XIII. No Third Party Beneficiaries. This Easement shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a property right or a cause of action in favor of a third party against either party hereto.

XIV. Waiver. A waiver or failure by either party to enforce any provision of this Easement shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Easement.

XV. Severability. If any term, condition, or provision of this Easement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable.

XVI. All Writings Contained Herein. This Easement, together with all exhibits, constitutes the complete and final agreement of the parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made on the subject matter, and may only be modified by a writing signed by both Parties.

XVII. Applicable Laws; Reasonable Use. In exercising their rights under this Easement, each Party shall comply with all federal, state, county and municipal statutes, laws, codes, rules, regulations, ordinances, resolutions, permits and/or other requirements of any kind, type or nature whatsoever applicable to their respective uses of the Easement Area. Any use, entrance upon or movement over, under, upon, along and/or across the Easement Area by any Party shall be conducted such that it does not damage the Easement Area or any improvements thereon, or unreasonably interfere with the use thereof any other Party. Grantor and County shall maintain the Easement Area in a clean, neat and orderly manner and will not create or permit any nuisance or waste, or allow the Easement Area to be used for any immoral or unlawful purpose.

XVIII. 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.

XIX. 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.

XX. 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.

XXI. 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.

XXII. Disclaimers. County acknowledges and agrees Grantor has made no representation as to the present or future condition of the Easement Area and Grantor expressly disclaims any representation or warranties regarding the Easement Area and its suitability for any of County's intended uses.

(Remainder of Page Intentionally Left Blank)

Authorized by City Council Resolution No. _____, adopted _____.

Executed this ___ day of _____, 20__.

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 _____

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

County:

Accepted by:

Approved as to legal form only:

Melissa McFadden 12/22/2022 | 8:25 PST
Melissa McFadden, P.E. Date
County Engineer

John Salmon 12/22/2022 | 7:29 PST
Deputy Prosecuting Attorney Date

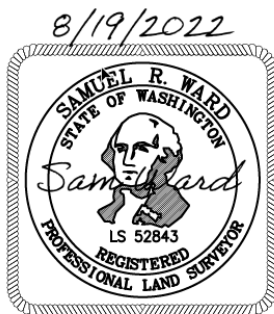
EXHIBIT A

EASEMENT AREA LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M., AND GOVERNMENT LOT 3 OF SECTION 6, TOWNSHIP 18 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE QUARTER CORNER COMMON TO SAID SECTIONS 6 AND 31; THENCE N 89°24'34" W ALONG THE SOUTH LINE OF SAID SECTION 31, 807.15 FEET, TO THE EASTERN MARGIN OF THE RAILROAD RIGHT OF WAY, THE TRUE POINT OF BEGINNING, AND THE BEGINNING OF A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS N 68°38'56" E, 5679.65 FEET; THENCE SOUTHERLY ALONG SAID NON-TANGENT CURVE AND SAID EASTERN MARGIN, THROUGH A CENTRAL ANGLE OF 0°26'32", FOR AN ARC LENGTH OF 43.83 FEET; THENCE S 68°16'02" W, 92.17 FEET TO THE BEGINNING OF A TANGENT CURVE HAVING A RADIUS OF 692.50 FEET; THENCE ALONG SAID TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 0°38'54", FOR AN ARC LENGTH OF 7.84 FEET TO THE WESTERN MARGIN OF SAID RAILROAD RIGHT OF WAY AND THE BEGINNING OF A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS N 68°12'30" E, 5779.64 FEET; THENCE NORTHERLY ALONG SAID NON-TANGENT CURVE AND SAID WESTERN MARGIN, THROUGH A CENTRAL ANGLE OF 1°50'03", FOR AN ARC LENGTH OF 185.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS N 21°09'40" W, 507.50 FEET; THENCE EASTERLY ALONG SAID NON-TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 0°34'18", FOR AN ARC LENGTH OF 5.06 FEET; THENCE N 68°16'02" E, 94.98 FEET TO SAID EASTERN MARGIN AND THE BEGINNING OF A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS N 70°04'24" E, 5679.65 FEET; THENCE SOUTHERLY ALONG SAID NON-TANGENT CURVE AND SAID EASTERN MARGIN, THROUGH A CENTRAL ANGLE OF 1°25'28", FOR AN ARC LENGTH OF 141.20 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

SAID EASEMENT AREA CONTAINS 18,503 SQUARE FEET, MORE OR LESS.



PROJECT NO: 1747.031
PREPARED BY SRW
DATE: 7/7/2022

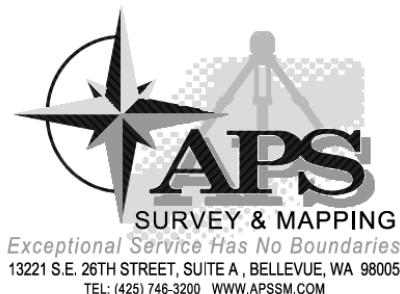
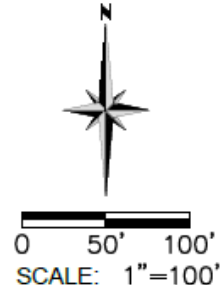
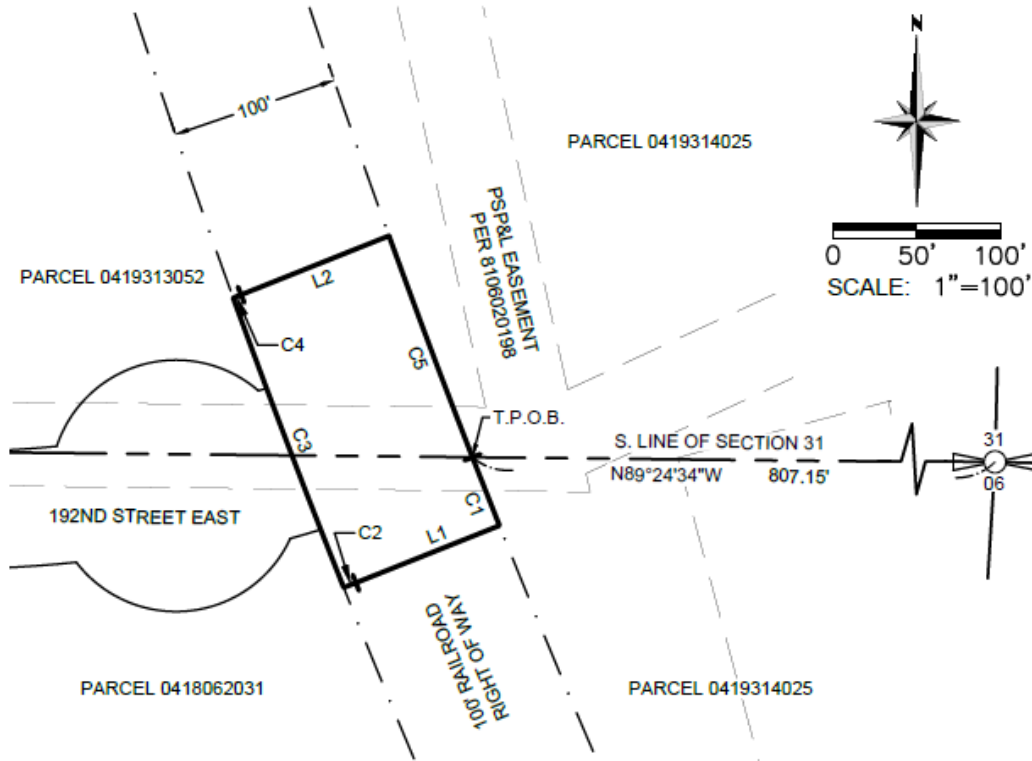


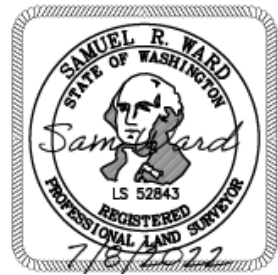
EXHIBIT B

EASEMENT AREA EXHIBIT MAP



CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	43.83'	5679.65'	0°26'32"
C2	7.84'	692.50'	0°38'54"
C3	185.01'	5779.64'	1°50'03"
C4	5.06'	507.50'	0°34'18"
C5	141.20'	5679.65'	1°25'28"

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	92.17'	S68°16'02"W
L2	94.98'	N68°16'02"E



PROJECT NO: 1747.031
 PREPARED BY SRW
 DATE: 7/17/2022

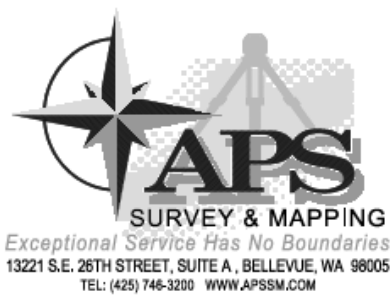
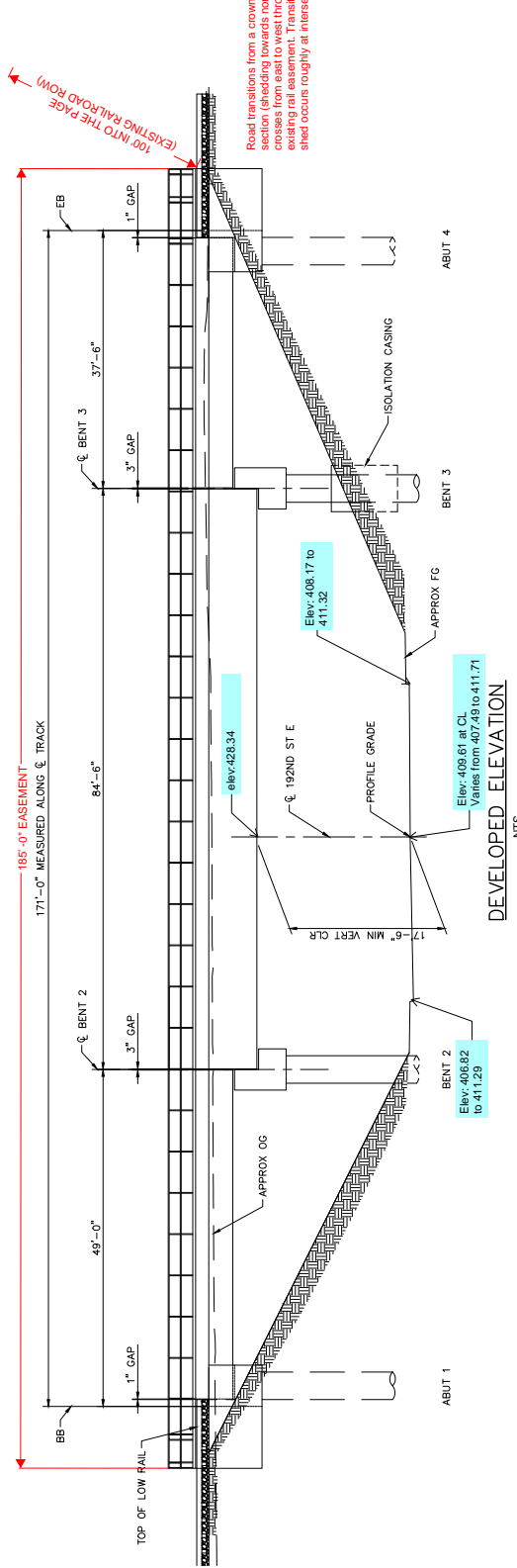
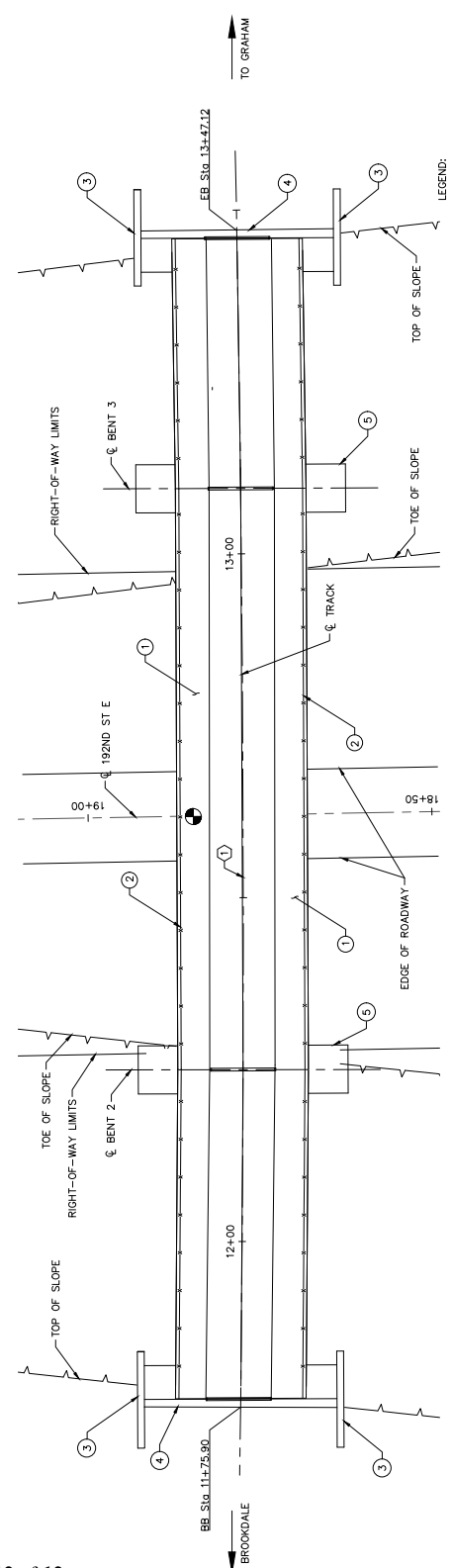


EXHIBIT C CROSS SECTION VI W



Road transitions from a crown section to a shed section at the intersection of the 100' wide existing rail easement. Transition from crown to shed occurs roughly at intersection of bridge.



CURVE DATA

①	ξ TRACK
R	= 5250.00'
A	= 2552.56°
T	= 1321.27'
L	= 2597.45'

LEGEND:

- ① CONCRETE WALK
- ② HANDRAILING
- ③ PRECAST WINGWALL
- ④ PRECAST ABUTMENT CAP
- ⑤ PRECAST BENT CAP
- INDICATES POINT OF MINIMUM VERTICAL CLEARANCE

