

City of Seattle
Department of Transportation
700 Fifth Avenue – Suite 3900
P. O. Box 34996
Seattle, WA 98124-4996
Attn: Larry Huggins

Document Type: Temporary Construction Easement

Reference Number of Related Document: N/A

Grantor(s): Port of Seattle

Grantee(s): City of Seattle

Abbreviated Legal Description: Ptn of Blk 148, 149, 153, and 159, Seattle Tidelands, City of Seattle, King County, Washington

Assessor's Tax Parcel ID Nos. 766620-2055

TEMPORARY CONSTRUCTION EASEMENT

Project: West Thomas Street Overpass

The Grantor, the **PORT OF SEATTLE** (hereafter "Grantor"), a municipal corporation organized under the laws of the State of Washington, hereby conveys and grants unto the **CITY OF SEATTLE** (hereafter "City"), a municipal corporation of the State of Washington, and its assigns, a Temporary Construction Easement on **60,117** square feet of real property, more or less, located in King County, Washington depicted on Exhibit A attached hereto and made a part hereof (hereafter, the "Property").

1. This Temporary Construction Easement shall be for the purpose of the right and privilege of exclusive access to a staging area and access to utility infrastructure on the Property, for use during construction, and non-exclusive access for ingress and egress and for all other uses and activities related thereto, to accomplish the West Thomas Street Overpass Project (hereafter, the "Project").

2. The City shall provide Grantor with a minimum of 30 days prior written notice identifying the commencement date of this Temporary Construction Easement ("Commencement Date") and shall, at that time, provide Grantor with a copy of the Project's construction schedule. The term of this Temporary Construction Easement shall commence on the Commencement date, but no sooner than March 1, 2011, and shall automatically terminate without further action by Grantor or the City on the earlier to occur of: (a) August 31, 2012, or (b) a date otherwise agreed to in writing by Grantor and the City ("Termination Date"). In the event the City does not complete the work under the Temporary Construction Easement as agreed to above, the City agrees to pay the Port a delay fee of Two Hundred Dollars (\$200.00) per day for each day the City's work under the Temporary Construction Easement

is delayed beyond the Termination Date. This Temporary Construction Easement shall be binding on the parties, their successors and assigns.

3. This Temporary Construction Easement shall include only the rights described above. The Grantor, its successors and assigns shall have the right to use the Property in any way and for any purpose not inconsistent with the rights granted by this Temporary Construction Easement.

4. The City will accomplish the activities permitted by this Temporary Construction Easement in a manner in which improvements -existing in the Property will not be disturbed or destroyed. However, in the event that improvements are disturbed or destroyed, the City shall restore the existing improvements to a condition reasonably equivalent to their condition immediately before the Commencement Date of this Temporary Construction Easement. In the event the City damages the irrigation system currently on the Property, the City agrees that the Port shall repair/replace said irrigation system and invoice the City for all costs incurred, including cost of labor, supplies and equipment. The City agrees to reimburse the City for all such costs within fifteen (15) days of receiving the Port's invoice. Grantor shall own and have the obligation to maintain all improvements on Grantor's Property upon termination of this Temporary Construction Easement.

5. Indemnification:

A. Grantor, its Commissioners, officers, employees and agents, shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by the City or by others, including but not limited to all persons directly or indirectly employed by the City, or any agents, contractors, subcontractors, licensees, or invitees of the City, as a result of any condition (including existing or future defects in the Property) or occurrence whatsoever related in any way to the City's use or occupancy of the Property and of areas adjacent thereto. The City agrees to defend and to hold and save Grantor harmless from all liability or expenses (including attorneys' fees, costs, and all expenses of litigation) in connection with any such items of actual or alleged injury or damage, except when such injury or damage is caused by the sole negligence of Grantor. *Provided* that to the extent this Temporary Construction Easement is construed to be subject to RCW 4.24.115, and where the injury or damage arises from the concurrent negligence of Grantor and the City, the City's indemnity will only extend to its negligence.

B. In any and all claims against Grantor by any employee of the City, its agents, anyone directly or indirectly employed by either of them, or anyone for whose acts any of them may be liable, the indemnification obligation of subparagraph A above shall not be limited in any way by any limitation on the amount or type of damages, compensation benefits payable by or for the City, or other person under applicable workers' or workmen's compensation, benefit, or

disability laws (including, but not limited to the Industrial insurance laws, Title 51 of the Revised Code of Washington), it being clearly agreed and understood by the parties hereto that the City expressly waives any immunity the City might have had under such laws. By executing this Temporary Construction Easement, the City acknowledges that the foregoing waiver has been mutually negotiated by the parties.

C. The City shall pay all attorneys' fees and expenses incurred by Grantor in establishing and enforcing Grantor's rights under this paragraph 5, whether or not suit was instituted.

6. Grantee shall, at its sole cost and expense, install signage on the Property warning the public of Park area closures and detours as a result of the City's use of the Property under the Temporary Construction Easement. Grantee may construct and maintain temporary fences in those locations on the Property approved by Grantor.

7. Grantee agrees, upon receiving reasonable notice from Grantor, to reduce construction noise and other interference with Grantor's special events on the Property in commemoration of Grantor's 100th anniversary.

THE PORT OF SEATTLE
a Washington municipal corporation

By: _____

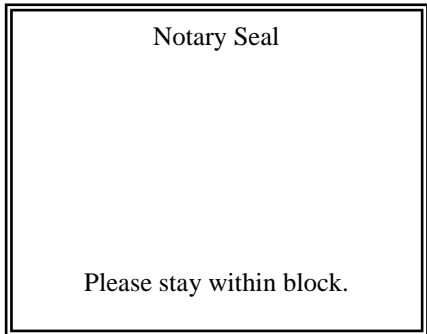
Name: Tay Yoshitani
Its: CEO

Dated: _____, 2011

STATE OF WASHINGTON)
 : §
County of King)

On this ____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared TAY YOSHITANI, to me known to be the CEO of the Port of Seattle, a Washington municipal corporation, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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



Notary (print name) _____
Notary Public in and for the State of Washington,
residing at _____
My Appointment expires _____

Temporary Construction Easement

EXHIBIT A Tax Parcel Number 766620-2055



Reviewed:




SCALE: 1"=150'

Initials _____

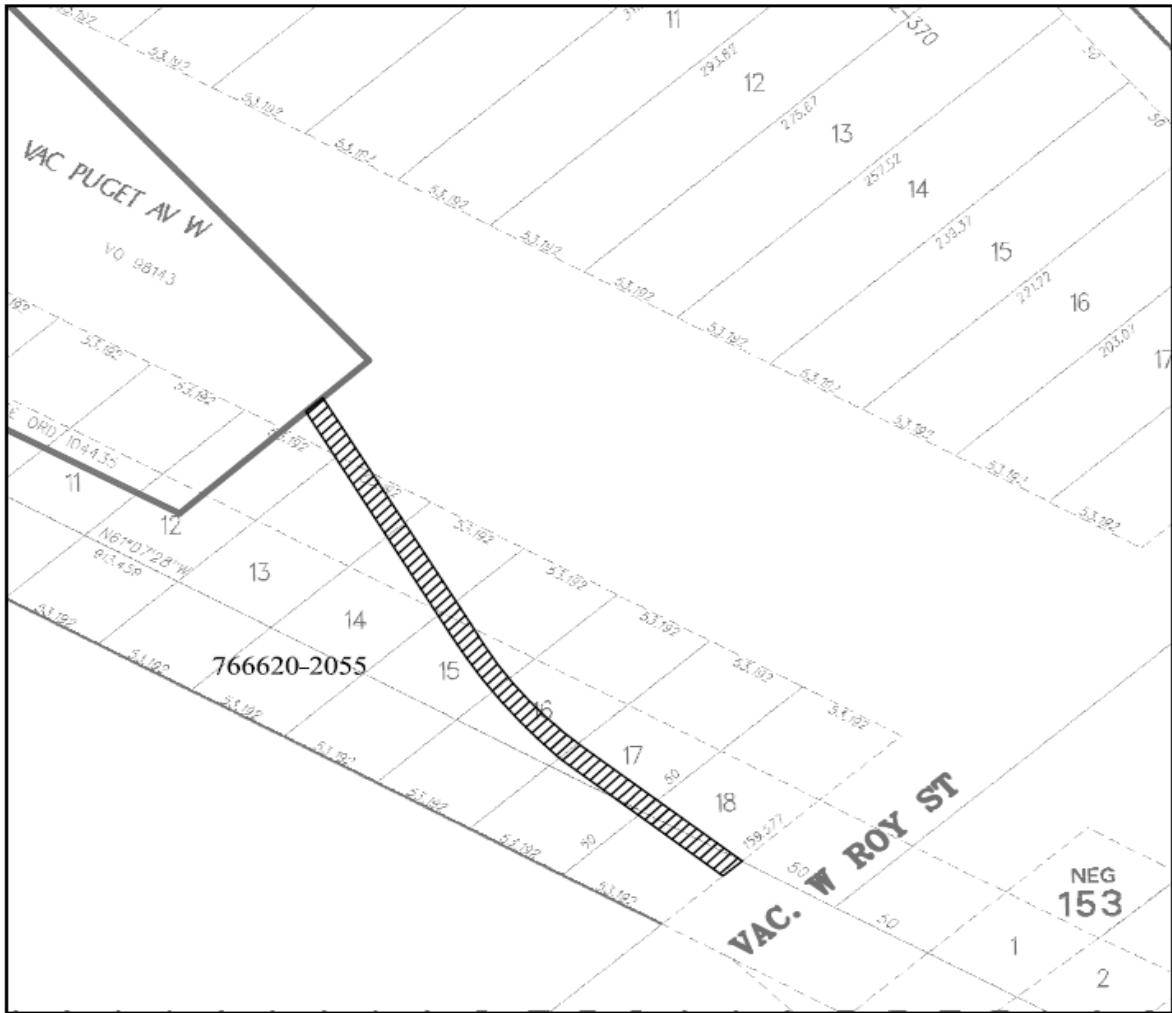
Date _____

LEGEND:

 Temporary Construction Easement

Temporary Construction Easement

EXHIBIT A Tax Parcel Number 766620-2055



Reviewed:



SCALE: 1"=100'

Initials _____

Date _____

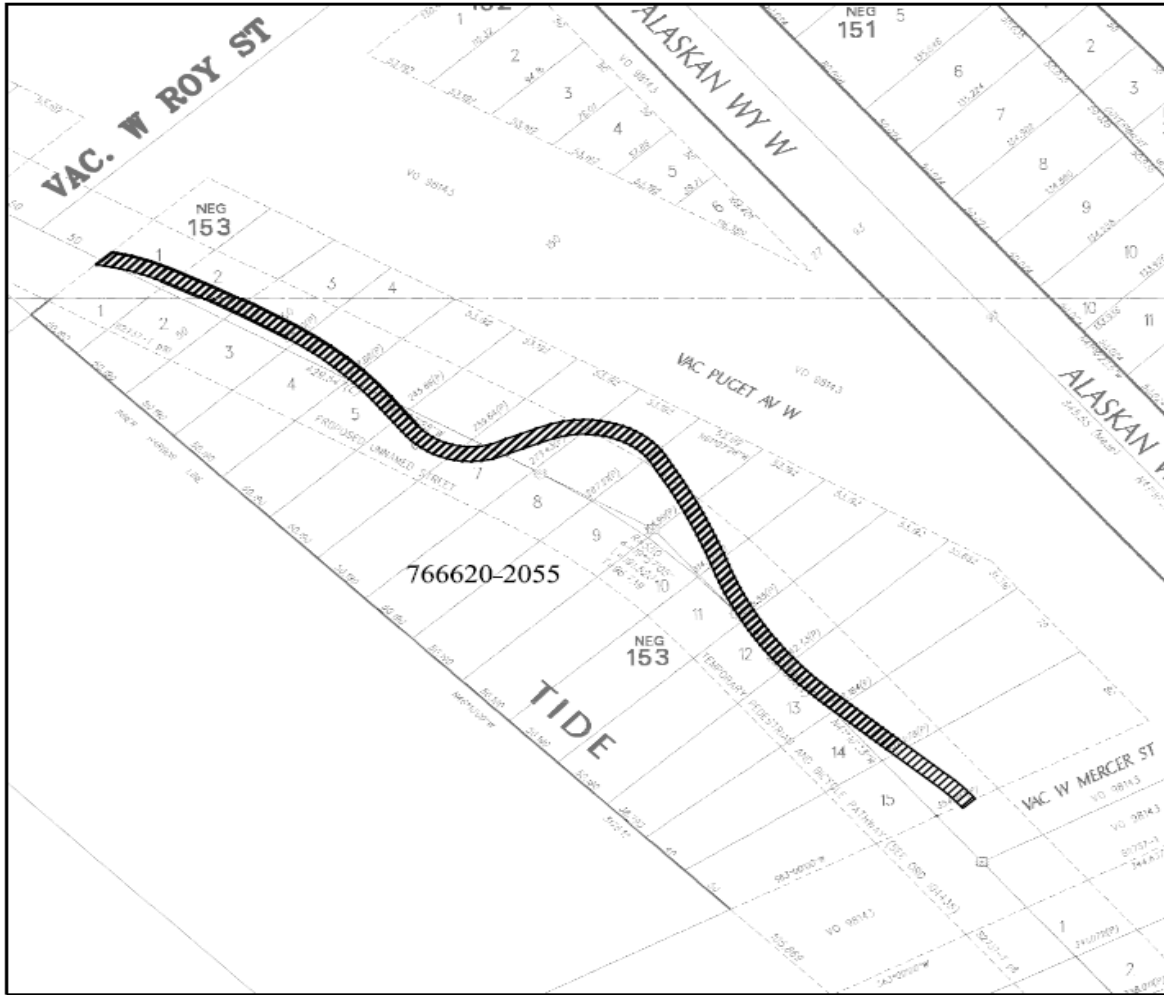
LEGEND:



Temporary Construction Easement

Temporary Construction Easement

EXHIBIT A
Tax Parcel Number 766620-2055



Reviewed:




SCALE: 1"=150'

Initials

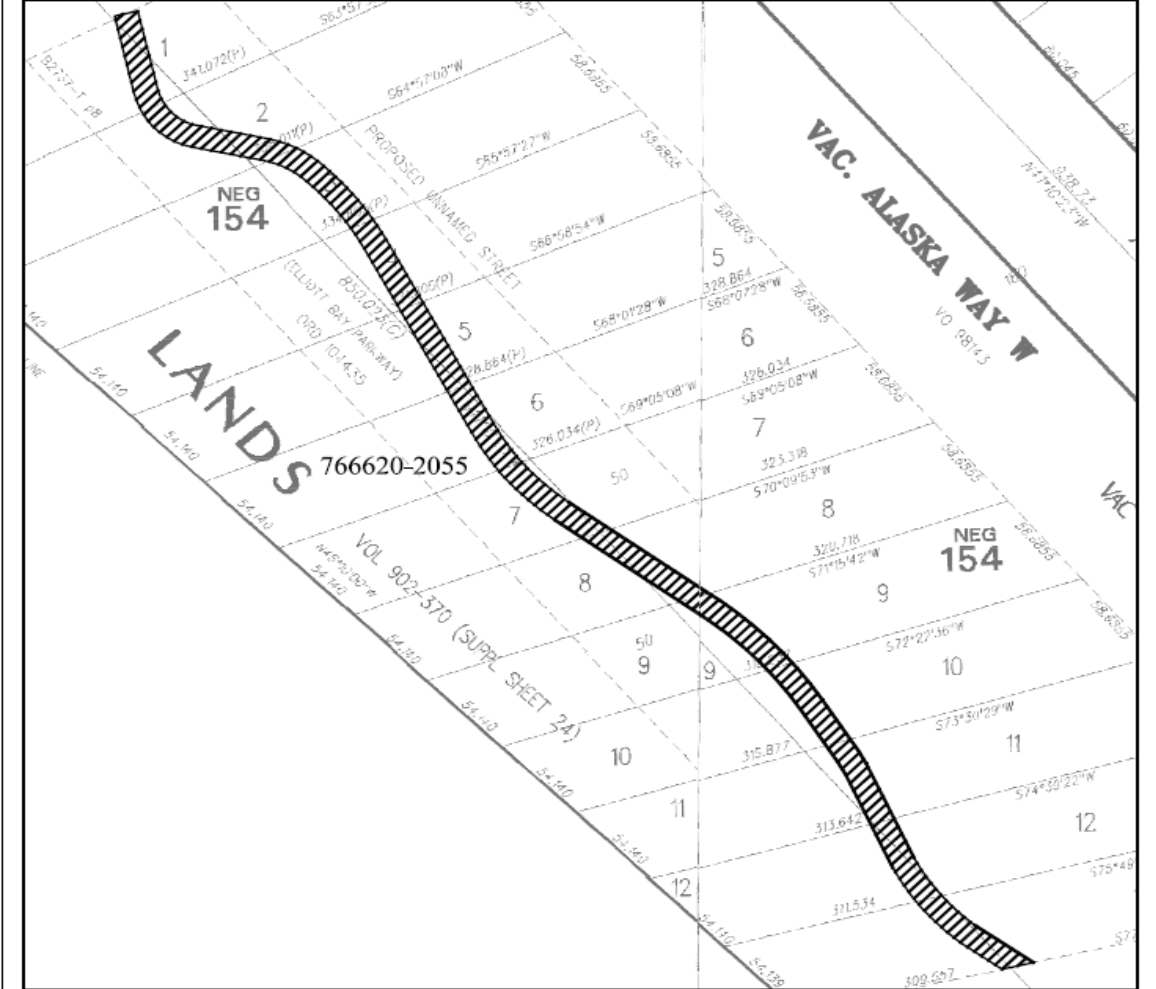
Date

LEGEND:

 Temporary Construction Easement

Temporary Construction Easement

EXHIBIT A
Tax Parcel Number 766620-2055



Reviewed:




SCALE: 1"=100'

Initials _____

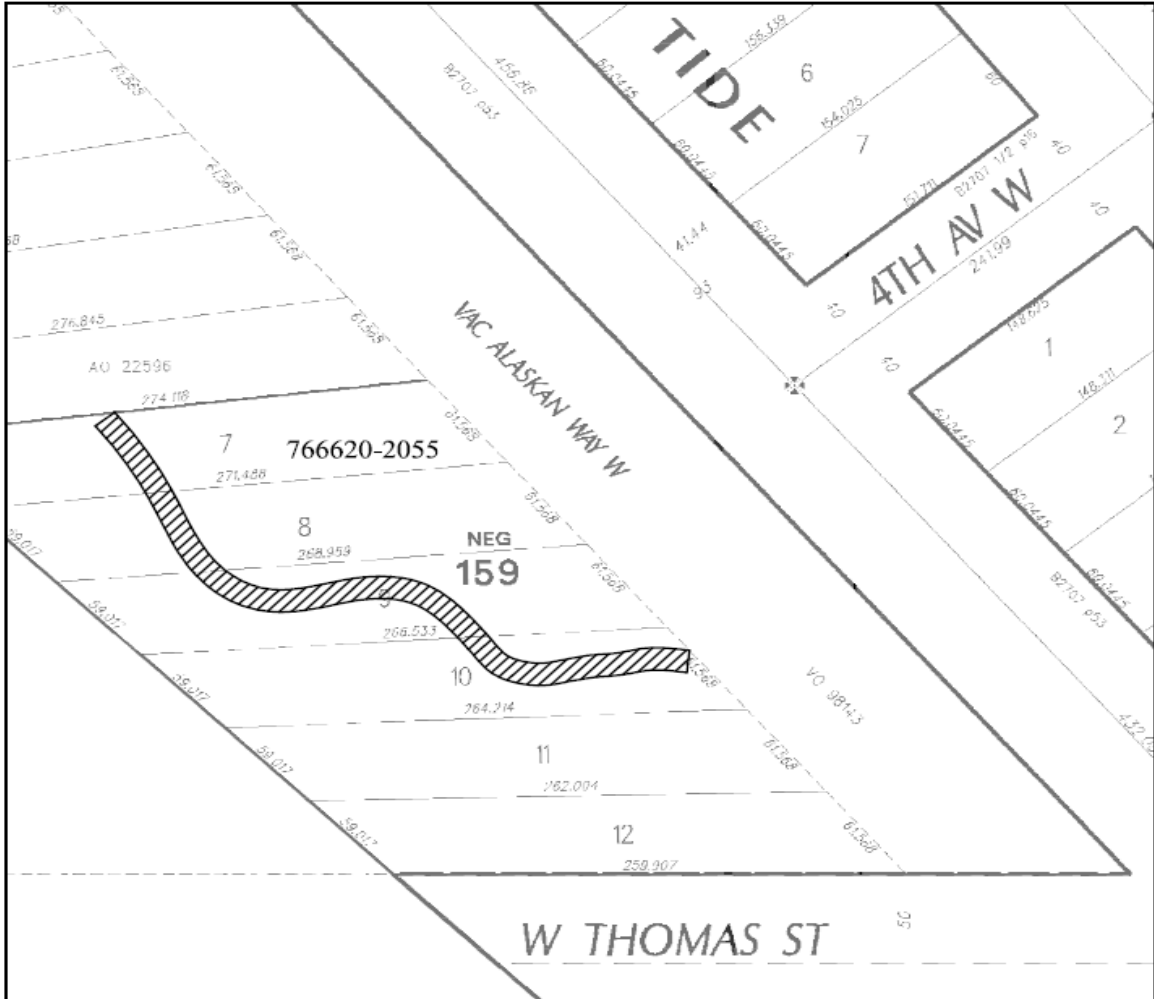
Date _____

LEGEND:

 Temporary Construction Easement

Temporary Construction Easement

EXHIBIT A
Tax Parcel Number 766620-2055



Reviewed:



SCALE: 1"=100'

Initials _____

Date _____

LEGEND:



Temporary Construction Easement