Ordinance No. 123394

Council Bill No. 116925

AN ORDINANCE relating to the Mountains to Sound Greenway Trail; authorizing the Director of Transportation to sign an agreement with the Washington State Department of Transportation for State construction of a portion of the Mountains to Sound Greenway Trail on City property and State property; and authorizing the Director of Transportation to sign a lease with the Washington State Department of Transportation for City maintenance and operation of a portion of the Mountains to Sound Greenway Trail on State property.

CF No. _____

Date Introduced: July 26, 2010	
Date 1st Referred:	To: (committee) Transportation
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage: 9.20.10	Full Council Vote: 8-0
Date Presented to Mayor: 9.22.10	Date Approved: 9/28/10
Date Returned to City Clerk: 9/29/10	Date Published: T.O. ✓ F.T. ___
Date Vetoed by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____

Councilmember

Committee Action:

PASS TRSCTB 3-0

9/20/10 Passed 8-0 SC excused

This file is complete and ready for presentation to Full Council. Committee: _____ (initial/date)

Law Department

Law Dept. Review	OMP Review	City Clerk Review	Electronic Copy Loaded	Indexed

Gretchen M. Haydel/GMH
SDOT Mountain to Sound Greenway Trail Project ORD
June 25, 2010
Version #4

ORDINANCE 123394

AN ORDINANCE relating to the Mountains to Sound Greenway Trail; authorizing the Director of Transportation to sign an agreement with the Washington State Department of Transportation for State construction of a portion of the Mountains to Sound Greenway Trail on City property and State property; and authorizing the Director of Transportation to sign a lease with the Washington State Department of Transportation for City maintenance and operation of a portion of the Mountains to Sound Greenway Trail on State property.

WHEREAS, the City of Seattle (the "City"), through the Seattle Department of Transportation, has cooperated with the Washington State Department of Transportation's (the "State") design of an extension of the Mountains to Sound Greenway Trail (the "MTS Trail") from its current terminus on Beacon Hill at Dr. Jose Rizal Bridge along Interstate 5 to Holgate Street; and

WHEREAS, the State is willing to construct the MTS Trail using City funds appropriated under Ordinances 119750, 121660, 121991, 122298, 122863, and 123177; and

WHEREAS, the City and the State have negotiated the terms of an agreement for construction of the MTS Trail; and

WHEREAS, the State will not construct the MTS Trail unless the City is willing to enter into a lease (the "Trail Lease"), agreeing to operate and maintain the portion of the MTS Trail located on State property; and

WHEREAS, the State and the City have negotiated the terms of a Trail Lease; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Director of Transportation, or his designee, is authorized, on behalf of the City of Seattle, to enter into an agreement with the State, substantially in the form attached hereto

SEATTLE CITY CLERK

as Attachment A and incorporated herein, for State construction of a segment of the MTS Trail as described therein.

Section 2. The Director of Transportation, or his designee, is authorized, on behalf of the City of Seattle, to enter into a Trail Lease with the State, substantially in the form attached hereto as Attachment B and incorporated herein, for operation and maintenance of a segment of the MTS Trail as described therein.

Section 3. This ordinance shall take effect and be in force 30 days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

2010 CITY CLERK

Passed by the City Council the 20th day of September, 2010, and signed by me in open session in authentication of its passage this 20th day of September, 2010.

President _____ of the City Council

Approved by me this 28th day of September, 2010.

Michael McGinn, Mayor

Filed by me this 29th day of September, 2010.

City Clerk

(Seal)

Attachment A: Agreement (GCA #6484)

Exhibit A to Attachment A: Cost Estimate

Exhibit B to Attachment A: Description of Work

Exhibit C to Attachment A: Vicinity Map

Attachment B: Trail Lease

Exhibit A to Attachment B: BPS Line Survey

SEA CITY CLERK

Exhibit B to Attachment B: BPN Line Survey

Exhibit C to Attachment B: WSDOT's Landscape Planting Plan

Exhibit D to Attachment B: GCA #6484

Exhibit E to Attachment B: City's Letter of Acceptance

SEA CITY CLERK

CITY OF SEATTLE
STATE AD, AWARD, and CONSTRUCT
MOUNTAINS TO SOUND REGIONAL TRAIL CORRIDOR
GCA 6484

This Agreement is made between the STATE OF WASHINGTON, Department of Transportation (STATE), and THE CITY OF SEATTLE, a municipal corporation of the state of Washington (LOCAL AGENCY).

WHEREAS, pursuant to Local Agency Agreement LA-4364, dated March 27, 2000, and amendments thereto, the STATE, on behalf of the LOCAL AGENCY, has designed a project titled "SR 519, I-90 to SR 519 Pedestrian Trail" (the "Project") to extend the multi-use trail along Interstate 90 (I-90) from the vicinity of the Jose Rizal Bridge westerly and south to connect to South Holgate Street east of the South Holgate Street Interstate 5 (I-5) overcrossing, and

WHEREAS, the trail will traverse both STATE and LOCAL AGENCY property, and

WHEREAS, the LOCAL AGENCY has requested that the STATE advertise, award, execute, and administer the construction contract for the Project, and

WHEREAS, the STATE has agreed to perform the requested Project work on behalf of the LOCAL AGENCY, and

WHEREAS, the LOCAL AGENCY has agreed to enter into a trail lease with the STATE simultaneous with this Agreement for the operation and maintenance of the trail segment located within state-owned limited access right of way,

NOW, THEREFORE, pursuant to chapter 39.34 RCW, and in consideration of the provisions, covenants, terms, conditions and performances contained herein, the Parties hereto mutually agree that the above recitals shall be incorporated herein as is set forth below, and further agree as follows:

1. TERM OF AGREEMENT

1.1 The term of this Agreement shall commence as of the date of the last Party's signature affixed below and shall continue until terminated in accordance with Section 5.1.

2. DESIGN

2.1 At the LOCAL AGENCY's request, the STATE prepared the plans, specifications and engineer's cost estimate (PS&E) for the Project pursuant to Local Agency Agreement LA 4364, dated 3/27/2000 and amendments thereto. The LOCAL AGENCY has reviewed and approved

FILED CITY CLERK

the design work at 30, 60, and 90 percent, and will provide approval of the proof copy Project PS&E.

2.2 Plans, specifications, and cost estimates were prepared in accordance with the current state of Washington, Standard Specifications for Road, Bridge and Municipal Construction, and amendments thereto (Standard Specifications), and adopted design standards, unless otherwise noted.

2.3 The STATE will be responsible for obtaining all necessary environmental permits.

3. PROJECT AD AND AWARD

3. 1 The STATE will advertise for construction bids in accordance with the current Standard Specifications, as the same may be modified by this Agreement.

3.2 The Project cost estimate for plan review, contract document preparation, ad and award, construction, construction engineering, management and administration, and contingencies is shown in Exhibit A (Cost Estimate), attached hereto and by this reference made a part of this Agreement.

3.3 Upon bid opening and prior to Project contract award, the STATE shall submit the bid tabulations and bid results to the LOCAL AGENCY for the LOCAL AGENCY's review and comment. Provided the LOCAL AGENCY does not submit a reasonable objection to the STATE in writing within (3) working days from the date of submission, the STATE shall have the right to award a construction contract if the lowest responsive and responsible bid is within fifteen (15%) percent of the Project's Cost Estimate.

3.4 If the bid of the lowest responsive and responsible bidder exceeds the amount allowed in Section 3.3, the STATE shall request written concurrence in contract award or rejection thereof from the LOCAL AGENCY. The STATE shall not award the construction contract unless and until it has received written approval from the LOCAL AGENCY to do so. The LOCAL AGENCY shall provide written approval within fifteen (15) working days of receipt of the STATE's written request therefore, or such other period as the Parties may agree to, in writing. If the LOCAL AGENCY does not notify the STATE within the specified time, the STATE will reject all bids. The LOCAL AGENCY shall be responsible for all costs incurred by the STATE, including design costs, up to and including costs associated with rejection of bids, if any.

3.5 If the lowest responsive and responsible bidder exceeds the amount allowed in Section 3.3, the LOCAL AGENCY may provide written

DWS CITY CLERK

request for the STATE to redesign the Project in a manner reasonably calculated to obtain bids within the Project cost estimate upon re-advertising. The LOCAL AGENCY agrees that all costs for re-design and re-advertisement shall be at the LOCAL AGENCY's expense. Reimbursement for re-design and re-advertisement shall be in accordance with Section 6. If the Project is re-designed and/or re-advertised, all provisions of this Agreement shall continue to apply between the LOCAL AGENCY and the STATE.

4. CONSTRUCTION

4.1 Subject to all of the terms and conditions contained herein, the STATE will execute the Project construction contract, will be the LOCAL AGENCY's representative during construction and will act as owner in the administration of the Project contract. The Project is generally described in Exhibit B, Description of Work, and is located as shown on Exhibit C, Vicinity Map, both of which exhibits are attached hereto and by this reference are made a part of this Agreement. The Project contract plans and specifications shall be incorporated into this Agreement as if fully set forth herein.

4.2 The STATE has designated a STATE Project Manager to provide all necessary services including, but not limited to, construction administration, inspection, and materials testing necessary to administer and manage the construction contract for the Project to ensure the Project is constructed in accordance with the contract plans and specifications. The LOCAL AGENCY shall assign a qualified LOCAL AGENCY employee as a LOCAL AGENCY Project Manager. The STATE Project Manager shall keep the LOCAL AGENCY Project Manager apprised of the progress of the Project contract and provide the LOCAL AGENCY Project Manager with sufficient notice of all Project construction and other meetings as will allow the LOCAL AGENCY Project Manager to attend such meetings. The STATE Project Manager shall also promptly provide the LOCAL AGENCY Project Manager with copies of all meeting minutes, requests for information, and other Project contract documents and correspondence at LOCAL AGENCY expense. Reimbursement shall be in accordance with Section 6.

4.3 The LOCAL AGENCY Project Manager may consult with and make inquiries of the STATE Project Manager, attend all meetings, and have access to all documentation concerning the Project. The LOCAL AGENCY shall not provide direction, directly or indirectly, to the contractor. All formal contacts between said LOCAL AGENCY and the STATE's contractor shall be through the STATE Project Manager or designee.

EDS CITY CLERK

4.4 If it becomes apparent that a unit bid item quantity will be exceeded by ten (10%) percent, or if the overage will result in a cost increase for the total Project exceeding five (5%) percent, the STATE shall consult with the LOCAL AGENCY within three (3) working days from when it becomes apparent that there will be such cost overages to determine a course of action either pursuant to Section 13.2 or to implement Section 8.

4.5 The STATE will prepare the final construction documentation in general conformance with the STATE Construction Manual. The STATE will maintain one set of plans as the official "as-built" set that contains notations in red ink of all plan revisions typically recorded per standard STATE practices. Once final acceptance of the Project has occurred, the STATE will submit one reproducible set of as-built plans to the LOCAL AGENCY within one hundred eighty (180) calendar days.

4.6 The LOCAL AGENCY agrees to provide, at LOCAL AGENCY expense, through its city police department, increased on-site police enforcement for the first week of construction during the normal working days of the STATE's contractor to discourage unlawful activities by third parties in the Project area and which will reinforce the establishment of the Project area as a work zone on state and city property.

5. TERMINATION

5.1 This Agreement shall terminate upon completion of the work, acceptance of the Project pursuant to Section 10, and STATE's receipt of full payment pursuant to Section 6, or if the Parties determine that Project continuation is no longer feasible, after the process described in Section 8.2.

5.2 The Governor or Secretary of Transportation (Secretary) may terminate this Agreement in whole or in part, or, from time to time may suspend work on the Project contract in whole or in part, whenever:

5.2.1 The STATE is prevented from proceeding with the work as a direct result of an Executive Order of the President of the United States of America (President) with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the state of Washington with respect to the preservation of energy resources.

5.2.2 The STATE or STATE's contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts

SEATTLE CITY CLERK

or omissions of persons or agencies other than the STATE or STATE's contractor.

5.2.3 If this Agreement is terminated, any claim by the STATE's contractor for costs associated with the termination shall be processed and resolved pursuant to Section 11.

5.3 The Governor or Secretary may terminate this Agreement at any time for convenience if termination is in the best interests of the STATE. In this event, the LOCAL AGENCY shall not be responsible for reimbursement, if any, of the STATE's grant funds for this Project.

5.4 The LOCAL AGENCY may terminate this Agreement at any time for convenience if termination is in the best interests of the LOCAL AGENCY. In this event, the STATE shall not be responsible for reimbursement, if any, of the grant funds for this Project. If the LOCAL AGENCY terminates this Agreement after Project award, termination of this Agreement also terminates the Project, and the Parties shall resolve the early termination Project work pursuant to the terms of Section 8.2. The LOCAL AGENCY agrees that all claims and costs associated with Project termination shall be at LOCAL AGENCY expense. Reimbursement shall be in accordance with Section 6.

5.5 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. PAYMENT

6.1 Except as otherwise provided herein, the LOCAL AGENCY, in consideration of the faithful performance of the work to be done by the STATE, agrees to reimburse the STATE for all actual direct and related indirect costs, including the STATE's indirect cost recovery rate, associated with the construction of the Project. Construction and construction management costs shall commence on the day of advertisement and shall include all costs associated with change orders and change order work.

6.2 An itemized cost estimate for construction of the Project is attached at Exhibit A. The cost of the construction also includes items set forth in the bid documents. Construction contingencies shall be used for cost increases, including any change orders. Construction engineering shall include all appropriate STATE costs incurred in advertising, awarding and administering the Project construction.

6.3 Upon receipt of a STATE invoice, the LOCAL AGENCY shall pay the STATE for those costs incurred that reflect the construction contractor's

SEA CITY CLERK

progress on the Project and services actually performed by the STATE during the billing period. Invoices are not to be submitted more frequently than one (1) time per month. The LOCAL AGENCY shall provide its payments to the STATE within thirty (30) calendar days after its receipt of the STATE's monthly invoice, except for final payment, which shall be made as described in Section 10.6.

6.4 The LOCAL AGENCY agrees that if payment for the work is not made within ninety (90) days after receipt of a STATE invoice, the STATE may deduct and expend any monies to which the LOCAL AGENCY is entitled to receive from the Motor Vehicle Fund until full payment for the work is received by the STATE.

6.5 The LOCAL AGENCY shall pay the STATE an "Advanced Payment " of Two Hundred Seventy-Eight Thousand Twenty Dollars ($278,220.00) within twenty (20) calendar days after the LOCAL AGENCY receives the STATE's Advance Payment request. The Advance Payment will be retained through the Project to substantial completion, with final adjustment made in the final payment. The purpose of the aAdvance pPayment of the construction cost is to ensure that the STATE does not loan the STATE's credit. The Advance Payment is based on fifteen (15) percent of the estimate construction cost.

6.6 The STATE will hold progress estimate review meetings with the contractor as needed. The STATE will invite the LOCAL AGENCY to participate in these reviews. The LOCAL AGENCY may audit the STATE's payment applications and all supporting documentation and costs in connection with the Project. The LOCAL AGENCY agrees to reimburse the STATE for all costs associated with an audit. Payment to the STATE shall be in accordance with Section 6. In the event the LOCAL AGENCY chooses to perform an audit, any adjustments to payments previously made to the STATE will be corrected at the conclusion of the audit. In the event that such audit reveals an overpayment or an underpayment has occurred, both Parties agree that any necessary refunds or additional payments will be made within thirty (30) calendar days after the error is discovered and the necessary invoices prepared.

6.7 Payments by the LOCAL AGENCY shall not constitute the LOCAL AGENCY's acceptance of any item of work.

7. RECORDS

7.1 During construction of the Project and for a period of not less than three (3) years from the date of final payment to the STATE, the records and accounts pertaining to the construction of the Project will be maintained

PDS CITY CLERK

and shall be made available by the STATE for inspection and audit by the LOCAL AGENCY and for use in the event of a litigation, claim or any other purpose. The LOCAL AGENCY agrees to pay the costs of any copies that it requests.

8. INCREASED COSTS

8.1 In the event unforeseen conditions require an increase in cost over the awarded contract amount (including sales tax, engineering, and contingencies) of more than five (5) percent, and if the Parties agree to the change, this Agreement will be amended covering said increase.

8.2 In the event it is determined that the LOCAL AGENCY does not have sufficient funds to complete the Project, the STATE and the LOCAL AGENCY shall negotiate to determine the future of the Project. If it is determined that the Project cannot proceed, the work shall be brought to a level that is safe for public use and the STATE will terminate the Project construction contract. In the event the Project is terminated under this Section, Section 10 shall apply to that portion of the work completed up to the time of termination, including contractor claims. The LOCAL AGENCY agrees to pay all costs for termination, including contractor claims in accordance with Section 6.

SEA CITY CLERK

9. PROJECT CONTRACT CHANGES – CHANGE ORDERS

9.1 The STATE Project Manager shall prepare all change orders to the construction contract in the manner described in the Standard Specifications. Subject to the limitations and conditions contained in this Agreement, the LOCAL AGENCY hereby authorizes the STATE to initiate, document, and perform all negotiations with the contractor, provide approval recommendations, and execute all change orders. The STATE will prepare change orders with supporting documentation and data in accordance with the Project contract documents.

9.2 Required change orders involve such changes in quantities or alterations in the work as are necessary to satisfactorily complete the Project as determined by the STATE. All other change orders shall be considered elective. Change order process and execution shall be in accordance with the Washington State Department of Transportation Construction Manual, M 41-04, current edition, subsections 1-2.4C(3) and 1-2.4C(4), unless otherwise provided herein.

9.3 The STATE may authorize individual required change orders to the Project of $10,000.00 or less, provided that (i) such changes do not, in the aggregate, exceed $50,000; (ii) they are consistent with the intent of the Project contract; and (iii) they do not include an extension of contract time. Notwithstanding the foregoing, the STATE shall not approve structural or material(s) related changes to the Project without approval of the LOCAL AGENCY, regardless of the cost.

9.4 The LOCAL AGENCY shall review and provide written approval to the STATE of proposed required change orders greater than $10,000.00. The STATE shall then be authorized to execute the change order.

9.5 The LOCAL AGENCY shall make every effort to expeditiously process change orders and understands that any delays associated with LOCAL AGENCY's approval of the change order may cause increases in the Project cost as well as the STATE's construction administration costs. The LOCAL AGENCY shall endeavor to complete its review of change orders that do not meet the conditions of Section 9.3 and are less than $50,000 within five (5) working days and all other change orders within ten (10) working days. The STATE shall ensure that the construction contract allows sufficient time for the LOCAL AGENCY's review. Nothing herein relieves the LOCAL AGENCY of its responsibility for change order costs or contractor claims associated with the LOCAL AGENCY's change order approval process.

BHS CITY CLERK

9.6 The LOCAL AGENCY may request elective changes to the contract through the STATE. The STATE will comply with the requested change provided that the change complies with Project permits, state and/or federal law and applicable rules and/or regulations and/or design policies and does not impair funding to complete the Project.

9.7 All elective changes to the Project that the LOCAL AGENCY requests shall be requested in writing by the LOCAL AGENCY before the STATE directs the contractor to implement the changes, even if an executed change order is not required by the Project contract. The LOCAL AGENCY agrees to pay for the increases in cost, if any, for such elective changes in accordance with Section 6.

10. PROJECT ACCEPTANCE

10.1 Upon substantial completion of the Project contract, the STATE will provide the LOCAL AGENCY with a Notice of Substantial Completion. Thereafter, the STATE and LOCAL AGENCY will perform a joint inspection of the Project. If the STATE and LOCAL AGENCY agree that the work has been completed in a satisfactory manner, the LOCAL AGENCY agrees to deliver a letter of acceptance to the STATE which shall include a release of the STATE from all future claims or demands of any nature resulting from the performance of the work and the STATE's administration thereof, under this Agreement, except for claims relating to plant establishment and construction warranties, and claims referred to in Section 11.

10.2 Subject to the provisions of Section 10.1, if a letter of acceptance is not received by the STATE within ninety (90) calendar days following Notice of Physical Completion of the Project, the Project shall be considered accepted by the LOCAL AGENCY and the LOCAL AGENCY shall be deemed to have released the STATE from all future claims and demands of any nature resulting from the performance of the work and the STATE's administration thereof under this Agreement except for claims relating to plant establishment and construction warranties, and claims referred to in Section 11. Notwithstanding anything in this Agreement to the contrary, the LOCAL AGENCY's acceptance of the Project hereunder shall not relieve the construction contractor from liability for any unauthorized or defective work or materials.

10.3 The LOCAL AGENCY may withhold its acceptance of the Project if it determines that any work does not comply with the final plans, specifications and change orders. In such event, the LOCAL AGENCY will prepare a punch list of such items and submit it to the STATE within ten (10) calendar days following Notice of Substantial Completion of the

ENS CITY CLERK

work. The STATE shall cause the construction contractor to correct the deficient work at no cost to the LOCAL AGENCY.

10.4 Upon Project acceptance, the LOCAL AGENCY shall assume responsibilities of the constructed Project in accordance with Trail Lease No. IC 1-17-08803, executed by the Parties simultaneously herewith.

10.5 The releases referenced in Sections 10.1 and 10.2 shall not include any release of the STATE from any future claims or demands for indemnity brought by the LOCAL AGENCY as a result of contractor claims or injuries of any nature to third parties caused by the STATE's negligence in performing its obligations under this Agreement or from the STATE's design of the Project. The provisions of this section shall be limited by the applicable statute of limitations.

10.6 Following Project acceptance, the STATE's delivery of as-built plans to the LOCAL AGENCY, and the satisfactory conclusion of the plant establishment and warranty periods as identified in the plans and specifications, the STATE shall request final payment from the LOCAL AGENCY and the LOCAL AGENCY shall remit payment within thirty (30) calendar days thereafter.

11. CLAIMS

11.1 Claims for Additional Payment

11.1.1 In the event the contractor makes a claim for additional payment associated with the work, the STATE will immediately notify the LOCAL AGENCY of such claims and provide it with a copy of the claim and all supporting documentation. Such claims shall be made in the manner and form as provided for in the Standard Specifications.

11.1.2 The LOCAL AGENCY shall not be obligated to pay such claims or their cost of defense to the extent that the claims are caused by the negligent acts or omissions of the STATE in administering the work.

11.1.3 The LOCAL AGENCY shall have the right to review and comment on any settlement for claims associated with the work. However, the STATE shall have the ultimate right to settle such claims. In the event the LOCAL AGENCY does not agree with the claim settlement as negotiated by the STATE, the LOCAL AGENCY shall reserve the right to not financially participate in the negotiated claim settlement. If agreement cannot be reached between the LOCAL AGENCY and the STATE on a claim

CITY CLERK

settlement, the Parties agree to follow the dispute resolution procedure in Section 12.11.1.4 If the STATE agrees, the LOCAL AGENCY may defend contractor claims associated with the work at its own cost, and in doing so, the LOCAL AGENCY agrees to pay any resulting settlement, court judgment or arbitration award. The STATE will cooperate with the LOCAL AGENCY in the LOCAL AGENCY's defense of the claims. The LOCAL AGENCY agrees to reimburse any STATE costs, including attorneys fees, incurred in providing such assistance in accordance with Section 6.

12. DISPUTES

12.1 In the event that a dispute arises under this Agreement, before initiating any legal proceeding the Parties shall attempt to resolve the matter as follows:

The STATE Project Manager and the LOCAL AGENCY Project Manager shall meet and attempt to resolve the matter. If these two officials are unsuccessful, they shall refer the matter to the STATE Northwest Region King Area Administrator and the LOCAL AGENCY's Capital Projects Director. If these officials are likewise unsuccessful, then they shall refer the matter to the STATE Northwest Region Assistant Regional Administrator and the LOCAL AGENCY's Transportation Director. Each Party shall be responsible for its own costs and fees.

13. GENERAL PROVISIONS

13.1 Rights of Entry:

The LOCAL AGENCY hereby grants to the STATE and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land under the jurisdiction of the LOCAL AGENCY within or adjacent to the Project area for the purpose of constructing the Project. The STATE understands and agrees that the construction contractor will be required to obtain a city of Seattle street use permit to enter onto and use property under the jurisdiction of the Seattle Department of Transportation. The LOCAL AGENCY will reasonably assist the construction contractor in obtaining such permit.

13.2 Amendment:

No modification of this Agreement is valid unless evidenced in writing by amendment to this Agreement and signed by both Parties. No verbal agreement may supersede, replace or amend this Agreement.

CITY CLERK

13.3 Assignment:

Neither Party to this Agreement shall transfer or assign any right or obligation hereunder without the prior written consent of the other Party.

13.4 Severability:

Should any section, term or provision of this Agreement be determined to be invalid by a court of law; the remainder of this Agreement shall not be affected and the same shall continue in full force and effect.

13.5 Legal Relations:

13.5.1 The STATE shall ensure that (a) every provision in the construction contract pursuant to which the construction contractor provides indemnity for personal injuries or property damages includes the LOCAL AGENCY as an indemnified party; (b) the LOCAL AGENCY is included as an additional insured on the construction contractor's liability policies; and (c) that the LOCAL AGENCY is named as a co-obligee on the construction contractor's payment and performance bonds(s).

13.5.2 The STATE shall protect, defend, indemnify and save harmless the LOCAL AGENCY, its officers, officials, employees, and agents from any and all costs, claims, judgments and/or awards of damages (both to persons or property and including attorneys' fees) arising out of, or in any way resulting from the STATE's negligent acts or omissions; provided, however, the STATE will not be required to indemnify, defend or save harmless the LOCAL AGENCY if the claim, suit or action for injuries, death or damages (both to persons or property) is caused by the sole negligence of the LOCAL AGENCY. Where such claims, suits, or actions result from the concurrent negligence of both the STATE and LOCAL AGENCY, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence, subject to the limitations of RCW 4.24.115. This indemnification shall survive the termination of this Agreement.

13.5.3 I n the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in Thurston County, Washington Superior Court. Further, the Parties agree that each will be solely responsible for payment of its own attorneys' fees, witness fees, and costs.

THIS CITY CLERK

13.6 Independent Contractor:

The STATE shall be deemed an independent contractor for all purposes, and the employees of the STATE or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the LOCAL AGENCY.

13.8 Working Days:

Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

KING COUNTY CLERK

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date last signed below.

CITY OF SEATTLE

_____
By

_____
Title

_____
Date

APPROVED AS TO FORM:

_____
City Attorney

_____
Date

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

_____
Russell S. East, P.E
Assistant Regional Administrator

_____
Date

APPROVED AS TO FORM:

_____
Ann E. Salay, AAG

_____
Date

FILED
CITY
CLERK

Gretchen M. Haydel/GMH
SDOT Mountain to Sound Greenway Trail Project ATT A EXH A
June 25, 2010
Version #1

ITEM NO.	STD. NO.	ITEM DESCRIPTION	UNIT MEAS	UNIT PRICE	QUANTITY	AMOUNT	PRE-QUAL
		PREPARATION					
1	0001	MOBILIZATION	L.S.			97,000.00	A1
2	0025	CLEARING AND GRUBBING	ACRE	7,000.00	1.84	12,880.00	D6
3		SELECTIVE CLEARING GRUBBING AND PRUNING	ACRE	12,000.00	0.43	5,160.00	D6
4	0050	REMOVAL OF STRUCTURE AND OBSTRUCTION	L.S.			12,000.00	F8
5	0060	REMOVING PORTION OF EXISTING STRUCTURE WALLS 1 & W3	L.S.			11,000.00	F8
6	0220	REMOVING CHAIN LINK FENCE	L.F.	5.00	690.00	3,450.00	I8
7		SELECTIVE PRUNING	EST.			8,000.00	D6
		GRADING					
8	0310	ROADWAY EXCAVATION INCL. HAUL	C.Y.	25.00	1,810.00	45,250.00	J6
9	0421	GRAVEL BORROW INCL. HAUL	C.Y.	25.00	2,500.00	62,500.00	J6
10	0470	EMBANKMENT COMPACTION	C.Y.	5.00	2,500.00	12,500.00	J6
		DRAINAGE					
11	1030	DITCH EXCAVATION INCL. HAUL	C.Y.	25.00	149.00	3,725.00	G2
12	1046	CONCRETE INLET	EACH	800.00	1.00	800.00	G2
13	1077	8 IN. QUARRY ROCK	TON	50.00	22.00	1,100.00	R0
14	1085	QUARRY SPALLS	C.Y.	80.00	154.00	12,320.00	R0
15	1160	UNDERDRAIN PIPE 6 IN. DIAM.	L.F.	12.00	1,554.00	18,648.00	L4
16	1170	DRAIN PIPE 6 IN. DIAM.	L.F.	35.00	249.00	8,715.00	L4
17	1171	DRAIN PIPE 8 IN. DIAM.	L.F.	35.00	123.00	4,305.00	L4
18	1270	CL. IV REINF. CONC. CULV. PIPE 12 IN. DIAM.	L.F.	40.00	100.00	4,000.00	G2
		STORM SEWER					
19	3091	CATCH BASIN TYPE 1	EACH	1,000.00	1.00	1,000.00	T8
20	3392	PLAIN CONC. STORM SEWER PIPE 8 IN. DIAM.	L.F.	35.00	26.00	910.00	T8
		STRUCTURE					
21	4025	GRAVEL BACKFILL FOR WALL	C.Y.	40.00	299.00	11,960.00	I2
22	7169	STRUCTURAL EARTH WALL	S.F.	35.00	1,002.00	35,070.00	I2
23	7170	BACKFILL FOR STRUCTURAL EARTH WALL INCL. HAUL	C.Y.	30.00	180.00	5,400.00	I2

Exhibit A to Attachment A

Gretchen M. Hayde/GMH
SDOT Mountain to Sound Greenway Trail Project ATT A EXH A
June 25, 2010
Version #1

ITEM NO.	STD. NO.	ITEM DESCRIPTION	UNIT MEAS	UNIT PRICE	QUANTITY	AMOUNT	PRE-QUAL
		SURFACING					
24	5100	CRUSHED SURFACING BASE COURSE	TON	28.00	1,926.00	53,928.00	F6
		LIQUID ASPHALT					
25	5334	ANTI-STRIPPING ADDITIVE	EST.			1,170.00	A4
		HOT MIX ASPHALT					
26	5717	HMA FOR PRELEVELING CL. 1/2 IN. PG PG 58-22	TON	100.00	100.00	10,000.00	A4
27	5767	HMA CL. 1/2 IN. PG PG 58-22	TON	100.00	1,065.00	106,500.00	A4
28	5835	COMPACTION PRICE ADJUSTMENT	CALC			2,330.00	A4
29	5837	ASPHALT COST PRICE ADJUSTMENT	CALC			402.00	A4
		IRRIGATION AND WATER DISTRIBUTION					
30	7715	FORCE ACCOUNT - IRRIGATION SYSTEM CAP AND REPAIR	EST.			5,000.00	A1
		EROSION CNTL AND ROADSIDE RESTORATION					
31	6403	ESC LEAD	DAY	100.00	45.00	4,500.00	H0
32	6458	TEMPORARY EROSION CONTROL BLANKET	S.Y.	1.40	5,677.00	7,947.80	H0
33	6463	CHECK DAM	L.F.	10.00	155.00	1,550.00	H0
34	6468	STABILIZED CONSTRUCTION ENTRANCE	S.Y.	30.00	88.00	2,640.00	H0
35	6470	STREET CLEANING	HR	120.00	80.00	9,600.00	H0
36	6471	INLET PROTECTION	EACH	80.00	20.00	1,600.00	H0
37	6479	WATTLE	L.F.	4.75	396.00	1,881.00	H0
38	6490	EROSION/WATER POLLUTION CONTROL	EST.			40,000.00	H0
39	6435	MULCHING	ACRE	1,500.00	1.60	2,400.00	T2
40	6414	SEEDING, FERTILIZING, AND MULCHING	ACRE	2,060.00	1.00	2,060.00	T2
41		LOW GROW MIX SEEDING AND MULCHING	S.Y.	5.00	655.00	3,275.00	T2
42	6552	PSIPE EDDIES WHITE WONDER DOGWOOD, 1-1/4" CAL.	EACH	150.00	3.00	450.00	M8
43	6552	PSIPE BLACK HAWTHORN, 24" HT., #2 CONT.	EACH	18.00	30.00	540.00	M8
44	6552	PSIPE RED SUNSET MAPLE, 24" HT., #2 CONT.	EACH	25.00	4.00	100.00	M8
45	6552	PSIPE SCOTCH PINE, 18" HT., #2 CONT.	EACH	25.00	11.00	275.00	M8
46	6552	PSIPE SCOULER WILLOW, 24" HT., #1 CONT.	EACH	12.00	30.00	360.00	M8

Exhibit A to Attachment A

Gretchen M. Haydel/GMH
SDOT Mountain to Sound Greenway Trail Project ATT A EXH A
June 25, 2010
Version #1

ITEM NO.	STD. NO.	ITEM DESCRIPTION	UNIT MEAS	UNIT PRICE	QUANTITY	AMOUNT	PRE-QUAL
		EROSION CNTL AND ROADSIDE RESTORATION					
47	6552	PSIPE WHITE FIR, 18" HT., #2 CONT.	EACH	25.00	4.00	100.00	M8
48	6552	PSIPE SUNSET ROCK ROSE, 9" HT., #1 CONT.	EACH	10.00	801.00	8,010.00	M8
49	6606	PLANT ESTABLISHMENT - SECOND YEAR	EST.			23,000.00	M8
50	6608	PLANT ESTABLISHMENT - THIRD YEAR	EST.			20,000.00	M8
51	6447	FINE COMPOST	C.Y.	55.00	15.00	825.00	T2
52	6545	WEED AND PEST CONTROL	EST.			6,000.00	M8
53	6530	SOIL AMENDMENT	C.Y.	55.00	39.00	2,145.00	H0
54	6580	BARK OR WOOD CHIP MULCH	C.Y.	55.00	45.00	2,475.00	M8
55	6630	HIGH VISIBILITY FENCE	L.F.	3.00	1,044.00	3,132.00	H0
		TRAFFIC					
56	6890	PERMANENT SIGNING	L.S.			5,000.00	U4
57	6904	ILLUMINATION SYSTEM	L.S.			90,000.00	H2
58	6973	OTHER TEMPORARY TRAFFIC CONTROL	L.S.			2,500.00	W3
59	6980	FLAGGERS AND SPOTTERS	HR	55.00	128.00	7,040.00	W3
60	6992	OTHER TRAFFIC CONTROL LABOR	HR	45.00	80.00	3,600.00	W3
61	6974	TRAFFIC CONTROL SUPERVISOR	L.S.			2,000.00	W3
62	6868	PEDESTRIAN CONTROL AND PROTECTION	L.S.			2,500.00	A1
		OTHER ITEMS					
63	7003	TYPE B PROGRESS SCHEDULE	L.S.			5,000.00	A1
64	7006	STRUCTURE EXCAVATION CLASS B INCL. HAUL	C.Y.	15.00	984.00	14,760.00	I2
65	7008	SHORING OR EXTRA EXCAVATION CLASS B	S.F.	1.00	4,210.00	4,210.00	I2
66	7011	GRAVEL BACKFILL FOR FOUNDATION CLASS A	C.Y.	30.00	75.00	2,250.00	F6
67	7014	GRAVEL BACKFILL FOR DRAIN	C.Y.	35.00	81.00	2,835.00	F6
68	7037	STRUCTURE SURVEYING	L.S.			6,000.00	V3
69	7038	ROADWAY SURVEYING	L.S.			15,000.00	V3
70		TREE DRAINAGE TRENCH	EACH	90.00	76.00	6,840.00	G2
71	7041	BOLLARD TYPE CITY STANDARD	EACH	750.00	2.00	1,500.00	J0

Exhibit A to Attachment A

Gretchen M. Haydel/GMH
SDOT Mountain to Sound Greenway Trail Project ATT A EXH A
June 25, 2010
Version #1

ITEM NO.	STD. NO.	ITEM DESCRIPTION	UNIT MEAS	UNIT PRICE	QUANTITY	AMOUNT	PRE-QUAL
		OTHER ITEMS					
72	7055	CEMENT CONC. SIDEWALK	S.Y.	200.00	8.00	1,600.00	C8
73	7083	CHAIN LINK FENCE TYPE 3	L.F.	18.00	2,056.00	37,008.00	I6
74	7085	COATED CHAIN LINK FENCE TYPE 3	L.F.	21.00	660.00	13,860.00	I6
75	7084	CHAIN LINK FENCE TYPE 4	L.F.	18.00	1,902.00	34,236.00	I6
76	7088	COATED CHAIN LINK FENCE TYPE 4	L.F.	20.00	1,060.00	21,200.00	I6
77		COATED CHAIN LINK FENCE TYPE 8 FT	L.F.	22.00	273.00	6,006.00	I6
78	7097	END, GATE, CORNER, AND PULL POST FOR CHAIN LINK FENCE	EACH	200.00	44.00	8,800.00	I6
79	7098	COATED END, GATE, CORNER, PULLPOST FOR CHAIN LINK FENCE	EACH	220.00	35.00	7,700.00	I6
80	7100	SINGLE 6 FT. CHAIN LINK GATE	EACH	500.00	2.00	1,000.00	I6
81	7101	SINGLE 6 FT. COATED CHAIN LINK GATE	EACH	600.00	3.00	1,800.00	I6
82	7102	DOUBLE 14 FT. CHAIN LINK GATE	EACH	950.00	4.00	3,800.00	I6
83		PARKS STANDARD SECURITY GATE	L.S.			6,000.00	A1
84	7164	GRAVITY BLOCK WALL	S.F.	35.00	4,344.00	152,040.00	E0
85		COPING FOR GRAVITY BLOCK WALL	L.F.	65.00	144.00	9,360.00	E0
86		COPING FOR STRUCTURAL EARTH WALL	L.F.	55.00	180.00	9,900.00	E0
87	9602	ADJUST INLET	EACH	400.00	1.00	400.00	G2
88	3080	ADJUST MANHOLE	EACH	500.00	3.00	1,500.00	T8
89		MODIFY CATCH BASIN	EACH	750.00	1.00	750.00	T8
90	7480	ROADSIDE CLEANUP	EST.			10,000.00	A1
91	7725	REIMBURSEMENT FOR THIRD PARTY DAMAGE	EST.			5.00	A1
92	7728	MINOR CHANGE	CALC			-1.00	A1
93	7736	SPCC PLAN	L.S.			1,000.00	A1
94	7550	CONSTRUCTION GEOTEXTILE FOR UNDERGROUND DRAINAGE	S.Y.	2.50	1,070.00	2,675.00	G2
95	7552	CONSTRUCTION GEOTEXTILE FOR SOIL STABILIZATION	S.Y.	2.50	1,960.00	4,900.00	G2
96	7569	NO TRESPASSING SIGN	EACH	150.00	8.00	1,200.00	A1
97	7570	HEALTH AND SAFETY PLAN	L.S.			1,500.00	A1

Exhibit A to Attachment A

Gretchen M. Haydel/GMH
SDOT Mountain to Sound Greenway Trail Project ATT A EXH A
June 25, 2010
Version #1

ITEM NO.	STD. NO.	ITEM DESCRIPTION	UNIT MEAS	UNIT PRICE	QUANTITY	AMOUNT	PRE-QUAL
		OTHER ITEMS					
98	7571	FA-SITE CLEANUP OF BIO. AND PHYSICAL HAZARDS	EST.			75,000.00	A1
					BASE TOTAL :	1,286,162.80	

Exhibit A to Attachment A

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
ESTIMATES AND BIDS ANALYSIS SYSTEM
***** PRELIMINARY ESTIMATE - SUMMARY *****

Gretchen M. Haydel/GMH
SDOT Mountain to Sound Greenway Trail Project ATT A EXH A
June 25, 2010
Version #1

HIGHWAY : SR 000, 005

PROJECT TITLE : SR 519
I-90 TO SR 519 PEDESTRIAN TRAIL

10A014

TYPE OF WORK :

FEDERAL AID PROJECT NO :

COUNTY(S) : KING

PROGRAM ITEM NUMBER(s) : 151902A

CONTROL SECTIONS : 1700NT, 172706

ESTIMATED COST DATA :

CONTRACT TOTAL	1,286,162.80	
WASHINGTON STATE SALES TAX: 9.50% OF $ 1,091,544.80 (GROUPS: 1 , 3)	103,696.76	
PROJECT SUBTOTAL	1,389,859.56	**
ENGINEERING 18.00%	250,174.72	

Exhibit A to Attachment A

Gretchen M. Hayde/GMH
SDOT Mountain to Sound Greenway Trail Project ATT A EXH A
June 25, 2010
Version #1

HIGHWAY : SR 000, 005

PROJECT TITLE : SR 519
I-90 TO SR 519 PEDESTRIAN TRAIL

10A014

TYPE OF WORK :

FEDERAL AID PROJECT NO :

COUNTY(S) : KING

PROGRAM ITEM NUMBER(s) : 151902A

CONTROL SECTIONS : 1700NT, 172706

ESTIMATED COST DATA :

CONTINGENCIES 3.60%	50,034.94
TOTAL COST OF PROJECT	1,690,069.22 ***

PROJECT REMARKS: THIS IS A CITY OF SEATTLE FUNDED PROJECT ON STATE AND CITY RIGHT OF WAY. THIS PROJECT EXTENDS THE EXISTING MOUNTAINS TO SOUND TRAIL WHICH ENDS AT 12TH AVE SOUTH AND CONTINUES IT TO HOLGATE STREET. TRAILS LEASE 1-17-08803 PENDING. FUNDING AGREEMENT, GCA 6484 PENDING. CONTINGENCIES NEEDS TO PROVIDE $50,000 FOR ALLOWABLE CHANGES PER THE TERMS OF THE GCA.

Exhibit A to Attachment A

SEATTLE CITY CLERK

Gretchen M. Haydel/GMH
SDOT Mountain to Sound Greenway Trail Project ATT A EXH B
June 25, 2010
Version #1

Description of Work

Design and construct a multi-purpose trail connection from the end of the I-90 Trail at 12th Ave S. and Sturges Ave S. to the east approach of Holgate I-5 overpass. Work consists of paving the trail, installing a crosswalk, landscaping, lighting, fencing, gates, and appropriate directional and regulatory signage.

The objective of the project is to provide a multi-use trail connection from the current Mountains to Sound Greenway terminus to the Sound. The new trail alignment will be constructed on land primarily under the jurisdiction of WSDOT, namely the existing WSDOT access road that goes along east side of I-5.

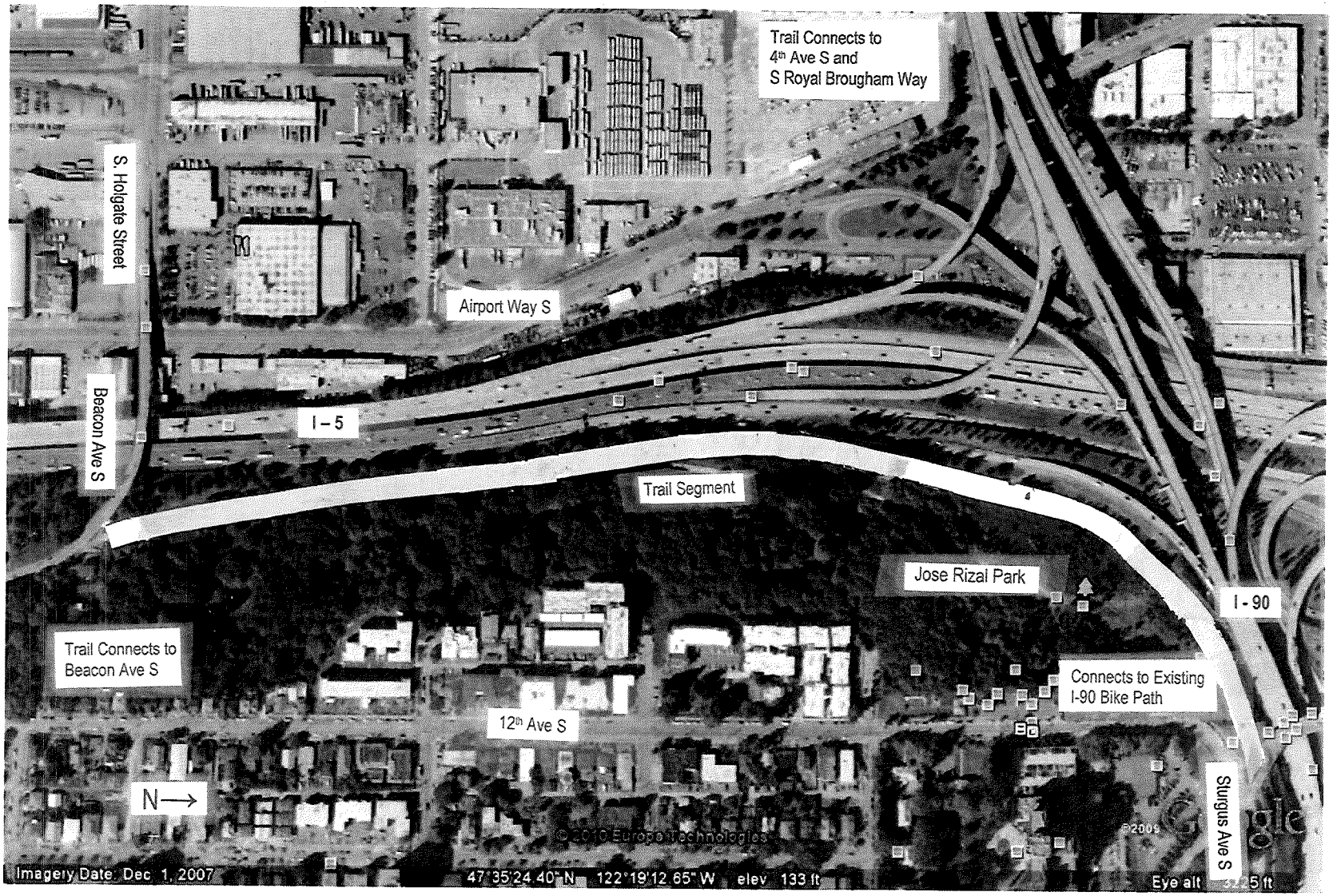
SEATTLE CITY CLERK

Gretchen M. Haydel/GMH
SDOT Mountain to Sound Greenway Trail Projec[illegible] TT A EXH C
June 25, 2010
Version #1

Mountains to Sound Trail

Site Map

VICINITY MAP



☐ City of Seattle Property

☐ State of Washington Property

Exhibit C to Attachment A

CITY CLERK SDOT

TR 01-12702
IC: 1-17-08803

T R A I L L E A S E

THIS IS A LEASE ("Lease") made and entered into by and between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION hereinafter called "WSDOT," and the CITY OF SEATTLE, a municipal corporation of the state of Washington, acting through its DEPARTMENT OF TRANSPORTATION, hereinafter called the "CITY";

WHEREAS, the land and premises to be leased are not presently needed exclusively for highway purposes; AND

WHEREAS, the CITY is willing to operate and maintain a trail segment of the Mountains to the Sound Greenway Trail (also known as the I-90 to SR 519 Trail) under this Lease as part of the CITY's local comprehensive trail plan and/or a state or federal comprehensive trail plan as an interim use until the land and premises to be leased are needed for a highway purpose; and

WHEREAS, WSDOT is granted authority to lease property under RCW 47.12.120, and, WSDOT deems it to be in the best public interest to enter into this Lease,

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED AS FOLLOWS:

1. LEASED PREMISES. WSDOT leases to the CITY, and the CITY hereby leases from WSDOT, the following premises (the "Leased Premises") all that portion of the West Half of the Northeast Quarter of Sections 8, Township 24 North, Range 4 East W.M., lying northerly of Beacon Avenue South, and all that portion of the Southeast Quarter of Section 5 of said Township and Range, all in the City of Seattle, King County; Washington, and known to be a portion of the highway right of way of SR 5, Seattle Freeway, Plum Street to Jackson, sheets 2, 4, & 6 of 8 sheets, approved August 7, 1962, and SR 90, Jct. SR 5 to W. Shore Mercer Island Sec. 1, JCT. SR 5 to Bradner Place S., sheet 2 of 15 sheets, approved February 29, 1980, and as generally shown hachured on **Exhibit A** and more particularly shown hachured on **Exhibit B** (BPS and BPN line surveys)~~,~~ **both Exhibits A and B** attached hereto and by this reference incorporated herein.

SDOT CITY CLERK

2. TERM. The term of this Lease is Twenty (20) years, COMMENCING ON THE DATE THE TRAIL IS ACCEPTED BY THE CITY under GCA 6484 (Commencement Date). A copy of the Parties' agreement No. GCA 6484 is attached hereto as **Exhibit D.** A copy of the CITY's letter of acceptance shall be attached to this Lease as **Exhibit E**.

3. RENEWAL. Upon expiration of the initial term, this Lease may be renewed by the CITY for Three (3) additional Ten (10) year periods, ("Renewal Period"), at the discretion of WSDOT; Provided that (A.) the CITY is not in default and has not been in default during the term of this Lease; (B.) the Leased Premises are not needed for a priority transportation purpose, as determined by WSDOT; (C.) CITY's continued use under this Lease does not impair the safety or operation of WSDOT's highway or facility, as solely determined by WSDOT; and (D.) the terms and conditions of this Lease conform to then existing state policies or practices, laws, regulations and contracts, or CITY is willing to amend this Lease to bring it into compliance with such policies, practices, laws, regulations, and contracts. The Renewal Period shall be on the same terms and conditions as set forth herein, except as modified by any changes in policies, practices, laws, regulations or contracts and as reflected in a written amendment signed by both parties. CITY shall give notice of its intent to renew this Lease for the Renewal Period(s) not less than Ninety (90) calendar days, but not more than Six (6) months, prior to the expiration of the Lease, or any extension thereof.

4. CONSIDERATION. In lieu of paying economic rent for the Leased Premises, the CITY agrees to provide other specific consideration that is deemed to be a highway benefit. The consideration is the separation of motor vehicle traffic from pedestrians, bicyclists and other non-motorized vehicles, which will materially increase motor vehicle safety and increase highway efficiency. Pedestrians, bicyclists and other non-motorized vehicles are currently using South Dearborn Street, or shortcutting through WSDOT property to reach the south downtown vicinity and the waterfront. South Dearborn Street contains on- and off-ramps to Interstate 5. The new trail will extend the Mountains to Sound Greenway Trail toward an existing I-5 overcrossing at South Holgate Street, which improves motorist safety by providing pedestrians, bicyclists and non-motorized vehicles with a separated transportation corridor away from the motoring public.

5. TERMINATION BY WSDOT.

A. WSDOT may terminate this Lease, without penalty or further liability as follows:

(1) Immediately, upon the unauthorized assignment of this Lease by CITY;

SEATTLE CITY CLERK

(2) Upon not less than Thirty (30) calendar days prior written notice, if CITY defaults on any provision in this Lease and is notified by WSDOT of the default Two (2) times within a Six (6) month period. The third default shall be deemed "non-curable;"

(3) Upon not less than Thirty (30) calendar days prior written notice to CITY, if CITY defaults, and fails to cure such default within that Thirty (30) calendar day period, or such longer period, as may be reasonably determined by WSDOT, if CITY is diligently working to cure the default. Waiver or acceptance of any default of the terms of this Lease by WSDOT shall not operate as a release of the CITY's responsibilities for any prior or subsequent default.

(4) Immediately, if the CITY's insurance coverage as required herein lapses for any reason. In such event, WSDOT may, at its option, barricade access to the Leased Premises;

(5) Immediately, upon issuance of any court order, legislative action, or governmental agency action having jurisdiction to take such action, which would significantly impair or effectively prohibit the CITY's use of the Leased Premises;

(6) Immediately, upon written notice, if a receiver is appointed to take possession of the CITY's assets, the CITY ma kes a general assignment for the benefit of creditors, or the CITY becomes insolvent or takes or suffers action under the Bankruptcy Act;

(7) Upon not less than Thirty (30) calendar days prior written notice, if WSDOT determines that it is in the best interest of WSDOT to terminate this Lease;

(8) Upon not less than Thirty (30) calendar days prior written notice if the Leased Premises has been abandoned, in WSDOT's sole judgment, for a continuous period of Ninety (90) calendar days; or

(9) Immediately, if a transportation emergency exists as solely determined by WSDOT.

B. WSDOT may terminate the Lease in part upon not less than Sixty (60) calendar days prior written notice, if WSDOT determines that a portion of the Leased Premises may be used for, but not limited to, telecommunications purposes, which in WSDOT's sole determination are reasonably consistent with WSDOT's authorized use of the Leased Premises. WSDOT will require a different lessee/user to pay the cost of alteration, if necessary, to maintain the safety and integrity of the trail.

SEA CITY CLERK

C. It is hereby acknowledged and agreed that the highway use of the Leased Premises is paramount to any other use, including CITY's use for a pedestrian, bicycle and other non-motorized vehicle trail. If this Lease is terminated for highway construction or reconstruction and WSDOT determines that it is necessary to close the trail, the CITY hereby agrees to be solely responsible for the mitigation of the trail closure, if necessary, at no cost to WSDOT and to indemnify and hold harmless WSDOT from any and all trail mitigation costs.

6. TERMINATION BY CITY.

CITY may terminate this Lease without penalty or further liability as follows:

A. Upon not less than Thirty (30) calendar days prior written notice for any reason; Provided that, the CITY removes prior to the date of termination any of its illumination poles and attached wires and luminaires located within the Leased Premises.

B. Upon not less than Thirty (30) calendar days prior written notice, if WSDOT defaults and fails to cure such default within that Thirty (30) calendar day period, or such longer period, as may be reasonably determined by the CITY, if WSDOT is diligently working to cure the default; or

C. Immediately, upon written notice, if in the CITY's judgment the Leased Premises is destroyed or damaged so as to substantially and adversely affect the CITY's authorized use of the Leased Premises.

D. Immediately, upon written notice to WSDOT, if the CITY adopts a budget that does not provide sufficient funds to meet the obligations set forth herein, at which point the CITY will remove at CITY expense any of its illumination poles and attached wires and luminaires located within the Leased Premises.

7. USE OF LEASED PREMISES.

A. No use other than reconstruction, operation and maintenance of a public pedestrian, bicycle, and other non-motorized vehicle trail under the control of the CITY is permitted without the prior written approval of WSDOT. The CITY expressly agrees that it will not charge others to use the Leased Premises. No motorized vehicles will be allowed on the Leased Premises except for CITY's maintenance vehicles and emergency vehicles responding to an emergency on the Leased Premises. In using the Leased Premises, the CITY shall comply with all policies and regulations, including, but not limited to RCW 47.42 et seq. and WAC 468-66 et seq., (Scenic Vistas Act) heretofore adopted or hereafter promulgated by the WSDOT relative to the location, operation, and maintenance of improvements located on the Leased

Premises. No access to the Leased Premises will be constructed or allowed to be constructed by or for the CITY without WSDOT's prior written approval. Direct access to ramps or traveled lanes of state highways is not permitted. All grading and construction plans and any changes thereof are subject to approval by WSDOT.

B. CITY will not allow third parties to use the trail as access to private property or improvements. Furthermore, in using the Leased Premises, it is expressly agreed that CITY shall: 1) comply with all applicable federal, state and local laws, ordinances, and regulations, including environmental requirements that are in force or which may hereafter be in force concerning the CITY's operation and maintenance of the Leased Premises for the purposes authorized in this Lease and 2) secure all necessary permits and licenses for the uses of the Leased Premises authorized in this Lease, except as provided in GCA 6484. The CITY hereby agrees to indemnify, defend and hold harmless WSDOT from all claims or suits resulting from the CITY's failure to comply with such requirements.

C. No signs, other than directional signs or that sign further described herein, are permitted. WSDOT owned fences in place at the time of execution of this Lease or relocated to separate the Leased Premises from the traveled roadway will be maintained by WSDOT; except, CITY shall maintain the fences identified in **Section 8.B.(7)**. Nothing is to be attached to WSDOT's fence without prior written approval. If any fence is damaged as a result of the activities authorized by this Lease, the CITY will promptly repair such damage at its cost to WSDOT's satisfaction and provide verbal notice to WSDOT's contact as identified in **Section 8.B.(7)**.

D. Within Thirty (30) calendar days of occupancy, the CITY at its sole expense shall erect and maintain a permanent sign at all entrances to the trail located on the Leased Premises, stating as follows: "This trail is located on highway right of way under a trail lease between the City of Seattle and the Washington State Department of Transportation."

E. WSDOT does not warrant that the unconstructed right of way is suitable for CITY'S purposes.

F. CITY agrees to pay all costs to barricade or to provide other interim safety measures, as directed by WSDOT, if closure of the trail becomes necessary to facilitate repair, reconstruction, maintenance, or modifications of the highway right of way.

THIS CITY CLERK

8. MAINTENANCE RESPONSIBILITIES.

A. CITY shall perform or cause to be performed at its sole expense all maintenance of the Leased Premises as shown on **Exhibit A** and **Exhibit B** that shall include, but not be limited to, keeping the Leased Premises in good condition, both as to safety and appearance, to the satisfaction of WSDOT. CITY shall be responsible for weed control, and reconstruction and repair of any or all components of the trail facility. In addition (and if applicable), CITY is responsible for the regular inspection and repair of structures as required by the Code of Federal Regulations 23 CFR 650, subpart C, National Bridge Inspection standards (NBIS), EXCEPT any and all work that would require Interstate 90 or Interstate 5 closure.

B. CITY agrees that it is additionally responsible for the following specific maintenance and operational items, at its sole cost and expense, without further liability to the WSDOT:

(1) Security and law enforcement for the Leased Premises;

(2) Graffiti removal from the Leased Premises. CITY shall in no way interfere with any highway operations or traffic flow on Interstate 90 or Interstate 5 when removing graffiti. Maintenance inspections of the Leased Premises shall be no less than once per month;

(3) Litter control on an as needed basis in accordance with adopted CITY maintenance standards and practices or upon WSDOT notification and/or inspections;

(4) Sweeping of the Leased Premises on an as needed basis in accordance with adopted CITY maintenance standards and practices;

(5) Removing and disposing of unauthorized signs, banners, etc. from the Leased Premises;

(6) Operation, maintenance and replacement of the trail's lighting, light poles and associated electrical systems on Leased Premises as shown on **Exhibit B** and payment of all electrical utility costs in accordance with **Section 12** herein;

(7) Maintenance of the fences constructed by WSDOT as part of the trail under GCA 6484, which define the width of the trail between South Holgate Street and the southerly intersection into Dr Jose Rizal Park, BPS station 10+54 (RT) to BPN station 32+92.2 (RT) and BPS station 10+90.5 (LT) to BPN station 32+96.5 (LT), and WSDOT hereby grants to the CITY a right of access over WSDOT property for purposes of maintenance of fences with

SEA CITY CLERK

Forty-Eight (48) hours prior verbal notice to the WSDOT Area 5 Maintenance Superintendent. The telephone number is (425)739-3700;

(8) Operation, maintenance and replacement of all retaining walls required for the Leased Premises as shown on **Exhibit B**; and

(9) Operation, maintenance and replacement of Six (6) access gates, numbered one through six inclusive, which will allow WSDOT access to WSDOT property as shown on **Exhibit B**.

C. WSDOT's Landscape Planting Plan is shown on **Exhibit C**, attached hereto and by this reference incorporated herein. CITY warrants that any vegetation disturbed during any reconstruction by the CITY shall be replanted or replaced in-kind, at CITY's expense, to the satisfaction of the WSDOT.

D. If CITY fails to maintain the trail as provided herein, the WSDOT may perform such maintenance after providing the CITY with Thirty (30) calendar days written notice of such maintenance default. Should the CITY fail to take corrective maintenance measures within the Thirty (30) calendar day notice period, the WSDOT may perform such maintenance, and CITY agrees to reimburse the WSDOT for all maintenance costs, including direct and indirect costs, within Thirty (30) calendar days of receipt of a WSDOT invoice.

9. ENVIRONMENTAL REQUIREMENTS.

A. CITY and WSDOT represent, warrant and agree that they will conduct their activities on and off the Leased Premises in compliance with all applicable environmental laws. As used in this Lease, Environmental Laws means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other comparable local, state or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto, including all amendments and/or revisions to said laws and regulations.

THIS CITY CLERK

B. Toxic or hazardous substances are not allowed on the Leased Premises without the express prior written permission of WSDOT and under such terms and conditions as may be specified by WSDOT. For the purposes of this Lease, "Hazardous Substances" shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., and the Washington Model Toxics Control Act, RCW 70.105D et seq., including all amendments and/or revisions to said laws and regulations, and shall include gasoline and other petroleum products. In the event such permission is granted, the disposal of such materials must be done in a legal manner by the CITY.

C. CITY agrees to cooperate in any environmental investigations conducted by WSDOT staff or independent third parties where there is evidence of contamination on the Leased Premises, or where WSDOT is directed to conduct such audit by an agency or agencies having jurisdiction. CITY will reimburse WSDOT within Thirty (30) calendar days of the date of a WSDOT invoice for the cost of such investigations, where the need for said investigation is determined to be caused by the CITY's operations and activities under this Lease. CITY will promptly provide WSDOT with notice of any inspections of the Leased Premises, notices of violations, and orders to clean up contamination received by CITY. CITY will permit WSDOT to participate in all settlement or abatement discussions concerning the Leased Premises. In the event that the CITY fails to take remedial measures as duly directed by a state, federal, or local regulatory agency within Ninety (90) calendar days of such notice, WSDOT may elect to perform such work, and the CITY covenants and agrees to reimburse WSDOT for all direct and indirect costs associated with WSDOT's work where those costs are determined to have resulted from the CITY's use of the Leased Premises. CITY further agrees that the use of the Leased Premises shall be such that no hazardous or objectionable smoke, fumes, vapor, odors, or discharge of any kind shall rise above the grade of the right of way.

D. For the purposes of this Lease, "Costs" shall include, but not be limited to, all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq; the Clean Water Act, 33 U.S.C. § 1251; the Clean Air Act, 42 U.S.C. § 7401; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901; and the Washington Model Toxics Control Act, RCW 70.105D et seq., including all amendments and/or revisions to said laws and regulations.

E. CITY agrees to defend, indemnify and hold harmless WSDOT from and against any and all claims, causes of action, demands and liability including, but not limited to, any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and

CITY CLERK

attorneys' fees associated with the removal or remediation of any Hazardous Substances that have been released, or otherwise come to be located on the Leased Premises, including those that may have migrated from the Leased Premises through water or soil to other properties, including without limitation, the adjacent WSDOT property and which are caused by or result from the CITY's activities on the Leased Premises. CITY further agrees to retain, defend, indemnify and hold harmless WSDOT from any and all liability arising from the offsite disposal, handling, treatment, storage, or transportation of any such Hazardous Substances removed from said Leased Premises by the CITY.

F. WSDOT agrees to defend, indemnify and hold harmless the CITY from and against any and all claims, causes of action, demands and liability including, but not limited to, any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees associated with the removal or remediation of any Hazardous Substances that have been released, or otherwise come to be located on the Leased Premises, including those that may have migrated from the Leased Premises through water or soil to other properties, including without limitation, the adjacent WSDOT property and which are caused by or result from the acts or omissions of WSDOT, its employees, contractors, and agents. WSDOT further agrees to retain, defend, indemnify and hold harmless the CITY from any and all liability arising from the offsite disposal, handling, treatment, storage, or transportation of any such Hazardous Substances removed from said Leased Premises by WSDOT, its employees, contractors, and agents.

G. The provisions of this section shall survive the expiration or termination of this Lease.

10. WSDOT'S RESERVATION OF RIGHT TO MAINTAIN AND GRANT UTILITY FRANCHISES AND PERMITS AND TO LEASE FOR COMPATIBLE PURPOSES.

A. WSDOT reserves the right for utility franchise and permit holders to enter upon the Leased Premises to maintain facilities and, for itself, to grant utility franchises and/or permits within the Leased Premises. Such installation will be accomplished in such a manner as to minimize any disruption to the CITY. WSDOT will use its best efforts to provide the CITY with plans of installation no less than Twenty (20) working days prior to the anticipated commencement of construction. The franchise/permit holder will be required to restore paving and grading damaged by the installation, as well as any other damage, including, without limitation, damage to vegetation. In addition, WSDOT will cause it franchisee to pay, if necessary, the cost of alteration to the trail to maintain the safety and integrity of the trail. WSDOT also reserves the right to withdraw portions of the Leased Premises for uses such as, but

SEATTLE CITY CLERK

not limited to, telecommunications transmission sites, which WSDOT determines to be reasonably compatible with the CITY's authorized use of Leased Premises.

B. CITY shall not disturb markers installed by a franchise/permit holder and will contact and provide notice to any franchise/permit holder and all owners of underground facilities prior to any excavation. CITY shall contact WSDOT and call the Underground Utility Locating Service, or its successor organization, as part of its efforts to ascertain any and all owners of underground utility facilities and to locate the utility. The CITY shall not damage legally installed underground utilities. CITY shall comply with all applicable provisions of Chapter 19.122 RCW relating to underground facilities.

11. USE OF RIGHT OF WAY UNDER OR ADJACENT TO STRUCTURE.

A. CITY agrees to provide protection against vehicular hits or other likely causes of damage arising from the CITY's use of the Leased Premises to all retaining walls and to piers exposed to such potential damage under any elevated highway structure existing on the Leased Premises. Such wall and pier protection shall be provided to the satisfaction of WSDOT prior to occupancy.

B. CITY shall not weld any metal object to any metal member of any metal structure, nor drill or rivet into nor otherwise fasten anything to any pier or beam on any concrete, metal, or wood structure without WSDOT's specific written approval of detailed drawings for such welding, riveting, drilling, or fastening.

C. CITY shall at its own expense post construction, and upon prior written approval from WSDOT, make any provisions it deems necessary to protect users of the trail from any hazards resulting from use and operation of the highway.

12. TAXES, ASSESSMENTS, AND UTILITIES. CITY agrees to pay all assessments that benefit the Leased Premises and/or which may hereafter become a lien on the interest of the CITY in accordance with RCW 79.44.010. The CITY agrees to pay all taxes that may hereafter be levied or imposed upon the interest of the CITY or by reason of this Lease. The CITY is responsible for and agrees to pay the cost for all utilities, including, but not limited to, surcharges, fuel adjustments, rate adjustments and taxes that serve the Leased Premises.

13. WSDOT'S APPROVAL OF DESIGN AND RECONSTRUCTION. CITY covenants that any future grading or reconstruction on the Leased Premises by the CITY will not damage, threaten to damage, or otherwise adversely affect any part or element of the highway facility or its operation. WSDOT shall be furnished with two sets of complete plans, details, and

specifications and revisions thereto for any future grading or improvements proposed to be placed on the Leased Premises by the CITY or its agents or contractors, and no work shall be done without prior written approval of such plans by WSDOT. All construction work shall be done in conformity with the plans and specifications as approved. WSDOT may take any action necessary, including directing that work be temporarily stopped or directing that additional work be done, to ensure compliance with the plans and specifications, protection of all parts and elements of the highway facility, and compliance with WSDOT's construction and safety standards. The improvements shall be designed and constructed in a manner that will permit WSDOT access to the highway facility for the purposes of inspection, maintenance, and construction, when necessary.

14. LIMITATIONS. CITY expressly acknowledges and agrees that WSDOT's rights under this Lease to review, comment on, disapprove and/or accept designs, plans specifications, work plans, construction, equipment, installation, **(a)** exist solely for the benefit and protection of WSDOT, **(b)** do not create or impose upon WSDOT any standard or duty of care toward the CITY, all of which are hereby disclaimed, **(c)** may not be relied upon by the CITY in determining whether the CITY has satisfied any and all applicable standards and requirements and **(d)** may not be asserted, nor may WSDOT's exercise or failure to exercise any such rights be asserted, against WSDOT by the CITY as a defense, legal or equitable, to CITY's obligation to fulfill such standards and requirements and regardless of any acceptance of work by WSDOT.

15. NON-COMPLETION OF RECONSTRUCTION. CITY shall obtain WSDOT's approval of construction drawings, complete any future reconstruction of the trail according to the approved plans, and complete the work within the WSDOT approved schedule and should the trail require any reconstruction closures, reopen the trail to the public within Thirty (30) calendar days of completing the reconstruction.

16. "AS BUILT" PLANS. As built plans to be provided to the CITY by WSDOT in accordance with GCA 6484 within Sixty (60) calendar days of the date the trail construction is completed. For any future grading or reconstruction by the CITY, CITY shall provide WSDOT with a complete set of dimensioned "As-Built" scale drawings showing at least the information following: **(a)** trail centerline; **(b)** ties to beginning and end of trail; **(c)** underground utilities; and **(d)** such other information as WSDOT may request. Acceptability of the As-Built drawings shall be determined solely by WSDOT. In the event the CITY fails to provide such plans within the prescribed time period, the CITY hereby agrees that WSDOT shall have the right, at its option, to contract with a consultant in order to secure such plans and CITY agrees to reimburse WSDOT for all costs incurred in obtaining said plans within Thirty (30) calendar days of the date of WSDOT's invoice.

RECEIVED CITY CLERK

17. LIENS.

A. CITY shall at all times indemnify and hold harmless WSDOT from all claims for labor or materials in connection with the CITY's reconstruction, repair, alteration, maintenance or installation of structures, improvements, equipment, or facilities on or within the Leased Premises, and from the cost of defending against such claims, including attorney fees.

B. In the event a lien is filed upon the Leased Premises as a result of work by the CITY, the CITY shall: (**a**) Record a valid Release of Lien, or (**b**) Deposit sufficient cash with WSDOT to cover the amount of the claim on the lien in question, and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim, or (**c**) Procure and record a bond which releases the Leased Premises from the claim of the lien and from any action brought to foreclose the lien.

C. Should the CITY fail to accomplish **a**, **b**, or **c** above within Fifteen (15) calendar days after the filing of such a lien, the Lease shall be in default.

18. ENCUMBRANCES. It is expressly understood that the CITY shall not encumber the Leased Premises.

19. WSDOT'S RIGHT OF ENTRY AND INSPECTION. WSDOT, for itself, its agents and contractors, and for the Federal Highway Administration, reserves the right to enter upon the Leased Premises at any time without notice to the CITY for the purpose of inspection, maintenance, construction, or reconstruction of the highway facility or any element thereof, or to perform environmental reviews. WSDOT shall in no way be responsible for any incidental or consequential damages due to such loss of use, if any, by the CITY. WSDOT and the Federal Highway Administration may from time-to-time go upon the Leased Premises for the purpose of inspecting any excavation, construction, or maintenance work being done by the CITY. Further, this right shall not impose any obligation upon WSDOT to make inspections to ascertain the safety of the CITY's improvements, if any, or the condition of the Leased Premises.

20. INSURANCE.

A. CITY warrants that it is self-insured, and agrees to provide acceptable evidence of its self-insured status to WSDOT.

B. In the event the CITY, after commencement of this Lease, elects to terminate its self-insured status, the following shall be applicable:

SEATTLE CITY CLERK

(1) The CITY shall secure commercial general liability insurance coverage for the Leased Premises, including public liability coverage for bodily injury, property damage, and personal injury with limits of liability of not less than Two Million and no/100 Dollars ($2,000,000.00) combined single limit per occurrence, or per offense as respects personal injury, with a general aggregate amount of not less than Four Million and no/100 Dollars ($4,000,000) per policy period. Such aggregate limits shall apply for this Leased Premises location, and coverage under said policy shall be triggered on an "occurrence basis," not on a "claims made" basis.

(2) The CITY will promptly cause to be provided to WSDOT a certificate of insurance evidencing coverage placed with an insurer licensed to conduct business in the State of Washington, to the satisfaction of WSDOT. WSDOT shall be included as an additional insured by provision of the liability policy required, utilizing ISO Form CG 20 26 (Additional Insured – Designated Person or Organization) or its functional blanket or designated additional insured equivalent without modification. The insurer shall agree to provide the WSDOT Real Estate Services Office in Tumwater with no less than Thirty (30) calendar days written notice, except ten (10) days written notice as respects cancellation for non-payment of premium as specified in RCW 48.18.290 before any cancellation of the coverage required herein.

(3) The CITY shall increase the policy limits at its sole cost, when and if WSDOT reasonably deems it necessary due to the CITY's use of the Leased Premises.

(4) The CITY assumes all obligations for premium payment, and in the event of nonpayment is obligated to reimburse WSDOT the cost of maintaining the insurance coverage and any legal fees incurred in enforcing such reimbursement in the event the CITY fails to pay the policy premiums.

(5) Coverage, if obtained by the CITY in compliance with the section, shall not be deemed as having relieved the CITY of any liability in excess of such coverage.

21. HOLD HARMLESS/INDEMNIFICATION.

A. CITY, its successors and assigns, will protect, save, and hold harmless WSDOT, its authorized agents and employees, from all claims, actions, costs, damages (both to persons and/or property), or expenses of any nature whatsoever by reason of the acts or omissions of the CITY, its assigns, subtenants, agents, contractors, licensees, invitees, employees, or any person whomsoever, arising out of or in connection with any acts or activities related to this Lease, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Leased Premises. The CITY further agrees to defend

DNS CITY CLERK

WSDOT, its agents or employees, in any litigation, including payment of any costs or attorney's fees, for any claims or actions commenced, arising out of, or in connection with acts or activities related to this Lease, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Leased Premises. This obligation shall not include such claims, actions, costs, damages, or expenses which may be caused by the sole negligence of WSDOT or its authorized agents or employees; provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) WSDOT, its agents or employees and (b) the CITY, its assigns, subtenants, agents, contractors, licensees, invitees, employees, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the CITY or its assigns, subtenants, agents, contractors, licensees, invitees, employees.

B. To the extent authorized by law, WSDOT, its successors and assigns will protect, save, and hold harmless the CITY, its authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of WSDOT, its agents or employees, arising out of or in connection with any acts or activities related to this Lease, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Leased Premises. WSDOT further agrees to defend the CITY, its authorized agents or employees, in any litigation, including payment of any costs or attorney's fees, for any claims or actions commenced, arising out of, or in connection with acts or activities related to this Lease, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Leased Premises. This obligation shall not include such claims, actions, costs, damages, or expenses which may be caused by the sole negligence of the CITY or its authorized agents or employees; provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) WSDOT, its authorized agents or employees and (b) the CITY, its authorized agents or employees, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of WSDOT or its authorized agents or employees.

C. CITY specifically assumes potential liability for the actions brought by CITY's employees and solely for the purposes of this indemnification and defense, CITY specifically waives any immunity under the State industrial insurance law, Title 51 RCW. CITY recognizes that this waiver was the subject of mutual negotiations.

D. The indemnification provisions contained in this section shall survive the termination or expiration of this Lease.

FILED CITY CLERK

22. NONDISCRIMINATION. CITY, for itself, its successors and assigns, as part of the consideration hereof, does hereby agree to comply with all applicable civil rights and antidiscrimination requirements including, but not limited to, Chapter 49.60 RCW.

23. ASSIGNMENT. Neither this Lease nor any rights created by it may be assigned, sublet, or transferred in written or oral form.

24. SURRENDER OF LEASED PREMISES

A. Upon termination of this Lease, the CITY shall cease its operations on and/or use of the Leased Premises. In the event the CITY fails to vacate the Leased Premises on the date of termination, the CITY shall be liable for any and all costs to WSDOT arising from such failure. As used herein, "vacate" shall mean the removal of the CITY'S illumination poles, and attached wires and luminaires from the Leased Premise and installation of security gates and fencing at the access points located at S Holgate Street and 12th Ave S and S Charles Street, at its cost and to WSDOT's satisfaction.

25. NO RELATIONSHIP ESTABLISHED. WSDOT shall in no event be construed to be a partner with, associate or joint venturer of the CITY or any party associated with the CITY. The CITY shall not create any obligation or responsibility on behalf of WSDOT or bind WSDOT in any manner.

26. TRANSPORTATION PURPOSES.

A. CITY and WSDOT hereby affirm that upon termination or expiration of this Lease for any reason and the subsequent use of the Leased Premises for transportation or other purposes, such use will not be considered the use of any publicly-owned land from a public park, recreation area, or wildlife and waterfowl refuge within the meaning of 23 U.S.C. 138 and 49 U.S.C. 303 (former 49 U.S.C.1653 (f), Section "4f"). If this Lease is terminated for highway construction or reconstruction and WSDOT determines that it is necessary to close the trail, the CITY agrees to be solely responsible for the replacement of the trail and all associated costs, if an authorized local, state or federal official having jurisdiction over the land or a court of competent jurisdiction determines that replacement of the trail is required under 23 U.S.C. 138 and 49 U.S.C. 303, as revised or subsequent federal policy or law. The CITY further agrees that it shall be solely responsible for any litigation costs should it choose to challenge any such local, state or federal official or court determination. The CITY agrees to indemnify and hold harmless WSDOT from all costs associated with a replacement trail, as well as all associated litigation costs.

FILED CITY CLERK

B. CITY further acknowledges, agrees, and promises not to use Outdoor Recreation Funds as provided for in the Land and Water Conservation Fund Act, 16 U.S.C. 460-l, sections 4-11 (see section 8(f)(3) within state owned right of way; such funds may be used outside of the state owned right of way).

27. CONDITION OF THE PROPERTY. WSDOT and CITY acknowledge that they will jointly examine the Leased Premises upon completion of the trail and the CITY's letter of acceptance, a copy of which will be attached to this Lease, will evidence the CITY's acceptance of the Leased Premises as per GCA 6484.

28. BINDING CONTRACT. This Lease shall not become binding upon WSDOT unless and until executed for WSDOT by the Secretary of Transportation, or her duly authorized representative.

29. ATTORNEYS' FEES. In the event of any controversy, claim, or dispute arising out of this Lease, each party shall be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs.

30. MODIFICATIONS. This Lease contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by written amendment, signed by all authorized parties thereto.

31. INTERPRETATION. This Lease shall be governed by and interpreted in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this Lease are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

32. SEVERABILITY. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

33. VENUE. CITY agrees that the venue of any action or suit concerning this Lease shall be in the Pierce County Superior Court and all actions or suits thereon shall be brought therein, unless applicable law requires otherwise.

DES CITY CLERK

34. TOTALITY OF AGREEMENT. It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by WSDOT except to the extent that the same are expressed in this Lease or GCA 6484.

35. MEMORANDUM OF LEASE. The parties hereby agree to execute and record a memorandum of lease, if either party so requests.

36. NOTICES. Wherever in this Lease written notices are to be given or made, they will be sent by certified or overnight mail addressed to the parties at the addresses listed below, unless a different address has been designated in writing and delivered to the other party.

WSDOT: DEPARTMENT OF TRANSPORTATION (Mailing Address)
Attn.: Property Management Section Manager
P.O. Box 47338
Olympia, WA 98504-7338

DEPARTMENT OF TRANSPORTATION (Physical Address)
Attn.: Property Management Section Manager
243 Israel Road S.E., Suite 101
Tumwater, WA 98501

CITY: CITY OF SEATTLE, DEPARTMENT OF TRANSPORTATION
Attn.: Director of Transportation
700 Fifth Avenue, Suite 3900
PO Box 34996
Seattle, WA 98124-4996

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

CITY CLERK

IN WITNESS WHEREOF, the parties have executed this Lease as of the date of WSDOT's execution written below.

Accepted and Approved by:

Signatures:

CITY OF SEATTLE	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
By _____	By: _____
Director of Transportation	Cynthia Tremblay, Property Management Program Manager
Dated: _____	Dated: _____

APPROVED AS TO FORM

By: _____

Assistant Attorney General

_____, 20____

SEA CITY CLERK

CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this _____ day of _____, 2010 before me personally appeared _____ to me known to be the Director of Transportation of the City of Seattle, a municipal corporation, that executed the foregoing instrument, and acknowledged 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/she was authorized to execute said instrument.

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

_____
(Signature)

_____
(Print or type name)
Notary Public in and for the State of Washington
residing at_____

My commission expires _____

FILED CITY CLERK

WSDOT ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this _____ day of _____, 2010 before me personally appeared Cynthia Tremblay, to me known to be the duly appointed Property Management Program Manager, and that she executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the _____ day of _____, 2010.

_____
(Signature)

_____
(Print or type name)
Notary Public in and for the State of Washington
residing at_____
My commission expires _____

EXHIBIT A
Page 1 of 4
1-17-08803
TR-01-12702
Mountain to the Sound Trail
S.8. T.24N. R.4E. W.M.
BEGINNING OF PLAN
STATION 2120+00
NOTE
FOR RIGHT OF WAY WEST OF FREEWAY
BASE LINE SEE SHEET NO.3
LEGEND:
SEATTLE TIDE LANDS
CENTRAL T. L. McKINNEYS ADD.
JOS C. KINNEARS ADD.
McNAUGHTS 3RD ADD.
McNAUGHTS EXTENSION TO JUDKINS
OWNERSHIPS
EXHIBIT A
NOTE: Approved per State Highway Commission Order Nov. 14, 1962
SR 5
SEATTLE FREEWAY
PLUM STREET TO JACKSON STREET
KING COUNTY
RIGHT OF WAY
STA. 2120+00 to STA. 2132+09.81 (Rt)
DRAWER 4
SEQUENCE 7
S. HOLGATE STREET
11TH AVE. S.
10TH AVE. S.
S. GRAND STREET
S. PLUM ST.
S. SEATTLE ST.
FOR RELINQUISHMENT TO CITY OF SEATTLE

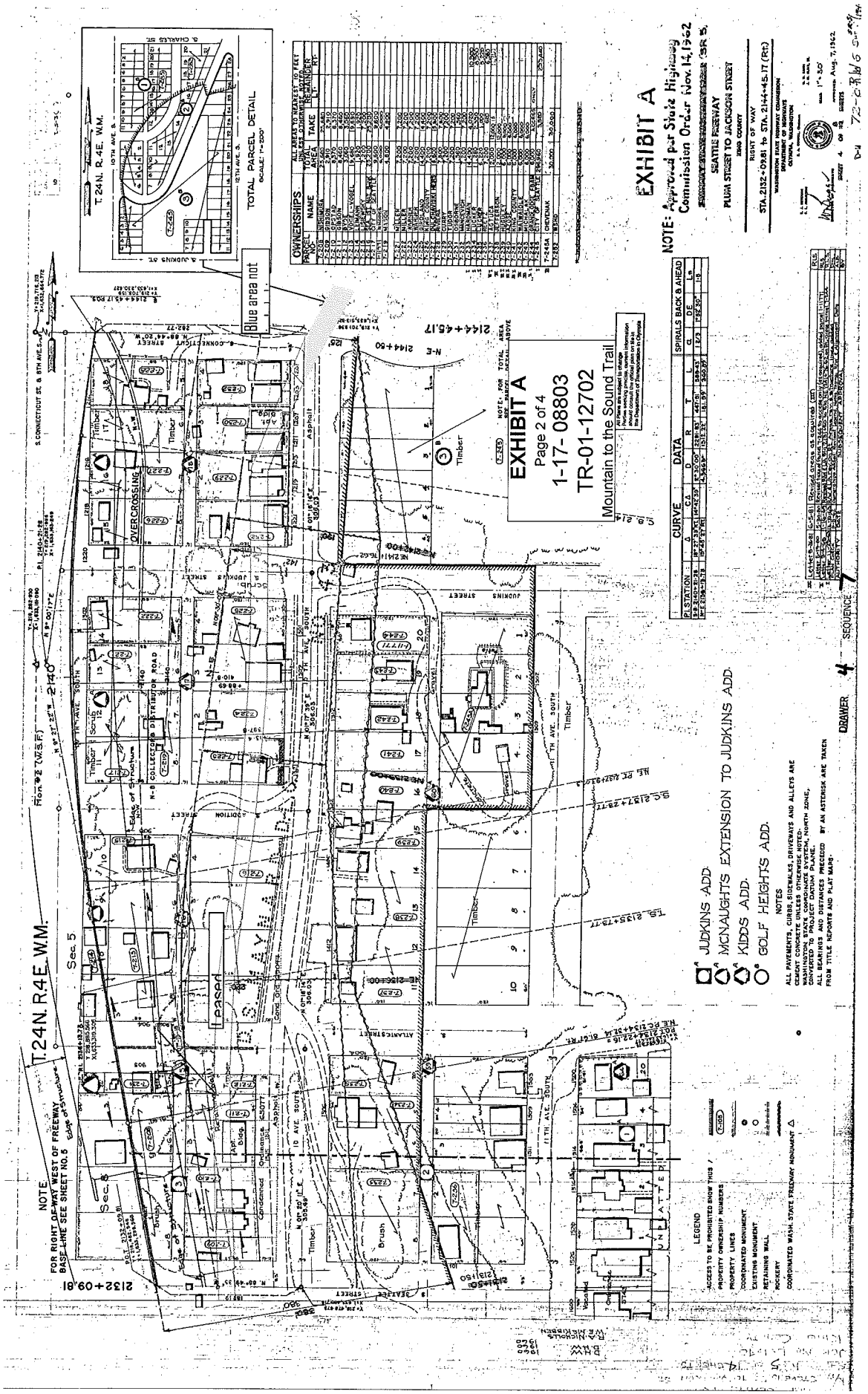
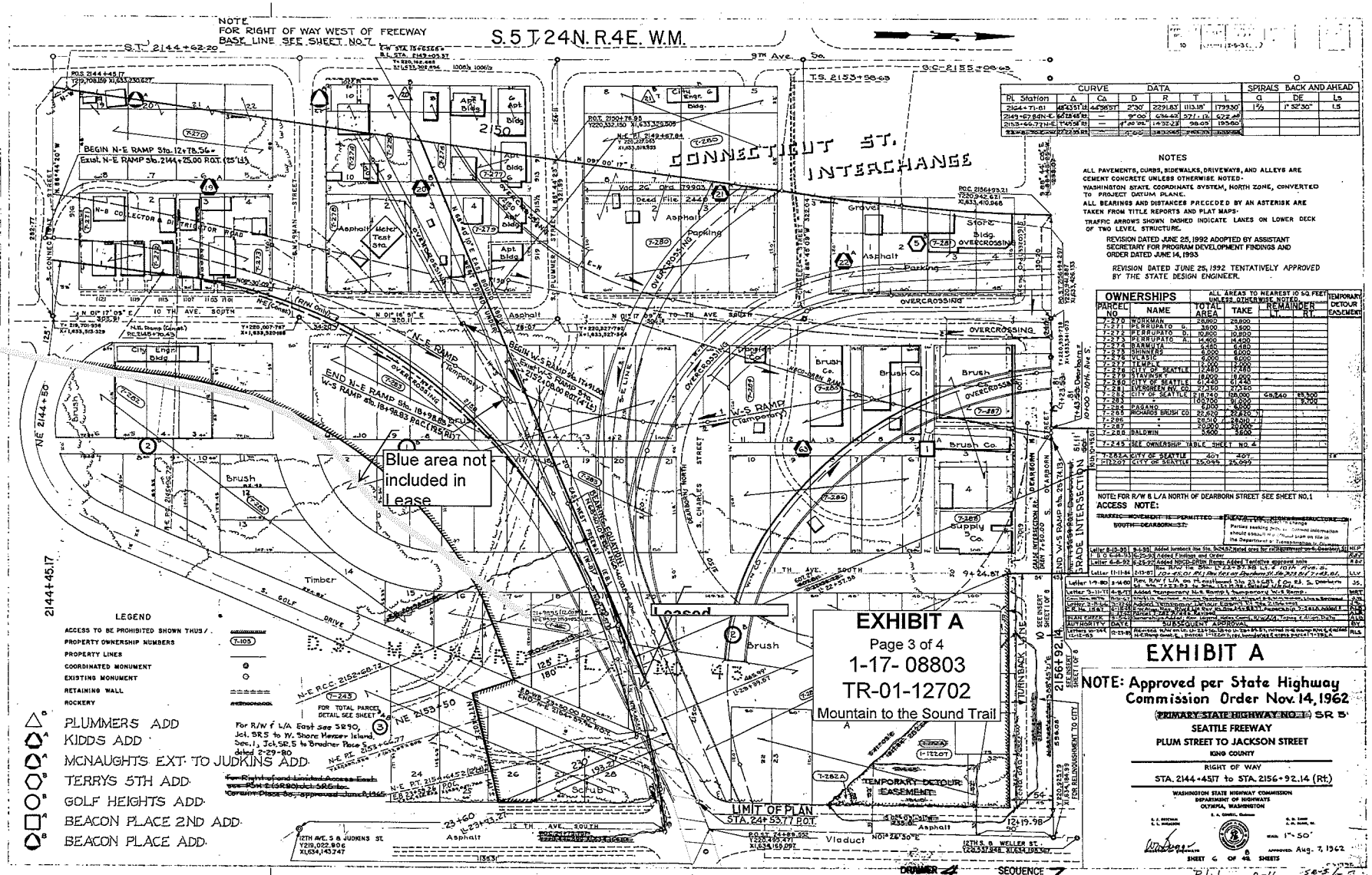


EXHIBIT A
NOTE: Approved per State Highway Commission Order Nov. 14, 1962
SEATTLE FREEWAY
PLUM STREET TO JACKSON STREET
RIGHT OF WAY
STA. 2132+09.81 to STA. 2144+45.17 (Rt.)
EXHIBIT A
Page 2 of 4
1-17- 08803
TR-01-12702
Mountain to the Sound Trail
Blue area not
TOTAL PARCEL DETAIL
T.24N. R.4E. W.M.
Sec. 5
Sec. 8
JUDKINS ADD.
McNAUGHTS EXTENSION TO JUDKINS ADD.
KIDDS ADD.
GOLF HEIGHTS ADD.
NOTES
LEGEND
DRAWER 4
SEQUENCE 7

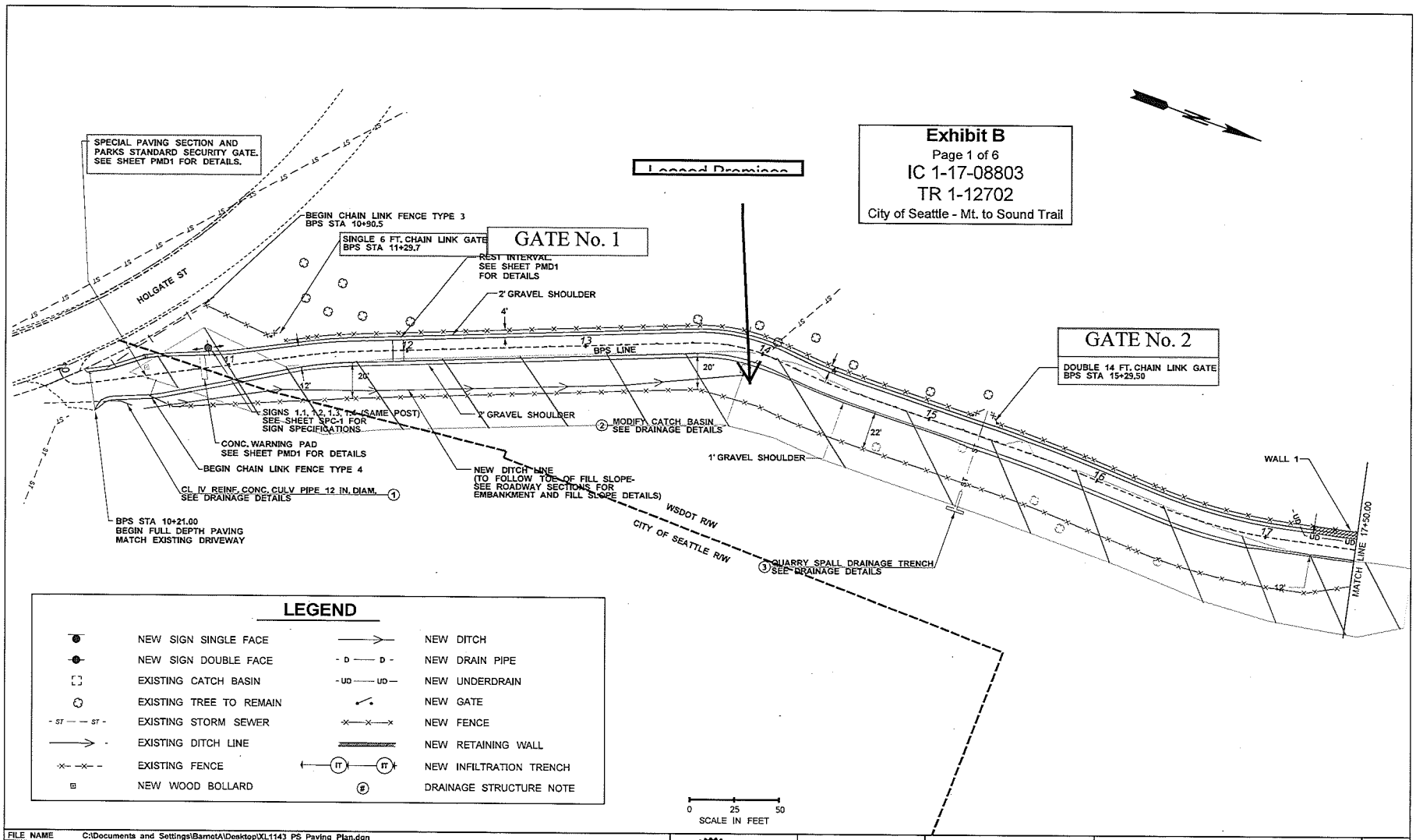


Gretchen M. Hayde/GMH
SDOT Mountain to Sound Greenway Trail Project ATT 9 EXH A
June 25, 2010
Version #1

Exhibit A to Attachment B BPS Line Survey

EXHIBIT A
Page 4 of 4
1-17- 08803
TR-01-12702
Mountain to the Sound Trail
T.24N.R.4E.W.M.
CITY OF SEATTLE
TO MERCER ISLAND
TO SR 5

Exhibit B
Page 1 of 6
IC 1-17-08803
TR 1-12702
City of Seattle - Mt. to Sound Trail



LEGEND

	NEW SIGN SINGLE FACE		NEW DITCH
	NEW SIGN DOUBLE FACE	- D — D -	NEW DRAIN PIPE
	EXISTING CATCH BASIN	- UD — UD —	NEW UNDERDRAIN
	EXISTING TREE TO REMAIN		NEW GATE
- ST — — ST -	EXISTING STORM SEWER		NEW FENCE
	EXISTING DITCH LINE		NEW RETAINING WALL
	EXISTING FENCE	IT IT	NEW INFILTRATION TRENCH
	NEW WOOD BOLLARD	#	DRAINAGE STRUCTURE NOTE

FILE NAME	C:\Documents and Settings\BarnetA\Desktop\XL1143_PS_Paving Plan.dgn
TIME	11:56:08 AM
DATE	5/20/2010
PLOTTED BY	BarnetA
DESIGNED BY	K. CATON
ENTERED BY	K. CATON
CHECKED BY	J. FARRIS
PROJ. ENGR.	B. NEBBITT
REGIONAL ADM.	L. ENG

REVISION | DATE | BY

REGION NO. 10 | STATE WASH | FED.AID PROJ.NO.
JOB NUMBER 10A014
CONTRACT NO. | LOCATION NO.

P.E. STAMP BOX DATE | P.E. STAMP BOX DATE

Washington State Department of Transportation

SR 519
I-90 TO SR 519 PEDESTRIAN TRAIL

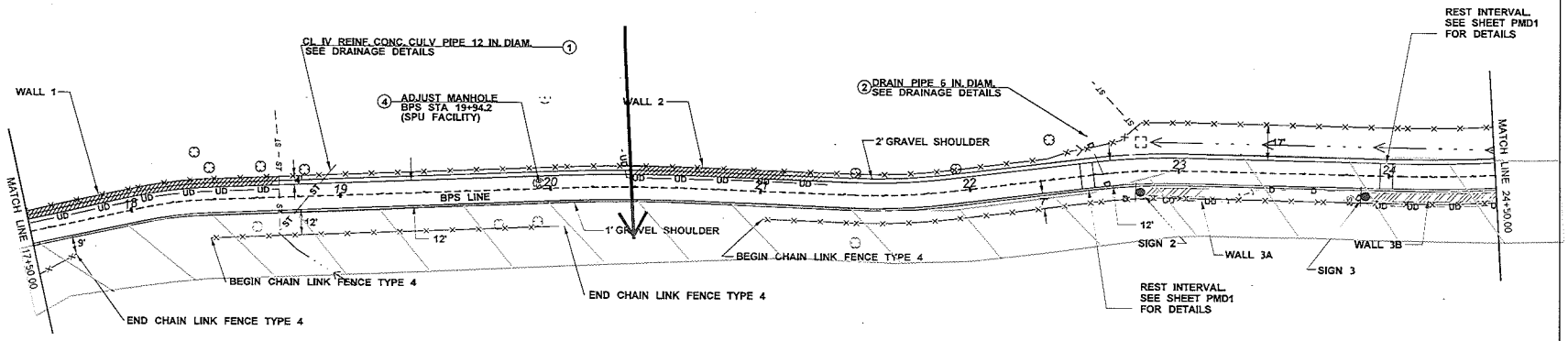
PAVING, DRAINAGE, AND SIGNING PLAN

Plot 1 | PLAN REF NO P1 | SHEET 36 OF 85 SHEETS

Gretchen M. Hayde/GMH
SDOT Mountain to Sound Greenway Trail Project AT-7 EXH B
June 25, 2010
Version #1

Exhibit B
Page 2 of 6
IC 1-17-08803
TR 1-12702
City of Seattle - Mt. to Sound Trail

Leased Premises



LEGEND

	NEW SIGN SINGLE FACE		NEW DITCH
	NEW SIGN DOUBLE FACE	- D — D -	NEW DRAIN PIPE
	EXISTING CATCH BASIN	- UD — UD —	NEW UNDERDRAIN
	EXISTING TREE TO REMAIN		NEW GATE
- ST — — ST -	EXISTING STORM SEWER		NEW FENCE
	EXISTING DITCH LINE		NEW RETAINING WALL
	EXISTING FENCE	IT IT	NEW INFILTRATION TRENCH
	NEW WOOD BOLLARD	#	DRAINAGE STRUCTURE NOTE

0 25 50
SCALE IN FEET

NOTES:
1. SEE SHEET SPC-1 FOR SIGN SPECIFICATIONS

FILE NAME	T:\589352\XL1143\CADD\PS&ESheets\XL1143_PS_Paving_Plan.dgn
TIME	8:30:13 AM
DATE	5/7/2010
PLOTTED BY	catonk
DESIGNED BY	K. CATON
ENTERED BY	K. CATON
CHECKED BY	J. FARRIS
PROJ. ENGR.	B. NEBBITT
REGIONAL ADM.	L. ENG

REVISION | DATE | BY

REGION NO. 10 | STATE WASH | FED.AID PROJ.NO.
JOB NUMBER 10A014
CONTRACT NO. | LOCATION NO.

P.E. STAMP BOX | DATE

P.E. STAMP BOX | DATE

Washington State Department of Transportation

SR 519
I-90 TO SR 519 PEDESTRIAN TRAIL

PAVING, DRAINAGE, AND SIGNING PLAN

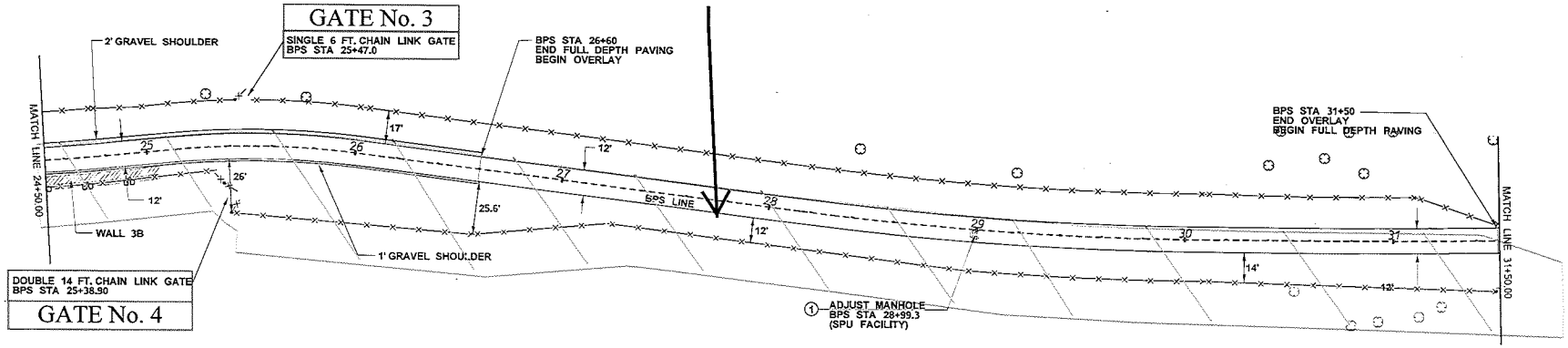
Plot 2
PLAN REF NO P2
SHEET 37 OF 85 SHEETS

Exhibit B to Attachment B BPN Line Survey

Gretchen M. Haydel/GMH
SDOT Mountain to Sound Greenway Trail Project ATT 9 EXH B
June 25, 2010
Version #1

Exhibit B
Page 3 of 6
IC 1-17-08803
TR 1-12702
City of Seattle - Mt. to Sound Trail

Leased Premises



LEGEND

	NEW SIGN SINGLE FACE		NEW DITCH
	NEW SIGN DOUBLE FACE	- D — D -	NEW DRAIN PIPE
	EXISTING CATCH BASIN	- UD — UD —	NEW UNDERDRAIN
	EXISTING TREE TO REMAIN		NEW GATE
- ST — — ST -	EXISTING STORM SEWER		NEW FENCE
	EXISTING DITCH LINE		NEW RETAINING WALL
	EXISTING FENCE	IT — IT	NEW INFILTRATION TRENCH
	NEW WOOD BOLLARD	#	DRAINAGE STRUCTURE NOTE

0 25 50
SCALE IN FEET

FILE NAME	T:\589352\XL1143\CADIPS&ESheets\XL1143_PS_Paving Plan.dgn
TIME	8:30:14 AM
DATE	5/7/2010
PLOTTED BY	catonk
DESIGNED BY	K. CATON
ENTERED BY	K. CATON
CHECKED BY	J. FARRIS
PROJ. ENGR.	B. NEBBITT
REGIONAL ADM.	L. ENG

REVISION | DATE | BY

REGION NO. 10 | STATE WASH
JOB NUMBER 10A014
CONTRACT NO.
FED.AID PROJ.NO.
LOCATION NO.

P.E. STAMP BOX — DATE
P.E. STAMP BOX — DATE

Washington State Department of Transportation

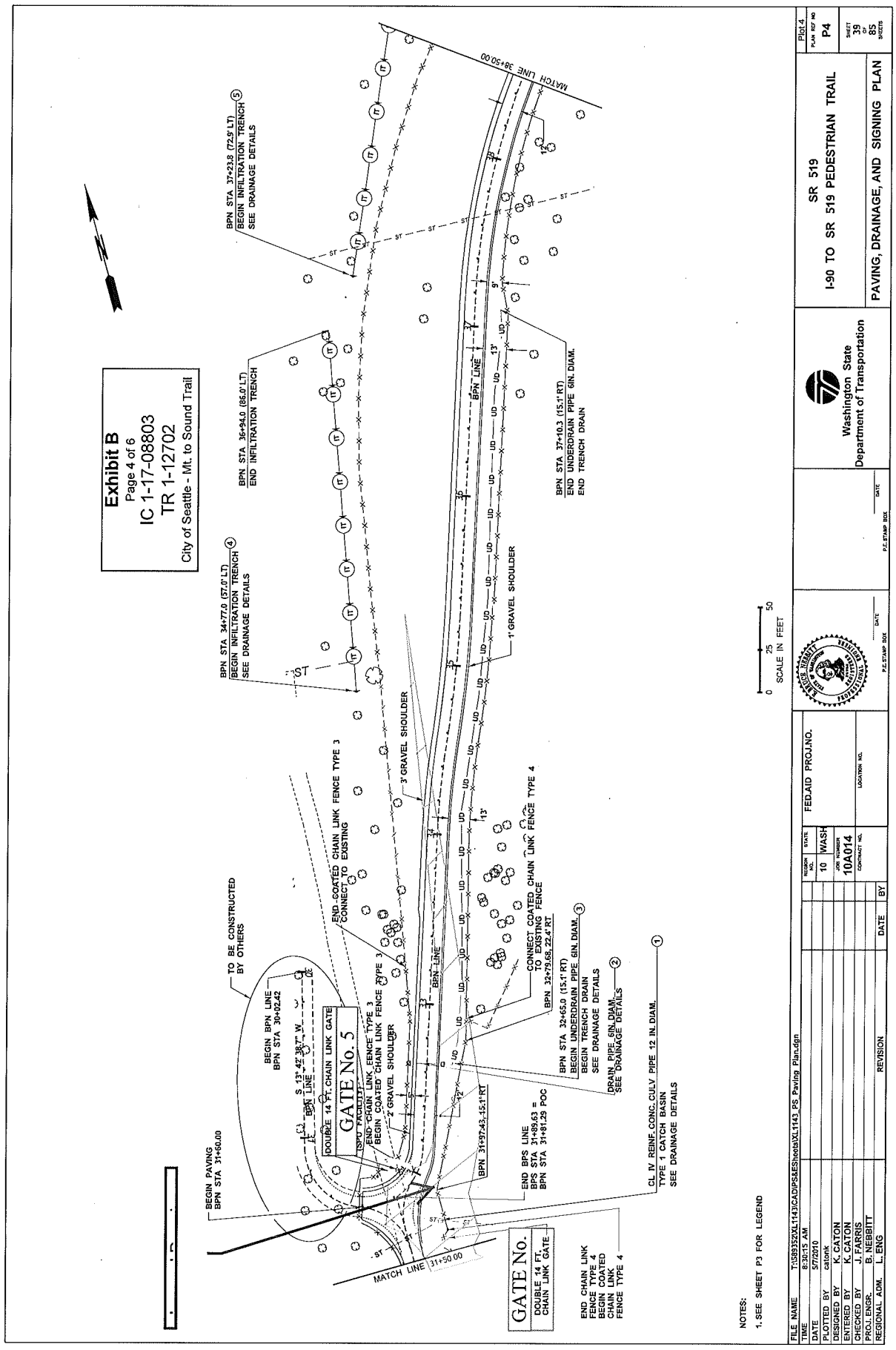
SR 519
I-90 TO SR 519 PEDESTRIAN TRAIL

PAVING, DRAINAGE, AND SIGNING PLAN

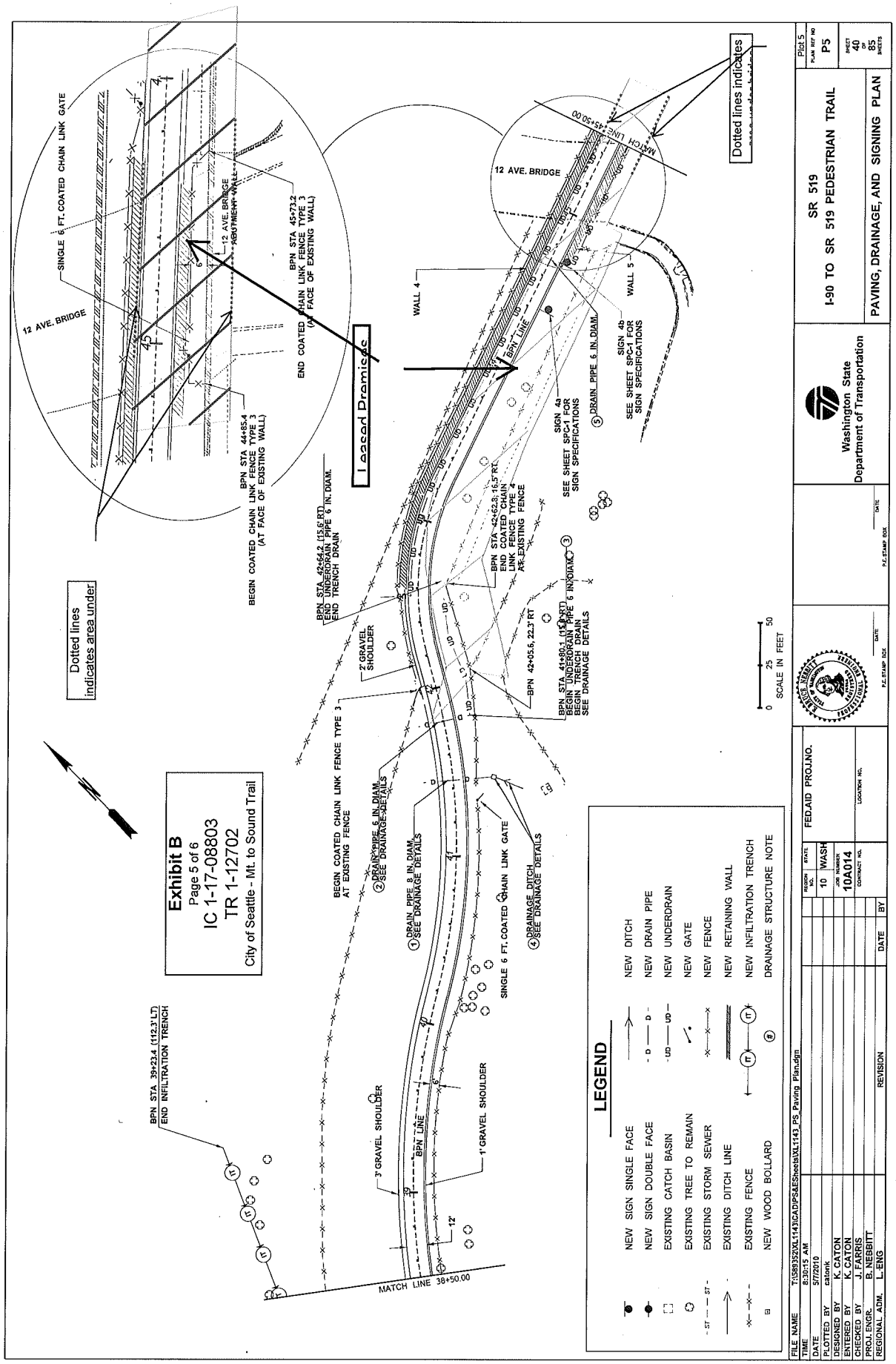
Plot 3
PLAN REF NO P3
SHEET 38 OF 85 SHEETS

Exhibit B to Attachment B BPN Line Survey

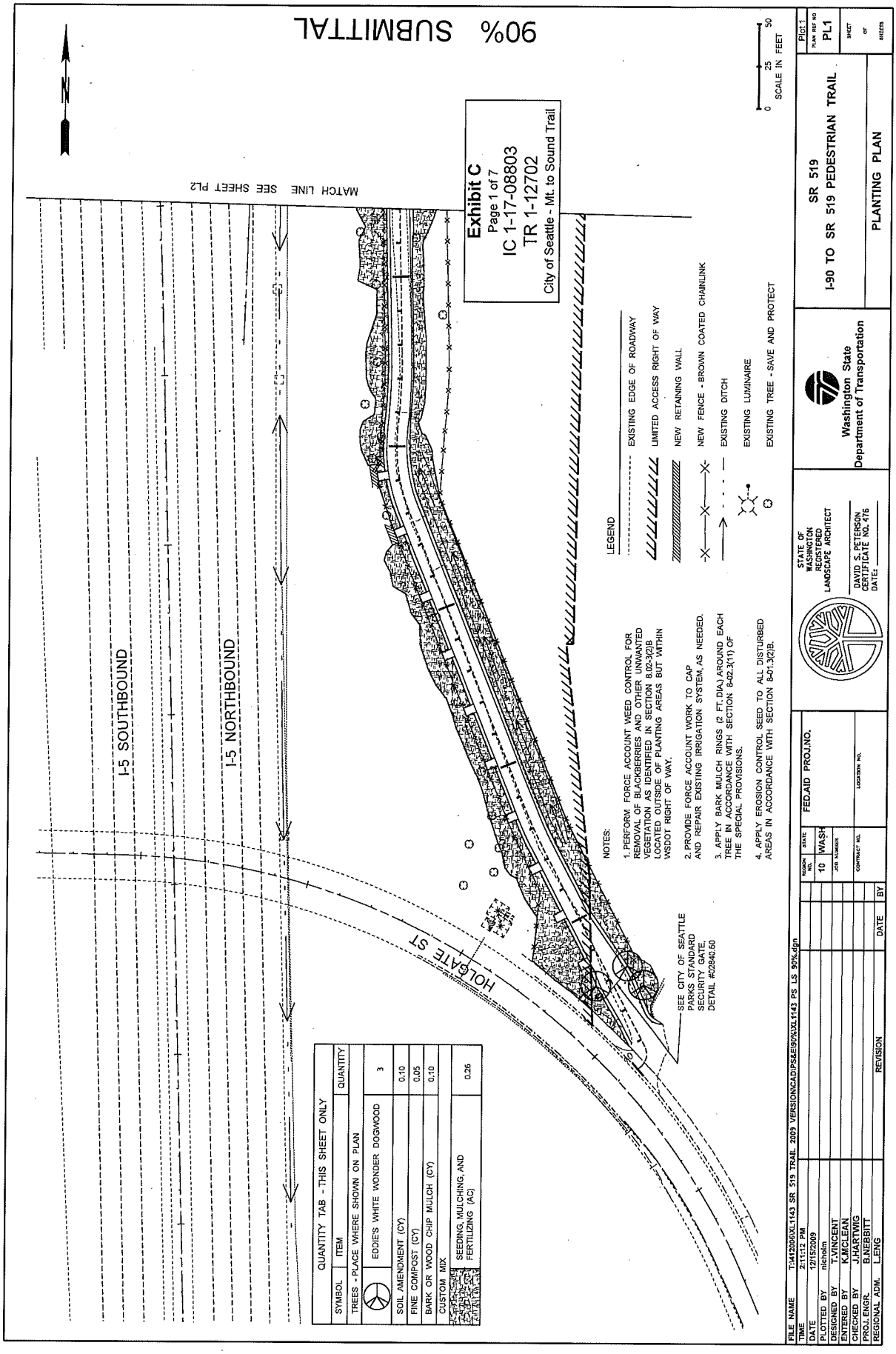
FILED
CITY CLERK



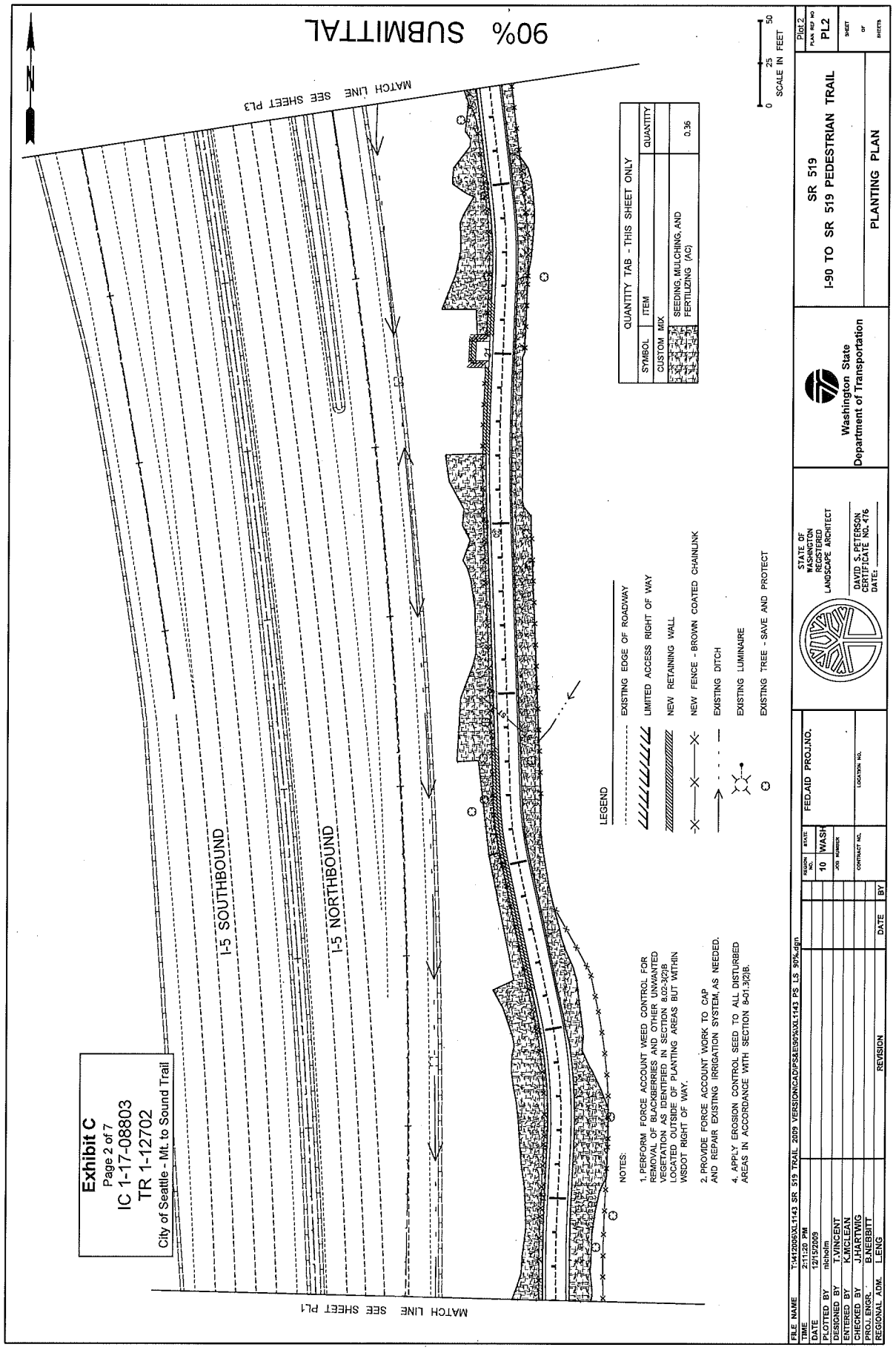
SEATTLE CITY CLERK



SEATTLE CITY CLERK



SEATTLE CITY CLERK



BAINBRIDGE ISLAND CITY CLERK

Gretchen M. Haydel/GMH
SDOT Mountain to Sound Greenway Trail Project
June 25, 2010
Version #1

EXH C

90% SUBMITTAL

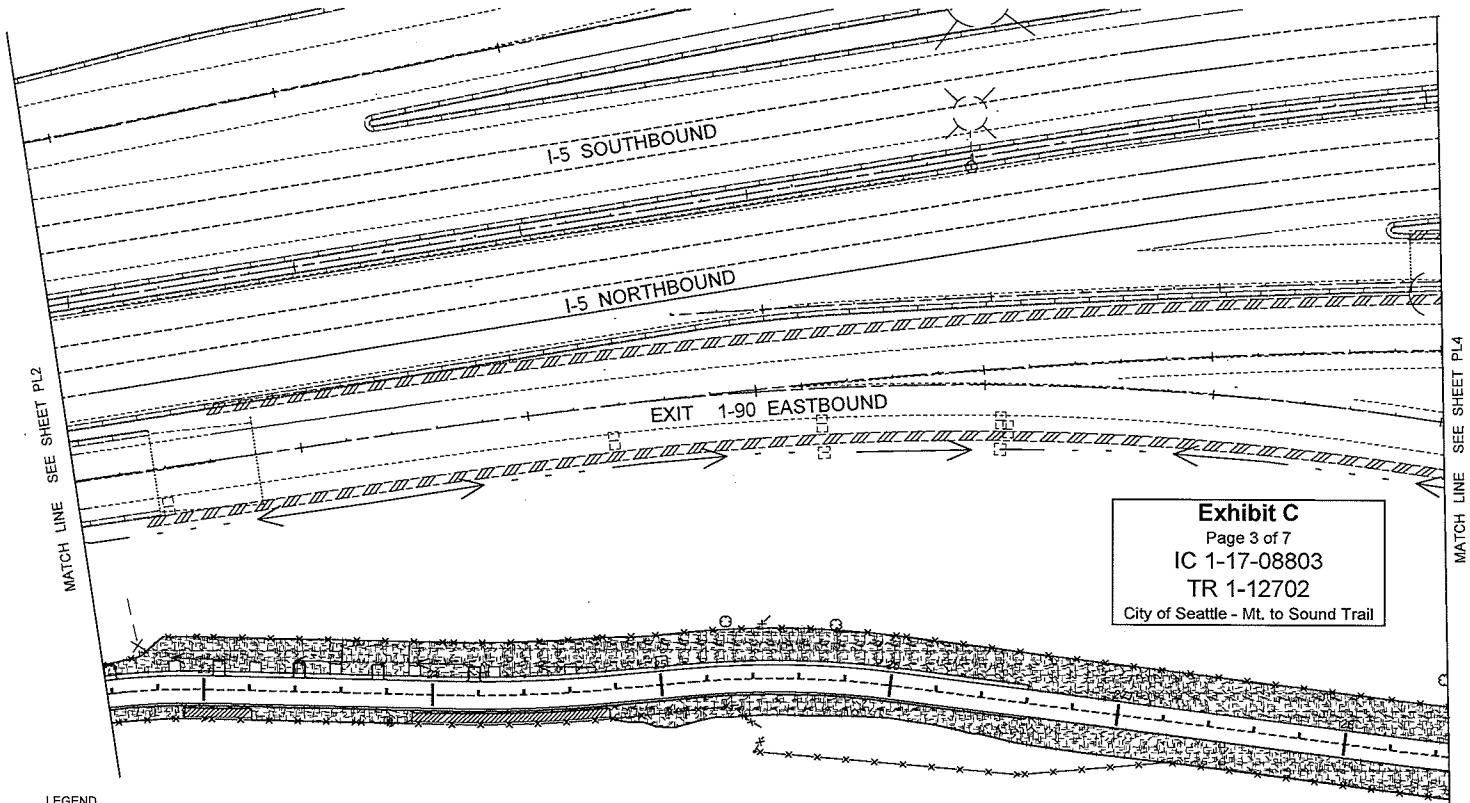


Exhibit C
Page 3 of 7
IC 1-17-08803
TR 1-12702
City of Seattle - Mt. to Sound Trail

LEGEND

- EXISTING EDGE OF ROADWAY
- LIMITED ACCESS RIGHT OF WAY
- NEW RETAINING WALL
- NEW FENCE - BROWN COATED CHAINLINK
- EXISTING DITCH
- EXISTING LUMINAIRE
- EXISTING TREE - SAVE AND PROTECT

NOTES:

1. PERFORM FORCE ACCOUNT WEED CONTROL FOR REMOVAL OF BLACKBERRIES AND OTHER UNWANTED VEGETATION AS IDENTIFIED IN SECTION 8.02-3(2)B LOCATED OUTSIDE OF PLANTING AREAS BUT WITHIN WSDOT RIGHT OF WAY.

2. PROVIDE FORCE ACCOUNT WORK TO CAP AND REPAIR EXISTING IRRIGATION SYSTEM, AS NEEDED.

4. APPLY EROSION CONTROL SEED TO ALL DISTURBED AREAS IN ACCORDANCE WITH SECTION 8-01.3(2)B.

QUANTITY TAB - THIS SHEET ONLY		
SYMBOL	ITEM	QUANTITY
CUSTOM MIX		
	SEEDING, MULCHING, AND FERTILIZING (AC)	0.3

0 25 50
SCALE IN FEET

FILE NAME	T:\412006\XL1143 SR 519 TRAIL 2009 VERSION\CAD\PS&E\90%\XL1143 PS LS 90%.dgn			REGION NO.	STATE	FED.AID PROJ.NO.
TIME	2:11:26 PM			10	WASH	
DATE	12/15/2009			JOB NUMBER		
PLOTTED BY	nicholm					
DESIGNED BY	T.VINCENT			CONTRACT NO.		LOCATION NO.
ENTERED BY	K.MCLEAN					
CHECKED BY	J.HARTWIG					
PROJ. ENGR.	B.NEBBITT					
REGIONAL ADM.	L.ENG	REVISION	DATE	BY		

STATE OF WASHINGTON
REGISTERED LANDSCAPE ARCHITECT
DAVID S. PETERSON
CERTIFICATE NO. 476
DATE: _____

Washington State Department of Transportation

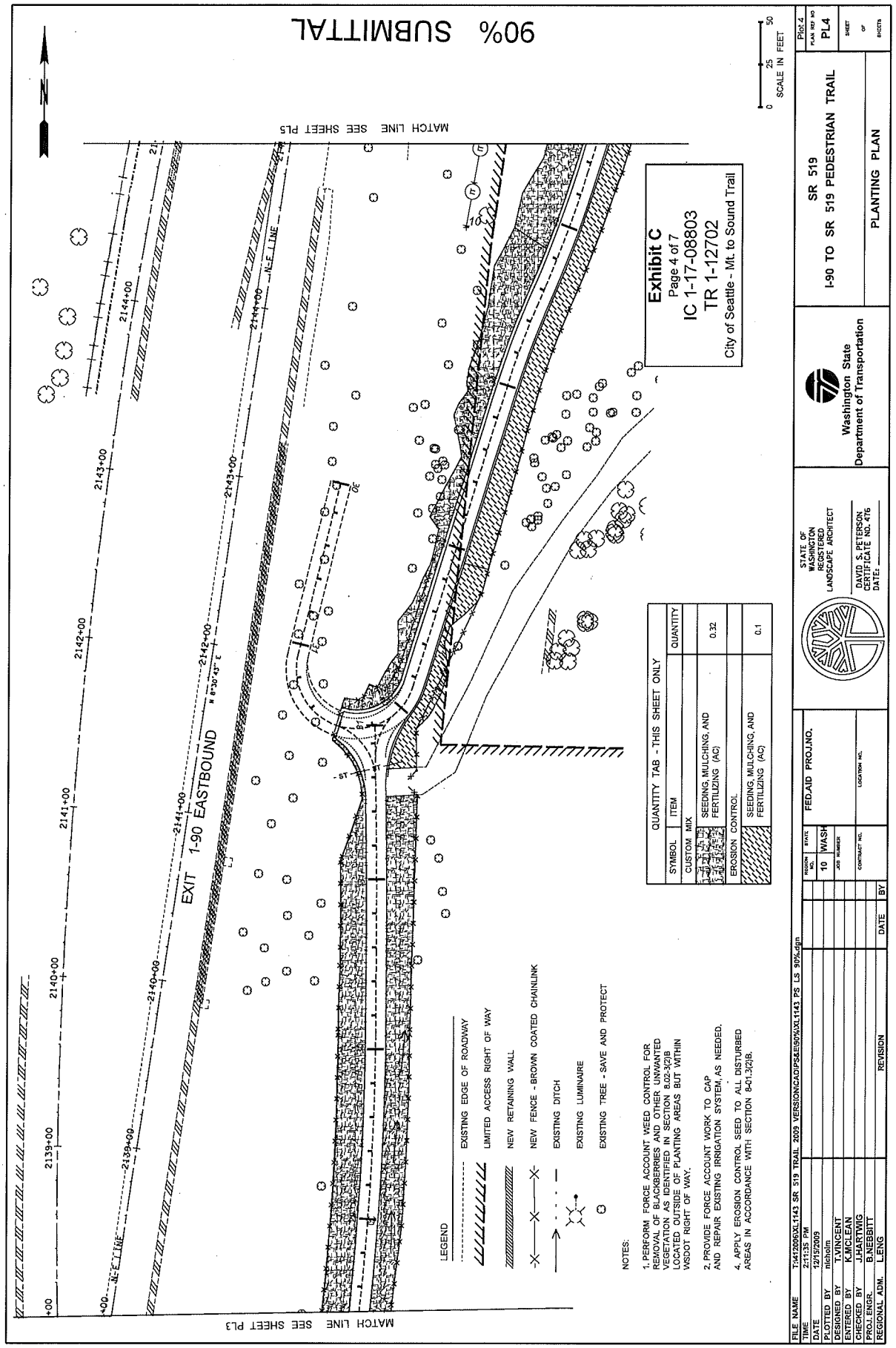
SR 519
I-90 TO SR 519 PEDESTRIAN TRAIL

PLANTING PLAN

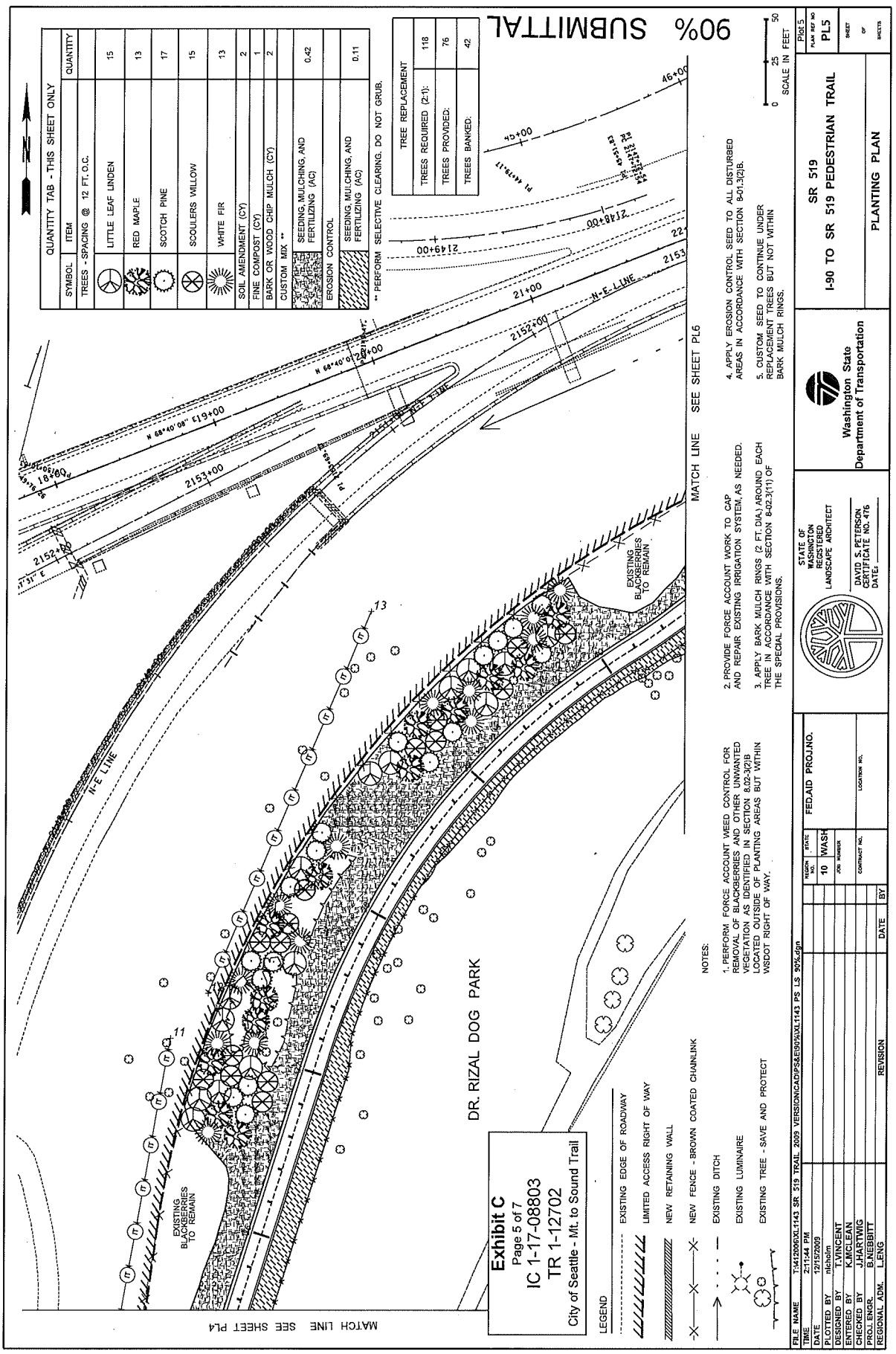
Plot 3
PLAN REF NO PL3
SHEET OF SHEETS

Exhibit C to Attachment B WSDOT's Landscaping Planting Plan

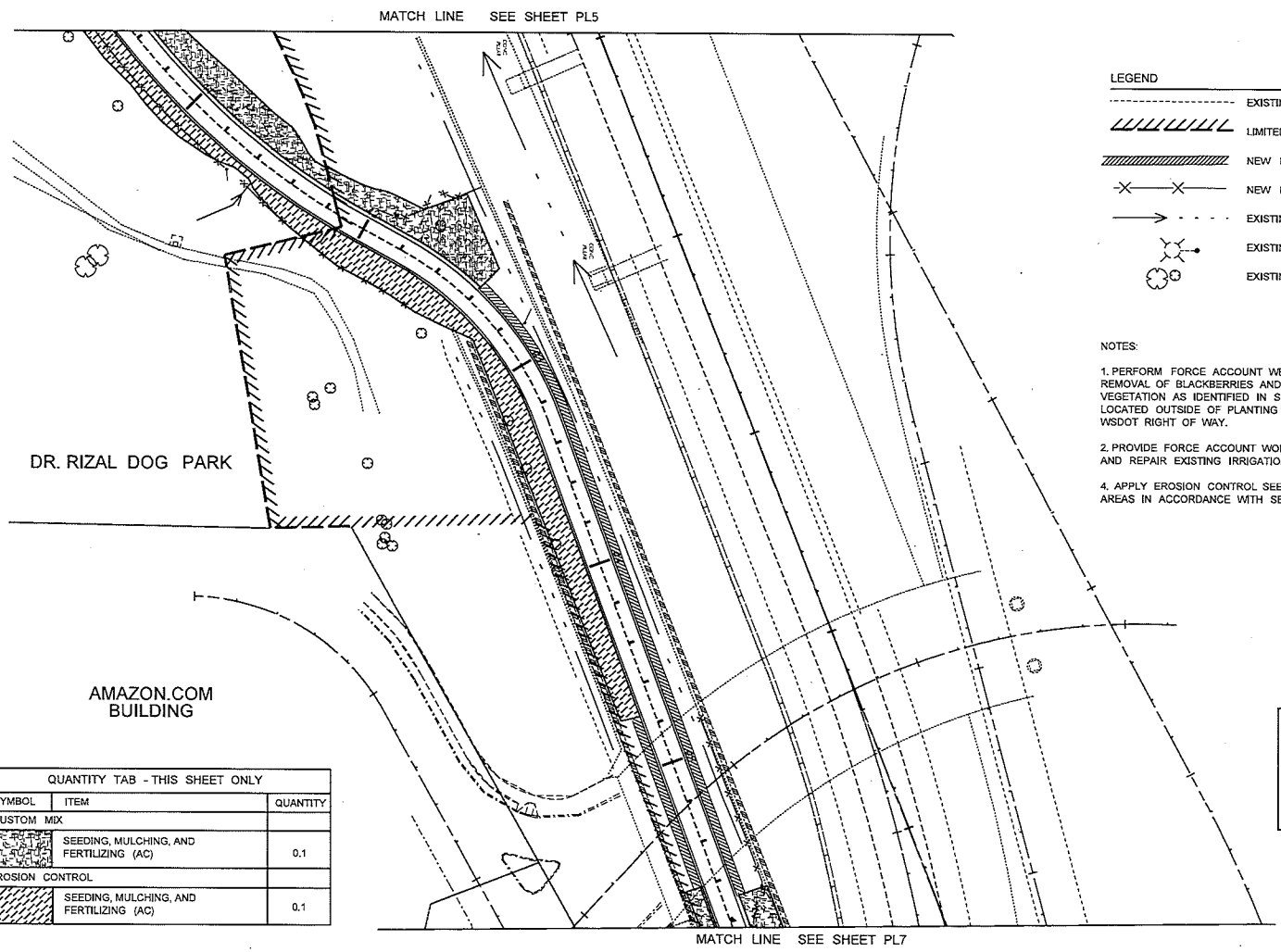
KING COUNTY CLERK



THIS CITY CLERK



THIS CITY CLERK



LEGEND

- EXISTING EDGE OF ROADWAY
- LIMITED ACCESS RIGHT OF WAY
- NEW RETAINING WALL
- NEW FENCE - BROWN COATED CHAINLINK
- EXISTING DITCH
- EXISTING LUMINAIRE
- EXISTING TREE - SAVE AND PROTECT

NOTES:

1. PERFORM FORCE ACCOUNT WEED CONTROL FOR REMOVAL OF BLACKBERRIES AND OTHER UNWANTED VEGETATION AS IDENTIFIED IN SECTION 8.02-3(2)B LOCATED OUTSIDE OF PLANTING AREAS BUT WITHIN WSDOT RIGHT OF WAY.

2. PROVIDE FORCE ACCOUNT WORK TO CAP AND REPAIR EXISTING IRRIGATION SYSTEM, AS NEEDED.

4. APPLY EROSION CONTROL SEED TO ALL DISTURBED AREAS IN ACCORDANCE WITH SECTION 8-01.3(2)B.

90% SUBMITTAL

Exhibit C
Page 6 of 7
IC 1-17-08803
TR 1-12702
City of Seattle - Mt. to Sound Trail

QUANTITY TAB - THIS SHEET ONLY

SYMBOL	ITEM	QUANTITY
CUSTOM MIX		
	SEEDING, MULCHING, AND FERTILIZING (AC)	0.1
EROSION CONTROL		
	SEEDING, MULCHING, AND FERTILIZING (AC)	0.1

0 25 50
SCALE IN FEET

FILE NAME	T:\412006\XL1143 SR 519 TRAIL 2009 VERSION\CAD\PS&E\90%\XL1143 PS LS 90%.dgn			
TIME	2:11:55 PM			
DATE	12/15/2009			
PLOTTED BY	nicholm			
DESIGNED BY	T.VINCENT			
ENTERED BY	K.MCLEAN			
CHECKED BY	J.HARTWIG			
PROJ. ENGR.	B.NEBBITT			
REGIONAL ADM.	L.ENG	REVISION	DATE	BY

REGION NO.	STATE	FED.AID PROJ.NO.
10	WASH	
JOB NUMBER		
CONTRACT NO.		LOCATION NO.

STATE OF WASHINGTON REGISTERED LANDSCAPE ARCHITECT
DAVID S. PETERSON
CERTIFICATE NO. 476
DATE:

Washington State Department of Transportation

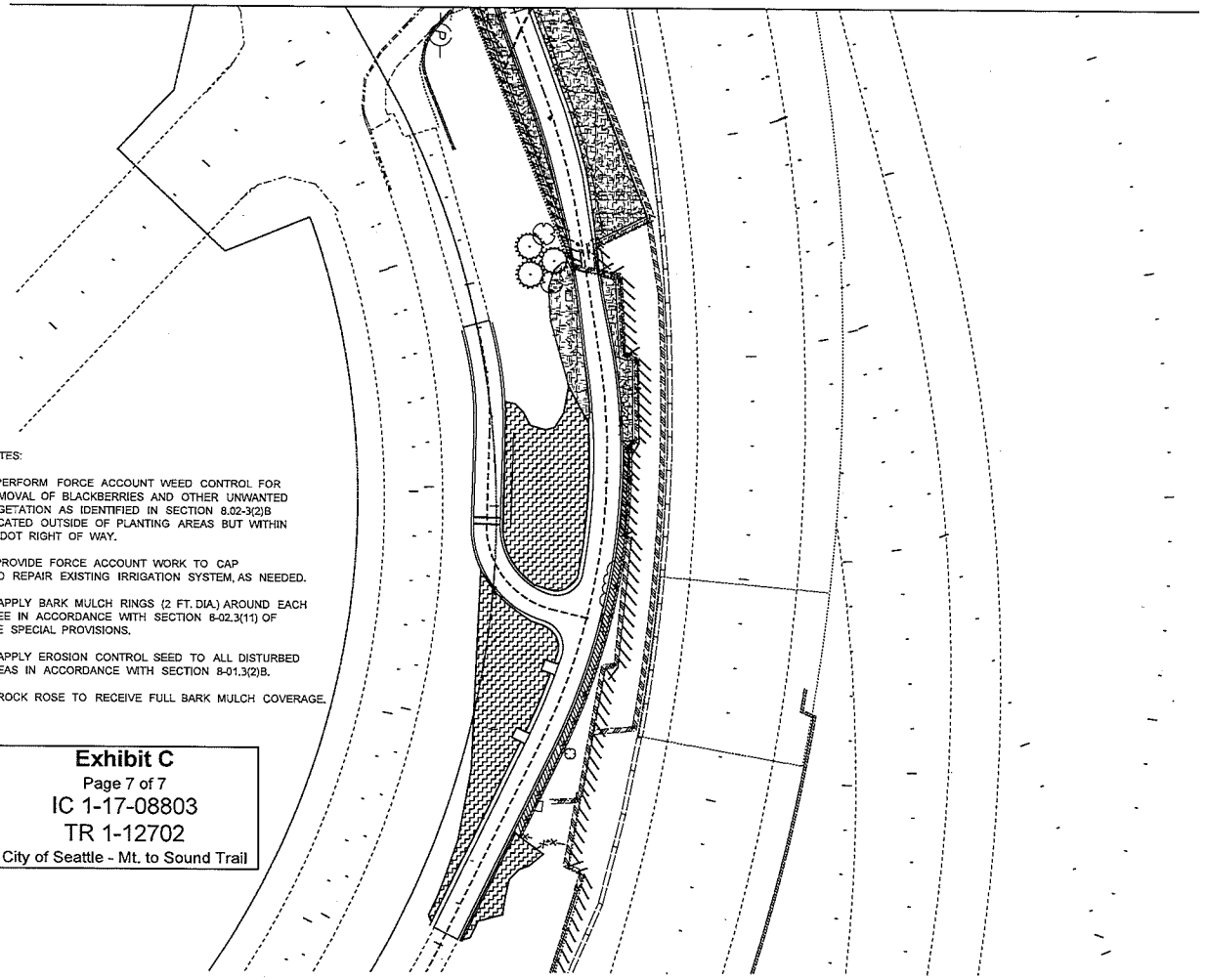
SR 519
I-90 TO SR 519 PEDESTRIAN TRAIL

PLANTING PLAN

Plot 6
PLAN REF NO PL6
SHEET OF SHEETS

Gretchen M. Haydel/GMH
SDOT Mountain to Sound Greenway Trail Project
June 25, 2010
Version #1
EXH C

MATCH LINE SEE SHEET PL6



QUANTITY TAB - THIS SHEET ONLY		
SYMBOL	ITEM	QUANTITY
TREE - PLANTING @ 12 FT. O.C.		
	SCOTCH PINE	3
SOIL AMENDMENT (CY)		0.5
FINE COMPOST (CY)		0.1
BARK OR WOOD CHIP MULCH (CY)		0.5
PLANTING MIX A - 2' O.C.		
	SUNSET ROCK ROSE	1450
SOIL AMENDMENT (CY)		54
FINE COMPOST (CY)		18
BARK OR WOOD CHIP MULCH (CY)		54
CUSTOM MIX		
	SEEDING, MULCHING, AND FERTILIZING (AC)	0.059

NOTES:

1. PERFORM FORCE ACCOUNT WEED CONTROL FOR REMOVAL OF BLACKBERRIES AND OTHER UNWANTED VEGETATION AS IDENTIFIED IN SECTION 8.02-3(2)B LOCATED OUTSIDE OF PLANTING AREAS BUT WITHIN WSDOT RIGHT OF WAY.

2. PROVIDE FORCE ACCOUNT WORK TO CAP AND REPAIR EXISTING IRRIGATION SYSTEM, AS NEEDED.

3. APPLY BARK MULCH RINGS (2 FT. DIA.) AROUND EACH TREE IN ACCORDANCE WITH SECTION 8-02.3(11) OF THE SPECIAL PROVISIONS.

4. APPLY EROSION CONTROL SEED TO ALL DISTURBED AREAS IN ACCORDANCE WITH SECTION 8-01.3(2)B.

5. ROCK ROSE TO RECEIVE FULL BARK MULCH COVERAGE.

Exhibit C
Page 7 of 7
IC 1-17-08803
TR 1-12702
City of Seattle - Mt. to Sound Trail

LEGEND

- EXISTING EDGE OF ROADWAY
- LIMITED ACCESS RIGHT OF WAY
- NEW RETAINING WALL
- NEW FENCE - BROWN COATED CHAINLINK
- EXISTING DITCH
- EXISTING LUMINAIRE
- EXISTING TREE - SAVE AND PROTECT

90% SUBMITTAL

0 25 50
SCALE IN FEET

FILE NAME	T:\412006\XL1143 SR 519 TRAIL 2009 VERSION\CAD\PS&E\90%\XL1143 PS LS 90%.dgn
TIME	2:12:03 PM
DATE	12/15/2009
PLOTTED BY	nicholm
DESIGNED BY	T.VINCENT
ENTERED BY	K.MCLEAN
CHECKED BY	J.HARTWIG
PROJ. ENGR.	B.NEBBITT
REGIONAL ADM.	L.ENG

REVISION	DATE	BY

REGION NO. 10 | STATE WASH | JOB NUMBER | CONTRACT NO. | FED.AID PROJ.NO. | LOCATION NO.

STATE OF WASHINGTON REGISTERED LANDSCAPE ARCHITECT
DAVID S. PETERSON
CERTIFICATE NO. 476
DATE: _____

Washington State Department of Transportation

SR 519
I-90 TO SR 519 PEDESTRIAN TRAIL

PLANTING PLAN

Plot 7 | PLAN REF NO PL7 | SHEET OF SHEETS

Exhibit C to Attachment B WSDOT's Landscaping Planting Plan

CITY OF SEATTLE
STATE AD, AWARD, and CONSTRUCT
MOUNTAINS TO SOUND REGIONAL TRAIL CORRIDOR
GCA 6484

This Agreement is made between the STATE OF WASHINGTON, Department of Transportation (STATE), and THE CITY OF SEATTLE, a municipal corporation of the state of Washington (LOCAL AGENCY).

WHEREAS, pursuant to Local Agency Agreement LA-4364, dated March 27, 2000, and amendments thereto, the STATE, on behalf of the LOCAL AGENCY, has designed a project titled "SR 519, I-90 to SR 519 Pedestrian Trail" (the "Project") to extend the multi-use trail along Interstate 90 (I-90) from the vicinity of the Jose Rizal Bridge westerly and south to connect to South Holgate Street east of the South Holgate Street Interstate 5 (I-5) overcrossing, and

WHEREAS, the trail will traverse both STATE and LOCAL AGENCY property, and

WHEREAS, the LOCAL AGENCY has requested that the STATE advertise, award, execute, and administer the construction contract for the Project, and

WHEREAS, the STATE has agreed to perform the requested Project work on behalf of the LOCAL AGENCY, and

WHEREAS, the LOCAL AGENCY has agreed to enter into a trail lease with the STATE simultaneous with this Agreement for the operation and maintenance of the trail segment located within state-owned limited access right of way,

NOW, THEREFORE, pursuant to chapter 39.34 RCW, and in consideration of the provisions, covenants, terms, conditions and performances contained herein, the Parties hereto mutually agree that the above recitals shall be incorporated herein as is set forth below, and further agree as follows:

1. TERM OF AGREEMENT

1.1 The term of this Agreement shall commence as of the date of the last Party's signature affixed below and shall continue until terminated in accordance with Section 5.1.

2. DESIGN

2.1 At the LOCAL AGENCY's request, the STATE prepared the plans, specifications and engineer's cost estimate (PS&E) for the Project pursuant to Local Agency Agreement LA 4364, dated 3/27/2000 and amendments thereto. The LOCAL AGENCY has reviewed and approved

the design work at 30, 60, and 90 percent, and will provide approval of the proof copy Project PS&E.

2.2 Plans, specifications, and cost estimates were prepared in accordance with the current state of Washington, Standard Specifications for Road, Bridge and Municipal Construction, and amendments thereto (Standard Specifications), and adopted design standards, unless otherwise noted.

2.3 The STATE will be responsible for obtaining all necessary environmental permits.

3. PROJECT AD AND AWARD

3. 1 The STATE will advertise for construction bids in accordance with the current Standard Specifications, as the same may be modified by this Agreement.

3.2 The Project cost estimate for plan review, contract document preparation, ad and award, construction, construction engineering, management and administration, and contingencies is shown in Exhibit A (Cost Estimate), attached hereto and by this reference made a part of this Agreement.

3.3 Upon bid opening and prior to Project contract award, the STATE shall submit the bid tabulations and bid results to the LOCAL AGENCY for the LOCAL AGENCY's review and comment. Provided the LOCAL AGENCY does not submit a reasonable objection to the STATE in writing within (3) working days from the date of submission, the STATE shall have the right to award a construction contract if the lowest responsive and responsible bid is within fifteen (15%) percent of the Project's Cost Estimate.

3.4 If the bid of the lowest responsive and responsible bidder exceeds the amount allowed in Section 3.3, the STATE shall request written concurrence in contract award or rejection thereof from the LOCAL AGENCY. The STATE shall not award the construction contract unless and until it has received written approval from the LOCAL AGENCY to do so. The LOCAL AGENCY shall provide written approval within fifteen (15) working days of receipt of the STATE's written request therefore, or such other period as the Parties may agree to, in writing. If the LOCAL AGENCY does not notify the STATE within the specified time, the STATE will reject all bids. The LOCAL AGENCY shall be responsible for all costs incurred by the STATE, including design costs, up to and including costs associated with rejection of bids, if any.

3.5 If the lowest responsive and responsible bidder exceeds the amount allowed in Section 3.3, the LOCAL AGENCY may provide written request for the STATE to redesign the Project in a manner reasonably

FILED CITY CLERK

calculated to obtain bids within the Project cost estimate upon re-advertising. The LOCAL AGENCY agrees that all costs for re-design and re-advertisement shall be at the LOCAL AGENCY's expense. Reimbursement for re-design and re-advertisement shall be in accordance with Section 6. If the Project is re-designed and/or re-advertised, all provisions of this Agreement shall continue to apply between the LOCAL AGENCY and the STATE.

4. CONSTRUCTION

4.1 Subject to all of the terms and conditions contained herein, the STATE will execute the Project construction contract, will be the LOCAL AGENCY's representative during construction and will act as owner in the administration of the Project contract. The Project is generally described in Exhibit B, Description of Work, and is located as shown on Exhibit C, Vicinity Map, both of which exhibits are attached hereto and by this reference are made a part of this Agreement. The Project contract plans and specifications shall be incorporated into this Agreement as if fully set forth herein.

4.2 The STATE has designated a STATE Project Manager to provide all necessary services including, but not limited to, construction administration, inspection, and materials testing necessary to administer and manage the construction contract for the Project to ensure the Project is constructed in accordance with the contract plans and specifications. The LOCAL AGENCY shall assign a qualified LOCAL AGENCY employee as a LOCAL AGENCY Project Manager. The STATE Project Manager shall keep the LOCAL AGENCY Project Manager apprised of the progress of the Project contract and provide the LOCAL AGENCY Project Manager with sufficient notice of all Project construction and other meetings as will allow the LOCAL AGENCY Project Manager to attend such meetings. The STATE Project Manager shall also promptly provide the LOCAL AGENCY Project Manager with copies of all meeting minutes, requests for information, and other Project contract documents and correspondence at LOCAL AGENCY expense. Reimbursement shall be in accordance with Section 6.

4.3 The LOCAL AGENCY Project Manager may consult with and make inquiries of the STATE Project Manager, attend all meetings, and have access to all documentation concerning the Project. The LOCAL AGENCY shall not provide direction, directly or indirectly, to the contractor. All formal contacts between said LOCAL AGENCY and the STATE's contractor shall be through the STATE Project Manager or designee.

RENTON CITY CLERK

4.4 If it becomes apparent that a unit bid item quantity will be exceeded by ten (10%) percent, or if the overage will result in a cost increase for the total Project exceeding five (5%) percent, the STATE shall consult with the LOCAL AGENCY within three (3) working days from when it becomes apparent that there will be such cost overages to determine a course of action either pursuant to Section 13.2 or to implement Section 8.

4.5 The STATE will prepare the final construction documentation in general conformance with the STATE Construction Manual. The STATE will maintain one set of plans as the official "as-built" set that contains notations in red ink of all plan revisions typically recorded per standard STATE practices. Once final acceptance of the Project has occurred, the STATE will submit one reproducible set of as-built plans to the LOCAL AGENCY within one hundred eighty (180) calendar days.

4.6 The LOCAL AGENCY agrees to provide, at LOCAL AGENCY expense, through its city police department, increased on-site police enforcement for the first week of construction during the normal working days of the STATE's contractor to discourage unlawful activities by third parties in the Project area and which will reinforce the establishment of the Project area as a work zone on state and city property.

5. TERMINATION

5.1 This Agreement shall terminate upon completion of the work, acceptance of the Project pursuant to Section 10, and STATE's receipt of full payment pursuant to Section 6, or if the Parties determine that Project continuation is no longer feasible, after the process described in Section 8.2.

5.2 The Governor or Secretary of Transportation (Secretary) may terminate this Agreement in whole or in part, or, from time to time may suspend work on the Project contract in whole or in part, whenever:

5.2.1 The STATE is prevented from proceeding with the work as a direct result of an Executive Order of the President of the United States of America (President) with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the state of Washington with respect to the preservation of energy resources.

5.2.2 The STATE or STATE's contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts

RON CITY CLERK

or omissions of persons or agencies other than the STATE or STATE's contractor.

5.2.3 If this Agreement is terminated, any claim by the STATE's contractor for costs associated with the termination shall be processed and resolved pursuant to Section 11.

5.3 The Governor or Secretary may terminate this Agreement at any time for convenience if termination is in the best interests of the STATE. In this event, the LOCAL AGENCY shall not be responsible for reimbursement, if any, of the STATE's grant funds for this Project.

5.4 The LOCAL AGENCY may terminate this Agreement at any time for convenience if termination is in the best interests of the LOCAL AGENCY. In this event, the STATE shall not be responsible for reimbursement, if any, of the grant funds for this Project. If the LOCAL AGENCY terminates this Agreement after Project award, termination of this Agreement also terminates the Project, and the Parties shall resolve the early termination Project work pursuant to the terms of Section 8.2. The LOCAL AGENCY agrees that all claims and costs associated with Project termination shall be at LOCAL AGENCY expense. Reimbursement shall be in accordance with Section 6.

5.5 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. PAYMENT

6.1 Except as otherwise provided herein, the LOCAL AGENCY, in consideration of the faithful performance of the work to be done by the STATE, agrees to reimburse the STATE for all actual direct and related indirect costs, including the STATE's indirect cost recovery rate, associated with the construction of the Project. Construction and construction management costs shall commence on the day of advertisement and shall include all costs associated with change orders and change order work.

6.2 An itemized cost estimate for construction of the Project is attached at Exhibit A. The cost of the construction also includes items set forth in the bid documents. Construction contingencies shall be used for cost increases, including any change orders. Construction engineering shall include all appropriate STATE costs incurred in advertising, awarding and administering the Project construction.

6.3 Upon receipt of a STATE invoice, the LOCAL AGENCY shall pay the STATE for those costs incurred that reflect the construction contractor's

DES CITY CLERK

progress on the Project and services actually performed by the STATE during the billing period. Invoices are not to be submitted more frequently than one (1) time per month. The LOCAL AGENCY shall provide its payments to the STATE within thirty (30) calendar days after its receipt of the STATE's monthly invoice, except for final payment, which shall be made as described in Section 10.6.

6.4 The LOCAL AGENCY agrees that if payment for the work is not made within ninety (90) days after receipt of a STATE invoice, the STATE may deduct and expend any monies to which the LOCAL AGENCY is entitled to receive from the Motor Vehicle Fund until full payment for the work is received by the STATE.

6.5 The LOCAL AGENCY shall pay the STATE an "Advanced Payment " of Two Hundred Seventy-Eight Thousand Twenty Dollars ($278,220.00) within twenty (20) calendar days after the LOCAL AGENCY receives the STATE's Advance Payment request. The Advance Payment will be retained through the Project to substantial completion, with final adjustment made in the final payment. The purpose of the aAdvance pPayment of the construction cost is to ensure that the STATE does not loan the STATE's credit. The Advance Payment is based on fifteen (15) percent of the estimate construction cost.

6.6 The STATE will hold progress estimate review meetings with the contractor as needed. The STATE will invite the LOCAL AGENCY to participate in these reviews. The LOCAL AGENCY may audit the STATE's payment applications and all supporting documentation and costs in connection with the Project. The LOCAL AGENCY agrees to reimburse the STATE for all costs associated with an audit. Payment to the STATE shall be in accordance with Section 6. In the event the LOCAL AGENCY chooses to perform an audit, any adjustments to payments previously made to the STATE will be corrected at the conclusion of the audit. In the event that such audit reveals an overpayment or an underpayment has occurred, both Parties agree that any necessary refunds or additional payments will be made within thirty (30) calendar days after the error is discovered and the necessary invoices prepared.

6.7 Payments by the LOCAL AGENCY shall not constitute the LOCAL AGENCY's acceptance of any item of work.

7. RECORDS

7.1 During construction of the Project and for a period of not less than three (3) years from the date of final payment to the STATE, the records and accounts pertaining to the construction of the Project will be maintained

PDS CITY CLERK

and shall be made available by the STATE for inspection and audit by the LOCAL AGENCY and for use in the event of a litigation, claim or any other purpose. The LOCAL AGENCY agrees to pay the costs of any copies that it requests.

8. INCREASED COSTS

8.1 In the event unforeseen conditions require an increase in cost over the awarded contract amount (including sales tax, engineering, and contingencies) of more than five (5) percent, and if the Parties agree to the change, this Agreement will be amended covering said increase.

8.2 In the event it is determined that the LOCAL AGENCY does not have sufficient funds to complete the Project, the STATE and the LOCAL AGENCY shall negotiate to determine the future of the Project. If it is determined that the Project cannot proceed, the work shall be brought to a level that is safe for public use and the STATE will terminate the Project construction contract. In the event the Project is terminated under this Section, Section 10 shall apply to that portion of the work completed up to the time of termination, including contractor claims. The LOCAL AGENCY agrees to pay all costs for termination, including contractor claims in accordance with Section 6.

9. PROJECT CONTRACT CHANGES – CHANGE ORDERS

9.1 The STATE Project Manager shall prepare all change orders to the construction contract in the manner described in the Standard Specifications. Subject to the limitations and conditions contained in this Agreement, the LOCAL AGENCY hereby authorizes the STATE to initiate, document, and perform all negotiations with the contractor, provide approval recommendations, and execute all change orders. The STATE will prepare change orders with supporting documentation and data in accordance with the Project contract documents.

9.2 Required change orders involve such changes in quantities or alterations in the work as are necessary to satisfactorily complete the Project as determined by the STATE. All other change orders shall be considered elective. Change order process and execution shall be in accordance with the Washington State Department of Transportation Construction Manual, M 41-04, current edition, subsections 1-2.4C(3) and 1-2.4C(4), unless otherwise provided herein.

9.3 The STATE may authorize individual required change orders to the Project of $10,000.00 or less, provided that (i) such changes do not, in the aggregate, exceed $50,000; (ii) they are consistent with the intent of the Project contract; and (iii) they do not include an extension of contract

BIS CITY CLERK

time. Notwithstanding the foregoing, the STATE shall not approve structural or material(s) related changes to the Project without approval of the LOCAL AGENCY, regardless of the cost.

9.4 The LOCAL AGENCY shall review and provide written approval to the STATE of proposed required change orders greater than $10,000.00. The STATE shall then be authorized to execute the change order.

9.5 The LOCAL AGENCY shall make every effort to expeditiously process change orders and understands that any delays associated with LOCAL AGENCY's approval of the change order may cause increases in the Project cost as well as the STATE's construction administration costs.. The LOCAL AGENCY shall endeavor to complete its review of change orders that do not meet the conditions of Section 9.3 and are less than $50,000 within five (5) working days and all other change orders within ten (10) working days. The STATE shall ensure that the construction contract allows sufficient time for the LOCAL AGENCY's review. Nothing herein relieves the LOCAL AGENCY of its responsibility for change order costs or contractor claims associated with the LOCAL AGENCY's change order approval process.

9.6 The LOCAL AGENCY may request elective changes to the contract through the STATE. The STATE will comply with the requested change provided that the change complies with Project permits, state and/or federal law and applicable rules and/or regulations and/or design policies and does not impair funding to complete the Project.

9.7 All elective changes to the Project that the LOCAL AGENCY requests shall be requested in writing by the LOCAL AGENCY before the STATE directs the contractor to implement the changes, even if an executed change order is not required by the Project contract. The LOCAL AGENCY agrees to pay for the increases in cost, if any, for such elective changes in accordance with Section 6.

10. PROJECT ACCEPTANCE

10.1 Upon substantial completion of the Project contract, the STATE will provide the LOCAL AGENCY with a Notice of Substantial Completion. Thereafter, the STATE and LOCAL AGENCY will perform a joint inspection of the Project. If the STATE and LOCAL AGENCY agree that the work has been completed in a satisfactory manner, the LOCAL AGENCY agrees to deliver a letter of acceptance to the STATE which shall include a release of the STATE from all future claims or demands of any nature resulting from the performance of the work and the STATE's administration thereof, under this Agreement, except for claims relating to

THIS CITY CLERK

plant establishment and construction warranties, and claims referred to in Section 11.

10.2 Subject to the provisions of Section 10.1, if a letter of acceptance is not received by the STATE within ninety (90) calendar days following Notice of Physical Completion of the Project, the Project shall be considered accepted by the LOCAL AGENCY and the LOCAL AGENCY shall be deemed to have released the STATE from all future claims and demands of any nature resulting from the performance of the work and the STATE's administration thereof under this Agreement except for claims relating to plant establishment and construction warranties, and claims referred to in Section 11. Notwithstanding anything in this Agreement to the contrary, the LOCAL AGENCY's acceptance of the Project hereunder shall not relieve the construction contractor from liability for any unauthorized or defective work or materials.

10.3 The LOCAL AGENCY may withhold its acceptance of the Project if it determines that any work does not comply with the final plans, specifications and change orders. In such event, the LOCAL AGENCY will prepare a punch list of such items and submit it to the STATE within ten (10) calendar days following Notice of Substantial Completion of the work. The STATE shall cause the construction contractor to correct the deficient work at no cost to the LOCAL AGENCY.

10.4 Upon Project acceptance, the LOCAL AGENCY shall assume responsibilities of the constructed Project in accordance with Trail Lease No. IC 1-17-08803, executed by the Parties simultaneously herewith.

10.5 The releases referenced in Sections 10.1 and 10.2 shall not include any release of the STATE from any future claims or demands for indemnity brought by the LOCAL AGENCY as a result of contractor claims or injuries of any nature to third parties caused by the STATE's negligence in performing its obligations under this Agreement or from the STATE's design of the Project. The provisions of this section shall be limited by the applicable statute of limitations.

10.6 Following Project acceptance, the STATE's delivery of as-built plans to the LOCAL AGENCY, and the satisfactory conclusion of the plant establishment and warranty periods as identified in the plans and specifications, the STATE shall request final payment from the LOCAL AGENCY and the LOCAL AGENCY shall remit payment within thirty (30) calendar days thereafter.

11. CLAIMS

11.1 Claims for Additional Payment

11.1.1 In the event the contractor makes a claim for additional payment associated with the work, the STATE will immediately notify the LOCAL AGENCY of such claims and provide it with a copy of the claim and all supporting documentation. Such claims shall be made in the manner and form as provided for in the Standard Specifications.

11.1.2 The LOCAL AGENCY shall not be obligated to pay such claims or their cost of defense to the extent that the claims are caused by the negligent acts or omissions of the STATE in administering the work.

11.1.3 The LOCAL AGENCY shall have the right to review and comment on any settlement for claims associated with the work. However, the STATE shall have the ultimate right to settle such claims. In the event the LOCAL AGENCY does not agree with the claim settlement as negotiated by the STATE, the LOCAL AGENCY shall reserve the right to not financially participate in the negotiated claim settlement. If agreement cannot be reached between the LOCAL AGENCY and the STATE on a claim settlement, the Parties agree to follow the dispute resolution procedure in Section 12.11.1.4 If the STATE agrees, the LOCAL AGENCY may defend contractor claims associated with the work at its own cost, and in doing so, the LOCAL AGENCY agrees to pay any resulting settlement, court judgment or arbitration award. The STATE will cooperate with the LOCAL AGENCY in the LOCAL AGENCY's defense of the claims. The LOCAL AGENCY agrees to reimburse any STATE costs, including attorneys fees, incurred in providing such assistance in accordance with Section 6.

12. DISPUTES

12.1 In the event that a dispute arises under this Agreement, before initiating any legal proceeding the Parties shall attempt to resolve the matter as follows:

The STATE Project Manager and the LOCAL AGENCY Project Manager shall meet and attempt to resolve the matter. If these two officials are unsuccessful, they shall refer the matter to the STATE Northwest Region King Area Administrator and the LOCAL AGENCY's Capital Projects Director. If these officials are likewise unsuccessful, then they shall refer the matter to the STATE Northwest Region Assistant Regional Administrator and the LOCAL AGENCY's Transportation Director. Each Party shall be responsible for its own costs and fees.

CITY CLERK

13. GENERAL PROVISIONS

13.1 Rights of Entry:

The LOCAL AGENCY hereby grants to the STATE and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land under the jurisdiction of the LOCAL AGENCY within or adjacent to the Project area for the purpose of constructing the Project. The STATE understands and agrees that the construction contractor will be required to obtain a city of Seattle street use permit to enter onto and use property under the jurisdiction of the Seattle Department of Transportation. The LOCAL AGENCY will reasonably assist the construction contractor in obtaining such permit.

13.2 Amendment:

No modification of this Agreement is valid unless evidenced in writing by amendment to this Agreement and signed by both Parties. No verbal agreement may supersede, replace or amend this Agreement.

13.3 Assignment:

Neither Party to this Agreement shall transfer or assign any right or obligation hereunder without the prior written consent of the other Party.

13.4 Severability:

Should any section, term or provision of this Agreement be determined to be invalid by a court of law; the remainder of this Agreement shall not be affected and the same shall continue in full force and effect.

13.5 Legal Relations:

13.5.1 The STATE shall ensure that (a) every provision in the construction contract pursuant to which the construction contractor provides indemnity for personal injuries or property damages includes the LOCAL AGENCY as an indemnified party; (b) the LOCAL AGENCY is included as an additional insured on the construction contractor's liability policies; and (c) that the LOCAL AGENCY is named as a co-obligee on the construction contractor's payment and performance bonds(s).

13.5.2 The STATE shall protect, defend, indemnify and save harmless the LOCAL AGENCY, its officers, officials, employees, and agents from any and all costs, claims, judgments and/or awards of damages (both to persons or property and including attorneys'

CITY CLERK

fees) arising out of, or in any way resulting from the STATE's negligent acts or omissions; provided, however, the STATE will not be required to indemnify, defend or save harmless the LOCAL AGENCY if the claim, suit or action for injuries, death or damages (both to persons or property) is caused by the sole negligence of the LOCAL AGENCY. Where such claims, suits, or actions result from the concurrent negligence of both the STATE and LOCAL AGENCY, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence, subject to the limitations of RCW 4.24.115. This indemnification shall survive the termination of this Agreement.

13.5.3 I n the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in Thurston County, Washington Superior Court. Further, the Parties agree that each will be solely responsible for payment of its own attorneys' fees, witness fees, and costs.

13.6 Independent Contractor:

The STATE shall be deemed an independent contractor for all purposes, and the employees of the STATE or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the LOCAL AGENCY.

13.8 Working Days:

Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

CITY CLERK

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date last signed below.

CITY OF SEATTLE

_____
By

_____
Title

_____
Date

APPROVED AS TO FORM:

_____
City Attorney

_____
Date

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

_____
Russell S. East, P.E
Assistant Regional Administrator

_____
Date

APPROVED AS TO FORM:

_____
Ann E. Salay, AAG

_____
Date

SEA CITY CLERK

This page intentionally left blank.

A copy of the Letter of Acceptance will be attached upon project completion.

CHS CITY CLERK

Form revised February 24, 2010

FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Department of Transportation	Larry Huggins/684-5001	Stephen Barham/733-9084

Legislation Title:

AN ORDINANCE relating to the Mountains to Sound Greenway Trail; authorizing the Director of Transportation to sign an agreement with the Washington State Department of Transportation for State construction of a portion of the Mountains to Sound Greenway Trail on City property and State property; and authorizing the Director of Transportation to sign a lease with the Washington State Department of Transportation for City maintenance and operation of a portion of the Mountains to Sound Greenway Trail on State property.

Summary and background of the Legislation:

This legislation authorizes the City of Seattle (City), through its Director of Transportation, to enter into a general contracting agreement (Contract) with the State of Washington through the Department of Transportation (State) for the construction of a segment of the Mountains to Sound Greenway Trail (MTS Trail) on a portion of City property and a portion of State property. This legislation also authorizes the Director of Transportation to enter into a trail lease agreement (Lease) with the State for the City's operation and maintenance of the MTS Trail portion on State property.

In 1999, the City, in coordination with the State, received a grant to fill this gap in the MTS Trail in Seattle. Pursuant to the Contract, the State will construct an extension of the MTS Trail across City and State property. The City is responsible for the cost of construction and will reimburse the State with federal grant money the City previously received for this project. Pursuant to the Lease, the City will operate and maintain the MTS Trail segment on State property. Approximately $110,000 of City assets for security and the illumination system will be used on State property for the project.

A portion of the new MTS Trail segment goes through Dr. Jose Rizal Park, which is under the jurisdiction of the Seattle Department of Parks and Recreation (Parks). SDOT and Parks will enter into a Memorandum of Understanding to set forth working guidelines and assign maintenance functions for this segment of the MTS Trail extension.

The MTS Trail will eventually extend to the Seattle Waterfront. This proposed legislation facilitates the Seattle extension of the MTS Trail, which will extend the multi-use trail at its

THIS CITY CLERK

current terminus on Beacon Hill at the Dr. Jose Rizal Bridge along Interstate 5 to the Holgate overpass. This new segment of the MTS Trail will become part of a one-hundred mile corridor of permanent open space lands along Interstate 90 from Seattle to Central Washington. The MTS Trail embraces and complements City parks and trails, wildlife habitats, working and protected forests, recreational opportunities in nature, local history, scenic beauty, tourism, and educational activities that promote a sustainable balance between population growth and a healthy environment.

Project Name:	**Project I.D.**	**Project Location:**	**Start Date:**	**End Date**
Mountains to Sound Greenway Trail	TC365750	TP-28 4th Ave. S/ S Royal Brougham Way	Q2/2000	Q4/2010

- *Please check any of the following that apply:*

____ **This legislation creates, funds, or anticipates a new CIP Project.** *(Please note whether the current CIP is being amended through this ordinance, or provide the Ordinance or Council Bill number of the separate legislation that has amended/is amending the CIP.)*

____ **This legislation does not have any financial implications.** (*Stop here and delete the remainder of this document prior to saving and printing.)*

__X__ **This legislation has financial implications.** *(Please complete all relevant sections that follow.)*

Appropriations: *This table should detail existing appropriations and reflect appropriations that are a direct result of this legislation If this legislation does not directly change an appropriation, but has budget impacts, please explain in the notes section below:*

Fund Name and Number	**Department**	**Budget Control Level***	**Existing 2009 Appropriation**	**New 2010 Appropriation (if any)**	**2011 Anticipated Appropriation**
TOTAL					

**See budget book to obtain the appropriate Budget Control Level for your department.*

Notes: Appropriations to support this legislation were made in the 2010 Adopted Budget.

CITY CLERK

Spending Plan and Future Appropriations for Capital Projects: *Please list the timing of anticipated appropriation authority requests and expected spending plan. In addition, please identify your cost estimate methodology including inflation assumptions, the projected costs of meeting applicable LEED standards, and the percent for art and design as appropriate.*

Spending Plan and Budget	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**Total**
Spending Plan							
Current Year Appropriation							
Future Appropriations							

Notes: The spending plan and future anticipated appropriations are in the 2010 Adopted Budget.

Funding source: *Identify funding sources including revenue generated from the project, and the expected level of funding from each source. When applicable, make a notation indicating the source of funds is paying for debt service.*

Funding Source (Fund Name and Number, if applicable)	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**Total**
TOTAL							

Notes: Funding Sources to support this legislation are in the 2010 Adopted Budget.

Bond Financing Required: *If the project or program requires financing, please list type of financing, amount, interest rate, term and annual debt service or payment amount. Please include issuance costs of 3% in listed amount.*

Type	**Amount**	**Assumed Interest Rate**	**Term**	**Timing**	**Expected Annual Debt Service/Payment**
N/A					
TOTAL					

THIS CITY CLERK

Uses and Sources for Operation and Maintenance Costs for the Project: *Estimate cost of one-time startup, operating and maintaining the project over a six year period and identify each fund source available. Estimate the annual savings of implementing the LEED Silver standard. Identify key assumptions such as staffing required, assumed utility usage and rates and other potential drivers of the facility's cost.*

O&M	2010	2011	2012	2013	2014	2015	Total
Uses							
Start Up							
On-going		2,115	2,157	2,200	2,244	**2,289**	**11,005**
Sources (itemize)		2,115	2,157	2,200	2,244	**2,289**	**11,005**

Notes: Costs will be supported within the existing trail maintenance budget.

Periodic Major Maintenance costs for the project: *Estimate capital cost of performing periodic maintenance over life of facility. Please identify major work items, frequency.*

Major Maintenance Item	Frequency	Cost	Likely Funding Source
Asphalt Replacement	20 years	$1.5M	Capital Funds
TOTAL			

Funding sources for replacement of project: *Identify possible and/or recommended method of financing the project replacement costs.*

<u>Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact</u>: *This table should only reflect the actual number of positions created by this legislation In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Position Title and Department*	Position # for Existing Positions	Fund Name & #	PT/FT	2010 Positions	2010 FTE	2011 Positions **	2011 FTE **
N/A							
TOTAL							

* *List each position separately*

** *2011 positions and FTE are <u>total</u> 2011 position changes resulting from this legislation, not incremental changes. Therefore, under 2011, please be sure to include any continuing positions from 2010.*

Notes:

SEA CITY CLERK

- **Do positions sunset in the future?** *(If yes, identify sunset date):* *N/A*

What is the financial cost of not implementing the legislation: *(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented):*

If this legislation is not implemented, the City would have to manage the construction of the project to build this segment of the MTS Trail in lieu of the State. The City would incur approximately $250,000 to assume management of this construction project and the project would be delayed for at least 6 months. A new trail lease would also have to be negotiated between the City and State to provide for City construction on State land and a new authorizing ordinance would need to be passed by the City Council.

In addition, this grant funded project is over 10 years old and a further delay could jeopardize current funding. Due to the age of the grant Federal Highway Administration has the authority to request that the City return the unspent grant balance of approximately $810,000 and pay back the spent portion of the grant in the amount of $440,000.

- **Does this legislation affect any departments besides the originating department?** • *If so, please list the affected department(s), the nature of the impact (financial, operational, etc)., and indicate which staff members in the other department(s) are aware of this Bill.*

Parks has jurisdiction over a portion of the new MTS Trail segment that will go through Dr. Jose Rizal Park. The Department of Transportation and Parks will enter into a Memorandum of Understanding to set forth working guidelines and designate maintenance responsibilities. Don Harris and Terry Dunning are the Parks representatives assigned to this project.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives** *(Include any potential alternatives to the proposed legislation, including using an existing facility to fulfill the uses envisioned by the proposed project, adding components to or subtracting components from the total proposed project, contracting with an outside organization to provide the services the proposed project would fill, or other alternatives):* None.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future?)*

No.

- **Other Issues** (*including long-term implications of the legislation*):

- **List attachments to the fiscal note below:** *(Please include headers with version numbers on all attachments, as well footers with the document's name (e.g., DOF Property Tax Fisc Att A))*

Attachment A: Mountains-to-Sound Trail Site Map.

CITY CLERK

Mountains to Sound Trail

Site Map

City of Seattle Property

State of Washington Property

Attachment A to Fiscal Note

FILED
CITY
CLERK

City of Seattle
Office of the Mayor

July 20, 2010

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill authorizing the City of Seattle (City) through the Director of the Seattle Department of Transportation to enter into a general contracting agreement (Contract) and a trail lease agreement (Lease) with the Washington State Department of Transportation (State) in connection with the Mountains to Sound Greenway Trail (MTS Trail).

In 1999, the City, in coordination with the State, received a grant to fill in this gap in the MTS Trail in Seattle. Pursuant to the Contract, the State will construct an extension of the MTS Trail across City and State property. In accordance with the Lease, the City will operate and maintain the MTS Trail segment on State property. The new segment of the MTS Trail will become part of a one-hundred mile corridor of permanent open space lands along Interstate 90 from Seattle to Central Washington. The MTS Trail embraces and complements City parks and MTS Trails, wildlife habitats, working and protected forests, recreational opportunities in nature, local history, scenic beauty, tourism, and educational activities that promote a sustainable balance between population growth and a healthy environment.

Most notably, the MTS Trail provides a separate non-motorized transportation network away from the motorized highway users. Currently, pedestrians and bicyclists use Dr. Jose Rizal Bridge and the associated road network to reach the waterfront from the current trail terminus. Construction of this segment of the MTS Trail will provide the needed separation that will enhance safety for all transportation users.

Thank you for your consideration of this legislation. Should you have questions, please contact Larry Huggins at (206) 684-5001.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov

CITY CLERK

STATE OF WASHINGTON – KING COUNTY

--ss.

261513 No. TITLE ONLY

CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:123394,123398-123407

was published on

10/11/10

The amount of the fee charged for the foregoing publication is the sum of $ 170.63, which amount has been paid in full.

JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 24, 2011

Subscribed and sworn to before me on

10/11/10

Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on September 20, 2010, and published here by title only, will be mailed upon request, or can be accessed at http://clerk.ci.seattle.wa.us. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 123394

AN ORDINANCE relating to the Mountains to Sound Greenway Trail; authorizing the Director of Transportation to sign an agreement with the Washington State Department of Transportation for State construction of a portion of the Mountains to Sound Greenway Trail on City property and State property; and authorizing the Director of Transportation to sign a lease with the Washington State Department of Transportation for City maintenance and operation of a portion of the Mountains to Sound Greenway Trail on State property.

ORDINANCE NO. 123398

AN ORDINANCE relating to City employment commonly referred to as the Second Quarter 2010 Employment Ordinance; designating positions as exempt from Civil Service status and authorizing the Mayor to execute a memorandum of agreement between the City of Seattle and the International Federation of Professional and Technical Engineers, Local 17; all by a 2/3 vote of the City Council.

ORDINANCE NO. 123399

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an amendment to the Mercer Arena Ground Lease between the City of Seattle and Seattle Opera.

ORDINANCE NO. 123400

AN ORDINANCE relating to the Department of Finance and Administrative Services; authorizing the Director of Finance and Administrative Services to execute an amendment to a lease agreement with the U.S. General Services Administration for warehouse space at Federal Center South, 4735 East Marginal Way South in Seattle; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123401

AN ORDINANCE relating to 800 MHz emergency radio communication; authorizing the Director of the Department of Information Technology to execute on behalf of the City an Interlocal Agreement between the City of Seattle, City of Tacoma, Eastside Public Safety Communication Agency, King County, Snohomish County Emergency Radio System, and Valley Communications Center for the purpose of interoperable 800 MHz emergency communications within the Puget Sound region; and ratifying and confirming prior acts.

ORDINANCE NO. 123402

AN ORDINANCE relating to the City Light Department; authorizing a 10-year agreement with Pend Oreille County for (1) the loss of revenues and additional financial burdens associated with the City of Seattle's operation of the Boundary Hydroelectric Project on the Pend Oreille River pursuant to RCW 5.21.420,.425,.426, and.427, and (2) the County's agreement to settle all issues relating to City Light's relicensing of the Boundary Hydroelectric Project and the related Sullivan Creek Power Project license surrender.

ORDINANCE NO. 123403

AN ORDINANCE relating to jail services; authorizing the Mayor to execute an Interlocal Agreement with Snohomish County for the Provision of Jail Services; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123404

AN ORDINANCE authorizing, in 2010, acceptance of funding from non-City sources; authorizing the heads of the Office for Education, the Office of Housing, the Seattle Fire Department, the Office for Civil Rights, the Human Services Department, the Department of Planning and Development, the Seattle Police Department, and Seattle Public Utilities to accept specified grants and private funding and to execute, deliver, and perform corresponding agreements.

ORDINANCE NO. 123405

AN ORDINANCE amending Ordinance 123177, which adopted the 2010 Budget, including the 2010-2015 Capital Improvement Program (CIP); changing appropriations to various departments and budget control levels, and from various funds in the Budget; adding new projects and revising project allocations for certain projects in the 2010-2015 CIP; creating a position; making transfers between various City funds; making cash transfers between funds; and ratifying and confirming certain prior acts, all by a three-fourths vote of the City Council.

ORDINANCE NO. 123406

AN ORDINANCE relating to the City's municipal golf courses; authorizing the Superintendent of the Seattle Department of Parks and Recreation to enter into a management contract with Premier Golf Centers LLC for the operation of the City's municipal golf courses located at Jefferson Park, Jackson Park, West Seattle, and Interbay; authorizing the Superintendent to set golf fees consistent with that agreement and authorizing the Department to collect such fees.

ORDINANCE NO. 123407

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Date of publication in the Seattle Daily Journal of Commerce, October 11, 2010.

10/11(261513)