

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Easement Agreement") is made as of this 10<sup>th</sup> day of March, 1992, by and between INLAND PROPERTIES, INC., a Montana corporation ("Inland"), FREMONT DOCK COMPANY, a Washington corporation ("Fremont Dock"), and THE CITY OF SEATTLE, a municipal corporation of the State of Washington ("City"); provided, however, Inland joins in this Easement Agreement only to encumber its interest in the property involved but does not otherwise undertake any obligations or derive any benefits from this Easement Agreement.

R E C I T A L S:

A. Inland has acquired the interest of Burlington Northern Railroad Company ("BN") in certain railroad right-of-way property situate between Phinney Avenue and the western edge of the Edgewater plat of the City of Seattle as recorded in Book 3, Page 141 of Plats, as such property is described on Exhibit A attached hereto (the "Property"). Fremont Dock owns certain real property adjacent to and abutting along the south side of the Property which is hereinafter referred to as the "Fremont Dock Property."

B. Fremont Dock and Inland have entered into a lease agreement with option to purchase covering the Property (the "Lease/Option"), a Memorandum of which was recorded on January 24, 1989, under Recording No. 8901240579, records of King County.

C. Inland, Fremont Dock, the City and The Quadrant Corporation have entered into that certain Agreement dated January 24, 1989 (the "Trail Agreement"), the terms of which remain in full force and effect with the exception only of terms regarding grant of the easements provided for herein, which terms are merged into this Easement Agreement. The Trail Agreement provides, among other things, that upon the satisfaction of certain conditions specified in the Trail Agreement, Inland, Fremont Dock and Quadrant will make, declare, convey and quit claim to the City, without warranty or representation, a perpetual easement appurtenant to and for the benefit of the property now owned or hereafter acquired by the City for the Burke-Gilman Trail and for the benefit of the Burke-Gilman Trail and the public (the "Trail Easement"), and a temporary construction easement (the "Temporary Construction Easement"), at such time as is appropriate.

D. Subsequent to the Trail Agreement, the parties have agreed to modify certain portions of the easement area and the areas described in this Easement Agreement reflect the changes made.

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920317-2094 02:39:00 PM KING COUNTY RECORDS 023 PER 29.00

EASEMENT

EXCISE TAX NOT REQUIRED  
King Co. Records Division  
By R. Castro Deputy

E. The City has requested that Inland and Fremont Dock presently grant the Trail and Temporary Construction Easement to the City and Fremont Dock and Inland are willing and desire to do so subject to the terms and conditions set forth in this Easement Agreement, and the City is desirous of accepting such Trail and Temporary Construction Easement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Grant of Trail Easement. Inland and Fremont Dock, for and on its own behalf and that of its successors and assigns, do hereby convey and quit claim unto the City and its successors, assigns, officers, partners, agents, employees, contractors, subcontractors, tenants, licensees and invitees, a perpetual, non-exclusive easement on and through portions of the Property, as that same area is more particularly described on Exhibit 1 attached hereto (the "Trail Easement") and shown on the sketch attached hereto as Exhibit 2. The area of the Trail Easement, as finally located within such described area, shall be referred to as the "Multi-Purpose Trail."

2. Grant of Temporary Construction Easement. Inland and Fremont Dock, for and on its own behalf and that of its successors and assigns, do hereby convey and quit claim unto the City and its successors and assigns, a temporary construction easement on and through such portion of the Fremont Dock Parking Property and the Property as more particularly described on Exhibit 3 attached hereto and incorporated herein by this reference, which is then used for vehicular ingress and egress; and, subject to the agreement of Fremont Dock, not to be unreasonably withheld, such additional portion which is otherwise appropriate and available for vehicular use without interfering with other tenants' use of the Fremont Dock Parking Property and which is necessary or convenient for the construction of the improvements within the Trail Easement Area ("Temporary Construction Easement"). This Temporary Construction Easement grants the City, its successors and assigns, contractors, agents, officers and employees the right to enter upon such portions of the Fremont Dock Parking Property described above as may be necessary for the purpose of initial development and construction of the improvements within the Multi-Purpose Trail, provided, that the City shall first give Fremont Dock written notice of the City's plans for use of the Temporary Construction Easement and provided that the City's use shall in no manner interfere unreasonably with other tenants' or subtenants' use of the Property which may become subject to the Temporary Construction Easement. The City shall bear all liability for its use of the Temporary Construction Easement and shall promptly repair any

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damage caused by its exercise of rights under the Temporary Construction Easement and shall indemnify and hold Fremont Dock harmless from and against all claims arising out of or related to the City's use of the Temporary Construction Easement.

3. Purpose. The Trail Easement is conveyed for all purposes necessary or incidental to the construction, operation, maintenance, improvement, enhancement and repair of a path or paths for pedestrians, bicycles, and other non-motorized muscle powered vehicles, small motorized wheel chairs and like equipment to permit handicapped use, planting strips, landscaping and related grading, granting to the City, its successors and assigns as owners of the Burke-Gilman Trail, its contractors, agents, officers and employees and to the public, free, open and continuous access on and through the Multi-Purpose Trail for the purposes above described.

4. Duration of Easements.

(a) Provided that construction of improvements within the Trail Easement is completed not later than January 31, 1995, the Trail Easement shall be perpetual so long as the use thereof continues by the public and shall inure to the benefit of the City and the public, and shall be binding upon Inland and Fremont Dock and their successors, assigns, mortgagees, lessees and sublessees.

(b) The Temporary Construction Easement shall commence 30 days after the date of written notice from the City to Fremont Dock of commencement of construction. It shall terminate automatically upon 60 days following the date upon which the City's Board of Public Works (or any successor City entity having such responsibility) accepts the improvements and the Multi Purpose Trail is open to the public.

5. Reaffirmation of Trail Agreement.

The parties hereby reaffirm all of the terms and provisions of the Trail Agreement, excepting only those terms and provisions pertaining to grant of the Trail Easement and the Temporary Construction Easement which are merged into this Easement Agreement, and the parties acknowledge and agree that the Trail Agreement remains in full force and effect and will remain in full force and effect during the entire term of the Trail Easement. Without limiting the foregoing, the City acknowledges that the provisions of Sections 1(d), 1(f), 3 and 4 remain in full force and effect and are enforceable in accordance with their terms.

6. Reservation of Rights. Inland and Fremont Dock shall not grant any permit, right or easement which would interfere with the City's or the public's exercise of their

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rights under the Easements. Inland and Fremont Dock retain all rights of use with respect to the property subject to the Trail Easement which do not interfere with the City's or the public's exercise of their rights, including but not limited to the right to use the subsurface for construction support or tiebacks, and use for utilities which do not interfere with the use of the Trail Easement except for the purposes of construction and maintenance, and provided such reservation of use for utilities shall not impair the City's authority to control utility hook-ups. Any exercise by Inland and Fremont Dock of their retained rights of use shall, however, be subject to scheduling of such use with the City and the City's approval of detour signing, if necessary, with the objective that any such use requiring a temporary re-routing would be accomplished in a manner to minimize disruption of the Multi-Purpose Trail's use. Fremont Dock retains the right at all times to deny access by the public to the Property and the Fremont Dock Property, not a part of the Multi-Purpose Trail. All development rights of Fremont Dock and any of its tenants as they now exist or may exist in the future are hereby reserved such that the Property and the Fremont Dock Property may be developed to the full extent permitted by law and such rights shall not be impaired in any way by this grant of the Trail Easement or the construction and use of the Multi-Purpose Trail. Without limiting the foregoing, it is agreed that no right to air, view or light are included within the grant of the Trail Easement, either expressly or by implication, with the sole exception of the grants and limitations applicable to air rights set forth in Sections 8(b) and 9 below.

7. Title. Inland and Fremont Dock make no representation or warranty with respect to title to the Multi-Purpose Trail except that Inland and Fremont Dock warrant that neither has granted rights to any other person which would have priority over the rights granted to the City hereunder.

8. Trail Crossings.

(a) At Grade. Inland and Fremont Dock shall have the right to permit trail crossings for pedestrian purposes at grade as Inland and Fremont Dock may deem necessary or appropriate as part of any development or other use of the Property or the Fremont Dock Property, provided that such crossings shall not unreasonably interfere with the use of the Multi-Purpose Trail and provided, further, that pedestrians utilizing the crossings shall yield the right of way to Multi-Purpose Trail users. Fremont Dock shall have the right to place any signage, security and warning devices relating to such trail crossings located on the Fremont Dock Property. The City and Fremont Dock shall mutually agree on the signage, security and warning devices relating to such pedestrian crossings and located within the Trail Easement, but the final decisions

regarding signage within the Trail Easement and all other design characteristics of the Trail Easement shall be made by the City and the City shall have full responsibility for the same. The responsibility for signage, security and warning devices for Trail crossings at Stone Way North, North Northlake Way and the pedestrian crossing and ramp at Albion North shall be the responsibility of the City. Other motor vehicle crossings shall require prior City approval, with the exception that occasional use of fork lifts and similar vehicles to transport items to and from the building situated at the southwest corner of North 34th Street and Stone Way North shall be permitted.

(b) Overhead Crossings and Extensions. Fremont Dock retains the right to construct overhead crossings over the Trail Easement, subject to the City's approval. Such crossings may be either for ingress and egress for vehicles or pedestrians or may be for purpose of construction of other improvements. In addition, within the Trail Easement, Fremont Dock, subject to prior City approval, shall be permitted to extend building extensions and appurtenances on the Fremont Dock Property into the Trail Easement, provided no such building extensions and appurtenances shall occur over the fifteen (15) foot constructed pathway within the Trail and provided further that any existing building extensions shall not be deemed a violation of this Easement Agreement.

9. Air Rights. Insofar as the right to construct improvements within the physical air directly above the Trail Easement is involved, and subject to existing structures and improvements, the air rights pertaining to the Trail Easement area are included within the grant of the Trail Easement, provided that such grant shall not entitle the City to construct any improvements within such air space, excluding directional and regulatory signage and, subject to the approval of Fremont Dock, artwork.

10. Indemnities and Insurance.

(a) Indemnities. Subject to the provisions of the second sentence of this paragraph, each party agrees to indemnify, defend and hold all other parties harmless from and against all claims and all costs, expenses and liabilities (including reasonable attorneys fees) incurred in connection with all claims, actions or proceedings arising from or as a result of the death of or any accident, injury, loss or damage whatsoever caused to any natural person or the property of any person arising out of the negligence of such party, it being the intent of the parties that each shall be responsible for its own negligence and, in the case of joint negligence each shall have such right of contribution as is provided by law. Notwithstanding the foregoing, however, the parties agree that within the area of the Trail Easement neither Fremont Dock nor

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Inland shall have any liability or any obligation to contribute, and the City hereby agrees to indemnify, defend and hold Fremont Dock and Inland harmless from and against all claims and all costs, expenses and liabilities (including reasonable attorneys fees in the event the City does not accept a tender of defense of any such claim made against Fremont Dock or Inland) incurred in connection with all claims, actions or proceedings arising from or as a result of the death of or any accident, injury, loss or damage whatsoever caused to any natural person or the property of any person arising out of events occurring within the Trail Easement or otherwise related to or arising out of the Trail Easement or its use except to the extent and only to the extent that Fremont Dock and/or Inland have by their active negligence caused such events, and in no event shall Fremont Dock or Inland have any liability or contribution obligation for any omission or failure to act within the area of the Trail Easement.

(b) Insurance. The parties may carry such liability insurance as each determines in the exercise of its sole discretion. To the extent available without additional cost, each party, and its respective contractors and agents, shall name all other parties as additional insureds on each policy of insurance and provide to the other parties a certificate of such insurance including an endorsement providing that the same shall not be canceled without at least 30 days notice to the parties, and provided further that no party shall incur any liability for failing to name any other party as an additional insured. The parties agree to cooperate and take all necessary and reasonable steps required by any insurance carrier to minimize the risk of liability and to lower insurance premiums for any party carrying insurance.

11. Relocation of Trail Easement. Inland and Fremont Dock, subject to the limitations of this Section 11, reserve the right to relocate the Trail Easement or any other portion thereof on other property of Inland and Fremont Dock from time to time in the future as such relocation may be necessary or desirable as part of Inland's and Fremont Dock's then use or development of the property through which the Trail Easement passes provided that the Trail Easement shall at all times connect to the adjacent part of the Burke-Gilman Trail at the easterly and westerly ends of the Trail Easement; the dimension of the Multi-Purpose Trail are not materially altered, and a continuous, uninterrupted (except for private trail crossings) trail is provided. In addition, in the event that relocation occurs after the initial development and construction of the Multi-Purpose Trail, Inland and Fremont Dock shall pay the full cost of reconstruction for the relocated trail. In the event Fremont Dock desires to construct an improvement on the Trail Easement adjacent to the Fremont Dock Parking Property thereby requiring a relocation of the Trail Easement, then a permissible relocation of the Trail Easement shall be on the southern portion of the

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Fremont Dock Parking Property adjacent to North Northlake Way provided that the City also permits additional access to any such improvement from North 34th Street in addition to reasonable access from North Northlake Way, such relocation to be subject to City approval.

12. Ownership of Improvements. All structures, facilities, utilities, equipment, landscaping materials, plantings or improvements of any kind which are acquired, constructed or installed in or upon the Trail Easement by the City or at the City's cost and expense shall be and remain the property of the City. Any improvements in the Trail Easement constructed at Inland's and Fremont Dock's expense shall be and remain the property of Inland and Fremont Dock, provided that Inland and Fremont Dock may donate the same to the City and, subject to the provisions of paragraph 13 below, in such event the City agrees to accept and maintain the same.

13. Maintenance. The City at its cost shall maintain the Multi-Purpose Trail in a safe, reasonably clean and presentable condition, including care for all landscaping and provision of adequate drainage including cleaning of all drains.

14. Remedies. If any party shall fail to fully and timely perform any of its obligations hereunder and shall not correct such failure within thirty (30) days of written notice from any other party, the nondefaulting party may seek specific performance hereof, damages, or any other remedy available at law or equity. In any proceeding arising out of this Easement Agreement, the prevailing party, or the party which substantially prevails, as determined by the court, shall be awarded a reasonable amount for its attorneys' fees and expenses of suit.

15. Notices. Notices required to be in writing under this Agreement shall be given by certified mail, return receipt requested, by personal delivery or by facsimile transmission. Notices, if mailed, shall be deemed effective upon the second day following deposit thereof in the United States mail, upon transmission by facsimile, or upon personal delivery. Any party may change the address to which notices may be given by written notice of such change to the other parties.

To the City:

City of Seattle  
Seattle Municipal Building  
Seattle, Washington 98104  
Attention: Director of  
Engineering

To Inland:

Inland Properties, Inc.  
c/o Washington Corporations  
101 International Way  
Missoula, Montana 59802

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Attention: John Crowley

Fremont Dock Company:

3301 Fremont Avenue North  
Seattle, Washington 98103  
Attention: Suzanne M. Burke

16. Recording of Easement. The parties hereto agree that this Easement shall be recorded with the King County Department of Records and Elections, and the City shall pay the recording costs.

17. Applicable Law. This Easement Agreement is executed under, and shall be construed in accordance with, the laws of the State of Washington.

18. Effective Date. This Easement shall be effective as of the date it is recorded with the King County Department of Records and Elections.

19. Waiver. The waiver by either Inland/Fremont Dock/City of the breach of any term set forth herein shall not be deemed to be a waiver of any subsequent breach of the same term or any other term.

20. As-Built. Upon completion of the improvements within the Multi-Purpose Trail, or any relocation thereof Inland and Fremont Dock may, with the City's concurrence, amend the description of the Trail Easement to conform with the actual as-built improvements within the Trail Easement.

21. Amendments. Neither this Easement Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought and by the party seeking enforcement of the same.

22. Approval or Consent. Whenever in this Trail Easement the consent or approval of the City is required, such consent or approval shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have executed this Easement as of the day and year first above noted.

INLAND PROPERTIES, INC.

By: John H. Crowley  
Its Vice President

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FREMONT DOCK COMPANY

By: Suzanne M. Burke  
It's V.P. - General Manager

THE CITY OF SEATTLE

By: Norman Brooks  
It's Mayor

Attest: Norman Brooks  
City Comptroller

Montana  
STATE OF ~~WASHINGTON~~ )  
Missoula ) ss.  
COUNTY OF ~~KING~~ )

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On this day personally appeared before me John H. Crowley, to me known to be the Vice President of INLAND PROPERTIES, INC., the corporation that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute said instrument on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 9th day of March, 1992.

John A. McNeal  
NOTARY PUBLIC in and for the  
State of ~~Washington~~, residing  
at Missoula  
My commission expires: July 7, 1995





EXHIBIT A

All that portion of the railroad right-of-way previously owned by Burlington Northern Railway Company, bounded on the west by the western boundary of the Edgewater Plat to the City of Seattle, as recorded in Book 3, Page 141 of Plats, bounded on the east by the western boundary of Gas Works Park, in Seattle, King County, Washington, bounded on the north by North Northlake Place and North 34th Street and bounded on the south by North Northlake Way.

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That portion of the South half of Section 18, Township 25 North, Range 4 East, W.M., in King County, Washington, described as follows:

Commencing at the intersection of the center lines of Woodland Park Ave. N. and N. 34th Street; thence Easterly along the center line of N. 34th Street 34.34 feet; thence Southerly on a line perpendicular to N. 34th Street 30.00 feet to the South line of N. 34th Street and the True Point of Beginning; thence Westerly along the South line of N. 34th Street to the most Easterly line projected Northerly of that property condemned by the State of Washington on December 11, 1929, for State Road No. 1 (Aurora Avenue North) under King County Superior Court Cause No. 224187; thence Southerly along said projected line to a line parallel to and 18.00 feet distant as measured perpendicular to the South line of N. 34th Street; thence Easterly along said parallel line to a point opposite the True Point of Beginning; thence on a line perpendicular to N. 34th Street 18.00 feet to the True Point of Beginning.

2

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That portion of the South half of Section 18, Township 25 North, Range 4 East, W.M., in King County, Washington, described as follows:

Commencing at the intersection of the center lines of Woodland Park Ave. N. and N. 34th Street; thence Easterly along the centerline of N. 34th Street 107.72 feet to a point opposite the Southwest corner of the "Fremont Station" building, as shown on page 76 of Field Book 2609MM, records of Seattle Engineering Dept.; thence Southerly on a line perpendicular to N. 34th Street 51.12 feet to said Southwest corner and the True Point of Beginning; thence Easterly along the South line of said building and its extension to the West line of Stone Way N.; thence South along said West line to a line parallel to and 12.00 feet distant, as measured perpendicular to, the above South building line; thence Westerly along said parallel line to a point opposite the True Point of Beginning; thence Northerly on a line perpendicular to N. 34th Street 12.00 feet to the True Point of Beginning.

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That portion of the South half of Section 18, Township 25 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at the intersection of the South line of N. 34th Street and the East line of Stone Way N.; thence along the South line of N. 34th Street to an intersection with the projection Southerly of the Westerly line of Edgewater Addition as recorded in Volume 3 of Plats, Page 141, Records of King County, Washington; thence Southerly along said projected West line to an intersection with a line parallel to and 13.00 feet distant from the South line of N. 34th Street as measured perpendicular to said South line; thence Westerly along said parallel line to the East line of Stone Way N; thence Northerly along said East line to the Beginning.

**EXHIBIT 3**

AN EASEMENT for construction purposes, the southerly line of which lies ten feet southerly as measured at right angles to the southerly line of the Multi-Purpose Trail easement described in Exhibit 1, and also lying between the projection southerly of the easterly and westerly end lines of said Multi-Purpose Trail easement, less any area occupied by an existing structure.

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**Channelization and Signing Legend**

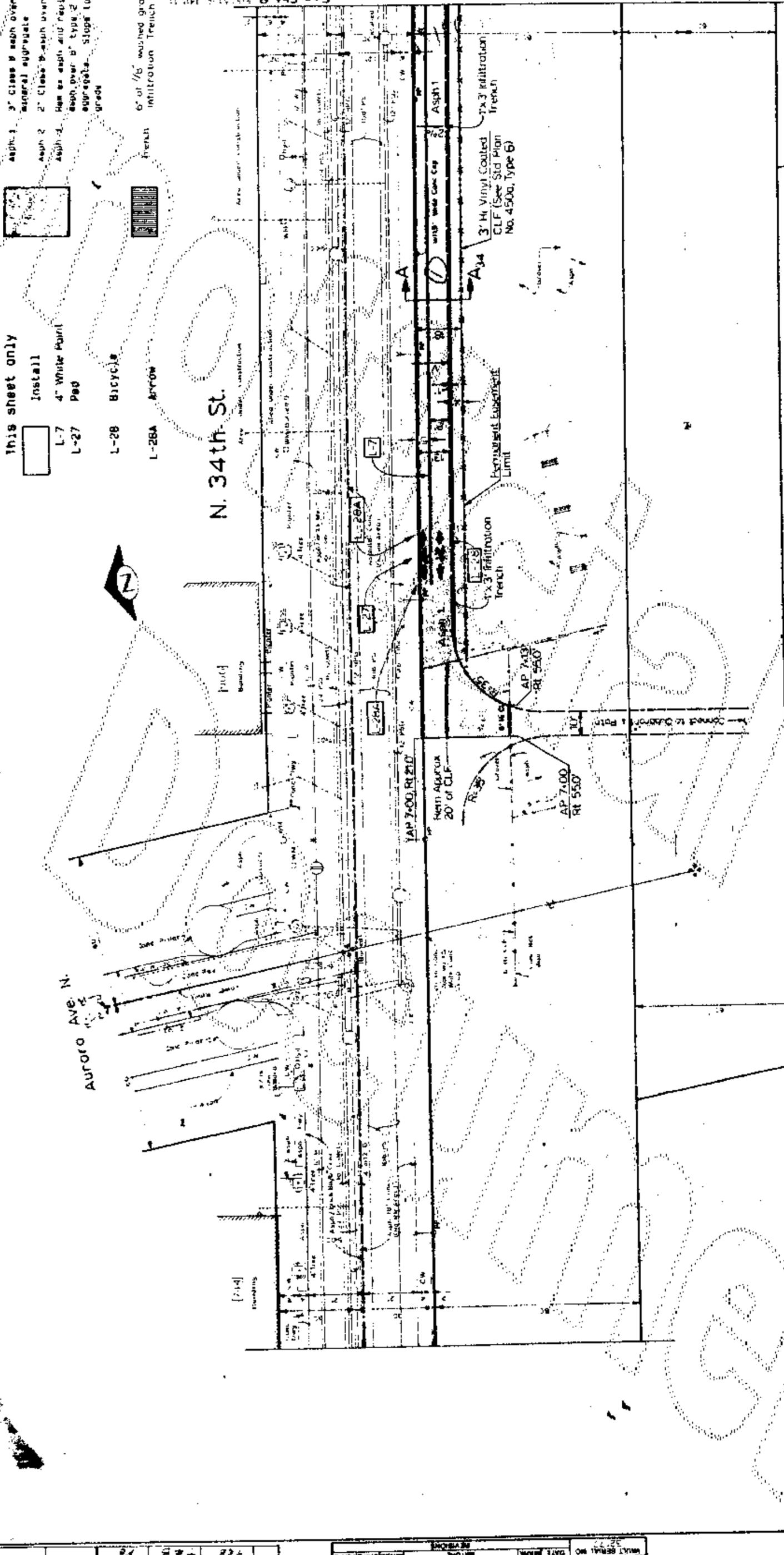
- This sheet only**
- Install
  - L-7 4" White Paint
  - L-27 Pop
  - L-28 Bicycle
  - L-28A Arrow

**Paving Legend**

- Unless Otherwise Noted:**
- Asph-1 3" Class B asphalt over 4" mineral aggregate
  - Asph-2 2" Class B asphalt over 1" Hem or asphalt and replace with 4" type 2 mineral aggregate. Slope to match existing grade
  - French 6" of 1/8" washed gravel over infiltration trench

EXHIBIT 2

Match Line



**N Northlake Way**

See Sht 26 for Landscaping Plan.  
 Waterway # 23

Paving, Drainage,  
 Channelization and Signing Plan

Burke Gilman Bike Trail  
 Meridian Ave N to 3rd Ave NW  
 By Paving, Etc

THE CITY OF SEATTLE  
 DEPARTMENT OF ENGINEERING  
 GARY JAMES, Director of Engineering



NAME OF OFFICIAL AND DATE	INITIALS AND DATE
Checked by: [Signature]	[Initials]
Reviewed by: [Signature]	[Initials]
Approved by: [Signature]	[Initials]

APPROVED FOR SUBMITTAL  
 BY THE BOARD OF PUBLIC WORKS  
 MAY 15, 2012

[Signature]

NO.	DATE	REVISION
1	5/24/12	ISSUED FOR PERMITS
2	5/24/12	REVISED PER COMMENTS
3	5/24/12	REVISED PER COMMENTS
4	5/24/12	REVISED PER COMMENTS
5	5/24/12	REVISED PER COMMENTS

WHAT SERIAL NO.	DATE MARK	REVISION
1	5/24/12	ISSUED FOR PERMITS
2	5/24/12	REVISED PER COMMENTS
3	5/24/12	REVISED PER COMMENTS
4	5/24/12	REVISED PER COMMENTS
5	5/24/12	REVISED PER COMMENTS

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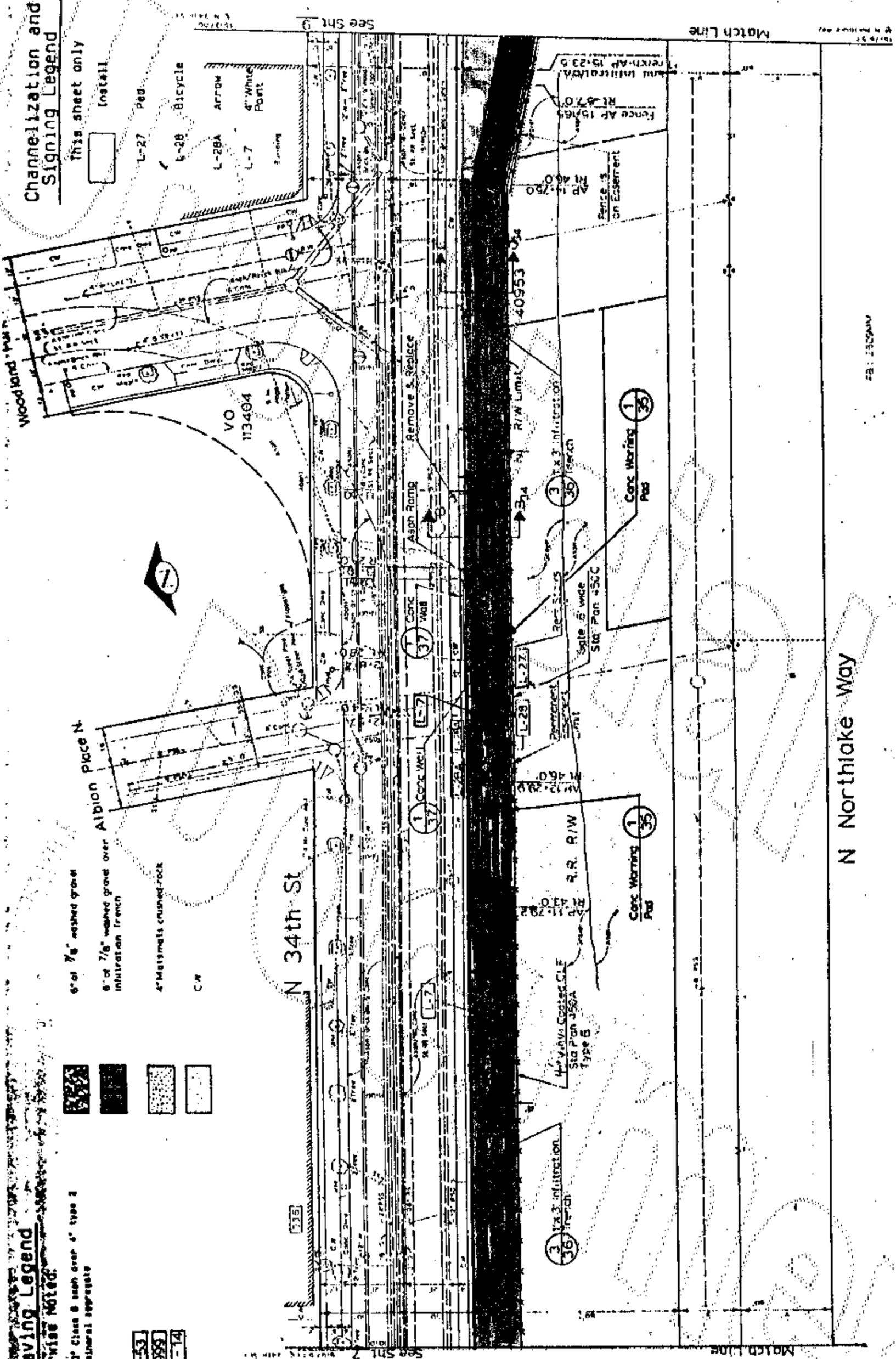
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**Channelization and Signing Legend**

- This sheet only
- Install
- L-27 Ped
- L-28 Bicycle
- L-28A Arrow
- L-7 4" White Post



**Paving Legend**  
 Unless Otherwise Noted:

- ★ 1" Class 8 each over 6" type 2 mineral aggregate
- ★ W-53
- R-999
- P4-14

See Sht. 27 for Landscaping Plan.

Paving, Drainage,  
 Channelization and Signing Plan

Burke Gilman Bike Trail  
 Meridian Ave N to 3rd Ave NW  
 By Paving, Etc

THE CITY OF SEATTLE  
 DEPARTMENT OF ENGINEERING  
 CLAY JERRIS, DIRECTOR OF ENGINEERING



DATE OF INITIAL JOB DUMP	DATE OF INITIAL JOB DUMP
NUMBER OF DUMP TRUCKS	NUMBER OF DUMP TRUCKS
VOLUME OF DUMP TRUCKS	VOLUME OF DUMP TRUCKS
DATE OF INITIAL JOB DUMP	DATE OF INITIAL JOB DUMP
NUMBER OF DUMP TRUCKS	NUMBER OF DUMP TRUCKS
VOLUME OF DUMP TRUCKS	VOLUME OF DUMP TRUCKS

APPROVED FOR POSTING  
 BY THE BOARD OF PUBLIC WORKS  
 SEATTLE, WASHINGTON  
 DATE: 5/24/12  
 BY: [Signature]

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2

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3

That portion of the South half of Section 18, Township 25 North, Range 4 East, W.M., in King County, Washington, described as follows:

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