Land Use & Economic Development Committee Agenda

Mukilteo City Hall - 11930 Cyrus Way

Tuesday, November 3, 2020

4:00 PM-5:30 PM

Zoom Virtual Meeting

Join Zoom Meeting
https://us02web.zoom.us/j/85386801561?pwd=TGI2cTg1WHd5MGk5Ky9yWGd3b0haQT09&from=msft

By phone: Dial by your location
+1 253 215 8782 US (Tacoma) +1 669 900 9128 US (San Jose) Meeting ID: 853 8680 1561
Passcode: 307662

CALL TO ORDER - 4:00 PM

Meeting Objectives:

1. Economic Recovery

   A. Business Survey Update
   B. General Committee Discussion

2. Washington State Ferries (WSF) Agreements

   A. Stormwater Agreement
   B. Turnback Agreement
   C. Airspace Agreement
   D. Slope Easement

ADJOURNMENT - 5:30 PM

Next Meeting: Tuesday, December 1, 2020 from 4:00 PM - 5:30 PM (Virtual/Remote)

- For accessibility information and for accommodation requests, please call the ADA Coordinator at (425) 263-8005 *(or TRS (800) 833-6384 or dial 711)*, or visit https://mukilteowa.gov/departments/executive/ada-program/.

LAND USE & ECONOMIC DEVELOPMENT COMMITTEE AGENDA REPORT	
SUBJECT TITLE: Washington State Ferries/City of Mukilteo - Agreements and Easements	**FOR AGENDA OF:** November 3, 2020
Contact Staff: David Osaki, Community Development Director Andrea Swisstack, Public Works Director	**EXHIBITS:** 1. Stormwater Agreement 2. Turnback Agreement 3. Airspace Lease Agreement 3A. Pre- and Post Airspace Parking 4. Slope Easement
Department Director: David Osaki, Community Development Director Andrea Swisstack, Public Works Director	

SUMMARY

The Washington State Department of Transportation - Washington State Ferries ("WSDOT" or "WSF") has announced its intention to open the new Mukilteo ferry terminal the last week of December 2020. As WSF moved forward with construction, the City has been negotiating a series of agreements and easements with WSF relating to utilities, right-of way, parking mitigation and future property development.

Four (4) of these agreements/easements are scheduled to be brought forward to the Mukilteo City Council December 7, 2020 for action. Bringing these agreements/easements to the Land Use & Economic Development Committee ("LU&ED") meeting now enables the LU&ED Committee to familiarize itself with the agreements/easements and ask questions, while still providing for sufficient time for staff to address issues prior to December 7, 2020.

BACKGROUND

Over the course of the last year the City has met regularly with WSDOT to draft and work through the details of these four agreements/easements. With the exception of the slope easement, the agreements/easements have been reviewed by both parties and have been reviewed by each agency's legal counsel. The slope easement currently represents the City's most recent proposed version, and a response from WSDOT is anticipated on that version.

In summary, the four agreements/easements are as follows:

1. **<u>Stormwater Agreement (Exhibit 1)</u>**
   The Stormwater agreement establishes ownership, operation and maintenance responsibilities for stormwater facilities involving the City of Mukilteo, WSDOT and, to a lesser extent, Sound Transit for the Mukilteo Multimodal Terminal Project.

   As part of the project, WSF is constructing stormwater infrastructure that will serve the SR 525 right-of-way, the new WSF Ferry Terminal, the Mukilteo Transit Center, First Street right-of-way and the Sounder Station. During the final design of the project it was determined that a three-way maintenance agreement would be necessary to clearly define ownership and maintenance responsibilities for this infrastructure.

   Although it is a three-way agreement, most of the agreement is between the City of Mukilteo and WSF. Sound Transit will maintain a trench drain and maintain concrete pavers in the vicinity of their station. The drawings included in Exhibit A of the draft agreement identify what party will maintain each element of the stormwater infrastructure constructed by the WSF terminal project. It is planned that Exhibit A will be updated to reflect as-built conditions after the construction of the Ferry Terminal project is complete.

2. **<u>Turnback Agreement (Exhibit 2)</u>**
   After completion of the WSF Terminal Project, the route of SR525 will change. Ferry traffic will travel east along a newly constructed segment of SR525 to access the new ferry terminal. The section of SR525 from the existing terminal's toll booths to the existing terminal at Front Street will no longer be needed as a State route and will effectively function as a City street.

   The Turnback Agreement will transfer the ownership of the right-of-way in this location from WSDOT to the City. The Turnback Agreement is in a standard form that WSDOT uses for these types of situations. Exhibit A in the Turnback Agreement highlights the area of right-of-way that will be conveyed to the City. Once executed, the City will take over the ownership, maintenance, operation and permitting authority of this area.

3. **<u>Airspace Agreement (Parking Mitigation - Exhibits 3 and 3A)</u>**
   "Airspace" is a WSDOT term. WSDOT defines "airspace" as encompassing the area at, above, and below the grade of the property. In this particular case, the City and WSDOT have been negotiating an airspace agreement related to parking on WSDOT property that will be available for the City to use.

As part of the Mukilteo Multi-Modal project, WSDOT will be impacting City parking spaces on Park Avenue as well as City owned parking just north of the BNSF railroad tracks immediately south of what will be the new First Street.

Six (6) of 17 existing parking spaces on Park Avenue will be eliminated with the WSF project. An existing 25 space City owned parking area will be reconstructed to 26 spaces.

To mitigate for the **net loss** of five (5) parking spaces, WSDOT will construct 12 parking spaces on WSDOT owned property that the City may use for parking. These 12 spaces will be leased to the City at no cost. Five (5) of these 12 spaces are mitigation to address the City's net loss of five (5) spaces. The remaining seven (7) spaces are being constructed and made available to the City for parking; except that these seven (7) spaces do not constitute mitigation. The City may charge for parking for these spaces as similarly assessed at other City public parking lots or facilities owned or operated by the City.

The WSDOT leased premises is highway right of way that abuts SR 525. WSDOT may at some time need to utilize the property to maintain, repair, or reconstruct the highway and therefore, it cannot declare the property surplus to its needs. WSDOT, however, has determined the property is not presently needed for a transportation purpose and will likely not be needed in the next 20 years. Under these circumstances, WSDOT may lease the right of way to the City of Mukilteo for general parking purposes.

If WSDOT terminates the lease within the first 20 years or does not renew the lease, then WSDOT remains obligated to replace the five (5) parking stalls located on the leased premises that constitute WSDOT's parking mitigation obligations under the Mukilteo Multimodal project.

4. **Slope Easement (Exhibit 4)**

The proposed exit lanes for the new WSF Terminal run along the southern property lines of three City-owned parcels. These City-owned parcels are identified for future mixed use development and park development in the 2016 Downtown Waterfront Master Plan.

The elevation of the WSF Ferry Terminal exit lanes sit higher than the City-owned parcels. Instead of constructing a retaining wall along the property lines, the project will construct a fill slope that extends onto the City-owned parcels. It is anticipated when the City properties develop in the future, the sites will be filled to match into the final elevations of the WSF Terminal exit lanes.

By allowing this slope easement on the City-owned parcels, fill associated with the future developments will be able to tie directly into the fill slope constructed by WSF. WSF will be responsible for all maintenance and repair of the slope throughout the duration of the easement agreement. After the City completes the development on these parcels, and the slope is no longer needed, the easement will self-extinguish.

RECOMMENDED ACTION

For LU&ED Committee discussion.

EXHIBIT 1

GMB 1084/GA 0141-19

OWNERSHIP, OPERATION AND MAINTENANCE AGREEMENT FOR STORMWATER FACILITIES OF THE MUKILTEO MULTIMODAL TRANSPORTATION CENTER BETWEEN CITY OF MUKILTEO, WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, AND CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

This Ownership, Operation and Maintenance Agreement for Stormwater Facilities of the Mukilteo Multimodal Transportation Center (Agreement) is made by and between the City of Mukilteo, a municipal corporation (CITY), the Central Puget Sound Regional Transit Authority, a regional transit authority of the State of Washington (SOUND TRANSIT), and the Washington State Department of Transportation, an agency of the State of Washington (WSDOT). The CITY, SOUND TRANSIT, and WSDOT shall hereinafter each be identified as a "Party," and shall be jointly called the "Parties."

1. RECITALS

1.1 WSDOT is undertaking a construction project that involves the replacement of the existing Mukilteo Ferry Terminal, the construction of associated roadway improvements on SR 525, and the construction of City of Mukilteo roadway and facility improvements, entitled the Mukilteo Multimodal Project (Project). The Parties are supportive of the Project, which will provide mutual long term benefits for the Parties and the citizens of the State of Washington.

1.2 As part of the Project, WSDOT will construct stormwater facilities to manage drainage from real property owned by each of the Parties (Stormwater System).

1.3 The Parties desire to identify the ownership of the Stormwater System features and to establish each Party's respective responsibilities for the operation and maintenance of those features.

1.4 The authority for each Party to enter into this Agreement are: WSDOT - RCW 47.28.140; CITY – RCW 47.28.140; and SOUND TRANSIT RCW 81.112.070

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached, incorporated and made a part hereof, the Parties agree as follows:

2. PURPOSE.

The purpose of this Agreement is to identify the ownership of the Stormwater Facility features and to establish each Party's respective responsibilities for the operation and maintenance of

those features. Except as specifically set forth herein, as between the CITY and WSDOT only, nothing in this Agreement is intended to depart from, or supersede, RCW 47.24.020 and the *City Streets as Part of State Highways Guidelines* dated April 30, 1997, as amended on April 2, 2013.

3. TERM AND TERMINATION

This Agreement shall commence upon CITY's acceptance of the Project, and shall remain in effect unless and until the Parties mutually agree that this Agreement is no longer necessary. In such event, this Agreement will be terminated by the written agreement of the Parties. Any termination shall not prejudice any rights or obligations accrued to the Parties prior to termination.

4. DESCRIPTION OF THE STORMWATER SYSTEM

4.1 The Stormwater System has been designed and will be constructed to collect, convey, and treat stormwater from SR 525 right of way, the Sound Transit Mukilteo Station, the new First Street right of way, the proposed CITY parking area, and the Mukilteo Multimodal Transportation Center.

4.2 The various components of the Stormwater System are depicted in Exhibit A, attached hereto and incorporated herein by this reference. The Parties acknowledge that the location and configuration of the various components of the Stormwater System as constructed may vary from that shown on Exhibit A. In that event, the Parties agree to modify Exhibit A to reflect the as-built location and configuration of the various components of the Stormwater System and to incorporate the modified Exhibit A into this Agreement by amendment pursuant to Section 19.7.

5. COOPERATION

The Parties agree to work cooperatively to ensure that the Stormwater System functions as designed.

The Parties acknowledge the existence of two NPDES permits, one for each of the City and WSDOT. Due to the interconnections between the Parties' systems and obligations under their respective permits, the Parties agree to cooperate and take necessary actions to ensure compliance with those permits when impacts are identified to either the other Party's system or the outfall.

In the event that an issue is identified which impacts either Parties' stormwater system or the outfall locations for such systems, the Parties agree to cooperatively inspect and address the issue. Each party agrees to produce its most recent inspection results for the impacted systems as well as maintenance records upon the other Party's request. Such request shall not occur more than once per year.

6. CONTRACT MANAGEMENT

6.1 Contract Managers. The Contract Managers identified for each Party below shall be lead for their respective Party regarding this Agreement. The Contract Managers shall be responsible for administering this Agreement and shall be the designated contact for any communications between the Parties.

For the CITY:
Andrea Swisstack
Public Works Director
11930 Cyrus Way
Mukilteo, WA 98275
Telephone: (425) 263-8081
Email: aswisstack@mukilteowa.gov

For WSDOT:
Tom Castor
WSF, Terminal Engineering Maintenance
2901 3rd Avenue
5th Floor
Seattle, WA 98121
Telephone: (206) 515-3727
Email: Castor@wsdot.wa.gov

For SOUND TRANSIT:
Paul Gonzales
Manager – Facilities Operations
401 S Jackson St
Seattle, WA 98104
Telephone: (206) 689-3387
E-mail: paul.gonzales@Soundtransit.org.

6.2 The name and contact information of a Contract Manager may be updated by a Party in writing by regular or electronic mail to the other Parties. A change in the name and/or contact information of a Contract Manager shall not be considered an amendment to this Agreement.

7. OWNERSHIP, OPERATION, AND MAINTENANCE OF THE STORMWATER SYSTEM

7.1 Each Party will own, operate, and maintain those features of the Stormwater System as designated on Exhibit A.

7.2 In the operation and maintenance of their respective features of the Stormwater System, each Party will comply with all applicable federal, state and local laws, rules, and regulations, and all permits issued with respect thereto, as they currently exist or as amended.

7.3 A Party, at its sole cost and expense, may enter into separate agreements with third-parties for the performance of that Party's operation and maintenance responsibilities under this Agreement.

7.4 If a Party identifies a need for maintenance and/or repair that is the responsibility of another Party under this Agreement, that Party shall notify the responsible Party and the responsible Party shall have thirty (30) calendar days to complete the maintenance and/or repair. If the responsible Party does not or cannot perform the maintenance and/or repairs within the thirty (30) calendar days, the Party providing the notice may perform the maintenance and/or repairs at the responsible Party's cost, and the responsible Party agrees to pay the actual direct and related indirect costs of the work. Reimbursement of the cost of the work shall be made in accordance with invoice and payment procedures set forth in **Section 11**.

7.5 The CITY shall accept stormwater from the real property owned by SOUND TRANSIT at no cost to SOUND TRANSIT. In exchange, and except as provided below, SOUND TRANSIT shall assume responsibility for the maintenance, repair, and replacement of the landscape pavers located within First Street adjacent to the real property owned by SOUND TRANSIT as shown on Exhibit B. If the landscape pavers are removed or damaged in the installation, removal, or relocation of utility facilities or for any other purpose other than a Sound Transit purpose, the CITY will be responsible, or will cause the party responsible for the removal or damage to the landscape pavers to be responsible, for replacement of the landscape pavers. If the City does not comply, or cannot legally comply, with the terms of this section, then Sound Transit will be relieved of its responsibility to maintain, repair, and replace the landscape pavers.

7.6 The CITY agrees to accept ownership of the stormwater features constructed by WSDOT but located on CITY property as identified on in Exhibit A. The CITY finds that such facilities will provide public benefit, has adequate resources to operate and maintain the facilities, and that acceptance will only occur if the facilities function as designed and meet maintenance standards. Further, upon completion of the facilities, the parties agree to enter into a bill of sale transferring the property interest in the facilities to the CITY. Such bill of sale may be signed by the Mayor if the facilities conform to the specifications and location outlined in Exhibit A.

7.7 WSDOT will own the stormwater/underdrain features constructed by WSDOT located on WSDOT property as identified in Exhibit A.

8. EMERGENCY MAINTENANCE OR REPAIR

8.1 Should a Party determine that the features of the Stormwater System that are the responsibility of another Party present an immediate danger to the public or to the real property,

facility, or operations of the Party, the Party will notify the responsible Party and request that the responsible Party immediately address the maintenance or repair problem.

8.2 In the event that the responsible Party does not or cannot immediately perform the emergency maintenance or repair, the Party providing notice may perform the emergency maintenance or repair at the expense of the responsible Party.

8.3 The responsible Party shall pay the actual direct and related indirect costs of the emergency maintenance or repair work. Reimbursement of the cost of the work shall be made in accordance with invoice and payment procedures set forth in **Section 11**.

9. FORCE MAJEURE

9.1 The term "Force Majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, accidents, shutdowns for the purpose of emergency repairs, strikes, and all other industrial, civil or public disturbances that are not reasonably within the control of a Party and which prohibit that Party from performing its obligations under this Agreement.

9.2 If any Party is rendered unable, wholly or in part, by a Force Majeure, to perform or comply with any obligation or condition of this Agreement then, upon giving notice and reasonably full particulars to the other Parties, such obligation or condition shall be suspended only for the time and to the extent reasonably necessary to allow for performance and compliance and to restore normal operations. In the event the Party ceases to be excused pursuant to this provision, then the other Parties shall be entitled to exercise remedies otherwise provided for this Agreement, including termination for default.

10. ALLOCATION OF COSTS.

The Parties agree that except for cost reimbursement that may be required under Section 7.4 and Section 8, the cost to perform the Parties' respective responsibilities under this Agreement shall be borne by that Party.

11. REIMBURSEMENT PROCEDURE

11.1 In the event a Party is entitled to cost reimbursement from another Party under Section 7.4 or Section 8, the costs shall be reimbursed as set forth below.

11.2 The Party performing the work will submit an invoice to the responsible Party containing the following information:

11.2.1 Party Agreement numbers: WSDOT Agreement GMB-1084/CITY Agreement 2020-011/SOUND TRANSIT **GA 0141-19**;

11.2.2 Location of the work performed;

11.2.3 Description of the work performed;
11.2.4 Date(s) the work was performed, including the number of hours worked;
11.2.5 Labor description, number of hours worked, and hourly rate;
11.2.6 Indirect cost rate;
11.2.7 Applicable taxes;
11.2.8 Other applicable charges; and
11.2.9 Total invoice price

11.3 The Parties will send invoices to each other at the following addresses:

If to City of Mukilteo:
ATTN: Accounts Payable
11930 Cyrus Way
Mukilteo, WA 98275
425.263.8000

If to WSDOT: wsfaccountspayable@wsdot.wa.gov, and
Attn: Accounts Payable
Washington State Ferries
2901 3rd Ave, Suite 500
Seattle WA 98121-3014

If to Sound Transit: AccountsPayable@soundtrasnit.org, and
Attn: Accounts Payable
Sound Transit
401 South Jackson Street
Seattle, WA 98104

11.4 The responsible Party shall pay the amount of the invoices within thirty (30) calendar days of the date of the invoice.

11.5 In the event the responsible Party disputes all or a portion of an invoice, the dispute shall be resolved in accordance with the dispute resolution procedure set forth in Section 18.

12. RIGHT OF ENTRY AND FRANCHISE

12.1 Each Party hereby grants to the other Parties a right of entry upon the real property for which the Party holds fee title as may be necessary to perform the WORK required under this Agreement.

12.2 Each Party shall give reasonable advance notice to the other Party prior to exercising the right of entry.

12.3 The granting of the right of entry pursuant to **Section 12.1** does not relieve the Party exercising the right of entry from obtaining all permits required to perform the work required under this Agreement.

12.4 The CITY and WSDOT shall issue utility franchises or long-term right-of-way permits, as the right-of-way owner may dictate, to the other as necessary to accommodate any Stormwater System features owned by the CITY or WSDOT located within the right-of-way of the other.

13. IMPROVEMENTS

13.1 A Party shall not make any alterations, additions, or improvements to the Stormwater System without first obtaining the other Parties' approval, which approval shall not be unreasonably withheld.

13.2 Except as provided in section 7 above, the cost and expense of any such alteration, addition, or improvement consented to by the other Parties shall be borne by the Parties benefiting from the improvements, in proportion to the benefit received by each Party.

13.3 It shall be the responsibility of the Party making the alteration to secure any and all governmental permits required in connection with any such work, and to perform such work in accordance with governing laws and procedures.

13.4 In addition, any Party constructing such an improvement shall work with the other Parties to minimize any adverse impacts of construction to the other Parties.

14. RECORDS MAINTENANCE

14.1 The Parties to this Agreement shall each maintain electronic books, records, work orders, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by the Parties in the performance of the work described herein. These records shall be subject to inspection, review or audit by personnel of the Parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six (6) years after expiration of this Agreement and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period. Provided, that if any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

14.2 Records and other documents, in any medium, furnished by one Party to this Agreement to the other Party, will remain the property of the furnishing party, unless otherwise agreed.

14.3 The Parties acknowledge that each Party is subject to the terms and conditions of the Public Records Act, chapter 42.56 RCW. Each Party recognizes that certain documents and records may include confidential information that is otherwise exempt from disclosure. Should such records become the subject of Public Records Request the party subject to the request will promptly notify the Party that owns the record of the request and the date by which it anticipates producing the requested records. It shall be the responsibility of the Party whose record is being requested to take such action as is necessary to prevent disclosure. Each Party shall utilize reasonable security procedures and protections to assure that records and documents provided by the other Parties are not erroneously disclosed to third parties.

15. ASSIGNMENT, SUBCONTRACT

Except as otherwise provided herein, a Party to this Agreement shall not assign, delegate or transfer this Agreement or the obligations incurred hereunder, in whole or in part, by operation of law or otherwise, or subcontract for the management or operation of their respective responsibilities, or parts thereof, without the prior written consent of the other Parties to this Agreement, which approval shall not be unreasonably withheld.

16. LEGAL RELATIONS

16.1 It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.

16.2 Allocation of Liability.

16.2.1 To the extent allowed by law, each Party (Indemnitor) shall protect, save, and hold harmless the other Parties and their authorized agents and employees (Indemnitee), from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of the Indemnitor, its agents, contractors, or employees, arising out of, or in connection with, its acts or activities or the acts or activities of its, agents, contractors, or employees, related to this Agreement. The Indemnitor further agrees to defend the Indemnitee, its agents or employees, in any litigation, including payment of any costs or attorneys' fees, for any claims or action commenced, arising out of, or in connection with, the acts or activities related to this Agreement. The obligations in this paragraph shall not include such claims, costs, damages, or expenses to the extent caused by the acts of Indemnitee or its authorized agents or employees; provided that, if the claims or damages are caused by or result from the concurrent acts of (a) Indemnitee, its agents, contractors, or employees and (b) the Indemnitor, its agents, contractors, or employees, or involves those actions covered by chapter 4.24.115 RCW, this indemnity provision shall be valid and enforceable only to the extent of the acts of the Indemnitor's agents or employees.

16.2.2 Each Party specifically assumes potential liability for actions brought by that Party's own employees against another Party. In addition, solely for the purpose of this indemnification and defense, each Party specifically waives any immunity under the state industrial insurance law, Title 51 RCW, as to the other Parties. This waiver has been mutually negotiated amongst the Parties.

16.2.3 The indemnification provisions in this paragraph shall survive the expiration or termination of this Agreement.

16.3 No liability shall attach to any of the Parties by reason of entering into this Agreement except as expressly provided herein.

16.4 Each Party agrees that it will include in any contract that is related to the performance of this Agreement a provision requiring the contractor to defend, indemnify and hold harmless the other Parties to this Agreement against any claims arising out of or related to the work of the contractor.

16.5 The provisions of this Section shall survive any termination or expiration of this Agreement.

17. NOTICES. Any notice or demand or other communication required or permitted to be given under this Agreement or applicable law shall be effective only if it is in writing and signed by the applicable Party, either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested and addressed to the applicable Party's designated Contract Manager as set forth in Section 6.

18. DISPUTE RESOLUTION

18.1 The Parties shall work collaboratively to resolve disputes and issues arising out of or related to this Agreement. Disagreements shall be resolved promptly and at the lowest level possible.

18.2 The Contract Managers shall confer to resolve disputes that arise under this Agreement as requested by a Party. The Contract Managers shall use their best efforts and exercise good faith to resolve such disputes.

18.3 In the event the Contract Managers are unable to resolve the dispute, each Party involved in the dispute shall appoint a Dispute Resolution Representative and the Dispute Resolution Representatives shall confer and exercise good faith to resolve the dispute.

18.4 In the event the Dispute Resolution Representatives are unable to resolve the dispute, the Parties may, if mutually agreed in writing, submit the matter to non-binding

mediation. The Parties shall then seek to mutually agree upon the mediation process, who shall serve as the mediator, and the timeframe the parties are willing to discuss the disputed issue(s).

18.5 Each Party shall bring to the mediation session, unless excused from doing so by the mediator, a representative from its side with full settlement authority. In addition, each Party shall bring counsel and such other persons as needed to contribute to a resolution of the dispute. The mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conference from later discovery or use in evidence; provided, that any settlement executed by the parties shall not be considered confidential and may be disclosed. Each Party shall pay its own costs for mediation and share equally in the cost of the mediator. The venue for the mediation shall be in Seattle, Washington, unless the Parties mutually agree in writing to a different location.

18.6 If the Parties cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful, then a Party may institute a legal action. The Parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted.

19. GENERAL

19.1 Recitals, Exhibits and Attachments. The recitals of this Agreement are hereby incorporated into this Agreement. All exhibits, attachments, and documents referenced in this Agreement are hereby incorporated into this Agreement.

19.2 Assurances. The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, State and local laws, rules, and regulations as they currently exist or as amended.

19.3 Non-Discrimination. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The parties agree to comply with, and to require that all subcontractors comply with, federal, state and local nondiscrimination laws, including but not limited to: The Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, and the American's with Disabilities Act, to the extent those laws are applicable to the subject matter of this Agreement.

19.4 Anti-kickback. No officer or employee of the parties, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

19.5 Financing. Each party shall be responsible for the financing of its contractual obligations under its normal budgetary process.

19.6 Interpretation. This Agreement shall be interpreted in accordance with the laws of the state of Washington. The titles to paragraphs and sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

19.7 Amendments. This Agreement may be amended only by the mutual written agreement of the parties executed by personnel authorized to bind each of the Parties.

19.8 Waiver. A failure by a Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the waiving party and attached to the original Agreement.

19.9 All Writings Contained Herein. This Agreement contains all of the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties.

19.10 Venue. Venue of any action brought under this Agreement involving WSDOT shall be in Superior Court for Thurston County, State of Washington. All other legal actions that do not involve WSDOT as a party shall be brought in Snohomish County, State of Washington.

19.11 Severability. If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

20. CONTRACT EXECUTION

20.1 Authority to Bind. The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

20.2 Counterparts. This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each party, for all purposes.

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

CITY OF MUKILTEO

By: XXXXXXXXXXXXXXXXXXXXXX Date: _____

XXXXXXXXXXXXXXXXXXXXXX

Jennifer Gregerson, Mayor

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

By: XXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXX Date: _____
Kimberly Farley, Chief System Officer

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By: XXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXX Date: _____
Amy Scarton, Assistant Secretary, WSDOT- Ferries Division

Approved as to form for Washington State Department of Transportation:

By: XXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXX Date: _____
Mark F. Schumock, Assistant Attorney General

Approved as to form for City of Mukilteo:

By: XXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXX Date: _____
Daniel Kenny, Ogden Murphy Wallace

Approved as to form for Central Puget Sound Regional Transit Authority

By: XXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXX Date: _____
Jordan Wagner, Sound Transit Legal Counsel

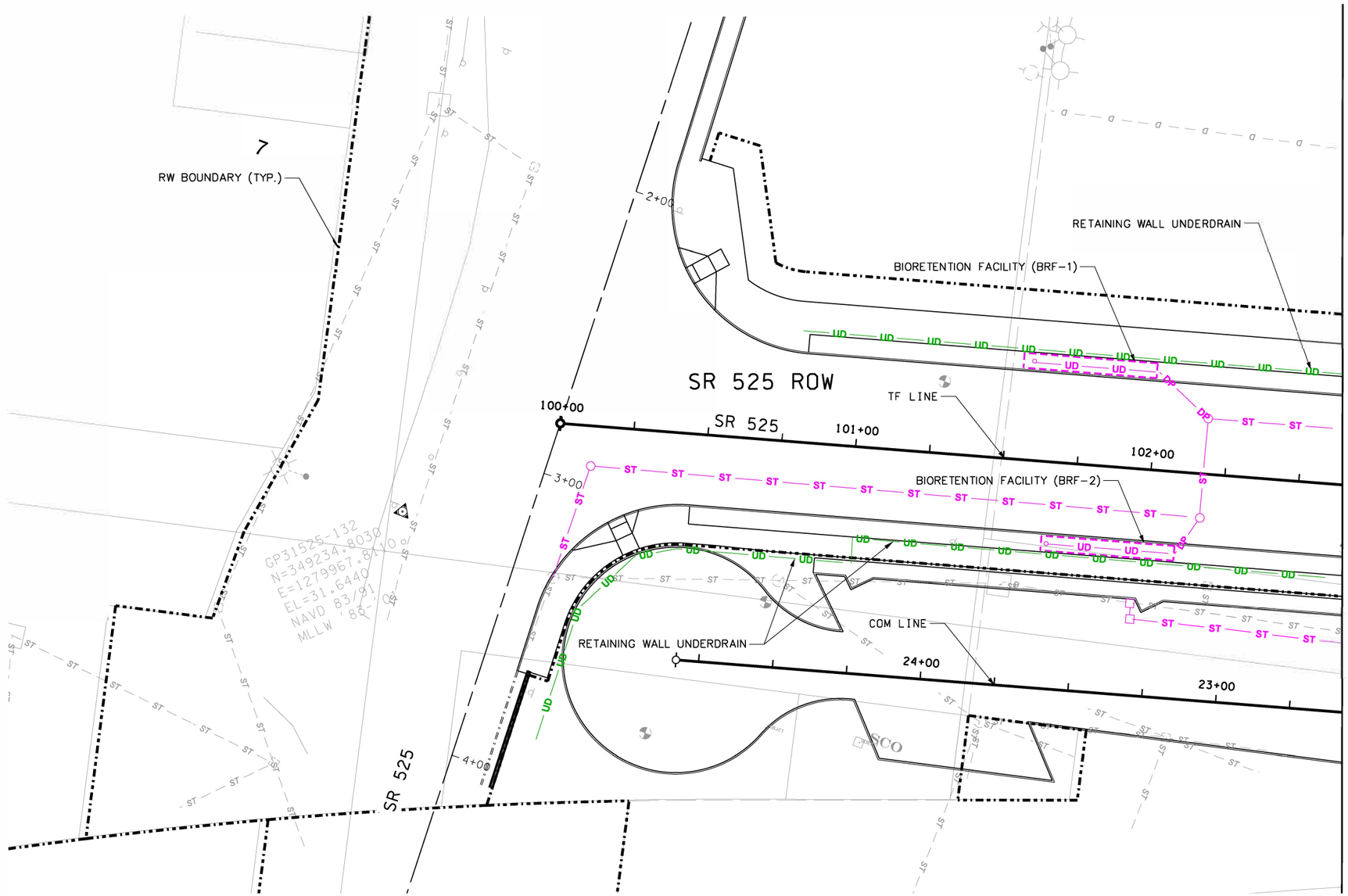


EXHIBIT A

(TO STORMWATER AGREEMENT)

NOTES:

1. INFORMATION SHOWN IS APPLICABLE TO PROPOSED STORM DRAINAGE SYSTEM FOR THE FERRY TERMINAL CONSTRUCTION CONTRACTS ONLY.
2. INFORMATION SHOWN DOES NOT APPLY TO EXISTING STORM DRAINAGE SYSTEM.

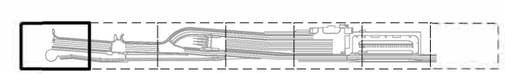
EXHIBIT A TO BE UPDATED WITH AS-BUILT CONDITIONS AS REFERENCED IN SECTION 4.2 OF THE AGREEMENT LANGUAGE.

LEGEND: RESPONSIBLE AGENCY

- WSDOT/WASHINGTON STATE FERRY
- CITY OF MUKILTEO
- SOUND TRANSIT

LEGEND: PIPES & STRUCTURE TYPES

- UD — UNDERDRAIN LINE
- ST — STORM SEWER
- DP — DP — DRAIN LINE
- BIORETENTION FACILITY (BRF-X)
- MWS — MODULAR WETLANDS SYSTEM (MWS-X)
- CATCH BASIN
- MANHOLE
- CLEANOUT
- D — TRENCH DRAIN



KEY PLAN

0 20 40
SCALE 1" = 40'

STORMWATER UTLITIES EXHIBIT MAINTENANCE & OWNERSHIP	EXHIBIT A
	1 OF 6

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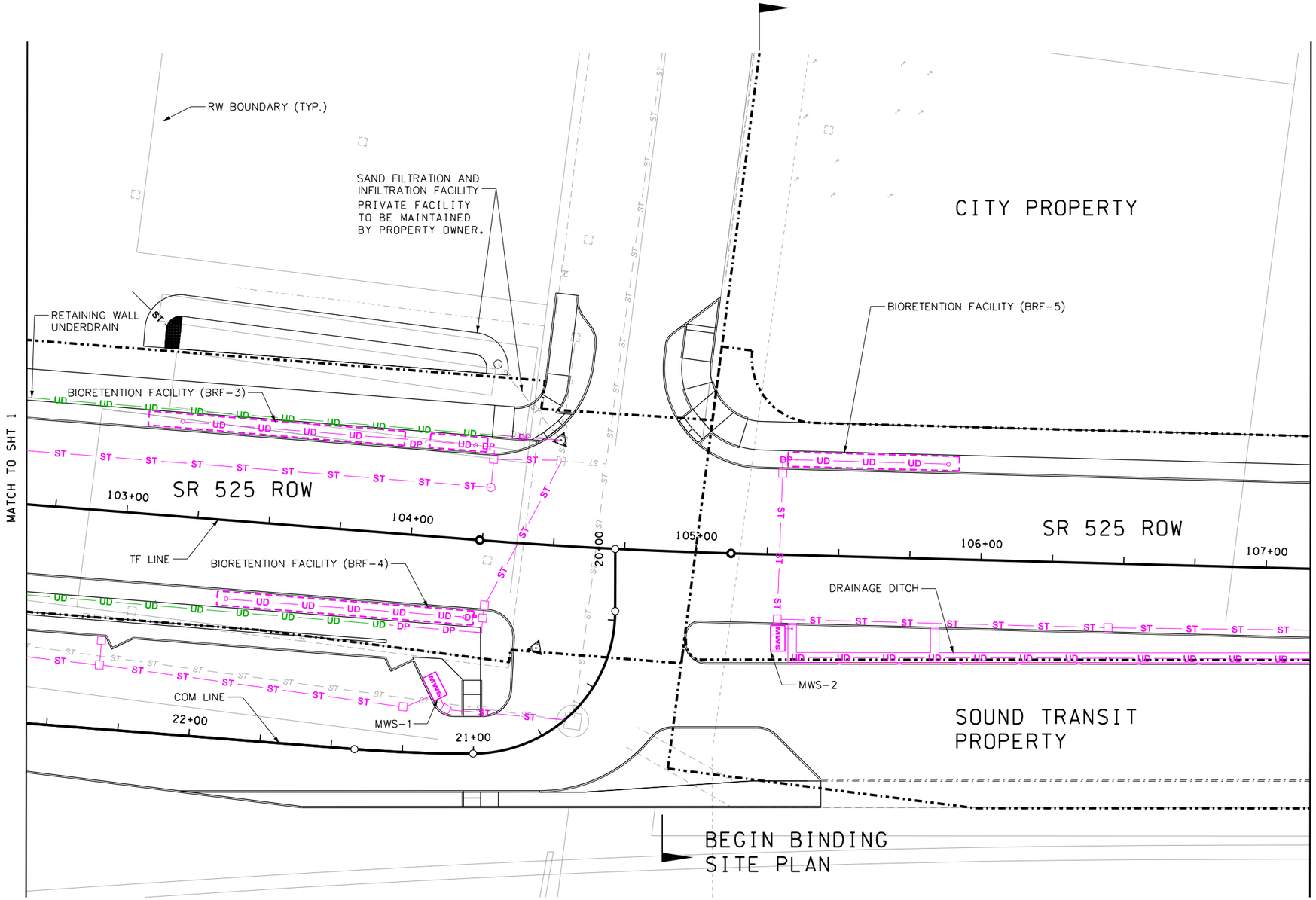

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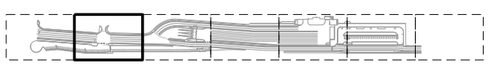

KEY PLAN

0 20 40
SCALE 1" = 40'

STORMWATER UTLITIES EXHIBIT MAINTENANCE & OWNERSHIP	EXHIBIT A
	2 OF 6

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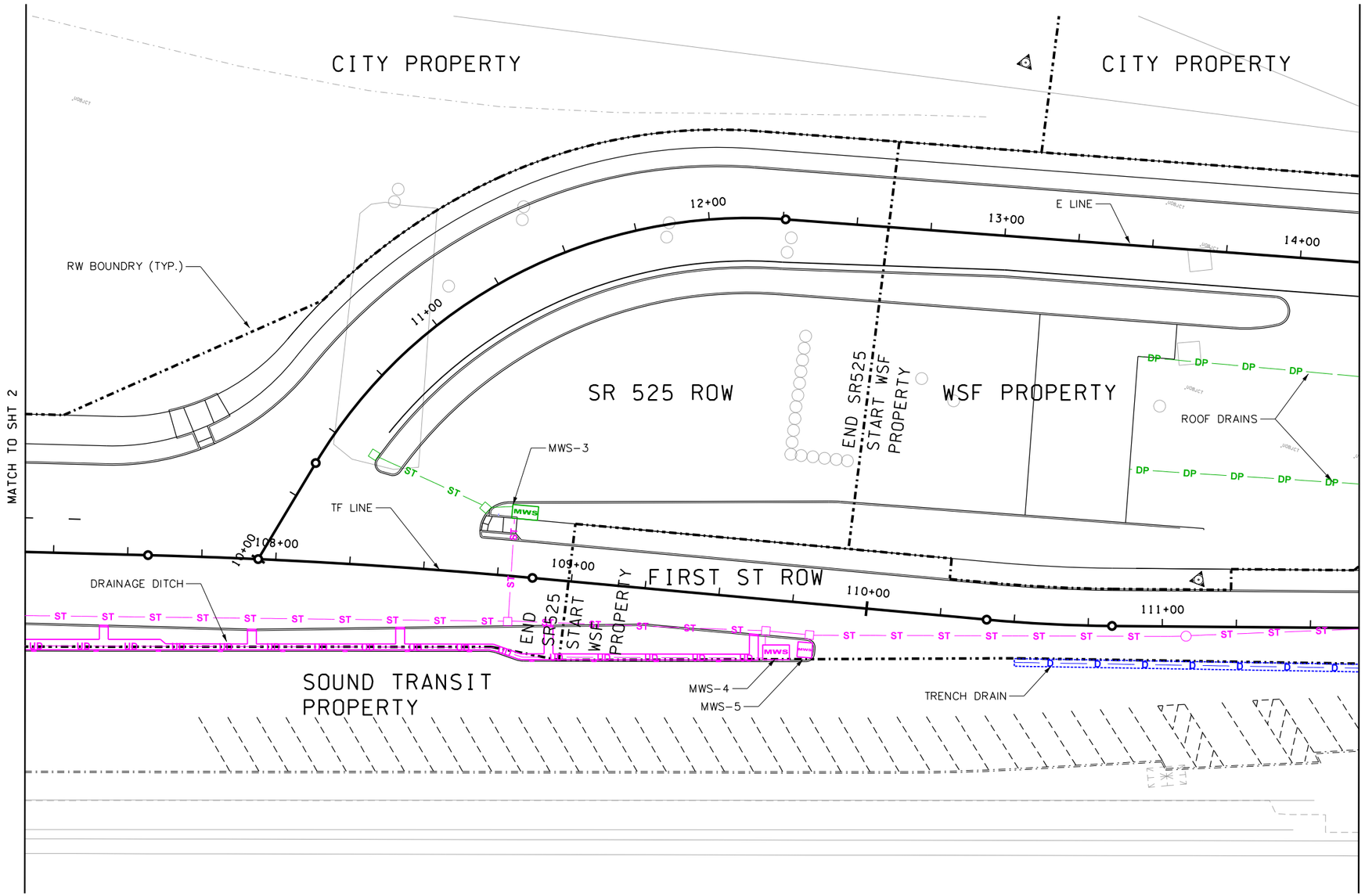

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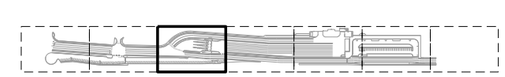

KEY PLAN

0 20 40
SCALE 1" = 40'

STORMWATER UTLITIES EXHIBIT MAINTENANCE & OWNERSHIP	EXHIBIT A 3 OF 6

File Location & Name:
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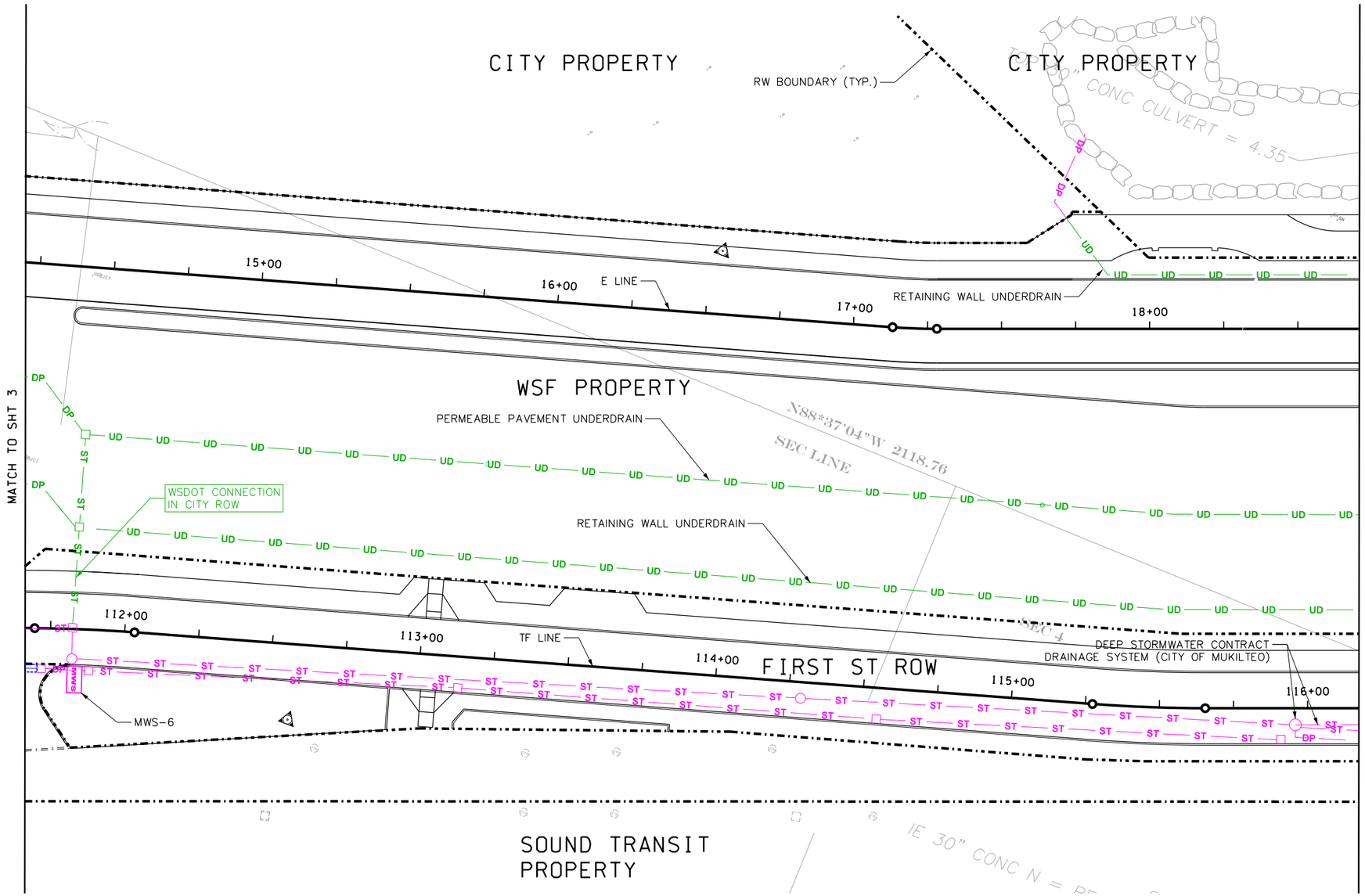

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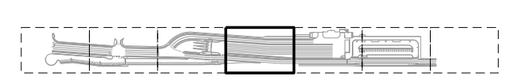

KEY PLAN

0 20 40
SCALE 1" = 40'

STORMWATER UTLITIES EXHIBIT MAINTENANCE & OWNERSHIP

EXHIBIT A

4 OF 6

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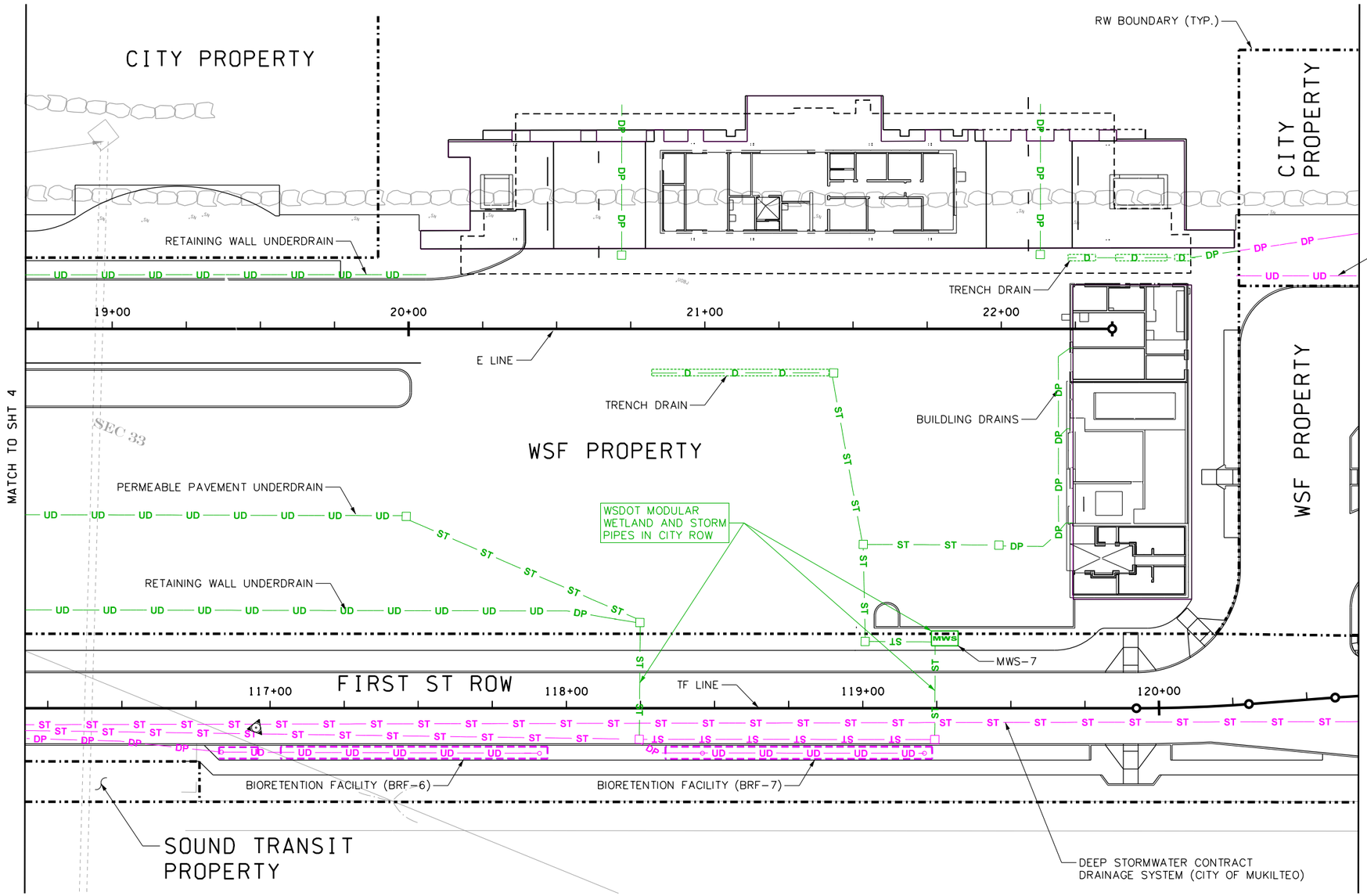

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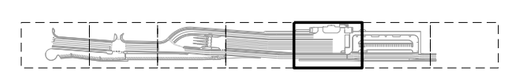

KEY PLAN

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SCALE 1" = 40'

STORMWATER UTLITIES EXHIBIT MAINTENANCE & OWNERSHIP

EXHIBIT A

5 OF 6

File Location & Name:
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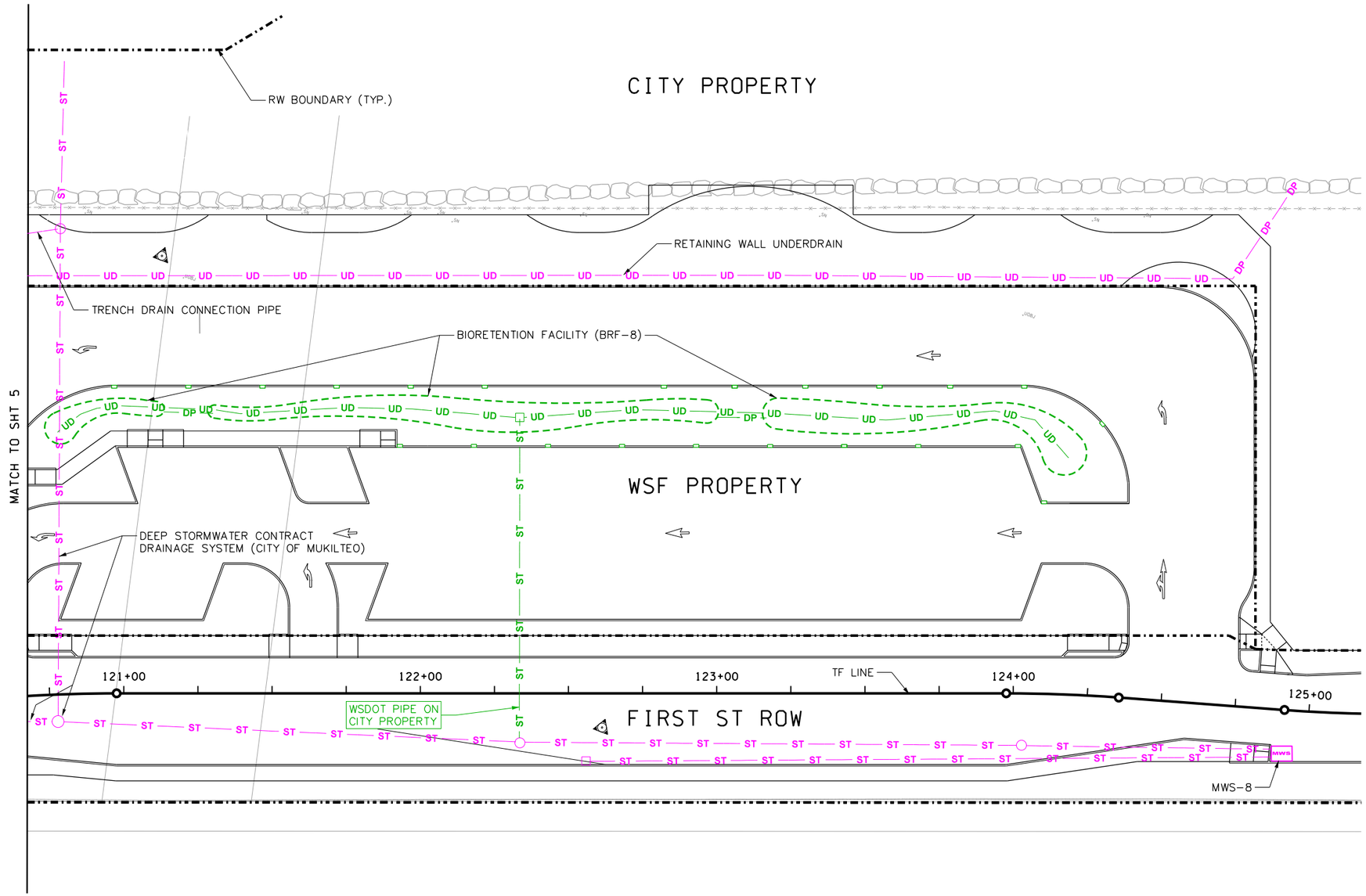

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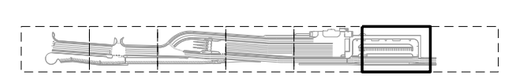

KEY PLAN

0 20 40
SCALE 1" = 40'

STORMWATER UTLITIES EXHIBIT
MAINTENANCE & OWNERSHIP

EXHIBIT A

6 OF 6

File Location & Name:
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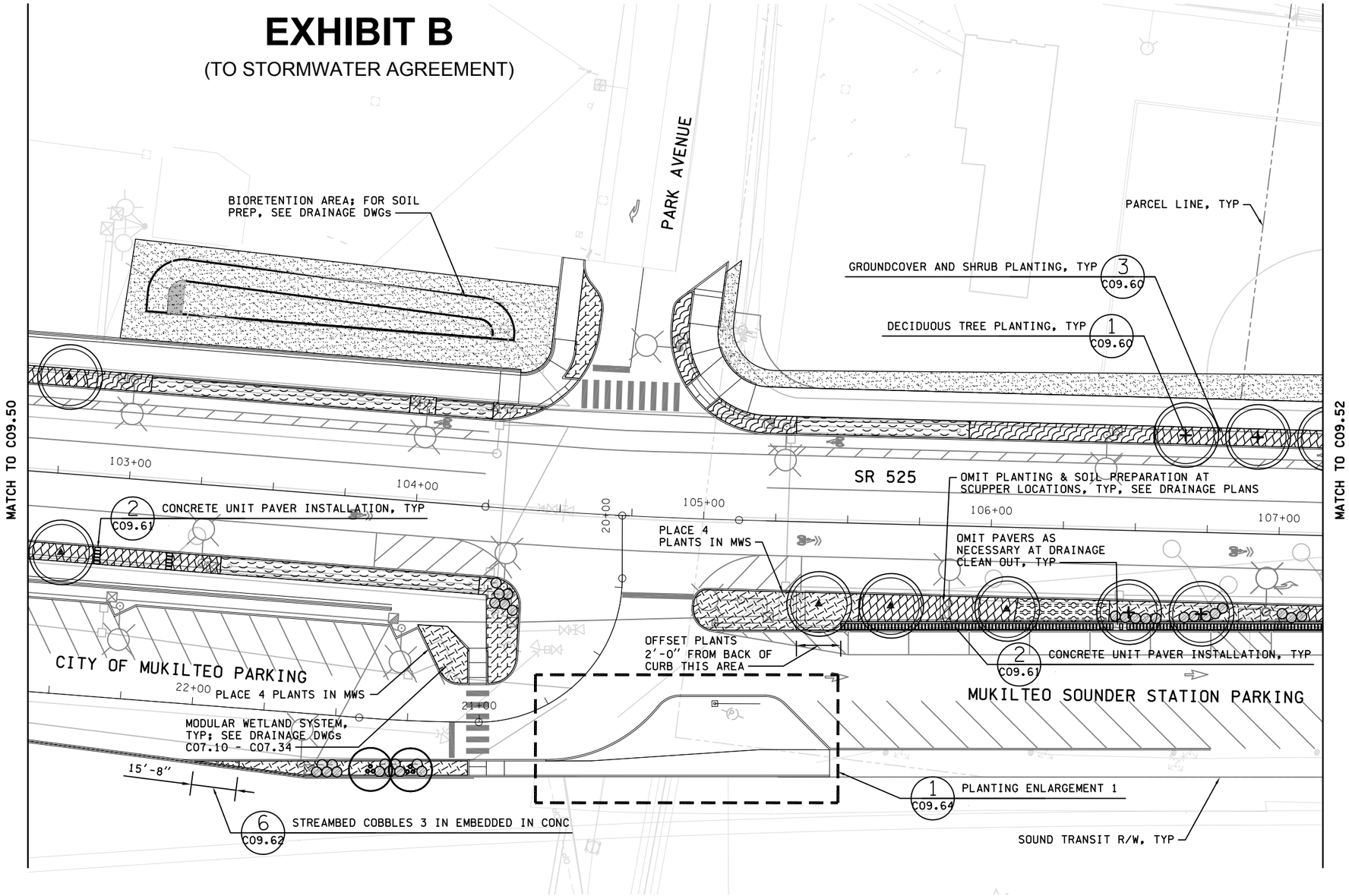
EXHIBIT B

(TO STORMWATER AGREEMENT)



NOTES:

1. ALL PLANTING AREAS TO RECEIVE PLANTING AREA SOIL PREPARATION, SEE DETAIL 5 DWG C09.60, UNLESS OTHERWISE NOTED ON THE PLAN.
2. ALL SEED AREAS TO RECEIVE SEED SOIL PREPARATION, SEE DETAIL 6 DWG C09.60, UNLESS OTHERWISE NOTED ON THE PLAN.
3. ALL PLANTING STRIPS TO RECEIVE PLANTING STRIP TREATMENT, SEE DETAIL 4 DWG C09.60, UNLESS OTHERWISE NOTED ON THE PLAN. PLANTING STRIPS DEFINED AS PLANTING AREAS BETWEEN CURB AND SIDEWALK OR PLANTING AREAS BETWEEN CURBS, UNLESS OTHERWISE NOTED OR AREA IS A BIORETENTION PLANTING AREA.
4. FOR SOIL PREPARATION IN BIORETENTION CELLS AND MODULAR WETLAND SYSTEMS, SEE DRAINAGE DWGs.
5. LIMITS OF PLANTING TO EQUAL LIMITS OF CONSTRUCTION DISTURBANCE. MEET AND MATCH ADJACENT EXISTING GRADES WITH A SMOOTH TRANSITION.

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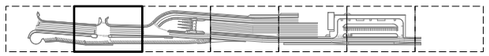
SCALE 1" = 40'



KEY PLAN

HBB LANDSCAPE ARCHITECTURE
215 WESTLAKE AVE. NORTH
SEATTLE, WA 98109
206.682.3051 phone
206.682.3245 fax

FILE NAME: PW:\WSF\Mukilteo\14W121_FERRYTERMCONST\CADD\HBB\14W121c09_51.dlv						
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SUBMITTAL DATE: 12/22/2017	BHADDOX					WA-2017-007-00
DESIGNED BY: J. VONG	12/22/17					REGION NO. STATE
ENTERED BY: B. HADDOX	12/22/17					10 WASH
CHECKED BY: D. KOONTS	12/22/17					JOB NUMBER 14W121
MAR PROJ ENGR: C. TORRES						CONTRACT NO.
DIR TERM ENGR: N. MCINTOSH						
ASST SECRETARY: A. SCARTON		REVISION	DATE	BY		00****

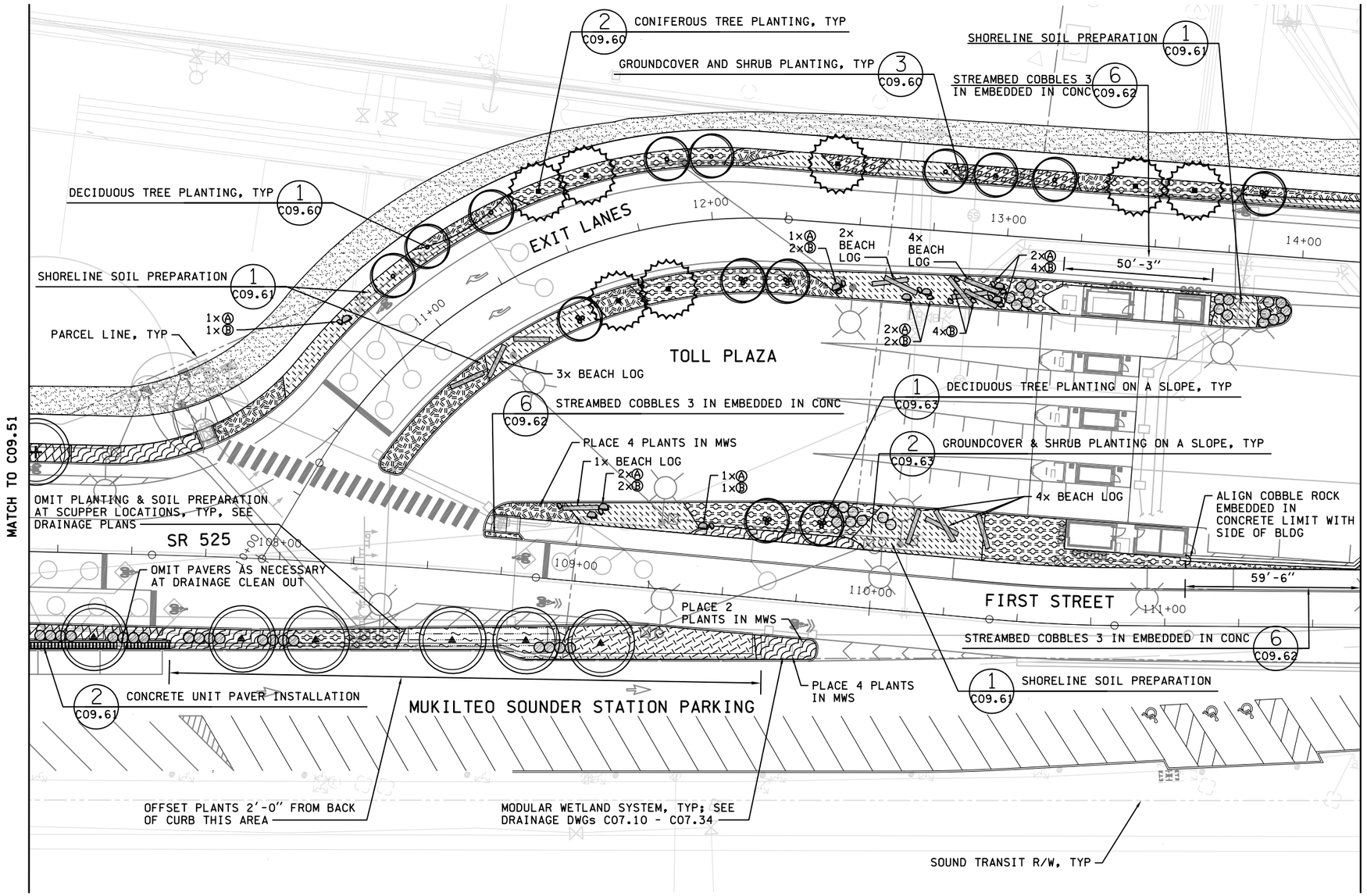
STATE OF WASHINGTON JULIET B. VONG NO. 867 EXP. LICENSED LANDSCAPE ARCHITECT

Washington State Department of Transportation
WASHINGTON STATE FERRIES

SR525
MUKILTEO FERRY TERMINAL (PHASE 2)
FERRY TERMINAL CONSTRUCTION

Exhibit B: Concrete Unit Paver Location

C09.51
SHEET
OF
SHEETS



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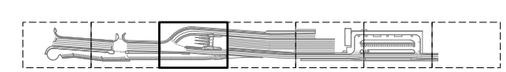
SCALE 1" = 40'



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SEATTLE, WA 98109
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SUBMITTAL DATE: 12/22/2017	BHADDOX					
DESIGNED BY: J. VONG	12/22/17					WA-2017-007-00
ENTERED BY: B. HADDOX	12/22/17					REGION NO. / STATE
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MAR PROJ ENGR: C. TORRES						JOB NUMBER 14W121
DIR TERM ENGR: N. MCINTOSH						
ASST SECRETARY: A. SCARTON		REVISION	DATE	BY		CONTRACT NO. 00****

STATE OF WASHINGTON JULIET B. VONG NO. 867 EXP. LICENSED LANDSCAPE ARCHITECT

Washington State Department of Transportation
WASHINGTON STATE FERRIES

SR525
MUKILTEO FERRY TERMINAL (PHASE 2)
FERRY TERMINAL CONSTRUCTION

Exhibit B: Concrete Unit Paver Location

C09.52
SHEET OF SHEETS

Washington State Department of Transportation

EXHIBIT 2

Turnback Agreement			Local Agency Name & Address City of Mukilteo 11930 Cyrus Way Mukilteo, WA 98275
Agreement Number **TB** 1-0258			Location Intersection of SR 525 and Front Street in Mukilteo (see attached R/W Plans as Exhibit A)
State Route SR 525	Control Section	Region Northwest	

THIS AGREEMENT is between the Washington State Department of Transportation, hereinafter "WSDOT," and the City of Mukilteo, hereinafter the "Local Agency;" collectively hereinafter the "PARTIES."

Recitals

1. WSDOT is planning the construction or improvement of a section of the state route as identified above, hereinafter referred to as the "Project."
2. WSDOT has acquired and/or is in the process of acquiring right-of-way needed to construct, reconstruct, or rearrange the state route and/or certain streets or roads, frontage roads, access roads, intersections, ramps, crossings, and /or other roadway features, hereinafter referred to as "Roadway Facilities."
3. Upon completion of the Project certain right-of-way and Roadway Facilities, as shown on Exhibit A, attached hereto and made a part hereof, will require maintenance, operation, and ownership transfer from WSDOT to the Local Agency.
4. WSDOT and Local Agency enter into this Agreement to identify the process of Roadway Facilities and right-of-way maintenance, operation, and ownership transfer.

NOW, THEREFORE, pursuant to:

- ☑ (City or Town) RCW 36.75.090 and/or RCW 47.52.210,
- ☐ (County) RCW 36.75.090 and WAC 468-18-040, "Design standards for rearranged county roads, frontage roads, access roads, intersections, ramps and crossings,"
- ☐ (County) RCW 36.75.090 and WAC 468-30-070 – "Procedure for transfer of abandoned state highway to counties"
- ☐ (City) RCW 36.75.090 and RCW 47.24.010 and WAC 468-30-075 - "Procedure for transfer of abandoned state highways to cities and towns"

It Is Mutually Agreed as Follows:

1. Acceptance, and Transfer of Operation And Maintenance

1.1 Once the Project is completed and reviewed by the Parties, WSDOT will in writing transfer to the Local Agency and the Local Agency agrees to accept the responsibility for the maintenance and operation of the Roadway Facilities and right of way until such time as the full ownership of the right of way and Roadway Facilities are conveyed by deed pursuant to Section 2.

1.2 The Local Agency agrees to accept ownership of the right of way and Roadway Facilities as shaded, where applicable, on Exhibit A, as follows:

Red Indicates access control and access rights to be retained by WSDOT

Blue (light) Indicates Roadway Facilities and right of way to be conveyed in fee to the Local Agency

Yellow Indicates easements to be conveyed to the Local Agency

Green Indicates Roadway Facilities and right-of-way to be conveyed in fee to the Local Agency subject to easement(s)

2. Recorded Conveyance

2.1 Within one year following WSDOT's written transfer to the Local Agency of the responsibility for maintenance and operations as provided in Section 1, WSDOT will furnish the Local Agency with a recordable conveyance of right of way, including the Roadway Facilities constructed thereon, as shown on the plans marked Exhibit A. The conveyance will be recorded pursuant to RCW 65.08.095. The PARTIES agree that sections 2.2, 2.3, 2.4 (if checked), and 2.5 herein shall be included in the conveyance document.

☑ 2.2 The Local Agency understands and agrees that the above-referenced property is transferred for road and street purposes only. The Local Agency shall not vacate, sell, rent or use the property (or any portion thereof) for nontransportation uses without first obtaining WSDOT's prior written approval. The Local Agency agrees on behalf of itself and its successors or assigns, not to revise either the right of way lines or the access control without first obtaining WSDOT's prior written approval. Should WSDOT authorize the vacation, sale, rental or use of the property (or any portion thereof) for nontransportation uses, the Local Agency agrees at its cost to determine by appraisal the fair market value/economic rent of the property (or any portion thereof), and the Local Agency and state of Washington agree to proportionally share in the value of the property in the same proportion as the purchase costs were shared.

☑ 2.3 The Local Agency agrees to comply with, and require its successors or assigns to comply with, all civil rights and anti-discrimination requirements of chapter 49.60 RCW, as to the right of way and Roadway Facilities to be conveyed.

☐ 2.4 Limited Access Highway - The Local Agency understands and agrees that WSDOT is retaining ownership of all rights of ingress and egress, to, from and between the above referenced state highway route and/or Roadway Facilities and the properties abutting said state highway route and/or Roadway Facilities, including all rights of access, light, view and air, and access control as shown by the access prohibition symbol and as shaded pursuant to Section 1.2, above, along the above referenced state route and/or Roadway Facilities right of way and along abutting properties on the right of way access plans marked as Exhibit A. The Local Agency, its successors or assigns, shall have no right of ingress or egress between the above referenced state route and abutting properties, or the state route and the lands herein conveyed that show the access prohibition symbol and as shaded pursuant to Section 1.2, above. The Local Agency, its successors or assigns, shall not be entitled to compensation for any loss of access, light, view, or air occasioned by the location, construction, reconstruction, maintenance, or operation of the above referenced state route and/or Roadway Facilities.

2.5 The Local Agency, on behalf of itself and its successors or assigns, waives and/or releases WSDOT from any past, present, or future claims for damages directly or indirectly caused by highway drainage or runoff, and further the Local Agency, its successors or assigns, shall have no right of compensation for damages to the property herein conveyed caused directly or indirectly by highway drainage or runoff.

2.6 The Local Agency agrees to accept the deed transferring ownership to the Local Agency subject to all matters of record.

In Witness Whereof, the Parties hereto have executed this Agreement on the Party's date last written below.

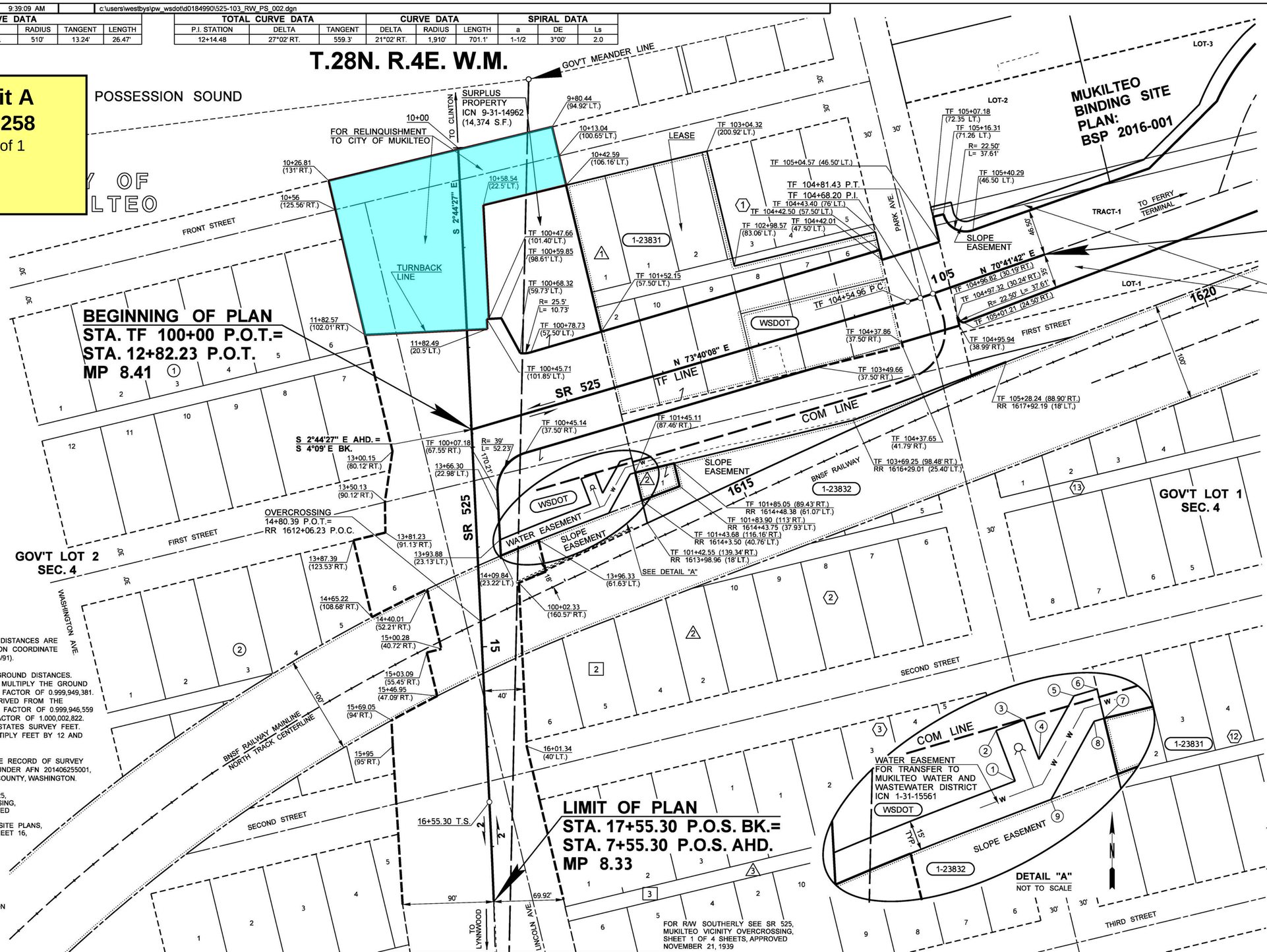
LOCAL AGENCY	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Signature: _____	Signature: _____
By: _____ Print Name	By: _____ Print Name
Title: _____	Title: _____
Date: _____	Date: _____

westbys	5/22/2018	9:39:09 AM	c:\users\westbys\pw_wsdot\d0184990\525-103_RW_PS_002.dgn

CURVE DATA				
P.I. STATION	DELTA	RADIUS	TANGENT	LENGTH
TF 104+68.20	2°58'26" LT.	510'	13.24'	26.47'

TOTAL CURVE DATA			CURVE DATA			SPIRAL DATA		
P.I. STATION	DELTA	TANGENT	DELTA	RADIUS	LENGTH	a	DE	Ls
12+14.48	27°02' RT.	559.3'	21°02' RT.	1,910'	701.1'	1-1/2	3°00'	2.0

Exhibit A
TB 1-0258
Page 1 of 1



ALL PLANS ARE SUBJECT TO CHANGE. OWNERSHIP SHOULD BE VERIFIED. PROPOSED PROPERTY RIGHTS SHOWN MAY NOT HAVE BEEN ACQUIRED. ENCUMBRANCES MAY OR MAY NOT BE SHOWN. PARTIES SEEKING CURRENT PLAN INFORMATION SHOULD CONSULT THE DEPARTMENT OF TRANSPORTATION HEADQUARTERS RIGHT OF WAY PLANS OFFICE FOR THE OFFICIAL PLAN ON FILE. FOR ENCUMBRANCE INFORMATION CONSULT THE DEPARTMENT OF TRANSPORTATION HEADQUARTERS REAL ESTATE SERVICES OFFICE.

END OF PLAN
STA. TF 106+00 P.O.T.
MP 8.52

FOR ACQUISITION DATA WITHIN THE MUKILTEO BINDING SITE PLAN SEE SNOHOMISH COUNTY SUNDRY SITE PLANS, MUKILTEO TANK FARM, SHEETS 53 THRU 57, APPROVED AND ADOPTED FEBRUARY 1, 2017.

FOR PLAN EASTERLY SEE SNOHOMISH COUNTY SUNDRY SITE PLANS, MUKILTEO TANK FARM, SHEETS 53 THRU 57, APPROVED AND ADOPTED FEBRUARY 1, 2017.

FOR R/W SOUTHERLY SEE SR 525, MUKILTEO VICINITY OVERCROSSING, SHEET 1 OF 4 SHEETS, APPROVED NOVEMBER 21, 1939

WATER EASEMENT		
POINT NO.	STATION	OFFSET
1	TF 100+93.52	105.04' RT.
2	TF 100+91.41	78.12' RT.
3	TF 101+06.36	76.95' RT.
4	TF 101+08.01	97.98' RT.
5	TF 101+33.78	72.41' RT.
6	TF 101+45.81	72.41' RT.
7	TF 101+45.11	87.46' RT.
8	TF 101+39.91	87.46' RT.
9	TF 101+08.19	118.94' RT.

THE BASIS OF BEARINGS AND DISTANCES ARE DETERMINED FROM WASHINGTON COORDINATE SYSTEM NORTH ZONE (NAD 83/91).

THE DISTANCES SHOWN ARE GROUND DISTANCES. TO OBTAIN THE GRID LENGTH, MULTIPLY THE GROUND LENGTH BY THE COMBINATION FACTOR OF 0.999,949,381. THE COMBINED FACTOR IS DERIVED FROM THE PRODUCT OF THE GRID SCALE FACTOR OF 0.999,946,559 AND THE ELEVATION SCALE FACTOR OF 1.000,002,822. DISTANCE UNITS ARE UNITED STATES SURVEY FEET. TO CONVERT TO METERS, MULTIPLY FEET BY 12 AND THEN DIVIDE BY 39.37.

FOR SURVEY INFORMATION SEE RECORD OF SURVEY RECORDED ON JUNE 25, 2014 UNDER AFN 201406255001, IN RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

THIS PLAN SUPERSEDES SR 525, MUKILTEO VICINITY OVERCROSSING, SHEET 1 OF 4 SHEETS, APPROVED NOVEMBER 21, 1939 AND SNOHOMISH COUNTY SUNDRY SITE PLANS, MUKILTEO FERRY TERMINAL, SHEET 16, APPROVED JULY 17, 1981.

(1) GRAVELLE'S ADDITION
(1) FREDRIKSEN'S ADDITION
(1) THOMAS' ADDITION
[1] FOWLER'S ADDITION

✳ CALCULATED
Φ SLOPE EASEMENT
Δ LEASE
⊠ WATER EASEMENT

PARCEL NO.	NAME	TOTAL AREA	R/W	LT. REMAINDER RT.		EASM'T
WSDOT						2,854 ⊠
1-23832	BNSF RAILWAY COMPANY	UNDETERMINED				6,134 Φ
1-23831	BUZZ INN LANDING, INC.	41,855 ✳	17,325	24,530		24,530 Δ

TOTAL AREA IS FROM ASSESSOR'S RECORDS UNLESS OTHERWISE NOTED.

OWNERSHIPS

ALL AREAS ARE SHOWN IN SQUARE FEET UNLESS OTHERWISE NOTED.

LEGEND

PROPERTY OWNERSHIP NUMBERS (-)
PROPERTY LINES

0 50 100
SCALE IN FEET

Reference	Approval	Revision Description	By
Letter 5-22-18	5-25-18	Corrected WSDOT Parcel Area of Water Easement	STW
Letter 5-16-18	5-18-18	Noted Water Easement For Transfer and ICN on Rt. Vic. Sta. 14+00 in Detail "A"	STW
Letter 4-24-18	4-27-18	Revised Water Easement on Lt. Sta. TF 100+91.41 to TF 101+45.81; Revised Water Easement Points 1 thru 9	MRW
Letter 4-18-18	4-20-18	Revised Water Easement on Lt. Sta. TF 101+14.87 to TF 101+44.99; Revised Water Easement Points 5, 6, 7 & 8	MRW
Letter 3-20-18	4-6-18	Revised R/W on Lt. Sta. 13+66.30 to 14+12.31; Added Water Easement on Lt. Vic. Sta. 14+00 to TF 101+45.59 Rt., Added Detail "A"	STW
Letter 9-18-17	9-22-17	Deleted Erroneous Line on Lt. Sta. TF 101+52.15 in Parcel 1-23831 R/W Acquisition Area	STW
Letter 8-16-17	9-13-17	Revised Surplus Property ICN 9-31-14962 and Area For Relinquishment Boundaries and Area on Lt. Sta. 10+58.54 to TF 100+47.66	STW

BILLY R. MUMMA — STATE OF WASHINGTON — 24787 — REGISTERED PROFESSIONAL LAND SURVEYOR

DIGITALLY APPROVED BY PROFESSIONAL LAND SURVEYOR OF RECORD ON FEBRUARY 1, 2017

SR 525
MUKILTEO FERRY TERMINAL
LINCOLN TO PARK VIC.

SNOHOMISH COUNTY

RIGHT OF WAY PLAN
STATION TF 100+00 TO STATION TF 106+00
MP 8.41 TO MP 8.52

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
OLYMPIA, WASHINGTON

CHARLES TORRAS — STATE OF WASHINGTON — 32243 — REGISTERED PROFESSIONAL ENGINEER

DIGITALLY APPROVED BY ENGINEER OF RECORD ON FEBRUARY 1, 2017

PROJECT ENGINEER

Mumma, Bill
May 29 2018 8:31 AM
cosign

FEBRUARY 1, 2017
APPROVED AND ADOPTED

STATE SURVEY MANAGER
SHEET 2 OF 2 SHEETS

5/22/2018 9:39:09 AM
c:\users\westbys\pw_wsdot\d0184990\525-103_RW_PS_002.dgn

EXHIBIT 3

AA: 9-13809
IC: 9-31-15369
SR 525, Mukilteo Ferry Terminal
Lincoln to Park VIC.

A I R S P A C E L E A S E

THIS IS AN AIRSPACE LEASE (Lease) made and entered into between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (hereinafter WSDOT), and the CITY OF MUKILTEO, a municipal corporation (hereinafter TENANT).

RECITALS

A. WSDOT is undertaking a construction project that involves the replacement of the existing Mukilteo Ferry Terminal, the construction of associated roadway improvements on SR 525, and the construction of TENANT roadway and facility improvements, entitled the Mukilteo Multimodal Project (Project). The parties are supportive of the Project, which will provide mutual long term benefits for both parties and the citizens of the state of Washington.

B. As a condition of the Project, WSDOT is required to mitigate the Project's impact on thirty-one (31), city-owned, general purpose, public, parking stalls. The parties have agreed that this mitigation obligation shall be fully satisfied by: (1) WSDOT constructing, at its sole cost and expense, a parking lot and cul-de-sac on the premises to be leased herein and on adjacent TENANT-owned real property; and (2) WSDOT leasing the premises to be leased herein to TENANT in accordance with the terms and conditions set forth herein. It is the intent of the parties that the Leased Premises and the adjacent TENANT-owned property will operate jointly as a city-operated, general purpose, public, parking lot.

C. The parties acknowledge that five (5) of the parking stalls required for mitigation will be located on the premises to be leased herein and twenty-six (26) of parking stalls required for mitigation will be located on the adjacent TENANT-owned property.

D. As an asset of the motor vehicle fund, WSDOT must charge fair market rent where it leases the property for non-highway use. WSDOT deems the use of the property to partially satisfy the Project's obligation to mitigate for impacting thirty-one (31), city-owned, general purpose, public, parking stalls to be a highway purpose for which no monetary rent is due.

E. The parties acknowledge that there will be seven (7) additional public parking stalls located on the premises to be leased herein that are not required to meet WSDOT's parking mitigation obligation.

F. WSDOT and TENANT agree that since the parking lot and cul-de-sac will be constructed by the Project, and the Project plans to construct this parking lot and cul-de-sac at the end of the Project's timeline, the term of this Lease shall not commence until WSDOT and TENANT mutually agree that the Mukilteo Multimodal Project is substantially complete.

G. The Parties acknowledge WSDOT does not presently possess fee title to a portion of the property to be leased and cannot lease this property to the City until it has acquired fee title. It is the intent of the Parties to add this portion of the premises upon WSDOT's acquisition of fee title in accordance with the terms of this Lease.

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

I. TENANT is authorized to lease property under RCW 35A.11.010.

AGREEMENT

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

1. PREMISES.

A. Parcel A. WSDOT does hereby lease to TENANT, and TENANT does hereby lease from WSDOT, the premises located in Government Lots 1 and 2 of Section 4, Township 28 North, Range 4 East, W.M. in the city of Mukilteo, Snohomish County and known to be a portion of the highway right of way of SR 525, Mukilteo Ferry Terminal Lincoln to Park VIC., sheet 2 of 2 sheets, approved February 1, 2017, and shown as Parcel A (hachured) on **Exhibit A**, attached hereto and by this reference incorporated herein (Premises). The Premises consists of approximately 13,295 square feet.

B. Parcel B. Upon recordation of the conveyance document(s), evidencing WSDOT's fee title ownership of Parcel B, WSDOT does hereby lease to TENANT, and TENANT does hereby lease from WSDOT, the premises located in Government Lots 1 and 2 of Section 4, Township 28 North, Range 4 East, W.M. in the city of Mukilteo, Snohomish County and known to be a portion of the highway right of way of SR 525, Mukilteo Ferry Terminal Lincoln to Park VIC., sheet 2 of 2 sheets, approved February 1, 2017, and shown as Parcel B (cross-hachured) on **Exhibit A**. Upon recordation of the conveyance documents, the term "Premises" shall mean both Parcel A and Parcel B.

C. Prior to receiving a Final Certificate of Occupancy, the City will inspect and accept the roadway development on the Premises as a condition of the Shoreline and Essential Public Facilities permit (EPF 2013-001/SH 2013-001) and the Building permits (ENG-2017-035/COMM-2017-005), and as a condition of the GCB 2878 and GCB 2516 construction agreements. ~~WSDOT and TENANT have examined the design of the Premises and accept it as designed. Once constructed, WSDOT and TENANT agree to jointly examine the Premises. and TENANT will notify WSDOT of any concerns with the Premises within 30 days. accept said Premises in its then present condition to include, but not be limited to, striping of parking spaces consistent with City of Mukilteo parking standards, before this agreement commences.~~

2. USE OF PREMISES.

A. TENANT's use of the Premises is limited to the operation and maintenance of a public parking lot that includes twelve (12) parking stalls for operable vehicles. For the purposes of this Lease, the term "operable vehicles" shall mean vehicles capable of being driven from the Premises under their own power on ten (10) minutes notice. TENANT may charge for parking on the Premises as similarly assessed at other TENANT public parking lots or facilities owned or operated by TENANT.

B. TENANT shall not install any permanent or temporary improvements on the Premises, including, but not limited to, pay stations, lighting, advertising devices and signage without the prior written approval of WSDOT except as required by this agreement.

C. TENANT acknowledges that the north and northwesterly ten (10) feet of the Premises, is reserved by WSDOT for maintenance purposes, including, but not limited to, drainage maintenance, and shall remain open and accessible to WSDOT and its employees, agents, and contractor's at all times. Said area is shown and labeled on **Exhibit A**.

D. TENANT's occupancy or use of the Premises and improvements, if any, shall not interfere with the use, safety, appearance, nor the enjoyment of the highway facility, nor produce fumes, vapors, odors, drippings, droppings, or discharge of any kind, except as ordinarily to be expected from use of a parking facility by operably vehicles.

E. In using the Premises, it is expressly agreed that TENANT shall:

(1) Comply with all policies and regulations, including, but not limited to chapter 47.42 RCW et seq. and WAC 468-66 et seq., heretofore adopted or hereafter promulgated by WSDOT relative to the location, operation, and maintenance of improvements located on the Premises.

(2) 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, and

(3) Secure all necessary permits and licenses for the uses of the Premises authorized in this Lease.

F. Access to the Premises is from the TENANT-owned property that abuts the Premises to the east, as shown on **Exhibit A**. Further, direct vehicular access to ramps or traveled lanes of limited access highways is not permitted.

G. TENANT shall not commit or allow to be committed any waste upon the Premises nor allow any public or private nuisance.

H. TENANT shall not allow compressed natural gas (CNG) or liquefied natural gas (LNG) vehicles to park on the Premises. The violation of this **Section 2.H.** shall constitute a default subject to immediate termination.

I. TENANT shall be responsible for the enforcement of parking restrictions, including the towing of violating vehicles, and other regulations, rules, policies, ordinances or statutes governing the conduct of individuals who enter the Premises.

J. No new construction by TENANT is permitted on the Premises for the duration of this Lease except as required by this agreement and without written approval from WSDOT.

3. MAINTENANCE.

A. Following TENANT acceptance of said Premises in its present condition, TENANT shall perform or cause to be performed at its expense all maintenance of the Premises, including improvements thereon, if any. TENANT shall be responsible for: graffiti removal; jersey barrier/bollard and wheel stops repair/replacement, if applicable; striping; fencing; TENANT installed lighting, if applicable; vegetation and litter control; removal of snow and ice; repair of any or all components of the parking facility and landscaping areas contained within the Premises; re-blade and/or fill pot holes with crushed surfacing top course in a manner sufficient to maintain a smooth surface on the Premises; and install, maintain, control and only allow legal access into and out of the Premises, which may require, at TENANT's sole cost and expense, installation of concrete barriers, signs, parking curbs, or other traffic guiding systems. Such maintenance will also include, but not be limited to, keeping the Premises in good condition, both as to safety and appearance, and in a manner so as to assure the improvements and condition of the Premises do not adversely affect the highway safety and appearance and that such maintenance will cause no interference with the highway use, all to the satisfaction of WSDOT.

B. WSDOT reserves the right to periodically observe and inspect said maintenance work.

C. Application of pesticides and herbicides within WSDOT right of way as part of TENANT's maintenance of the Premises shall be performed by, or under, the direct supervision of TENANT's officers, officials, employees, and/or agents who possess a current Public Operator or Commercial Pesticide Operator license. Washington State Department of Agriculture Pesticide Application Records shall be kept by TENANT for each application in accordance with chapter 17.21 RCW and be produced to WSDOT within five (5) calendar days after WSDOT requests the records.

4. TERM. The parties acknowledge that the parking lot and cul-de-sac to be constructed by WSDOT upon the Premises and the adjacent TENANT-owned property will not be completed at the time of execution of this Lease. The parties further acknowledge that WSDOT's fee title ownership of Parcel B will not be completed at the time of execution of this Lease. As such, the parties agree: TENANT's use and occupancy of Parcel A shall commence ~~be for a term of twenty (20) years, commencing~~ concurrently with the date WSDOT declares the Mukilteo Multimodal Project substantially complete; and TENANT's use and occupancy of Parcel B shall commence concurrently with the recordation of the Parcel B conveyance documents conveying fee title of Parcel B to WSDOT. The term of this Lease shall be for a period of 20 years commencing concurrently with the date WSDOT declares the Mukilteo Multimodal Project substantially complete (Commencement Date).The Commencement Date and the date WSDOT acquires fee title to Parcel B shall be memorialized by written amendments to this Lease. Such written amendments memorializing these dates shall be approved by the Department of Transportation Property Management Program Coordinator and the City of Mukilteo Mayor as authorized representatives of WSDOT and TENANT, respectively. For the purposes of this Lease, the term "substantially complete" shall mean the date that WSDOT determines WSDOT has the full and unrestricted benefit of the facilities, both from the operational and safety standpoint, all the initial plantings are completed and only minor or incidental work, replacement of temporary substitute facilities, plant establishment periods, or correction or repair remains for the Physical Completion of the total Contract.

5. RENEWAL.

A. This Lease may be renewed by TENANT for three (3) additional ten (10) year periods (Renewal Period); provided that:

(1) TENANT is not in default and has not been in default during the term of this Lease;

(2) There is no transportation need for the Premises;

(3) TENANT'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

(4) The terms and conditions of this Lease conform to then-existing WSDOT policies or practices, laws, regulations, and contracts, or provided, TENANT has executed an amendment to this Lease to bring it into compliance with such policies, practices, laws, regulations, and contracts prior to the expiration of the then current Term.

B. 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. TENANT shall give notice of its intent to renew this Lease for the Renewal Period at least ninety (90) calendar days, but not more than six (6) months, prior to the expiration of the then current Term. If notice of intent to renew is provided by TENANT with at least ninety (90) calendar days, but not more than six (6) months, prior to the expiration of the then current Term, and no changes to the terms and conditions of the Agreement are requested, such renewal will automatically go into place at the end of the current Term unless WSDOT requests modifications to the terms and conditions within 30 days of receiving such renewal notice. Any renewal that involves changed terms and/or conditions must be in writing and approved by the parties.

6. HOLDING OVER. In the event TENANT shall hold over or remain in possession of the Premises with the consent of WSDOT after the expiration of the stated term of this Lease, or any written extension or renewal of the term of this Lease, such holding over period or continued possession shall create a tenancy from month-to-month only, upon the same terms and conditions as are set forth herein; provided that WSDOT or TENANT may, in addition to other remedies provided elsewhere herein, terminate this Lease for any reason with not less than thirty (30) calendar days prior written notice.

7. TERMINATION; FUTURE DEVELOPMENT; SUSPENSION.

A. Termination.

(1) This Lease may be terminated by either party upon not less than thirty (30) calendar days prior written notice to the other; provided, in the event of an emergency as determined by WSDOT, WSDOT may terminate this Lease with less notice or immediately, as deemed necessary by WSDOT.

(2) In the event WSDOT terminates this Lease for reasons other than a TENANT default or TENANT terminates this Lease for a WSDOT default, WSDOT shall secure

alternative public parking for the number of the thirty-one (31) required mitigation parking stalls that are removed or rendered unusable as a result of the loss of use of the Premises for so long as WSDOT's Project mitigation obligations remain in effect; provided, that if TENANT has permanently reduced the number of mitigation parking stalls located on the Premises or on the abutting TENANT-owned property, WSDOT's Project mitigation obligations shall be reduced by the number of Project parking mitigation spaces removed by the City. The parties acknowledge and agree this relocation obligation does not apply to the Seven (7) parking stalls located on the Premises that are not required to meet WSDOT's Project parking mitigation obligation.

B. Suspension. WSDOT may temporarily suspend this Lease, in whole or in part, without penalty or further liability as follows, except as provided in **Subsection 6.B(5)** below:

(1) WSDOT hereby reserves for itself, the Federal Highway Administration (FHWA), and their respective employees, contractors, agents, invitees, and consultants, the right to enter upon the Premises for transportation related purposes including, but not limited to, installation of utilities, construction, maintenance, repairs, reconstruction, drainage, and staging of equipment.

(2) In the event of a scheduled transportation related project requiring the use, in whole or in part, of the Premises in excess of five (5) calendar days, WSDOT shall notify TENANT at least thirty (30) calendar days in advance of such suspension of this Lease.

(3) In the event it becomes necessary for WSDOT to temporarily suspend TENANT's use of the Premises, in whole or in part, due to an unscheduled need, WSDOT shall notify TENANT within twenty-four (24) hours of the actual closure or limitation in use. In the event of an emergency, no prior notice is required.

(4) WSDOT shall provide TENANT an updated map based on **Exhibit A** that shall delineate the area required by WSDOT, FHWA, their respective employees, contractors, agents, invitees, and/or consultants, and any area remaining that is available to TENANT. Said map shall be sent with the notification of the temporary suspension, or at least thirty (30) calendar days prior to WSDOT, FHWA, their respective employees, contractors, agents, invitees, and/or consultants need of the Premises, if the Lease is suspended as allowed in **Section 6.B.(2)**.

(5) Prior to any suspension of the Lease in whole or in part, or any access or use of the Premises limiting the TENANT'S ability to use the allocated parking spaces WSDOT shall secure alternative public parking for the number of the thirty-one (31) required mitigation parking stalls that are removed or rendered unusable as a result of the loss of use of the Premises for so long as WSDOT's Project mitigation obligations remain in effect; provided, that if TENANT has reduced the number of mitigation parking stalls located on the Premises or on the abutting

TENANT-owned property, WSDOT's Project mitigation obligations shall be reduced by the number of Project parking mitigation spaces removed by the City. The parties acknowledge and agree this relocation obligation does not apply to the parking stalls located on the Premises that are not required to meet WSDOT's Project parking mitigation obligation.

8. CONSIDERATION. The consideration for this Lease is the full mitigation of the Project's impact on TENANT's public parking, which is hereby deemed a highway benefit and/or as serving a highway purpose and other valuable consideration, which is equivalent in value to economic rent for the property. WSDOT shall have the right to review any change in the use of the Premises and may require that TENANT begin paying rent in the event of a change in use.

9. ENCUMBRANCES. TENANT shall not encumber ~~title to~~ the Premises.

10. USE FOR TRANSPORTATION PURPOSES.

A. TENANT and WSDOT hereby affirm that upon expiration or termination, in whole or in part, of this Lease for any reason and the subsequent use of the 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/or 49 U.S.C. 303 (former 49 U.S.C. 1653(f), Section "4f"). If this Lease is terminated, in whole or in part, for transportation or other purposes and WSDOT or authorized local, state, or federal official having jurisdiction of the land or a court of competent jurisdiction determines that replacement of all or any portion of the Premises is required under 23 U.S.C. 138 and/or 49 U.S.C. 303, TENANT agrees to acquire any necessary replacement lands promptly at its own expense, and hold harmless WSDOT from any such related costs.

B~~A~~. TENANT acknowledges, agrees, and promises not to use on the Premises Outdoor Recreation Funds as provided for in the Land and Water Conservation Act, 16 U.S.C. 460-l, sections 4-11 (see section 8(f)(3)).

C~~B~~. Within thirty (30) calendar days of the Commencement Date, TENANT at its expense shall erect and maintain a permanent sign at a location on the Premises approved by WSDOT stating as follows: *"This parking lot is located on highway right of way and is under an agreement between the City of Mukilteo and the Washington State Department of Transportation."*

11. SIGNS/DISPLAY/ADVERTISING DEVICES. Signs, display, or advertising devices are not permitted on the Premises unless they comply with ch. 47.42 RCW and ch. 468-66 WAC and are completely detailed on a separate plan sheet, which has been approved in writing by

WSDOT and incorporated by reference into this Lease. Such advertising shall only indicate ownership and type of on-Premise activities.

12. PERSONAL PROPERTY. WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any property of whatsoever kind stored, kept, or maintained on or about the Premises, except for such claims or losses that may be caused by WSDOT or its authorized agents or employees. Upon termination of this Lease, WSDOT or its agent may remove all property remaining on the Premises at TENANT's expense and dispose of it in any manner WSDOT deems appropriate. TENANT agrees to reimburse WSDOT for the costs of such removal and disposal within thirty (30) calendar days of the date of WSDOT's invoice.

13. FENCES. Fences shall be maintained by TENANT. If any fence is damaged as a result of TENANT's activities or the acts of parking patrons, TENANT will promptly repair such damage at its cost to WSDOT's satisfaction. If any fence is damaged as a result of the activities of WSDOT or its employees, contractors, franchisees, permittees, licensees or other such third party similarly authorized by WSDOT to use the Premises, WSDOT will promptly repair such damage. In the event TENANT fails to promptly complete said repair WSDOT may complete the repair and TENANT agrees to reimburse WSDOT for the cost of said repair within thirty (30) calendar days of the date of WSDOT's invoice.

14. USE OF RIGHT OF WAY ADJACENT TO STRUCTURE. TENANT 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.

15. WSDOT'S RIGHT OF ENTRY/INSPECTION.

A. WSDOT, for itself, its agents and contractors, and for FHWA, reserves the right to enter upon the Premises at any time without notice to TENANT for the purpose of inspection, or maintenance, construction, or reconstruction of the highway facility or any element thereof, to perform security audits such as Homeland Security, or to perform environmental audits as provided for elsewhere in this Lease. Any loss of the use of the Premises due to WSDOT's exercise of such right will be compensated for solely by WSDOT providing replacement mitigation stalls to be approved in advance by the TENANT, which approval shall not be unreasonably withheld, if the Premises is not available for more than twenty-four (24) hours. WSDOT shall in no way be responsible for any incidental or consequential damages due to such loss of use, if any, by TENANT.

B. WSDOT, its agents and contractors, and FHWA may enter upon the Premises at any time without prior notice for the purpose of inspecting any excavation, construction, or maintenance work being done by TENANT. In addition, WSDOT, its agents and contractors, and FHWA may enter the improvements, if any, on the Premises at any time and without prior notice, for the purpose of inspection, maintenance, and repair of said improvements.

C. Entry upon the Premises and the improvements, if any, for any other purpose by WSDOT, its agents and contractors, and FHWA shall be conducted with reasonable notice to TENANT and during the hours of 8:00 a.m. to 5:00 p.m.

16. DISPOSITION OF IMPROVEMENTS. Except as provided elsewhere herein, upon termination of this Lease under any provision hereof, the improvements constructed by TENANT on the Premises shall become the property of WSDOT or, at the option of WSDOT, shall be removed by TENANT at TENANT's expense in a manner prescribed by WSDOT. In the event TENANT fails to remove said improvements upon termination, WSDOT may remove and dispose of said improvements as it deems appropriate and at TENANT's expense. TENANT shall reimburse WSDOT for all expenses incurred in such removal and disposal within thirty (30) calendar days of the date of WSDOT's invoice for such costs.

17. VACATION OF PREMISES. Upon termination of this Lease, TENANT shall cease its operations on and/or use of the Premises. In the event TENANT fails to vacate the Premises on the date of termination, TENANT shall be liable for any and all costs to WSDOT arising from such failure.

18. WSDOT ACCESS TO REMOVE IMPROVEMENTS. In the event TENANT fails to remove improvements or restore the Premises to WSDOT's satisfaction, then if necessary or desirable in WSDOT's judgment for reasons of safety or economy, WSDOT or its agents shall have the right to cross any lands owned or otherwise controlled by TENANT for the purpose of accomplishing said removal or restoration. Said right shall expire one hundred eighty (180) calendar days after the date of termination of this Lease, or when removal and restoration is complete in WSDOT's judgment, whichever is the earlier.

19. RESTORATION OF PREMISES. Prior to termination of this Lease, TENANT agrees, if so directed by WSDOT, to restore the Premises to its condition at the time of TENANT's acceptance, reasonable wear and tear excepted. This work is to be done at TENANT's expense to the satisfaction of WSDOT. TENANT shall at all times have 60 days to complete such requested restoration of the premises.

20. NON-APPLICABILITY OF RELOCATION ASSISTANCE. TENANT acknowledges that this Lease does not at any time entitle TENANT to assistance by or through WSDOT under the Relocation Assistance - Real Property Acquisition Policy (ch. 8.26 RCW).

21. WSDOT'S RESERVATION OF RIGHT TO MAINTAIN/GRANT UTILITY FRANCHISES/PERMITS.

A. WSDOT reserves the right for utility franchise and permit holders to enter upon the Premises to maintain, repair, and enhance existing facilities and install new utilities and, for itself, to grant utility franchises and/or permits across the Premises. Such installation will be accomplished in such a manner as to minimize any disruption to TENANT. The franchise/permit holder will be required to restore paving and grading damaged by the installation to the same or better condition as existed prior to disruption. WSDOT also reserves the right to withdraw portions of the Premises for uses such as, but not limited to, communications sites, which WSDOT and TENANT agree is reasonably compatible with TENANT's authorized use of the Premises. In the event any of the TENANT's five (5) mitigation required parking spaces on the Premises are made unavailable for more than a twenty-four (24) hour period for parking due to the exercise of rights reserved or granted under this section, WSDOT shall provide alternative parking to be approved in advance by the TENANT, which approval shall not be unreasonably withheld.

B. TENANT 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. TENANT 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. TENANT shall not damage legally installed underground utilities. TENANT shall comply with all applicable provisions of chapter 19.122 RCW relating to underground facilities.

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

23. LIENS.

A. Nothing in this Lease shall be deemed to make TENANT the agent of WSDOT for purposes of construction, repair, alteration, or installation of structures, improvements, equipment,

or facilities on the Premises. TENANT acknowledges that WSDOT may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by TENANT.

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

C. In the event a lien is filed upon the Premises, TENANT shall:

(1) Record a valid Release of Lien;

(2) 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

(3) Procure and record a bond which releases the Premises from the claim of the lien and from any action brought to foreclose the lien.

D. Should TENANT fail to accomplish **Section 23.C.(1)**, **(2)**, or **(3)**, above, within fifteen (15) calendar days after the filing of such a lien, the Lease shall be in default.

24. ENVIRONMENTAL REQUIREMENTS.

A. TENANT represents, warrants, and agrees that it will conduct its activities associated with this Lease on and off the Premises in compliance with all applicable Environmental Laws. As used in this Lease, the term "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.

B. Toxic or hazardous substances are not allowed on the Premises without the express 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 commercial, stored gasoline and other petroleum products. In the event such permission is granted, the use and disposal of such materials must be done in a legal manner by TENANT.

C. TENANT agrees to cooperate in any environmental investigations conducted by WSDOT staff or independent third parties where there is evidence of contamination on the Premises, or where WSDOT is directed to conduct such audit by an agency having jurisdiction. TENANT will reimburse WSDOT within thirty (30) calendar days of the date of WSDOT's invoice for the cost of such investigations, where the need for said investigation is determined to be caused by TENANT's operations. TENANT will promptly provide WSDOT with notice of any inspections of the Premises, notices of violations, and orders to clean up contamination. TENANT will permit WSDOT to participate in all settlement or abatement discussions. In the event TENANT 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 TENANT covenants and agrees to reimburse WSDOT for all direct and indirect costs associated with WSDOT's work, within thirty (30) calendar days of the date of WSDOT's invoice, where those costs are determined to have resulted from TENANT's use of the Premises.

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, Ch. 70.105D RCW, et seq., including all amendments and/or revisions to said laws and regulations.

E. TENANT 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 attorneys' fees associated with the removal or remediation of any Hazardous Substances that have been released, or otherwise come to be located on the Premises, including those that may have migrated from the Premises through water or soil to other properties, including without limitation, the adjacent WSDOT property, and which are caused by or result from TENANT's activities on the Premises. TENANT 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 Premises as a result of removal necessitated by TENANT's activities on the Premises.

F. The provisions of this Section shall survive the termination or expiration of this Lease.

25. INSURANCE.

A. At its sole expense, TENANT shall secure and maintain in effect a policy providing public liability insurance issued by an insurer licensed to conduct business in the state of Washington. The insurance policy shall provide liability coverage for any and all claims of bodily injury, property damage, and personal injury arising from TENANT's use of the Premises which is the subject of this Lease. The insurance policy required by this Section shall provide coverage as follows:

(1) If the Premises are to be used for commercial purposes, no less than Two Million and no/100 Dollars ($2,000,000.00) per occurrence, with a general aggregate limit of no less than Four Million and no/100 Dollars ($4,000,000.00) per policy period; or

(2) Such aggregate limits shall apply for this Premises location, and coverage under said policy shall be triggered on an "occurrence basis," not on a "claims made" basis.

B. If the Premises are to be used for commercial purposes, the coverage required by this Section shall be at least as broad as that provided by the most current Commercial General Liability Policy form ISO (Insurance Services Office, Inc.) policy form CG 00 01 12 07, or its equivalent without modification. The use of an equivalent form shall require prior written approval by WSDOT.

C. No changes whatsoever shall be initiated as to the coverage without prior written approval by WSDOT and written authorization by WSDOT to make any requested changes.

D. Unless approved by WSDOT in advance and in writing, the liability coverage required by this Section shall not be subject to any deductible or self-insured retentions of liability greater than:

(1) Five Thousand and no/100 Dollars ($5,000.00) per occurrence if the Premises are to be used for commercial purposes, or

(2) The payment of any such deductible or self-insured retention of liability amounts remains the sole responsibility of TENANT.

E. TENANT assumes all obligations for premium payments, and in the event of nonpayment, WSDOT, at its sole discretion, may pay the premiums necessary to keep any lapsed insurance policies in force. In the event WSDOT pays the premiums, TENANT shall reimburse WSDOT the entire cost and expense it incurred to maintain the insurance coverage and any legal fees it incurred in enforcing such reimbursement. TENANT shall make such reimbursement to WSDOT within thirty (30) calendar days of the date of WSDOT's invoice. The payment of the premiums by WSDOT under this Section shall not be construed as a waiver of TENANT's obligation to pay insurance premiums.

F. Coverage obtained by TENANT in compliance with this Section shall not be deemed as having relieved TENANT of any liability in excess of such coverage.

G. TENANT shall provide WSDOT with a certificate of insurance reflecting the insurance coverage required by this Section, including deductible or self-insured retentions, within ten (10) calendar days of the execution of this Lease. Such certificates shall also be provided upon renewal of said policies and changes in carriers.

H. All of the aforementioned insurance requirements of the City shall be fulfilled in their entirety by the City's membership and coverage in WCIA, a self-insured municipal insurance pool.

26. HOLD HARMLESS/INDEMNIFICATION/WAIVER.

A. TENANT, 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 TENANT, 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 Premises. TENANT further agrees to defend 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 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 (1) WSDOT, its agents, or employees; and (2) TENANT, 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 TENANT or its assigns, subtenants, agents, contractors, licensees, invitees, and employees.

B. WAIVER: TENANT agrees that its obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents while occupying the Premises for any purpose. For this purpose, TENANT, by MUTUAL NEGOTIATION, hereby waives with respect to WSDOT only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions chapter 51.12 RCW.

C. The provisions contained in this Section shall survive the termination or expiration of this Lease.

27. NONDISCRIMINATION. TENANT, 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.

28. ASSIGNMENT. Neither this Lease nor any rights created by it may be assigned, sublet, or transferred by TENANT. In the event that TENANT allows others to use any portion of the Premises, whether by written or oral agreement without WSDOT's prior written approval, WSDOT, in addition to or in lieu of terminating this Lease for default, and in addition to any damages it may experience, may demand a share of any revenue generated by such unauthorized use. WSDOT shall set the amount of said share, and its decision shall be final and binding. WSDOT may demand such share at any time during the term of this Lease. TENANT shall pay said share to WSDOT within thirty (30) calendar days of demand. TENANT agrees to pay said share retroactively to the date the unauthorized third party's use of the Premises commenced. Furthermore, such unauthorized assignment shall not relieve TENANT hereunder from all of its obligations under this Lease, including but not limited to, maintenance of insurance.

29. BINDING CONTRACT. This Lease shall not become binding upon WSDOT unless and until executed for WSDOT by the Secretary of Transportation or such Secretary's duly authorized representative.

30. PERFORMANCE BY WSDOT. If TENANT defaults in the performance or observation of any covenant or agreement contained in this Lease, WSDOT, without notice if deemed by WSDOT that an emergency exists, or if no emergency exists, with thirty (30) calendar days prior written notice, may direct TENANT to stop all or a portion of its use of the Premises and may itself perform or cause to be performed such covenant or agreement and may enter upon the Premises for such purpose. Such emergency shall include, but not be limited to, endangerment of life, the highway facility or failure of TENANT to obtain in a timely manner the specified

insurance coverage. TENANT shall reimburse WSDOT the entire cost and expense of such performance by WSDOT and any legal fees WSDOT incurred in enforcing such reimbursement. TENANT shall make such reimbursement within thirty (30) calendar days of the date of WSDOT's invoice. Any act or thing done by WSDOT under the provisions of this Section shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof.

31. MODIFICATIONS. This Lease contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any other manner other than by a written agreement signed by all parties hereto. The receipt of rent, by WSDOT, with knowledge of any breach of this Lease by TENANT, and/or with knowledge of any default on the part of TENANT shall not be deemed to be a waiver of any provision of this Lease. Failure on the part of WSDOT to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of WSDOT to enforce the same in the event of any subsequent breach or default.

32. 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.

33. 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.

34. TOTALITY OF AGREEMENT. It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by TENANT or by WSDOT, except to the extent that the same are expressed in this Lease. It is further understood that this Lease shall not be valid and binding upon WSDOT unless and until accepted and approved by the Secretary of Transportation or such Secretary's duly authorized representative.

35 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, except as provided elsewhere in this Lease.

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

37. NOTICES. Wherever in this Lease written notices are to be given or made, they will be served, personally delivered or 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. TENANT agrees to accept service of process at said addresses; provided that, such address is located in the state of Washington. Otherwise, TENANT designates the Secretary of state of Washington as an agent for the purpose of service of process. Such service shall be deemed personal service.

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

DEPARTMENT OF TRANSPORTATION (Physical Address)
Real Estate Services
Attn.: Property Management Program Manager
7345 Linderson Way SW
Tumwater, WA 98501

TENANT: CITY OF MUKILTEO
Attn: Public Works Director
11930 Cyrus Way
Mukilteo, WA 98275

CITY OF MUKILTEO
Attn: Community Development Director
11930 Cyrus Way
Mukilteo, WA 98275

38. RECITALS. The recitals are hereby incorporated into this Lease.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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

Signatures:	Accepted and Approved by:
CITY OF MUKILTEO	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
By: _____	By: _____
Title: _____	Northwest Region Regional Administrator
Dated: _____	Dated: _____
APPROVED AS TO FORM	APPROVED AS TO FORM
By: _____	By: _____
City Attorney	Assistant Attorney General
Dated: _____	Dated: _____

AGENCY ACKNOWLEDGMENT

STATE OF WASHINGTON)

)ss

COUNTY OF SNOHOMISH)

On this _____ day of _____, 20_____ before me personally appeared _____, to me known to be the duly appointed _____ and that he/she executed the within and foregoing instrument and acknowledged the said instrument to be his/her free and voluntary act and deed of said state of Washington, for the uses and purposes therein set forth, and on oath Lessees that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the _____ day of _____, 20_____.

_____
(Signature)

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

My commission expires _____

WSDOT ACKNOWLEDGMENT

STATE OF WASHINGTON)

)ss

COUNTY OF THURSTON)

On this _____ day of _____, 20____ before me personally appeared _____, to me known to be the duly appointed Northwest Region Regional Administrator, 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 _____, 20____.

_____
(Signature)

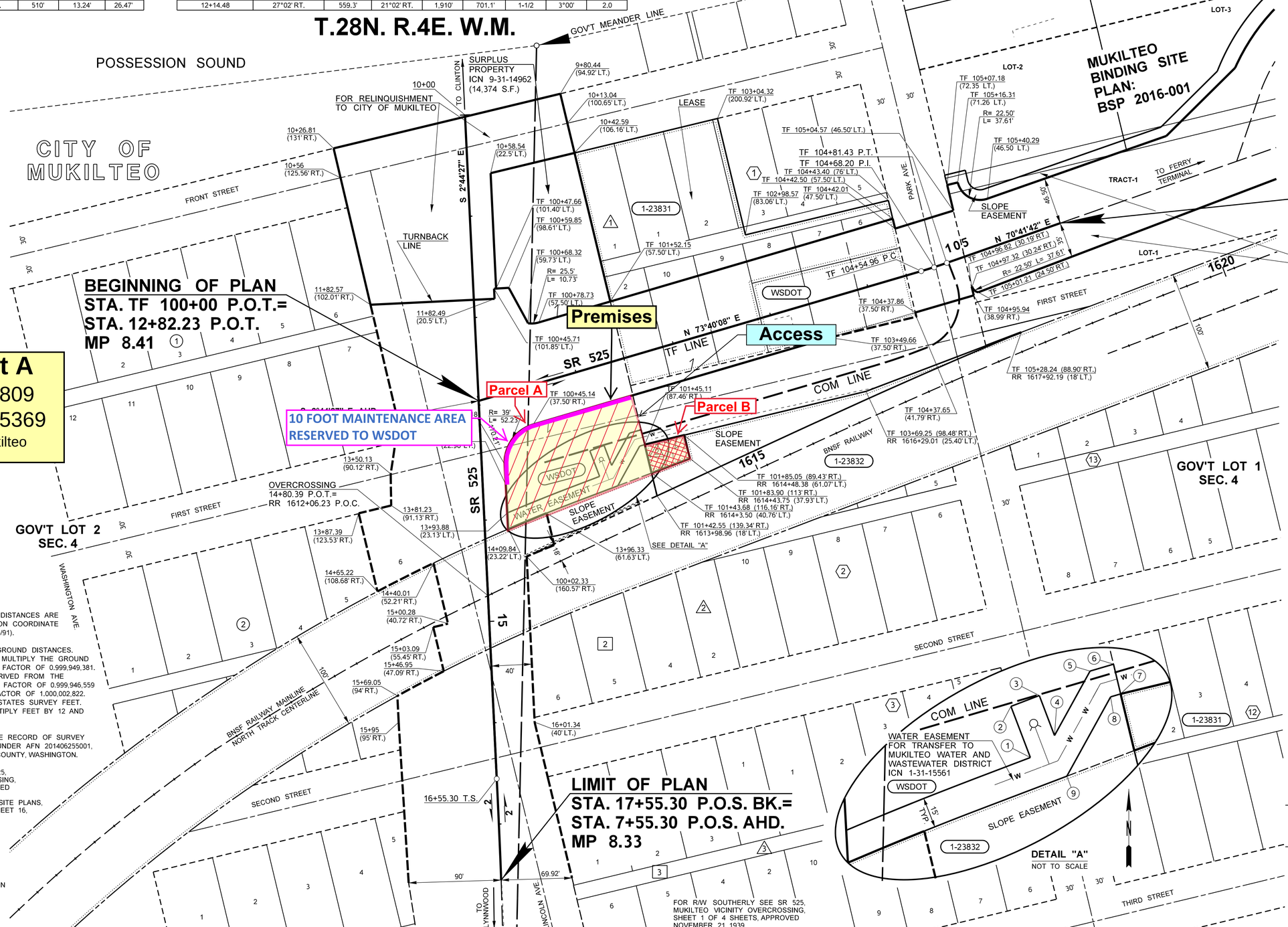
_____
(Print or type name)
Notary Public in and for the state of Washington
residing at_____

My commission expires _____

westbys	5/22/2018	9:39:09 AM	c:\users\westbys\pw_wsdot\d0184990\525-103_RW_PS_002.dgn

CURVE DATA				
P.I. STATION	DELTA	RADIUS	TANGENT	LENGTH
TF 104+68.20	2°58'26" LT.	510'	13.24'	26.47'

TOTAL CURVE DATA			CURVE DATA			SPIRAL DATA		
P.I. STATION	DELTA	TANGENT	DELTA	RADIUS	LENGTH	a	DE	Ls
12+14.48	27°02' RT.	559.3'	21°02' RT.	1,910'	701.1'	1-1/2	3°00'	2.0



ALL PLANS ARE SUBJECT TO CHANGE. OWNERSHIP SHOULD BE VERIFIED. PROPOSED PROPERTY RIGHTS SHOWN MAY NOT HAVE BEEN ACQUIRED. ENCUMBRANCES MAY OR MAY NOT BE SHOWN. PARTIES SEEKING CURRENT PLAN INFORMATION SHOULD CONSULT THE DEPARTMENT OF TRANSPORTATION HEADQUARTERS RIGHT OF WAY PLANS OFFICE FOR THE OFFICIAL PLAN ON FILE. FOR ENCUMBRANCE INFORMATION CONSULT THE DEPARTMENT OF TRANSPORTATION HEADQUARTERS REAL ESTATE SERVICES OFFICE.

WATER EASEMENT		
POINT NO.	STATION	OFFSET
1	TF 100+93.52	105.04' RT.
2	TF 100+91.41	78.12' RT.
3	TF 101+06.36	76.95' RT.
4	TF 101+08.01	97.98' RT.
5	TF 101+33.78	72.41' RT.
6	TF 101+45.81	72.41' RT.
7	TF 101+45.11	87.46' RT.
8	TF 101+39.91	87.46' RT.
9	TF 101+08.19	118.94' RT.

THE BASIS OF BEARINGS AND DISTANCES ARE DETERMINED FROM WASHINGTON COORDINATE SYSTEM NORTH ZONE (NAD 83/91).

THE DISTANCES SHOWN ARE GROUND DISTANCES. TO OBTAIN THE GRID LENGTH, MULTIPLY THE GROUND LENGTH BY THE COMBINATION FACTOR OF 0.999,949,381. THE COMBINED FACTOR IS DERIVED FROM THE PRODUCT OF THE GRID SCALE FACTOR OF 0.999,946,559 AND THE ELEVATION SCALE FACTOR OF 1.000,002,822. DISTANCE UNITS ARE UNITED STATES SURVEY FEET. TO CONVERT TO METERS, MULTIPLY FEET BY 12 AND THEN DIVIDE BY 39.37.

FOR SURVEY INFORMATION SEE RECORD OF SURVEY RECORDED ON JUNE 25, 2014 UNDER AFN 201406255001, IN RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

THIS PLAN SUPERSEDES SR 525, MUKILTEO VICINITY OVERCROSSING, SHEET 1 OF 4 SHEETS, APPROVED NOVEMBER 21, 1939 AND SNOHOMISH COUNTY SUNDRY SITE PLANS, MUKILTEO FERRY TERMINAL, SHEET 16, APPROVED JULY 17, 1981.

(1) GRAVELLE'S ADDITION
(1) FREDRIKSEN'S ADDITION
(1) THOMAS' ADDITION
[1] FOWLER'S ADDITION

✳ CALCULATED
⌀ SLOPE EASEMENT
△ LEASE
⊠ WATER EASEMENT

PARCEL NO.	NAME	TOTAL AREA	R/W	LT. REMAINDER RT.		EASM'T
WSDOT						2,854 ⊠
1-23832	BNSF RAILWAY COMPANY	UNDETERMINED				6,134 ⌀
1-23831	BUZZ INN LANDING, INC.	41,855 ✳	17,325	24,530		24,530 △

TOTAL AREA IS FROM ASSESSOR'S RECORDS UNLESS OTHERWISE NOTED.

OWNERSHIPS

ALL AREAS ARE SHOWN IN SQUARE FEET UNLESS OTHERWISE NOTED.

LEGEND

PROPERTY OWNERSHIP NUMBERS (-)

PROPERTY LINES

0 50 100
SCALE IN FEET

Reference	Approval	Revision Description	By
Letter 5-22-18	5-25-18	Corrected WSDOT Parcel Area of Water Easement	STW
Letter 5-16-18	5-18-18	Noted Water Easement For Transfer and ICN on Rt. Vic. Sta. 14+00 in Detail "A"	STW
Letter 4-24-18	4-27-18	Revised Water Easement on Lt. Sta. TF 100+91.41 to TF 101+45.81; Revised Water Easement Points 1 thru 9	MRW
Letter 4-18-18	4-20-18	Revised Water Easement on Lt. Sta. TF 101+14.87 to TF 101+44.99; Revised Water Easement Points 5, 6, 7 & 8	MRW
Letter 3-20-18	4-6-18	Revised R/W on Lt. Sta. 13+66.30 to 14+12.31; Added Water Easement on Lt. Vic. Sta. 14+00 to TF 101+45.59 Rt., Added Detail "A"	STW
Letter 9-18-17	9-22-17	Deleted Erroneous Line on Lt. Sta. TF 101+52.15 in Parcel 1-23831 R/W Acquisition Area	STW
Letter 8-16-17	9-13-17	Revised Surplus Property ICN 9-31-14962 and Area For Relinquishment Boundaries and Area on Lt. Sta. 10+58.54 to TF 100+47.66	STW

BILLY R. MUMMA — STATE OF WASHINGTON — 24787 — REGISTERED PROFESSIONAL LAND SURVEYOR

DIGITALLY APPROVED BY PROFESSIONAL LAND SURVEYOR OF RECORD ON FEBRUARY 1, 2017

SR 525
MUKILTEO FERRY TERMINAL
LINCOLN TO PARK VIC.

SNOHOMISH COUNTY

RIGHT OF WAY PLAN
STATION TF 100+00 TO STATION TF 106+00
MP 8.41 TO MP 8.52

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
OLYMPIA, WASHINGTON

CHARLES TORRES — STATE OF WASHINGTON — 32245 — REGISTERED PROFESSIONAL ENGINEER

DIGITALLY APPROVED BY ENGINEER OF RECORD ON FEBRUARY 1, 2017

PROJECT ENGINEER

FEBRUARY 1, 2017
APPROVED AND ADOPTED

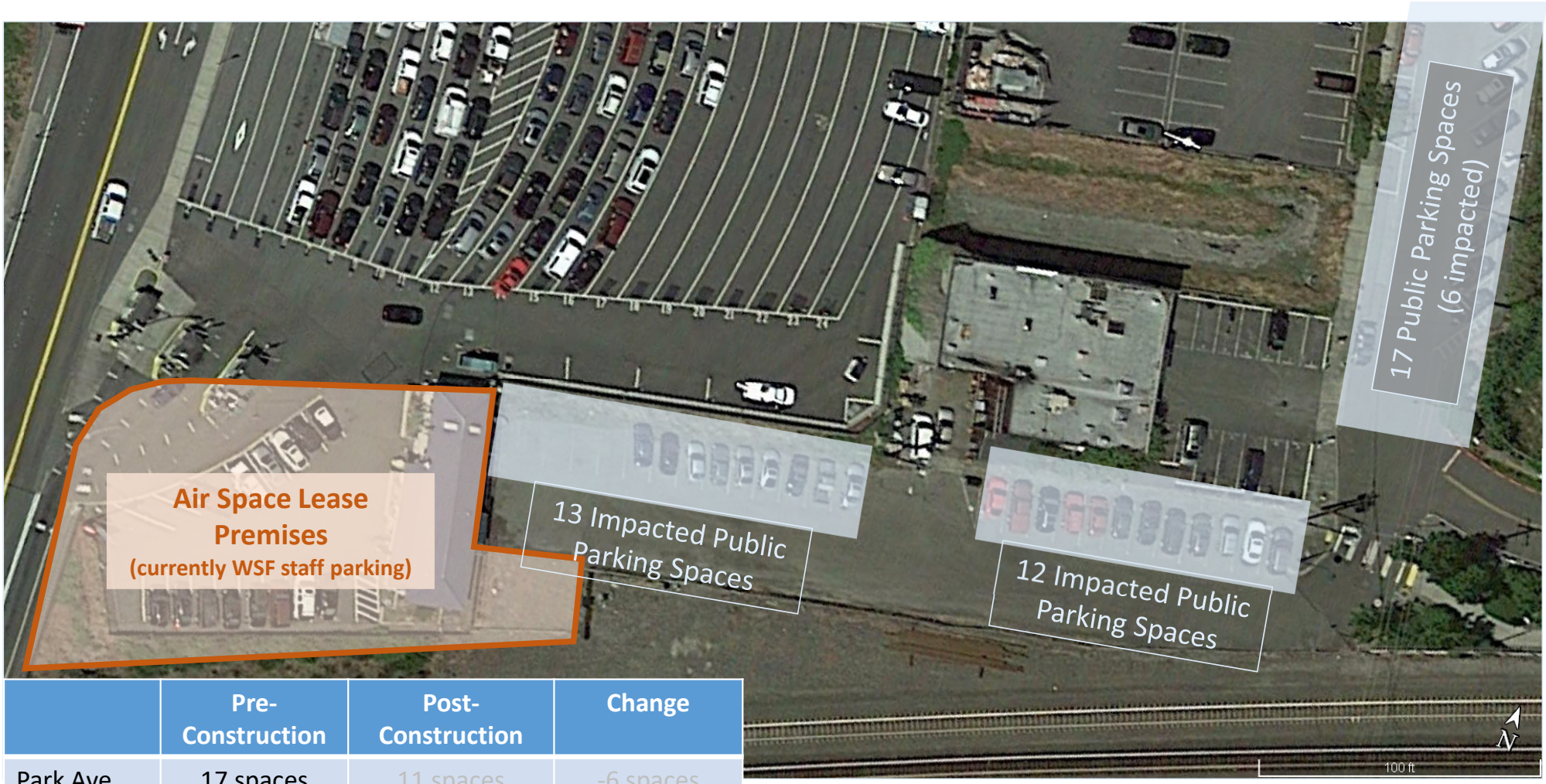
STATE SURVEY MANAGER

SHEET 2 OF 2 SHEETS

5/22/2018 9:39:09 AM c:\users\westbys\pw_wsdot\d0184990\525-103_RW_PS_002.dgn

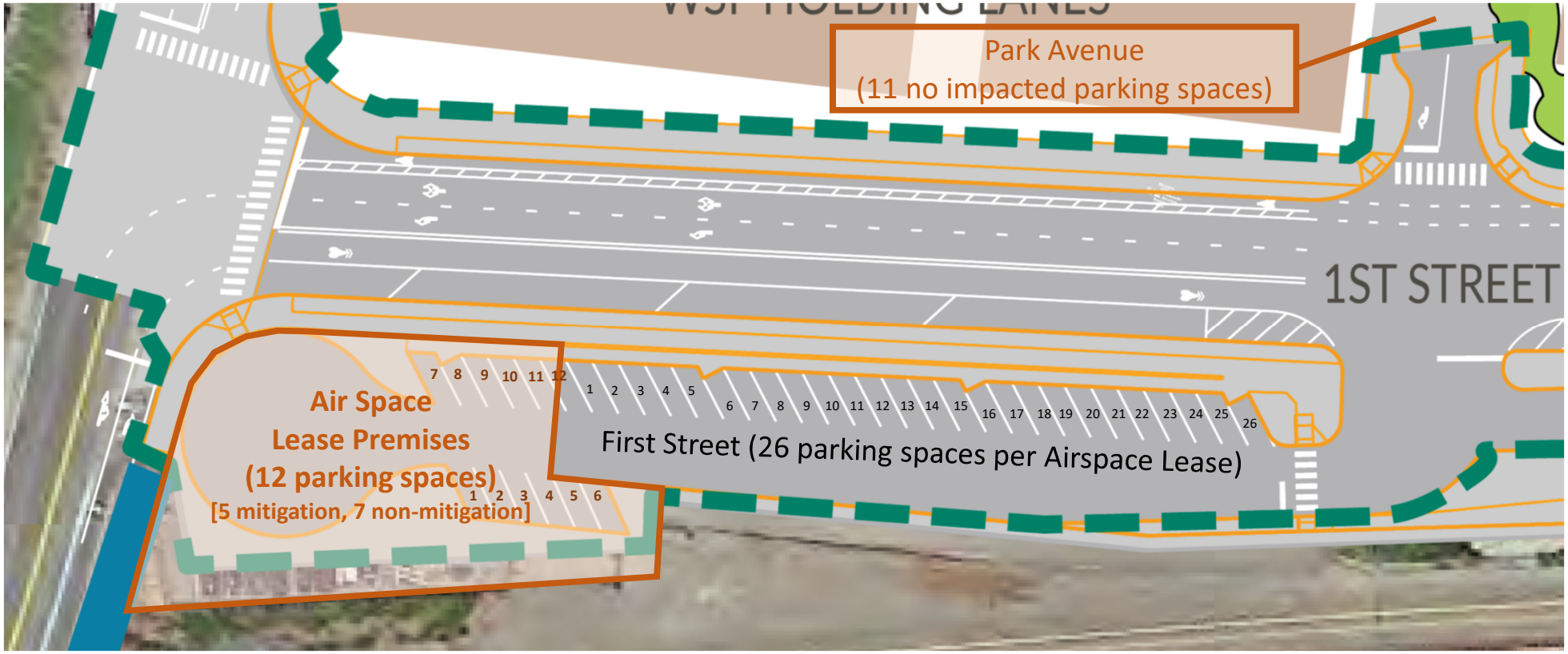
EXHIBIT 3-A

AIRSPACE PARKING -
Pre and Post Construction



	Pre-Construction	Post-Construction	Change
Park Ave.	17 spaces	11 spaces	-6 spaces
First St.	25 spaces	38 spaces	+ 13 spaces
Total	42 spaces	49 spaces	+ 7 spaces

Public Parking Spaces—Pre-Construction
(31 impacted/11 not impacted)



Public Parking Spaces—Post-Construction
(31 mitigation/7 non-mitigation/11 not impacted)

	Pre-Construction	Post-Construction	Change	
Park Ave.	17 spaces	11 spaces	-6 spaces	Displaced by sidewalk improvements and ROW changes for the project
First St.	25 spaces	38 spaces	+ 13 spaces	Includes 5 required mitigation spaces and 7 required non-mitigation spaces
Total	42 spaces	49 spaces	+ 7 spaces	More spaces than pre-construction—meeting commitments and conditions

EXHIBIT 4

(Slope Easement - City's Latest Proposal)

After recording return document to:

State of Washington
Department of Transportation
Real Estate Services Office
P O Box 47338
Olympia WA 98504-7338

Document Title: Easement
Reference Number of Related Document: N/A
Grantor: City of Mukilteo
Grantee: State of Washington, Department of Transportation
Legal Description: Ptn Lots 2, 3 and 5, Elliot Point Landing, First Amended Binding Site Plan, City of Mukilteo Binding Site Plan BSP 2016-001, under Rec. No. 201701205001, in Section 4, T28N, R4E, WM and Section 33, T29N, R4E, WM, Snohomish County
Additional Legal Description is on Page 4 of Document
Assessor's Tax Parcel Numbers: Ptns 00596901400001 and 29043300401400

EASEMENT

THIS EASEMENT (this "Easement Agreement") is entered into this ___ day of _____, 2020 (the "Effective Date"), by and among City of Mukilteo ("Grantor"), and the State of Washington acting by and through its Department of Transportation ("Grantee") for a slope easement at the Snohomish County Sundry Site Plans, Mukilteo Tank Farm.

Section 1. Grant of Easement. The Grantor for and in consideration of a donation, hereby grants to and for the benefit of the Grantee, its successors and assigns, a perpetual, nonexclusive easement (the "Easement") in, on, over, across, above, and under the portion of the City's property more particularly described in Exhibit A (the "Easement Area") for the following purposes: to excavate and/or place an embankment upon all or any of the Easement Area to the level of the grade of SR 525 (the "Improvements").

Section 2. Maintenance. Subject to the provisions of this Section, Grantee shall maintain and repair, at the Grantee's sole cost and expense, the Improvements and the Easement Area (to the extent of Grantee's use thereof) in a good, safe and attractive condition and in compliance with all applicable governmental requirements. Without limiting the generality of the preceding, all Improvements shall meet or exceed all applicable requirements and specifications of the City of Mukilteo.

Section 3. Limitation on the Use of the Easement Area. To the extent not inconsistent with Grantee's use of the Easement Area, Grantor may install and maintain roads, landscaping, sidewalks and other similar improvements in the Easement Area.

Section 4. Indemnity. Grantee shall indemnify, defend and hold Grantor harmless for any and all claims, damages, actions, suits or proceedings (including reasonable attorney's fees), for any injury or death to persons or damage to property (collectively "Claim") which arise from Grantee's (or any of Grantee's employee's, agent's, or contractor's) activities on Grantor's Property, except to the extent caused by the negligence or misconduct of Grantor, its agents, contractors, employees, or invitees. The foregoing indemnity covers actions brought by Grantee's own employees and it is specifically and expressly intended to constitute a waiver of any Grantee's immunity under the Washington Industrial Insurance Act, RCW Title 51 so that Grantor receives the full benefit of the foregoing indemnity in the event of any claim by an employee of Grantee.

Section 5. No Waiver of Breach. No failure by either party to this Easement Agreement to insist upon the strict performance of any term or condition of this Easement Agreement, or to exercise any right or remedy upon a breach of this Easement Agreement, shall constitute a waiver of any such breach or any subsequent breach.

Section 6. Consideration. Grantor makes this donation of an Easement in the Easement Area to Grantee voluntarily and with full knowledge of its entitlement to receive just compensation therefor. The Grantor hereby waives the Grantee's requirement of obtaining an appraisal for the acquired property right.

Section 7. Automatic Termination. The parties agree that, in the event the Grantor, its successors or assigns, shall excavate and/or place an embankment upon all or any area covered by this slope easement to the level of the grade of SR 525 abutting thereon, all rights of the Grantee herein shall automatically cease and terminate as to such area. Upon request by Grantor, Grantee shall execute a quitclaim deed or release or partial release of this easement for recording and public notice purposes as to any area that is subject to the automatic cessation and termination.

Section 8. Entire Agreement. This Easement Agreement comprises the entire agreement between the parties respecting the Easement granted hereunder and it is intended to fully and completely express the parties' rights and obligations. This Easement Agreement may only be modified or amended by a written instrument executed by both Grantor and Grantee.

Section 9. Attorney's Fees. In any action, proceeding or arbitration between Grantor and Grantee seeking enforcement of any of the terms and provisions of this Easement Agreement, the prevailing party in such action, proceeding or arbitration, including any appeal therefrom, shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses (not limited to taxable costs).

IN WITNESS WHEREOF, this Easement Agreement has been executed as of the day and year first written above.

Dated _____, 2020

CITY OF MUKILTEO, a municipal corporation

By: _____

JENNIFER GREGERSON, Mayor

Accepted and Approved

STATE OF WASHINGTON,
Department of Transportation

By: _____
Hal Wolfe, Northwest Region
Real Estate Services Manager,
Authorized Agent

Date: _____

DRAFT

STATE OF WASHINGTON)
: §
County of Snohomish)

On this _____ day of _____, 2020, before me personally appeared JENNIFER GREGERSON, to me known to be the Mayor of the City of Mukilteo, Washington, who executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said City, for the uses and purposes therein mentioned, and stated that she was authorized to execute said instrument.

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

Notary Seal

Please stay within block.

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

DRAFT

EXHIBIT A

All that portion of the hereinafter described PARCEL "A" lying southerly and westerly of a line beginning at a point 10 feet northerly of the southwest corner of PARCEL "A", which point lies on the westerly boundary of said PARCEL "A"; thence North 76°28'11" East 20.92 feet; thence South 13°32'13" East 10.00 feet; thence southeasterly along a curve to the left having a radius of 12.50 feet, an arc distance of 21.07 feet; thence North 70°41'42" East 184.48 feet; thence North 45°17'02" East 78.42 feet; thence northeasterly along a curve to the left having a radius of 84.28 feet, an arc distance of 217.00 feet; thence northeasterly along a curve to the right having a radius of 90.28 feet, an arc distance of 190.00 feet; thence North 73°26'45" East 162.56 feet; thence North 16°33'15" West 5.00 feet; thence North 73°26'45" East 150.00 feet; thence North 16°33'15" West 5.00 feet; thence North 73°26'45" East 165.00 feet; thence North 23°59'09" East 10.20 feet; thence North 69°09'58" East 12.55 feet; thence South 20°50'02" East 19.94 feet; thence southwesterly along a curve to the left having a radius of 10.00 feet, an arc distance of 7.85 feet; thence South 24°09'58" West 2.49 feet; thence southwesterly along a curve to the right having a radius of 10.00 feet, an arc distance of 8.60 feet to the southerly margin of PARCEL "A", and the end of this line description.

PARCEL "A"

Lots 2, 3 and 5, Elliot Point Landing, First Amended Binding Site Plan, City of Mukilteo Binding Site Plan BSP 2016-001, recorded under Recording No. 201701205001, records of Snohomish County, Washington, being portions of Section 4, Township 28 North, Range 4 East, W.M. and Section 33, Township 29 North, Range 4 East, W.M., in Snohomish County, Washington.

The specific details concerning all of which are to be found on sheets 54 and 55 of that certain plan entitled Snohomish County Sundry Site Plans, Mukilteo Tank Farm, now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval February 1, 2017, as revised.

Grantor's Initials

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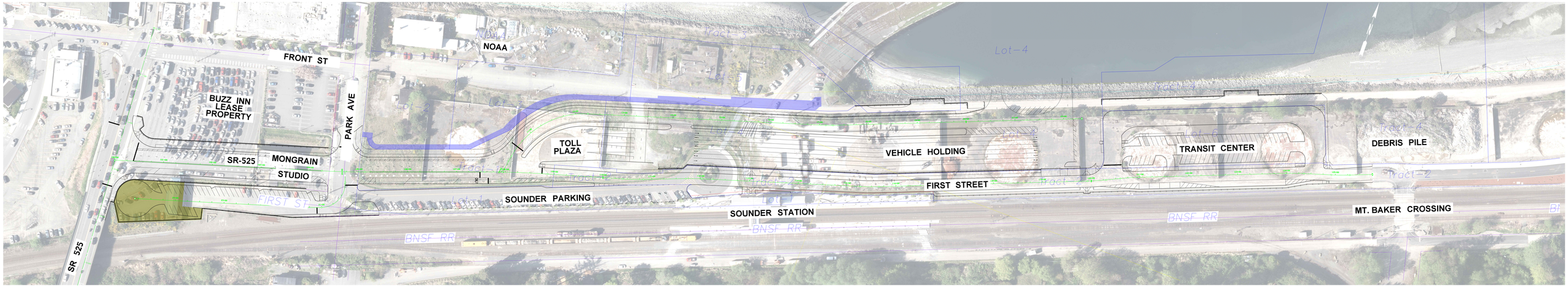

EASEMENT & LEASE AREA DESIGNATION
EXHIBIT B

SLOPE EASEMENT FOR WORK AREA 2D

AIRSPACE LEASE