

CITY OF SEATTLE
ORDINANCE 126249
COUNCIL BILL 119962

AN ORDINANCE relating to Seattle Public Utilities; authorizing the General Manager and Chief Executive Officer of Seattle Public Utilities to enter into a stormwater facility construction and maintenance agreement with the State of Washington and grant a non-exclusive easement to the State of Washington for the stormwater facility, upon, under, and across a portion of the south half of the northwest quarter of Section 3, Township 23 North, Range 4 East, W.M., King County, Washington.

WHEREAS, The City of Seattle (“City”), by and through its Seattle Public Utilities Department (SPU) owns a parcel of land adjacent to Interstate 5 north of the Boeing Access Road, which was purchased in 1993 to address the needs of the City’s South Norfolk Street Drainage Project (authorized by Ordinance 116785) and the State of Washington’s (“State”) Tukwila to Lucile St. High Occupancy Vehicle (HOV) and Surveillance, Control, and Driver Information (SC&DI) Stage 1 complementary drainage projects; and

WHEREAS, since time was of the essence, SPU granted the State a construction permit to proceed with construction of stormwater facilities while continuing to negotiate the terms of the Participating Agreement GM1119 between the City and the State; and

WHEREAS, SPU and the State unsuccessfully attempted to reach agreement on the construction and maintenance details of the joint drainage project; and

WHEREAS, SPU has not yet conveyed property rights to the State for the project; and

WHEREAS, the State proceeded to install the stormwater facility necessary for the Tukwila to Lucile St. HOV and SC&DI Stage 1 project on the parcel purchased by SPU, as well as on property owned by the State within the limited access of Interstate 5, based on the construction permit previously granted to the State by SPU; and

1 WHEREAS, SPU and the State have agreed that the most advantageous solution to the State's
2 stormwater facility on SPU property is the sale of an easement for the existing
3 stormwater facilities; and

4 WHEREAS, the General Manager and Chief Executive Officer of Seattle Public Utilities has
5 recommended granting the easement; NOW, THEREFORE,

6 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

7 Section 1. The General Manager and Chief Executive Officer (CEO) of Seattle Public
8 Utilities or the CEO's designee is authorized to execute for and on behalf of The City of Seattle a
9 Stormwater Maintenance and Operation Agreement with the State of Washington, substantially
10 in the form of Attachment 1 to this ordinance.

11 Section 2. Upon receipt of payment in the amount of \$6,100, the CEO of Seattle Public
12 Utilities or the CEO's designee is authorized to execute for and on behalf of The City of Seattle
13 an easement with the State of Washington, substantially in the form of the Easement for Access
14 and Stormwater Treatment Facility, attached to this ordinance as Exhibit B to Attachment 1,
15 granting a non-exclusive easement for access to and maintenance of stormwater facilities on
16 City-owned Tax Parcel 0323049223.

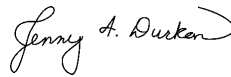
1 Section 3. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 7th day of _____ December, 2020,
5 and signed by me in open session in authentication of its passage this 7th day of
6 _____ December, 2020.



7 _____
8 President _____ of the City Council

9 Approved by me this 11th day of December, 2020.



10 _____
11 Jenny A. Durkan, Mayor

12 Filed by me this 11th day of December, 2020.



13 _____
14 Monica Martinez Simmons, City Clerk

15 (Seal)

16
17
18 Attachments:
19 Attachment 1 – Stormwater Maintenance and Operation Agreement

Attachment 1

GMB 1119

I-5 MLK-Norfolk Water Quality Treatment Maintenance and Operation

This Agreement is made and entered into between the Washington State Department of Transportation, hereinafter “WSDOT,” and the City of Seattle, hereinafter the “City,” collectively as the “Parties” and individually as the “Party.”

RECITALS

1. The City owns, maintains and operates the I-5 MLK-Norfolk Water Quality Treatment Pond, hereinafter the “SPU Stormwater Facility,” as shown on Exhibit A, Page 2 (approximately).
2. WSDOT owns, maintains and operates two (2) Interstate 5 (I-5) drainage cross culverts, one 48-inch diameter and one 24-inch diameter, hereinafter the “WSDOT Culverts,” located on WSDOT I-5 limited access right of way, as shown on Exhibit A, Page 2 (approximately). The Parties agree WSDOT shall continue to maintain and operate these two WSDOT Culverts, which drain into the SPU Stormwater Facility.
3. WSDOT constructed a stormwater pond, hereinafter the “WSDOT Stormwater Pond,” located north of the WSDOT Culverts and the SPU Stormwater Facility, as shown on Exhibit A, Page 2 (approximately). The WSDOT Stormwater Pond was built in part on WSDOT I-5 limited access right of way that runs alongside Southbound I-5 and in part on City right of way that lies west of WSDOT I-5 limited access right of way.
4. An access road with gate is adjacent to the westernmost lane of Southbound I-5 at Milepost 158.35 (approximately), hereinafter the “I-5 Access Road/SPU Access Road” and the “WSDOT I-5 Access Gate,” as shown on Exhibit A, Page 2.
5. The Parties agree WSDOT shall maintain and operate the WSDOT Stormwater Pond and the WSDOT Culverts.
6. The Parties agree the City shall maintain and operate the SPU Stormwater Facility.
7. WSDOT has asked the City to grant an easement to WSDOT through City right of way for the purpose of WSDOT’s maintenance and operation of the stormwater facilities that are the responsibility of WSDOT, as shown on Exhibit B. WSDOT has requested that the City grant this easement not later than two (2) years from the date this Agreement is executed. If the City does not, within this two (2) year period, grant WSDOT such an easement or grant WSDOT a substantially similar easement to which WSDOT agrees, then this Agreement will terminate two (2) years from the date this Agreement is executed.

NOW, THEREFORE, pursuant to RCW 47.28.140, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, considerations, covenants and performances contained herein, and the attached Exhibit A and Exhibit B which are incorporated by this reference and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. RELOCATION OF FACILITY

1.1 Upon at least ninety (90) calendar days written notice to the City's representative identified in Section 5 of this Agreement, WSDOT may, at the sole cost and expense of WSDOT, relocate the WSDOT Culverts as necessary to accommodate public works projects or any WSDOT projects in WSDOT I-5 limited access right of way.

2. WSDOT MAINTENANCE AND OPERATION RESPONSIBILITIES

2.1 WSDOT shall, at its sole cost and expense, maintain and operate the WSDOT Stormwater Pond and the WSDOT Culverts.

2.2 WSDOT's "Routine Maintenance" of the WSDOT Stormwater Pond and the WSDOT Culverts shall include cleaning and repair, replacement of any failed structure or component, and repair of any damage to City right of way caused by the maintenance and operation of the WSDOT Stormwater Pond and/or the WSDOT Culverts. Implementation of best management practices (BMPs) to minimize sediment transport, restoration of disturbed native vegetation in-kind, and repair of damage resulting from WSDOT work activities shall be part of routine maintenance in accordance with current practice of WSDOT. WSDOT shall maintain the area within a distance of 15-feet of the culvert outfalls. WSDOT shall notify the City's Representative in writing five (5) working days prior to doing Routine Maintenance of the WSDOT Culverts and/or repairing any damage to City right of way. The Parties may, upon mutual agreement, shorten the five (5) working days notification period in a particular instance. WSDOT is not required to notify the City prior to conducting routine maintenance of the WSDOT Stormwater Pond.

2.3 For WSDOT's major maintenance, repair and/or replacement work of the WSDOT Culverts, not including Routine Maintenance, WSDOT shall provide the City with notification of the need for such work. The City reserves the right to review any damage occurring from a failure of the WSDOT Culverts. WSDOT has the option to determine the method of repair to the WSDOT Culverts or can defer to the City and allow it to do the repair based on current WSDOT maintenance standards at WSDOT's sole cost and expense.

2.4 In the event of an emergency involving the WSDOT Culverts, the WSDOT Stormwater Pond and/or the SPU Stormwater Facility, WSDOT may perform

immediate maintenance and/or repair work without prior notification to the City. If WSDOT performs such emergency work it shall notify the City as soon as reasonably practicable. The City will reimburse WSDOT for the reasonable cost of emergency work for the SPU Stormwater Facility.

3. CITY MAINTENANCE AND OPERATION RESPONSIBILITIES

- 3.1 The City shall, at its sole cost and expense, maintain and operate the SPU Stormwater Facility.
- 3.2 The City's "Routine Maintenance" of the SPU Stormwater Facility shall include cleaning and repair, replacement of any failed structure or component, and repair of any damage to WSDOT I-5 limited access right of way caused by the maintenance and operation of the SPU Stormwater Facility. Implementation of best management practices (BMPs) to minimize sediment transport, restoration of disturbed native vegetation in-kind, and repair of damage resulting from SPU work activities shall be part of routine maintenance in accordance with current practice of the City. The City shall notify WSDOT's Representative in writing five (5) working days prior to repairing any damage to WSDOT I-5 limited access right of way. The Parties may, upon mutual agreement, shorten the five (5) working days notification period in a particular instance. The City is not required to notify WSDOT prior to conducting routine maintenance of the SPU Stormwater Facility.
- 3.3 In the event of an emergency involving the WSDOT Culverts, the WSDOT Stormwater Pond and/or the SPU Stormwater Facility, the City may perform immediate maintenance and/or repair work without prior notification to WSDOT. If the City performs such emergency work it shall notify WSDOT as soon as reasonably practicable. WSDOT will reimburse the City for the reasonable cost of emergency work for the WSDOT Culverts and/or WSDOT Stormwater Pond.

4. RIGHT OF ENTRY

- 4.1 WSDOT grants to the City and its employees, authorized agents, contractors, and/or subcontractors, a right of entry, privilege and permit of ingress and egress onto the I-5 Access Road/SPU Access Road and through the WSDOT I-5 Access Gate, for the purpose of the City's maintenance and operation of the SPU Stormwater Facility and to carry out any other duties specified for the City in this Agreement.
- 4.2 WSDOT will provide an access for WSDOT and for the City through a dual lock system at the I-5 WSDOT Access Gate. The City agrees that it will permit ingress and egress through the I-5 WSDOT Access Gate only to City-authorized personnel and to WSDOT-authorized personnel.

- 4.3 WSDOT grants to the City and its employees, authorized agents, contractors, and/or subcontractors, a right of entry, privilege and permit of ingress and egress over, under, upon and across WSDOT I-5 limited access right of way, for the purpose of the City's maintenance and operation of the SPU Stormwater Facility and to carry out any other duties specified for the City in this Agreement.
- 4.4 The City grants to WSDOT and its employees, authorized agents, contractors, and/or subcontractors, a right of entry, privilege and permit of ingress and egress over, under, upon and across City right of way, for the purpose of WSDOT's maintenance and operation of the WSDOT Culverts and the WSDOT Stormwater Pond and to carry out any other duties specified for WSDOT in this Agreement.
- 4.5 A Party shall not be responsible for damage to facilities and/or right of way caused by the employees, authorized agents, contractors and/or subcontractors of the other Party. If a Party causes such damage it will notify the other Party as soon as reasonably practicable and shall pay to repair the damage. The City and WSDOT agree to work together in good faith to agree upon the required repairs.

5. PARTY REPRESENTATIVES

- 5.1 All notification or contact pursuant to this Agreement shall reference GMB 1119 and be directed to the Party representatives or designated representatives, as follows:

City of Seattle	Washington State Department of Transportation
Arnel Valmonte Project Manager Seattle Public Utilities 700 Fifth Avenue, Suite 4900 Seattle, WA 98124 Phone: (206) 615-1438 arnel.valmonte@seattle.gov	Jim McBride Maintenance Superintendent, Area 5 Washington State Department of Transportation 10833 Northup Way NE Bellevue, WA 98004 Phone: (425) 739-3734 MCBRIDJ@wsdot.wa.gov

- 5.2 A Party may designate an alternative representative to the individual listed in Section 5.1 and in this event shall notify the other Party in writing.

6. DURATION AND TERMINATION

- 6.1 The term of this Agreement begins on the date the Agreement is executed.

- 6.2 WSDOT has requested that the City grant an easement to WSDOT through City right of way, as shown on Exhibit B, not later than two (2) years from the date this Agreement is executed. If the City does not, within this two (2) year period, grant WSDOT such an easement or grant WSDOT a substantially similar easement to which WSDOT agrees, then this Agreement shall terminate two (2) years from the date this Agreement is executed.
- 6.3 If WSDOT, pursuant to Section 1.1, relocates the WSDOT Culverts in their entirety to a location outside of City right of way and access to the relocated WSDOT Culverts does not necessitate WSDOT's entry onto City right of way, then the WSDOT Culverts shall no longer be subject to this Agreement.
- 6.4 Except as provided in Section 6.2 and/or Section 6.3, this Agreement may be terminated only if mutually agreed upon by the Parties. Conditions of termination shall be mutually agreed upon in writing and shall not be binding unless signed by persons authorized to bind each of the Parties.
- 6.5 Any termination of this Agreement shall not prejudice any rights or obligations accrued to WSDOT and the City prior to termination.

7. GENERAL PROVISIONS

7.1 Amendment

- 7.1.1 This Agreement may be amended or modified only by the mutual agreement of the Parties except as provided in Section 7.1.2 below. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.
- 7.1.2 Where it is necessary to amend this Agreement due to relocation of the WSDOT Culverts, the Parties shall negotiate any changes in good faith and without delay. Any amendment to this Agreement made as a consequence of relocation of the WSDOT Culverts shall not become effective until signed by persons authorized to bind each of the Parties.

- 7.2 Indemnification and Waiver: Each of the Parties shall protect, defend, indemnify, and hold harmless the other Party and its officers, officials, employees and authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgements, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, that Party's obligations performed or to be performed pursuant to the provisions of this Agreement. No Party shall be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the

Parties, their agents, officials or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials or employees. The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees or agents. For this purpose only, **the Parties, by mutual negotiation, hereby waive**, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. This indemnification and waiver shall survive the termination of this Agreement.


7.3 Disputes and Venue

- 7.3.1 In the event a dispute arises under this Agreement, WSDOT and the City representatives shall work in good faith to resolve the matter as expeditiously as possible.
- 7.3.2 If the Parties cannot reach a resolution, the City and WSDOT shall each appoint a member to a Disputes Board. These two members shall select a third member not affiliated with either Party, who shall serve as chairman, to serve on the Disputes Board. The three-members of the Disputes Board shall conduct a dispute resolution hearing that shall be informal and unrecorded and shall furnish a written decision which shall not be binding on the Parties. The Parties agree that this disputes process must be followed before filing any litigation concerning the dispute. Each Party shall be responsible for its own attorney fees and costs, and each Party agrees to pay one-half of all expenses of the third board member.
- 7.3.3 In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceeding shall be brought in the Superior Court situated in Thurston County, Washington. Further, the Parties agree that each will be solely responsible for payment of their own attorneys' fees, witness fees, and costs.
- 7.4 Records and Audit: All records for maintenance, operation and/or repair work done pursuant to this Agreement shall be held and kept available for a period of six (6) years from the date of this Agreement's termination for inspection and audit by WSDOT, the City and the Federal government. Each Party shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should a Party require copies of any records from the other Party, the requesting Party agrees to pay the reasonable costs thereof. In the event of litigation or claim arising from the performance of this Agreement, the City and WSDOT agree to maintain the records and accounts until such litigation, appeal or claims are finally resolved. This section shall survive the termination of this Agreement.

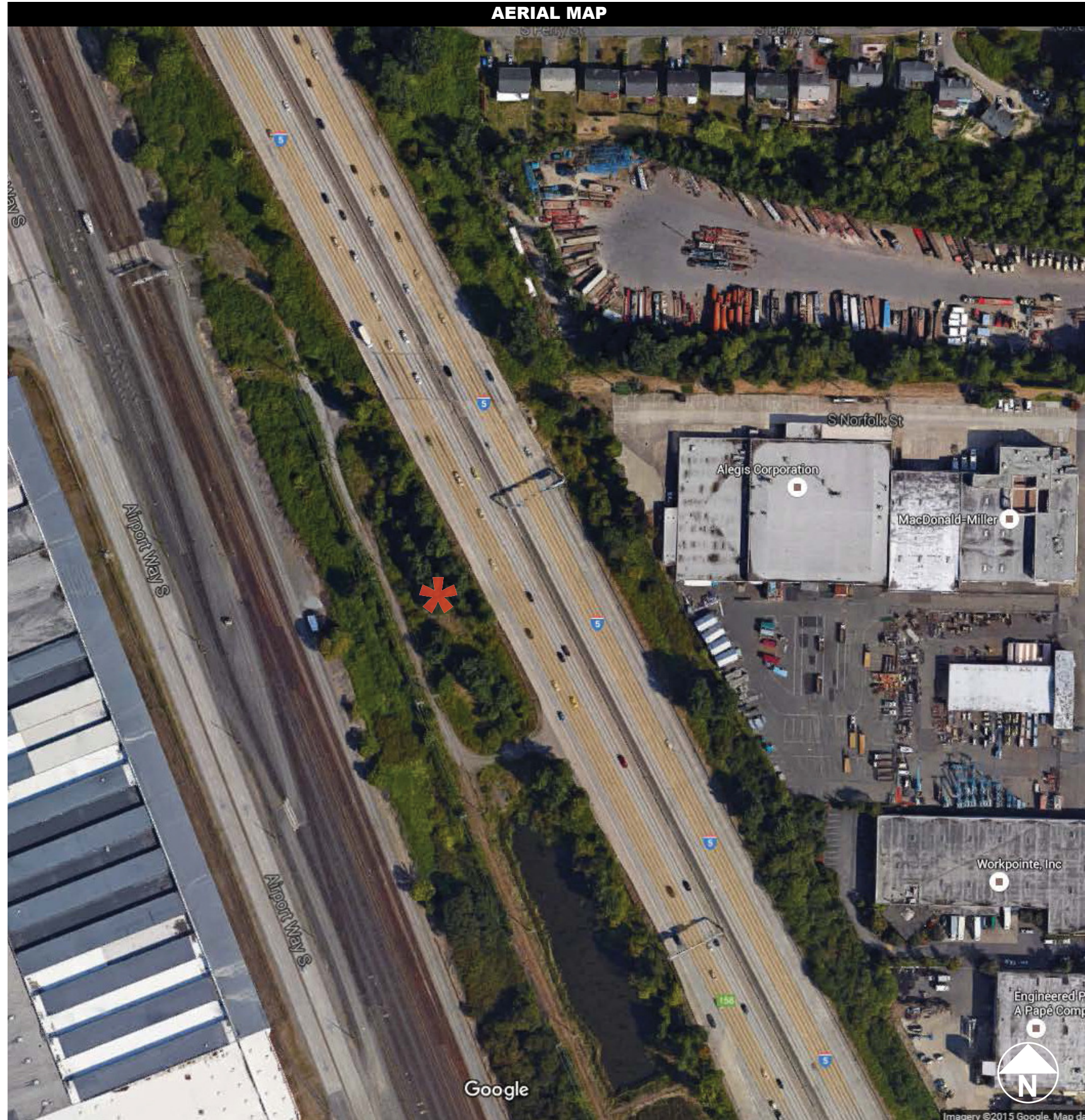
7.5 Calendar Day: Calendar day means any day on the calendar including Saturday, Sunday or a legal local, state, or federal holiday.

7.6 Working Day: Working day means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

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

City of Seattle	Washington State Department of Transportation
<u>Sign and Date:</u>	<u>Sign and Date:</u>
Name: Title:	Dave McCormick Assistant Regional Administrator Maintenance Operations – NW Region
Approved as to Form City of Seattle	Approved as to Form Washington State Department of Transportation
<u>Sign and Date:</u>	<u>Sign and Date:</u>  8/26/2020
Name: City Attorney	Mark Schumock Assistant Attorney General

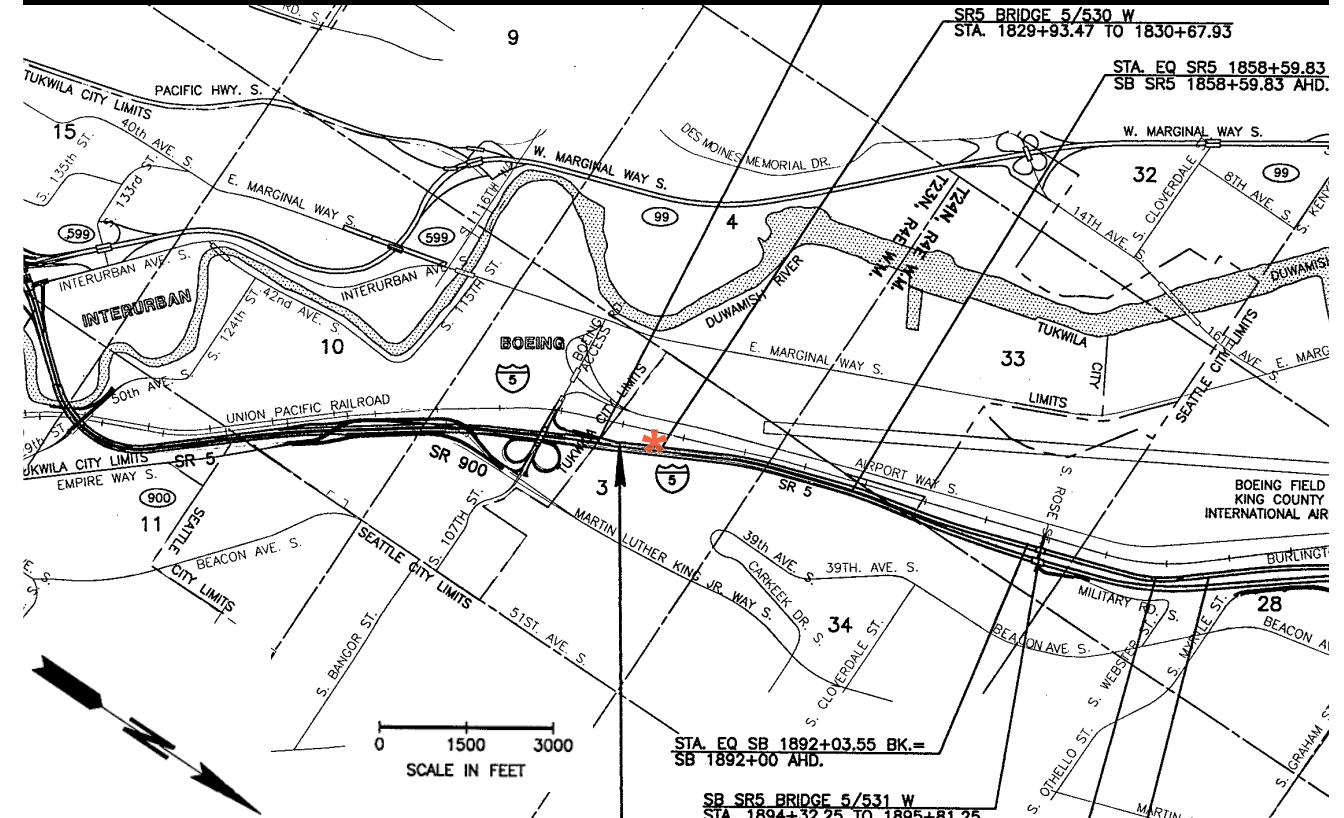
AERIAL MAP

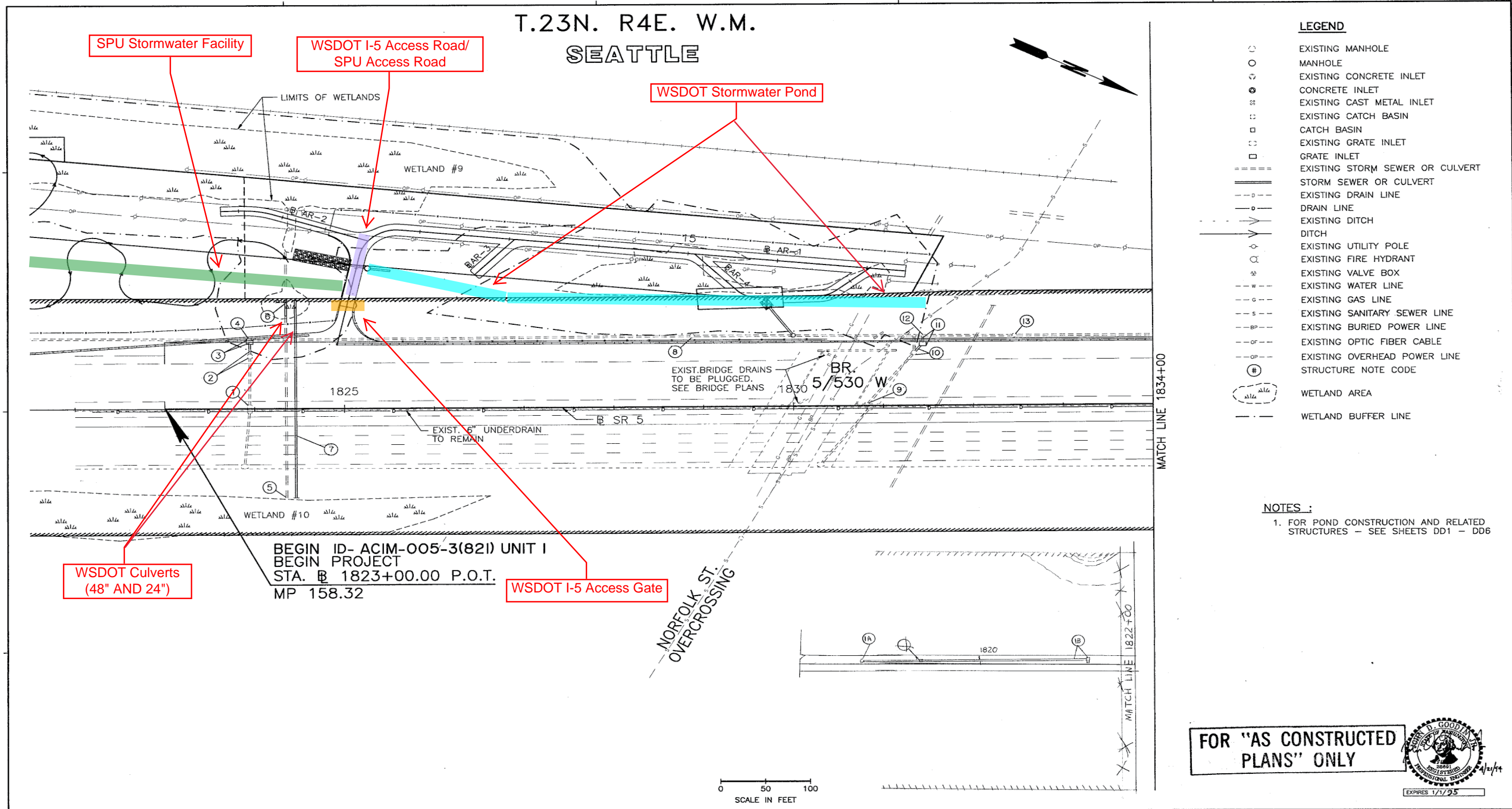


SITE INFORMATION

LOCATION:	SR 5 MP 158.5
FACILITY TYPE:	COMBINED WET/DETENTION POND
MAINTENANCE RESPONSIBILITY:	WSDOT
DESIGN:	OL-1859 CONSTRUCTION: 014536 JOB NUMBER: 94W073
HYDRAULIC REPORT:	TBD
MODIFIED BY:	N/A
SITE DESCRIPTION:	THIS IS A 2-CELL FACILITY PROVIDING SEDIMENT REMOVAL, DETENTION, AND WATER QUALITY TREATMENT FROM A BIOSWALE. THE CELLS ARE SEPARATED BY EARTHEN BERMS AND ALL CELLS HAVE A GEOSYNTHETIC CLAY LINER. THIS FACILITY DOES NOT HAVE A GRAVITY DRAIN NOR A SEDIMENT GAGE.
AS-BUILT FIELD VERIFICATION:	7/12/2016
SURVEY BENCH MARK:	LID OF THE INLET CONTROL STRUCTURE
DISCLAIMER:	<ul style="list-style-type: none"> NOTIFY MAINTENANCE SUPERVISOR IF THE BMP IS NOT CHARACTERISTIC OF THIS OWNER'S MANUAL TO FACILITATE MAINTENANCE ACTIVITIES. CONTACT MAINTENANCE SUPERINTENDENT BEFORE ANY MAINTENANCE TAKES PLACE. IF SENSITIVE AREAS OR BUFFERS ARE ADJACENT TO FENCE LINE OR POND BERM, CONTACT NW REGION ENVIRONMENTAL PROGRAM MANAGER OR MAINTENANCE AREA BMP LEAD TECH PRIOR TO STARTING ANY WORK. LET ANY POND WATER SETTLE FOR DISTURBED POND AREAS PRIOR TO DISCHARGING. FOR PONDS WHERE RISK OF OVER TOPPING EXISTS, WATER MAY NEED TO BE TREATED BEFORE DISCHARGE. GRAVEL FILTERS ARE TO BE PROTECTED FROM TURBID WATER DURING MAINTENANCE WORK. FOLLOW REQUIREMENTS FOR CONSTRUCTION TESC.

VICINITY MAP





SR JOB NO. SHEET PLOTTING DATE : 04/19/04

DESIGNED BY:	DATE	REVISION	BY
A. ZEHNI	04/94		
S. STEINMETZ / T. BUI	04/94		
D. GOODIN	04/94		
S. L. EVERETT			
R. O. ANDERSON			

REGION NO.	STATE	FED. AID PROJ. NO.	SHEET NO.	TOTAL SHEETS
	WASH			
JOB NUMBER		ACIM-005-3(821)		
94W073		ID-005-3(821)		
CONTRACT NO.		UNIT I		
BY		4576		

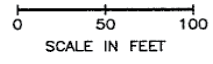
PROGRAM DEVELOPMENT DIVISION

Washington State
Department of Transportation

PARSONS BRINCKERHOFF

SR 5
TUKWILA TO LUCILE ST.
HOV AND SC & DI-STAGE 1
DRAINAGE/UTILITY PLAN
STA. 1822+00 TO STA. 1834+00

DR1
SHEET 81 OF 501 SHEETS



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: The City of Seattle, Seattle Public Utilities Department

Grantee: State of Washington, Department of Transportation

Legal Description: Ptn S¹/₂ of the NW¹/₄ of Section 3, T23N, R4E, WM, King County

Additional Legal Description is on Page 10 of Document

Assessor's Tax Parcel Number: Ptn 032304-9223

EASEMENT for ACCESS & STORMWATER TREATMENT FACILITY

State Route 5, South 126th St. to Norfolk St.

This EASEMENT for ACCESS & STORMWATER TREATMENT FACILITY ("Easement") is made this ____ day of _____, 2020, by and between The City of Seattle, a municipal corporation of the State of Washington, acting by and through its Seattle Public Utilities Department ("City"), and the State of Washington, acting by and through its Department of Transportation ("State").

RECITALS

Whereas, the City owns a parcel of land adjacent to Interstate 5 north of the Boeing Access Road which was purchased in 1993 to address the needs of the City's South Norfolk Street Drainage Project (authorized by City of Seattle Ordinance 116785) and the State's Tukwila to Lucile St. HOV and SC & DI Stage 1 complimentary drainage projects, and

Whereas, time was of the essence, the City granted the State a Construction Permit to proceed with construction of stormwater facilities while continuing to negotiate the terms of the Participating Agreement GC10284 between the City and the State, and

EASEMENT

Whereas, the City and State attempted to reach agreement on the construction and maintenance details of said joint drainage project, agreement was never reached and no property was transferred by the City to the State, and

Whereas, the State proceeded to install the stormwater facility necessary for their Tukwila to Lucile St. HOV and SC & DI Stage 1 project on the parcel purchased by the City as well as on property owned by the State within the limited access of Interstate 5 based on the CONSTRUCTION PERMIT previously granted to the State by the City, and

Whereas, the City and the State have agreed that the most advantageous solution to the State's stormwater facility on City property and limited access State owned property is the sale of an easement for the existing stormwater facilities, and

Whereas, the City and the State have agreed to a joint Maintenance Agreement under GMB 1119, and

NOW THEREFORE, for and in consideration of SIX THOUSAND ONE HUNDRED AND NO/100 Dollars (\$6,100.00), and the mutual covenants and agreements hereinafter set forth herein, and other valuable consideration, it is agreed by and between the parties hereto as follows:

A. EASEMENT GRANT AND AGREEMENT

1. Subject to the purpose, terms, conditions, and restrictions herein described, the City hereby grants and conveys to the State a nonexclusive easement for the operation and maintenance of existing State stormwater facilities, upon, under and across that portion of the City's parcel, as legally described in Exhibit A (the "Easement Area") and depicted in Exhibit B, attached hereto, including the rights of ingress and egress to the Easement Area across the areas shown in Exhibit B. The State acknowledges it has had the opportunity to access and inspect the Easement Area and the entire City parcel, including the areas for ingress and egress, and that the City makes no representations or warranties, express or implied, including without limitation, any fitness for a particular purpose, all such warranties being hereby expressly denied with respect to the Easement Area and the City's parcel. Accordingly, the State accepts the Easement Area, including the rights of ingress and egress, in its "As, Is, Where Is, and With All Faults" condition.

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2. All references to the City's activities or use of any property owned or controlled by the City including the Easement Area, shall also apply to City successors, assigns, officers, employees, agents, consultants, contractors, representatives, invitees or licensees.
3. All references to the State's activities or use of the Easement Area shall also apply to its successors, assigns, officers, employees, agents, consultants, contractors, representatives, invitees or licensees.

B. RIGHTS RESERVED BY THE CITY

1. City shall have the right to install, repair, replace, maintain, operate and make lateral connections to any of its existing or future drainage facilities and appurtenances, electrical transmission and distribution facilities, or other City improvements within said easement area.
2. City shall not be liable for the relocation or repair of State's stormwater facilities, or other State improvements within the Easement Area by reason of such work or operations or for damage to roadway, stormwater facilities or other State improvements within said easement area, except where such damage is caused by the sole or comparative negligence of the City, its agents or employees.
3. City reserves the right to grant or deny permission to use or occupy the Easement Area for any other purpose, including use by State or other utility agencies; provided that such use or occupancy shall not unreasonably conflict with the purposes herein granted.

C. STATE'S USE OF THE EASEMENT AREA

1. State shall be responsible for the maintenance of State's stormwater facilities within the Easement Area, which shall be at no cost or expense to City.
2. The use of the Easement Area by the State shall in no way interfere with present or future use of said property by City for drainage or water lines or facilities, overhead or underground electrical transmission or distribution facilities, or for other City purposes.
3. The Easement Area is for the purpose of operating and maintaining an existing stormwater facility designed and constructed by State.

EASEMENT

4. State has the right to use the existing roadway for ingress and egress to the Easement Area. Use of the existing roadway by State includes restoration to its condition prior to any construction or maintenance activities by State.
5. State shall access the Easement Area via their existing access point from Interstate 5 at approximately Highway Engineer's Station HES 2749+50.
6. State shall be responsible for the maintenance of the gate and all associated costs at the State's access point from Interstate 5 at approximately Highway Station HES 2749+50. Said access point, which also serves Seattle City Light and Seattle Public Utilities, shall be gated and locked when not in use. If ramp and/or lane closure is necessary during the use of this access, or for the City's maintenance schedule, a Traffic Control Plan shall be approved by the State before commencing.
7. State shall acquire no right or interest in the Easement Area, or to the occupancy of same, or any part thereof, other than as herein described.
8. Before undertaking any construction, repair or maintenance of the roadway or stormwater facilities, plans and specifications must be submitted to and approved in writing by Seattle Public Utilities.
9. This easement specifically does not allow any City utility infrastructure within the Easement Area to be altered, moved, or adjusted, unless plans and specifications have been submitted to and approved in writing by Seattle Public Utilities, any other City Department, or other entity already operating infrastructure within the Easement Area. If approved, all alterations, moving or adjusting of infrastructure shall be paid for by the State or its agents or its permittees.
10. The City has the right to stop work or modify any approved plans, if the City determines that work is not being performed as approved, there is a safety issue, or that City facilities or the facilities of others are at risk.
11. No City approval contemplated by this Agreement may be taken as an assumption of liability or a representation that any submission is in compliance with any applicable laws, standards, or regulations.

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D. COMPLIANCE WITH LAWS AND REGULATIONS

1. The use of the Easement Area is subject to all applicable rules, regulations and laws governing the construction, operation and maintenance of such use, including environmental laws.
2. Purpose, terms, conditions, and restrictions herein described shall not be construed to replace or to be used in lieu of any permit or licenses which may be required, granted or supervised by any agency or subdivision of government with jurisdiction over State's facilities.

E. UTILITIES IN THE EASEMENT AREA

1. In addition to the purposes of this Agreement, other public utilities may be allowed in the Easement Area by City permit, subject to plans and specifications being submitted to and approved in writing by Seattle Public Utilities. Approval shall not be unreasonably withheld. Public utilities are defined as governmental or quasi-governmental entities or legally registered companies providing public utility services. Seattle Public Utilities will charge its then applicable fees for the permit, including administration of the application and writing the permit, plan review, and operational oversight of the proposed installation.
2. Utility agencies must restore the roadway and Easement Area at the time of the utility installation. Restoration shall be only as approved by both the City and State, and to the specifications of any agency or subdivision of government having jurisdiction.

F. RELEASE AND INDEMNIFICATION

1. State shall defend, indemnify and hold harmless City, City's officials, employees, agents, and representatives from and against any and all claims, liens, demands, actions, costs, losses, expenses, harm, damages, and liability of any kind or character asserted or arising from, on account of, or in connection with: (a) State's exercise of its rights and obligations under this Agreement, (b) the acts or omissions of State (and State's officials, employees, agents, consultants, contractors, representatives, or licensees in or upon the Easement Area), or (c) any damage to or failure of the roadway, storm drain or other State improvements resulting in any damage or injury to any person or property, or any interest of any person or entity whatsoever; provided however, nothing herein shall require State to so indemnify and hold

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harmless City to the extent of the negligence or other fault on the part of the City, its officials, employees, agents, consultants, contractors, representatives or licensees.

2. State agrees to maintain compliance with any and all environmental laws and not to cause or permit the Easement Area to become contaminated with any hazardous substances in violation of such environmental laws. In the event that any property becomes contaminated as a result of the use of the Easement Area by State, its officials, employees, agents, consultants, contractors, representatives, licensees, invitees or visitors, State agrees to clean up and remediate damage to such property and to bring it into compliance with all applicable environmental laws. State agrees to indemnify, release and hold harmless the City from any environmental liability which may arise out of, result from, or be related to the past, present, or future contamination of the Easement Area by State, its officials, employees, agents, consultants, contractors, representatives, licensees, invitees or visitors. For purposes of this paragraph, "environmental laws" shall mean any local, state or federal law, regulation, ordinance, order or other source of law, now or hereafter in effect relating to the protection of human health or the environment including, but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of 1980; the Federal Water Act of 1977; the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any regulations promulgated thereunder from time to time.
3. Any and all damage or injury done to the Easement Area, City municipal utility facilities, or existing facilities of others, resulting from construction in, and the use of, the Easement Area by State or its agents or its permittees, for the Purposes described in this Easement, must be repaired to the City's and/or other facility owner's satisfaction within thirty (30) days of the occurrence of such damage or of notification to State by the City or other facility owner of the existence of such damage, at the sole cost and expense of State or its agents or its permittees. State

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agrees to require an insurance policy of any of its permittees, in an amount adequate to cover any and all damages to the Easement Area during the construction phase, not less than \$1 million.

- 4. If State, or its agents or its permittees, has not corrected, or made an acceptable agreement with City to correct any condition caused by State, or any responsible agents or permittees, that the City determines as unacceptable within thirty (30) days of notification by City, City may perform such work, and all reasonable costs incurred shall be paid by State, or any responsible agents or permittees, within 30 days of receipt of an invoice for the work. City may act immediately for conditions which pose a threat to public health, safety or the environment. Any late payments will be charged 1% per month interest.

G. GOVERNING LAW

- 1. This Agreement shall be construed and governed under Washington Law. Venue for any action between the parties arising from the subject matter of this Agreement will be in King County Superior Court at Seattle.

H. SEVERABILITY

- 1. If any provision of this Agreement is found to be invalid, the remainder of the provisions of this Agreement that are not materially altered or invalidated shall remain in full force and effect.
- 2. This Agreement, and each of the terms, provisions, conditions and covenants herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

I. CONTACTS

CITY OF SEATTLE – SEATTLE PUBLIC UTILITIES: (206) 386-1800

STATE – DEPARTMENT OF TRANSPORTATION: (425) 739-3734
 (Area 5 Maintenance)

EASEMENT

It is understood and agreed that delivery of this Easement is hereby tendered and that the terms and obligations hereof shall not become binding upon the State of Washington unless and until accepted and approved hereon in writing for the State of Washington, by and through its Department of Transportation, by its authorized agent.

Dated _____, 2020

THE CITY OF SEATTLE

By: _____
Mami Hara, General Manager and Chief
Executive Officer, Seattle Public Utilities

This deed is executed and delivered pursuant to City of Seattle Ordinance _____.

Accepted and Approved

STATE OF WASHINGTON,
Department of Transportation

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

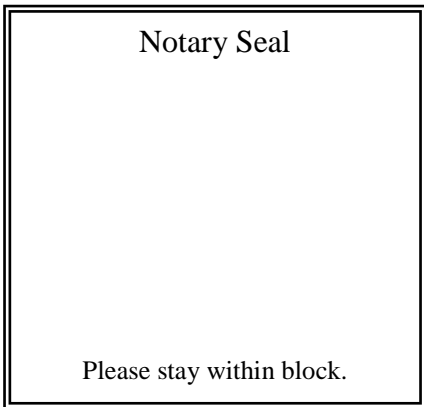
Date: _____

EASEMENT

STATE OF WASHINGTON)
 : §
County of King)

On this _____ day of _____, 2020, before me personally appeared MAMI HARA, known to me to be the General Manager and Chief Executive Officer of Seattle Public Utilities of the City of Seattle, the municipal corporation named in and which executed the within and foregoing document, and stated on oath that she was authorized to execute the foregoing document on behalf of said municipal corporation and signed the same as the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned.

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



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

EASEMENT

EXHIBIT A

All that portion of the hereinafter described PARCEL "A" lying within a tract of land beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 2748+26.85 on the SR 5 line survey of SR 5, South 126th St. to Norfolk St., and 140 feet southwesterly therefrom; thence southwesterly to a point opposite said HES 2748+26.85 and 252 feet southwesterly therefrom; thence northwesterly through equation P.O.T. 2754+86.9 BACK = P.O.T. 1830+50.05 AHEAD to a point opposite HES 1831+14± on said line survey and 179.33 feet southwesterly therefrom, said point lying on the northerly property boundary line of said PARCEL "A"; thence easterly along said northerly property boundary line to a point opposite HES 1830+93± on said line survey and 142.15 feet southwesterly therefrom, said point being the northeast corner of said PARCEL "A"; thence southeasterly along the easterly line of said PARCEL "A" to a point opposite HES 2754+50 on said line survey and 140 feet southwesterly therefrom; thence continuing southeasterly along the easterly line of said PARCEL "A" to the point of beginning.

PARCEL "A"

That portion of the south half of the northwest quarter of Section 3, Township 23 North, Range 4 East, W.M., in King County, Washington, lying easterly of the O & W Railroad (now Union Pacific Railroad) right of way, south of the south margin of South Norfolk Street, and southwesterly of Primary State Highway No. 1 (now SR 5).

The lands herein described contain an area of 54,258 square feet, more or less, the specific details concerning all of which are to be found on sheet 5 of that certain plan entitled SR 5, South 126th St. to Norfolk St., now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval March 13, 1962, revised August 30, 2019.

Grantor's Initials

