

Fall City Metropolitan Park District (FCMPD)

Otak # 32649

# Technical Memorandum #11



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**Subject:** Right of Way and Easement Requirements

**By:** Mark Cole, PE

**Date:** December 31, 2019

This design memorandum presents criteria, recommendations, and other relevant information for project consideration on the above referenced subject.

## **Acknowledgement:**

Significant discussion and agency comments during review are incorporated and reflected by date-revision, when shown. Information presented herein represents final concurrence and direction on referenced subject.

<u><b>Otak</b></u>	<i>initials</i>
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Kirk Harris, Commissioner	

## **Introduction**

The purpose of this technical memorandum is to present existing conditions and right-of-way and easement requirements and recommendations for the Fall City Metropolitan Park District (the District) to construct a paved trail within SR 202 right of way.

## **Additional Relevant Documents (Attached)**

- WSDOT Standard Trail Lease Agreement, version dated January 2017
- Legal Description, for lease agreement, by Otak dated August 2017

## **Existing Conditions**

The trail is proposed to be located within the existing SR 202 right of way extending from SE 40<sup>th</sup> Street (approximate Fall City limit line) easterly approximately 0.9 miles to the SE 42<sup>nd</sup> Street/334<sup>th</sup> Place SE intersection. Based on County assessor's data and available right-of-way maps, the existing SR 202 right-of-way is 50 feet each side of its centerline which, within the project limits, closely follows the center of the existing SR 202 pavement. Additionally, excluding the proposed trail terminus' at SE 40<sup>th</sup> Street and 334<sup>th</sup> Place SE, there are five public right-of-way street crossings as well as one private street crossing (to

Chief Kanim Middle School) that extend southerly from the existing SR 202 right of way. These streets and right of way widths are:

- **SE 40<sup>th</sup> Street:** 60-foot total right-of-way (King County DOT)
- **323<sup>rd</sup> Avenue SE:** 60-foot total right-of-way (King County DOT)
- **324<sup>th</sup> Avenue SE:** 60-foot total right-of-way (King County DOT)
- **Chief Kanim Middle School:** 30-foot private road easement (Snoqualmie Valley SD)
- **328<sup>th</sup> Street SE:** 30-foot right-of-way (Un-opened - King County DOT) -
- **332<sup>nd</sup> Avenue SE:** 40-foot total right-of-way (King County DOT)
- **334<sup>th</sup> Place SE:** 60-foot total right-of-way (King County DOT)

The proposed trail's east end at 334<sup>th</sup> Place SE terminates at its intersection with SE 42<sup>th</sup> Street. This intersection is located entirely to the south, but very close, to the edge of existing SR 202 right of way and the northerly and easterly legs each extend to form additional intersections with SR 202.

### **Proposed Right of Way and Easement Requirements**

Washington State Department of Transportation (WSDOT), authority having ownership of the SR 202 right-of-way, requires obtaining a trail lease agreement to allow constructing the trail facility within their right-of-way.

Additionally, the east end of the proposed trail will terminate at 334<sup>th</sup> Place SE, outside WSDOT's right-of-way. This location in addition to necessary curb/pavement reconstruction associated with trail crossings at other public street intersections involve construction beyond SR 202 within public right of way owned by King County. Permit approval from King County will be required although no additional right of way or easements are anticipated being necessary in these areas.

The proposed preliminary trail crossing at the existing Chief Kanim Middle School street-entry anticipates some curb/pavement reconstruction beyond SR 202 right of way. This primary drive entry to the school is a private street within a road easement owned by the Snoqualmie Valley School District. No right of way or easements are anticipated however it will be necessary to obtain approval from the School District to perform construction within the existing road easement. In addition to this private street crossing, the proposed trail will cross thirteen (13) driveways from private properties having direct access onto SR 202. The driveway portion within the SR 202 right of way at each trail crossing will be reconstructed and based on the preliminary design no temporary construction easements (TCE) appears to be needed. However, this needs to be confirmed early during final design of required grading limits. This may reveal needing to obtain a small TCE from one or more properties.

### **WSDOT Trail Lease Agreement**

Based on discussions with WSDOT, a trail lease agreement would be completed following WSDOT's review and approval of proposed design/improvements. This agreement, which provides for indicating the term of the lease, maintenance responsibilities, and stipulates other requirements and commitments between the District and WSDOT is required to be fully executed prior to constructing the trail (standard agreement attached).

The following steps are necessary in completing the lease agreement:

- A J-Account (JA, WSDOT billable account) and funds committed for design review/approval must be established (estimated as approximately \$15,000).
- Submit final design plans for WSDOT's design group for review/comments (a completed "Draft" lease agreement can also be submitted to WSDOT's Real Estate Services Group at this time to begin lease term discussions).
- Edit/revise trail design plans and respond to WSDOT design group's comments.
- Receive design plan approval and finalize details of the lease agreement.
- Complete and obtain a fully executed agreement (prior to project bid advertisement for constructing the improvements).

A legal description, for use in the lease agreement and to define the limits of the proposed trail improvements, has been prepared (attached). It is anticipated that obtaining a fully executed agreement from WSDOT may take up to 12-months or more once beginning discussions. The terms of the agreement (and District obligations) begin upon execution of the lease agreement regardless of when the trail's construction is actually completed.

## **Conclusions and Recommendations**

- Early after beginning final design, confirm extent of preliminary improvements (and update plans, if necessary); complete a preliminary drainage report, (to WSDOT requirements); and submit plans/report to WSDOT's design section for review/comment and approval.
- Establish J-Account (JA) with WSDOT when beginning final design to facilitate WSDOT's review/coordination on the design documents and lease agreement terms.
- Recommend having the District's legal-council formally review WSDOT's standard lease agreement and subsequently submit a completed draft agreement to WSDOT's real estate group to begin discussing the terms of the lease. (Submittal to WSDOT should closely follow submittal of design plans).
- Contact Snoqualmie Valley School District to discuss project, need for improvements, and required approval process to working within existing road easement.
- Individual driveway crossing and grading limits should be further evaluated during final design to confirm if any locations may require obtaining a TCE from the property owner.
- Use of Recreation and Conservation Office (RCO) funds can sometime impact future WSDOT projects and it is recommended to confirm with WSDOT if, under the terms of the lease agreement, RCO grant funding would be prohibited for use in constructing the trail.
- Because the lease agreement obligates the District upon its execution regardless of when trail is constructed, it is recommended that the agreement not fully be executed until all construction funding is secured (or can be reasonable expected).

Exhibit \_\_\_\_

**Significant Discussion Topics during Agency (Client) Memorandum Review**

The below summary represents relevant discussion occurring during agency memorandum review in validating presented information and incorporating memorandum changes to reflect final agency direction.

*[To be completed at time of final concurrence]*

Lease No.:  
I.C. No.:  
Parcel No.:  
Fed. Aid No.:  
Project:

**MASTER TRAIL LEASE INSTRUCTIONS**  
**JANUARY 2017 VERSION**

Please note that all “V” symbols followed by a number indicate an area that requires specific information added by the Property Management Specialist drafting this Lease. Additional fields requiring specific information are denoted by parenthesis and/or underlines.

For example, “V1” requires that the Property Management Specialist fill in the Rental Agreement number, “V2” requires the Inventory Control Number, “V3” requires TENANT’s legal name, etc.

## TRAIL LEASE

THIS IS A TRAIL LEASE made and entered into by and between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (hereinafter WSDOT), and V3 (hereinafter TENANT);

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

WHEREAS, the TENANT desires to construct, operate, and maintain a trail segment under this Lease as part of the TENANT's local comprehensive trail plan and/or a state or federal comprehensive trail plan as an interim use until the land and premises to be leased are needed for a highway purpose; and

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

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

**1. PREMISES.** WSDOT leases to TENANT, and TENANT hereby leases from WSDOT, the premises (Premises) located V4 and known to be a portion of the highway right of way of V5, sheet V6 of V7 sheets, and as further described and/or shown hachured on **Exhibit A**, attached hereto and by this reference incorporated herein.

**2. USE OF PREMISES.**

A. No use other than construction, operation, and maintenance of a public pedestrian, bicycle, and other non-motorized vehicle trail under the control of TENANT is permitted without the prior written approval of WSDOT. TENANT expressly agrees that it will not charge others to use the Premises. No motorized vehicles will be allowed on the Premises except for TENANT's maintenance vehicles and emergency vehicles responding to an emergency on the Premises. In using the Premises, TENANT shall comply with all statutes, policies, and regulations, including, but not limited to the Scenic Vistas Act, RCW 47.42 et seq. and WAC 468-66 et seq., heretofore adopted or hereafter promulgated by WSDOT or the state legislature relative to the location, operation, and maintenance of improvements located on the Premises. No access to the Premises will be constructed or allowed to be constructed by or for TENANT without WSDOT's prior written approval. Direct access to ramps or traveled lanes of state highways is not permitted. All grading and construction plans and any changes thereof are subject to approval by WSDOT.

B. TENANT will not allow third parties to use the trail as access to private property or improvements. Furthermore, in using the Premises, it is expressly agreed that TENANT shall:

(1) comply with all applicable federal, state, and local laws, ordinances, and regulations, including environmental requirements that are in force or which may hereafter be in force; and

(2) secure all necessary permits and licenses for the uses of the Premises authorized in this Lease. TENANT hereby agrees to indemnify, defend and hold harmless WSDOT from all claims or suits resulting from TENANT's failure to comply with such requirements.

C. No signs, other than directional signs or that sign further described herein, are permitted. WSDOT owned fences in place at the time of execution of this Lease or relocated to separate the Premises from the traveled roadway will be maintained by WSDOT. Nothing is to be attached to WSDOT's fence without prior written approval. If any fence is damaged as a result of the activities authorized by this Lease, TENANT will promptly repair such damage at its cost to WSDOT's satisfaction.

D. Within thirty (30) calendar days of occupancy, TENANT at its sole expense shall erect and maintain a permanent sign at all entrances to the Trail located on WSDOT right of way, stating as follows:

*"This trail is located on highway right of way under a cooperative agreement between \_\_\_\_\_ and the Washington State Department of Transportation."*

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

**3. TERM.** The term of this Lease is \_\_\_\_\_ years, COMMENCING ON THE DATE OF EXECUTION OF THIS LEASE BY WSDOT (Commencement Date).

**4. RENEWAL.** Upon expiration of the initial term, this Lease may be renewed by TENANT for \_\_\_\_\_, (Renewal Period), at the discretion of WSDOT; provided that, (A) TENANT is not in default and has not been in default during the term of this Lease; (B) the property is not needed for a priority transportation purpose, as determined by WSDOT; (C) 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 (D) the terms and conditions of this Lease conform to then-existing state policies or practices, laws, regulations, and contracts, or provided, TENANT is willing to amend this Lease to bring it into compliance with such policies, practices, laws, regulations, and contracts. The Renewal Period shall be on the same terms and conditions as set forth herein, except as modified by any changes in policies, practices, laws, regulations, or contracts and as reflected in a written amendment signed by both parties. TENANT shall give written notice of its intent to renew this Lease for the Renewal Period(s) not less than ninety (90)

calendar days, but not more than six (6) months, prior to the expiration of the Lease, or any extension thereof.

**5. TERMINATION BY WSDOT.**

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

- (1) immediately, upon the unauthorized assignment of this Lease by TENANT;
- (2) upon not less than thirty (30) calendar days' prior written notice, for failure of TENANT to provide acceptable As-Built drawings to WSDOT within \_\_\_\_\_ ( ) calendar days of the date of completion of the trail construction; acceptability of the As-Built drawings shall be determined solely by WSDOT;
- (3) upon not less than thirty (30) calendar days' prior written notice, if TENANT defaults on any provision in this Lease and is notified by WSDOT of the default two (2) times within a six (6) month period. The third default shall be deemed "non-curable";
- (4) upon not less than thirty (30) calendar days' prior written notice to TENANT, if TENANT defaults, and fails to cure such default within that thirty (30) day period, or such longer period, as may be reasonably determined by WSDOT, if TENANT is diligently working to cure the default. Waiver or acceptance of any default of the terms of this Lease by WSDOT shall not operate as a release of TENANT's responsibilities for any prior or subsequent default;
- (5) immediately, if TENANT's insurance coverage as required herein lapses for any reason. In such event, WSDOT may, at its option, barricade access to the Premises;
- (6) immediately, upon issuance of any court order, legislative action, or governmental agency action having jurisdiction to take such action, which would significantly impair or effectively prohibit TENANT's use of the Premises;
- (7) immediately, upon written notice, if a receiver is appointed to take possession of TENANT's assets, TENANT makes a general assignment for the benefit of creditors, or TENANT becomes insolvent or takes or suffers action under the Bankruptcy Act;
- (8) upon not less than \_\_\_\_\_ ( ) calendar days' prior written notice, if WSDOT determines that it is in the best interest of WSDOT to terminate this Lease;
- (9) upon not less than thirty (30) calendar days' prior written notice if the Premises has been abandoned, in WSDOT's sole judgment, for a continuous period of ninety (90) days;



(10) immediately, if a transportation emergency exists as solely determined by WSDOT; or

(11) upon not less than thirty (30) calendar days prior written notice, if TENANT (i) does not begin construction of the improvements, as described in **Section V8** "Use of Premises" herein (or as shown on **Exhibit "\_\_\_"**) within \_\_\_\_\_ ( ) calendar days from the Commencement Date of this Lease; (ii) does not complete the work within \_\_\_\_\_ ( ) calendar days of the beginning of said construction, or (iii) fails to open the trail to the public within \_\_\_\_ ( ) calendar days of completing the trail construction. WSDOT and TENANT may mutually agree in writing to extend the periods provided under (i), (ii), and/or (iii) to accommodate unforeseen conditions out of the control of either party, such as, but not limited to, weather, availability of equipment, and availability of utilities.

B. WSDOT may terminate the Lease in part upon not less than sixty (60) calendar days' prior written notice, if WSDOT determines that a portion of the Premises may be used for, but not limited to, telecommunications purposes, which in WSDOT's sole determination are reasonably consistent with TENANT's authorized use of the Premises.

C. It is hereby acknowledged and agreed that the highway use of the Premises is paramount to any other use, including TENANT's use for a pedestrian, bicycle, and other non-motorized vehicle trail. If this Lease is terminated for highway construction or reconstruction, and WSDOT determines that it is necessary to relocate the trail system or acquire replacement land, TENANT hereby agrees to acquire any such necessary replacement lands promptly and at no cost to WSDOT, to reconstruct its facility at no cost to WSDOT on said replacement lands, and to indemnify and hold harmless WSDOT from any and all costs.

D. If TENANT fails to remove the trail and WSDOT determines that it is necessary to continue to maintain the trail in a safe, operable condition, then TENANT hereby agrees that WSDOT may withhold funds sufficient to reimburse WSDOT for all costs associated with the continued maintenance of said trail from TENANT's share of any Motor Vehicle Gas Tax Funds or any other funds distributed to TENANT by WSDOT to cover ongoing expenses of trail maintenance and operation.

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

**6. TERMINATION BY TENANT.** TENANT may terminate this Lease without penalty or further liability as follows:

A. upon not less than \_\_\_\_\_ ( ) calendar days' prior written notice for any reason; provided that, TENANT removes all traces of the trail prior to the date of termination;

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

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

7. **CONSIDERATION.** In lieu of paying economic rent for the Premises, TENANT agrees to provide other specific consideration which is deemed to be a highway benefit. The consideration is: (*choose as appropriate and delete what's not*) The separation of motor vehicle traffic from pedestrians, equestrians or cyclists which will materially increase motor vehicle safety and increase highway efficiency. (Include brief description of the safety problems); **or** TENANT's construction and maintenance, at its sole expense, the section of trail as designated in **Exhibit \_\_\_\_**, attached hereto and by this reference incorporated herein, which maintenance and construction would otherwise be the responsibility of WSDOT. This construction shall include fencing, landscaping, and other items as set forth in **Exhibit \_\_\_\_**, attached hereto and by this reference incorporated herein; **or** The parties agree that TENANT will provide other consideration as follows: (Include details of consideration provided by Tenant).

**\*\*Please note that if the Tenant is required to pay a monetary rent, the appropriate Rent sections from the Airspace Lease should be added to this document.**

## 8. MAINTENANCE RESPONSIBILITIES.

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

B. TENANT warrants that any landscaping planted and maintained on the Premises will not damage, threaten to damage, or otherwise adversely affect any part or component of the state's highway facility or operation, or adversely affect traffic safety.

## 9. ENVIRONMENTAL REQUIREMENTS.

A. TENANT represents, warrants, and agrees that it will conduct its activities 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 gasoline and other petroleum products. In the event such permission is granted, the use and/or 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 or agencies having jurisdiction. TENANT will reimburse WSDOT for the cost of such investigations, where the need for said investigation is determined to be caused by TENANT's operations. TENANT will 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 that 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 where those costs are determined to have resulted from TENANT's use of the Premises. TENANT further agrees that the use of the Premises shall be such that no hazardous or objectionable smoke, fumes, vapor, odors, or discharge of any kind shall rise above the grade of the right of way.

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

E. 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.

F. WSDOT hereby agrees to indemnify and hold harmless TENANT from any costs or liabilities associated with the removal or remediation of any Hazardous Substances that have been released, or otherwise come to be located on the Premises by the acts or omissions of WSDOT, its employees, contractors, and agents. WSDOT further agrees to retain and indemnify and hold harmless TENANT from any and all liability arising from the offsite disposal, handling, treatment, storage, or transportation of any such Hazardous Substances removed from said Premises.

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

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

A. WSDOT reserves the right for utility franchise and permit holders to enter upon the Premises to maintain facilities and, for itself, to grant utility franchises and/or permits within 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. WSDOT also reserves the right to withdraw portions of the Premises for uses such as, but not limited to, telecommunications transmission sites, which WSDOT determines to be reasonably compatible with TENANT's authorized use of Premises.

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.

**11. USE OF RIGHT OF WAY UNDER/ADJACENT TO STRUCTURE. (Optional)**

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

B. 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.

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

**12. 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 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 for all utilities, including, but not limited to, surcharges, fuel adjustments, rate adjustments and taxes that serve the Premises.

**13. WSDOT'S APPROVAL OF DESIGN/CONSTRUCTION.** TENANT covenants that any construction on the Premises will not damage, threaten to damage, or otherwise adversely affect any part or element of the highway facility or its operation. WSDOT shall be furnished with one (1) complete set of plans, details, and specifications and revisions thereto for grading and all improvements proposed to be placed on the Premises, and no work shall be done without prior written approval of such plans by WSDOT. All construction work shall be done in conformity with the plans and specifications as approved. WSDOT may take any action necessary, including directing that work be temporarily stopped or directing that additional work be done, to ensure compliance with the plans and specifications, protection of all parts and elements of the highway facility, and compliance with WSDOT's construction and safety standards. The improvements

shall be designed and constructed in a manner that will permit WSDOT access to the highway facility for the purposes of inspection, maintenance, and construction, when necessary.

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

**15. NON-COMPLETION OF CONSTRUCTION.** TENANT shall obtain WSDOT's approval of construction drawings, complete construction of the project according to the approved plans, and open the trail to the public within \_\_\_\_\_ ( ) months of the effective date of this Lease.

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

**17. LIENS.**

A. TENANT shall at all times indemnify and hold harmless WSDOT from all claims for labor or materials in connection with construction, repair, alteration, maintenance, 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.

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

C. Should TENANT fail to accomplish Section B.(a), (b), or (c) above within fifteen (15) calendar days after the filing of such a lien, the Lease shall be in default per **Section 5.A.(4)**.

**18. ENCUMBRANCES.** It is expressly understood that TENANT shall not encumber the Premises.

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

**20A. INSURANCE.** (*Choose either 20A or 20B*)

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 of no less than Two Million and no/100 Dollars (\$2,000,000.00) bodily injury and property damage or combined single limit of liability per occurrence, with a general aggregate limit of no less than Four Million and no/100 Dollars (\$4,000,000.00) per policy period. 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. 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 07 98 or later, or its equivalent without modification, and shall be endorsed to include pollution liability coverage under ISO form CG 00 39 10 90, or its equivalent without modification, in amounts previously stated. The use of an equivalent form shall require prior written approval by WSDOT. TENANT shall provide additional endorsements and/or increase the policy limits at its sole cost, when and if WSDOT deems it necessary due to TENANT's use of the Premises, within ten (10) calendar days of WSDOT's written request to do so.

C. WSDOT shall be named as an additional insured by endorsement of the liability policy required by this section utilizing ISO Form 2026 (Additional Insured – Designated Person

or Organization) or its equivalent without modification. The endorsement shall require the insurer to provide the WSDOT, Real Estate Services Office, P.O. Box 47338 Olympia, WA 98504-7338, with no less than thirty (30) calendar days' written notice before any cancellation of the coverage required by this section.

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

E. 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 Five Thousand and no/100 Dollars (\$5,000.00) per occurrence. The payment of any such deductible or self-insured retention of liability amounts remains the sole responsibility of TENANT.

F. TENANT assumes all obligations for premium payment, and in the event of non-payment, is obligated to reimburse WSDOT the cost of maintaining the insurance coverage and any legal fees incurred in enforcing such reimbursement in the event TENANT fails to pay the policy premiums.

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

H. TENANT shall provide WSDOT with a certificate of insurance reflecting the insurance coverage required by this Section within ten (10) calendar days of the execution of this Lease. Such certificates shall be provided upon renewal of said policies and changes in carriers.

## **20B. INSURANCE.**

A. TENANT warrants that it is self-insured, and agrees to provide acceptable evidence of its self-insured status to WSDOT. TENANT's insurance policy must provide liability coverage for the Premises, including public liability coverage for bodily injury, property damage, and personal injury of not less than Two Million and no/100 Dollars (\$2,000,000.00) combined single limit per occurrence, with a general aggregate amount of not less than Four Million and no/100 Dollars (\$4,000,000.00) per policy period. 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. TENANT shall increase the policy limits at its sole cost, when and if WSDOT deems it necessary due to TENANT's use of the Premises within ten (10) calendar days of WSDOT's written request to do so.

B. TENANT assumes all obligations for premium payment, and in the event of non-payment is obligated to reimburse WSDOT the cost of maintaining the insurance coverage and



any legal fees incurred in enforcing such reimbursement in the event TENANT fails to pay the policy premiums.

C. Coverage, if obtained by TENANT in compliance with the Section, shall not be deemed as having relieved TENANT of any liability in excess of such coverage.

D. In the event TENANT, after commencement of this Lease, elects to terminate its self-insured status and secure commercial liability coverage, TENANT will promptly notify WSDOT, promptly secure insurance coverage as designated herein or as amended by WSDOT and promptly provide a certificate of insurance from an insurer licensed to conduct business in the state of Washington, to the satisfaction of WSDOT. WSDOT shall be named as an additional insured by endorsement of the liability policy required, utilizing ISO Form 2026 (Additional Insured – Designated Person or Organization) or its equivalent without modification. The endorsement shall require the insurer to provide the WSDOT, Real Estate Services Office, P.O. Box 47338 Olympia, WA 98504-7338, with no less than thirty (30) calendar day's written notice before any cancellation of the coverage required herein.

## **21. HOLD HARMLESS/INDEMNIFICATION.**

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 indemnification and WAIVER provisions contained in this Section shall survive the termination or expiration of this Lease.

**22. 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.

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

**24. SURRENDER OF PREMISES/REMOVAL OF TENANT'S IMPROVEMENTS/PERSONAL PROPERTY.**

A. 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. As used herein, "vacate" shall include preventing use of the Premises by the public.

B. Upon termination of this Lease, TENANT agrees, if so directed by WSDOT, to restore grades and on limited access highways also to relocate WSDOT's fences, if any, to their configurations prior to TENANT's occupancy. This work is to be done at TENANT's sole expense to the satisfaction of WSDOT.

C. Upon termination of this Lease TENANT agrees, if so requested by WSDOT, to obliterate the trail, remove all improvements and personal property, and/or provide erosion control treatment at its own expense and to WSDOT's satisfaction, returning the right of way to its original condition before the construction of the trail.

D. TENANT shall accomplish the above work by the date of termination. If, after termination of this Lease, TENANT has not removed its improvements and/or personal property and returned the right of way to its original condition, if requested to do so, within the time allowed, WSDOT may, but need not, remove and dispose of said improvements and/or personal property and return the right of way to its original condition at the expense of TENANT, and TENANT shall reimburse WSDOT for any and all expenses incurred by WSDOT in connection with such removal, work or disposal within thirty (30) calendar days of the date of WSDOT's invoice.

**25. NO RELATIONSHIP ESTABLISHED.** WSDOT shall in no event be construed to be a partner with, associate, or joint venturer of TENANT or any party associated with TENANT.

TENANT shall not create any obligation or responsibility on behalf of WSDOT or bind WSDOT in any manner.

**26. TRANSPORTATION PURPOSES.**

A. TENANT and WSDOT hereby affirm that upon termination or expiration 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 49 U.S.C. 303 (former 49 U.S.C.1653 (f), Section “4f”). If this Lease is terminated for highway construction and WSDOT or authorized local, state, or federal official having jurisdiction of the land or a court of competent jurisdiction determines that replacement of the trail is required under 23 U.S.C. 138 and 49 U.S.C. 303, TENANT agrees that it shall be responsible for and promptly replace the trail as required and pay all such costs in accordance with Section 5.C. of this Lease.

B. TENANT further acknowledges, agrees, and promises not to use Outdoor Recreation Funds as provided for in the Land and Water Conservation Fund Act, 16 U.S.C. 460-1, sections 4-11 (see section 8(f)(3) within state owned right of way; such funds may be used outside of the state owned right of way).

**27. CONDITION OF THE PROPERTY.** WSDOT and TENANT acknowledge that they have jointly examined the Premises identified in **Exhibit “\_\_\_”**, attached hereto, and TENANT accepts said Premises in its present condition as of the Commencement Date of this Lease.

**28. 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.

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

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

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

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

**33. VENUE.** 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.

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

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

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

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

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

TENANT: V8

Signatures:

Accepted and Approved by:

TENANT

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM

By: \_\_\_\_\_  
Assistant Attorney General

Date: \_\_\_\_\_

CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON )

) ss

COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or type name)

Notary Public in and for the State of Washington  
residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

AGENCY 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 \_\_\_\_\_ of \_\_\_\_\_, and that s/he 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 s/he 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 \_\_\_\_\_, and that s/he 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 s/he 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 \_\_\_\_\_





Architects • Engineers  
Landscape Architects  
Planners • Urban Designers  
Surveyors & Mappers

Project Number: 32649

## Legal Description Trail Easement

A strip of land 35 feet wide, situated in Sections 9, 15 and 16 of Township 24 North, Range 7 East, of the Willamette Meridian, King County, Washington, the southerly line of which is more particularly described as follows;

COMMENCING at a 1 1/2" brass cap in a monument case at the Northeast corner of said Section 16, thence North 87°50'07" West for a distance of 1,013.89 feet;

Thence North 02°09'53" West for a distance of 30.00 feet to a point on the south Right-of-Way line of State Route 202 (also known as SE Redmond-Fall City Road), said point also being a point on the arc of a 1,482.50 foot radius curve to the left, the center of which bears North 22°04'24" West, said point being the POINT OF BEGINNING;

Thence along said curve and said south Right-of-Way line, through a central angle of 20°54'02", an arc distance of 540.79 feet;

Thence South 88°49'38" East, along said south Right-of-Way line, for a distance of 1,190.34 feet to the point of curvature of a 1,382.50 foot radius curve to the right;

Thence along said curve and said south Right-of-Way line, through a central angle of 14°39'14", an arc distance of 353.59 feet;

Thence South 74°10'24" East, along said south Right-of-Way line, for a distance of 1,738.59 feet to the point of curvature of a 1,382.50 foot radius curve to the right;

Thence along said curve and said south Right-of-Way line, through a central angle of 34°47'00", an arc distance of 839.29 feet;

Thence South 39°23'24" East, along said south Right-of-Way line, for a distance of 206.26 feet to the point of curvature of a 1,482.50 foot radius curve to the left;

Thence along said curve and said south Right-of-Way line, through a central angle of 02°17'33", an arc distance of 59.32 feet to a point from which the Northeast corner of said Section 16 bears



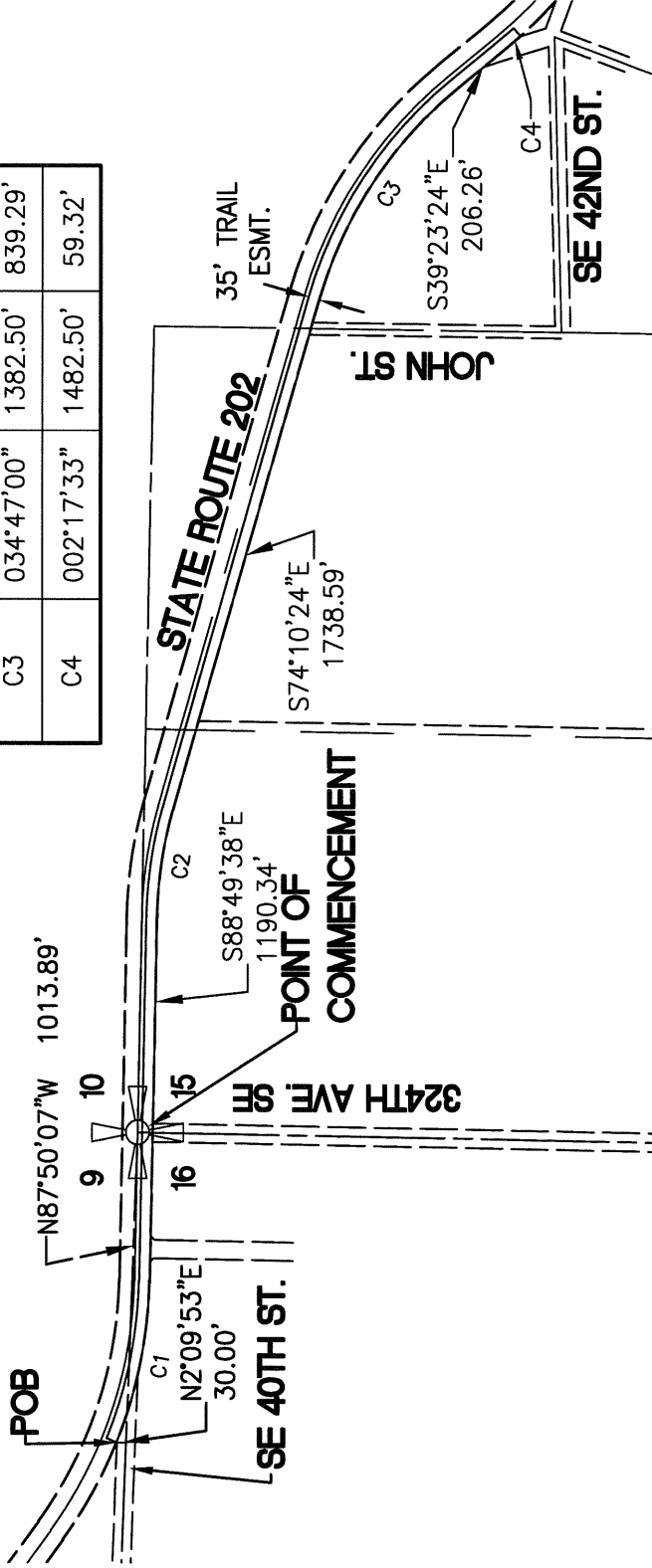
Architects • Engineers  
Landscape Architects  
Planners • Urban Designers  
Surveyors & Mappers

North 70°49'01" West at a distance of 3,798.01 feet, said point also being the terminus of said line;


The side lines of said strip to be shortened or lengthened to terminate perpendicular to State Route 202.

An area containing 172,767 square feet or 3.9662 acres, more or less.

CURVE TABLE			
CURVE #	DELTA	RADIUS	LENGTH
C1	020°54'02"	1482.50'	540.79'
C2	014°39'14"	1382.50'	353.59'
C3	034°47'00"	1382.50'	839.29'
C4	002°17'33"	1482.50'	59.32'



NOT TO SCALE



**otak**

11241 Willows Road NE  
Suite 200  
Bellevue, Washington 98052  
Phone: (425) 822-4446  
FAX: (425) 827-9677  
www.otak.com

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**EXHIBIT**

**Trail Easement**

King County, Washington

