

RESOLUTION R-5554

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE A DESIGN-BUILD COOPERATIVE AGREEMENT WITH THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION RELATED TO THE I-405, BRICKYARD TO SR 527 IMPROVEMENT PROJECT.

1           WHEREAS, Interstate-405 (I-405) is a major transportation  
2 corridor that extends through the city of Kirkland and, among  
3 other transportation and economic benefits, facilitates a growing  
4 amount of regional public transit; and  
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6           WHEREAS, recognizing the increased demand and  
7 congestion occurring in the I-405 corridor, the Washington State  
8 Department of Transportation (WSDOT) undertook an extensive,  
9 three-year study, including stakeholder participation, to develop  
10 an environmental impact statement in 2002 that became the basis  
11 of the *I-405 Master Plan*; and  
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13           WHEREAS, the Washington State Legislature approved the  
14 2022 "Move Ahead Washington" transportation package, which  
15 included full funding for the I-405, Brickyard to SR 527  
16 Improvement Project (Project); and  
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18           WHEREAS, the voter-approved 2016 Sound Transit 3 (ST3)  
19 funding package includes Bus Rapid Transit (BRT) to serve the I-  
20 405 Corridor from Lynnwood to Burien; and  
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22           WHEREAS, I-405 BRT includes Sound Transit funding a  
23 new transit station in the vicinity of the Brickyard Park and Ride;  
24 and  
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26           WHEREAS, Sound Transit and WSDOT have agreed that  
27 Sound Transit will fund and WSDOT will design and construct the  
28 Brickyard Inline Transit Station as part of the Project; and  
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30           WHEREAS, the Brickyard Inline Transit Station will create a  
31 new access point to the region's high-capacity transit network, as  
32 well as a new pedestrian and bicycle connection across I-405,  
33 addressing mobility and access for people traveling between  
34 Kirkland, surrounding communities, and the greater region; and  
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36           WHEREAS, the City of Kirkland (City) has a strong interest  
37 in helping to ensure that the improvements, in addition to Sound  
38 Transit and WSDOT goals, are also consistent with the City's  
39 policies, standards, and design goals; and  
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41           WHEREAS, WSDOT desires to be a cooperative partner  
42 with local governments such as the City and provide them with an  
43 active and meaningful role in the design of projects; and

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WHEREAS, the means of doing so is for the City to enter into an agreement with WSDOT to participate in the design and construction of the portion of the project located within the city of Kirkland.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

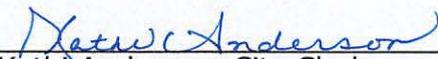
Section 1. The City Manager is hereby authorized and directed to execute, on behalf of the City of Kirkland, the Design-Build Cooperative Agreement for Design and Construction of the I-405, Brickyard to SR 527 Improvement Project in a form substantially similar to that attached to this Resolution as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting this 06 day of September, 2022.

Signed in authentication thereof this 06 day of September, 2022.

  
\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

  
\_\_\_\_\_  
Kathi Anderson, City Clerk

**GCB 3671**

**DESIGN-BUILD COOPERATIVE AGREEMENT  
For DESIGN and CONSTRUCTION of the  
I-405, Brickyard to SR527 Improvement Project**

**THIS Agreement (AGREEMENT)** is made and entered into by the City of Kirkland (CITY) and the Washington State Department of Transportation (WSDOT), collectively referred to as the "PARTIES" and individually referred to as the "PARTY."

**Recitals**

- A. WSDOT, in the interest of providing improved access in the I-405 Corridor, proposes improvements along I-405 within Kirkland in a project known as the I-405, Brickyard to SR527 Improvement Project (PROJECT) and identified in Exhibits A and B hereto.
- B. The proposed PROJECT will require WSDOT to perform certain work on CITY facilities.
- C. WSDOT will construct the PROJECT using the design-build method of project delivery.
- D. The design-build method of project delivery is flexible and allows for the development and finalization of the design after the contract is awarded, unlike the typical design-bid-build method of project delivery.
- E. The PARTIES have worked together on the preparation of the technical requirements in the PROJECT Request for Proposal (RFP) for the design-build contract.
- F. The design of project elements in the design-build method of project delivery moves faster than in the typical design-bid-build method of project delivery, necessitating expedited CITY review of the PROJECT design elements.
- G. The PARTIES recognize the importance of timeliness in reviews, avoidance of delays, and minimizing costs for the PROJECT, as well as the mutual benefits provided in shortening plan and proposal review times.
- H. The PARTIES understand that the PROJECT design will be finalized after the design-build contract is awarded.
- I. The PARTIES desire this AGREEMENT to define their roles and responsibilities related to design and construction of the PROJECT.
- J. The PARTIES recognize that future supplements or amendments to this AGREEMENT, or other new agreements, may be necessary to record final design decisions and define cost estimates related to the design, construction, maintenance and operation of the PROJECT.

**NOW, THEREFORE,** by virtue of Revised Code of Washington (RCW) 47.28.140 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof,

**IT IS MUTUALLY AGREED AS FOLLOWS:**

**1.0 GENERAL**

- 1.1 WSDOT will construct the PROJECT improvements along the I-405 Corridor, the conceptual design and construction improvements of which are described in Exhibit A, General Project Description, and shown in Exhibit B, Project Overview, attached hereto and by this reference made parts of this AGREEMENT.
- 1.2 The PARTIES have had ongoing discussions that have resulted in design decisions for elements the PARTIES agree to incorporate into the PROJECT. Those elements are incorporated into this AGREEMENT, its supplements, and/or amendments, or will be incorporated into separate contracts or other related agreements for this PROJECT.

**2.0 ROLES**

- 2.1 The PARTIES acknowledge that WSDOT will act as lead Contracting Agency and enter into future contractual agreement(s) with a design-build contractor (DESIGN-BUILDER) for final design and construction of the PROJECT.
- 2.2 A partnering session will be held including WSDOT staff, CITY staff, and WSDOT's DESIGN-BUILDER staff to review coordination processes and to determine the frequency of continuing coordination meetings.
- 2.3 The PARTIES agree to fund, and be fully responsible for, their own respective costs associated with staff time necessary to fulfill their roles and responsibilities as identified in this AGREEMENT.
- 2.4 The PARTIES shall be responsible for compliance with the State of Washington COVID-19 Vaccination Requirement Proclamation 21-14.1, dated August 9, 2021, for all services the PARTIES, its employees, agents, consultants, contractors and subcontractors furnish for the PROJECT.
- 2.5 WSDOT shall track all CITY communication requests related to the PROJECT.
- 2.6 The CITY shall identify an individual (CITY Designated Representative) to be responsible for facilitating all CITY PROJECT-related communication between WSDOT and CITY staff as well as expediting CITY review of all PROJECT-related submittals. This coordination of efforts with WSDOT will take place via WSDOT's I-405 Project Engineer.
- 2.7 WSDOT's I-405 Project Engineer, or designee, will be responsible for facilitating all WSDOT PROJECT-related communication between the CITY Designated

Representative and WSDOT staff as well as for providing PROJECT-related submittals to the CITY Designated Representative. This coordination of efforts with the CITY will take place via the CITY Designated Representative.

- 2.8 WSDOT agrees to provide quarterly presentations or written updates to the CITY when requested to do so by the CITY.
- 2.9 WSDOT and WSDOT's DESIGN-BUILDER will develop a PROJECT Communication Plan, as documented in the PROJECT's RFP and addenda, so that general PROJECT information is made available to the public. In addition, the CITY, WSDOT and WSDOT's DESIGN-BUILDER will continue coordinating outreach to the Kirkland business and residential community.
- 3.0 **CITY REVIEW AND COMMENT ON PROJECT ELEMENTS**
- 3.1 WSDOT will provide the CITY with one (1) electronic copy of documents as required for review and comment by the CITY on PROJECT elements.
  - 3.1.1 PROJECT elements include, but are not limited to, design of CITY streets and other associated CITY roadway elements, streetlights along CITY roadways, CITY stormwater facilities, transit features within CITY right of way, landscaping, noise variance requests within the CITY limits, and right of way use permits within the limits of Kirkland.
  - 3.1.2 The CITY's review of these elements will be limited to confirming that the submittals conform with mandatory manuals and publications and applicable CITY design standards, standard plans, pre-approved plans, codes, and policies, as documented in the PROJECT's RFP and addenda, and described in Section 4.0 of this AGREEMENT. The mandatory manuals and publications documented in the PROJECT's RFP and addenda, shall take precedence for design standards, standard plans, codes, and policies.
- 3.2 WSDOT will review all submittals from its DESIGN-BUILDER for completeness and compliance with the design-build contract requirements prior to forwarding them to the CITY's Designated Representative for review. The electronic copy of the documents will fulfill the Quality Assurance and Quality Control requirements identified in the PROJECT RFP and addenda prior to submittal to the CITY.
- 3.3 WSDOT will work with its DESIGN-BUILDER to give the CITY as much advance notice of upcoming submittals as possible, as provided in the "Contract Schedule", Section 1-08.3 of the PROJECT RFP.
- 3.4 The PARTIES recognize the importance of timeliness in reviews, avoidance of delays, and minimizing costs for the PROJECT, as well as the mutual benefit provided in shortening plan and proposal review times. The CITY commits to reviewing and returning submittals to WSDOT within a maximum of ten (10) calendar days from

receipt. The submittal review and permit process are shown in Exhibit C, Review and Permit Process, attached hereto and by this reference made part of this AGREEMENT.

- 3.4.1 In the case of infrequent circumstances, such as but not limited to, CITY emergencies and extreme and unusual weather conditions affecting the CITY's ability to perform normal functions, or receipt of PROJECT submittals of unusual volume, complexity, or unexpected or controversial content, the PARTIES recognize the CITY may have to review and return submittals outside of the allotted review period.
- 3.4.2 The PARTIES agree that additional review days may be allowed by WSDOT if there is no created delay or cost increase for the PROJECT. In these cases, the CITY will be responsible for requesting additional review time from WSDOT in writing and articulating the cause for delay and specific additional calendar days needed for the review.
  - 3.4.2.1 WSDOT will review the extended period request for consequences to the design-build contract requirements, schedule, and cost.
  - 3.4.2.2 WSDOT will approve extensions if there is no delay, cost or risk created to the design-build contract, or if WSDOT deems it in the best interest of the PROJECT.
  - 3.4.2.3 If the CITY does not review submittals within the agreed upon review time, WSDOT may assume the CITY had no comments and will continue as if the CITY had complied with the applicable response time requirements.

#### **4.0 DESIGN OF ELEMENTS WITHIN CITY JURISDICTION**

- 4.1 All plans for the PROJECT will follow WSDOT's Plans Preparation Manual as documented in the PROJECT RFP and addenda. All facilities will use WSDOT design standards; provided however that plans which include work within CITY right of way or in areas to be turned back to the CITY will be subject to the CITY's zoning and municipal codes and any other applicable plans, policies and procedures, as documented in the PROJECT RFP and addenda.
- 4.2 PROJECT commitments are outlined in Exhibit D, Project Commitments, attached hereto and by this reference made part of this AGREEMENT.
- 4.3 The PARTIES agree that the aesthetic treatments of the I-405 Master Plan compatible elements will conform to the guidelines described in the Interstate-405 Urban Design Criteria (UDC) for the PROJECT, incorporated into this AGREEMENT by this reference. Details of aesthetic elements agreed to by the PARTIES for the PROJECT are identified in Exhibit D, Project Commitments.
- 4.4 The PARTIES agree that the PROJECT may include transit agency aesthetic treatments for the elements which are operated and maintained by transit agencies, as included in the PROJECT RFP.

- 4.5 If WSDOT or WSDOT's DESIGN-BUILDER proposes a change to an existing CITY facility, other than as provided in the PROJECT RFP and addenda, such as to a CITY street, sidewalk, bike lane, streetlight, landscaping, or traffic signal, WSDOT agrees to present the change to the CITY for review and comment. The final determination as to the resolution of any such requested changes shall be made by the CITY in its reasonable and good faith discretion. As part of any such change, the PARTIES agree to exercise their best good faith efforts to reach an agreement on the appropriate allocation of costs related to any such change.
- 4.6 If the CITY proposes a change to an existing CITY facility within the PROJECT limits, other than as provided in the PROJECT RFP and addenda, the CITY shall request a meeting through WSDOT's I-405 Project Engineer.
- 4.6.1 The PARTIES agree to meet in a cooperative spirit to review and discuss the CITY proposed change.
- 4.6.2 If WSDOT determines, in its discretion, that the proposed change to be feasible and appropriate, the PARTIES shall exercise their best good faith efforts to negotiate the responsibilities for payment of costs associated with the requested change based on the benefits of the proposed change to each PARTY.
- 4.6.2.1 In the event the PARTIES agree on a CITY proposed change or to add work to the PROJECT per Section 4 of this AGREEMENT for which the CITY is responsible, the Parties will follow State law and guidance for indirect costs as outlined in RCW 47.28.140 and the Office of Financial Management State Administration & Accounting Manual. The WSDOT indirect cost rate will be included in cost estimates for CITY proposed changes or added work.
- 4.6.3 If the PARTIES can mutually agree on payment responsibilities, WSDOT will implement the change.
- 4.6.3.1 WSDOT and the CITY will perform inspection and acceptance of the CITY added work, as described in Section 8.0 of this AGREEMENT, and acceptance by the CITY shall occur if the CITY added work is completed pursuant to the PROJECT design-build contract documents. WSDOT and the CITY acknowledge that operations and maintenance responsibility for CITY added work to the PROJECT will be borne by the CITY, unless otherwise agreed to by the PARTIES in writing.
- 4.6.4 The consideration of potential schedule delays, which may result in additional cost, shall be of paramount importance to both PARTIES, with reducing cost as the primary goal and acknowledged mutual benefit. This consideration shall guide the conduct of the PARTIES with respect to any and all proposed changes, whether requested by WSDOT or the CITY.

- 4.7 WSDOT will provide the CITY with plans for review of any proposed changes to the CITY facilities identified in Sections 4.5 and 4.6 for review. These reviews will be conducted in accordance with Section 3.0 of this AGREEMENT.
- 4.8 WSDOT and the CITY recognize the CITY's desire to potentially include Community Enhancement features into this PROJECT as part of the construction effort. The PARTIES acknowledge this desire and reserve the right to amend this AGREEMENT in the future to accommodate this additional Community Enhancement work, should the PARTIES reach agreement on the scope, budget and terms for performance of this work. WSDOT and the CITY acknowledge that any costs, design work, and maintenance responsibility for Community Enhancement features will be borne by the CITY and the Community Enhancement features shall be compatible with Section 4.3, details of which would be included in an amendment to this AGREEMENT.

## **5.0 STORM DRAINAGE**

- 5.1 WSDOT, working with its DESIGN-BUILDER, shall develop a Technical Information Report and Hydraulic Report that will include hydrologic/hydraulic analysis of all Stormwater Facilities, including water quality/detention facilities and conveyance systems, which convey runoff through the PROJECT site and discharge to downstream systems, streams, wetlands, and rivers.
- 5.2 WSDOT's DESIGN-BUILDER will evaluate facilities that convey stormwater from offsite areas through WSDOT right of way. This evaluation will extend to a point one-quarter (1/4) of a mile downstream of the site, and upstream to a point where any backwater conditions cease. Potential impacts to be assessed include the following items at a minimum: changes in peak flow, changes in flood duration, bank erosion, and channel erosion changes from the PROJECT site. This evaluation will be documented in the Hydraulic Report discussed in Section 5.1.
- 5.3 WSDOT shall be responsible for future maintenance of all Stormwater Facilities that collect, convey, or treat PROJECT highway facility runoff including that from mainline and ramp roadways within the limited access right of way.
- 5.4 The PARTIES acknowledge that the PROJECT will replace the existing culvert at Juanita Creek under I-405, which is a fish barrier, to restore the stream connection. The PROJECT will also remove an existing instream pond and control structure within the I-405 right of way immediately upstream of the culvert without replacing or relocating the instream pond and control structure or its functionality. The instream pond and control structure are owned, operated, and maintained by the CITY (as successor-in-interest to King County) under WSDOT Utility Permit No. 14157. After the removal of the existing instream pond and control structure, WSDOT Utility Permit No. 14157 will be revoked. By this AGREEMENT, the PARTIES have not reached any agreement relative to potential liability.

5.5 The PARTIES maintenance responsibilities described in Section 10.0 of this AGREEMENT shall continue and remain in effect after the termination of this AGREEMENT.

**6.0 TRAFFIC OPERATIONS**

6.1 WSDOT and WSDOT's DESIGN-BUILDER will coordinate with the CITY to manage traffic flow during construction, as outlined in the PROJECT RFP.

6.2 WSDOT, working with its DESIGN-BUILDER will install, operate and maintain any temporary signalization used during PROJECT construction, as outlined in the PROJECT RFP. The DESIGN-BUILDER, WSDOT and the CITY will work jointly to develop the signal timing plans for any temporary signalization, and WSDOT shall make the final determination on the temporary signalization and timing plans, in its discretion.

**7.0 TRAFFIC CONTROL AND DETOUR PLAN APPROVAL PROCESS ON CITY STREETS**

7.1 WSDOT, working with its DESIGN-BUILDER, shall submit proposed road closures, detours, and traffic control plans involving CITY streets to the CITY for approval, as stated in the Maintenance of Traffic (MOT) Section 2.22 of the PROJECT's RFP, for which approval shall not be unreasonably withheld. The CITY shall review each submittal in accordance with the timelines set forth in Section 3.0 of this AGREEMENT, indicating either "approved," "approved with comments," or "not approved, contractor to revise and resubmit."

7.2 WSDOT, working cooperatively with the CITY, will develop time and date restrictions on detours, road closures, and sidewalk closures for inclusion in the PROJECT's RFP.

**8.0 WORK WITHIN CITY RIGHT OF WAY OR PROJECT ELEMENTS TO BE MAINTAINED BY THE CITY**

8.1 WSDOT, working with its DESIGN-BUILDER, will notify the CITY at least fourteen (14) calendar days in advance of any work within the CITY right of way or on PROJECT elements to be maintained by the CITY at the completion of the PROJECT, as shown in Exhibit E, Right of Way Plans or Exhibit F, Project Maintenance Responsibilities, attached hereto and by this reference made part of this AGREEMENT. WSDOT will be responsible for the acquisition and all associated right of way for the PROJECT.

8.2 The CITY may provide an inspector, at the CITY's expense, to ensure compliance with CITY requirements for CITY owned elements of the PROJECT located within CITY owned right of way or PROJECT elements to be maintained by the CITY at the completion of the PROJECT.

8.2.1 The CITY Inspector shall notify the CITY Designated Representative and WSDOT's I-405 Project Engineer in writing of any work that does not conform with the PROJECT design-build contract as soon as the non-conforming issue is known. The

non-conforming issues shall be resolved by WSDOT to applicable CITY standards, through its DESIGN-BUILDER, and in a manner it determines is in accordance with the PROJECT RFP and addenda, as made part of the design-build contract.

- 8.2.2 The CITY Designated Representative shall communicate, with WSDOT's DESIGN-BUILDER through WSDOT's I-405 Project Engineer and CITY employees will follow WSDOT DESIGN-BUILDER's protocols when visiting the PROJECT site.
- 8.3 The CITY will take over ownership of the CITY PROJECT elements and be responsible for operations and maintenance costs as described herein, once the DESIGN-BUILDER work has been accepted by WSDOT and the CITY after final inspection.
  - 8.3.1 WSDOT will provide written notification of completion of work to the CITY. The CITY will provide their acceptance after final inspection in writing within the timeframes and terms described in Section 3.0, for which acceptance shall not be withheld if the work complies with CITY standards within the PROJECT RFP and design-build contract documents. Satisfactory closure of all non-conforming issues and completion of the CITY requested punch list items which do not comply with the PROJECT RFP and design-build contract documents shall provide reasonable basis for CITY approval and acceptance. If the CITY has responded with written reasons why it believes that the work does not comply with CITY standards included in the design-build contract documents, and such work has not been corrected to the satisfaction of the CITY, the CITY reserves the right to escalate the issue to the dispute resolution process outlined in Section 11.0 of this AGREEMENT.
  - 8.3.2 Upon completion and acceptance of the work, the CITY shall be solely responsible for all future ownership, operation and maintenance costs of its facilities. WSDOT will be released from all future claims and demands, without WSDOT liability or expense, subject only to the provisions of Section 12.0, INDEMNIFICATION AND HOLD HARMLESS.

## **9.0 PERMITS**

- 9.1 WSDOT, and/or its DESIGN-BUILDER, shall apply for and obtain all necessary permits for work outside WSDOT limited access, which includes the following:
  - 9.1.1 Exceptions to the hours for development activity (per Kirkland Zoning Code).
  - 9.1.2 Noise Exemption approvals (per Kirkland Zoning Code).
  - 9.1.3 Right of way (ROW) use permits, which includes all road construction work within the CITY's right of way, including but not limited to, review of proposed road closures, haul routes, and design and construction of local road sidewalks, curbs, driveway curb cuts, pavement sections, utilities, and easements.
  - 9.1.4 Building and associated trade permits related to the construction of transit features within CITY right of way, or other process as agreed to by the PARTIES in writing.

- 9.2 WSDOT will provide the CITY with documentation demonstrating substantive compliance with the requirements of the CITY's critical areas regulations in lieu of applying for critical area permits for all work within the limited access right of way and temporary construction easements.
- 9.3 WSDOT and/or its DESIGN-BUILDER will confirm with the CITY's Designated Representative that all applications for permits necessary for the PROJECT are complete and all issues related to the permit have been resolved prior to permit submittal.
- 9.4 The CITY's Designated Representative will work with WSDOT and/or its DESIGN-BUILDER to process all applications for permits necessary for PROJECT as outlined in Section 9.1 above.
- 9.5 The CITY shall review each permit submittal by WSDOT or WSDOT's DESIGN-BUILDER and return it to WSDOT, within fourteen (14) calendar days, as shown in Exhibit C, Permit and Review Process.
- 9.6 The DESIGN-BUILDER will acquire the ROW use permit. Using the CITY "Public Works Department Improvement Evaluation Packet", the PARTIES estimate the CITY Right of Way Use permit fees for the PROJECT to be Thirty Thousand US Dollars (\$30,000), and that the actual CITY Right of Way Use permit fees will not exceed the maximum amount of Thirty Thousand US Dollars (\$30,000).
- 9.7 The DESIGN-BUILDER will acquire the Building permit and associated trade permits. The PARTIES estimate these permit fees for the PROJECT to be Thirty Thousand US Dollars (\$30,000), and that the actual CITY Building permit and associated trade permit fees will not exceed the maximum amount of Thirty Thousand US Dollars (\$30,000).

## **10.0 MAINTENANCE RESPONSIBILITIES**

- 10.1 The PARTIES agree that, in general, financial and ongoing responsibility for maintenance of the PROJECT elements will not deviate from those described in Exhibit F, Project Maintenance Responsibilities, or will be addressed under a separate agreement.

## **11.0 DISPUTES**

- 11.1 If disputes arise that are related to the application of this AGREEMENT, the PARTIES agree to work collaboratively to resolve disputes promptly and at the lowest following order:
  - 11.1.1 The CITY's Designated Representative and WSDOT's I-405 Project Engineer, or designee, shall jointly cooperate to informally resolve any disputes as quickly and efficiently as possible.
  - 11.1.2 If the issue cannot be resolved at the level described above, WSDOT's I-405/SR 167 Deputy Program Administrator, or designee, and the CITY's Public Works

Director, or designee, shall jointly cooperate to informally resolve any disputes as quickly and efficiently as possible.

- 11.1.3 If dispute resolution is still not successful, the CITY's City Manager, or designee, and WSDOT's I-405/SR 167 Program Administrator, or designee, shall jointly cooperate to informally resolve any dispute in accordance with the procedures described in Section 11.2 and 11.3 below.
- 11.2 If unresolved, the CITY's City Manager, or designee, and WSDOT's I-405/SR 167 Program Administrator, or designee, shall notify each other in writing of any dispute needing resolution. They shall exercise their best efforts to meet together with appropriate staff from the CITY and WSDOT, if any, within seven (7) calendar days of receiving the written notice in order to resolve the dispute to the satisfaction of both PARTIES. Each PARTY agrees to compromise to the fullest extent reasonably possible in resolving the dispute to avoid delays and minimize costs.
- 11.3 If, after fourteen (14) calendar days of receipt of the written notice described in Section 11.2 above, the dispute is still unresolved, the CITY's City Manager and WSDOT's I-405/SR 167 Program Administrator shall each appoint a member to a dispute resolution panel; these two members shall select a third member not affiliated with either PARTY. The decision made by this panel shall be final and binding on the PARTIES to this AGREEMENT. WSDOT and the CITY shall each pay fifty (50) percent of the costs for the third member of the dispute resolution panel; however, each PARTY shall be responsible for their own costs and fees.
- 12.0 INDEMNIFICATION AND HOLD HARMLESS**
- 12.1 Each PARTY shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees and agents, , while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each of the PARTIES' own intentional and negligent acts or omissions. No PARTY will be required to indemnify, defend, or save 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, its officers, officials, employees and agents while acting within the scope of their employment as such. Where such claims, suits, or actions result from the concurrent or contributory negligence of the PARTIES, officers, officials, employees and agents, , while acting within the scope of their employment as such, and/or involve those matters covered by RCW 4.24.115, the defense and indemnity provided herein shall be valid and enforceable only to the extent of a PARTY'S own negligence.
- 12.2 WSDOT and the CITY 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 its employees or agents. For this purpose, the PARTIES, by mutual negotiation, hereby waive, with respect to the other PARTY only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

12.3 Each PARTY shall protect, defend, indemnify, and save harmless Sound Transit, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each of the PARTIES' own intentional and negligent acts or omissions. No PARTY will be required to indemnify, defend, or save harmless Sound Transit if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of Sound Transit, its officers, officials, employees, and agents. Where such claims, suits, or actions result from the concurrent or contributory negligence of the PARTIES, officers, officials, employees, agents, and Sound Transit, its officers, officials, employees, and agents while acting within the scope of their employment as such, and/or involve those matters covered by RCW 4.24.115, the defense and indemnity provided herein shall be valid and enforceable only to the extent of a PARTY'S or Sound Transit's own negligence.

12.4 In the event either PARTY substantially prevails in any legal proceeding to enforce the provisions of this Section, all such fees, expenses, and costs, including reasonable attorney's fees, shall be recoverable from the other PARTY.

12.5 This indemnification and waiver shall survive the termination of this AGREEMENT.

### **13.0 AMENDMENT**

13.1 Either PARTY may request modifications to this AGREEMENT.

13.1.1 Such modifications shall be mutually agreed upon by written amendments and/or supplements to this AGREEMENT.

13.1.2 No variation or alteration of the terms of this AGREEMENT shall be valid unless made in advance and in writing and signed by an authorized representative of WSDOT and the City Manager of the CITY hereto.

### **14.0 ALL WRITINGS CONTAINED HEREIN**

14.1 This AGREEMENT contains all the terms and conditions agreed upon by the PARTIES to this AGREEMENT.

14.2 No other understanding, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any of the PARTIES hereto.

### **15.0 GOVERNANCE**

15.1 This AGREEMENT is entered into pursuant to, and under the authority granted by, the laws of the state of Washington and applicable federal laws.

15.2 The provisions of this AGREEMENT shall be construed to conform to those laws.

**16.0 EFFECTIVENESS AND DURATION**

16.1 This AGREEMENT is effective upon execution by both PARTIES and shall remain in effect through the design and construction of the PROJECT.

**17.0 SEVERABILITY**

17.1 If any provision of this AGREEMENT, or any provision of any document incorporated by reference, shall be held invalid, such invalidity shall not affect the other provisions of this AGREEMENT that can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this AGREEMENT, and to this end the provisions of this AGREEMENT are declared to be severable.

**18.0 TERMINATION**

18.1 WSDOT may immediately terminate this AGREEMENT in whole, or from time to time in part, whenever WSDOT determines that such termination is in the best interests of the public or WSDOT. WSDOT shall exercise its best good faith effort in an attempt to provide written notice to the CITY in accordance with the time period listed in 21.2, unless extenuating circumstances necessitate immediate termination.

18.2 This AGREEMENT may be terminated for convenience by either PARTY upon thirty (30) calendar days advanced written notice to the other PARTY.

18.3 This AGREEMENT may be terminated, in part, by CITY with or without cause, by providing WSDOT with thirty (30) calendar days' advance written notice for termination of CITY added work as described in this AGREEMENT.

18.4 Regardless of which PARTY terminates the AGREEMENT, CITY shall be responsible for reimbursing WSDOT for completed CITY added work described in this AGREEMENT up to and through the date of termination. The PARTIES shall mutually agree, in writing, to the percent of work completed on the date of termination, and reimbursement shall occur in a proportional amount of the lump sum not to exceed the amount of the cost estimate agreed by the PARTIES in writing.

18.5 If the AGREEMENT is terminated by CITY prior to fulfillment of the terms stated herein for CITY added work described in this AGREEMENT:

18.5.1 CITY shall be responsible for costs of non-cancelable obligations, including any redesigning, reengineering or re-estimating, if necessary, to terminate CITY added work and restore the work vicinity to a condition that meets the condition and standards in place at the initiation of construction of the PROJECT. The PARTIES shall mutually agree, in writing, to any associated costs prior to invoicing.

18.5.2 CITY acknowledges and agrees that such termination shall not relieve the CITY from its responsibility to design, remove, relocate and/or construct its facilities so as

not to delay or conflict with WSDOT's PROJECT. WSDOT agrees to provide to the CITY all work-related documents upon final payment by the CITY.

18.6 If the AGREEMENT is terminated by WSDOT, WSDOT shall reimburse CITY for the costs of any non-cancelable obligations and shall fund, or reimburse CITY for, redesign, reengineering or re-estimating related to CITY added work necessitated by WSDOT's termination to restore the work vicinity to a condition that meets the condition and standards in place at the initiation of construction of the PROJECT. The PARTIES shall mutually agree, in writing, to any associated costs prior to invoicing.

18.7 WSDOT's performance under this AGREEMENT is contingent on Sound Transit's commitment to and the appropriation of sufficient funds to perform the activities contemplated herein. If sufficient funds are not appropriated, WSDOT may terminate this AGREEMENT immediately for lack of appropriation and will notify the CITY in writing.

#### **19.0 VENUE**

19.1 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, and only upon exhaustion of the dispute resolution process outlined in Section 11.0 of this AGREEMENT.

**IN WITNESS WHEREOF**, the PARTIES hereto have executed this AGREEMENT as of the latest date written below:

CITY OF KIRKLAND

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
By (signature):  
Kurt Triplett  
City Manager

\_\_\_\_\_  
By (signature):  
Lisa Hodgson  
I-405/SR 167 Program Administrator

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

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

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
By (print):

\_\_\_\_\_  
By (print):

\_\_\_\_\_  
By (signature):  
City Attorney

\_\_\_\_\_  
By (signature):  
Assistant Attorney General  
Office of the Attorney General

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

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

ATTEST:

\_\_\_\_\_  
By (print):

\_\_\_\_\_  
By (signature):  
City Clerk

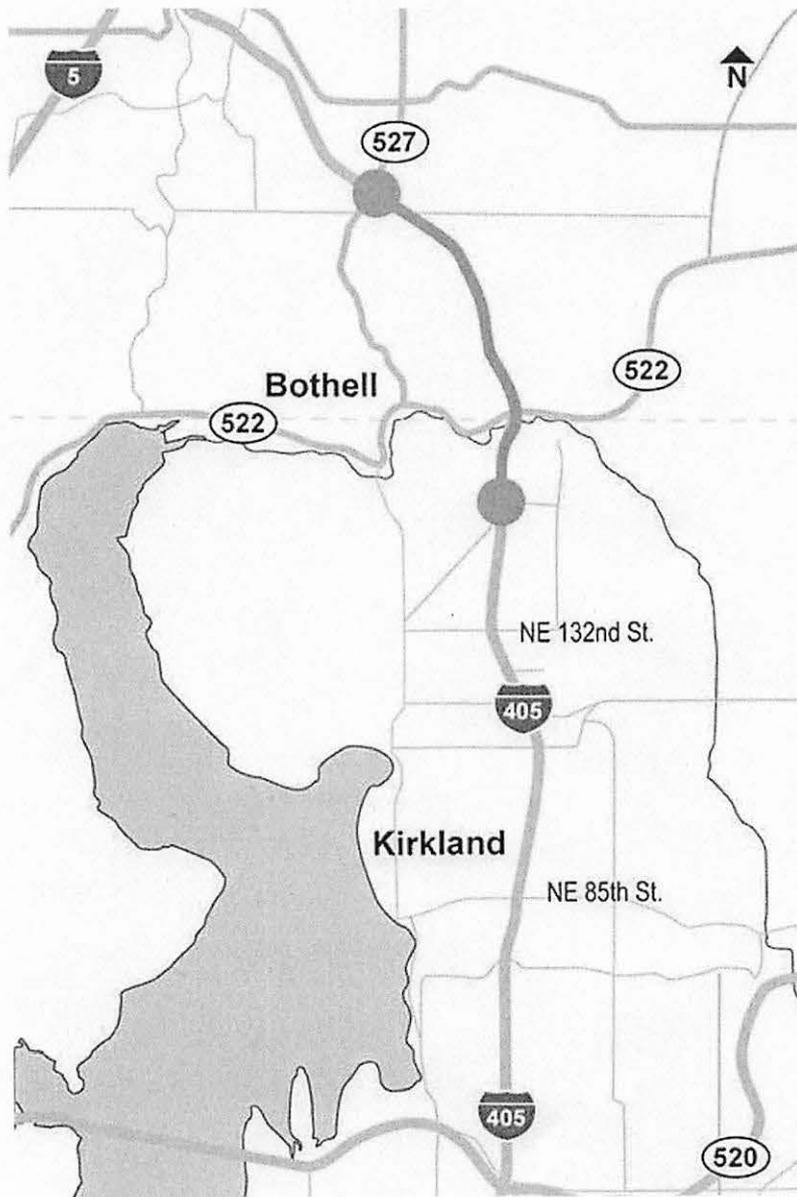
\_\_\_\_\_  
Date:

## **EXHIBIT A GENERAL PROJECT DESCRIPTION**

The PROJECT includes design and construction improvements in the I-405 Corridor from milepost 21.4 to 27.0. The primary elements of the PROJECT include the following:

- Extend the dual I-405 express toll lane system between SR 522 and SR 527 (build one new lane in each direction)
- Reconfigure I-405 through the SR 522 interchange and build direct access ramps to the express toll lanes at SR 522
- Build a partial direct access interchange at SR 527 (to east, north and south) to provide connections to the Canyon Park Park and Ride, including providing a pedestrian crossing of I-405.
- Build a new inline station at Brickyard Park and Ride
- Remove existing fish barrier culverts.
- Restore stream connections across I-405. The connection will include a combination of open channel segments and culverts.

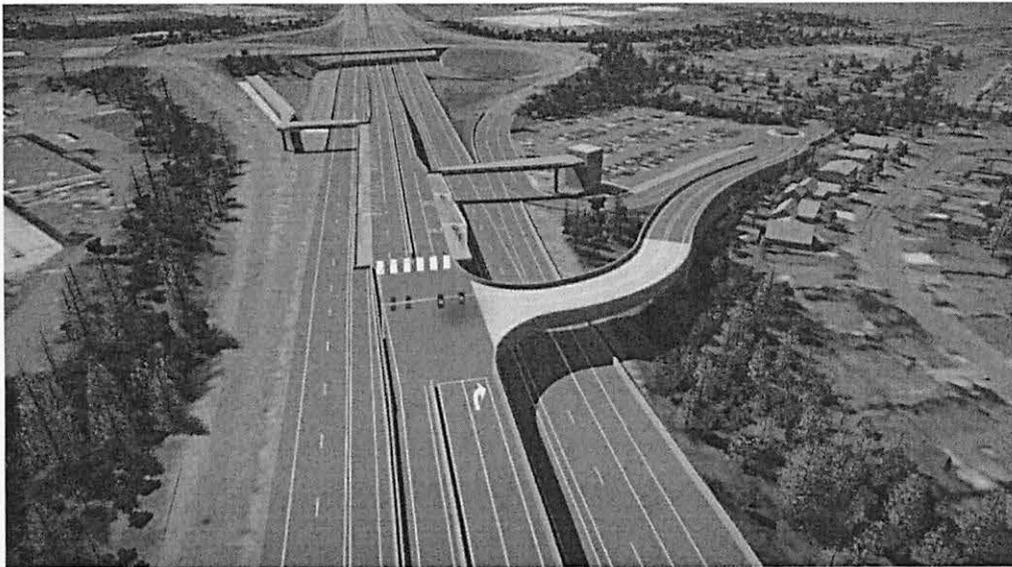
**EXHIBIT B  
PROJECT OVERVIEW**



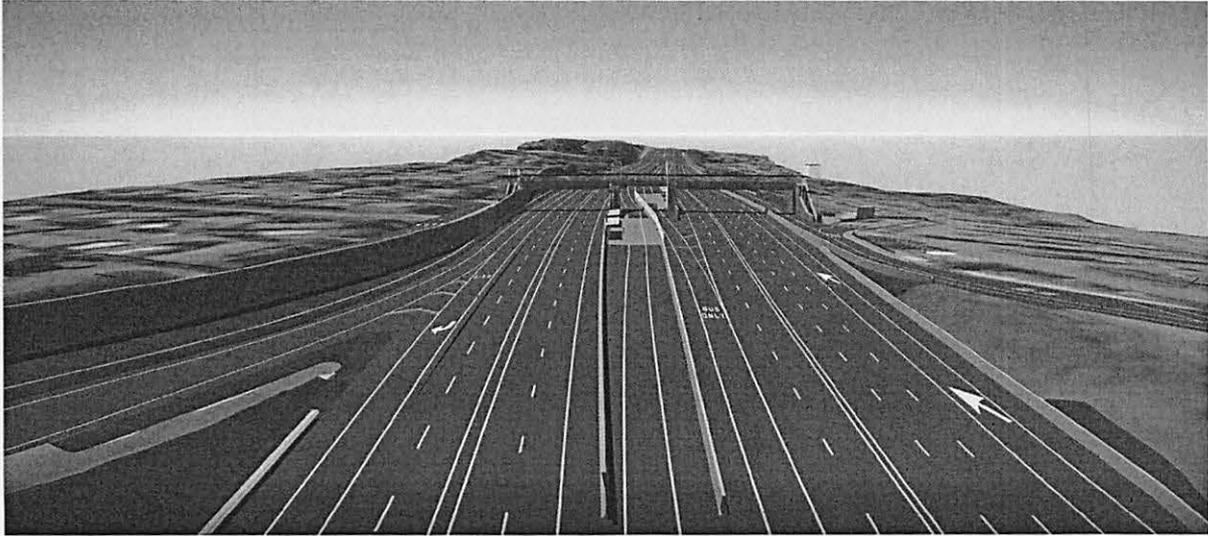
**Conceptual Design of the SR 522 Interchange**



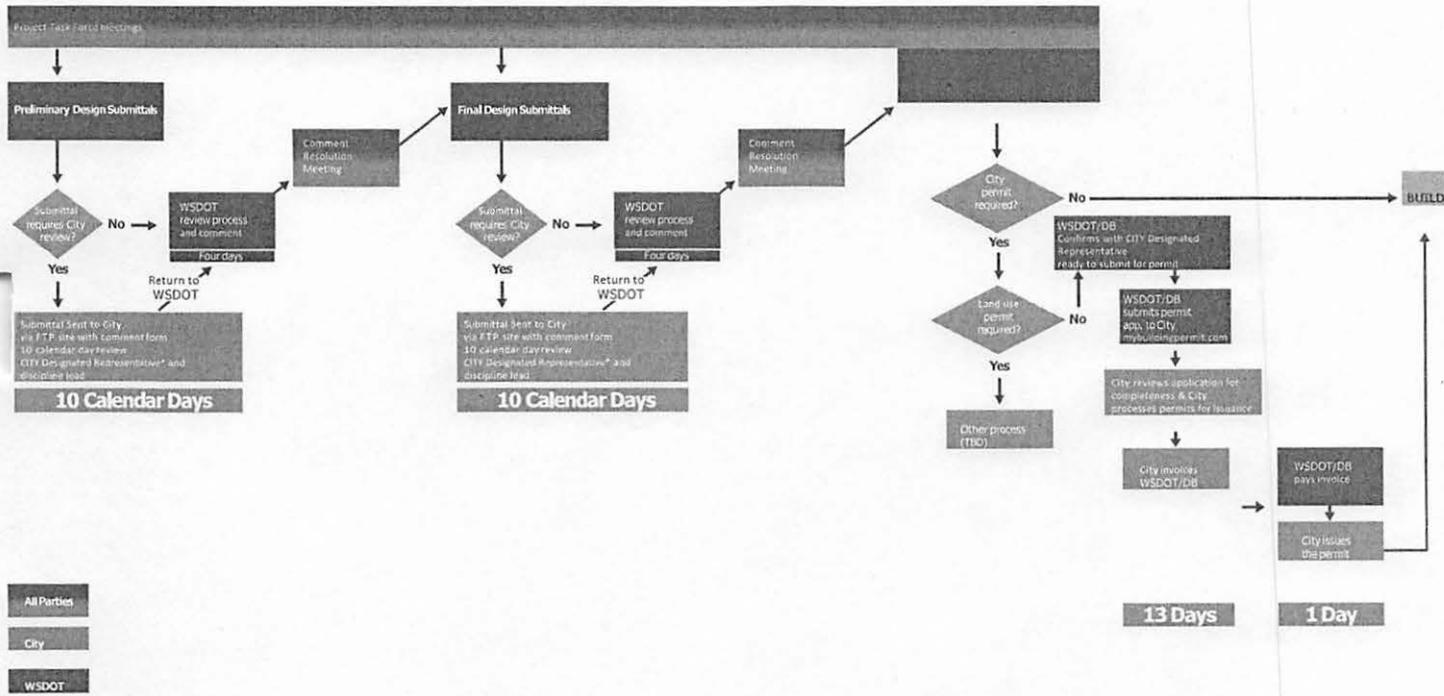
**Conceptual Design of the SR 527 Interchange and Canyon Park Park and Ride Vicinity**



**Conceptual Design of the Brickyard Inline Transit Station**



**WSDOT/Kirkland I-405 Project City Review and Permit Process**



\*CITY Designated Representative involved through design development and construction.

## **EXHIBIT D PROJECT COMMITMENTS**

The PARTIES agree to the following commitments, each of which is within the CITY's jurisdiction and within the PROJECT limits. The PARTIES recognize these commitments are based on conceptual PROJECT design and that future supplements or amendments to this AGREEMENT, or other new agreements, may be necessary to record final design decisions, update commitments based on final design and define cost estimates related to the design, construction and maintenance of the PROJECT.

WSDOT will:

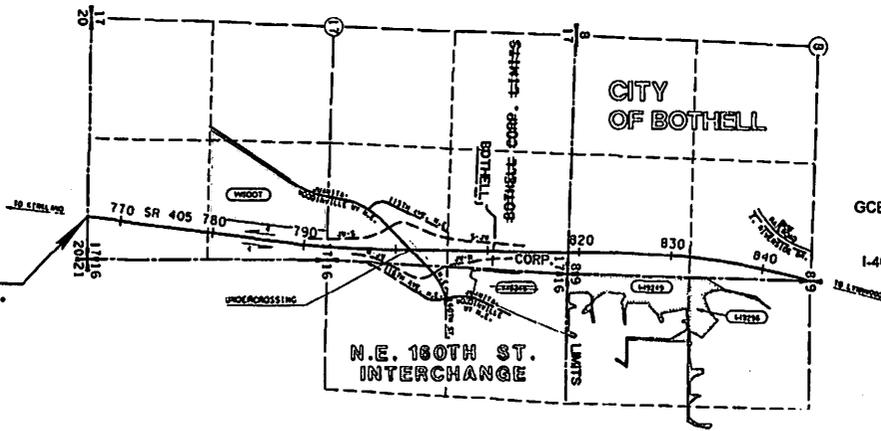
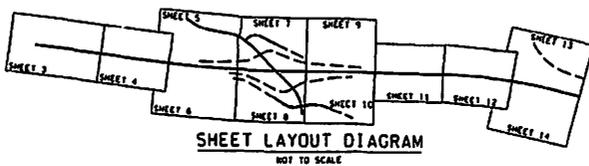
- 1.1. Maintain local access to properties along NE 155th Street and other CITY streets related to the PROJECT during construction.
- 1.2. Incorporate CITY lighting along NE 155th Street per CITY documented standards.
- 1.3. Provide curb, gutter and sidewalk on south side of NE 155th Street and west side of 116th Avenue NE matching existing roadway width, and make channelization and signage modifications to accommodate safe and efficient circulation.
- 1.4. Continue to coordinate and support the CITY in addressing issues related to the replacement of the Juanita Creek culvert including:
  - 1.4.1. Writing letters of support, assisting, and reviewing CITY grant applications to protect and improve the downstream habitat if it's impacted by the PROJECT.
  - 1.4.2. Continuing discussions after the Hydrological Simulation Program Fortran model has been calibrated to help identify and plan mitigation and habitat improvement measures as related to the PROJECT.
- 1.5. Coordinate with the CITY, WSDOT's DESIGN-BUILDER and other interested agencies to remove or abandon the existing instream pond and control structure on Juanita Creek. WSDOT will provide model and as-built files for the Juanita Creek area.
- 1.6. Relocate any CITY utilities impacted by the PROJECT to be outside the East Plaza structure.
- 1.7. Provide regular CITY community notification and outreach within a half mile of the Brickyard Inline Transit Station access during PROJECT design and construction, and coordinate with CITY outreach staff on the notification and outreach, according to Section 2.9 of this AGREEMENT.

The CITY will:

- 2.1. Provide WSDOT with copies of all permits, franchises and/or ordinances within the PROJECT limits, for facilities within CITY owned right of way that are incorporated into the PROJECT.
- 2.2. Encourage and enforce Franchise and other Utility permits to the extent possible in support of WSDOT and their DESIGN-BUILDER to construct the proposed improvements as required.
- 2.3. Provide WSDOT or Sound Transit with leases, easements, permits and other necessary agreements for permanent installation and maintenance of PROJECT elements within CITY right of way and jurisdiction to construct the proposed improvements as required.
- 2.4. Continue to coordinate with WSDOT in addressing issues related to the replacement of the Juanita Creek culvert.

- 2.5. Coordinate with other agencies as needed to document the removal or abandonment of existing instream pond and control structure on Juanita Creek.
- 2.6. Require that other utilities impacted by the PROJECT be relocated before providing permit, per CITY commitment in Sections 2.2 and 2.3 of this Exhibit.

T.26N. R.5E. W.M.



**BEGINNING OF PLAN**  
STA. 766+40.66 P.O.T.  
MP 21.94

Page 1 of 2  
Exhibit E - Right of Way Plans  
GCB 3671 Cooperative Agreement for the Design  
and Construction  
of the  
I-405, Brickyard to SR527 Improvement Project

SR 405  
N.E. 145TH ST. VIC.  
TO SNOHOMISH COUNTY LINE  
KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN  
RIGHT OF WAY AND TOTAL PARCEL DETAIL  
MP 21.94 TO MP 25.03  
STATION 766+40.66 TO STATION 828+96.12  
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
O. W. H. WASHINGTON



APPROVED AND ISSUED MARCH 25, 2003

*James A. Wynn*  
PROJECT MANAGER

**LEGEND**

PROPERTY OWNERS' NUMBERS

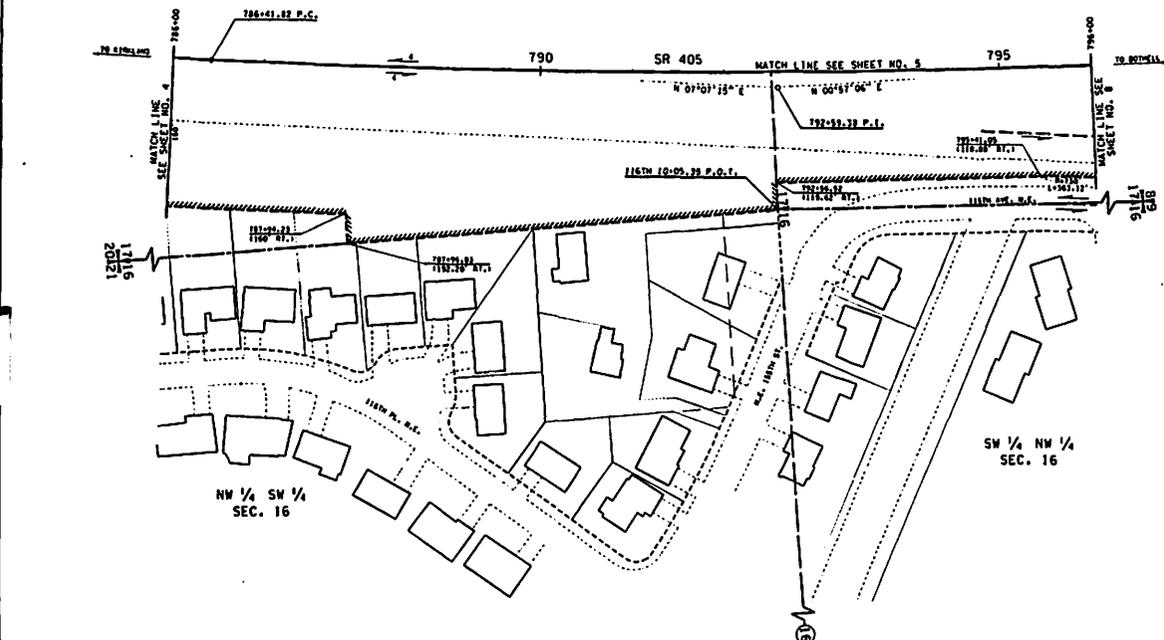
PROPERTY LINES

SCALE IN FEET  
0 500 1000

DATE	DESCRIPTION	BY	APP'D
12/11/02	Issue R/W Plan	J. Wynn	J. Wynn
12/11/02	Issue Parcel Detail	J. Wynn	J. Wynn
12/11/02	Issue Right of Way Plan	J. Wynn	J. Wynn
12/11/02	Issue Limited Access Plan	J. Wynn	J. Wynn
12/11/02	Issue Right of Way and Parcel Detail	J. Wynn	J. Wynn
12/11/02	Issue Right of Way and Limited Access Plan	J. Wynn	J. Wynn

DATE	12/22/11	BY	W. J. ...
SCALE	AS SHOWN	PROJECT	SR 405 IMPROVEMENT PROJECT
REVISION	12/22/11	BY	W. J. ...

T.26N. R.5E. W.M.



ALL PLANS ARE SUBJECT TO CHANGE. CHANGES SHOULD BE NOTICED. PROPOSED PROPERTY RIGHTS SHOWN MAY NOT HAVE BEEN ACQUIRED. DISCREPANCIES MAY OR MAY NOT BE SHOWN. PARTIAL EASEMENT CURRENT PLAN INFORMATION SHOULD CONSULT THE DEPARTMENT OF TRANSPORTATION HEADQUARTERS FOR THE PLANS. CONTROL FOR THE ORIGINAL PLAN OR FILE FOR DISCREPANCY INFORMATION CONTACT THE DEPARTMENT OF TRANSPORTATION HEADQUARTERS REAL ESTATE SERVICES OFFICE.

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

THE DISTANCES SHOWN ARE GROUND DISTANCES. FOR SURVEY INFORMATION SEE RECORDS OF SURVEY FOR WASHINGTON STATE DEPARTMENT OF TRANSPORTATION PROJECT 1-405 RECORDS FEBRUARY 11, 2005.

THIS PLAN SUPERSEDES SHEETS 3 THROUGH 16 OF 18 SHEETS OF SR 405, N.E. 145TH ST. TO SNOHOMISH CO. LINE, APPROVED JANUARY 18, 1964.

ACCESS NOTE:  
EMERGENCY PERSONNEL SHALL HAVE ACCESS THROUGH THESE SUELL RECORDS LOCATED AT STATION 1181.75 AND STATION 1181.75. THESE RECORDS WILL BE USED FOR ACCESS TO THE RECORDS OUTSIDE THE WOODY YARD AND SHALL REMAIN LOCKED WHEN NOT IN USE.

Page 2 of 2  
Exhibit E - Right of Way Plans  
621N.071 Cooperative Agreement for the Design and Construction of the  
I-405, Backyard to SR227 Improvement Project



SR 405  
N.E. 145TH ST. VIC.  
TO SNOHOMISH COUNTY LINE  
KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN  
FULL CONTROL  
MP 22.31 TO MP 22.50  
STATION 796+00 TO STATION 796+00  
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
Olympia, Washington



APPROVED AND ADDED MARCH 25, 2008  
W. J. ...  
RIGHT OF WAY PLANS ENGINEER

**LEGEND**

ACCESS TO BE PROHIBITED SHOWN THIS

PROPERTY OWNERSHIP NUMBERS

PROPERTY LINES

0 50 100  
SCALE IN FEET

PARCEL NO.	NAME	TOTAL AREA	R/W	LT. REMINDER BY	EASEMENT
TOTAL AREA IS FROM ASSessor'S RECORDS UNLESS OTHERWISE NOTED.					
OWNERSHIPS					
ALL AREAS ARE SHOWN IN SQUARE FEET UNLESS OTHERWISE NOTED.					

DATE	12/22/11	BY	W. J. ...
SCALE	AS SHOWN	PROJECT	SR 405 IMPROVEMENT PROJECT
REVISION	12/22/11	BY	W. J. ...

**EXHIBIT F**  
**PROJECT MAINTENANCE RESPONSIBILITIES**

Maintenance commitments after PROJECT construction completion, as referenced in Section 10.0 of this AGREEMENT and as agreed to by the PARTIES, is as follows:

The CITY will:

1.1 Maintain all improvements along NE 155<sup>th</sup> Street.

In the event the PROJECT final plans result in a change to the conceptual plan maintenance responsibilities agreed to by the PARTIES, as outlined above and in the conceptual plan graphic below, the PARTIES will amend this AGREEMENT or develop a separate agreement to reflect the responsibilities of the PARTIES.

### Exhibit F - Project Maintenance Responsibilities

