



INTRLOC_00

WSDOT

File Location

Vendor Name

Document Type: Interlocal New

Vendor Name: WSDOT

PO# Location: INTRLOC-000

Effect Date: 1/1/2011

Term Date: 12/31/2021

CR#: 47151

Related CR#: _____

Ordinance: _____

Resolution: 8153

Leg Date: 11/1/2010

Vendor #: 35185

Description: AIRSPACE LEASE FOR I-90 TRAIL/FACTORIA BLVD
PO 710877-000

WSDOT
12/31/2021

Notes:

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INTRLOC_00
INTERLOCAL AGREEMENTS
12/31/2099
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CR# 47151 DATE 2-10-11 LOG INTRALOC-000

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TR 1-12709
ICN 1-17-07345

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T R A I L L E A S E

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6 THIS IS A LEASE made and entered into by and between the WASHINGTON STATE
7 DEPARTMENT OF TRANSPORTATION hereinafter called "WSDOT," and THE CITY OF
8 BELLEVUE, a municipal corporation of the State of Washington, hereinafter called the "CITY";

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

11 WHEREAS, CITY desires to construct, operate and maintain a trail segment to extend
12 the Mountains to Sound Greenway Trail along I-90 and within I-405 right of way, connecting it
13 with the 124th Ave. SE Bike Lane under this Lease as part of the CITY's local comprehensive
14 trail plan and/or a state or federal comprehensive trail plan as an interim use until the land and
15 premises to be leased are needed for a highway purpose; AND

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

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

20 **1. LEASED PREMISES.** WSDOT leases to the CITY, and the CITY hereby leases
21 from WSDOT, the leased premises (Premises) located in the West half of the Southeast Quarter
22 and the Northeast Quarter of the Southeast Quarter of Section 9, Township 24 North, Range 5
23 East, W.M. in King County and known to be a portion of the highway right of way of SR 405,
24 S.E. 64th St. Vic. To S.E. 30th Vic., sheets 18, 20, 26 and 27 of 27 sheets, approved on January
25 27, 2006 and as further shown hachured on Exhibit A attached hereto and by this reference
26 incorporated herein.

27 The Premises consists of 25,880 square feet, more or less.

28 **2. TERM.** The term of this Lease is Ten (10) years, COMMENCING ON THE
29 DATE OF EXECUTION OF THIS LEASE BY WSDOT (Commencement Date).

30 **3. RENEWAL.** Upon expiration of the initial term, this Lease may be renewed by
31 the CITY for Two (2) additional Ten (10) year periods, ("Renewal Period"), at the discretion of

1 WSDOT; Provided that (A.) the CITY is not in default and has not been in default during the
2 term of this Lease; (B.) the property is not needed for a priority transportation purpose, as
3 determined by WSDOT and in compliance with applicable FHWA laws, regulations, and
4 guidelines; (C.) CITY's continued use under this Lease does not impair the safety or operation of
5 WSDOT's highway or facility, as solely determined by WSDOT; and (D.) the terms and
6 conditions of this Lease conform to then existing state policies or practices, laws, regulations and
7 contracts, or provided CITY is willing to amend this Lease to bring it into compliance with such
8 policies, practices, laws, regulations, and contracts. The Renewal Period shall be on the same
9 terms and conditions as set forth herein, except as modified by any changes in policies, practices,
10 laws, regulations or contracts and as reflected in a written amendment signed by both parties.
11 CITY shall give notice of its intent to renew this Lease for the Renewal Period(s) not less than
12 Ninety (90) calendar days, but not more than Six (6) months, prior to the expiration of the Lease,
13 or any extension thereof.

14 **4. CONSIDERATION.** In lieu of paying economic rent for the Premises, the CITY
15 agrees to provide other specific consideration which is deemed to be a highway benefit. The
16 consideration is the separation of motor vehicle traffic from pedestrians, bicycles, and other non-
17 motorized vehicles providing an alternate route which will materially increase motor vehicle
18 safety and increase highway efficiency. This trail segment located within the SR 405 Factoria
19 Interchange will provide a direct route between the I-90 Trail (Mountains to Sound Greenway)
20 and the 124th Avenue SE bike lanes in Factoria. The trail will allow pedestrians, bicycles, and
21 other non-motorized vehicles to bypass the congestion and heavy traffic volumes on SE 38th
22 Street and Factoria Boulevard, thus eliminating a major safety hazard and cause of congestion to
23 the motoring public.

24 The FHWA and WSDOT must review and approve any change in the use of the Premises
25 and may require the CITY to pay fair market rent.

26 **5. TERMINATION BY WSDOT.**

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

29 (1) Immediately, upon the unauthorized assignment of this Lease by
30 CITY;

31 (2) Upon not less than Thirty (30) calendar days prior written notice,
32 for failure of the CITY to provide acceptable As-Built drawings to WSDOT within Sixty (60)

1 calendar days of the date of completion of the trail construction; acceptability of the As-Built
2 drawings shall be determined solely by WSDOT;

3 (3) Upon not less than Thirty (30) calendar days prior written notice, if
4 CITY defaults on any provision in this Lease and is notified by WSDOT of the default Two (2)
5 times within a Six (6) month period. The third default shall be deemed "non-curable;"

6 (4) Upon not less than Thirty (30) calendar days prior written notice to
7 CITY, if CITY defaults, and fails to cure such default within that Thirty (30) day period, or such
8 longer period, as may be reasonably determined by WSDOT, if CITY is diligently working to
9 cure the default. Waiver or acceptance of any default of the terms of this Lease by WSDOT
10 shall not operate as a release of the CITY's responsibilities for any prior or subsequent default;

11 (5) Upon not less than Thirty (30) calendar days prior written notice, if
12 CITY (i) does not begin construction of the improvements, as described in Section 7 "Use of
13 Premises" herein and shown on Exhibit B within Sixty (60) calendar days from the
14 Commencement Date of this Lease; (ii) does not complete the work within One Hundred Eighty
15 (180) calendar days of the beginning of said construction, or (iii) fails to open the trail to the
16 public within Sixty (60) calendar days of completing the trail construction. WSDOT and CITY
17 may mutually agree in writing to extend the periods provided under (i), (ii), and/or (iii) to
18 accommodate unforeseen conditions out of the control of either party, such as, but not limited to,
19 weather, availability of equipment, and availability of utilities;

20 (6) Immediately, if the CITY's insurance coverage as required herein
21 lapses for any reason. In such event, WSDOT may, at its option, barricade access to the Premises
22 at CITY cost;

23 (7) Immediately, upon issuance of any court order, legislative action,
24 or governmental agency action having jurisdiction to take such action, which would significantly
25 impair or effectively prohibit the CITY's use of the Premises;

26 (8) Immediately, upon written notice, if a receiver is appointed to take
27 possession of the CITY's assets, the CITY makes a general assignment for the benefit of
28 creditors, or the CITY becomes insolvent or takes or suffers action under the Bankruptcy Act;

29 (9) Upon not less than Thirty (30) calendar days prior written notice, if
30 WSDOT determines that it is in the best interest of WSDOT to terminate this Lease;

1 (10) Upon not less than Thirty (30) calendar days prior written notice if
2 the Premises has been abandoned, in WSDOT's sole judgment, for a continuous period of Ninety
3 (90) calendar days; or

4 (11) Immediately, if a transportation emergency exists as solely
5 determined by WSDOT.

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

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

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

24 E. CITY agrees to pay all costs to barricade or to provide other interim safety
25 measures, as directed by WSDOT, if closure of the trail becomes necessary to facilitate repair,
26 reconstruction, maintenance, or modifications of the highway right of way; or if CITY's
27 insurance coverage lapses as provided in Section 5.A.(6) above.

28 **6. TERMINATION BY CITY.**

29 CITY may terminate this Lease without penalty or further liability as follows:

30 A. Upon not less than Thirty (30) calendar days prior written notice for any
31 reason; Provided that the CITY removes all traces of the trail prior to the date of termination.

1 B. Upon not less than Thirty (30) calendar days prior written notice, if
2 WSDOT defaults and fails to cure such default within that Thirty (30) calendar day period, or
3 such longer period, as may be reasonably determined by the CITY, if WSDOT is diligently
4 working to cure the default; or

5 C. Immediately, upon written notice, if in the CITY's judgment the Premises
6 is destroyed or damaged so as to substantially and adversely affect the CITY's authorized use of
7 the Premises.

8 7. **USE OF PREMISES.**

9 A. No use other than construction, operation and maintenance of a public
10 pedestrian, bicycle, and other non-motorized vehicle trail and trailhead as detailed on **Exhibit B**
11 attached hereto and made a part hereof, under the control of the CITY is permitted without the
12 prior written approval of WSDOT. The CITY shall not block the access to WSDOT's detention
13 pond located in the Southwest quadrant of SR 90 and Factoria Boulevard. The CITY expressly
14 agrees that it will not charge others to use the Premises. No motorized vehicles will be allowed
15 on the Premises except for CITY's maintenance vehicles and emergency vehicles responding to
16 an emergency on the Premises. In using the Premises, the CITY shall comply with all statutes,
17 policies and regulations, including, but not limited to the Scenic Vistas Act, RCW 47.42 et seq.
18 and WAC 468-66 et seq., heretofore adopted or hereafter promulgated by the WSDOT or the
19 state legislature relative to the location, operation, and maintenance of improvements located on
20 the Premises. No access to the Premises will be constructed or allowed to be constructed by or
21 for the CITY without WSDOT's prior written approval. Direct access to ramps or traveled lanes
22 of state highways is not permitted. All grading and construction plans and any changes thereof
23 are subject to approval by WSDOT.

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

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

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

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

7 D. Within Thirty (30) calendar days of occupancy, the CITY at its sole
8 expense shall erect and maintain a permanent sign at all entrances to the Trail located on
9 WSDOT right of way, stating as follows: "This trail is located on highway right of way under a
10 Trail Lease between the City of Bellevue and the Washington State Department of
11 Transportation."

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

14 **8. MAINTENANCE RESPONSIBILITIES.**

15 A. CITY shall perform or cause to be performed at its sole expense all
16 maintenance of the Premises that shall include, but not be limited to, keeping the Premises in
17 good condition, both as to safety and appearance, to the satisfaction of WSDOT. CITY shall be
18 responsible for weed control, and reconstruction and repair of any or all components of the trail
19 facility. In addition (and if applicable), CITY is responsible for the regular inspection and repair
20 of structures as required by the Code of Federal Regulations 23 CFR 650, subpart C, National
21 Bridge Inspection standards (NBIS), EXCEPT any and all work that would require Interstate 405
22 and/or Interstate 90 closures.

23 B. CITY agrees that it is additionally responsible for the following specific
24 maintenance and operational items, at its sole cost and expense, without further liability to the
25 WSDOT:

26 (1) Security and law enforcement for the Premises;

27 (2) Graffiti removal upon all real and personal property (including all
28 fixtures and attachments). CITY shall in no way interfere with any highway operations or traffic
29 flow on Interstate 405 and/or Interstate 90 when removing graffiti. CITY graffiti inspections
30 shall be no less than once per month;

31 (3) Litter control on an as needed basis in accordance with adopted
32 CITY maintenance standards and practices or upon WSDOT written notification;

1 (4) Sweeping of the Premises on an as needed basis in accordance
2 with adopted CITY maintenance standards and practices; and

3 (5) Removing and disposing of unauthorized signs, banners, etc. from
4 the Premises.

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

8 D. CITY warrants that any vegetation disturbed during construction of the
9 CITY's trail project, shall be replanted or replaced, at CITY's expense, to the satisfaction of the
10 WSDOT.

11 E. If CITY fails to maintain the trail as provided herein, the WSDOT may
12 perform such maintenance after providing the CITY with Thirty (30) calendar days written
13 notice of such maintenance default, and CITY agrees to reimburse the WSDOT for such
14 maintenance costs within Thirty (30) calendar days of receipt of a WSDOT invoice.

15 **9. ENVIRONMENTAL REQUIREMENTS.**

16 A. CITY represents, warrants and agrees that it will conduct its activities on
17 and off the Premises in compliance with all applicable environmental laws. As used in this
18 Lease, the term "Environmental Laws" means all federal, state and local environmental laws,
19 rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations
20 or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C.
21 § 6901, et. seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution
22 Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know
23 Act, 42 U.S.C. § 11001, et seq., the Comprehensive Environmental Response, Compensation and
24 Liability Act, 42 U.S.C. § 9601, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et
25 seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other
26 comparable local, state, or federal statute or ordinance pertaining to the environment or natural
27 resources and all regulations pertaining thereto, including all amendments and/or revisions to
28 said laws and regulations.

29 B. Toxic or hazardous substances are not allowed on the Premises without
30 the express written permission of WSDOT and under such terms and conditions as may be
31 specified by WSDOT. For the purposes of this Lease, "Hazardous Substances," shall include all
32 those substances identified as hazardous under the Comprehensive Environmental Response,
33 Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., and the Washington Model Toxics

1 Control Act, RCW 70.105D et seq., including all amendments and/or revisions to said laws and
2 regulations, and shall include gasoline and other petroleum products. In the event such
3 permission is granted, the use and/or disposal of such materials must be done in a legal manner
4 by the CITY.

5 C. CITY agrees to cooperate in any environmental investigations conducted
6 by WSDOT staff or independent third parties where there is evidence of contamination on the
7 Premises, or where WSDOT is directed to conduct such audit by an agency or agencies having
8 jurisdiction. CITY will reimburse WSDOT for the cost of such investigations, where the need
9 for said investigation is determined to be caused by the CITY's operations. CITY will provide
10 WSDOT with notice of any inspections of the Premises, notices of violations, and orders to clean
11 up contamination. CITY will permit WSDOT to participate in all settlement or abatement
12 discussions. In the event that the CITY fails to take remedial measures as duly directed by a
13 state, federal, or local regulatory agency within Ninety (90) calendar days of such notice,
14 WSDOT may elect to perform such work, and the CITY covenants and agrees to reimburse
15 WSDOT for all direct and indirect costs associated with WSDOT's work where those costs are
16 determined to have resulted from the CITY's use of the Premises. CITY further agrees that the
17 use of the Premises shall be such that no hazardous or objectionable smoke, fumes, vapor, odors,
18 or discharge of any kind shall rise above the grade of the right of way.
19

20 D. For the purposes of this Lease, "Costs" shall include, but not be limited to,
21 all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties,
22 and attorney fees and other litigation costs incurred in complying with state or federal
23 environmental laws, which shall include, but not be limited to, the Comprehensive
24 Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq; the Clean
25 Water Act, 33 U.S.C. § 1251; the Clean Air Act, 42 U.S.C. § 7401; the Resource Conservation
26 and Recovery Act, 42 U.S.C. § 6901; and the Washington Model Toxics Control Act, RCW
27 70.105D et seq., including all amendments and/or revisions to said laws and regulations.

28 E. CITY agrees to defend, indemnify and hold harmless WSDOT from and
29 against any and all claims, causes of action, demands and liability including, but not limited to,
30 any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and
31 attorneys' fees associated with the removal or remediation of any Hazardous Substances that
32 have been released, or otherwise come to be located on the Premises, including those that may
33 have migrated from the Premises through water or soil to other properties, including without
34 limitation, the adjacent WSDOT property and which are caused by or result from the CITY's
35 activities on the Premises. CITY further agrees to retain, defend, indemnify and hold harmless
36 WSDOT from any and all liability arising from the offsite disposal, handling, treatment, storage,
37 or transportation of any such Hazardous Substances removed from said Premises.

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

8 G. The provisions of this paragraph shall survive the expiration or
9 termination of this Lease.

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

13 A. WSDOT reserves the right for utility franchise and permit holders to enter
14 upon the Premises to maintain facilities and, for itself, to grant utility franchises and/or permits
15 within the Premises. Such installation will be accomplished in such a manner as to minimize any
16 disruption to the CITY. The franchise/permit holder will be required to restore paving and
17 grading damaged by the installation. WSDOT also reserves the right to withdraw portions of the
18 Premises for uses such as, but not limited to, telecommunications transmission sites, which
19 WSDOT determines to be reasonably compatible with the CITY's authorized use of Premises.

20 B. CITY shall not disturb markers installed by a franchise/permit holder and
21 will contact and provide notice to any franchise/permit holder and all owners of underground
22 facilities prior to any excavation. CITY shall contact WSDOT and call the Underground Utility
23 Locating Service, or its successor organization, as part of its efforts to ascertain any and all
24 owners of underground utility facilities and to locate the utility. The CITY shall not damage
25 legally installed underground utilities. CITY shall comply with all applicable provisions of
26 Chapter 19.122 RCW relating to underground facilities.

27 **11. TAXES, ASSESSMENTS, AND UTILITIES.** CITY agrees to pay all
28 assessments that benefit the Premises and/or which may hereafter become a lien on the interest
29 of the CITY in accordance with RCW 79.44.010. The CITY agrees to pay all taxes that may
30 hereafter be levied or imposed upon the interest of the CITY or by reason of this Lease. The
31 CITY is responsible for and agrees to pay the cost for all utilities, including, but not limited to,
32 surcharges, fuel adjustments, rate adjustments and taxes that serve the Premises.

1 **12. WSDOT'S APPROVAL OF DESIGN AND CONSTRUCTION.** CITY
2 covenants that any construction on the Premises will not damage, threaten to damage, or
3 otherwise adversely affect any part or element of the highway facility or its operation. WSDOT
4 shall be furnished with two sets of complete plans, details, and specifications and revisions
5 thereto for grading and all improvements proposed to be placed on the Premises, and no work
6 shall be done without prior written approval of such plans by WSDOT. All construction work
7 shall be done in conformity with the plans and specifications as approved. WSDOT may take any
8 action necessary, including directing that work be temporarily stopped or directing that
9 additional work be done, to ensure compliance with the plans and specifications, protection of all
10 parts and elements of the highway facility, and compliance with WSDOT's construction and
11 safety standards. The improvements shall be designed and constructed in a manner that will
12 permit WSDOT access to the highway facility for the purposes of inspection, maintenance, and
13 construction, when necessary.

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

24 **14. NON-COMPLETION OF CONSTRUCTION.** CITY shall obtain WSDOT's
25 approval of construction drawings, complete construction of the project according to the
26 approved plans, and open the trail to the public within Three Hundred (300) calendar days of the
27 effective date of this Lease.

28 **15. "AS BUILT" PLANS.** Within Sixty (60) calendar days of the date the trail
29 construction is completed, CITY shall provide WSDOT with a complete set of dimensioned "As-
30 Built" scale drawings showing at least the information following: (a) trail centerline; (b) ties to
31 beginning and end of trail; (c) underground utilities; and (d) such other information as WSDOT
32 may request. Acceptability of the As-Built drawings shall be determined solely by WSDOT. In
33 the event the CITY fails to provide such plans within the prescribed time period, the CITY
34 hereby agrees that WSDOT shall have the right, at its option, to contract with a consultant in
35 order to secure such plans and CITY agrees to reimburse WSDOT for all costs incurred in
36 obtaining said plans within Thirty (30) calendar days of the date of WSDOT's invoice.

1 **16. LIENS.**

2 A. CITY shall at all times indemnify and hold harmless WSDOT from all
3 claims for labor or materials in connection with construction, repair, alteration, maintenance or
4 installation of structures, improvements, equipment, or facilities on or within the Premises, and
5 from the cost of defending against such claims, including attorney fees.

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

12 C. Should the CITY fail to accomplish a, b, or c above within Fifteen (15)
13 calendar days after the filing of such a lien, the Lease shall be in default.

14 **17. ENCUMBRANCES.** It is expressly understood that the CITY shall not
15 encumber the Premises.

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

26 **19. INSURANCE.**

27 A. CITY warrants that it is an individually self insured municipal corporation
28 that fully self-insures its liability exposures as authorized under the provisions of RCW 48.62,
29 and agrees to provide acceptable evidence of its self insured status to WSDOT.

30 B. In the event the CITY, after commencement of this Lease, elects to
31 terminate its self insured status and secure commercial liability coverage, CITY will promptly
32 notify WSDOT, promptly secure insurance coverage from an insurer licensed to conduct

1 business in the State of Washington, to the satisfaction of WSDOT. The CITY's insurance
2 policy must provide liability coverage for the Premises, including public liability coverage for
3 bodily injury, property damage, and personal injury of not less than Two Million and no/100
4 Dollars (\$2,000,000.00) combined single limit per occurrence, with a general aggregate amount
5 of not less than Four Million and no/100 Dollars (\$4,000,000) per policy period. Such aggregate
6 limits shall apply for this Premises location, and coverage under said policy shall be triggered on
7 an "occurrence basis," not on a "claims made" basis. The CITY shall increase the policy limits
8 at its sole cost, when and if WSDOT deems it necessary due to the CITY's use of the Premises
9 within ten (10) days of WSDOT's written request to do so. WSDOT shall be named as an
10 additional insured by endorsement of the liability policy required, utilizing ISO Form 2026
11 (Additional Insured – Designated Person or Organization) or its equivalent without modification.
12 The endorsement shall require the insurer to provide the WSDOT, Headquarters Real Estate
13 Services Office in Tumwater, with no less than thirty (30) days written notice before any
14 cancellation of the coverage required herein.

15 C. CITY assumes all obligations for premium payment, and in the event of
16 nonpayment, CITY is obligated to reimburse WSDOT the cost of maintaining the insurance
17 coverage and any legal fees incurred in enforcing such reimbursement in the event the CITY
18 fails to pay the policy premiums. However, WSDOT is not obligated to pay the CITY's
19 insurance premiums.

20 D. Coverage, if obtained by the CITY in compliance with this section, shall
21 not be deemed as having relieved the CITY of any liability in excess of such coverage.

22 **20. HOLD HARMLESS/INDEMNIFICATION.**

23 A. CITY, its successors and assigns, will protect, save, and hold harmless
24 WSDOT, its authorized agents and employees, from all claims, actions, costs, damages (both to
25 persons and/or property), or expenses of any nature whatsoever by reason of the acts or
26 omissions of the CITY, its assigns, subtenants, agents, contractors, licensees, invitees,
27 employees, or any person whomsoever, arising out of or in connection with any acts or activities
28 related to this Lease, whether those claims, actions, costs, damages, or expenses result from acts
29 or activities occurring on or off the Premises. The CITY further agrees to defend WSDOT, its
30 agents or employees, in any litigation, including payment of any costs or attorney's fees, for any
31 claims or actions commenced, arising out of, or in connection with acts or activities related to
32 this Lease, whether those claims, actions, costs, damages, or expenses result from acts or
33 activities occurring on or off the Premises. This obligation shall not include such claims, actions,
34 costs, damages, or expenses which may be caused by the sole negligence of WSDOT or its
35 authorized agents or employees; provided, that if the claims or damages are caused by or result

1 from the concurrent negligence of (a) WSDOT, its agents or employees and (b) the CITY, its
2 assigns, subtenants, agents, contractors, licensees, invitees, employees, or involves those actions
3 covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the
4 extent of the negligence of the CITY or its assigns, subtenants, agents, contractors, licensees,
5 invitees, employees.

6 B. CITY specifically assumes potential liability for the actions brought by
7 CITY's employees and solely for the purposes of this indemnification and defense, CITY
8 specifically waives any immunity under the State industrial insurance law, Title 51 RCW. CITY
9 recognizes that this waiver was the subject of mutual negotiations.

10 C. The indemnification provisions contained in this section shall survive the
11 termination or expiration of this Lease.

12 21. **NONDISCRIMINATION.** CITY, for itself, its successors and assigns, as part
13 of the consideration hereof, does hereby agree to comply with all applicable civil rights and
14 antidiscrimination requirements including, but not limited to, Chapter 49.60 RCW.

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

17 23. **SURRENDER OF PREMISES AND REMOVAL OF CITY'S**
18 **IMPROVEMENTS AND PERSONAL PROPERTY.**

19 A. Upon termination of this Lease, the CITY shall cease its operations on
20 and/or use of the Premises. In the event the CITY fails to vacate the Premises on the date of
21 termination, the CITY shall be liable for any and all costs to WSDOT arising from such failure.
22 As used herein, "vacate" shall include preventing use of the Premises by the public.

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

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

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

9 **24. NO RELATIONSHIP ESTABLISHED.** WSDOT shall in no event be
10 construed to be a partner with, associate or joint venturer of the CITY or any party associated
11 with the CITY. The CITY shall not create any obligation or responsibility on behalf of WSDOT
12 or bind WSDOT in any manner.

13 **25. TRANSPORTATION PURPOSES.**

14 A. CITY and WSDOT hereby affirm that upon termination or expiration of
15 this Lease for any reason and the subsequent use of the Premises for transportation or other
16 purposes, such use will not be considered the use of any publicly-owned land from a public park,
17 recreation area, or wildlife and waterfowl refuge within the meaning of 23 U.S.C. 138 and 49
18 U.S.C. 303 (former 49 U.S.C.1653 (f), Section "4f"). If this Lease is terminated for highway
19 construction and the WSDOT or authorized local, state or federal official having jurisdiction of
20 the land or a court of competent jurisdiction determines that replacement of the trail is required
21 under 23 U.S.C. 138 and 49 U.S.C. 303, CITY agrees that it shall be responsible for and
22 promptly replace the trail as required and pay all such costs in accordance with Paragraph 5.C. of
23 this Lease.

24 B. CITY further acknowledges, agrees, and promises not to use Outdoor
25 Recreation Funds as provided for in the Land and Water Conservation Fund Act, 16 U.S.C. 460-
26 1, sections 4-11 (see section 8(f)(3) within state owned right of way; such funds may be used
27 outside of the state owned right of way).

28 **26. CONDITION OF THE PROPERTY.** WSDOT and CITY acknowledge that
29 they have jointly examined the Premises identified in **Exhibit A** attached hereto, and the CITY
30 accepts said Premises in its present condition as of the Commencement Date of this Lease.

31 **27. BINDING CONTRACT.** This Lease shall not become binding upon WSDOT
32 unless and until executed for WSDOT by the Secretary of Transportation, or her duly authorized
33 representative.

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

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

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

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

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

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

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

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

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

3
4 Signatures:

Accepted and Approved by:

5
6 CITY OF BELLEVUE

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

7
8
9 By: Tom Nijate

By: Cynthia Tremblay

10
11 Title: Deputy City Mgr

Cynthia Tremblay,
Property Management Program Manager

12
13 Dated: 11-8-10

Dated: 12-20-2010

14

15 Approved as to form.
16 By: Sharon J. Poole
Assistant City Attorney

APPROVED AS TO FORM
By: Ann E. Salay
Assistant Attorney General

17
18
19
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11-29, 2010

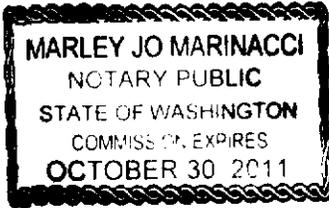
AGENCY ACKNOWLEDGMENT

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STATE OF WASHINGTON)
) ss
COUNTY OF King)

On this 8th day of November, 2010 before me personally appeared
Brad Miyake, to me known to be the duly appointed
Deputy City Manager of City of Bellevue and that he/she executed the within and
foregoing instrument and acknowledged the said instrument to be his/her free and voluntary act
and deed of said State of Washington, for the uses and purposes therein set forth, and on oath
Lessees that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
8th day of November, 2010.



Marley Jo Marinacci
(Signature)

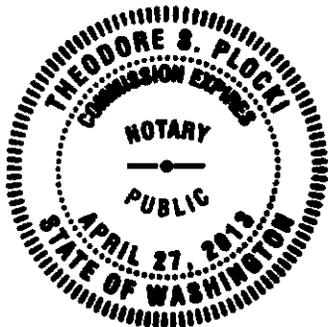
Marley Jo Marinacci
(Print or type name)
Notary Public in and for the State of Washington
residing at Renton
My commission expires 10-30-11

1 WSDOT ACKNOWLEDGMENT

2 STATE OF WASHINGTON)
3) ss
4 COUNTY OF THURSTON)
5
6

7 On this 20th day of December, 2010 before me
8 personally appeared Cynthia Tremblay, to me known to be the duly appointed Property
9 Management Program Manager, and that she executed the within and foregoing instrument and
10 acknowledged the said instrument to be the free and voluntary act and deed of said State of
11 Washington, for the uses and purposes therein set forth, and on oath states that she was
12 authorized to execute said instrument.
13

14 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
15 20th day of December, 2010.
16



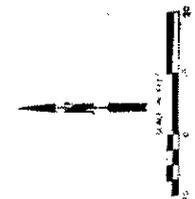
Theodore S. Plocki
(Signature)

Theodore S. Plocki
(Print or type name)

Notary Public in and for the State of Washington
residing at Olympia, Washington
My commission expires April 27, 2013



I-90 OFF RAMP



TRAILHEAD CONSTRUCTION NOTES

1. REMOVE AND REPLACE 3' x 4' AND 4' x 4' CONCRETE PAVING SURF DETAIL THE 3'x4'
2. REMOVE AND REPLACE 3' x 4' CONCRETE PAVING SURF DETAIL THE 4'x4' AREA
3. REMOVE AND REPLACE 3' x 4' CONCRETE PAVING SURF DETAIL THE 4'x4' AREA
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9. REMOVE AND REPLACE 3' x 4' CONCRETE PAVING SURF DETAIL THE 4'x4' AREA
10. REMOVE AND REPLACE 3' x 4' CONCRETE PAVING SURF DETAIL THE 4'x4' AREA

TRAILHEAD GENERAL NOTES

1. ALL UTILITIES SHOWN ARE APPROXIMATE LOCATIONS. FIELD VERIFY ALL UTILITIES PRIOR TO CONSTRUCTION.
2. ALL UTILITIES AND CONDUITS TO BE RELOCATED SHALL BE SHOWN.
3. UNDERGROUND UTILITIES SHOWN ARE APPROXIMATE TO THE INFORMATION CONTAINED IN AVAILABLE RECORDS AND FIELD SURVEY.
4. FIELD VERIFY ALL UTILITIES PRIOR TO CONSTRUCTION. FIELD VERIFY ALL UTILITIES PRIOR TO CONSTRUCTION.
5. FIELD VERIFY ALL UTILITIES PRIOR TO CONSTRUCTION. FIELD VERIFY ALL UTILITIES PRIOR TO CONSTRUCTION.
6. ALL UTILITIES AND CONDUITS TO BE RELOCATED SHALL BE SHOWN.
7. ALL UTILITIES AND CONDUITS TO BE RELOCATED SHALL BE SHOWN.

Additional construction plan note & a condition of this trail lease:
 If any I-405 chain-link fencing is removed for trail construction activities, it shall be replaced at the end of each work day to prevent access to the I-405 facility. Orange visibility fence is not a suitable replacement. If chain link fencing is removed, there shall be a flagger or other personnel in the vicinity of the fence removal site to insure that no trespass occurs. If the fence replacement is not feasible, a lockable gate can be installed, and it shall be locked when there are no construction activities in the vicinity. CITY shall obtain WSDOT's and FHWA's prior approval for the locations and specifications of any fence, gate, or alternative installations to prevent unauthorized access to the I-405 facility.

CITY *David W. Wray* WSDOT *Cynthia Tremblay* 12-20-10

Exhibit B
 TR 1-12709
 IC 1-17-07345
 City of Bellevue
 Page 1 of 5

FACTORIA BLVD SE

City of Bellevue
 Transportation Department

Approved By: _____
 Date: _____
 Title: _____

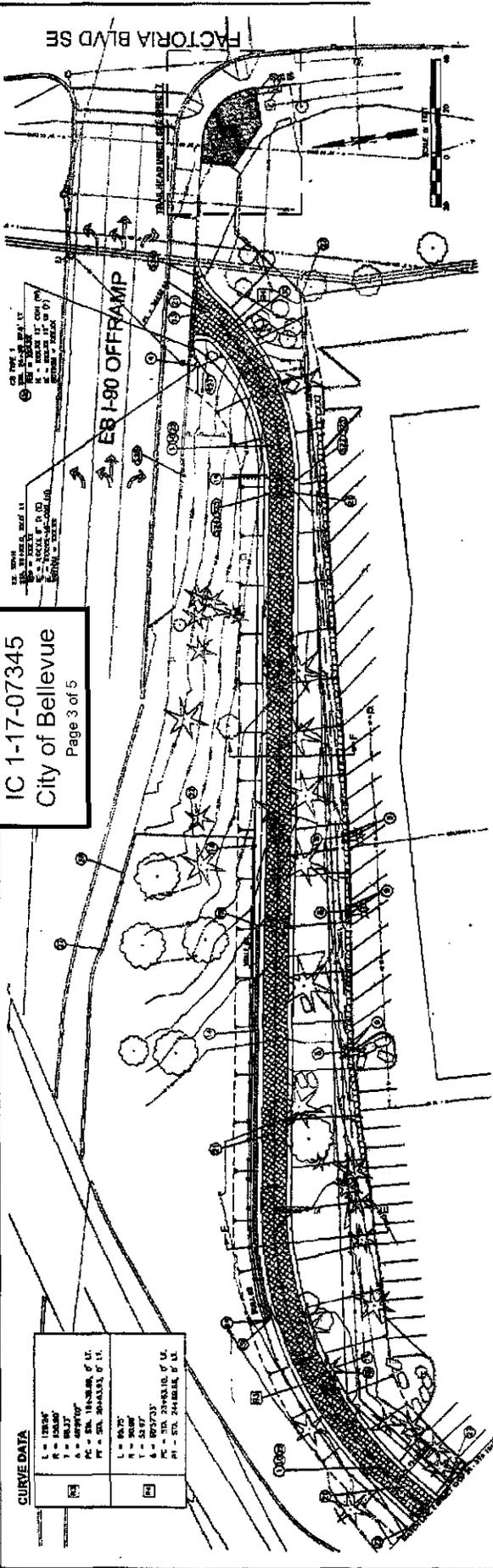
FACTORIA MULTI-USE PATH
 CONNECTION

I-90 FACTORIA BLVD
 TRAILHEAD IMPROVEMENTS PLAN

Exhibit B
 TR 1-12709
 IC 1-17-07345
 City of Bellevue
 Page 3 of 5

CURVE DATA

L = 1285'	R = 1285'
A = 90.00°	Δ = 90.00°
PC = STA. 24483.00	PT = STA. 24483.00
PI = STA. 24483.00	PI = STA. 24483.00
LC = 1285'	RC = 1285'
TA = 23.57°	TR = 23.57°
PC = STA. 24483.00	PT = STA. 24483.00
PI = STA. 24483.00	PI = STA. 24483.00



CONSTRUCTION NOTES

- REMOVE EXISTING CURVES AND MATCH EXISTING CURVES AS SHOWN ON THE ORIGINAL DRAWING SHEET.
- DO NOT USE THIS SHEET.
- ADJUST CATCH BASINS TO FINISHED GRADE PER CDD STA. AND NO. 0-2-2.
- DO NOT USE THIS SHEET.
- CONTRACTOR SHALL VERIFY ALL CONDUITS AND CONNECTIONS FROM EXISTING JUNCTION BOX TO NEW STREET LIGHT LOCATION ARE CORRECT AND FUNCTIONING. SEE DRAWING FOR ALL CONDUIT AND CONNECTIONS. REMOVE EXISTING POLE AND RELOCATE TO NEW LOCATION. SEE DRAWING FOR ALL CONDUIT AND CONNECTIONS.
- DO NOT USE THIS SHEET.
- REMOVE AND REINSTALL ALL EXISTING CURVES AND MATCH EXISTING CURVES AS SHOWN ON THE ORIGINAL DRAWING SHEET.
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CONSTRUCTION NOTES (CONTINUED)

- REMOVE AND REINSTALL ALL EXISTING CURVES AND MATCH EXISTING CURVES AS SHOWN ON THE ORIGINAL DRAWING SHEET.
- DO NOT USE THIS SHEET.
- ADJUST CATCH BASINS TO FINISHED GRADE PER CDD STA. AND NO. 0-2-2.
- DO NOT USE THIS SHEET.
- CONTRACTOR SHALL VERIFY ALL CONDUITS AND CONNECTIONS FROM EXISTING JUNCTION BOX TO NEW STREET LIGHT LOCATION ARE CORRECT AND FUNCTIONING. SEE DRAWING FOR ALL CONDUIT AND CONNECTIONS. REMOVE EXISTING POLE AND RELOCATE TO NEW LOCATION. SEE DRAWING FOR ALL CONDUIT AND CONNECTIONS.
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- REMOVE AND REINSTALL ALL EXISTING CURVES AND MATCH EXISTING CURVES AS SHOWN ON THE ORIGINAL DRAWING SHEET.

GRADING TABLE

Station	Proposed	Existing	Grade	Notes
24480+00	11.65	11.65	11.65	Top of Existing Curb
24480+10	11.65	11.65	11.65	Top of Existing Curb
24480+20	11.65	11.65	11.65	Top of Existing Curb
24480+30	11.65	11.65	11.65	Top of Existing Curb
24480+40	11.65	11.65	11.65	Top of Existing Curb
24480+50	11.65	11.65	11.65	Top of Existing Curb
24480+60	11.65	11.65	11.65	Top of Existing Curb
24480+70	11.65	11.65	11.65	Top of Existing Curb
24480+80	11.65	11.65	11.65	Top of Existing Curb
24480+90	11.65	11.65	11.65	Top of Existing Curb
24490+00	11.65	11.65	11.65	Top of Existing Curb
24490+10	11.65	11.65	11.65	Top of Existing Curb
24490+20	11.65	11.65	11.65	Top of Existing Curb
24490+30	11.65	11.65	11.65	Top of Existing Curb
24490+40	11.65	11.65	11.65	Top of Existing Curb
24490+50	11.65	11.65	11.65	Top of Existing Curb
24490+60	11.65	11.65	11.65	Top of Existing Curb
24490+70	11.65	11.65	11.65	Top of Existing Curb
24490+80	11.65	11.65	11.65	Top of Existing Curb
24490+90	11.65	11.65	11.65	Top of Existing Curb
24500+00	11.65	11.65	11.65	Top of Existing Curb
24500+10	11.65	11.65	11.65	Top of Existing Curb
24500+20	11.65	11.65	11.65	Top of Existing Curb
24500+30	11.65	11.65	11.65	Top of Existing Curb
24500+40	11.65	11.65	11.65	Top of Existing Curb
24500+50	11.65	11.65	11.65	Top of Existing Curb
24500+60	11.65	11.65	11.65	Top of Existing Curb
24500+70	11.65	11.65	11.65	Top of Existing Curb
24500+80	11.65	11.65	11.65	Top of Existing Curb
24500+90	11.65	11.65	11.65	Top of Existing Curb
24510+00	11.65	11.65	11.65	Top of Existing Curb
24510+10	11.65	11.65	11.65	Top of Existing Curb
24510+20	11.65	11.65	11.65	Top of Existing Curb
24510+30	11.65	11.65	11.65	Top of Existing Curb
24510+40	11.65	11.65	11.65	Top of Existing Curb
24510+50	11.65	11.65	11.65	Top of Existing Curb
24510+60	11.65	11.65	11.65	Top of Existing Curb
24510+70	11.65	11.65	11.65	Top of Existing Curb
24510+80	11.65	11.65	11.65	Top of Existing Curb
24510+90	11.65	11.65	11.65	Top of Existing Curb
24520+00	11.65	11.65	11.65	Top of Existing Curb

City of Bellevue
 Transportation Department

FACTORIA MULTI-USE PATH CONNECTION

TRAIL PLAN
 STA. 19+20 TO 24+50

Sheet 14 of 28

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 8153

A RESOLUTION authorizing execution of a Lease Agreement with the Washington State Department of Transportation, for access to state-owned right of way, to construct and maintain the 124th Avenue SE Connection to the I-90 Trail Project and a trailhead/kiosk near Factoria Boulevard.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

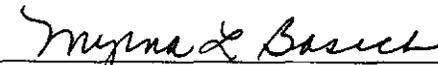
Section 1. The City Manager or his designee is hereby authorized to execute a Lease Agreement with the Washington State Department of Transportation, for access to state-owned right of way, to construct and maintain the 124th Avenue SE Connection to the I-90 Trail project and a trailhead/kiosk near Factoria Boulevard; a copy of which Lease Agreement has been given Clerk's Receiving No. 47151.

Passed by the City Council this 15th day of November, 2010, and signed in authentication of its passage this 18th day of November, 2010.

(SEAL)


Don Davidson, DDS
Mayor

Attest:


Myrna L. Basich, City Clerk

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT:

Resolution No. 8153 authorizing execution of a Lease Agreement with the Washington State Department of Transportation for access to state-owned right-of-way to construct and maintain the 124th Avenue SE Connection to the I-90 Trail project and a trailhead/kiosk near Factoria Boulevard.

FISCAL IMPACT:

The subject lease has a term of 10 years with an option to extend the lease for two additional 10-year periods. While the lease does not require payment of rent, it does require the City to perform all maintenance on the project once constructed. The annual cost of this maintenance (sweeping, weed control, safety and surface repairs, graffiti removal, and litter control) is estimated to be approximately \$15,000. Due to the timing of the project, very little maintenance is anticipated before 2013. Therefore, no specific budget has been included in the proposed 2011-2012 General Fund budget for this obligation. Additional M&O costs will be addressed in a future budget cycle (2013-2014). Minor unanticipated or incidental costs will be accommodated within the existing M&O budget.

STAFF CONTACT:

Goran Sparrman, Director, 452-4338
Dave Berg, Deputy Director, 452-6468
Mike Mattar, Design Division Manager, 452-4318
Chris Masek, Engineer, 452-4619
Transportation Department

Max Jacobs, Real Property Manager, 452-4182
Civic Services Department

POLICY CONSIDERATION:

Execution of a lease agreement with WSDOT is a requisite element of project implementation for the 124th Avenue SE Connection to the I-90 Trail, a project identified and adopted into the Comprehensive Plan as part of the 2005 Factoria Area Transportation (FATS) Update (Project PB7) and the 2009 Pedestrian and Bicycle Transportation Facilities Plan Update (Project O-136). The project also supports key Comprehensive Plan policies including: TR-79 (assign high priority to pedestrian and bicycle projects that address safety issues) and S-FA-22 (improve safety for bicyclists and other non-motorized users by providing an integrated on-street and off-street system). Bellevue City Code Section 4.30.020 requires City Council approval for leases of more than one year in duration.

BACKGROUND:

After identification as part of the FATS Update, the 124th Avenue SE Trail Connection was prioritized into the City's 2009-2020 Transportation Facilities Plan as project TFP-165 (Resolution No. 7914 on April 20, 2009) and the City's 2010-2015 Transportation Improvement Program as TIP Reference No. 45 (Resolution No. 7933 on June 15, 2009). On December 1, 2008, Council approved Ordinance No. 5851 adopting the 2009-2010 Budget and 2009-2015 CIP Plan that included the Pedestrian Access Improvements program (CIP Plan No. PW-W/B-56), which will be used to provide local match funding for the project. Council subsequently

accepted two grants, a \$605,000 state Pedestrian and Bicycle Safety Grant and a \$354,400 federal Congestion Management and Air Quality grant, to fund the construction of the trail connection (Ordinance No. 5932 on January 19, 2010). The \$605,000 state grant became past due as the City and state negotiated the lease required for the project. The second and final extension for grant obligation ends December 1, 2010, at which point the City must surrender the funds if not obligated. Right-of-way certification, the final process step for obligation, cannot occur without the executed lease. Council action will enable the City to meet the requirements of the grants.

The goal of the 124th Avenue SE Connection project is to address non-motorized safety and system connectivity issues in Factoria, one of the City's designated activity centers. The project will construct a 10-foot-wide paved multi-purpose trail connecting the north end of 124th Avenue SE near SE 38th Street to the existing Mountains to Sound Greenway trail along I-90. A mid-block crossing on 124th Avenue SE just south of SE 38th Street will be constructed, including a small island for pedestrian refuge. Wayfinding signage will direct pedestrians and bicyclists to the bypass connection, which provides access to the I-90 trail without traversing the heavily congested SE 38th Street and Factoria Boulevard. The project also includes a non-grant funded trailhead and informational kiosk at the Factoria Boulevard entrance to the I-90 Trail. The proposed trail connection and trailhead project is located on WSDOT limited access right-of-way, and thereby requires execution of the subject lease agreement prior to implementation.

The design and right-of-way acquisition for the 124th Avenue Connection project are complete. Advertising this project for construction is contingent on obtaining final approval from WSDOT and FHWA, which is contingent on the execution of this lease agreement.

EFFECTIVE DATE:

If approved, this Resolution becomes effective immediately upon Council adoption.

OPTIONS:

1. Adopt Resolution No. 8153 authorizing execution of a Lease Agreement with the Washington State Department of Transportation for access to state-owned right-of-way to construct and maintain the 124th Avenue SE Connection to the I-90 Trail project and a trailhead/kiosk near Factoria Boulevard.
2. Do not adopt Resolution No. 8153 and provide alternative direction to staff.

RECOMMENDATION:

Adopt Resolution No. 8153 authorizing execution of a Lease Agreement with the Washington State Department of Transportation for access to state-owned right-of-way to construct and maintain the 124th Avenue SE Connection to the I-90 Trail project and a trailhead/kiosk near Factoria Boulevard.

MOTION:

Move to adopt Resolution No. 8153 authorizing execution of a Lease Agreement with the Washington State Department of Transportation for access to state-owned right-of-way to construct and maintain the 124th Avenue SE Connection to the I-90 Trail project and a trailhead/kiosk near Factoria Boulevard.

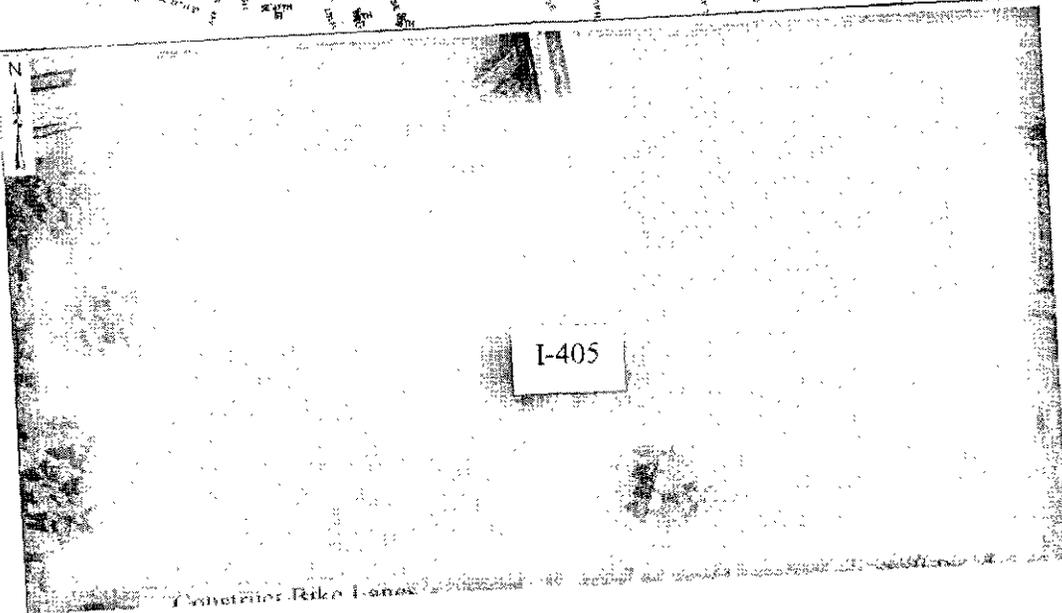
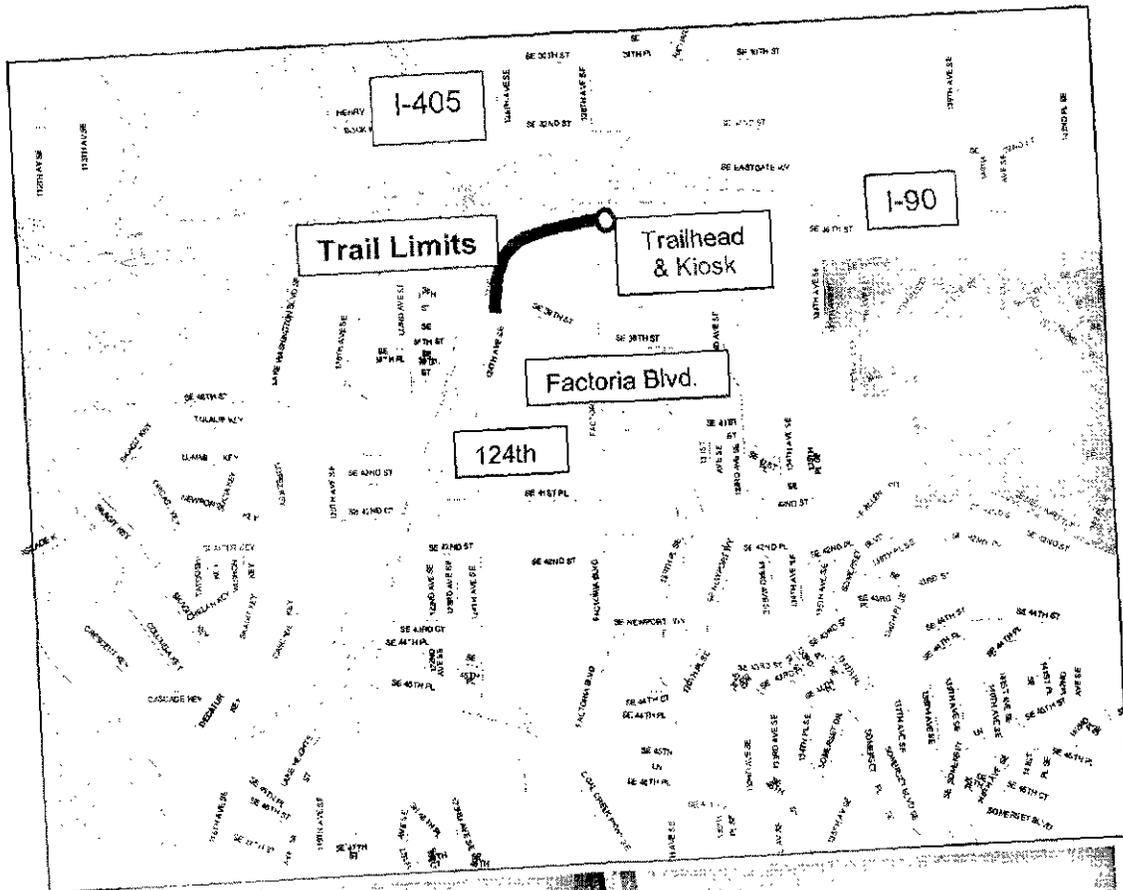
ATTACHMENTS:

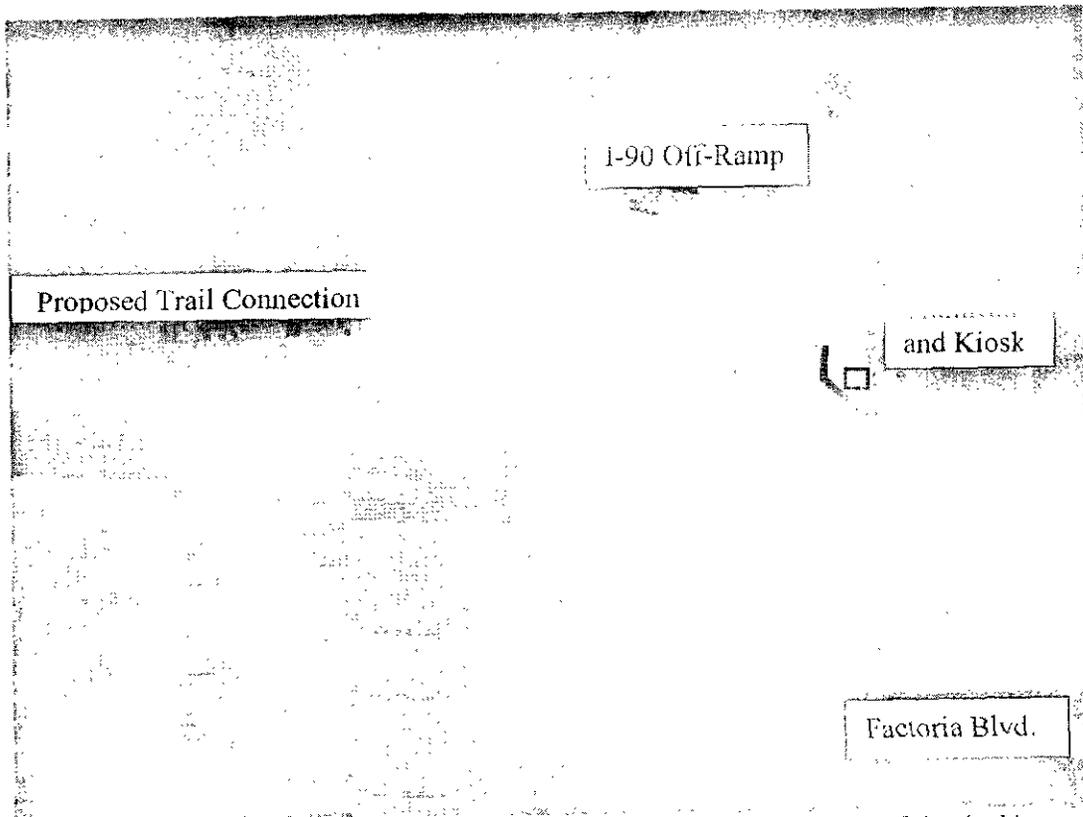
Vicinity and Project Map
Proposed Resolution No. 8153

AVAILABLE IN COUNCIL OFFICE:

Lease Agreement

City of Bellevue 124th Avenue SE Connection to I-90 Trail VICINITY and PROJECT MAPS





Note: Trailhead surface will stop east of the gate access to the fenced area and north of signal cabinets.

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 8153

A RESOLUTION authorizing execution of a Lease Agreement with the Washington State Department of Transportation, for access to state-owned right of way, to construct and maintain the 124th Avenue SE Connection to the I-90 Trail Project and a trailhead/kiosk near Factoria Boulevard.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is hereby authorized to execute a Lease Agreement with the Washington State Department of Transportation, for access to state-owned right of way, to construct and maintain the 124th Avenue SE Connection to the I-90 Trail project and a trailhead/kiosk near Factoria Boulevard; a copy of which Lease Agreement has been given Clerk's Receiving No. _____.

Passed by the City Council this _____ day of _____, 2010, and signed in authentication of its passage this _____ day of _____, 2010.

(SEAL)

Don Davidson, DDS
Mayor

Attest:

Myrna L. Basich, City Clerk



CITY OF BELLEVUE
Finance - Contracting Services
425-452-7876

CR# 47151 DATE 2-10-11 Loc/INTALOC PO# 710877000

Ass 7610

CONTRACT ROUTING/APPROVAL

CURRENT CONTRACT INFORMATION:

Contract Title: I-90 Trailhead Airspace Agreement with WSDOT
Contract Description: Airspace lease for I-90 Trail/Factoria Boulevard
Total Aggregate Value: \emptyset
(Includes orig. + prev. amends + new amend)
New Amendment Value:
Budget Impact: ~~Expenditure Contract~~ Sufficient Funds
Department: Transportation
Contract Manager 1: Kevin McDonald **2:**
Contract Manager has the authority to approve invoices for payment on this contract.
Contract Type: Interlocal Agreement
Contract Form: Custom contract document

Additional Comments

This is a FATS Early Implementation project funded through the CIP. Trailhead design is complete and includes a kiosk with wayfinding information, plus special paving to match the recently completed Factoria Boulevard sidewalks, benches, and landscaping. Total project cost is estimated \$30,000-40,000. Bellevue is responsible for long-term maintenance.

Does the contractor meet criteria listed on the data entry screen? If no, independent contractor checklist should be attached.

VENDOR INFORMATION:

Vendor Name: WSDOT
New Vendor No **COB Bus. License #**
(CS to complete)
JDE Vendor Number: 35185
Tax ID # **UBI # (if known)**

CONTRACT TERMS:

Orig. Effective Date: approx 6/9/07 **End Date:** 6/9-27
Subject To: option for 2 10 year renewals

RELATED CONTRACT INFORMATION:

Is this an Amendment/Chng. Ord.? No **Amendment #:** N/A
Amendment Effective Date:
Orig. Clerk's Receiving Number: N/A
Orig. Contract Value:
(w/o amendments)
Total Value of Previous Amends/Chng Ord's:
Other Amendment CR#s:

SELECTION METHOD:

Please provide explanation of process in add'l comments

Process
Method
Bid / RFP / RFQ / ITQ #: N/A

COUNCIL APPROVAL

Motion to Award: No
Ordinance # N/A
Resolution # 7610

Council Award Date: 8/6/07

	Yes	No
ROUTING & APPROVAL		
Authorized Department Signature	<i>[Signature]</i> Transportation	
Date	6/19/07	
Title	Transp. Director	
ROUTE:	In	Out
CONT SVCS	<i>[Signature]</i>	8.8.07
ITD:	N/A	
LEGAL:	<i>[Signature]</i> 8/13/07	
INSURANCE REVWD BY:	<i>[Signature]</i> 8/20/07	
CMO:	<i>[Signature]</i>	
CGO:	M. Tomareo 2-10-11	
CONT SVCS:	M. Schwab 9/14/07	
Return To:	Kevin McDonald	

CONTRACT REVIEW CRITERIA

Contract Title **1-90 Trailhead Airspace Agreement with WSDOT**

Vendor Name

WSDOT

DEPT (1) CONTRACTING SERVICES

- a) Does the Contract Routing/Approval Form and Contract have consistent information?
- b) Is the Contract Type and template appropriate for the services performed?
- NA** c) Are the Contract Values (i.e.: aggregate values, yearly budget totals, taxable amounts, acct numbers, etc.) accurate? **\$0**
- d) Is the JDE vendor name & number accurate?
- NA** e) Does Contractor have a Bellevue Business License? If not, date Tax Office was notified: _____
- NA** f) Do the Contract Start/End Dates comply with current policies (maximum 4 years unless exception noted)? **intra**
- NA** g) Is this an amendment or renewal? If so, are the original contract #s and values indicated?
- NA** h) Has the Selection Method been explained in Additional Comments? Are results attached?
- i) Is there an ordinance/resolution/motion for this contract? If so, is date and # noted? Is copy attached? **Legal**
- j) Does the contractor meet requirements of the Independent Contractor Threshold question?
- k) Is Attachment "A" (Scope of Work and/or Services) attached?
- l) Is Attachment "B" (Insurance Requirements) attached?
- m) Does the Contractor's Certificate of Insurance meet Attachment "B" requirements?
- n) Is the City of Bellevue (& contracting partners) listed as an additional insured on the Certificate of Insurance?
- o) Are the policy expiration date(s) on the Certificate of Insurance current?
- NA** p) Is the contract exempt from paying Prevailing Wages? **Yes** If not, are current Wage Rates attached in Attachment "C"? **NA**
- q) Does the Contractor have an open account with the Washington State Dept. of Revenue?
- r) Are the Contractor's worker's comp. premiums current?
- NA** s) Is the Contractor on the Federal Debarred Suspended List?
- NA** t) Does the vendor have an active Professional/Contractor License with the Washington State Dept. of Licensing?

Legal →

Reluctant to Review

Legal

(2) INFORMATION TECHNOLOGY DEPARTMENT (if applicable):

- a) Do the technology components meet the enterprise technology standards for the City?
- b) Does the purpose of the contract comply with the City's IT strategic plan?
- c) Has ITGC approved the project?
- d) Are the vendors IT City qualified vendors for technology work?

(3) RISK MANAGEMENT:

- a) Are the Insurance Requirements (Attachment B) appropriate for Scope of Work? *Tenancy agreement w/ WADOT. State determines insur. for the City as a tenant. Requirements are unilateral and high.*
- b) Does the contractor's Certificate of Insurance comply with the requirements?
- c) Are there any Limitations of Liability clauses or other risk transfer language problems that shift risk back to the City? **Yes.**
- d) Does the Hold Harmless clause include language referencing Title 51 releases? **Hold Harmless is very broad!**

(4) CITY ATTORNEY'S OFFICE:

- a) Has the Contractor signed all originals and initialed any proposed changes to standard language?
- b) Are contract terms and conditions consistent throughout entire contract?
- c) Are there any unlawful provisions? **Should there be legislation for this agmt**

(5) CITY MANAGER'S OFFICE:

- a) Does contract meet overall consistency with City contracting policy, budget, etc.?

CR# 47151 DATE 2-10-10 Loc INTRLOC PO# 710877-000
As 7610

**CONTRACT ROUTING/APPROVAL SUMMARY
 ALPHA CON001**

NOTE: This page MUST accompany all contracts being routed for approval.
 Contracts lacking this page will be considered incomplete and will be returned to the
 originating department.

JDE BUDGET INFORMATION:

Line No	Description	CIP No. (if)	GL Date	AccountNo	Subtotal	Taxable? (enter No)	Total

FOR CITY CLERK'S OFFICE USE:

Vendor Number 35185
 Vendor Name: WSPOT
 Start Date: 6-19-07 (approx) End Date: 6-19-07
 Contract Type: Interlocal Agreement Bid / RFP / RFQ / ITQ # N/A
 Amendment / Renewal? No Amend #: N Original Contract # N/A
 Ordinance # N/A Resolution # N/A Council Bid Award Date N/A
 Selection Method: na
 Department: Transportation Document Value: 0
 Contract Description: Airspace lease for I-90 Trail/Factoria Boulevard