



# Transportation & Public Works Meeting Agenda

March 2, 2023; 5:30 – 6:30 PM  
“Hybrid Meeting”

**This meeting will be conducted in a hybrid format with in-person and remote options for public participation. The meeting will be broadcast on SeaTV Government Access Comcast Channel 21 and live-streamed on the City’s website <https://seatacwa.gov/seatvlive> and click the “live” Channel 1 grey box.**

Peter Kwon, Chair  
Takele Gobena  
Jake Simpson, Mayor

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**Note: A quorum of the Council may be present**

Other Councilmembers present:

Staff Coordinators: Will Appleton, Public Works Director; Florendo Cabudol, City Engineer.

Other Staff participating: Mason Giem, PW Programs Coordinator;

TIME	TOPIC	PROCESS TYPE	WHO	Time
1	Call to order		Chair	
2	PUBLIC COMMENTS: The committee will hear in-person public comments and is also providing remote oral and written public comment opportunities. All comments shall be respectful in tone and content. Providing written comments and registering for oral comments must be done by 2:00 PM the day of the meeting. Registration is required for remote comments and encouraged for in-person comments. Any requests to speak or provide written public comments which are not submitted following the instructions provided or by the deadline will not be included as part of the record. • Instructions for providing remote oral public comments are located at the following link: <a href="#">Registration for Oral Public Comments</a> - Council Committees and Citizen Advisory Committees		Chair	5

	Submit email/text public comments to TPWPubliccomment@seatacwa.gov. The comment will be mentioned by name and subject and then placed in the committee handout packet posted to the website meeting calendar the next day.			
3	Prior Minutes Approval	Feb 16 Minutes to Approve	Chair	5
4	Approve design contract amendment for KPG on ST-141 Airport Station Pedestrian Improvements Project	Discussion/Action	Kamal Mahmoud	10
5	State Route 509 Phase 2 Interlocal Agreement	Discussion/Action	Will Appleton	15
6	Department Updates		Will Appleton	10
7	<u>Future Meeting Topics</u> : Right of Way Uses; Property Surplus; Debris Management Plan Adoption;			5
8	Adjourn	Adjourn Meeting	Chair	



# Transportation & Public Works Committee Meeting Minutes

February 16, 2023  
4:30 PM – 6:00 PM  
\*\* Hybrid Meeting \*\*

Members:	Present:	Absent:	Commence: 4:31 PM Adjourn: 5:31 PM
Peter Kwon, Chair	X		
Jake Simpson	X		
Takele Gobena		A	

Other Councilmembers participating:

Staff Coordinators: Will Appleton, Public Works Director; Florendo Cabudol, City Engineer

Other Staff Participating: Brenton Cook, Senior Civil Engineer, Mason Giem, Public Works Program Coordinator; Kamal Mahmoud, Engineering Manager; Gwen Pilo, Finance & Systems Director; Gwen Voelpel, Deputy City Manager; Ingrid Bulpin, Real Property Analyst; Zach Shields, Senior Planner

Public Comment	No public comment was given
1. Approve Prior Meeting's Minutes	Feb 2 Minutes were approved
2. Condemnation Ordinance for STN45 River Ridge Elementary Sidewalk	<p>Discussion/Action</p> <p>Brenton Cook, Senior Civil Engineer, presented a proposed Ordinance regarding the River Ridge Elementary Project to authorize condemnation proceedings on several properties on the project alignment.</p> <p>The importance of this matter involves the following considerations:</p> <ol style="list-style-type: none"> <li>1. ROW acquisition is essential to ensure the City</li> </ol>

- has all the property rights needed to construct, operate and maintain its improvements.
2. To avoid construction delays and allow for a defined path forward to a settlement.
  3. An Ordinance would grant city staff the authority to commence with the filing of a Condemnation Action (if necessary) in Superior Court, against only the properties that have not settled / agreed to the City's offer to purchase needed property rights.

Right-of-way is the legal right, established by usage or grant, to pass along a specific route through grounds or property belonging to another. It allows for construction and maintenance of road, curb/gutter, landscaping, sidewalks, bicycle lanes, utilities, lighting, and other types of elements that serve the traveling public.

Obtaining additional right-of-way is necessary when the existing travel corridor is insufficient to fit proposed roadway and pedestrian improvements. Often, existing right-of-way widths were developed based on old, obsolete roadway, and pedestrian design and/or planning standards.

Property acquisitions for capital improvement projects are required when proposed improvements need to be constructed within existing right-of-way that is insufficient in width to support the required infrastructure. The City negotiates purchase of additional right-of-way from adjacent private property owners as needed.

The City offers to purchase property rights following WSDOT's approved right-of-way acquisition procedures adopted by the City, and follows these steps:

- **Identify** property required for project construction.
- **Notify** affected property owners/community outreach.
- Prepare a Determination of Value or have 3<sup>rd</sup> party appraisal completed.
- Present formal written **offer** for the needed property rights.
- Provide information as to their **rights** and **roles**.
- **Negotiate** terms for final settlement.
- Assist with **relocation**, if needed.
- Offer to **reimburse** for evaluation services.
- Pay for all **closing costs** and recording fees.
- Send settlement **payments** to legal owners.

Eminent domain is the power possessed by government agencies to acquire the private property of an

owner without their consent. The government can acquire private lands, with the threat of eminent domain if it is reasonably shown that the needed property will have a Public Use and is Necessary for a public project.

The City can the exercise the power of eminent domain, if a settlement cannot be reached. The government must prove the four elements set forth in the Fifth Amendment of the Constitution. They are as follows; acquisition is of private property, property must be acquired, acquisition must be for public use, and just compensation must be awarded.

To exercise eminent domain, a condemnation ordinance must be passed by the Council for the project.

The Ordinance authorizes the use of eminent domain (if necessary) for outstanding properties to allow for a defined path forward to a settlement and avoiding project delay.

More specifically the ordinance:

- Identifies subject parcels.
- Authorizes the use of eminent domain and proceed with a condemnation action.
- Allows for possession and use of the property in parallel with process.

If no settlement is reached, the Courts will then decide on fair and just compensation.

- Notice of the proposed Ordinance and scheduled action is planned to be sent to identified property owners via certified mail on February 20, 2023.
- Notice of Ordinance will be posted in Seattle Times on February 27, 2023, and March 6, 2023.
- Complete right-of-way and easement acquisitions by May 2023.
- Kent School District will complete design and advertise for construction bids by April / May 2023.
- Kent School District to issue Notice to Proceed with construction by early Summer of 2023.

- The City is responsible for all right-of-way related costs (acquisitions, easements, etc.).

- Staff applied for and received the following grants to offset right-of-way costs:

- \$300,000 WA State Transportation Improvement Board (TIB) Grant

- Kent School District to absorb design and construction related costs for this project.

	<p>Staff is recommending the Committee to approve forwarding Agenda Bill 6159 to Council for review and action at the March 14, 2023, Regular Council Meeting.</p> <p>Process includes public hearing with adoption of this ordinance, prior to council action. Staff is providing a packet for the property owners of what the process will look like.</p> <p>Committee unanimously agreed to move the Ordinance as an action item to the March 14, 2023, Regular Council Meeting with a recommendation to approve.</p>
<p>3. Approval of Solid Waste Contract Consultant</p>	<p>For Consent Agenda</p> <p>Mason Giem, Public Works Program Coordinator, presented this item.</p> <p>The City of SeaTac currently has a solid waste contract with Recology King County that will expire on 5/31/2025 and staff wishes to hire a consultant to help with the procurement of a new comprehensive's garbage, recyclables and compostables services contract.</p> <p>The Consultant will assist the City of SeaTac in three main functions.</p> <ol style="list-style-type: none"> <li>1. Drafting and producing an RFP for a comprehensive garbage, recyclables and compostables services contract.</li> <li>2. Responding to questions and evaluations of proposals.</li> <li>3. Assisting in final contract language development and passage.</li> </ol> <p>Forward to Council with a recommendation of approval authorizing the City Manager to enter a contract with Hans Van Dusen for Solid Waste Contract Consulting and amend the budget to provide \$45,000 for that purpose.</p> <p>Committee raised a question asking as to why we need to write a new contract and why can't we use language from an existing contract?</p> <p>Staff responded stating that there are ongoing changes in the solid waste world and the City would want someone who is knowledgeable of those changes so that we can get the best rates and service with a new solid waste contract.</p> <p>Committee unanimously agreed to move the contract to a Regular Council Meeting with recommendation to approve.</p>

<p>4. Streetlighting Funding Request</p>	<p>For Consent Agenda</p> <p>Florendo Cabudol, City Engineer presented the streetlight funding request about replacing seven existing streetlights upcoming Polaris Development.</p> <p>At the time the Polaris Development was approved for construction, the City had not yet adopted street lighting standards and an associated policy; therefore, the frontage improvements that will be constructed by Polaris do not include upgrading existing lights to our current standard. Rather, the developer will reuse existing streetlight poles. The existing poles while functional do not promote the look and feel that the City desires to see developed in this area. Consequently, prior to the street frontage being completed, staff are exploring an opportunity with the developer that would have the City procure up to seven (7) new streetlights for the developer to use in lieu of existing lighting and install at their cost.</p> <p>Any street lights that are provided by the City would be City owned and operated following their installation. The estimated cost for procurement of 7 new lights is \$70,000, which was not contemplated in the current budget. Therefore, a budget amendment will be required to allow for acquisition of the lights should we reach agreement with the developer.</p> <p>Staff proposes amending the 2023/2024 biennial budget to increase the available funding within the Street Fund (102) by \$70,000, thereby allowing for the purchase of the subject streetlight poles for installation along the frontages (S 154<sup>th</sup> St and International Blvd.) of the Polaris site.</p> <p>Committee unanimously agreed to proceed with preparing a funding request and budget amendment for action at a future Regular Council Meeting with a recommendation to approve.</p>
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<p>5. Department Updates</p>	<p>Florendo Cabudol, City Engineer, presented update items for the Committee.</p> <ul style="list-style-type: none"> <li>• The 34<sup>th</sup> Ave S. Pedestrian Project S. 160<sup>th</sup>. to S. 166<sup>th</sup> is nearing homestretch and staff is addressing the concern regarding the retaining wall.</li> <li>• The airport station project is at 90% of the design submittal and staff will be reaching out to residents for right of way acquisitions.</li> <li>• Design for the 2023 over lay project at 24<sup>th</sup> Ave. S and Des Moines Memorial Drive is underway. The City is aware of any Port related and WSDOT related projects on 518 and the City will be managing traffic in the summer.</li> <li>• The Miller Creek Daylighting project to start construction as well in the spring.</li> <li>• There is an RFQ for a consultant for the S 204<sup>th</sup> Street, 32<sup>nd</sup> Ave S to 34<sup>th</sup> Ave S, streets project near Madrona Elementary.</li> </ul> <p>Committee raised a question regarding the white and yellow turtles at South 188<sup>th</sup> St. between I-5 and International Blvd. stating that when its dark and wet it's hard to see the lanes. Is it possible to repaint some of the lines? Could this be repainted this summer?</p> <p>Staff responded saying that Public Works are moving away from raised pavement markers and will be going forward with painting lines. The City works with King County roads to paint within the City of SeaTac as they have the equipment. Staff is aware of the request and concern and would start painting in the early summer for annual program. If this is required sooner the City requires 3 days of dry weather to paint.</p>
<p>6. Adjourn</p>	<p>Meeting adjourned at 5:31 PM.</p>





# MEMORANDUM

To: Transportation and Public Works Committee  
From: Kamal Mahmoud, Public Works Engineering Manager  
Date: March 02, 2023  
Subject: Amendment to Airport Station Pedestrian Improvements (Project ST-141) Design Services Contract

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## **Purpose:**

Staff is seeking the Committee's recommendation to place the proposed contract amendment to the professional services agreement with KPG-Psomas for the design of the Airport Station Area Pedestrian Improvements (Public Works CIP ST-141) on the consent agenda for the March 14 Regular Council Meeting (RCM).

## **Background:**

The Airport Station Pedestrian Improvements Project is currently in the design phase. Staff is reviewing the 90% design drawings and specifications submitted by KPG-Psomas in December 2022. The project is now also entering the Right-of-Way (ROW) acquisition phase that is anticipated to be completed by December 2024. Final construction bid documents will then be finalized after ROW acquisition is certified. The current target date for advertising the project for construction bids is December of 2024.

A professional services contract with KPG-Psomas was approved by Council (see Agenda bill 5487) and a Notice to Proceed issued on August 28, 2020. Three prior contract amendments were executed as follows:

- Amendment #1: Added budget and scope to allow KPG to incorporate the design of structural elements by Structural Engineering Consultant (Trantech).
- Amendment #2: A renewal of the original agreement facilitated by the design consultant change in ownership and company name to KPG-Psomas (formerly KPG).
- Amendment #3: Added budget to allow KPG-Psomas to redesign the proposed street and pedestrian lighting on the project.

Amendment #4 is being requested to extend the contract completion date to December 31, 2024, and to increase the budget by \$264,057 and a not-to-exceed contract budget of \$ 1,791,712.97 for the following reasons:

- Out of Scope Work: KPG-Psomas was asked on two separate occasions to work on project related items that were out of scope and not covered under the terms and conditions of the original contract and were not accounted for in either of the previous amendments. These out-of-scope services included work on presentations, materials, and scheduling utilized during the Urban Design Ad-Hoc Committee process, assisting City staff with two successful federal grant funding applications, and providing additional support for right of way plan submittal to WSDOT. The total billing for these out-of-scope items is \$74,928.31.
- Utility Coordination: The original contract provided scope and budget for KPG-Psomas to coordinate with and assist in design efforts for the major dry utilities impacted by the project (PSE, Comcast, Lumen). A combination of factors has made this effort more difficult than was originally anticipated by City staff and the consultant, resulting in costs and expenditures that have well exceeded the original proposed budget for this task. PSE, Comcast, and Lumen have been difficult to coordinate with since the beginning of the project. Staffing shortages and change of personnel resulted in poor design submittals that needed to be constantly corrected and resubmitted.
- Scope Increase on 32nd Avenue South at MasterPark Lot B Frontage.: Under the original contract, it was assumed that no improvements would be performed on westside of 32nd Avenue South along MasterPark Lot B frontage. At the time, the design level of effort and cost was deemed expensive. Because of this, that scope was not included in the project. Based on a number of factors, including increased grant funding from PSRC and WSDOT, evaluations regarding the existing Development Agreement with MasterPark Lot B, and benefit to the subarea as a whole, it has been decided that this scope should be included in this project. The cost to design that section of 32nd Avenue South, additional survey, stormwater updates, and additional lighting evaluation has been included in this amendment.

**Options/Recommendation:**

Staff recommends approving amendment and seeks Committee recommendation to place the item on the Consent Agenda for the March 14, 2023, RCM. Unspent 2022 project funds will be used to pay for the additional costs associated with Amendment #4.

If this recommendation is not given, options include deferring design of this project until funds can be allocated to the cover the additional costs.

**PUBLIC WORKS CONSULTANT CONTRACT – AMENDMENT NO. 4  
BETWEEN**

City of SeaTac	AND	KPG-Psomas
4800 South 188 <sup>th</sup> Street		3131 Elliott Avenue, Suite 400
SeaTac, WA 98188		Seattle, WA 98121

=====  
PROJECT: Airport Station Pedestrian Improvements Project  
Project #: ST-141  
=====

**AMENDMENT OF CONSULTANT CONTRACT**

Pursuant to Section 16 of the Consultant Contract between the City of SeaTac (City) and KPG-Psomas (Consultant), dated September 2<sup>nd</sup>, 2020, the City and the Consultant hereby amend:

Section 2 (under the subheading “SCOPE OF SERVICES.”) shall be replaced as follows:

The Consultant shall be responsible for completion of the scope of services detailed in Attachment A, A1, A2, and A3 to this Contract.

Section 3 (under the subheading “TIME FOR BEGINNING AND COMPLETION.”) as follows:

All work shall be completed by December 31, 2024.

Section 5 (under the subheading “COMPENSATION – REIMBURSEMENT OF EXPENSES.”) shall be replaced as follows:

The City shall pay to the Consultant an additional \$264,057.97. The revised compensation and expenses shall not exceed \$1,791,712.97, without prior approval, and payment will only be made for actual services rendered.

All other terms of the Consultant Agreement shall remain in effect and unchanged.

IN APPROVAL, authorized representatives of the Parties to this Contract have signed below. This Amendment shall become effective on the date of the last signature made.

CITY OF SEATAC

KPG-Psomas

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

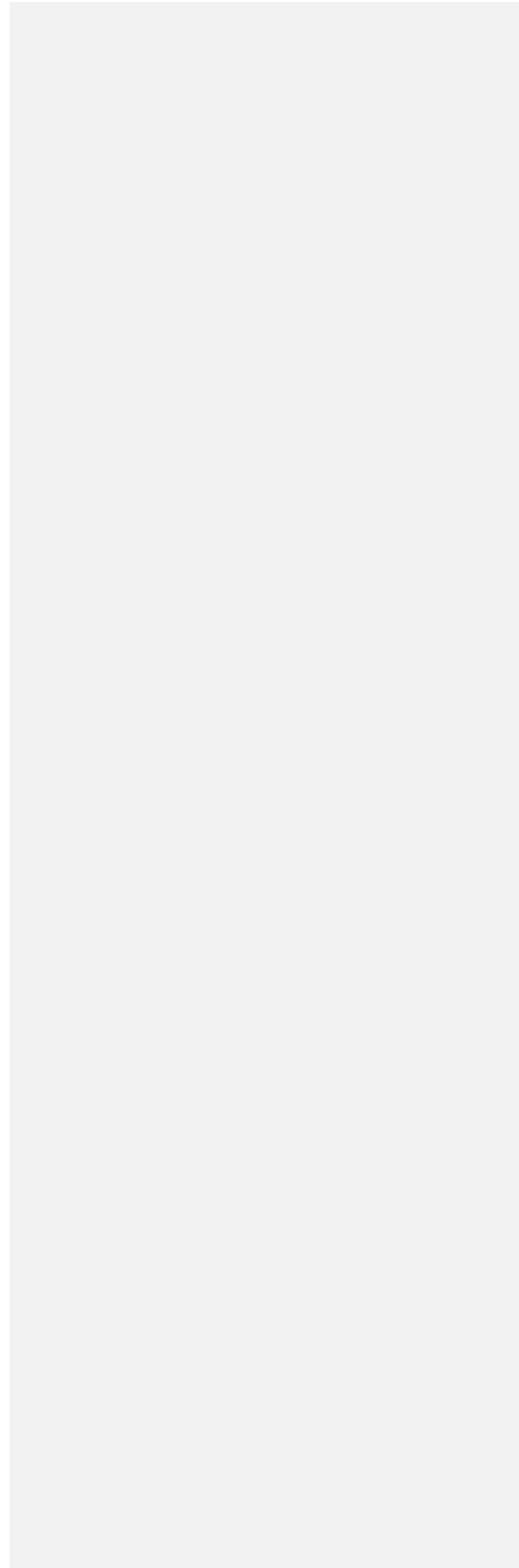
APPROVED AS TO FORM:

**Commented [FC1]:** The contract expiration date needs to be extended beyond 12/31/2023 (as listed in contract) to account for the added scope. Amendments 1-3 do not extend the contract.

**Commented [KM2R1]:** I prefer to extend to June 30, 2025 to be on the safe side.

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Mary E. Mirante-Bartolo, City Attorney



**EXHIBIT D**  
**PRIME CONSULTANT COST COMPUTATIONS**

Client City of SeaTac

Project Station Area Pedestrian Improvements - Supplement 6 (Masterpark Frontage and Extended Design/Coordination Services)

KPG PSOMAS INC. PROJECT NUMBER: 20066

DATE: February 14, 2023



WE	Work Element Description															Total Hours and Labor Fee Estimate by WE		
		Engineering Manager	Survey Manager	Senior Engineer	Urban Design Manager	Senior Project Engineer	Project Surveyor	Project Landscape Architect	Design Engineer	Senior CAD Technician	Senior Admin	Engineering Technician	Survey Crew II (W/Equip)	Office Admin	Landscape Technician	Hours	Fee	
		251	251	215	200	203	164	155	133	138	133	124	260	103	102			
<b>WE 1 - Project Management</b>																		
1.1	Project Management (22 months/end of 2024)	22	0	0	0	0	0	0	0	0	22	0	0	0	0	44	\$ 8,448.00	
1.2	Monthly Coordination Meetings (22)	22	0	11	0	0	0	0	0	0	0	0	0	0	0	33	\$ 7,887.00	
1.3	Project Schedule	2	0	0	0	0	0	0	0	0	0	0	0	0	2	\$ 502.00		
1.4	Internal Project Team Meetings (8)	8	0	8	4	4	0	4	8	0	0	4	0	0	40	\$ 7,520.00		
1.5	QA/QC Reviews	8	0	8	8	8	0	8	0	0	0	0	0	0	40	\$ 8,192.00		
	<b>WE Total</b>	<b>62</b>	<b>0</b>	<b>27</b>	<b>12</b>	<b>12</b>	<b>0</b>	<b>12</b>	<b>8</b>	<b>0</b>	<b>22</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>159</b>	<b>\$ 32,549.00</b>		
<b>WE 2 - Survey Pickups (Masterpark Improvements)</b>																		
2.1	Additional Field Survey	0	4	0	0	0	0	0	0	0	0	0	40	0	0	44	\$ 11,404.00	
2.2	Utility Locate Coordination	0	4	0	0	0	0	0	0	0	0	0	0	0	4	\$ 1,004.00		
2.3	Base Map Updates	0	4	0	0	0	0	0	40	0	0	0	0	0	44	\$ 6,524.00		
2.4	Survey of Potholes	0	2	0	0	0	0	0	0	0	0	8	0	0	10	\$ 2,582.00		
	<b>WE Total</b>	<b>0</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>40</b>	<b>0</b>	<b>0</b>	<b>48</b>	<b>0</b>	<b>0</b>	<b>102</b>	<b>\$ 21,514.00</b>		
<b>WE 3 - ROW Support</b>																		
3.1	Property Owner Exhibits (38)	0	0	8	0	0	0	0	0	48	0	0	0	0	0	56	\$ 8,344.00	
3.2	Legals (42) and Exhibits (78 - Fee, PE, TCE)	0	0	0	0	0	80	0	0	40	0	0	0	0	0	120	\$ 18,640.00	
3.3	Field Locate ROW (24 Parcels)	0	2	0	0	0	4	0	0	0	0	24	0	0	30	\$ 7,398.00		
	<b>WE Total</b>	<b>0</b>	<b>2</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>84</b>	<b>0</b>	<b>0</b>	<b>88</b>	<b>0</b>	<b>24</b>	<b>0</b>	<b>0</b>	<b>206</b>	<b>\$ 34,382.00</b>		
<b>WE 4 - Utility Coordination and JUT Design Updates</b>																		
4.1	Updated Utility Conflict Plan	2	0	8	0	0	0	0	16	0	0	0	0	0	0	26	\$ 4,350.00	
4.2	Meetings with the Franchise Utilities (15)	4	0	8	0	0	0	0	20	0	0	0	0	0	0	32	\$ 5,384.00	
4.3	Utility District Coordination	4	0	2	0	0	0	0	0	0	0	0	0	0	6	\$ 1,434.00		
4.4	Utility Design Updates (100%, WSDOT, Bid Submittals)	4	0	24	0	24	0	0	80	0	0	0	0	0	132	\$ 21,676.00		
4.5	Potholing Coordination	0	0	4	0	0	0	0	16	0	0	0	0	0	20	\$ 2,988.00		
	<b>WE Total</b>	<b>14</b>	<b>0</b>	<b>46</b>	<b>0</b>	<b>24</b>	<b>0</b>	<b>0</b>	<b>132</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>216</b>	<b>\$ 35,832.00</b>		
<b>WE 5 - Final Design (Including Masterpark Improvements)</b>																		
5.1	Station Area Plans (100%)	0	0	48	32	40	0	72	64	32	0	48	0	0	56	392	\$ 60,592.00	
5.2	Masterpark Frontage Improvements Plans (90%, 100%)	0	0	24	16	60	0	24	56	32	0	48	0	0	32	292	\$ 45,340.00	
5.3	Quantities and Cost Estimates	4	0	8	8	16	0	16	16	0	0	0	0	16	84	\$ 13,812.00		
5.4	Specifications	4	0	16	8	8	0	8	0	0	4	0	0	0	48	\$ 9,440.00		
5.5	AGI Report Update	0	0	4	0	0	0	0	0	0	0	16	0	0	20	\$ 2,844.00		
5.6	Stormwater TIR Update	0	0	0	0	8	0	0	16	0	0	0	0	0	24	\$ 3,752.00		
	<b>WE Total</b>	<b>8</b>	<b>0</b>	<b>100</b>	<b>64</b>	<b>132</b>	<b>0</b>	<b>120</b>	<b>152</b>	<b>64</b>	<b>4</b>	<b>112</b>	<b>0</b>	<b>0</b>	<b>104</b>	<b>860</b>	<b>\$ 135,780.00</b>	
<b>Total Labor Hours and Fee</b>																	<b>1,543</b>	<b>\$ 260,057</b>
<b>Subconsultants</b>																		
																	Utility Locate Service (est)	\$ 1,000.00
																	Geotechnical - GeoDesign (est)	\$ 3,000.00
																	Subtotal	\$ 4,000.00
																	Administrative Charge (5%)	
																	<b>Total Subconsultant Expense</b>	<b>\$ 4,000.00</b>
<b>Reimbursable Direct Non-Salary Costs</b>																		
																	Mileage at current IRS rate	
																	Reproduction Allowance	
																	<b>Total Reimbursable Expense</b>	<b>\$ -</b>
																	<b>Total Estimated Budget</b>	<b>\$ 264,057.00</b>



# MEMORANDUM

To: Transportation and Public Works Committee  
From: William Appleton, Public Works Director  
Date: 3/2/23  
Subject: SR509 Phase 2 – Interlocal Agreement

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## **Purpose:**

To provide an overview of the final draft agreement (Interlocal Agreement “ILA”) between the City of SeaTac and the Washington State Department of Transportation (Parties) for Phase 2 of the SR509 Completion Project.

## **Background:**

A Design-Build contract for Phase 2 of the SR509 Completion Project will be awarded by WSDOT in 2023 for construction in 2024. In advance of WSDOT proceeding with requests for proposals from firms, it is appropriate for the Parties to develop and enter into an agreement that documents understandings around project development and coordination including environmental approaches, construction approaches, property rights and permitting, payments and costs, and dispute resolution. The attached agreement has been through several iterations, has addressed concerns voiced by both parties and is now in a final draft form. No substantial changes are expected prior to finalizing the agreement. As similar agreement was entered into for Phase 1 of the SR509 Completion Project.

## **Options/Recommendation:**

Staff is seeking a recommendation from committee to forward the attached agreement to full Council for consideration and approval.

**GCB 3808**

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
WSDOT / CITY OF SEATAC**

This Interlocal Agreement (“Agreement”) is entered into by and between the Washington State Department of Transportation (“WSDOT”) and City of SeaTac (“City”), each a “Party” or collectively the “Parties.”

**RECITALS**

- A. WSDOT is a state agency authorized to plan, design, construct, operate and maintain highways in the State of Washington;
- B. City is a local agency authorized to plan, design, construct, operate and maintain streets and alleys within their corporate boundaries in the State of Washington;
- C. The Parties previously entered into agreement GCB 3068 establishing the City’s financial participation in Local Agency Partner contributions to the Puget Sound Gateway Program (“Program”) and the City’s participation in design coordination and concurrence during implementation of the Project.
- D. WSDOT is planning the construction of the *SR 509/24<sup>th</sup> Avenue S to S 188<sup>th</sup> Street – New Expressway Project* (“Project”), also known as the *SR 509 Completion Project Stage 2*, and portions thereof lie within the City corporate boundary. The City has certain design requirements or requests to be incorporated into the construction of the Project, which include historic markers, shared-use path, roundabout (RAB) finishes, infrastructure for future City gateway features within the S 188th Street interchange, S 194<sup>th</sup> Street forward compatibility, signage on Des Moines Memorial Drive (DMMD), streetscape approaching the S 192<sup>nd</sup> Street overcrossing, and local road closure allowances.
- E. In instances where the WSDOT Project conflicts with any city street utility facilities (Facilities), WSDOT may not expend motor vehicle funds for any relocation, modification or removal (hereinafter collectively “Relocation”) of the Facilities in conflict with the Project, unless those Facilities occupy the public right-of-way (“ROW”) or public fee property pursuant to a compensable property interest (hereinafter collectively “Easement”). The City and/or utility owner will be responsible for Relocation costs of Facilities without an Easement right.
- F. The Parties enter into this Agreement with a mutual understanding that, notwithstanding the Parties’ execution and performance under this Agreement, each Party reserves all rights, claims, remedies, and defenses related to any payment made under this Agreement, including, without limitation, the right to seek reimbursement of any amounts paid by a Party in connection with this Agreement.

**AGREEMENT**

NOW THEREFORE, pursuant to WSDOT's authority granted pursuant to RCW 39.34, and in consideration of the terms, conditions, covenants, and performances contained herein, as well as the attached Exhibits which are incorporated and made a part hereof, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

1. Incorporation of Recitals. The above-stated Recitals are incorporated into this Agreement and made a part hereof by this reference to the same extent as if such Recitals were set forth in full at this point.

2. Project Development and Coordination.

2.1 Jurisdiction. The terms and commitments herein to meet the mutually agreeable requirements of the City apply only to facilities within those street ROW areas outside of the WSDOT ROW turnback limits and to facilities within existing streets crossing WSDOT ROW to remain in service. WSDOT ROW limits are defined as those recorded on the current approved ROW Plans. WSDOT will coordinate and support the City to identify the extent of their corporate boundary legal descriptions tied to WSDOT ROW that have changes due to the new WSDOT ROW limits, including survey descriptions, map exhibits, and draft ordinance document review comments. The City will draft and execute the required ordinance document(s) to adopt the new boundary, including coordinating and facilitating joint resolutions/ordinances with the abutting cities that share the same boundary change, as required. The corporate boundary update will be completed by the City(s) prior to the completion of the WSDOT Project Notice to Proceed.

2.2 Review and Coordination. During the design phase (Request for Proposal "RFP" preparation) of this Project, WSDOT and City will identify the extent of the design elements and improvements within the city. WSDOT will provide City with Project design plans as early as possible, and will schedule and meet with City to review, to the extent knowable by WSDOT during Project development, the ROW and environmental requirements, facilities design, traffic maintenance, haul routes, potential pavement mitigation, and construction scheduling to ensure the City has opportunities to comment. The Parties will thereafter work cooperatively to concur with and incorporate the desired design elements, standards, aesthetics, material/finishes, and improvements and the timing and process to establish any property commitments or permits as required under Section 2.4.

The City acknowledges its obligation to plan for and participate in each of the Project's Preliminary and Final Design plan reviews and comment resolutions and task force meetings, related to work on City-owned ROW or property, prior to the construction plan Release for Construction (RFC), at City's cost. Permit application documents that includes plans can be submitted to the City, using Final Design drawings, with the intent that the permit is issued and will include the RFC drawings. WSDOT acknowledges that fees/costs for review of city permit application documents and issuance of city permits will be charged to WSDOT's design-builder. City will participate in the Preconstruction meetings to coordinate and resolve any outstanding issues prior to beginning construction. The City acknowledges that WSDOT is the owner representative in the contract with the Design-Builder and WSDOT will act on behalf of the City to ensure that the work is performed in accordance with the contract, which includes the SeaTac Municipal Code and adopted City standards.

Review submittals to and from either Party will be transmitted prior to 12:00 pm on the due date day.

2.3 Environmental Approach. As outlined in (#509-0147) regarding the project's



consistency with the City of SeaTac's critical areas ordinance, WSDOT ROW purchased prior to 1990 is exempt from the City's Critical Areas Rules. Buffer Impacts to Wetlands 22.40 and 21.75, were mitigated for through participation in the Des Moines Creek Basin Plan (DMCBP) and capital improvement projects (CIPs). Buffer impacts to Wetland 22.42, may be mitigated for at Barnes Creek. Wetland impacts may be mitigated for at the AMB advance mitigation site. Wetland impact limits are as follows:

Permanent Impacts:

- To the Cut and Fill grading lines
- To the Drip line of the bridge
- 3 feet outside of the Fill wall

Temporary Impacts

- 5 feet beyond the Cut grading lines
- 20 feet beyond the Fill grading lines
- 5 feet beyond the Drip line of the bridge
- For Fill Walls: 5 feet beyond the 3 feet permanent impact line

As outlined and approved in the EIS dated 2003 the permanent termination of S 194<sup>th</sup> Street at the new SR 509 Expressway includes mitigation. Measures include, but are not limited to the following:

- Provide Wayfinding signs to be installed on S 8<sup>th</sup> Avenue to advise use of S 192<sup>nd</sup> Street for DMMD south access.
- Retain the existing weight restriction on S 194<sup>th</sup> Street as local traffic only.
- Construct the Lake to Sound Trail Segment C.
- Complete the S 192<sup>nd</sup> Street bridge work and open new street crossing prior to closing 194<sup>th</sup> Street to DMMD.
- Retain the existing alternate neighborhood connectivity to DMMD on S 196<sup>th</sup> Place

2.4 Construction Approach. WSDOT will construct the Project to meet the mutually agreeable requirements of the City. WSDOT will include applicable sections from the SeaTac Municipal Code, adopted City standards and applicable City policies in the WSDOT construction contract documents for Stage 2 as Mandatory Standards for all work done on City ROW and property.

If the City wants any item of work constructed to deviate from what is required by SeaTac's Municipal Code and adopted City standards and policies published at the time the RFP is advertised, the City must inform WSDOT in writing at least thirty (30) days prior to the due date for Proposals. Otherwise, any change requested by City after the Proposals due date will be funded solely by the City if such change increases the cost of the Project. See Section 3.0 below. However, changes requested by the City after the Proposals due date that are necessary to bring the work in compliance with applicable sections of the SeaTac Municipal Code and adopted City standards and policies included in the advertised RFP, shall not be funded by the City.

The following design speeds will be used as the basis of design

- DMMD/S 188<sup>th</sup> Street– 40 MPH, 15 MPH at RAB
- S 192<sup>nd</sup> Street – 35 MPH
- S 194<sup>th</sup> Street – 25 MPH
- DMMD (South) – 35 MPH
- S 200<sup>th</sup> Street – 35 MPH
- 24<sup>th</sup> Avenue – 35 MPH

The desired design elements identified below are based on WSDOT's conceptual design. Some of these commitments may become null and void based on the final design of the selected Design-Builder:

- a) Streetscape work within Project limits. Construct HMA travelled way, per WSDOT standards. Construct concrete curb and gutter and 6-foot wide sidewalks per WSDOT Standard Plans, except where noted herein for DMMD and S 192<sup>nd</sup> St. Construct RABs on DMMD/S 188<sup>th</sup> Street with stamped concrete finish medians and truck aprons and mountable curbing. Color will be Federal Standard 595 Color No. 31136. Central island of RAB's will be designed and constructed to allow for mutually agreed upon features coordinated prior to release of the RFP. These features include, but are not limited to the following:
- Two 4-inch conduits (one extends eastward from the eastern RAB, and one extends westward from the western RAB) ending at least 6 feet outside of the WSDOT ROW turnback limits and two junction boxes (one on each end) for electrical services for future City Gateway signage and appurtenances in RAB.
  - Two 6-inch casing for water line (one extends eastward from the eastern RAB, and one extends westward from the western RAB) ending at least 6 feet outside of the WSDOT ROW turnback limits and will be capped at both ends for future use.
  - The central island of the western RAB will be 900 sq. ft. and the area of the eastern RAB will be 1500 sq. ft.
  - The central island will be amended and planted with grass seed

If the City elects to have any proprietary gateway or signature features constructed or installed by the Project, the City will coordinate the details with the selected Design-Builder during the final design of the construction plans. WSDOT supports the City constructing feature(s) at the City's expense. The elements that are constructed must be mutually agreed upon by the City and WSDOT and be designed and constructed in accordance with WSDOT standards.

Construct a new 10-foot wide HMA shared-use path on the south side of DMMD/S 188<sup>th</sup> Street across SR 509 connecting the Lake to Sound trail on the west and the existing path on the east ending at DMMD/S 188<sup>th</sup> Street/Starling Drive intersection, per WSDOT standards. Shared-use path will be designed for loading to accommodate maintenance vehicles and maintenance construction equipment. Street lighting will also be installed along the street on the outside of the shared-use path. Pedestrian scale lighting will not be provided for the shared-use path. Existing pedestrian crossing and push buttons will be removed from the north side of the DMMD/S 188<sup>th</sup> Street/Starling Drive intersection. No pedestrian access will be provided on the west side of the DMMD/S 188<sup>th</sup> Street/Starling Drive intersection and along the north side of DMMD or across the RABs.

The basic configuration for the new S 192<sup>nd</sup> Street bridge will be two 11-foot lanes, 6-foot wide sidewalk with concrete curb and gutter on one side, and 10-foot wide HMA shared-use path separated by a barrier on the travel way side. All transitions to match the existing will occur inside the limits of WSDOT ROW. Sidewalk and shared-use path extending beyond WSDOT ROW may be constructed upon concurrence and in accordance with the terms of betterments in Section 3.0. (Exhibit A)

Terminate S 194<sup>th</sup> Street on the west side of SR 509 ROW and construct a new 6-foot concrete sidewalk and curb and gutter with widened corner connection to 11<sup>th</sup> Place S to the south and 30' driveway approach for 11<sup>th</sup> Place private drive to the north. Construct new WSDOT standard chain link fencing along the ROW, including a gated WSDOT pond access driveway at former S 194<sup>th</sup> Street/DMMD intersection.

Retain and protect City's existing shared-use path and associated drainage on S 200<sup>th</sup> Street. The existing park fencing along S 200<sup>th</sup> that is temporarily removed for construction will be replaced in kind.

Use WSDOT standard MMA pavement markings for permanent striping and 3M brand taped pavement markings for temporary striping. Non-standard decorative, signature, or gateway features may be constructed upon concurrence and in accordance with the terms of betterments in Section 3.0.

- b) Structure finish and trim. Comply with requirements set forth in the SR 509 Completion Project Phase 1 Urban Design Criteria (Exhibit B) attached hereto and made a part of this agreement.
- c) Illumination work within Project limits. Replace existing mast lighting, attached to PSE poles being relocated, in kind. Replace the existing pedestrian path lighting on S 200<sup>th</sup> Street that will be removed under the new bridge construction. The removed poles will be salvaged and delivered to the City maintenance shop located at 2000 S 136th St, SeaTac, WA 98168. Underdeck lights will be installed if there is insufficient clearance to accommodate the City's proprietary pedestrian light poles. Lighting fixtures under deck on WSDOT bridge structures/abutments will be installed in accordance with WSDOT **structure mounting requirements and will be owned, operated, and maintained by the City.** New continuous street lighting may be constructed upon concurrence and in accordance with the terms of betterments in Section 3.0. Independent lighting for pedestrian paths will be installed, powered, and maintained at City's expense in accordance with the terms of betterments in Section 3.0. Rapid Flashing Beacons will be installed for all pedestrian crossings at the RABs.
- d) Signing work within Project limits. Replace existing street signs that are disturbed or do not meet WSDOT standards. Provide wayfinding signage near the new shared-use path connections with the existing trail system. Provide new street signage needed for safe operation of the RABs. Signs will be ground post mounted per WSDOT standard drawings. Sign bridges, cantilevers, or bridge mounts requested by the City instead of ground post mounting will be considered a betterment and paid for by the City per Section 3.0 upon approval. New signs requested by the City that did not exist prior to the Project that are not warranted for safe operation will be considered a betterment and paid for by the City per Section 3.0 upon approval. The City acknowledges that the existing street ROW width for westbound DMMD is insufficient to accommodate standard offsets for street sign placement. WSDOT will secure sufficient ROW width or permit rights to install new signs needed for the interchange ramps. It will be the City's responsibility to secure sufficient ROW width or permit rights to install any new City signage per Section 2.5.
- e) Des Moines Memorial Drive work within Project limits. Plant Elm trees 80' on-center (OC) on both sides of the street where feasible with 3-year establishment period required. Plant wildflower seed mix around trees and along 10' wide strip behind the sidewalk where there is sufficient ROW. Install memorial markers in sidewalk 80' OC. Protect and accommodate the Corridor Enhancement Site (CES) located at the DMMD/188<sup>th</sup>/12<sup>th</sup>

intersection. City will facilitate WSDOT obtaining temporary construction rights on the CES property as needed for Project work that interfaces with the site. City will be responsible for hanging/attaching memorial banners to street light poles as desired. Any of the old DMMD brick roadbed encountered during excavation work will be disposed of with the other roadway excavation material.

- f) Utility relocation work within Project limits. Existing utilities within the street ROW are there by franchise rights (defined by WSDOT as “Type 1” where referenced in contracts) and any conflicting facilities shall be relocated at the owner’s cost. In the event that a Type 1 utility owner will not relocate at their cost any portion of their facilities that are in conflict with the Project, and the City is unable to enforce the franchise, the street improvements requested or required by the City that are dependent on the relocation may be removed from the Project by mutual agreement and will become a separate construction contract administered by the City and funded by the mutual agreement.
- g) Forward compatibility. Street improvement projects planned by the City beyond the WSDOT ROW may be added to the Project by mutual executed agreement and will be the City’s cost responsibility.
  - SR 509 bridge over DMMD S will be constructed to span existing 60’ ROW.
  - SR 509 bridge over 200<sup>th</sup> St will be constructed to span existing 60’ ROW
- h) Regional Storm Water Detention (RSWD) Pond work. WSDOT will modify the City’s existing RSWD pond near 24<sup>th</sup> Avenue S to provide an equal volume (flow control) capacity and water quality functionality, full circulation access, equivalent emergency overflow feature, and bio-treatment swale replacement. RSWD Pond modifications shall also comply with requirements of the Des Moines Basin Plan as it discharges into Des Moines Creek. RSWD Pond will be expanded to the south on property acquired by WSDOT and conveyed to City per the Land Exchange Agreement dated 11/27/18. Improvements/upgrades to the RSWD pond’s existing capacity, quality, functionality requested by the City will be considered a betterment and paid for by the City per Section 3.0 upon approval.

2.5 Property Rights and Permitting. For the purpose of reducing duplicative procedures where street ROW is concerned, in instances where the Parties agree the public-ROW is under permanent WSDOT control (inside Turnback line), City will not be required to issue permits for the Project work. In instances where the Parties agree the public ROW is outside of WSDOT ROW control (outside Turnback line), City will issue WSDOT and their Design-Builder a Street ROW Use Permit for the Project work. City grants WSDOT and their Design-Builder the right to construct all the improvements in existing City ROW and acknowledges that WSDOT requires a Contract Bond for the full Proposal amount from the Design-Builder that includes permit related costs. In alignment with the WSDOT DB Contract, the Design-Builder shall obtain all required permits and licenses that have not been obtained by WSDOT for the project work within city ROW.

Use of street ROW along DMMD, Des Moines Memorial Drive, S 192<sup>nd</sup> Street, S 194<sup>th</sup> Street, S 196<sup>th</sup> Street, S 200<sup>th</sup> Street, 18<sup>th</sup> Avenue S, 24<sup>th</sup> Avenue S. and S 204<sup>th</sup> Street will be turned back to the City shortly after Project completion. Property acquired by WSDOT for constructing City facilities will be conveyed to the City shortly after Project completion, pursuant to the Land Exchange Agreement that addresses the various property transfers between the Parties for the

Project. WSDOT will be responsible for recording relinquishments and transfers in the King County Auditor office.

Easements acquired on city property for Project work will require written notification to the City of begin and end dates of activation

2.6 WSDOT will issue/transfer a no-cost lease to the City in exchange for operating and maintaining the Lake to Sound Trail Segment C portions on WSDOT ROW within City limits. The lease transfer for the Trail will be issued promptly after those improvements are completed by King County Parks.

2.7 Street Closure limits and allowances. WSDOT will coordinate the Maintenance of Traffic (MOT) conditions with the City prior to and during construction. Currently anticipated and planned traffic restrictions include the following, which are subject to change based upon the final design of the selected Design Builder:

- a) The City concurs that S 192<sup>nd</sup> Street can be closed across the SR 509 ROW for up to 9 months during the new bridge construction. For the duration of such closure, S 188<sup>th</sup> Street and S 194<sup>th</sup> Street will remain open during this period. Access to abutting properties will be maintained 24/7 with flagging stations as needed.
- b) DMMD, and S 200<sup>th</sup> Street will be restricted or closed periodically short term (less than 1 work shift) with flagging stations as needed for new bridge construction. Access to abutting properties will be maintained 24/7 with flagging stations as needed.
- c) Hazardous materials will be prohibited through the S 188<sup>th</sup> St. tunnel under the airport.
- d) DMMD/S 188<sup>th</sup> Street may be restricted lanes during weekdays and closed periodically for weekend and night closures in coordination with the City.
- e) Additional Maintenance of Traffic strategies may be necessary during construction as will be coordinated with the City.

2.8 Maintenance Responsibility of active streets within WSDOT ROW will be a separate agreement (Appendix A) attached hereto and made a part hereof.

2.9 WSDOT shall allow City inspectors access to the Project construction site to inspect any City permitted work involving City-owned property, ROW or utilities, or property to be transferred to and/or maintained by the City after construction, at reasonable times and with the prior consent of WSDOT upon 48 hours prior written notice to the WSDOT project engineer. WSDOT acknowledges that compliance inspections for City permits will be charged to WSDOT's Design-Builder.

2.10 The provisions in FHWA-1273 (Exhibit C) attached hereto and made a part of this agreement will apply to all work on this Project.

### 3. Payment and Costs.

The City acknowledges that requests for change(s) to the WSDOT construction contract, other than changes that are necessary to bring the design in compliance with applicable sections of the SeaTac Municipal Code and adopted City standards and policies, may increase costs for the City and that

WSDOT will not implement any such change(s) unless the City agrees in advance in writing to be solely responsible for the costs associated with such change. All such changes shall ultimately be made at the sole discretion of WSDOT. WSDOT acknowledges that the City shall not be responsible for increased costs for any design changes requested by the City that are necessary to bring the design or the work in compliance with applicable sections of the SeaTac Municipal Code, adopted City standards, or the SSDP as of the **Project** RFP issue date

Betterment. Notwithstanding the foregoing, if City desires to include a betterment in the above design elements work at any specific location, WSDOT will allow for betterment work to be performed, provided the Parties can reasonably coordinate the Project schedule to accommodate the betterment work without increasing Project costs or delaying the Project. Betterment is defined as any significant deviation or upgrading of the design being contemplated during the implementation of the Project that is not attributable to the highway construction or to meeting current requirements or standards and is made solely for the benefit of and at the election of City. The difference in cost between the minimum construction required as a result of the Project and City's desired betterment shall be at City's sole expense and the additional funds authorized by amendment to GCB 3068. The estimated cost of betterments to be paid by the City will be fully loaded, including but not limited to Design-Builder's change order markup, sales tax, WSDOT construction engineering management labor, and WSDOT regional overhead markup.

If betterment is pursued for sidewalks on S 192<sup>nd</sup> St., SeaTac will cover the additional costs.

#### 4. Indemnification.

To the extent permitted by law, WSDOT and the City shall protect, defend, indemnify, and save harmless each other, their respective officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, indemnifying party's (WSDOT and the City) negligent acts or omissions. Neither WSDOT nor the City will be required to indemnify, defend, or save harmless each other if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other party. Where such claims, suits, or actions result from concurrent negligence of WSDOT and the City, the indemnity provisions provided herein shall be valid and enforceable only to the extent of WSDOT's or the City's own negligence. WSDOT and the City agree that their respective obligations under this subsection 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, WSDOT and the City, 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. In the event that WSDOT or the City incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this section, all such fees, expenses, and costs shall be recoverable by the prevailing party. This indemnification shall survive the termination of this Agreement.

#### 5. Dispute Resolution, Governing Law and Venue

In order to expeditiously and permanently resolve a dispute arising under this Agreement, the Parties hereby agree as follows.

WSDOT and City shall each appoint a member to a disputes board; these two members shall select a third member not affiliated with either agency. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with the aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.

In the event that either Party deems it necessary to institute legal action or proceedings following the decision of the disputes board, the Parties agree that any such action or proceedings shall be brought either in the superior court situated in King County, Washington, or the United States District Court for the Western District of Washington. Further, the Parties agree that each shall be responsible for its own attorneys' fees and costs.

## 6. General Provisions

6.1 Breach. If a Party is in material breach of or fails to perform the terms and provisions of this Agreement and such failure continues for a period for thirty (30) days after written notice from the other Party (or if such failure is not susceptible of a cure within such thirty (30) day period, cure has not been commenced within such thirty (30) day period and diligently pursued thereafter to completion), then such non-defaulting Party may, (a) terminate this agreement, and (b) pursue any remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance and/or injunctive relief. Where the non-defaulting Party pursues an action for damages or otherwise, such party shall be entitled to reasonable attorneys' fees, court costs and associated expenses in any prevailing action, if awarded in such action.

6.2 Rights and Remedies. The rights and remedies of the Parties to this Agreement are in addition to any other rights and remedies provided by law, except as otherwise provided in this Agreement.

6.3 No Waiver. Failure of a Party to enforce any term under this agreement shall not be deemed, nor shall it constitute, a waiver of such term or any other term, unless otherwise provided in a writing executed by the Party charged.

6.4 No Agency. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party shall be deemed, or represent themselves to be, employees of any other Party.

6.5 No Third-Party Rights. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties.

6.6 Binding on Successors; Survival. All of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, permitted assigns and legal representatives. This Agreement supersedes every antecedent or concurrent oral and/or written declaration or understanding respecting the Relocation Work and the Project.

6.7 Compliance with Laws. Each of the Parties shall comply, and to the best of its ability shall ensure, that its employees, agents, consultants and representatives comply with all federal, state, and local laws, regulations, and ordinances applicable to the work and services to be performed.

6.8 Designated Representatives and Notice.

- (a) City's Designated Representative for this Agreement is [REDACTED].
- (b) WSDOT's Designated Representative for this Agreement is Ali Amiri Project Engineer (AmiriA@wsdot.wa.gov).
- (c) Changes to Designated Representative shall be made by notice pursuant to 6.8(d).
- (d) Notice. Unless otherwise provided herein, all notices, communications and deliveries required or permitted under this Agreement shall be in writing and shall be (a) delivered personally, (b) sent by overnight commercial air courier (such as Federal Express), or (c) mailed, postage prepaid, certified or registered mail, return receipt requested; to the parties at the addresses hereinafter set forth:

**City**

[REDACTED]

**WSDOT**

Ali Amiri – Design Project Engineer

[AmiriA@Wsdot.WA.Gov](mailto:AmiriA@Wsdot.WA.Gov)

SR 509 New Expressway

999 Third Avenue Suite 2300

Seattle, WA 98104

Andrey Chepel - Project Construction Manager

ChepelA@Wsdot.wa.gov

SR 509 Completion Project

18000 International Blvd., Suite 900

SeaTac, WA 9810488

6.9 Interpretation. This Agreement is the result of negotiations between the Parties. Any ambiguity in this Agreement shall not be presumptively construed in favor of or against any party.

6.10 Authority. Each Party represents and warrants that it has the requisite authority to execute this Agreement.

6.11 Amendment. This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.



6.12 Counterpart and Electronic Signature. This Agreement may be signed in multiple counterparts, each of which constitutes an original and all of which taken together constitute one and same agreement. Electronic signatures or signatures transmitted via e-mail in a "PDF" may be used in place of original signatures on this Agreement. The Parties intend to be bound by its electronic or "PDF" signature on this Agreement, are aware that the other Parties are relying on its electronic or "PDF" signature and waives any defenses to the enforcement of this Agreement based upon the form of signature.

6.13 Audits/Records. All records for the PROJECT in support of all costs incurred shall be maintained by WSDOT for a period of six (6) years from the date of termination of this Agreement or any final payment authorized under this Agreement, whichever is later. The CITY shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should the CITY require copies of any records, it agrees to pay the costs thereof. In the event of litigation or claim arising from the performance of this Agreement, the Parties agree to maintain the records and accounts until such litigation, appeal or claims are finally resolved. This section shall survive the termination of this Agreement. The Parties agree that the work performed herein is subject to audit by either or both Parties and/or their designated representatives, and/or the federal/state government.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective, authorized representatives as of the Party's date signed last below.

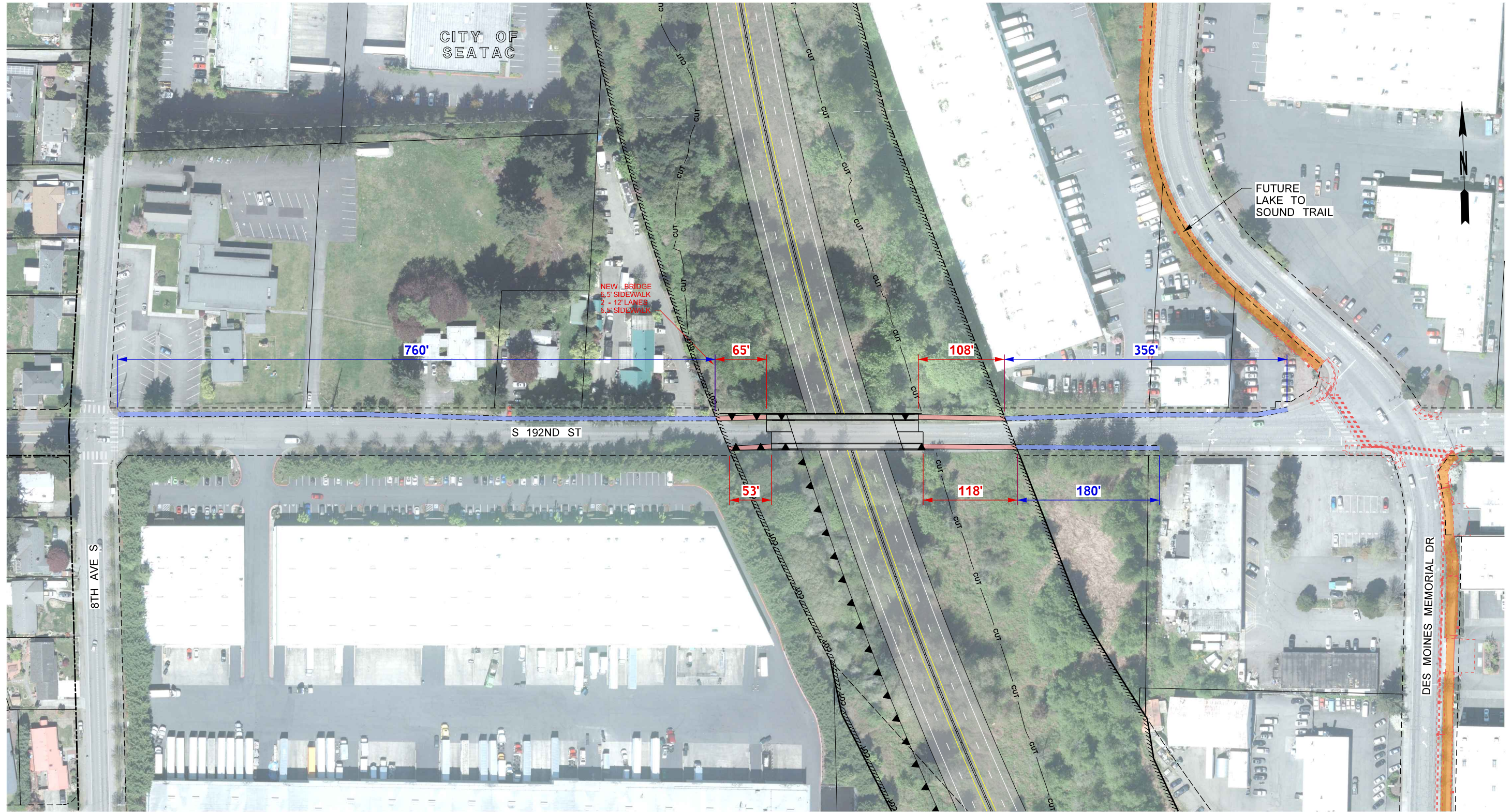
For Washington State Department of Transportation

For City



DATE: 11/7/2022  
FILE NAME: c:\users\roegreg\p\_w\stot\046994\SR509\_Sig2\_192\_Sidewalks-Seatac.dgn  
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**FOR DISCUSSION  
PURPOSES ONLY**



Puget Sound  
**GATEWAY** Program



**SR 509/24TH AVE S TO S 188TH ST  
NEW EXPRESSWAY PROJECT  
S 192ND ST SIDEWALK CONNECTIONS**



## Appendix L

# SR 509 COMPLETION PROJECT PHASE 1

Urban Design Criteria

December 2, 2019

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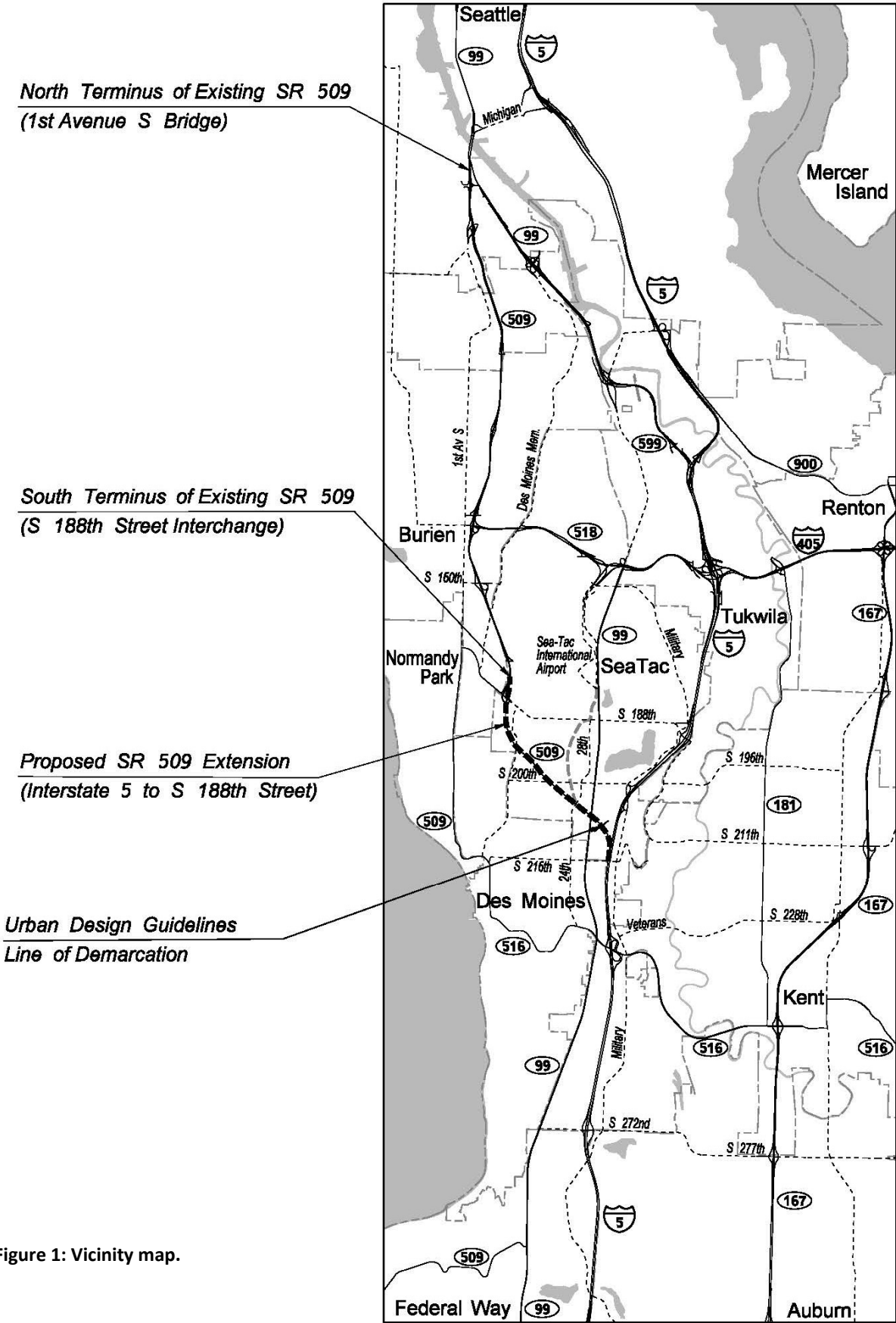


Figure 1: Vicinity map.

## PURPOSES AND OBJECTIVES

This document, Urban Design Criteria, provides a foundation for the visual design of the SR 509 Completion - Stage 1b Project. The criteria guide visual and aesthetic considerations for SR 509 between the I-5 interchange in the City of SeaTac and the First Avenue South Bridge in Seattle, and for I-5 and the I-5 corridor within the Project limits. The line of demarcation shown in Figure 1 represents the SR 99 Bridge, where the SR 509 aesthetic ends and the I-5 aesthetic begins (southeast of the bridge).

The criteria in this document are intended to help designers meet the Washington Department of Transportation (WSDOT) *Roadside Manual* goals for the SR 509 and I-5 corridors. According to the manual, effective highway design provides predictability and coherence in the visual environment. Visual composition of the new highway should be unified along the corridor and mesh with the surrounding natural and built elements.

The criteria in this document are consistent with objectives outlined in the WSDOT *Roadside Manual*, the *Roadside Policy Manual*, and other related documents. The criteria were developed to meet the following objectives:

- Promote safety while enhancing the driving experience
- Minimize community and environmental disruption
- Preserve and protect desirable views and vistas and screen undesirable views
- Create a quality visual experience for travelers using the new roadway, especially because Seattle-Tacoma International Airport (Sea-Tac Airport) is a gateway for regional tourism and because the cities of SeaTac, Des Moines, Seattle, and Burien include visual quality in their planning objectives
- Develop an attractive and unified system of highway structures (e.g., bridges, ramps, walls) that will enhance corridor continuity
- Add interest to retaining and noise walls
- Locate retaining and noise walls in ways that provide space for plants and that interface well with adjacent land uses
- Incorporate adequate space for plantings with a diverse variety of low-maintenance, self-sustaining native plants (the *Roadside Manual* 800-1, 10) taking care not to increase waterfowl attraction since Sea-Tac Airport is nearby
- Design vegetation and grading to help guide traffic through the highway corridor
- Design appurtenances such as lighting, signage, and safety devices to harmonize with highway structures and other site elements
- Allow for creation of community gateways that introduce adjacent communities and that serve as transition zones for community interface
- Design and restore roadsides so they are sustainable
- Integrate operational, environmental, and visual functions that have low life-cycle costs

- Preserve and enhance greenbelts within the highway right-of-way (ROW) to improve visual qualities of the community, and to provide a pleasant visual experience for the traveler.

## BRIDGES

### OBJECTIVES

Motorists, recreationists, pedestrians, residents, office workers, and tourists will all view SR 509 from different perspectives and from various locations. Because of this range of visibility, it is important to design the highway bridges so they present a unified, attractive appearance and fit visually with their surroundings. Visual aspects of design, such as proportion, form, and scale, are discussed here to facilitate a consistent design process. If bridge engineers apply these criteria early in the development of each highway structure's type, size, and location, it will help in creating attractive structures that fit with local landscapes.

Bridges need to be strong and stable yet appear slender and light. Slender bridge members with thin profiles are preferable to massive structures that dominate the landscape. The shallowest depth of structure consistent with strength and stiffness requirements should be used. Simplicity and continuity are important objectives. Designs should maintain consistent shapes and forms and use a minimal number of materials, colors, and textures.

It is also important to design bridge spans with good proportions, carefully considering bridge span-to-depth ratios. Designers should avoid placing thin piers under heavy superstructures or, conversely, large piers under thin superstructures. The bridge superstructure should appear as one continuous horizontal element. Abrupt changes in superstructure depth at adjoining spans create the appearance of separate or disconnected structures. Wide earthen embankments should not be used to segregate bridge spans.

A strong and logical pattern should be established for pier spacing to create visual order with pier placement. Generally, an odd number of spans is preferable. A minimum number of columns should be used, to avoid the appearance of a "forest" of columns. Piers should be positioned in a consistent relationship to under-crossing streets; preferably, pier lines should parallel the under-crossing street.

The form, materials, finishes, and overall structural composition of bridges need to harmonize with adjacent natural and built environments.

### CRITERIA

#### SUPERSTRUCTURE

- Beam and girder depths shall be kept constant over multi-span structures.
- Beam and girder depths on closely adjacent structures visible to the traveling public shall be visually similar.
- Where an existing bridge only requires lengthening or widening, the new components shall be visually similar to the existing bridge structure type.
- Drainage pipes and other conduits shall be concealed in spaces between girders and in recessed slots or grooves in piers and abutments.
- Bird prevention spikes shall be used on all potential bird perch locations.



- Simple and consistent bracing patterns made up of as few (large) members as possible shall be used (Figure 2). Complex bracing patterns, variable patterns, and patterns composed of many small members shall be avoided.



**Figure 1: A Simple and Consistent Bracing Pattern with Uniform Girder Spacing Reduces Visual Clutter.**

#### PIERS

- Round pier columns shall be used for all new bridge structures.
- Exposed projecting pier caps shall not be used.
- Where multiple piers are visible at the same time, piers of varying heights shall appear to have same width.

#### ABUTMENTS AND WING WALLS

- At places where the abutments of more than one bridge are visible, the angle between the roadway and the abutment shall be equal for all the visible abutments.
- Where abutment walls and wing walls tie into retaining walls, the same patterning and color shall be used on all wall surfaces.
- Abutment slope protection shall be a minimum of 3:1 slope and shall not exceed 2:1 slope.
- Battered cast-in-place walls shall not be used.

#### SURFACE FINISH TREATMENT

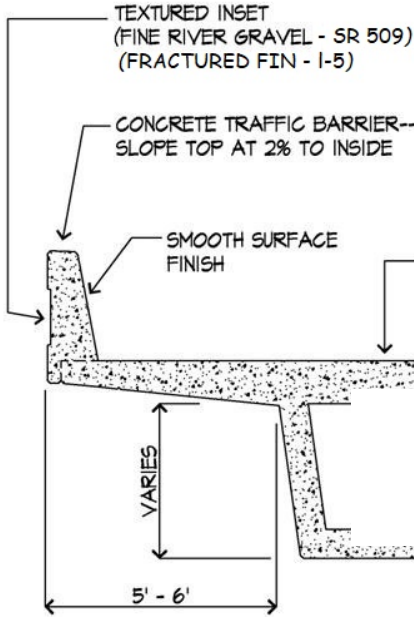
- All concrete surfaces shall be treated with a pigmented sealer.
- SR 509:
  - The color for abutment walls, wing walls, retaining walls, and pier columns shall be “Mount St. Helens Gray.”
  - The color for bridge superstructures, deck cantilevers, and concrete bridge rails shall be “Washington Gray.”
- I-5:
  - The color for all concrete shall be “Washington Gray.”

#### SURFACE TEXTURE

The surfaces of concrete bridge elements shall be finished or textured as follows:

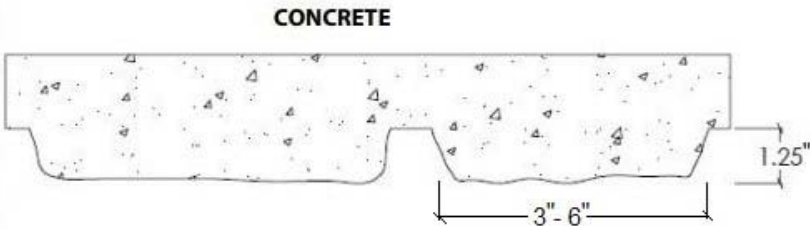
- SR 509:
  - Form liners of abutment support walls, abutment wing walls, and retaining walls shall be Mammoth Cobblestone Pattern Number 1536, supplied by Spec Formliners, Inc., Santa Ana, California, 92701, telephone number (714) 429-9500.
  - Bridge columns and superstructures, including bridge deck cantilevers, shall be Class 2 smooth textures.

- Concrete traffic barriers on bridges shall be textured as shown on Figure 3.
- Surfaces of abutment support walls, abutment wing walls, and retaining walls shall be “Coarse River Gravel” (Figure 4).
- The inset for concrete traffic barriers shall be “Fine River Gravel” (Figure 5) as described below.
- Form liners for concrete traffic barriers on bridges shall be 1-inch Round Stone Pattern Number 1609 as supplied by Spec Formliners, Inc., 1038 East 4<sup>th</sup> Street, Santa Ana, California, 92701; telephone number (714) 429-9500.
- Traffic barriers on grade shall be Class 2 smooth textured.



**Figure 3: Textured Inset Location for Barriers on Bridges.**

- I-5:
  - Surfaces of abutment support walls, abutment wing walls, and retaining walls shall be “Raised Panel” (Figure 6).
  - Bridge columns and superstructures, including bridge deck cantilevers, shall be Class 2 smooth textured.
  - Concrete traffic barriers on bridges shall be textured as shown in Figure . The inset shall be “Fractured Fin”; see WSDOT *Standard Concrete Finishes for Bridge & Structure Construction in Highway Projects*, Appendix L.
  - Traffic barriers on grade shall be Class 2 smooth textured.



**Figure 4: Coarse River Gravel.**

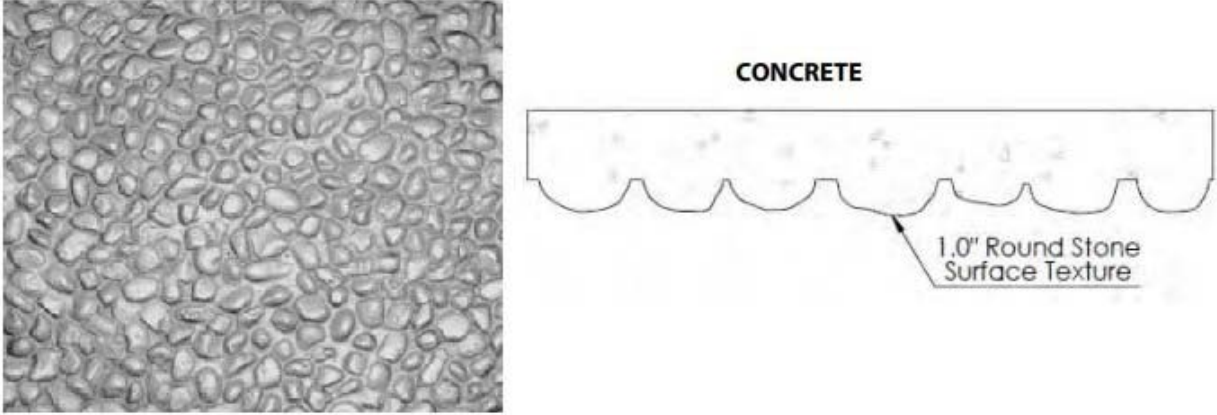


Figure 5: Fine River Gravel.

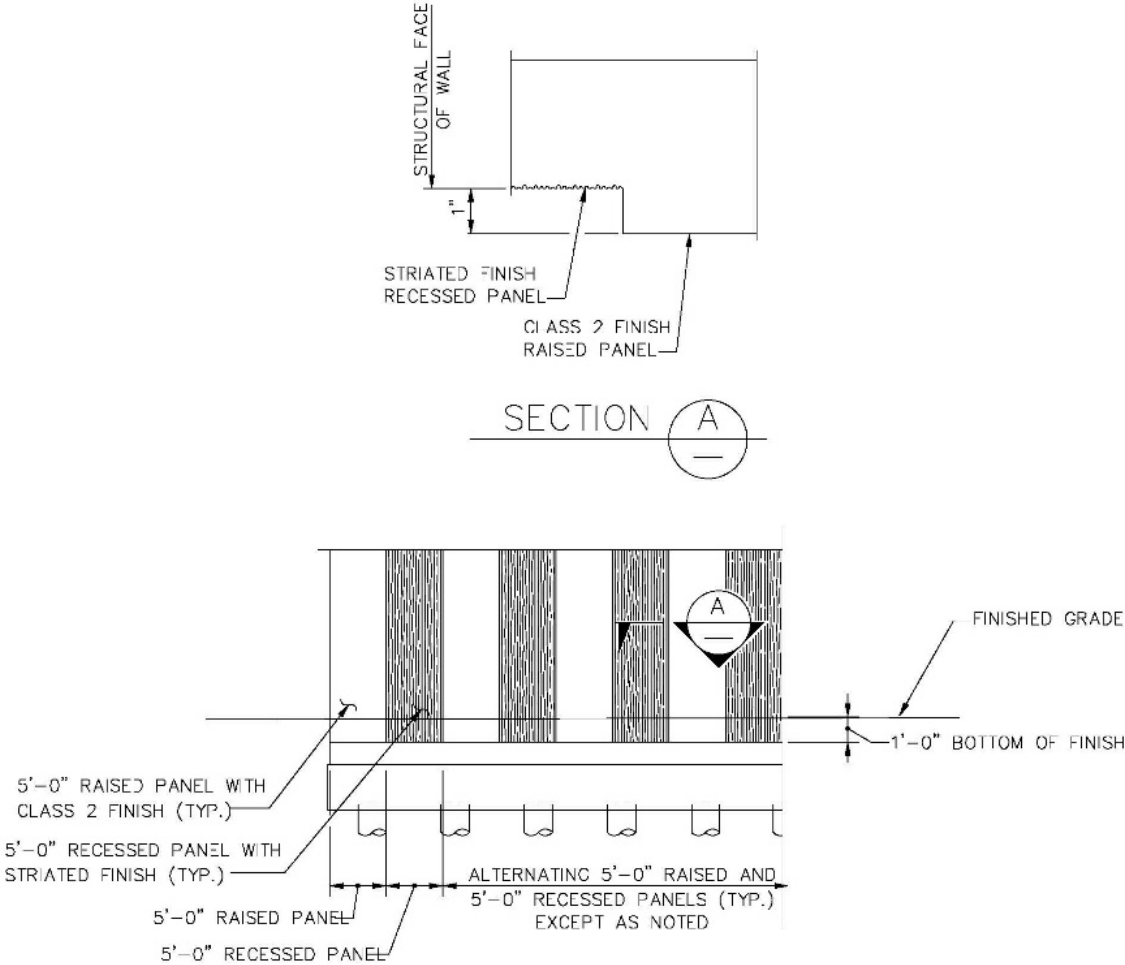


Figure 6: Raised Panel Concrete Surface Treatment. See WSDOT Standard Concrete Finishes for Bridge & Structure Construction in Highway Projects, Appendix L, Striated Finish.

# WALLS

## OBJECTIVES

The visual impact of walls along the highway is potentially significant. The objectives of these criteria are to reduce the scale and visual impact of walls and to maintain consistency throughout the SR 509 corridor. Generally, the alignment of retaining walls shall relate to the road alignment, and the tops of walls shall respond to grades behind the walls.

## CRITERIA

The following criteria also apply to pre-cast noise walls unless otherwise noted.

### WALL ALIGNMENT

- Retaining walls on long curves shall follow the road along a curved alignment (Figure 7).
- Walls shall parallel the highway alignment without jogs, offsets, or pronounced undulations.
- If walls cannot be constructed in curved sections, walls shall be constructed in a series of short-chorded sections that appear to be on an arc or curving alignment (Figure 8).
- Wall transitions needed to move walls away from or toward the road shall be done gradually over long curves (Figure ).
- Short jogs and zigzags in wall alignments shall be avoided (Figure 10).
- Where possible, wall ends shall be curved into earth berms (Figure 11).

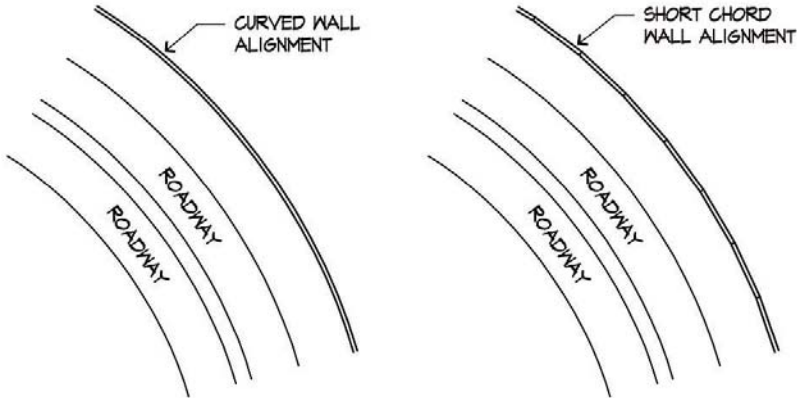


Figure 7: Curved Wall and Short Chord Wall Alignments.

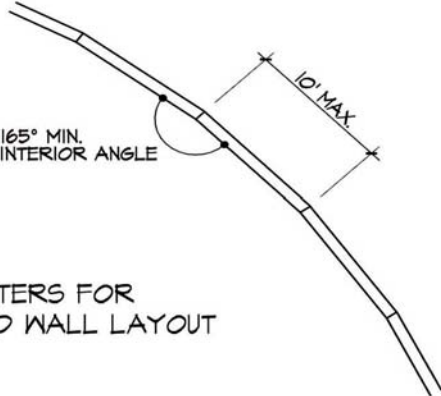


Figure 8: Chorded Wall Layout.

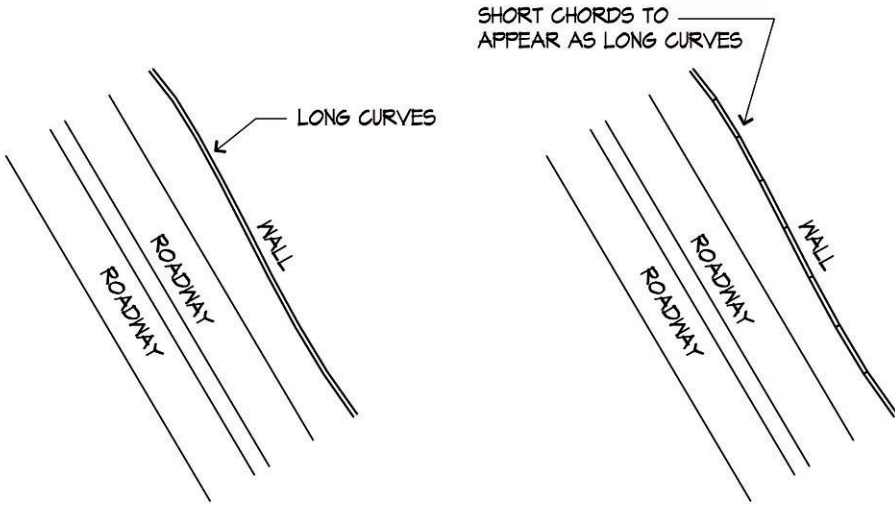


Figure 3: Gradual Long Curve Transitions in Wall Alignment (correct).

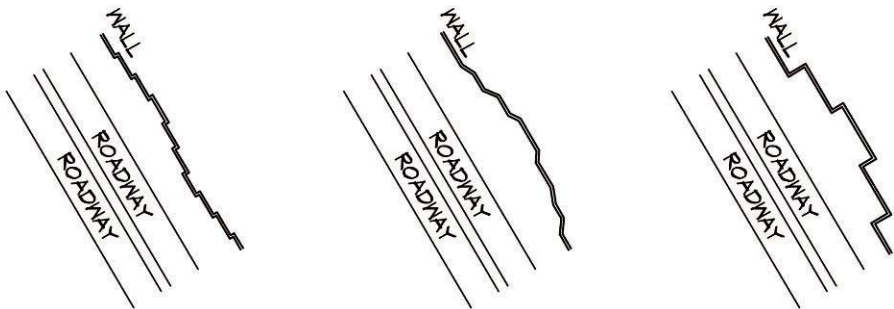


Figure 10: Jogged and Zigzag Wall Alignments (incorrect).

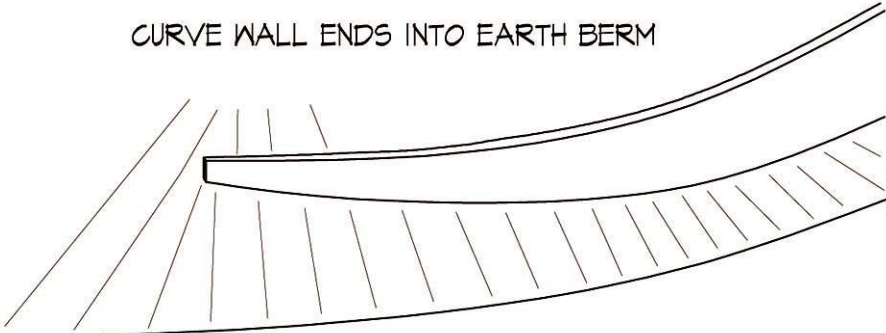


Figure 4: Wall End Treatment.

### TOP OF WALL PROFILE

- All walls shall be capped by a Class 2 smooth finish concrete band or cap (Figure 12).
- Transitions in the top of wall elevations shall be relatively gradual over long curves (Figure 13).
- Abrupt sags and crests along the top of wall shall be avoided (Figure 14).
- Short steps along the top of retaining walls shall be avoided (Figure 15).
- If top of wall cannot be constructed along a curved profile, the top shall be constructed in a series of short chorded sections that appear to be curved.
- When both the horizontal alignment and top of wall curve, the curves shall be coordinated to visually complement each other (Figure 16).
- Where retaining walls abut concrete bridge rails, the top of the retaining wall shall be aligned flush with the top of the bridge rail.
- For pre-cast walls, the top of the wall may be stepped. The minimum horizontal run for stepped top of pre-cast walls is 50 feet, and the minimum vertical step or rise is 2.5 feet. When steps greater than 2.5 feet are required, they shall be made in even 1-foot increments (e.g., 3.5 feet, 4.5 feet) up to 7.5 feet maximum (15% slope).
- The profile of upper retaining walls or noise walls shall be compatible with the profile of lower walls and barrier walls (Figure 17).
- Where appropriate, the top of a retaining wall may be extended vertically to function as a barrier wall or noise wall.

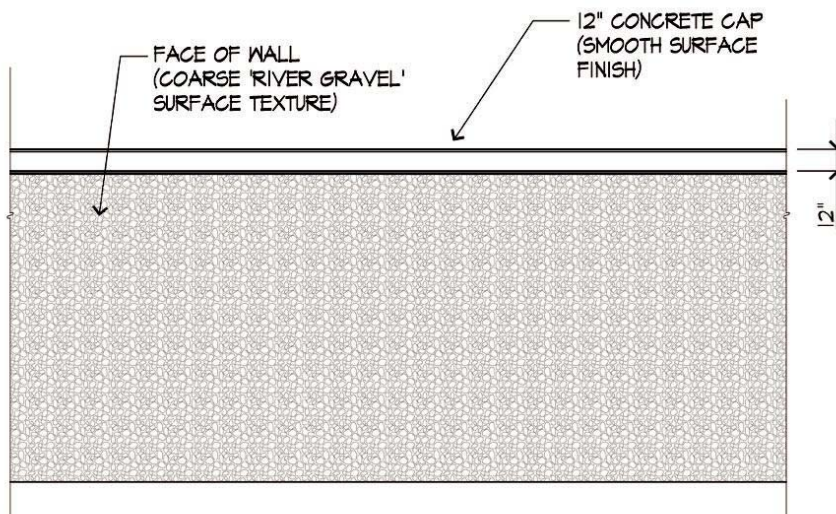


Figure 12: Elevation of Concrete Retaining Wall Showing SR 509 Corridor Finishes.



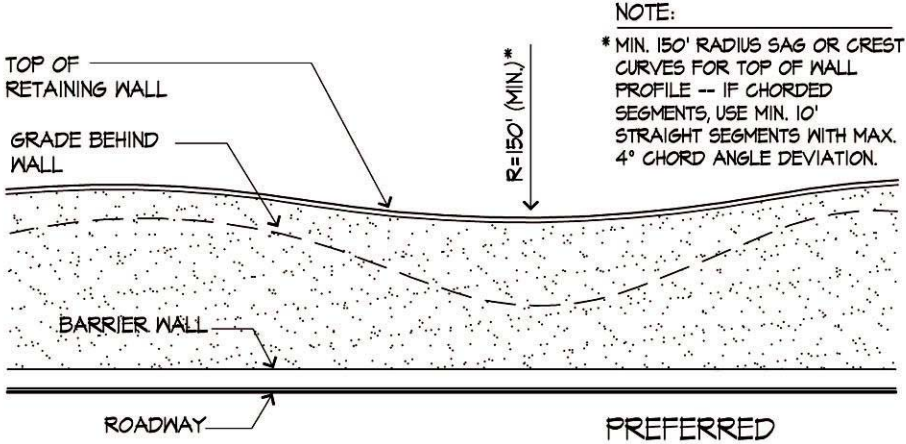


Figure 13: Gradual Top of Wall Transitions (correct).

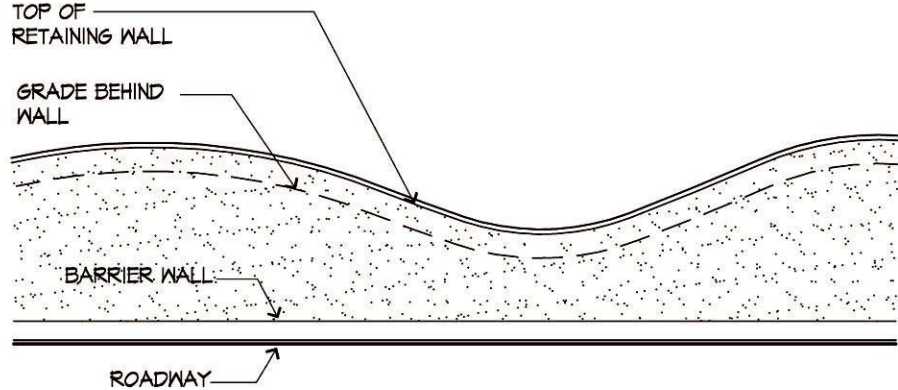


Figure 14: Abrupt Sag and Crest Curves (incorrect).

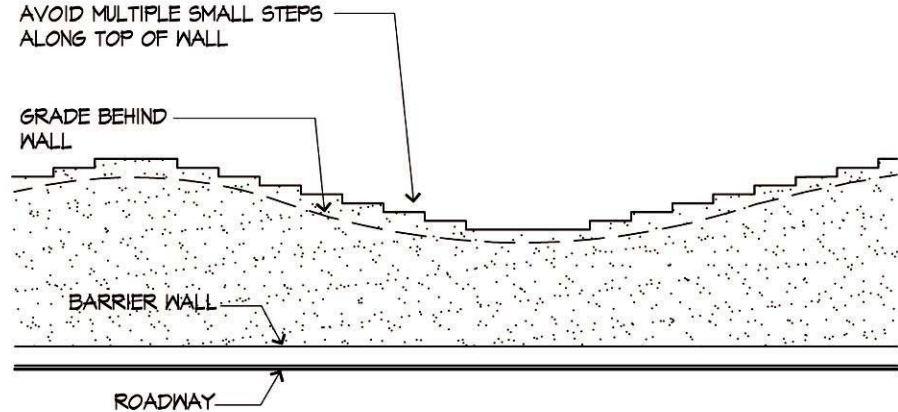
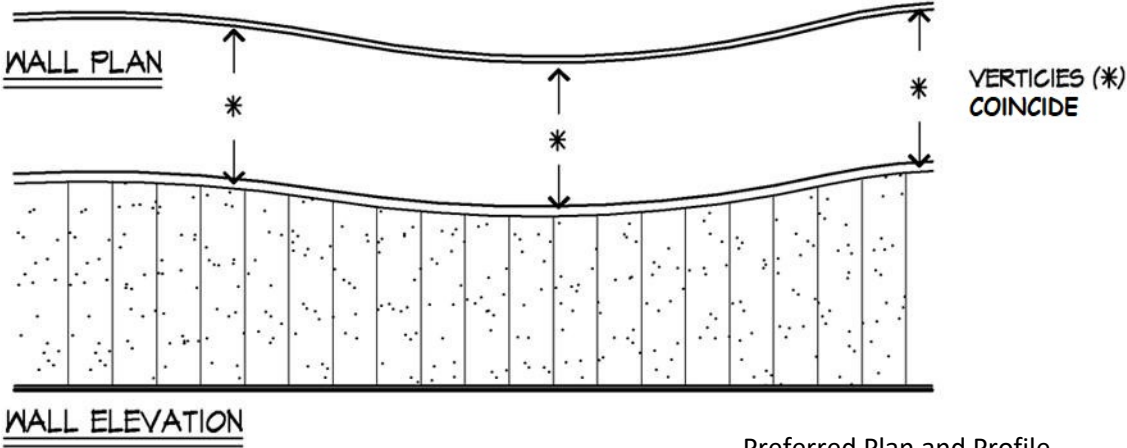
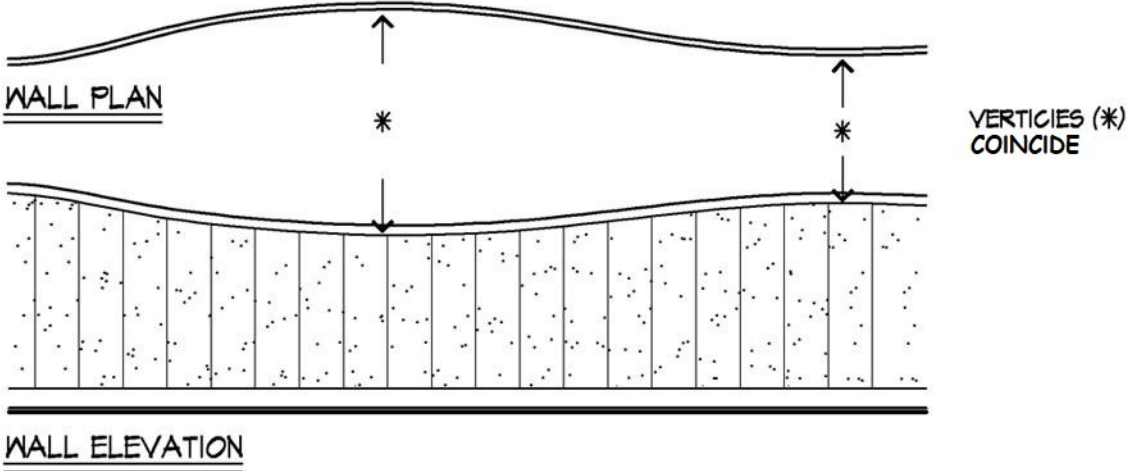


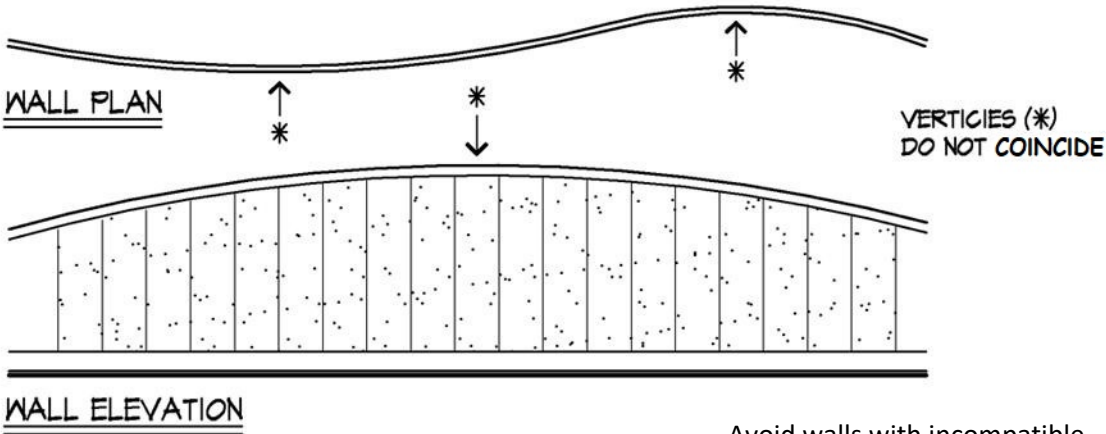
Figure 15: Stepped Top of Wall (incorrect).



Preferred Plan and Profile  
Coordination



Preferred Plan and Profile  
Coordination



Avoid walls with incompatible  
or contrary profiles

Figure 16: Coordination of Wall Plans and Profiles.



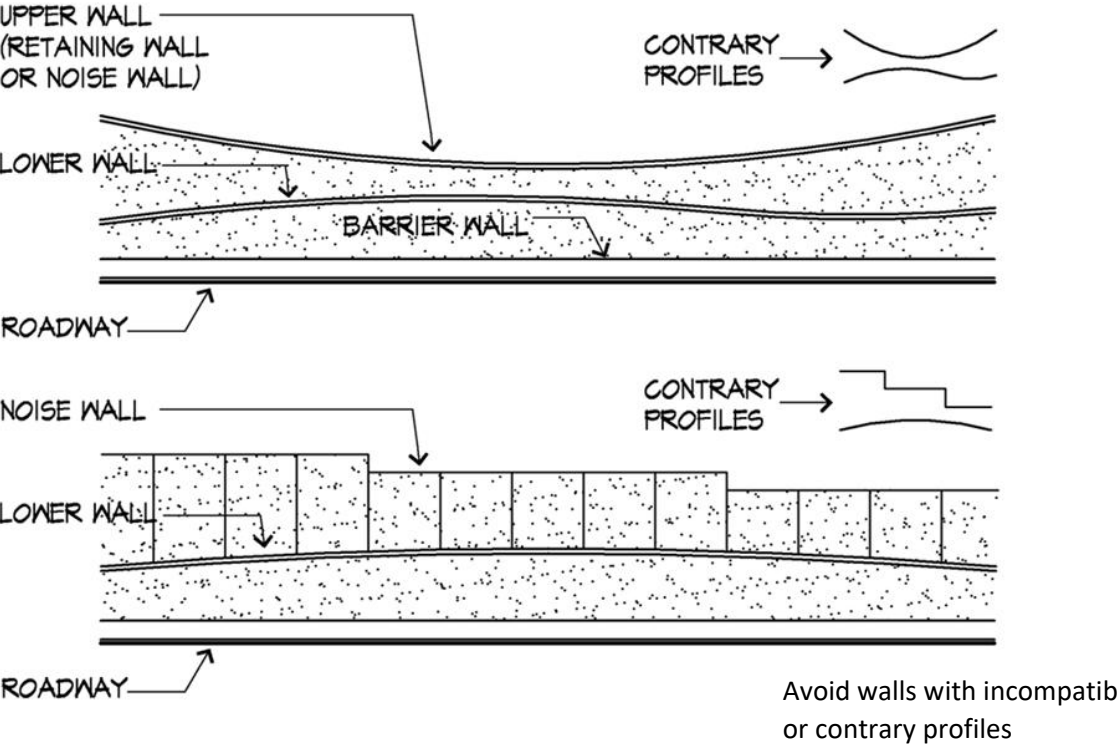
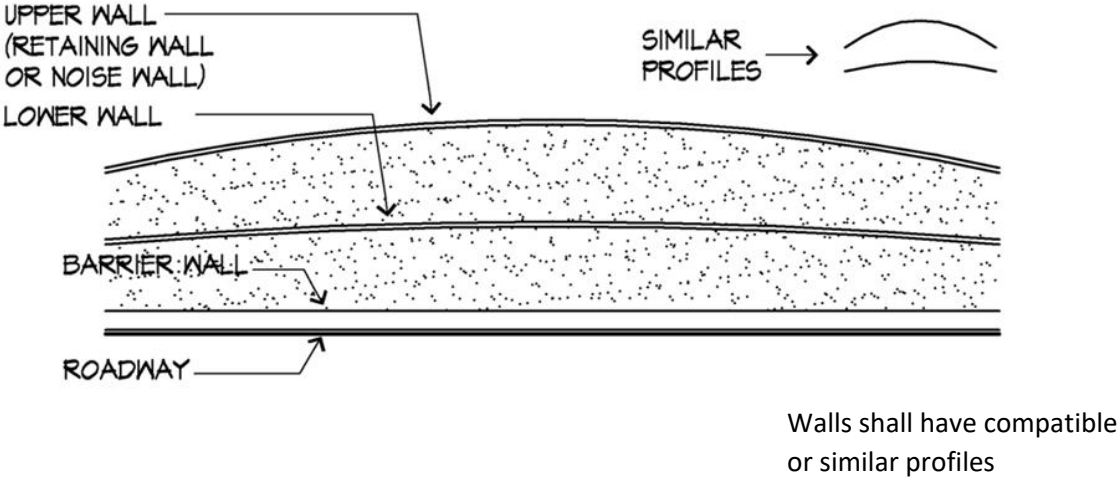


Figure 17: Wall Profile Compatibility.

#### WALL BATTER

- Front-battered cast-in-place retaining walls shall not be used. Batter that faces the retained side is permissible.

#### TEXTURE AND COLOR

The wall texture and color have been selected to visually subdue wall surfaces, discourage graffiti, accommodate vining plants, and be available for various wall types.

All exposed wall surfaces shall be textured and coated with an approved pigmented sealer as follows:

- SR 509:
  - Wall color “Mount St. Helens Gray”
  - For wall texture, see abutment and wing wall surface texture requirements
- I-5:
  - Wall color “Washington Gray”
  - For wall texture excluding noise walls, see abutment and wing wall surface texture requirements
  - Noise wall texture “Fractured Fin” (see the *WSDOT Standard Concrete Finishes for Bridge & Structure Construction in Highway Projects*, Appendix L)
  - Noise wall texture on community side “Ashlar Stone Finish” (see the *WSDOT Standard Concrete Finishes for Bridge & Structure Construction in Highway Projects*, Appendix L)

# SAFETY BARRIERS

## OBJECTIVES

Roadside barriers and barriers on structures will meet necessary safety requirements and will be well integrated with structures and other highway elements. Traffic barriers and pedestrian guardrails on bridges will emphasize the predominantly horizontal lines of the bridge while being appropriately scaled to the structure as a whole. Pedestrian guardrails will be designed to allow the maximum visibility through the railing consistent with safety requirements.

## CRITERIA

### ROADSIDE BARRIERS

For consistency throughout the SR 509 and I-5 corridors, concrete traffic barriers shall be used wherever roadside barriers are required along the highway mainline and entry/exit ramps. F-shaped concrete barriers shall be used on bridges, and single-slope concrete barriers shall be used in all other locations. In medians on SR 509, barriers shall be high performance.

- Certain barrier sections will function as short retaining walls that support planter areas in the median and along the roadside. These barrier wall sections shall be sealed to retain soils to within 4 to 6 inches of the top of the wall.
- Where local streets cross over the highway, concrete barriers along the highway shall extend continuously under the bridge in front of piers, abutments, and retaining wall structures. Areas behind the barrier (between the barrier and the pier or abutment) shall be surfaced with concrete slope protection or capped with concrete (Figure 18).

### BARRIERS ON STRUCTURES

- The tops of concrete traffic barriers shall slope toward the roadway.
- Concrete traffic barriers shall be extended across the tops of the bridge wing walls for better integration of bridge components and to accentuate the horizontal lines of the bridge (Figure 19).
- Where concrete traffic barriers on bridges abut traffic barriers on-ramps, the tops of

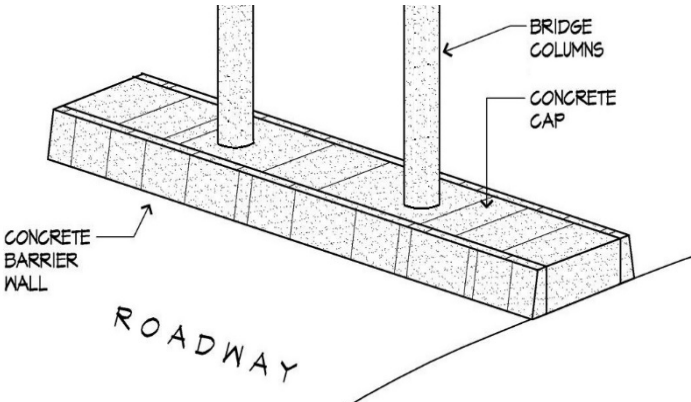


Figure 5: Roadside Concrete Barrier with Capped Median.

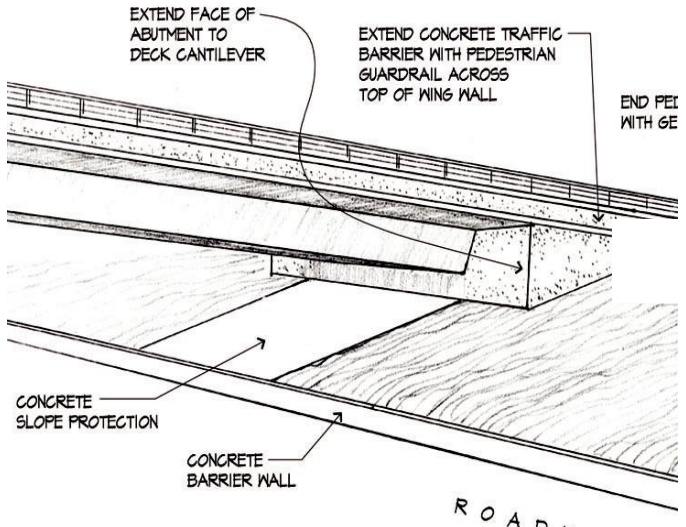


Figure 19: Concrete Barrier Extension onto Bridge Wing Walls.

barriers shall be aligned flush. Class 2 smooth finish vertical bands shall be provided at ends of barriers where they abut (Figure 20).

- Where concrete traffic barriers on bridges abut retaining walls, the tops of barriers shall be aligned flush with tops of walls. Class 2 smooth finish vertical bands shall be provided at ends of barriers where they abut (Figure 21).
- The same surface treatment shall be used on the outside of ramp barriers as was used on bridge barriers.

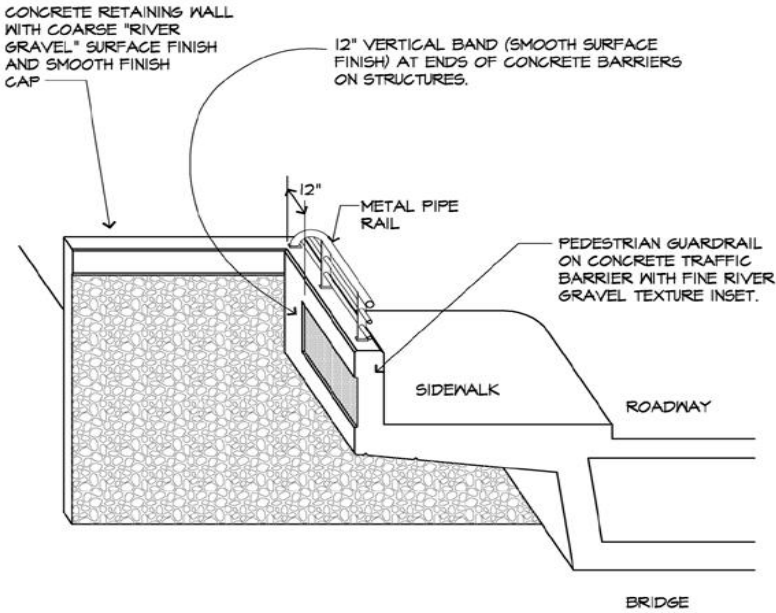
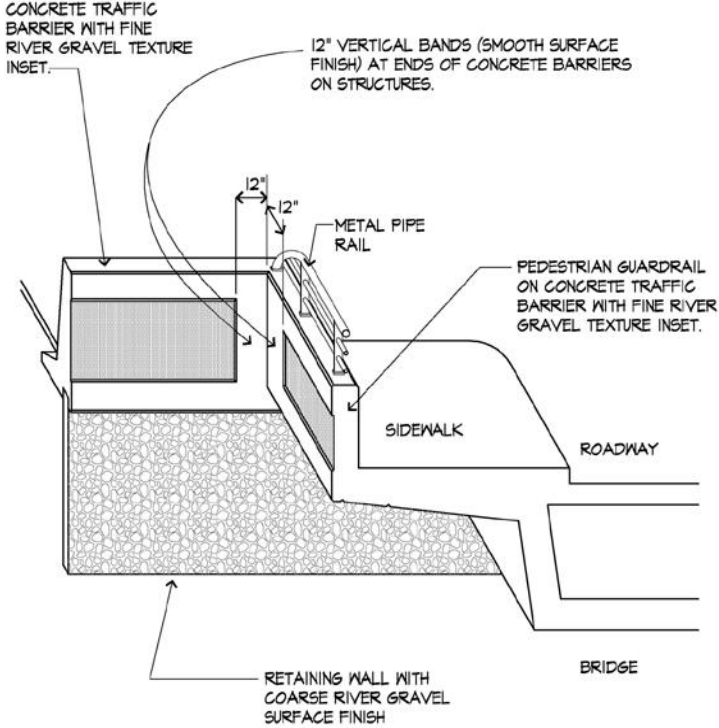


Figure 20: SR 509 Corridor Finishes on Bridge Traffic Barrier Abutting a Wall.



**Figure 21: SR 509 Corridor Finishes on Bridge Traffic Barrier Abutting Barrier on Wall.**

- Whenever possible, the ends of the concrete barriers shall be buried in the back slope in accordance with WSDOT’s design manual, and use of impact attenuators shall be minimized.

## COMMUNITY GATEWAYS

### OBJECTIVES

The Design-BUILDER will need to initiate the process to determine specific design and character elements for each community’s respective community gateways. The design must meet the WSDOT *Roadside Policy Manual* parameters for community gateways, and design elements will need to be approved by WSDOT.

The Design-BUILDER will work with the City of SeaTac to develop a community gateway that meets WSDOT criteria at 24<sup>th</sup> Avenue South.

### CRITERIA

#### COMMUNITY GATEWAY DESIGN

General guidelines for community gateways are outlined in the WSDOT *Roadside Policy Manual*. These guidelines shall be used by local communities as the basis for design of their community gateways. The Design-BUILDER shall facilitate and implement the community gateway design process and agreements for community gateways.

## LIGHTING, SIGNALS, AND CAMERAS

### OBJECTIVES

Highway lighting will be designed to provide safe, efficient illumination of the roadway with minimal impacts to the adjacent community. The placement and appearance of light fixtures should be uniform and ordered. One type of light fixture should be used consistently over the length of the SR 509 mainline. Different types of light fixtures may occur at under- and over-crossings of city streets, but their style should be compatible with the style of the SR 509 mainline fixtures. Layout and design of lighting should meet WSDOT lighting standards and be compatible with other corridor elements such as structures, landscaping, and signage. Light fixtures for the I-5 corridor will be consistent with existing I-5 fixtures. New city streets outside of the SR-509 and I-5 ROWs will have lighting that meets local codes and standards and matches existing lighting where the new city streets meet existing local streets.

### CRITERIA

The SR 509 corridor light fixture shall be a standard WSDOT Type 3 medium-cut-off fixture with flat glass optics and an LED source. The mounting pole shall be a WSDOT Type 1 painted galvanized steel pole.

- The same type of light fixture shall be used throughout the SR 509 corridor and throughout the I-5 corridor. The same type of light fixture shall be used on local streets according to local jurisdiction standards.
- Designing so that conduits are exposed on visible portions of walls, bridges, and other structures shall be avoided.
- The lighting plan shall be coordinated with the design of walls and bridges.
- On short bridge spans, when possible, lights shall be located only at the ends of the bridges.
- On longer spans, lights shall be located at uniform intervals on the structure and in locations that are visually integrated with the bridge structure, such as at pier lines. When lights are mounted on structures, the bases shall be integrated into the wall in a consistent manner.
- Lighting shall meet FAA guidelines.
- Light-mounting poles, camera poles, and ramp meter signal poles shall be painted. The color shall be “Mount St. Helens Gray” along the SR 509 corridor and “Galvanized” along the I-5 corridor. On city streets outside of WSDOT ROWs, the color shall be according to Local Agency standards.

## UTILITIES AND INTELLIGENT TRANSPORTATION SYSTEMS

### OBJECTIVES

A primary visual objective for utility installations in the highway corridor is visual concealment or de-emphasis. Designing above-ground utility elements requires attention to setting, location, scale, and color to reduce the negative effects of visual clutter.

### CRITERIA

- Utility and intelligent transportation system cabinets shall be sited in inconspicuous locations. Placement of cabinets in open areas shall be avoided. Instead, cabinets and boxes shall be

located near walls, structures, and plant massings. Access to utility cabinets shall be maintained. Cabinets shall be placed so that the signal technician can see the signal head when working on the cabinet.

- Finish for cabinets and other enclosures shall be stainless steel or alloy aluminum with a mill finish according to Section 2-29.13(10)C of the *WSDOT Standard Specifications for Road, Bridge, and Municipal Construction*.
- Because utility cabinets will be more visible to slower-moving traffic and pedestrians, care shall be taken when locating boxes and cabinets along local streets and at the intersections of local streets and highway ramps. Cabinets shall be located outside of sight triangles.
- When extending utilities across bridges, pipes and conduit shall be concealed in the bridge superstructure (Figure 22). Neither conduit nor pipes shall be attached to visually exposed surfaces on bridges and walls.
- Additional conduits for future use shall be provided on all bridges.
- Use of bridge drains is discouraged. If water must be drained on a bridge, a drop drain shall be used if possible. If a drop drain is not possible, the bridge engineering, hydraulic engineering, bridge maintenance staff, and landscape architect shall jointly design an acceptable bridge drain location. Ideally, the bridge drain will be concealed in the recessed slots in the piers. Where visible to the public, downspout drains and scuppers on bridges shall be painted to match the bridge structure pigmented sealer.

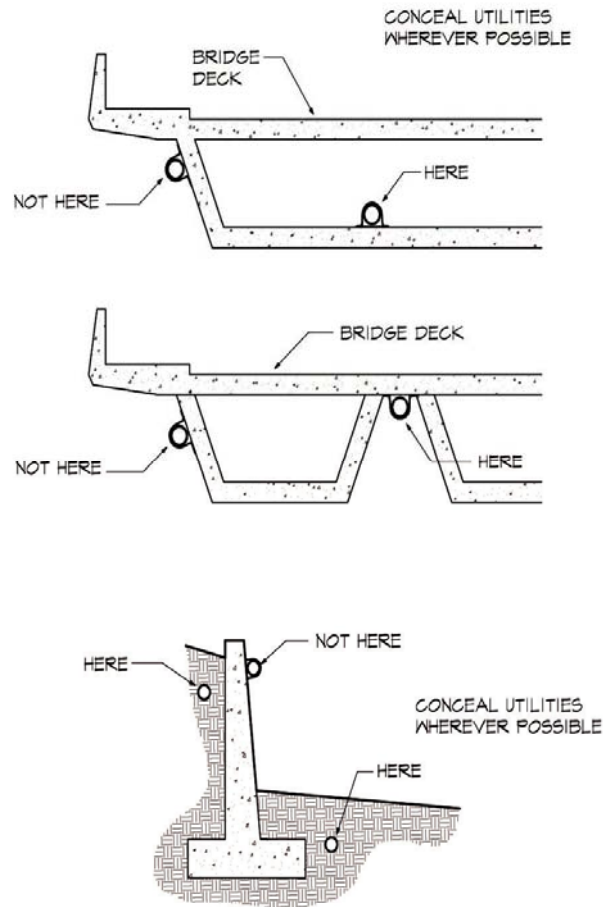


Figure 22: Utilities Along Bridges and Walls.

## RIGHT-OF-WAY FENCING AND FALL PROTECTION ASTHETICS

### OBJECTIVES

A primary visual objective for fencing and fall protection installations in the highway corridor is visual concealment or de-emphasis. Fencing and fall protection will require attention to color and type to reduce the negative effects of visual clutter.

### CRITERIA

#### RIGHT-OF-WAY FENCING

- Fencing shall be Type 3, in accordance with the *WSDOT Standard Plans*.

- Fencing shall be coated in accordance with WSDOT general special provisions (GSPs) in the color “Black.”

#### FALL PROTECTION

- Fall protection shall be galvanized cable fence, as detailed in the *Bridge and Design Manual*, Chapter 8.

#### FALL PROTECTION EXPOSED TO PUBLIC VIEW

- Fall protection exposed to public view shall have all galvanized surfaces painted in accordance with Section 6-07.3(11)A of the WSDOT *Standard Specifications for Road, Bridge, and Municipal Construction*. The color of the finish coat, when dry, shall match the color of the wall or barrier in which it is mounted.

## SIGNS AND TOLL GANTRIES

### OBJECTIVES

Highway signing shall provide necessary information in a manner that is safe and easy to comprehend. The size and location of signs and mounting structures shall be compatible with other highway structures, lighting, and landscaping.

### CRITERIA

- When reasonable to do so, signs shall be placed on sign-mounting structures instead of on the sides of bridges.
- Where signs must be located over the roadway, they shall be mounted on simple mono-tube structures. Mono-tubes for signs and toll gantries and toll gantry hangers shall be painted “Mount St. Helens Gray” on SR 509 and “Blue Gray” (Federal Standard 595 Color Number 3527) on I-5 (Figure 23 **Error! Reference source not found.**).
- Where signs must be mounted on a bridge overpass to serve the under-passing road, the signs shall be attached unobtrusively. The tops of the signs shall not extend above the tops of the bridge rails, and the bottoms of the signs shall not extend below the bottoms of the bridge structures (Figure 24).
- Where multiple signs must be mounted on bridges or sign structures, signs of the same height shall be used.
- Where local streets cross over the highway, erecting signs on the over-crossing bridge to serve the over-crossing roadway shall be avoided; instead, signs shall be located before or after the bridge when possible.
- Where signs must be mounted on bridges, a mounting monotube or bar shall be placed spanning all lanes of traffic to accommodate sign movements for future potential re-channelization of traffic.



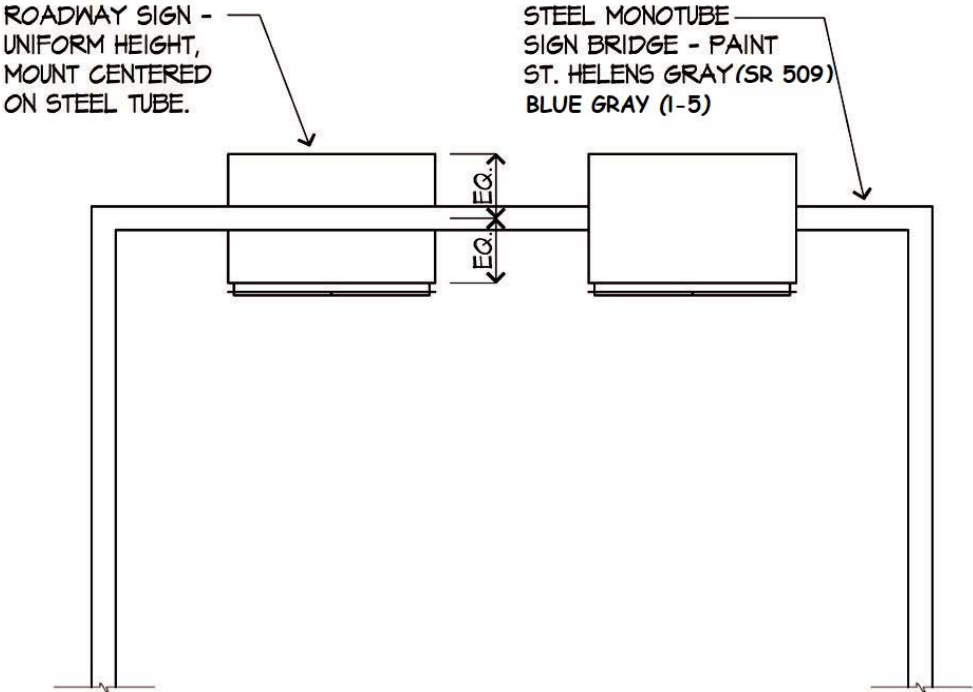


Figure 23: Monotube Signbridge.

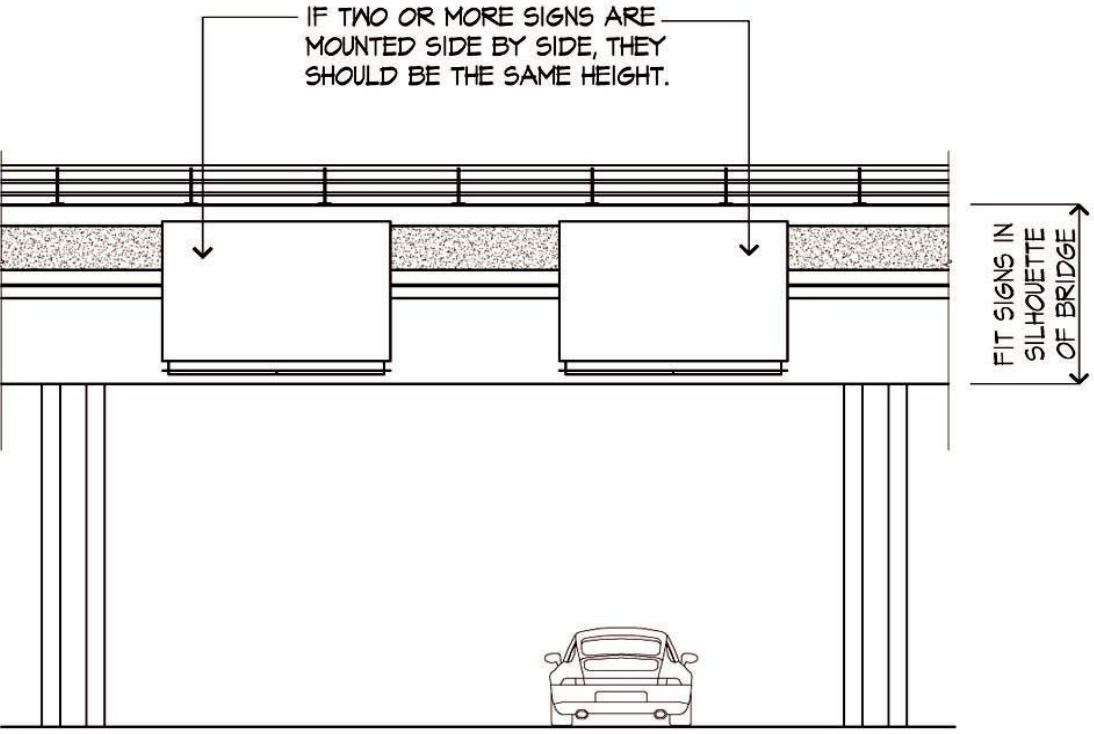


Figure 7: Mounting Signs on Bridges.

## VEGETATION

### OBJECTIVES

Roadsides and medians along SR 509 and I-5 will be planted to accomplish several objectives and functions. Planting objectives outlined here are consistent with those identified in the WSDOT *Roadside Policy Manual* and the WSDOT *Roadside Manual*. Planting objectives are to:

- Protect and enhance the natural and built environment, including protection of water and air quality, wetlands, sensitive areas, and habitat, as well as control of weeds and erosion.
- Improve visual quality, including positive driver guidance and navigation, distraction screening, corridor continuity, roadway and adjacent property buffering, and scenic view preservation.



**Figure 25: Existing SR 509 Northbound Approaching the Duwamish Valley.**

Visual continuity and view buffering are two important functions of vegetation in the SR 509 and I-5 corridors. The ability of vegetation to provide visual continuity and view buffering is exhibited along the existing segment of SR 509 between the First Avenue South Bridge and South 188<sup>th</sup> Street. Long stretches of the highway are currently edged by a dense line of trees and shrubs (Figure 25 and Figure 26). This curtain of vegetation blocks views from the road of adjacent residential and commercial development. The roadside vegetation provides an attractive and consistent edge that screens the visual clutter of residential backyards, apartment buildings, parking lots, and other urban elements. Additionally, this narrow band of trees and shrubs buffers views of the highway from nearby homes, schools, parks, and businesses.



**Figure 26: Existing SR 509 near 128th Street.**

The I-5 corridor from Angle Lake to Federal Way is currently edged by a dense line of trees and shrubs and landforms, except for the ROW immediately north of the SR 516 interchange in Des Moines and the area along the City of Kent Midway Landfill. Some of this buffering vegetation will be removed and replaced by the Sound Transit Federal Way Link Extension (FWLE) project. Disturbed ROW along I-5 for the SR 509 Completion Project will be restored to blend with existing I-5 corridor vegetation and the proposed FWLE vegetation and to provide visual buffering from and for adjacent properties.

Plantings in median areas and in areas between ramps and the mainline highway will serve various purposes. Plantings between roadways will reduce the visual expansiveness and scale of the multi-lane highway. Vegetation between opposing lanes of traffic shields headlight glare. Plants can also screen the visual clutter and distraction of on-coming traffic in opposing lanes to improve drivability and guidance. Moreover, vegetation between roads and ramps is attractive and helps to visually unify the highway with the surrounding landscape.

Local and regional comprehensive plans cite the need to preserve and supplement vegetation in the SR 509 corridor. The Community Design Background Report included in the SeaTac Comprehensive Plan recommends preserving and enhancing greenbelts in highway ROWs. The City of Burien *Gateway Design*

*Report* calls for enhanced landscaping of the freeway ROW and coordination with WSDOT to “create a safe and unique landscaped gateway” to Burien at the SR 509/SR-518 interchange.

## CRITERIA

- For visual consistency and integration with the adjacent landscape, plants in the SR 509 corridor shall be mostly natives or have the visual characteristics of native plants.
- Plants along the extended and reconstructed highway, as well as along I-5, shall be characteristic of the region, be suited to local climate and soils, have low maintenance requirements, and provide year-round visual buffering.



**Figure 8: International Boulevard (SR 99) Toward South End of Future SR 509.**

- Selected plant species shall meet the criteria for planting near airports. Specifically, species height shall be restricted within the Port of Seattle Flight Safety Corridor and attraction of birds that might flock around aircraft shall be minimized within 10,000 feet of the runways. Taller species may be used in lower tiers of cut sections of roadway, but because of flight path considerations, only species that at maturity will not become obstructions within the Port of Seattle Flight Safety Corridor will be allowed.
- The roadside vegetation buffer for SR 509 and I-5 shall be in accordance with the Rural and Semi-Urban Roadside Character Treatment Level 2 guidelines outlined in the *WSDOT Roadside Policy Manual*. Specifically, the buffer shall consist predominantly of coniferous trees with intermittent deciduous trees. Large and medium-sized shrubs shall be interplanted with the trees to increase view buffering and screening. Low shrubs or vining plants shall be used on ground areas to stabilize soil areas, eliminate the need for mowing and trimming around trees and shrubs, and inhibit the growth of invasive plants. The layout and composition of the vegetation buffer shall be adapted to work with cross-section grading, ROW width, and clear zone and sight distance requirements. Stormwater collection and treatment facilities will also influence the configuration of planted areas.
- Plant species selected for city streets shall meet the requirements of the Local Agency of the city street.
- Selection of plant species and final placement and layout of plants shall be coordinated with the WSDOT landscape architect’s office. Planting conditions to be implemented for the SR 509 extension and I-5 reconstruction are described in the following sections.

## ROADSIDE CUT SLOPE PLANTING

The following planting criteria are for a roadside cross-section consisting of ditch or swale, with a cut slope extending above the ditch to approximately the ROW line (Figure 28). The roadside may be with or without a barrier or guardrail.

- Coniferous trees shall be provided on upper parts of slopes; they shall be planted in slightly irregular rows two to three plants deep, outside of the clear zone and within the ROW.

- Intermittent short gaps in conifers shall be provided every 100 to 300 yards. Upper-story and lower-story deciduous trees shall be inserted into gaps. Deciduous trees shall be far enough from the roadway to minimize the amount of leaves that enter the drainage systems.
- Large shrubs shall be planted among trees and, in places, in front of trees.
- Within the clear zone, on the lower slope below the conifers, and above the ditch, medium to low shrubs or non-climbing vining ground covers shall be provided to create a gradation or transition from grass to trees. Width of grass shall be limited to one-pass mowing. Shrubs and ground covers may undulate in and out of the clear zone.
- Plants shall be laid out in informal, slightly irregular massings (Figure 28).
- Roadside ditch and ditch side slopes shall be planted with erosion control grasses.
- A 10-foot grass strip shall be provided adjacent to the roadway unless sidewalks, raised planting areas, or barriers are provided (Figure ).

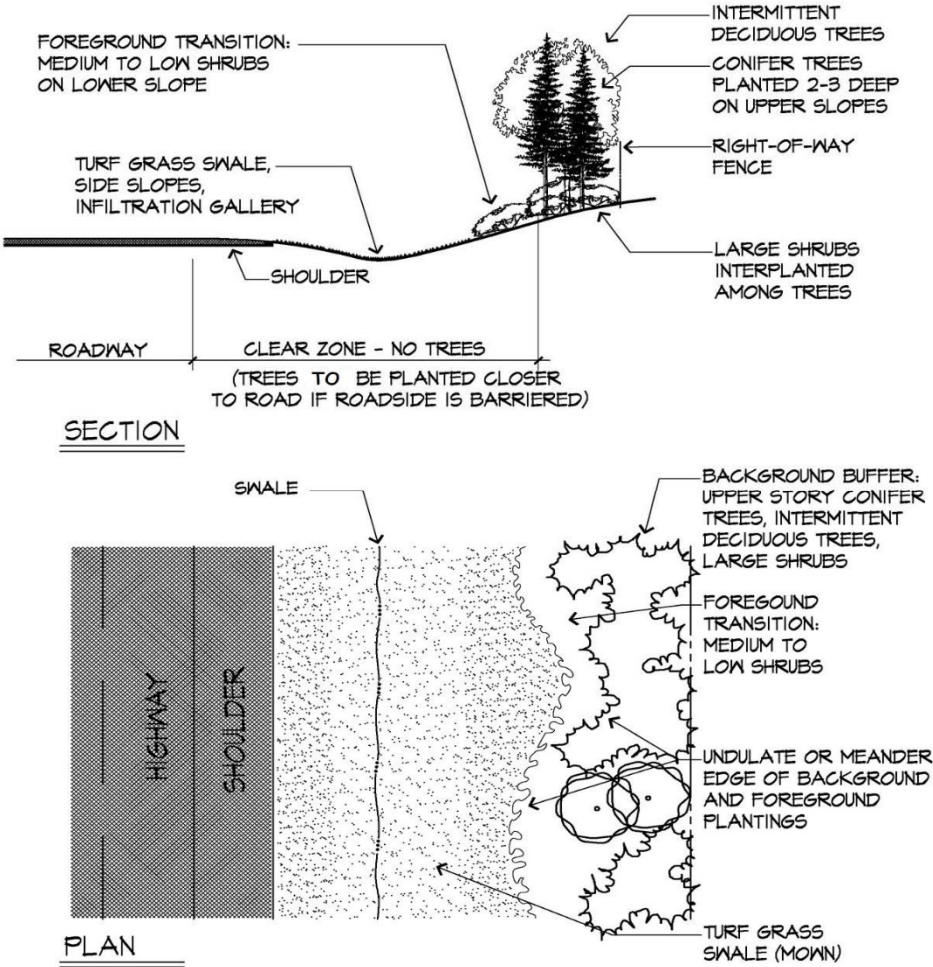


Figure 28: Roadside Planting on Cut Slopes.

### ROADSIDE FILL SLOPE PLANTING

The following planting criteria are for a roadside cross-section consisting of a fill slope between the edge of shoulder and existing grade or ROW line. The roadside may include stormwater treatment facilities. The roadway may be with or without a barrier/guardrail.

- Coniferous trees shall be provided on lower part of slope. They shall be planted in slightly irregular rows two to three plants deep, outside of the clear zone and within the ROW (Figure 30).
- Intermittent gaps in conifers shall be provided every 100 to 300 yards and upper story and lower story deciduous trees shall be inserted into gaps. Deciduous trees shall be far enough from the roadway to minimize the amount of leaves that enter the drainage systems.
- Large shrubs shall be planted among conifer trees and, in places, in front of conifer trees.
- Within the clear zone, on the upper slope above the conifers, medium to low shrubs and/or non-climbing vining ground covers shall be provided to create a stepped or graduated transition from grass to trees. The edge of the shrub or ground cover foreground shall undulate slightly toward and away from the road.
- Plants shall be laid out in informal, slightly irregular massings.
- Upper part of slope shall be planted with erosion control grasses unless a barrier or guardrail is present. Shrub and tree planting shall be continued to barrier or guardrail.

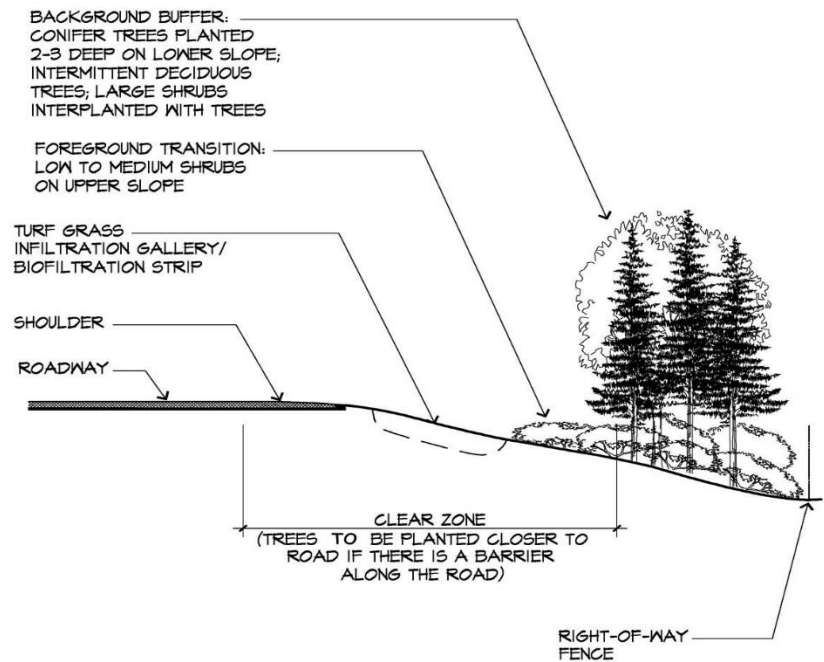


Figure 30: Roadside Planting on Fill Slope.

### PLANTING IN BARRIERED RAISED AREAS BETWEEN ROADS

The following planting criteria are for raised planter areas between concrete barriers. This situation would occur where narrow medians are flanked by barriers and the area between barriers is filled with soil to form a raised planter strip. A similar condition would occur in linear areas between the mainline highway and on/off-ramps.

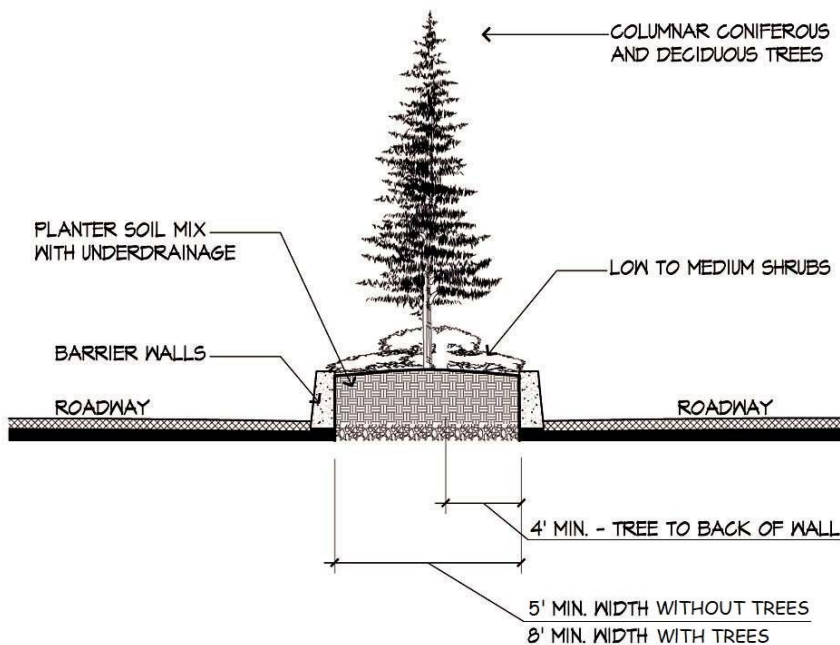
Generally, these planter strips shall be planted with trees and shrubs that provide vertical mass and density. Plantings in these areas shall create as much visual separation between pavements as possible without overhanging the roadway or violating clear zones.

- The minimum raised planter width shall be 5 feet. Trees in planter areas 8 feet to 10 feet wide shall be predominantly narrow conifers spaced to form linear and fairly uniform vertical plant



masses. Low- to medium-height shrubs shall be used to cover open ground areas in the planter strips.

- Raised planter strips 10 feet wide and greater shall be planted with a combination of columnar deciduous and conifer trees. Trees shall be spaced to form fairly uniform linear plant masses. Groups of coniferous trees shall be alternated with groups of deciduous trees for visual interest. Deciduous trees shall be located in areas to minimize the amount of leaves that enter the drainage systems. Low to medium shrubs shall be used to cover open ground in planter areas.
- Strips between barriers less than 5 feet wide shall be capped with concrete to prevent accumulation of debris between barriers.
- Planter strips between barriers shall be raised (Figure 31) except where stormwater facilities require lower grades and when width between barriers is greater than 12 feet. These areas shall meet the requirements of Planting in Barriered At-Grade Areas Between Roads.



**Figure 31: Barrier at Planter Areas.**

#### PLANTING IN BARRIERED AT-GRADE AREAS BETWEEN ROADS

The following planting criteria are for at-grade median areas and narrow areas between the highway mainline and on/off-ramps. These linear areas shall be barriered with concrete barriers within the SR 509 and I-5 corridors.

Roadway stormwater runoff may be directed into these linear areas, where stormwater conveyance and treatment facilities would be provided. Stormwater treatment facilities in these areas generally will have linear configuration and, depending on the layout and size of the treatment system, plants may be located opposite of, between, or flanking the treatment facility. Plantings shall be closely coordinated with requirements for siting, operating, and maintaining stormwater facilities. When the median area is

used as an infiltration area, the water will quickly infiltrate and there will be little water available for the plantings. Irrigation will not be allowed in areas near the infiltration systems.

Generally, at-grade planter strips shall be planted with trees and shrubs to provide as much visual separation between pavements as possible without overhanging the road, violating clear zones, or compromising stormwater treatment.

The planting criteria for raised planters shall apply to this section, with the following additional requirements:

- The minimum distance between plants and stormwater facilities shall be 6 feet.
- Only evergreen trees and shrubs shall be used near stormwater facilities.
- Surface treatments and plant coverings (such as grass) for stormwater facilities shall be determined by the Engineer. Grass behind barriers shall be limited to stormwater facilities. Maintenance equipment access for mowing shall be provided.

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**Note:** Figure 3 is reprinted by permission of John Wiley & Sons, Inc. from the book, *Bridgescape: The Art of Designing Bridges*, by Frederick Gottemoeller, ©1998 by John Wiley & Sons, Inc.



## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

### II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:



"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

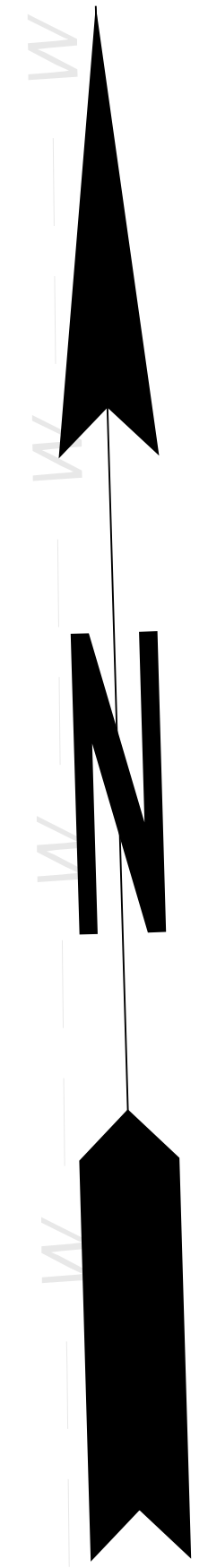
4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



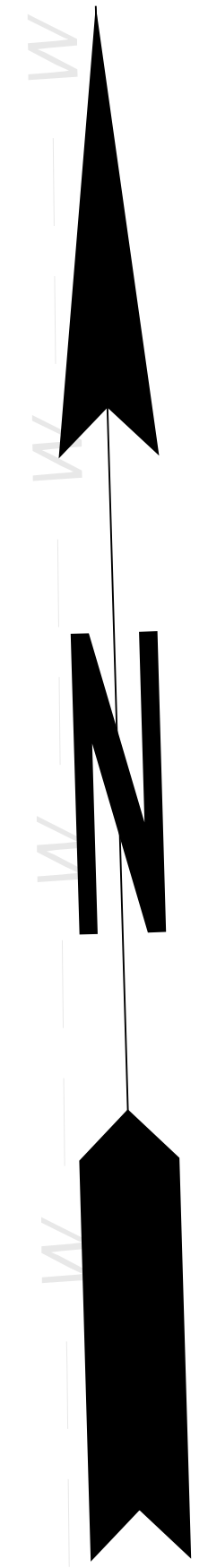
**NEW BRIDGE**  
**6.5' SIDEWALK NORTH SIDE**  
**2 - 11' LANES**  
**10' + 0.5' SHARED PATH SOUTH SIDE**



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NOT FOR CONSTRUCTION



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