CONSTRUCTION AND MAINTENANCE AGREEMENT
BETWEEN
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (GMC 1026)
AND
CITY OF BATTLE GROUND

This Agreement (Agreement) is between the Washington State Department of Transportation, hereinafter "WSDOT," and the City of Battle Ground, hereinafter the "City." WSDOT and the City may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

1. The City requested, and WSDOT agreed, to purchase and install One Hundred Seventy-Three (173) 48-inch yellow centerline surface-mounted tubular markers on State Route 503 (SR 503)/SW 10th Avenue and Eighty-Two (82) on SR 503/NW 10th Avenue to provide channelization on SR 503 between milepost (MP) 7.91 and MP 8.20, hereinafter referred to as the Tubular Markers.

2. Upon purchase and installation by WSDOT, the City agrees to own and maintain the Tubular Markers.

3. WSDOT and the City enter into this Agreement to outline the division of installation and maintenance responsibilities for the Tubular Markers.

Now therefore, pursuant to RCW 47.28.140 the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and the attached Exhibit A, which is incorporated and made a part hereof, It Is Mutually Agreed as Follows:

1. COOPERATION

The Parties agree to work cooperatively to ensure that the SR 503 right of way and the Tubular Markers, shown on Exhibit A, is installed and maintained to function as designed. The Parties shall meet on an as needed basis to discuss maintenance obligations, the functioning of the Tubular Markers, and this Agreement.

2. PURPOSE

The purpose of this Agreement is to define the responsibilities for the installation and maintenance of the Tubular Markers.

3. PERIOD OF PERFORMANCE

This Agreement shall commence upon execution and shall remain in effect unless and until terminated as set forth below.

4. TERMINATION

4.1 This Agreement may be terminated, without penalty or further liability as follows:

4.1.1 Termination for Cause

This Agreement may be terminated for cause by either Party if the other Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if the other Party violates any of the terms and conditions of this Agreement. The notice of intent to terminate for cause shall be issued by a Party

in writing and the other Party shall have the opportunity to correct the violation or failure within fifteen (15) working days of the date of the notice. If the failure or violation is not corrected within the time allowed, this Agreement will automatically terminate.

4.1.2 Termination for Withdrawal of Authority
This Agreement may be terminated by either Party in the event that either Party's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement. The notice of intent to terminate for withdrawal of authority shall be issued to the Parties in writing no less than fourteen (14) calendar days in advance of termination. No penalty shall accrue to either Party in the event termination under this section is exercised. This section shall not be construed to permit the Parties to terminate this Agreement in order to acquire similar services from a third-party.

4.1.3 Termination for Non-Allocation of Funds
This Agreement may be terminated by either Party if insufficient funds are allocated or appropriated to the Party to continue its performance of this Agreement in any future period. The notice of intent to terminate for non-allocation of funds shall be issued in writing no less than fourteen (14) calendar days in advance of termination.

4.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

4.3 Within thirty (30) working days of the termination of this Agreement, the City shall, if directed by WSDOT, remove the Tubular Markers, and shall restore the WSDOT right of way to its condition prior to the installation of the Tubular Markers at the City's sole cost and expense and to the reasonable satisfaction of WSDOT. The work to restore the right of way shall be performed in a manner consistent with Section 5.2. If the City fails or refuses to perform the work necessary to comply with this requirement, WSDOT may perform the work at the expense of the City. Reimbursement for the cost of the work by WSDOT shall be made in accordance with Section 7.

5. WSDOT INSTALLATION

5.1 WSDOT, at its sole cost and expense, shall purchase and install the Tubular Markers as set forth in this Agreement. Any reconstruction or additional construction beyond the Tubular Markers shall be negotiated under a separate agreement.

5.2 WSDOT shall perform all work under this Agreement in accordance with WSDOT Maintenance Manual standards M51-01.11, or any revisions thereto, and the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD), current edition at the time the Tubular Markers is installed.

5.3 WSDOT agrees to perform the work required under this Agreement in such a manner as to not impede or disrupt in any way the operation, construction, or maintenance, or interfere with or endanger the safety of the traveling public or pedestrians on SR 503/10th Avenue. WSDOT shall conduct all traffic control required for installation of the Tubular Markers in a manner consistent with the MUTCD and/or WSDOT's Work Zone Traffic Control Guidance M54-44, current edition.

5.4 Upon completion of the installation of the Tubular Markers, WSDOT shall notify the City within five (5) working days for final review and acceptance.

6. CITY MAINTENANCE AND REPLACEMENT

6.1 Upon installation of the Tubular Markers by WSDOT and acceptance by the City per Section 5.4, the City, at its sole cost and expense, shall own, maintain, and if warranted, replace the Tubular Markers as set forth in this Agreement. Any reconstruction or additional construction beyond the Tubular Markers shall be negotiated under a separate agreement.

6.2 The City shall perform all work under this Agreement in accordance with WSDOT Maintenance Manual standards M51-01.11, or any revisions thereto, and the “Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD), current edition at the time the Tubular Markers are being maintained.

6.3 The City shall perform all work required under this Agreement in such a manner as to not impede or disrupt in any way WSDOT highway construction, maintenance, or interfere with or endanger the safety of the traveling public or pedestrians. The City shall conduct all traffic control required for maintenance and replacement, if necessary, of the Tubular Markers in a manner consistent with the MUTCD and/or the WSDOT's Work Zone Traffic Control Guidance M54-44, current edition.

6.4 The work to be performed by the City under this Agreement includes Traffic Control.

6.4.1 The City agrees that maintenance, and any necessary replacement of the Tubular Markers within SR 503 right of way, shall be restricted to daylight hours and no work shall be allowed within the SR 503 right of way on Saturdays or Sundays, or on holidays, unless otherwise authorized by the WSDOT, or under emergency circumstances. If a holiday falls on a Saturday, the preceding Friday is counted as the holiday, and the City shall be off the SR 503 right of way by noon on Thursday. When the holiday falls on a Monday, the City shall be off the SR 503 right of way by noon on the preceding Friday.

6.4.2 The City agrees that any temporary lane closure or restriction longer than four (4) hours of SR 503 for the purpose of maintaining or replacement of the Improvements shall require a WSDOT-approved traffic control plan prior to performing any work.

7. EMERGENCY MAINTENANCE OR REPAIR

7.1 Should WSDOT determine that any work performed under this Agreement that is the responsibility of the City presents an immediate danger to the public or to real property, facility, or operation of SR 503, WSDOT will notify the City in writing, with email being acceptable, and request that the City immediately address the emergency maintenance or repair issue within one (1) working day of notification.

7.2 In the event that the City does not or cannot immediately perform the emergency maintenance or repair, WSDOT may perform the emergency maintenance or repair at the expense of the City.

7.3 The City shall be responsible for the actual direct and related indirect costs of the emergency maintenance or repair work. Reimbursement of the cost of the work shall be

made in accordance with invoice and payment procedures set forth in Sections 8.1.2 and 8.1.3.

8. FAILURE TO PERFORM MAINTENANCE AND EMERGENCY MAINTENANCE

8.1 WSDOT reserves the right to perform work required by the City on the Tubular Markers that lie within WSDOT-owned right of way to the extent necessary for the safe operation and maintenance of SR 503, should the City fail to perform the work pursuant to this Agreement.

8.1.1 If the City fails to perform any work required under this Agreement WSDOT will notify the City, in writing, with email being acceptable, of the work that must be completed, and the City shall perform the work within thirty (30) calendar days. If the City does not perform the identified work, WSDOT reserves the right to perform the work in accordance with minimum WSDOT highway standards set forth in this Agreement.

8.1.2 In the event WSDOT is required to perform any of the work required to be performed by the City, the City shall reimburse WSDOT for its actual direct, and related indirect costs, for all work performed by WSDOT on behalf of the City within thirty (30) working days of the date of the invoice received from WSDOT (the "Due Date"). In the event the City fails to make payment by the Due Date, the City will pay WSDOT interest on outstanding balances at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is greater. Interest shall be calculated from the Due Date to the date of payment.

8.1.3 If the City objects to all or any portion of an invoice, it shall notify WSDOT within twenty (20) calendar days from the date of receipt and shall pay only that portion of the invoice not in dispute. WSDOT and the City shall make every effort to settle the disputed portion, and if necessary, utilize dispute resolution provided for in Section 15. No interest shall be due on any portion of an invoice the City is determined not to owe following settlement between the parties or completion of dispute resolution process.

9. RIGHT OF ENTRY

9.1 Each Party hereby grants to the other Party a right of entry upon the real property or right of way for which the Party holds fee title as may be necessary to perform the work required under this Agreement.

9.2 The granting of the right of entry pursuant to this Agreement does not relieve the Party exercising the right of entry from obtaining all permits required to perform the work required under this Agreement.

10. FUTURE IMPROVEMENTS

10.1 A Party shall not make any alterations or additional improvements to the property or right of way that may affect the other Party without first obtaining the other Party's approval, which approval shall not be unreasonably withheld. Alternations and improvements shall be the subject of a subsequent agreement, or amendment which must be executed prior to commencing work.

10.2 The cost and expense of any such alteration or additional improvements consented to by

the other Party, including construction, maintenance, and removal, shall be borne by the Party benefiting from the additional improvements, in proportion to the benefit received by each Party.

10.3 It shall be the responsibility of the Party making the alteration to secure any and all governmental permits required in connection with any such work, and to perform such work in accordance with governing laws and procedures.

10.4 In addition, any Party constructing such an improvement shall work with the other Party to minimize any adverse impacts of construction to other parties.

11. ADMINISTRATION AND NOTICES

11.1 The Point of Contact (POC) identified for each Party shall be responsible for administering this Agreement.

City POC: Mark Herceg – Public Works Director, Phone: 360-342-5075, Email: mark.herceg@cityofbg.org.

WSDOT POC: Jacob Peters – Regionwide Maintenance Superintendent, Phone: 360-619-0660, Email: jacob.peters@wsdot.wa.gov.

11.2 Any notice, demand, or other communication required or permitted to be given under this Agreement or applicable law shall be effective only if it is in writing, with email being acceptable, addressed to the applicable Party's designated POC as set forth herein.

11.3 The name and contact information of a POC may be updated by a Party in writing, with email being acceptable, to the other Party. A change in the name and/or contact information of a POC shall not require an amendment to this Agreement.

12. ASSIGNMENT AND SUBCONTRACT

Except as otherwise provided herein, a Party to this Agreement shall not assign, delegate or transfer this Agreement or the obligations incurred hereunder, in whole or in part, by operation of law or otherwise, or subcontract for the management or operation of their respective responsibilities, or parts thereof, without the prior written consent of the other Party to this Agreement, which approval shall not be unreasonably withheld.

13. LEGAL RELATIONS

13.1 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. No joint venture or partnership is formed as a result of this Agreement.

13.2 The Parties shall be deemed independent contractors for all purposes, and the employees of the Parties or any of their contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the other Party.

14. INDEMNIFICATION

14.1 Each Party to this Agreement will protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from,

each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials, or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials or employees.

14.2 The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees, or agents. For this purpose, only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

14.3 This indemnification and waiver will survive the termination of this Agreement.

15. DISPUTE RESOLUTION

15.1 The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to, this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process shown below shall be a prerequisite to the filing of litigation concerning any dispute between the parties:

15.1.1 The POC, designated in this Agreement shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. The POCs shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any disputes or issues related to the successful performance of this Agreement. The POCs shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.

15.1.2 A Party’s POC shall notify the other Party in writing, with email being acceptable, of any dispute or issue that the POC believes may require formal resolution according to Section 9.2. The POCs shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.

15.1.3 In the event the POCs cannot resolve the dispute or issue, the City, and WSDOT’s Region Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.

15.1.4 In the event the City and WSDOT’s Region Administrator, or their respective designees, cannot resolve the dispute or issue, the City and WSDOT shall each appoint a member to a Dispute Board. These two (2) members shall then select a third member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Board shall be shared equally by both parties; however, each Party shall be responsible for its own costs and fees.

16. RECORDS AND AUDIT

All records related to work performed under this Agreement shall be held and kept available for inspection and audit 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. Each Party shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. In the event of litigation or claim arising from the performance of this Agreement, the City and WSDOT agree to maintain the records and accounts until such litigation, appeal or claims are finally resolved. This section shall survive the termination of this Agreement.

17. GENERAL

17.1 Assurances: The Parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, State, and local laws, rules, and regulations as they currently exist or as amended.

17.2 Interpretation: This Agreement shall be interpreted in accordance with the laws of the state of Washington. The titles to paragraphs and sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

17.3 Amendments: This Agreement may be amended only by the mutual written agreement of the Parties executed by personnel authorized to bind each Party.

17.4 Waiver: A failure by a Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the waiving party and attached to the original Agreement.

17.5 All Writings Contained Herein: This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties.

17.6 Venue: Venue of any action brought under this Agreement involving WSDOT shall be in Superior Court for Thurston County, State of Washington.

17.7 Severability: If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

17.8 Authority to Bind: The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

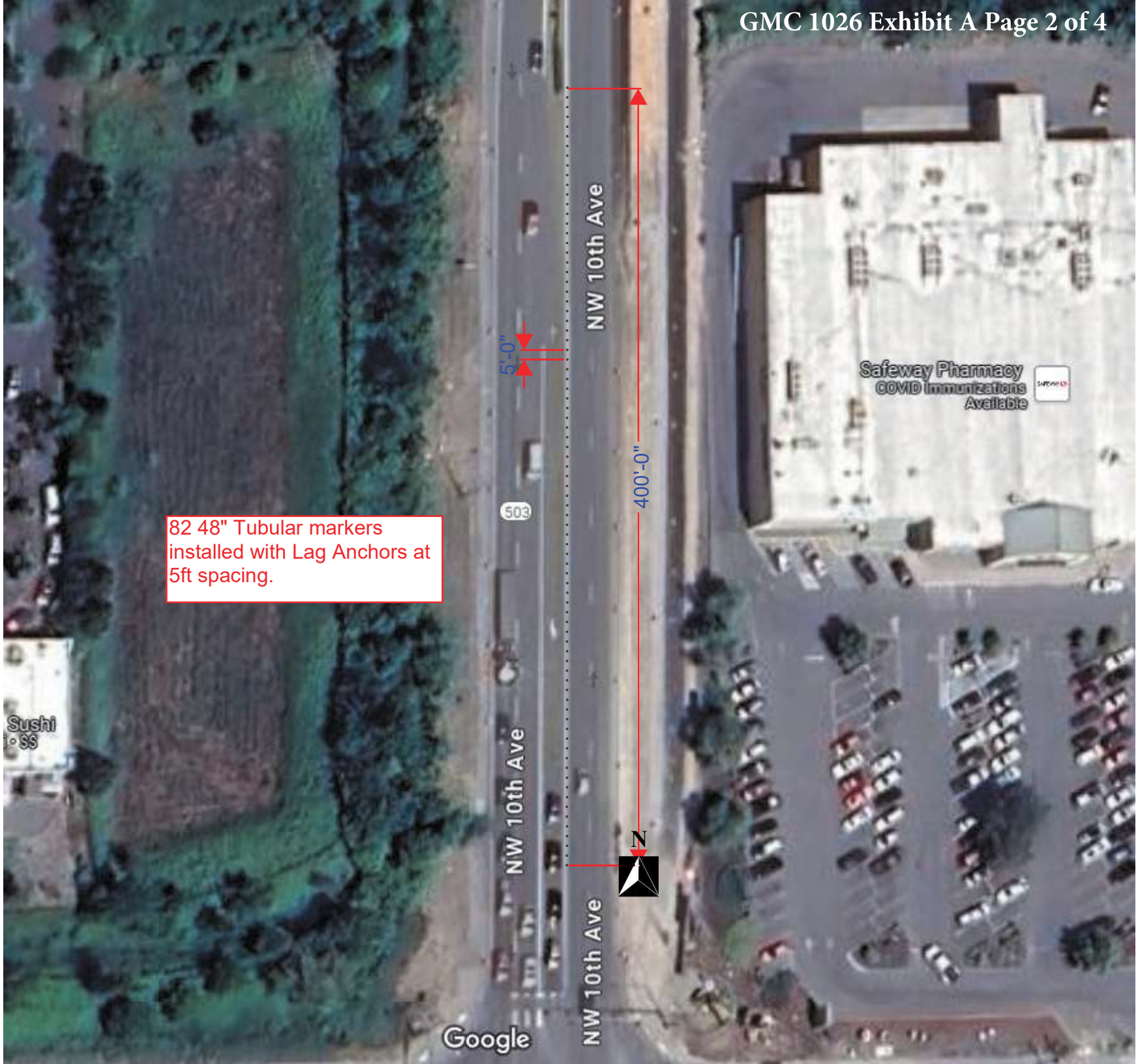
18. COUNTERPARTS AND ELECTRONIC SIGNATURE

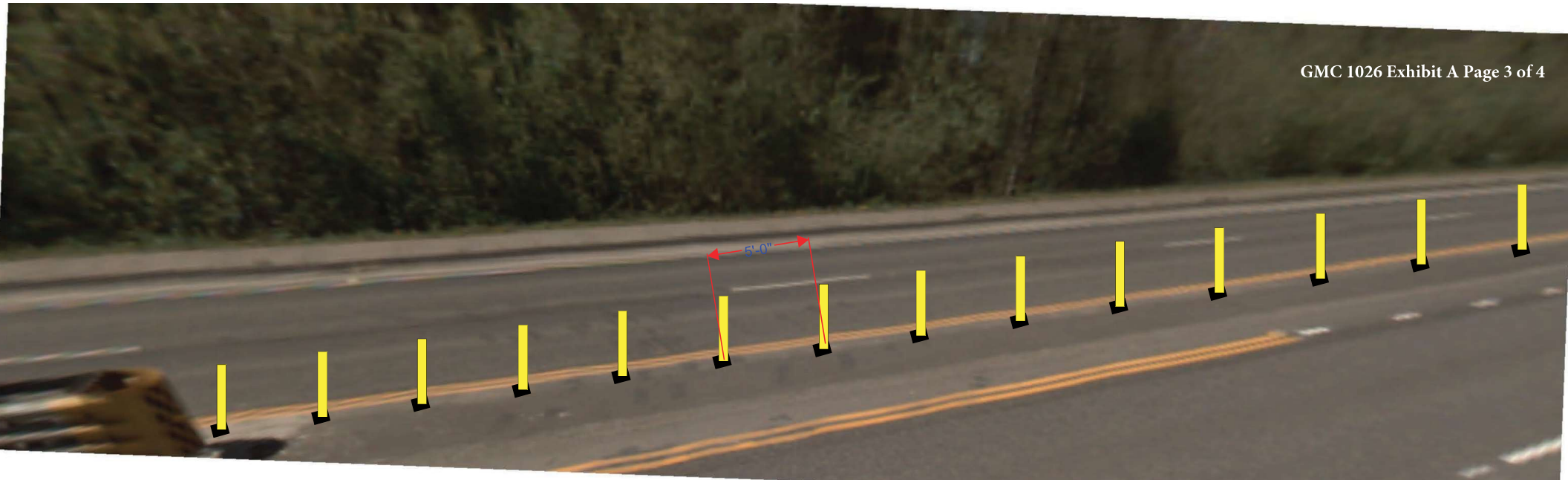
This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each Party, for all purposes. Electronic signatures or signatures transmitted via e-mail in portable document format ("PDF") may be used in place of original signatures on this Agreement. Each Party intends to be bound by its electronic or PDF signature on this Agreement and is aware that the other Party is relying on its electronic or PDF signature.

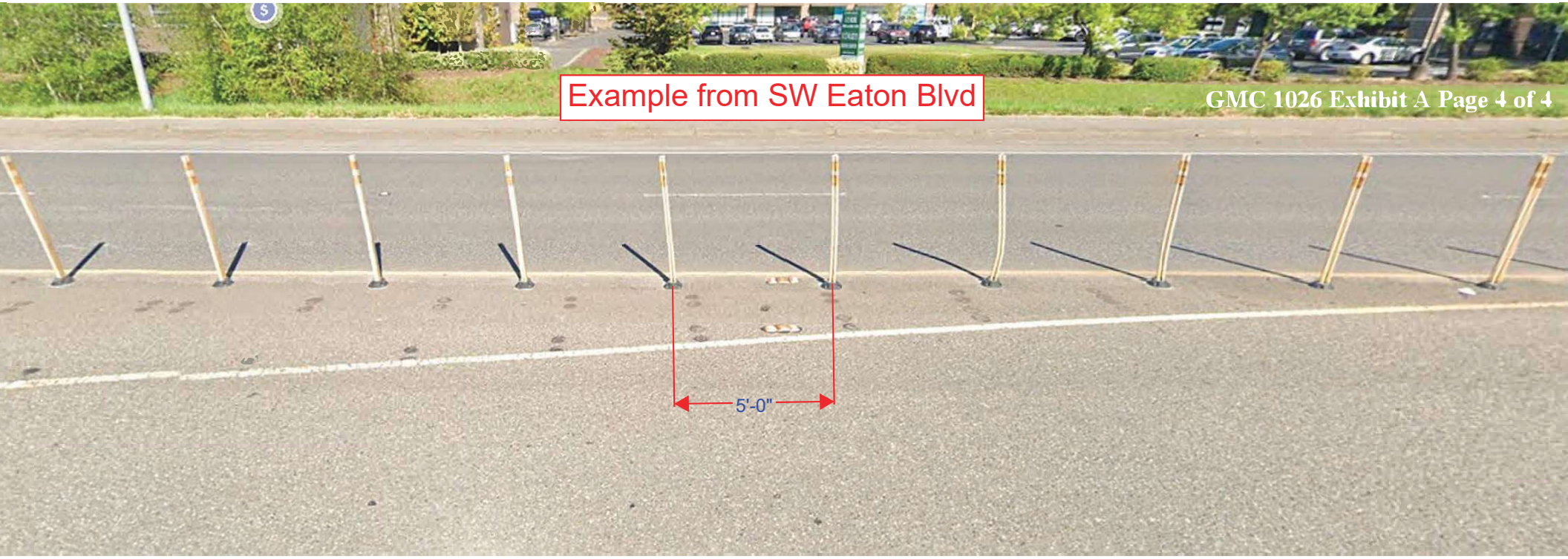
In witness whereof, the Parties hereto have executed this Agreement as of the Party's date last signed below.

CITY OF BATTLE GROUND	**WASHINGTON STATE DEPARTMENT OF TRANSPORTATION**
By: Kristina Swanson	By: Brad Clark
Printed: Kris Swanson	Printed: Brad Clark
Title: City Manager	Title: SWR Maintenance Manager
Date: 7/22/2025	Date: 7-24-25
Approved as to Form for City of Battle Ground	**Approved as to Form for Washington State Department of Transportation**
By: Kirk Ehlis Kirk Ehlis (Jul 24, 2025 08:20:21 PDT)	By: Alex M. Straub
Printed: Kirk Ehlis	Printed: Alex Straub
Title: City Attorney	Title: Assistant Attorney General
Date: 7/22/2025	Date: July 24, 2025


502
W Main St
SW 12th Ave
SW 10th Ave
Daybreak Early Learning Center
SW 1st St
SW 12th Ave
5'-0"
173 48" Tubular markers, installed with Lag Anchors at 5ft spacing.
Wilco Farm Store
Animal feed store
850'-0"
SW 2nd St
503
N
SW 10th Ave
SW 7th Ave
Google


82 48" Tubular markers installed with Lag Anchors at 5ft spacing.
5'-0"
400'-0"
NW 10th Ave
NW 10th Ave
NW 10th Ave
503
Safeway Pharmacy
COVID Immunizations Available
Sushi
N
Google


5'-0"


Example from SW Eaton Blvd
5'-0"

19. WSDOT Maintenance Agreement - Exhibit A - Agreement 21Jul25

Final Audit Report 2025-07-24

Created:	2025-07-22
By:	Elizabeth Halili (elizabeth.halili@cityofbg.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAABL_-H4iugwbdDypKt6FqI_nNtAVJg6r

"19. WSDOT Maintenance Agreement - Exhibit A - Agreement 21Jul25" History

Document created by Elizabeth Halili (elizabeth.halili@cityofbg.org)
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Agreement completed.
2025-07-24 - 3:20:21 PM GMT

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