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**I-405 CONGESTION RELIEF AND BUS RAPID TRANSIT PROJECT
GCA 4998
KELSEY CREEK COMMUNITY PARK
WETLAND MITIGATION
AGREEMENT**

This I-405 Kelsey Creek Community Park Wetland Mitigation Agreement, together with the attached exhibits, hereinafter referred to as the "AGREEMENT" defines the rights and responsibilities of the State of Washington, Department of Transportation and its contractors, herein referred to as WSDOT, and the City of Bellevue, a municipal corporation, herein referred to as CITY, collectively referred to as the PARTIES and individually referred to as the PARTY, regarding the development of a wetland mitigation site for the I-405 Corridor Project, herein referred to as the SITE.

WHEREAS, pursuant to RCW Chapter 39.34, the Interlocal Cooperation Act, WSDOT and the CITY are each authorized to enter into this AGREEMENT; and

WHEREAS, WSDOT may develop environmental mitigation sites for transportation projects in advance of construction pursuant to RCW Chapters 47.12.330 through 47.12.370; and

WHEREAS, the purpose of this AGREEMENT is to create a new wetland area that provides for a mix of forested, emergent, and scrub-shrub wetland that naturally transitions from forested land next to the Lake Hills Connector to wetlands within Kelsey Creek Community Park. The wetland area will increase habitat functions by establishing native tree, shrub and/or other ground cover vegetation communities within the creation and buffer areas and will include the removal of fill and other materials; and

WHEREAS, the CITY owns, and the City Utilities Department manages, Kelsey Creek Community Park, herein referred to as the PROPERTY; and within Kelsey Creek Community Park, immediately northeast of the intersection of Richards Road and the Lake Hills Connector, is about 3.5 acres of land, more or less, part of which will be utilized by WSDOT to develop the SITE; and

WHEREAS, the SITE will be recorded as a Native Growth Protection Area (NGPA); and

WHEREAS, for the purposes of exchange of services and funds between PARTIES under the Interlocal Cooperation Act, it is acknowledged and agreed that each respective PARTY will receive certain intrinsic and realized benefits from the development of the SITE; and

WHEREAS, it is acknowledged and agreed that it is in the best interest of WSDOT and the CITY to enter into this AGREEMENT and to provide for the specific actions as noted herein.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

1. OBLIGATIONS, RIGHTS, AND RESTRICTIONS – All PARTIES

- 1.0 This AGREEMENT has been created for the purpose of wetland establishment and the long-term protection of the SITE.
- 1.0.1 The Legal Description for the CITY-owned SITE is as described in Exhibit "A", attached hereto and by this reference made a part of this AGREEMENT.
- 1.0.2 A conceptual Wetland Mitigation Plan is attached as Exhibit "B", and incorporated herein and by this reference made a part of this AGREEMENT. WSDOT will develop the SITE consistent with the design features as identified in Exhibit "B" and as finalized in Exhibit F as described below in section 1.0.7.
- 1.0.3 A Declaration of Restrictive Covenant, attached hereto as Exhibit "C", and incorporated herein and by this reference made a part of this AGREEMENT, has been created for the purpose of wetland establishment and the long-term protection of the SITE. The CITY will execute this AGREEMENT and return it to WSDOT to accept and record at the King County Recorder's Office. Ownership of the SITE shall not be altered by this AGREEMENT.
- 1.0.4 The City shall grant to WSDOT a right of entry ("ROE") for construction and development of the SITE, attached hereto as Exhibit "D."
- 1.0.5 A Workload Plan for the maintenance of the SITE is attached hereto as Exhibit "E" and incorporated herein by this reference.
- 1.0.6 WSDOT will record Exhibits A, and C in King County, Washington to ensure the establishment of the wetland and protection of the SITE.
- 1.0.7 A final Wetland Mitigation Plan, based on the conceptual Mitigation Plan, will be attached as Exhibit F when completed and approved by the Department of Ecology. These plans, as submitted to the Department of Ecology and attached to the AGREEMENT as Exhibit F, and incorporated herein and by this reference made a part of this AGREEMENT, will replace the conceptual form of the plans incorporated into this AGREEMENT as Exhibit B. WSDOT will develop the SITE consistent with the design features as identified in Exhibit F.

1.1 WSDOT shall be the lead agency for the planning, design, construction, and monitoring of the wetland creation. WSDOT will complete the construction of the SITE by the end of the I-405/112th Avenue SE to SE 8th Street construction contract. All wetland mitigation design, construction, maintenance, and monitoring costs of the SITE required to achieve the performance standards as identified in Exhibit "B" or required by permit will be at WSDOT's expense.

1.2 WSDOT will satisfy all permit requirements to construct and monitor the SITE to achieve a stable wetland and riparian plant community.

The Wetland Mitigation Plan will be the document of record for compliance with permit conditions, and is conceptually defined in Exhibit B and finalized in Exhibit F of this AGREEMENT, and is incorporated herein by this reference. The Workload Plan, Exhibit E of this AGREEMENT, shall meet and/or exceed the minimum requirements necessary for compliance with performance standards in the Wetland Mitigation Plan and the permit conditions. WSDOT is responsible for obtaining regulatory approval for Exhibit B and Exhibit E.

1.3 The ESTABLISHMENT PERIOD is the ten (10) year period beginning upon installation of the plantings and ending when all performance standards identified in the Mitigation Plan are met and the Year 10 (ten) Annual Monitoring Report is issued, unless within thirty (30) days of the completion of the Year 10 Annual Monitoring Report, one PARTY notifies the other PARTY in writing specifically stating how the performance standards have not been met. In such a case, the ESTABLISHMENT PERIOD ends when those performance standards have been met.

1.4 Beginning immediately after the completion of the ESTABLISHMENT PERIOD the CITY is responsible for the long term management and maintenance of the SITE as defined in this AGREEMENT.

1.5 Actions taken during the ESTABLISHMENT PERIOD and long term management of the SITE shall be limited to those activities that will enhance the SITE in accordance with the intent and purposes of this AGREEMENT and the NGPA and the Wetland Mitigation Plan.

1.6 WSDOT is responsible for maintenance of the SITE for a period of one (1) year (Year 1) from the beginning of the ESTABLISHMENT PERIOD. During the construction of the SITE and the first year of the subsequent ESTABLISHMENT PERIOD, WSDOT will bear all costs for construction and maintenance. Beginning the second year (Year 2) of the ESTABLISHMENT PERIOD, the CITY shall assume responsibility for maintenance, at WSDOT's expense, as described in Exhibit E for the remainder of the ESTABLISHMENT PERIOD.

1.6.1 WSDOT will provide the CITY with an annual monitoring report during the ESTABLISHMENT PERIOD. At a minimum of once (1) per year for the ten (10) year ESTABLISHMENT PERIOD, the CITY and WSDOT will review the maintenance program for the SITE for compliance with the Wetland Mitigation Plan and permit requirements. WSDOT and the CITY will mutually agree in writing to modify the Workload Plan for approval by the Department of Ecology, if necessary, for the remainder of the ESTABLISHMENT PERIOD.

1.6.1.1 Per section 8-02.3 (13) of the WSDOT Standard Specifications for Road, Bridge, and Municipal Construction 2006, the Kelsey Creek Community Park Wetland Mitigation Site contractor (CONTRACTOR) will meet with the WSDOT project engineer on a monthly basis and will maintain the plants and planting areas to the satisfaction of the WSDOT project engineer, who will require the CONTRACTOR to implement any necessary activities to ensure compliance with the Wetland Mitigation Plan and permit conditions. CITY staff may attend these monthly meetings as they choose. Communications with the CONTRACTOR are defined in Section 2.5.

1.6.1.2 On a quarterly basis during Years 2 and 3, WSDOT and CITY staff will meet on site to determine if the mitigation site is meeting the requirements of the Wetland Mitigation Plan and permit conditions. Appropriate documentation of those meetings will be determined at that time.

1.6.2 If during the first year (Year 1) of the ESTABLISHMENT PERIOD a regulatory agency determines that WSDOT does not meet the requirements of the Wetland Mitigation Plan and permit conditions, WSDOT will take action to comply with the Wetland Mitigation Plan and permit conditions.

1.6.3 If beginning the second year (Year 2) of the ESTABLISHMENT PERIOD and for the remainder of the ESTABLISHMENT PERIOD, a regulatory agency determines that the CITY does not meet the requirements of the Wetland Mitigation Plan and permit conditions, the CITY will take action to comply with the Wetland Mitigation Plan and permit conditions.

1.6.4 A Workload Plan outlining vegetation management, noxious weed control, plant establishment, site adjustment, irrigation, and maintenance tasks and estimated costs is attached as Exhibit E. WSDOT shall reimburse the CITY for the costs of the work provided for in this Workload Plan for the second (2nd) through tenth (10th) year of

the ESTABLISHMENT PERIOD. Reimbursable costs are not to exceed the estimate in Exhibit E. Reimbursement and/or payment shall be invoiced to WSDOT no more than once (1) per month.

- 1.7 The CITY and WSDOT shall reach mutual concurrence on planting density, plant species, maintenance frequencies, connectivity to adjacent wetland hydrology, and wetland design configuration in the plans and specifications prior to submittal to the Department of Ecology and the City of Bellevue Shoreline Conditional Use Permitting authority; and the plans, as submitted to the Department of Ecology shall be attached to this AGREEMENT as Exhibit F, replacing the conceptual form of the plans and incorporated into this AGREEMENT as Exhibit B.
- 1.8 In the event that a dispute arises out of the conduct of this AGREEMENT, the PARTIES agree to follow the dispute resolution process set forth in Section 4.6 of this AGREEMENT.
- 1.9 If ever all or part of the SITE is taken in eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this AGREEMENT, the CITY and WSDOT shall join in appropriate actions at the time of such taking to recover the just compensation and damages as provided by law. All expenses incurred in this action by the CITY and WSDOT, including any replacement costs, shall be paid out of the recovered proceeds, and the CITY will be entitled to the full remaining proceeds from the conversion proceeds.
- 1.10 WSDOT and CITY shall not make any change, disturbance, alteration, or impairment within the SITE which shall materially damage the NGPA values of the SITE. WSDOT and the CITY shall not construct or place any structures or fill within the SITE.

Nothing in this AGREEMENT shall preclude the City from locating trail structures related to trail L-473, linking the Richards Valley trail system to Kelsey Creek Park as identified in the CITY's Pedestrian and Bicycle Transportation Plan which was adopted by the CITY in the 1990's, outside the perimeter of the SITE but within Kelsey Creek Park.

- 1.11 After the ESTABLISHMENT PERIOD the SITE will be managed and maintained by the CITY for the purposes of a NGPA, as defined by the CITY's Critical Areas Ordinance.

2. OBLIGATIONS, RIGHTS AND RESTRICTIONS - CITY

- 2.0 The long term management by the CITY shall begin at the end of the ESTABLISHMENT PERIOD. The ESTABLISHMENT PERIOD may include

the associated 30 day notification period, as described in Sections 1.3, and any period of accompanying dispute resolution as described in Section 4.6. The long term management, including any maintenance such as weed control and repair of vandalism, of the SITE is the sole responsibility of the CITY. The CITY retains responsibility and shall bear costs and liabilities related to their ownership, operation, upkeep, and long term management and maintenance of the SITE.

- 2.1 The CITY shall use best management practices to control or prevent hazard, disease, or the spread of invasive plants, or to establish or enhance wildlife habitats on the SITE. This may include approved pesticides, herbicides, and other toxic substances allowed per environmental regulations and approval by appropriate State authorities.
- 2.2 The CITY will convey to WSDOT a right of entry (ROE) as mentioned in paragraph 1.0 of this AGREEMENT, for the construction, maintenance and monitoring of the SITE attached as Exhibit D.
- 2.3 The CITY, its successors and any future assignees, shall have the responsibility and obligation to identify, protect, and preserve in perpetuity the NGPA conservation value of the SITE. If the CITY ever sells the SITE, or transfers ownership to any third PARTY, the CITY will transfer the property subject to the terms of this AGREEMENT.
- 2.4 The CITY will be the permitting agency for the Shoreline Permit.
- 2.5 The CITY reserves the right to inspect the construction of the facilities and have a designated representative attend weekly and/or scheduled on-site construction meetings; the CITY will express any concerns, comments, or suggestions to WSDOT and will not provide any comment or direction to the CONTRACTOR. WSDOT shall provide the CITY a monthly progress report until the project is completed. Any substantial field changes to the design in Exhibit B shall be mutually concurred upon by WSDOT and the CITY.
- 2.6 During construction, the CITY will provide reasonable notice, of not less than twenty-four (24) hours, of its intent to access the SITE, outside of regularly scheduled construction meetings, by a telephone call, letter, facsimile, or electronic message to the designated representative of WSDOT prior to the date access is required.

3. OBLIGATIONS, RIGHTS AND RESTRICTIONS - WSDOT

- 3.0 WSDOT shall have exclusive claim to Wetland Mitigation acreage generated by the SITE to be used as compensation for unavoidable impacts from WSDOT's I-405 corridor projects.

- 3.1 During the ESTABLISHMENT PERIOD, WSDOT, its agents and assigns shall also have reasonable and free access to the SITE as identified in this AGREEMENT, for educational, scientific and biological purposes to observe and study the SITE at no cost whatsoever to the CITY.
- 3.2 WSDOT shall furnish all labor, material, equipment and tools required to construct the wetland design in accordance with the Wetland Mitigation Plan attached hereto as Exhibit B at WSDOT's sole cost and expense. The CITY and WSDOT shall reach mutual concurrence on the plans and specifications prior to submittal to the Department of Ecology.
- 3.3 WSDOT shall promptly inform the CITY of any modifications required by the Department of Ecology and the implementation of such changes shall be done by mutual concurrence of WSDOT and the CITY.
- 3.4 WSDOT shall provide the CITY a monthly progress report until the project is completed. Any substantial field changes to the design in Exhibit B shall be mutually concurred upon by WSDOT and the CITY.
- 3.5 Following the ESTABLISHMENT PERIOD, WSDOT may enter upon the SITE, upon providing reasonable notice of 24 hours, such other times as necessary for the purpose of enforcing the provisions of the AGREEMENT, if WSDOT has reason to believe that a violation of the AGREEMENT is occurring or is threatened.
- 3.6 WSDOT shall be responsible for obtaining all necessary permits for the construction of the SITE at its sole cost and expense to construct and establish a stable wetland and riparian plant community.
- 3.7 This AGREEMENT is assignable, but only to a successor organization or agency to WSDOT, and/or the CITY, or to an organization that is authorized to acquire and hold restrictive covenants under RCW 64.04.130 or 84.34.210 (or any successor provision then applicable).
- 3.8 On request of the CITY, WSDOT shall within sixty (60) days execute and deliver to the CITY any document, including an estoppel certificate, which certifies the CITY's compliance with any obligations of the CITY contained in this AGREEMENT and otherwise evidences the status of the AGREEMENT as may be requested by the CITY, provided the CITY is, in WSDOT's judgment, in compliance with said obligations.

4. INTERPRETATION, SEVERABILITY, DISPUTES, ENTIRE AGREEMENT

- 4.0 Law. The laws of the State of Washington shall govern the interpretation and performance of this AGREEMENT.
- 4.1 Rule of Construction. Any general rule of construction to the contrary notwithstanding, this AGREEMENT shall be liberally construed to affect the purpose of the NGPA and the policy and purpose of RCW 84.34.200-250 and RCW 64.04.130. If any provision in this AGREEMENT is found to be ambiguous, an interpretation consistent with the purpose of this AGREEMENT that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 4.2 Titles. The titles in this AGREEMENT have been inserted solely for the convenience of reference and are not a part of this AGREEMENT and shall have no effect on construction or interpretation. The titles in no way define, limit, or describe the scope or intent of this AGREEMENT.
- 4.3 Severability. If any provision of this AGREEMENT, or the application of such provision to any person or circumstances, is found to be invalid, the remainder of the provisions of this AGREEMENT, or the application of that provision to persons or circumstances other than those which it is found to be invalid, shall not be affected by such invalidation.
- 4.4 Non-Exclusivity. Nothing herein shall impair or limit the CITY's right to convey a separate conservation easement covering the SITE or any other property owned by the CITY. Any subsequent easement affecting the SITE will be subject to this AGREEMENT, the NGPA, and the rights conveyed to WSDOT herein.
- 4.5 Forbearance by either PARTY to exercise its right(s) under this AGREEMENT in the event of any breach of any of the terms of the AGREEMENT by the other PARTY shall not be deemed or construed to be a waiver of such terms or of any of the same or similar terms or rights found in the AGREEMENT. No delay or omission by WSDOT or the CITY in the exercise of any right or remedy upon any breach by the other PARTY shall impair such right or remedy or be construed as a waiver. Nothing contained in this AGREEMENT shall be construed to entitle WSDOT to bring any action against the CITY for any injury to or change in the SITE resulting from causes beyond the CITY's control, including, without limitation, fire, flood, storm, and earth movement; or from any reasonable action taken by the CITY under emergency conditions to prevent, abate, or mitigate significant injury to the SITE, resulting from such causes. In the event of a geologic alteration of the SITE by earth movement that is sufficient to remove it completely from sight or use, this AGREEMENT may be terminated by mutual agreement of the CITY and WSDOT.

4.6 If achievement of the performance standards at the end of the ESTABLISHMENT PERIOD have not been met or addressed as outlined in Sections 1.3 of this AGREEMENT, or if WSDOT or the CITY determines that there is a violation of the terms of this AGREEMENT, or that a violation is threatened, WSDOT or the CITY shall give written notice of such violation to the other PARTY. WSDOT or the CITY shall demand in writing corrective action by the offending PARTY sufficient to cure the violation. Where the violation involves injury to the SITE as a result from any use or activity inconsistent with the purpose of this AGREEMENT, WSDOT or the CITY will require the offending PARTY to restore the damaged portion of the SITE to its original condition immediately preceding the injury or damage, with the offending PARTY responsible for the costs incurred.

4.6.1 Pursuant to this section, if the offending PARTY fails to cure the violation within thirty (30) days after receipt of the notice from the other PARTY, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, without limiting liability for a violation, WSDOT or the CITY may, at its option, direct the offending PARTY to stop work and cure the violation itself or cause the violation to be cured. WSDOT or the CITY, their agents, or contractors may enter upon the SITE for such purposes without additional notice to WSDOT or the CITY, until the violation is cured.

4.6.2 In such a case, the PARTY in violation shall repay the other within 60 days upon written demand of the entire cost and expense of such performance by the other PARTY. Further, remedies described in this section shall be cumulative and shall be in addition to all remedies now or later existing at law or equity.

4.6.3 In the event that a dispute arises under this AGREEMENT, the PARTIES, beginning at the lowest organizational level, will work collaboratively toward resolution. Using the following guidelines, each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays and minimize costs.

4.6.3.1 Informal Resolution. The informal resolution process begins at the staff level and is raised to higher organizational levels if necessary. The levels of resolution are described below.

4.6.3.1.1 Utilities Environmental Scientist or Parks Natural Resource Manager contacts WSDOT project engineer to jointly cooperate to resolve the issue(s) and/or any dispute as quickly and efficiently as possible.

4.6.3.1.2 If the issue(s) cannot be resolved at the staff level, the CITY Transportation Capital Projects Manager and the WSDOT I-405 Project Environmental Manager will meet to jointly cooperate to resolve the issue and/or any dispute as quickly and efficiently as possible.

4.6.3.1.3 If the issue cannot be resolved at the manager level, the CITY's Utilities Director or designee and the WSDOT I-405 Project Director or designee will jointly cooperate to informally resolve any issues and/or dispute as quickly and efficiently as possible.

4.6.4 Written Notice. If still unresolved, the CITY's Utilities Director or designee and the WSDOT I-405 Project Director or designee shall notify each other in writing of any dispute needing resolution. They shall meet together with appropriate staff from the CITY and WSDOT, if any, within three (3) business days of receiving the written notice in order to resolve the dispute to the satisfaction of both PARTIES. Each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays and minimize costs.

4.6.5 If the issue or dispute cannot be resolved to the satisfaction of both PARTIES, the CITY's Utilities Director or designee and the WSDOT I-405 Project Director, and their staff as appropriate, will meet with the Department of Ecology to address and resolve the issue or dispute.

4.7 Each of the PARTIES, shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each of the PARTY's own negligent or intentional acts or omissions. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence.

4.7.1 WSDOT and the CITY agree that their obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the PARTIES, by mutual negotiation, hereby waive, as respects the other PARTY only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

4.7.2 In the event either PARTY incurs any judgment, award, and/or cost

arising herefrom, including attorneys' fees, to enforce the provision of this article, all such fees, expenses, and costs shall be recoverable from the other PARTY.

- 4.7.3 Further, during construction, WSDOT will hold the CITY harmless from any liability or obligation whatsoever relating to planning, design, construction and the implementation of the wetland restoration and enhancement activities, and monitoring, or the exercise of any right or privilege granted under this AGREEMENT, provided none of these are a result of the CITY's negligence.
- 4.7.4 This indemnification shall survive the termination of this AGREEMENT.
- 4.8 This AGREEMENT may be modified, amended, or terminated by mutual written agreement by WSDOT and the CITY, except that no amendment to the AGREEMENT shall be allowed that will affect the qualification of the approved assignees or WSDOT's interest in the AGREEMENT. Furthermore, any amendment to this AGREEMENT shall be consistent with the purpose of this AGREEMENT. No obligations of either PARTY to this AGREEMENT may be transferred or assigned to a third PARTY without the written consent of both PARTIES, which consent shall not be unreasonably withheld.
- 4.9 The covenants, terms, conditions, and restrictions of this AGREEMENT shall be binding upon and inure to the benefit of the PARTIES to this AGREEMENT and their respective successors and assigns and shall continue as a servitude running in perpetuity with the SITE.
- 4.10 Except as otherwise provided herein, a PARTY's rights and obligations under this AGREEMENT terminate upon transfer of the PARTY's interest, except that liability for acts or omissions occurring before transfer shall survive transfer.
- 4.11 Entire Agreement. This AGREEMENT sets forth the entire agreement of the PARTIES with respect to this AGREEMENT and supersedes all prior discussions, negotiations, understandings, or agreements relating to the SITE, all of which are merged into this AGREEMENT.

5. NOTICE

Any notice, demand, request, consent, approval or communication that any PARTY desires or is required to give to the others shall be in writing and either delivered personally or sent by first class mail, postage prepaid, addressed as follows:

WSDOT: DEPARTMENT OF TRANSPORTATION
Attn: Project Director
I-405 Congestion Relief and Bus Rapid Transit Projects
600 108th Avenue NE, Suite 405
Bellevue, WA 98004-5126

CITY: CITY OF BELLEVUE

City of Bellevue, Director of the Utilities Department
450 110th Avenue NE
P.O. Box 90012
Bellevue, WA, 98009-9012
City of Bellevue, Director of the Parks Department
450 110th Avenue NE
P.O. Box 90012
Bellevue, WA, 98009-9012

or to such other address as any PARTY from time to time shall designate by written notice to each other.

It is understood and agreed that delivery of this AGREEMENT is hereby tendered and that terms and obligations hereof shall not become binding upon the State of Washington unless and until accepted and approved hereof in writing for the State of Washington, Department of Transportation, by the I-405 Congestion Relief and Bus Rapid Transit Project Director.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT on this 22 day of November 2006.

CITY OF BELLEVUE,
a municipal corporation

By: Brad Miyake
Brad Miyake
Deputy City Manager

Date: 11-15-06

STATE OF WASHINGTON
DEPARTMENT OF
TRANSPORTATION

By: Kim Henry
Kim Henry
Director, I-405 Congestion Relief
and Bus Rapid Transit Project

Date: 11/17/06

For: City of Bellevue

For: State of Washington
Department of Transportation

Approved as to form

Approved as to form

By: *James H. Prock*
Assistant City Attorney

By: *Stephen Klenishi*
Assistant Attorney General
Office of the Attorney General

Date: 10/30/06

Date: 11/22/2006

**KELSEY CREEK COMMUNITY PARK MITIGATION AGREEMENT
EXHIBIT A
MITIGATION SITE LEGAL DESCRIPTION**

EXHIBIT A

All that portion of the following described PARCEL "A" lying within a tract of land beginning at the south quarter corner of Section 33, Township 25 North, Range 5 East, W.M., in King County, Washington; thence South 51°34'37" East 2,193.86 feet to the True Point of Beginning, being on the northeasterly margin of Lake Hills Connector; thence North 84°45'35" East 301.50 feet; thence North 68°14'23" East 165.00 feet; thence South 73°13'09" East 47.00 feet; thence South 22°02'27" East 124.00 feet; thence South 07°50'35" West 128.00 feet; thence South 41°57'10" West 169.00 feet; thence South 00°32'24" West 125.00 feet; thence North 68°42'48" East 24.00 feet; thence South 21°17'12" East 46.85 feet to the northeasterly margin of Lake Hills Connector; thence northwesterly along said margin along a curve to the right having a radius of 1005 feet an arc distance of 553.45 feet; thence continuing on said margin North 31°36'29" West 96.54 feet to the True Point of Beginning.

PARCEL A:

That portion of the northeast quarter of Section 4, Township 24 North, Range 5 East, W.M., in King County, Washington, lying northeasterly of the northeast margin of Lake Hill Connector Road, and lying south of the following described line:

Beginning at a point on the east line of said subdivision, 960.75 feet south of the northeast corner thereof;
thence North 88°18'45" West 1,152.23 feet to the northeast margin of the Lake Hill Connector Road and the terminus of said line.

The lands herein described contain an area of 3.5 acres, more or less, the specific details concerning all of which are to be found in that certain map of definite location now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval March 17, 2006.

**KELSEY CREEK COMMUNITY PARK MITIGATION AGREEMENT
EXHIBIT B
CONCEPTUAL MITIGATION PLAN**

The entire conceptual mitigation plan is available on file in the I-405 Congestion Relief and Bus Rapid Transit project office. A copy of the cover sheet is attached.

1 **I-405 Congestion Relief and**
2 **Bus Rapid Transit Projects**
3 **SE 8th to I-90 (South Bellevue) Project**

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13 **DRAFT**
14 **Wetland Mitigation Plan**

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33 **Washington State**
34 **Department of Transportation**

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37 **March 2006**

**KELSEY CREEK COMMUNITY PARK MITIGATION AGREEMENT
EXHIBIT C
DECLARATION OF RESTRICTIVE COVENANT**

After recording return document to:

City of Bellevue, Director of the Utilities Department
425 110th Avenue NE
P.O. Box 90012
Bellevue, WA 98009-9012

Document Title: Restrictive Covenant

Reference Number of Related Document:

Grantor(s): City of Bellevue

Legal Description: Ptn of NE¼ of Section 4, T24N, R5E, WM

Additional Legal Description is on Page 6

Assessor's Tax Parcel Number(s): 042405-9113-08

DECLARATION OF RESTRICTIVE COVENANT

This DECLARATION OF RESTRICTIVE COVENANT (Declaration) is made as of November 15, 2006, by the CITY OF BELLEVUE (CITY), a Washington municipal corporation (Declarant) for the benefit of the STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION, a Washington municipal corporation (WSDOT).

RECITALS

- A. Declarant is the owner of certain real property commonly referred to as Kelsey Creek Community Park (Property) in King County, Washington, and legally described on Appendix A attached hereto and incorporated herein.
- B. Declarant and WSDOT have entered into that certain agreement titled I-405 Congestion Relief and Bus Rapid Transit Project Kelsey Creek Community Park Wetland Mitigation Agreement (Agreement), together with exhibits, and as authorized by Bellevue City Council Resolution 7419 on August 7, 2006, pursuant to RCW Chapter 39.34, the Interlocal Cooperation Act.
- C. Declarant and WSDOT have entered into such agreement in part to maintain a portion of the Property as a Native Growth Protection Area (NGPA); such portion being referred to as the Kelsey Creek Community Park Wetland Mitigation Area (Site), and legally described on Appendix A, attached hereto and incorporated herein.
- D. Declarant and WSDOT recognize that each party will receive certain intrinsic and realized benefits from the development of the Site pursuant to the Agreement.

- E. The Declarant wishes to subject the Site to this Declaration and the NGPA, as described in Appendix B, attached hereto, and by this reference incorporated herein, in order to place of record on the title of the Property Declarant's agreement to maintain the Site as an NGPA.

NOW THEREFORE, Declarant declares for the benefit of WSDOT as follows:

1. Native Growth Protection Area

Declarant shall in perpetuity maintain the Site as an NGPA in accordance with the CITY's Critical Areas Ordinance. The Declarant will not make or permit to be made any use of the Site which is inconsistent with an NGPA.

2. Title

The rights granted herein are not to be construed in any way whatsoever as conveying or transferring the fee title to all or any portion of the Property. The rights granted herein are subject to all matters of record as of the date hereof.

3. Covenants Running with the Land

The terms and conditions of this Declaration touch and concern the land and are intended to be covenants running with the land, and shall burden and benefit the parties hereto and their respective successors and assigns in interest.

4. Modification

This Declaration may not be amended except by a written document executed after the date hereof by the duly authorized representatives of Declarant and the WSDOT. This Declaration includes Appendices A and B which are attached hereto and incorporated herein by this reference.

5. Choice of Law and Venue

This Declaration shall be governed by the law of the State of Washington. Venue shall be King County.

6. Warranty and Representation of Authority

Declarant represents to WSDOT that the person or persons executing this Declaration have authority to do so and to bind Declarant hereunder. All consents, permissions, and approvals related to entry into this Declaration, and the obligations hereunder, have been obtained.

7. Severability

Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions thereof or the application thereof to any other person and the same shall remain in full force and effect.

8. Captions

The captions preceding the text of each section are included only for convenience of reference and shall be disregarded in the construction or interpretation of this Declaration.

9. Notices

Notices required to be in writing under the Declaration shall be personally delivered or sent by U.S. mail, facsimile, or electronically. Any notice given by hand shall be deemed given when delivered. Any notice given by facsimile or electronically shall be deemed to have been received the same business day it was sent, so long as it was sent before 4:00 pm PST. If sent after 4:00 pm PST, the notice shall be deemed to have been given the following business day. Any notice sent by mail shall be deemed to have been received when three days have elapsed from the time such notice was deposited in the U.S. mail, postage prepaid, and addressed as follows:

WSDOT: DEPARTMENT OF TRANSPORTATION
 WSDOT
 Attn: Project Director
 I-405 Congestion Relief and Bus Rapid Transit Projects
 600 108th Avenue NE, Suite 405
 Bellevue, WA 98004-5126

CITY: CITY OF BELLEVUE

City of Bellevue, Director of the Utilities Department
450 110th Avenue NE
P.O. Box 90012
Bellevue, WA, 98009-9012

And to

City of Bellevue, Director of the Parks Department
450 110th Avenue NE
P.O. Box 90012
Bellevue, WA, 98009-9012


And to

City of Bellevue, City Attorney
450 110th Avenue NE
P.O. Box 90012
Bellevue, WA, 98009-9012

Either party may change the address to which notices may be given by giving notice as above provided.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the 15th of November, 2006.

CITY OF BELLEVUE, a municipal corporation

By: 
BRAD MIYAKE, Deputy City Manager

Approved as to Form

[Handwritten Signature]

Assistant City Attorney

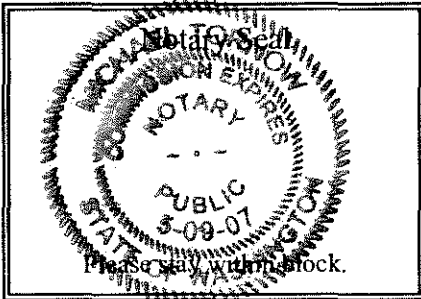
STATE OF WASHINGTON)

: ss.

County of King)

On this 15 day of November, 2006, before me personally appeared BRAD MIYAKE, to me known to be the Deputy City Manager of the City of Bellevue, Washington who executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said City, for the uses and purposes therein mentioned, and each on oath stated that They were authorized to execute said instrument.

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



Michael Tomrow
Notary (print name) MICHAEL TOMROW
Notary Public in and for the State of Washington,
residing at Bothell
My Appointment expires 5-9-07

**Appendix A
Legal Descriptions**

EXHIBIT A

All that portion of the following described PARCEL "A" lying within a tract of land beginning at the south quarter corner of Section 33, Township 25 North, Range 5 East, W.M., in King County, Washington; thence South 51°34'37" East 2,193.86 feet to the True Point of Beginning, being on the northeasterly margin of Lake Hills Connector; thence North 84°45'35" East 301.50 feet; thence North 68°14'23" East 165.00 feet; thence South 73°13'09" East 47.00 feet; thence South 22°02'27" East 124.00 feet; thence South 07°50'35" West 128.00 feet; thence South 41°57'10" West 169.00 feet; thence South 00°32'24" West 125.00 feet; thence North 68°42'48" East 24.00 feet; thence South 21°17'12" East 46.85 feet to the northeasterly margin of Lake Hills Connector; thence northwesterly along said margin along a curve to the right having a radius of 1005 feet an arc distance of 553.45 feet; thence continuing on said margin North 31°36'29" West 96.54 feet to the True Point of Beginning.

PARCEL A:

That portion of the northeast quarter of Section 4, Township 24 North, Range 5 East, W.M., in King County, Washington, lying northeasterly of the northeast margin of Lake Hill Connector Road, and lying south of the following described line:

Beginning at a point on the east line of said subdivision, 960.75 feet south of the northeast corner thereof;
thence North 88°18'45" West 1,152.23 feet to the northeast margin of the Lake Hill Connector Road and the terminus of said line.

The lands herein described contain an area of 3.5 acres, more or less, the specific details concerning all of which are to be found in that certain map of definite location now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval March 17, 2006.

Appendix B
Native Growth Protection Area

1. Dedication of a Native Growth Protection Area (NGPA) establishes on all present and future owners and users of the land, an obligation to leave undisturbed all trees and other vegetation within the area, except as set forth below.
2. Trees and vegetation within the NGPA may be disturbed only where:
 - a. Permitted prior to the date of this Declaration under the terms of the I-405 Congestion Relief and Bus Rapid Transit Project Kelsey Creek Community Park Wetland Mitigation Agreement and its attachments (Agreement) between the CITY and WSDOT; or
 - b. Necessary to remove diseased, dead or dying trees or vegetation that present a hazard, so long as all necessary permits from all regulatory agencies with jurisdiction are obtained and the CITY consents in writing to such removal; or
 - c. Necessary to implement a native growth enhancement plan, so long as all necessary permits from all regulatory agencies with jurisdiction are obtained and WSDOT and the CITY consent in writing to such removal as described in the Agreement;
3. Structures, fill, and obstructions are prohibited within said NGPA.
4. Before and during the course of any grading, building construction, or other development activity on or adjacent to the NGPA, the common boundary between the NGPA and the area of development activity must be fenced or otherwise marked to the satisfaction of the CITY.
5. The City of Bellevue, as a municipal corporation and regulatory authority, will enforce and ensure compliance with the requirements, terms and conditions of this NGPA restriction through applicable ordinances, regulations, and any method available under law. In the event of a violation of the NGPA, the City of Bellevue will enforce said requirements, terms and conditions of the NGPA as described in the Kelsey Creek Community Park Wetland Mitigation Agreement.

**KELSEY CREEK COMMUNITY PARK MITIGATION AGREEMENT
EXHIBIT D
RIGHT OF ENTRY AGREEMENT**

EXHIBIT D
RIGHT-OF-ENTRY AGREEMENT

Kelsey Creek Community Park

Access for wetland mitigation work for the State of Washington
Department of Transportation
Kelsey Creek Community Park Wetland Mitigation Agreement

WHEREAS, the City of Bellevue is the owner of certain property commonly known as Kelsey Creek Community Park, and

WHEREAS, the Washington State Department of Transportation (WSDOT) wishes to perform wetland mitigation for its I-405 Congestion Relief and Bus Rapid Transit Project, and

WHEREAS, _____ (selected contractor) has been retained by WSDOT to complete this work, and

WHEREAS, the wetland mitigation on the City of Bellevue's property requires temporary access through the City-owned Kelsey Creek Community Park, and

WHEREAS, the City of Bellevue wishes to grant a temporary right to enter upon a portion of Kelsey Creek Community Park as identified herein, for purposes of said work;

NOW THEREFORE, for valuable consideration, the sufficiency of which is hereby acknowledged, the City of Bellevue, WSDOT, and

_____ (selected contractor), agree as follows:

The City of Bellevue Parks & Community Services Department, hereinafter called the "**Grantor**," hereby grants to WSDOT and

_____ (selected contractor), hereinafter collectively called the "**Applicant**", a Right of Entry ("ROE "Agreement") upon a portion of the Kelsey Creek Community Park, herein referred to as the "**Site**", for work and activities related to WSDOT's I-405 Kelsey Creek Community Park Wetland Mitigation Project, herein referred to as "**Project**."

DEFINED AREA:

Access shall be restricted to the Site listed above, as described in Attachment "A", the legal description of the Site, attached hereto, and by this reference, incorporated herein.

DEFINITIONS:

"Applicant" shall include Applicant, its servants, officers, employees, contractors, sub-contractors, invitees, and/or agents.

GENERAL CONDITIONS:

1. Applicant hereby agrees to abide by all terms and conditions of this ROE Agreement.
2. Grantor hereby grants to the Applicant a right to enter upon the Site hereinafter described as work permitted under City of Bellevue Permit # _____, and for no other purpose.
3. Applicant shall secure any and all permits necessary for Applicant's work.
4. Applicant shall secure all permits prior to this ROE Agreement being approved. A copy of all permits, written authorization, and agreements shall be provided to the Grantor prior to start of construction. Applicable permit is City of Bellevue Permit # _____.
5. A copy of all permits, and approved plans, shall be available on site at all times.
6. This ROE Agreement is for its stated purposes only and does not constitute approval required for issuance of any permits which may be required for construction necessary to complete the proposed Project.
7. The Applicant is advised that modifications of any permit conditions may be required in order to mitigate/resolve unforeseen impacts to the Site due to activities authorized by this ROE Agreement.

Grantor hereby grants to Applicant the right to enter upon the Site upon execution of this ROE Agreement. The Applicant's right to enter is expected to expire at midnight on September 30, 2009 ("Completion Date") but no later than completion date of the I-405 112th Avenue SE to SE 8th Street project, unless as otherwise authorized in writing by Grantor.

The Grantor hereby grants to the Applicant the right to enter upon the Site between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, and Saturday from 9:00 am to 6:00 p.m. for the duration of the work. No work

shall be performed on Sundays unless otherwise authorized by the City of Bellevue.

8. Applicant shall comply with all applicable Federal, State, County and local laws and ordinances applicable to the work to be completed under this ROE Agreement.
9. Applicant shall at all times conduct their activities on Grantor's property so as not to interfere with, obstruct, or endanger Grantors' operations, facilities and/or public.
10. Applicant shall sign the staging and ingress/egress points during use. Applicant shall provide a phone number to contact if the public has questions relating to the Project. Signs will be installed at Applicant's cost. Applicant shall notify the Grantor for approval on where to install signs prior to installation.
11. Applicant shall post in clear visibility a weather proof sign indicating 24-hour emergency contact information.
12. All tools, equipment, and other property taken upon or placed upon the Site by the Applicant shall remain the property of Applicant and must be removed immediately upon the expiration of this ROE Agreement. At no time will any tools, equipment, materials, or other property be located on/in areas outside of the areas defined in Attachment "A".
13. Applicant shall at all times be responsible for safely securing all tools, equipment, and other property used for the Project. Grantor shall not be responsible for the loss, theft, or damage of any kind to tools, equipment, or other property used by Applicant or Applicant's employees, contractors, or agents during construction of the Project.
14. Except as necessarily provided for in the **Kelsey Creek Community Park Wetland Mitigation Agreement**, all efforts will be taken to minimize impact to the Site. Any impacts to the Site must be repaired to the satisfaction of Grantor.
15. Indemnification will occur as described in the Kelsey Creek Mitigation Community Park Wetland Mitigation Agreement.
16. Pursuant to section 1-07.18 of the 2006 WSDOT Standard Specifications for Road, Bridge, and Municipal Construction, the applicant's contractor shall maintain insurance as required by the WSDOT contract. The WSDOT contract shall also include the naming of the City of Bellevue as an additional insured on the Owners and Contractors protective liability insurance acquired for the State as respect to mitigation site activities performed on the City's property in connection with the construction project.

17. This ROE Agreement shall be binding upon Applicant's successors and assigns. Applicant shall not assign or transfer any of the rights under this ROE Agreement without the prior written consent of the Grantor.

WAIVER OF LIABILITY:

18. Grantor makes no guarantees, warranties or representations as to the safety or suitability of the Site for the purposes described in this ROE Agreement, including egress or ingress to the Kelsey Wetland Mitigation Site.
19. All restoration work needed after the Project will be done according to the **Kelsey Creek Community Park Wetland Mitigation Agreement** together with attachments.

INSPECTION REQUIREMENTS:

20. This ROE Agreement requires a pre-construction meeting to finalize the terms of this Agreement prior to beginning any construction activity on the Site. Contact the Parks Natural Resource Manager, at (425) 452-6048, and Utilities Environmental Scientist, at (425) 452- 4861, to request a pre-construction meeting. The City of Bellevue may assign alternate staff to oversee the Project by providing Applicant written notice.
21. Following approval of this ROE Agreement by all parties, Applicant shall notify the Natural Resource Manager and Environmental Scientist at the numbers above a minimum of thirty (30) days in advance of the start of work.
22. Grantor and City of Bellevue inspectors shall have the right to patrol and police the lands and adjacent right-of-way, hereinafter described during the period of this ROE Agreement. Applicant further agrees to permit City inspectors to be present during the period of said ROE Agreement. Stop work orders will be consistent with the City of Bellevue Shoreline Conditional Use Permit.
23. Applicant shall barricade off the portion of the Site where the Site or ingress/egress may be a safety hazard to the public.
24. Applicant shall prevent any and all debris, soils or other materials from being deposited onto any traveled surface other than the specified area within the Site on the public roadways leading to and from the Site. In the event that debris, soils or other materials are deposited on any of said surfaces, or if the Grantor notifies the Applicant that said condition exists, the Applicant shall, at the Applicant's expense, immediately clean and repair said surface to the satisfaction of the Grantor.

- 25. Applicant shall control its work so as to comply with all applicable provisions of the Shoreline Conditional Use Permit section of the Bellevue City Code (BCC 23.76) ordinances to prevent any hazards to public safety, health and welfare. If applicable, the Applicant shall install catch basin filters in all catch basins (existing and new). Placing a piece of geo-textile under the grate of the catch basin is not acceptable.
- 26. Applicant shall at all times maintain free, clear, and safe ingress/egress throughout Site.
- 27. No items shall be stored without previous Grantor approval. At no time will any hazardous materials be allowed for storage on-site.

The land affected by this ROE Agreement is located within the City of Bellevue, in the County of King, State of Washington.

IN WITNESS WHEREOF, the said Grantor has hereunto signed his/her name this _____ day of _____, 2006.

By signing this ROE Agreement, Applicant acknowledges that he/she has read, understood, and voluntarily accepted all of the conditions contained herein.

GRANTOR:

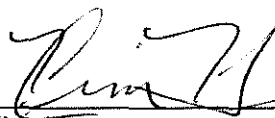
APPLICANT:

City of Bellevue

WSDOT



 Brad Miyake
 Deputy City Manager



 Kim Henry
 Director, I-405 Congestion Relief and Bus
 Rapid Transit Project

 (selected contractor)

 (Sign Name)

APPROVED AS TO FORM:



 Assistant City Attorney

**KELSEY CREEK COMMUNITY PARK MITIGATION AGREEMENT
EXHIBIT E
WORKLOAD PLAN**

EXHIBIT “E”

MANAGEMENT & MAINTENANCE WORKLOAD PLAN for KELSEY CREEK PARK COMMUNITY PARK WETLAND MITIGATION

General Requirements

A. The intent of this Exhibit E (EXHIBIT) is to describe and cover all labor, materials, equipment and services necessary for the performance of all work included in and required for the maintenance for years two (2) through ten (10) of the Kelsey Creek Community Park Wetland Mitigation Site (SITE) by the Washington State Department of Transportation (WSDOT) and the City of Bellevue (CITY) as described in the I-405 Kelsey Creek Community Park Wetland Mitigation Agreement (AGREEMENT).

B. The work included in this EXHIBIT includes, but may not be limited to, noxious and exotic plant control as defined in Appendix “A” attached hereto and incorporated by this reference, herbicide application, pruning, mowing, blowing, plant establishment, irrigation, plant replacement, SITE inspection, and contract administration. Per Appendix “B” attached hereto and incorporated by this reference, WSDOT will pay all costs of maintenance activities for the duration of the ESTABLISHMENT PERIOD that are completed to ensure compliance with the established performance standards per the Wetland Mitigation Plan and Shoreline Conditional Use Permit. The CITY will pay for all other maintenance activities implemented by the CITY at the SITE.

C. The Wetland Mitigation SITE is located in Kelsey Creek Community Park as described in Exhibit “A” of the AGREEMENT.

D. Maintenance Specifications

1. The CITY and/or its contractor will furnish all labor, tools, specialized equipment, materials, supervision, and transportation to perform vegetation management and maintenance services as specifically outlined in this EXHIBIT and as required per the AGREEMENT. The CITY and/or its contractor will be responsible for the inspection and maintenance of all equipment used in performance of tasks outlined in the AGREEMENT.
2. All maintenance shall be performed under the supervision of a qualified

horticulturist, biologist, arborist, or forester working in concert with a certified landscape professional with a working knowledge of wetland plants and wetland maintenance.

3. The CITY and/or its contractor will ensure that employees comply with all CITY and Washington State Industrial regulations and practices.
4. WSDOT, the CITY and/or their contractor that has employees working on or near the public right-of-way street shall comply with CITY and Washington State regulations pertaining to safety equipment, warning signs, and traffic control. The following regulations must be observed.
 - a) Workers must wear safety vests at all times.
 - b) Trucks and trailers must be coned at all times. Minimum cone height is eighteen (18) inches; however, twenty-eight (28)-inch cones with reflective tape are recommended.
 - c) Traffic warning signs must be positioned on the right-of-way to forewarn traffic of workers in the area. Minimum sign size is thirty (30) inches square with five inch letters on orange\white background. A "WORKERS AHEAD" sign is sufficient if landscape work can be confined to one side of the street behind the curb. "WORKERS AHEAD" signs should be displayed from both directions if operations encroach on the center median or center median and both sides of the street.
 - d) If the landscape operation dictates that a lane be closed of multi-laned streets, the signing should be as follows:
 - i. "WORKERS AHEAD",
 - ii. "RIGHT/LEFT LANE CLOSED AHEAD",
 - iii. Lane reduction symbol and/or arrow directional signs, and
 - iv. Cones.

These safety regulations are mandated by the State Department of Labor and Industries and are subject to change.

E. The CITY's Contract Administrator will inspect work performed by CITY maintenance crews and/or contractors on a routine basis.

F. Equipment or intensive work such as mowing and/or blowing done at the SITE shall not commence before 7:00 a.m. on weekdays and 9:00 a.m. on weekends.

G. Any damage to the SITE including plant material due to WSDOT, the CITY and/or their contractor's negligence, will be remedied by the party who caused the damage, at its sole cost and expense, in a timely manner. Any damage to desirable plant material due to negligence or misuse of pesticides will be remedied by the party who caused the damage, at its sole cost and expense, in a timely manner.

H. Pesticide Application Requirements

1. The CITY's contractors shall possess a current Washington State Department of Agriculture (WSDA) Commercial Pesticide Applicator Company License. The Contractor shall provide a copy of this license to the CITY each year.
2. The CITY and its contractors shall permit only personnel who possess a current Commercial Pesticide Operator license to apply pesticides to SITE.
3. The CITY's contractors shall provide a copy of an approved WSDA Pesticide Application Record for each Application. The Record shall be sent (a FAX is acceptable) to the Contract Administrator within seventy-two (72) hours of application.
4. The Contractor is responsible for ensuring compliance with all WSDA and Washington State Department of Ecology (WDOE) regulations and statutes, including compliance with all new or modified regulations or statutes once the regulation or statute has been implemented by WSDA.
5. The Contractor is responsible for complying with all of WSDOT's applicable permit requirements. WSDOT will provide details of all applicable permit requirements to the CITY and/or its contractors.
6. The entire SITE shall be considered a wetland and the CITY and/or its contractors are responsible for acquiring all required approvals and permits from WSDA and WDOE prior to the use of pesticides in the SITE.
7. If applicable and requested by WSDOT, the CITY shall provide a copy of an approved aquatic NPDES permit to the WSDOT I-405 Project

Director within seventy-two (72) hours of application.

I. WSDOT and the CITY shall be responsible for notifying each other of any significant tree hazards including, but not limited to, dead native trees, plants, broken limbs, disease and insect infestations. The CITY's contractors shall be responsible for notifying the CITY of the aforementioned hazards.

J. The CITY shall manage and maintain the SITE as per the AGREEMENT and the requirements of the Wetland Mitigation Plan and Shoreline Conditional Use Permit. Per this Mitigation AGREEMENT, WSDOT and the CITY will agree on maintenance activities prior to the commencement of maintenance activities on the SITE.

1. SITE management visits and maintenance visits will occur at a frequency of no less than once per year and at least one visit shall occur between May 1 and July 31 each year.
2. All plants identified in Appendix "A" within the maintained area shall be weeded by manual/mechanical methods to remove new shoots of non-native, invasive or other problem vegetation to provide a twelve (12)-inch radius, or twenty-four (24)-inch diameter, maintained area.
3. The twelve (12)-inch radius may also be maintained by the use of glyphosate herbicides. The CITY reserves the right to limit the use of specific herbicides and/or application of said herbicides.
4. The wetland mitigation SITE perimeters shall be recognized. Encroaching noxious and exotic vegetation including, but not limited to, those species in Appendix "A" shall be controlled within the wetland mitigation perimeters.
5. Noxious and exotic vegetation including, but not limited to, those species in Appendix "A" shall not exceed limits agreed upon in the Wetland Mitigation Plan. If this occurs, additional weeding shall occur and plant densities will be increased in barren areas or areas currently invaded by noxious or invasive weeds in order to thwart establishment of undesirable species within the wetland boundary. Plant selections will be made by utilizing species from the original palette that have shown the most vigor in adapting to the SITE. When appropriate, cuttings from surrounding, thriving vegetation may also be utilized, provided that cuttings are collected during the appropriate time of year and that the harvesting of cuttings is

conducted in such a manner as not to measurably reduce the aerial coverage of the native vegetation.

6. All litter and debris shall be removed from within the wetland mitigation perimeter.
7. Snags, habitat logs, and other large woody debris installed at the SITE shall be repaired or replaced consistent with the Wetland Mitigation Plan. Repair or replacement of the features shall be performed under the supervision of a qualified horticulturist, biologist, arborist, or forester working in concert with a certified landscape professional.

K. In years two (2) through ten (10), a brief written summary of the annual management and maintenance actions shall be submitted to the WSDOT I-405 Project Director no later than January 31 so that WSDOT can incorporate the information into its annual monitoring reports. The summary shall include, but is not limited to identification of actions described in Sections A through J (above) for the preceding calendar year and shall also include all other notable management and maintained activities conducted on the SITE for the preceding year. The summary shall be sent (a FAX or email is acceptable) to the WSDOT I-405 Project Director no later than January 31 each year.

APPENDIX "A"
NOXIOUS AND EXOTIC PLANT CONTROL

<u>Scientific Name</u>	<u>Common Name</u>	<u>State Classification</u>
Phalaris arundinacea	Reed canary grass	C
Ranunculus repens	Creeping buttercup	
Rubus laciniatus	Evergreen blackberry	
Rubus procerus	Himalayan blackberry	
Lythrum salicaria	Purple Loosestrife	B
Cirsium arvense	Canada thistle	C
Convolvulus arvensis	Field Bindweed	C
Cytisus scoparius	Scotch broom	B
Impatiens glandulifera	Policeman's helmet	
Lamium sp.	Dead nettle	B
Polygonum cuspidatum	Japanese knotweed	C
Solanum dulcamara	Bittersweet nightshade	C

Appendix "B"
 Management Maintenance Workload Plan
 I-405 Kesley Creek Park Wetland Mitigation

Tasks	Unit of Measure	Inventory Quantity	Time Standard	Time Standard Per Visit	Frequency Per Month												Annual Frequency	Annual Hours	
					J	F	M	A	M	J	J	A	S	O	N	D			
Maintenance																			
Rough Mow	SQ FT	2460	100	Min	24.6				1	2	2	1	1	1	1		9	3.7	
Hand Weeding	SQ FT	150000	150	Min	1000.0	1	1	1	4	4	2	2	2	1	1	1	1	350.0	
Trimming/pruning	SQ FT	150000	150	Min	1000.0				1	1	1		1		1		5	83.3	
Herbicide	SQ FT	150000	150	Min	1000.0				1	1	1		1		1		5	83.3	
Liter	SQ FT	152460	1200	Min	127.1	1	1	1	1	1	1	1	1	1	1	1	12	25.4	
Hardsurface Maintenance	SQ FT	3000	500	Min	6.0	1	1	1	4	4	2	2	2	1	1	1	1	21	
Subtotal Planting areas																	547.9	\$ 17,484.53	
Administration																			
Inspection/Contract Management	SQ FT	152460	4000	Min	38.1	1	1	2	4	4	4	4	4	4	2	1	1	20.3	\$ 650.50
Non-routine																			
* Establishment Watering	Per Freq	0	1	\$300	0.0					2	4	4	4	2			16	\$ 4,800.00	
** Plant replacement	Annual	\$3,810.00																\$ 3,810.00	
*** Total Estimated Total Costs																		\$ 26,725.03	

Cost based on an hourly rate of \$32 per hour.

* Watering frequencies and associated costs vary depending on weather. Watering frequencies are primarily for years one and two.

** Plant replacement cost is dependent on inspections and field verification.

*** Actual cost are verified through competitive contract proposals. Maintenance activities are completed through contracts. Contract administration is by City of Bellevue staff.

**KELSEY CREEK COMMUNITY PARK MITIGATION AGREEMENT
EXHIBIT F
FINAL MITIGATION PLAN**

The entire final mitigation plan is available on file in the I-405 Congestion Relief and Bus Rapid Transit project office. A copy of the cover sheet is attached.

**I-405 Congestion Relief and
Bus Rapid Transit Projects**

**Kelsey Creek
Wetland Mitigation Plan**

For

**SE 8th to I-90 (South Bellevue) Project
112th Ave SE to I-90 Project
Bellevue Braids Project**

**Washington State
Department of Transportation**

September 2006