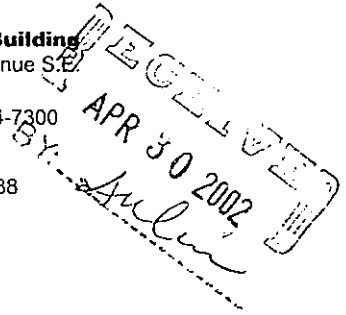




**Washington State
Department of Transportation**
Douglas B. MacDonald
Secretary of Transportation

Transportation Building
310 Maple Park Avenue SE
P.O. Box 47300
Olympia, WA 98504-7300
360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov



April 29, 2002

Mr. James E. Bay
City of Sequim, Public Works Director
152 West Cedar Street
Sequim, WA 98382-3317

RE: Trail Lease – Olympic Discovery Trail
I.C. 3-05-05266 / AA-3-11315

Dear Mr. Bay:

Enclosed is your copy of the executed Trail Lease covering the Olympic Discovery Trail on the SR 101 right of way.

Please contact me if you have any questions regarding this matter. My telephone number is (360) 705-7327.

Sincerely,

Craig Sisson
Property Agent

cc: Delori Soukup, Olympic Region Real Estate Services

Enclosure

After recording return document to:
State of Washington
Department of Transportation
Real Estate Services Office
P O Box 47338
Olympia, WA 98504-7338

Document Title: TRAIL LEASE
Reference Number of Related Document: NA
Landlord: Washington State Department of Transportation
Tenant(s): City of Sequim
Legal Description: A portion of the NW ¼ of NE ¼, & SE ¼ of NE ¼ of Sec. 28, and a
portion of NW ¼ of SW ¼, all in Twn. 30 N. Range 3 West, W.M.
Additional legal Description is on Exhibit A of Document
Assessor's Tax Parcel Number: None

1 AA-3-11315
2 IC:3-05-05266

3 TRAIL LEASE

4 THIS Lease is made and entered into by and between the WASHINGTON STATE
5 DEPARTMENT OF TRANSPORTATION, hereinafter called the "WSDOT," and the
6 CITY OF SEQUIM, a municipal corporation, hereinafter called the "TENANT;"

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

9 WHEREAS, the TENANT desires to construct, operate and maintain a trail segment
10 under this Lease as part of the Olympic Discovery Trail, as a temporary use until the land
11 and premises to be leased are needed for a highway purpose; AND

12 WHEREAS, WSDOT is granted authority to lease property under RCW 47.12.120;
13 AND

14 WHEREAS, WSDOT deems it to be in the best public interest to enter into this
15 Lease;

16 NOW, THEREFORE, in consideration of the terms, conditions, covenants and
17 performances contained herein, IT IS MUTUALLY AGREED THAT:

1 **1. LEASED PREMISES.** The WSDOT leases to the TENANT, and the
2 TENANT hereby leases from the WSDOT, the premises (the "Leased Premises") located in
3 the Northwest ¼ of the Northeast ¼, and the Southeast ¼ of the Northeast ¼, of Section 28,
4 and the Northwest ¼ of the Southwest ¼ of Section 27, all in Township 30 North, Range 3
5 West, W.M., and known to be a portion of the highway right of way of SR 101, Simdars
6 Road Interchange Vicinity, Sheets 2 through 4 of 5 Sheets, and of SR 101, Sequim Bypass,
7 Sheets 26 through 28 of 31 Sheets, and shown shaded in gray on Exhibit "A," attached
8 hereto and by this reference incorporated herein, together with the right to access the Leased
9 Premises at the following locations and as shown on said Exhibit "A":

- 10 A. At HES 577+66.50.
- 11 B. From "SIMDARS ROAD" at HES 584+79.75 and HES 586+31.33.
- 12 C. From "DEL HUR EASEMENT" between HES 628+40.37 and HES 628+55.03.
- 13 D. The Leased Premises consists of 1.98 acres, more or less.

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

16 **3. RENEWAL.** Upon expiration of the initial term, this Lease may be
17 renewed by the TENANT for two (2) successive ten (10) year periods ("Renewal Period"),
18 at the sole discretion of the WSDOT; Provided that (A.) the TENANT is not in default and
19 has not been in default during the term of this Lease; (B.) the property is not needed for a
20 priority transportation purpose, as solely determined by WSDOT; (C.) TENANT's
21 continued use under this Lease does not impair the safety or operation of the WSDOT's
22 highway or facility, as solely determined by the WSDOT; and (D.) the terms and conditions
23 of this Lease conform to then existing state policies or practices, laws, regulations and
24 contracts, or provided TENANT is willing to amend this Lease to bring it into compliance
25 with such policies, practices, laws, regulations, and contracts. The Renewal Period shall be
26 on the same terms and conditions as set forth herein, except as modified by any changes in
27 policies, practices, laws, regulations or contracts and as reflected in a written amendment
28 signed by both parties. TENANT shall give notice of its intent to renew this Lease for the
29 Renewal Period(s) not less than ninety (90) days, but not more than six (6) months prior to
30 the expiration of the Lease, or any extension thereof.

31 **4. CONSIDERATION.** In lieu of paying economic rent for the Leased
32 Premises, the TENANT agrees to provide other specific consideration in support of this
33 Lease which is deemed to be a highway benefit. The consideration is the payment for
34 construction and continued operation and maintenance of a trail which will materially
35 increase motor vehicle safety by separating motor vehicle traffic from pedestrians, and other

1 non-motorized traffic, such as equestrians or cyclists. Safety concerns currently exist
2 because pedestrians, equestrians or cyclists currently use the shoulder of the highway
3 traveling at a lower rate of speed than motorized traffic, distracting motorists and increasing
4 the risk of accidents and motorist injury.

5 **5. STATE'S APPROVAL OF TRAIL DESIGN, CONSTRUCTION, AND**
6 **MAINTENANCE.**

7 A. TENANT wishes to construct, operate and maintain a pedestrian,
8 equestrian, cyclist, and other non-motorized traffic trail within the right of way of SR 101,
9 on land provided for under this Lease. The parties agree that the TENANT shall provide for
10 the actual construction and maintenance of the trail as part of its "City of Sequim, Olympic
11 Discovery Trail" project and shall pay all costs associated with said construction and
12 maintenance.

13 B. TENANT covenants that any construction, landscaping or
14 maintenance conducted on the Leased Premises will not damage, threaten to damage, or
15 otherwise adversely affect any part or element of the highway facility, its operation or the
16 safety of the traveling public.

17 C. TENANT and STATE have entered into agreement LA 4272 which
18 provides for the construction and maintenance of this trail. TENANT shall provide the
19 STATE with two sets of complete plans, details, and specifications and any revisions
20 thereto for any structures, grading, landscaping and all improvements proposed to be placed
21 on the Leased Premises. TENANT shall also provide to the STATE the timing of the
22 project, traffic control measures, inspections, environmental protections, maintenance
23 schedule, funding, and other conditions as deemed necessary by the STATE. All design
24 features, construction and maintenance shall comply with both STATE specifications and
25 the Local Agencies Guidelines (LAG) Manual and shall be subject to STATE approval. No
26 work shall be done without prior written approval of such plans and specifications by the
27 STATE. All construction work shall be done in conformity with the plans and
28 specifications as approved. The STATE may take any action necessary, including directing
29 that work be temporarily stopped or directing that additional work be done, to ensure
30 observation of the plans and specifications, protection of all parts and elements of the
31 highway facility, and compliance with the STATE's construction and safety standards. The
32 trail improvements, landscaping, and maintenance shall be designed, constructed, and
33 maintained in a manner that will permit unobstructed access to the highway facility for the
34 purposes of highway inspection, maintenance, and construction when necessary.

35 D. As part of its construction and maintenance obligations, TENANT
36 shall construct and maintain a painted separation barrier and/or fencing between the Leased

1 Premises and traveled lanes of SR 101 which shall comply with STATE specifications and
2 the LAG manual.

3 **6. USE OF LEASED PREMISES.**

4 A. No use other than construction, operation and maintenance of a
5 public pedestrian, equestrian, cyclist, and non-motorized traffic trail is permitted without
6 the prior written approval of the WSDOT. The TENANT expressly agrees that it will not
7 charge others to use the Leased Premises. No motorized vehicles will be allowed on the
8 Leased Premises, except for TENANT's maintenance vehicles and emergency vehicles
9 responding to an emergency on the Leased Premises. In using the Leased Premises, the
10 TENANT shall comply with all policies and regulations adopted or hereafter promulgated
11 by the WSDOT relative to the location, operation, and maintenance of improvements
12 located on the Leased Premises. No access to the Leased Premises will be constructed or
13 allowed to be constructed by or for the TENANT without the WSDOT's prior written
14 approval. Direct access to ramps or traveled lanes of state highways is not permitted,
15 except as shown on Exhibit A, attached hereto. All grading and construction plans and any
16 changes thereof are subject to approval by the WSDOT.

17 C. TENANT shall not allow third parties to use the trail as access to
18 private property or improvements. Furthermore, in using the Leased Premises, it is
19 expressly agreed that TENANT must: 1) comply with all applicable federal, state and local
20 laws, ordinances, and regulations, including environmental requirements that are in force or
21 which may hereafter be in force; and 2) must secure all necessary permits and licenses. The
22 TENANT hereby agrees to defend and hold harmless the WSDOT from all claims or suits
23 resulting from the TENANT's failure to comply with such requirements.

24 D. WSDOT owned fences in place at the time of execution of this
25 Lease or relocated to separate the Leased Premises from the traveled roadway will be
26 maintained by the WSDOT. Nothing is to be attached to the WSDOT's fence without prior
27 written approval. If any fence is damaged as a result of the activities authorized by the
28 Lease, the TENANT will promptly repair such damage at its cost to the WSDOT's
29 satisfaction.

30 E. No signs, other than signs permitted pursuant to chapter 47.42. RCW,
31 and rules promulgated thereunder, are allowed. Further, within thirty (30) days of
32 occupancy, the TENANT at its sole expense shall erect and maintain a permanent sign,
33 stating as follows: "This trail is located on highway right of way under a cooperative
34 agreement between the City of Sequim and the Washington State Department of
35 Transportation."

1 **7. MAINTENANCE RESPONSIBILITIES.**

2 A. The TENANT shall perform or cause to be performed all
3 maintenance of the Leased Premises in accordance with approved plans and specifications
4 and that shall include, but not be limited to, keeping the Leased Premises in good condition,
5 both as to safety and appearance, to the satisfaction of the WSDOT. TENANT shall be
6 responsible for weed control, reconstruction and repair of any or all components of the trail
7 facility.

8 B. Should TENANT not maintain the Leased Premises to the WSDOT's
9 satisfaction, the WSDOT shall notify the TENANT in writing. TENANT shall complete
10 the maintenance or repairs specified within thirty (30) days of WSDOT notification. If
11 TENANT still fails to maintain the Leased Premises, TENANT agrees that STATE may
12 provide maintenance for the Leased Premises, by its own workforce or by contract, and
13 TENANT agrees to reimburse the STATE the full amount of any expenses incurred by
14 STATE within thirty (30) days of the date of the STATE's invoice.

15 **8. USE OF RIGHT OF WAY UNDER OR ADJACENT TO**
16 **STRUCTURE.**

17 A. The TENANT agrees to provide protection against vehicular hits or
18 other likely causes of damage arising from the TENANT's use of the Leased Premises to all
19 retaining walls and to piers exposed to such potential damage under any elevated highway
20 structure existing on the Leased Premises. Such wall and pier protection shall be provided
21 to the satisfaction of the STATE prior to occupancy.

22 B. The TENANT shall not weld any metal object to any metal member
23 of any metal structure, nor drill or rivet into nor otherwise fasten anything to any pier or
24 beam on any concrete, metal, or wood structure without the STATE's specific written
25 approval of detailed drawings for such welding, riveting, drilling, or fastening.

26 C. The TENANT shall at its own expense make any provisions it deems
27 necessary to protect users of the proposed facility from any hazards resulting from use and
28 operation of the highway.

29 **9. ENVIRONMENTAL REQUIREMENTS.**

30 A. TENANT represents, warrants and agrees that it will conduct its
31 activities on and off the Leased Premises in compliance with all applicable environmental
32 laws. As used in this Lease, Environmental Laws means all federal, state and local
33 environmental laws, rules, regulations, ordinances, judicial or administrative decrees,
34 orders, decisions, authorizations or permits, including, but not limited to, the Resource

1 Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Clean Air Act, 42 U.S.C. §
2 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the
3 Emergency Planning and Community Right to Know Act, 42 U.S.C. § 1101, et seq., the
4 Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §
5 9601, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., the Oil Pollution
6 Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other comparable local, state
7 of federal statute or ordinance pertaining to the environment or natural resources and all
8 regulations pertaining thereto, including all amendments and/or revisions to said laws and
9 regulations.

10 B. Toxic or hazardous substances are not allowed on the Leased
11 Premises without the express written permission of the WSDOT and under such terms and
12 conditions as may be specified by the WSDOT. For the purposes of this Lease, "Hazardous
13 Substances" shall include all those substances identified as hazardous under the
14 Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.
15 Section 9601 et seq., and the Washington Model Toxic Control Act, RCW 70.105D et seq.,
16 including all amendments and/or revision to said laws and regulations and shall include
17 gasoline and other petroleum products. In the event such permission is granted, the disposal
18 of such materials must be done in a legal manner by the TENANT.

19 C. TENANT agrees to cooperate in any environmental investigations
20 conducted by WSDOT staff or independent third parties where there is evidence of
21 contamination on the Leased Premises, or where the WSDOT is directed to conduct such
22 audit by an agency or agencies having jurisdiction. TENANT will reimburse the WSDOT
23 for the cost of such investigations, where the need for said investigation is determined to be
24 caused by the WSDOT's operations. TENANT will provide the WSDOT with notice of
25 any inspections of the Leased Premises, notices of violations, and orders to clean up
26 contamination. TENANT will permit the WSDOT to participate in all settlement or
27 abatement discussions. In the event the TENANT fails to take remedial measures as duly
28 directed by a state, federal, or local regulatory agency within ninety (90) days of such
29 notice, the WSDOT may elect to perform such work, and TENANT covenants and agrees to
30 reimburse the WSDOT for all direct and indirect costs associated with the WSDOT's work
31 where said contamination is determined to have resulted from the use of the Leased
32 Premises. TENANT further agrees, the use of the Leased Premises shall be such that no
33 hazardous or objectionable smoke, fumes, vapor, odors, or discharge of any kind shall rise
34 above the grade of the right of way.

35 D. For the purposes of this Lease, "Costs" shall include, but not be
36 limited to, all response costs, disposal fees, investigatory costs, monitoring costs, civil or
37 criminal penalties, and attorney fees and other litigation costs incurred in complying with
38 state or federal environmental laws, which shall include, but not be limited to, the
39 Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §

1 9601, et seq; the Clean Water Act, 33 U.S.C. § 1251; the Clean Air Act, 42 U.S.C. § 7401;
2 the Resource Conservation and Recovery Act, 42 U.S.C. § 6901; and the Washington
3 Model Toxic Control Act, RCW 70.105D et seq., including all amendments and/or
4 revisions to said laws and regulations.

5 E. TENANT agrees to defend, indemnify and hold the WSDOT
6 harmless from and against any and all claims, causes of action, demands and liability
7 including, but not limited to, any costs, liabilities, damages, expenses, assessments,
8 penalties, fines, losses, judgments and attorneys' fees associated with the removal or
9 remediation of any Hazardous Substances that have been released, or otherwise come to be
10 located on the Leased Premises, including those that may have migrated from the Leased
11 Premises through water or soil to other properties, including without limitation, the adjacent
12 WSDOT property and which are caused by or result from the activities on the Leased
13 Premises. TENANT further agrees to retain, defend, indemnify and hold the WSDOT
14 harmless from any and all liability arising from the offsite disposal, handling, treatment,
15 storage, or transportation of any such Hazardous Substances removed from said property.

16 F. The WSDOT hereby agrees to indemnify and hold the TENANT
17 harmless from any costs or liabilities associated with the removal or remediation of any
18 Hazardous Substances that have been released, or otherwise come to be located on the
19 Leased Premises by the acts or omissions of the WSDOT its employees, contractors, and
20 agents. The WSDOT further agrees to retain and indemnify and hold TENANT harmless
21 from any and all liability arising from the offsite disposal, handling, treatment, storage, or
22 transportation of any such Hazardous Substances removed from said property.

23 G. The provisions of this paragraph shall survive the expiration or
24 termination of this Lease.

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

28 A. The WSDOT reserves the right for utility franchise and permit
29 holders to enter upon the Leased Premises to maintain facilities and, for itself, to grant
30 utility franchises and/or permits within the Leased Premises. Such installation will be
31 accomplished in such a manner as to minimize any disruption to the TENANT. The
32 franchise/permit holder will be required to restore paving, landscaping and grading
33 damaged by the installation. The WSDOT also reserves the right to withdraw portions of
34 the Leased Premises for uses such as, but not limited to, telecommunications transmission
35 sites, which the WSDOT determines to be reasonably compatible with TENANT's
36 authorized use of Leased Premises.

1 B. The TENANT will not disturb markers installed by a
2 franchise/permit holder and will contact and provide notice to the franchise/permit holder
3 and all owners of underground facilities by calling 360-683-3661 prior to any excavation, so
4 that the franchise/permit holder may locate the utility. The TENANT shall not damage
5 installed underground utilities.

6 **11. TAXES, ASSESSMENTS, AND UTILITIES.** The TENANT agrees to
7 pay all assessments that benefit the Leased Premises and/or which may hereafter become a
8 lien on the interest of the TENANT in accordance with RCW 79.44.010. The TENANT
9 agrees to pay all taxes that may hereafter be levied or imposed upon the interest of the
10 TENANT or by reason of this Lease. The TENANT is responsible for and agrees to pay the
11 cost for all utilities, including, but not limited to, surcharges, fuel adjustments, rate
12 adjustments and taxes, that serve the Leased Premises.

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

24 **13. NON-COMPLETION OF CONSTRUCTION.** TENANT shall obtain the
25 WSDOT'S approval of construction drawings, complete construction of the project
26 according to the approved plans, and open the trail to the public within twenty-four (24)
27 months of the commencement of this Lease.

28 **14. "AS BUILT" PLANS.** Within one hundred eighty (180) days of the date
29 the trail construction is completed, TENANT shall provide the WSDOT with a complete set
30 of dimensioned "As-Built" scale drawings, showing at least the information following: (a)
31 trail centerline; (b) ties to beginning and end of trail; (c) underground utilities; and (d) such
32 other information as the WSDOT may request. In the event the TENANT fails to provide
33 such plans within the prescribed time period, the TENANT hereby agrees that the WSDOT
34 shall have the right, at its option, to contract with a consultant in order to secure such plans
35 and TENANT agrees to reimburse the WSDOT for all costs incurred in obtaining said plans
36 within thirty (30) days of the date of the WSDOT's invoice.

1 **15. LIENS.**

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

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

14 C. Should the TENANT fail to accomplish either a, b, or c above within
15 fifteen (15) days after the filing of such a lien, the Lease shall be in default.

16 **16. ENCUMBRANCES.** It is expressly understood that the TENANT shall not
17 encumber the Leased Premises.

18 **17. WSDOT'S RIGHT OF ENTRY AND INSPECTION.** The WSDOT, for
19 itself, its agents and contractors, and for the Federal Highway Administration, reserves the
20 right to enter upon the Leased Premises at any time without notice to the TENANT for the
21 purpose of maintaining an existing highway facility, inspecting, surveying or conducting
22 tests. The WSDOT shall in no way be responsible for any incidental or consequential
23 damages due to such loss of use by the TENANT. The WSDOT and the Federal Highway
24 Administration may from time-to-time go upon the Leased Premises to inspect any work
25 done by the TENANT. Further, this right shall not impose any obligation upon the
26 WSDOT to make inspections to ascertain safety of the TENANT's improvements or the
27 condition of the Leased Premises.

28 **18. INSURANCE.**

29 A. TENANT warrants that it is self-insured, and agrees to provide
30 acceptable evidence of its self insured status to the WSDOT. The TENANT's insurance
31 policy must provide liability coverage for the Leased Premises, including public liability
32 coverage for bodily injury, property damage, and personal injury of not less than \$1,000,000
33 combined single limit per occurrence, with a general aggregate amount of not less than
34 \$3,000,000 per policy period. In the event the TENANT, after commencement of this lease,
35 elects to terminate its self insured status and secure commercial liability coverage,

1 TENANT will promptly notify the WSDOT, promptly secure insurance coverage as
2 designated herein or as amended by the WSDOT and promptly provide a certificate of
3 insurance from an insurer licensed to conduct business in the State of Washington.

4 B. Coverage in the minimum amounts set forth herein shall not be
5 construed to relieve the TENANT from liability in excess of such coverage. The TENANT
6 agrees that the WSDOT may require increases in said coverages by written notice to the
7 TENANT, as the WSDOT deems reasonable and necessary. Further, no changes whatsoever
8 shall be initiated as to the coverages required above without prior written approval by the
9 WSDOT and written authorization by the WSDOT to make any requested changes.

10 **19. HOLD HARMLESS/INDEMNIFICATION.** The TENANT, its
11 successors and assigns, will protect, save, and hold harmless the WSDOT, its authorized
12 agents and employees, from all claims, actions, costs, damages, or expenses of any nature
13 whatsoever by reason of the acts or omissions of the TENANT, its assigns, subtenants,
14 agents, contractors, licensees, invitees, employees, or any person whomsoever, arising out
15 of or in connection with this Lease. The TENANT further agrees to defend the WSDOT, its
16 agents or employees, in any litigation, including payment of any costs or attorneys' fees, for
17 any claims or action commenced, arising out of, or in connection with this Lease, whether
18 those claims, actions, costs, damages, or expenses result from acts or activities occurring on
19 or off the Leased Premises. This obligation shall not include such claims, costs, damages,
20 or expenses which may be caused by the sole negligence of the WSDOT or its authorized
21 agents or employees; PROVIDED, that if the claims or damages are caused by or result
22 from the concurrent negligence of (a) the WSDOT, its agents or employees and (b) the
23 TENANT, its agents, subtenants, assigns, contractors, invitees, licensees or employees, or
24 involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid
25 and enforceable only to the extent of the negligence of the TENANT or the TENANT's
26 assigns, contractors, agents, subtenants, invitees, licensees or employees.

27 **20. NONDISCRIMINATION,** The TENANT, for itself, its successors and
28 assigns, as part of the consideration hereof, do hereby agree to comply with all civil rights
29 and antidiscrimination requirements of Chapter 49.60 RCW.

30 **21. ASSIGNMENT.** Neither this Lease nor any rights created by it may be
31 assigned, sublet, or transferred in written or oral form.

32 **22. TERMINATION.**

33 A. This Lease may be terminated without penalty or further liability as
34 follows:

1 (1) Immediately by the WSDOT, if the WSDOT deems that a
2 transportation emergency exists.

3 (2) Immediately by the WSDOT, upon the unauthorized
4 assignment of this Lease by TENANT.

5 (3) Immediately by the WSDOT, if a receiver is appointed to take
6 possession of TENANT's assets, if the TENANT makes a general assignment for the
7 benefit of creditors, or if the TENANT becomes insolvent or takes or suffers action under
8 the Bankruptcy Act.

9 (4) Immediately by the WSDOT, if TENANT's insurance
10 coverage as required herein, lapses for any reason. In such event, the WSDOT may, at its
11 option, barricade access to the Leased Premises.

12 (5) Upon not less than thirty (30) days written notice by the
13 WSDOT, if TENANT defaults and fails to cure such default within that thirty (30) day
14 period, or such longer period, as may be determined by the WSDOT, if TENANT is
15 diligently working to cure the default. Waiver or acceptance of any default of the terms of
16 this Lease by the WSDOT shall not operate as a release of the TENANT's responsibilities
17 for any prior or subsequent default.

18 (6) Upon not less than thirty (30) days written notice by the
19 WSDOT, for failure of the TENANT to open the trail to the public within twenty-four(24)
20 months of the commencement of this Lease.

21 (7) Upon not less than thirty (30) days written notice by the
22 WSDOT, for failure of the TENANT to provide acceptable as-built plans to the WSDOT
23 within one hundred eighty (180) days of the date of completion of the trail construction.

24 (8) Upon not less than thirty (30) days written notice by the
25 WSDOT, if Lessee defaults on any provision in this Lease and is notified by the WSDOT of
26 the default two (2) times within a six (6) month period. The third default shall be deemed
27 "non-curable".

28 (9) Upon not less than thirty (30) days written notice by the
29 WSDOT if the WSDOT determines that the Leased Premises have ceased to be used or
30 have been abandoned by the TENANT for a continuous period of ninety (90) days.

31 (10) Upon not less than sixty (60) days written notice by the
32 WSDOT, for priority transportation purposes, as determined by the WSDOT.

33 (11) Upon not less than sixty (60) days written notice by the
34 TENANT or its successor; Provided that TENANT or its successor obliterates the trail prior
35 to termination.

1 B. The WSDOT may terminate the Lease, in part, upon not less than
2 sixty (60) days written to the TENANT, if the WSDOT determines that a portion of the
3 Leased Premises may be used for, but not limited to, telecommunications purposes, which
4 in the WSDOT's determination are reasonably consistent with TENANT's authorized use
5 of the Leased Premises.

6 C. It is hereby acknowledged and agreed that the highway use of the
7 Leased Premises is paramount to any other use, including TENANT's use for a bicycle and
8 pedestrian trail. If this Lease is terminated for highway construction or reconstruction and
9 the WSDOT determines that it is necessary to relocate the trail system or acquire
10 replacement land, the TENANT hereby agrees to acquire any such necessary replacement
11 lands promptly and at no cost to the WSDOT, to reconstruct its facility at no cost to the
12 WSDOT on said replacement lands, and to hold the WSDOT harmless from any and all
13 costs. The parties specifically acknowledge and agree that the Leased Premises will be
14 needed for Phase II of the Sequim Bypass Project and that the trail is a temporary fixture.

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

21 **23. SURRENDER OF LEASED PREMISES AND REMOVAL OF**
22 **TENANT'S IMPROVEMENTS AND PERSONAL PROPERTY.**

23 A. Upon termination of this Lease, the TENANT shall cease its
24 operations on and/or use of the Leased Premises. In the event the TENANT fails to vacate
25 the Leased Premises on the date of termination, the TENANT shall be liable for any and all
26 costs to the WSDOT arising from such failure. As used herein, "vacate" shall include
27 preventing use of the Leased Premises by the public.

28 B. Upon termination of this Lease, the TENANT agrees, if so directed
29 by the WSDOT, to restore grades and on limited access highways also to relocate the
30 WSDOT's fences, if any, to their configurations prior to the TENANT's occupancy. This
31 work is to be done at the TENANT's expense to the satisfaction of the WSDOT.

32 C. Upon termination of this Lease TENANT agrees, if so requested by
33 the WSDOT, to obliterate the trail, remove all improvements and personal property, and/or
34 provide erosion control treatment at its own expense and to the WSDOT's satisfaction.

35 D. The TENANT shall accomplish the above work by the date of
36 termination. If, after termination of this Lease, the TENANT has not removed its

1 improvements and/or personal property within the time allowed, the WSDOT may, but need
2 not, remove and dispose of said improvements and/or personal property at the expense of
3 the TENANT and the TENANT shall reimburse the WSDOT for any expense incurred by
4 the WSDOT in connection with such removal or disposal within thirty (30) days of the date
5 of the WSDOT's invoice.

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

10 **25. TRANSPORTATION PURPOSES.** The TENANT and the WSDOT
11 hereby affirm that upon termination of this Lease for any reason and the subsequent use of
12 the Leased Premises for transportation or other purposes, such use will not be considered
13 the use of any publicly-owned land from a public park, recreation area, or wildlife and
14 waterfowl refuge within the meaning of 23 U.S.C. 138 and 49 U.S.C. 303. If the WSDOT
15 determines that replacement of the trail is required under 23 U.S.C. 138 and 49 U.S.C. 303,
16 TENANT agrees that it shall be responsible for and promptly pay all such costs in
17 accordance with Paragraph 21.C. of this Lease.

18 **26. CONDITION OF THE PROPERTY.** The WSDOT and TENANT
19 acknowledge that they have jointly examined the Leased Premises identified in Exhibit "A"
20 attached hereto, and the TENANT accepts said premises in its present condition as of the
21 date of commencement of this Lease.

22 **27. BINDING CONTRACT.** This Lease shall not become binding upon the
23 WSDOT unless and until executed for the WSDOT by the Director, Real Estate Services, or
24 his duly authorized representative.

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

28 **29. MODIFICATIONS.** This instrument contains all the agreements and
29 conditions made between the parties hereto and may not be modified orally or in any
30 manner other than by an agreement in writing signed by all parties thereto.

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

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

6 **32. VENUE.** TENANT agrees that the venue of any action or suit concerning
7 this Lease shall be in the Thurston County Superior Court. The TENANT agrees to accept
8 service of process at the address provided herein.

9 **33. MEMORANDUM OF LEASE.** The parties hereby agree to execute and
10 record a memorandum of lease, if either party so requests.

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

15 **WSDOT:** DEPARTMENT OF TRANSPORTATION
16 Attn.: Property Management Program Manager
17 310 Maple Park Ave. S.E.
18 P.O. Box 4 7338
19 Olympia, WA 98504-7338

20 **TENANT:** **CITY OF SEQUIM**
21 Attn: Director of Public Works
22 152 West Cedar Street
23 Sequim, Washington 98382-3317

CITY OF SEQUIM

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By William B. Elliott 4/22/02
Date
City Manager

By Gerald L. Gallinger 4-29-02
Date
Director, Real Estate Services

APPROVED AS TO FORM

APPROVED AS TO FORM

CRAIG A. RITCHIE 4/24/02
By Craig A. Ritchie
City Attorney

Assistant Attorney General 4-29-02
By Assistant Attorney General

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CITY ACKNOWLEDGMENT

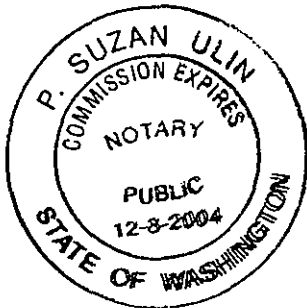
STATE OF WASHINGTON)

: ss.

County of Clallam)

On this 22nd day of April, 2002 before me personally appeared William B. Elliott to me known to be the duly appointed City Manager of the City of Sequim, 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 he was authorized to execute said instrument by resolution of the Mayor and City Commissioners of said City, and that the seal affixed is the official seal of said City.

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



P. Suzan Ulin
Notary (print name) P. SUZAN ULIN
Notary Public in and for the State of Washington,
Residing at Sequim, Washington
My appointment expires 12-8-2004

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STATE AGENCY ACKNOWLEDGMENT

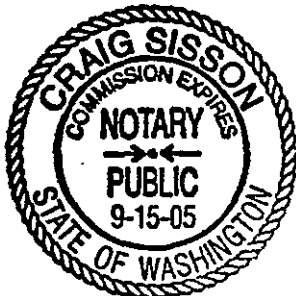
2 STATE OF WASHINGTON)

3 : ss.

4 County of Thurston)

5 I, the undersigned, a Notary Public in and for the State of Washington, do hereby certify
6 that on this 29th day of APRIL, 2002, before me personally appeared
7 Gerald L. Gallinger, Director, Real Estate Services, for the State of Washington Department of
8 Transportation, and that he executed the within and foregoing instrument and acknowledged the
9 said instrument to be the free and voluntary act and deed of said State of Washington, for the
10 uses and purposes therein set forth, and on oath states that he is authorized to execute said
11 instrument.

12 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
13 day and year first above written.



[Signature]

Notary (print name) CRAIG SISSON

Notary Public in and for the State of Washington,

Residing at OLYMPIA

My appointment expires SEPT 15, 2005

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