Washington State Department of Transportation

Developer Agreement Construction by Developer At Developer Expense			Developer and Address Mr. Ron Porter Eddie's Diner P.O. Box 328 Mukilteo, WA 98275
Agreement Number UC 3388			Section / Location MP 51.52, Highway 99
State Route No. 99	Control Section No. 3102	Region Northwest	Description of Work Construct curb, gutter, sidewalk and associated widening and a right-in/right-out access connection (Permit No. AC 97090112)
Surety Bond $20,000.00	Work Hours 9:00 A.M. to 3:30 P.M.		

This AGREEMENT, made and entered into this 4 th day of June, 1998, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE", and the above named organization, hereinafter called the "DEVELOPER".

WHEREAS, the DEVELOPER wishes to construct an intersection and/or related improvements within the STATE's rights-of-way, and

WHEREAS, the STATE and DEVELOPER now wish to define responsibility for construction and maintenance of the proposed improvements.

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NOW THEREFORE, by virtue of Title 47.50 RCW, it is mutually agreed between the parties hereto as follows:

1. The STATE agrees to grant the DEVELOPER permission to construct the above described work within STATE right-of-way at the location described in Exhibit "A", attached hereto and by this reference made a part of this AGREEMENT.

2. The DEVELOPER agrees to construct the project as shown on Exhibit "B", at 100 percent DEVELOPER expense and responsibility. Exhibit "B" is attached hereto and by this reference made a part of this AGREEMENT.

   The responsibility of the DEVELOPER for performance, safe conduct, and adequate policing and supervision of the project shall not be lessened or otherwise affected by the STATE's approval of plans, specifications, or work, or by the presence at the worksite of the STATE's representative(s), or by compliance by the DEVELOPER with any requests or recommendations made by such representative(s)

3. Any change of work from that shown on Exhibit "B" must be approved by the STATE prior to beginning such work. Plan revisions may be required by the STATE if design standards change between the time of the AGREEMENT approval and the beginning of construction.

4. Upon receipt of this AGREEMENT by the DEVELOPER the STATE may request a construction schedule showing critical dates and activities that will lead to the timely completion of the work required under this AGREEMENT.

   Failure by the DEVELOPER to provide the construction schedule within 30 days may cause cancellation of the AGREEMENT. Cancellation of this agreement will not lessen the DEVELOPER'S responsibility to reimburse the STATE for those costs agreed to by item 13.

5. Prior to beginning of construction, a preconstruction conference shall be held with the STATE, DEVELOPER, and the DEVELOPER's contractor.

6. Should the DEVELOPER choose to perform the work outlined herein with other than its own forces, a representative of the DEVELOPER shall be present at all times unless otherwise agreed to by the Region Administrator. All contact between the STATE and DEVELOPER's contractor shall be through the representative of the DEVELOPER. Where the DEVELOPER chooses to perform the work with its own forces, it may elect to appoint one of its own employees engaged in the construction as its representative. Failure to comply with this provision shall be grounds for restricting any further work by the DEVELOPER within STATE right-of-way, until said requirement is met.

   The DEVELOPER, at its own expense, shall adequately police and supervise all work on the above described project by itself, its contractor(s), subcontractor(s), agent(s), and others, so as to not endanger or injure any person or property.

7. Work within STATE right-of-way shall be restricted to the above specified hours and no work shall be allowed on the right-of-way Saturdays, Sundays, or Holidays, unless otherwise authorized by the STATE.

8. In the construction and/or maintenance of this facility, the DEVELOPER shall comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways", current edition. Any closures or restrictions of the highway shall require a STATE approved traffic control plan.

9. All material and workmanship shall conform to the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, current edition, and shall be subject to inspection by the STATE.

10. All disturbed right-of-way shall be seeded, fertilized, mulched, and protected from erosion.

11. The DEVELOPER shall provide an executed surety bond acceptable to the STATE in the amount stated above. the bond shall:

    Be signed by a surety that is registered with the Washington State Insurance Commissioner and appears on the current authorized list published by the Office of the Insurance Commissioner.

    Be conditioned upon faithful performance of the AGREEMENT.

    Guarantee that the surety shall idemnify and defend the STATE against any loss resulting from the DEVELOPER's failure to faithfully perform all the terms under this AGREEMENT.

    Guarantee that the DEVELOPER or the contractor of the DEVELOPER shall pay all laborers, mechanics, subcontractors, and materialmen, or any person who provides supplies or provisions for carrying out the work.

    The surety bond shall remain in full force and effect until released in writing by the STATE.

    The STATE will recover from the DEVELOPER and its sureties such damages as the STATE may sustain by reason of the DEVELOPER's failure to comply with the provisions of this AGREEMENT.

12. The DEVELOPER shall obtain and keep in force for the duration of the work under this AGREEMENT, public liability and property damage insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW. The STATE shall be specifically named as an insured in a policy with the same company which insures the DEVELOPER or by an endorsement to an existing policy. The amount of coverage shall be not less than a single limit of $1,000,000 for bodily injury, including death and property damage per occurrence. The DEVELOPER shall furnish the STATE proof of insurance prior to undertaking any work covered by this AGREEMENT.

13. The DEVELOPER shall reimburse the STATE for all actual direct and related indirect costs necessitated by this AGREEMENT. Such costs include, but are not limited to, agreement preparation, plan review, and construction inspection.

    The DEVELOPER agrees to make payment for the work to be done by the STATE within thirty (30) days from receipt of billing from the STATE. Payment not made within thirty (30) days after receipt of billings shall bear interest at the rate of one percent per month or fraction thereof until paid pursuant to RCW 43.17.240.

14. The STATE shall have ownership and control of the completed facility within the STATE right-of-way and related traffic signal induction loops outside the STATE's right-of-way, all subject to final acceptance by the STATE with the exception that the DEVELOPER, his assigns, and successors, shall be responsible for the construction and maintenance of the private connections and appurtenances between the shoulder line of the highway and the right-of-way line inclusive of surfacing and drainage, when applicable. Future construction or maintenance within the areas of responsibility by the DEVELOPER, his assigns, and successors which will affect the traffic signal induction loops and related appurtenances shall require STATE review and approval.

15. Any breach of the terms and conditions of this AGREEMENT, or failure on the part of the DEVELOPER to proceed with due diligence and in good faith in the construction and maintenance work provided for herein, shall subject this AGREEMENT to be cancelled and, at the option of the STATE, may require the DEVELOPER to remove all or part of the facilities constructed hereunder at the DEVELOPER's sole expense.

16. The DEVELOPER shall idemnify and hold the STATE, and its agents, employees and/or officers harmless from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the STATE, its agents, employees and officers arising out of, in connection with, or incident to the execution of this AGREEMENT and/or the DEVELOPER's performance or failure to perform any aspect of this AGREEMENT. Provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the DEVELOPER and (b) the STATE, its agents, employees and/or officers, this idemnity provision shall be valid and enforceable only to the extent of the negligence of the DEVELOPER, and provided further, that nothing herein shall require the DEVELOPER to hold harmless or defend the STATE, its agents, employees and/or officers from any claims arising from the sole negligence of the STATE, its agents, employees, and/or officers.

17. In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action or proceedings shall be brought in a court of competent jurisdiction situated in Thurston County, Washington.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

DEVELOPER	STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION
By: Robert H Brennan	By: David L [illegible]
Title: Chairman	Title: Deputy Right of Way Adm.
Date: 6-4-98	Date: 6/4/98

DOT Form 224-054 EF
Revised 6/95

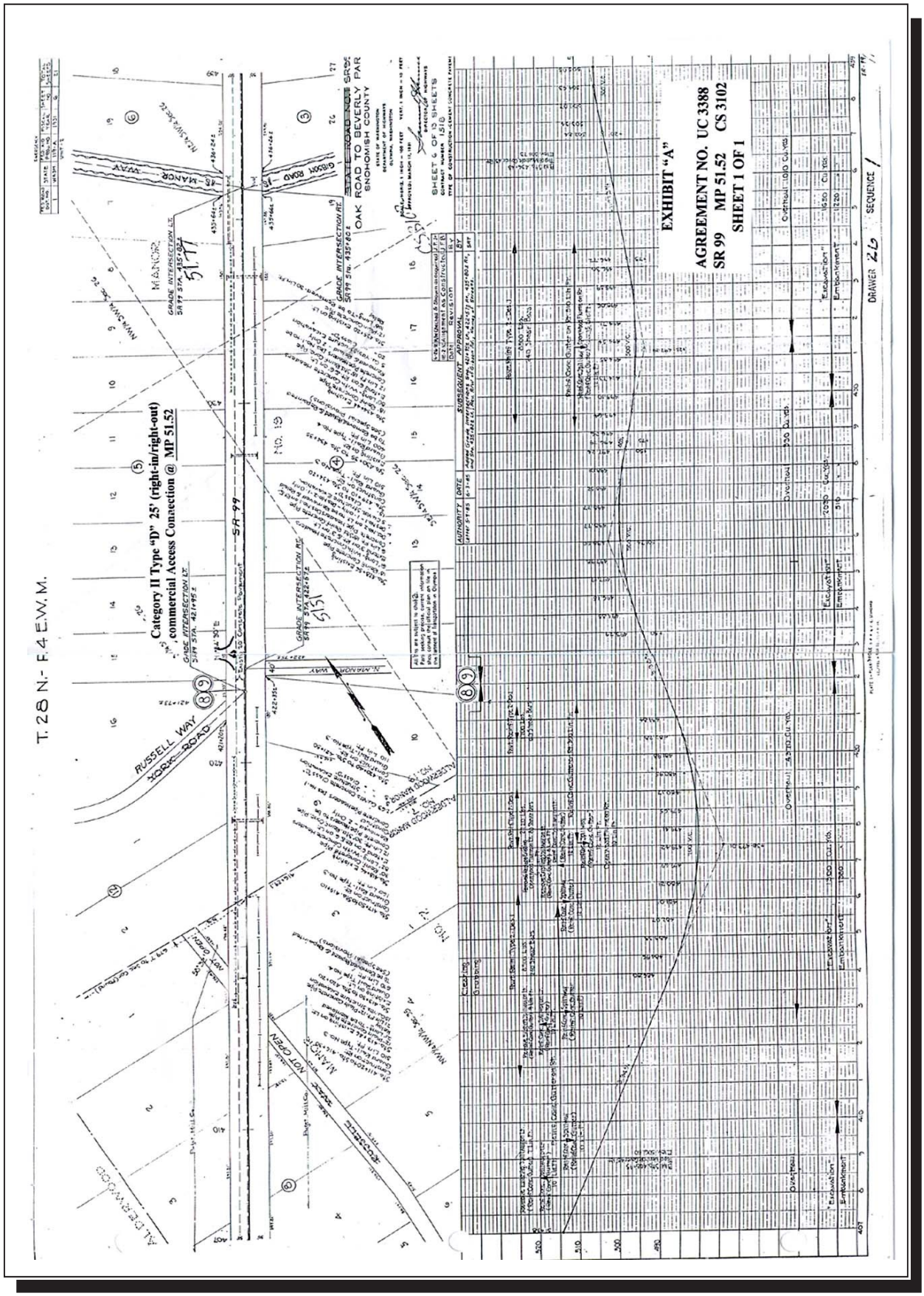
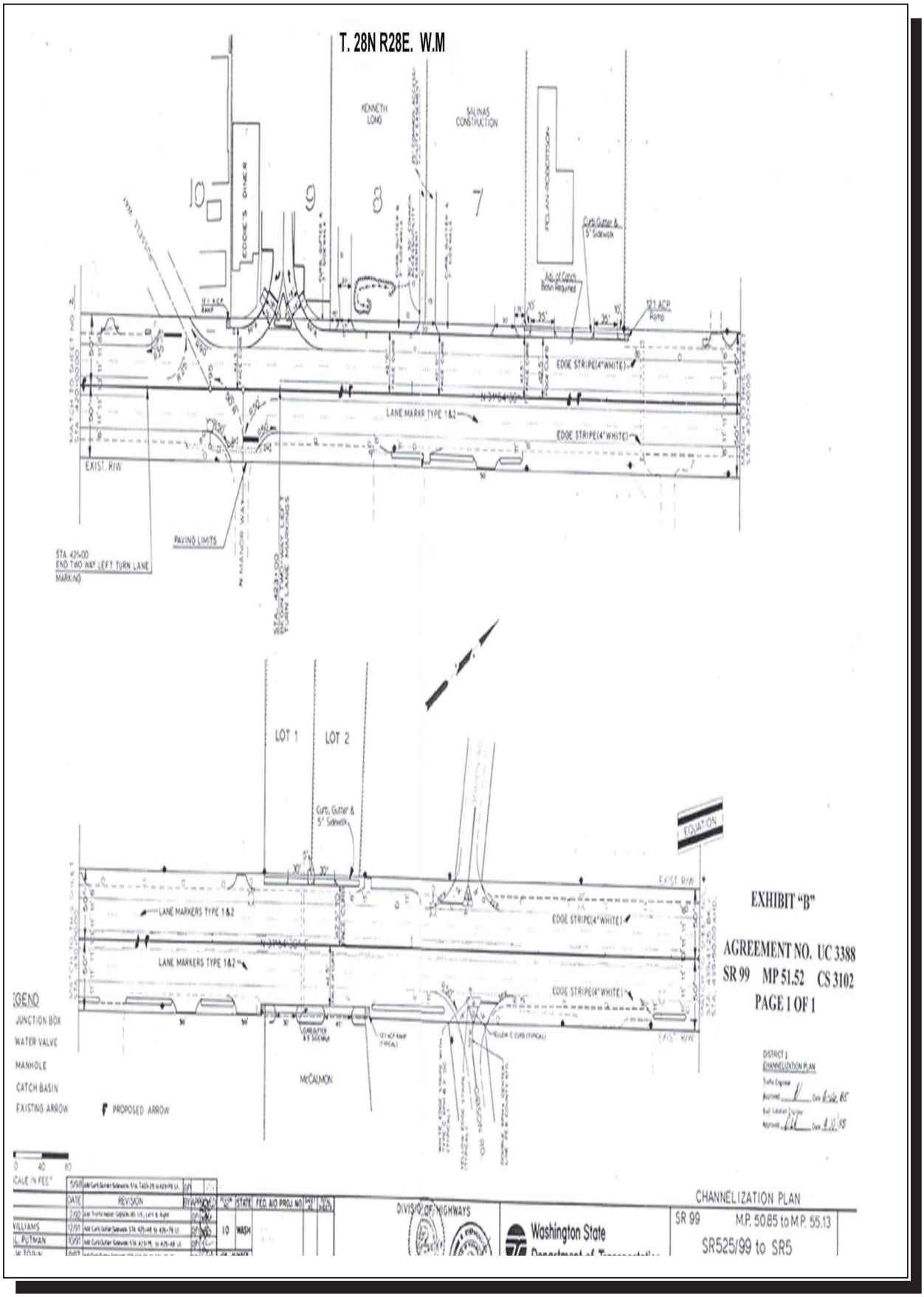


EXHIBIT "A"
AGREEMENT NO. UC 3388
SR 99 MP 51.52 CS 3102
SHEET 1 OF 1
Category II Type "D" 25' (right-in/right-out)
commercial Access Connection @ MP 51.52
T. 28 N. - R. 4 E.W.M.
SR-99
RUSSELL WAY
YORK ROAD
MANOR WAY
GIBSON ROAD
STATE ROAD NO. SR99
OAK ROAD TO BEVERLY PAR
SNOHOMISH COUNTY
SHEET 6 OF 10 SHEETS
DRAWER 26
SEQUENCE 1


T. 28N R28E. W.M
KENNETH LONG
SALINAS CONSTRUCTION
EDDIE'S DINER
EDGE STRIPE(4" WHITE)
LANE MARKR TYPE 1&2
EXIST. R/W
PAVING LIMITS
N MANOR WAY
LOT 1
LOT 2
Curb, Gutter & 5' Sidewalk
EQUATION
LANE MARKERS TYPE 1&2
McCALMON
JUNCTION BOX
WATER VALVE
MANHOLE
CATCH BASIN
EXISTING ARROW
PROPOSED ARROW
EXHIBIT "B"
AGREEMENT NO. UC 3388
SR 99 MP 51.52 CS 3102
PAGE 1 OF 1
CHANNELIZATION PLAN
DIVISION OF HIGHWAYS
Washington State
SR 99 M.P. 50.85 to M.P. 55.13
SR525/99 to SR5