



CITY OF
BAINBRIDGE ISLAND

City Council Regular Business Meeting Agenda Bill

MEETING DATE: August 27, 2019

ESTIMATED TIME: 10 Minutes

AGENDA ITEM: (8:40 PM) Wyatt/Madison Roundabout Project Right-of-Way and Temporary Construction Easement Acquisition - Public Works,

STRATEGIC PRIORITY: Reliable Infrastructure and Connected Mobility

PRIORITY BASED BUDGETING PROGRAM:

AGENDA CATEGORY: Contract

PROPOSED BY: Public Works

RECOMMENDED MOTION:

I move to forward for approval with the September 10, 2019 Consent Agenda authorization for the City Manager and the Public Works Director to negotiate and execute all agreements needed to purchase easements or right-of-way necessary for the Wyatt/Madison Roundabout Project up to a total amount of \$180,000.

SUMMARY:

Public Works Department staff requests that the City Council authorize the City Manager and the Public Works Director to negotiate and execute all agreements needed to purchase easements or right-of-way necessary for the Wyatt/Madison Roundabout Project up to a total amount of \$180,000.

FISCAL IMPACT:

Amount:	\$180,000
Ongoing Cost:	
One-Time Cost:	\$180,000
Included in Current Budget?	Yes

BACKGROUND:

The Public Works Department staff have negotiated an agreement with the private property owners at the southwest corner of Wyatt and Madison Avenues for permanent and temporary easements that will facilitate the construction of the Wyatt/Madison roundabout and the Wyatt Ave sidewalk construction. There are two permanent easements along the Wyatt Way frontage for sidewalk improvements, and three temporary construction easements ("TCEs") that will facilitate construction and material storage.

Also included in the packet is an evaluation of the \$180,000 value of the permanent and temporary easements, provided by the City's right-of-way consultant, Contract Land Staff LLC (CLS). CLS concluded that the value of the easements (considered an administrative settlement in lieu of condemnation) was appropriate given the value of the private property, the value of the property owner's continued administrative involvement in the process, and the potential costs associated with a condemnation proceeding.

ATTACHMENTS:

[ROW Easement Agreement - MARE - Parcel No. 272502-4-184-2004](#)

[ROW Easement Agreement - MARE - Parcel No. 272502-4-185-2003](#)

[TCE - MARE - Parcel No. 272502-4-009-2007](#)

[TCE - MARE - Parcel No. 272502-4-184-2004](#)

[TCE - MARE - Parcel No. 272502-4-185-2003](#)

[Memorandum - CLS Evaluation](#)

FISCAL DETAILS: The 2019-20 Adopted Project Budget total is \$3,850,000 (\$3,700,000 in the General Fund and \$150,000 in the Water Utility Fund). Project spending to date totals \$810,000 (\$780,000 in the general fund and \$30,000 in Water) with \$3,040,000 remaining.

Fund Name(s): General Fund

Coding:

AFTER RECORDING, PLEASE RETURN TO:

Kelly Jahraus
Deputy City Clerk
City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, WA 98110

RIGHT-OF-WAY EASEMENT AGREEMENT

Reference Number(s) of
Documents Assigned
or Released:

N/A

Grantor(s):

Madison Avenue Real Estate LLC.

Grantee:

City of Bainbridge Island, a Washington State municipal
corporation

Short Legal Description:

Ptn NE ¼, SE ¼, Sec. 27, T.25N., R.2E., W.M., Kitsap County,
WA, daf: Beg 20ft S & 20ft W of NE Cor of NE ¼, SE ¼; Th W
267ft; Th S 82ft; Th E 247ft; Th SE to a pt 102ft S of POB; Th N
to POB

Assessor's Property Tax

Parcel/Account Number(s): 272502-4-184-2004

THIS RIGHT-OF-WAY EASEMENT AGREEMENT (“Agreement”) is made by and between Madison Avenue Real Estate LLC. (“Grantor”) and the City of Bainbridge Island, a Washington State municipal corporation (“Grantee”). The Grantor and the Grantee (the “Parties”) agree as follows:

1. Grantor’s Real Property. The Grantor is the fee owner of the real property which is legally described on **Exhibit A**, attached hereto and incorporated herein by this reference (“Grantor’s Real Property”).

2. Grant of Perpetual Right-of-Way Easement. The Grantor, for valuable consideration, the receipt of which is hereby acknowledged, conveys and warrants to the Grantee, its successors, and assigns, a perpetual, nonexclusive right-of-way easement (“Right-of-Way Easement”) under, over, through, and across the portion of the Grantor’s Real Property legally described on **Exhibit B** and depicted on **Exhibit D**, both of which are attached hereto and incorporated herein (“Right-of-Way Easement Area”).

3. Grant of Access and Maintenance Easement. The Grantor, for valuable consideration, the receipt of which is hereby acknowledged, conveys and warrants to the Grantee, its successors, and assigns, a perpetual, nonexclusive access and maintenance easement (“Maintenance Easement”) under, over, through, and across the portion of the Grantor’s Real Property legally described on **Exhibit C**, attached hereto and incorporated herein (“Maintenance Easement Area”), and depicted on **Exhibit D**.

4. Purpose. The Right-of-Way Easement and the Maintenance Easement are conveyed, for the benefit and use of the Grantee and the general public, for the purpose of the construction, development, installation, operation, maintenance, repair, replacement, removal, or use of certain Facilities. For the purposes of this Agreement, “Facilities” shall include: (i) a roadway; (ii) utility facilities; and (iii) other reasonable and appropriate uses appurtenant to a municipal roadway and utility installation and use, including, without limitation, sidewalks, curbs, gutters, pipes, pumps, and wires.

5. Access. The Grantee shall have the right, without prior institution of any suit or proceeding at law, to enter upon the Right-of-Way Easement Area and the Maintenance Easement Area as necessary for the construction, development, installation, operation, maintenance, repair, replacement, removal, or use of any Facilities.

6. Restoration. If the surface of the Right-of-Way Easement Area or the Maintenance Easement Area is disturbed by the Grantee’s construction, development, installation, operation, maintenance, repair, replacement, removal, or use of any Facilities, then the Grantee shall restore the surface of the same as nearly as possible to the condition in which it existed at the commencement of the Grantee’s work.

7. Reservation of Rights. All rights, title, and interest, which may be used and enjoyed without interfering with the Right-of-Way Easement and the Maintenance Easement, are reserved to the Grantor. The construction, installation, maintenance, or repair, after the date of

this Agreement, of structures of a permanent nature, which interfere with the operation of any Facilities, shall be deemed an encroachment upon the Grantee's easement rights, and the Grantor shall be obligated to remove the encroachments at the Grantor's expense.

8. Protection of Facilities. The Grantor covenants that no digging, tunneling, or other form of construction activity shall be done on the Grantor's Real Property, the Right-of-Way Easement Area, or the Maintenance Easement Area that would disturb, damage, unearth, or undermine any of the Facilities, or endanger the lateral support to any of the Facilities.

9. Indemnity. By accepting and recording this Agreement, the Grantee agrees to indemnify and hold harmless the Grantor from any and all claims for injuries or damages suffered by any person or property which may be caused by the Grantee's exercise of the rights granted herein; provided, that the Grantee shall not be responsible to the Grantor for any injuries or damages suffered by any person or property caused by the acts or omissions of the Grantor or their agents.

10. Binding Effect. This Agreement and the rights and obligations under this Agreement are intended to and shall run with the land and shall benefit and bind the Parties and their respective successors and assigns.

11. Good Title. The Grantor warrants that they have good title to the Grantor's Real Property and warrants the Grantee title to, and quiet enjoyment of, the Right-of-Way Easement and the Maintenance Easement conveyed in this Agreement.

12. Complete Agreement. This Agreement represents the complete agreement of the Parties regarding the matters described herein. There are no other verbal or written agreements regarding the easement rights and obligations set forth herein, except as contained in this Agreement. This Agreement may only be modified by a written document signed by the Parties.

13. Authority. Each party signing this Agreement, if on behalf of an entity, represents that they have full authority to sign this Agreement on behalf of such entity.

14. Attorneys' Fees. If either party brings any suit or other proceeding arising out of or in connection with this Agreement, the prevailing party (as determined by the court or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the later of the signature dates below.

GRANTOR:

MADISON AVENUE REAL ESTATE LLC.

By: _____

Its: _____

Date: _____

GRANTEE:

CITY OF BAINBRIDGE ISLAND

By: _____

Morgan Smith, City Manager

Date: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that s/he signed this
instrument, on oath stated that s/he was authorized to execute the instrument, and acknowledged
it as the _____ of the _____ to be the free
and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
 (Print Name)
Notary Public in and for the State of Washington.
Commission Expires: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Morgan Smith is the person who
appeared before me, and said person acknowledged that she signed this instrument, on oath
stated that she was authorized to execute the instrument, and acknowledged it as the City
Manager of the City of Bainbridge Island to be the free and voluntary act of such entity for the
uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
 (Print Name)
Notary Public in and for the State of Washington.
Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR'S REAL PROPERTY

Beginning 20 feet south and 20 feet west of the northeast corner of the northeast quarter of the southeast quarter of Section 27, Township 25 North, Range 2 East, W.M.;
Thence West 267 Feet;
Thence South 82 Feet;
Thence East 247 Feet;
Thence southeast to a point 102 feet south of the Point of Beginning;
Thence North to the Point of Beginning;
EXCEPT roads;

AND EXCEPT that portion described as follows:

Beginning 20 feet south and 20 feet west of the northeast corner of the northeast quarter of the southeast quarter of Section 27, Township 25 North, Range 2 East, W.M.;
Thence West 150 Feet;
Thence South 82 Feet;
Thence East 130 Feet;
Thence southeast to a point 102 feet south of the Point of Beginning;
Thence North to the Point of Beginning;
EXCEPT roads.

EXHIBIT B

LEGAL DESCRIPTION OF RIGHT-OF-WAY EASEMENT AREA

The northerly 10.00 feet of the following described parcel;

Beginning 20 feet south and 20 feet west of the northeast corner of the northeast quarter of the southeast quarter of Section 27, Township 25 North, Range 2 East, W.M.;

Thence West 267 Feet;

Thence South 82 Feet;

Thence East 247 Feet;

Thence southeast to a point 102 feet south of the Point of Beginning;

Thence North to the Point of Beginning;

EXCEPT roads;

AND EXCEPT that portion described as follows:

Beginning 20 feet south and 20 feet west of the northeast corner of the northeast quarter of the southeast quarter of Section 27, Township 25 North, Range 2 East, W.M.;

Thence West 150 Feet;

Thence South 82 Feet;

Thence East 130 Feet;

Thence southeast to a point 102 feet south of the Point of Beginning;

Thence North to the Point of Beginning;

EXCEPT roads.

EXHIBIT C

LEGAL DESCRIPTION OF MAINTENANCE EASEMENT AREA

The northerly 10.00 feet of the following described parcel;

Beginning 20 feet south and 20 feet west of the northeast corner of the northeast quarter of the southeast quarter of Section 27, Township 25 North, Range 2 East, W.M.;

Thence West 267 Feet;

Thence South 82 Feet;

Thence East 247 Feet;

Thence southeast to a point 102 feet south of the Point of Beginning;

Thence North to the Point of Beginning;

EXCEPT roads;

AND EXCEPT that portion described as follows:

Beginning 20 feet south and 20 feet west of the northeast corner of the northeast quarter of the southeast quarter of Section 27, Township 25 North, Range 2 East, W.M.;

Thence West 150 Feet;

Thence South 82 Feet;

Thence East 130 Feet;

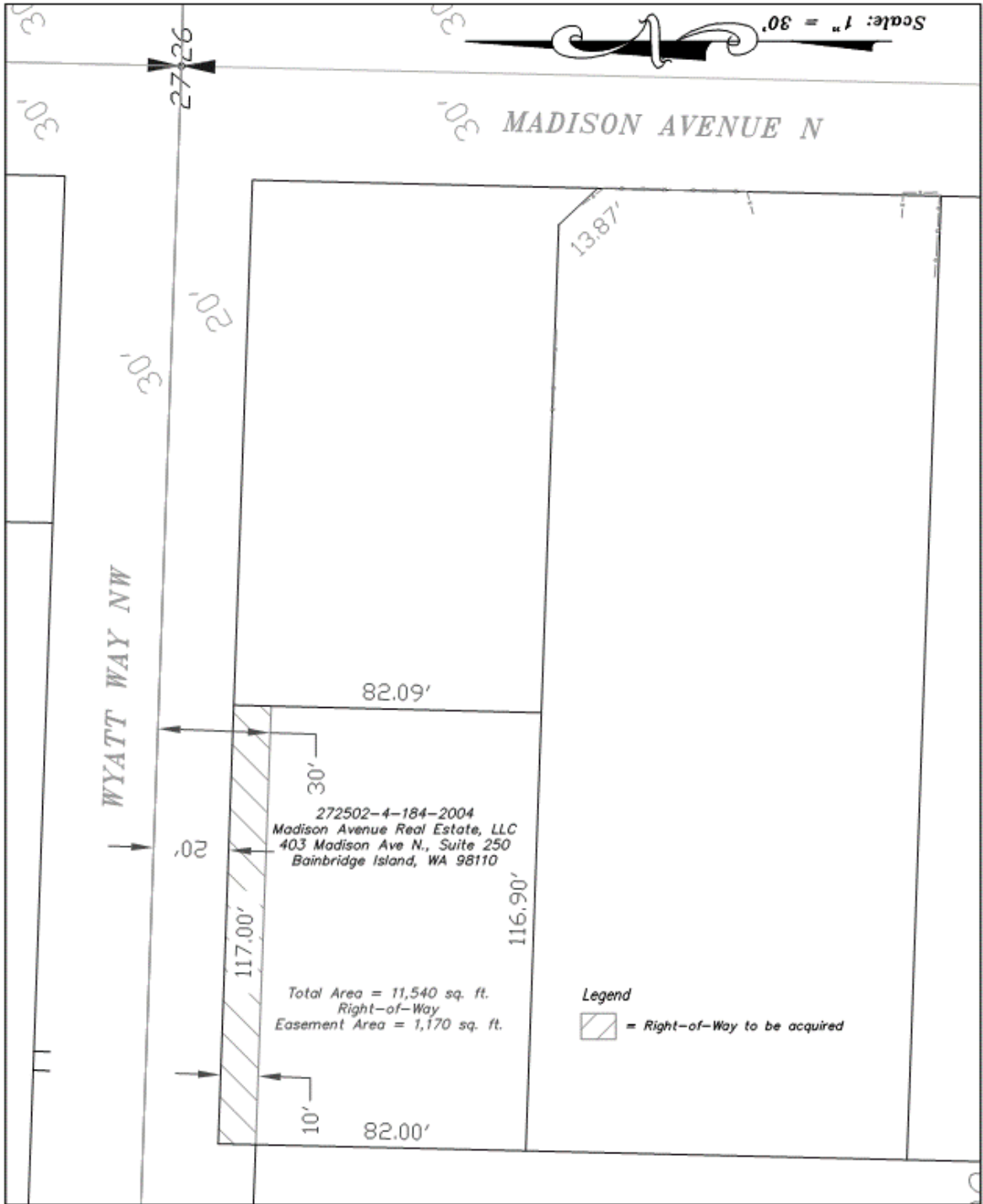
Thence southeast to a point 102 feet south of the Point of Beginning;

Thence North to the Point of Beginning;

EXCEPT roads.

EXHIBIT D

(attached)



05-20-2019 DATE	Right-of-Way Easement Area a portion of Northeast 1/4, Southeast 1/4 Sec. 27, T.25N., R.2E., W.M.		CITY OF BAINBRIDGE ISLAND PUBLIC WORKS ENGINEERING DEPARTMENT
1 NUMBER			

AFTER RECORDING, PLEASE RETURN TO:

Kelly Jahraus
Deputy City Clerk
City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, WA 98110

RIGHT-OF-WAY EASEMENT AGREEMENT

Reference Number(s) of
Documents Assigned
or Released:

N/A

Grantor(s):

Madison Avenue Real Estate LLC.

Grantee:

City of Bainbridge Island, a Washington State municipal
corporation

Short Legal Description:

Ptn NE ¼, SE ¼, Sec. 27, T.25N., R.2E., W.M., Kitsap County,
WA, daf: Beg 20ft S & 20ft W of NE Cor of NE ¼, SE ¼; Th W
150ft; Th S 82ft; Th E 130ft; Th SE to a pt 102ft S of POB; Th N
to POB
City of Bainbridge Island, Kitsap County, Washington,
(Complete legal description on Exhibit A)

Assessor's Property Tax

Parcel/Account Number(s): 272502-4-185-2003

THIS RIGHT-OF-WAY EASEMENT AGREEMENT (“Agreement”) is made by and between Madison Avenue Real Estate LLC. (“Grantor”) and the City of Bainbridge Island, a Washington State municipal corporation (“Grantee”). The Grantor and the Grantee (the “Parties”) agree as follows:

1. Grantor’s Real Property. The Grantor is the fee owner of the real property which is legally described on **Exhibit A**, attached hereto and incorporated herein by this reference (“Grantor’s Real Property”).

2. Grant of Perpetual Right-of-Way Easement. The Grantor, for valuable consideration, the receipt of which is hereby acknowledged, conveys and warrants to the Grantee, its successors, and assigns, a perpetual, nonexclusive right-of-way easement (“Right-of-Way Easement”) under, over, through, and across the portion of the Grantor’s Real Property legally described on **Exhibit B** and depicted on **Exhibit D**, both of which are attached hereto and incorporated herein (“Right-of-Way Easement Area”).

3. Grant of Access and Maintenance Easement. The Grantor, for valuable consideration, the receipt of which is hereby acknowledged, conveys and warrants to the Grantee, its successors, and assigns, a perpetual, nonexclusive access and maintenance easement (“Maintenance Easement”) under, over, through, and across the portion of the Grantor’s Real Property legally described on **Exhibit C**, attached hereto and incorporated herein (“Maintenance Easement Area”), and depicted on **Exhibit D**.

4. Purpose. The Right-of-Way Easement and the Maintenance Easement are conveyed, for the benefit and use of the Grantee and the general public, for the purpose of the construction, development, installation, operation, maintenance, repair, replacement, removal, or use of certain Facilities. For the purposes of this Agreement, “Facilities” shall include: (i) a roadway; (ii) utility facilities; and (iii) other reasonable and appropriate uses appurtenant to a municipal roadway and utility installation and use, including, without limitation, sidewalks, curbs, gutters, pipes, pumps, and wires.

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6. Restoration. If the surface of the Right-of-Way Easement Area or the Maintenance Easement Area is disturbed by the Grantee’s construction, development, installation, operation, maintenance, repair, replacement, removal, or use of any Facilities, then the Grantee shall restore the surface of the same as nearly as possible to the condition in which it existed at the commencement of the Grantee’s work.

7. Reservation of Rights. All rights, title, and interest, which may be used and enjoyed without interfering with the Right-of-Way Easement and the Maintenance Easement, are reserved to the Grantor. The construction, installation, maintenance, or repair, after the date of

this Agreement, of structures of a permanent nature, which interfere with the operation of any Facilities, shall be deemed an encroachment upon the Grantee's easement rights, and the Grantor shall be obligated to remove the encroachments at the Grantor's expense.

8. Protection of Facilities. The Grantor covenants that no digging, tunneling, or other form of construction activity shall be done on the Grantor's Real Property, the Right-of-Way Easement Area, or the Maintenance Easement Area that would disturb, damage, unearth, or undermine any of the Facilities, or endanger the lateral support to any of the Facilities.

9. Indemnity. By accepting and recording this Agreement, the Grantee agrees to indemnify and hold harmless the Grantor from any and all claims for injuries or damages suffered by any person or property which may be caused by the Grantee's exercise of the rights granted herein; provided, that the Grantee shall not be responsible to the Grantor for any injuries or damages suffered by any person or property caused by the acts or omissions of the Grantor or their agents.

10. Binding Effect. This Agreement and the rights and obligations under this Agreement are intended to and shall run with the land and shall benefit and bind the Parties and their respective successors and assigns.

11. Good Title. The Grantor warrants that they have good title to the Grantor's Real Property and warrants the Grantee title to, and quiet enjoyment of, the Right-of-Way Easement and the Maintenance Easement conveyed in this Agreement.

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13. Authority. Each party signing this Agreement, if on behalf of an entity, represents that they have full authority to sign this Agreement on behalf of such entity.

14. Attorneys' Fees. If either party brings any suit or other proceeding arising out of or in connection with this Agreement, the prevailing party (as determined by the court or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the later of the signature dates below.

GRANTOR:

MADISON AVENUE REAL ESTATE LLC.

By: _____

Its: _____

Date: _____

GRANTEE:

CITY OF BAINBRIDGE ISLAND

By: _____

Morgan Smith, City Manager

Date: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that s/he signed this
instrument, on oath stated that s/he was authorized to execute the instrument, and acknowledged
it as the _____ of the _____ to be the free
and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
 (Print Name)
Notary Public in and for the State of Washington.
Commission Expires: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Morgan Smith is the person who
appeared before me, and said person acknowledged that she signed this instrument, on oath
stated that she was authorized to execute the instrument, and acknowledged it as the City
Manager of the City of Bainbridge Island to be the free and voluntary act of such entity for the
uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
 (Print Name)
Notary Public in and for the State of Washington.
Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR'S REAL PROPERTY

Beginning 20 feet south and 20 feet west of the northeast corner of the northeast quarter of the southeast quarter of Section 27, Township 25 North, Range 2 East, W.M.;

Thence West 150 feet;

Thence South 82 feet;

Thence East 130 feet;

Thence southeast to a point 102 feet south of the Point of Beginning;

Thence North to the Point of Beginning;

EXCEPT roads;

EXCEPT for that portion conveyed to the City of Bainbridge Island for right of way under Auditor's File No. 3217711, records of Kitsap County, Washington, described as follows:

The East 10 feet of the above described property.

EXHIBIT B

LEGAL DESCRIPTION OF RIGHT-OF-WAY EASEMENT AREA

A portion of the following described parcel;

Beginning 20 feet south and 20 feet west of the northeast corner of the northeast quarter of the southeast quarter of Section 27, Township 25 North, Range 2 East, W.M.;

Thence West 150 feet;

Thence South 82 feet;

Thence East 130 feet;

Thence southeast to a point 102 feet south of the Point of Beginning;

Thence North to the Point of Beginning;

EXCEPT roads;

EXCEPT for that portion conveyed to the City of Bainbridge Island for right of way under Auditor's File No. 3217711, records of Kitsap County, Washington, described as follows:

The east 10 feet of the above described property.

Described as follows;

Commencing at the northeast corner of the above described parcel and the True Point of Beginning;

Thence West 140.00 feet;

Thence South 4.00 feet;

Thence easterly parallel to the north line of the above described parcel 67.00 feet;

Thence South $81^{\circ}32'09''$ East 51.44 feet;

Thence southeasterly along a tangent curve to the right, having a radius of 25.00 feet, through a central angle of $82^{\circ}57'57''$, an arc distance of 36.20 feet to the easterly property line of the above described parcel and the westerly right-of-way of Madison Avenue N;

Thence northerly along said property line 34.28 feet to the True Point of Beginning.

EXHIBIT C

LEGAL DESCRIPTION OF MAINTENANCE EASEMENT AREA

A portion of the following described parcel;

Beginning 20 feet south and 20 feet west of the northeast corner of the northeast quarter of the southeast quarter of Section 27, Township 25 North, Range 2 East, W.M.;

Thence West 150 feet;

Thence South 82 feet;

Thence East 130 feet;

Thence southeast to a point 102 feet south of the Point of Beginning;

Thence North to the Point of Beginning;

EXCEPT roads;

EXCEPT for that portion conveyed to the City of Bainbridge Island for right of way under Auditor's File No. 3217711, records of Kitsap County, Washington, described as follows:

The east 10 feet of the above described property.

Described as follows;

Commencing at the northeast corner of the above described parcel and the True Point of Beginning;

Thence West 140.00 feet;

Thence South 4.00 feet;

Thence easterly parallel to the north line of the above described parcel 67.00 feet;

Thence South $81^{\circ}32'09''$ East 51.44 feet;

Thence southeasterly along a tangent curve to the right, having a radius of 25.00 feet, through a central angle of $82^{\circ}57'57''$, an arc distance of 36.20 feet to the easterly property line of the above described parcel and the westerly right-of-way of Madison Avenue N;

Thence northerly along said property line 34.28 feet to the True Point of Beginning.

EXHIBIT D

(attached)



05-28-2019 DATE	Right-of-Way Easement Area a portion of Northeast 1/4, Southeast 1/4 Sec. 27, T.25N., R.2E., W.M.		CITY OF BAINBRIDGE ISLAND PUBLIC WORKS ENGINEERING DEPARTMENT
1 NUMBER			

AFTER RECORDING RETURN TO:

Kelly Jahraus
Deputy City Clerk
City of Bainbridge Island
280 Madison Avenue N.
Bainbridge Island, WA 98110

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

Reference Number(s) of Documents Assigned or Released:

N/A

Grantor(s):

Madison Avenue Real Estate LLC, a Washington State limited liability company

Grantee:

City of Bainbridge Island, a Washington State municipal corporation

Short Legal Description:

[REDACTED]
City of Bainbridge Island, Kitsap County, Washington,
(Complete legal description on Exhibit A)

Assessor's Property Tax

Parcel/Account Number(s): 272502-4-009-2007

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

IN THE MATTER OF:
CITY OF BAINBRIDGE ISLAND

WYATT WAY RECONSTRUCTION PROJECT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (“Agreement”) is made by and between the City of Bainbridge Island, a Washington State municipal corporation, (“Grantee”) and Madison Avenue Real Estate LLC, a Washington State limited liability company (“Grantor”). The Grantor and the Grantee (the “Parties”) agree as follows:

1. Grantor’s Real Property. The Grantor is the fee owner of the real property legally described on **Exhibit A**, attached hereto and incorporated herein by this reference (“Grantor’s Real Property”).

2. Grant of Temporary Construction Easement. The Grantor, for valuable consideration, the receipt of which is hereby acknowledged, grants to the Grantee a nonexclusive temporary easement (“Temporary Construction Easement”) to use, modify, and/or occupy the portion of Grantor’s Real Property legally described on **Exhibit B** and depicted on **Exhibit C**, both of which are attached hereto and incorporated herein (“Temporary Construction Easement Area”).

3. Purpose. The Temporary Construction Easement is granted to the City to allow the City to complete the City’s Wyatt Way Reconstruction Project, which consists of, but is not limited to, the following work:

- a. Complete sidewalk and bicycle facilities on both sides of the street from Madison to Lovell;
- b. Reconstruction of roadway surfacing and drainage improvements; and
- c. Utility maintenance, improvements, and upgrades.

4. Duration. This Agreement shall take effect upon execution by both Parties. The Temporary Construction Easement granted under this Agreement shall remain in full force and effect until completion of the City’s Wyatt Way Reconstruction Project, at which point the Temporary Construction Easement shall expire and no longer be in force or effect. For the purposes of this Agreement, completion of the City’s Wyatt Way Reconstruction Project shall occur on the date of the City’s final acceptance of the work performed by the contractor hired by the City to construct the project.

5. Indemnity. By executing this Agreement, the Grantee agrees to indemnify and hold harmless the Grantor from any and all claims for injuries or damages suffered by any person or property which may be caused by the Grantee’s exercise of the rights granted herein; provided, that the Grantee shall not be responsible to the Grantor for any injuries or damages suffered by any person or property caused by the acts or omissions of the Grantor or their agents.

6. Restoration. If the surface of the Temporary Construction Easement Area is disturbed by the Grantee in completing the Wyatt Way Reconstruction Project, then the Grantee shall restore the surface of the same as nearly as possible to the condition in which it existed at the commencement of the Grantee's work. Provided, that the City shall have no obligation to restore any portion of the Temporary Construction Easement Area in which the City constructed any improvement and had the legal right to construct such improvement.

7. Access. The Grantee shall have the right, without prior institution of any suit or proceeding at law, to enter upon the Temporary Construction Easement Area as necessary to complete the Wyatt Way Reconstruction Project.

8. Reservation of Rights. All rights, title, and interest, which may be used and enjoyed without interfering with the Temporary Construction Easement are reserved to the Grantor.

9. Good Title. The Grantor warrants that they have good title to the Grantor's Real Property and warrants the Grantee title to, and quiet enjoyment of, the Temporary Construction Easement for the duration of this Agreement.

10. Authority. Each party signing this Agreement, if on behalf of an entity, represents that they have full authority to sign this Agreement on behalf of such entity.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the later of the signature dates below.

Date: _____

Date: _____

By: _____

By: _____

GRANTOR

Chris Wierzbicki, Director of Public Works
City of Bainbridge Island

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that s/he signed this
instrument, on oath stated that s/he was authorized to execute the instrument, and acknowledged
it as the _____ of the _____ to be the free
and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
(Print Name)

Notary Public in and for the State of Washington.
Commission Expires: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Chris Wierzbicki is the person who
appeared before me, and said person acknowledged that he signed this instrument, on oath stated
that he was authorized to execute the instrument, and acknowledged it as the Public Works
Director of the City of Bainbridge Island to be the free and voluntary act of such entity for the
uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
(Print Name)

Notary Public in and for the State of Washington.
Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF GRANTOR'S REAL PROPERTY

272502-4-009-2007

481 Madison Ave. N (situs)
Bainbridge Island, WA 98110

That portion of the northeast quarter of the southeast quarter of Section 27, Township 25 North, Range 2 East, W.M., Kitsap County, Washington, described as follows:
Beginning 102 feet South and 287 feet West of the northeast corner of said subdivision;
Thence East 247 feet;
Thence Southeasterly to a point which is 122 feet South and 20 feet West of the northeast corner of said subdivision;
Thence South 0°40' East 81.62 feet, more or less, to a point which is 203.62 feet South and 20 feet West of the northeast corner of said subdivision;
Thence North 89°22'42" West 267 feet;
Thence North 0°40' West 101.62 feet, more or less, to Point of Beginning;

EXCEPT for the East ten feet of the above described property as dedeed for right-of-way per Auditor's File No. 3125295, records of Kitsap County, Washington;

EXCEPT Madison Avenue North

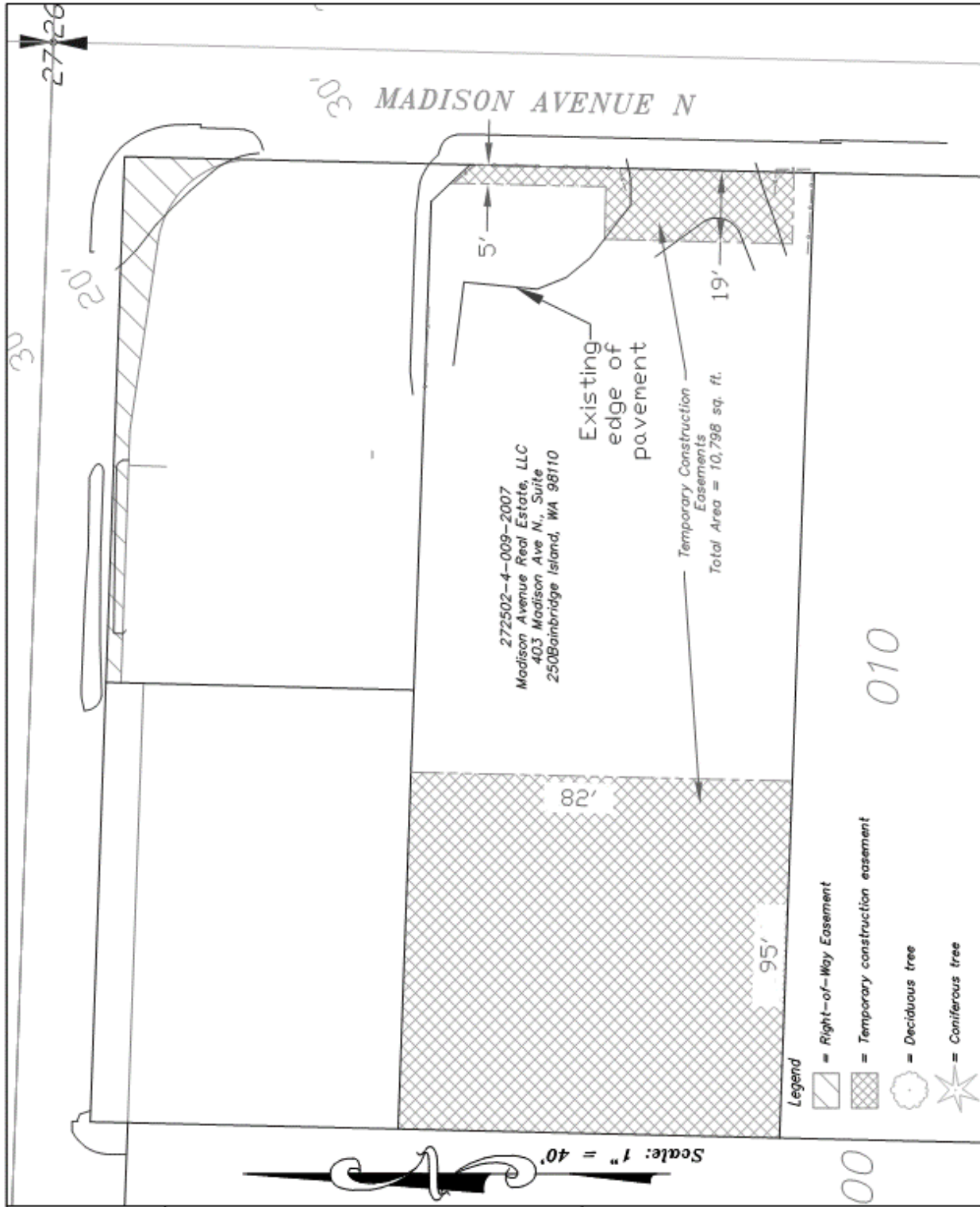
DRAFT

EXHIBIT B
LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT AREA

DRAFT

EXHIBIT C
SKETCH OF TEMPORARY CONSTRUCTION EASEMENT AREA
(attached)

DRAFT



07-30-2019
DATE

1
NUMBER

Temporary Construction Easement
a portion of
Northeast 1/4, Southeast 1/4
Sec. 27, T.25N., R.2E., W.M.

CITY OF BAINBRIDGE ISLAND

CITY OF BAINBRIDGE ISLAND

PUBLIC WORKS ENGINEERING DEPARTMENT

AFTER RECORDING RETURN TO:

Kelly Jahraus
Deputy City Clerk
City of Bainbridge Island
280 Madison Avenue N.
Bainbridge Island, WA 98110

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

Reference Number(s) of Documents Assigned or Released:

N/A

Grantor(s):

Madison Avenue Real Estate LLC, a Washington State limited liability company

Grantee:

City of Bainbridge Island, a Washington State municipal corporation

Short Legal Description:

Ptn NE ¼, SE ¼, Sec. 27, T.25N., R.2E., W.M., Kitsap County, WA, daf: Beg 20ft S & 20ft W of NE Cor of NE ¼, SE ¼; Th W 267ft; Th S 82ft; Th E 247ft; Th SE to a pt 102ft S of POB; Th N to POB

City of Bainbridge Island, Kitsap County, Washington,
(Complete legal description on Exhibit A)

Assessor's Property Tax

Parcel/Account Number(s): 272502-4-184-2004

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

IN THE MATTER OF:
CITY OF BAINBRIDGE ISLAND

WYATT WAY RECONSTRUCTION PROJECT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (“Agreement”) is made by and between the City of Bainbridge Island, a Washington State municipal corporation, (“Grantee”) and Madison Avenue Real Estate LLC, a Washington State limited liability company (“Grantor”). The Grantor and the Grantee (the “Parties”) agree as follows:

1. Grantor’s Real Property. The Grantor is the fee owner of the real property legally described on **Exhibit A**, attached hereto and incorporated herein by this reference (“Grantor’s Real Property”).

2. Grant of Temporary Construction Easement. The Grantor, for valuable consideration, the receipt of which is hereby acknowledged, grants to the Grantee a nonexclusive temporary easement (“Temporary Construction Easement”) to use, modify, and/or occupy the portion of Grantor’s Real Property legally described on **Exhibit B** and depicted on **Exhibit C**, both of which are attached hereto and incorporated herein (“Temporary Construction Easement Area”).

3. Purpose. The Temporary Construction Easement is granted to the City to allow the City to complete the City’s Wyatt Way Reconstruction Project, which consists of, but is not limited to, the following work:

- a. Complete sidewalk and bicycle facilities on both sides of the street from Madison to Lovell;
- b. Reconstruction of roadway surfacing and drainage improvements; and
- c. Utility maintenance, improvements, and upgrades.

4. Duration. This Agreement shall take effect upon execution by both Parties. The Temporary Construction Easement granted under this Agreement shall remain in full force and effect until completion of the City’s Wyatt Way Reconstruction Project, at which point the Temporary Construction Easement shall expire and no longer be in force or effect. For the purposes of this Agreement, completion of the City’s Wyatt Way Reconstruction Project shall occur on the date of the City’s final acceptance of the work performed by the contractor hired by the City to construct the project.

5. Indemnity. By executing this Agreement, the Grantee agrees to indemnify and hold harmless the Grantor from any and all claims for injuries or damages suffered by any person or property which may be caused by the Grantee’s exercise of the rights granted herein; provided, that the Grantee shall not be responsible to the Grantor for any injuries or damages suffered by any person or property caused by the acts or omissions of the Grantor or their agents.

6. Restoration. If the surface of the Temporary Construction Easement Area is disturbed by the Grantee in completing the Wyatt Way Reconstruction Project, then the Grantee shall restore the surface of the same as nearly as possible to the condition in which it existed at the commencement of the Grantee's work. Provided, that the City shall have no obligation to restore any portion of the Temporary Construction Easement Area in which the City constructed any improvement and had the legal right to construct such improvement.

7. Access. The Grantee shall have the right, without prior institution of any suit or proceeding at law, to enter upon the Temporary Construction Easement Area as necessary to complete the Wyatt Way Reconstruction Project.

8. Reservation of Rights. All rights, title, and interest, which may be used and enjoyed without interfering with the Temporary Construction Easement are reserved to the Grantor.

9. Good Title. The Grantor warrants that they have good title to the Grantor's Real Property and warrants the Grantee title to, and quiet enjoyment of, the Temporary Construction Easement for the duration of this Agreement.

10. Authority. Each party signing this Agreement, if on behalf of an entity, represents that they have full authority to sign this Agreement on behalf of such entity.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the later of the signature dates below.

Date: _____

Date: _____

By: _____

By: _____

GRANTOR

Chris Wierzbicki, Director of Public Works
City of Bainbridge Island

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that s/he signed this
instrument, on oath stated that s/he was authorized to execute the instrument, and acknowledged
it as the _____ of the _____ to be the free
and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
(Print Name)

Notary Public in and for the State of Washington.
Commission Expires: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Chris Wierzbicki is the person who
appeared before me, and said person acknowledged that he signed this instrument, on oath stated
that he was authorized to execute the instrument, and acknowledged it as the Public Works
Director of the City of Bainbridge Island to be the free and voluntary act of such entity for the
uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
(Print Name)

Notary Public in and for the State of Washington.
Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF GRANTOR'S REAL PROPERTY

272502-4-184-2004

Beginning 20 feet south and 20 feet west of the northeast corner of the northeast quarter of the southeast quarter of Section 27, Township 25 North, Range 2 East, W.M.;
Thence West 267 feet;
Thence South 82 feet;
Thence East 247 feet;
Thence southeast to a point 102 feet south of the Point of Beginning;
Thence North to the Point of Beginning;
EXCEPT roads;

AND EXCEPT that portion described as follows:

Beginning 20 feet south and 20 feet west of the northeast corner of the northeast quarter of the southeast quarter of Section 27, Township 25 North, Range 2 East, W.M.;
Thence West 150 feet;
Thence South 82 feet;
Thence East 130 feet;
Thence southeast to a point 102 feet south of the Point of Beginning;
Thence North to the Point of Beginning;
EXCEPT roads.

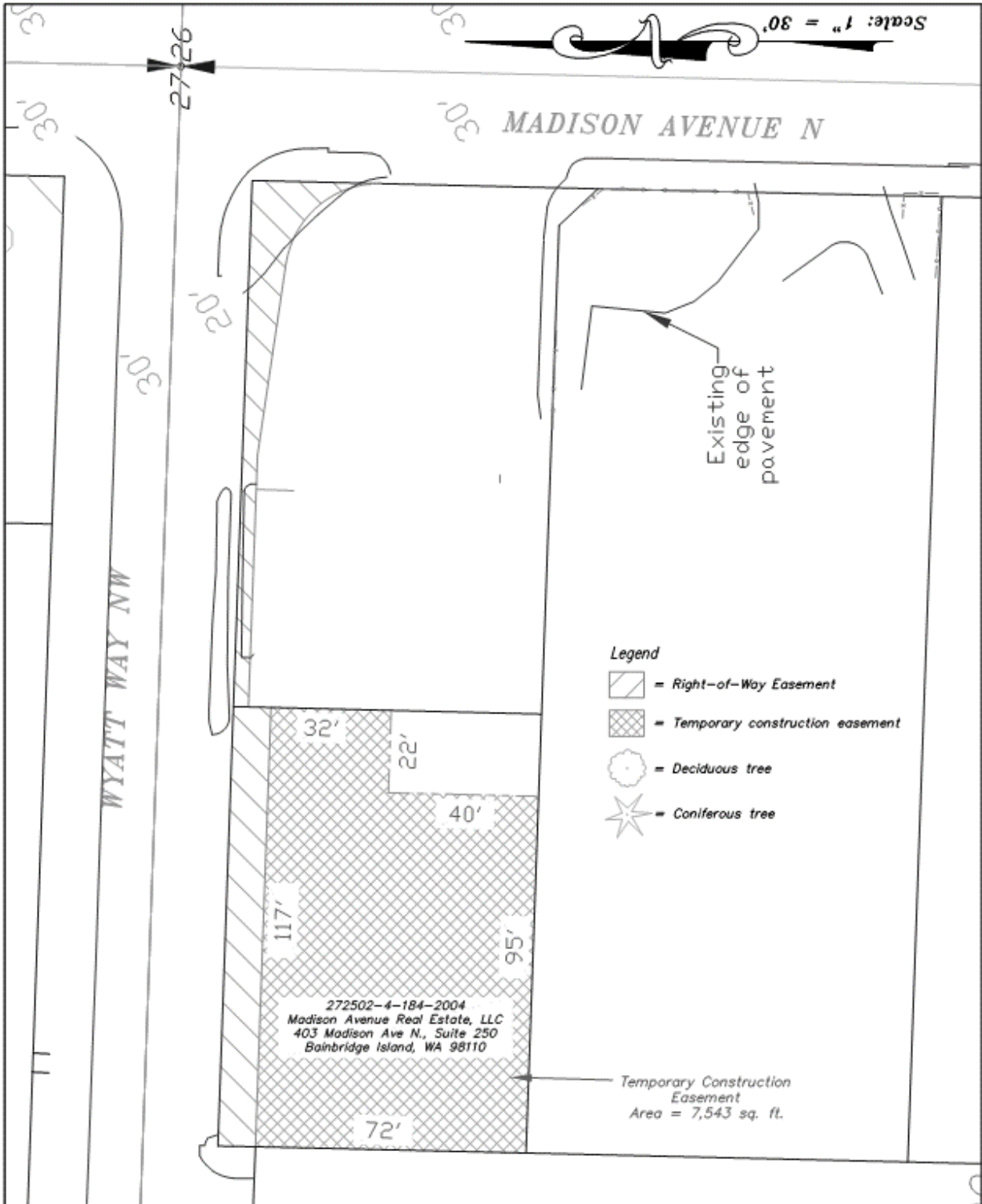
DRAFT

EXHIBIT B
LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT AREA

DRAFT

EXHIBIT C
SKETCH OF TEMPORARY CONSTRUCTION EASEMENT AREA
(attached)

DRAFT



07-30-2019
DATE

1
NUMBER

Temporary Construction Easement
a portion of
Northeast 1/4, Southeast 1/4
Sec. 27, T.25N., R.2E., W.M.

CITY OF
BAINBRIDGE ISLAND

CITY OF BAINBRIDGE ISLAND

PUBLIC WORKS ENGINEERING DEPARTMENT

AFTER RECORDING RETURN TO:

Kelly Jahraus
Deputy City Clerk
City of Bainbridge Island
280 Madison Avenue N.
Bainbridge Island, WA 98110

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

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N/A

Grantor(s):

Madison Avenue Real Estate LLC, a Washington State limited liability company

Grantee:

City of Bainbridge Island, a Washington State municipal corporation

Short Legal Description:

Ptn NE ¼, SE ¼, Sec. 27, T.25N., R.2E., W.M., Kitsap County, WA, daf: Beg 20ft S & 20ft W of NE Cor of NE ¼, SE ¼; Th W 150ft; Th S 82ft; Th E 130ft; Th SE to a pt 102ft S of POB; Th N to POB

City of Bainbridge Island, Kitsap County, Washington,
(Complete legal description on Exhibit A)

Assessor's Property Tax

Parcel/Account Number(s): 272502-4-185-2003

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

IN THE MATTER OF:
CITY OF BAINBRIDGE ISLAND

WYATT WAY RECONSTRUCTION PROJECT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (“Agreement”) is made by and between the City of Bainbridge Island, a Washington State municipal corporation, (“Grantee”) and Madison Avenue Real Estate LLC, a Washington State limited liability company (“Grantor”). The Grantor and the Grantee (the “Parties”) agree as follows:

1. Grantor’s Real Property. The Grantor is the fee owner of the real property legally described on **Exhibit A**, attached hereto and incorporated herein by this reference (“Grantor’s Real Property”).

2. Grant of Temporary Construction Easement. The Grantor, for valuable consideration, the receipt of which is hereby acknowledged, grants to the Grantee a nonexclusive temporary easement (“Temporary Construction Easement”) to use, modify, and/or occupy the portion of Grantor’s Real Property legally described on **Exhibit B** and depicted on **Exhibit C**, both of which are attached hereto and incorporated herein (“Temporary Construction Easement Area”).

3. Purpose. The Temporary Construction Easement is granted to the City to allow the City to complete the City’s Wyatt Way Reconstruction Project, which consists of, but is not limited to, the following work:

- a. Complete sidewalk and bicycle facilities on both sides of the street from Madison to Lovell;
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- c. Utility maintenance, improvements, and upgrades.

4. Duration. This Agreement shall take effect upon execution by both Parties. The Temporary Construction Easement granted under this Agreement shall remain in full force and effect until completion of the City’s Wyatt Way Reconstruction Project, at which point the Temporary Construction Easement shall expire and no longer be in force or effect. For the purposes of this Agreement, completion of the City’s Wyatt Way Reconstruction Project shall occur on the date of the City’s final acceptance of the work performed by the contractor hired by the City to construct the project.

5. Indemnity. By executing this Agreement, the Grantee agrees to indemnify and hold harmless the Grantor from any and all claims for injuries or damages suffered by any person or property which may be caused by the Grantee’s exercise of the rights granted herein; provided, that the Grantee shall not be responsible to the Grantor for any injuries or damages suffered by any person or property caused by the acts or omissions of the Grantor or their agents.

6. Restoration. If the surface of the Temporary Construction Easement Area is disturbed by the Grantee in completing the Wyatt Way Reconstruction Project, then the Grantee shall restore the surface of the same as nearly as possible to the condition in which it existed at the commencement of the Grantee's work. Provided, that the City shall have no obligation to restore any portion of the Temporary Construction Easement Area in which the City constructed any improvement and had the legal right to construct such improvement.

7. Access. The Grantee shall have the right, without prior institution of any suit or proceeding at law, to enter upon the Temporary Construction Easement Area as necessary to complete the Wyatt Way Reconstruction Project.

8. Reservation of Rights. All rights, title, and interest, which may be used and enjoyed without interfering with the Temporary Construction Easement are reserved to the Grantor.

9. Good Title. The Grantor warrants that they have good title to the Grantor's Real Property and warrants the Grantee title to, and quiet enjoyment of, the Temporary Construction Easement for the duration of this Agreement.

10. Authority. Each party signing this Agreement, if on behalf of an entity, represents that they have full authority to sign this Agreement on behalf of such entity.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the later of the signature dates below.

Date: _____

Date: _____

By: _____

By: _____

GRANTOR

Chris Wierzbicki, Director of Public Works
City of Bainbridge Island

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that s/he signed this
instrument, on oath stated that s/he was authorized to execute the instrument, and acknowledged
it as the _____ of the _____ to be the free
and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
(Print Name)

Notary Public in and for the State of Washington.
Commission Expires: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Chris Wierzbicki is the person who
appeared before me, and said person acknowledged that he signed this instrument, on oath stated
that he was authorized to execute the instrument, and acknowledged it as the Public Works
Director of the City of Bainbridge Island to be the free and voluntary act of such entity for the
uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
(Print Name)

Notary Public in and for the State of Washington.
Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF GRANTOR'S REAL PROPERTY

272502-4-185-2003

499 Madison Ave. N.
Bainbridge Island, WA 98110

Beginning 20 feet south and 20 feet west of the northeast corner of the northeast quarter of the southeast quarter of Section 27, Township 25 North, Range 2 East, W.M.;

Thence West 150 feet;

Thence South 82 feet;

Thence East 130 feet;

Thence southeast to a point 102 feet south of the Point of Beginning;

Thence North to the Point of Beginning;

EXCEPT roads;

EXCEPT for that portion conveyed to the City of Bainbridge Island for right of way under Auditor's File No. 3217711, records of Kitsap County, Washington, described as follows:

The east 10 feet of the above described property.

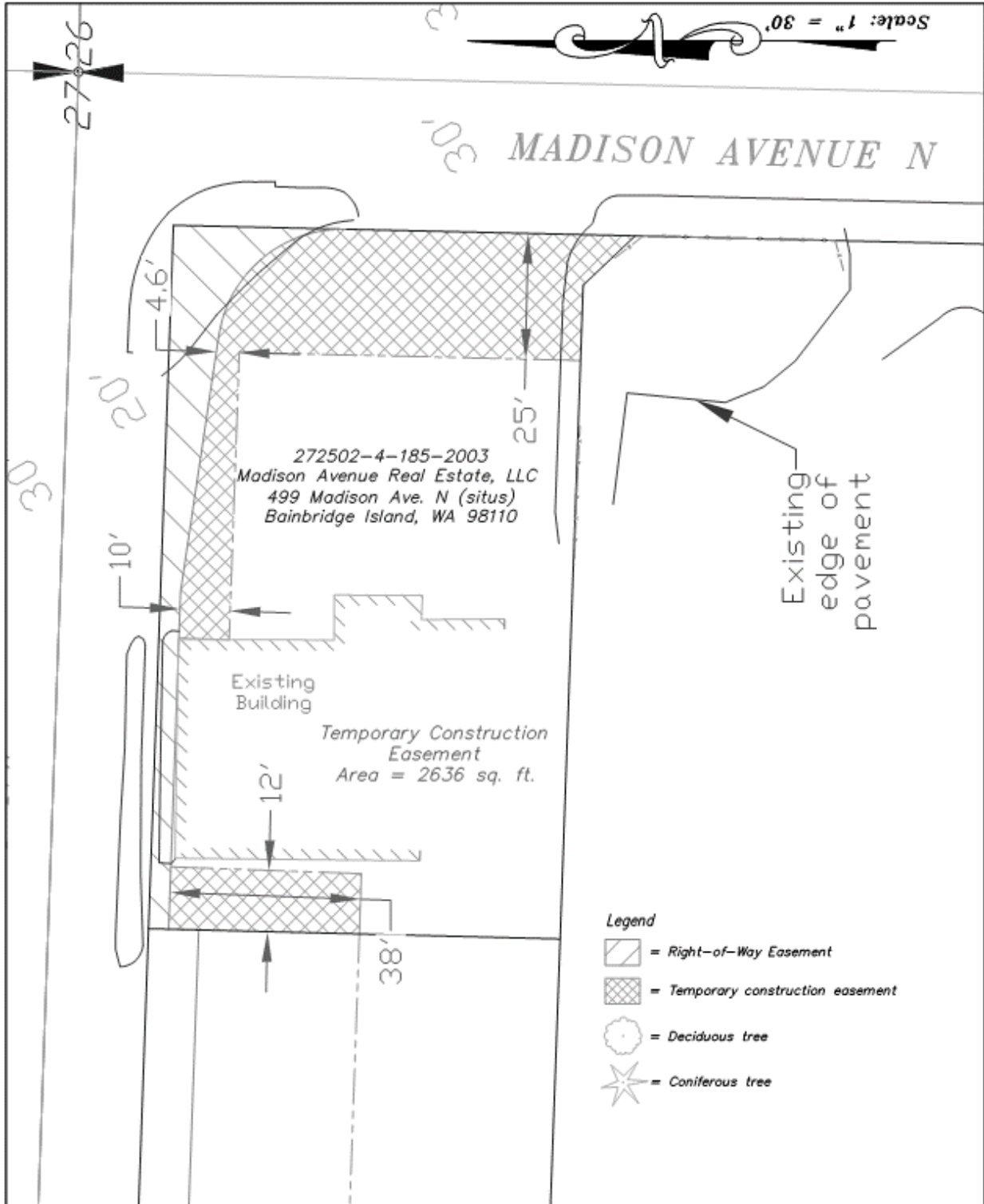
DRAFT

EXHIBIT B
LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT AREA

DRAFT

EXHIBIT C
SKETCH OF TEMPORARY CONSTRUCTION EASEMENT AREA
(attached)

DRAFT



07-29-2019 DATE	Temporary Construction Easement a portion of		CITY OF BAINBRIDGE ISLAND PUBLIC WORKS ENGINEERING DEPARTMENT
1 NUMBER	Northeast 1/4, Southeast 1/4 Sec. 27, T.25N., R.2E., W.M.		



MEMORANDUM

TO: Rob Grant, P.L.S.
City of Bainbridge Island

FROM: Faith Roland, SR/WA

DATE: August 6, 2019

SUBJECT: Administrative Settlement: *Wyatt Way Improvements*
Landowner: Madison Avenue Real Estate, LLC

Offer

An offer was made on July 24, 2018 to John Eisenhauer, President and Manager of Madison Avenue Real Estate, LLC for 2,130 square feet of in fee and 7,524 square feet of temporary construction easement associated with the *Wyatt Way Improvement Project*. The offer was presented in person at Mr. Eisenhauer's office in Bainbridge Island, WA.

Offer Total: \$106,000.00 (rounded)

Tax Parcel Number: 272502-4-185-2003; 272502-4-184-2004; 272502-4-009-2007

Discussion and Analysis:

Negotiations with John Eisenhauer determined Madison Avenue Real Estate is proceeding with redevelopment of the property pending design and permit approval with City of Bainbridge Island.

During negotiations with the property owner a settlement was agreed upon at a price of \$180,000.00 (rounded) and based on the following conditions:

- Convert the fee acquisition to Right-of-Way Easement and Agreement.
- Enlarge Temporary Construction Easement area 13,453 square feet for a total of 20,977 square feet of to accommodate additional construction staging.
- Construction of a new curb cut / driveway on parcel 272502-4-185-2003 to mitigate for the removal of the existing driveway on Wyatt Way nearest to Madison Street.

\$ 71,888.00 for 2,130 SF of Right-of-Way Easement @ \$33.75/SF

\$ 75,520.00 for 20,977 SF of Temporary Construction Easement @ \$3.60/SF

\$ 6,542.00 for Improvements impacted

\$ 26,050.00 Administrative settlement

Total: \$ 180,00.00 (Rounded)



RECOMMENDATION:

The owner’s counter-offer of \$180,000.00 results in a unit price of approximately \$53 per square foot of land (fee), which is approximately a 17.5% increase from the appraised land value of \$45 per square foot. The appraisal which provided the basis for the offer references the “Effective Date of Value” as December 6, 2017. This date is approximately 20 months old and suggests the appraised value and initial offer price does not accurately reflect the current Fair Market Value of the acquisition. The settlement will allow the property owner to mitigate for perceived impacts of project construction on the existing automotive business.

The additional project temporary construction easement area will require coordination with the property owner and business owner on construction timing and associated on-site restoration. The temporary construction easement has the potential to temporarily displace up to 10 parking stalls used by the existing automotive business during on-site restoration.

In the interest of time and the resources required to pursue additional negotiations, and imminent legal action authorizing eminent domain, we recommend approval of the proposed \$180,000.00 administrative settlement, which is a \$26,050.00 increase, as supportable, reasonable and in the public’s best interest.

Accepted By _____ Date _____

Its _____