

**LANDSCAPING AND MAINTENANCE AGREEMENT:
I-84 AND TEN MILE ROAD INTERCHANGE**

This LANDSCAPING AND MAINTENANCE AGREEMENT (“Agreement”) is made effective this ____ day of _____, 2024, by and between the CITY OF MERIDIAN, a municipal corporation organized under the laws of the State of Idaho (“City”), and TEN MILE CROSSING INC., an Idaho corporation (“Brighton”). City and Brighton may be referred to as a Party or collectively as the “Parties.”

WHEREAS, on December 3, 2009, City and the Idaho Transportation Department (“ITD”) entered into an Interagency Agreement for Landscaping and Maintenance of the Interstate-84/Ten Mile Road Interchange (“2009 ITD Agreement”), attached hereto as Exhibit A;

WHEREAS, *inter alia*, the 2009 ITD Agreement requires City to maintain the landscape improvements installed at I-84 and Ten Mile Road;

WHEREAS, Brighton is willing to assume responsibility for such landscape maintenance as it pertains to the locations depicted on Exhibit B;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. BRIGHTON’S RESPONSIBILITIES.

- A. **Assumption of City’s responsibilities.** As it pertains to the area depicted in Exhibit B, Brighton shall assume all responsibilities set forth in Article III of the 2009 ITD Agreement, titled “Responsibilities of City,” except those items listed in Article II *City’s Responsibility* below.
- B. **Landscaped areas as-is.** Brighton acknowledges and accepts that the landscaped areas to be maintained on an “as is” and “where is” basis. Brighton shall be solely responsible for any and all measures necessary to provide the landscaping services in a manner that is safe for persons conducting the work, and for users of the adjacent roadways.

II. CITY’S RESPONSIBILITIES.

- A. **Install new landscaping.** City shall install new landscaping at the landscaped areas described in the 2009 ITD Agreement as generally set forth in Section 2.2 of that agreement and the plans attached hereto as Exhibit C.
- B. **Maintain sidewalks.** The City shall continue to be responsible for maintaining the sidewalks installed within the Project Site pursuant to Section 3.5 of the 2009 ITD Agreement.

III. GENERAL TERMS.

- A. **Term and termination.** This Agreement shall remain in effect until December 31, 2034. The term of this Agreement shall be renewed automatically for one-year periods thereafter unless

terminated by either party in the manner provided in this Agreement. This Agreement shall automatically terminate if the 2009 ITD Agreement is terminated pursuant to Section 6.2 of that agreement.

- B. Assumption of risk.** Brighton acknowledges that provision of services under this Agreement may carry a risk of injury, illness, and/or death, some of which risks may be unknown, and, with that knowledge, Brighton hereby assumes all such risks and hazards.
- C. Indemnification.** Brighton shall fully indemnify, hold harmless and defend and City from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, expenses (including but not limited to reasonable attorney's fees), or injury to persons or property, whether or not involving a third party claim, which arise out of or relate to any act or omission of in carrying out Brighton's responsibilities under this Agreement. The limits of Brighton's insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless City; and if City becomes liable for an amount in excess of the insurance limits herein provided due to the actions or omissions of Brighton or Brighton's employees, agents, contractors, or invitees, Brighton covenants and agrees to indemnify and save and hold harmless City from and for all such losses, claims, actions, or judgments for damages or liability to persons or property. Brighton does not assume the indemnity obligations of City contained in Article IV of the 2009 ITD Agreement.
- D. Insurance.** Each party shall obtain all necessary insurance as may be required in order to protect its respective insurable interests as may be related to its rights and obligations described within this Agreement.
- E. Waiver.** Brighton waives and releases, on behalf of Brighton and Brighton's heirs, executors, administrators, assigns, and/or personal representatives, any and all claims and recourse against City, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to Brighton's performance of this Agreement, whether such loss or damage may be attributable to known or unknown conditions, except for liability arising out of concurrent or sole negligence of City or its officers, agents or employees.
- F. Compliance with law.** Throughout the course of this Agreement, the Parties shall comply with any and all applicable federal, state, and local laws.
- G. Force Majeure.** No Party will be liable for failure to perform any duty under this Agreement where such failure is due to or made impracticable by unforeseeable causes beyond the Parties' control and without the fault or negligence of the Parties, including, but not restricted to, acts of God or the public enemy, fire, flood, natural disaster, epidemic, strike, or order of any court or authorized agency.
- H. State of Idaho requirements.** The following provisions are required by the State of Idaho. The inclusion of these provisions in this Agreement does not indicate that these clauses are relevant to the subject matter of this Agreement; rather, these provisions are included solely to comply with the laws of the State of Idaho.

- 1. Anti-Boycott Against Israel Act.** Pursuant to Idaho Code § 67-2346, as applicable, Brighton certifies that Brighton is not currently engaged in, and will not for the duration of this Agreement engage in, a boycott of goods or services from Israel or territories under Israel's control. The terms "company" and "boycott Israel" shall have the meanings ascribed to them in Idaho Code § 67-2346.
 - 2. No Public Funds for Abortion Act.** Pursuant to Idaho Code § 18-8703, as applicable, Brighton certifies that Brighton is not, and will not for the duration of this Agreement become, an abortion provider or an affiliate of an abortion provider, as those terms are defined in the "No Public Funds for Abortion Act," Idaho Code §§ 18-8701 *et seq.*
 - 3. Contract with company owned or operated by the government of China prohibited.** Pursuant to Idaho Code § 67-2359, as applicable, Brighton certifies that Brighton is not a company currently owned or operated by the government of China and will not for the duration of this Agreement be owned or operated by the government of China. The terms "company" and "government of China" shall have the meanings ascribed to them in Idaho Code § 67-2359.
- I. Time of the essence.** The Parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations agreed to hereunder shall constitute a breach of, and a breach of this Agreement, by the Party so failing to perform.
- J. Binding on Successors.** This Agreement shall be binding on the successors, administrators, executors and assigns of all Parties hereto.
- K. Non-waiver.** No waiver by either Party operates as, or is to be construed as, a waiver in respect of any failure, breach, or default not expressly identified by an express, written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates as, or is to be construed as, a waiver thereof; nor does any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- L. Third-party beneficiaries.** This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third-party beneficiary rights in any person or entity not a Party hereto.
- M. Assignment.** Neither Party shall sell, transfer, or assign its interest in this Agreement without first providing written notice to the other Party.
- N. Notices.** All notices, demands and requests required or desired to be given under this Agreement must be in writing and shall be deemed to have been provided as of the date such writing is mailed, via U.S. Mail, prepaid and addressed, if to Brighton to Ten Mile Crossing Inc., 2929 W. Navigator Drive, Suite 400, Meridian, Idaho 83642, or, if to City, to Meridian City Clerk, 33 E. Broadway Avenue, Meridian, Idaho, 83642.

- O. Entire agreement.** This Agreement constitutes the entire understanding between the Parties. This Agreement supersedes any and all statements, promises, or inducements made by either Party, or agents of either Party, whether oral or written, and whether previous to the execution hereof or contemporaneous herewith. The terms of this Agreement may not be enlarged, modified or altered except upon written agreement signed by both Parties hereto. If the 2009 ITD Agreement is modified pursuant to Section 6.7 of said agreement, City shall provide Brighton with a copy of said modification within three (3) business days of its execution. Within five (5) business days from receipt of the modification, the Parties shall amend this Agreement to provide Brighton the opportunity to assume or decline to assume the modification to the modification.

- P. Agreement governed by Idaho law.** The validity, interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Idaho, including, without limitation, Article VIII, Section 3, of the Idaho Constitution limiting indebtedness. Venue shall be in the courts of Ada County, Idaho.

- Q. Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected.

- R. Exhibits.** All exhibits to this Agreement are incorporated by reference and made a part of hereof as if the exhibits were set forth in their entirety herein.

- S. Warranty of authority.** Each party represents that all corporate action necessary for the authorization, acceptance and delivery of this Agreement by such party and the performance of its obligations hereunder has been taken.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed the day and year first written above.

BRIGHTON:

TEN MILE CROSSING INC.,
 an Idaho corporation

By: _____
 Robert L. Phillips, President

CITY:

City of Meridian

ATTEST:

 Robert E. Simison, Mayor

 Chris Johnson, City Clerk

Exhibit A

**INTERAGENCY AGREEMENT FOR
LANDSCAPING AND MAINTENANCE
OF THE INTERSTATE-84/TEN MILE ROAD INTERCHANGE
Project No. A011(932)
Key No. 11932**

This AGREEMENT ("Agreement") is made and entered into this 3rd day of December, 2009, by and between the Idaho Transportation Department (hereinafter, "State"), and the City of Meridian, an Idaho municipal corporation, (hereinafter, "City") (collectively, the "Parties").

RECITALS

WHEREAS, the City has requested that the State approve the expenditure of transportation funds for landscape treatments of the Idaho Transportation Department's Interstate 84 / Ten Mile Rd IC Landscaping Project No. A011(932) to provide scenic enhancement of a gateway road into the City of Meridian; and

WHEREAS, the City is committed to protecting the investment of these funds by performing certain maintenance as agreed upon between the parties; and

WHEREAS, authority for this Agreement is established in Section 40-317, Idaho Code, which allows for cooperative agreements between the Idaho Transportation Department and municipalities for the construction of and improvements to bridges and state highways; and

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties do mutually undertake, promise, and agree as follows:

I. Appropriation of Funds

This Agreement contemplates that the State will appropriate sufficient funds, not to exceed \$880,000.00, to design and construct landscaping for the new interchange at the junction of Interstate 84 and Ten Mile Road, in Meridian, Idaho, near Mile Post 42.00 (hereinafter, "Project Site"). This Agreement is limited to that project, identified as ITD Project No. A011(932) and specifically shown on Exhibit A, attached hereto and incorporated herein. If, within two (2) years of signing of this Agreement by the parties, sufficient funds for this transportation project are not appropriated and a bid process is not completed with the awarding of construction of Project No. A011(932), this Agreement shall become null and void and neither party shall have any obligations to the other under its terms.

II. Responsibilities of State

2.1 State will design and install landscape features in accordance with the Project Plans for Project No. A011(932), shown on Exhibit A to this Agreement.

2.2 State agrees that it will provide and install landscape improvements described as follows:

- a. Four (4) Islands/Approach Triangles improved with shrubs, perennials, non-mown grasses, rock mulch, sidewalk, stamped colored concrete border, topsoil, and pressurized irrigation system;
- b. Two (2) raised median areas on Ten Mile Road improved with shrubs, perennials, non-mown grasses, rock mulch, stamped colored concrete border, topsoil, and pressurized irrigation system;
- c. Interchange ramp and Ten Mile Road slopes improved with non-mown grass;
- d. Interchange detention ponds improved with water tolerant shrubs and water tolerant non-mown grass;

2.3 State agrees to notify City of any future highway construction that would impact the landscape improvements covered by this Agreement, and to seek mutually-agreeable solutions to any such construction in order to minimize the destruction or removal of the landscape improvements covered by this Agreement. If a solution is not found, both parties understand and agree that State shall be allowed to remove the landscape improvements at its expense and that City's obligations under this agreement shall cease. In such event, State agrees to provide sixty (60) days written notice to City prior to any construction or other actions to remove the landscape improvements.

2.4 State agrees to hold contractors/subcontractors responsible for any and all damages to the landscape improvements resulting from contracted work at the Project Site.

2.5 State, or its Contractor, shall assure the establishment of plantings by watering, cultivating, replacement of plants or mulch, and other work necessary to maintain the plants in a healthy condition, throughout a plant establishment period of one year.

2.6 State shall maintain the Ten Mile IC bridge structure, including the irrigation pipe sleeve provided for installation of the pressurized irrigation system through the structure. State shall also maintain the integrity and functionality of the Interchange detention ponds located within the I-84 Right-Of-Way.

2.7 State agrees to hold all contractors responsible for warranties provided under agreements between State and contractors/subcontractors for the benefit of City in its maintenance obligations under this Agreement. All warranties shall be for a minimum of a one year period from date of substantial completion.

III. Responsibilities of City

3.1 The City will review and approve the construction plans and specifications, prior to the project advertisement for construction.

3.2 Upon completion of construction of Project No. A011(932) and City inspection and sign-off of the landscape improvements, City will assume responsibility for maintenance and care of the landscape improvements described above, as follows:

- a. Maintain all shrubs, perennials, and grasses in a healthy condition, replacing any vegetation with same or equivalent plantings as needed, with responsibility for replacement after completion of the one year establishment period;
- b. Maintain the graded areas to the shape and contours as established at the Project Site, unless a modified grading plan is approved by Idaho Transportation Department;
- c. Remove trash and other roadside debris from the approach triangles formed by the on and off ramps at the Project Site;
- d. Trim and prune as required to remove dead materials and to maintain the vegetation in an attractive condition;
- e. Operate and maintain the pressurized irrigation system, including main and distribution pipes, the pressurized irrigation pipe within the pipe sleeve in the interchange bridge structure, valves, sprinklers, and control system, with responsibility for replacement after the Contractor warranty periods are complete;
- f. Maintain sprinklers so that they do not wet the roadways.
- g. Utilize State-approved highway safety procedures for City personnel during all times of landscape maintenance completed within the State retained Right-of-Way;

3.3 City shall be required to perpetually maintain the landscape areas within the Project Site as shown on Exhibit A, subject to annual appropriation of such maintenance cost by the City and in conformity with the provisions of Article VIII, Section 3 of the Idaho Constitution.

3.4 Should the City desire additional landscape improvements after completion of Project No. A011(932), City will comply with State's standard permitting and approval process for work completed within the I-84 and Ten Mile Interchange Right-Of-Way.

IV. Indemnity

Should any part of the landscape features within the State retained Right-of-Way and maintained by the City be damaged or destroyed through the wrongful or negligent act of any third party, the State will make every effort to determine the identity and whereabouts of the responsible party and the State will attempt collection of the costs of the repair or replacement. If the State is able to collect the cost of repair or replacement, it will advance the funds to the City, based on City estimates or repair invoices.

City does hereby indemnify, save and hold harmless State from and against any and all liability, damages or costs, known or unknown, relating to or as a result of City's maintenance of the Project Site and not as the result of the negligence of State.

State does hereby indemnify, save and hold harmless the City from and against any and all liability, damages or costs, known or unknown, relating to or as a result of defects in the construction of Project No. A011(932) resulting in additional cost to the City to plant, repair, replace or maintain the aesthetic improvements which are the subject of this Agreement and not as the result of the negligence of the City.

V. Term of Agreement

It is anticipated the term of this Agreement shall be perpetual, subject to annual appropriation of such maintenance cost by the City and in conformity with the provisions of Article VIII, Section 3 of the Idaho Constitution. Neither party may terminate this Agreement without the prior written consent of the other party, other than as set forth in this Agreement.

VI. General Provisions

6.1 **Contact Information:** The contact for the Idaho Transportation Department shall be the Assistant District Three Engineer (Operations) at (208)334-8300. The contact for the City of Meridian shall be the Director of Public Works at (208) 898-5500.

6.2 **Termination of Interagency Agreement/Nonappropriation:** Nothing in this Agreement shall be construed to be an indebtedness or liability in violation of Article VIII, Section 3 of the Idaho Constitution.

6.3 **Attorney Fees:** In the event of any controversy, claim, or action being filed or instituted between the parties to enforce the terms and conditions of this Agreement, or arising from the breach of any provision hereof, the prevailing party will be entitled to receive from the other Party all costs, damages, and expenses, including reasonable

attorneys' fees including fees on appeal, incurred by the prevailing party. The prevailing party will be that party who was awarded judgment as a result of trial or arbitration.

6.4 Choice of Law: This Agreement shall be governed by, and construed in accordance with, the laws of the State of Idaho.

6.5 Exhibits: All exhibits to this Agreement are incorporated by reference and made a part of this Agreement as if the exhibits were set forth in their entirety in this Agreement.

6.6 Entire Agreement: This Agreement and the exhibits hereto constitute the full and entire understanding and agreement between the parties with regard to the transaction contemplated herein, and no party shall be liable or bound to the other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

6.7 Acknowledgments and Modifications: No acknowledgments required hereunder, and no modification or waiver of any provision of this Agreement or consent to departure there from, shall be effective unless in writing and signed by State and City.

6.8 Headings: The headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

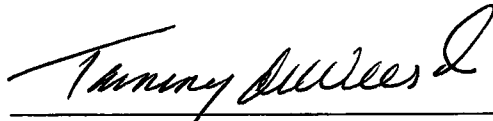
6.9 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

End of Agreement
[Signature page follows.]


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF MERIDIAN

IDAHO TRANSPORTATION DEPARTMENT



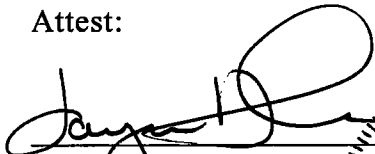
Tammy de Weerd, Mayor



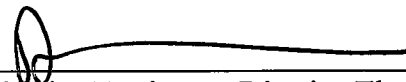
Assistant Chief Engineer (Development)

Attest:

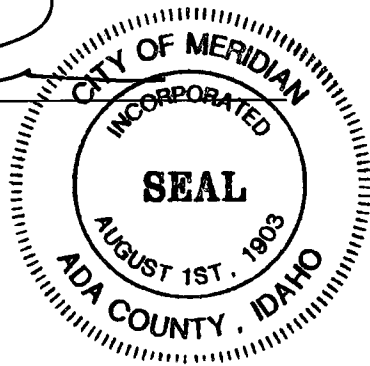
Recommended by:



City Clerk

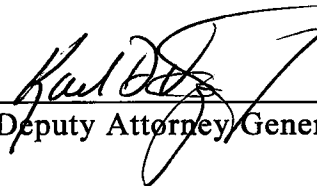


District Engineer, District Three




APPROVED AS TO FORM:

Date



Deputy Attorney General



Date

Exhibit A Index

Sheets

1	Legend and Project Totals
2 - 6	Landscape Exhibits 1 - 5

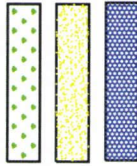
I-84 TEN MILE RD IC LANDSCAPING FEDERAL AID PROJECT NO. A011(932)

**KEY NO. 11932
ADA COUNTY**

LEGEND

SYM DESCRIPTION

- DC COMPACT OREGON GRAPE-MAHONIA AQUIFOLIUM 'COMPACTA'-5 GAL
- RG ROSE GLOW BARBERRY-BERBERIS THAMNIFOLIA VAR 'ROSE GLOW'-5 GAL
- GL GROW-LOW SUMAC-RHUS AROMATICA 'GROW-LOW'-5 GAL
- LF LOWFAST GOTTONEASTER-GOTTONEASTER 'DAMMERI LOWFAST'-5 GAL
- WR WHITE MEIDLAND ROSE-ROSA 'ALBA MEIDLAND'-5 GAL
- SW SUMMERWINE NINEBARK-PHYSCARPUS OPULIFOLIUS 'SUMMERWINE'-5 GAL
- TU YUCCA-YUCCA FILAMENTOSA-2 GAL
- FG FLAME GRASS-MISCANTHUS SINENSIS PURPURASCENS-1 GAL
- KF KARL FORESTER FEATHER REED-CALAMAGROSTIS X ACUTIFLORA 'KARL FORESTER'-1 GAL
- MG DWARF MAIDEN GRASS-MISCANTHUS SINENSIS 'ADAGID'-1 GAL
- BE BLACK-EYED SUSAN-RUDECKIA FULGIDA 'GOLDSTRUM'-1 GAL (8" SP)
- DL STELLA D'ORO DAYLILY-HEMORCALLIS 'STELLA D'ORO'-1 GAL
- LV HICCOTE LAVENDER-LAVANDULA ANGSTIFOLIA 'HICCOTE'-1 GAL
- RS RUSSIAN SAGE-PEROVSKIA ATRIPLIFOLIA-1 GAL



UNMOWN GRASS SEEDING - MIX OF CHEWINGS FESCUE, HARD FESCUE, AND COVAR SHEEP FESCUE

ROCK MULCH - 2" CRUSHED BASALT ROCK CHARCOAL GRAY WITH TAN IN COLOR. INSTALL 4" THICKNESS ON WEED BARRIER FABRIC.

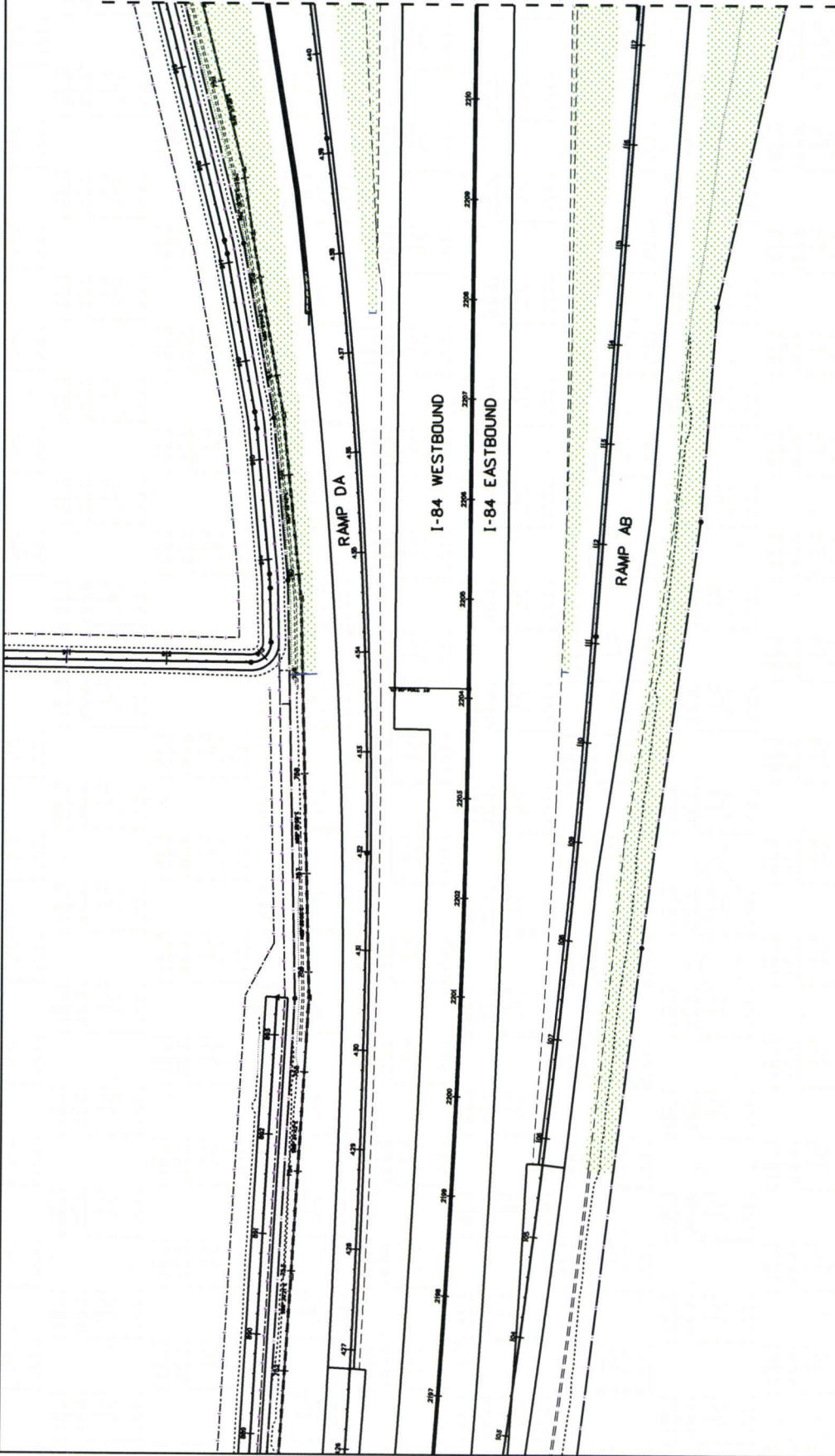
RIVER COBBLE - 4-6" WASHED RIVER COBBLE. INSTALL 6" THICKNESS ON WEED BARRIER FABRIC.

APPROXIMATE PROJECT TOTALS

UNMOWN GRASS SEEDING - 18.0 AC
SHRUBS - 1,297 EA
PERENNIALS - 3,009 EA

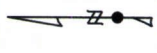
**LANDSCAPE EXHIBIT A
I-84 TEN MILE RD IC LANDSCAPING
PROJECT NO. A011(932)
KEY NO. 11932**

SCALE 1"=100'



MATCH LINE SEE EXHIBIT 2

LANDSCAPE EXHIBIT 1
I-84 TEN MILE RD IC LANDSCAPING
PROJECT NO. A011(932)
KEY NO. 11932

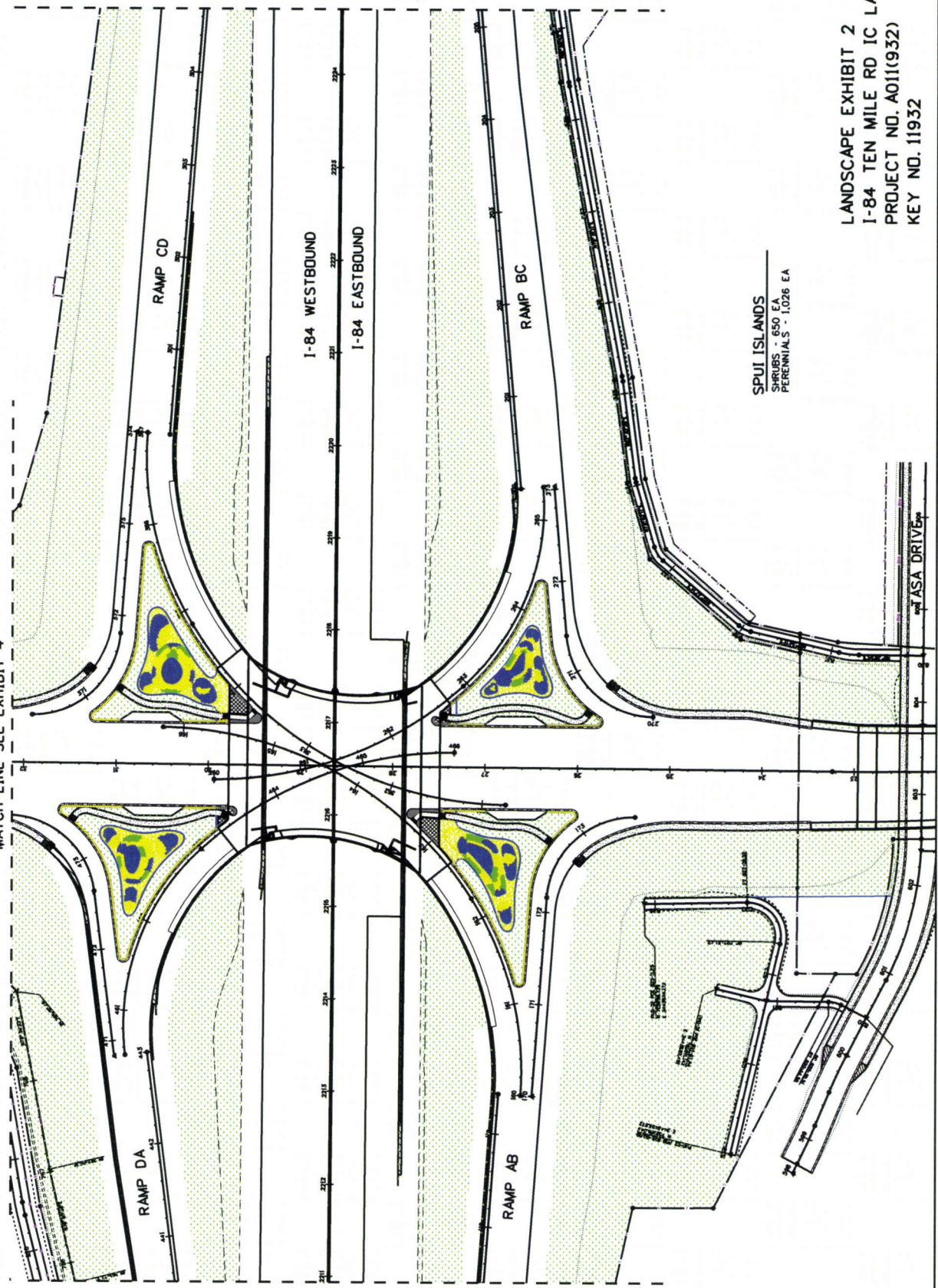


SCALE 1"=100'

MATCH LINE SEE EXHIBIT 4

MATCH LINE SEE EXHIBIT 1

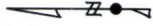
MATCH LINE SEE EXHIBIT 3



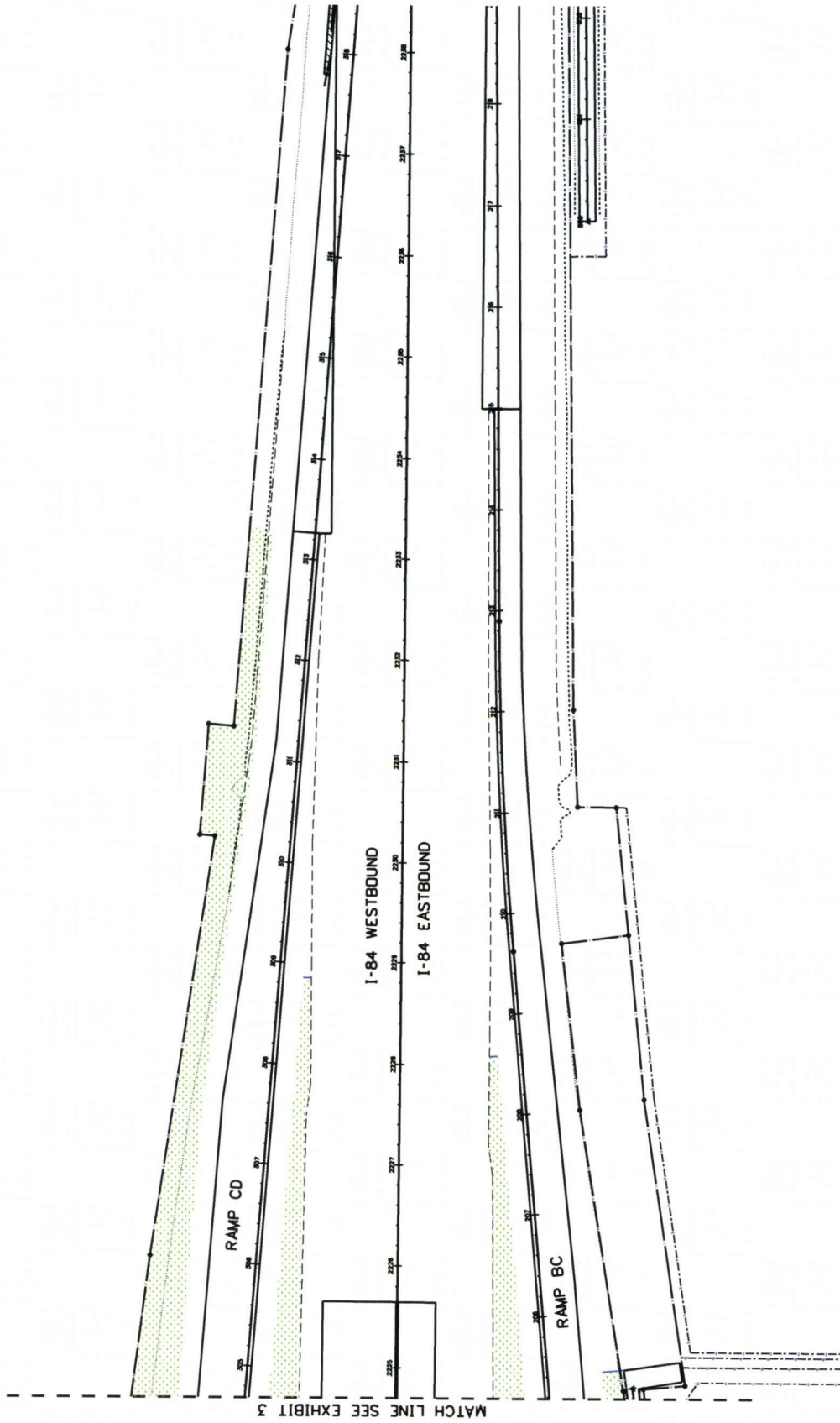
SPII ISLANDS
 SHRUBS - 650 EA
 PERENNIALS - 1,026 EA

LANDSCAPE EXHIBIT 2
 I-84 TEN MILE RD IC LANDSCAPING
 PROJECT NO. A011(932)
 KEY NO. 11932

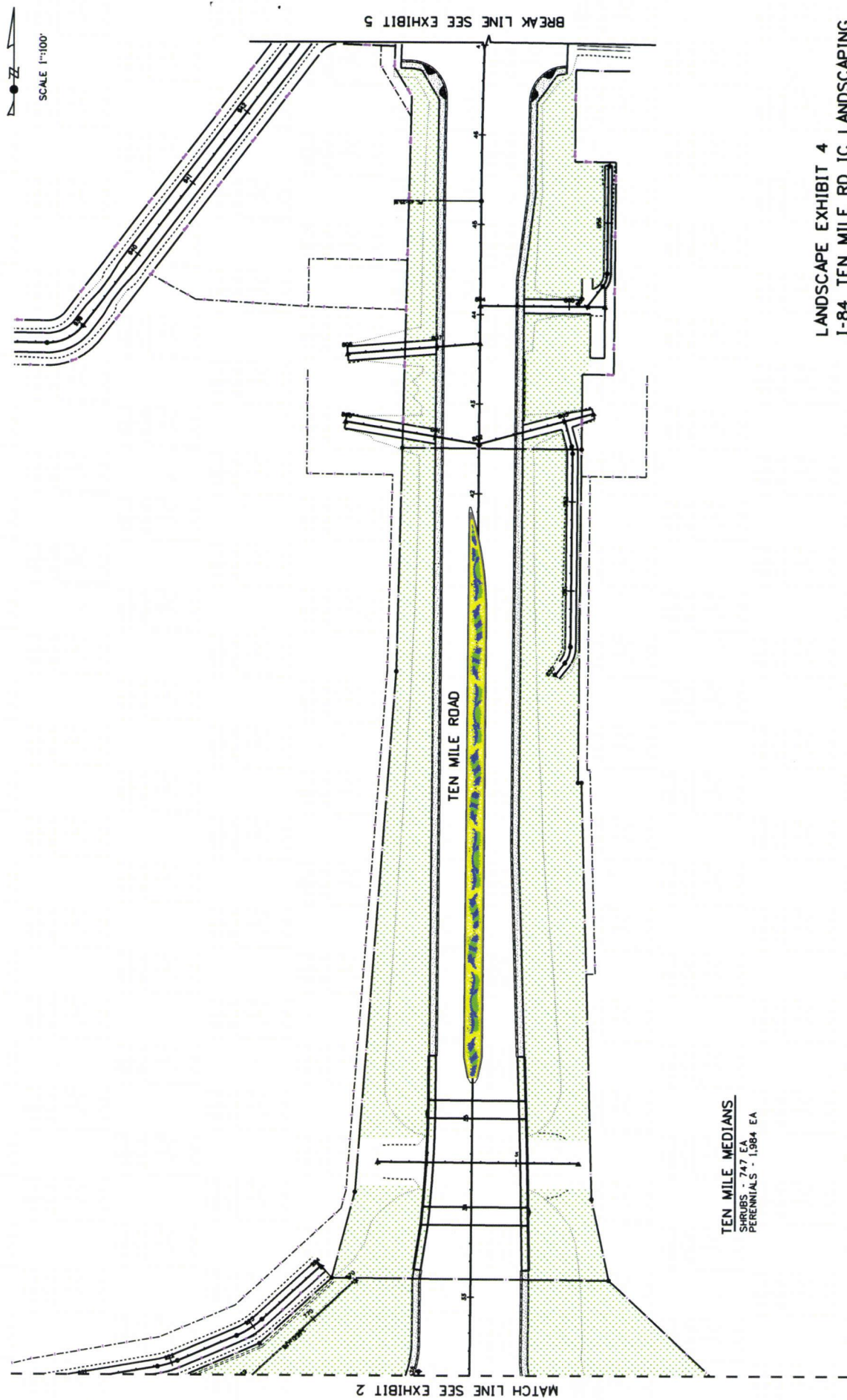
ASA DRIVE



SCALE 1"=100'



LANDSCAPE EXHIBIT 3
I-84 TEN MILE RD IC LANDSCAPING
PROJECT NO. A01(1932)
KEY NO. 11932



LANDSCAPE EXHIBIT 4
 I-84 TEN MILE RD IC LANDSCAPING
 PROJECT NO. A011(932)
 KEY NO. 11932

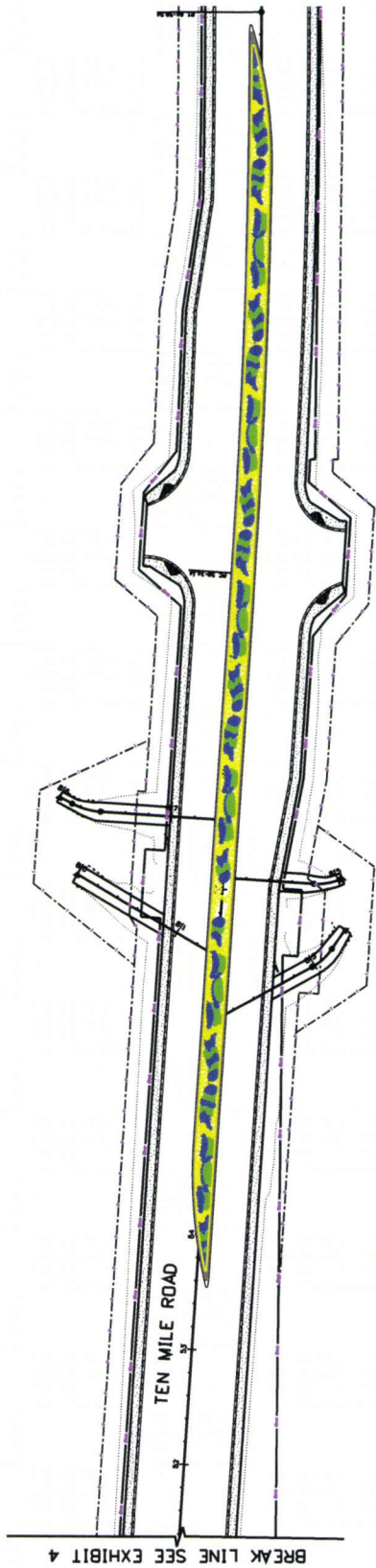
TEN MILE MEDIANS
 SHRUBS - 747 EA
 PERENNIALS - 1,984 EA

BREAK LINE SEE EXHIBIT 5

MATCH LINE SEE EXHIBIT 2



SCALE 1"=100'



BREAK LINE SEE EXHIBIT 4

TEN MILE ROAD

TEN MILE MEDIANS
 SHRUBS - 747 EA
 PERENNIALS - 1,984 EA

LANDSCAPE EXHIBIT 5
 I-84 TEN MILE RD IC LANDSCAPING
 PROJECT NO. A011(932)
 KEY NO. 11932

EXHIBIT B

Depiction of Brighton Maintenance Area

