

Order 50-19/20

Passage: 8-0 (Mavodones absent) on 9/16/2019

Effective 9/16/2019

ETHAN K. STRIMLING (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (2)  
BRIAN E. BATSON (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND**  
**IN THE CITY COUNCIL**

KIMBERLY COOK (5)  
JILL C. DUSON (A/L)  
PIOUS ALI (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE PURCHASE AND SALE AGREEMENT BETWEEN  
PORTLAND AND KENNEBEC KROSSING, LLC  
RE: SOMERSET STREET EXTENSION PROJECT**

**ORDERED**, that the Purchase and Sale Agreement between Portland and Kennebec Crossing, LLC is hereby approved, substantially in the form attached hereto; and

**BE IT FURTHER ORDERED**, that the City Council hereby authorizes the City Manager or his or her designee to execute said document and any other related documents necessary or convenient to carry out the intent of said document; and

**BE IT FURTHER ORDERED**, that this order is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately and prevent delay of the project construction schedule.

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT is made by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as “Buyer” or “City”), and KENNEBEC KROSSING, LLC, a Maine limited liability company with a mailing address of P.O. Box 779, Portland, Maine 04104-0779, its successors and assigns (hereinafter referred to as “Seller”).

### RECITALS

WHEREAS, Seller is the owner of certain land and buildings located at or near 101 Hanover Street, Portland, Maine (“Seller’s Property”), which property is generally depicted on the diagram prepared by Gorrill Palmer and entitled Sheet 16, Portland Somerset Street Restoration Drainage Plans, a copy of which is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, the Seller’s Property includes an area comprised of approximately 5,687 square feet (the “Fee Premises”), which Fee Premises is generally depicted on the diagram prepared by Titcomb Associates entitled Fee Premises, dated August 15, 2019, and attached hereto as Exhibit B, and more particularly described in Exhibit C, both of which are attached hereto and incorporated herein by reference; and

WHEREAS, Seller’s Property also includes an area comprised of approximately 11,722 square feet (the “License Premises”), which License Premises is generally depicted on the diagram prepared by Titcomb Associates entitled License Premises, dated August 15, 2019, and attached hereto as Exhibit D, and more particularly described in Exhibit E, both of which are attached hereto and incorporated herein by reference; and

WHEREAS, the City desires to purchase the Fee Premises and obtain temporary construction rights to the License Premises for a locally administered Maine Department of Transportation right of way project involving the realignment of Kennebec and Somerset Streets (the “Project”), and the Seller desires to convey the Fee Premises to the City and grant the City a temporary construction license in the License Premises subject to the terms and conditions set forth herein (the Fee Premises and the License Premises are referred to herein collectively as the “Premises”).

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

- 1. SALE OF FEE PREMISES; EFFECTIVE DATE.** Seller agrees to sell the Fee Premises and license the License Premises to Buyer, and Buyer agrees to purchase the Fee Premises and license the License Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement shall become effective after both Buyer and Seller have signed it. The date that the last of Buyer or Seller sign this Agreement shall be the effective date (the “Effective Date”). Unless otherwise

specified, all deadlines and time periods set forth in this Agreement, including shall be computed from the Effective Date.

## **2. CONSIDERATION.**

- a. The consideration for the Fee Premises shall be One Hundred Fourteen Thousand Six Hundred Twenty-Three Dollars (\$114,623.00) (the “Fee Purchase Price”).
- b. The consideration for the License Premises shall be Eight Thousand Three Hundred Four Dollars (\$8,304.00) (the “License Purchase Price”).
- c. A deposit of One Thousand Dollars (\$1,000.00) shall be paid by Buyer within two (2) business days of the Effective Date and held in escrow by Drummond & Drummond until closing of the sale of the Fee Premises (“Closing”) and applied to the Fee Purchase Price (or, if applicable, until returned to Buyer pursuant to this Agreement) (the “Deposit”); and
- d. The Fee Purchase Price, less the Deposit, shall be paid by Buyer to Seller at Closing by Buyer’s check or wire transfer, subject to any adjustments provided for in this Agreement.
- e. The License Purchase Price shall be paid to Seller prior to Buyer’s commencement of the Project and occupancy of the License Premises.

## **3. DUE DILIGENCE; TITLE; INSPECTIONS.**

- a. Due Diligence Period. Subject to extension as set forth in Paragraph 3(b) and (d), Buyer will have until the day that is sixty (60) days after the Effective Date of this Agreement (the “Due Diligence Period”) to complete any survey, environmental review and title examinations, and to undertake such other investigations, testing or inspections as Buyer shall deem appropriate.
- b. Title to the Fee Premises shall be conveyed by good, marketable and insurable title acceptable to the Buyer evidenced by quitclaim deed with covenant (the “Deed”), and shall be free of liens or other encumbrances and leases or other rights of occupancy, except for utility easements and other encumbrances of record that do not impair the value of the property.
- c. Inspections. Buyer may enter into any part of the Fee Premises at all reasonable times prior to the closing in order to inspect the Fee Premises, conduct surveys, test borings, engineering and environmental studies, and to do such other things as are reasonably necessary with respect to the acquisition and development of the Fee Premises (collectively, the “Inspections”). In the event that any of the Inspections reveals defects or conditions that are unacceptable to Buyer, as determined by Buyer in its sole and absolute discretion, Buyer shall have the option of terminating this Agreement and receiving back the Deposit and shall

restore the Fee Premises to the condition it found it in as of the date of this Agreement.

d. **Objections.** Buyer will have until the end of the Due Diligence Period to deliver to Seller any written objections to title, environmental, or survey matters that Buyer determines materially affect insurability of title at standard rates, or the use of the Fee Premises, the value of the Fee Premises, the cost of development of or the cost or feasibility of construction on the Fee Premises. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing, after the end of the Due Diligence Period may be made at any time prior to the closing. If the Survey and any environmental reports are not completed and distributed to the parties at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period will be extended for one (1) thirty (30) day period provided Buyer provides written notice prior to the expiration of the Due Diligence Period.

e. **Option to Cure.**

(1) In the event of a title, Survey or environmental objection by Buyer, Seller will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that Seller elects to cure the objection, it will have thirty (30) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that Seller does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's satisfaction, Buyer will have the option to:

(A) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement);

(B) waive the objection and close; or

(C) undertake the cure of such objection at its own expense (in which case it shall have 30 days to do so and the Closing Date shall be extended to a date ten (10) days after the expiration of such 30 day period); if Buyer determines it is not satisfied with the results of its own cure efforts, Buyer shall be entitled at any time prior to the expiration of the ten (10) day period following Buyer's thirty (30) day cure period set forth in this subsection (C) to terminate this Agreement as set forth in subsection (A) set forth above, or to waive its objection and close under this Agreement.

(2) Notwithstanding anything to the contrary contained in this section 3, Buyer shall at all times have the right to terminate this Agreement for

any reason prior to the expiration of the Due Diligence Period and obtain a refund of the Deposit.

- 4. RISK OF LOSS.** Until transfer of title hereunder, the risk of loss or damage to the Fee Premises by fire or otherwise is assumed by the Seller. The Fee Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event Seller is not able to deliver the Fee Premises as stated, Buyer may terminate this Agreement and receive a refund of the Deposit.

**5. DEFAULT AND REMEDIES.**

- a. In the event Seller defaults under this Agreement, Buyer shall have available all remedies at law and in equity, including, without limitation, the remedy of specific performance.
- b. In the event Buyer defaults under this Agreement, for a reason other than the default of Seller, Seller shall have the right to retain the Deposit and any interest accrued thereon and shall have available all remedies at law and equity.

- 6. REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller represents and warrants to Buyer that the following are true as of the date of this Agreement and will be true as of the closing:

- a. There are no outstanding pending or threatened liens, claims, rights of first refusal, licenses or encumbrances against or affecting the Fee Premises.
- b. All outstanding bills and/or accounts payable concerning the Fee Premises are either paid or will be paid prior to or at the time of closing.
- c. There are no outstanding claims, losses or demands against Seller by any person respecting Seller's ownership, use or occupancy of the Fee Premises.
- d. To the best of Seller's knowledge, the Fee Premises has not been used by Seller for any dumping of waste materials or landfilling and is free of special wastes, underground storage tanks, radon, asbestos, lead substances, and any hazardous, biomedical, radioactive or toxic, substances, materials or wastes (hereinafter "Environmental Hazards") caused by Seller's actions. The terms used in the foregoing sentence shall include, without limitation, all substances, materials, etc., designated by such terms under any laws, ordinances or regulations, whether federal, state or local.
- e. Seller has no knowledge of any boundary disputes or encroachments affecting the Fee Premises.

6.1 **Environmental Remediation.** In the event Environmental Hazards are found on the Fee Premises, the City will be responsible for all remediation costs required to complete the Project unless the Environmental Hazards were caused by the Seller. The City's obligations under this paragraph shall survive closing of the sale of the Fee Premises.

**7. CITY'S AND SELLER'S RIGHT TO TERMINATE; CONDITIONS PRECEDENT TO CLOSING.** Notwithstanding anything to the contrary herein:

- a. The City shall have the right to terminate this Agreement at any time if the City decides not to move forward with construction of the Project or if the Premises are no longer needed for the Project.
- b. It shall be a condition precedent to the City's obligation to close on the purchase of the Fee Premises that Seller grant to City a License Agreement for the License Premises for the duration of the Project in substantially the form attached hereto as Exhibit F. City shall use best efforts to complete the Project within 10 months after paying the License Purchase Price to Seller as described in section 9(a) below. The Seller shall have the right to terminate the License Agreement if the City decides not to move forward with the Project.
- c. Because the Fee Premises includes a portion of the existing parking lot on Seller's Property (the "Existing Parking Lot"), and Seller will need to continue to use the Existing Parking Lot until commencement of the Project, it shall be a condition precedent to the Seller's obligation to close on the sale of the Fee Premises that the City grant to Seller a Revocable Encroachment License and Option to Purchase Agreement for that portion of the Fee Premises that the Existing Parking Lot encroaches upon (the "Encroachment License and Option Agreement") in substantially the form attached hereto as Exhibit G.
- d. **Existing Easements.** The Fee Premises and License Premises are currently encumbered in part by existing sewer and water easements. To the extent that the City enters onto the Fee Premises and License Premises to conduct work associated with the current sewer and storm water separation project on and near Seller's Property (the "Work"), the City shall, once the Work is complete, restore any portions of Seller's Property disturbed by the Work to the condition it found the Seller's Property as of the signing of this Agreement; provided, however, that such restoration obligation shall not apply to the Fee Premises after the closing of the sale of the Fee Premises. The City expects such restoration work to be completed by October 4, 2019.

**8. CLOSING.** Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel at a time agreeable to the parties on or before the day that is three months after the Effective Date of this Agreement or thirty (30) days after the later of (i) the expiration of the Due Diligence Period; (ii) the deadline for the Seller to resolve any title, Survey or environmental

objections; (iii) the date to which Buyer elects to extend the Closing Date under Paragraph 2 or 7 (the “Closing Date”). Notwithstanding the foregoing, Seller agrees to close on a date earlier than that specified above upon Buyer’s request at least one week prior to Closing. At the Closing:

- a. Seller shall execute, acknowledge and deliver to Buyer a quitclaim deed with covenant conveying to Buyer good, marketable and insurable title to the Fee Premises at standard rates, free and clear of all liens and encumbrances except as otherwise set forth herein.
- b. Buyer shall deliver the balance of the Fee Purchase Price, subject to any adjustments set forth in this Agreement, to the Seller by check or wire transfer.
- c. The parties shall execute a License Agreement for the License Premises in substantially the form attached hereto as Exhibit F.
- d. The parties shall execute an Encroachment License and Option Agreement in substantially the form attached hereto as Exhibit G.
- e. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be reasonably necessary to carry out the obligations under this Agreement, and for the Buyer to obtain owners title insurance at standard rates in form reasonably acceptable to Buyer.
- f. Seller shall deliver evidence, reasonably satisfactory to Buyer, that Seller is in good standing under Maine law, and that the individuals acting with respect to the Closing and executing documents on behalf of Seller are authorized to do so.
- g. City shall deliver to Seller a copy of all City Council Orders approving this Agreement and authorizing the City Manager or other City officials to execute any documents necessary to effectuate the intent and purpose of this Agreement.
- h. Real estate taxes and any other assessments that may be due on the Premises shall be prorated as of the date of the closing.
- i. The Maine real estate transfer tax shall be paid by Seller and Buyer in accordance with 36 M.R.S.A., §4641-A.
- j. The recording fee for the deed of conveyance shall be paid for by Buyer.
- k. A portion of the purchase price shall be withheld at the closing by Buyer if required by 36 M.R.S.A. § 5250-A.
- l. Full possession of the Fee Premises will be delivered to Buyer at closing free and clear of all tenancies or occupancies by any person or entity.

## **9. POST CLOSING MATTERS.**

- a.** The City anticipates occupying the License Premises on or after commencement of the Project, which is expected to commence in the Spring of 2020, but in no event sooner than January 1, 2020, except as described in section 7.1. After receiving all approvals for the Project, the City will provide Seller with no less than one week's prior written notice, and will pay to Seller the License Purchase Price, before occupying the License Premises.
- b.** In connection with the Project, the City anticipates having to alter the parking lot and certain landscaping located on Seller's retained Property. In connection with such alterations, the City shall make the improvements listed below to Seller's Property, which, among other improvements, including improvements to City property, are generally depicted on Sheets 11, 14, 15, 16, 17, 18, 20, 21, and A1 of the Portland Somerset Street Restoration Plans prepared by Gorrill Palmer for the City of Portland, #WIN17628.00, which are collectively attached hereto as Exhibit H:

- i.** Parking Lot:

1. Remove existing pavement from the Parking Lot (which lot is located between Seller's building and the Fee Premises);
2. Reshape the Parking Lot as generally depicted on the Plan;
3. Eliminate the Hanover Street Parking Lot entrance;
4. Install new granite curbing (approximately 356 linear feet) along the perimeter of the Parking Lot;
5. Install two catch basins for drainage;
6. Install 210 linear feet of 12" underdrain to drain the subbase of the Parking Lot;
7. Add new gravel in select areas;
8. Install 3" of new pavement (approximately 12,150 square feet) in the Parking Lot;
9. Install approximately 100 square foot concrete pad in Parking Lot to separate parking spaces from Parking Lot entrance;
10. Add new pavement markings for 31 parking spaces;
11. Remove the utility pole in the existing Parking Lot and relocate it outside of the to-be-improved Parking Lot, subject to the approval of Central Maine Power Company.

- ii.** Landscaping around the perimeter of the new Parking Lot, including sidewalk and esplanade areas owned by City:

1. 155 linear feet of landscaped planter along sidewalk.

2. Plant approximately the following numbers and types of plants:

Plant List		
Botanical name	Common Name	Quantity
Nepeta Faassenii 'Junior Walker'	Junior Walker Catmint	25
Nepeta Faassenii 'Walkers low'	Walker's Low Catmint	13
Pennisetum Alopecuroides 'Hamelin'	Hamelin Fountain Grass	8
Sporobolus Heterolepsis	Prairie Dropseed	98
Rudbeckia Sullivantii 'Little Goldstar'	Little Goldstar Coneflower	19
Ulmus Americana 'Princeton'	Princeton American Elm	2
Quercus Rubra	Red Oak	3

c. The terms and conditions of this section 9 shall survive closing of the Fee Premises and the License Agreement; provided, however that in the event that the City decides not to move forward with the Project, it shall have no obligation to make the above-referenced improvements.

**10. ENTIRE AGREEMENT.** This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

**11. NON-WAIVER.** No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

**12. HEADINGS AND CAPTIONS.** The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

**13. BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns, provided, however that this Agreement shall not be assigned by the City.

**14. TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

**15. GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

**16. NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery to the City Manager's office shall be effective as personal delivery to the City Manager on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

**FOR THE CITY:** City of Portland  
ATTN: City Manager  
389 Congress Street  
Portland, ME 04101

With a copy to: The Office of the Corporation Counsel at the same address.

**FOR SELLER:** Kennebec Krossing, LLC  
P.O. Box 779  
Portland, ME 04104-0779

With a copy to: Paul E. Peck, Esq.  
Drummond & Drummond, LLP  
One Monument Way  
Portland, ME 04101

**17. SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

**18. BROKERS.** Seller and Buyer each represents and warrants that neither has dealt with a real estate broker in connection with this transaction. Seller agrees to indemnify and hold harmless Buyer from any claims made by any broker should Seller's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, Buyer agrees to indemnify and hold harmless Seller from any claims made by any broker should Buyer's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

**19. RECITALS INCORPORATED BY REFERENCE.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

**IN WITNESS WHEREOF**, the parties have hereunto have caused this instrument to be executed on their behalf by their duly authorized officers or representatives, as of the day and year first written above.

**CITY OF PORTLAND**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Jon P. Jennings  
Its City Manager  
Dated: \_\_\_\_\_

**KENNEBEC KROSSING, LLC**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

Approved as to Form:

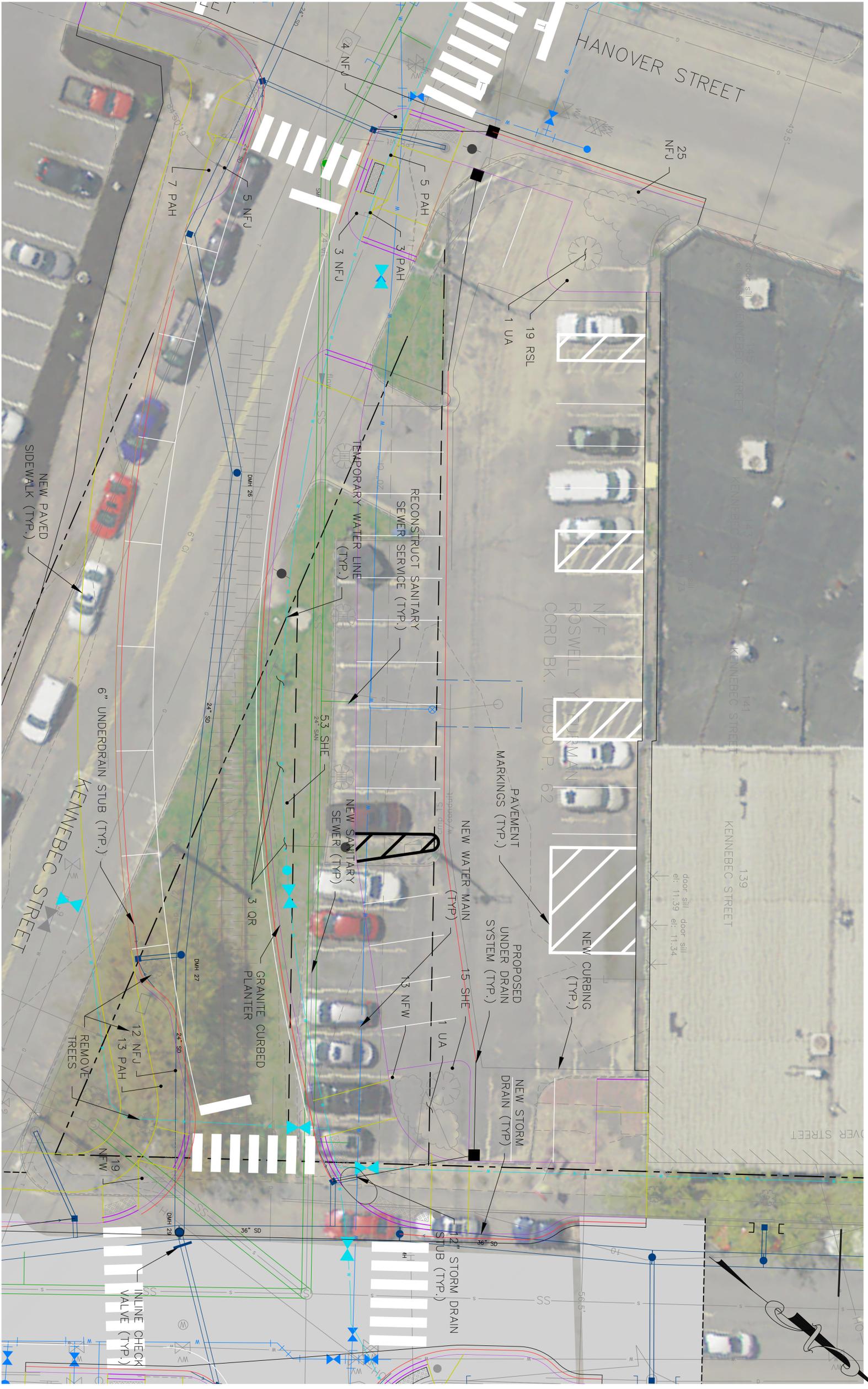
Approved as to Funds:

\_\_\_\_\_  
City Corporation Counsel's Office

\_\_\_\_\_  
City Finance Department

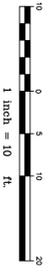
**EXHIBIT A**

(Diagram of Seller's Property Follows)



**PLANT LIST**

KEY	BOTANICAL NAME	COMMON NAME	SIZE	QTY
NFJ	NEPETA FAASSEMI 'JUNIOR WALKER'	JUNIOR WALKER CATMINT	NO.1 COUNT.	94
NFW	NEPETA FAASSEMI 'WALKER'S LOW'	WALKER'S LOW CATMINT	NO.1 COUNT.	22
PAF	PENNYCRESS ALPINE CURVED'S 'HAWK LIT'	HAWK LIT FOUNTAIN GRASS	NO.1 COUNT.	52
SHE	SPOROBOLUS HETEROPUS	PRARIE DROPSEED	NO.1 COUNT.	98
RSL	RUDEBECKIA SULLIVANTII 'LITTLE GOLDSTAR'	LITTLE GOLDSTAR CORNFLOWER	NO.1 COUNT.	19
UA	ULMUS AMERICANA 'PRINCETON'	PRINCETON AMERICAN ELM	2 1/2" CAL	2
QR	QUERCUS RUBRA	RED OAK	2 1/2" CAL	3



DESIGN BY:	XXX
DRAWN BY:	XXX
CHECKED BY:	XXX
SHEET NAME:	141-146 KENNEBEC STREET
DATE:	06-2019
SHEET NO.:	FIG-1
SCALE:	AS SHOWN

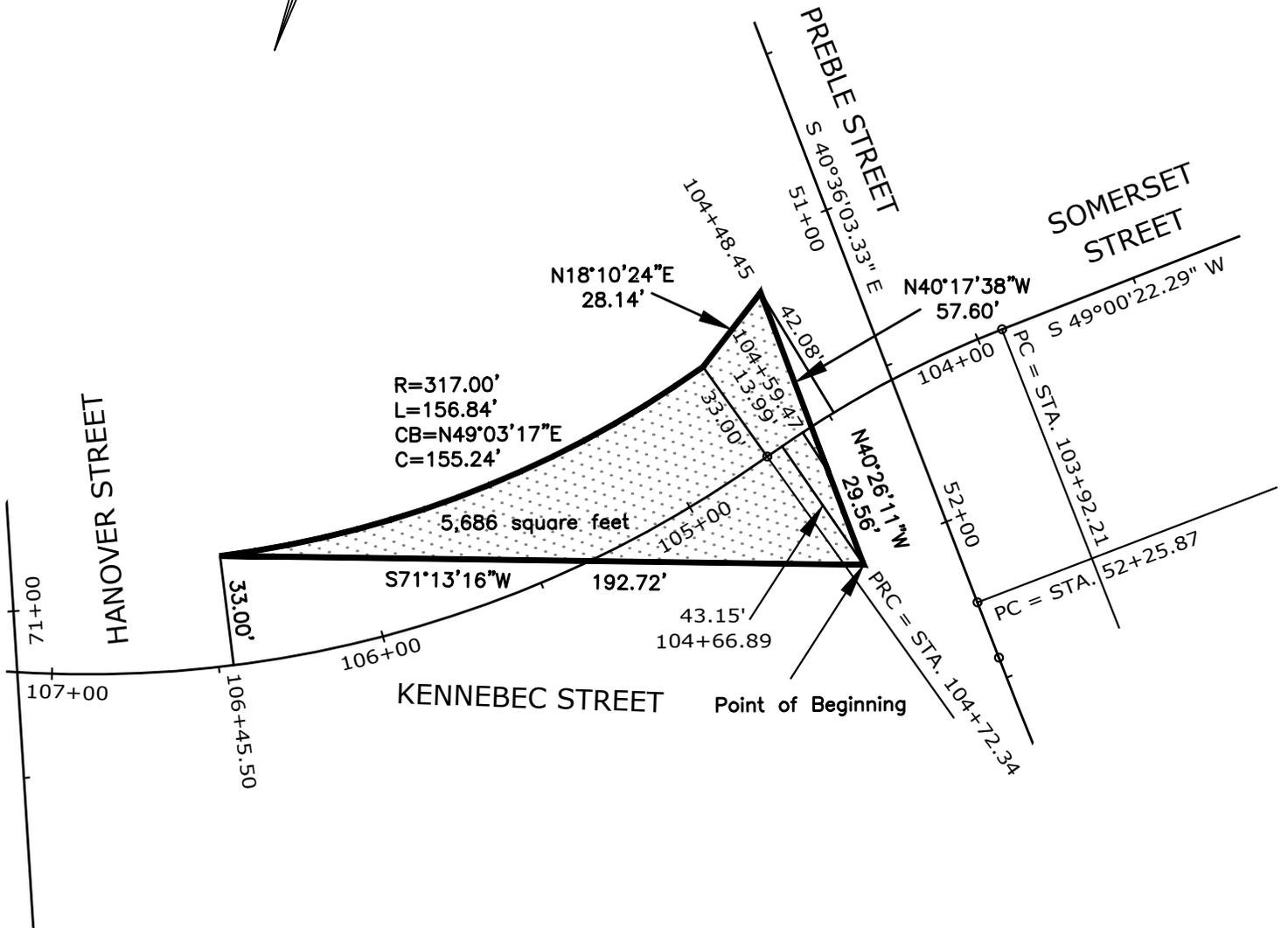
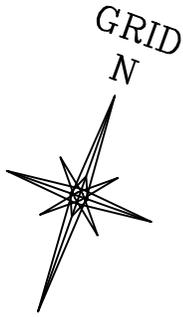


PROJECT NAME:  
**PREBLE, KENNEBEC, SOMERSET  
 SEWER SEPARATION  
 PHASE II**

CITY OF PORTLAND, MAINE  
 DEPARTMENT OF PUBLIC WORKS  
 WATER RESOURCE DIVISION  
 212 CANCO ROAD, SUITE B, PORTLAND, MAINE 04103  
 PHONE (207) 874-8846 FAX (207) 874-8852

REV	SUBMISSION	DATE

**EXHIBIT B**  
(Diagram of Fee Premises Follows)



## Exhibit B Fee Premises

Hanover Street, Kennebec Street and Preble Street

Portland, Maine

JOB# 213108

DATE: August 15, 2019

SCALE: 1"=50'



***Titcomb Associates***

133 Gray Road, Falmouth, Maine 04105  
 (207)797-9199 www.titcombsurvey.com

**EXHIBIT C**  
(Description of Fee Premises)

A certain lot or parcel of land located on the westerly side of Preble Street and the northerly side of Kennebec Street in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

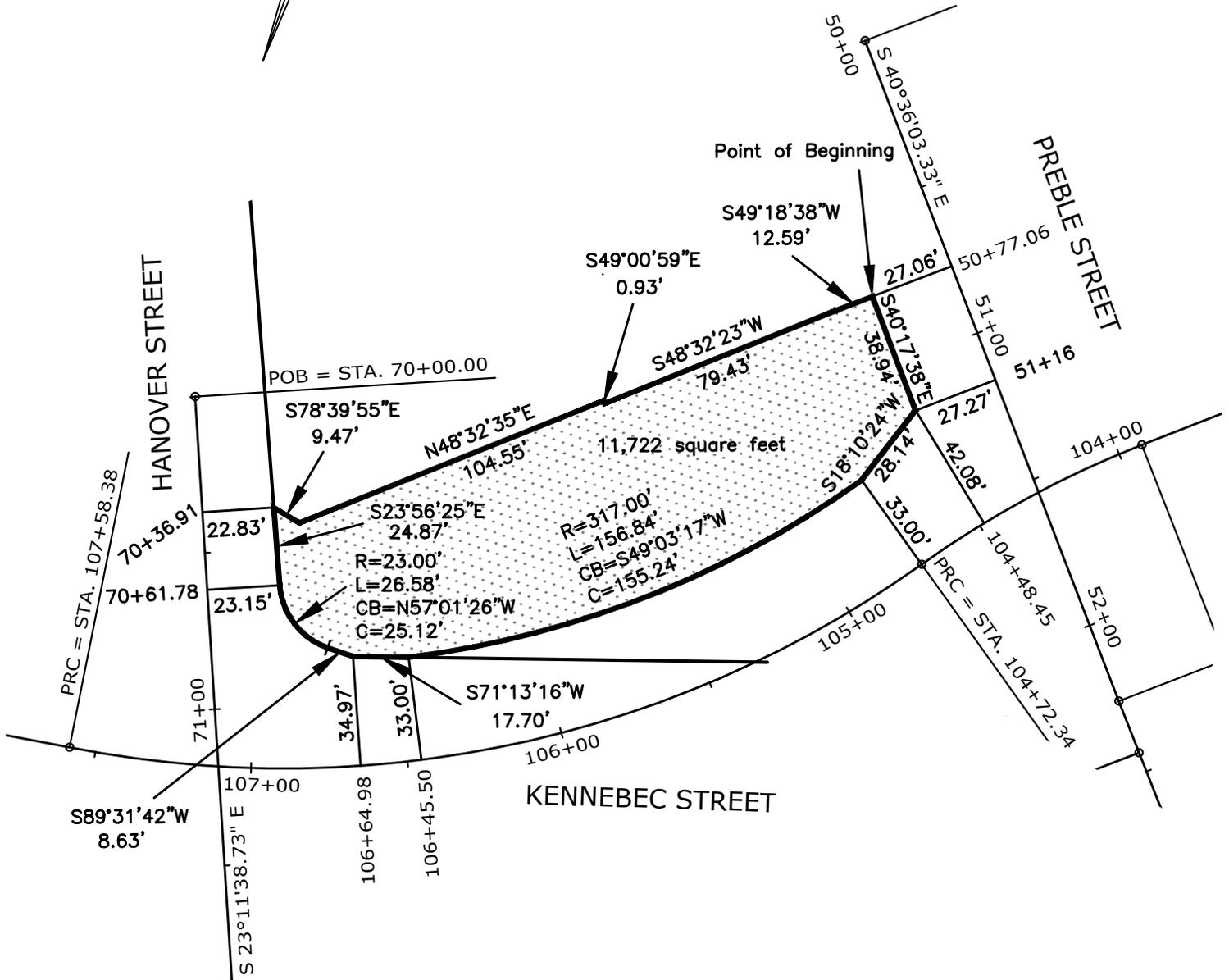
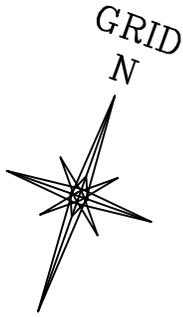
Beginning at a point at the intersection of the westerly side of Preble Street with the northerly side of Kennebec Street, said point of beginning being located Forty-Three and 15/100 (43.15) feet to the left of Station 104+66.89 of the Kennebec Street Baseline as depicted on a City of Portland Right of Way Map of Somerset Street made by Gorrill Palmer dated January, 2018, Sheet 31 of 31. Thence:

- 1) S 71°13'16" W by said Kennebec Street a distance of One Hundred Ninety-Two and 72/100 (192.72) feet to a point located Thirty-Three and 00/100 (33.00) feet to the right of Station 106+45.50 of said Kennebec Street Baseline;
- 2) Northeasterly through land of the Grantor following a non-tangent curve to the left, having a radius of Three Hundred Seventeen and 00/100 (317.00) feet, an arc distance of One Hundred Fifty-Six and 84/100 (156.84) feet to a point located Thirty-Three and 00/100 (33.00) feet to the right of Station 104+72.34 of said Kennebec Street Baseline, said point being located N 49°03'17" E a distance of One Hundred Fifty-Five and 24/100 (155.24) feet from the last described point;
- 3) N 18°10'24" E through said land of the Grantor a distance of Twenty-Eight and 14/100 (28.14) feet to a point on the westerly side of Preble Street located Forty-Two and 08/100 (42.08) feet to the right of Station 104+48.45 of said Kennebec Street Baseline;
- 4) S 40°17'38" E by said Preble Street a distance of Fifty-Seven and 60/100 (57.60) feet to a point located Thirteen and 99/100 (13.99) feet to the left of Station 104+59.47 of said Kennebec Street Baseline;
- 5) S 40°26'11" E by said Preble Street a distance of Twenty-Nine and 56/100 (29.56) feet to the point of beginning.

Bearings are referenced to grid north, Maine State Plane Coordinate System, West Zone, NAD83.

The above described parcel contains 5,686 square feet, more or less, being a portion of land now or formerly of Kennebec Crossing LLC as described in a deed recorded in the Cumberland County Registry of Deeds in Book 30862, Page 167.

**EXHIBIT D**  
**(Diagram of License Premises Follows)**



**Exhibit D**  
**Exhibit D License Premises**

Hanover Street, Kennebec Street and Preble Street

Portland, Maine

JOB# 213108

DATE: August 15, 2019

SCALE: 1"=50'



**Titcomb Associates**

133 Gray Road, Falmouth, Maine 04105  
 (207)797-9199 www.titcombsurvey.com

**EXHIBIT E**

(Description of License Premises)

A certain license area located on the westerly side of Preble Street and the easterly side of Hanover Street in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

Beginning at a point on the Westerly side of Preble Street, said point of beginning being located Twenty-Seven and 06/100 (27.06) feet to the right of Station 50+77.06 of the Preble Street Baseline depicted on a City of Portland Right of Way Map of Somerset Street made by Gorrill Palmer dated January, 2018, Sheet 31 of 31. Thence:

- 1) S 40°17'38" E by said Preble Street a distance of Thirty-Eight and 94/100 (38.94) feet to a point located Twenty-Seven and 27/100 (27.27) feet to the right of Station 51+16 of said Preble Street Baseline;
- 2) S 18°10'24" W through land of the Grantor a distance of Twenty-Eight and 14/100 (28.14) feet to a point located Thirty-Three and 00/100 (33.00) feet to the right of Station 104+72.34 of the Kennebec Street Baseline as depicted on said Plan;
- 3) Southwesterly through said land of the Grantor, following a curve to the right having a radius of Three Hundred Seventeen and 00/100 (317.00) feet, an arc distance of One Hundred Fifty-Six and 84/100 (156.84) feet to a point on the northerly side of Kennebec Street located Thirty-Three and 00/100 (33.00) feet to the right of Station 106+45.50 of said Kennebec Street Baseline, said point being located S 49°03'17" W a distance of One Hundred Fifty-Five and 24/100 (155.24) feet from the last described point;
- 4) S 71°13'16" W by said Kennebec Street a distance of Seventeen and 70/100 (17.70) feet to a point located Thirty-Four and 97/100 (34.97) feet to the right of Station 106+64.98 of said Kennebec Street Baseline;
- 5) S 89°31'42" W through said land of the Grantor a distance of Eight and 63/100 (8.63) feet to a point;
- 6) Northwesterly through said land of the Grantor, following a curve to the right having a radius of Twenty-Three and 00/100 (23.00) feet, an arc distance of Twenty-Six and 58/100 (26.58) feet to a point on the easterly side of Hanover Street located Twenty-Three and 15/100 (23.15) to the left of Station 70+61.78 of the Hanover Street Baseline as depicted on said Plan, said point being located N 57°01'26" W a distance of Twenty-Five and 12/100 (25.12) feet from the last described point;
- 7) N 23°56'25" W by said Hanover Street distance of Twenty-Four and 87/100 (24.87) feet to a point located Twenty-Two and 83/100 (22.83) feet to the left of Station 70+36.91 of said Hanover Street Baseline;
- 8) S 78°39'55" E through said land of the Grantor a distance of Nine and 47/100 (9.47) feet

to a point;

9) N 48°32'35" E through said land of the Grantor a distance of One Hundred Four and 55/100 (104.55) feet to a point;

10) S 49°00'59" E through said land of the Grantor a distance of Zero and 93/100 (0.93) feet to a point;

11) N 48°32'23" E through said land of the Grantor a distance of Seventy-Nine and 43/100 (79.43) feet to a point;

12) N 49°18'38" E through said land of the Grantor a distance of Twelve and 59/100 (12.59) feet to the point of beginning.

Bearings are referenced to grid north, Maine State Plane Coordinate System, West Zone, NAD83.

The above described license area contains 11,722 square feet, more or less, lying over a portion of land now or formerly of Kennebec Crossing LLC as described in a deed recorded in the Cumberland County Registry of Deeds in Book 30862, Page 167.

## EXHIBIT F

### LICENSE AGREEMENT

This License Agreement made as of this \_\_\_\_ day of \_\_\_\_\_ by and between the CITY OF PORTLAND, a body politic and corporate, located in Cumberland County, State of Maine (“CITY”) and Kennebec Crossing, LLC a Maine limited liability company with a mailing address of P.O. Box 779, Portland, Maine, its successors and assigns (“LICENSOR”) the owner of the property located on the westerly side of Preble Street and the easterly side of Hanover Street in the City of Portland, as more particularly described Exhibit A, attached hereto (hereinafter, the “License Area”).

The purpose of this License Agreement is to allow CITY to construct a public sidewalk on public property adjacent to the License Area in the existing right-of-way on the westerly side of Preble Street and the easterly side of Hanover Street, and to make certain improvements to the Licensed Area as described in a certain Purchase and Sale Agreement (the “Purchase & Sale Agreement”) between the parties dated September \_\_\_, 2019 (collectively, the “Work”) in connection with a locally administered Maine Department of Transportation right of way project involving the realignment of Kennebec and Somerset Streets (the “Project”), and, in the course of conducting that Work, to cross over and upon the License Area with people, equipment, and machinery. CITY shall therefore have the right to enter in, over and under the License Area for the purposes of constructing a sidewalk along Preble and Kennebec Streets and performing any grading necessitated by that Work. The Work shall be accomplished by the CITY at its sole cost and expense in such manner as will not unreasonably interfere with LICENSOR’S use of the License Area, provided, however, that LICENSOR acknowledges and agrees that completion of the Work will require that the parking lot in the License Area may be unavailable at times for LICENSOR’S use during the term of this Agreement. CITY anticipates commencing the Project

in the Spring of 2020, and it anticipates completing the Project and the Work within 10 months and will undertake best efforts to do so, but cannot guarantee completion of the Project in that time. CITY agrees during the term of this Agreement, to diligently work to provide as much parking in the License Area as possible for LICENSOR's tenants and customers and to provide LICENSOR's tenants, to the extent possible, access to the License Area in order for said tenants to access their leased premises. CITY agrees its contractor shall, at City expense, improve the License Area and adjacent property owned by LICENSOR and the CITY in accordance with the terms and conditions of the Purchase and Sale Agreement. In the event that changes to the Project require changes to the improvements described in the Purchase and Sale Agreement, such changed improvements shall be of comparable substance and quality to those described in the Purchase and Sale Agreement. Such changes will not decrease the number of parking spaces on LICENSOR's remaining property or LICENSOR's access to the public way.

Prior to beginning any work in the License Area, the CITY will require its contractors working in the License Area to procure and maintain occurrence-based commercial general liability insurance coverage in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, death and property damage, naming the City and LICENSOR as an additional insured thereon, and also workers' compensation insurance coverage to the extent required by law.

Subject to, and limited by, the defenses, immunities and limitations of liability or damages available to the CITY under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the CITY, the CITY agrees to indemnify and hold LICENSOR harmless from and against all claims, damages, losses, and expenses arising out of or resulting from CITY's use of the License Area, provided, and to the extent, that any such claims, damage, loss or expense (1)

is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use therefrom, and (2) is caused by the negligent act or omission of the CITY, its employees, or contractors. Nothing in this Agreement shall or is intended to waive any defense, immunity or limitation of liability available to the City, their officers, agents or employees under the Maine Tort Claims Act, 14 M.R.S. §8101, et seq., other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the CITY.

The City anticipates occupying the License Area on or after commencement of the Project, which is expected to commence in the Spring of 2020, but in no event sooner than January 1, 2020, except as described in section 7.1 of the Purchase and Sale Agreement. After receiving all approvals for the Project, the City will provide Seller with no less than one week's prior written notice before occupying the License Area. The term of this License Agreement shall commence when the City makes the Payment described below and shall terminate upon completion of the Project. In the event that the term of this Agreement exceeds ten months, the CITY shall pay LICENSOR a monthly prorated amount based on the Payment set forth below.

LICENSOR and CITY have determined just compensation for the rights conferred herein to be \$8,304.00 (the "Payment"), which the CITY shall pay to LICENSOR upon CITY's occupation of the License Area and commencement of the Work. LICENSOR accepts the Payment as just compensation for all rights conferred herein and releases CITY from any further claims of just compensation for or arising from the rights conferred herein.

This instrument is a License and no provision hereof shall be construed as conveying an easement or other estate in land, and LICENSOR reserves all other rights not inconsistent or incompatible with the rights granted herein to CITY. This instrument shall be binding on LICENSOR'S successors and assigns.

IN WITNESS WHEREOF, Kennebec Crossing, LLC has caused this instrument to be executed by \_\_\_\_\_, its \_\_\_\_\_ thereunto duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 201\_.

KENNEBEC CROSSING, LLC

\_\_\_\_\_  
By:  
Its \_\_\_\_\_

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 201\_

Personally appeared the above named \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, as aforesaid and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said Kennebec Crossing, LLC.

Before me,

\_\_\_\_\_  
Attorney-at-Law/Notary Public  
Printed Name: \_\_\_\_\_  
Commission expires: \_

## **EXHIBIT G**

### **REVOCABLE ENCROACHMENT LICENSE AND OPTION TO REPURCHASE AGREEMENT**

This Revocable Encroachment License And Option To Repurchase Agreement (hereinafter "Agreement") is made and entered into by and between the City of Portland (hereinafter, "City"), a Maine body corporate and politic, with a mailing address of 389 Congress Street, Portland, Maine 04101 and Kennebec Krossing, LLC, a Maine limited liability company with a mailing address of P.O. Box 779, Portland, Maine 04104-0779, its successors and assigns (hereinafter, "Licensee"), owner of certain real property located at or near 101 Hanover Street, Portland, Maine (the "Licensee's Remaining Property").

#### **RECITALS**

WHEREAS, Licensee has this day conveyed certain property to the City, which abuts Licensee's Remaining Property, as described in a Purchase and Sale Agreement between the parties dated September \_\_\_, 2019 (the "Purchase and Sale Agreement") and as set forth in a quitclaim deed with covenant from Licensee to the City of near or even date herewith to be recorded in the Cumberland County Registry of Deeds (the property conveyed to the City is referred to herein as the "Fee Premises" and is a portion of the property conveyed to Licensee by quitclaim deed recorded in the Cumberland County Registry of Deeds, Book 30862, page 167); and

WHEREAS, the City requires the Fee Premises for a locally administered Maine Department of Transportation right of way project involving the realignment of Kennebec and Somerset Streets, which the City anticipates commencing in the spring of 2020 (the "Project"); and

WHEREAS, a portion of the parking lot adjacent to the building on Licensee's Remaining Property encroaches upon the Fee Premises, as generally depicted on the plan attached hereto as Exhibit 1 (which portion of the Fee Premises is referred to herein as the "Parking Encroachment Area"); and

WHEREAS, Licensee desires to continue to use the Parking Encroachment Area for the purpose of parking of vehicles for itself, its tenants, and their guests (the "Encroachment") until such time as the Parking Encroachment Area is required for the Project; and

WHEREAS, the City will allow the Encroachment to encroach into the Parking Encroachment Area under the terms and conditions set forth in this Agreement; and

WHEREAS, in the event that the City does not move forward with the Project, Licensee desires the option to repurchase the Parking Encroachment Area subject to the terms and conditions set forth herein.

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

1. Licensee is hereby permitted to continue to use the Parking Encroachment Area only for the purpose of maintaining the area and for parking of vehicles for itself, its tenants, and their guests. Licensee agrees that its rights hereunder shall be subject and subordinate to all easements of record affecting the Parking Encroachment Area and the City's rights under a certain License Agreement between the parties of near or even date herewith (the "License Agreement"), which License Agreement is described in the Purchase and Sale Agreement. The City shall have no obligation to maintain the Parking Encroachment Area for the benefit of Licensee or any third party.
2. Licensee is hereby permitted to occupy the Parking Encroachment Area only for the purpose set forth herein and maintenance of the Parking Encroachment Area. Licensee shall make no improvements to the Parking Encroachment Area without the City's prior written consent. Except as set forth in the Purchase and Sale Agreement and as permitted by existing utility easements affecting the Parking Encroachment Area, the City will not interfere with Licensee's use of the Parking Encroachment Area until commencement of the Project.
3. Any work performed upon and use of the Parking Encroachment Area by Licensee for the purposes set forth herein shall be at Licensee's sole cost and expense (unless otherwise agreed in writing), the parties acknowledging that there may be temporary interruptions in enjoyment of the Parking Encroachment Area. Licensee, its successors and assigns, shall defend, indemnify and hold the City, its officers, agents, and employees harmless from any and all claims, including but not limited to claims for damage to City property and reasonable attorney's fees, which arise out of Licensee's use, or the use of the area by Licensee's contractors, tenants, or their guests, of the City's property as described above during the term of this Agreement. The Licensee's obligation to defend, indemnify and hold the City harmless shall survive termination or revocation of this Agreement.
4. Licensee shall be responsible for the proper maintenance of the Encroachment. In the event of damage to the Parking Encroachment Area caused by Licensee, Licensee shall promptly repair/restore the same.
5. Licensee agrees that City may enter and utilize the Parking Encroachment Area at any time for the purpose of installing, repairing, replacing, or maintaining improvements to its public facilities or utilities necessary for the health, safety and welfare of the public or for any other public purpose. City shall bear no responsibility or liability for any damage or disruption or other adverse consequences resulting from the Encroachment, but City will make reasonable efforts to minimize such damage.
6. Licensee agrees, binds and obligates itself, its successors and assigns to procure and maintain throughout the term of this Agreement comprehensive general liability insurance in the minimum amount of Four Hundred Thousand Dollars (\$400,000) (or the amount stated in the Maine Tort Claims Act, as may be amended from time to time) per occurrence for bodily injury, death, or property damage covering its activities hereunder and naming the City as an additional insured thereon. Certificates evidencing such coverage shall be delivered to the City and shall provide the City with no less than thirty (30) days prior notice of cancellation or non-renewal. All insurance coverage required

herein shall include coverage of all Licensees' contractors and subcontractors. Nothing in this paragraph or this Agreement shall be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the City under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the City.

7. Licensee, by execution of this License, hereby agrees to assume and hereby does assume responsibility for any and all claims and/or damage to persons or property arising out of or in any way related to Licensee's exercise of the rights granted by this Agreement, and does hereby forever waive, release, relinquish, remise, indemnify and discharge the City, its agents, employees, successors and assigns from and against any and all losses, costs or expenses (including reasonable attorneys' fees), damages, demands, liabilities, claims, actions, causes of action, suits, or judgments (collectively, "Claims") whatsoever of every name and nature, in law and in equity, including without limitation those related in any manner to any accident or injury to, or death of, any person, or any damage to property occurring on, in or in the vicinity of the area covered by this License, arising out of the presence in and use by the Licensee of the area covered by this License. Licensee's indemnity obligations hereunder shall not apply to claims or damages caused by the act or omission of the City, its employees or contractors.
8. This Agreement is assignable to any subsequent owners of the Licensee's Remaining Property, and in the event of such assignment, Licensee shall notify the City of such assignment no fewer than 10 days prior to the effective date of such assignment.
9. This Agreement, and all of the rights and obligations herein, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
10. Term and Termination.
  - a. This Agreement shall automatically terminate upon the earlier of (1) five years after the date of this Agreement or (2) upon commencement of the improvements to Licensee's parking lot as described in the Purchase and Sale Agreement and the License Agreement.
  - b. The City may terminate this Agreement six months after receipt by the Licensee of written notice of Licensee's non-compliance with any of the terms of this Agreement, which notice shall identify such non-compliance, provided that such non-compliance is not cured within six (6) months after Licensee's receipt of such notice; provided, however, that the notice period shall be 30 days for Licensee's failure to maintain insurance required by this Agreement.
  - c. Licensee may terminate this Agreement at any time upon 10 days' prior written notice to the City.
  - d. In the event that the City has not commenced construction of the Project within four (4) years from the date of this Agreement, (1) the City shall pay to Licensee the sum of \$9,521.10, which represents the value of certain improvements to the

Fee Premises for which Licensee was not compensated in the Purchase and Sale Agreement, which improvements are described in a certain February 28, 2018 appraisal report entitled "Parcel No.(4) Owner: Kennebec Crossing, LLC Somerset Street Project Portland, Maine W.I.N. 17628.00," prepared for the City by Dwyer Associates, and the value of which value has been increased by an escalator of 4% per year from the time of said appraisal to the end of said four year period, and (2) Licensor shall have the option to terminate this Agreement and repurchase the Parking Encroachment Area as set forth in the "Option to Purchase" set forth in Exhibit 2 attached hereto.

11. Any notice provided under this Agreement must be sent by certified mail, return receipt requested to the other party at the address first set forth above, or at such other address as a party may provide to the other in writing from time to time.

IN WITNESS WHEREOF, the City of Portland has caused this Agreement to be executed by Jon P. Jennings, its City Manager thereunto duly authorized, and \_\_\_\_\_ has caused this License to be executed by \_\_\_\_\_, its \_\_\_\_\_ thereunto duly authorized, as of the day and year first written above.

**CITY OF PORTLAND**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Jon P. Jennings  
Its City Manager  
Dated: \_\_\_\_\_

**KENNEBEC CROSSING, LLC**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2019

Then personally appeared the above-named Jon P. Jennings, City Manager of the City of Portland, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2019

Then personally appeared the above-named \_\_\_\_\_,  
\_\_\_\_\_ of Kennebec Crossing, LLC, as aforesaid, and acknowledged the foregoing to be her free act and deed in her said capacity, and the free act and deed of said limited liability company.

Before me,

\_\_\_\_\_  
Attorney-at-Law/Notary Public

**EXHIBIT 1**  
**(TO REVOCABLE ENCROACHMENT LICENSE AND  
OPTION TO REPURCHASE AGREEMENT)**

N/F  
BOPO LLC  
CCRD BK. 28797 P. 224

BOPO LLC  
PARCEL NO. (5)  
LAND TAKEN = 1,401± S.F.  
TEMP. CONST. RIGHTS = 881± S.F. (2)  
TOTAL AREA = 0.33± AC. (CALC.)  
REM. AREA = 0.30± AC.

PC = STA. 61+12.72

PT = STA. 60+92.66  
CITY OF PORTLAND

PC = STA. 103+92.21

PREBLE STREET

KENNEBEC STREET

NOVER STREET

0.13± AC. 70'±

AREA OF EXISTING PARKING LOT WITHIN LAND TAKEN = 2,117± S.F.

11,722± S.F.

30' WATER EASEMENT 7491/303

30' SEWER EASEMENT 7460/228

CMP / NET&T POLE EASEMENT TT80/76

LIMIT OF EXISTING PARKING LOT

TEMP.  
door all elev 11.54 door all elev 11.73

CONST.

LIMITS

N/F  
KENNEBEC KROSSING LLC  
CCRD BK. 30862 P. 167

**EXHIBIT 2**  
**(TO REVOCABLE ENCROACHMENT LICENSE AND  
OPTION TO REPURCHASE AGREEMENT)**

**Option to Repurchase**

1. In the event that the City fails to commence construction of the Project described in the Revocable Encroachment License And Option To Repurchase Agreement (the "Agreement") to which this Exhibit is attached within four years after the date of the Agreement, Licensee shall have the right, but not the obligation, to repurchase the Parking Encroachment Area for \$20.16 per square foot increased by an escalator of 4% per year for each year after the date of the Agreement that this Option is exercised (the "Option Price"). The date of this Agreement is referred to herein as the Closing Date. This Option shall automatically terminate upon the City's commencement of the Project.

- a. In order to exercise the Option, Licensee must notify the City in writing of its intent to do so on or before the date that is 50 months after the Closing Date. The City agrees that if it receives such Notice, it will reconvey to Licensee the Parking Encroachment Area within 60 days of the date of the Notice for the Option Price.
- b. In the event Licensee provides the Notice of its intent to exercise the Option, the Notice is to be accompanied by a payment to the City or its successors or assigns of earnest money in the amount of One Thousand Dollars (\$1,000.00) (the "Earnest Money"). Licensee shall indicate in said Notice the date, time and place for closing, which shall be held not less than thirty (30) nor more than sixty (60) days after the giving of such Notice.
- c. If Licensee, its successors or assigns, exercises this Option to purchase the Parking Encroachment Area, then in consideration of the terms, covenants and conditions contained herein, the parties mutually agree as follows:
  - i. Upon the giving of the Notice together with the Earnest Money, City shall thereby be bound to sell and Licensee shall thereby be bound to purchase the Parking Encroachment Area upon the terms and conditions set forth herein. City or its successors, transferees or assigns shall convey the Parking Encroachment Area by a good and sufficient quitclaim deed with covenant granting marketable title thereto, free and clear of all encumbrances and defects in title except for utility and public easements servicing the Parking Encroachment Area. The closing shall be held at the date, time and place set forth in said Notice, or at such reasonable date thereafter as may be required to clear any encumbrance and defects in title, and the City or its successors, transferees or assigns shall then and there deliver the deed to Licensee, its successors or assigns, upon tender of the balance of the Option Price by certified check, cashier's check, or cash. The balance to be tendered to the City or its successors or assigns shall be the Option Price, less the Earnest Money and any other option consideration actually received by the City.

- ii. If counsel of the Licensee, or its successors or assigns, shall be of the opinion, given in good faith, that the title to said premises is defective or is otherwise not free and clear of all material encumbrances or that the title is not marketable, then the Licensee, its successors or assigns, shall have the right, provided it or they shall have exercised this Option, to extend the time for conveyance of the Parking Encroachment Area, during which time the City or its successors, transferees or assigns shall make a reasonable effort to remove such defects at its own expense, to the satisfaction of counsel of the Licensee, its successors or assigns. If record title proves defective and City or its successors or assigns shall fail to remove such defect within a reasonable time after notice from Licensee of the nature of the defect, Licensee may, at its election, (a) cure any such defect and deduct the cost thereof from the Option Price at closing, or (b) elect to close notwithstanding any such defect, or (c) terminate this Option by written notice to the City or its successors or assigns, whereupon all Earnest Money paid by Licensee to the City or its successors or assigns shall immediately be returned to Licensee and thereafter the parties shall be relieved of all obligations and this Option shall terminate.
  - iii. If all obligations of this agreement have been performed, excepting that Licensee does not complete the purchase, the City or its successors or assigns shall retain the Earnest Money as full liquidated damages, and without recourse to any other remedies, and whereupon this Option shall terminate.
  - iv. Full possession of the Parking Encroachment Area, free of all encumbrances except as aforesaid, is to be delivered to Licensee at closing, with the Parking Encroachment Area to be in the reasonably functional condition, reasonable wear and tear excepted.
  - v. Real estate taxes and utilities shall be prorated as of the time of the passing of title. Real estate transfer taxes, if any, arising in connection with the conveyance of the Parking Encroachment Area shall be paid by the parties or their successors or assigns in accordance with the custom of the locality where the premises are situated.
- d. Notwithstanding anything else to the contrary herein, in the event that Licensee fails to give the Notice on or before the date that is 50 months after the Closing Date, then the Option shall automatically terminate, provided, however, that upon such termination, Licensee shall, at City's request and expense, execute and record an affidavit indicating that the Option has terminated.

2. This option to repurchase herein may be amended or modified in whole or in part only by written agreement of Licensee and City.

3. This Option is enforceable by Licensee as a contract and shall inure to the benefit of and be enforceable by Licensee, its successors, and assigns.

4. The validity of any clause, part or provision of this option to repurchase herein shall not affect the validity of the remaining portions of thereof.

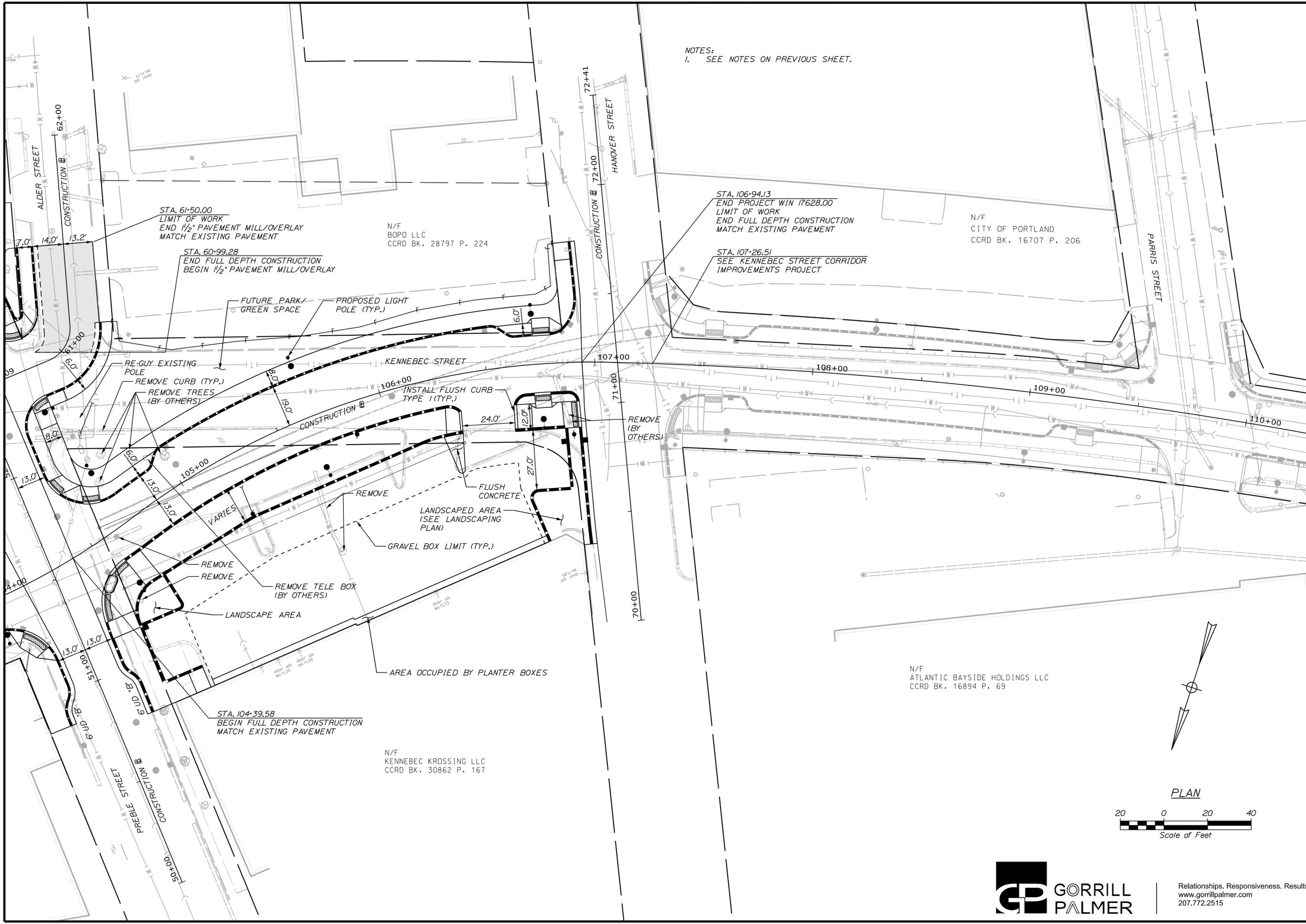
**EXHIBIT H**  
(Portland Somerset Street Restoration Plans)

Date: 11/2/2018

Username: Mike.Cundiff

Division: HIGHWAY

Filename: ...\\000\Highway\011\_Plan02.dgn



NOTES:  
 1. SEE NOTES ON PREVIOUS SHEET.

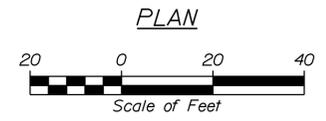
CITY OF PORTLAND  
 55 PORTLAND STREET  
 PORTLAND, MAINE 04101

PROJ. MANAGER	C. WELZEL	DATE
DESIGN DETAILED	J. WUNDERBACH	11/18
CHECKED/REVIEWED	T. LANDRY	11/18
DESIGNS DETAILED		
REVISIONS 1		
REVISIONS 2		
REVISIONS 3		
REVISIONS 4		
FIELD CHANGES		

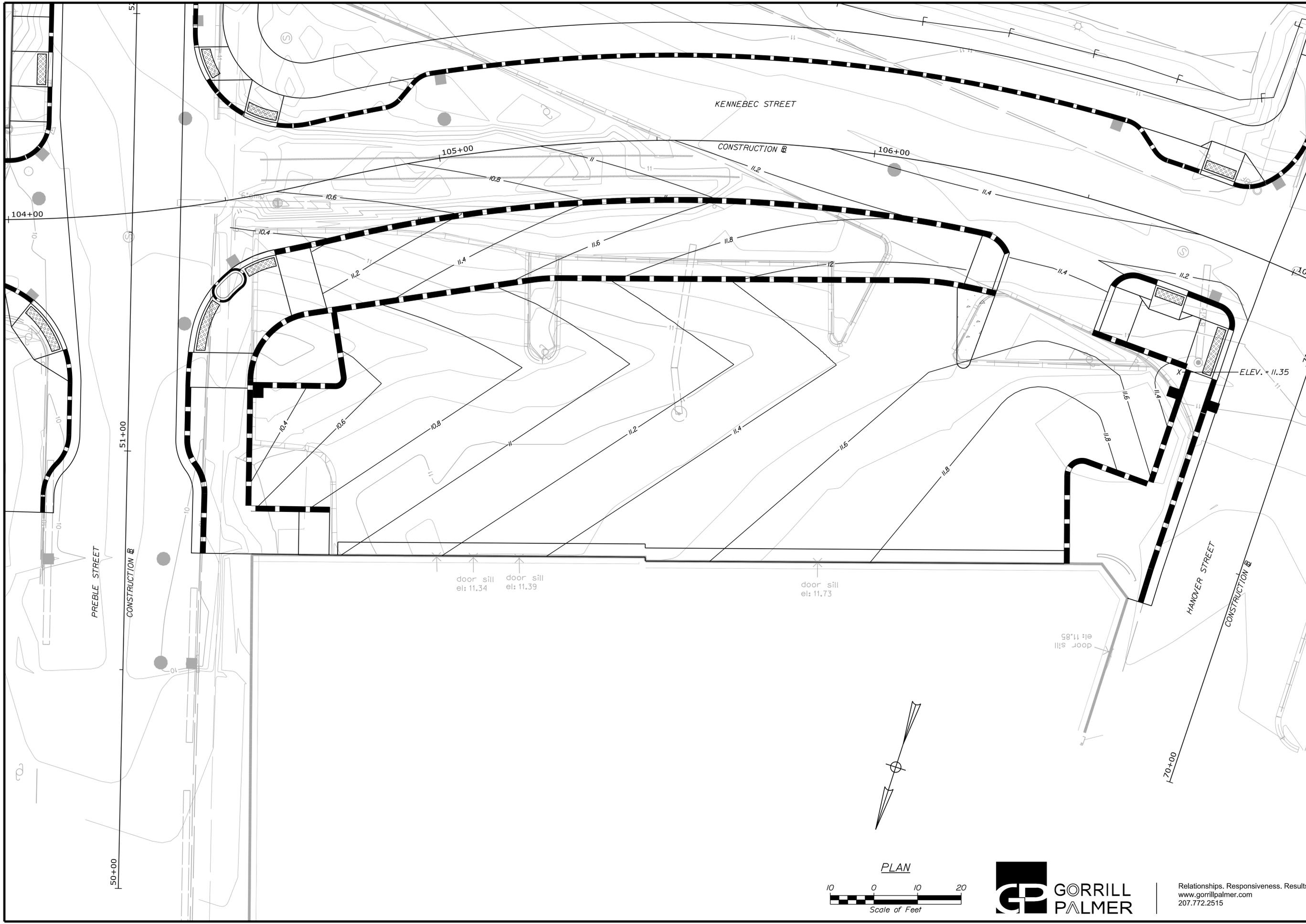
DATE	SIGNATURE	P.E. NUMBER	DATE

PORTLAND  
 SOMERSET STREET  
 RESTORATION  
 GENERAL PLANS

SHEET NUMBER  
**11**  
 OF 31



Relationships. Responsiveness. Results.  
 www.gorrillpalmer.com  
 207.772.2515



CITY OF PORTLAND  
55 PORTLAND STREET  
PORTLAND, MAINE 04101

PORTLAND  
SOMERSET STREET  
RESTORATION

PROJ. MANAGER	C. WELZEL	BY	DATE
DESIGN/DETAILED	J. WUNDERBACH	T. LANDRY	11/18
CHECKED/REVIEWED	D. DETINGER		11/18
DESIGN/DETAILED			
REVISIONS 1			
REVISIONS 2			
REVISIONS 3			
REVISIONS 4			
FIELD CHANGES			

PARKING LOT GRADING PLAN

SHEET NUMBER  
**14**  
OF 31

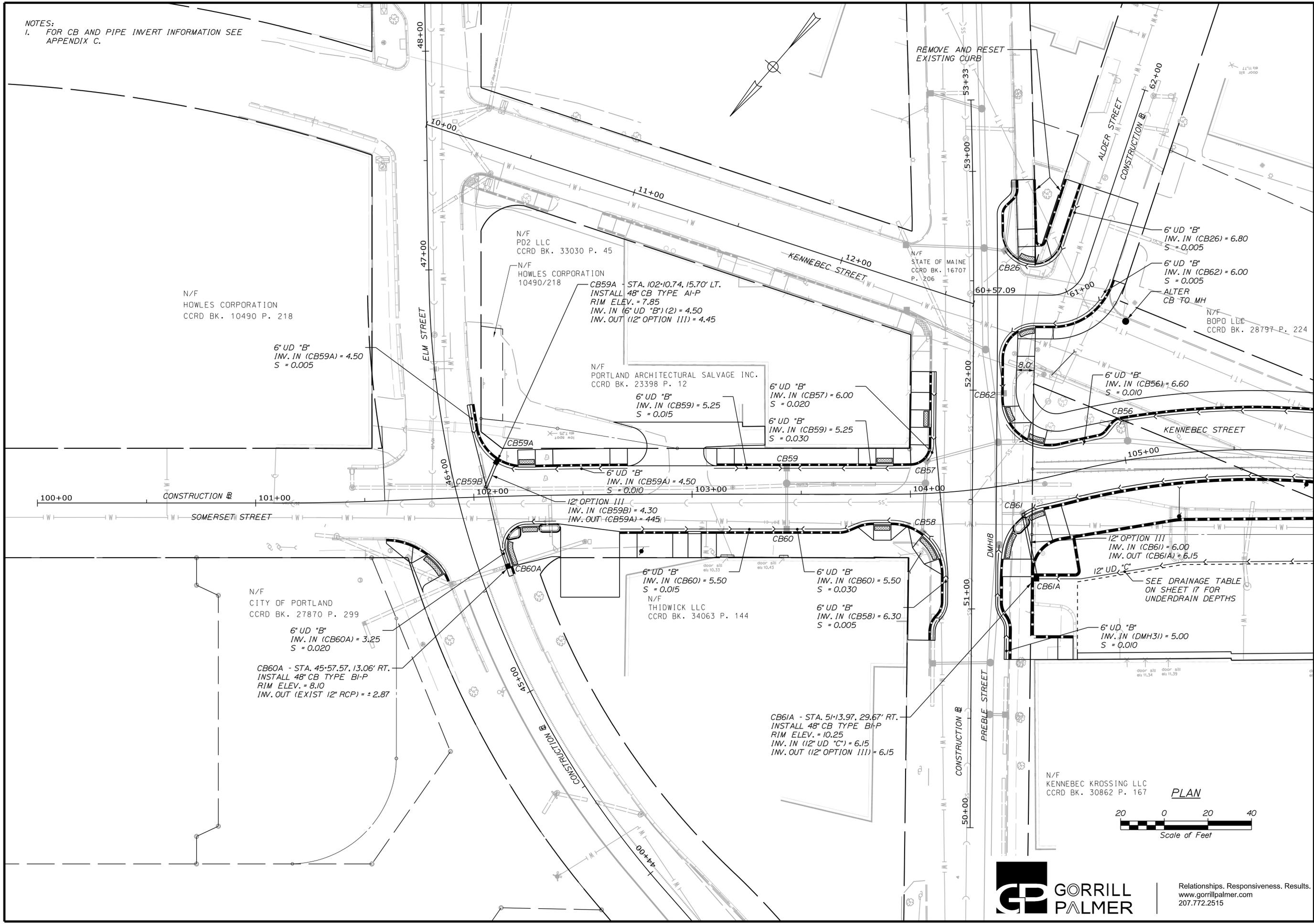
WIN  
17628.00



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207.772.2515

Filename: ... \Highway\015\_DrainagePlan01.dgn  
 Division: HIGHWAY  
 Username: Mike.Cundiff  
 Date: 11/2/2018

NOTES:  
 1. FOR CB AND PIPE INVERT INFORMATION SEE APPENDIX C.



N/F  
 HOWLES CORPORATION  
 CCRD BK. 10490 P. 218

6" UD "B"  
 INV. IN (CB59A) = 4.50  
 S = 0.005

N/F  
 PD2 LLC  
 CCRD BK. 33030 P. 45

N/F  
 HOWLES CORPORATION  
 10490/218  
 CB59A - STA. 102+10.74, 15.70' LT.  
 INSTALL 48" CB TYPE A1-P  
 RIM ELEV. = 7.85  
 INV. IN 16" UD "B" (2) = 4.50  
 INV. OUT (12" OPTION III) = 4.45

N/F  
 PORTLAND ARCHITECTURAL SALVAGE INC.  
 CCRD BK. 23398 P. 12

6" UD "B"  
 INV. IN (CB59) = 5.25  
 S = 0.015

6" UD "B"  
 INV. IN (CB57) = 6.00  
 S = 0.020

6" UD "B"  
 INV. IN (CB59) = 5.25  
 S = 0.030

12" OPTION III  
 INV. IN (CB59B) = 4.30  
 INV. OUT (CB59A) = 4.45

6" UD "B"  
 INV. IN (CB60) = 5.50  
 S = 0.015

6" UD "B"  
 INV. IN (CB60) = 5.50  
 S = 0.030

6" UD "B"  
 INV. IN (CB58) = 6.30  
 S = 0.005

N/F  
 CITY OF PORTLAND  
 CCRD BK. 27870 P. 299

6" UD "B"  
 INV. IN (CB60A) = 3.25  
 S = 0.020

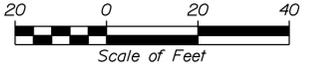
CB60A - STA. 45+57.57, 13.06' RT.  
 INSTALL 48" CB TYPE B1-P  
 RIM ELEV. = 8.10  
 INV. OUT (EXIST 12" RCP) = ± 2.87

N/F  
 THIDWICK LLC  
 CCRD BK. 34063 P. 144

CB61A - STA. 51+13.97, 29.67' RT.  
 INSTALL 48" CB TYPE B1-P  
 RIM ELEV. = 10.25  
 INV. IN (12" UD "C") = 6.15  
 INV. OUT (12" OPTION III) = 6.15

N/F  
 KENNEBEC KROSSING LLC  
 CCRD BK. 30862 P. 167

PLAN



CITY OF PORTLAND  
 55 PORTLAND STREET  
 PORTLAND, MAINE 04101

WIN  
 17628.00

PROJ. MANAGER	DATE	BY	DATE
C. WELZEL		T. LAUDRY	
DESIGN DETAILED	J. WUNDERBACH		
CHECKED/REVIEWED	D. ETINGER		
DESIGN DETAILED			
REVISIONS 1			
REVISIONS 2			
REVISIONS 3			
REVISIONS 4			
FIELD CHANGES			

PORTLAND  
 SOMERSET STREET  
 RESTORATION

DRAINAGE PLANS

SHEET NUMBER

15

OF 31



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 www.gorillpalmer.com  
 207.772.2515

Date: 11/2/2018

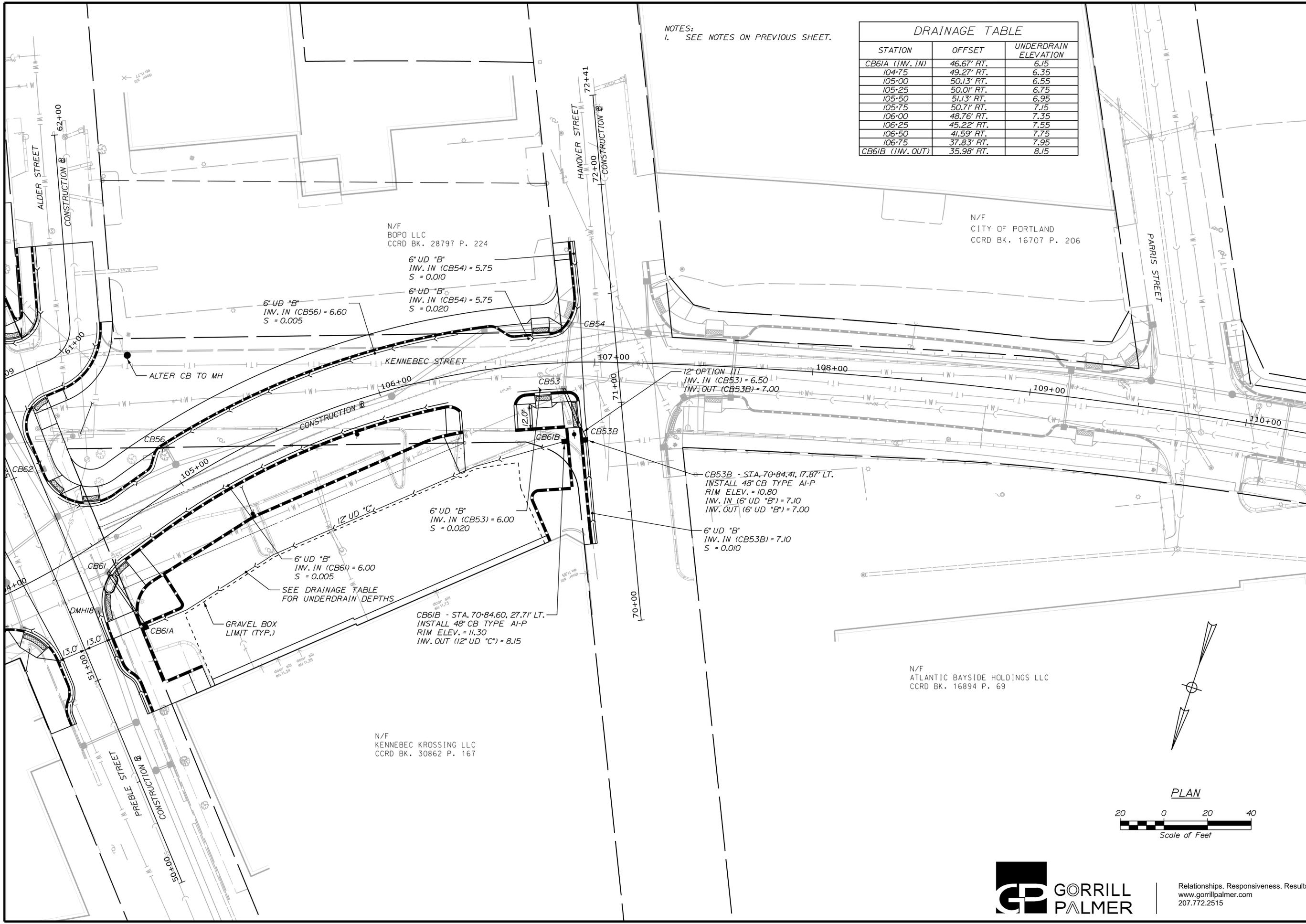
Username: Mike.Cundiff

Division: HIGHWAY

Filename: ... \Highway\016\_DrainagePlan02.dgn

NOTES:  
1. SEE NOTES ON PREVIOUS SHEET.

STATION	OFFSET	UNDERDRAIN ELEVATION
CB61A (INV. IN)	46.67' RT.	6.15
104+75	49.27' RT.	6.35
105+00	50.13' RT.	6.55
105+25	50.01' RT.	6.75
105+50	51.13' RT.	6.95
105+75	50.71' RT.	7.15
106+00	48.76' RT.	7.35
106+25	45.22' RT.	7.55
106+50	41.59' RT.	7.75
106+75	37.83' RT.	7.95
CB61B (INV. OUT)	35.98' RT.	8.15



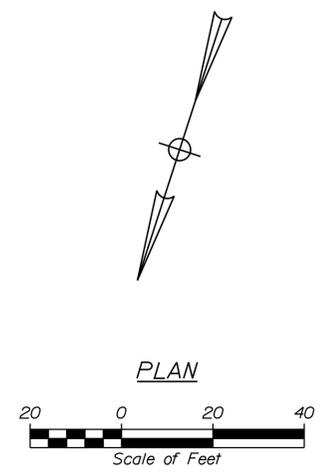
CITY OF PORTLAND  
55 PORTLAND STREET  
PORTLAND, MAINE 04101

WIN  
17628.00

PROJ. MANAGER	C. WELZEL	BY	T. LANDRY	DATE	DATE
DESIGN-DETAILED	J. WUNDERBACH	DATE	11/8		
CHECKED-REVIEWED	D. TINGIER	DATE	11/8		
DESIGN-DETAILED					
DESIGN-DETAILED					
REVISIONS 1					
REVISIONS 2					
REVISIONS 3					
REVISIONS 4					
FIELD CHANGES					

PORTLAND  
SOMERSET STREET  
RESTORATION  
DRAINAGE PLANS

SHEET NUMBER  
**16**  
OF 31



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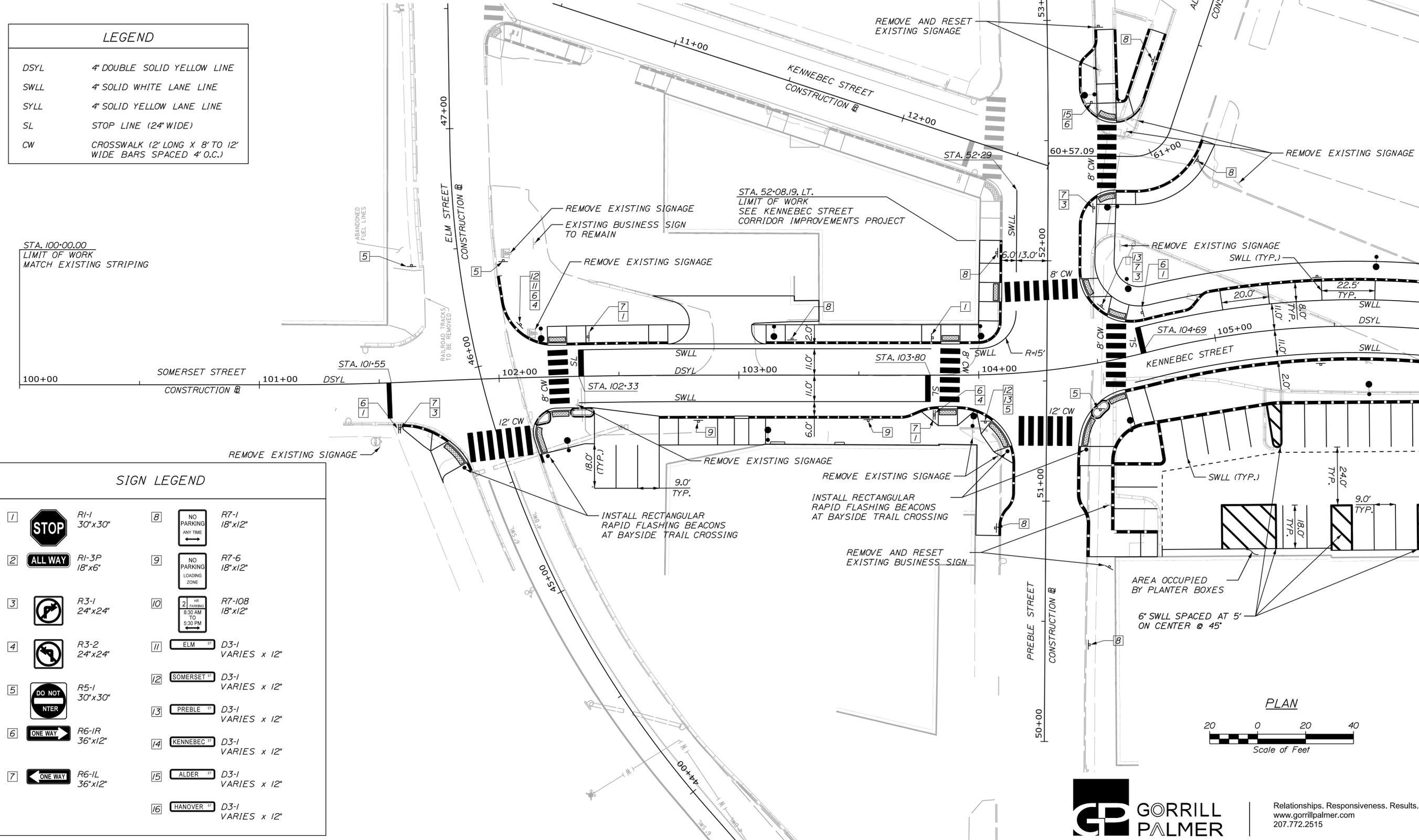
NOTES:

1. ALL PAVEMENT MARKINGS THAT CONFLICT WITH THE PROPOSED SHALL BE REMOVED IN ACCORDANCE WITH MAINE DOT SPECIFICATIONS.
2. ALL PROPOSED WORK SHALL BE IN CONFORMANCE WITH THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS", "STANDARD HIGHWAY SIGNS", U.S.D.O.T., F.H.W.A., LATEST EDITION.
3. REMOVAL OF EXISTING ROADSIDE SIGNS AND RELOCATION OF ROADSIDE SIGNS/POSTS, SHALL BE CONSIDERED INCIDENTAL TO THE 645 PAY ITEMS.
4. PROPOSED SIGN LOCATIONS, OFFSET AND HEIGHT SHALL BE IN ACCORDANCE WITH THE MANUAL FOR UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS (MUTCD), LATEST EDITION, AS APPROVED BY THE RESIDENT.
5. THE PROPOSED DESIGN SHOWN AS GRAY ON THESE PLANS IS BASED ON THE KENNEBEC STREET CORRIDOR IMPROVEMENTS PROJECT, SHOWN FOR INFORMATIONAL PURPOSES ONLY.
6. RESTRIPE PREBLE STREET CENTERLINE WITH A 4" BROKEN WHITE LANE LINE (10' STRIPE WITH 30' GAP) FROM STA. 50+00 TO STA. 53+00.

LEGEND

DSYL	4" DOUBLE SOLID YELLOW LINE
SWLL	4" SOLID WHITE LANE LINE
SYLL	4" SOLID YELLOW LANE LINE
SL	STOP LINE (24" WIDE)
CW	CROSSWALK (2' LONG X 8' TO 12' WIDE BARS SPACED 4' O.C.)

STA. 100+00.00  
LIMIT OF WORK  
MATCH EXISTING STRIPING



SIGN LEGEND

1		R1-1 30"x30"	8		R7-1 18"x12"
2		R1-3P 18"x6"	9		R7-6 18"x12"
3		R3-1 24"x24"	10		R7-10B 18"x12"
4		R3-2 24"x24"	11		D3-1 VARIES x 12"
5		R5-1 30"x30"	12		D3-1 VARIES x 12"
6		R6-1R 36"x12"	13		D3-1 VARIES x 12"
7		R6-1L 36"x12"	14		D3-1 VARIES x 12"
			15		D3-1 VARIES x 12"
			16		D3-1 VARIES x 12"



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CITY OF PORTLAND  
55 PORTLAND STREET  
PORTLAND, MAINE 04101

PROJ. MANAGER	C. WELZEL	BY	T. LANDRY	DATE	11/18
DESIGN-DETAILED	J. WINGENBACH	CHECKED-REVIEWED	D. EITINGER	SIGNATURE	
DESIGNS-DETAILED		DESIGNS-DETAILED		P.E. NUMBER	
REVISIONS 1		REVISIONS 2		DATE	
REVISIONS 3		REVISIONS 4			
FIELD CHANGES					

PROJ. MANAGER	C. WELZEL	BY	T. LANDRY	DATE	11/18
DESIGN-DETAILED	J. WINGENBACH	CHECKED-REVIEWED	D. EITINGER	SIGNATURE	
DESIGNS-DETAILED		DESIGNS-DETAILED		P.E. NUMBER	
REVISIONS 1		REVISIONS 2		DATE	
REVISIONS 3		REVISIONS 4			
FIELD CHANGES					

PORTLAND  
SOMERSET STREET  
RESTORATION  
SIGNING & STRIPING PLANS

SHEET NUMBER  
**17**  
OF 31

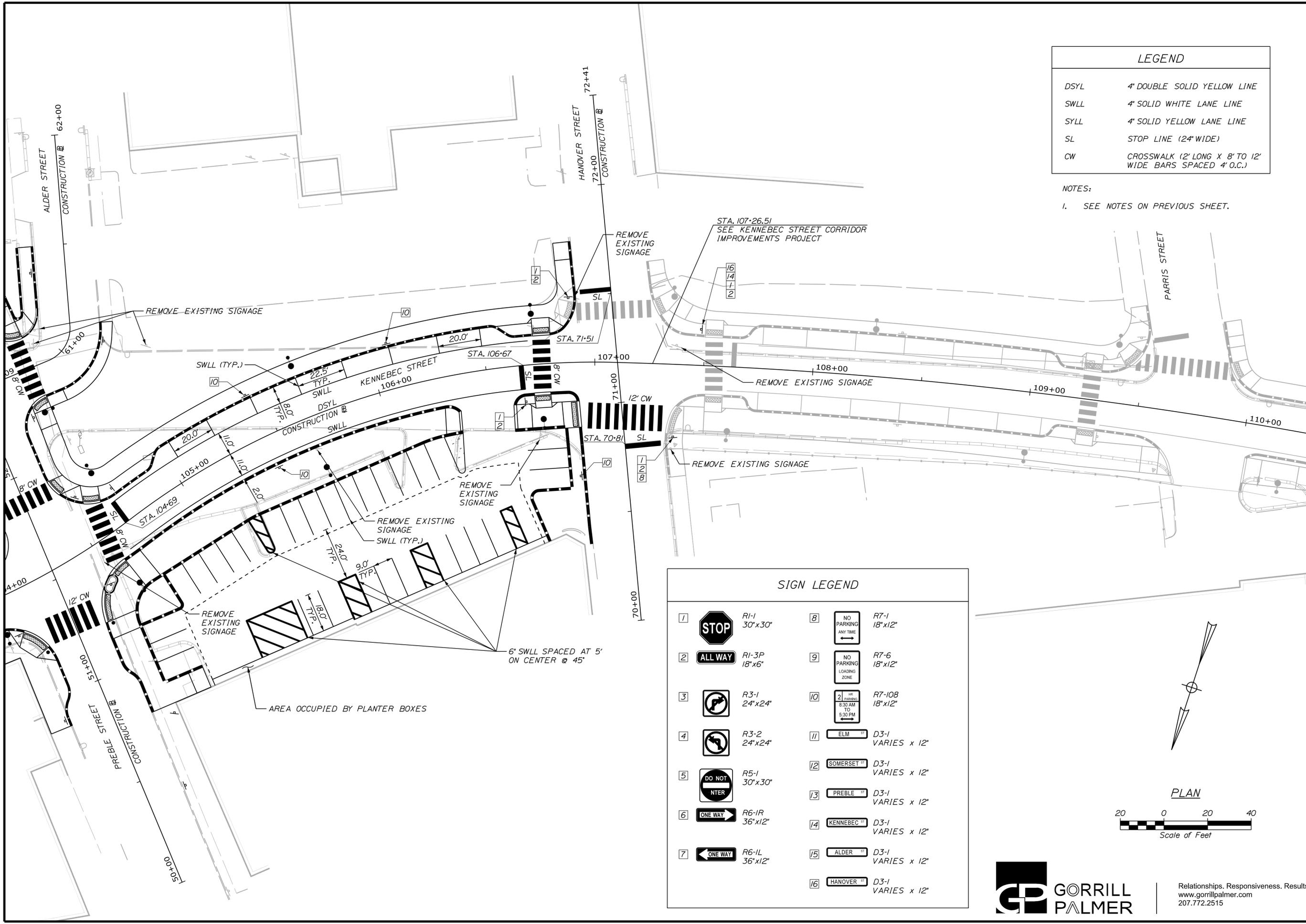
WIN  
17628.00

Date: 11/2/2018

Username: Mike.Cundiff

Division: HIGHWAY

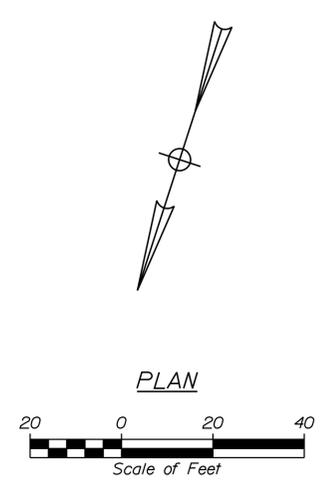
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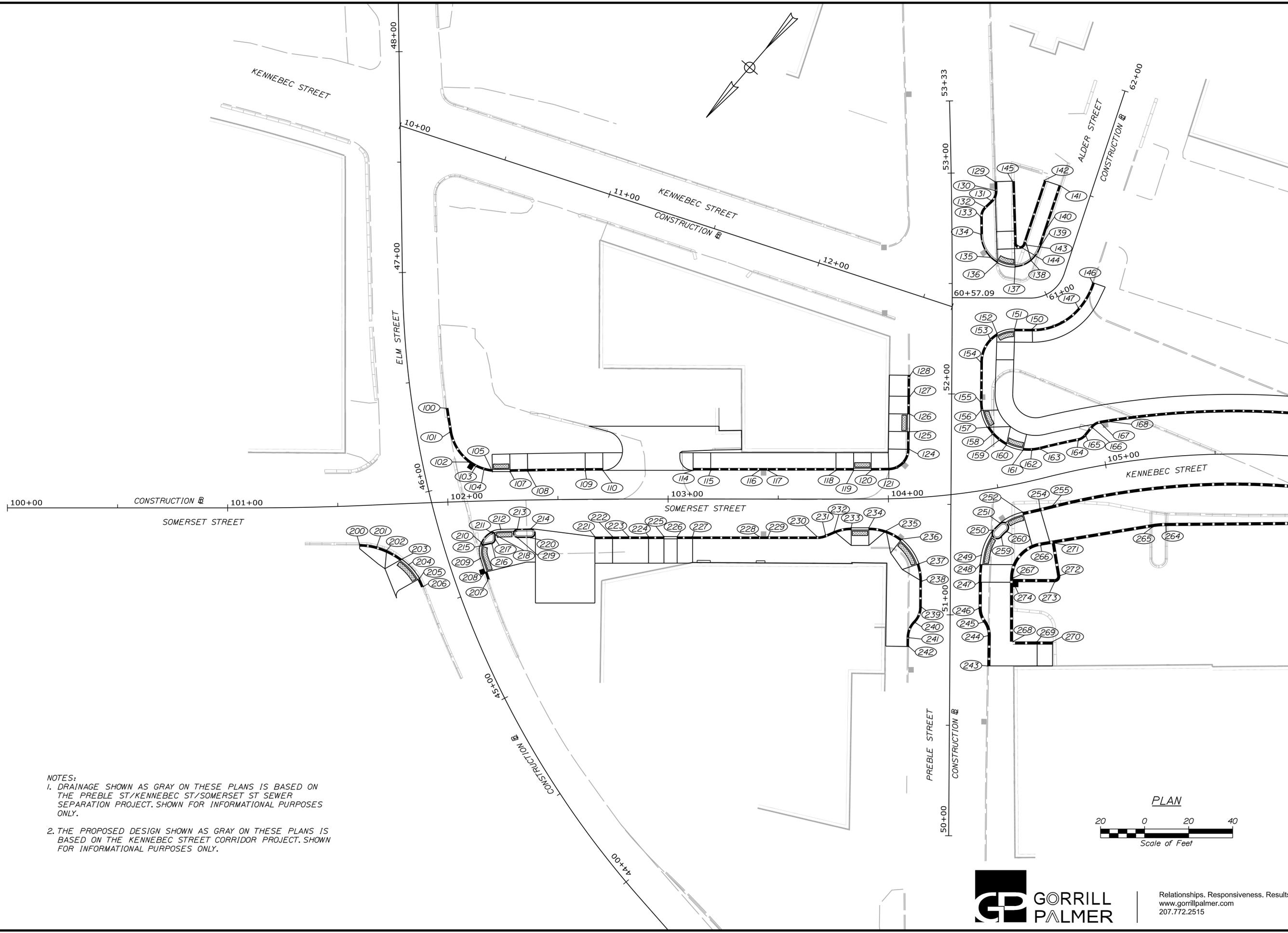
LEGEND	
DSYL	4" DOUBLE SOLID YELLOW LINE
SWLL	4" SOLID WHITE LANE LINE
SYLL	4" SOLID YELLOW LANE LINE
SL	STOP LINE (24" WIDE)
CW	CROSSWALK (2' LONG X 8' TO 12' WIDE BARS SPACED 4' O.C.)

NOTES:  
1. SEE NOTES ON PREVIOUS SHEET.

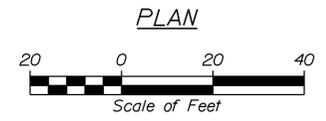
SIGN LEGEND			
1		R1-1 30"x30"	
2		R1-3P 18"x6"	
3		R3-1 24"x24"	
4		R3-2 24"x24"	
5		R5-1 30"x30"	
6		R6-1R 36"x12"	
7		R6-1L 36"x12"	
8		R7-1 18"x12"	
9		R7-6 18"x12"	
10		R7-10B 18"x12"	
11		D3-1 VARIES x 12"	
12		D3-1 VARIES x 12"	
13		D3-1 VARIES x 12"	
14		D3-1 VARIES x 12"	
15		D3-1 VARIES x 12"	
16		D3-1 VARIES x 12"	



CITY OF PORTLAND 55 PORTLAND STREET PORTLAND, MAINE 04101		WIN 17628.00																																																															
PORTLAND SOMERSET STREET RESTORATION SIGNING & STRIPING PLANS																																																																	
SHEET NUMBER	18	OF 31																																																															
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>PROJ. MANAGER</th> <th>C. WELZEL</th> <th>BY</th> <th>T. LANDRY</th> <th>DATE</th> <th>11/18</th> <th>SIGNATURE</th> </tr> </thead> <tbody> <tr> <td>DESIGN DETAILED</td> <td>J. WINGENBACH</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>CHECKED/REVIEWED</td> <td>D. TETTINGER</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>DESIGN DETAILED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>REVISIONS 1</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>REVISIONS 2</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>REVISIONS 3</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>REVISIONS 4</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>FIELD CHANGES</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>			PROJ. MANAGER	C. WELZEL	BY	T. LANDRY	DATE	11/18	SIGNATURE	DESIGN DETAILED	J. WINGENBACH						CHECKED/REVIEWED	D. TETTINGER						DESIGN DETAILED							REVISIONS 1							REVISIONS 2							REVISIONS 3							REVISIONS 4							FIELD CHANGES						
PROJ. MANAGER	C. WELZEL	BY	T. LANDRY	DATE	11/18	SIGNATURE																																																											
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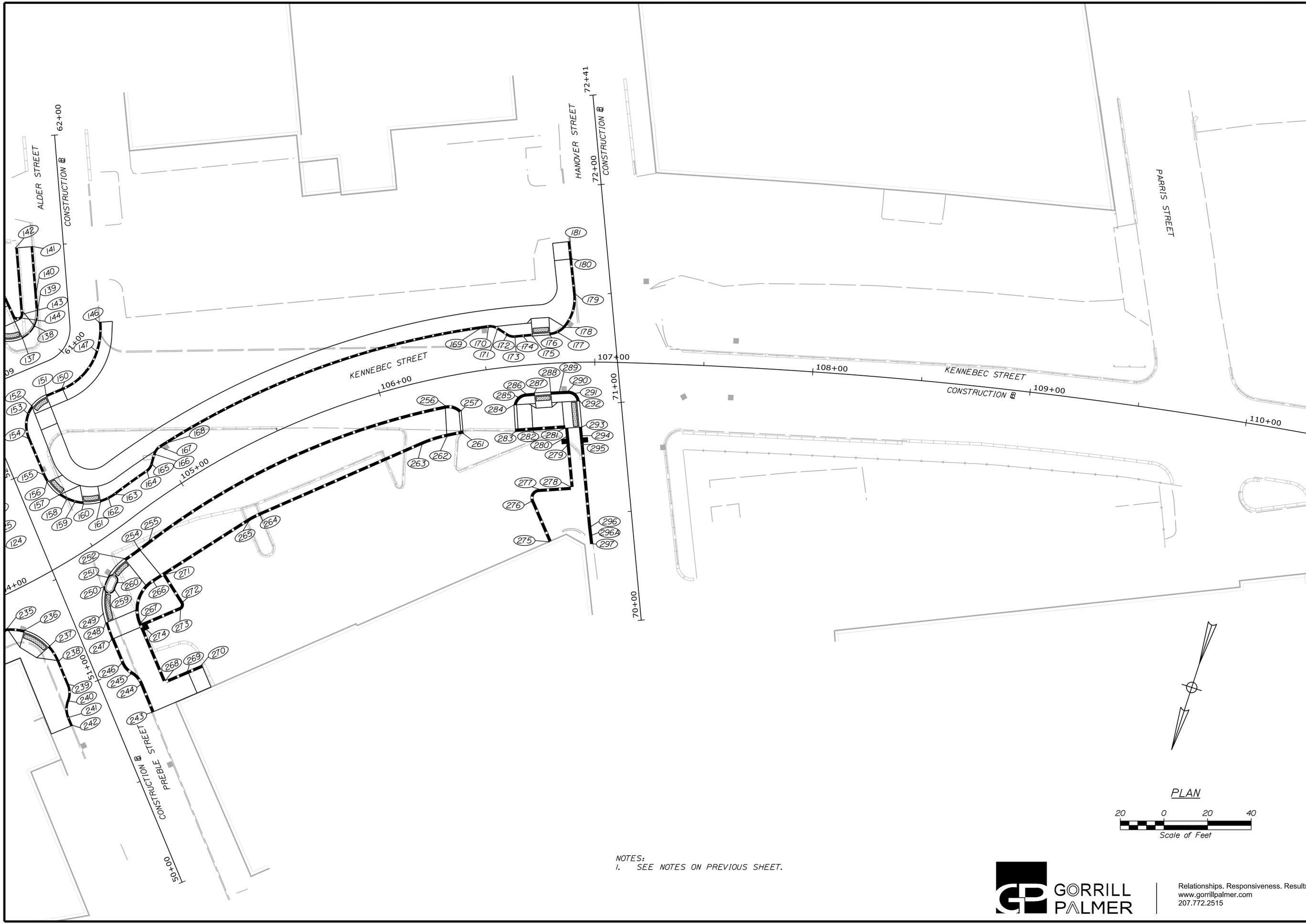


- NOTES:
1. DRAINAGE SHOWN AS GRAY ON THESE PLANS IS BASED ON THE PREBLE ST/KENNEBEC ST/SOMERSET ST SEWER SEPARATION PROJECT. SHOWN FOR INFORMATIONAL PURPOSES ONLY.
  2. THE PROPOSED DESIGN SHOWN AS GRAY ON THESE PLANS IS BASED ON THE KENNEBEC STREET CORRIDOR PROJECT. SHOWN FOR INFORMATIONAL PURPOSES ONLY.



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 207.772.2515

CITY OF PORTLAND 55 PORTLAND STREET PORTLAND, MAINE 04101		WIN 17628.00	
PROJ. MANAGER C. WELZEL	BY T. LAUDRY	DATE 11/18	SIGNATURE
DESIGN DETAILED J. WUNDERBACH	CHECKED-REVIEWED D. ETINGER	DESIGN DETAILED	P.E. NUMBER
DESIGN DETAILED	DESIGN DETAILED	REVISIONS 1	DATE
REVISIONS 2	REVISIONS 3	REVISIONS 4	FIELD CHANGES
PORTLAND SOMERSET STREET RESTORATION		CURBING PLANS	
SHEET NUMBER		20	
		OF 31	



NOTES:  
 1. SEE NOTES ON PREVIOUS SHEET.



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CITY OF PORTLAND  
 55 PORTLAND STREET  
 PORTLAND, MAINE 04101

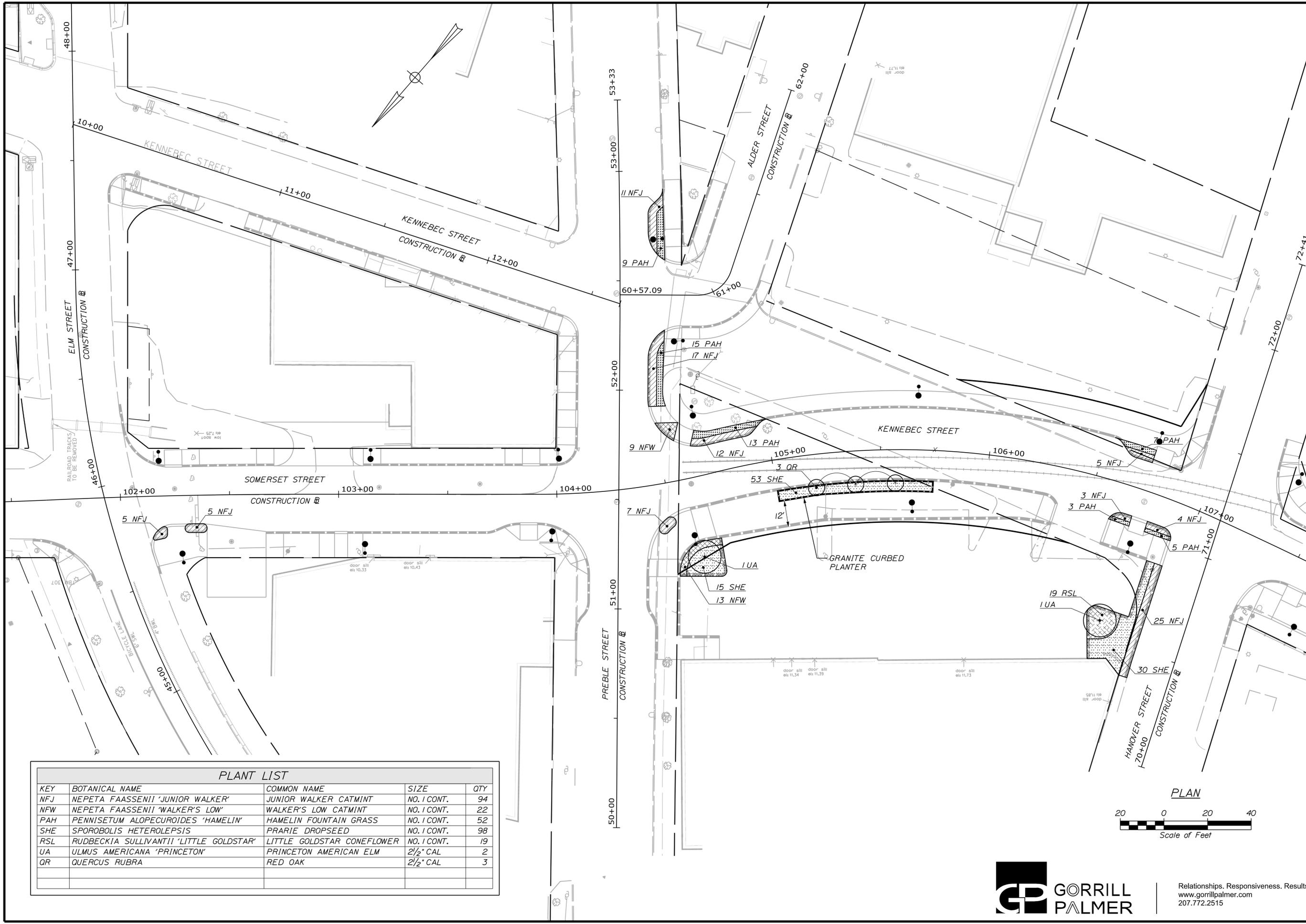
PROJ. MANAGER	DATE	BY	DATE
DESIGN DETAILED	J. WUNDERBACH	T. LANDRY	11/18
CHECKED/REVIEWED	D. TETINGER		11/18
DESIGN DETAILED			
DESIGN DETAILED			
REVISIONS 1			
REVISIONS 2			
REVISIONS 3			
REVISIONS 4			
FIELD CHANGES			

SIGNATURE	P.E. NUMBER	DATE

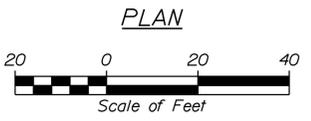
PORTLAND  
 SOMERSET STREET  
 RESTORATION  
 CURBING PLANS

SHEET NUMBER  
**21**  
 OF 31

WIN  
 17628.00



PLANT LIST				
KEY	BOTANICAL NAME	COMMON NAME	SIZE	QTY
NFJ	NEPETA FAASSENII 'JUNIOR WALKER'	JUNIOR WALKER CATMINT	NO. 1 CONT.	94
NFW	NEPETA FAASSENII 'WALKER'S LOW'	WALKER'S LOW CATMINT	NO. 1 CONT.	22
PAH	PENNISETUM ALOPECUROIDES 'HAMELIN'	HAMELIN FOUNTAIN GRASS	NO. 1 CONT.	52
SHE	SPOROBOLIS HETEROLEPSIS	PRARIE DROPSEED	NO. 1 CONT.	98
RSL	RUDBECKIA SULLIVANTII 'LITTLE GOLDSTAR'	LITTLE GOLDSTAR CONEFLOWER	NO. 1 CONT.	19
UA	ULMUS AMERICANA 'PRINCETON'	PRINCETON AMERICAN ELM	2 1/2" CAL	2
QR	QUERCUS RUBRA	RED OAK	2 1/2" CAL	3



CITY OF PORTLAND  
 55 PORTLAND STREET  
 PORTLAND, MAINE 04101

PORTLAND  
 SOMERSET STREET  
 RESTORATION

PROJ. MANAGER	CHRIS BRANCH	BY	DATE
DESIGN-DETAILED	C.MATTHEO	M.CUNDIFF	11/18
CHECKED-REVIEWED	D.ETTINGER		
DESIGN-DETAILED			
REVISIONS 1			
REVISIONS 2			
REVISIONS 3			
REVISIONS 4			
FIELD CHANGES			

LANDSCAPING PLAN

SHEET NUMBER  
**A1**



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WIN  
 17628.00