

**AGREEMENT**  
**BY AND AMONG THE COUNTY OF LAKE, THE CITY OF WAUKEGAN,**  
**AND THE WAUKEGAN PARK DISTRICT FOR SAFETY AND AESTHETIC**  
**ENHANCEMENTS ON SUNSET AVENUE (COUNTY HIGHWAY 46)**

**THIS AGREEMENT** is entered into this \_\_\_\_\_, day of \_\_\_\_\_, A.D. 20\_\_\_\_, by and among the COUNTY OF LAKE, Illinois, an Illinois body politic and corporate, acting by and through its Chair and County Board, hereinafter referred to as the COUNTY, the CITY OF WAUKEGAN, an Illinois Municipal Corporation, acting by and through its Mayor and City Council, hereinafter referred to as the CITY, and the PARK DISTRICT OF WAUKEGAN, a unit of local government, acting by and through its President and Board of Park Commissioners, hereinafter referred to as the DISTRICT. The COUNTY, the CITY and the DISTRICT are hereinafter referred to collectively as “parties” to THIS AGREEMENT, and any one of which is referred to individually as a “party” to THIS AGREEMENT.

**WITNESSETH**

**WHEREAS**, the COUNTY, in order to facilitate the free flow of traffic and ensure the safety of the motoring public, is desirous to make certain safety and aesthetic improvements to the median along Sunset Avenue (County Highway 46) from a point approximately 925 feet east of Delany Road to a point approximately 500 feet west of Northwestern Avenue; and,

**WHEREAS**, said safety and aesthetic improvements along Sunset Avenue include the modification of the existing median along Sunset Avenue (hereinafter **MEDIAN**), the addition of a Guardrail System at the Union Pacific Railroad bridge pier (hereinafter **GUARDRAIL**), and the addition of landscape enhancements within the central portion of the **MEDIAN** on Sunset Avenue, (hereinafter the **IMPROVEMENT**, which shall also be referred to as County Section 11-00169-07-LS); and,

**WHEREAS**, the COUNTY shall prepare all surveys, design engineering plans and specifications, bid documents and furnish construction engineering supervision, and cause the **IMPROVEMENT** to be built in accordance with the approved plans, specifications, and construction contract (hereinafter **PLANS**). Said **PLANS** by reference herein are hereby made a part hereof (i.e., those **PLANS** dated May 17, 2013, prepared by the Lake County Division of Transportation); and,

**WHEREAS**, the PLANS contain the LANDSCAPE CONCEPT PLANS (hereinafter LANDSCAPING PLANS) detailing the landscape enhancements and the size, type and species of live planted materials (hereinafter LANDSCAPE MATERIALS) contained within the MEDIAN, to be installed as part of the IMPROVEMENT. The LANDSCAPING PLANS are attached as EXHIBIT A to THIS AGREEMENT, which is attached hereto and is hereby made a part hereof; and,

**WHEREAS**, the MEDIAN shall be modified between Delany Road and Northwestern Avenue and shall contain LANDSCAPE MATERIALS, in accordance with the attached EXHIBIT A to THIS AGREEMENT; and,

**WHEREAS**, the MEDIAN being modified as part of the IMPROVEMENT lies within CITY and DISTRICT limits; and,

**WHEREAS**, the COUNTY has a program to beautify roadside areas along COUNTY highways. Said program is referred to as the LakeScape Program; and,

**WHEREAS**, the LakeScape Program is a partnership between the COUNTY and other entities for roadside enhancement; and,

**WHEREAS**, the COUNTY agrees to construct the IMPROVEMENT to improve the safety and enhance the aesthetic appeal of the MEDIAN and to provide and install the LANDSCAPE MATERIALS in the MEDIAN with no reimbursement by the CITY or the DISTRICT; and,

**WHEREAS**, the CITY and the DISTRICT have expressed their desire to partner together to provide routine maintenance to the LANDSCAPE MATERIALS (including trees, shrubs, perennials, sealed decorative aggregate, and stone walls, plus any and all ancillary materials) installed under the IMPROVEMENT within the MEDIAN with no reimbursement by the COUNTY; and,

**WHEREAS**, the IMPROVEMENT as heretofore described will be of immediate benefit to the residents of the COUNTY, the CITY, and the DISTRICT and will be permanent in nature;

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, made and pursuant to all applicable statutes, local ordinances, and authority, the COUNTY, the CITY, and the DISTRICT do hereby enter into the following:

**SECTION I.**  
**Recitals/Headings**

1. It is mutually agreed by and among the parties hereto that the foregoing preambles are hereby incorporated herein as though fully set forth.
2. It is mutually agreed by and among the parties hereto that the “headings” as contained in THIS AGREEMENT are for reference only, and the actual written provisions, paragraphs and words of THIS AGREEMENT shall control.

**SECTION II.**  
**Construction of the IMPROVEMENT**

1. The COUNTY agrees to prepare the LANDSCAPING PLANS, and the CITY and DISTRICT shall have the opportunity to review the LANDSCAPING PLANS with respect to the LANDSCAPE MATERIALS.
2. It is mutually agreed by and among the parties hereto that the MEDIAN shall contain trees, shrubs and perennials as well as various LANDSCAPING MATERIALS, in accordance with the attached EXHIBIT A to THIS AGREEMENT.
3. The COUNTY agrees to construct the IMPROVEMENT and to provide and install the LANDSCAPE MATERIALS in the MEDIAN without reimbursement by the CITY or the DISTRICT.
4. The COUNTY agrees to design, provide and install a LakeScape sign depicting the name and logo of the CITY, the DISTRICT, and the COUNTY without reimbursement by the CITY or the DISTRICT. The LakeScape sign will signify the partnership between the CITY, the DISTRICT, and the COUNTY. The CITY and the DISTRICT shall have the opportunity to review the design of said sign.
5. It is mutually agreed by and among the parties hereto that, as of this writing, the anticipated letting date for the IMPROVEMENT is July 23, 2013. The date of said scheduled letting is subject to change without notice to the CITY or the DISTRICT and is a function of the availability of funding and project readiness.

**Section III.**  
**Maintenance of the LANDSCAPE MATERIALS in the MEDIAN**

1. The COUNTY agrees to maintain, or cause to be maintained, the structure of the MEDIAN, the existing curb around the MEDIAN, the GUARDRAIL within the MEDIAN and the LakeScape sign with no reimbursement by the CITY or the DISTRICT.
2. The CITY and the DISTRICT agree to provide routine maintenance of the LANDSCAPE MATERIALS in the MEDIAN with no reimbursement by the COUNTY. Said routine maintenance to be performed by the CITY and the DISTRICT shall include, but not be limited to, the basic upkeep of the LANDSCAPE MATERIALS. Also, if appropriate, routine maintenance shall include weeding, watering, pruning and mulching as well as the replacement of dead plant materials. Routine maintenance shall include cleaning the sealed decorative aggregate and stone walls as well as the removal of debris from the MEDIAN.
3. The COUNTY further agrees to provide capital maintenance (major maintenance) of the LANDSCAPE MATERIALS, at its sole expense. Said capital maintenance shall include the complete redesign and replacement of the LANDSCAPE MATERIALS within the MEDIAN, should the need for redesign or full replacement of the LANDSCAPE MATERIALS be deemed necessary by the COUNTY at a future point in time.
4. It is mutually agreed by and among the parties hereto that, following substantial completion of the IMPROVEMENT and upon notice from the COUNTY, the CITY and the DISTRICT shall commence their maintenance upon the LANDSCAPE MATERIALS within the MEDIAN.
5. The COUNTY shall include in the plans and specifications a requirement for a full-replacement guarantee should any of the LANDSCAPE MATERIALS not remain in a live, healthy condition throughout the construction of the IMPROVEMENT and for a period of one (1) year following the date of planting, per the Standard Specification contained within the construction contract.
6. It is mutually agreed by and among the parties hereto that should any of the specified

LANDSCAPE MATERIALS included in the LANDSCAPING PLANS show signs of decline and/or disease, as mutually determined by the COUNTY, the CITY, and the DISTRICT, except to the extent covered by the guarantee described in Paragraph 5 above, the CITY and/or the DISTRICT shall promptly remove and replace said LANDSCAPE MATERIALS at its sole expense.

7. The COUNTY agrees to provide to the CITY and the DISTRICT a four (4)-hour maintenance seminar, at no cost to the CITY or the DISTRICT, on the maintenance of the LANDSCAPE MATERIALS in the MEDIAN. The scheduling of said maintenance seminar shall occur prior to the completion of construction of the IMPROVEMENT and shall be coordinated in a manner so as to ensure the attendance of the appropriate personnel from the CITY and the DISTRICT.
8. It is further mutually agreed by and among the parties hereto that, absent an emergency situation, the CITY and the DISTRICT shall perform their maintenance on the LANDSCAPE MATERIALS in the MEDIAN during non-peak traffic times, namely on weekdays, between 9:00 a.m. and 3:00 p.m. The CITY and the DISTRICT shall provide the appropriate traffic control on Sunset Avenue, in accordance with LCDOT and MUTCD standards, while performing maintenance on the LANDSCAPE MATERIALS in the MEDIAN.

## **SECTION V.**

### **General Provisions**

1. It is mutually agreed by and among the parties hereto that THIS AGREEMENT shall not be construed, in any manner or form, to limit the power or authority of the COUNTY or the COUNTY's County Engineer to maintain, operate, manage, improve, construct, reconstruct, repair, widen or expand COUNTY Highways as best determined, as provided by law.

2. It is mutually agreed by and among the parties hereto that nothing contained in THIS AGREEMENT is intended or shall be construed as, in any manner or form, creating or establishing a relationship of co-partners among the parties hereto, or as constituting either the CITY (including its elected officials, duly appointed officials, employees and agents) the agent, representative or employee of the COUNTY for any purpose or in any manner, whatsoever, or the DISTRICT (including its elected officials, duly appointed officials, employees and agents) the agent, representative or employee of the COUNTY for any purpose or in any manner, whatsoever. Both the CITY and the DISTRICT are to be and shall remain independent of the COUNTY with respect to all services performed under THIS AGREEMENT.
3. It is mutually agreed by and among the parties hereto that each party warrants and represents to the other parties and agrees that: (1) THIS AGREEMENT is executed by duly authorized agents or officers of such party and that all such agents and officers have executed the same in accordance with the lawful authority vested in them pursuant to all applicable and substantive requirements; (2) THIS AGREEMENT is binding and valid and will be specifically enforceable against each party; and, (3) THIS AGREEMENT does not violate any presently existing provisions of law nor any applicable order, writ, injunction or decree of any court or government department, commission, board, bureau, agency or instrumentality applicable to such party.
4. It is mutually agreed by and among the parties hereto that THIS AGREEMENT shall be deemed to take effect on September 1, 2013, provided the duly authorized agents of the parties hereto duly execute THIS AGREEMENT by affixing their signatures prior to September 1, 2013. In the event the date that the last authorized agent of the parties hereto affixes their signature to THIS AGREEMENT is subsequent to September 1, 2013, the effective date of THIS AGREEMENT shall then be the first day of the month which follows the date that the last authorized agent of the parties hereto affixes their signature.
5. It is mutually agreed by and among the parties hereto that the provisions of THIS AGREEMENT are severable. If any provision, paragraph, section, subdivision, clause, phrase or word of THIS AGREEMENT is for any reason held to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining portions of THIS AGREEMENT.
6. It is mutually agreed by and among the parties hereto that the agreement of the parties hereto is contained herein and that THIS AGREEMENT supersedes all oral agreements and negotiations between the parties hereto relating to the subject matter hereof.

7. It is mutually agreed by and among the parties hereto that any alterations, amendments, deletions, or waivers of any provision of THIS AGREEMENT shall be valid only when expressed in writing and duly executed by the parties hereto.
8. THIS AGREEMENT shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. Neither party hereto shall assign, transfer, sell, grant, convey, deed, cede or otherwise give over, in any manner or form, any of its duties, obligations and/or responsibilities as heretofore set forth in THIS AGREEMENT without first obtaining the expressed written consent and permission of the remaining parties to THIS AGREEMENT.
9. THIS AGREEMENT shall be enforceable in any court of competent jurisdiction in Lake County by each of the parties hereto by any appropriate action at law or in equity, including any action to secure the performance of the representations, promises, covenants, agreements, duties, responsibilities and obligations contained herein.
10. THIS AGREEMENT may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute THIS AGREEMENT.
11. THIS AGREEMENT shall remain in full force and effect for such a period of time as the MEDIAN, in whole or in part, remain in place and in use.
12. The CITY and the DISTRICT agree, upon completion of the IMPROVEMENT, to indemnify, defend and hold harmless the COUNTY, its elected officials, its duly appointed officials, agents, employees, and representatives, and the COUNTY's Division of Transportation, its duly appointed officials, agents, employees, and representatives from and against, any and all claims, suits, settlements, actions, losses, expenses, damages, injuries, judgments and demands (collectively referred to hereinafter as "claims") arising from and relating to the maintenance (or lack thereof) of LANDSCAPE MATERIALS placed in the MEDIAN along Sunset Avenue.
13. The COUNTY agrees to indemnify, defend and hold harmless the CITY and the DISTRICT, their elected officials, their duly appointed officials, agents, employees and representatives from and against any and all claims, suits, settlements, actions, losses, expenses, damages, injuries judgments and demands (collectively referred to hereinafter as "claims") arising from and relating to the design or construction of the MEDIAN GUARDRAIL or IMPROVEMENT.

14. The COUNTY acknowledges and agrees that the CITY and the DISTRICT shall have the right to terminate their obligation under THIS AGREEMENT, at will and without cause, upon sixty (60) days prior written notice to the COUNTY.
15. THIS AGREEMENT shall be considered null and void in the event that the construction contracts covering the IMPROVEMENT are not awarded by January 1, 2015.

**CITY OF WAUKEGAN**

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

**WAUKEGAN PARK DISTRICT**

ATTEST:

\_\_\_\_\_  
Secretary  
Waukegan Park District

By: \_\_\_\_\_  
President, Board of Park Commissioners

Date: \_\_\_\_\_

**RECOMMENDED FOR EXECUTION**

\_\_\_\_\_  
Lake County  
County Engineer/  
Director of Transportation

**COUNTY OF LAKE**

ATTEST:

\_\_\_\_\_  
Clerk  
Lake County

By: \_\_\_\_\_  
Chairman  
Lake County of Board

Date: \_\_\_\_\_

**EXHIBIT A**  
**LANDSCAPING PLANS**

*Sunset Avenue Improvements*  
*County Section 11-00169-07-LS*

*Exhibit A*  
*Sheet 1 of 3*



"ACCOLADE" ELM



"HOMESTEAD" ELM



"HAPPY RETURNS" DAYLILY



"TIGER EYES" SUMAC



"ANDORRA" JUNIPER



"JETFIRE" DAFFODILS



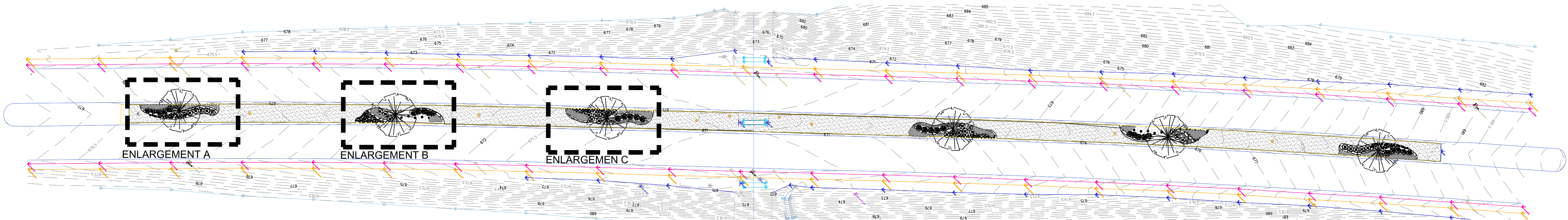
"KNOCKOUT" ROSE



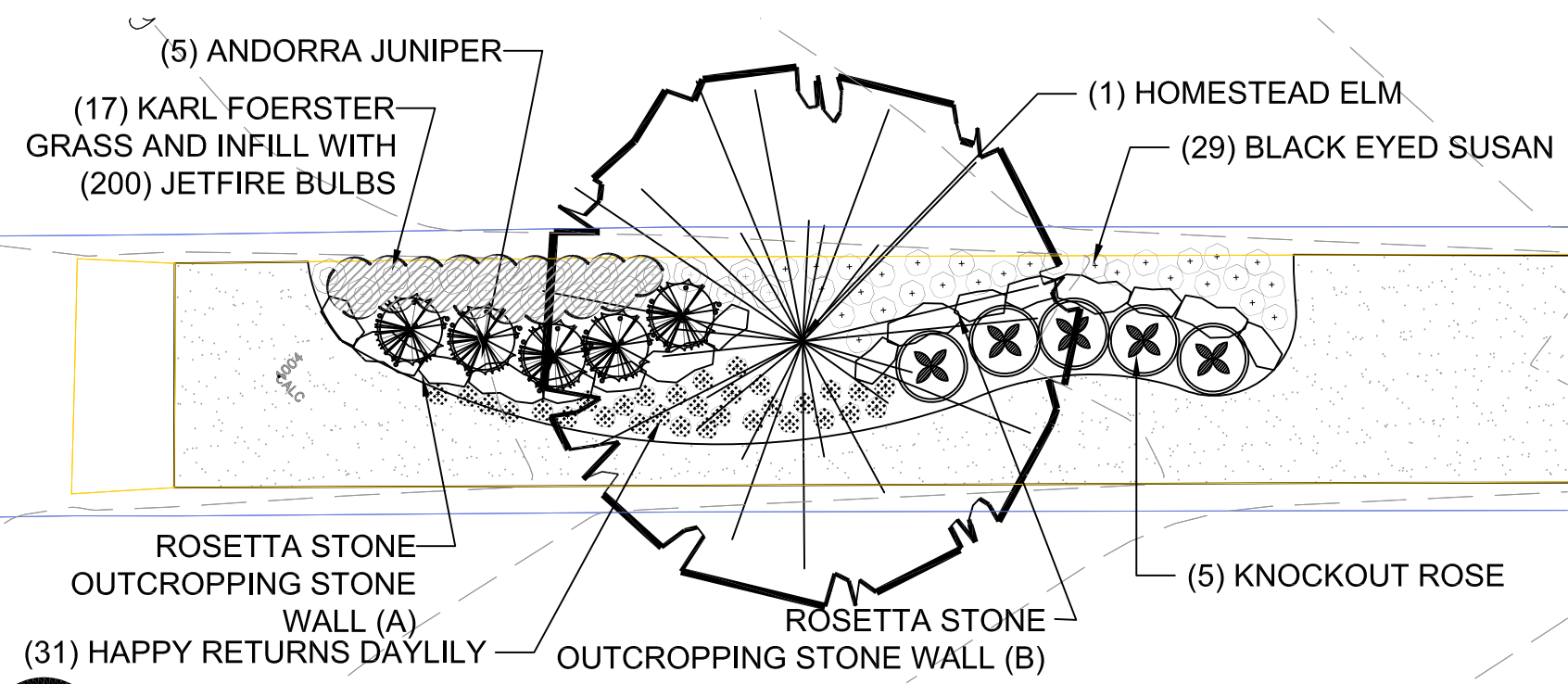
BLACK-EYED SUSANS



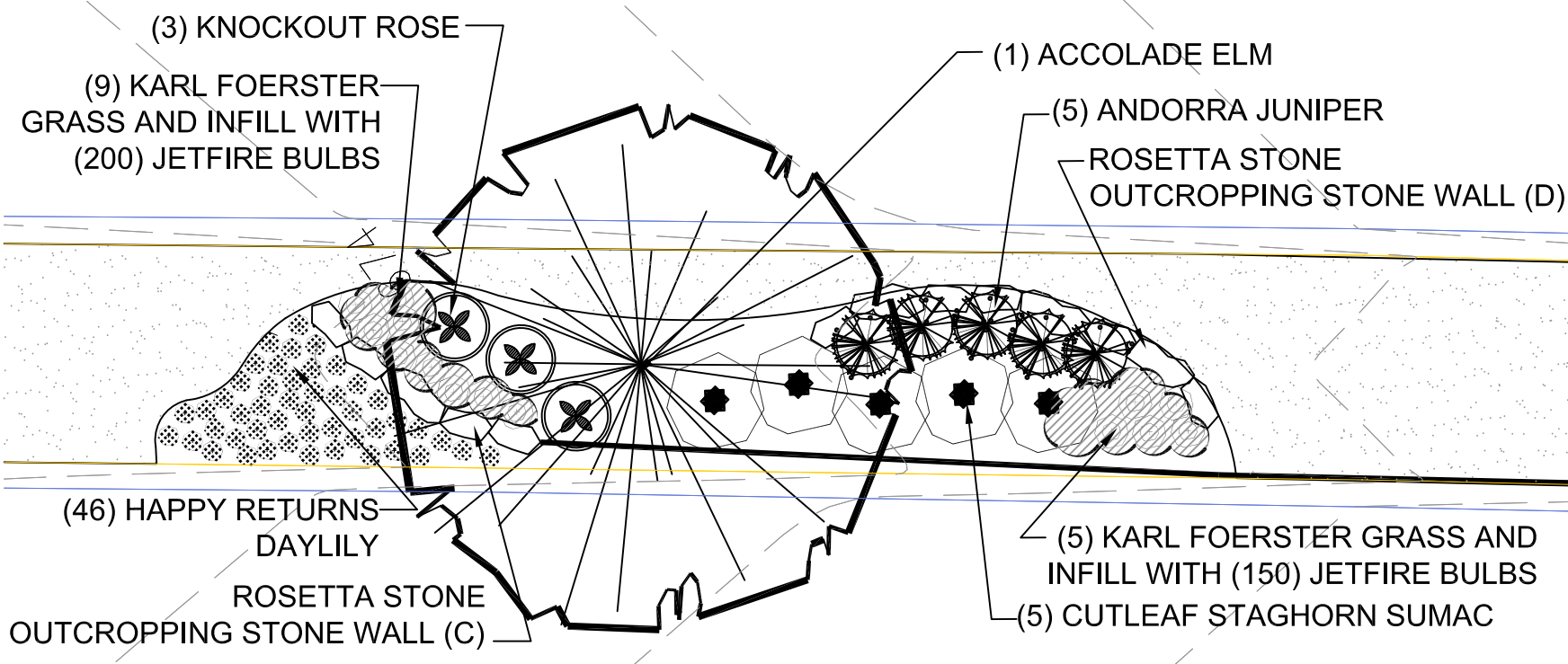
"KARL FOERSTER" GRASS



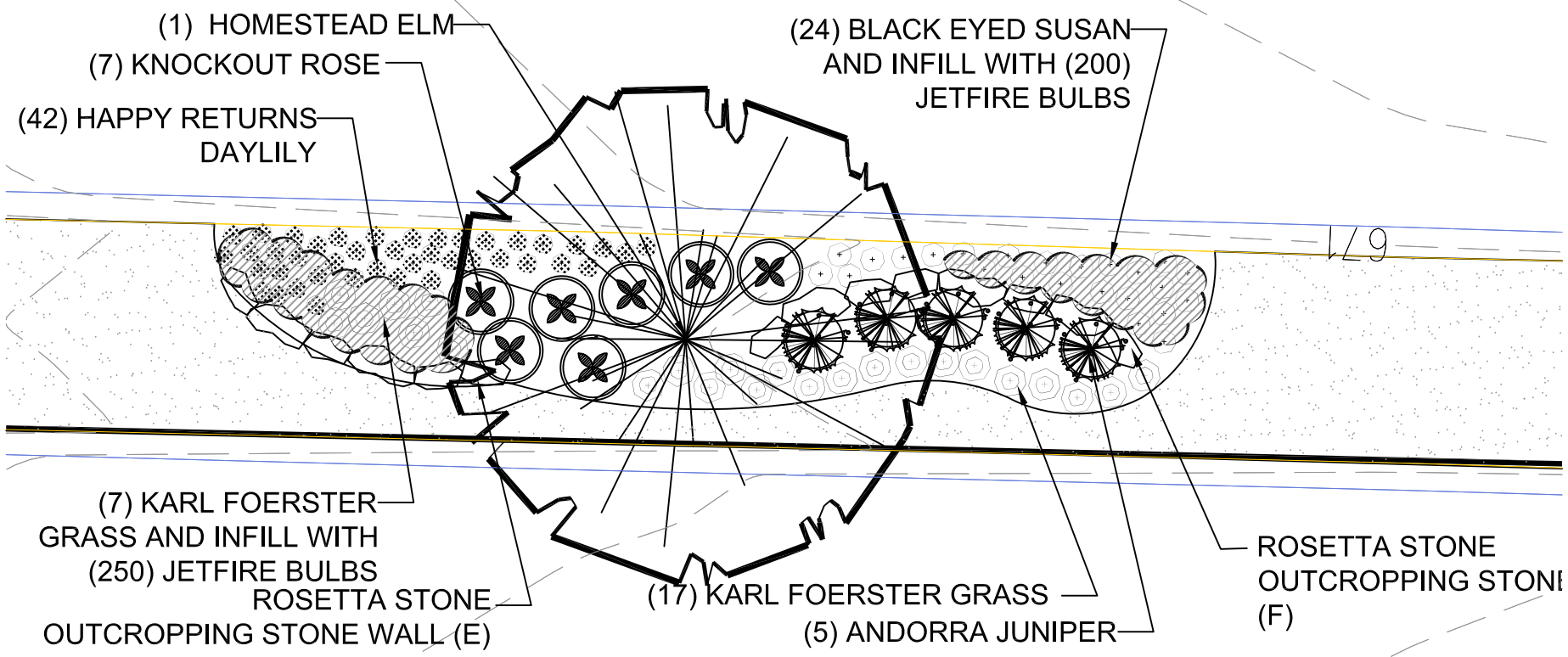
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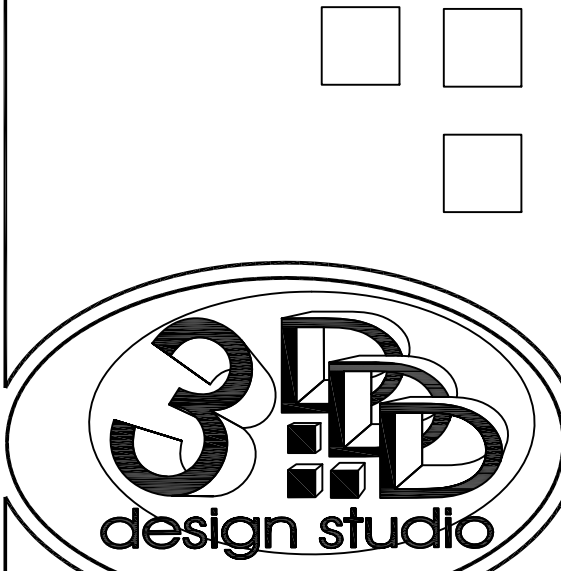
2 West Enlargement A  
SCALE: 1"=10'-0"



3 West Enlargement B  
SCALE: 1"=10'-0"



4 West Enlargement C  
SCALE: 1"=10'-0"



529 North Barron Boulevard  
Grayslake, IL 60030  
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email: info@3ddesignstudio.com

L.C.D.O.T.: SUNSET AVENUE MEDIAN LANDSCAPING  
West Landscape Enlargements

scale	AS NOTED
design	3D
date	5.17.13
revision	
revision	
revision	



"ACCOLADE" ELM



"HOMESTEAD" ELM



"HAPPY RETURNS" DAYLILY



"TIGER EYES" SUMAC



"ANDORRA" JUNIPER



"JETFIRE" DAFFODILS



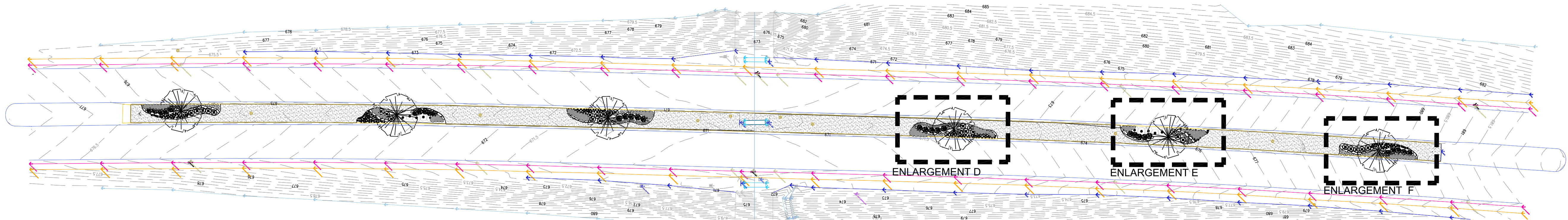
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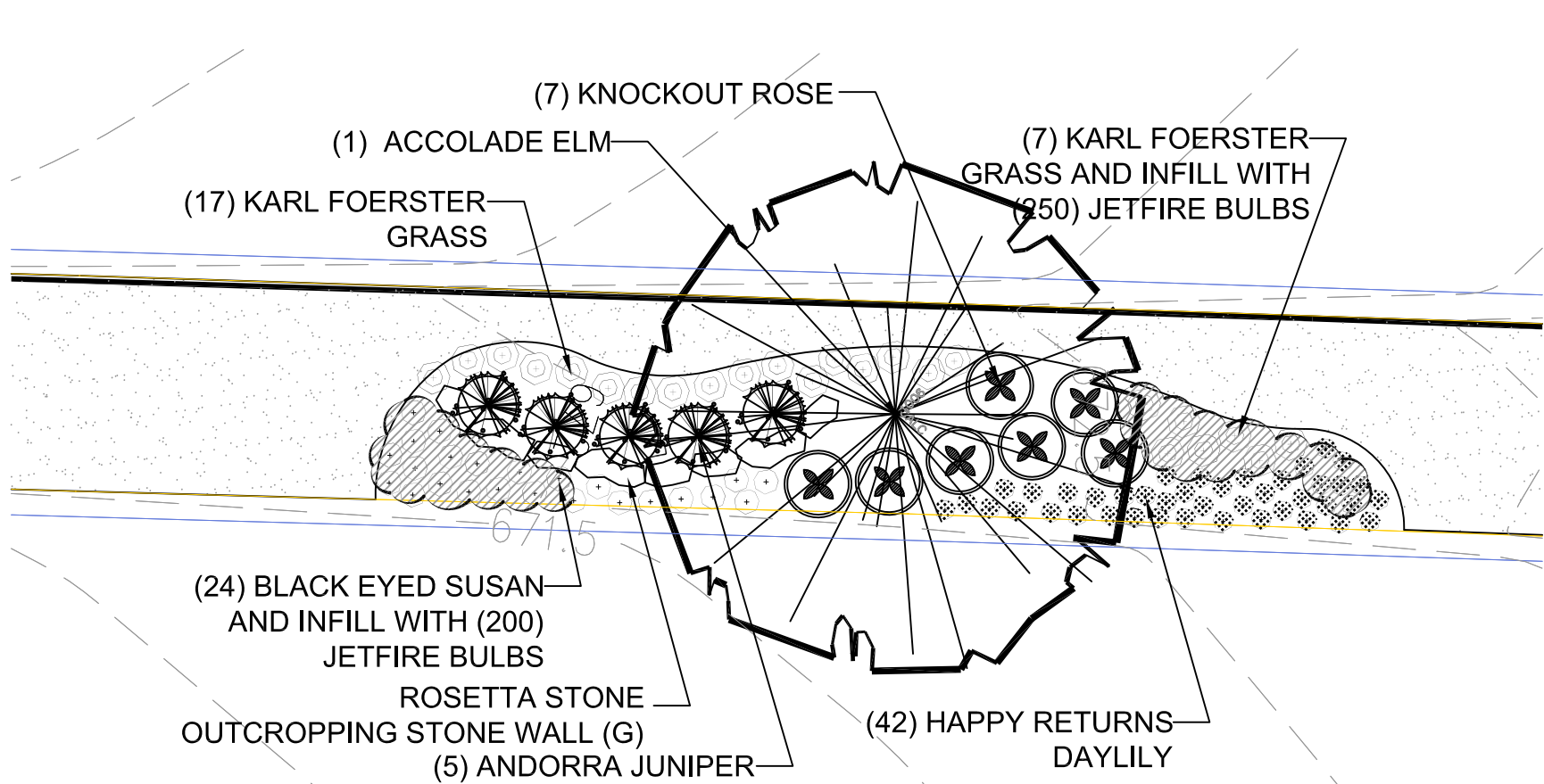
BLACK-EYED SUSANS



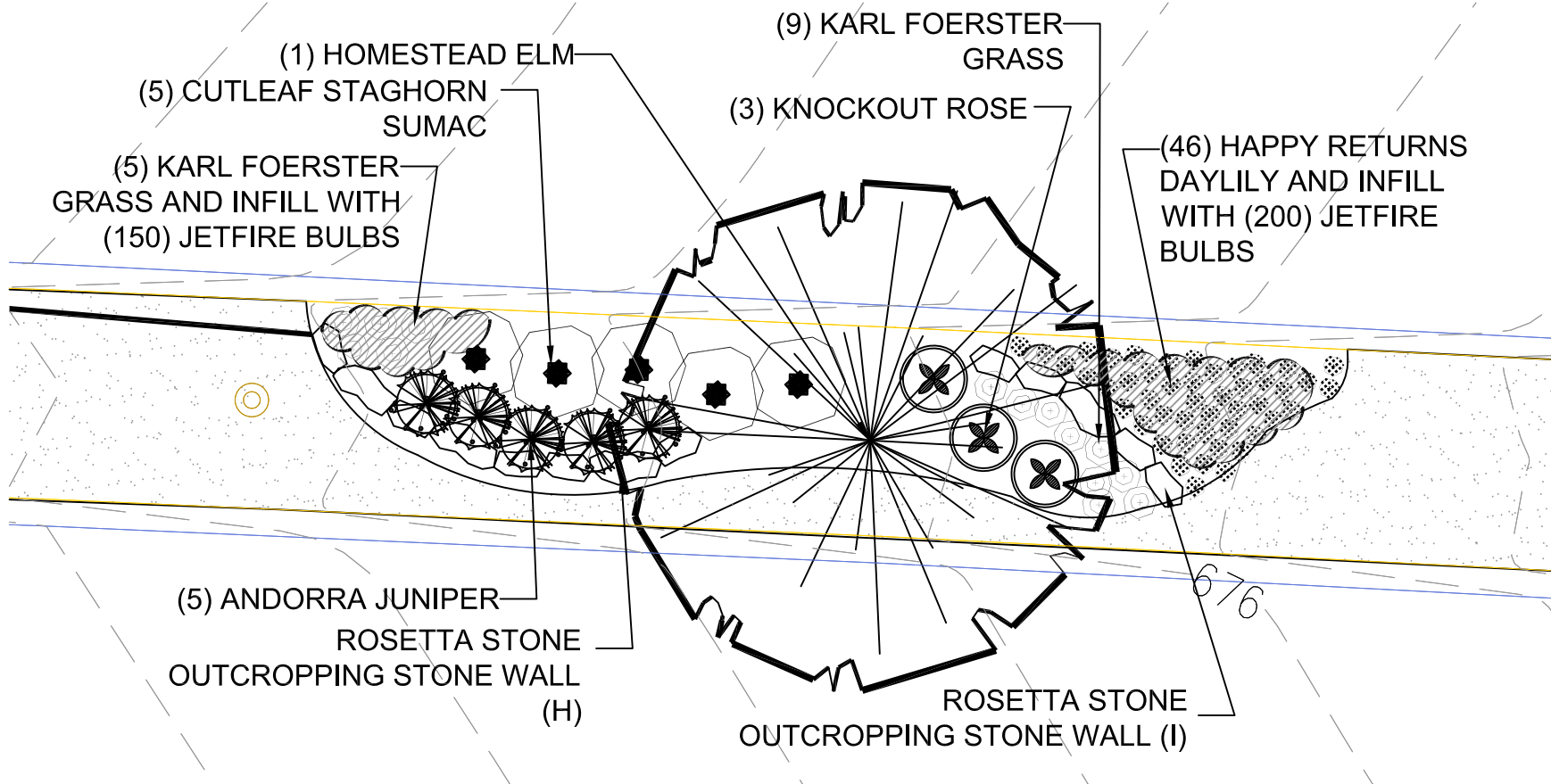
"KARL FOERSTER" GRASS



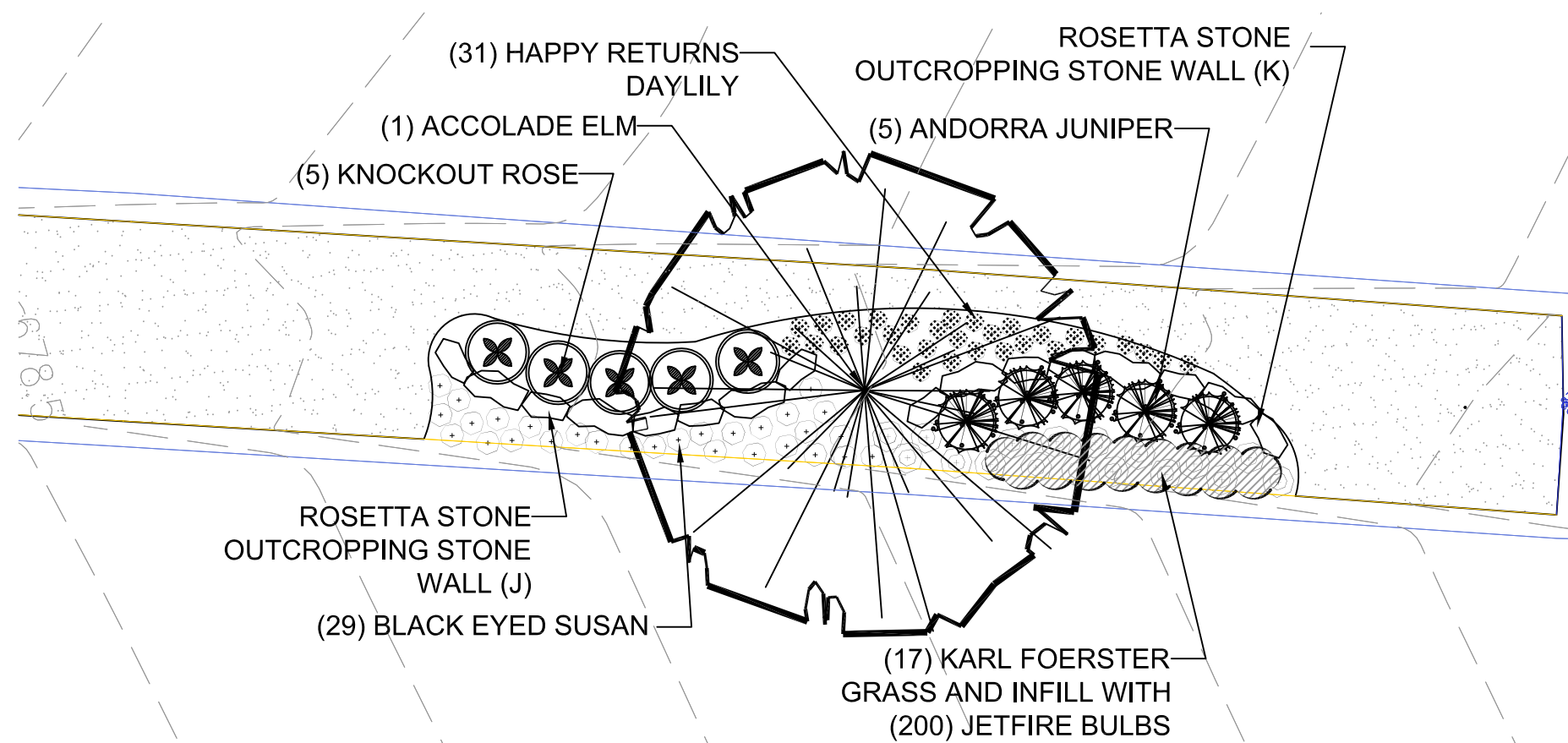
1 Location Plan  
SCALE: 1"=40'-0"



2 West Enlargement D  
SCALE: 1"=10'-0"



3 West Enlargement E  
SCALE: 1"=10'-0"



4 West Enlargement F  
SCALE: 1"=10'-0"

3D design studio

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L.C.D.O.T.: SUNSET AVENUE MEDIAN LANDSCAPING  
East Landscape Enlargements

scale	AS NOTED
design	3D
date	5.17.13
revision	
revision	
revision	

sheet 6 of 6 sheet(s)