

INTERLOCAL AGREEMENT

Regarding Elevator and Pedestrian Bridge Project for Access Between the South Kirkland Park-and-Ride and the Cross Kirkland Corridor

This INTERLOCAL AGREEMENT (“ILA”) is made by and between the City of Kirkland, a Washington municipal corporation (“Kirkland”) and King County, a political subdivision of the State of Washington (“King County”) and legal successor in interest to the Municipality of Metropolitan Seattle. Together, Kirkland and King County are sometimes referred to herein as the “Parties” and individually as a “Party.”

RECITALS

1. Kirkland is the owner of an approximately 5.75-mile portion of the Eastside Rail Corridor (“ERC”), which is a rail corridor that has been railbanked under the National Trails System Act (16 U.S.C. §1241 et. seq.). The portion of the Eastside Rail Corridor that is owned by Kirkland is known as the “Cross Kirkland Corridor” or “CKC.” The CKC extends from the north edge of the NE 108th Street crossing in north Bellevue to the 132nd Place NE crossing in the Totem Lake neighborhood in north Kirkland. Kirkland has constructed a soft-surface interim public trail on the CKC and has approved a master plan for a permanent paved public trail. The interim trail is open to the public and the paved trail will be open to the public after it is constructed.

2. King County is the Interim Trail User for the CKC and the remainder of the Eastside Rail Corridor pursuant to those certain Notices of Interim Trail Use (NITU) issued on November 25, 2008 in Surface Transportation Board Docket No. AB-6 (Sub-No. 465X), as well as the NITUs issued on October 27, 2008 in STB Docket No. AB-6 (Sub-Nos. 463X and Sub-No. 464X), other than a portion located within the City of Redmond. King County is presently undertaking the first phase of master planning for its own regional trail project on the Eastside Rail Corridor, including the King County-owned segments of the Corridor contiguous with the CKC and located north and south of it.

3. King County also owns a 3.86-acre parcel of land identified as King County Assessor’s tax parcel No. 2025059081, with a street address of 3677 108th Ave NE (“Property”), located on the Bellevue side of the Bellevue-Kirkland jurisdictional boundary and adjacent to the CKC.

4. King County and its predecessor in interest, the Metropolitan Municipality of Seattle, have operated the South Kirkland Park-and-Ride (“SKPR”) on the Property since 1978. The legal description of the Property is attached hereto as **Exhibit A** and incorporated herein by this reference.

5. In addition, King County holds a permit for the Eastside Sewer Interceptor, which is a significant regional wastewater facility located in the CKC adjacent to the SKPR, which permit is identified as King County Recorder's Office instrument nos. 5832816 and 5832817 (recorded January 14, 1965).

6. King County, Kirkland, the City of Bellevue and the City of Redmond all have an interest in regional transit, including making connections to the SKPR via non-motorized links, such as the CKC and the ERC.

7. The SKPR has been redeveloped ("Redeveloped SKPR") and now provides transit-oriented development including multifamily housing and affordable housing, as well as a multistory parking garage in addition to an updated transit center on the Property near the boundary between the Property and the CKC.

8. There is a significant, steep grade change between the Property and the CKC, resulting in a significant elevation difference between the CKC and the SKPR.

9. Kirkland and King County agree that it would be mutually beneficial and desirable for there to be a convenient and accessible access between the SKPR and the CKC that meets Americans with Disabilities Act standards. Such access will benefit the King County Parks and Recreation Division by establishing connectivity between SKPR and the King County trail that is now being master planned, which will likely include a regional multipurpose trail segment immediately adjacent to and southeast of the SKPR on the east side of 108th Ave NE.

10. A recent King County Metro Transit Division and Sound Transit study entitled Non-Motorized Connectivity Study concluded that connectivity to trails increases transit ridership. Improved connectivity between the SKPR and the CKC will benefit King County Metro Transit Division by providing direct access to the SKPR from the CKC for pedestrians and bicyclists, thus enhancing nonmotorized access to the SKPR and potentially contributing to a reduction in single-occupancy vehicle trips originating in the vicinity.

11. Kirkland has obtained a significant State legislative appropriation to partially fund a separate, stand-alone and independent elevator and related facilities that would provide an ADA-accessible connection between the SKPR and the CKC ("Elevator Project"). King County supports the goals of the Elevator Project and, pursuant to King County Ordinance No. 17707, has appropriated an additional \$150,000 of King County funding intended to support the Elevator Project. King County's funding contribution (the "County Contribution") was appropriated in part to King County Parks CIP Fund 3581 (\$75,000) and in part to King County Public Transportation Construction Fund 3641 (\$75,000). King County Ordinance No. 17707 provides that the County Contribution may only be expended after the King County Council approves an interlocal agreement for disbursement of the funds.

12. Kirkland and King County entered into a Memorandum of Understanding (“MOU”) dated July 1, 2014, which set forth the general intent of the Parties with respect to design, construction and maintenance of the Elevator Project.

13. Kirkland intends that the Elevator Project be developed, constructed, operated and maintained in a manner consistent with the railbanked status of the CKC, and consistent with existing property interests in the CKC.

14. Kirkland and King County share an interest in facilitating alternatives to single-occupant vehicle commuting, including improvements to foster pedestrian and bicycle access to transit facilities.

15. The Intergovernmental Cooperation Act, Chapter 39.34 RCW, authorizes Kirkland and King County to enter into an agreement with each other for joint or cooperative action.

16. Kirkland and King County seek to enter into an agreement that builds on the general intentions stated in the MOU, provides that King County will contribute \$150,000 to the Elevator Project, sets forth the terms and conditions under which Kirkland will design and construct the Elevator Project, and sets forth the parameters under which, after construction, Kirkland will manage, maintain and repair the Elevator facility.

NOW, THEREFORE, the Parties hereby agree as follows:

TERMS AND CONDITIONS

1. Interlocal Cooperation Act Compliance.

Consistent with RCW §39.34.030(3) and (4):

A. This ILA shall be effective upon execution by the King County Metro Transit Division. This ILA shall expire (1) at 11:59 pm on December 31, 2018; or (2) twelve months after the date that the Elevator Project is Substantially Complete, whichever occurs first. For purposes of this ILA, “Substantially Complete” means (i) the Elevator Project has been completed by Kirkland other than minor incidental work, corrections or repairs, the completion of which will not have a material effect on the public’s use of the Elevator Project, (ii) the public may utilize the Elevator Project for its intended purpose of access to and from the CKC, (iii) the Elevator Project’s systems and utilities are operational in a manner materially consistent with purpose for which they are intended, and (iv) any governmental or regulatory approvals or authorizations, if any, required in order for the public to legally utilize the Elevator Project have been obtained, including but not limited to certificates of occupancy and operating permits. Provided, that certain

terms and conditions of this ILA shall survive the expiration or earlier termination of this ILA as specified herein.

- B. No separate legal or administrative entity is created by this ILA.
- C. The purposes of this ILA are specified in the Recitals of this ILA.
- D. This ILA shall terminate automatically as set forth in Section 1.A of this ILA.
- E. The Parties' Designated Representatives identified in **Exhibit B** of this ILA shall administer this ILA. The Parties may change or replace their Designated Representatives from time to time by giving notice as provided in Section 11 and **Exhibit B** of this ILA. The Parties' shall update the names and contact information for their Designated Representatives as needed to reflect such changes.
- F. Kirkland and King County shall acquire, hold, and dispose of real and personal property in furtherance of the Elevator Project in their individual capacities.

2. Elevator Project Funding.

- A. King County shall contribute an amount not to exceed \$150,000 to Kirkland to be used towards the Elevator Project. Kirkland shall apply the County Contribution towards capital costs of the Elevator Project, such as capital project management costs, design or construction costs, obtaining necessary local, state or federal permits or approvals, and providing public notice and outreach with respect to Elevator Project design or construction. Kirkland may not apply the County Contribution towards operation, maintenance, repair, upkeep, facility management, or use of the completed Elevator Project.
- B. King County shall pay the County Contribution within 60 days of receiving itemized statements from Kirkland that (1) detail the capital expenditures for which Kirkland seeks reimbursement; and (2) include such supplemental documentation (e.g. invoices, receipts, work orders, timesheets, etc.) as King County may reasonably require to comply with its financial reporting requirements.
- C. As between King County and Kirkland, Kirkland shall be responsible for all costs, charges, and expenses of Elevator Project design and construction in excess of the County Contribution.

3. Review of Elevator Project Plans by King County. The Parties have previously reviewed and approved the 30% design plans. Drawings depicting the approved site plan layout for the Elevator Project structure on the Property and the anticipated construction impact area are attached hereto as **Exhibit C**. Kirkland will, in a timely fashion, provide King

County with an opportunity to review, comment on and approve the design drawings and special provisions (henceforth referred to as the “Plans”) at the 60% and 100% stages and King County shall notify Kirkland of its primary staff contact person who will coordinate review of the Plans. The Parties do not anticipate additional technical engineering review of the Plans by King County beyond the 60% design review stage unless subsequent revisions materially alter the size, scope or characteristics of the Project or its impacts to the Property, the Eastside Sewer Interceptor, or the Redeveloped SKPR. King County’s review is intended to relate to safety and operational issues related to the Redeveloped SKPR, the Property, transit and wastewater operations, and for compliance with the National Trails Systems Act. King County shall provide written comments within 20 calendar days of receipt of the 60%-stage Plans from Kirkland. The Parties may mutually agree to extend the number of days needed to complete review. In the event additional technical engineering review is required, Kirkland shall provide King County with the revised Plans and King County will use its best efforts to provide written comments at its earliest convenience, but in no event more than 20 calendar dates from receipt of the revised Plans. The Parties may mutually agree to extend the number of days needed to complete this review. Notwithstanding anything else in this Section 3, Kirkland acknowledges that the King County Wastewater Treatment Division Local Public Agency (LPA) Coordinator must approve Kirkland’s final Plans in writing prior to bidding and awarding the construction contract.

4. Authorization to Enter Property for Elevator Pre-Construction Work. Prior to construction of the Elevator Project, Kirkland is authorized to enter onto and use the Property for temporary purposes related to completion of design of the Elevator Project. Kirkland shall conduct all pre-construction actions without materially disrupting any existing public use of the Property. Prior to access at any time, Kirkland shall submit a formal request for access to King County’s Construction Information Center at 206-684-2785 (“CIC”) (**minimum 5-business days’ advance notice required**), identifying the access area (with depiction), the reason for the access, the time frame in which to conduct the access, and any other information that King County desires in order to maintain the safety and operation of the Redeveloped SKPR. Prior to construction, Kirkland shall not conduct any invasive or destructive testing (e.g. concrete coring, mechanized boring or excavation, clearing, or other work), store equipment or materials, fence off any portion of the Property, or materially disrupt public Park-and-Ride use of the Property without separate written authorization from King County, which may be in the form of a Special Use Permit or execution of the TCE (hereafter defined). In addition to the above, for any approved access to the Property prior to the execution of the TCE, Kirkland shall comply with the following:

- Maintain sidewalk access to the extent of existing sidewalks.
- Stay within the defined area (to be determined and approved in each instance), NO construction parking on the SKPR lot or garage.

- Keep access area free of trash, litter, construction debris etc.
- Control dirt/mud from wheels of trucks / equipment.
- Equipment/vehicles over 10,000 lbs. shall not be allowed on any asphalt areas of the Property or the garage without separate specific written permission from King County, which permission may include terms and conditions to protect the asphalt from damage or denied altogether in King County's sole and absolute discretion.
- Repair/restore any damage to asphalt, concrete, curbs, and other improvements.
- Control/handle trench spoils to protect parking stalls and pedestrian areas from spill over.

In addition, no activity shall be allowed that impedes transit coach ingress or egress to or from or circulation through the Property, unless prior coordination has occurred and specific written approval has been given by the CIC. Before requesting that transit coach movements be restricted Grantee shall first make a good-faith effort to plan and implement the contemplated work so that interference with coach movements may be avoided to the maximum extent practicable.

5. Authorization to Construct, Operate and Maintain Elevator Project.

A. Temporary Construction Easement.

i. Upon finalization of the Elevator Project Plans, the Parties shall execute a Temporary Construction Easement (TCE) substantially in the form of **Exhibit D** attached hereto, authorizing Kirkland to enter the Property for the purpose of constructing the Elevator Project. The TCE will contain provisions identifying temporary construction staging and use areas to be used by Kirkland during construction of the Elevator Project. Once the final Plans are reviewed and approved by the KCWTD LPA Coordinator as contemplated in Section 3, the Metro Transit Division may supplement the TCE with additional construction-related conditions to the extent such conditions do not conflict with this ILA or the form of the TCE attached as Exhibit D. Metro Transit Division shall propose conditions as early as possible to facilitate the construction process. The final executed TCE shall be recorded with the King County's Recorder's Office.

ii. The TCE shall include the following elements, to be established by negotiation of the Parties prior to execution of the TCE:

a. Access plan, illustrating travel lanes anticipated to be impacted on the Property, proposed construction vehicle and equipment ingress and egress routes and

material laydown on the Property and in the immediate vicinity, as well as hours for Project access;

b. Traffic control plan, illustrating and describing the City's plans for safely controlling vehicle ingress and egress and managing interactions between Project construction traffic and park-and-ride traffic, as well as general traffic.

c. Since the subject matter of the access plan and the traffic control plan overlap, the City, at its discretion, may combine the access plan and traffic control plan into a single consolidated plan.

d. A pavement damage repair process under which King County may make claims against the City for a two-year period to pay for repair of pavement or subsurface damage to the Property caused by heavy (10,000 pounds or greater) Project-related vehicles, equipment or materials, which damage may not be evident for up to two years.

B. Permanent Easement. Before the City or the public may use the completed Elevator Project, the Parties shall execute a permanent easement authorizing Kirkland to occupy, use, operate and maintain the Elevator Project on the Property, substantially in the form of **Exhibit E** attached hereto and incorporated herein by this reference (the "Easement"). The King County Metro Transit Division may supplement the Easement with additional reasonable operation and maintenance-related conditions to the extent such conditions do not conflict with this ILA or the form of the Easement attached as Exhibit E. The Easement shall include terms and conditions relating to the long-term operation and maintenance of the constructed Elevator Project after the useful life of the Elevator Project facilities, including but not limited to the potential demolition and removal of those facilities at Kirkland's sole cost and expense. The final executed Easement shall be recorded with the King County's Recorder's Office.

C. Notice of Construction Schedule. Notwithstanding any other term or condition of this ILA, the TCE, or the Easement, Kirkland may not commence construction of the Project on the Property until Kirkland has notified Metro Transit of Kirkland's proposed construction schedule and start date, and Metro Transit has responded to Kirkland in writing approving Kirkland's proposed construction schedule and start date. Notwithstanding the notice requirements of Section 11, the notice-and-approval process required in this Section 5.C may be satisfied by email communications between Kirkland's project manager and Metro Transit's designated representative. The Parties agree that the notice-and-approval process contemplated in this Section 5.C is not in the nature of a property interest, permit or other entitlement, but rather is simply intended to

ensure that construction of the Project is scheduled in coordination with Metro's ongoing transit operations at, and other public uses of, the Redeveloped SKPR.

6. Key Roles and Responsibilities of Kirkland.

A. Kirkland shall fund the Elevator Project (other than the King County Contribution) and comply with applicable grant requirements.

B. Kirkland shall design, construct, operate, own, manage, and maintain the Elevator Project facilities for the useful life of the Elevator Project facilities.

C. Kirkland shall obtain all necessary land use permits and approvals for the Elevator Project, including, without limitation, any required environmental review (e.g. SEPA, NEPA, etc.) and mitigation. Subject to Section 3 of this ILA, Kirkland shall continue to coordinate with KCWTD's LPA Coordinator to confirm that the final design and construction of Elevator Project remains compatible with the existing Eastside Sewer Interceptor.

D. Kirkland shall construct the Elevator Project facilities, utilizing such required public bidding process as may be required. Kirkland and King County shall enter into the TCE prior to commencement of any construction activities.

E. After completion of construction of the Elevator Project facilities, Kirkland may contract with a private third-party contractor to operate and maintain the completed Elevator Project facilities on behalf of Kirkland and at Kirkland's cost and expense as provided in and subject to the terms and conditions of the Easement.

F. Kirkland shall coordinate with King County to develop analyses and documentation related to the anticipated number of pedestrians and bicyclists that may use the Elevator Project to access the SKPR Transit Center for the purpose of establishing the transit benefits of the Elevator Project for the FTA.

G. Kirkland acknowledges that the SKPR parking garage and lot are transit facilities for use by King County Metro Transit customers, and that King County is responsible to manage parking in those facilities under King County Code Chapter 28.96 and related authorities. Kirkland shall cooperate with King County to ensure that parking related to recreational use of the CKC does not displace transit-related parking in those transit parking facilities.

H. In partial consideration of the County Contribution, Kirkland shall identify King County as a partial funding source on a construction sign erected during construction to identify funding sources used for the Project. The construction sign shall use language substantially similar to the following:

“Funding for this project was provided, in part, by King County [along with other funding sources].”

In addition, Kirkland shall place a permanent plaque on the completed Elevator Project structure, in a location readily visible to the public. The minimum plaque size is 12” by 12”. The plaque should contain the following (a single plaque may be used to acknowledge multiple funding sources, including King County):

FUNDING FOR THIS PROJECT PROVIDED IN PART BY KING COUNTY

7. Key Roles and Responsibilities of King County.

A. The connection between the SKPR and the CKC is a joint goal of King County and Kirkland. The Elevator Project will fulfill that goal. As a result, Kirkland shall pay the standard and established fees imposed by King County Real Estate Services Section for the TCE and the Easement. To the extent that the Elevator Project is documented to provide transit benefits, King County, with the approval of King County Council, intends to reduce or eliminate any otherwise-applicable charge, rent, or other real-property fees for use of the Property for the Elevator Project. King County will work cooperatively with Kirkland to facilitate Kirkland’s construction, operation and maintenance of the Elevator Project. King County and Kirkland will reasonably cooperate with each other and work jointly and in good faith to demonstrate to the Federal Transportation Administration (“FTA”) that the Elevator Project meets criteria for transit benefits, with the goal, but not the obligation, that those transit benefits will offset all rent or any other type of fees that King County would otherwise be required to charge for use of a portion of the Property for the Elevator Project.

B. King County, Metro Transit Division and the King County Department of Natural Resources and Parks may reasonably perform oversight of the design and construction of the Elevator Project to the extent the Division’s General Manager and the Department’s Director deem necessary and appropriate for benefit of King County in light of the public’s ongoing use of the SKPR for transit purposes and King County’s trail easement rights, the Parties’ rail-banking-related obligations, and regional wastewater utility infrastructure in the CKC, and in light of the restrictions applicable to the source of funds used for each Division’s contribution to the Elevator Property.

C. The King County Department of Natural Resources (and the divisions therein) and the King County Metro Transit Division shall each bear their own costs with respect to all of their staff time arising out of or relating to the Elevator Project, including staff time spent on Elevator Project plan review and comment, meetings, email, telephone calls, site visits and inspection, and other Elevator Project oversight-related costs.

8. RESERVED.

9. Legal Relations.

A. King County's review, comment, disapproval, approval, or acceptance of any designs, plan specifications, work plans, construction, equipment, or installation of improvements relating to the Elevator Project:

- (i) Exist solely for the benefit and protection of King County and its employees and agents;
- (ii) Does not create or impose on King County or its employees and agents any standard or duty of care towards Kirkland, all of which are hereby disclaimed;
- (iii) May not be relied on by Kirkland in determining whether Kirkland has satisfied all applicable standards and requirements; and
- (iv) May not be asserted, nor may the exercise or failure to exercise any such rights by King County and its employees and agents be asserted against King County or its employees and agents by Kirkland as a defense, legal or equitable, to Kirkland's obligation to fulfill such standards and requirements, notwithstanding any review, comment, or approval of plans or construction by King County or its employees or agents.

B. This ILA is solely for the benefit of the Parties hereto and creates no right, duty, privilege, or cause of action in any other person or entity. No joint venture or partnership is formed as a result of this ILA. No employees or agents of one Party or its contractors or subcontractors shall be deemed to be employees, agents, contractors or subcontractors of the other Party.

C. (i) Kirkland will defend, indemnify, and hold harmless King County, and its successors and assigns, from all claims, actions, administrative proceedings, costs, damages, demands, or expenses of any nature whatsoever (collectively, "Claims") arising out of or relating to the design, permitting, or construction of the Elevator Project. Kirkland will defend, with counsel of its sole reasonable choice, King County and its successors and assigns, against any litigation arising out of or in connection with Kirkland's acts or omissions in connection with the Elevator Project. Provided, that if such Claims are caused by or result from the concurrent negligence of (a) King County or its agents, successors, or assigns and (b) Kirkland, or its agents, successors, or assigns, and such concurrent negligence involves those actions covered by RCW 4.24.115, then this Section 9.C shall be valid and enforceable only to the extent of the negligence of Kirkland, or its agents, successors, or assigns. Kirkland's obligations to defend, indemnify, and hold harmless under this Section 9.C shall not include any Claims which may be caused by the sole negligence of King County or its agents, successors, or assigns.

(ii) Kirkland agrees that its obligations under this Section 9.C extend to any Claims brought by or on behalf of any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Kirkland's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects King County only, and only to the extent necessary to provide King County with a full and complete indemnity of Claims made by Kirkland's employees. King County and Kirkland acknowledge that these indemnity provisions were specifically negotiated and agreed upon by them.

D. Each Party shall maintain insurance coverage, whether through a self-funded program or an alternative risk of loss financing program, for all of its liability exposures for the duration of this ILA. Each Party shall bear its own costs in maintaining such coverage. Each Party shall provide the other Party with at least thirty (30) days prior written notice of any material change in their respective self-funded or alternative risk of loss financing programs. Nothing in this Section 9.D. shall limit or modify Kirkland's indemnity obligations under this ILA.

E. In performing under this ILA, the Parties shall comply, and shall ensure that their contractors and subcontractors comply, with all federal, state and local laws, regulations and ordinances applicable to such work and services as each Party may perform in furtherance of this ILA, including laws regarding nondiscrimination, including but not limited to the federal Civil Rights Act of 1964; the Washington Law Against Discrimination, Chapter 49.60 RCW; and King County Charter §840.

F. The Parties' rights and duties under this Section 9 shall survive the expiration or earlier termination of this ILA.

10. Counterparts. This ILA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same instrument.

11. Notice. The Parties shall provide notice to each other via the Designated Representatives identified in **Exhibit B** to this ILA. Any notice permitted or required to be given under this ILA shall be given in writing and may be effected by certified United States mail, with return receipt requested, properly addressed, postage prepaid; or by reputable overnight delivery service; or by personal service. Notice shall be deemed effective three (3) days after mailing, or upon delivery or service or rejection of delivery or service.

12. Dispute Resolution. The Parties shall use their best efforts to resolve disputes regarding this ILA in an economic and time-efficient manner to advance the purposes of this ILA and the Elevator Project. If a dispute arises between the Parties, they shall attempt to resolve such dispute as expeditiously as possible and will cooperate so that the express purposes of this

ILA are not frustrated, and so that the activities contemplated under this ILA are not significantly delayed or interrupted except for reasons of safety, wastewater infrastructure integrity, compliance with railbanking requirements under the National Trails Systems Act and its implementing regulations (including but not limited to 16 U.S.C. §1247(d) and 49 C.F.R. Part 1152), or compliance with FTA requirements.

13. Jurisdiction and Venue. This ILA shall be interpreted in accordance with the laws of the State of Washington, without reference to its conflicts of law rules or choice of law provisions. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising out of or relating to this ILA.

14. Rights and Remedies Cumulative. The rights and remedies of the Parties to this ILA are in addition to any other rights and remedies provided by law.

15. Binding on Successors. All of the terms, provisions and conditions of this ILA shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, permitted assigns and legal representatives.

16. Assignment. Neither Party shall assign any interest, obligation, or benefit in this ILA or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other Party.

17. Severability. If any term or provision of this ILA or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this ILA, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall continue in full force and effect.

18. Amendments / Supplements. The Parties may amend this ILA as necessary. No amendment of this ILA shall be binding upon the Parties unless it is in writing and signed by an authorized representative of each Party. Amendments other than ministerial revisions (such as updates to **Exhibit B**, updating of legal descriptions in Exhibits A, D, or E, and so forth) or corrections of clerical errors shall not be effective without approval by ordinance of the Metropolitan King County Council.

19. Execution of ILA. This ILA may be executed in multiple counterparts, all of which together shall be regarded for all purposes as one original.

20. Entire Agreement. This ILA, including its recitals and Exhibits, along with the July 1, 2014 Memorandum of Understanding between the Parties, embodies the Parties' entire agreement on the matters covered by it, except as supplemented by subsequent amendments to

this ILA or by subsequent written agreements between the Parties. All prior negotiations and draft written agreements are merged into and superseded by this ILA.

21. Exhibits. The following Exhibits are attached to this ILA and are a material part hereof:

- A. Property Legal Description
- B. Designated Representatives and Other Points of Contact
- C. Site Plan and Anticipated Construction Impact Drawings for Elevator Project
- D. King County Temporary Construction Easement for Elevator Project
- E. King County Permanent Easement for Elevator Project

SIGNATURES APPEAR ON FOLLOWING PAGE

THE PARTIES execute this ILA effective as of the date signed by the King County Metro Transit Division, which shall be the last entity to sign.

KING COUNTY DEPARTMENT OF NATURAL RESOURCES AND PARKS

By: _____

Its: _____

_____ Date

TRANSIT DIVISION, KING COUNTY DEPARTMENT OF TRANSPORTATION

By: _____

Its: _____

_____ Date

CITY OF KIRKLAND

By: _____

Its: _____

_____ Date

EXHIBIT A

Legal Description of Property

That certain real property located in King County, Washington, and more particularly described as follows:

Portion of Lot 3 of Kirkland Short Plat number SUB 12-00390 recorded under King County Recording No. 201220828900002 in King County, Washington.

ALSO KNOWN AS Assessor's Tax Parcel No. 2025059081, with a street address of 3677 108th Avenue NE, Bellevue, WA 98004.

EXHIBIT B

Designated Representatives and Other Points of Contact

1. Designated Representatives

Designated Representative for King County Metro Transit Division:

Rand Juliano, Transactions Manager
King County
KSC-TR-0431
201 South Jackson
Seattle, WA 98104-3856

PHONE (206) 477-5933
EMAIL rand.juliano@kingcounty.gov

Designated Representative for King County Department of Natural Resources and Parks:

David St. John, Government Relations Administrator
King County
201 South Jackson
Suite 700
Seattle, WA 98104-3856

PHONE (206) 477-4517
EMAIL david.st.john@kingcounty.gov

Designated Representative for City of Kirkland:

Frank Reinart, Project Engineer/Manager
City of Kirkland, Public Works Department
123 5th Avenue
Kirkland, WA 98033-6189
(425) 587-3826
freinart@kirklandwa.gov

2. Technical Staff Contacts:

Staff Contacts for King County Metro Transit Division:

Elizabeth Wright, Project Manager
King County
KSC-TR-0435
201 South Jackson
Seattle, WA 98104-3856

PHONE (206) 477-5928
EMAIL Elizabeth.wright@kingcounty.gov

Staff Contacts for King County Wastewater Treatment Division

Mark Lampard, Senior Engineer
King County
201 South Jackson
Suite 500
Seattle, WA 98104-3856

PHONE (206)477-5414
EMAIL mark.lampard@kingcounty.gov

Staff Contacts for King County Parks and Recreation Division

Erica Jacobs, ERC Trail Project Manager
King County
201 South Jackson
Suite 700
Seattle, WA 98104-3856

PHONE (206) 477-5539
EMAIL erica.jacobs@kingcounty.gov

Staff Designated Representative for City of Kirkland:

Frank Reinart, Project Engineer/Manager
City of Kirkland, Public Works Department
123 5th Avenue
Kirkland, WA 98033-6189
(425) 587-3826
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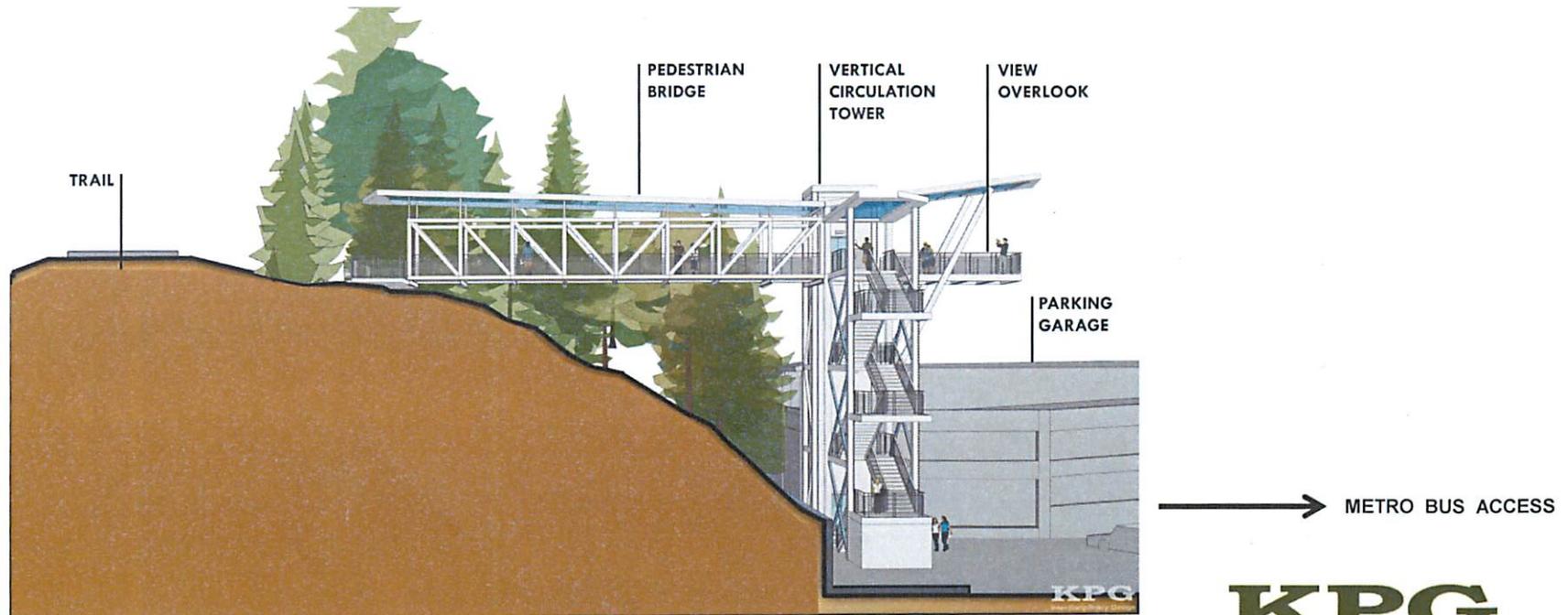
EXHIBIT C

Site Plan and Anticipated Construction Impact Drawings for Elevator Project

Kirkland CKC/King County ERC Pedestrian Connection



- ▶ Key Design Elements
 - ▶ Multi-use trail connectivity
 - ▶ Anchor future transit hub
 - ▶ METRO transportation access



KPG
Interdisciplinary Design

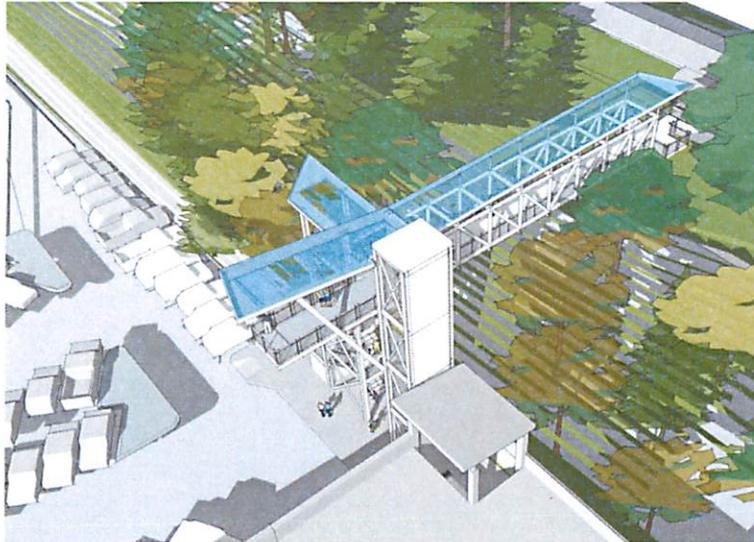
Kirkland CKC/King County ERC Pedestrian Connection



▶ Key Design Elements

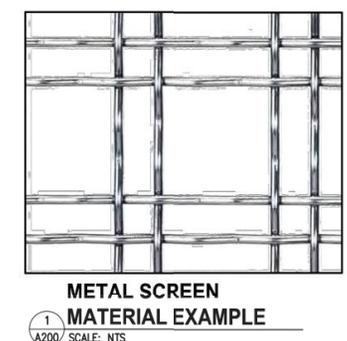
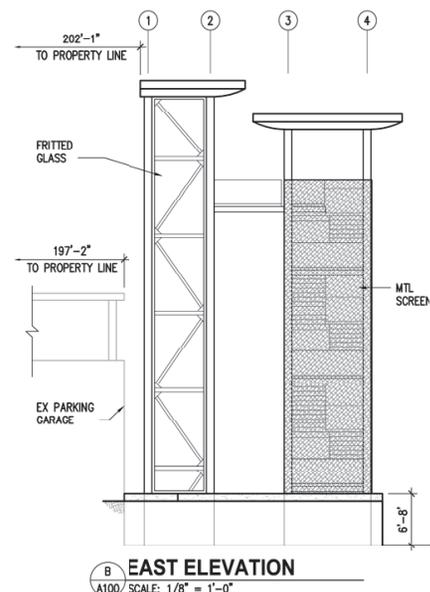
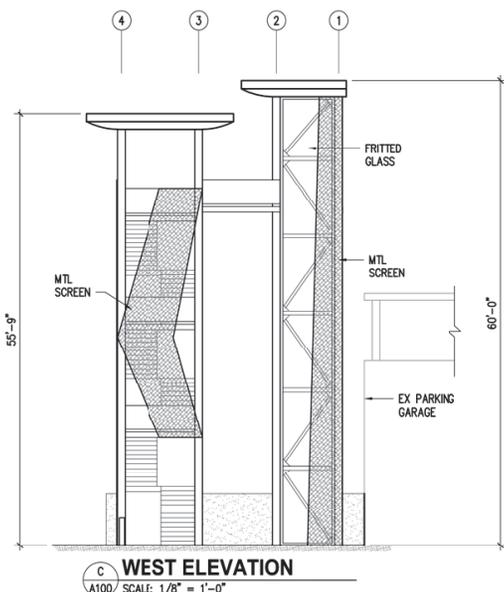
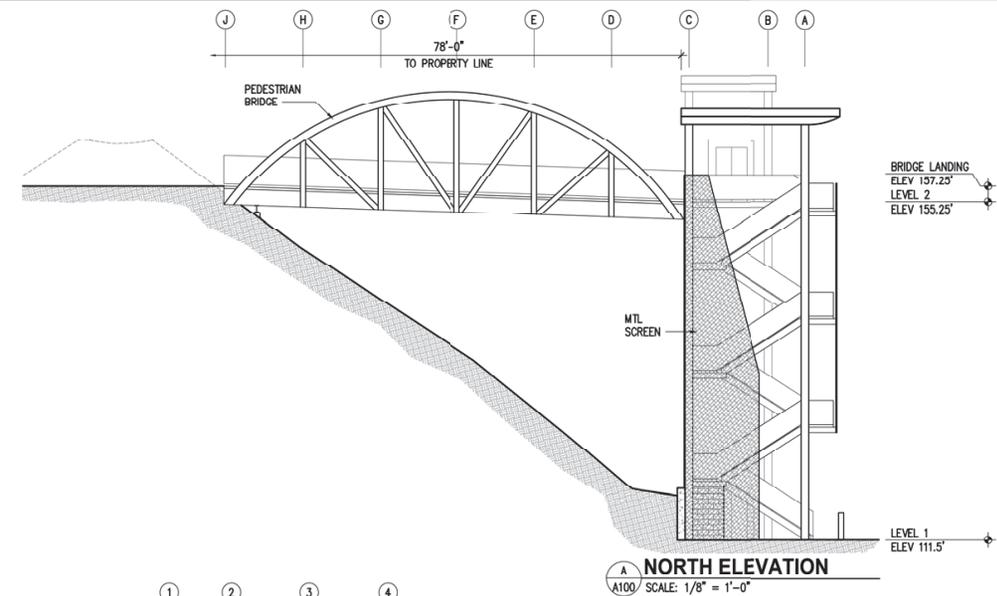
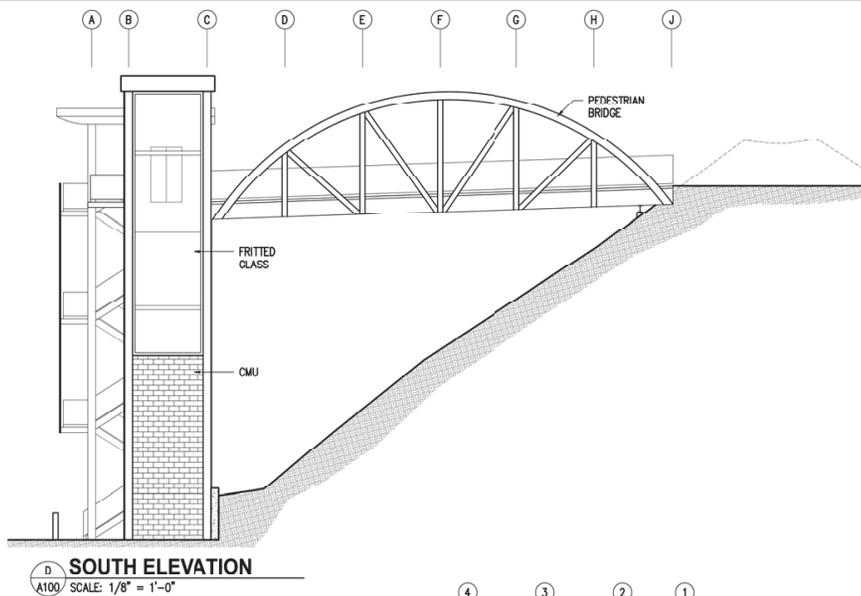
▶ Accessibility

- ▶ Elevator up 65-Feet to CKC Trail
- ▶ Bridge



KPG
Interdisciplinary Design

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NO.	DATE	BY	APPR	REVISIONS

Approved By		A200_ILLY.dwg
ENGINEERING MANAGER	DATE	FILENAME
PROJECT MANAGER	DATE	G BARBER
PROJECT ENGINEER	DATE	DESIGNED BY
		S FISCHER SEPT 4 2014
		DRAWN BY
		DI DEAN
		CHECKED BY
		DATE



KPG
 753 9th Ave N
 Seattle, WA 98109
 (206) 265-1649
 www.kpg.com

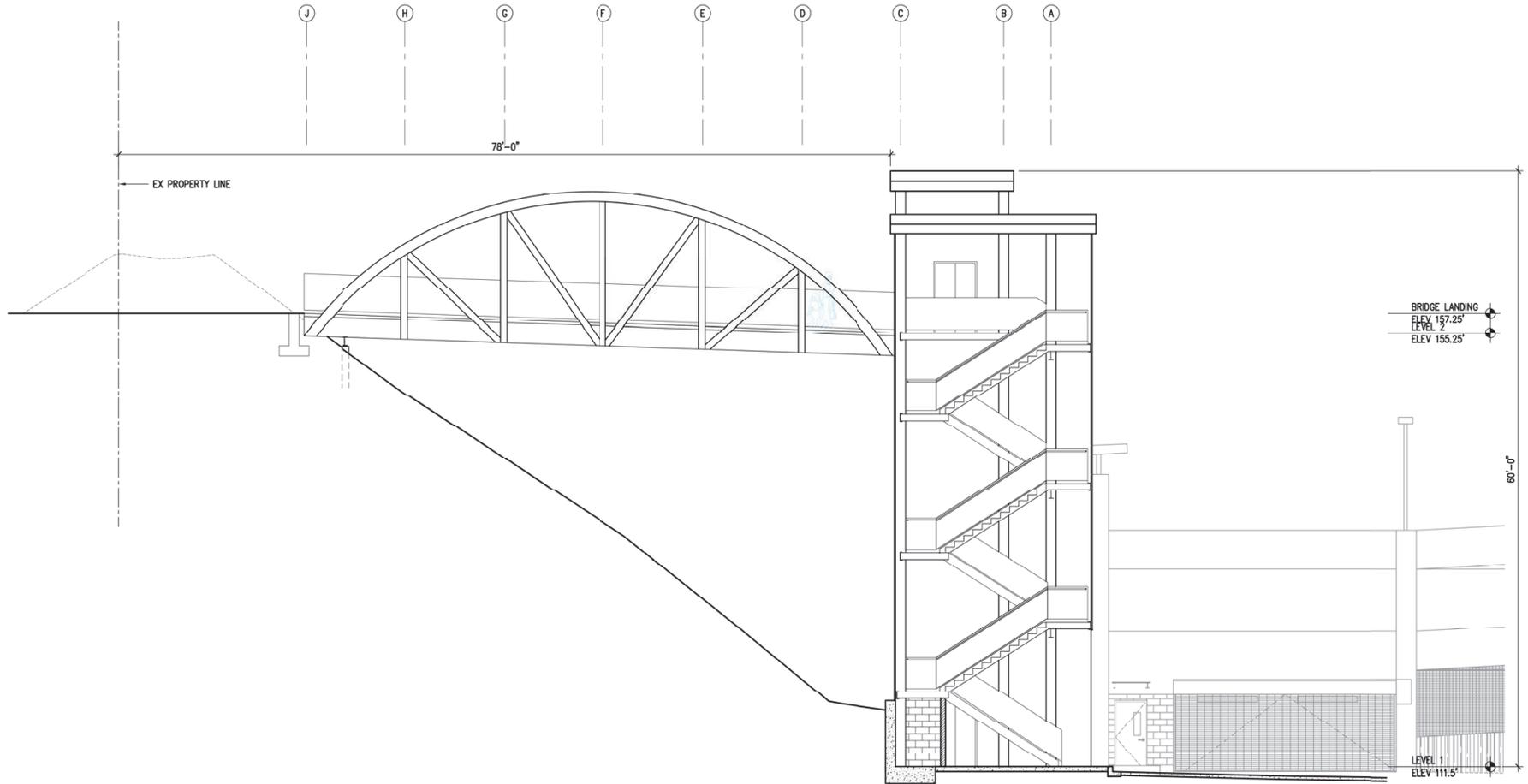
2500 Jefferson Ave
 Tacoma, WA 98402
 (253) 827-0720



CITY OF KIRKLAND
 PARK & RIDE CKC CONNECT

ARCHITECTURAL NORTH & SOUTH EXTERIOR ELEVATIONS	
KPG PROJECT No. 13152	SHT <u>A200</u> OF <u>9</u>

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A SECTION
 A100 SCALE: 3/16" = 1'-0"

NO.	DATE	BY	APPR	REVISIONS

Approved By		AZ02_OVERALL_SECT.dwg	
ENGINEERING MANAGER	DATE	FILENAME	
PROJECT MANAGER	DATE	G BARBER	
PROJECT ENGINEER	DATE	DESIGNED BY	SEPT 4 2014
		DRAWN BY	DATE
		DU DEAN	
		CHECKED BY	DATE



KPG
 753 9th Ave N
 Seattle, WA 98109
 (206) 265-1649
 www.kpg.com

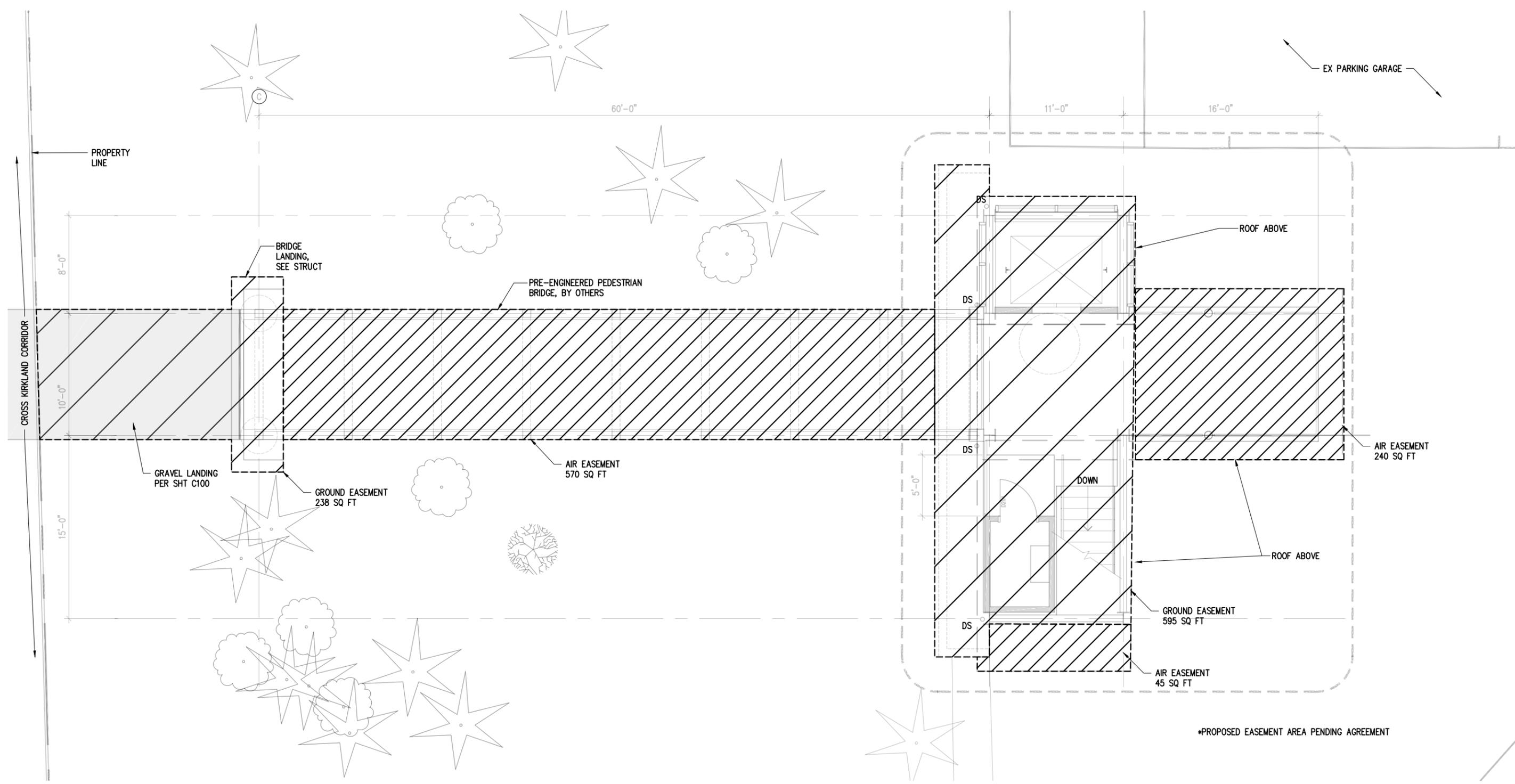
2500 Jefferson Ave
 Tacoma, WA 98402
 (253) 827-9720



CITY OF KIRKLAND
 PARK & RIDE CKC CONNECT

ARCHITECTURAL OVERALL BUILDING SECTION	
KPG PROJECT No. 13152	SHT A202 OF 9

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A LEVEL 2 PLAN
 G004 SCALE: 1/4" = 1'-0" 

*PROPOSED EASEMENT AREA PENDING AGREEMENT

NO.	DATE	BY	APPR.	REVISIONS

Approved By		A102_PLAN_LVL2.dwg	
ENGINEERING MANAGER	DATE	DESIGNED BY	DATE
PROJECT MANAGER	DATE	DRAWN BY	DATE
PROJECT ENGINEER	DATE	CHECKED BY	DATE



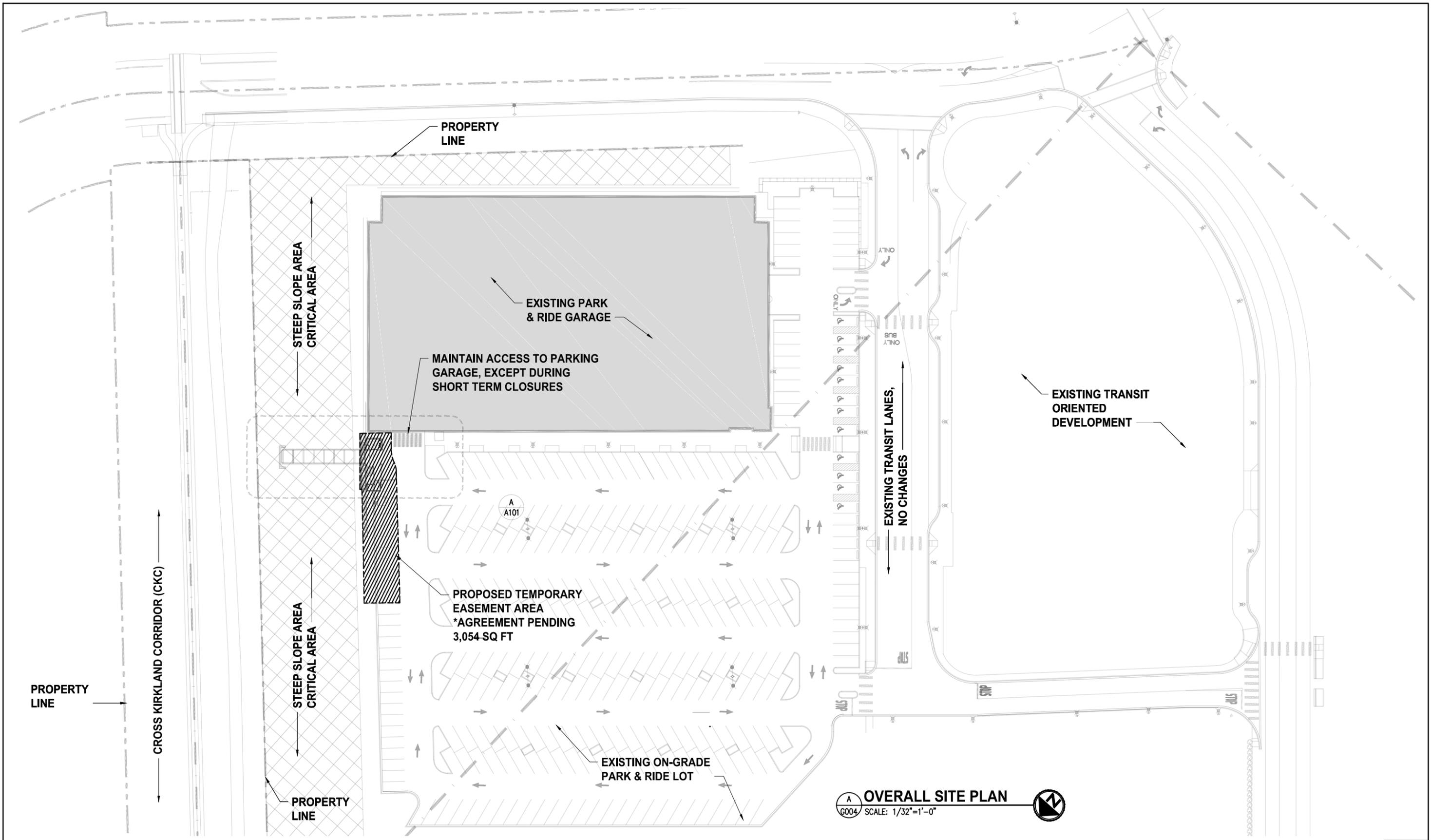
PERMIT SUBMITTAL



**CITY OF KIRKLAND
 PARK & RIDE CKC CONNECT**

ARCHITECTURAL PLAN LEVEL 2	
KPG PROJECT No. 13152	SHT 11 OF 50

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A
G004 **OVERALL SITE PLAN**
SCALE: 1/32"=1'-0"

G003

NO.	DATE	BY	APPR.	REVISIONS

Approved By

ENGINEERING MANAGER	DATE
PROJECT MANAGER	DATE
PROJECT ENGINEER	DATE

G004_OVERALL SITE PLAN.dwg

FILENAME	G BARBER
DESIGNED BY	J PALMER
DATE	SEPT 4 2014
DRAWN BY	DJ DEAN
CHECKED BY	
DATE	

5712
REGISTERED ARCHITECT
Gary B. Barber
GARY B. BARBER
 STATE OF WASHINGTON

KPG
 753 9th Ave N
 Seattle, WA 98109
 (206) 286-1640
 www.kpg.com

2502 Jefferson Ave
 Tacoma, WA 98402
 (253) 627-0720

PERMIT SUBMITTAL



**CITY OF KIRKLAND
 PARK & RIDE CKC CONNECT**

GENERAL OVERALL SITE PLAN & CONSTRUCTION STAGING PLAN

KPG PROJECT No. 13152 SHT 4 OF 50

EXHIBIT D

Form of Temporary Construction Easement (TCE)

WHEN Recorded Return to:

TEMPORARY CONSTRUCTION EASEMENT

Grantor: King County

Grantee: City of Kirkland

Abbreviated Legal Description: Por. Lot 3, Kirkland S.P. No. SUB 12-00390, King County Rec. No. 201220828900002, in King County, WA

Assessor's Tax Parcel No.(s): 2025059081

Additional legals on Exhibits A-_____ attached hereto

THIS Temporary Construction Easement ("Easement" or "Agreement") is granted by KING COUNTY, a home-rule charter county and successor in interest to the Municipality of Metropolitan Seattle, hereinafter called the "Grantor," to CITY OF KIRKLAND, a municipal corporation and code city with a mayor-council form of government, hereinafter called the "Grantee." Together, Grantor and Grantee are sometimes referred to herein as the "Parties" and individually as a "Party."

RECITALS

1. Grantor is the owner of the property described in Exhibit A attached hereto (the "Property").
2. Grantee desires a temporary construction easement over the Easement Area as described and shown in Exhibit B in order to install the improvements all in accordance with the plans prepared by _____, dated _____ (the "Plans" or "Improvements") as shown on Exhibit C and attached hereto, in order to construct certain elevator/bridge-related improvements.
3. Grantor is authorized to grant utility easements and other interests pursuant to King County Code Section 4.56.115, and Grantor is willing to grant a temporary construction

easement to Grantee on the Property subject to the terms and conditions set forth in this Easement.

NOW, THEREFORE, for the consideration recited in this Easement and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

EASEMENT TERMS AND CONDITIONS

1. Grant of Easement.

- A. Grantor hereby grants to Grantee a temporary construction easement to enter upon and have access to that portion of the Property described and illustrated in Exhibit B (the “Easement Area”) and by this reference incorporated herein for the purposes described in Section 2 below and subject to the limitations set forth therein. Grantee shall have the right to permit third parties to enter upon the Easement Area to accomplish the purposes described herein, provided that all such persons abide by the terms of this Easement.
- B. Grantee acknowledges and agrees that Grantor has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, contracts or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of as to, concerning, or with respect to:
- i. The value, nature, quality, or condition of the Easement Area, including, without limitation, the water, soil, and geology;
 - ii. The income, if any, to be derived from the Easement Area;
 - iii. The suitability of the Easement Area for any and all activities or uses which Grantee or anyone else may conduct thereon;
 - iv. The compliance of or by the Easement Area or its operation with any laws, rules, ordinances, or regulations of any applicable governmental authority or body;
 - v. The Easement Area’s habitability, merchantability, marketability, profitability, or fitness for a particular purpose;
 - vi. The manner or quality of the construction or materials, if any, incorporated into the Easement Area; or
 - vii. Any other matter with respect to the Easement Area; and Grantee specifically acknowledges and agrees that Grantor has not made, does not make, and specifically disclaims any representations regarding compliance with any environmental protection, pollution, zoning or land use laws, rules,

regulations, orders, or requirements, including the existence in, on, or adjacent to the Easement Area of Hazardous Substances as defined in Section 13.B of this Easement.

- C. Grantee further acknowledges and agrees that, having been given the opportunity to inspect the Easement Area, Grantee is relying solely on its own investigation of the Easement Area and not on any information provided or to be provided by Grantor. Grantee further acknowledges and agrees that any information provided or to be provided by Grantor with respect to the Easement Area was obtained from a variety of sources and that Grantor has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information.
- D. Grantee further acknowledges and agrees that Grantor is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Easement Area, or the operation thereof, furnished by any real estate broker, agent, employee, servant, or other person, and, to the maximum extent permitted by law, the use of the Easement Area as provided for herein is made on an “AS-IS” condition and basis with all faults, without any obligation on the part of Grantor to make any changes, improvements, or to incur any expenses whatsoever for the maintenance or repair of the Easement Area.

2. Purpose of Easement.

- A. The purpose of this Easement is to grant Grantee, its employees, contractors, agents, permittees, and licensees the right to enter upon the Easement Area at such times as may be necessary, for the purpose of constructing, installing or relocating the Improvements consistent with Exhibit C attached hereto.
- B. The easement rights granted herein are solely for the benefit of Grantee, and are personal to Grantee, its successors in interest and assigns.
- C. The parties acknowledge that the Improvements are being made to improve the connection between the Cross Kirkland Corridor and the County’s South Kirkland Park-and-Ride on the Property. The parties further acknowledge that Grantor intends to grant a Permanent Easement to Grantee so that Grantee may own, maintain, operate, repair, and otherwise be responsible for the completed Improvements. Grantee agrees that in partial consideration of this Easement, and as a condition of the Permanent Easement:
 - i. Grantee shall at all times protect the King County Wastewater Treatment Division’s Eastside Interceptor (ESI) sewer pipeline located in the Cross Kirkland

Corridor (CKC) adjacent to the South Kirkland Park-and-Ride from damage during the construction, maintenance, operation and repair of the Improvements;

- ii. Grantee shall construct the Improvements in strict conformance with the final approved plans and specifications, including any supplemental conditions reasonably required by King County Metro Transit Division pursuant to Section 5A of the Interlocal Agreement Regarding Elevator Project for Access Between the South Kirkland Park-and-Ride and the Cross Kirkland Corridor (“Interlocal Agreement”).
- iii. Grantee shall execute the Permanent Easement prior to the use of the completed Improvements and until the Permanent Easement is fully executed and recorded with the King County Recorder’s Office Grantee shall not use the completed Improvements and failure to comply with this section 2.C.iii shall constitute an event of default as provided in this Agreement. Grantor shall execute the Permanent Easement prior to or upon completion of the Improvements in accordance with this Easement.

3. Grantor’s Right to Review Grantee’s Construction Staging Plans.

Prior to its entry onto the Easement Area, Grantee shall, at its sole cost and expense, submit to Grantor for its review and approval, which approval shall not be unreasonably withheld, copies of the construction staging plans and specifications for the Improvements and detailing any existing trees and improvements to be removed. Grantor shall have ten (10) Business Days following receipt thereof to approve the construction staging plans and specifications for the Improvements (or any modification thereof) in writing or the same will be deemed disapproved. If Grantor submits objections or comments within the 10-day period, then Grantee shall revise the construction staging plans and specifications consistent with the objections or comments and shall resubmit the same to Grantor for further review until Grantee submittals have been approved.

4. Performance Bond and Additional Performance-Related Conditions.

A. Performance Bond.

Prior to commencing work on the Property, Grantee shall deliver to Grantor evidence of a performance bond, irrevocable letter of credit, or another commercially reasonable form of security acceptable to Grantor in an amount equivalent to one hundred percent (100%) of the estimated value of the completed Improvements, on a form acceptable to Grantor with a surety company or lender approved by Grantor, such approval not to be unreasonably withheld. Grantee shall notify the surety or lender of any changes in the work. Grantee shall promptly furnish Grantor with evidence of additional bond or other

security to protect Grantor and persons supplying labor or materials required for the Improvements if:

- i. Grantor has a reasonable objection to any surety or lender;
- ii. Any surety or lender fails to furnish reports on its financial condition pursuant to Grantor's request; or
- iii. The price to complete the Improvements increases beyond the stated amount of the bond or other security.

B. Additional Performance-Related Conditions.

Grantor hereby requires Grantee to perform additional conditions as specified in Addendum "A" attached hereto and made a part hereof by this reference.

5. Restoration of Grantor's Improvements. If Grantor's existing improvements in the Easement Area are disturbed or damaged by Grantee's use of the Easement Area, then except for the Improvements and such other permanent alterations as may be allowed under Grantee's approved construction staging plans and specifications under Section 3 of this Easement, such disturbance or damage shall be restored or replaced in as good a condition as existed immediately before Grantee entered the Easement Area, including without limitation, the restoration of landscaping with vegetation of equivalent value. During the Term, Grantee may on an interim basis, restore the Easement Area to a reasonably safe and convenient condition. Without limiting the generality of the foregoing sentence, Grantee shall completely remove any trees or curbing marked for removal and Grantee shall patch and fill any holes in any paving to provide a safe and level surface for pedestrian and vehicular use so as not to interfere with continued use of the Property as a transit center and park-and-ride with transit commuter parking. At Grantor's discretion, representatives of Grantor and Grantee shall jointly conduct a walk-through of the Easement Area after restoration to evaluate the state of the Easement Area. After such inspection, both representatives together will establish in writing any further restoration to be done by Grantee, the time schedule to perform such work and the inspection date of such work. If Grantor is satisfied with the condition of the Easement Area and the quality and extent of Grantee's restoration work, then Grantor will so notify Grantee in writing.

6. Grantor's Reserved Right to Use Easement Area.

A. Subject to Grantee's right to control access to the Easement Area for purposes of safety and construction under Paragraph B of this Section 6, Grantor shall retain the right to use and enjoy the Easement Area, including the right to use existing improvements located in the Easement Area so long as such use does not unreasonably

interfere with Grantee's rights under this Easement, including without limitation the special conditions listed in Addendum A, attached hereto and made a part hereof.

- B. Grantee's use of the Easement Area shall be non-exclusive; provided, that Grantee may fence the Easement Area during the Term, and Grantee may limit access to such fenced portion or portions of the Easement Area for reasons of safety and construction site security, and Grantee shall install such construction barricades, fencing and signage as may be required to protect the safety of persons and property using the Easement Area or the surrounding Property during the Term. Any such fencing shall be limited to the minimum area and duration necessary to accomplish Grantee's desired safety outcomes consistent with usual and ordinary construction practices. Provided, that Grantee acknowledges that Grantee may not fence any paved portion of the Easement Area that is used by Grantor's transit coaches or other vehicles for ingress and egress to and from the Property or to circulate within the Property.
- C. Grantee shall, at its sole cost and expense, upon completion of the Improvements, remove all construction debris, materials, equipment and vehicles from the Easement Area, and restore the surface of the Easement Area to a condition substantially identical to that which existed when Grantee first entered upon the Property, save and except for the area occupied by the completed Improvements.

7. Term of Easement.

- A. The term of this Easement is seven (7) months (the "Term"). The Term shall commence upon initiation of Grantee's construction activities within the Easement Area, but no sooner than _____, and shall remain in force until 11:59 P.M. on _____, or until Grantee completes construction of the Improvements and restoration of the Property, whichever occurs first.
- B. Grantee shall provide Ten (10) days prior written notice to Grantor prior to commencement of construction. The Term may be extended or renewed by mutual written consent of Grantor and Grantee and, if necessary, upon payment of additional consideration under Section 8 of this Easement.

8. Payment for Easement.

In consideration of the transit-related benefits afforded by the Improvements, Grantor shall charge Grantee a land-use fee of \$0 for use of the Easement Area under this TCE. Grantee shall pay the standard easement processing fee charged by King County Real Estate Services (\$3,000).

9. Binding Effect.

Until the expiration of the Term, the Easement granted hereby, and the duties, restrictions, limitations and obligations herein shall burden the Easement Area and shall be binding upon the Grantor and its respective successors, assigns, and lessees and each and every person who shall at any time have a fee, leasehold, or other interest in any part of the Easement Area during the Term.

10. Building Permits.

Grantee shall secure at its sole cost and expense all building and other permits, licenses, permissions, consents and approvals required to complete the Improvements within the Easement Area consistent with all applicable laws, rules, ordinances or regulations, including but not limited to permission from the owners of any and all third-party equipment, improvements, or utilities located within the Easement Area. Except for the County Contribution (see Interlocal Agreement, Section 2A) and King County staff time, the Improvements shall be completed by Grantee, at no cost or expense to Grantor, and shall be constructed in a good and workmanlike manner. When Grantee commences construction work it shall prosecute the same diligently and continuously to completion.

11. Safety.

Grantee shall take all appropriate measures to protect the safety of persons and property on adjoining portions of the Property or other land while using the Easement Area. Grantee shall use its best efforts to minimize the impact on the remainder of the Property, including but not limited to, the installation of dust and debris barriers, if necessary during the construction process, and shall not damage any part of the Property or any vehicles that may be parked on or otherwise use the Property outside of the Easement Area. If the Easement Area or the Property or any improvements located thereon or any vehicles parked on the Property outside of the Easement Area are damaged or destroyed by the exercise of the rights granted by and through this Easement to Grantee or Grantee's contractors, subcontractors, suppliers, employees, agents, licensees or invitees, then Grantee shall repair the damage to any vehicles, the Easement Area or the Property and restore the Easement Area or the Property to good condition and repair. Grantee shall not park or allow its contractors, suppliers, or other agents to park construction vehicles on the Property outside of the Easement Area.

12. Liens.

Grantee shall not suffer or permit any lien, charge, security interest or encumbrance (collectively, "Liens") to be filed against the Property in connection with or arising under this Easement or relating to the Improvements. If any such Lien is filed, Grantee shall within thirty (30) days following the attachment of same, remove and discharge any and all such Liens. Grantee may contest the validity or amount of any such Lien in good faith provided that within thirty (30) days after the filing of any such Lien, Grantee discharges

such Lien of record or records a bond which eliminates said Lien as an encumbrance against the Property. Grantee shall indemnify, protect, defend and hold Grantor harmless from and against all liabilities, losses, damages, expenses and costs (including reasonable attorneys' fees and costs) incurred in connection with any such Liens, which indemnification shall survive the expiration or termination of this Agreement.

13. Easement Area Maintenance.

Grantee shall, at its sole cost and expense, maintain the Easement Area in good condition and repair throughout the term of this Agreement.

A. Without limiting the generality of the foregoing sentence, Grantee shall: (i) shall not commit or suffer any waste upon the Easement Area or the Property; (ii) shall not do or permit anything to be done in, on or about the Property or the Easement Area that is illegal or unlawful; and (iii) comply with all environmental, health and safety requirements imposed by the permitting jurisdictions or other governmental authorities or Environmental Laws as defined in Paragraph B of this Section 13 and all requirements of law that may be applicable to Grantee's use of the Easement Area.

B. Environmental Requirements.

- i. Grantee represents, warrants and agrees that it shall conduct its activities related to the Easement Area in compliance with all applicable environmental laws. As used in this Agreement, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et. seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., the Model Toxics Control Act, RCW chapter 70.105D, and Washington or any other comparable local, state, or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto.
- ii. Grantee shall not bring toxic or hazardous substances upon the Easement Area without Grantor's express written permission and under such terms and conditions as may be specified by Grantor. For the purposes of this Easement, "Hazardous Substances," shall include all those substances identified as hazardous or toxic under the Environmental Laws, and shall include any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, and which are regulated or controlled as

such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended, including but not limited to gasoline and other petroleum products. In the event such permission is granted, the disposal of such materials must be done in a legal manner by Grantee.

- iii. Grantee agrees to cooperate in any environmental investigations conducted by or at the direction of Grantor or any state, federal, or local agency with jurisdiction where there is evidence of contamination on the Property, or where Grantor is directed to conduct such audit by an agency or agencies having jurisdiction. Grantee shall reimburse Grantor for the cost of such investigations, where the need for said investigation is reasonably and finally determined to be caused by Grantee's acts or omissions. Grantee shall provide Grantor with notice of any inspections of the Easement Area, notices of violations, and orders to clean up contamination. Grantee shall permit Grantor to participate in all settlement or abatement discussions. If Grantee fails to take remedial measures as duly directed by a state, federal, or local regulatory agency within thirty (30) days of such notice, Grantor may elect to perform such work, and Grantee covenants and agrees to reimburse Grantor for all commercially reasonable direct and indirect costs associated with Grantor's work where said contamination is determined to arise out of or result from Grantee's use of the Easement Area.
- iv. For the purposes of this Section 13.B (Environmental Requirements), "Costs" shall include, but not be limited to, all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with the Environmental Laws, or any of them.
- v. Grantee agrees to defend, indemnify and hold Grantor harmless from and against any and all claims, causes of action, administrative proceedings, obligations, demands and liability including, but not limited to, any Costs, liabilities, damages, expenses, assessments, penalties (whether civil or criminal), fines, losses, judgments and attorneys' fees associated with the removal or remediation of any Hazardous Substances released or otherwise located on the Easement Area as a result of Grantee's acts or omissions on the Easement Area or in connection with Grantee's exercise of its rights under this Easement, including but not limited to Hazardous Substances that may have migrated from the Easement Area through water or soil to other properties. Grantee further agrees to defend, indemnify and hold Grantor harmless from any and all liability arising from Grantee's offsite disposal, handling, treatment, storage, or transportation of any Hazardous Substances removed from the Easement Area by or on behalf of Grantee. Grantee expressly waives and releases its right to seek cleanup contribution or any other form of recovery from Grantor under MTCA (RCW 70.105D) and CERCLA (42 U.S.C. 9601 et seq.), but only to the extent arising

out of or relating to Grantee's activities on the Property during the Term of this Easement or otherwise in connection with the Easement Area, the Improvements, or any of them.

- vi. The provisions of this Section 13.B (Environmental Requirements) shall survive the termination or expiration of this Easement. This Section 13.B is the exclusive provision of this Easement regarding Hazardous Substances and environmental obligations relating to the Easement, and the exclusive contractual rights and duties of Grantor and Grantee pertaining thereto.

14. Indemnity.

Grantee shall protect, defend, indemnify and hold Grantor and its officials, officers and employees harmless (except to the extent caused by the gross negligence of Grantor or any such official, officer or employee acting within the scope of such person's employment or office) from and against any and all claims, demands, losses, liabilities, damages, expenses and costs (including reasonable attorney's fees and costs) of every kind and description and for any personal injury or loss to or damage or destruction of property suffered by Grantor arising out of Grantee's exercise of its rights under this Agreement or the completion of the Improvements by Grantee or Grantee's officers, employees, agents, consultants, contractors or subcontractors of all tiers or any of their respective officers, employees or agents. Provided, that if any such claims are caused by or result from the concurrent negligence of (a) Grantor or its agents, successors, or assigns and (b) Grantee, or its agents, successors, or assigns, and such concurrent negligence involves those actions covered by RCW 4.24.115, then this Section 14 shall be valid and enforceable only to the extent of the negligence of Grantee, or its agents, successors, or assigns. The foregoing indemnification is specifically and expressly intended to include, but is not limited to, all claims against Grantor by an employee or former employee of Grantee or its consultants, contractors and subcontractors; and Grantee expressly waives, as respect Grantor only, all immunity and limitation on liability under any industrial insurance act including Title 51 RCW, to the extent necessary to provide Grantor with a complete indemnity for the actions of Grantee's officers, agents, employees, consultants, contractors, subcontractors or any of their respective officers, agents or employees. This indemnification has been the subject of specific negotiation between the Parties and this indemnification shall survive the expiration or termination of this Agreement.

15. Grantee Insurance.

- A. Grantee shall maintain, and cause its contractor to maintain, the following minimum insurance: (a) commercial general liability insurance in an amount not less than \$5,000,000 combined single limit per occurrence covering any claim, personal injury or property damage, including coverage for contractual liability, arising in connection with the presence of Grantee or its officers, agents, employees, consultants,

contractors, subcontractors or any of their respective officers, agents or employees on the Property or the Easement Area; (b) business automobile liability (owned, hired or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1,000,000 per occurrence; (c) employer's liability insurance with limits of not less than \$1,000,000 per occurrence; and (d) worker's compensation insurance (as required by law). All such insurance shall: (i) be endorsed to name Grantor as an additional insured; (ii) be endorsed to provide that it is primary with and non-contributing with, any insurance maintained by Grantor; (iii) contain a severability of interest provision in favor of Grantor; (iv) contain a waiver of any rights of subrogation against Grantor; and (v) be issued by an insurance company authorized to do business in the State of Washington with a Best's rating of not less than A:VIII. The insurance coverage and limits set forth herein shall be deemed to be minimum coverage and limits and shall not be construed in any way as a limitation on Grantee's duty to carry adequate insurance or liability for losses, claims, liabilities or damages arising under this Easement. Upon written demand by Grantor, Grantee shall deliver to Grantor copies of all relevant insurance policies or certificates of insurance verifying such coverage.

- B. With respect to Grantee, the above insurance requirements shall be fulfilled by Grantee's membership in and coverage with Washington Cities Insurance Authority, a self-insured liability risk pool.
- C. Grantee shall cause any consultant or subcontractor hired to provide work or services in connection with the development of the Improvements to maintain the minimum insurance amounts and coverages set forth in Section 15.A and to meet all other insurance-related requirements set forth in that section, except that for such consultants and subcontractors the \$5 million commercial general liability insurance amount specified in Section 15.A.(a) may be reduced to \$2 million combined single limit per occurrence.

16. General Terms and Conditions.

- A. The captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Easement nor the intent of any provision hereof.
- B. Grantee may not assign this Easement without Grantor's prior written consent, which consent may be withheld by Grantor in its sole and absolute discretion.
- C. This Easement, the permanent easement, and the Interlocal Agreement constitute the entire agreement of the Parties with respect to the subject matter hereto. There are no other verbal or written agreements between the Parties regarding the subject matter herein. This Easement cannot be amended except by an instrument in writing signed

by the Parties hereto. The rights, duties and obligations of the Parties under this Easement shall survive the expiration or other termination of this Easement.

PROVIDED, if there is any conflict or ambiguity as between this Easement and any permanent easement or easements granted by Grantor to Grantee and recorded in the real property records of King County in connection with the Improvements described in Exhibits C and D attached hereto, then the permanent easement or easements shall prevail.

- D. If any term of this Easement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term. If application of this severability provision should materially and adversely affect the economic substance of the transactions contemplated hereby, then the Party adversely impacted shall be entitled to compensation for such adverse impact, provided the reason for the invalidity or unenforceability of a term is not due to serious misconduct by the Party seeking such compensation.
- E. This Easement shall be governed by and construed and enforced in accordance with the laws of the State of Washington without regard to its choice of law rules or conflicts of law provisions, and venue shall lie exclusively in King County Superior Court in Seattle, Washington. The Parties each waive their respective right to file suit elsewhere or in any other court.
- F. In the event either party employs an attorney to enforce any of the provisions of this Agreement via litigation, mediation, or arbitration, then the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees in connection with such action.
- G. Time is of the essence in the performance of this Agreement.
- H. This Easement may be executed in counterparts each of which is an original and all of which shall constitute but one original.
- I. This Easement creates no right, duty, privilege, obligation, cause of action, or any other interest in any person or entity not a party to it.
- J. Nothing contained in this Easement shall be considered or interpreted to diminish the governmental or police powers of King County or the City of Kirkland.

K. Any terms and provisions of this Easement pertaining to rights, duties or obligations extending beyond the expiration or termination of this Easement, and all outstanding or remaining obligations accrued prior to the end of the Term of this Easement, shall survive the end of the Term of this Easement.

L. The Parties hereby acknowledge and agree that:

- i. Each Party hereto is of equal bargaining strength;
- ii. Each Party has actively participated in the drafting, preparation and negotiation of this Easement;
- iii. Each Party has consulted with its legal counsel and such other professional advisors as such Party has deemed appropriate, or had the opportunity to do so in relation to any and all matters contemplated under this Easement;
- iv. Each Party and its counsel and advisors have reviewed this Easement, or had the opportunity to do so;
- v. Each Party has agreed to enter into this Easement following such review and the rendering of such advice; and
- vi. Any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Easement, or any portion hereof, or any amendments hereto.

M. Grantee shall complete and submit any Real Estate Excise Tax Affidavit required in connection with this Easement and shall pay any Real Estate Excise Tax and related fees due upon this transaction. Upon review and approval, such approval not to be unreasonably withheld, Grantor shall sign and return to Grantee the completed Real Estate Excise Tax Affidavit.

N. Grantee shall pay all closing costs, recording fees, and other third-party transactional costs in connection with the granting of this Easement.

17. Notice.

Any notice permitted or required to be given by either Party to this Easement shall be given in writing and may be effected by certified United States mail, with return receipt requested, properly addressed, postage prepaid, or by reputable overnight delivery service, or by personal delivery, as follows:

If to Grantor:

King County Metro Transit
201 South Jackson Street, Suite 400
Seattle, WA 98104-3856
Attn: General Manager

If to Grantee:

City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Attn: Public Works Director

or to such other address or to such other person's attention of which notice was given in accordance with this section. Notice shall be deemed effective three (3) days after mailing or upon delivery as described above.

18. Breach; Remedies for Default.

- A. Default by Grantee. A material default under this Easement by Grantee shall include, without limitation, the occurrence of any one or more of the following events:
- i. Grantee shall have failed to pay any payment required hereunder within ten (10) business days following the date where such failure shall continue for a period of an additional ten (10) business days after written notice from Grantor; or
 - ii. Grantee shall have failed to perform any other obligation required hereunder where such failure shall continue for a period of thirty (30) days after written notice from Grantor, provided such 30-day period shall be extended to the extent reasonably necessary to complete such cure so long as Grantee diligently and continuously attempts to do so;
 - iii. Any of the following occur:
 - a. Grantee makes a general assignment or general arrangement for the benefit of creditors;
 - b. A petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Grantee (unless within sixty (60) days following the date that a proceeding is filed under the bankruptcy code the bankruptcy trustee or the Grantee as debtor in possession has (i) elected to assume this Easement; (ii) has cured all defaults under this Easement and paid all sums due and owing under this Easement, and (iii) has provided Grantor with adequate assurance

that the bankruptcy trustee and/or the Grantee has and will continue to have sufficient unencumbered assets after payment of all secured obligations and administrative expenses to assured Grantor that the bankruptcy trustee and/or Grantee will have sufficient funds and/or income to fulfill the obligations of Grantee under this Easement);

- c. A petition for adjudication of bankruptcy or for reorganization or rearrangement is filed against Grantee and is not dismissed within sixty (60) days;
 - d. A trustee or receiver is appointed to take possession of all or substantially all of Grantee's assets; or
 - e. Substantially all of Grantee's assets or Grantee's interest under this Easement is subjected to attachment, execution or other judicial seizure which is not discharged within sixty (60) days.
 - f. Grantee fails to execute the Permanent Easement.
- B. Default by Grantor. A material default under this Easement by Grantor shall include, without limitation, the occurrence of any one or more of the following events:
- i. Grantor shall have failed to perform any obligation required hereunder where such failure shall continue for a period of thirty (30) days after written notice from Grantee, provided such 30-day period shall be extended to the extent reasonably necessary to complete such cure so long as Grantor diligently and continuously attempts to do so;
 - ii. Any of the following occur:
 - a. Grantor makes a general assignment or general arrangement for the benefit of creditors;
 - b. A petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Grantor (unless within sixty (60) days following the date that a proceeding is filed under the bankruptcy code the bankruptcy trustee or the Grantor as debtor in possession has (i) elected to assume this Easement; (ii) has cured all defaults under this Easement and paid all sums due and owing under this Easement, and (iii) has provided Grantee with adequate assurance that the bankruptcy trustee and/or the Grantor has and will continue to have sufficient unencumbered assets after payment of all secured obligations and administrative expenses to assure Grantee that the bankruptcy trustee

and/or Grantor will have sufficient funds and/or income to fulfill the obligations of Grantor under this Easement);

- c. A petition for adjudication of bankruptcy or for reorganization or rearrangement is filed against Grantor and is not dismissed within sixty (60) days;
- d. A trustee or receiver is appointed to take possession of all or substantially all of Grantor's assets; or
- e. Substantially all of Grantor's assets or Grantor's interest under this Easement is subjected to attachment, execution or other judicial seizure which is not discharged within sixty (60) days.

C. Remedies. All remedies under this Easement are cumulative and shall be deemed additional to any and all other remedies to which either Party may be entitled in law or in equity. In the event of any violation or breach or threatened violation or breach of any provision of this Easement, the non-breaching or non-defaulting Party shall, in addition to all other remedies under this Easement or at law or at equity, shall have the right to specifically enforce the terms of this Easement. Notwithstanding anything in this Easement to the contrary, any Party seeking damages for a breach of this Easement shall have the right to recover only actual damages which arise from or are incurred by reason of such default or negligent acts or omissions of the other Party, and each Party hereto waives, to the maximum extent permitted by law, any right it may have to claim or recover any special, indirect, incidental, consequential or punitive damages of any kind or nature, even if it has been advised of the possibility of such damages. In the event of a default by Grantee under this Easement that has not been cured by Grantee within the applicable cure period provided above, Grantor may terminate this Easement if such default remains uncured for thirty (30) days after a notice of such termination has been delivered by Grantor to Grantee.

19. Exhibits/Addendum.

The following Exhibits and Addendum are attached to this Easement and incorporated by this reference as if fully set forth herein.

- A. Legal Description of Property
 - B. Legal Description and Illustration of Temporary Construction Easement Area
 - C. Improvements
 - D. Form of Permanent Easement
- Addendum A: Special Conditions
Attachment A-1: Construction Vehicle Travel Control Plan
Attachment A-2: Traffic Control Plan

Exhibit A

Legal Description of Property

That certain real property located in King County, Washington, and more particularly described as follows:

Portion of Lot 3 of Kirkland Short Plat number SUB 12-00390 recorded under King County Recording No. 201220828900002 in King County, Washington.

ALSO KNOWN AS Assessor's Tax Parcel No. 2025059081, with a street address of 3677 108th Avenue NE, Bellevue, WA 98004.

Exhibit B

Legal Description and Illustration of Temporary Construction Easement Area

(Legal description and illustration of Temporary Construction Easement area to be inserted upon completion of final Project Plans)

Exhibit C

Improvements

(To be inserted upon completion of final Project Plans)

Exhibit D

Form of Permanent Easement

Addendum A

SPECIAL CONDITIONS

The following special conditions are hereby incorporated into and made a part of the Agreement:

Grantee shall:

- Maintain sidewalk access to the extent of existing sidewalks.
- Stay within the defined easement area, NO construction parking on the park-and-ride lot or garage. Grantee shall provide a construction parking plan to Grantor that does not utilize the park-and-ride lot or garage. Grantee may use not more than eleven (11) park-and-ride lot stalls for construction staging during the seven-month Term of the Easement, and not for construction parking. The 11 stalls that Grantee may use for construction staging are shown in attachment A-4 to these special conditions. Grantee may not use any other park-and-ride stalls for any other purpose. Grantee may propose night or weekend work in connection with some or all of the construction and Grantor and Grantee shall negotiate the terms and conditions under which such construction may take place.
- Keep Easement Area free of trash, litter, construction debris etc.
- Control dirt/mud from wheels of Trucks / equipment.
- Comply with Construction Vehicle Travel Control Plan and Traffic Control Plan, attachments A-1 and A-2 to these special conditions.
- Repair/restore any immediately observable damage to asphalt, concrete, curbs, and other improvements.
- Comply with Paving Damage Repair Provisions, attachment A-3 to these special conditions.
- Control/handle trench spoils to protect parking stalls and pedestrian areas from spill over.
- Maintain functional irrigation lines that service landscaping areas outside Temporary Construction Easement Area.
- Maintain functional perimeter lighting.
- Meet the conditions of the King County Wastewater Treatment Division (KCWTD) regarding protection of ESI sewer facilities within the permit area of the CKC during construction. These condition shall be stated on the final approved plan set or the letter to the city of Kirkland from KCWTD approving construction activity within the permit area of the CKC.

In addition, Grantee shall not impede transit coaches' ingress or egress to or from or circulation through the Property, unless prior coordination has occurred and approval has been given by Grantor's Construction Information Center at 206-684-2785 ("CIC") (minimum 5-business days' advance notice required). Before requesting that transit coach movements be restricted Grantee shall first make a good-faith effort to plan and implement the contemplated work so that interference with transit coach movements may be avoided to the maximum extent practicable.

Grantor Initial _____

Grantee Initial

Initial Initial Initial Initial

Attachments:

- A-1 Construction Vehicle Travel Control Plan
- A-2 Traffic Control Plan
- A-3 Paving Damage Repair Provisions
- A-4 Illustration of 11 Parking Stalls Available for Construction Staging

SPECIAL CONDITIONS

ATTACHMENT A-1

CONSTRUCTION VEHICLE TRAVEL CONTROL PLAN

1. At least 30 calendar days prior to construction Grantee shall provide a construction vehicle travel plan for review and approval by Grantor, illustrating the intended path or paths of travel in and out of the park-and-ride property, and listing proposed hours for construction access.
2. The approved travel plan will be attached to this Attachment A-1 when complete.
3. The City may consolidate the Construction Vehicle Travel Control Plan with the Traffic Control Plan set forth in Attachment A-2.

SPECIAL CONDITIONS

ATTACHMENT A-2

TRAFFIC CONTROL PLAN

1. At least 30 calendar days prior to construction Grantee shall provide a traffic control plan for review and approval by Grantor, illustrating all proposed flagger or traffic control locations and describing all measures that Grantee proposes to use to safely manage construction traffic, park-and-ride traffic, and general traffic in the vicinity of the Property during construction of the Project.
2. The approved traffic control plan will be attached to this Attachment A-2 when complete.
3. The City may consolidate the Traffic Control Plan with the Construction Vehicle Travel Control Plan set forth in Attachment A-1.

SPECIAL CONDITIONS

ATTACHMENT A-3

PAVING DAMAGE REPAIR PROVISIONS

1. Grantee acknowledges that bringing equipment, vehicles, or materials weighing 10,000 pounds or more onto the Property will exceed pavement weight limits, and will cause subsurface damage that may not be readily observable for months or even up to two years after Substantial Completion.
2. Grantee shall take all necessary precautions to prevent damage to asphalt or concrete surfaces during construction. Grantee shall avoid, minimize, and mitigate any and all impacts to asphalt or concrete due to the weight or motion of vehicles, equipment, or materials through all reasonable means, including but not limited to use of steel plates, for any vehicle, equipment, or materials that will be brought onto the lot and that will exceed 10,000 pounds gross weight.
2. At least 30 days before construction and **before** bringing any vehicle, equipment, or materials weighing 10,000 pounds or more onto any portion of the Property, Grantee shall submit a general description of its proposed mitigation measures of weight and load issues and a general description of the types of vehicles and equipment (including estimated weight) to be used during construction for review and approval by Transit's Design & Construction engineers. The approved mitigation measures shall be attached to this Attachment A-3 when complete.
3. Grantee shall be responsible for all costs associated with repairing any damage to the asphalt or concrete or to the substrate or other subsurface structures, including damage which may or may not be immediately present or observable.
4. For purposes of this Attachment A-3, "Substantial Completion" means:
 - (a) All elements required for the functioning of the Improvements shall be operational and in good working order and condition including satisfying applicable ADA building requirements and the Washington State Law Against Discrimination, RCW ch. 49.60, as well as regulations adopted thereunder, a temporary or permanent certificate of occupancy has been issued, and all construction-related permit conditions have been satisfied;
 - (b) Finish work on the Improvements is substantially completed, and all fire and life safety, sprinkler and electrical systems have been installed and are in good working order and condition, and all construction debris has been removed;
 - (c) all site utilities, sidewalks and landscaping are substantially completed and construction barricades and equipment have been removed;
 - (d) all entrances and exits to the Improvements and the Property are restored and completed;
 - (e) the access and security systems for the Improvements are installed and operational; and
 - (f) only minor punch-list items which do not materially affect use and occupancy of the Improvements remain to be completed.
5. Grantor shall monitor the subject asphalt and concrete pavement through its usual and ordinary facility inspection and monitoring process. If, at any time in the twenty-four calendar months after Substantial Completion, Grantor identifies any new, different, or unusual pavement failure and determines that such failure appears to be related to Grantee's construction of the Improvements, then Grantor shall promptly notify Grantee of a claim for damages to pavement and Grantor and Grantee shall jointly inspect the affected pavement. If Grantee disagrees with Grantor's assertion that the observed damage relates to construction of the Improvements then the parties shall enter into dispute resolution under Section 12 of the ILA regarding the Improvements.

SPECIAL CONDITIONS

ATTACHMENT A-4

**ILLUSTRATION OF ELEVEN PARK-AND-RIDE STALLS AVAILABLE TO
GRANTEE FOR CONSTRUCTION STAGING PURPOSES, AND NO OTHER
PURPOSE**

EXHIBIT E

Form of Permanent Easement for Elevator Project (Easement)

WHEN Recorded Return to:

PERMANENT EASEMENT

Grantor: King County

Grantee: City of Kirkland

Abbreviated Legal Description: Por. Lot 3, Kirkland S.P. No. SUB 12-00390, King County Rec. No. 201220828900002, in King County, WA

Assessor’s Tax Parcel No.(s): 2025059081

Additional legals on Exhibits A-_____ attached hereto

THIS Easement (“Easement” or “Agreement”) is granted by KING COUNTY, a home-rule charter county and successor in interest to the Municipality of Metropolitan Seattle, hereinafter called the “Grantor,” to CITY OF KIRKLAND, a municipal corporation and code city with a council-manager form of government, hereinafter called the “Grantee.” Together, Grantor and Grantee are sometimes referred to herein as the “Parties” and individually as a “Party.”

RECITALS

1. Grantor is the owner of the property described in Exhibit A attached hereto (the “Property”).
2. The Parties previously entered into an interlocal agreement regarding the design, construction, operation and maintenance of certain improvements intended to improve access between the Property and the Central Kirkland Connector Trail, which agreement was authorized by King County Council ordinance no. _____ (the “ILA”).
3. The ILA contemplated that the Parties would enter into a temporary construction easement and a permanent easement to enable the City to construct, operate, and maintain the access structure on the Property.

4. In furtherance of the ILA, Grantor granted Grantee a temporary construction easement over the Property, identified by King County recording no. _____.
5. Consistent with the ILA, the City has constructed an access structure include stairs and an elevator as described and shown in Exhibit B in accordance with the plans prepared by _____, dated _____ (the “Plans” or “Improvements”), copies of which plans are on file with the Parties.
6. The Improvements were made to improve the connection between the Cross Kirkland Corridor and the County’s South Kirkland Park and Ride on the Property. The Improvements are now complete and, as contemplated in the ILA, Grantee desires a permanent easement over the Property as described and shown in Exhibit B in order to maintain the Improvements.
7. Ordinance no. _____ authorized Grantor to execute an easement substantially in the form of this Easement.

NOW, THEREFORE, as authorized by Ordinance _____, Grantor agrees to grant, and Grantee agrees to accept, an easement over that portion of the Property described and illustrated in Exhibit B, subject to and conditioned upon Grantee’s compliance with the following terms and conditions:

EASEMENT TERMS AND CONDITIONS

1. Grant of Easement.

- A. Grantor hereby grants to Grantee a permanent easement to enter upon and have access to that portion of the Property described and illustrated in Exhibit B (the “Easement Area”), for the purposes described in Section 2 below and subject to the limitations set forth in that Section. Grantee shall have the right to permit third parties to enter upon the Easement Area to accomplish the purposes described herein, provided that all such persons abide by the terms of this Easement.
- B. Grantee acknowledges and agrees that Grantor has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, contracts or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of as to, concerning, or with respect to:
 - i. The value, nature, quality, or condition of the Easement Area, including, without limitation, the water, soil, and geology;
 - ii. The income, if any, to be derived from the Easement Area;

- iii. The suitability of the Easement Area for any and all activities or uses which Grantee or anyone else may conduct thereon;
 - iv. The compliance of or by the Easement Area or its operation with any laws, rules, ordinances, or regulations of any applicable governmental authority or body;
 - v. The Easement Area's habitability, merchantability, marketability, profitability, or fitness for a particular purpose;
 - vi. The manner or quality of the construction or materials, if any, incorporated into the Easement Area; or
 - vii. Any other matter with respect to the Easement Area; and Grantee specifically acknowledges and agrees that Grantor has not made, does not make, and specifically disclaims any representations regarding compliance with any environmental protection, pollution, zoning or land use laws, rules, regulations, orders, or requirements, including the existence in, on, or adjacent to the Easement Area of Hazardous Substances as defined in Section 13 of this Easement.
- C. Grantee further acknowledges and agrees that, having been given the opportunity to inspect the Easement Area, Grantee is relying solely on its own investigation of the Easement Area and not on any information provided or to be provided by Grantor. Grantee further acknowledges and agrees that any information provided or to be provided by Grantor with respect to the Easement Area was obtained from a variety of sources and that Grantor has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information.
- D. Grantee further acknowledges and agrees that Grantor is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Easement Area, or the operation thereof, furnished by any real estate broker, agent, employee, servant, or other person, and, to the maximum extent permitted by law, the use of the Easement Area as provided for herein is made on an "AS-IS" condition and basis with all faults, without any obligation on the part of Grantor to make any changes, improvements, or to incur any expenses whatsoever for the maintenance or repair of the Easement Area.

2. Purpose of Easement.

- A. The purpose of this Easement is to grant Grantee, its employees, contractors, agents, permittees, and licensees the right to enter upon the Easement Area at such times as may be necessary, so that Grantee may own, maintain, operate, repair, and otherwise exercise its legal responsibility for the completed Improvements subject to the limitations set forth in this Easement. In addition, Grantee shall at all times protect the

King County Wastewater Treatment Division's Eastside Interceptor (ESI) sewer pipeline located in the Cross Kirkland Corridor (CKC) adjacent to the South Kirkland Park and Ride from damage during any, maintenance, operation and repair of the Improvements;

- B. The easement rights granted herein are solely for the benefit of Grantee, and are personal to Grantee, its successors in interest and assigns.

3. Grantee's Maintenance Duties.

- A. Grantee shall, at its sole cost and expense, maintain the Easement Area in good condition and repair throughout the term of this Easement. Grantee shall also maintain the Improvements in a good, safe, clean and neat condition suitable for use by the public. Grantee shall perform Minor Maintenance and Major Maintenance (each as defined herein) to keep the Improvements in such condition. All maintenance of the Improvements shall be completed by Grantee at no cost or expense to Grantor, and shall be performed in a good and workmanlike manner. When Grantee commences maintenance it shall prosecute the same diligently and continuously to completion.
- B. Without limiting the generality of Grantee's duties under Section 3.A, Grantee shall:
 - (i) not commit or suffer any waste upon the Easement Area or the Property; (ii) not do or permit anything to be done in, on or about the Property or the Easement Area that is illegal or unlawful; and (iii) comply with all environmental, health and safety requirements imposed by the permitting jurisdictions or other governmental authorities or Environmental Laws as defined in Section 13 of this Easement and all requirements of law that may be applicable to Grantee's use of the Easement Area.
- C. Minor Maintenance. Grantee may access the Property for performing Minor Maintenance without prior notice to Grantor provided that (i) Grantee accesses the Property from the adjacent CKC and does not bring any vehicles or large equipment onto the Property, and (ii) Grantee has previously provided a maintenance schedule to Grantor. In the event Grantee desires to bring one or more vehicles onto the Property to perform Minor Maintenance, Grantee shall notify Grantor at least 10 calendar days before performing Minor Maintenance on the Improvements on the Property. Subject to dispute resolution under Section 18.C, and in addition to the conditions set forth in the Addendum to this Easement, Grantor shall have the right, but not the duty, to impose reasonable safety-related conditions on Grantee's access to the Property for Minor Maintenance-related purposes. The notice-and-review process required in this Section 3.C may be satisfied by email communications between the Parties' designated representatives. Subject to the foregoing notice-and-approval requirements (to the extent they are applicable), Grantee may enter upon the Easement Area to perform Minor Maintenance of the Improvements. In performing Minor Maintenance, Grantee shall use its best efforts to avoid any disruption of ongoing transit-related uses

of the Property, including but not limited to transit-coach operations, transit facility maintenance, security operations, and use of the Property as a park-and-ride facility by the public. For emergency work constituting Minor Maintenance, Grantee shall use its best efforts to coordinate with Grantor regarding the work, and shall notify Grantor within 24 hours of commencing the emergency work. For purposes of this Easement, Minor Maintenance includes, but is not limited to: Routine inspection and cleaning, including sweeping, washing, graffiti removal, and trash removal; repair and replacement of light fixtures, signage, and other minor fixtures; periodic inspection and maintenance of elevator equipment or fire suppression equipment; adjustment or replacement of minor hardware; and minor touch-up of paint or other coatings. Minor Maintenance excludes all work fairly characterized as Major Maintenance under Section 3.D of this Easement. If the Parties disagree whether a particular task or activity constitutes Minor Maintenance or Major Maintenance, then they shall enter into dispute resolution under Section 18.C of this Easement.

- D. Major Maintenance. Prior to performing Major Maintenance of the Improvements within the Easement Area on the Property, Grantee shall, at its sole cost and expense, submit to Grantor for its review and approval, which approval shall not be unreasonably withheld, copies of the Major Maintenance plans and specifications for the Improvements, including Grantee's plans to avoid interference with Transit-related functions and activities on the Property. Grantor shall have twenty (20) calendar days following receipt thereof to approve the Major Maintenance for the Improvements (or any modification thereof) in writing or the same will be deemed disapproved. If Grantor submits objections or comments within the 10-day period, then Grantee shall revise the Major Maintenance plans and specifications consistent with the objections or comments and shall resubmit the same to Grantor for further review until Grantee submittals have been approved. For emergency work constituting Major Maintenance, Grantee shall use its best efforts to coordinate with Grantor regarding the work, and shall notify Grantor within 24 hours of commencing the emergency work. For purposes of this Easement, "Major Maintenance" includes all work not fairly characterized as Minor Maintenance under Section 3.C, including but not limited to: Overhaul or replacement of elevator equipment; any structural repairs to the Improvements, including steel work or concrete work; replacement of more than two glass panels at any one time; repair or replacement of entire systems or subsystems, such as electrical systems, fire suppression systems, drainage systems, communication systems, or security systems; any cleaning or repair that requires the Improvements to be closed to public use for a continuous period of 12 hours or more; and any work that requires scaffolding, or that requires a vehicle larger than a full-size pickup truck ("full-size" meaning a truck with an 4'x8' bed or less), or that requires equipment larger than a 2-person aerial work platform (i.e. "cherry picker" or scissor lift).

4. Additional Performance-Related Conditions.

Grantee shall comply with all additional conditions specified in Addendum “A” attached hereto.

5. Restoration of Grantor’s Improvements.

- A. Grantee shall, at its sole cost and expense, upon completion of any maintenance, remove all debris, materials, equipment and vehicles from the Easement Area, and restore the surface of the Easement Area to a condition substantially identical to that which existed when Grantee first entered upon the Property, save and except for the area occupied by the completed Improvements.
- B. If Grantor’s existing improvements in the Easement Area are disturbed or damaged by Grantee’s use of the Easement Area, then except for the Improvements such disturbance or damage shall be restored or replaced in as good a condition as existed immediately before Grantee entered the Easement Area, all at Grantee’s sole cost and expense, including, without limitation, the restoration of landscaping with vegetation of equivalent value. Without limiting the generality of the foregoing sentence, Grantee shall always provide a safe and level surface for pedestrian and vehicular use around the perimeter of the Easement Area so as not to interfere with continued use of the Property as a transit center and park and ride with transit commuter parking. At Grantor’s discretion, representatives of Grantor and Grantee shall jointly conduct a walk-through of the Easement Area after restoration to evaluate the state of the Easement Area. After such inspection, both representatives together will establish in writing any further restoration to be done by Grantee, the time schedule to perform such work and the inspection date of such work. If Grantor is satisfied with the condition of the Easement Area and the quality and extent of Grantee’s restoration work, then Grantor will so notify Grantee in writing.

6. Grantor’s Reserved Right to Use Easement Area.

Grantee’s use of the Easement Area shall be non-exclusive. Grantor retains the right to use and enjoy the Easement Area, including the right to use existing improvements located in the Easement Area so long as such use does not unreasonably interfere with Grantee’s rights under this Easement, including without limitation the special conditions listed in Addendum A, attached hereto and made a part hereof.

7. Term of Easement.

The term of this Easement is permanent unless there is an event of default that Grantee has failed to cure and Grantor, by ordinance of the King County Council, is authorized to

terminate the Easement. In addition, if Grantee demolishes and removes the Improvements from the Property, then this Easement shall terminate effective as of the date that Grantor accepts Grantee's restoration of the Easement Area under Section 5, and such termination shall occur and be effective without further act of the Parties.

8. Payment for Easement.

In consideration of the transit-related benefits afforded by the Improvements, Grantor shall charge Grantee a land-use fee of \$0 for use of the Easement Area. Grantee shall pay the standard easement processing fee charged by King County Real Estate Services (\$3,000).

9. Binding Effect.

Unless terminated under Section 7 of this Easement, the Easement granted hereby, and the duties, restrictions, limitations and obligations herein shall burden the Easement Area and shall be binding upon the Grantor and its successors, assigns, and lessees and each and every person who shall at any time have a fee, leasehold, or other interest in any part of the Easement Area.

10. Permits.

Grantee shall secure at its sole cost and expense all building and other permits, licenses, permissions, consents and approvals required to operate and maintain the Improvements within the Easement Area consistent with all applicable laws, rules, ordinances or regulations, including but not limited to permission from the owners of any and all third-party equipment, improvements, or utilities located within the Easement Area.

11. Safety and Convenience.

Grantee shall take all appropriate measures to protect the safety of persons and property on adjoining portions of the Property or other land while using the Easement Area, and shall avoid, to the maximum extent practicable, any interference with the ongoing use of the Property as a transit center for park and ride purposes. Grantee shall use its best efforts to minimize the impact of its use on the remainder of the Property, including but not limited to, the installation of dust and debris barriers, if necessary during the maintenance process, and shall not damage any part of the Property or any vehicles that may be parked on or otherwise use the Property outside of the Easement Area. If the Easement Area or the Property or any improvements located thereon or any vehicles parked on the Property outside of the Easement Area are damaged or destroyed by Grantee's exercise of the rights granted by and through this Easement to Grantee or by Grantee's contractors, subcontractors, suppliers, employees, agents, licensees or invitees, then Grantee shall repair the damage to any vehicles, the Easement Area or the Property and shall restore the

Easement Area or the Property to good condition and repair, all at Grantee's sole cost and expense. Grantee shall not park or allow its contractors, suppliers, or other agents to park construction vehicles on the Property outside of the Easement Area without separate written permission from Grantor, which permission may be in the form of a special use permit, a temporary easement, or another form of authorization.

12. Liens.

Grantee shall not suffer or permit any lien, charge, security interest or encumbrance (collectively, "Liens") to be filed against the Property in connection with or arising under this Easement or relating to the Improvements. If any such Lien is filed, Grantee shall within thirty (30) days following the attachment of same, remove and discharge any and all such Liens. Grantee may contest the validity or amount of any such Lien in good faith provided that within thirty (30) days after the filing of any such Lien, Grantee discharges such Lien of record or records a bond which eliminates said Lien as an encumbrance against the Property. Grantee shall indemnify, protect, defend and hold Grantor harmless from and against all liabilities, losses, damages, expenses and costs (including reasonable attorneys' fees and costs) incurred in connection with any such Liens, which indemnification shall survive the expiration or termination of this Easement.

13. Environmental Matters.

- A. Grantee represents, warrants and agrees that it shall conduct its activities related to the Easement Area in compliance with all applicable environmental laws. As used in this Easement, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., the Model Toxics Control Act, RCW chapter 70.105D, and Washington or any other comparable local, state, or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto.
- B. Grantee shall not bring toxic or hazardous substances upon the Easement Area without Grantor's express written permission and under such terms and conditions as may be specified by Grantor. For the purposes of this Easement, "Hazardous Substances," shall include all those substances identified as hazardous or toxic under the Environmental Laws, and shall include any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, and which are regulated or controlled as such by any applicable federal, state or local laws,

ordinances or regulations as now existing or hereafter amended, including but not limited to gasoline and other petroleum products. In the event such permission is granted, the disposal of such materials must be done in a legal manner by Grantee.

- C. Grantee agrees to cooperate in any environmental investigations conducted by or at the direction of Grantor or any state, federal, or local agency with jurisdiction where there is evidence of contamination on the Property, or where Grantor is directed to conduct such audit by an agency or agencies having jurisdiction. Grantee shall reimburse Grantor for the cost of such investigations, where the need for said investigation is reasonably and finally determined to be caused by Grantee's acts or omissions. Grantee shall provide Grantor with notice of any inspections of the Easement Area, notices of violations, and orders to clean up contamination. Grantee shall permit Grantor to participate in all settlement or abatement discussions. If Grantee fails to take remedial measures as duly directed by a state, federal, or local regulatory agency within thirty (30) days of such notice, Grantor may elect to perform such work, and Grantee covenants and agrees to reimburse Grantor for all commercially reasonable direct and indirect costs associated with Grantor's work where said contamination is determined to arise out of or result from Grantee's use of the Easement Area.
- D. For the purposes of this Section 13 (Environmental Requirements), "Costs" shall include, but not be limited to, all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with the Environmental Laws, or any of them.
- E. Grantee agrees to defend, indemnify and hold Grantor harmless from and against any and all claims, causes of action, administrative proceedings, obligations, demands and liability including, but not limited to, any Costs, liabilities, damages, expenses, assessments, penalties (whether civil or criminal), fines, losses, judgments and attorneys' fees associated with the removal or remediation of any Hazardous Substances released or otherwise located on the Easement Area as a result of Grantee's acts or omissions on the Easement Area or in connection with Grantee's exercise of its rights under this Easement, including but not limited to Hazardous Substances that may have migrated from the Easement Area through water or soil to other properties. Grantee further agrees to defend, indemnify and hold Grantor harmless from any and all liability arising from Grantee's offsite disposal, handling, treatment, storage, or transportation of any Hazardous Substances removed from the Easement Area by or on behalf of Grantee. Grantee expressly waives and releases its right to seek cleanup contribution or any other form of recovery from Grantor under MTCA (RCW 70.105D) and CERCLA (42 U.S.C. 9601 et seq.), but only to the extent arising out of or relating to Grantee's activities on the Property during the Term of this Easement or otherwise in connection with the Easement Area, the Improvements, or any of them.

F. The provisions of this Section 13 (Environmental Requirements) shall survive the termination or expiration of this Easement. This Section 13 is the exclusive provision of this Easement regarding Hazardous Substances and environmental obligations relating to the Easement, and the exclusive contractual rights and duties of Grantor and Grantee pertaining thereto.

14. Indemnity.

Grantee shall protect, defend, indemnify and hold Grantor and its officials, officers and employees harmless (except to the extent caused by the gross negligence of Grantor or any such official, officer or employee acting within the scope of such person's employment or office) from and against any and all claims, demands, losses, liabilities, damages, expenses and costs (including reasonable attorney's fees and costs) of every kind and description and for any personal injury or loss to or damage or destruction of property suffered by Grantor arising out of Grantee's exercise of its rights under this Easement or the completion of the Improvements by Grantee or Grantee's officers, employees, agents, consultants, contractors or subcontractors of all tiers or any of their respective officers, employees or agents. Provided, that if any such claims are caused by or result from the concurrent negligence of (a) Grantor or its agents, successors, or assigns and (b) Grantee, or its agents, successors, or assigns, and such concurrent negligence involves those actions covered by RCW 4.24.115, then this Section 14 shall be valid and enforceable only to the extent of the negligence of Grantee, or its agents, successors, or assigns. The foregoing indemnification is specifically and expressly intended to include, but is not limited to, all claims against Grantor by an employee or former employee of Grantee or its consultants, contractors and subcontractors; and Grantee expressly waives, as respect Grantor only, all immunity and limitation on liability under any industrial insurance act including Title 51 RCW, to the extent necessary to provide Grantor with a complete indemnity for the actions of Grantee's officers, agents, employees, consultants, contractors, subcontractors or any of their respective officers, agents or employees. This indemnification has been the subject of specific negotiation between the Parties and this indemnification shall survive the expiration or termination of this Easement.

15. Grantee Insurance.

Grantee shall maintain, and cause any consultant, contractor or subcontractor hired to provide work or services in connection with the development of the Improvements to maintain, the following minimum insurance: (a) commercial general liability insurance in an amount not less than \$5,000,000 combined single limit per occurrence covering any claim, personal injury or property damage, including coverage for contractual liability, arising in connection with the presence of Grantee or its officers, agents, employees, consultants, contractors, subcontractors or any of their respective officers, agents or employees on the Property or the Easement Area; (b) business automobile liability

(owned, hired or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1,000,000 per occurrence; (c) employer's liability insurance with limits of not less than \$1,000,000 per occurrence; and (d) worker's compensation insurance (as required by law). All such insurance shall: (i) be endorsed to name Grantor as an additional insured; (ii) be endorsed to provide that it is primary with and non-contributing with, any insurance maintained by Grantor; (iii) contain a severability of interest provision in favor of Grantor; (iv) contain a waiver of any rights of subrogation against Grantor; and (v) be issued by an insurance company authorized to do business in the State of Washington with a Best's rating of not less than A:VIII. The insurance coverage and limits set forth herein shall be deemed to be minimum coverage and limits and shall not be construed in any way as a limitation on Grantee's duty to carry adequate insurance or liability for losses, claims, liabilities or damages arising under this Easement. Upon written demand by Grantor, Grantee shall deliver to Grantor copies of all relevant insurance policies or certificates of insurance verifying such coverage.

16. General Terms and Conditions.

- A. The captions and paragraph headings contained in this Easement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Easement nor the intent of any provision hereof.
- B. Grantee may not assign this Easement without Grantor's prior written consent, which consent may be withheld by Grantor in its sole and absolute discretion.
- C. This Easement, its attachments, and the ILA together constitute the entire agreement of the Parties with respect to the subject matter hereto. There are no other verbal or written agreements between the Parties regarding the subject matter herein. This Easement cannot be amended except by an instrument in writing signed by the Parties hereto
- D. If any term of this Easement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.
- E. This Easement shall be governed by and construed and enforced in accordance with the laws of the State of Washington without regard to its choice of law rules or conflicts of law provisions, and venue shall lie exclusively in King County Superior Court in Seattle, Washington. The Parties each waive their respective right to file suit elsewhere or in any other court.

- F. In the event either party employs an attorney to enforce any of the provisions of this Easement via litigation, mediation, or arbitration, then the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees in connection with such action.
- G. Time is of the essence in the performance of this Easement.
- H. This Easement may be executed in counterparts each of which is an original and all of which shall constitute but one original.
- I. This Easement creates no right, duty, privilege, obligation, cause of action, or any other interest in any person or entity not a party to it.
- J. Nothing contained in this Easement shall be considered or interpreted to diminish the governmental or police powers of King County or the City of Kirkland.
- K. Any terms and provisions of this Easement pertaining to rights, duties or obligations extending beyond the expiration or termination of this Easement, and all outstanding or remaining obligations accrued prior to the end of the Term of this Easement, shall survive the end of the Term of this Easement.
- L. The Parties hereby acknowledge and agree that:
- i. Each Party hereto is of equal bargaining strength;
 - ii. Each Party has actively participated in the drafting, preparation and negotiation of this Easement;
 - iii. Each Party has consulted with its legal counsel and such other professional advisors as such Party has deemed appropriate, or had the opportunity to do so in relation to any and all matters contemplated under this Easement;
 - iv. Each Party and its counsel and advisors have reviewed this Easement, or had the opportunity to do so;
 - v. Each Party has agreed to enter into this Easement following such review and the rendering of such advice; and
 - vi. Any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Easement, or any portion hereof, or any amendments hereto.

M. Grantee shall complete and submit any Real Estate Excise Tax Affidavit required in connection with this Easement and shall pay any Real Estate Excise Tax and related fees due upon this transaction. Upon review and approval, such approval not to be unreasonably withheld, Grantor shall sign and return to Grantee the completed Real Estate Excise Tax Affidavit.

N. Grantee shall pay all closing costs, recording fees, and other third-party transactional costs in connection with the granting of this Easement.

17. Notice.

Any notice permitted or required to be given by either Party to this Easement shall be given in writing and may be effected by certified United States mail, with return receipt requested, properly addressed, postage prepaid, or by reputable overnight delivery service, or by personal delivery, as follows:

If to Grantor:

King County Metro Transit
201 South Jackson Street, Suite 400
Seattle, WA 98104-3856
Attn: General Manager

If to Grantee:

City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Attn: Public Works Director

or to such other address or to such other person's attention of which notice was given in accordance with this section. Notice shall be deemed effective three (3) days after mailing or upon delivery as described above.

18. Breach; Dispute Resolution; Remedies for Default.

A. Default by Grantee. A material default under this Easement by Grantee shall include, without limitation, the occurrence of any one or more of the following events:

- i. Grantee shall have failed to pay any payment required hereunder within ten (10) business days following the date where such failure shall continue for a period of an additional ten (10) business days after written notice from Grantor; or

ii. Grantee shall have failed to perform any other obligation required hereunder where such failure shall continue for a period of thirty (30) days after written notice from Grantor, provided such 30-day period shall be extended to the extent reasonably necessary to complete such cure so long as Grantee diligently and continuously attempts to do so;

iii. Any of the following occur:

- a. Grantee makes a general assignment or general arrangement for the benefit of creditors;
- b. A petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Grantee (unless within sixty (60) days following the date that a proceeding is filed under the bankruptcy code the bankruptcy trustee or the Grantee as debtor in possession has (i) elected to assume this Easement; (ii) has cured all defaults under this Easement and paid all sums due and owing under this Easement, and (iii) has provided Grantor with adequate assurance that the bankruptcy trustee and/or the Grantee has and will continue to have sufficient unencumbered assets after payment of all secured obligations and administrative expenses to assured Grantor that the bankruptcy trustee and/or Grantee will have sufficient funds and/or income to fulfill the obligations of Grantee under this Easement);
- c. A petition for adjudication of bankruptcy or for reorganization or rearrangement is filed against Grantee and is not dismissed within sixty (60) days;
- d. A trustee or receiver is appointed to take possession of all or substantially all of Grantee's assets; or
- e. Substantially all of Grantee's assets or Grantee's interest under this Easement is subjected to attachment, execution or other judicial seizure which is not discharged within sixty (60) days.

B. Default by Grantor. A material default under this Easement by Grantor shall include, without limitation, the occurrence of any one or more of the following events:

- i. Grantor shall have failed to perform any obligation required hereunder where such failure shall continue for a period of thirty (30) days after written notice from Grantee, provided such 30-day period shall be extended to the extent reasonably necessary to complete such cure so long as Grantor diligently and continuously attempts to do so;

- ii. Any of the following occur:
 - a. Grantor makes a general assignment or general arrangement for the benefit of creditors;
 - b. A petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Grantor (unless within sixty (60) days following the date that a proceeding is filed under the bankruptcy code the bankruptcy trustee or the Grantor as debtor in possession has (i) elected to assume this Easement; (ii) has cured all defaults under this Easement and paid all sums due and owing under this Easement, and (iii) has provided Grantee with adequate assurance that the bankruptcy trustee and/or the Grantor has and will continue to have sufficient unencumbered assets after payment of all secured obligations and administrative expenses to assure Grantee that the bankruptcy trustee and/or Grantor will have sufficient funds and/or income to fulfill the obligations of Grantor under this Easement);
 - c. A petition for adjudication of bankruptcy or for reorganization or rearrangement is filed against Grantor and is not dismissed within sixty (60) days;
 - d. A trustee or receiver is appointed to take possession of all or substantially all of Grantor's assets; or
 - e. Substantially all of Grantor's assets or Grantor's interest under this Easement is subjected to attachment, execution or other judicial seizure which is not discharged within sixty (60) days.

C. Dispute Resolution.

- i. Procedures Mandatory. Any dispute between the Parties under this Easement shall, as a condition precedent to litigation, first be subject to the dispute resolution procedures set forth in this Section 18.C.
- ii. Negotiated Settlement. The first step in the dispute resolution process settlement of the dispute, as follows:
 - a. A Party desiring to initiate settlement negotiations (the "Initiating Party") may do so by giving written notice to the other Party (the "Responding Party") of the basis for the dispute, provided that the Initiating Party shall use commercially reasonable efforts to furnish the Responding Party, as expeditiously as possible, with notice of any dispute once such dispute is recognized, and shall cooperate with the Responding Party in an effort to

mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such dispute.

- b. The Initiating Party shall, within five (5) business days after giving written notice to the Responding Party of the basis for the dispute, prepare and provide to the Responding Party a written, detailed summary of the basis for the dispute, together with all facts, documents, backup data and other information reasonably available to the Initiating Party that support the Initiating Party's position in the dispute.
 - c. The Initiating Party shall designate and make any of its employees or agents having knowledge of the dispute available to the Responding Party to respond to questions of the Responding Party.
 - d. Within fourteen (14) days after the Initiating Party gives notice of a dispute, (1) the Responding Party shall prepare and provide to the Initiating Party a written, detailed summary, together with all facts, documents, backup data and other information reasonably available to the Responding Party that support the Responding Party's position in the dispute; (2) the Responding Party shall designate and make any of its employees or agents having knowledge of the dispute available to the Initiating Party to respond to questions of the Initiating Party; and (3) employees or agents of the Parties who have authority to settle the dispute, along with other parties having knowledge of or an interest in the dispute, shall meet at a mutually acceptable time and place in Seattle, Washington, in an effort to compromise and settle the dispute.
- iii. Mediation. Any dispute which is not resolved by direct discussions and negotiations as provided herein shall be submitted to mediation under the Commercial Mediation Procedures of the American Arbitration Association or such other rules as the Parties may agree to use. If the Parties cannot agree on the selection of a mediator within ten days (10) of the request for mediation, any Party may immediately request the appointment of a mediator in accordance with the governing mediation rules. Mediation shall occur at any location in Seattle, Washington that the mediator may designate. The mediation shall include the exchange of written claims and responses, with supporting information, at least ten (10) days prior to the actual mediation. Grantee, on the one hand, and Grantor, on the other hand, shall each be responsible for 50% of the mediation expenses. The Parties shall conclude mediation proceedings under this Section 18.C within sixty (60) days after the designation of the mediator. If mediation proceedings do not resolve the dispute within such period, and if the Parties do not mutually agree to an extension of such period, then a Party may commence litigation with respect to the dispute.

- iv. **Optional Arbitration.** The Parties may, by mutual written agreement, submit any particular claim or dispute to binding arbitration following the American Arbitration Commercial Arbitration Rules, provided, that in the event the individual arbitrators selected by the Parties cannot agree to a unanimous award, then the third arbitrator appointed by the two party-selected arbitrators shall render the award alone after consideration of the respective Parties' arbitrators.
 - v. **No Prejudice.** Provided the Initiating Party has complied with the requirements for giving notice of the existence of a dispute, no delay in disposing of such dispute while the Parties pursue the dispute resolution procedures shall prejudice the rights of any Party. At the request of the Initiating Party or the Responding Party, the Parties shall enter into an agreement to toll the statute of limitations with respect to the subject matter of a dispute while the Parties pursue the dispute resolution procedures. Positions expressed, responses given, and information submitted in any dispute resolution process under this Section 18.C shall not be admissible as evidence in any subsequent dispute resolution, litigation, or other legal proceeding.
 - vi. **Emergency.** If Grantor or Grantee reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to or loss of the Improvements or the Property, or that delay in initiating or prosecuting a claim in litigation would irrevocably prejudice a Party, then such Party may pursue any immediate remedy available at law or in equity without following the dispute resolution procedures in this Section 18.C.
- D. **Remedies.** All remedies under this Easement are cumulative and shall be deemed additional to any and all other remedies to which either Party may be entitled in law or in equity. In the event of any violation or breach or threatened violation or breach of any provision of this Easement, the non-breaching or non-defaulting Party shall, in addition to all other remedies under this Easement or at law or at equity, shall have the right to specifically enforce the terms of this Easement, or to terminate this Easement upon the demolition and removal of the Improvements. Notwithstanding anything in this Easement to the contrary, any Party seeking damages for a breach of this Easement shall have the right to recover only actual damages which arise from or are incurred by reason of such default or negligent acts or omissions of the other Party, and each Party hereto waives, to the maximum extent permitted by law, any right it may have to claim or recover any special, indirect, incidental, consequential or punitive damages of any kind or nature, even if it has been advised of the possibility of such damages. In the event of a default by Grantee under this Easement that has not been cured by Grantee within the applicable cure period provided above, Grantor may terminate this Easement if such default remains uncured for thirty (30) days after a notice of such termination has been delivered by Grantor to Grantee.

19. Exhibits/Addendum.

The following Exhibits and Addendum are attached to this Easement and incorporated by this reference as if fully set forth herein.

- A. Legal Description of Property
 - B. Legal Description and Illustration of Permanent Easement Area
- Addendum A Special Conditions

20. Authority to Execute.

The undersigned acknowledges that they are authorized to execute this Easement and bind their respective Party to the obligations set forth herein.

IN WITNESS WHEREOF, the Grantor and Grantee hereby execute this Easement as of the day and year below written.

EASEMENT CONTINUES ON FOLLOWING PAGES

Exhibit A

Legal Description of Property

That certain real property located in King County, Washington, and more particularly described as follows:

Portion of Lot 3 of Kirkland Short Plat number SUB 12-00390 recorded under King County Recording No. 201220828900002 in King County, Washington.

ALSO KNOWN AS Assessor's Tax Parcel No. 2025059081, with a street address of 3677 108th Avenue NE, Bellevue, WA 98004.

Exhibit B

Legal Description and Illustration of Permanent Easement Area

(Legal description and illustration of Permanent Easement area to be inserted upon completion of final Project Plans.)

Addendum A

SPECIAL CONDITIONS

The following special conditions are hereby incorporated into and made a part of the Easement:

Grantee shall:

- Maintain sidewalk access to the extent of existing sidewalks.
- Stay within the defined easement area, NO construction or maintenance parking on the park-and-ride lot or garage without separate written permission from Grantor. Grantee shall access the Property from the adjacent CKC for the purpose of performing Minor Maintenance.
- Keep Easement Area free of trash, litter, construction debris etc.
- Control dirt/mud from wheels of Trucks / equipment.
- For Major Maintenance requiring vehicle access over the Property, at least 30 calendar days prior to initiating such Major Maintenance Grantee shall provide a vehicle travel plan for review and approval by Grantor, illustrating the intended path of travel in and out of the park-and-ride property, including all proposed flagger or traffic control locations. Grantee shall take all necessary precautions to prevent damage to asphalt or concrete surfaces during construction.
- Repair/restore any immediately observable damage to asphalt, concrete, curbs, and other improvements caused by Grantee. Grantee shall be responsible for all costs associated with repairing any damage to the asphalt or concrete itself or to the substrate and resulting from Grantee's exercise of its Easement rights, including damage which may or may not be immediately present or observable.
- Bring no vehicle onto the Property that weighs in excess of 10,000 pounds without separate written permission from Grantor. Grantee shall avoid, minimize, and mitigate any and all impacts to asphalt or concrete due to the weight or motion of vehicles, equipment, or materials through all reasonable means, including but not limited to use of steel plates, for any vehicle, equipment, or materials that will be brought onto the lot and that will exceed 10,000 pounds gross weight.
- Control/handle trench spoils to protect parking stalls and pedestrian areas from spill over.
- Maintain functional irrigation lines that service landscaping areas outside Permanent Easement Area.
- Maintain functional perimeter lighting.
- Meet the conditions of the King County Wastewater Treatment Division (KCWTD) regarding protection of ESI sewer facilities within the permit area of the CKC during construction or maintenance. These conditions shall be stated on the final approved plan set or the letter to the city of Kirkland from KCWTD approving construction or maintenance activity within the permit area of the CKC.

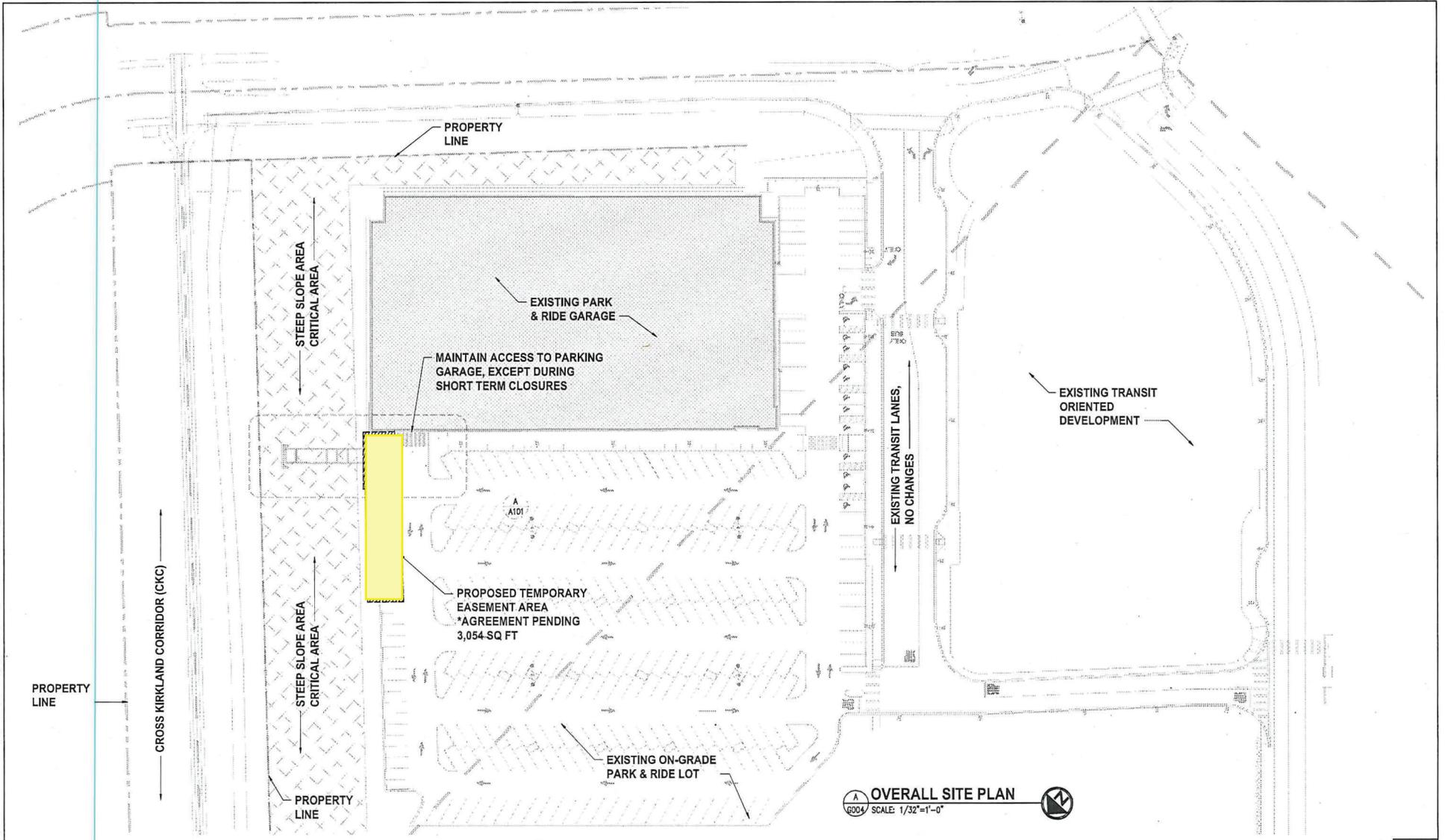
In addition, Grantee shall not impede transit coaches' ingress or egress to or from or circulation through the Property, unless prior coordination has occurred and approval has been given by Grantor's Construction Information Center at 206-684-2785 ("CIC") (minimum 5-business days' advance notice required). Before requesting that transit coach movements be restricted Grantee shall first make a good-faith effort to plan and implement the contemplated work so that interference with transit coach movements may be avoided to the maximum extent practicable.

Grantor Initial _____

Grantee Initial

Initial Initial Initial Initial

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NO.	DATE	BY	APPR.	REVISIONS

Approved By		FILENAME	G004_OVERALL SITE PLAN.dwg
ENGINEERING MANAGER	DATE	DESIGNED BY	J. PALMER
PROJECT MANAGER	DATE	DRAWN BY	DATE
PROJECT ENGINEER	DATE	CHECKED BY	DATE

6712
REGISTERED ARCHITECT
J. PALMER
 JAY & BARBARA
 ARCHITECTS & PLANNERS

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 Seattle, WA 98107
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PERMIT SUBMITTAL



**CITY OF KIRKLAND
 PARK & RIDE CKC CONNECT**

GENERAL OVERALL SITE PLAN & CONSTRUCTION STAGING PLAN	
KPG PROJECT No. 13152	SHT <u>4</u> OF <u>50</u>