

ORDINANCE O-4807

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF KIRKLAND AND GOOGLE LLC REGARDING A CATALYST PROJECT RELATED TO THE NE 85TH STREET STATION AREA PLAN AND ITS FORM-BASED CODE AND AUTHORIZING AND DIRECTING THE EXECUTION OF SUCH AGREEMENT.

1 WHEREAS, in 2019, the City of Kirkland ("City") began a
2 land use planning process related to the development of the new
3 bus rapid transit ("BRT") station at the I-405/NE 85th Street
4 interchange by Sound Transit and WSDOT as part of Sound
5 Transit 3; and
6

7 WHEREAS, such process led to the development of a NE
8 85th Street Station Area Plan ("Station Area Plan") to address land
9 use, zoning, and economic development plans for areas adjacent
10 to the BRT station; and
11

12 WHEREAS, following a lengthy and robust public
13 engagement process and the completion of required
14 environmental review, the City Council adopted the Station Area
15 Plan through Resolution R-5411 on June 28, 2022; and
16

17 WHEREAS, on June 28, 2022, the Council also adopted a
18 Form-based Code ("FBC") for the Commercial Use Zone of the
19 Station Area, as well as amendments to the City's comprehensive
20 plan, zoning map, zoning code, and design guidelines through
21 Ordinances O-4800, O-4801, O-4802, and O-4803; and
22

23 WHEREAS, the City and Google LLC ("Google") have been
24 negotiating terms and conditions for a development agreement
25 related to a potential Google campus project ("Google project")
26 within the Station Area; and
27

28 WHEREAS, the Google project meets the FBC criteria for a
29 "catalyst" project and is considered important to the successful
30 implementation of the Station Area Plan; and
31

32 WHEREAS, RCW 36.70B.170 authorizes development
33 agreements between local governments and persons having
34 ownership or control of real property within its jurisdiction, setting
35 forth the development standards and other provisions that shall
36 apply to and govern and vest the development, use, and
37 mitigation of the real property for the duration specified in the
38 agreement; and
39

40 WHEREAS, pursuant to RCW 36.70B.200, a city shall only
41 approve a development agreement by ordinance or resolution
42 after a public hearing; and

43 WHEREAS, the Council conducted an extended study
44 session as a special meeting related to a proposed Development
45 Agreement ("Agreement") for the Google project in the Station
46 Area on July 6, 2022; and
47

48 WHEREAS, the Council held the required public hearing
49 related to the Development Agreement at a special meeting on
50 July 11, 2022, at which time Google and all interested members
51 of the community were given the opportunity to offer public
52 testimony; and
53

54 WHEREAS, the review materials and comments made at
55 the study session, together with the draft Agreement and its
56 exhibits, were made parts of the public hearing record; and
57

58 WHEREAS, based on public testimony and comments from
59 Councilmembers, City staff and Google representatives have
60 successfully negotiated amendments to the Agreement and its
61 exhibits that address Google engagement with the Lake
62 Washington School District and the issues of (i) all-electric
63 buildings, (ii) vesting process for concurrency person trips, (iii)
64 required elements of a Google Transportation Management Plan
65 ("TDM") and utilization of an independent transportation
66 engineering firm related to vehicle parking, and (iv) retention by
67 the City of any original exhibits or portions thereof that are not
68 accepted for recording by King County; and
69

70 WHEREAS, the Council now wishes to authorize and direct
71 the execution of the Agreement by the City Manager following its
72 execution by Google.
73

74 NOW, THEREFORE, the City Council of the City of Kirkland
75 do ordain as follows:
76

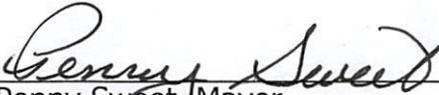
77 Section 1. The City Manager is authorized and directed to
78 execute the Development Agreement between the City of Kirkland
79 and Google LLC together with its Exhibits A through H, in
80 substantially the form attached hereto and following execution of
81 the Agreement by Google.
82

83 Section 2. This ordinance shall be in force and effect five
84 days from and after its passage by the Kirkland City Council and
85 publication pursuant to Section 1.08.017, Kirkland Municipal Code
86 in the summary form attached to the original of this ordinance and
87 by this reference approved by the City Council.

88
89
90
91

Passed by majority vote of the Kirkland City Council in open meeting this 19 day of July, 2022.

Signed in authentication thereof this 19 day of July, 2022.


Penny Sweet, Mayor

Attest:


Kathi Anderson, City Clerk

Approved as to Form:


Kevin Raymond, City Attorney

Publication Date: 07/25/2022

PUBLICATION SUMMARY
OF ORDINANCE NO. 4807

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF KIRKLAND AND GOOGLE LLC REGARDING A CATALYST PROJECT RELATED TO THE NE 85TH STREET STATION AREA PLAN AND ITS FORM-BASED CODE AND AUTHORIZING AND DIRECTING THE EXECUTION OF SUCH AGREEMENT.

SECTION 1. Authorizes the City Manager to execute a Development Agreement between the City of Kirkland and Google LLC regarding a catalyst project related to the NE 85th Street Station Area Plan and its Form-based Code.

SECTION 2. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 19 day of July, 2022.

I certify that the foregoing is a summary of Ordinance 4807 approved by the Kirkland City Council for summary publication.



Kathi Anderson, City Clerk

After recording, return to:

Google LLC
 1600 Amphitheatre Parkway
 Mountain View, CA 94043
 Attn: Legal Department/RE Matters and
 REWS Project Executive

Document Title(s) (or transactions contained therein)

1. Development Agreement

Grantor(s) (Last name, first, then first name and initials)

1.

Additional names on page of document.

Grantee(s) (Last name first, then first name and initials)

1.

Additional names on page of document.

Legal Description (abbreviated: i.e., lot, block plat or section, township, range, qtr./qtr.)

Additional legal is on page of document.

Reference Number(s) of Documents assigned or released:

Additional numbers on page of document.

Assessor's Property Tax Parcel/Account Number

Property Tax Parcel is not yet assigned

Additional parcel numbers on page of document.

DEVELOPMENT AGREEMENT

Between

CITY OF KIRKLAND AND GOOGLE LLC

Dated as of

the ___ day of _____, 2022

Development Agreement

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<u>Exhibit</u>	<u>Description</u>	<u>Partial Section Reference</u>
A	Site Legal Description	
B	Site Plan and Phasing Plan	
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E	Sustainability Features	
F	Infrastructure Improvements	
G	Pick-Up and Drop-Off Locations	
H	120th Vehicular Access Driveway Location Factors	

DEVELOPMENT AGREEMENT

BETWEEN THE CITY OF KIRKLAND AND GOOGLE LLC

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2022, by and between the City of Kirkland, a Washington municipal corporation ("City") and Google LLC, a Delaware limited liability company ("Google"). Collectively, the City and Google may be referred to herein as Parties, and each separately is a Party.

RECITALS

A. In 2019, the City began to study a potential Kirkland NE 85th Street Station Area Plan ("SAP") to authorize and encourage transit-oriented development ("TOD") in the area near the future Bus Rapid Transit ("BRT") Station that Sound Transit and the Washington State Department of Transportation will construct at the I-405 interchange with NE 85th Street in Kirkland ("Station Area").

B. The City's studies and its planning and environmental documents for the SAP include:

a. an April 2020 Public Engagement Plan that provides a framework for coordination of public engagement for the City's SAP effort, including engagement with large property owners and major employers, as well as other members of the public;

b. an April 15, 2020 Opportunities and Challenges Report that recognized, among other things, that a significant portion of the Station Area is surface parking that is a suboptimal use in proximity to regional transit, and that the Station Area has low access to parks, a poor environment for walking and biking, and a lack of community gathering spaces;

c. a Draft Supplemental Environmental Impact Statement ("DSEIS") issued January 5, 2021 that studied potential significant adverse and beneficial impacts of three SAP alternatives, including an action alternative allowing growth with zoning heights up to a maximum of 300 feet;

d. a decision by the City Council in June 2021 to narrow the focus of the environmental review in the Final Supplemental Environmental Impact Statement ("FSEIS") to two SAP alternatives: "Current Trends," which studied current growth trends with no zoning changes; and "Transit Connected Growth," which studied growth with reduced zoning heights up to a maximum of 250 feet;

e. a November 2021 Fiscal Impacts and Community Benefits Analysis that concluded that development of the Station Area with Current Trends would create increased need for public infrastructure without increased means to fund that infrastructure, while Transit Connected Growth would efficiently concentrate growth and create more revenue for the City to invest in infrastructure, community benefits, and operations, making this alternative affordable for the City and more fiscally sustainable;

f. Resolution R-5503 passed by the City Council on December 14, 2021 that adopted the Council's Preferred Plan Direction for the SAP and directed City staff to implement it by preparing amendments to the Comprehensive Plan, a final SAP, a Form-Based Code ("FBC"), and a Planned Action Ordinance ("PAO") consistent with the Transit Connected Growth alternative;

g. a FSEIS issued December 30, 2021;

h. an Addendum to the FSEIS in June 2021 that includes analysis of the environmental impacts of this Development Agreement and concludes that such impacts are within the scope of the impacts studied in the FSEIS; and

i. a Final SAP that: amends the Comprehensive Plan by means of Ordinance O-4800 and Resolution R-5547; Kirkland Zoning Map changes to apply the Commercial Mixed-Use Zone by means of Ordinance O-4801; a Final Form-Based Code for the Commercial Mixed-Use Zone by means of Ordinance O-4802; and Design Guidelines for the Station Area by means of Ordinance O-4803 all passed by the City Council on June 28, 2022.

j. In addition, one or two planned action ordinances are expected to be passed by the City Council later in 2022.

C. Google followed the City's efforts to plan for transit-oriented development in the Station Area and the WSDOT and Sound Transit plan to locate the BRT next to the site of the existing car dealership owned by LMJ Enterprises Limited Partnership ("Johnson"). In late 2020 Johnson and Google entered into an agreement for Google's potential acquisition of the site of Lee Johnson Auto ("Site"), located adjacent to the future BRT Station. The Site is bounded by Interstate-405 on the west, NE 85th Street to the north, 120th Avenue NE to the east, and privately owned property and the end of the 118th Avenue right-of-way to the south. It is composed of twelve tax parcels and is legally described on Exhibit A attached hereto and incorporated herein.

D. Johnson and Google provided comments to the City supporting the City's planning efforts and introduced Google's interest in acquiring, developing, and using the Site for a TOD office project if the proposed SAP approved additional height and density to allow such development as contemplated in the City's Station Area planning efforts.

E. The City recognized that redevelopment of the Site with a TOD office project by Google could serve as a catalyst for redevelopment of the entire Station Area, and the City Council by letter dated September 24, 2021, encouraged Google, as a community member, to participate in the City's on-going legislative process to develop regulations for the Station Area by sharing Google's initial concepts for development of the Site so that City consultants and staff could better understand the practical and policy consequences of the regulations that the City was developing.

F. The City and Google agreed upon a Framework for Discussions that guided the sharing of information as the City developed its regulations to create and implement the SAP.

G. Google also shared its conceptual plans for the Site with many community groups and stakeholders.

H. The discussions between the City and Google led to the recognition that development of the Site in the manner conceptually proposed by Google could result in net positive benefit to the City, helping to fund transportation infrastructure, open space, and other public benefits envisioned in the SAP, and also serve as a catalyst for development of the remainder of the Station Area consistent with the SAP.

I. The City and Google also recognized and agreed that preparation of a development agreement concurrently with creation of the SAP would provide the certainty needed to support the timely sale of the Site by Johnson to Google as well as the timely redevelopment of the Site as a catalyst for redevelopment in the Station Area.

J. The City and Google enter into this Agreement pursuant to the authority of RCW 36.70B.170-210: the Parties recognize and agree that this Agreement is an exercise of the City's police power as well as a contract, and that this Agreement relates to Google's project permit applications (RCW 36.70B.200).

K. Google warrants that its agreement with Johnson for acquisition of the Site gives it control of the Site within the meaning of RCW 36.70B.170(1).

L. The intent and purpose of this Agreement is to:

a. Recognize that redevelopment of the Site adjacent to the new BRT Station is important for redevelopment of the entire Station Area;

b. Implement development of the Site as an "early catalyst transit oriented development project" as described in KZC 57.05.03 ;

c. Enable the first phase of construction of the Site to happen concurrently or in advance of construction of the BRT Station;

d. Accelerate construction of traffic improvements and other infrastructure identified in the SAP Fiscal Impacts and Community Benefits Analysis and FSEIS;

e. Accelerate funding of affordable housing within the Station Area by means of the community benefit amenity incentive payment;

f. Accelerate construction of community benefits including open space, project sustainability measures, and bicycle and pedestrian facilities;

g. Recognize that full development of this large Site will need to occur in phases over a period of years and that phasing is in the public interest because it will allow the construction of public infrastructure to keep pace with development of the Site; and

h. Identify project components and appropriate mitigation measures for project impacts; and

i. Recognize that extended vested rights are in the public interest because they enable phasing and long-term investment by Google in the Site and in public infrastructure.

M. The City Council conducted a public hearing to consider this Agreement on July ____, 2022 and approved its execution on July ____, 2022 by Ordinance No. _____.

NOW, THEREFORE, in order to fulfill the foregoing purposes and intent, and in consideration of the mutual agreements herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the City and Google agree as follows.

AGREEMENT AND SITE-SPECIFIC REGULATIONS

1. **Project Description.** The development to be located on the Site in accordance with the terms and conditions of this Agreement is called the "Project." The Project is depicted and described on the attached Exhibits B through G, and other applicable standards are listed in Exhibit H, all of which are hereby approved by the City and incorporated herein by this reference:

- (a) Exhibit B, Site Plan and Phasing Plan
- (b) Exhibit C, Amenity Incentive Open Space Features
- (c) Exhibit D, Amenity Incentive System Framework
- (d) Exhibit E, Sustainability Features
- (e) Exhibit F, Infrastructure Improvements
- (f) Exhibit G, Pick-Up Drop-Off Locations
- (g) Exhibit H, 120th Vehicular Access Driveway Location Factors

2. **Entitlement Approvals.**

(a) **Design Review.**

(i) **Process – Overview.** Google shall follow the process outlined in KZC 142.35 for Design Review Board ("DRB") approval of the Project, except as further clarified in this Section.

(ii) **Purpose of Exhibits B – G.** For purposes of the Design Review process, the City accepts Exhibits B through G as the site plan for the Project. The DRB shall use these Exhibits as the basis for administering the Design Guidelines for aspects of the Project not specifically illustrated in the Exhibits, but the DRB shall have no authority to require modification of the Exhibits. Any changes proposed by Google to Exhibits B through G shall be reviewed pursuant to Section 7 of this Agreement.

(iii) **Conceptual Design Conference.** Google shall submit a Conceptual Design Conference application that includes all Project Phases, to help inform the DRB's consideration of the design plans for the Project. This Conceptual Design Conference application will include Exhibits B through G, plus additional information specified in the City's Conceptual Design Conference application materials and this subsection. The DRB will consider and provide

feedback on the Conceptual Design Conference application. Pursuant to KZC 142.35, the DRB does not approve the Conceptual Design Conference application, but uses the application to inform review of the future Design Response application(s). The Conceptual Design Conference application shall show conceptual details and dimensions for the following Project features: setbacks (street, upper-story, and parking); façade length; tower separation; building massing and modulation; open space improvements; frontage improvements; and pedestrian, vehicle, and bicycle entries.

(iv) **Design Response Conference.** The design plans for each Project Phase shall subsequently be submitted as Design Response Conference applications, and shall include full design details for the applicable Project Phase(s), including but not limited to: ground-level transparency and blank wall treatments; weather protection design; exterior building materials and detailed façade articulation and modulation; and landscape and open space design details and materials. The DRB's feedback on the design plans for the Project shall be limited to the Applicable Development Regulations and Design Guidelines pursuant to Section 5, and shall conclude with a decision to approve, conditionally approve, or deny the Design Response Conference application, pursuant to KZC 142.35.

(v) **Design Departures and Minor Variations.** Design departures, deviations, and minor variations to the Applicable Development Regulations and Design Guidelines may be sought by Google pursuant to KZC 142.37, the FBC, and this Agreement. Modifications to the DRB-approved Design Response Conference applications may be sought by Google pursuant to KZC 142.50.

(vi) **Appeals.** DRB decisions may be appealed to the Hearing Examiner pursuant to KZC 145.60.

(b) **Consistency Determination.** Concurrently with Google seeking approval of its Design Response Conference application for each Project Phase, the Department shall review Google's proposal in order to confirm that it is consistent with this Agreement and to impose any conditions required to ensure consistency ("Certification of Consistency").

(i) The Department's Certification of Consistency shall be the City's final land use decision for purposes of Chapter 36.70C RCW. The Department will review a Project Phase for consistency concurrently with Google seeking approval of its Design Response Conference application, but the Department shall not issue its Certification of Consistency until after approval by the DRB of the Design Conference application for such Phase.

(i) Google may apply for building permits and other construction approvals at any time, but such permits and approvals for each Project Phase shall not be approved before the Department certifies consistency pursuant to this Section.

3. State Environmental Policy Act Review of this Agreement and Project Phases. The City reviewed the environmental impacts of this Agreement and determined that such impacts are within the scope of impacts identified and addressed in the FSEIS for the SAP, and further identified in the Addendum to the FSEIS that the City's Responsible Official issued June 24, 2022. On July 11, 2022 the City also issued a Declaration of Significance ("DS") for this Agreement and

adopted the FSEIS and Addendum pursuant to WAC 197-11-600(4) and KMC 24.02.210. The City intends to adopt a PAO that is consistent with this Agreement and that designates each Project Phase as a Planned Action under RCW 43.21C.440. Once the PAO is adopted, the Planning and Building Department (the "Department") shall review the environmental checklist submitted by Google for that Project Phase and determine whether the Project Phase is consistent with the PAO and this Agreement. A Certification of Consistency under subsection 2(b) of this Agreement shall also constitute a determination pursuant to RCW 43.21C.440(3) that the Project Phase is consistent with the PAO. Unless Google proposes Project modifications pursuant to the process in Section 7 that result in additional Project impacts not contemplated in this Agreement or the PAO, no additional SEPA review is necessary for any City entitlement approval or approval of technical or ministerial permits for any Project Phase. In the event no PAO is adopted by the time of the Design Response Conference approval is sought for any Project Phase, the City will make a threshold determination for that Project Phase.

4. Community Benefits and Compliance with Amenity Incentive System. This Agreement limits the Project to the Office Square Footage Limit (defined below), which is less development than the FBC would otherwise allow on the Site. Google nonetheless agrees to provide the features listed below and in Exhibit D that exceed the amenity points necessary for the maximum development that could be achieved under the FBC.

(a) **Office Square Footage Limit.** The "Office Square Footage Limit" is 1,540,000 square feet of usable, interior office space generally measured from the inside face of the exterior building wall, excluding the following areas: parking, loading, bicycle, or other transportation facilities; vent shafts, atriums, and floor penetrations; mechanical and utility floors or areas; space dedicated to sustainability features; publicly accessible community-activated spaces; and any other spaces that are not solely accessory to the office space. The Office Square Footage Limit is applicable as used in this Agreement only, and does not modify parking, floorplate, and other development standard measurements that apply to the Project based on the Applicable Development Regulations as defined in Section 5.

(b) **Community Benefit Incentive Amenity.** As a condition of issuance of the first structural building permit for Phase One, Google shall pay \$12,464,000.00 to the City as a voluntary incentive amenity payment based on the Office Square Footage Limit, that the City will use to provide community benefits, including affordable housing, within the City of Kirkland (the "Community Benefit Amenity Incentive Payment"). The City agrees that this Community Benefit Amenity Incentive Payment taken together with the Amenity Incentive Open Space Features exceed the requirements of the amenity incentive system in the FBC for development within the Office Square Footage Limit and that no additional requirement to provide community benefits payments, including for affordable housing, shall apply to development of the Site during the Term of this Agreement unless the Office Square Footage Limit is sought to be increased. Forty (40) percent of this Community Benefit Amenity Incentive Payment shall be refundable according to a payment plan mutually agreed to by both Parties if Google does not apply for Design Response Conference for Phase Four before expiration of the Term and does not subsequently receive building permits.

(c) **Amenity Incentive Open Space Features.** Exhibit C depicts the conceptual location and anticipated size of certain Open Space Features that are provided to exceed

the amenity incentive system in the FBC (“Amenity Incentive Open Space Features”). The City agrees that the Amenity Open Space Features in Exhibit C that will be delivered in accordance with the Phasing Plan meet or exceed the requirements of the amenity incentive system in the FBC taken together with the Community Benefit Amenity Incentive Payment, and no additional amenity requirements apply to development of the Site consistent with this Agreement. The Parties acknowledge that if a Project Phase is not constructed, then the Amenity Incentive Open Space Features for that Phase may not be constructed.

(i) **Adjustments to the Size and Location of Amenity Incentive Open Space Features.** Google may modify the location of Amenity Incentive Open Space Features through the Conceptual Design Conference and/or the Design Response Conference processes described in this Agreement. Proposed reductions in the size of any Amenity Incentive Open Space Feature, unless the square footage is reallocated to another Amenity Incentive Open Space Feature, shall be evaluated based on the modification thresholds in Section 7.

(ii) **Privately-Owned Publicly Accessible Open Space.** The Amenity Incentive Open Space Features identified on Exhibit C are intended to be privately-owned publicly accessible spaces. Prior to issuance of a Certificate of Occupancy for the applicable Project Phase associated with construction of a particular Amenity Incentive Open Space Feature, Google shall execute and record a declaration of public access covenants and restrictions, in the form and substance mutually satisfactory to Google and the City that shall set forth the categories and limitations on use of the open space feature in accordance with this Agreement. The hours of operation and scope of permissible uses shall be generally consistent with the City’s hours of operation and allowed uses for parks in the City. The declaration shall also establish a process by which the Parties shall agree upon rules for permissible conduct within such spaces, including time, place, and manner restrictions intended to ensure that such spaces may be enjoyed without conflict among uses, and to temporarily close such spaces for private events, maintenance, or to protect the health and safety of the public or its employees. Such rules may be implemented after approval in writing by the City, which approval shall not be unreasonably conditioned or denied. The West Pedestrian and Bicycle Path, North Mid-Block Connection, and South Mid-Block Connection shall not be closed for private events without prior approval from the City for each closure, which approval shall not be unreasonably conditioned or denied.

(d) **Sustainability Features.** The Parties acknowledge that the Project exceeds the requirements of the amenity incentive system in the FBC without any additional sustainability features included in the amenity calculation. Therefore, none of the Project’s anticipated sustainability features are relied upon to achieve the Office Square Footage Limit. The Project’s anticipated sustainability features that it will endeavor to achieve on a voluntary basis are described in Exhibit E.

(e) **Lake Washington School District.** Google will collaborate with the Lake Washington School District on potential opportunities for partnership, including potential opportunities to use space within the Project for student learning. Any such partnership between Google and the Lake Washington School District is not relied upon to achieve the Office Square Footage Limit.

5. Vesting of Development Regulations. The applicable provisions of the Kirkland Municipal Code (“Code”) in effect on the Effective Date shall apply to the development of the Project, except where they have been modified by this Agreement and are referred to herein as “Applicable Development Regulations.” Applicable provisions include the “Design Guidelines for the NE 85th Street Station Subarea Plan” (“Design Guidelines”) applied by the Design Review Board, which shall control the design of development within the Site, and the FBC and other applicable Code provisions, which shall control dimensional standards and issues not addressed in this Agreement. In the event of conflict between this Agreement and the City’s adopted regulations and guidelines, this Agreement shall control. The vesting provisions in this section shall not apply to International Codes that are separately addressed in subsection 5(a), to impact fees that are separately addressed in Section 11, and to permit and plan review fees that are separately addressed in Section 18. All vesting under this Agreement is subject to the City’s authority to address a serious threat to public health and safety.

(a) International and State Codes. The International Building Code, International Fire Code, and other construction and technical codes including but not limited to mechanical, plumbing, electrical, stormwater, energy, and other codes in effect in the City and State of Washington as of the date of filing a complete building permit application shall apply to all new development reflected in that application. However, if new versions of the International Building, Fire, or other applicable technical codes are adopted after the building permit for Phase One is submitted, the City agrees that all buildings and structures attached or connected to the Phase One structure shall be required to comply with the new codes only to the extent compliance: (a) does not require any modifications to Existing Structures, and (b) is reasonable and feasible based on the existing and planned building systems for Phase One. Any additional buildings or structures attached to Phase One shall not be considered “substantial alterations” to that structure. The City further recognizes that the Project includes an upper-level private pedestrian connection between its towers and other non-public spaces. The upper-level pedestrian connection will be an enclosed or unenclosed space that is constructed in multiple Project Phases. Construction of the connection segments must comply with the applicable International Building, Fire, or other applicable technical codes at the time building permits are submitted for each Project Phase only to the extent compliance: (a) does not require any modifications to Existing Structures, and (b) is reasonable and feasible based on the existing building systems. The construction of the upper-level pedestrian connection to or between any existing structure shall not be considered a “substantial alteration” to the Existing Structure. For the purposes of this Section, a building or structure shall be considered an “Existing Structure” if construction pursuant to an issued building permit has commenced.

(b) Optional Development Regulations. During the Term, Google may request to waive vesting to Applicable Development Regulations or technical codes under subsection (a) and develop the Site or discrete portions thereof in accordance with new codes, development regulations, or generally applicable standards adopted by the City after the dates of vesting under this Section, so long as only one edition of each such Applicable Development Regulation or International Code applies to any one structure. By waiving its vesting for one or more structures, Google shall have no obligation to bring other portions of the Site or other Project Phases into conformance with such newly-adopted standards.

6. Alternative Form-Based Code Standards.

(a) **Location and Function of Mid-Block Connections.** The Site is required to implement two “Mid-Block Connections” for pedestrian and pedestrian-friendly public access across the Site. The conceptual locations for the Mid-Block connections are depicted on the Site Plan in Exhibit B. Google, at its sole discretion, may seek to modify the location of one or both of these connections during the Conceptual Design Conference or subsequent Design Response Conference processes, and such modification shall be considered a minor modification to this Agreement if the proposed modification meets the modification thresholds in Section 7. The North Mid-Block Connection may be designed to prioritize and enhance pedestrian access use. The South Mid-Block Connection will provide a shared use path for pedestrians, bicycles, and other small human-powered or speed-limited wheeled vehicles such as scooters and skateboards, for which a speed limit shall be established.

(b) **Floorplate Size.** The maximum floorplate size for each building in the Project shall be as follows: (i) no limit below 45’ average building elevation (ii) 50,000 gross square feet between 45’-75’ average building elevation, (iii) 45,000 gross square feet between 75’-125’ average building elevation, and (vi) 40,000 gross square feet above 125’ average building elevation. To promote architectural interest, floor plate size may be averaged within the average building elevation tiers, and within no more than two floors above and below the average building elevation tier cutoff heights, so long as the combined average gross square footage for affected tiers meets the limits in this Section and no single floor is more than 5,000 gross square feet larger than the applicable limit. The square footage of upper-level, enclosed or unenclosed, pedestrian connections between buildings (skybridges) are excluded from the floorplate size calculations.

(c) **Landscape Buffer Alternative.** In lieu of the 15-foot landscape buffer required along site lot lines, the Project shall incorporate a 20-foot structure setback from the lot lines adjacent to neighboring parcels in the limited area indicated on Exhibit B. Where applicable, the structure setback area will accommodate emergency or service vehicle access, a 5-foot landscape strip with trees that meet City-approved tree standards with deciduous trees of two-inch caliper, minimum, and/or coniferous trees at least six feet in height minimum, and the Project will implement natural and building design features to enhance privacy and tree canopy on these site edges. The City acknowledges that this area is intended to be used for emergency vehicle access and a loading dock access ramp.

(d) **Right-of-Way Dedications for Frontage Improvements and Setbacks.** Any setbacks applicable to the Site by the FBC shall be measured from the Site property lines as of the Effective Date, notwithstanding any additional dedication of easements or right-of-way the City may require for roadway, pick-up/drop-off, bicycle, or pedestrian infrastructure improvements or other frontage improvements such as curbs, sidewalks, bus stops, street landscaping, or street furnishing zones.

(e) **Weather Protection.** The Parties acknowledge that none of the Applicable Development Regulations require freestanding weather protection canopies on the Site.

7. **Project Modifications.** Google may request modifications to the Project described in this Agreement. Requests for minor modifications will be decided by the Department; requests for major modifications will be decided by the Council.

(a) A major modifications is one that requests an increase in the height or maximum site coverage allowed by the FBC, or an increase in the amount of office square footage above the Office Square Footage Limit approved in this Agreement; or that seeks departures from other development allowances beyond what is allowed by the FBC and not otherwise approved in this Agreement; or that requests a reduction in the totality of mitigation and community benefit value provided by the Amenity Incentive Features in Exhibits C and D.

(b) A minor modification is any other modification, for example a modification to Exhibit B to change the construction phasing, or to adjust the Amenity Incentive Features and in Exhibits C and D in a manner that does not diminish their overall mitigation and/or community benefit value.

(c) The Department shall determine whether a modification is major or minor, and shall approve a minor modification if the Department determines that it will result in development that is consistent with the terms and intent of this Agreement and is not materially detrimental to other properties in the immediate vicinity of the Site. If there is a dispute about whether a modification is major or minor, then Google may seek a formal interpretation from the City and may pursue further appeal pursuant to the procedures in KZC Ch. 170.

8. Phasing. The Project is envisioned to be constructed in several phases as depicted on Exhibit B, together with infrastructure improvements that will be completed with each Phase as set forth in Exhibit F. Construction is envisioned in numerical order from Phase One to Phase Five, together referred to in this Agreement as the "Project Phases" or individually as a "Project Phase." Google may, in its sole discretion, pursue construction of one or more Project Phases simultaneously. Any proposed modifications to the phasing depicted in Exhibit B shall be reviewed as a minor modification to this Agreement.

9. Potential improvement of 118th Avenue NE and Potential Latecomer's Agreement. To the extent that Google is required to construct additional parking for Phases Four and Five, access to such parking shall be by way of 118th Avenue NE, and Google shall improve this street to meet City standards in effect at the time of such improvements. Before Google is required to make such improvements, the City will consider an application by Google to create an assessment reimbursement area pursuant to RCW Ch. 35.72 so that other properties benefited by such improvements share in the cost of their construction.

10. Impact Fees.

(a) **Transportation Impact Fees.** The Transportation Impact Fee rate shall be based on the impact fee schedule in effect at the time of a complete building permit application for the applicable Project Phase; provided, however, the Parties acknowledge that Google's vehicle trip rate goal for the Site is significantly lower than the trip rates assumed by the City in calculating its impact fee rates, and therefore, the Parties agree that development of the Site is subject to an independent transportation impact fee calculation as provided by KMC 27.04.040. Google shall provide for the City's review an independent fee calculation study, prepared by a licensed traffic engineer, supporting the independent fee amount. Pursuant to KMC 27.04.060, Google shall also be entitled to a transportation impact fee credit for existing uses on the Site as of the Effective

Date, even if existing buildings are demolished and such uses removed prior to Site development pursuant to the Phasing Plan.

(i) **Credits.** The City acknowledges that several of the transportation improvements identified on Exhibit F are system improvements that support the City's transportation system as a whole. Google shall be entitled to a credit against its impact fee obligations for the value of associated dedicated land, and the costs of improvements, land acquisition, and construction for such system improvements pursuant to KMC 27.04.060 as such facilities serve the goals and objectives of the City's Capital Facilities Plan. Google shall pay impact fees for Phase One, construct the required system improvements pursuant to Exhibit F, and present evidence to the City of the cost of such system improvements. Once the City verifies the costs of such system improvements, Google shall receive credit for such verified costs against the impact fees required for any subsequent Project Phase as directed by Google until all credit amounts are applied.

11. Concurrency. The Project shall be considered a phased development for the purposes of concurrency review pursuant to KMC 25.10.040.

12. Transportation Concurrency. Based on Google's completion of the Concurrency Management Application, the Project is expected to generate 2,234 person trips. Google has received a Concurrency Test Notice for 1,534 person trips, which will be deducted from the City's current concurrency balance. Upon completion of the Phase One transportation system improvements identified in Exhibit F, Google shall receive an additional Concurrency Test Notice for 700 additional person trips, which will be available in the City's concurrency balance because of the completion of such improvements. The Phase One transportation system improvement projects identified on Exhibit F shall be completed prior to certificate of occupancy for Phase One. The person trip capacity provided by transportation system improvement projects will be calculated and added into the City's concurrency balance as part of the next update of the City's concurrency system. The Concurrency Test Notices issued to the Project shall be valid for the Term of this Agreement and no additional concurrency review shall be required during that period so long as person trips assigned to the Project by the Concurrency Test Notices remain unused. The City will deduct the number of person trips used by each Project Phase from the Concurrency Test Notices based on the gross floor area for each use approved through the building permit and Certificate of Concurrency for that Phase. The Concurrency Test Notices will expire at the end of the Term of this Agreement unless Project Phases are still in process according to Section 19, and any unused person trip will be returned to the City.

(a) **Water and Sewer Concurrency.** The Project achieves water and sewer concurrency upon completion of the utility projects outlined in Exhibit F, provided all structures are provided with fire sprinkler suppression as required by Code. The City will reserve sewer capacity in the system for the Term of the Agreement and for the time Project Phases are still in process according to Section 19 based on a peak sewer flow of 182.3 gallons per minute. The City will reserve water capacity in the system for the Term of the Agreement and for the time Project Phases are still in process according to Section 19 and will provide a minimum fire flow of 2,700 gallons per minute.

13. Signage. Notwithstanding anything to the contrary in Kirkland Zoning Code Ch. 100, Google shall, at minimum, be permitted to install the following signs on the Site:

(a) Two wall-mounted, marquee, or under-marquee signs identifying the main building tenant for each office tower. The height of wall-mounted or marquee signs shall not exceed the height of rooftop features or the height limit for the Site identified in the FBC.

(b) Two monument signs for the Site identifying the main tenant.

(c) Additional wall-mounted, blade, or marquee signs identifying each commercial, retail, or institutional ground-level building use.

Signage shall be proposed and approved by the Department via a Master Sign Plan pursuant to KZC 100.80. The Department may consult with the DRB for non-binding recommendations prior to approval of the Master Sign Plan.

14. Vehicle Parking.

(a) Google will construct parking for Phases One, Two, and Three at a vehicle parking rate that complies with the FBC, which is two vehicle parking spaces per 1,000 square feet of commercial use. As part of Phases One, Two, and Three, Google will prepare, implement, and manage a Transportation Management Program (“TDM Program”) that supports parking demand at or below two parking spaces per 1,000 square feet of commercial use. The elements of this TDM Program shall include an annual survey of travel modes and reporting to the City and, as needed, a combination of: (i) pay-per-use parking; (ii) employee transit pass subsidies; (iii) employee emergency ride home program; (iv) employee bike storage and shower facilities; (v) an employee carpool program; and (vi) employee shuttle services.

(b) Upon initiation of the Design Response Conference applications for Phases Four and Five, the City will consider, pursuant to KZC 57.25.06, a request by Google to reduce the parking requirement for development on the Site to a lower Site-wide parking ratio that is consistent with Google’s ability to demonstrate success in reducing parking demand on the Site. The maximum such reduction will be to one vehicle parking space per 1,000 square feet of commercial use. At the time any reduction is sought, Google shall provide information to justify a lower parking ratio including information on national best practice research, site-specific parking demand data if available, and parking utilization data from other similar projects, which demonstrate the effectiveness of additional or enhanced transportation demand management measures that Google will undertake to consistently achieve the proposed lower parking ratio. Information and data collection methodology will be subject to review and approval by the City. If the City does not approve a lower parking ratio, then Google will construct additional parking for Phases 4 and 5 at the vehicle parking ratio that complies with the FBC.

(c) If the City approves a lower parking ratio pursuant to subsection (b), Google will prepare, implement and manage an enhanced TDM Program to support such lower parking ratio. This enhanced TDM Program may include the elements listed in subsection (a) together with such additional or enhanced elements as are needed to support the lower parking ratio, for

example subsidizing employee parking at park-and-ride locations along the BRT line, increasing shuttle services, or charging higher costs for pay-per-use parking.

(d) If the City approves a lower parking ratio pursuant to subsection (b), then prior to opening for Phases Four and Five and for the first three years following issuance of a Certificate of Occupancy for Phases Four and Five, Google shall also hire an independent third-party transportation engineering firm to complete an annual multi-day on-street parking utilization study to measure on-street parking capacity on surrounding streets within a 15-minute walkshed from the Site, and during this same multi-day period each year after opening, a parking utilization study of Google's on-Site parking facilities to provide information on the relationship between demand in Google's on-Site parking facilities and on-street parking. The timing, scope and methodology of these studies shall be reviewed and approved by a City Transportation Engineer. The parking utilization study conducted prior to opening shall be used to set a baseline condition for on-street parking. If the results from the parking utilization studies show consistent parking utilization above eighty percent during AM, mid-day, and PM peak hours compared to the baseline condition, then Google shall fund signage for short-term parking restrictions in studied locations where parking utilization is above eighty percent compared to the baseline. If Google is required to fund short-term parking signage, then it will hire an independent third-party transportation engineering firm to complete two subsequent years of annual on-street parking utilization studies based on an updated study area boundary that may include additional areas outside the 15-minute walkshed, that reasonably appear to be impacted by overflow parking from the Site. If the results of such studies show no reduction in on-street parking utilization during peak hours where parking utilization is above eighty percent compared to the baseline, then Google shall fund one-half the cost to the City of a parking enforcement officer, and such funding shall continue until subsequent annual parking utilization studies performed by an independent third-party transportation engineering firm hired by Google demonstrate that Google is achieving the approved lower parking ratio.

15. Pick-Up / Drop-Off Areas. Subject to final City approval as to design and location, Google may construct short-term vehicular passenger pick-up and drop-off and commercial loading zone pull-outs along the Site frontage on the west side of 120th Avenue NE and on the east side of 118th Avenue NE in the general locations and with the conceptual sizes identified on Exhibit G to the extent they can be accommodated based on the final driveway and intersection locations discussed in Sections 14 and 15. The Parties will work together to ensure final design for the pick-up and drop-off spaces meets transportation engineering standards prior to construction. These locations will be used as short-term vehicular passenger pick-up and drop-off and commercial loading Monday through Friday during Google's business hours and at other times with prior approval from the City. The Parties will work together to agree upon appropriate Monday through Friday business hour time restrictions. On evenings, nights, and weekends the City shall set any restrictions related to this parking. The pick-up and drop-off pull-outs shall be available to the public at all times as memorialized in an easement or dedication to the City as mutually agreed upon by the Parties; provided, however, Google may reserve the pick-up and drop-off areas for special events and loadings activities with permission from the City.

16. 85th and 120th Vehicular Access. The Site is permitted vehicle access driveway curb cuts at the following locations: one from NE 85th Street and two from 120th Avenue NE. Curb cut spacing, size and geometry shall be reviewed and approved by the City based on the City

of Kirkland Department of Public Works Pre-Approved Plans Policy R-4 (01/2020 ed.). The location of the NE 85th Street driveway curb cut shall be in the location of the existing driveway on this street frontage and shall be for the sole use of vehicles serving the Project's "Transit Hub." The location of the primary signalized access driveway for the Project on 120th Avenue NE shall generally be aligned with NE 83rd Street, although an alternative location between NE 83rd Street and NE 84th Lane may be approved by the City as part of the City's Consistency Certification for Phase One if the City determines that the alternative location can operate safely and efficiently based on information supplied by Google and the criteria listed in Exhibit H. The location of the other 120th Avenue NE driveway shall be at the southernmost location along the Site's 120th property line allowed by the Pre-Approved Plans Policy, and shall be used for service vehicle access. Locations for the driveways are further depicted in Exhibit B.

17. **118th Ave Vehicular Access.** Two vehicle access locations from 118th Ave NE are permitted for emergency access for Phases One, Two, and Three, and additional vehicle access locations will be permitted for service vehicle access that will be combined with commuter vehicle access if additional parking is required for Phases Four and Five, as generally depicted on Exhibit B. The exact location and number of vehicle access driveways shall be reviewed and approved by the City based on the City of Kirkland Department of Public Works Pre-Approved Plans Policy R-4 (01/2020 ed.) by to ensure safe and efficient operations. Access to Phases One, Two and Three shall not be provided from 118th Ave NE, except for emergency vehicles and emergency exit access from the Phase One parking garage. If vehicle parking is required for Phases Four and Five, the Parties agree that Google will improve the street cross section of 118th Ave NE consistent with the scope described in Exhibit F.

18. **Permit Processing Fees.** Google shall pay the City's Development Fees (permit processing fees) in accordance with Kirkland Municipal Code Ch. 21.74, and fee amounts shall be those in effect at the time Google submits a complete application for permits for each Project Phase and based on the City's adopted building valuation table.

19. **Timely Review of Permit Submittals.** It is the intent of the Parties to cooperate and diligently work to obtain all necessary entitlements, permits and approvals for development of the Site.

(a) **Timely Submittals.** Google acknowledges that the City cannot begin processing applications related to development of the Site until it submits complete applications on a timely basis. Google shall use diligent good faith efforts to (i) provide to the City in a timely manner any and all documents, applications, plans, and other information necessary for the City to carry out its obligations hereunder; and (ii) cause Google's architects, planners, engineers, and consultants to provide to the City in a timely manner all such documents, applications, plans and other required materials.

(b) **Timely Processing.** Upon submission by Google of all applicable applications, submission fees, and other required documents, the City will promptly and diligently, subject to City ordinances, policies, and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Google's currently pending permit applications, including: (x) providing staff assistance, additional staff and/or third-party consultants for concurrent, expedited planning and processing for each application, (y) providing prompt notice

of applications, meetings, and hearings, if required, and (z) acting on such applications. Google and the City may enter into a separate a Processing and Reimbursement Agreement(s) to facilitate Google's reimbursement for the City's hiring of third-party consultants, plan checkers, or other staff support to expedite permit review and processing.

20. Term. This Agreement is effective and binding on the Parties for an initial term of Ten (10) years, commencing on the date of mutual execution (the "Effective Date"), and expiring on the tenth anniversary of the Effective Date (the "Initial Term"). The Initial Term shall be automatically extended for a subsequent Five (5) year term (the "Extended Term,") on the date that Google has both applied for its first structural building permit for Phase One and made the Community Benefit Incentive Amenity Payment. If applicable, the Extended Term shall commence on the tenth anniversary of the Effective Date and shall expire on the fifteenth anniversary of the Effective Date. If this Agreement or permits for any Project Phase are challenged to the City's Hearing Examiner, or Superior Court by a third-party, the Term shall be extended by the number of days required to resolve such appeal by the Hearing Examiner and/or by the Superior Court.

21. Completion at End of Term. If Google has not yet finished all five Project Phases at the conclusion of the Term of this Agreement, Google may vest the right to complete any remaining Project Phase after expiration of the Term of this Agreement by:

(a) Submitting before expiration of this Agreement a complete Design Response Conference application pursuant to KZC 145.35;

(b) Proceeding without unreasonable delay to obtain Design Response Conference approval and Certification Of Consistency pursuant to Section 2; and by

(c) Submitting, within twelve months after such certification, a complete application for a building permit for a principal structure approved by the DRB, and completing construction within the time limits required by the building code.

22. Notice. All correspondence and any notice required in this Agreement shall be delivered both by electronic mail and by either personal service or U.S. Mail to the following parties:

TO CITY:

City of Kirkland
Kirkland City Hall
123 5th Avenue
Kirkland, WA 98033
Attn: City Manager

with a copy to:

City of Kirkland
Kirkland City Hall
123 5th Avenue
Kirkland, WA 98033
Attn: City Attorney

TO GOOGLE: Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attn: Legal Department/RE Matters and
REWS Project Executive

with a copy to: Hillis Clark Martin & Peterson P.S.
999 Third Avenue, Suite 4600
Seattle, WA 98104
Attn: Ryan Durkan and Abigail DeWeese

Notice is deemed to be given on the date of electronic mail provided that on the same day notice is also given for delivery to a commercial courier or placed in the U.S. Mail. Either Party may update or change the person and addresses for the receipt of notices under this Section from time-to-time by delivering written notice to the other Party designating the new person or address, at least Five (5) days prior to the name and/or address change.

23. Binding Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. Google shall not, however, assign its rights under this Agreement to any entity not also owned or controlled by Google unless Google obtains prior written consent of the City, which shall not be unreasonably conditioned or withheld.

24. Amendment. This Agreement may be amended by written agreement of the City and Google. The City's approval of such amendment shall follow the process established by RCW 36.70B.170 *et seq.* for adoption of a development agreement.

25. Reservation of City Authority. As required by RCW 36.70B.170(4), and notwithstanding any other term of this Agreement, the City reserves the right to establish and impose new or different additional regulations to the extent required to address a serious threat to public health and safety.

26. Force Majeure. The Term of this Agreement shall be extended for each day of a Force Majeure Event that has an actual impact on Google's ability to achieve entitlements or permits for the Project during the Term. A "Force Majeure Event" shall mean, for the purposes of this Agreement, any event or condition that: (i) is beyond a Party's control, (ii) prevents the Party's performance of this Agreement, (iii) and that the Party could not have reasonably foreseen. If the City and Google do not agree about the existence or duration of a Force Majeure Event, they shall resolve their disagreement by Dispute Resolution.

27. Dispute Resolution. With regard to any dispute between the City and Google arising from this Agreement or the Project, a Party shall, at the request of the other Party, meet with designated representatives of the requesting Party promptly following its request. The parties to any such meetings shall attempt in good faith to resolve any such disputes. In the event the Parties are unable to resolve the issue and reach an agreement within thirty (30) days of a meeting request pursuant to this section, either Party may request mediation. If the Parties are unable to reach agreement with or without mediation within Ninety (90) days of the initial meeting request pursuant to this section, either Party may initial judicial proceedings. Nothing in this section shall

be interpreted as requiring either Party to reach agreement with regard to disputed matters addressed by meeting or mediation, nor shall the outcome of such meetings or mediation be binding on the parties unless expressly agreed to in writing by the parties. Nothing in this section shall require a Party to postpone seeking injunctive relief or taking other steps if it believes in good faith such postponement will cause irreparable harm to such Party.

28. Waiver. The waiver by a Party of a breach of any provision of this Agreement by the other Party shall not operate or be construed as a waiver of any subsequent breach by that Party.

29. No Presumption Against Drafter. The Parties have each participated in the negotiation and drafting of this Agreement, and each has been represented by counsel. In the event a court determines a provision of this Agreement to be ambiguous, such ambiguity shall not be construed against another Party based on the claim that the Party drafted the ambiguous language.

30. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the signatory Parties and their successors and assigns. No other person or entity shall have any right of action based on any provision in this Agreement, and no other person or entity shall have any third-party beneficiary status.

31. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington, and venue for any action shall lie in King County Superior Court.

32. Severability. Should any court of competent jurisdiction find any provision of this Agreement to be invalid under Chapter 36.70B or otherwise, the remainder of the Agreement shall remain in full force and effect. Provided, however, if the invalidation would deprive either Party of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then the Parties shall meet and confer and shall make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable. Notwithstanding the foregoing, if an essential purpose of this Agreement would be defeated by loss of the invalid provision, the Party deprived of an essential benefit shall have the option to terminate this Agreement from and after such a determination by providing notice to the other Party.

33. Section Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, or conditions of this Agreement.

34. Final and Complete Agreement. This Agreement constitutes the final and complete expression of the Parties with regard to its terms. This Agreement supersedes and replaces all prior agreements, discussions and representations on all subjects addressed herein, without limitation. No Party is entering into this Agreement in reliance on any promises, inducements, representations, understandings, interpretations, or agreements other than those stated herein.

35. Recording. Google shall record an executed copy of this Agreement with the King County Auditor, pursuant to RCW 36.70B.190, no later than fourteen days after the Effective Date,

and shall provide the City with a conformed copy of the recorded document within thirty days of the Effective Date.

36. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement. Facsimile signatures on this Agreement shall constitute original signatures of the Parties.

The City Council conducted a public hearing regarding this Agreement on July _____, 2022 and approved this Agreement by Resolution _____, which authorizes the City Manager to execute this Agreement after its execution by Google.

By their signatures below, the persons executing this Agreement each represent and warrant that they have full power and authority to bind the entity on whose behalf such person signs, and that such entities have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement.

GOOGLE:

By _____
Its _____

CITY:

By _____
Its _____

Exhibit A
Site Legal Description

Exhibit B

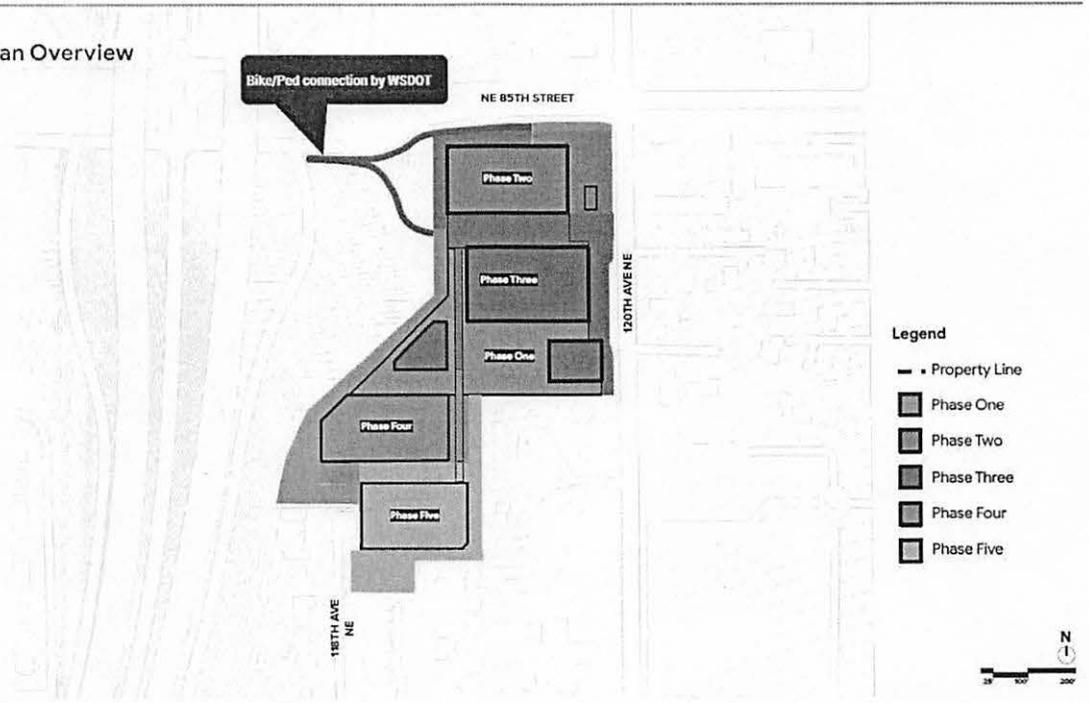
Site Plan and Phasing Plan

[Available in City File No. PLN-00492 if not included in recorded document]

Site Plan Overview

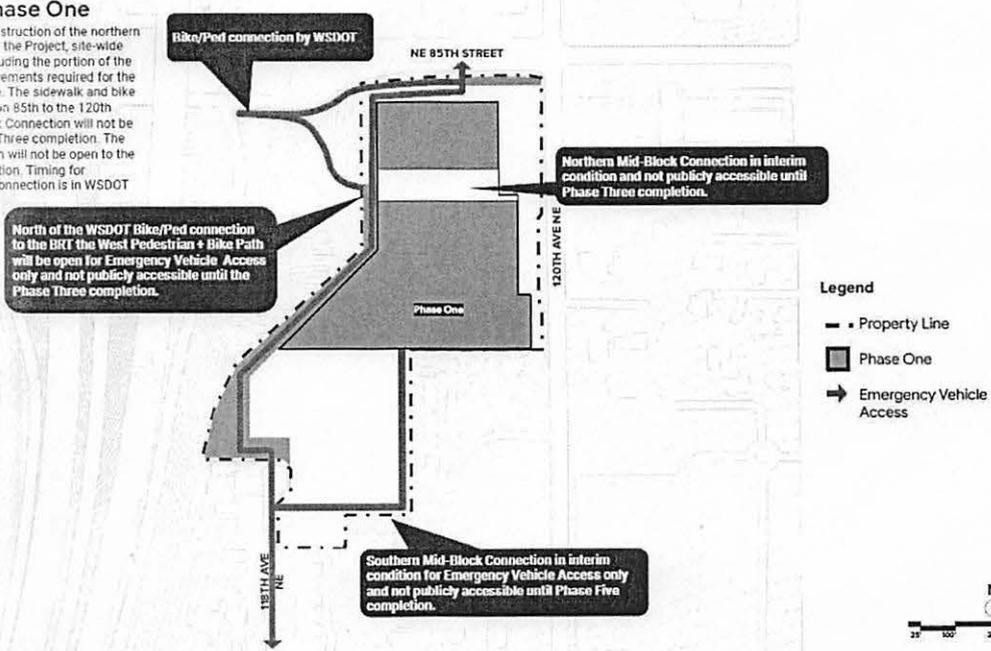


Phasing Plan Overview



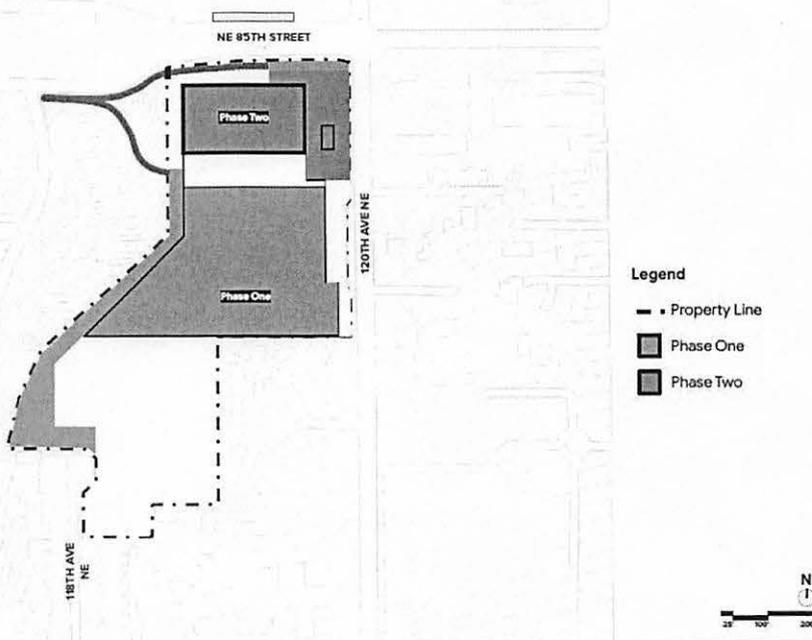
Phasing Plan - Phase One

Phase One shall consist of construction of the northern parking garage and Podium for the Project, site-wide emergency vehicle access including the portion of the NE 85th Street frontage improvements required for the emergency vehicle access lane. The sidewalk and bike lane from the WSDOT section on 85th to the 120th corner. The Northern Mid-Block Connection will not be open to the public until Phase Three completion. The Southern Mid-Block Connection will not be open to the public until Phase Five completion. Timing for construction of the Bike/Ped connection is in WSDOT control.



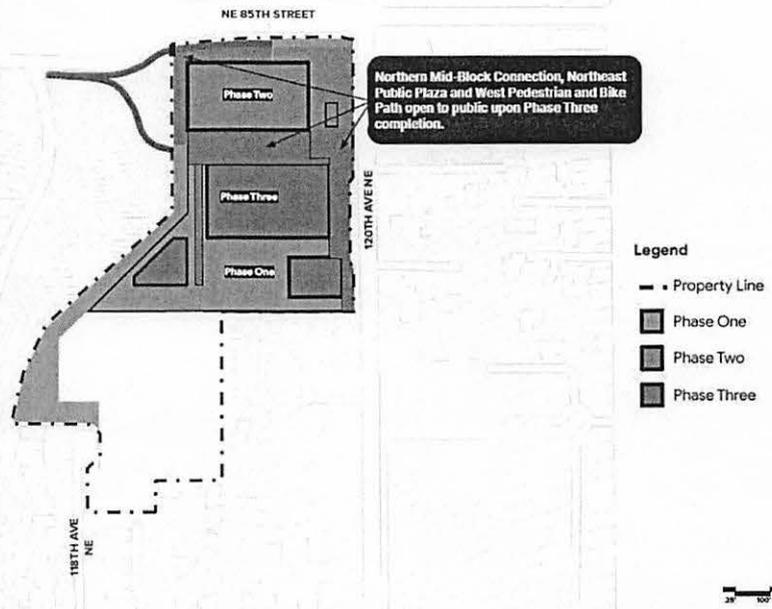
Phasing Plan - Phase Two

Phase Two shall consist of construction of the northern Tower, the Northeast Pedestrian Plaza and Public Space, a Food and Beverage Pavilion in the Public Space, and frontage improvements on 120th Avenue NE and a portion of NE 85th Street.



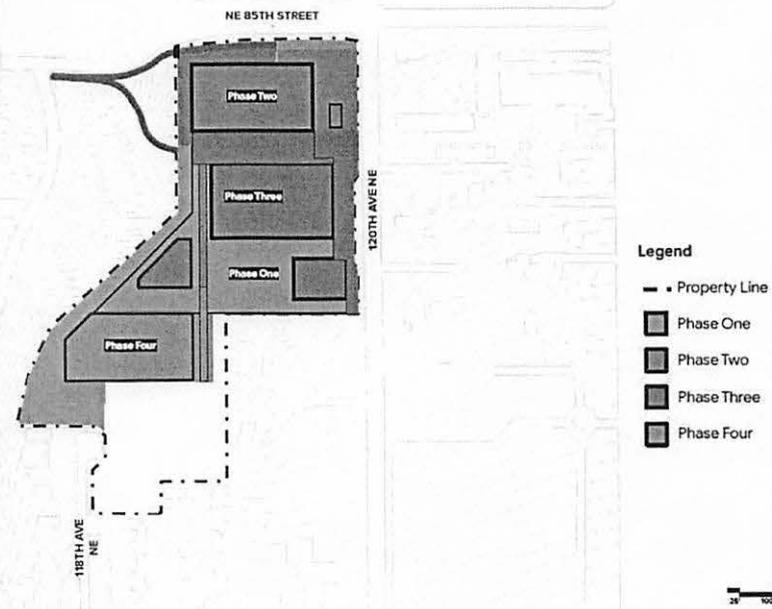
Phasing Plan - Phase Three

Phase Three shall consist of construction of the 120th Avenue NE Tower, both Pavilion buildings that sit on the Podium, and an upper-level private pedestrian connection between the Phase Two Tower, the Phase Three Tower, and the western Pavilion building. By the end of this Phase, the West Pedestrian and Bicycle Path, the Northern Mid-Block Connection, and all of the Northeast Public Plaza will be completed and open to the public.



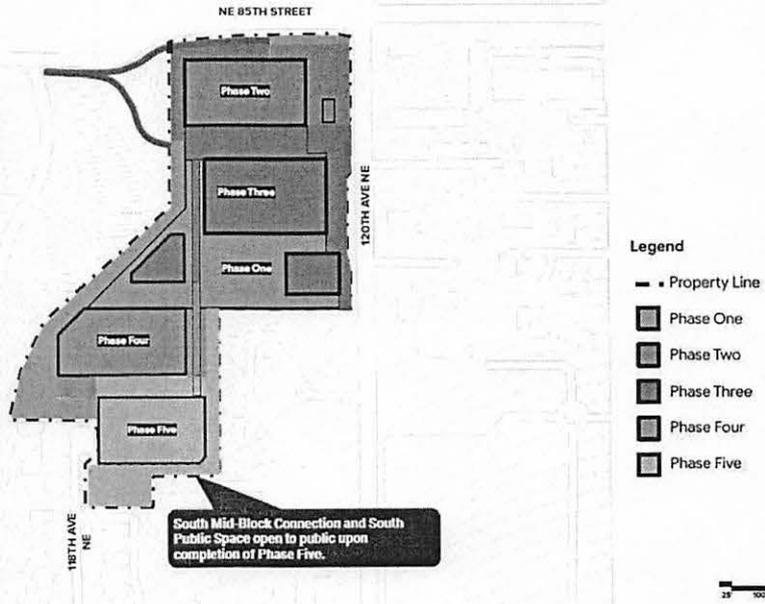
Phasing Plan - Phase Four

Phase Four shall consist of construction of the third Tower and extension of the upper-level private pedestrian connection to that building.

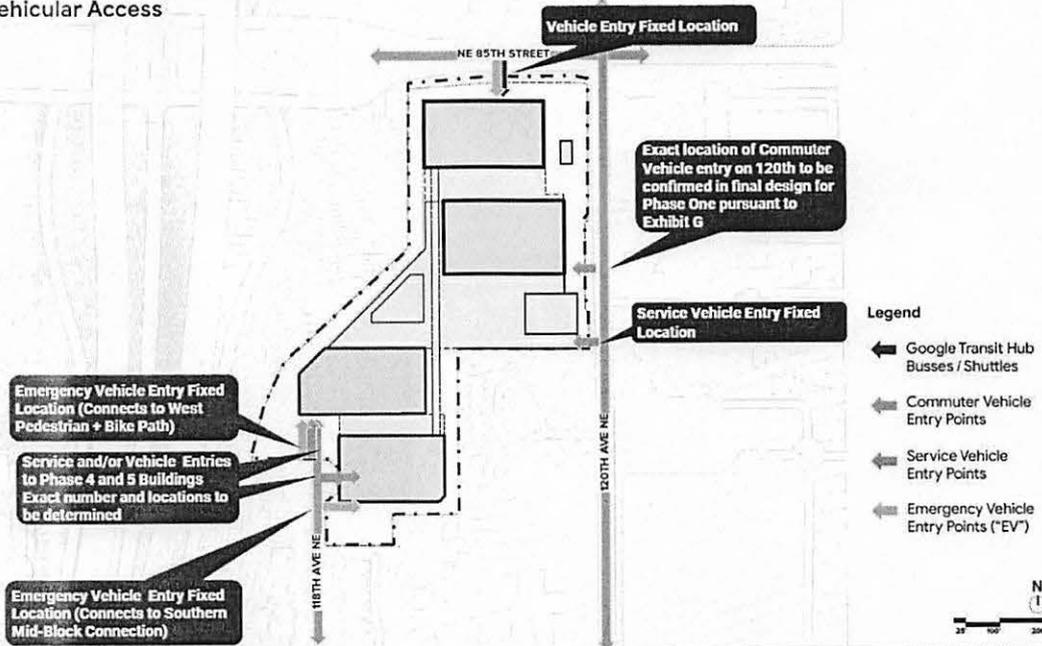


Phasing Plan - Phase Five

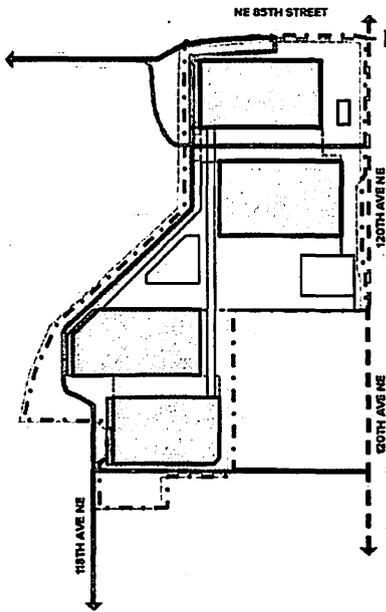
Phase Five shall consist of construction of the southernmost Tower, extension of the upper-level private pedestrian connection to that building, and completion of the Southern Mid-Block Connection and Public Space.



Site Plan - Vehicular Access

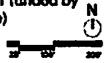


Site Plan - Public Access Locations

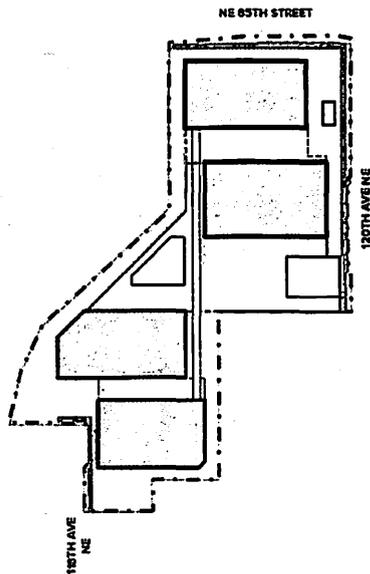


Legend

- Planned Pedestrian / Bike Connection
- Planned Pedestrian Priority Connection
- - - Existing / Improved Frontage
- Planned Pedestrian / Bike Connection (by others; location to be determined by others)
- - - Existing / Improved Pedestrian Connection (by others); Planned Restriped Bike Lane (by Google)
- Planned Pedestrian / Bike Connection (by WSDOT funded by Google)



Site Plan - Frontage Types

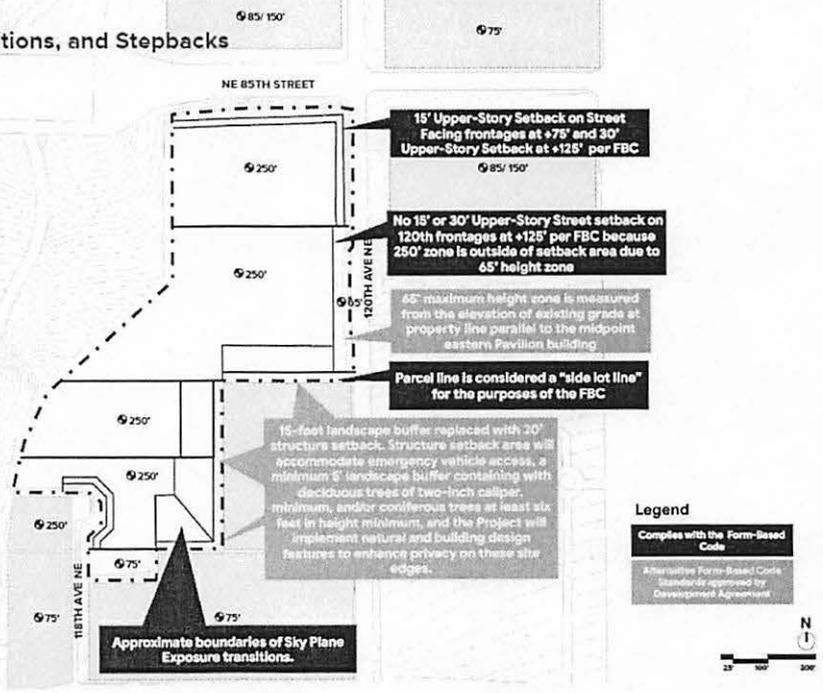


Legend

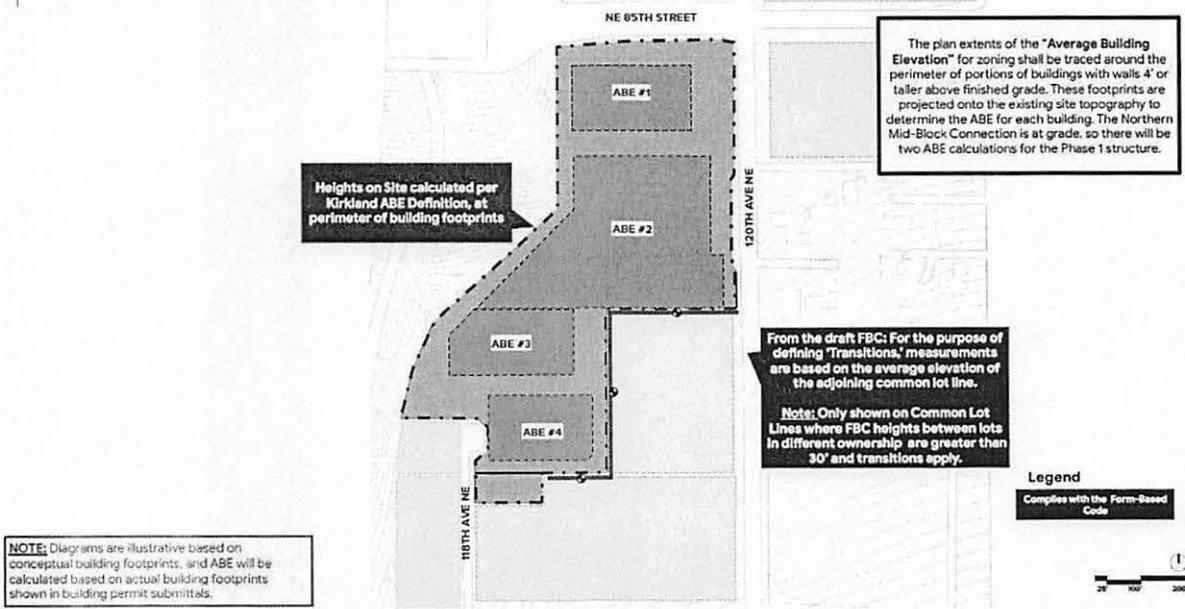
- - - Property Line
- ▨ Urban Street Edge
- ▨ Retail / Active Uses
- ▨ Plaza / Public Space



Site Plan - Building Height, Transitions, and Stepbacks

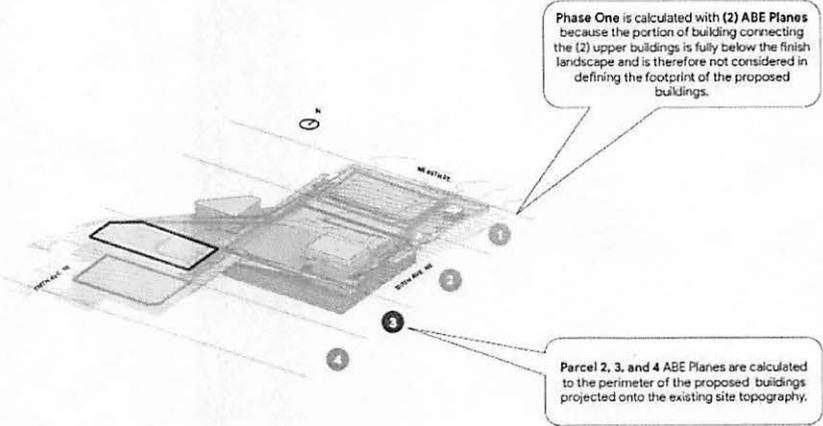


Site Plan - Conceptual Average Building Elevations



NOTE: Diagrams are illustrative based on conceptual building footprints, and ABE will be calculated based on actual building footprints shown in building permit submittals.

Average Building Elevation Calculation



The plan extents of the "Average Building Elevation" for zoning shall be traced around the perimeter of portions of buildings with walls 4' or taller above finished grade. These footprints are projected onto the existing site topography to determine the ABE for each building. The Northern Mid-Block Connection is at grade, so there will be two ABE calculations for the Phase 1 structure.

NOTE: Diagrams are illustrative based on conceptual building footprints, and ABE will be calculated based on actual building footprints shown in building permit submittals.

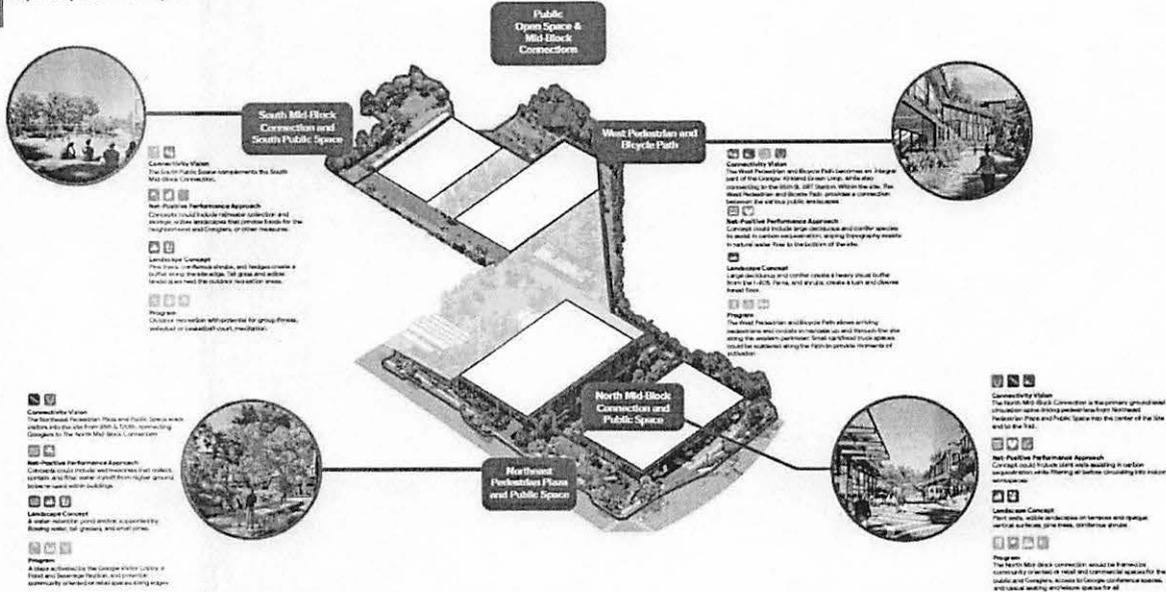
N.T.S

Exhibit C

Amenity Incentive Open Space Features

[Available in City File No. PLN-00492 if not included in recorded document]]

Open Space Concepts



Open Space Features

- Pedestrian / Bicycle Connection to BRT**
Bicycle and pedestrian path connecting the BRT station to the West Pedestrian and Bicycle Path and North Mid-Block Pedestrian Connection. Path to be constructed by WSDOT with segment connecting to Northern Mid-Block connection to be funded by Google with WSDOT approval.
- Northeast Pedestrian Plaza and Public Space**
Mixture of publicly accessible landscape and hardscape spaces at the intersection of 85th St and 120th Ave, with programmatic activation along its edges at strategic locations.
28,000 GSF
- Northern Mid-Block Pedestrian Priority Connection and Public Space**
Publicly accessible hardscape space flanked by edge activation to the north and south, providing an east-west pedestrian prioritized connection across the site.
12,500 GSF
- The South Mid-Block Connection**
Landscape publicly accessible East/West Ped/Bike connection on the southern portion of the site, connecting 118th Ave to adjacent sites and possible future connection to 120th Ave NE that would be implemented by others. A portion of the South Mid-Block Connection also functions as emergency vehicle access with overlapping vehicle travel lane and shared pedestrian and bicycle path.
2,100 GSF
- South Public Space**
Landscape publicly open space that complements the South Mid-Block Connection.
11,000 GSF
- West Pedestrian and Bicycle Path**
Publicly accessible shared pedestrian and bike path for north/south connection to 118th St, North Pass, BRT access, and 85th Street. Shared pedestrian and bike path also functions as emergency vehicle access as shown in section.
40,000 GSF

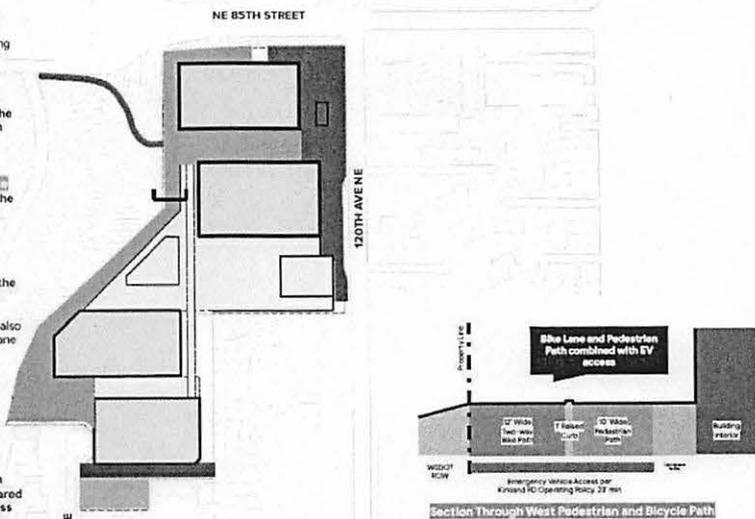


Exhibit D

Amenity Incentive System Framework

Compliance with Amenity Incentive System

This exhibit contains features that shall be included in the Project to exceed the amenity incentive requirements of the FBC for the Office Square Footage Limit.

Approximately 50% of the Office Square Footage Limit, which equates to approximately 825,000 gross square feet, is envisioned to be constructed above the base height limit and would require the Project to achieve amenity points to meet the FBC absent this Agreement. The final amount of office gross square footage ultimately constructed above the base height limit will depend on the final approved design, and it could be more or less square footage. The fifth column below entitled "Project with Office Square Footage Limit Authorized by this Agreement Above Base Height: Percentage of Total Amenity Points Earned" describes the approximate percentage value of each amenity feature for the estimated gross square footage in the Project above the base height limit. These percentages are provided for illustrative purposes only. The percentages show that the Project will provide features that achieve nearly double the number of amenity points necessary for the gross square footage above the base height limit estimated in the Project, thereby providing significant community benefit.

If development of the Site were not limited by the Office Square Footage Limit in this Agreement, the maximum gross square footage that could be achieved on the Site under the FBC above the base height limit is approximately 1,065,000 square feet. The fourth column below entitled "If the Project were built to Maximum FBC Square Footage Above Base Height: Percentage of Total Amenity Points Earned" describes the approximate percentage value of each amenity feature if the maximum gross square footage under the FBC above the base height limit was proposed in the Project. This column illustrates how the number of amenity points earned through the features listed below would continue to satisfy amenity requirements even in this scenario.

Modification of any of the features listed below will be a Project Modification as determined in accordance with Sections 4 and 7. The Project's sustainability features are not proposed for amenity points. The sustainability goals the Project will endeavor to achieve are in Exhibit E.

Category	Proposal and Points Ratio	Total SF Earned	If the Project were built to Maximum FBC Square Footage Above Base Height: Percentage of Total Amenity Points Earned	Project with Office Square Footage Authorized by this Agreement Above Base Height: Percentage of Total Amenity Points Earned
Community Benefit Amenity Incentive Payment (Affordable Housing)	\$12.464M at \$16.67 per sf	747,690	70%	91%
Enhanced Mid-Block Green Connection				
North Mid-Block Connection	12,500 sf at 5:1	62,500	6%	8%
South Mid-Block Connection	2,100 sf at 5:1	10,500	1%	1.3%
Outdoor Public Open Space Areas				
West Pedestrian and Bicycle Path	40,000 sf at 7.5:1	300,000	28%	36%
Northeast Open Space	28,000 sf at 7.5:1	210,000	19%	25%
South Open Space	11,000 sf at 7.5:1	82,500	8%	10%
Sustainability Features	*	*	*	*
Totals (without Sustainability Feature points)		1,413,190	133%	171%

*The Sustainability Features described in Exhibit E would also be eligible to earn amenity points and would thereby increase the Total Amenity Points Earned and the community benefit provided by the Project; however, the number of Sustainability Feature amenity points cannot be calculated at the Project's current conceptual stage, so no such points are included in this illustrative exhibit.

Exhibit E

Sustainability Features

Sustainability Features

Baseline Requirements -

- The Project will comply with the City's High Performance Buildings Standards ("HPBS") contained in KZC 115.62 and will not allow any gas cooking equipment in buildings.
- The Project will certify as LEED Platinum, under LEED BD+C v4/4.1 or ND v4/4.1, or a current version or another equivalent sustainability certification, at the discretion of the developer.

Additional Information -

- The Project will not use any of the sustainability features provided as a means to gain amenity incentive square footage, therefore, all sustainability features are undertaken as a means to reduce the Project's impact on the neighbors, the City and region.
- The following are examples (one from each relevant focus area of the City's Sustainability Master Plan) of steps the Project will endeavor to take above and beyond the HPBS and LEED Platinum requirements.

Sustainability Features

- The Project will advance the goals of the City's Sustainability Master Plan Relevant Focus Areas by endeavoring to do the following:
 - **Energy Supply and Emissions**
 - Utilizing 100% Electric Energy for Transportation
 - Utilizing 100% Carbon Free Energy (24/7) by 2030
 - **Buildings and Infrastructure**
 - Utilizing Mass Timber Construction for all office towers
 - Designing Mass Timber structures to be deconstructed and re-used at end of life
 - Reducing total water usage on the site to 12.5 gallons per person per day
 - Implementing stormwater design features so that water leaving the Project site will minimally impact the natural hydrology of the downstream watershed and local community.
 - **Land Use and Transportation**
 - Utilizing Transportation Demand Management measures that will reduce the VMT for employees on the site to under 50% of the Google Kirkland VMT (2019 baseline)
 - **Natural Environment and Ecosystems**
 - Designing landscape and landscape features to fill the current "Habitat Gap" existing in the area of the I-405/85th Street/Lee Johnson intersection (2019 baseline)
 - **Sustainable Materials Management**
 - Designing and Constructing to achieve a >90% Landfill Diversion Rate
 - **Healthy Community**
 - Designing to be a safe, inclusive, and welcoming place for all people
 - Designing to be a place that will aid in the efforts of the BIPOC community, refugees, immigrants and economically struggling residents to access the resources they need to thrive

Exhibit F

Infrastructure Improvements

Transportation Infrastructure:

Improvement	Description	Credit	Phase
NE 85th Pedestrian and Bike Path	Shared 12' bike and pedestrian pathway and 8' landscape buffer along 85th frontage from eastern edge of WSDOT work to 85th/120th site corner.	No credit. Project frontage improvement.	Phase 1
NE 85th Eastbound Right Turn Lane	Add eastbound dedicated right turn lane along project frontage from 85th/120th corner to west along site frontage. Turn lane extents shall be consistent with conceptual plan supported by WSDOT.	No credit. Project improvement.	Phase 1
NE 85th and 120th NB LT Lanes	Add dual left turn dedicated lanes north from 120th northbound to 85th westbound. Restripe and reconfigure roadway sections at intersection to support turn lanes. Reconstruct eastern curb, sidewalk, and pedestrian ramp as needed. Right of way acquisition to be facilitated by the City of Kirkland, if needed. Power line and utility line reconstruction on the east side of 120th, as needed. Signal and lighting upgrades to support turn lanes.	Credit. System improvement.	Phase 1
Traffic Signal at 120th and Main Commuter Vehicle Site Entrance	New traffic signal and curb ramps on 120th at commuter vehicle site entrance.	No credit. Project improvement.	Phase 1
120th Pick-Up / Drop Off Areas	Pick-Up and Drop-Off pull-outs on 120th consistent with Exhibit G.	No credit. Project improvement.	Phase 3
120th Frontage Improvements	New wider sidewalks along property frontage, landscaping, and furnishing zones consistent with the FBC's requirements.	No credit. Project frontage improvement.	Phase 2 and Phase 3 as described in Exhibit B

Improvement	Description	Credit	Phase
120th Fronting Site	Rechannelization and southbound bike lane restriping for 120th within existing right of way extents along Site's 120th property line.	No credit. Project frontage improvement.	Phase 1
120th South of Site to 80th	Rechannelization and bike lane restriping for 120th within existing right of way extents south of 120th property line to 80th.	Credit. System improvement.	Phase 1
120th and 80th Intersection	New signal and restriping of SB LT pocket at intersection. Reconstruct pedestrian ramp and restripe crosswalks as needed.	Credit. System improvement.	Phase 1
118th and 80th Intersection	New signal or roundabout and installation of pedestrian infrastructure.	No credit. Project improvement.	Phase 5 if Project follows baseline parking requirements in the FBC and installs parking in Phases 4 and 5
118th Bike Lane	New two-way protected bike lane on 118th from south property line to 80th.	Credit. System improvement.	Phase 1
118th Pick-Up / Drop-Off Area	Pick-Up and Drop-Off pull-out on 118th consistent with Exhibit G	No credit. Project improvement.	Phase 4
118th Complete Street	New street section including sidewalks, landscaping, channelization.	Work beyond traffic mitigation is system improvement eligible for latecomer's agreement.	Phase 5 if Project follows baseline parking requirements in the FBC and installs parking in Phases 4 and 5

Water Infrastructure

No water infrastructure upgrades required to meet minimum fire flow requirements.

Sewer Infrastructure

Improvement	Description	Credit	Phase
Portion of SAP-7	Upsizing sewer main from 8" to 12" in segment "D."	No credit. Needed for Project capacity.	Phase 1
SAP-6	Relocation of sewer main currently within Site and upsizing to 12".	Upsizing is system improvement and associated cost will be paid by the City.	Phase 1

Exhibit G

Pick-Up Drop-Off (“PUDO”) Locations

- 120th Ave north PUDO: Minimum 75’ of flex curb space.
- 120th Ave south PUDO: Minimum 155’ of flex curb space.
- 118th Ave PUDO: Minimum 75’ of curb space.

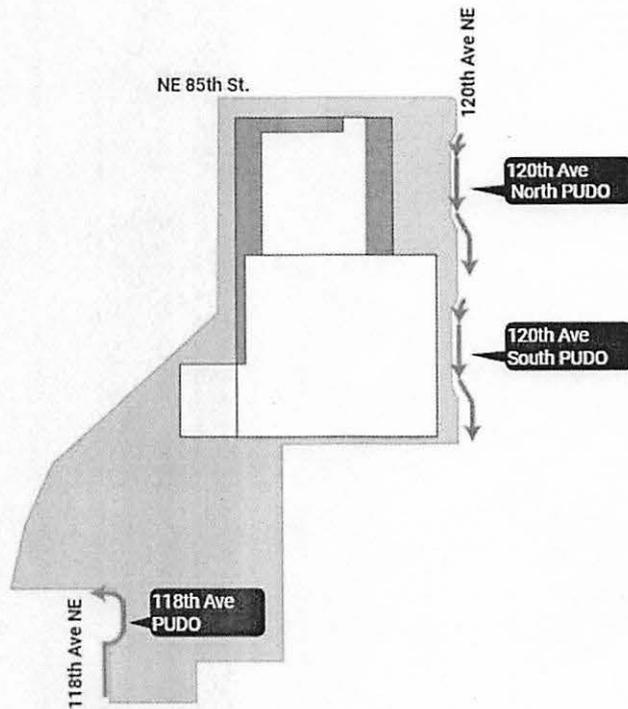


Exhibit H

120th Vehicular Access Driveway Location Factors

Kirkland's Transportation Master Plan Goal T-4 supports the city in developing a safe and efficient road network for vehicles. Managing access to the existing transportation network for new developments is one component of maintaining a safe and efficient road network, and existing access policies are contained within the Department of Public Works Pre-Approved Plans Policy R-4: Driveway Policy. The City of Kirkland is concerned that the proposed access location at NE 84th Lane would increase the likelihood that vehicle queues from the new signalized access would extend to the NE 85th St/120th Ave NE traffic signal and increase congestion on NE 85th St. There is also an existing private driveway immediately south of NE 84th Lane, and the proposed traffic signal at NE 84th Lane could limit access for these residents and create safety concerns if maintained in its current configuration.

Factors that will be considered to determine the site access location on 120th Avenue NE

Information Needed to Support Access at NE 84th Lane

Policy R-4.II.7: Grades, Throat Length, Horizontal and Vertical Alignment

- Conceptual design that demonstrates how existing private driveway immediately to the south may be connected to NE 84th Lane. Grade of proposed connection beyond landing area shall not exceed 15%
- Outreach plan for affected residences on NE 84th Lane and private driveway immediately to the south
- Schedule for outreach and construction that demonstrates how the private driveway can be reconstructed to connect to NE 84th Lane prior to the expected site opening date
- Coordinate with King County Metro for any impacts to existing bus stop

Policy R-4.II.8: Traffic Control at Driveways

- Projected AM and PM peak vehicle volumes for driveway and 120th Ave NE at year of opening
- Signal warrant evaluation that indicates a signal is warranted based on expected volumes
- Synchro (or comparable software) analysis for AM and PM peak intersection operations that demonstrates acceptable intersection operations with proposed intersection geometry and signal phasing, if applicable
- SimTraffic (or comparable software) vehicle queueing analysis for 120th Ave NE corridor (including NE 85th St/120th Ave NE intersection, site access/120th Ave NE intersection, and NE 80th St/120th Ave NE intersection) at year of opening that demonstrates 95th percentile vehicle queues will not extend to NE 85th St/120th Ave NE intersection for the AM and PM peak

Policy R-4.II.9: Sight Distance

- Sight distance evaluation that indicates sufficient sight distance is available

Information Needed to Support Access around NE 83rd Street

Policy R-4.II.7: Grades, Throat Length, Horizontal and Vertical Alignment

- Summary of how proposed access location complies with Policy R-4 for driveway setback, spacing, and offset
- No anticipated outreach would be required for modifications to an existing public street, but this could be considered depending on selected intersection design and impact to homes on NE 83rd St

Policy R-4.II.8: Traffic Control at Driveways

- Projected AM and PM peak vehicle volumes for driveway and 120th Ave NE at year of opening
- Signal warrant evaluation that indicates a signal is warranted based on expected volumes
- Synchro (or comparable software) analysis for AM and PM peak intersection operations that demonstrates acceptable intersection operations with proposed intersection geometry and signal phasing, if applicable
- SimTraffic (or comparable software) vehicle queueing analysis for 120th Ave NE corridor (including NE 85th St/120th Ave NE intersection, site access/120th Ave NE intersection, and NE 80th St/120th Ave NE intersection) at year of opening that demonstrates 95th percentile vehicle queues will not extend to NE 85th St/120th Ave NE intersection for the AM and PM peak

Policy R-4.II.9: Sight Distance

- Sight distance evaluation that indicates sufficient sight distance is available

Note: the driveway location evaluation must be prepared by a licensed transportation engineer

Relevant TMP Policies

Policy T-4.1 Make strategic investments in intersections and street capacity to support existing and proposed land use

Policy T-4.6 Reduce crash rates for motor vehicles

Policy T-4.7 Mitigate negative impacts of motor vehicles on neighborhood streets

Policy T-5.5 Require new development to mitigate site specific and system wide transportation impacts