



**Special Meeting of the Land Committee of the  
Spokane Park Board**

May 31, 2017, 3:00 p.m. – 5:00 p.m.

Park Operation Lunch Room

2304 E Mallon Avenue

Spokane, Washington

Al Vorderbrueggen – Park Operations Director

**Committee Members:**

- X Traver, Susan – Chairperson
- X Gilman, Greta
- X Kelley, Ross
- X Lodato, Sally
- X Salvatori, Steve
- X Fagan, Mike – Council Liaison

**Also present:  
Park Board:**

**Parks Staff:**

Jason Conley  
Fianna Dickson  
Leroy Eadie  
Garrett Jones  
Al Vorderbrueggen

**Other City Staff:**

Nate Odle  
James Richman

**Guest(s):**

Stacy Bjordahl  
Jim Wilson

(Note: Ross Kelley arrived shortly after the meeting began. Steve Salvatori attended telephonically.)

**Summary**

- The Committee recommended Park Board approve a contract with RMT for purchase of a Jacobsen wide-area mower for Park Operations in the amount of \$58,692.00, plus tax.
- The Committee recommended Park Board accept the plan for Dial-a-Story Project placement at AM Cannon Park.
- The Committee recommended Park Board approve the Nettleton Centennial Trail Signage.
- The Committee recommended Park Board approve the revised Don Kardong Bridge Contribution Agreement with The Friends of the Centennial Trail.
- The Committee recommended Park Board approve the Revised KXLY Access and Reciprocal Parking Easements at the Southeast Complex, with the discussed amended Exhibit.
- The most recent draft of a Ground Lease Agreement regarding High Drive Bluff property was provided for purposes of discussing property location, history, recent developments, agreement highlights, and acquisition interest.
- Staff reviewed design developments and benefits for the KXLY project at the Southeast Complex.
- The Park Operations Financial report was not available, but will be included at the next Finance Committee meeting.
- Park staff gave a verbal Capital Projects report, briefly highlighting select projects.
- The Parks Report focused on transient camps, park safety, impacts of quick transitions between seasons, and appreciation for staff.
- No CSO Tank update was scheduled.

## **MINUTES**

Chairperson Susan Traver convened the meeting and announced agenda order changes.

### **Action Items:**

1. **Contract with RMT for a Mower for Park Operations (\$58,692.00, before tax)** – Staff reviewed specifications of Jacobsen HR Series mowers, and benefits of this purchase. Clarifications and questions were discussed.

**Motion #1:** Ross Kelley moved to approve purchase of this Jacobsen wide area mower as presented.

Mike Fagan seconded.

Motion passed.

2. **Dial-a-Story Project at AM Cannon Park** – Staff reviewed the Project, its location, that it is a temporary art piece, collaborating partners, and oversight by the West Central Community Center. Questions, concerns, and staff support were discussed.

**Motion #2:** Mike Fagan moved to accept the plan for Dial-a-Story placement.

Sally Lodato seconded.

Motion passed.

3. **Nettleton Centennial Trail Signage** – Staff reviewed the project, its history, and location. Questions and clarifications were discussed.

**Motion #3:** Sally Lodato moved to approve the Nettleton Centennial Trail Signage.

Mike Fagan seconded.

Motion passed.

4. **Don Kardong Bridge MOU** – There was a communications mix-up with the Friends of the Centennial Trail when this item was previously at Land Committee. Staff explained the issues and remedies. Questions, concerns, clarifications, funding, and language changes were discussed.

**Motion #4:** Sally Lodato moved to approve the revised Don Kardong Bridge Contribution Agreement with the Friends of the Centennial Trail.

Ross Kelley seconded.

Motion passed.

5. **Revised KXLY Access and Reciprocal Parking Easements at Southeast Complex** – Park and City Legal staff reviewed developments since the agreement passed in April, 2016, and benefits of a revised agreement. Concerns, clarifications, questions, and an amended exhibit were discussed.

**Motion #5:** Ross Kelley moved to approve the Revised Access and Reciprocal Parking Easements at Southeast Complex, with the discussed amended Exhibit.

Sally Lodato seconded.

Motion passed.

### **Discussion Items:**

1. **High Drive Bluff Property** – The most recent draft of a ground lease agreement was provided for discussion purposes. Property location, history, recent developments, agreement highlights, and acquisition interest were reviewed. Questions, clarifications, and concerns were discussed.

2. **KXLY Project at Southeast Complex Design Update** – Questions and clarifications were discussed during staff review of design developments and benefits.

**Standing Report Items:**

1. Park Operations Monthly Financial Report – The report was not available, but will be included at the next Finance Committee meeting.
2. Parks Capital Projects Update – Staff gave a verbal report, briefly highlighting select projects.
3. Parks Report – Staff report, and discussion, focused on transient camps, park safety, impacts of quick transitions between seasons, and appreciation of staff.
4. CSO Tank Update – No report was scheduled.

The Chairperson adjourned the meeting. Next scheduled meeting is July 5, 2017, at 3:00 p.m. at the Park Operations Complex, located at 2304 East Mallon, Spokane, Washington.

HR™ Series

Wide Area Rotary Mower

SPECIFICATIONS

Engine	HR600		HR700		HR800	
Type	Kubota® V2403-CR-TE4 4-cyl, turbo diesel				Kubota® V3307-CR-E4B 4-cyl, turbo diesel	
Horsepower*	65.2HP (48.6 kW) @ 2700 rpm				74.3 hp (55.4 kW) @ 2600 rpm	
Emission Level	EPA Tier 4 Final (EU Stage IIIB)					
Cooling System	Side-by-side radiator/hydraulic oil cooler; pressurized; 8 qt (7.6 L) capacity, 8.5 fins per inch				Side-by-side radiator/hydraulic oil cooler; reversing fan; pressurized; 14.7 qt (13.9L) capacity, 8.5 fins per inch	
Fuel Capacity	20.4 gal (77.1 L)				29.5 gal (109.8 L)	
Electrical System	12-volt, input/output controller. 60 amp alternator. Overload protection with automotive type fuses.				12-volt, input/output controller. 90 amp alternator. Overload protection with automotive type fuses.	
Traction & Drive						
Traction System	Hydrostatic closed loop parallel-cross-series SureTrac™ system; variable displacement piston pump; front high torque piston wheel motors (HR700 - fixed displacement, HR800 - dual displacement); full time auto 4wd forward, on demand in reverse. Variable displacement, electronically controlled hydrostatic piston pump.					
Deck Drive	Seven individual hydraulic motors with self lubricating integral bearings		Nine individual hydraulic motors with self lubricating integral bearings			
Hydraulic Capacity	13.3 gal (50.2 litre) capacity reservoir				20.3 gal (76.8 liter) capacity reservoir	
Hydraulic System	O-ring face seal fittings, 10 micron remote charge filters, suction screen at tank, oil cooler					side by side radiator, diagnostic test ports.
Speed (Max)						
Mowing	10 mph (16.4 km/h)				11 mph ( 17.7 km/h)	
Transport	15.5 mph (25 km/h)				High Speed: 20 mph (32.2 km/h), Low Speed: 10 mph (16.1 km/h)	
Reverse	4 mph (6.4 km/h)				6 mph (9.6 km/h)	
Tires, Brakes & Steering						
Front tires	26 x 12-12 tubeless 8 ply				26.5 x 14-12 tubeless 6 ply	
Rear tires	20 x 10-8 tubeless 6 ply				20 x 10-8 tubeless 8 ply	
Service Brake	Dynamic through traction system				Dynamic through traction system; emergency brake	
Parking Brake	Automatic wet parking brakes integrated into wheel motors					
Steering	Q-Amp® variable rate, hydrostatic powered equal displacement cylinder to rear wheels					
Decks & Cutting						
Overall Cutting Width	137 in. (3.5 m)		168 in. (4.27 m)		192 in. (4.9 m)	
Number and Size	One 60 in. (1.52 m) front deck; Two 44 in. (1.12 m) wing decks		One 60 in. (1.52 m) front deck; Two 60 in. (1.52 m) wing decks		One 72 in. (1.83 m) front deck; Two 66 in. (1.68 m) wing decks	
Deck Construction	11 gauge (3 mm) Domex high strength steel shell with 11 gauge (3 mm) bolt in baffle and stiffeners		11 gauge (3 mm) Domex high strength steel shell with 9 gauge (4mm) bolt in baffle and stiffeners			
Castor Wheels	Eight, 4 x 11 in. smooth tires with greasable tapered roller bearings				Ten, 4 x 11 in. smooth tires with greasable tapered roller bearings	
Deck Lift/Lower	Fingertip operated joysticks for individual deck lift/lower; cross cut position; front deck service position with lock pin. Electronic safety locks.					
Weight Transfer	On demand electrically operated hydraulic weight transfer system					
Height of Cut	1.0 - 4.75 in. (25-121mm) in 0.25 in. (6.4 mm) increments		1.0 - 4.5 in. (25-114 mm) in 0.5 in. (12.7 mm) increments		1.0 - 6.0 in. (25-152 mm) in 0.5 in. (12.7 mm) increments	
Cutting Capacity (No Overlaps or Stops)	Max: 13.8 acres/hour at 10.0 mph (5.6 ha/hr at 16.0 km/h) Typical: 10.4 acres/hour at 7.5 mph (4.00 ha/hr at 12.0 km/h)''		Max: 17.0 acres/hour at 10.0 mph (6.9 ha/hr at 16.0 km/h) Typical: 12.7 acres/hour at 7.5 mph (5.14 ha/hr at 12.0 km/h)		Max: 21.3 acres/hour at 11.0 mph (8.62 ha/hr at 17.7 km/h) Typical: 14.5 acres/hour at 7.5 mph (5.87 ha/hr at 12.0 km/h)	
Weight & Dimen-sions	Standard Unit	Cab Unit	Standard Unit	Cab Unit	Standard Unit	Cab Unit
Weight	3873 lbs (1756 kg)	4442 lbs (2014 kg)	4119 lbs (1868 kg)	4688 lbs (2126 kg)	4801 lbs (2178 kg)	5370 lbs (2436 kg)
Length	143 in. (3.62 m) front deck down		143 in. (3.62 m) front deck down		147 in. (3.66 m) front deck down	
Height	83 in. (2.1 m) ROPs up 78 in. (2.0 m) ROPs down and decks up	87 in. (2.2 m)	92 in. (2.34 m) decks up 83 in. (2.11 m) decks down, ROPS up 67 in. (1.70 m) ROPS and decks down	92 in. (2.34 m) decks up 87 in. (2.2 m) decks down	95 in. (2.41) decks up 85 in. (2.16) decks down, ROPS up 67 in. (1.70 m ) ROPS and decks down	95 in. (2.41) decks up 87 in. (2.2 m) decks down
Transport Width	65 in. (1.67 m) at 1 in. (25 mm) height of cut				77 in. (1.96 m) at 1 in. (25 mm) height of cut	

\*Engine horsepower is provided by engine manufacturer. Actual operating power output may vary due to conditions of specific use.  
NOTE: Specifications, while correct at time of printing, may change without notice.



Wide Area Rotary Mower

HR™ Series



HR700 shown.

The all new HR Series of wide area rotary mowers delivers the next generation of productivity on all fronts. The ultra-durable new SureStrength™ decks and superior maneuverability make it the ideal mower for sports fields, parks and green spaces, schools, airports, golf courses, and commercial grounds. By utilizing high strength, high performance steel and a compact chassis design, the HR series sets a new industry standard for the most efficient use of power.

QUICK SPECS

- Engine:**  
HR600/HR700 - 65.2 hp (48.6 kW) Kubota® diesel Tier 4 Final (Stage IIIB)  
HR800 - 74.3 hp (55.4 kW) Kubota® diesel Tier 4 Final (Stage IIIB)
- Cutting Units:** Three individually controlled rotary decks  
HR600 - 11 ft. 5 in. (3.5 m) width of cut, 60 in. (1.52 m) front and two 44 in. (1.12 m ) wing decks  
HR700 - 14 ft. (4.27 m) width of cut, 60 in. (1.52 m) front and two 60 in. (1.52 m ) wings  
HR800 - 16 ft. (4.9 m) width of cut, 72 in.(1.83 m) front and two 66 in. (1.68 m) wings
- Transport Width:**  
HR600/HR700 - 65 in. (1.67 m) at 1 in. (25 mm) height of cut  
HR800 - 77 in. (1.96 m) at 1 in. (25 mm) height of cut





# HR<sup>TM</sup> Series

## PRODUCTIVITY

- **The HR Series** delivers unmatched versatility, offering a range of cutting widths. Setting the standard, the HR600 (11.4 foot model) mows through up to 13.8 acres of grass per hour. Getting more done, the HR700 (14 foot model) cuts up to 17.0 acres of grass per hour, or the ultra productive HR800 (16 foot model) slices through up to 21.3 acres of grass per hour.
- **Unparalleled nimble platform** delivers zero uncut circle for effortless 180 degree turning, leaving no uncut grass and easier mowing around obstacles.
- **New AdaptiCut<sup>TM</sup>** system automatically adjusts mow speed to ensure consistent cut performance even through the thickest grass.

## SERVICEABILITY

- **Individual hydraulic deck motors** with self-lubricating integral bearings deliver reliable cutting power to each blade and require no tensioning or greasing maintenance of belts and pulleys.
- **InCommand<sup>TM</sup> control system** provides on-board diagnostics for quick and easy troubleshooting and displays maintenance reminders on-screen to aid in proper service and increased up time.

## COMFORT

- **Ergonomic cockpit** with optimal seating position, wing decks set forward of operator, and armrest located individual lift/lower deck joysticks for superior unobstructed views.
- **Tilt Sensor Technology (TST)<sup>TM</sup>** ensures operator safety by automatically monitoring slope angles and alerting operators when nearing unsafe working conditions.



### Industry's narrowest transport in its class

allows the HR series to go where other mower simply can't.

- Wing decks fold up inside the front deck to easily gauge accessibility.

## PRODUCT CONFIGURATION

### EQUIPPED AS STANDARD ON THE HR SERIES

- ✓ SureTrac 4WD
- ✓ Foldable ROPS
- ✓ 3.8" full color display screen
- ✓ Tilt steering wheel
- ✓ 4 point tie downs
- ✓ ISO mounted operator's platform
- ✓ Fully adjustable suspension seat with seat belt
- ✓ Armrest controls
- ✓ Fully sealed, maintenance free rear axle
- ✓ Cruise control
- ✓ Password protected, programmable travel speeds
- ✓ Selectable manual, automatic, and creep modes

### ADDITIONALLY ON THE HR800

- ✓ Reversing fan

### ACCESSORIES

- ☐ Road light kit
- ☐ Canopy/sunshade
- ☐ Climate controlled cab
- ☐ Cab accessories - Road light kit, Rear wiper kit



**Factory installed, ROPs certified, climate controlled cab** with A/C, heat, fan, ventilation windows and premium air suspension cloth seat provides operator protection and comfort in extreme temperatures.

- Heated windshield with sunshade, wiper and washer helps maintain visibility if sun is glaring or weather turns bad.
- Additional features include - interior & exterior mirrors, amber beacons, left glass assist door with locking handle and rear emergency exit.
- Road light kit and rear wiper kit available.

## Wide Area Rotary Mower

### Q Amp<sup>®</sup> Steering

variable rate steering system delivering straight line mowing while maintaining the fast response required to turn immediately.

### Armrest Control

operator lift/lower controls on fingertip joystick for fatigue free operation. Cross cut position for seamless transitioning over pathways. AdaptiCut<sup>TM</sup> system light indicators for real-time cut quality feedback.

### InCommand<sup>TM</sup> Control System

full color display screen providing real time onboard diagnostics, service intervals, and TST for safe slope operation ensuring operators and service technicians have information to run efficiently and safely.

### Comfortable, Productive Ride

ISO mounted operator platform complete with a full suspension, high back seat. Maximum visibility with minimum fatigue.

### Proven and Powerful

Tier 4 Final (Stage IIIB) Kubota<sup>®</sup> turbocharged diesel engines deliver exceptional mowing power to effortlessly take down the tallest, thickest grass.

### Reversing Fan (HR800)

Hydraulically controlled fan reverses on-demand or automatically via timer keeping air intake screen clear of debris and features automatic speed control providing optimal operating temperatures.

### Easy Access Hood

instant access for daily maintenance and quick-release side panels for more thorough servicing. Storage net behind operator for jackets and supplies.

### SureTrac<sup>TM</sup> 4WD

parallel-cross-series system automatically transfers power where needed. Provides superior traction for hill climbing and side slope operation. Also features on-demand 4WD in reverse.

HR800 shown.

### Maintenance Free, Wet Parking Brakes

integrated into the front wheel motors, deliver safe braking on even the steepest of slopes and have no linkages or pads to service or adjust.

### SureStrength<sup>TM</sup> Decks

constructed with Domex<sup>®</sup> high strength, high performance structural steel delivers greater durability in a lighter more sustainable design. Bolt together construction makes for easy maintenance and repairs.

### Best Use of Power

HR series wide area rotary mowers are lighter than its competitors. By utilizing high strength, high performance steel throughout and compact chassis design, a new industry standard has been established for power to weight ratio and efficiency.



# WEST CENTRAL DIAL-A-STORY

## A COLLABORATIVE PROJECT OF:

**Spokane Arts**  
**Spark Central**  
**Laboratory**  
**Spokane Civic Theatre**

## INSTALLATION SITES

**Batch Bakeshop** | Mika Maloney  
**West Central Community Center** | Kim Ferraro  
**Indaba Coffee** on Broadway | Bobby Enslow

## SYNOPSIS

Three 'Dial-A-Story' booths will be installed at three sites in the West Central neighborhood in May 2017 through September 15, 2017. The sponsor for the three booth installations is STCU. These booths are an interactive way for community members to connect with the history, culture, and experiences of the West Central neighborhood and bring community members closer together. This interactive public art is a dynamic intersection of arts disciplines.

Pedestrians can hit a key on the rotary phone and then use the attached headset to play back stories by real West Central residents lasting no more than 3 minutes each. Stories were written by adults and teens living and working in West Central. Anonymous submissions were encouraged, and a website and QR code on each booth encourages listeners to share their own West Central experiences via Spokane Arts website in the hopes that we can add new stories to the booths throughout the summer.

On May 23rd, Spark Central hosted a performance night where actors from the Spokane Civic Theatre dramatically performed the stories for the community. We hoped to have the booths installed by May 23rd, but are now hoping for as soon as possible.



**Thanks for your time and support!**





## **NETTLETON'S ADDITION FINAL SCULPTURE WHITE PAPER**

### **PURPOSE**

To install and accession into the City of Spokane's Public Art Collection an existing fourth Nettleton's Addition Historic District marker, which was delayed due to Centennial Trail construction.

### **BACKGROUND**

Nettleton's Addition Historic District was listed on the National Register of Historic Places in 2006. By 2008, the West Central Neighborhood had marked the district's three major arterial entrances with towering reclaimed-metal sculptures, fabricated by artist and Nettleton's resident Steffan Wachholtz. These sculptures were accessioned into Spokane's Public Art Collection through agreements with the City's Park Department, Street Department and a private property owner. Wachholtz also began fabrication of a fourth sign for installation at the southwest corner of the district, at Bridge Avenue along the Centennial Trail, which at that time was still in the planning phase. With that section of the trail now complete, the neighborhood has initiating installation of this final sign.

Installation of the final sign will be funded jointly by the West Central Neighborhood Council and Jim Frank and mark the point where Nettleton's Addition and Kendall Yards meet. Cut aluminum plate will read "NETTLETON 1887" when viewed from the south and "KENDALL YARDS" when viewed from the north. The marker will be 15 ½ feet tall and 3 ¾ feet in diameter at the base, encircled by a bench 6 ¾ feet in diameter. The concrete plinth will be 9 ¾ feet in diameter at ground level.

D.C. Concrete, Inc., the licensed and bonded contractor involved with the two most recent Nettleton's Addition marker projects, will handle the installation. Payment will be made directly from the sponsors to the artist and contractor after the installation is complete.

### **ACTION**

The Nettleton's Addition project is supported by the West Central Neighborhood Council, Jim Frank and the Spokane Arts Commission. The project supports the City's goals of cultivating public and private partnerships, establishing Spokane's identity, creative placemaking and dovetailing the arts and civic planning. It's hoped the Spokane Park Board also supports installation and accession of this final piece alongside its companion pieces.







City Clerk's No. \_\_\_\_\_

**~~MEMORANDUM OF UNDERSTANDING RE:~~ CONTRIBUTION AGREEMENT**

**PARKS DEPARTMENT & THE FRIENDS OF THE CENTENNIAL TRAIL FUNDING UP TO \$75,000  
FOR 30% DESIGN WORK FOR THE DON KARDONG BRIDGE ON THE CENTENNIAL TRAIL**

THIS CONTRIBUTION AGREEMENT ("Agreement") is between the **CITY OF SPOKANE PARKS AND RECREATION DEPARTMENT**, as ("City"), and **THE FRIENDS OF THE CENTENNIAL TRAIL**, a 501(c)(3) corporation organized under the laws of the State of Washington, as ("FRIENDS"). Hereinafter referenced together as the "parties", and individually a "party."

WHEREAS, the City of Spokane Parks and Recreation Department is in charge of maintaining the Centennial Trail ("Trail"), as it courses along the Spokane River and through the City of Spokane; and

WHEREAS, FRIENDS is engaged in raising funds to contribute to various agencies to assist them with the maintenance of the Trail. FRIENDS is desirous of contributing funding to assist the City with the costs of the initial Architectural & Engineering ("Initial A&E") associated with the redesign and refurbishment of the Don Kardong Bridge ("Bridge") on the Trail.

-- NOW THEREFORE, the parties hereto agree as follows:

**AGREEMENTS:**

1. **PREMISES.**

A. The City maintains portions of the Trail, which includes: the asphalt trail, bridges and related improvements located along the Spokane River, from the Idaho State Line through downtown Spokane as depicted in the attached Exhibit A.

B. FRIENDS is willing to contribute (subject to the terms of this Agreement) funds to assist the City with the necessary Initial A&E costs associated with the redesign and refurbishment of the Bridge.

C. **Condition.** As a condition precedent to the effectiveness of this Agreement, the City shall (i) cause this Agreement to be approved by the Park Board and (ii) provide to FRIENDS a legal opinion memorandum reasonably acceptable to FRIENDS, that this Agreement shall, upon said Park Board approval, be fully in effect and enforceable according to its terms, opinion.

2. CONTRIBUTION. Pursuant to and subject to the terms and conditions of this Agreement, and after the conditions precedent in Section 1.C are satisfied, FRIENDS shall contribute up to **SEVENTY FIVE THOUSAND AND NO/100 (\$75,000.00)** to the City to assist the City with its Initial A&E costs associated with the redesign and refurbishment of the Bridge. Contributions up to the maximum **SEVENTY FIVE THOUSAND AND NO/100 (\$75,000.00)** amount by the FRIENDS to the City shall occur within fifteen (15) business days of the City providing to the FRIENDS copies of invoices from the engineering firm for the Initial A&E costs incurred for the redesign and refurbishment of the Bridge; provided, however, that no further contributions shall be made by the FRIENDS from and after the earlier of (i) the FRIENDS contributing a total of **SEVENTY FIVE THOUSAND AND NO/100 (\$75,000.00)** under the terms above or (ii) ~~by~~ December 31, 2017.

3. REFUND BY CITY TO FRIENDS OF CONTRIBUTION. In the event the renovation and refurbishment of the Bridge is not completed in accordance with the final A&E design specifications by December 31, 2021~~19~~<sup>20</sup>, the City shall, no later than January 31, 2022<sup>20</sup> pay to FRIENDS an amount equal to the total amount contributed by the FRIENDS to the City under Section 2 (above), plus interest at FIVE PERCENT (5%), compounded annually from the date(s) of the contribution(s) made by FRIENDS under Section 2, above. In order for said completion of the Bridge to be deemed to have occurred, the firm which provided the final A&E specifications must certify on or by December 31, 2021~~19~~<sup>20</sup>, that (i) the renovation and refurbishment of the Bridge is substantially complete (ninety percent 90%), and in accordance with said final A&E design, specifications therefore and (ii) said renovation and refurbishment is substantially in accordance with the Initial A&E design specifications.

Formatted: Highlight

4. RELATIONSHIP OF THE PARTIES. The relationship of the parties hereto is simply that of a "grantor" of contributions (FRIENDS) and a "grantee" of contributions (City) pursuant to the foregoing provisions of this Agreement. Nothing shall be construed herein to create a partnership, joint venture or other employment relationship between the parties hereto. Moreover, nothing hereunder shall be construed to create any form of ownership interest in FRIENDS to the Trail or any asset of the City, including, but not limited to: the A&E designs and specifications described in this Agreement. The parties acknowledge and agree that FRIENDS has no authority or control whatsoever over the selection of the architectural and engineering firm to provide the design described above; the actual redesign and specifications for construction and refurbishment of the Bridge or the operation and/or maintenance of the Bridge. The City hereby agrees to indemnify and hold harmless the FRIENDS from any claim, damage, loss (including, but not limited to attorney's fees), or other costs incurred by FRIENDS as a result of this Agreement and the FRIENDS contribution above. The foregoing indemnity obligation shall be construed as broadly as possible under Washington State law.

5. TAXES. Any and all taxes imposed on the contributions by FRIENDS under this Agreement shall be borne by the City.

6. NOTICES. Any and all notices required or permitted to be given under this Agreement shall be sufficient if furnished in writing and delivered in person or sent by

certified mail (to be effective upon mailing) to the other party, at the addresses prescribed in this Agreement.

Friends of the Centennial Trail:  
P.O. Box 351  
Spokane, WA 99210

City of Spokane Parks and Recreation Department  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

7. GOVERNING LAW. This Agreement shall be interpreted, construed and governed according to the laws of the State of Washington.

8. DISPUTES. In the event of a dispute relating to or arising from this Agreement which cannot be settled by the parties within thirty (30) days of the written demand of either party to the other for commencement of negotiations concerning the same, the arbitration provisions of this Section 8 shall apply. Either party ("Demanding Party") may, after said thirty (30) day period, give written notice to the other party ("Recipient Party") demanding arbitration hereunder and designating an arbitrator ("Arbitration Notice"). The arbitrator selected by the Demanding Party shall arbitrate the dispute unless, within twenty (20) days of the Arbitration Notice, the Recipient Party gives the Demanding Party written notice of the Recipient Party's rejection of said arbitrator and designates an arbitrator of the Recipient Party's choice. If, within ten (10) days of the Recipient Party's rejection, the parties do not agree in writing to an arbitrator, the dispute shall be submitted to Judicial Dispute Resolution of Seattle, Washington ("JDR") to select a single arbitrator designated by JDR, who JDR, in its discretion, believes is appropriate for the subject dispute. The arbitrator selected by JDR may or may not be a JDR arbitrator. The arbitration shall take place in Spokane, Washington, in accordance with RCW 7.04A. The arbitrator selected in accordance with the foregoing shall make all decisions regarding discovery procedure, fact and law, and such decisions shall be final and binding on all parties. Prior to the final decision of the arbitrator, each party shall be responsible for payment of one-half (1/2) of the associated fees of the arbitrator. However, the party designated by the arbitrator as the substantially prevailing party in the arbitration shall be awarded all the costs of arbitration, including reasonable attorneys' fees incurred and the fees incurred for arbitrator. Any judgment upon an award may be entered in the Superior Court of Spokane County, in the State of Washington,.

9. MISCELLANEOUS.

A. Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto pertaining to the contributions by FRIENDS described herein and may not be modified or amended, except by a written instrument signed by each of the parties hereto expressing such modification or amendment. A failure on the part of either party to exercise or a delay in exercising any right, power or remedy hereunder shall not operate as a waiver, or future waiver thereof, except where a time limit is expressly specified herein. No single or partial exercise of any right, power or remedy hereunder shall preclude any other further exercise of any right, power or remedy. This



Agreement contains all covenants, representations and warranties made between the parties hereto.

B. Prior Agreements or Writings. This Agreement completely supersedes any other agreement (oral or written) or writings between the parties hereto.

10. INTERPRETATION AND SIGNATURES. This Agreement was the product of negotiation between the parties so that neither party shall be considered the drafter of this Agreement. This Agreement may be signed in counterparts.

11. City of Spokane Parks and Recreation will own all plans and specifications funded and associated with this Agreement.

Formatted: Highlight

Formatted: Highlight

Dated: \_\_\_\_\_ CITY OF SPOKANE PARKS AND  
RECREATION DEPARTMENT

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

Title: \_\_\_\_\_

Attest:

Approved as to form:

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

\_\_\_\_\_  
Assistant City Attorney

Dated: \_\_\_\_\_ FRIENDS OF THE CENTENNIAL TRAIL

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

Title: \_\_\_\_\_

Email Address:  
\_\_\_\_\_

17-502

Exhibit 1



AFTER RECORDING RETURN TO:

Stanley M. Schwartz  
Witherspoon Kelley  
422 W. Riverside Ave, Suite 1100  
Spokane WA 99201

### ACCESS AND RECIPROCAL PARKING EASEMENTS

This Access and Reciprocal Parking Easement ("**Easement and Agreement**") is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2017 ("**Effective Date**") by and between the City of Spokane, Parks Department ("**Park Board**"), as "**Grantor**" and QueenB Radio, Inc., d/b/a KXLY, a Washington Corporation which term includes successors and assigns ("**KXLY**") as "**Grantee**", hereinafter jointly referred to as "**Parties**".

#### Recitals

A. The Park Board owns certain real property located in the City of Spokane, Spokane County, Washington, consisting of approximately 16.5 acres, as more particularly described on the attached **Exhibit A** ("**Park Property**"). The Park Property is developed as a youth sporting complex, which includes soccer fields, baseball diamonds, surface parking, and a storage area.

B. The Parties acknowledge and understand as follows: (1) The Park Property is commonly referred to as the Southeast Sports Complex and was previously improved with a grant (the "Grant") awarded by the State of Washington Interagency Committee for Outdoor Recreation (the "Agency"); (2) the exchange of easements under this Easement and Agreement is considered a "conversion" under guidelines administered the Agency (the "Conversion"); (3) Grantee is in the process of asking the Agency to approve the Conversion; and (4) obtaining Agency approval will require joint and mutual cooperation of the Parties, and will require appraisals prepared according to guidelines approved by the Agency demonstrating that the property interests received by the Park Board hereunder have a fair market value at least equivalent to that of the property interests being converted (the "Appraisals").

**BC.** South and west of the Park Property, KXLY owns real property consisting of approximately 14 acres, as more particularly described on the attached **Exhibit B** ("**KXLY Property**"). The KXLY Property contains two existing broadcast towers, a generator building, improvements and open space.

**CD.** Directly south of the Park Property, KXLY owns approximately fifteen (15) acres of property which is presently zoned CC2-DC, subject to a Development Agreement with the City of Spokane ("**Adjacent KXLY Property**"). See **Exhibit B-1**.

**DE.** The City of Spokane owns land in between and adjacent to both the Park Property and the Adjacent KXLY Property which is the subject of a Purchase and Sale Agreement (Clerk's File OPR 2015-0920) between the City of Spokane and KXLY ("**City Property**").

**EF.** A signalized intersection was recently installed at Regal Street and Palouse Highway (the "**Signalized Intersection**"). The Signalized Intersection improves traffic movements for north and south bound traffic on Regal Street and east bound traffic on Palouse Highway.

**FG.** At present, pedestrians and vehicles access the Park Property through a driveway and parking lot located south of the Signalized Intersection.

**GH.** The Parties believe that the development of the west leg of the Signalized Intersection will enhance the use and enjoyment of the Park Property, the Adjacent KXLY Property and the City Property ("**Benefitted Properties**") and wish to enter into an agreement providing for conveyance of easements with construction and maintenance of improvements that will provide pedestrian, vehicular access ("**Joint Access**"), and vehicle parking for the Benefitted Properties. See **Exhibit C**.

**HI.** Simultaneous with the Parties' execution of this Easement and Agreement, the Parties have also entered into a (i) Ground Lease with City of Spokane Park Board ("**Ground Lease**"), and (ii) a License and Development Agreement ("**License and Development Agreement**"), of even date herewith. The Ground Lease provides for a lease of certain property by KXLY to the Park Board, and the License and Development Agreement provides for construction of the Joint Access as well as other improvements including, without limitation, a soccer field on the property covered by the ground lease.

NOW, THEREFORE, in consideration of the terms, covenants, and conditions herein and of the benefits derived by Grantor, the Parties covenant and agree as follows:

1. **ACCESS AND PARKING EASEMENT.** Grantor does hereby grant, convey and deliver to Grantee, its successors and assigns a non-exclusive easement in, under, through and over the following described property:



(see attached **Exhibit D**)

hereinafter referred to as "**Easement Area**" upon the terms, covenants and conditions herein. This easement shall apply to all interests now owned or hereafter acquired in the Easement Area. Grantor further agrees that Grantee shall have a right of entry upon reasonable areas of the Park Property that is adjacent to the Easement Area to install, inspect, repair or maintain the Easement Area and perform any other related functions or duties provided following such entry the adjacent area is returned to the condition it was found, reasonable wear and tear excepted.

2. **PURPOSE.** This easement is conveyed to the Grantee for purpose of locating, constructing, maintaining and repairing a public pedestrian and vehicle access to the Benefitted Properties, plus outdoor surface vehicle parking and related landscaping with stormwater control together with the right to install, use and maintain underground sewer and water lines, electrical service lines and other public utilities to serve adjacent property in a manner that does not unreasonably interfere with the purpose of the easement ("**Access and Parking Easement**"). The improvements on the Easement Area will provide public access to the Benefitted Properties from Regal Street and Palouse Highway through the Signalized Intersection.

3. **CONSIDERATION.** The consideration for the easements is set forth in this Easement and Agreement and the License and Development Agreement between the Parties.

4. **COVENANTS.** Grantor and Grantee agree to the following.

A. **Duration.** The Access and Parking Easement and rights granted herein, shall run with the land to which the Easement Area is appurtenant (the "**Burdened Property**") and shall be perpetual in duration, and shall be binding upon and inure to the benefit of the Parties, their heirs, successors and assigns. This Easement and Agreement may be terminated by: (1) KXLY if it does not acquire the City Property or (2) the Park Board if KXLY does not commence development of the Joint Access as well as the Improvements described in the License and Development Agreement within four (4) years from the Effective Date and thereafter complete said improvements with reasonable diligence.

B. **Interference.** Grantor, without the consent of Grantee, may not grant other interests, rights or easements that allow the use of the Easement Area or areas adjacent thereto that unreasonably interfere with the use permitted through this Easement or the covenants set forth in this Section 4.

C. Development of Joint Access. KXLY, through its agents and contractor, shall, at its cost and expense, design, construct, warrant and otherwise develop the Joint Access as a local access commercial street. The Joint Access shall be open and available for use by the public in the same manner as other public streets in the City of Spokane, subject to the terms of this Easement and Agreement.

D. Maintenance. KXLY at its cost and expense will maintain and repair the street and related improvements on the Joint Access to a condition, at least, in reasonable conformance with the condition of curb, sidewalk and pavement adjacent to the Signalized Intersection. Maintenance and repair includes cleaning, removing litter, sweeping, snowplowing, repairing surface and structural damage and cracks which result from reasonable wear and tear.

In an emergency, Grantee shall have the right, but not the obligation, to enter the Easement Area and the Burdened Property for the purpose of installation, maintenance, repair, removal and replacement of the improvements or utilities in the Easement Area.

E. Conforming Easement to "As Built" Construction. Following construction of the Joint Access, KXLY shall provide a current survey that depicts (1) the Joint Access and (2) the boundary between the Park Property and the City Property consistent with the installed improvements.

F. Displacement of Park Department Surface Parking. Prior to construction of the Joint Access, KXLY and the Parks Department shall meet and confer to identify the number of and relocation of vehicle parking spaces on the Easement Area that will be displaced as a result of installing the Joint Access. It is intended that KXLY shall replace each displaced parking stall (estimated to be eight foot wide parking stalls) with at least one similar space prior to the full improvement and occupancy of the Adjacent KXLY Property pursuant to the then-existing City land use entitlements.

G. Development of Joint Use Parking. Following completion of the Joint Access, KXLY shall within a reasonable period develop vehicle parking in conformance with City of Spokane development standards on the Easement Area and KXLY Property, hereinafter the "**Joint Use Parking**" as depicted on Exhibit C. The parking shall be non-exclusive and be available on a "first come, first-serve basis" to persons who are using or otherwise occupying the Park Property, KXLY Property and Adjacent KXLY Property for its intended purpose. The number of available parking spaces for joint use is estimated to be 149.

5. RECIPROCAL PARKING AND ACCESS EASEMENT ON KXLY PROPERTY. In consideration for the Access and Parking Easement, KXLY hereby grants and conveys a

{S1380118; 7 }

Formatted: Justified, Indent: First line: 0.44",  
Adjust space between Latin and Asian text,  
Adjust space between Asian text and numbers

perpetual non-exclusive easement to the Park Board, its employees, officers, agents, guests, licensees and invitees who are using or occupying the Park Property (collectively, the "Permitted Users") to park motor vehicles on the KXLY Property with related vehicle and pedestrian ingress and egress on the areas depicted and legally described on Exhibit E, which areas include a driveway no less than 20 feet in width running between the southwest corner of easement area "B and the eastern edge of easement area "C", as depicted in said Exhibit E ("Reciprocal Easement"). In the event the Appraisals indicate that the fair market value of the easement interests received by KXLY hereunder exceed the fair market value of the Easement interests received by the Park Board, KXLY agrees to adjust the boundaries to increase the size of the easements conveyed to the Park Board hereunder such that the fair market value of the easements received by the Park Board are at least equal to the fair market value of the easement interests received by KXLY, determined according to Agency appraisal guidelines.

A. Duration. The Reciprocal Easement and rights granted herein shall run with the land to which the Reciprocal Easement is appurtenant, shall be perpetual in duration and binding upon and inure to the benefit of the Parties, their heirs, successors and assigns. The Reciprocal Easement shall automatically terminate if and when the Access and Parking Easement is terminated.

B. Use and Occupancy. The Joint Use Parking shall be free and open to the public during regular park hours for the Park Property, and may be used and occupied by persons and vehicles for reasonable periods consistent with the customary permitted use and occupancy of vehicle parking on the adjacent commercially-KXLY developed property and the use of the public Park Property as open space and/or public sports complex fields for outdoor recreation. In the event KXLY, its successors and assigns finds that any person is using the Joint Use Parking in a manner which violates any term of this Easement and Agreement or any reasonable rule related to the Joint Use Parking, causes harm or creates a nuisance, KXLY may require the vehicle or person(s) to be removed therefrom. Prior to the removal of a vehicle KXLY may give notice by 1) contacting the person and/or 2) posting a notice on the vehicle to be removed. Twenty-four (24) hours after notice KXLY is authorized to remove the vehicle and take such other action as is reasonably necessary including storage or impoundment. KXLY shall defend, indemnify, and hold the Park Board harmless against any claims resulting from KXLY's removal of vehicles from the Easement Area.

C. Maintenance. KXLY shall be responsible to improve, maintain, repair, resurface, stripe, sweep, and remove snow and litter from the Joint Use Parking, at no cost to the Park Board. Appropriate signage for such available parking shall be placed on both the Park Property, City Property and KXLY Property in mutually agreed locations.

C.D. Assignment of Rights. KXLY understands that the Park Board will record an assignment of rights in the records of Spokane County that: (1) describes the Reciprocal Easement; (2) commits the Park Board to enforcing the terms of this Easement and Agreement; (3) gives the Agency certain rights, which are co-held with the Park Board, for access to the Reciprocal Easement; (4) indemnifies the Agency with respect to the acts or omissions of KXLY and the Park Board on the Easement Area; and (5) requires the Park Board to consult with the Agency for any amendment of the Easement and Agreement, or conversion of the easement to another use.

6. INSURANCE.

- A. KXLY shall, at its sole expense, obtain and keep in force throughout the term of this Easement and Agreement commercial general liability insurance on an occurrence basis with a combined single limit of no less than \$1.5 million per occurrence and \$2 million General Aggregate, naming the City of Spokane and Park Board, its officers, employees, contractors, agents, and other such persons or entities as the Park Board may designate as additional insureds. The policy shall contain cross liability endorsements, and shall provide coverage for liability arising out of or relating to KXLY's use and occupancy of the Easement Area, including non-owned automobile liability.
- B. The Park Board shall, at its sole expense, obtain and keep in force throughout the term of this Easement and Agreement commercial general liability insurance on an occurrence basis with a combined single limit of no less than \$1.5 million per occurrence and \$2 million General Aggregate, naming KXLY, its officers, employees, contractors, agents, and other such persons or entities as KXLY may designate as additional insureds. The policy shall contain cross liability endorsements, and shall provide coverage for liability arising out of or relating to the Park Board's use and occupancy of the Reciprocal Easement, including non-owned automobile liability.

7. INDEMNIFICATION.

- A. KXLY shall indemnify, defend, and hold the City of Spokane and Park Board harmless from all claims arising from the KXLY's use, occupancy, management, and maintenance of the Easement Area or from any activity, work or thing done, permitted or suffered by KXLY in or about the Easement Area, except to the extent such claim resulted from the act or omission of the City of Spokane or Park Board's employees, agents or contractors in which case this indemnity provision shall be valid and enforceable only to the extent such claim arose from the act or omission of KXLY's employees, agents, or contractors.



B. The Park Board shall indemnify, defend, and hold KXLY harmless from all claims arising from the Park Board's use, occupancy, management, and maintenance of the Reciprocal Easement or from any activity, work or thing done, permitted or suffered by the Park Board in or about the Reciprocal Easement, except to the extent such claim resulted from the act or omission of KXLY's employees, agents or contractors in which case this indemnity provision shall be valid and enforceable only to the extent such claim arose from the act or omission of the Park Board's employees, agents, or contractors.

8. MEDIATION. If either party has a claim or dispute under this agreement, notice of the same shall be sent to the other party. The notice shall provide a brief description of the dispute. Within forty-eight (48) hours of delivering the notice, the Parties shall meet and confer to resolve the dispute.

If the Parties are unable to resolve the dispute within five (5) business days of the notice, the Parties shall engage a mediator to assist in resolving the dispute. The mediator's fees and costs shall be equally shared by the Parties. Thereafter, the Parties may exercise available legal remedies.

9. CORPORATE AUTHORITY. Grantor represents and warrants that he/she is duly authorized to execute and deliver this Easement on behalf of the City of Spokane, Parks Department in accordance with a duly adopted resolution of the Park Board in accordance with its Charter and bylaws, and that this Easement is binding upon the City of Spokane and said entity in accordance with its terms.

10. NOTICES. All written notices required to be given pursuant to the terms hereof shall be either delivered personally or deposited in the United States mail, certified mail, return receipt requested, postage prepaid and addressed to the addresses listed below:

GRANTOR:

City of Spokane, Park Board  
Attn: Parks and Recreation Director  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

GRANTEE:

QueenB Radio, Inc.  
Attn: Tim Anderson  
500 W. Boone Avenue  
Spokane, WA 99201

The foregoing addresses may be changed by written notice to the other party as provided herein. Mailed notice properly given shall be deemed received three (3) days after deposit in the mail.

11. ENTIRE AGREEMENT/ ASSIGNMENT. This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Easement Area. It is agreed that there are no verbal understandings or agreements which change the terms, covenants and conditions herein set forth. No modifications of this Agreement, or waiver of any of its terms, shall be effective unless in writing duly executed by the parties. This Easement may not be assigned without the written consent of Grantor, which consent will not be unreasonably withheld.

This Easement is effective the day and year set forth above.

GRANTOR:

GRANTEE:

CITY OF SPOKANE, PARK BOARD

QUEENB RADIO, A WASHINGTON  
CORPORATION

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

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

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me personally appeared \_\_\_\_\_, to me known to be the person that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the City of Spokane, Park Board, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for the purposes thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of WA,  
residing at \_\_\_\_\_  
My Appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me personally appeared \_\_\_\_\_, to me known to be the person that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of QueenB Radio, Inc., for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument for the purposes thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of WA,  
residing at \_\_\_\_\_  
My Appointment expires \_\_\_\_\_

EXHIBIT A  
Park Property



EXHIBIT B  
KXLY Property

KXLY Property

*[exhibit on next page]*





Legal Description for KXLY Property

THE EAST HALF OF THE NORTHEAST QUARTER OF GOVERNMENT LOT 10,  
SECTION 4, TOWNSHIP 24 NORTH, RANGE 43 EAST, W.M., CITY OF SPOKANE,  
WASHINGTON.

TOGETHER WITH THAT PORTION OF THE NORTHWEST QUARTER OF  
GOVERNMENT LOT 9 LYING WEST OF A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 9,  
THENCE N87°40'18"E ALONG THE NORTH LINE THEREOF A DISTANCE OF 367.44  
FEET TO THE POINT OF BEGINNING OF SAID LINE; THENCE FROM SAID POINT OF  
BEGINNING S02°27'16"E A DISTANCE OF 665.47 FEET TO A POINT ON THE SOUTH  
LINE OF SAID NORTHWEST QUARTER AND THE TERMINUS OF THIS LINE  
DESCRIPTION, SAID POINT BEARING N87°41'12"E A DISTANCE OF 377.70 FEET  
FROM THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER.

EXHIBIT B-1  
Adjacent KXLY Property

*[exhibit on next page]*

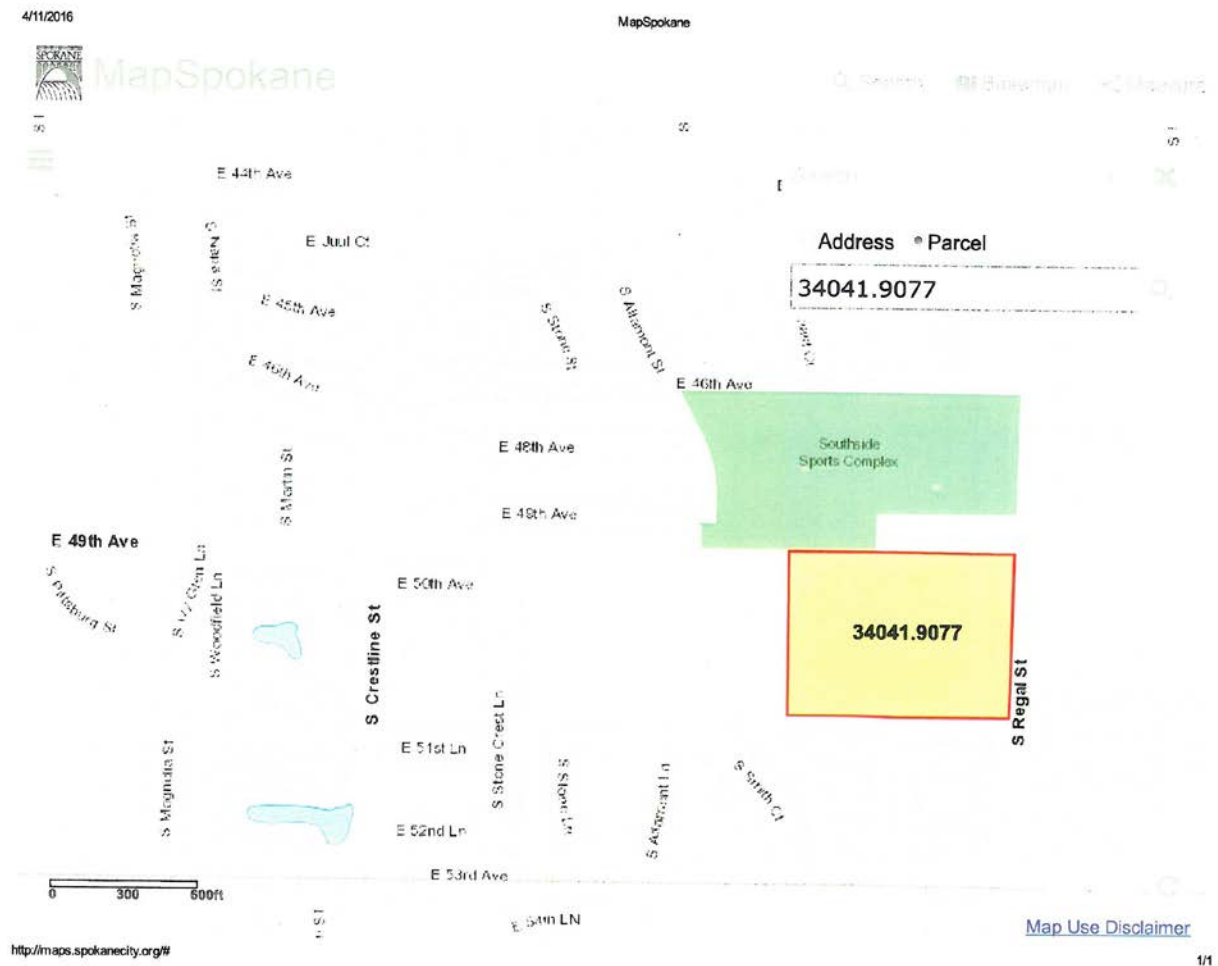


EXHIBIT B-1  
Legal Description of Property

THE NORTHEAST QUARTER OF GOVERNMENT LOT 9, SECTION 4, TOWNSHIP 24 NORTH, RANGE 43 EAST, W.M., CITY OF SPOKANE, WASHINGTON; EXCEPT COUNTY ROAD.

TOGETHER WITH THAT PORTION OF THE NORTHWEST QUARTER OF SAID GOVERNMENT LOT 9 LYING EAST OF A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 9, THENCE N87°40'18"E ALONG THE NORTH LINE THEREOF A DISTANCE OF 367.44 FEET TO THE POINT OF BEGINNING OF SAID LINE; THENCE FROM SAID POINT OF BEGINNING S02°27'16"E A DISTANCE OF 665.47 FEET TO A POINT ON THE SOUTH LINE OF SAID NORTHWEST QUARTER AND THE TERMINUS OF THIS LINE DESCRIPTION, SAID POINT BEARING N87°41'12"E A DISTANCE OF 377.70 FEET FROM THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER.

Spokane County Tax Parcel No. 34041.9077

EXHIBIT C

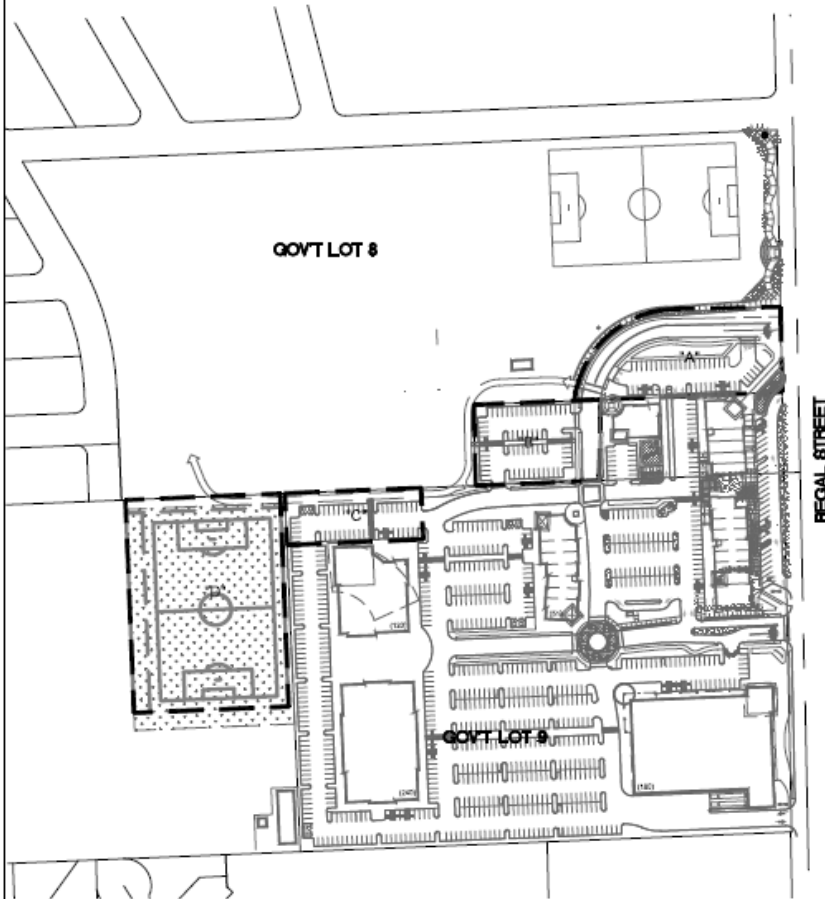
*[exhibit on next page]*



**EXHIBIT FOR DESCRIPTION 'A, B, C, D'**  
**S.4, T.24N., R.43E., W.M., CITY OF SPOKANE,**  
**SPOKANE COUNTY, WA**



**SCALE: 1" = 250'**



**COFFMAN**  
**ENGINEERS**  
 10 N. Post Street Suite 500  
 Spokane, Washington 99201  
 509 328 2994 Fax 509 328 2999

project	Southgate - KXLY	by	DJA	sheet no.
location	City of Spokane, WA	date	11/7/16	1 of 1
client		checked	JEA	job no.
		date	11/7/16	161129

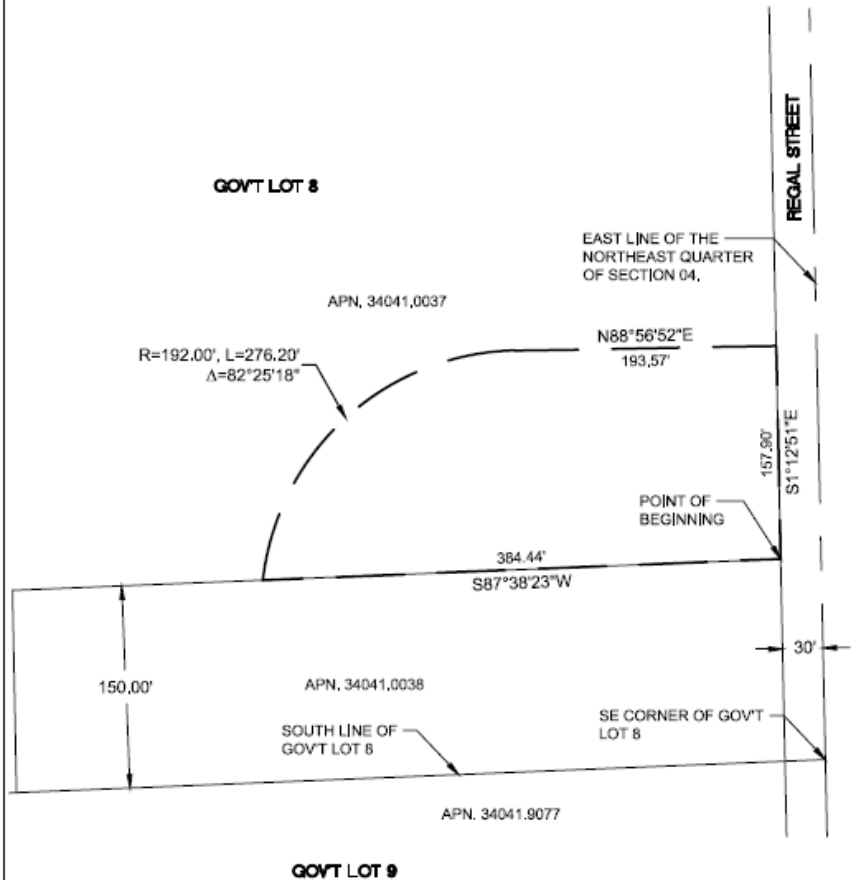
EXHIBIT D  
Easement Area

*[exhibit on next page]*

**EXHIBIT FOR DESCRIPTION 'A'**  
**S.4, T.24N., R.43E., W.M., CITY OF SPOKANE,**  
**SPOKANE COUNTY, WA**



**SCALE: 1" = 100'**



**COFFMAN**  
**ENGINEERS**  
 10 N. Post Street Suite 500  
 Spokane, Washington 99201  
 509 328 2994 Fax 509 328 2999

project	Southgate - KXLY	by	DJA	sheet no.
location	City of Spokane, WA	date	11/4/16	1 of 1
drawn		checked	JEA	job no.
		date	11/4/16	161129

Easement Description "A"

A parcel of land in Government Lot 8 in the Northeast Quarter of Section 04, Township 24 North, Range 43 East, Willamette Meridian, City of Spokane, Spokane County, Washington, being more particularly described as follows:

**COMMENCING** at the Southeast Corner of said Government Lot 8, thence along the East line of said Government Lot 8 North 01°12'51" West a distance of 150.03 feet to a point on a line being 150.00 feet North of the South line of said Government Lot 8; thence along said line South 87°38'23" West a distance of 30.01 feet to the West right of way line of Regal Street and being the **POINT OF BEGINNING**;

Thence continuing **South 87°38'23" West** a distance of 384.44 feet;

Thence leaving said line in a Northeasterly direction with a non-tangent curve turning to the right with a radius of 192.00 feet, having a chord bearing of **North 47°44'13" East** a chord distance of **252.99 feet**, a central angle of 82°25'18" and an arc length of 276.20 feet;

Thence **North 88°56'52" East** a distance of **193.57** feet to said West right of way of Regal Street;

Thence along said West right of way **South 01°12'51" East** a distance of **157.90** feet to the **POINT OF BEGINNING** for this description.

Containing **54721.56** S.F. (**1.256** Acres) of land more or less.

**BASIS OF BEARING** is North 01°12'51" West a distance of 2662.89 feet between the East Quarter Corner of Section 32 and the Southeast corner of said Government Lot 8.

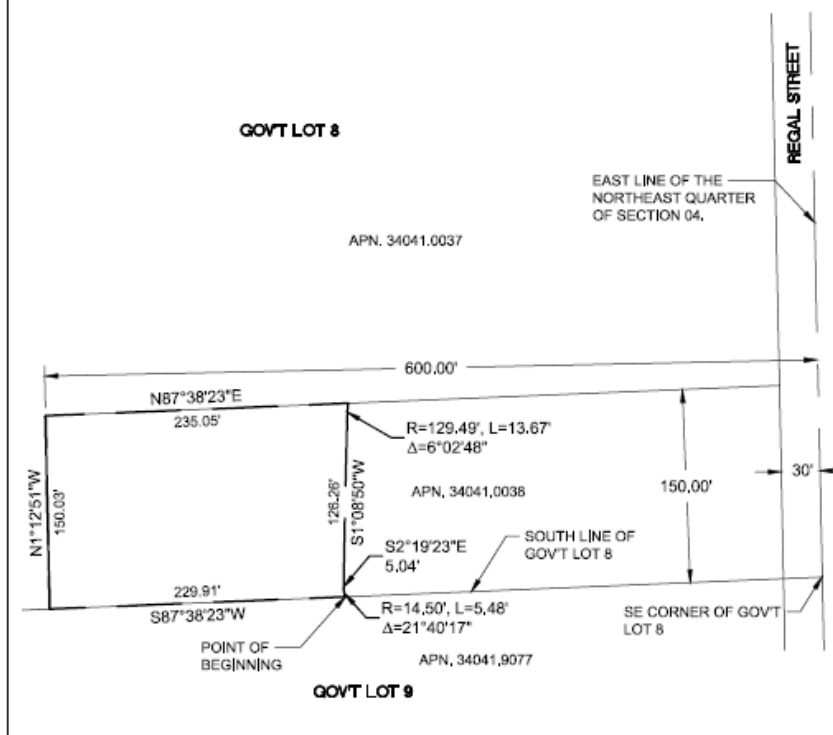
EXHIBIT E  
Reciprocal Easement

*[exhibit on next page]*

**EXHIBIT FOR DESCRIPTION "B"**  
**S.4, T.24N., R.43E., W.M., CITY OF SPOKANE,**  
**SPOKANE COUNTY, WA**



**SCALE: 1" = 100'**



**COFFMAN**  
**ENGINEERS**  
 10 N. Post Street Suite 500  
 Spokane, Washington 99201  
 509 328 2994 Fax 509 328 2999

project	Southgate - KLY	by	DJA	sheet no.
location	City of Spokane, WA	date	11/4/16	1 of 1
client		checked	JEA	job no.
		date	11/4/16	161129



Easement Description "B"

A parcel of land in Government Lot 8 in the Northeast Quarter of Section 04, Township 24 North, Range 43 East, Willamette Meridian, City of Spokane, Spokane County, Washington, being more particularly described as follows:

**COMMENCING** at the Southeast Corner of said Government Lot 8, thence along the South line of said Government Lot 8, South 87°38'23" West a distance of 370.21 feet to the **POINT OF BEGINNING**;

Thence continuing **South 87°38'23" West** a distance of **229.91** feet to a point on a line being 600.00 feet West of the East Line of said Government Lot 8;

Thence along said line **North 01°12'51" West** a distance of **150.03** feet to a point on a line being 150.00 feet North of the South line of said Government Lot 8;

Thence along said line **North 87°38'23" East** a distance of **235.05** feet;

Thence leaving said line in a Southerly direction with a non-tangent curve turning to the left with a radius of 129.49 feet, having a chord bearing of **South 03°38'41" West** and a chord distance of **13.66 feet**, having a central angle of 06°02'48" and an arc length of 13.67 feet;

Thence **South 01°08'50" West** a distance of **126.26** feet;

Thence **South 02°19'23" East** a distance of **5.04** feet;

Thence in a Southerly direction with a tangent curve turning to the left with a radius of 14.50 feet, having a chord bearing of **South 13°09'32" East** and a chord distance of **5.45 feet**, having a central angle of 21°40'17" and an arc length of 5.48 to the **POINT OF BEGINNING** for this description.

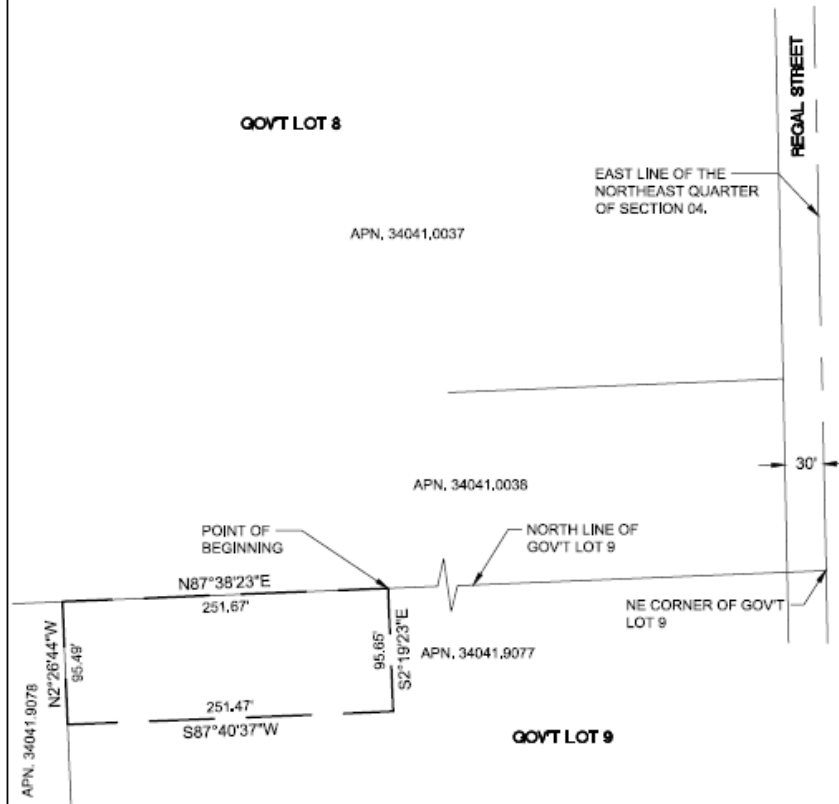
Containing **34710.42 S.F. (0.797 Acres)** of land more or less.

**BASIS OF BEARING** is North 01°12'51" West a distance of 2662.89 feet between the East Quarter Corner of Section 32 and the Southeast corner of said Government Lot 8.

EXHIBIT FOR DESCRIPTION "C"  
S.4, T.24N., R.43E., W.M., CITY OF SPOKANE,  
SPOKANE COUNTY, WA



SCALE: 1" = 100'



**COFFMAN**  
ENGINEERS  
10 N. Post Street Suite 500  
Spokane, Washington 99201  
509 328 2994 Fax 509 328 2999

project	Southgate - K/LY	by	DJA	sheet no.	1 of 1
location	City of Spokane, WA	date	11/4/16	job no.	161129
client		checked	JEA		
		date	11/4/16		

Easement Description "C"

A parcel of land in Government Lot 9 in the Northeast Quarter of Section 04, Township 24 North, Range 43 East, Willamette Meridian, City of Spokane, Spokane County, Washington, being more particularly described as follows:

**COMMENCING** at the Northeast Corner of said Government Lot 9, thence along the North line of said Government Lot 9, South 87°38'23" West a distance of 701.23 feet to the **POINT OF BEGINNING**;

Thence leaving said line **South 02°19'23" East** a distance of **95.65** feet;

Thence **South 87°40'37" West** a distance of **251.47** feet;

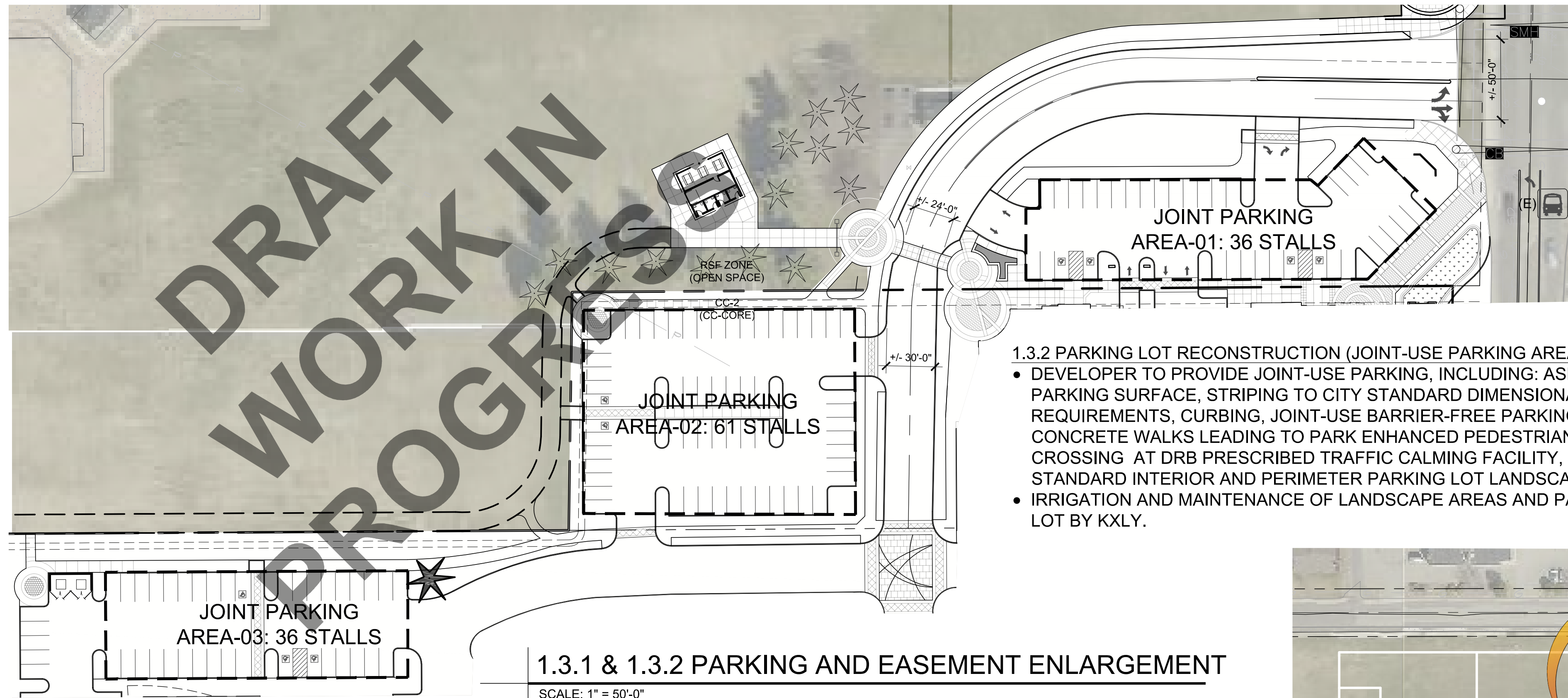
Thence **North 02°26'44" West** a distance of **95.49** feet to said North line of Government Lot 9;

Thence along said North Line North 87°38'23" East a distance of 251.67 feet to the **POINT OF BEGINNING** for this description.

Containing 24042.55 S.F. (0.552 Acres) of land more or less.

**BASIS OF BEARING** is North 01°12'51" West a distance of 2662.89 feet between the East Quarter Corner of Section 32 and the Northeast corner of said Government Lot 9.



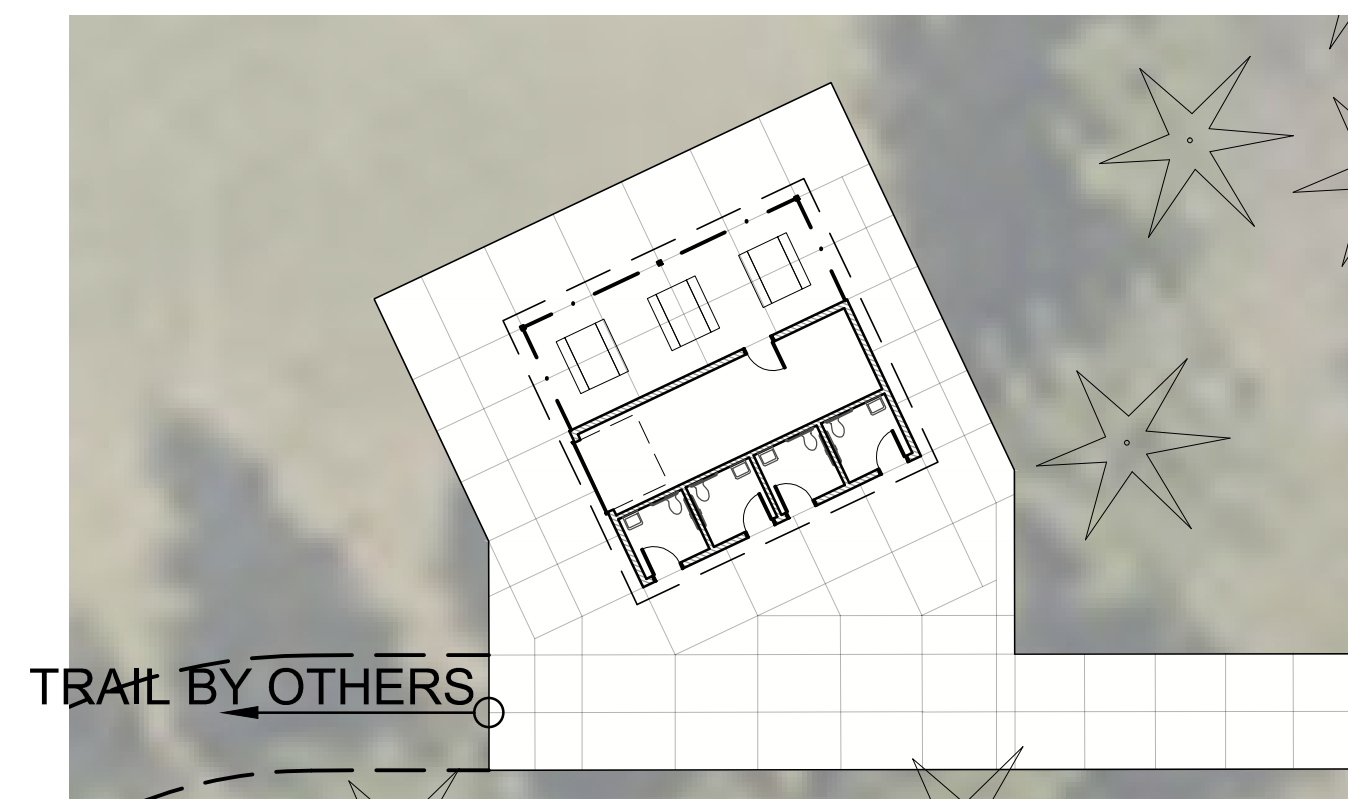


1.3.1 & 1.3.2 PARKING AND EASEMENT ENLARGEMENT

SCALE: 1" = 50'-0"

#### 1.3.3 REPLACEMENT RESTROOMS.

- DEVELOPER TO REPLACE RESTROOM FACILITIES DISPLACED BY THE JOINT-ACCESS DRIVE.
- CITY PARKS DEPARTMENT PREFERS FOUR SINGLE OCCUPANCY BARRIER-FREE RESTROOMS IN LIEU OF THE EXISTING GENDER-SEGREGATED FACILITIES IN ACCORDANCE WITH WAC 162-32-060 'GENDER-SEGREGATED FACILITIES.'
- CITY PARKS DEPARTMENT DESIRES ONE LARGE STORAGE AREA ACCESSIBLE BY ONE VANDAL-RESISTANT ROLL-UP DOOR AND ONE STEEL PERSONNEL DOOR.
- RESTROOM TO BE CONSTRUCTED WITH SIMILAR MATERIALS AND GENERALLY CORRESPONDING TO THE DEVELOPMENT COLOR SCHEME AND DESIGN EXPRESSION. THIS LIKELY INCLUDES EXPOSED CMU, OR SIMILAR MATERIALS, WOOD-TRUSS ROOF FRAMING WITH METAL AND/OR SINGLE-PLY ROOFING, PAINTED STEEL DOORS, GWB OR SIMILAR CEILING ATTACHED TO ROOF FRAMING. OTHER FIXTURES AND MATERIALS PER CITY OF SPOKANE 'PARK-WIDE STANDARD.'

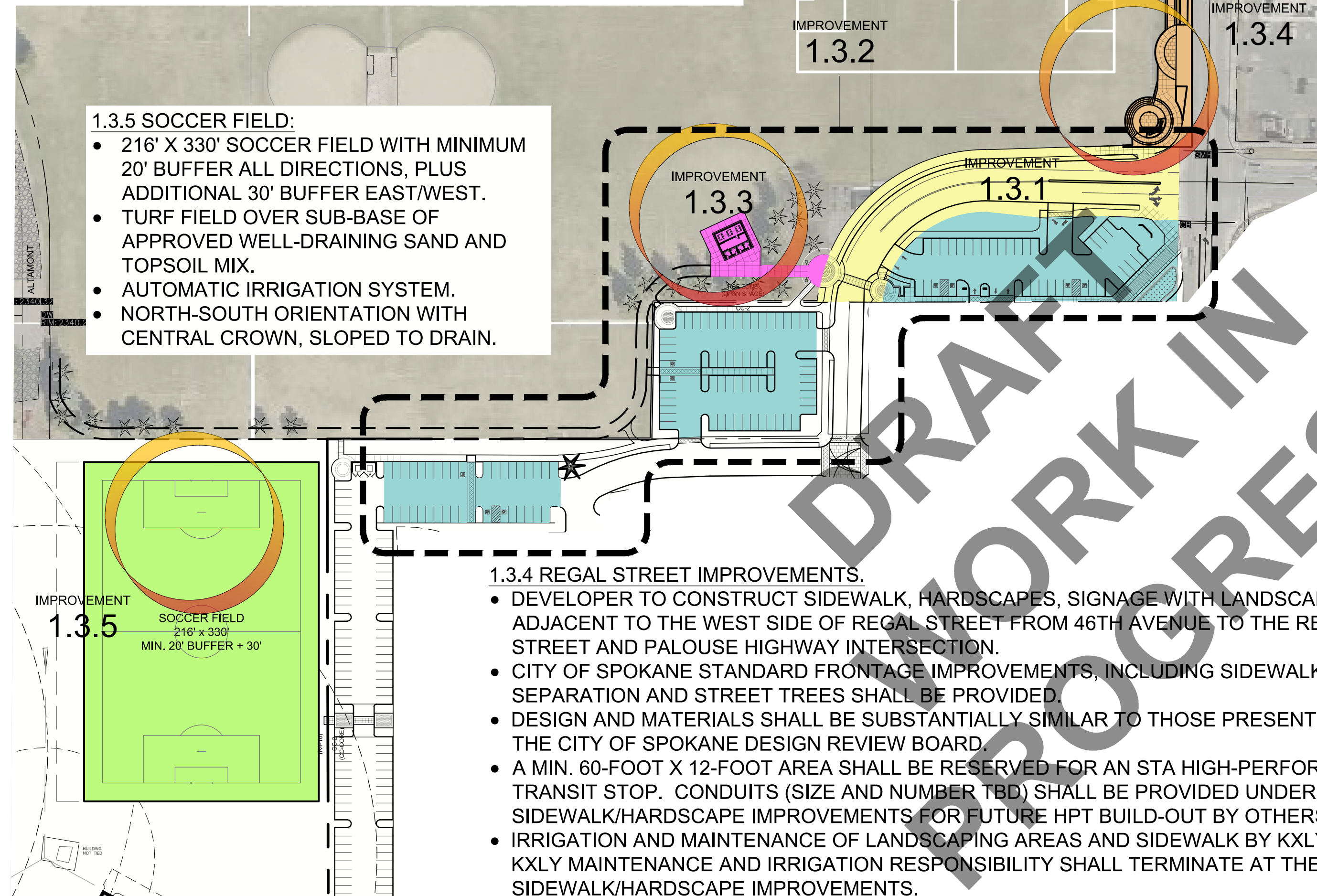


1.3.3 RESTROOM ENLARGEMENT

SCALE: 1" = 20'-0"

#### 1.3.2 PARKING LOT RECONSTRUCTION (JOINT-USE PARKING AREA-01):

- DEVELOPER TO PROVIDE JOINT-USE PARKING, INCLUDING: ASPHALT PARKING SURFACE, STRIPING TO CITY STANDARD DIMENSIONAL REQUIREMENTS, CURBING, JOINT-USE BARRIER-FREE PARKING, CONCRETE WALKS LEADING TO PARK ENHANCED PEDESTRIAN CROSSING AT DRB PRESCRIBED TRAFFIC CALMING FACILITY, CITY STANDARD INTERIOR AND PERIMETER PARKING LOT LANDSCAPING.
- IRRIGATION AND MAINTENANCE OF LANDSCAPE AREAS AND PARKING LOT BY KXLY.

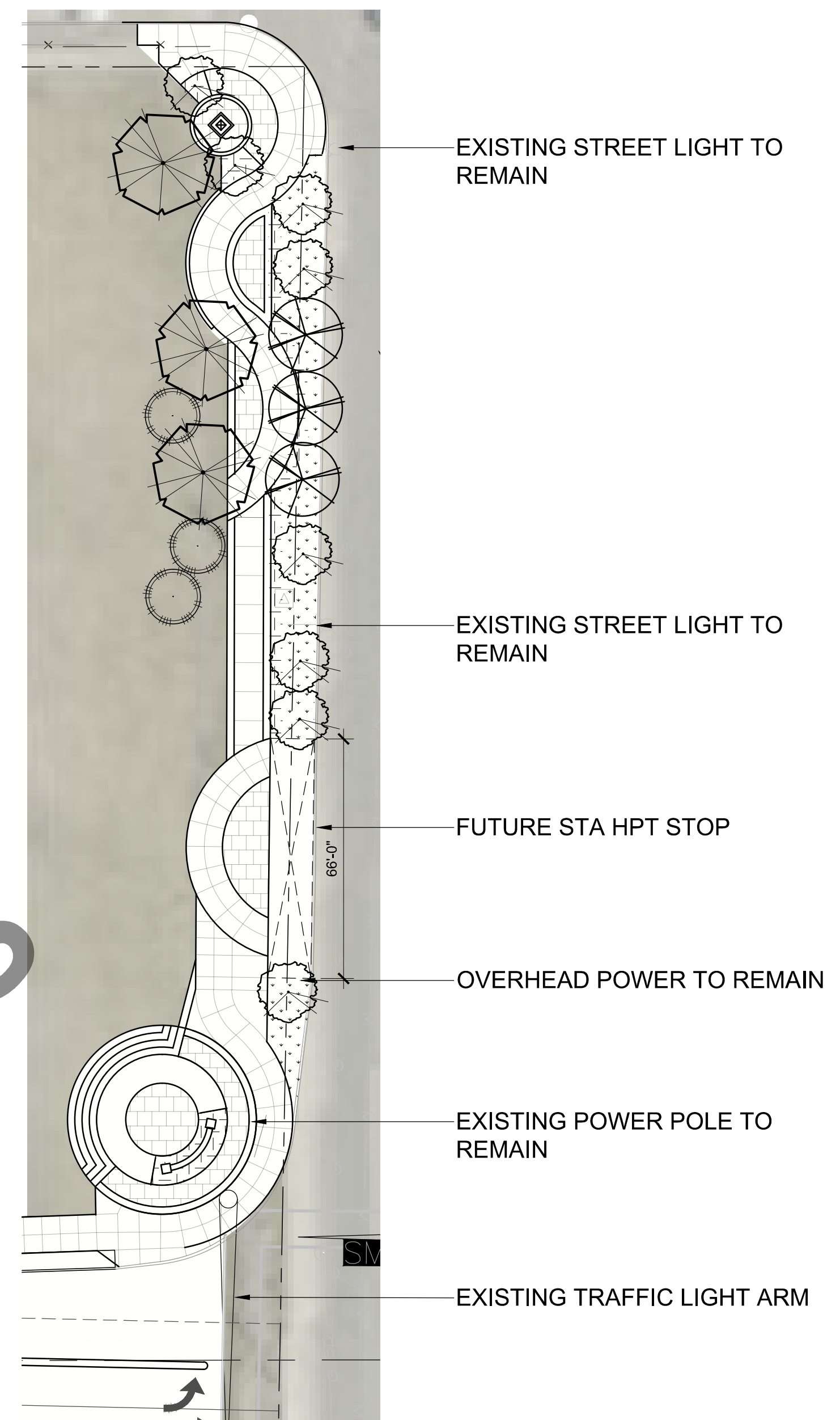


#### 1.3.5 SOCCER FIELD:

- 216' X 330' SOCCER FIELD WITH MINIMUM 20' BUFFER ALL DIRECTIONS, PLUS ADDITIONAL 30' BUFFER EAST/WEST.
- TURF FIELD OVER SUB-BASE OF APPROVED WELL-DRAINING SAND AND TOPSOIL MIX.
- AUTOMATIC IRRIGATION SYSTEM.
- NORTH-SOUTH ORIENTATION WITH CENTRAL CROWN, SLOPED TO DRAIN.

#### 1.3.4 REGAL STREET IMPROVEMENTS.

- DEVELOPER TO CONSTRUCT SIDEWALK, HARDSCAPES, SIGNAGE WITH LANDSCAPING ADJACENT TO THE WEST SIDE OF REGAL STREET FROM 46TH AVENUE TO THE REGAL STREET AND PALOUSE HIGHWAY INTERSECTION.
- CITY OF SPOKANE STANDARD FRONTAGE IMPROVEMENTS, INCLUDING SIDEWALK SEPARATION AND STREET TREES SHALL BE PROVIDED.
- DESIGN AND MATERIALS SHALL BE SUBSTANTIALLY SIMILAR TO THOSE PRESENTED TO THE CITY OF SPOKANE DESIGN REVIEW BOARD.
- A MIN. 60-FOOT X 12-FOOT AREA SHALL BE RESERVED FOR AN STA HIGH-PERFORMANCE TRANSIT STOP. CONDUITS (SIZE AND NUMBER TBD) SHALL BE PROVIDED UNDER THE SIDEWALK/HARDSCAPE IMPROVEMENTS FOR FUTURE HPT BUILD-OUT BY OTHERS.
- IRRIGATION AND MAINTENANCE OF LANDSCAPING AREAS AND SIDEWALK BY KXLY. THE KXLY MAINTENANCE AND IRRIGATION RESPONSIBILITY SHALL TERMINATE AT THE BACK SIDEWALK/HARDSCAPE IMPROVEMENTS.



1.3.4 ENLARGED REGAL ST. IMPROVMENTS

SCALE: 1" = 30'-0"



## GROUND LEASE AGREEMENT

This Ground Lease Agreement (the "Lease") is made as of the \_\_\_\_ day of June, 2017, by and between RANDALL BRACHER and BRACHER PROPERTIES, LLC, an Idaho Limited Liability Company ("Lessor" or "Bracher") and the CITY OF SPOKANE ~~PARK BOARD, a municipal corporation~~ ("Lessee" or "City"), collectively referred to herein as the "Parties."

### RECITALS

- A. Bracher is the owner of approximately 50 acres of property described on "Exhibit A" attached hereto (the "Land") located in the City of Spokane, Spokane County, Washington.
- B. Lessor desires to lease the Land to the Lessee, and Lessee desires to lease the Land from Lessor, pursuant to the terms and conditions of this Lease.
- C. ~~On or about April 11, 2017, Swedberg Contracting Corporation bulldozed an access road through the Land as well as through adjacent land owned by Lessee. Lessor has filed a lawsuit against Swedberg in Spokane County Superior Court (Cause No. 17201501-1) seeking to recover damages from Swedberg. An illegal road was constructed on the Land and adjacent property owned by Lessee on or about April 11 and 12, 2017 and r~~Restoration of the Land ~~as well as Lessee's adjacent property to remediate the damage~~ is underway and will continue during the term of this Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

### **SECTION 1: THE DEMISE**

- 1.1 Demise. In consideration of the rents, covenants and agreements contained in this Lease, Lessor hereby leases the Land to Lessee, and Lessee hereby leases the Land from Lessor upon and subject to the conditions set forth in this Lease, and subject to all encumbrances and matters of record as of the date of this Lease.
- 1.2 Use of Land. The Land shall be used only for recreational and park use. Lessee shall prevent any waste of the Land and, ~~except as otherwise provided in this Lease~~, shall not use, alter or improve the Land without the prior written approval of the Lessor, which approval may be withheld.

### **SECTION 2: TERM**

- 2.1 Commencement. The term of this Lease shall commence on June 1, 2017. ("Effective Date").

2.2 Duration. The term of this Lease shall continue from the Effective Date for three (3) years, to May 31, 2020 ("Term.")

2.3 Surrender of Lease. Lessee shall surrender possession of the Land and all Lessee's improvements, additions and alterations, other than those that Lessor has demanded Lessee to remove, to Lessor upon expiration of this Lease, or upon its earlier termination, in good condition and repair. Lessee's surrender of the Land and improvements upon expiration of the Term shall be without the necessity of any Notice from Lessor, and Lessee hereby waives Notice to vacate the Land and improvements. If Lessee fails to surrender the Land and improvements as requested, Lessee will be liable to Lessor for any and all damages incurred by Lessor as a result. In addition, Lessee shall pay to Lessor, during any period that it shall refuse to surrender possession of the Premises to Lessor Rent at the rate specified in Section 2.4.

Any personal property left in, on or about the Land or improvements after the expiration of this Lease will be deemed conclusively to have been abandoned and may be removed, stored, sold, destroyed, or otherwise disposed of by Lessor without Notice to Lessee or any other person and without obligation to account for them; and Lessee will pay Lessor for all expenses incurred in connection with such property, including, but not limited to, the cost of repairing any damage to the Land and premises caused by the removal of such property.

2.4 Holding Over. If Lessee does not vacate the Land and improvements upon the expiration or earlier termination of this Lease and Lessor thereafter accepts rent from Lessee, such possession by Lessee shall be deemed to be a one (1) year tenancy. This Section shall survive expiration or early termination of the Lease.

All provisions of this Lease except those pertaining to Term shall apply to the extension, except that Rent shall be immediately increased to an amount equal to ~~300~~110% of the Rent on the date of the expiration or earlier termination of the Lease and payment shall be due immediately.

### SECTION 3: RENT

3.1 Rental Amounts. Lessee shall pay to Lessor the following sums as rent and other consideration, which shall be payable in US Dollars as follows:

3.1.1 Amount Due at Execution of Lease. Lessee shall pay Lessor the amount owed for the first one-year term of the Lease.

3.1.2 Rent Due During Term. Annual rental shall be as follows:

- a. Twenty-Five Thousand Dollars (\$25,000) for the period commencing on June 1, 2017 and ending May 31, 2018.

**Comment [RJ1]:** WE CAN PROPOSE THAT, IF PARKS PURCHASES THE PROPERTY, RENT PAYMENTS, OR A PORTION OF RENT PAYMENTS, SHALL BE APPLIED TO PURCHASE PRICE



- b. On or before May 31, 2018, Lessee shall pay Lessor Twenty Seven Thousand Five Hundred Dollars (\$27,500) for the period commencing on June 1, 2018 and ending May 31, 2019.
- c. On or before May 31, 2019 Lessee shall pay Lessor Thirty Thousand Dollars (\$30,000) for the period commencing on June 1, 2019 and ending on May 31, 2020.

#### SECTION 4: PURCHASE RIGHTS

4.1 Right of First Refusal: During the term of this Lease, Lessor grants to the Lessee a Right of First Refusal. This Right of First Refusal is granted on the following terms and conditions:

- a. Bracher shall not sell all or any part of the Land without first allowing the City an opportunity to exercise this Right of First Refusal.
- b. If at any time during the Lease, Bracher receives a bonafide written offer ("Offer") from any person to purchase the Land which Bracher intends to accept, Bracher shall send the City a true and correct copy of the Offer, ~~deleting the buyers name,~~ and notifying all parties of Bracher's intention to accept the same.
- c. The City shall have the right, within fifteen (15) days after receipt of the Offer in which to accept the terms of the Offer in the City's own name or in the name of a nominee, for the purchase price and on the terms specified in the Offer. Within said fifteen (15) days, the City shall give Bracher written notice of whether it elects to purchase the Land. In the event no such written notice is received within said fifteen (15) day period, the City shall be deemed to have rejected its right of first refusal.
- d. If the City elects not to purchase the property within said fifteen(15) day period, Bracher may then sell the property to the buyer, provided that the sale is on materially the same terms and conditions and for the same price as set forth in the Offer. In the event that sale does not occur, the Right of First Refusal continues in full force and effect until subsequent exercise or termination of this Lease.
- e. If the City elects to purchase the property, the sale shall close in accordance with the terms of the Offer.
- f. Any party hereto may waive in writing compliance by any other party hereto with any of the covenants and conditions regarding this Right of First Refusal.
- g. This Right of First Refusal and the rights and obligations of the parties thereunder shall not be assignable.

Formatted: Indent: Left: 0", First line: 0"

4.2 Option to Purchase: The City shall have the right and option to purchase the Land from Lessor during the Term of this Lease, including without limitation any holdover term during which Lessor has accepted Rent. The option may be exercised with 90 days written notice by the City at any time during the Term of this Lease, including without limitation any holdover term during which Lessor has accepted Rent. Unless otherwise specified by the written agreement of the City and Lessor, the sale and purchase of the Premises to the City shall occur in accordance with the following terms and conditions:

a. Purchase price. If the City exercises its purchase option, the purchase price shall be determined pursuant to Section 4.3 below.

b. Closing. Closing of the purchase and sale shall occur no later than sixty (60) days following proper notice from the City of its intent to purchase the Premises or no later than thirty (30) days following the parties' determination of the Purchase Price. The place of closing shall be at First American Title, E. 40 Trent Ave. Spokane Washington, or at such other location as the parties may agree in writing.

c. Closing documents. At the closing, Lessor shall produce or execute a real estate excise tax affidavit and statutory warranty deed transferring marketable title to the Premises to the City, free and clear of all liens, assessments, deeds of trust, mortgages, or encumbrances except for those expressly agreed to by the City.

d. Closing expenses. Lessor shall pay title insurance premiums, real estate tax prorated to the date of closing, real estate excise tax, if any, its attorneys' fees, one half of the closing agent's fees and all other expenses incurred by Lessor which relate to the Premises. The City shall pay all recording fees, its attorneys' fees, and real estate taxes due after the closing date, and one half of the closing agent's fees.

4.23 Direct Purchase by City: If the Lessor and Lessee desire to negotiate a sale of the Land during the term of this Lease or within a twenty (20) year period following the termination of this Lease, the fair market value shall be determined by an MAI appraiser mutually selected by the parties. If the parties are unable to agree, each shall select an MAI appraiser and the two appraisers shall appoint an MAI appraiser to prepare the appraisal. The appraisal shall assume full legal access to the Land for ingress, egress and utilities; provided, the City believes the Property is landlocked and, by agreeing to the foregoing assumption, the City does not concede that the Property is entitled to access across adjacent property owned by the City. If the parties elect to proceed with a sale based upon the value determined by appraisal, a formal purchase and sale agreement shall be executed and will include the provisions customarily included for a sale of vacant land. The assumption of full legal access for appraisal purposes shall apply if the City purchases the Land in its own right or through the ~~exercise of condemnation or the~~ Conservation Futures Program, or where the City is one buyer or a party in a transaction involving multiple buyers.

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Left, Indent: Left: 0", Hanging: 0.5", Line spacing: single

Formatted: Font: +Headings (Cambria), Underline

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

## SECTION 5: POSSESSION & IMPROVEMENTS

- 5.1 Possession. Lessee shall have possession of the Land on June 1, 2017, unless another date is otherwise mutually agreed to by the Parties in writing. Taking possession of the Land by Lessee shall be conclusive evidence that Lessee accepts the Land and that the Land is ~~in good conditions~~ suitable for Lessee's intended purposes at the time possession is taken.
- 5.2 Improvements. Lessee shall obtain prior written approval by Lessor for any structural or permanent improvements to be undertaken on the Land. Any expansion of the public trails network on the Land shall be in consultation with Lessor.
- 5.3 Signage. In consultation with Lessor, Lessee shall install and maintain signage in appropriate locations to mark designated public trails and any Park Rules of Use.
- 5.4 Ownership of Improvements. Any improvements made on the Land by Lessee shall become the property of Lessor at the termination of the Lease.

## SECTION 6: MAINTENANCE OF LAND

- 6.1 Restoration Monitoring. The Land has been partially restored in accordance with a Restoration Plan prepared by Land Expressions for Avista Utilities ("Plan"), a copy of which is attached hereto as Exhibit "B." Lessee shall monitor the restoration work according to the schedule in the Plan. Lessor reserves the right to also monitor the restoration individually or through qualified consultants.
- 6.2 Weed Control. Lessee shall monitor the Land for weeds and apply treatments as needed to prevent new weed growth or eradicate existing weeds.
- 6.3 Restoration and Improvements. During the term of this Lease, Lessor shall have a limited right of access to the Land through the adjoining City property to perform restoration work, monitoring, ~~or irrigation or improvements~~ to the Land, provided such work does not unreasonably disrupt the leasehold rights, and further provided that the access does not damage City property. Motorized A ~~access to the Land that is needed by~~ shall be limited four wheel drive or ATV type vehicles (similar to vehicles currently used by the Parks Department to access the City property,) and will be permitted through areas designed by the City at the Qualchan Golf Course with at least ~~seventy-two (72)~~ two (2) days advance notice to the Parks Director.
- 6.4 Fuel Management. At least annually, Lessee shall inspect the Land and perform fuel management, if needed, according to best practices.
- 6.5 Debris Removal. Lessee will periodically monitor the Land for trash or other debris and remove and properly dispose.

Formatted: Strikethrough

Formatted: Strikethrough

- 6.6 **Incident Notification and Management.** If either party becomes aware of harmful activities occurring on the Land (e.g. squatters, illegal roads, fire), they shall immediately notify any necessary authorities and then the other party by email and telephone. Lessor and Lessee will also immediately confer to determine if remedial action is needed and set a timeline for Lessee to complete the agreed work.

~~6.7 **Reimbursement.** If Lessor is required to perform maintenance, monitoring or land management that is unanticipated at the time of execution of this Lease and necessary to properly maintain the Land, Lessee will reimburse Lessor for such expenses up to Two Thousand Five Hundred Dollars (\$2,500) annually.~~

## **SECTION 7: TAXES**

Lessor shall be responsible for the payment of and shall pay and discharge all real estate taxes, applicable personal property taxes, assessments and utility charges which are otherwise related to the Land during the term of this Lease.

## **SECTION 8: CONDITION OF THE LAND; INDEMNITY; MAINTENANCE**

- 8.1 **Condition of Land.** Lessee hereby accepts the Land "as is" in its existing condition, and further understands that all representations and information regarding the Land, including any information regarding sizes and boundaries of the Land are approximations to be independently verified by the Lessee.
- 8.2 **Indemnity.** From and after the Effective Date of this Lease, and to the extent permitted by law, Lessee shall absolutely and unconditionally indemnify, defend and hold Lessor harmless from and against any and all debts, demands, obligations, liens, judgments, claims, liabilities, losses, damages, cleanup costs and expenses (including reasonable attorneys' fees) now or hereafter arising in connection with Lessee's exercise of its rights and privileges under this Lease. This indemnification shall survive the Expiration Date of this Lease.
- 8.3 **Lessor's Right to Inspect.** Lessor shall have the right to inspect the Land at any time.

## **SECTION 9: LIENS; SECURITY INTEREST**

- 9.1 **Lessee's Duty.** Lessee will not directly or indirectly create or permit to be created or to remain, and will discharge any other mortgage, lien, security interest, encumbrance or charge on, pledge of or conditional sale or other title retention agreement with respect to the Land.
- 9.2 **Lessor's Right to Lien the Land.** Lessor shall have the right to lien, encumber or borrow against the Land.

## **SECTION 10: INDEMNITY AND INSURANCE**

10.1 Indemnity. Lessee agrees to hold harmless, indemnify and defend Lessor, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of Lessee or the general public, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of Lessee, its officers, agents, contractors, subcontractors or employees, in connection with Lessee's use of the Land during the Term of this Lease and any improvements provided, however, that:

- (a) Lessee's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of Lessor, its officers, agents, contractors, subcontractors or employees; and
- (b) Lessee's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of Lessee and Lessor, or of Lessee and a third party other than an officer, agent, contractor, subcontractor or employee of Lessee, shall apply only to the extent of the negligence or willful misconduct of Lessee.

Pursuant to RCW 4.24.115, Lessee agrees that to the extent necessary to hold harmless, indemnify, and defend Lessor and its officers, agents, and employees from any claims, losses, or liability for injuries, sickness, or death of Lessee's employees, but only to such extent, Lessee waives Lessee's immunity under industrial insurance, Title 51 RCW, for any such injury, sickness, or death. By signing this Lease, Lessee and Lessor acknowledge that this waiver has been mutually negotiated.

10.2 Lessee's Insurance. Lessee shall, at all times during the Term of this Lease, maintain the following insurance coverage, and shall name Lessor as a named insured under each of the policies required below:

~~(a) Property Insurance. Property insurance fully insuring any improvements constructed on the Land, including but not limited to loss by windstorm, hail, explosion, riot, vehicles, smoke damage, vandalism and malicious mischief in amounts sufficient to prevent Lessor or Lessee from becoming a co-insurer of any loss under the applicable policies, but in any event in amounts not less than the full replacement cost of all buildings, equipment, and other improvements to the Land, including the cost of debris removal. The property insurance policy shall meet the requirements set forth in this section and in the Ground Lease.~~

(ba) General Liability. Commercial liability insurance, covering the legal liability of Lessor and Lessee against claims for bodily injury, death or property damage, occurring on, in or about the Land.

**Comment [RJ2]:** I don't believe there are any improvements on the property.

- 10.3 Waiver of Subrogation. Every insurance policy maintained pursuant to Section 10.2 shall provide that the insurer waives all rights of subrogation against a named insured, and any successor to a named insured's interest in the Land. Lessor shall hold Lessee harmless from all damages arising out of the damage to any person or property occurring in, on, or about the Land other than damages arising out of the intentional misconduct or breach of this Lease by Lessee, its employees or agents; provided, however, that Lessor's obligation under this subparagraph shall be limited to the sum that exceeds the amount of insurance proceeds, if any, received by Lessor.
- 10.4 Evidence of Insurance. City shall deliver to Bracher prior to the commencement of the Term of this Lease certificates of insurance evidencing all the insurance which is then required to be maintained by Lessee, and Lessee shall, within forty-five (45) days prior to the expiration of any such insurance, deliver other certificates of insurance evidencing the renewal of such insurance.

#### **SECTION 11: EMINENT DOMAIN**

Formatted: No underline

- 11.1 Entire or Substantial Taking. If the entire Land, or so much thereof as to make the balance not reasonably adequate for the conduct of Lessee's purpose shall be taken under the power of eminent domain, this Lease shall automatically terminate on the date condemning authority takes possession.
- 11.2 Partial Taking. In the event of any taking under the power of eminent domain which does not so result in a termination of this Lease, the Annual Rent payable hereunder shall be reduced, effective on the date the condemning authority takes possession, in the same proportion which the acreage of the portion of the Land taken bears to the total acreage of the Land prior to the taking, and this Lease shall continue in full force and effect.
- 11.3 Awards. Any award for taking of all or any part of the Land under the power of eminent domain shall be the property of the Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for taking of the fee. Nothing herein, however shall be deemed to preclude Lessee from obtaining, or to give Lessor any interest in, any award to Lessee for loss of or damage to or cost of removal of Lessee's removable personal property, or for damages for cessation or interruption of Lessee's use of the Land. Both Lessor and Lessee agree to cooperate with one another in respect of any taking under power of eminent domain so that each may receive a maximum award in the case of any taking under the power of eminent domain to which they are respectively entitled in the law or under this Lease.
- 11.4 Sale Under Threat of Condemnation. A sale by Lessor to any authority with power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed a taking under the power of eminent domain under this Section.

#### **SECTION 12: DEFAULT BY LESSEE AND LESSOR'S REMEDIES**

Formatted: No underline



- 12.1 Event of Default. The following occurrences or acts shall constitute an event of default under this Lease:
- (a) Failure to Perform. If Lessee shall (1) default in making payment when due of any rent or any other amount payable by Lessee hereunder; or (2) default in the observance or performance of any other substantial provision of this Lease to be observed or performed by Lessee hereunder; and, in either case, if such default shall continue for thirty (30) days, in each case after Lessor shall have given to Lessee notice specifying such default and demanding that the same be cured, or, with respect to a default under subsection (2), if by reason of the nature thereof such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period of thirty (30) days, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default and with all due diligence, it being intended in connection with a default not susceptible of being wholly cured with due diligence within such period that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence.
- 12.2 Remedies Upon Lessee's Default. In the event of any default by Lessee as defined hereinabove which default remains uncured after the expiration of the respective period set forth above, Lessor may exercise any remedy which may be available to Lessor at law or equity, including but not limited to actions for damages, and/or injunctive relief, and/or as liquidated damages a sum of money equal to the balance of the rent for the remainder of the Term.
- 12.3 Cumulative Rights and Remedies. The rights and remedies reserved to Lessor herein, including those not specifically described, shall be cumulative, and except as provided by Washington statutory law in effect at the time, Lessor may pursue any and all such rights and remedies at the same time or independently.
- 12.4 No Waiver. No delay or omission of Lessor to exercise any right or remedy shall, except as expressly provided herein, be construed as a waiver of any such right or remedy or of any default by Lessee hereunder. The acceptance by Lessor of rent or any additional rent hereunder shall not be a waiver of any preceding breach or default by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent accepted, regardless of Lessor's knowledge of such preceding breach or default at the time of acceptance of such rent, or, except as expressly set forth herein, a waiver of Lessor's right to exercise any remedy available to Lessor by virtue of such breach or default.
- 12.5 Attorneys' Fees. If either party incurs any expenses, including but not limited to reasonable attorneys' fees, consultant and expert witness fees (including, without limitation, those incurred on appeal), in connection with any action or proceeding instituted by any party by reason of any default or alleged default of a party hereunder, the party prevailing in such action or proceeding shall be entitled to

recover its reasonable expenses from the other party hereof. For purposes of this provision, in any action or proceeding instituted pertaining to the Lease, a party shall be deemed the prevailing party if (a) judgment is entered substantially in favor of said party, or (b) before trial or judgment the other party shall pay all or any portion of the charges claimed by said party, or the other party shall eliminate the condition(s), cease the act(s) or otherwise cure the omissions(s) claimed by said party to constitute a default by the other party hereunder.

### **SECTION 13: QUIET ENJOYMENT**

Formatted: No underline

If and so long as City shall pay all rent and all other amounts payable by the City hereunder whenever the same shall become due and shall keep all of the covenants and conditions required by it to be kept during this Lease and shall perform all of its other obligations hereunder, Lessor covenants and agrees that Lessor will not interfere with the peaceful and quiet occupation and enjoyment of the Land by Lessee, which occupation and enjoyment shall be without hindrance, ejection or molestation by Lessor.

Formatted: No underline

### **SECTION 14: LESSEE TO COMPLY WITH APPLICABLE LAWS AND AGREEMENTS**

- 14.1 Compliance with Laws. Lessee shall not use the Land or permit anything to be done in or about the Land which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Lessee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and obtain all permits, licenses or other approvals required by governmental agencies or bodies. Lessee shall further comply with the requirements of any board or fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Land.
- 14.2 Compliance with Agreements. Lessee shall comply with all insurance policies and applicable agreements to which Lessee is a party or by which it is bound, now or hereafter in effect, and all agreements of which Lessee has notice and which are now in effect and applicable to the Land.

### **SECTION 15: NOTICES**

Formatted: No underline

All notices, requests, demands, instructions or other documents to be given hereunder to any party shall be in writing and shall either be personally delivered to the party at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery) or delivered by first class mail, sent by registered or certified mail, return receipt requested, as follows:

If to Lessor:

Randall Bracher  
PO Box 1269  
Ketchum, ID 83340

As to Section 6.6, Notice shall be given to Lessor at:  
Email:  
Phone:

w/copy to:  
Parsons/Burnett/Bjordahl/Hume LLP  
159 S. Lincoln  
Steam Plant Square, Suite 225  
Spokane WA 99201

As to Section 6.6, Notice shall be given to Lessor at:  
Email: [bjordahl@pblaw.biz](mailto:bjordahl@pblaw.biz)  
Phone: 509-252-5066

If to Lessee:

CITY OF SPOKANE PARKS DIRECTOR  
808 W. Spokane Falls Blvd.  
Spokane WA 99201

w/copy to:  
City Attorney's Office  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

Notices so mailed shall be deemed to have been given forty-eight (48) hours after the deposit of the same in any United States Mail post office box in the state to which the notice is addressed or seventy-two (72) hours after deposit in any such post office box other than the state to which the notice is addressed, postage prepaid, addressed as set forth above. For the purpose of this paragraph addresses for notice may be changed by giving written notice of such change in the manner herein provided for giving notice.

#### **SECTION 16: ASSIGNMENT AND SUBLEASING**

Formatted: No underline

- 16.1 Subleasing. Lessee shall not sublease the Land.
- 16.2 Assignment. Lessee shall not assign, mortgage, or encumber this Lease or delegate the duties of the Lessee under this Lease without the prior written consent of Lessor. Lessor reserves the right to deny any request for assignment for any reason whatsoever. Lessor reserves the right to assign this Lease.

#### **SECTION 17: MISCELLANEOUS**

Formatted: No underline

- 17.1 Time of Essence. Time is of the essence in regard to performance of the covenants and agreements stated herein.
- 17.2 No Joint Venture or Agency. Nothing contained in this Lease nor any of the acts of the parties hereto shall be construed nor is it the intent of the parties, to create a joint venture or partnership between Lessor and Lessee, nor is either party the agent or representative of the other, and nothing in this Lease shall be construed to create any such agency relationship or to hold either party liable to anyone for goods delivered or services performed at the request of the other party.
- 17.3 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the matters set forth herein. Any amendments, modifications, or changes to this Agreement shall be in writing and signed by both Parties.
- 17.4 Force Majeure. No Party shall be responsible for delays or failure of performance resulting from acts of God, riots, acts of war, epidemics, power failures, earthquakes or other disasters, providing such delay or failure of performance could not have been prevented by reasonable precautions and cannot reasonably be circumvented by such party through use of alternate sources, workaround plans or other means.
- 17.4 Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Washington.
- 17.5 Headings. The headings herein contained are for the purposes of identification and reference convenience only and shall not be considered in construing this Lease.
- 17.6 Successors and Assigns. Subject to the provisions hereof restricting the sublease or assignment by Lessee, all the terms and provisions of this Lease shall be binding upon and to the benefit of and be enforceable by the parties and the successors and assigns of the parties.
- 17.7 No Merger. In no event shall the leasehold interest of Lessee hereunder merge with any estate of the Lessor in or to the Land.
- 17.8 Counterparts; Recording of Memorandum. This Lease may be executed in several counterparts, each of which shall be deemed an original for all purposes. Either Lessor or Lessee shall have the right to record a memorandum of this Lease and the parties shall cooperate in execution of such memorandum.
- 17.9 Validity/Severability. If any provision of this Lease is held to be invalid, such invalidity shall not affect the validity or enforceability of any other provision of this agreement.
- 17.10 Schedule of Exhibits. This Lease includes the following exhibits attached hereto and incorporated herein by this reference.

## SECTION 18: RELEASE OF CLAIMS

In consideration of the mutual benefits of the Parties under this Lease, and other valuable consideration, the receipt of said consideration which is hereby acknowledged, Lessor does hereby release and forever discharge Lessee, and any officers, agents and employees, successors and assigns of Lessee, and any and all other persons, firms, or corporations, whether herein named or referred to, and their respective heirs, legal representatives, successors and assigns, (having been referred to above as "Releasees"), from any and all claims, demands and causes of actions, damages, costs, expenses, compensation and attorneys' fees, and any other claims or damages of any kind whatsoever arising out of or connected with, directly or indirectly, the allegations made or that could have been made, in the Lawsuit, entitled RANDALL BRACHER, an individual; BRACHER PROPERTIES, LLC, an Idaho Limited Liability Company, plaintiffs, v. SWEDBERG CONTRACTING CORP., a Washington corporation, defendant, referred in Spokane Superior Court No. 17201501-1, and will indemnify and hold the releasees harmless from any attempt to collect the same.

This release includes, but is not limited to, all claims and actions and all such injuries or damages, known to the Lessor, at the time this release is executed and all such claims, damages, or injuries that might develop at any time thereafter of every nature and kind whatsoever, even though unknown to said Lessor, and not contemplated or suspected by said Lessor, at the time of the release.

It is expressly agreed and understood that the Lessee's entering into this Lease is not to be construed as an admission on the part of the releasees of any liability whatsoever in connection with the above-referenced lawsuit, but is in compromise and settlement of any potential claims which will be disputed by them.

EXHIBIT A: Land Legal Description

EXHIBIT B: Land Expressions Restoration Plan

IN WITNESS WHEREOF Lessor and Lessee have executed this Lease as of the date set forth in the first paragraph above to evidence their agreement to the terms contained herein.

**RANDALL BRACHER**

---

Formatted: Font: Bold

Formatted: Centered

Formatted: Font: +Headings (Cambria)

Formatted: Left, Indent: First line: 0", Line spacing: single

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Left, Line spacing: single

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Body Text, Indent: Left: 0", First line: 0"

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

Formatted: Font: +Headings (Cambria)

|

**BRACHER PROPERTIES, LLC**

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

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

STATE OF WASHINGTON )

) ss.

COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

NOTARY PUBLIC in and for the  
State of \_\_\_\_\_, residing  
at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**CITY OF SPOKANE**

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

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

STATE OF \_\_\_\_\_ )

) ss.

|

COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_, an Idaho limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

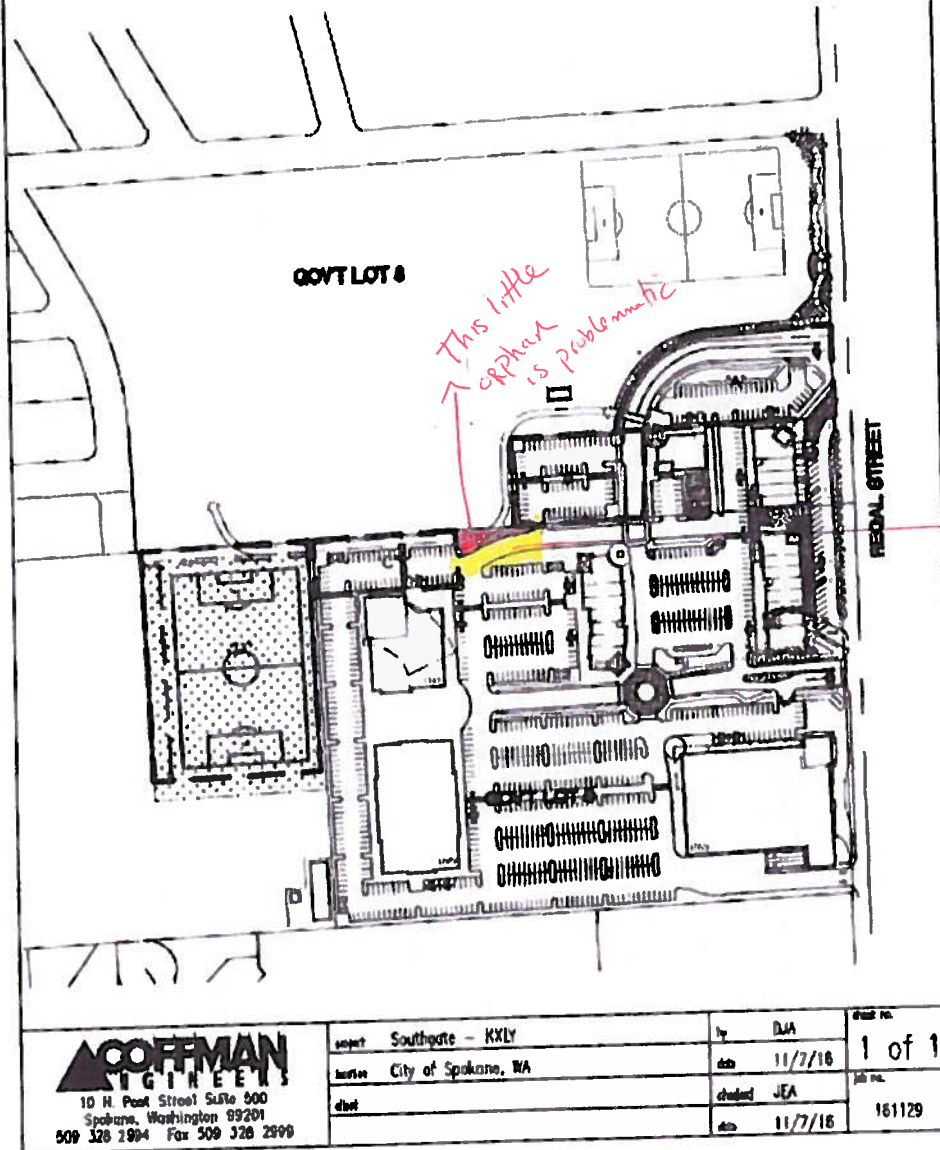
DA TED: \_\_\_\_\_

NOTARY PUBLIC in and for the  
State of \_\_\_\_\_, residing  
at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

EXHIBIT FOR DESCRIPTION 'A, B, C, D'  
S.4, T.24N., R.43E., W.M., CITY OF SPOKANE,  
SPOKANE COUNTY, WA



SCALE: 1" = 250'

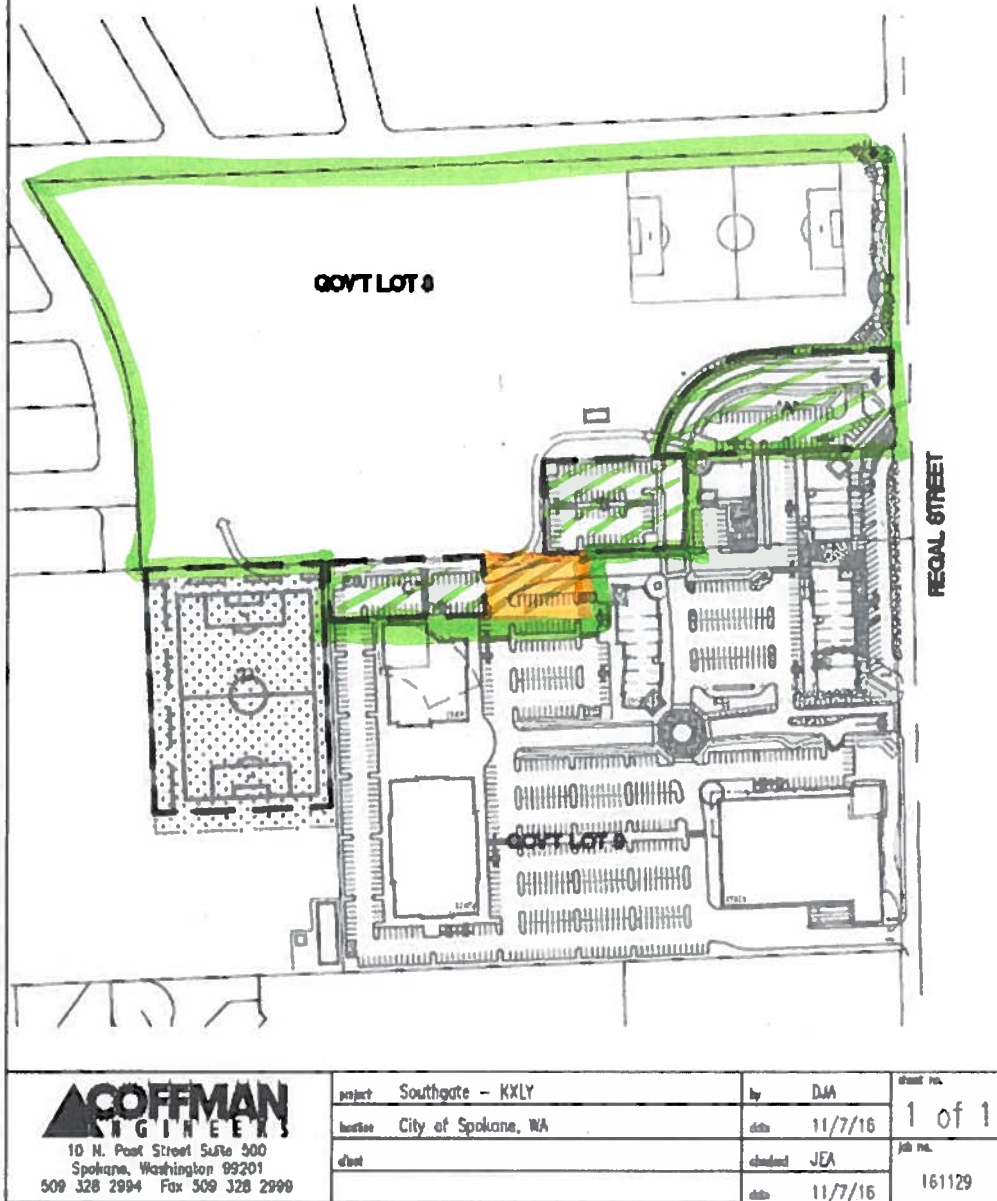




**EXHIBIT FOR DESCRIPTION 'A, B, C, D'**  
**S.4, T.24N., R.43E., W.M., CITY OF SPOKANE,**  
**SPOKANE COUNTY, WA**



**SCALE: 1" = 250'**



**COFFMAN**  
**ENGINEERS**  
 10 N. Post Street Suite 500  
 Spokane, Washington 99201  
 509 328 2994 Fax 509 328 2999

project	Southgate - KXLY	by	DJA	sheet no.	1 of 1
location	City of Spokane, WA	date	11/7/16	job no.	161129
drawn		checked	JEA		
		date	11/7/16		

{S1380118; 4 }



— add this  
to replacement



— new LUKF boundary



— less than fee  
ownership