



Spokane Park Board

Nov. 10, 2016 – 1:30 p.m.

City Hall, City Council Chambers

808 W. Spokane Falls Blvd, Spokane, Washington

Park Board Members:

- X Chris Wright – President
- X Susan Traver – Vice President
- X Leroy Eadie – Secretary
- X Ross Kelley
- X Lauren Pendergraft
- X Nick Sumner
- X Ted McGregor
- X Greta Gilman
- X Richard Chase
- X Candace Mumm (arrived: 1:35 p.m.)

Parks Staff:

- Jason Conley
- Garrett Jones
- Al Vorderbrueggen
- Angel Spell
- Berry Ellison
- Mark Buening
- Pamela Clarke
- Danielle Arnold
- Megan Qureshi
- Fianna Dickson

Guests:

- Dave Browneagle
- Jennifer Lienberger
- Heather Beebe-Stevens
- Karen Mobley
- Michael Hamilton
- Jena Jauchius
- Consuelo Larrabee
- Melanie Bell
- Steve Conner
- Paul Knowles
- Hal McGathery

MINUTES

1. **Roll Call:** *Pamela Clarke*
See above

2. **Minutes:**
A. Oct. 13, 2016, regular Park Board meeting minutes and study session notes

Motion No. 1: Susan Traver moved to approve the Oct. 13, 2016, regular Park Board meeting minutes and study session notes.

Ross Kelley seconded.
Motion passed unanimously.

3. **Additions or Deletions to the Agenda:**
A. None

4. **Introductions/Special Guests:**
A. New Park Board member introduction – *Chris Wright* introduced and welcomed new Park Board member *Rick Chase*.

B. Spokane Parks Foundation – *Heather Beebe-Stevens*, Spokane Parks Foundation executive director, reported the foundation celebrated its 65th birthday Oct. 25. Spokane Parks Foundation is 50 years older than the Portland and Seattle parks foundations. The foundation has served the city's parks since 1951 and served countywide parks since 1986. During this time, the foundation awarded \$3.5 million in grants, which includes \$3.4 million awarded within the city of Spokane. Ms. Beebe-Sevens provided highlights on the Make A Splash In A Kid's Life project, which provided the following in recent years: 1) 7,567+ swimsuits; 2) 1,618 swim lessons; 3) 10,820 pool passes; 4) 29,500 swims; and 5) 2,686 free swims on Free Swim Days.

5. **Claims:** Claims for the month of October 2016 – *Susan Traver*

Motion No. 2: Susan Traver moved to approve claims for the month of October 2016 in the amount of

\$2,123,074.92.

Ross Kelley seconded.
Motion passed unanimously.

6. **Financial report & budget update:** – *Mark Buening* introduced and welcomed new Accountant II *Megan Qureshi* to the staff. Mr. Buening provided the October financial report and budget update. Park Fund revenue is tracking at 101% of the projected budget. Parks and Recreation expenditures are tracking at 96% of the projected budget. The Golf Fund revenue is tracking at 96% of the projected budget. The Golf Fund expenditures are tracking at 95% of the projected budget. Mr. Buening presented a detailed report on the Riverfront Park redevelopment budget allocations, budget breakdown by project, and a comparison of budget to actuals and committed expenditures.

7. **Special Discussion/Action Items:**

- A. **Park Board Committee assignment** – *Chris Wright* entertained a motion to assign Rick Chase to the following Park Board committees: 1) Riverfront Park; 2) Golf; and 3) Urban Forestry.

Motion No. 3: Susan Traver moved to accept the proposed new Park Board committee assignments.

Nick Sumner seconded.
Motion passed unanimously.

8. **Committee Reports – Action Items:**

Urban Forestry Tree Committee: Nov. 1, 2016, *Lauren Pendergraft*

- A. **Finch Arboretum/Woodland Center restroom remodel - Western States Construction (\$55,000)** – *Lauren Pendergraft* and *Angel Spell* recapped a proposed Woodland Center restroom remodel contract with Western States Construction, not to exceed \$55,000. This project involves renovating three existing restrooms and converting to two ADA compliant restrooms.

Motion No. 4: Lauren Pendergraft moved to accept the Finch Arboretum/Woodland Center restroom remodel contract with Western States Construction, not to exceed \$55,000.

Nick Sumner seconded.
Motion passed unanimously.

- B. The Nov. 29, 2016, Urban Forestry Tree Committee is cancelled. The next scheduled meeting is 4:15 p.m. Jan. 3, 2017, at the Finch Arboretum Woodland Center.

Golf Committee: Nov. 8, 2016, *Nick Sumner*

- A. Action items: None
B. Golf course update – *Jason Conley* provided a brief update on the status on each course, including: 1) Esmeralda is open until further notice; 2) Downriver and Qualchan will close Nov. 13; and 3) Indian Canyon is closed for the season.
C. Mr. Conley announced the Esmeralda golf professional interview process is almost finalized. The selection panel is expected to have their decision by early next week with a recommendation prepared for the December Golf Committee meeting.
D. The next scheduled meeting is 8:05 a.m. Dec. 6, 2016, in the City Conference Room 2B.

Land Committee: Nov. 2, 2016, *Chris Wright*

- A. **Soccer Field ground lease/easement – KXLY** – *Garrett Jones* reviewed the ground lease and easement agreement between the city/Park Board and the real property owner QueenB Radio/KXLY for the Southside Athletics Complex located at Regal Street and Old Palouse Highway. The agreement states the city will enter into a 20-year lease with KXLY. As part of the terms, Parks plans to construct public vehicle and pedestrian access, sidewalks, hardscape, landscaping, new concession and storage buildings, and reconstruct existing restrooms. At the conclusion of the 20-year lease, the city will be granted a 45-day first right of refusal. Park Board members voiced a

concern regarding the 45 days and determined they would like a longer period. Lauren Pendergraft suggested approving the proposed ground lease agreement, as presented, and direct staff to negotiate an additional 15 days. Upon approval between the owner and the Park Board, the lease will go to the Mayor for signature.

Motion No. 5: Ross Kelley moved to approve the ground lease and easement agreement with QueenB, as presented, with the contingency that a 60-day first right of refusal is negotiated.

Susan Traver seconded.

Motion passed with an 8-to-1 vote.

Purchase and sales agreement - Sisters of The Holy Names – *Garrett Jones* recapped the agreement with Sister of The Holy Names. The agreement involves 31 acres of riverfront property near TJ Meenach Drive which was nominated as a Conservation Futures property. The county and city were granted \$2 million in grants which will supplement the Conservation Future funds. The city of Spokane is noted as the purchaser and Spokane County is the financier. The total purchase price of the property is \$2.65 million. If approved, Parks will accept ownership of the property which allows public access to this unique riverfront property.

Motion No. 6: Ted McGregor moved to endorse the purchase and sales agreement with Sisters of The Holy Names, as presented, with funding from Conservation Futures and grants.

Nick Sumner seconded.

Motion passed unanimously.

Sky Prairie Park master plan – *Garrett Jones* presented the Sky Prairie master plan prepared by the Eastern Washington University Urban and Regional Planning students for the city and the Five Mile Neighborhood Association. The recommendation overview includes three alternative master plan scenarios which offers options for the use and development of the park. The master plan is intended to guide the future use and development of Sky Prairie Park.

Motion No. 7: Susan Traver moved to accept the Sky Prairie master plan, as presented.

Ross Kelley seconded.

Motion passed unanimously.

B. Chris Wright appointed Susan Traver as Land Committee chair pro tem until the Land Committee chair position is assigned.

C. The next scheduled meeting is 3 p.m. Nov. 30, 2016, in City Hall Conference Room 5A.

Recreation Committee: (Nov. 3, 2016, meeting was cancelled) *Lauren Pendergraft*

A. Action Item: None

B. Last month's Cal Ripken Sr. Foundation adaptive field groundbreaking was a well-attended, successful event.

C. The next scheduled meeting is 3 p.m. Dec. 1, 2016, in the Manito Meeting Room, Manito Park.

Riverfront Park Committee: Nov. 7, 2016, *Ted McGregor*

A. Arborist services contract amendment – Northwest Plant Health Care, Inc. (\$128,625) – *Berry Ellison* reviewed the arborist services contract amendment with Northwest Plant Health Care, Inc., not to exceed \$128,625.

Motion No. 8: Ted McGregor moved to accept the arborist services contract amendment, as presented.

Susan Traver seconded.

Motion carried unanimously.

Canada Island resolution – *Dave Browneagle* of the Spokane Tribe of Indians expressed his appreciation regarding the recent collaborative work between the city and the Spokane Tribe. Mr. Browneagle offered some of the island's history. The island was used as a fishing site, and as a storage and drying location for the salmon which were caught in the Spokane River. The Upper, Lower and Middle bands of the Spokane Tribe are gathering name suggestions for the island, at this time. The recommendation for the new name is expected to be announced in the coming months. Mr. Browneagle thanked the Park Board and city for being part of this combined positive effort. Ted McGregor explained the proposed resolution is intended to define the procedure for approving the Spokane Tribe of Indians place name for Canada Island and our cooperative commitment to working together on this project. The Riverfront Park recommended the resolution to the Park Board with a language addition to include: WHEREAS, the Spokane Park Board in cooperation with the Canadian Government, Consul General of Canada James K. Hill recognizes "Small acts like renaming Canada Island to honor the original inhabitants of the Spokane area are symbolically important to the ongoing process in both Canada and the U.S."

Motion No. 9: Ted McGregor moved to endorse the Canada Island resolution, as presented.

Candace Mumm seconded.
Motion passed unanimously.

Amendment/change order approval policy – *Ted McGregor* presented a proposed amendment/change or approval policy designed to streamline the process on bond-related decisions.

Motion No. 10: Ted McGregor moved to accept the amendment/change order approval policy, as presented.

Ross Kelley seconded.
Motion carried unanimously.

Promenade and South Bank East 30% design – *Ted McGregor* provided a recap of current Riverfront Park redevelopment projects which are at 30% design. Mr. McGregor explained there will be recommendation to endorse and proceed with some projects, while other park improvement projects will remain at this phase until additional funding is secured. Riverfront Park Committee is recommending the Park Board approve the Promenade and South Bank East (SBE) 30% design developed by Berger Partnership. The proposed design calls for moving and re-introducing two Expo butterflies into the park. One of the original five butterflies will move from the North Bank to a site close to the Red Wagon site. The second remaining butterfly structure, which is currently off-site, will return to the park's south bank. Three new, smaller butterflies are also proposed as part of the SBE design. *Jennifer Lienberger* of Save the Expo Butterflies citizens group urged the Park Board to approve using bond funds to permanently place the Expo butterflies and three new butterflies into the newly designed park. Citing a 1974 *Spokesman Review* article, Ms. Lienberger reported the Park Board originally intended to keep the five statues in the park after Expo as a way of commemorating the history of the world's fair. *Berry Ellison* explained the cost to move and erect the two original butterflies is estimated at \$50,000. This estimate does not include lighting or improvements. There is consideration to incorporate the butterflies into the Lead Artist's work.

Motion No. 11: Ted McGregor moved to adopt the Promenade and South Bank East 30% design, as presented.

Candace Mumm seconded.
Motion passed unanimously.

North Bank 30% design – *Ted McGregor* opened the discussion regarding a proposed North Bank

30% design developed by Berger Partnership. Public comment was provided addressing concerns about the regional playground design. Concerns included: 1) falls short of its potential and doesn't adequately tell the story of the floods; 2) deviates from the playscape's predesign; 3) possesses potential safety issues; 4) has inadequate shade protection; and 5) is not appropriately designed for youths of all ages and abilities. The Park Board was urged by local landscape architect *Jenna Jauchius* to stop the current design of the regional playground. She also requested the project be released for a request for qualifications allowing a qualified team to bid on the playground project. Public comment was also provided by a citizen from the Cheney/Spokane Chapter of the Ice Age Floods Institute, a retired geologist and a former educator. Park Board members and staff agreed many of the stated concerns are currently being addressed. The proposed 30% design incorporates an Ice Age Floods theme with play and learning components. The stated suggestions and concerns will be taken into consideration as the project progresses. Staff was directed to develop a list questions and concerns for Berger before approving 30% design.

No action taken.

Lead Artist timeline – *Ted McGregor* explained the proposed change is intended to align the artist design work with the design phase of the Pavilion project. The Lead Artist contract with Meejin Yoon is expected to be signed and executed shortly. Ms. Yoon is tentatively scheduled to be in Spokane at the beginning of next year.

Motion No. 12: Ted McGregor moved to accept the Lead Artist timeline, as presented.

Susan Traver seconded.
Motion passed unanimously.

Hill International contract amendment (budget neutral) – *Berry Ellison* presented the contract amendment which involves a budget reallocation to move dollars from the 2018 and 2019 budgets, into the 2016 and 2017 budgets. The original contract called for equal amounts allocated for each year. Contract services involve management and program support for the Riverfront Park redevelopment project.

Motion No. 12: Ted McGregor moved to accept the Hill International contract amendment, as presented.

Ross Kelley seconded.
Motion passed unanimously.

B. Riverfront Park redevelopment project overview – *Garrett Jones* presented the newly implemented Riverfront Park redevelopment project overview. This monthly report offers a snapshot view of where each redevelopment project stands in terms of project development, timeline and budget. Mr. Jones reported the Loeff Carrousel bid documents will be posted Nov. 30. The archeological and tree protection program on the Loeff site will take place December and January. Following First Night, the carrousel will close and the Loeff Carrousel will be removed and stored. Once the carrousel is removed, the existing building will be demolished. By early 2017, construction is scheduled to begin on the Recreational Rink.

C. The next scheduled meeting is 8:05 a.m. Dec. 5, 2016, in the City Council Briefing Center.

Finance Committee: Nov. 8, 2016, *Susan Traver*

A. Action Item: EBO - Witter Pool Deck repair project (\$51,200) – *Leroy Eadie* reviewed a recommendation to approve an EBO in the amount of \$51,200 for a contract with TD & H Engineering. Services involve project management, inspection and administrative services for the Witter Pool deck construction project.

Motion No. 13: Susan Traver moved to accept the EBO in the amount of \$51,200 for the TD & H

Engineering contract to be forwarded to City Council for approval.

Ross Kelley seconded.

Motion passed unanimously.

B. The next regularly scheduled meeting is 3 p.m. Dec. 6, 2016, in City Hall Conference Room 2B.

Bylaws Committee: *Ross Kelley* – No report

9. **Reports:**

Park Board President: *Chris Wright* announced the resignation of Park Board member Ken Van Voorhis and thanked him for his years of service on the board.

Liaisons:

1. Spokane Parks Foundation Liaison: *Susan Traver* – No report
2. Council Liaison – *Candace Mumm* reported the city enjoyed an 11% increase in sales tax for the month of August in comparison to last year.

Parks Director: *Leroy Eadie* reported the face-to-face interviews are underway for the Park Operations director position. Once a recommendation is finalized it will be brought before City Council for confirmation. Mr. Eadie thanked the Mayor for his participation in the fundraising for the Cal Ripken Sr. Ability Field at Mission Park. Mr. Eadie announced plans for improving communication with Park Board, making Park Board committee meeting recordings available to the public and the board, and offering a user-friendly process for board members to call in to committee meetings.

10. **Correspondence:**

- A. Letters: Renaming of Canada Island
- B. Newsletters: Corbin Senior Activity Center
Hillyard Senior Center
Southside Senior and Community Center
Sinto Senior Activity Center

11. **Public Comments:** None


12. **Executive Session:** None

13. **Adjournment:** 4 p.m.

14. **Meeting dates:**

- A. Next Committee meeting dates:
Golf Committee: 8:05 a.m. Dec. 6, 2016, City Conference Room 2B
Land Committee: 3 p.m. Nov. 30, 2016, City Hall Conference Room 5A
Recreation Committee: 3 p.m. Dec. 1, 2016, Manito Meeting Room, Manito Park
Riverfront Park Committee: 8:05 a.m. Dec. 5, 2016, City Council Briefing Center
Finance Committee: 3 p.m. Dec. 6, 2016, City Hall Conference Room 2B
Urban Forestry Committee: 4:15 p.m. Jan. 3, 2017, Woodland Center, Finch Arboretum
- B. Park Board meeting date: 1:30 p.m. Dec. 8, 2016, City Council Chambers
- C. Joint Park Board/City Council study session: 3:30 p.m. Dec. 8, 2016, City Council Briefing Center

Minutes approved by:


Leroy Eadie, Director of Parks and Recreation

CITY OF SPOKANE PARKS & RECREATION

The logo is a dark blue circle containing a white stylized figure of a person in a dynamic pose, possibly jumping or running. A white flower with five petals is positioned above the figure, and a white curved line, resembling a path or a branch, arches over the figure.

Financial Report
October, 2016



City of Spokane Parks & Recreation

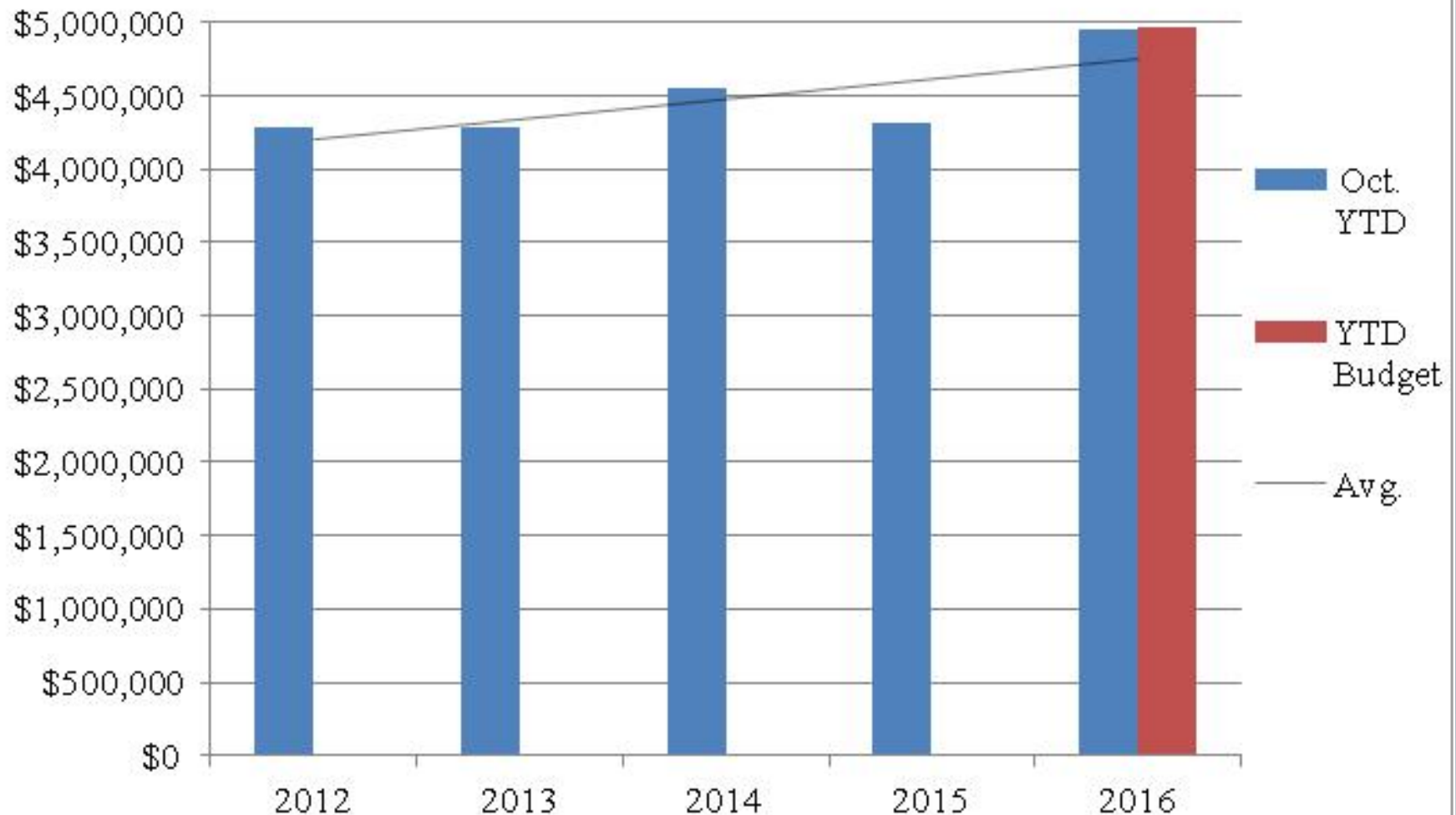
PARK FUND – Revenues & Expenditures

October 31, 2016 (reported in millions)

As of October (in millions)	2016 Budget	YTD Budget	YTD Actual	% YTD Budget
Park Revenue	6.83	4.96	5.01	101%
Transfers In	13.51	11.44	11.44	100%
Funds Available	20.33	16.40	16.44	100%
Expenditures	17.61	14.47	13.88	96%
Transfers Out	0.55	0.47	0.25	52%
Capital Outlay	3.30	2.07	0.49	23%
Windstorm 2015 - NET	0.35	n/a	-0.04	n/a
NET	-1.48	-0.61	1.87	
Beginning Fund Balance	1.05	1.05	1.05	
Ending Fund Balance	-0.43	0.44	2.92	

Park Fund Revenue

5 Year Trend & YTD Budget



City of Spokane Parks & Recreation

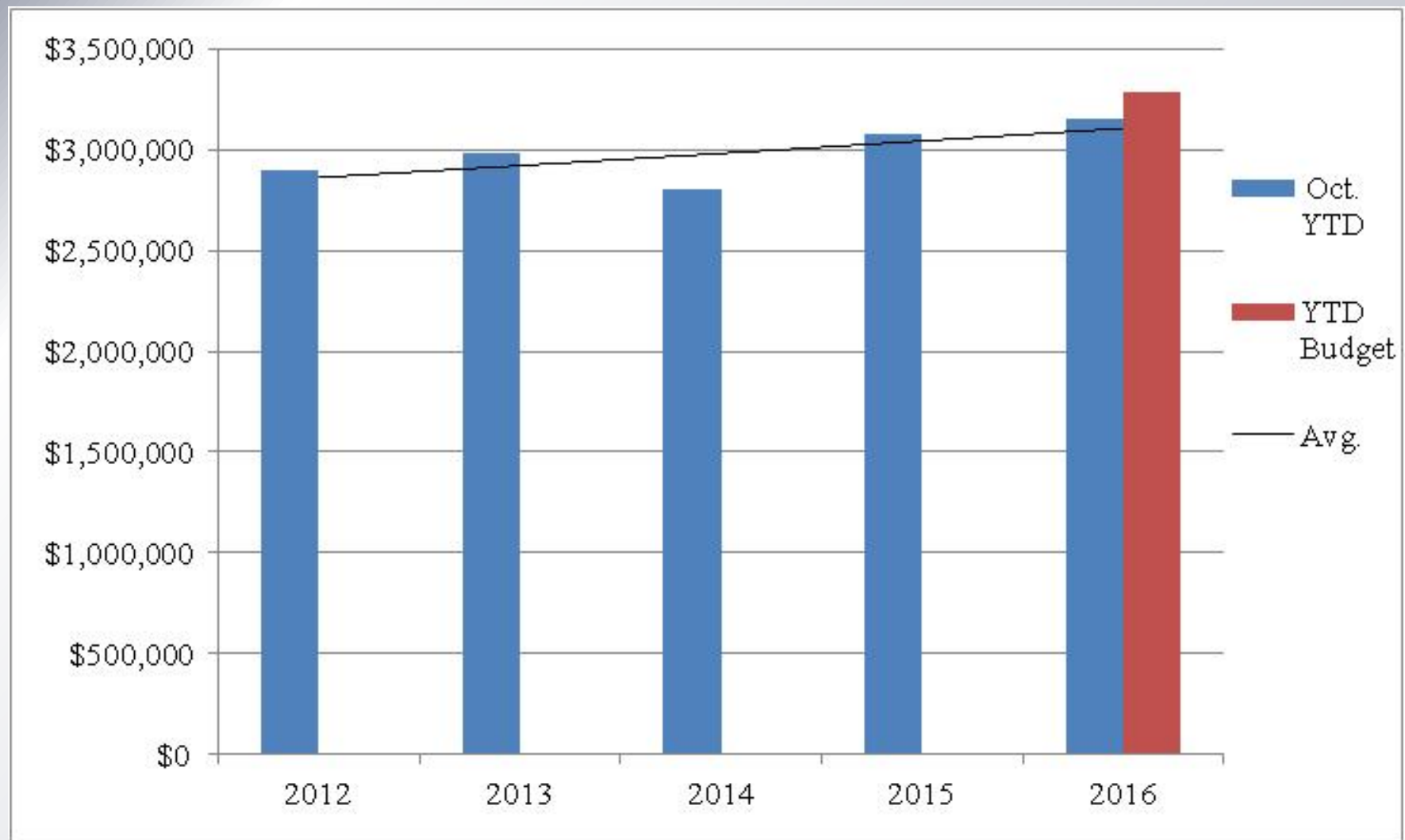
GOLF FUND – Revenues & Expenditures

October 31, 2016 (reported in millions)

As of October (in millions)	2016 Budget	YTD Budget	YTD Actual	% YTD Budget
Golf Revenue	3.38	3.29	3.16	96%
Transfers In	0.04	0.02	0.00	0%
Funds Available	3.42	3.30	3.16	96%
Expenditures	3.20	2.67	2.54	95%
Transfers Out	0.00	0.00	0.00	0%
Capital Outlay	0.28	0.25	0.14	55%
Windstorm 2015	0.12	n/a	0.08	n/a
NET	-0.19	0.38	0.40	
Beginning Fund Balance	0.11	0.11	0.11	
Ending Fund Balance	-0.07	0.49	0.51	

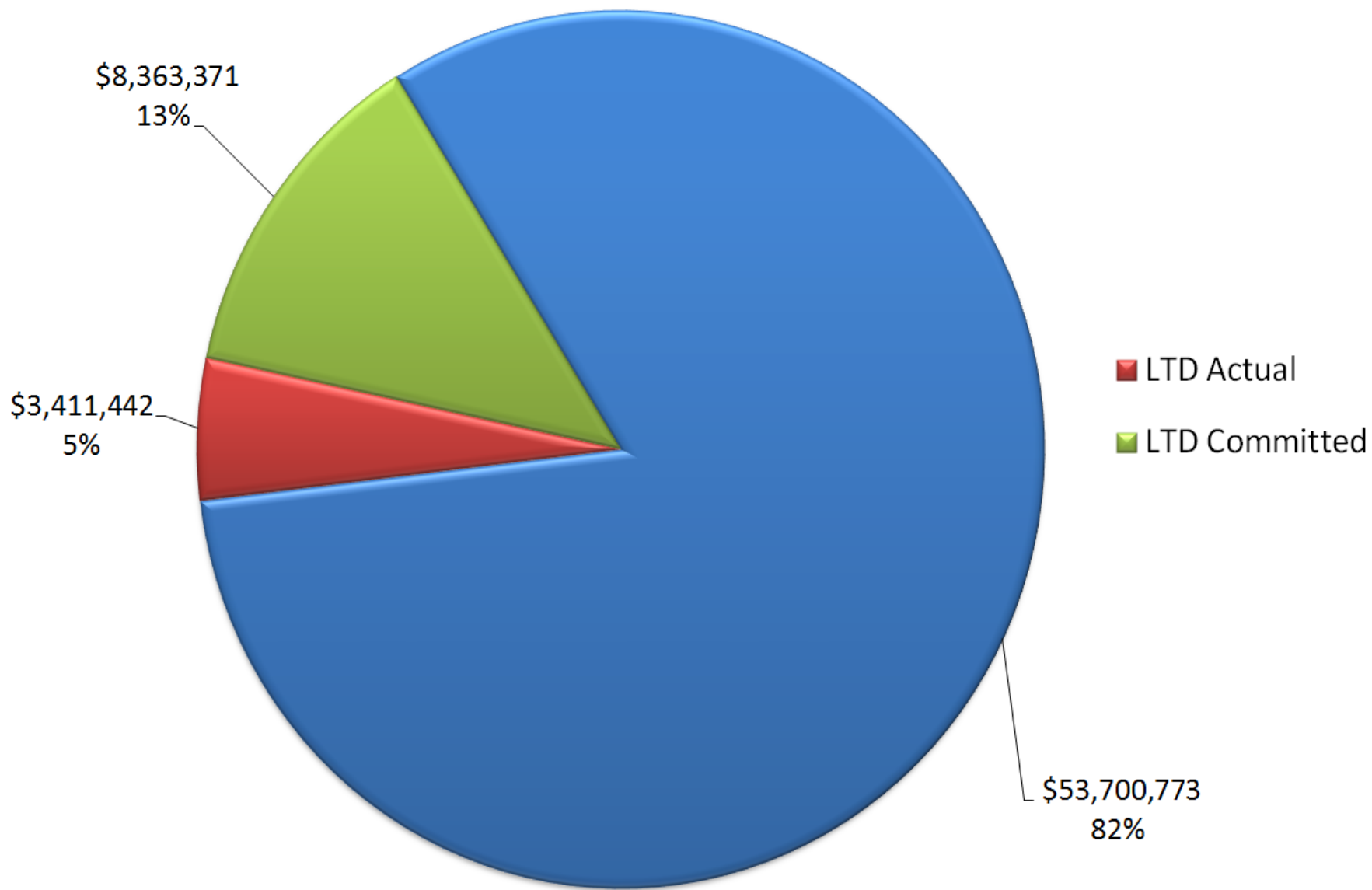
Golf Fund Revenue

5 Year Trend & YTD Budget

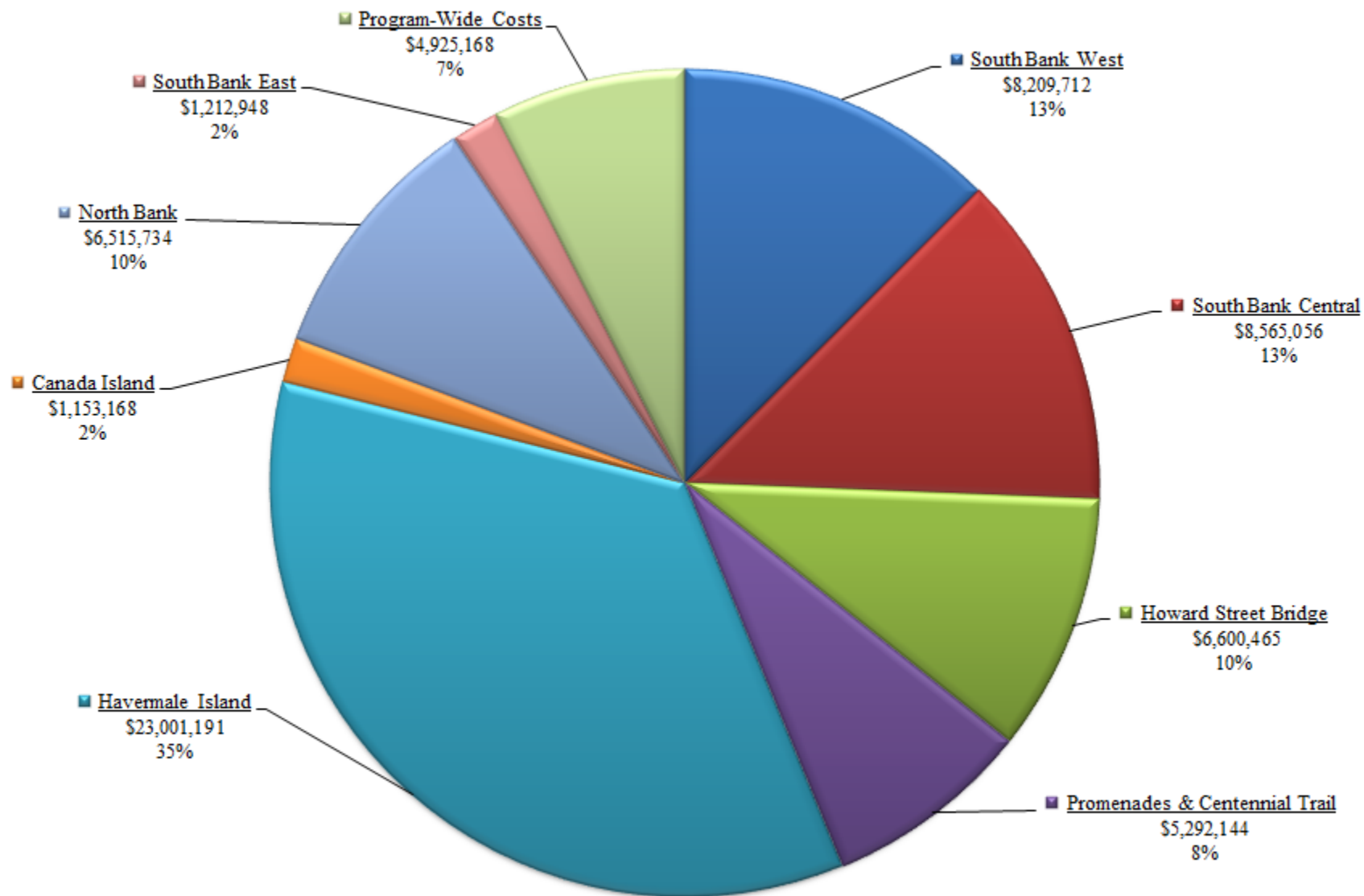


Budget Summary		October 2016			
Project Component	Budget	Expended as of Oct. 31, 2016	Committed to Date	Total of YTD Expended and Committed	Budget Balance to Date
1. South Bank West (Rec. Rink, Gondola Meadow)	\$ 8,209,712	\$ 880,060	\$ 498,616	\$ 1,378,676	\$ 6,831,036
2. South Bank Central (Looft Carrousel)	\$ 8,565,056	\$ 361,548	\$ 562,367	\$ 923,915	\$ 7,641,141
3. Howard Street South Channel Bridge	\$ 6,600,465	\$ 818,078	\$ 5,229,294	\$ 6,047,372	\$ 553,093
4. Promenades and Centennial Trail	\$ 5,292,144	\$ 4,750	\$ 6,900	\$ 11,650	\$ 5,280,494
5. Havermale Island	\$ 23,001,191	\$ 27,377	\$ 73,300	\$ 100,677	\$ 22,900,514
6. Canada Island	\$ 1,153,168	\$ -	\$ 98,600	\$ 98,600	\$ 1,054,568
7. North Bank	\$ 6,515,734	\$ 34,933	\$ 33,442	\$ 68,375	\$ 6,447,359
8. South Bank East	\$ 1,212,948	\$ 42,985	\$ -	\$ 42,985	\$ 1,169,963
9. Project-Wide Costs (Non- Specific Area)	\$ 4,925,168	\$ 1,241,711	\$ 1,860,852	\$ 3,102,563	\$ 1,822,605
TOTAL	\$ 65,475,586	\$ 3,411,442	\$ 8,363,371	\$ 11,774,813	\$ 53,700,773

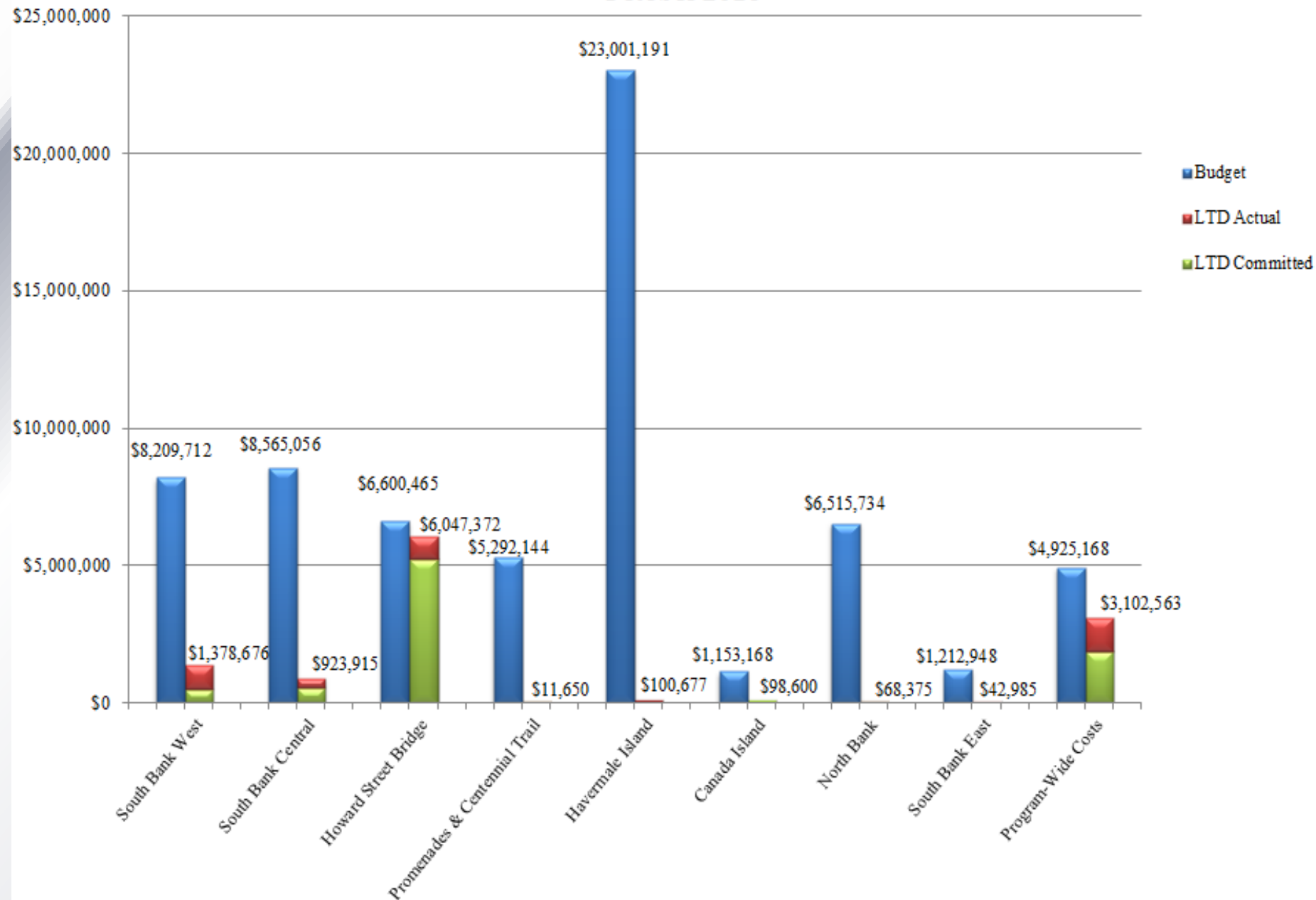
Budget Utilization Through October 2016



Budget by Project



Comparison of Budget to Actual and Committed Expenditures October 2016



MEMORANDUM

November 8, 2016

To: City of Spokane Park Board

From: Pat Dalton, Assistant City Attorney

Re: KXLY/Southside Athletics Complex

Dear Park Board Members,

This Office has examined the legal requirements and limitations of Park Board authority as those limitations and requirements apply to the Regal Property transaction. We have examined various documents necessary for the construction of public vehicle and pedestrian access, reconstruction of existing parking lots, restrooms, concession and storage buildings, sidewalks, hardscape, signage and landscaping, and the installation of a soccer field on the KXLY/Southside Athletics Complex site. We have also examined the License and Development Agreement, the Ground Lease, and Access and Parking Easements. We have previously opined that the Park Board has the legal authority to grant a "perpetual easement" across park property in favor of KXLY and further has the legal authority to enter into a long-term agreement to lease real property from KXLY.

It is our opinion that Park Board has the legal authority to approve the Ground Lease With City of Spokane Park Board, which is on the Board's Agenda for the Board's November meeting. Assuming the Park Board approves the Ground Lease, it will go to the Mayor for his signature.

GROUND LEASE WITH CITY OF SPOKANE PARK BOARD

This lease agreement ("**Lease**") is made and entered into as of the ____ day of _____, 2016 ("**Execution Date**"), by and between QueenB Radio, Inc., a Washington corporation d/b/a KXLY ("**KXLY**" or "**Lessor**") and the City of Spokane, a municipal corporation of the State of Washington acting through its Park Board ("**Park Board**" or "**Lessee**"), jointly referred to as "**Parties**."

I. BACKGROUND

A. Lessor is the owner of real property located in the City of Spokane, Washington.

B. The Parties have entered into an "Access and Reciprocal Parking Easements" that provides for pedestrian and vehicle access to adjoining property plus the development of surface parking and other improvements.

C. In order to construct various improvements, the Parties have also entered into a "License and Development Agreement," of even date herewith, that provides, among other things, for the construction of: public vehicle and pedestrian access; reconstruction of an existing parking lot restrooms, concession and storage buildings; sidewalks, hardscape, signage and landscaping; plus the installation of a soccer field on the Property. The terms of the License and Development Agreement are incorporated herein.

D. The Parties desire to enter into this agreement to lease the Property.

NOW, THEREFORE, for and in consideration of the following terms, conditions and covenants, Lessor does hereby lease to the Lessee as follows:

1. **Property.** The real property which is the subject of this Lease is legally described on Exhibit A, which is attached hereto and incorporated herein by this reference (the "**Property**"). The Property is depicted on Exhibit B, attached hereto.

2. **Term.**

2.1 **Lease Term.** The initial term of this Lease is twenty (20) years (the "**Initial Term**") commencing on the date of the Lease Notice (defined below). Thereafter, Lessee is granted the right to extend this Lease as set forth in Section 2.2. The date this Lease commences shall be known as the "**Commencement Date**."

2.2 **Lease Option.** Unless, at least six (6) months prior to the expiration of the Initial Term, Lessee notifies Lessor of its intention to terminate this Lease, this Lease shall be automatically extended for an additional twenty (20) year period upon the same terms ("**Lease Extension**"); provided the Lease Extension shall not be available if Lessee is then in default of this Lease according to the terms hereof, and subject to Lessee's right to cure.

2.3 **Lease Commencement.** The Lease will commence by Lessor delivering to Lessor written notice stating that the improvements, defined in the License and Development

Agreement between the Parties, have been completed and the Property may be used and occupied for its intended purpose (the "**Lease Notice**"). The Lease Notice shall be delivered to the Mayor with a copy to the Director of the Parks Department according to section 20.5.

3. **Title, Representation and Inspection.**

3.1 **Title.** Within thirty (30) days after the Execution Date, Lessor shall provide to Lessee at Lessee's cost and expense, a commitment for a standard coverage Lessee's policy of title insurance with respect to the Property in the minimum amount of \$200,000.00 (the "**Title Commitment**") issued by a title insurance company (the "**Title Company**"). The Title Commitment shall show the status of title to the Property as of the date of the Title Commitment and shall be accompanied by copies of all documents referred to in the Title Commitment. Lessee shall review the Title Commitment and notify Lessor in writing of Lessee's disapproval of any **Schedule B** exceptions shown thereon (the "**Disapproved Exceptions**") within thirty (30) days following the date on which the Title Commitment is delivered to Lessee. Lessee's failure to notify Lessor in writing of its disapproval of any exception within such time period shall be deemed approval of such exception; provided, any matters that would prevent Lessee from using the Property for Lessee's intended purpose shall be deemed disapproved, and therefore Disapproved Exceptions, whether or not Lessee provides notice of its disapproval. All exceptions which are either approved or deemed approved shall be referred to herein as "**Permitted Exceptions**".

Lessor shall have thirty (30) days from the date of receipt of any notice of disapproval to cause Disapproved Exceptions to be removed from the Title Commitment or cause the Title Company to commit to insure against loss or damage that may be occasioned by such Disapproved Exceptions. However, Lessor shall have no obligation to cause Disapproved Exceptions to be removed from the Title Commitment or to cause the Title Company to commit to insure against loss or damage that may be occasioned by such Disapproved Exceptions through an endorsement or endorsements acceptable to Lessee. Lessor shall notify Lessee within the thirty (30) day period whether Lessor has caused the Disapproved Exceptions to be removed from the Title Commitment, or caused the Title Company to commit to insure against loss or damage that may be occasioned by the Disapproved Exceptions, and Lessor's failure to notify Lessee in writing of its decision not to cause such Disapproved Exceptions to be removed from the Title Commitment or to cause the Title Company to commit to insure against loss or damage that may be occasioned by the Disapproved Exceptions shall be deemed a commitment by Lessor to cause the Disapproved Exceptions to be removed. In the event Lessor timely notifies lessee that it will not cause the Disapproved Exceptions to be removed from the Title Commitment, or cause the Title Company to commit to insure against loss or damage that may be occasioned by the Disapproved Exceptions, Lessee shall thereafter notify Lessor within ten (10) days whether Lessee shall elect to (i) waive the Disapproved Exceptions, (ii) terminate this Lease, or (iii) enter into good faith negotiations to modify this Lease to remedy the effect of the Disapproved Exceptions.

3.2 **Representations.** Lessor hereby represents and warrants to Lessee that (i) Lessor has good and marketable fee simple title to the Property (including, without limitation, the improvements and fixtures thereon, if any); (ii) the Property is free and clear from rights of use or occupancy or of restrictions that would have a material adverse effect on Lessee's use or occupancy of the Property; (iii) there are no unrecorded covenants, conditions, restrictions, easements or other

agreements which encumber or may have a material adverse effect on Lessee's use or occupancy of the Property; (iv) Lessor has the appropriate authority to enter into this Lease; (v) except as set forth herein, there are no (a) rights of first refusal, (b) rights of first offering, or (c) options to lease, purchase or finance all or any portion of the Property; (vi) there is no material or adverse fact or condition relating to the Property (including the land and improvements thereon) or any portion thereof that has not been specifically disclosed in writing by Lessor to Lessee; (vii) there are no existing, pending or threatened condemnation actions, violations of any applicable laws, pending or threatened governmental or administrative actions or proceedings, or causes of action, proceedings, suits or judgments with respect to the Property, and Lessor is not aware of any facts or circumstances that might give rise to any such condemnation action, cause of action, violation, action, suit, proceeding or judgment.

3.3 Environmental Site Assessment. Lessor represents that the Property is (i) not contaminated with any Hazardous materials and (ii) not in violation of any Environmental Law(s), as defined herein. Within one hundred eighty (180) days of the Execution Date (the "**Contingency Deadline**"), Lessee may obtain at Lessee's sole cost and expense, an environmental site assessment of the Property, prepared by a licensed environmental engineer.

3.3.1 Other Inspections. Following the Execution Date and until the Contingency Deadline, Lessee shall be entitled to conduct an examination of the Property, including other tests and inspections which Lessee shall deem necessary or desirable for the purposes of determining whether, in Lessee's discretion, the Property is suitable for Lessee's purposes. Lessee agrees to indemnify and hold Lessor harmless for any loss, cost or expense resulting from damage to the Property, or injury to persons resulting from the work conducted pursuant to this section 3.3.1, except and only to the extent such damage is caused by the negligence or intentional acts of the Lessor.

3.3.2 Inspection Notice. Lessee shall give Lessor five (5) days advance written notice of its intent to inspect the Property.

3.3.3 Post Inspection Notice. If Lessee reasonably determines the condition of the Property is unsuitable for the Lessee's intended use due to a material defect or condition, Lessee shall provide written notice of the same to the Lessor prior to the Contingency Deadline. A "material defect or condition" means a subsurface condition revealing the presence of Hazardous Conditions or any other condition that renders the site unsuitable for a youth soccer field, where the remedy is estimated to cost more than ten thousand dollars (\$10,000.00). Upon receipt of written notice, the Parties shall meet and confer in order to review and address Lessee's notice. If the Parties are unable to resolve Lessee's concerns to Lessee's satisfaction, Lessee may exercise rights available in Section 20.11 and those available at law or in equity.

3.3.4 Definitions. For purposes of this Section 3.3, the term "Hazardous Materials" shall include, but not be limited to, substances defined as "Hazardous Substances," "Hazardous Materials," "Hazardous Waste," "Toxic Substances", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S.C. Section 9601 et seq., the Model Toxic Control Act of the State of

Washington and all regulations adopted and publications promulgated pursuant to such laws, collectively "Environmental Law".

4. Improvements.

4.1 Lessor's Work. Lessor agrees to improve the Property, install all necessary utility lines serving the premises, perform all other reasonable site work, and construct a soccer field in accordance with plans and specifications prepared and approved by Lessee ("**Lessor's Work**") under the License and Development Agreement. "**Improvements**" include the soccer field, related surface and subsurface infrastructure and all permanent structures placed on the Property.

4.2 Lessee's Work. Lessee shall construct all other improvements, facilities, fixtures, and equipment necessary or desirable to use and occupy the Property under this Lease. Lessee shall not construct or install any improvements or structures that interfere with the use of the adjacent broadcast towers including the related underground wires and cables on the Property.

4.3 Title to Improvements. The Improvements to be constructed on the Property shall be the property of Lessee during the Lease Term. Upon the expiration or sooner termination of this Lease, all improvements shall automatically vest in and become the property of Lessor without any obligation to pay Lessee therefore; provided, however, title to the Improvements shall vest in Lessee as a result of Lessee's exercise of the First Right of Refusal (Section 19). At Lessor's request, Lessee agrees to assign to Lessor all warranties assignable by Lessee regarding the construction of Lessee's Work.

5. Rent, Taxes and Utility Charges.

5.1 Ground Rent. Lessee shall on the Commencement Date and each anniversary date thereafter pay rent in the amount of One Dollar (\$1.00) per year.

5.2 Property Tax.

5.2.1 Lessee shall pay directly to the taxing authority, prior to delinquency, all real property taxes, Chapter 84.52 RCW, levied upon the Property.

5.2.2 Lessee may in good faith contest the validity of any tax or assessment to be paid by it, and Lessee shall have the right to institute any proceedings, provided that all costs, expenses and liabilities, including attorneys' fees, shall be paid by Lessee. In the event Lessee desires to contest any tax or assessment hereunder, Lessee shall be required to take all steps necessary to ensure that the authorities imposing the tax shall not be able to exercise any right against the Property or against the Lessor during the period Lessee is contesting the tax assessment based upon the Lessee's failure to pay such tax or assessment.

5.3 Utility Charges. Lessee shall be responsible for all obtaining utilities and services provided to Lessee at the Property and agrees to pay, prior to delinquency, all charges for electricity,

gas, water, sewage, and/or all other public and private services or charges used by or through Lessee at the Property, excluding any charges or services provided to or incurred by Lessor or its affiliates.

6. Use.

6.1 Compliance with Laws. Lessee shall comply with all local, state or federal laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force with respect to the Lessee's use and occupancy of the Property.

6.2 Hazardous Materials. "**Hazardous Material**" shall mean any matter (whether gaseous, liquid or solid) which is now or hereafter designated as a hazardous or toxic waste or substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601, et seq., all as now or hereafter amended, or which may now or hereafter be regulated under any other federal, state, or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment, including, without limitation, (i) any asbestos and/or asbestos containing materials (collectively "**ACMs**") regardless of whether such ACMs are in a friable or non-friable state, or (ii) any matter designated as a hazardous substance pursuant to Section 311 of the Federal Water Pollution Control Act (33 USC 1317), or (iii) any matter defined as a hazardous waste pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, (42 USC 6901 et seq) pertaining to health or the environment. "Hazardous Material" shall not include ordinary cleaning and maintenance products which are used with due care and in accordance with applicable law and the instructions of the manufacturer of such products in the reasonable and prudent conduct of the business conducted on the Property.

6.2.1 Lessee shall not store, use, sell, release, generate or dispose of any Hazardous Materials in, on or about the Property without the prior written consent of Lessor.

6.2.2 If, during the course of construction of Lessor's Work (i.e., the Improvements called for under the License and Development Agreement) and/or Lessee's Work, Hazardous Materials are discovered on or beneath the Property (other than Hazardous Materials introduced to the Property following the Commencement Date), Lessor and Lessee shall determine the estimated cost of remediation in accordance with state and federal environmental laws. Lessor shall pay the cost of remediation, monitoring and disposal; provided Lessee is not responsible for the release of the Hazardous Material. In no case shall Lessee have any responsibility whatsoever under this Lease or otherwise for the cost of remediation, monitoring and/or disposal unless it has been proven that Lessee caused the release of the Hazardous Materials.

6.2.3 Lessor shall indemnify, defend (by counsel acceptable to Lessee), protect, and hold harmless Lessee, and each of Lessee's employees, agents, successors, and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses (including, without limitation, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property), costs, or expenses (including attorneys' fees, consultant fees, and expert fees) for the death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (a) Lessor's use, analysis, storage, transportation, disposal,

release, threatened release, discharge, or generation of Hazardous Materials, in, on, under, about, or from the Property, or (b) Lessor's failure to comply with any Hazardous Materials Law relating to the Property.

7. **Alterations and Improvements; Fixtures and Equipment.** Except as otherwise provided in this Lease and the License and Development Agreement, any alterations, additions or improvements to the Property or the Improvements thereon shall be made at Lessee's sole cost and expense unless otherwise mutually agreed to in writing by the parties. Lessee shall secure any and all governmental permits, approvals or authorizations required in connection with any such work, and shall hold Lessor harmless from any and all liability, costs, damages, expenses (including attorneys' fees) and any and all liens resulting therefrom. All alterations, additions and improvements to the Property or Improvements shall immediately become the property of Lessor upon termination or expiration of this Lease without any obligation to pay therefor; provided, however, as set forth in Section 8.3 below, Lessee's trade fixtures, furnishings, appliances and equipment shall remain the property of Lessee and shall not become a part of the Property.

7.1 **Permission of Lessor.** Lessee shall have the right, but not the obligation, at its sole cost and discretion and without obtaining the prior consent from Lessor, to make any additions, alterations, and/or improvements to the Property and/or the Improvements ("**Lessee Improvements**"), whose fair market value does not exceed Ten Thousand and 00/100 Dollars (\$10,000.00) in any one instance. All Lessee Improvements whose fair market value exceeds that amount shall require Lessor's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

8. **Maintenance of Premises.**

8.1 **Maintenance and Repair by Lessee.** Lessee shall maintain the Property, including its Improvements, in good operational condition for Lessee's use of the Property in a manner consistent with other outdoor sports fields owned by Lessee. All repair work shall be done in a good and workmanlike manner. Lessee shall not commit waste with respect to the Improvements or the Property.

8.2 **Repairs by Lessor.** Lessor shall not be responsible for maintaining, repairing or restoring any part of the Property.

8.3 **Surrender of Property.** Upon expiration or earlier termination of this Lease, Lessee shall surrender the Property and all Improvements constructed thereon to Lessor. Upon such termination, Lessee may remove all of Lessee's furniture, fixtures, equipment, trade fixtures, signs, inventory and other personal property. Improvements made to the Property by Lessee (such as the Building, parking lot improvements and landscaping) will remain on the Property. Any of Lessee's personal property or improvements left on the Property by Lessee ninety (90) days after termination of this Lease shall conclusively be considered abandoned and Lessor will be entitled to use or dispose of it free of any interest of Lessee.

9. **Liens.** Lessee shall keep the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by Lessee. If any lien is filed against the Property as a result of action or inaction of Lessee, Lessee, upon demand, shall release the Property

from the lien by posting a bond in accordance with the terms of RCW 60.04.161, or posting other security in form and amount acceptable to Lessor. Nothing in this covenant shall deny the right of Lessee to dispute any lien it deems improper.

10. **Assignment and Subletting.** The Lessee may not assign this Lease in whole or in part by operation of law or otherwise, and sublet all or any part of the Property, without prior written consent of the Lessor in each instance.

11. **Insurance and Indemnity.**

11.1 **Lessee's Insurance.** Lessee, at its sole cost and expense, shall obtain and maintain (or cause to be obtained and maintained, as the case may be) the following insurance for the respective periods indicated below:

11.1.1 From and after the Commencement Date and thereafter during the Term, comprehensive broad form commercial general liability insurance covering claims arising out of Lessee's operations, use and occupancy of the Property. Coverage shall be maintained on an occurrence basis, covering premises and operations, products and completed operations, contractual liability, personal injury liability, bodily injury liability and property damage liability. At the beginning of the Term such insurance shall have a combined single limit of not less than One Million Five Hundred Thousand Dollars (\$1,500,000) per occurrence and One Million Five Hundred Thousand Dollars (\$1,500,000) in the aggregate. Such insurance shall (a) name Lessor as an additional insured; (b) specifically insure Lessee's indemnity obligations; and (c) be primary to any liability insurance maintained by Lessor.

11.2 **General Requirements.** All insurance (and renewals thereof) required by this Section shall be issued by responsible insurance carriers authorized to do business in the State of Washington with an A. M. Best Rating of A-/VII or better. Each policy shall expressly provide that it shall not be cancelled or changed without at least thirty (30) days' prior written notice to all parties insured or named therein. The insurance described in Section 11.1.1 shall include Lessor as an additional insured. All of the insurance required by this Section shall be primary and noncontributing with any insurance which may be carried by the other party, shall afford coverage for all claims based on any act, omission, event or condition which occurs or arises during the policy period, and may be obtained by endorsement on blanket policy(ies) of insurance carried and maintained by Lessee. Beginning five (5) years after the Commencement Date, and every five (5) years thereafter, the amount (limit) of insurance coverage shall be adjusted by the Parties to equal the insurance coverage Lessee carries on similar properties and use.

11.3 **Mutual Waiver of Subrogation.** Notwithstanding any other provision of this Lease, Lessor and Lessee each hereby waives, releases and discharges the other, its agents and employees from all claims whatsoever arising out of loss, claim, expense, damage or destruction covered or required to be covered by insurance or covered by other casualty insurance it may carry (a "Loss"), notwithstanding that such Loss may have been caused by the other, its agents or employees. Lessor and Lessee each hereby agrees to look to its insurance coverage only upon such Loss. Lessor's policy or policies of insurance shall contain a waiver of subrogation clause

as to Lessee. Lessee's policy or policies of insurance shall contain a waiver of subrogation clause as to Lessor.

11.4 Indemnification.

11.4.1 Lessee Indemnification of Lessor. Lessee, as of the Commencement Date, shall indemnify, defend and hold harmless Lessor from and against all loss, cost, injury, damages, liability, suits, claims, judgments, costs, attorney's fees, and liens of every kind and nature (collectively "**Claims**") that may occur or be claimed by, to or with respect to any persons, corporations, property on or about the Property resulting from any act, omission or negligence by Lessee, its agents, employees, licensees, sublessees, invitees or by those claiming under Lessee or resulting from Lessee's use or possession of the Property or the condition of the Property.

12. Eminent Domain.

12.1 Total Taking. If all the Property is taken by the power of eminent domain exercised by any governmental or quasi-governmental authority, this Lease shall terminate as of the date Lessee is required to vacate the Property and all minimum rent, adjustments and other rentals and charges due hereunder shall be paid to that date. The term "**eminent domain**" shall include the taking or damaging of property by, through or under any governmental or quasi-governmental authority, and any purchase or acquisition in lieu thereof. Lessee shall be entitled to receive as damages the full value of its Improvements and Lease interests at the time of taking.

12.2 Partial Taking. If more than twenty percent (20%) of the shall be taken or appropriated, this Lease may, at the option of Lessee, be terminated by written notice given to Lessor not more than thirty (30) days after Lessor and Lessee receive notice of the taking or appropriation, and such termination shall be effective as of the date when Lessee is required to vacate the portion of the Property so taken.

12.3 Damages. In the event of a partial taking which does not result in the termination of this Lease and which does result in a "single award" (defined below), the award shall first be made available to restore the Property and the improvements, fixtures, furnishings, etc. located thereon, and the excess award shall be the property of the Lessor. In the event of a total taking, the just compensation, settlement payment or award shall be the sole property of the Lessor.

13. Lessee's Default.

13.1 Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee.

13.1.1 Failure to Pay Rent. The failure by Lessee to pay Ground Rent when due, where such failure shall continue for a period of thirty (30) days after written notice thereof by Lessor to Lessee.

13.1.2 Abandonment, Nuisance or Waste. After written notice thereof by Lessor, the use, neglect or waste of the Property for a continuous period of thirty (30) days by

Lessee, its agents, employees, guests, or invitees in a manner which creates a nuisance (as such term is defined by state and local law) that unreasonably interferes with the use and enjoyment of the Property or adjacent property under which Lessor, its agents, assigns and successors have a material or financial interest therein.

13.1.3 Failure to Perform. The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by the Lessee, other than described in Section 13.1.2 above, where such failure shall continue for a period of thirty (30) days after written notice thereof by Lessor to Lessee.

13.2 Lessee's Right to Cure. If Lessee fails to cure the default within the above number of calendar days after written notice thereof is given by Lessor, provided that, if the nature of the default is such that it cannot reasonably be cured within said calendar day period, and/or if Lessee commences an action to cure such default during such calendar day period, and thereafter diligently continues to prosecute such cure, Lessee's time to cure such default shall be reasonably extended for such additional period as may be necessary for that purpose. If Lessee fails to cure such failure of performance, then Lessor may elect to terminate this Lease and take possession of the Property.

13.3 Lessor's Remedies in Default. 13.3.1 Upon the occurrence of an event of default under Section 13.1, Lessor shall have the following rights and remedies, subject to the provisions of Section 11.5:

13.3.1.1 To terminate this Lease and Lessee's right of possession of the Property by giving notice of such election to Lessee, in which event Lessee shall immediately surrender possession thereof to Lessor; or

13.3.1.2 To terminate Lessee's right of possession of the Property without terminating this Lease by giving notice of such election to Lessee, in which event (A) Lessee shall immediately surrender possession thereof to Lessor, failing which Lessor may exercise the right of reentry, and (B) Lessor shall have the right to occupy the Property for and on account of Lessee and to collect any unpaid Rent and other charges which have or may thereafter become due and payable; or

13.3.1.3 To exercise the rights described in clause (ii) above and thereafter elect to terminate this Lease and all of Lessee's rights in or to the Property by giving notice of such election to Lessee.

13.3.1.4 If Lessor reenters the Property such reentry or any action, in unlawful detainer or otherwise, to obtain possession of the Property shall be deemed to be an election by Lessor to terminate this Lease, and Lessee's liability to pay Rent or other charges thereafter accruing.

13.4 Remedies Cumulative - Waiver. It is understood and agreed that the Lessor's remedies hereunder are cumulative and the Lessor's exercise of any right or remedy due to a default

or breach by Lessee shall not be deemed a waiver of, or to alter, affect or prejudice any right or remedy which Lessor may have under this Lease or by law.

14. **Reconstruction.** In the event the Improvements on the Property are damaged by fire or other perils, Lessee shall using its reasonable efforts to accomplish the work in question as soon as is reasonably possible repair, restore and rebuild the same (or other structures more suitable to Lessee's then-intended use of the Property), and this Lease shall remain in full force and effect. Notwithstanding the foregoing, in the event of a fire or other casualty occurring where there is less than five (5) years remaining in the term of this Lease, Lessee shall have the right to terminate the Lease effective as of the date of fire or other casualty by written notice to Lessor. If Lessee elects to terminate this Lease under the preceding sentence, then Lessee shall remove its personal property and debris from the Property within one hundred twenty (120) days after Lessee's notice.

15. **Holding Over.** Unless otherwise agreed to by Lessor in writing, any holding over by Lessee after the expiration of the lease term hereof, with or without Lessor's consent, shall be construed to be a tenancy from month-to-month. Such holdover tenancy shall be subject to all of the terms and conditions set forth herein, to the extent not inconsistent with a month-to-month tenancy.

16. **Quiet Enjoyment.** Lessee, upon fully complying with and promptly performing all of the terms, covenants and conditions of this Lease, and upon the payment of all sums due hereunder, shall have and quietly enjoy the Property for the lease term set forth herein.

19. **Right of First Refusal.** KXLY hereby grants and conveys to the Park Board a first right of refusal to purchase the Property, which shall be exercised by the Park Board in the following manner:

19.1. KXLY shall give written notice to the Park Board that it has received a fully executed bona fide purchase offer from a third party for the Property. The notice by KXLY shall include a copy of the written document that sets forth the terms and conditions of the sale and purchase between KXLY and the third party (the "**Purchase Offer**"). Any sale to a third party would be subject to this Lease.

19.2. Following receipt of the notice from KXLY, the Park Board shall have forty-five (45) days to deliver to KXLY a notice of its intent to exercise its first right of refusal for the Property on the same terms and conditions as those set forth in the Purchase Offer.

19.3. If the Park Board delivers said notice of its election to exercise its first right of refusal, KXLY and the Park Board shall proceed to complete and close the transaction according to the terms and conditions of the Purchase Offer, and the Park Board shall be deemed a party thereto.

19.4. If the Park Board expressly rejects its first right of refusal to acquire the Property, or if the Park Board fails to respond to the notice from KXLY within forty-five (45) days as provided herein, then, in either event, the Park Board's first right of refusal shall terminate as to the Purchase Offer and any subsequent sale of the Property; provided, if KXLY does not thereafter complete the sale according to the Purchase Offer, the Park Board's right of first refusal shall remain in effect for the term of this Lease.

19.5 The foregoing right of first refusal shall not apply to any sale, transfer or assignment by Lessor to a person or entity related to or affiliated with Lessor; provided, any sale, transfer or assignment of the Property shall be subject to the terms of this Lease.

20. Miscellaneous.

20.1 No Partnership, Joint Venture. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture as between Lessor and Lessee, or between Lessor and any other party; nor shall Lessee be deemed the Lessor's agent. Lessor shall not be liable for the debts or obligations of Lessee or for any other party.

20.2 Successors or Assigns. All the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon the Lessor, Lessee and their respective heirs, administrators, executors, successors and assigns, and upon any person or persons coming into ownership or possession of any interest in the Property by operation of law or otherwise, subject at all times, however, to all provisions and restrictions elsewhere contained in this Lease respecting the assignment, transfer, encumbering, or subletting of all or any part of the Property or Lessee's interest in this Lease.

20.3 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

20.4 Recording. Lessee may record this Lease or a Notice thereof without the prior written consent of the Lessor. If Lessee records a memorandum or "short form" of this Lease, it shall be in a form customarily used for such purposes. Said memorandum or short form of this Lease shall describe the parties, the Property, the lease term and any other provisions reasonably required, shall incorporate this Lease by reference and shall specify that any inconsistency between the memorandum of lease and this Lease shall be resolved in favor of this Lease.

20.5 Notices. Any notices required in accordance with any of the provisions herein shall be delivered or mailed by registered or certified mail, postage prepaid and return receipt requested, to the addresses set forth below or at such other place as either party may in writing from time to time specify. Any such notice shall be deemed effective on the date of delivery or two (2) business days after mailing. If there is more than one Lessee or Lessor, any notice required or permitted hereunder may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof.

Notices to Lessee:

Director, Parks Department
City of Spokane
808 W. Spokane Falls Blvd.
Spokane, WA 99201

With a copy to: Office of the City Attorney
City of Spokane
808 W. Spokane Falls Blvd.
Spokane, WA 99201

Notices to Lessee: QueenB Radio, Inc.
500 West Boone Avenue
Spokane, WA 99201-2491

With a copy to: Stanley M. Schwartz
Witherspoon, Kelley, Davenport & Toole, P.S.
422 W. Riverside Ave., Suite 1100
Spokane, WA 99201

20.6 Amendments. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

20.7 Force Majeure. This Lease and the obligations of either party hereunder, other than obligations to pay Rent or other sums of money, shall be excused if such party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of the obligated party; provided, however, such excused performance shall only be for that period of time that the cause of such inability or delay shall exist. This Lease and the obligations of either party hereunder shall not be affected or impaired because the other party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of the obligated party.

20.8 Choice of Law. This Lease shall be governed by the laws of the state of Washington.

20.9 Broker's Commission. Lessor and Lessee represent and warrant to one another that they have incurred no liabilities or claims for brokerage commissions or finder's fees in connection with the execution of this Lease, and that they have not dealt with and have no knowledge of any other real estate broker, agent or salesperson involved in any way with this Lease. Lessor and Lessee agree to indemnify, defend and hold each other harmless from all such liabilities or claims (including, without limitation, attorneys' fees) arising out of any contractual or other obligation alleged to exist between the indemnifying party and any other real estate broker, agent or salesperson. Lessor specifically agrees to indemnify, defend and hold Lessee harmless from and against any claim for a commission or finder's fee made by Carl Guenzel arising from or relating to this Lease.

20.10 Execution by Lessee and Lessor. No contractual or other rights shall exist or be created between Lessor and Lessee until all parties hereto have executed this Lease and fully executed copies have been delivered to Lessor and Lessee.

20.11 Meet and Confer, Mediation and Other Remedies. 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.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above set forth.

LESSOR:

QUEENB RADIO, INC., a Washington corporation

By _____
Its _____

LESSEE:

CITY OF SPOKANE, a municipal corporation of the State of Washington

By _____
Mayor David Condon

Attest:

By: _____
Terry Pfister, City Clerk

Approved as to Form:

By: _____
Assistant City Attorney

[illegible]

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of _____, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said banking corporation, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

Signature

Print Name

NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My commission expires _____.

[illegible]

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared DAVID CONDON, known to me to be the Mayor of the **CITY OF SPOKANE**, and Terry Pfister, known to me to be the City Clerk of the City of Spokane, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the purposes therein mentioned, and on oath stated that they was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

Signature

Print Name

NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My commission expires _____.

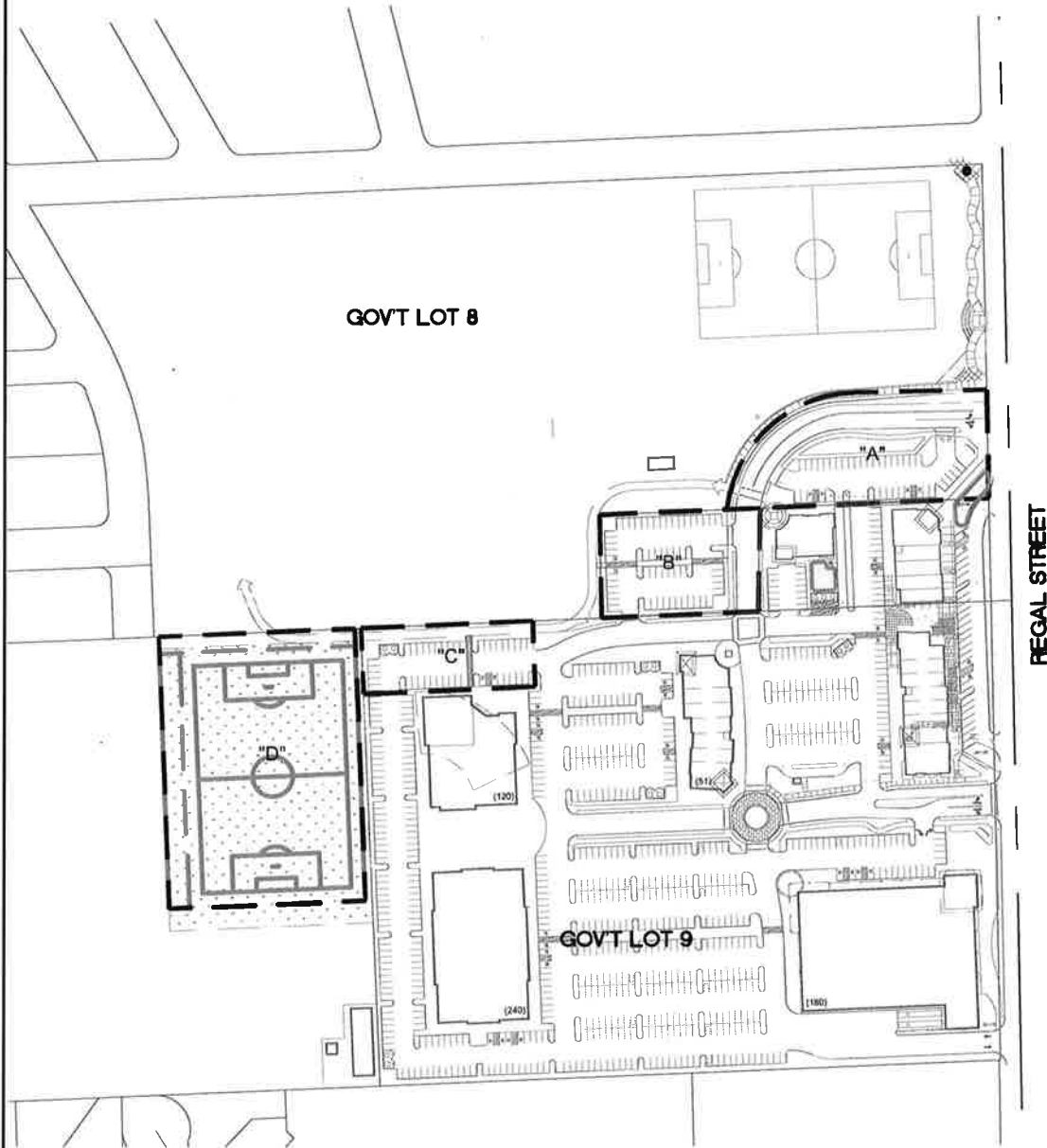
EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

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.	
client		checked	JEA		161129
		date	11/7/16		

EXHIBIT B
DEPICTION OF PROPERTY

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



SCALE: 1" = 100'

APN. 34041.0037

EAST LINE OF THE
NORTHEAST QUARTER
OF SECTION 04.

REGAL STREET

GOV'T LOT 8

APN. 34041.0038

30'

POINT OF
BEGINNING

NORTH LINE OF
GOV'T LOT 9

N87°38'23"E
286.00'

NE CORNER OF GOV'T
LOT 9

APN. 34041.9078

APN. 34041.9077

GOV'T LOT 9

N2°18'45"W
395.00'

395.24'
S2°18'45"E

286.00'
S87°41'15"W

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
client		checked	JEA	job no.
		date	11/4/16	161129

MEMORANDUM

April 6, 2016

To: Chris Wright, Park Board President

From: Pat Dalton, Assistant City Attorney

Re: Legal Issues Concerning KXLY/Southside Athletics Complex

Dear Chris,

You have asked us to respond to two questions concerning Park Board powers to enter into three agreements contemplated between the Park Board and KXLY. Those questions are (1) may the Park Board agree to a "perpetual easement" across park property in favor of KXLY? And (2) does the Park Board have authority to enter into a long term lease of KXLY property?

The contemplated easement is created in a document entitled Access and Reciprocal Parking Easements. The agreement gives KXLY a perpetual easement across Park Property so that KXLY can access its adjacent property, and in return gives the Park Board a perpetual easement for park users to access and park motor vehicles on KXLY's property. The issue raised by the Park Board is whether section 48 of the City Charter requires a vote of the public in order to grant a perpetual easement across Park Board property.

Spokane City Charter section 48 states in part:

The park board shall have power ... to grant concessions, leases, and privileges under such restrictions and for such compensation as it shall prescribe ... provided that ... no concession, lease or privilege shall be granted for a period of more than three years unless approved by ordinance.

...

Neither the park board nor the city council shall have the power to sell or exchange any existing park or portion thereof without the prior approval of the electorate given by a majority vote at the next ensuing general municipal election or special municipal election, as the case may be.

Under general rules of statutory construction, both of these provisions must be given meaning. The first provision clearly grants the Park Board authority to enter into agreements granting others the privilege to use park property for purposes that are not inconsistent with the Park Board's use of the property – i.e., easements. By contrast, the second provision limits the Park Board's authority to convey ownership of a park, or part of a park, to another.

The Washington Real Property Deskbook (3rd Edition), Section 10.2(1) discusses this issue:

An easement is a privilege to use the land of another. *State ex rel. Shorett v. Blue Ridge Club*, 22 Wn.2d 487, 156 P.2d 667 (1945). It is an interest in land, but not an estate in land. *Bakke v. Columbia Valley Lumber Co.*, 49 Wn.2d 165, 298 P.2d 849 (1956). One cannot have an easement in one's own property, because an easement is merely a use interest, not an ownership interest, in land. *Coast Storage Co. v. Schwartz*, 55 Wn.2d 848, 351 P.2d 520 (1960). In other words, an easement is an incorporeal right or interest in another's property. *Perrin v. Derbyshire Scenic Acres Water Corp.*, 63 Wn.2d 716, 388 P.2d 949 (1964). (Emphasis supplied by underline.)

In *Jones v. Berg*, 105 Wash. 69, 77 (1919), the Court was faced with the question of whether an easement had to be separately recorded under the recording statutes in effect at that time. The purported easement was included in a recorded deed, but the claim was made that there was not sufficient notice to a purchaser. The Court held that the easement did not need to be separately recorded:

'An 'easement' has been defined as a liberty, privilege, or advantage in land without profit, existing distinct from the ownership of the soil. It is a right which one person has to use the land of another for a specific purpose. As more fully defined, it is a privilege without profit, which the owner of one tenement has a right to enjoy in respect to that tenement, in or over the tenement of another person, by reason whereof the latter is obliged to suffer or refrain from doing something on his own tenement for the advantage of the former, a charge or burden upon one estate (the servient) for the benefit of another (the dominant).' *Jones v. Berg, supra*, at 77-78 (emphasis added by underline).

As defined by Washington law, we believe that a perpetual easement is not the “sale or exchange” of a park requiring a vote of the electorate, and falls within the Park Board's authority to grant privileges allowing others to use the land under the Park Board's control. The Charter does require that the City Council approve of a “perpetual” easement. Section 48 of the Charter also provides: “no concession, lease, or privilege shall be granted for a period of more than three years unless approved by ordinance.” Only the Council has the authority to

enact ordinances, so the Council would need to approve of the creation of a perpetual easement.

Your second question is whether the Park Board has the authority to lease land. As part of the transaction contemplated with KXLY, to assure that Parks maintains the same number of full-size soccer fields after the creation of the street easement as currently exist, KXLY has proposed leasing land to the Park Board for 20 years, with an option for a second 20 years. This land will contain a full-sized soccer field. The proposed lease calls for a \$1 per year cost to the Park Board. There is also discussion of including a right of first refusal to purchase the property from KXLY that would extend for some period following the end of the leasehold term (that is, either 20 or 40 years).

There are no Charter restrictions on the Park Board entering into long-term leases of property. Section 48, again, grants power to the Park Board to “purchase, procure, accept ... all parks and grounds used for park purposes.” The City Council must ultimately approve of any “lease” of Park land “granted” by the Park Board for longer than three years, but there is no similar requirement for Council approval for the Park Board to lease land from someone else.

Pat

LICENSE AND DEVELOPMENT AGREEMENT

This License and Development Agreement ("**Agreement**") is made as of this ____ day of _____, 2016 (the "**Effective Date**"), by and between QueenB Radio, Inc., d/b/a KXLY, a Washington corporation ("**KXLY**"), and the City of Spokane, a First Class Charter City acting through the City of Spokane Park Board ("**Park Board**"), hereinafter jointly referred to as "**Parties**" and individually as a "**Party**".

RECITALS

A. The Parties have entered into an Access and Reciprocal Parking Easement, of even date herewith ("**Easement and Agreement**"), that provides, among other things, for (i) the dedication of an easement and construction of improvements on real property owned by the Park Board as described in the attached Exhibit A (the "**Park Property**"), and (ii) a reciprocal parking and access easement benefitting the Park Property on property owned by KXLY.

B. KXLY owns certain real property in Spokane, Washington, consisting of approximately 14 acres, as described on the attached Exhibit B ("**KXLY Property**"). The KXLY Property contains two existing broadcast towers, a generator building, improvements and open space. The Parties have entered into a Ground Lease with City of Spokane Park Board, of even date herewith (the "**Ground Lease**"), pursuant to which KXLY agrees to lease a portion of the KXLY Property to the Park Board, for purposes of construction, operation, maintenance, repair and replacement of a sports/soccer field.

C. Adjacent and to the east of the KXLY Property is an additional fifteen (15) acres of property, owned by KXLY, which is located south of the intersection of Regal Street and the Palouse Highway ("**Adjacent KXLY Property**"). See Exhibit C.

D. The Park Property is presently developed as a youth sporting complex which includes soccer fields, baseball diamonds, surface parking, restrooms and a concessions and storage area/building. In order to construct the improvements contemplated by the Easement and Agreement, it is necessary to reconfigure a sports field on the Park Property, relocate existing improvements and buildings, plus construct a new sports/soccer field on the KXLY Property.

E. Through this Agreement, the Parties desire to cooperate with each other in developing and constructing the identified improvements upon the following terms, covenants and conditions. Exhibit D, attached hereto, contains a depiction of the Improvements (defined herein).

NOW, THEREFORE, the Parties agree as follows:

1. Definitions. The following capitalized terms have the meaning set forth below:

1.1 **"Governmental Approvals"** means the receipt of valid Permits, permission or other approvals and entitlements necessary for the construction, use and operation of the Improvements that are issued by a Governmental Authority.

1.2 **"Governmental Authority"** means any federal, Washington State, Spokane County or City of Spokane governmental entity that exercises executive, legislative, administrative, regulatory, judicial, or public authority with respect to the Park Property, and/or the KXLY Property.

1.3 **"Improvements"** mean the following:

1.3.1 construction of public vehicle and pedestrian access from the Regal Street and Palouse Highway intersection on a street with associated pedestrian/multimodal improvements into the Park Property (**"Joint Access"**);

1.3.2 reconstruction of the parking lot located on Exhibit A;

1.3.3 reconstruction of restrooms, concession and storage buildings with associated underground utilities located on Exhibit A;

1.3.4 construction of sidewalk, hardscapes, signage with landscaping adjacent to the west side of Regal Street from 46th Avenue to the Regal Street and Palouse Highway intersection; and

1.3.5 installation of a soccer field on KXLY Property.

1.4 **"Improvement Work"** means the construction and installation of the Improvements according to the Improvement Plans, requirements of any Governmental Authority and other agreed documents.

1.5 **"Permits"** means all written approvals, licenses, permits, authorizations, consents, grants, franchises, orders, exemptions, deviations, variances, notices or registrations with or by any Governmental Authority under any law, ordinance, regulation or standard that authorizes development and use of the Improvements.

2. Responsibility of KXLY. KXLY through its agents and contractor, shall, at its sole cost and expense, design, engineer, construct, warrant and otherwise develop the Improvements pursuant to all appropriate Governmental Approvals and Permits; KXLY shall be responsible for obtaining all necessary Governmental Approvals including without limitation any design deviations. If KXLY, through no fault of its own, has not achieved Substantial Completion (as defined below) of the Improvements within _____ of the Parties' mutual execution of this Agreement, the Parties shall in good faith with due diligence reach a mutual agreement regarding reasonable time extensions, changes or alternatives to complete the Improvements. As used herein, the term "Substantial Completion" shall mean the stage in the progress of the

Improvements when the Improvements are sufficiently complete in accordance with approved plans such that they may be utilized for their intended use. In addition, KXLY shall design a multi-purpose trail as generally depicted on Exhibit D. This multi-purpose trail shall not be constructed by KXLY, nor considered part of the Improvements.

2.1 Design Standards. The Improvements identified in section 1.3.1 shall be similar in design and construction for those improvements installed by the Park Board on other City sports fields within the past ten (10) years. The Joint Access shall be designed as a local access commercial street with a design deviation to reduce the width of the right of way, address aspects of the site, provide traffic calming features, achieve superior design function and terminate at the Adjacent KXLY Property.

2.2 Submission of Preliminary Improvements Plans. KXLY shall submit to the Parks Department preliminary plans which contain (i) a site plan depicting the proposed Improvements, to include but not be limited to, the location of buildings, structures, pedestrian and vehicle ingress and egress to the Park Property, (ii) renderings showing the elevation and general appearance of the Improvements, and (iii) such other matters that will reasonably lead to the development of the Improvement Plans set forth in Section 2.4 below, hereinafter "**Preliminary Improvements Plans.**"

The Parties shall meet and confer in good faith in order to reach agreement on the Preliminary Improvements Plans. The Park Board shall approve or disapprove of the Preliminary Improvements Plans within thirty (30) days from KXLY's delivery of the Preliminary Improvements Plans; provided, the Park Board shall not unreasonably withhold, condition, or delay approval of the Preliminary Improvements Plan. In the event the Parks Department disapproves the Preliminary Improvements Plans, KXLY shall revise the Preliminary Improvements Plans as KXLY deems necessary, and thereafter resubmit the same to the Parks Department for review and approval, which approval of the Preliminary Improvements Plans shall not be unreasonably withheld, conditioned or delayed. If the Parties are unable to resolve any disagreement over the Preliminary Improvements Plans within a reasonable period of time not to exceed thirty (30) days following KXLY's delivery of the revised Preliminary Improvements Plans, then either Party may invoke the provisions of Section 7 of this Agreement.

2.3 Park Board Approval of Final Improvement Plans. Within one hundred (180) days after approval of the Preliminary Improvements Plans, or as otherwise mutually agreed, KXLY shall prepare or cause to be prepared the following documents, in substantial conformance with the approved Preliminary Improvements Plans for review and approval by the Parks Department:

2.3.1 documents, including but not limited to working drawings, elevations, plans and specifications which will be the basis for construction

documents, along with identifying the persons and entities that will develop, design, and construct the Improvements (the "**Improvement Development Plan**"); and

2.3.2 a schedule for the completion of the Improvements according to the Improvement Development Plan ("**Improvement Schedule**").

The identified terms set forth in 2.2.1 and 2.3.2 above are collectively referred to as the "**Improvement Plans**."

The Parties shall meet and confer in good faith in order to reach agreement on the Improvement Plans. The Park Board's approval of the Improvement Plans shall not be unreasonably withheld, conditioned or delayed. If the Parties are unable to resolve any disagreement over the Improvement Plans within a reasonable period of time not to exceed thirty (30) days following KXLY's delivery of the Improvement Plans, then either Party may invoke the provisions of Section 7 of this Agreement.

2.4 Governmental Approval of Improvements. KXLY shall, at no cost or expense to the City of Spokane and/or Park Board, obtain all Governmental Approvals and Permits that are required for the Improvements to be done on the Park Property and KXLY Property. The Park Board (or the City of Spokane) shall cooperate, review and sign all applications for Permits and approvals necessary for construction and promptly provide to KXLY any information in the Park Board's possession that is required to make application for or to obtain any such approvals and Permits

2.5 Construction of Improvements. KXLY shall cause the Improvements to be commenced and completed in accordance with the terms of this Agreement through a licensed, bonded and insured general contractor (the "**General Contractor**"), at no cost or expense to the City of Spokane and/or Park Board. KXLY shall pay the General Contractor's costs and fees to construct the Improvements. KXLY shall indemnify, defend, and hold the City of Spokane and Park Board harmless from any claim(s) that construction of the Improvements was subject to Washington public works and prevailing wage requirements.

2.6 Construction Management. KXLY shall be responsible for, through its General Contractor or otherwise, performing the construction of the Improvements with reasonable care, prudence, attention to quality, timing, and cost control to ensure compliance with the terms of this Agreement.

2.7 Construction Inspection. KXLY and the Park Board shall each designate a qualified person to inspect and confirm the Improvements are constructed in accordance with the Governmental Approvals and Permits, and all applicable laws. The Parties and designees shall have the right to make reasonable inspection of the construction progress at

all times, provided that such inspection is coordinated with the General Contractor's representative at the construction site and does not unnecessarily interfere with the progress of the Improvements.

2.8 Bonds, Liens and Warranty. The General Contractor shall provide payment and performance bonds guaranteeing: (a) the payment of all laborers, suppliers and material men and (b) the performance of the Improvements, respectively. KXLY shall indemnify, hold harmless, and defend the Park Board from and against any lien and pay the lien plus reasonable attorney fees without cost or expense assessed against the City or Park Board. The General Contractor shall warranty the Improvements to be free from defects, subsidence and failure for a period of two (2) years after final acceptance by the Parties. The Park Board shall be a beneficiary of this warranty.

2.9 Compliance. The Improvements shall be completed in compliance with the Plan and all applicable Governmental Approvals and Permits, all applicable laws and the terms of this Agreement. No changes shall be made to the Plan or any Governmental Approvals or Permits without the Parks Department prior written approval.

2.10 Availability of Collected Stormwater. KXLY intends to collect and store stormwater on the KXLY Property in a pond or similar feature. KXLY agrees to permit the Park Board to use the collected stormwater for irrigation at its cost and expense. KXLY will install "Purple Pipe" from the developed stormwater pond to an area adjacent to the sports field developed on the KXLY Property.

3. License and Real Property Interests.

3.1 License. The Park Board hereby grants KXLY, General Contractor and their respective consultants a non-exclusive license to enter and remain on areas of the Park Property as reasonably necessary ("**Licensed Area**") to inspect, stake or mark, demolish, construct, improve and otherwise install and complete the Improvements in accordance with the terms of this Agreement. KXLY shall, and shall cause its agents, consultants, and General Contractor to, exercise best efforts to avoid creating unreasonable noise, dust or other inconvenience to patrons, guests and invitees of the Park Property. The Improvements construction shall be performed with due care, returning the remainder of the Licensed Area to the condition in which it was found, reasonable wear and tear excepted. Without limiting the foregoing:

(a) Representatives of KXLY, General Contractor and the Parks Department shall meet periodically, as requested, in order to establish the particular details and scheduling of the Improvements that may (i) cause significant noise, dust, fumes or odors (such as, by way of example and not limitation, demolition, excavation, paving, and painting), (ii) involve the movement of construction vehicles or heavy equipment in areas regularly used by patrons, guests, invitees or

employees using the Park Property, (iii) alter regular pedestrian or vehicular access to the Park Property or (iv) otherwise materially disrupt the normal operation and use of the Park Property, to the extent commercially practicable, so as to eliminate or minimize interference with the normal operation of the Park Property.

(b) KXLY, its agents, consultants, and General Contractor shall, and they shall cause all subcontractors to, take all appropriate safety measures to protect patrons, guests, invitees, and employees of the Park Board from injury or damage.

(c) The Parties, their agents, consultants, and contractors shall cooperate and coordinate construction activities in a manner that does not interfere with or delay the Improvements.

4. Term. This Agreement shall commence on the Effective Date and shall terminate upon (a) completion of the Improvements and the execution of a Lease Agreement where KXLY leases the developed sports field in section 1.3.5 to the Park Board upon the following terms: (1) the rent is one dollar (\$1.00) per year; (2) the initial term is 20 years with the Park Board given one right to renew for an additional 20-years upon the same terms; (3) the use, occupancy, maintenance and liability shall be at the sole expense of the Park Board; and (4) subject to additional terms, conditions and covenants that are usual and customary in similar agreements. The Lease shall contain a First Right of Refusal that may be exercised at the end of the renewal term.

5. Indemnity.

5.1 Indemnification Obligation. KXLY shall defend, indemnify and hold the Park Board, and its officers, directors, employees, agents, contractors, lessees, guests, invitees, successors and assigns of each of the foregoing (collectively, the “**Park Board Indemnitees**”) harmless against and from any and all claims, costs, damages or expenses arising from the conduct, management, or performance of the Improvements, including, without limitation, any and all claims arising from: (a) any breach or default on the part of KXLY or the General Contractor in performance of any covenant or agreement on its part to be performed pursuant to the terms of this Agreement; and (b) any act of negligence or willful misconduct of KXLY, the General Contractor, or any of their agents, servants, employees, contractors, subcontractors, or licensees. Such indemnity shall include any and all costs, attorney fees, expenses, and liabilities incurred in or about any such claim, action, or proceeding brought thereon, and if any action or proceeding be brought against any of the Park Board Indemnitees by reason of any such claim. KXLY, on notice from the Park Board, shall defend against such action or proceeding, unless such action or proceeding is defended by counsel for any carrier of public liability insurance provided herein.

5.2 Limitation on Indemnification. If and to the extent this Agreement is a contract or agreement subject to Revised Code of Washington (“**RCW**”) Section 4.24.115 as in effect on the date of this Agreement, all provisions of this Agreement pursuant to

which KXLY agrees to indemnify the Park Board Indemnitees against liability for damages arising out of bodily injury to persons or damage to property (“**Damages**”) in connection with the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of any improvement to the Park Board Property (“**Indemnities**”) will be limited by the provisions of this Section 5.2. None of such Indemnities will apply to Damages caused by or resulting from the sole negligence of the indemnitee, its agents or employees. To the extent that any such Damages are caused or result from the concurrent negligence of (a) the indemnitee or its agents or employees and (b) the indemnitor or its agents or employees, the Indemnities will apply only to the extent of the indemnitor's negligence. If RCW 4.24.115 is hereafter amended to eliminate or modify the limitations on indemnities set forth therein, this Section 5.2 will automatically and without further act by either Party be deemed amended to remove any of the limitations contained in this Section 5.2 that are no longer required by then-applicable law. KXLY and the Park Board have specifically negotiated the waiver of and hereby specifically waive any provisions of any industrial insurance act, including Title 51 of the RCW, or any other employee benefit act which might otherwise operate to release or immunize KXLY from its obligations under Section 5.1 and this Section 5.2.

6. KXLY's Liability Insurance.

(a) KXLY shall, or cause its General Contractor to purchase and maintain such insurance set forth below that may arise out of or result from KXLY's or the General Contractor's acts or omissions under this Agreement to include its agents, contractors or anyone acting on behalf of KXLY.

(b) The comprehensive general liability insurance shall include premises operations (including explosion, collapse, and underground coverage), elevator, independent contractors, completed operations, and blanket contractual liability on all written contracts, all including broad form property damage coverage.

(c) The comprehensive general and automobile liability insurance shall be written for not less than limits of liability as follows:

(A) Comprehensive general liability insurance with a limit not less than \$1,500,000.00 each occurrence covering liability arising from bodily injury, property damage, independent contractors, products-completed operations, and liability assumed under an insured contract.

(B) Comprehensive automobile liability insurance with a limit of not less than \$1,500,000.00 each occurrence covering liability arising from bodily injury and property damage.

(C) Professional liability insurance with a limit of not less than \$1,500,000.00 including errors and omissions or equivalent coverage for claims arising out of KXLY's, its contractors' (including the General Contractor) and their subcontractors' negligent or willful errors or omissions during the performance of the construction services contemplated by this Agreement. Such insurance shall also include coverage for reasonable attorneys' fees and investigation costs.

(d) The foregoing policies shall contain a provision that coverages afforded under the policies will not be canceled or be nonrenewable until at least thirty (30) days' prior written notice has been given to the Park Board. Certificates of insurance from KXLY and the General Contractor showing such coverages to be in force and naming the Park Board as an additional insured shall be filed with the Park Board prior to commencement of the Improvements.

7. Dispute Resolution.

7.1 If either party has a disagreement, dispute, claim, or seeks relief ("**Dispute**") against the other party 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 Dispute is not resolved within five (5) days from the notice, the matter may be resolved according to section 7.2.

7.2 Following conclusion of the process in section 7.1, the Project Neutral (defined below) shall impartially consider the Dispute and render a written decision that is final and binding. The Project Neutral shall be jointly selected within ten (10) days of delivery of the Dispute and be a design professional (such as an architect) who has knowledge of similar property and projects in Spokane County.

The Project Neutral's decision shall be based upon the facts and legal authority relating to the Dispute. The Project Neutral may conduct an independent investigation into any presented matter and may request the Parties submit additional information. The Project Neutral shall conduct a hearing and then issue a written decision within thirty (30) days of the delivery of the Dispute. The Parties shall share the fees and costs of the Project Neutral.

8. Events of Default; Remedies.

8.1 Events of Default -- KXLY. Upon the occurrence of any one or more of the following events which shall continue and not be cured in accordance with the notice and opportunity to cure provisions set forth in this Section, the Park Board may, at its option, declare an "Event of Default" under this Agreement:

(a) KXLY fails to comply with any term or fails to perform any of its obligations under this Agreement and such failure has a material adverse effect on the Park Board or creates a material risk of injury to person or damage to property;

(b) KXLY fails to comply with any term or fails to perform any of its obligations under this Agreement, where such failure is not within the terms of Section 8.1(a) above, and continues for a period of ten (10) days after written notice from the Park Board;

(c) if any representation or warranty made by KXLY in this Agreement shall have been false or misleading as of the day it was made, provided that if such untrue representation or warranty is susceptible of being cured, KXLY shall have the right to cure such representation or warranty within ten (10) days of receipt of notice from the Park Board;

(d) any Governmental Approvals or Permits required to perform the Improvement expire or otherwise are not in full force and effect.

8.2 Events of Default -- the Park Board. If the Park Board fails to comply with any term or fails to perform any of its obligations under this Agreement for a period of thirty (30) days after written notice from KXLY, KXLY may, at its option, declare an Event of Default under this Agreement.

8.3 Cure. If a default subject to a cure period hereunder is not reasonably susceptible of cure within the applicable cure period provided above, but the defaulting Party commences to cure such default within the applicable cure period and thereafter diligently prosecutes the cure to completion, and completes such cure within thirty (30) days of commencing the cure, such default shall not become an Event of Default; provided, if the nature of the default is such that it cannot be fully cured within 30 days due to circumstances not under the defaulting Party's control, the period of time in which defaulting Party must cure the violation shall be extended for such additional time reasonably necessary to complete the cure.

8.4 Remedies. Upon the occurrence of any Event of Default, the non-defaulting Party may, in addition to other rights as shall be granted under any other provision of this Agreement, but without waiving such other rights, (a) perform any and all work necessary to complete, secure and/or protect the Improvements, (b) bond or discharge any lien upon such Party's property not bonded or discharged by the defaulting Party as required hereunder, (c) specifically enforce the defaulting Party's unperformed obligations, and (d) seek arbitration as set forth in Section 7 herein or exercise all rights and remedies available at law or in equity through a court with personal and subject matter jurisdiction.

9. Forced Delay. Performance by either Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, general lack of transportation, general governmental restrictions, regulations, orders or priority, unusually severe weather, breach of this Agreement by the other Party, or acts or failures to act of Governmental Authority after diligent best efforts to cause the Governmental Authority to act. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within fifteen (15) days of the commencement of the cause. In the event the time for performance of a Party's obligation is extended under this Section 9, the Parties shall reasonably and in good faith cooperate to minimize the duration of the extension and shall revise the Skywalk Plan to reflect the resulting extension.

10. Notice. All notices required or permitted to be given hereunder shall be in writing, may be given by personal delivery, United States mail (certified, return receipt requested) or overnight delivery by a service retaining evidence of delivery, and shall be deemed delivered when received at the address set forth below.

If to the Park Board: Attn: Leroy Eadie, Director of Parks and Recreation
5th Floor City Hall
808 W Spokane Falls Blvd
Spokane, WA 99201

With copies to: City of Spokane
Office of the City Attorney
City Hall, Fifth Floor
808 W. Spokane Falls Blvd.
Spokane, WA 99201

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

With a copy to: Stanley M. Schwartz
Witherspoon Kelley
422 West Riverside Avenue, Suite 1100
Spokane, WA 99201

11. Binding Effect. This Agreement will bind and inure to the benefit of the Parties and their successors and assigns.

12. Entire Agreement. This Agreement shall supersede any prior representation or agreement, written or oral. This Agreement shall not be subject to modification or amendment except in a writing executed by both Parties.

13. Attorney Fees. In any action to enforce any provision of this Agreement, the prevailing Party shall be entitled to recover in addition to any other amounts awarded, its reasonable attorney fees and costs of action.

14. Governing Law. This Agreement shall be interpreted and governed by and under the laws of Washington.

15. Authority. If either Party is a corporation or partnership or other entity, each person executing this Agreement on behalf of such Party hereby represents and warrants that such Party is a duly formed and existing entity and has full right and authority to execute and deliver this Agreement and that each person signing on behalf of such Party is authorized to do so.

16. Counterparts. This Agreement may be executed in multiple counterparts, and each counterpart, when fully executed and delivered, shall constitute an original instrument, and all such multiple counterparts shall constitute but one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, KXLY and the Park Board do hereby execute this Agreement as of the Effective Date.

CITY OF SPOKANE, PARK BOARD:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved:

Leroy Eadie, Director of Parks and Recreation

Approved as to Form:

_____,Assistant City Attorney

KXLY:

QUEENB RADIO, a Washington Corporation

By: _____
Its: _____

EXHIBIT A
Park Property

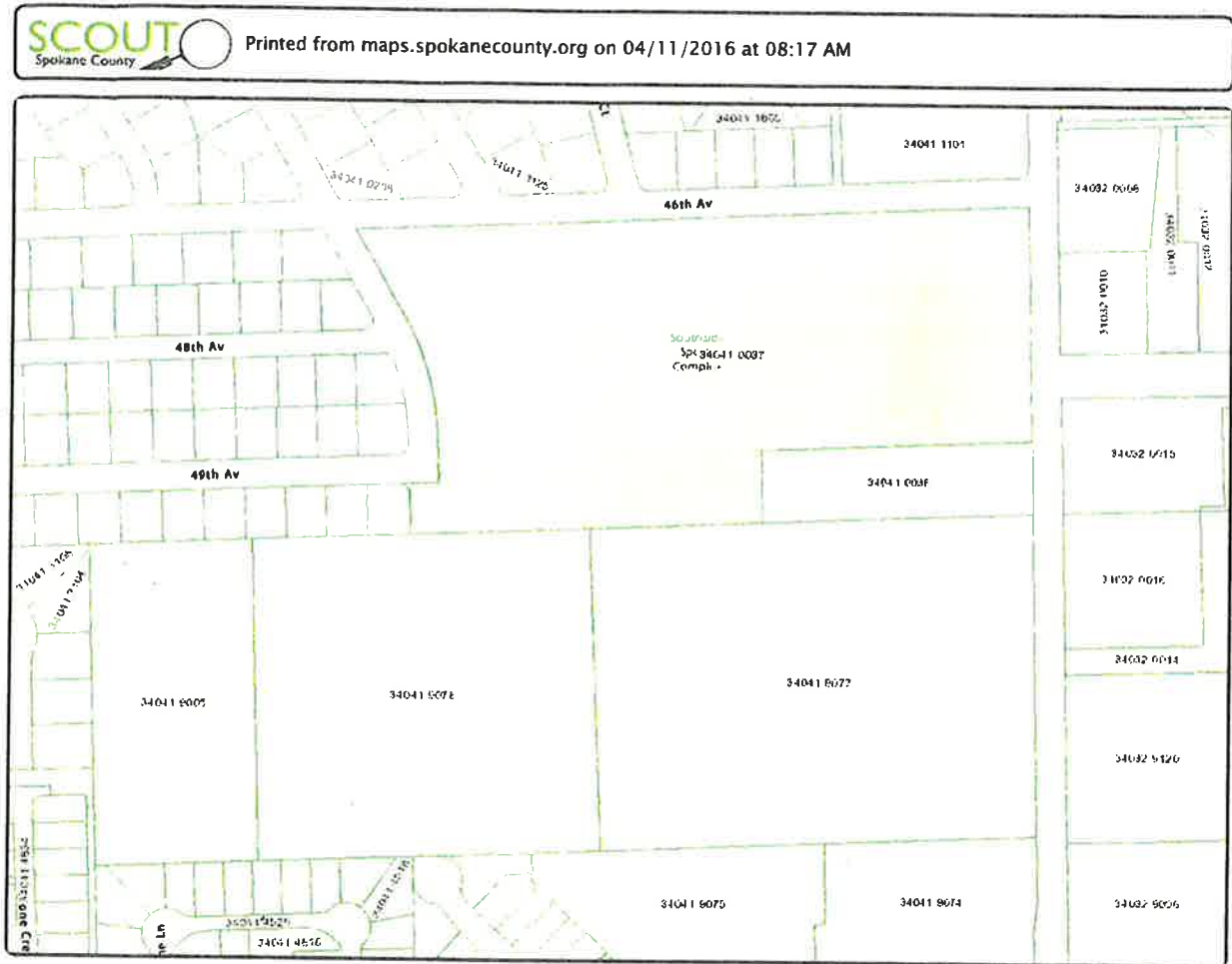


EXHIBIT B
KXLY Property

[The exhibit follows this page.]

Address  **Parcel**

34041.9078

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5/10/2014

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8 Alameda St

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25

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S. Hargreaves

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<http://maps.spokanecity.org/#>

[Map Use Disclaimer](#)

151

S Reginald St

G. Smith

U 148524

5. Scope

Southside Sports Complex

34041.9078

4/11/2016



MapSpokane

7 Ave

E 48th Ave

E 48th Ave

E 50th Ave

E 48th Ave

E 50th Ave

E 50th Ave

S Crestline St

S Stone St



E 51st Ln

E 51st Ln

E 52nd Ln

One Creek Ln

Address Parcel
34041.9005

Southeast
Sports Complex

34041.9005

[Map Use Disclaimer](#)

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<http://maps.spokanecity.org/#>

EXHIBIT C
Adjacent KXLY Property

[The exhibit follows this page.]

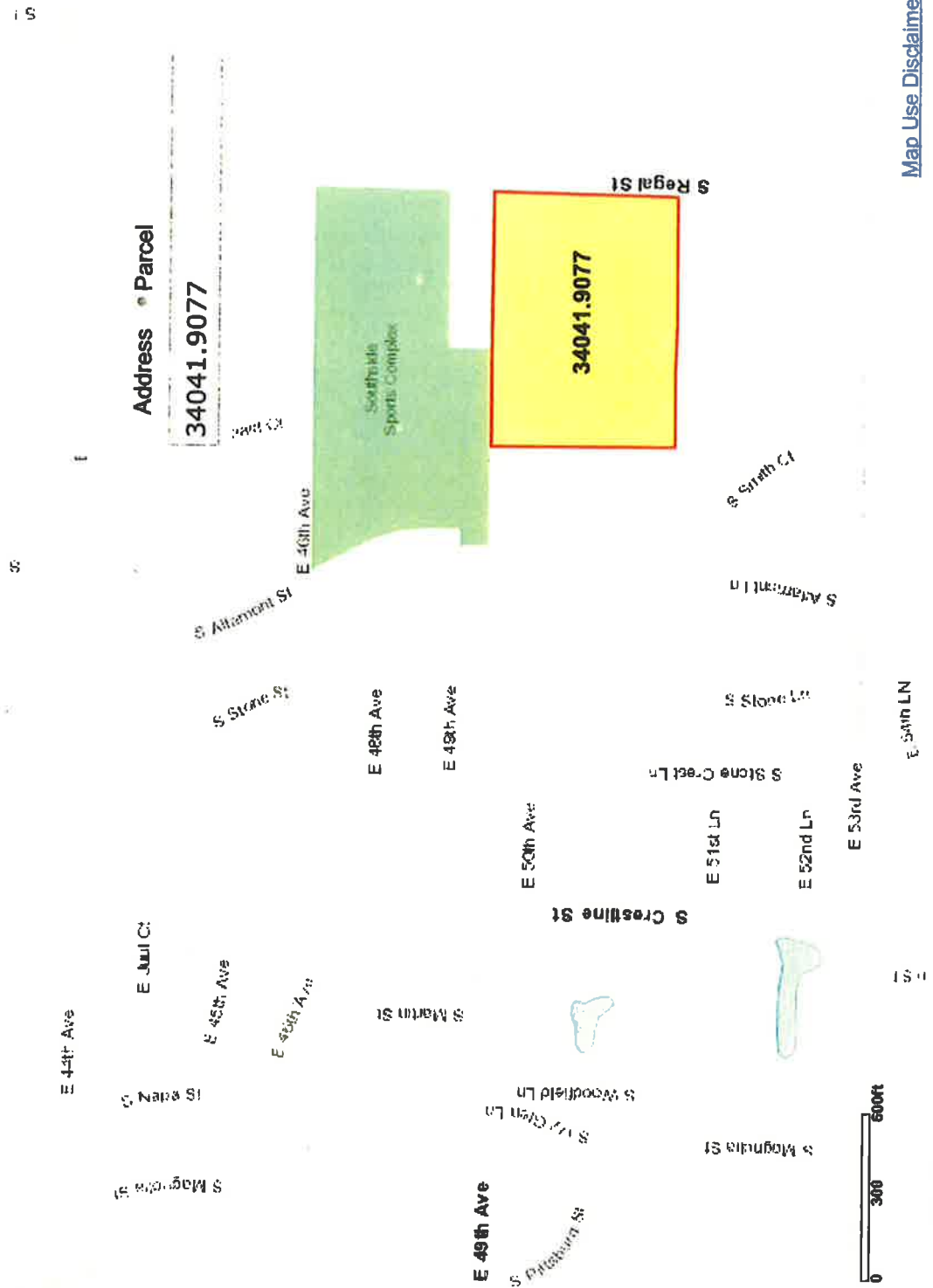
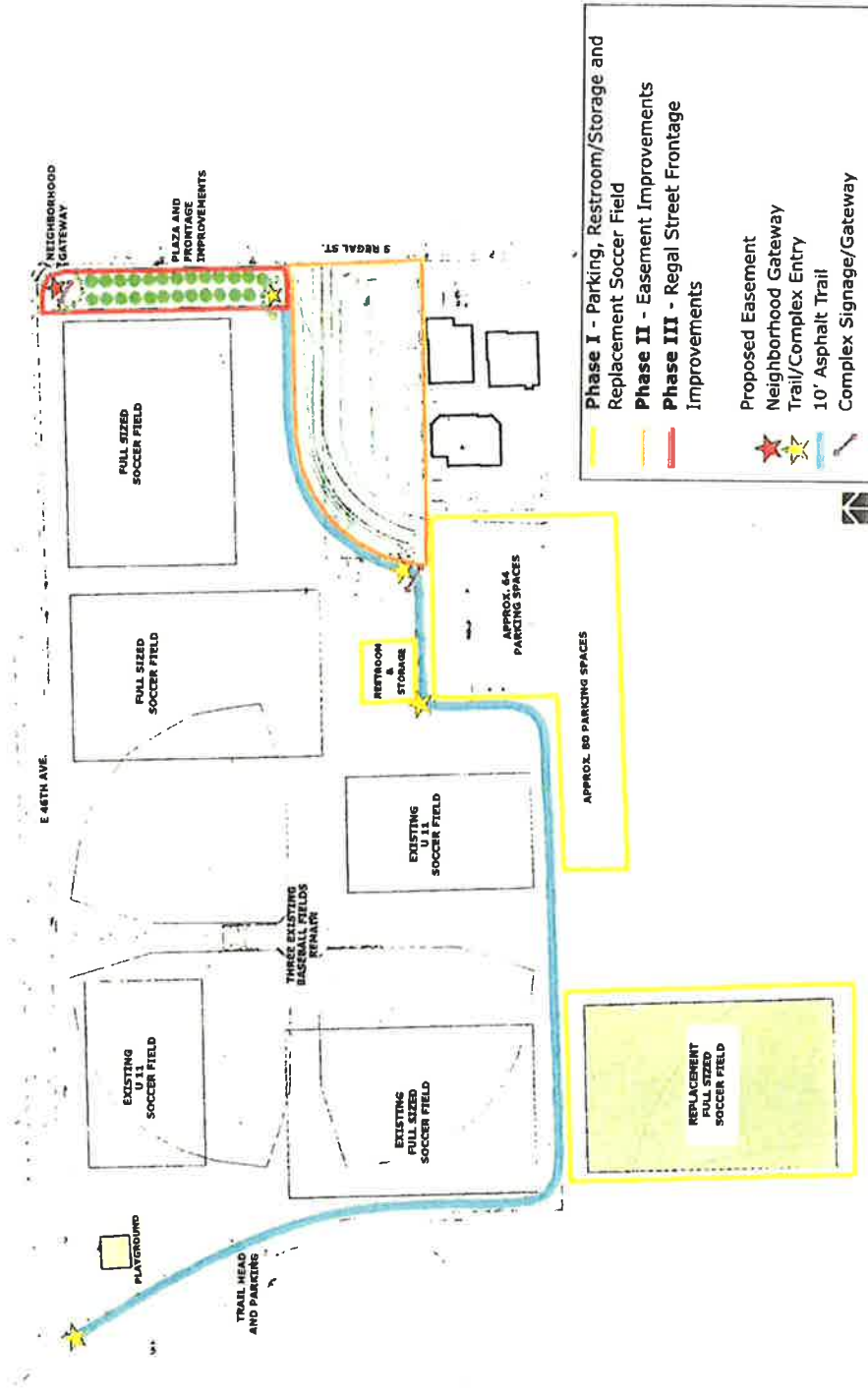


EXHIBIT D
Depiction of Improvements

[The exhibit follows this page.]



Southeast Sports Complex - Preferred Concept
Exhibit B

Michael Terrell Landscape Architecture, PLLC
 1421 N Meadowood Lane, Suite 150
 Liberty Lake, WA 99019
 (509) 922-7449
 March 2, 2016

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 _____, 2016 ("**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. 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.

C. 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**.

D. 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**").

E. 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.

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

G. 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**.

H. 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 Joint 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 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 legally described on Exhibit E ("**Reciprocal Easement**").

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, and may be used and occupied by persons and vehicles for reasonable periods consistent with the customary use and occupancy of vehicle parking on the adjacent commercially developed property and a public park and/or public sports complex. 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.

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 _____, 2016, 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 _____, 2016, 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 _____

Printed from maps.spokanecounty.org on 04/11/2016 at 08:17 AM



EXHIBIT B
KXLY Property

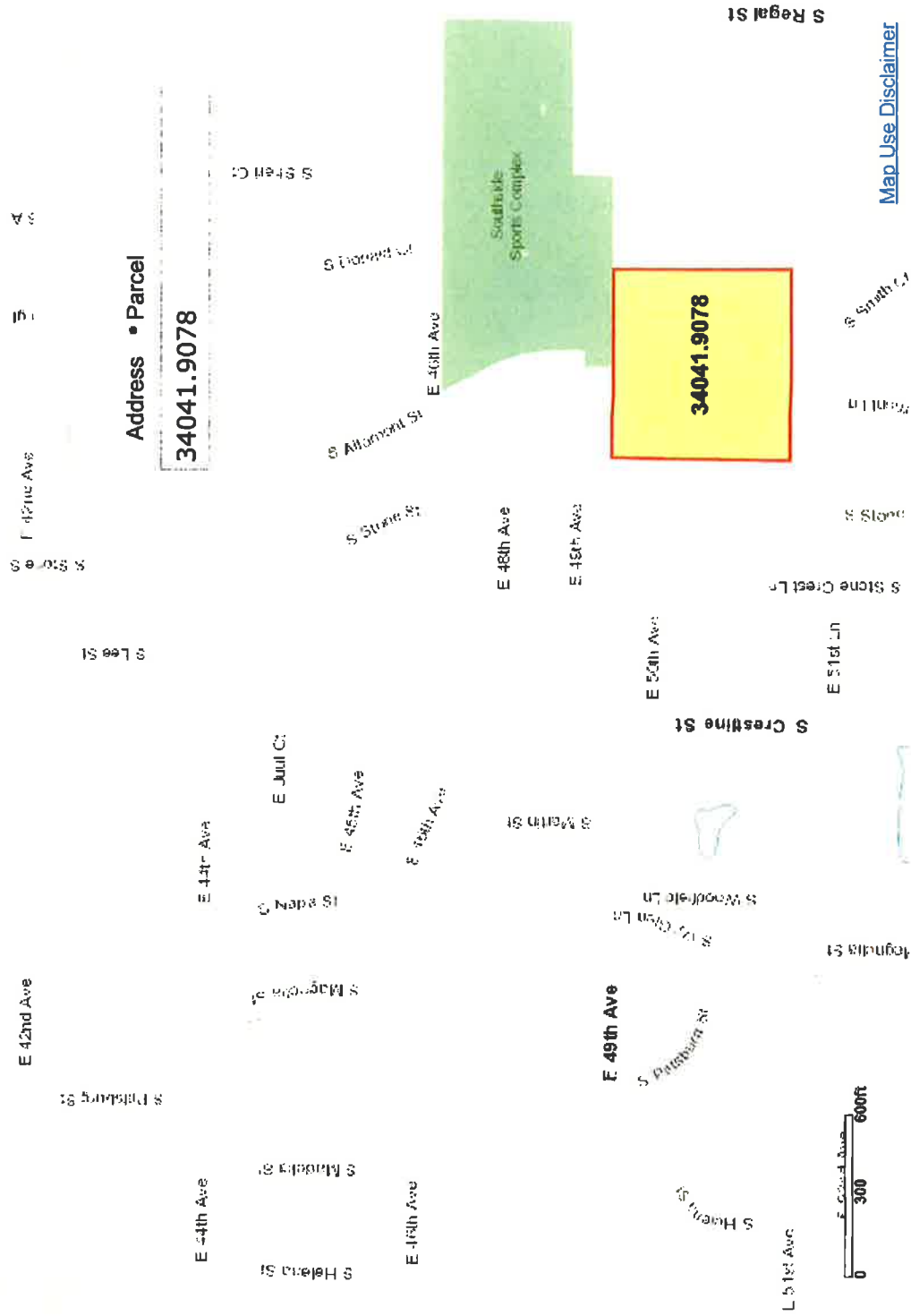
Adjacent KXLY Property

[exhibit on next page]

4/11/2016



MapSpokane



<http://maps.spokanecity.org/#>

4/11/2016



MapSpokane

S Loc St

E 4th Ave

E 42nd Ave

Address • Parcel

34041.9005

E 48th Ave

Southeast
Sports Complex

E 50th Ave

E 48th Ave

E 50th Ave

E 50th Ave

S Loc St

S Shure St

S Crestline St

E 51st Ln

E 51st Ln

E 51st Ln

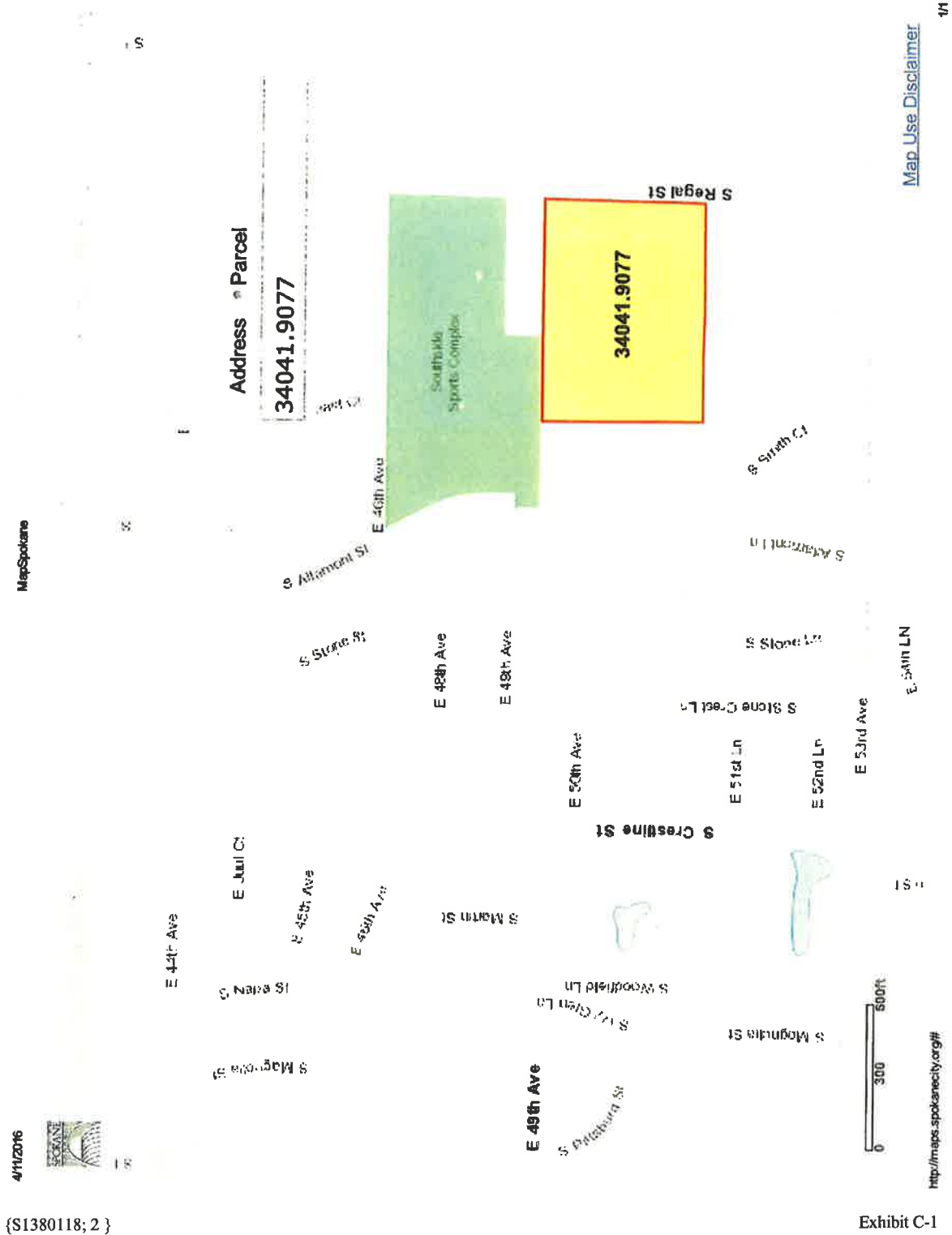
0 150 300ft

<http://maps.spokanecity.org/#>

E 52nd Ln

[Map Use Disclaimer](#)

EXHIBIT C Conceptual Site Plan



{S1380118; 2 }

Exhibit C-1

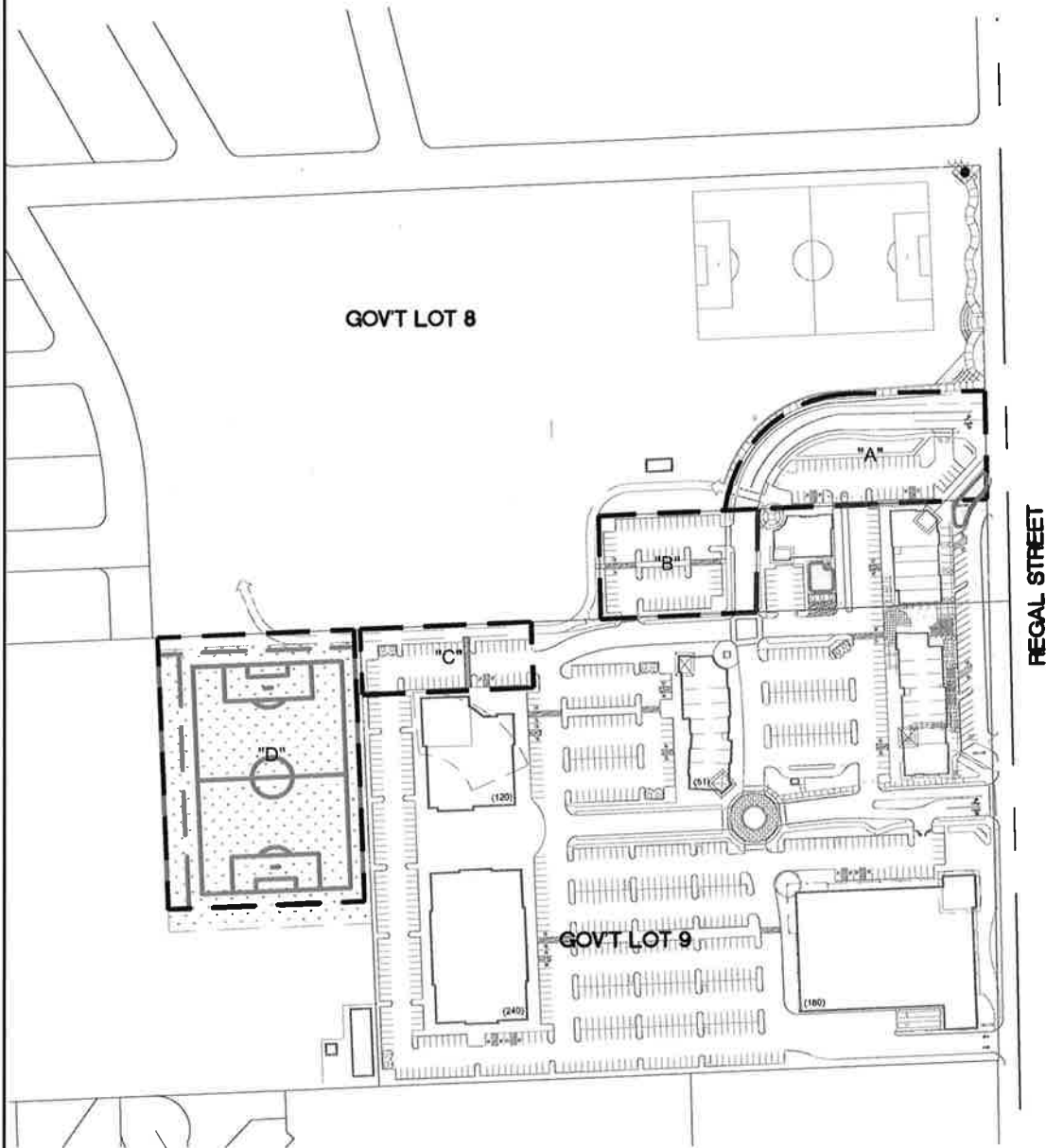
EXHIBIT D
Easement Area

[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'



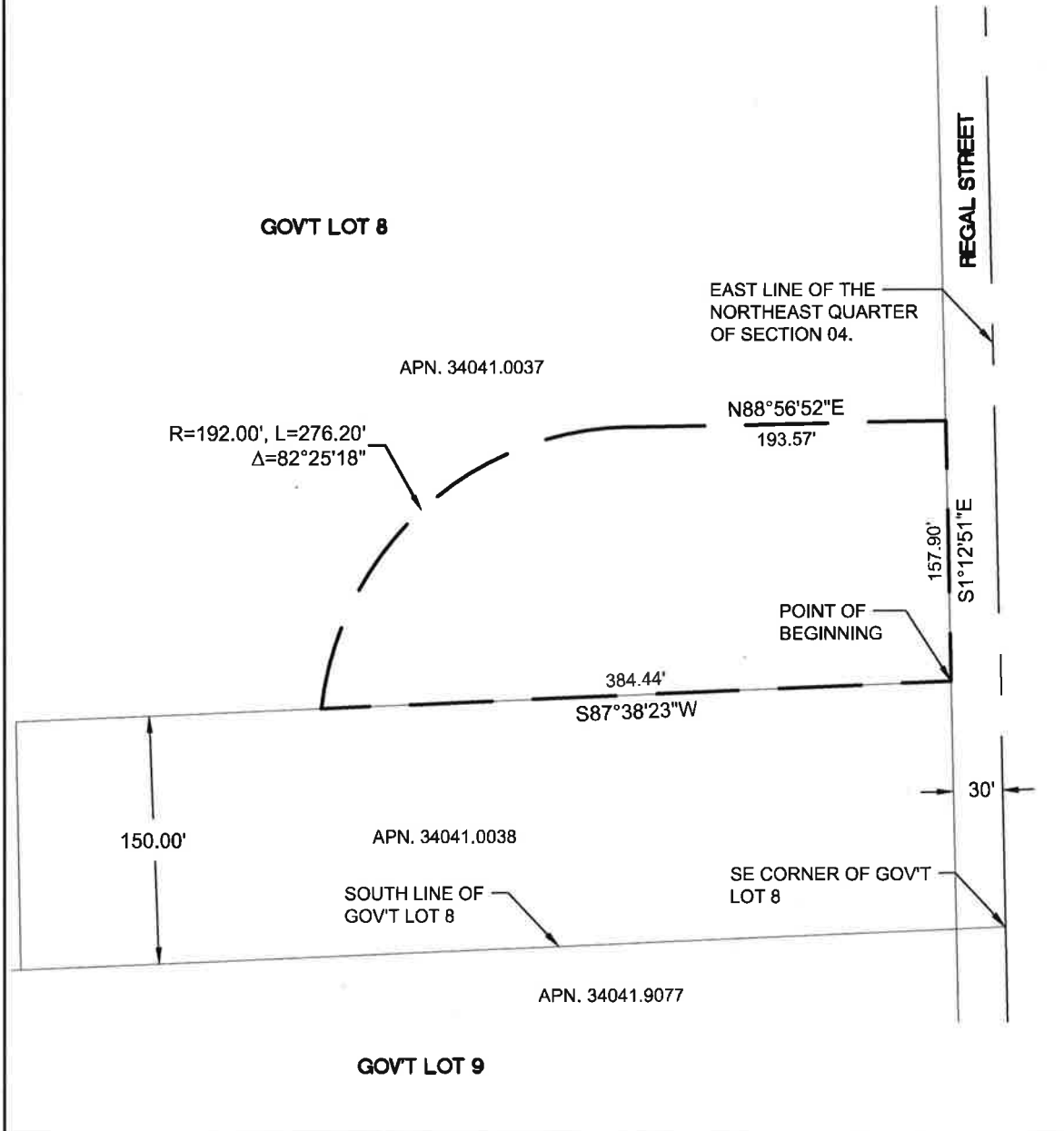
COFFMAN
ENGINEERS
10 N. Post Street Suite 500
Spokane, Washington 99201
509 328 2994 Fax 509 328 2999

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



SCALE: 1" = 100'



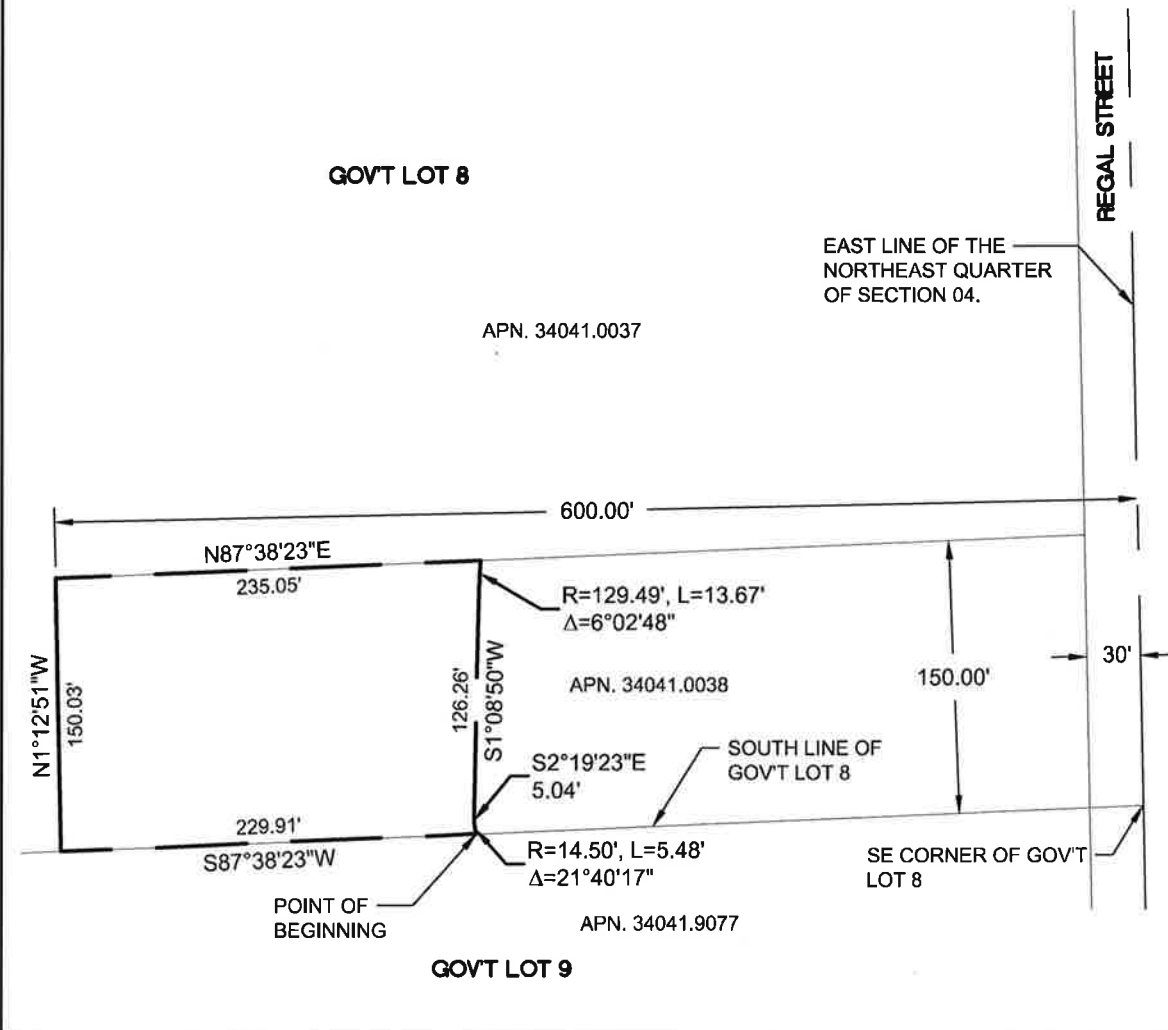
10 N. Post Street Suite 500
Spokane, Washington 99201
509 328 2994 Fax 509 328 2999

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

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



SCALE: 1" = 100'



COFFMAN
ENGINEERS

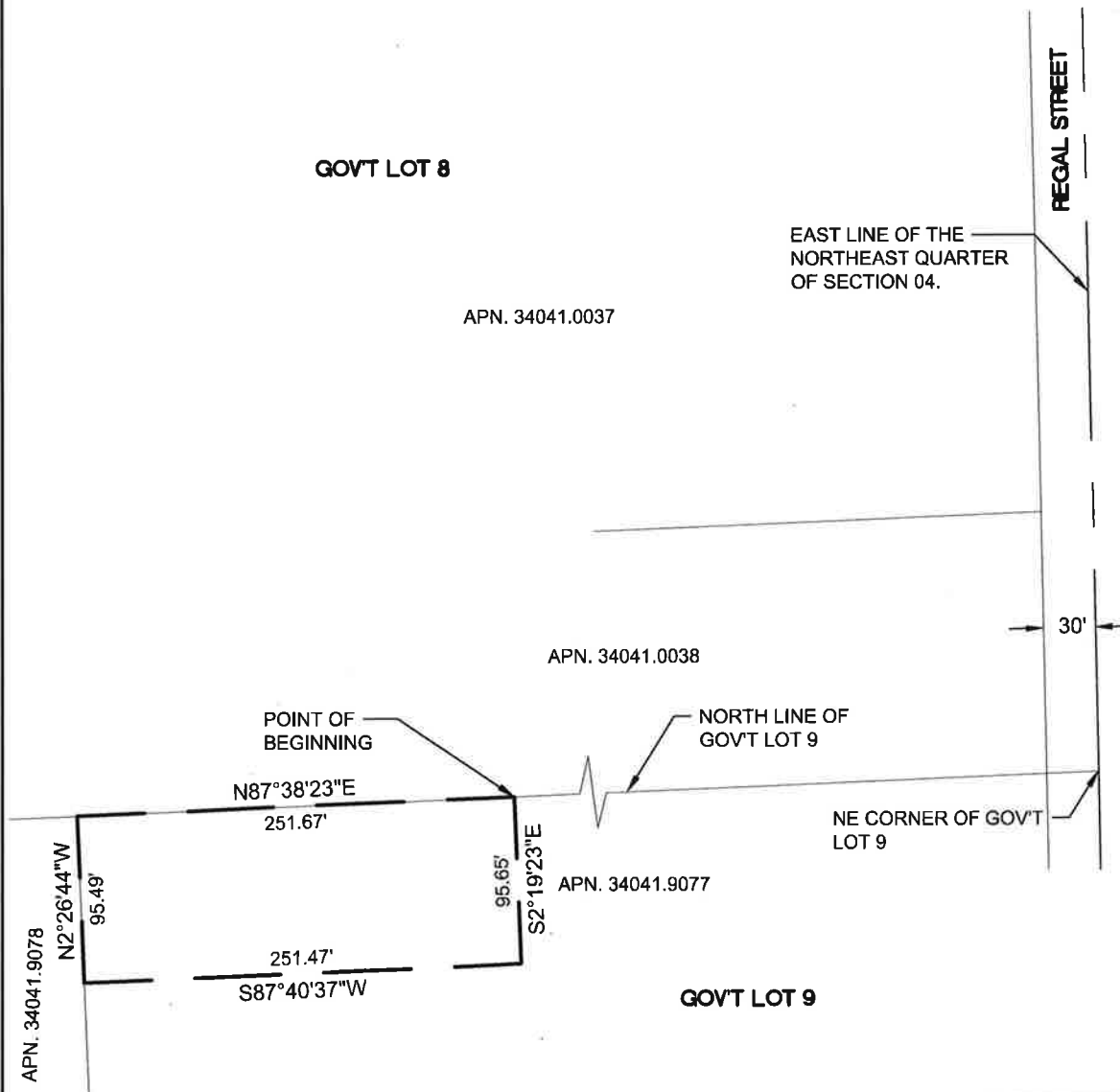
10 N. Post Street Suite 500
Spokane, Washington 99201
509 328 2994 Fax 509 328 2999

project	Southgate - KXLY	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		

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



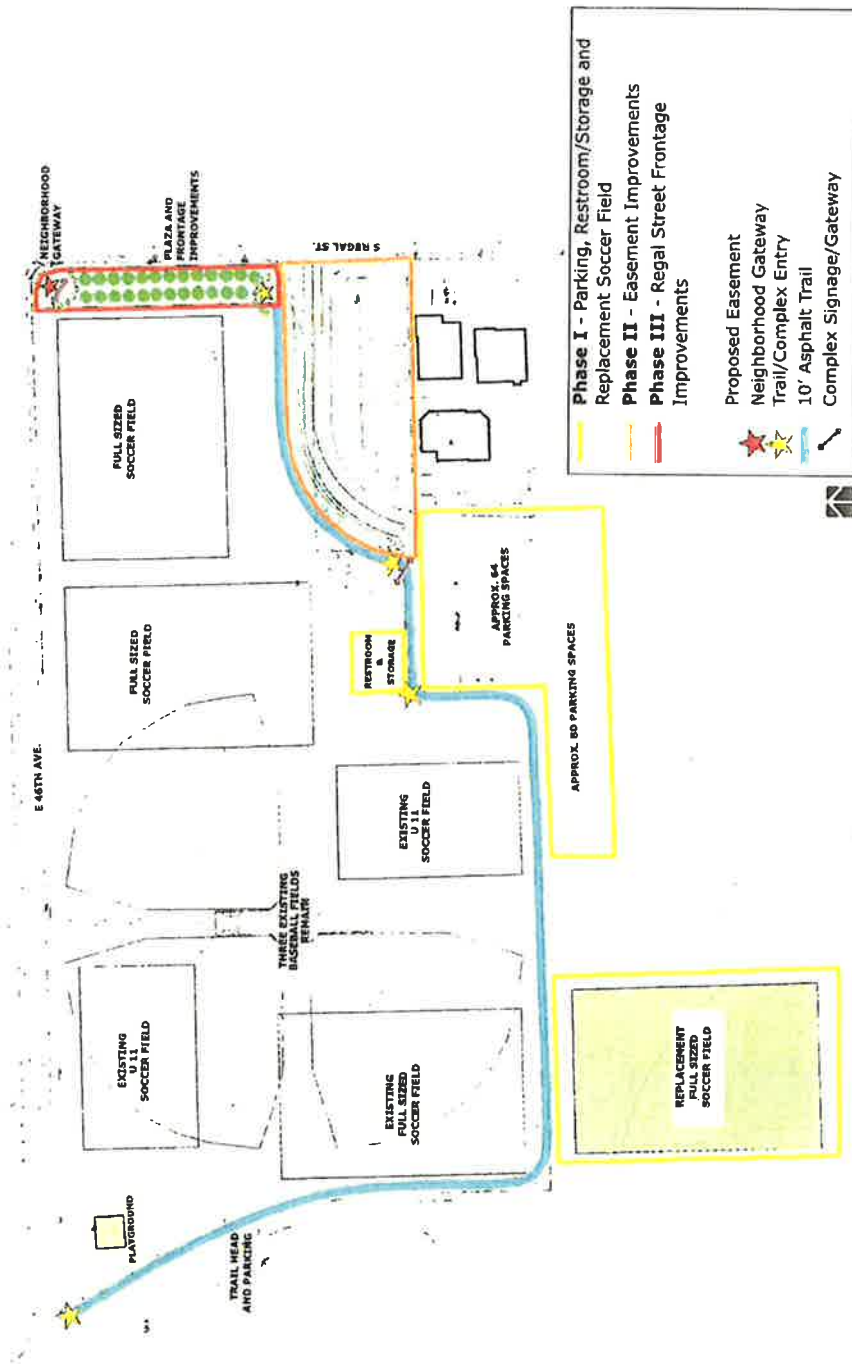
SCALE: 1" = 100'



COFFMAN
ENGINEERS

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

project	Southgate - KXLY	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



Southeast Sports Complex - Preferred Concept

Exhibit B

Michael Teneill Landscape Architecture, PLLC
1421 N. Mississippi Ave.
Liberty, MO 64068
(509) 922-7449
March 2, 2016

EXHIBIT E
Reciprocal Easement

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2016 by and between the SISTERS OF THE HOLY NAMES, a Washington nonprofit corporation having offices for the transaction of business at 17590 Gleason Drive, Lake Oswego, OR, 97034 ("Seller") and the CITY OF SPOKANE, a Washington municipal corporation, acting through the City of Spokane Park Board, having offices for the transaction of business at 808 West Spokane Falls Boulevard, Spokane, WA, 99201 ("Purchaser"), and jointly referred to, along with the Seller, as the "Parties."

WITNESSETH:

WHEREAS, the Seller is the owner of certain real property, consisting of 31.17 acres more or less ("Subject Property"), which is located in Spokane County, Washington. The Subject Property includes Spokane County Tax Parcel No. 25116.0054, and is more particularly described and depicted in "Exhibit A" attached hereto and incorporated herein by reference; and

WHEREAS, the Subject Property was the number one ranked property on the Spokane County Conservation Futures 2010 Prioritized Acquisition List identified for acquisition; and

WHEREAS, the Purchaser is desirous of acquiring the Subject Property for natural open space and passive recreation purposes utilizing funds from the Spokane County Conservation Futures Fund, designated as County Fund No. 117; and

WHEREAS, the Subject Property will be acquired as part of the Conservation Futures Program; and, therefore, the Parties agree that usage of the Subject Property shall be consistent with RCW Chapter 84.34; and

WHEREAS, as part of the Conservation Futures Program and specific to this agreement only, all Purchaser's costs as described herein will be paid for directly by Spokane County utilizing County Fund No. 117; and

WHEREAS, when the Subject Property is acquired, the Purchaser shall be solely responsible to the State of Washington to properly care for and maintain the Subject Property consistent with Washington state statutes; and

WHEREAS, the Purchaser is desirous of acquiring the Subject Property for parks and recreation purposes and the Seller is desirous of selling the Subject Property to the Purchaser, under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the Parties do hereby mutually agree as follows:

SECTION 1: SALE OF PROPERTY

The Seller agrees to sell, convey, and transfer to the Purchaser, and the Purchaser agrees to purchase, acquire, and take from the Seller, the Subject Property pursuant to the terms and conditions set forth herein. Seller and Purchaser agree that the legal description attached as "Exhibit A" for the Subject Property is subject to revision upon Purchaser's receipt of a preliminary commitment for title insurance. Purchaser and Seller authorize Escrow Agent (defined below) to insert, add or correct the legal description for the Subject Property subject to approval by Seller and Purchaser.

SECTION 2: CONSIDERATION

The total purchase price for the Subject Property shall be **Two Million Six Hundred Fifty Thousand and no/100ths Dollars (\$2,650,000.00)** in cash payable as a lump sum at closing.

SECTION 3: CONTINGENCIES

This sale is contingent upon the following:

- a. The adoption of a resolution by the Board of County Commissioners of Spokane County authorizing the expenditure of funds from County Fund No. 117 for the Purchaser's acquisition of the Subject Property. Said funding shall be sufficient to include: (1) the purchase price, (2) the cost of the Level I Environmental Site Assessment and any additional studies or work recommended by said Level I together with the cost of any other inspections of Subject Property reasonably pursued by the Purchaser, (3) the cost of a boundary line survey, (4) the cost of a standard title insurance policy, and (5) Purchaser's share of all closing costs. Purchaser's obligation to close is expressly contingent upon Purchaser's receipt of such funding from Spokane County.
- b. The Purchaser's receipt of a Level 1 Environmental Assessment and report on the Subject Property that, in the sole judgment of the Purchaser, evidences that the Subject Property is free from hazardous materials/contaminants as defined under State and Federal environmental laws. The Purchaser shall have the right, within ten (10) business days upon receipt of the final draft of the environmental report to elect to terminate this Agreement and receive a refund of any earnest money paid by Purchaser, or to otherwise object to the condition of the Subject Property in which case the Seller and Purchaser shall attempt in good faith efforts to resolve Purchaser's concerns. If the Purchaser does not terminate this Agreement or otherwise object in writing, this contingency will be deemed satisfied and waived. Completion of the Level 1 Environmental Assessment shall be at the Purchaser's expense.
- c. The Purchaser's satisfaction with the results of a boundary line survey of the Subject Property by a licensed land surveyor to be conducted at the Purchaser's expense.

- d. The Purchaser's satisfaction with the content of a title report and standard (or extended policy at Purchaser's option) title insurance policy to be paid for by the Purchaser.
- e. The Seller's cure before closing of any and all violations of law, ordinances or orders of federal, state, county, and municipal agencies, affecting the Subject Property at the date of this Agreement.
- f. The recording of the Restrictive Covenants concerning the Subject Property as provided for in Section 10 below and attached hereto as Exhibit B
- g. The Seller's signature on the Just Compensation Acknowledgement Form attached hereto as Exhibit C.
- h. The Purchaser's receipt of a letter from the Department of Ecology stating that "No Further Action" is needed for environmental remediation as it relates to a portion of the Subject Property (See Section 5, herein).
- i. The Purchaser's satisfaction that the Subject Property is suitable for Purchaser's intended use, consistent with the Restrictive Covenants, and that acquisition of the Subject Property will not subject Purchaser to unreasonable risk of financial responsibility or liability.
- j. The Seller's recording of an easement as described in Section 5 herein for pedestrian ingress and egress for the benefit of the Subject Property.

SECTION 4: INSPECTION

The Purchaser is encouraged to inspect the Subject Property at its expense prior to title transfer to satisfy itself with the condition of the Subject Property. Except as provided herein, the Purchaser is acquiring the Subject Property "as is," without warranty of any kind by the Seller.

SECTION 5: CONDITION OF THE PROPERTY

The Seller covenants to the best of its knowledge that the Subject Property complies with local, county, state, or federal ordinances and statutes. The Seller covenants to convey the Subject Property free and clear from any violations or complaints filed or existing in any of the departments of any city, county, state, or federal governments. Seller has disclosed to Purchaser that a portion of the Subject Property is in the process of being environmentally remediated and that a "No Further Action" letter from the Department of Ecology is expected to be received for that portion of the Subject Property. Receipt of such letter is a contingency to this sale as provided in Section 3-h above.

To the best of the Seller's knowledge, there are no pending special assessments or condemnation actions with respect to the Subject Property, or any part thereof, and the Seller has no knowledge of any special assessments or condemnation action being contemplated.

The Subject Property is currently the benefitted parcel under a general "Access and Utilities Easement" across the adjacent property currently owned by Catholic Housing Services of Eastern Washington ("CHS"). The existing Easement requires that a specific access easement be recorded upon sale of the Subject Property providing pedestrian ingress and egress for the benefit of the Subject Property. Seller is responsible for entering into such an easement with CHS and will do so in consultation with Purchaser.

Seller shall use its best efforts to obtain an easement across the property owned by CHS providing adequate vehicular access for the benefit of the Subject Property. For the purposes of this section, "adequate" means access of a width, slope and surface similar to the existing natural surface access road on the Subject Property suitable for use by the Purchaser's maintenance vehicles for access to the Subject Property.

The Seller will cooperate with the Purchaser and execute all documents necessary to satisfy all contingencies, release all liens, assessments, or other encumbrances that may exist against the Subject Property

The Seller has good marketable title in fee simple to the Subject Property.

Purchaser acknowledges and agrees that to the maximum extent permitted by law, and except as otherwise expressly set forth in this Agreement, the sale of the Subject Property to Purchaser as provided herein is made on an "AS IS" and "WHERE IS" condition and basis and "WITH ALL FAULTS." The parties acknowledge that the purchase price reflects such condition and basis for this transaction. Purchaser is relying on its own investigation of the Subject Property with respect to this transaction. In conjunction therewith, Purchaser hereby waives receipt of the statutory "Form 17" Seller Disclosure Statement, except for the "Environmental" Section of such form.

SECTION 6: PROPERTY LINES

The Seller covenants that any and all buildings, driveways, and other improvements on the Subject Property are within its boundary lines, and that no improvements on adjoining properties extend across the boundary lines of the Subject Property.

SECTION 7: CLOSING

The closing is to be scheduled as soon as possible following completion of the contingencies outlined in Section 3 above. This transaction will be closed in escrow by First American Title Insurance Company of Spokane acting as escrow agent, hereinafter referred to as "Escrow Agent." The Seller and Purchaser will split (50/50) the fees and costs of the Escrow Agent with the exception of title insurance, which shall be paid for by the Purchaser.

The closing will be held at the offices of the Escrow Agent on or before that date which shall be ten (10) business days after receiving written notification from the Purchaser that all contingencies in Section 3 have been completed or waived, but in any event no later than **December 30th, 2016** (the "Closing Date"). If closing does not occur on or before the Closing

Date, or any later date mutually agreed to in writing by the Seller and Purchaser, the Escrow Agent will immediately terminate the escrow and return all documents and undistributed funds to the party that deposited them.

Each party will execute, sufficiently in advance of the Closing Date, the documents necessary to carry out this transfer including but not limited to a warranty deed, real estate excise tax affidavits, etc. The cost of recording of any closing documents shall be split (50/50) by the Seller and Purchaser. Any excise taxes shall be paid by the Seller.

Each party shall deposit any other instruments and documents that are reasonably required by the Escrow Agent or otherwise required to close the escrow and consummate the purchase and sale of the Subject Property in accordance with this Agreement.

SECTION 8: TITLE AND POSSESSION

At closing, title will be conveyed by warranty deed. The deed shall be in proper form, shall state the usual full covenants and warranty, and shall be duly executed and acknowledged by the Seller, so as to convey to the Purchaser the fee simple of the Subject Property, free of all encumbrances except as stated in this Agreement. In case the Seller cannot give a good and sufficient deed, then the obligations of both Parties under this Agreement shall cease.

The Purchaser shall, upon the receipt of a good and sufficient deed, be entitled to possession of the Subject Property. If the Seller fails to give possession to the Subject Property at closing, the Seller becomes tenant by sufferance of the Purchaser and by this Agreement waives all notice to quit, as provided by the laws of Washington.

The Seller agrees to transfer, and the Purchaser agrees to accept, ownership of the Subject Property free of all claims and rights of others, except for recorded covenants, easements, licenses, liens of any kind, water rights, and the reservations and restrictions set forth herein.

SECTION 9: TERMINATION

Either party may terminate this Agreement based on the other party's failure to comply with the conditions of this Agreement. Notice shall be provided in writing to the other party of its non-compliance. The other shall have thirty (30) days to cure the deficiency. Failure to correct the deficiency within that time period shall result in a default of the other party's rights under this Agreement.

SECTION 10: INDEMNITY AND HOLD HARMLESS

Purchaser agrees to indemnify and hold Seller harmless of, from and against any and all liabilities, suits, claims, losses, causes of action, liens, fines, penalties, costs and expenses, including, without limitation, court costs, reasonable attorneys' fees and costs, and damages ("Claims") (1) for any environmental conditions discovered, and any cleanup or remediation required, after closing, unless such environmental conditions were caused by Seller, and (2) for any Claims arising after closing and asserted by any person or entity arising out of Purchaser's

and the public's use of the Subject Property, including, but not limited to, injury to or death of any person or damage to any property, or liability resulting from use or ownership of a property containing hazardous substances. This hold harmless clause shall apply even if Seller would otherwise be strictly liable under applicable law, but not to the extent such claims are caused by the sole or concurrent negligence of Seller.

SECTION 11: CONSERVATION FUTURES

In order to assure the continued open space use of the Subject Property in perpetuity, and as consideration for the payment of the purchase price with funds from the Spokane County Conservation Futures Fund, Spokane County ("County") shall acquire rights in future development of the Subject Property to the full extent allowed and permitted by RCW 84.34.200 et seq. The Purchaser retains the right to continue any existing open space use of the Subject Property, and to develop any other open space use. The Purchaser and the County shall cause to be recorded restrictive covenants running with the Subject Property, which shall bind the Purchaser, its heirs, successors, assigns, and any subsequent owners or lessees of the Subject Property in perpetuity. Such covenants (the "Restrictive Covenants") shall provide that the Subject Property be used in perpetuity for passive recreation by the public, and shall:

- a. Forbid any new construction, building, improvement, or use of the Property other than an open space use and improvements associated with the public's use of such open space permitted by Chapter 84.34 RCW; and
- b. Require County permission for any construction, building, or improvement as defined in the Restrictive Covenants on the Subject Property, which permission shall not be unreasonably withheld.
- c. Be recorded by the Parties at Closing.

The Restrictive Covenants are more particularly described in "Exhibit B" attached hereto and incorporated herein by reference.

The Parties further agree that the County is an intended beneficiary of this Agreement; and, as such, is fully entitled to enforce the provisions of this Agreement.

SECTION 12: COMPLIANCE WITH LAWS

The Parties hereto specifically agree to observe all federal, state and local laws, ordinances and regulations to the extent that they may have any bearing upon the services required to be performed by either party under the terms of this Agreement.

In particular, the use of the Subject Property shall be consistent with RCW 84.34.200 and such restrictions as may be agreed upon by the Parties.

SECTION 13: ASSIGNMENT

This Agreement shall not be assignable by the Purchaser without the Seller's written consent. The Assignee shall be subject to all terms and conditions of this Agreement.

SECTION 14: TIME

Time is of the essence of this Agreement.

SECTION 15: PARTIES LIABLE

This Agreement is binding upon the Parties and all their heirs, successors and assigns.

SECTION 16: WAIVER

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement, or at law, shall be taken and construed as cumulative – that is, in addition to every other remedy provided herein by law.

Failure of the Purchaser or the Seller, respectively, to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Agreement or any part hereof, or the right of the Seller or Purchaser to hereafter enforce each and every such provision.

SECTION 17: NOTICES

All notices called for or provided for in this Agreement shall be in writing and must be served on either of the Parties personally or by certified mail, return receipt requested, sent to the Parties at the following addresses or at such other addresses as the Parties may from time to time direct in writing. Notices sent by certified mail shall be deemed served when deposited in the United States mail, postage prepaid.

Seller: By delivery:
 Sisters of the Holy Names
 Attn: Vicki Cummings, CFO
 17590 Gleason Dr.
 Lake Oswego, OR 97034

 By mail:
 Sisters of the Holy Names
 Attn: Vicki Cummings, CFO
 P.O. Box 398
 Marylhurst, OR 97036

And to:

Paine Hamblen LLP
Attn: Kathryn R. McKinley
717 W. Sprague Ave., Ste. 1200
Spokane, WA 99201

Purchaser: City of Spokane Parks and Recreation Department
C/O Leroy Eadie, Director
808 West Spokane Falls Blvd, 5th Floor
Spokane, WA 99201

Financing: Spokane County
C/O Doug Chase, Parks, Recreation and Golf Director
404 N Havana St.
Spokane, WA 99202

SECTION 18: HEADINGS

The article headings contained in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to and shall not be deemed to define, limit or extend the scope of the article to which they appertain.

SECTION 19: ALL WRITINGS CONTAINED HEREIN

This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties. Both Parties have read and understand all of the Agreement and that no representations, promises or agreements not expressed in the agreement have been made to induce either to execute the same.

SECTION 20: INTERPRETATION

This Agreement has been made and shall be construed as having been made and delivered within the State of Washington and the laws of the State of Washington shall be applicable to its construction and enforcement.

SECTION 21: VENUE

Any litigation regarding this Agreement or arising out of the performance thereof shall be commenced and maintained only in competent courts of jurisdiction within Spokane County, Washington.

SECTION 22: SEVERABILITY

In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or

applications of this Agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed on the day and year first set forth above.

SELLER: Sisters of the Holy Names

By: Vicki Cummings
Name: Vicki Cummings
Title: Chief Financial Officer

STATE OF OREGON)
) ss.
County of Clackamas)

I certify that I know or have satisfactory evidence that Vicki Cummings is the person who appeared before me and acknowledged that she signed this instrument, on oath stated that she is authorized to execute the instrument and acknowledge it as the Chief Financial Officer of Sisters of the Holy Names, a Washington nonprofit corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in this instrument.

DATED this 28th day of October, 2016.



Mandi Van Der Sluis
NOTARY PUBLIC IN FOR AND THE STATE OF
Oregon residing at US Bank.
My commission expires June 23, 2018.

APPROVED AS TO FORM:

PURCHASER: CITY OF SPOKANE

City Attorney

Mayor / City Administrator

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this _____ day of _____, 20____, before me personally appeared _____, and _____ to me known to be the Mayor, and the City Attorney, respectively, of the CITY OF SPOKANE, a municipal corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

DATED this _____ day of _____, 2016.

NOTARY PUBLIC IN FOR AND THE STATE OF
WASHINGTON residing at _____.
My commission expires _____.

EXHIBIT A

Legal Description

A portion of Government Lots 2 and 5, in Section 12; and a portion of Government Lot 9, in Section 11, Township 25 North, Range 42 East, Willamette Meridian, being more particularly described as follows:

BEGINNING at the East Quarter Corner of said Section 11; thence South 15°55'24" East 125.31 feet to the southeasterly right of way line of Fort George Wright Drive as described in that certain Quit Claim Deed recorded January 24, 1992 as Auditor's File No. 9201240296, said point also being the **TRUE POINT OF BEGINNING** of this description; thence along said southeasterly right of way line of Fort George Wright Drive the following four (4) courses and distances:

North 45°09'27" West 100.00 feet,

Southwesterly along a non-tangent curve to the right, from a point with a radial bearing of South 45°09'27" East, with a radius of 545.00 feet, through a central angle of 11°44'52", an arc length of 111.75 feet to a point with a radial bearing of South 33°24'35" East,

Southwesterly along a non-tangent curve to the right, from a point with a radial bearing of South 58°06'02" East, with a radius of 190.78 feet, through a central angle of 52°46'00", an arc length of 175.70 feet to a point with a radial bearing of South 05°20'02" East, and

South 84°39'58" West 84.40 feet;

thence leaving said southeasterly right of way line of Fort George Wright Drive South 68°47'14" East 572.05 feet; thence North 86°35'20" East 180.92 feet; thence South 41°33'37" East 291.63 feet; thence South 34°02'07" East 243.73 feet; thence South 27°35'10" East 218.77 feet; thence South 30°48'30" West 445.22 feet; thence South 08°11'46" West 355.72 feet; thence South 55°00'49" West 488.16 feet; thence North 46°03'08" West 90.83 feet; thence North 31°12'30" West 93.96 feet; thence North 33°00'03" West 44.78 feet; thence northwesterly along a non-tangent curve to the left, from a point with a radial bearing of North 55°03'04" East, having a radius of 1,033.88 feet, through a central angle of 14°36'10", an arc length of 263.50 feet to a point with a radial bearing of North 40°26'54" East; thence North 48°16'59" West 278.06 feet; thence North 53°16'02" West 145.37 feet; thence North 59°54'04" West 87.84 feet to the east line of that certain parcel of land described as Parcel "A" in that certain Statutory Warranty Deed recorded May 30, 1978 as Auditor's File No. 7805300503; thence along said east line South 15°50'51" West 209 feet to the ordinary high water Page 1 of 2 line of the Spokane River; thence southeasterly, northeasterly, and northwesterly along said ordinary high water line to a point at the intersection of said ordinary high water line and the said southeasterly right of way line of Fort George Wright Drive as described in that certain Quit Claim Deed recorded January 24, 1992 as Auditor's File No. 9201240296; thence along said southeasterly right of way line of Fort George Wright Drive southwesterly along a non-tangent curve to the right, from a point with a radial bearing of South 64°26'37" East, with a radius of 645.00 feet, through a central angle of

19°17'10", an arc length of 217.11 feet to the said true point of beginning of this description, containing 31.25 acres of land, more or less.

EXCEPTING THEREFROM an area now used for a Geiger Field Instrument Landing System Outer Marker Site located in Section 12, Township 25 North, Range 42 East, Willamette Meridian, Spokane County, Washington, more particularly described as follows:

BEGINNING at a point lying South 45°00' East, a distance of 993.19 feet from the Northwest corner of the Southwest quarter of said Section 12, thence by the following courses and distances:

South 44°30' East, 80.00 feet;

North 45°30' East, 65.00 feet;

North 44°30' West, 80.00 feet;

Thence South 45°30' West, 65.00 feet to the point of beginning.

Spokane County Tax Parcel Nos. 25116.0054

Containing 31.17 acres, more or less.

Situate in the City of Spokane, Spokane County, State of Washington

Map of Subject Property (See Next Page)

EXHIBIT A (CONTINUED)

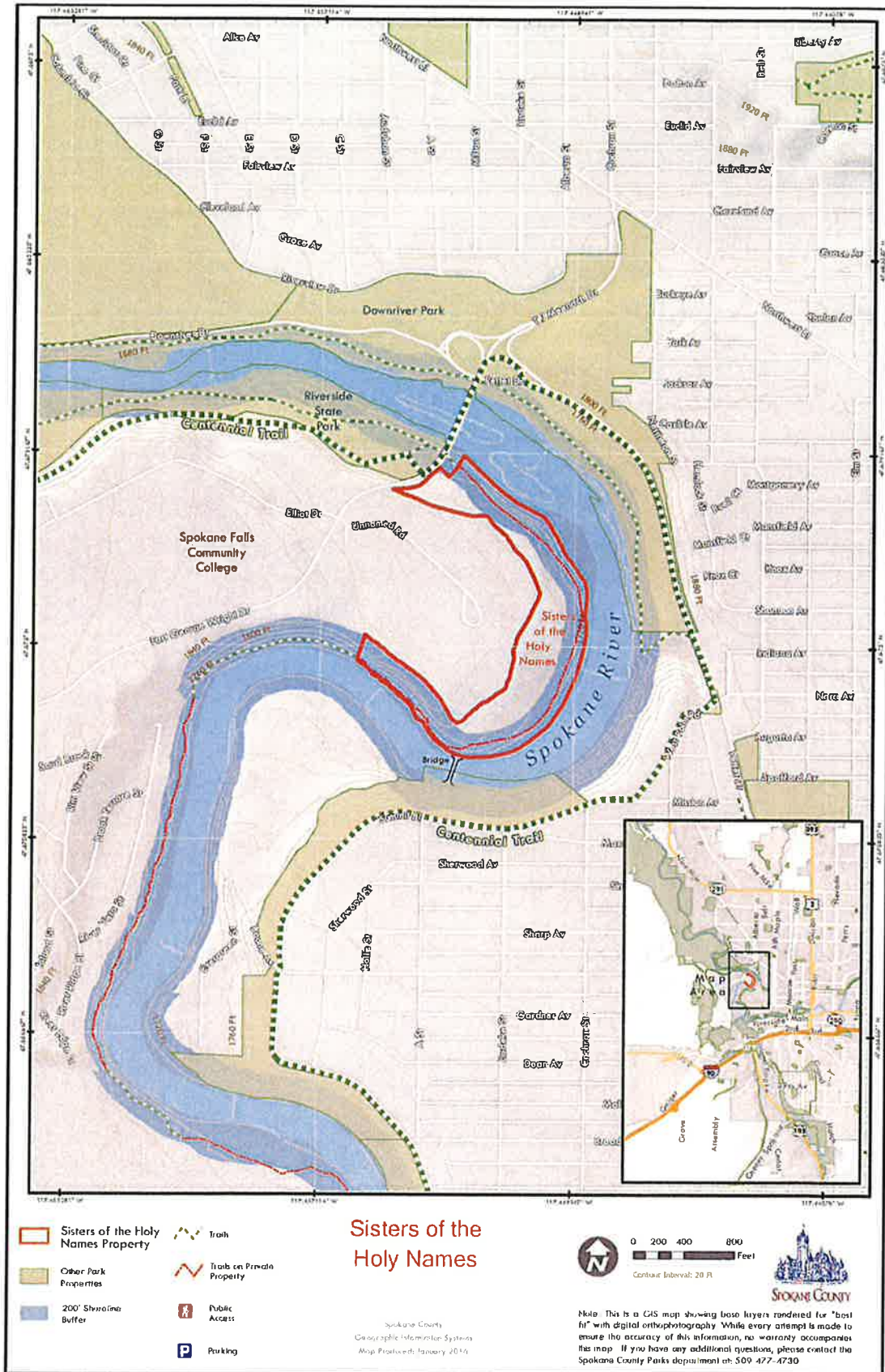


EXHIBIT B

After Recording, Return to:

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
APPLICABLE TO CERTAIN REAL PROPERTY ACQUIRED THROUGH
CONSERVATION FUTURES

THIS DECLARATION made and entered into this ____ day of _____, 2016 by and between SPOKANE COUNTY, a political subdivision of the State of Washington, having offices for the transaction of business at West 1116 Broadway Avenue, Spokane, Washington, 99260, hereinafter referred to as the "COUNTY", and the CITY OF SPOKANE, a Washington municipal corporation, acting through the City of Spokane Park Board, having offices for the transaction of business at 808 West Spokane Falls Boulevard, Spokane Washington 99201, hereinafter referred to as the "CITY", jointly hereinafter referred to as the "PARTIES."

WITNESSETH:

WHEREAS, pursuant to the provisions of RCW 84.34.200, the legislature found that: (1) the haphazard growth and spread of urban development is encroaching upon, or eliminating open areas and spaces of varied size and character, including many other having significant recreational, social, scenic, or esthetic values; (2) such areas and spaces, if preserved and maintained in their present open space state, would constitute important assets to existing and impending urban and metropolitan development and, at the same time, would continue to contribute to the welfare and well-being of the citizens of the state as a whole; and (3) as such, the acquisition of interests or rights in real property for the preservation of open spaces and areas constitutes a public purpose for which public funds may properly be expended or advanced; and

WHEREAS, pursuant to the provisions of RCW 84.34.230, the citizens of Spokane County advised the Board of County Commissioners of Spokane to levy an amount of money to be used solely for the purpose of acquiring rights and interests in real property pursuant to the terms of RCW 84.34.210 and 84.34.220; and

Sisters of the Holy Names ("Three Islands") Deed Restriction

WHEREAS, pursuant to the provisions of the RCW 84.34.240, the Board of County Commissioners of Spokane County passed Resolution No. 93-1560, establishing a Conservation Futures Fund, designated as County Fund No. 117 ("Conservation Futures Fund"); and

WHEREAS, the City of Spokane entered into a Purchase and Sale Agreement ("Agreement") with the Sisters of the Holy Names for 31.17 acres MOL of real property ("Subject Property) known locally as the Three Islands Spokane River Property; and

WHEREAS, the Subject Property is legally described in Exhibit "A", which is attached hereto and incorporated herein by this reference; and

WHEREAS, on _____, pursuant to Spokane County Resolution No. _____, the Board of County Commissioners authorized the expenditure of funds towards the purchase of the Subject Property utilizing funds from the Conservation Futures Fund; and

WHEREAS, the Agreement provides that the County and the City shall cause to be recorded restrictive covenants running with the Subject Property, which shall bind the City, its heirs, successors, assigns, and any subsequent owners or lessees of the Subject Property in perpetuity. Said covenants shall:

1. Forbid any new construction, building, improvement, or use of the Subject Property other than an open space use and improvements associated with the public's use of such open space as permitted by Chapter 84.34 RCW; and
2. Require County permission for any new construction, building, or improvement on the Subject Property as defined in Section 2 (b.) herein which permission shall not be unreasonably withheld; and
3. Cause to be recorded by the Parties at closing..

Such covenants shall preserve the Subject Property in perpetuity; and

WHEREAS, as of _____, the City of Spokane is now the owner of the Subject Property.

NOW, THEREFORE, the Parties hereby publish and declare that:

1. Declaration. The Subject Property shall be subject to the following covenants, conditions, restrictions, limitations and obligations, all of which are for the purpose of protecting the value and desirability of the Subject Property as open space land as contemplated in Chapter 84.34 RCW, and all of which shall run with the land and shall be a burden upon and a benefit to, any and all parties acquiring or owning any right, title or interest in any part of the above-described property in the Subject Property, and their heirs, successors, assigns, grantees, executors, administrators, and devisees. More particularly:

- a. The Subject Property shall be used in perpetuity for passive recreation by the public, and in such manner as to protect the natural habitat of the Subject Property.

Sisters of the Holy Names ("Three Islands") Deed Restriction

b. Any construction, building, improvement, or use of the Subject Property other than improvements associated with the public's use of such open space use permitted by Chapter 84.34 RCW is prohibited.

c. County permission shall be required for any new construction, building, or improvement on the Subject Property, which permission shall not be unreasonably withheld. County permission will not be required for routine maintenance or improvements related to the management of the Subject Property. In the event of an emergency that the City reasonably believes involves or affects public safety, the City may commence such maintenance and improvement activities as are necessary to preserve public safety after first making reasonable attempts to notify the Spokane County Parks, Recreation & Golf Director.

d. In order to facilitate the public's safe enjoyment of the Subject Property, the site shall be maintained in good condition and repair by the City consistent with the Conservation Futures Best Management Practices of the Spokane County Park Plan or any future version thereof.

2. Definitions. As used herein:

a. **"Building"** shall mean any building, plant, facility, enclosed storage area, structure or other improvement affixed to the Property,

b. **"Improvements"** shall mean and include buildings, outbuildings, driveways, parking areas, sidewalks, swimming pools, tennis courts, walls, hedges, lawns, landscaping, flag poles, parking areas, drives, paved trails, lighting, and any other structure of any type or kind, and all additions to any of the foregoing. "Improvements" shall not mean and include fencing, primitive natural surface trails, signage, habitat restoration and other minor improvements commonly implemented on Conservation Futures property to adequately care for and maintain the property.

c. **"Open space land"** shall mean (i) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly, or (ii) any land area, the preservation of which in its present use would (A) conserve and enhance natural or scenic resources, or (B) protect streams or water supply, or (C) promote conservation of soils, wetlands, beaches or tidal marshes, or (D) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (E) enhance recreation opportunities, or (F) preserve historic sites, or (G) preserve visual quality along highway, road, and street corridors or scenic vistas.

3. Specific Enforcement of Restrictions. The County, its heirs, successors, and assigns, provided that such is a governmental entity, shall have the right to enforce this Declaration and each and every covenant, condition, provision, restriction and term contained in this Declaration; and there shall arise from the breach of any such covenant, condition, provision, restriction or term contained in this Declaration, a cause of action for damages or for enforcement in a equity as a remedy for such breach. The City, their heirs, successors, and assigns, agree that monetary

damages may not provide adequate compensation for the breach of the covenants, conditions, provisions, restrictions and terms contained in this Declaration and that this Declaration may be specifically enforced by the County, its heirs, successors, and assigns, provided that such is a governmental entity.

4. Attorney's Fees. In any legal or equitable proceeding for enforcement of, or to restrain a violation of, this Declaration or any of the covenants, conditions, provisions, restrictions and terms contained in this Declaration, the losing party or parties shall pay the reasonable attorney's fees expenses and all other costs and expenses of in connection with such prosecution or defense of such enforcement action (including, but not limited to, the costs of obtaining and/or continuing an abstract of title to the Lot or Parcel in question, the costs of any contemplated or actual legal proceedings, and the costs of preparation and presentation of any evidence in such proceeding), of the prevailing party or parties, in such amount as may be fixed by the Court (or by agreement of such parties) in such proceedings. Provided, however, such losing party or parties shall not be obligated for any such attorney's fees and costs incurred by such prevailing party or parties for the period after such losing party or parties offers to settle such matter for an amount equal to or greater than that finally approved by a court of competent jurisdiction and/or, except in the case of repeated or continuing violations, takes or forbears from the requested action, as appropriate.

5. Inspection. The County, through its authorized agents and employees, may from time to time, at any reasonable hour or hours, enter and inspect the Subject Property to ascertain compliance with this Declaration.

6. Failure to Enforce Not a Waiver of Rights. The County's failure to enforce any condition, covenant, provision, restriction, reservation or term of this Declaration in any one instance shall not be deemed to be a waiver of the right to do so thereafter nor shall it be deemed to waive the right to enforce any other condition, covenant, easement, provision, restriction, reservation or term of this Declaration.

7. Rights of Third Parties. This Declaration is deemed to be also for the benefit of the general public.

8. Covenants Binding and Running with the Land. Each of the conditions, covenants, easements, indentures, provisions, restrictions, reservations and terms contained in this Declaration shall be binding upon and insure to the benefit of the County, its heirs, successors, and assigns, provided that such is a governmental entity, and shall be deemed covenants that run with the land, and shall continue for the applicable periods specified in this Declaration.

9. Duration. The provisions of this Declaration shall continue in perpetuity.

10. Waiver, Modification or Amendment. No waiver, modification or amendment of any term or condition of this Declaration shall be effective unless in writing, and no waiver or indulgence by either Party or any deviation by the other Party from full performance of this

Agreement shall be a waiver of the right to subsequent or other full, strict, and timely performance.

11. Severability. In the event any provision of this Declaration is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited.

12. Merger Clause. This Agreement expresses the full and final purpose and agreement of the Parties and will not be qualified, modified or supplemented by course of dealing, usage of trade, or course of performance. There are no verbal agreements which qualify, modify or supplement this Agreement.

13. Governing Law; Venue. This Declaration shall be construed in accordance with the laws of the State of Washington. Any actions to enforce the provisions of this Declaration shall be brought in Spokane County, Washington.

14. Headings. The captions of the Articles, Sections and Subsections of this Declaration are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

15. Notices. All notices called for or provided for in this Agreement shall be in writing and must be served on any of the parties personally or by certified mail, return receipt requested, sent to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing. Notices sent by certified mail shall be deemed served when deposited in the United States mail, postage prepaid.

-
- COUNTY: Spokane County
- C/O Board of County Commissioners
- 1116 W. Broadway Ave.
- Spokane, Washington 99260
-
- CITY: City of Spokane
- C/O Director, Parks & Recreation Department
- 808 W Spokane Falls Boulevard, 5th Floor
- Spokane, WA 99201

IN WITNESS WHEREOF, the Parties have duly executed this Declaration as of the date and year first above written.

SPOKANE COUNTY:

Sisters of the Holy Names ("Three Islands") Deed Restriction

By: _____
Shelly O'Quinn, Chair

Ginna Vasquez

Sisters of the Holy Names (“Three Islands”) Deed Restriction

STATE OF WASHINGTON)

) ss.

COUNTY OF SPOKANE)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me; and said person acknowledged that he signed this instrument as the duly authorized representative of the City of Spokane, Washington, and acknowledged it to be the free and voluntary act of the City of Spokane, Washington for the uses and purposes mentioned in this instrument.

DATED this _____ day of _____, 2016.

Notary name printed or typed:
Notary Public in and for the State of
Residing at
My appointment expires:

Exhibit "A"
(Subject Property)

Legal Description

A portion of Government Lots 2 and 5, in Section 12; and a portion of Government Lot 9, in Section 11, Township 25 North, Range 42 East, Willamette Meridian, being more particularly described as follows:

BEGINNING at the East Quarter Corner of said Section 11; thence South 15°55'24" East 125.31 feet to the southeasterly right of way line of Fort George Wright Drive as described in that certain Quit Claim Deed recorded January 24, 1992 as Auditor's File No. 9201240296, said point also being the **TRUE POINT OF BEGINNING** of this description; thence along said southeasterly right of way line of Fort George Wright Drive the following four (4) courses and distances:

North 45°09'27" West 100.00 feet,

Southwesterly along a non-tangent curve to the right, from a point with a radial bearing of South 45E09'27" East, with a radius of 545.00 feet, through a central angle of 11°44'52", an arc length of 111.75 feet to a point with a radial bearing of South 33E24'35" East,

Southwesterly along a non-tangent curve to the right, from a point with a radial bearing of South 58°06'02" East, with a radius of 190.78 feet, through a central angle of 52°46'00", an arc length of 175.70 feet to a point with a radial bearing of South 05E20'02" East, and

South 84°39'58" West 84.40 feet;

thence leaving said southeasterly right of way line of Fort George Wright Drive South 68°47'14" East 572.05 feet; thence North 86°35'20" East 180.92 feet; thence South 41°33'37" East 291.63 feet; thence South 34°02'07" East 243.73 feet; thence South 27°35'10" East 218.77 feet; thence South 30°48'30" West 445.22 feet; thence South 08°11'46" West 355.72 feet; thence South 55°00'49" West 488.16 feet; thence North 46°03'08" West 90.83 feet; thence North 31°12'30" West 93.96 feet; thence North 33°00'03" West 44.78 feet; thence northwesterly along a non-tangent curve to the left, from a point with a radial bearing of North 55°03'04" East, having a radius of 1,033.88 feet, through a central angle of 14°36'10", an arc length of 263.50 feet to a point with a radial bearing of North 40°26'54" East; thence North 48°16'59" West 278.06 feet; thence North 53°16'02" West 145.37 feet; thence North 59°54'04" West 87.84 feet to the east line of that certain parcel of land described as Parcel "A" in that certain Statutory Warranty Deed recorded May 30, 1978 as Auditor's File No. 7805300503; thence along said east line South 15°50'51" West 209 feet to the ordinary high water Page 1 of 2 line of the Spokane River; thence southeasterly, northeasterly, and northwesterly along said ordinary high water line to a point at the intersection of said ordinary high water line and the said southeasterly right of way line of Fort George Wright Drive as described in that certain Quit Claim Deed recorded January 24, 1992 as Auditor's File No. 9201240296; thence along said southeasterly right of way line of Fort George Wright Drive southwesterly along a non-tangent curve to the right, from a point with a radial bearing of South 64°26'37" East, with a radius of 645.00 feet, through a central angle of

19°17'10", an arc length of 217.11 feet to the said true point of beginning of this description, containing 31.25 acres of land, more or less.

EXCEPTING THEREFROM an area now used for a Geiger Field Instrument Landing System Outer Marker Site located in Section 12, Township 25 North, Range 42 East, Willamette Meridian, Spokane County, Washington, more particularly described as follows:

BEGINNING at a point lying South 45°00' East, a distance of 993.19 feet from the Northwest corner of the Southwest quarter of said Section 12, thence by the following courses and distances:

South 44°30' East, 80.00 feet;

North 45°30' East, 65.00 feet;

North 44°30' West, 80.00 feet;

Thence South 45°30' West, 65.00 feet to the point of beginning.

Spokane County Tax Parcel Nos. 25116.0054

Containing 31.17 acres, more or less.

Situate in the City of Spokane, Spokane County, State of Washington

Exhibit C

Sisters of the Holy Names
17590 Gleason Drive
Lake Oswego, OR 97034

RE: Just Compensation Notice

Dear Sisters of the Holy Names (Seller),

The Sisters of the Holy Names (Seller) owns the Three Islands Spokane River Property (Subject Property) further described herein, which is vacant land. This notice is to advise you of your compensation for the Subject Property, Spokane County Tax Parcel No. 25116.0054 located at **2911 W Fort George Wright Drive, Spokane, WA 99224** consisting of 31.17 acres MOL.

In compliance with state and federal law, the just compensation for fee interest in the Subject Property is: \$ 2,650,000.00 as determined by the appraisal review dated _____, 2016 and completed by _____.

By signing this notice, you acknowledge that you were made aware of the just compensation of the Subject Property under consideration. This does not obligate you to sell the Subject Property or any rights in it.

Seller's signature: _____

Sisters of the Holy Names
By: Vicki Cummings
Its: Chief Financial Officer

_____ **Date**

Please retain this letter for your records, and return a completed copy to me by prior to closing. If you have questions, please contact at (509) 477-2188

Best Regards,

Paul Knowles
Park Planner and Real Estate Coordinator
Spokane County Parks, Recreation & Golf



North Bank Regional Playground 2018

Talking Points

November 2016

Goals of the Regional Playground

- Create a safe, dynamic, quality nature-based play/learn environment for children of all abilities and families.
- Serve as an educational, interpretive, and destination play area. It will be incredibly unique in its capacity to provide both passive and active recreation.
- Focus on age-appropriate play areas that integrate opportunities for children to interact with water and landscape features, and host a family activity space that connects to the park's great lawn area and pathways.
- Create a regionally-distinct destination playscape depicting the ice age floods geologic story.

Partnership

- Parks and Recreation applied for a grant with the Washington State Recreation and Conservation Office (RCO) and worked with state officials through the design process. Under the RCO LWCF program, the regional playground project ranked seventh in the state.
- Partners for the grant and design included the City's Therapeutic Recreation Program, Access 4 All Spokane, Spokane County Accessible Communities Advisory Committee, the Ice Age Floods Institute and the YMCA.

Design Process

- To meet \$1m budget, the Berger Partnership offered schematic designs specifying semi-custom equipment.
- 30% design documents are rooted in pre-design goals & objectives.
- 30% designs were approved by Design Steering Committee & Design Review Board, and well received by the Park Board at the October study session.
- Designs are only at 30%, and much refinement is yet to be completed.

Safety

- All playground manufacturers are required to meet or exceed American playground safety standards.
- The Parks department staffs a certified playground safety inspector for all equipment.
- Features such as slides will be covered to reduce surface heat, and ample shade will be provided.

Inclusive Play

- Inclusive play has always been at the forefront. The playground is designed to provide equal accessibility to active play, imaginative play, and natural elements for all abilities and ages.
- The design proposes access from the main walk into the play area via wood fiber and poured-in-place surfacing will provide direct access to transfer station platforms, main net structures, swings, slides, and a parent seating/shade area. The playground is accessible (ADA) from the public right of way and adjacent parking areas.
- The slides off the cliff face are accessible via a <5% ramp from the entry of the play area up to the cliff face and slides back down to the central playground.
- Sand play, including a water table, will be incorporated. Accessible play equipment is integrated in many able-body components specified.
- Parent zone terraces have access to the main route through and into the play area.
- An additional toddler-to-six playground is planned for another area of the park to allow a focused area for our youngest visitors.

Ice Age Floods Story

Building from the Great Floods vision, the playground continues to be guided by the pre-design plan.

- The playground has been relocated to a more central spot to engage the existing basalt cliff, a stunning reminder of the river's geology. It becomes both a back-drop and a play element for the playground.

- Building on our natural lands, the playground includes a coulee, butte, basalt outcroppings, granite boulders, potholes, dry cataracts, erratics (rocks brought in by glaciers), rythmites (rock terraces), and mima mounds (low oval mounds).
- Additional vertical, vendor-provided features will engage the basalt cliffs with slides and climbing structures, allowing the addition of height and thrill to the play experience needed to make a destination playground. This allows for leveraged costs through stock safety benefits vs. expensive, entirely custom features.
- Interpretation and hands-on activities will be woven into playground features for learning.



City of Spokane Parks and Recreation
Department

CONTRACT AMENDMENT #3

Title: **Riverfront Park Project Management Services**
2016 and 2017 Budget Allocation

This Contract Amendment is made and entered into by and between the **City of Spokane Parks and Recreation Department** as ("City"), a Washington municipal corporation, and **Hill International, Inc.**, whose address is **818 West Riverside Avenue, Suite 350, Spokane, Washington, 99201** as ("**CONSULTANT**").

*WHEREAS, the parties entered into a Contract wherein the **CONSULTANT** agreed to provide for the City **Management Support Services**; and*

WHEREAS, a change or revision of the Work has been requested, thus the original Contract needs to be formally Amended by this written document; and

-- NOW, THEREFORE, in consideration of these terms, the parties mutually agree as follows:

1. CONTRACT DOCUMENTS.

The Contract, dated **March 10, 2016 and April 4, 2016**, any previous amendments, addendums and / or extensions / renewals thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

2. EFFECTIVE DATE.

This Contract Amendment shall become effective on **November 10, 2016**.

3. ADDITIONAL WORK.

The Scope of Work in the original Contract is revised to include the following:

Adjust contract scope and budget as follows:

<u>2016</u>	<u>\$320,000</u>	<u>Program/Project Support; HSSB CM; & Pavilion PDB Procurement</u>
<u>2017</u>	<u>\$230,000</u>	<u>Program/Project Support; HSSB CM; & Pavilion PDB Management</u>

4. COMPENSATION.

The City shall pay an additional amount not to exceed **ZERO AND NO/100 DOLLARS (\$0.00)** for everything furnished and done under this Contract Amendment. This is the maximum amount to be paid under this Amendment, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this document.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Contract Amendment by having legally-binding representatives affix their signatures below.

HILL INTERNATIONAL, INC.

By _____
Signature Date

Type or Print Name

Title

Attest:

City Clerk

**CITY OF SPOKANE PARKS AND
RECREATION DEPARTMENT**

By _____
Signature Date

Type or Print Name

Title

Approved as to form:

Assistant City Attorney

Attachments that are part of this Agreement:

Consultant's proposal dated November 4, 2016.

16-XXX



November update to the Board

Garrett Jones, Parks Planning & Development Manager

Berry Ellison, Program Manager

Jo-Lynn Brown, Program Coordinator

RIVERFRONTPARK**NOW.COM**

Howard Street Bridge South



Currently in deconstruction, through early December
Timeline: Fall 2017

Howard Street Bridge South



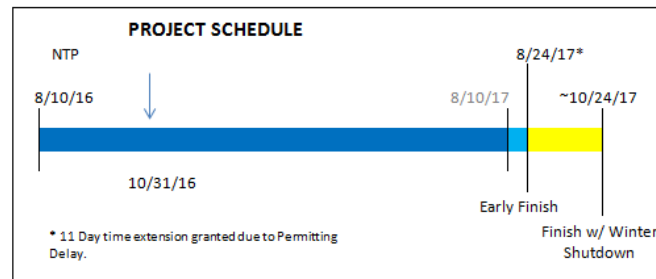
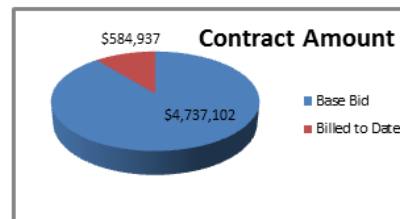
Howard Street South Channel Bridge Construction Status October 2016

Contractor: **T. LaRiviere Equipment**
Project Manager: Thomas Haroldsen
Superintendent: Bruce Heitman

Engineer/Arch: CH2M
Owner PM: Berry Ellison - Parks
Owner CM: Lorraine Mead - Hill Intl

ISSUES/CONCERNS:

- Contractor a little behind schedule.
- Contractor behind on submittals.
- Overrun of contaminated Materials



Looff Carrousel



Preparing bid documents, planning to post November 30
Archaeology and tree protections & removals will begin December/January
Carrousel will close January 1, removal of horses will begin
Construction timeline: February 2017 – February 2018

Recreational Ice Ribbon & SkyRide



Posted for bid November 2, closes December 5
Apparent low bidder will be chosen and verified
Construction timeline: Early 2017 – Fall 2017

Regional Playground



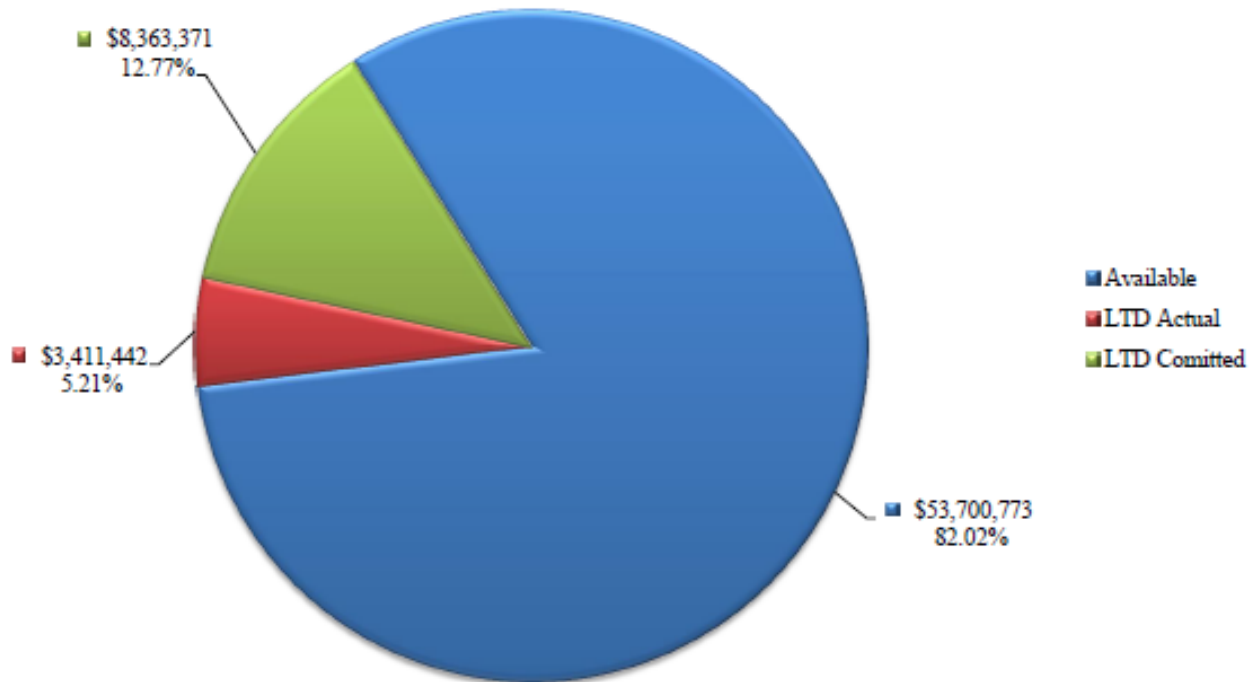
At 30% design development

Providing feedback to designers gathered from Park Board, Design Steering Committee, Design Review Board, and staff

Estimated construction starts 2018

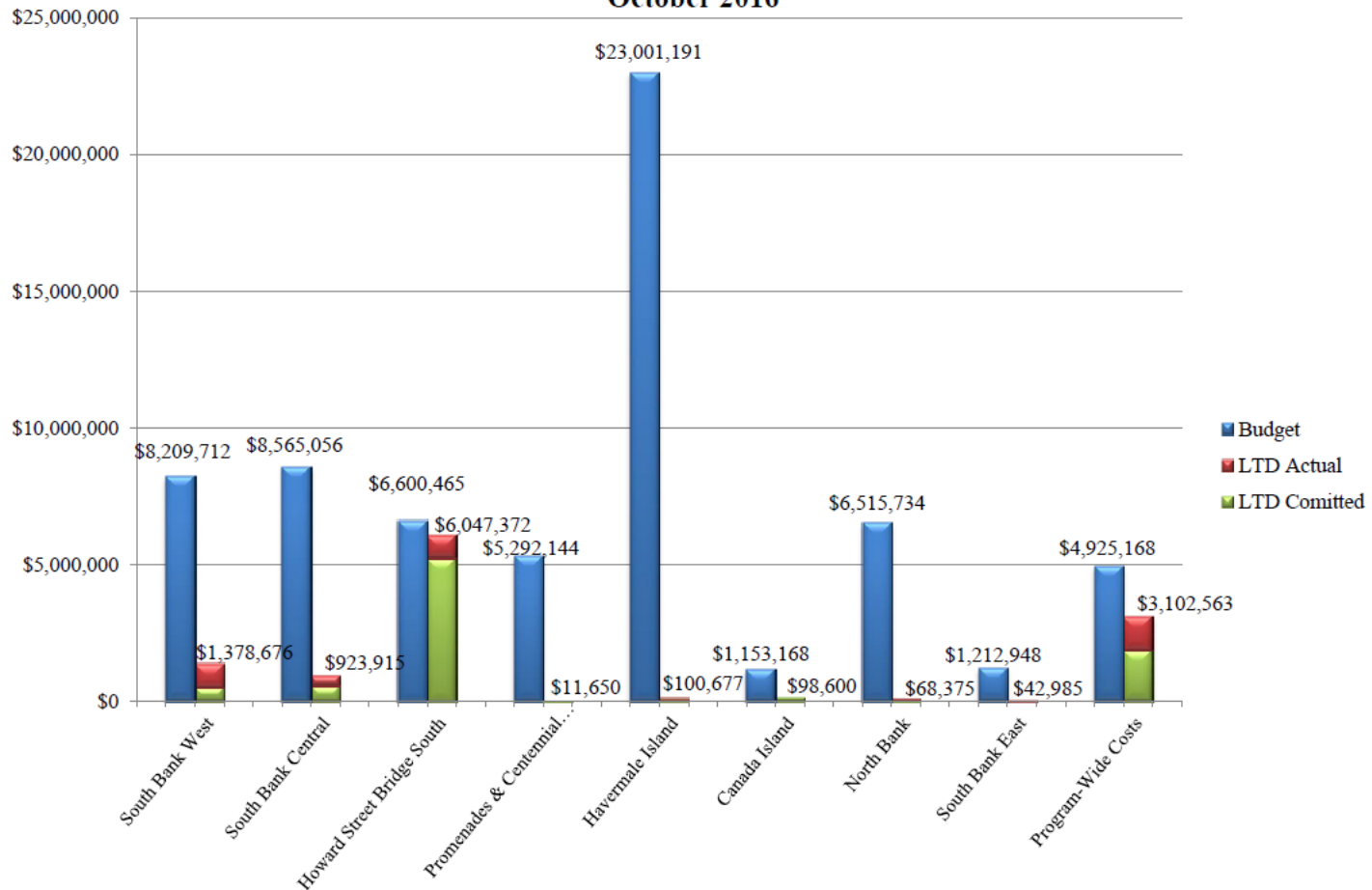
Financial Snapshot

Budget Utilization Through October 2016
(May 2016 Budget)



Financial Snapshot

Comparison of Budget to Actual & Committed Expenditures October 2016





YOUR NEW PARK IS HAPPENING NOW

RIVER
FRONT
PARK

Questions & Comments