



CITY OF KIRKLAND

City Attorney's Office
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MEMORANDUM

To: Kurt Triplett, City Manager
From: Oskar Rey, Assistant City Attorney
Date: September 8, 2014
Subject: Agreement Regarding Impact Fees and SEPA Mitigation Fees with SRMKII, LLC

RECOMMENDATION

That the City Council adopts the attached resolution approving the Agreement Regarding Payment and Use of SEPA Mitigation Fees and Impact Fees ("Agreement") with SRMKII, LLC ("SRM"). The Agreement coordinates payment of development fees and installation of required public improvements with respect to the Phase II expansion of the Google campus.

BACKGROUND

SRM is currently developing property located at 451 Seventh Avenue South, Kirkland, Washington ("Property") in connection with the Phase II Google expansion ("Project"). In connection with the Project, SRM was required to pay transportation impact fees in the amount of \$1,373,400 pursuant to Kirkland Municipal Code Chapter 27.04. In addition, as part of the State Environmental Policy Act ("SEPA") process, SRM agreed to construct or pay for installation of several public improvements. SRM will pay an additional \$1,346,450 in SEPA mitigation fees which will fund City installation of certain public improvements required under SEPA. Finally, SRM will install certain public improvements in connection with its Project work.

A spreadsheet summarizing the required SRM mitigation payments is attached to this staff report as Attachment A. What follows is a summary of the required public improvements, their estimated cost, and who will install them:

Traffic Signal at 6th Street South and Kirkland Way. This public improvement is on the Capital Facilities Plan list and is eligible for use of impact fees. The current estimate for design and construction of this traffic signal is \$1,200,550. The Agreement provides that the City will construct the 6th Street South and Kirkland Way traffic signal and may utilize transportation impact fees for the purposes of doing so. SRM has contributed transportation impact fees of \$1,373,400, and the 6th Street South and Kirkland Way traffic signal is the only required public improvement for the Project that is eligible for transportation impact fees. To the extent SRM's transportation impact fee contribution exceeds the cost of the 6th Street South and Kirkland Way traffic signal, the remaining impact fees will be held and expended by the City as general transportation impact fees, which must be expended within 10 years. Any costs in excess of the current engineer's

estimate of \$1,200,550 will be the responsibility of the City (see Agreement, Section 2.1 and Section 3).

7th Avenue South Frontage Improvements. Installation of the 7th Avenue South improvements requires coordination between the City and SRM. Under the Agreement, the City is required to install water, sewer and partial storm water facilities on 7th Avenue South by December 31, 2014, and the City has already awarded a bid for that work (these utility improvements are not required SEPA mitigation and are being done by the City in advance of the street frontage improvements). After utility installation, SRM will install frontage improvements on 7th Avenue South no later than May 31, 2015. The frontage improvements will extend to State Street. The Agreement takes into account the possibility that the portion of the frontage improvements closest to State Street may be installed in connection with another development in that area (see Agreement, Section 1.1, second paragraph). After that, the City will overlay 7th Avenue South. Each party will install its portion of the 7th Avenue South improvements at its own cost (see Agreement, Section 1.1).

Traffic Signal at 6th Street South and 9th Avenue South. Pursuant to SEPA, SRM is required to install or pay for a new traffic signal at this intersection. The current Capital Improvement Plan project cost estimate for site acquisition, design and construction of this traffic signal is \$1,013,300, including a contingency in the amount of \$49,590. Under the Agreement, SRM will contribute this amount to the City for this signal. To the extent the cost of this signal exceeds the current estimate, SRM will reimburse the City for the excess cost. If the total cost of the signal is less than \$1,013,300, the City will refund or credit SRM the difference (see Agreement, Section 2.2 and Section 3).

6th Street South Frontage Improvements. The Agreement provides that the City will install frontage improvements along 6th Street South from the northeast corner of the Property to the intersection of 6th Street South and 1st Avenue South. The engineer's estimate for this work is \$583,150. The City is utilizing Transportation Improvement Board grant funding for this work in the amount of \$250,000. SRM is contributing \$333,150. The City would be responsible for any costs above the current estimate (see Agreement, Section 2.3 and Section 3).

There are several other aspects of the Agreement that should be summarized:

Certificate of Occupancy. For contractual reasons, SRM needs to have a Certificate of Occupancy for the Project by May 30, 2015. The required public improvements are development conditions for the Project. The Agreement provides that if work to be performed by the City is not complete by May 30, 2015, the City will not use that as a basis for declining to issue Certificate of Occupancy. SRM would still be required to complete the other items it is responsible for in order to receive Certificate of Occupancy for the Project (see Agreement, Section 2.4).

Payment Schedule. SRM has already paid \$1,373,400 in transportation impact fees. The Agreement requires payment of SEPA mitigation fees in the additional amount of \$1,346,450. Under the Agreement, this amount will be paid in three equal installments within 30, 120 and 210 days of execution of the Agreement (see Agreement, Exhibit C).

Latecomer's Agreement Option. Some of the improvements installed or paid for by SRM may be eligible for a street latecomer agreement, which would provide for reimbursement of SRM by subsequent developments that are benefitted by the public improvements. Establishment of a

street latecomer agreement requires that the benefitted properties be identified, and to the extent those properties are developed or redeveloped within 15 years, the developer would pay SRM a proportionate share of the cost of the public improvements. The City's street latecomer agreement regulations are set forth at KMC Chapter 19.28 and corresponding state law provisions are set forth at RCW Chapter 35.72. SRM has not indicated that it intends to establish a latecomer agreement, but would like to keep open the option of doing so within 90 days of completion of the public improvements (see Agreement, Section 5).

Adoption of the attached Resolution will authorize the City to enter into the Agreement with SRM and allow for coordination of installation of (and payment for) the required public improvements for the Phase II expansion of the Google campus.

Google Phase II Mitigation Payments									
Projects to be constructed by the City				Funding					
	Project #	CIP Cost Estimate		SRM Impact Fee	SRM Cash	City TIB Grant			
Traffic Signal at 6th St. and Kirkland Way	TR-65	\$1,200,550		\$1,200,550					
6th Street Sidewalk	NM-82	\$583,150			\$333,150	\$250,000			
Traffic Signal at 6th St. and 9th Ave	TR-115	\$1,013,300			\$1,013,300				
Total Payment due from SRM to City		Amount		Notes:					
		Paid	Unpaid						
Traffic Impact Fees	TR-65	\$1,373,400		\$1,200,550 will be used to fund 6th St/Kirkland Way signal. \$172,850 to Impact Fee fund for other CFP projects.					
6th Street Sidewalk	NM-82		\$333,150	Contribution capped at \$333,150; any cost overruns will be paid by the City.					
Traffic Signal at 6th St. and 9th Ave	TR-115		\$1,013,300	Based on CIP project cost estimate including a \$49,590 contingency. Any additional costs will be borne by SRM.					
Total Unpaid			\$1,346,450						
Total SRM Mitigation Payment		\$2,719,850							
<p>Note: Impact fees are expended on a "first in, first out" basis. The impact fees expended by the City on the above Projects will not be the same impact fees contributed by SRM</p>									

RESOLUTION R-5069

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AN AGREEMENT REGARDING PAYMENT AND USE OF SEPA MITIGATION FEES AND IMPACT FEES WITH SRMKII, LLC WITH RESPECT TO THE PHASE II GOOGLE CAMPUS EXPANSION PROJECT.

WHEREAS, SRMKII, LLC ("SRM") is the owner of real property commonly known as 451 Seventh Avenue South, Kirkland, Washington; and

WHEREAS, SRM intends to construct a commercial office building on the property consisting of approximately 180,792 square feet ("Project") which SRM is leasing to Google, Inc. ("Google"); and

WHEREAS, pursuant to City regulations and the State Environmental Policy Act ("SEPA"), SRM is required to pay impact fees, mitigation fees and install certain road and utility infrastructure improvements in connection with the Project; and

WHEREAS, the City and SRM would like to enter an Agreement that coordinates installation of, and payment for, the required public improvements;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute the Agreement Regarding Payment and Use of SEPA Mitigation Fees and Impact Fees, substantially in the form of the Agreement attached to this Resolution.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of September, 2014.

Signed in authentication thereof this ____ day of September, 2014.

MAYOR

Attest:

City Clerk

**AGREEMENT REGARDING PAYMENT AND USE OF SEPA MITIGATION FEES AND
IMPACT FEES**

THIS AGREEMENT REGARDING PAYMENT AND USE OF SEPA MITIGATION FEES AND IMPACT FEES (“Agreement”) is made and entered into as of _____, 2014 (the “Effective Date”), by and between the CITY OF KIRKLAND, a non-charter, optional code Washington municipal corporation (the “City”); and SRMKII, LLC, a Washington limited liability company (the “Developer”).

RECITALS

A. Developer is the owner of certain real property generally located at 451 7th Ave. South, in Kirkland, Washington, and legally described on the attached Exhibit A (the “Property”).

B. Developer intends to construct a commercial office building on the Property consisting of approximately 180,792 square feet (the “Project”), as shown on the site development plan attached hereto as Exhibit B. As of the Effective Date, the entirety of the Project is leased to Google, Inc. (“Google”).

C. As a prerequisite to further development of the Project, the City has required Developer to install, or pay for the installation of, certain offsite improvements (designated herein as the Developer Improvements and the City Improvements, which collectively constitute the “Offsite Improvements”). The Offsite Improvements are intended to reduce traffic congestion near, and improve access to, the Project. Some of the Offsite Improvements are also required as reasonable mitigation measures as the result of the State Environmental Policy Act (“SEPA”) review for the Project.

D. The parties desire to enter into this Agreement to set forth their understanding and agreement with respect to the performance of the foregoing work and responsibility for the costs associated therewith.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the parties hereto agree as follows:

1. Required Developer Improvements. Developer shall furnish and install, at its sole cost and expense, the Offsite Improvements described in Section 1.1 (the “Developer Improvements”), all in accordance with the Kirkland Zoning Code (“KZC”) and the Plans (as defined in Section 1.2, below):

1.1 7th Avenue South Frontage Improvements. As used in this Agreement, the term “Frontage Improvements” means, with respect to any public street, all frontage improvements required to bring such street into compliance with the KZC, including, without limitation, vertical curbs, gutters, storm water drainage systems, sidewalks, and associated landscaping. No later than December 31, 2014, the City will install water, sewer and partial storm water facilities on 7th Avenue South (“Utility Installation”). After Utility Installation, and no later than May 31, 2015, (the “7th Avenue Improvement Deadline”), Developer shall install Frontage Improvements on the south side of 7th Avenue South along the entire frontage of the Property, and extending westerly from the northwest corner of the Property approximately four hundred (400) feet (the “Developer 7th Avenue Frontage Improvement Cutoff”). As soon as reasonably practicable after Developer’s installation of the foregoing Frontage Improvements, the City shall overlay 7th Avenue South at its sole cost and expense.

In addition to the foregoing, if by the 7th Avenue Improvement Deadline the City has not entered into an agreement with another developer providing for the installation of Frontage Improvements from the Developer 7th Avenue Frontage Improvement Cutoff westerly to the existing Frontage Improvements located directly east of the southeast corner of 7th Avenue South and State Street South (the “Adjacent 7th Avenue Property Frontage Improvements”), or any portion thereof, Developer shall install such Adjacent 7th Avenue Property Frontage Improvements at Developer’s sole cost and expense; provided, however, that Developer may be entitled to reimbursement for such costs in accordance with Section 5 hereof. The City shall notify Developer within one (1) business day following the date on which the City enters into an agreement with another developer providing for the installation of the Adjacent 7th Avenue Property Frontage Improvements.

1.2 Plans and Specifications. Following the Effective Date, Developer shall submit plans and specifications for the Developer Improvements (“Plans”) to the City. The City shall promptly review Developer’s proposed Plans and either (i) deliver a written notice to Developer accepting the Plans; or (ii) provide Developer with written objections to the Plan, in which event Developer shall revise the Plans accordingly and resubmit the same to the City. Following the City’s approval of the Plans, Developer shall construct and install the Developer Improvements in strict conformance with the Plans.

1.3 Inspections. At all times during construction of the Developer Improvements, the City shall have the right, but not the duty, to inspect materials and workmanship, and all materials and work shall conform to the accepted Plans. Any material or work not conforming to the accepted Plans shall promptly be removed or replaced to the satisfaction of the City at the Developer's expense.

1.4 Voluntary Developer Improvements. In addition to the required Developer Improvements described above, Developer may, but shall not be required to, (i) install curbs and gutters along the east side of 5th Place South extending from the northeastern corner of 7th Avenue South to a location reasonably determined by Developer, and (ii) provide an additional layer of asphalt over such portions of 5th Place South as determined by Developer in its sole and absolute discretion. Notwithstanding the foregoing, an asphalt overlay may be required by the City on 5th Place South due to damage from construction traffic related to this Project.

2. City Improvements. The City shall furnish and install the following offsite improvements (collectively, the “City Improvements”), the costs of which shall be borne by the City and Developer in accordance with Section 3:

2.1 Kirkland Way/6th Street South Traffic Signal. The City acknowledges that the installation of traffic signals and related crosswalks and intersection improvements at Kirkland Way and 6th Street South (the “Kirkland Way/6th Street South Traffic Signal”) is a City-imposed condition to the issuance of a final certificate of occupancy for the Project. The City shall install the Kirkland Way/6th Street South Traffic Signal within a reasonable period of time from the date of this Agreement. The current estimate for design and construction of the Kirkland Way/6th Street South Traffic Signal is \$1,200,550.

2.2 6th Street South/9th Avenue South Traffic Signal. The parties acknowledge that the installation of traffic signals and related intersection improvements at 6th Street South and 9th Avenue South is a SEPA condition for the Project. The City shall install the 6th Street South/9th Avenue South Traffic Signal within a reasonable period of time from the date of this Agreement. The current estimate for design and construction of the 6th Street South/9th Avenue South Traffic Signal is \$1,013,300.

2.3 6th Street South Frontage Improvements. The City shall install Frontage Improvements along the west side of 6th Street South, from the northeast corner of the real property located generally at 747 6th Street South extending to the intersection of 6th Street South and 1st Avenue South within a reasonable period of time from the date of this Agreement. The current estimate for the design and construction of the 6th Street South Frontage Improvements is \$583,150.

2.4 Issuance of Certificate of Occupancy. Notwithstanding any provision of this Agreement to the contrary, if the City fails to install the Kirkland Way/6th Street South Traffic Signal, the 6th Street South/9th Avenue South Traffic Signal, or the 6th Street South Frontage Improvements by May 30, 2015, and there are no other outstanding conditions to the issuance of a final certificate of occupancy for the Project, the City shall take all actions necessary to issue a final, unconditional certificate of occupancy for the Project to Developer, effective no later than May 30, 2015. The City shall indemnify, defend, and hold Developer harmless from and against any and all debts, duties, obligations, liabilities, liens, suits, claims, demands, causes of actions, damages, losses, costs and expenses (including, without limitation, legal expenses and attorneys' fees with respect to the same or to enforce the foregoing) incurred by reason of or in connection with the City's breach of its obligations under this Section 2.1.

3. Payment for Offsite Improvements. Developer shall be responsible for one hundred percent (100%) of the costs associated with the Developer Improvements. As of the Effective Date, Developer has paid transportation impact fees of One Million Three Hundred Seventy-Three Thousand Four Hundred Dollars (\$1,373,400.00). Developer shall contribute an additional One Million Three Hundred Forty Six Thousand Four Hundred Fifty Dollars (\$1,346,450.00) (the "Developer City Improvement Contribution") towards the cost of the City Improvements, in accordance with the payment schedule attached hereto as Exhibit C. The Parties acknowledge that the additional \$1,346,450 contribution is a SEPA mitigation fee and not a transportation impact fee. Payment in full of the Developer City Improvement Contribution shall be a condition of obtaining a certificate of occupancy for the Project. With respect to the Kirkland Way/6th Street South Traffic Signal and 6th Street South Frontage Improvements, the costs for the design and installation of the City Improvements in excess of the current estimate will be borne entirely by the City. With respect to the 6th Street South/9th Avenue South Traffic Signal, the Developer shall reimburse the City for any costs reasonably incurred by the City above the current estimate. In the event the City's actual design and installation costs for the 6th Street South/9th Avenue South Traffic Signal are lower than the current estimate of \$1,013,300, the City shall either refund or credit the difference between the current estimate and the actual cost to the Developer in timely fashion. From time to time, upon Developer's request, the City shall deliver to Developer any and all invoices and other documentation relating to the costs incurred by the City with respect to the 6th Street South/9th Avenue South Traffic Signal. For the 6th Street South/9th Avenue South Traffic Signal, the City shall establish a small advisory committee, with a representative of Developer as a member, for the purpose discussing issues of project cost. The small advisory committee may advise and provide input to the City on measures that may reduce or minimize project cost. The City shall consider the input of the small advisory committee prior to making project decisions that significantly impact project cost, but the City shall retain ultimate decision-making authority with respect to the 6th Street South/9th Avenue South Traffic Signal project.

4. Completion of Offsite Improvements; Post-Installation Ownership and Maintenance of Offsite Improvements. As used in this Agreement, the “Completion Date” means the date on which the Offsite Improvements are completed and accepted by the City. Following the Completion Date and the required two year maintenance period, the Offsite Improvements will be owned and maintained by the City, at the City’s sole cost and expense.

5. Reimbursement of Offsite Improvement Costs by Other Property Owners. The parties acknowledge that, pursuant to Chapter 19.28 of the Kirkland Municipal Code (“KMC”), Developer may be entitled to reimbursement for a portion of the costs associated with some of the Offsite Improvements (“Improvement Costs”) in the event any Subsequent Developer (as defined below) develops or redevelops an Assessment Reimbursement Property (as defined below). The Developer may seek reimbursement for Improvement Costs pursuant to KMC 19.28, including, without limitation, executing and recording an Assessment Reimbursement Contract as more particularly described below. City staff will reasonably cooperate with Developer in establishing the Assessment Reimbursement Area (as defined in Section 5.2, below). Developer acknowledges that some of the Offsite Improvements are not subject to reimbursement pursuant to KMC Chapter 19.28.

5.1 Subsequent Developer. As used in this Agreement, the term “Subsequent Developer” means any person or entity who: (i) owns an Assessment Reimbursement Property, (ii) did not contribute any funds for the Offsite Improvements, (iii) develops its Assessment Reimbursement Property (or redevelops the same to a higher use) within fifteen (15) years following the date on which the Assessment Reimbursement Contract (as defined below) is recorded, and (iv) is not required to install a “street project” (as defined in KMC 19.28.030) in connection with such development or redevelopment because such street project was already installed by the City or Developer pursuant to this Agreement. As used in this Agreement, the term “Assessment Reimbursement Property” means any parcel of real property located within the Assessment Reimbursement Area, as determined by the City in accordance with Section 5.2.

5.2 Assessment Reimbursement Area. Within ninety (90) days of the Completion Date, the Developer may (i) preliminarily determine which parcels of real property adjacent to the Offsite Improvements would require similar improvements if the same were developed or redeveloped (such parcels collectively comprising the “Assessment Reimbursement Area”), and (ii) deliver to City a memorandum describing the methodology used to determine the boundaries of the Assessment Reimbursement Area (“ARA Memo”). City shall review the ARA Memo and reasonably cooperate with the Developer on submitting the Assessment Reimbursement Contract to the City Council for approval.

5.3 Final Approval of Assessment Reimbursement Area. Upon agreement between City staff and the Developer on the form of the Assessment Reimbursement Contract, the Developer shall deliver to the Assessment Reimbursement Property owners of record a written notice that complies in all respects with the requirements of KMC 19.28.060(2) (“ARA Notice”). If any Assessment Reimbursement Property owner requests a hearing in writing within twenty (20) days following the mailing of the ARA Notice, the City Council shall conduct a hearing that complies in all respects with the requirements of KMC 19.28.060(2). The ruling of the City Council with respect to the Assessment Reimbursement Area following such hearing will be the final decision of the City. As used herein, the “Final Approval Date” means the later to occur of (i) twenty (20) days after the mailing of the ARA Notice, or (ii) if an Assessment Reimbursement Property owner timely requests a hearing in accordance with KMC 19.28.060(2), the date on which the City council finally approves the Assessment Reimbursement Area following such hearing.

5.4 Assessment Reimbursement Contract. Not later than ten (10) business days following the Final Approval Date, Developer and the City shall execute and Developer may record in the office of the King County Department of Records and Elections an Assessment Reimbursement Contract, in a form that is mutually agreeable to the City and Developer. Once recorded, the Assessment Reimbursement Contract will be binding upon all property owners within the Assessment Reimbursement Area. Offsite Improvements subject to reimbursement under the Assessment Reimbursement Contract will include design, grading, paving, installation of curbs, gutters, storm drainage, sidewalks, street lighting, traffic controls and other similar improvements as required by the street standards of the City.

5.5 Responsibilities of City Following Recordation of Assessment Reimbursement Contract. Following the recordation of the Assessment Reimbursement Contract in accordance with this Section 5, the City shall not be responsible to Developer for any reimbursement payments required under the Assessment Reimbursement Contract, except as to moneys actually received by the City from Subsequent Developers. Developer acknowledges that pursuant to KMC 19.28.070, the City may retain up to fifteen percent (15%) of each payment received from a Subsequent Developer for administrative costs incurred with respect to the processing of the same.

6. Grant of Tie-Back Easement for Benefit of Developer's Property. The City hereby grants and conveys to Developer to and for the use and benefit of the Property, a temporary nonexclusive easement on, under, and across certain real property owned by the City, as generally depicted on the attached Exhibit D (hereinafter referred to as the "Tie Back Easement Area"). Such easement shall be used for the purpose of installing "tie-backs" and/or "tie rods" in conformity with industry standard specifications, and associated equipment to temporarily support the Project and for excavation associated therewith, together with the right of access onto the Tie Back Easement Area for pre-construction and construction activities, including, without limitation, measurement, pre-construction surveys, soil testing, installation, monitoring, adjustment, repair and destressing of the tie-backs and/or tie rods. The easement rights granted by the City pursuant to this Section shall commence on the Effective Date and shall continue until a final certificate of occupancy is issued for the Project.

7. Approval of Agreement. The parties acknowledge that any agreement with a private developer pertaining to the construction or installation of a "street project" (as defined in KMC 19.28.030) entered into by the City must be approved by the City Council.

8. Dispute Resolution Process. The parties shall use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations. If the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute through mediation before resorting to litigation. The fees for mediation will be borne equally by the parties.

9. Modifications to Agreement. This Agreement contains all terms, conditions and provisions agreed upon by the parties hereto, and shall not be modified except by written amendment executed by both parties.

10. General Provisions.

10.1 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.

10.2 Agreement Binding on Successors. This Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of Developer, and upon the City, except as limited and conditioned in this Agreement.

10.3 Severability. If any provision of this Agreement is determined to be unenforceable or invalid in a final decree or judgment by a court of law, then the remainder of this Agreement not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect. In that event, this Agreement shall thereafter be modified, as provided immediately hereafter, to implement the intent of the parties to the maximum extent allowable under law. The parties shall diligently seek to agree to modify the Agreement consistent with the final court determination, and no party shall undertake any actions inconsistent with the intent of this Agreement until the modification to this Agreement has been completed. If the parties do not mutually agree to modifications within forty-five (45) days after the final court determination, then either party may initiate the mediation process under Section 8 for determination of the modifications that will implement the intent of this Agreement and the final court decision.

10.4 Authority. Each party respectively represents and warrants that it has the power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to deliver and perform its obligations under this Agreement.

10.5 Exhibits Incorporated. All exhibits to this Agreement are incorporated by this reference as though fully set forth herein.

10.6 Headings. The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit or otherwise modify the terms and conditions of this Agreement.

10.7 Time of the Essence. Time is of the essence of this Agreement and of every provision hereof. Unless otherwise set forth in this Agreement, the reference to “days” shall mean calendar days. If any time for action occurs on a weekend or legal holiday in the State of Washington, then the time period shall be extended automatically to the next business day.

10.8 Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein and this Agreement supersedes all previous agreements, oral or written.

10.9 Default and Remedies.

(a) Cures Taking More Than Thirty Days. No party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from any other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure.

(b) Attorneys’ Fees. In any action to enforce or determine a party’s rights under this Agreement, the substantially prevailing party will be entitled to attorney’s fees and costs.

10.10 No Third-Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

10.11 Preparation of Agreement. This Agreement has been reviewed and revised by legal counsel for both parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Agreement.

10.12 Notices. All communications, notices, and demands of any kind that a party under this Agreement requires or desires to give to any other party shall be in writing and either (i) delivered personally, (ii) sent by facsimile transmission with an additional copy mailed first class, or (iii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

If to the City: City of Kirkland
 123 Fifth Avenue
 Kirkland, WA 98033
 Attn: Oskar Rey

If to Developer: SRMKII, LLC
 111 N. Post Street, Suite 200
 Spokane, WA 99201
 Attn: Bryan P. Stone

With a copy to: Lukins & Annis, P.S.
 717 W. Sprague Ave., Suite 1600
 Spokane, WA 99201
 Attn: James S. Black

Notice by hand delivery or facsimile shall be effective upon receipt, provided that notice by facsimile shall be accompanied by mailed notice as set forth herein and shall be evidenced by a machine-printed confirmation of successful transmission. If deposited in the mail, certified mail, return receipt requested, notice shall be deemed delivered forty-eight (48) hours after deposited. Any party at any time by notice to the other party may designate a different address or person to which such notice or communication shall be given.

10.13 Delays. If either party is delayed in the performance of its obligations under this Agreement due to force majeure, then performance of those obligations shall be excused for the period of delay.

10.14 Indemnification. Except as otherwise specifically provided elsewhere in this Agreement and any exhibits hereto, each party shall protect, defend, indemnify and hold harmless the other party and their officers, agents, and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, which are caused by or result from any negligent act or omission of the party's own officers, agents, and employees in performing services pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against a party, the party whose negligent action or omissions gave rise to the claim shall defend the other party at the indemnifying party's sole cost and expense; and if final judgment be rendered against the other party and its officers, agents, and employees or jointly the parties and their respective officers, agents, and employees, the parties whose actions or omissions gave rise to the claim shall satisfy the same; provided that, in the event of concurrent negligence, each party shall indemnify and hold the other parties harmless

only to the extent of that party's negligence. The indemnification to the City hereunder shall be for the benefit of the City as an entity, and not for members of the general public.

10.15 Project is a Private Undertaking. The Project is a private development and the City has no financial interest therein except as authorized in the exercise of its governmental functions. The parties understand and acknowledge that the City-owned Cross Kirkland Corridor ("CKC") is adjacent to the Project and will be improved by Developer in connection with construction of the Project. Improvement of the CKC by Developer is the subject of a separate Agreement between the City and Developer ("CKC Agreement") and this Agreement does not expressly or impliedly modify the CKC Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

CITY:

CITY OF KIRKLAND, a Washington
municipal corporation

DEVELOPER:

SRMKII, LLC, a Washington limited liability
company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF WASHINGTON)
 : ss
County of _____)

On this ____ day of _____, 20__, personally appeared before me _____, to me known to be the _____ of the CITY OF KIRKLAND, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that any seal affixed is the official seal of such municipal corporation.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

Notary Public (Signature)

(Print Name)

(Seal or Stamp)

My commission expires: _____

STATE OF WASHINGTON)
 : ss
County of _____)

On this ____ day of _____, 20__, personally appeared before me _____, to me known to be the _____ of SRMKII, LLC, the entity that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that she/he was authorized to execute said instrument and that any seal affixed is the official seal of such entity.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

Notary Public (Signature)

(Print Name)

(Seal or Stamp)

My commission expires: _____

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

THAT PORTION OF LOT 12 LYING WEST OF NORTHERN PACIFIC RAILROAD COMPANY RIGHT OF WAY AND THAT PORTION OF LOTS 15 AND 16 LYING EAST OF A LINE WHICH IS THE SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 12 AS EXTENDED SOUTHERLY TO THE SOUTH LINE OF LOT 16 AND LYING WEST OF THE NORTHERN PACIFIC RAILROAD COMPANY RIGHT OF WAY, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 94, IN KING COUNTY, WASHINGTON;

EXCEPT THE NORTH 15 FEET OF THE WESTERLY 325 FEET CONVEYED TO THE CITY OF KIRKLAND BY DEED RECORDED UNDER RECORDING NUMBER 7104230470;

SITUATE IN THE CITY OF KIRKLAND, COUNTY OF KING, STATE OF WASHINGTON.

EXHIBIT B
SITE DEVELOPMENT PLAN

[see attached]

EXHIBIT C

PAYMENT SCHEDULE

- 1.** \$448,816.67 due on the date that is 30 days after the Effective Date.
- 2.** \$448,816.67 due on the date that is 120 days after the Effective Date.
- 3.** \$448,816.66 due on the date that is 210 days after the Effective Date.

EXHIBIT D
TIE BACK EASEMENT AREA

[see attached]