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MEMORANDUM

To: Kurt Triplett, City Manager

From: Tracey Dunlap, Deputy City Manager
Kevin Raymond, City Attorney
Pat Schneider, Principal, Foster Garvey PC
Adam Weinstein, Director of Planning & Building

Date: July 1, 2022

Subject: SPECIAL STUDY SESSION ON A PROPOSED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF KIRKLAND AND GOOGLE, LLC REGARDING A CATALYST PROJECT DEVELOPMENT RELATED TO THE NE 85TH STREET STATION AREA PLAN

RECOMMENDATION:

It is recommended that the City Council hold a special study session on July 6, 2022, related to a proposed Development Agreement ("Agreement") between the City of Kirkland and Google, LLC. This Agreement creates a catalyst project development as contemplated by the NE 85th Street Station Area Plan ("Station Area Plan") adopted by the Council on June 28, 2022, through Resolution R-5547. This study session will provide the Council and the community with detailed information from City staff about the proposed Agreement, in advance of a public hearing before the Council now being scheduled for July 11, 2022. Pursuant to RCW 36.70B.170, a public hearing is required to be held before such an agreement may be approved by resolution or ordinance.

BACKGROUND DISCUSSION:

In recognition of the importance of development agreements to generate significant community benefit from projects on large sites in the Station Area, the Form-based Code ("FBC") for Phase 1 of the Station Area Plan adopted by City Council on June 28, 2022, includes the following code provision enabling development agreements to be utilized in the Station Area:

KZC 57.05.03 DEVELOPMENT AGREEMENTS – CATALYST PROJECTS

As a means of encouraging early catalyst transit oriented development projects within the Station Area, projects on sites greater than four acres within the Commercial Mixed Use District are encouraged to apply for and negotiate a development agreement with the City pursuant to Chapter 36.70B RCW.

The purpose of such a development agreement is to provide a process for tailoring the regulations and incentives of this Chapter as they apply to specific facts and circumstances. A Development Agreement approved by the City Council pursuant to Chapter 36.70B RCW may approve specific variations or exceptions from the District Regulations if the Council finds and concludes in the Development Agreement that the variations or exceptions result in a project that provides overall greater benefit or overall better mitigation than would a project that strictly complies with the District Regulations, except that a Development Agreement may not authorize (1) additional height above the bonus maximum height; or (2) a principal use that is not otherwise permitted in the District.

A development agreement is both an exercise of the City's police power (the City's authority to protect public health, safety, and welfare) and a voluntary contract between a local government and an entity that controls or owns property (property owner), detailing the obligations of both parties, and specifying the standards and conditions that will govern development of the property. Although development agreements are voluntary, they are binding on the signing parties and their successors.

A development agreement can benefit the property owner and the local government and its community. As examples:

- A development agreement provides assurances to the property owner that the development regulations that apply to a development will not change during the term of the agreement; and
- In a development agreement, a local government can tailor specific conditions to specific projects and sites, a property owner can agree to do more than the law would otherwise require both to mitigate project impacts and provide public benefits, and both parties, and the local community, can benefit from an agreed-upon timeline for the development and construction of corresponding public infrastructure.

As has been discussed in previous Council meeting packets, as well as in public and community meetings, City staff have engaged with Google for a number of months to explore the terms of a potential development agreement. The intent of the Agreement is to guide the development of a new Google Campus on the existing Lee Johnson automobile dealership property, while also providing a number of associated community benefits in support of the Station Area Plan. Because the resulting Agreement is multi-faceted and multi-disciplinary, its primary negotiation-and-review team comprised staff across key City departments and outside legal counsel, including the following members (areas of focus for each team member are listed in *italics*):

- Kurt Triplett, City Manager: *principal negotiator, most topics*
- Tracey Dunlap, Deputy City Manager for Operations: *coordination and oversight, all topics, technical review of public benefits, infrastructure, impact fees*
- Kevin Raymond, City Attorney: *legal issues and coordination with applicant legal team*
- Pat Schneider, Principal – Foster Garvey: *legal issues*
- Adam Weinstein, Director of Planning & Building: *entitlement/permit process, environmental review, project description, code compliance, public benefits*
- Jeremy McMahan, Deputy Director of Planning & Building: *entitlement/permit process, environmental review, project description, code compliance, public benefits*

- Allison Zike, Senior Planner: *entitlement/permit process, environmental review, project description, code compliance, public benefits*
- Joel Pfundt, Transportation Manager: *project description, public benefits, infrastructure, impact fees, parking, access*
- John Burkhalter, Development Engineering Manager: *public benefits, infrastructure, impact fees, access*

Staff from other departments, including Finance & Administration and the Fire Department, were also consulted as subject matter experts. A more detailed list of the City staff who reviewed elements of the Agreement will be presented at the study session.

The Lee Johnson site is an important property for implementation of the Station Area Plan due to its large size (approximately 9.5 acres), underutilized nature (it mostly comprises surface parking lots), and proximity to the Bus Rapid Transit (“BRT”) Station that is planned to be operational in 2026. Fostering the development of a major employment-generating campus in such close proximity to the BRT Station would help the City achieve multiple objectives, including: increased energy efficiency and reduced per-capita carbon emissions to help meet goals in the Sustainability Master Plan; increased mobility options and transit-oriented development goals in the Comprehensive Plan; and the vision for a walkable, transit-connected community in the Station Area Plan. The Google project would include substantial open space, pedestrian and bike connections, community gathering spaces similar to beloved urban spaces in Kirkland, such as Downtown, Kirkland Urban, and The Village at Totem Lake. For these and other reasons, the Google project contemplated by the Agreement is representative of what the Station Area Plan characterizes and encourages as a “catalyst” project.

here are two primary reasons why the Agreement is important to pursue now that Phase 1 of the Station Area Plan has been adopted.

First, for the Station Area Plan to achieve its vision and capitalize on the once-in-a-generation investment in mass transit that the BRT station represents, there needs to be one or more catalyst projects to foster redevelopment of the larger plan area. As the City experienced with its lengthy planning process and rezoning of Totem Lake, spanning over two decades, without a catalyst project, the vision is likely to be entirely dependent on a combination of factors outside of the City’s control, such as the health of the real estate market and local economy, as well as developer interest. Supporting a catalyst projects like that proposed by Google, through a development agreement ensures the project is supportive of the Station Area Plan vision and that it offers substantial community benefits that exceed those otherwise required under our codes. This helps ensure that the BRT investment at NE 85th Street achieves its promise, that the impacts of new development can be mitigated, and that the benefits of new, planned-for development can be secured. In the absence of a catalyst project and the Station Area Plan, under current market conditions, it is likely that the area would redevelop as multi-family housing, in a lower-intensity format, or much more slowly. The City’s analysis shows this type of development would not be able to mitigate the impacts on services and infrastructure or provide the full range of public benefits desired by the community.

Second, and at the same time, one of Kirkland's long-time businesses and largest sales tax producers, Lee Johnson, is planning to sell its property, and the City is encouraged by the fact that Lee Johnson has entered into options for other properties to remain in business within Kirkland. In order for Lee Johnson to decide whether to exercise these options, Google must make a decision by mid-2022 on whether to purchase the Lee Johnson site and develop it as a catalyst project. The Agreement will provide the certainty Google needs to make a timely decision for the current owner, which in turn will facilitate Lee Johnson's ability to continue its presence in our community. The potential to retain an important existing business within Kirkland in a different location while obtaining a catalyst project within the Station Area presents a generational opportunity to maximize community and economic benefits for Kirkland.

It should be noted that Google's interest in building a campus in the Station Area was not expressed until after the City's initiation of the Station Area planning process and the development of plans between 2018 and 2019 by the Washington Department of Transportation ("WSDOT") and Sound Transit to locate the BRT Station at the interchange of NE 85th Street and I-405. In late 2020, Lee Johnson and Google entered into an agreement for Google's potential acquisition of the Lee Johnson property, and since then Google has supported the City's planning efforts and embarked on designing a campus development that would help leverage the regional transportation investment in BRT and help realize the City's vision for the Station Area Plan. The City, in recognition of the Google Campus as a potential catalyst project, sent Google a letter dated September 24, 2021 that encouraged Google, as an important community member, to actively participate in the Station Area planning process by publicly sharing initial design concepts for the Lee Johnson site. Beginning in late 2021 and continuing to date, Google has shared its development concepts with a number of community groups and City staff, as well as with the Planning Commission and Council.

PROPOSED DEVELOPMENT AGREEMENT:

The Development Agreement ("Agreement") is designed to ensure that development of this catalyst project by Google helps achieve the long-range vision of the Station Area Plan and that it exceeds the outcomes for community benefits intended by the requirements in Phase 1 of the new FBC for the Station Area that Council adopted on June 28, 2022. The Agreement also gives Google the certainty it needs to make a purchase decision on the Lee Johnson property and the certainty the owner of the Lee Johnson needs to finalize decisions about relocating within Kirkland.

The Agreement was shaped by the following key principles:

1. Parks, open space, and pedestrian/bike features included in the Google Campus development meet or exceed the parks, open space, and pedestrian/bike features that would otherwise be required of a project of this size and scale in the FBC.
2. Google voluntarily makes a significant financial incentive amenity contribution in support of early investments in critically needed affordable housing development

in Kirkland, and in recognition of the significant community need for affordable housing.

3. Google's open space and housing contributions taken together exceed the amenity incentive provisions of the FBC necessary to allow Google the height and density of its project. In addition, Google voluntarily agrees to achieve sustainability features that meet or exceed the sustainability features that otherwise would be required of a project of this size and scale under the FBC.
4. All development fees, impacts fees, and connection charges required by the City's code are paid by Google, just as any other developer would pay them.
5. Google provides full mitigation of the City-identified impacts of its project that were attributable to a zoning-compliant development project on the Lee Johnson site, as identified in the Final Supplemental Environmental Impact Statement ("FSEIS") for the Station Area Plan.
6. Google constructs additional "system improvements" to public infrastructure (e.g. public improvements that benefit the entire community) that go beyond what is required to mitigate the impacts of its project, and sooner than the City might otherwise be able to complete, in exchange for impact fee credits for transportation system improvement projects that were already on the City's Capital Facilities Plan. That Plan may be updated later this year to include transportation system improvement projects identified by the Station Area Plan.

The contents of the Agreement are summarized, section by section, below:

1. Project Description. Exhibit A is a legal description of the site. The Google Campus would be developed pursuant to Exhibits B through H of the Agreement. The campus project would be developed in five phases and comprise up to 1,540,000 square feet of total office development. The Exhibits identify the site legal description; site plan and phasing plan; amenity incentive open space features; amenity incentive system framework; sustainability features; infrastructure improvements; pick-up and drop-off locations; and the factors for locating the project's principal driveway on 120th Avenue NE.
2. Entitlement Approvals. Generally, approval of the Google Campus would follow standard procedures outlined in Section 142.35 of the Kirkland Zoning Code ("KZC"), under which the Design Review Board ("DRB") would apply the adopted Station Area Plan Design Guidelines to specific phases of the project. Similar to other large projects in Kirkland, the DRB first would conduct a Conceptual Design Conference ("Conference") on the site plan for all five phases of the project, and materials submitted to the DRB would include illustrations of design elements such as building setbacks, façade length, tower separation, building massing and modulation, open space, frontage improvements, and vehicle and bicycle access points. After the initial Conference, the DRB would hold an additional Conference on each specific project phase, focusing on site-specific phase details, such as façade articulation and landscape design. The project elements shown in the Exhibits referenced above may not be

modified by the DRB, but details and features not shown in the Exhibits would be subject to DRB review and modification in accordance with the adopted Design Guidelines. Design departures from the adopted FBC and Design Guidelines would be allowed on a limited basis, subject to provisions in the KZC, Design Guidelines, and the Agreement.

3. State Environmental Policy Act (“SEPA”) Review. This section explains that the anticipated environmental impacts of the project are within the scope of the impacts studied in the FSEIS for the Station Area Plan, which the Planning & Building Department (“Department”) has supplemented with a June 2022 Addendum, incorporating new information that became available after the FSEIS was issued in December 2021. This section also details how a potential future Planned Action Ordinance for the Google Campus would allow for streamlined environmental review. Assuming the Google Campus does not change in a way that results in new environmental impacts, no additional SEPA review would be necessary for individual phases of the project.
4. Public Benefits and Compliance with Amenity Incentive System. This section together with Exhibit C and D requires Google to provide “Incentive Amenities” for community benefits, principally including affordable housing in Kirkland and open space that substantially exceeds the requirements in the FBC for earning the height proposed by Google. This section also commits Google to working to achieve aggressive sustainability goals set forth in Exhibit E. Payment of the total Community Benefit Amenity Incentive Payment (that the City will use for affordable housing in Kirkland) will be required before issuance of the first structural building permit for Phase One; forty percent of this Payment would be refundable if Google were to not pursue Phase 4 before the end of the initial 10-year Agreement term. Google also will provide Amenity System Open Space Features that meet or exceed the requirements of the FBC, as conceptually described in Exhibit C.
5. Vesting of Development Regulations. In general, the KZC and Kirkland Municipal Code (“KMC”) regulations and Design Guidelines that are in effect at the time of the effective date of the Agreement govern development of the Google Campus for the term of the Agreement. The applicable building codes and other construction and technical codes will be those that are in effect at the time a complete application is submitted for each permit associated with an individual campus project phase, with some limited exceptions for buildings attached to the podium constructed as part of Phase One of the project. Once the Phase One podium is constructed it need not be changed because of changes in the codes that apply to subsequent Phases except in regard to limited life/safety code provisions.

6. Alternative Form-based Code Standards. The Agreement would authorize variations from the FBC because Google has demonstrated that these variations are tailored to the site and the Project and will result in binding commitments to greater overall community benefits and mitigation than would be required through strict compliance with the KZC and KMC:
 - a. the two proposed mid-block connections identified in Exhibit B will be created, with the north connection designed to prioritize pedestrian-friendly uses. The locations of the mid-block connections may be adjusted by Google, subject to the “minor” modifications provisions of the Agreement;
 - b. larger floor plates are permitted to allow Google to construct the floor area it needs while reducing the height of the buildings below that otherwise allowed by the KZC;
 - c. in two locations a 20-foot setback (with a row of trees to provide screening) is authorized instead of a 15-foot landscape buffer because the setback is needed for emergency vehicle access; and
 - d. FBC-compliant setbacks are measured from property lines as they exist as of the effective date of the Agreement, notwithstanding any future Google dedications of land or easements for right-of-way or frontage improvements.
7. Project Modifications. This section defines “minor” and “major” modifications to the project. Minor modifications, which are subject to Department review and approval, include changes that in general do not modify the size or scale of the project or the associated community benefits specified in the Agreement. Major modifications would require City Council approval, and include changes to the height, maximum site coverage, or total gross floor area of the project. This approach is similar to the modification process previously established for Kirkland Urban.
8. Phasing. The Project will be constructed in five phases, each phase including its associated public infrastructure improvements. Google will have the option to construct multiple phases simultaneously.
9. Infrastructure Improvements and Latecomer’s Agreements. Google will construct the parking structure needed for comply with KZC parking requirements for Phases One, Two, and Three during the construction of those phases. If Google constructs Phases Four and Five and the City determines that more parking is needed, Google will improve 118th Avenue NE to City standards to provide access to such additional parking. If this happens, the City would consider an application by Google to create a “latecomer” assessment reimbursement area so that other properties on 118th Avenue NE that will benefit from the improvements

would also share in those improvement costs when those properties re-develop.

10. Transportation Impact Fees. The process for Google's payment of transportation impact fees, and the credits it will receive for constructing transportation system improvements as set forth in Exhibit F, are clarified to reflect the phased nature of the project and Google's efforts to reduce vehicle trips. In general, however, Google will pay impact fees in effect at the time complete building permit applications are submitted in connection with each project phase.
11. Concurrency. This section addresses concurrency issues for transportation, water, and sewer. For transportation, the Agreement approves a Concurrency Test Notice for a specific number of person trips for the term of the Agreement and explains how these person trips will be deducted for each phase of this Project. This agreed-upon concurrency number was calculated based on City review of a standard Concurrency Management Application submitted to the Public Works Department by Google. The Agreement acknowledges that water (including for fire flow) and sewer concurrency requirements will be met upon completion of the utility projects identified in Exhibit F.

(Note that at the time of drafting this memorandum, the Concurrency Management Application process is not yet complete, and the trip amount has been left blank in the Agreement. That number will be filled in prior to the public hearing on July 11, 2022.)
12. Signage. The signage section indicates that signage on the site would be subject to the relevant provisions of the KZC, including the creation of a Master Sign program governing signage across the entire site similar to other larger developments in Kirkland, including Kirkland Urban and The Village at Totem Lake. The section also specifies the minimum types of signs that would be installed on the site.
13. Vehicle Parking. Google will build vehicle parking required by the KZC for the first three phases of the project together with those phases. Before Google constructs Phases Four and Five, however, Google will have an opportunity to demonstrate to the City that the already-constructed parking for the first three phases will be sufficient to also serve the final two project phases, due in part to the success of Google's transportation demand management measures. Absent such an approval, however, Google would be responsible for providing additional KZC-required vehicle parking together with the development of the final two project phases. If the City does approve a lower parking ratio for the final two project phases, but it is later determined that lower parking ratio is not being met, Google would take additional transportation demand management measures and, if necessary, fund half of the costs of an additional City

parking enforcement officer on an ongoing basis until Google has demonstrated it has achieved the approved lower parking ratio requirements. Throughout this process, Google's performance will be monitored and additional measures required to ensure that vehicle trips correspond with available parking.

14. Pick-Up/Drop-Off Areas. This section addresses how the City and Google will work together on the final design and use of pick-up and drop-off areas on 120th Avenue NE. The final design will be subject to City review and approval, taking into account the final driveway and intersection locations as described generally below in items 15 and 16.
15. 85th and 120th Vehicular Access. This section addresses agreements related to the location and use of the driveway on NE 85th Street and the two driveways on 120th Avenue NE. The location of the NE 85th Street driveway and one of the two 120th Avenue NE driveways have been determined. The final location of the second 120th Avenue NE driveway will generally be in the area of NE 83rd Street but determined and approved in the future by the City.
16. 118th Vehicular Access. This section addresses location and use of access locations on 118th Avenue NE for different project phases. The precise number and locations will be determined and approved later by the City.
17. Permit Processing Fees. This section confirms that Google is required to meet the requirements of KMC Chapter 21.74 and to pay the City's permit processing fees that are in effect at the time that Google submits applications for permits for each project phase.
18. Timely Review of Permit Submittals. This section confirms that Google will submit complete permit applications with the necessary information and that the City will review such applications promptly and diligently. Third-party reviewers may be hired by the City, to be reimbursed by Google, to allow for more timely processing of permit reviews.
19. Term. In recognition that the Google Campus is a five-phase catalyst project and that Google will make most of its investments in public infrastructure in Phase One, the initial term of the agreement will be for 10 years, with this term automatically extended for another 5 years when Google applies for its first structural building permit within the initial 10-year term for Phase Four.
20. Completion at End of Term. This section establishes the steps that Google must take to complete the Project if the Development Agreement expires but not all project phases are complete.

21. Items 21-35, Legal Items. The Agreement is a contract as well as a regulation, so it concludes with typical contract terms. Section 23 makes the Agreement binding on the parties and their successors, and it limits Google's ability to assign the Agreement to a non-Google entity without the approval of the City. Section 26 is a standard force majeure provision. Section 27 provides for dispute resolution that includes non-binding mediation. Section 35 provides for the recording of the Agreement.
22. Exhibits. A-H.

NEXT STEPS

A public hearing will be held on July 11, 2022. The Development Agreement, with any amendments requested by City Council and then agreed to by Google, could return to Council for approval by resolution at its regular meeting on July 19, 2022.

ATTACHMENTS

Draft Development Agreement including Exhibits B-H

DRAFT SUBJECT TO CONTINUING REVIEW

7/1 REVIEW DRAFT

DEVELOPMENT AGREEMENT

Between

CITY OF KIRKLAND AND GOOGLE LLC

Dated as of

the ____ day of _____, 2022

DRAFT

Development Agreement

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DRAFT

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DRAFT

DEVELOPMENT AGREEMENT

BETWEEN THE CITY OF KIRKLAND AND GOOGLE LLC

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

RECITALS

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

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

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

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

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

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

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

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

g. a FSEIS issued December 30, 2021;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AGREEMENT AND SITE-SPECIFIC REGULATIONS

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

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

2. Entitlement Approvals.

(a) **Design Review.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) **Amenity Incentive Open Space Features.** Exhibit C depicts the conceptual location and anticipated size of certain Open Space Features that are provided to exceed the amenity incentive system in the FBC (“Amenity Incentive Open Space Features”).

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

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

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

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

5. Vesting of Development Regulations. The applicable provisions of the Kirkland Municipal Code ("Code") in effect on the Effective Date shall apply to the development of the Project, except where they have been modified by this Agreement and are referred to herein as "Applicable Development Regulations." Applicable provisions include the "Design Guidelines for the NE 85th Street Station Subarea Plan" ("Design Guidelines") applied by the Design Review Board, which shall control the design of development within the Site, and the FBC and other applicable Code provisions, which shall control dimensional standards and issues not addressed in this Agreement. In the event of conflict between this Agreement and the City's adopted regulations

and guidelines, this Agreement shall control. The vesting provisions in this section shall not apply to International Codes that are separately addressed in subsection 5(a), to impact fees that are separately addressed in Section 11, and to permit and plan review fees that are separately addressed in Section 18. All vesting under this Agreement is subject to the City's authority to address a serious threat to public health and safety.

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

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

6. Alternative Form-Based Code Standards.

(a) **Location and Function of Mid-Block Connections.** The Site is required to implement two "Mid-Block Connections" for pedestrian and pedestrian-friendly public access across the Site. The conceptual locations for the Mid-Block connections are depicted on the Site Plan in Exhibit B. Google, at its sole discretion, may seek to modify the location of one or both of these connections during the Conceptual Design Conference or subsequent Design Response Conference processes, and such modification shall be considered a minor modification to this Agreement if the proposed modification meets the modification thresholds in Section 7. The North Mid-Block Connection may be designed to prioritize and enhance pedestrian access use. The South

Mid-Block Connection will provide a shared use path for pedestrians, bicycles, and other small human-powered or speed-limited wheeled vehicles such as scooters and skateboards, for which a speed limit shall be established.

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

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

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

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

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

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

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

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

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

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

10. Impact Fees.

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

(i) **Credits.** The City acknowledges that several of the transportation improvements identified on Exhibit F are system improvements that support the City’s transportation system as a whole. Google shall be entitled to a credit against its impact fee obligations for the value of associated dedicated land, and the costs of improvements, land acquisition, and construction for such system improvements pursuant to KMC 27.04.060 as such

facilities serve the goals and objectives of the City's Capital Facilities Plan. Google shall pay impact fees for Phase One, construct the required system improvements pursuant to Exhibit F, and present evidence to the City of the cost of such system improvements. Once the City verifies the costs of such system improvements, Google shall receive credit for such verified costs against the impact fees required for any subsequent Project Phase as directed by Google until all credit amounts are applied.

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

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

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

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

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

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

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

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

14. Vehicle Parking.

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

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

(c) If the City approves a lower parking ratio pursuant to subsection (b), Google will prepare, implement and manage an enhanced TDM Program to support such lower parking ratio. This enhanced TDM Program may include the elements listed in subsection (a) together with such additional or enhanced elements as are needed to support the lower parking ratio, for example subsidizing employee parking at park-and-ride locations along the BRT line, increasing shuttle services, or charging higher costs for pay-per-use parking.

(d) If the City approves a lower parking ratio pursuant to subsection (b), then prior to opening for Phases Four and Five and for the first three years following issuance of a certificate of occupancy for Phases Four and Five, Google shall also complete an annual multi-day on-street parking utilization study to measure on-street parking capacity on surrounding streets within a 15-minute walkshed from the Site, and during this same multi-day period each year after opening, a parking utilization study of Google’s on-Site parking facilities to provide information on the relationship between demand in Google’s on-Site parking facilities and on-street parking. The timing, scope and methodology of these studies shall be reviewed and approved by a City Transportation Engineer. The parking utilization study conducted prior to opening shall be used to set a baseline condition for on-street parking. If the results from the parking utilization studies

show consistent parking utilization above eighty percent during AM, mid-day, and PM peak hours compared to the baseline condition, then Google shall fund signage for short-term parking restrictions in studied locations where parking utilization is above eighty percent compared to the baseline. If Google is required to fund short-term parking signage, then it will complete two subsequent years of annual on-street parking utilization studies based on an updated study area boundary that may include additional areas outside the 15-minute walkshed, that reasonably appear to be impacted by overflow parking from the Site. If the results of such studies show no reduction in on-street parking utilization during peak hours where parking utilization is above eighty percent compared to the baseline, then Google shall fund one-half the cost to the City of a parking enforcement officer, and such funding shall continue until subsequent annual parking utilization studies demonstrate that Google is achieving the approved lower parking ratio.

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

16. 85th and 120th Vehicular Access. The Site is permitted vehicle access driveway curb cuts at the following locations: one from NE 85th Street and two from 120th Avenue NE. Curb cut spacing, size and geometry shall be reviewed and approved by the City based on the City of Kirkland Department of Public Works Pre-Approved Plans Policy R-4 (01/2020 ed.). The location of the NE 85th Street driveway curb cut shall be in the location of the existing driveway on this street frontage and shall be for the sole use of vehicles serving the Project's "Transit Hub." The location of the primary signalized access driveway for the Project on 120th Avenue NE shall generally be aligned with NE 83rd Street, although an alternative location between NE 83rd Street and NE 84th Lane may be approved by the City as part of the City's Consistency Certification for Phase One if the City determines that the alternative location can operate safely and efficiently based on information supplied by Google and the criteria listed in Exhibit H. The location of the other 120th Avenue NE driveway shall be at the southernmost location along the Site's 120th property line allowed by the Pre-Approved Plans Policy, and shall be used for service vehicle access. Locations for the driveways are further depicted in Exhibit B.

17. 118th Ave Vehicular Access. Two vehicle access locations from 118th Ave NE are permitted for emergency access for Phases One, Two, and Three, and additional vehicle access locations will be permitted for service vehicle access that will be combined with commuter vehicle access if additional parking is required for Phases Four and Five, as generally depicted on Exhibit

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

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

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

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

(b) **Timely Processing.** Upon submission by Google of all applicable applications, submission fees, and other required documents, the City will promptly and diligently, subject to City ordinances, policies, and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Google's currently pending permit applications, including: (x) providing staff assistance, additional staff and/or third-party consultants for concurrent, expedited planning and processing for each application, (y) providing prompt notice of applications, meetings, and hearings, if required, and (z) acting on such applications. Google and the City may enter into a separate a Processing and Reimbursement Agreement(s) to facilitate Google's reimbursement for the City's hiring of third-party consultants, plan checkers, or other staff support to expedite permit review and processing.

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

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

- (a) Submitting before expiration of this Agreement a complete Design Response Conference application pursuant to KZC 145.35;
- (b) Proceeding without unreasonable delay to obtain Design Response Conference approval and Certification Of Consistency pursuant to Section 2; and by
- (c) Submitting, within twelve months after such certification, a complete application for a building permit for a principal structure approved by the DRB, and completing construction within the time limits required by the building code.

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

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

with a copy to: City of Kirkland
Kirkland City Hall
123 5th Avenue
Kirkland, WA
Attn: City Attorney

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

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

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

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

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

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

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

27. Dispute Resolution. With regard to any dispute between the City and Google arising from this Agreement or the Project, a Party shall, at the request of the other Party, meet with designated representatives of the requesting Party promptly following its request. The parties to any such meetings shall attempt in good faith to resolve any such disputes. In the event the Parties are unable to resolve the issue and reach an agreement within thirty (30) days of a meeting request pursuant to this section, either Party may request mediation. If the Parties are unable to reach agreement with or without mediation within Ninety (90) days of the initial meeting request pursuant to this section, either Party may initial judicial proceedings. Nothing in this section shall be interpreted as requiring either Party to reach agreement with regard to disputed matters addressed by meeting or mediation, nor shall the outcome of such meetings or mediation be binding on the parties unless expressly agreed to in writing by the parties. Nothing in this section shall require a Party to postpone seeking injunctive relief or taking other steps if it believes in good faith such postponement will cause irreparable harm to such Party.

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

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

30. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the signatory Parties and their successors and assigns. No other person or entity

shall have any right of action based on any provision in this Agreement, and no other person or entity shall have any third-party beneficiary status.

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

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

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

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

35. Recording. Google shall record an executed copy of this Agreement with the King County Auditor, pursuant to RCW 36.70B.190, no later than fourteen days after the Effective Date, and shall provide the City with a conformed copy of the recorded document within thirty days of the Effective Date.

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

The City Council conducted a public hearing regarding this Agreement on July _____, 2022 and approved this Agreement by Resolution _____, which authorizes the City Manager to execute this Agreement after its execution by Google, so long as such execution happens within ___ days of the Council's passage of Resolution _____.

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

GOOGLE:

By _____
Its _____

CITY:

By _____
Its _____

DRAFT

Exhibit A
Site Legal Description

DRAFT

Exhibit B

Site Plan and Phasing Plan

[Attached]

DRAFT

Exhibit C

Amenity Incentive Open Space Features

[Attached]

DRAFT

Exhibit D

Amenity Incentive System Framework [Attached]

DRAFT

Exhibit E

Sustainability Features [Attached]

DRAFT

Exhibit F

Infrastructure Improvements

[Attached]

DRAFT

Exhibit G

Pick-Up Drop-Off (“PUDO”) Locations

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

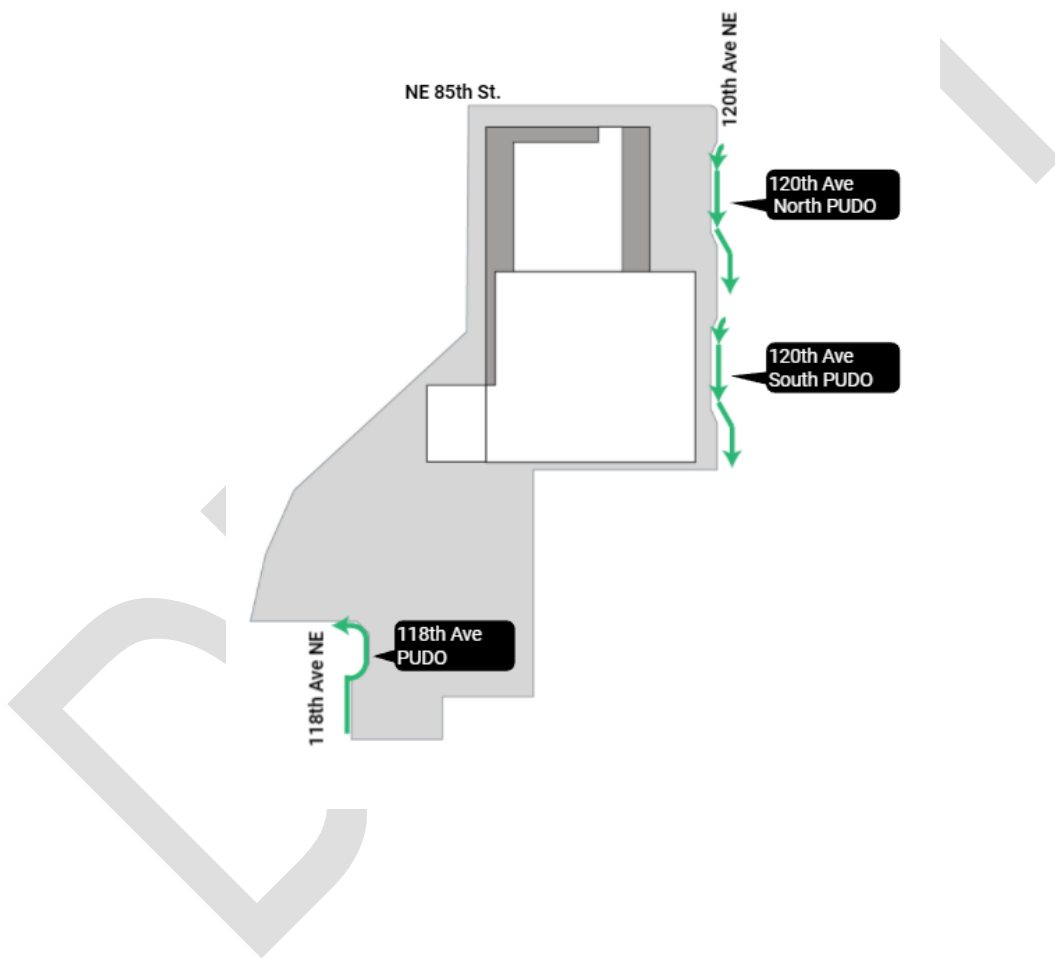


Exhibit H

120th Vehicular Access Driveway Location Factors

[Attached]

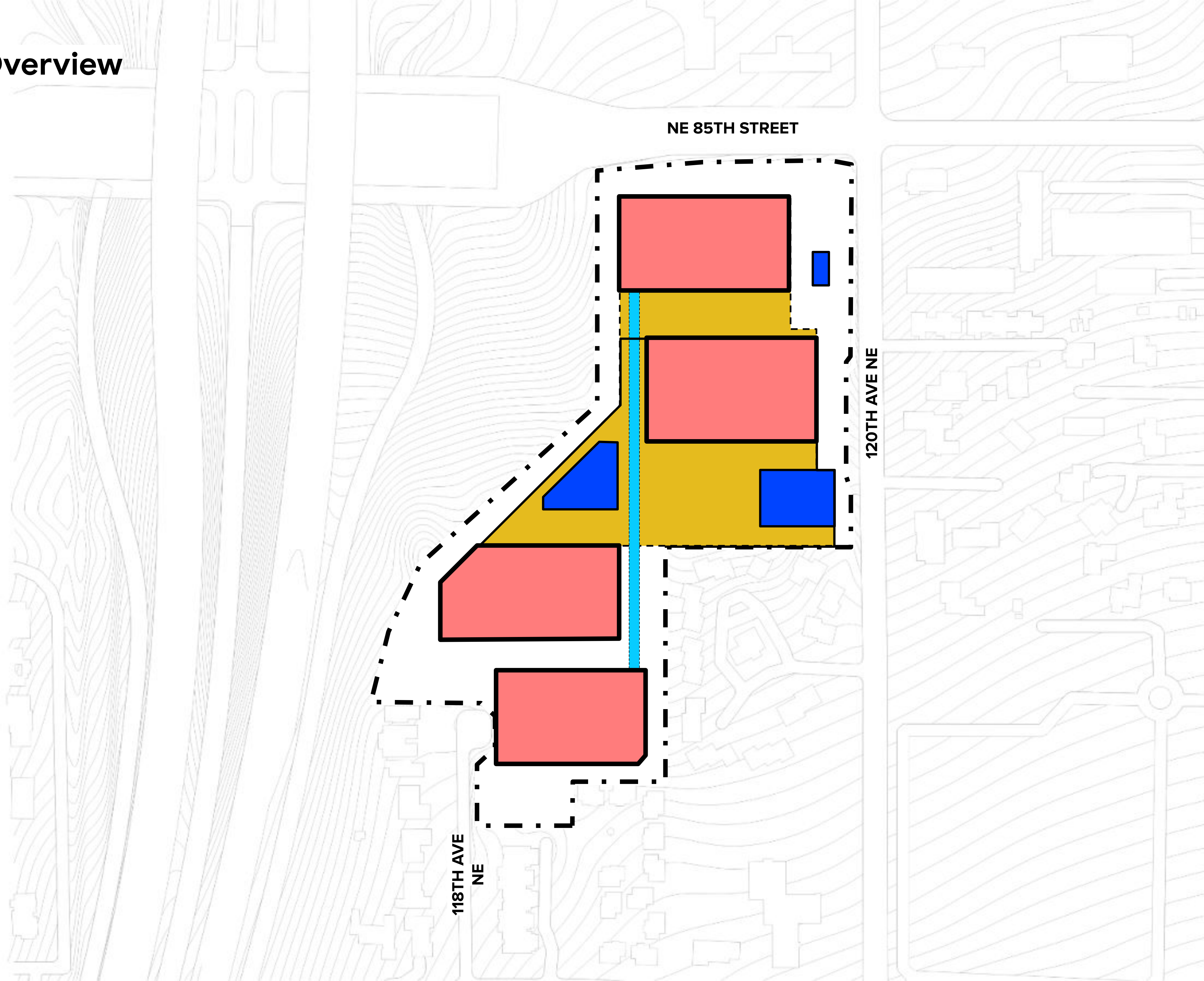
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Exhibit B

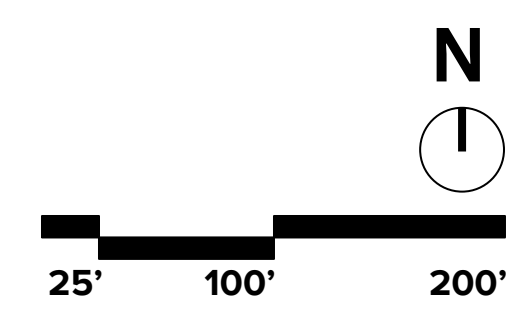
Site Plan and Phasing Plan

Site Plan Overview

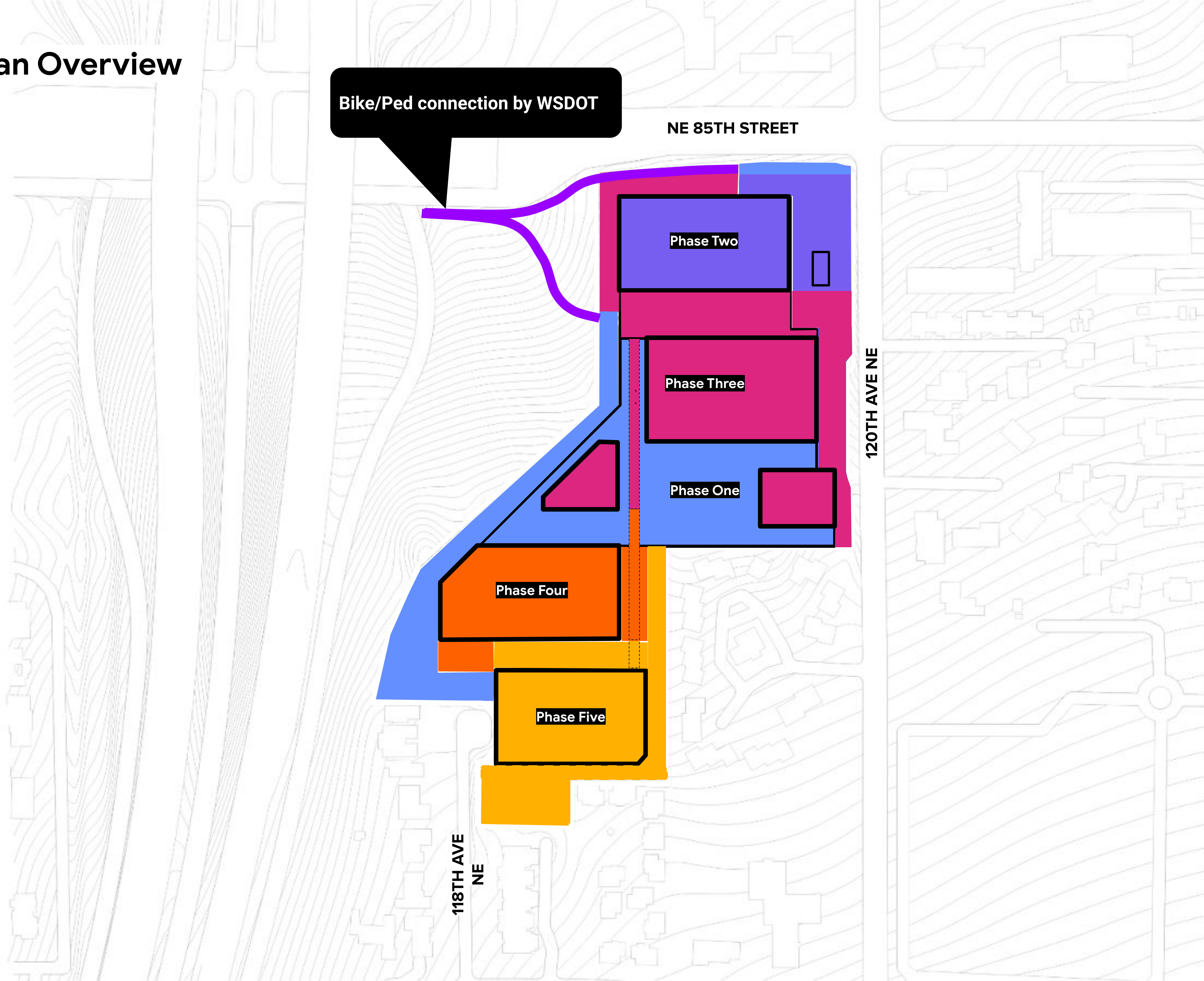


Legend

- Property Line
- High-Rise (IV-B)
- Podium (IA) (Above Grade)
- Podium (IA) (Below Grade)
- Upper-Level Private Pedestrian Connection
- Pavilion (IA or IV-B)



Phasing Plan Overview



Bike/Ped connection by WSDOT

NE 85TH STREET

120TH AVE NE

118TH AVE
NE

Phase Two

Phase Three

Phase One

Phase Four

Phase Five

Legend

— • Property Line

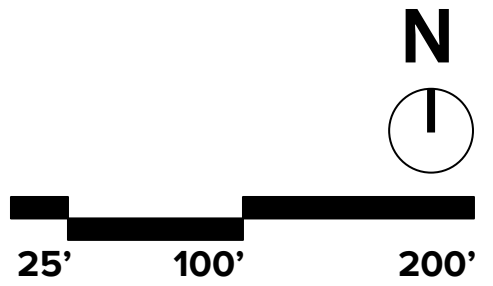
Phase One

Phase Two

Phase Three

Phase Four

Phase Five



Phasing Plan - Phase One

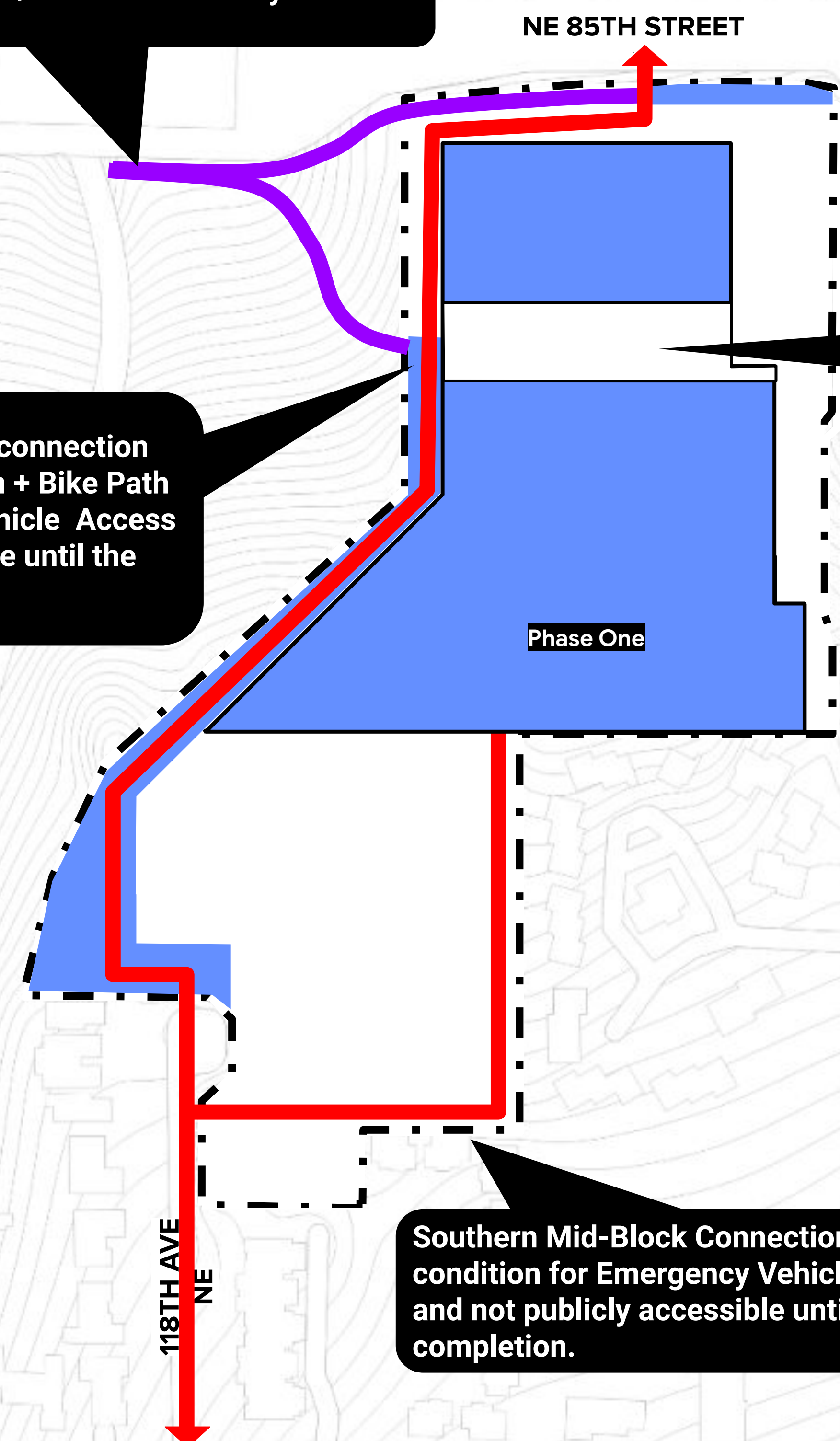
Phase One shall consist of construction of the northern parking garage and Podium for the Project, site-wide emergency vehicle access including the portion of the NE 85th Street frontage improvements required for the emergency vehicle access lane. The sidewalk and bike lane from the WSDOT section on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

North of the WSDOT Bike/Ped connection to the BRT the West Pedestrian + Bike Path will be open for Emergency Vehicle Access only and not publicly accessible until the Phase Three completion.

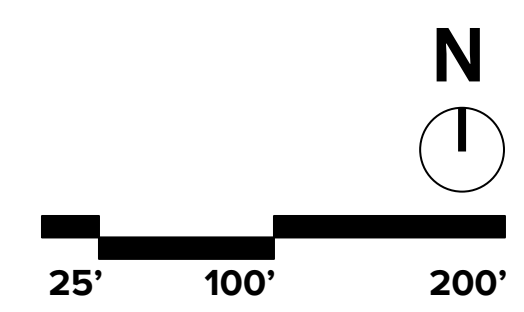
Bike/Ped connection by WSDOT

Northern Mid-Block Connection in interim condition and not publicly accessible until Phase Three completion.

Southern Mid-Block Connection in interim condition for Emergency Vehicle Access only and not publicly accessible until Phase Five completion.

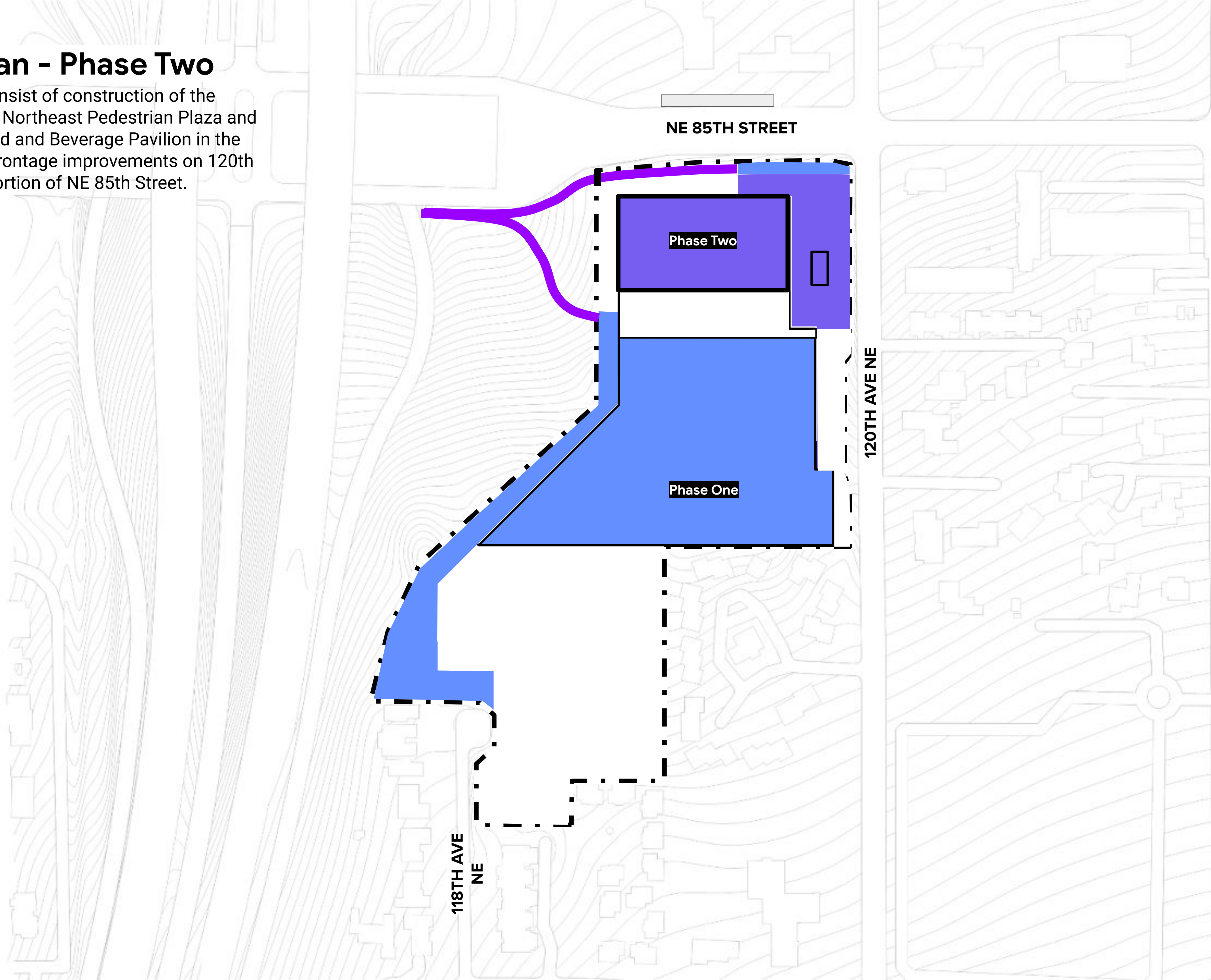


- Legend**
- - - Property Line
 - Phase One
 - ➔ Emergency Vehicle Access



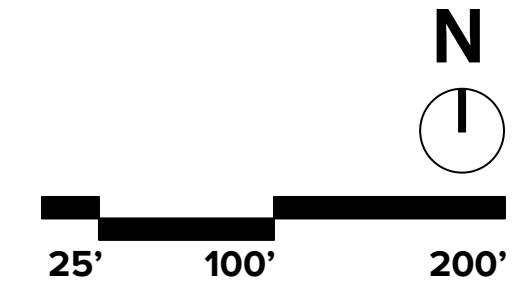
Phasing Plan - Phase Two

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



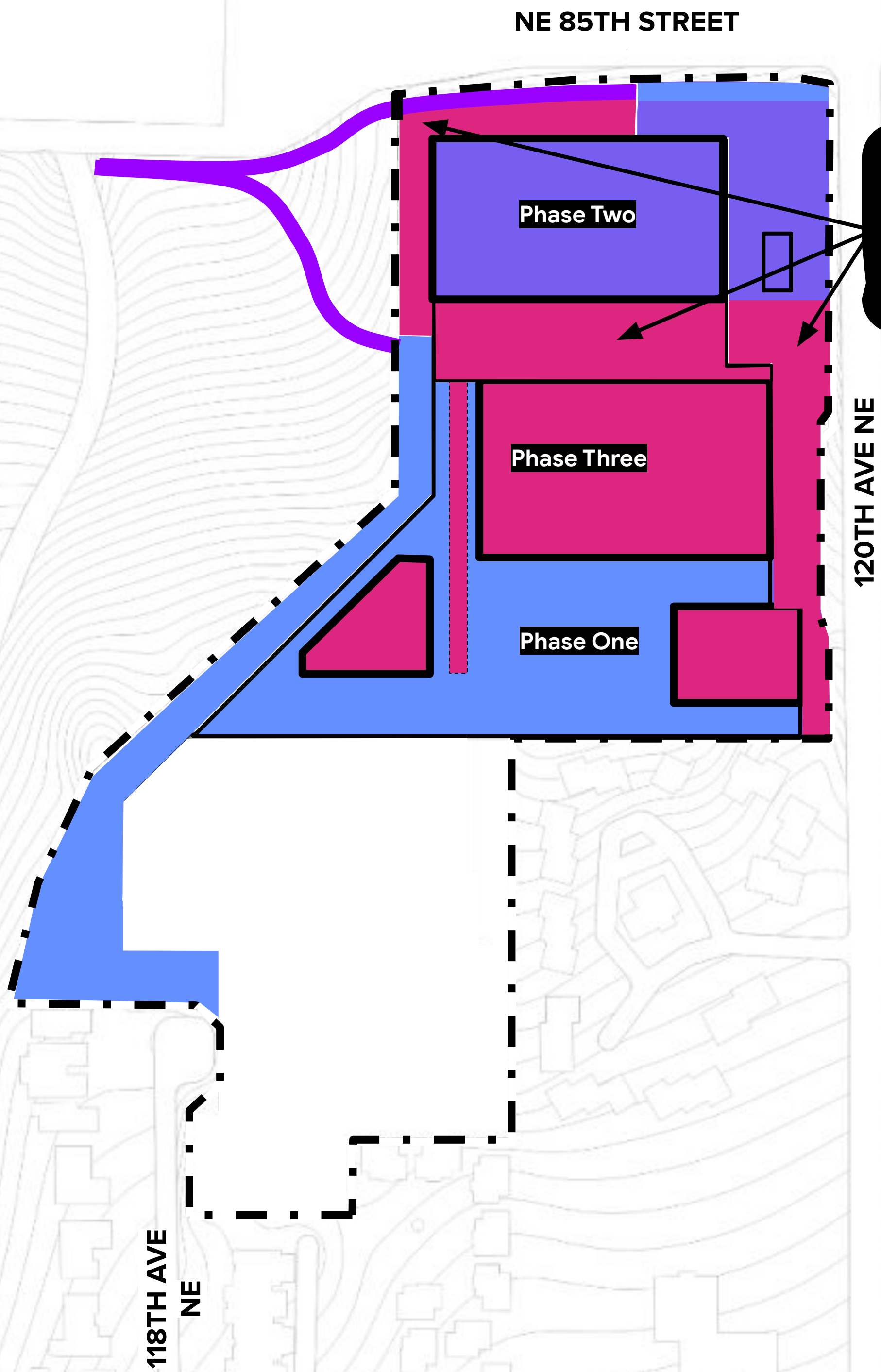
Legend

- · - Property Line
- Phase One
- Phase Two



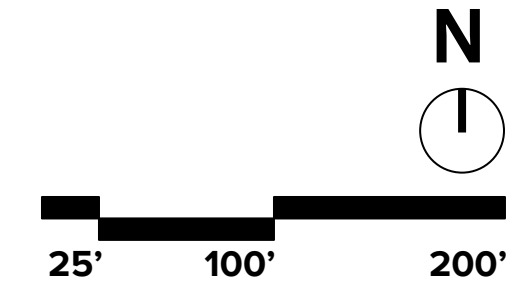
Phasing Plan - Phase Three

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



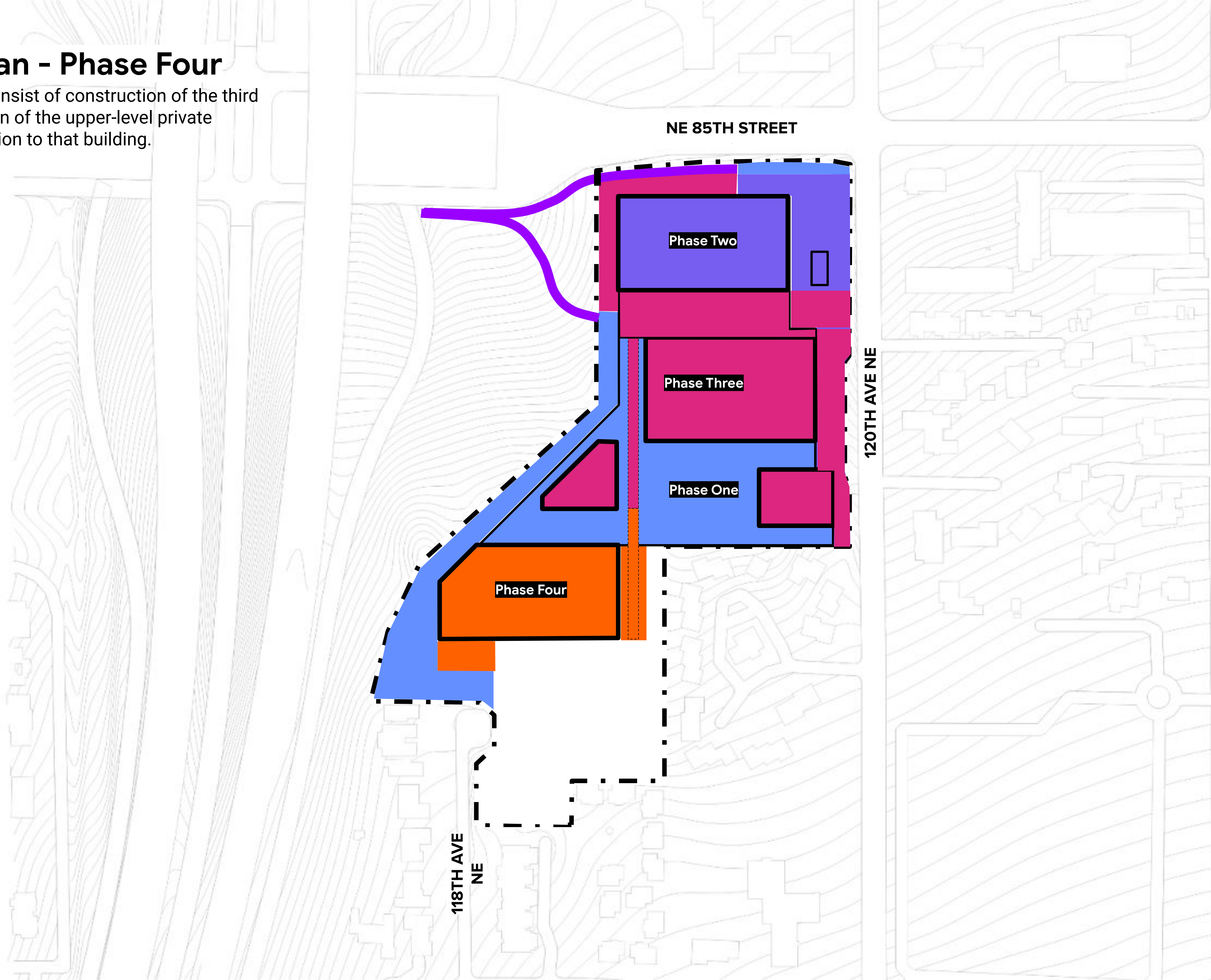
Northern Mid-Block Connection, Northeast Public Plaza and West Pedestrian and Bike Path open to public upon Phase Three completion.

- Legend**
- - - Property Line
 - Phase One
 - Phase Two
 - Phase Three



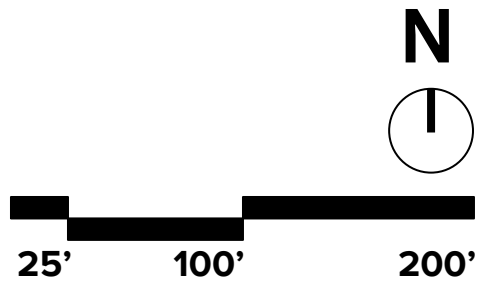
Phasing Plan - Phase Four

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



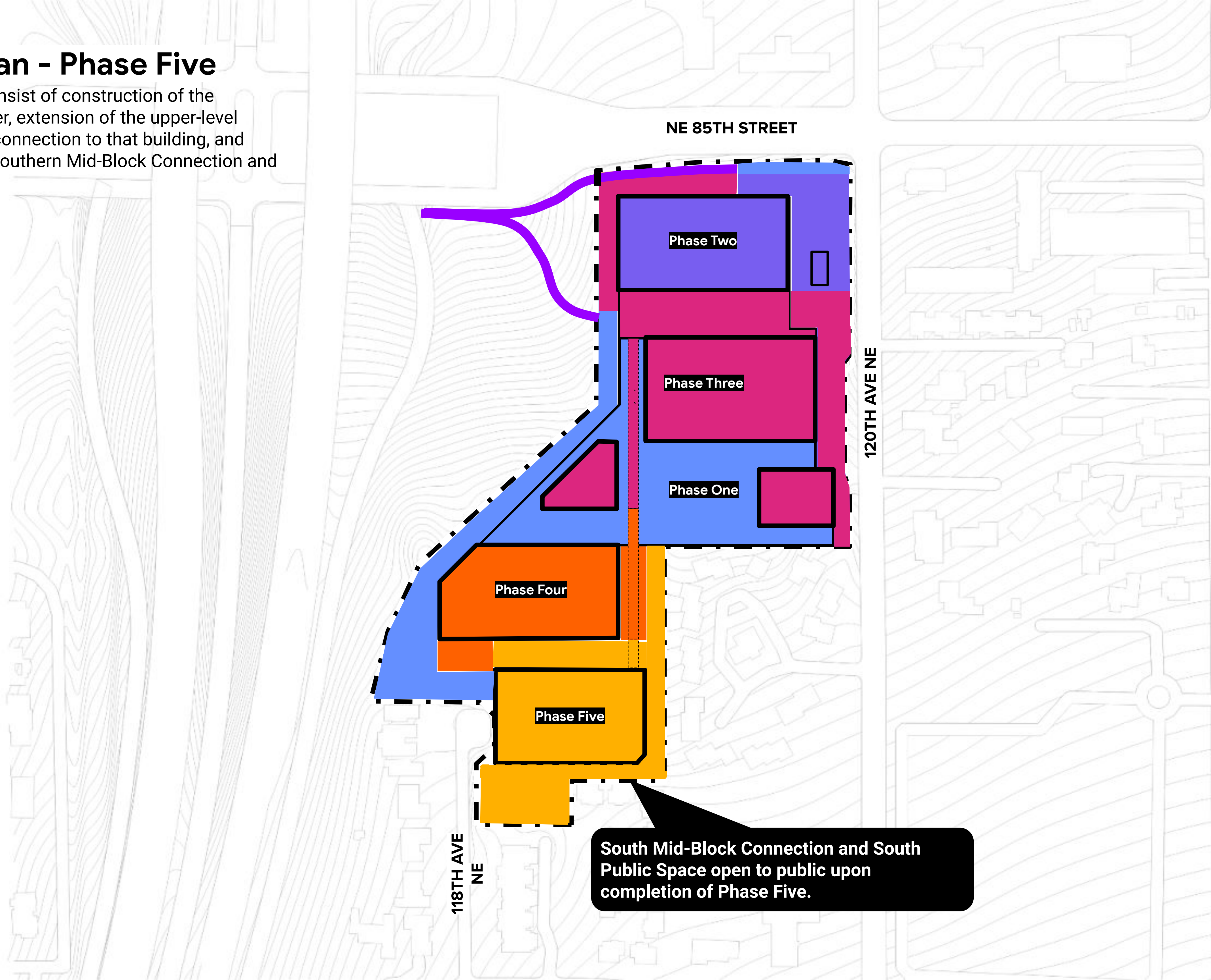
Legend

- - - Property Line
- Phase One
- Phase Two
- Phase Three
- Phase Four



Phasing Plan - Phase Five

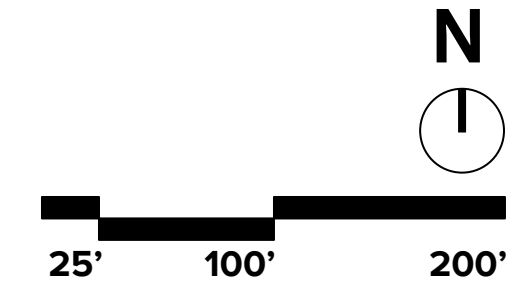
Phase Five shall consist of construction of the southernmost Tower, extension of the upper-level private pedestrian connection to that building, and completion of the Southern Mid-Block Connection and Public Space.



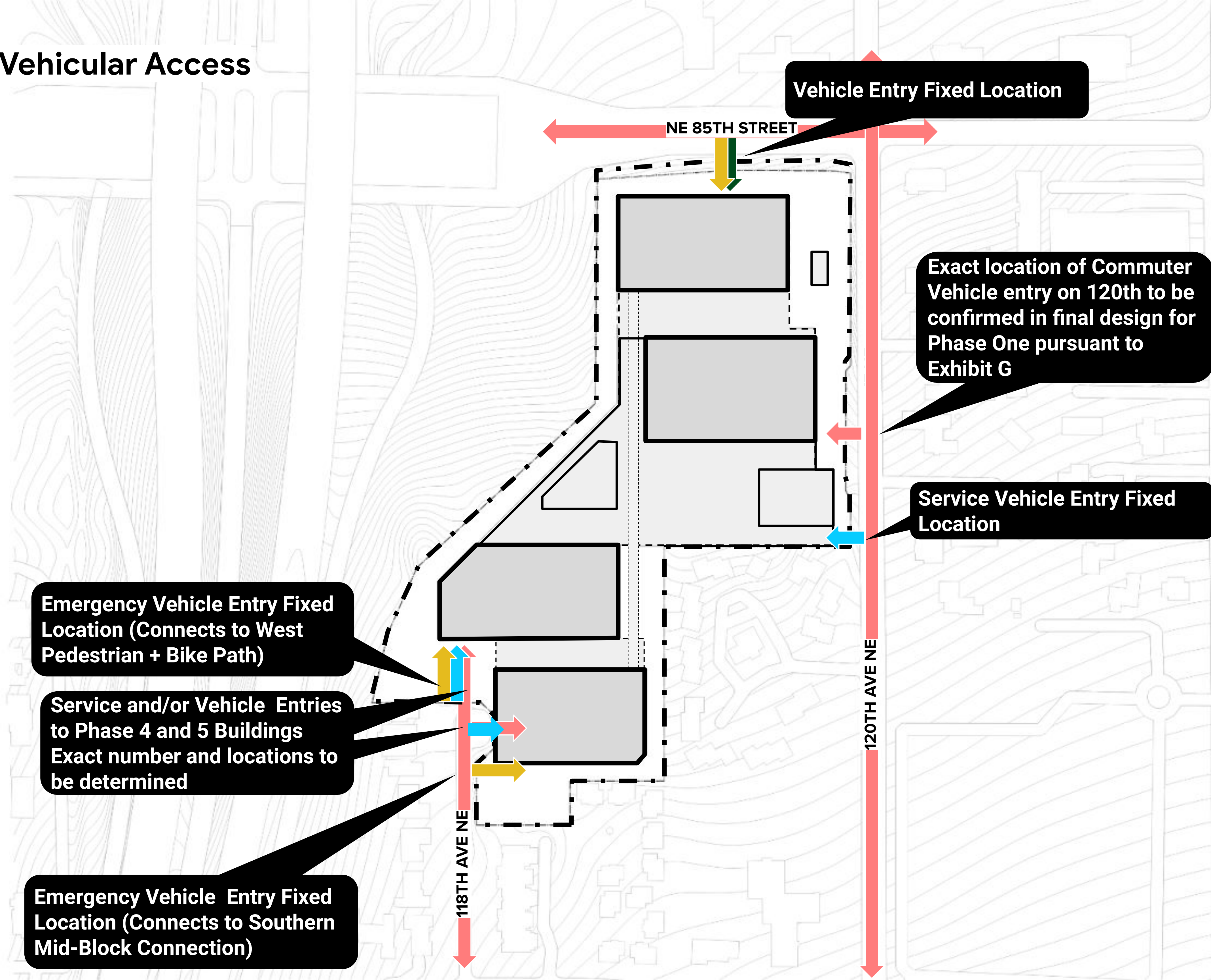
Legend

- - - Property Line
- Phase One
- Phase Two
- Phase Three
- Phase Four
- Phase Five





South Mid-Block Connection and South Public Space open to public upon completion of Phase Five.

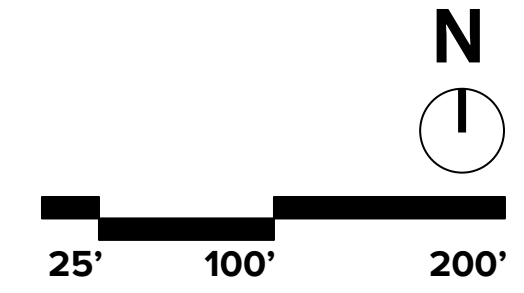


Site Plan - Vehicular Access

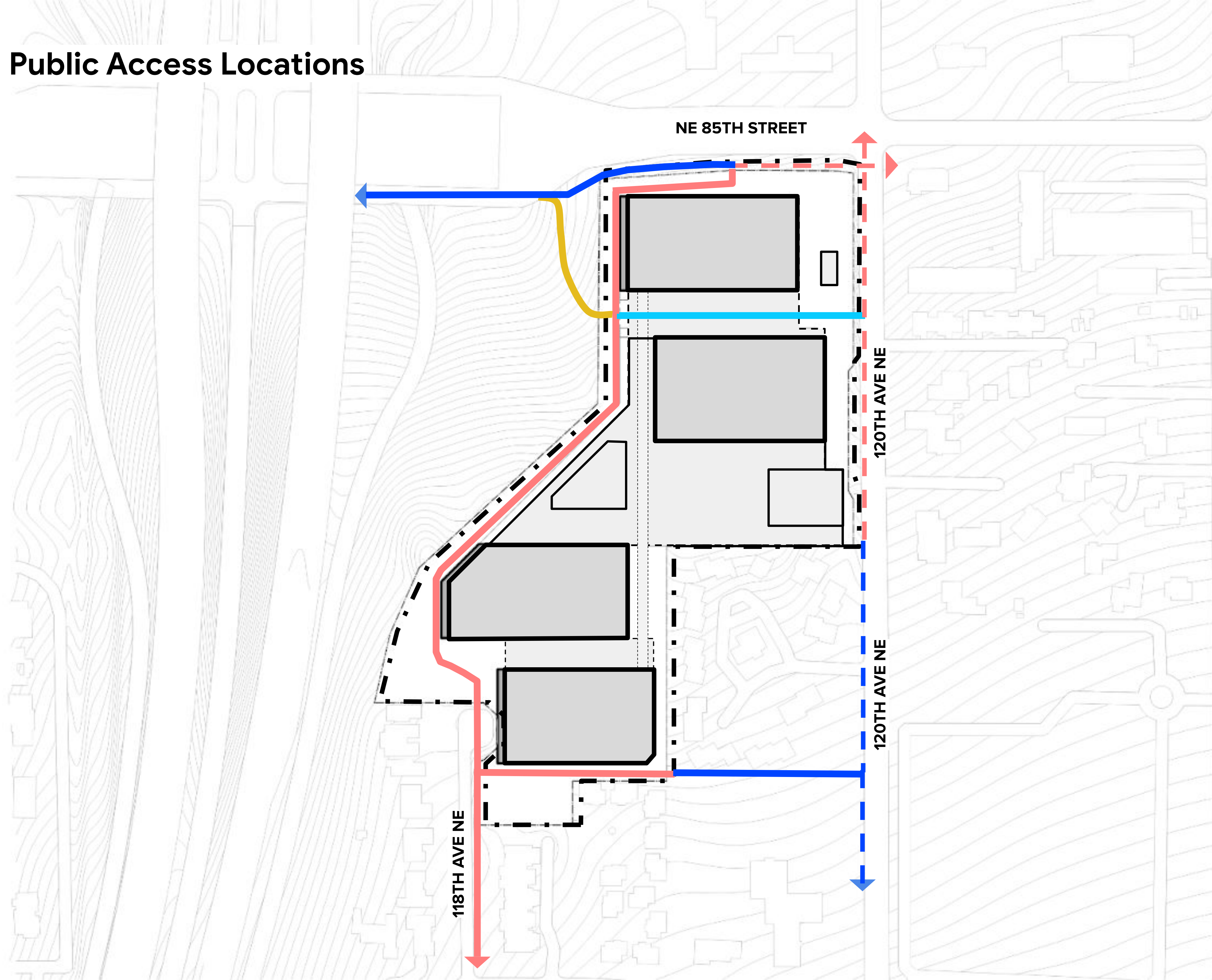


Legend

-  Google Transit Hub Busses / Shuttles
-  Commuter Vehicle Entry Points
-  Service Vehicle Entry Points
-  Emergency Vehicle Entry Points ("EV")

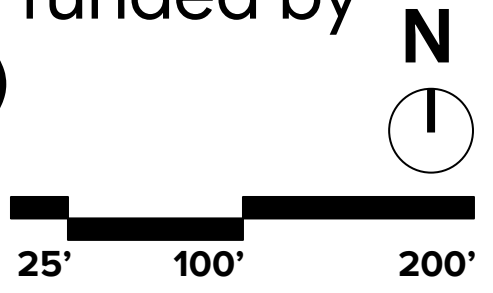


Site Plan - Public Access Locations

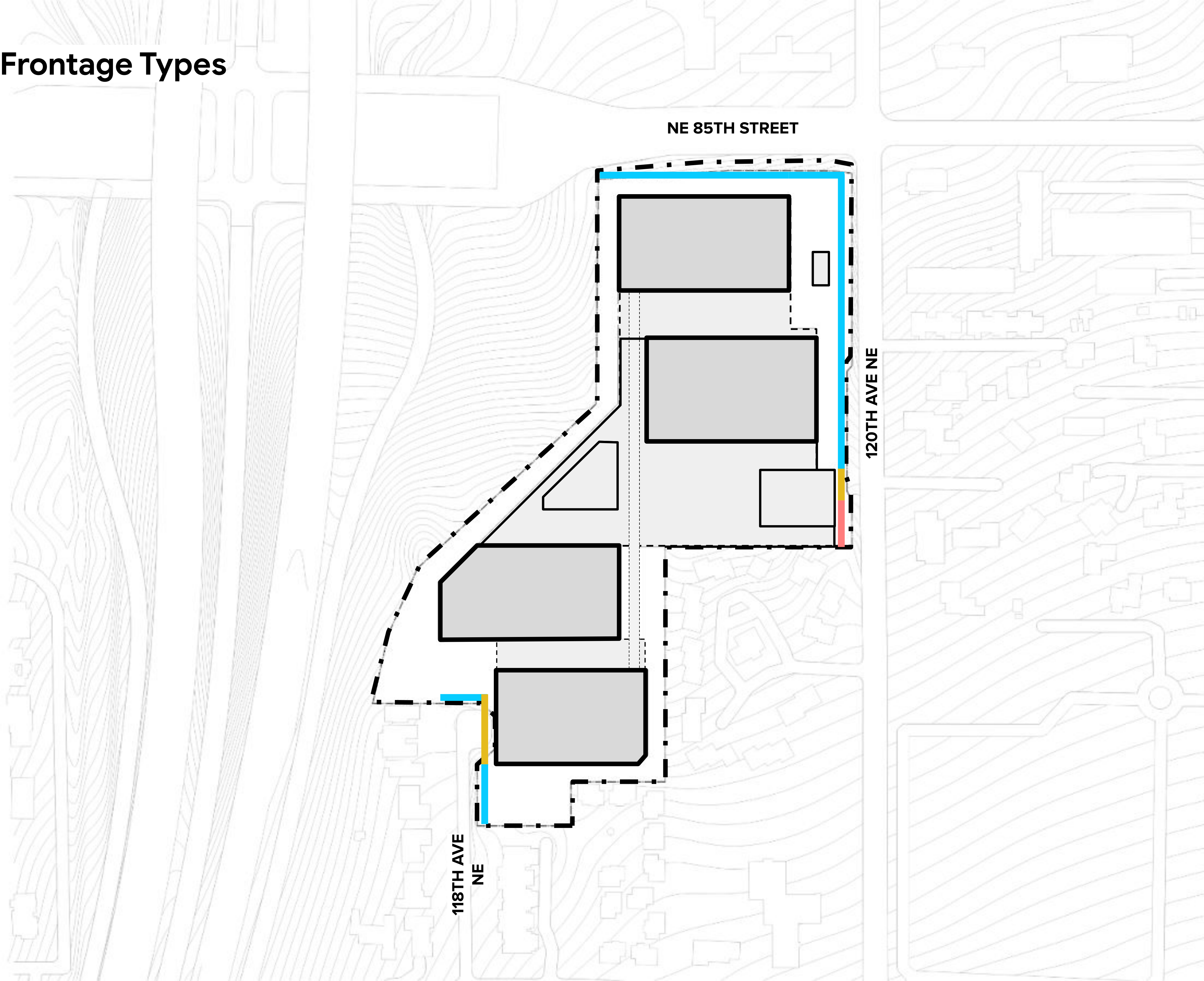


Legend

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

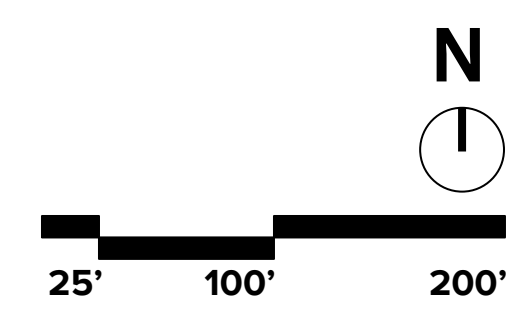


Site Plan - Frontage Types

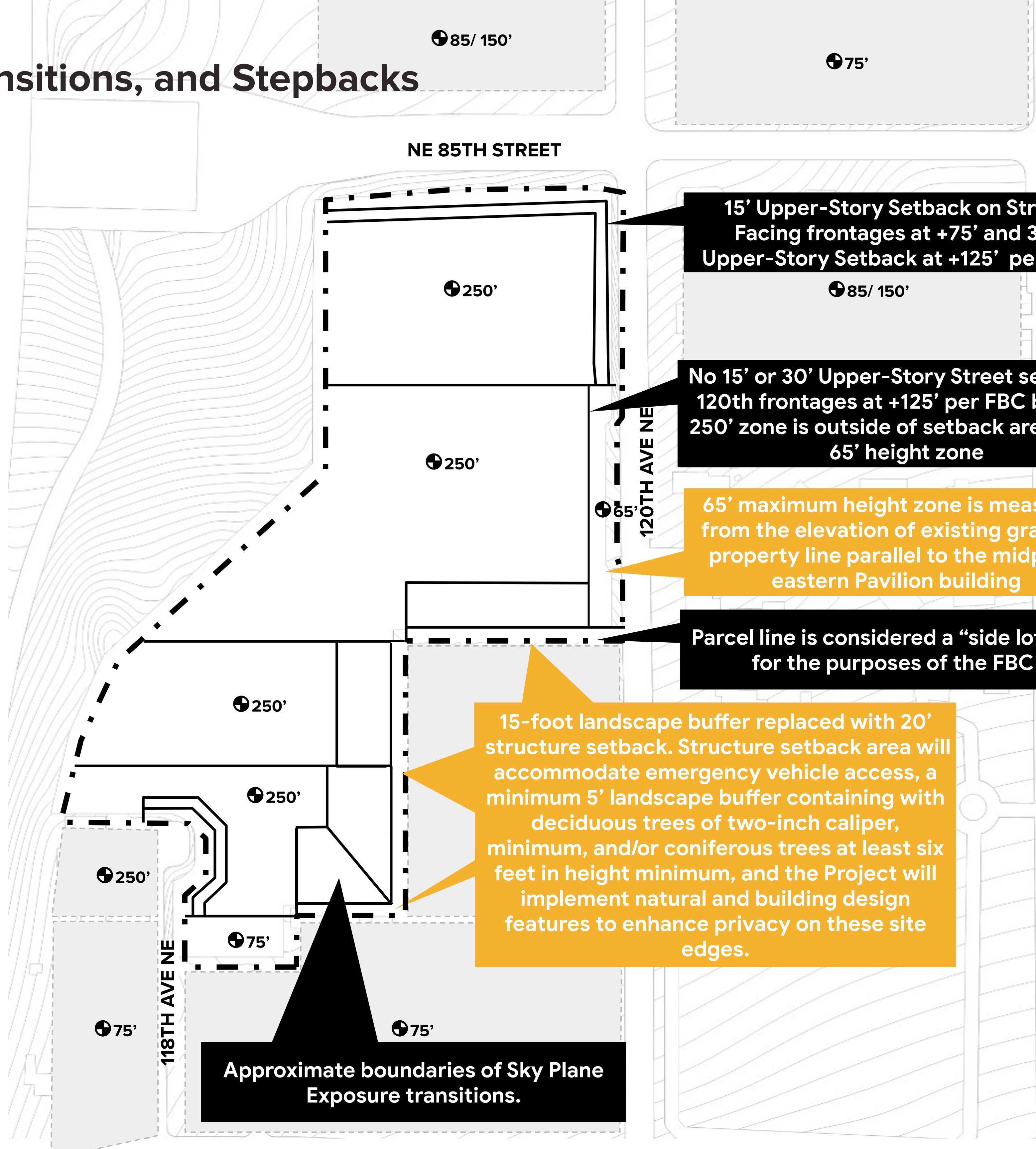


Legend

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



Site Plan - Building Height, Transitions, and Stepbacks



15' Upper-Story Setback on Street Facing frontages at +75' and 30' Upper-Story Setback at +125' per FBC

No 15' or 30' Upper-Story Street setback on 120th frontages at +125' per FBC because 250' zone is outside of setback area due to 65' height zone

65' maximum height zone is measured from the elevation of existing grade at property line parallel to the midpoint eastern Pavilion building

Parcel line is considered a "side lot line" for the purposes of the FBC

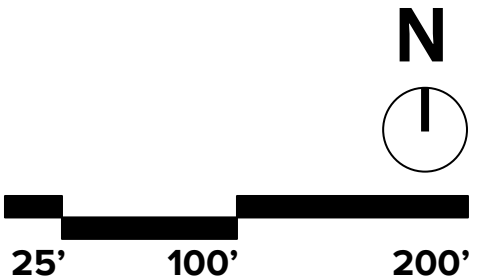
15-foot landscape buffer replaced with 20' structure setback. Structure setback area will accommodate emergency vehicle access, a minimum 5' landscape buffer containing with deciduous trees of two-inch caliper, minimum, and/or coniferous trees at least six feet in height minimum, and the Project will implement natural and building design features to enhance privacy on these site edges.

Approximate boundaries of Sky Plane Exposure transitions.

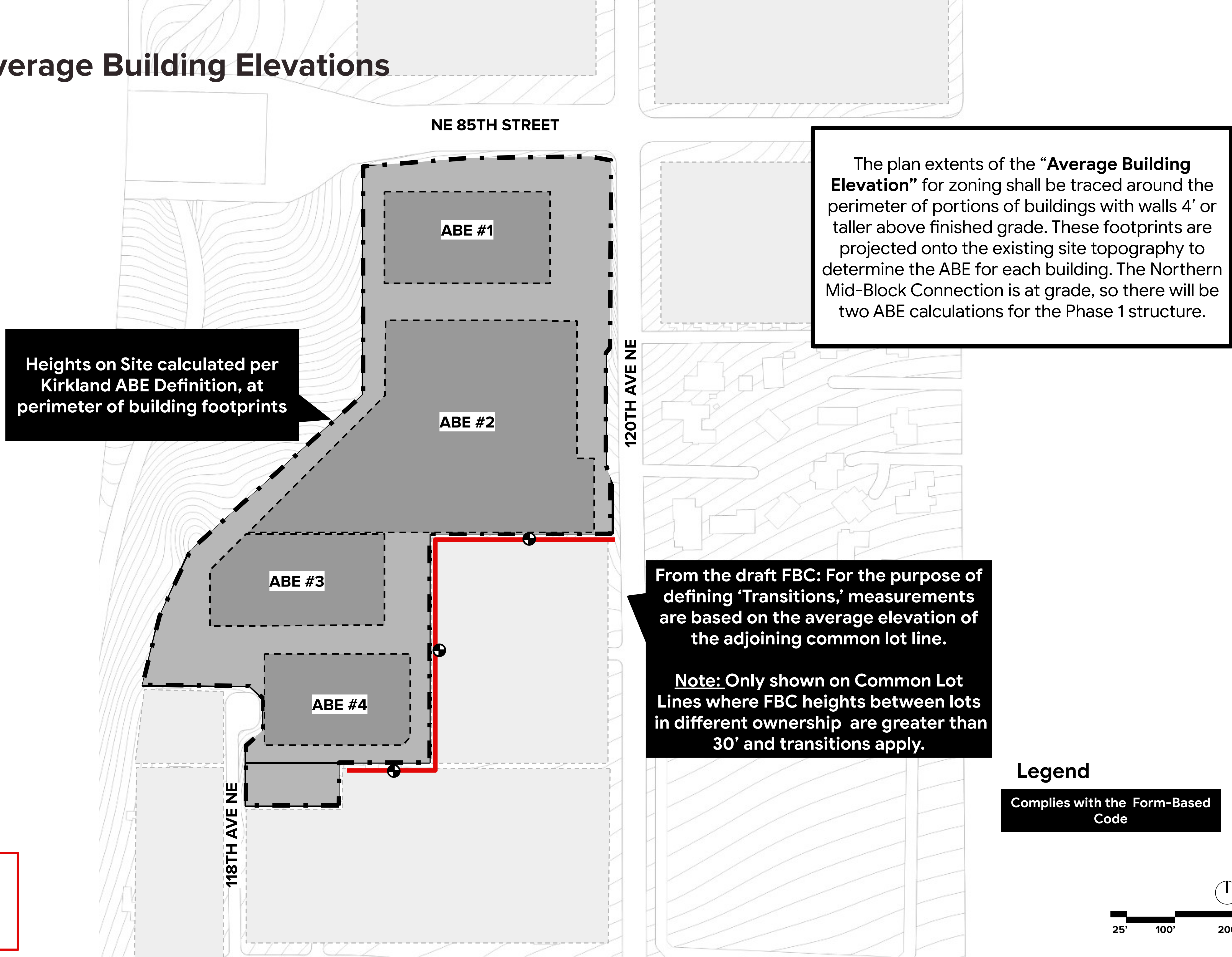
Legend

Complies with the Form-Based Code

Alternative Form-Based Code Standards approved by Development Agreement



Site Plan - Conceptual Average Building Elevations



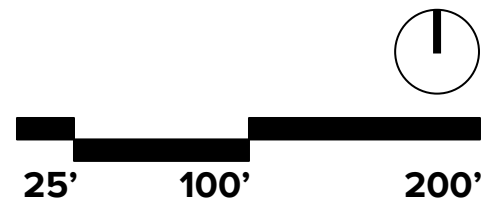
Heights on Site calculated per Kirkland ABE Definition, at perimeter of building footprints

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

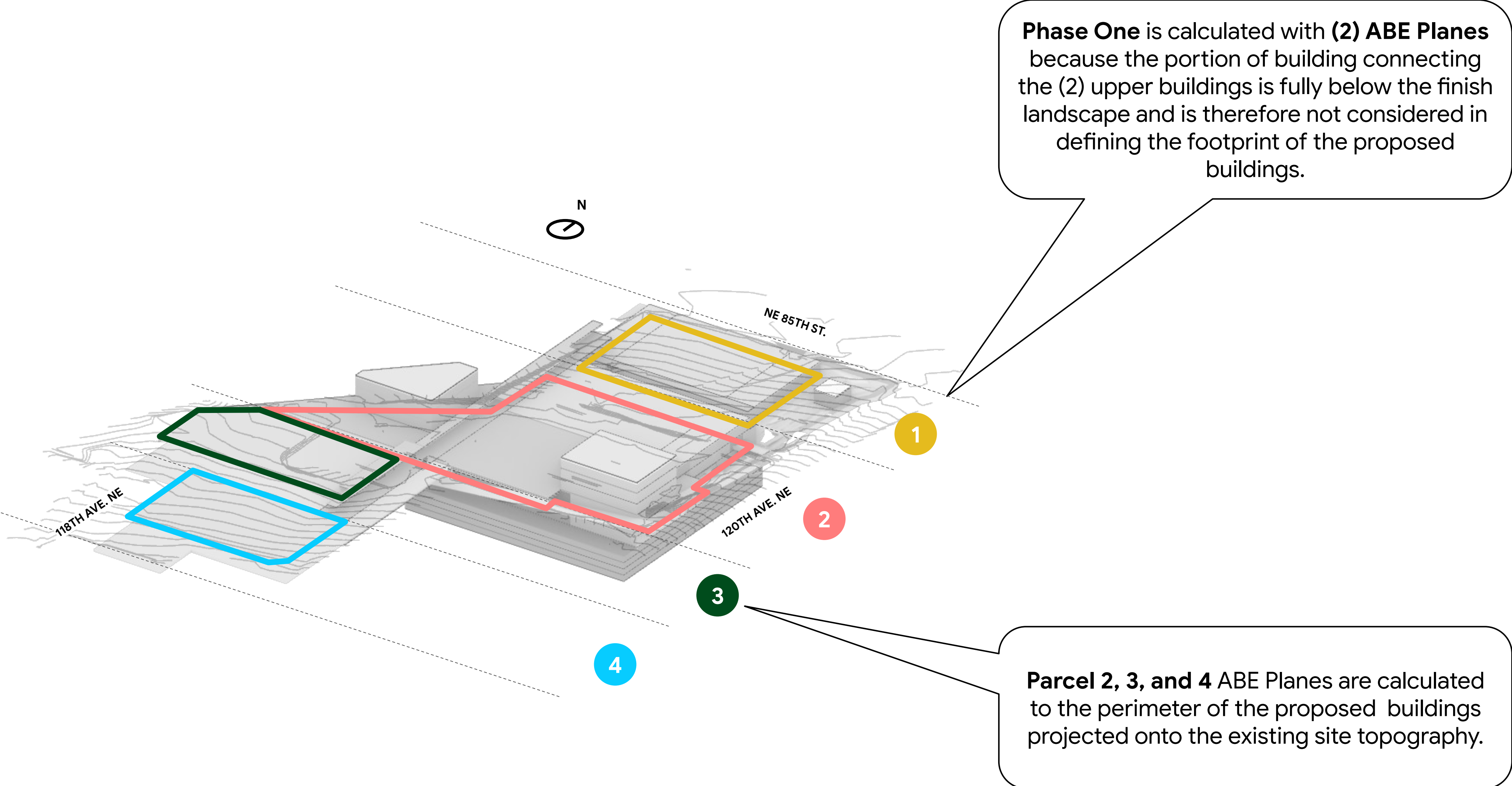
From the draft FBC: For the purpose of defining ‘Transitions,’ measurements are based on the average elevation of the adjoining common lot line.
Note: Only shown on Common Lot Lines where FBC heights between lots in different ownership are greater than 30’ and transitions apply.

Legend
Complies with the Form-Based Code

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



Average Building Elevation Calculation



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

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

N.T.S

Exhibit C

Open Space Features

Open Space Concepts



South Mid-Block Connection and South Public Space



Connectivity Vision
The South Public Space complements the South Mid-Block Connection.



Net-Positive Performance Approach
Concepts could include rainwater collection and storage, edible landscapes that provide foods for the neighborhood and Googlers, or other measures.

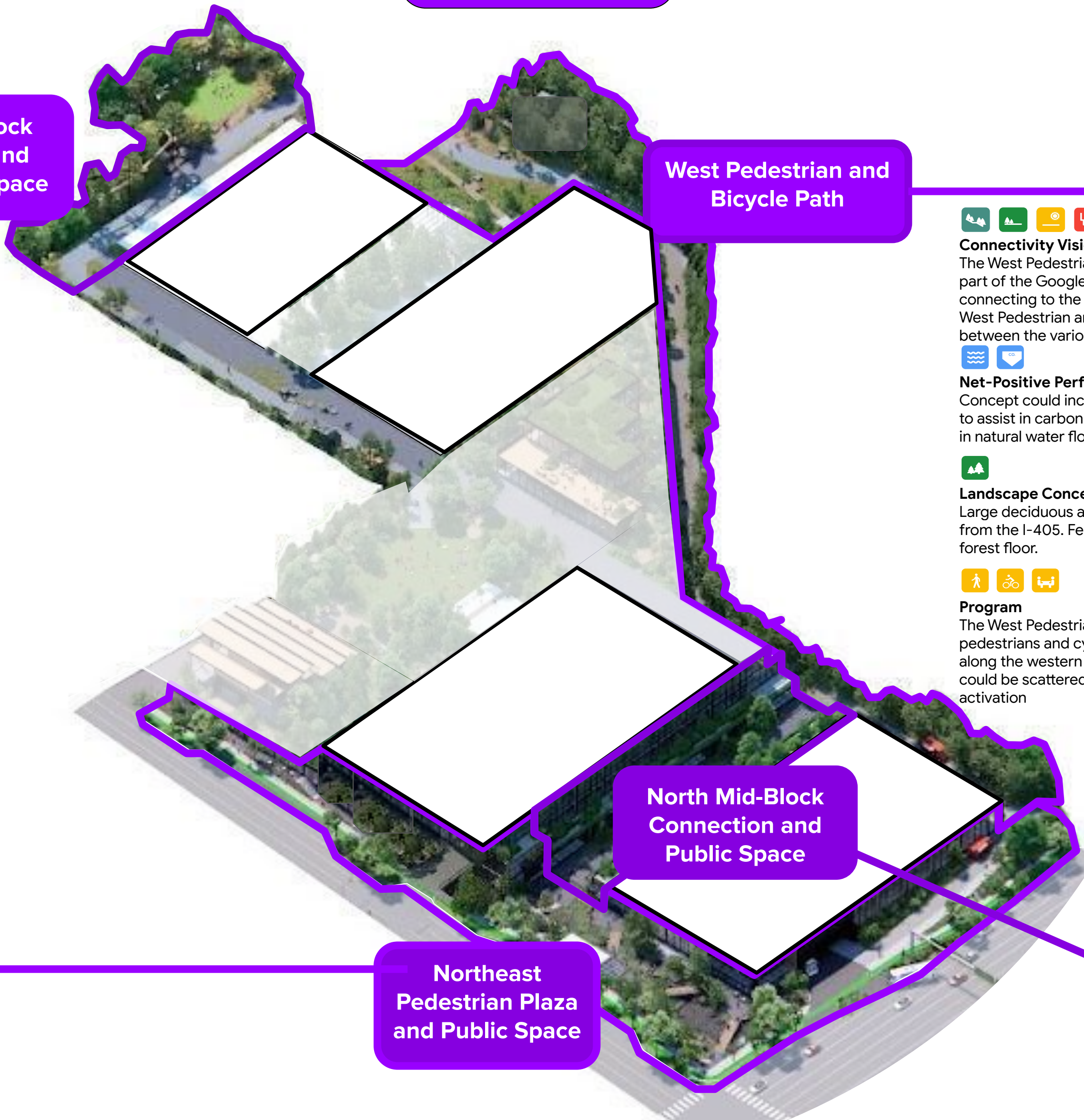


Landscape Concept
Pine trees, coniferous shrubs, and hedges create a buffer along the site edge. Tall grass and edible landscapes nest the outdoor recreation areas.



Program
Outdoor recreation with potential for group fitness, volleyball or basketball court, meditation.

Public Open Space & Mid-Block Connections



West Pedestrian and Bicycle Path



Connectivity Vision
The West Pedestrian and Bicycle Path becomes an integral part of the Google-Kirkland Green Loop, while also connecting to the 85th St. BRT Station. Within the site, The West Pedestrian and Bicycle Path provides a connection between the various public landscapes



Net-Positive Performance Approach
Concept could include large deciduous and conifer species to assist in carbon sequestration, sloping topography assists in natural water flow to the bottom of the site.



Landscape Concept
Large deciduous and conifer create a heavy visual buffer from the I-405. Ferns, and shrubs, create a lush and diverse forest floor.



Program
The West Pedestrian and Bicycle Path allows arriving pedestrians and cyclists to navigate up and through the site along the western perimeter. Small cart/food truck spaces could be scattered along the Path to provide moments of activation



Northeast Pedestrian Plaza and Public Space



Connectivity Vision
The Northeast Pedestrian Plaza and Public Space leads visitors into the site from 85th & 120th, connecting Googlers to The North Mid-Block Connection



Net-Positive Performance Approach
Concepts could include wet meadows that collect, contain, and filter water-runoff from higher ground, to be re-used within buildings.



Landscape Concept
A water-retention pond anchor, supported by flowing water, tall grasses, and small pines.



Program
A plaza activated by the Google Visitor Lobby, a Food and Beverage Pavilion, and potential community oriented or retail spaces along edges

North Mid-Block Connection and Public Space



Connectivity Vision
The North Mid-Block Connection is the primary ground level circulation spine linking pedestrians from Northeast Pedestrian Plaza and Public Space into the center of the Site and to the Trail.



Net-Positive Performance Approach
Concept could include plant walls assisting in carbon sequestration while filtering air before circulating into indoor workspaces



Landscape Concept
Plant walls, edible landscapes on terraces and opaque vertical surfaces, pine trees, coniferous shrubs



Program
The North Mid-Block connection would be framed by community oriented or retail and commercial spaces for the public and Googlers, access to Google conference spaces, and casual seating and leisure spaces for all

Open Space Features

Pedestrian / Bicycle Connection to BRT

Bicycle and pedestrian path connecting the BRT station to the West Pedestrian and Bicycle Path and North Mid-Block Pedestrian Connection. Path to be constructed by WSDOT with segment connecting to Northern Mid-Block connection to be funded by Google with WSDOT approval.

Northeast Pedestrian Plaza and Public Space

Mixture of publicly accessible landscape and hardscape spaces at the intersection of 85th St and 120th Ave, with programmatic activation along its edges at strategic locations. 28,000 GSF

Northern Mid-Block Pedestrian Priority Connection and Public Space

Publicly accessible hardscape space flanked by edge activation to the north and south, providing an east/west pedestrian prioritized connection across the site. 12,500 GSF

The South Mid-Block Connection

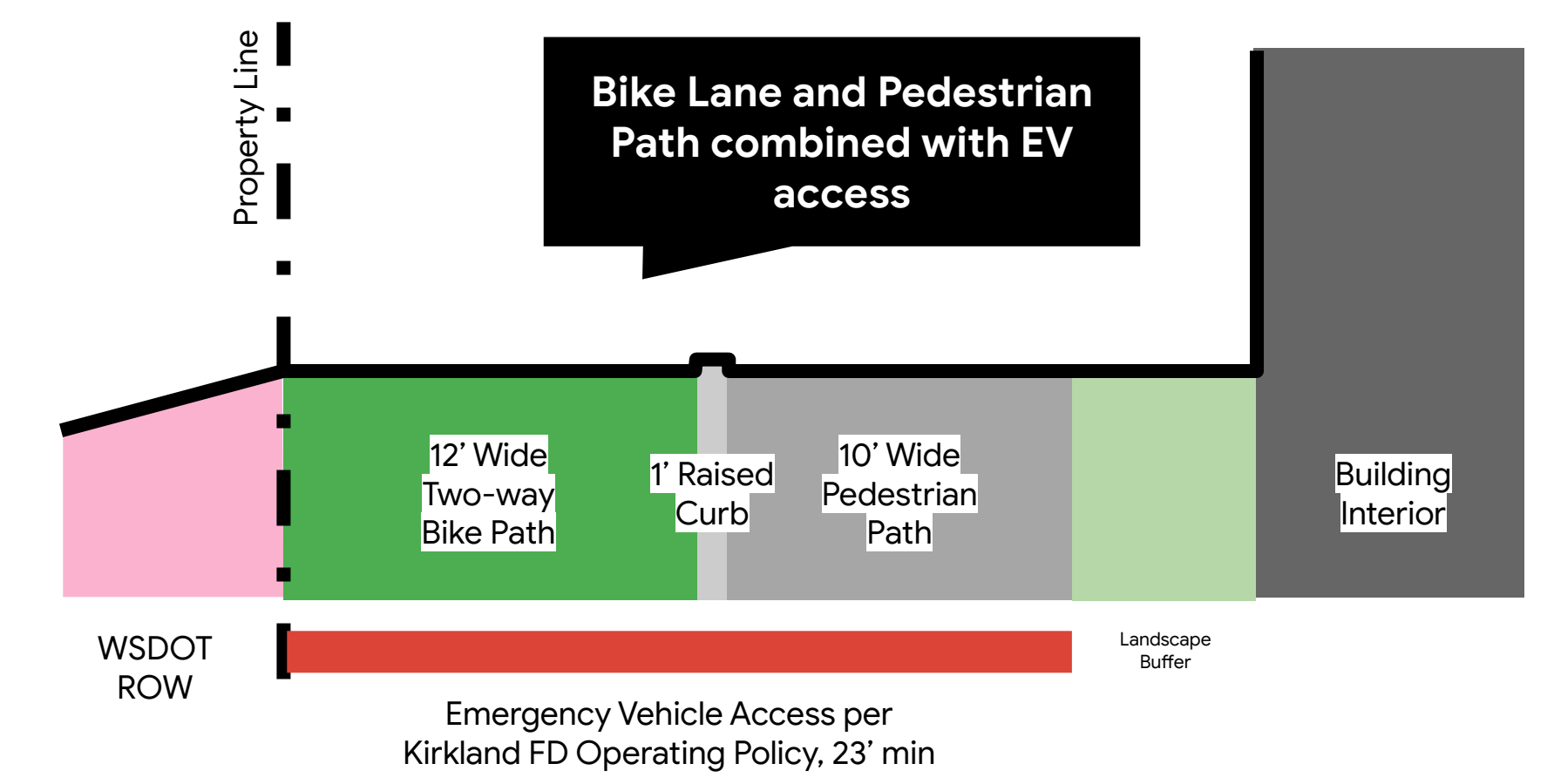
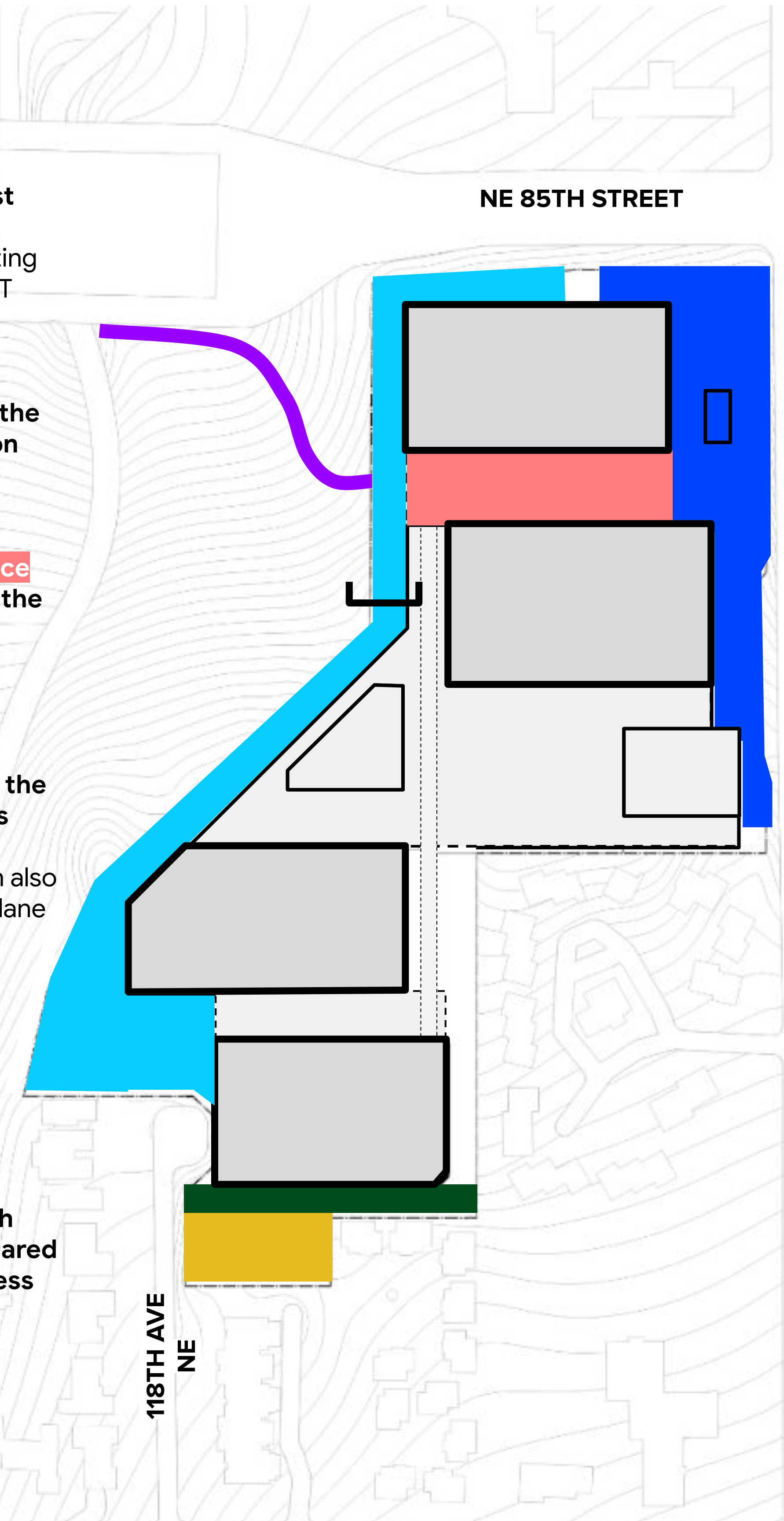
Landscaped publicly accessible East/West Ped/Bike connection on the southern portion of the site, connecting 118th Ave to adjacent sites and possible future connection to 120th Ave NE that would be implemented by others. A portion of the South Mid-Block Connection also functions as emergency vehicle access with overlapping vehicle travel lane and shared pedestrian and bicycle path. 2,100 GSF

South Public Space

Landscaped publicly open space that complements the South Mid-Block Connection. 11,000 GSF

West Pedestrian and Bicycle Path

Publicly accessible shared pedestrian and bike path for north/south connection to 118th St, North Pass, BRT access, and 85th Street. Shared pedestrian and bike path also functions as emergency vehicle access as shown in section. 40,000 GSF



Section Through West Pedestrian and Bicycle Path

Exhibit D

Compliance with Amenity Incentive System

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

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

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

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

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

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

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Exhibit E

Sustainability Features

Sustainability Features

Baseline Requirements -

- The Project will comply with the City's High Performance Buildings Standards ("HPBS").
- The Project will certify as LEED Platinum, under LEED BD+C v4/4.1 or ND v4/4.1, or a current version or another equivalent sustainability certification, at the discretion of the developer.

Additional Information -

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

Sustainability Features

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

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

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

Information Needed to Support Access at NE 84th Lane

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

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

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

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

Policy R-4.II.9: Sight Distance

- Sight distance evaluation that indicates sufficient sight distance is available

Information Needed to Support Access around NE 83rd Street

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

- Summary of how proposed access location complies with Policy R-4 for driveway setback, spacing, and offset

- No anticipated outreach would be required for modifications to an existing public street, but this could be considered depending on selected intersection design and impact to homes on NE 83rd St

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

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

Policy R-4.II.9: Sight Distance

- Sight distance evaluation that indicates sufficient sight distance is available

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

Relevant TMP Policies

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

Policy T-4.6 Reduce crash rates for motor vehicles

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

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