City Attorney
Stephanie Croll
Rev: 12/23/24

AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF KIRKLAND, WASHINGTON AND LAKE WASHINGTON INSTITUTE OF TECHNOLOGY, WASHINGTON

FOR MUTUAL COOPERATION IN A PUBLIC WORKS PROJECT ALONG 132ND AVENUE NE ADJACENT TO LAKE WASHINGTON INSTITUTE OF TECHNOLOGY, AS IDENTIFIED HEREIN

THIS AGREEMENT ("Agreement") is entered into between the City of Kirkland ("City") and the Lake Washington Institute of Technology ("LWIT"), both Washington municipal corporations, individually a "Party" and collectively the "Parties," pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act.

RECITALS

A. Whereas, LWIT has applied for permits and is currently in construction to develop a new Early Learning Education Building located along 132nd Ave. NE ("the LWIT Project"). LWIT has hired, or will hire, a Design Consultant and Construction Contractor for their Project. LWIT's Project includes the construction or reconstruction of bus stops on both the east and west side of 132nd Ave. NE; and

B. Whereas, the City wishes to make improvements to the pedestrian crossing of 132nd Avenue NE, on the north side of NE 116th Street (see the map attached as **Exhibit A**), and coordinate design and construction of these improvements with LWIT's Project. The City has obtained a grant to fund the design and construction of improvements to the pedestrian crossing of 132nd Avenue NE in the form of installing Rectangular Rapid Flashing Beacons ("RRFBs") from the Washington State Transportation Impact Board ("TIB"). The City's RRFB Project at the pedestrian crossing of 132nd Avenue NE shall be referred to hereinafter at the "City's Project"; and

C. Whereas, it is in the Parties' mutual best interest to coordinate and integrate their work, when possible, to realize efficiencies and reduce disruption to the public; and

D. Whereas, the Parties share a mutual interest in the City's Project; and

E. Whereas, based upon the circumstances, LWIT will serve as the design and build lead for the City's Project, and Kirkland will provide reimbursement for the approved Project costs.

Now, therefore, the Parties agree as follows:

AGREEMENT

1. CITY RESPONSIBILITIES

a. The City will fund the design and construction of the pedestrian crossing improvements through TIB grant funding, with a maximum contribution of $265,000. The Parties agree that before the City is obligated to those costs it shall receive a written estimate from the Contractor, through LWIT, and must first approve those costs in writing. The estimated cost for both design consultant and contractor is $174,330 (Exhibit B).

b. The City shall have the absolute right and authority to review and approve both the design and construction plans for the City's Project, ensuring compliance with City standards and applicable safety codes. This authority shall include, but not be limited to, as follows:

i. **Review and Approval:** The City shall have the right to prior review and approval, in writing, of all design and construction plans, ensuring they meet all applicable standards, codes, and regulations.
ii. **Modifications:** The City shall have the authority to require modifications to the design and construction plans throughout the duration of the City's Project as deemed necessary to comply with safety, operational, and aesthetic standards.
iii. **Materials and Equipment:** The City shall have the right to prior approval, in writing, of the selection of all materials and equipment to be used in the City's Project, including but not limited to the RRFBs.
iv. **Construction Methods:** The City shall have the right to prior approval, in writing, of the proposed construction methods and practices to ensure they meet required safety and quality standards.
v. **Compliance with Environmental Regulations:** The City shall have the right to ensure that the design and construction plans comply with all environmental regulations and sustainability practices.
vi. **Inspection and Testing:** The City shall have the authority to conduct inspections and require testing during and after construction of the City's Project to ensure compliance with approved plans and specifications.
vii. **Permits and Approvals:** The City shall have the right to ensure that all necessary permits and approvals are obtained prior to commencement of construction of the City's Project.
viii. **Scheduling and Coordination:** The City shall have the right to prior approval, in writing, of the construction schedule of the City's Project and require coordination with other City projects and activities to minimize disruption.
ix. **Unapproved Delays:** The City shall have the right and authority to pursue liquidated damages of up to $100/day against LWIT for any unnecessary

and/or unapproved delays in completion of the City's Project; **provided**, nothing stated herein shall affect LWIT's rights to pursue reimbursement for these liquidated damages from any responsible party; including, but not limited to, LWIT's Consultant and Contractor.

x. **Final Acceptance:** The City shall have the authority to conduct a final inspection upon completion of the City's Project and approve the Project, in writing, before it is opened for public use.

c. The City will reimburse LWIT for approved design and construction costs following receipt of detailed invoices and after final inspection and acceptance, in writing, of the completed work by the City.

2. LWIT RESPONSIBILITIES

a. LWIT shall direct its design consultants and construction contractors to design and construct the pedestrian crossing improvements contained in the City's Project, including the installation of RRFB, as specified by the City.

b. LWIT will submit Change Orders for the City's Project to LWIT's Design Consultant and Construction Contractor, subject to the City's prior review and written approval of such Change Orders.

c. LWIT will coordinate construction schedules with the City to minimize disruption and ensure alignment with City Project timelines.

d. LWIT shall ensure that its Construction Contractor obtains all permits and approvals necessary to perform the City's Project, pursuant to state law, and all applicable City codes, rules, regulations, plans and policies.

3. COORDINATION AND COOPERATION

The Parties shall cooperate, and they shall coordinate efforts to cause the City's Project to be constructed pursuant to a process and schedule consistent with this Agreement and developed mutually by the designated representatives of the Parties.

4. DESIGN AND CONSTRUCTION PROCEDURE

a. Project Plans

The City shall review and approve, in writing, all designs, specifications and plans for the improvements included in the City's Project. Any modifications required by the City to meet safety and standards shall be incorporated by LWIT and its consultants.

b. Competitive Bid

LWIT has called for bids for the university development and has awarded the development contract. The City is satisfied with the contract award and agrees with LWIT that the process leading to the award of such contract and the contract itself comply with all applicable public works statutes. The City's Project shall be presented to LWIT's design consultant and contractor via Change Orders that shall first be reviewed and approved, in writing, by the City.

c. Project Contracting and Construction

The Contractor shall perform the Project work, except as provided otherwise in this Agreement. LWIT shall serve as the Project Manager and City's agent for the Project. LWIT will coordinate with the City regarding the progress of the Project. LWIT shall have final decision-making authority for all work by the Contractor for the Project, except as expressly identified herein. LWIT shall be responsible for all inspection of the Project Work, except as expressly identified herein.

d. Construction Oversight

LWIT shall monitor construction activities, and provide the City' Project Engineer, Ling Wang-Staley, with regular progress updates on the City's Project. The City has the authority to inspect and require corrections or adjustments as needed.

LWIT shall provide a minimum of five (5) working days' notice and meet in the field with the City's Project Engineer to confirm the design and construction requirements of the Project work prior to the Contractor commencing work. Both the City and LWIT shall document all that was discussed during this site visit.

e. Change Orders

1) LWIT must obtain the City's prior written consent to a change order with regard to the City's Project. The City shall provide a response within ten (10) working days, but no consent will be presumed in the absence of a timely response.

2) Regardless of the type of change or the dollar amount of the change order, LWIT shall provide the City with copies of all requests for change orders and all executed change orders related to the City's Project.

f. Payments to Consultant and Contractor

LWIT shall make all payments to the Consultants and Contractor for work designing and constructing the City's Project.

g. Final Acceptance

Upon completion, the City shall conduct a final inspection of the improvements installed for the City's Project to ensure compliance. Acceptance of the improvements by the City, in writing, is required before reimbursement is processed.

h. Claims

The following only applies only to work related to the City's Project and claims related to such work.

1) Should any claim by LWIT's Design Consultant or Contractor or another third party arise with regard to the City's Project, LWIT shall handle and administer such claim(s). LWIT shall immediately notify the City when such a claim is made and shall keep the City informed of the processing and progress of any claim. LWIT will request, and the City may provide, guidance and input regarding any proposed settlement terms of such a claim. LWIT must obtain the City's written approval in advance of any settlement or prosecution of a claim. All such claims are subject to the indemnification provisions set forth in Section 5 of this Agreement.

2) In the event one or both of the Parties wish to pursue any claim or action against the Consultant or Contractor or a person who is not a party to this Agreement, the other party will cooperate in good faith in prosecuting such claim or action. This provision in no way requires sharing in the costs of pursuing such claim.

5. INDEMNIFICATION AND INSURANCE

a. LWIT shall require the Consultant and Contractor to obtain and keep in force during the term of the City's Project, liability, and property damage insurance policies consistent with LWIT's standard requirements for public works insurance policies. LWIT shall require the Consultant and Contractor to name the City and its officers, officials, employees, and agents as additional insureds on all such policies of insurance to the same extent as LWIT. If LWIT's standard insurance requirements change significantly from the requirements in existence at the time this agreement is executed, LWIT will inform the City in writing.

b. LWIT shall require the Consultant and Contractor to defend, indemnify, and hold harmless the City and its officers, officials, employees, and agents from any and all claims, injuries, damages, losses, or suits, including attorneys' fees, arising out of or in connection with the Consultant's and Contractor's participation in the City's Project, to the same extent as LWIT and consistent with LWIT's standard indemnification provisions for public works contracts.

c. Each Party agrees to defend, indemnify, and hold harmless the other Party and

its officers, officials, employees, and agents from any and all claims, injuries, damages, losses, or suits, including reasonable attorneys' fees, arising out of or in any way resulting from that Party's own tortious acts, errors, or omissions that may arise in connection with its performance under this Agreement. A Party will not be required to defend, indemnify, or hold harmless the other Party if the claim, injury, damage, loss, or suit is caused by the sole negligence of the other Party. Where such claims, injuries, damages, losses, or suits result from the concurrent negligence of the Parties, the indemnity, defense, and hold harmless provisions herein shall be valid and enforceable against the Indemnifying Party only to the extent of the Indemnifying Party's own negligence. Each of the Parties agrees that its obligations under this Section 5 extend to any claim, injury, damage, loss, or suit brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW. The obligations of this Section shall survive termination of this Agreement.

d. If either Party incurs any costs, including attorneys' fees or expert witness fees, to enforce this Agreement and prevails in such enforcement action, all such costs and fees shall be recoverable from the losing Party.

6. DISPUTE RESOLUTION

a. Representatives. For purposes of this section, the Designated Representative for Kirkland shall be the Director of Public Works or their designee. The Designated Representative for LWIT shall be the Facilities and Operations Director for LWIT, Casey Huebner, or their designee. The Designated Representatives shall serve as the Administrators of this Agreement for purposes of the Interlocal Cooperation Act.

b. Negotiations. In the event that any dispute arises between the Parties as to the interpretation or application of any term of this Agreement or as to the validity of any claim made by either Party against the other as a result of this Agreement, either Party may make a written request for a meeting between the Designated Representatives of each party within a reasonable time.

c. Mediation Participation. In the event the Parties are unable to resolve the dispute through negotiations or if the parties waive the negotiation process, the Parties agree to participate in a non-binding mediation of their dispute at a mutually agreeable location prior to commencing legal action. Either Party may request that any dispute be submitted to mediation at any time upon the giving of written notice to the other Party.

d. Selection of Mediator. Upon the giving of notice by either Party as provided above, the Parties shall attempt to select a neutral person to evaluate and mediate the dispute.

e. Conflicts of Interest. Each Party shall promptly disclose to the other any circumstances known by it that would cause justifiable doubt as to the independence or impartiality of any individual under consideration or appointed as a mediator. Any such individual shall promptly disclose such circumstances to the Parties. If any such circumstances are disclosed, the individual shall not serve as mediator unless both Parties agree in writing.

f. Compensation of Mediator. The mediator's charges shall be established at the time of appointment. Unless the Parties agree otherwise, the fees and expenses of the mediator shall be divided equally and each Party shall bear its own costs and expenses.

g. Mediation Session. The mediation session is intended to provide each Party with an opportunity to present its best case and position to the mediator and for the Parties to receive opinions and recommendations from the mediator. The mediator shall facilitate communications between the Parties, identify issues, and generate options for settlement. The mediator also shall discuss with each Party separately the mediator's opinion and evaluation of the strengths and weaknesses of that Party's position. The terms of any settlement made by the Parties as the result of the mediation shall be set out in a written addendum to this agreement.

h. Confidentiality. The dispute resolution process identified in this paragraph is a compromise negotiation for purposes of judicial rules of evidence. To the extent permitted by law, the Parties agree to maintain in confidence all offers, promises, conduct, and statements, oral or written, made in the course of the mediation by either of the Parties, their agents, employees, experts, representatives or attorneys, or by the mediator, and agree that the same shall be deemed negotiations in pursuit of settlement and compromise and not admissible or discoverable in subsequent legal proceedings pursuant to Washington Evidence Rule 408. The mediator shall be disqualified as a trial or deposition witness, consultant, or expert of either Party.

i. Reservation of Rights. In the event the Parties are unable to resolve the dispute through the dispute resolution process established in this Section 6, the Parties reserve any and all other rights and remedies available to each of them regarding such dispute.

7. DESIGNATED REPRESENTATIVES; NOTICES AND COMMUNICATIONS

Other than as set forth herein, the Designated Representatives of the Parties to receive notices and communications shall be the following employees, or their designees:

City of Kirkland Public Works Director	Lake Washington Institute of Technology Vice President, Administrative Services

123 Fifth Avenue
Kirkland, Washington 98033

11605 132nd Ave NE
Kirkland, Washington 98034

All notices and other formal communications shall be mailed or delivered to the Designated Representatives. The Parties may change their respective Designated Representative by written notification to one another.

8. TERM AND TERMINATION

a. The Term of this Agreement shall be for a period of one year following its execution or the completion of the City's Project, whichever occurs later; provided, however, that its insurance, indemnification, and confidentiality provisions will be of continuing effect.

b. This Agreement may be terminated for convenience by either Party upon the giving of at least 30 days prior written notice.

c. Either party may terminate this Agreement for cause effective immediately following a 14-day opportunity to cure period, which shall begin when written notice of intent to terminate for cause is provided by one party to the other party.

9. NO SEPARATE ENTITY CREATED

This Agreement does not create any separate legal or administrative entity.

10. PROPERTY

No acquisition, holding, or disposing of real or personal property is anticipated under this Agreement.

11. OTHER PROVISIONS

a. This Agreement constitutes the entire and exclusive agreement between the Parties relative to the City's Project described herein and supersedes all prior discussions. This Agreement may be amended only in writing, signed by both Parties.

b. There are no third-party beneficiaries to this Agreement. No person or entity other than a Party to this Agreement shall have any rights under this Agreement or any authority to enforce its provisions, and any such rights or enforcement must be consistent with and subject to the terms of this Agreement.

c. Waiver of any default or breach of this Agreement shall not be deemed to be a waiver of any other prior or subsequent default or breach and shall not be construed to be a modification of the terms of this Agreement, unless stated to be such through written agreement of both Parties.

d. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion thereof, shall not affect the validity of the remaining provisions of this Agreement and any invalid provision shall be ineffective only to the extent of such invalidity, illegality, or unenforceability. In such case, the parties shall in good faith modify or substitute such invalid provision consistent with the original intent of the parties.

e. This Agreement may be signed in counterparts, and, if so signed, shall be deemed one integrated document.

CITY OF KIRKLAND

Julie Underwood
Julie Underwood (Dec 30, 2024 10:44 PST)

Dec 30, 2024

Julie Underwood
Deputy City Manager of Operations

Approved as to form:

Stephanie Croll
Stephanie Croll (Dec 23, 2024 13:18 PST)

Dec 23, 2024

Stephanie Croll
Senior Assistant City Attorney

LAKE WASHINGTON INSTITUTE OF TECHNOLOGY

12/18/24

~~Darcy Cookson Kipnis, Ed.D~~
~~Vice President, Administrative Services~~
Amy Morrison, Ed D
President, LWTech

Approved as to form:

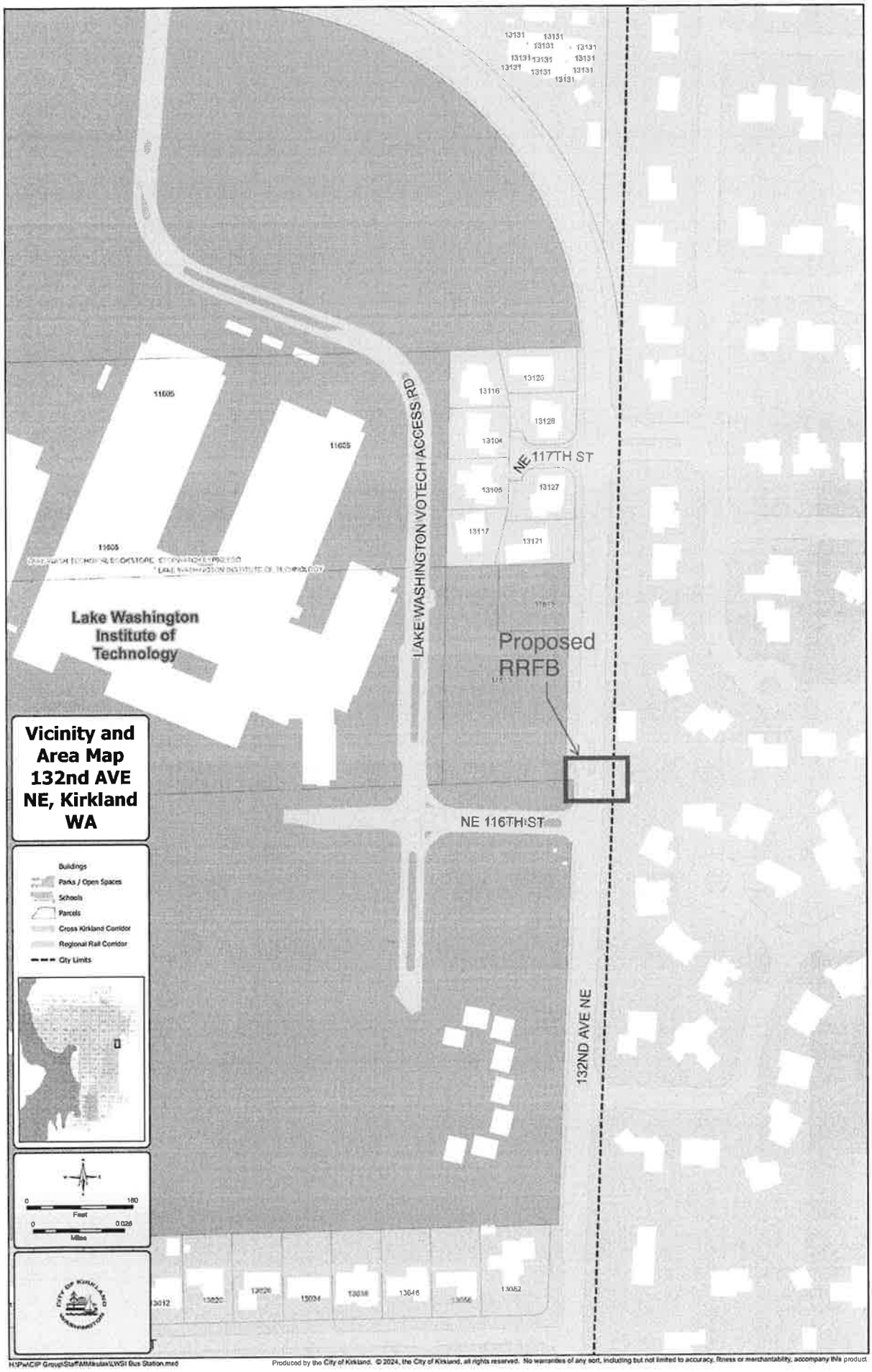
Lake WA Institute of Technology

EXHIBIT A

PROJECT WORK SCOPE

Install a RRFB along 132nd Avenue NE adjacent to LWIT to improve the pedestrian facility safety. This project will be accomplished by cooperating with LWIT's design consultants and construction contractors.

Right-of-way acquisition is not expected for this project.



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EXHIBIT B
COST OF PROJECT WORK

Item	Qty	Unit	Unit Price	Amount
Design	1	LS	$22,330	$22,330
Construction	1	LS	$125,000	$125,000
Contingency			$27,000	$27,000
Total				$174,330