

**REGULAR MEETING AND PUBLIC HEARING OF THE
NORTH BEND PLANNING COMMISSION
Wednesday February 7, 2024, 6:30 PM
City Hall, 920 SE Cedar Falls Way, North Bend, WA**

AGENDA

- 1) Call to order and roll call, Planning Commission**
- 2) Approval of minutes from November 15, 2023, and January 3, 2024 meetings.**
- 3) Opportunity for public comment on non-agenda items (3 minutes per person)**
- 4) Introduction, Public Hearing and Recommendation - Development Agreement (DA) for
Sirius Sports Facility**
- 5) Select Chair and Vice Chair for Planning Commission**
- 6) Adjournment by 8:30 unless otherwise approved**

PLEASE NOTE: Members of the public may choose to attend the meeting in person or by teleconference. Members of the public attending the meeting in-person will have an opportunity to provide public comment and if attending the meeting by teleconference may submit written comments via in-person drop off, mail, fax, or e-mail to rdeming@northbendwa.gov. All written comments must be received by 4 p.m. on the day of the scheduled meeting and must be 350 words or less. If an individual requires an accommodation because of a difficulty attending the public meeting, the City requests notice of the need for accommodation by 3:30 p.m. on the day of the scheduled meeting. Participants can request an accommodation to be able to provide remote public comments by contacting the City by phone (425) 888-5633 or by e-mail to rdeming@northbendwa.gov. No other remote public comment will be permitted.

Those wishing to access the meeting by teleconference will be required to have a registered Zoom account and display your full name to be admitted to the online meeting.

Zoom Meeting Information:

To Sign Up for a Zoom Account: <https://zoom.us/join>

Join Zoom Meeting

<https://us02web.zoom.us/j/84069345990?pwd=SE9IM3Y3ZmJRNThrSUIMRFhlNVZHUT09>

Meeting ID: 840 6934 5990

Passcode: 317193

Call In Phone Number: 1-253-215-8782

**REGULAR MEETING OF THE
NORTH BEND PLANNING COMMISSION
- ACTION MEETING MINUTES -**

Wednesday, November 15, 2023, 6:30 PM

In Person & Virtual Online Meeting

This meeting was held at City Hall, 920 SE Cedar Falls Way, North Bend, WA, and was also available online. A complete video recording of this meeting is available on the City of North Bend YouTube website, at www.youtube.com under: City of North Bend

AGENDA ITEM #1: CALL TO ORDER

The meeting was called to order at 6:35 PM.

ROLL CALL

Planning Commissioners present: Brian Aylward, Juliano Pereira, Suzan Torguson (Chair), James Boevers, Errol Tremolada, and Hannah Thiel. Olivia Moe was absent and excused.

City Staff Present: Mike McCarty, Principal Planner, and James Henderson, Economic Development Manager.

AGENDA ITEM #2: Opportunity for Public Comment

No comments were offered.

AGENDA ITEM #3: Approval of October 18, 2023 Planning Commission Meeting Minutes

Commissioner Boevers made a Motion to Approve the October 18, 2023, Planning Commission Meeting Minutes. Commissioner Pereira Seconded the Motion. The Motion was Approved 6-0.

AGENDA ITEM #4: Economic Development Element for 2024 Comprehensive Plan Update – Public Hearing and Planning Commission Recommendation

Economic Development Manager James Henderson introduced the draft update to the Economic Development Element. Commission Chair Torguson opened the public hearing at 6:44. No members of the public spoke for the public hearing. The hearing was closed at 6:44.

There was discussion between Commissioners and staff. Commissioners provided the following comments:

- Commissioners suggested additional discussion and coordination with the Snoqualmie Tribe given the large hotel and conference center they are building and potential for partnerships and opportunities to connect their casino and hotel patrons to North Bend businesses. James Henderson noted that looking into such opportunities will be a part of the work program for the Economic Development Commission in the year ahead.
- Commissioners discussed and suggested adding an additional metric to the Economic Development Element. The metric discussed was sales tax per acre for the six commercial districts in North Bend.
- Commissioners suggested adding policy language within the Land Use Element of the Comprehensive Plan to consider likely tax (sales and property) revenue implications when evaluating potential for rezones.

Subject to the above referenced modifications to be made by staff, Commissioner Boevers provided a motion to recommend City Council approval of the proposed Economic Development Element of the Comprehensive Plan for adoption with the full 2024 Comprehensive Plan update. The motion was seconded by Commissioner Thiel and passed 6:0.

AGENDA ITEM #6: Adjournment by 8:30 PM unless otherwise approved by the Commission

The Meeting was Adjourned at 7:05 PM.

**REGULAR MEETING OF THE
NORTH BEND PLANNING COMMISSION
- ACTION MEETING MINUTES -
Wednesday, January 3, 2024, 6:30 PM
In Person Meeting and Workshop**

PLEASE NOTE: This meeting will be held at City Hall, 920 SE Cedar Falls Way, North Bend, WA.

AGENDA ITEM #1: CALL TO ORDER

The meeting was called to order at 6:30 PM.

ROLL CALL

Planning Commissioners present: Brian Fitzgibbon, Juliano Pereira, Sam White, James Boevers. Hannah Thiel, Stephen Matlock and Olivia Moe.

City Staff Present: Rebecca Deming, Community & Economic Development Director, Mike McCarty, Principal Planner, Jamie Burrell, Senior Planner

James Henderson, Economic Development Manager and Bre Keveren, Communication Manager were also in the room.

AGENDA ITEM #2: Opportunity for Public Comment on non-agenda items

Chris Lodahl commented on issues related to parking and apartments and satellite pocket parks and provided a letter.

AGENDA ITEM #3: Public Workshop for the 2024 Comprehensive Plan Land Use Element and Zoning

Staff provided an introduction and summary of the purpose of the workshop and desire for feedback from the community. Attendees and staff had individual conversations around the room informally.

AGENDA ITEM #6: Adjournment by 8:30 PM unless otherwise approved by the Commission

The Meeting was Adjourned at 7:50 PM.



Staff Report and Planning Commission Recommendation for the Development Agreement for the Snoqualmie Valley Athletic Complex

Meeting Date: January 17, 2024

Proponent: City of North Bend, and Peak View LLC

Staff Recommendation: A Motion to recommend City Council approval of a Development Agreement with Peak View, LLC, for the Snoqualmie Valley Athletic Complex.

I. Purpose of proposed development agreement:

The City is proposing to enter into a Development Agreement (DA) with Peak View, LLC, for the Snoqualmie Valley Athletic Complex, also known as the Sirius Sports Complex.

A DA may be authorized under City Council approval pursuant to the process in North Bend Municipal Code Chapter 18.27.

The original Development Agreement, approved by the City Council on October 18, 2016, with Bendigo Properties, LLC, enabled the applicant to phase the Snoqualmie Valley Athletic Complex development, constructing the ballfields and certain supporting infrastructure in the first phase ahead of availability of sewer, and then construct a later second phase that would include a building housing indoor sports courts and other supporting infrastructure, upon construction of a sewer line.

The 1st Amendment to the Development Agreement, approved by the City Council on January 7, 2020, enabled Bendigo Properties, LLC, to serve the project with the required sewer connection through participating in the Meadowbrook Sewer Utility Local Improvement District (ULID) rather than constructing an independent sewer line.

The 2nd Amendment to the DA with Bendigo Properties LLC was approved by City Council on October 20, 2021. This amendment extended the time for completion of the Project to June 30, 2025 and extended the time for the construction vault toilet facilities serving the development to October 31, 2024, if sewer is not installed, given the timeframe necessary for the City's completion of the sewer line serving this area through the Meadowbrook ULID. After the city authorized the second amendment, Peak View, LLC, purchased the property subject to the requirements in the DA.

Due to the change in ownership, staff is recommending the city enter into a new DA for the Snoqualmie Valley Athletic complex with Peak View, LLC. The DA would include existing remaining obligations under Phase 1 (see Exhibit C), and the new requirements for Phase 2 of the complex. As proposed by Peak View LLC, Phase 2 would consist of an approximately 75,000 square foot indoor athletic facility to include lobby, basketball courts and/or racquetball courts, and restrooms. Peak View LLC will also design and build water and sewer systems for the building and connect them to the city's sewer line when it is completed.

The obligations under the new DA with Peak View, LLC, would be to December 31, 2026, in order to match the estimated completion date of the sewer system. The draft DA is attached as Exhibit A (clean version) and Exhibit B (redline version).

II. CONCLUSION AND STAFF RECOMMENDATION:

City staff recommends approval of the new DA with Peak View, LLC. Following consideration of any testimony that may be provided to you at the public hearing at your January 17 meeting, staff requests your recommendation to the City Council as to whether to approve the DA.

III. PLANNING COMMISSION RECOMMENDATION

Based on the findings above and public comments received, the North Bend Planning Commission recommends **approval** of Development Agreement with Peak View, LLC, attached as Exhibit A.

Exhibit A: Draft DA

**DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF NORTH BEND
AND Peak View, L.L.C.
FOR THE
SNOQUALMIE VALLEY ATHLETIC COMPLEX**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2024, by and between the City of North Bend, a municipal corporation of the State of Washington (“the City”) and Peak View, L.L.C., a limited liability company organized under the laws of the State of Washington (“Developer”).

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, this form of development is consistent with North Bend’s Comprehensive Plan goals and policies for this area; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use and mitigation of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by local government planning under chapter the Growth Management Act (RCW 36.70B.170(1)); and

WHEREAS, Bendigo Properties, L.L.C constructed four athletic fields and an athletic facility complex in the Neighborhood Business-2 zoning district in the City of North Bend located at 1422 Bendigo Boulevard N. in North Bend (the “Property” or the “Project”) consistent with a Development Agreement (“Original Agreement”) approved by the North Bend City Council on October 18, 2016 after a public hearing; and

WHEREAS, the Original Agreement enabled Bendigo Properties to phase the Project, constructing the ballfields and certain supporting infrastructure in the first phase ahead of availability of sewer, and then construct a later second phase that would include a building housing indoor sports courts and other supporting infrastructure, upon construction of a sewer line; and

WHEREAS, the City of North Bend authorized a First Amendment to the Development Agreement with Bendigo Properties LLC on January 7, 2020, which authorized Bendigo Properties to serve the Project with required sewer connection through participating in the Meadowbrook Sewer Utility Local Improvement District (“Meadowbrook ULID”) rather than constructing an independent sewer line; and

WHEREAS, the City of North Bend authorized a Second Amendment to the Development Agreement with Bendigo Properties LLC on October 20, 2021, which (1) extended the time for completion of the Project to time to June 30, 2025 and (2) extended the time for the construction vault toilet facilities serving the development to October 31, 2024, if sewer is not installed, given the timeframe necessary for the City's completion of the sewer line serving this area through the Meadowbrook ULID; and

WHEREAS, after the City authorized a Second Amendment to the Development Agreement with Bendigo Properties LLC, Peak View, LLC purchased the Property subject to the requirements in the Development Agreement, as amended; and

WHEREAS, the City of North Bend has determined that Phase 1 of the Project is now largely complete, with Peak View, LLC needing to finish identified items on a checklist provided on October 11, 2023, and complete submittals of easements and other Phase 1-related documents; and

WHEREAS, the Meadowbrook ULID timeline has been extended, therefore, requiring additional time for Peak View, LLC to construct the necessary improvements, and as a result the City desires to extend certain obligations under the Development Agreement to December 31, 2026; and

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

1. The Project Site. The Project Site is approximately 12 acres of land located immediately south of Gardiner Creek east of Bendigo Boulevard (SR-202) and west of Boalch Avenue NW, comprised of King County Tax Parcel Nos. 0423089036, 5418700030, 5418700005, 5418700025, 5418700010, 5418700020, and more particularly described in the attached **Exhibit A**.

2. The Project. The Project is the development and use of the Project Site as an athletic complex with approximately four multi-purpose fields and one indoor athletic facility, hereafter referred to as the "SVAA Athletic Complex." The Project is to be completed in two (2) phases, with the items remaining below as follows:

A. Phase 1 remaining obligations to be completed by March 30, 2024:

1. Complete all tasks identified on the Phase 1 completion punch list prepared by Daniel Turple, dated October 11, 2023, attached hereto as Exhibit F.
2. Complete installation of dugout roofs consistent with the approved construction plans, dated May 18, 2021, or the Developer shall submit a letter to the City indicating they no longer wish to install this item.
3. Complete batting/pitching cages wall screening and roof barriers, consistent with the approved construction plans, dated May 18, 2021, or submit a letter from the Developer indicating they no longer wish to install the wall and roof screening of the batting/pitching cages.

4. Remove the unpermitted shipping container that appears to be used for construction storage and concession stand. A structure may be authorized subject to all required permits and approvals.
5. Complete installation of black wire mesh ball-stop safety barrier atop the field/backstop fencing.
6. Record right of way conveyance to the City for the additional right-of-way along 14th Street, as noted on Note 10 on Sheet C4.52 of the approved Construction Plans, dated May 18, 2021.
7. Record revised drainage easements, per notes 4 and 5 on sheet C4.52 of the approved Construction Plans, dated May 18, 2021.
8. Prepare public water easement for City review and acceptance prior to recording by the City.
9. Record critical area tract and Native Growth Protection Easement identified on the approved Phase 1 Construction Plans dated May 18, 2021, and consistent with the City's Critical Area regulations in NBMC 14.05.210 and 14.05.220.
10. Submit Stormwater Declaration of covenant for City review, and recording upon approval.
11. Submit stormwater facility maintenance easement for swales on the property along Boalch Avenue for City review, and recording upon approval.
12. Submit Landscape maintenance agreement and maintenance security for Phase 1 plantings of the approved Construction Plans dated May 18, 2021, and consistent with requirements of NBMC 18.18.150.
13. Submit Critical area maintenance security for critical area plantings per the approved Construction Plans dated May 18, 2021, and consistent with requirements of NBMC 14.05.090.
14. Submit Critical area inspection report prepared by a qualified Critical Areas biologist, consistent with note 3.7 of the December 15, 2020 Critical Areas Report, including a punch list of any required corrections.
15. Submit as-builts and GIS layers for review and approval.
16. Prepare bill of sale for presentation to the City Council.
17. Submit infrastructure maintenance bond for Phase 1 improvements. Upon acceptance of the maintenance bond, City staff will provide for release of the Phase 1 performance bond.
18. Should the Developer fail to satisfy completion of the Remaining Phase 1 obligations identified in this section by March 30, 2024, the City may, but is not obligated to, revoke the Temporary Certificate of Occupancy for the project.

B. Phase 1A to be completed by December 31, 2026:

1. Construct street frontage improvements along the entire Bendigo Boulevard property frontage consistent with the approved May 18, 2021 Construction Plans, providing an 8-foot wide meandering asphalt trail. The trail shall connect to the sidewalk on NW 14th Street.
2. Underground overhead utility lines on NW 14th Street and Bendigo Boulevard consistent with the approved May 18, 2021 Construction Plans.

3. Should the Phase 2 building not be constructed, submit a landscape plan for landscaping remaining undeveloped areas of the site consistent with NBMC 18.18, and upon approval of such plan, install required landscaping.
4. Construct a men's and women's restroom facility (conceptual plan for which is attached hereto as Exhibit E) to be connected to the municipal water and sewer systems, unless restroom facilities are constructed with the building to be completed in Phase 2.
5. Developer shall execute an Assignment of Developer Extension Agreement to be signed with the City and complete and record all necessary bills of sale.

C. If Developer in its sole discretion moves forward with Phase 2, Phase 2 to be completed by December 31, 2026:

1. Design and build an approximately 75,000 square foot indoor athletic facility to include lobby, basketball courts and/or racquetball courts, and restrooms ("the Building"), and additional required parking and site infrastructure for the Building as necessary. Site and building related items:
 - (a) The number of restrooms shall accommodate all proposed uses on the site;
 - (b) Undergo building design review with the City CED Department and Building Department;
 - (c) Building height may exceed the 30' maximum building height for the Neighborhood Business-2 Zone per NBMC 18.10.040 by up to 20% to accommodate the taller ceilings necessary for indoor basketball courts.
 - (d) Building may exceed single-user ground floor square footage limitation in Commercial Design Standards given the large nature of the use (indoor basketball/sports courts).
 - (e) Fences, backstops, dugouts, and like accessory structures may be permitted within the building setback.
 - (f) Design and build paved parking lot(s) and associated parking lot landscaping as required for Phase 2 improvements, indoor athletic facility. The parking requirement for the indoor athletic facility is also being calculated per player, which is one parking space per four players. This yields a parking requirement of 72 parking spaces to accommodate the max number of players (15 players per roster x 2 teams per court x 12 courts = 90 parking spaces). The total number of required parking spaces for the site is 140 spaces;
2. Design and build water and sewer systems for the building and connect to municipal facilities. The site plan provided is a conceptual design and has not been fully reviewed for consistency with the North Bend Municipal Code or engineered. Final engineering plans shall be reviewed and approved by the City.
 - (a) Sanitary Sewer Service Items:
 - (i) Developer shall connect the site to the municipal sewer system to be constructed through the Meadowbrook Sewer Utility Local Improvement District and pay all fees and charges for such connection as required.
 - (b) Water Service Items:
 - (i) Developer shall construct remaining water main extension extending through the site consistent with the approved construction plans dated May 18, 2021.

- (ii) From the 12" by 12" cross at the southwest corner of the parking lot shown on the approved construction plans dated May 18, 2021, a 15-foot wide public water system easement shall be provided extending to the Bendigo Boulevard N. right-of-way.
 - (iii) Prepare public water easement for City review and acceptance prior to recording by the City.
 - 3. Design and construct an 8-foot wide pedestrian bridge over Gardiner Creek to connect the 8-foot wide meandering trail along the property's Boalch Avenue frontage to connect to the adjacent Meadowbrook Farm property across Gardiner Creek. Bridge ownership and maintenance shall be conveyed to the City by Developer following acceptance by the City. To mitigate for potential adverse impacts from construction noise and adjacent use of the Meadowbrook Farm Interpretive Center, construction of the trail bridge during the months of April through October shall only occur during weekdays when events at the Interpretive Center are less likely to be scheduled, and the contractor shall inform the Si View Metropolitan Park District of the proposed bridge construction schedule.
 - 4. Developer to request Phase 2 completion punch list from City inspector.
 - 5. Complete all tasks identified on the Phase 2 completion punch list prepared by City inspector.
 - 6. Submit as-builts and GIS layers for review and approval.
 - 7. Prepare bill of sale for presentation to City Council.
 - 8. Submit infrastructure maintenance bond for Phase 2 improvements. Upon acceptance of the maintenance bond, City staff will provide for release of the Phase 2 performance bond. Prior to Certificate of Final Occupancy for the building, the applicant shall prepare a speed study, if required by the Washington State Department of Transportation and if not already conducted by the City of North Bend, to lower the speed limit to 35-mph, or other reduced speed limit, along Bendigo Boulevard from a point north of the NW 14th Street intersection south to the 30-mph speed limit entering downtown North Bend. Subject to approval of the Washington State Department of Transportation for lowering the speed limit, the applicant shall post new speed limit signs on Bendigo Boulevard N within this area.
- D. Nothing in this Development Agreement shall excuse the Developer from paying any applicable ULID assessments, general facilities charges, or any other rates, assessments, charges, and the like associated with the availability of sewer, connection to the City's sewer utility, or attributable for the provision of sewer service thereto.

3. Exhibits. The following exhibits, attached hereto, are incorporated herein and made part of this Agreement by this reference:

- A. Exhibit A: Project Site – Legal Descriptions;
- B. Exhibit B: Draft Site Plan differentiating Phase 1 from Phase 2;
- C. Exhibit C: Preliminary Plan showing proposed right-of-way improvements; and

D. Exhibit D: Site Plan showing proposed building pad locations.

E. Exhibit E: Phase 1a Restroom Plan.

F. Exhibit F: Phase 1 completion punch list prepared by Daniel Turple, dated October 11, 2023.

4. Effective Date and Duration. This Agreement shall commence upon the effective date of the City Council resolution approving this Agreement (the “Effective Date”), and shall continue in force for a period of three (3) years (the “Initial Term”) unless extended or terminated as provided herein. Following the expiration of the Initial Term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner. The Term of this Agreement does not effect the deadlines for the items listed in Phase 1, Phase 1A, and Phase 2.

5. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

6. Agreement Binding on Future Landowners. From time to time, as provided in this Agreement, Developer may sell or otherwise lawfully dispose of a portion of the Project Site to a person or entity (“Landowner”) who, unless otherwise released by the City, shall be subject to the applicable provisions of this Agreement related to such portion of the Project Site. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

7. Planning and Development.

A. Development Standards. Except as otherwise specifically provided in this Agreement, the Project shall be completed in accordance with all development and design standards of the North Bend Municipal Code, and all applicable environmental, building, and construction codes and regulations contained therein in effect at the time of permit submittal.

B. Public Works. Developer agrees to install right-of-way improvements, including curb, gutter, sidewalk, and bike lanes as generally depicted in **Exhibit C**. The final design shall be approved by the Public Works Director. Construction of right-of-way improvements shall be followed by a dedication of right-of-way improvements to the City by Developer recording all required documents. Upon recording, said right-of-ways will be the responsibility of the City for maintenance, repairs and liability, except the Developer shall be responsible for the maintenance of the LID biochannel in the right-of-way.

8. Vested Rights.

A. During the term of this Agreement, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully

vested in Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the exhibits hereto, or as expressly consented to by Developer.

B. This Development Agreement only covers those specific development standards addressed herein. The City's Development Regulations, including building, fire, public works, land use, and signage regulations shall govern unless specifically addressed in this Agreement. No vesting is created by this Agreement for any other development regulation that is not included in this Agreement. Notwithstanding the foregoing, Developer will have the full benefit of the vested rights doctrine in Washington State and will only be bound by those laws, statutes, regulations, ordinances and codes in effect at the time of permit submittal by Developer.

9. Permits Required. Developer shall obtain all permits required under the City Code for this Project.

10. Minor Modifications. Minor modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the City Code, and shall not require an amendment to this Agreement.

11. Further Discretionary Actions. Developer acknowledges that the City's land use regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Project Site.

12. Existing Land Use Fees and Impact Fees.

A. Developer acknowledges and agrees that land use, building, fire, public works and sign fees adopted by the City as of the Effective Date of this Agreement may be increased by the City from time to time, and are applicable to permits and approvals for the Project Site, as long as such fees apply to similar applications and projects in the City.

B. All impact fees shall be paid as set forth in the approved permit or approval, in accordance with Title 17 of the North Bend Municipal Code, and City will exercise reasonable efforts to explore mitigation of such fees, consistent with other applications and Projects in the City.

13. Notice of Default/Opportunity to Cure/Dispute Resolution.

A. In the event a party, acting in good faith, believes the other party has violated the terms of this Agreement, the aggrieved party shall give the alleged offending party written notice of the alleged violation by sending a detailed written statement of the alleged breach. The alleged offending party shall have thirty (30) days from receipt of written notice in which to cure the

alleged breach. This notice requirement is intended to facilitate a resolution by the parties of any dispute prior to the initiation of litigation. Upon notice of an alleged breach, the parties agree to meet and agree upon a process for attempting to resolve any dispute arising out of this Agreement. A lawsuit to enforce the terms of this Agreement shall not be filed until the latter of (1) the end of the 30-day cure period or (2) the conclusion of any dispute resolution process.

B. After proper notice and expiration of the 30-day cure period, if the alleged default has not been cured or is not being diligently cured in the manner set forth in the notice, the aggrieved party may, at its option, institute legal proceedings in accordance with this Agreement. Additionally, the City may decide to enforce the City Code violations and obtain penalties and costs as provided in applicable provisions of the North Bend Municipal Code.

14. Amendment; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of the parties as provided in Section 27 herein, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Project Site as the City Council may deem necessary to the extent required by a serious threat to public health and safety.

15. Termination.

A. This Agreement shall expire and be of no further force and effect if:

1. The development contemplated in this Agreement and in associated permits and/or approvals issued by the City are not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City; or
2. Developer does not construct the Project as contemplated by the permits and approvals obtained in connection with the Project and this Agreement, or submits applications for development of the Project Site that are inconsistent with this Agreement.

B. This Agreement shall terminate either (1) upon the expiration of the Initial Term identified in Section 4 above, or (2) when the Subject Property has been fully developed *and* all of Developer's obligations in connection therewith are satisfied as determined by the City, whichever first occurs. Upon termination of this Agreement under this Subsection 15(B), the City shall record a notice of such termination in a form satisfactory to the City Attorney.

C. This Agreement shall terminate upon Developer's abandonment of the Project. Developer shall be deemed to have abandoned the Project if a building permit for construction of the Building approved in this Agreement is not submitted to the City within 5 years of the Effective Date noted above.

16. Effect of Termination on Developer Obligations. Termination of this Agreement shall not affect any of Developer's obligations to comply with (a) the City Comprehensive Plan or any applicable zoning code(s), subdivision maps or other land use entitlements approved with respect to the Project Site; (b) any conditions or restrictions specified in this Agreement to continue after the termination of this Agreement; or (c) obligations to pay assessments, liens, fees or taxes, unless the termination or abandonment of the Project nullifies such obligations.

17. Effect of Termination on City. Upon termination of this Agreement, the entitlements, conditions of development, limitations on fees and any other terms and conditions vested pursuant to Section 8 herein shall no longer be vested hereby with respect to the Project Site (provided that vesting of such entitlements, conditions or fees may be established for the property pursuant to then-existing planning and zoning laws).

18. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land, and the benefits and burdens shall bind and inure to the benefit of the parties. Developer and every Landowner, purchaser, assignee or transferee of an interest in the Project Site, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, unless the Landowner or subsequent Landowner assignee or transferee has abandoned the project and no party has started construction of the Project, and shall be the beneficiary thereof and a party thereto, but only with respect to the Project Site, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Project Site sold, assigned or transferred to it. A copy of the fully executed Agreement shall be recorded in accordance with Section 29 herein.

19. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Agreement by any party in default hereof.

20. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle. This section shall survive the termination of this Agreement.

21. No Presumption Against Drafter. Developer represents that it has been advised to seek legal advice and counsel from its attorney concerning the legal consequences of this Agreement, that it has carefully read the foregoing Agreement, and knows the contents thereof, and signs the same as its own free act, and that it fully understands and voluntarily accepts the terms and conditions of this Agreement. Both parties have had the opportunity to have this Agreement reviewed and revised by legal counsel, and the parties agree that no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

22. Notices. Notices, demands, or correspondence to the City and Developer shall be sufficiently given if dispatched by prepaid first-class mail to the following addresses:

TO CITY: City Administrator
City of North Bend
P.O. Box 896
North Bend, WA 98045

TO DEVELOPER: Peak View LLC
1800 114th Ave. SE
Bellevue, WA 98004

Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

23. Assignment. This Agreement shall be binding and inure to the benefit of the parties. Developer shall not assign its rights under this Agreement without the written consent of the City, which consent shall not unreasonably be withheld.

24. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action shall lie in King County Superior Court.

25. No Attorneys' Fees. In the event of any litigation or dispute resolution process between the parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of costs or attorneys' fees or expert witness fees.

26. Severability. The provisions of this Agreement are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this Agreement, or the validity of its application to other persons or circumstances.

27. Entire Agreement. This Agreement contains the entire agreement between the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. Changes made in accordance with Section 14 herein shall be incorporated by written amendments or addenda signed by both parties and made.

29. Recording. Developer shall record an executed copy of this Agreement with the King County Auditor, pursuant to RCW 36.70B.190, no later than fourteen (14) days after the Effective Date and shall provide the City with a conformed copy of the recorded document within thirty (30) days of the Effective Date.

By their signatures below, the persons executing this Agreement each represent and warrant that they have full power and authority to bind their respective organizations, and that such organizations have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement.

CITY OF NORTH BEND

By: _____
Mary Miller, Mayor

Peak View, L.L.C.

By: _____
Printed Name: _____
Title: _____

Attest/Authenticated:

Susie Oppedal, City Clerk

Approved As To Form:

Kendra Rosenberg, City Attorney

**** remainder of page intentionally left blank ****

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2023, did personally appear before me, the undersigned Notary Public in and for the State of Washington, _____, who is known to me or produced satisfactory evidence that s/he is the person that executed the foregoing Development Agreement, and acknowledged that s/he signed the Agreement as his or her free and voluntary act for the uses and purposes mentioned therein.

GIVEN under my hand and official seal this ____ day of _____, 2023.

Print name: _____

NOTARY PUBLIC in and for the State of Washington, residing at _____

Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2023, did personally appear before me, the undersigned Notary Public in and for the State of Washington, _____, who is known to me or produced satisfactory evidence that s/he is the person that executed the foregoing Development Agreement, and acknowledged that s/he signed the Agreement as his or her free and voluntary act for the uses and purposes mentioned therein.

GIVEN under my hand and official seal this ____ day of _____, 2023.

Print name: _____

NOTARY PUBLIC in and for the State of Washington, residing at _____

Commission expires: _____

EXHIBIT A:
PROJECT SITE – LEGAL DESCRIPTIONS

Parcel No. 0423089036

PORTION OF SW 1/4 OF NW 1/4 - BEGIN SW CORNER TH S 88-56-06 E ALONG S LINE 311.83 FT TO ELY MGN OF SNOQUALMIE NORTH BEND ROAD & POB TH S 88-56-06 E 710.94 FT TO WLY MGN OF MEADOWBROOK NORTH BEND ROAD TH N 30-24-10 W ALONG SAID WLY MGN 301.66 FT TAP OF TANGENT CURVE TO RIGHT RAD OF 557.09 FT TH ALONG SAID CURVE THRU C/A OF 21-29-07 TO THREAD OF GARDNER CREEK TH WLY ALONG GARDNER CREEK TO ELY MGN OF STATE HIGHWAY R/W TH S 44-09-00 E ALONG SAID ELY MGN TO POB LESS CO ROAD BEING A PORTION OF TRACT C-1 OF MAY 1965 SURVEY

Parcel No. 5418700030

MEADOWBROOK TRACTS LESS CO RD

Parcel No. 5418700005

MEADOWBROOK TRS

Parcel No. 5418700025

MEADOWBROOK TRACTS LESS CO RD

Parcel No. 5418700010

MEADOWBROOK TRACTS

Parcel No. 5418700020

MEADOWBROOK TRACTS LESS CO RD

EXHIBIT B:
SITE PLAN DIFFERENTIATING PHASE 1 FROM PHASE 2

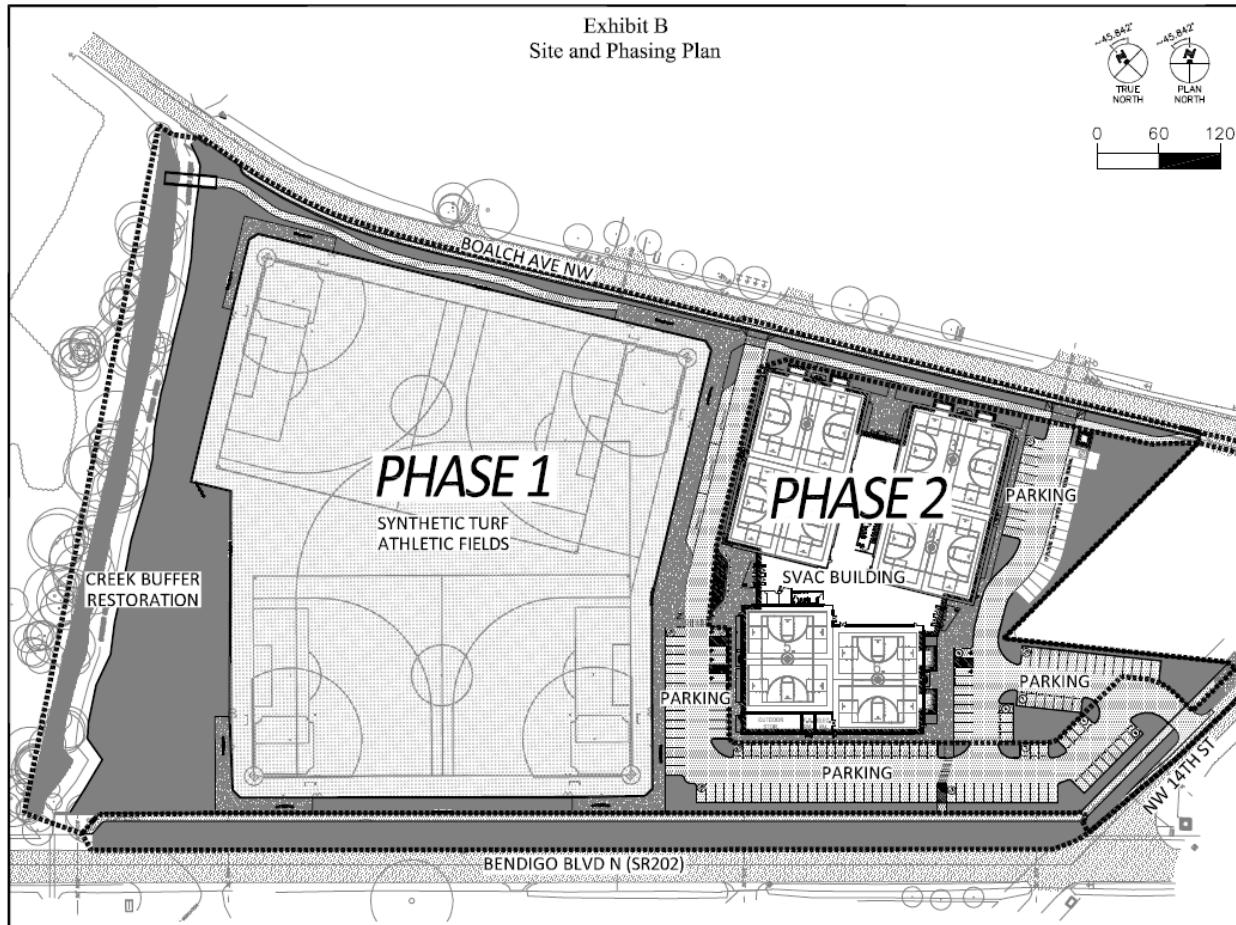
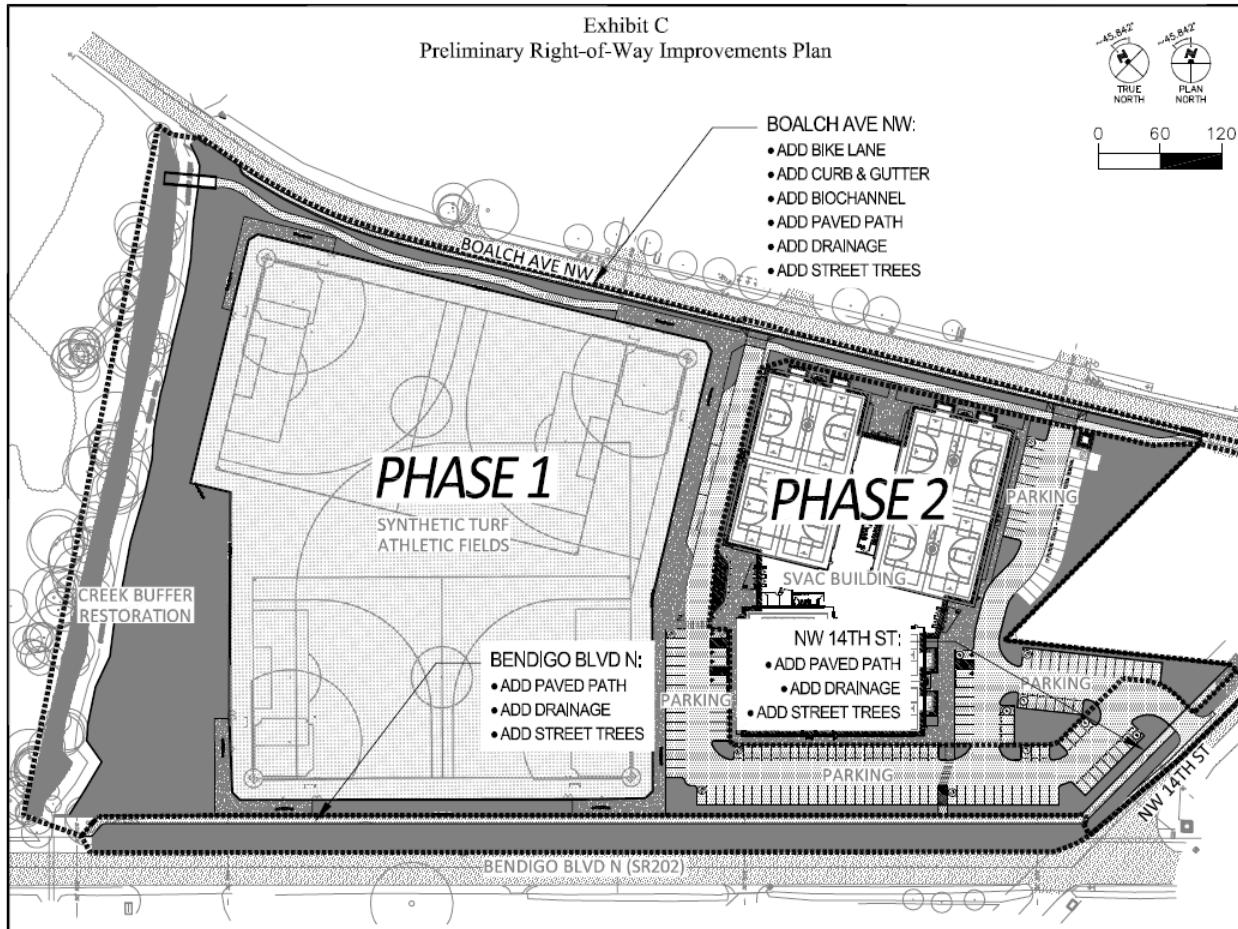


EXHIBIT C:

CONCEPTUAL PLAN SHOWING PROPOSED RIGHT-OF-WAY IMPROVEMENTS



Street Design Sections for Boalch (1/2 street improvements)

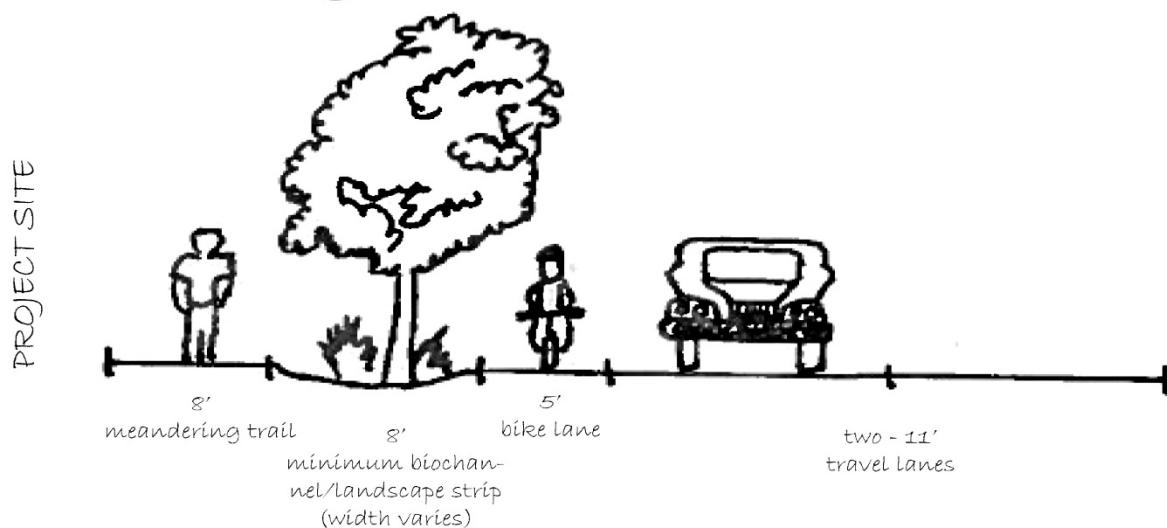


EXHIBIT D:
ELEVATIONS SHOWING PROPOSED DESIGN OF BUILDING



16

EXHIBIT E:
PHASE 1A RESTROOM PLAN

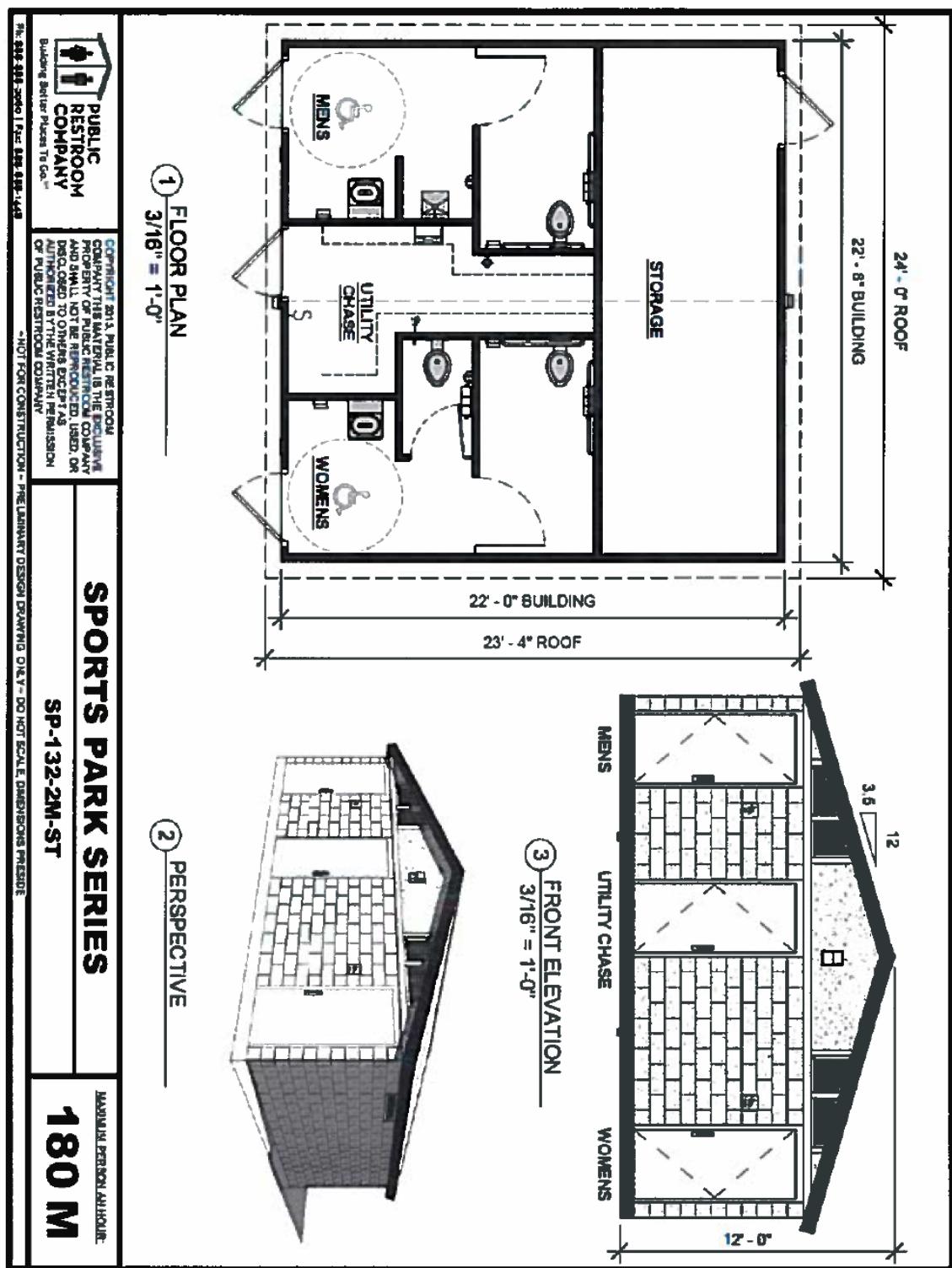


EXHIBIT F:
PHASE 1 COMPLETION PUNCHLIST

DRAFT



Prepared by : Daniel Turple

SVAA PUNCH LIST

ROADWAY, STORM SEWER, SANITARY SEWER, AND WATER MAIN PUNCH LIST

LEGEND	
ITEM NUMBERS	
1 - 100	GENERAL
101 -199	ROADWAY
201 - 299	STORM
300 - 399	SEWER
401 - 499	WATER

	ITEM NO.	ITEM DESCRIPTION
GENERAL		
	001	Submit asbuilts for review, once asbuilts are acceptable the city will ask for GIS/mylars per NBMC
	002	Exposed soils around save trees (phase 2 area) needs to be stabilized and trees need a risk assessment and letter provided to city via contractor's arborist. Trees have exposed soils and area needs to be restored
	003	Contractor needs to stabilize areas that were disturbed in phase 2, currently has exposed soils
	004	Privacy fence for outdoor restrooms were removed, need to reinstall privacy fence
	005	All landscape needs to be completed per Mike McCarty email sent on 11/14/22
	006	Clean up/remove all debris behind save trees, currently looks like there is some scrap turf, large sandbags, and pile of dirt/rock
ROADWAY		
	101	Driveway entrance off 14 th street has 2 broken panels in the driveway approach, needs to be removed and replaced
	102	Curb and gutter is cracking in several locations along 14 th street that needs to be removed and replaced, contractor and inspector to identify areas
	103	Curb and gutter is cracking in several locations along boulch ave that needs to be removed and replaced, contractor and inspector to identify areas
	104	ADA path along south side of fields needs to be installed.

	105	Asphalt patch on boulch ave needs to be removed and replaced, asphalt patch is settling
	107	Block wall is not currently installed along asphalt path along boulch ave. see sheet. C 4.63 note (SBW)

	108	Entrance off 14 th street channelization arrows is extremely faded need to re paint
	109	Major ponding in parking stalls along southeastern field, needs to be addressed
	110	Asphalt path along boulch on northwestern part of project is damaged, needs saw cut and replaced
	111	Elk fence needs to be extended apx 10' to the south on the northwestern part of the project to tie into field fence.
	112	Mulch needs to be added behind thickened curb next to CB 020

STORM

	201	Outfall into mitigation area, trash rack is buried in quarry spalls. Expose entire trash rack and line ditch with quarry spalls
	202	CB 020 need to open hatch for inspection
	203	Contractor to install locking bolts on all CB lids
	204	Ditch along SR 202 needs to be grubbed and regraded, this ditch needs to be re-graded because the new culvert was installed and is currently lower then existing ditch and is causing back up on to neighboring properties
	205	SDCO in mitigation area's need to have SDCO and mechanical plugs installed

WATER

	401	Cut chains on side ports of hydrants
	402	Install valve extensions on hydrant foot valves
	403	Pour concrete collar around water valves in Phase 2 limits only per NBPW standards detail W-57
	404	Paint hydrants 2 coats fire hydrant yellow per NBPW 6-17
	405	Install (1) valve marker for foot valves in phase 2 area per NBPW standard detail W-14

**DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF NORTH BEND
AND Peak View, L.L.C.
FOR THE
SNOQUALMIE VALLEY ATHLETIC COMPLEX**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2024, by and between the City of North Bend, a municipal corporation of the State of Washington (“the City”) and Peak View, L.L.C., a limited liability company organized under the laws of the State of Washington (“Developer”).

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, this form of development is consistent with North Bend’s Comprehensive Plan goals and policies for this area; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use and mitigation of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by local government planning under chapter the Growth Management Act (RCW 36.70B.170(1)); and

WHEREAS, Bendigo Properties, L.L.C constructed four athletic fields and an athletic facility complex in the Neighborhood Business-2 zoning district in the City of North Bend located at 1422 Bendigo Boulevard N. in North Bend (the “Property” or the “Project”) consistent with a Development Agreement (“Original Agreement”) approved by the North Bend City Council on October 18, 2016 after a public hearing; and

WHEREAS, the Original Agreement enabled Bendigo Properties to phase the Project, constructing the ballfields and certain supporting infrastructure in the first phase ahead of availability of sewer, and then construct a later second phase that would include a building housing indoor sports courts and other supporting infrastructure, upon construction of a sewer line; and

WHEREAS, the City of North Bend authorized a First Amendment to the Development Agreement with Bendigo Properties LLC on January 7, 2020, which authorized Bendigo Properties to serve the Project with required sewer connection through participating in the Meadowbrook Sewer Utility Local Improvement District (“Meadowbrook ULID”) rather than constructing an independent sewer line; and

WHEREAS, the City of North Bend authorized a Second Amendment to the Development Agreement with Bendigo Properties LLC on October 20, 2021, which (1) extended the time for completion of the Project to time to June 30, 2025 and (2) extended the time for the construction vault toilet facilities serving the development to October 31, 2024, if sewer is not installed, given the timeframe necessary for the City's completion of the sewer line serving this area through the Meadowbrook ULID; and

WHEREAS, after the City authorized a Second Amendment to the Development Agreement with Bendigo Properties LLC, Peak View, LLC purchased the Property subject to the requirements in the Development Agreement, as amended; and

WHEREAS, the City of North Bend has determined that Phase 1 of the Project is now largely complete, with Peak View, LLC needing to finish identified items on a checklist provided on October 11, 2023, and complete submittals of easements and other Phase 1-related documents; and

WHEREAS, the Meadowbrook ULID timeline has been extended, therefore, requiring additional time for Peak View, LLC to construct the necessary improvements, and as a result the City desires to extend certain obligations under the Development Agreement to December 31, 2026; and

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

1. The Project Site. The Project Site is approximately 12 acres of land located immediately south of Gardiner Creek east of Bendigo Boulevard (SR-202) and west of Boalch Avenue NW, comprised of King County Tax Parcel Nos. 0423089036, 5418700030, 5418700005, 5418700025, 5418700010, 5418700020, and more particularly described in the attached **Exhibit A**.

2. The Project. The Project is the development and use of the Project Site as an athletic complex with approximately four multi-purpose fields and one indoor athletic facility, hereafter referred to as the "SVAA Athletic Complex." The Project is to be completed in two (2) phases, with the items remaining below as follows:

A. Phase 1 remaining obligations to be completed by March 30, 2024:

1. Complete all tasks identified on the Phase 1 completion punch list prepared by Daniel Turple, dated October 11, 2023, attached hereto as Exhibit F.
2. Complete installation of dugout roofs consistent with the approved construction plans, dated May 18, 2021, or the Developer shall submit a letter to the City indicating they no longer wish to install this item.
3. Complete batting/pitching cages wall screening and roof barriers, consistent with the approved construction plans, dated May 18, 2021, or submit a letter from the Developer indicating they no longer wish to install the wall and roof screening of the batting/pitching cages.

4. Remove the unpermitted shipping container that appears to be used for construction storage and concession stand. A structure may be authorized subject to all required permits and approvals.
5. Complete installation of black wire mesh ball-stop safety barrier atop the field/backstop fencing.
6. Record right of way conveyance to the City for the additional right-of-way along 14th Street, as noted on Note 10 on Sheet C4.52 of the approved Construction Plans, dated May 18, 2021.
7. Record revised drainage easements, per notes 4 and 5 on sheet C4.52 of the approved Construction Plans, dated May 18, 2021.
8. Prepare public water easement for City review and acceptance prior to recording by the City.
9. Record critical area tract and Native Growth Protection Easement identified on the approved Phase 1 Construction Plans dated May 18, 2021, and consistent with the City's Critical Area regulations in NBMC 14.05.210 and 14.05.220.
10. Submit Stormwater Declaration of covenant for City review, and recording upon approval.
11. Submit stormwater facility maintenance easement for swales on the property along Boalch Avenue for City review, and recording upon approval.
12. Submit Landscape maintenance agreement and maintenance security for Phase 1 plantings of the approved Construction Plans dated May 18, 2021, and consistent with requirements of NBMC 18.18.150.
13. Submit Critical area maintenance security for critical area plantings per the approved Construction Plans dated May 18, 2021, and consistent with requirements of NBMC 14.05.090.
14. Submit Critical area inspection report prepared by a qualified Critical Areas biologist, consistent with note 3.7 of the December 15, 2020 Critical Areas Report, including a punch list of any required corrections.
15. Submit as-builts and GIS layers for review and approval.
16. Prepare bill of sale for presentation to the City Council.
17. Submit infrastructure maintenance bond for Phase 1 improvements. Upon acceptance of the maintenance bond, City staff will provide for release of the Phase 1 performance bond.
18. Should the Developer fail to satisfy completion of the Remaining Phase 1 obligations identified in this section by March 30, 2024, the City may, but is not obligated to, revoke the Temporary Certificate of Occupancy for the project.

B. Phase 1A to be completed by December 31, 2026:

1. Construct street frontage improvements along the entire Bendigo Boulevard property frontage consistent with the approved May 18, 2021 Construction Plans, providing an 8-foot wide meandering asphalt trail. The trail shall connect to the sidewalk on NW 14th Street.
2. Underground overhead utility lines on NW 14th Street and Bendigo Boulevard consistent with the approved May 18, 2021 Construction Plans.

3. Should the Phase 2 building not be constructed, submit a landscape plan for landscaping remaining undeveloped areas of the site consistent with NBMC 18.18, and upon approval of such plan, install required landscaping.
4. Construct a men's and women's restroom facility (conceptual plan for which is attached hereto as Exhibit E) to be connected to the municipal water and sewer systems, unless restroom facilities are constructed with the building to be completed in Phase 2.
5. Developer shall execute an Assignment of Developer Extension Agreement to be signed with the City and complete and record all necessary bills of sale.

C. If Developer in its sole discretion moves forward with Phase 2, Phase 2 to be completed by December 31, 2026:

1. Design and build an approximately 75,000 square foot indoor athletic facility to include lobby, basketball courts and/or racquetball courts, and restrooms ("the Building"), and additional required parking and site infrastructure for the Building as necessary. Site and building related items:
 - (a) The number of restrooms shall accommodate all proposed uses on the site;
 - (b) Undergo building design review with the City CED Department and Building Department;
 - (c) Building height may exceed the 30' maximum building height for the Neighborhood Business-2 Zone per NBMC 18.10.040 by up to 20% to accommodate the taller ceilings necessary for indoor basketball courts.
 - (d) Building may exceed single-user ground floor square footage limitation in Commercial Design Standards given the large nature of the use (indoor basketball/sports courts).
 - (e) Fences, backstops, dugouts, and like accessory structures may be permitted within the building setback.
 - (f) Design and build paved parking lot(s) and associated parking lot landscaping as required for Phase 2 improvements, indoor athletic facility. The parking requirement for the indoor athletic facility is also being calculated per player, which is one parking space per four players. This yields a parking requirement of 72 parking spaces to accommodate the max number of players (15 players per roster x 2 teams per court x 12 courts = 90 parking spaces). The total number of required parking spaces for the site is 140 spaces;
2. Design and build water and sewer systems for the building and connect to municipal facilities. The site plan provided is a conceptual design and has not been fully reviewed for consistency with the North Bend Municipal Code or engineered. Final engineering plans shall be reviewed and approved by the City.
 - (a) Sanitary Sewer Service Items:
 - (i) Developer shall connect the site to the municipal sewer system to be constructed through the Meadowbrook Sewer Utility Local Improvement District and pay all fees and charges for such connection as required.
 - (b) Water Service Items:
 - (i) Developer shall construct remaining water main extension extending through the site consistent with the approved construction plans dated May 18, 2021.

- (ii) From the 12" by 12" cross at the southwest corner of the parking lot shown on the approved construction plans dated May 18, 2021, a 15-foot wide public water system easement shall be provided extending to the Bendigo Boulevard N. right-of-way.
 - (iii) Prepare public water easement for City review and acceptance prior to recording by the City.
 - 3. Design and construct an 8-foot wide pedestrian bridge over Gardiner Creek to connect the 8-foot wide meandering trail along the property's Boalch Avenue frontage to connect to the adjacent Meadowbrook Farm property across Gardiner Creek. Bridge ownership and maintenance shall be conveyed to the City by Developer following acceptance by the City. To mitigate for potential adverse impacts from construction noise and adjacent use of the Meadowbrook Farm Interpretive Center, construction of the trail bridge during the months of April through October shall only occur during weekdays when events at the Interpretive Center are less likely to be scheduled, and the contractor shall inform the Si View Metropolitan Park District of the proposed bridge construction schedule.
 - 4. Developer to request Phase 2 completion punch list from City inspector.
 - 5. Complete all tasks identified on the Phase 2 completion punch list prepared by City inspector.
 - 6. Submit as-builts and GIS layers for review and approval.
 - 7. Prepare bill of sale for presentation to City Council.
 - 8. Submit infrastructure maintenance bond for Phase 2 improvements. Upon acceptance of the maintenance bond, City staff will provide for release of the Phase 2 performance bond. Prior to Certificate of Final Occupancy for the building, the applicant shall prepare a speed study, if required by the Washington State Department of Transportation and if not already conducted by the City of North Bend, to lower the speed limit to 35-mph, or other reduced speed limit, along Bendigo Boulevard from a point north of the NW 14th Street intersection south to the 30-mph speed limit entering downtown North Bend. Subject to approval of the Washington State Department of Transportation for lowering the speed limit, the applicant shall post new speed limit signs on Bendigo Boulevard N within this area.
- D. Nothing in this Development Agreement shall excuse the Developer from paying any applicable ULID assessments, general facilities charges, or any other rates, assessments, charges, and the like associated with the availability of sewer, connection to the City's sewer utility, or attributable for the provision of sewer service thereto.

3. Exhibits. The following exhibits, attached hereto, are incorporated herein and made part of this Agreement by this reference:

- A. Exhibit A: Project Site – Legal Descriptions;
- B. Exhibit B: Draft Site Plan differentiating Phase 1 from Phase 2;
- C. Exhibit C: Preliminary Plan showing proposed right-of-way improvements; and

D. Exhibit D: Site Plan showing proposed building pad locations.

E. Exhibit E: Phase 1a Restroom Plan.

F. Exhibit F: Phase 1 completion punch list prepared by Daniel Turple, dated October 11, 2023.

4. Effective Date and Duration. This Agreement shall commence upon the effective date of the City Council resolution approving this Agreement (the “Effective Date”), and shall continue in force for a period of three (3) years (the “Initial Term”) unless extended or terminated as provided herein. Following the expiration of the Initial Term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner. The Term of this Agreement does not effect the deadlines for the items listed in Phase 1, Phase 1A, and Phase 2.

5. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

6. Agreement Binding on Future Landowners. From time to time, as provided in this Agreement, Developer may sell or otherwise lawfully dispose of a portion of the Project Site to a person or entity (“Landowner”) who, unless otherwise released by the City, shall be subject to the applicable provisions of this Agreement related to such portion of the Project Site. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

7. Planning and Development.

A. Development Standards. Except as otherwise specifically provided in this Agreement, the Project shall be completed in accordance with all development and design standards of the North Bend Municipal Code, and all applicable environmental, building, and construction codes and regulations contained therein in effect at the time of permit submittal.

B. Public Works. Developer agrees to install right-of-way improvements, including curb, gutter, sidewalk, and bike lanes as generally depicted in **Exhibit C**. The final design shall be approved by the Public Works Director. Construction of right-of-way improvements shall be followed by a dedication of right-of-way improvements to the City by Developer recording all required documents. Upon recording, said right-of-ways will be the responsibility of the City for maintenance, repairs and liability, except the Developer shall be responsible for the maintenance of the LID biochannel in the right-of-way.

8. Vested Rights.

A. During the term of this Agreement, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully

vested in Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the exhibits hereto, or as expressly consented to by Developer.

B. This Development Agreement only covers those specific development standards addressed herein. The City's Development Regulations, including building, fire, public works, land use, and signage regulations shall govern unless specifically addressed in this Agreement. No vesting is created by this Agreement for any other development regulation that is not included in this Agreement. Notwithstanding the foregoing, Developer will have the full benefit of the vested rights doctrine in Washington State and will only be bound by those laws, statutes, regulations, ordinances and codes in effect at the time of permit submittal by Developer.

9. Permits Required. Developer shall obtain all permits required under the City Code for this Project.

10. Minor Modifications. Minor modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the City Code, and shall not require an amendment to this Agreement.

11. Further Discretionary Actions. Developer acknowledges that the City's land use regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Project Site.

12. Existing Land Use Fees and Impact Fees.

A. Developer acknowledges and agrees that land use, building, fire, public works and sign fees adopted by the City as of the Effective Date of this Agreement may be increased by the City from time to time, and are applicable to permits and approvals for the Project Site, as long as such fees apply to similar applications and projects in the City.

B. All impact fees shall be paid as set forth in the approved permit or approval, in accordance with Title 17 of the North Bend Municipal Code, and City will exercise reasonable efforts to explore mitigation of such fees, consistent with other applications and Projects in the City.

13. Notice of Default/Opportunity to Cure/Dispute Resolution.

A. In the event a party, acting in good faith, believes the other party has violated the terms of this Agreement, the aggrieved party shall give the alleged offending party written notice of the alleged violation by sending a detailed written statement of the alleged breach. The alleged offending party shall have thirty (30) days from receipt of written notice in which to cure the

alleged breach. This notice requirement is intended to facilitate a resolution by the parties of any dispute prior to the initiation of litigation. Upon notice of an alleged breach, the parties agree to meet and agree upon a process for attempting to resolve any dispute arising out of this Agreement. A lawsuit to enforce the terms of this Agreement shall not be filed until the latter of (1) the end of the 30-day cure period or (2) the conclusion of any dispute resolution process.

B. After proper notice and expiration of the 30-day cure period, if the alleged default has not been cured or is not being diligently cured in the manner set forth in the notice, the aggrieved party may, at its option, institute legal proceedings in accordance with this Agreement. Additionally, the City may decide to enforce the City Code violations and obtain penalties and costs as provided in applicable provisions of the North Bend Municipal Code.

14. Amendment; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of the parties as provided in Section 27 herein, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Project Site as the City Council may deem necessary to the extent required by a serious threat to public health and safety.

15. Termination.

A. This Agreement shall expire and be of no further force and effect if:

1. The development contemplated in this Agreement and in associated permits and/or approvals issued by the City are not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City; or
2. Developer does not construct the Project as contemplated by the permits and approvals obtained in connection with the Project and this Agreement, or submits applications for development of the Project Site that are inconsistent with this Agreement.

B. This Agreement shall terminate either (1) upon the expiration of the Initial Term identified in Section 4 above, or (2) when the Subject Property has been fully developed *and* all of Developer's obligations in connection therewith are satisfied as determined by the City, whichever first occurs. Upon termination of this Agreement under this Subsection 15(B), the City shall record a notice of such termination in a form satisfactory to the City Attorney.

C. This Agreement shall terminate upon Developer's abandonment of the Project. Developer shall be deemed to have abandoned the Project if a building permit for construction of the Building approved in this Agreement is not submitted to the City within 5 years of the Effective Date noted above.

16. Effect of Termination on Developer Obligations. Termination of this Agreement shall not affect any of Developer's obligations to comply with (a) the City Comprehensive Plan or any applicable zoning code(s), subdivision maps or other land use entitlements approved with respect to the Project Site; (b) any conditions or restrictions specified in this Agreement to continue after the termination of this Agreement; or (c) obligations to pay assessments, liens, fees or taxes, unless the termination or abandonment of the Project nullifies such obligations.

17. Effect of Termination on City. Upon termination of this Agreement, the entitlements, conditions of development, limitations on fees and any other terms and conditions vested pursuant to Section 8 herein shall no longer be vested hereby with respect to the Project Site (provided that vesting of such entitlements, conditions or fees may be established for the property pursuant to then-existing planning and zoning laws).

18. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land, and the benefits and burdens shall bind and inure to the benefit of the parties. Developer and every Landowner, purchaser, assignee or transferee of an interest in the Project Site, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, unless the Landowner or subsequent Landowner assignee or transferee has abandoned the project and no party has started construction of the Project, and shall be the beneficiary thereof and a party thereto, but only with respect to the Project Site, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Project Site sold, assigned or transferred to it. A copy of the fully executed Agreement shall be recorded in accordance with Section 29 herein.

19. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Agreement by any party in default hereof.

20. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle. This section shall survive the termination of this Agreement.

21. No Presumption Against Drafter. Developer represents that it has been advised to seek legal advice and counsel from its attorney concerning the legal consequences of this Agreement, that it has carefully read the foregoing Agreement, and knows the contents thereof, and signs the same as its own free act, and that it fully understands and voluntarily accepts the terms and conditions of this Agreement. Both parties have had the opportunity to have this Agreement reviewed and revised by legal counsel, and the parties agree that no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

22. Notices. Notices, demands, or correspondence to the City and Developer shall be sufficiently given if dispatched by prepaid first-class mail to the following addresses:

TO CITY: City Administrator
City of North Bend
P.O. Box 896
North Bend, WA 98045

TO DEVELOPER: Peak View LLC
1800 114th Ave. SE
Bellevue, WA 98004

Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

23. Assignment. This Agreement shall be binding and inure to the benefit of the parties. Developer shall not assign its rights under this Agreement without the written consent of the City, which consent shall not unreasonably be withheld.

24. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action shall lie in King County Superior Court.

25. No Attorneys' Fees. In the event of any litigation or dispute resolution process between the parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of costs or attorneys' fees or expert witness fees.

26. Severability. The provisions of this Agreement are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this Agreement, or the validity of its application to other persons or circumstances.

27. Entire Agreement. This Agreement contains the entire agreement between the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. Changes made in accordance with Section 14 herein shall be incorporated by written amendments or addenda signed by both parties and made.

29. Recording. Developer shall record an executed copy of this Agreement with the King County Auditor, pursuant to RCW 36.70B.190, no later than fourteen (14) days after the Effective Date and shall provide the City with a conformed copy of the recorded document within thirty (30) days of the Effective Date.

By their signatures below, the persons executing this Agreement each represent and warrant that they have full power and authority to bind their respective organizations, and that such organizations have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement.

CITY OF NORTH BEND

By: _____
Mary Miller, Mayor

Peak View, L.L.C.

By: _____
Printed Name: _____
Title: _____

Attest/Authenticated:

Susie Oppedal, City Clerk

Approved As To Form:

Kendra Rosenberg, City Attorney

**** remainder of page intentionally left blank ****

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2023, did personally appear before me, the undersigned Notary Public in and for the State of Washington, _____, who is known to me or produced satisfactory evidence that s/he is the person that executed the foregoing Development Agreement, and acknowledged that s/he signed the Agreement as his or her free and voluntary act for the uses and purposes mentioned therein.

GIVEN under my hand and official seal this ____ day of _____, 2023.

Print name: _____

NOTARY PUBLIC in and for the State of Washington, residing at _____

Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2023, did personally appear before me, the undersigned Notary Public in and for the State of Washington, _____, who is known to me or produced satisfactory evidence that s/he is the person that executed the foregoing Development Agreement, and acknowledged that s/he signed the Agreement as his or her free and voluntary act for the uses and purposes mentioned therein.

GIVEN under my hand and official seal this ____ day of _____, 2023.

Print name: _____

NOTARY PUBLIC in and for the State of Washington, residing at _____

Commission expires: _____

EXHIBIT A:
PROJECT SITE – LEGAL DESCRIPTIONS

Parcel No. 0423089036

PORTION OF SW 1/4 OF NW 1/4 - BEGIN SW CORNER TH S 88-56-06 E ALONG S LINE 311.83 FT TO ELY MGN OF SNOQUALMIE NORTH BEND ROAD & POB TH S 88-56-06 E 710.94 FT TO WLY MGN OF MEADOWBROOK NORTH BEND ROAD TH N 30-24-10 W ALONG SAID WLY MGN 301.66 FT TAP OF TANGENT CURVE TO RIGHT RAD OF 557.09 FT TH ALONG SAID CURVE THRU C/A OF 21-29-07 TO THREAD OF GARDNER CREEK TH WLY ALONG GARDNER CREEK TO ELY MGN OF STATE HIGHWAY R/W TH S 44-09-00 E ALONG SAID ELY MGN TO POB LESS CO ROAD BEING A PORTION OF TRACT C-1 OF MAY 1965 SURVEY

Parcel No. 5418700030

MEADOWBROOK TRACTS LESS CO RD

Parcel No. 5418700005

MEADOWBROOK TRS

Parcel No. 5418700025

MEADOWBROOK TRACTS LESS CO RD

Parcel No. 5418700010

MEADOWBROOK TRACTS

Parcel No. 5418700020

MEADOWBROOK TRACTS LESS CO RD

EXHIBIT B:
SITE PLAN DIFFERENTIATING PHASE 1 FROM PHASE 2

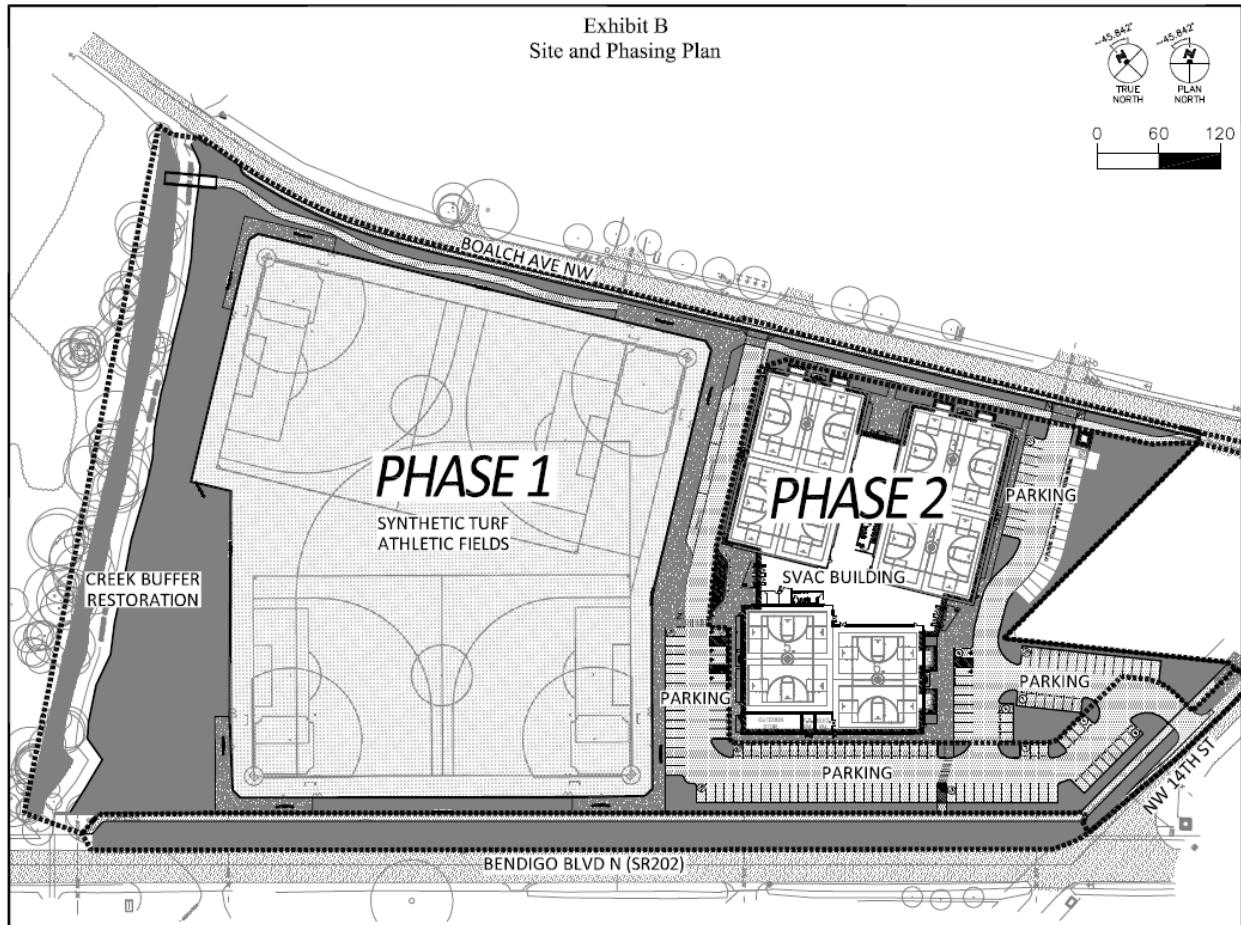
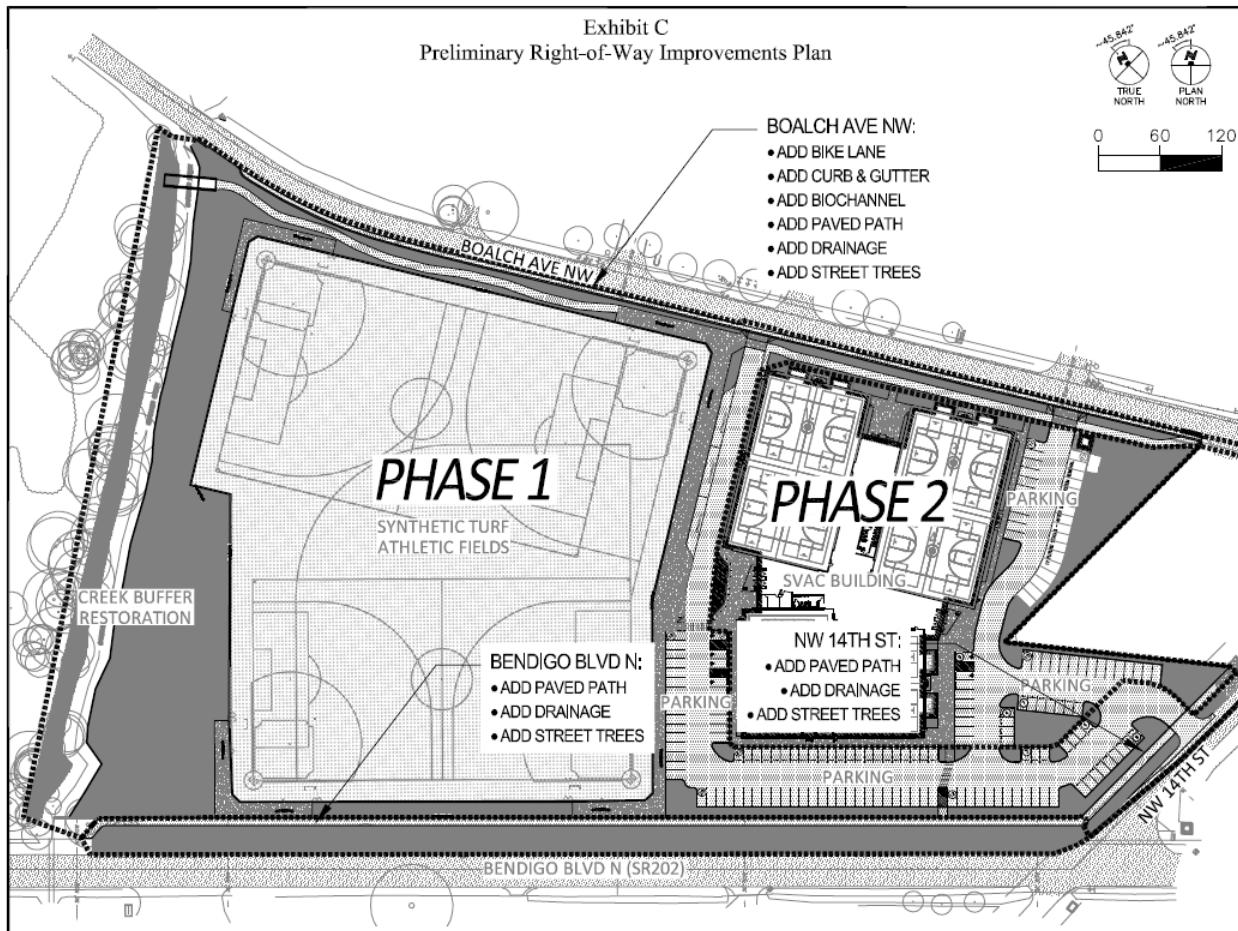


EXHIBIT C:

CONCEPTUAL PLAN SHOWING PROPOSED RIGHT-OF-WAY IMPROVEMENTS



Street Design Sections for Boalch (1/2 street improvements)

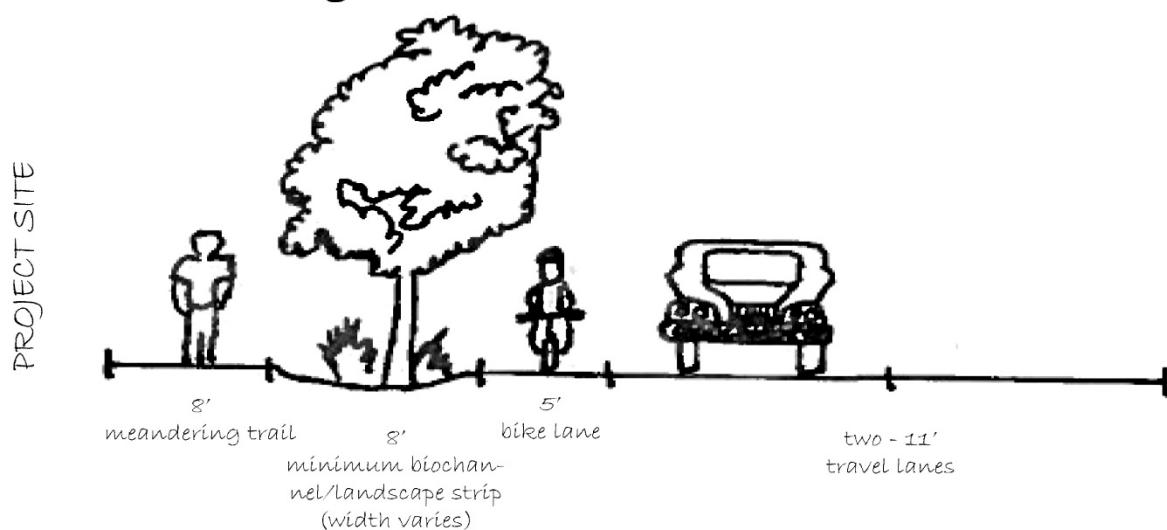
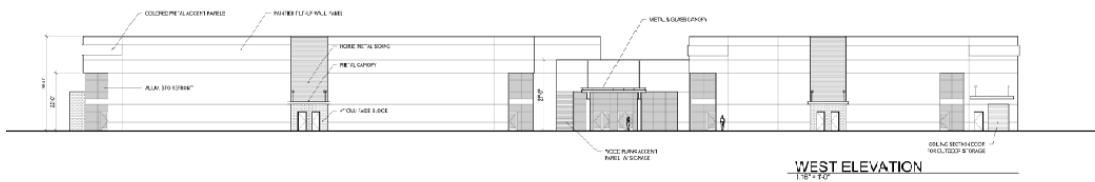
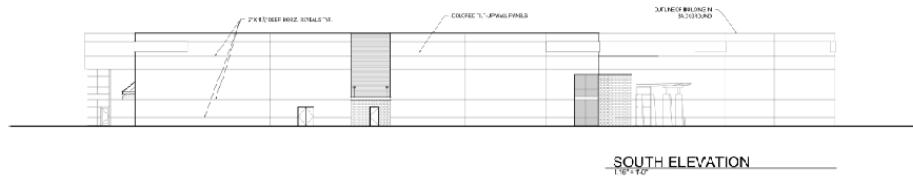


EXHIBIT D:
ELEVATIONS SHOWING PROPOSED DESIGN OF BUILDING



ENGERT
ARCHITECTURE
LLC
 1100 SECOND AV
 SUITE 200
 98021-3827
engertarchitecture.com



SNOQUALMIE VALLEY
ATHLETIC CENTER
 1422 BENDINGO BLVD. N.
 NORTH BEND, WASHINGTON 98024

CONSULTANT

STAMP

EDITIONS

PROJECT DRAWING
SCHEMATIC

DATE: 08/2015
 DRAWN: PE
 PROJECT NO: 9501
 APPROVED: PE
 SHEET TITLE: EXTERIOR
 ELEVATIONS

A3.1

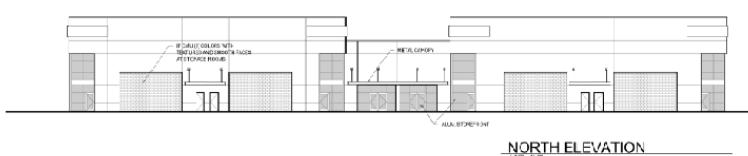
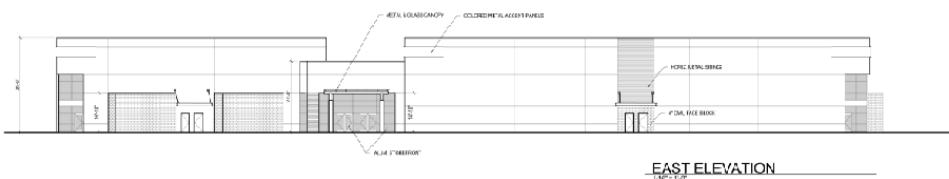


EXHIBIT E:
PHASE 1A RESTROOM PLAN

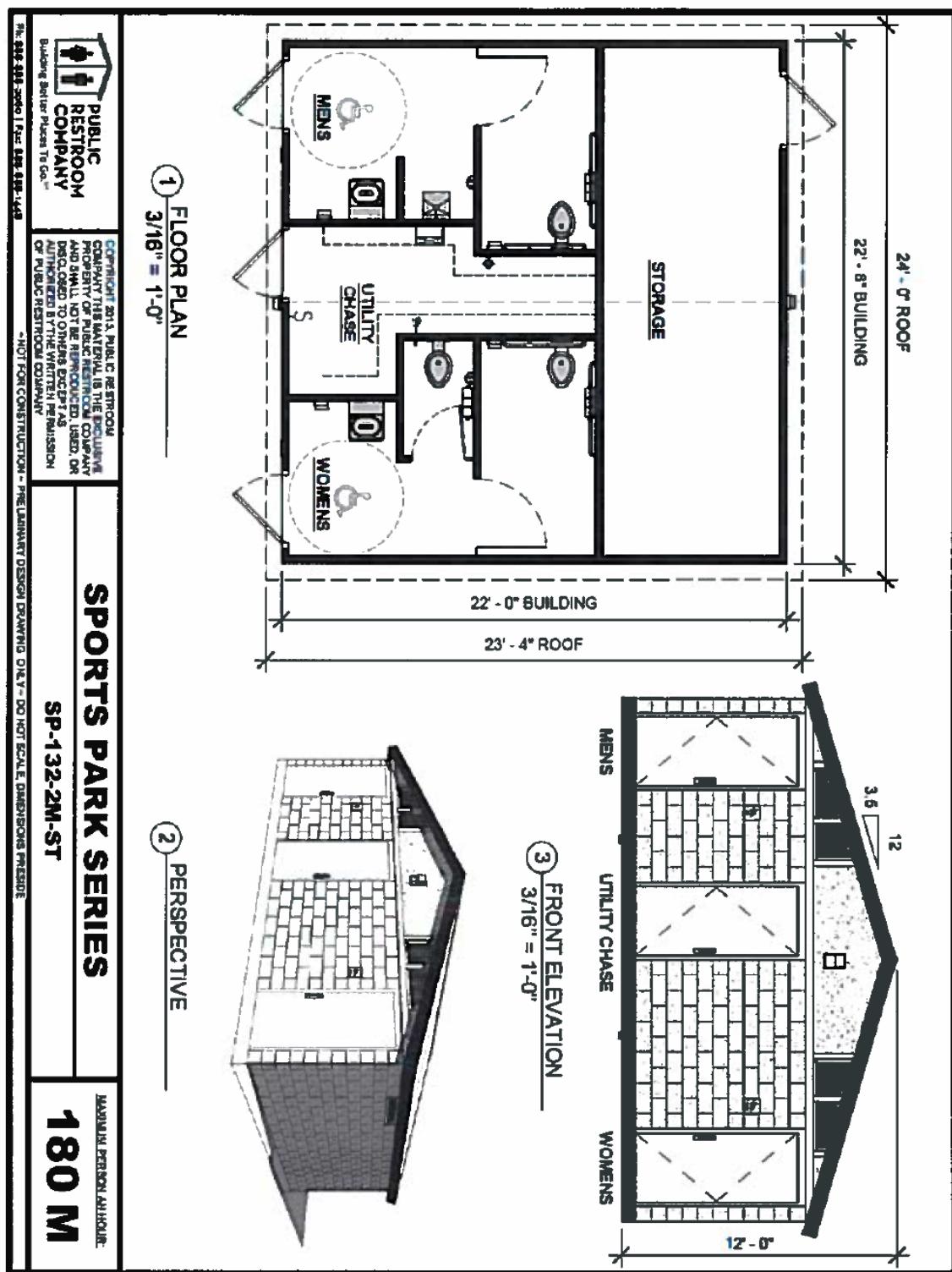


EXHIBIT F:
PHASE 1 COMPLETION PUNCHLIST

DRAFT



Prepared by : Daniel Turple

SVAA PUNCH LIST

ROADWAY, STORM SEWER, SANITARY SEWER, AND WATER MAIN PUNCH LIST

LEGEND	
ITEM NUMBERS	
1 - 100	GENERAL
101 -199	ROADWAY
201 - 299	STORM
300 - 399	SEWER
401 - 499	WATER

	ITEM NO.	ITEM DESCRIPTION
GENERAL		
	001	Submit asbuilts for review, once asbuilts are acceptable the city will ask for GIS/mylars per NBMC
	002	Exposed soils around save trees (phase 2 area) needs to be stabilized and trees need a risk assessment and letter provided to city via contractor's arborist. Trees have exposed soils and area needs to be restored
	003	Contractor needs to stabilize areas that were disturbed in phase 2, currently has exposed soils
	004	Privacy fence for outdoor restrooms were removed, need to reinstall privacy fence
	005	All landscape needs to be completed per Mike McCarty email sent on 11/14/22
	006	Clean up/remove all debris behind save trees, currently looks like there is some scrap turf, large sandbags, and pile of dirt/rock
ROADWAY		
	101	Driveway entrance off 14 th street has 2 broken panels in the driveway approach, needs to be removed and replaced
	102	Curb and gutter is cracking in several locations along 14 th street that needs to be removed and replaced, contractor and inspector to identify areas
	103	Curb and gutter is cracking in several locations along boulch ave that needs to be removed and replaced, contractor and inspector to identify areas
	104	ADA path along south side of fields needs to be installed.

	105	Asphalt patch on boulch ave needs to be removed and replaced, asphalt patch is settling
	107	Block wall is not currently installed along asphalt path along boulch ave. see sheet. C 4.63 note (SBW)

	108	Entrance off 14 th street channelization arrows is extremely faded need to re paint
	109	Major ponding in parking stalls along southeastern field, needs to be addressed
	110	Asphalt path along boulch on northwestern part of project is damaged, needs saw cut and replaced
	111	Elk fence needs to be extended apx 10' to the south on the northwestern part of the project to tie into field fence.
	112	Mulch needs to be added behind thickened curb next to CB 020

STORM

	201	Outfall into mitigation area, trash rack is buried in quarry spalls. Expose entire trash rack and line ditch with quarry spalls
	202	CB 020 need to open hatch for inspection
	203	Contractor to install locking bolts on all CB lids
	204	Ditch along SR 202 needs to be grubbed and regraded, this ditch needs to be re-graded because the new culvert was installed and is currently lower then existing ditch and is causing back up on to neighboring properties
	205	SDCO in mitigation area's need to have SDCO and mechanical plugs installed

WATER

	401	Cut chains on side ports of hydrants
	402	Install valve extensions on hydrant foot valves
	403	Pour concrete collar around water valves in Phase 2 limits only per NBPW standards detail W-57
	404	Paint hydrants 2 coats fire hydrant yellow per NBPW 6-17
	405	Install (1) valve marker for foot valves in phase 2 area per NBPW standard detail W-14