


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: June 28, 2021

AGENDA ITEM:	
SmartCap Building B – Temporary Construction and Permanent Emergency Access Easement PA21005	
PREPARED BY:	DIRECTOR APPROVAL:
Chris Holland, Planning Manager	
DEPARTMENT:	
Community Development	
ATTACHMENT:	
<ol style="list-style-type: none"> 1. Preliminary Site Plan 2. City owned parcel map 3. Engineering Design and Development Standards Standard Plan 3-202-002 4. Temporary Construction Easement 5. Permanent Emergency Access Easement 	
BUDGET CODE:	AMOUNT:
SUMMARY:	

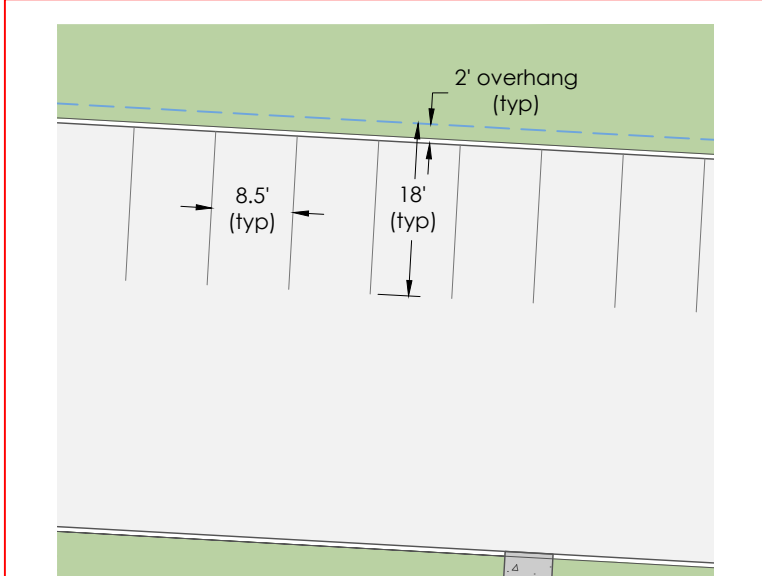
SmartCap is proposing construction of a new 68,425 SF industrial distribution building located on the southeast corner of 152nd Street NE & 40th Avenue NE (APN 31053300203300). SmartCap has requested the City grant a temporary construction easement and permanent emergency access easement over City owned property located between SmartCap Buildings A & B. Specifically, in order to meet Building and Fire codes SmartCap Building B would need to obtain a permanent emergency access easement over the city owned parcel (APN 31053300206300).

The City’s parcel contains the stormwater conveyance line to the regional stormwater ponds. If City Council agrees in granting both a temporary construction easement and a permanent emergency access easement over the city owned parcel, the Public Works Department recommends the following conditions of approval:

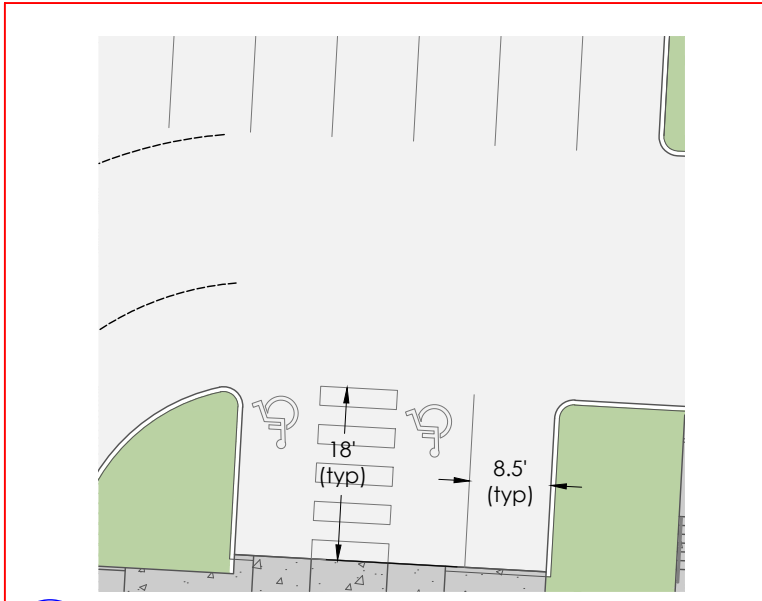
1. The existing bollards adjacent to 152nd Street NE right-of-way shall be retained or replaced in-kind, to avoid the potential for access to the SmartCap parcel via 152nd Street NE.
2. Bollards shall be installed at the north and south end of the proposed parking areas in order to prevent vehicular access to the city parcel via the SmartCap site.
3. The proposed easement area of the City parcel shall be paved in accordance with Marysville Engineering Design and Development Standards Standard Plan 3-202-002. Existing catch basin lids shall be raised to be flush with the pavement.

<p>RECOMMENDED ACTION: Staff recommends Council authorize the Mayor to sign the Temporary Construction Easement and Permanent Emergency Access Easement and record with the Snohomish County Auditor.</p> <p>RECOMMENDED MOTION: I move to authorize the Mayor to sign the Temporary Construction Easement and Permanent Emergency Access Easement and record with the Snohomish County Auditor.</p>
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A PORTION OF SECTION 33, TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M.



1 TYPICAL 8.5X18 STALL W/2' OVERHANG DETAIL
Scale 1" = 20'



2 TYPICAL 8.5X18 ADA STALL DETAIL
Scale 1" = 20'

PARKING CALCULATIONS

Warehouse Use (1 space/2,000)	63,293 sf	32 Spaces
Office Building (1 space/400sf)	5,132 sf	13 Spaces
Parking Required		45 Spaces
Parking Provided		58 Spaces
Compact Parking		55 Spaces
ADA Accessible Parking		3 Spaces

BICYCLE PARKING CALCULATIONS

Bicycle Parking (5% of Vehicle Spaces)	5% of 45 Spaces
Bicycle Parking Provided	3 Bicycle Stalls

DEVELOPMENT STANDARDS

Zoning	LI
Minimum Street Setback	None
Minimum Interior Setback	None
Maximum Base Height	45'
Maximum Impervious Surface	85%

LANDSCAPE DATA

Total Site Area	185,662.2 sf (4.26 ac)
Landscaping Required Total Required (15% of Total Area)	27,849 sf
Landscaping Provided Total Landscaping	31,825 sf

SIGNS

All signs are to comply with MMC 22C.160.160(1)

**AQUIFER RECHARGE/
WELL HEAD PROTECTION**

SOILS

Norma Loam;
Hydrologic Soil Group: B/D

**CALL AT LEAST 2
BUSINESS DAYS
BEFORE YOU DIG
1-800-424-5555**

BUILDING DESIGNATIONS (Interior Area)

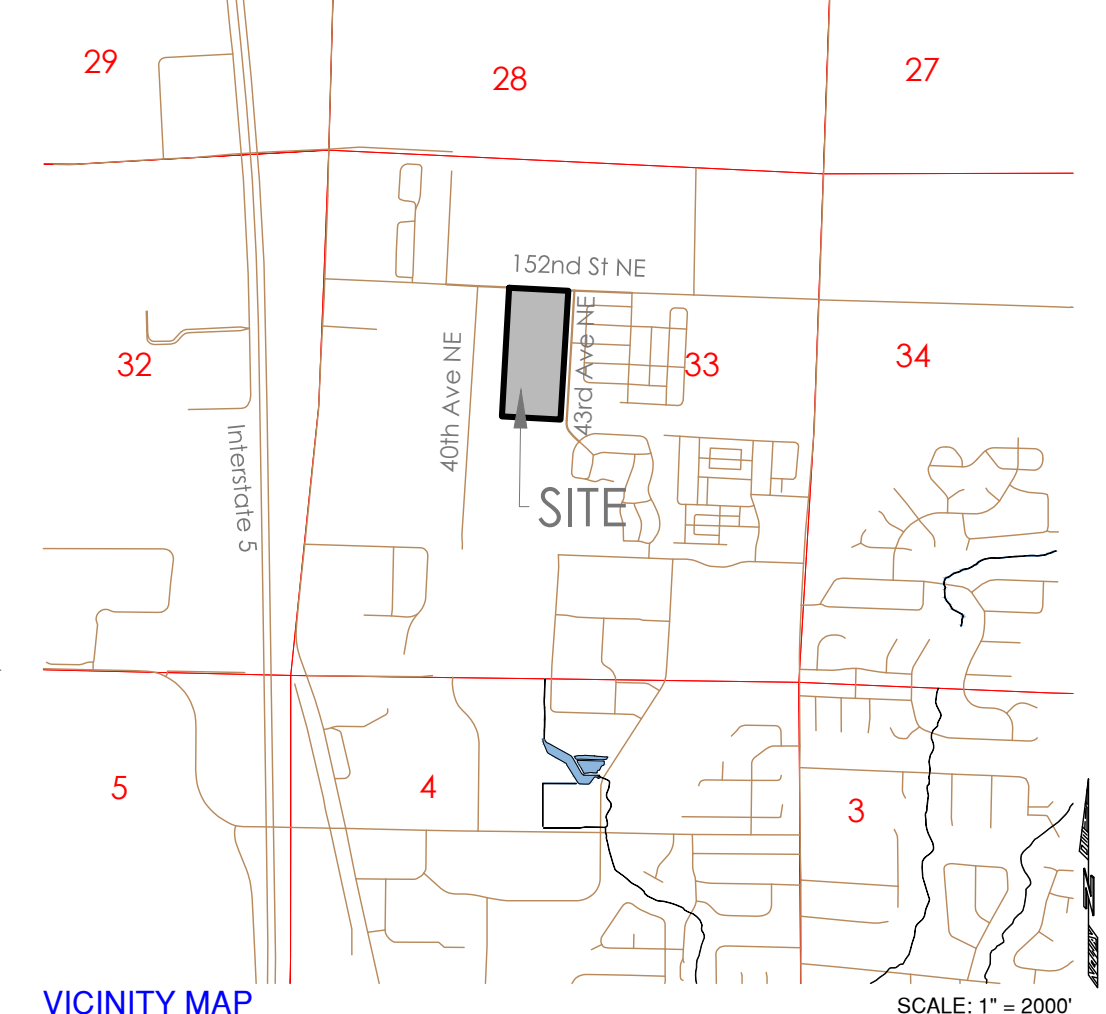
Building B	Office	5,132 sf*
	Warehouse	63,290 sf*
	Total	68,425 sf*

*Note: Areas tabulated are for the interior portion of the buildings consistent with architectural plans. Building Footprint Areas are represented on site plan for stormwater management calculations.

LAND DISTURBING AREA

TOTAL SITE AREA B	185,662.2 sf (4.26 ac)
Impervious Area	
Aisle / Parking B	81,446 sf
Sidewalk B	3,539 sf
Concrete Trash Pad B	427 sf
PGIS Total B	85,412 sf
Roof A	68,425 sf
Total Impervious B	153,837 sf (67%)
Land Disturbing Activity	
Conceptual Area of Disturbance B	185,662.2 sf (4.26 ac)

- NOTES**
- Where illuminated signs and illuminated areas are permitted, such illuminating devices shall be shaded and/or directed so as not to visibly create a nuisance to any property in a residential zone classification. Residential zoning is located to the east of the proposed development.
 - Mechanical equipment located on the roof, facade or external portions of a building shall be architecturally screened so as not to be visible from adjacent properties at street level or the public street.
 - Equipment or vents which generate noise or air emissions shall be located on the opposite side of the building from adjoining residentially designated properties.
 - Industrial and exterior lighting shall not be used in such a manner that it produces glare on public highways. Arc welding, oxy-fuel torch cutting, or similar processes shall be performed so as not to be seen from any point beyond the outside of the property.
 - The storage and handling of inflammable liquids, liquefied petroleum gases, and explosives shall comply with rules and regulations falling under the jurisdiction of the city's fire chief, and the laws of the state of Washington. Bulk storage of inflammable liquids below ground shall be permitted, and the tanks shall be located not closer to the property line than the greatest dimension (diameter, length or height) of the tank.
 - Provisions shall be made for necessary shielding or other preventive measures against interference as occasioned by mechanical, electrical and nuclear equipment, and uses or processes with electrical apparatus in nearby buildings or land uses.
 - Liquid and solid wastes and storage of animal or vegetable waste which attract insects or rodents or otherwise create a health hazard shall be prohibited. No waste products shall be exposed to view from eye level from any property line in an industrial district.
 - All necessary power lines, telephone wires, television cables, fire alarm systems and other communication wires, cables or lines shall be placed in underground location either by direct burial or by means of conduit or duct. All such underground installations or systems shall be approved by the appropriate utility company and shall adhere to all governing applicable regulations including, but not limited to, the applicable City and State regulations and specific requirements of the appropriate utility pursuant to MMC Section 22G.120.270.



VICINITY MAP SCALE: 1" = 2000'

LEGAL DESCRIPTION
THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 31 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN; EXCEPT COUNTY ROAD (152ND ST NE); AND EXCEPT THE WESTERLY 20 FEET AS CONDEMNED IN SNOHOMISH COUNTY SUPERIOR COURT CASE NO.04-2-10056-7.

DATUM & BENCHMARK
VERTICAL DATUM IS NAVD88 PER WSDOT BMS1005-79.

PUBLISHED VALUE: 107.565';
VRS OBSERVATIONS: 107.29';
SURVEY DATA WERE RAISED BY 0.275 TO MATCH BM.

HORIZONTAL DATUM:
LOCAL GROUND SYSTEM BASED ON WA SPCS NORTH ZONE, NAD83/2011

COMBINED SCALE FACTOR: 0.999940867080
TO OBTAIN GROUND COORDINATES FROM STATE PLANE GRID, SCALE BY 1.000059136414909 FROM THE ORIGIN AND THEN SUBTRACT 350,000 FROM THE NORTHINGS AND 1,200,000 TO THE EASTINGS, AND THEN SCALE BY 0.999940867080 FROM THE ORIGIN.

TO OBTAIN GROUND COORDINATES FROM STATE PLANE GRID, ADD 350,000 TO THE NORTHINGS AND 1,200,000 TO THE EASTINGS, AND THEN SCALE BY 0.999940867080 FROM THE ORIGIN.
BASIS OF BEARINGS IS THE NORTH LINE OF SECTION 33, TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M. AS SHOWN ON SNOHOMISH COUNTY RECORD OF SURVEY FILED UNDER A.F. NO. 200305225002

SURVEY NOTES (BENCHMARK Surveyors, LLC)
The survey data along 152nd St. NE, 43rd Ave NE, East of Bern and South of the South Property line were created by David Evans and Associates, Inc. Benchmark Surveying, LLC does not accept liability for the survey data and topography shown hereon. Benchmark Surveying, LLC is finalizing the Alpha of the Client's request utilizing the existing survey data provided by David Evans and Associates Inc.

PROJECT INFORMATION

Tax Parcel Numbers	310533-002-033-00
Total Area	185,662.2 sf (4.26 ac)
GPP Designation	Light Industrial
Existing Zoning	Light Industrial
Proposed Land Use	Light Industrial

LOCAL SERVICES

Sewage Disposal:	City Of Marysville
Water District:	City Of Marysville
School District:	Marysville School District 25
Fire District:	City Of Marysville
Post Office:	Marysville
Electric:	
Phone:	
Cable:	
Gas:	

Sheet List Table

Sheet Number	Sheet Title
Planning - Building B: P3	
P1	Preliminary Site Overview Plan - Building B
P2	Preliminary Site Plan - Building B
P3	Existing Conditions - Building B
Construction - Building B: C12	
C1	Civil Site Overview Map - Building Site B
C2	Construction Notes - Building Site B
C3	Clearing & TESC Plan - Building Site B
C4	Grading Plan - Building Site B
C5	Grading & TESC Details - Building Site B
C6	Site Cross Sections - Building Site B
C7	152nd St. NE Frontage Improvements Plan - Building Site B
C8	40th Ave. NE Frontage Improvements Plan - Building Site B
C9	Stormwater Management Overview Plan - Building Site B
C10	Sewer and Water Plans - Building Site B
C11	Sewer Profile & Details - Building Site B
C12	Water Details - Building Site B

CONTACT PERSON
Land Technologies Inc.
Merle Ash
18820 3rd Ave. NE
Arlington, WA 98223
360.652.9727
merle@landtechway.com

SITE ADDRESS
4100 152nd St NE
Marysville, WA 98271

ENGINEER
Land Technologies, Inc.
Tyler S. Foster, PE
18820 3rd Ave. NE
Arlington, WA 98223
360.652.9727
Tyler@landtechway.com

OWNER
SmartCap DC North B QO2B, LLC.
8201 164th Ave NE, Ste 105
Redmond, WA 98052

APPLICANT
SmartCap
Robert Shipley
8201 164th Ave NE, Ste 105
Redmond, WA 98052
robert@smartcapgroup.com
c. 425.422.3484

**CERTIFIED EROSION
CONTROL SPECIALIST**

SURVEYOR
Benchmark Surveying, LLC.
Joseph R. Dierhorn
1191 S 44th Dr SE
Everett, WA 98208
206.396.6252

LAND TECHNOLOGIES
18820 Third Avenue, N.E.
Arlington, WA 98223
360-652-9727

PROJECT LEAD: Merle
CHECKED BY: Tyler
DRAWN BY: Alex, Mer
APPLICATION DATE: -
SITE APPROVAL DATE: -
REVISION DATE: -
LDA APPROVAL: -
AS BUILT: -

4100 152nd Marysville
4100 152nd St NE, Marysville, WA 98271
A PORTION OF SECTION 33, TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M.

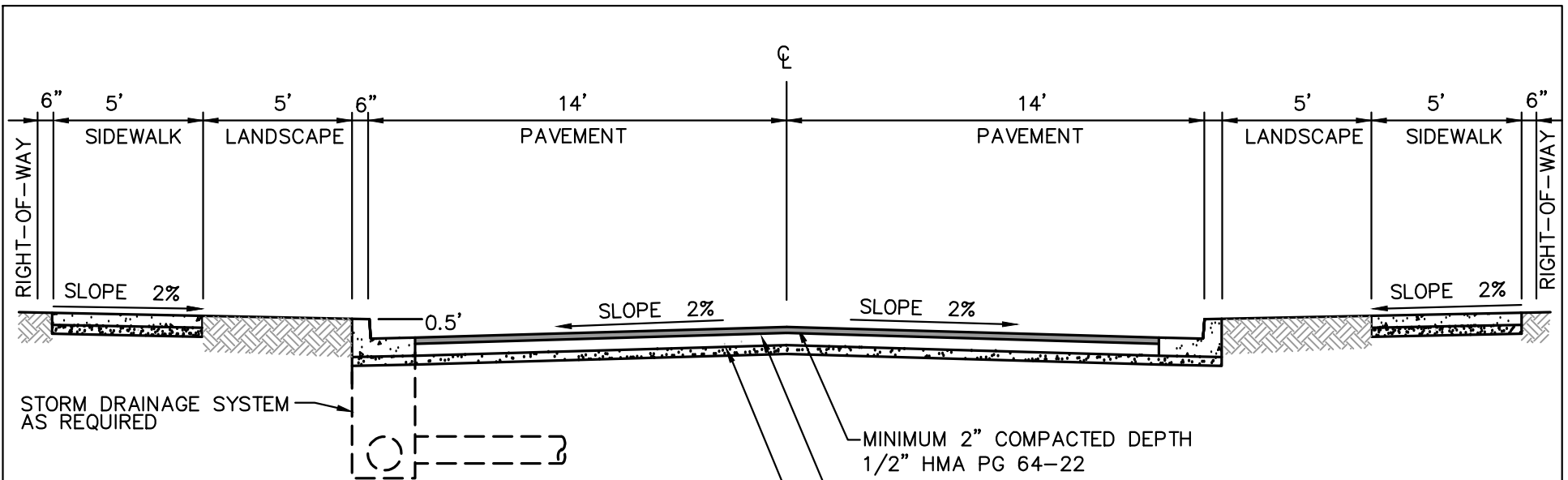
Smart Cap
8201 164th Ave NE, Ste 105, Redmond, WA 98052

PRELIMINARY SITE OVERVIEW PLAN - BUILDING B

SHEET
P1 of P3
24x36
PA21-005

© Copyright 1993-2021
MAKING A WAY OUT OF NO WAY





STORM DRAINAGE SYSTEM
AS REQUIRED

NOTES:

1. CURB & GUTTER SHALL BE CEMENT CONCRETE BARRIER CURB & GUTTER PER SECTION 3-514.
2. CURB AND SIDEWALK JOINTS AS PER MARYSVILLE SECTION 3-515.
3. STREET LIGHTING SHALL BE DETERMINED BY LOCATION AS PER MARYSVILLE SECTION 3-506.
4. THIS DRAWING ILLUSTRATES A MINIMUM ASPHALT CONCRETE ROAD SECTION. ACTUAL SURFACING DESIGN FOR ARTERIALS AND COMMERCIAL ACCESS STREETS SHALL BE BASED ON SOILS AND TRAFFIC ANALYSIS.
5. THIS DRAWING ILLUSTRATES A MINIMUM ASPHALT CONCRETE ROAD SECTION. DESIGN FOR RESIDENTIAL ACCESS STREETS SHALL BE IN ACCORDANCE WITH SECS. 3-401 AND 3-402. ADDITIONAL SUBGRADE TREATMENT MAY BE REQUIRED DEPENDING ON SOIL CONDITIONS.
6. THE RIGHT-OF-WAY WIDTH SHALL BE WIDENED AN ADDITIONAL 5 FT MIN FOR PLACEMENT OF FIRE HYDRANT AND MAILBOX CLUSTER INSTALLATION.
7. DRAINAGE REQUIRED BEHIND WALK IN CUT AREAS.
8. REVERSE SLOPE SIDEWALKS ARE ALLOWED SUBJECT TO PLAN REVIEW.

MINIMUM 2" COMPACTED DEPTH
1/2" HMA PG 64-22

MINIMUM 4" COMPACTED DEPTH ASPHALT
TREATED BASE (A.T.B.)

3" COMPACTED DEPTH CRUSHED
SURFACING BASE COURSE

APPROVED BY

12/28/16

MARYSVILLE CITY ENGINEER

DATE



LOCAL ACCESS STREET
50' RIGHT-OF-WAY
COMBINED CURB, GUTTER
& SIDEWALK

STANDARD PLAN 3-202-002

RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:

FOSTER GARVEY P.C.
1111 Third Avenue, Suite 3000
Seattle, Washington 98101
Attention: Bryan Helfer

TEMPORARY CONSTRUCTION AGREEMENT

GRANTOR:	City of Marysville, a Washington municipal corporation
GRANTEE:	SMARTCAP DC North B QOZB LLC, a Washington limited liability company
ABBREVIATED LEGAL DESCRIPTION:	N/A Complete legal description on <u>Exhibit A.</u> PTN SEC 33 TWP 31N RGE 5E SE QTR NW QTR, SNOHOMISH COUNTY Complete legal description on <u>Exhibit B.</u>
ASSESSOR'S TAX PARCEL ID NOs.:	31053300206300; 31053300203300

TEMPORARY ACCESS AND CONSTRUCTION EASEMENT

THIS TEMPORARY ACCESS AND CONSTRUCTION EASEMENT (the “**Agreement**”) is made as of this ____ day of _____ 2021 (the “**Effective Date**”), by and between the CITY OF MARYSVILLE, Washington municipal corporation (“**City**” or “**Grantor**”), and SMARTCAP DC NORTH B QOZB LLC, a Washington limited liability company (“**Grantee**”).

RECITALS

A. City is the fee simple owner of a certain parcel of real property located in Marysville, Washington and legally described in Exhibit A attached hereto and incorporated herein by reference (the “**Grantor Parcel**”).

B. Grantee is the fee simple owner of a certain parcel of real property located in Marysville, Washington and legally described in Exhibit B attached hereto and incorporated herein by reference (“the **Grantee Parcel**”), which parcel is adjacent to the west of Grantor Parcel. The Grantor Parcel and the Grantee Parcel are occasionally referred to herein collectively as the “**Parcels.**”

C. Grantee intends to construct new improvements on the Grantee Parcel, including, but not limited to, an office and warehouse building consisting of approximately 68,425 square feet, related parking and other improvements (“**Grantee’s Project**”). Grantee desires access to the Grantee Parcel over the Grantor Parcel in connection with Grantee’s Project and its application for the temporary and permanent use of the Grantee Parcel.

D. City has requested that Grantee enter into this Agreement whereby the City, as Grantor, conveys to Grantee certain temporary easements and rights benefitting the Grantee Parcel as described herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the parties incorporate the Recitals herein and further agree as follows:

1. Temporary Construction Easement.

(a) Grant of Temporary Construction Easement. Grantor hereby grants and conveys to Grantee and Grantee’s successors and assigns, for the benefit of the Grantee Parcel and for the purposes set forth in Section 2(b) below, a temporary, non-exclusive easement (the “**Temporary Construction Easement**”) over, along, in, upon, under and through a portion of the Grantor Parcel identified as the “Temporary Construction Easement” in Exhibit C attached hereto and by this reference incorporated herein.

(b) Use of Construction Easement Areas. For the duration of the Temporary Construction Easement, Grantee, and all persons who now or hereafter own or hold a fee interest in all or any portion of the Grantee Parcel, may enter and use the Temporary Construction Easement as may be necessary for construction of Grantee’s Project and the installation and construction of related improvements on the Grantee Parcel. This right of access includes vehicular and pedestrian ingress and egress, and for the parking of vehicles and equipment and supplies, in connection with the construction of improvements on the Grantee Parcel. All construction work shall be at the sole cost and expense of the owner of the Grantee Parcel.

(c) Restoration. Prior to the termination of the Temporary Construction Easement, Grantee shall restore and improve the Grantor Parcel to a condition equal to or better than the condition which existed immediately prior to the Effective Date. Grantee's restoration obligations shall include paving a portion of the Grantor Parcel to provide permanent emergency access from the 152nd right of way to adjacent property owned by City and Grantee respectively ("**Grantee's Restoration Work**"). Such paving shall be constructed in accordance with Marysville Engineering Design and Development Standards Standard Plan 3-202-002.

3. No Liens. Grantee will not permit any mechanic's lien, materialmen's lien, or other lien of any kind on the Grantor Parcel by anyone claiming by reason of any act or omission of Grantee and its permittees.

4. Duration of Easement. The Temporary Construction Easement shall terminate and be of no further force or effect on the earlier of: (a) the date upon which the construction of Grantee's Project on the Grantee Parcel is completed, Grantee has completed Grantee's Restoration Work, and City and any other applicable governmental authority having jurisdiction over the Property has approved and accepted the same in all regards; or (b) five (5) years from the date of the City granting Administrative Site Plan Approval. While the rights under this Agreement shall automatically terminate as provided herein, at the request of the Grantor, the parties shall enter into and record an appropriate instrument memorializing such termination.

5. Indemnification. The Grantee shall defend, indemnify, and save the Grantor harmless from any and all claims and causes of action suffered by any person, persons or property by reason of, arising out of, or resulting from the use of the Temporary Construction Easement by Grantee, its successors and assigns.

6. Attorney Fees and Costs. In the event a suit, action, arbitration or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the US Bankruptcy Code, is instituted to interpret or enforce any provisions of this Agreement, or with respect to any dispute relating to this Agreement, the substantially prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees as determined by the judge or arbitrator at trial or arbitration, as the case may be.

7. Governing Law; Venue. The interpretation and performance of this Agreement shall be governed by the laws of the State of Washington, with venue in Snohomish County, Washington.

8. Rights Run With Land. It is the intent of the parties that, during the term hereof, this Agreement shall run with the land described herein, and shall be binding upon the parties and their respective successors, and assigns. This Agreement and the rights and obligations arising hereunder shall be deemed appurtenant to the Parcels. Grantor warrants and covenants that Grantor is the fee simple owner of the Grantor Parcel and the Construction Easement Areas and has all right, title and authority to grant the easements granted hereunder.

9. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreements, arrangements, and understandings relating to the subject matter of this Agreement. This Agreement may be amended only in writing signed by the parties hereto.

10. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed and original, but all of which together shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

GRANTOR:

GRANTEE:

CITY OF MARYSVILLE,
a Washington municipal corporation

SMARTCAP DC NORTH B QOZB LLC,
a Washington limited liability company

By _____

By _____

Name: _____

Name: _____

Its: _____

Its: _____

STATE OF WASHINGTON

COUNTY OF SNOHOMISH

ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it on behalf of the City of Marysville.

Dated this ____ day of _____, 2021.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at _____

My appointment expires _____

[Signatures continue on next page]

STATE OF WASHINGTON

COUNTY OF KING

ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of The SmartCap Group, Inc., a Washington corporation, the Manager of SMARTCAP DC North B QOZB LLC, a Washington limited liability company, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, 2021.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at _____

My appointment expires _____

EXHIBIT A

Legal Description

Section 33 Township 31 Range 05 Quarter NW WLY 20 FT FDP AS MEAS AT R/A'S TO W BOUND
THOF E1/2 SE1/4 NW1/4 LESS ESE FOR DITCH DD NO 5 AF NO. 236006 PER SCC 04-2-10056-7
REC AFN 200406090082

EXHIBIT B

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SNOHOMISH, STATE OF WA, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF THE NORTHEAST QUARTER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33;

THENCE NORTH 89°34'16" EAST ALONG THE 1/16 LINE 358.73 FEET TO THE EAST LINE OF 40TH AVENUE NORTHEAST AND POINT OF BEGINNING;

THENCE SOUTH 0°14'50" WEST ALONG SAID EAST LINE 670.22 FEET;

THENCE NORTH 89°41'21" EAST 284.48 FEET TO THE EAST LINE OF THE WEST HALF OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER;

THENCE NORTH 0°14'50" WEST ALONG SAID EAST LINE OF WEST HALF 670.87 FEET TO 1/16 LINE;

THENCE SOUTH 89°34'16" WEST ALONG 1/16 LINE 278.73 FEET TO POINT OF BEGINNING;

EXCEPT COUNTY ROAD ON NORTH SIDE.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

31053300203300

EXHIBIT C-1

Legal Description of Temporary Construction Easement

TEMPORARY CONSTRUCTION EASEMENT

(LEGAL DESCRIPTION)

THE NORTH HALF OF THE EAST 20.00 FEET OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M

EXCEPT COUNTY ROAD (152ND ST NE)

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

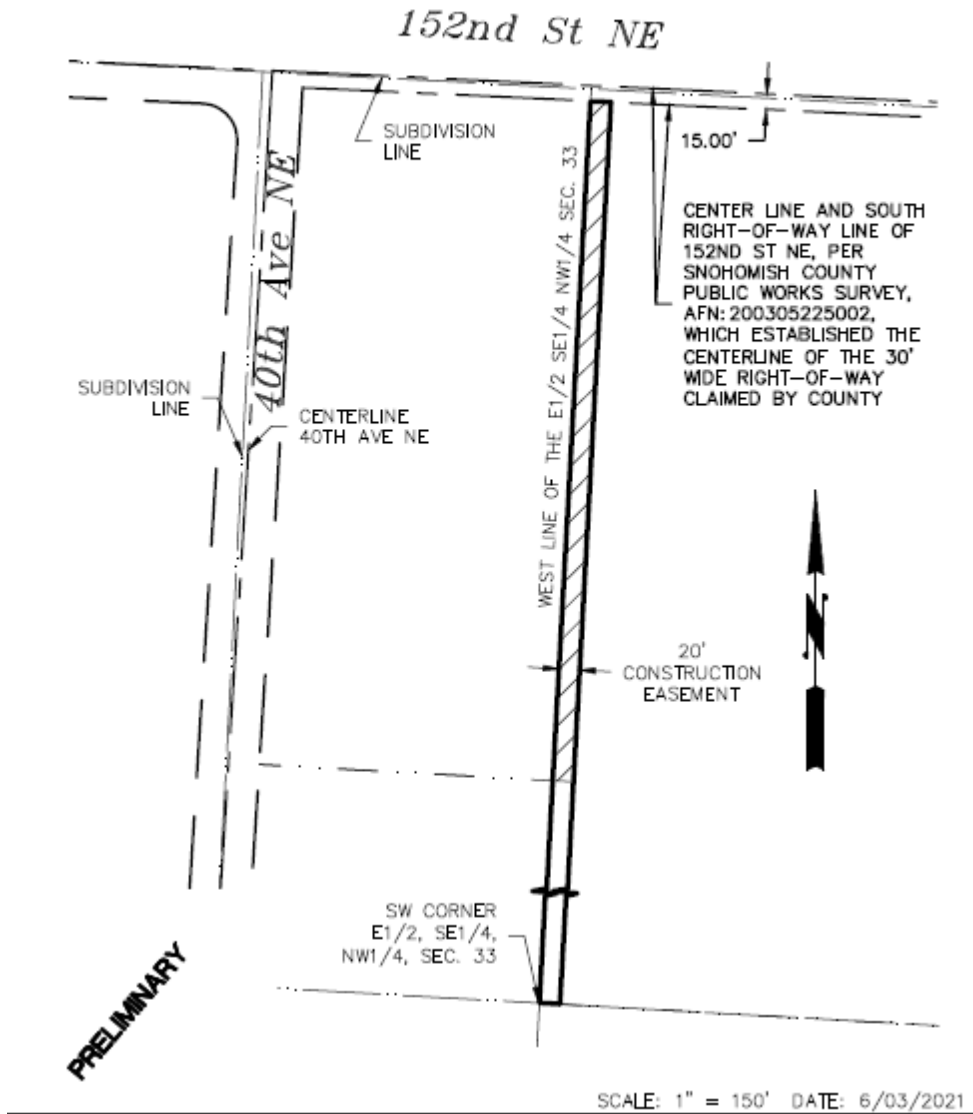
(CONTAINING APPROXIMATELY 13,187 SQ. FT.)

BENCHMARK SURVEYING LLC
SMARTCAP DC NORTH – 152ND St NE
6/03/2021

EXHIBIT C-2

Depiction of Temporary Construction Easement

TEMPORARY CONSTRUCTION EASEMENT



RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:

FOSTER GARVEY P.C.
1111 Third Avenue, Suite 3000
Seattle, Washington 98101
Attention: Bryan Helfer

PERMANENT EMERGENCY ACCESS EASEMENT AGREEMENT

GRANTOR:	City of Marysville, a Washington municipal corporation
GRANTEE:	SMARTCAP DC North B QOZB LLC, a Washington limited liability company
ABBREVIATED LEGAL DESCRIPTION:	N/A Complete legal description on <u>Exhibit A.</u> PTN SEC 33 TWP 31N RGE 5E SE QTR NW QTR, SNOHOMISH COUNTY Complete legal description on <u>Exhibit B.</u>
ASSESSOR'S TAX PARCEL ID NOs.:	31053300206300; 31053300203300

PERMANENT EMERGENCY ACCESS EASEMENT

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RECITALS

A. City is the fee simple owner of a certain parcel of real property located in Marysville, Washington and legally described in Exhibit A attached hereto and incorporated herein by reference (the “**Grantor Parcel**”).

B. Grantee is the fee simple owner of a certain parcel of real property located in Marysville, Washington and legally described in Exhibit B attached hereto and incorporated herein by reference (“the **Grantee Parcel**”), which parcel is adjacent to the west of Grantor Parcel. The Grantor Parcel and the Grantee Parcel are occasionally referred to herein collectively as the “**Parcels**.”

C. Grantee intends to construct certain new improvements on the Grantee Parcel including, but not limited to, an office and warehouse building consisting of approximately 68,425 square feet, related parking and other improvements (“**Grantee’s Project**”).

D. Simultaneous with the execution of this Agreement and in connection with Grantee’s application to the City, City has requested that the parties execute a temporary construction easement whereby, after the completion of Grantee’s work (“**Temporary Construction Easement**”), Grantee agreed to restore the Grantor Parcel and pave a portion of the Grantor Parcel (“**Grantee Work**”).

E. After Grantee’s completion of the Grantee Work, Grantee desires to acquire and Grantor desires to convey an easement for emergency vehicle access on, over, and through the Grantor Parcel to serve the Grantee Parcel as required by a condition of development approval imposed on the Grantee Property by the City.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the parties incorporate the Recitals herein and further agree as follows:

1. Permanent Emergency Access Easement.

(a) Grant of Emergency Access Easement. Grantor hereby grants and conveys to Grantee and Grantee’s successors and assigns, for the benefit of the Grantee Parcel, a 20-foot wide permanent non-exclusive easement herein (the “**Emergency Access Easement**”) appurtenant on, over, and through that portion of the Grantor Parcel legally described Exhibit C-1 and on depicted on Exhibit C-2 attached hereto and by this reference incorporated herein (the “**Emergency Access Easement Area**”).

(b) Use of Emergency Access Easement Area. Grantee may use the Emergency Access Easement Area as a means of providing access to police, emergency medical, fire, and other emergency service personnel and providers (collectively, “**First Responders**”) to obtain access to the Grantee Parcel.

2. Maintenance and Repair.

(a) Pursuant to a temporary construction easement to be recorded concurrent with this instrument, the Grantee shall pave the Emergency Access Easement Area. Upon Grantor's acceptance of Grantee's paving work, the Grantor shall be responsible for the upkeep and maintenance of the Emergency Access Easement Area on the property at Grantor's sole cost and expense. Such upkeep, maintenance and installation shall be consistent with prudent maintenance standards, and such upkeep, maintenance and installation shall be conducted from time to time as reasonably necessary. All such access and related upkeep, maintenance and installation activities shall be performed so as not to interfere with Grantee's use and operation of the Grantee Parcel and Emergency Access Easement Area (other than minor interference that is reasonable and immaterial to the other Grantee's use and operations).

3. Indemnification. The Grantee shall defend, indemnify, and hold the Grantor (and all of Grantor's officers, officials, employees, and volunteers) harmless from any and all claims, injuries, damages, losses, or suits, including reasonable attorney's fees if any, arising out of the use of the Emergency Access Easement by the Grantee and/or Grantee's guests and invitees, except for injuries and damages caused by the negligence or willful misconduct of the Grantor.

4. Attorney Fees and Costs. In the event a suit, action, arbitration or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the US Bankruptcy Code, is instituted to interpret or enforce any provisions of this Agreement, or with respect to any dispute relating to this Agreement, the substantially prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, as determined by the judge or arbitrator at trial or arbitration, as the case may be.

5. Governing Law; Venue. The interpretation and performance of this Agreement shall be governed by the laws of the State of Washington, with venue in Snohomish County, Washington.

6. Rights Run With Land. It is the intent of the parties that, during the term hereof, this Agreement shall run with the land described herein, and shall be binding upon the parties and their respective successors, and assigns. This Agreement and the rights and obligations arising hereunder shall be deemed appurtenant to the Parcels. Grantor warrants and covenants that Grantor is the fee simple owner of the Grantor Parcel which includes the Emergency Access Easement Area and has all right, title and authority to grant the easements granted hereunder.

7. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreements, arrangements, and understandings relating to the subject matter of this Agreement. This Agreement may be amended only in writing signed by the parties hereto.

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed and original, but all of which together shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

GRANTOR:

GRANTEE:

CITY OF MARYSVILLE,
a Washington municipal corporation

SMARTCAP DC NORTH B QOZB LLC,
a Washington limited liability company

By _____

By _____

Name: _____

Name: _____

Its: _____

Its: _____

STATE OF WASHINGTON

COUNTY OF SNOHOMISH

ss.

I certify that I know or have satisfactory evidence that [_____] is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it on behalf of the City of Marysville.

Dated this ____ day of _____, 2021.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at _____

My appointment expires _____

[Signatures continue on next page]

STATE OF WASHINGTON

COUNTY OF KING

ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of The SmartCap Group, Inc., a Washington corporation, the Manager of SMARTCAP DC North B QOZB LLC, a Washington limited liability company, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, 2021.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at _____

My appointment expires _____

EXHIBIT A

Legal Description

Section 33 Township 31 Range 05 Quarter NW WLY 20 FT FDP AS MEAS AT R/A'S TO W BOUND
THOF E1/2 SE1/4 NW1/4 LESS ESE FOR DITCH DD NO 5 AF NO. 236006 PER SCC 04-2-10056-7
REC AFN 200406090082

EXHIBIT B

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SNOHOMISH, STATE OF WA, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF THE NORTHEAST QUARTER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33;

THENCE NORTH 89°34'16" EAST ALONG THE 1/16 LINE 358.73 FEET TO THE EAST LINE OF 40TH AVENUE NORTHEAST AND POINT OF BEGINNING;

THENCE SOUTH 0°14'50" WEST ALONG SAID EAST LINE 670.22 FEET;

THENCE NORTH 89°41'21" EAST 284.48 FEET TO THE EAST LINE OF THE WEST HALF OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER;

THENCE NORTH 0°14'50" WEST ALONG SAID EAST LINE OF WEST HALF 670.87 FEET TO 1/16 LINE;

THENCE SOUTH 89°34'16" WEST ALONG 1/16 LINE 278.73 FEET TO POINT OF BEGINNING;

EXCEPT COUNTY ROAD ON NORTH SIDE.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

31053300203300

EXHIBIT C-1

Legal Description of Emergency Access Easement Area

EMERGENCY ACCESS EASEMENT
(LEGAL DESCRIPTION)

THE NORTH HALF OF THE EAST 20.00 FEET OF THE EAST HALF OF THE SOUTHEAST
QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 31 NORTH, RANGE
5 EAST, W.M

EXCEPT COUNTY ROAD (152ND ST NE),

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

(CONTAINING APPROXIMATELY 13,787 SQ. FT.)

BENCHMARK SURVEYING LLC
SMARTCAP DC NORTH – 152ND St NE
6/03/2021

EXHIBIT C-2

Depiction of Emergency Access Easement Area

