

AMENDED AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington**

October 4, 2018 – 7:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC

BOARD & COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORT

~~Item 1: CITY MANAGERS MONTHLY REPORT~~

COUNCIL BREAK

CONSENT CALENDAR

Page 1 Item 1 SMALL BUSINESS SATURDAY PROCLAMATION
Motion is to approve the Proclamation recognizing the Saturday after Thanksgiving as Small Business Saturday.

Page 5 Item 2: UTILITY UNDERGROUNDING ON THE SOUTH 216TH STREET
SEGMENT 3 IMPROVEMENTS (11TH AVENUE S TO 20TH AVENUE S):
CONSTRUCTION AGREEMENTS
Motion 1 is to approve the Schedule 74 Project Construction Agreement and Project Plan with Puget Sound Energy for the underground conversion along South 216th Street, Segment 3 (11th Avenue S to 20th Avenue S) and authorize the City Manager to sign the Agreement, substantially in the form as submitted.

Motion 2 is to approve the Joint Trench Agreement for underground conversion of Comcast facilities along South 216th Street, Segment 3 (11th Avenue S to 20th Avenue S) and authorize the City Manager to sign the agreement substantially in the form as submitted.

Motion 3 is to approve the Statement of Work for underground conversion of Century Link facilities along South 216th Street, Segment 3 (11th Avenue S to 20th Avenue S) under Agreement No. 7932 and authorize the City Manager to sign the statement of work substantially in the form as submitted.

Page 59 Item 3: CONSULTANT CONTRACT AMENDMENT #8-GRANT FREDRICKS
Motion is to approve Amendment/Addendum 8 to the Contract with Grant Fredricks, continuing professional consulting services through December 31, 2019, with an increase of \$10,000 for 2018 (bringing the total not-to-exceed amount for 2018 services to \$90,000.00), and authorize the City Manager to sign the contract amendment substantially in the form submitted.

OLD BUSINESS

Page 63 Item 1: INTERLOCAL AGREEMENT (ILA) WITH HIGHLINE COLLEGE FOR
THE COLLEGE WAY CONNECTION PROJECT
Staff Presentation: Chief Operations Officer Dan Brewer

PUBLIC HEARING/CONTINUED PUBLIC HEARING

Page 127 Item 1: DRAFT ORDINANCE APPROVING FEDERAL WAY LINK EXTENSION
(FWLE) TRANSIT WAY AGREEMENT (TWA)
Staff Presentation: Chief Operations Officer Dan Brewer

Page 127 Item 2: DRAFT RESOLUTION APPROVING FWLE DEVELOPMENT
AGREEMENT (DA), AND COLLEGE WAY CONNECTION PROJECT
FUNDING AGREEMENT (FA), CONTINUED
Staff Presentation: Chief Operations Officer Dan Brewer

EXECUTIVE SESSION

NEXT MEETING DATE

October 11, 2018 City Council Study Session

ADJOURNMENT

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Small Business Saturday
Proclamation

ATTACHMENTS:
1. Proclamation

FOR AGENDA OF: October 4, 2018

DEPT. OF ORIGIN: Admin

DATE SUBMITTED: September 27, 2018

CLEARANCES:

- ☐ Community Development _____
- ☐ Marina _____
- ☐ Parks, Recreation & Senior Services _____
- ☐ Public Works _____

CHIEF OPERATIONS OFFICER: _____

- ☐ Legal _____
- ☐ Finance _____
- ☐ Courts _____
- ☐ Police _____
- ☒ City Clerk *PMW*

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to recognize the November 24, 2018 as Small Business Saturday.

Suggested Motion

Motion 1: "I move to approve the Proclamation recognizing the Saturday after Thanksgiving as Small Business Saturday."

Background

Small Business Saturday was created in 2010 in response to small business owners' most pressing need, more customers. Falling between Black Friday and Cyber Monday, it's a day to support the local businesses that create jobs, boost the economy and preserve the neighborhoods around the country. It has since become a well-known, celebrated event on the nation's calendar with support from elected officials and public and private organizations.

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City of Des Moines

ADMINISTRATION
21630 11TH AVENUE SOUTH, SUITE A
DES MOINES, WASHINGTON 98198-6398
(206) 878-4595 T.D.D.: (206) 824-6024 FAX: (206) 870-6540



Proclamation

WHEREAS, according to the United States Small Business Administration, there are currently 28.8 million small businesses in the United States; and

WHEREAS, small businesses employ 48 percent of the employees in the private sector in the United States; and

WHEREAS, on average, 33 percent of consumers' holiday shopping will be done at small, independently-owned retailers and restaurants; and

WHEREAS, 91 percent of all consumers believe that supporting small, independently-owned restaurants and bars is important; and

WHEREAS, 76 percent of all consumers plan to go to one or more small businesses as part of their holiday shopping; and

WHEREAS, Des Moines supports our local businesses that create jobs, boost our local economy and preserve our neighborhoods; and

NOW THEREFORE, THE DES MOINES CITY COUNCIL HEREBY PROCLAIMS the Saturday after Thanksgiving as

SMALL BUSINESS SATURDAY

AND urge the residents of our community, and communities across the country, to support small businesses and merchants on Small Business Saturday and throughout the year.

SIGNED this 4th day of October, 2018.

Matt Pina, Mayor

The Waterland City

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Utility Undergrounding on the South 216th Street Segment 3 Improvements (11th Avenue S to 20th Avenue S.): Construction Agreements

AGENDA OF: October 4, 2018

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: September 24, 2018

CLEARANCES:

☒ Community Development _____

☐ Marina N/A

☐ Parks, Recreation & Senior Services N/A

☒ Public Works PBX

ATTACHMENTS:

1. Puget Sound Energy Schedule 74 Project Construction Agreement, Work Plan, Costs Estimate;
2. Comcast Joint Utility Trench Construction Agreement
3. Century Link Construction Agreement
4. S. 216th Street CIP

CHIEF OPERATIONS OFFICER: _____

☒ Legal MB

☒ Finance _____

☐ Courts N/A

☐ Police N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this item is to approve an agreements with Puget Sound Energy, Century Link and Comcast conversion and undergrounding of overhead utilities along 216th Street between 20th Avenue S. and 11th Avenue So. The following motion will appear on the Consent Calendar:

Suggested Motion:

Motion 1: I move to approve the Schedule 74 Project Construction Agreement and Project Plan with Puget Sound Energy for underground conversion along South 216th Street, Segment 3 (11th Avenue S. to 20th Avenue S) and authorize the City Manager to sign the Agreement, substantially in the form as submitted.

Motion 2: I move to approve the Joint Trench Agreement for underground conversion of Comcast facilities along South 216th Street, Segment 3 (11th Avenue S. to 20th Avenue S) and authorize the City Manager to sign the agreement substantially in the form as submitted.

Motion 3: I move to approve the Statement of Work for underground conversion of Century Link facilities along South 216th Street, Segment 3 (11th Avenue S. to 20th Avenue S) under Agreement No. 7932 and authorize the City Manager to sign the statement of work substantially in the form as submitted.

Background

The S. 216th Street Segment 3 project is adopted as part of the 2019-2038 Transportation Improvement Plan for the City of Des Moines. It is the last arterial segment prioritized for construction, collectively referred to as the Transportation Gateway Project. Project design is complete, right of way has been acquired, SEPA has been approved, and construction funding is secured via agreements with the Washington State Transportation Improvement Board (TIB) and the Port of Seattle. Staff plans to advertise the project for construction bids in the late fall of 2018.

Staff conducted a utility coordination effort as part of the improvement project. All utilities within the project limits have been involved in the process. Overhead utilities, including PSE, Comcast, and Century Link, are being undergrounded.

The Des Moines Municipal Code contains the following section regarding undergrounding:

12.48.110 Improvement of streets, utility undergrounding.

The city council, when ordering the improvement of a street, whether financed by a local improvement district or city funds, shall determine whether the relocation of electrical and communication systems underground is required, and if so, the manner of payment therefore. [Ord. 1012 § 11, 1993.]

At the December 21, 2009 City Council meeting, the Council confirmed its policy direction regarding undergrounding components of the Transportation Gateway Project. At the January 19, 2017 meeting, the City Council approved a consultant agreement with KPG to design this last segment of S. 216th Street Segment 3 between Pacific Highway South and Marine View Drive. Upon completion of this project, consistent with City policy, the overhead communications and electrical distribution system will be entirely underground.

Discussion

Undergrounding of aerial utilities and placement in a joint utility trench is complex, avoiding conflicts with water, sewer and storm drainage facilities. This work is now incorporated into the City's project plans and specifications. Staff and the consultant are in the process of finalizing the bid documents. Approval of these utility agreements is required in advance of advertising the project for construction.

During the design phase of the project, the City met with utility purveyors to inform them of the City's plans, and to request their input and participation in the project. All overhead utilities agreed to participate in the joint utility trench with costs to be proportionately shared consistent with State Law, tariffs and City franchise agreements. The use of a joint utility trench reduces the costs for all of the parties.

Under these Agreements (Attachments 1, 2 and 3), the City's contractor will dig the trench, install utility provided vaults and conduit and backfill within the joint utility trench area. Utilities will be responsible for providing and installing their own wiring within the system, and making all wiring connections. The agreements require that utilities meet coordinated schedules for completing work.

Each utility has franchise and/or tariff agreements that govern their final participation. Generally, Puget Sound Energy absorbs 60% of eligible costs, Century Link contributes the differential costs of aerial relocation and Comcast contributes its full proportionate share of trench, vault and conduit installation costs. Puget Sound Energy is also bearing a full share of costs for undergrounding future fiber optic conduit.

Pending City Council approval of these agreements, the City is expected to fund an estimated 30% of the JUT costs and will absorb cost of secondary connections to a limited number of residences. Providing secondary residential connections is consistent with previous practice in the Transportation Gateway corridor to avoid contract delay and potential increased costs. The City will also own and operate the LED street light system and a fiber optic cable.

The cost of undergrounding will be based upon actual construction costs. Current estimated agreement costs and utility shares (in thousands of dollars) are:

PSE:	\$ 806.4	Utility Share: \$ 558.8
Comcast:	\$ 244.6	Utility Share: \$ 244.6
CenturyLink:	<u>\$ 227.0</u>	Utility Share: <u>\$ 96.5</u>
Total	\$ 1,278.0	\$ 899.9

Undergrounding of utilities are not eligible for TIB grant reimbursement.

Project Status

The table below summarizes actions relevant to the project as well as those that are scheduled to come before the Council on consent. The action before the Council with this agenda item is italicized.

Agreement or Contract

Agency / Utility	Council Authorization/Obligations
Washington State Transportation Improvement Board Funding Certification	January 5, 2017
Design Agreement	January 19, 2017
Supplemental Drainage Design Agreement	September 14, 2017
Right of Way Plan approval - Acquisition NTP	January 11, 2018
Port of Seattle Frontage Agreement	July 19, 2018
Utility Agreements	<i>Pending for October 4, 2018</i>

King County Metro Agreement	Pending, TBD
Advertise for Construction	Pending for November 6, 2018
Construction and Construction Engineering Contract	Pending for January 17, 2019

Alternatives

There are no available alternatives that would not significantly impact the project schedule and budget. If the Council were to decide to reverse its previous direction, and not require the utilities to be undergrounded, additional right-of-way will need to be acquired by the City in order to accommodate the aerial relocation as there is currently insufficient right-of-way to accommodate this together with the proposed improvements.

Financial Impact

The costs associated with the undergrounding of utilities have been included within the project CIP budget (Attachment 4).

Recommendation or Conclusion

Staff recommends that Council approve the Construction Agreements.

Concurrence

The Legal, Finance, Community Development and Public Works Departments concur.

SCHEDULE 74 UNDERGROUND CONVERSION

Project Construction Agreement

Project Name: Des Moines 216th Schedule 74 Segment 3

Project Number: 101104868

THIS Agreement, dated as of this ____ day of _____, 2018, is made by and between The City Of Des Moines, a _____ (the "Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the "Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy, and pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity has determined that it is necessary to replace the existing overhead electric distribution system within the area specified in the Project Plan (as defined below) (the "Conversion Area") with a comparable underground electric distribution system, all as more specifically described in the Project Plan (the "Conversion Project").

C. The Government Entity and the Company have previously entered into a Project Design Agreement dated as of _____ (the "Design Agreement"), pursuant to which the parties completed certain engineering design, cost assessment, operating rights planning and other preliminary work relating to the Conversion Project and, in connection with that effort, developed the Project Plan.

D. The Government Entity and the Company wish to execute this written contract in accordance with Schedule 74 of the Company's Electric Tariff G ("Schedule 74") to govern the completion of the Conversion Project, which both parties intend shall qualify as an underground conversion under the terms of Schedule 74.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Definitions.

(a) Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement, including, without limitation, the following:

- i) Cost of Conversion;
- ii) Public Thoroughfare;
- iii) Temporary Service;
- iv) Trenching and Restoration;
- v) Underground Distribution System; and
- vi) Underground Service Lines.

(b) "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of the foregoing, a "comparable" system shall include, unless the Parties otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less)

of such diameter and number as may be specified and agreed upon in the Project Plan necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced.

- (c) "Estimated Reimbursable Private Conversion Costs" shall mean the Company's good faith estimate of the Reimbursable Private Conversion Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (d) "Estimated Reimbursable Temporary Service Costs" shall mean the Company's good faith estimate of the Reimbursable Temporary Service Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (e) "Estimated Reimbursable Upgrade Costs" shall mean the Company's good faith estimate of the Reimbursable Upgrade Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (f) "Estimated Shared Company Costs" shall mean the Company's good faith estimate of the Shared Company Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (g) "Estimated Shared Government Costs" shall mean the Government Entity's good faith estimate of the Shared Government Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (h) "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of the foregoing, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.
- (i) "Party" shall mean either the Company, the Government Entity, or both.
- (j) "Private Property Conversion" shall mean that portion, if any, of the Conversion Project for which the existing overhead electric distribution system is located, as of the date determined in accordance with Schedule 74, (i) outside of the Public Thoroughfare, or (ii) pursuant to rights not derived from a franchise previously granted by the Government Entity or pursuant to rights not otherwise previously granted by the Government Entity.
- (k) "Project Plan" shall mean the project plan developed by the Parties under the Design Agreement and attached hereto as Exhibit A, as the same may be changed and amended from time to time in accordance with Section 6, below. The Project Plan includes, among other things, (i) a detailed description of the Work that is required to be performed by each Party and any third party, (ii) the applicable requirements and specifications for the Work, (iii) a description of the Operating Rights that are required to be obtained by each Party for the Conversion Project (and the requirements and specifications with respect thereto), (iv) an itemization and summary of the Estimated Shared Company Costs, Estimated Shared Government Costs, Estimated Reimbursable Private Conversion Costs (if any), Estimated Reimbursable Temporary Service Costs (if any) and Estimated Reimbursable Upgrade Costs (if any), and (v) the Work Schedule.
- (l) "Operating Rights" shall mean sufficient space and legal rights for the construction, operation, repair, and maintenance of the Underground Distribution System.
- (m) "Reimbursable Private Conversion Costs" shall mean (i) all Costs of Conversion, if any, incurred by the Company which are attributable to a Private Property Conversion, less (ii) the distribution pole replacement costs (if any) that would be avoided by the Company on account of such Private Property Conversion, as determined consistent with the applicable Company distribution facilities

replacement program, plus (iii) just compensation as provided by law for the Company's interests in real property on which such existing overhead distribution system was located prior to conversion; provided that the portion of the Reimbursable Private Conversion Costs attributable to the Costs of Conversion under subparagraph (i) of this paragraph shall not exceed the Estimated Reimbursable Private Conversion Costs without the prior written authorization of the Government Entity.

- (n) "Reimbursable Temporary Service Costs" shall mean all costs incurred by the Company which are attributable to (i) any facilities installed as part of the Conversion Project to provide Temporary Service, as provided for in Schedule 74, and (ii) the removal of any facilities installed to provide Temporary Service (less salvage value of removed equipment); provided that the Reimbursable Temporary Service Costs shall not exceed the Estimated Reimbursable Temporary Service Costs without the prior written authorization of the Government Entity.
- (o) "Reimbursable Upgrade Costs" shall mean all Costs of Conversion incurred by the Company which are attributable to any Government-Requested Upgrade; provided that the Reimbursable Upgrade Costs shall not exceed the Estimated Reimbursable Upgrade Costs without the prior written authorization of the Government Entity.
- (p) "Shared Company Costs" shall mean all Costs of Conversion (other than Reimbursable Upgrade Costs, Reimbursable Private Conversion Costs and Reimbursable Temporary Service Costs) incurred by the Company in connection with the Conversion Project; provided, however, that the Shared Company Costs shall not exceed the Estimated Shared Company Costs without the prior written authorization of the Government Entity. For the avoidance of doubt, the "Shared Company Costs" shall, as and to the extent specified in the Design Agreement, include the actual, reasonable costs to the Company for the "Design Work" performed by the Company under the Design Agreement.
- (q) "Shared Government Costs" shall mean all Costs of Conversion incurred by the Government Entity in connection with (i) any duct and vault installation Work which the Parties have specified in the Project Plan is to be performed by the Government Entity as part of the Government Work, and (ii) the acquisition of any Operating Rights which the Parties have, by mutual agreement, specified in the Project Plan are to be obtained by the Government Entity for the Conversion Project, but only to the extent attributable to that portion of such Operating Rights which is necessary to accommodate the facilities of the Company; provided, however, that the Shared Government Costs shall not exceed the Estimated Shared Government Costs without the prior written authorization of the Company.
- (r) "Total Shared Costs" shall mean the sum of the Shared Company Costs and the Shared Government Costs. For the avoidance of doubt, the Total Shared Costs shall not include, without limitation, (i) costs to the Government Entity for Trenching and Restoration, or (ii) costs associated with any joint use of trenches by other utilities as permitted under Section 3(b).
- (s) "Work" shall mean all work to be performed in connection with the Conversion Project, as more specifically described in the Project Plan, including, without limitation, the Company Work (as defined in Section 2(a), below) and the Government Work (as defined in Section 3(a), below).
- (t) "Work Schedule" shall mean the schedule specified in the Project Plan which sets forth the milestones for completing the Work, as the same may be changed and amended from time to time in accordance with Section 6, below.

2. Obligations of the Company.

- (a) Subject to the terms and conditions of this Agreement, the Company shall do the following as specified in, and in accordance with the design and construction specifications and other requirements set forth in, the Project Plan (the "Company Work"):

- i) furnish and install an Underground Distribution System within the Conversion Area (excluding any duct and vault installation or other Work which the Parties have specified in the Project Plan is to be performed by the Government Entity);
 - ii) provide a Company inspector on-site at the times specified in the Work Schedule to inspect the performance of any duct and vault installation Work which the Parties have specified in the Project Plan is to be performed by the Government Entity; and
 - iii) upon connection of those persons or entities to be served by the Underground Distribution System and removal of facilities of any other utilities that are connected to the poles of the overhead system, remove the existing overhead system (including associated wires and Company-owned poles) of 15,000 volts or less within the Conversion Area except for Temporary Services.
- (b) Upon request of the Government Entity, the Company shall provide periodic reports of the progress of the Company Work identifying (i) the Company Work completed to date, (ii) the Company Work yet to be completed, and (iii) an estimate regarding whether the Conversion Project is on target with respect to the Estimated Shared Company Costs, the Estimated Reimbursable Private Conversion Costs (if any), the Estimated Reimbursable Temporary Service Costs (if any), the Estimated Reimbursable Upgrade Costs (if any) and the Work Schedule.
- (c) Except as otherwise provided in the Company's Electric Tariff G, the Company shall own, operate and maintain all electrical facilities installed pursuant to this Agreement including, but not limited to, the Underground Distribution System and Underground Service Lines.
- (d) Subject to the terms and conditions of this Agreement, the Company shall perform all Company Work in accordance with the Project Plan, the Work Schedule and this Agreement.

3. Obligations of the Government Entity.

- (a) Subject to the terms and conditions of this Agreement, the Government Entity shall do the following as specified in, and in accordance with the design and construction specifications and other requirements set forth in, the Project Plan (the "Government Work"):
 - i) provide the Trenching and Restoration;
 - ii) perform the surveying for alignment and grades for ducts and vaults; and
 - iii) perform any duct and vault installation and other Work which the Parties have specified in the Project Plan is to be performed by the Government Entity.
- (b) Other utilities may be permitted by the Government Entity to use the trenches provided by the Government Entity for the installation of their facilities so long as such facilities or the installation thereof do not interfere (as determined pursuant to the Company's electrical standards) with the Underground Distribution System or the installation or maintenance thereof. Any such use of the trenches by other utilities shall be done subject to and in accordance with the joint trench design specifications and installation drawings set forth or otherwise identified in the Project Plan, and the Government Entity shall be responsible for the coordination of the design and installation of the facilities of the other utilities to ensure compliance with such specifications and drawings.
- (c) Upon request of the Company, the Government Entity shall provide periodic reports of the progress of the Government Work identifying (i) the Government Work completed to date, (ii) the Government Work yet to be completed, and (iii) an estimate regarding whether the Conversion Project is on target with respect to the Estimated Shared Government Costs and the Work Schedule.
- (d) The Government Entity shall be responsible for coordinating all work to be performed in connection with the street improvement program within the Conversion Area.

- (e) Subject to the terms and conditions of this Agreement, the Government Entity shall perform all Government Work in accordance with the Project Plan, the Work Schedule and this Agreement.

4. Work Schedule.

- (a) The Government Entity and the Company have agreed upon the Work Schedule as set forth in the Project Plan. Changes to the Work Schedule shall be made only in accordance with Section 6, below.
- (b) Promptly following the execution of this Agreement, and upon completion by the Government Entity of any necessary preliminary work, the Government Entity shall hold a pre-construction meeting involving all participants in the Conversion Project to review project design, coordination requirements, work sequencing and related pre-mobilization requirements. Following the pre-construction meeting, the Government Entity shall give the Company written notice to proceed with the Work at least ten (10) business days prior to the commencement date specified in the Work Schedule.
- (c) Subject to the terms and conditions of this Agreement, each Party shall perform the Work assigned to it under this Agreement in accordance with the Work Schedule. So long as the Company performs the Company Work in accordance with the Work Schedule, the Company shall not be liable to the Government Entity (or its agents, servants, employees, contractors, subcontractors, or representatives) for any claims, actions, damages, or liability asserted or arising out of delays in the Work Schedule.

5. Location of Facilities.

All facilities of the Company installed within the Conversion Area pursuant to this Agreement shall be located, and all related Operating Rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74, as specified by the Parties in the Project Plan.

6. Changes.

- (a) Either Party may, at any time, by written notice thereof to the other Party, request changes in the Work within the general scope of this Agreement (a "Request for Change"), including, but not limited to: (i) changes in, substitutions for, additions to or deletions of any Work; (ii) changes in the specifications, drawings and other requirements in the Project Plan, (iii) changes in the Work Schedule, and (iv) changes in the location, alignment, dimensions or design of items included in the Work. No Request for Change shall be effective and binding upon the Parties unless signed by an authorized representative of each Party.
- (b) If any change included in an approved Request for Change would cause a change in the cost of, or the time required for, the performance of any part of the Work, an equitable adjustment shall be made in the Estimated Shared Company Costs, the Estimated Shared Government Costs, the Estimated Reimbursable Private Conversion Costs (if any), the Estimated Reimbursable Temporary Service Costs (if any), the Estimated Reimbursable Upgrade Costs (if any) and/or the Work Schedule to reflect such change. The Parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the Parties are unable to agree upon the terms of the equitable adjustment, either Party may submit the matter for resolution pursuant to the dispute resolution provisions in Section 10, below.
- (c) The Work Schedule, the Estimated Shared Company Costs, the Estimated Shared Government Costs, the Estimated Reimbursable Private Conversion Costs, the Estimated Reimbursable Temporary Service Costs and/or the Estimated Reimbursable Upgrade Costs shall be further equitably adjusted from time to time to reflect any change in the costs or time required to perform the Work to the extent such change is caused by: (i) any Force Majeure Event under Section 11, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost,

schedule or other aspect of the Work and was not known by or disclosed to the affected Party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Work which are expressly identified by the Parties in the Project Plan. Upon the request of either Party, the Parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the Parties are unable to agree upon the terms of the equitable adjustment, either Party may submit the matter for resolution pursuant to the dispute resolution provisions in Section 10, below.

- (d) Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each Party shall, if requested by the other Party, proceed with the Work in accordance with any approved Request for Change. Any request to proceed hereunder must be accompanied by a written statement setting forth the requesting Party's reasons for rejecting the proposed equitable adjustment of the other Party.

7. Compensation and Payment.

- (a) Subject to and in accordance with the terms and conditions of this Agreement (including, without limitation, the payment procedures set forth in this Section 7), payment in connection with the Conversion Project and this Agreement shall be as follows:
 - i) The Total Shared Costs shall be allocated to the Parties in the following percentages: (A) sixty percent (60%) to the Company, and (B) forty percent (40%) to the Government Entity.
 - ii) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Private Conversion Costs, if any.
 - iii) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Upgrade Costs, if any.
 - iv) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Temporary Service Costs, if any.
 - v) The Government Entity shall pay one hundred percent (100%) of the costs it incurs to perform that portion of the Government Work specified in Section 3(a)(i) and (ii) (i.e., Trenching and Restoration and surveying).
 - vi) The Company shall pay one hundred percent (100%) of the costs it incurs to design, provide and construct any Company-Initiated Upgrade.
 - vii) The Company shall pay one hundred percent (100%) of the costs it incurs to obtain Operating Rights outside the Public Thoroughfare.
- (b) Based on the allocation of responsibilities set forth in Section 7(a), above, the Parties shall determine the net amount payable by the Government Entity or the Company, as applicable, to the other Party under this Agreement (the "Net Amount"). The Net Amount shall be determined by using the amount of the Total Shared Costs allocated to the Government Entity under Section 7(a)(i), and adjusting such amount as follows:
 - i) Subtracting (as a credit to the Government Entity) the amount of the Shared Government Costs.
 - ii) Adding (as a credit to the Company) the amount of all Reimbursable Private Conversion Costs, Reimbursable Upgrade Costs and Reimbursable Temporary Service Costs.
 - iii) Subtracting (as a credit to the Government Entity) any payments previously made to the Company by the Government Entity under the Design Agreement which, under the terms of the Design Agreement, are to be credited to the Government Entity under this Agreement.

The Net Amount, as so calculated, (A) will be an amount payable to the Company if it is a positive number, and (B) shall be an amount payable to the Government Entity if it is a negative number.

- (c) Within sixty (60) business days of completion of the Conversion Project, the Government Entity shall provide the Company with an itemization of the Shared Government Costs (the "Government Itemization"), together with such documentation and information as the Company may reasonably request to verify the Government Itemization. The Government Itemization shall, at a minimum, break down the Shared Government Costs by the following categories, as applicable: (i) property and related costs incurred and/or paid by the Government Entity, including any costs of obtaining Operating Rights, and (ii) construction costs incurred and/or paid by the Government Entity, including and listing separately inspection, labor, materials and equipment, overhead and all costs charged by any agent, contractor or subcontractor of the Government Entity.
- (d) Within thirty (30) business days after the Company's receipt of the Government Itemization and requested documentation and information, the Company shall provide the Government Entity a written statement (the "Company Statement") showing (i) an itemization of the Shared Company Costs, (ii) the Parties' relative share of the Total Shared Costs based on the Company's itemization of the Shared Company Costs and the Government Entity's itemization of the Shared Government Costs set forth in the Government Itemization, (iii) any Reimbursable Private Conversion Costs, (iv) any Reimbursable Upgrade Costs, (v) any Reimbursable Temporary Service Costs, (vi) any credits to the Government Entity for payments previously made to the Company by the Government Entity under the Design Agreement which, under the terms of the Design Agreement, are to be credited to the Government Entity under this Agreement, and (vii) the Net Amount, as determined in accordance with Section 7(b), above, together with such documentation and information as the Government Entity may reasonably request to verify the Company Statement. The itemization of the Shared Company Costs included in the Company Statement shall, at a minimum, break down the Shared Company Costs by the following categories, as applicable: (i) design and engineering costs, and (ii) construction costs, including and listing separately inspection, labor, materials and equipment, overhead and all costs charged by any agent, contractor or subcontractor of the Company.
- (e) Within thirty (30) business days after the Government Entity's receipt of the Company Statement and requested documentation and information, the Net Amount shall be paid by the owing Party to the other Party, as specified in the Company Statement.

8. Indemnification.

- (a) The Government Entity releases and shall defend, indemnify and hold the Company harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of the Government Entity in its performance under this Agreement. During the performance of such activities the Government Entity's employees or contractors shall at all times remain employees or contractors, respectively, of the Government Entity.
- (b) The Company releases and shall defend, indemnify and hold the Government Entity harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of the Company in its performance under this Agreement. During the performance of such activities the Company's employees or contractors shall at all times remain employees or contractors, respectively, of the Company.
- (c) Solely for purposes of enforcing the indemnification obligations of a Party under this Section 8, each Party expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, and agrees that the obligation to indemnify, defend and hold harmless provided for in this Section 8 extends to any such claim brought against the indemnified Party by or on behalf of any employee of the indemnifying Party. The foregoing waiver shall not in any way preclude the indemnifying Party from raising such immunity as a defense against any claim brought against the indemnifying Party by any of its employees.

9. Conversion of Service to Customers within Conversion Area.

- (a) Upon commencement of the Work, the Government Entity shall notify all persons and entities within the Conversion Area that service lines to such customers must be converted from overhead to underground service within the applicable statutory period following written notice from the Government Entity that service from underground facilities are available in accordance with RCW 35.96.050. Upon the request of any customer, other than a single family residential customer, within the Conversion Area, the Company shall remove the overhead system and connect such persons' and entities' Underground Service Lines to the Underground Distribution System.
- (b) The Parties acknowledge that single family residences within the Conversion Area must (i) provide a service trench and conduit, in accordance with the Company's specifications, from the underground meter base to the point of service provided during the conversion, and (ii) pay for the secondary service conductors as defined in Schedule 85 of the Company's Electric Tariff G. The Government Entity shall exercise its authority to order disconnection and removal of overhead facilities with respect to owners failing to convert service lines from overhead to underground within the timelines provided in RCW 35.96.050.

10. Dispute Resolution.

- (a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the Parties. A Party who wishes dispute resolution shall notify the other Party in writing as to the nature of the dispute. Each Party shall appoint a representative who shall be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.
- (b) Any claim or dispute arising hereunder which relates to any Request for Change or any equitable adjustment under Section 6, above, or the compensation payable by or to either Party under Section 7, above, and which is not resolved by senior management within the time permitted under Section 10(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.
- (c) In connection with any arbitration under this Section 10, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the Parties. Each Party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing Party's costs and expenses (including, but not limited to, reasonable attorneys' fees) by the other Party.
- (d) Unless otherwise agreed by the Parties in writing, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.

11. Uncontrollable Forces.

In the event that either Party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a third party; or any failure or delay in the performance by the other Party, or a third party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

12. Insurance.

- (a) PSE shall, and shall require each of its contractors to, secure and maintain in force throughout the duration of the Conversion Project (or, if sooner, until termination of this Agreement) comprehensive general liability insurances, with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 aggregate for personal injury; and \$1,000,000 per occurrence/aggregate for property damages, and professional liability insurance in the amount of \$1,000,000
- (b) The Government Entity shall ensure that each of its contractors performing any Government Work secures and maintains in force throughout the duration of the Conversion Project (or, if sooner, until termination of this Agreement) insurance policies having the same coverage, amounts and limits as specified Section 12(a), above.
- (c) In lieu of the insurance requirements set forth in Section 12(a), above, the Company may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the Government Entity's request, the Company shall provide the Government Entity with reasonable written evidence that the Company is maintaining such self-insurance.

13. Other.

- (a) Agreement Subject To Tariff. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electrical Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.
- (b) Termination. The Government Entity reserves the right to terminate the Conversion Project and this Agreement upon written notice to the Company. In the event that the Government Entity terminates the Conversion Project and this Agreement, the Government Entity shall reimburse the Company for all costs reasonably incurred by the Company in connection with the Work performed prior to the effective date of termination. In such event, the costs reimbursable to the Company (i) shall not be reduced by any Shared Government Costs or other costs incurred by the Government Entity, and (ii) shall be paid within thirty (30) days after the receipt of the Company's invoice therefor. Sections 1, 5, 7, 8, 9, 10, 11 and 13 shall survive any termination of the Conversion Project and/or this Agreement.
- (c) Facilities Greater Than 15,000 Volts. Nothing in this Agreement shall in any way affect the rights or obligations of the Company under any previous agreements pertaining to the existing or future facilities of greater than 15,000 Volts within the Conversion Area.

- (d) Compliance With Law. The Parties shall, in performing the Work under this Agreement, comply with all applicable federal, state, and local laws, ordinances, and regulations.
- (e) No Discrimination. The Company, with regard to the Work performed by the Company under this Agreement, shall comply with all applicable laws relating to discrimination on the basis race, color, national origin, religion, creed, age, sex, or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.
- (f) Independent Contractor. The Company and the Government Entity agree that the Company is an independent contractor with respect to the Work and this Agreement. The Company is acting to preserve and protect its facilities and is not acting for the Government Entity in performing the Work. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties. Neither the Company nor any employee of the Company shall be entitled to any benefits accorded employees of the Government Entity by virtue of the Work or this Agreement. The Government Entity shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Company, or any employee of the Company.
- (g) Nonwaiver of Rights or Remedies. No failure or delay of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any other right under this Agreement, and no course of dealing or performance with respect thereto, shall, except to the extent provided in this Agreement, be construed as a waiver or, or choice of, or relinquishment of any right under any provision of this Agreement or any right at law or equity not otherwise provided for herein. The express waiver by either Party of any right or remedy under this Agreement or at law or equity in a particular instance or circumstance shall not constitute a waiver thereof in any other instance or circumstance.
- (h) No Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, their respective successors, assigns and legal representatives.
- (i) Governmental Authority. This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental regulatory authorities and courts having jurisdiction over this Agreement, the Parties or either of them. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental regulatory authorities and courts that are required to be incorporated into agreements of this character are by this reference incorporated in this Agreement.
- (j) No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Further, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.
- (k) Severability. In the event that any provision of this Agreement or the application of any such provision shall be held invalid as to either Party or any circumstance by any court having jurisdiction, such provision shall remain in force and effect to the maximum extent provided by law, and all other provisions of this Agreement and their application shall not be affected thereby but shall remain in force and effect unless a court or arbitrator holds they are not severable from the invalid provisions.

- (l) Notice. Any notice under this Agreement shall be in writing and shall be mail or hand delivery, delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

If to the Government Entity:

City Of Des Moines Public Works
21630 11th Avenue S, Suite A
Des Moines, WA 98198
Attn: Brandon Carver
PH: 206-870-6543

If to the Company:

Puget Sound Energy, Inc.
6905 S. 228th St.
Kent, WA 98032
Attn: Hong Nguyen
PH: 425-449-6609

Any Party may change its address specified in this Section 13(l) by giving the other Party notice of such change in accordance with this Section 13(l).

- (m) Applicable Law. This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.
- (n) Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entireties; provided, however, that except as expressly set forth in this Agreement, nothing herein is intended to or shall alter, amend or supersede the Design Agreement and the same shall remain in full force and effect in accordance with its terms.
- (o) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the Parties, including but not limited to, any entity to which the rights or obligations of a Party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:

Company:

City of Des Moines

PUGET SOUND ENERGY, INC.

BY _____

BY _____

ITS _____

ITS _____

Date Signed _____

Date Signed _____

Approved as to form:



Exhibit “A” Project Plan Schedule 74 Underground Conversion

City of Des Moines S 216TH ST DES MOINES SCHEDULE 74 PSE Project Number: 101104868 (August 15th, 2018)

Pursuant to Puget Sound Energy (“PSE”) Rate Schedule 74 and as described in this Project Plan, PSE will convert its existing overhead electrical distribution system of 15,000 volts or less to an equivalent Underground Distribution System. This Project Plan describes work to be performed by PSE and the City of Des Moines (the “City”) for the conversion of certain PSE electrical distribution system facilities as described herein (the “Conversion Project”). Construction of this Conversion Project is contingent upon and shall not commence prior to both written acceptance of this Project Plan and written execution of a Schedule 74 Construction Agreement by the City and PSE.

This Project Plan includes and consists of:

- Detailed description of the Construction Work to be performed
- Construction Drawings, Standards, Specifications and Requirements for the Construction Work (attached)
- Operating Rights to be obtained for the Conversion Project (attached)
- Construction Work Schedule
- Construction Costs Estimate Summary (attached)

Revisions to this Project Plan must be mutually approved by the City and PSE.

Scope of Work

This Conversion Project will replace PSE’s existing overhead electrical distribution system with an Underground Distribution System within the following area (the “Conversion Area”): South 216th Street generally located between 11th ave S. and 18th ave S. The Conversion Project is approximately 4,000 feet in length, including laterals and road crossings.

The Conversion Project includes modification or replacement of all existing services lines within the Conversion Area to connect to the Underground Distribution System and removal of PSE’s existing overhead electric distribution facilities (including PSE distribution poles and pole mounted street lights) from the Conversion Area.

PSE initiated upgrades included in this project consist of: PSE owned Fiber Duct and vaults for future use to be installed by the City JUT contractor.

City requested upgrades included in this project consist of: *None Anticipated*

In conjunction with this Conversion Project, PSE will remove its existing street lighting system from the Conversion Area, in coordination with the City of Des Moines, and is anticipated when the City's street lighting system is complete and operational. Provision of a replacement street lighting system within the Conversion Area is not included in this Project Plan. Replacement street lighting service can be provided by separate arrangement in accordance with applicable PSE Tariff Schedules.

Responsibilities of Parties

City Responsibilities

- a) Provide written notice to customers within the Conversion Area in advance of Conversion Project Construction Work start. The notice will include contact information for both the City and PSE, the expected Conversion Project schedule, anticipation of service interruptions and work required to be performed by customers.
- b) Coordinate other utility conversion, removal and relocation from PSE's poles.
- c) Provide all surveying for equipment placement, locations, and establish all grade elevations for the Underground Distribution System within the Conversion Area.
- d) Provide all necessary excavation, bedding, backfill, off-site disposal, site restoration and coordination for installation of the Underground Distribution System. This includes trenching, backfill, and restoration for cut-over and transfer of existing underground system and service lines from the existing overhead distribution system to the new Underground Distribution System.
- e) Coordinate private property trenching, excavation and restoration activity with private property owners affected by this Conversion Project.
- f) Provide flagging and traffic control as required for all work performed by the City.
- g) Install and proof all ducts and vaults for the Underground Distribution System (excluding work in ducts or vaults containing energized cables or equipment – see PSE Responsibilities) in accordance with PSE standards and specifications using ducts and vaults provided by PSE. "Proofing" as used herein is defined as verification using a mandrel that the duct and vault system is free and clear of damage, installed to the proper grade and at the proper location and contains a pulling line.
- h) Provide PSE at least ten (10) business days notice prior to the start of trenching activity to allow for delivery of PSE materials to the job site and scheduling of PSE's on-site Inspector. Provide at least two (3) business days notice for scheduled delivery of vaults from the manufacturer.
- i) Provide secure staging and storage area(s) for duct and vault materials provided by PSE. The City shall be responsible for the security and condition of these materials until they are installed and accepted by PSE or returned to PSE's custody.

- j) Provide labor and equipment for the off-loading of PSE duct and vault materials delivered to the job site.
- k) Promptly following notice from PSE that the Underground Distribution System has been energized, provide notice to customers within the Conversion Area informing them of their obligation and responsibility to convert their overhead service lines to underground service lines as provided by state law or to modify existing underground service lines for connection to the Underground Distribution System. Affected service lines are listed in the Service Lines section of this Project Plan.
- l) Facilitate weekly (or as otherwise agreed by the City and PSE) construction coordination meetings to include all relevant parties participating in the conversion including PSE and its contractor(s), the City and its contractor(s), and other utilities.
- m) Provide any necessary operating rights for the installation of PSE's facilities in accordance with PSE's Schedule 74 Section 3 and as mutually agreed by the PSE and the City. Operating rights are further addressed in the Operating Rights section of this Project Plan.
- n) Modify, reroute or replace service lines to City owned facilities to connect to the Underground Distribution System.
- o) Following notification from PSE that Construction Work is complete; provide to PSE any Shared Government Costs as provided for in the Construction Agreement.

Puget Sound Energy Responsibilities

Provide all duct and vault materials, cables, electrical equipment and components necessary for installation of the Underground Distribution System including certification of materials of origin for products with steel that must meet the Buy America provisions administered by the Federal Highways Administration. FHWA. Any additional cost related to meeting this requirement will covered by change order at 100% City cost.

- a) Following notice from the City, deliver or cause to be delivered all duct and vault materials to the designated staging/storage area(s). Acknowledge delivered quantities and condition of duct and vault materials by signing shipping manifests.
- b) Following notice from the City, provide inspection services needed for overseeing the proper installation of ducts and vaults by the City.
- c) Accept delivery of the completed duct and vault system once the new system has been proofed (as described above) by the City. PSE will provide a mandrel to the City to be used in proofing of the duct and vault system.
- d) Provide PSE electrical workers to complete duct installation and proofing when such work is performed at or in any energized vault containing energized cables or equipment.
- e) Install (except for ducts and vaults installed by the City) and energize the Underground Distribution System. Provide written notice to the City when the Underground Distribution System is energized.
- f) Perform cut-over and transfer of existing Underground Distribution System and existing underground service lines from the overhead distribution system to the new Underground Distribution System where applicable (see City Responsibility item "d" concerning trenching

responsibility). PSE will notify the City for excavation and the affected customers at least two (2) business days prior to installation, transfer, and connection of underground service lines. Affected service lines are listed in the Service Lines section of this Project Plan.

- g) Install and connect replacement underground service lines to single family residences and connect modified and replacement non-residential underground service lines provided by customers within the Conversion Area pursuant to PSE Tariff Schedule 85. Affected service lines are listed in the Service Lines section of this Project Plan.
- h) Remove the existing overhead electric distribution system including, conductors, equipment, down guys, anchors and poles after all service lines to customers within the Conversion Area are connected to the Underground Distribution System and all other utilities have been removed from PSE's poles. Holes left following removal of poles will be filled with crushed rock and compacted in accordance with applicable City standards or specifications.
- i) Provide flagging and traffic control as required for all work performed by PSE (except as may otherwise be reasonably provided by the City during installation of ducts and vaults in conjunction with City performed trenching, excavation, back-fill and restoration).
- j) Attend weekly (or as otherwise agreed by the City and PSE) construction coordination meetings facilitated by the City and its contractor during periods of Conversion Project construction.
- k) Agrees to conform to FHWA guidelines regarding Buy America.

Operating Rights

The Underground Distribution System will be located within Public Thoroughfare except as described in the Operating Rights Attachment. The Construction Work will not be released by PSE for construction until i) all operating rights necessary for the installation of PSE's facilities have been obtained and have been verified by PSE, or ii) the City otherwise signs an agreement releasing PSE from any and all financial obligations associated with the location or relocation of PSE facilities resulting from commencement of construction prior to acquisition of all identified necessary operating rights.

Construction Work Schedule

The work will be performed in accordance with the following Work Schedule, unless this schedule is revised by mutual agreement of the City and PSE or circumstances beyond the reasonable control of the City and/or PSE preclude such performance.

Installation of ducts and vaults: Late Spring 2019 through Summer/Fall 2019.

Installation and energization of the Underground Distribution System: Summer/Fall 2019.

Removal of overhead facilities: Begin ten (10) days after all services have been converted and the removal of other utilities from PSE poles. The removal of the existing street lighting system shall be coordinated with The City of Des Moines.

Installation and removal of Temporary Service: None required.

Work Schedule Restrictions: Subject to permit requirements.

Construction Cost Estimate

The estimated costs to perform the Construction Work and the allocation of costs between the parties are presented in the attached Construction Costs Estimate Summary. These estimated costs are valid for **construction start within ninety (90) days from the date shown on the attached Construction Costs Estimate Summary. Since the anticipated construction is in 2019, a revised cost estimate will be provided approximately ninety (90) days prior to the start of construction.** The previously executed Design Agreement has been fulfilled with the submission of the attached Construction Plans and Construction Agreement. The construction costs provided include costs associated with construction starting with a pre-construction meeting called by the City and attended by the City's contractor. Time spent on this project at the request of the City between the date of this Project Plan and the pre-construction meeting will be compensated by Change Order.

Estimated Inspection and Service Provider Outside Services costs are based on **2018** contract rates. Costs for work performed by PSE after January 31, **2019** shall be subject to revision to reflect contract rates which become effective after this date. Further, in the event performance of the Construction Work does not proceed substantially as provided in this Project Plan, PSE's estimated construction costs shall be subject to revision.

Changes in Construction Work scope, performance and/or schedule can result in actual Construction Costs which significantly differ from estimated costs shown in the Construction Cost Estimate Summary. Such changes shall promptly be brought to the attention of PSE and the City when anticipated or known to occur and shall be documented in a Change Order mutually agreed by the City and PSE.

Project Assumptions

The project design, construction plans and cost estimates are based on and reflect the following assumptions. Construction conditions that are not consistent with these assumptions may result in a request for change or an equitable adjustment to project compensation under Section 6 of the Construction Agreement.

Cost Assumptions

1. The Construction Work will be performed in accordance with the Construction Drawings and Construction Work Schedule.
2. PSE's Project Manager will accept or reject (with written justification) the duct and vault installation work performed by the City within five (5) business days notice of completion from the City. In the event PSE rejects any of the ducts or vaults (with reasonable written justification); the City will perform the necessary remedial work. The City will then re-notify PSE and PSE shall have five (5) business days to accept or reject the remedial work.
3. All PSE cables can be pulled through the ducts and vaults system to be used for the Conversion Project utilizing normal cable pulling equipment and methods.

4. A City Street Use permit is the only permit necessary for PSE to perform its work for this Conversion Project and will be issued within two (2) weeks of PSE submitting a complete permit application (including any supporting documentation reasonably required by the City). There will be no charge for the permit or inspection fees.
5. The estimated daily productivity rate for PSE duct and vault installation is based on the City's contractor opening a minimum of **60** feet of trench per working day. The daily productivity rate is used to estimate the number of days a PSE Inspector will be required during installation of ducts & vaults. The Inspector will be scheduled in full day increments and in one continuous effort. Changes to a continuous schedule require a minimum of (3) three days advance notice and must be mutually agreed between the City and PSE.
6. Included in the project pricing is attendance by the PSE Project Manager at scheduled weekly construction meetings while the duct and vaults are actively being installed and when the PSE line crew is on site. Additional meetings that may be required while PSE facilities are not being installed will be compensated on a Change Order basis.
7. Traffic control provided by PSE assumes the use of two flaggers, basic signage and simple channelization. Additional traffic control measures are not included.
8. Work to be performed by PSE does not include installation and/or removal of Temporary Service facilities at the request of others during construction.
9. All cut-over and transfer work will be completed during regular working hours.
10. If new guy anchors are required they shall be installed prior to installation of new ducts in the same area.
11. When Fluidized Thermal Backfill (FTB) is used, associated cost will be allocated 100% to PSE when required for a Company Initiated Upgrade and otherwise 100% to the City.
12. Installation of protective bollards may be necessary at some locations and may not be included in the project design. In the event unplanned bollards are required they shall be installed in accordance with City requirements.

Schedule

1. There will be a total of two (2) PSE crew mobilizations as follows: i) one mobilization of an underground line crew for installation of underground conductors and equipment; and ii) one mobilization of an overhead line crew for removal of the existing overhead facilities. Once mobilized PSE crews will have continuous productive work until all PSE Construction Work is complete.
2. All PSE Construction Work will be performed during regular working hours from 8:00 am to 5:00 pm excluding holidays. In the event that lane closures are necessary for performance of work, PSE shall be limited to working between the hours of (same as regular working hours). PSE and the City will mutually agree to weekly work schedules for the Construction Work. PSE shall be allowed to perform PSE work as scheduled without changes or interruptions caused by other construction activities.
3. Work requiring scheduled interruption of electric service (cut-overs and transfers) will be performed during the working hours specified in Schedule Assumption #2 above, and will be scheduled with at least two (2) business days notice. PSE will notify customers of scheduled service interruptions.

Additional Considerations

Service Lines

Service lines within the Conversion Area must be modified or replaced to provide underground service from the Underground Distribution System as described and listed in the PSE Construction Drawings. Performance of the work and associated costs shall be governed by PSE Tariff Schedule 85.

Cut-overs and Transfers

PSE customers within the Conversion Area will experience interruption of electric service during performance of the Construction Work when transferring system and customer loads from the overhead distribution system to the Underground Distribution System. PSE will notify customers at least two (2) business days in advance of expected service interruptions. Customers, other than those, may request that cut-over and transfer work affecting their service be performed outside the regular working hours listed above subject to the customer's written agreement to reimburse PSE for the additional cost (at overtime rates) to perform such work outside the regular working hours, excluding the two planned outages noted in the scope of work.

New Service

Connection of new or increased load for City facilities (such as new traffic signals) under terms of PSE Tariff Schedule 85 will be addressed on a separate work order and work sketch. Additional costs may apply and will be quoted separately.

PSE Design & Construction Standards

This Conversion Project has been designed and will be constructed in accordance with PSE design and construction standards in effect as of the date of this Project Plan. PSE standards applicable to Construction Work to be performed by the City have been provided to the City in PSE's "Electric Distribution Trench/Duct/Vault Construction Standards, 2011". All relevant PSE standard described above are attached to this Project Plan by this reference.

Temporary Support (Holding) of PSE Poles

Whenever any pole(s) are required to be temporarily supported (held) due to excavation in proximity to such poles, the City will coordinate with PSE to provide such support. The need to temporarily support such poles shall be determined by PSE, and if required, such support shall be provided by PSE. As used herein, "temporary support" means supporting one or more poles for a continuous working period of ten hours or less.

Acceptance of Project Plan

The City and PSE mutually agree to and accept this Project Plan as of the date indicated below:

For the City:

By: _____

Its: _____

Date: _____

For PSE:

By: _____

Its: _____

Date: _____



FACILITY CONVERSION/MODIFICATION BILLING DETAIL

Scope of Work

City requested Schedule 74 Conversion of existing PSE OH Facilities.

To: Des Moines
21650 11th Avenue S.

Des Moines, WA 98198

Attn: Len Madsen

Project Description: S. 216th St Segment 3-Schedule 74

Location: S. 216th St. between

PSE Project Manager: Hong Nguyen

Activity: PSE Order #:	PSE Design Cost		PSE Construction Cost Estimate		Customer Installed Duct and Vault		Change Orders
	% Reimbursable:	101104868	101104868	101104868	101104868	101104868	
PSE Materials	40%		40%		40%		
PSE Construction Labor							
PSE Project Management	\$ 8,994.28		\$169,965.15		\$154,031.56		City Obligation
PSE Inspection			\$249,734.00				PSE Obligation
PSE Overheads	\$ 9,146.92		\$16,257.57				
Federal Income Tax	\$1,410.56		\$151,234.60				
Total Actual Costs:		\$19,551.76	\$45,656.84		\$154,031.56		\$0.00
							\$74,938.52
GRAND TOTAL Not Incl/CO's:							\$806,431.48
Des Moines Obligation Incl/CO's:							\$322,572.59
PSE Obligation Incl/CO's:							\$558,797.41

Date: 9/12/2018

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JOINT UTILITY TRENCH AGREEMENT
Between the City of Des Moines and Comcast
for the
South 216th Street, Segment 3 Improvements
(11th Avenue S to 20th Avenue S.)

THIS joint utility trench agreement (the “Agreement”) is entered into between the City of Des Moines, a Washington municipal corporation (“City”), and Comcast Cable Communications Management, LLC, a Delaware limited liability company (“Comcast”). This Agreement may refer to Comcast or to City each as a “Party” or together as the “Parties” to this Agreement.

RECITALS

WHEREAS, the City is undertaking a capital improvement project known as the South 216th Street, Segment 3 Improvements between 11th Avenue S and 24th Avenue S. (hereinafter referred to as the “Project”); and

WHEREAS, Comcast owns and operates certain utilities located in the S. 216th Street right-of-way and within and adjacent to the limits of the Project and Comcast has a franchise agreement with the City to operate in said right-of-way; and

WHEREAS, it is the City’s belief that pursuant to the franchise agreement adopted by Ordinance 1327, (effective date of August 30, 2003), the right-of-way improvements require Comcast to underground its facilities that are currently located above ground; and

WHEREAS, relocation requires trenching within the right-of-way and the Parties recognize the efficiencies of entering into an agreement whereby one trench will be dug for all of the affected parties to relocate their facilities; and

WHEREAS, integrating Comcast’s work into the City’s Project would be more expedient, less expensive, and less disruptive to the public than undertaking both the City’s and Comcast’s projects separately; and

WHEREAS, the Parties mutually desire to establish a formal arrangement under which Comcast will pay the City in exchange for the City’s incorporating Comcast’s work into the City’s Project; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of defining their respective rights, obligations, costs and liabilities regarding this undertaking; and

WHEREAS, the City Council of the City of Des Moines has taken appropriate action to approve the City’s entry into this Agreement; and

WHEREAS, Comcast has taken appropriate action to approve Comcast’s entry into this Agreement;

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and made part hereof, the Parties agree as follows:

AGREEMENT

1. SCOPE OF WORK.

The City will advertise for construction bids and enter into a contract with Contractor (hereinafter defined) for the construction of a joint utility trench (the “JUT”) which shall include power and/or communication facilities for the City, Comcast, Century Link, and PSE. The JUT will generally be constructed along the north side of S. 216th Street between 11th Avenue S. and 20th Avenue S.

2. TERM AND TERMINATION.

This Agreement shall commence on December 31, 2018 (the “Effective Date”) and shall continue for a period of 24 (twenty-four) months, unless earlier terminated pursuant to this Agreement.

In the event that either Party defaults in the performance of its obligations herein, notice shall be given by the non-defaulting Party of its intent to terminate the Agreement for cause, to be effective thirty (30) days thereafter, unless that cause is cured within thirty (30) days after the defaulting Party receives such notice.

3. CONTRACTOR REQUIREMENTS.

The independent contractor hired by the City to perform this work shall be referred to as “Contractor” in this Agreement. Contractor, pursuant to a contract with the City, shall excavate the JUT, install City, PSE, Century Link, and Comcast facilities, install the bedding material, backfill and compact the JUT, and perform any restoration required by the City, all to be performed in a good and workmanlike manner consistent with industry standards. The City represents that any such contract shall further require of Contractor that the work be conducted in conformity with (i) the applicable procedures and requirements of the Parties as described herein; (ii) all applicable laws, ordinances and regulations of any governmental authority, and; (iii) all applicable terms and provisions of the National Electric Safety Code, as may be amended, supplemented or replaced from time to time, including but not limited to those pertaining to protection and separation of conductors buried in earth.

4. RESPONSIBILITIES OF THE PARTIES.

A. Comcast

1. Comcast shall provide to the City, and assume full responsibility for, engineering drawings, specifications, construction standards, and quantities in accordance with acceptable industry standards and City Franchise. The drawings shall show in detail the location and elevation of the conduits, JUT, and vaults, and shall include a general

traffic control plan for activities not associated with installation of facilities within the Contractor controlled JUT area.

2. Comcast shall obtain a permit from the City for the underground relocation of Comcast's facilities.
3. Comcast shall be responsible for supplying all materials necessary for the construction of its new conduit and vault system within the JUT area. Comcast will deliver all of these materials to the job site for installation by Contractor. Comcast will arrange with Contractor any required material storage and/or security until the materials are installed.
4. Comcast acknowledges and agrees that the City is subject to FHWA federal funding requirements and is subject to 23 CFR635.410 and Comcast will cause its supplier(s) to certify that materials provided to Contractor for installation and materials provided and installed by Comcast crews that contain steel, will conform to applicable provisions of the Buy America Act including providing the City with a certification of materials origin (COMO) delivered to the site.
5. Comcast shall, after receiving notice from the City, provide inspection services needed for overseeing the proper installation of its new conduit and vault system within the JUT area. Any problems identified by Comcast during the installation shall be promptly reported to the City. Comcast shall cooperate in providing timely inspections so that progress of the work is not delayed.
6. Final Inspection and Acceptance. When Comcast's new conduit and vault system within the JUT area is completed by Contractor, the City will provide Comcast written notice of its completion and request "Final Inspection" and "Acceptance" from Comcast. Within seven (7) calendar days of the City's notice, Comcast will complete a Final Inspection of the new system. Comcast shall give notice of Acceptance to the City within three (3) working days of completing the Final Inspection. In the event that Comcast determines that the work has not been completed per design, Comcast shall specify in writing what work remains to be done or what corrections need to be made, also within three (3) working days of completing Final Inspection. The City will notify Comcast when such identified items are completed, where upon Comcast shall again commence Final Inspection under the process set forth herein. Comcast shall not begin work on the conduit and vault system inside or outside of the JUT area, until the notice of Final Acceptance has been provided to the City. Comcast shall be responsible for any delay costs incurred by the City resulting solely from Comcast's failure to meet the Final Inspection and Acceptance schedule.
7. Schedule for Comcast Relocation Work. Following Comcast's Final Acceptance of the new conduit and vault system within the JUT area, Comcast will have twenty-two (22) working days to initiate placement of its facilities and request activation of its Power Supplies by PSE. Upon activation of Power Supplies by PSE, a second twenty-two (22) working day period will commence during which COMCAST will complete

placement of facilities, make necessary cut-overs, and remove overhead facilities.

8. Comcast shall provide and install all other conduits, vaults, equipment, and other materials necessary to complete the Comcast conduit and vault system located outside of the JUT area.
9. Comcast will provide all cables and labor to install cables in the new conduit and vault system, labor to splice cable, and labor to perform service cutover from the existing system to the newly constructed system.
10. Comcast will perform cut-over and transfer of existing Comcast customers and facilities to the new underground system where applicable.
11. Comcast will notify the City in writing when Comcast's installation is complete and the system has been activated.
12. Comcast will remove its existing aerial cables, equipment, and poles in conflict with the City's project.
13. Comcast will be responsible for providing all traffic control associated with the pulling of Comcast cables and associated equipment, and the removal of Comcast's existing facilities. Traffic control and other permits needed for pulling cables and installing other associated equipment will be obtained from the City by Comcast.
14. Comcast will pay its proportionate share of the JUT costs as described in Section 5 of this Agreement.
15. All rights, title, and interest in and to the portion of the facilities and associated equipment installed by Comcast and associated equipment shall at all times remain with Comcast. The Parties hereto acknowledge and agree that Comcast shall in no event be required to remove its respective, affected aerial facilities prior to completion of the underground facilities in accordance with this Agreement.
16. Comcast shall maintain continued coordination with the City and Contractor regarding the installation of Comcast's facilities. This coordination shall include, but not be limited to, the following:
 - a. Comcast representatives shall attend the pre-construction meeting.
 - b. Comcast representatives shall attend weekly construction meetings.
 - c. Comcast representatives shall provide timing of when and where its materials will be delivered to the job site.
 - d. Comcast shall provide a project schedule, including time and duration of work, for Comcast work to install facilities not associated with the JUT area.
 - e. Comcast shall coordinate with other utility companies included in the JUT solely with respect to the placement of its facilities. This may include the stacking of conduits with another utility, and locating conduits below or around other vaults.

B. City

1. The City shall prepare drawings and specifications for excavation of the JUT. The City will advertise for bids, evaluate bids, award a contract, and monitor Contractor's activities.
2. The City's contract shall provide for all necessary excavation, bedding, backfill, off-site disposal, and site restoration for the Project, along with the coordination of other utilities participating in the Project. The City shall be reimbursed by Comcast for Comcast's proportionate share of the JUT costs as described in Section 5 of this Agreement.
3. Contractor shall install Comcast provided vault and conduit materials necessary for the supporting structure within the JUT area. Upon completion of the new conduit and vault system within the joint utility area, Contractor will proof the duct and leave a pull-rope in place. The City shall be reimbursed by Comcast for the costs of installing the Comcast provided materials as described in Section 5 of this Agreement.
4. Contractor shall provide all flagging and traffic control for the JUT excavation and backfilling activity. The City shall be reimbursed by Comcast for Comcast's proportionate share of flagging and traffic control costs associated with the JUT construction as described in Section 5 of this Agreement.
5. The City shall document quantities as Contractor proceeds with excavation, installation, and backfill and will provide detailed invoices to Comcast for work undertaken in connection with this Agreement.
6. The City shall maintain continued coordination with Comcast regarding the installation of Comcast's facilities. This coordination shall include but not be limited to the following:
 - a. The City's representatives shall attend the pre-construction meeting.
 - b. The City's representatives shall attend weekly construction meetings.
 - c. The City shall provide Comcast a copy of Contractor's proposed work schedule showing date, location, and extent of work to be performed. This schedule shall be subject to change at any time.
 - d. Comcast shall be given ten (10) days notice that Contractor is beginning construction.
7. After completion of the project, the City shall provide Comcast "as-built" drawings. Upon receipt of the as-built drawings, Comcast shall have ten (10) calendar days review and comment on the as-built drawings and to accept or reject the as-built drawings. If Comcast does not provide comments on the as-built drawings within the ten (10) day period set forth above, the as-built drawings shall be deemed accepted by Comcast.

5. COST ALLOCATION.

Exhibit A, attached to this Agreement, is an estimate of Comcast's proportionate share of the JUT costs. The costs shown on Exhibit A are an estimate only. The final breakdown of costs for the items specified below will be based on the actual quantities of work performed by Contractor times the contract unit costs for each work item, and will be subject to final review and mutual approval by Comcast and the City.

A. Joint Utility Trench Costs.

Comcast agrees to pay the City its proportionate share of the JUT costs, including trench, bedding, and backfill, commensurate with its proportionate share of trench usage as shown in Exhibit A attached hereto and incorporated by this reference. JUT costs will be finalized after completion of construction to account for actual construction costs, and the City will provide Comcast with a copy of the applicable Contractor pay estimates for final payment to be made to the City, which will be subject to final review and mutual approval by Comcast and the City.

B. Conduit and Vault Installation.

Comcast agrees to pay for the excavation, site preparation, and installation for its conduit and vaults that are outside the JUT area separately and in addition to any JUT costs, survey costs, and traffic control costs discussed herein. These additional costs shall be preliminarily determined from the bid price accepted by the City. The cost to excavate for and install Comcast's vaults will be finalized after completion of construction to account for actual construction costs, and will be subject to final review and mutual approval by Comcast and the City.

C. Street Crossings.

Comcast agrees to pay the City for the installation costs for Contractor to install Comcast's conduits in street crossings. These costs are in addition to the JUT costs outlined in Section 5.A, and will be subject to final review and mutual approval by Comcast and the City.

D. Survey.

Comcast agrees to pay its proportionate share of the reasonable costs for the City's surveyor to provide vault locations and elevations and any other survey data that may be required to locate and place Comcast facilities, subject to final review and mutual approval by Comcast and the City.

E. Traffic Control.

Comcast agrees to pay the City its proportionate share of the traffic control costs associated with the construction of the JUT, commensurate with its proportionate share of trench usage as shown in Exhibit A attached hereto and incorporated by this reference.

F. Administration Costs.

Comcast agrees to reimburse the City for Comcast's prorated share of the City's project administration and management costs. Comcast's prorated share of these costs is anticipated to be \$6,000.

G. Additional Expenses.

Comcast agrees to pay its proportionate share of any additional expenses incurred due to Comcast's approved change requests requiring additional trench depth or width or for any other unforeseen conditions that are attributable to errors in Comcast's design or conflicts not accounted for in Comcast's design, and to dewatering for ground water. Any changes to Comcast's portion of work perceived as necessary by Contractor must be approved by Comcast in advance. Comcast will not pay for any share of additional expenses incurred due solely to approved change requests from other JUT users and/or the City. Comcast shall be responsible for its prorated costs share of public utility easements, if required, to accommodate Comcast equipment.

H. Claims by Contractor.

Responsibility for the cost of any claims made by Contractor allegedly caused by Comcast shall be subject to good faith negotiations between the Parties. Any resulting payment agreement will be subject to final review and mutual approval by Comcast and the City.

I. Invoice.

Upon proper completion of the trench work, Comcast agrees to pay the City within sixty (60) days of receiving a correct invoice from the City for amounts that the City has been invoiced by Contractor for work that has been completed by Contractor and approved by Comcast and which Comcast has agreed to pay under this Agreement.

J. Defective or Unauthorized Work.

Comcast shall promptly notify the City of any defective or unauthorized work performed by the Contractor, upon Comcast inspection pursuant to Section A.6 and prior to the City's approval of the Contractor's pay estimate for such work. Comcast reserves the right to withhold payment for any such work. Defective or unauthorized work includes, without limitation, work and materials that do not conform to the requirements of this Agreement and extra work and materials furnished without Comcast's approval. As the contracting agency, the City will provide notification to the Contractor of such defective or unauthorized work and will not make payment to the Contractor for defective or unauthorized Work. The City shall hold the Contractor solely responsible to immediately remedy, remove, replace, or dispose of defective or unauthorized Work or materials and hold the Contractor solely responsible to bear

all costs of doing so. If the Contractor fails to remove defective or unauthorized work, the City will take action as outlined in the City's Public Works Contract with the Contractor.

K. Final Payment/Waiver of Claims.

The making of final payment by Comcast shall constitute a waiver of claims by the City and Contractor, except those previously and properly made and identified by City or Contractor as unsettled at the time request for final payment is made.

L. Withdrawal from Agreement.

Should Comcast elect not to participate in the JUT, it will be the responsibility of Comcast to relocate its facilities for the Project within thirty (30) days of Contractor's completion of the JUT. Comcast's new facilities must be located in the public right-of-way and construction of these facilities can in no way delay Contractor's work on the JUT. The City cannot accept delays in the schedule due to Comcast electing not to participate in the JUT.

6. CHANGES.

After the City executes a contract with Contractor, Comcast shall submit any changes requested to be performed by Contractor to the City. The City shall submit this to Contractor; obtain a price from Contractor to perform the work, and notify Comcast of this price. Prices supplied by Contractor for Comcast change orders shall be in conformance with the 25% limit in subsection 1-04.6 of the WSDOT Standard Specifications. Comcast shall have 48 hours from receiving the price from the City within which to respond. If Comcast chooses not to accept Contractor's price then this work shall only be performed by Comcast according to a mutually agreed upon schedule with Contractor so as not to cause delay to Contractor.

7. INDEMNIFICATION; LIENS; ENCUMBRANCES AND LIABILITY.

Each Party shall defend, indemnify and hold the other Party, its officers, officials, employees and agents harmless from any and all claims, injuries, damages, losses or suits including reasonable legal costs and attorney fees, to the extent they arise from or in connection with the performance of any work required under this Agreement by such Party, whether performed by the Party, its officers, officials, employees or agents (including Contractor in the case of the City), except for injuries and damages caused by the negligence or willful misconduct of the other Party.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Parties, its officials, employees and agents, a Party's liability hereunder shall be only to the extent of the Party's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

No Party, directly or indirectly, shall create or impose any lien on the property of another, or on the rights or title relating thereto, or any interest therein, or in this Agreement. Each Party shall

promptly, at its own expense, take such action as may be necessary to duly discharge any lien created by it on the property of another.

Except as expressly provided herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT; provided, however, there shall be no limitation on a Party's liability to the other for any fines or penalties imposed on the other Party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the Party to comply with any term or condition of this Agreement or any valid and applicable law, rule or regulation.

8. INSURANCE.

The contract between the City and Contractor shall require that Contractor procure and maintain for the duration of the project insurance of the types and in the amounts described below against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work by Contractor, its agents, representatives, employees, subconsultants or subcontractors.

A. Automobile Liability

Insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and

B. Commercial General Liability

Insurance written on an occurrence basis with limits no less than \$1,000,000 single limit per occurrence and \$2,000,000 general aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU); and employer's liability or Stop Gap coverage under workers' compensation insurance.

C. Excess Liability

Insurance with limits not less than \$1,000,000 per occurrence and aggregate.

Any payment of deductible or self-insured retention shall be the sole responsibility of Contractor. The Parties, their officials, employees, agents and volunteers shall be designated as additional insureds on the insurance policy, as respects work performed by or on behalf of the Parties under this Agreement and a copy of the endorsement, or its equivalent, designating the Parties as additional insured shall be attached to the Certificate of Insurance, copies of which shall be provided to the Parties prior to commencement of construction by Contractor. Contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

9. FRANCHISE AGREEMENT.

The City and Comcast agree that as to future projects, by entering into this Agreement, neither Party has waived any rights it may have under the existing franchise agreements between the City and Comcast, and the City and Comcast expressly herein reserve such rights. Notwithstanding anything in this Agreement to the contrary, Comcast's participation in the JUT activity contemplated in this Agreement, and its very participation in this Agreement, shall in no event be construed as acceptance, affirmation, or ratification of the City's construction of Comcast's obligation to underground and enter into a writing pursuant to the franchise agreement, and the Parties understand and agree that the terms and conditions of this Agreement shall not be considered as a basis for future undergrounding projects that may be franchise required.

10. MISCELLANEOUS.

A. Compliance with Laws

The Parties shall comply with all applicable federal, state and local laws, rules and regulations throughout every aspect in the performance of this Agreement.

B. Nonwaiver of Breach

The failure of a Party to insist upon strict performance of any of the terms and rights contained herein, or to exercise any option herein conferred in one or more instances, shall not be constructed to be a waiver or relinquishment of those terms and rights and they shall remain in full force and effect.

C. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of Washington. If any dispute arises between the Parties or between any Party and Contractor under any of the provisions of this Agreement, resolution of that dispute shall be available only through the jurisdiction, venue and rules of the King County Superior Court, King County, Washington.

D. Attorney's Fees

To the extent not inconsistent with RCW 39.04.240, in any claim or lawsuit for damages arising from the Parties' performance of this Agreement, each Party shall be responsible for payment of its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit; however, nothing in this subsection shall limit a Party's right to indemnification under Section 7 of this Agreement.

E. Written Notice

All communications regarding this Agreement shall be sent to the Parties at the addresses listed on the signature page of this Agreement, unless otherwise notified. Any written notice shall become effective upon delivery, but in any event three (3) calendar days after the date of

mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated on this Agreement.

F. Dispute Resolution and Governing Law

1. **Alternative Dispute Resolution.** If a dispute arises from or relates to this Agreement or the breach hereof, then the Parties shall use their best efforts to first settle the dispute in an amicable manner through direct discussions between the Parties. If any such dispute cannot be resolved through direct discussions between the Parties, then the Parties shall attempt to settle the dispute by mediation administered by a mediator under American Arbitration Association (“AAA”) rules or policies for mediation before resorting to arbitration. The mediator may be selected by agreement of the Parties or through the AAA. Following mediation, or upon written agreement of the Parties to waive mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach hereof shall be settled through arbitration which shall be conducted in accordance with the then current Commercial Arbitration Rules of the AAA (the “AAA Rules”). The arbitrator may be selected by agreement of the Parties or through the AAA. All fees and expenses for mediation or arbitration shall be borne by the Parties equally. However, each Party shall bear the expense of its own Counsel, experts, witnesses and preparation of evidence. Any award made by the arbitrator will be in accordance with applicable law, will be in writing, and will state the reasons upon which it is based. The arbitrator will have no power to modify or abridge the terms of this Agreement. The award of the arbitrator will be final, and judgment on the award may be entered by any court having jurisdiction to do so. Neither party shall appeal the award to any court. Once the arbitrator has been selected, it will have exclusive jurisdiction to hear applications for such relief, or modifications thereof, except that any interim measures or injunctive relief ordered by the arbitral panel may be immediately and specifically enforced by a court of competent jurisdiction. Unless otherwise agreed by the Parties or required by law, the Parties, the arbitrators, and AAA will maintain the confidentiality of all documents, communications, proceedings, and awards provided, produced, or exchanged pursuant to an arbitration conducted under this Section.
2. **Applicable Law and Jurisdiction:** This Agreement shall be governed by the laws of the State of Washington. Although the Parties have agreed to and designated the primary dispute resolution method set forth in Section 10.F.1 above, any other claim, dispute or action shall be commenced exclusively in the King County Superior Court or the United States District Court, Western District of Washington as appropriate. In the event of any claim or lawsuit for damages arising from the Parties’ performance of this Agreement, each party shall pay all its legal costs and attorney fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law, provided however nothing in this paragraph shall be construed to limit either Party’s right to indemnification under Section 7 of this Agreement.

G. Modification

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each affected Party.

H. Severability

If any one or more sections, sub-sections, or sentences of this Agreement are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this Agreement and the remainder shall remain in full force and effect.

I. Relationship

It is understood and agreed that no agency, employment, joint venture, co-employer or partnership is created by this Agreement. No Party hereto shall have the power or authority to act for another in any manner to create obligations or debts which would be binding upon the other Party. No Party shall be responsible for any obligation or expense whatsoever of the other Party except as set forth herein.

J. Force Majeure

Parties shall not be deemed to be in breach of this Agreement if unable to perform their respective obligations hereunder as a result of the occurrence of an event of "force majeure," which shall include, but not be limited to, acts of God, acts of the government of the United States or of any state or political subdivision thereof, strikes, civil riots or disturbances, fire, floods, explosions, earthquakes, wind, storms, hurricanes, lightning or other similar catastrophes or other causes beyond the Parties' reasonable control. The scope of events of force majeure shall not extend to payment of money owed hereunder.

K. Disclosure

Both Parties agree that, to the extent allowable under RCW Chapter 42.56, all information with respect to this Agreement will be kept confidential and will be used for internal company purposes only. Neither Party shall, without the prior written consent of the other Party: (a) issue any press release or make any other public announcement regarding this Agreement or any relation between the City and Comcast; or (b) use the name, trademarks, or other proprietary identifying symbol of the other Party or its affiliates. Such consent by Comcast may be given only by the Executive Vice President of Corporate Communications or his or her designee. Any purported consent by any other person, including any Comcast sales or customer service representative, is void and of no effect.

L. Assignment

Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, either may assign all or part of this Agreement immediately, without the prior written consent of the other Party (a) to any entity that controls, is controlled by, or is in common control with a Party or (b) to any successor in interest to a

Party or (c) if necessary to satisfy the rules, regulations and/or orders of any federal, state or local governmental agency or body.

M. Entire Agreement

The written provisions and terms of this Agreement, together with any attached Exhibits, supersede all prior verbal statements by any representative of the City, and those statements shall not be construed as forming a part of or altering in any manner this Agreement. This Agreement and any attached Exhibits contain the entire Agreement between the Parties. Should any language in any Exhibit to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties below have executed this Agreement as of the date set forth below to be effective as of the Effective Date.

**Comcast Cable Communications
Management, LLC**

City of Des Moines

By: _____
Print Name: _____
Title: _____
Date: _____

By: _____
Print Name: _____
Title: _____
Date: _____

At the Direction of the Des Moines City
Council taken during open public meeting on
the _____ day of _____, 2018.

APPROVED AS TO FORM:

Des Moines City Attorney

NOTICES TO BE SENT TO:

Comcast

Comcast
Attn: Jerry Steele
410 Valley Ave NW
Puyallup, WA 98371
(253) 288-7533 (Office)
(206) 571-8893 (Cell)
(253) 288-7500 (Fax)

NOTICES TO BE SENT TO:

City of Des Moines

City of Des Moines
Attn: Brandon Carver
21650 11th Avenue South
Des Moines, WA 98198
(206) 870-6543 (Office)
(206) 293 1116 (Cell)
(206) 870-6596 (Fax)

With a copy to: Comcast Cable Communications Management, LLC
1500 Market Street
Philadelphia, PA 19102
Attention: General Counsel

EXHIBIT A

EXHIBIT A



Des Moines Transportation Gateway Project

S 216th Street Segment 3: 11th Avenue S to 20th Avenue S.

Engineers Estimate of Probable Costs

Comcast Undergridding

August 7, 2018



Interdisciplinary Design

Bid Item No.	Section	Item	Quantity	Unit	Unit Cost	Total Cost	Comcast % of JUT	Comcast Cost
SCHEDULE B - JOINT UTILITY TRENCH SHARED COSTS								
B1	1-04	Unexpected Site Changes	1	FA	\$ 36,000.00	\$ 36,000.00	26.87%	\$ 9,673.94
B2	1-05	Roadway Surveying	1	LS	\$ 7,000.00	\$ 7,000.00	26.87%	\$ 1,891.04
B3	1-07	Spill Prevention, Control & Countermeasures Plan	1	LS	\$ 500.00	\$ 500.00	26.87%	\$ 134.36
B4	1-07	Potholing	20	EA	\$ 600.00	\$ 12,000.00	26.87%	\$ 3,224.65
B5	1-08	Type B Progress Schedule (Minimum Bid \$5,000)	1	LS	\$ 1,000.00	\$ 1,000.00	26.87%	\$ 268.72
B6	1-09	Mobilization for Joint Utility Trench	1	LS	\$ 40,000.00	\$ 40,000.00	26.87%	\$ 10,748.82
B7	1-10	Project Temporary Traffic Control for Joint Utility Trench	1	LS	\$ 30,000.00	\$ 30,000.00	26.87%	\$ 8,051.61
B8	2-09	Shoring or Extra Excavation Class B for Joint Utility Trench	1	LS	\$ 45,000.00	\$ 45,000.00	26.87%	\$ 12,092.42
B9	8-01	Erosion/Water Pollution Control	1	LS	\$ 3,000.00	\$ 3,000.00	26.87%	\$ 806.16
B10	8-26	Franchise Utility Coordination	1	LS	\$ 10,000.00	\$ 10,000.00	26.87%	\$ 2,687.20
B11	8-26	HMA Class 1/2" PG 64-22 for Joint Utility Trench	245	TON	\$ 150.00	\$ 36,750.00	26.87%	\$ 9,875.48
B12	8-26	Franchise Utility Trench Excavation, Incl. Haul	3500	CY	\$ 40.00	\$ 140,000.00	26.87%	\$ 37,620.87
B13	8-26	Franchise Utility Trench and Structure Backfill, Crushed Surfacing Top Course	3225	TON	\$ 35.00	\$ 112,875.00	26.87%	\$ 30,331.82
B14	8-26	Franchise Utility Trench Bedding - Sand	940	CY	\$ 40.00	\$ 37,600.00	26.87%	\$ 10,103.89
Subtotal Schedule B \$ 137,510.99								
Sales Tax (10%) \$ 13,751.10								
Total Estimated Comcast Allocation Schedule B: \$ 151,262.09								

Bid Item No.	Section	Item	Quantity	Unit	Unit Cost	Total Cost
SCHEDULE C - COMCAST UNDERGRIDDING						
C1	8-26	Install Conduit 2 in. Diam.	3535	LF	\$ 4.00	\$ 14,140.00
C2	8-26	Install Conduit 4 in. Diam.	6090	LF	\$ 4.00	\$ 24,360.00
C3	8-26	Install Vault SCL B 2436	1	EA	\$ 1,300.00	\$ 1,300.00
C4	8-26	Install Vault SCL B 3048	4	EA	\$ 1,500.00	\$ 6,000.00
C5	8-26	Install Handhole SCL B 1419	2	EA	\$ 1,000.00	\$ 2,000.00
C6	8-26	Install Pedestal 1020 By Comcast	3	EA	-	-
C7	8-26	Install Pedestal 1432 By Comcast	1	EA	-	-
C8	8-26	Install Rhino Pedestal By Comcast	1	EA	-	-
C9	8-26	Install Power Supply Cabinet By Comcast	1	EA	-	-
Subtotal \$ 47,800.00						
Sales Tax (10%) \$ 4,780.00						
Total Estimated Construction Cost Schedule C \$ 52,580.00						

S 216th Street Segment 3: Comcast Easement Costs

Project Parcel #	Tax Parcel	Acquisition Type	Survey & ROW	Title Cost	PFE/AOS Cost	Negotiation Cost	Comcast Share %	Comcast Cost
		Utility Easement						

Comcast Construction Cost Estimates	
Estimated Proportional Share Schedule B \$	151,262.09
Estimated Schedule C \$	52,580.00
Total Schedules B & C \$	203,842.09
Construction Management (15%) \$	30,576.31
City Administration (5%) \$	10,192.10
TOTAL COMCAST CONSTRUCTION COSTS \$	244,610.51

STATEMENT OF WORK NO. TBD
to
AGREEMENT NO. NCA7932.0
FOR JOINT CONSTRUCTION

This Statement of Work is attached to and made a part of the most current amended version of the Agreement. In the event that any term of this Statement of Work conflicts with anything contained in the Agreement, except for terms identified in the Agreement as Non-Waivable Terms, this Statement of Work will control for purposes of this Statement of Work only. Unless otherwise defined herein, all capitalized terms in this Statement of Work will have the meanings set forth in the Agreement.

-
1. **Term.** This Statement of Work will commence as of the 1st day of June, 2018 (Effective Date) and will continue through December 31, 2020 (Expiration Date).
 2. **Party.** The Centurytel Services Group Affiliate that is a party to the Schedule is CenturyLink
 3. **The Work:**

The Project is described on **Exhibit A** "The Project" to this Statement of Work, and the "Work Schedule" for the Project is described on **Exhibit B** "Work Schedule".

Project Developer shall, at no cost or expense to CenturyLink, prepare and provide to CenturyLink engineering drawings, specifications and construction standards for the Project (the "Project Developer's Specifications"). The Project Developer, City of Des Moines, WA shall choose and pay all costs associated with the Contractor and shall provide to CenturyLink at least ten (10) calendar days' prior written notice prior to the beginning of the Project and of the Work. In addition, Project Developer shall provide all necessary excavation, bedding, backfill, off-Site disposal, and Site restoration for the placement of the Facilities, along with the coordination of other utilities participating in the Project. Project Developer shall provide all flagging and traffic control, including uniformed officers when required, for any necessary excavation or work performed by Project Developer. Project Developer will notify CenturyLink of any changes in the Work, and will obtain CenturyLink's prior written approval of such changes before commencement of any changes to the Work.

Within the number of days set forth in the Work Schedule after CenturyLink's receipt of Project Developer's Specification, CenturyLink shall, at no cost or expense to Project Developer, prepare and provide to Project Developer engineering drawings, specifications, construction standards and quantities pursuant to which the Work must be performed by Project Developer ("CenturyLink's Specifications"). CenturyLink's Specifications shall show in detail the quantity and size of all facilities and equipment to be used by CenturyLink that Project Developer will install pursuant to this Statement of Work. CenturyLink shall notify Project Developer in writing of any changes it wishes to make in CenturyLink's Specifications, and such changes shall be made, if feasible.

If the Work includes installation of new vaults and/or conduit, CenturyLink will install all wires, conductors and any other equipment needed to complete the CenturyLink portion of the Project as provided in **Exhibit A** in accordance with the Work Schedule set forth in **Exhibit B**. The vaults and conduit shall be owned solely by **CenturyLink**, and shall be responsible for all maintenance in connection with the vaults and conduits except for defects covered by the warranty contained in the Agreement. If required, CenturyLink will perform cut-over and transfer of existing CenturyLink customers to the new or relocated Facilities and/or remove any replaced aerial CenturyLink Facilities or underground CenturyLink Facilities that are in conduit or manhole structures only in accordance with the Work Schedule set forth in **Exhibit B**. CenturyLink shall in no event be required to perform a cut-over or transfer or to remove any affected Facilities prior to completion of any replacement Facilities in accordance with this Statement of Work and CenturyLink's approval of the replacement Facilities. The Facilities and all associated equipment shall be owned solely by CenturyLink, and CenturyLink shall be responsible for all maintenance in connection with the Facilities. To the extent that it has the right to do so, upon approval of the Work by CenturyLink, Project Developer shall grant, provide and/or assign to CenturyLink any permits, licenses or approvals required to access, occupy, use or operate the Facilities or any materials or facilities used in connection with the Facilities.

If the Work involves excavating, Project Developer will ensure that the Contractor notifies all utility companies and others who may have underground plant in the vicinity of the Work and that the Contractor obtains appropriate information on the location of all buried cable and utilities prior to performing any Work. Project Developer will be responsible for any failure of the Contractor to locate, expose and protect from damage all existing underground facilities, including but not limited to electrical, telephone, water, gas and sewer. In addition to its indemnification obligations contained in the Agreement, if any existing underground or other facilities are damaged directly or indirectly in connection with the Work, Project Developer will, at its expense, promptly repair or replace all damaged or destroyed facilities. Project Developer will ensure that immediate temporary repairs are made and will immediately report the damage to the property owner and to CenturyLink and will ensure that no permanent repairs are made unless the consent of the property owner has first been obtained. Repairs will be made within forty-eight (48) hours after receiving permission from the property owner, unless otherwise agreed to by CenturyLink. At CenturyLink's sole option, CenturyLink may elect, rather than having Project Developer make any repair described in this subsection, to have the repair made by CenturyLink's employees or contractors. If CenturyLink or its contractor performs the repair, CenturyLink will invoice Project Developer for CenturyLink's reasonable and documented costs, including without limitation labor costs, and Project Developer will pay CenturyLink for such costs within forty-five (45) calendar days after receipt of an invoice.

CenturyLink will be responsible for providing all traffic control associated with the installation and/or removal of Facilities for which CenturyLink is responsible pursuant to this Statement of Work, including the pulling of cables and associated equipment.

Project Developer will be responsible for providing all traffic control associated with the installation, relocation, and/or removal of Facilities for which Project Developer is responsible pursuant to this Statement of Work.

Project Developer shall obtain any and all licenses, permits and approvals required for the Work.

Project Developer agrees that the Work will be performed in accordance with all applicable federal, state and local laws, rules and regulations and the requirements of whoever owns or has jurisdiction over the rights of way in which the Work is to be performed.

CenturyLink shall have the right at all times to observe and inspect the performance of the Work.

To the extent that performance of the Work requires the use or installation of any materials, and unless as otherwise agreed to in writing by the parties, CenturyLink shall arrange for the purchase and delivery of materials to the Site in accordance with the Project Schedule. If CenturyLink and Project Developer agree that Project Developer will supply any materials, the materials will be new and shall be of the specific type designated by CenturyLink.

If the Work requires the use or installation of any materials, the item checked below shall apply:

☒ X Except as specifically set forth in **Exhibit B**, CenturyLink shall arrange for the purchase and delivery of materials to the Project site in accordance with the Work Schedule.

☐ Except as specifically set forth in **Exhibit B**, Project Developer shall provide all materials required in connection with the Project. All materials will be new and of the specific type designated by CenturyLink.

☐ As set forth in **Exhibit B**, Project Developer and CenturyLink shall each provide some materials for the Project. All materials provided by Project Developer will be new and of the specific type designated by CenturyLink

Ownership of any materials or equipment supplied by Contractor will transfer to CenturyLink upon receipt by Contractor of payment for the Work by CenturyLink.

CenturyLink and Project Developer shall maintain continued coordination regarding the Project, and Project Developer shall ensure that the Contractor also participates in the coordination. This coordination shall include but not be limited to a pre-construction meeting. Project Developer shall be responsible for the scheduling of these meetings.

Project Developer will be responsible to CenturyLink for acts and omissions of Project Developer's and the Contractor's employees and subcontractors and each of their agents and employees, and any other persons performing portions of the Work.

4. Completion of the Work:

Project Developer shall notify CenturyLink within ten (10) calendar days after completion of the Work and shall deliver to CenturyLink "as-builts" for the Work if applicable. Upon receipt of the notification and the as-builts, CenturyLink shall have ten (10) calendar days to inspect the Work and the as-builts and to accept or reject the Work and the as-builts (specifying, if rejected, any reasonable objection or deficiency) by delivery of written notice to the City. Project Developer will, at its own expense, correct the problem within ten (10) calendar days after receipt of CenturyLink's notice. The foregoing procedure will be repeated until CenturyLink finally approves the Work and the as-builts. If CenturyLink fails to reject the Work or as-builts within the ten (10) day period set forth above, the Work and as-builts shall be deemed accepted by CenturyLink.

5. Changes:

If conditions or circumstances require a change in the Project or the Work, each party shall agree in writing to any changes, including without limitation payment responsibilities, prior to commencement of the Work or the changes. Neither party shall be responsible for any changes to the Work (including without limitation payment responsibilities) made without its prior written consent

6. Payment for the Work/Fees.

In consideration for performance of the Work and for the other promises and covenants contained in this Agreement, CenturyLink agrees to pay to Project Developer the amount set forth on an exhibit to the Schedule (the "Payment") in accordance with the **Exhibit E** "Work Price Schedule" to the Schedule (the "Payment Schedule"); provided, that CenturyLink shall not make any final payment to Project Developer until CenturyLink has approved the Work.

7. Project Managers.

CenturyLink:	Project Developer:
Leslie Ferguson-Watson	Brandon Carver, Public Works Director
23315 66 th Ave. So.	21650 11 th Ave. So.
Kent, Wa., 98032	Des Moines, Wa., 98198
(206)	206-870-6543

The parties, intending to be legally bound, have caused this Statement of Work to be executed on the dates set forth below.

CenturyLink Corporation	Project Developer The City of Des Moines
_____	_____
(Authorized Signature)	(Authorized Signature)
_____	Michael Matthias
(Print or Type Name of Signatory)	(Print or Type Name of Signatory)
Director Local Network Eng. & Const.	City Manager
(Title)	(Title)
_____	_____
(Execution Date)	(Execution Date)
	By direction of the Des Moines City Council during open public meeting on: _____
	Approved as to form: _____ Tim George Date Des Moines City Attorney

EXHIBIT A**THE PROJECT**

The City of Des Moines, WA (Project Developer) will be making sidewalk and right of way improvements along S. 216th Street from approximately 11th Avenue S to 20th Avenue S. The City of Des Moines has requested that CenturyLink relocate existing aerial facilities to an underground environment by way of participation in the joint trench utility corridor to be provided by the City to facilitate the facility relocation work.

EXHIBIT B

THE WORK AND THE WORK SCHEDULE

The Project Developer will provide all excavation, backfill, restoration and labor for the installation of approximately 7,300 lineal feet of CenturyLink provided 4 inch PVC conduit in various duct configurations, in the joint trench utility corridor for the relocation of existing CenturyLink aerial facilities. CenturyLink will provide and deliver all vaults, conduit and conduit accessories, including conduit bends, couplers and caps in accordance with project schedule. The Project Developer will be responsible for insuring the condition and security of CenturyLink provided materials once delivered to the job site. All newly installed conduit shall be proofed by the Project Developer's contractor by passing a CenturyLink approved mandrel through each conduit and installation of CenturyLink provided polyethylene mule/measuring tape.

CenturyLink estimates the cost of relocation of the Aerial overhead at \$96,472.60. CenturyLink agrees make payment to the City of Des Moines for said amount as betterment for the project per the terms of this agreement.

The Project Developer contractor will stub out and stake conduit access for CenturyLink oversets as provided on the final City Plans and Specifications. Installation of conduit, vaults, Charles Pedestals and Charles Cubes will be coordinated with the Project Developer's contractor and CenturyLink. After all newly installed conduit has been proofed and accepted by CenturyLink, the City's contractor will provide all excavation, backfill, restoration and labor for the installation and setting the final grade of CenturyLink provided Charles Pedestals (4), Charles cubes (3), Vaults 463-TA (3), and Vault 466TA (1). CenturyLink will provide all excavation, backfill, restoration and labor for oversight and installation of CenturyLink provided Vaults 264-TA (4) and Vault 463-TA (1). CenturyLink will be compensated for oversight labor costs by the Project Developer. Said work will be completed within 20 working days following notice to proceed by the Project Developer's contractor to Century Link.

CenturyLink will provide all labor and materials for the installation of , ground rods, copper cable, fiber cable, and wire required to facilitate the relocation of existing CenturyLink facilities. Extra care must be exercised by the CenturyLink's contractor to ensure that existing facilities are not damaged during these work operations.

CenturyLink will require up to 60 working days to install new cables and wire, splice cable and cutover service to the new telecommunications system after all new conduit, manholes, hand holes and pedestals have been installed and approved CenturyLink. Cut over of secondary connections will occur following activation of power supplies by PSE. CenturyLink will require up to an additional 15 working days to remove all existing aerial facilities within the bounds of the project that a rein conflict with project design and reset facilities to final finished grade. Said removals will follow PSE's removal of overhead power where in conflict.

All work performed by the City's contractor as applicable to the installation of CenturyLink facilities will be in accordance with CenturyLink design which has been incorporated into the overall project design. Attached are Exhibit C and D which includes specifications for CenturyLink work.

Exhibit C



Name of Project: S 216th St Improvements: SEG III
 Job Number: N.321469
 Location: S 216th St: 11th Ave S to 18th Ave S
 City, State: Des Moines, WA
 Project Owner: City of Des Moines
 CenturyLink Engineer/Representative: Jason Tesdal: 206-345-3488

1. CONDUIT

- a) JUT Conduit: conduit placed in the "main" trench with other utilities.
- b) Road Crossing Conduit: conduit placed with or without other utilities that are tributaries from the JUT.
- c) All conduits will be equipped with a 200lb. test pull tape calibrated in feet.
- d) All conduit and bends will be steel sweeps but no less than PVC Schedule 40. All conduit sweeps are required to be long radius sweeps: 90x48 or 45x48. All conduits must be accessible and sealed to keep water and debris out of conduit prior to cable placement.
- e) All conduit systems are designed on the basis that each conduit run, between structures, will have no more than three (3) 90 DEGREE BENDS or six (6) 45 DEGREE BENDS; or the combination of both totaling a maximum of 270 DEGREES OF BENDS.
- f) All underground conduits will be PVC Schedule 40 or better unless authorized by CenturyLink prior to placement or required by municipality: i.e. Schedule 80 crossing roads.
- g) Once CenturyLink provided materials are delivered to specified location on job site, the entity constructing the utility trench will be responsible for all materials until the Utility trench is accepted by CenturyLink.

Exhibit D



Delivering Reliability

INSTALLATION INFORMATION

This installation information (dated 4-30-2016) supercedes and makes null and void all previous information.

EXCAVATION AND BEDDING

Installation of vaults requires that the customer provide the excavation in which to lower the individual components into place. The excavation must allow for overall assembled height of vault plus added height of risers, cast iron covers, etc., and bedding material consisting of 4" to 12" of suitable base material.

A minimum clearance of 12" and 24" around the sidewalls of the vault is required for ease of installation.

SETTING

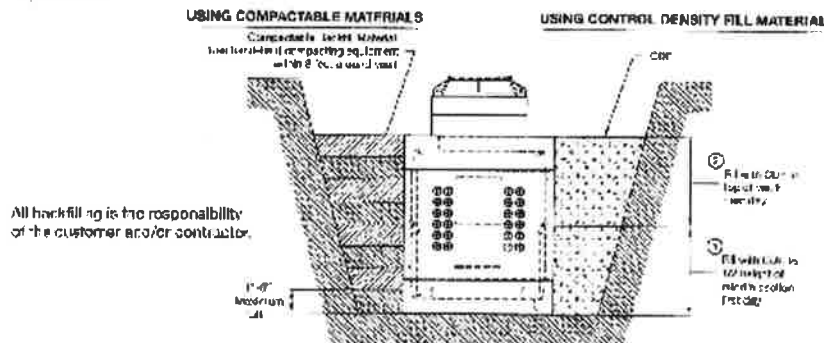
The vault is assembled as each section is lowered into the excavation. First, the base section is lowered, leveled, and firmly positioned. Then subsequent sections are lowered and assembled. The seal surfaces between sections must be clean and the gaskets must be in place. Excavation hole must not contain water when setting vault.

KNOCKOUTS

Knockouts are provided in various locations in sufficient number to meet the majority of requirements. Knockouts are easily removed by striking in the center with a hammer or other similar tool. A single moderately heavy blow will give better results than numerous light blows.

BACKFILLING

Backfill around all vaults should be of a good compacting material such as pea gravel, sand, or select backfill material. In no case shall the material be saturated soil, or contain large rocks or chunks. No voids should remain between the vault walls and native soil of excavation. Backfilling should not be done until vault is completely assembled. Make certain the backfill is compacted progressively from the bottom to the top surface.

**GROUTING**

All grouting of risers, covers, conduit or specific sections of vaults is the responsibility of the customer and/or contractor. A recommended cement grout consists of two parts sand and one part cement and sufficient water to form a plastic slurry. Apply in a manner to insure filling of all voids in the joint being sealed.

DESIGN ASSUMPTIONS

Vaults are designed for H-20 loading unless otherwise specified. Soil cover for vaults shall be between 6'-0" (maximum) and top of vault at finished grade (minimum). If the soil cover does not fall within this range or the water table is less than 3'-0" below finished grade (ft, ft, etc.), or if loading exceeds H-20, Oldcastle Precast needs to be contacted to evaluate the vault for structural and buoyancy purposes.

Mailing Address:
Oldcastle Precast
Auburn, VA 22003

Phone: 1-800-368-5411
Fax: 202-368-5411
Email: info@oldcastleprecast.com

opauburn.com

EXHIBIT E**WORK PRICE SCHEDULE**

In accordance with RCW 35.99.060, the City is responsible for the incremental cost difference between aerial to aerial relocation of facilities and aerial to buried relocation of facilities when CenturyLink has an ownership share in the aerial supporting structures estimated at \$96,472. The CenturyLink aerial facilities requiring relocation are mostly attached to CenturyLink owned poles and as such CenturyLink meets the requirements in the RCW regarding ownership share in aerial supporting structures. CenturyLink will accept excavation for trench, labor to install CenturyLink provided conduit and all restoration in joint trench required for the relocation of CenturyLink aerial facilities in conflict with City project design at no cost to CenturyLink. CenturyLink will install overset vaults and/or cubes needed for the project as noted in Exhibit G-1. The City will acquire permanent utility easements on behalf of CenturyLink and other utilities for the location of utility structures on private properties and CenturyLink intends to reimburse the City for proportionate costs thereof.

CenturyLink will provide all conduit, vaults, hand holes, manholes, cable, labor to pull cable in conduit, labor to splice cable and cutover service to the new system and labor to remove existing CenturyLink aerial cables and poles in conflict with City project design at no cost to the City.

The estimated cost of this work is shown below and attached hereto as Exhibit E-1.

ACTIVITY	COST	DES MOINES PORTION	CENTURYLINKS PORTION	Notes
JUT Construction	\$219,037.96	\$122,565.36	\$96,472.60	Clink's incremental cost benefit
JUT Oversets (CenturyLink)	\$8,000.00	\$8,000.00	\$0.00	All labor for 5 oversets
TOTAL COST	\$227,037.96	\$127,565.36	\$96,472.60	

Any change order or forced account costs would be considered to be additional increment costs to the conversion.

EXHIBIT E-1

Des Moines Transportation Gateway Project
S 216th Street Segment 3: 11th Avenue S to 20th Avenue S
Engineer's Estimate of Probable Costs
Century Link Undergrounding
July 30, 2018



KPG
KPMG LLP

Bid Item No.	Section	Item	Quantity	Unit	Unit Cost	Total Cost	Century Link % of JUT	Century Link Cost
SCHEDULE B - JOINT UTILITY TRENCH SHARED COSTS								
B1	1-04	Uninterrupted Site Changes	1	LS	\$ 36,000.00	\$ 36,000.00	23.65%	\$ 5,965.40
B2	1-05	Roadway Surveying	1	LS	\$ 7,000.00	\$ 7,000.00	23.65%	\$ 1,669.38
B3	1-07	Spill Prevention, Control & Countermeasures Plan	1	LS	\$ 500.00	\$ 500.00	23.65%	\$ 119.24
B4	1-07	Permitting	20	EA	\$ 600.00	\$ 12,000.00	23.65%	\$ 2,851.00
B5	1-08	Type B Program Schedule (Minimum Bid \$5,000)	1	LS	\$ 1,000.00	\$ 1,000.00	23.65%	\$ 236.42
B6	1-09	Mobilization for Joint Utility Trench	1	LS	\$ 40,000.00	\$ 40,000.00	23.65%	\$ 9,529.33
B7	1-10	Project Temporary Traffic Control for Joint Utility Trench	1	LS	\$ 30,000.00	\$ 30,000.00	23.65%	\$ 7,154.50
B8	2-09	Shoring or Ears Excavation Class B for Joint Utility Trench	1	LS	\$ 45,000.00	\$ 45,000.00	23.65%	\$ 10,731.75
B9	8-01	Erosion/Water Pollution Control	1	LS	\$ 3,000.00	\$ 3,000.00	23.65%	\$ 715.45
B10	8-26	Franchise Utility Coordination	245	TON	\$ 150.00	\$ 36,750.00	23.65%	\$ 2,884.63
B11	8-26	HMA Class 1/2" PG 64-22 for Joint Utility Trench	245	TON	\$ 150.00	\$ 36,750.00	23.65%	\$ 2,884.63
B12	8-26	Franchise Utility Trench Excavation, 10'x10'	500	CY	\$ 40.00	\$ 20,000.00	23.65%	\$ 3,320.75
B13	8-26	Franchise Utility Trench and Structure Bidding, Cracked Surfacing	3225	TON	\$ 36.00	\$ 112,875.00	23.65%	\$ 26,518.80
B14	8-26	Franchise Utility Trench Bidding - Sand	840	CY	\$ 45.00	\$ 37,800.00	23.65%	\$ 8,965.57
Schedule B Totals								
						\$ 1,221,379.95	23.65%	\$ 289,672.80
						\$ 12,203.79	100%	\$ 12,203.79
						Total Estimated Century Link Allocation Schedule B:		\$ 134,241.64

Bid Item No.	Section	Item	Quantity	Unit	Unit Cost	Total Cost
SCHEDULE D - CENTURY LINK UNDERGROUNDING						
D1	8-26	Install Conduit 4"x10'	7500	LF	\$ 4.00	\$ 29,200.00
D2	8-26	Install Conduit 6"x10'	4	EA	\$ 300.00	\$ 1,200.00
D3	8-26	Install Conduit 8"x10'	3	EA	\$ 500.00	\$ 1,500.00
D4	8-26	Install Conduit 10"x10'	3	EA	\$ 2,000.00	\$ 6,000.00
D5	8-26	Install Vault 4651A	1	EA	\$ 2,000.00	\$ 2,000.00
D6	8-26	Install Vault 4661A	4	EA	\$ 500.00	\$ 2,000.00
D7	8-26	Install 264-1A Vault By Century Link	1	EA		
D8	8-26	Install 465 1A Vault By Century Link	1	EA		
D9	8-26	Adjust Vault to Grade	5	EA	\$ 800.00	\$ 4,000.00
						Schedule D Totals
						\$ 43,900.00
						Sales Tax (10%)
						\$ 4,390.00
						Total Estimated Construction Cost Schedule D:
						\$ 48,290.00

S 21st Street Segment 3: Century Link Eastment Costs

Project Parcel #	Tax Parcel	Acquisition Type Unit Estimate	Survey & BOM	Tele Cost	PEE/ACS Cost	Material Cost	Century Link % Share	Century Link Cost

Century Link Undergrounding Cost Estimate			
Estimated Proportional Share Schedule B	134,241.64		
Estimated Schedule G	48,290.00		
Sub total	182,531.64		
Construction Management (15%)	27,379.75		
City Administration (5%)	9,126.59		
Total	219,037.96		
Century Link overhead labor 10% & 15%	89,000.00		
TOTAL	227,937.96		
ESTIMATED COST DISTRIBUTION			
ACTIVITY	COST	DES MONIES PORTION	CENTURYLINKS PORTION*
JUT Construction	\$219,037.96	\$122,568.36	\$96,472.80
JUT Materials & Construction Overhead	\$8,000.00	\$8,000.00	\$0.00
TOTAL COST	\$227,037.96	\$130,568.36	\$96,472.80

*J. Tesdal 9/10/18
EMAIL - proprietary
costs

Project Title:

South 216th - Segment 3

Project #

319.334

Summary Project Description:

ACTUAL EXPENDITURES				BUDGET		PROJECT BUDGET ALLOCATIONS BY YEAR					
Project to Date 12/31/17	Project To Date 3/31/2018	2018 Year to Date 3/31/2018	2018 Remaining	Estimated Year End 2018	Planned Year 2019	Planned Year 2020	Planned Year 2021	Planned Year 2022			
475,018	477,035	2,017	62,965	64,982							
3,069	7,188	4,119	2,812	6,931							
37,693	38,373	660	41,627	42,307							
1,800	1,800		(1,800)	(1,800)							
-	11,066	11,066	118,934	130,000							
-	7,260	7,260	22,740	30,000							
-	-		-	-	560,000						
-			-	-	30,000						
-			-	-	4,081,000						
-			-	-							
-			-	-							
5,176	5,176		1,824	1,824	51,210						

57												
Project to Date 12/31/17	Project to Date 3/31/2018	2018 YTD 3/31/2018	2018 Remaining	Scheduled Year 2018	Scheduled Year 2019	Scheduled Year 2020	Scheduled Year 2021	Scheduled Year 2022				
242,333	242,333		153,515	153,515	2,376,117							
280,423	280,423		120,729	120,729	6,132,093							
522,756	522,756		274,244	274,244	5,132,210							

Funding Source

Transfers

319.334.321.387.00.00.00
319.334.000.334.03.80.00

Funding Sources			
	1/1/18 Current C/P Budget	2018 C/P Supplemental Request	2018 Revised C/P Budget Estimate
Traffic Impact Fees - City Wide	2,771,965	-	2,771,965
TIF Grant	3,157,245	-	3,157,245
Total Project Revenue Budget: 6,929,210			

Committed Cash:

(25,142)

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AGENDA ITEM

SUBJECT: Consultant Contract Amendment
#8– Grant Fredricks

ATTACHMENTS:

1. Proposed Amendment/Addendum 8 to Professional Services Agreement with Grant Fredricks

AGENDA OF: October 4, 2018

DEPT. OF ORIGIN: Chief Operations Officer

DATE SUBMITTED: September 27, 2018

CLEARANCES:

- ☐ Community Development _____
- ☐ Marina N/A
- ☐ Parks, Recreation & Senior Services N/A
- ☐ Public Works _____

CHIEF OPERATIONS OFFICER: DJS

- ☒ Legal MH
- ☒ Finance Baw
- ☐ Courts N/A
- ☐ Police N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: _____

Purpose and Recommendation:

The purpose of this item is for the City Council to approve a contract amendment/addendum with Grant Fredricks for additional 2018 consulting services related to the Sound Transit's (ST) Federal Way Link Extension (FWLE). Funds for the proposed amendment/addendum are available in the 2018 adopted budget and Task Order #2 of the Services Agreement between the City and Sound Transit for the FWLE and provided for in the 2018 budget. The following motion will appear on the Consent Calendar:

Suggested Motion:

Motion: "I move to approve Amendment/Addendum 8 to the Contract with Grant Fredricks, continuing professional consulting services through December 31, 2019, with an increase of \$10,000 for 2018 (bringing the total not-to-exceed amount for 2018 services to \$90,000.00), and authorize the City Manager to sign the contract amendment substantially in the form submitted."

Background:

Mr. Fredricks has been providing management consulting services under contract since January 2013 following his retirement from the City in November 2012. As a State Personnel System (PERS) 2 retiree, he may work up to 867 hours a year for employers covered by PERS such as the City. In 2013 he worked a total of 800 hours, 482 hours in 2014, 410 hours in 2015, 494 hours in 2016, 500 hours in 2017, and in 2018 up to 683 hours if this addendum is approved.

To date in 2018, 99% of his time was spent on FWLE. All his FWLE time was and will continue to be fully reimbursed by Sound Transit under the terms of Task Orders #1, #2 and prospectively #3.

Discussion

Mr. Fredricks has been working in Des Moines four or five days a month and from his home office when it is not necessary to commute to City Hall. He occasionally participates in City Council and Council Committee meetings and represents the City with Sound Transit as the City's project coordinator.

In 2018, Mr. Fredricks has been working under an amended \$80,000 (617 hours) City Council-approved contract on FWLE planning and permitting, working with Highline College on the College Way Connection Project in the East Parking Lot of the College, amending and resolving technical and land use code requirements, and drafting and coordinating language for the development agreement, transit way agreement and funding agreement with Sound Transit. Mr. Fredricks hourly rate was increased by Amendment/Addendum 7 to \$150/hour for the second half of 2018 and 2019.

The FWLE-related work in 2018 has been more complex and time consuming than anticipated when the June 2018 amendment was requested. It has included and will include but will not be limited to the following: develop a draft Task Order 3 with ST staff; reviewing design builder requests for information and alternative technical concepts, completing Highline College's right-of-way dedications, helping coordinate review, approval and approval of the College's comprehensive sign plan; assisting with the vacation of City rights-of-way along the guideway alignment; and assisting in the development of the City FWLE staffing plan through design and construction.

Consultant Selection Process

Professions outside the fields described in RCW 39.80 may provide consulting services such as long-range planning and studies, project management, economic analyses, real estate negotiations, etc. These consulting services are provided through personal service agreements (RCW 39.29). For professional service contracts, like the one for Mr. Fredricks, the City can select or appoint based on the specific experience of the individual and the proposed work to be performed. There are no other specific selection requirements for professional service contracts.

Alternatives

Council may choose not to approve the 2018 contract amendment in which case Mr. Fredricks will continue to work until the end of October when his contract authority is reached, and resume assigned work in January under the Council-approved 2019 contract. Other staff would be required to back fill his assignments from November through the end of the year.

Financial Impact

The 2018 Community Development budget has enough capacity to accommodate up to \$10,000 of additional 2018 spending assuming Sound Transit fully reimburses his time as provided for in Task Order #2. The adopted 2018 Budget was developed to accommodate up to \$50,000 in services provided by contract as proposed anticipating that 90% of these costs will be reimbursed by ST in accordance with task orders authorized by the City Council Services Agreement with ST.

Recommendation/Conclusion:

Staff recommends that Council approve the proposed contract Addendum.

EIGHTH CONTRACT AMENDMENT/ADDENDUM
CONTRACT FOR SERVICES BETWEEN
THE CITY OF DES MOINES AND GRANT FREDRICKS

THIS AMENDMENT/ADDENDUM is entered into on this ____ of _____, 2018, pursuant to that certain Contract entered into on the 2nd day of January, 2014 and as amended on October 13, 2014, December 23, 2014, January 8, 2015, December 21, 2015, October 27, 2016, October 26, 2017 and June 21, 2018 between the **CITY OF DES MOINES, WASHINGTON** (hereinafter "City"), and **GRANT FREDRICKS** (hereinafter "VENDOR").

The parties herein agree that the Contract dated January 2, 2014, shall remain in full force and effect, except for the amendments/addendums set forth as follows:

I) **SECTION II** of Contract amended June 21, 2018 is hereby amended to read as follows:

II. **TIME OF COMPLETION.** Upon the effective date of this Amendment/Addendum, Vendor shall complete the work and provide all goods, materials, and services by December 31, 2019.

II) **SECTION III** of Contract amended October 26, 2017, is hereby amended to read as follows:

III. **COMPENSATION.** The City shall pay the Vendor an amount not to exceed ~~\$80,000~~\$90,000 for services performed in 2018, and \$50,000 for services performed in 2019 at a rate of \$150.00 per hour effective July 1, 2018, for the goods materials, and services contemplated in this Agreement. Vendor shall invoice the City not later than the 5th of the following month. The invoice will include an itemized work summary.

Except as modified hereby, all other terms and conditions of contract dated January 2, 2014, remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Addendum as of the date first above written.

GRANT L. FREDRICKS: By: _____ <i>(signature)</i> Print Name: <u>Grant L. Fredricks</u> Vendor DATE: _____	CITY OF DES MOINES: By: _____ <i>(signature)</i> Print Name: <u>Michael Matthias</u> Its <u>City Manager</u> DATE: _____ Approved by the Des Moines City Council in an open public meeting on _____, 2018. Attest: _____ Approved as to form: _____ _____ City Clerk City Attorney DATE: _____ DATE: _____ _____
NOTICES TO BE SENT TO: Grant L. Fredricks: dba Fredricks Management Consulting 9020 Valley Green Dr SE Olympia, WA 98513 (360) 584-3164 (cell phone) granita.fredricks@gmail.com	NOTICES TO BE SENT TO: CITY OF DES MOINES: Daniel J. Brewer, PE, PTOE Chief Operations Officer City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 206-870-6554 (telephone) 206-870-6540 (facsimile)

A G E N D A I T E M

SUBJECT: Interlocal Agreement (ILA) with Highline College for the College Way Connection Project

ATTACHMENTS:

1. Interlocal Agreement Between the City of Des Moines and Highline College for the College Way Connection Project

FOR AGENDA OF: October 4, 2018

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: September 24, 2018

CLEARANCES:

- [X] Community Development *SMC*
 [X] Public Works *RBC*
 [] Marina N/A
 [] Parks, Recreation & Senior Services N/A

CHIEF OPERATIONS OFFICER: *DSB*

- [X] Legal *MM*
 [X] Finance *SAW*
 [] Police N/A
 [] Courts N/A

**APPROVED BY CITY MANAGER
FOR SUBMITTAL:** *[Signature]*

Purpose and Recommendation:

The purpose of this item is to seek Council authorization to enter into an Interlocal Agreement (ILA) (Attachment 1) between the City of Des Moines and Highline College for the College Way Connection Project, to be integrated as part of Sound Transit's Federal Way Link Extension (FWLE) Project.

Suggested Motion:

Motion: "I move to approve the Interlocal Agreement between City of Des Moines and Highline College for the College Way Connection Project and authorize the City Manager to sign said Agreement substantially in the form as submitted."

Background:

The FWLE final alignment and project-to-build was approved by the Sound Transit Board in January 2017. The approved project included a Kent Des Moines Link light rail station located on 30th Avenue South and South 236th Street/College Way, with a connection to Highline College along the 236th/College Way corridor.

In June 2016, Highline College submitted a Master Plan application for the proposed redevelopment of the Campus including East Lot parking and circulation improvements. The City Council approved the Master Plan following a public hearing in January 2017. The Master Plan is incorporated by reference into Chapter 5, Capital Facilities, Utilities and Public Services Element of the Des Moines

Comprehensive Plan. A SEPA Environmental Checklist was submitted with the Master Plan Application. A threshold Mitigated Determination of Non-significance (MDNS) was issued on November 21, 2016 and no appeals were received.

The College has been working for many years with the City, King County Metro and Sound Transit to accommodate the impacts and opportunities of the Kent Des Moines light rail station opening for service in 2024. As noted in the Master Plan approval resolution MDNS Condition #9, Light Rail Station Access, as highlighted in the following resolution recitals, the City Council underscored the importance of opportunities for improved light rail station access and the City's willingness to work with the College and other agencies to help fund such improvements:

- *The City Council is especially supportive of MDNS Requirement 9 promoting improved access through the Highline College Campus to the Midway light rail station from Des Moines' neighborhoods on the north and south sides of the Campus and from the Barnes Creek Trail extension on the west side of the campus, and*
- *The City hopes to work closely with the College on funding such access improvements using Sound Transit 3 Access Improvement Program, State College Board, and other federal, state, regional and local funding.*

Sound Transit will issue a Notice to Proceed to a Design-Build contractor (DB) in Summer 2019. As noted in earlier Council briefings, the following is the current FWLE schedule:

- Right of Way Acquisition – Through July 2019
- Request for Design/Builder (DB) Qualifications (RFQ) – Issued April 2018
- Request for Proposals (RFP) from 3 short listed DB teams – Issued September 2018
- DB selected – Winter 2019
- Notice to Proceed with design and construction – Summer 2019
- Heavy construction completed – 2023
- FWLE service begins - 2024

Discussion:

The College Way Connection Project will develop the street end and pedestrian access and East Lot parking improvements on the Highline College Campus in conjunction the College Way street improvements west of Pacific Highway South as an integrated element of the FWLE project and College campus. The Project will help decrease vehicular traffic by increasing the travel mode split for transit.

The College and the City have signed a Letter of Concurrence (Exhibit A to Attachment 1) which highlights the intent to connect the Kent Des Moines light rail station at South 236th Street and 30th Avenue South along South 236th Street and College Way to a street end just inside the current eastern edge of the College.

Sound Transit has completed state- and federally-required environmental analysis of the FWLE and the City's SEPA Official has determined that no further SEPA review is required for the Project and associated parking lot modifications.

Sound Transit's Design Build Contractor will complete the design and construct the College Way Connection Project, and both the City and the College will contribute toward the cost of constructing the Project as follows:

- The City will vacate certain historic public rights of way on the Campus (Exhibit F);
- The College will, in turn and at no cost to the City, dedicate a street end right of way (ROW) and grant a drainage easement (Exhibit E);
- The City will pay \$500,000 for the final design and construction of the street end along with pedestrian and bicycle facilities and landscaping to be constructed in the new City ROW on the College; and
- The College will pay \$900,000 for the final design and construction of parking lot and traffic circulation modifications outside the City ROW (Exhibit C).

As per the ILA Sound Transit will provide two monument sign foundations with electrical service on SR99, and one in the center island of the new street end treatment on the Campus. The College has agreed to fabricate, install and maintain the signs. These three signs will be part of a College comprehensive sign plan to be submitted by December 2018 and reviewed by the City as an element of a Comprehensive Design Plan Determination.

The City's ROW vacation and the College's dedication of the College Way ROW will be considered separately by the City Council this winter.

Additional coordination involving right of way dedication, stormwater easements and public works contracting will be required with the State Board of Community and Technical Colleges and the State Department of Enterprise Services over the next several months. City staff will be coordinating and cooperating with Highline College Staff on this process.

Alternatives:

The Highline College Board of Trustees authorized the President to sign the ILA on September 20th. If the City Council desires changes to the College-signed ILA, staff will need to negotiate the desired changes and the amended ILA will need to be approved by the College Board of Trustees and then reviewed again by the City Council.

Financial Impact:

The City's cost contribution will come from Transportation Impact Fees to be collected from the Highline Place development and will be paid to Sound Transit in January 2021. Under the terms of the ILA and FWLE Development Agreement, the City will serve as agent for the College. The College's cost share will be paid to the City in two increments: upon substantial completion/opening for public use; and upon final acceptance. The City, in turn, will pay the combined City and College contribution to Sound Transit under the terms of the Sound Transit/City Development Agreement to be considered by the Council on October 4, 2018.

If the ILA is not accepted, the City will not incur unreimbursed administrative expenses, but would also not receive any College funds to support this program. The College Way street end would be relocated east to a location just outside the East Parking Lot.

Recommendation/Conclusion:

Public Works, Community Development, Finance and Legal recommend authorization of the Interlocal Agreement.

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**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF DES MOINES AND HIGHLINE COLLEGE
for the
COLLEGE WAY CONNECTION PROJECT**

This Interlocal Agreement (“Agreement”) is entered, by and between the CITY OF DES MOINES (“City”), a Washington municipal corporation and HIGHLINE COLLEGE, a Washington State Community and Technical College (“College”). Under the authority of RCW 39.34.030 and in consideration of the mutual covenants contained herein, the City and College do hereby agree as follows regarding the College Way Connection Project (“Project”).

RECITALS

WHEREAS, the City is a non-charter optional municipal code city organized under the laws of the State of Washington, with authority to enact laws and enter into interlocal and right-of-way agreements to promote the health, safety, and welfare of its citizens.

WHEREAS, Highline College is a state community college created pursuant to chapter 28B.50 RCW with power to enter into this agreement, except where noted.

WHEREAS, Chapter 39.34 RCW (“The Interlocal Cooperation Act”) permits municipal corporations and state agencies to contract with one another to perform any act that each is independently authorized to perform.

WHEREAS, the Growth Management Act (Chapter 36.70A RCW) requires that the City plan for and encourage high capacity transit facilities such as the Federal Way Link Extension (RCW 36.70A.020) and accommodate within the City such essential public facilities (RCW 36.70A.200).

WHEREAS, in November 2008, central Puget Sound area voters approved an extensive program of transportation projects to be implemented over the 15-year timeframe from 2009 – 2023 known as the Sound Transit 2 (ST2) Plan. Among other projects identified for implementation, ST2 included the extension of the Link light rail transit system from SeaTac to the cities of Kent and Des Moines which is now a portion of Sound Transit’s Federal Way Link Extension (FWLE). In November 2016, voters approved an additional program of transportation projects, known as the Sound Transit 3 (ST3) plan. The ST3 plan included, among other projects, the extension of the Link light rail transit system from its current terminus at the Angle Lake Station at S. 200th Street in the City of SeaTac to the City of Federal Way as part of the FWLE.

WHEREAS, the College Way Connection Project will develop the College Way street end and pedestrian access on Highline College from the light rail station and will be integrated into the FWLE project and College campus.

WHEREAS, The College and the City have signed a Letter of Concurrence which highlights the intent to connect the Kent Des Moines light rail station at South 236th Street and 30th Avenue South along South 236th Street and College Way to a street end just inside the current eastern edge of the College. The letter of Concurrence is included as Exhibit A to this Agreement.

WHEREAS, the City and College recognize the public benefits that will accrue to the City, College, and community from construction of the Project including a decrease in vehicular traffic and an increase in the travel mode split for transit.

WHEREAS, the Parties acknowledge that Sound Transit has completed extensive environmental analysis of the FWLE in accordance with the National and State Environmental Policy Act (NEPA and SEPA). Sound Transit completed the SEPA with the issuance of the Federal Way Link Extension Final Environmental Impact Statement on November 18, 2016. The Federal Transit Administration (“FTA”) issued a Record of Decision (ROD) on March 6, 2017 and the Federal Highway Administration (“FHWA”) issued a ROD on March 9, 2017 concluding the NEPA process.

WHEREAS, the City has completed environmental analysis of the Project in accordance with the State Environmental Policy Act (SEPA) and determined that no further SEPA review is required for the Project and associated parking lot improvements (Exhibit B).

WHEREAS, the Parties recognize the importance of connecting the light rail station to the College as part of the comprehensive program of regional transit improvements approved by voters and have mutually concluded that it is feasible to do so by 2024. Both parties will work in a collaborative effort to resolve any issues and risks to ensure that the College Way Connection Project is completed before Federal Way Link Extension project begins operations, currently projected for 2024.

WHEREAS, the parties anticipate that Sound Transit will procure the services of a Design Build Contractor to construct the College Way Connection Project, and that both the City and the College will contribute toward the cost of constructing the Project.

WHEREAS, the parties anticipate completion of the project will require that the City vacate certain public rights of way on the property held in trust on behalf of the College, as well as the City street right of way dedication and grant of a drainage easement by the State Board of Community and Technical Colleges (SBCTC).

NOW THEREFORE, in consideration of mutual promises and covenants and promises to set forth in this Agreement, and in the exercise of authority granted by the Interlocal Cooperation Act, Chapter 39.34 RCW, the Parties hereto agree to the terms and conditions as follows:

1.0 DEFINITIONS

For purposes of this Agreement, the following terms, phrases, words, and their derivations will have the meaning herein given where capitalized; words not defined herein will have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender will be applicable to all genders whenever the sense requires. The words “will” and “shall” are mandatory and the word “may” is permissive. Reference to governmental entities, whether persons or entities, refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference will be read to refer to the renumbered provision. References to laws, ordinances or regulations will be interpreted broadly to

cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted as amended.

- 1.1 Agreement. “Agreement” means this Interlocal Agreement approved by appropriate action of the City and College.
- 1.2 City. “City” means the City of Des Moines and any successor or assignee following an assignment that is permitted under this Agreement.
- 1.3 Design/Build Contractor. “Design/Build (or D/B) Contractor” means the entity or entities that will contract with Sound Transit to complete the design of the Project, as part of the FWLE, to obtain all remaining permits for the Project as part of the FWLE, and to construct the Project as part of the FWLE, all based upon a design/build procurement method.
- 1.4 Design Submittal. “Design Submittal” means a set of design documents for the Project that have been or will be submitted to the City for review as the Project moves through various review and approval processes. The different phases of design submittal are:
 - (a) “Preliminary Engineering (PE) Submittal” (30% Design Submittal) means the Design Submittal that was furnished to the City in 2017 prior to Sound Transit initiating a procurement process seeking the services of a Design/Build Contractor. These plans included conceptual design of the alignment. The City has already reviewed and provided written comment on this submittal. Sound Transit has provided a written response to the City indicating how the City’s comments have been resolved.
 - (b) “Proposed Changes to the Preliminary Engineering Submittal” means a Design Submittal based on plans prepared as part of Sound Transit’s Design/Build Contractor selection process. This submittal will include any design changes to the “Preliminary Engineering (PE) Submittal” initiated by the Design/Build Contractor including the College Way Connection Project during procurement and/or initiated by Sound Transit in preparing the RFP. This will be provided to the City for conceptual review.
 - (c) “60% Design Submittal” means a Design Submittal that presents the basic concept of a defined segment of the overall Project, including advanced detail on route alignment, utilities, urban design concepts, and other concepts required to define the intent of the Project. This will also include the incorporation of the identified resolution to the city review comments received on the “Preliminary Engineering (PE) Submittal”.
 - (d) “90% Design Submittal” means a Design Submittal reflecting advanced design for a defined segment of the overall Project, so that all reviewers can comment on the overall scope of the Project prior to submittal of the Permit Submittal (100%). It shall include all scope of work. Items missing from design should be minor and documented to reviewers.
- 1.7 Permit Submittal (100% Design). “Permit Submittal” means a Design Submittal illustrating the entire scope of the work of a defined segment of the overall Project so that all reviewers can comment on the overall scope of the Project. This may include utility relocation improvements, new traffic signaling plans, grading and landscaping plans, and all work to be completed as part of the Project.

- 1.8 Issued for Construction. The IFC set of drawings will serve as the basis for construction activities and field inspections. It will incorporate any required corrections based on review of the Permit Submittal, upon which the Design-Build Contractor will rely in constructing the Project, including, but not limited to a complete set of construction plans, drawings, and specifications.
- 1.9 Federal Way Link Extension (FWLE). The extension of the Link light rail transit system from its current terminus at the Angle Lake Station at South 200th Street in the City of SeaTac to the City of Federal Way as part of the Federal Way Link Extension project.
- 1.10 Over-the-Shoulder Review. “Over-the-Shoulder Review” means the informal and ongoing review of evolving design concepts and plans developed during the Project construction phase.
- 1.11 Parties. “Parties” means the City of Des Moines and Highline College.
- 1.12 Project. “Project” or “Connection Project” means the College Way street end and pedestrian access to Highline College integrated into the FWLE project, and other parking lot and traffic circulation modifications as described and depicted in Exhibit C, attached and incorporated herein, and as approved by the City and College pursuant to the approvals described in this Agreement.
- 1.13 Sound Transit. “Sound Transit” means the Central Puget Sound Regional Transit Authority, and its Design Build (D/B) contractor.

2.0 COOPERATION AND GOOD FAITH EFFORTS

- 2.1 Cooperation: The Parties understand and agree that the activities described in this Agreement depend upon timely and open communication and cooperation between the Parties. In this regard, communication of issues, changes, or problems that arise with any aspect of the work should occur as early as possible in the process. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues.
- 2.2 Future Agreements: The Parties acknowledge that this Agreement may contemplate the execution and delivery of future agreements, documents, instruments, and permits, the final form and contents of which are not presently determined. This may include, but not limited to, requirements from the State Board of Community and Technical Colleges (SBCTC), or the Department of Enterprise Services (DES) for example. The Parties agree to provide the necessary resources and to work in good faith to develop the final form and contents of such documents, agreements, instruments, and permits, and to execute and deliver the same promptly.
- 2.3 Timely Review: The Parties will provide timely review by both dedicated and regular City and College staff or its consultants of all permit applications and design submittals necessary to complete the Project, subject to the City’s applicable process and regulations.
- 2.4 Impact on College Operations: The City will exercise its reasonable best efforts to minimize impacts of construction activities upon current and future College operations. It is acknowledged by the Parties that certain impacts on the campus during construction of the Project cannot be completely avoided.

3.0 PROJECT LOCATION AND ELEMENTS

- 3.1 FWLE Project: As described in the FWLE's Final Environmental Impact Statement (EIS), the purpose of the FWLE is to expand the Sound Transit Link light rail system from the City of SeaTac to the cities of Des Moines, Kent, and Federal Way in King County to provide a rapid, reliable, accessible, and efficient alternative for travel to and from the corridor and other urban growth and activity centers in the region including Highline College. It would proceed generally within I-5 right-of-way to the FWLE's terminus in the City of Federal Way. The Kent Des Moines (KDM) Station plus two other new LRT stations will be constructed as part of the FWLE with associated improvements for parking, pedestrian, bicycle, bus and other access improvements. In the City of Des Moines, specific improvements to be included as part of the FWLE project include construction of College Way along with pedestrian and bicycle improvements. The FWLE project will also include the College Way Connection Project improvements on the Highline College campus, which will be addressed in this Agreement, and in a subsequent Development Agreement between the City and Sound Transit.
- 3.2 College Way Connection Project: The College Way Connection Project includes the construction improvements necessary for connecting the Kent Des Moines light rail station to the College campus, which is part of the comprehensive program of regional transit improvements approved by voters, and consistent with the FWLE FEIS. These improvements generally consist of a FWLE and City-funded street and street end round-about on College Way and associated drainage improvements located on the College Campus, along with College-funded pedestrian and bicycle facilities from the round-about street end through the parking lot to existing pedestrian and bicycle facilities on the eastern edge of the college Campus, and College-funded parking lot modifications to accommodate these street end and pedestrian and bicycle facilities and replace displaced parking. The Project is generally described and depicted in Exhibit C. It is understood that the number of parking spaces shown in Exhibit C are approximate, and the actual number of parking spaces is subject to change based on the Final Design considerations.

4.0 SEPA COMPLIANCE

- 4.1 FWLE Project EIS: Sound Transit is the lead agency for SEPA compliance on the FWLE. In coordination with the City and other agencies with jurisdiction, Sound Transit has completed the substantive and procedural environmental review for the Project in accordance with SEPA requirements. The environmental review covers the City's issuance of permits for the FWLE Project as well as environmental mitigation, and the City will use and rely upon the existing environmental documents to satisfy its SEPA responsibilities, consistent with WAC 197-11-600.
- 4.2 College Way Connection Project: The Project (as described in Section 3.2) is consistent with comments received during the FWLE FEIS and is considered by the City to be design detail to complete traffic and pedestrian connections from South 236th Street/College Way to the College campus. In addition, the Project is consistent with the threshold determination of a Mitigated Determination of Nonsignificance (MDNS) issued on November 21, 2016 for the City Council-approved Highline College Master Plan which included access improvements from the KDM Station and SR 99. The City of Des Moines has determined that SEPA requirements for the project have been satisfied with the completion of these two separate environmental processes,

that all appropriate mitigation has been addressed, and that no additional environmental analysis is needed for this Project (Exhibit B).

5.0. PROJECT SCHEDULE

The City commits to use its best efforts to ensure the project is completed efficiently and effectively and consistent with the expectations of the College and Sound Transit. The City will provide timely updates to the College on the Project Schedule as it evolves and based on input from Sound Transit and their D/B Contractor.

6.0 PROJECT REQUIREMENTS AND DEVELOPMENT STANDARDS

- 6.1 Pre-Final PE: The City and College have determined that the Project as represented in the Pre-Final PE Submittal is generally well-designed. Furthermore, the Parties are aware of the Project schedule and the criticality of meeting schedule milestones to deliver the Project, as part of the FWLE Project, efficiently and effectively and consistent with expectations of the College and Sound Transit.
- 6.2 Development Standards: To the extent this Agreement does not establish or define development regulations or standards covering a certain subject, element, or condition, the Project will be governed by the City development standards and regulations in effect on July 1, 2018.
 - 6.2.1 Signs: The project will include foundations/bases and conduits for accent lighting for two College signs on the northwest and southwest corners of SR 99, and a College sign in the center of the street end on the Campus subject to a College-prepared and City approved Comprehensive Signage Design Plan determination that addresses all signage for the campus. The requirements for the Comprehensive Signage Design process are included in Exhibit G. The College will be responsible to provide, install, and maintain the signs and any lighting on the ST provided foundations. Details for the envisioned College Signs are provided in Exhibit D.
 - 6.2.2 Parking: The College will approve all East Parking Lot modifications, consistent with City standards.
 - 6.2.3 Lighting: The College will specify and approve the final design of all East Parking Lot lighting improvements, consistent with City standards.
- 6.3 Codes in Effect: The codes and editions that will be used for the entirety of this Project's Design and Construction are specified in the City's Development Agreement with Sound Transit that will be issued to Sound Transit's D/B Contractor and is incorporated by reference into this Agreement.
- 6.4 Right-of-Way (ROW) Vacation and Dedication: The State Board of Community and Technical College holds the project site in trust on behalf of the College. The College agrees to fully support and endorse a determination by the SBCTC to dedicate ROW required for the Project and support and endorse the grant of an associated drainage easements by the SBCTC to the City for the FWLE (Exhibit E), and in return the City agrees to vacate the former historic County ROW in the Project area (Exhibit F). When constructed, the College will fully support and endorse a proposal to the

SBCTC that the street end on the College Campus become part of the City maintained ROW and street system. See Section 11.

- 6.5 Property Access for Construction. The City will provide access rights to Sound Transit for all property needed for staging and construction of the College Way Connection Project with 90 days' notice at no cost to Sound Transit. Construction staging for that portion of College Way that is located east of Highline College shall not occur on the College campus unless specifically allowed by the College.
- 6.6 Construction Window/Schedule. Sound Transit's Design-Build Contractor (D-B) will have access to the College Campus annually from June 1 to September 15. All construction activities on the College Way Connection Project must be completed within this window, unless otherwise approved in advance by the City.
- 6.7 Project Inspection. Inspection will be done in accordance with permit conditions established in accordance with DMMC 12.05.140 in coordination with Sound Transit and College inspectors.
- 6.8 Ownership and Maintenance. The City and/or College will accept ownership and maintenance responsibility for those improvements upon substantial completion of the College Way Connection Project element of the Federal Way Link Extension in accordance with Section 3.09B of the FWLE D-B General Conditions.
- 6.9 Construction Completion Date. Sound Transit shall complete construction of the College Way Connection Project prior to substantial completion of the Federal Way Link Extension Project unless otherwise mutually agreed by the Parties.
- 6.10 Project Costs and Contributions: Provided that the SBCTC approves the dedication of the ROW and easements required for the Project as described in Exhibit C at no cost to the City, the College will contribute \$900,000 as its share of the estimated \$1,400,000 Project cost for the project described in Exhibit C. If the SBCTC does not approve the dedication of the ROW and easements required for the Project as described in Exhibit C at no cost to the City, the City is not legally able to contribute toward the Project, and the College will be responsible for the full Project cost of \$1,400,000.

The College contribution and estimated project cost identified for this option are consistent with the project described in Exhibit C. This has all new parking areas to be constructed under this agreement on the College campus as paved with asphalt.

The College is not responsible for costs in excess of \$900,000 or \$1,400,000 (respective of the SBCTC decision) unless the excess cost is due to one or more change orders requested by the College and agreed to by the City and Sound Transit, in which case the excess cost will be paid by the College.

6.11 Schedule for Project Decisions and Contributions:

Provided that the SBCTC approves the dedication of the ROW and easements required for the Project as described in Exhibit C at no cost to the City, the College will make payments to the City as follows:

Payment 1: N/A.

Payment 2: Four hundred fifty thousand dollars (\$450,000) due upon Sound Transit's Notice of Substantial Completion of the College Way Connection Project construction and the project is open to public use.

Payment 3: Four hundred fifty thousand dollars (\$450,000) due when Notice of Final Acceptance is issued by Sound Transit for the College Way Connection Project as defined in Exhibit C and the City accepts the right of way improvements.

If the SBCTC does not approve the dedication of the ROW and easements required for the Project as described in Exhibit C at no cost to the City, the College will make payments to the City as follows:

Payment 1: Five hundred thousand dollars (\$500,000) due December 31, 2020.

Payment 2: Four hundred fifty thousand dollars (\$450,000) due upon Sound Transit's Notice of Substantial Completion of the College Way Connection Project construction and the project is open to public use.

Payment 3: Four hundred fifty thousand dollars (\$450,000) due when Notice of Final Acceptance is issued by Sound Transit for the College Way Connection Project as defined in Exhibit C and the City accepts the right of way improvements.

7.0 **PERMITTING, DESIGN REVIEW AND INSPECTION**

7.1 Permitting: The City will coordinate with the College before issuing any permits to Sound Transit for the Project.

7.2 Design Review: The City will participate in on-going Over-the-Shoulder reviews throughout the design process of the Sound Transit's D/B Contractor. City participation will be facilitated by the City's Project Liaison, who will be co-located at the FWLE Project job office and whose primary function it will be to identify and resolve issues to support the design process and development of plans that satisfy the City's permitting requirements. The City's Project Liaison will also serve as the agent for the College during this process. If required, the College and the City will negotiate and execute a separate Liaison agreement for activities the City provided to the College beyond the scope of this Agreement.

- (a) One or more permitting packages will be submitted with 100% Construction Document Submittal for the subject project element depending on phasing. The Parties have committed to make a good faith effort to review the permitting submittal within approximately 10 business days, unless a mutually agreed-upon alternative timeframe is determined with Sound Transit. After the City's and College's review of the 100%

Construction Document Submittal, Sound Transit's D/B Contractor will convene a meeting with the City, College and Sound Transit to discuss how issues have been resolved.

- (b) The Parties contemplate that the ongoing, collaborative FWLE Over the Shoulder review (see Section 7.3) will keep the City's Project Liaison apprised of the latest developments in the design. The City's Project Liaison will coordinate review required by other City and College staff as a means of seeking informal feedback from the City and the College. To the extent that disputes arise about how a design correction should be resolved or whether a design correction is appropriate, the Parties will use the dispute resolution process in Section 14.

- 7.3 Project Administration: The City will assign a City staff contact as the City Project Liaison. The City Project Liaison will provide central coordination of all Design Submittal reviews and comments from all involved City and College Departments and will be an effective and empowered conduit between Sound Transit and other City and College staff.

The College Director of Facilities and Operations will serve as the College Project Liaison for Project administration with the City. The College Project Liaison will also be responsible for identifying and disclosing to the City as soon as practicable any other College projects or proposals that have the potential to conflict or interfere with the expeditious design and construction of the Project. The City Project Liaison will then be responsible to forward this information to Sound Transit and their D/B Contractor.

- 7.4 Project Permitting Plan: The City's Development Agreement with Sound Transit anticipates that Sound Transit will require its D/B Contractor to develop and submit a Permitting Plan as one of the earliest critical activities. This plan will be reviewed and developed with input from the City and College. Sound Transit and the City will work cooperatively to develop a final Permitting Plan that is implementable by Sound Transit and/or the D/B Contractor and support City and College operations.

- 7.5 Permits and Licenses. The City will be responsible to ensure the Project secures and maintains in effect, all federal, state, and local permits and licenses required for the construction of the College Way Connection, including, without limitation, health, environmental, and communication permits and licenses.

- 7.6 Non-Interference. Subject to its relationships with and responsibilities to the SBCTC, the College will not interfere with Sound Transit's ability to secure, obtain, and maintain, at Sound Transit's sole cost and expense, any permits, licenses or approvals of other governmental agencies or authorities, or of any necessary Third Parties, for the use of any structures or facilities, including streets, roads, or utility poles.

- 7.7 Inspection:

- (a) For the Project constructed by Sound Transit's D/B Contractor, but which will be owned and maintained by the City following completion of construction or those components that abut, cross, or reside in City Right of Way, the City will do on site review and inspection of work performed by the D/B Contractor. These components include but

are not necessarily limited to: street lighting standards, traffic signal poles and signal boxes, streets, sidewalks, curbs and gutters, drainage facilities, and other infrastructure as deemed appropriate. The College may participate in these reviews and inspections at their discretion.

- (b) The Parties have identified conceptually the infrastructure for which they will respectively have inspection and acceptance responsibilities. Exhibit C depicts this concept. However, both Parties recognize the limitations of this conceptual plan and intend that it will be used conceptually and not to limit their mutual responsibilities to cooperate to deliver the Project in a safe, efficient, and timely manner.

8.0 CONSTRUCTION

- 8.1 D/B Contractor Mitigation Plans: The City expects that Sound Transit will require the D/B Contractor to develop mitigation and other plans that conform to City requirements including the following: Transportation Management Plan, Maintenance of Traffic Plan, Construction Noise and Vibration Mitigation Plan, Construction Outreach and Communication Plan. These plans will be submitted by the City to the College for review and comment prior to their acceptance by Sound Transit.
- 8.2 Contractor Work Hours: The Parties acknowledge that Sound Transit's D/B Contractor may propose work outside of the City's and College's standard permissible days and/or hours for construction. In the event such a proposal is received by Sound Transit from their D/B Contractor, the City's Project Liaison will facilitate the process of coordinating College work days, work hours, and/or noise variance, as appropriate. Sound Transit and the College understand that such requests may be conditioned or denied by the City.

9.0 MINOR REVISIONS TO PROJECT APPROVALS

The City Public Works Director or designee is authorized to approve minor revisions to the Project that are necessary and generally consistent with this Agreement and the City's street design and construction standards. Such approvals and/or minor revisions will include oversight of the ST D/B contractor including: any revisions within the scope and intent of the original Project approvals, right of way dedication and recording, design review and approval, substantial project completion, physical completion, and/or any revisions within the scope of the Project environmental documents.

10.0 UTILITY RELOCATION

The College acknowledges that the relocation of utilities outside of the identified Project area (Exhibit C) may be needed to facilitate the improvements. If the need for such utility relocations becomes necessary, the College agrees to enter into separate agreements with utility providers as needed regarding the relocation of their facilities outside the Project area.

11.0 OPERATION AND MAINTENANCE RESPONSIBILITIES FOR IMPROVEMENTS CONSTRUCTED UNDER THE AGREEMENT

- 11.1 Responsibilities: Unless otherwise described in this section, upon completion and acceptance of the Project by the Parties, the City will be responsible for ownership and maintenance of the improvements in the College Way ROW, and the stormwater facilities located in dedicated easement areas on the College campus. The SBCTC will be responsible for ownership of all other improvements on the campus property. The College will be responsible for maintenance of all other improvement on the campus property.
- 11.2 Highline College Signing: The City will permit the College to install and maintain illuminated monument signs within the College Way ROW, under a Right-of-Way Use Permit. The permit may also include provisions for landscaping within the round-about street end. Under its Development Agreement with the Sound Transit, Sound Transit will include the installation of two monument signs bases, and associated lighting in the College Way ROW adjacent to SR 99 as part of the FLWE Project, consistent with the urban design elements for the Kent Des Moines Station area. Sound Transit will also include a base and conduit pathway to the center of the Round-about at the end of College Way to facilitate lighting of a Highline College Sign. These three signs, along with other signing for the Highline Campus, will be part of a Comprehensive Design Plan Determination expected to be submitted by the College to the City by December 2018.

12.0 LIABILITY, INDEMNIFICATION

- 12.1 Indemnification by the College: The College hereby agrees to indemnify, defend, and hold the City harmless from all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses, including, without limitation, reasonable attorney fees, paid by the City and arising or resulting from the negligent acts or omissions of the College.
- 12.2 Indemnification by the City: The City hereby agrees to indemnify, defend, and hold the College harmless from all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses, including, without limitation, reasonable attorney fees, paid by the College and arising or resulting from the negligent acts or omissions of the City.
- 12.3 Notice of Claims: The party seeking indemnification will give the indemnifying party prompt notice of any claims directly affecting the party seeking indemnification about which it is aware the project. The City and College will cooperate fully with one another in the defense of any claim. The indemnifying party will not settle any claim directly affecting the party seeking indemnification without the prior written consent of the party seeking indemnification, which consent will not be unreasonably withheld.

13.0 INSURANCE

The City warrants that under its Development Agreement with the Sound Transit, Sound Transit, at its sole expense, is required to obtain and maintain during the entire term of this Agreement an

appropriate program of commercial insurance, self-insurance or any combination thereof in amounts and types sufficient to satisfy its liabilities. The Development Agreement further provides that, when commercial insurance is utilized, Sound Transit will name the City and College as Additional Insureds in accordance with insurer underwriting practices, and Sound Transit insurance policies will be primary and non-contributory to any coverage maintained by the City and the College. When commercial insurance is used, coverage will include: (i) comprehensive general liability insurance; (ii) property damage liability insurance, including coverage for explosion, collapse, and instability; (iii) workers' compensation insurance, to the extent required by law; (iv) employer's liability insurance; and (v) comprehensive auto liability coverage, including owned, hired, and non-owned vehicles.

14.0 DISPUTE RESOLUTION

14.1 Dispute Escalation: The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations at the lowest level by engaging in the following dispute escalation process should any such disputes arise:

- (a) Level One - The College's Director of Facilities and Operation and the City's Project Liaison will meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute, either party may refer the dispute to Level Two.
- (b) Level Two - The College's Director of Facilities and Operations and the City's Public Works Director or Chief Strategic Officer as appropriate will meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.
- (c) Level Three - The College's President or Designee, and the City Manager or Designee will meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level Three, either party may refer the dispute to mediation.

14.2 If Dispute Resolution Fails: Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) calendar days after referral of that dispute to Level Three, the Parties will agree to mediation. At all times prior to resolution of the dispute, the Parties will continue to perform and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

15.0 DEFAULT

No party will be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) calendar days after written notice of default from any other party. Each notice of default will specify the nature of the alleged default and the way the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such period and the diligent prosecution

to completion of the cure will be deemed a cure. Any party not in default under this Agreement will have all rights and remedies provided by law including without limitation damages, specific performance or writs to compel performance or require action consistent with this Agreement. The prevailing party, or the substantially prevailing party if no one party prevails entirely, will be entitled to reasonable attorney fees and costs.

16.0 REMEDIES; ENFORCEMENT

16.1 Remedies: If dispute resolution is reasonably determined to be futile or otherwise fails, the Parties reserve the right to exercise all the following remedies, singly or in combination, in the event the other violates any provision of this Agreement:

- (a) Commencing an action at law for monetary damages;
- (b) Commencing an action for equitable or other relief; and
- (c) Seeking specific performance of any provision that reasonably lends itself to such remedy.

16.2 Remedy Considerations: In determining which remedy or remedies for violation are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the breaching party has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. Remedies are cumulative; the exercise of one will not foreclose the exercise of others.

16.3 Failure to Enforce Prompt Compliance: Neither party will be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure by the other party to enforce prompt compliance, nor will such failure to enforce constitute a waiver of rights or acquiescence in the other party's conduct.

17.0 TERM; TERMINATION

This Agreement will be effective as of the date the last party signs. Unless sooner terminated pursuant to the terms hereof, this Agreement will remain in effect for six years after completion and final acceptance of the Project.

18.0 COVENANTS AND WARRANTIES

18.1 City Warranties: By execution of this Agreement, the City warrants:

- (a) That the City has the full right and authority to enter into and perform this Agreement and any permits that may be granted in accordance with the terms hereof, and that by entering into or performing this Agreement the City is not in violation of its charter or by-laws, or any law, regulation or agreement by which it is bound or to which it is bound or to which it is subject; and

- (b) That the execution, delivery and performance of this Agreement by the City has been duly authorized by all requisite corporate action, that the signatories for the City hereto are authorized to sign this Agreement, and that, upon approval by the City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.

18.2 College Warranties: By execution of this Agreement, the College warrants:

- (a) That Highline College has full right and authority to enter into and perform this Agreement in accordance with the terms hereof, except the authority to dedicate the ROW per Exhibit C, and by entering into or performing under this Agreement, Highline College is not in violation of any of its agency governance rules, or any law, regulation or agreement by which it is bound or to which it is subject; and
- (b) That the execution, delivery and performance of this Agreement by the College has been duly authorized by all requisite College action, that the signatories for the College hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the

19.0 ASSIGNABILITY; BENEFICIARY

- 19.1 Binding Agreement: This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors or assignees.
- 19.2 Assignment: Either party hereto may assign any monetary receivables due them under this Agreement; provided, however, such assignment will not relieve the assignor of any of its rights or obligations under this Agreement.
- 19.3 Beneficiaries: Neither this Agreement nor any term or provision hereof, or any inclusion by reference, will be construed as being for the benefit of any party not a signatory hereto.

20.0 DESIGNATED REPRESENTATIVES

- 20.1 Designated Representatives: To promote effective intergovernmental cooperation and efficiencies, the Parties each designate a representative ("Designated Representative") who will be responsible for coordination of communications between the Parties and will act as the point of contact for each party. The Designated Representatives will be responsible for the performance of the objectives of this Agreement.

Designated Representatives and Contact Information during Construction/Operations:

HIGHLINE COLLEGE
Michael Pham
Vice President, Administration

CITY OF DES MOINES
Daniel J. Brewer, PE, PTOE
Chief Operations Officer

Highline College
 2400 S. 240th St
 Des Moines, WA 98198
 (206) 592-3701
mpham@highline.edu

City of Des Moines
 21630 11th Ave S
 Des Moines, WA 98198
 (206) 870-5681
dbrewer@desmoineswa.gov

- 20.2 Responsibilities: Each Designated Representative is also responsible for coordinating the input and work of its agency, consultants, and staff as it relates to the objectives of this Agreement. The Parties reserve the right to change Designated Representatives, by written notice to the other party during the term of this Agreement.

21.0 NOTICE

Unless otherwise provided herein, all notices and communications concerning this Agreement will be in writing and addressed to the Designated Representative. Any party at any time by written notice to the other party may designate a different address or person to which such notice or communication will be given. Unless otherwise provided herein, all notices will be either: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other party's Designated Representative as listed herein.

22.0 GENERAL PROVISIONS

- 22.1 Unreasonable Withholding: The Parties will not unreasonably withhold requests for information, approvals or consents provided for in this Agreement. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement. The City and College agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.
- 22.2 Interpretation: This Agreement will be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement will be King County, Washington.
- 22.3 Time is of the Essence: Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to "days" will mean calendar days. If any time for action occurs on a weekend or legal holiday, then the time will be extended automatically to the next business day.
- 22.4 Rights of Action: This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person will have any right of action based upon any provision of this Agreement.

- 22.5 Ambiguity: This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity will be construed against the party drafting the document will apply to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law including the requirements of RCW 39.34.030.
- 22.6 Cost Responsibility: Each Party will be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties.
- 22.7 Events Beyond Parties Control: The Parties will not be deemed in default with provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond its control; the unforeseeable unavailability of labor or materials; or labor stoppages or slowdowns, or power outages exceeding back-up power supplies. This Agreement will not be revoked, or a party penalized for such noncompliance, provided that such party takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of both parties' employees or property, or the health, safety, and integrity of the public, Public Right-of-way, public property, or private property.
- 22.8 Agreement Amendments: This Agreement may be amended only by a written instrument executed by each of the Parties hereto. No failure to exercise and no delay in exercising, on the part of any party hereto, any rights, power or privilege hereunder will operate as a waiver hereof, except as expressly provided herein.
- 22.9 Agreement Entirety: This Agreement constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes all prior negotiations, oral and written, understandings and agreements with respect hereto.
- 22.10 Section Headings: Section headings are intended as information only and will not be construed with the substance of the section they caption.
- 22.11 Counterparts: This Agreement may be executed in several counterparts, each of which will be deemed an original, and all counterparts together will constitute but one and the same instrument.

23.0 SEVERABILITY

In case any term of this Agreement will be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement will in any way be affected thereby.

IN WITNESS WHEREOF, each of the parties has executed this Agreement by its authorized representative.

HIGHLINE COLLEGE

By: _____
_____, President

Date: _____

Authorized by Resolution No. _____

APPROVED AS TO FORM:

By: _____
Bruce Marvin, Assistant Attorney General

THE CITY OF DES MOINES

By: _____
Michael Mathias, City Manager

Date: _____

Approved by the Des Moines City Council in
open Public Meeting on _____.

APPROVED AS TO FORM:

By: _____
Tim George, City Attorney

EXHIBIT LIST

Exhibit A: Letter of Concurrence, College Way Street End, January 29, 2018

Exhibit B: SEPA Review of College Way Connection Project, April 19, 2018.

Exhibit C: Street End, Parking Lot, Pedestrian and Bicycle Facilities, and Drainage Improvement

Exhibit D: College Sign Details

Exhibit E: ROW to Be Dedicated to the City

Exhibit F: Historic County ROW to Be Vacated

Exhibit G: Comprehensive Sign Permit Requirements

Exhibit A



January 29, 2018

Michael Pham
Vice President, Administration
Highline College
2400 S. 240th St
Des Moines, WA 98198

Subject: FWLE Letter of Concurrence – College Way Street End

Dear Mr. Pham,

The purpose of this letter of concurrence (LOC) is to document the agreement in principle made between Highline College (College) and the City of Des Moines (City) relating to the design coordination, capital cost responsibility and allocation, real estate, environmental review, scheduling and the project management approach that will be used to design and build the College Way Connectivity Improvements consisting of roadway terminus and parking lot improvements on the Highline College campus. These improvements are consistent with comments received during the FWLE project EIS process and the City-approved Highline College Master Plan.

This LOC does not bind the College or the City to specific actions or decisions regarding either the FWLE project or the College Way Connectivity Improvements, but rather provides a framework for negotiating in good faith to complete the final terms and conditions to be contained in a Development Agreement (DA) between the City and College regarding:

- dedication of the required street end right of way to construct a round-about, and
- vacation of historic undeveloped road right of way, and
- drainage easements to construct a storm water conveyance system to connect with the City of Des Moines Storm Water System in the vicinity of 28th Avenue South in the East Parking Lot, and
- Highline College traffic impact and parking exception request.

The final DA shall incorporate by reference the to-be-approved Development Agreement between the City of Des Moines and Sound Transit.

The Waterland City

Mr. Michael Pham
Page Two
January 29, 2018

Please find attached, the Conceptual Design, College Way Street End proposed by the City and ST staff. The City of Des Moines will be responsible for costs associated with construction of the College Way Connectivity Improvements indicated in Exhibit A, highlighted in blue. Highline College will be responsible for costs associated with construction of any desired parking facilities or parking lot circulation not directly associated with the Connectivity Improvements. Cost sharing estimates will include soft costs and are the responsibility of each agency. Agreed upon cost estimates will be the basis of the DA rather than a proration of the final Design Build Lump sum contract amount. Each agency is responsible for change orders associated with their area of responsibility. The DA will address any unanticipated contamination conditions that may be encountered and detailed procedures for management of contaminated materials disturbed during construction.

The parties to this LOC acknowledge that the final Development Agreement will be subject to review and approval by the City of Des Moines City Council, the Highline College Board of Trustees, the State Board of Community and Technical Colleges, and until the transfer of the land title to the college, the Department of Natural Resources.

If you agree, please sign and return this Letter of Concurrence. The City will then draft a DA for the College's review and approval and incorporate the elements of this Letter into its DA with Sound Transit.

Sincerely,



Daniel J. Brewer, PE, PTOE
Chief Operations Officer
City of Des Moines

Concurrence:
Highline College

By: 

1 Jan 29, 2018

Michael Pham, Vice President, Administration
Highline College

Enclosure: Conceptual Design, College Way Connectivity Improvements

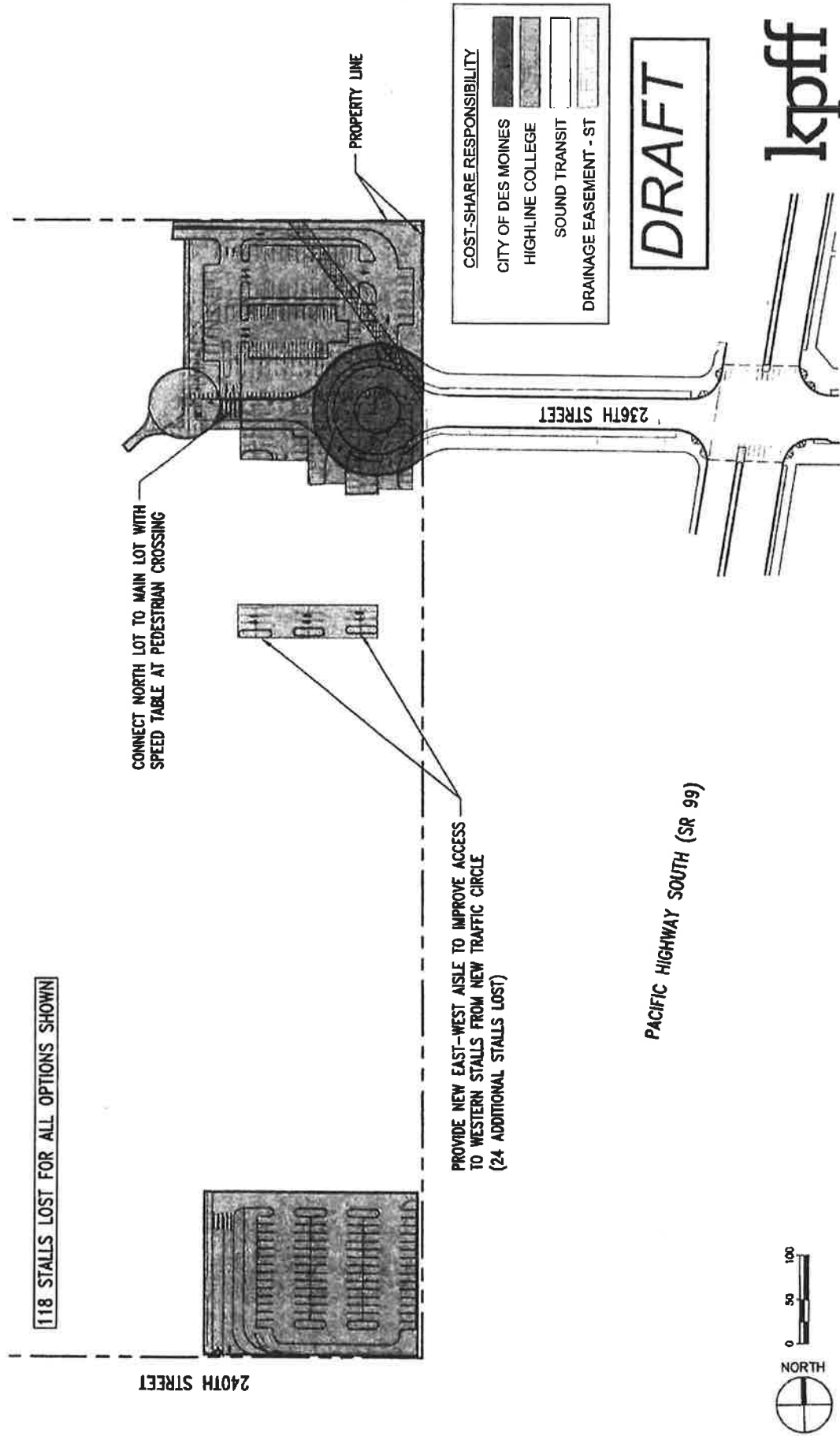
Cc: Brandon Carver, Public Works Director
City of Des Moines

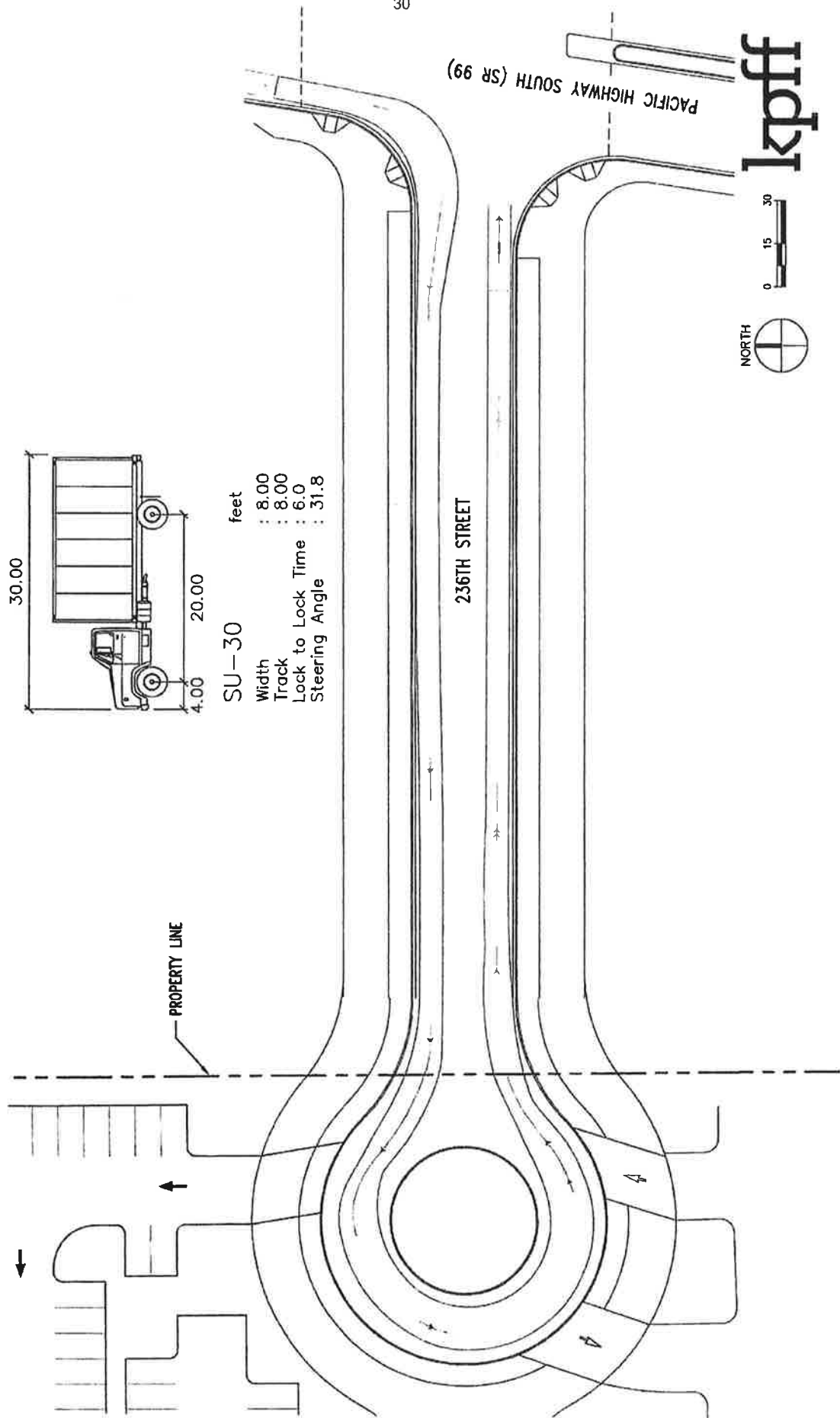
The Waterland City

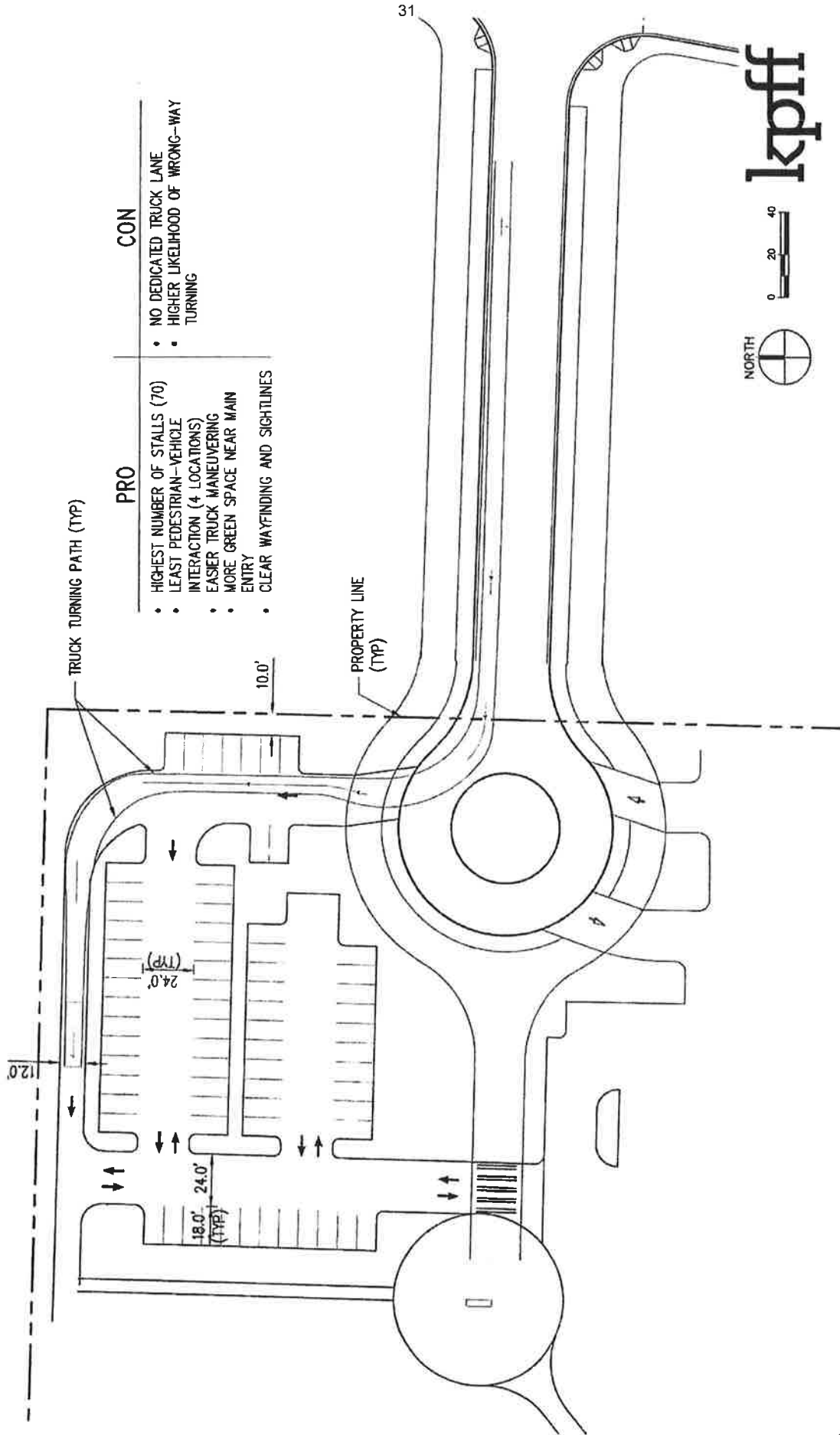
High-Level Cost Estimate: 236th Lane & Highline College (HC) Property Improvements
MLarson 10/17/2017

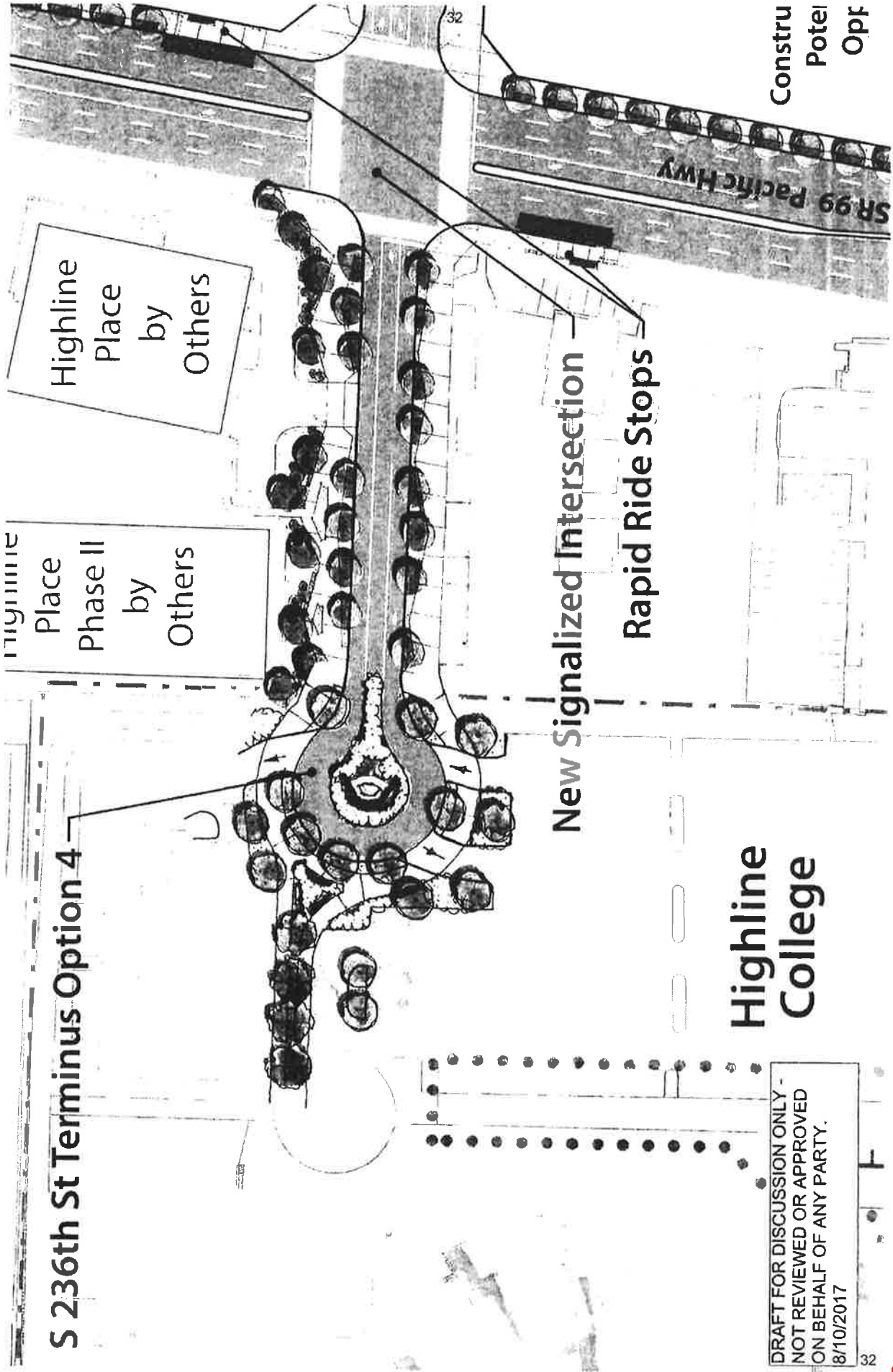
Highline College and S 236th Lane Improvements Cost Estimate	HC Property Parking + Roundabout (KPFF Estimate)	Roundabout (\$ 236th Lane west of HC Property Line)	HC Property Parking Only (Purple-Blue)	236th Lane (East of HC Property Line)
Civil Roadway Improvements	\$ 414,300	\$ 199,749	\$ -	\$ 1,027,036
Demolition	\$ 121,000	\$ 59,849	\$ -	\$ 90,847
Drainage	\$ 513,000	\$ 100,000	\$ -	\$ 400,000
Landscaping	\$ 83,000	\$ 40,000	\$ -	\$ 40,000
Subtotal	\$ 1,131,300	\$ 399,598	\$ -	\$ 1,557,883
Mobilization (8%)	\$ 90,504	\$ 31,968	\$ -	\$ 124,631
Contingency (30%)	\$ -	\$ 119,879	\$ -	\$ 467,365
Contingency - KPFF Estimate (15%)	\$ 169,695	\$ -	\$ -	\$ -
Total	\$ 1,391,499	\$ 551,445	\$ 840,054	\$ 2,149,878
Cost-Share Responsibility	City of Des Moines & Highline College	City of Des Moines	Highline College	Sound Transit

 1601 Fifth Avenue, Suite 1600 Seattle, WA 98101 (206) 622-5822 fax (206) 622-8130		Opinion of Probable Cost Worksheet			
Project	HC 236th Entrance	By	Dan Veldee		
Location	Des Moines WA	Date	6-Sep-18		
Client	Highline College				
Site Preparation					
Description	QTY	Unit	Unit Price	Cost	
Surveying	1	LS	\$30,000.00	\$30,000.00	
Site Demolition	1	LS	\$40,000.00	\$40,000.00	
TESC	1	LS	\$15,000.00	\$15,000.00	
Common Excavation	2,000	CY	\$18.00	\$36,000.00	
Subtotal for Site Preparation				\$121,000.00	
Utilities					
Description	QTY	Unit	Unit Price	Cost	
Stormwater Flow Control structure	1	EA	\$2,500.00	\$2,500.00	
Stormwater Detention Pipe	1	LS	\$146,000.00	\$146,000.00	
Structure Excavation	3,600	CY	\$50.00	\$180,000.00	
Water Quality Catch Basins	6	EA	\$20,000.00	\$120,000.00	
8" SD pipe	600	LF	\$75.00	\$45,000.00	
Manhole	5	EA	\$3,900.00	\$19,500.00	
Subtotal for Utilities				\$513,000.00	
Pavement					
Description	QTY	Unit	Unit Price	Cost	
Pavement, HMA CL 1/2 IN	950	TN	\$160.00	\$152,000.00	
Mineral aggregate Type 1	1,900	TN	\$42.00	\$79,800.00	
Curb and gutter	2,500	LF	\$23.00	\$57,500.00	
Concrete Pavement	2,000	SY	\$60.00	\$120,000.00	
Pavement markings	1	LS	\$5,000.00	\$5,000.00	
Subtotal for Pavement				\$414,300.00	
Site Amenities					
Description	QTY	Unit	Unit Price	Cost	
Landscaping & irrigation	8,500	SF	\$6.00	\$51,000.00	
Light poles	6	EA	\$5,000.00	\$30,000.00	
Signs	1	LS	\$3,000.00	\$3,000.00	
Subtotal for Site Amenities				\$84,000.00	
Subtotal				\$1,132,300.00	
Mobilization (8%)				\$90,584.00	
Contingencies (5.5%)				\$62,276.50	
Escalation (10%)				\$113,230.00	
Total				\$1,398,390.50	
Assumptions: 1. Soft costs including Washington State sales tax, Highline College administrative costs, permit fees and design fees are not included in this estimate. 2. Unit prices derived from 2015 SDOT unit cost report, and current WSDOT unit bid tabulation standards. 3. Cost estimate only includes the proposed work on the Highline College Campus. All work in the public right-of-way is not included in this estimate.					









Constru
Pote
Opf

S 236th St Terminus Option 4

Highline
Place
Phase II
by
Others

Highline
Place
Phase II
by
Others

New Signalized Intersection

Rapid Ride Stops

Highline
College

SR 99 Pacific Hwy

DRAFT FOR DISCUSSION ONLY -
NOT REVIEWED OR APPROVED
ON BEHALF OF ANY PARTY.
8/10/2017

Exhibit B

City of Des Moines



PLANNING, BUILDING AND PUBLIC WORKS
www.desmoineswa.gov
 21630 11TH AVENUE SOUTH, SUITE D
 DES MOINES, WASHINGTON 98198-6398
 (206) 670-7576 FAX (206) 670-6544



April 19, 2018

Dan Abernathy
 Executive Project Director, Federal Way Link Extension
 401 S. Jackson St
 Seattle, WA 98104

Subject: SEPA Review of College Way Connectivity Connection Project

Dear Mr. Abernathy,

The purpose of this letter is to advise Sound Transit of the City of Des Moines' decision that no further State Environmental Policy Act (SEPA) review is required for the College Way Connectivity Connection Project (Project), FWLE drainage improvements and associated East Parking Lot improvements, and College-funded mitigation and parking lot modifications that are consistent with the City-approved College Master Plan.

Our decision is based on review of the existing FWLE and College SEPA documents and the anticipated Project scope that includes the City code-required standard for the end of a street, pedestrian and bicycle access and associated East Parking Lot modifications, and College-funded mitigation and parking lot modifications that are consistent with the City-approved College Master Plan. These project elements complete the College Way/ South 236th Street connection to the Kent Des Moines (KDM) Link Station and are within the scope of the existing environmental documents and consistent with public comments received during the public hearing on the Highline College Master Plan, the City's Mitigated Determination of Nonsignificance issued on November 21, 2016 for the City Council-approved Highline College Master Plan, and the FWLE DEIS and FEIS.

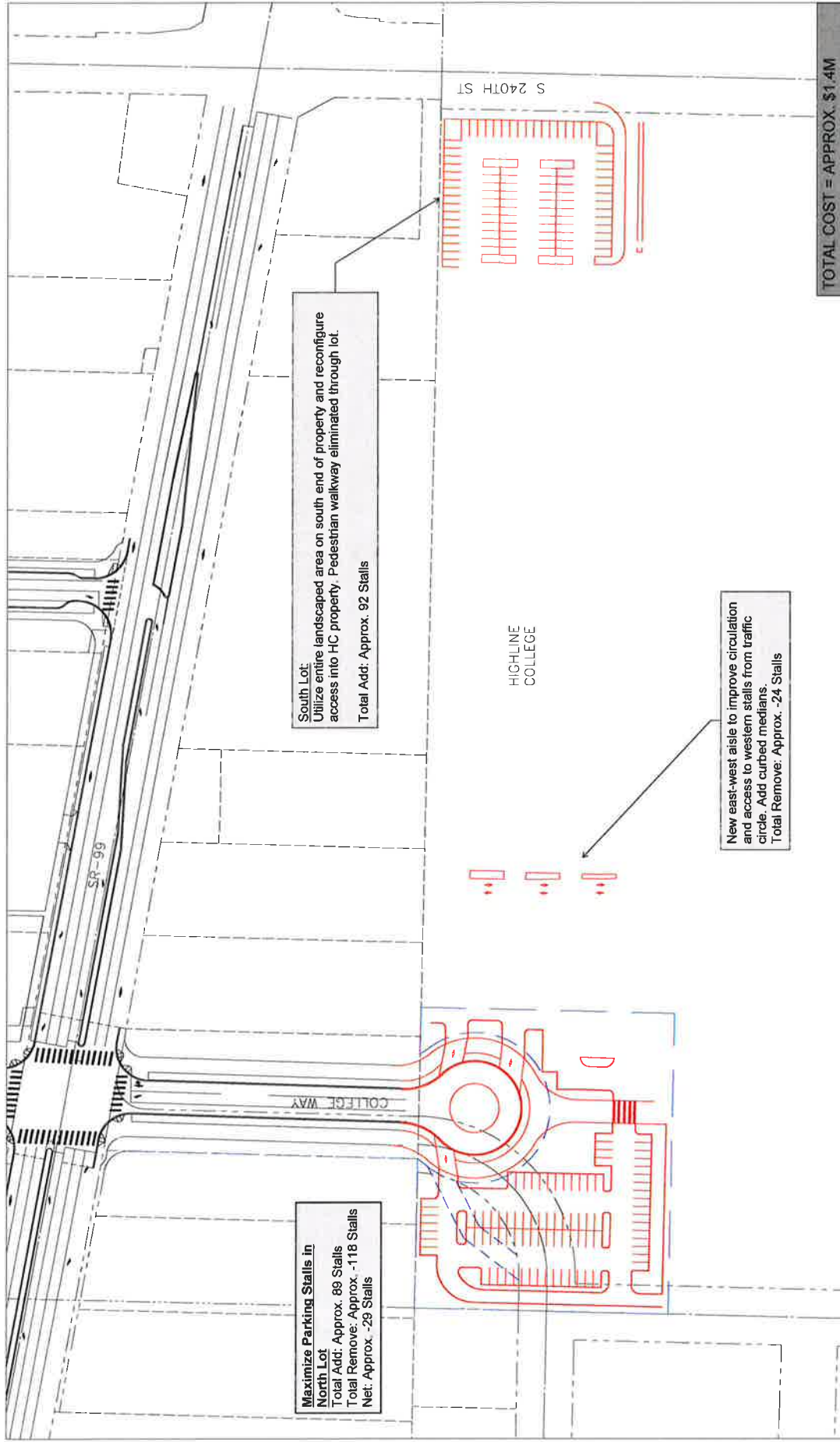
As part of the City's Interlocal Agreement with Highline College, the City will be the SEPA lead agency for the Project elements east of the College Campus boundary

Sincerely,

Susan Cezar, LEG
 Chief Strategic Officer
 SEPA Official
 City of Des Moines

Cc: Dan Brewer, Chief Operations Officer

Exhibit C



College Way Connection Project

09/05/2018

CONCEPTUAL DESIGN



SOUND TRANSIT FEDERAL WAY LINK EXTENSION

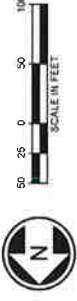


Exhibit D

Dan Brewer

From: Holldorf, Barry <bholldorf@highline.edu>
Sent: Monday, October 09, 2017 10:40 AM
To: paul.bennett@soundtransit.org
Cc: Dan Brewer; Grant Fredricks; Pham, Michael; Skari, Lisa A
Subject: Highline College sign spec for ST RFQ
Attachments: HIGHLINE SPECS DWGS 2-2017-0929s.pdf; PSPEC 2-HC ENTRY-2017-0930.docx

Paul

In the spirit of trying to keep you on track with including in your RFQ I am submitting to you the sign for hwy. 99 entrance and roundabout sign at the 236th entrance.

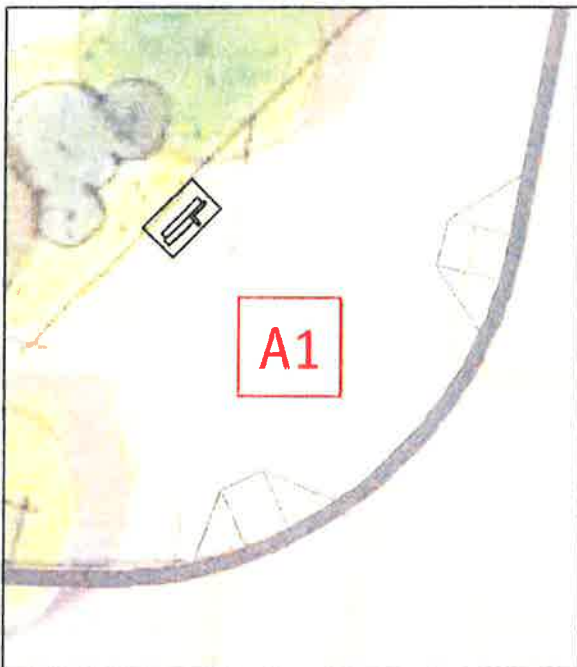
Hope this provides the information you will need for this exercise.

Barry Holldorf, CFM
Director of Facilities & Operations
Highline College
2400 S. 240th St.
Des Moines WA 98198
206-870-3793

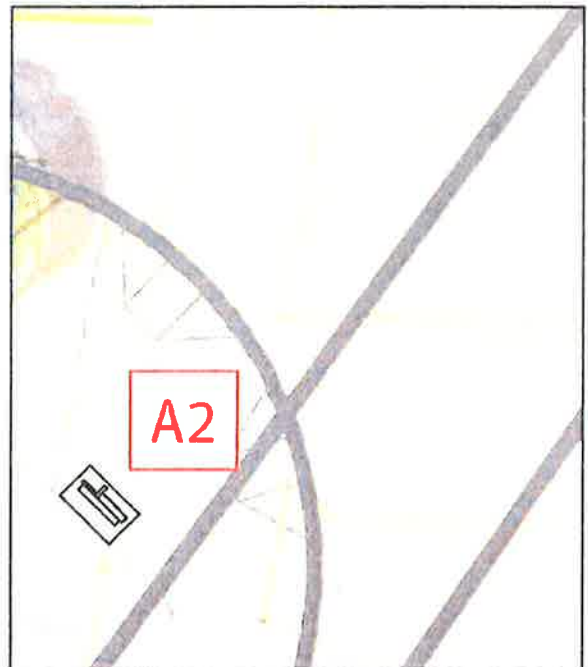




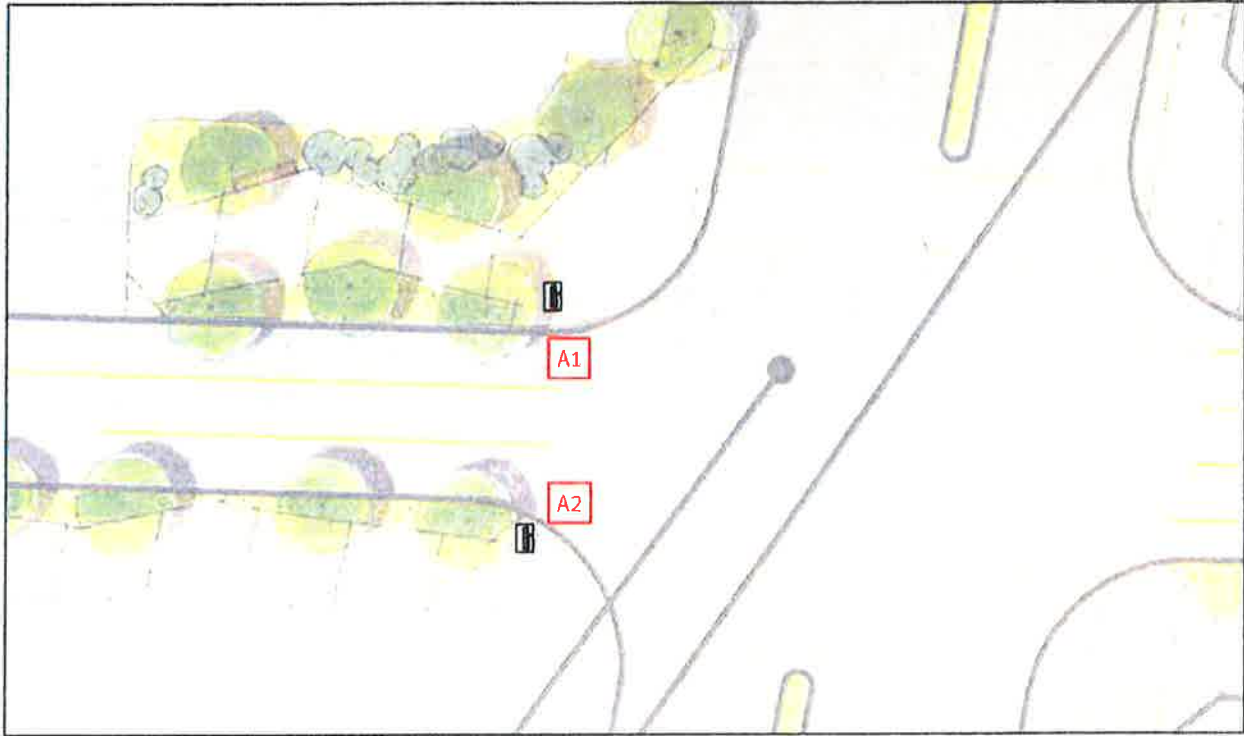
1.1 Sign Location A, Placement Option 1
1:500



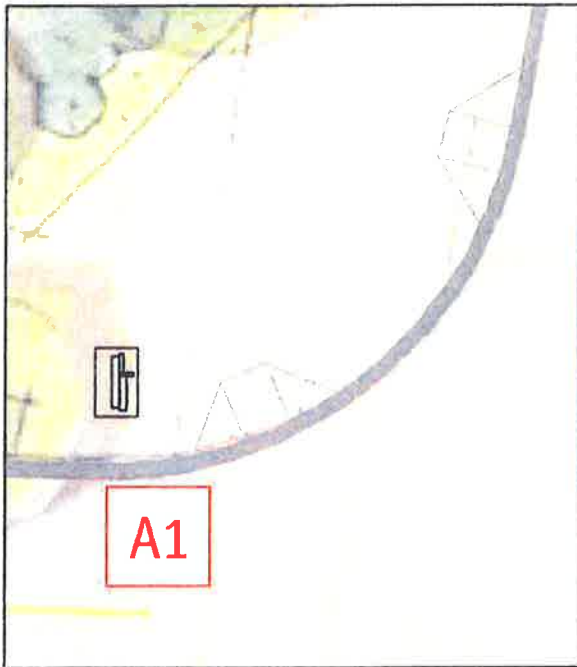
1.2 Enlarged Plan
1:200



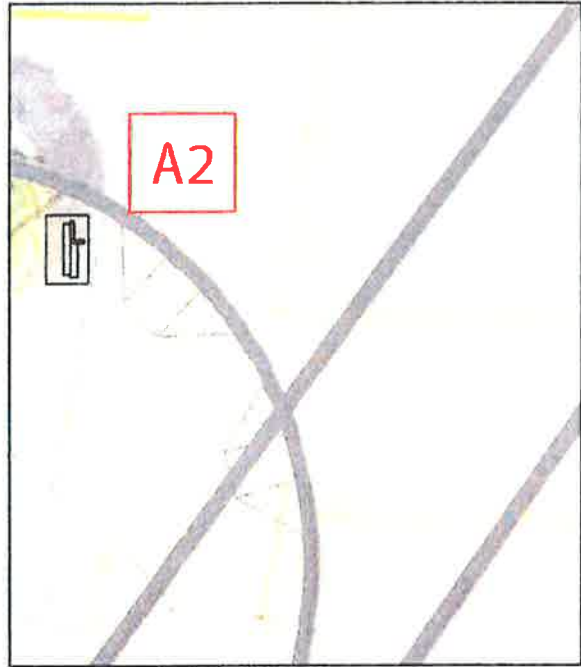
1.3 Enlarged Plan
1:200



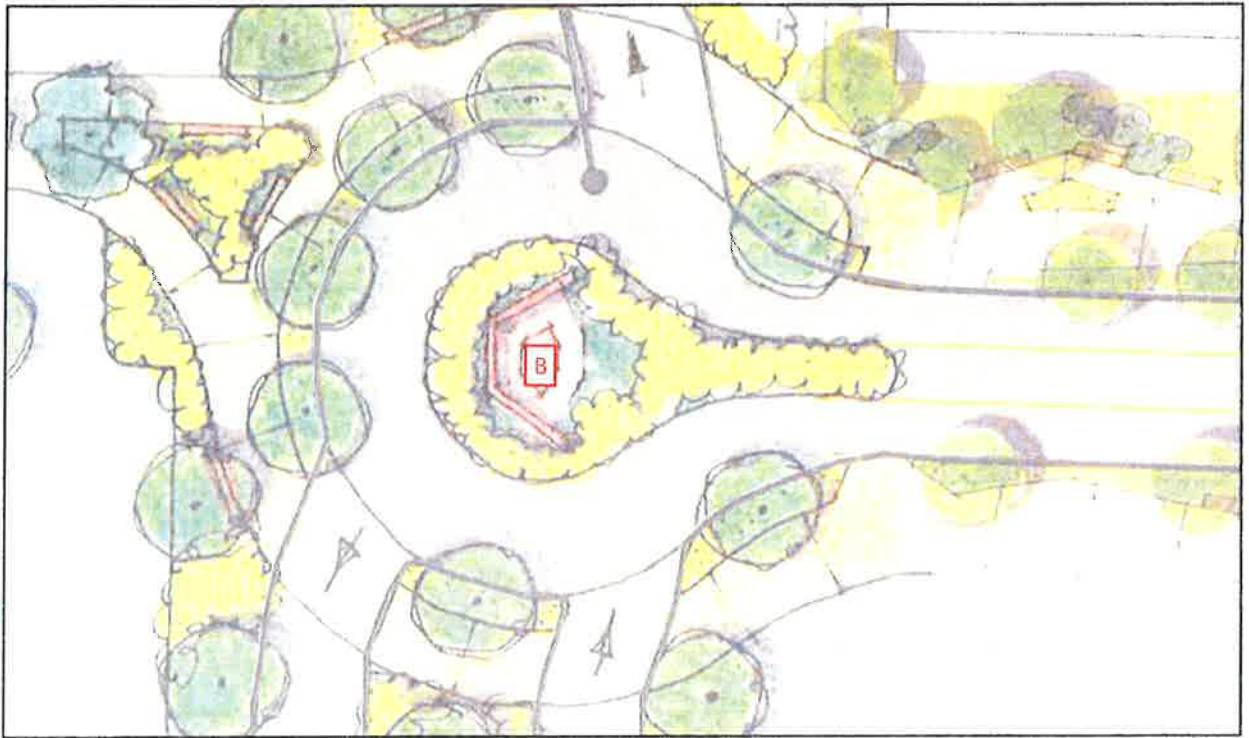
2.1 Sign Location A, Placement Option 2
1:500



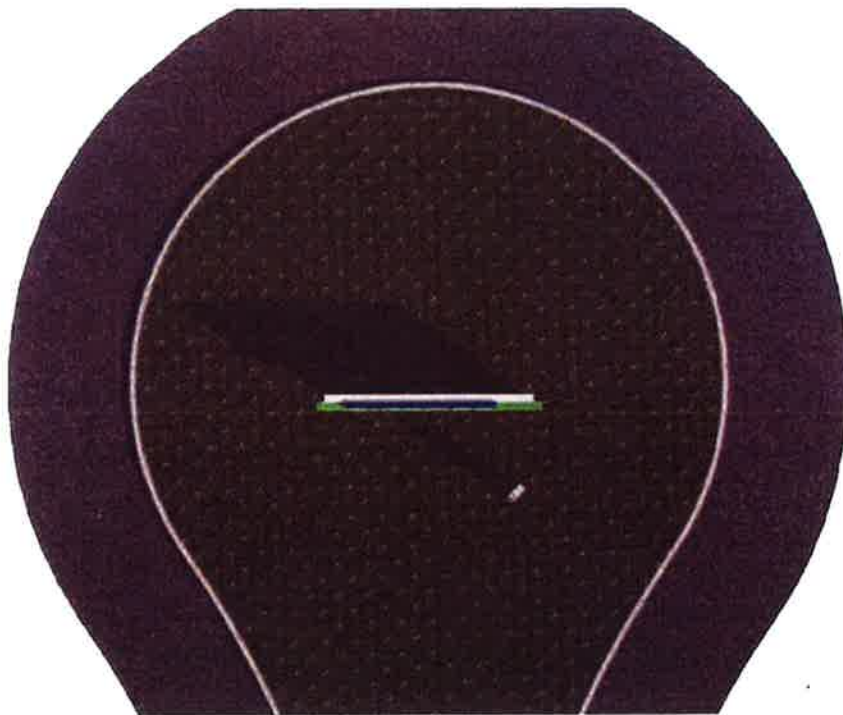
2.2 Enlarged Plan
1:200



2.3 Enlarged Plan
1:200

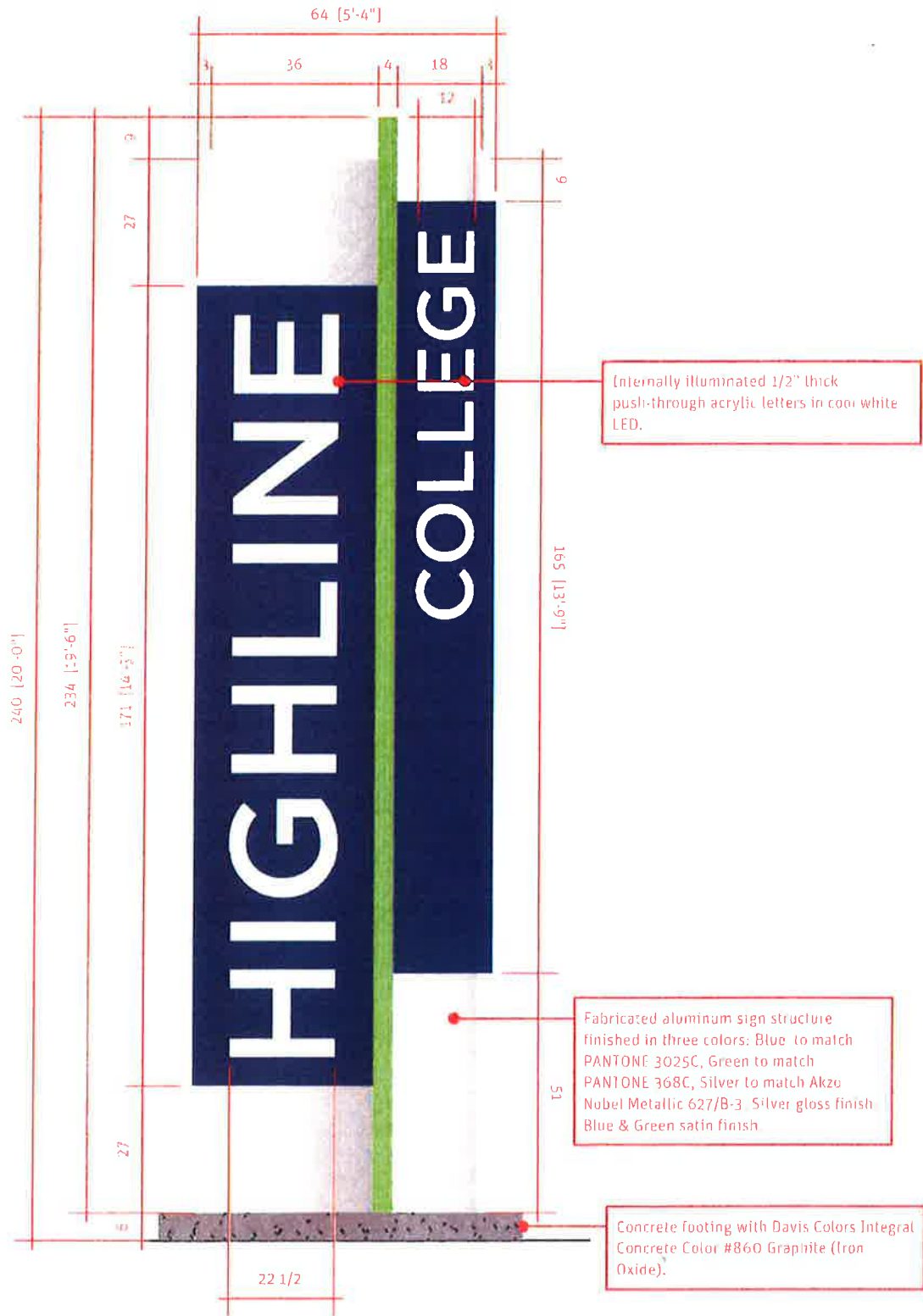


3.1 Sign Location B
1:500



3.2 Sign Location B, Conceptual Rendering Plan View
1:200

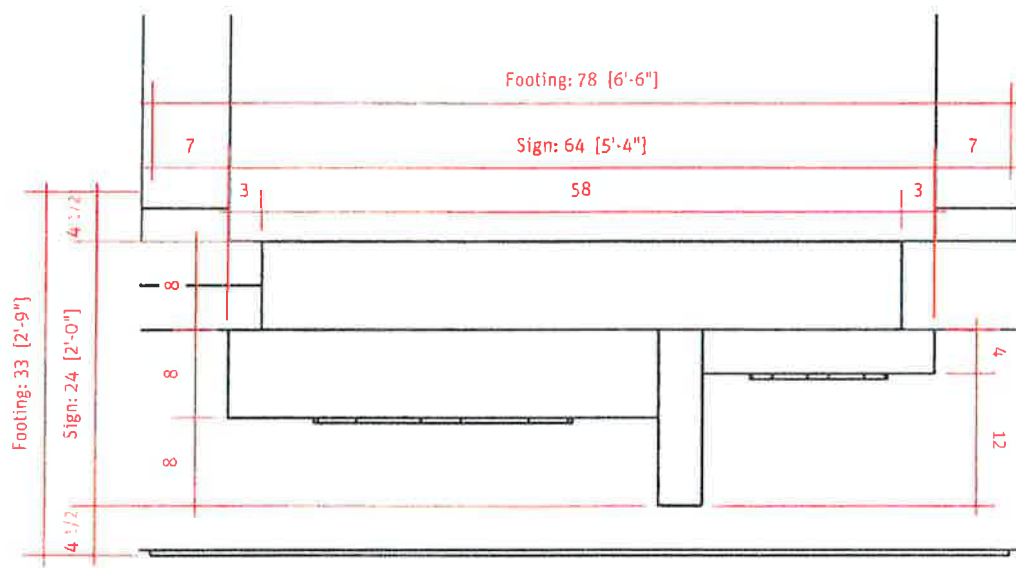




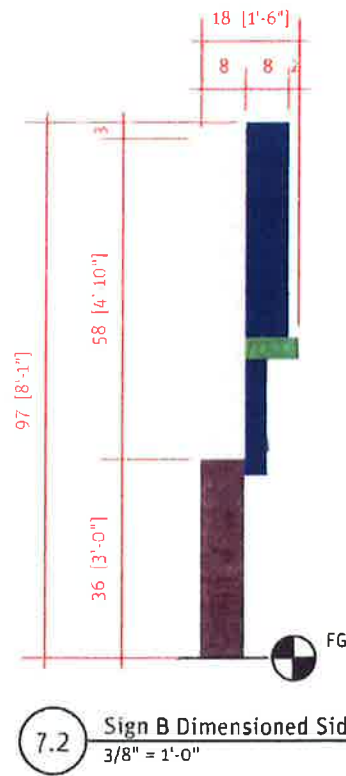
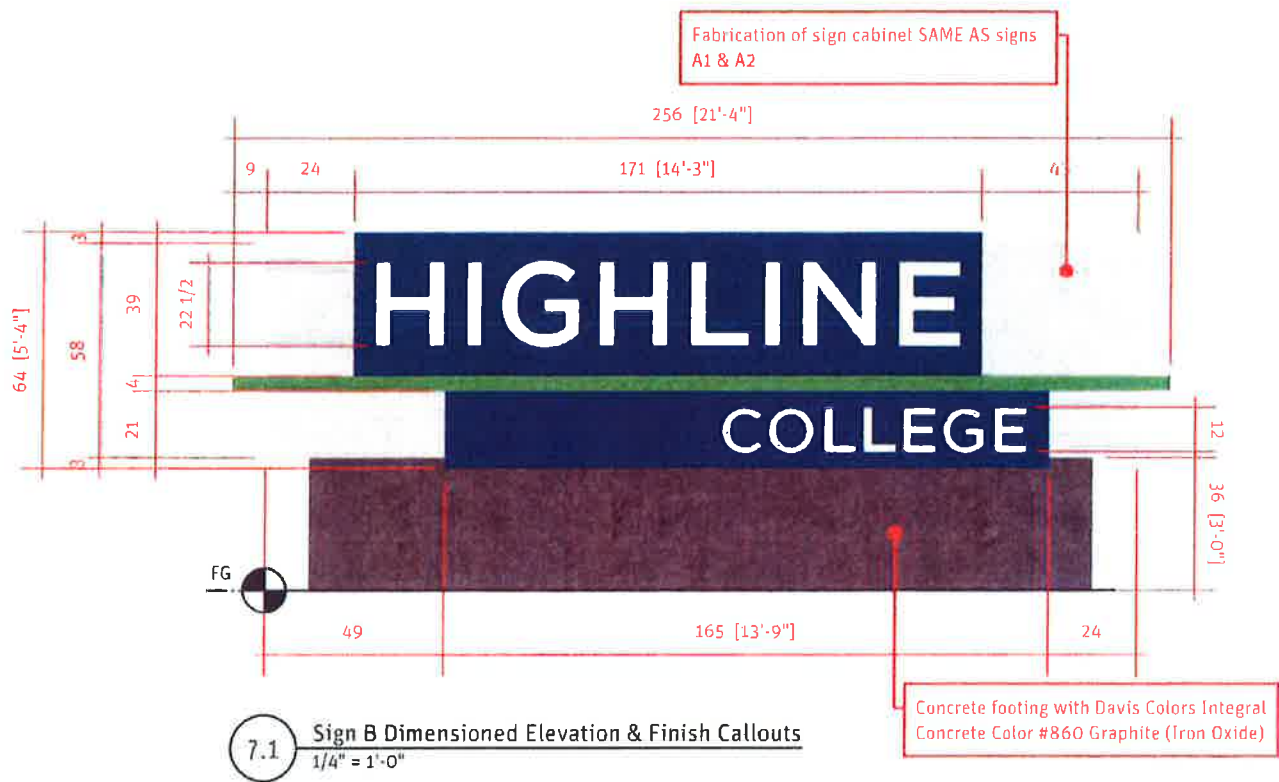
5

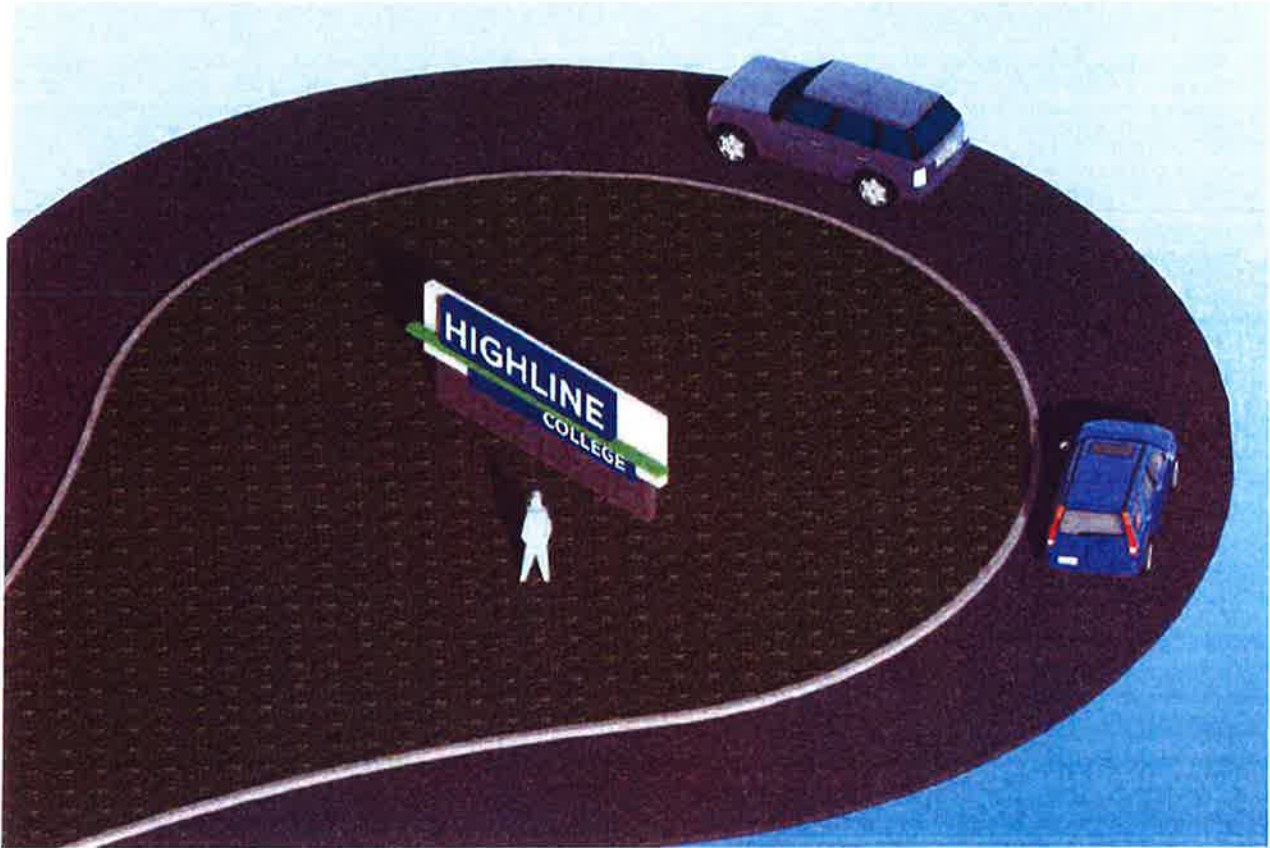
Signs A1 & A2 Dimensioned Elevation & Finish Callouts

3/8" = 1'-0"



6 Signs A1 & A2 Dimensioned Plan View
 $\frac{3}{4}" = 1'-0"$





8

Sign B Conceptual Rendering
1:125

Performance Specifications

Highline College Signage at South 236th Street and SR 99 Pacific Highway South

1 General

- 1.1 Project location: Southwest and Northwest corners of South 236th Street and SR 99 Pacific Highway South, Des Moines, Washington.
- 1.2 General scope: Fabrication and installation of three internally illuminated campus identification signs:
 - 1.2.1 Two signs (A1 & A2) at intersection of South 236th Street and SR 99 Pacific Highway South, one on each side. See drawings.
 - 1.2.2 One sign (B) in new turnaround.
- 1.3 Attachments — Sign Type Drawings
- 1.4 Work to include all materials, labor, equipment, footing design, structural engineering, inspection, coordination, supervision, permits, electrical connection, and installation for turnkey operation of the three signs.
- 1.5 Artwork for the message elements of the signs — “HIGHLINE” and “COLLEGE” — will be provided in Adobe Illustrator CC format.

2 Submittals

- 2.1 Detailed shop drawings are required and shall include:
 - 2.1.1 Scale sign face layouts.
 - 2.1.2 Sign profiles, product component details, dimensions, anchorages, and accessories.
 - 2.1.3 Installation locations.
- 2.2 Samples:
 - 2.2.1 (3) sets of 12 inch by 12 inch (minimum) painted samples of each color.
 - 2.2.2 (3) samples of colored concrete footing.

3 Performance

- 3.1 Signs shall be of the shape, proportions, and finishes as described in the attached drawings.
- 3.2 Signs shall be placed at the locations specified. Final placement in turnaround to be coordinated with Owner and Landscape Architect.
- 3.3 Signs shall be free of blemishes and demonstrate quality craftsmanship.
- 3.4 Corners shall be square, edges shall be smooth, elements shall be level.

- 3.5 Illuminated elements shall be even, free of hot spots.
- 3.6 Illumination shall be by cool white LED. Access to LED and in particular to power supply shall be provided for maintenance.
- 3.7 Sign electrical connection shall be on a separate circuit with an astronomical clock so that sign is powered only when exterior illumination levels warrant.
- 3.8 Finishes shall even and consistent across all surfaces, free of blemish and discoloration.
- 3.9 Finishes and coatings shall be of standard use within the sign fabrication industry, typically Akzo Nobel (preferred) or Matthews Paint (acceptable but not preferred).
- 3.10 Finishes and coatings shall be graffiti-resistant.
- 3.11 Finishes shall have a ten year warranty against discoloration, cracking, clouding, and silvering.

Exhibit E

Dan Brewer

From: Lowry, Soraya <Soraya.Lowry@soundtransit.org>
Sent: Thursday, June 28, 2018 4:43 PM
To: Dan Brewer
Cc: Grant Fredricks; Abernathy, Dan; Eskenazi, Zachary; Wilk, Dana; O'Brien, Kathryn
Subject: RE: Legal Descriptions -
Attachments: FL227.1 Parcel Map-Streets.pdf; AE 0044-12 HC-College Way Cul-de-sac_20180430.pdf

Hi Dan – The assumptions used to develop the parcel maps and legal descriptions attached are as follows:

1. Attached vacation of the "City ROW" through HCC. There is a proposed storm drain line that was shown to be just NE of this existing ROW, which is shown to have a Drainage Easement. This storm drain line can be shifted to be within the ROW, which is why we have never prepared a parcel map or said that there were any impacts on the HCC property since this storm drain line can be placed within the ROW. The vacation of this ROW could reserve the City's rights for an easement for this storm drain line. The request to revise the easement from 10' to 20' to me is unnecessary since the ROW is 60'. There is actually another City ROW portion along the north side of HCC that HCC is using for their use even though it is technically City ROW.
2. Attached proposed dedication from the college to the City for the proposed cul-de-sac.
3. ROW Plans don't show ST obtaining any fee takes or easements on the HCC parcel per meetings that we have had.

Please let me know if you have edits.

Thanks,
 Soraya

Soraya Lowry
 High Capacity Transit Development Manager
 Planning, Environment & Project Development
 Sound Transit
 206.903.7408

Connect with us
facebook.com/SoundTransit
twitter.com/SoundTransit



From: Dan Brewer [mailto:DBrewer@desmoineswa.gov]
Sent: Thursday, June 28, 2018 4:26 PM
To: Lowry, Soraya <Soraya.Lowry@soundtransit.org>
Cc: Grant Fredricks <GFredricks@desmoineswa.gov>
Subject: RE: Legal Descriptions -

The ILA with the college is nearly complete. We're down to minor word-smithing at this point. The college has indicated that they will sign the ILA tomorrow morning.

The only remaining is the legal descriptions.....

Dan

From: Lowry, Soraya [<mailto:Soraya.Lowry@soundtransit.org>]
Sent: Wednesday, June 27, 2018 3:53 PM
To: Dan Brewer <DBrewer@desmoineswa.gov>
Cc: Grant Fredricks <GFredricks@desmoineswa.gov>
Subject: RE: Legal Descriptions -

I am inquiring with HDR and will get back to you ASAP.

Thanks,
 Soraya

Soraya Lowry
 High Capacity Transit Development Manager
 Planning, Environment & Project Development
 Sound Transit
 206.903.7408

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twitter.com/SoundTransit



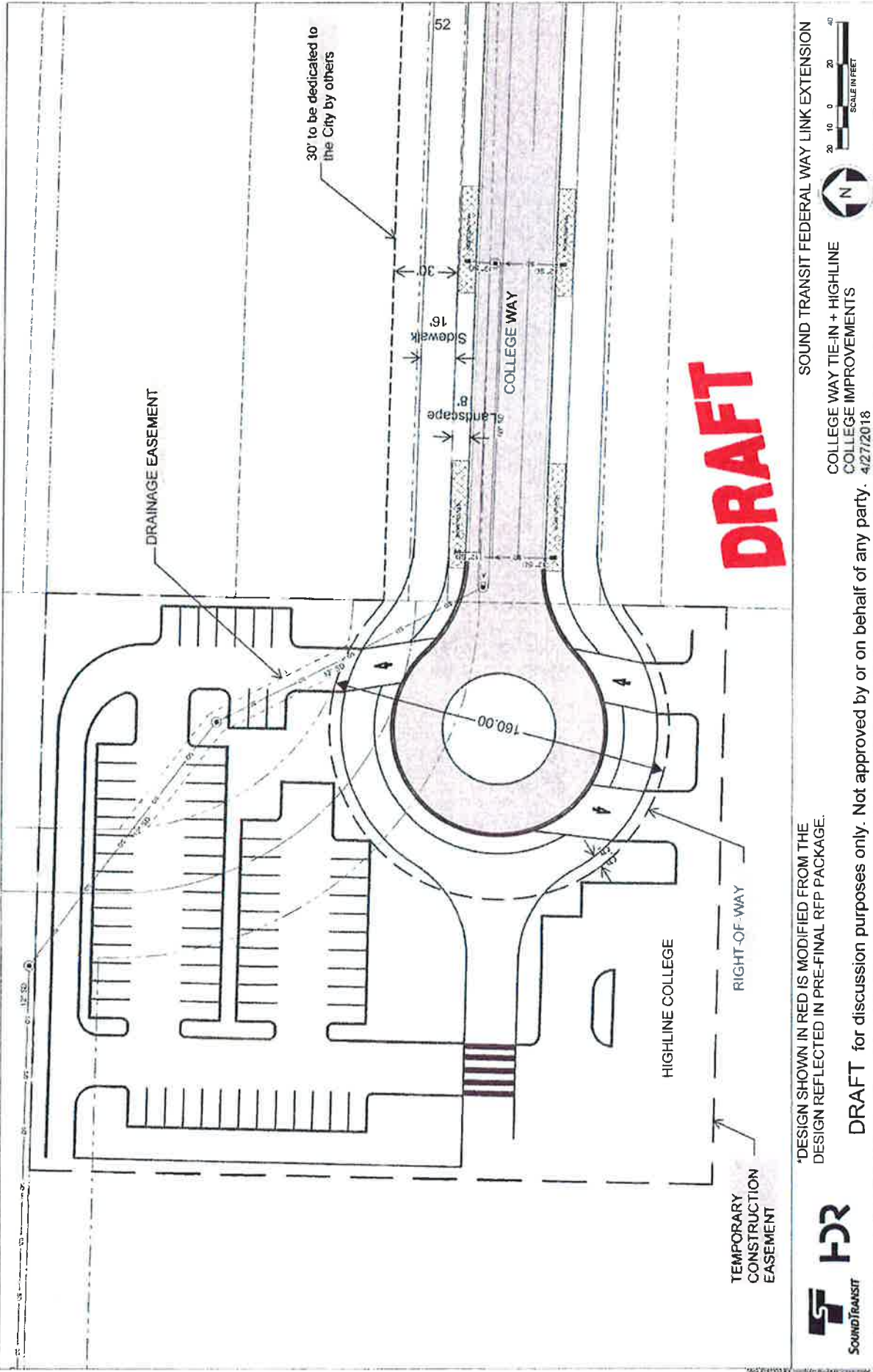
From: Dan Brewer [<mailto:DBrewer@desmoineswa.gov>]
Sent: Wednesday, June 27, 2018 2:59 PM
To: Lowry, Soraya <Soraya.Lowry@soundtransit.org>
Cc: Grant Fredricks <GFredricks@desmoineswa.gov>
Subject: Legal Descriptions -

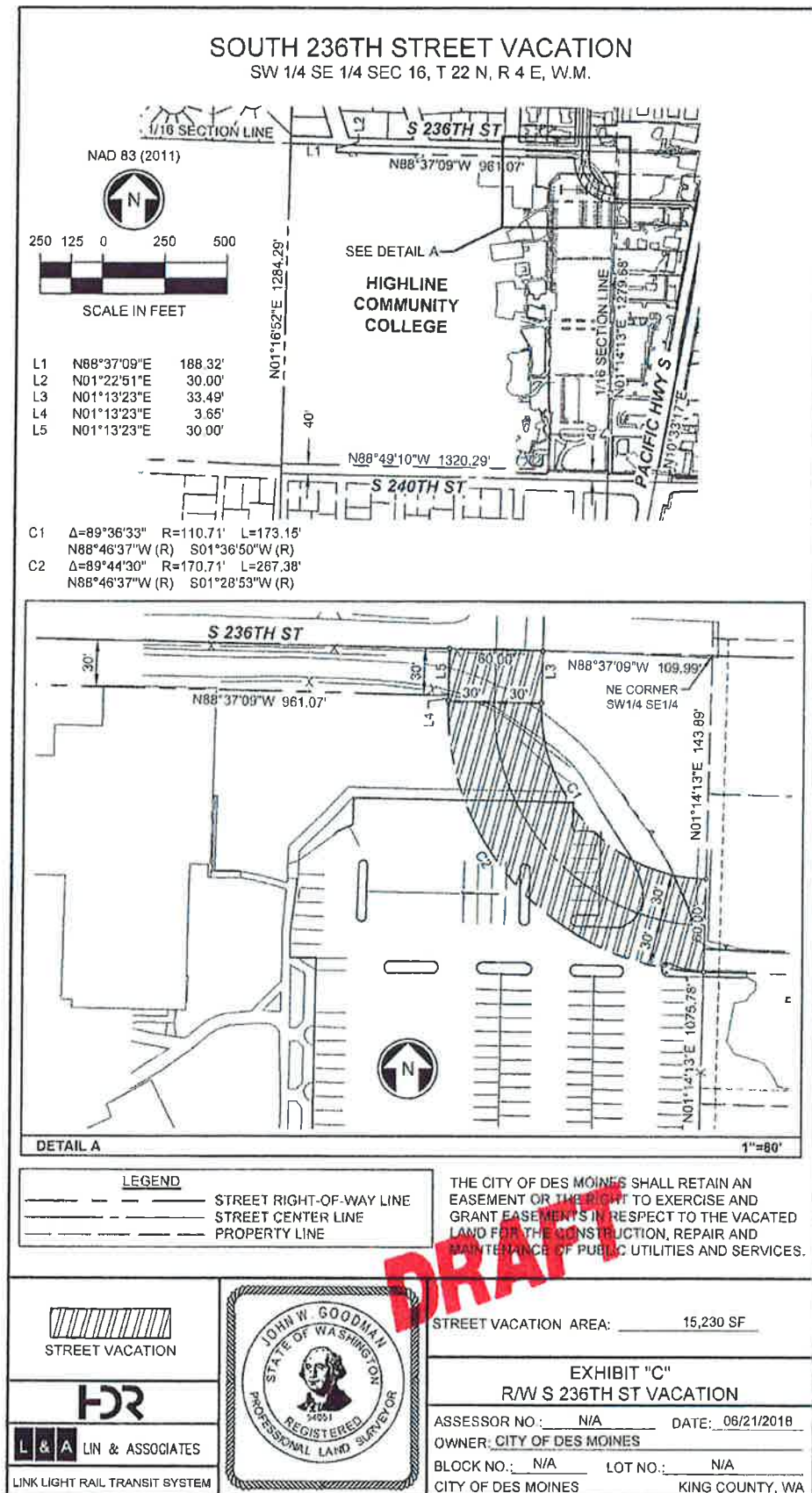
I'm pulling together the Attachments for the College ILA.

Do we have the final legal descriptions and exhibits for the various areas on the college campus?

1. The area of the street end to be dedicated to the City.
2. The area of the storm drainage easement.
3. The Historic ROW that the City needs to vacate back to the college.
4. The TCE areas for the parking lot work.

Dan





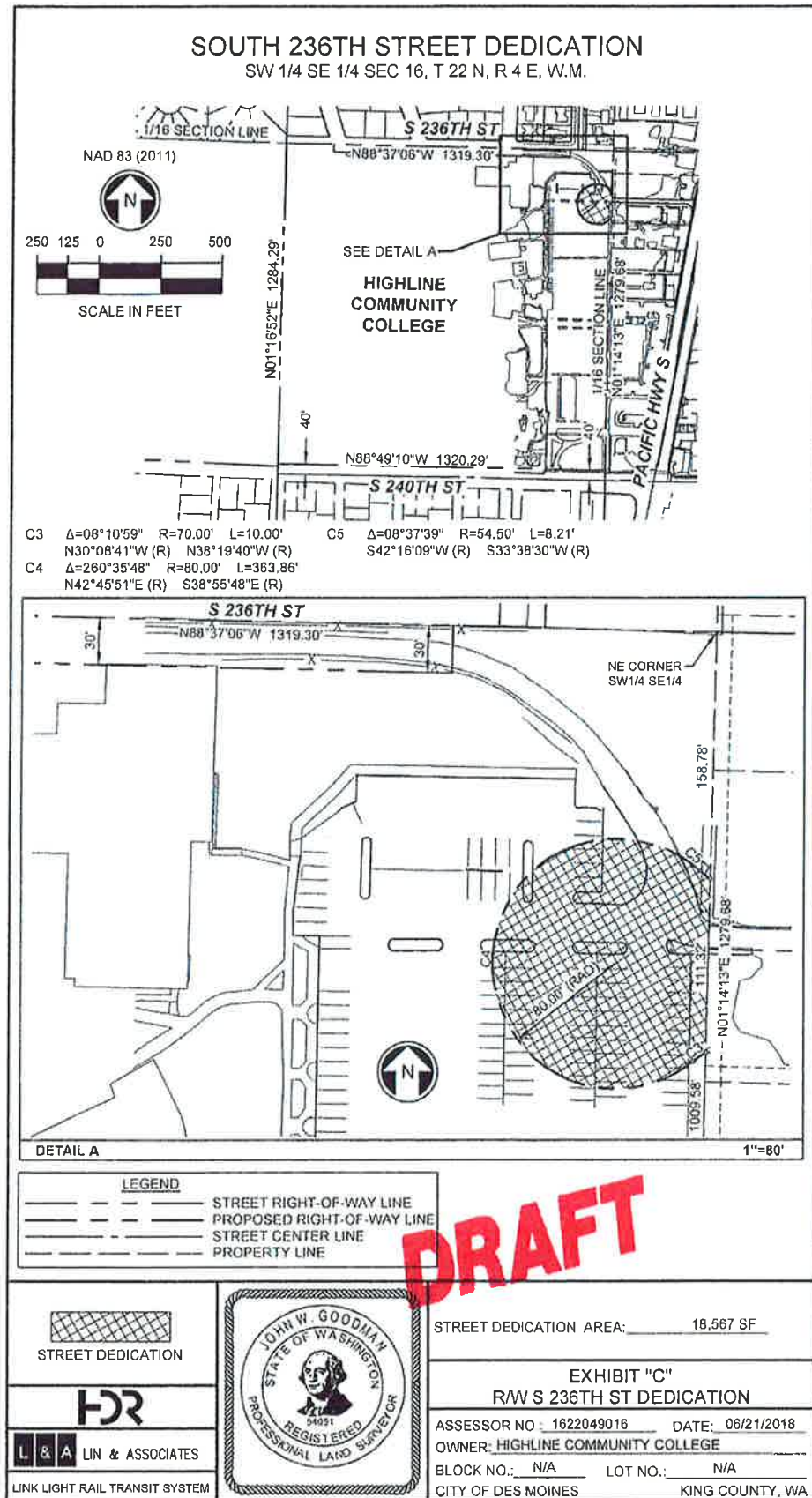


EXHIBIT "A"

R/W No. FL227.1
PIN 1622049016
STATE OF WASHINGTON – HIGHLINE COMMUNITY COLLEGE

DRAFT**Entire Parcel:**

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 22 NORTH,
RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;
EXCEPT ANY PORTION THEREOF LYING WITHIN THE RIGHT OF WAY FOR 25TH AVENUE SOUTH;
AND EXCEPT AND PORTION THEREOF LYING WITHIN THE RIGHT OF WAY FOR SOUTH 240TH
STREET.

EXHIBIT "B"

R/W No. FL227.1
 PIN 1622049016
 STATE OF WASHINGTON – HIGHLINE COMMUNITY COLLEGE

DRAFT**Area of South 236th Street Vacation:**

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE
 SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE
 MERIDIAN, IN KING COUNTY, WASHINGTON;
 THENCE ALONG THE EAST LINE OF SAID SUBDIVISION S01°14'13"W A DISTANCE OF 143.89 FEET
 TO THE POINT OF BEGINNING;
 THENCE CONTINUING ALONG SAID EAST LINE S01°14'13"W A DISTANCE OF 60.00 FEET TO THE
 BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF
 170.71 FEET, OF WHICH THE RADIAL LINE BEARS S01°28'53"W;
 THENCE WESTERLY, NORTHWESTERLY AND NORTHERLY ALONG SAID CURVE THROUGH A
 CENTRAL ANGLE OF 89°44'30" AN ARC DISTANCE OF 267.38 FEET;
 THENCE N01°13'23"E A DISTANCE OF 33.65 FEET TO THE NORTH LINE OF SAID SUBDIVISION;
 THENCE ALONG SAID NORTH LINE S88°37'09"E A DISTANCE OF 60.00 FEET;
 THENCE S01°13'23"W A DISTANCE OF 33.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT
 HAVING A RADIUS OF 110.71 FEET;
 THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°36'33" AN ARC DISTANCE OF
 173.15 FEET TO THE POINT OF BEGINNING

THE CITY OF DES MOINES SHALL RETAIN AN EASEMENT OR THE RIGHT TO EXERCISE AND
 GRANT EASEMENTS IN RESPECT TO THE VACATED LAND FOR THE CONSTRUCTION, REPAIR
 AND MAINTENANCE OF PUBLIC UTILITIES AND SERVICES

CONTAINING 15,230 SQUARE FEET, MORE OR LESS

EXHIBIT "B"

R/W No. FL227.1
 PIN 1622049016
 STATE OF WASHINGTON – HIGHLINE COMMUNITY COLLEGE

DRAFT

Area of South 236th Street Dedication:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE
 SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE
 MERIDIAN, IN KING COUNTY, WASHINGTON;
 THENCE ALONG THE EAST LINE OF SAID SUBDIVISION S01°14'13"W A DISTANCE OF 158.78 FEET
 TO THE POINT OF BEGINNING;
 THENCE CONTINUING ALONG SAID EAST LINE S01°14'13"W A DISTANCE OF 111.32 FEET TO THE
 BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF
 70.00 FEET, OF WHICH THE RADIAL LINE BEARS N30°08'41"W;
 THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°10'59" AN
 ARC DISTANCE OF 10.00 FEET TO THE POINT OF REVERSE CURVE HAVING A RADIUS OF 80.00
 FEET;
 THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 260°35'48" AN ARC DISTANCE
 OF 363.86 FEET TO THE POINT OF REVERSE CURVE HAVING A RADIUS OF 54.50 FEET;
 THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°37'39" AN ARC DISTANCE OF
 4.11 FEET TO THE POINT OF BEGINNING

CONTAINING 18,567 SQUARE FEET, MORE OR LESS

Exhibit F

Dan Brewer

From: Dan Brewer
Sent: Wednesday, January 17, 2018 3:52 PM
To: 'Pham, Michael'; Holldorf, Barry
Cc: Grant Fredricks; Brandon Carver
Subject: FW: Information on Highline College area dedicated for public ROW
Attachments: 5678292+EAS.PDF; FL227 1-Parcel Map_KN.pdf; Pages from FWEA-L05-RPP100-Rack Set_KN.pdf

Michael & Barry:

I am forwarding you the information below in advance of our meeting tomorrow. It would be good to discuss this with you at the meeting, either with the folks from Highline Place, or separately at our follow up meeting afterwards.

As you will see, the Sound Transit team of staff and consultants have discovered a right-of-way that was dedicated and recorded back in 1963, which is on what we have all thought of as the Highline campus. That may in fact not be the case however. Sound Transit approached us with this information in December, and we asked them to do some more research into this to see if this right-of-way was ever vacated at King County. They have now completed that research and there does not appear to be any records indicating that this right-of-way was ever vacated. As you can imagine, this presents some issues that we need to discuss and figure out.

Take a look and lets discuss tomorrow.

Dan

From: Eskenazi, Zachary [mailto:Zachary.Eskenazi@soundtransit.org]
Sent: Tuesday, January 16, 2018 2:26 PM
To: Dan Brewer <DBrewer@desmoineswa.gov>
Cc: Grant Fredricks <GFredricks@desmoineswa.gov>; Lowry, Soraya <Soraya.Lowry@soundtransit.org>
Subject: Information on Highline College area dedicated for public ROW

Hello Dan-

I am following up to your request for the information on the Highline College area that is dedicated as a public ROW.

Attached is the information we provided at the meeting in December including Ordinance No. 609, King County Rec No. 8411200460, which vacates the north half of 236th ST North of the College's property and East of the Deeded Roadway crossing the Northeast corner of the College's property.

Regards,

Zac

Zac Eskenazi
 High Capacity Transit Project Manager
 Planning, Environment and Project Development
 Sound Transit
 206-903-7178

120

60

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
BERT L. COLE, Commissioner of Public Lands

5675292

*
In re: Application No. 2685 for*
Right of Way for County Road in *
King County *

ORDER
AND
CERTIFICATE OF GRANT
OF
RIGHT OF WAY

It appearing to the Commissioner of Public Lands that Application No. 2685 has been filed in this office by the Board of County Commissioners of King County for an easement for a right of way for county road over and across portions of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 16, Township 22 North, Range 4 East, W.M., in King County; and

It further appearing that this easement is necessary for the use of King County as a county road; that there is no merchantable timber on the area included within the right of way; and that the plat showing the survey of said right of way as filed with said application is hereby approved as the official plat of said road; and the Commissioner being fully advised, it is therefore

ORDERED and DETERMINED that an easement for right of way for county road in accordance with the authority set forth in Section 5, Chapter 73, Session Laws of 1961, is hereby granted to King County over and across the following described land:

Those portions of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 16, Township 22 North, Range 4 East, W.M., included within the limits of three strips of land described as follows:

The North 10.0 feet of the South 40.0 feet of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, having an area of 0.30 acre; also

Beginning at a point on the east line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, which is S 1° 18' 30" W 173.89 feet from the northeast corner thereof, said point being a point on a 41° 43' curve to the right, the tangent to said curve at said point bears N 88° 23' 42" W, running thence on said curve to the right, with a width of 30.0 feet on each side, a distance of 220.26 feet and thence N 1° 17' 40" E 33.18 feet to a point on the north line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, which is N 88° 36' 50" W 140.0 feet from the northeast corner thereof, having an area of 0.35 acre; also

Beginning at a point in said SW $\frac{1}{4}$ SE $\frac{1}{4}$, which is S 1° 17' 40" W 15.0 feet from a point on the north line which is N 88° 36' 50" W 170.00 feet from the northeast corner thereof, running thence, with a width of 15.0 feet on each side, N 88° 36' 50" W 961.00 feet to a point, which is S 1° 23' 10" W 15.0 feet from a point on the north line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, which is S 88° 36' 50" E 189.93 feet from the northwest corner thereof, having an area of 0.66 acre.

The rights of way hereinabove described have a total area of 1.31 acres as shown on the plat thereof on file in the office of the Commissioner of Public Lands at Olympia, Washington.

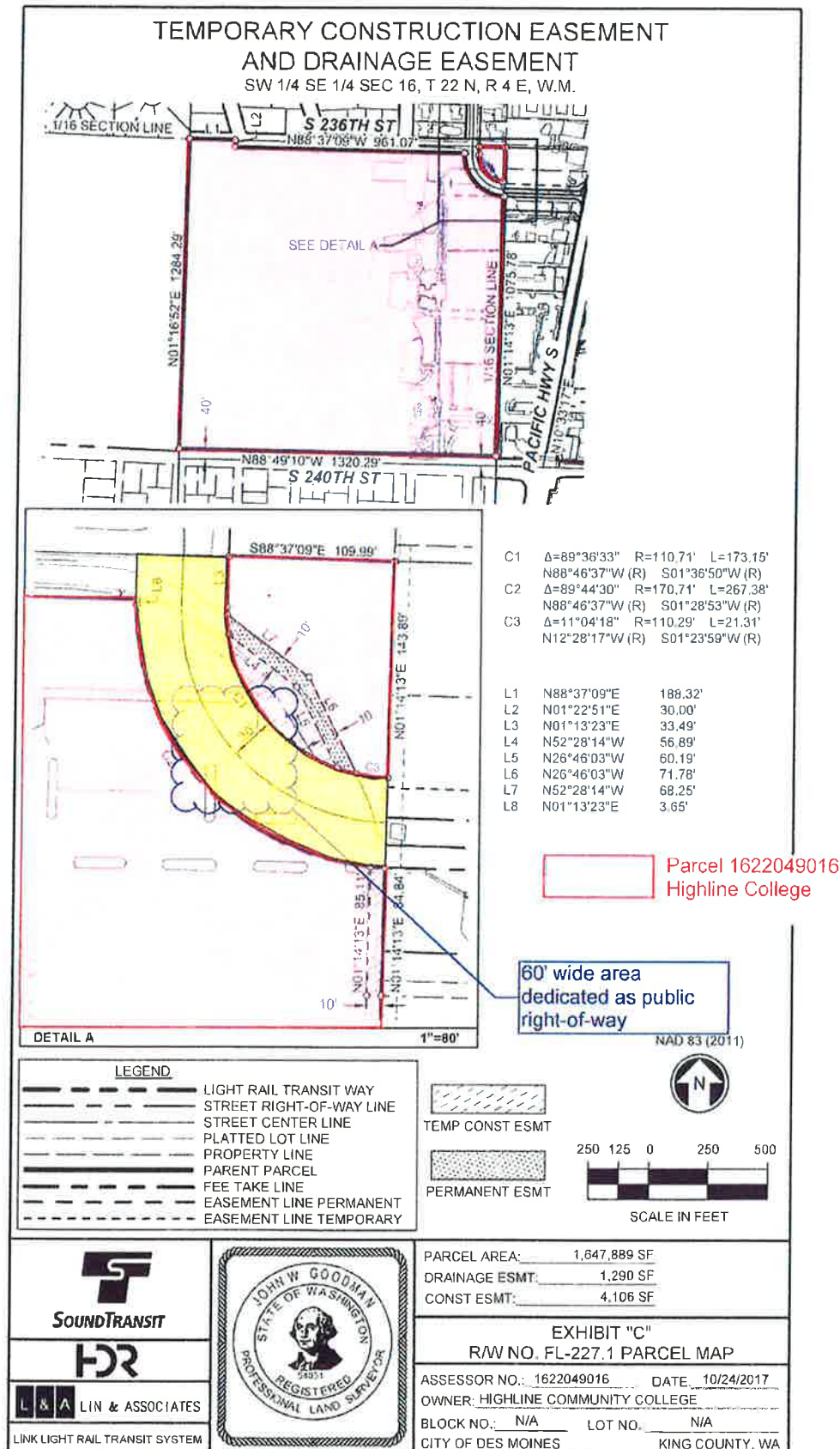
Dated this 27th day of November, A.D., 1963.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Bert L. Cole
BERT L. COLE
Commissioner of Public Lands

DEC 19 1963

78
pp. No. 2685



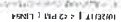


Exhibit G

Dan Brewer

Subject: FW: Comprehensive Sign Review

From: Denise Lathrop

Sent: Wednesday, June 27, 2018 4:15 PM

To: Dan Brewer <DBrewer@desmoineswa.gov>

Subject: Comprehensive Sign Review

1. A sign Comprehensive Design Plan is required to approve the new off-premises monument sign in addition to any other existing or future Highline College signs. The Comprehensive Design Plan process and criteria for approval is explained in chapter 18.200 DMMC (DMMC 18.200.120, DMMC 18.200.130, and DMMC 18.200.140). All of the College's signs will be considered in the Comprehensive Design Plan review. A master development application, a narrative pursuant to DMMC 18.200.130(1), square footages of all proposed and existing Highline College signs, and a site plan would be submitted with the application. The current fee for a Comprehensive Design Plan is \$1,530.00 (an Administrative Zoning Code Deviation Request fee per <http://www.desmoineswa.gov/DocumentCenter/View/124>) plus an automation fee.
2. Elevations, structural and electrical details, a site plan, a new sign permit application, and fees for any new sign/s must also be submitted.

Denise E. Lathrop, AICP

Planning & Development Services Manager

City of Des Moines Planning, Building and Public Works Department

21630 11th Avenue S, Suite D

Des Moines, WA 98198-6398

Phone: 206-870-6563

Fax: 206-870-6544

IT TAKES A PLACE TO CREATE A COMMUNITY AND A COMMUNITY TO CREATE A PLACE

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A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Continued Combined Public Hearing:
Draft Ordinance Approving Federal Way Link
Extension (FWLE) Transit Way Agreement
(TWA), Draft Resolution Approving FWLE
Development Agreement (DA) and College Way
Connection Project Funding Agreement (FA)

ATTACHMENTS:

1. Draft Ordinance 18-086 approving the Agreement between the City of Des Moines and Sound Transit for Grant of Non-Exclusive Use of a Light Rail Transit Way as related to the Federal Way Link Extension Light Rail Transit Project
2. Draft Resolution 18-087 approving the Federal Way Link Extension Project Development Agreement between the City of Des Moines and Sound Transit Federal Way Link Extension
3. Draft Funding Agreement between the City of Des Moines and Sound Transit for the College Way Connection Project
4. FWLE Property Acquisition Status, 9/6/2018

FOR AGENDA OF: October 4, 2018

DEPT. OF ORIGIN: Community Development & Public Works

DATE SUBMITTED: September 24, 2018

CLEARANCES:

- [X] Community Development SMC
 [X] Public Works RRC
 [] Marina N/A
 [] Parks, Recreation & Senior Services N/A

CHIEF OPERATIONS OFFICER: DSB

- [X] Legal mh
 [X] Finance Baw
 [] Police N/A
 [] Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation:

The purpose of this agenda item is to continue a Public Hearing to consider the Federal Way Link Extension (FWLE) Transit Way Agreement (TWA) and the FWLE Development Agreement (DA) and to authorize the City Manager or his designee to enter into a Funding Agreement (FA) for Sound Transit to design and construct the College Way Connection Project as formally approved by the City Council in its Interlocal Agreement with Highline College.

These Agreements have been negotiated over the last 20 months between City and Sound Transit staff, with input and collaboration from other affected agencies such as Highline College and the Washington State Department of Transportation (WSDOT). The three Agreements are scheduled to be considered by the Sound Transit Board later this fall.

Continued Combined Public Hearing:

Draft Ordinance Approving the FWLE TWA, Draft Resolution Approving the FWLE DA and Motion Approving the College Way Connection Project Funding Agreement

Page 2 of 8

The TWA addresses Sound Transit's permanent location and use of facilities within the City's Rights-of-Way. This Agreement is similar to (but slightly different than) a Franchise Agreement for the use of the Rights-of-Way.

Sound Transit's FWLE project is considered an Essential Public Facility (EPF) according to RCW 36.70A.200 and WAC 365-196-550, and DMMC 18.255. In accordance with DMMC 18.255.050, this EPF would normally be processed as an unclassified use permit (UUP). However, Sound Transit has requested and City Administration has agreed to process the Land Use Application in accordance with the Alternative Permitting Process provided for in DMMC 18.255.100, which provides for the use of a Development Agreement subject to a public hearing and approval by the City Council provided that certain conditions are met.

Motions:

Motion 1 A: "I move to suspend City Council Rule 26(a) in order to enact Draft Ordinance No. 18-086 on first reading."

Motion 1 B: "I move to enact Draft Ordinance 18-086 approving the Transit Way Agreement between the City of Des Moines and Sound Transit, for Grant of Non-Exclusive Use of a Light Rail Transit Way as Related to the Federal Way Link Extension Light Rail Transit Project."

Motion 2: "I move to adopt Draft Resolution 18-087 approving the Federal Way Link Extension Project Development Agreement between the City of Des Moines and Sound Transit."

Motion 3: "I move to authorize the City Manager or his designee to sign the Funding Agreement between the City of Des Moines and Sound Transit for the College Way Connection Project further defined in the approved Interlocal Agreement between the City of Des Moines and Highline College, substantially in the form as submitted".

Background

The Growth Management Act (GMA) (Chapter 36.70A RCW) requires that the City plan for and encourage high capacity transit facilities such as the Federal Way Link Extension (RCW 36.70A.020) and accommodate within the City such essential public facilities (RCW 36.70A.200). Likewise, the GMA grants authority to the City to impose reasonable permitting conditions on such projects. Accordingly, the City has planned for the extension of the Link light rail transit (LRT) system through Des Moines, by including this Project in the City's Comprehensive Plan for the past 20 years.

In November 2008, central Puget Sound area voters approved Sound Transit 2 (ST2) including extension of the LRT system from SeaTac to the cities of Kent and Des Moines. In November 2016, voters approved Sound Transit 3 (ST3) which included the extension of the LRT system to the City of Federal Way as part of the Federal Way Link Extension Project.

Continued Combined Public Hearing:

Draft Ordinance Approving the FWLE TWA, Draft Resolution Approving the FWLE DA and Motion Approving the College Way Connection Project Funding Agreement

Page 3 of 8

The City has been working with Sound Transit for several years to negotiate agreements on various project requirements and permitting processes that would provide certainty and predictability for the FWLE Project, such as use of completed Sound Transit Environmental documents and FTA mitigation requirements, establishing a consolidated permit process, amending and resolving technical code requirements that are impractical or infeasible, supporting and accommodating the LRT system in land use plans and development regulations, and allowing for extended vesting or duration of land use approvals.

The City has modified its Landscape Code and other Zoning Code chapters by Ordinance No. 1695, the Tree Code by Ordinance No. 1694, and the Essential Public Facilities Codes by Ordinance No. 1697, to fulfill its obligations under the GMA to accommodate the FWLE Project, reduce Project costs and provide Sound Transit more design flexibility while still adequately protecting Des Moines residents impacted by the Project.

On June 28, 2017, the City and Sound Transit executed a City Services Agreement establishing responsibilities for City participation in Project implementation and how Sound Transit would reimburse the City for costs incurred for design review, permitting, and public right-of-way review and approval services as authorized by the terms of the City Services Agreement. On June 28, 2017, the City and Sound Transit executed a Task Order #1 under the City Services Agreement to address reimbursement for City expenses by Sound Transit during 2017. The City was reimbursed \$178,666 for 2017 services. On April 12, 2018, the City and Sound Transit executed an Amended Task Order #2 to address reimbursement for City expenses by Sound Transit during 2018 and the first quarter of 2019. The City has earned \$179,933 for City services through August 31, 2018 under Task Order #2. The Parties anticipate executing Task Order #3 in early 2019 to address reimbursement for City expenses through the remainder of the Project. Additional Task Orders will be executed as necessary.

Sound Transit has completed extensive environmental analysis of the Project in accordance with the National and State Environmental Policy Act (NEPA and SEPA). Sound Transit completed SEPA review with the issuance of the FWLE Final Environmental Impact Statement (FEIS) on November 18, 2016. The Federal Transit Administration (FTA) issued a Record of Decision (ROD) on March 6, 2017 and the Federal Highway Administration (FHWA) issued a ROD on March 9, 2017 concluding the NEPA process. Under terms of the DA, as required under WAC 197-11-600, the City will rely on the Sound Transit environmental analysis to satisfy its SEPA responsibilities.

Sound Transit has adopted real property acquisition and relocation procedures and guidelines that comply with the Federal property acquisition and relocation laws, all of which establish a uniform policy for the expedient and consistent treatment of owners and tenants subjected to land acquisition practices and provide for the fair and equitable treatment of persons displaced because of the FWLE. Sound Transit has acquired or will acquire such real property interests in Des Moines as are necessary to construct, maintain, and operate the Project. The status of property acquisition as of early September 2018 is attached.

Continued Combined Public Hearing:

Draft Ordinance Approving the FWLE TWA, Draft Resolution Approving the FWLE DA and Motion Approving the College Way Connection Project Funding Agreement

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Sound Transit, with input from the City, has prepared a 30% level design concept for the FWLE Project, which has been provided to the short-listed Design Build teams as part of the Request for Proposals. The City has reviewed and provided extensive comments on the FWLE Project 30% design and has provided a comprehensive list of Project Requirements that the selected Design Builder will have to address for the project. Sound Transit issued the RPF on September 14, 2018. Proposals will be due to Sound Transit in March of 2019. Final Design and Construction of the FWLE project will begin in the summer of 2019.

The Highline College Board of Trustees approved the Interlocal Agreement (ILA) between the City of Des Moines and Highline College for the College Way Connection Project on September 20, 2018 and the ILA is scheduled for City Council approval on October 4th prior to this Continued Public Hearing.

The City and Sound Transit have agreed to continue to work in a collaborative effort to achieve Sound Transit's goal to have the FWLE Project begin operations by 2024.

Discussion:

Public Hearing

At the Public Hearing, the Council will be asked to determine that Sound Transit's proposed FWLE Project is generally consistent with the City's development regulations; that the proposed Project conforms with the conditions of approval provided in DMMC 18.35.020; and to approve the FWLE Project as a permitted land use, pursuant to the City's Essential Public Facilities (EPF) Code (DMMC 18.255). To accomplish this the Council will be asked to enact Draft Ordinance 18-086, approving the Transit Way Agreement (Attachment 1), and adopt Draft Resolution 18-087, approving the Development Agreement (Attachment 2). The City Council will also be asked to authorize the City Manager or his designee to enter into a Funding Agreement with Sound Transit for the College Way Connection Project (Attachment 3).

Land Use Approval

Sound Transit has requested Essential Public Facility (EPF) land use approval for the Project using the alternative development agreement process in accordance with DMMC 18.255.100 in lieu of an unclassified use permit required under DMMC 18.255.050. Sound Transit has submitted an application demonstrating that all applicable DMMC requirements have been met. City Administration has agreed to process their Land Use Application using the alternative development agreement process (refer to Exhibit B of Attachment 2), subject to City Council approval. Sound Transit understands that this land use approval shall not be deemed to exempt the Project from any other applicable City, state and/or federal regulations, and this Development Agreement contains such reasonable conditions as necessary to ensure the EPF satisfies, to the extent practicable, the permit criteria.

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Design Development and Permitting

The City will be actively involved with design development and approval. The City's Project Liaison will be co-located in the Project field office with other members of the Project team (which will include representatives from the other jurisdictions, Sound Transit, and the Design/Build Contractor). The City's Liaison will coordinate and facilitate design review and permitting with City Hall staff. The DA contains design review and permitting time standards, which have been developed using an over-the shoulder review process similar to what the City used throughout the design and construction of the FAA facility at the Des Moines Creek Business Park.

Roadway Improvements

Specific City roadway improvements will be included as part of the FWLE Project. Those improvements include new cul-de-sac street-end turnarounds at the east end of South 220th, South 221st and South 224th Streets, and College Way improvements with new sidewalks and lighting, all meeting City standards. The City has required that Sound Transit provide a payment-in-lieu for the improvements on South 224th Street, which the City will combine with other City funds to rebuild South 224th Street east of SR 99.

Street ends that are now City right-of-way (ROW) but are needed for FWLE will be vacated in accordance with Chapter 12.10 DMMC. Sound Transit will make application for a street vacation, which will be processed by the City under a separate ordinance(s) and public hearing(s) later this year. Once new City street ends and College Way are constructed, the associated ROW will be dedicated to the City.

Sound Transit currently proposes to construct an underpass for the LRT or possibly an overcrossing for the LRT adjacent to Interstate 5 on South 216th Street, and an overcrossing for the LRT over Kent-Des Moines Road. The structures shall be constructed under authority of the Transit Way Agreement and right-of-way use permits as required by City code.

Noise Mitigation

An extensive presentation and discussion of noise impacts and mitigation was provided to the City Council on May 10, 2018, and feedback from the Council has been incorporated into the DA to the extent possible.

The Project will mitigate noise impacts following the 2006 FTA Transit Noise and Vibration Impact Assessment guidance and Sound Transit's 2004 Light Rail Noise Mitigation Policy. Noise mitigation measures based on the Pre-Final Preliminary Engineering documents are identified in Appendix G3 of the FEIS. Based on the EIS analysis, where mitigation is needed for at-grade segments, noise walls that are typically 6 to 8 feet in height would be provided. Noise wall heights may be up to 21 feet in height to mitigate noise impacts at certain multi-family locations. Based on the EIS analysis, where mitigation is needed for elevated segments, acoustic panels that are typically 4 feet in height would be attached to the guideway.

The Design/Build Contractor will complete the Project's final design and, as a result, may redesign sections of the alignment. If the Design/Build Contractor redesigns the alignment, the

Continued Combined Public Hearing:

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noise impacts and mitigation measures will also be reevaluated which may adjust identified noise wall heights and extents. The Design/Build Contractor must demonstrate to Sound Transit and the City through design modeling that the proposed noise mitigation strategy meets Federal guidance and ST policy. The Design/Build Contractor must also demonstrate to Sound Transit and the City through actual field measurements that the constructed noise mitigation fulfills Federal guidance and ST policy.

Proactive community outreach, including feedback on noise wall design and decorative features, will ensure transparency with the Pacific Ridge Neighborhood and the City during this final design review and construction monitoring process. Sound Transit will require the Design Builder to construct noise walls as soon as practicable.

Construction noise (daytime and/or nighttime) will meet City regulatory requirements by using operations methods, scheduling, equipment choice, and acoustical treatments in accordance with any FEIS mitigation requirements, City permit conditions and/or noise variances granted by the City.

Vesting

The DA shall apply throughout the construction build-out period for the Project, which the Parties have established as ten years following execution of the Agreement unless other county, state or Federal laws preempt the City's authority to vest regulations. The Project shall be governed by the City development standards and regulations in effect on July 1, 2018.

Property Management

The Parties have agreed to a strategy of property management and demolition of vacant structures that will be acquired by Sound Transit to avoid the creation of public nuisances.

Parking Mitigation

Sound Transit shall, in coordination with the City and at Sound Transit's expense, conduct an on-street parking inventory and utilization study of identified residential areas located within approximately one quarter-mile of the Kent/Des Moines station area. This study will take place within one year before and within one year after the start of revenue service based on a mutually agreed upon study methodology that evaluates parking capacity and usage of the identified residential area, and whether any difference in parking use can reasonably be attributed to the Project. If the post-revenue service study shows that these areas are over 90% capacity prior to 9 am, and over 50% of the on-street parking use can be reasonably attributed to light rail transit customer parking, then Sound Transit and the City will work together in good faith to identify, recommend and if necessary implement appropriate parking control measures. Potential parking control measures include parking meters, restricted parking, passenger and truck load zones, and residential parking zones (RPZs). Sound Transit will install any agreed upon parking meters, RPZs or parking restriction signage within the agreed upon area. The City will be responsible for monitoring and providing all enforcement and maintenance, including ongoing RPZ-related costs.

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Design/Build Contractor Mitigation Plans

The Design/Build Contractor will develop the following mitigation and other plans that conform to City requirements:

- Transportation Management Plan – Specifying the Design/Build Contractor’s overall strategy for managing issues related to transportation during construction.
- Maintenance of Traffic Plan – Specifying provisions for safely and adequately maintaining traffic during construction, including vehicular, pedestrian, bicycle and transit traffic.
- Construction Noise and Vibration Mitigation Plan – Specifying means and methods implemented by the Design/Build Contractor to minimize noise and vibration during construction and outlining the process for addressing complaints and claims from citizens.
- Construction Outreach and Communication Plan – Specifying Design/Build Contractor requirements for advance notification of construction activities and other actions that are of interest to the community.

College Way Connection Project

As part of its construction of College Way, Sound Transit is responsible for the construction of a cul-de-sac street-end turnaround at the end of College Way, along with associated drainage improvements running through the Highline College Campus to an outfall located north of the campus. Highline College has a Master Plan improvement near the College Way Street end. As addressed in the Interlocal Agreement with the College approved by the College on September 20, 2018 and scheduled for City Council consideration on October 4, 2018 prior to this continued public hearing, the College Way Connection Project will be part of Sound Transit’s FWLE project and generally consists of a roundabout at the end of College Way located in City ROW on the Highline College Campus and includes pedestrian and bicycle facilities that connect the roundabout street end through the parking lot to existing pedestrian and bicycle facilities on the eastern edge of the Highline College campus. It also includes parking lot modifications to accommodate the roundabout and pedestrian and bicycle facilities and replace displaced parking.

The City and Highline College will pay for the estimated cost of those improvements based on the estimated costs for the improvements, specifically design services, and construction costs for a roundabout, pedestrian, bicycle improvements, and parking lot modification, less the cul-de-sac street end turnaround improvements that Sound Transit would otherwise be required to construct. The Parties agree (based on Engineer’s Estimates from each Party, and Highline College’s Engineering Consultants) that the City payment to Sound Transit will be in the amount of \$1,400,000 and will be payable by the City to Sound Transit in three installments beginning in 2021.

Signing – Highline College

As part of partnership efforts with the City, Sound Transit will construct two foundations and a conduit pathway for associated lighting for two College monument signs adjacent to SR 99, and one College monument sign in the center of the College Way round-about on the College campus.

Continued Combined Public Hearing:

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As part of its Interlocal Agreement with Highline College, the College is responsible to submit a Comprehensive Sign Plan to the City for Review and Approval by December 2018. The College is responsible for the fabrication and installation of the signs and the costs of ownership and maintenance of the signs following installation.

Signing – City of Des Moines

The City has expressed interest in siting a monument sign near the guideway crossing of Kent Des Moines Road. If the City and WSDOT are unable to come to an agreement on siting of the City's monument sign within WSDOT ROW, Sound Transit and the City have agreed to work in good faith during final design of the FWLE Project to identify opportunities for a monument sign near the southeast corner of the Kent Des Moines road and the I-5 off-ramp on Sound Transit property. Sound Transit will construct the foundation and a conduit pathway for associated lighting for the installation of the sign. The City will be responsible for any required land use permitting for the signage, fabrication and installation of the sign, and all costs of ownership and maintenance following installation.

Alternatives:

Council has the option to amend the TWA, the Development Agreement and/or Funding Agreement subject to concurrence with Sound Transit.

Financial Impact:

Public transit contractors do not pay retail sales tax, but they must pay sales or use tax on all materials they place in or on the link light rail system as well as equipment and supply purchases. Also, public transit construction activity does not include construction of utility improvements. Applicable sales tax will be reported on the contractor's sales tax return form and coded City of Des Moines #1709. The work would also be subject to City business and occupation taxes.

All City FWLE-related costs except for the College Way Connection Project will be directly reimbursed or covered by permit fees. The City is expected to receive currently unknown payments-in-lieu for up to one acre of off-site landscaping and tree replacement and payment-in-lieu for haul route restoration and the S. 224th Street end. College Way will also be improved by ST from a single lane to a 3-lane boulevard with extra wide sidewalks, bike lanes and lighting and dedicated to the City.

Recommendations/Conclusion:

Administration recommends that the City Council enact Draft Ordinance 18-086 approving the Transit Way Agreement (TWA), adopt Draft Resolution No. 18-087 approving the FWLE Development Agreement (DA) including the FWLE as an approved Essential Public Facility land use, and authorize the City Manager to enter into a funding agreement for the College Way Connection Project.

Concurrence:

Community Development, Public Works, Legal and Finance Departments concur.

COMMUNITY DEVELOPMENT & PUBLIC WORKS FIRST DRAFT 9/20/2018**DRAFT ORDINANCE NO. 18-086**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, granting Sound Transit, a Washington Municipal Corporation, its successors and assigns, the right, privilege, authority, and nonexclusive use, to construct, maintain, operate, replace, and repair a light rail transit system, in, upon, over, along, under, beneath and along the Light Rail Transit Way in the City of Des Moines.

WHEREAS, Sound Transit is a governmental entity created pursuant to Chapters 81.104 and 81.112 RCW with all powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties, including the right to construct and maintain facilities in public rights of way without a franchise (RCW 81.112.100 and RCW 35.58.330);

WHEREAS, the City is a non-charter optional municipal code city incorporated under the laws of the State of Washington;

WHEREAS, the City owns and operates city streets, and other infrastructure improvements within the City boundaries where Sound Transit proposes certain transit improvements and light rail;

WHEREAS, the Growth Management Act (Chapter 36.70A RCW) requires the City to plan for and encourage regional high capacity transportation facilities such as the Link Light Rail Transit Project (RCW 36.70A.020);

WHEREAS, in 1996, 2008, and 2016, pursuant to state law, the Central Puget Sound Regional Transit Authority (known as "Sound Transit") proposed, and Central Puget Sound voters approved financing for, regional transit system plans known as Sound Move, ST2, and ST3, respectively;

WHEREAS, these regional transit system plans include, among other projects, the Federal Way Link Extension Project ("Project") connecting the cities of SeaTac, Des Moines, Kent, and Federal Way to the existing Link Light Rail System, which will provide numerous benefits to the City's residents, workers, and visitors, and which will help the City meet its Comprehensive Plan goals;

WHEREAS, Sound Transit and the Federal Transit Administration of the United States Department of Transportation ("FTA") have jointly planned the Project pursuant to the National

and State Environmental Policy Acts, and have completed environmental review for the projects in SeaTac, Des Moines, Kent, and Federal Way with the Federal Way Link Extension Final Environmental Impact Statement issued on November 18, 2016 and FTA's Record of Decision issued on March 6, 2017;

WHEREAS, on January 26, 2017, the Sound Transit Board defined and selected the Federal Way Link Extension alignment, profile, stations, and associated infrastructure to be built between Angle Lake Station at S. 200th Street and the Federal Way Transit Center in Resolution 2017-02;

WHEREAS, Sound Transit is intending to deliver the Project as a design/build procurement ("Design/Build") and has been coordinating with the City in preparation for Project design and construction;

WHEREAS, the City and Sound Transit want to agree on a grant of a non-exclusive use of a Light Rail Transit Way for the Federal Way Link Extension Project in the City with appropriate terms and conditions that will satisfy FTA's continuing control requirements;

WHEREAS, the City and Sound Transit intend to execute a Development Agreement in coordination with this Transit Way Agreement;

WHEREAS, the City of Des Moines has determined that it is in the best interests of the public to grant the Transit Way Agreement on the terms and conditions set forth in the Agreement;

WHEREAS, in consideration of mutual promises and covenants herein contained related to the grant of a non-exclusive use of a Light Rail Transit Way by the City to Sound Transit to construct, operate, maintain, and own a Light Rail Transit System in the City of Des Moines within and along the Light Rail Transit Way, the parties hereto agree to the terms and conditions; now, therefore:

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. The Transit Way Agreement attached as Exhibit A between the City of Des Moines and Sound Transit for the Grant of a Non-Exclusive Use of a Light Rail Transit Way as related to the Federal Way Link Extension Light Rail Transit Project is adopted.

Sec. 2. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2018 and signed in authentication thereof this ____ day of _____, 2018.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____, 2018

Rev 03 – Final for Execution

**AGREEMENT BETWEEN THE CITY OF DES MOINES AND SOUND TRANSIT FOR
GRANT OF NON-EXCLUSIVE USE OF A LIGHT RAIL TRANSIT WAY AS RELATED
TO THE FEDERAL WAY LINK EXTENSION LIGHT RAIL TRANSIT PROJECT**

This AGREEMENT is entered into by and between the City of Des Moines (the "City") and Central Puget Sound Regional Transit Authority ("Sound Transit") and is effective when signed by all parties.

RECITALS

WHEREAS, Sound Transit is a governmental entity created pursuant to Chapters 81.104 and 81.112 RCW with all powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties, including the right to construct and maintain facilities in public rights of way without a franchise (RCW 81.112.100 and RCW 35.58.330);

WHEREAS, the City is a non-charter optional municipal code city incorporated under the laws of the State of Washington;

WHEREAS, the City owns and operates city streets, and other infrastructure improvements within the City boundaries where Sound Transit proposes certain transit improvements and light rail;

WHEREAS, the Growth Management Act (Chapter 36.70A RCW) requires the City to plan for and encourage regional high capacity transportation facilities such as the Link Light Rail Transit Project (RCW 36.70A.020);

WHEREAS, in 1996, 2008, and 2016, pursuant to state law, the Central Puget Sound Regional Transit Authority (known as "Sound Transit") proposed, and Central Puget Sound voters approved financing for, regional transit system plans known as Sound Move, ST2, and ST3, respectively;

WHEREAS, these regional transit system plans include, among other projects, the Federal Way Link Extension Project ("Project") connecting the cities of SeaTac, Des Moines, Kent, and Federal Way to the existing Link Light Rail System, which will provide numerous benefits to the City's residents, workers, and visitors, and which will help the City meet its Comprehensive Plan goals;

WHEREAS, Sound Transit and the Federal Transit Administration of the United States Department of Transportation ("FTA") have jointly planned the Project pursuant to the National and State Environmental Policy Acts, and have completed environmental review for the Project with publication of the Federal Way Link Extension Final Environmental Impact Statement on November 18, 2016, FTA's Record of Decision issued on March 6, 2017, and the Federal Highway Administration's Record of Decision, issued on March 9, 2017;

WHEREAS, on January 26, 2017, the Sound Transit Board defined and selected the Federal Way Link Extension alignment, profile, stations, and associated infrastructure to be built between Angle Lake Station at S. 200th Street and the Federal Way Transit Center in Resolution 2017-02;

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WHEREAS, Sound Transit is intending to deliver the Project as a design/build procurement ("Design/Build") and has been coordinating with the City in preparation for Project Design and Construction;

WHEREAS, the City and Sound Transit want to agree on a grant of a non-exclusive use of a Light Rail Transit Way for the Federal Way Link Extension Project in the City with appropriate terms and conditions that will satisfy FTA's continuing control requirements; and

WHEREAS, the City and Sound Transit intend to execute a Development Agreement in coordination with this Transit Way Agreement.

NOW THEREFORE, in consideration of mutual promises and covenants herein contained related to the grant of a non-exclusive use of a Light Rail Transit Way by the City to Sound Transit to construct, operate, maintain, and own a Light Rail Transit System in the City of Des Moines within and along the Light Rail Transit Way, the parties hereto agree to the terms and conditions as follows:

SECTION I. DEFINITIONS

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities, whether persons or entities, refer to those entities or their successors in authority. If specific provisions of law referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances, and regulations now in force or hereinafter enacted or amended.

1.1 **Agreement**. "Agreement" means this Light Rail Transit Way Agreement approved by appropriate action of the City of Des Moines and of Sound Transit.

1.2 **City**. "City" means the City of Des Moines and any successor or assignee following an assignment that is permitted under this Agreement.

1.3 **Director**. "Director" means the Director of Public Works of the City of Des Moines.

1.4 **Emergency**. "Emergency" means, except as otherwise provided, a generally unexpected occurrence or set of circumstances that affects public safety or health demanding immediate action.

1.5 **Final Construction Plans**. "Final Construction Plans" means prints showing in detail, the proposed construction and specifications of the Light Rail Transit System including alignment drawings showing the exact limits of the Light Rail Transit Way.

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1.6 Final Right-of-Way Plans. "Final Right-of-Way Plans" means prints having the proposed limits of the Light Rail Transit Way mathematically tied to existing local street monumentation and the Washington State Coordinate System.

1.7 Liability. "Liability" means all loss, damages, cost, expense (including costs of investigation and attorney fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims, and demands of whatever kind of nature (including those arising under the Federal Employers Liability Act), arising out of an occurrence relating to this Agreement or occurring on or relating to the Light Rail Transit System described herein.

1.8 Light Rail Transit Facility. "Light Rail Transit Facility" means a structure, rail track, equipment, or other improvement of a Light Rail Transit System, including but not limited to ventilation structures, traction power substations, signal bungalows, Light Rail Transit Stations and related passenger amenities, bus layover and inter-modal passenger transfer facilities, and station access facilities.

1.9 Light Rail Transit Station. "Light Rail Transit Station" means a Light Rail Transit Facility whether at grade, above grade or below grade that provides pedestrian access to Light Rail Transit System vehicles and facilitates transfer from light rail to other modes of transportation. A Light Rail Transit Station may include mechanical devices such as elevators and escalators to move passengers and may also include such passenger amenities as informational signage, seating, weather protection, fountains, or artwork.

1.10 Light Rail Transit System. "Light Rail Transit System" means a public rail transit line, including Light Rail Transit Facilities, all infrastructure (including light rail vehicles operating in the Light Rail Transit Way), passenger services and communication equipment, that operates at grade level, above grade level, or in a tunnel and that provides high-capacity, regional transit service owned or operated by a regional transit authority authorized under RCW 81.112. A Light Rail Transit System may be designed to share a street right of way although it may also use a separate right of way. Commuter rail and low capacity, or excursion rail transit service are not included.

1.11 Light Rail Transit Way. "Light Rail Transit Way" means the areas within the Public Rights of Way occupied by Sound Transit for its Light Rail Transit System after construction pursuant to this Agreement, as shown on the record drawings of the Final Right-of-Way Plans approved by the Director and on file with the City Clerk.

1.12 Parties. "Parties" means the City of Des Moines and Sound Transit.

1.13 Passenger. "Passenger" means any person who is not an employee of Sound Transit, and who is aboard any Sound Transit Light Rail Transit System vehicle.

1.14 Public Rights of Way. "Public Rights of Way" means the areas above, below, on and over public streets and easements which, under the Des Moines Municipal Code, the City ordinances, and applicable laws, the City has authority to grant rights of way, permits, or licenses for use thereof or has regulatory authority therefor.

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1.15 **Project.** "Project" means the segments of the Light Rail Transit System in the City as described in Sound Transit Board Resolution 2017-02 and subsequent approved permits and agreements.

1.16 **Record Drawings.** "Record Drawings" means the neatly and legibly marked set of as-built contract drawings, maintained by Sound Transit's Design-Build Contractor with up-to-date information, showing all changes in the work, including final locations of all elements of work.

1.17 **Routine Maintenance and Operation.** "Routine Maintenance and Operation" means Sound Transit's maintenance and operation of the Light Rail Transit System that does not require (i) the excavation of soil that would alter or disturb the Public Rights of Way, or (ii) the use of heavy machinery within fifty (50) feet of or upon the Public Rights of Way.

1.18 **Sound Transit.** "Sound Transit" means the Central Puget Sound Regional Transit Authority, and any other entity to the extent such entity, as permitted under this Agreement, is exercising any rights to operate the Light Rail Transit System over any portion of the Light Rail Transit Way pursuant to a specific written grant of such rights by Sound Transit.

1.19 **Third Party.** "Third Party" means any person other than the City or an employee of the City, and any person other than Sound Transit or an employee of Sound Transit.

1.20 **Track Access Permit.** "Track Access Permit" means the process for track access, the management, scheduling, and authorization of access to employees, third parties, and contractors to perform work on, near, or adjacent to the Light Rail Transit System or any Sound Transit facility. (See Exhibit D – Track Access Procedures.)

SECTION II. GRANT OF RIGHTS BY THE CITY

2.1 **Grant of Non-Exclusive Use of a Light Rail Transit Way.** The City grants to Sound Transit a non-exclusive use of portions of certain Public Rights of Way, the general location of which is described and depicted on **Exhibits A and B** hereto, to be known as a Light Rail Transit Way, to construct, operate, maintain, and own a Light Rail Transit System in, upon, above, beneath and along the Light Rail Transit Way in accordance with the terms and conditions of this Agreement. The Light Rail Transit Way shall be limited to the areas described generally in the plans and profile drawings contained in **Exhibit C** hereto and more fully described in the Final Right-of-Way Plans. The Director or designee and Sound Transit's Deputy Executive Director or designee of Design and Engineering shall, from time to time, jointly revise and modify **Exhibit C** to conform to the Final Construction Plans and the Final Right-of-Way Plans as long as the revisions are, in their judgment, within the scope and intent of **Exhibit C**. The Director is hereby expressly delegated the authority to revise and modify **Exhibit C** from time to time consistent with the terms of this paragraph. This grant shall take effect upon the filing with the City Clerk by the Director of approved Final Construction Plans and Final Right-of-Way Plans. Sound Transit expressly agrees that it will construct, operate, and maintain the Light Rail Transit System in compliance with this Agreement and all applicable City ordinances, state, and federal laws.

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2.2 Rights Limited to Light Rail Transit System. The non-exclusive use of a Light Rail Transit Way is granted solely for the purpose of construction, maintenance, operation, and ownership of the Light Rail Transit System detailed in the Issued for Construction Plans, and for no other purpose. Sound Transit intends, and shall have the right, to use the Light Rail Transit Way solely for Light Rail Transit System uses. Sound Transit agrees that it shall not, without the City's written consent, construct on or along the Light Rail Transit Way any additions to or expansions of the Light Rail Transit System subsequent to the construction done in accordance with the Issued for Construction Plans and with the Final Right-of-Way Plans. Notwithstanding the foregoing, nothing contained herein shall prevent Sound Transit from replacing Light Rail Transit Facilities or equipment existing after construction after first obtaining any necessary permits or other authorizations from the City.

2.3 Work Permitted in Light Rail Transit Way. Sound Transit understands and agrees that during the normal course of Light Rail Transit Way use, the City may engage in construction, maintenance, demolition, leasing, licensing, permitting, and similar activities that have the potential to cause interruption to the Light Rail Transit System. Sound Transit understands and agrees that such activities may be caused, from time to time, by reasons including but not limited to: (i) traffic conditions, (ii) public safety, (iii) construction of facilities which constitute permissible use of Public Rights of Way ("ROW"), (iv) repair of ROW facilities (including resurfacing or widening), (v) change of grade to ROW, and (vi) response to emergencies and natural disasters, and (vii) construction, installation, maintenance or repair of sewer drains, water pipes, power lines, signal lines, traffic control devices, tracks, communication systems, public works, public facilities or improvements, or any utilities. The City agrees that such activities, to the extent they are permitted or controlled by the City, shall not occur within the Light Rail Transit Way without written notice to Sound Transit. Any such activities done by or for the City shall be undertaken in a manner that minimizes, to the greatest extent possible, disruption to operation of the Light Rail Transit System. Before commencement of any work the City will apply for, and direct all Third Parties to apply for, a Track Access Permit in accordance with Sound Transit's then current track access standard operating procedures (see Exhibit D), for which approval shall not be unreasonably withheld or delayed, taking into account the nature of the proposed entry.

2.4 Non-Exclusive Use. Sound Transit understands that the rights granted herein are non-exclusive. The City shall have the right to agree to other non-exclusive uses or occupancies of the Light Rail Transit Way. The City agrees that such uses or occupancies shall not unreasonably impair the ability of Sound Transit to operate the Light Rail Transit System.

2.5 Use Restricted. This Agreement does not authorize the provision of any services by Sound Transit other than the services strictly related to the operation of the Light Rail Transit System. Sound Transit's use of the Light Rail Transit Way for anything other than a Light Rail Transit System shall require written permission from the City.

2.6 Ownership. Sound Transit shall own all tracks and other Light Rail Transit Facilities on the Light Rail Transit Way, including, without limitation, improvements constructed at the cost and expense of Sound Transit that are not otherwise transferred to and accepted by the City. Nothing in this Agreement shall be construed as granting to Sound Transit any interest or right in the Light Rail Transit Way or the improvements on the Light Rail Transit Way other than the rights expressly provided herein.

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2.7 No Rights by Implication. No rights shall pass to Sound Transit by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for the following:

A. Any other permit or authorization required for the privilege of transaction and carrying on a business within the City that may be required by the ordinances and laws of the City; or

B. Any permit, agreement or authorization required in connection with operations on or in public streets or property, including by way of example and not limitation, street cut permits; or

C. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Agreement.

2.8 Utilities Agreements. This Agreement shall not be read to diminish, or in any way affect, the authority of the City to control and charge for the use of the light, water, storm, solid waste, and wastewater utilities. Therefore, if Sound Transit desires to use such utilities, it must pay standard rates for utility services and obtain necessary agreements or consents for such uses, as may be required by the City, which agreements or consents shall not be unreasonably withheld.

SECTION III. PERMITS

3.1 Permits and Licenses. Sound Transit, at its sole cost and expense, shall (i) secure and maintain in effect, all federal, state, and local permits and licenses required for the construction, operation, and maintenance of the Light Rail Transit System, including, without limitation, crossing, zoning, building, health, environmental, rights of way use and communication permits and licenses, and (ii) indemnify the City against payment of the costs thereof and against any fines or penalties that may be levied for failure to procure, or to comply with, such permits or licenses, as well as any remedial costs incurred by the City in curing any such failures.

3.2 Non-Interference. The City shall not interfere with Sound Transit's ability to secure, obtain, and maintain, at Sound Transit's sole cost and expense, any permits, licenses or approvals of other governmental agencies or authorities, or of any necessary Third Parties, for the use of any structures or facilities, including streets, roads, or utility poles not owned by the City.

SECTION IV. CONSTRUCTION

4.1 Approval of Construction. Sound Transit shall obtain the approval of the Director of all Light Rail Facility Final Construction Plans for work in the Public Right of Way prior to any such work commencing. Final Construction plans must be accompanied by Final Right-of-Way Plans. Approval for construction shall consist of the issuance of a construction permit or permits by the Director for each project section or contract to be constructed by Sound Transit within the Public Rights of Way.

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4.2 Record Drawings. Within six (6) months of Sound Transit's acceptance of Design-Build Contractor Project completion, Sound Transit shall furnish to the City record as built drawings of the Final Construction Plans and Final Right-of-Way Plan, including Record Drawings and associated electronic AUTOCAD and GIS files showing the as-built condition. Upon mutual agreement as to the types and number of drawings required, Sound Transit shall furnish to the City drawings sufficient to describe the project spatially in the Washington State Coordinate System.

4.3 Entry Upon Light Rail Transit Way. Sound Transit, its employees, and agents shall have the right, as defined and limited pursuant to Section V of this Agreement, to enter upon the Light Rail Transit Way for the purpose of constructing, operating, and maintaining the Light Rail Transit Facilities.

4.4 Temporary Use of Public Rights of Way. During construction of the Light Rail Transit System, Sound Transit, with the prior written agreement of the City, and approval of any required permits, may fence portions of the Public Rights of Way for the temporary storage of construction equipment and materials, provided that such structures and fences (i) do not interfere with or disrupt in any way, other than ways approved in advance by the City, the ordinary use of the Public Right of Way; (ii) do not interfere with or disrupt in any way, other than in ways approved in advance by the City, the ordinary access to property on either side of the Public Rights of Way; (iii) are not used for construction worker parking; and (iv) do not unnecessarily limit the public's right to travel within the Public Right of Way. Sound Transit shall not store or temporarily place any goods, materials, or equipment (i) near a roadway, intersection, or crossing in such a manner as to interfere with the sight distance of persons approaching such crossing; or (ii) within such greater distance as prohibited by the City; provided, however, that fuel and other hazardous substances shall not be stored unless approved by appropriate officials of the City and South King Fire and Rescue.

4.5 Utilities During Construction. The City recognizes that the Light Rail Transit System is an essential public facility and public transportation improvement. Sound Transit will coordinate with all utilities to minimize utility relocation costs and related construction and will negotiate with non-City-owned utilities on utility relocation costs. Sound Transit shall pay for any relocation or protection of City-owned utilities, including storm water facilities that the City determines is necessary due to construction or operation of the Light Rail Transit System. The specific allocation of costs of such relocation shall be defined in a series of future agreements between the City and Sound Transit relating to the separate construction segments of the Light Rail Transit System, each agreement to be entered into before construction on the particular segment begins.

4.6 Work Completed by Sound Transit. Sound Transit, at Sound Transit's sole cost and expense, will furnish all materials, parts, components, equipment, and structures necessary to construct and operate the Light Rail Transit System, or any part thereof, in accordance with this Agreement. Any and all work by Sound Transit shall be done in a good and workman-like manner, in conformity with all applicable engineering, safety, and other statutes, laws, ordinances, regulations, rules, codes, orders, or specifications of any public body or authority having jurisdiction.

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4.7 Installation. All facilities and installations must meet or exceed applicable specifications of the City and be in compliance with all existing federal, state, and local laws, ordinances and regulations.

4.8 Track Support. During any work of any character by Sound Transit at locations of the Light Rail Transit Facilities, and in accordance with the Final Construction Plans, Sound Transit will support the tracks, structures and roadbed of the Light Rail Transit System in such manner as is necessary for the safe operation of the Light Rail Transit System and ordinary use of the Public Rights of Way.

4.9 Imminent Danger. If, during construction, there is an Emergency or the Light Rail Transit System creates or is contributing to an imminent danger to health, safety, or property that Sound Transit is unable to immediately address, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Light Rail Transit System without prior notice, and charge Sound Transit for costs incurred. The City shall provide notice of such Emergency or danger along with any actions taken to Sound Transit as soon as practicable, taking into consideration the nature and complexity of the Emergency or other imminent danger.

4.10 Accommodation of Moving Structures. Sound Transit shall, on the request of any Third Party holding a valid permit issued by a governmental authority and a Sound Transit Track Access permit, temporarily raise or lower its wires to permit the moving of buildings or other objects. Sound Transit may require that the expense of such temporary removal or raising or lowering of wires be paid in advance by the Third Party requesting the same.

4.11 Information Regarding Ongoing Work. In addition to providing notice to the public of ongoing work as may be required under applicable law, Sound Transit shall develop a comprehensive project-specific communication plan in coordination with the City to establish and maintain effective communication with residents and businesses to allow them to be fully informed about potentially significant disruptions, such as temporary street closures, changes in transit service, and parking availability. As part of the plan, Sound Transit will work with the City, community and neighborhood groups prior to and through the construction process to identify types of impacts that would occur and communicate mitigation activities to address such impacts.

4.12 Restoration of Public Rights of Way. Sound Transit shall promptly repair any and all Public Rights of Way and public property that is disturbed or damaged during the construction of its Light Rail Transit System to substantially the same condition, or in the case of street surfaces, better condition if reasonably necessary within a mutually agreed-upon timeframe commensurate with the scope of repairs. In the event Sound Transit does not comply with the foregoing requirement, the City may, upon reasonable advance notice to Sound Transit, take the actions to restore the Public Rights of Way or public property at Sound Transit's sole cost and expense.

4.13 Federal Grant Conditions. Sound Transit's design and construction of the Project may become subject to a financial assistance agreement between Sound Transit and the Federal Transit Administration ("FTA"). Both parties recognize that changes to this Agreement may be necessary in order to comply with FTA funding requirements.

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SECTION V. ENTRY NOTICE

5.1 Access. Sound Transit, its employees and agents shall have access to the Public Rights of Way in connection with Sound Transit's construction, operation, and maintenance of the Light Rail Transit System as is reasonably necessary in accordance with this Agreement; provided however, except to the extent expressly provided in this Agreement, this right of access shall not be deemed to require the City to take any actions or expend any funds to enable such persons to exercise such rights of access, and provided further that such access may not interfere with or disrupt in any way, other than in ways approved in advance by the City, the use of the Light Rail Transit Way by the City or Third Parties in and Light Rail Transit Way.

5.2. Notice Prior to Initial Entry. During Project construction, Sound Transit shall give the City at least seventy-two (72) hours' written notice before initial entry upon any portion of the Public Rights of Way for construction purposes.

5.3 Entry after Project Construction. After construction, any entry by Sound Transit onto the Public Rights of Way that is not pursuant to the Routine Maintenance and Operation of the Light Rail Transit System or for purposes relating to an Emergency shall require (i) advance written notice from Sound Transit to the City not less than ten (10) days prior to Sound Transit's planned entry, with notice to specify the purpose of the entry; (ii) if entry involves any new connection or removal of any portion of the Light Rail Transit System, plans as required by direction of the Director showing in detail the proposed new construction, reconstruction, or removal; and (iii) approval by the City which approval shall not be unreasonably withheld or delayed, taking into account the nature of the proposed entry.

5.4 Entry for Routine Maintenance and Operation. During Routine Maintenance and Operation, Sound Transit personnel may enter the Public Rights of Way without notice to the City, as long as such entry is for the sole purpose of Routine Maintenance and Operation. If the Routine Maintenance and Operation activities require the closure of a traffic lane, Sound Transit will exert its best efforts to provide the City forty-eight (48)-hours' written notice before closure of any portion of the Public Right-of-Way.

5.5 Emergency Access. In the event of an Emergency that interrupts or significantly disrupts Operation of the Light Rail Transit System and for purposes of taking immediate corrective action, Sound Transit personnel may enter the Public Rights of Way without notice to the City, as long as such entry is for the sole purpose of addressing the Emergency; provided, however, that if any entry for such purposes is likely to require excavation of soil that would alter or disturb the Public Rights of Way or use of heavy machinery within fifty (50) feet of or upon the Public Rights of Way, Sound Transit shall give the City verbal or telephonic notice of the places where, and the manner in which, entry is required, prior to such entry, promptly followed by written notice.

SECTION VI. OPERATION, MAINTENANCE, AND REPAIR IN STREETS AND RIGHTS OF WAY

6.1 Compliance with Laws, Rules, and Regulations. Sound Transit shall operate, maintain, and repair its Light Rail Transit System in compliance with all federal, state, and local laws, ordinances, departmental rules and regulations and practices affecting such system, which include, by way of

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example and not limitation, the obligation to operate, maintain, and repair in accordance with the City's Land Use Code and construction codes, and City street and utility standards. In addition, the operation, maintenance, and repair shall be performed in a manner consistent with industry standards. Sound Transit shall exercise reasonable care in the performance of all its activities and shall use industry-accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or property.

6.2 Permits Required. Except in cases of emergency repairs, Sound Transit's operation, maintenance, or repair of its Light Rail Transit System shall not commence until all required permits have been properly applied for and obtained from the proper City officials and all required permits and associated fees paid, including, but not limited to, the cost of permit-application review and inspection. In case of emergency repairs, appropriate permits shall be applied for no later than the second business day following repairs.

6.3 Level of Operation/Maintenance. All facilities shall be operated and maintained in such a manner as to minimize disruption to other users of the Public Rights of Way. All facilities shall be maintained in a state of good repair as defined by FTA in 49 CFR 625.

6.4 Appointment of Operator. Sound Transit may appoint an operator as Sound Transit's agent to exercise some or all of Sound Transit's rights under this Agreement, subject to the terms and conditions of this Agreement.

6.5 Regulatory Approvals. Sound Transit and its operator shall obtain and maintain all federal, state and/or local regulatory approvals as may be required for the operation of the Light Rail Transit System.

6.6 Responsibility for Equipment. The City shall have no responsibility for inspecting, maintaining, servicing, or repairing any trains or other equipment used by Sound Transit as part of the Light Rail Transit System, but all such equipment shall at all times comply with applicable federal, state, and local governmental requirements.

6.7 Prompt Repair. Sound Transit shall promptly repair any and all Public Rights of Way, public property, or private property that is disturbed or damaged during the operation, maintenance, or repair of its Light Rail Transit System within a mutually agreed-upon timeframe commensurate with the scope of repairs. Public property and Public Rights of Way must be restored to substantially the same condition as before the disturbance or damage occurred, or, in the case of street surfaces, better condition if reasonably necessary.

6.8 Imminent Danger. In the event of an Emergency, or where the Light Rail Transit System creates or is contributing to an imminent danger to health, safety or property, the City will immediately notify Sound Transit's Link Control Center ("LCC") or 911 to address the situation.

6.9 No At-Grade Crossings or Crossing Gates Without Permission. Sound Transit will not install any at-grade crossings or crossing gates or other traffic control devices without the written consent of the City.

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SECTION VII. FACILITY LOCATION SIGNS

Sound Transit, at its sole cost, expense, and risk, shall secure permits, furnish, erect, and thereafter maintain signs showing the location of all Sound Transit facilities. Signs shall be in conformance with applicable codes.

SECTION VIII. THIRD PARTY RIGHT OF WAY OWNERSHIP

This Agreement is not intended to cover and does not cover any occupancies over (i) rights of way or other land owned solely or jointly by any other person or entity, or (ii) any rights granted to the City by Third Parties.

SECTION IX. RELOCATIONS

If the City desires the relocation of a portion of the Light Rail Transit Facilities to accommodate the City, the City shall notify Sound Transit of such fact, and Sound Transit shall consult with the City regarding such request.

SECTION X. LIABILITY, INDEMNIFICATION

Sound Transit hereby agrees to indemnify, defend, and hold harmless the City of any and all claims, demands, suits, actions, damages, recoveries, judgments, and expenses, including, without limitation, reasonable attorneys' fees, paid by the City and arising or growing out of, in connection with, or resulting from, either directly or indirectly, the construction, maintenance, operation, repair, removal, occupancy, and use of Light Rail Transit System in the Light Rail Transit Way by Sound Transit. Sound Transit's obligation under this provision shall encompass only its own negligence, and does not relate or apply to the City's sole or partial negligence, for which the City shall remain responsible. This limitation applies to the sole or partial negligence, actions or inaction of the City, its employees, servants, agents, contractors, or subcontractors.

The City shall give Sound Transit prompt notice of any claims of which it is aware. Sound Transit shall promptly assume responsibility for the claim or undertake the defense of any litigation on behalf of the City. The City shall cooperate fully with Sound Transit in the defense of any claim. The City shall not settle any claim without the prior written consent of Sound Transit, which consent shall not be unreasonably withheld. Sound Transit expressly assumes potential liability for actions brought by Sound Transit's employees and agents against the City and, solely for the purpose of this indemnification, expressly waives any immunity under the Industrial Insurance Law, Title 51 RCW. Sound Transit acknowledges that this waiver was entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

SECTION XI. INSURANCE

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Sound Transit shall maintain throughout the term of this Agreement, and for six (6) years after its termination, insurance adequate to protect the City against claims that may arise as a result of the construction, operation, or maintenance of the Light Rail Transit System in the Light Rail Transit Way, including, without limitation (i) comprehensive general liability insurance; (ii) property damage liability insurance, including coverage for explosion, collapse, and instability; (iii) workers' compensation insurance, to the extent required by law; (iv) employer's liability insurance; and (v) comprehensive auto liability coverage, including owned, hired, and non-owned vehicles.

Sound Transit shall carry such insurance with responsible insurers or self-insure or participate in an insurance pool or pools at levels of coverage or with reserves adequate, in the reasonable judgment of Sound Transit, to protect Sound Transit and the City against loss, and as are ordinarily carried by municipal or privately-owned entities engaged in the operation of systems comparable to the Light Rail Transit System.

Sound Transit shall file with the City's Risk Manager certificates of insurance reflecting evidence of the required insurance and naming the City as an additional insured where appropriate. The certificates shall contain a provision that coverage will not be canceled until at least thirty (30) days' prior written notice has been given to the City.

If Sound Transit fails to maintain the required insurance, the City may order Sound Transit to stop operating the Light Rail Transit System in the Light Rail Transit Way until the required insurance is obtained.

SECTION XII. LIENS

12.1 The Light Rail Transit Way and Light Rail Transit Facilities are not subject to a claim of lien. In the event that any City property becomes subject to any claims for mechanics, artisans, or materialmen liens, or other encumbrances chargeable to or through Sound Transit which Sound Transit does not contest in good faith, Sound Transit shall promptly, and in any event within thirty (30) days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit or other means), without cost to the City, and shall indemnify the City against all costs and expenses, including attorney fees, incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Sound Transit after first giving Sound Transit five (5) business days' advance notice of its intention to do so. The City shall use its reasonable best efforts to keep Sound Transit's facilities free of all liens that may adversely affect the Light Rail Transit System.

12.2 Nothing herein shall preclude Sound Transit's or the City's contest of a claim for lien or other encumbrance chargeable to or through Sound Transit or the City, or of a contract or action upon which the same arose.

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12.3 Nothing in this Agreement shall be deemed to give, and the City expressly waives, any claim of ownership in and to any part or the whole of the Light Rail Transit Facilities except as may be otherwise provided herein.

SECTION XIII. TERM; TERMINATION

13.1 This Agreement shall be effective as of the date the last party signs and, unless sooner terminated pursuant to the terms hereof, shall remain in effect for so long as the Light Rail Transit Way is used for public transportation purposes.

13.2 Upon termination of this Agreement, Sound Transit agrees to prepare, execute and deliver to the City all documentation necessary to evidence termination of this Agreement or portion thereof so terminated. No such termination, however, shall relieve the parties hereto of obligations accrued and unsatisfied at such termination.

13.3 Upon the cessation of use of the Light Rail Transit Way for the Light Rail Transit System, to the extent any portion of it remaining in the Public Rights of Way or on any other public property is not removed by Sound Transit, the City, as expressed by ordinance, may deem it abandoned and it shall become the property of the City. If the City does not desire such ownership, Sound Transit shall remove any remaining portion of the Light Rail System.

13.4 Any order by the City issued pursuant to this Section to remove the Light Rail Transit System in whole or in part shall be sent by registered or certified mail to Sound Transit not later than twenty-four (24) months following the date of termination of this Agreement, or, if later, the final resolution of any appeal of the termination.

13.5 Sound Transit shall file a written removal plan with the City not later than sixty (60) calendar days following the date of the receipt of any orders directing removal, or any consent to removal, describing the work that will be performed, the manner in which it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City. The affected property shall be restored to as good or better condition than existed immediately prior to removal.

SECTION XIV. DISPUTE RESOLUTION; REMEDIES; ENFORCEMENT

14.1 Dispute Resolution.

A. Any disputes or questions of interpretation of this Agreement that may arise between Sound Transit and the City shall be governed under the Dispute Resolution provisions in this Section. The Parties agree that cooperation and communication are essential to resolving issues efficiently. The Parties agree to exercise their best efforts to resolve any disputes that may arise through this dispute resolution process.

B. The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level.

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C. The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good-faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

(1) Level One - Sound Transit's Deputy Executive Director of Design, Engineering and Construction Management or Designee and the City's Engineering Services Manager shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level One, either party may refer the dispute to Level Two.

(2) Level Two - Sound Transit's Executive Director of Design, Engineering and Construction Management or Designee and the City's Public Works Director or Designee shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.

(3) Level Three - Sound Transit's Chief Executive Officer or Designee and the City Manager or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner.

D. Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) calendar days after referral of that dispute to Level Three, the Parties are free to file suit or agree to alternative dispute resolution methods such as mediation. At all times prior to resolution of the dispute, the Parties shall continue to perform and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

14.2 Notice of Default. Neither party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) calendar days after written notice of default from any other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within thirty (30) days, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure.

14.3 Remedies. Either party hereto has the right to exercise any and all of the following remedies, singly or in combination, and consistent with the dispute resolution and notice of default sections of this Agreement, in the event the other party violates any provision of this Agreement:

- A. Commencing an action at law for monetary damages;
- B. Commencing an action for equitable or other relief;

C. Seeking specific performance of any provision that reasonably lends itself to such remedy.

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14.4 Cumulative Remedies. In determining which remedy or remedies for a party's violation are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the party has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstance. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

14.5 Failure to Enforce. Neither party hereto shall be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure of the other party to enforce prompt compliance, and one party's failure to enforce shall not constitute a waiver of rights or acquiescence in the other party's conduct.

SECTION XV. COVENANTS AND WARRANTIES

15.1 By execution of this Agreement, the City warrants:

A. That the City has full right and authority to enter into and perform this Agreement and any permits which may be granted in accordance with the terms hereof, and that by entering into or performing this Agreement the City is not in violation of any law, regulation, or agreement by which it is bound, to which it is bound, or to which it is subject; it being understood, however, that the covenant and warranty contained in this Section does not constitute a warranty, expressed or implied, by the City, of the right or rights granted by the City to Sound Transit hereunder; and

B. That the execution, delivery, and performance of this Agreement by the City has been duly authorized by all requisite corporate action, that the signatories for the City hereto are authorized to sign this Agreement, and that, upon approval by the City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

15.2 By execution of this Agreement, Sound Transit warrants:

A. That Sound Transit has full right and authority to enter into and perform this Agreement in accordance with the terms hereof and by entering into or performing under this Agreement, Sound Transit is not in violation of any of its agency governance rules, any law, regulation or agreement by which it is bound or to which it is subject; and

B. That the execution, delivery and performance of this Agreement by Sound Transit has been duly authorized by all requisite Board action, that the signatories for Sound Transit hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

SECTION XVI. RECORDINGS, TAXES AND OTHER CHARGES

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16.1 Sound Transit shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any permit, easement or deed which may be granted hereunder. Sound Transit further agrees that if it is determined by any federal, state, or local governmental authority that the sale, acquisition, license, grant, transfer, or disposition of any part or portion of the Light Rail Transit Facilities or right herein described requires the payment of any tax, levy, excise, assessment, or charges, including without limitation, property, sales or use tax, under any statute, regulation or rule, Sound Transit shall pay these, plus any penalty and/or interest thereon, directly to said taxing authority and shall hold the City harmless therefrom. Sound Transit shall pay all taxes, levies, fees, excises, assessments, or charges, including any penalties and/or interest thereon, levied or assessed on the Light Rail Transit Facilities, or on account of their existence or use, including increases thereof attributable to such existence or use, and excluding taxes based on the income of the City, shall indemnify the City against payment thereof. Sound Transit shall have the right to claim, and the City shall reasonably cooperate with Sound Transit in the prosecution of any such claim, for refund, rebate, reduction, or abatement of such tax(es).

16.2 The City may pay any tax, levy, fee, excise, assessment or charge, plus any penalty and/or interest thereon, imposed upon Sound Transit for which Sound Transit is obligated pursuant to this Section if Sound Transit does not pay such tax, levy, excise, assessment, or charge when due. Sound Transit shall reimburse the City for any such payment made pursuant to the previous sentence, plus interest at the prime rate per annum, as published in the Wall Street Journal.

SECTION XVII. ASSIGNABILITY; BENEFICIARY

17.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assignees. No assignment hereof or sublease shall be valid for any purpose without the prior written consent of the other party, and any attempt by one party to assign or license the rights or obligations hereunder without prior written consent will give the other party the right, at its written election, immediately to terminate this Agreement or take any other lesser action with respect thereto. The above requirement for consent shall not apply to (i) any disposition of all or substantially all of the assets of a party; (ii) any governmental entity merger, consolidation or reorganization, whether voluntary or involuntary; (iii) a sublease or assignment of this Agreement, in part or in whole, to a governmental entity; or (iv) a sale, lease, or other conveyance by the City, subject to those requirements set forth in this Agreement; provided however, that no sublease or assignment under (ii) or (iii) shall be permitted to a governmental entity not operating, constructing or maintaining a Light Rail Transit System on behalf of Sound Transit, and provided further that no unconsented assignment shall relieve Sound Transit of its obligations and liabilities under this Agreement.

17.2 Either party hereto may assign any monetary receivables due them under this Agreement; provided, however, such assignment shall not relieve the assignor of any of its rights or obligations under this Agreement.

17.3 Sound Transit acknowledges and agrees that the City may designate in writing a designee to (i) receive information, including information designated or identified as confidential, and notices under this Agreement, and (ii) provide certain approvals or consents required from the

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City under this Agreement. In the event of such designation, Sound Transit may rely on approvals or consents by such designee on behalf of the City as fully as if such actions were performed by the designator itself.

17.4 Neither this Agreement nor any term or provision hereof, or any inclusion by reference, shall be construed as being for the benefit of any party not a signatory hereto.

SECTION XVIII. NOTICES

18.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to (one copy each):

Central Puget Sound Regional Transit Authority
Attention: Deputy Executive Director DECM
401 South Jackson Street
Seattle, WA 98104-2826

And to:

City of Des Moines
Attention: Chief Operations Officer
21630 11th Avenue S.
Des Moines, WA 98198

SECTION XIX. MISCELLANEOUS

19.1 This Agreement shall survive delivery and/or recordation of each may be granted hereunder.

19.2 Each party shall be responsible for its own costs, including legal fees, in negotiating or finalizing this Agreement, unless otherwise agreed by the Parties.

19.3 Sound Transit shall not be deemed in default with the provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond Sound Transit's control; the unforeseeable unavailability of labor or materials; labor stoppages or slowdowns; or power outages exceeding back-up power supplies. This Agreement shall not be revoked or Sound Transit penalized for such noncompliance, provided that Sound Transit takes immediate and diligent steps to return to compliance and to comply as soon as practicable under the circumstances without duly endangering the health, safety, and integrity of Sound Transit's employees or property, or health, safety, and integrity of the public, Public Rights of Way, public property, or private property.

19.4 This Agreement may be amended only by a written instrument executed by each of the parties hereto, save and except for revisions or modifications to **Exhibit C** as provided for in Section 2.1 herein. No failure to exercise and no delay in exercising, on the part of any party

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hereto, any rights, power or privilege hereunder shall operate as a waiver hereof except as expressly provided herein.

19.5 This Agreement constitutes the entire agreement of the parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, oral and written, understandings and agreement with respect hereto.

19.6 Section headings are intended as information only, and shall not be construed with the substance of the section they caption.

19.7 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.

SECTION XX. LEGAL FORUM

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.

SECTION XXI. INTERPRETATION

This Agreement is executed by all parties under current interpretations of applicable federal, state or local statute, ordinance, law, or regulation.

SECTION XXII. SEVERABILITY

In case any term of this Agreement shall be held invalid, illegal, or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.

IN WITNESS WHEREOF, each of the parties hereto has executed this Light Rail Transit Way Agreement by having its authorized representative affix his/her name in the appropriate space below.

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SOUND TRANSIT

CITY OF DES MOINES

By: _____
Peter M. Rogoff, Chief Executive Officer

By: _____

Date: _____

Date: _____

Authorized by Motion XX on XX

Authorized by Motion of the City Council on
XXX XX, 2018

Approved as to form:

Approved as to form:

By: _____
Stephen G. Sheehy,
Senior Legal Counsel

By: _____
Tim George
City Attorney

- Exhibit A: General Description of Light Rail Alignment and Station Location(s)
- Exhibit B: Graphic Representation of Light Rail Alignment and Station Location(s)
- Exhibit C: Federal Way Link Extension Plans and Profiles
- Exhibit D: Track Access Procedures (June 15, 2015)

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EXHIBIT A

GENERAL DESCRIPTION OF LIGHT RAIL ALIGNMENT AND STATION LOCATION

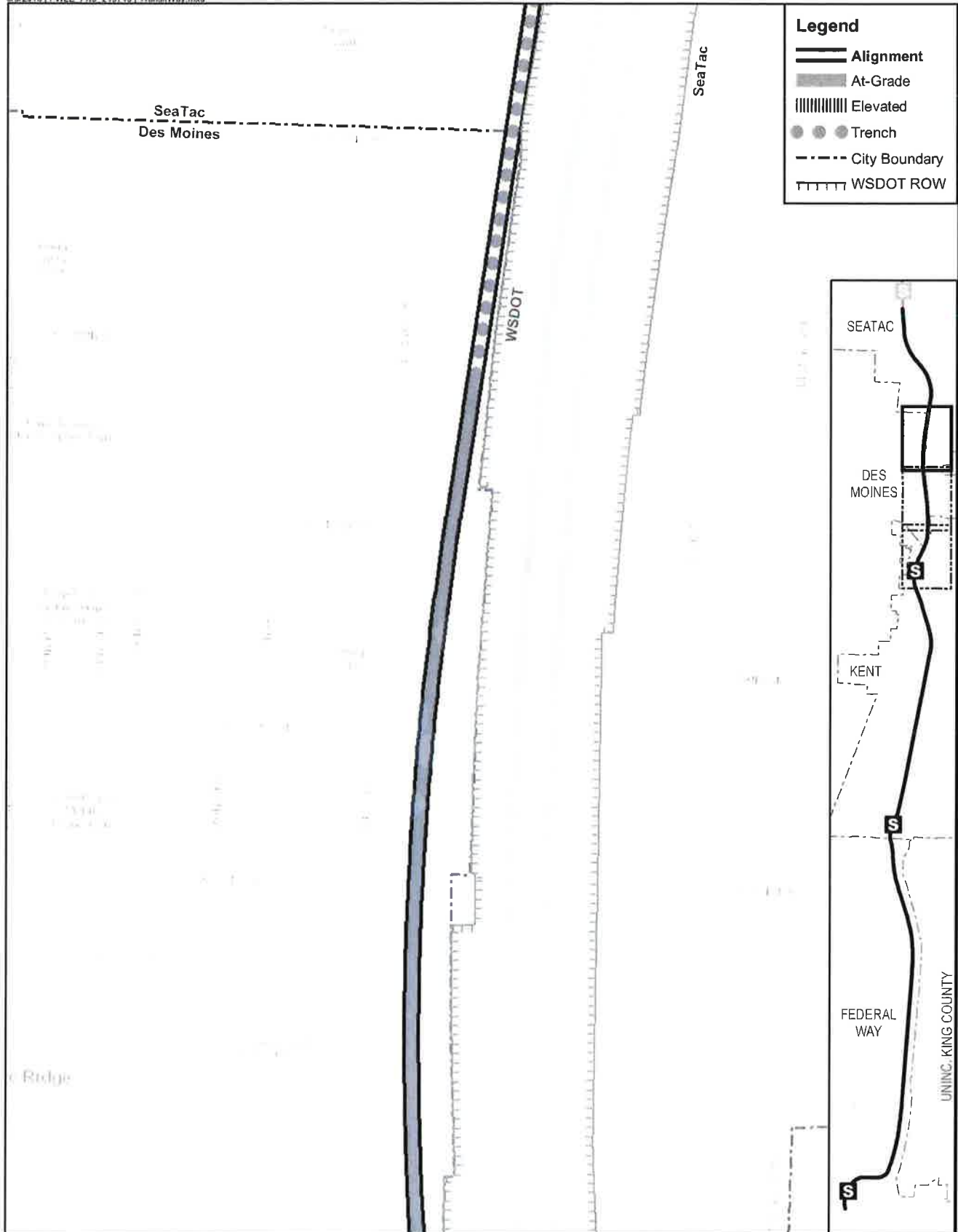
General Description of Federal Way Link Extension Alignment in Des Moines

Route: Approximately 1.1 miles from the northern City limits on the north side of S 216th Street in a combination of retained cut, retained fill, at-grade, and elevated structures to the City limits at Kent Des Moines Road.

EXHIBIT B:

LIGHT RAIL ALIGNMENT AND STATION LOCATIONS

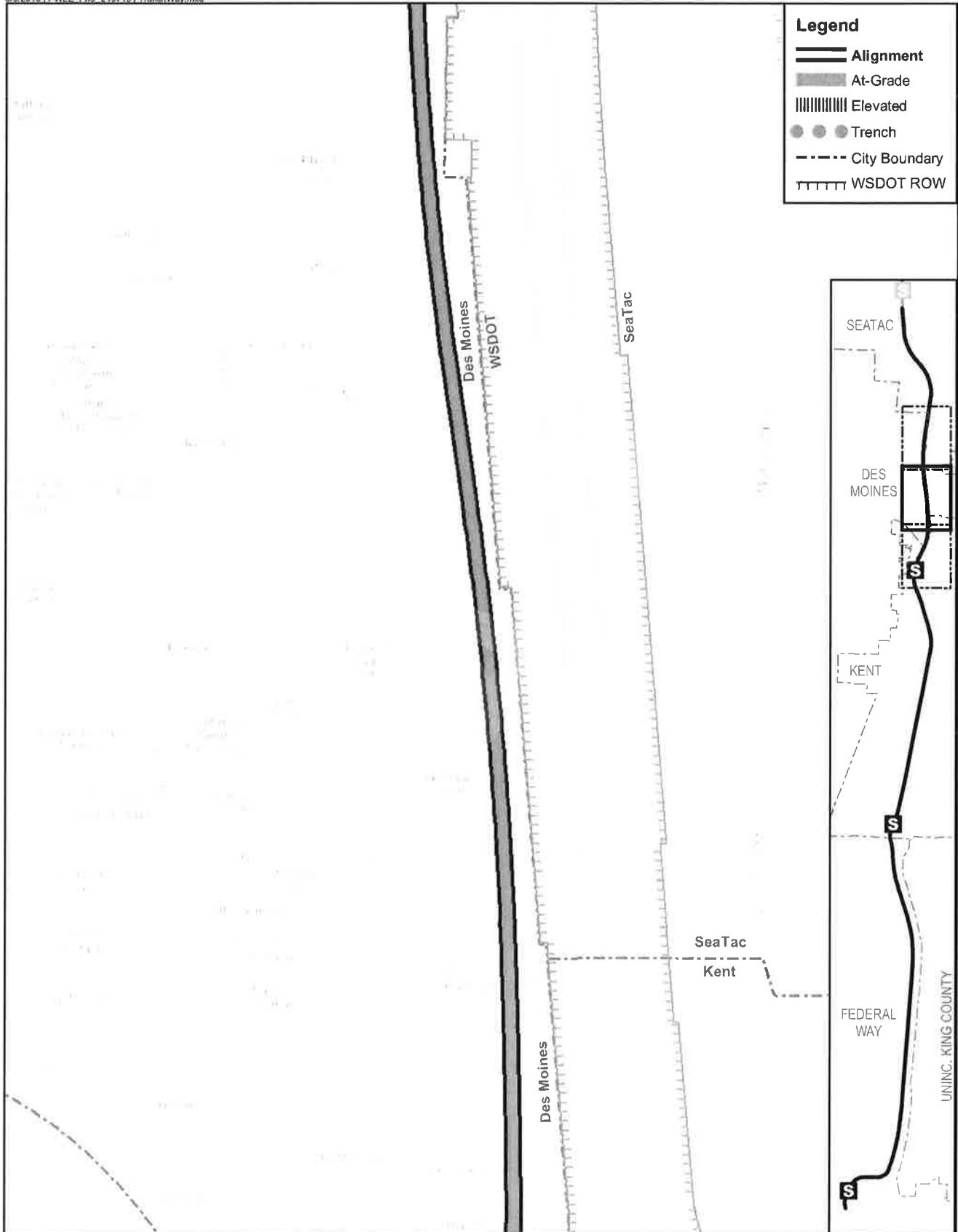
3/9/2018 | FWLE_Ph3_249745 | TransitWay.mxd



Service Layer Credits: Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

EXHIBIT B-1
Light Rail Alignment and Station Locations
City of Des Moines
Federal Way Link Extension

3/9/2018 | FWLE_Ph3_2497451_TransitWay.mxd

**EXHIBIT B-2****Light Rail Alignment and Station Locations****City of Des Moines****Federal Way Link Extension**

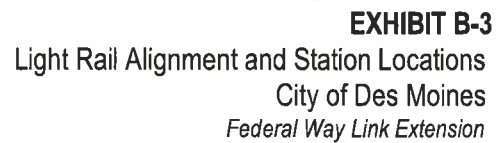
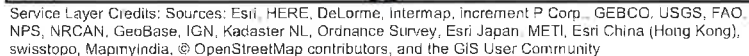
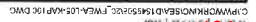
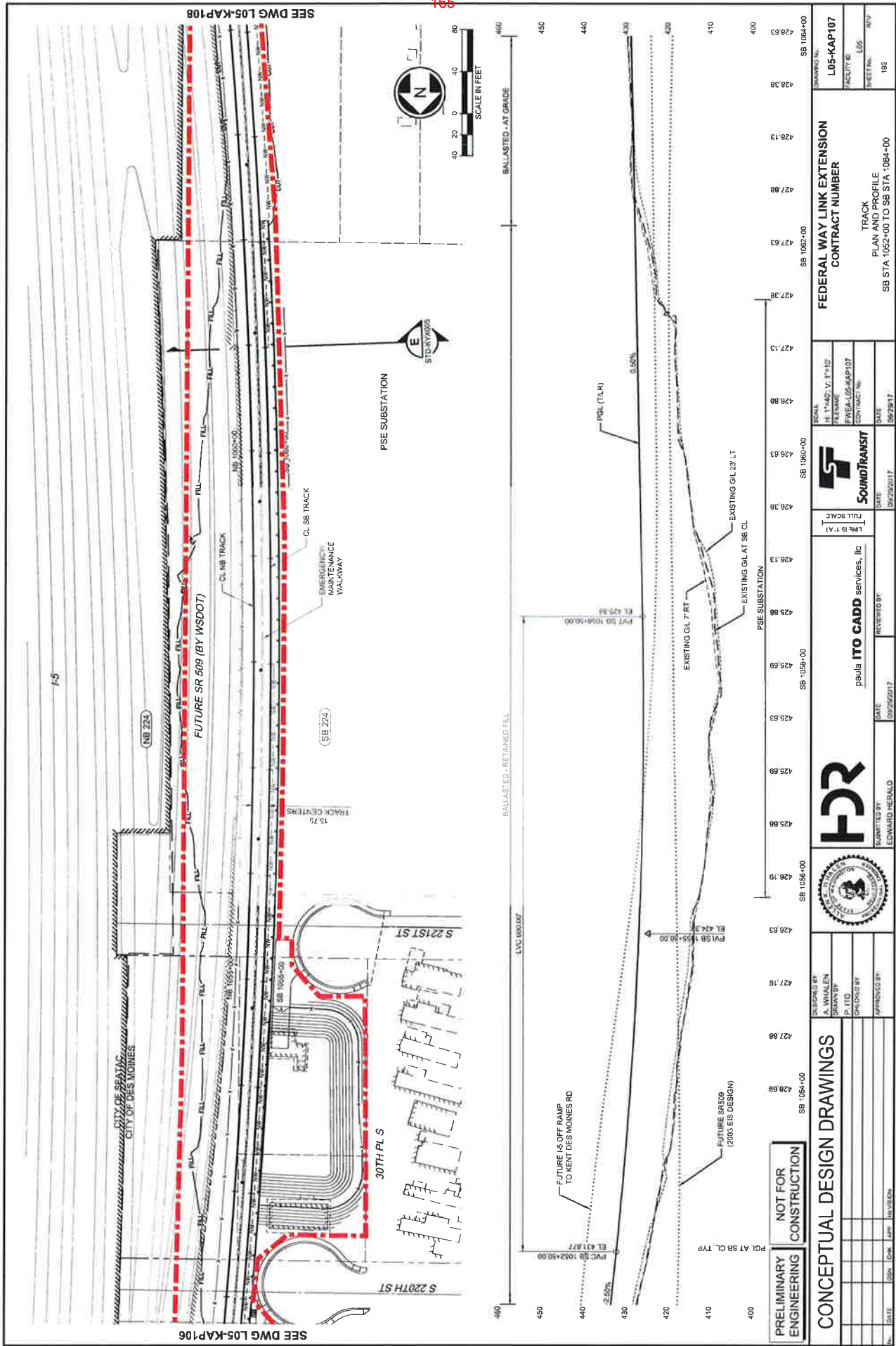


EXHIBIT C:

PLAN AND PROFILES







PRELIMINARY ENGINEERING		NOT FOR CONSTRUCTION		CONCEPTUAL DESIGN DRAWINGS	
DATE	ISSUED	DATE	ISSUED	DATE	ISSUED
DESIGNED BY J. WHALEN		CHECKED BY P. ITO		APPROVED BY EDWARD HERALDO	
DRAWN BY P. ITO		DATE 09/29/2017		DATE 09/29/2017	
PROJECT NO. L05		SHEET NO. 192		SHEET NO. 192	
FEDERAL WAY LINK EXTENSION		CONTRACT NUMBER		TRACK	
PLAN AND PROFILE		SB STA 1052+00 TO SB STA 1064+00		SB STA 1052+00 TO SB STA 1064+00	



SCALE
H 1"=40' V 1"=10'
FEDERAL WAY LINK EXTENSION
CONTRACT NO.
DATE
09/29/2017

LINE IS T-1
TULLY SCALE
DATE
09/29/2017

PAULA ITO CADD SERVICES, LLC
DATE
09/29/2017



DESIGNED BY
J. WHALEN
CHECKED BY
P. ITO
APPROVED BY
EDWARD HERALDO

DATE
09/29/2017

DATE
09/29/2017

DATE
09/29/2017

DATE
09/29/2017

DATE
09/29/2017

1-5

CONCEPTUAL DESIGN DRAWINGS

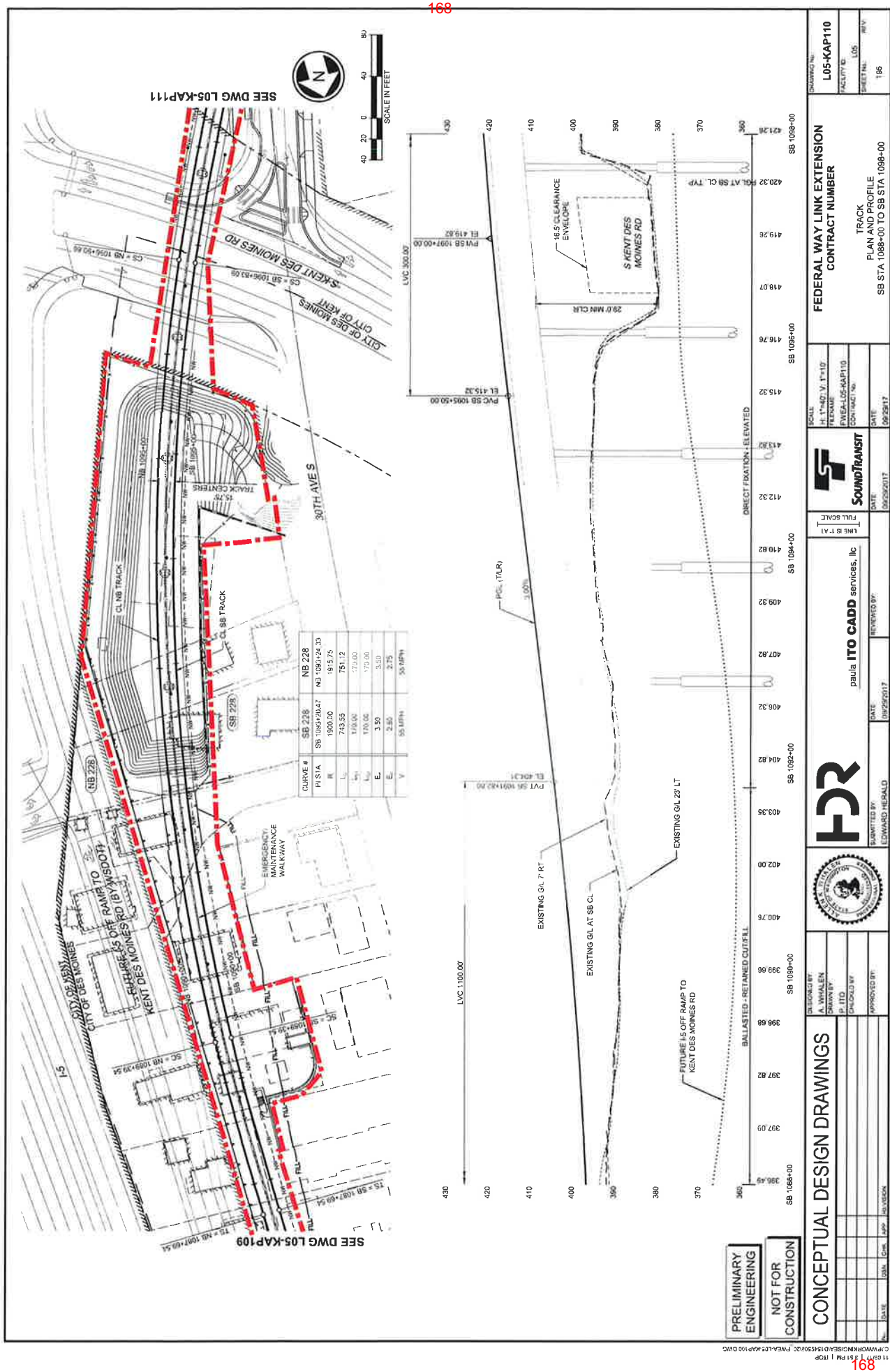
PRELIMINARY
ENGINEERING



SOUNDTRANS

paula **ITO CADD** services, llcFEDERAL WAY LINK EXTENSION
CONTRACT NUMBER

TRACK
PLAN AND PROFILE
SB STA 1064+00 TO SB STA 10



CURVE #	SB 228	NB 228
PI STA	SS 1085+00.47	NB 1084+43.33
MI	1900.00	1915.75
L ₁	743.35	751.12
L ₂	178.00	170.00
L ₃	170.00	170.00
E ₁	3.50	3.50
E ₂	2.50	2.75
V	55 MPH	55 MPH

PRELIMINARY
ENGINEERING
NOT FOR
CONSTRUCTION

CONCEPTUAL DESIGN DRAWINGS

DESIGNED BY	PAUL A. WHALEN
CHECKED BY	PAUL A. WHALEN
APPROVED BY	PAUL A. WHALEN
DATE	09/25/2017



SUBMITTED BY
EDWARD HEBARD

DATE
09/25/2017

REVIEWED BY
PAUL A. WHALEN

DATE
09/25/2017



SCALE
H: 1"=40' V: 1"=10'

PROJECT
FEDERAL-LOIS-KAP110

CONTRACT NO.
L05

SHEET NO.
195

DRAWING NO.
L05-KAP110

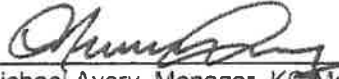
FEDERAL WAY LINK EXTENSION
CONTRACT NUMBER
TRACK
PLAN AND PROFILE
SB STA 1088+00 TO SB STA 1098+00

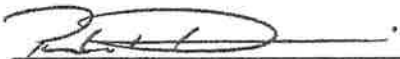


King County
Department of Transportation
Metro Light Rail Section



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Approved:  Date: 6/5/15
Michael Avery, Manager, KC Metro Rail Section

Approved:  Date: 6-5-15
Paul Denison, Director, Sound Transit Light Rail Operations

Approved:  Date: 6-5-2015
Tom Jones, Operations Superintendent, KC Metro Rail Section

Approved:  Date: 6.5.2015
Marie Olson, Link Transportation Manager, Sound Transit Light Rail

1.0 PURPOSE

To provide the process for managing track access to the Link Light Rail System right of way including the Downtown Seattle Transit Tunnel (DSTT).

2.0 DEFINITIONS

Controller—The designated employee on duty in the Link Control Center (LCC) having authority over the entire Light Rail System, including all rail and bus movement in the DSTT.

Downtown Seattle Transit Tunnel (DSTT)—The tunnel portion of the Link Light Rail System located in the Seattle Central Business District which has joint operations of buses and light rail trains.

Employee In Charge (EIC)—The designated KCM employee, with a current KCM Light Rail EIC training certificate, that is in charge of a work group. The EIC shall be assisted by flaggers when necessary.

KCM – King County Metro

Link Control Center (LCC)—The primary location for controlling, monitoring and dispatching the entire Link Rail System including rail and bus operations in the DSTT. Also used to address the controller in charge of the rail system at any given time.



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Lockout and Tagout (LOTO)—A procedure for safely de-energizing a section of the OCS and/or TPSS to protect personnel working on or within 10 feet of the overhead. It requires the use of locks and tags, voltage testers, placement grounds, cables, strobes, cones, flags and signs.

Overhead Contact System (OCS)—The overhead wires and equipment that distribute electric power from substations to light rail vehicles.

Power and Facilities (P&F)—A work group of King County Metro responsible for trolley bus OCS and facilities maintenance including the DSTT. Power and Facilities authorization is required for any work planned in the DSTT.

Red Tag—A red tag is used to lockout / tagout necessary systems when working within 10 feet of the OCS. A red tag for lock out / tagout may also be required for work on other elements of the system as designated by the KCM Rail Section Manager or designee.

Right Of Way (ROW)—The area that extends 10 feet from the nearest rail and/or property dedicated to light rail operations.

ST – Sound Transit

Track Access – The management, scheduling, and authorization of access to employees and contractors to perform work on, near or adjacent to the right of way or any Sound Transit facilities.

Track Access Coordinator—The individual designated by the KC Rail Manager or designee, responsible for the coordination and management of all work performed on the ROW by non-KCM personnel.

Track Allocation Request/Work Permit Form—A document used by non-KCM personnel to request authorization to perform work on, near, or adjacent to the ROW. Once approved, the Track Allocation Request /Work Permit Form serves as written authorization to allow such work to be performed and restricted such work to specific areas and time periods. Herein referred to as permit requests or work permits once authorized.



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Trackway— The area extending 10 feet from the nearest rail not designated for public use or separated from the rail by a permanent, fixed barrier.

Work Plan – An outline of all tasks or tests associated with work related to permit requests, including but not limited to: Date range of planned work, list of participant names, individual roles and responsibilities, detailed work description, maps, tools/equipment listing, and safety plan.

WP&S – Way, Power, and Signal

VM – Vehicle Maintenance

3.0 REQUIREMENTS

- 3.1 All persons except for KCM Rail Section personnel and KCM Power & Facilities (P&F) personnel must have an approved work permit prior to performing work within the Link ROW.
- 3.2 In order to ensure the safety of personnel and equipment, and the safe movement of trains along the Link alignment and buses in the DSTT, access to the ROW must be planned and approved by the KCM Track Access Coordinator prior to the performance of any work by non-KCM personnel.
- 3.3 All permit requests must include a comprehensive description of planned work. Work plans are required to adequately describe the scope of planned work. Work that is scheduled to last more than one week must have a work plan with each permit request submittal.
- 3.4 If permit requests include work that may either require access to the trackway or impact service, contact the Link Track Access Office at least 15 business days (3 weeks) prior to the desired start of work.
- 3.5 The KCM Track Access Coordinator reserves the right to refer permit requests and/or work plans to the appropriate KCM or ST Subject Matter Expert for technical review as needed.



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- 3.6 Any work planned to occur in the DSTT must be coordinated with both the KCM Track Access Coordinator and the KCM Power and Facilities Department. Work permits must be issued by both offices prior to DSTT work taking place.
- 3.7 The Rail Manager or designee has final authority concerning the issuance of work permits.
- 3.8 Rail Operations reserves the right to cancel authorization to work in the ROW at any time.
- 3.9 In the event of an emergency that requires immediate action to safeguard persons or property, LCC may permit immediate access to the ROW as needed without a permit.
- 3.10 Primary contractors and subcontractors are required to obtain permits for their work. Subcontractors will not be allowed to work under the permit of the primary contractor/permit holder.
- 3.11 If a permit requires support from KCM WP&S, KCM Facilities, KCM Vehicle Maintenance, and/or KCM Operations, coordination in advance is required. For these permits, notification to appropriate support department(s) of intent to use or to cancel the permit is required both 24 hours and 1 hour in advance of the start time. Failure to make these notifications to KCM will result in cancellation of the permit.
- 3.12 Permitted work must adhere to all conditions of the permit including permitted time, location and other restrictions. Performing work not identified on the respective permit will result in an immediate suspension of the work and revocation of the permit.
- 3.13 LCC must be contacted to open the permit before any work begins. LCC must be contacted to close the permit once all work is complete and all workers and equipment are clear of the ROW. Notifications to LCC are required each time before entering or exiting the trackway during the permitted time period. When an EIC has been assigned to a work group,



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the work permit shall be opened and closed by the EIC only. Work permits not requiring an EIC may be opened and closed by the individual designated on the work permit.

- 3.14 All personnel who perform work within the ROW must have successfully completed the appropriate tier KCM ROW safety training course.
- 3.15 All persons working in the ROW must have their ROW card in their possession.
- 3.16 All persons in the ROW, whether Link employees or others, shall immediately follow all orders from the LCC unless it is unsafe to do so.

4.0 PROCEDURES

- 4.1 To obtain a Track Allocation Request/Work Permit Form, contact the Link Track Access Coordinator at LinkTrackAccess@soundtransit.org.

- 4.2 The completed permit request must be submitted as a Word document to the Track Access Coordinator no later than Monday at 0800 for the Permit Week beginning the following Monday. The Permit Week begins each Monday morning at 0001 and ends the following Sunday at 2400.

Note: Time sensitive work, as determined by KCM, that was not requested by the deadline may be approved at the discretion of the Track Access Coordinator.

- 4.3 Work plans shall be submitted with the Track Allocation Request/Work Permit Form.

Note: Work plans involving SCADA systems must be approved by the Sound Transit IT SCADA Engineer and the KCM SCADA Chief prior to submitting a permit request.

- 4.4 Each Tuesday, the Track Access Coordinator shall meet with KCM Rail Department representatives to review permit requests and any



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associated work plans. Representatives from all Rail shall be given the opportunity to review permit requests and associated work plans. Support requirements, operational constraints and availability are determined at this meeting.

- 4.5 Permit requestor(s) or representatives must attend the Track Access Coordination meeting conducted at 1300 on Wednesdays at the Link Operations and Maintenance Facility (OMF) 3407 Airport Way South, Seattle, WA 98134. At this meeting, permit requestor(s) or representatives will meet with KCM and ST staff. The upcoming week's track access schedule will be reviewed and scheduling conflicts or questions concerning the work will be discussed.

Note: If the permit requestor or assigned representative is not present at the meeting, the requested permit may not be approved at the discretion of the Track Access Coordinator.

- 4.6 Permits are subject to additional requirements as specified by KCM Rail Operations.
- 4.7 The Track Access Coordinator has final signature authority for issuance of all permits.
- 4.8 Following signature approval, a PDF file of the original permit will be sent to the requestor no later than the end of business Friday.
- 4.9 The Track Access Coordinator will produce and distribute a Track Access Report by the end of business on Friday. Report shall include all approved work permits.
- 4.10 Copies of all approved work permits will be placed in the track access log book kept at the LCC.
- 4.11 The permit requestor, after receiving a copy of the completed and approved work permit, may plan the work per the instructions on the approved work permit.



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- 4.12 A copy of the approved work permit must be in the possession of the work party at the worksite. Failure to produce a valid work permit upon request will result in removal of the work party from the ROW.
- 4.13 Once issued, the conditions on a work permit will not be revised. If changes to any conditions are needed, such as day, time, worker protections, etc. then the permit must be cancelled and a new permit issued.

5.0 RESPONSIBILITIES

- 5.1 LCC may grant special authorization to commence emergency work as needed without a work permit.
- 5.2 Permit Requestors
- 5.2.1 As required by KCM, permits requestors must have an approved work permit and associated work plan prior to commencement of work.
- 5.2.2 Permits are required regardless of the scope of work. A copy of the approved work permit must be in the possession of the work party at the worksite. Failure to produce a valid work permit upon request will result in removal of the work party from the ROW.
- 5.3 Employee in Charge (EIC)
- 5.3.1 The EIC shall open and close work permits with LCC. The EIC shall only close work permits after confirming that all personnel, equipment and material are clear of the ROW and that all systems have been restored to their normal state.
- 5.3.2 Conduct a job/safety briefing with the contractor and crew prior to the start of work



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5.3.3 Suspend all work activities if any member of the contractor work crew is found to be in violation of the conditions of the contractor work permit(s) or does not have a valid permit onsite.

5.4 Link Control Center

5.4.1 Facilitate immediate access to the ROW in the event of an emergency.

5.4.2 Authorize access to the Link ROW to those performing routine maintenance if access does not unduly affect the safe, efficient movement of trains or buses.

5.4.3 Inform operators of workers and work parties entering and leaving the trackway.

5.4.4 Coordinate activities with those performing work to ensure minimal impact on train and bus movement as well as automobile and pedestrian traffic.

5.4.5 Coordinate non-routine activities and assist with sectionalization as required.

5.4.6 Suspend work permits if required to ensure the safety of people and/or property, or during major service interruptions where the need to restore service is critical.

5.4.7 Ensure all work activities being performed within the Link ROW are recorded in the Track Access Permit Log. The EIC for each permit, if applicable, should be included on this log.

5.5 Field Supervisors

5.5.1 Monitor and report ROW activity violations or unsafe conditions to LCC.

6.0 APPENDICES



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Appendix1: Track Access Request/Work Permit Form

Appendix2: Track Allocation Work Plan Template

7.0 SUMMARY OF CHANGES

Initial Issue-3/7/08

Revision1-4/3/09

- Changed the signature block and minor text changes in the body of the document.
- Revised Track Access Request/Work Permit Form

Revision2-6/27/13

- Updated Definitions section
- Updated Requirements section
- Updated Procedures section

Revision3-6/26/15

- Updated Definitions section
- Updated Responsibility section
- Updated Procedures section
- Updated Requirements section
- Updated Appendix
- Complete Revision



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TRACK ACCESS PROCEDURES

Appendix1: Track Allocation Request / Work Permit Form



King County
Department of Transportation
Metro Light Rail Operations

TRACK ALLOCATION REQUEST/ WORK PERMIT FORM

LCC (206) 205-8177 Permit # P15-021

Company Name:		Main Office Phone:	
Work Crew Leader's Name:		After Hours Phone:	
Number of Work Sites:	Number of Employees:	On Site Phone #:	
Type of Work to be Performed:			
Equipment to be used:			
Exact Location of Work:		NORTH ☐	SOUTH ☐
At	Between	And	
Start Date:	Time:	End Date:	Time:
PROTECTION REQUIRED			
De-Energize TPSS	Lockout Tags	Work Zone	KCM Link Staff on Site
De-Energize OCS	Lockout Locks	Flaggers Required	24 hrs and 1 hr advance notice for stoppage
De-Energize OCS			
Signals Lockout	Track Switching	LRV Operations	
Gates Lockout			
Special Requirements:			
Date	Time		
CONTRACTOR AGREEMENT			
I, hereby the LCC by radio or the number at the top of this permit prior to entering the ROW, any time I leave the work area, the scope of the work changes, and upon completion of the work. All workers must carry their ROW card at all times. Failure to do so WILL result in cancellation of this permit by the LCC or KC Metro Light Rail Operations. Personnel have read and understand the rules and requirements detailed in this permit and will abide by them. This Permit may be revoked at any time for violation of rules & requirements or as deemed necessary for the safety of personnel and equipment.			
Contractor's Rep. (and contact number)			Date:
KCM LINK AUTHORIZATION			
Facilities Dept: Ian Bennett 206 290-1734 cell 206-903-7492 cell ian.bennett@soundtransit.org Metro Erickson 206 255-7349 cell Michael.Erickson@soundtransit.org		Traction Power Dept: Melinda Hickman 206-423-3577 cell 206-903-7720 melinda.hickman@soundtransit.org Pam Smith-Crafton 206 295-5822 cell Pamela.Smith-Crafton@soundtransit.org	
ACADIA/Metro Comm Dept: John Humphrey 206-255-7768 cell 206 903 7718 cell john.humphrey@soundtransit.org		Track Dept: Mike Larson 206-255-0422 cell 206-903-7723 mike.larson@soundtransit.org	
KCM LINK Representative: Tam Swett 206 903-7670 cell; tam.swett@soundtransit.org Cathy Morgan 206 903-7692 cell; cathy.morgan@soundtransit.org			Date:
IMPORTANT			
Permit must be available for review and on the work site at all times.			

Distribution: Original Track Access Coordinator, PDF Copy to Coordinator, PDF Copy to LCC

Rev. 6.23.15 Date 6.17.15



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Metro Light Rail Section



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Appendix2: Work Plan Template

EXAMPLE TRACK ALLOCATION WORK PLAN

Please note: This document is an example only and does not constitute the only type of acceptable work plan. This document outlines the types of information needed to assess risk to the system and determine support requirements. Submitter assumes all liability for accuracy and completeness of work plans.

Date:

SUBMITTED BY (name and contact information):

APPROVING AUTHORITY FOR THIS WORK (Sound Transit Project Manager or other Approving Authority – name and contact information):

Description of Work:

Proposed Work Start Date:

Duration of Project: (If a multiple week project, what progress point are you working in:-
-Give info by Week, example: week 1 of 4, etc.)

Schematics & Drawings Attached (Y/N):

Employees on site: (Give names of all employees on site)

ROW Training Complete: (Y/N, indicate for each employee):

LIST OF EQUIPMENT:

Materials:

Vehicles:

Staging locations:

SUPPORT REQUIRED:

Department:

EIC:

Support only:

Other:

SAFETY PLAN:

Safety Requirements:

PPE:

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COMMUNITY DEVELOPMENT & PUBLIC WORKS FIRST DRAFT 9/20/2018**DRAFT RESOLUTION NO. 18-087**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, approving the Federal Way Link Extension Project Development Agreement between the City of Des Moines and Sound Transit.

WHEREAS, the City is a non-charter optional municipal code city incorporated under the laws of the State of Washington, with authority to enact laws and enter into development and right-of-way agreements to promote the health, safety, and welfare of its citizens; and

WHEREAS, Sound Transit is a regional transit authority created pursuant to chapters 81.104 and 81.112 RCW with all powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties; and

WHEREAS, this Agreement is authorized by RCW 36.70B.170 through .210 as well as Des Moines Municipal Code (DMMC)18.35.020 which allows a property owner to apply to the City to enter into a development agreement to address project development standards including, design standards, project phasing, review procedures, vesting, and other appropriate development requirements; and

WHEREAS, in November 2008, central Puget Sound area voters approved an extensive program of transportation projects to be implemented over the 15-year timeframe from 2009 - 2023 known as the Sound Transit 2 (ST2) Plan. Among other projects identified for implementation, ST2 included the extension of the Link light rail transit system from SeaTac to the cities of Kent and Des Moines. In November 2016, voters approved an additional program of transportation projects, known as the Sound Transit 3 (ST3) plan. The ST3 plan included, among other projects, the extension of the Link light rail transit (LRT) system from its current terminus at the Angle Lake Station at S. 200th Street in the City of SeaTac to the City of Federal Way as part of the Federal Way Link Extension Project; and

Resolution No. ____
 Page 2 of ____

WHEREAS, on January 26, 2017, the Sound Transit Board adopted Resolution No. 2017-02, which defined and selected the Federal Way Link Extension alignment, profile, stations, and associated infrastructure to be built between S. 200th Street and the Federal Way Transit Center. This action also established the project definition for the Project's National Environmental Policy Act (NEPA) Record of Decision; and

WHEREAS, Sound Transit and the City have been working to identify and obtain commitments for permitting processes that provide certainty and predictability for the Project, such as use of completed Sound Transit Environmental documents and FTA mitigation requirements, establishing a consolidated permit process, amending and resolving technical code requirements that are impractical or infeasible, supporting and accommodating the light rail system in land use plans and development regulations, and allowing for extended vesting or duration of land use approvals; and

WHEREAS, the Growth Management Act (GMA) (Chapter 36.70A RCW) requires that the City plan for and encourage high capacity transit facilities such as the Federal Way Link Extension (RCW 36.70A.020) and accommodate within the City such essential public facilities (RCW 36.70A.200). Likewise, the GMA grants authority to the City to impose reasonable permitting conditions on the Project; and

WHEREAS, the City has modified its Landscape Code and other Zoning Code chapters by Ordinance No. 1695, Tree Code by Ordinance No. 1694 and Essential Public Facilities Codes by Ordinance No. 1697 to fulfill its obligations under the GMA to accommodate the Project, reduce Project costs and provide Sound Transit more design flexibility while still adequately protecting Des Moines residents impacted by the Project; and

WHEREAS, pursuant to RCW 36.70B.200 and DMMC 18.35.020, the City held a properly noticed public hearing, and the City Council determined that the proposed Project is generally consistent with the City's development regulations; that the proposed Project conforms with the conditions of approval

Draft 092018

Resolution No. ____
 Page 3 of ____

provided in DMMC 18.35.020; and has authorized the City Manager to enter into this Agreement; and

WHEREAS, pursuant to RCW 36.70B.200, a public hearing was held before the City Council on October 4, 2018, and all persons wishing to be heard were heard; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

Sec. 1. Approval. The Essential Public Facilities Land Use Application and the Development Agreement (Exhibit A) between the City of Des Moines and Sound Transit are hereby approved by the Des Moines City Council.

Sec. 2. Compliance with other law. Nothing in this Resolution shall be construed as excusing the Applicant from compliance with all federal, state, or local statutes, ordinances, or regulations applicable to this development other than as expressly set forth herein.

Sec. 3. Distribution of resolution following City Council action. Certified or conformed copies of this Resolution shall be delivered to the following:

(1) City of Des Moines Community Development and Public Works Departments; and

(2) Sound Transit; and

(3) City Clerk of the City of Des Moines.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2018 and signed in authentication thereof this ____ day of _____, 2018.

 M A Y O R

APPROVED AS TO FORM:

 City Attorney

Draft 092018

Resolution No. ____
Page 4 of ____

ATTEST:

City Clerk

**FEDERAL WAY LINK EXTENSION PROJECT DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF DES MOINES AND SOUND TRANSIT**

This Development Agreement (“Agreement”) is entered into, by and between the CITY OF DES MOINES (“City”), a Washington municipal corporation (“City”) and the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (“Sound Transit”), a regional transit authority. Under the authority of RCW 36.70B.170-210 and in consideration of the mutual covenants contained herein, the City and Sound Transit do hereby agree as follows regarding the Federal Way Link Extension (“Project”).

RECITALS

- A. The City is a non-charter optional municipal code city incorporated under the laws of the State of Washington, with authority to enact laws and enter into development and right-of-way agreements to promote the health, safety, and welfare of its citizens.
- B. Sound Transit is a regional transit authority created pursuant to chapters 81.104 and 81.112 RCW with all powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties.
- C. This Agreement is authorized by RCW 36.70B.170 through .210. In addition, the City has adopted regulations governing development agreements, as set forth in section 18.35.020 of the Des Moines Municipal Code (DMMC), and those regulations allow a property owner to apply to the City to enter into a development agreement to address project development standards including, design standards, project phasing, review procedures, vesting, and other appropriate development requirements.
- D. In November 2008, central Puget Sound area voters approved an extensive program of transportation projects to be implemented over the 15-year timeframe from 2009 – 2023 known as the Sound Transit 2 (ST2) Plan. Among other projects identified for implementation, ST2 included the extension of the Link light rail transit system from SeaTac to the cities of Kent and Des Moines. In November 2016, voters approved an additional program of transportation projects, known as the Sound Transit 3 (ST3) plan. The ST3 plan included, among other projects, the extension of the Link light rail transit (LRT) system from its current terminus at the Angle Lake Station at S. 200th Street in the City of SeaTac to the City of Federal Way as part of the Federal Way Link Extension Project.
- E. Sound Transit and the City have signed a Term Sheet intended to address and document progress toward goals identified by the Sound Transit Board in Motion M2015-56, which directed Sound Transit staff to work with local jurisdictions in the corridor to identify and obtain commitments for permitting processes that would provide certainty and predictability for the Project, such as use of completed Sound Transit Environmental documents and FTA mitigation requirements, establishing a consolidated permit process, amending and resolving technical code requirements that are impractical or infeasible, supporting and accommodating the light rail system in land use plans and development regulations, and allowing for extended vesting or duration of land use approvals.

- F. The Growth Management Act (GMA) (Chapter 36.70A RCW) requires that the City plan for and encourage high capacity transit facilities such as the Federal Way Link Extension (RCW 36.70A.020) and accommodate within the City such essential public facilities (RCW 36.70A.200). Likewise, the GMA grants authority to the City to impose reasonable permitting conditions on the Project.
- G. The City has modified its Landscape Code and other Zoning Code chapters by Ordinance No. 1695, Tree Code by Ordinance No. 1694 and Essential Public Facilities Codes by Ordinance No. 1697 to fulfill its obligations under the GMA to accommodate the Project, reduce Project costs and provide Sound Transit more design flexibility while still adequately protecting Des Moines residents impacted by the Project.
- H. On January 26, 2017, the Sound Transit Board adopted Resolution No. 2017-02, which defined and selected the Federal Way Link Extension alignment, profile, stations, and associated infrastructure to be built between S. 200th Street and the Federal Way Transit Center. This action also established the project definition for the Project's National Environmental Policy Act (NEPA) Record of Decision.
- I. On June 28, 2017, the City and Sound Transit executed a City Services Agreement establishing responsibilities for City participation in Project implementation and how Sound Transit would reimburse the City for costs incurred for design review, permitting, and public right-of-way review and approval services as authorized by the terms of the City Services Agreement. On June 28, 2017, the City and Sound Transit executed a Task Order #1 under the City Services Agreement, to address reimbursement for City expenses by Sound Transit during 2017. On April 12, 2018, the City and Sound Transit executed an Amended Task Order #2 under the City Services Agreement, to address reimbursement for City expenses by Sound Transit during 2018 and the first quarter of 2019. The Parties anticipate executing Task Order #3 in early 2019 to address reimbursement for City expenses by Sound Transit through the remainder of the Project. Additional Task Orders will be executed as necessary.
- J. Sound Transit is intending to deliver the Project as a design/build procurement ("Design/Build") and has been coordinating with the City in preparation for Project design and construction. In recognition of the multiple development permits and separate review processes, and the continuing potential for conflict, overlap, and duplication between such processes, the City and Sound Transit desire to consolidate permit and environmental review processes for the benefit of both parties and the public pursuant to the development agreement authority provided in RCW 36.70B.170-.210 and DMMC 18.35.020. In addition, the City recognizes the public benefits which will accrue to the City and community from development of the property for the Project.
- K. Sound Transit has completed extensive environmental analysis of the Project in accordance with the National and State Environmental Policy Act (NEPA and SEPA). Sound Transit completed SEPA review with the issuance of the Federal Way Link Extension Final Environmental Impact Statement (FEIS) on November 18, 2016. The Federal Transit Administration ("FTA") issued a Record of Decision (ROD) on March 6, 2017 and the Federal

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Highway Administration (FHWA) issued a ROD on March 9, 2017 concluding the NEPA process.

- L. Sound Transit has adopted real property acquisition and relocation procedures and guidelines that comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 90-646, 84 Stat. 1894), as amended by the Uniform Relocation Act Amendments of 1987 (PL 100-17, 101 Stat. 246-256) and as implemented by the United States Department of Transportation (49 CFR 24), all of which establish a uniform policy for the expedient and consistent treatment of owners subjected to land acquisition practices and provide for the fair and equitable treatment of persons displaced as a result of public works programs or projects of a local public body (hereinafter the “Federal Regulations”). Pursuant to these policies and its statutory authority, Sound Transit has acquired or will acquire such real property interests as are necessary to construct, maintain, and operate the Project.
- M. Both Parties recognize the importance of extending the light rail system as part of the comprehensive program of regional transit improvements approved by voters and have mutually concluded that it is feasible to do so by 2024. Both parties will work in a collaborative effort to resolve any issues and risks in order to achieve Sound Transit’s goal to have the Federal Way Link Extension Project begin operations by 2024.
- N. Pursuant to RCW 36.70B.200 and DMMC 18.35.020, the City held a properly noticed public hearing, and the City Council determined that the proposed Project is generally consistent with the City’s development regulations; that the proposed Project conforms with the conditions of approval provided in DMMC 18.35.020; and has authorized the City Manager to enter into this Agreement.

NOW THEREFORE, in consideration of mutual promises and covenants herein contained related to the approval of various development permits to Sound Transit to construct, operate, and maintain the Project, the Parties hereto agree to the terms and conditions as follows.

1.0 DEFINITIONS

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning herein given where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Reference to governmental entities, whether persons or entities, refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted as amended.

- 1.1 Agreement. “Agreement” means this Development Agreement approved by appropriate action of the City and of Sound Transit.

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- 1.2 City. “City” means the City of Des Moines and any successor or assignee following an assignment that is permitted under this Agreement.
- 1.3 College. “College” means Highline College and any successor or assignee following an assignment that is permitted under this Agreement.
- 1.4 Construction Build-Out Period. “Construction Build-Out Period” means the period commencing upon execution of this Agreement and ending ten years thereafter.
- 1.5 Design/Build Contractor. “Design/Build (or D/B) Contractor” means the entity or entities that will contract with Sound Transit to complete the design of the Project, to obtain all remaining permits for the Project, and to construct the Project, all based upon a design/build procurement method.
- 1.6 Design Submittal. “Design Submittal” means a set of design documents for the Project that have been or will be submitted to the City for review as the Project moves through various review and approval processes. The different phases of design submittal are:
- a) “Preliminary Engineering (PE) Submittal” (30% Design Submittal) means the Design Submittal that was furnished to the City in 2017 prior to Sound Transit initiating a procurement process seeking the services of a Design/Build Contractor. These plans included conceptual design of the alignment. The City has already reviewed and provided written comment on this submittal. Sound Transit has provided a written response to the City indicating how the City’s comments have been resolved.
 - b) “Proposed Changes to the Preliminary Engineering Submittal” means a Design Submittal based on plans prepared as part of Sound Transit’s Design/Build Contractor selection process. This submittal will include any design changes to the “Preliminary Engineering (PE) Submittal” initiated by the Design/Build Contractor during procurement and/or initiated by Sound Transit in preparing the RFP. This will be provided to the City for conceptual review.
 - c) “60% Design Submittal” means a Design Submittal for a defined segment of the overall project that presents advanced details on items such as route alignment, utilities, and urban design concepts. These elements shall be identified by the DB at the time of submittal. 60% plans will also include basic concepts for other project elements that will be addressed in future submittals. This will also include the incorporation of the identified resolution to the city review comments received on the “Preliminary Engineering (PE) Submittal”.
 - d) “90% Design Submittal” means a Design Submittal reflecting advanced design for a defined segment of the overall Project, so that all reviewers can comment on specific details, as well as the overall scope of the Project prior to submittal of the Permit Submittal (100% Design). Items missing from this submittal should be minor and documented for reviewers.
- 1.7 Issued for Construction. “Issued for Construction (IFC)” means a complete set of construction plans, drawings, and specifications that incorporate corrections to the Permit Submittal required by the AHJ for use by the Design/Build Contractor to construct the project.

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- 1.8 Over-the-Shoulder Review. “Over-the-Shoulder Review” means the informal and ongoing review of evolving design concepts and plans developed during the Project construction phase.
- 1.9 Parties. “Parties” means the City of Des Moines and the Central Puget Sound Regional Transit Authority.
- 1.10 Permit Submittal (100% Design). “Permit Submittal” means a Design Submittal illustrating detailed plans for all work proposed in the permit application. This may include utility relocation improvements, new traffic signaling plans, grading and landscaping plans, and all work to be completed as part of the Project.
- 1.11 Project. “Project” or “Federal Way Link Extension (FWLE)” means the light rail system as described and depicted in Exhibit A, attached and incorporated herein, and as approved by the City pursuant to the approvals described in this Agreement.
- 1.12 Project Requirements. “Project Requirements” means the requirements included within documents provided at the time of the Project’s RFQ/RFP that must be met by the Project’s D/B Contractor, and specify the capabilities, features or attributes, etc. of the Project’s deliverables as it relates to completing the Project and its objectives.
- 1.13 Sound Transit. “Sound Transit” means the Central Puget Sound Regional Transit Authority, its Design/Build Contractor and any other entity to the extent such entity, as permitted under this Agreement, is exercising any rights to build or operate the Light Rail Transit System over any portion of the Light Rail Transit Way including the Kent/Des Moines Station and College Way pursuant to a specific written grant of such rights by Sound Transit.

2.0 COOPERATION AND GOOD FAITH EFFORTS

- 2.1 Cooperation. The Parties understand and agree that the activities described in this Agreement depend upon timely and open communication and cooperation between the Parties. The Parties also understand and agree that this applies to Sound Transit’s D/B Contractor, and will require Over-the-Shoulder reviews consistent with Section 9.3 of this Agreement. In this regard, communication of issues, changes, or problems that arise with any aspect of the work should occur as early as possible in the process, and not wait for explicit due dates or deadlines. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues.
- 2.2 Future Agreements. The Parties acknowledge that this Agreement may contemplate the execution and delivery of other future agreements, documents, instruments, and permits, the final form and contents of which are not presently determined, including but not limited to additional Task Order Assignments, Public Safety and Emergency Services Plan consistent with Section 12, and Mitigation Plans consistent with Section 10, for example. The Parties agree to provide the necessary resources and to work in good faith to develop the final form and contents of such documents, agreements, instruments, and permits, and to execute and deliver the same promptly.
- 2.3 Timely Review. The City will provide timely review by both dedicated and regular City staff of all permit applications necessary to complete the Project, subject to the City’s applicable process and regulations. This includes Sound Transit’s payment of applicable permit fees and

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reimbursement for City staff time as consistent with the executed City Services Agreement and related task orders for the Project.

- 2.4 Impact on Businesses and Institutions. Sound Transit will exercise its reasonable best efforts to minimize impacts of construction activities upon business operations and local institutions (including Highline College) and pending development opportunities in the Project area.

3.0 PROJECT LOCATION AND ELEMENTS

- 3.1 FWLE Project. As described in the Project's FEIS, the purpose of the Project is to expand the Sound Transit Link light rail system from the City of SeaTac to the cities of Des Moines, Kent, and Federal Way in King County in order to provide a rapid, reliable, accessible, and efficient alternative for travel to and from the corridor and other urban growth and activity centers in the region. When constructed, the Project will provide a connection south from the existing Angle Lake Station crossing to the east in a manner that allows for the planned construction of the SR 509 Extension Project by the Washington State Department of Transportation (WSDOT). It will proceed generally within I-5 right-of-way to the Project's terminus in the City of Federal Way. See Exhibit A for the Project's Description and General Alignment. Three new LRT stations will be constructed as part of the Project with associated improvements for parking, pedestrian, bicycle, bus and other access improvements.
- 3.2 Roadway Improvements. In the City of Des Moines, specific roadway improvements will be included as part of the Project. These improvements include:
- 3.2.1 New cul-de-sac street-end turnaround at the east end of S 220th St with new sidewalk
 - 3.2.2 New cul-de-sac street-end turnaround at the east end of S 221st St with new sidewalk
 - 3.2.3 New cul-de-sac street-end turnaround at the east end of S 224th St with new sidewalk (See Section 11.1 for further discussion of this improvement)
 - 3.2.4 New College Way (formerly S 236th Lane) road with sidewalks, pedestrian pathways, and lighting. (See Section 11.2 for further discussion)
 - 3.2.5 Roadway improvements will include installation of new lighting, meeting current City standards.
- 3.3 Vacations and Dedication of Public Rights-of-way. City right-of-way (ROW) that is needed for Sound Transit's Project, will need to be vacated in accordance with chapter 12.10 DMMC. Sound Transit will submit an application for a street vacation, which will be processed by the City under a separate Ordinance and Public Hearing. Once street improvements are constructed (outside the Transit Way) and are no longer needed for construction of the Project, the associated ROW will be dedicated to the City.
- 3.4 Construction in City ROW. S. 216th Street and Kent-Des Moines Road are City rights-of-way subject to this provision whereby Sound Transit intends to construct an underpass for the LRT or possibly an overcrossing for the LRT adjacent to Interstate 5 on S. 216th Street and an

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overcrossing for the LRT over Kent-Des Moines Road. The structures shall be constructed under authority of the Transit Way Agreement (Exhibit I) between the City and Sound Transit and rights-of-way use permits and associated fees as required by City code.

- 3.5 Noise Mitigation. The Parties agree that the Project will mitigate noise impacts consistent with the 2006 FTA Transit Noise and Vibration Impact Assessment guidance and Sound Transit's 2004 Light Rail Noise Mitigation Policy. Noise mitigation measures based on the Pre-Final Preliminary Engineering documents are identified in Appendix G3 of the FEIS. As indicated in the FEIS analysis, where mitigation is needed for at-grade segments, noise walls that are typically 6 to 8 feet in height would be provided. Noise wall heights may be up to 18 feet in height to mitigate noise impacts at certain locations. And as indicated in the FEIS analysis, where mitigation is needed for elevated segments, acoustic panels that are typically 4 feet in height would be attached to the guideway. The Design/Build Contractor will complete the Project's Final design and, as a result, may redesign sections of the alignment. If the Design/Build Contractor redesigns the alignment, the noise impacts and mitigation measures will also be reevaluated which may adjust identified noise wall heights and extents. During Final Design, the Design/Build Contractor must demonstrate to Sound Transit and the City through design modeling that the proposed noise mitigation strategy for noise from Project Operations meets Federal guidance and Sound Transit policy. The Design/Build Contractor must also demonstrate to Sound Transit and the City through actual field measurements that the constructed noise mitigation actually fulfilled Federal guidance and Sound Transit policy. Proactive community outreach, including feedback on noise wall design and decorative features, will ensure transparency with the Pacific Ridge Neighborhood and the City during this final design review and construction monitoring process. Sound transit will require the Design/Build Contractor to construct noise walls as soon as practicable.
- 3.6 Construction Noise Mitigation. The Parties agree that construction noise (daytime and/or nighttime) will be consistent with project requirements by using operations methods, scheduling, equipment choice, and acoustical treatments in accordance with any FEIS mitigation requirements, City permit conditions and/or noise variances granted by the City.

4.0 SEPA COMPLIANCE

Sound Transit is the lead agency for compliance with SEPA. In coordination with the City and other agencies with jurisdiction, Sound Transit has completed the substantive and procedural environmental review for the Project in accordance with SEPA requirements. The environmental review covers the City's issuance of permits for the Project as well as environmental mitigation, and the City will use and rely upon the existing environmental documents to satisfy its SEPA responsibilities, consistent with WAC 197-11-600. The foregoing is not intended to limit the City's authority to impose reasonable permit conditions pursuant to its development regulations.

5.0. PROJECT SCHEDULE

The City is aware of the Project schedule and the criticality of meeting schedule milestones to deliver the Project efficiently and effectively and consistent with expectations of the region's citizens, as

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expressed in voter-approved ST2 and ST3 ballot measures. Sound Transit will share with the City updates to the Project Schedule as it evolves and based on input from Sound Transit's D/B Contractor.

6.0 ESSENTIAL PUBLIC FACILITY REQUIREMENTS

The Parties agree that the Project is a regional transportation facility that has the status of an essential public facility ("EPF") and that the requirements of RCW 36.70A.200 are applicable. Under Chapter 36.70A RCW, the City may not utilize development regulations to render impracticable Sound Transit's decisions on siting and location of the Project; however, the City may impose reasonable permit and mitigation conditions on the Project.

7.0 DEVELOPMENT STANDARDS

7.1 Land Use Approval. Pursuant to RCW 36.70B.170 through 36.70B.210, as amended, as well as DMMC 18.35.020, the City may enter into a development agreement with Sound Transit for the Project. Sound Transit has requested Essential Public Facility (EPF) land use approval for the Project using the alternative development agreement process in accordance with DMMC 18.255.100 in lieu of an unclassified use permit required under DMMC 18.255.050. This request is approved, as indicated by the City's letter attached as Exhibit B and the City hereby grants land use approval for the Project. Sound Transit understands that this land use approval shall not be deemed to exempt the Project from any other applicable city, state and/or federal construction-related administrative regulations or permits, and this Agreement contains such reasonable conditions as necessary to ensure the EPF satisfies, to the extent practicable, the City's land use approval criteria.

7.2 Pre-Final PE. The City has determined that the Project as represented in the Pre-Final PE Submittal is generally consistent with City codes and standards. So long as the Project is developed consistent with appropriate City permit approvals and this Agreement, the public health, safety, environment and welfare are adequately protected and will not be unreasonably impacted as enumerated in DMMC 18.255.080 through 18.255.110. The City has provided for departures from previous development regulations through code amendments because the Project is an essential public transportation facility and will be providing a benefit to the region of an equal or greater value relative to the standards from which departure is being allowed. Specific clarifications of codes as they will be applied to elements of Project design in the City are included as follows:

7.2.1 Landscape buffering and irrigation systems installed as part of the Project shall be designed, constructed and maintained in accordance with DMMC 18.195 as further interpreted by Exhibit C, with which Sound Transit has concurred.

7.2.2 Wetlands DMMC 16.10.150 Wetlands – Mitigation Requirements.

The City recognizes that opportunities for permittee-responsible compensatory mitigation within City limits and the same drainage basin as the wetland impacts, are very limited and would likely result in fragmented wetland mitigation. Therefore, the City will accept King County In-Lieu Fee mitigation for permanent wetland impacts in their jurisdiction. In Lieu Fee mitigation will stay within the WRIA 9 watershed.

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- 7.3 **Vesting.** The vesting described in this Agreement shall apply throughout the Construction Build-out Period for the Project, which the Parties have established as ten years following execution of this Agreement. During the Construction Build-out Period, the City shall neither modify nor impose new or additional development regulations or standards for the Project beyond those set forth in this Agreement, except as otherwise provided in this Agreement, or if other county, state or federal laws preempt the City's authority to vest regulations. The City reserves the authority to impose new or different officially adopted regulations, only if, and to the extent required by a serious threat to the public health and safety, as determined by the City Council after notice and an opportunity to be heard has been provided to Sound Transit unless the threat is so immediate that notice is not practical in the short term, due to the imminent threat to public health and safety. To the extent this Agreement does not establish or define development regulations or standards covering a certain subject, element, or condition, the Project shall be governed by the City development standards and regulations in effect on July 1, 2018.
- 7.4 **Codes in Effect.** The codes and editions that will be used for the entirety of this Project's Design, Construction, and Operation are attached as Exhibit D and are specified in Section 2.2 of the Project Requirements, which shall be issued to Sound Transit's D/B Contractor.
- 7.5 **Local Roadways.** Local roadway cross-sections to be improved by Sound Transit shall be consistent with the concurrence letter addressing this subject and executed between the City and Sound Transit dated April 4, 2017, attached and incorporated herein as Exhibit E.
- 7.6 **Property Management.** The Parties have agreed to a strategy of property management and demolition of vacant structures for properties that will be acquired by Sound Transit. These strategies are addressed in a letter of concurrence executed between the City and Sound Transit dated November 29, 2017, attached and incorporated herein as Exhibit F.
- 7.7 **Parking Mitigation.** Sound Transit shall, in coordination with the City and at Sound Transit's expense conduct an on-street parking inventory and utilization study of the block faces identified in Exhibit G, all located within one quarter-mile of the Kent/Des Moines Station. This study will take place within one (1) year before start and within one (1) year after start of revenue service based on a mutually agreed upon study methodology that evaluates parking capacity and usage of the block faces identified in Exhibit G, and whether any difference in parking use can reasonably be attributed to the Project. If the post-revenue service study shows that the block faces identified in Exhibit G are over 90% capacity prior to 9 am, and over 50% of the on-street parking use can be attributed to light rail transit customer parking, then Sound Transit and the City will work together in good faith to identify, recommend and, if necessary, implement parking control measures. Potential parking control measures include parking meters, restricted parking, passenger and truck load zones, and residential parking zones (RPZs). Once Sound Transit and the City agree upon the appropriate parking control measures, Sound Transit will install any agreed upon parking meters, RPZs or parking restriction signage within the study area, pursuant to terms of an agreement or some other instrument developed by the Parties delineating the scope of work, terms of payment, City's on-going operations and maintenance responsibility and other relevant conditions. The City will be responsible for

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monitoring and providing all enforcement and maintenance, including ongoing RPZ-related costs. In the event the City desires to expand the scope of the parking study beyond the ¼-mile range depicted in Exhibit G, Sound Transit would work with the City to develop partnership opportunities to support the expanded study area, including options to partner with Highline College or other entities for financial and/or in-kind contributions for the study. Notwithstanding the potential for the parking study area to expand as a partnership endeavor, Sound Transit will only be responsible for installing parking control measures (as described above) in the ¼-mile study area depicted in Exhibit G.

- 7.8 City Street Lighting and Fixtures. Sound Transit agrees that street lighting along College Way will be City-owned and City-maintained upon physical completion and Sound Transit shall require the Design/Build Contractor to provide a one-time supply of spare poles and fixtures, benches and other urban design elements for replacements (equivalent to 12% spares) as required by the City.
- 7.9 Traffic Mitigation. Sound Transit will mitigate long-term traffic impacts as described in the Federal Way Link Extension Record of Decision and as summarized in Exhibit H (ROD, Table B-1, Mitigation Plan).
- 7.10 Transit Way Agreement. The Transit Way Agreement is attached hereto as Exhibit I and its terms shall take precedence over any potential conflicts with the terms of this Development Agreement.

8.0 RIGHT OF WAY ACQUISITION

Sound Transit agrees to inform the City regarding progress on the ROW acquisition process and to maintain properties acquired for construction as defined in Section 7.6 above.

9.0 DESIGN REVIEW, PERMITTING AND INSPECTION

9.1 Project Administration.

9.1.1 City Project Liaison. The City shall assign a City staff contact for the Project ("City Project Liaison"). The City Project Liaison shall provide central coordination of all Design Submittal reviews and comments from all involved City Departments and shall be an effective and empowered conduit between Sound Transit and other City staff. The City Project Liaison shall resolve any inconsistencies among review comments from the City Departments and shall provide Sound Transit with consistent and consolidated review, comments, and decisions. At a minimum, the person filling this role for the City should have a Professional Engineers license and/or 10-years' experience in the field, preferably with an extensive construction management background. In addition to these tasks, the City Project Liaison shall participate in regularly scheduled project-level meetings. The City Project Liaison shall also be responsible for identifying and disclosing to Sound Transit as soon as practicable any other City projects or proposals (e.g., transportation projects, private development projects) that have the potential to conflict or interfere with the expeditious design and construction of the Project.

- 9.1.2 ST Liaison. Sound Transit will assign a Sound Transit staff contact for the Project (“ST Liaison”). The ST Liaison shall provide central coordination for Project Design Submittals and Project coordination. In addition to these tasks, the ST Liaison shall participate in regularly scheduled project-level meetings.
- 9.2 Design/Build Contractor. Sound Transit shall obtain approval from the City for construction of the Project through submittal of the appropriate City applications. The City acknowledges that Sound Transit will be procuring this Project using design/build or other alternative procurement methods and further acknowledges that the Design/Build Contractor may, at Sound Transit’s discretion, make any of the required submittals on Sound Transit’s behalf. In that regard, references to “Sound Transit” herein shall be interpreted to mean Sound Transit or its Design/Build Contractor, at Sound Transit’s discretion unless the context clearly requires otherwise.
- 9.3 Over-the-Shoulder Review. Sound Transit, the City, and Sound Transit’s D/B Contractor will participate in on-going Over-the-Shoulder reviews throughout the design process. City participation will be facilitated by the City’s Project Liaison, described in 9.1.1., who will be co-located at the Project job office and whose primary function it will be to identify and resolve issues to support the design process and development of plans that satisfy the City’s permitting requirements.
- 9.4 Proposed Changes to the Preliminary Engineering Submittal. ST will provide to the City for conceptual review a package highlighting significant changes to the Project design proposed during the Design/Build Contractor procurement process and/or changes that were initiated by Sound Transit in preparing the RFP. The purpose of this submittal is to establish a baseline for the Project design that the Design/Build Contractor will continue to advance. This will be provided to the City for conceptual review.
- 9.5 60% Design Submittal. ST will provide to the City for review and comment a 60% Design Submittal for each design package (as identified by the Design/Build Contractor as part of its Permitting Plan, and as agreed by the City) incorporating a narrative and clouding changes pursuant to the City’s review comments of the Preliminary Engineering Submittal. The City shall perform a review of the submittal and return its unified comments and corrections on the designs, plans, and specifications from all relevant City departments to Sound Transit within a mutually-agreed upon timeframe after receipt of the submittal. The timeframe for review will be determined and agreed upon by the Parties when the Project Permitting Plan is developed and approved (see Section 9.11); however, the City and Sound Transit acknowledge the need for expeditious review of Design Submittals and are committed to this goal. Sound Transit will reimburse the City for time spent to review of the submittal, pursuant to the City Services Agreement and its subsidiary Task Orders. If deemed necessary by the Parties, and after the City’s review of the 60% design plans, Sound Transit’s Design/Build Contractor will convene a comment resolution meeting to inform the City of how issues have been resolved and to discuss the options for resolving the issues.

- 9.6 90% Design Submittal. ST will provide to the City for review and comment a 90% Design Submittal for each design package (as identified by the Design/Build Contractor as part of its Permitting Plan, and as agreed by the City) incorporating a narrative and clouding changes pursuant to the City's review comments on the 60% Design Submittal. The Design/Build Contractor has the option to obtain an appointment with the City's permit process team to discuss the submittal prior to review by the City. The City shall perform a review of the submittal and return its unified comments and corrections on the designs, plans, and specifications from all relevant City departments to Sound Transit within a mutually-agreed upon timeframe of receipt of the submittal. The timeframe for review will be determined and agreed upon by the Parties when the Project Permitting Plan is developed and approved (see Section 9.11); however, the City and Sound Transit acknowledge the need for expeditious review of Design Submittals and are committed to this goal. Sound Transit will reimburse the City for time spent reviewing the submittal, pursuant to the City Services Agreement and its subsidiary Task Orders. If deemed necessary by the Parties, and after the City's review of the 90% design plans, Sound Transit's Design/Build Contractor will convene a comment resolution meeting to inform the City of how issues have been resolved and to discuss the adequacy of or other options for resolving the issues.
- 9.7 100% Design Submittal. This submittal is intended as the Permit Submittal. Each permitting package will be submitted with 100% design plans for the subject project element, incorporating a narrative and clouding changes pursuant to the City's review comments from the 90% design submittal. The City shall perform a review of the submittal and return its unified comments and corrections on the designs, plans, and specifications from all relevant City departments to Sound Transit within a mutually-agreed upon timeframe of receipt of the submittal. The timeframe for review will be determined and agreed upon by the Parties when the Project Permitting Plan is developed and approved (see Section 9.9); however, the City and Sound Transit acknowledge the need for expeditious review of Design Submittals and are committed to this goal. After the City's review of the 100% design plans, Sound Transit's D/B Contractor will convene a comment resolution meeting to inform the City of how issues have been resolved and to discuss the adequacy of or other options for resolving the issues.
- 9.8 Issued for Construction. The IFC set of drawings will serve as the basis for construction activities and field inspections. It will incorporate any required corrections based on review of the Permit Submittal, upon which the Design/Build Contractor will rely in constructing the Project, including, but not limited to a complete set of construction plans, drawings, and specifications.
- 9.9 Role of City Liaison. The Parties contemplate that the ongoing, collaborative Over the Shoulder review (see Section 9.3) will keep the City's Project Liaison apprised of the latest developments in the design. The City's Project Liaison will coordinate review required by other City staff as a means of seeking informal feedback from the City. To the extent that disputes arise about how a design correction should be resolved or whether a design correction is appropriate, the Parties shall use the dispute resolution process in Section 19.
- 9.10 Sound Transit Responsibility. While most post-Pre-Final PE Submittal design work will be performed by the Design/Build Contractor, not by Sound Transit, Sound Transit retains responsibility for ensuring that the City receives prompt responses to City requests for

additional documentation, plans, specifications, drawings, and explanations within the timeline as set forth in the Project Permitting plan between the parties.

- 9.11 Project Permitting Plan. The Parties recognize the mutual benefit of establishing an efficient and expedited process for seeking and obtaining permits to construct the Project in the City. Accordingly, Sound Transit will require its D/B Contractor to develop and submit a Permitting Plan as one of the earliest critical activities, utilizing the Preliminary Permitting Plan as guidance, as attached in Exhibit J. This plan shall be developed with input from the City Project Liaison. Upon its submittal, Sound Transit will provide a copy of the plan for review and comment to the City. Sound Transit and the City shall work cooperatively to develop a final Permitting Plan that is implementable by the D/B Contractor.
- 9.12 Permits and Licenses. Sound Transit, at its sole cost and expense, shall (i) secure and maintain in effect, all federal, state, and local permits and licenses required for the construction, operation, and maintenance of the Light Rail Transit System, including, without limitation, crossing, zoning, building, health, environmental, and communication permits and licenses, and (ii) indemnify the City against payment of the costs thereof and against any fines or penalties that may be levied for failure to procure, or to comply with, such permits or licenses, as well as any remedial costs incurred by the City in curing any such failures.
- 9.13 Non-Interference. The City shall not interfere with Sound Transit's ability to secure, obtain, and maintain, at Sound Transit's sole cost and expense, any permits, licenses or approvals of other governmental agencies or authorities, or of any necessary Third Parties, for the use of any structures or facilities, including streets, roads, or utility poles.
- 9.14 Inspection.
- 9.14.1 Sound Transit-Owned Facilities. Sound Transit shall be responsible for inspection and acceptance of work for facilities constructed by Sound Transit's Design/Build Contractor for which Sound Transit shall have ownership, operating, and maintenance responsibilities. These facilities may include, but are not necessarily limited to: LRT track and guideway, including all appurtenances such as catenary poles and wires, fencing and other barriers, train signals and other equipment necessary for operations), LRT structures including bridges, abutments, retaining walls, and noise barriers constructed to mitigate the results of LRT-generated airborne noise, traction power substations and signal bungalows, and LRT stations and related passenger amenities including park-and-ride structures and transit station access facilities.
- 9.14.2 City Owned Facilities. The City may perform review and inspection of work performed by the Design/Build Contractor for facilities that will be owned and maintained in whole or in part by the City following completion of construction or those components that abut, cross, or reside in City Right of Way or property, or those facilities including noise walls and landscape buffers affecting or abutting private property. The City may contract for reimbursable independent professional services to perform these reviews or inspections. These facilities may include but are not necessarily limited to: street lighting standards, traffic signal poles and signal boxes, streets, sidewalks, curbs and gutters, drainage facilities, and other infrastructure as deemed appropriate.

- 9.14.3 Sound Transit-Owned Facilities in City right-of-Way. The City may review and perform field verification of Sound Transit structures as part of the ROW use permit and related civil plan review to ensure that impacts to City ROW and City facilities are addressed.
- 9.14.4 Sound Transit Self-certification. Sound Transit will provide self-certification of traction power substations installed as part of Project construction. Documentation regarding the Parties' agreement regarding this issue is included as Exhibit L.

10.0 CONSTRUCTION

10.1 Design/Build Contractor Mitigation Plans. It is acknowledged by the Parties that Sound Transit shall require the Design/Build Contractor to develop mitigation and other plans that conform to City requirements. The following plans shall be required of Sound Transit's Design/Build Contractor and shall be submitted to the City for review and comment prior to their acceptance by Sound Transit. The City shall have 15 business days in which to complete its review. Depending on the nature of the mitigation plan, the City will advise Sound Transit if this review may require longer review time. Sound Transit will review all City comments and will respond in writing to comments received.

- Transportation Management Plan – Specifying the Design/Build Contractor's overall strategy for managing issues related to transportation during construction.
- Maintenance of Traffic Plan – Specifying provisions for safely and adequately maintaining traffic during construction, including vehicular, pedestrian, bicycle and transit traffic.
- Construction Noise and Vibration Mitigation Plan – Specifying means and methods implemented by the Design/Build Contractor to minimize noise and vibration during construction.
- Construction Outreach and Communication Plan – Specifying Design/Build Contractor requirements for advance notification of construction activities and other actions that are of interest to the community.
 - A 24-hour monitoring center that provides telephone access for the public to get construction information and to make complaints and incident reports.
 - A multi-media public information program to provide information regarding street closures, hours of construction, business access, and parking impacts.
 - Information on how access to businesses is being maintained during construction.
 - Information on how access for pedestrians, bicyclists, and transit riders is being maintained.
 - Maintain a construction issues response log that tracks construction—related complaints and their resolution.

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- 10.2 Contractor Haul Routes. Sound Transit and the City have worked cooperatively to identify construction contractor haul routes that may be used to transport materials and equipment necessary to construct the Project while minimizing impacts (to the extent possible) to City businesses and residents. Haul routes are depicted in Exhibit M and the City shall, by issuance of a street use permit, allow use of them by Sound Transit's Design/Build Contractor. If the Design/Build Contractor proposes the use of alternate routes to Sound Transit, Sound Transit shall seek the City's concurrence and permission prior to accepting the Design/Build Contractor's proposal.
- 10.3 Contractor Work Hours. The Parties acknowledge that Sound Transit's Design/Build Contractor may propose work outside of the City's standard permissible days and/or hours for construction. In the event such a proposal is received by Sound Transit from their Design/Build Contractor, the Sound Transit Liaison will work closely with the City's Project Liaison to consider the request and to facilitate the process of seeking a City work day, work hours, and/or noise variance, as appropriate. Sound Transit understands that such requests may be denied.
- 10.4 Restoration of Contractor Haul Routes. Sound Transit shall restore the existing roadway pavement and other surface infrastructure within the public right-of-way that is affected by construction activities. Specifically, Sound Transit shall require its Design/Build Contractor to restore construction haul routes used by the Design/Build Contractor in the City. This commitment to restoration of haul routes shall consist of provision of a 2-inch mill and overlay of asphalt to be laid down after the cessation of Design/Build Contractor hauling activities on the route and prior to substantial completion of Project construction. This 2-inch mill and overlay shall be provided from curb to curb along the route and shall be the extent of any agreed-to restoration, except for the need to provide new or improve any existing non-compliant ADA curb ramps where sidewalks are present.

The City prefers a fee in lieu of restoration (i.e., to receive the equivalent value from Sound Transit as fee thereby waiving the requirement for Design/Build Contractor restoration) for any or all of the streets used as Project haul routes. If the City chooses to request a fee in lieu of restoration, they must notify Sound Transit in writing of this choice and for which (if not all) of the haul routes this fee shall apply. The fee in lieu shall be calculated using the most recent, credible bid received by the City for similar work or by some other methodology agreed to by the Parties, and the in-lieu payment shall be made to the City within 90 calendar days of parties reaching agreement on the amount. The request for fee in lieu of restoration will not be considered by Sound Transit if notification has not taken place prior to the initiation of Design/Build Contractor restoration.

- 10.5 Progress Reports. At the City's request, Sound Transit agrees to provide the City with copies of progress reports, status reports, construction contract reports, inspection reports, RFI logs, submittal logs, and schedule updates as generated by the Design/Build Contractor and as required in the construction contract for the Project.

11.0 PARTNERSHIP OPPORTUNITIES FOR OTHER IMPROVEMENTS

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- 11.1 South 224th Street End. To satisfy the City of Des Moines' code requirement that South 224th Street be improved to provide a usable street end, as a result of disrupting the current street end to construct the Project, Sound Transit will make a fee-in-lieu payment. The fee will be based on the estimated costs for the required improvements, specifically design services, right of way acquisition, and construction costs for a cul-de-sac turnaround at the east end of S. 224th Street, including a new sidewalk and lighting. The fee-in-lieu payment will be in the amount of \$153,766 and will be payable by Sound Transit to the City by December 31, 2019. The scope of these costs are depicted in Exhibit R. The City will coordinate with Sound Transit and the Design/Build Contractor regarding the timing of the City's construction of S. 224th Street.
- 11.2 College Way Connection Project. The City and Highline College have a planned improvement in the vicinity of the College Way Street end known as the College Way Connection Project. The College Way Connection Project generally consists of a cul-de-sac at the end of College Way located on property that currently belongs to the Highline College but will be dedicated to the City of Des Moines as public right-of-way, and includes pedestrian facilities that connect the cul-de-sac street end through the parking lot to existing pedestrian and bicycle facilities on the eastern edge of the Highline College campus, and eventually to the Barnes Creek regional trail system. It also includes parking lot modifications to accommodate the cul-de-sac and pedestrian facilities. The College Way Connection Project is generally described and depicted with associated scope in Exhibit N.

The opportunity exists for Sound Transit, the City, and Highline College to minimize construction impacts and realize other potential economies of scale by collaborating, whereby improvements associated with the College Way Connection Project would be constructed by Sound Transit. The City has entered into an Inter-local Agreement with Highline College, included as Exhibit O, for the completion of the College Way Connection Project. The City is the lead agency under SEPA and is responsible for environmental review and permitting for the College Way Connection Project and has determined that no further SEPA review is required as documented in the April 19, 2018 letter included as Exhibit P.

Sound Transit believes the Project will provide an added benefit to the transit experience for its patrons by improving access to the Kent/Des Moines station. Sound Transit's Scope Control Policy (Resolution No. R2009-04) requires outside participation in order to include the College Way Connection Project in the Federal Way Link Extension Project.

Sound Transit has agreed to include the College Way Connection Project improvements in the Design/Build Contractor scope-of-work subject to a funding agreement with the City. The funding agreement provides the terms and conditions for Sound Transit to construct the College Way Connection Project as part of its planned construction of the FWLE, including City provision of funding for the additional improvements at specified project milestones and agreement to maintain the improvements once they are built. The City has agreed to provide payments totaling \$1,400,000 for this project. The amount of the payments is based on the estimated costs for the improvements, specifically design services, and construction costs for a roundabout, pedestrian improvements, and parking lot modifications. The funding agreement

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will be developed between Sound Transit and the City and implemented no later than Quarter 2 of 2019.

Any construction costs that exceed the payment amount stated above shall be paid by Sound Transit unless the excess cost is due to one or more change orders requested by the City, in which case the excess cost will be paid by the City.

- 11.3 Highline College Signing. As part of partnership efforts with the City, Sound Transit will construct two foundations and a conduit pathway for associated lighting for two monument signs (general dimensions of the signs not to exceed 6' wide by 20' tall) in the College Way ROW adjacent to SR 99, and one monument sign (general dimensions of the sign not to exceed 22' wide by 6' tall) in the center of the College Way round-about on the College campus as generally shown in Exhibit Q. Final dimensions of the signs and associated foundations will be determined during Final Design. As part of its Inter-local Agreement with Highline College, the College is responsible to submit a Comprehensive Sign Plan to the City for Review and Approval by September of 2018. The City will be responsible for any environmental review. Sound Transit's Design/Build Contractor will be responsible for obtaining a building permit for the installation of the foundations to ensure that the construction of the foundations is consistent with the Comprehensive Sign Plan. The City, as part of its Highline College Comprehensive Sign Plan review and approval, will secure and address individual sign permits, including College fabrication, installation and all costs of ownership and maintenance.
- 11.4 City of Des Moines Monument Sign. Sound Transit acknowledges the City's interest in siting a monument sign near the guideway crossing of Kent Des Moines Road. If the City and WSDOT are unable to come to agreement on siting of the City's monument sign within WSDOT ROW, Sound Transit and the City agree to work in good faith during Final Design to identify opportunities for a monument sign to be located in the vicinity of the southeast corner of the Kent Des Moines road and the I-5 off-ramp on property to be dedicated by Sound Transit. Additionally, Sound Transit will construct the foundation and a conduit pathway for associated lighting for the installation of the sign (general dimensions not to exceed 40' wide by 6' tall). The City will be responsible for environmental review, any required land use permitting for the signage, fabrication and installation of the sign, and any and all costs of ownership and maintenance following installation.
- 11.5 Transportation Management Opportunities. In the event that other parties, potentially including Highline College, King County Metro, the City of Des Moines, and the City of Kent, conduct an effort evaluating Transportation Management alternatives that may increase the transit mode split in the area surrounding the Kent/Des Moines Station and Highline College, Sound Transit agrees to participate.
- 11.6 Providing for Future Pedestrian Crossing of Kent Des Moines Road. Sound Transit will require the Design/Build Contractor to include a footprint for a potential future pedestrian bridge near Kent Des Moines Road and 30th Avenue South (to be funded and constructed by the City or other third party) in the Project plans. The bridge would be shown as separate from the guideway and in the vicinity of the guideway crossing of Kent Des Moines Road for the purpose of establishing that the FWLE design does not preclude such future development.

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12.0 PUBLIC SAFETY AND EMERGENCY SERVICES

Sound Transit shall coordinate with the City's Police Department to ensure adequate security measures and coordination are in place. Sound Transit also shall periodically re-evaluate its security infrastructure to maintain an appropriate level of advancement and technology. All operational aspects of public safety and the cooperation between Sound Transit and the City's Police Department shall be documented in a separate agreement between Sound Transit and the City prior to the start of revenue operations.

13.0 MINOR REVISIONS TO PROJECT APPROVALS

The City's Chief Operations Officer or designee is authorized to approve minor revisions to the Project that are necessary and generally consistent with this Agreement. Such minor revisions shall include, (a) any revisions within the scope and intent of the original Project approvals, and/or (b) any revisions within the scope of the Project environmental documents.

14.0 UTILITY RELOCATION

14.1 City Utilities. The Parties acknowledge that certain utilities, specifically stormwater system and appurtenances, owned by the City and located on City property or within public right of way will be relocated or impacted by the Project. The City will permit Sound Transit to relocate the City-owned utilities that conflict with the Project at Sound Transit's expense. Sound Transit shall submit plans for permit approval of all City utilities proposed to be modified.

That portion of the D/B Contractor's work consisting of the City's stormwater system and appurtenances shall not be given final acceptance until it is approved in writing by the City per the individual permit requirements. The City shall not unreasonably withhold final acceptance.

14.2 Other Utilities. Sound Transit will enter into separate agreements with non-City utilities regarding the relocation of their facilities. Sound Transit will pay for a Third-Party utility's relocation costs, as necessary to complete the Project.

15.0 OPERATION AND MAINTENANCE RESPONSIBILITIES FOR IMPROVEMENTS CONSTRUCTED UNDER THE AGREEMENT

The Parties have agreed conceptually to ownership and maintenance responsibilities for infrastructure and landscaping installed as part of the Project, as depicted in Exhibit K. This conceptual plan may change during the Project's Design/Build process; however, the following commitments will remain unchanged. Sound Transit will own and maintain all infrastructure associated with the LRT System, including LRT Stations and all LRT Facilities. Upon acceptance of work completed by Sound Transit's Design/Build Contractor, the City will own and maintain infrastructure installed within public rights-of-way, and other infrastructure installed as part of the Project that serves local needs. The City will be responsible for maintenance of all landscaping installed by Sound Transit's Design/Build Contractor in public rights-of-way, beginning upon the close of the required plant establishment period required by

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City code. Sound Transit will be responsible for maintenance of all landscaping installed on property controlled by Sound Transit.

16.0 LIABILITY, INDEMNIFICATION

- 16.1 Indemnification. Sound Transit hereby agrees to indemnify, defend, and hold the City harmless from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses, including, without limitation, reasonable attorney fees, paid by the City and arising or growing out of or in connection with or resulting from, either directly or indirectly, the construction, maintenance, operation, repair, removal, occupancy, and use of the Project by Sound Transit, unless such claims arise from the sole or partial negligence, actions or inaction of the City, its employees, servants, agents, contractors, subcontractors, or persons using the Project with permission of the City.
- 16.2 Notice of Claims. The City shall give Sound Transit prompt notice of any claims directly affecting Sound Transit about which it is aware. Sound Transit shall promptly assume responsibility for the claim or undertake the defense of any litigation on behalf of the City. The City shall cooperate fully with Sound Transit in the defense of any claim. The City shall not settle any claim directly affecting Sound Transit without the prior written consent of Sound Transit, which consent shall not be unreasonably withheld.
- 16.3 Sound Transit Liability. Sound Transit expressly assumes potential liability for actions brought by Sound Transit's employees and agents against the City and, solely for this indemnification, expressly waives any immunity under the Industrial Insurance Law, Title 51 RCW. Sound Transit acknowledges that this waiver was entered into pursuant to the provisions of RCW 4.24.1 I 5 and was the subject of mutual negotiation.

17.0 INSURANCE

- 17.1 Commercial and Self Insurance. Sound Transit shall, at its sole expense, obtain and maintain during the entire term of this Agreement an appropriate program of commercial insurance, self-insurance or any combination thereof in amounts and types sufficient to satisfy its liabilities. When commercial insurance is utilized, Sound Transit and its contractor shall name the City as Additional Insured in accordance with insurer underwriting practices, and Sound Transit insurance policies shall be primary and non-contributory to any coverage maintained by the City. Sound Transit waives all rights of subrogation against the City for claims by third-parties arising under this Agreement, other than for damages, claims or liabilities arising from negligent acts or omissions of the City and its officers, employees and agents. The limits of Sound Transit's selected coverage program in no way diminishes Sound Transit's obligations to the City as set forth in this Agreement. Sound Transit shall maintain this coverage program throughout the term of this Agreement, and for six (6) years after its termination, to protect the City against claims that may arise because of the construction, operation, or maintenance of the Project. When commercial insurance is used, coverage shall include. (i) comprehensive general liability

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insurance; (ii) property damage liability insurance, including coverage for explosion, collapse, and instability; (iii) workers' compensation insurance, to the extent required by law; (iv) employer's liability insurance; and (v) comprehensive auto liability coverage, including owned, hired, and non-owned vehicles.

- 17.2 Insurers. When commercial insurance is used, Sound Transit shall carry such commercial insurance with responsible insurers or self-insure or participate in an insurance pool or pools, at levels of coverage or with reserves adequate, in the reasonable judgment of Sound Transit, to protect Sound Transit and the City against loss, and as are ordinarily carried by municipal or privately-owned entities engaged in the operation of facilities comparable to the Project.
- 17.3 Certificates of Insurance. Sound Transit shall file with the City's Risk Manager a formal letter of self-insured status, or when commercial insurance is used, Certificates of Insurance reflecting evidence of the required insurance and naming the City as an additional insured where appropriate. The coverage maintained by Sound Transit under this Agreement shall not be canceled until at least thirty (30) days' prior written notice has been given to the City.
- 17.4 Remedies. If Sound Transit fails to maintain the appropriate program of commercial insurance, self-insurance or any combination thereof in amounts and types sufficient to satisfy its liabilities, the City may order Sound Transit to stop constructing and/or operating the Project until the appropriate insurance coverage program is obtained.

18.0 LIENS

- 18.1 Liens. The Project Facilities are not subject to a claim of lien. In the event that any City property becomes subject to any claims for mechanics', artisans' or materialmen's liens, or other encumbrances chargeable to or through Sound Transit that Sound Transit does not contest in good faith, Sound Transit shall promptly, and in any event within thirty (30) days, cause such lien claim or encumbrance to be discharged or released of record, by payment, posting of bond, court deposit or other means, without cost to the City, and shall indemnify the City against all costs and expenses, including attorney fees, incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Sound Transit after first giving Sound Transit five (5) business days' notice of its intention to do so. The City shall use its reasonable best efforts to keep Sound Transit's facilities free of all liens that may adversely affect the Project.
- 18.2 Contest of Claims. Nothing herein shall preclude Sound Transit's or the City's contest of a claim for lien or other encumbrance chargeable to or through Sound Transit or the City, or of a contract or action upon which the same arose.

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- 18.3 Claim of Ownership. Nothing in this Agreement shall be deemed to give, and the City hereby expressly waives, any claim of ownership in and to any part or the whole of the Project except as may be otherwise provided herein.

19.0 DISPUTE RESOLUTION

Any disputes or questions of interpretation of this Agreement that may arise between Sound Transit and the City shall be governed under the Dispute Resolution provisions in this Section. The Parties agree that cooperation and communication are essential to resolving issues efficiently. The Parties agree to exercise their best efforts to resolve any disputes that may arise through this dispute resolution process, rather than in the media or through other external means.

- 19.1 Dispute Escalation. The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level. The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise.
- 19.1.1 Level One - Sound Transit's Executive Project Director or equivalent and the City's Manager of Engineering Services or Planning and Development Services Manager as appropriate shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level One, either party may refer the dispute to Level Two.
- 19.1.2 Level Two - Sound Transit's Executive Director of Design, Engineering, and Construction Management and the City's Public Works Director or Chief Strategic Officer/Community Development Director as appropriate shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.
- 19.1.3 Level Three - Sound Transit's Chief Executive Officer or Designee and the City Manager or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner.
- 19.2 If Dispute Resolution Fails. Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level three within fourteen (14) calendar days after referral of that dispute to Level Three, the Parties are free to file suit or agree to alternative dispute resolution methods such as mediation. At all times prior to resolution of the dispute, the Parties shall continue to perform and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

20.0 DEFAULT

No party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) calendar days after written notice of default from any other party. Each notice of default shall specify the nature of the alleged default and the way the default may be cured

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satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time and the diligent prosecution to completion of the cure shall be deemed a cure. Any party not in default under this Agreement shall have all rights and remedies provided by law including without limitation damages, specific performance or writs to compel performance or require action consistent with this Agreement. The prevailing party, or the substantially prevailing party if no one party prevails entirely, shall be entitled to reasonable attorney fees and costs.

21.0 REMEDIES; ENFORCEMENT

21.1 Remedies. The Parties reserve the right to exercise all the following remedies, singly or in combination, in the event the other violates any provision of this Agreement.

- (a) Commencing an action at law for monetary damages;
- (b) Commencing an action for equitable or other relief; and
- (c) Seeking specific performance of any provision that reasonably lends itself to such remedy.

21.2 Remedy Considerations. In determining which remedy or remedies for violation are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the breaching party has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

21.3 Failure to Enforce Prompt Compliance. Neither party shall be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure by the other party to enforce prompt compliance, nor shall such failure to enforce constitute a waiver of rights or acquiescence in the other party's conduct.

22.0 TERM; TERMINATION

22.1 Effective Date. This Agreement shall be effective as of the date the last party signs. Unless sooner terminated pursuant to the terms hereof, this Agreement shall remain in effect for so long as the Project is used for public transportation purposes.

22.2 Termination. Upon termination of this Agreement, Sound Transit agrees to prepare, execute and deliver to the City all documentation necessary to evidence termination of this Agreement or portion thereof so terminated. No such termination, however, shall relieve the Parties hereto of obligations accrued and unsatisfied at such termination.

22.3 Cessation of Project. Upon the cessation of use of the Project, to the extent any portion of it remaining in the Public Right-of-Way or on any other public property is not removed by Sound

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Transit, the City, as expressed by ordinance, may deem it abandoned and it shall become the property of the City. If the City does not desire such ownership, Sound Transit shall remove any remaining portion of the Project.

- 22.4 Removal Plan. Sound Transit shall file a written removal plan with the City not later than sixty (60) calendar days following the date of the receipt of any orders directing removal, or any consent to removal, describing the work that will be performed, the way it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City. The affected property shall be restored to as good or better condition than existed immediately prior to removal.

23.0 COVENANTS AND WARRANTIES

- 23.1 City Warranties. By execution of this Agreement, the City warrants:

- (a) That the City has the full right and authority to enter into and perform this Agreement and any permits that may be granted in accordance with the terms hereof, and that by entering into or performing this Agreement the City is not in violation of its charter or by-laws, or any law, regulation or agreement by which it is bound or to which it is bound or to which it is subject; and
- (b) That the execution, delivery and performance of this Agreement by the City has been duly authorized by all requisite corporate action, that the signatories for the City hereto are authorized to sign this Agreement, and that, upon approval by the City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

- 23.2 Sound Transit Warranties. By execution of this Agreement, Sound Transit warrants:

- (a) That Sound Transit has full right and authority to enter into and perform this Agreement in accordance with the terms hereof, and by entering into or performing under this Agreement, Sound Transit is not in violation of any of its agency governance rules, or any law, regulation or agreement by which it is bound or to which it is subject; and
- (b) That the execution, delivery and performance of this Agreement by Sound Transit has been duly authorized by all requisite Board action, that the signatories for Sound Transit hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.

24.0 RECORDINGS, TAXES AND OTHER CHARGES

- 24.1 Recording. This Agreement shall be recorded pursuant to the requirements of 36.70B.190.

- 24.2 Recording Costs. Sound Transit shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any permits that may

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be granted hereunder. Sound Transit further agrees that if it is determined by any federal, state, or local governmental authority that the sale, acquisition, license, grant, transfer, or disposition of any part or portion of the Project or rights herein described requires the payment of any tax, levy, excise, assessment, or charges, including, without limitation, property or leasehold excise tax, sales or use tax, under any statute, regulation, or rule, Sound Transit shall pay the same, plus any penalty and/or interest thereon, directly to said taxing authority and shall hold the City harmless therefrom. Sound Transit shall pay all taxes, levies, excises, assessments, or charges, including any penalties and/or interest thereon, levied or assessed on the Project, or because of their existence or use, including increases attributable to such existence or use, and excluding taxes based on the income of the City, and shall indemnify the City against payment thereof. Sound Transit shall have the right to claim, and the City shall reasonably cooperate with Sound Transit in the prosecution of any such claim for refund, rebate, reduction or abatement of such tax.

- 24.3 If Sound Transit Fails to Pay Recording Costs. The City may pay any tax, levy, excise, assessment or charge, plus any penalty and/or interest thereon, imposed upon Sound Transit for which Sound Transit is obligated pursuant to this Section if Sound Transit does not pay such tax, levy, excise, assessment, or charge when due. Sound Transit shall reimburse the City for any such payment made pursuant to the previous sentence, plus interest at the prime rate per annum, as published in the Wall Street Journal.

25.0 ASSIGNABILITY; BENEFICIARY

- 25.1 Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors or assignees. No assignment hereof or sublease shall be valid for any purpose without the prior written consent of the other party, and any attempt by one party to assign or license the rights or obligations hereunder without prior written consent will give the other party the right, at its written election, immediately to terminate this Agreement or take any other lesser action with respect thereto. The above requirement for consent shall not apply to (i) any disposition of all or substantially all of the assets of a party, (ii) any governmental entity merger, consolidation, or reorganization, whether voluntary or involuntary, (iii) a sublease or assignment of this Agreement, in whole or in part, to a governmental entity, or (iv) a sale, lease, or other conveyance subject to those requirements set forth in this Agreement; provided, however, that no sublease or assignment under (ii) or (iii) shall be permitted to a governmental entity not operating, constructing or maintaining the Project on behalf of Sound Transit, and provided further that no unconsented assignment shall relieve Sound Transit of its obligations and liabilities under this Agreement.
- 25.2 Assignment. Either party hereto may assign any monetary receivables due them under this Agreement; provided, however, such assignment shall not relieve the assignor of any of its rights or obligations under this Agreement.

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- 25.3 Designees. Sound Transit acknowledges and agrees that the City may designate, in writing, a designee to (i) receive information (including information designated or identified as confidential) and notices under this Agreement, and (ii) provide certain approvals or consents required from the City under this Agreement. In the event of such designation, Sound Transit may rely on approvals or consents by such designee on behalf of the City as fully as if such actions were performed by the designator itself.
- 25.4 Beneficiaries. Neither this Agreement nor any term or provision hereof, or any inclusion by reference, shall be construed as being for the benefit of any party not a signatory hereto.

26.0 DESIGNATED REPRESENTATIVES

- 26.1 Designated Representatives. To promote effective intergovernmental cooperation and efficiencies, the Parties each designate a representative ("Designated Representative") who shall be responsible for coordination of communications between the Parties and shall act as the point of contact for each party. The Designated Representatives shall be responsible for the performance of the objectives of this Agreement. Each Designated Representative is also responsible for coordinating the input and work of its agency, consultants, and staff as it relates to the objectives of this Agreement. The Parties reserve the right to change Designated Representatives, by written notice to the other party during the term of this Agreement. Each party's Designated Representative is named below with the individual's contact information.

Designated Representatives and Contact Information during Construction/Operations.

SOUND TRANSIT	CITY OF DES MOINES
Dan Abernathy	Daniel J. Brewer, PE, PTOE
Executive Project Director	Chief Operations Officer
401 S Jackson St	21630 11 th Ave S
Seattle, WA 98104	Des Moines, WA 98198
206-903-7170	(206) 870-6581
dan.abernathy@soundtransit.org	dbrewer@desmoineswa.gov

27.0 NOTICE

Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the Designated Representative. Any party at any time by written notice to the other party may designate a different address or person to which such notice or communication shall be given. Unless otherwise provided herein, all notices shall be in writing and shall be either: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other party's Designated Representative as listed herein.

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However, notice under Section 20, Termination, must be delivered in person or by certified mail, return receipt requested.

28.0 GENERAL PROVISIONS

- 28.1 Unreasonable Withholding. The Parties shall not unreasonably withhold requests for information, approvals or consents provided for in this Agreement. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement. The City and Sound Transit agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.
- 28.2 Interpretation. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be Pierce County, Washington.
- 28.3 Time is of the Essence. Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to "days" shall mean calendar days. If any time for action occurs on a weekend or legal holiday, then the time shall be extended automatically to the next business day.
- 28.4 Appeal of City Land Use Decision. Upon adoption of the resolution that approves this Agreement, the City Council's decision shall be a final decision subject to appeal under chapter 36.70C RCW.
- 28.5 Rights of Action. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.
- 28.6 Ambiguity. This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law including the requirements of RCW 36. 70A.200.
- 28.7 Cost Responsibility. Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties.
- 28.8 Events Beyond Parties' Control. The Parties shall not be deemed in default with provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond its control; the unforeseeable unavailability of labor or materials; or labor stoppages or slowdowns, or power outages exceeding back-up power supplies. This Agreement shall not be revoked, or a party penalized

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for such noncompliance, provided that such party takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of both parties' employees or property, or the health, safety, and integrity of the public, Public Right-of-Way, public property, or private property.

- 28.9 Agreement Amendments. This Agreement may be amended only by a written instrument executed by each of the Parties hereto. No failure to exercise and no delay in exercising, on the part of any party hereto, any rights, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein.
- 28.10 Agreement Entirety. This Agreement constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes all prior negotiations, oral and written, understandings and agreements with respect hereto.
- 28.11 Section Headings. Section headings are intended as information only and shall not be construed with the substance of the section they caption.
- 28.12 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.
- 28.13 Rights of Federal Agencies. Sound Transit's design and construction of the Project is subject to a financial assistance contract between Sound Transit and the United States Department of Transportation, and the FTA. Both parties recognize that the FTA may request a change to this Agreement to comply with its funding requirements.

29.0 SEVERABILITY

In case any term of this Agreement shall be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.

IN WITNESS WHEREOF, each of the parties has executed this Agreement by its authorized representative.

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**CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY (SOUND TRANSIT)**

By. _____
Peter M. Rogoff, Chief Executive Officer

Date. _____

Authorized by Motion No. _____

APPROVED AS TO FORM.

By. _____
_____, Legal Counsel

THE CITY OF DES MOINES

By. _____
Michael Matthias, City Manager

Date. _____

Authorized by Resolution No. _____
on _____, 2018.

APPROVED AS TO FORM.

By. _____
Tim George, City Attorney

Rev 05 – Final for Execution

EXHIBIT LIST

- Exhibit A. Project Description and General Alignment
- Exhibit B. City of Des Moines – FWLE Essential Public Facility Land Use Approval
- Exhibit C. LOC City Landscape Code Interpretation
- Exhibit D. Code Vesting
- Exhibit E. LOC Right-of-Way Cross-Sections
- Exhibit F. LOC Demolition and Property Management
- Exhibit G. On-Street Parking Inventory – Study Area
- Exhibit H. Mitigation Plan from FWLE ROD
- Exhibit I. Transit Way Agreement
- Exhibit J. Preliminary Permitting Plan
- Exhibit K. Operations and Maintenance Responsibilities
- Exhibit L. TPSS Self-certification Letter
- Exhibit M. Approved Contractor Haul Routes
- Exhibit N. College Way Connection Project Conceptual Design and Scope
- Exhibit O. College Way Connection Project Inter-local Agreement
- Exhibit P. College Way Connection Project SEPA Review
- Exhibit Q. Highline College Signage Project (Locations)
- Exhibit R. South 224th Street End Scope

EXHIBIT A:

PROJECT DESCRIPTION AND GENERAL ALIGNMENT

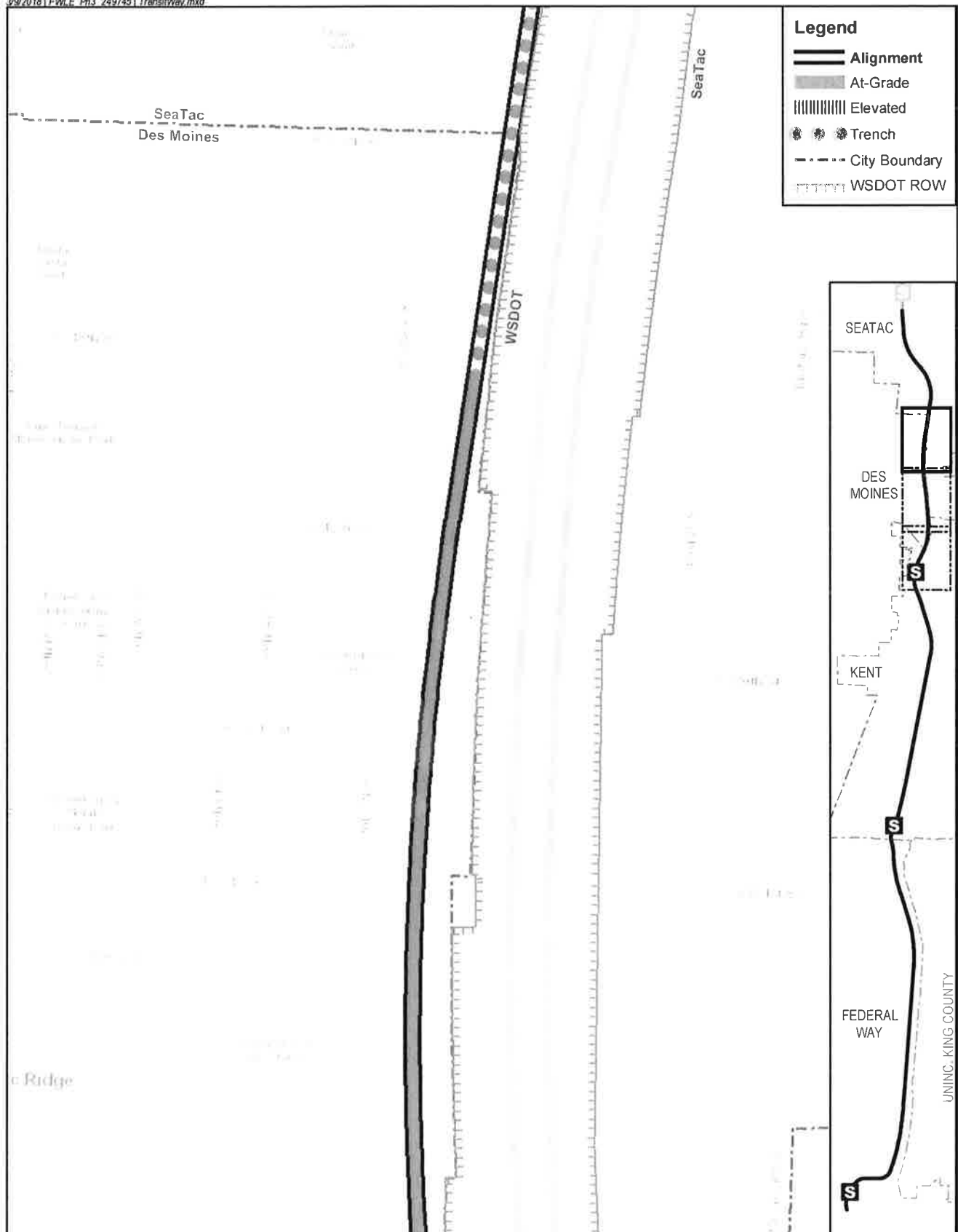
EXHIBIT A:**GENERAL DESCRIPTION OF LIGHT RAIL ALIGNMENT AND STATION LOCATION****General Description of Federal Way Link Extension Alignment in Des Moines**

Route: Approximately 1.1 miles from the northern City limits on the north side of S 216th Street in a combination of retained cut, retained fill, at-grade, and elevated structures to the northern City limits at Kent Des Moines Road.

Light Rail Alignment and Station Locations

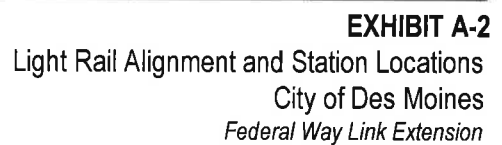
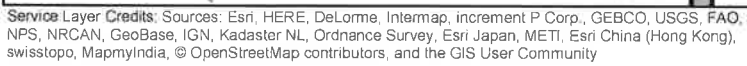
(REVIEWERS: Please reference associated PDF entitled: AE 0044-12 Transit Way Template Exhibit B: Light Rail Alignment and Station Locations)

3/9/2018 | FWLE_Ph3_249745 | TransitWay.mxd

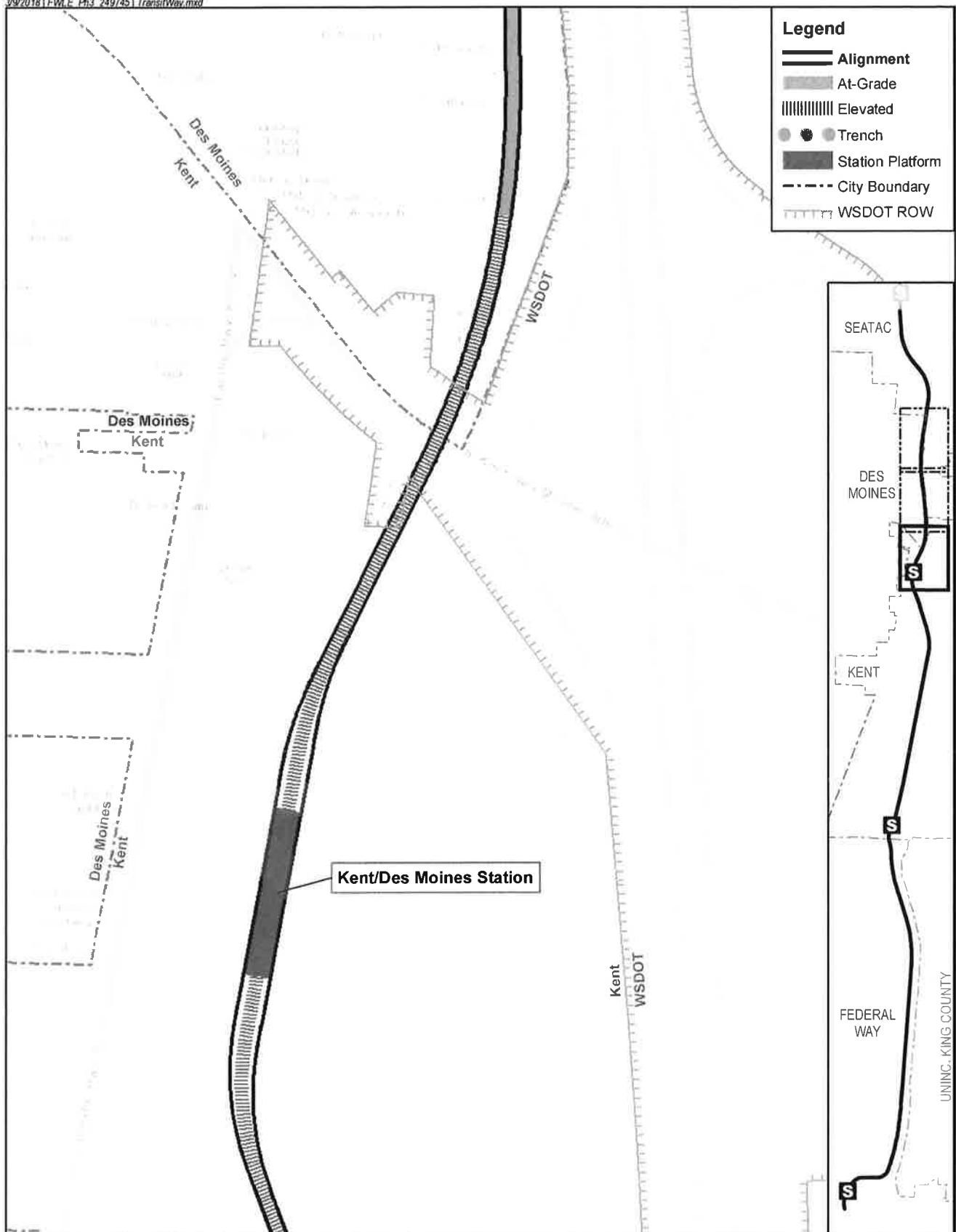


0 75 150 300 450 Feet

EXHIBIT A-1
Light Rail Alignment and Station Locations
City of Des Moines
Federal Way Link Extension



3/9/2018 1:FWA_E_Ph3 2497451 TransitWay.mxd



Service Layer Credits: Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

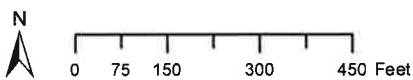


EXHIBIT A-3
Light Rail Alignment and Station Locations
City of Des Moines
Federal Way Link Extension

EXHIBIT B:

**CITY OF DES MOINES
FEDERAL WAY LINK EXTENSION
ESSENTIAL PUBLIC FACILITY
LAND USE APPROVAL**



April 24, 2018

Dan Brewer, PE
Chief Operations Officer
City of Des Moines
21650 11th Avenue South
Des Moines, WA 98198

Subject: Alternative Process – Development Agreement for Federal Way Link Extension Project

Dear Mr. Brewer:

Sound Transit requests Essential Public Facility (EPF) land use approval for the Federal Way Link Extension (FWLE) Project using the alternative development agreement process, in accordance with DMMC 18.255.100, in lieu of an unclassified use permit required under DMMC 18.255.050.

Sound Transit would also like to acknowledge, and to thank the City for its partnership efforts to date in advancing planning and design for the FWLE Project. These efforts have included on-going staff coordination, providing informal input and comment on various Project aspects, and reaching formal milestones, such as execution of a Project Term Sheet (setting forth general support for the Project) and a City Services Agreement. In both the City Term Sheet and the City Services Agreement, the City has recognized Sound Transit's completion of substantive and procedural environmental review in accordance with SEPA requirements, with publication of the FWLE Project's Final EIS in November 2016. The FEIS can be accessed at

<https://www.soundtransit.org/Projects-and-Plans/Federal-Way-Link-Extension/Federal-Way-document-archive/federal-way-link>.

As part of completing SEPA, and to prepare for issuance of a FWLE Design-Build construction contract, Sound Transit has satisfied all criteria required in DMMC 18.255.100. Satisfaction of all criteria by sub-section is detailed below.

- (1) **CITY REQUIREMENT:** The public has been notified and given an opportunity to comment in a process as rigorous as that required by chapter 18.20 and this chapter.

ST RESPONSE: Sound Transit has been engaging the public and agencies since the start of early scoping in 2012, with a 30-day early scoping period, including two public meetings, one agency meeting, and an online survey. The Draft EIS process kicked off with formal public environmental scoping in June and

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Kent Keel
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Dave Upthegrove
King County Councilmember

Peter von Reichbauer
King County Councilmember

Victoria Woodards
Tacoma Mayor

CHIEF EXECUTIVE OFFICER

Peter M. Rogoff

July 2013, which included meetings with the public and agencies, a comment period, and public notices and advertisements. The release of the Draft EIS in April 2015 included a formal review and comment period with two public meetings and hearings, one of which was held at Highline College on May 7, 2015. The Final EIS Notice of Availability was posted in the Federal Register and the SEPA Register on November 18, 2016, along with notices in local newspapers and on the Sound Transit website. There was a 30-day comment period held on the Final EIS from November 18, 2016 to December 19, 2016.

- (2) **CITY REQUIREMENT:** Proof of a published notice(s) regarding the proposed EPF in the City's official newspaper or equivalent media describing the proposal and soliciting comments, together with any written comments received on the proposed EPF.
ST RESPONSE: Notification of the Project was made pursuant to SEPA, including solicitation for public comment on the Draft EIS, the Final EIS, and notification of the appeals process. Responses to comments received on the Draft EIS were include in Appendix I of the Final EIS. Responses to comments received on the Final EIS were included in the Project's Record of Decision. Please see response to criterion (a) for more details on public notification and comment periods.
- (3) **CITY REQUIREMENT:** Proof that the applicant has had at least one neighborhood meeting consistent with the requirements of DMMC 18.255.060 to discuss the proposed EPF.
ST RESPONSE: Sound Transit has held numerous neighborhood meetings in the City of Des Moines throughout the Project's history. Most recently, in 2017, five meetings were hosted with residents in the Pacific Ridge neighborhood. ST also participated in four community events held in the summer of 2017, as well as inviting Des Moines residents to a station area "look and feel" community workshop at Highline College in September 2017.
- (4) **CITY REQUIREMENT:** An analysis of the facility siting criteria, including size, physical characteristics, support facilities, access, future expansion needs and analysis of alternative sites and a description of any applicable state or regional siting process.
ST RESPONSE: Discussion of the criteria used in selecting the Preferred Alternative for the FWLE Project, alternatives evaluated, and siting process are documented in the Project's Final EIS – Section ES.5, published in November 2016.
- (5) **CITY REQUIREMENT:** A description of general environmental, traffic and social impacts and proposed mitigation measures.
ST RESPONSE: A description of general environmental (Chapter 4.6-4.13), traffic (Chapter 3), and social (Chapter 4.4) impacts and proposed mitigation measures was included in the Project's Final EIS, published in November 2016.
- (6) **CITY REQUIREMENT:** The site's relationship to the projected service area and distribution of similar facilities within that service area.
ST RESPONSE: The Project's Final EIS includes a description of the Project's purpose and need (Chapter 1) in the context of the projected service area and distribution of similar facilities and how the FWLE Project is expected to meet service area needs.

Dan Brewer
 April 24, 2018
 Page 3

- (7) **CITY REQUIREMENT:** An analysis of the proposal's consistency with the City's comprehensive plan and applicable development regulations, and an identification of any inconsistencies.

ST RESPONSE: Through ST's work during the environmental review process and close coordination with City staff to both prepare the Project Requirements for the Design-Build Request for Proposals and draft the Development Agreement, ST has confirmed that the FWLE Project is generally consistent with the City's comprehensive plan and development regulations, as well as being referenced as a project anticipated for implementation in the City's Comprehensive Transportation Plan.

- (8) **CITY REQUIREMENT:** A proposed site plan and vicinity map with current zoning designations.

ST RESPONSE: Plans for the FWLE Project have been shared with the City at various stages of development and will also be exhibits in both the Transit Way Agreement and the Development Agreement. The Development Agreement will commit to an ongoing process of City review and approval as the plans evolve during Final Design. The Final EIS included conceptual plans for the Project and found that it was generally consistent with current City zoning (Chapter 4.2). These figures (Figure 4.2-1 and 4.2-2 from the Final EIS) are attached to this letter.

Sound Transit understands that this land use approval shall not be deemed to exempt the FWLE from any other applicable city, state and/or federal regulations, and the Development Agreement shall contain such reasonable conditions as necessary to ensure the EPF satisfies, to the extent practicable, the permit criteria and does not unreasonably impact the public health, safety, environment and welfare as enumerated in DMMC 18.255.080 through 18.255.110.

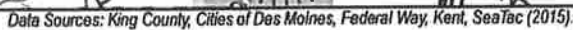
Sound Transit looks forward to continuing our productive partnership with the City of Des Moines, including execution of the FWLE Project's Development Agreement later this year. Please let me know if any additional information would be helpful in the City's consideration of this request to grant the Federal Way Link Extension land use approval with a Development Agreement.

Sincerely,



Dan Abernathy
 Executive Project Director
 Federal Way Link Extension
 Sound Transit

Dan Brewer
April 24, 2018
Page 4



Generalized Zoning (North)

224





City of Des Moines

ADMINISTRATION
21630 11TH AVENUE SOUTH, SUITE A
DES MOINES, WASHINGTON 98198-6398
(206) 878-4595 T.D.D.; (206) 824-6024 FAX:(206) 870-6540



June 28, 2018

Dan Abernathy
Executive Project Director, Federal Way Link Extension
Central Puget Sound Regional Transit Authority
401 S. Jackson Street
Seattle, WA 98104

RE: LUA2018-0010

Dear Mr. Abernathy,

Thank you for your April 24, 2018 letter requesting that the Federal Way Link Extension (FWLE) land use approval be processed through a development agreement, using the alternative process set forth in DMMC 18.255.100.

The City and Sound Transit have been working together in the planning and coordination of City requirements for the FWLE. Pursuant to your letter and the on-going coordination between our agencies, the City recognizes that a process as rigorous as an unclassified use permit has been undertaken by Sound Transit, through the draft and final EIS and additional on-going public processes.

This letter constitutes a determination that the FWLE is an essential public facility, and, agreement to process the land use approval through a development agreement, subject to a public hearing and approval by the Des Moines City Council.

The agreement to utilize a development agreement does not exempt the project from any other applicable city, state and/or federal regulations.

The development agreement will contain such reasonable conditions as necessary to ensure the proposed essential public facility satisfies, to the extent practicable, the permit criteria and does not unreasonably impact the public health, safety, environment and welfare as enumerated in DMMC 18.255.080 through 18.255.110.

The City Council will hold a public hearing prior to approval of the development agreement. At the hearing, any interested person may provide oral or written comment on matters relevant to the agreement. The City Council's decision shall be a final decision subject to appeal under chapter 36.70C RCW.

Notice of this determination will be published in the Seattle Times, the City's official newspaper of record.



Michael Matthias

City Manager

Appeal of this determination:

"The City Manager's or the City Manager's designee's determination shall be appealable to the City Council by the applicant or by any affected person. Appeals shall be filed pursuant to chapter 18.20 DMMC. The City Council shall hold a public hearing on the appeal within 30 days of the filing of the appeal. At the hearing, any interested person may provide oral or written comment on matters relevant to the appeal. The City Council shall issue a decision on the appeal within 14 days of the close of the hearing. The City Council's decision shall be a final decision subject to appeal under chapter 36.70C RCW."

EXHIBIT C:

LETTER OF CONCURRENCE

CITY LANDSCAPE CODE INTERPRETATION

City of Des Moines



PLANNING, BUILDING AND PUBLIC WORKS
www.desmoineswa.gov
 21630 11TH AVENUE SOUTH, SUITE D
 DES MOINES, WASHINGTON 98198-6398
 (206) 870-7576 FAX (206) 870-6544



April 26, 2018

Dan Abernathy
 Executive Project Director, Federal Way Link Extension
 401 S. Jackson St
 Seattle, WA 98104

Subject: FWLE Letter of Concurrence – DMMC Code Interpretation Landscape and Irrigation

Dear Mr. Abernathy,

The purpose of this letter is to document Sound Transit's (ST) concurrence with the City of Des Moines (City) interpretation of Des Moines Municipal Code (DMMC) 18.195 regarding landscaping and irrigation proposed for the FWLE in Des Moines. Please find attached, the formal Zoning Code interpretation.

This interpretation responds to the City's understanding of Sound Transit's proposed design approach for the landscape buffer and associated irrigation for the FWLE and how the City will implement the recently enacted Landscape Code ordinance.

This Letter of Concurrence is intended to demonstrate the joint understanding and cooperation between ST and the City regarding landscape design during construction of the FWLE corridor in Des Moines.

Sincerely,

Daniel J. Brewer, P.E., P.T.O.E.
 Chief Operations Officer
 City of Des Moines

Concurrence:
 Sound Transit

By: _____
 Dan Abernathy, Executive Project Director, FWLE

Enclosure: Zoning Code Interpretation Related to the Application of the Des Moines Municipal Code Landscaping Provisions to Sound Transit Federal Way Link Extension

Cc: Susan Cezar, City of Des Moines – Chief Strategic Officer
 Doc Control

Memo



Date: April 10, 2018
To: Interested Parties
Cc: Michael Matthias, City Manager
 Tim George, City Attorney
 Dan Brewer, Chief Operations Officer
From: Susan Cezar, Chief Strategic Officer *SC*
RE: Zoning code interpretation related to the application of the Des Moines Municipal Code landscaping provisions to the Sound Transit Federal Way Link Extension

Introduction

This Zoning Code Interpretation relates to the application of the landscaping provisions of DMMC 18.195.080, 18.195.210, DMMC 18.195.425, and the City of Des Moines Street Development Standards, Appendix H: Street Tree Standards: Design of Street Tree Planting Areas, to the Sound Transit Federal Way Link Extension (FWLE). The listed DMMC provisions are interpreted as follows for the Sound Transit Federal Way Link Extension:

Questions

1. Will the City allow FWLE to install irrigation which is not permanent for parts of the project that will become City right-of-way (ROW) and those parts that will be Sound Transit-owned properties?
2. Will the City accept responsibility for long-term maintenance of landscaping in City ROW after the warranty and establishment period has ended?
3. How will the City apply the provisions of 18.195.425 DMMC to the FWLE?

Applicable Code Sections

DMMC 18.195.080 Irrigation

All landscape areas shall be irrigated by a *permanent*, underground sprinkler or drip watering system complete with automatic controls.

DMMC 18.195.210 Maintenance.

The property owner shall be responsible for the maintenance of all landscaping required pursuant to this section, including any landscaping within a right-of-way, abutting the subject property. Such landscaping shall be maintained in good condition to present a neat and orderly appearance; shall be kept free from refuse and debris; living landscape material shall be kept alive and in a healthy condition; and in such a manner as to accomplish the purpose for which it was initially required.

DMMC 18.195.425 Landscaping for Essential Public Transportation Facilities.

(1) A request to modify landscaping and/or irrigation requirements for essential public transportation facilities shall be detailed in landscape design plans submitted by the essential public transportation facility designer or design-builder. The landscape design shall clearly and in detail state what adjustments of requirements are being requested and the reasons such adjustments are warranted, and shall be accompanied with such supplementary data, such as sketches, surveys, statistical information and if appropriate how the landscape design conforms to design requirements and/or development agreements affecting the project, as deemed necessary to substantiate the adjustment.

(2) A required landscape buffer may be reduced by more than 50 percent for construction of essential public transportation facilities in conjunction with governmental acquisition of property for right-of-way expansion with approved landscape design plans incorporating existing or proposed vegetation, or alternative mitigation measures such as buffer or

open space averaging, off-site mitigation and fees paid in lieu pursuant to Chapter 16.25 DMMC or other alternative mitigation approaches which result in an "equal or better" buffer result for the project or benefit to the City.

(3) The requested modifications shall be processed as part of the applicable City permit or approval process in accordance with conditions associated with the approved modifications to required landscaping, landscape buffers and irrigation and as set forth in a City Council-approved development agreement pursuant to RCW 36.70B.

DMMC 16.25.085 Off-site mitigation and fees paid in lieu.

Where an applicant cannot provide for the minimum required replacement trees on site, off-site mitigation for private developments or a fee-in-lieu payment into the City's urban forestry fund for public developments may be approved by the Community Development Director.

(1) Where off-site mitigation is utilized, the remaining required replacement trees must be planted at an off-site location approved by the Director. Where the site is City-owned property, the public works and/or parks department must also approve the tree planting. Acceptable off-site locations, in order of priority, are as follows:

- (a) Publicly owned land in the City of Des Moines including but not limited to: environmentally sensitive areas; regional surface water facilities; or wildlife corridors. Similar lands owned by nonprofit entities that are reserved in open space also qualify.
- (b) Publicly owned parks or recreational facilities within the City of Des Moines.
- (c) Other mitigation or restoration sites managed by other public entities or private conservation groups.
- (d) Public school sites within the City of Des Moines.
- (e) Other sites proposed by the applicant, when it is documented that higher priority sites are not available or viable.

(2) Where use of a tree replacement fee is approved by the Director, the fee shall be paid into the City's urban forestry fund established in DMMC 3.51.150. The fee shall be established based on the number of replacement trees being satisfied as follows: The fee for each replacement tree shall cover the cost of a tree of the required size and type, installation (labor and equipment), maintenance for two years, and fund administration.

Analysis

DMMC 18.195.080 Irrigation

As part of the FWLE Project, Sound Transit has proposed to install irrigation systems in City public rights-of-way consistent with the above-referenced code. These irrigation systems will match and connect to existing irrigation systems where possible. After the warranty and establishment period, Sound Transit proposes to turn over this City right-of-way system for City long-term ownership and maintenance.

Sound Transit has requested that the City grant an exception to the requirement for installation of permanent irrigation systems for landscaping on Sound Transit-owned properties and rights-of-way. Sound Transit shall require their D/B Contractor to ensure all plantings receive irrigated water throughout the warranty and establishment period. This may include temporary irrigation system designed to accommodate a 3-5-year service life per Sound Transit Design Criteria Manual (Chapter 10.5.1) or any other efficient, cost-effective and water conservation method per specific site conditions as approved by Sound Transit and City during final design.

For landscaping installed by Sound Transit's D-B Contractor as part of restoration of private properties following temporary occupancy, Sound Transit shall require their D/B Contractor to ensure all plantings receive irrigated water throughout the warranty and establishment period or per Sound Transit agreement with private property owner. This may include temporary irrigation designed to accommodate a 3-5-year service life per Sound Transit Design Criteria Manual (Chapter 10.5.1) or any other efficient, cost-effective and water conservation method per specific site conditions as approved by Sound Transit during final design. The irrigation system will match and connect to existing private property irrigation system where applicable. After the warranty and establishment period, the irrigation system will be turned over to private properties for long-term ownership and maintenance.

DMMC 18.195.210 Maintenance.

For the FWLE Project, Sound Transit has proposed that the City accept responsibility for long-term maintenance of landscaping installed as part of the FWLE project within City of Des Moines right-of-way after the warranty and establishment period has ended.

DMMC 18.195.425 Landscaping for Essential Public Transportation Facilities.

It is the intent of Sound Transit to comply with requirements of the above-referenced code, which was developed in cooperation with the City and Sound Transit, reflecting the unique opportunities and constraints for the Parties inherent in the Project. The referenced code provides various options for appropriate landscaping, based on detailed design developed in future Project phases.

DMMC 16.25.085 Off-site mitigation and fees paid in lieu.

To the extent that that the City-required landscape buffer cannot be accommodated on Sound Transit-acquired right-of-way along the guideway alignment, it is the intent of Sound Transit to use the provisions of this section to use either off-site mitigation and/or fees paid in lieu to meet the City's requirements.

Interpretation

Within the authority of DMMC 18.195.425 Landscaping for Essential Public Transportation Facilities, the City will agree to the following subject to approval and provisions of the Development Agreement to be approved by the Parties in 2018:

1. The City will accept Sound Transit's D-B-installed irrigation system and accept responsibility for long-term maintenance of landscaping installed in City ROW after the plant warranty and establishment period.
2. The City will modify the requirement for permanent irrigation in Sound Transit-owned properties per specific site conditions as approved by Sound Transit and City during final design.
3. The City will allow Sound Transit's DB-Contractor to implement one or more of the following options to meet the 25-foot landscape buffer area requirement along the entire guideway in Des Moines (except for the R-SE zoned property belonging to Puget Sound Energy):
 - a. A strategy of "buffer averaging," specified in DMMC 18.195.425 will be an acceptable landscaping modification to DMMC 18.195.140, provided that a minimum of 50% of the required area for landscape buffer is provided in properties owned by Sound Transit per DMMC 18.195.140.
 - b. Sound Transit may receive buffer averaging credit for the installation of Type II landscaping on private property if agreed to by the private property owner and placed in a covenant.
 - c. The City will consider approving a reduced landscape buffer depth per DMMC 18.195.140 for multi-family properties provided a noise wall that meets mitigation requirements laid out in the FWLE FEIS is installed, thereby buffering residential units above the ground level and an equivalent amount of landscape buffer is provided elsewhere in the City.
 - d. To the extent that the required area of landscape buffer or replacement trees cannot be accommodated adjacent to the guideway, Sound Transit may propose to satisfy these requirements through off-site or fees paid in-lieu in accordance with the provisions of DMMC 16.25.085 and the associated worksheet.
 - e. For properties which Sound Transit will have only temporary construction easements, respective property owners will be offered the opportunity to have additional landscaping provided by Sound Transit's D-B Contractor, should they grant permission and per Sound Transit's negotiated temporary easement. Such landscaping may be credited against the overall required buffer area if it meets the City's Type II landscape criteria and is permanently protected through a covenant or other means acceptable to the City.
 - f. For both Sound Transit owned property and properties for which Sound Transit will have only temporary rights-of-occupancy, landscaping design will be provided in compliance with the following:
 - i. Requirements for Type II landscaping per DMMC 18.195.390;
 - ii. Sound Transit's Vegetation Clear Zone requirements as diagrammed in Project Requirements Vol. 2, Appendix 2.4;
 - iii. Neighborhood preferences determined in outreach briefings summarized in Project Requirements Vol.2, Appendix 2.3.

Appeal

This code interpretation is considered a Type I land use decision (DMMC 18.20.150) and may be appealed provided a proper and complete appeal that meets all requirements of DMMC 18.20.160 is filed with the City Clerk at 21630 11th Avenue South, Suite A, Des Moines, WA 98198, within 10 days of the receipt of this letter. The DMMC may be found through a link on the City's website home page at www.desmoineswa.gov and the current fee schedule can be found at: <http://www.desmoineswa.gov/184/Permit-Applications-Worksheets>.

EXHIBIT D:
CODE VESTING

DRAFT City of Des Moines Code References

This table identifies codes which shall be vested by the City of Des Moines. The version of the code vested shall be the version that is adopted and in effect at the date of the execution of the Development Agreement, unless otherwise noted in this table. Vesting will apply to the FWLE light rail project and related transit amenities included in the Design-Build contract, and will not apply to alterations to commercial and residential type buildings impacted by the construction.

City of Des Moines – Codes and Standards
International Code Council (ICC) with published or adopted state and local amendments:
International Building Code (IBC) 2015
International Mechanical Code (IMC) 2015
International Fire Code (IFC) 2015
International Fuel Gas Code (IFG) 2015
International Energy Conservation Code (IECC) 2015
American National Standards Institute (ICC/ANSI) A117.1-2009 Department of Justice ADA Standards for Accessible Design
International Association of Plumbing and Mechanical Officials (IAPMO)
Uniform Plumbing Code, 2015
National Fire Protection Association (NFPA) standards with published or adopted state and local amendments:
NFPA 10 Standard for Portable Fire Extinguishers 2018
NFPA 13 Standard for the Installation of Sprinkler Systems 2016
NFPA 14 Standard for the Installation of Standpipes Private Hydrant and Hose Systems 2016
NFPA 20 Standard for the Installation of Stationary Pumps for Fire Protection 2019
NFPA 25 Standard for Water Based Fire Protection Systems 2017
NFPA 54 National Fuel Gas Code 2018
NFPA 70 National Electrical Code (NEC) 2017
NFPA 70E Electrical Safety in the Workplace 2018
NFPA 72 National Fire Alarm Code 2016
NFPA 101 Life Safety Code 2018
NFPA 110 Standard for Emergency and Standby Power Systems 2016
NFPA 130 Fixed Guideway Transit Systems 2017
NFPA 2001 Standard for Clean Agent Fire Protection Systems 2018
City of Des Moines Municipal Code
Title 7 – Health and Sanitation

DRAFT City of Des Moines Code References

Title 10 – Traffic Code
Title 11 -- Utilities
Title 12 – Streets, Sidewalks and Public Spaces
Title 13 – Water and Sewers
Title 14 – Buildings and Construction
Title 16 -- Environment
Title 18 -- Zoning
Title 20 -- Telecommunications
Other City of Des Moines Standards
City of Des Moines Street Development Standards
City of Des Moines ROW Construction Standards and Requirements

EXHIBIT E:

LETTER OF CONCURRENCE
RIGHT-OF-WAY CROSS-SECTIONS



April 4, 2017

Dan Brewer
Chief Operations Officer
City of Des Moines
21650 11th Ave South
Des Moines, WA 98198

Subject: Federal Way Link Extension Letter of Concurrence 003, City of Des Moines Right-of-Way Cross-Sections

Dear Mr. Brewer,

Sound Transit recently concluded the environmental process for the Federal Way Link Extension Project, with the Federal Transit Authority publication of the environmental Record of Decision on March 9, 2017, and will soon begin the process to acquire property interests needed for the project. To meet the Sound Transit Board's goal of starting revenue operations in 2024, it is critical that pre-acquisition activities be undertaken in advance. A key pre-acquisition activity is confirming that the roadway cross-sections to be improved by Sound Transit are consistent with current City street standards.

The following exhibits and drawings depict cross sections for S 220th, S 221st, and S 224th St cul-de-sacs and S 236th Ln, consistent with the Pre-Final Preliminary Engineering Submittal, dated July 29, 2016, which was provided to the City and updated to address City comments.

- Drawings L05-CRP108, CRP110 and Exhibit D-1 depict S 220th St, S 221st and S 224th St cul-de-sacs
- Drawing L05-CRP156, CRP158 and Exhibit D-2 depicts S 236th Ln at SR 99 and adjacent to Highline College parking lot

Sound Transit requests the City's confirmation that the Right-Of-Way Cross-Sections shown in the exhibits to this letter, and described in the exhibits, are consistent with current City street standards. Please indicate your concurrence by signing below on both copies and returning one copy of this letter to us by April 7, 2017, so that ROW certification and property acquisition for the project can continue on schedule. If you have any questions, please contact Dan Abernathy at (206) 398-5000 or dan.abernathy@soundtransit.org.

Sincerely,

Dan Abernathy
Federal Way Link Extension Executive Director
DECM

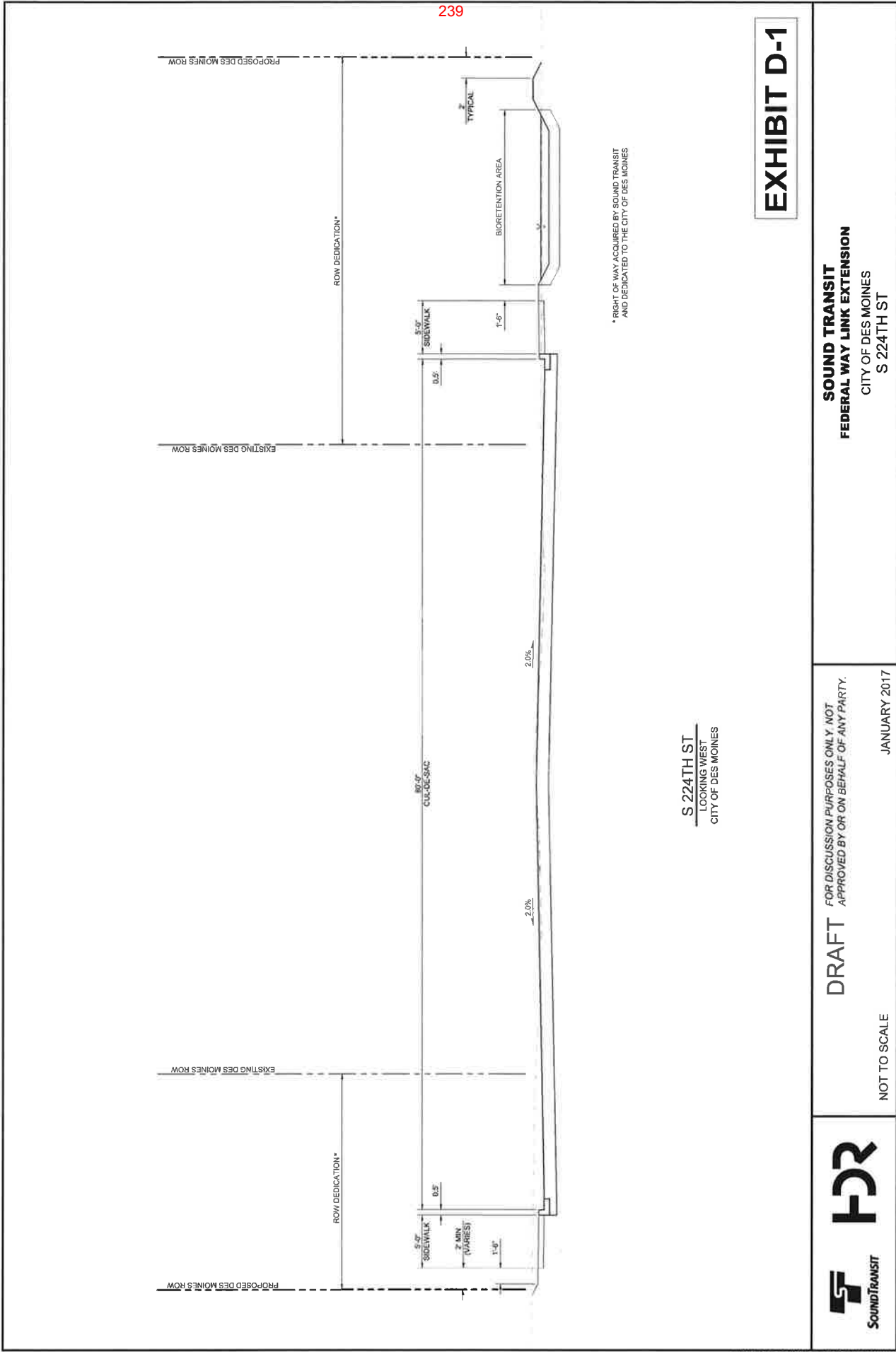
Concurrence:

City of Des Moines

By:  / 4-6-2017
Dan Brewer, P.E.
Chief Operations Officer
City of Des Moines
Date

Enclosure: Drawings and Exhibits

Cc: Brandon Carver, Public Works Director
Doc Control



DRAFT FOR DISCUSSION PURPOSES ONLY. NOT APPROVED BY OR ON BEHALF OF ANY PARTY.

NOT TO SCALE

JANUARY 2017

SOUND TRANSIT
FEDERAL WAY LINK EXTENSION
CITY OF DES MOINES
S 224TH ST

EXHIBIT D-1



NOT TO SCALE

DRAFT FOR DISCUSSION PURPOSES ONLY. NOT
APPROVED BY OR ON BEHALF OF ANY PARTY.

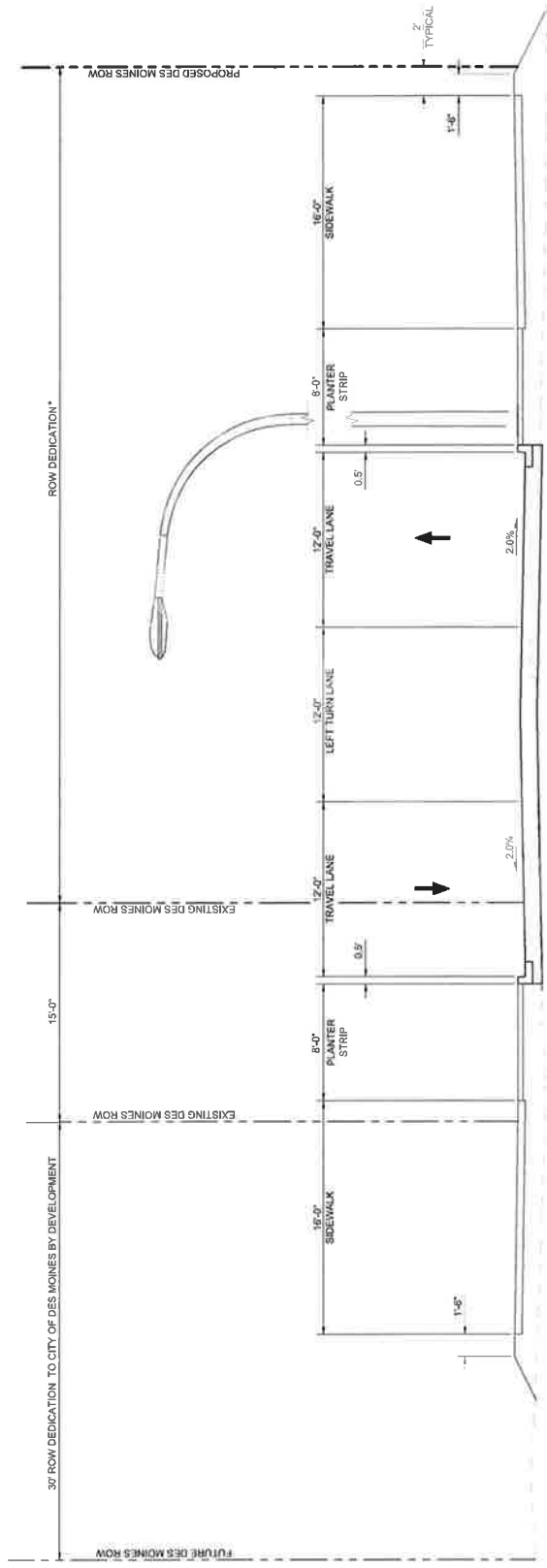
JANUARY 2017

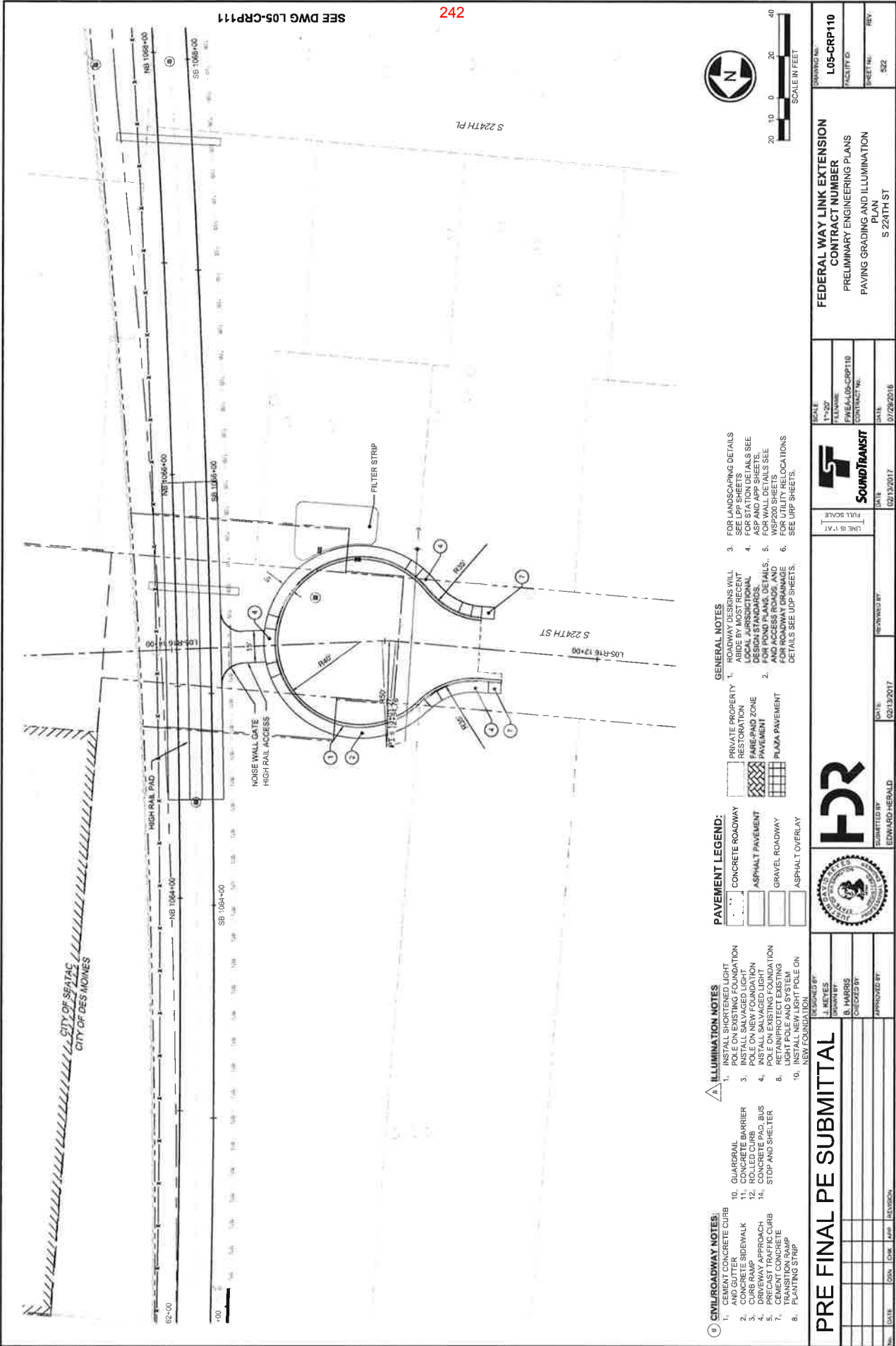
SOUND TRANSIT
FEDERAL WAY LINK EXTENSION
CITY OF DES MOINES
S 236TH ST

EXHIBIT D-2

S 236TH ST (WEST OF SR99)
LOOKING EAST
CITY OF DES MOINES

* RIGHT OF WAY ACQUIRED BY SOUND TRANSIT
AND DEDICATED TO THE CITY OF DES MOINES





SEE DWG L05-CRP111 242



SCALE IN FEET
0 10 20 40

- GENERAL NOTES**
1. ROADWAY DESIGNS WILL ABIDE BY MOST RECENT LOCAL JURISDICTIONAL REQUIREMENTS.
 2. FOR FUND PLANS, DETAILS, AND ACCESS ROADS, AND FOR ROADWAY DRAINAGE DETAILS SEE UP SHEETS.
 3. FOR LANDSCAPING DETAILS SEE UP SHEETS.
 4. FOR STATION DETAILS SEE UP SHEETS.
 5. FOR WALL DETAILS SEE WSP200 SHEETS.
 6. FOR UTILITY RELOCATIONS SEE UP SHEETS.

- PAVEMENT LEGEND:**
- CONCRETE ROADWAY
 - ASPHALT PAVEMENT
 - GRAVEL ROADWAY
 - ASPHALT OVERLAY

- ILLUMINATION NOTES**
1. INSTALL SHORTENED LIGHT POLE ON EXISTING FOUNDATION
 2. INSTALL SALVAGED LIGHT POLE ON EXISTING FOUNDATION
 3. INSTALL SALVAGED LIGHT POLE ON EXISTING FOUNDATION
 4. INSTALL SALVAGED LIGHT POLE ON EXISTING FOUNDATION
 5. LIGHT POLE AND SYSTEM ON NEW FOUNDATION
 6. LIGHT POLE AND SYSTEM ON NEW FOUNDATION
 7. LIGHT POLE AND SYSTEM ON NEW FOUNDATION
 8. LIGHT POLE AND SYSTEM ON NEW FOUNDATION
 9. LIGHT POLE AND SYSTEM ON NEW FOUNDATION
 10. LIGHT POLE AND SYSTEM ON NEW FOUNDATION

- CIVIL/ROADWAY NOTES**
1. CEMENT CONCRETE CURB
 2. CEMENT CONCRETE CURB
 3. CEMENT CONCRETE CURB
 4. CEMENT CONCRETE CURB
 5. CEMENT CONCRETE CURB
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 19. CEMENT CONCRETE CURB
 20. CEMENT CONCRETE CURB

FEDERAL WAY LINK EXTENSION CONTRACT NUMBER PRELIMINARY ENGINEERING PLANS PAVING GRADING AND ILLUMINATION PLAN S 224TH ST		DRAWING NO. L05-CRP110 FACILITY ID SHEET NO. 522
SCALE 1"=20' FULL SCALE DATE 02/13/2017	SOUNDtransit DATE 02/13/2017	DATE 02/13/2017
PRE FINAL PE SUBMITTAL		
DESIGNED BY CHECKED BY APPROVED BY	DATE DATE DATE	REVIEWED BY DATE

EXHIBIT F:

LETTER OF CONCURRENCE

DEMOLITION AND PROPERTY MANAGEMENT



November 29, 2017

Dan Brewer, P.E.
City of Des Moines - Chief Operations Officer
21650 11th Avenue S.
Des Moines, WA 98198

Subject: FWLE Letter of Concurrence – Demolition/Property Management Plan Acceptance

Dear Mr. Brewer:

The purpose of this letter is to document the agreement made between Sound Transit and the City of Des Moines relating to the proactive property management/ demolition of parcels acquired by Sound Transit for the construction and operation of the Federal Way Link Extension (FWLE) corridor. Please find attached, the Demolition Program and the Demolition Permit Information proposed by Sound Transit and approved by City staff.

The procedures for property management will vary for single-family residential homes, multi-family complexes, and commercial properties depending on occupancy, site conditions, building material, size, permit requirements, and the extent of relocation activities required. For example, apartment complexes and commercial buildings require more extensive relocation activities and engineering detail to prepare demolition plans and specifications when compared to the relocation and demolition of a single-family home. Each property will be dealt with on a case-by-case basis through on-going coordination between Sound Transit and the City of Des Moines.

Sound Transit and the City of Des Moines will work closely to identify problem properties and minimize their vacancy time through an accelerated contractor award process and a coordinated permit approval process. ST will provide the City with a periodic status report of ROW activities, including residential units that have been vacated. Prior to demolition of these properties, Sound Transit personnel will secure the property and perform routine surveillance. After the demolition of structures, Sound Transit Property Management will restore the property with lawn and maintain the site on a regular basis. This Letter of Concurrence is intended to demonstrate the joint understanding and cooperation between Sound Transit and the City of Des Moines regarding structure demolition and property management during pre-construction and construction of the FWLE corridor.

Sincerely,

Dan Abernathy
Executive Project Director
Sound Transit - Federal Way Link Extension

Central Puget Sound Regional Transit Authority • Union Station
401 S. Jackson St., Seattle, WA 98104-2826 • Reception: (206) 398-5000 • FAX: (206) 398-5499
www.soundtransit.org

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CHIEF EXECUTIVE OFFICER

Peter M. Rogoff

Dan Brewer, P.E.
November 29, 2017
Page 2

Concurrence:
City of Des Moines

By:  / 12-14-2017
Date
Dan Brewer, P.E.
City of Des Moines - Chief Operations Officer

Enclosure: FWLE Demolition Program
FWLE Demolition Permit Information

cc: Brandon Carver, City of Des Moines - Public Works Director
Doc Control

Sound Transit FWLE – Demolition Program

The Sound Transit (ST) Federal Way Link Extension (FWLE) will extend the light rail alignment from Angle Lake Station to the vicinity of the existing Federal Way Transit Center. The light rail extension is about 7.8 miles, consisting of a combination of elevated and at-grade guideway. The FWLE will also construct three new elevated stations and associated parking lots. These three stations will be constructed at Kent Des Moines Road, S. 272nd Street and S. 317 Street (immediately south of the existing Federal Way Transit Center). The temporary terminus, including the proposed tail-tracks, will be at the eastern edge of The Commons at Federal Way.

The FWLE will be completed using a design-build (DB) delivery method. The Request for Proposal will be issued in the summer of 2018, and Notice-to-Proceed (NTP) will be awarded to the winning DB Contractor in the summer of 2019. The first phase of construction will be building demolition along the light rail alignment.

The purpose of this memo is to describe the ST demolition program and contract strategy to minimize the number of vacant properties that ST acquires, waiting to be demolished.

Property Impact & Acquisition

At the completion of preliminary design, ST identified property impacts¹ along the proposed 7.8 miles alignment. The following tables summarize the impacts:

	Numbers	Bldg. Impact	Commercial	Single-Family Residence (SFR)	Multi-Family
Parcel Impacted	261	75	34	20	21
Full Take	91	59	27	16	16
Partial Take	170	16	7	4	5

Priority 1 – Bldg. impact		SeaTac	Des Moines	Kent	Federal Way	Total
Res	SFR	2	7	5	0	14
	Multi	1	10	1	1	13
Com		2	0	15	8	25

Priority 2 – Bldg. impact		SeaTac	Des Moines	Kent	Federal Way	Total
Res	SFR	0	1	2	1	4
	Multi	1	4	1	0	6
Com		1	1	2	1	5

¹ Property Impact information taken from ST Real Property Impact matrix, dated 6/9/2017.

Priority 3-4 – Bldg. impact		SeaTac	Des Moines	Kent	Federal Way	Total
Res	SFR	0	2	0	0	2
	Multi	0	2	0	0	2
Com		1	0	3	0	4

Among the 261 impacted parcels, 75 parcels will have building impacts. The FWLE property acquisition program is divided into four priority groupings based on resource availability and the level of impact. More groupings may be required at a later time.

In late April, ST Staff presented the Priority 1 group to ST Board for authority to acquire the properties; and the Board approved the motion. ST will start obtaining ownership / possession & use (P&U) by the end of this year. ST is scheduled to acquire approximately 14 single-family residences (SFR).

Sound Transit Property Management Program

Once ST obtains ownership of a piece of property, ST Property Management (PM) Division will change all the locks on the property and make all necessary maintenance to secure the property. Along with ST Police Department, ST Security, and PM will regularly inspect and patrol the property. During and after the property is demolished, PM will also perform routine maintenance, such as repairing damaged fences, mowing the lawn to keep the property well-maintained.

Events Leading Up to Demolition

On a typical single-family residence, the property will be vacated within 4 weeks of closing. ST usually works with property owners to relocate in advance of or as soon as possible after closing. ST would like to work with AHJs to start the required permitting process for demolition soon after ST makes a formal offer to the property. ST has been coordinating with private utilities throughout preliminary engineering. The AHJs and Utilities' permit requirements are described in the FWLE Demolition Permit Information (see attached document). After the property is vacated, a ST Consultant will perform the Hazardous Building Materials (HBMS) inspection. With the HBMS result, ST will have all the necessary information for the demolition permit.

For multi-family residences, such as apartment complexes, multi-level buildings, and commercial properties, ST will perform necessary architectural and engineering to prepare demolition plans and specifications prior to issuing the contract for demolition. Additional time will be required. Due to relocation constraints, full vacation of multi-family buildings is typically longer than 4 weeks from closing.

ST has identified a list of tasks that ST can perform in advance of demolition:

1. Architectural and Engineering plans for multi-family and commercial properties
2. Relocation
3. HBMS (need owner permission)
4. Permit process to full take properties (need AHJ waiver / concurrence)

Demolition Contract Strategy

During our regular meeting with AHJs, ST staff noted the concern about vacant properties waiting for demolition. AHJs have experienced transient occupation of these vacant homes; and vacant properties are also targets for various types of crime. ST will utilize a couple contract delivery methods with the goal of minimizing the vacancy time for single-family residences.

1. Small work contracts

Within the Priority 1 grouping, ST anticipates acquiring 14 SFRs by the end of this year. ST estimated that it will cost around \$20,000 to demolish each SFR, including hazardous materials removal. ST currently has a small works roster that can be utilized for public works contracts under \$300,000. The procurement duration for this type of contract is usually 10 weeks and requires minimal plans and specs in order to help expedite the process.

	Process	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
1	Procurement (2 ½ months)								
2	Initial offer								
3	Ownership (P & U)								
4	Secure property (1 week)								
5	Vacation / Relocation (90 days max.)								
6	Permits (8 weeks)								
7	HBMS **								
8	Demolition (1 week)								
9	Site Restoration (1 week)								

** Sound Transit will request permission from property owners to perform this task once the initial offers are made.

For a typical SFR, it will take up to 4 months to complete the demolition. All the required procedures – permitting, vacation and HBMS could not start until ST obtains ownership / P&U. And the demolition work could not commence until the property is vacated.

If AHJs are partnering with ST, ST can start the permit application in advance. With a vacated SFR with no known hazardous materials, the demolition can be completed within one week after ST obtains ownership.

However, the worst scenario is to have a vacated property before ST completes the closing.

2. Large contracts

For more complex demolition for multi-family and commercial properties, ST will utilize standard low bid public works contracts with full plans and specs. The relocation time for these properties usually takes longer, and the procurement duration for this type of contract is usually 6 months. This will also require approval from the ST Board.

	Process	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
1	Procurement (4 mon.)													
2	Initial offer													
3	Engr. doc. Prep.													
4	Ownership													
5	Secure property													
6	Vacation / Relocation (6 months)													
7	Permits (3 months)													
8	HBMS **													
8	Demolition													
10	Site Restoration													

** Sound Transit will request permission from property owners to perform this task once the initial offers are made.

3. Job order contract (JOC)

If there is a high risk SFR, ST will work with AHJs to expedite the demolition permit process. ST PM Division will take all necessary actions to secure the property. ST will reserve utilizing this contract method to perform demolition-in-demand (DID). At this time, ST is planning up to five (5) JOC contracts for the FWLE demolition program.

	Process	Sep	Oct	Nov	Dec	Jan	Feb	Mar
1	Procurement (2 weeks)							
2	Initial offer							
3	Ownership (P & U)							
4	Secure property (1 week)							
5	Vacation / Relocation (90 days max.)							
6	Permits (4 weeks)							
7	HBMS **							
8	Demolition (1 week)							
9	Site Restoration (1 week)							

** Sound Transit will request permission from property owners to perform this task once the initial offers are made.

ST is committed to work with AHJ to make the property demolition a smooth process with the least impact necessary to the communities along the FWLE alignment. This document summarizes ST demolition programs and processes. We are looking forward to hearing your feedback and working with you to bring the light rail to your communities.



FWLE – Demolition Permit Information

May 18, 2017

Demolition permits will be required by City building departments for removal of any structures (residential and commercial) on a property. Separate permits may be required for each structure. Each jurisdiction has their own demolition application form or checklist; however the required information and approvals are generally the same. The Cities require several signatures from affected utilities or agencies to be obtained in advance of them issuing the actual demolition permit.

In general, each structure to be demolished will require the following items prior to submittal of the demolition application to the city building department:

- An Asbestos survey conducted by a certified Asbestos Hazardous Emergency Response Act (AHERA) building inspector
- A Notice of Intent filed with the Puget Sound Clean Air Agency (if structure has a projected roof area 120 square feet or more)
- Actual signatures from utility providers/agencies or acknowledgement that approvals are required

The bullets and links below provide application form, checklists, and information sheets for each of the cities.

City of Kent

- Demolition Information Sheet <http://www.kentwa.gov/home/showdocument?id=745>
- Demolition Pre-App <http://www.kentwa.gov/home/showdocument?id=765>
- Underground Tanks requires separate Fire Department Permit Approval

City of Federal Way

- Demolition signature sheet:
<http://www.cityoffederalway.com/sites/default/files/Documents/Department/CD/Building/122%20Demolition%20Permit%20Requirements.pdf>
- Demolition contact information sheet:
<http://www.cityoffederalway.com/sites/default/files/Documents/Department/CD/Building/109%20Demolition%20Permit%20Contact%20List.pdf>
- Construction Permit application required:
<http://www.cityoffederalway.com/sites/default/files/Documents/Department/CD/Building/100%20Permit%202016%20Application.pdf>

City of Des Moines

- Building Permit Application <http://www.desmoineswa.gov/DocumentCenter/View/136>
- Demolition Checklist <http://www.desmoineswa.gov/DocumentCenter/View/2500>
- PSCAA Checklist: <http://www.desmoineswa.gov/DocumentCenter/View/131>



City of SeaTac

- Demolition Checklist:
<http://www.ci.seatac.wa.us/Modules/ShowDocument.aspx?documentid=391>
 - A SEPA Checklist must be submitted if it is a non-single family structure or if the structure is <4,000 square feet
 - Requires site restoration
- Demolition Application Form
<http://www.ci.seatac.wa.us/Modules/ShowDocument.aspx?documentid=345>

Utilities

General: utility district work for demolitions is triggered by the City demolition permit. District-specific demolition permit still required.

Highline Water District

Highline Water District's project-related service area falls within the cities of Des Moines, SeaTac, Kent and Federal Way.

- Over-the-counter permit.
- Water service connection to be removed at the main for abandoned services.
 - The service can temporarily be converted to an irrigation service (no basic monthly fee, unlike a domestic service) and the meter removed. Connection to the main can be removed later. This will need to be tracked to ensure service connection abandonment occurs.
 - Preference is to remove service connection at time of abandonment.

Midway Sewer District

Midway Sewer District's project related service area covers all falls within the cities of Des Moines, SeaTac and Kent.

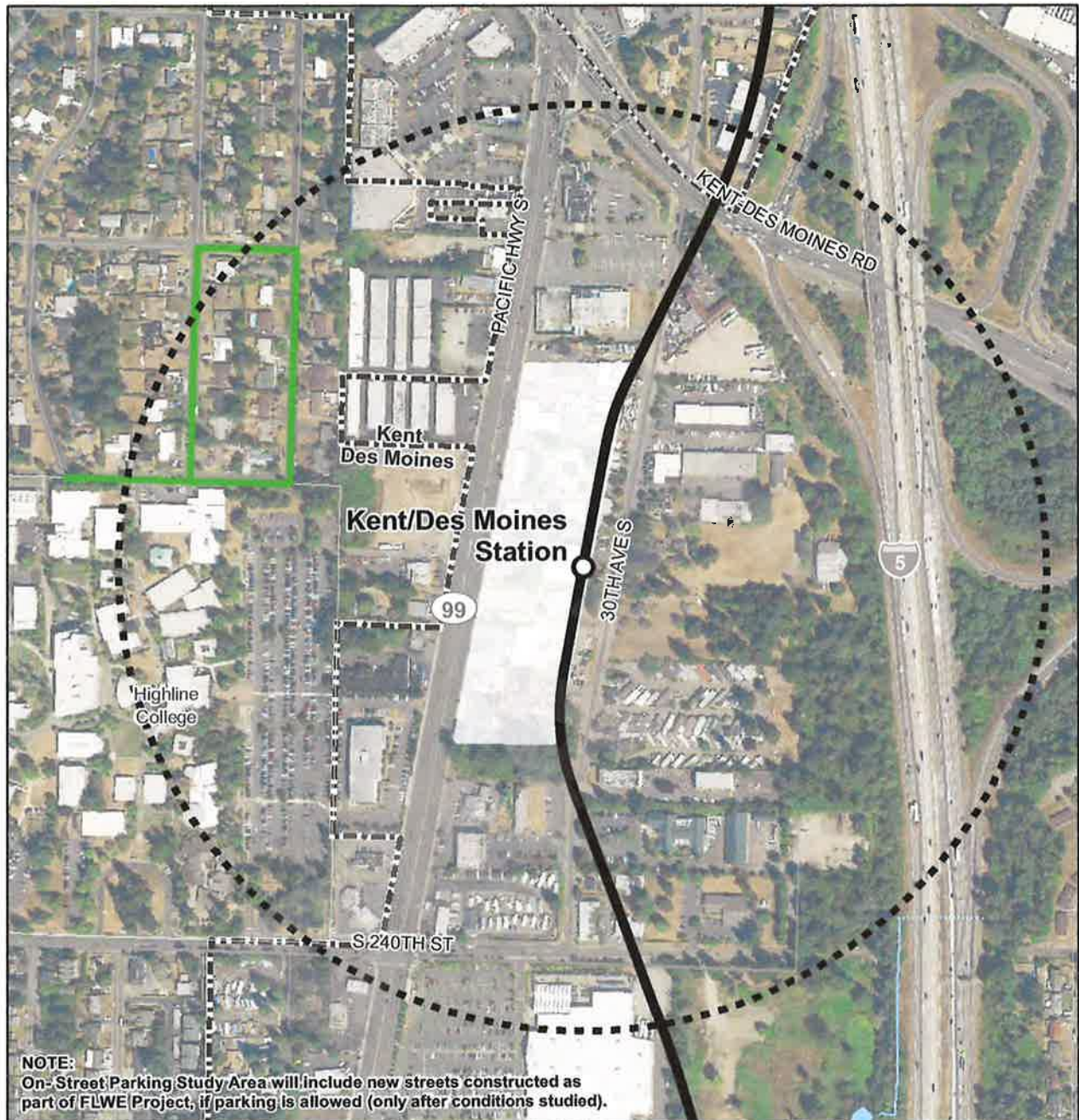
- Over-the-counter permit (\$25).
- Side sewer connection to be capped at the main prior to demolition.
- Work must be performed by a district-approved side sewer contractor.
- Considered routine service, so isn't subject to any agreements established between ST and the District related to the FWLE project.

Lakehaven Water and Sewer District

Lakehaven Water & Sewer District's project-related service areas are solely within the City of Federal Way.

- Water service to be abandoned at the main.
- Side sewer connection to be abandoned at the main.

EXHIBIT G:
ON-STREET PARKING INVENTORY
STUDY AREA



Legend

- | | |
|-----------------|------------------------------|
| Alignment | Street |
| Station | City Boundary |
| 1/4 Mile Radius | On-Street Parking Study Area |

Data Sources: King County, Cities of Des Moines, Federal Way, Kent, SeaTac (2015).
6/27/2018 | FWLE_Ph3_249745 | DevelopmentAgendaDM.mxd

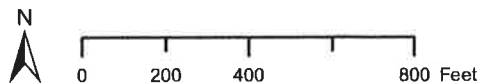


EXHIBIT G On-Street Parking Study Area

Federal Way Link Extension

EXHIBIT H:

**MITIGATION PLAN FROM
FEDERAL WAY LINK EXTENSION
RECORD OF DECISION**

TABLE B-1
Mitigation Plan

Resource	Final EIS Chapter/Section	Impact Topic	Period	Mitigation Description
Transportation	3 and 5	Traffic	Long-term	Mitigation will be required at intersections where the intersection level of service (LOS) will be worse than with the No Build Alternative and will not meet the applicable agency LOS standard. If an intersection is not expected to meet agency LOS standards with the No Build Alternative, Sound Transit will participate in mitigation if the FWLE substantially degrades the intersection performance further. The following measures will improve the AM and PM peak intersection delay to meet LOS standards, or to achieve the same LOS or better for intersections that will be below standards with the No Build Alternative: • SR 99 and Kent-Des Moines Road: a second northbound right-turn pocket, a new northbound left-turn pocket on SR 99. - Additional mitigation for the interim terminus conditions: northbound right-turn signal overlap phase, restricted westbound U-turn movement • SR 99 and S 240th Street: protected plus permissive signal phasing for eastbound and westbound approaches. - Additional mitigation for the interim terminus conditions: additional southbound left-turn pocket, widened S 240th Street, westbound and northbound right-turn pockets • SR 99/S 272nd Street: northbound right-turn pocket. • I-5 northbound ramps/S 272nd Street: northbound left-turn pocket. • I-5 southbound ramps/S 272nd Street: southbound right-turn pocket, rechannelized southbound approach to a shared left-through and right-turn-only lane. • Military Road S/S 272nd Street: southbound right-turn pocket. • Star Lake Road/S 272nd Street: eastbound and westbound left-turn pockets. • SR 99/S 320th Street: northbound right-turn pocket. • Military Road S/259th Place S/S Reith Road: westbound and southbound right-turn pocket. Sound Transit will provide these improvements or other improvements agreed to with the agency of jurisdiction. As the project design advances, Sound Transit will continue to work with affected jurisdictions/agencies to evaluate mitigation strategies for safe, efficient operations. Final mitigation will be determined and agreed upon by Sound Transit and the affected jurisdiction(s) and agency(s). Sound Transit's contribution to improve intersections will be determined during the project permitting process. This may include contributing a proportionate share of costs to improve intersections affected by the FWLE, based on the project's proportionate ratio of trips at the intersection, or another equitable method.
			Construction	Sound Transit will develop a Maintenance of Traffic plan to address the effects of construction activities on the transportation system in the study area during construction. The plan will include at least the following measures, to address specific circumstances as necessary: • Conform to the Manual on Uniform Traffic Control Devices (FHWA, 2009) and jurisdictional requirements for all maintenance of traffic plans. • Install advance warning signs and highly-visible construction barriers, and use flaggers where needed. • Consider a variety of traffic and travel demand management strategies.

TABLE B-1
Mitigation Plan

Resource	Final EIS Chapter/Section	Impact Topic	Period	Mitigation Description
				- Clearly sign and provide reasonable detour routes when cross streets are closed for elevated guideway and trench construction. The contractor will be required to keep nearby parallel facilities open to facilitate access and mobility. - Use lighted or reflective signage to direct drivers to truck haul routes to ensure visibility during nighttime work hours. Use special lighting for work zones and travel lanes, where required. - Communicate public information through tools such as print, radio, posted signs, websites, and e-mail to provide information regarding street closures, hours of construction, business access, and parking impacts. - Coordinate access closures with affected businesses and residents. The contractor will be required to perform this task in coordination with Sound Transit staff. If access closures are required, property access to residences and businesses will be maintained to the extent possible. If access to the property cannot be maintained, the specific construction activity will be reviewed to determine if it could occur during non-business hours, or if the parking and users of this access (for example, deliveries) could be accommodated at an alternate location. - Post advance-notice signs prior to construction in areas where construction activities will affect access to surrounding businesses. - Provide regular updates to schools, emergency service providers, local agencies, solid waste utilities, and postal services, and assist public school officials in providing advance and ongoing notice to students and parents concerning construction activity near schools. - Schedule traffic lane closures and high volumes of construction truck traffic during off-peak hours to minimize delays, where practical. - Cover potholes and open trenches, where possible, and use protective barriers to protect drivers from open trenches. - Place a temporary construction barrier near the southbound I-5 edge of pavement where barriers are not already present to separate construction activity from I-5 mainline traffic. - To minimize potential freight impacts, coordinate with affected businesses throughout the construction period to notify them of lane and access closures and maintain business access as much as possible.
	3 and 5	Transit	Long-term	No mitigation is required.
			Construction	Construction of the Preferred Alternative will temporarily close the entire Star Lake Park-and-Ride. Sound Transit will mitigate this closure by routing transit riders to available spaces at other nearby park-and-ride lots or leasing parking lots and/or new parking areas in the vicinity. Sound Transit will coordinate with King County Metro on temporarily rerouting bus service as needed.
	3	Safety	Long-term and construction	No mitigation is required for operation or construction.
	3 and 5	Parking	Long-term	Sound Transit will compensate business owners at fair market value for parking spaces it acquires. Sound Transit will work with local jurisdictions to evaluate and, if necessary, implement hide-and-ride mitigation around any of the stations. If requested by local jurisdictions, Sound Transit will inventory on-street parking around a station before and after the start of light rail revenue service, and will then determine where mitigation measures

TABLE B-1
Mitigation Plan

Resource	Final EIS Chapter/Section	Impact Topic	Period	Mitigation Description
Acquisitions, Displacements, and Relocations				will be needed in coordination with the local jurisdiction. Potential parking-control measures include parking meters, restricted parking, passenger and truck load zones, and residential parking zones (RPZs). For those agreed-to parking controls, Sound Transit will pay for signage or other parking-control installations for 1 year after the FWLE begins operating. The local jurisdictions will be responsible for monitoring and providing all enforcement and maintenance, including ongoing RPZ-related costs. Owners of off-street private lots will be responsible for monitoring and preventing potential hide-and-ride parking in their own lots.
			Construction	No mitigation is required.
	3 and 5	Non-motorized facilities	Long-term and construction	No mitigation is required.
	5	Freight mobility	Long-term	No mitigation is required.
			Construction	For any construction activities that might have I-5 impacts, Sound Transit will provide construction information to WSDOT for use in the state's freight notification system. Sound Transit will provide information in a format acceptable to WSDOT.
Land Use	4.1	Acquisitions, displacements, and relocations	Long-term and construction	Sound Transit will compensate affected property owners according to Sound Transit's adopted real estate property acquisition and relocation policy, procedures, and guidelines (Sound Transit, 2014a, b). These policies and procedures comply with the federal Uniform Relocation Act and the State of Washington's relocation and property acquisition requirements, and in some cases provide advisory services above the minimum requirements of federal and state law.
	4.2 and 5	Land use	Long-term and construction	No mitigation is required.
	4.3	Economics	Long-term	No mitigation is required.
Economics	5	Local businesses	Construction	Sound Transit will develop a construction mitigation plan to address project effects to businesses in the study area during construction and will dedicate staff to work with the affected businesses. The plan will include at least the following measures: • Provide 24-hour construction telephone hotline. • Provide business cleaning services on a case-by-case basis. • Provide detour, open-for-business, and other signage as appropriate. • Establish effective communications with the public through meetings and construction updates, alerts, and schedules. • Implement promotion and marketing measures to help affected business districts maintain their customer

TABLE B-1
Mitigation Plan

Resource	Final EIS Chapter/Section	Impact Topic	Period	Mitigation Description
				base. - Maintain access to each business as much as possible and coordinate with businesses during times of limited access. - Provide a community ombudsman to investigate and address complaints.
Social, Community, and Neighborhoods	4.4 and 5	Social	Long-term and Construction	No mitigation is required.
Visual and Aesthetics	4.5 and 5	Visual	Long-term	As Sound Transit develops the detailed design, it will incorporate a combination of the following measures as appropriate where the FWLE lowers visual quality at locations identified in Figures 4.5-1 to 4.5-3 in Section 4.5 of the Final EIS: <i>Mitigation Measure 1:</i> Remaining vegetation outside of WSDOT I-5 rights-of-way might screen some views of FWLE components along I-5 from adjacent and other nearby residences. Where remaining vegetation and/or sound walls do not effectively screen views of FWLE components, Sound Transit will add new landscaping adjacent to residential areas. As appropriate, Sound Transit will provide landscaping beyond code requirements (i.e., greater widths of planting strips or plant materials) to provide effective visual mitigation. Where appropriate and agreed upon with property owners, Sound Transit will add landscaping on private property (i.e., within the yards of adjacent residences) to help screen views of FWLE components. <i>Mitigation Measure 2:</i> In areas next to residences where there is not enough room to add landscaping that would screen views of FWLE sound walls, the sound walls will be treated with visually interesting elements such as design treatments that incorporate, textures, patterns, and/or color. Where appropriate, Sound Transit will consider adding lower-growing and smaller-scale landscaping along the base of sound walls adjacent to residences to soften the walls' appearance. <i>Mitigation Measure 3:</i> Vegetation removal along the I-5 corridor within the WSDOT right-of-way as well as within Resource Conservation Areas will be minimized to the extent practicable as determined in consultation with WSDOT. When mitigation is required, Sound Transit will consult with WSDOT staff to develop appropriate site-specific measures and offsite mitigation to provide effective visual mitigation, consistent with the WSDOT <i>Roadside Policy Manual</i> (WSDOT, 2015). The manual describes the extent of the mitigation that is required for lost vegetation, vegetation types, and replacement ratios, and where replacement can occur. The manual requires that "mitigation for lost or damaged RCAs must consist of an equal value exchange that provides appropriate performance values identified in the manual." This includes replacing RCA land impacted by the project, as well as replanting that land. The manual includes permanent irrigation requirements for impacted RCAs and specific plant establishment criteria. Sound Transit will also restore or replace impacted vegetation in the highway right-of-way outside of RCAs in accordance with the manual. Specific types, amounts, and locations for replanting will be identified in consultation with WSDOT and through development of a roadside master plan.
			Construction	During construction, Sound Transit will provide visual screening for station construction and staging areas adjacent to residential areas and schools, where required by local jurisdictions. Visual screening could include a solid barrier to screen ground-level views into the construction area. When possible, Sound Transit will preserve

TABLE B-1
Mitigation Plan

Resource	Final EIS Chapter/Section	Impact Topic	Period	Mitigation Description
Air Quality and Greenhouse Gases	4.6 and 5	Air quality	Long-term	existing vegetation to assist in screening views. Sound Transit will shield construction lighting and direct it downward to avoid light spillover onto adjacent sensitive uses. Sound Transit will comply with local jurisdictions' requirements for controlling construction lighting.
			Construction	No mitigation is required. No mitigation is required.
Noise and Vibration	4.7	Light rail noise	Long-term	Noise mitigation measures will be provided consistent with Sound Transit's Light Rail Noise Mitigation Policy (Motion No. M2004-08) and the FTA Guidance Manual (2006). During final design, all potential impacts and mitigation measures will be reviewed for confirmation, and if it is discovered that mitigation could be achieved by a less costly means or if the detailed analysis shows no impact, a mitigation measure may be eliminated or modified. Mitigation will also be determined for any new impacts identified during final design. After light rail operations have started, if the resulting noise exceeds FTA criteria, more mitigation may be required. Sound walls will be built where feasible and reasonable, as determined by Sound Transit, based on specific site conditions. Sound walls will be along the side of the guideway structure for elevated profiles, and will be on the ground for at-grade, retained cut, or trench profiles. Based on the EIS analysis, sound walls between 4 and 18 feet tall will be needed for 20,700 feet along the west side of the alignment and sound walls 4 to 6 feet tall will be needed for 4,700 feet along the east side of the alignment. If sound walls are not effective, then sound insulation of the building will be evaluated and provided if the interior noise level does not meet the standard in the Sound Transit Noise Mitigation Policy. Special trackwork (e.g., movable-point or spring-rail frogs) will be used to eliminate the noise-causing gap between tracks at switches and crossovers at locations where this gap causes an impact.
	4.7	Park-and-ride noise	Long-term	Noise mitigation for the park-and-rides will consist of design features such as sound walls within the parking structure or near the perimeter of the Kent/Des Moines station.
	4.7	Traffic noise	Long-term	The length and height of proposed light rail sound walls will be designed to mitigate traffic noise impacts as practical. The existing sound wall south of S 288th Street will be partially replaced east of the guideway where the guideway will be elevated over Bingaman Creek. A second sound wall will be constructed to the west of the guideway in this area as well if the SR 509 Extension is constructed in this area. All of the traffic noise impacts will be mitigated with sound walls.
	4.7	Vibration and groundborne noise	Long-term	No mitigation is required for groundborne noise. Vibration impacts will be mitigated with use of ballast mats or tire-derived aggregate below the light rail track or high-compliance direct-fixation (HCDF) track fasteners. If warranted, special trackwork with low-impact frogs will be used in place of a conventional frog where crossovers (the point at which two rails cross) would cause a vibration impact that cannot be mitigated through other measures. Sound Transit will confirm or modify the need for and effectiveness of the identified vibration mitigation measures during final design.
	5	Construction noise and vibration	Construction	Sound Transit will comply with applicable construction permits and BMPs to avoid and minimize temporary noise and vibration impacts; no additional mitigation is needed.

TABLE B-1
Mitigation Plan

Resource	Final EIS Chapter/Section	Impact Topic	Period	Mitigation Description
Water Resources	4.8 and 5	Water resources	Long-term	The Preferred Alternative will realign approximately 1,000 feet of Bingham Creek south and north of S 288th Street. Mitigation information for this impact is described below under Ecosystems.
			Construction	No mitigation is required.
	4.9 and 5	Wetlands and wetland buffers	Long-term	Sound Transit will mitigate long-term impacts on wetlands and wetland buffers by replacing resources through one or more of the following methods: • Approved wetland mitigation banks • King County in-lieu fee program • Advance offsite compensatory mitigation • Project-specific mitigation developed by Sound Transit and approved by appropriate regulatory agencies and in consultation with affected tribes. Sound Transit will implement compensatory mitigation in accordance with applicable federal, state, and local requirements and guidelines. Publicly or privately owned portions of the McSorley Creek Wetland may provide opportunities for mitigation through enhancement, or by removing fill materials along the perimeter of the wetlands to create and reestablish wetland acreage and function. Sound Transit will determine final wetland mitigation actions during final design and permitting.
			Construction	Sound Transit will avoid impacting wetlands as much as practicable during construction. Where it cannot avoid impacts, it will restore wetlands and wetland buffers temporarily impacted by construction and will mitigate long-term temporary impacts as described above. Compensatory mitigation will be implemented in accordance with applicable federal, state, and local requirements and guidelines. To the extent that impacts cannot be avoided, Sound Transit will provide compensatory mitigation to achieve no net loss of ecosystem function and acreage.
	4.9	Streams	Long-term	Sound Transit will mitigate unavoidable impacts on Bingham Creek by replanting affected areas with native vegetation to improve stream habitat and riparian function. If additional offsite mitigation is also needed, it will be developed by Sound Transit and approved by appropriate regulatory agencies and in consultation with affected tribes.
	4.9 and 5	Upland vegetation and wildlife	Long-term	Sound Transit will mitigate tree removal in the WSDOT right-of-way according to the <i>WSDOT Roadside Policy Manual</i> (WSDOT, 2015). Specific types, amounts, and locations for replanting will be identified through development of a roadside master plan in consultation with WSDOT. Sound Transit will comply with local jurisdictions' tree replacement requirements for tree removal outside of WSDOT right-of-way. Because of the visual impacts of tree removal and visual mitigation measures described above, specific locations may have more plantings than the replacement ratio specified in local ordinances.
			Construction	Sound Transit will establish schedule restrictions for clearing activities in order to comply with the Migratory Bird Treaty Act (MBTA). Clearing activities will occur outside the active bird nesting period, to the extent possible. If avoidance scheduling is infeasible, Sound Transit will comply with U.S. Fish and Wildlife and Washington State Department of Fish and Wildlife regulations related to preconstruction surveys. If nesting migratory birds are present, Sound Transit will take the appropriate measures to assure compliance with the MBTA.

TABLE B-1
Mitigation Plan

Resource	Final EIS Chapter/Section	Impact Topic	Period	Mitigation Description
Energy	4.10 and 5	Energy	Long-term and construction	Vegetation impacts from construction that occurs outside the long-term footprints will be temporary, as construction will be followed by site restoration and vegetation reestablishment. Sound Transit will mitigate for temporary impacts on forested vegetation using applicable guidance from WSDOT and local jurisdiction regulations. Vegetation plantings and restoration will only include native species. No mitigation is required.
Geology and Soils	4.11 and 5	Geology and soils	Long-term and construction	No mitigation is required.
Hazardous Materials	4.12 and 5	Hazardous materials	Long-term	To mitigate potential impacts from hazardous materials sites, Sound Transit will perform a level of environmental due diligence appropriate to the size and past use at all properties along the corridor before they are acquired. Phase 2 environmental site assessments will be conducted where appropriate. Where identified hazardous materials are present, Sound Transit will be responsible for remediating contaminated soil and groundwater, including any previously unknown contamination found during construction.
			Construction	Sound Transit will implement BMPs to avoid or minimize potential spills of hazardous materials, including a Spill Prevention and Maintenance Plan. The project will comply with all applicable state and federal regulatory and permitting requirements for the handling of hazardous materials.
Electromagnetic Fields	4.13 and 5	Electromagnetic fields	Long-term and construction	No mitigation is required.
Public Services, Safety, and Security	4.14 and 5	Public services	Long-term and construction	No mitigation is required.
		Public schools	Long-Term	No mitigation is required.
			Construction	Sound Transit will install a construction barrier between the construction zone and the rest of the Mark Twain Elementary school property (the playground, school buildings, and driveways) designed to address safety, security, visual effects, and noise. It will also develop a construction plan for work at and near Mark Twain Elementary School. The plan will assure safe pedestrian access and safe schoolbus operations throughout construction, and it will identify a way for the project team to communicate with interested parents. Sound Transit will designate a liaison to work with the school administration on safety, noise, and other potential construction impacts.
Utilities	4.15 and 5	Utilities	Long-term	No mitigation is required.
			Construction	No mitigation is required.

TABLE B-1
Mitigation Plan

Resource	Final EIS Chapter/Section	Impact Topic	Period	Mitigation Description
Historic and Archaeological Resources	4.16 and 5	Historic and archaeological resources	Long-term	No mitigation is required.
			Construction	Sound Transit will develop and implement an Inadvertent Discovery Plan (IDP) to minimize the risk of damage if a currently unknown archaeological resource is discovered. The IDP will include procedures that FTA and Sound Transit will follow if human remains or cultural artifacts are discovered during construction. FTA and Sound Transit will invite the State Historic Preservation Office and interested tribes to review the plan. Archaeologists will conduct training for contractors to help them identify potential cultural resources during construction, including protocols to implement if a potential resource is discovered.
Parkland and Open Space	4.17	Parks and open spaces	Long-term	No mitigation is required.
	5	Playfields	Construction	Sound Transit will restore temporarily impacted portions of the Mark Twain Elementary School field after construction.

EXHIBIT I:
TRANSIT WAY AGREEMENT

**IN DEVELOPMENT
BY ST AND CITY**

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**AGREEMENT BETWEEN THE CITY OF DES MOINES AND SOUND TRANSIT FOR
GRANT OF NON-EXCLUSIVE USE OF A LIGHT RAIL TRANSIT WAY AS RELATED
TO THE FEDERAL WAY LINK EXTENSION LIGHT RAIL TRANSIT PROJECT**

This AGREEMENT is entered into by and between the City of Des Moines (the "City") and Central Puget Sound Regional Transit Authority ("Sound Transit") and is effective when signed by all parties.

RECITALS

WHEREAS, Sound Transit is a governmental entity created pursuant to Chapters 81.104 and 81.112 RCW with all powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties, including the right to construct and maintain facilities in public rights of way without a franchise (RCW 81.112.100 and RCW 35.58.330);

WHEREAS, the City is a non-charter optional municipal code city incorporated under the laws of the State of Washington;

WHEREAS, the City owns and operates city streets, and other infrastructure improvements within the City boundaries where Sound Transit proposes certain transit improvements and light rail;

WHEREAS, the Growth Management Act (Chapter 36.70A RCW) requires the City to plan for and encourage regional high capacity transportation facilities such as the Link Light Rail Transit Project (RCW 36.70A.020);

WHEREAS, in 1996, 2008, and 2016, pursuant to state law, the Central Puget Sound Regional Transit Authority (known as "Sound Transit") proposed, and Central Puget Sound voters approved financing for, regional transit system plans known as Sound Move, ST2, and ST3, respectively;

WHEREAS, these regional transit system plans include, among other projects, the Federal Way Link Extension Project ("Project") connecting the cities of SeaTac, Des Moines, Kent, and Federal Way to the existing Link Light Rail System, which will provide numerous benefits to the City's residents, workers, and visitors, and which will help the City meet its Comprehensive Plan goals;

WHEREAS, Sound Transit and the Federal Transit Administration of the United States Department of Transportation ("FTA") have jointly planned the Project pursuant to the National and State Environmental Policy Acts, and have completed environmental review for the Project with publication of the Federal Way Link Extension Final Environmental Impact Statement on November 18, 2016, FTA's Record of Decision issued on March 6, 2017, and the Federal Highway Administration's Record of Decision, issued on March 9, 2017;

WHEREAS, on January 26, 2017, the Sound Transit Board defined and selected the Federal Way Link Extension alignment, profile, stations, and associated infrastructure to be built between Angle Lake Station at S. 200th Street and the Federal Way Transit Center in Resolution 2017-02;

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WHEREAS, Sound Transit is intending to deliver the Project as a design/build procurement ("Design/Build") and has been coordinating with the City in preparation for Project Design and Construction;

WHEREAS, the City and Sound Transit want to agree on a grant of a non-exclusive use of a Light Rail Transit Way for the Federal Way Link Extension Project in the City with appropriate terms and conditions that will satisfy FTA's continuing control requirements; and

WHEREAS, the City and Sound Transit intend to execute a Development Agreement in coordination with this Transit Way Agreement.

NOW THEREFORE, in consideration of mutual promises and covenants herein contained related to the grant of a non-exclusive use of a Light Rail Transit Way by the City to Sound Transit to construct, operate, maintain, and own a Light Rail Transit System in the City of Des Moines within and along the Light Rail Transit Way, the parties hereto agree to the terms and conditions as follows:

SECTION I. DEFINITIONS

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities, whether persons or entities, refer to those entities or their successors in authority. If specific provisions of law referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances, and regulations now in force or hereinafter enacted or amended.

1.1 **Agreement**. "Agreement" means this Light Rail Transit Way Agreement approved by appropriate action of the City of Des Moines and of Sound Transit.

1.2 **City**. "City" means the City of Des Moines and any successor or assignee following an assignment that is permitted under this Agreement.

1.3 **Director**. "Director" means the Director of Public Works of the City of Des Moines.

1.4 **Emergency**. "Emergency" means, except as otherwise provided, a generally unexpected occurrence or set of circumstances that affects public safety or health demanding immediate action.

1.5 **Final Construction Plans**. "Final Construction Plans" means prints showing in detail, the proposed construction and specifications of the Light Rail Transit System including alignment drawings showing the exact limits of the Light Rail Transit Way.

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1.6 Final Right-of-Way Plans. "Final Right-of-Way Plans" means prints having the proposed limits of the Light Rail Transit Way mathematically tied to existing local street monumentation and the Washington State Coordinate System.

1.7 Liability. "Liability" means all loss, damages, cost, expense (including costs of investigation and attorney fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims, and demands of whatever kind of nature (including those arising under the Federal Employers Liability Act), arising out of an occurrence relating to this Agreement or occurring on or relating to the Light Rail Transit System described herein.

1.8 Light Rail Transit Facility. "Light Rail Transit Facility" means a structure, rail track, equipment, or other improvement of a Light Rail Transit System, including but not limited to ventilation structures, traction power substations, signal bungalows, Light Rail Transit Stations and related passenger amenities, bus layover and inter-modal passenger transfer facilities, and station access facilities.

1.9 Light Rail Transit Station. "Light Rail Transit Station" means a Light Rail Transit Facility whether at grade, above grade or below grade that provides pedestrian access to Light Rail Transit System vehicles and facilitates transfer from light rail to other modes of transportation. A Light Rail Transit Station may include mechanical devices such as elevators and escalators to move passengers and may also include such passenger amenities as informational signage, seating, weather protection, fountains, or artwork.

1.10 Light Rail Transit System. "Light Rail Transit System" means a public rail transit line, including Light Rail Transit Facilities, all infrastructure (including light rail vehicles operating in the Light Rail Transit Way), passenger services and communication equipment, that operates at grade level, above grade level, or in a tunnel and that provides high-capacity, regional transit service owned or operated by a regional transit authority authorized under RCW 81.112. A Light Rail Transit System may be designed to share a street right of way although it may also use a separate right of way. Commuter rail and low capacity, or excursion rail transit service are not included.

1.11 Light Rail Transit Way. "Light Rail Transit Way" means the areas within the Public Rights of Way occupied by Sound Transit for its Light Rail Transit System after construction pursuant to this Agreement, as shown on the record drawings of the Final Right-of-Way Plans approved by the Director and on file with the City Clerk.

1.12 Parties. "Parties" means the City of Des Moines and Sound Transit.

1.13 Passenger. "Passenger" means any person who is not an employee of Sound Transit, and who is aboard any Sound Transit Light Rail Transit System vehicle.

1.14 Public Rights of Way. "Public Rights of Way" means the areas above, below, on and over public streets and easements which, under the Des Moines Municipal Code, the City ordinances, and applicable laws, the City has authority to grant rights of way, permits, or licenses for use thereof or has regulatory authority therefor.

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1.15 Project. "Project" means the segments of the Light Rail Transit System in the City as described in Sound Transit Board Resolution 2017-02 and subsequent approved permits and agreements.

1.16 Record Drawings. "Record Drawings" means the neatly and legibly marked set of as-built contract drawings, maintained by Sound Transit's Design-Build Contractor with up-to-date information, showing all changes in the work, including final locations of all elements of work.

1.17 Routine Maintenance and Operation. "Routine Maintenance and Operation" means Sound Transit's maintenance and operation of the Light Rail Transit System that does not require (i) the excavation of soil that would alter or disturb the Public Rights of Way, or (ii) the use of heavy machinery within fifty (50) feet of or upon the Public Rights of Way.

1.18 Sound Transit. "Sound Transit" means the Central Puget Sound Regional Transit Authority, and any other entity to the extent such entity, as permitted under this Agreement, is exercising any rights to operate the Light Rail Transit System over any portion of the Light Rail Transit Way pursuant to a specific written grant of such rights by Sound Transit.

1.19 Third Party. "Third Party" means any person other than the City or an employee of the City, and any person other than Sound Transit or an employee of Sound Transit.

1.20 Track Access Permit. "Track Access Permit" means the process for track access, the management, scheduling, and authorization of access to employees, third parties, and contractors to perform work on, near, or adjacent to the Light Rail Transit System or any Sound Transit facility. (See Exhibit D – Track Access Procedures.)

SECTION II. GRANT OF RIGHTS BY THE CITY

2.1 Grant of Non-Exclusive Use of a Light Rail Transit Way. The City grants to Sound Transit a non-exclusive use of portions of certain Public Rights of Way, the general location of which is described and depicted on **Exhibits A and B** hereto, to be known as a Light Rail Transit Way, to construct, operate, maintain, and own a Light Rail Transit System in, upon, above, beneath and along the Light Rail Transit Way in accordance with the terms and conditions of this Agreement. The Light Rail Transit Way shall be limited to the areas described generally in the plans and profile drawings contained in **Exhibit C** hereto and more fully described in the Final Right-of-Way Plans. The Director or designee and Sound Transit's Deputy Executive Director or designee of Design and Engineering shall, from time to time, jointly revise and modify **Exhibit C** to conform to the Final Construction Plans and the Final Right-of-Way Plans as long as the revisions are, in their judgment, within the scope and intent of **Exhibit C**. The Director is hereby expressly delegated the authority to revise and modify **Exhibit C** from time to time consistent with the terms of this paragraph. This grant shall take effect upon the filing with the City Clerk by the Director of approved Final Construction Plans and Final Right-of-Way Plans. Sound Transit expressly agrees that it will construct, operate, and maintain the Light Rail Transit System in compliance with this Agreement and all applicable City ordinances, state, and federal laws.

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2.2 Rights Limited to Light Rail Transit System. The non-exclusive use of a Light Rail Transit Way is granted solely for the purpose of construction, maintenance, operation, and ownership of the Light Rail Transit System detailed in the Issued for Construction Plans, and for no other purpose. Sound Transit intends, and shall have the right, to use the Light Rail Transit Way solely for Light Rail Transit System uses. Sound Transit agrees that it shall not, without the City's written consent, construct on or along the Light Rail Transit Way any additions to or expansions of the Light Rail Transit System subsequent to the construction done in accordance with the Issued for Construction Plans and with the Final Right-of-Way Plans. Notwithstanding the foregoing, nothing contained herein shall prevent Sound Transit from replacing Light Rail Transit Facilities or equipment existing after construction after first obtaining any necessary permits or other authorizations from the City.

2.3 Work Permitted in Light Rail Transit Way. Sound Transit understands and agrees that during the normal course of Light Rail Transit Way use, the City may engage in construction, maintenance, demolition, leasing, licensing, permitting, and similar activities that have the potential to cause interruption to the Light Rail Transit System. Sound Transit understands and agrees that such activities may be caused, from time to time, by reasons including but not limited to: (i) traffic conditions, (ii) public safety, (iii) construction of facilities which constitute permissible use of Public Rights of Way ("ROW"), (iv) repair of ROW facilities (including resurfacing or widening), (v) change of grade to ROW, and (vi) response to emergencies and natural disasters, and (vii) construction, installation, maintenance or repair of sewer drains, water pipes, power lines, signal lines, traffic control devices, tracks, communication systems, public works, public facilities or improvements, or any utilities. The City agrees that such activities, to the extent they are permitted or controlled by the City, shall not occur within the Light Rail Transit Way without written notice to Sound Transit. Any such activities done by or for the City shall be undertaken in a manner that minimizes, to the greatest extent possible, disruption to operation of the Light Rail Transit System. Before commencement of any work the City will apply for, and direct all Third Parties to apply for, a Track Access Permit in accordance with Sound Transit's then current track access standard operating procedures (see Exhibit D), for which approval shall not be unreasonably withheld or delayed, taking into account the nature of the proposed entry.

2.4 Non-Exclusive Use. Sound Transit understands that the rights granted herein are non-exclusive. The City shall have the right to agree to other non-exclusive uses or occupancies of the Light Rail Transit Way. The City agrees that such uses or occupancies shall not unreasonably impair the ability of Sound Transit to operate the Light Rail Transit System.

2.5 Use Restricted. This Agreement does not authorize the provision of any services by Sound Transit other than the services strictly related to the operation of the Light Rail Transit System. Sound Transit's use of the Light Rail Transit Way for anything other than a Light Rail Transit System shall require written permission from the City.

2.6 Ownership. Sound Transit shall own all tracks and other Light Rail Transit Facilities on the Light Rail Transit Way, including, without limitation, improvements constructed at the cost and expense of Sound Transit that are not otherwise transferred to and accepted by the City. Nothing in this Agreement shall be construed as granting to Sound Transit any interest or right in the Light Rail Transit Way or the improvements on the Light Rail Transit Way other than the rights expressly provided herein.

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2.7 No Rights by Implication. No rights shall pass to Sound Transit by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for the following:

A. Any other permit or authorization required for the privilege of transaction and carrying on a business within the City that may be required by the ordinances and laws of the City; or

B. Any permit, agreement or authorization required in connection with operations on or in public streets or property, including by way of example and not limitation, street cut permits; or

C. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Agreement.

2.8 Utilities Agreements. This Agreement shall not be read to diminish, or in any way affect, the authority of the City to control and charge for the use of the light, water, storm, solid waste, and wastewater utilities. Therefore, if Sound Transit desires to use such utilities, it must pay standard rates for utility services and obtain necessary agreements or consents for such uses, as may be required by the City, which agreements or consents shall not be unreasonably withheld.

SECTION III. PERMITS

3.1 Permits and Licenses. Sound Transit, at its sole cost and expense, shall (i) secure and maintain in effect, all federal, state, and local permits and licenses required for the construction, operation, and maintenance of the Light Rail Transit System, including, without limitation, crossing, zoning, building, health, environmental, rights of way use and communication permits and licenses, and (ii) indemnify the City against payment of the costs thereof and against any fines or penalties that may be levied for failure to procure, or to comply with, such permits or licenses, as well as any remedial costs incurred by the City in curing any such failures.

3.2 Non-Interference. The City shall not interfere with Sound Transit's ability to secure, obtain, and maintain, at Sound Transit's sole cost and expense, any permits, licenses or approvals of other governmental agencies or authorities, or of any necessary Third Parties, for the use of any structures or facilities, including streets, roads, or utility poles not owned by the City.

SECTION IV. CONSTRUCTION

4.1 Approval of Construction. Sound Transit shall obtain the approval of the Director of all Light Rail Facility Final Construction Plans for work in the Public Right of Way prior to any such work commencing. Final Construction plans must be accompanied by Final Right-of-Way Plans. Approval for construction shall consist of the issuance of a construction permit or permits by the Director for each project section or contract to be constructed by Sound Transit within the Public Rights of Way.

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4.2 Record Drawings. Within six (6) months of Sound Transit's acceptance of Design-Build Contractor Project completion, Sound Transit shall furnish to the City record as built drawings of the Final Construction Plans and Final Right-of-Way Plan, including Record Drawings and associated electronic AUTOCAD and GIS files showing the as-built condition. Upon mutual agreement as to the types and number of drawings required, Sound Transit shall furnish to the City drawings sufficient to describe the project spatially in the Washington State Coordinate System.

4.3 Entry Upon Light Rail Transit Way. Sound Transit, its employees, and agents shall have the right, as defined and limited pursuant to Section V of this Agreement, to enter upon the Light Rail Transit Way for the purpose of constructing, operating, and maintaining the Light Rail Transit Facilities.

4.4 Temporary Use of Public Rights of Way. During construction of the Light Rail Transit System, Sound Transit, with the prior written agreement of the City, and approval of any required permits, may fence portions of the Public Rights of Way for the temporary storage of construction equipment and materials, provided that such structures and fences (i) do not interfere with or disrupt in any way, other than ways approved in advance by the City, the ordinary use of the Public Right of Way; (ii) do not interfere with or disrupt in any way, other than in ways approved in advance by the City, the ordinary access to property on either side of the Public Rights of Way; (iii) are not used for construction worker parking; and (iv) do not unnecessarily limit the public's right to travel within the Public Right of Way. Sound Transit shall not store or temporarily place any goods, materials, or equipment (i) near a roadway, intersection, or crossing in such a manner as to interfere with the sight distance of persons approaching such crossing; or (ii) within such greater distance as prohibited by the City; provided, however, that fuel and other hazardous substances shall not be stored unless approved by appropriate officials of the City and South King Fire and Rescue.

4.5 Utilities During Construction. The City recognizes that the Light Rail Transit System is an essential public facility and public transportation improvement. Sound Transit will coordinate with all utilities to minimize utility relocation costs and related construction and will negotiate with non-City-owned utilities on utility relocation costs. Sound Transit shall pay for any relocation or protection of City-owned utilities, including storm water facilities that the City determines is necessary due to construction or operation of the Light Rail Transit System. The specific allocation of costs of such relocation shall be defined in a series of future agreements between the City and Sound Transit relating to the separate construction segments of the Light Rail Transit System, each agreement to be entered into before construction on the particular segment begins.

4.6 Work Completed by Sound Transit. Sound Transit, at Sound Transit's sole cost and expense, will furnish all materials, parts, components, equipment, and structures necessary to construct and operate the Light Rail Transit System, or any part thereof, in accordance with this Agreement. Any and all work by Sound Transit shall be done in a good and workman-like manner, in conformity with all applicable engineering, safety, and other statutes, laws, ordinances, regulations, rules, codes, orders, or specifications of any public body or authority having jurisdiction.

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4.7 Installation. All facilities and installations must meet or exceed applicable specifications of the City and be in compliance with all existing federal, state, and local laws, ordinances and regulations.

4.8 Track Support. During any work of any character by Sound Transit at locations of the Light Rail Transit Facilities, and in accordance with the Final Construction Plans, Sound Transit will support the tracks, structures and roadbed of the Light Rail Transit System in such manner as is necessary for the safe operation of the Light Rail Transit System and ordinary use of the Public Rights of Way.

4.9 Imminent Danger. If, during construction, there is an Emergency or the Light Rail Transit System creates or is contributing to an imminent danger to health, safety, or property that Sound Transit is unable to immediately address, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Light Rail Transit System without prior notice, and charge Sound Transit for costs incurred. The City shall provide notice of such Emergency or danger along with any actions taken to Sound Transit as soon as practicable, taking into consideration the nature and complexity of the Emergency or other imminent danger.

4.10 Accommodation of Moving Structures. Sound Transit shall, on the request of any Third Party holding a valid permit issued by a governmental authority and a Sound Transit Track Access permit, temporarily raise or lower its wires to permit the moving of buildings or other objects. Sound Transit may require that the expense of such temporary removal or raising or lowering of wires be paid in advance by the Third Party requesting the same.

4.11 Information Regarding Ongoing Work. In addition to providing notice to the public of ongoing work as may be required under applicable law, Sound Transit shall develop a comprehensive project-specific communication plan in coordination with the City to establish and maintain effective communication with residents and businesses to allow them to be fully informed about potentially significant disruptions, such as temporary street closures, changes in transit service, and parking availability. As part of the plan, Sound Transit will work with the City, community and neighborhood groups prior to and through the construction process to identify types of impacts that would occur and communicate mitigation activities to address such impacts.

4.12 Restoration of Public Rights of Way. Sound Transit shall promptly repair any and all Public Rights of Way and public property that is disturbed or damaged during the construction of its Light Rail Transit System to substantially the same condition, or in the case of street surfaces, better condition if reasonably necessary within a mutually agreed-upon timeframe commensurate with the scope of repairs. In the event Sound Transit does not comply with the foregoing requirement, the City may, upon reasonable advance notice to Sound Transit, take the actions to restore the Public Rights of Way or public property at Sound Transit's sole cost and expense.

4.13 Federal Grant Conditions. Sound Transit's design and construction of the Project may become subject to a financial assistance agreement between Sound Transit and the Federal Transit Administration ("FTA"). Both parties recognize that changes to this Agreement may be necessary in order to comply with FTA funding requirements.

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SECTION V. ENTRY NOTICE

5.1 Access. Sound Transit, its employees and agents shall have access to the Public Rights of Way in connection with Sound Transit's construction, operation, and maintenance of the Light Rail Transit System as is reasonably necessary in accordance with this Agreement; provided however, except to the extent expressly provided in this Agreement, this right of access shall not be deemed to require the City to take any actions or expend any funds to enable such persons to exercise such rights of access, and provided further that such access may not interfere with or disrupt in any way, other than in ways approved in advance by the City, the use of the Light Rail Transit Way by the City or Third Parties in and Light Rail Transit Way.

5.2 Notice Prior to Initial Entry. During Project construction, Sound Transit shall give the City at least seventy-two (72) hours' written notice before initial entry upon any portion of the Public Rights of Way for construction purposes.

5.3 Entry after Project Construction. After construction, any entry by Sound Transit onto the Public Rights of Way that is not pursuant to the Routine Maintenance and Operation of the Light Rail Transit System or for purposes relating to an Emergency shall require (i) advance written notice from Sound Transit to the City not less than ten (10) days prior to Sound Transit's planned entry, with notice to specify the purpose of the entry; (ii) if entry involves any new connection or removal of any portion of the Light Rail Transit System, plans as required by direction of the Director showing in detail the proposed new construction, reconstruction, or removal; and (iii) approval by the City which approval shall not be unreasonably withheld or delayed, taking into account the nature of the proposed entry.

5.4 Entry for Routine Maintenance and Operation. During Routine Maintenance and Operation, Sound Transit personnel may enter the Public Rights of Way without notice to the City, as long as such entry is for the sole purpose of Routine Maintenance and Operation. If the Routine Maintenance and Operation activities require the closure of a traffic lane, Sound Transit will exert its best efforts to provide the City forty-eight (48)-hours' written notice before closure of any portion of the Public Right-of-Way.

5.5 Emergency Access. In the event of an Emergency that interrupts or significantly disrupts Operation of the Light Rail Transit System and for purposes of taking immediate corrective action, Sound Transit personnel may enter the Public Rights of Way without notice to the City, as long as such entry is for the sole purpose of addressing the Emergency; provided, however, that if any entry for such purposes is likely to require excavation of soil that would alter or disturb the Public Rights of Way or use of heavy machinery within fifty (50) feet of or upon the Public Rights of Way, Sound Transit shall give the City verbal or telephonic notice of the places where, and the manner in which, entry is required, prior to such entry, promptly followed by written notice.

SECTION VI. OPERATION, MAINTENANCE, AND REPAIR IN STREETS AND RIGHTS OF WAY

6.1 Compliance with Laws, Rules, and Regulations. Sound Transit shall operate, maintain, and repair its Light Rail Transit System in compliance with all federal, state, and local laws, ordinances, departmental rules and regulations and practices affecting such system, which include, by way of

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example and not limitation, the obligation to operate, maintain, and repair in accordance with the City's Land Use Code and construction codes, and City street and utility standards. In addition, the operation, maintenance, and repair shall be performed in a manner consistent with industry standards. Sound Transit shall exercise reasonable care in the performance of all its activities and shall use industry-accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or property.

6.2 Permits Required. Except in cases of emergency repairs, Sound Transit's operation, maintenance, or repair of its Light Rail Transit System shall not commence until all required permits have been properly applied for and obtained from the proper City officials and all required permits and associated fees paid, including, but not limited to, the cost of permit-application review and inspection. In case of emergency repairs, appropriate permits shall be applied for no later than the second business day following repairs.

6.3 Level of Operation/Maintenance. All facilities shall be operated and maintained in such a manner as to minimize disruption to other users of the Public Rights of Way. All facilities shall be maintained in a state of good repair as defined by FTA in 49 CFR 625.

6.4 Appointment of Operator. Sound Transit may appoint an operator as Sound Transit's agent to exercise some or all of Sound Transit's rights under this Agreement, subject to the terms and conditions of this Agreement.

6.5 Regulatory Approvals. Sound Transit and its operator shall obtain and maintain all federal, state and/or local regulatory approvals as may be required for the operation of the Light Rail Transit System.

6.6 Responsibility for Equipment. The City shall have no responsibility for inspecting, maintaining, servicing, or repairing any trains or other equipment used by Sound Transit as part of the Light Rail Transit System, but all such equipment shall at all times comply with applicable federal, state, and local governmental requirements.

6.7 Prompt Repair. Sound Transit shall promptly repair any and all Public Rights of Way, public property, or private property that is disturbed or damaged during the operation, maintenance, or repair of its Light Rail Transit System within a mutually agreed-upon timeframe commensurate with the scope of repairs. Public property and Public Rights of Way must be restored to substantially the same condition as before the disturbance or damage occurred, or, in the case of street surfaces, better condition if reasonably necessary.

6.8 Imminent Danger. In the event of an Emergency, or where the Light Rail Transit System creates or is contributing to an imminent danger to health, safety or property, the City will immediately notify Sound Transit's Link Control Center ("LCC") or 911 to address the situation.

6.9 No At-Grade Crossings or Crossing Gates Without Permission. Sound Transit will not install any at-grade crossings or crossing gates or other traffic control devices without the written consent of the City.

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SECTION VII. FACILITY LOCATION SIGNS

Sound Transit, at its sole cost, expense, and risk, shall secure permits, furnish, erect, and thereafter maintain signs showing the location of all Sound Transit facilities. Signs shall be in conformance with applicable codes.

SECTION VIII. THIRD PARTY RIGHT OF WAY OWNERSHIP

This Agreement is not intended to cover and does not cover any occupancies over (i) rights of way or other land owned solely or jointly by any other person or entity, or (ii) any rights granted to the City by Third Parties.

SECTION IX. RELOCATIONS

If the City desires the relocation of a portion of the Light Rail Transit Facilities to accommodate the City, the City shall notify Sound Transit of such fact, and Sound Transit shall consult with the City regarding such request.

SECTION X. LIABILITY, INDEMNIFICATION

Sound Transit hereby agrees to indemnify, defend, and hold harmless the City of any and all claims, demands, suits, actions, damages, recoveries, judgments, and expenses, including, without limitation, reasonable attorneys' fees, paid by the City and arising or growing out of, in connection with, or resulting from, either directly or indirectly, the construction, maintenance, operation, repair, removal, occupancy, and use of Light Rail Transit System in the Light Rail Transit Way by Sound Transit. Sound Transit's obligation under this provision shall encompass only its own negligence, and does not relate or apply to the City's sole or partial negligence, for which the City shall remain responsible. This limitation applies to the sole or partial negligence, actions or inaction of the City, its employees, servants, agents, contractors, or subcontractors.

The City shall give Sound Transit prompt notice of any claims of which it is aware. Sound Transit shall promptly assume responsibility for the claim or undertake the defense of any litigation on behalf of the City. The City shall cooperate fully with Sound Transit in the defense of any claim. The City shall not settle any claim without the prior written consent of Sound Transit, which consent shall not be unreasonably withheld. Sound Transit expressly assumes potential liability for actions brought by Sound Transit's employees and agents against the City and, solely for the purpose of this indemnification, expressly waives any immunity under the Industrial Insurance Law, Title 51 RCW. Sound Transit acknowledges that this waiver was entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

SECTION XI. INSURANCE

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Sound Transit shall maintain throughout the term of this Agreement, and for six (6) years after its termination, insurance adequate to protect the City against claims that may arise as a result of the construction, operation, or maintenance of the Light Rail Transit System in the Light Rail Transit Way, including, without limitation (i) comprehensive general liability insurance; (ii) property damage liability insurance, including coverage for explosion, collapse, and instability; (iii) workers' compensation insurance, to the extent required by law; (iv) employer's liability insurance; and (v) comprehensive auto liability coverage, including owned, hired, and non-owned vehicles.

Sound Transit shall carry such insurance with responsible insurers or self-insure or participate in an insurance pool or pools at levels of coverage or with reserves adequate, in the reasonable judgment of Sound Transit, to protect Sound Transit and the City against loss, and as are ordinarily carried by municipal or privately-owned entities engaged in the operation of systems comparable to the Light Rail Transit System.

Sound Transit shall file with the City's Risk Manager certificates of insurance reflecting evidence of the required insurance and naming the City as an additional insured where appropriate. The certificates shall contain a provision that coverage will not be canceled until at least thirty (30) days' prior written notice has been given to the City.

If Sound Transit fails to maintain the required insurance, the City may order Sound Transit to stop operating the Light Rail Transit System in the Light Rail Transit Way until the required insurance is obtained.

SECTION XII. LIENS

12.1 The Light Rail Transit Way and Light Rail Transit Facilities are not subject to a claim of lien. In the event that any City property becomes subject to any claims for mechanics, artisans, or materialmen liens, or other encumbrances chargeable to or through Sound Transit which Sound Transit does not contest in good faith, Sound Transit shall promptly, and in any event within thirty (30) days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit or other means), without cost to the City, and shall indemnify the City against all costs and expenses, including attorney fees, incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Sound Transit after first giving Sound Transit five (5) business days' advance notice of its intention to do so. The City shall use its reasonable best efforts to keep Sound Transit's facilities free of all liens that may adversely affect the Light Rail Transit System.

12.2 Nothing herein shall preclude Sound Transit's or the City's contest of a claim for lien or other encumbrance chargeable to or through Sound Transit or the City, or of a contract or action upon which the same arose.

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12.3 Nothing in this Agreement shall be deemed to give, and the City expressly waives, any claim of ownership in and to any part or the whole of the Light Rail Transit Facilities except as may be otherwise provided herein.

SECTION XIII. TERM; TERMINATION

13.1 This Agreement shall be effective as of the date the last party signs and, unless sooner terminated pursuant to the terms hereof, shall remain in effect for so long as the Light Rail Transit Way is used for public transportation purposes.

13.2 Upon termination of this Agreement, Sound Transit agrees to prepare, execute and deliver to the City all documentation necessary to evidence termination of this Agreement or portion thereof so terminated. No such termination, however, shall relieve the parties hereto of obligations accrued and unsatisfied at such termination.

13.3 Upon the cessation of use of the Light Rail Transit Way for the Light Rail Transit System, to the extent any portion of it remaining in the Public Rights of Way or on any other public property is not removed by Sound Transit, the City, as expressed by ordinance, may deem it abandoned and it shall become the property of the City. If the City does not desire such ownership, Sound Transit shall remove any remaining portion of the Light Rail System.

13.4 Any order by the City issued pursuant to this Section to remove the Light Rail Transit System in whole or in part shall be sent by registered or certified mail to Sound Transit not later than twenty-four (24) months following the date of termination of this Agreement, or, if later, the final resolution of any appeal of the termination.

13.5 Sound Transit shall file a written removal plan with the City not later than sixty (60) calendar days following the date of the receipt of any orders directing removal, or any consent to removal, describing the work that will be performed, the manner in which it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City. The affected property shall be restored to as good or better condition than existed immediately prior to removal.

SECTION XIV. DISPUTE RESOLUTION; REMEDIES; ENFORCEMENT

14.1 Dispute Resolution.

A. Any disputes or questions of interpretation of this Agreement that may arise between Sound Transit and the City shall be governed under the Dispute Resolution provisions in this Section. The Parties agree that cooperation and communication are essential to resolving issues efficiently. The Parties agree to exercise their best efforts to resolve any disputes that may arise through this dispute resolution process.

B. The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level.

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C. The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good-faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

(1) Level One - Sound Transit's Deputy Executive Director of Design, Engineering and Construction Management or Designee and the City's Engineering Services Manager shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level One, either party may refer the dispute to Level Two.

(2) Level Two - Sound Transit's Executive Director of Design, Engineering and Construction Management or Designee and the City's Public Works Director or Designee shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.

(3) Level Three - Sound Transit's Chief Executive Officer or Designee and the City Manager or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner.

D. Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) calendar days after referral of that dispute to Level Three, the Parties are free to file suit or agree to alternative dispute resolution methods such as mediation. At all times prior to resolution of the dispute, the Parties shall continue to perform and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

14.2 Notice of Default. Neither party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) calendar days after written notice of default from any other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within thirty (30) days, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure.

14.3 Remedies. Either party hereto has the right to exercise any and all of the following remedies, singly or in combination, and consistent with the dispute resolution and notice of default sections of this Agreement, in the event the other party violates any provision of this Agreement:

A. Commencing an action at law for monetary damages;

B. Commencing an action for equitable or other relief;

C. Seeking specific performance of any provision that reasonably lends itself to such remedy.

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14.4 Cumulative Remedies. In determining which remedy or remedies for a party's violation are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the party has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstance. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

14.5 Failure to Enforce. Neither party hereto shall be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure of the other party to enforce prompt compliance, and one party's failure to enforce shall not constitute a waiver of rights or acquiescence in the other party's conduct.

SECTION XV. COVENANTS AND WARRANTIES

15.1 By execution of this Agreement, the City warrants:

A. That the City has full right and authority to enter into and perform this Agreement and any permits which may be granted in accordance with the terms hereof, and that by entering into or performing this Agreement the City is not in violation of any law, regulation, or agreement by which it is bound, to which it is bound, or to which it is subject; it being understood, however, that the covenant and warranty contained in this Section does not constitute a warranty, expressed or implied, by the City, of the right or rights granted by the City to Sound Transit hereunder; and

B. That the execution, delivery, and performance of this Agreement by the City has been duly authorized by all requisite corporate action, that the signatories for the City hereto are authorized to sign this Agreement, and that, upon approval by the City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

15.2 By execution of this Agreement, Sound Transit warrants:

A. That Sound Transit has full right and authority to enter into and perform this Agreement in accordance with the terms hereof and by entering into or performing under this Agreement, Sound Transit is not in violation of any of its agency governance rules, any law, regulation or agreement by which it is bound or to which it is subject; and

B. That the execution, delivery and performance of this Agreement by Sound Transit has been duly authorized by all requisite Board action, that the signatories for Sound Transit hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

SECTION XVI. RECORDINGS, TAXES AND OTHER CHARGES

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16.1 Sound Transit shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any permit, easement or deed which may be granted hereunder. Sound Transit further agrees that if it is determined by any federal, state, or local governmental authority that the sale, acquisition, license, grant, transfer, or disposition of any part or portion of the Light Rail Transit Facilities or right herein described requires the payment of any tax, levy, excise, assessment, or charges, including without limitation, property, sales or use tax, under any statute, regulation or rule, Sound Transit shall pay these, plus any penalty and/or interest thereon, directly to said taxing authority and shall hold the City harmless therefrom. Sound Transit shall pay all taxes, levies, fees, excises, assessments, or charges, including any penalties and/or interest thereon, levied or assessed on the Light Rail Transit Facilities, or on account of their existence or use, including increases thereof attributable to such existence or use, and excluding taxes based on the income of the City, shall indemnify the City against payment thereof. Sound Transit shall have the right to claim, and the City shall reasonably cooperate with Sound Transit in the prosecution of any such claim, for refund, rebate, reduction, or abatement of such tax(es).

16.2 The City may pay any tax, levy, fee, excise, assessment or charge, plus any penalty and/or interest thereon, imposed upon Sound Transit for which Sound Transit is obligated pursuant to this Section if Sound Transit does not pay such tax, levy, excise, assessment, or charge when due. Sound Transit shall reimburse the City for any such payment made pursuant to the previous sentence, plus interest at the prime rate per annum, as published in the Wall Street Journal.

SECTION XVII. ASSIGNABILITY; BENEFICIARY

17.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assignees. No assignment hereof or sublease shall be valid for any purpose without the prior written consent of the other party, and any attempt by one party to assign or license the rights or obligations hereunder without prior written consent will give the other party the right, at its written election, immediately to terminate this Agreement or take any other lesser action with respect thereto. The above requirement for consent shall not apply to (i) any disposition of all or substantially all of the assets of a party; (ii) any governmental entity merger, consolidation or reorganization, whether voluntary or involuntary; (iii) a sublease or assignment of this Agreement, in part or in whole, to a governmental entity; or (iv) a sale, lease, or other conveyance by the City, subject to those requirements set forth in this Agreement; provided however, that no sublease or assignment under (ii) or (iii) shall be permitted to a governmental entity not operating, constructing or maintaining a Light Rail Transit System on behalf of Sound Transit, and provided further that no unconsented assignment shall relieve Sound Transit of its obligations and liabilities under this Agreement.

17.2 Either party hereto may assign any monetary receivables due them under this Agreement; provided, however, such assignment shall not relieve the assignor of any of its rights or obligations under this Agreement.

17.3 Sound Transit acknowledges and agrees that the City may designate in writing a designee to (i) receive information, including information designated or identified as confidential, and notices under this Agreement, and (ii) provide certain approvals or consents required from the

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City under this Agreement. In the event of such designation, Sound Transit may rely on approvals or consents by such designee on behalf of the City as fully as if such actions were performed by the designator itself.

17.4 Neither this Agreement nor any term or provision hereof, or any inclusion by reference, shall be construed as being for the benefit of any party not a signatory hereto.

SECTION XVIII. NOTICES

18.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to (one copy each):

Central Puget Sound Regional Transit Authority
Attention: Deputy Executive Director DECM
401 South Jackson Street
Seattle, WA 98104-2826

And to:

City of Des Moines
Attention: Chief Operations Officer
21630 11th Avenue S.
Des Moines, WA 98198

SECTION XIX. MISCELLANEOUS

19.1 This Agreement shall survive delivery and/or recordation of each may be granted hereunder.

19.2 Each party shall be responsible for its own costs, including legal fees, in negotiating or finalizing this Agreement, unless otherwise agreed by the Parties.

19.3 Sound Transit shall not be deemed in default with the provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond Sound Transit's control; the unforeseeable unavailability of labor or materials; labor stoppages or slowdowns; or power outages exceeding back-up power supplies. This Agreement shall not be revoked or Sound Transit penalized for such noncompliance, provided that Sound Transit takes immediate and diligent steps to return to compliance and to comply as soon as practicable under the circumstances without duly endangering the health, safety, and integrity of Sound Transit's employees or property, or health, safety, and integrity of the public, Public Rights of Way, public property, or private property.

19.4 This Agreement may be amended only by a written instrument executed by each of the parties hereto, save and except for revisions or modifications to **Exhibit C** as provided for in Section 2.1 herein. No failure to exercise and no delay in exercising, on the part of any party

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hereto, any rights, power or privilege hereunder shall operate as a waiver hereof except as expressly provided herein.

19.5 This Agreement constitutes the entire agreement of the parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, oral and written, understandings and agreement with respect hereto.

19.6 Section headings are intended as information only, and shall not be construed with the substance of the section they caption.

19.7 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.

SECTION XX. LEGAL FORUM

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.

SECTION XXI. INTERPRETATION

This Agreement is executed by all parties under current interpretations of applicable federal, state or local statute, ordinance, law, or regulation.

SECTION XXII. SEVERABILITY

In case any term of this Agreement shall be held invalid, illegal, or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.

IN WITNESS WHEREOF, each of the parties hereto has executed this Light Rail Transit Way Agreement by having its authorized representative affix his/her name in the appropriate space below.

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SOUND TRANSIT

CITY OF DES MOINES

By: _____
Peter M. Rogoff, Chief Executive Officer

By: _____

Date: _____

Date: _____

Authorized by Motion XX on XX

Authorized by Motion of the City Council on
XXX XX, 2018

Approved as to form:

Approved as to form:

By: _____
Stephen G. Sheehy,
Senior Legal Counsel

By: _____
Tim George
City Attorney

- Exhibit A: General Description of Light Rail Alignment and Station Location(s)
- Exhibit B: Graphic Representation of Light Rail Alignment and Station Location(s)
- Exhibit C: Federal Way Link Extension Plans and Profiles
- Exhibit D: Track Access Procedures (June 15, 2015)

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EXHIBIT A

GENERAL DESCRIPTION OF LIGHT RAIL ALIGNMENT AND STATION LOCATION

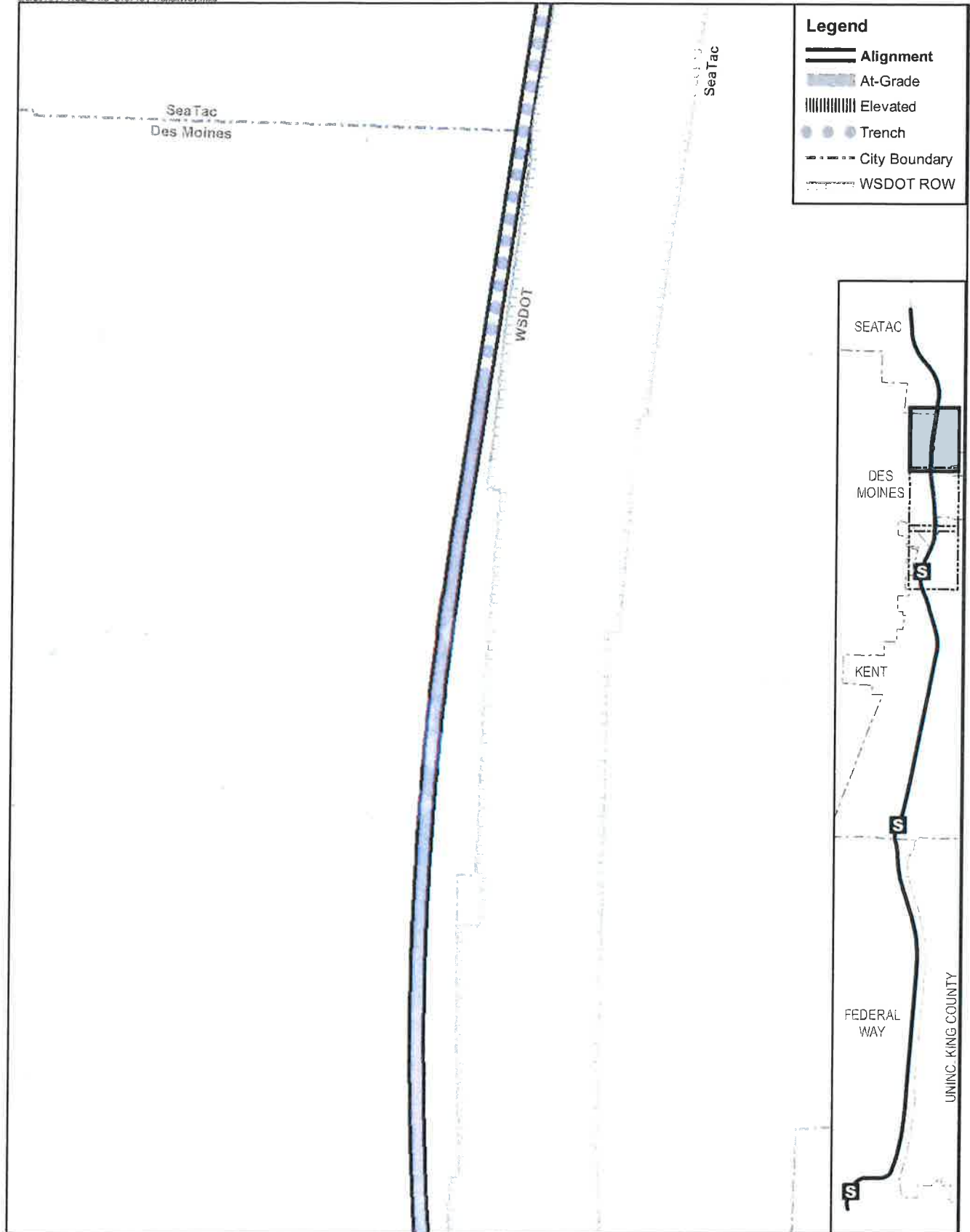
General Description of Federal Way Link Extension Alignment in Des Moines

Route: Approximately 1.1 miles from the northern City limits on the north side of S 216th Street in a combination of retained cut, retained fill, at-grade, and elevated structures to the City limits at Kent Des Moines Road.

EXHIBIT B:

LIGHT RAIL ALIGNMENT AND STATION LOCATIONS

3/9/2018 | FWLE_Ph3_249745 | TransitWay.mxd

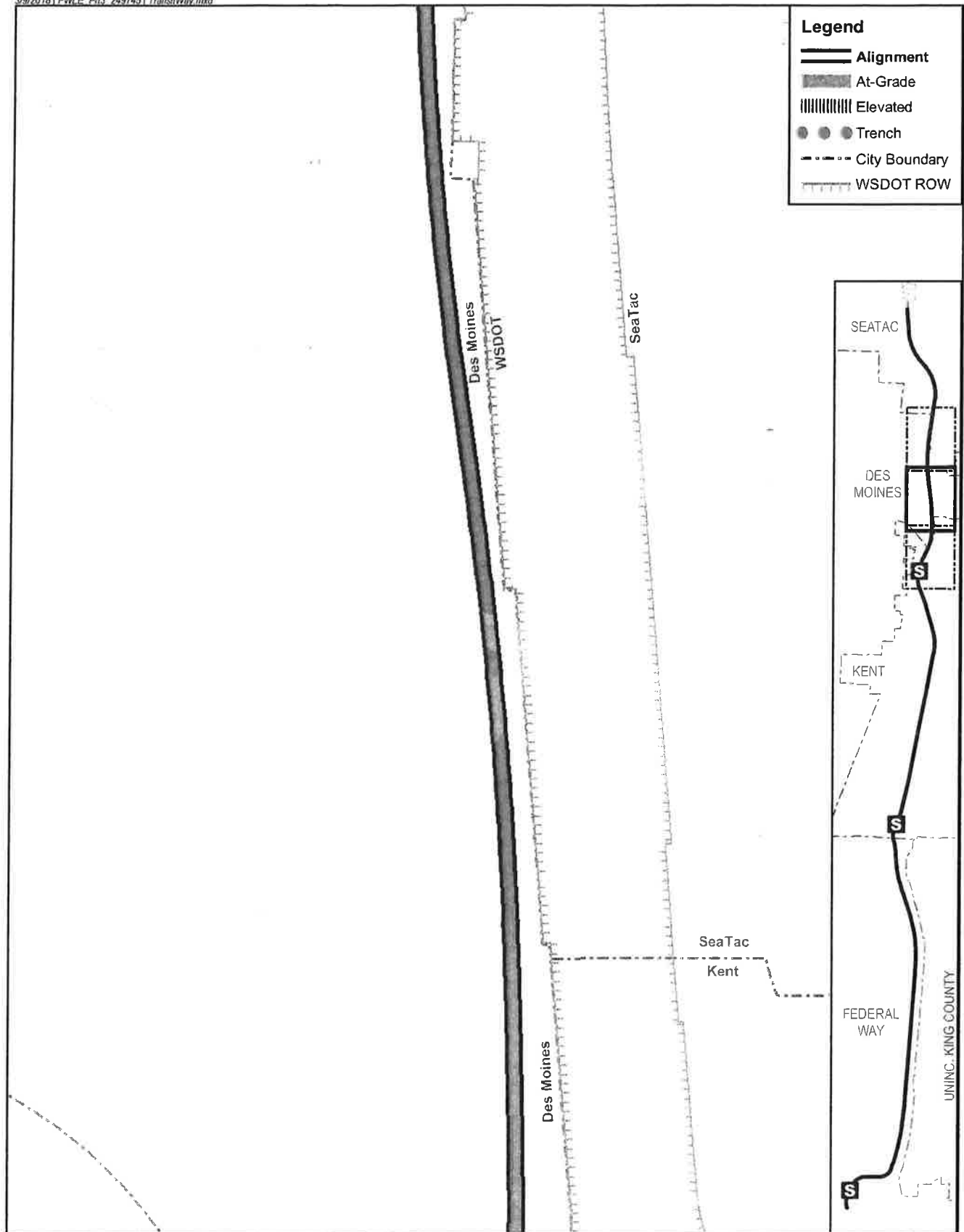
**EXHIBIT B-1**

Light Rail Alignment and Station Locations

City of Des Moines

Federal Way Link Extension

3/9/2018 | FWLE Ph3 249745 | TransitWay.mxd



Service Layer Credits: Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

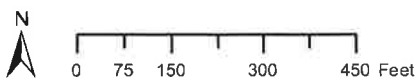
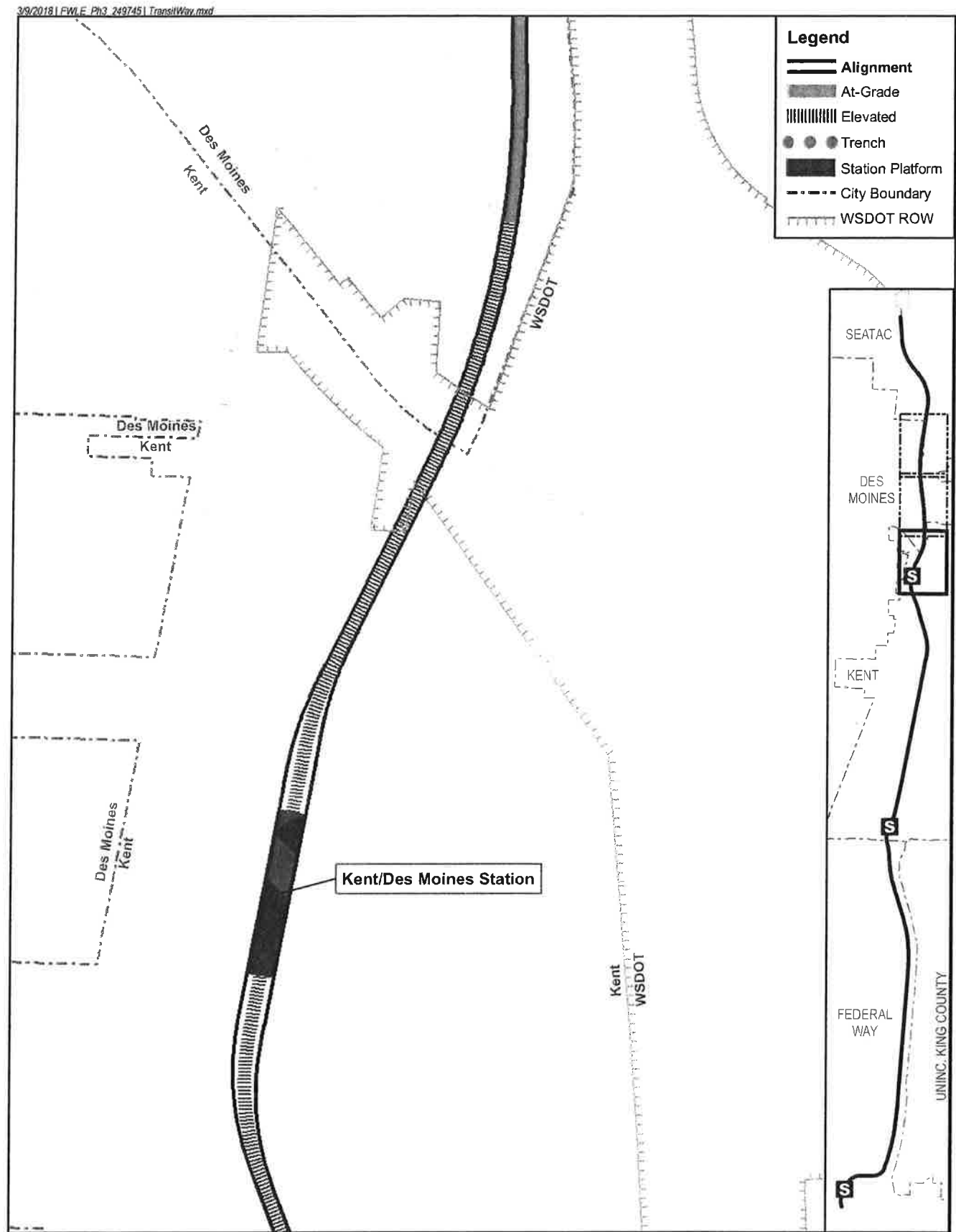


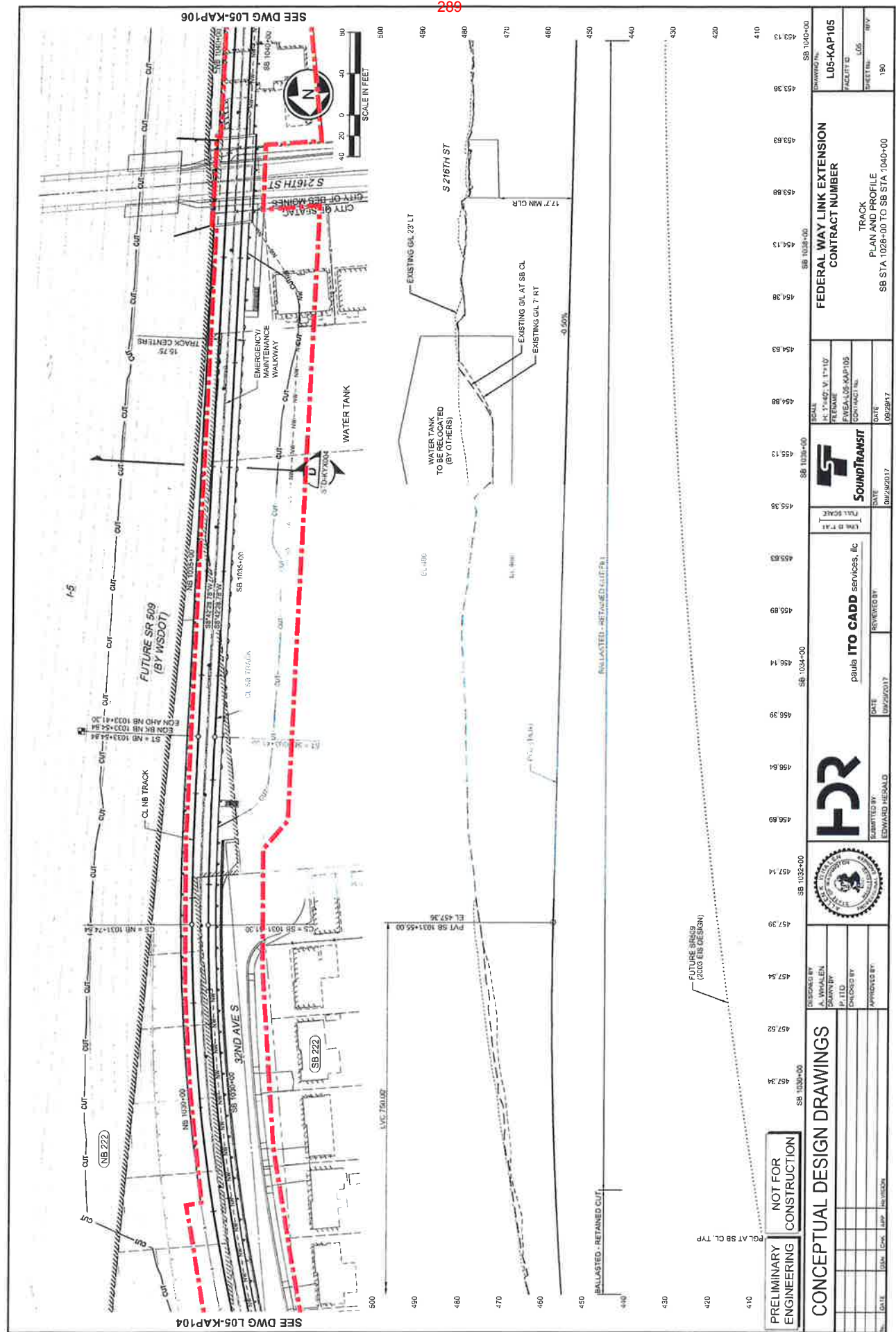
EXHIBIT B-2
Light Rail Alignment and Station Locations
City of Des Moines
Federal Way Link Extension



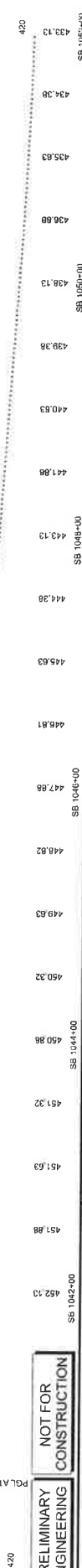
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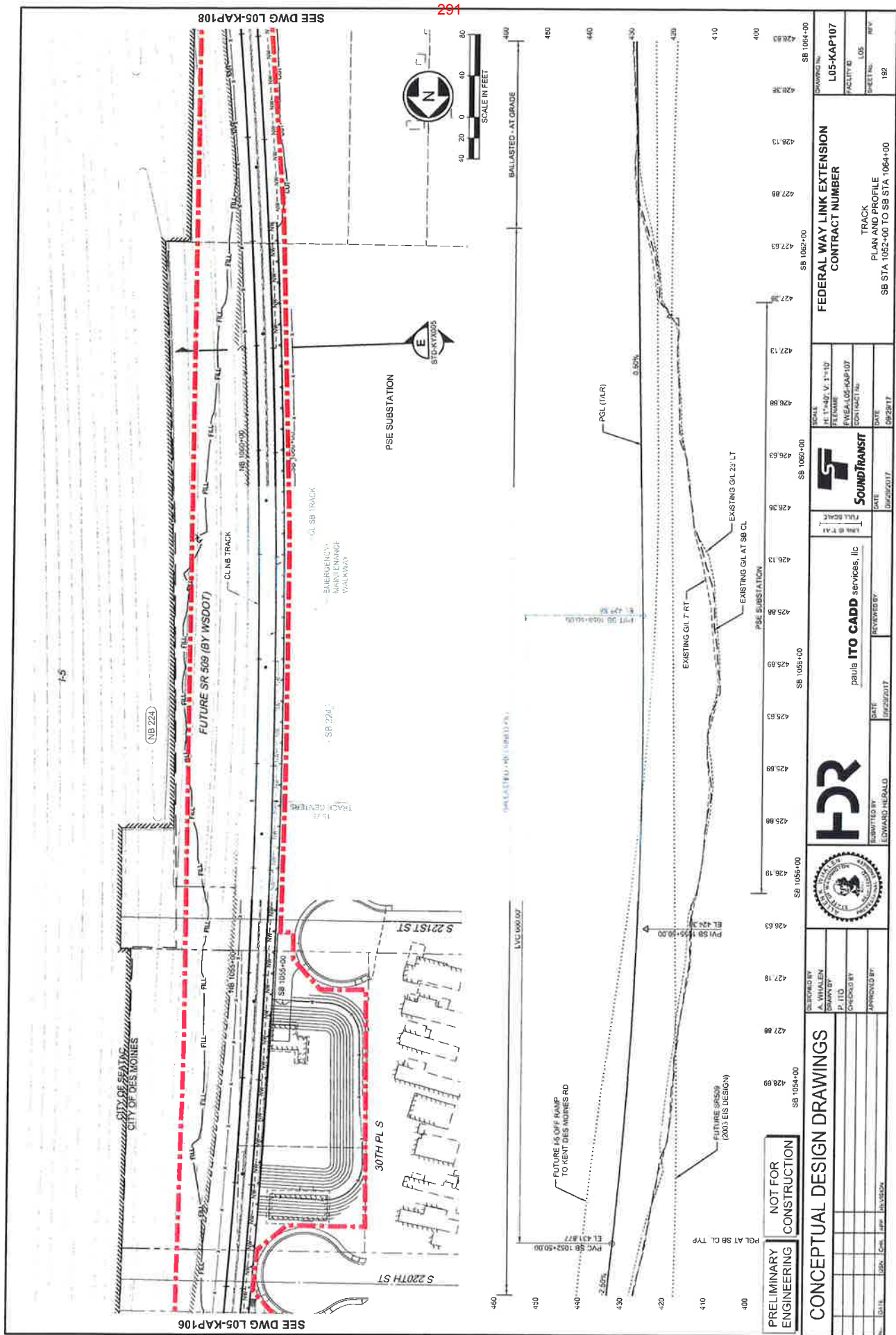
EXHIBIT B-3
Light Rail Alignment and Station Locations
City of Des Moines
Federal Way Link Extension

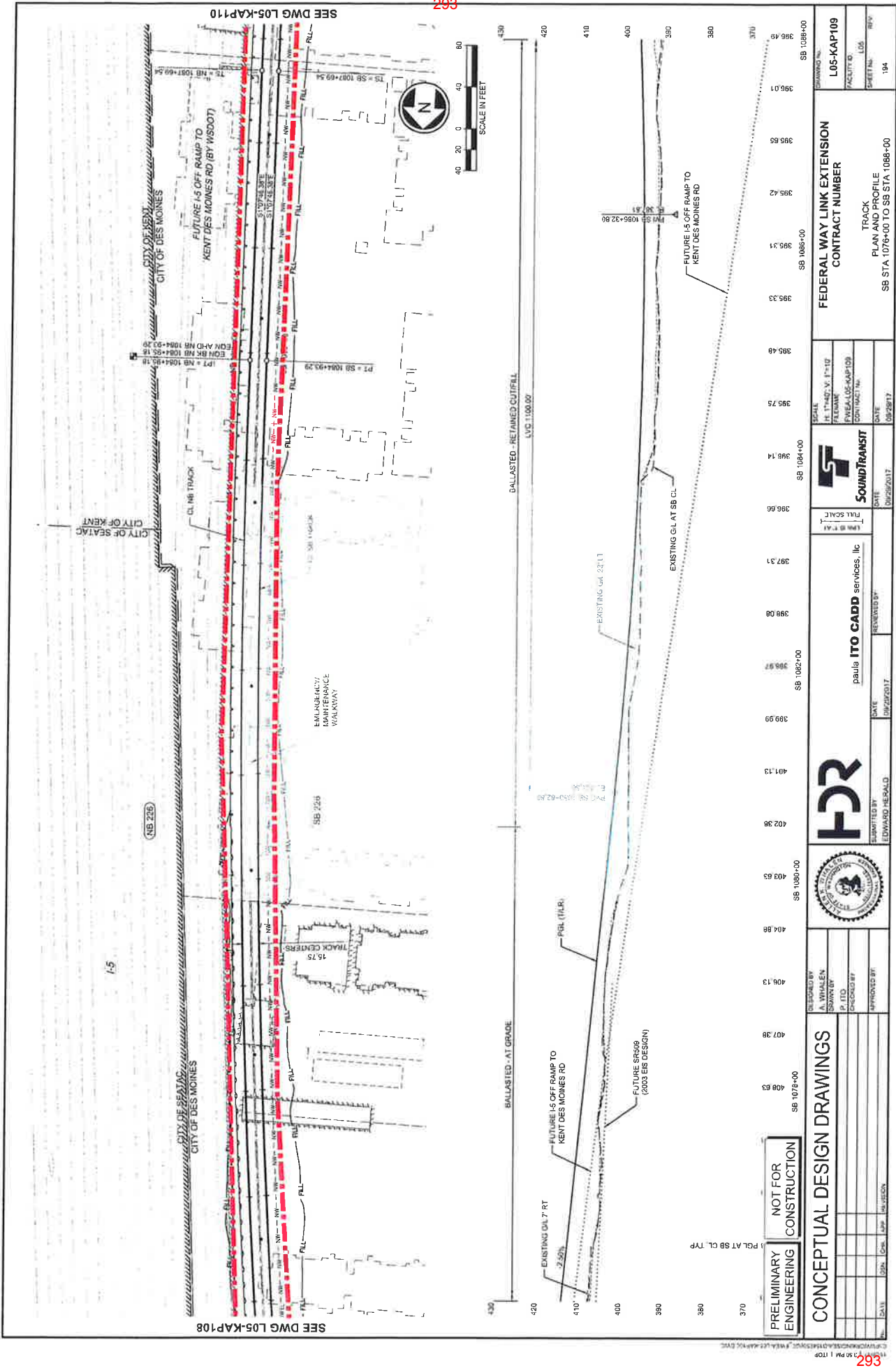
EXHIBIT C:
PLAN AND PROFILES



EE DWG 105-KAP107

[illegible]





CONCEPTUAL DESIGN DRAWINGS														paula ITO CADD services, llc				SCALE 1" = 10' 0" V. 1" = 10'		FEDERAL WAY LINK EXTENSION	
DESIGNED BY A. WHELEN SWANBY										P. ITO		P. ITO		FEDERAL WAY LINK EXTENSION		CONTRACT NUMBER		L05-KAP109		DRAWING NO.	
CHECKED BY										CHECKED BY		CHECKED BY		FEDERAL WAY LINK EXTENSION		CONTRACT NUMBER		L05-KAP109		DRAWING NO.	
APPROVED BY										APPROVED BY		APPROVED BY		FEDERAL WAY LINK EXTENSION		CONTRACT NUMBER		L05-KAP109		DRAWING NO.	
DATE										DATE		DATE		FEDERAL WAY LINK EXTENSION		CONTRACT NUMBER		L05-KAP109		DRAWING NO.	
09/25/2017										09/25/2017		09/25/2017		FEDERAL WAY LINK EXTENSION		CONTRACT NUMBER		L05-KAP109		DRAWING NO.	
EDWARD HEBALD										EDWARD HEBALD		EDWARD HEBALD		FEDERAL WAY LINK EXTENSION		CONTRACT NUMBER		L05-KAP109		DRAWING NO.	
194										194		194		FEDERAL WAY LINK EXTENSION		CONTRACT NUMBER		L05-KAP109		DRAWING NO.	

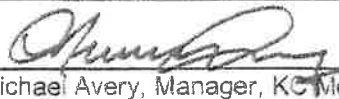


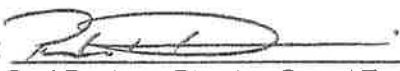


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Approved:  Date: 6/5/15
Michael Avery, Manager, KC Metro Rail Section

Approved:  Date: 6-5-15
Paul Denison, Director, Sound Transit Light Rail Operations

Approved:  Date: 6-5-2015
Tom Jones, Operations Superintendent, KC Metro Rail Section

Approved:  Date: 6-5-2015
Marie Olson, Link Transportation Manager, Sound Transit Light Rail

1.0 PURPOSE

To provide the process for managing track access to the Link Light Rail System right of way including the Downtown Seattle Transit Tunnel (DSTT).

2.0 DEFINITIONS

Controller—The designated employee on duty in the Link Control Center (LCC) having authority over the entire Light Rail System, including all rail and bus movement in the DSTT.

Downtown Seattle Transit Tunnel (DSTT)—The tunnel portion of the Link Light Rail System located in the Seattle Central Business District which has joint operations of buses and light rail trains.

Employee In Charge (EIC)—The designated KCM employee, with a current KCM Light Rail EIC training certificate, that is in charge of a work group. The EIC shall be assisted by flaggers when necessary.

KCM – King County Metro

Link Control Center (LCC)—The primary location for controlling, monitoring and dispatching the entire Link Rail System including rail and bus operations in the DSTT. Also used to address the controller in charge of the rail system at any given time.



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Lockout and Tagout (LOTO)—A procedure for safely de-energizing a section of the OCS and/or TPSS to protect personnel working on or within 10 feet of the overhead. It requires the use of locks and tags, voltage testers, placement grounds, cables, strobes, cones, flags and signs.

Overhead Contact System (OCS)—The overhead wires and equipment that distribute electric power from substations to light rail vehicles.

Power and Facilities (P&F)—A work group of King County Metro responsible for trolley bus OCS and facilities maintenance including the DSTT. Power and Facilities authorization is required for any work planned in the DSTT.

Red Tag—A red tag is used to lockout / tagout necessary systems when working within 10 feet of the OCS. A red tag for lock out / tagout may also be required for work on other elements of the system as designated by the KCM Rail Section Manager or designee.

Right Of Way (ROW)—The area that extends 10 feet from the nearest rail and/or property dedicated to light rail operations.

ST – Sound Transit

Track Access – The management, scheduling, and authorization of access to employees and contractors to perform work on, near or adjacent to the right of way or any Sound Transit facilities.

Track Access Coordinator—The individual designated by the KC Rail Manager or designee, responsible for the coordination and management of all work performed on the ROW by non-KCM personnel.

Track Allocation Request/Work Permit Form—A document used by non-KCM personnel to request authorization to perform work on, near, or adjacent to the ROW. Once approved, the Track Allocation Request /Work Permit Form serves as written authorization to allow such work to be performed and restricted such work to specific areas and time periods. Herein referred to as permit requests or work permits once authorized.



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Trackway– The area extending 10 feet from the nearest rail not designated for public use or separated from the rail by a permanent, fixed barrier.

Work Plan – An outline of all tasks or tests associated with work related to permit requests, including but not limited to: Date range of planned work, list of participant names, individual roles and responsibilities, detailed work description, maps, tools/equipment listing, and safety plan.

WP&S – Way, Power, and Signal

VM – Vehicle Maintenance

3.0 REQUIREMENTS

- 3.1 All persons except for KCM Rail Section personnel and KCM Power & Facilities (P&F) personnel must have an approved work permit prior to performing work within the Link ROW.
- 3.2 In order to ensure the safety of personnel and equipment, and the safe movement of trains along the Link alignment and buses in the DSTT, access to the ROW must be planned and approved by the KCM Track Access Coordinator prior to the performance of any work by non-KCM personnel.
- 3.3 All permit requests must include a comprehensive description of planned work. Work plans are required to adequately describe the scope of planned work. Work that is scheduled to last more than one week must have a work plan with each permit request submittal.
- 3.4 If permit requests include work that may either require access to the trackway or impact service, contact the Link Track Access Office at least 15 business days (3 weeks) prior to the desired start of work.
- 3.5 The KCM Track Access Coordinator reserves the right to refer permit requests and/or work plans to the appropriate KCM or ST Subject Matter Expert for technical review as needed.



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- 3.6 Any work planned to occur in the DSTT must be coordinated with both the KCM Track Access Coordinator and the KCM Power and Facilities Department. Work permits must be issued by both offices prior to DSTT work taking place.
- 3.7 The Rail Manager or designee has final authority concerning the issuance of work permits.
- 3.8 Rail Operations reserves the right to cancel authorization to work in the ROW at any time.
- 3.9 In the event of an emergency that requires immediate action to safeguard persons or property, LCC may permit immediate access to the ROW as needed without a permit.
- 3.10 Primary contractors and subcontractors are required to obtain permits for their work. Subcontractors will not be allowed to work under the permit of the primary contractor/permit holder.
- 3.11 If a permit requires support from KCM WP&S, KCM Facilities, KCM Vehicle Maintenance, and/or KCM Operations, coordination in advance is required. For these permits, notification to appropriate support department(s) of intent to use or to cancel the permit is required both 24 hours and 1 hour in advance of the start time. Failure to make these notifications to KCM will result in cancellation of the permit.
- 3.12 Permitted work must adhere to all conditions of the permit including permitted time, location and other restrictions. Performing work not identified on the respective permit will result in an immediate suspension of the work and revocation of the permit.
- 3.13 LCC must be contacted to open the permit before any work begins. LCC must be contacted to close the permit once all work is complete and all workers and equipment are clear of the ROW. Notifications to LCC are required each time before entering or exiting the trackway during the permitted time period. When an EIC has been assigned to a work group,



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the work permit shall be opened and closed by the EIC only. Work permits not requiring an EIC may be opened and closed by the individual designated on the work permit.

- 3.14 All personnel who perform work within the ROW must have successfully completed the appropriate tier KCM ROW safety training course.
- 3.15 All persons working in the ROW must have their ROW card in their possession.
- 3.16 All persons in the ROW, whether Link employees or others, shall immediately follow all orders from the LCC unless it is unsafe to do so.

4.0 PROCEDURES

- 4.1 To obtain a Track Allocation Request/Work Permit Form, contact the Link Track Access Coordinator at LinkTrackAccess@soundtransit.org.

- 4.2 The completed permit request must be submitted as a Word document to the Track Access Coordinator no later than Monday at 0800 for the Permit Week beginning the following Monday. The Permit Week begins each Monday morning at 0001 and ends the following Sunday at 2400.

Note: Time sensitive work, as determined by KCM, that was not requested by the deadline may be approved at the discretion of the Track Access Coordinator.

- 4.3 Work plans shall be submitted with the Track Allocation Request/Work Permit Form.

Note: Work plans involving SCADA systems must be approved by the Sound Transit IT SCADA Engineer and the KCM SCADA Chief prior to submitting a permit request.

- 4.4 Each Tuesday, the Track Access Coordinator shall meet with KCM Rail Department representatives to review permit requests and any



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associated work plans. Representatives from all Rail shall be given the opportunity to review permit requests and associated work plans. Support requirements, operational constraints and availability are determined at this meeting.

- 4.5 Permit requestor(s) or representatives must attend the Track Access Coordination meeting conducted at 1300 on Wednesdays at the Link Operations and Maintenance Facility (OMF) 3407 Airport Way South, Seattle, WA 98134. At this meeting, permit requestor(s) or representatives will meet with KCM and ST staff. The upcoming week's track access schedule will be reviewed and scheduling conflicts or questions concerning the work will be discussed.

Note: If the permit requestor or assigned representative is not present at the meeting, the requested permit may not be approved at the discretion of the Track Access Coordinator.

- 4.6 Permits are subject to additional requirements as specified by KCM Rail Operations.
- 4.7 The Track Access Coordinator has final signature authority for issuance of all permits.
- 4.8 Following signature approval, a PDF file of the original permit will be sent to the requestor no later than the end of business Friday.
- 4.9 The Track Access Coordinator will produce and distribute a Track Access Report by the end of business on Friday. Report shall include all approved work permits.
- 4.10 Copies of all approved work permits will be placed in the track access log book kept at the LCC.
- 4.11 The permit requestor, after receiving a copy of the completed and approved work permit, may plan the work per the instructions on the approved work permit.



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- 4.12 A copy of the approved work permit must be in the possession of the work party at the worksite. Failure to produce a valid work permit upon request will result in removal of the work party from the ROW.
- 4.13 Once issued, the conditions on a work permit will not be revised. If changes to any conditions are needed, such as day, time, worker protections, etc. then the permit must be cancelled and a new permit issued.

5.0 RESPONSIBILITIES

- 5.1 LCC may grant special authorization to commence emergency work as needed without a work permit.
- 5.2 Permit Requestors
- 5.2.1 As required by KCM, permits requestors must have an approved work permit and associated work plan prior to commencement of work.
- 5.2.2 Permits are required regardless of the scope of work. A copy of the approved work permit must be in the possession of the work party at the worksite. Failure to produce a valid work permit upon request will result in removal of the work party from the ROW.
- 5.3 Employee in Charge (EIC)
- 5.3.1 The EIC shall open and close work permits with LCC. The EIC shall only close work permits after confirming that all personnel, equipment and material are clear of the ROW and that all systems have been restored to their normal state.
- 5.3.2 Conduct a job/safety briefing with the contractor and crew prior to the start of work



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5.3.3 Suspend all work activities if any member of the contractor work crew is found to be in violation of the conditions of the contractor work permit(s) or does not have a valid permit onsite.

5.4 Link Control Center

5.4.1 Facilitate immediate access to the ROW in the event of an emergency.

5.4.2 Authorize access to the Link ROW to those performing routine maintenance if access does not unduly affect the safe, efficient movement of trains or buses.

5.4.3 Inform operators of workers and work parties entering and leaving the trackway.

5.4.4 Coordinate activities with those performing work to ensure minimal impact on train and bus movement as well as automobile and pedestrian traffic.

5.4.5 Coordinate non-routine activities and assist with sectionalization as required.

5.4.6 Suspend work permits if required to ensure the safety of people and/or property, or during major service interruptions where the need to restore service is critical.

5.4.7 Ensure all work activities being performed within the Link ROW are recorded in the Track Access Permit Log. The EIC for each permit, if applicable, should be included on this log.

5.5 Field Supervisors

5.5.1 Monitor and report ROW activity violations or unsafe conditions to LCC.

6.0 APPENDICES



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Appendix1: Track Access Request/Work Permit Form

Appendix2: Track Allocation Work Plan Template

7.0 SUMMARY OF CHANGES

Initial Issue-3/7/08

Revision1-4/3/09

- Changed the signature block and minor text changes in the body of the document.
- Revised Track Access Request/Work Permit Form

Revision2-6/27/13

- Updated Definitions section
- Updated Requirements section
- Updated Procedures section

Revision3-6/26/15

- Updated Definitions section
- Updated Responsibility section
- Updated Procedures section
- Updated Requirements section
- Updated Appendix
- Complete Revision



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TRACK ACCESS PROCEDURES

Appendix 1: Track Allocation Request / Work Permit Form

King County
Department of Transportation
Metro Transit & Sound Transit

TRACK ALLOCATION REQUEST/ WORK PERMIT FORM

LCC (206) 205-8177 Permit # 213-01

Company Name		Main Office Phone	
Work Crew Leader's Name		After Hours Phone	
Number of Work Sites	Number of Employees	On Site Phone #	
Type of Work to be Performed:			
Equipment to be Used:			
Exact Location of Work		NORTH ☐	SOUTH ☐
At	Between	And	
Start Date	Time	End Date	Time
PROTECTION REQUIRED			
De-Energize TPSS	Lockout Tags	Work Zone	KCM Link Staff on Site
De-Energize TPSS			
De-Energize OCS	Lockout Locks	Flaggers Required	24 hrs and 1 hr services notice for school
De-Energize OCS			
Signals Lockout	Track Switching	LRV Operations	
Signal Lockout			
Special Requirements:			
Date	Time		
CONTRACTOR AGREEMENT			
I hereby agree to the LCC by radio or the number at the top of this permit prior to entering the ROW any time. I have read and understand the scope of the work changes, and upon completion of the work. All workers must carry this ROW card at all times. Failure to do so will result in cancellation of this permit by the LCC or KC Metro Light Rail Operations. Personnel have read and understand the rules and requirements stated in this permit and will abide by them. This Permit may be revoked at any time for violation of rules & requirements or as deemed necessary for the safety of personnel and equipment.			
Contractor's Rep. (and contact number)			Date:
KCM LINK AUTHORIZATION			
Facilities Dept: Ian Bennett 206-290-1784 cell: 206-903-7492 cell ian.bennett@soundtransit.org Mike Erickson 206-255-7349 cell Mike.Erickson@soundtransit.org		Traction Power Dept: Mekia Hickman 206-423-3577 cell: 206-903-7720 mekia.hickman@soundtransit.org Pam Smith-Granson... 206-295-5822 cell Pamela.Smith-Granson@soundtransit.org	
LCADAV/Transit/Control Desk: John Hammer 206-255-7798 cell: 206-903-7718 cell john.hammer@soundtransit.org		Track Dept: Mike Larson 206-255-0422 cell: 206-903-7723 mike.larson@soundtransit.org	
KCM LINK Representative: Tam Savel 206-903-7870 cell: tam.savel@soundtransit.org Keith Morgan 206-903-7892 cell Keith.morgan@soundtransit.org		Restricted Access Office: Approved ☐ Canceled ☐	
		Date:	
IMPORTANT			
Permit must be available for review and on the work site at all times.			
Distribution: Original Track Access Coordinator, PDF Copy to Contractor, PDF Copy to LCC Rev: 6-02-2015 07/11/15			



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Appendix2: Work Plan Template

EXAMPLE TRACK ALLOCATION WORK PLAN

Please note: This document is an example only and does not constitute the only type of acceptable work plan. This document outlines the types of information needed to assess risk to the system and determine support requirements. Submitter assumes all liability for accuracy and completeness of work plans.

Date:

SUBMITTED BY (name and contact information):

APPROVING AUTHORITY FOR THIS WORK (Sound Transit Project Manager or other Approving Authority – name and contact information):

Description of Work:

Proposed Work Start Date:

Duration of Project: (If a multiple week project, what progress point are you working in:-
-Give info by Week, example: week 1 of 4, etc.)

Schematics & Drawings Attached(Y/N):

Employees on site: (Give names of all employees on site)

ROW Training Complete: (Y/N, indicate for each employee):

LIST OF EQUIPMENT:

Materials:

Vehicles:

Staging locations:

SUPPORT REQUIRED:

Department:

EIC:

Support only:

Other:

SAFETY PLAN:

Safety Requirements:

PPE:

EXHIBIT J:

PRELIMINARY PERMITTING PLAN

DRAFT

Federal Way Link Extension Project

Preliminary Permitting Plan

1. Purpose

This Preliminary Permitting Plan (“Preliminary Plan”) was developed by Sound Transit to establish a framework for the permitting of the Federal Way Link Extension Project (“Project”) by the cities of SeaTac, Des Moines, Kent, and Federal Way. It is intended to inform the development of the Final Permitting Plan, which will be the responsibility of Sound Transit’s eventual Design-Build Contractor (“D-B Contractor”). This Preliminary Plan describes anticipated design submittal packages by type and quantity as well as a potential range of plan sheets. Finally, this Preliminary Plan also includes the anticipated time for City review and action on the submittal package as well as the type and number of potential permits required for the Project.

The Preliminary Plan is intended to provide a level of certainty and predictability for Sound Transit, the local jurisdictions, and the D-B Contractor as it relates to the Project permitting process. It reflects Sound Transit’s best efforts at anticipating D-B Contractor submittal packages, based on recent agency experience. It also reflects input from the local jurisdictions regarding the time, expressed in calendar days, needed for City action on the submittal. The commitment for timing of City action is based on the broad assumptions regarding the submittal package, including number of plan sheets and type of submittal. It is understood by Sound Transit, the local jurisdictions, and will be understood by the D-B Contractor that, to the extent the Final Permitting Plan differs from these assumptions, the timing for City action will be negotiated between City and D-B Contractor.

2. Background

Existing and anticipated agreements between Sound Transit and the local jurisdictions provide the basis for enacting the framework commitments of this Preliminary Plan – specifically, the forthcoming FWLE Development Agreement (anticipated to be complete for all cities by the end of 2018) and the City Services Agreement, executed in 2017. This Preliminary Plan is anticipated to be an exhibit to the Development Agreement and provide a basis for an understanding between Sound Transit and the cities regarding design review and permitting. The City Services Agreement sets forth the terms by which Sound Transit and the City will work cooperatively during design, permitting, and construction and provides the means for Sound Transit to enter into Task Orders with the City whereby financial compensation is provided. Sound Transit intends to continue to collaborate with the City to develop Task Orders as part of final design review and to use the Preliminary and Final Permitting Plans as the basis for staffing under future Task Orders. However, with submittal of the Project’s permitting package(s) to the City, the D-B Contractor will be responsible for the payment of permit fees and Sound Transit will no longer be using Task Orders to reimburse the City for time spent reviewing and approving permitting packages, other than the dedicated project liaison.

3. Preliminary Plan Overview

Design Packages Table:

The “Design Packages” table of the Preliminary Plan provides an estimate of the design submittal packages as well as a range of total milestone submittals by design package that may be provided by the D-B Contractor at each milestone (i.e., at 60%, 90%, 100%).

- Column Heading: “Design Package” indicates the major subject of the submittal (e.g., civil, utilities, track, etc.)
- Column Heading: “City Department/Division” indicates the City department / division anticipated to review the submittal.
- Column Heading: “# of Milestone Submittals” indicates the range of anticipated number of submittals that may be part of the Design Package.
- Column Heading: “Total Plan Sheets per Milestone Submittal” indicates the anticipated number of plan sheets that would be part of each milestone submittal.
- Column Heading: “Turnaround Time per Package” indicates the anticipated City time to act on the milestone submittal in calendar days.

Most critically to understanding the City’s commitment for timing of action requested, the Design Packages Table also provides an estimated number of plan sheets per milestone submittal, with notes that the timeframe may be expanded if there are multiple overlapping submittals by the D-B Contractor. It is understood that the range of time for City action on a package is commensurate with the size of the submittal and that timing will change commensurate with the submittal, and based on the Final Permitting Plan from Sound Transit’s eventual D-B Contractor. There are some submittals for which no City action is required. These submittals will be provided to the City for courtesy review.

(Please reference Design Packages portion of attached table)

Permitting Packages Table:

The “Permitting Packages” table of the Preliminary Plan provides a rough estimate of the type and number of permits that will need to be pulled by Sound Transit’s eventual D-B Contractor, as well as the City departments that will be involved in their review. The Project will secure all required permits, regardless of whether included on this table.

- Column Heading: “Permit” indicates the permit type that is anticipated for the Project.
- Column Heading: “City Department/Division” indicates the City department / division anticipated to approve the permit.
- Column Heading: “# of Permits” indicates the range of anticipated number of permits by type that may be required.
- Column Heading: “Turnaround Time per Permit” indicates the anticipated City time to approve the permit in calendar days.

Assumptions regarding timing for city permit approval were based on input and conversations with the local jurisdictions. Time to approve the various permit types by the City is expressed in calendar days.

(Please reference Permitting Packages portion of attached table.)

4. Summary

This Preliminary Plan provides the framework for development by Sound Transit's eventual D-B Contractor of a Final Permitting Plan, for review and approval by Sound Transit and the cities of SeaTac, Des Moines, Kent, and Federal Way as part of Project construction. The Development Agreement, to which this Preliminary Plan is an exhibit, documents commitments between Sound Transit and the individual cities for managing the design review process. The City Services Agreement, and the Task Orders issued pursuant to its terms, provide a mechanism for reimbursing the City for time spent reviewing design submittals at the 60%, 90% and 100% completion level. The eventual D-B Contractor will be responsible for payment to the Cities of permitting fees as well as development of the Project's Final Permitting Plan.

FWLE Preliminary Permitting Plan - Draft of Guidance to D-8
City of Des Moines

Design Packages

Packaging by D-8 Contractor (Proposed Changes/60%/90%)	Elements for Milestone Review	City Department/Division*	# of Milestone Submittals	Total Plan Sheets per Milestone Submittal	Mutually Agreed Upon Maximum Estimated Turnaround Time Per Submittal (Calendar Days)
Package by Geographic Area	Civil (Walls, Road, Grading)	Community Development	3-15	10-90	21
Package by Geographic Area	Utilities	Community Development	5-10	5-30	21
Package by Geographic Area	Columns	Community Development	1-10	5-10	N/A - courtesy (Reference Note #1 Below)
Package by Geographic Area	Foundations	Community Development	1-10	5-20	N/A - courtesy (Reference Note #1 Below)
Package by Geographic Area	Track	Community Development	1-5	15-50	N/A - courtesy (Reference Note #1 Below)
Package by Geographic Area	Systems	Community Development	1-5	15-75	N/A - courtesy (Reference Note #1 Below)
Package by Geographic Area	Landscaping	Community Development	1-5	5-30	21
* D-8 will work with City Liaison to identify specific areas requiring resolution for each package and create a cover sheet of contents prioritized to focus City review.					

Permitting Packages

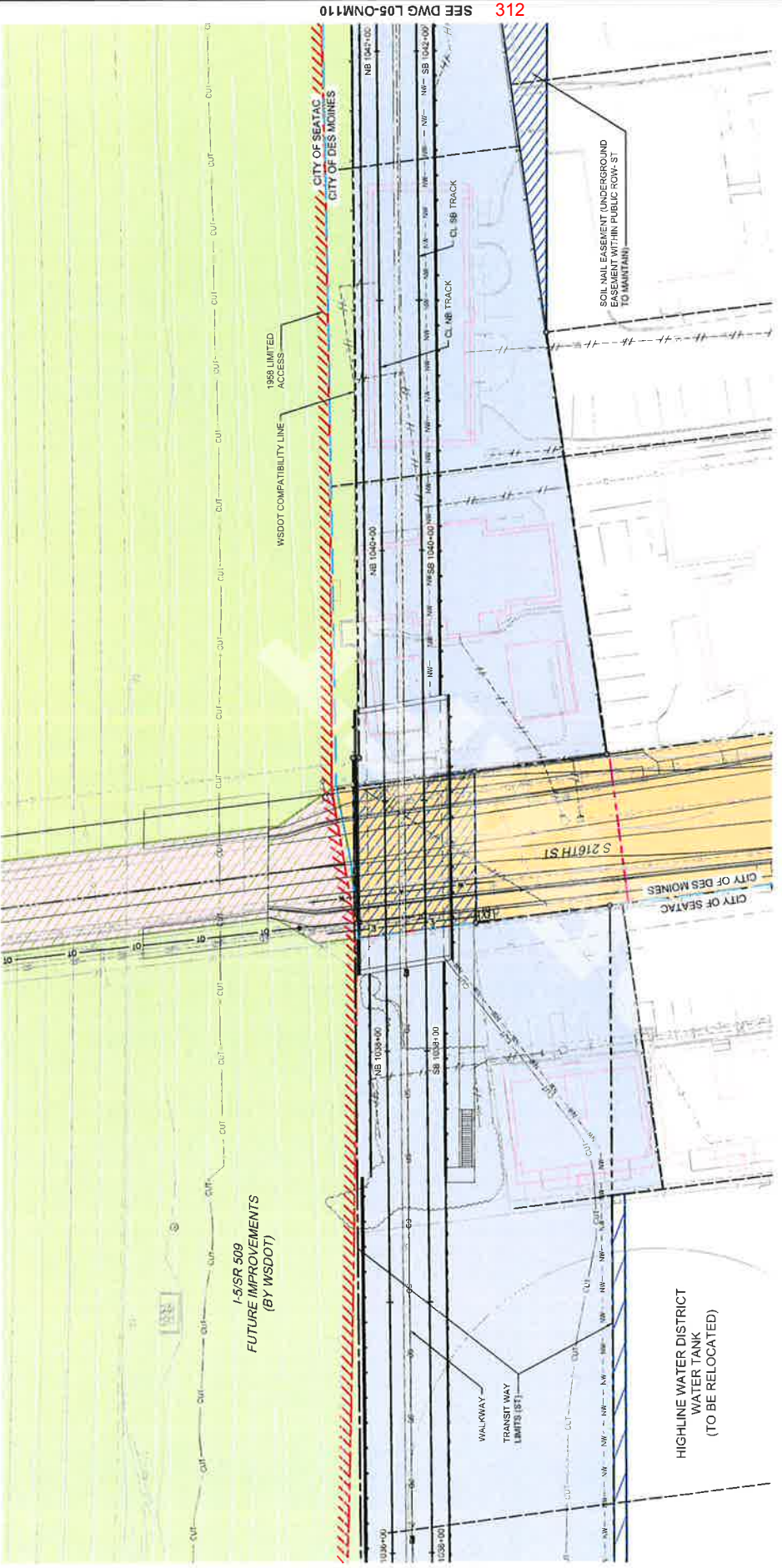
Permit	City to Inspect (Yes/No)	City Department/Division	# of Permits	Total Plan Sheets per Milestone Submittal	Mutually Agreed Upon Maximum Estimated Turnaround Time Per Permit (Calendar Days)
Demolition Permits	Yes	Community Development	30-50		7
Civil Grading - landscaping (offsite)	Yes	Community Development	1-10		21
Civil Grading - landscaping (onsite)	Yes	Community Development	As Needed		14
Civil Grading - land clearing	Yes	Community Development	As Needed		28
Civil Grading - grading/ fill/tree	Yes	Community Development	As Needed		14
Civil Grading - civil improvements	Yes	Community Development	As Needed		14
Civil Grading - utilities	Yes	Community Development	As Needed		21
Building Permits - wall	Yes	Community Development	1-5		21
Right of Way Permit	Yes	Community Development	1-15		14
Building Permits - Electrical	Yes	Community Development	1-3		14
Sign Permit	Yes	Community Development	1-8		14
Electrical Permit (TPSS feed)	Yes	Community Development	1-4		14
Noise Variance for Nighttime Work	Yes	Community Development	0-15		7

Notes

- #1 - The City intends to review vibration analyses for column and foundation designs to understand how effects will extend beyond project limits.
- #2 - The City may require an additional 7 days if outside consultant design review support is required. This need is expected to be identified during Over The Shoulder review. In Des Moines, all applications are submitted to the Community Development Department. Development Services Division then designates a project coordinator who then circulates the application to the Building, Engineering Services and SWM divisions, coordinates reviews and consolidates review comments returning the consolidated review comments to the applicant.
- #3 - The above permits, packages, sizes and durations are a guideline and meant to further discussions between the D-8 and AHJ.
- #4 - Design-Build team will propose a permit plan. The plan may separate packages by geographic areas and/or by discipline. If the Design-Build team's plan and packaging approach is generally within the limits shown above, the review turn around times will be met by the AHJ.
- #5 - Design-Build team to obtain approval of the final permit plan from AHJ.
- #6 - Turnaround time is defined as the time from submission of a complete submittal and/or permit to the AHJ to the return of submission (typically with comments) to the Design-Build team by AHJ. Time excludes day of submission.

EXHIBIT K:

OPERATIONS AND MAINTENANCE RESPONSIBILITIES



SEE DWG L05-ONM110 312

SEE DWG L05-ONM108

PRIMARY OPERATOR/ MAINTAINER	SECONDARY OPERATOR/ MAINTAINER	PRIMARY OPERATOR/ MAINTAINER	SECONDARY OPERATOR/ MAINTAINER
WSDOT	CITY OF SEATAC	CITY OF SEATAC	CITY OF SEATAC
SOUND TRANSIT	CITY OF DES MOINES	CITY OF DES MOINES	CITY OF DES MOINES
HIGHLINE WATER DISTRICT	CITY OF KENT	CITY OF KENT	CITY OF KENT
PUGET SOUND ENERGY	CITY OF FEDERAL WAY	CITY OF FEDERAL WAY	CITY OF FEDERAL WAY
SEATTLE PUBLIC UTILITIES			



DATE: 06/22/2011
SUBMITTED BY: E. KESALD

LINE 18 - 1 AT
FULL SCALE

DATE: 06/22/2011
SUBMITTED BY: E. KESALD

SCALE: 1"=20'
PROJECT: FEDERAL WAY LINK EXTENSION
CONTRACT: 105-ONM109

DATE: 06/22/2011
SUBMITTED BY: E. KESALD

SOUND TRANSIT

FEDERAL WAY LINK EXTENSION

PRELIMINARY ENGINEERING PLANS

CIVIL

OPERATION AND MAINTENANCE PLAN

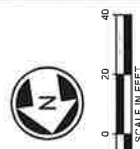
SB STA 1036.00 TO SB STA 1042.00

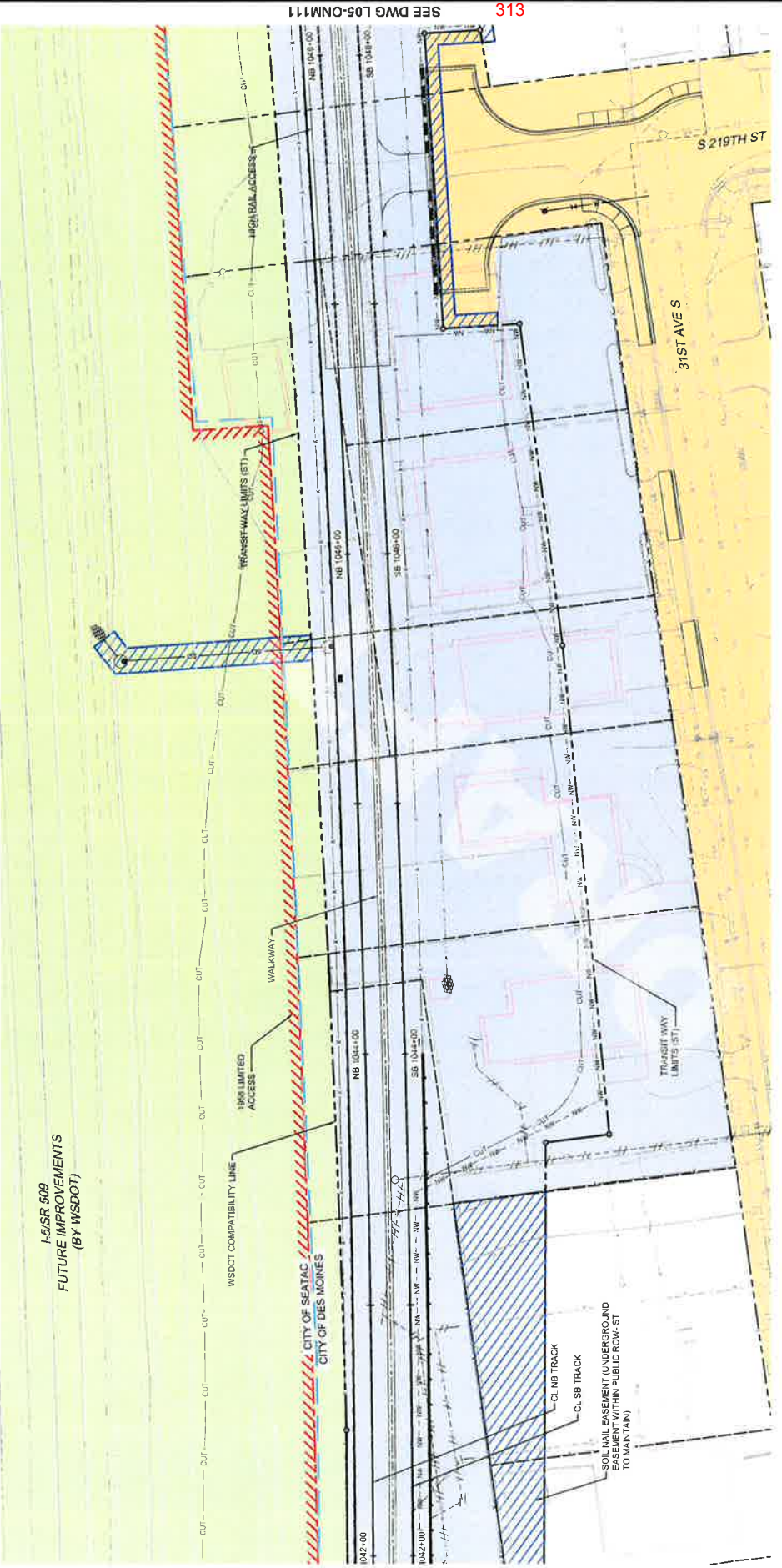
LO5-ONM109

PROJECT ID

SHEET NO. 8

REV





I-5SR 509
FUTURE IMPROVEMENTS
(BY WSDOT)

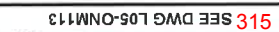
SEE DWG L05-ONM111

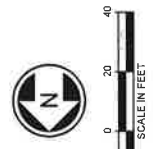
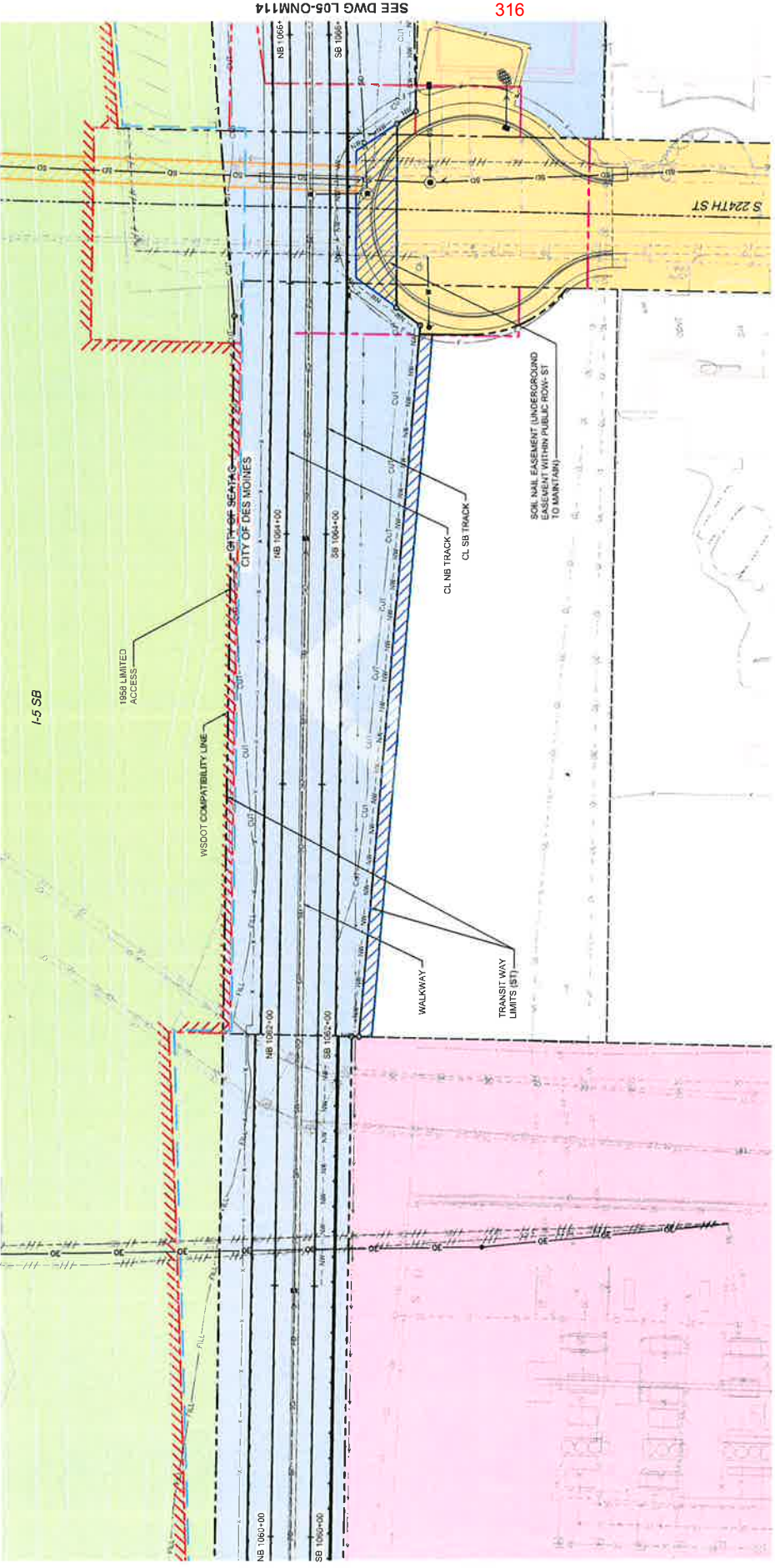
SEE DWG L05-ONM109

PRIMARY OPERATOR/ MAINTAINER	SECONDARY OPERATOR/ MAINTAINER	PRIMARY OPERATOR/ MAINTAINER	SECONDARY OPERATOR/ MAINTAINER
WSDOT	SOUND TRANSIT	CITY OF SEATAC	CITY OF SEATAC
HIGH-LINE WATER DISTRICT	PUGET SOUND ENERGY	CITY OF DES MOINES	CITY OF DES MOINES
SEATTLE PUBLIC UTILITIES		CITY OF KENT	CITY OF KENT
		CITY OF FEDERAL WAY	CITY OF FEDERAL WAY



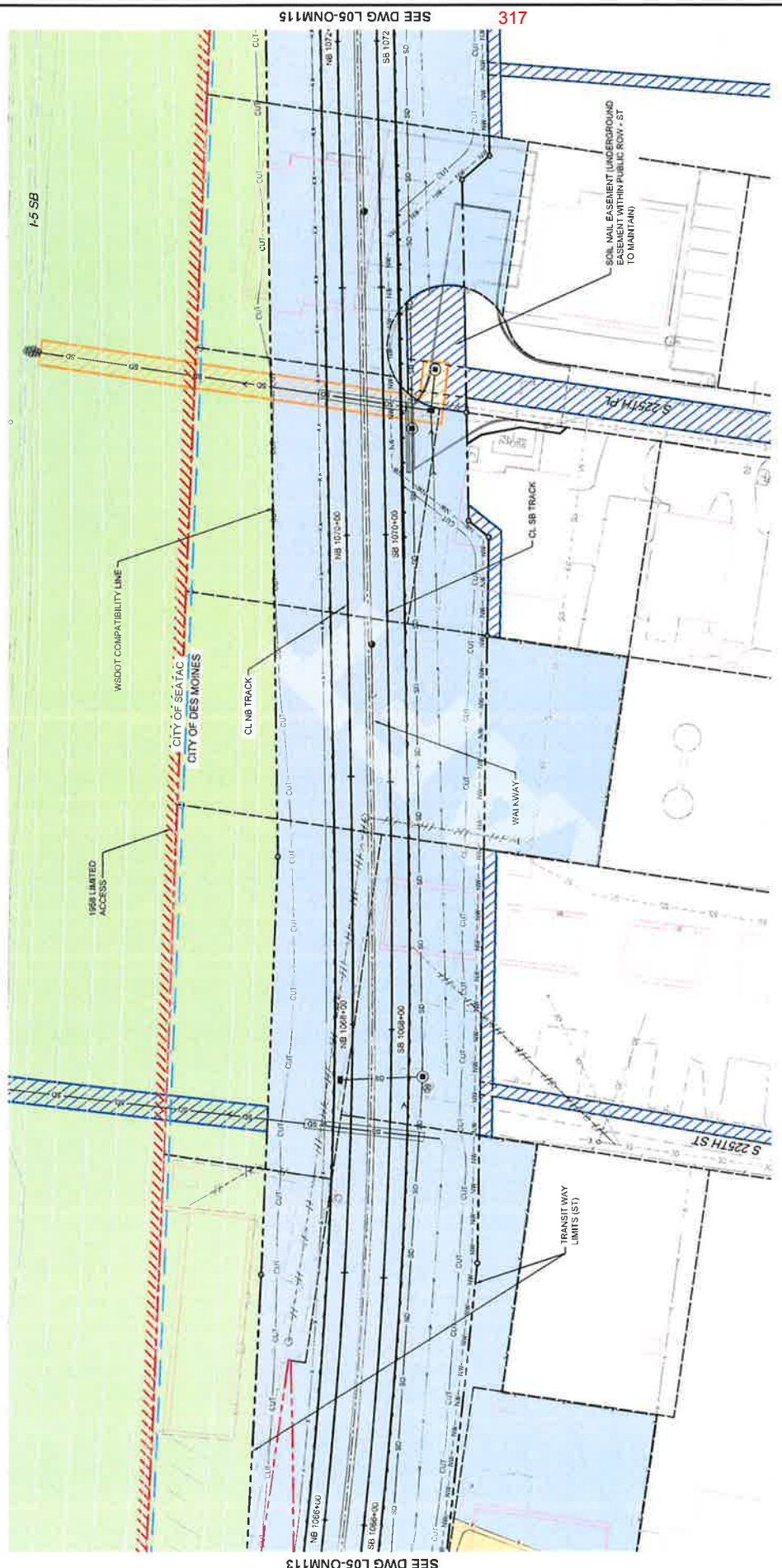
				SOUND TRANSIT FEDERAL WAY LINK EXTENSION PRELIMINARY ENGINEERING PLANS		L05-ONM110	
SUBMITTED BY E. HERALD		DATE 06/22/2011		SCALE 1" = 40'		DRAWN BY J. LUI	
CHECKED BY G. ROY-CROFT		DATE 06/22/2011		SCALE 1" = 40'		DESIGNED BY J. LUI	
APPROVED BY E. HERALD		DATE 06/22/2011		SCALE 1" = 40'		PROJECT NO. L05-ONM110	
REVISIONS		SHEET NO. 10		SHEET TOTAL 10		REV	





PRIMARY OPERATOR/ MAINTAINER	SECONDARY OPERATOR/ MAINTAINER	PRIMARY OPERATOR/ MAINTAINER	SECONDARY OPERATOR/ MAINTAINER
WSDOT	CITY OF SEATAC	CITY OF SEATAC	CITY OF SEATAC
SOUND TRANSIT	CITY OF DES MOINES	CITY OF DES MOINES	CITY OF DES MOINES
HIGHLINE WATER DISTRICT	CITY OF KENT	CITY OF KENT	CITY OF KENT
PUGET SOUND ENERGY	CITY OF FEDERAL WAY	CITY OF FEDERAL WAY	CITY OF FEDERAL WAY
SEATTLE PUBLIC UTILITIES			

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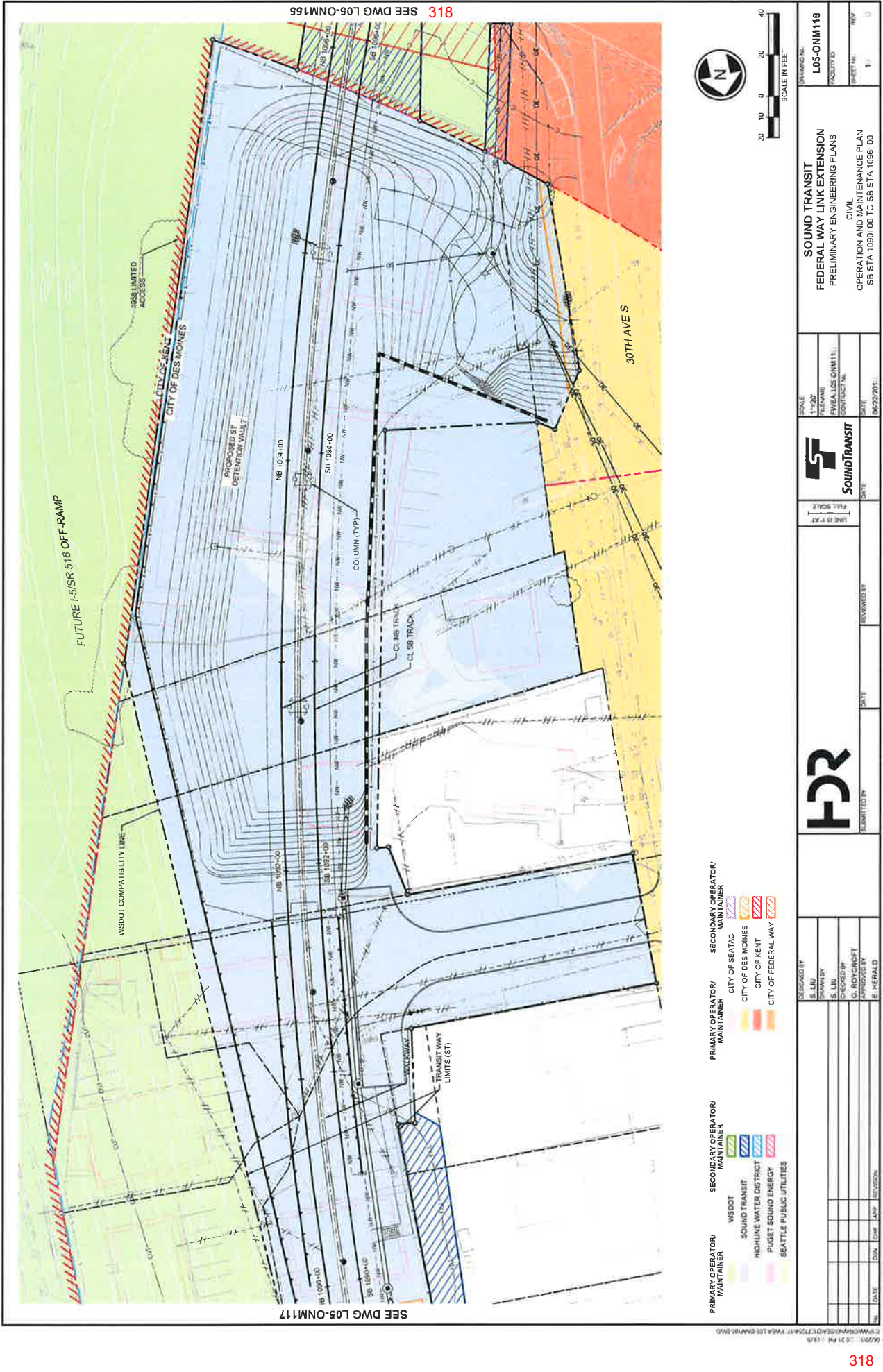
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SEE DWG L05-ONM115

- PRIMARY OPERATOR/ MAINTAINER**
- WSDOT
 - SOUND TRANSIT
 - HIGHLAND WATER DISTRICT
 - PUGET SOUND ENERGY
 - SEATTLE PUBLIC UTILITIES
- SECONDARY OPERATOR/ MAINTAINER**
- CITY OF SEATAC
 - CITY OF DES MOINES
 - CITY OF KENT
 - CITY OF FEDERAL WAY

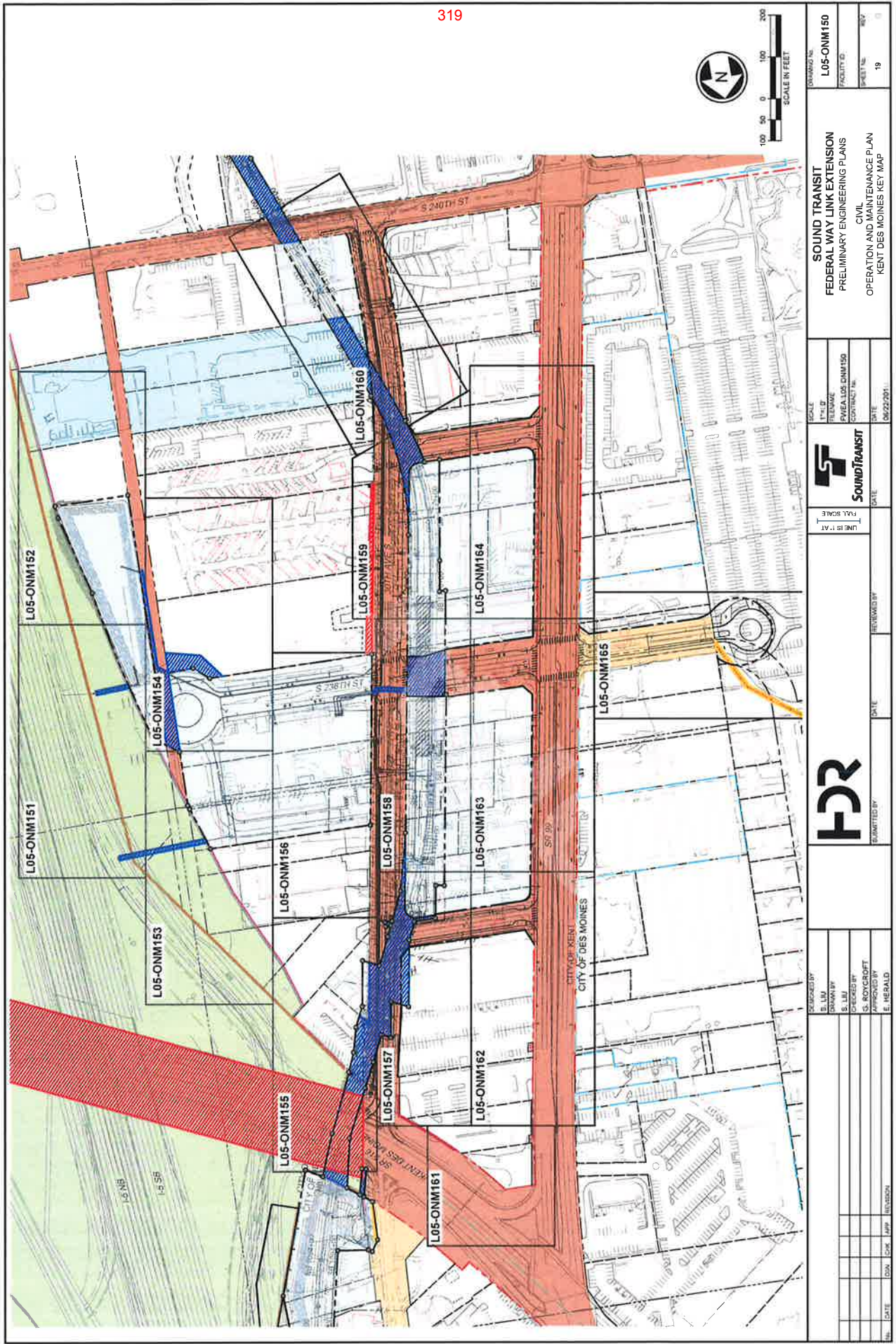


				SOUND TRANSIT FEDERAL WAY LINK EXTENSION PRELIMINARY ENGINEERING PLANS CIVIL OPERATION AND MAINTENANCE PLAN SB STA 1066+00 TO SB STA 1072+00		L05-ONM114 FACILITY NO. SHEET NO. 14 REV.	
DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE
BY	BY	BY	BY	BY	BY	BY	BY
DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE
DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE

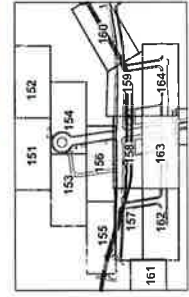
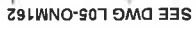


SEE DWG L05-ONM117

SEE DWG L05-ONM155

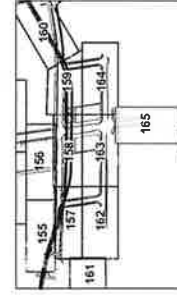


DESIGNED BY B. LAM DRAWN BY B. LAM CHECKED BY S. ROYCE APPROVED BY E. NEALD		SUBMITTED BY DATE		REVIEWED BY DATE		L05-ONM150 FEDERAL WAY LINK EXTENSION PRELIMINARY ENGINEERING PLANS OPERATION AND MAINTENANCE PLAN CIVIL KENT DES MOINES KEY MAP		SOUND TRANSIT FACILITY ID SHEET NO. 19	
SCALE 1"=100' FEDERAL WAY LINK EXTENSION CONTRACT NO.		DATE 06/22/2011		DATE		SOUND TRANSIT FACILITY ID SHEET NO. 19		SOUND TRANSIT FACILITY ID SHEET NO. 19	

[illegible]



COLLEGE WAY



KENT DES MOINES STATION

[illegible]

EXHIBIT L:

TPSS SELF-CERTIFICATION LETTER



May 14, 2018

Lawrence Pickard
Chief Building Official
City of Des Moines
21630 11th Avenue, S., Suite D
Des Moines, WA 98198

AMENDED TO CORRECT JURISDICTION FROM CITY OF KENT TO CITY OF DES MOINES IN SECOND PARAGRAPH
Sound Transit Proposal for the Federal Way Link Extension TPSS and Signal System Electrical Permitting

Dear Mr. Pickard:

Sound Transit is in the preliminary design phase of the Federal Way Link Extension (FWLE) project, a component of the November 2008 voter-approved ST2 package. The FWLE project is a 7.8 mile light rail project that will benefit local communities and support regional growth with fast, frequent and reliable light rail service, connecting communities in the three-county district of Pierce, King, and Snohomish.

The purpose of this letter is to come to an agreement between Sound Transit and the City of Des Moines granting Sound Transit to self-certify and self-label our Systems' Traction Power Substations (TPSS) and wayside signal electrical equipment (signal bungalows, houses, and cabinets), as previously approved by the State of Washington Department of Labor and Industries (L&I) on May 10, 2002 and reaffirmed by the same on August 31, 2017 (please see Attachments B and C).

Based on WAC 296-46B-010(16) & (23), Traffic Management Systems, L&I determined Sound Transit can act as its own laboratory to self-label and self-certify their equipment in lieu of an approved testing laboratory. Sound Transit's TPSS and wayside signal electrical equipment are railway equipment that are built and installed per the American Railway Engineering and Maintenance-of-Way Association (AREMA) and American Railway Association (AAR) standards. AREMA and AAR standards are developed for the sole purpose of manufacturing and installing the nation's railroads and their equipment suppliers ranging from rail to signal and communication equipment.

On the Federal and national level, AREMA and AAR standards are referenced and used by the Federal Railroad Association (FRA) and the Federal Transit Administration (FTA) for light rail projects similar to Sound Transit projects.

Central Puget Sound Regional Transit Authority • Union Station
401 S. Jackson St., Seattle, WA 98104-2826 • Reception: (206) 398-5000 • FAX: (206) 398-5499
www.soundtransit.org

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Snohomish County Executive

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Dave Upthegrove
King County Councilmember

Peter von Reichbauer
King County Councilmember

Victoria Woodards
Tacoma Mayor

CHIEF EXECUTIVE OFFICER

Peter M. Rogoff

Similar agreements regarding this proposal and request have been successfully executed with other local jurisdictions (copies of signed agreements can be made available upon request). As part of this proposal and agreement, normal electrical permitting through the local jurisdiction's permit process would remain unchanged, specifically the electrical feed to the TPSS and signal houses.

The attached information, for your review and consideration, will help to provide an oversight of how Sound Transit would like the City to permit our TPSS installation.

Attachment A: Signal System Electrical Permit Concepts for Federal Way Link Extension

Attachment B: August 31, 2017 email from Larry Vance for Stephen Thornton, Chief Electrical Inspector to Terry Beals, Director, Regulatory Permitting, Sound Transit DECM Permit Administration

Attachment C: May 10, 2002 letter signed by Ronald Fuller, past Chief Electrical Inspector, Washington Department of Labor and Industries Amended in 2017 (please see track changes) by Larry Vance, for Stephen Thornton, current Chief Electrical Inspector, Washington Department of Labor and Industries.

Attachment D: Copy of Sound Transit Self-Certification Sticker

Once you have had the chance to thoroughly review the information provided and it is determined this letter satisfies all your concerns, please concur with your signature below and return a copy of this letter to my attention.

If you have any questions or concerns, please contact me at 206-903-7807 or you can email me at gayle.zeller@soundtransit.org

Sincerely,

Gayle Zeller
FWLE Corridor Permit Manager
401 S. Jackson Street
Seattle, WA 98104



Gayle Zeller
Sound Transit
FWLE Corridor Permit Manager

Date 5/14/2018



Date 5-22-18

Lawrence Pickard, CBO
City of Des Moines
Building Division, Community Development

ATTACHMENT A

SIGNAL SYSTEM ELECTRICAL PERMIT CONCEPTS FOR EAST LINK

Purpose:

The purpose of this paper is to propose a procedure to the respective authorities having jurisdiction over sub-areas of the East Link project (Mercer Island, Bellevue, and Redmond) for permitting and inspection of the Link light rail transit (LRT) signal system. This paper only covers signal system permit and inspection issues, and although many considerations are similar, does not apply to any other LRT element.

This same approach has been successful for Sound Transit's Central Link light rail system which opened for revenue service in July 2009 through the cities of Seattle, Tukwila, SeaTac, and areas under the electrical jurisdiction of the Washington State Department of Labor and Industries (L&I). Authorities are encouraged to discuss this with their counterparts in these jurisdictions.

Introduction:

The National Electrical Code (NEC or NFPA 70) is a consensus standard developed with the purpose of providing a *'practical safeguarding of persons and property from hazards arising from the use of electricity.'* Because the railroad industry is not included in the NFPA 70 standards development process, NEC 90.2(B)(3) specifically omits *'installations of railways for generation, transformation, transmission, or distribution of power used exclusively for operation of rolling stock or installations used exclusively for signaling and communications purposes.'* The light rail transit industry typically follows many railway industry practices. Although the NEC provides no guidance, other standards organizations and the federal government have established railway safety standards aimed not only at protecting the public and railway workers, but also providing for the safety of passengers using the railway system and dependent upon proper functioning of its train control (signal) system.

The industry standards for railway signal system equipment and installation frequently far exceed normal NEC requirements and have established an exceptional safety record. However, railroad signal equipment is not UL listed and is installed in ways that are not typical in the electrical industry under NEC rules. Railroad companies such as BNSF are regulated by the Federal Railroad Administration, and therefore, do not obtain local permits for their signal systems. However, ST has cooperated with local authorities to obtain permits and interim and final inspections.

Basic Concept

Specifications will require the ST Signals Contractor to obtain electrical permits from the local authority and, during and after installation, coordinate inspections of the work. The following provides a basic understanding of how this is accomplished:

1. The electrical permit and inspection would include the service to the signal housing. The boundary of inspection would be the power connections from the panelboards to equipment racks. ST has an agreement with Washington Labor & Industries providing ST with the responsibility to self-certify its signal equipment and installation provided it meets the

applicable industry standards. The basis of this agreement is that the LRT signal system is to be considered as the equivalent of a highway traffic control system. A copy of original letter from former Washington State Chief Electrical Inspector, Ron Fuller, dated May 10, 2002 (see Attachment B) assigning this responsibility under WAC 296-46A-092(8) and 104(7), which has since been rolled up into WAC 296-46B-010(16)-(23).

2. The Signals Contractor is required to provide a "Gold Seal" L&I certification for prefabricated signal bungalows. This involves structural, mechanical, and electrical plan reviews by L&I in addition to inspections of work at the manufacturer's assembly site. The contract documents establish this as a Contractor requirement.
3. As mentioned above, railroad signal equipment is not UL listed, although it is built to industry standards that are frequently more rigorous than NEC or UL requirements. For example, a normal #14 AWG XHHW-2 wire would require 30 mils of insulation but a #14 AWG AREMA signal wire requires 60 mils of insulation. Another important fundamental difference is that railroad signal circuits are not grounded. This is to assure that the train signals will remain functional and safe even with one line inadvertently grounded. The signal system is self-monitoring and alerts Sound Transit signal maintenance workers that a grounded circuit has been detected so repairs can be undertaken in safe manor. This is similar to the method used for isolation of critical hospital and industrial power and control systems. The source of most railway industry standards is the American Railway Engineering and Maintenance-of-Way Association (AREMA).

Procedure Proposed for East Link:

1. The Contractor is responsible to contact the city inspection department to determine the permit fee based on the value of the signal system.
2. The Contractor prepares the permit application showing the power distribution portion of the signal system and the power calculations. Permit would cover service, transformers, UPS, disconnects, overcurrent protection, and connections from the panelboards to signal rack equipment. Sample permit requests to the cities of Seattle, Tukwila, and SeaTac are included in Attachment C. (Please note that these are only sample permit requests. If the East Link permitting authorities require a different format or data, the authority is requested to inform the Contractor or provide instructions that can be inserted into ST Signals Contract documents.)
3. All materials undergo 100% factory tests with factory test procedures and reports reviewed and/or witnessed by the designated ST signals engineer. During installation (or start of field test), the responsible ST engineer or his designee will apply self-certification stickers with serial numbers to the signal equipment. (A PDF copy of the sticker is provided as Attachment D.) Authorities will be able to identify that this item is self-certified and therefore will not require inspection. The list of the light rail items to be self-certified includes but is not limited to the following:
 - a. Equipment racks
 - b. Switch machines
 - c. Impedance bonds
 - d. Wayside signals
 - e. Switch heaters
 - f. Junction boxes
 - g. Entrance racks

h. Signal wiring

- 4. When applying self-certification stickers, ST maintains a log that records the sticker number, equipment name and model number, ID (or location), equipment serial number, and industrial code(s) applicable to that equipment. Those records are available at any time and can be provided upon request.**

Zeller, Gayle

From: Vance, Larry (LNI) <VANC235@LNI.WA.GOV>
Sent: Thursday, August 31, 2017 8:56 AM
To: Beals, Terry
Cc: Peckham, Lane; Rempe, Joe; Hellman, James; Newton, Corey; scoffman@ci.tacoma.wa.us; Zeller, Gayle; DeMarre, Jeffrey; DeLalla, Craig; Beals, Terry; Beckman, Eric; Thornton, Stephen D (LNI); Mutch, Rod (LNI); Bierward, Antone F (LNI); Thomas, Robert G. (LNI); Straley, Dennis M (LNI); Sedlacek, Craig L (LNI)
Subject: RE: L&I Reaffirmation of R. Fuller Letter Dated May 10, 2002 - Sound Transit - Traffic Management Systems
Attachments: Ron Fuller Letter Labor and Industries re ST elec field evaluation May 10 2002 - Updated References.pdf

Hello Terry,

In regards to the 2002 letter, fifteen years have passed and very little has changed. For clarity in the attached version of the 2002 letter, notes correct rule references and reconfirm Sound Transit's ability as a transit jurisdiction to act as a laboratory and apply their own equipment approval label to traffic management system equipment. In 2017, rules for traffic management systems exist in WAC 296-46B-010(16)-(23).

I hope this information helps you. If I can be of further assistance, please contact me.

Thank you,

Larry Vance | Electrical Technical Specialist
 for Stephen Thornton, Chief Electrical Inspector
 Washington State Department of Labor and Industries
 Field Services & Public Safety Division
 (360) 902-5742

Save about 10 by renewing your electrical license online at:
<http://www.lni.wa.gov/TradesLicensing/LicensingReq/Legal.asp>

From: Beals, Terry [mailto:terry.beals@soundtransit.org]
Sent: Wednesday, August 30, 2017 8:53 AM
To: Vance, Larry (LNI) <VANC235@LNI.WA.GOV>
Cc: Peckham, Lane <LPECKHAM@ci.tacoma.wa.us>; Rempe, Joe <jrempe@ci.tacoma.wa.us>; Hellman, James <JHELLMAN@ci.tacoma.wa.us>; Newton, Corey <newton@ci.tacoma.wa.us>; scoffman@ci.tacoma.wa.us; Zeller, Gayle <Gayle.Zeller@soundtransit.org>; DeMarre, Jeffrey <jeffrey.demarre@soundtransit.org>; DeLalla, Craig <craig.delalla@soundtransit.org>; Beals, Terry <terry.beals@soundtransit.org>; Beckman, Eric <eric.beckman@soundtransit.org>
Subject: L&I Reaffirmation of R. Fuller Letter Dated May 10, 2002
Importance: High

Good morning, Larry

Please confirm by responding to this email the essential contents of the attached Ron Fuller Letter to Sound Transit dated May 10, 2002 allowing Sound Transit as a transit jurisdiction to act as a laboratory and apply their own equipment approval label to traffic management system equipment is still valid and acceptable to the State of Washington Department of Labor and Industries Electrical Program.

Best Regards,

Terry

Terry Beals
Director, Regulatory Permitting
DECM Permit Administration
Sound Transit
101 S. Jackson St
Seattle, WA
terry.beals@soundtransit.org
206-398-5237



RECEIVED

MAY 15 2002

SOUND TRANSIT
SYSTEMS ENGINEERING

STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES

Mail correspondence to: PO Box 44460 • Olympia WA 98504-4460

May 10, 2002

Marc Bardsley
Link Light Rail
401 S Jackson St
Seattle, WA 98104

Subject: Light Rail project

Dear Marc,

This will confirm our discussion at yesterday's meeting between Sound Transit, Tacoma Power, the City of Seattle, Impulse NC, Inc., Totem Electric, and the department. There is a requirement for field evaluation or listing of all electrical equipment being installed within the state. Equipment includes, but is not limited to: conduit, boxes, wire, fittings, devices, and utilization equipment.

The department approves all field evaluation and listing laboratories. ~~The department approves all requests for field evaluations on a case by case basis.~~ Upon request, approval may be granted to perform part or all of the field evaluation in the manufacturer's facility. ~~The request for obtaining permission to perform a field evaluation must be submitted prior to the evaluation taking place.~~ A copy of all field evaluation reports must be provided to the department, local jurisdiction office, and the customer. See WAC 296-402 for details concerning listing and field evaluation laboratory requirements.

For traffic signal equipment, there is an option allowing the transit jurisdiction to act as a laboratory and apply their own equipment approval label (see WAC 296-46A-092(8) and 104(7) in lieu of an approved testing laboratory. At yesterday's meeting, we agreed that, in the case of the Sound Transit Light Rail project, traffic includes the transit system itself for the purposes of signalization for controlling pedestrian, vehicular, and rolling stock traffic. This option does not include illumination, signage, or other electrical systems. Signalization does not include the power systems used to operate the rolling stock.

It will be advantageous for Sound Transit to ensure that its equipment vendors are aware of the requirements for listing or field evaluation prior to beginning manufacturing the product. The traction power equipment currently at issue on the Tacoma section must have a field evaluation before final acceptance. At this time, the department has received no request for field evaluation of that equipment.

Sincerely,

Ronald Fuller
Chief Electrical Inspector

cc: Chuck Gregg, Tacoma – Chief Electrical Inspector
Dick Alford, Seattle – Chief Electrical Inspector

In 2017, WAC 296-46A-092(8) refers to definition of "Identification Plate" found in WAC 296-46B-100

In 2017, text in this letter marked with strikethrough is not applicable.

In 2017, WAC 296-46A-104(7) refers to "Identification of traffic management components." found in WAC 296-46B-010(22)

In 2017, WAC 296-402 requirements are found in WAC 296-46B-999

In 2017, it remains L&I position to agree that, in the case of Sound Transit Light Rail, traffic includes the transit system itself for the purposes of signalization for controlling pedestrian, vehicular, and rolling stock traffic. Sound Transit, as a transit jurisdiction, may act as a laboratory and apply their own traffic signal equipment approval labels to Sound Transit traffic management system equipment that meets applicable standards in WAC 296-46B-010(17).

In 2017, WAC 296-46A-104 requirements are found in WAC 296-46B-010(16)-(22)

WAC 296-46A-104 Traffic management systems. (1) A traffic management system includes:

- (a) Traffic illumination systems.
- (b) Traffic signal systems.
- (c) Traffic monitoring systems.
- (d) The electrical service cabinet and all related components and equipment installed on the load side of the service cabinet supplying electrical power to the traffic management system.

The department will perform the electrical inspection and acceptance of traffic management systems within its jurisdiction.

(2) The department recognizes that traffic signal conductors, pole and bracket cables, signal displays, and traffic signal controllers/cabinets and associated components used in traffic management systems are acceptable for the purpose of meeting the requirements of chapter 19.28 RCW provided they conform with the following applicable standards or are listed on the Washington state department of transportation (WSDOT) qualified products list.

- (a) WSDOT/APWA Standard Specifications and Plans.
- (b) WSDOT Design Manual.
- (c) International Municipal Signal Association (IMSA).
- (d) National Electrical Manufacturers Association (NEMA).
- (e) Federal Standards 170/Controller Cabinets.
- (f) Manual for Uniform Road, Bridge, and Municipal Construction.
- (g) Institute of Transportation Engineers (ITE).
- (h) Manual of Uniform Traffic Control Devices (MUTCD).

(3) Associated induction detection loop or similar circuits will be accepted by the department without inspection.

(4) For the licensing requirements of chapter 19.28 RCW, jurisdictions will be considered owners of traffic management systems when doing electrical work for other jurisdiction(s) under a valid interlocal agreement, as permitted by chapter 39.34 RCW. Interlocal agreements for traffic management systems must be filed with the department prior to work being performed for this provision to apply.

(5) Jurisdictions, with an established electrical inspection authority, and WSDOT may perform electrical inspection on their rights-of-way for each other by interlocal agreement. They may not perform electrical inspection on other rights-of-way except as allowed in chapter 19.28 or 39.34 RCW.

(6) Underground installations.

(a) In other than open trenching, raceways will be considered "fished" according to the NEC and do not require visual inspection.

(b) Inspections in open trenching will be conducted by the department within its jurisdiction. The electrical work permit purchaser must coordinate the electrical inspection. A written request (e.g., letter, e-mail, fax, etc.) for inspection, made to the department office having the responsibility to perform the inspection, must be made a minimum of two working days prior to the inspection need (e.g., two working days - 10:00 a.m. Tuesday request for a 10:00 a.m. Thursday inspection, excluding holidays and weekends).

If, after proper written request, the department fails to make an electrical inspection at the time requested, underground conduit may be covered after inspection by the local government jurisdiction's project inspector/designee. Written documentation of a local government jurisdiction inspection must be provided to the department when requested. Written documentation will include:

- (i) Date of inspection.
- (ii) Location.
- (iii) Installing firm.
- (iv) Owner.



SOUNDTRANSIT

APPROVED

**CERTIFICATION
FILE NO.**

0001001

**LINK SYSTEMS ENGINEERING
WAC 296-46A-092**

EXHIBIT M:
APPROVED CONTRACTOR HAUL ROUTES

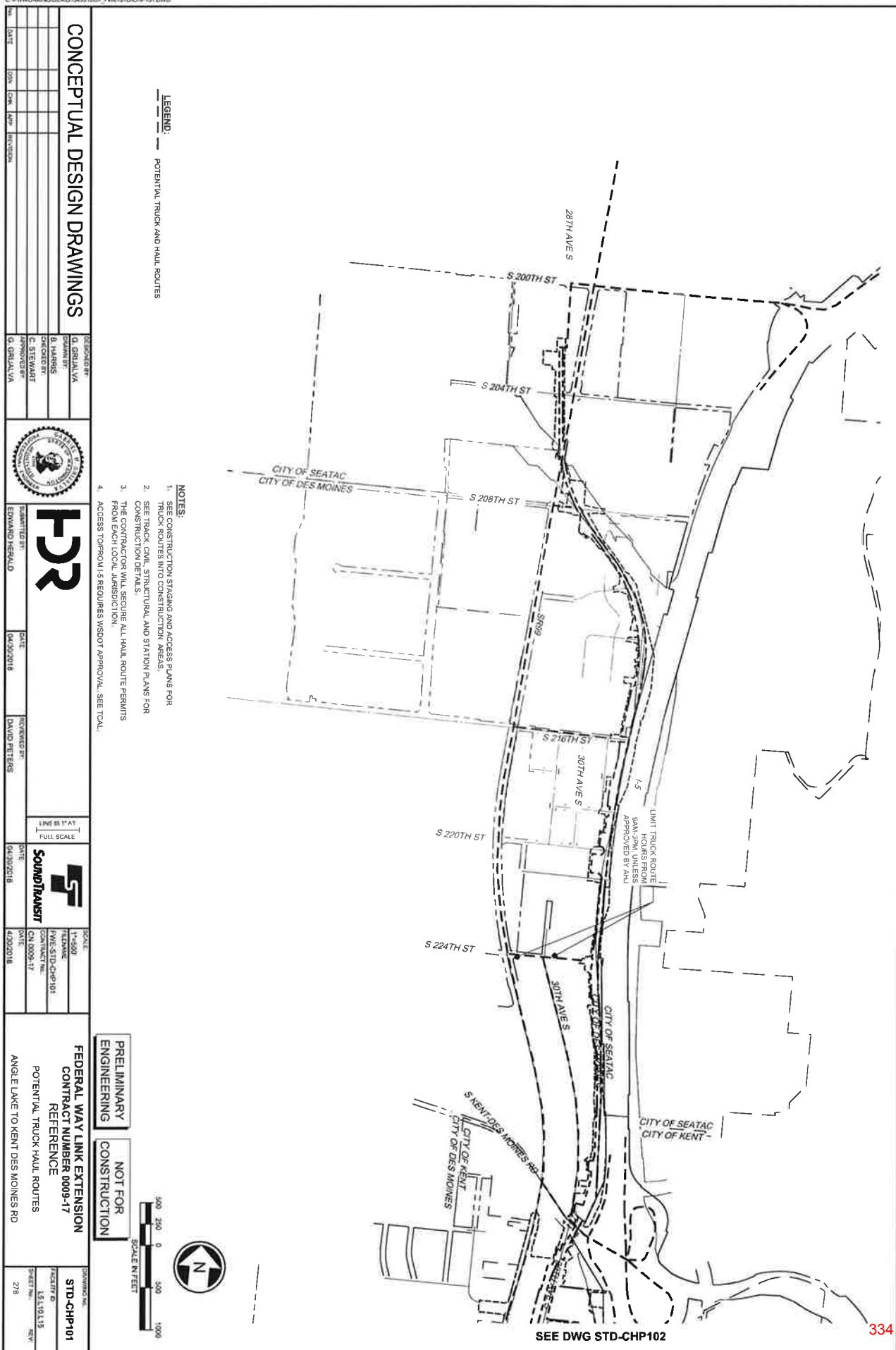
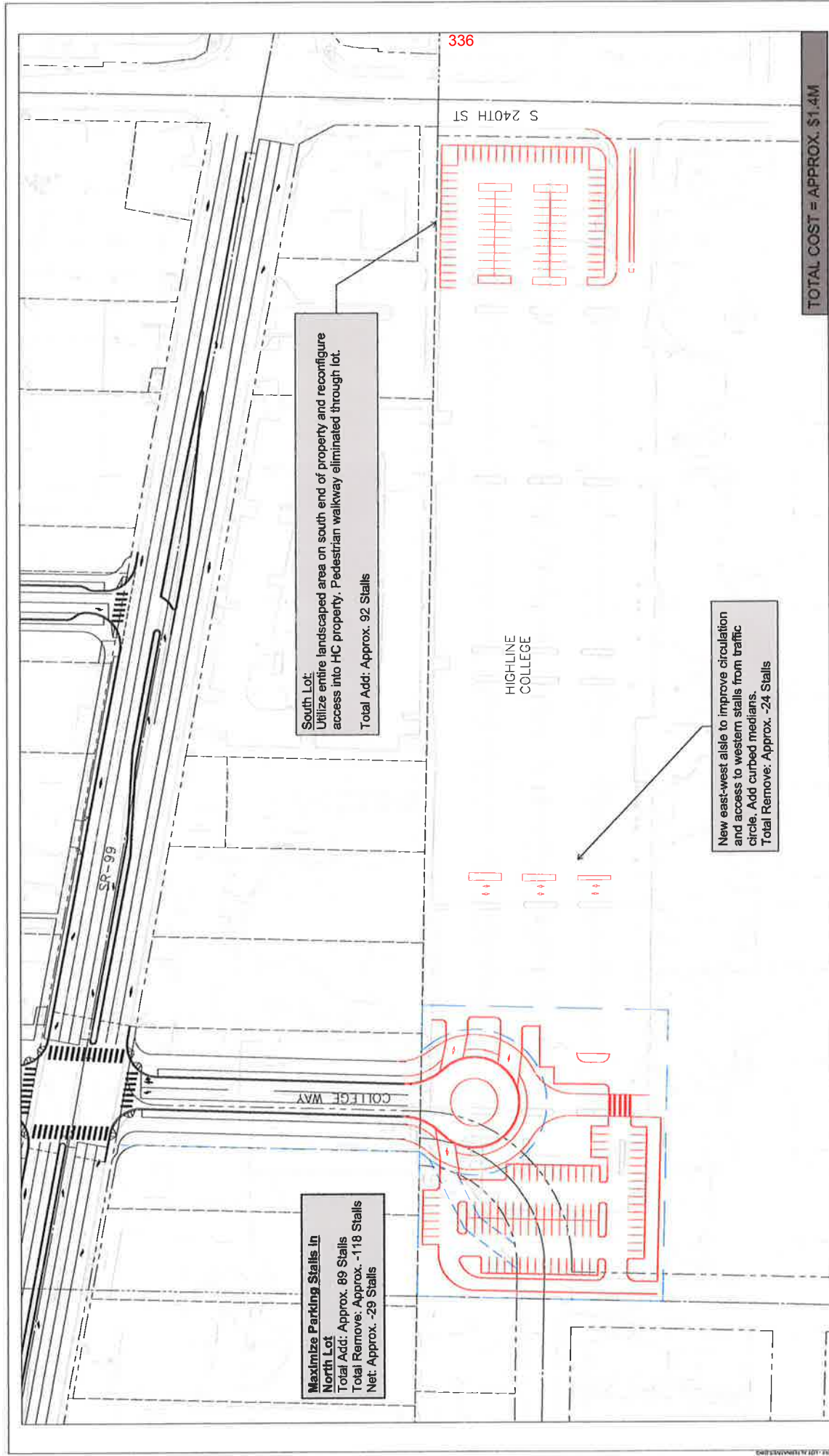


EXHIBIT N:

COLLEGE WAY CONNECTION PROJECT

CONCEPTUAL DESIGN



College Way Connection Project

09/05/2018

CONCEPTUAL DESIGN



SOUND TRANSIT FEDERAL WAY LINK EXTENSION



EXHIBIT O:

COLLEGE WAY CONNECTION PROJECT

INTER-LOCAL AGREEMENT

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF DES MOINES AND HIGHLINE COLLEGE
for the
COLLEGE WAY CONNECTION PROJECT**

This Interlocal Agreement ("Agreement") is entered, by and between the CITY OF DES MOINES ("City"), a Washington municipal corporation and HIGHLINE COLLEGE, a Washington State Community and Technical College ("College"). Under the authority of RCW 39.34.030 and in consideration of the mutual covenants contained herein, the City and College do hereby agree as follows regarding the College Way Connection Project ("Project").

RECITALS

WHEREAS, the City is a non-charter optional municipal code city organized under the laws of the State of Washington, with authority to enact laws and enter into interlocal and right-of-way agreements to promote the health, safety, and welfare of its citizens.

WHEREAS, Highline College is a state community college created pursuant to chapter 28B.50 RCW with power to enter into this agreement, except where noted.

WHEREAS, Chapter 39.34 RCW ("The Interlocal Cooperation Act") permits municipal corporations and state agencies to contract with one another to perform any act that each is independently authorized to perform.

WHEREAS, the Growth Management Act (Chapter 36.70A RCW) requires that the City plan for and encourage high capacity transit facilities such as the Federal Way Link Extension (RCW 36.70A.020) and accommodate within the City such essential public facilities (RCW 36.70A.200).

WHEREAS, in November 2008, central Puget Sound area voters approved an extensive program of transportation projects to be implemented over the 15-year timeframe from 2009 – 2023 known as the Sound Transit 2 (ST2) Plan. Among other projects identified for implementation, ST2 included the extension of the Link light rail transit system from SeaTac to the cities of Kent and Des Moines which is now a portion of Sound Transit's Federal Way Link Extension (FWLE). In November 2016, voters approved an additional program of transportation projects, known as the Sound Transit 3 (ST3) plan. The ST3 plan included, among other projects, the extension of the Link light rail transit system from its current terminus at the Angle Lake Station at S. 200th Street in the City of SeaTac to the City of Federal Way as part of the FWLE.

WHEREAS, the College Way Connection Project will develop the College Way street end and pedestrian access on Highline College from the light rail station and will be integrated into the FWLE project and College campus.

WHEREAS, The College and the City have signed a Letter of Concurrence which highlights the intent to connect the Kent Des Moines light rail station at South 236th Street and 30th Avenue South along South 236th Street and College Way to a street end just inside the current eastern edge of the College. The letter of Concurrence is included as Exhibit A to this Agreement.

WHEREAS, the City and College recognize the public benefits that will accrue to the City, College, and community from construction of the Project including a decrease in vehicular traffic and an increase in the travel mode split for transit.

WHEREAS, the Parties acknowledge that Sound Transit has completed extensive environmental analysis of the FWLE in accordance with the National and State Environmental Policy Act (NEPA and SEPA). Sound Transit completed the SEPA with the issuance of the Federal Way Link Extension Final Environmental Impact Statement on November 18, 2016. The Federal Transit Administration (“FTA”) issued a Record of Decision (ROD) on March 6, 2017 and the Federal Highway Administration (“FHWA”) issued a ROD on March 9, 2017 concluding the NEPA process.

WHEREAS, the City has completed environmental analysis of the Project in accordance with the State Environmental Policy Act (SEPA) and determined that no further SEPA review is required for the Project and associated parking lot improvements (Exhibit B).

WHEREAS, the Parties recognize the importance of connecting the light rail station to the College as part of the comprehensive program of regional transit improvements approved by voters and have mutually concluded that it is feasible to do so by 2024. Both parties will work in a collaborative effort to resolve any issues and risks to ensure that the College Way Connection Project is completed before Federal Way Link Extension project begins operations, currently projected for 2024.

WHEREAS, the parties anticipate that Sound Transit will procure the services of a Design Build Contractor to construct the College Way Connection Project, and that both the City and the College will contribute toward the cost of constructing the Project.

WHEREAS, the parties anticipate completion of the project will require that the City vacate certain public rights of way on the property held in trust on behalf of the College, as well as the City street right of way dedication and grant of a drainage easement by the State Board of Community and Technical Colleges (SBCTC).

NOW THEREFORE, in consideration of mutual promises and covenants and promises to set forth in this Agreement, and in the exercise of authority granted by the Interlocal Cooperation Act, Chapter 39.34 RCW, the Parties hereto agree to the terms and conditions as follows:

1.0 DEFINITIONS

For purposes of this Agreement, the following terms, phrases, words, and their derivations will have the meaning herein given where capitalized; words not defined herein will have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender will be applicable to all genders whenever the sense requires. The words “will” and “shall” are mandatory and the word “may” is permissive. Reference to governmental entities, whether persons or entities, refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference will be read to refer to the renumbered provision. References to laws, ordinances or regulations will be interpreted broadly to

cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted as amended.

- 1.1 Agreement. "Agreement" means this Interlocal Agreement approved by appropriate action of the City and College.
- 1.2 City. "City" means the City of Des Moines and any successor or assignee following an assignment that is permitted under this Agreement.
- 1.3 Design/Build Contractor. "Design/Build (or D/B) Contractor" means the entity or entities that will contract with Sound Transit to complete the design of the Project, as part of the FWLE, to obtain all remaining permits for the Project as part of the FWLE, and to construct the Project as part of the FWLE, all based upon a design/build procurement method.
- 1.4 Design Submittal. "Design Submittal" means a set of design documents for the Project that have been or will be submitted to the City for review as the Project moves through various review and approval processes. The different phases of design submittal are:
 - (a) "Preliminary Engineering (PE) Submittal" (30% Design Submittal) means the Design Submittal that was furnished to the City in 2017 prior to Sound Transit initiating a procurement process seeking the services of a Design/Build Contractor. These plans included conceptual design of the alignment. The City has already reviewed and provided written comment on this submittal. Sound Transit has provided a written response to the City indicating how the City's comments have been resolved.
 - (b) "Proposed Changes to the Preliminary Engineering Submittal" means a Design Submittal based on plans prepared as part of Sound Transit's Design/Build Contractor selection process. This submittal will include any design changes to the "Preliminary Engineering (PE) Submittal" initiated by the Design/Build Contractor including the College Way Connection Project during procurement and/or initiated by Sound Transit in preparing the RFP. This will be provided to the City for conceptual review.
 - (c) "60% Design Submittal" means a Design Submittal that presents the basic concept of a defined segment of the overall Project, including advanced detail on route alignment, utilities, urban design concepts, and other concepts required to define the intent of the Project. This will also include the incorporation of the identified resolution to the city review comments received on the "Preliminary Engineering (PE) Submittal".
 - (d) "90% Design Submittal" means a Design Submittal reflecting advanced design for a defined segment of the overall Project, so that all reviewers can comment on the overall scope of the Project prior to submittal of the Permit Submittal (100%). It shall include all scope of work. Items missing from design should be minor and documented to reviewers.
- 1.7 Permit Submittal (100% Design). "Permit Submittal" means a Design Submittal illustrating the entire scope of the work of a defined segment of the overall Project so that all reviewers can comment on the overall scope of the Project. This may include utility relocation improvements, new traffic signaling plans, grading and landscaping plans, and all work to be completed as part of the Project.

- 1.8 Issued for Construction. The IFC set of drawings will serve as the basis for construction activities and field inspections. It will incorporate any required corrections based on review of the Permit Submittal, upon which the Design-Build Contractor will rely in constructing the Project, including, but not limited to a complete set of construction plans, drawings, and specifications.
- 1.9 Federal Way Link Extension (FWLE). The extension of the Link light rail transit system from its current terminus at the Angle Lake Station at South 200th Street in the City of SeaTac to the City of Federal Way as part of the Federal Way Link Extension project.
- 1.10 Over-the-Shoulder Review. “Over-the-Shoulder Review” means the informal and ongoing review of evolving design concepts and plans developed during the Project construction phase.
- 1.11 Parties. “Parties” means the City of Des Moines and Highline College.
- 1.12 Project. “Project” or “Connection Project” means the College Way street end and pedestrian access to Highline College integrated into the FWLE project, and other parking lot and traffic circulation modifications as described and depicted in Exhibit C, attached and incorporated herein, and as approved by the City and College pursuant to the approvals described in this Agreement.
- 1.13 Sound Transit. “Sound Transit” means the Central Puget Sound Regional Transit Authority, and its Design Build (D/B) contractor.

2.0 COOPERATION AND GOOD FAITH EFFORTS

- 2.1 Cooperation: The Parties understand and agree that the activities described in this Agreement depend upon timely and open communication and cooperation between the Parties. In this regard, communication of issues, changes, or problems that arise with any aspect of the work should occur as early as possible in the process. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues.
- 2.2 Future Agreements: The Parties acknowledge that this Agreement may contemplate the execution and delivery of future agreements, documents, instruments, and permits, the final form and contents of which are not presently determined. This may include, but not limited to, requirements from the State Board of Community and Technical Colleges (SBCTC), or the Department of Enterprise Services (DES) for example. The Parties agree to provide the necessary resources and to work in good faith to develop the final form and contents of such documents, agreements, instruments, and permits, and to execute and deliver the same promptly.
- 2.3 Timely Review: The Parties will provide timely review by both dedicated and regular City and College staff or its consultants of all permit applications and design submittals necessary to complete the Project, subject to the City’s applicable process and regulations.
- 2.4 Impact on College Operations: The City will exercise its reasonable best efforts to minimize impacts of construction activities upon current and future College operations. It is acknowledged by the Parties that certain impacts on the campus during construction of the Project cannot be completely avoided.

3.0 PROJECT LOCATION AND ELEMENTS

- 3.1 FWLE Project: As described in the FWLE's Final Environmental Impact Statement (EIS), the purpose of the FWLE is to expand the Sound Transit Link light rail system from the City of SeaTac to the cities of Des Moines, Kent, and Federal Way in King County to provide a rapid, reliable, accessible, and efficient alternative for travel to and from the corridor and other urban growth and activity centers in the region including Highline College. It would proceed generally within I-5 right-of-way to the FWLE's terminus in the City of Federal Way. The Kent Des Moines (KDM) Station plus two other new LRT stations will be constructed as part of the FWLE with associated improvements for parking, pedestrian, bicycle, bus and other access improvements. In the City of Des Moines, specific improvements to be included as part of the FWLE project include construction of College Way along with pedestrian and bicycle improvements. The FWLE project will also include the College Way Connection Project improvements on the Highline College campus, which will be addressed in this Agreement, and in a subsequent Development Agreement between the City and Sound Transit.
- 3.2 College Way Connection Project: The College Way Connection Project includes the construction improvements necessary for connecting the Kent Des Moines light rail station to the College campus, which is part of the comprehensive program of regional transit improvements approved by voters, and consistent with the FWLE FEIS. These improvements generally consist of a FWLE and City-funded street and street end round-about on College Way and associated drainage improvements located on the College Campus, along with College-funded pedestrian and bicycle facilities from the round-about street end through the parking lot to existing pedestrian and bicycle facilities on the eastern edge of the college Campus, and College-funded parking lot modifications to accommodate these street end and pedestrian and bicycle facilities and replace displaced parking. The Project is generally described and depicted in Exhibit C. It is understood that the number of parking spaces shown in Exhibit C are approximate, and the actual number of parking spaces is subject to change based on the Final Design considerations.

4.0 SEPA COMPLIANCE

- 4.1 FWLE Project EIS: Sound Transit is the lead agency for SEPA compliance on the FWLE. In coordination with the City and other agencies with jurisdiction, Sound Transit has completed the substantive and procedural environmental review for the Project in accordance with SEPA requirements. The environmental review covers the City's issuance of permits for the FWLE Project as well as environmental mitigation, and the City will use and rely upon the existing environmental documents to satisfy its SEPA responsibilities, consistent with WAC 197-11-600.
- 4.2 College Way Connection Project: The Project (as described in Section 3.2) is consistent with comments received during the FWLE FEIS and is considered by the City to be design detail to complete traffic and pedestrian connections from South 236th Street/College Way to the College campus. In addition, the Project is consistent with the threshold determination of a Mitigated Determination of Nonsignificance (MDNS) issued on November 21, 2016 for the City Council-approved Highline College Master Plan which included access improvements from the KDM Station and SR 99. The City of Des Moines has determined that SEPA requirements for the project have been satisfied with the completion of these two separate environmental processes,

that all appropriate mitigation has been addressed, and that no additional environmental analysis is needed for this Project (Exhibit B).

5.0. PROJECT SCHEDULE

The City commits to use its best efforts to ensure the project is completed efficiently and effectively and consistent with the expectations of the College and Sound Transit. The City will provide timely updates to the College on the Project Schedule as it evolves and based on input from Sound Transit and their D/B Contractor.

6.0 PROJECT REQUIREMENTS AND DEVELOPMENT STANDARDS

- 6.1 Pre-Final PE: The City and College have determined that the Project as represented in the Pre-Final PE Submittal is generally well-designed. Furthermore, the Parties are aware of the Project schedule and the criticality of meeting schedule milestones to deliver the Project, as part of the FWLE Project, efficiently and effectively and consistent with expectations of the College and Sound Transit.
- 6.2 Development Standards: To the extent this Agreement does not establish or define development regulations or standards covering a certain subject, element, or condition, the Project will be governed by the City development standards and regulations in effect on July 1, 2018.
 - 6.2.1 Signs: The project will include foundations/bases and conduits for accent lighting for two College signs on the northwest and southwest corners of SR 99, and a College sign in the center of the street end on the Campus subject to a College-prepared and City approved Comprehensive Signage Design Plan determination that addresses all signage for the campus. The requirements for the Comprehensive Signage Design process are included in Exhibit G. The College will be responsible to provide, install, and maintain the signs and any lighting on the ST provided foundations. Details for the envisioned College Signs are provided in Exhibit D.
 - 6.2.2 Parking: The College will approve all East Parking Lot modifications, consistent with City standards.
 - 6.2.3 Lighting: The College will specify and approve the final design of all East Parking Lot lighting improvements, consistent with City standards.
- 6.3 Codes in Effect: The codes and editions that will be used for the entirety of this Project's Design and Construction are specified in the City's Development Agreement with Sound Transit that will be issued to Sound Transit's D/B Contractor and is incorporated by reference into this Agreement.
- 6.4 Right-of-Way (ROW) Vacation and Dedication: The State Board of Community and Technical College holds the project site in trust on behalf of the College. The College agrees to fully support and endorse a determination by the SBCTC to dedicate ROW required for the Project and support and endorse the grant of an associated drainage easements by the SBCTC to the City for the FWLE (Exhibit E), and in return the City agrees to vacate the former historic County ROW in the Project area (Exhibit F). When constructed, the College will fully support and endorse a proposal to the

SBCTC that the street end on the College Campus become part of the City maintained ROW and street system. See Section 11.

- 6.5 Property Access for Construction. The City will provide access rights to Sound Transit for all property needed for staging and construction of the College Way Connection Project with 90 days' notice at no cost to Sound Transit. Construction staging for that portion of College Way that is located east of Highline College shall not occur on the College campus unless specifically allowed by the College.
- 6.6 Construction Window/Schedule. Sound Transit's Design-Build Contractor (D-B) will have access to the College Campus annually from June 1 to September 15. All construction activities on the College Way Connection Project must be completed within this window, unless otherwise approved in advance by the City.
- 6.7 Project Inspection. Inspection will be done in accordance with permit conditions established in accordance with DMMC 12.05.140 in coordination with Sound Transit and College inspectors.
- 6.8 Ownership and Maintenance. The City and/or College will accept ownership and maintenance responsibility for those improvements upon substantial completion of the College Way Connection Project element of the Federal Way Link Extension in accordance with Section 3.09B of the FWLE D-B General Conditions.
- 6.9 Construction Completion Date. Sound Transit shall complete construction of the College Way Connection Project prior to substantial completion of the Federal Way Link Extension Project unless otherwise mutually agreed by the Parties.
- 6.10 Project Costs and Contributions: Provided that the SBCTC approves the dedication of the ROW and easements required for the Project as described in Exhibit C at no cost to the City, the College will contribute \$900,000 as its share of the estimated \$1,400,000 Project cost for the project described in Exhibit C. If the SBCTC does not approve the dedication of the ROW and easements required for the Project as described in Exhibit C at no cost to the City, the City is not legally able to contribute toward the Project, and the College will be responsible for the full Project cost of \$1,400,000.

The College contribution and estimated project cost identified for this option are consistent with the project described in Exhibit C. This has all new parking areas to be constructed under this agreement on the College campus as paved with asphalt.

The College is not responsible for costs in excess of \$900,000 or \$1,400,000 (respective of the SBCTC decision) unless the excess cost is due to one or more change orders requested by the College and agreed to by the City and Sound Transit, in which case the excess cost will be paid by the College.

6.11 Schedule for Project Decisions and Contributions:

Provided that the SBCTC approves the dedication of the ROW and easements required for the Project as described in Exhibit C at no cost to the City, the College will make payments to the City as follows:

Payment 1: N/A.

Payment 2: Four hundred fifty thousand dollars (\$450,000) due upon Sound Transit's Notice of Substantial Completion of the College Way Connection Project construction and the project is open to public use.

Payment 3: Four hundred fifty thousand dollars (\$450,000) due when Notice of Final Acceptance is issued by Sound Transit for the College Way Connection Project as defined in Exhibit C and the City accepts the right of way improvements.

If the SBCTC does not approve the dedication of the ROW and easements required for the Project as described in Exhibit C at no cost to the City, the College will make payments to the City as follows:

Payment 1: Five hundred thousand dollars (\$500,000) due December 31, 2020.

Payment 2: Four hundred fifty thousand dollars (\$450,000) due upon Sound Transit's Notice of Substantial Completion of the College Way Connection Project construction and the project is open to public use.

Payment 3: Four hundred fifty thousand dollars (\$450,000) due when Notice of Final Acceptance is issued by Sound Transit for the College Way Connection Project as defined in Exhibit C and the City accepts the right of way improvements.

7.0 **PERMITTING, DESIGN REVIEW AND INSPECTION**

7.1 Permitting: The City will coordinate with the College before issuing any permits to Sound Transit for the Project.

7.2 Design Review: The City will participate in on-going Over-the-Shoulder reviews throughout the design process of the Sound Transit's D/B Contractor. City participation will be facilitated by the City's Project Liaison, who will be co-located at the FWLE Project job office and whose primary function it will be to identify and resolve issues to support the design process and development of plans that satisfy the City's permitting requirements. The City's Project Liaison will also serve as the agent for the College during this process. If required, the College and the City will negotiate and execute a separate Liaison agreement for activities the City provided to the College beyond the scope of this Agreement.

- (a) One or more permitting packages will be submitted with 100% Construction Document Submittal for the subject project element depending on phasing. The Parties have committed to make a good faith effort to review the permitting submittal within approximately 10 business days, unless a mutually agreed-upon alternative timeframe is determined with Sound Transit. After the City's and College's review of the 100%

Construction Document Submittal, Sound Transit's D/B Contractor will convene a meeting with the City, College and Sound Transit to discuss how issues have been resolved.

- (b) The Parties contemplate that the ongoing, collaborative FWLE Over the Shoulder review (see Section 7.3) will keep the City's Project Liaison apprised of the latest developments in the design. The City's Project Liaison will coordinate review required by other City and College staff as a means of seeking informal feedback from the City and the College. To the extent that disputes arise about how a design correction should be resolved or whether a design correction is appropriate, the Parties will use the dispute resolution process in Section 14.

- 7.3 Project Administration: The City will assign a City staff contact as the City Project Liaison. The City Project Liaison will provide central coordination of all Design Submittal reviews and comments from all involved City and College Departments and will be an effective and empowered conduit between Sound Transit and other City and College staff.

The College Director of Facilities and Operations will serve as the College Project Liaison for Project administration with the City. The College Project Liaison will also be responsible for identifying and disclosing to the City as soon as practicable any other College projects or proposals that have the potential to conflict or interfere with the expeditious design and construction of the Project. The City Project Liaison will then be responsible to forward this information to Sound Transit and their D/B Contractor.

- 7.4 Project Permitting Plan: The City's Development Agreement with Sound Transit anticipates that Sound Transit will require its D/B Contractor to develop and submit a Permitting Plan as one of the earliest critical activities. This plan will be reviewed and developed with input from the City and College. Sound Transit and the City will work cooperatively to develop a final Permitting Plan that is implementable by Sound Transit and/or the D/B Contractor and support City and College operations.

- 7.5 Permits and Licenses. The City will be responsible to ensure the Project secures and maintains in effect, all federal, state, and local permits and licenses required for the construction of the College Way Connection, including, without limitation, health, environmental, and communication permits and licenses.

- 7.6 Non-Interference. Subject to its relationships with and responsibilities to the SBCTC, the College will not interfere with Sound Transit's ability to secure, obtain, and maintain, at Sound Transit's sole cost and expense, any permits, licenses or approvals of other governmental agencies or authorities, or of any necessary Third Parties, for the use of any structures or facilities, including streets, roads, or utility poles.

- 7.7 Inspection:

- (a) For the Project constructed by Sound Transit's D/B Contractor, but which will be owned and maintained by the City following completion of construction or those components that abut, cross, or reside in City Right of Way, the City will do on site review and inspection of work performed by the D/B Contractor. These components include but

are not necessarily limited to: street lighting standards, traffic signal poles and signal boxes, streets, sidewalks, curbs and gutters, drainage facilities, and other infrastructure as deemed appropriate. The College may participate in these reviews and inspections at their discretion.

- (b) The Parties have identified conceptually the infrastructure for which they will respectively have inspection and acceptance responsibilities. Exhibit C depicts this concept. However, both Parties recognize the limitations of this conceptual plan and intend that it will be used conceptually and not to limit their mutual responsibilities to cooperate to deliver the Project in a safe, efficient, and timely manner.

8.0 CONSTRUCTION

- 8.1 D/B Contractor Mitigation Plans: The City expects that Sound Transit will require the D/B Contractor to develop mitigation and other plans that conform to City requirements including the following: Transportation Management Plan, Maintenance of Traffic Plan, Construction Noise and Vibration Mitigation Plan, Construction Outreach and Communication Plan. These plans will be submitted by the City to the College for review and comment prior to their acceptance by Sound Transit.
- 8.2 Contractor Work Hours: The Parties acknowledge that Sound Transit's D/B Contractor may propose work outside of the City's and College's standard permissible days and/or hours for construction. In the event such a proposal is received by Sound Transit from their D/B Contractor, the City's Project Liaison will facilitate the process of coordinating College work days, work hours, and/or noise variance, as appropriate. Sound Transit and the College understand that such requests may be conditioned or denied by the City.

9.0 MINOR REVISIONS TO PROJECT APPROVALS

The City Public Works Director or designee is authorized to approve minor revisions to the Project that are necessary and generally consistent with this Agreement and the City's street design and construction standards. Such approvals and/or minor revisions will include oversight of the ST D/B contractor including: any revisions within the scope and intent of the original Project approvals, right of way dedication and recording, design review and approval, substantial project completion, physical completion, and/or any revisions within the scope of the Project environmental documents.

10.0 UTILITY RELOCATION

The College acknowledges that the relocation of utilities outside of the identified Project area (Exhibit C) may be needed to facilitate the improvements. If the need for such utility relocations becomes necessary, the College agrees to enter into separate agreements with utility providers as needed regarding the relocation of their facilities outside the Project area.

11.0 OPERATION AND MAINTENANCE RESPONSIBILITIES FOR IMPROVEMENTS CONSTRUCTED UNDER THE AGREEMENT

- 11.1 Responsibilities: Unless otherwise described in this section, upon completion and acceptance of the Project by the Parties, the City will be responsible for ownership and maintenance of the improvements in the College Way ROW, and the stormwater facilities located in dedicated easement areas on the College campus. The SBCTC will be responsible for ownership of all other improvements on the campus property. The College will be responsible for maintenance of all other improvement on the campus property.
- 11.2 Highline College Signing: The City will permit the College to install and maintain illuminated monument signs within the College Way ROW, under a Right-of-Way Use Permit. The permit may also include provisions for landscaping within the round-about street end. Under its Development Agreement with the Sound Transit, Sound Transit will include the installation of two monument signs bases, and associated lighting in the College Way ROW adjacent to SR 99 as part of the FLWE Project, consistent with the urban design elements for the Kent Des Moines Station area. Sound Transit will also include a base and conduit pathway to the center of the Round-about at the end of College Way to facilitate lighting of a Highline College Sign. These three signs, along with other signing for the Highline Campus, will be part of a Comprehensive Design Plan Determination expected to be submitted by the College to the City by December 2018.

12.0 LIABILITY, INDEMNIFICATION

- 12.1 Indemnification by the College: The College hereby agrees to indemnify, defend, and hold the City harmless from all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses, including, without limitation, reasonable attorney fees, paid by the City and arising or resulting from the negligent acts or omissions of the College.
- 12.2 Indemnification by the City: The City hereby agrees to indemnify, defend, and hold the College harmless from all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses, including, without limitation, reasonable attorney fees, paid by the College and arising or resulting from the negligent acts or omissions of the City.
- 12.3 Notice of Claims: The party seeking indemnification will give the indemnifying party prompt notice of any claims directly affecting the party seeking indemnification about which it is aware the project. The City and College will cooperate fully with one another in the defense of any claim. The indemnifying party will not settle any claim directly affecting the party seeking indemnification without the prior written consent of the party seeking indemnification, which consent will not be unreasonably withheld.

13.0 INSURANCE

The City warrants that under its Development Agreement with the Sound Transit, Sound Transit, at its sole expense, is required to obtain and maintain during the entire term of this Agreement an

appropriate program of commercial insurance, self-insurance or any combination thereof in amounts and types sufficient to satisfy its liabilities. The Development Agreement further provides that, when commercial insurance is utilized, Sound Transit will name the City and College as Additional Insureds in accordance with insurer underwriting practices, and Sound Transit insurance policies will be primary and non-contributory to any coverage maintained by the City and the College. When commercial insurance is used, coverage will include: (i) comprehensive general liability insurance; (ii) property damage liability insurance, including coverage for explosion, collapse, and instability; (iii) workers' compensation insurance, to the extent required by law; (iv) employer's liability insurance; and (v) comprehensive auto liability coverage, including owned, hired, and non-owned vehicles.

14.0 DISPUTE RESOLUTION

14.1 Dispute Escalation: The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations at the lowest level by engaging in the following dispute escalation process should any such disputes arise:

- (a) Level One - The College's Director of Facilities and Operation and the City's Project Liaison will meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute, either party may refer the dispute to Level Two.
- (b) Level Two - The College's Director of Facilities and Operations and the City's Public Works Director or Chief Strategic Officer as appropriate will meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.
- (c) Level Three - The College's President or Designee, and the City Manager or Designee will meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level Three, either party may refer the dispute to mediation.

14.2 If Dispute Resolution Fails: Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) calendar days after referral of that dispute to Level Three, the Parties will agree to mediation. At all times prior to resolution of the dispute, the Parties will continue to perform and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

15.0 DEFAULT

No party will be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) calendar days after written notice of default from any other party. Each notice of default will specify the nature of the alleged default and the way the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such period and the diligent prosecution

to completion of the cure will be deemed a cure. Any party not in default under this Agreement will have all rights and remedies provided by law including without limitation damages, specific performance or writs to compel performance or require action consistent with this Agreement. The prevailing party, or the substantially prevailing party if no one party prevails entirely, will be entitled to reasonable attorney fees and costs.

16.0 REMEDIES; ENFORCEMENT

16.1 Remedies: If dispute resolution is reasonably determined to be futile or otherwise fails, the Parties reserve the right to exercise all the following remedies, singly or in combination, in the event the other violates any provision of this Agreement:

- (a) Commencing an action at law for monetary damages;
- (b) Commencing an action for equitable or other relief; and
- (c) Seeking specific performance of any provision that reasonably lends itself to such remedy.

16.2 Remedy Considerations: In determining which remedy or remedies for violation are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the breaching party has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. Remedies are cumulative; the exercise of one will not foreclose the exercise of others.

16.3 Failure to Enforce Prompt Compliance: Neither party will be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure by the other party to enforce prompt compliance, nor will such failure to enforce constitute a waiver of rights or acquiescence in the other party's conduct.

17.0 TERM; TERMINATION

This Agreement will be effective as of the date the last party signs. Unless sooner terminated pursuant to the terms hereof, this Agreement will remain in effect for six years after completion and final acceptance of the Project.

18.0 COVENANTS AND WARRANTIES

18.1 City Warranties: By execution of this Agreement, the City warrants:

- (a) That the City has the full right and authority to enter into and perform this Agreement and any permits that may be granted in accordance with the terms hereof, and that by entering into or performing this Agreement the City is not in violation of its charter or by-laws, or any law, regulation or agreement by which it is bound or to which it is bound or to which it is subject; and

- (b) That the execution, delivery and performance of this Agreement by the City has been duly authorized by all requisite corporate action, that the signatories for the City hereto are authorized to sign this Agreement, and that, upon approval by the City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.

18.2 College Warranties: By execution of this Agreement, the College warrants:

- (a) That Highline College has full right and authority to enter into and perform this Agreement in accordance with the terms hereof, except the authority to dedicate the ROW per Exhibit C, and by entering into or performing under this Agreement, Highline College is not in violation of any of its agency governance rules, or any law, regulation or agreement by which it is bound or to which it is subject; and
- (b) That the execution, delivery and performance of this Agreement by the College has been duly authorized by all requisite College action, that the signatories for the College hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the

19.0 ASSIGNABILITY; BENEFICIARY

- 19.1 Binding Agreement: This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors or assignees.
- 19.2 Assignment: Either party hereto may assign any monetary receivables due them under this Agreement; provided, however, such assignment will not relieve the assignor of any of its rights or obligations under this Agreement.
- 19.3 Beneficiaries: Neither this Agreement nor any term or provision hereof, or any inclusion by reference, will be construed as being for the benefit of any party not a signatory hereto.

20.0 DESIGNATED REPRESENTATIVES

- 20.1 Designated Representatives: To promote effective intergovernmental cooperation and efficiencies, the Parties each designate a representative ("Designated Representative") who will be responsible for coordination of communications between the Parties and will act as the point of contact for each party. The Designated Representatives will be responsible for the performance of the objectives of this Agreement.

Designated Representatives and Contact Information during Construction/Operations:

HIGHLINE COLLEGE
Michael Pham
Vice President, Administration

CITY OF DES MOINES
Daniel J. Brewer, PE, PTOE
Chief Operations Officer

Highline College
 2400 S. 240th St
 Des Moines, WA 98198
 (206) 592-3701
mpham@highline.edu

City of Des Moines
 21630 11th Ave S
 Des Moines, WA 98198
 (206) 870-5681
dbrewer@desmoineswa.gov

- 20.2 **Responsibilities:** Each Designated Representative is also responsible for coordinating the input and work of its agency, consultants, and staff as it relates to the objectives of this Agreement. The Parties reserve the right to change Designated Representatives, by written notice to the other party during the term of this Agreement.

21.0 NOTICE

Unless otherwise provided herein, all notices and communications concerning this Agreement will be in writing and addressed to the Designated Representative. Any party at any time by written notice to the other party may designate a different address or person to which such notice or communication will be given. Unless otherwise provided herein, all notices will be either: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other party's Designated Representative as listed herein.

22.0 GENERAL PROVISIONS

- 22.1 **Unreasonable Withholding:** The Parties will not unreasonably withhold requests for information, approvals or consents provided for in this Agreement. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement. The City and College agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.
- 22.2 **Interpretation:** This Agreement will be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement will be King County, Washington.
- 22.3 **Time is of the Essence:** Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to "days" will mean calendar days. If any time for action occurs on a weekend or legal holiday, then the time will be extended automatically to the next business day.
- 22.4 **Rights of Action:** This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person will have any right of action based upon any provision of this Agreement.

- 22.5 **Ambiguity:** This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity will be construed against the party drafting the document will apply to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law including the requirements of RCW 39.34.030.
- 22.6 **Cost Responsibility:** Each Party will be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties.
- 22.7 **Events Beyond Parties Control:** The Parties will not be deemed in default with provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond its control; the unforeseeable unavailability of labor or materials; or labor stoppages or slowdowns, or power outages exceeding back-up power supplies. This Agreement will not be revoked, or a party penalized for such noncompliance, provided that such party takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of both parties' employees or property, or the health, safety, and integrity of the public, Public Right-of-way, public property, or private property.
- 22.8 **Agreement Amendments:** This Agreement may be amended only by a written instrument executed by each of the Parties hereto. No failure to exercise and no delay in exercising, on the part of any party hereto, any rights, power or privilege hereunder will operate as a waiver hereof, except as expressly provided herein.
- 22.9 **Agreement Entirety:** This Agreement constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes all prior negotiations, oral and written, understandings and agreements with respect hereto.
- 22.10 **Section Headings:** Section headings are intended as information only and will not be construed with the substance of the section they caption.
- 22.11 **Counterparts:** This Agreement may be executed in several counterparts, each of which will be deemed an original, and all counterparts together will constitute but one and the same instrument.

23.0 SEVERABILITY

In case any term of this Agreement will be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement will in any way be affected thereby.

IN WITNESS WHEREOF, each of the parties has executed this Agreement by its authorized representative.

HIGHLINE COLLEGE

By: _____
_____, President

Date: _____

Authorized by Resolution No. _____

APPROVED AS TO FORM:

By: _____
Bruce Marvin, Assistant Attorney General

THE CITY OF DES MOINES

By: _____
Michael Mathias, City Manager

Date: _____

Approved by the Des Moines City Council in
open Public Meeting on _____.

APPROVED AS TO FORM:

By: _____
Tim George, City Attorney

EXHIBIT LIST

Exhibit A: Letter of Concurrence, College Way Street End, January 29, 2018

Exhibit B: SEPA Review of College Way Connection Project, April 19, 2018.

Exhibit C: Street End, Parking Lot, Pedestrian and Bicycle Facilities, and Drainage Improvement

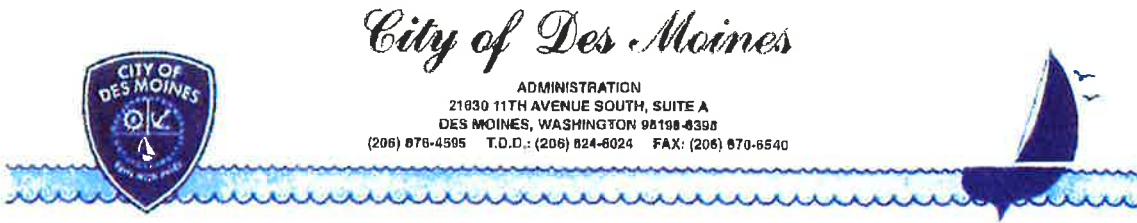
Exhibit D: College Sign Details

Exhibit E: ROW to Be Dedicated to the City

Exhibit F: Historic County ROW to Be Vacated

Exhibit G: Comprehensive Sign Permit Requirements

Exhibit A



January 29, 2018

Michael Pham
 Vice President, Administration
 Highline College
 2400 S. 240th St
 Des Moines, WA 98198

Subject: FWLE Letter of Concurrence – College Way Street End

Dear Mr. Pham,

The purpose of this letter of concurrence (LOC) is to document the agreement in principle made between Highline College (College) and the City of Des Moines (City) relating to the design coordination, capital cost responsibility and allocation, real estate, environmental review, scheduling and the project management approach that will be used to design and build the College Way Connectivity Improvements consisting of roadway terminus and parking lot improvements on the Highline College campus. These improvements are consistent with comments received during the FWLE project EIS process and the City-approved Highline College Master Plan.

This LOC does not bind the College or the City to specific actions or decisions regarding either the FWLE project or the College Way Connectivity Improvements, but rather provides a framework for negotiating in good faith to complete the final terms and conditions to be contained in a Development Agreement (DA) between the City and College regarding:

- dedication of the required street end right of way to construct a round-about, and
- vacation of historic undeveloped road right of way, and
- drainage easements to construct a storm water conveyance system to connect with the City of Des Moines Storm Water System in the vicinity of 28th Avenue South in the East Parking Lot, and
- Highline College traffic impact and parking exception request.

The final DA shall incorporate by reference the to-be-approved Development Agreement between the City of Des Moines and Sound Transit.

The Waterland City

Mr. Michael Pham
Page Two
January 29, 2018

Please find attached, the Conceptual Design, College Way Street End proposed by the City and ST staff. The City of Des Moines will be responsible for costs associated with construction of the College Way Connectivity Improvements indicated in Exhibit A, highlighted in blue. Highline College will be responsible for costs associated with construction of any desired parking facilities or parking lot circulation not directly associated with the Connectivity Improvements. Cost sharing estimates will include soft costs and are the responsibility of each agency. Agreed upon cost estimates will be the basis of the DA rather than a proration of the final Design Build Lump sum contract amount. Each agency is responsible for change orders associated with their area of responsibility. The DA will address any unanticipated contamination conditions that may be encountered and detailed procedures for management of contaminated materials disturbed during construction.

The parties to this LOC acknowledge that the final Development Agreement will be subject to review and approval by the City of Des Moines City Council, the Highline College Board of Trustees, the State Board of Community and Technical Colleges, and until the transfer of the land title to the college, the Department of Natural Resources.

If you agree, please sign and return this Letter of Concurrence. The City will then draft a DA for the College's review and approval and incorporate the elements of this Letter into its DA with Sound Transit.

Sincerely,



Daniel J. Brewer PE, PTOE
Chief Operations Officer
City of Des Moines

Concurrence:
Highline College

By: 
1 Jan 29, 2018

Michael Pham, Vice President, Administration
Highline College

Enclosure: Conceptual Design, College Way Connectivity Improvements

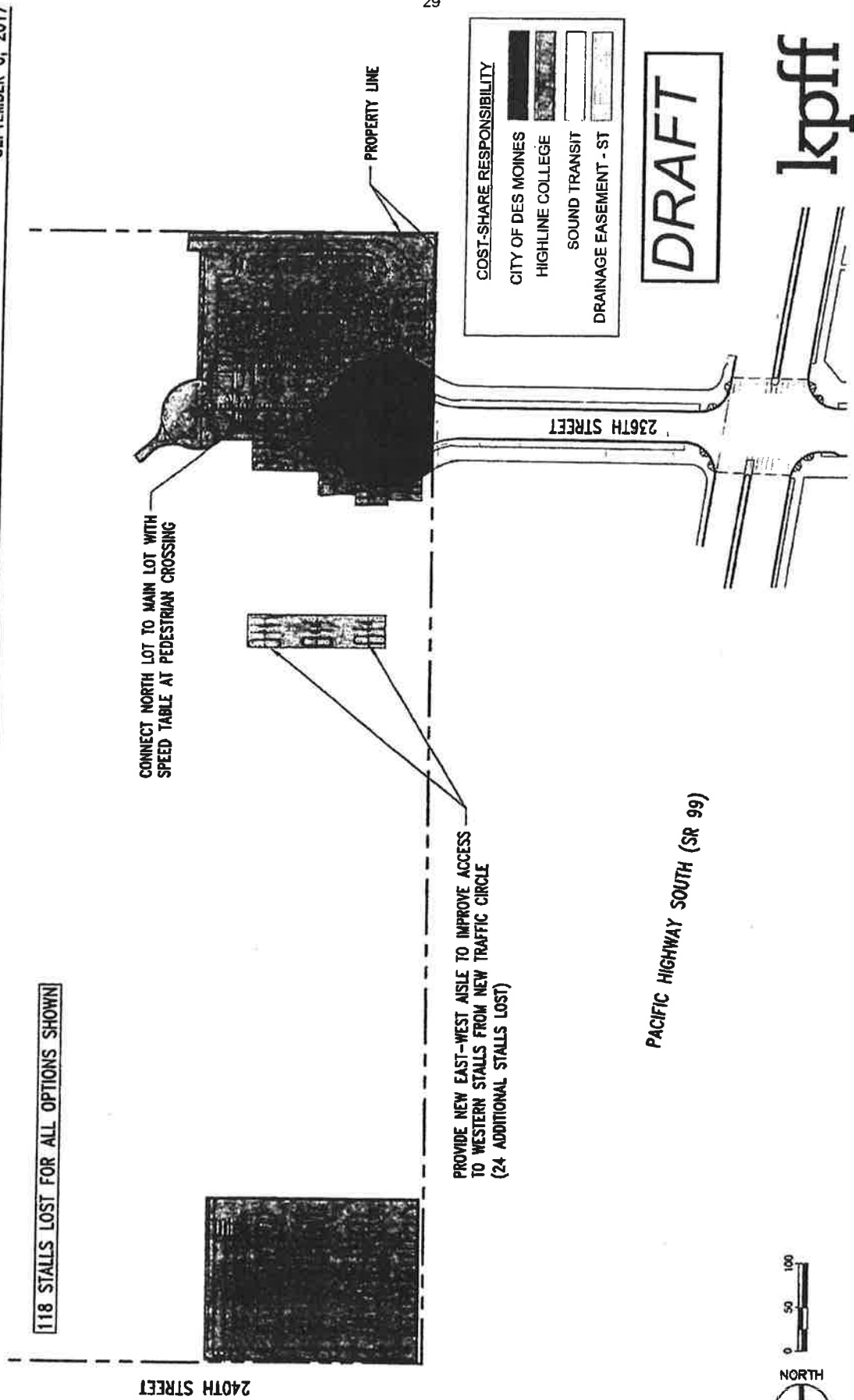
Cc: Brandon Carver, Public Works Director
City of Des Moines

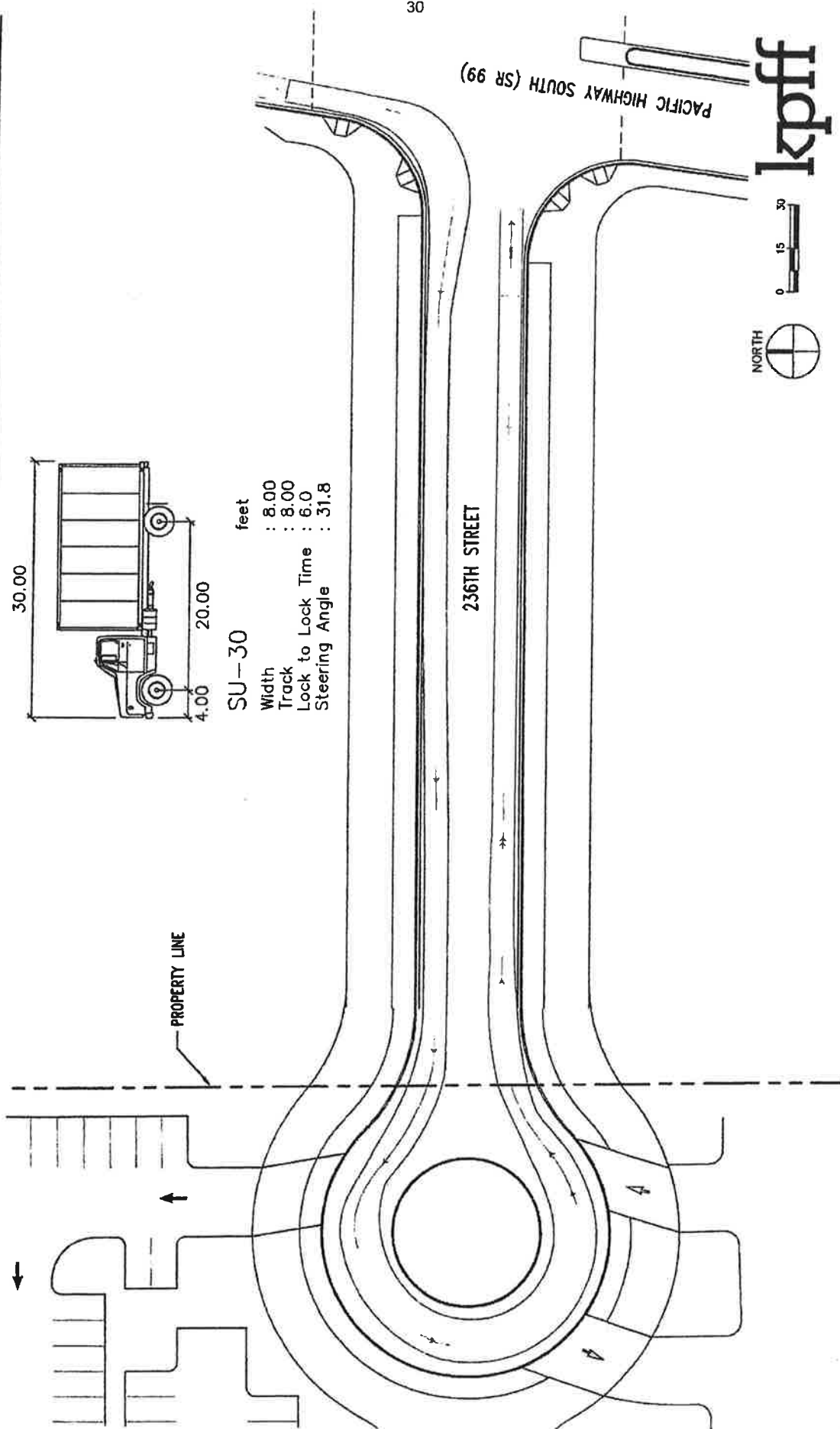
The Waterland City

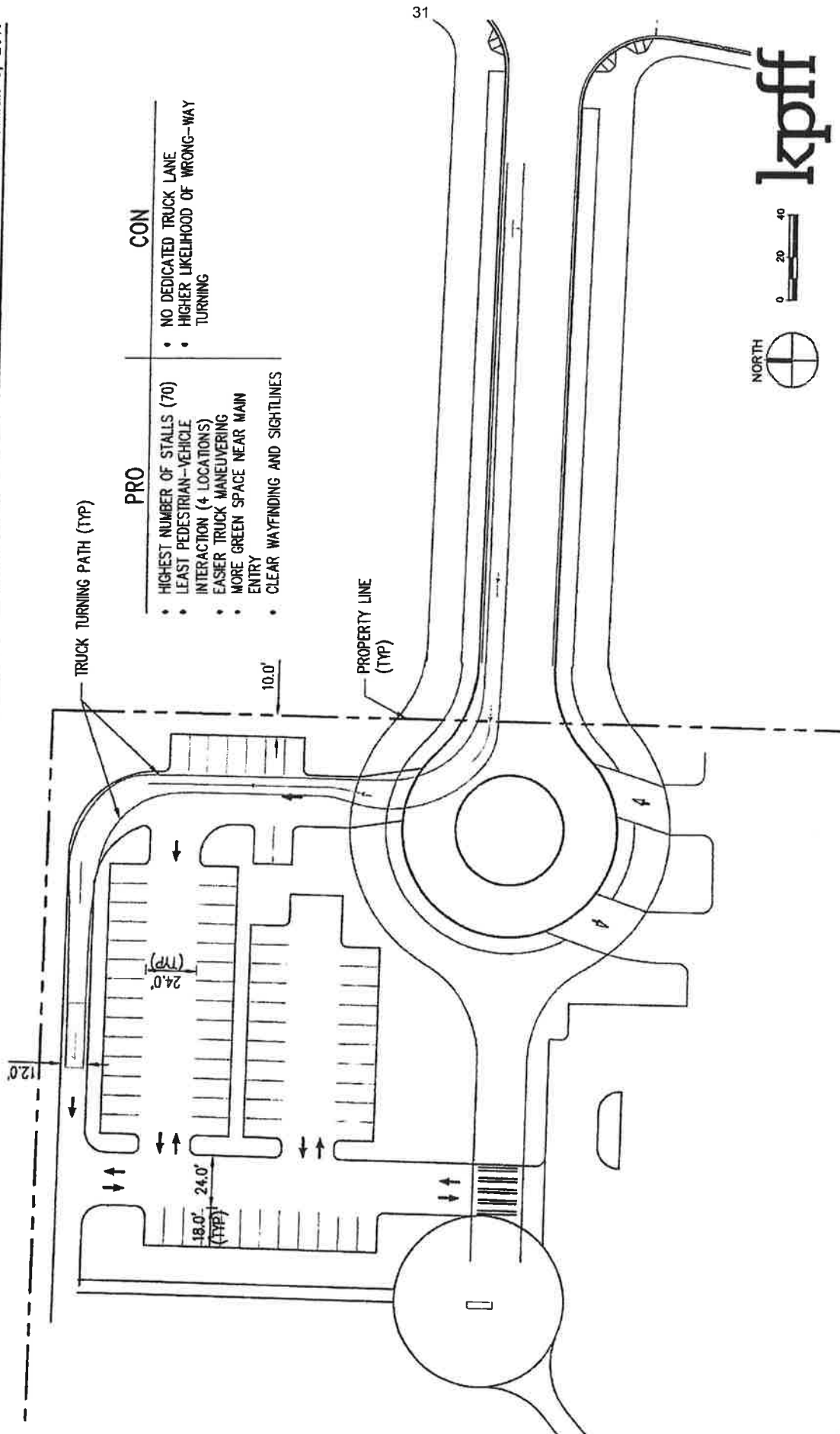
High-Level Cost Estimate: 236th Lane & Highline College (HC) Property Improvements
MLarson 10/17/2017

Highline College and S 236th Lane Improvements Cost Estimate	HC Property Parking + Roundabout (KPFF Estimate)	Roundabout (\$ 236th Lane west of HC Property Line)	HC Property Parking Only (Purple-Blue)	236th Lane (East of HC Property Line)
Civil Roadway Improvements	\$ 414,300	\$ 199,749	\$ -	\$ 1,027,036
Demolition	\$ 121,000	\$ 59,849	\$ -	\$ 90,847
Drainage	\$ 513,000	\$ 100,000	\$ -	\$ 400,000
Landscaping	\$ 83,000	\$ 40,000	\$ -	\$ 40,000
Subtotal	\$ 1,131,300	\$ 399,598	\$ -	\$ 1,557,883
Mobilization (8%)	\$ 90,504	\$ 31,968	\$ -	\$ 124,631
Contingency (30%)	\$ -	\$ 119,879	\$ -	\$ 467,365
Contingency - KPFF Estimate (15%)	\$ 169,695	\$ -	\$ -	\$ -
Total	\$ 1,391,499	\$ 551,445	\$ 840,054	\$ 2,149,878
Cost-Share Responsibility	City of Des Moines & Highline College	City of Des Moines	Highline College	Sound Transit

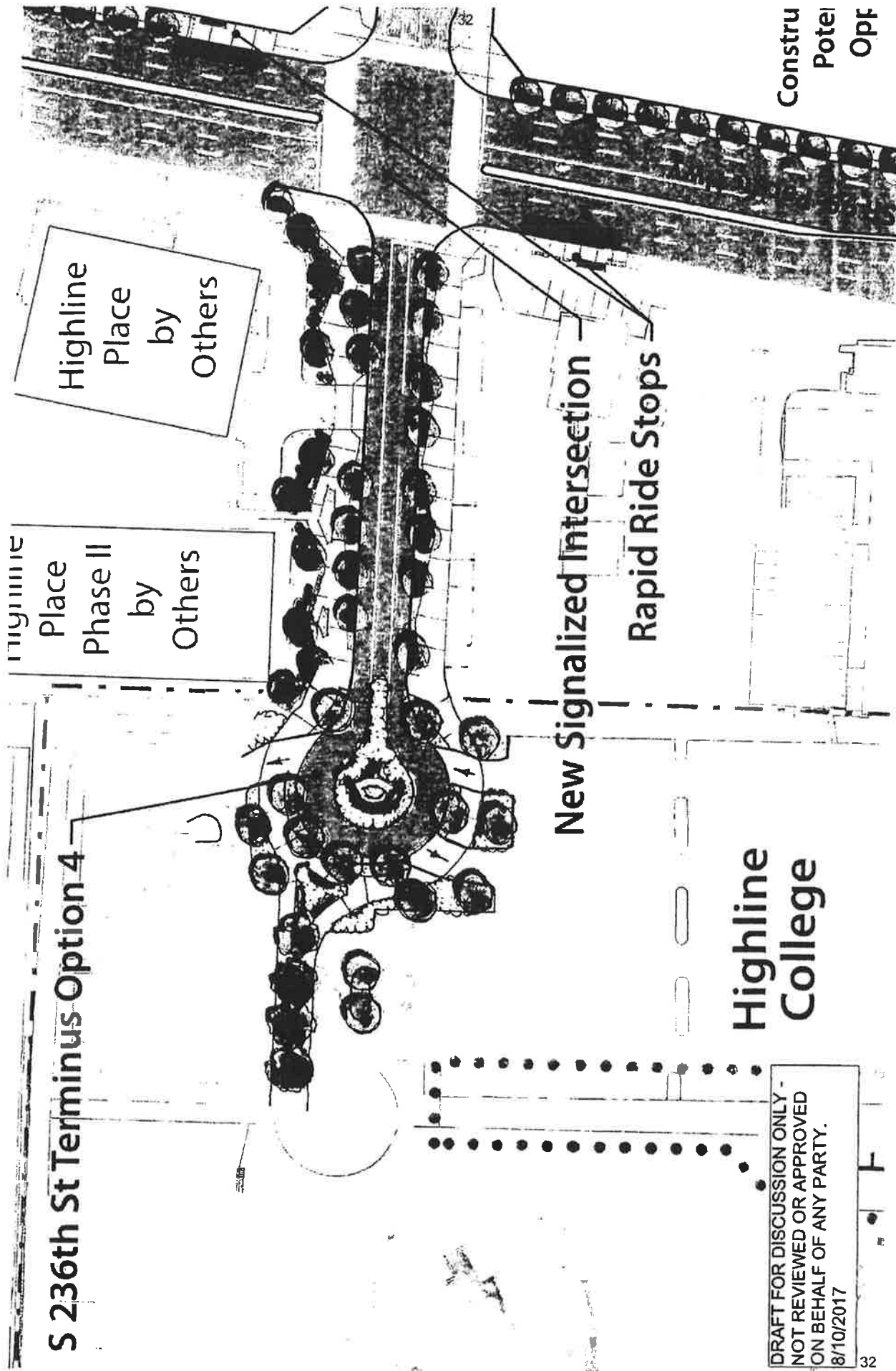
kpff		Opinion of Probable Cost Worksheet			
1001 1 st Avenue, Suite 1000, Seattle, WA 98101 206.462.4622 • Fax: 206.462.4621		Project	HC 236th Entrance	By	Dan Veldee
		Location	Des Moines WA	Date	6-Sep-18
		Client	Highline College		
Site Preparation					
Description	QTY	Unit	Unit Price	Cost	
Surveying	1	LS	\$30,000.00	\$30,000.00	
Site Demolition	1	LS	\$40,000.00	\$40,000.00	
TESC	1	LS	\$15,000.00	\$15,000.00	
Common Excavation	2,000	CY	\$18.00	\$36,000.00	
Subtotal for Site Preparation				\$121,000.00	
Utilities					
Description	QTY	Unit	Unit Price	Cost	
Stormwater Flow Control structure	1	EA	\$2,500.00	\$2,500.00	
Stormwater Detention Pipe	1	LS	\$146,000.00	\$146,000.00	
Structure Excavation	3,600	CY	\$50.00	\$180,000.00	
Water Quality Catch Basins	6	EA	\$20,000.00	\$120,000.00	
8" SD pipe	600	LF	\$75.00	\$45,000.00	
Manhole	5	EA	\$3,900.00	\$19,500.00	
Subtotal for Utilities				\$513,000.00	
Pavement					
Description	QTY	Unit	Unit Price	Cost	
Pavement, HMA CL 1/2 IN	950	TN	\$160.00	\$152,000.00	
Mineral aggregate Type 1	1,900	TN	\$42.00	\$79,800.00	
Curb and gutter	2,500	LF	\$23.00	\$57,500.00	
Concrete Pavement	2,000	SY	\$60.00	\$120,000.00	
Pavement markings	1	LS	\$5,000.00	\$5,000.00	
Subtotal for Pavement				\$414,300.00	
Site Amenities					
Description	QTY	Unit	Unit Price	Cost	
Landscaping & irrigation	8,500	SF	\$6.00	\$51,000.00	
Light poles	6	EA	\$5,000.00	\$30,000.00	
Signs	1	LS	\$3,000.00	\$3,000.00	
Subtotal for Site Amenities				\$84,000.00	
Subtotal				\$1,132,300.00	
Mobilization (8%)				\$90,584.00	
Contingencies (5.5%)				\$62,276.50	
Escalation (10%)				\$113,230.00	
Total				\$1,398,390.50	
Assumptions:					
1. Soft costs including Washington State sales tax, Highline College administrative costs, permit fees and design fees are not included in this estimate.					
2. Unit prices derived from 2015 SDOT unit cost report, and current WSDOT unit bid tabulation standards.					
3. Cost estimate only includes the proposed work on the Highline College Campus. All work in the public right-of-way is not included in this estimate.					







Constru
Pote
Opt



DRAFT FOR DISCUSSION ONLY -
NOT REVIEWED OR APPROVED
ON BEHALF OF ANY PARTY.
8/10/2017

Exhibit B

City of Des Moines



PLANNING, BUILDING AND PUBLIC WORKS
www.desmoineswa.gov
 21630 11TH AVENUE SOUTH, SUITE D
 DES MOINES, WASHINGTON 98198-6388
 (206) 870-7576 FAX (206) 870-8544



April 19, 2018

Dan Abernathy
 Executive Project Director, Federal Way Link Extension
 401 S. Jackson St
 Seattle, WA 98104

Subject: SEPA Review of College Way Connectivity Connection Project

Dear Mr. Abernathy,

The purpose of this letter is to advise Sound Transit of the City of Des Moines' decision that no further State Environmental Policy Act (SEPA) review is required for the College Way Connectivity Connection Project (Project), FWLE drainage improvements and associated East Parking Lot improvements, and College-funded mitigation and parking lot modifications that are consistent with the City-approved College Master Plan.

Our decision is based on review of the existing FWLE and College SEPA documents and the anticipated Project scope that includes the City code-required standard for the end of a street, pedestrian and bicycle access and associated East Parking Lot modifications, and College-funded mitigation and parking lot modifications that are consistent with the City-approved College Master Plan. These project elements complete the College Way/ South 236th Street connection to the Kent Des Moines (KDM) Link Station and are within the scope of the existing environmental documents and consistent with public comments received during the public hearing on the Highline College Master Plan, the City's Mitigated Determination of Nonsignificance issued on November 21, 2016 for the City Council-approved Highline College Master Plan, and the FWLE DEIS and FEIS.

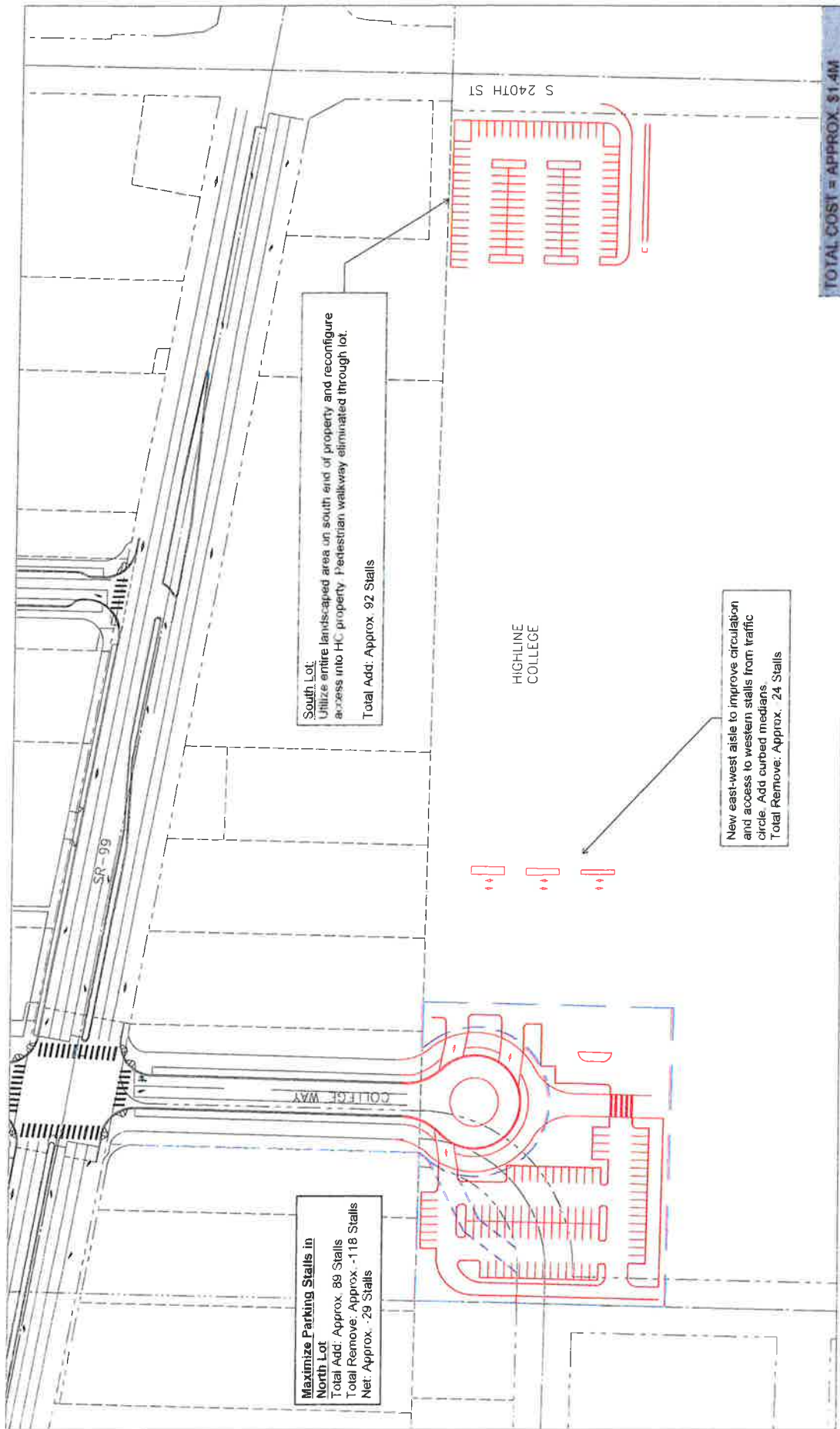
As part of the City's Interlocal Agreement with Highline College, the City will be the SEPA lead agency for the Project elements east of the College Campus boundary

Sincerely,

Susan Cezar, LEG
 Chief Strategic Officer
 SEPA Official
 City of Des Moines

Cc: Dan Brewer, Chief Operations Officer

Exhibit C



College Way Connection Project

09/05/2018

CONCEPTUAL DESIGN



SOUND TRANSIT FEDERAL WAY LINK EXTENSION



Exhibit D

Dan Brewer

From: Holldorf, Barry <bholldorf@highline.edu>
Sent: Monday, October 09, 2017 10:40 AM
To: paul.bennett@soundtransit.org
Cc: Dan Brewer; Grant Fredricks; Pham, Michael; Skari, Lisa A
Subject: Highline College sign spec for ST RFQ
Attachments: HIGHLINE SPECS DWGS 2-2017-0929s.pdf; PSPEC 2-HC ENTRY-2017-0930.docx

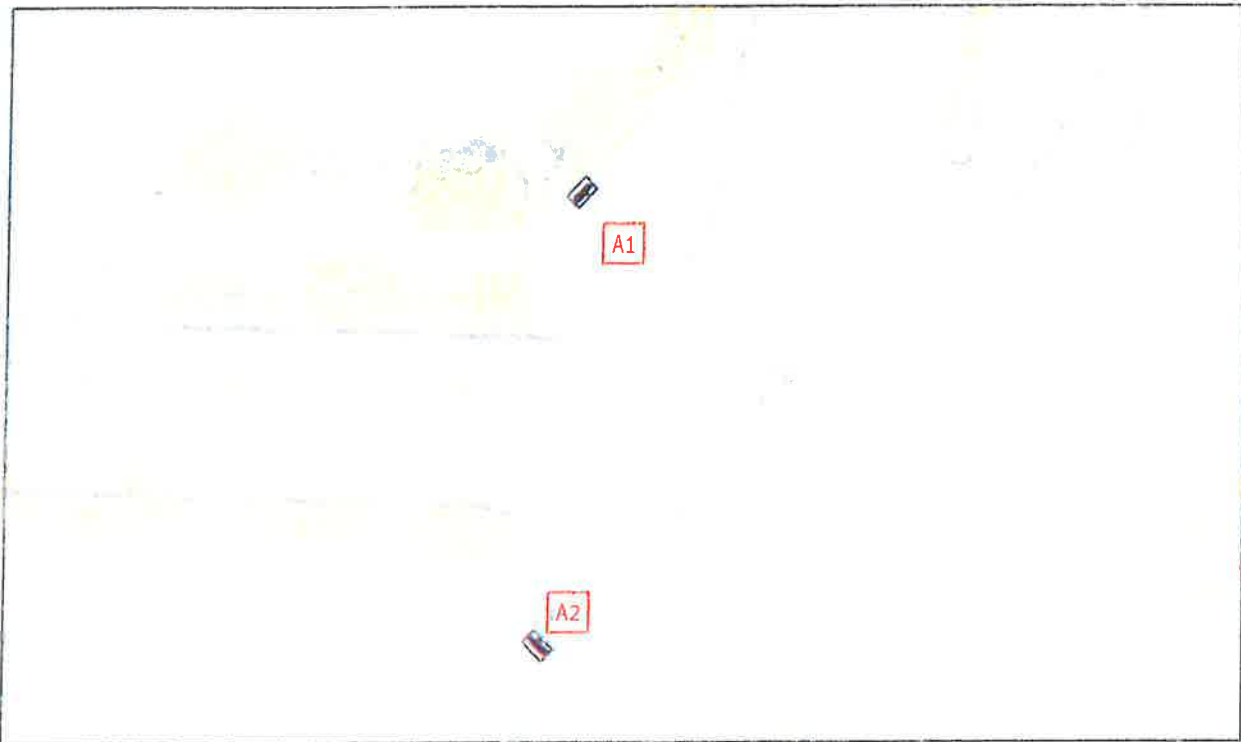
Paul

In the spirit of trying to keep you on track with including in your RFQ I am submitting to you the sign for hwy. 99 entrance and roundabout sign at the 236th entrance.

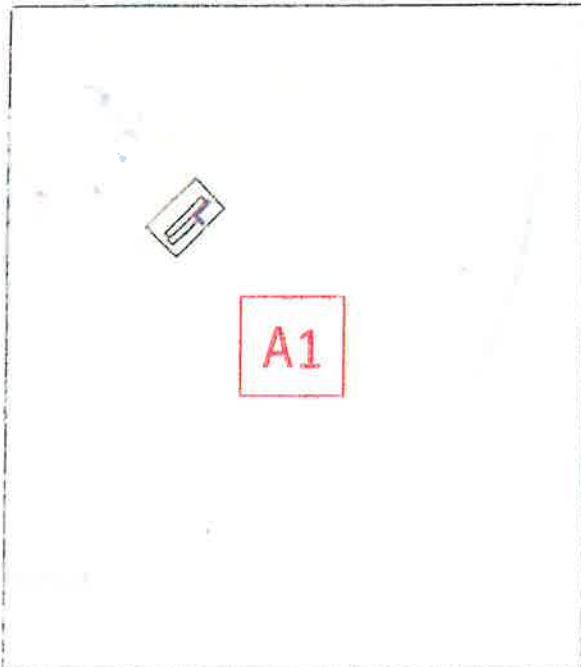
Hope this provides the information you will need for this exercise.

Barry Holldorf, CFM
Director of Facilities & Operations
Highline College
2400 S. 240th St.
Des Moines WA 98198
206-870-3793

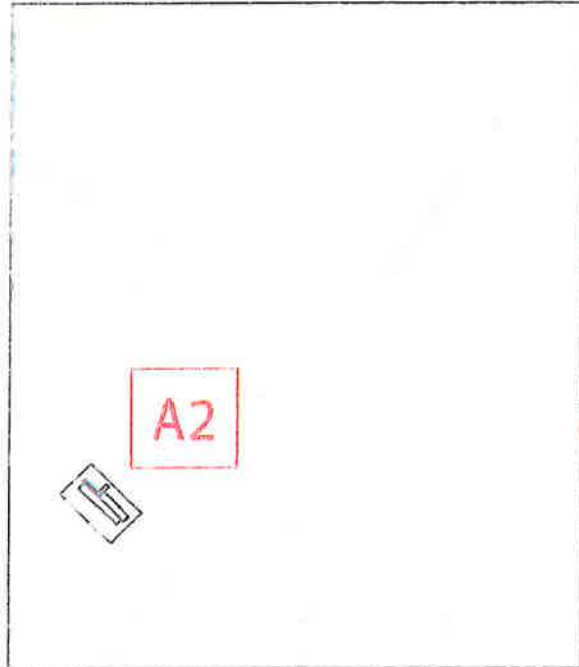




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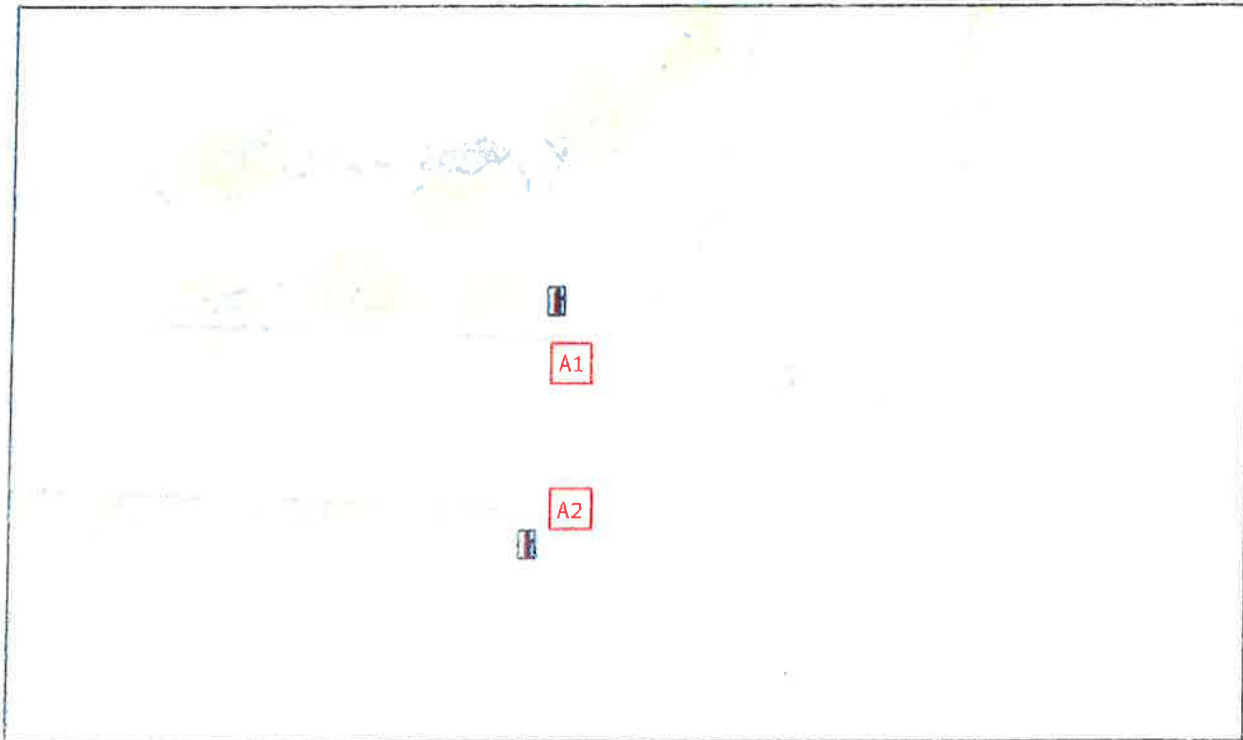
Sign Location A, Placement Option 1
1:500

1.2

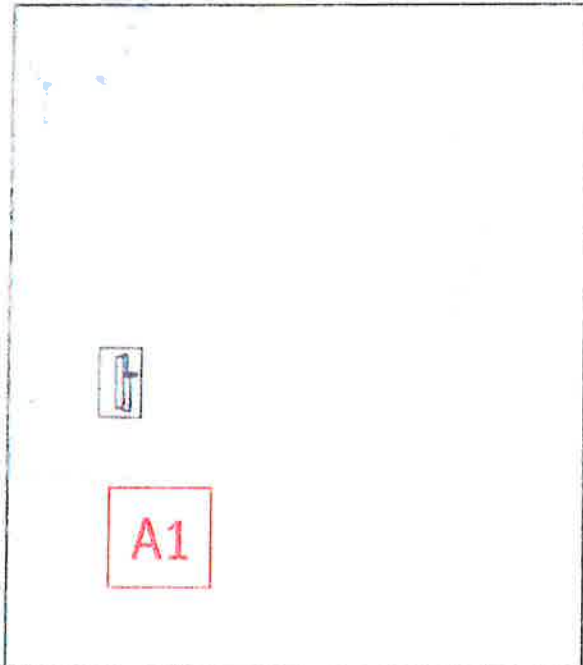
Enlarged Plan
1:200

1.3

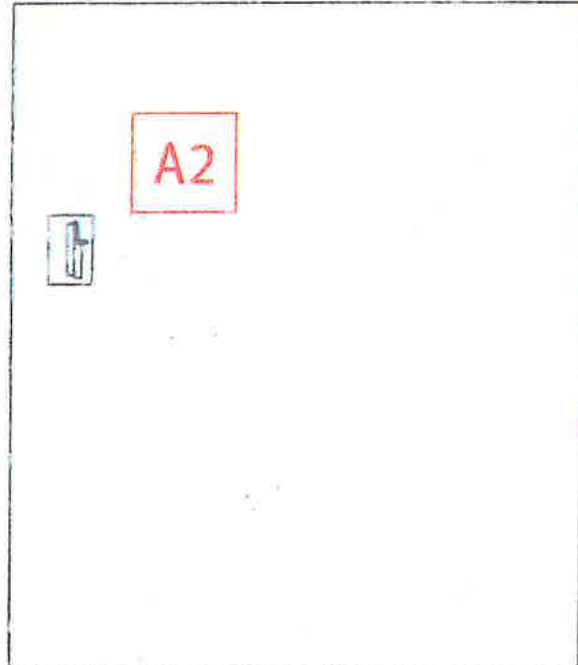
Enlarged Plan
1:200



2.1 Sign Location A, Placement Option 2
1:500



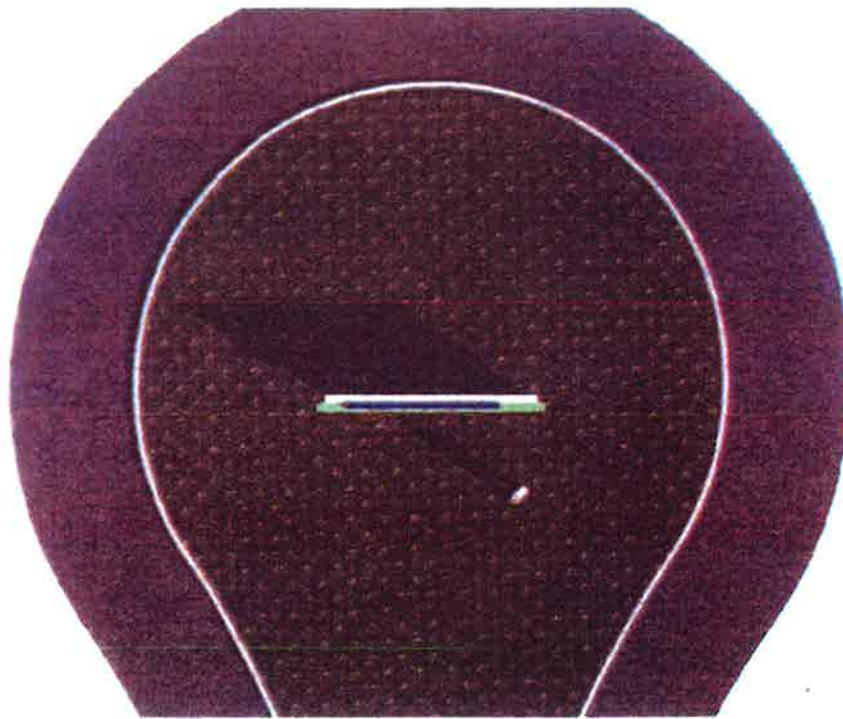
2.2 Enlarged Plan
1:200



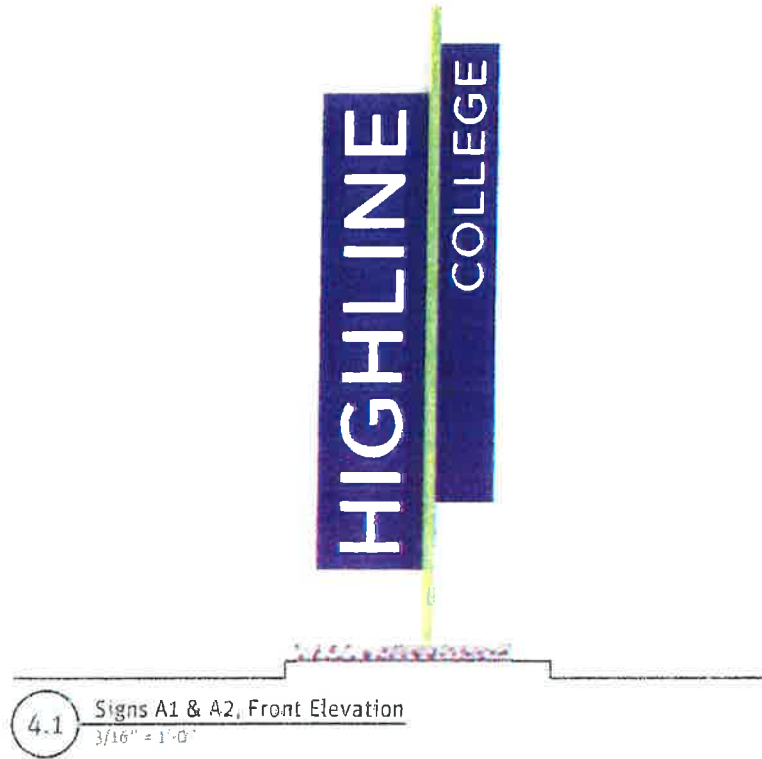
2.3 Enlarged Plan
1:200

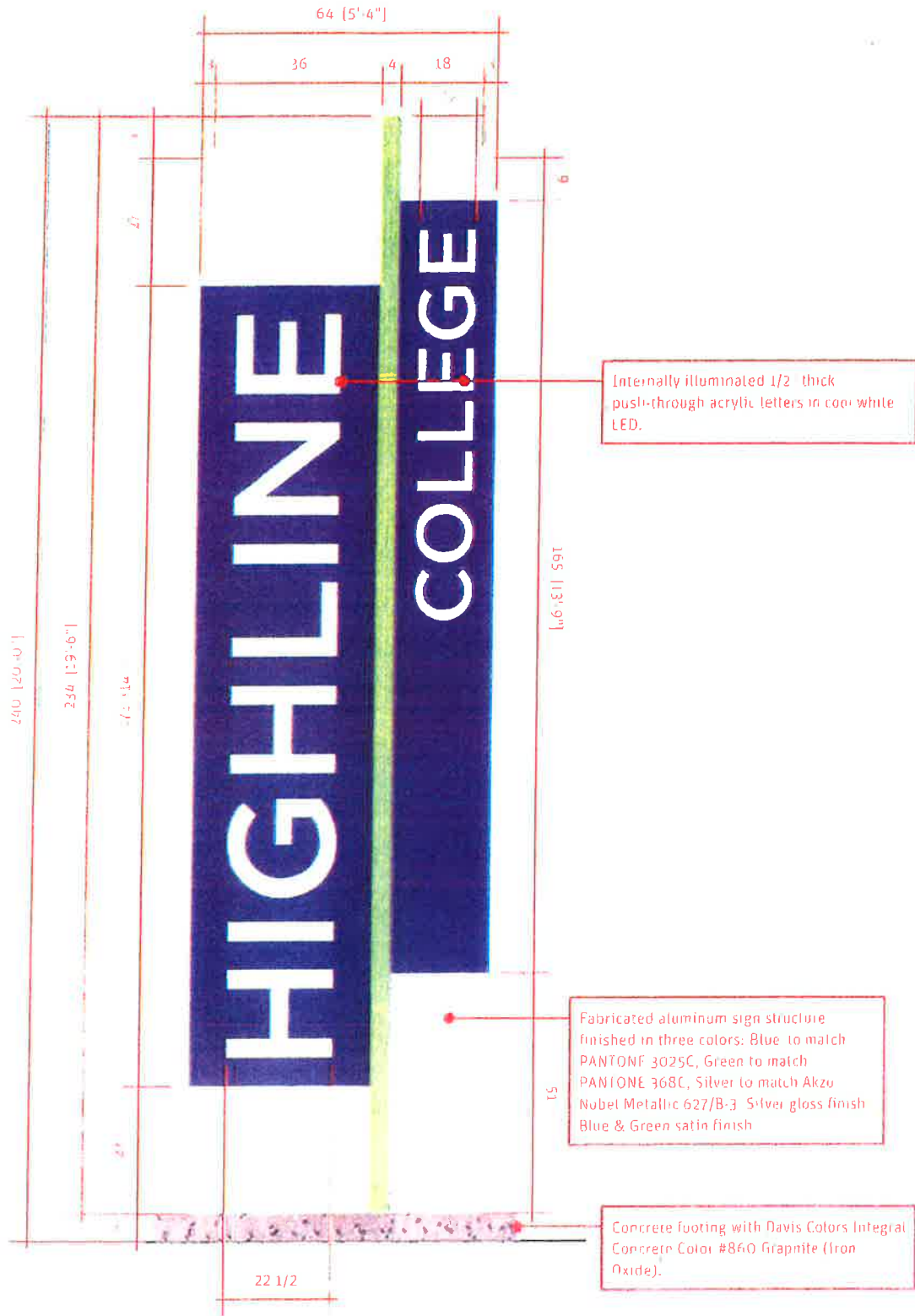


3.1 Sign Location B
1:500



3.2 Sign Location B, Conceptual Rendering Plan View
1:200

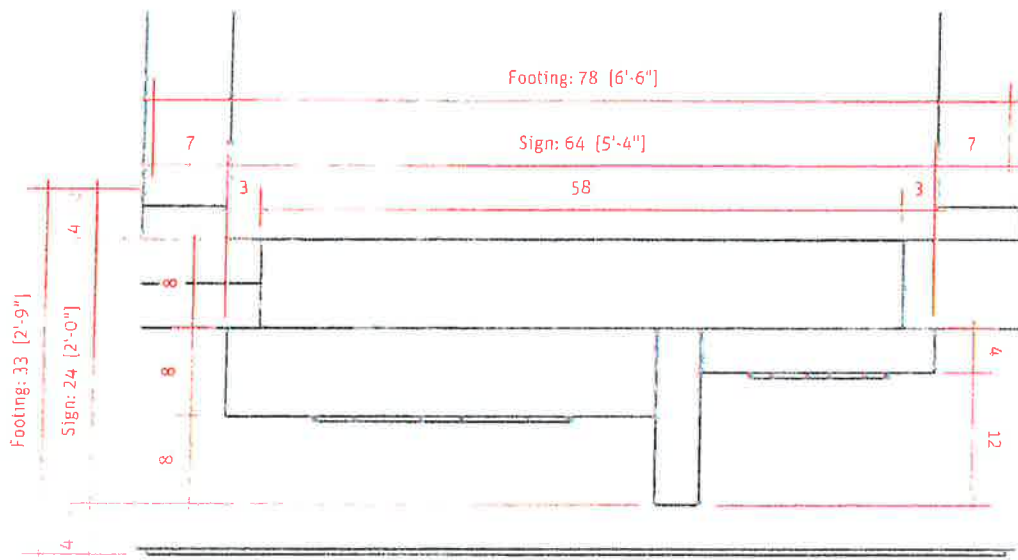




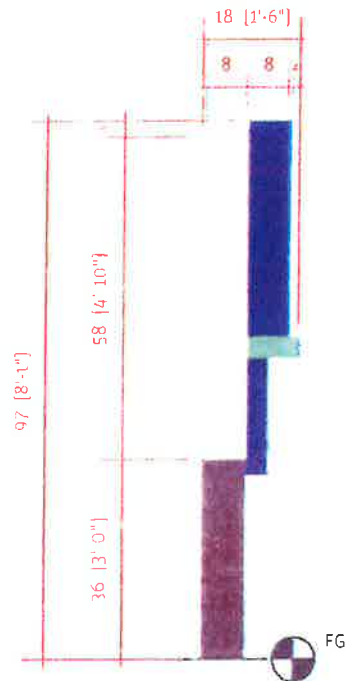
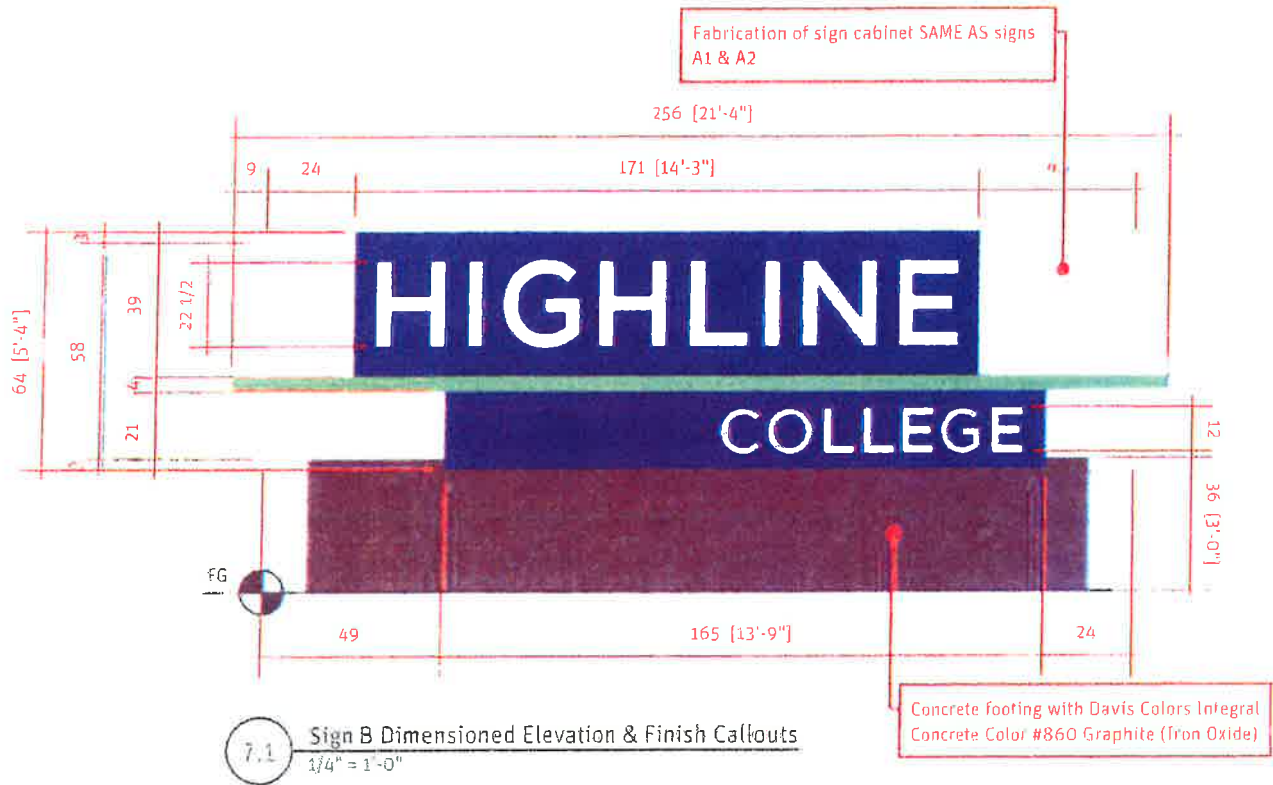
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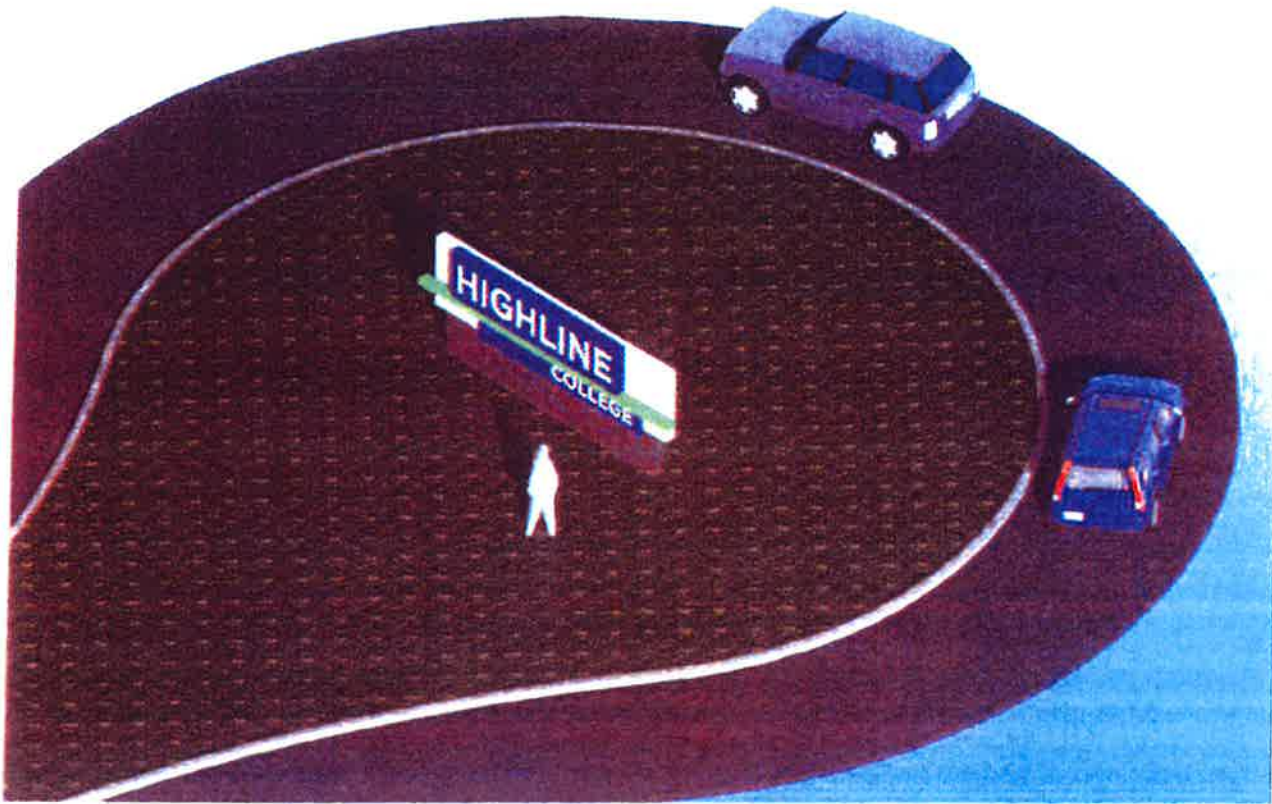
Signs A1 & A2 Dimensioned Elevation & Finish Callouts

3/8" = 1'-0"



6 Signs A1 & A2 Dimensioned Plan View
3/4" = 1'-0"





8

Sign B Conceptual Rendering
1:125

Performance Specifications

Highline College Signage at South 236th Street and SR 99 Pacific Highway South

1 General

- 1.1 Project location: Southwest and Northwest corners of South 236th Street and SR 99 Pacific Highway South, Des Moines, Washington.
- 1.2 General scope: Fabrication and installation of three internally illuminated campus identification signs:
 - 1.2.1 Two signs (A1 & A2) at intersection of South 236th Street and SR 99 Pacific Highway South, one on each side. See drawings.
 - 1.2.2 One sign (B) in new turnaround.
- 1.3 Attachments — Sign Type Drawings
- 1.4 Work to include all materials, labor, equipment, footing design, structural engineering, inspection, coordination, supervision, permits, electrical connection, and installation for turnkey operation of the three signs.
- 1.5 Artwork for the message elements of the signs — “HIGHLINE” and “COLLEGE” — will be provided in Adobe Illustrator CC format.

2 Submittals

- 2.1 Detailed shop drawings are required and shall include:
 - 2.1.1 Scale sign face layouts.
 - 2.1.2 Sign profiles, product component details, dimensions, anchorages, and accessories.
 - 2.1.3 Installation locations.
- 2.2 Samples:
 - 2.2.1 (3) sets of 12 inch by 12 inch (minimum) painted samples of each color.
 - 2.2.2 (3) samples of colored concrete footing.

3 Performance

- 3.1 Signs shall be of the shape, proportions, and finishes as described in the attached drawings.
- 3.2 Signs shall be placed at the locations specified. Final placement in turnaround to be coordinated with Owner and Landscape Architect.
- 3.3 Signs shall be free of blemishes and demonstrate quality craftsmanship.
- 3.4 Corners shall be square, edges shall be smooth, elements shall be level.

- 3.5 Illuminated elements shall be even, free of hot spots.
- 3.6 Illumination shall be by cool white LED. Access to LED and in particular to power supply shall be provided for maintenance.
- 3.7 Sign electrical connection shall be on a separate circuit with an astronomical clock so that sign is powered only when exterior illumination levels warrant.
- 3.8 Finishes shall even and consistent across all surfaces, free of blemish and discoloration.
- 3.9 Finishes and coatings shall be of standard use within the sign fabrication industry, typically Akzo Nobel (preferred) or Matthews Paint (acceptable but not preferred).
- 3.10 Finishes and coatings shall be graffiti-resistant.
- 3.11 Finishes shall have a ten year warranty against discoloration, cracking, clouding, and silvering.

Exhibit E

Dan Brewer

From: Lowry, Soraya <Soraya.Lowry@soundtransit.org>
Sent: Thursday, June 28, 2018 4:43 PM
To: Dan Brewer
Cc: Grant Fredricks; Abernathy, Dan; Eskenazi, Zachary; Wilk, Dana; O'Brien, Kathryn
Subject: RE: Legal Descriptions -
Attachments: FL227.1 Parcel Map-Streets.pdf; AE 0044-12 HC-College Way Cul-de-sac_20180430.pdf

Hi Dan – The assumptions used to develop the parcel maps and legal descriptions attached are as follows:

1. Attached vacation of the "City ROW" through HCC. There is a proposed storm drain line that was shown to be just NE of this existing ROW, which is shown to have a Drainage Easement. This storm drain line can be shifted to be within the ROW, which is why we have never prepared a parcel map or said that there were any impacts on the HCC property since this storm drain line can be placed within the ROW. The vacation of this ROW could reserve the City's rights for an easement for this storm drain line. The request to revise the easement from 10' to 20' to me is unnecessary since the ROW is 60'. There is actually another City ROW portion along the north side of HCC that HCC is using for their use even though it is technically City ROW.
2. Attached proposed dedication from the college to the City for the proposed cul-de-sac.
3. ROW Plans don't show ST obtaining any fee takes or easements on the HCC parcel per meetings that we have had.

Please let me know if you have edits.

Thanks,
 Soraya

Soraya Lowry
 High Capacity Transit Development Manager
 Planning, Environment & Project Development
 Sound Transit
 206.903.7408

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twitter.com/SoundTransit



From: Dan Brewer [mailto:DBrewer@desmoineswa.gov]
Sent: Thursday, June 28, 2018 4:26 PM
To: Lowry, Soraya <Soraya.Lowry@soundtransit.org>
Cc: Grant Fredricks <GFredricks@desmoineswa.gov>
Subject: RE: Legal Descriptions -

The ILA with the college is nearly complete. We're down to minor word-smithing at this point. The college has indicated that they will sign the ILA tomorrow morning.

The only remaining is the legal descriptions.....

Dan

From: Lowry, Soraya [<mailto:Soraya.Lowry@soundtransit.org>]
Sent: Wednesday, June 27, 2018 3:53 PM
To: Dan Brewer <DBrewer@desmoineswa.gov>
Cc: Grant Fredricks <GFredricks@desmoineswa.gov>
Subject: RE: Legal Descriptions -

I am inquiring with HDR and will get back to you ASAP.

Thanks,
 Soraya

Soraya Lowry
 High Capacity Transit Development Manager
 Planning, Environment & Project Development
 Sound Transit
 206.903.7408

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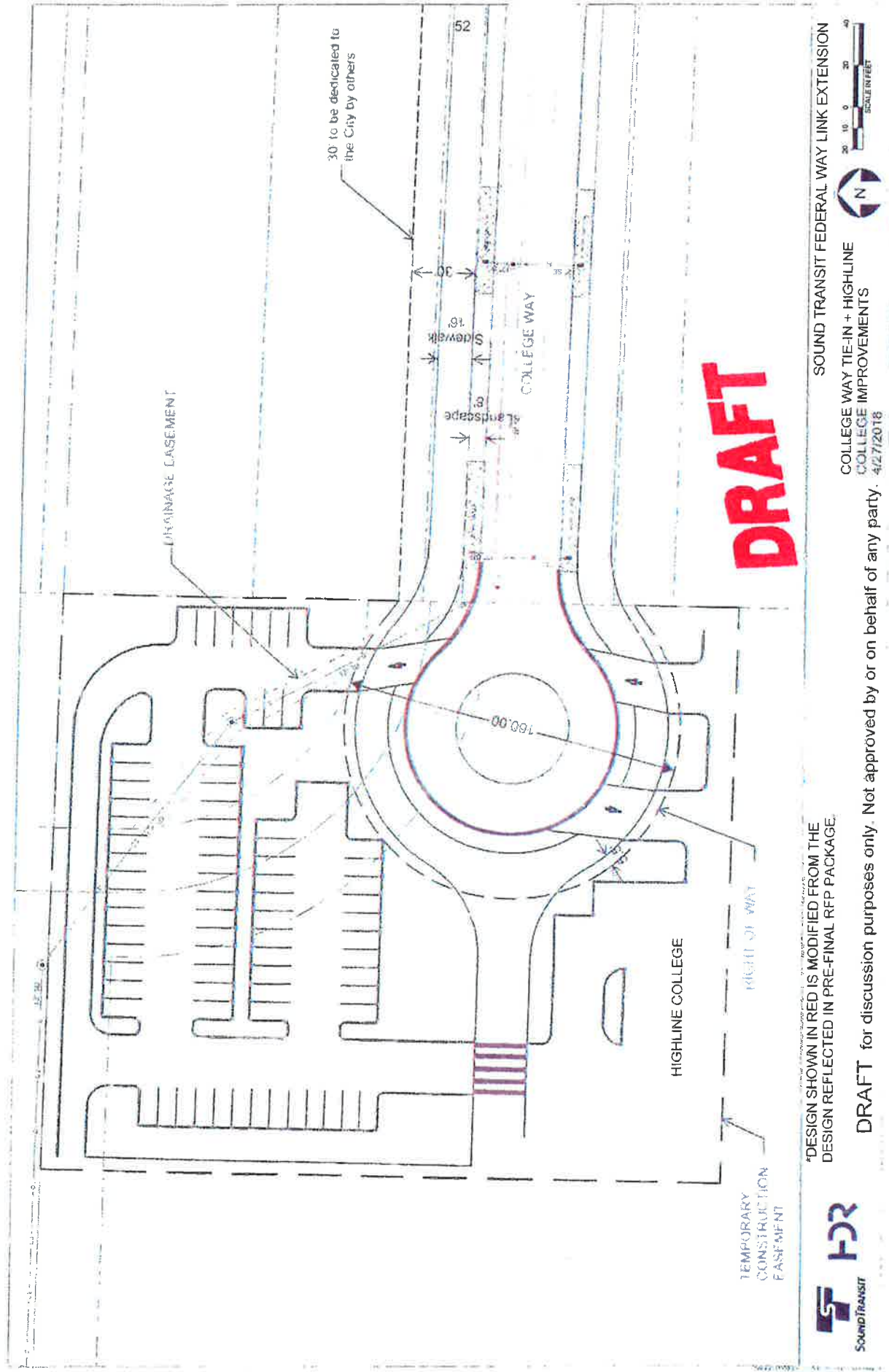
From: Dan Brewer [<mailto:DBrewer@desmoineswa.gov>]
Sent: Wednesday, June 27, 2018 2:59 PM
To: Lowry, Soraya <Soraya.Lowry@soundtransit.org>
Cc: Grant Fredricks <GFredricks@desmoineswa.gov>
Subject: Legal Descriptions -

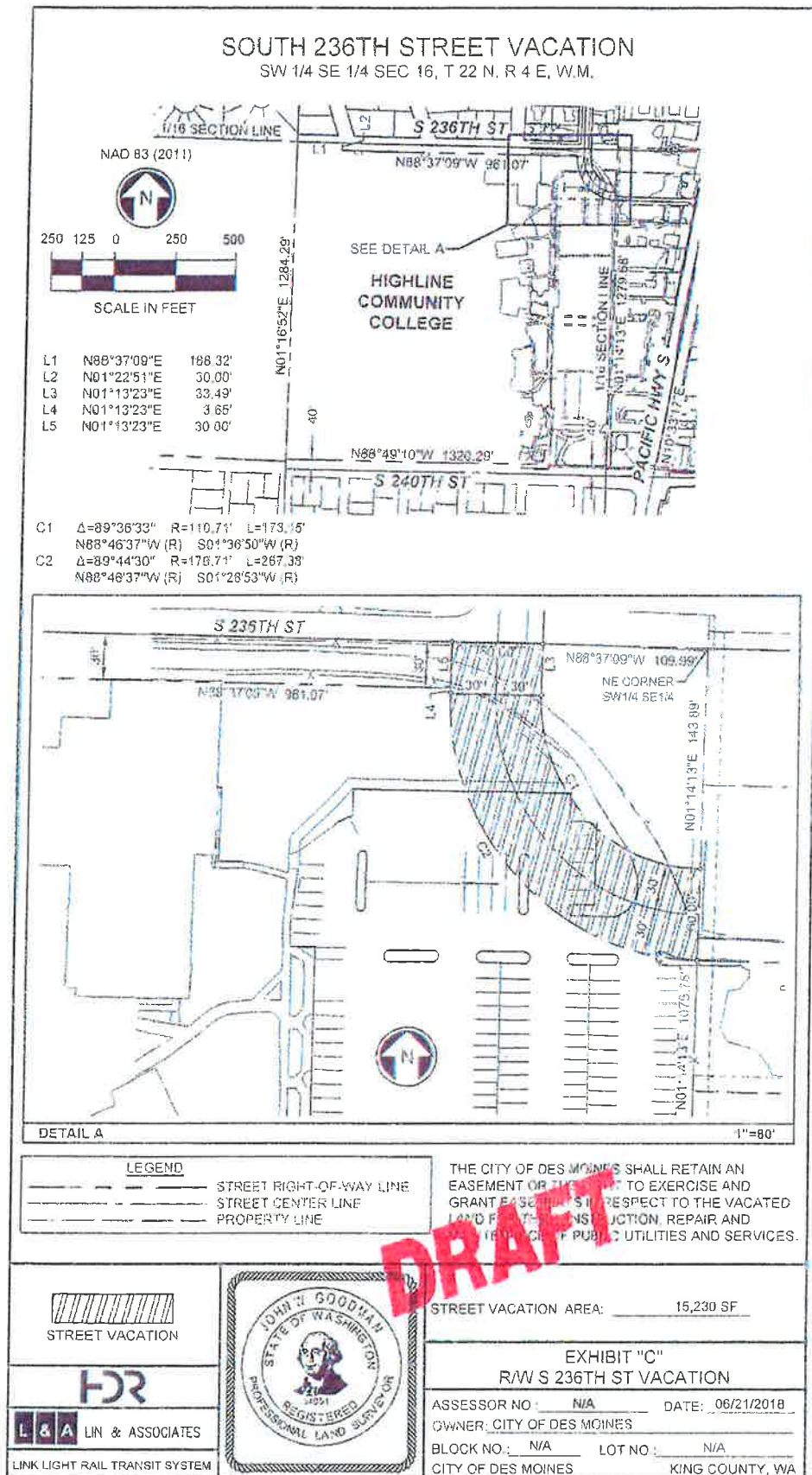
I'm pulling together the Attachments for the College ILA.

Do we have the final legal descriptions and exhibits for the various areas on the college campus?

1. The area of the street end to be dedicated to the City.
2. The area of the storm drainage easement.
3. The Historic ROW that the City needs to vacate back to the college.
4. The TCE areas for the parking lot work.

Dan





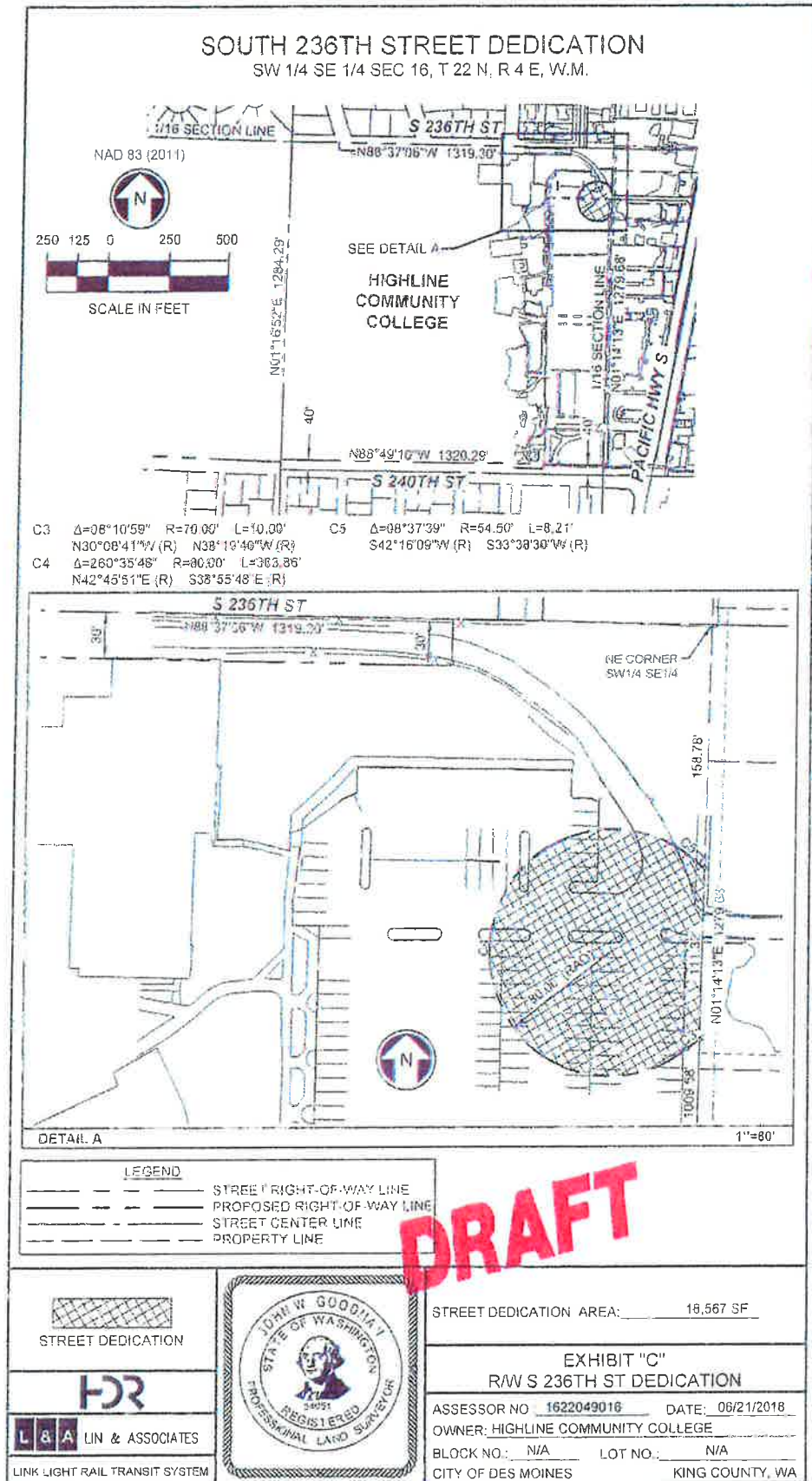


EXHIBIT "A"

R/W No FL227.1
PIN 1622049016
STATE OF WASHINGTON – HIGHLINE COMMUNITY COLLEGE

DRAFT**Entire Parcel:**

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 22 NORTH,
RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;
EXCEPT ANY PORTION THEREOF LYING WITHIN THE RIGHT OF WAY FOR 25TH AVENUE SOUTH;
AND EXCEPT AND PORTION THEREOF LYING WITHIN THE RIGHT OF WAY FOR SOUTH 240TH
STREET.

EXHIBIT "B"

R/W No. FL227 I
 PIN 1622049016
 STATE OF WASHINGTON – HIGHLINE COMMUNITY COLLEGE

DRAFT

Area of South 236th Street Vacation:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE
 SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE
 MERIDIAN, IN KING COUNTY, WASHINGTON;
 THENCE ALONG THE EAST LINE OF SAID SUBDIVISION S01°14'13"W A DISTANCE OF 143.89 FEET
 TO THE POINT OF BEGINNING;
 THENCE CONTINUING ALONG SAID EAST LINE S01°14'13"W A DISTANCE OF 60.00 FEET TO THE
 BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF
 170.71 FEET, OF WHICH THE RADIAL LINE BEARS S01°28'53"W;
 THENCE WESTERLY, NORTHWESTERLY AND NORTHERLY ALONG SAID CURVE THROUGH A
 CENTRAL ANGLE OF 89°44'30" AN ARC DISTANCE OF 267.38 FEET;
 THENCE N01°13'23"E A DISTANCE OF 33.65 FEET TO THE NORTH LINE OF SAID SUBDIVISION;
 THENCE ALONG SAID NORTH LINE S88°37'09"E A DISTANCE OF 60.00 FEET;
 THENCE S01°13'23"W A DISTANCE OF 53.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT
 HAVING A RADIUS OF 110.71 FEET;
 THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°36'33" AN ARC DISTANCE OF
 173.15 FEET TO THE POINT OF BEGINNING

THE CITY OF DES MOINES SHALL RETAIN AN EASEMENT OR THE RIGHT TO EXERCISE AND
 GRANT EASEMENTS IN RESPECT TO THE VACATED LAND FOR THE CONSTRUCTION, REPAIR
 AND MAINTENANCE OF PUBLIC UTILITIES AND SERVICES

CONTAINING 15,230 SQUARE FEET, MORE OR LESS

EXHIBIT "B"

R/W No. FL227.1
 PIN 1622049016
 STATE OF WASHINGTON – HIGHLINE COMMUNITY COLLEGE

DRAFT

Area of South 236th Street Dedication:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE
 SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE
 MERIDIAN, IN KING COUNTY, WASHINGTON;
 THENCE ALONG THE EAST LINE OF SAID SUBDIVISION S01°14'13"W A DISTANCE OF 158.78 FEET
 TO THE POINT OF BEGINNING;
 THENCE CONTINUING ALONG SAID EAST LINE S01°14'13"W A DISTANCE OF 111.32 FEET TO THE
 BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF
 70.00 FEET, OF WHICH THE RADIAL LINE BEARS N30°08'41"W;
 THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°10'59" AN
 ARC DISTANCE OF 10.00 FEET TO THE POINT OF REVERSE CURVE HAVING A RADIUS OF 80.00
 FEET;
 THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 260°35'48" AN ARC DISTANCE
 OF 363.86 FEET TO THE POINT OF REVERSE CURVE HAVING A RADIUS OF 54.50 FEET;
 THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°37'39" AN ARC DISTANCE OF
 4.14 FEET TO THE POINT OF BEGINNING.

CONTAINING 18,567 SQUARE FEET, MORE OR LESS

Exhibit F

Dan Brewer

From: Dan Brewer
Sent: Wednesday, January 17, 2018 3:52 PM
To: 'Pham, Michael'; Holldorf, Barry
Cc: Grant Fredricks; Brandon Carver
Subject: FW: Information on Highline College area dedicated for public ROW
Attachments: 5678292+EAS.PDF; FL227 I-Parcel Map_KN.pdf; Pages from FWEA-L05-RPP100-Rack Set_KN.pdf

Michael & Barry:

I am forwarding you the information below in advance of our meeting tomorrow. It would be good to discuss this with you at the meeting, either with the folks from Highline Place, or separately at our follow up meeting afterwards.

As you will see, the Sound Transit team of staff and consultants have discovered a right-of-way that was dedicated and recorded back in 1963, which is on what we have all thought of as the Highline campus. That may in fact not be the case however. Sound Transit approached us with this information in December, and we asked them to do some more research into this to see if this right-of-way was ever vacated at King County. They have now completed that research and there does not appear to be any records indicating that this right-of-way was ever vacated. As you can imagine, this presents some issues that we need to discuss and figure out.

Take a look and lets discuss tomorrow.

Dan

From: Eskenazi, Zachary [mailto:Zachary.Eskenazi@soundtransit.org]
Sent: Tuesday, January 16, 2018 2:26 PM
To: Dan Brewer <DBrewer@desmoineswa.gov>
Cc: Grant Fredricks <GFredricks@desmoineswa.gov>; Lowry, Soraya <Soraya.Lowry@soundtransit.org>
Subject: Information on Highline College area dedicated for public ROW

Hello Dan-

I am following up to your request for the information on the Highline College area that is dedicated as a public ROW.

Attached is the information we provided at the meeting in December including Ordinance No. 609, King County Rec No. 8411200460, which vacates the north half of 236th ST North of the College's property and East of the Deeded Roadway crossing the Northeast corner of the College's property.

Regards,

Zac

Zac Eskenazi
 High Capacity Transit Project Manager
 Planning, Environment and Project Development
 Sound Transit
 206-903-7178

63-1011-1

R/W 1777

3

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
BERT L. COLE, Commissioner of Public Lands

5679292

*
In re: Application No. 2685 for*
Right of Way for County Road in *
King County *

ORDER
AND
CERTIFICATE OF GRANT
OF
RIGHT OF WAY

It appearing to the Commissioner of Public Lands that Application No. 2685 has been filed in this office by the Board of County Commissioners of King County for an easement for a right of way for county road over and across portions of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 16, Township 22 North, Range 4 East, W.M., in King County; and

It further appearing that this easement is necessary for the use of King County as a county road; that there is no merchantable timber on the area included within the right of way; and that the plat showing the survey of said right of way as filed with said application is hereby approved as the official plat of said road; and the Commissioner being fully advised, it is therefore

ORDERED and DETERMINED that an easement for right of way for county road in accordance with the authority set forth in Section 5, Chapter 73, Session Laws of 1961, is hereby granted to King County over and across the following described land:

Those portions of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 16, Township 22 North, Range 4 East, W.M., included within the limits of three strips of land described as follows:

The North 10.0 feet of the South 40.0 feet of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, having an area of 0.30 acre; also

Beginning at a point on the east line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, which is S 1° 18' 30" W 173.89 feet from the northeast corner thereof, said point being a point on a 41° 43' curve to the right, the tangent to said curve at said point bears N 88° 23' 42" W, running thence on said curve to the right, with a width of 30.0 feet on each side, a distance of 220.26 feet and thence N 1° 17' 40" E 33.18 feet to a point on the north line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, which is N 88° 36' 50" W 140.0 feet from the northeast corner thereof, having an area of 0.35 acre; also

Beginning at a point in said SW $\frac{1}{4}$ SE $\frac{1}{4}$, which is S 1° 17' 40" W 15.0 feet from a point on the north line which is N 88° 36' 50" W 170.00 feet from the northeast corner thereof, running thence, with a width of 15.0 feet on each side, N 88° 36' 50" W 961.00 feet to a point, which is S 1° 23' 10" W 15.0 feet from a point on the north line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, which is S 88° 36' 50" E 189.93 feet from the northwest corner thereof, having an area of 0.66 acre.

The rights of way hereinabove described have a total area of 1.31 acres as shown on the plat thereof on file in the office of the Commissioner of Public Lands at Olympia, Washington.

Dated this 27th day of November, A.D., 1963.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Bert L. Cole
BERT L. COLE
Commissioner of Public Lands

DEC 19 1963

78
pp. No. 2685





Exhibit G

Dan Brewer

Subject: FW: Comprehensive Sign Review

From: Denise Lathrop
Sent: Wednesday, June 27, 2018 4:15 PM
To: Dan Brewer <DBrewer@desmoineswa.gov>
Subject: Comprehensive Sign Review

1. A sign Comprehensive Design Plan is required to approve the new off-premises monument sign in addition to any other existing or future Highline College signs. The Comprehensive Design Plan process and criteria for approval is explained in chapter 18.200 DMMC (DMMC 18.200.120, DMMC 18.200.130, and DMMC 18.200.140). All of the College's signs will be considered in the Comprehensive Design Plan review. A master development application, a narrative pursuant to DMMC 18.200.130(1), square footages of all proposed and existing Highline College signs, and a site plan would be submitted with the application. The current fee for a Comprehensive Design Plan is \$1,530.00 (an Administrative Zoning Code Deviation Request fee per <http://www.desmoineswa.gov/DocumentCenter/View/124>) plus an automation fee.
2. Elevations, structural and electrical details, a site plan, a new sign permit application, and fees for any new sign/s must also be submitted.

Denise E. Lathrop, AICP
Planning & Development Services Manager
City of Des Moines Planning, Building and Public Works Department
21630 11th Avenue S, Suite D
Des Moines, WA 98198-6398
Phone: 206-870-6563
Fax: 206-870-6544

IT TAKES A PLACE TO CREATE A COMMUNITY AND A COMMUNITY TO CREATE A PLACE

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EXHIBIT P:

COLLEGE WAY CONNECTION PROJECT

SEPA REVIEW



City of Des Moines

PLANNING, BUILDING AND PUBLIC WORKS
www.desmoineswa.gov
21630 11TH AVENUE SOUTH, SUITE D
DES MOINES, WASHINGTON 98198-6398
(206) 870-7576 FAX (206) 870-6544



April 19, 2018

Dan Abernathy
Executive Project Director, Federal Way Link Extension
401 S. Jackson St
Seattle, WA 98104

Subject: SEPA Review of College Way Connectivity Connection Project

Dear Mr. Abernathy,

The purpose of this letter is to advise Sound Transit of the City of Des Moines' decision that no further State Environmental Policy Act (SEPA) review is required for the College Way Connectivity Connection Project (Project), FWLE drainage improvements and associated East Parking Lot improvements, and College-funded mitigation and parking lot modifications that are consistent with the City-approved College Master Plan.

Our decision is based on review of the existing FWLE and College SEPA documents and the anticipated Project scope that includes the City code-required standard for the end of a street, pedestrian and bicycle access and associated East Parking Lot modifications, and College-funded mitigation and parking lot modifications that are consistent with the City-approved College Master Plan. These project elements complete the College Way/ South 236th Street connection to the Kent Des Moines (KDM) Link Station and are within the scope of the existing environmental documents and consistent with public comments received during the public hearing on the Highline College Master Plan, the City's Mitigated Determination of Nonsignificance issued on November 21, 2016 for the City Council-approved Highline College Master Plan, and the FWLE DEIS and FEIS.

As part of the City's Interlocal Agreement with Highline College, the City will be the SEPA lead agency for the Project elements east of the College Campus boundary

Sincerely,

Susan Cezar, LEG
Chief Strategic Officer
SEPA Official
City of Des Moines

Cc: Dan Brewer, Chief Operations Officer

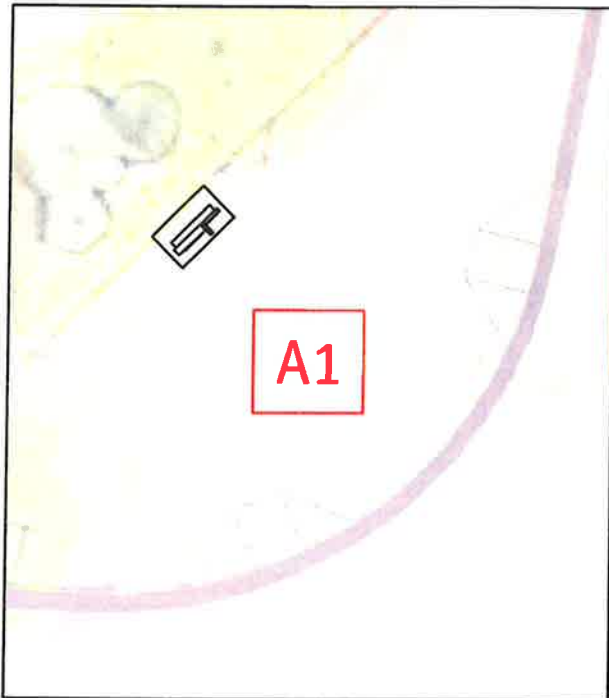
EXHIBIT Q:

HIGHLINE COLLEGE SIGNAGE PROJECT - LOCATIONS



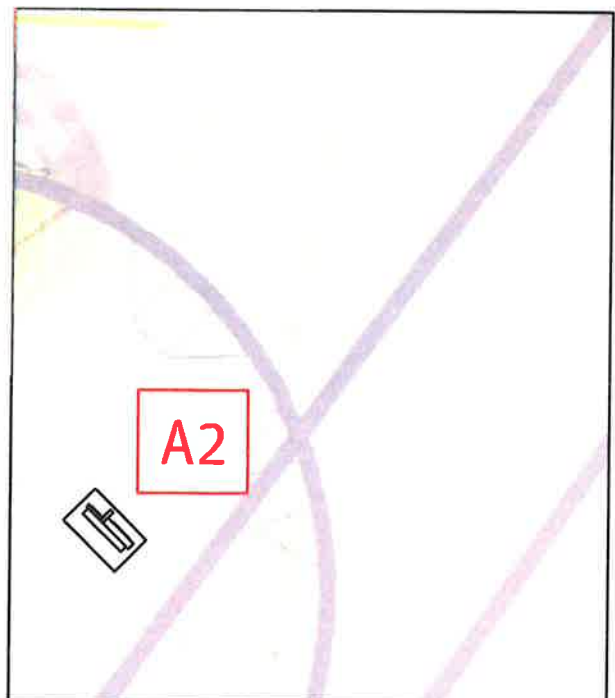
1.1

Sign Location A, Placement Option 1
1:500



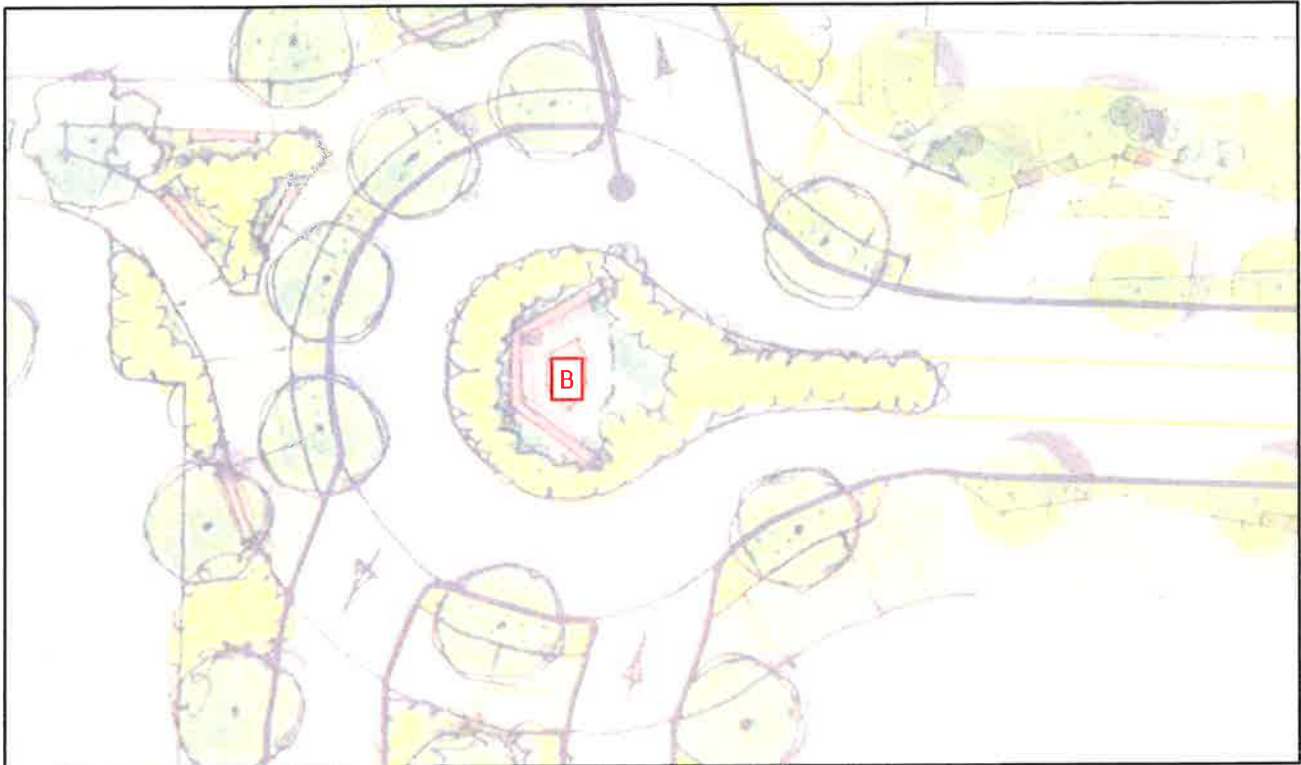
1.2

Enlarged Plan
1:200

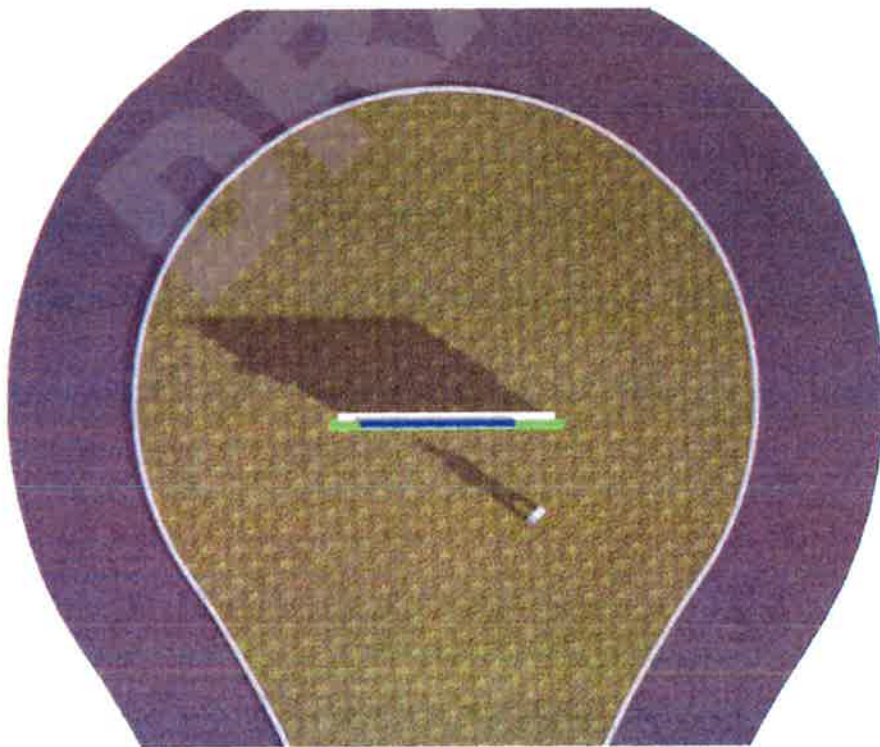


1.3

Enlarged Plan
1:200



3.1 Sign Location B
1:500



3.2 Sign Location B, Conceptual Rendering Plan View
1:200

EXHIBIT R:

SOUTH 224TH STREET END FEE-IN-LIEU SCOPE

SOUTH 224th STREET END FEE-IN-LIEU SCOPE

SCOPE:

- Remove/clear existing gravel and dirt surface (6,962 SF), excavate and grade to 10" depth.
- Provide new 80' diameter clearing to the back of a 5' wide sidewalk (1,375 SF), a concrete curb and gutter (275 LF) and the area between the curb is 4" asphalt over 4" of gravel base (5,587 SF).
- Two new concrete driveways.
- Two new catch basins and 150 LF of PVC drainage pipe.
- Street lighting.

QUALIFICATIONS AND ASSUMPTIONS:

- Contractor obtain permits.

EXCLUSIONS:

- Road work, curbs, sidewalk from 15 foot back of cul-de-sac.

Final for Execution

**FUNDING AGREEMENT
BETWEEN THE CITY OF DES MOINES AND SOUND TRANSIT
FOR THE COLLEGE WAY CONNECTION PROJECT**

THIS AGREEMENT ("Agreement") effective this ____ day of _____, 20____, is entered into between the City of Des Moines (the "City"), a Washington municipal corporation, and Sound Transit, a regional transit authority of the State of Washington, for the purposes set forth below. The City and Sound Transit are collectively referred to hereafter as "the Parties" or individually as a "Party."

RECITALS

- A. The City is a non-charter optional municipal code city incorporated under the laws of the State of Washington, with authority to enact laws and enter into development and right-of-way agreements to promote the health, safety, and welfare of its citizens.
- B. Sound Transit is a regional transit authority created pursuant to chapters 81.104 and 81.112 RCW with all powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties.
- C. The Sound Transit System Expansion Plan includes the Federal Way Link Extension project ("FWLE Project") located within the City of Des Moines.
- D. The City and Highline Community College have executed an inter-local agreement ("ILA") for the City to lead a planned improvement in the vicinity of the College Way street-end ("College Way Connection Project") that would construct a roundabout, parking lot modifications and pedestrian facilities.
- E. The City has determined that environmental review on the College Way Connection Project has been completed with the Highline College Master Plan Determination on Non-significance issued by the City on November 21, 2016 and the FWLE Final Environmental Impact Statement issued by Sound Transit on November 2017.
- F. The City and Sound Transit will enter into a Development Agreement ("Development Agreement") to consolidate permit and environmental review processes for the benefit of both parties and the public pursuant to the development agreement authority provided in RCW 36.70B.170-.210 and DMMC 18.35.020.
- G. The Development Agreement identifies the College Way Connection Project as a partnership opportunity, whereby the City and Sound Transit could minimize construction impacts and realize economies of scale by incorporating construction of the College Way Connection Project into the FWLE Project.

Final for Execution

- H. Sound Transit has considered the proposed College Way Connection Project and has determined it will provide an added benefit to the transit experience for its patrons by improving access to the Kent/Des Moines (“KDM”) Station.
- I. Sound Transit’s Scope Control Policy (Resolution No. R2009-04) requires a financial contribution to include the College Way Connection Project in the Federal Way Link Extension Project.
- J. The Parties have determined that the most efficient means of constructing the College Way Connection Project is for the City to pay Sound Transit for the cost to construct that project in conjunction with the construction of the FWLE Project.

NOW THEREFORE, in consideration of the terms, conditions, and covenants contained herein, it is mutually agreed that:

1. Purpose. This Agreement provides the terms and conditions for Sound Transit to design and construct the College Way Connection Project as part of its planned construction of the Federal Way Link Extension Project.
2. Project Administration. The Parties acknowledge that Sound Transit will serve as the project administrator for construction and construction management for the College Way Connection Project, and will be solely responsible for managing all construction activities.
3. Project Requirements. The City has identified a scope of work, depicted in **Exhibit A**, which has been included in the FWLE Project Requirements. The City and Sound Transit shall notify and consult with each other’s Designated Representative prior to any substantive changes to the College Way Connection Project, including changes to the project requirements, change orders after Sound Transit’s construction contract has been issued, changes required by Sound Transit’s construction contractor, or other changes as appropriate. The City and Sound Transit will amend this agreement as described in Section 22 to reflect mutually agreed changes to the City’s contribution.
4. Permitting and Environmental Review. The City has determined that environmental review for the College Way Connection Project has been completed, as documented in the April 19, 2018 letter attached as **Exhibit B**. The City is responsible to obtain all environmental permits and approvals necessary for construction to begin at no cost to Sound Transit. Sound Transit will obtain all other required permits for construction. The City will waive all permit and approval fees necessary for construction.
5. Property Access for Construction. The City will provide access rights to Sound Transit for all property needed for staging and construction of the College Way Connection Project with 90 days’ notice at no cost to Sound Transit. These access rights have been incorporated into the City’s ILA with the College. Construction staging for that portion of College Way that is

Final for Execution

located east of Highline College shall not occur on the College campus unless specifically allowed by the College.

6. Construction Window/Schedule. Sound Transit's Design-Build Contractor (D-B) will have access to the College Campus annually from June 1 to September 15. All construction activities on the College Way Connection Project must be completed within this window, unless otherwise approved in advance by the City.
7. Project Inspection. Inspection will be done in accordance with permit conditions established in accordance with DMMC 12.05.080 in coordination with Sound Transit inspectors.
8. Ownership and Maintenance. The City will accept ownership and maintenance responsibility for those improvements upon substantial completion of the College Way Connection Project in accordance with Section 3.09B of the FWLE D-B General Conditions.
9. Construction Completion Date. Sound Transit shall complete construction of the College Way Connection Project prior to substantial completion of the Federal Way Link Extension Project unless otherwise mutually agreed by the Parties.
10. City Financial Contribution. The City will pay Sound Transit one million four hundred thousand dollars (\$1,400,000) for the construction of the College Way Connection Project. This amount represents the design and construction costs for the roundabout, pedestrian improvements, and parking lot modifications depicted in **Exhibit A**. This contribution will be made in three payments:

Payment 1: Five hundred thousand dollars (\$500,000) due January 15, 2021.

Payment 2: Four hundred fifty thousand dollars (\$450,000) due upon Sound Transit's Notice of Substantial Completion of the College Way Connection Project construction and the project is open to public use as defined in Section 3.09 A of the FWLE D-B General Conditions.

Payment 3: Four hundred fifty thousand dollars (\$450,000) due when Notice of Final Acceptance is issued by Sound Transit for the College Way Connection Project as defined in Section 3.09 A of the FWLE D-B General Conditions.

The City is not responsible for costs in excess of \$1,400,000 unless the excess cost is due to one or more change orders requested by the City and agreed to by the City and Sound Transit following the consultation described in Section 3, in which case the excess cost will be paid by the City.

11. Invoicing. Sound Transit will submit invoices to the City consistent with the three-staged payment structure and amount established in the foregoing section. Invoices must be paid by the City within (30) days of receipt of the invoice.

Final for Execution

12. Designated Representatives. The Parties shall each designate a single representative responsible for communications between the Parties (“Designated Representative”). Each Party’s Designated Representative is identified as follows.

SOUND TRANSIT	CITY OF DES MOINES
Dan Abernathy	Daniel J. Brewer, PE, PTOE
Executive Project Director	Chief Operations Officer
401 S Jackson St	21630 11 th Ave S
Seattle, WA 98104	Des Moines, WA 98198
206-903-7170	(206) 870-6581
dan.abernathy@soundtransit.org	dbrewer@desmoineswa.gov

13. Dispute Resolution. Any disputes or questions of interpretation of this Agreement or the performance of either Party under this Agreement that may arise between Sound Transit and the City shall be governed under the dispute resolution provisions in Section 19 of the Development Agreement. The Parties agree that cooperation and communication are essential to resolving issues efficiently.
14. Indemnity. The City hereby agrees to indemnify, defend, and hold Sound Transit harmless from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses, including, without limitation, reasonable attorney fees, paid by Sound Transit and arising or growing out of or in connection with or resulting from, either directly or indirectly, the construction, maintenance, operation, repair, removal, occupancy, and use of the College Way Connection Project by the City, unless such claims arise from the sole or partial negligence, actions or inaction of Sound Transit, its employees, servants, agents, contractors, or subcontractors.
15. Default. The Parties may mutually agree to terminate this Agreement if it is determined that construction of the College Way Connection Project cannot be completed within the timeline established in Section 6 by providing notice as described in Section 20. If this Agreement is terminated under this Subsection, Sound Transit will reimburse the City the amount of any uncommitted payments associated with the incomplete improvements made to Sound Transit pursuant to this Agreement within ninety (90) days of the date of termination.
16. Duration. This Agreement shall take effect upon the last date of signature by the Parties as set forth below. This Agreement shall remain in effect until the College Way Connection Project contemplated by this Agreement is complete and open to the public, unless this

Final for Execution

Agreement is extended by mutual agreement of the Parties pursuant to Section 21, superseded by a future agreement, or suspended or terminated pursuant to Section 15.

17. Administration of Agreement. This Agreement will be jointly administered by Sound Transit's Designated Representative and the City's Designated Representative. Each party shall be responsible for its own public records and public records requests.
18. Assignment of Beneficiaries. Neither Party may assign all or any portion of this Agreement without the express written consent of the other Party. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.
19. Notices. Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the Designated Representative. All notices shall be either: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other party's Designated Representative as listed herein. However, notice under Section 15, Default, must be delivered in person or by certified mail, return receipt requested.

20. General Provisions

21.1. The Parties shall not unreasonably withhold requests for information, approvals, or consents provided for in this Agreement; provided, however, that approvals or consents required to be given by vote of the Sound Transit Board or Des Moines City Council are recognized to be legislative actions. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement provided, however, that such actions or documents must be first approved by vote of the Sound Transit Board or Des Moines City Council, such actions are recognized to be legislative actions. The Parties agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.

21.2. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Each party consents to the personal jurisdiction and venue of the state and federal courts in King County, Washington and waives any objection that such courts are an inconvenient forum.

21.3. Time is of the essence in every provision in this Agreement. Unless otherwise set forth in this Agreement, the reference to "days" shall mean calendar days unless otherwise noted. Any reference to "working days" shall exclude any legal holidays and

Final for Execution

weekend days. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.

21.4. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other party.

21.5. Neither Party shall be relieved of its obligations to comply promptly with any provision of this Agreement by reason of any failure by the other Party to enforce prompt compliance, and such failure to enforce shall not constitute a waiver of rights or acquiescence in the other Party's conduct.

21.6. This Agreement has been reviewed and revised by legal counsel for all Parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law.

21.7. Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties. If either Party brings any claim or lawsuit arising from this Agreement, each Party shall pay all its legal costs and attorney's fees and expenses incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; however, nothing in this paragraph shall be construed to limit the Parties' rights to indemnification.

21.8. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.

22. Amendments. This Agreement may be amended only by a written instrument executed by both Parties. The Designated Representatives may, by mutual agreement, revise or replace the Exhibits as necessary.

23. Severability. In case any term of this Agreement shall be held invalid, illegal, or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.

Each of the Parties has executed this Agreement by having its authorized representative affix his/her name in the appropriate space below and the effective date shall be the last date written below:

Final for Execution

IN WITNESS WHEREOF, each of the Parties has executed this Agreement by having its authorized representative affix her/his name in the appropriate space below:

SOUND TRANSIT

CITY OF DES MOINES

By: _____
Peter M. Rogoff, Chief Executive
Officer

By: _____
Michael Matthias, City Manager

Date: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____
_____, Senior Legal Counsel

By: _____
_____, City Attorney

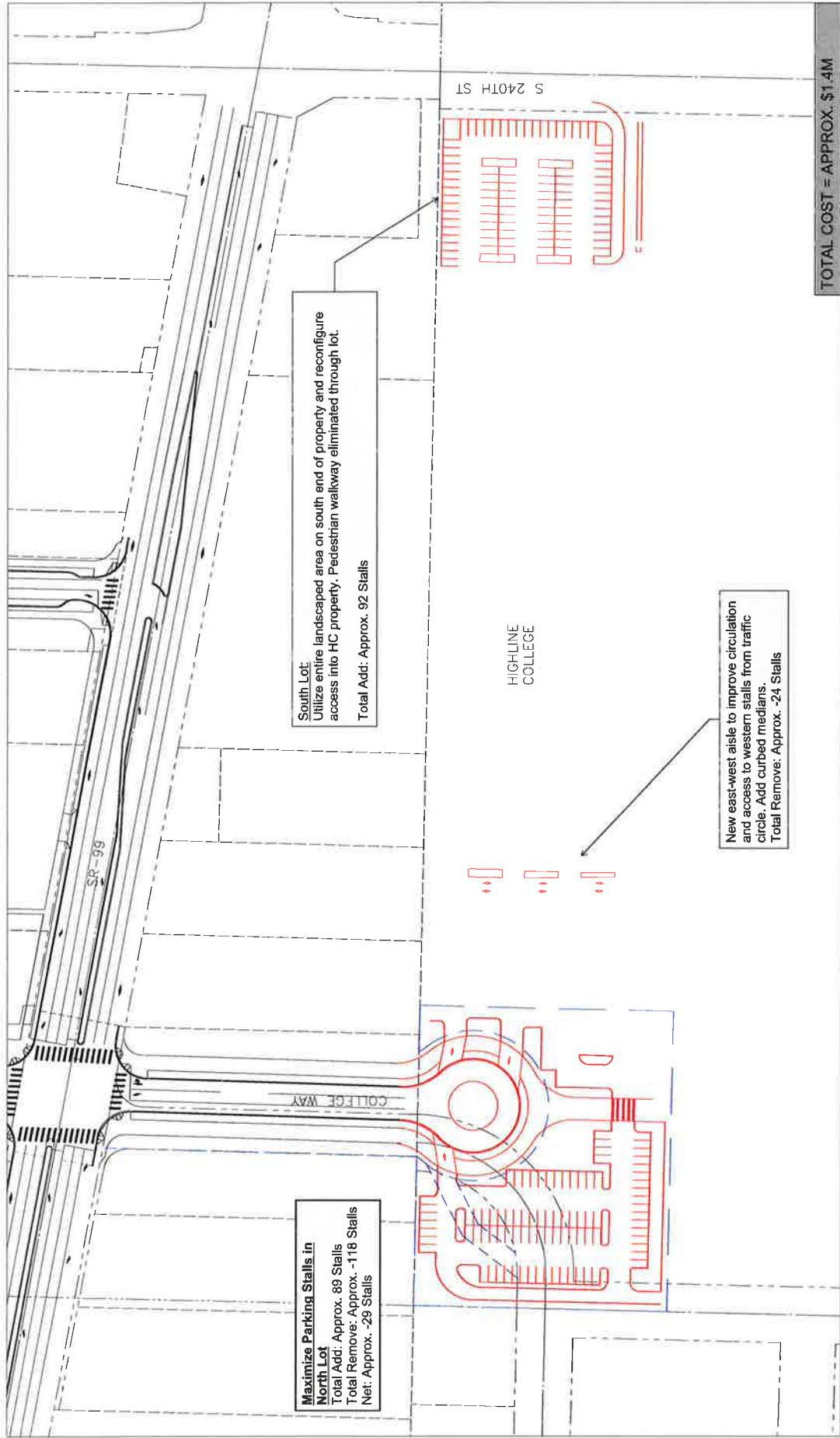
Exhibit List:

Exhibit A: College Way Connection Project Description

Exhibit B: Letter Confirming Completion of Environmental Review

EXHIBIT A:

**COLLEGE WAY CONNECTION
PROJECT DESCRIPTION**



SOUND TRANSIT FEDERAL WAY LINK EXTENSION

COLLEGE WAY CONNECTION PROJECT SCOPE

SCOPE:

North Parking lot improvements & Cul-de-sac:

- Demo existing parking lot paving, curbs, signs, gate, trees and clear & grub.
- New 3" asphalt paving over 6" gravel base, new concrete curbs and concrete sidewalk.
- Storm drainage water quality catch basins, manholes, detention pipe and storm drainage pipe.
- Landscaping and irrigation, light poles/fixtures and signs.

South Parking Lot Improvements & Curbed Medians:

- Demo existing parking lot paving, curbs, trees and clear & grub.
- Retain asphalt driving surface & curbs at existing entry/exit road.
- Install one catch basin & storm pipe. Install one light pole/fixture.
- New 3" asphalt paving over 6" gravel base.
- New concrete curbs at Medians only.
- Sales tax and permits included for the North & South parking.
- A 5% Design Allowance is included for the North & South parking.
- Design, CM and ST Admin. is included.

EXCLUSIONS:

- Road work, curbs, sidewalk from 30 foot back of cul-de-sac.
- Concrete curbs, sidewalk, storm detention pipe and landscaping at the South parking lot.
- City Soft Costs, ROW.

CITY FINANCIAL CONTRIBUTION:

- The City will pay Sound Transit one million four hundred thousand dollars. This is in addition to a credit from the City in the amount of \$104,000.

EXHIBIT B:

COLLEGE WAY CONNECTION PROJECT

SEPA REVIEW

City of Des Moines



PLANNING, BUILDING AND PUBLIC WORKS
www.desmoineswa.gov
 21630 11TH AVENUE SOUTH, SUITE D
 DES MOINES, WASHINGTON 98198-6398
 (206) 870-7576 FAX (206) 870-6544



April 19, 2018

Dan Abernathy
 Executive Project Director, Federal Way Link Extension
 401 S. Jackson St
 Seattle, WA 98104

Subject: SEPA Review of College Way Connectivity Connection Project

Dear Mr. Abernathy,

The purpose of this letter is to advise Sound Transit of the City of Des Moines' decision that no further State Environmental Policy Act (SEPA) review is required for the College Way Connectivity Connection Project (Project), FWLE drainage improvements and associated East Parking Lot improvements, and College-funded mitigation and parking lot modifications that are consistent with the City-approved College Master Plan.

Our decision is based on review of the existing FWLE and College SEPA documents and the anticipated Project scope that includes the City code-required standard for the end of a street, pedestrian and bicycle access and associated East Parking Lot modifications, and College-funded mitigation and parking lot modifications that are consistent with the City-approved College Master Plan. These project elements complete the College Way/ South 236th Street connection to the Kent Des Moines (KDM) Link Station and are within the scope of the existing environmental documents and consistent with public comments received during the public hearing on the Highline College Master Plan, the City's Mitigated Determination of Nonsignificance issued on November 21, 2016 for the City Council-approved Highline College Master Plan, and the FWLE DEIS and FEIS.

As part of the City's Interlocal Agreement with Highline College, the City will be the SEPA lead agency for the Project elements east of the College Campus boundary

Sincerely,

Susan Cezar, LEG
 Chief Strategic Officer
 SEPA Official
 City of Des Moines

Cc: Dan Brewer, Chief Operations Officer

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City of Des Moines
Geographic Information
System

**Property
Acquisition**

Sound Transit FWLE
9/06/2018

Easement

- Full
- Partial
- Easement

Status

- Closed
- Pending
- Planned
- V Vacant



**Des Moines
Public Works**

21650 11th Ave S
Des Moines, WA 98198-6398
PHONE: (206) 870-7576 • FAX: (206) 870-6544
WEB: <http://www.desmoineswa.gov>

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CITY COUNCIL REGULAR MEETING

Speaker Sign-Up Sheet

October 4, 2018

For ~~ODD~~ ~~Even~~ Rows
~~3rd~~ Behind
 Address
 - Sun
 Wesley
 Terrace
 2-4

[illegible]