

AGENDA

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

July 12, 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 MANAGER MONTHLY REPORT

CONSENT CALENDAR

Page 1 Item 1: APPROVAL OF MINUTES
Motion is to approve the minutes from the June 28, 2018 City Council Regular meeting.

Page 7 Item 2: APPROVAL OF VOUCHERS
Motion is to approve for payment vouchers and payroll transfers through July 5, 2018 included in the attached list and further described as follows:

Total A/P Checks/Vouchers	#154476-154595	\$354,565.48
Electronic Wire Transfers	#1067-1072	\$232,341.63
Payroll Checks	#19056-19068	\$ 8,117.70
Payroll Direct Deposit	#270001-270184	\$388,071.58
Total Checks and Wires for A/P and Payroll:		\$983,096.39

OLD BUSINESS

Page 9 Item 1: INTERLOCAL AGREEMENT WITH HIGHLINE COLLEGE FOR THE COLLEGE WAY CONNECTION PROJECT
Staff Presentation: Chief Operations Officer Dan Brewer

NEW BUSINESS

Page 73 Item 1: AMENDING TITLE 20 DMMC, TELECOMMUNICATIONS, CREATING
STANDARDS AND REGULATIONS FOR SMALL CELL WIRELESS
FACILITIES

Staff Presentation: City Attorney Tim George

EXECUTIVE SESSION

NEXT MEETING DATE

July 19, 2018 City Council Regular Meeting

ADJOURNMENT

MINUTES

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

June 28, 2018 – 7:00 p.m.

CALL TO ORDER

Mayor Pina called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Back.

ROLL CALL

Council present: Mayor Matt Pina; Deputy Mayor Vic Pennington; Councilmembers Traci Buxton, Jeremy Nutting, Luisa Bangs, Robert Back and Matt Mahoney.

Staff present:

City Manager Michael Matthias; Chief Operations Officer Dan Brewer; Chief Strategic Officer Susan Cezar; Assistant City Attorney Matt Hutchins; Acting Harbormaster Scott Wilkins; Police Chief Ken Thomas; Finance Director Beth Anne Wroe; Parks, Recreation & Senior Services Director Patrice Thorell; Senior Services Manager Sue Padden; Special Transportation Project Manager Len Madsen; City Clerk/Communications Director Bonnie Wilkins; Deputy City Clerk Taria Keane.

COMMENTS FROM THE PUBLIC

- Brian Snure, Legacy Foundation
- Alan Masterson, Senior Center
- John McEvoy, Des Moines Activity Center
- Bob Pond, 30th Ave S
- Jeanne Serrill, Senior Center
- Yvonne Nutting, ABC 4 Highline
- Sue Padden, Senior Center
- Susan White, Retiring Employee
- Bill Linscott, Marina District
- Patricia Clark, Sue Padden
- Patrice Thorell, Legacy Foundation

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Councilmember Back

- South County Area Transportation Board Meeting
- Farmers Market
- Bill Rudberg one of the first City Council Members
- AWC Conference

Councilmember Bangs

- Municipal Facilities Committee Meeting

Councilmember Nutting

- Municipal Facilities Committee Meeting
- North Marina Parking Lot Bulkhead and Restrooms Replacement Survey
- Economic Development Committee Meeting

Councilmember Buxton

- Domestic Violence and Fire Arms Summit
- Regional Taskforce Caucus
- Mount Rainier Graduation
- Maury Island Incident
- Farmers Market Board Meeting
- Citizen Advisory Committee Meeting

Deputy Mayor Vic Pennington

- Economic Development Committee Meeting
- Valley Communications Meeting
- Acknowledged Des Moines Police Officers

Councilmember Mahoney

- Farmers Market
- Destination Des Moines Meeting
- Maury Island Incident
- Citizen Advisory Committee Meeting
- StART Meeting at the Airport

PRESIDING OFFICER'S REPORT

- Farmers Market
- Maury Island Incident
- Citizen Advisory Meeting
- United Way Free Summer Meals Program for Kids and Teens

ADMINISTRATION REPORT

- SeaTac Stakeholders Group
- Barnes Creek Trail Grant
- South King County Affordable Housing and Homelessness Meeting

CONSENT CALENDAR**Item 1: APPROVAL OF MINUTES**

Motion is to approve the minutes from the June 7, 2018 City Council Study Session, minutes from the June 14, 2018 City Council Regular meeting and minutes from the June 14, 2018 City Council Executive Session.

Item 2: APPROVAL OF VOUCHERS

Motion is to approve for payment vouchers and payroll transfers through June 20, 2018 included in the attached list and further described as follows:

Total A/P Checks/Vouchers	#154336-154475	\$ 563,962.02
Electronic Wire Transfers	#1058-1066	\$ 531,395.16
Payroll Checks	#19050-19055	\$ 14,354.59
Payroll Direct Deposit	#250001-250167	\$ 348,968.57
Total Checks and Wires for A/P and Payroll:		\$1,458,680.34

- Item 3: INTERLOCAL AGREEMENT BETWEEN THE CITY AND HIGHLINE WATER DISTRICT REGARDING THE WATER TOWER PARK SITE
Motion is to approve the Interlocal Agreement between the City and Highline Water District for use of Highline Water District property, for a term of five (5) years, wherein the District grants the City the right to use a portion of the District's North Hill Water Storage Tank Property for parks and recreation purposes, and authorize the City Manager to sign the Agreement substantially in the form as submitted.
- Item 4: REPEAL OF THE CITY'S COMMERCIAL PARKING TAX
Motion 1 is to suspend Rules 26(a) in order to enact Draft Ordinance No. 18-068 on first reading.

Motion 2 is to enact Draft Ordinance No. 18-068, repealing chapter 5.68 DMMC, Commercial Parking Tax.
- Item 5: S 216TH STREET SEGMENT 3 IMPROVEMENTS RIGHT-OF-WAY ACQUISITIONS
Motion 1 is to approve and accept a Statutory Warranty Deed (94 SF) and Temporary Construction Easement (333 SF) on Parcel Number #082204-9132, owned by Sophia Kollias and provide compensation to the owner of \$1,334.80 for the Warranty Deed, \$472.86 for the Temporary Construction Easement and \$40.00 for property damage, totaling \$1888.00 (rounded), plus reasonable closing costs, and authorize the City Manager to sign the Easement and Real Property Voucher Agreement substantially in the form submitted.

Motion 2 is to approve and accept a Temporary Construction Easement (177 SF) on Parcel #082204-9013, owned by Jeffery and Shannon Johnson and provide compensation to the owners of \$358.67 (324 SF) for the Temporary Construction Easement, and \$428.00 for all damages totaling \$787.00 (rounded), and authorize the City Manager to sign the Temporary Construction Easement and Real Property Voucher substantially in the form submitted.
- Item 6: RESOLUTION NO. 18-074 SETTING A PUBLIC HEARING REGARDING CHANGES IN PERMITTED USES AND ASSOCIATED REGULATIONS IN THE INSTITUTIONAL CAMPUS (I-C) ZONE
Motion 1 is to adopt Draft Resolution No. 18-074 setting a public hearing on July 26, 2018, or as soon thereafter that the matter can be heard, to consider amending the permitted uses and associated development regulations in the I-C Institutional Campus Zone.
- Item 7: ARTS COMMISSION APPOINTMENT
Motion is to confirm the mayoral appointment of Beverly Reich to an unexpired term on the City of Des Moines Arts Commission effective immediately and expiring on December 31, 2019.

Direction/Action

Motion made by Councilmember Nutting to approve the Consent Agenda; seconded by Councilmember Bangs.

Councilmember Bangs pulled Consent Agenda Item #6.

The remainder of the Consent Calendar passed 7-0.

Motion made by Councilmember Bangs to amend Consent Item #6 to adopt Draft Resolution No. 18-074 setting a public hearing on August 23, 2018, or as soon thereafter that the matter can be heard, to consider amending the permitted uses and associated development regulations in the I-C Institutional Campus Zone; seconded by Councilmember Back.
The motion passed 7-0.

NEW BUSINESS

Item 1:

2008 REFUNDING BONDS, 1ST READING

Staff Presentation: Finance Director Beth Anne Wroe

Finance Director Wroe gave a Power Point Presentation to Council.

Direction/Action

Motion made by Councilmember Nutting to pass Draft Ordinance No.18-044 to a second reading on July 12, 2018 for further City Council consideration and approval, seconded by Councilmember Mahoney.
The motion passed 7-0.

EXECUTIVE SESSION

At 8:24 p.m. Council went into Executive Session. The purpose of the Executive Session was to discuss Performance Of A Public Employee Under RCW 42.30.110(1)(g). Those in attendance: Mayor Pina; Deputy Mayor Pennington; Councilmembers Buxton, Nutting, Bangs, Back and Mahoney; City Manager Matthias, Chief Operations Officer Brewer, Chief Strategic Officer Cezar, Assistant City Attorney Hutchins, and City Clerk/Communications Director Wilkins. The Executive Session was expected to last 15 minutes.

At 8:39 p.m. Mayor Pina extended the Executive Session an additional 10 minutes.

At 8:49 p.m. Deputy Mayor Pennington extended the Executive Session an additional 10 minutes.

At 8:59 p.m. Deputy Mayor Pennington extended the Executive Session an additional 5 minutes.

The Executive Session concluded at 9:04 p.m.

The Executive Session lasted 40 minutes.

No formal action was taken.

NEXT MEETING DATE:

July 12, 2018 City Council Regular Meeting

ADJOURNMENT**Direction/Action**

Motion made by Councilmember Nutting to adjourn; seconded by Deputy Mayor Pennington.

The motion passed 7-0.

The meeting was adjourned at 9:04 p.m.

Respectfully Submitted,
Taria Keane
Deputy City Clerk

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CITY OF DES MOINES
Voucher Certification Approval

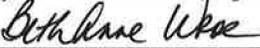
12-Jul-18

Auditing Officer Certification

Vouchers and Payroll transfers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing, which has been made available to the City Council.

As of July 12, 2018 the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers through July 5, 2018 included in the attached list and further described as follows:

The vouchers below have been reviewed and certified by individual departments and the City of Des Moines Auditing Officer:


 Beth Anne Wroe, Finance Director

	# From	# To	Amounts
Claims Vouchers:			
Total A/P Checks/Vouchers	154476	- 154595	354,565.48
Electronic Wire Transfers	1067	- 1072	232,341.63
Total claims paid			586,907.11
Payroll Vouchers			
Payroll Checks	19056	- 19068	8,117.70
Direct Deposit	270001	- 270184	388,071.58
Total Paychecks/Direct Deposits paid			396,189.28
Total checks and wires for A/P & Payroll			983,096.39

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AGENDA ITEM

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

FOR AGENDA OF: July 12, 2018

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: July 3, 2018

ATTACHMENTS:

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

CLEARANCES:

Community Development Sue

Public Works RBC

Marina N/A

Parks, Recreation & Senior Services N/A

CHIEF OPERATIONS OFFICER: DJB

Legal M4

Finance Baw

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 3-4 short listed DB teams – August 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 College Way street improvements west of Pacific Highway South, including the street end and pedestrian access improvements on the Highline College Campus which will be integrated into 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;
- The College will pay \$950,000 for the final design and construction of parking lot and traffic circulation modifications outside the City ROW; and
- The College will make a final decision on the East Lot parking modifications by April 1, 2019. These decisions will include final dimensions, surface treatment and traffic circulation, including access to South 240th Street (Exhibit C).

The ILA also provides for two Sound Transit-funded College 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 September 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 street 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 President signed the staff-coordinated ILA on June 30th. 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. If the ILA is approved, the City will serve as agent for the College with administrative staff costs to be paid for directly or reimbursed by Sound Transit through the Council-approved FWLE City Services Agreement. The College's cost share will be paid to the City by December 31, 2020. 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 July 26th, 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 Sound Transit or their D/B Contractor will submit to the City for review as the Project moves through various review and approval processes. There are currently envisioned four phases of design submittal as follows. These may change as procurement and design proceeds:
 - (a) "Pre-Final Preliminary Engineering (PE) Submittal" means the Design Submittal that was developed by the City, College, and Sound Transit prior to Sound Transit seeking the services of a Design/Build Contractor and has been completed at the time this Agreement is executed.
 - (b) "50% Design Submittal" means a Design Submittal that presents the basic concept of a defined segment of the Project, including advanced detail on roadway alignment, utilities, urban design concepts, parking lot layout, and other concepts required to define the intent of the Project.
 - (c) "100% Construction Document Submittal" (or "Permit Submittal") means a Design Submittal illustrating the entire scope of the work of the Project under design so that all reviewers can comment on the overall scope of the Project. This may include utility relocation improvements, grading and landscaping plans, and all work completed as part of the Project. This submittal is intended to ensure that new, never-before-seen items of significance do not appear for the first time in the Issued for Construction Design Submittal. This submittal will constitute the Permit Submittal.
 - (d) "Issued for Construction Design Submittal" means a Design Submittal that has incorporated any corrections required based on review of the 100% Construction Document, or 50% Design Submittal and that is sufficiently complete for Project Approval and upon which the Design/Build Contractor will rely on for constructing the Project, including, but not limited to a complete set of construction plans, drawings, and specifications, draft construction schedule, and maintenance of traffic plan. The Approved Permit Plans and Final Right-of-Way Plans will not materially differ from the Issued for Construction Design Submittal.

- 1.5 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.
- 1.6 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.
- 1.7 Parties. “Parties” means the City of Des Moines and Highline College.
- 1.8 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.
- 1.9 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 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 has the following options to develop the Project as relating to the new parking areas:

Option 1 (All new parking area to be paved):

The College agrees to contribute \$950,000 as its share of the estimated \$1,450,000 Project cost for alternative A.1 in Exhibit C. The City will address the cost difference in its Development Agreement with Sound Transit. To the extent that the Project cost is reduced below \$1,450,000, the cost savings shall be applied to the College's contribution by the equal amount. 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 \$1,450,000.

The college contribution and estimated project cost identified for this option are consistent with alternative A.1 of Exhibit C. This alternative has all new parking areas to be constructed under this agreement on the College campus as paved with asphalt.

Option 2 (Paving of some new parking area delayed):

The College agrees to contribute \$850,000 as its share of the estimated \$1,350,000 Project cost for alternative A.2 in Exhibit C. The City will address the cost difference in its Development Agreement with Sound Transit. To the extent that the Project cost is reduced below \$1,350,000, the cost savings shall be applied to the College's contribution by the equal amount. 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 \$1,350,000.

The college contribution and estimated project cost identified for this option are consistent with alternative A.2 of Exhibit C. This alternative has the new parking area to be constructed under this agreement on the College campus adjacent to South 240th Street with a compacted gravel surface. If the College chooses this alternative, the College must submit a plan meeting the requirements of DMMC 18.210.070(4) to the City no later than February 1, 2019. The City will authorize interim parking uses per DMMC 18.210.070 for this new parking area, in that the surface of the parking area may be compacted gravel for up to 5 years, from the date the parking area is constructed, upon which the College Agrees to pave the area, consistent with City Standards. The City will not authorize interim parking uses for the parking area improvements near the College Way street end.

6.6 Schedule for Project Decisions and Contributions:

A final College decision on exact parking lot changes and traffic circulation must be made by April 1, 2019 to be incorporated into the FWLE project construction.

The College payment to the City for the Project shall be made at a time to be determined jointly by the Parties but not later than December 31, 2020.

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

CITY OF DES MOINES

Daniel J. Brewer, PE, PTOE
Chief Operations Officer
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.

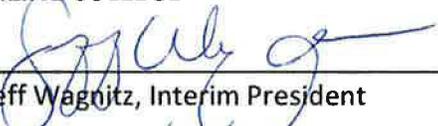
22.11 Counterparts: This Agreement may be executed in several counterparts, each of which will be deemed an original, and all counterparts together will constitute but one and the same instrument.

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: 
Jeff Wagnitz, Interim President

Date: 6/30/18

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

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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

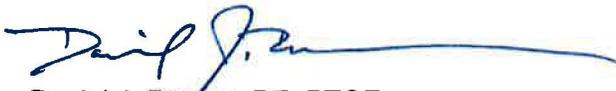
Mr. Michael Pham
 Page Two
 January 29, 2018

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: 
 / 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 (KPF 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 - KPF 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

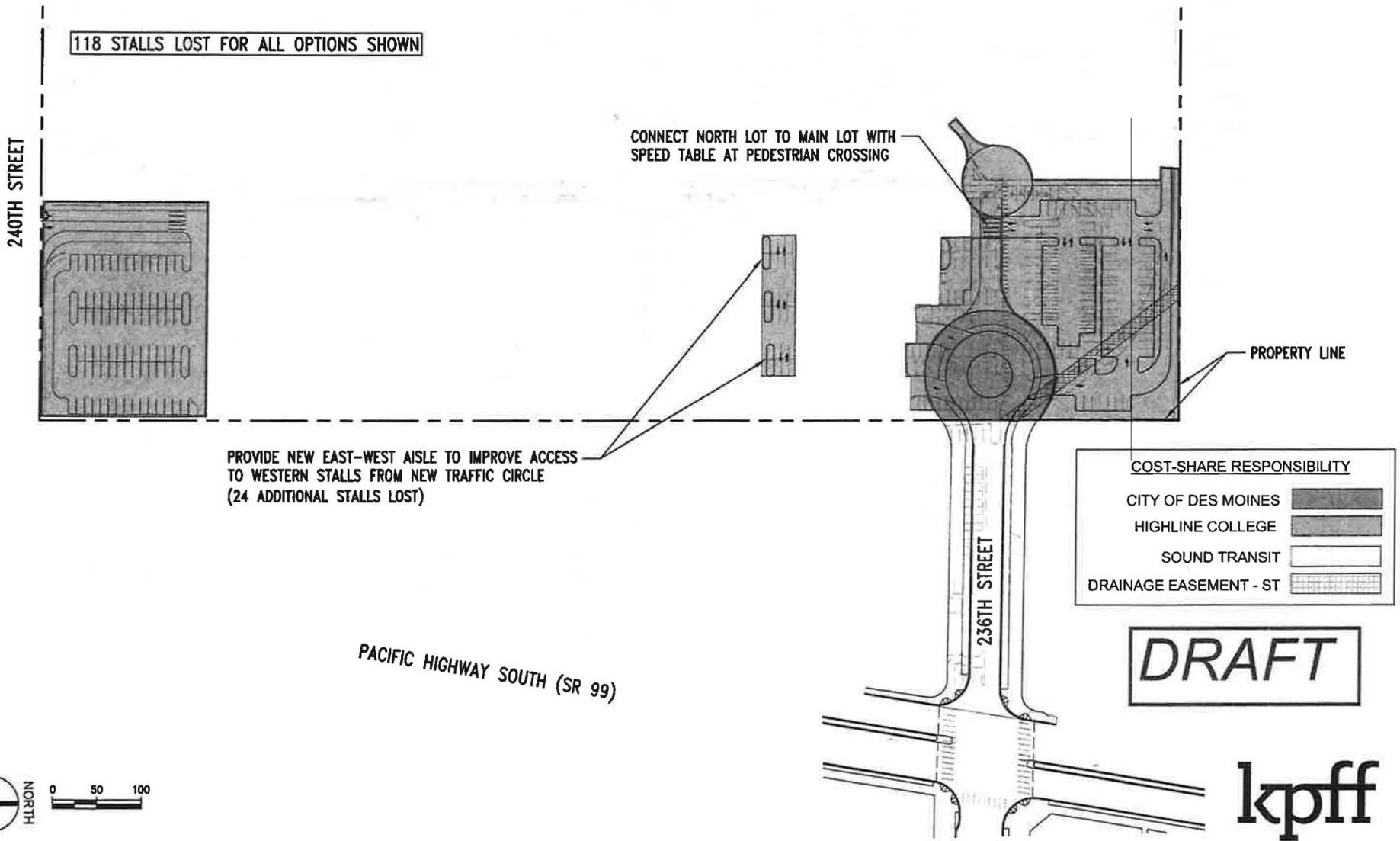
 1601 Fifth Avenue Suite 1600 Seattle, WA 98101 (206) 622-5322 fax (206) 622-0130		Opinion of Probable Cost Worksheet			
		Project	HC 236th Entrance	By	Dan Veldee
		Location	Des Moines WA	Date	14-Sep-17
		Client	Highline College		
Site Preparation					
Description	QTY	Unit	Unit Price	Cost	
Surveying	1	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	\$2,000.00	\$2,000.00	
Subtotal for Site Amenities				\$83,000.00	
Subtotal				\$1,131,300.00	
Mobilization (8%)				\$90,504.00	
Contingencies (15%)				\$169,695.00	
Total				\$1,391,499.00	
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 is representative of the work on Highline College property for proposed Option #1					

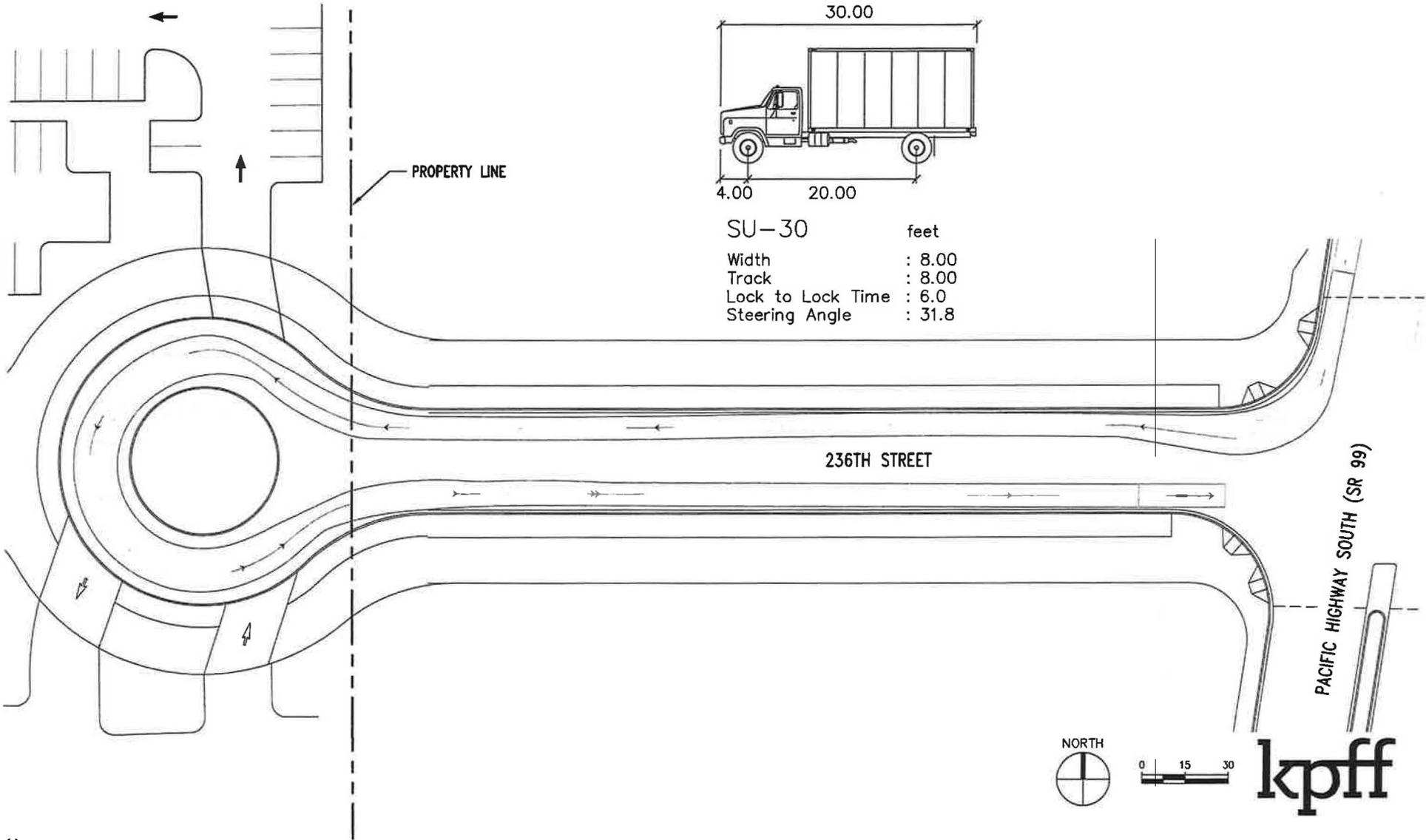
SCC 40

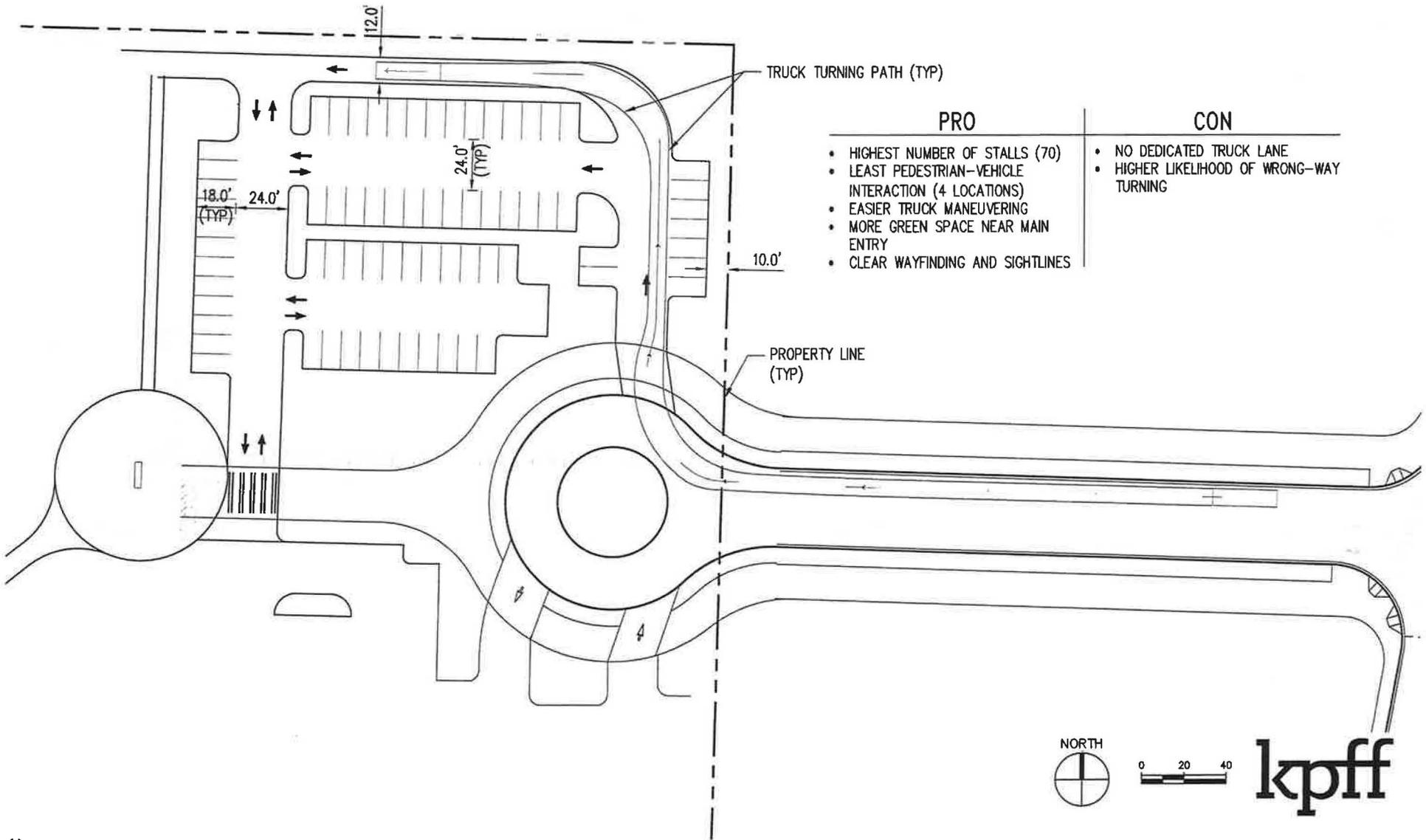
Sitework and Special Conditions

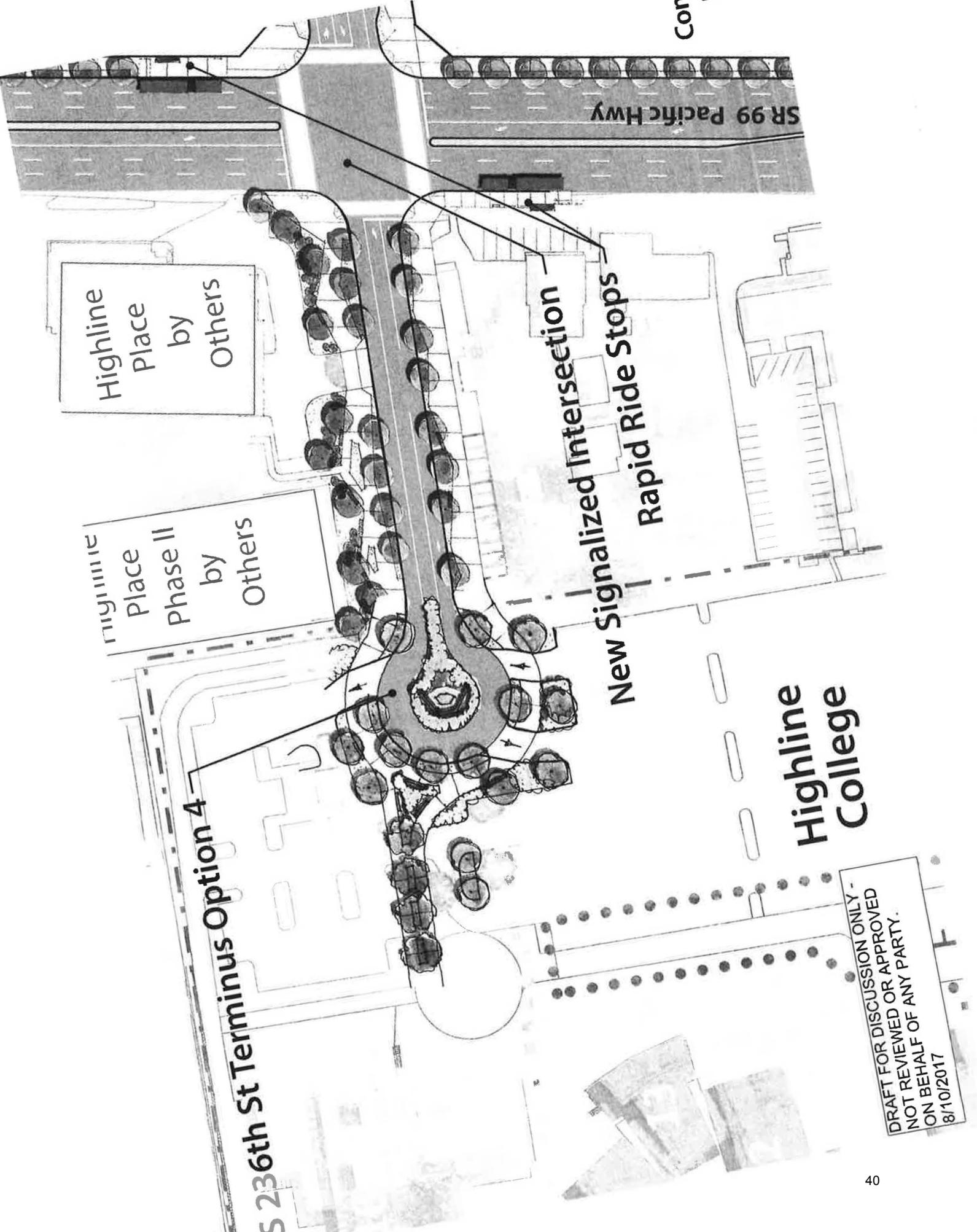
40.07 Roadway and Parking Lots		Note: yellow = input quantity, brown = output quantity			output	
40.07.01 Roadway Improvement on Highline College property (West of property line only)				HC		
UCL CODE	ITEM DESCRIPTION	UNIT	UNIT COST	QUANTITY		
GENERAL ALIGNMENT				TOTAL	HC - Roundabout	236th Lane
				Asphalt Pavement Area (sf) →	5,900.0	10,551.0
				Concrete Pavement Area (sf) →		
				Gravel Pavement Area (sf) →		
				Sidewalk Area (sy) →	1,040	12,093.0
31-23-16-00.01	Excavation, Site w/haul	cy	\$ 20.00		100.0	200.0
32-16-23-13.01	Concrete Sidewalk	sy	\$ 60.00	13133.1	1040.1	12093.0
32-16-13-13.06	Concrete Curb Ramp	ea	\$ 1,500.00	4.0	2.0	2.0
32-11-23-23.04	Crushed Surfacing Top Course	cy	\$ 87.00	1135.8	203.5	932.4
	Crushed Surfacing Top Course - Asphalt Pavement (8")	cy			145.7	260.5
	Crushed Surfacing Top Course - Gravel Pavement (2")	cy				
	Crushed Surfacing Top Course - Sidewalk (2")	cy			57.8	671.8
32-11-23-23.01	Crushed Surfacing Base Course	cy	\$ 35.00	0.0	0.0	0.0
	Crushed Surfacing Base Course - Concrete Pavement (6")	cy				
	Crushed Surfacing Base Course - Gravel Pavement (4")	cy				
32-11-23-23.03	Gravel Borrow	tn	\$ 47.65	1500.0	300.0	1200.0
32-12-16-13.02	HMA Class 1/2" (3")	cy	\$ 221.00	152.3	54.6	97.7
32-12-16-13.04	HMA Class 3/4" (3")	cy	\$ 221.00	152.3	54.6	97.7
32-13-13-33.01	Cement Concrete Pavement (12")	cy	\$ 275.00	0.0		
32-16-13-13.03	Concrete Curb And Gutter	lf	\$ 39.00	1420.0	800.0	620.0
32-17-23-13.04	White Stripe	lf	\$ 3.00	1100.0	500.0	600.0
26-56-19-00.01	Lighting, Roadway - Pole	ea	\$ 10,000.00	9.0	3.0	6.0
26-56-19-00.02	Lighting, Roadway - LED Fixture	ea	\$ 500.00	9.0	3.0	6.0
26-56-19-00.03	Lighting, Roadway - Pole Foundation	ea	\$ 4,000.00	9.0	3.0	6.0
				Subtotal	\$ 199,749	\$ 1,027,036

40.01 Demolition and Earthwork									
40.01.01 Demolition				GW05		HC - Roundabout		236th Lane	
UCL CODE	ITEM DESCRIPTION	DISCIPLINE	UNIT	UNIT COST	QUANTITY				
02-41-13-13.01	Sawcut Asphalt Pavement	Civil	lf	\$ 2.20	1180.0	830.0	350.0		
02-41-13-13.04	Remove Concrete Curb	Civil	lf	\$ 6.71	565.0	200.0	365.0		
02-41-13-13.06	Remove Concrete Sidewalk	Civil	sy	\$ 22.49	214.4	0.0	214.4		
02-41-13-13.08	Remove Asphalt Pavement	Civil	sy	\$ 20.00	5053.9	2765.1	2288.8		
02-41-13-23.11	Remove Light Pole	Civil	ea	\$ 654.24	2.0	2.0	0.0		
02-41-16-13.01	Building Demolition	Civil	sf	\$ 11.06	3272.0	0.0	3272.0		
31-11-13-10.01	Clearing & Grubbing	Civil	sy	\$ 1.40	651.6	50.0	601.6		
				Total Cost	\$ 150,696	\$ 9,849	\$ 90,847		









S 236th St Terminus Option 4

Highline Place Phase II by Others

Highline Place by Others

New Signalized Intersection
Rapid Ride Stops

SR 99 Pacific Hwy

Highline College

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

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,

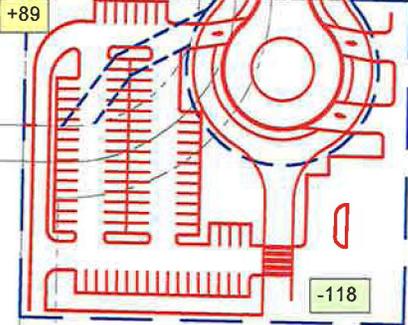
Susan Cezar, LEG
 Chief Strategic Officer
 SEPA Official
 City of Des Moines

Cc: Dan Brewer, Chief Operations Officer

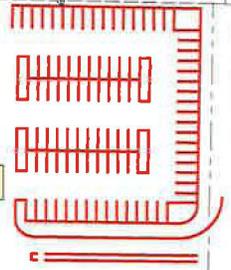
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A1

Option A1 - Maximize Parking Stalls in North Lot
 Total Add: Approx. 89 Stalls
 Total Remove: Approx. -118 Stalls
 Net: Approx. -29 Stalls
 Approx. Cost*: \$1.1M (No Change from KPFF design)



Option B - South Lot:
 Utilize entire landscaped area on south end of property and reconfigure access into HC property. Pedestrian walkway eliminated through lot eliminated.
 Total Add: Approx. 92 Stalls
 Approx. Cost* (HMA pavement): \$350k

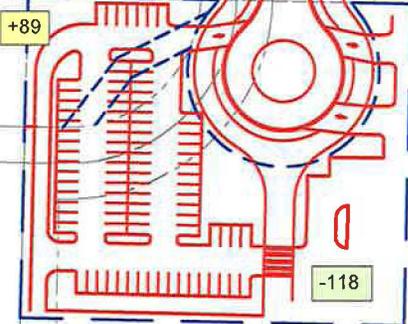


Optional new east-west aisle to improve circulation and access to western stalls from traffic circle. Add curbed medians.
 Total Remove: Approx. -24 Stalls
 Approx. Cost*: \$10k

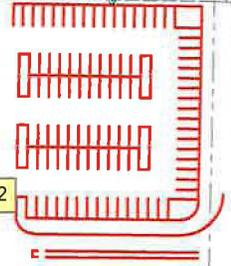
A1 TOTAL COST = APPROX. \$1.46M

A2

Option A1 - Maximize Parking Stalls in North Lot
 Total Add: Approx. 89 Stalls
 Total Remove: Approx. -118 Stalls
 Net: Approx. -29 Stalls
 Approx. Cost*: \$1.1M (No Change from KPFF design)



Option B - South Lot:
 Utilize entire landscaped area on south end of property and reconfigure access into HC property. Pedestrian walkway eliminated through lot eliminated.
 Total Add: Approx. 92 Stalls
 Approx. Cost* (gravel pavement): \$250k



Optional new east-west aisle to improve circulation and access to western stalls from traffic circle. Add curbed medians.
 Total Remove: Approx. -24 Stalls
 Approx. Cost*: \$10k

A2 TOTAL COST = APPROX. \$1.36M

*Costs shown are high-level costs due to preliminary design



DRAFT CONCEPTUAL DESIGN
 For discussion purposes only. Not approved by or on behalf of any party.

SOUND TRANSIT FEDERAL WAY LINK EXTENSION
 Highline College -
 Parking Alternatives
 6/27/18

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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.

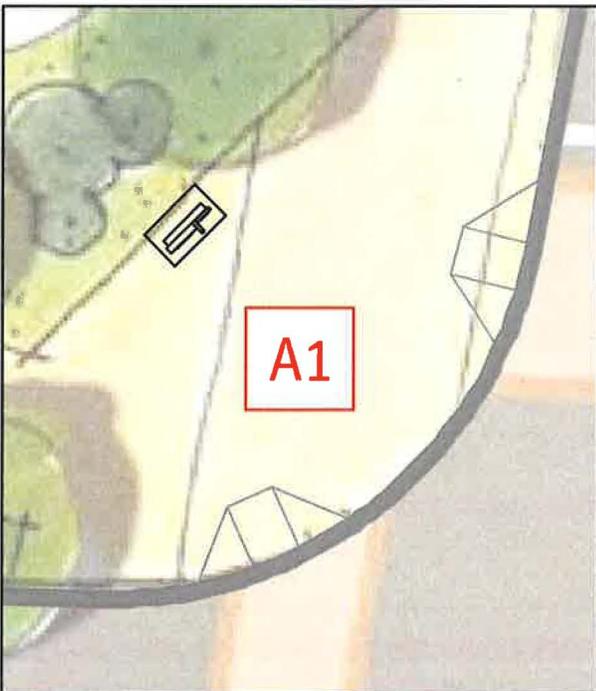
Hope this provides the information you will need for this exercise.

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

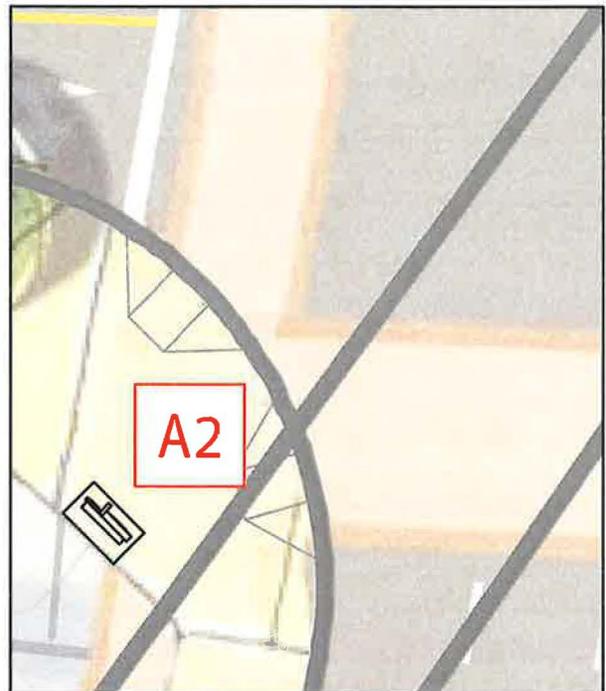




1.1 Sign Location A, Placement Option 1
1:500



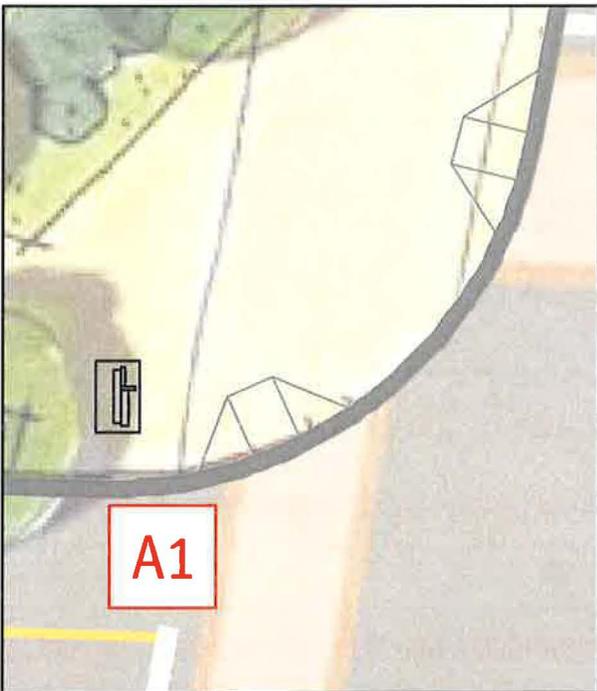
1.2 Enlarged Plan
1:200



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



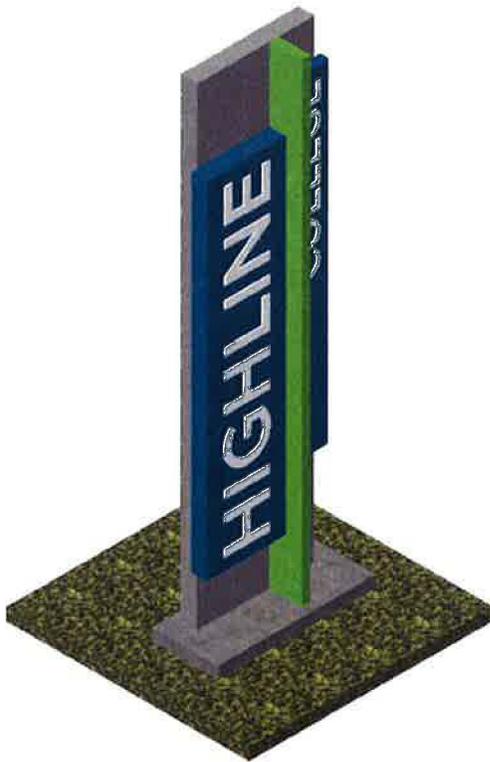
3.1 Sign Location B
1:500



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



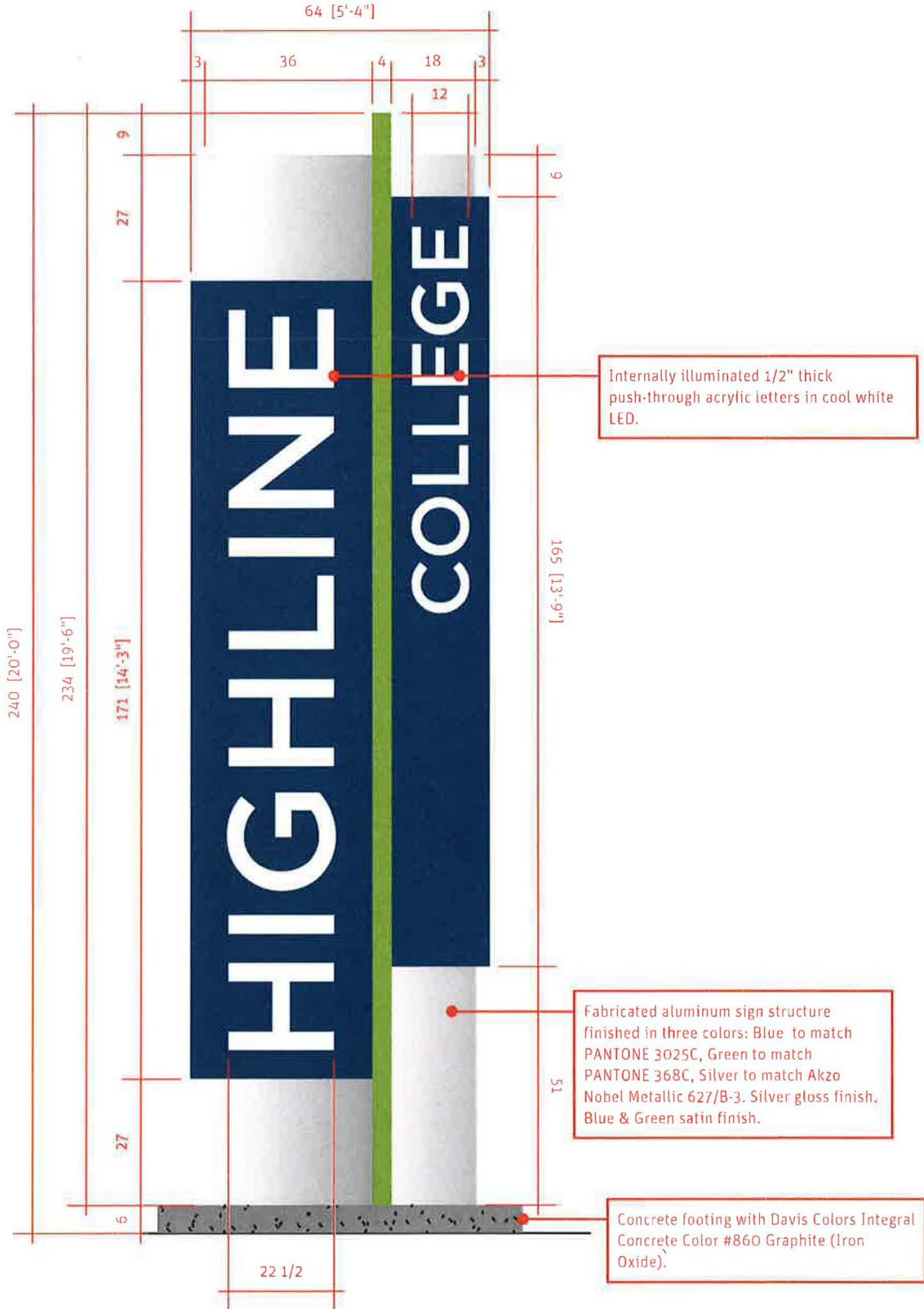
4.1 Signs A1 & A2, Front Elevation
3/16" = 1'-0"



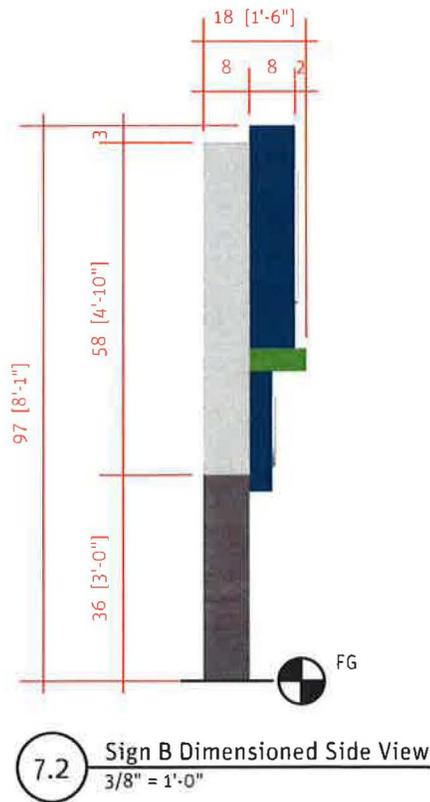
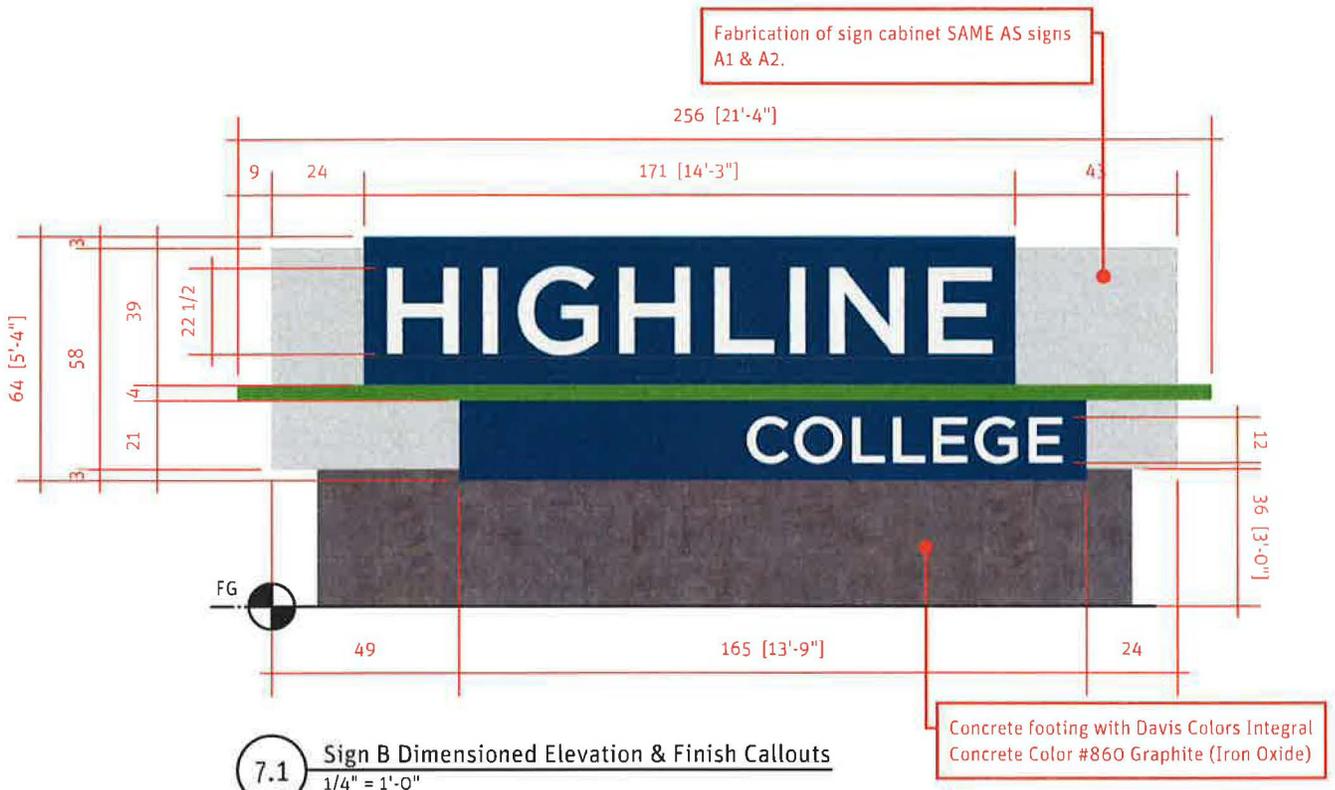
4.2 A1 & A2 Left Isometric Rendering
3/16" = 1'-0"

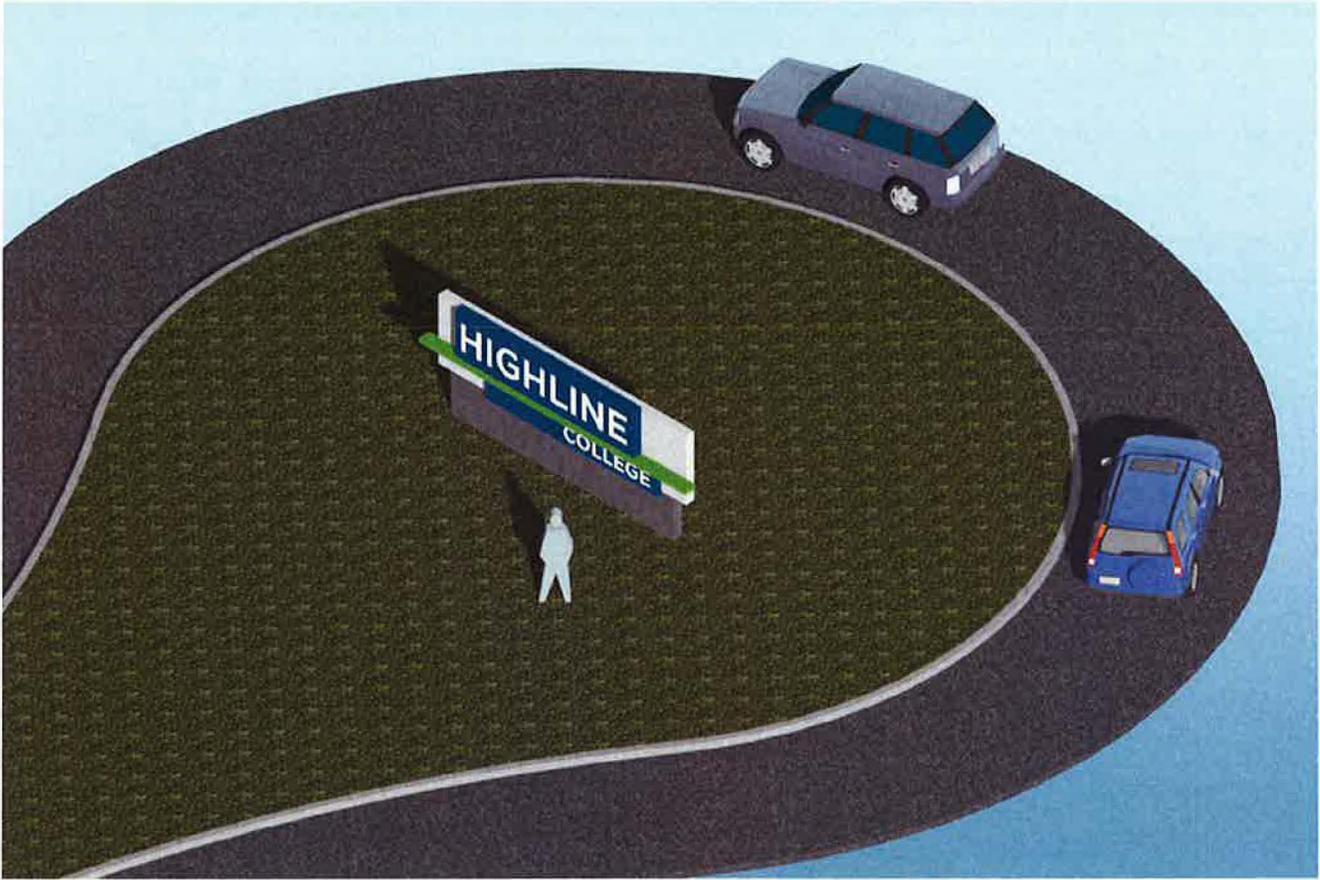


4.3 A1 & A2 Right Isometric Rendering
3/16" = 1'-0"



5 Signs A1 & A2 Dimensioned Elevation & Finish Callouts
 3/8" = 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.

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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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twitter.com/SoundTransit



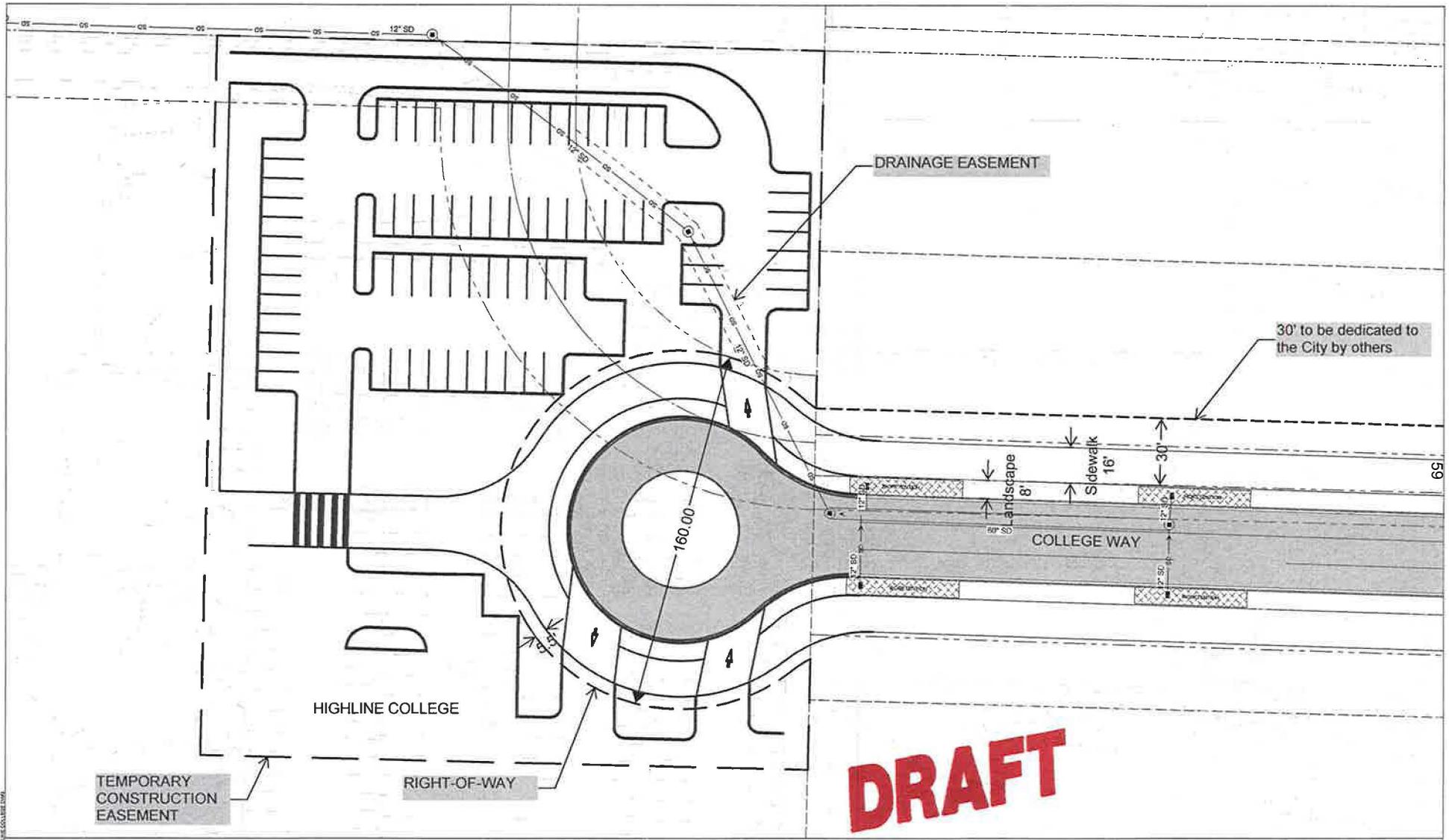
From: Dan Brewer [<mailto:DBrewer@desmoineswa.gov>]
Sent: Wednesday, June 27, 2018 2:59 PM
To: Lowry, Soraya <Soraya.Lowry@soundtransit.org>
Cc: Grant Fredricks <GFredricks@desmoineswa.gov>
Subject: Legal Descriptions -

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



69 11/15/18 11:25 AM C:\PROJECTS\20180427\20180427.DWG



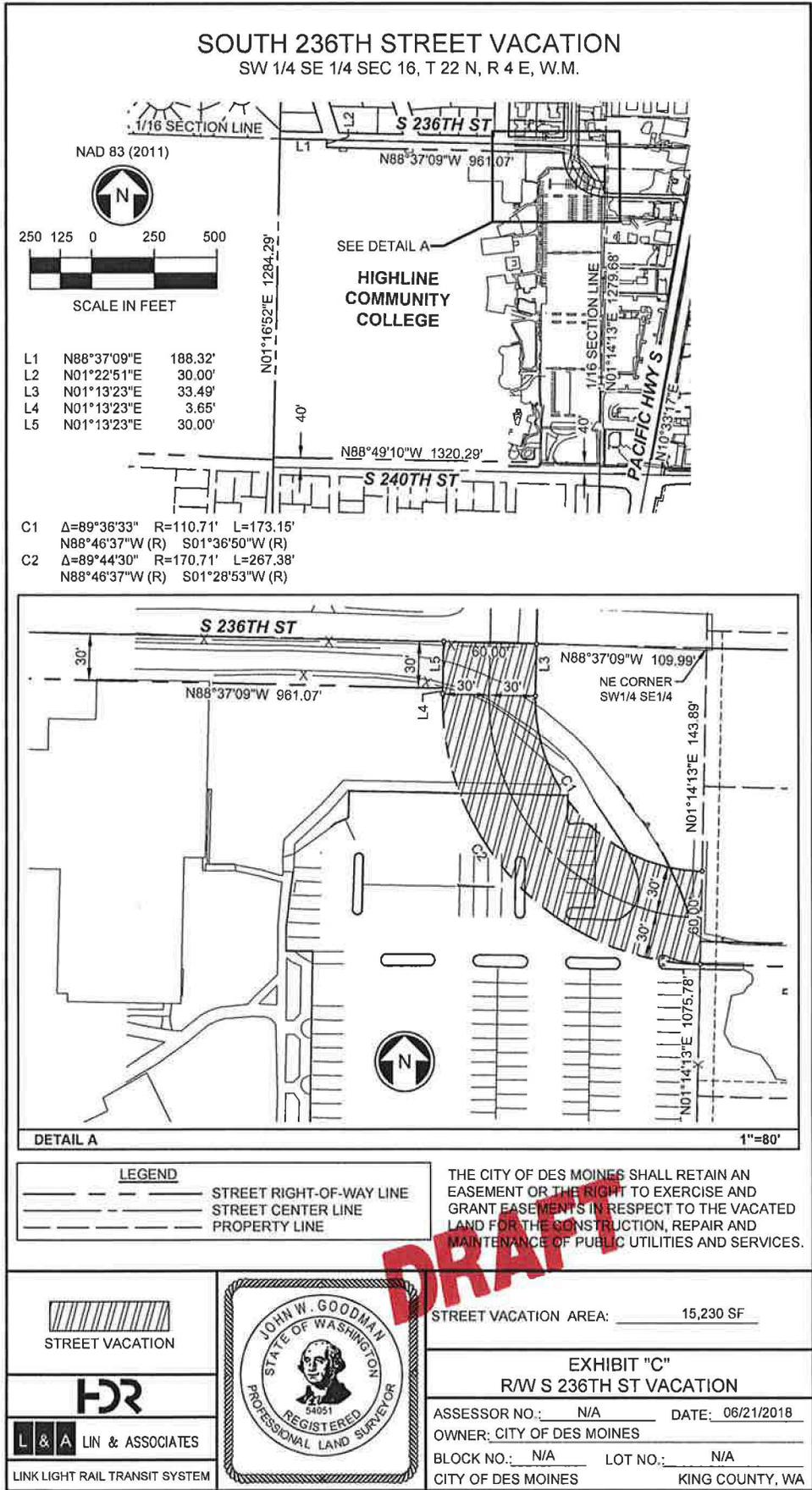
*DESIGN SHOWN IN RED IS MODIFIED FROM THE DESIGN REFLECTED IN PRE-FINAL RFP PACKAGE.

DRAFT for discussion purposes only. Not approved by or on behalf of any party.

SOUND TRANSIT FEDERAL WAY LINK EXTENSION

COLLEGE WAY TIE-IN + HIGHLINE COLLEGE IMPROVEMENTS
4/27/2018





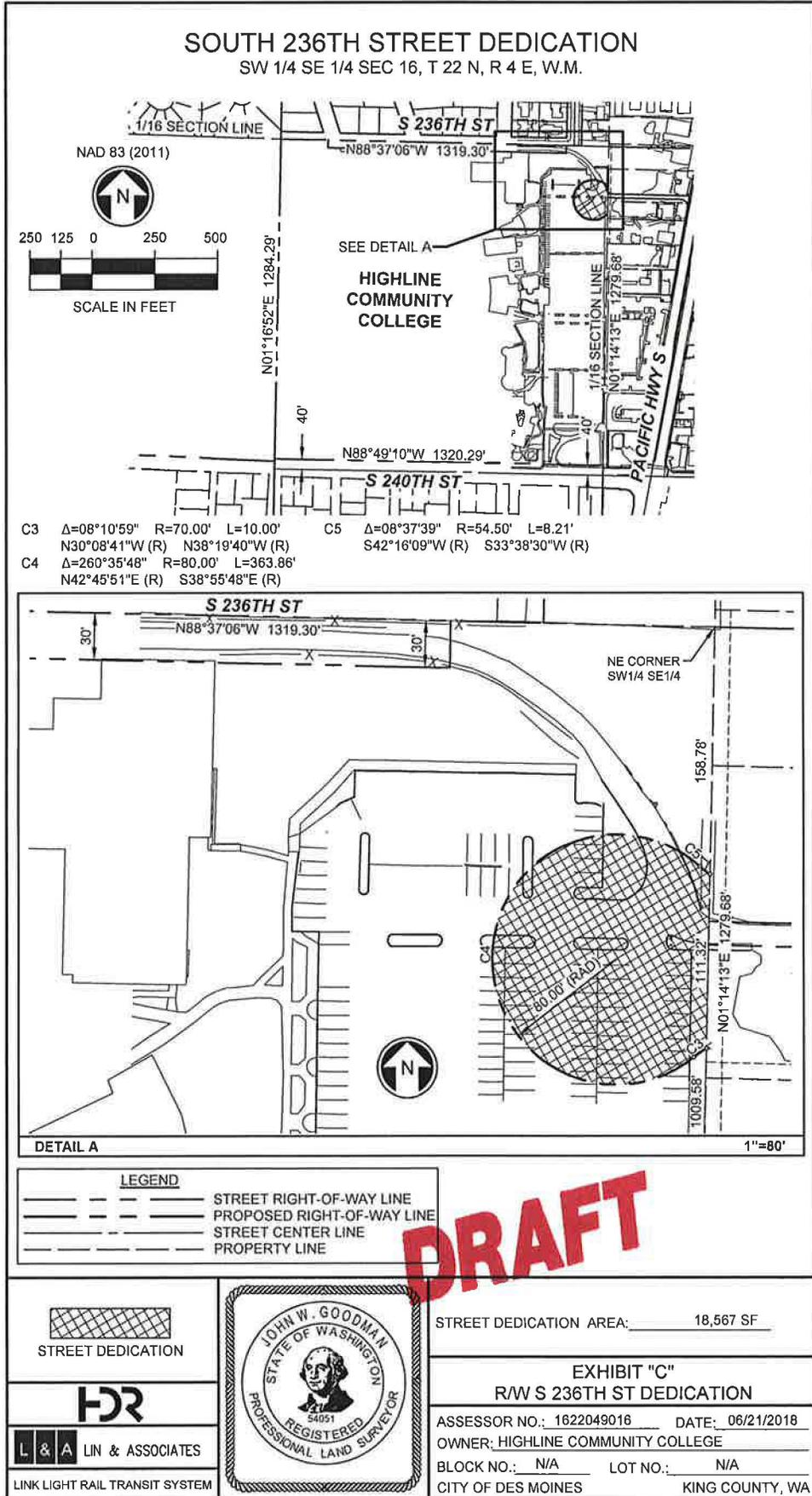


EXHIBIT "A"

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

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

63-1044

R/w 1777

9

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

5678292

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

O R D E R
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.

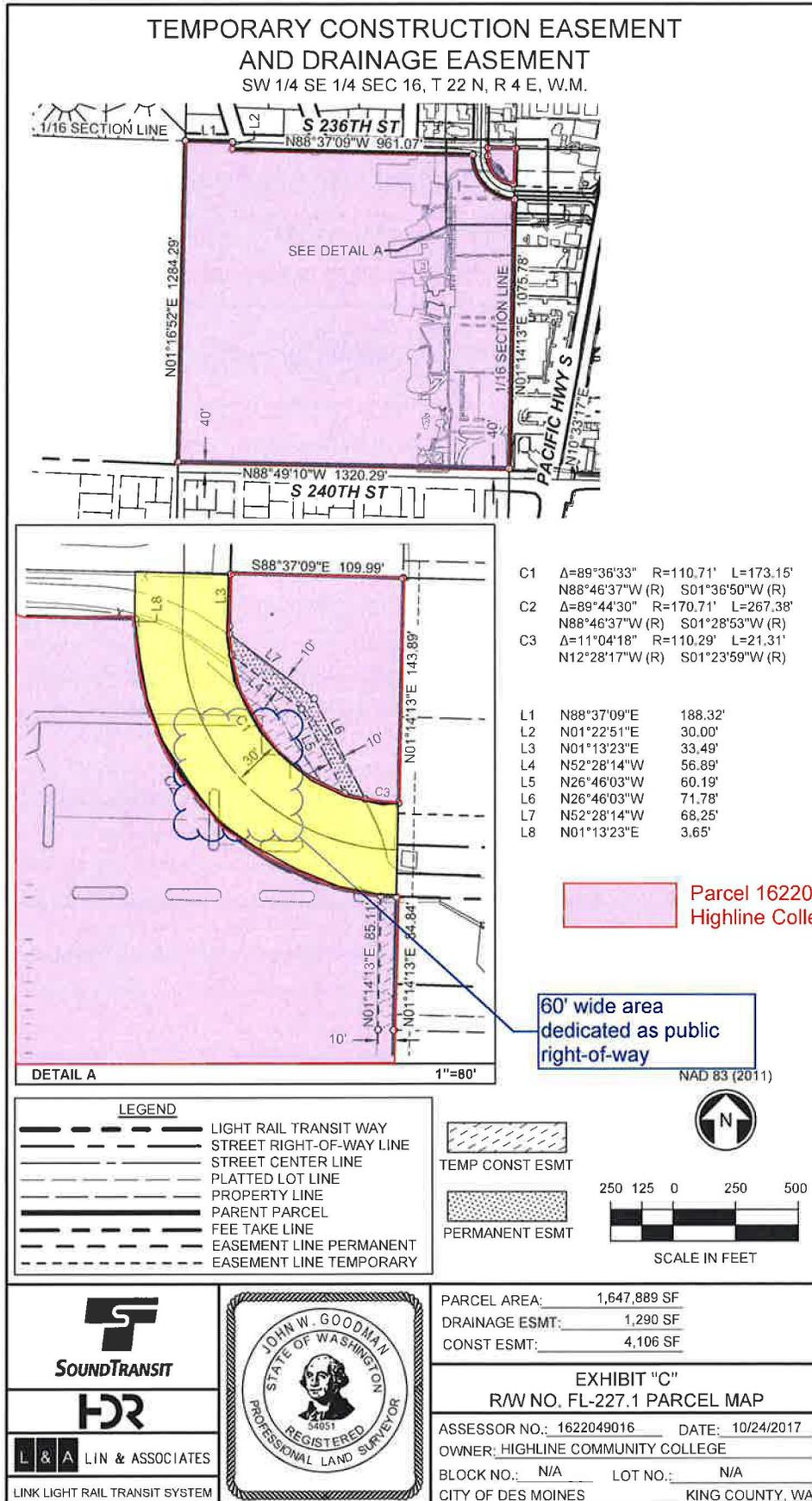
The rights of way hereinabove described have a total area of 1.31 acres as shown on the plat thereof on file in the office of the Commissioner of Public Lands at Olympia, Washington.

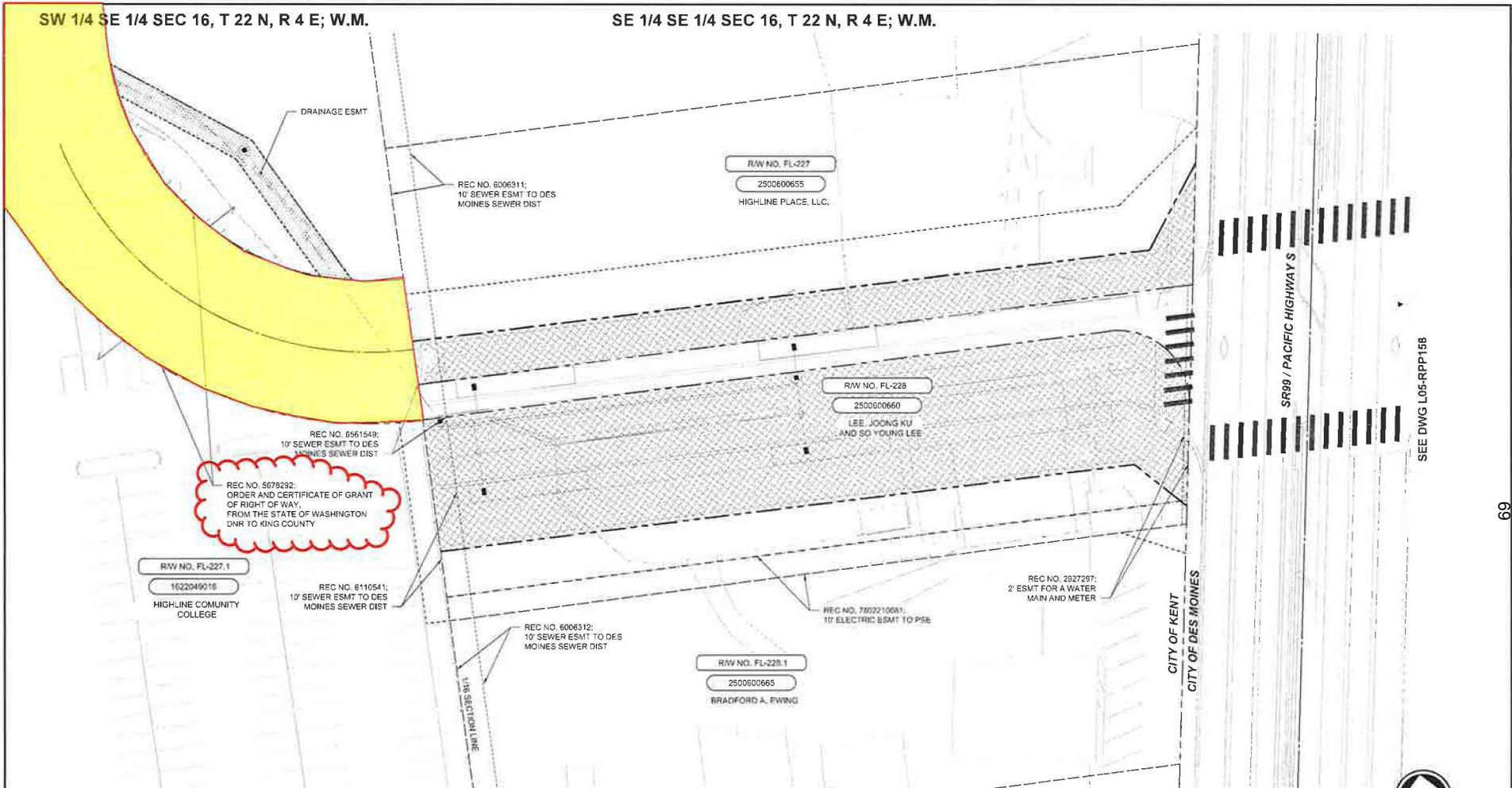
Dated this 27th day of November, A.D., 1963.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

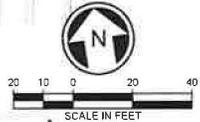
Bert L. Cole
BERT L. COLE
Commissioner of Public Lands

DEC 19 1963 pp. No. 2685





SOUND TRANSIT R/W NO.	PARCEL NO. (TAX ACCOUNT NO.)	OWNERS	PARCEL AREA SQ. FT.	FEE TAKE SQ. FT.	REMAINDER SQ. FT.	GUIDEWAY/ PERMANENT ESMT SQ. FT.	TEMPORARY CONSTRUCTION ESMT SQ. FT.	KING CO. RECORDING NO.
1	FL-227	2500600655	HIGHLINE PLACE, LLC.	33,724	6,098	27,633	6,812	
2	FL-227.1	1622049016	HIGHLINE COMMUNITY COLLEGE	1,717,135		1,290	4,300	
3	FL-228	2500600660	LEE, JOONG KU AND SO YOUNG LEE	26,891	18,154	8,737	6,737	
4	FL-228.1	2500600665	BRADFORD A. EWING	30,316			169	



PRELIMINARY ENGINEERING NOT FOR CONSTRUCTION

CONCEPTUAL DESIGN DRAWINGS				DESIGNED BY A. FURTADO DRAWN BY A. EDRY CHECKED BY E. BONE APPROVED BY J. GOODMAN			 L & A ASSOCIATES, INC. Consulting Engineers		SCALE 1"=20' FILE NAME A-L05-RPP160 CONTRACT NO. DATE 08/07/2017	FEDERAL WAY LINK EXTENSION CONTRACT NUMBER PRESCRIPTIVE RIGHT-OF-WAY PLAN KENT DES MOINES STATION	DRAWING NO. L05-RPP160 FACILITY ID L05 SHEET NO. 77
NO.	DATE	DES.	CHK.	APP.	REVISION	SUBMITTED BY EDWARD HERALD		DATE 08/07/2017	REVIEWED BY	DATE 08/07/2017	

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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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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Amending Title 20 DMMC, *Telecommunications*, creating standards and regulations for small cell wireless facilities

ATTACHMENTS:

1. Draft Ordinance No. 18-027

FOR AGENDA OF: July 12, 2018

DEPT. OF ORIGIN: Legal Department

DATE SUBMITTED: July 5, 2018

CLEARANCES:

- Community Development *SMC*
- Marina
- Parks, Recreation & Senior Services
- Public Works *RBL*

CHIEF OPERATIONS OFFICER: _____

- Legal *JB*
- Finance
- Courts
- Police

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

Purpose and Recommendation

The purpose of this agenda item is for City Council to amend Title 20 DMMC, *Telecommunications*, to provide for regulation of small cell wireless facilities, adding new definitions regarding small cell deployment, amending and adding new sections to chapter 20.07 DMMC regarding standards and regulations relating to small cell facilities, and repealing and reenacting chapter 20.10 DMMC relating to appeals.

Suggested Motion

Motion 1: “I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 18-027 on first reading.”

Motion 2: “I move to enact Draft Ordinance No. 18-027, adding new definitions regarding small cell deployment, amending and adding new sections to chapter 20.07 DMMC regarding standards and regulations relating to small cell facilities, and repealing and reenacting chapter 20.10 DMMC relating to appeals.

OR

Motion: “I move to pass Draft Ordinance no. 18-027 to a second reading on a date to be determined.”

Background

The state has granted the City the authority to manage the use of its rights-of-way and regulate the use of municipal property through RCW 35A.47.040, RCW 80.36.040, RCW 35.99.010 et. seq., among other authorities. In 1996, Congress placed restrictions on this authority by adopting the Telecommunications Act of 1996, 47 U.S.C. § 253, preempting any regulation in conflict with that act. The City adopted ordinance no. 1316, codified at Title 20 DMMC, pursuant to its authority granted by the Legislature and within the bounds set by Congress, providing for standards and regulation of large macro cell facilities and providing a framework for the granting of franchises to telecommunication companies for placement of macro cell facilities in City rights-of-way.

Since the adoption of ordinance no. 1316 in 2003, use of data by wireless devices has grown exponentially, and the wireless technology required to provide that data has evolved over several generations. In order to serve their customers’ data needs, wireless providers have begun to deploy what is known as “small cell” facilities to supplement the coverage provided by the large macro cell facilities. These small cell facilities are significantly smaller than their macro counterparts, but they must be deployed in greater numbers and spaced much closer together. The companies seeking to deploy these small cells frequently seek to locate them on existing utility poles or to install them on new poles in public rights-of-way.

The City’s Telecommunication Code, Title 20 DMMC, continues to reasonably and adequately regulate large macro cell facilities, but is not sufficient to address the new issues raised by small cell technology due to the new methods of deployment, which tend to be more concentrated and located closer to the human environment. This Draft Ordinance seeks to address these concerns by adding new definitions to the Telecommunications Code, adopting new regulations and design standards, providing for heightened standards to protect to the degree allowed under federal law specified design districts, and providing for franchise agreements between the City and telecommunications providers seeking to deploy small cells.

Discussion

The new provisions supplement existing regulations of wireless communication facilities in the DMMC. The existing provisions that are in place regulating large macro cell facilities have worked well for the City, so the proposal is to leave those provisions largely as is. The amendments and additions contained in the Draft Ordinance are as follows:

1. Updated Definitions: (pages 2-9) Definitions in Title 20 are updated to add definitions applicable to small cell facilities and to update previous existing definitions to reflect current technology and use.

2. Updating Existing Macro Facility Regulations: (pages 9-37) As discussed above, Chapter 20.07 Title 20 DMMC, continues to reasonably and adequately regulate large macro cell facilities. However, when reviewing these sections, there were a number of updates and small edits made to reflect the current state of the industry. Additionally, amendments were included to exclude small cell facilities from the regulations regarding macro cell facilities.

3. Small Cell Review and Approval Process - Use of administrative review: (pages 37-50) Because of the tight timeframes imposed by federal shot clocks (see Federal shot clock discussion below) an administrative approval process is utilized rather than a land use process such as a conditional use permit (“CUP”). This process as well as the application process is new language in the code. Due to the federal shot clocks as well as state review time frames, the conditional use process is ill-suited to the deployment

of dozens of small scale facilities in the public right-of-way. Dozens of individual CUP cases could overwhelm your hearing examiner process. In effect, you will be treating small cells the same as other utilities. This process requires public notice and provides for the opportunity for public comment.

4. Small Cell Design and Concealment Standards. (pages 50-63) These provisions which are located beginning in draft ordinance section 20.07.240, adopt design standards for small cell facilities as defined by state law. Specific design standards are included for wooden utility poles, non-metal utility poles, strand-mounted facilities between utility poles and in certain situations, the attachment of small cell facilities to existing buildings and structures. These provisions are primarily focused on small cell deployments in the public rights-of-way but in certain circumstances such as undergrounded areas, it may be less impactful to locate facilities on existing buildings or structures to minimize visual impacts. The design provisions have been developed through discussions in a variety of communities such as Puyallup, Normandy Park and Mukilteo with the involvement of the wireless industry. As our consultants discussed when the subject was first presented, the City has the ability to regulate the aesthetics of small cell deployment but not the technology employed. Section 20.07.240(6) requires the development of specific concealment techniques through administrative approvals for the deployment of small cells in design districts, in undergrounded areas and in your urban design corridor (“blue light pole street corridors”). Review is designed to tailor facilities to the design environment in which they are to be located and coordinate installation with existing design requirements for these districts.

5. Federal Shot Clocks and Appeal Process. (pages 65-69) Chapter 20.10 incorporates federal time limitations applicable to collocations on existing facilities and “eligible facilities requests.” Eligible facilities requests are small-scale expansion of existing facilities. Such expansions may not defeat the concealment strategies required to be adopted in Chapter 20.07 and the small cell deployment and design provisions.

Citizen Concerns: Radio Frequency (RF) preemption. A citizen recently raised concerns at public comment regarding the potential future impacts of Radio Frequency (RF) radiation on the public. Congress has preempted state and local regulation of radio frequency emissions and interference. The draft ordinance contains the maximum level of regulation available to the City in the form of a requirement that an applicant certify compliance of small cells and other transmitting equipment with federal regulation. In the view of the FCC, the emissions from small cell facilities are well below acceptable limits for Maximum Permissible Exposure (MPE). Small cell facilities operate at a small fraction of regulated power. The FCC accordingly granted a categorical exclusion from environmental review for facilities meeting certain height and frequency requirements. See A Local Government Official’s Guide to Transmitting Antennae RF Emission Safety: Rules, Procedures and Practical Guidance. FCC, June 2, 2000.

Alternatives

The City Council may:

1. Pass the proposed Draft Ordinance as written.
2. Pass the proposed Draft Ordinance with alterations.
3. Pass the proposed Draft Ordinance to a second reading.
4. Decline to pass the proposed Draft Ordinance.

Financial Impact

The financial impact of this specific draft ordinance will be minimal. The City will likely receive applications for small cell franchise agreements which will include an application fee to cover the City’s costs. Additionally, improved telecommunications and wireless performance and service may increase usage and could result in additional taxes received from the telecommunications providers.

Recommendation

Staff recommends that the City Council enact Draft Ordinance No. 18-027 as written. This Draft Ordinance has been reviewed and vetted by the Legal Department and Planning, Building and Public Works Department as well as the City's outside legal consultant. Finally, this Draft Ordinance was provided to the major telecommunication providers for their review. Comments received were considered in creating this Draft.

CITY ATTORNEY'S FIRST DRAFT 06/04/2018**DRAFT ORDINANCE NO. 18-027**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON amending the provisions of Title 20 DMMC, section 20.01.030, "Definitions," to add new definitions relating to small cell deployment and chapter 20.07 DMMC, *Antennas and Wireless Communication Facilities*, to add standards and regulations relating to small cell facilities; repealing chapter 20.10 DMMC and enacting in its place a new chapter 20.10 DMMC, *Eligible Facilities Requests and Appeals*; and fixing a time when the same shall be effective.

WHEREAS, the City Council seeks to facilitate the availability of reliable, personal wireless communication services for its citizens and the public by permitting the placement of small cell facilities where appropriate; and

WHEREAS, the installation, expansion, and maintenance of small cell technology facilities and associated structures on or along the Right of Way and on private properties may have an impact upon: (1) the aesthetic values and character of the City; (2) safe use and passage on or along the Rights of Way by the public; and (3) properties and property values in the City in areas where such structures are placed, and therefore local regulation is appropriate; and

WHEREAS, the federal Telecommunications Act of 1996 and regulations promulgated with respect to the Act by the Federal Communications Commission ("FCC") authorize local governments to enact reasonable regulations for the placement, expansion, height, and maintenance of small cell technologies facilities and associated structures; and

WHEREAS, the adoption of the regulations, procedures and requirements in this ordinance will permit Applicants and Providers to enhance the provision of personal wireless service and protect the public welfare, health, safety and interests of the City's citizens; and

WHEREAS, the City Council deems it to be in the public interest to repeal chapter 20.10 DMMC relating to appeals and enact a new chapter establishing time limits known as "shot clocks" as required by federal laws such as 47 U.S.C. §1455(a) and 47 CFR 1.40001, and

{WSS1753607.DOCX;1/13130.080005/ }

Ordinance No. 18-027

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WHEREAS, federal law and regulation sets time limits on the processing of applications for eligible facility requests to expand existing structures which do not substantially change the height or profile of the structures used to collocate wireless communications facilities, and

WHEREAS, the City Council acknowledges that the growing use of smart phones and other personal wireless devices creates a substantial need for wireless data transmission and therefore deems it in the public interest to adopt the federal guidelines while integrating the provisions for small cell permitting in the code in order to ensure for the speedy review of applications; now therefore,

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

Sec. 1. DMMC 20.01.030 and section 3 of Ordinance No. 1316 are amended to remove subsection numbers and to place definitions in alphabetic order, and are further amended or added to read as follows:

~~(4)~~—"Antenna" means any exterior apparatus designed for telephonic, radio, data, Internet, or television communications through the sending and/or receiving of electromagnetic waves, and includes equipment attached to a tower, utility pole, light standard ~~or building or other structure~~ for the purpose of providing personal wireless services, including unlicensed wireless telecommunications services, wireless telecommunications services utilizing frequencies authorized by the Federal Communications Commission for "cellular," "enhanced specialized mobile radio" and "personal communications services," telecommunications services, and its attendant base station.

~~(5)~~—"Antenna height" means the vertical distance measured from finished grade to the highest point of the antenna. ~~the base of the antenna support structure at grade to the highest point of the structure even if said highest point is an antenna.~~

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Measurement of tower height shall include antenna, base pad, and other appurtenances. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

"Approved small cell facility": any small cell facility that has received all required permits.

"Base Station": A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein nor any equipment associated with a tower. Base Station includes, without limitation:

(a) Equipment associated with wireless communications services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small-cell networks).

(c) Any structure other than a tower that, at the time the relevant application is filed with the City under this section, supports or houses equipment described in subparagraph (a) and (b) above that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant application is filed with the City under this section, does not support or house

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equipment described in subparagraph (a) and (b) above.

~~(18) "Co-location" or "collocation" means the use of a personal wireless service facility or cell site by more than one personal wireless service provider or the siting of a facility on an existing structure.~~

Except when utilized in chapter 20.10 DMMC, "Co-location" or "collocation", except when utilized in chapter 20.10 DMMC, means the use of a personal wireless service facility or cell site by more than one personal wireless service provider or the siting of a facility on an existing structure. In the context of chapter 20.10 DMMC, "collocation" means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes.

"Commercial zones" or "commercial district" means and includes each of the zoning classifications as defined established in DMMC 18.06.020; 18.05.080(2) as currently written or subsequently amended. ; B-N, Neighborhood Business; B-C, Community Business; C-C, Community Commercial; D-C, Downtown Commercial; E-C, General Commercial; B-P Business Park; and H-C Highway Commercial.

"Concealment elements": Transmission facilities designed to look like some feature other than a wireless tower or base station or which minimizes the visual impact of an antenna by use of non-reflective materials, appropriate colors and/or a concealment canister.

"Conditional use permit" or "CUP" means a process and approval as described in Ordinance No. 770 and in the zoning Code, Title 1814094 DMMC.

"Eligible Facilities Request": Any request for modification of an existing tower or base station

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that does not substantially change the physical dimensions of such tower or base station, involving:

(a) Collocation of new transmission equipment;

(b) Removal of transmission equipment; or

(c) Replacement of transmission equipment.

"Eligible support structure": Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City.

"Existing": a constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a tower that has not been reviewed and reviewed because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this section.

"Microcells": is defined in accord with RCW 80.36.375.

"Mount" means the structure or surface upon which personal wireless service facilities are mounted. There are three types of mounts: (a) building-mounted, a personal wireless service facility mount fixed to the roof or side of a building; (b) ground-mounted, a personal wireless service facility mount fixed to the ground, such as a tower; and (c) structure-mounted, a personal wireless service facility fixed to a structure other than a building, such as light standards, utility poles, and bridges.

(56) "Public ways" or "rights-of-way" includes the surface of and space above and below any real property in the city in which the city has a

Ordinance No. 18-027

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~~regulatory interest, or interest as a trustee for the public including, but not limited to, all public streets, highways, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the city, and any public or utility easements established, dedicated or devoted for public utility purposes.~~

"Public right-of-way" and/or "right-of-way" shall be defined in accordance with RCW 35.99.010(5) and means land dedicated for public roads and streets but does not include land so dedicated which has not been opened and improved for motor vehicle use by the public nor other land excluded by statute.

"Residential Zone" "residential district" means and includes each of the zoning classifications as established defined in DMMC 18.06.020080(1) as currently written or as subsequently amended. ~~RS-15,000, 9,600, 8,400 and 7,200; RA-3,600; RM-2,400; RM-1,800; RM-900; RM-900A; RM-900B; S-E; and S-R.~~

"Small cell" and "small cell network" are defined in accord with RCW 80.36.375.

"Substantial change": A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(a) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(b) For towers other than towers in the

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public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(c) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(d) It entails any excavation or deployment outside the current site;

(e) It would defeat the concealment elements of the eligible support structure; or

(f) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided, however, that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified above.

~~(66) "Telecommunications service" means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video~~

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~~programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.~~

"Telecommunications service" shall be defined as provided in RCW 35.99.010 (7).

~~(67) "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term encompasses personal wireless service facilities including radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures, and the like.~~

"Tower": Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul and the associated site.

"Transmission equipment": Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

"Urban Designed Corridor": a right-of-way

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corridor with context sensitive designed street light poles and fed by underground power. Street lights may be owned by either the City or Puget Sound Energy.

"Utility pole": a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.

Sec. 2. Chapter 20.07 DMMC and sections 74 through 87 of Ordinance No. 1316 are amended to include provisions relating to Small Cell Development and Standards to read as follows:

20.07.010 Purpose.

(1) The standards set forth in this ~~chapter section~~ are designed to protect the public health, safety, and welfare, to protect property values and minimize visual impact while furthering the development of enhanced telecommunications services in the City and these standards were designed to comply with the Telecommunications Act of 1996. The provisions of this title are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This title shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.

(2) To the extent that any provision of this title is inconsistent or conflicts with any other City ordinance this title shall control. Otherwise, this Title shall be construed consistently with the other provisions and regulations of the City.

(3) In reviewing any application to provide personal wireless service or to install

Ordinance No. 18-027

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personal wireless service facilities, the City shall act within a reasonable period of time, taking into account the nature and scope of the application. Any decision to deny an application shall be in writing, supported by substantial evidence contained in a written record. The City shall approve, approve with conditions, or deny the application in accordance with the time frames and exceptions set forth in this Title, ~~Ordinance 1174~~ and in accordance with other applicable ordinances.

20.07.020. Exemptions. The following are exempt from the provisions of this chapter title and shall be permitted in all zones:

(1) Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC.

(2) Antennas and related equipment no more than three feet in height that are being stored, shipped, or displayed for sale.

(3) Radar systems for military and civilian communication and navigation.

(4) Wireless radio utilized for temporary emergency communications in the event of a disaster and police, fire and first responder communications facilities; provided, however, that joint use networks such as the Public Safety Broadband Network (First Net) which also provides commercial telecommunications services to the public shall be subject to this chapter.

(5) Licensed amateur (ham) radio stations.

(6) Satellite dish antennas less than two meters in diameter, including direct to home satellite services, when used as a secondary use of the property.

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(7) Routine maintenance or repair of a personal wireless service facility and related equipment (excluding structural work or changes in height or dimensions of antennas, towers, or buildings); provided, that compliance with the standards of this title are maintained.

(8) Subject to compliance with all other applicable standards of this title, a building permit application need not be filed for emergency repair or maintenance of a personal wireless service facility until 30 days after the completion of such emergency activity.

(9) A cell on wheels or other temporary personal wireless telecommunications facility shall be permitted at a time and manner as determined by the City.

(10) Automated meter reading (AMR) facilities for collecting utility meter data for use in the sale of utility services, except for whip and other antennas greater than two feet in length; so long as the AMR facilities are within the scope of activities permitted under a valid franchise agreement between the utility service provider and the City.

(11) Stand-mounted and other stand-alone wireless local area network ("Wi-Fi") antennae less than 1.5 cubic feet in total volume when installed pursuant to a valid franchise and certified as compliant with FCC regulations governing radio frequency ("RF") emissions. This exception does not apply to telecommunications facilities larger in scale or electrical power.

(12) Eligible facilities requests. See DMMC 20.07.080 and chapter 20.10 DMMC.

DIVISION 1

LARGE SCALE WIRELESS COMMUNICATION FACILITIES

20.07.030. Recognition of industry site selection criteria. In establishing a new site, the industry requires a location that is technically compatible with the established network. A general area is to be identified based upon engineering constraints and the desired area of service. Specific locations within that general area will be evaluated using the following criteria which are not listed in order of priority:

(1) Topography as it relates to line of sight transmissions for optimum efficiency in telephone service.

(2) Availability of road access.

(3) Availability of electric power.

(4) Availability of land-based telephone lines or microwave link capability.

(5) Lands leasable at fair market value, and landlords who want facilities to be located on their properties consistent with zoning regulations.

(6) Screening potential of existing vegetation, structures and topographic features.

(7) Zoning that will allow low power mobile radio service facilities.

(8) Compatibility with adjacent land uses.

(9) The least number of sites to cover the desired area.

(10) The greatest amount of coverage, consistent with physical requirements.

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(11) Opportunities to mitigate possible visual impact.

(12) Availability of suitable existing structures for antenna mounting.

20.07.040. Site selection criteria.

(1) Any applicant proposing to construct an antenna support structure or mount an antenna on an existing structure outside of the Public Rights-of-Way or any facility in the Public Rights-of-Way other than small cell facilities, shall demonstrate by engineering evidence that the antenna must be located at the site to satisfy its function in the applicant's local grid system. Further, the applicant must demonstrate by engineering evidence that the height requested is the minimum height necessary to fulfill the site's function within the grid system.

(2) Applications for necessary permits will only be processed when the applicant demonstrates either that it is an FCC-licensed telecommunications provider or that it has agreements with an FCC-licensed telecommunications provider for use or lease of the support structure.

(3) Low power mobile radio service facilities shall be located and designed to minimize and mitigate any significant adverse impact on residential property values. Facilities shall be placed in locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.

(4) In all zones, location and design of facilities shall consider the impact of the facility on the surrounding neighborhood and the visual impact within the zone district. In all zones, towers shall be significantly screened or designed

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according to standards to be established by the City Manager ~~community development director~~.

20.07.050. Priority of locations. The order of priorities for locating new personal wireless service facilities other than small cell facilities in the Public Rights-of-Way shall be as follows:

(1) Place antennas and towers on City property if practical.

(2) Place antennas on ~~appropriate public ways and~~ existing structures, such as buildings, towers, water towers and smokestacks.

(3) Place antennas and towers in districts zoned commercial.

(4) Place antennas and towers on other nonresidential property.

(5) Place antennas on multifamily residential structures exceeding 30 feet in height.

(6) Place antennas and towers in residential zones (a) only if appropriate locations are not available in nonresidential zones, or (b) when co-location on an existing structure can be accomplished in a manner consistent with the design and aesthetic considerations provided under this title.

20.07.060. Conditional Use Permit required for antennas and personal wireless facilities in a Residential Zone.

(1) Except for items exempt from the provisions of this title as provided in DMMC 20.07.020, a conditional use permit is required for all antennas, towers, and personal wireless facilities located in a residential zone, other than small cell facilities in the Public Rights-of-Way.

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Small cell facilities within the Public Rights-of-Way shall be located pursuant to Division II of this chapter. Any terms and conditions imposed on such use shall contain substantially similar terms and conditions which, taken as a whole and considering relevant characteristics of the facility and situation at hand, do not provide more or less favorable terms and conditions than those required of licensees or franchisees under this Title.

(2) An applicant that wishes to locate a new antenna support structure in a residential zone shall demonstrate that a diligent effort has been made to locate the proposed communications facilities on a government facility, a private institutional structure, or other appropriate existing structures within a nonresidential zone, and that due to valid considerations including physical constraints, and economic or technological feasibility, no appropriate location is available.

(3) Applicants are required to demonstrate that they: (a) have contacted the owners of structures in excess of 30 feet within a one-quarter-mile radius of the site proposed and which from a location standpoint could provide part of a network for transmission of signals, and (b) have asked for permission to install the antenna on those structures at fair market value.

(4) The information submitted by the applicant shall include: (a) a map of the area to be served by the tower or antenna, (b) its relationship to other cell sites in the applicant's network, and (c) an evaluation of existing buildings taller than 30 feet within one-quarter mile of the proposed tower or antenna which from a location standpoint could provide part of a network to provide transmission of signals.

(5) In order to process eligible facility requests co-locations and other applications subject

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to Federal and state time limitations, the conditional use process may be expedited to the extent required to comply with chapter 35.99 RCW.

(6) Waiver of Conditional Use Permit. See DMMC 20.07.080 for waiver of conditional use permit for co-locations and eligible facilities requests. A conditional use permit is not required for the location of Wireless Communication Facilities on Public Property pursuant to DMMC 20.07.070.

20.07.070. Siting priority on public property.

Where public property is sought to be utilized by an applicant, priority for the use of City-owned land for wireless antennas and towers will be given to the following entities in descending order:

(1) City of Des Moines;

(2) Public safety agencies, including law enforcement, fire and ambulance services, which are not part of the City of Des Moines and private entities with a public safety agreement with the City of Des Moines;

(3) Other governmental agencies, for uses which are not related to public safety; and

(4) Entities providing licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), data, Internet, paging, and similar services that are marketed to the general public.

(a) Minimum requirements. The placement of personal wireless service facilities on City-owned property must comply with the following requirements:

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(i) The facilities will not interfere with the purpose for which the City-owned property is intended;

(ii) Probable, significant adverse impacts on surrounding private property can be appropriately mitigated;

(iii) The applicant is willing to obtain adequate liability insurance and commit to a lease agreement which includes equitable compensation for the use of public land and other necessary provisions and safeguards. The City shall establish fees after considering comparable rates in other cities, potential expenses, risks to the City, and other appropriate factors;

(iv) The applicant will submit a letter of credit, performance bond, or other security acceptable to the City to cover the costs of removing the facilities;

(v) The antennas or tower will not interfere with other users who have a higher priority as discussed in this section;

(vi) The lease shall provide that the applicant must agree that in the case of a declared emergency or documented threat to public health, safety or welfare and following reasonable notice, the City may require the applicant to remove the facilities at the applicant's expense;

(vii) The applicant must reimburse the City for any related costs which the City incurs because of the presence of the applicant's facilities;

(viii) The applicant must obtain all necessary land use approvals; and

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(ix) The applicant must cooperate with the City's objective to encourage co-locations and thus limit the number of cell sites requested or camouflage the site.

(b) Special requirements for Parks. The use of City-owned parks for personal wireless service facilities brings with it special concerns due to the unique nature of these sites. The placement of personal wireless service facilities in a park will be allowed only when the following additional requirements are met:

(i) The City Manager or the City Manager's designee has reviewed and made a recommendation regarding proposed personal wireless service facilities to be located in the park and this recommendation must be forwarded to the City Council for consideration;

(ii) In no case shall personal wireless service facilities be allowed in designated critical areas unless they are co-located on existing facilities.

(iii) Before personal wireless service facilities may be located in public parks, consideration shall be given to visual impacts and disruption of normal public use;

(iv) Personal wireless service facilities may be located in public parks that are adjacent to an existing commercial or industrial zone;

(v) Personal wireless service facilities may be located in park maintenance facilities.

(vi) Personal wireless facilities may only be located in public parks if the applicant presents evidence sufficient to

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satisfy the City Manager that such facilities will be appropriately designed, sited, and constructed to protect the health, safety and welfare of park users.

(c) Required submittals. Application for conditional use permits, building permits, and other related requests may include any combination of site plans, surveys, maps, technical reports, or written narratives necessary to convey the following information in addition to the requirements of other applicable ordinances:

(i) Photosimulations of the proposed facility from affected residential properties and public ways at varying distances;

(ii) A site elevation and landscaping plan indicating the specific placement of the facility on the site, the location of existing structures, trees, and other significant site features, the type and location of plant materials used to screen the facility, and the proposed color(s) of the facility;

(iii) A signed statement indicating that (a) the applicant and landowner agree they will diligently negotiate in good faith to facilitate co-location of additional personal wireless service facilities by other providers on the applicant's structure or within the same site location and (b) the applicant and/or landlord agree to remove the facility within sixty (60) days after abandonment;

(iv) Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by FCC Paragraph 1.1307, or, in the event that an FCC environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment;

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(v) A site plan clearly indicating the location, type and height of the proposed tower and antenna, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, and any other proposed structures;

(vi) A current map and aerial showing the location of the proposed tower, a map showing the locations and service areas of other personal wireless service facilities operated by the applicant and those proposed by the applicant that are close enough to impact service within the City;

(vii) Legal description of the parcel, if applicable;

(viii) The approximate distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties;

(ix) A landscape plan showing specific landscape materials;

(x) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination;

(xi) A letter signed by the applicant stating the tower will comply with all FAA regulations and EIA Standards and all other applicable federal, state and local laws and regulations;

(xii) A statement by the applicant as to whether construction of the tower

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will accommodate co-location of additional antennas for future users;

(xiii) Certification that the antenna usage will not interfere with other adjacent or neighboring transmission or reception functions;

(xiv) The telecommunications company must demonstrate that it is licensed by the FCC if required to be licensed under FCC regulations;

(xv) The applicant, if not the telecommunications service provider, shall submit proof of lease agreements with an FCC licensed telecommunications provider if such telecommunications provider is required to be licensed by the FCC;

(xvi) A full site plan shall be required for all sites, showing the tower, antenna, antenna support structure, building, fencing, buffering, access, and all other items required in this title. The site plan shall not be required if the antenna is to be mounted on an existing structure; and

(xvii) At the time of site selection, the applicant should demonstrate how the proposed site fits into its overall network within the City.

20.07.080. Co-location and Eligible Facilities Requests.

(1) To minimize adverse visual impacts associated with the proliferation of towers, co-location of personal wireless service facilities and Eligible Facilities Requests to expand facilities on existing or new towers are ~~is~~ as follows:

(a) Proposed facilities may, and are encouraged to, co-locate onto existing towers.

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Such co-location is permitted by right and new or additional conditional use permit approval is not required, except that any other permit, license, lease, or franchise requirements must be satisfied, and the co-location must be accomplished in a manner consistent with the policy, site criteria, and landscape/screening provisions contained in this Title.

(b) The conditional use permit requirement for a facility may be ~~is~~ waived in all zones if the applicant locates the antenna on an existing structure or an existing tower or expands an existing facility by an Eligible Facilities Request. The applicant must submit detailed plans to the community development department for a co-location permit to determine if the conditional use permit process and public hearing can be waived. No building permit will be issued until approval is granted by a co-location permit or conditional use permit.

(c) The City may deny an application to construct new facilities if the applicant has not shown by substantial evidence that it has made a diligent effort to mount the facilities on an existing structure or tower or expand an existing facility by an Eligible Facilities Request.

(d) To reduce the number of antenna support structures needed in the City in the future, new proposed support structures shall be designed to accommodate antennas for more than one user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons.

(e) Unless co-location is not feasible, an applicant's site plan shall reserve an area for other providers' equipment and/or probable expansion or modification of the applicant's proposed facility near the base of the applicant's

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tower. A first right-of-refusal (which is either executed or maintained while the provider's personal wireless facilities and services are in use) to lease the area at the base of the tower or mount for other providers will meet the reservation requirement.

(f) To provide further incentive for co-location or expansion by an Eligible Facilities Request, an existing tower may be modified through a co-location or Eligible Facilities Request permit which may be issued by the City Manager or the City Manager's designee. See DMMC 20.10.020 et. seq. ~~when an applicant can demonstrate the ability to co-locate an additional antenna of the same type as that on the existing tower and that the height of the existing tower will not be increased.~~

(g) While co-location and the requirements herein are encouraged, co-location shall not take precedence over the construction of shorter towers with appropriate screening.

(2) Providers with existing facilities capable of accommodating co-location within the City of Des Moines are hereby required to negotiate in good faith with any applicant seeking to co-locate telecommunications equipment on their facilities.

If an applicant is unable to reach a co-location agreement with a provider owning or controlling an existing facility within the City as the result of terms and conditions which are believed to be in bad faith and anticompetitive, the aggrieved applicant may, upon payment of a filing fee to be established by the City Manager, petition the ~~community development director~~ City Manager to make a determination as to whether such terms and conditions should be deemed in bad faith and anticompetitive. If the City Attorney concludes that the challenged terms and conditions of any co-location agreement are in bad faith and anticompetitive, the City Attorney may institute

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proceedings before the Hearing Examiner seeking revocation of any or all land use or other authorizations granted by the City with respect to the existence or operation of such facility; however, the City may, at its sole discretion, withdraw or refrain from initiating a revocation proceeding until such time as the aggrieved applicant makes payment or reaches and complies with an agreement with the City setting a schedule for payment of all reasonably anticipated costs to be incurred by the City in a revocation proceeding before the Hearing Examiner.

Upon receipt of a revocation recommendation from the City Attorney, the Hearing Examiner shall conduct all necessary proceedings and reach a determination as to whether the terms and conditions of the challenged co-location agreement are in bad faith and anti-competitive. The Hearing Examiner shall have authority to revoke any and all land use permits, or other authorizations granted by the City with respect to the existence and operation of telecommunications facilities owned or controlled by any provider found to be in violation of this section or impose lesser sanctions as provided in DMMC 20.06.280. Upon a determination by the Hearing Examiner to revoke permits or authorizations enabling the existence or operation of any facility(ies) or improvement(s) located within the City, the affected provider shall remove such facility(ies) in the time and manner provided in DMMC 20.06.290.

Notwithstanding provisions found elsewhere in City codes, appeals of any Hearing Examiner decision including decisions to site wireless communication facilities to be located outside of the Public Rights-of-Way by conditional use permit issued under this section shall be before the King County Superior Court, and must be filed and served within twenty-one (21) days of the issuance of such decision as provided in RCW 36.70C.040(3). Administrative

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permits issued pursuant to DMMC 20.07.070 or 20.07.240 are not land use decisions and are not subject to review under chapter 36.70C RCW.

20.07.090. Design criteria.

(1) As provided above, new facilities shall be designed to accommodate co-location, unless the applicant demonstrates why such design is not feasible for economic, technical, or physical reasons.

(2) Facilities shall be architecturally compatible with the surrounding buildings and land uses in the zoning district and screened or otherwise integrated, through location and design, to blend in with the existing characteristics of the site.

(a) Setback. A tower's setback shall be measured from the base of the tower to the property line of the parcel on which it is located. In residential districts and residential land use areas, where permitted, towers shall be set back from all property lines a distance equal to 100 percent of tower height as measured from ground level, except for unusual geographic limitations or other public policy considerations, as determined in the City's sole discretion. All other towers shall comply with the minimum setback requirements of the area in which they are located in all other zoning districts, unless there are unusual geographical limitations or other public policy considerations as determined in the sole and absolute discretion of the City.

Such considerations shall include by way of illustration and not limitation, but are not limited to:

(i) Impact on adjacent properties;

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(ii) Alternative sites for personal wireless facilities; and

(iii) The extent to which screening and camouflaging will mitigate the effects of the personal wireless facilities.

~~(b) Public Way Setback Exception. The setback requirement may be waived if the antenna and antenna support structure are located in the city public way.~~

(be) View Corridors. Due consideration shall be given so that placement of towers, antennas, and personal wireless service facilities do not obstruct or significantly diminish views of Mt. Rainier, Puget Sound or the Olympic Mountains.

(cd) Color, marking, lights, signals and signs. Towers shall have a color generally matching the surroundings or background that minimizes their visibility unless a different color is required by the FCC or FAA.

No signals, lights, or signs shall be permitted on towers unless required by the FCC or the FAA. Should marking be required, in cases where there are residents located within a distance which is 300 percent of the height of the tower, then dual mode lighting shall be requested from the FAA and the residents located within said distance shall be notified.

(de) Equipment and structures. Ground level equipment, buildings, and the tower base shall be screened from public view. The standards for the equipment buildings are as follows:

(i) The maximum floor area is 300 square feet and the maximum height is limited to the height of a one-story building which design

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is consistent with the neighborhood. Except in unusual circumstances or for other public policy considerations the equipment building may be located no more than 50 feet from the tower or antenna, with any additional distance to be left to the discretion of the City Manager ~~community development director~~. Depending upon the aesthetics and other related issues, the City, in its sole discretion, may approve multiple equipment structures or one or more larger structures.

(ii) Ground level buildings shall be screened from view by landscape plantings, fencing, or other appropriate means to satisfy City standards for Type I landscaping.

(iii) Equipment buildings mounted on a roof shall have a finish similar to the exterior building walls. Equipment for roof-mounted antenna may also be located within the building on which the antenna is mounted.

(iv) In instances where equipment buildings are located in residential zones, equipment buildings shall comply with setback requirements and shall be designed so as to conform in appearance with nearby residential structures.

(v) Equipment buildings, antennas, and related equipment shall occupy no more than 25 percent of the total roof area of the building the facility is mounted on, which may vary in the City's sole discretion if co-location and an adequate screening structure is used.

(vi) Noise from antenna equipment should be reduced where possible to 30 Db. Continual low frequency sounds such as hums, clicks, buzzes and the like should be avoided.

The use must be approved on a site plan or final development plan, as applicable.

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(~~e~~f) Federal requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If those standards and regulations are changed, then personal wireless service providers governed by this title shall bring their towers and antennas into compliance with the revised standards and regulations within three months of their effective date or the timelines provided by the revised standards and regulations, whichever time period is longer. The revised standards and regulations are not retroactively applicable to existing providers, unless otherwise provided or permitted by federal law. Failure to bring towers and antennas into compliance with the revised standards and regulations shall constitute grounds for the City to remove a provider's facilities at the provider's expense.

(~~f~~g) Building codes - Safety standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable City building codes and the applicable standards for towers that are published by the Electronic Industries Association ("EIA"), as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring the tower into compliance with such standards. If the owner fails to bring its tower into compliance within thirty (30) days, the City may remove the tower at the owner's expense.

(~~g~~h) Structural design. Towers shall be constructed to the EIA Standards, which may be amended from time to time, and to all applicable construction/building codes. Further, any

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improvements or additions to existing towers shall require submission of site plans stamped by a professional engineer which demonstrate compliance with the EIA Standards and all other good industry practices. The plans shall be submitted and reviewed at the time building permits are requested.

(h±) Fencing. A well-constructed wall, or wooden fence not less than six feet in height from the finished grade shall be provided around each personal wireless service facility. Fencing should be colored or should be of a design which blends into the character of the existing environment. Access to the facility shall be through a locked gate. The use of chain link, plastic, vinyl, or wire fencing is prohibited unless it is fully screened from public view through the use of either climbing evergreen shrubs on the fence or evergreen shrubs equal to the height of the fence and consistent with the City's Type I landscaping standards.

(i±) Tower and antenna height.

(i) All applicants for approvals and/or permits required by the City for towers or antennas must demonstrate through engineering evidence that the height of the proposed tower and/or antenna is the minimum height necessary to satisfactorily fulfill the facility's intended function.

(ii) No tower or antenna that is taller than the minimum height required, based on engineering evidence, shall be approved or otherwise permitted. Engineering evidence reviewed and considered by the City may include information obtained through the third-party review process set forth in.

(iii) No tower or mount shall exceed eighty (80) feet; provided, that:

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(A) A conditional use permit may be issued by the Hearing Examiner to allow a tower or mount up to but not exceeding 120 feet if the applicant can show by clear and convincing evidence that the additional height is necessary to allow for collocation of one or more additional facilities on the proposed tower; and

(B) The applicant presents a binding agreement with another provider ready, willing and able to collocate its facility on the proposed tower at or within a reasonable time of its completion, but not more than 90 days following completion, except for conditions or circumstances outside the control of the parties wishing to effectuate the collocation agreement related to the tower at issue; or the applicant presents a construction plan calling for collocation of more than one facility belonging to the applicant on the proposed tower at or within a reasonable time of its completion, but not more than ninety (90) days following completion, except for conditions or circumstances outside the control of the applicant; and

(C) In the event that collocation of an additional facility has not occurred on any tower granted approval for a height exceeding 80 feet within the time period set forth above, the City may order removal or modification of the facility at the owner's expense as provided in this title; and

(D) In considering the application for a conditional use permit under this section, the Hearing Examiner shall evaluate the matter and impose conditions consistent with subsections (2) (i), (i) and (ii) of this section and other relevant provisions of this title.

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(j) Antenna support structure safety. The applicant shall demonstrate that the proposed antenna and support structure are safe, and the surrounding areas will not be negatively affected by support structure failure, falling ice, or other debris or interference. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.

(k) Required parking. If the cell site is fully automated, the location for one parking space for maintenance visits shall be designated on the site plan. If the site is not automated, adequate parking shall be reserved on the site plan for on-site employees.

(l) Tower separation. In no case shall towers be located closer than five hundred (500) feet from another tower whether it is owned or utilized by applicant or another provider, unless the City Manager designates areas where multiple towers can be located in closer proximity following a third-party review initiated upon receipt of an application warranting such study. The term "tower" as used in this section shall not include existing, replacement or new utility poles or light standards used to site small cell facilities when located within the Public Rights-of-Way.

(m) Antenna criteria. Antenna on or above a structure shall be subject to the following:

(i) The antenna shall be architecturally compatible with the building and wall on which it is mounted and shall be designed and located so as to minimize any adverse aesthetic impact.

(ii) The antenna shall be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible and shall not project above the wall on

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which it is mounted unless it must be for technical reasons. In no event shall an antenna project be more than 16 feet above the roof line including parapets.

(iii) The antenna shall be constructed, painted, or fully screened to match as closely as possible the color and texture of the building and wall on which it is mounted.

(iv) The antenna may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building but may not project any higher than the enclosure.

(v) If an accessory equipment shelter is present, it must blend with the surrounding buildings in architectural character and color.

(vi) The structure must be architecturally and visually (color, size, bulk) compatible with surrounding existing buildings, structures, vegetation, and uses. Such facilities will be considered architecturally and visually compatible if they are camouflaged to disguise the facility.

(vii) Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area. The effectiveness of visual mitigation techniques must be evaluated by the City, in the City's sole discretion.

(viii) For installations or buildings greater than thirty (30) feet in height, see other applicable provisions of this title. In

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addition to the other requirements of this Title, on buildings thirty (30) feet or less in height, the antenna may be mounted on the roof if the following additional criteria are satisfied:

(A) The City finds that it is not technically possible or aesthetically desirable to mount the antenna on a wall.

(B) No portion of the antenna or base station causes the height of the building to exceed the limitations set forth herein.

(C) The antenna or antennas and related base stations cover no more than an aggregate total of twenty-five percent (25%) ~~percent~~ of the roof area of a building, which may vary in the City's sole discretion, if co-locating and an adequate screening structure are used.

(D) Roof-mounted antenna and related base stations are completely screened from view by materials that are consistent and compatible with the design, color, and materials of the building.

(E) No portion of the antenna may exceed sixteen (16) feet above the height of the existing building.

(ix) If a proposed antenna is located on a building or a lot subject to a site review, approval is required prior to the issuance of a building permit.

(x) No antenna shall be permitted on property designated as an individual landmark or as a part of a historic district unless such antenna has been approved in accordance with City ordinances.

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(xi) No personal wireless service provider or lessee or agent thereof shall fail to cooperate in good faith to accommodate co-location with competitors. If a dispute arises about the feasibility of co-locating, the City Manager may require a third party technical study, at the expense of either or both parties, to resolve the dispute.

(xii) No personal wireless service provider or lessee shall fail to assure that its antenna complies at all times with the current applicable FCC standards. After installation, but prior to putting the antenna in service, each provider shall submit a certification by an independent professional engineer to that effect. In the event that an antenna is co-located with another antenna, the certification must provide assurances that FCC approved levels of electromagnetic radiation will not be exceeded by the co-location.

(xiii) No antenna shall cause localized interference with the reception of any other communications signals including, but not limited to, public safety, television, and radio broadcast signals.

(xiv) No person shall locate an antenna or tower for wireless communications services upon any lot or parcel except as provided in this ~~title~~ Division of chapter 20.07 DMMC.

(3) Setback from street. Unless there are unusual geographic limitations or other public policy considerations, as determined in the City's sole discretion, no such antenna, antenna array, or its support structure shall be erected or maintained closer to any street than the minimum setback for the zone in which it is located unless otherwise waived or exempt.

(4) Guy wires restricted. No guy or other support wires shall be used in connection with such

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antenna, antenna array, or its support structure except when used to anchor the antenna, antenna array, or support structure to an existing building to which such antenna, antenna array, or support structure is attached; however, the City Manager ~~public works director~~ may permit the temporary use of guy wires where such use is required in an emergency or other circumstances that are in the interest of public health and safety, but in no event should such temporary use be allowed for more than thirty (30) days.

20.07.100 Permits required. Where a tower or antenna support structure will be 60 feet or less in height, and such facility is not otherwise exempt from coverage by this title, in addition to the other provisions of this title, an applicant will be required to obtain design review approval as set forth in chapter 18.23558 DMMC. In the event that a proposed tower or antenna support structure will be located in a residential zone, or an unscreened tower in the downtown area, or will be more than sixty (60) feet in height, in addition to the other provisions of this Title, an applicant will be required to obtain a conditional use permit. With respect to the placement of antenna on a tower or antenna support structure, the requirements for a conditional use permit or design review will be applicable based on the height of the tower and antenna or mount and antenna unless this title provides other requirements to the contrary.

To meet the standards of this Title, a personal wireless service facility must also comply with the other requirements under this title and, for antennas attached to the roof or sides of a building at least thirty (30) feet in height, an existing tower, a water tank, or a similar structure:

(1) Antennas mounted on existing structures in the commercial zones, not exceeding 16 feet in height, may be permitted following design

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review approval as provided in chapter 18.~~23558~~ DMMC and submittal of an affidavit of compliance with this title and other City regulations.

(2) Antennas, antenna arrays, and support structures not on publicly owned property shall not extend more than 16 feet above the highest point of the structure on which they are mounted. The antenna, antenna array, and their support structure shall be mounted so as to blend with the structure to which the antenna is attached. The antenna and its support structure shall be designed to withstand a wind force of one hundred (100) miles per hour without the use of supporting guy wires. The antenna, antenna array, and their support structure shall be a color that blends with the structure on which they are mounted.

(3) To the extent that antennas are attached to electric, phone or light poles and such antennas are no more than two (2) feet in height, collocation and building permits will be required, but such antenna(s) shall not be subject to setbacks and screening requirements.

20.07.110 Inspection requirements. Each year after a facility becomes operational, the facility operator shall conduct a safety inspection in accordance with the EIA and FCC Standards and within 60 days of the inspection file a report with the City Manager. Submission of a copy of FCC required, and duly filed, safety inspection report, or the facility operator's maintenance reports for the prior twelve (12) months in the event no FCC report is required for such year, shall satisfy the requirements of this section.

20.07.120 Landscaping/Screening.

(1) Landscaping. Landscaping, as described herein, shall be required to screen personal wireless service facilities as much as possible, to soften the appearance of the cell site.

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The City may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping if they achieve the same degree of screening as the required landscaping. If the antenna is mounted flush on an existing building, and other equipment is housed inside an existing structure, landscaping shall not be required.

(2) Screening. The visual impacts of a personal wireless service facility shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures. The following landscaping and buffering shall be required around the perimeter of the tower and accessory structures, except that the City may waive the standards for those sides of the facility that are not in public view. Landscaping shall be installed on the outside of fences. Further, existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or as a supplement to landscaping requirements.

(3) Landscaping and screening requirements may be waived by the City where such measures are not in the public interest.

(4) In the event that landscaping and/or screening is not maintained at the required level, the City, after giving thirty (30) days' advance written notice, may maintain or establish the landscaping and/or screening. All expenses incurred by the City under this section shall constitute a civil debt owing to the City jointly and severally by the owner(s) and lessee(s), which debt shall be collectible in the same manner as any other civil debt.

DIVISION II

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**SMALL CELL DEPLOYMENT: FRANCHISE AND SMALL CELL
PERMITS**

20.07.130 Overview of Division II. In order to manage its right-of-way in a thoughtful manner which balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment while complying with the requirements of State and federal law, the City of Des Moines adopts this process for the deployment of small cell and microcell technology. Service providers who seek to utilize the public right-of-way for small cell deployment in order to enhance wireless communication, data transmission or other related services to the citizens of the City must have a valid franchise agreement to provide the specific service which utilizes the right-of-way and a Small Cell Permit to deploy the technology. Entities with franchises who wish to utilize a small cell deployment to upgrade or expand their existing services shall utilize the processes set forth in Title 20 and implementing Small Cell Permits to deploy their technology and obtain design approval of specific installations. The Small Cell Permit process administers deployment under a valid franchise. An entity without a franchise agreement may apply concurrently for a franchise and adjunct Small Cell Permit which shall be processed concurrently as one Master Permit within the meaning of RCW 35.99.010(3) and 35.99.030. For entities with a valid franchise, See DMMC 20.07.170.

(1) Nothing in this ordinance revises or diminishes the rights and obligations of an existing franchise.

(2) The term "small cell deployment" shall include the deployment of small cell facilities, microcells and small cell networks as those terms are defined by RCW 80.36.375 provided that microcells may not be deployed in the public right-

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of-way, except as provided in Division I of this chapter.

(3) See chapter 20.01 DMMC for additional definitions.

20.07.140 Application. Applicants shall apply using the City's franchise application form and submit a fee deposit commensurate with the estimated administrative costs of processing an application for a franchise. The City Manager or his or her designee ("City Manager") is charged with administration of small cell deployments and other wireless communication review processes established under chapter 20.07 DMMC. Service providers seeking to utilize the City's right-of-way for small cell deployments shall specify geographic boundaries for the small cell deployment described in the application. The applicant may designate the entire City at its discretion or any portion thereof as the franchise boundary. Phased development is permitted, and an applicant is encouraged to specify at least the initial small cell deployment in its application.

The following information shall be provided by all applicants for franchises seeking to utilize small cell deployment. Existing franchisees who seek to utilize a small cell deployment to expand or implement an existing franchise shall provide the information as a part of a Small Cell Permit application for small cell deployment.

(1) Designation of facilities. The application shall provide specific locational information including GIS coordinates of all facilities to the extent known and specify whether and where small cell facilities are to be located on existing utility poles including City-owned light standards (included in the definition of utility pole), or will utilize replacement utility poles, new poles, towers, and/or other structures. Conduit

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and/or ground-mounted equipment necessary for and intended for use in the deployment shall also be specified, to the extent known, regardless of whether the additional facilities are to be constructed by the applicant or leased from an infrastructure provider. Detailed schematics and visual renderings of the facilities shall be provided by the applicant. Failure to provide sufficient detail may result in a later finding of a significant change in the facility if significant elements of the facility were not shown on the originally approved franchise exhibit. Failure to include significant elements may also result in the requirement that new or undocumented elements complete the approval processes detailed in this chapter.

(2) **Implementation.** Absent specific approval of sites and facilities in a franchise, the rights granted under the franchise are implemented through the issuance of a Small Cell Permit. The franchise application may be accompanied by one or more applications for a Small Cell Permit to deploy small cells. An initial franchise, including specific sites and facilities and/or a related Small Cell Permit application(s) shall be processed concurrently as one Master Permit.

(a) Up to fifteen (15) sites may be specified in one Small Cell Permit application for processing. The City Manager may allow up to five (5) additional sites in the same application in order to consider small cell sites within one logical service area in one application

(b) Issuance of a Small Cell Permit to install a small cell deployment shall be contingent upon approval of a franchise or the possession of a valid franchise.

(c) If more than one application for a Small Cell Permit is submitted by an applicant,

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they shall be considered in the order received. If multiple applications are submitted on the same date, the applicant shall indicate which application should be considered first. All Small Cell Permits which are submitted in conjunction with a franchise application shall be considered as one Master Permit. Any element of a deployment which qualifies as either an Eligible Facilities Request or a collocation pursuant to chapter 20.10 DMMC shall be specifically designated by the applicant and may be addressed separately by the City Manager in order to comply with the shot clocks established by federal law.

(d) The City Manager may approve, deny or conditionally approve all or any portion of the sites and/or facilities proposed in the Small Cell Permit application.

(e) Any application for a franchise or Small Cell Permit which contains an element which is not exempt from SEPA review shall comply with chapter 16.05 DMMC.

(f) Radio Frequency ("RF") Certification. The applicant shall submit a sworn affidavit signed by an RF Engineer with knowledge of the proposed project affirming that the small cell deployment will be compliant with all FCC and other governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the small cell facility and associated wireless backhaul will operate. An existing franchisee applying for a Small Cell Permit for small cell deployment shall provide an RF certification for all facilities included in the deployment which are to be installed by the Franchisee. If facilities necessary to the Small Cell Deployment are to be provided by another franchisee, the Right-of-Way Use Permit and Franchise to deploy such facilities shall be contingent on submittal of an RF Certification by the other franchisee for any such facilities which

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produce RF emissions. If such facilities will emit RF emissions, this additional RF Certification shall address the cumulative impact of the RF emissions and certify compliance with federal requirements. The initial franchisee and all implementing Right-of-Way Use Permits shall be contingent on such secondary certification. The applicant or franchisee shall immediately remove or repair any facilities that exceed FCC RF Emission requirements. A modification of a facility by an Eligible Facilities Request requires a new RF certification.

(g) Regulatory authorization. Issuance of the Use Permit for the facilities shall also be contingent upon the applicant's provision of proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

(h) Completeness; Franchise and Small Cell Applications. The City Manager or his/her designee shall review an application for completeness and notify the applicant within thirty (30) days of submission whether the application is complete, provided, however, that an applicant may consent to a different completeness review period. A service provider may resubmit an incomplete application within sixty (60) days of notice by the City Manager. Failure to resubmit an application in a timely manner shall be deemed a withdrawal of that application. An applicant shall be notified in writing of the approval or denial of the application. No application shall be deemed complete without the fee deposit set by the City Manager.

20.07.150. Review process. The following provisions relate to applications for a franchise or Small Cell Permit for small cell deployments.

(1) Review of facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC 253 and 47 USC

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332 and applicable case law. Applicants for franchises and the Small Cell Permits which implement the franchise shall be treated in a competitively neutral and non-discriminatory manner with other service providers utilizing supporting infrastructure which is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement or cumulative impacts. Franchise and Small Cell Permit review under this chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

(2) Concealment. In any zone not designated by DMMC 20.07.260 for design review ("design review"), applications for a Small Cell Permit or for facilities designated within a franchise, the City may permit small cell deployment on existing utility poles and replacement poles in accordance with the City's generally applicable pole design and concealment standards adopted in Division III of this chapter and DMMC 20.07.240. Accordingly, small cell facilities installed pursuant to this concealment authorization may only be expanded pursuant to an Eligible Facilities Request if the City Manager determines that such expansion would not defeat the concealment elements of the facilities.

(3) Design review. Small cell deployment in Design Zones and Underground Districts, as well as certain new or replacement facilities, are subject to design review. See DMMC 20.07.260.

20.07.160. Public comment. The City shall provide notice of a complete application for a franchise on the City's website with a link to the franchise application. This notice requirement shall also apply to existing franchisees applying for a Small Cell Permit for small cell deployment.

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The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries. The applicant is encouraged to host informational meetings for the public regarding the deployment. These meetings are for the public's information and are neither hearings nor part of any land use or appeal process.

20.07.170. Facilities designated in the Franchise and/or Small Cell Permit application. Small cell deployments may be approved by reference to exhibits in an approved franchise. Approval of the franchise shall be deemed to approve the site and the design of small cell facilities set forth in the franchise. This approval is limited to the specific location, facility and design elements shown on the exhibits to the franchise. Any element not shown on an exhibit must be approved by the governing review processes designated herein. All facilities shall comply with the concealment standards adopted by the City in DMMC 20.07.150(2) and/or 20.07.240. An existing franchisee may, at its option:

(1) Apply to amend the existing franchise to designate additional sites for small cell deployment, as well as approve the small cell facilities to be installed and the concealment measures to be utilized; or

(2) Apply for a Small Cell Permit which may include:

(a) Small cell facilities to be installed on existing utility poles and which utilize the generally applicable design and concealment standards established by DMMC 20.07.240; and/or

(b) Small cell facilities for placement on new utility poles or installations in a Design Zone or Undergrounded Areas, utilizing the design approval procedures set forth in DMMC

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20.07.240(6).

20.07.180. Small Cell Permit and minor deviations.

(1) The City Manager shall review applications for Small Cell Permits for small cell deployments approved by a franchise or described in a concurrent franchise application. The City Manager may authorize minor deviations in the Small Cell Permit from the dimensional design and concealment technologies referenced in the exhibits to the franchise or design standards.

(2) A deviation in height of the pole of up to ten (10) feet above the height of the existing pole or a height providing the minimum clearance necessary to provide safety clearance may be permitted. Replacement poles of up to ten (10) feet above the height of the existing pole or minimum required safety clearance may also be permitted when required for clearance or separation by the pole owner or applicable electrical code.

(3) Deviations in the dimensions or volume of small cell facilities which do not exceed the cumulative total provided by the definition of a small cell or microcell facility in RCW 80.36.375 may be considered a minor deviation when an applicant replaces components of an existing, approved small cell facility. Provided, however, that in each instance the new or revised facilities shall not defeat the concealment features set by the City's generally applicable pole design standard adopted pursuant to the franchise, DMMC 20.07.240.

(4) The decision of the City Manager to approve a Small Cell Permit with a minor deviation, if any, shall be final and is not subject to appeal under City code or through further legislative review.

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20.07.190 Significant deviations. Any request for significant deviations from the approved small cell facilities design designated in the franchise, Small Cell Permit or City's design and concealment standards shall be considered by the City Manager under the procedures applicable to a Type I land use action (see chapter 18.20 DMMC), and pursuant to the timelines established in chapter 20.09 DMMC. An applicant seeking approval of a new pole in a Design Zone or Underground District designated by chapter 20.07.260 DMMC shall be subject to the same review process.

20.07.200 Wireless Communication and Small Cell Deployment Facility approvals and processes. Approval of a Franchise, Small Cell Permit and/or other approval referenced in this chapter are conditioned on the following requirements:

(1) Satisfy applicable bulk requirements such as noise and light regulations.

(2) Comply with adopted design and concealment standards, or the concealment element design approved for replacement utility poles and new utility poles in a Design Zone or Underground District.

(3) Obtain the written approval of the owner of any utility pole for the installation of its facilities on such utility pole. Approval of a franchise does not authorize attachment to City-owned utility poles or other structures.

(4) Unless specifically provided for in a franchise, obtain a lease from the City to utilize the City's ground space for the installation of any new pole, a replacement utility pole over sixty (60) feet or to locate any new ground-based structure, base station or other attendant equipment on City right-of-way or City property;

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(5) Comply with all City construction standards and State and federal codes when operating in the right-of-way and obtain a required permit to enter the right-of-way.

(6) Installation of a facility which is not exempt from SEPA review shall be processed in accordance with the provisions of chapter 16.05 DMMC.

(7) Small Cell facilities approved pursuant to this chapter shall be considered as an outright permitted use when located within the right-of-way.

20.07.210 Additional review procedures; Compliance with state processing limitations.

Wireless communication facilities in Design or Underground Districts are subject to review as provided in chapter 20.07 DMMC. The provisions of chapter 20.07 DMMC shall be interpreted and applied to insure compliance with chapter 35.99 RCW and federal law.

(1) An application for a franchise seeking general permission to utilize the public right-of-way for telecommunications shall be processed in compliance with the time limits established by RCW 35.99.030(1)(b) and is a Master Use Permit within the meaning of RCW 35.99.010 (3).

(2) An application to deploy specific new small cell facilities at specific locations in the public right-of-way which have not been previously approved as a part of a franchise approval, is a police power exercise governed by RCW 35.99.040(2) and shall be governed by the time limits established by federal law for new facilities, provided, however, that:

(a) The City will endeavor to process the application within ninety (90) days;

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(b) Applications qualifying as Eligible Facilities Requests shall be processed as provided in chapter 20.10 DMMC.

(3) A small cell permit application submitted concurrently with an application for a new or amended franchise shall be considered as an application for a consolidated Master Use Permit and shall be processed with the time limits established by RCW 35.99.030(1)(b).

(4) A franchise for a telecommunications franchise, a consolidated Master Permit for telecommunications (Franchise and Small Cell Permit) or a Small Cell Permit which authorizes deployment of a specific facilities at specific locations are implemented through the issuance of right-of-way use permits. These authorizations to enter the public right-of-way to install specifically approved small cell facilities are use permits within the meaning of RCW 35.99.010(8) and shall be issued within thirty (30) days of receipt of a complete application as required by RCW 35.99.030(2), provided that requests for minor deviations shall be processed by the City Manager pursuant to DMMC 20.07.180 within the same time frame.

DIVISION III

SMALL CELL DESIGN STANDARDS

20.07.220. Wireless communication design standards - Small cell facilities. This Division of chapter 20.07 DMMC provides design and review procedures for communications facilities in the Public Rights-of-Way. These provisions are intended to provide objective design criteria to assist in minimizing the visually obtrusive impacts which can be associated with wireless communications facilities and to encourage creative approaches in

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the location and construction of wireless communications facilities.

20.07.230. Small cell deployment. Small cell deployment includes small cell facilities and small cell networks provided that microcells shall be permitted only in accordance with Division I of this chapter. The following provisions establish design and concealment standards for small cell deployments, provided, however, that any small cell or small cell network component which is not exempt from SEPA review shall comply with chapter 16.05 DMMC.

(1) Existing or replacement utility poles in areas other than Design Zones and underground districts. Eligible small cell facilities permitted under the provisions of a franchise approval shall be considered to have satisfied the design and concealment standards when installed on existing utility poles.

(2) Small cell deployments on existing utility poles not approved pursuant to a franchise. Small cell deployments on existing utility poles which have not been approved as an exhibit to the franchise or as a minor deviation there to, shall comply with the provisions of DMMC 20.07.240 and approved pursuant to a permit issued as provided in this Chapter.

(3) Replacement utility pole - street lighting. With the express permission of the City, a replacement utility pole or a new utility pole may be permitted in the form of a new streetlight standard. The design of the street light standard shall be in accordance with adopted City construction standards when located outside of a Design Zone or underground district. Replacement utility poles/street light standards located within a Design Zone shall conform to the adopted streetscape design standard for the Design Zone.

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Wherever technologically feasible, all equipment and cabling shall be internal to the replacement street lighting standard.

(4) Undergrounded areas. In areas in which utilities have been undergrounded, a service provider or infrastructure company desiring to locate any above-ground infrastructure in support of a small cell deployment shall submit a concealment element plan in accordance with the provisions of DMMC 20.07.240(6).

(5) Undergrounded areas in Urban Designed Corridors. In areas in which utilities have been undergrounded and improved as urban designed corridors, a service provider or infrastructure company desiring to locate any aboveground infrastructure shall provide a separate, stand-alone pole that matches the urban design theme of the corridor. Pole design to be approved by the City pursuant to DMMC 20.07.240(6)

20.07.240 Design and Concealment Standards for Small Cell Deployments. Small cell deployments whether permitted on the right-of-way pursuant to a franchise or in accordance with this chapter shall conform to the following design standards:

(1) Small Cell Facilities attached to non-wooden poles. Small cell facilities attached to existing or replacement non-wooden light poles and other non-wooden poles in the right of way or poles outside of the right of way shall conform to the following design criteria:

(a) Antennas and the associated equipment enclosures shall be sited and installed in a manner which minimizes the visual impact on the streetscape either by fully concealing the antennae and associated equipment fully within the pole or through a concealment element plan which provides an

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equivalent or greater impact reduction. This requirement shall be applied in a manner which does not dictate the technology employed by the service provider nor unreasonably impair the technological performance of the equipment chosen by the service provider.

(b) All conduit, cables, wires and fiber must be routed internally in the light pole. Full concealment of all conduit, cables, wires and fiber is required within mounting brackets, shrouds, canisters or sleeves if attaching to exterior antennas or equipment.

(c) An antenna on top of an existing pole may not extend more than six (6) feet above the height of the existing pole and the diameter may not exceed sixteen (16) inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that it appears as a continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole except for canister antennas which shall not require screening. All cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.

(d) Any replacement pole shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way.

(e) The height of any replacement pole may not extend more than ten (10) feet above the height of the existing pole or the minimum additional height necessary for adequate clearance from electrical wires, whichever is greater.

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(f) The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements, ADA requirements, and if a replacement light standard then with the City's lighting requirements.

(g) The use of the pole for the siting of a small cell facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small cell facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small cell facility and the small cell facility and all associated equipment shall be removed.

(2) Wooden pole design standards. Small cell facilities located on wooden poles shall conform to the following design criteria:

(a) The wooden pole at the proposed location may be replaced with a taller pole for the purpose of accommodating a small cell facility; provided, that the replacement pole shall not exceed a height that is a maximum of ten (10) feet taller than the existing pole, unless a further height increase is required and confirmed in writing by the pole owner and that such height extension is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities.

(b) A pole extender may be used instead of replacing an existing pole but may not increase the height of the existing pole by more than ten (10) feet unless a further height increase is required and confirmed in writing by the pole owner and that such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities. A "pole extender" as used herein is an

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object affixed between the pole and the antenna for the purpose of increasing the height of the antenna above the pole. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole.

(c) Replacement wooden poles may either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the pole owner in the City.

(d) Antennas, equipment enclosures, and all ancillary equipment, boxes and conduit shall be colored or painted to match the approximate color of the surface of the wooden pole on which they are attached.

(e) Panel antennas shall not be mounted more than twelve (12) inches from the surface of the wooden pole.

(f) Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a wooden pole provided that each antenna enclosure shall not be more than three (3) cubic feet in volume, with a cumulative total antenna volume not to exceed nine (9) cubic feet, unless additional volume is technically necessary which in such cases the total volume may not exceed twelve (12) cubic feet.

(g) A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection 2(a) above. A canister antenna mounted on the top of a wooden pole shall not exceed sixteen (16) inches, measured at the top of the pole, and shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may propose a side mounted canister

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antenna, so long as the inside edge of the antenna is no more than twelve (12) inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.

(h) An omni-directional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four (4) feet in height and is mounted directly on the top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.

(i) All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on wooden poles shall not be mounted more than six (6) inches from the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.

(j) Equipment for small cell facilities must be attached to the wooden pole, unless otherwise permitted to be ground mounted pursuant to subsection (5)(a). The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure may not exceed seventeen (17) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and does not cumulatively exceed seventeen (17) cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole if such banners or road signs are allowed by the pole owner.

(k) An applicant who desires to enclose its antennas and equipment within a unified

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enclosure may do so, provided that such unified enclosure does not exceed four (4) cubic feet. To the extent possible the unified enclosure shall be placed so as to appear as an integrated part of the pole or behind banners or signs. The unified enclosure may not be placed more than six (6) inches from the surface of the pole unless a further distance is technically required and confirmed in writing by the pole owner.

(l) The visual effect of the small cell facility on all other aspects of the appearance of the wooden pole shall be minimized to the greatest extent possible.

(m) The use of the wooden pole for the siting of a small cell facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small cell facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small cell facility and the small cell facility and all associated equipment shall be removed.

(n) All cables and wires shall be routed through conduit along the outside of the pole. The outside conduit shall be colored or painted to match the pole. The number of conduit shall be minimized to the number technically necessary to accommodate the small cell.

(3) Small cell facilities attached to existing buildings. Small cell facilities attached to existing buildings, shall conform to the following design criteria:

(a) Small cell facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.

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(b) The interruption of architectural lines or horizontal or vertical reveals is discouraged.

(c) New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if it complements the architecture of the existing building.

(d) Small cells shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.

(e) Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.

(f) Small cell facilities shall be painted and textured to match the adjacent building surfaces.

(4) Small cell facilities mounted on cables strung between existing utility poles shall conform to the following standards.

(a) Each strand mounted facility shall not exceed (3) cubic feet in volume;

(b) Only one strand mounted facility is permitted per cable between any two existing poles;

(c) The strand mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than six (6) feet from the pole unless a greater distance is technically necessary or required by the pole owner for safety clearance;

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(d) No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic;

(e) Ground mounted equipment to accommodate such strand mounted facilities is not permitted, except when placed in pre-existing equipment cabinets;

(f) Pole mounted equipment for strand mounted facilities shall meet the requirements of for pole mounted small cells; and

(g) Such strand mounted devices must be installed to cause the least visual impact and with the minimum exterior cabling or wires (other than the original strand) necessary to meet the technological needs of the facility.

(5) General requirements.

(a) Ground mounted equipment in the rights of way is prohibited unless such facilities are placed under ground or the applicant can demonstrate that pole-mounted or undergrounded equipment is technically infeasible. If ground mounted equipment is necessary, then the applicant shall submit a concealment element plan. Generators located in the rights of way are prohibited.

(b) No equipment shall be operated so as to produce noise in violation of Chapter 18.185 DMMC.

(c) Small cell facilities are not permitted on traffic signal poles.

(d) Replacement poles and new poles shall comply with the American with Disabilities Act (ADA), City construction and sidewalk clearance standards, and state and federal regulations in order to provide a clear and safe passage within the rights-of-way.

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(e) Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole.

(f) The design criteria as applicable to small cell facilities described herein shall be considered concealment elements and such small cell facilities may only be expanded upon an eligible facilities request described in Chapter 20.10 DMMC, when the modification does not defeat the concealment elements of the facility.

(g) No signage, message or identification other than the manufacturer's identification or identification required by governing law is allowed to be portrayed on any antenna, and any such signage on equipment enclosures shall be of the minimum amount possible to achieve the intended purpose; provided that, signs are permitted as concealment element techniques where appropriate.

(h) Antennas and related equipment shall not be illuminated except for security reasons, required by a federal or state authority, or unless approved as part of a concealment element plan.

(i) Side arm mounts for antennas or equipment are prohibited.

(j) The preferred location of a small cell facility on a pole is the location with the least visible impact.

(k) Antennas, equipment enclosures and ancillary equipment, conduit and cable, shall not dominate the building or pole upon which they are attached.

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(l) The City may consider the cumulative visual effects of small cells mounted on poles within the rights-of-way in when assessing proposed siting locations so as to not adversely affect the visual character of the City. This provision shall not be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the service provider.

(m) These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the applicant, alternative forms of concealment or deployment may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.

(6) New poles in the rights-of-way for small cell facilities and installations in a design district.

(a) New poles within the rights-of-way are only permitted if the applicant can establish that:

(i) The proposed small cell facility cannot be located on an existing utility pole or light pole, electrical transmission tower or on a site outside of the public rights of way such as a public park, public property, building, transmission tower or in or on a non-residential use in a residential zone whether by roof or panel-mount or separate structure;

(ii) The proposed wireless communications facility receives approval for a

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concealment element design, as described in subsection (c) below;

(iii) The proposed wireless communications facility also complies with shoreline and SEPA, if applicable; and

(iv) No new poles shall be located in a critical area or associated buffer required by the City's Critical Areas Management ordinance, except when determined to be exempt pursuant to said ordinance.

(b) The concealment element design shall include the design of the screening, fencing or other concealment technology for a tower, pole, or equipment structure, and all related transmission equipment or facilities associated with the proposed wireless communications facility, including but not limited to fiber and power connections.

(i) The concealment element design should seek to minimize the visual obtrusiveness of wireless communications facility installations. The proposed pole or structure should have similar designs to existing neighboring poles in the rights of way, including to the extent technically feasible similar height. Other concealment methods include, but are not limited to, integrating the installation with architectural features or building design components, utilization of coverings or concealment devices of similar material, color and texture - or the appearance thereof - as the surface against which the installation will be seen or on which it will be installed, landscape design, or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all conduit and wirelines are installed internally in the structure or otherwise integrated into the design of the structure. Use of a unified enclosure

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equal to or less than four (4) cubic feet in volume may be permitted in meeting these criteria.

(ii) If the City Manager has already approved a concealment element design either for the applicant or another wireless communications facility along the same public right-of-way or for the same pole type, then the applicant shall utilize a substantially similar concealment element design, unless it can show that such concealment element design is not physically or technologically feasible, or that such deployment would undermine the generally applicable design standards.

(c) Even if an alternative location is established pursuant to subsection 6(a)(1) the conditional use permit process may determine that a new pole in the right-of-way is in fact a superior alternative based on the impact to the City, the concealment element design, the City's Comprehensive Plan and the added benefits to the community.

(d) Prior to the issuance of a permit to construct a new pole or ground mounted equipment in the right-of-way, the applicant must obtain a site-specific agreement from the City to locate such new pole or ground mounted equipment. This requirement also applies to replacement poles that are higher than the replaced pole, and the overall height of the replacement pole and the proposed wireless communications facility is more than sixty (60) feet.

(e) Installation of small cell facilities in a Design Zone [20.07.260 DMMC] shall be permitted by an administrative approval of a concealment plan utilizing the design and concealment standards contained in this chapter.

(f) These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be

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interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the applicant, alternative forms of concealment or deployment may be permitted which provide similar or greater.

20.07.260 Designated Design Zones

Design Zones. The following zones are designated as Design Zones for the purpose of the application of the provisions of this chapter of the Des Moines Municipal Code.

- (1) Pacific Ridge-Commercial (PR-C);
- (2) Pacific Ridge Residential (PR-R); and
- (3) Marina District Planning Area.

The concealment element design developed pursuant to DMMC 20.07.240(6) shall utilize the Design Guidelines adopted for the design districts by Ordinance Nos. 1486 and 1268 respectively.

20.07.270 Review of Wireless Communications Facilities Other Than Small Cell Deployments. Other wireless communication facilities shall be reviewed pursuant to this chapter, including wireless communication facilities outside of the Public Rights of Way and all wireless communication facilities other than small cells when located in the public right-of way.

(1) These provisions shall be interpreted and applied in order to comply with the provisions of federal law. By way of illustration and not limitation, any small cell facility which has been certified as compliant with all FCC and other government regulations regarding the human exposure to radio frequency emissions will not be denied on

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the basis of RF radiation concerns. See DMMC
20.07.140(2)(f).

(2) Wireless communication facilities
shall be subject to the requirements of this Chapter
to the extent that such requirements (i) do not
unreasonably discriminate among providers of
functionally equivalent services, and (ii) do not
have the effect of prohibiting personal wireless
services within the City.

DIVISION IV

GENERALLY APPLICABLE REQUIREMENTS

20.07.280130 Nonuse/abandonment.

(1) **Abandonment.** No less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the City of Des Moines by certified U.S. mail of the proposed date of abandonment or discontinuation of operation. In the event that a licensed carrier fails to give notice, the facility shall be considered abandoned upon the City's discovery of discontinuation of operation. Upon such abandonment, the provider shall have 60 days or additional period of time determined in the reasonable discretion of the City within which to:

(a) Reactivate the use of the facility or transfer the facility to another provider who makes actual use of the facility; or

(b) In the event that abandonment as defined in this title occurs due to relocation of an antenna at a lower point on the antenna support structure, reduction in the effective radiated power of the antenna or reduction in the number of transmissions from the antennas, the operator of the tower shall have six months from the date of effective abandonment to co-locate another service

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on the tower. If another service provider is not added to the tower, then the operator shall promptly dismantle and remove that portion of the tower which exceeds the minimum height required to function satisfactorily. Notwithstanding the foregoing, changes which are made to personal wireless facilities which do not diminish their essential role in providing a total system shall not constitute abandonment. However, in the event that there is a physical reduction in height of substantially all of the provider towers in the City or surrounding area then all of the towers within the City shall similarly be reduced in height.

(2) Dismantle and Removal Facility. If the tower, antenna, foundation, base station, replacement pole and/or other and ~~facility is~~ are not removed within the 60-day time period or additional period of time allowed by the City, the City may remove such tower, antenna, foundation, base station, replacement pole and/or other and ~~related~~ facility at the provider's expense. If there are two or more providers co-locating on a facility, except as provided for in the paragraph above, this provision shall not become effective until all providers cease using the facility.

At the earlier of 60 days from the date of abandonment without reactivating or upon completion of dismantling and removal, City approval for the facility shall automatically expire.

20.07.290140 Third-party review. Personal wireless service providers use various methodologies and analyses, including geographically-based computer software, to determine the specific technical parameters of their services and low power mobile radio service facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. In certain instances, a third-party expert may need to review the technical data submitted by a provider. The City

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may require a technical review as part of a permitting process. The costs of the technical review shall be borne by the provider.

The selection of the third-party expert may be by mutual agreement between the provider and the City, or at the discretion of the City, with a provision for the provider and interested parties to comment on the proposed expert and review his or her qualifications. The expert review is intended to address interference and public safety issues and be a site-specific review of technical aspects of the facilities or a review of the providers' methodology and equipment used and not a subjective review of the site which was selected by a provider. Based on the results of the expert review, the City may require changes to the provider's application. The expert review shall address the following:

- (1) The accuracy and completeness of submissions;
 - (2) The applicability of analysis techniques and methodologies;
 - (3) The validity of conclusions reached;
- and
- (4) Any specific technical issues designated by the City.

Sec. 3. Chapter 20.10 DMMC, Appeals, and section 118 of Ordinance No. 1316 are hereby repealed and replaced as chapter 20.10 DMMC, Eligible facility requests and appeals, to read as follows:

CHAPTER 20.10

Eligible Facility Requests and Appeals

20.10.010. Purpose. Congress and the

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Federal Communications Commission ("FCC") have, pursuant to the authority granted by 47 USC 253(c) and 47 USC 332(a), required local governments to act on wireless communication facility applications within a reasonable period of time and have established time limits or "shot clocks" for local review. The Washington State Legislature has also adopted similar limitations under the provisions of Chapter 35.99 RCW. Accordingly, the City adopts the following time limits for review of applications for Eligible Facility Requests, Small Cell Permits, and other approvals for service providers of telecommunication services.

20.10.020. Eligible Facilities Request.

(1) Application Review.

(a) Application. The City Manager shall prepare and make publicly available an application form which shall be limited to the information necessary for the City to consider whether an application is an Eligible Facilities Request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.

(b) Type of Review. Upon receipt of an application for an Eligible Facilities Request pursuant to this Chapter, the City Manager shall review such application to determine whether the application qualifies as an Eligible Facilities Request.

(c) Time frame for review. Within sixty (60) days of the date on which an applicant submits an application seeking approval under this Chapter, the City Manager shall approve the application unless it determines that the application is not covered by this section.

(d) Tolling of the time frame for

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review. The sixty (60) day review period begins to run when the application is filed and may be tolled only by mutual agreement by the City Manager and the applicant or in cases where the City Manager determines that the application is incomplete. The time frame for review of an Eligible Facilities Request is not tolled by a moratorium on the review of applications.

(i) To toll the time frame for incompleteness, the City Manager shall provide written notice to the applicant within thirty (30) days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application.

(ii) The time frame for review begins running again when the applicant makes supplemental submission in response to the City Manager notice of incompleteness.

(iii) Following a supplemental submission, the City Manager will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this subsection. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(e) Determination that application is not an eligible facilities request. If the City Manager determines that the applicant's request does not qualify as an Eligible Facilities Request, the City Manager shall deny the application. To the extent additional information is necessary, the City Manager may request such information from the applicant to evaluate the application under other

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provisions of this chapter and applicable law.

(f) Failure to act. In the event the City Manager fails to approve or deny a request for an Eligible Facilities Request within the time frame for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the City Manager in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(g) Remedies. Both the applicant and the City may bring claims related to Section 6409(a) of the Spectrum Act to any court of competent jurisdiction.

20.10.030. Collocation. Eligible collocations other than those defined in DMMC 20.07.080 shall be processed within ninety (90) days of receipt of a complete application. The City Manager will notify the applicant within thirty (30) days of receipt of an application whether it is complete or if additional information is required. The term collocation shall not apply to the initial placement of a small cell facility on a utility pole or on any other base station or tower that was not constructed for the sole or primary purpose of an FCC licensed antenna and their associated facilities.

20.10.040. New wireless communication facilities. New wireless communications facilities shall be processed within one-hundred fifty (150) days of receipt of a complete application. The City Manager will notify the applicant within thirty (30) days of receipt of an application whether it is complete or if additional information is required.

20.10.050. An Administrative appeal of administrative decision. A decision of the City Manager or the City Manager's designee made in

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accordance with this Title, including assessment of fees as provided herein, shall be considered a final administrative decision. A person aggrieved by a decision of the City Manager or designee made pursuant to this Title may appeal such decision to the Hearing Examiner in accordance with the Hearing Examiner Code, chapter 18.240 DMMC. The time and the form of such appeals is provided in chapter 18.240 DMMC, provided, however, that:

(1) The processes and procedures described in chapter 18.240 DMMC shall be expedited and adjusted, as necessary, to comply with provisions of this chapter and stated Federal law.

(2) Nothing herein shall be interpreted to provide for an appeal of a decision of the City Council to approve, deny or conditionally approve the grant of a Franchise or license to use the Public Rights-of-Way.

(3) The procedures in this chapter are not land use actions and are not subject to the provisions of RCW 36.70B.070 through 36.70B.130. See section 18.20.060 and RCW 36.70B.140(i).

NEW SECTION. Sec. 4. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

NEW SECTION. Sec.5. Effective date. This Ordinance shall take effect and be in full force five (5) days after its final passage by the Des Moines City Council in accordance to law.

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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: _____

July 9, 2018

MS. TINA HICKEY
MINOR HOME REPAIR
21630 11TH AVE. SO. #D
DES MOINES, WA 98198

My dear Ms. Hickey,

I want to thank you for

- *toilets that flush properly and don't leak
- *bathroom floor that stays put
- *a faucet that does not drip continuously
- *stove burners that do not spark

Very sincerely,


Florencia L. Aranca

BETTER BUSINESS BUREAU

POB 1000

Dupont 98327

My dear gentlemen;

I want to rave about the City of Des Moines, WA. For helping me with minor home repairs. The city has certainly made my life more comfortable and safer.

Very sincerely yours,

A handwritten signature in cursive script that reads "Florencia L. Aranca". The signature is written in black ink and is positioned above the printed name.

FLORENCIA L. ARANCA

Cc: MS. TINA HICKEY

City of Des Moines

Good evening. I am here to make remarks about fireworks in our city. As we all know, they are against the law. As we all know, there are people who purchase and use fireworks anyway. There were 74 calls into the police department this fireworks season. 29 calls resulted in some sort of contact with someone regarding fireworks. Two addresses were contacted twice, one within a couple of hours on the night of the 4th of July. Zero citations were issued. All 29 of those contacts were given a warning or provided information about the Des Moines Municipal Code regarding fireworks. Even the people at the address who were contacted twice on the same night.

This is frustrating to the citizens of Des Moines. There is a pervasive feeling that there is no point in calling the police because they won't do anything about crime anyway. If you haven't been shot, raped, or murdered, there just isn't any point any more. This small set of data about fireworks seems to back that feeling up.

As a block watch captain, I spend a lot of time just trying to get people to call the police when their mail is stolen or their car is broken into. I try to convince them that something will be done if we keep calling and the police can get enough information to do something. That being said, 41 calls did not result in any contact with someone with fireworks. 37 calls either didn't have good address information or the people lighting off the fireworks were gone before the police could arrive. We citizens can do a better job of gathering information to help the police do their jobs.

I would like to see anyone who is contacted more than once about illegally using fireworks start getting citations. Actual enforcement of the law is the only way to get through to some of these people. Fines will start eating into their fireworks budget for the year. This is a year round problem. From Independence Day to New Year's Eve to Seahawks games, our citizens have to deal with this for a month of Sundays throughout the year.

I expect our law enforcement to actually enforce our laws and when they are actively doing emphasis on fireworks and don't issue a single citation, that's frustrating. As we move forward, I encourage our officers to check and see if contact has been made about fireworks in the past and issue a citation when that is the case.

Thank you for your time, have a good evening.

**Des Moines Police Department Executive Summary:
2018 WSFC Law Enforcement Intelligence Survey**



In June of 2018, at the request of the Des Moines Police Department, the Washington State Fusion Center (WSFC) conducted an initial survey of the Des Moines Police Department's ability to gather, analyze and share intelligence.

The intent of this survey was to identify the most significant domain threats facing the Des Moines Police Department, as well as to identify administrative or policy considerations that hinder the development and use of intelligence information. Each law enforcement agency has domain threat(s) that vary in size and severity; by identifying these threats the Des Moines Police Department will be better equipped to prioritize intelligence efforts and resources. It is not only inefficient to operate blindly, but it is also potentially damaging, as it increases the risk of becoming too intrusive and/or gathering information that is not appropriate. Assuming that a particular threat is present when it is not will only result in wasted resources and distraction from real existing threats. On the same note, failing to base intelligence collection efforts on an identified threat may result in collecting information on persons or groups without the proper justification.

Survey Highlights:

- Burglaries/Auto Thefts, Gangs and Violent Crime are the most significant threats to public safety in Des Moines
- The Des Moines Police Department (PD) does not currently have a separate intelligence component
- The current Spillman database system is not used to its fullest potential and subsequently limits law enforcement operations
- Des Moines PD FIR cards are not used on a consistent basis and a general level of confusion surrounds their value
- Des Moines Shift Logs are not used on a consistent basis by the patrol teams
- Des Moines PD does not participate to any significant degree in the WSFC FLO program
- The Des Moines PD does not integrate with the Washington State Fusion Center or the Regional Intelligence Group within an intelligence partnership

Baseline:

Des Moines Police Department total staffing: 44
Des Moines Police Department Sworn Officers: 32
Intelligence Survey Responses: 27

(Note: some officers were either on leave or otherwise unavailable).

Survey Results:

Table 1.0

What groups currently pose the most significant threat(s) to the safety of your jurisdiction?

Gangs	Burglaries (property crimes)	Robberies	Auto Thefts
Mental Illness/Homelessness	Violent Crime (DV, Sexual Assaults, Drive by Shootings)	Drugs	

Note: Robberies were differentiated from Violent Crime due to the frequent specific noting by respondents. Drive by Shootings, while overwhelming due to gang activity, were also differentiated due to specific mention.

Table 1.1

Of the groups identified, list the three most significant threats in order of severity:

1. Burglaries	62.9%
2. Drugs/Opioids	59.2%
3. Violent Crime (DV, Sexual Assaults, Drive by Shootings)	48.1%

Table 1.2

The remaining significant threats in order of severity:

4. Gangs	40.7%
5. Robberies	25.9%
6. Auto Theft	22.2%
7. Mental Illness/Homelessness	18.5%

It should be noted that if a specific, quantifiable number of Violent Crimes (i.e, Drive By Shootings) could be assigned to Gang activity it would likely rise to a top-three significant threat. Likewise, if Robberies were added to Violent Crime it would rise to the number two significant threat (74%), and if Auto Theft were to be added to Burglaries (property crimes), it would remain the most significant threat at 85.1%

Table 2.0

Does the Des Moines Police Department utilize intelligence in support of investigative and law enforcement efforts?

Yes	4 (14.8%)
No	23 (85.1%)

As part of this survey each officer was asked for their recommendations on how to create or improve the Intelligence Program of the Des Moines Police Department. While the responses varied greatly in scope depending on the officer’s background and education, certain recommendations were generally consistent across the board.

Table 3.0

Below, based on the number of responses, were the most frequent observations/recommendations:

1.	The Spillman database needs to be better utilized to support the department.
2.	Utilization of the FIR cards needs to be consistent with all patrol teams.
3.	A full-time Crime Analyst is needed.
4.	The Shift Log, while sufficient to pass along basic information, is not satisfactory in and of itself.
5.	Spillman should be available in every patrol car.
6.	The Shift Log is not used uniformly and there are no mandatory requirements for what should be noted in the log.
7.	Informational stovepipes exist within the department.

Summary:

The Des Moines Police Department is staffed, to a person, with dedicated and professional officers. The following recommendations are made to improve communication as well as to increase officer and community safety. Many law enforcement agencies have an intelligence capability, but oftentimes this capability is limited in its utility because of failures in structure or direction. Perhaps the most common limitation is that the agency collects but does not analyze information. Instead, the information is stored in a database simply awaiting access. In Des Moines PD’s case, this database is Spillman, and there is department wide uncertainty as to whether key elements of information are even being captured for entry into the database.

During the individual interviews every officer was positive and optimistic about the future of the department. However, numerous officers expressed frustration with the Spillman system; its lack of user friendliness, its unavailability in the patrol cars, and perhaps most significantly, a lack of knowledge of the system’s capabilities.

Equally of consequence was the fact that many officers were unaware of the value and importance of collecting information that could be of intelligence value. For example, a few officers stated that they felt the time spent filling out the FIRs cards to be a waste of time. This is a training issue; every officer should understand, at least at the rudimentary level, what intelligence is and how it can be utilized in their jurisdiction. A basic understanding of the state, federal and local intelligence components and their mission and capabilities is a good first step towards a more comprehensive appreciation of intelligence collection.

The following issues and subsequent recommendations are noted:

1. **ISSUE:** The Spillman database system.

RECCOMENDATION: Many agencies struggle to provide real-time, accurate information to officers in the field, and the Des Moines Police Department has challenges in this area as well. The Spillman database system currently utilized by the Des Moines Police Department has been in place since June 1, 1995. This system needs to be better utilized to its optimal capacity in support of departmental operations. The recent command edict to initiate direct input of reports is a critical first step, but other steps are necessary to ensure that other cost-effective measures are being studied and implemented.

This includes remote access from patrol vehicles. Remote access would give officers the information they need to make educated decisions without relying solely on radio communication or returning to headquarters. While officers can currently access Spillman from their smartphones, this can be cumbersome and has limitations. However, if personnel could access agency data from a web-enabled laptop they could complete reports and interviews while in the field. This enables officers to stay out serving the community, rather than constantly making trips back to the office (a complaint noted by several officers).

2. **ISSUE:** Crime Analysis capability.

RECCOMENDATION: A fulltime Crime Analyst would greatly benefit the Department. Given budget considerations, a Crime Analyst with just one collateral duty would still greatly contribute to the program. Some officers have developed their own covert on-line presence to conduct analysis of certain social media, particularly gang activity. However, this is not guided by departmental policy or supervised by command staff. Several officers commented that the only crime analysis being conducted was the forwarding of law enforcement bulletins. One solution is a weekly or bi-weekly intelligence summary of key trends or criminal activity with accompanying analysis. This would serve to provide some strategic investigative and policing guidance to the department.

3. **ISSUE:** The Shift Log.

RECCOMENDATION: The Shift Log is the primary inter-departmental communication on intelligence, trends and major events. However, the Shift Log is not standardized across all four patrol teams, nor does it have designated entry criteria or mandated entries, ie, all violent crimes, DV calls even without arrests, etc. Non-pertinent information should be minimized. There was great variance in officer input regarding the Shift Log; some diligently read the log while others felt it was of limited to no value.

4. **ISSUE:** The FIR card.

RECCOMENDATION: Use of the FIR card should be standardized and mandated. Due to inconsistent use and lack of direction, interestingly characterized by one officer as “one step above canyons.” If remote in-vehicle access to Spillman officers is developed, an officer could direct input the FIR card thereby eliminating the multi-step administrative process currently in place.

5. **ISSUE:** Patrol Team’s Monthly Project.

RECCOMENDATION: Under current operations each patrol team selects a monthly project to focus on. However, there appears to be minimal coordination between patrol teams as well as no follow-up analysis or review. Officers are unaware of the value of the projects nor whether command staff have even reviewed the results. The monthly projects that each patrol team work on should be better refined, coordinated and provided with strategic guidance by command staff.

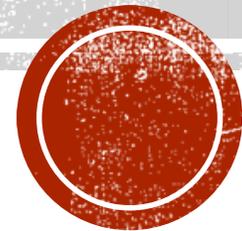
6. **ISSUE:** Interagency and interdepartmental cooperation and information sharing.

RECCOMENDATION: Improve departmental collaboration with adjoining jurisdictions, as well as with state and federal partners.

7. **ISSUE:** Officer training opportunities related to intelligence and information sharing.

RECCOMENDATION: Better advertising of training opportunities. For example, the Washington State Fusion Center offers numerous FLO classes throughout the year and the only cost to the Department would be per diem for lodging and mea

CITY MANAGER MONTHLY REPORT



June 2018

CITY MANAGER

- Mayors Roundtable Meeting.
- SCORE Executive Director Interviews.
- Midway Park Ecotech/Farmbot and Rotary Play Area Restoration at Midway Park.
- Aviation Advisory Committee Meeting.
- Washington Cities Insurance Authority Audit.
- Citizens Advisory Committee Neighborhood Meeting.
- SeaTac Stakeholders Advisory Round Table.
- Met with Michelle Wardian – Outdoor Research.



CHIEF OPERATIONS OFFICER

- SR 509
- Sound Transit
- Highline College
- Port of Seattle
- Citizens Advisory Committee Meeting



CITY CLERK

- Reported Public Record Statistics to JLARC (Joint Legislative Audit and Review Committee Reporting). Reporting period July 23-December 31, 2018 with a July 1, 2018 Deadline.
- Citizens Advisory Committee Neighborhood Meeting.
- Affordable Housing Meeting.
- Taria Completed Professional Development 1 Class.
- Public Records Statistics:
 - June:
 - 147 with 9 outstanding for June.
 - Total Outstanding (includes 2017): 41.
 - Total Requests Received Year to Date: 781.
 - 2017 January-June: 896.



COMMUNITY DEVELOPMENT

- Development activity remains brisk/Wesley Homes submitted Phase II building permits, a portion of the main building valued at \$52 million.
- Shoreline Master Program grant application complete with the Department of Ecology.
- Recycling – New quality standards and import bans by China are affecting the solid waste companies, could lead to rate increases Des Moines coordinating with other cities for analysis and discussion with Recology CleanScapes.
- I-C Zoning Amendments:
 - Revised draft ordinance presented to the Council Economic Development Committee.
 - Consultant technical memorandums, SEPA checklist, and Council set public hearing date for 8/23/18.



COURT

- Staffing Changes:
 - Court Clerk
 - Court Security Officer
- ATS Statistics Update



EMERGENCY MANAGEMENT

- CEMP (Comprehensive Emergency management Plan) Progress:
 - Basic plan.
 - Emergency Support Functions.
- NIMS (National Incident Management System) Training:
 - Online.
 - Classroom.
- Employee Preparedness:
 - At work.
 - At home.
- Community Emergency Response Teams (CERT):
 - Training.
 - Partnerships.



FINANCE

- Submitted the Audited Comprehensive Annual Financial Report for the fiscal year ended December 31, 2017 to the Government Finance Officers Association (GFOA)'s Certificate of Achievement for Excellence in Financial Reporting award program. The review process can take up to 6 months.
- Development and preparation of the Capital Improvement Plan 2019-2024.
- 2019 Budget Development.
- 2018 Bond Issue – Refunding of 2008 bonds and new bonds for the North Bulkhead improvements.



LEGAL

- Legal department coordinated with the City's consultants and other departments to finalize the draft ordinance amending Title 20 DMMC to provide for regulation of small cell wireless facilities.
- Staff prepared a draft ordinance repealing the City's parking tax. It was passed by the City Council June 28.
- Staff assisted the City Clerk with responding to a request for public records involving the City's Red light camera program and worked with DMPD to ensure that the program's annual reports are in strict compliance with state standards.
- The assistant city attorney worked with code enforcement officers on multiple issues including:
 - Addressing a commercial property and adjacent vacant lot in consultation with Planning and Building departments and South King Fire & Rescue.
 - Responding to our first request by a mortgage servicer under HB2057 for a determination that a property is abandoned, in mid-foreclosure, and a nuisance, AKA a "zombie property."



MARINA

- Ken Rogers' Unit for the Marina Container Village has arrived.
- Repaired and re-installed all Redondo Docks.
- Outstanding paid parking issues addressed:
 - Still in Beta pilot mode.
 - Evaluate and make changes as necessary.
- Combined parking revenue from July 6, 2017 to July 6, 2018:
 - \$192,263.03.
 - Approximately 218,678 vehicle entries in 2017.
 - Approximately 195,551 vehicle entries in 2018.
 - Total vehicle entries from July 6, 2017 to July 6, 2018: 414,229.



PARKS, RECREATION & SENIOR SERVICES

- Senior Center: Kathy Burrows began as Senior Services Manager.
- Events and Facilities: Coordination with Destination Des Moines and representatives from City Departments.
 - Meadow skimmed with sand to help level the area for weddings and lawn chairs. Thank you Adam and team!
- Club KHAOS: Before and after school ended June 20th, 320 children.
- Summer KHAOS started on June 21st, 247 children registered to date.
- T-Ball/Coach Pitch started: 9 teams/150 participants. June - 5 softball tournaments, 60 teams and 2,240 players and spectators.



POLICE

- 4th of July Police Operations.
- Redondo:
 - Coffee with a Cop.
 - Station.
 - Cameras.
- Community Services Officer Operations:
 - Tanya Seaberry to Community Outreach.
 - Kory Batterman to Code Enforcement.
 - Alarms and Training Data Entry to Records.
- Chief's Advisory Meetings.



PUBLIC WORKS

- The Barnes Creek Trail project has been selected for FHWA grant funding in the amount of \$519,000 to secure project Right of Way in 2021.
- On June 20th and 21st, Des Moines hosted the first of two scheduled **StormFests** that were held at Des Moines Beach Park. StormFest is a stormwater education event that provides an interactive field-based experience for 6th graders! In one day, students rotate through hands-on education stations, learning about their local watershed, the animals that live in them, sources of pollution, and engineering solutions to prevent stormwater pollution! Over 1,000 Highline School District students attended. This is StormFest's inaugural year – funded by a Washington State Department of Ecology GROSS Grant. StormFest will be again be offered to next school year's 6th graders on October 10th and 11th in Des Moines Beach Park.
- The new split position (50% fleet assistant and 50% facilities assistant) was filled on 6/18 by Joel Van Dyk.



Regulating Small Cells in the Right-of-Way

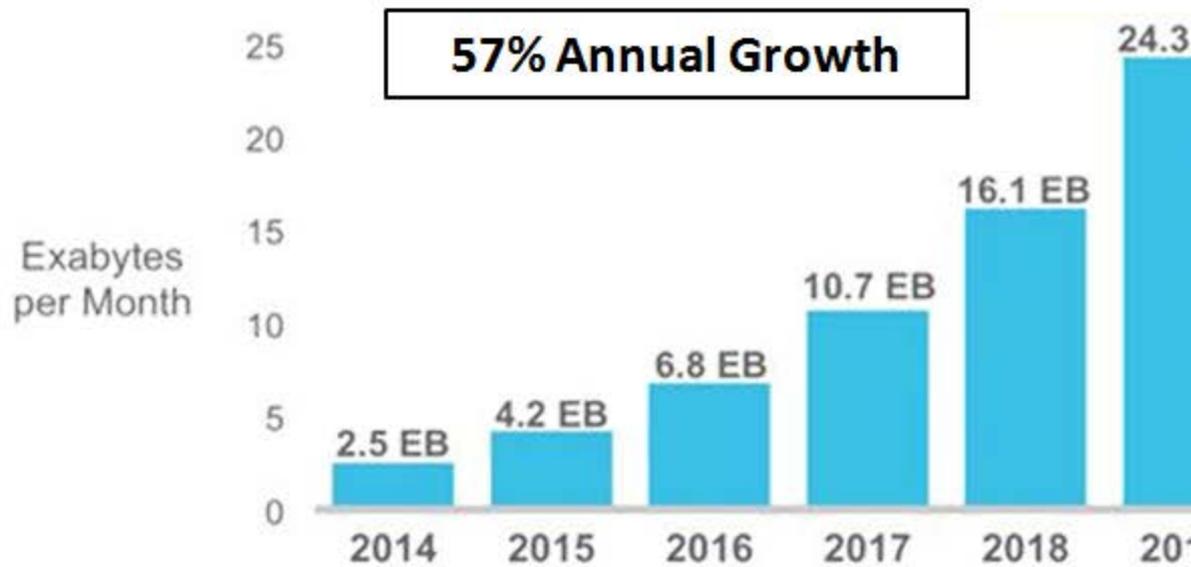


OMW

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The “why” behind small cell.

- ✓ Deploy Macro Cells
- ✓ Add Capacity to Existing Sites
- ✓ **Deploy Small Cells**



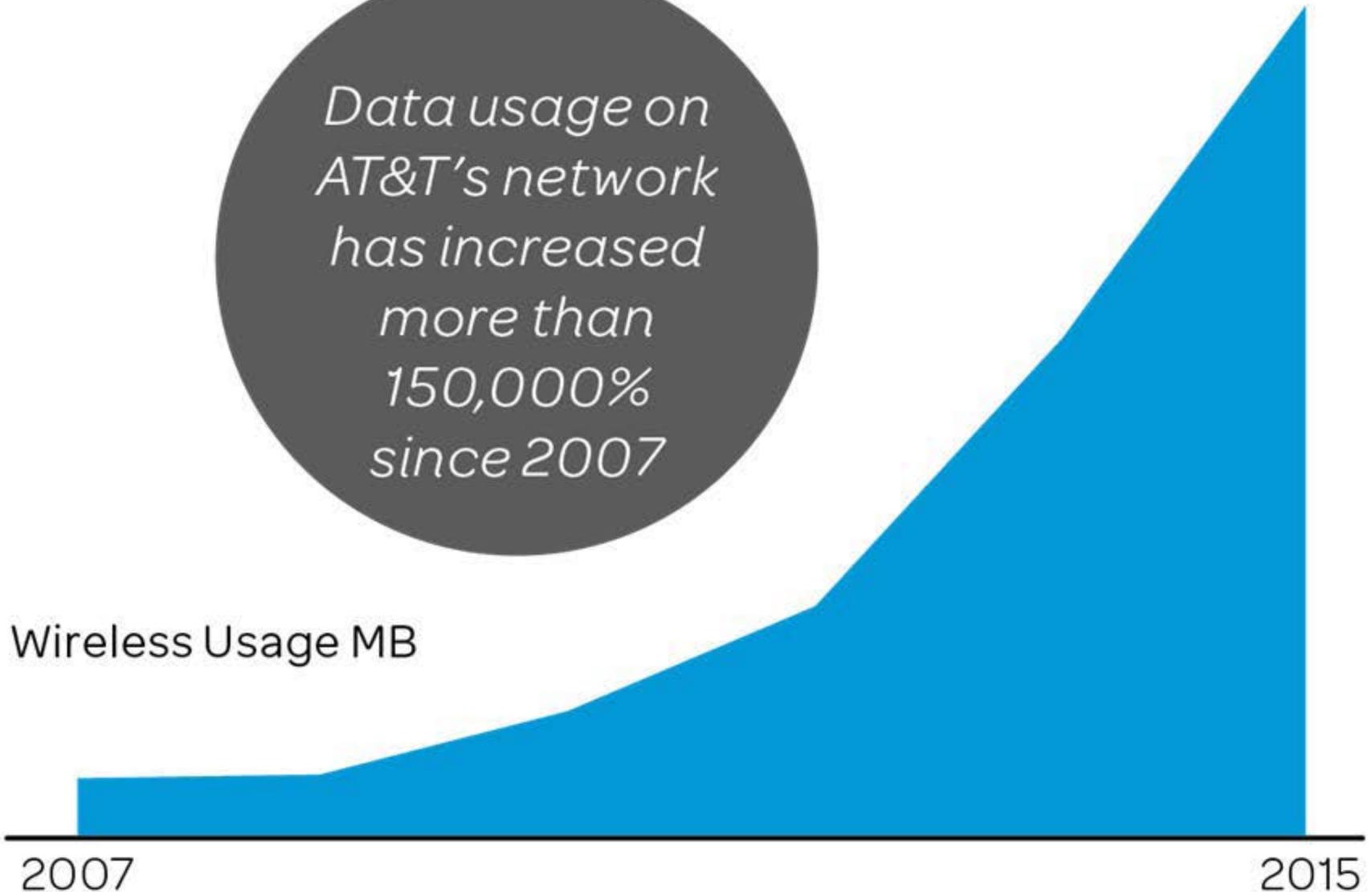
Global Mobile Data Traffic Projected Growth

Source: Cisco VNI Mobile, 2014

What the demand looks like on AT&T's network:

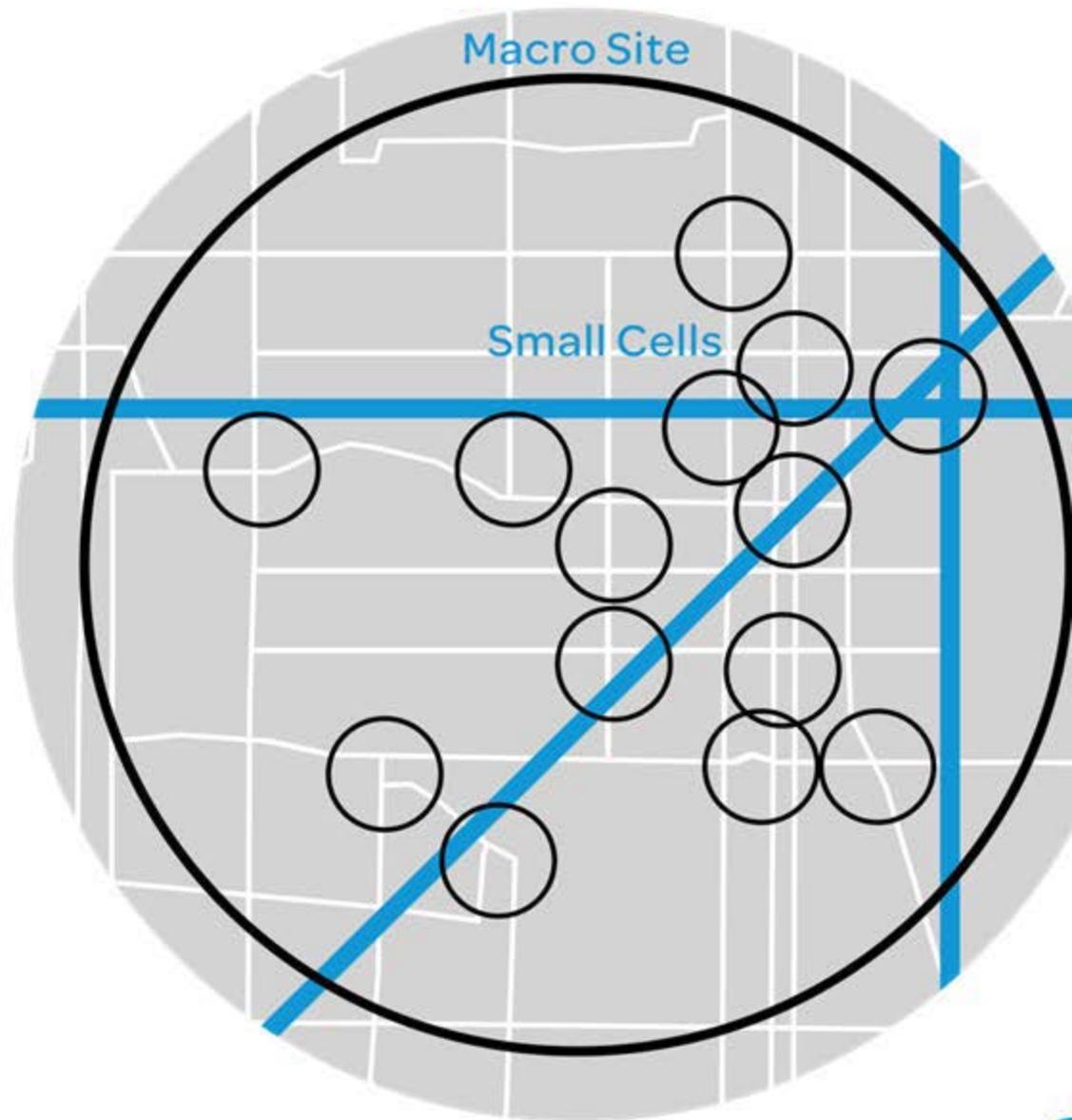
*Data usage on
AT&T's network
has increased
more than
150,000%
since 2007*

Wireless Usage MB

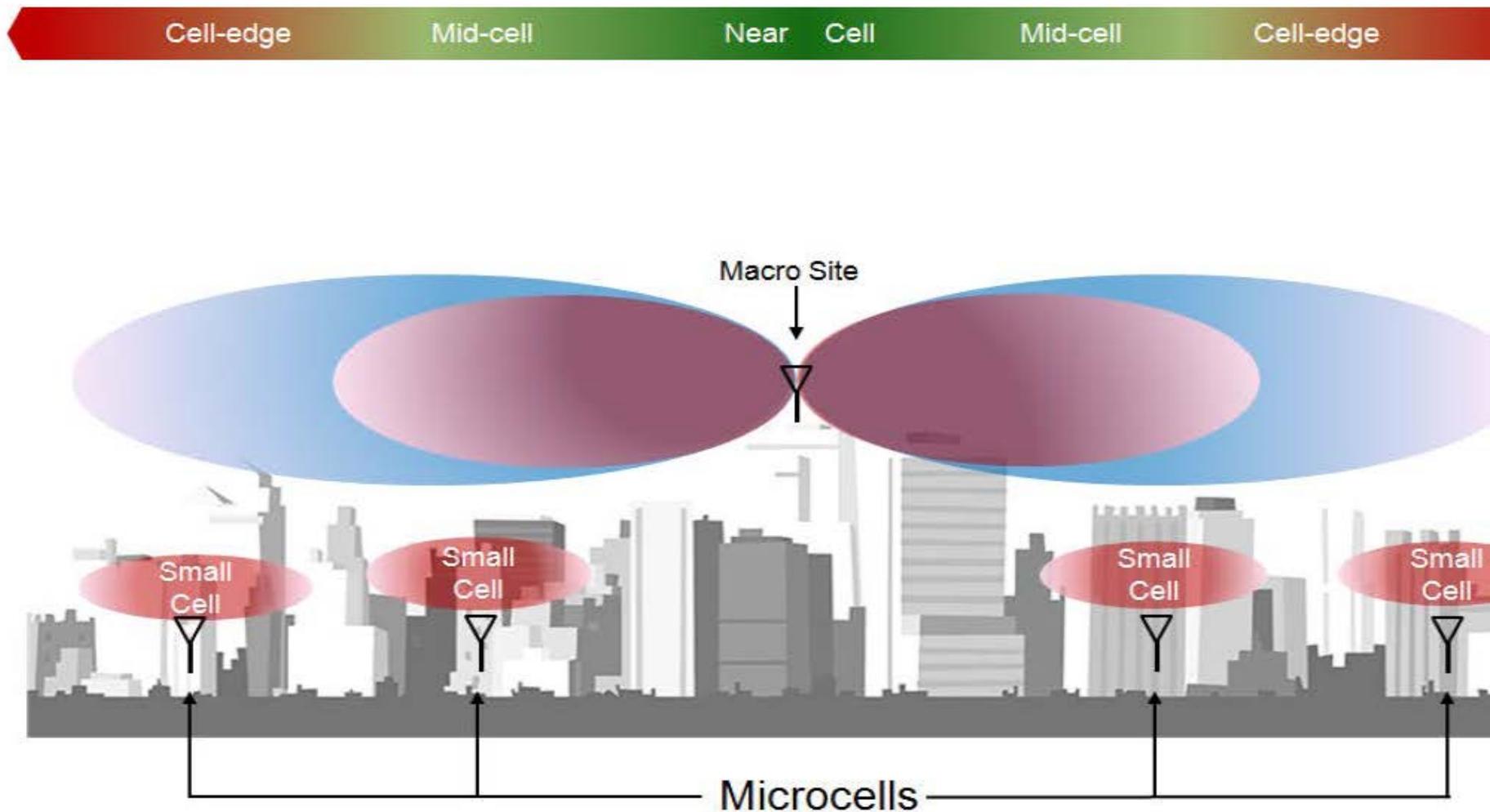




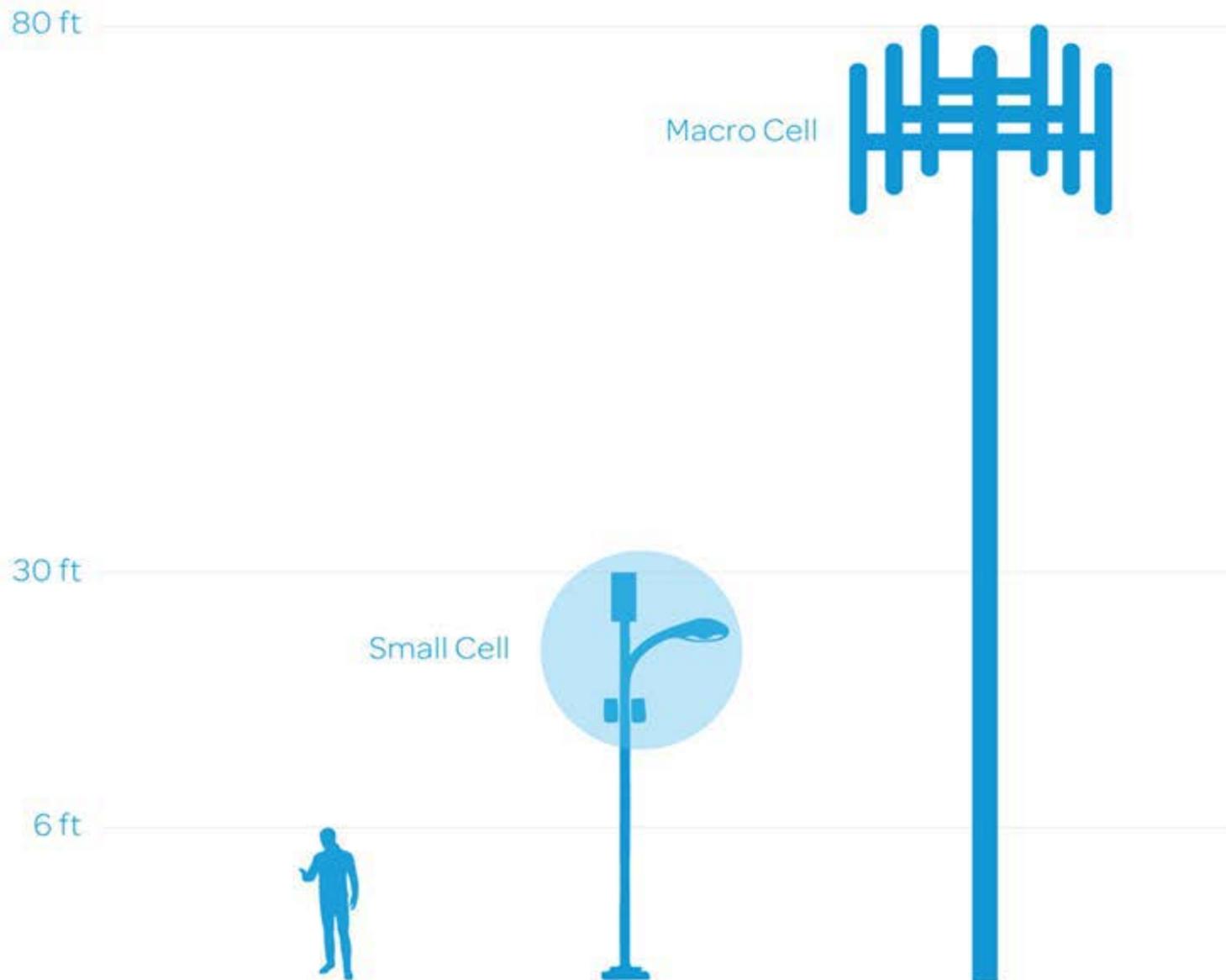
Small cells can
densify our
network to
meet customer
demand



Macro vs Small Cell



Different technology, different process



Definition of small cell facility - RCW 80.36.375

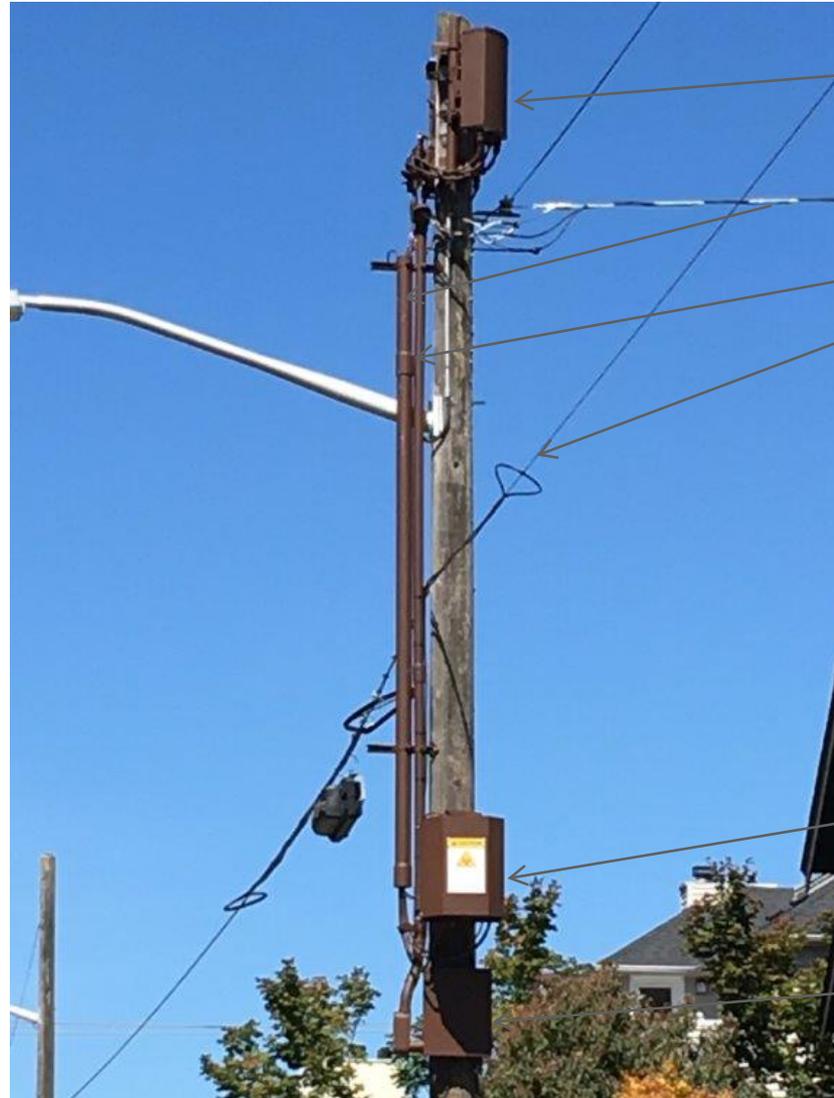
(d) "Small cell facility" means a personal wireless services facility that meets both of the following qualifications:

(i) Each antenna is located inside an antenna enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet

(ii) Primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume: Electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment power transfer switch, and cut-off switch.



Small Cell - Is more than a Small Antenna Box



Antenna

Fiber & Coax Conduit

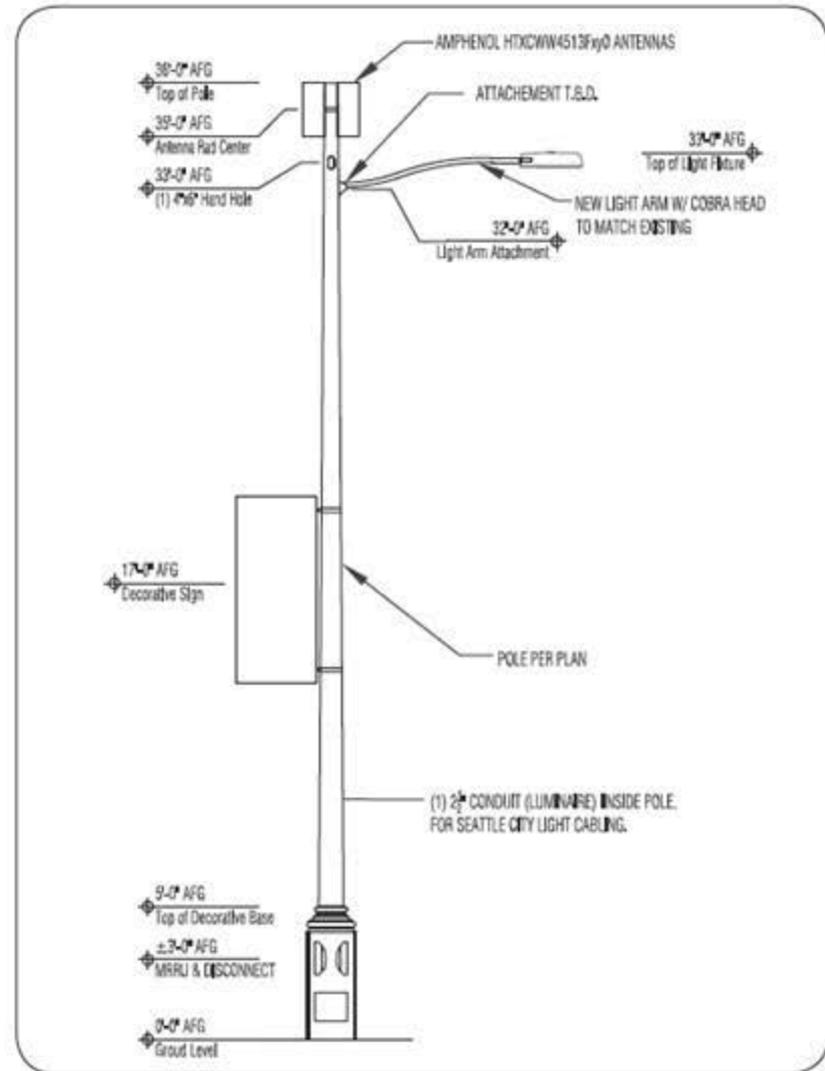
Power Conduit

New Fiber Service

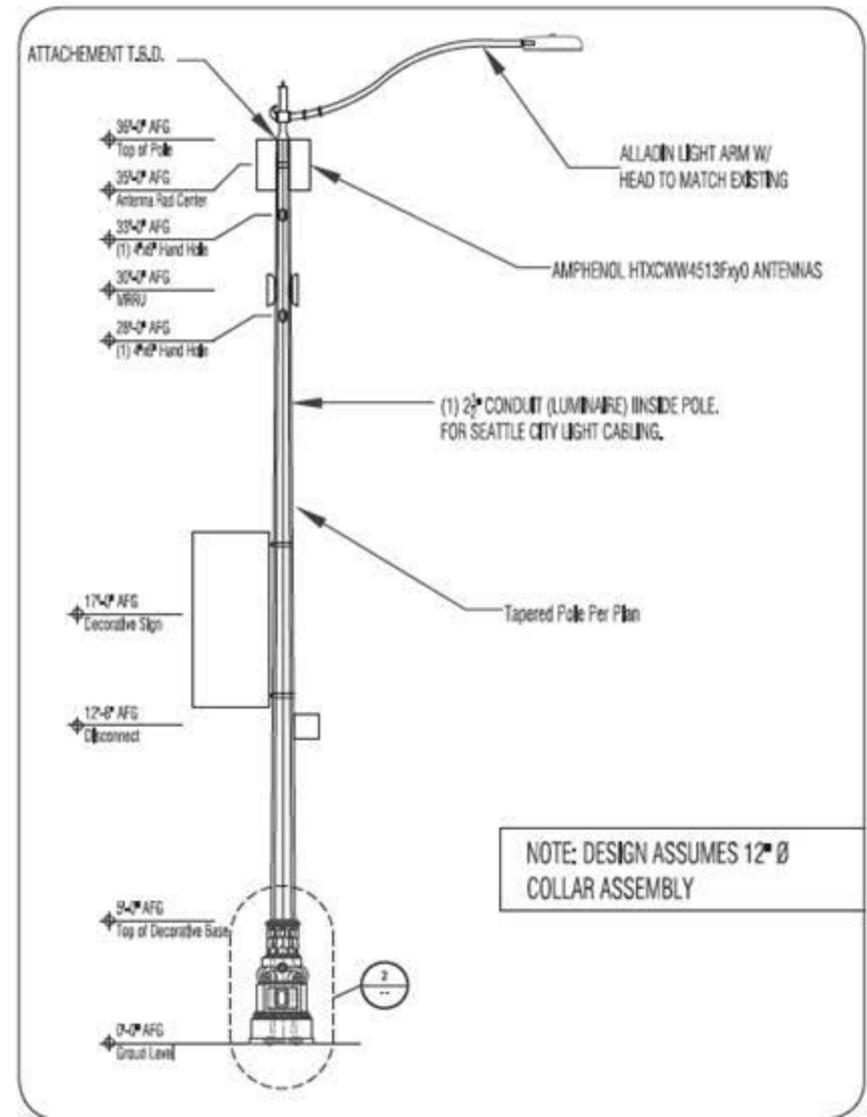
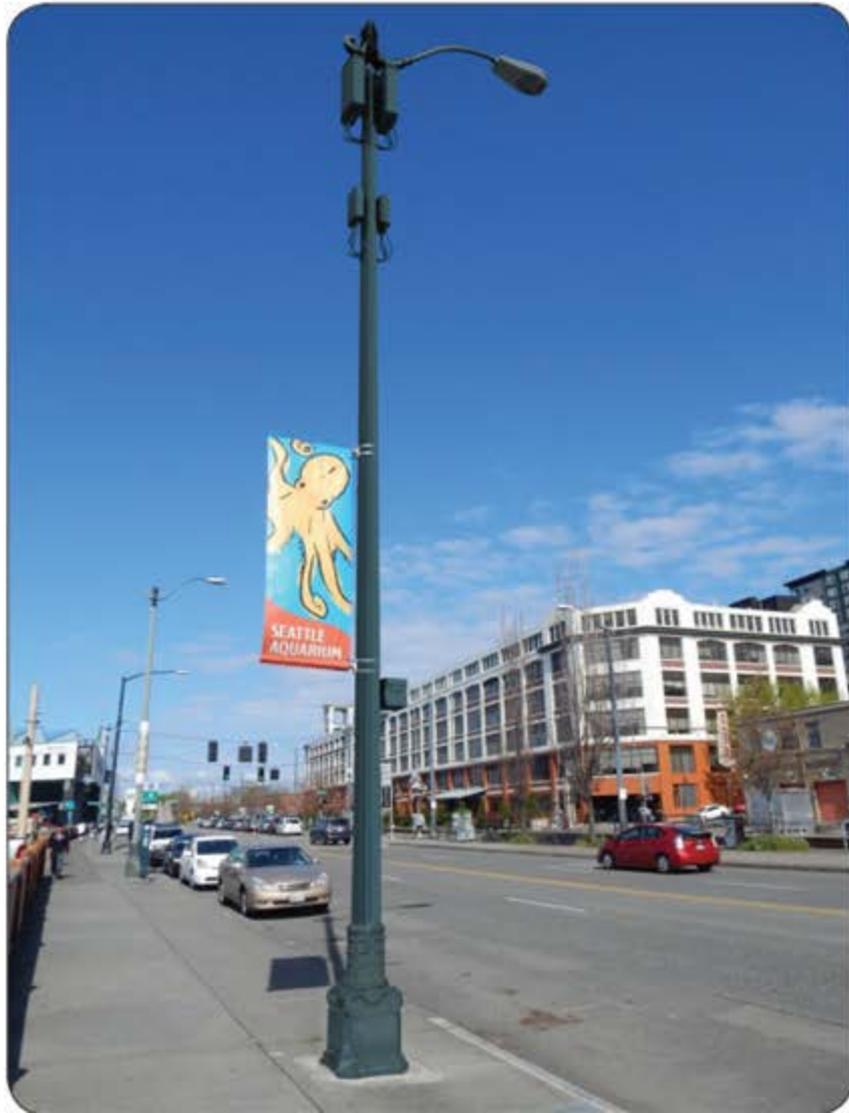
*Radios and Fiber
Termination Box in
a concealed shroud*

Power Disconnect

Small Cell Deployment: Simulation for Seattle (equipment in base)



Small Cell Deployment: Simulation for Seattle (pole mounted)



Verizon Seattle Strand Mount Trial



Combined antenna and radio units are mounted to a bracket that is hung on the fiber strand.

Fiber runs into the radios from a nearby fiber termination box.



Conduits contain power lines running from the supply space to the power disconnect and then to the antenna and radio units.

The power disconnect is mounted to the pole



DRAFT ORDINANCE

Des Moines

*Chapter 20.07 DMMC – Wireless
Communication
Facilities in the Public Right-of-Way*

Chapter 20.10 DMMC – Federal Shot Clocks

FRANCHISE – Exercise of Contracting Power

- 1) *Courts defer to City Council*
- 2) *Stewards of the right-of-way*

LAND USE

- 1) *Federal shot clocks*
- 2) *Right-of-way use not a “Land Use Action” – Ch. 36.70C (GMA)*
- 3) *Reserve for tough situations*
 - A. *Undergrounded Areas*
 - B. *New Poles*
 - C. *Design Districts and Urban Designed Corridors (“blue light street corridors”)*

State and Federal Pre-emption and Shot Clocks

A City May Not:

- 1. Effectively exclude a Wireless Communications provider from the City;**
- 2. Prevent a provider from closing significant gaps in coverage;**
- 3. Dictate or limit the technological choices of a provider;**
- 4. Regulate Radio Frequency Emissions; and/or**
- 5. Discriminate Between Service Providers.
(level playing field)**

A City May:

- 1. Address Aesthetic issues by requiring the “least intrusive means” of closing a coverage gap.**
- 2. Regulate new poles in the Right-of-Way and Utility poles over sixty (60) feet in height.**

KEY DESIGN ROLE

Pole Owner

PSE (utility poles) and City (light standards) control design by pole attachment agreements.

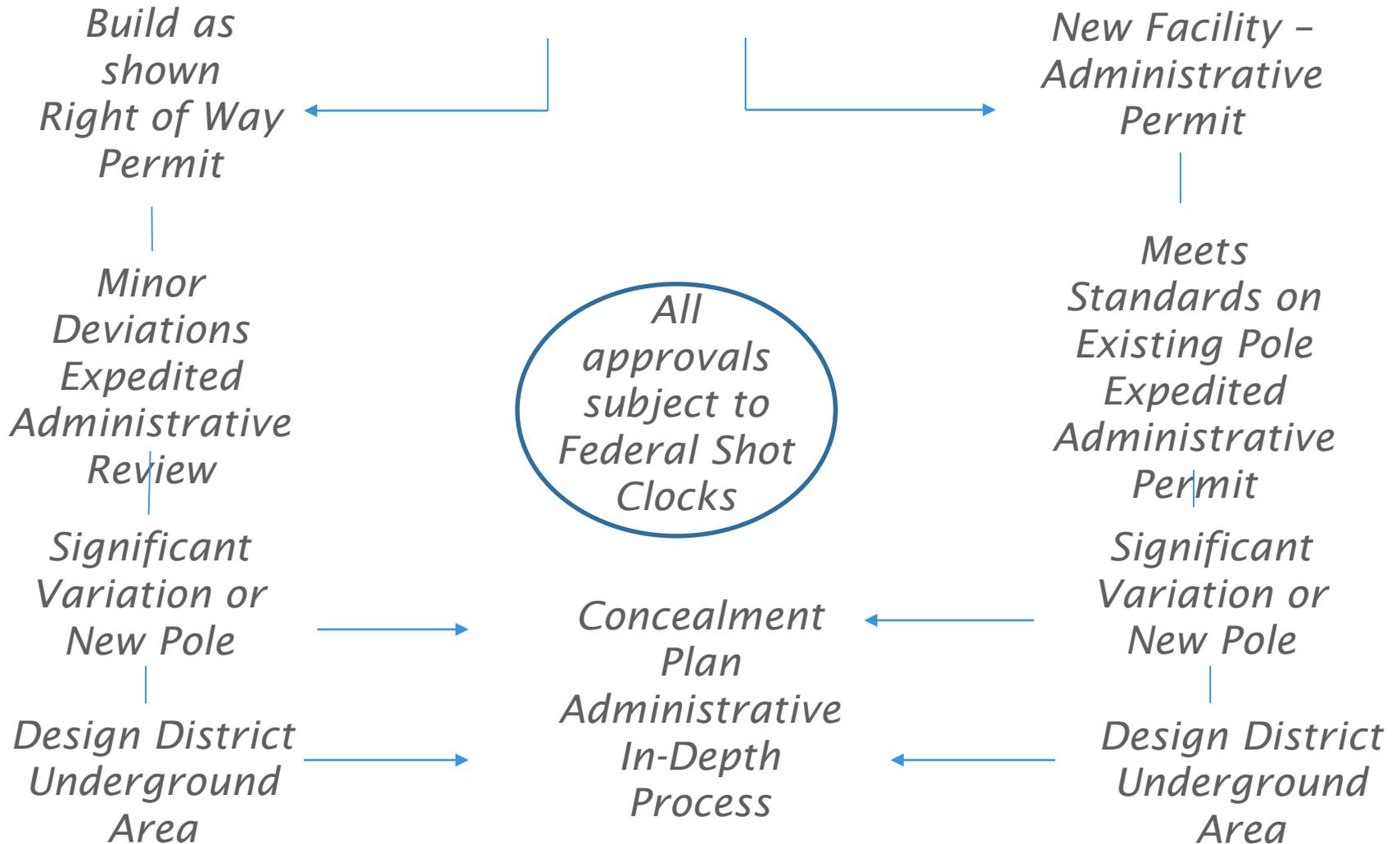
State and National Electrical Codes also dictate placement of small cell facilities

SHOT CLOCKS

Strict State and Federal Limitations on consideration of:

- **Master Permits (Franchise) – 120 days – Chapter 35.99 RCW**
- **Collocation. 90 days FCC**
- **Eligible Facilities Requests: Expansion of Existing Facilities. 60 days FCC**

Approved Franchise



SMALL CELLS – KEY CONCEPTS

1. *Incorporate federal shot clocks. Draft Chapter 20.10 DMMC*
2. *Take advantage of court's deference to City Council legislative and contract powers. Chapter 20.07 Division II DMMC*
3. *Treat small cells in the rights-of-way like other utilities [not land use decisions – RCW 36.70B.160 and 36.70C.020(a).] Revision to Chapter 20.07 Division II DMMC*
4. *Small Cell Design and Concealment Standards integrated with existing Macro Tower provisions. Chapter 20.07 Division III, DMMC, Section 20.07.240*

5. *Encourage use of existing utility poles. Discourage new poles. See, for example, draft 20.07.240(6) DMMC*
6. *Retain existing macro tower provisions. Chapter 20.07, Div. I DMMC*

