

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Authorizing the City Manager to Execute an Agreement for Relocation of Stormwater and Sewer Lines and Water Line Extensions with Merlone Geier Partners

DEPARTMENT: Public Works

PRESENTED BY: Tricia Juhnke, City Engineer

ACTION: ☐ Ordinance ☐ Resolution ☒ Motion
 ☐ Discussion ☐ Public Hearing

PROBLEM/ISSUE STATEMENT:

Earlier this year, the City and Merlone Geier Partners (MGP) negotiated a Development Agreement to create a 17.3-acre mixed use center in the middle of the 70-acre Aurora Square site, an area now called Shoreline Place, which was approved by the City Council on September 9, 2019. The Development Agreement specifies responsibilities for funding of frontage, intersection and storm drainage improvements, some of which will be constructed as part of the City's project to improvements to Westminster Way N and to N 155th Street, and others as part of the Alexan development under construction by Trammel Crow Residential (TCR) on the east and west side of Westminster Way N. A portion of Westminster Way N has been closed to facilitate construction of the Alexan project and the City's Westminster Way and 155th Street Intersection Improvement Project (Westminster/155 Project).

Subsequent to approval of the Development Agreement, the City and MGP have now negotiated an agreement, titled Agreement for Relocation of Stormwater and Sewer Lines and Water Line Extensions (Attachment A), which provides detail to implement the design, construction and funding of those improvements described above, and includes additional frontage, turn lane, sewer line relocation and water line extension improvements necessary for MGP's redevelopment of Shoreline Place.

With the City, MGP and TCR constructing improvements in the same area at approximately the same, coordination of the improvements will decrease overall disruption to the public from the right-of-way improvements and be a more cost-effective approach for all parties than subsequently excavating within Westminster Way N to complete the stormwater and sewer line relocations and the water line extensions at a later time in a separate project as would likely have occurred absent this coordination.

This Agreement between the City and MGP outlines the roles and responsibilities of work included in the Westminster/155 Project that, in conjunction with the Right of Way Improvement Phasing Agreement between the City and TCR, provides the foundation for coordination of the construction improvements. This Agreement also specifies the

methodology for calculating MGP's payment to the City for improvements outlined in the Development Agreement and other MGP improvements included in the City's construction contract. Tonight, Council is scheduled to authorize the City Manager to execute the Agreement for Relocation of Stormwater and Sewer Lines and Water Line Extensions with MGP.

RESOURCE/FINANCIAL IMPACT:

This Agreement addresses how the MGP's improvements included in the City construction contract are calculated and reimbursed, and how MGP reimburses the City for "in-lieu" frontage improvements built as part of the Alexan (TCR) Right of Way Improvement Phasing Agreement. A general outline of the funding elements addressed in this Agreement are:

1. MGP will fund their share of the Westminster/155 Project as specified in the Development Agreement based upon quantities and unit prices bid in the City project.
2. MGP will fund the sewer line relocation and water line extensions included in the Westminster/155 Project based upon quantities and unit prices bid in the City project.
3. MGP will reimburse the City for the in-lieu frontage along the MGP property based upon quantities and negotiated unit prices. These funds will reimburse the City for improvements included in the City contract that benefit the Alexan development.

The staff report for award of the Westminster/155 Project construction contract, which is expected in the coming months, will provide detail on funding for that project and include the funding in this Agreement, surface water utility funding (for the City storm line relocation) and a Transportation Improvement Board grant.

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute the Agreement for Relocation of Stormwater and Sewer Lines and Water Line Extensions with Merlone Geier Partners.

Approved By: City Manager **DT** City Attorney **MK**

BACKGROUND

On September 9, 2019, the City Council adopted Resolution No. 441 approving a Development Agreement with Merlone Geier Partners (MGP) to create a 17.3-acre mixed use center in the middle of the 70-acre Aurora Square site, an area now called Shoreline Place. The staff report for this Council action can be found at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2019/staffreport090919-8b.pdf>.

Staff have been coordinating the anticipated improvements that originate from the Development Agreement into the City's Westminster and 155th Intersection Improvement Project (Westminster/155 Project). As part of that effort, an existing storm line has been identified that is currently located on MGP property with no evidence of an easement. In order to fulfill the vision of the Community Renewal Area and the development objectives of MGP, both parties agree the storm line should be relocated into the right-of-way of Westminster Way N.

In addition to the need to relocate the stormwater line and the improvements required in the Development Agreement, there are other projects occurring or needing to occur in the vicinity of Westminster Way N and N 155th Street that will be coordinated with or included in the Westminster/155 Project, which is scheduled for advertisement in November 2019 with construction anticipated to begin in early 2020. These include:

1. Trammel Crow Residential (TCR) is constructing the Alexan multi-family development project. This project is currently in construction with completion anticipated in 2021. The City has an agreement with TCR for phasing of Right of Way improvements:
<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2018/staffreport091018-7e.pdf>.
2. The MGP redevelopment requires sewer line relocation and water line extensions within Westminster Way N.

The Westminster/155 Project has been revised to include the additional scope items for the stormwater line relocation, additional frontage improvements identified by MGP and included in the Development Agreement, and the sewer line relocation and water line extensions needed to support MGP's redevelopment.

DISCUSSION

To account for this, the City and MGP have now negotiated an agreement, titled Agreement for Relocation of Stormwater and Sewer Lines and Water Line Extensions (Attachment A), which provides detail to implement the design, construction and funding of those improvements described above, and includes additional frontage, turn lane, sewer line relocation and water line extension improvements necessary for MGP's redevelopment of Shoreline Place.

This Agreement addresses responsibilities for design, construction and property easements and dedications necessary for all elements of the Westminster/155 Project. In general, the City is responsible for the costs associated with the relocation of the

stormwater line and MGP is responsible for the costs associated with the sewer relocation and waterline extension and the costs associated with the construction of the frontage and intersection improvements as required in the Development Agreement.

This Agreement also addresses how and when the costs of MGP's improvements included in the City construction contract are calculated and reimbursed, and how MGP reimburses the City for "in-lieu" frontage improvements built as part of the Alexan (TCR) Right of Way Improvement Phasing Agreement. These funds contribute to the funds available for the City Westminster and 155th Intersection Improvement Project.

Westminster Way N between Aurora Avenue N and N 155th Street is currently closed for the construction of the Alexan project and in anticipation of the Westminster/155 Project. Including the MGP improvements in the Westminster/155 Project will minimize disruption to the public by this closure.

The alternative of not authorizing this Agreement would result in the need for multiple projects in the vicinity at the same or nearly the same time. This would extend the impact to the community through extended or multiple road closures, increase the need for complex coordination between multiple contractors and incur higher costs for all parties.

COUNCIL GOAL(S) ADDRESSED

The item addresses the following Council Goals:

- Goal 1: Strengthen Shoreline's economic climate and opportunities – Action Step 1; Implement the Community Renewal Plan for Shoreline Place, including execution of development agreements in the Community Renewal Area and construction of intersection improvements at N 155th Street and Westminster Way N.
- Goal 2: Continue to deliver highly-valued public services through management of the City's infrastructure and stewardship of the natural environment.

RESOURCE/FINANCIAL IMPACT

This Agreement addresses how the MGP's improvements included in the City construction contract are calculated and reimbursed, and how MGP reimburses the City for "in-lieu" frontage improvements built as part of the Alexan (TCR) Right of Way Improvement Phasing Agreement. A general outline of the funding elements addressed in this Agreement are:

1. MGP will fund their share of the Westminster/155 Project as specified in the Development Agreement based upon quantities and unit prices bid in the City project.
2. MGP will fund the sewer line relocation and water line extensions included in the Westminster/155 Project based upon quantities and unit prices bid in the City project.
3. MGP will reimburse the City for the in-lieu frontage along the MGP property based upon quantities and negotiated unit prices. These funds will reimburse the

City for improvements included in the City contract that benefit the Alexan development.

The staff report for award of the Westminster/155 Project construction contract, which is expected in the coming months, will provide detail on funding for that project and include the funding in this Agreement, surface water utility funding (for the City storm line relocation) and a Transportation Improvement Board grant.

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute the Agreement for Relocation of Stormwater and Sewer Lines and Water Line Extensions with Merlone Geier Partners.

ATTACHMENTS

Attachment A: Agreement for Relocation of Stormwater and Sewer Lines and Water Line Extensions Between the City of Shoreline and Merlone Geier Partners, Including Exhibits A-G

**AGREEMENT FOR RELOCATION OF STORMWATER AND SEWER LINES
AND WATER LINE EXTENSIONS**

THIS AGREEMENT FOR RELOCATION OF STORMWATER AND SEWER LINES AND WATER LINE EXTENSIONS (this “Agreement”) entered into and executed on the date indicated below, between the CITY OF SHORELINE, a Washington municipal corporation (“City”), and MGP XII SB AURORA, LLC, a Delaware limited liability company (“MGP”), or its assigns. The City and MGP are referred to collectively as the “Parties” and individually, a “Party” to this Agreement.

RECITALS

- A. In 2012, the City designated the Aurora Square area as a Community Renewal Area (“CRA”) and on August 10, 2015 passed Ordinance 705 adopting the Aurora Square CRA Planned Action. The Planned Action seeks to act as a catalyst for public and private partnership investment that will renew and revitalize Aurora Square creating a compact, more intense, mixed-use, pedestrian-friendly, and transit-supportive land use. The Planned Action contemplates providing residents and visitors greater access to a mix of housing, retail and commercial opportunities that meets a range of needs.
- B. The Planned Action seeks to modify Westminster Way N. from N. 155th Street to N. 160th Street to provide a more pedestrian and bicycle-friendly section including street parking that unites adjacent properties planned for multifamily housing to the rest of Aurora Square.
- C. The City’s current CIP schedule identifies certain city improvements to Westminster Way N. and to N. 155th Street in 2020.
- D. MGP owns and is planning the redevelopment of approximately 17.31 acres of the property formerly known as Shoreline Sears, located between N. 160th Street and Westminster Way N. in the CRA in accordance with the Development Agreement. The MGP Property is legally described in **Exhibit A** and shown on **Exhibit B**. The City desires to promote a redevelopment of the MGP Property that is consistent with the Planned Action, CRA, and the Shoreline Comprehensive Plan, the Development Agreement and the frontage and intersections improvements required by Exhibit G to the Development Agreement which is attached hereto as **Exhibit C**.
- E. Maple Multi-Family Land TX, L. P., a Delaware limited partnership (“TCR”), owns certain real property located at 15560 Westminster Way N. within the CRA in the area commonly referred to as the Westminster Triangle (the “Alexan Property”), on which TCR is developing a multi-family apartment project (the “Alexan Project”).
- F. MGP is in process of receiving entitlements for Shoreline Place but is not anticipating construction until 2020.
- G. The City and TCR entered into a Right of Way Improvement Phasing Agreement pursuant to which TCR is constructing alternative frontage improvements that abut

Westminster Way “in lieu” of the required standard frontage improvements along TCR's own property in a cost equal to the required standard frontage improvements. TCR's scope of work for the alternative improvements includes work within the right-of-way up to MGP's property line, including certain improvements along and within the Westminster Way N. right-of-way. Pursuant to the Development Agreement, MGP is responsible for its proportionate share of the improvements shown on **Exhibit C**, including those improvements which would have been its standard frontage improvements had they not been constructed by TCR pursuant to the Alexan ROW Phasing Agreement. The City is phasing its CIP improvements in coordination with these alternative frontage improvements. TCR's “in lieu” alternative frontage improvements are shown on **Exhibit D** and on **Exhibit E** (north of Station 109+00). MGP added a turn lane and extended the frontage improvements after the City was at 90% design of the City's CIP improvements. These additional improvements are being added to the City Project and are identified separately in **Exhibit C**.

- H. The City determined that the phased improvements described in the Alexan ROW Phasing Agreement were in the public interest because they would: coordinate the design and construction of the City's CIP improvements with the Alexan Property alternative frontage improvements; enhance traffic operations and circulation during the construction of the phased improvements; increase traffic safety; decrease overall disruption to the public from the phased improvements; allow for additional coordination with other upcoming CRA projects; advance the vision of the CRA; and satisfy requirements of the Planned Action.
- I. A stormwater line that was constructed prior to Shoreline's municipal incorporation that primarily serves property other than the MGP Property is located on the MGP Property adjacent to Westminster Way N. without an express easement. The Stormwater Line, if it were to remain operating in place, would inhibit the ability to fulfill the vision of the CRA which calls for a more pedestrian-friendly environment with enhanced pedestrian connections and gathering areas and retail and residential frontage along Westminster Way N. Relocation will benefit the Parties by implementing the CRA vision, activating the pedestrian environment on Westminster Way N., making the Stormwater Line more accessible, and resolving the encroachment.
- J. A stormwater line relocation will be included in the contract for the City Project.
- K. A sewer line running in a SW/NE direction to the west of Westminster Way N. through the MGP Property serving various property owners also needs to be relocated to accommodate redevelopment of the MGP Property consistent with the CRA vision. MGP desires to include portions of the Sewer Line relocation in the contract for the City CIP Project.
- L. A water line within Westminster Way N. will be constructed by TCR as part of the development of the Alexan Property. Water line extensions from that water main to the MGP Property are desired to accommodate redevelopment of the MGP Property consistent with the CRA vision. MGP desires to include portions of the Water Line Extensions in the contract for the City Project.

- M. The City agrees to expand the scope of the contract for the City Project to include the Sewer Line relocation and Water Line Extensions.
- N. The Parties agree that coordination and consolidation of these improvements into a single construction contract will decrease overall disruption to the public from the right-of-way improvements and be a more cost-effective approach for all Parties than subsequently excavating within Westminster Way N. to complete the Stormwater and Sewer Line relocations and Water Line Extensions at a later time in a separate project.
- O. The Parties wish to identify responsibilities for the Stormwater Line relocation, Sewer Line relocation, and Water Line Extensions, and for implementation of the intersection and frontage improvements required by the Development Agreement for the MGP Property.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual undertakings and promises contained herein, and the benefits to be realized by each Party and in future consideration of the benefit to the general public by this Agreement, the Parties agree as follows:

Section 1. DEFINED TERMS. Each defined term in this Agreement shall have the meaning ascribed to that term in this Section 1 unless otherwise defined in this Agreement:

“Agreement” means this Agreement for Relocation of Stormwater and Sewer Lines and Water Line Extensions.

“Alexan Property” means the property located at 15560 Westminster Way N., Shoreline, Washington 98133, in the area commonly referred to as the Westminster Triangle.

“Alexan ROW Phasing Agreement” means the Right of Way Improvement Phasing Agreement between the City and TCR dated September 20, 2018.

“CIP” means the City Capital Improvement Plan.

“City CIP Project” means those certain City improvements to Westminster Way N. and to N. 155th Street included in the 2019 - 2024 CIP and scheduled for 2020.

“City Project” means the City CIP Project with the addition of the Relocation Project and the MGP Turn Lane Project shown in **Exhibits C and F**.

“CRA” means the Aurora Square Community Renewal Area.

“Development Agreement” means the September 30, 2019 Development Agreement between the Parties approved by the City Council on September 9, 2019 by Resolution 441.

“MGP Frontage Improvements” means the frontage improvements shown on **Exhibit C**.

“MGP Property” means the property legally described in **Exhibit A** and depicted **Exhibit B**.

"MGP Turn Lane Project" means MGP's southbound right turn lane on Westminster Way N. at

155th Street N., the Block F frontage on Westminster Way N. and additional frontage improvements within the limits of the City Westminster Way N. and N. 155th Street Intersection Project identified on **Exhibit C**.

“Planned Action” means the Aurora Square CRA Planned Action.

“Relocation Project” means relocation of the City Stormwater Line and the Sewer Line serving various property owners in the CRA from the MGP Property to the Westminster Way N. right-of-way and Water Line Extensions from the TCR constructed water line in Westminster Way N. to the MGP Property as shown on **Exhibit F**. The Sewer Line will become a RWD asset and the Water Line will become a Seattle Public Utility Asset.

“RWD” means the Ronald Wastewater District.

“SMC” means the Shoreline Municipal Code.

“Stormwater Line” means the stormwater line currently located on the MGP Property to be located into the Westminster Way N. right-of way, shown in **Exhibit F**.

“Sewer Line” means the sewer line currently located on the MGP Property to be located into the Westminster Way N. right-of-way, shown in **Exhibit F**.

“TCR” means Maple Multi-Family Land TX, L. P., a Delaware limited partnership.

“Water Line Extensions” means water line extensions from the TCR constructed water main in Westminster Way N. to the MGP Property and a water main extension in Westminster Way N. to the southern boundary of MGP’s Block F property, shown in **Exhibit F**.

Section 2. CITY PROJECT.

A. City Project. The Parties acknowledge that the improvements to Westminster Way N. and to the N. 155th Street intersection, Stormwater Line and Sewer Line relocation and the Water Line Extensions are to be included in the City Project construction documents and constructed by the City’s Contractor. MGP and the City agree to work collaboratively on design and construction of these improvements. Should MGP desire additional improvements that cannot be included in the City Project, MGP will be responsible for their cost and their construction.

1. MGP will be responsible for the cost of the following work to be completed as components of the City Project:
 - i. The cost of MGP Frontage Improvements.
 - ii. The MGP Turn Lane Project.
 - iii. The Sewer Line Relocation.
 - iv. The Water Line Extensions.
 - v. The signal system improvements shown on **Exhibit C** that are included within the scope of City’s Westminster Way N. and N. 155th Street Intersection Improvement Project limits.
2. The City is responsible for the cost and construction of the following components of the City Project:
 - i. Stormwater Line Relocation.
 - ii. The 155th Street and Westminster Way intersection improvements (excluding those set out in Section 2.A.1.v above).

iii. All other components of the City Project not listed in Section 2.A.1.

B. Design.

1. The City's Civil Engineer has designed the City CIP Project.
2. MGP's Civil Engineer will develop and/or coordinate with the City's Civil Engineer the design of the MGP Turn Lane Project.
3. MGP's Civil Engineer will complete the design of the Stormwater and Sewer Line relocations and Water Line Extensions.
4. MGP's Civil Engineer will coordinate with the City's Civil Engineer to incorporate the design of the Stormwater Line, Sewer Line, Water Line Extensions and the MGP Turn Lane Project into the City Project contract documents.
5. The City Project contract package will contain separate schedules for tracking the work and associated costs of: a) MGP Frontage Improvements, the MGP Turn Lane Project and the Signal System improvements. b) Stormwater Line relocation; c) Water Line Extensions and Sewer Line Relocation;
6. The City will review and ensure the City Project contract documents encompass the projects described in Section 2.B.4 and advertise the project for bids.

C. Permitting.

1. As a City Capital project, the design and construction of the work to be included in the City Project do not require a City Right-of-Way permit but will require review and approval of the design of the utility infrastructure by the appropriate utility provider.
2. The Sewer Line relocation requires a permit from RWD in accordance with the RWD's Developer Extension Agreement. MGP will be responsible for obtaining the permit from RWD. The permit conditions and requirements will be included as part of the City contract package.
3. The Water Line Extensions require a permit from Seattle Public Utilities in accordance with the Seattle Public Utilities requirements. MGP will be responsible for obtaining the permit from Seattle Public Utilities. The permit conditions and requirements will be included as part of the City contract package.

D. Easements and Dedication. To the extent permitted by current easement and other restrictions affecting the MGP Property, MGP will grant to the City temporary construction easement(s), permanent easement(s), and a Right-of-Way dedication for public infrastructure on or using the MGP Property. The consideration for the easements and dedication shall be the entering into of this Agreement.

1. Subject to the proviso in Section 2.D, MGP shall grant to the City a Temporary Construction Easement as generally shown on **Exhibit G** for public infrastructure identified in this Agreement on or using the MGP Property. The Temporary Construction Easement will also allow TCR to construct its "in lieu" alternative frontage improvements along Westminster Way N. adjacent to the MGP Property and will include language regarding minimizing and mitigating traffic impacts on Shoreline Place tenants during construction. The Temporary Construction Easement will be developed by MGP and recorded by MGP by November 15, 2019. A draft of

- the Temporary Construction Easement will be developed by MGP and submitted to the City for review by November 1, 2019.
2. Subject to the proviso in Section 2.D, MGP shall grant to the City a Right of Way dedication for the MGP Turn Lane Project by November 15, 2019. A draft of the Right-of-Way dedication will be developed by MGP and submitted to the City for review by November 1, 2019.
 3. MGP shall grant to the City permanent Stormwater Line Easement for the Stormwater Line remaining on MGP property in the vicinity of N. 155th Street and N. 157th Street by November 15, 2020. A draft of the permanent Stormwater Line Easement will be developed by MGP and submitted to the City for review by November 1, 2020. The final easement will be recorded after all construction is complete.

E. Construction.

1. The City will advertise for bid the construction of the City Project in conformance with public works bidding requirements.
2. MGP will be invited to attend construction meetings to, at a minimum, monitor contract progress, coordinate issues between the projects, review and provide input on changes in construction affecting the Stormwater Line relocation, Sewer Line relocation, Water Line Extensions and MGP Turn Lane Project and review for approval associated contract change orders and to monitor the City Project for issues may affect the MGP Property and implementation of the Development Agreement. MGP agrees to attend construction meetings when requested by the City to discuss specific issues.
3. MGP's Engineer will timely respond to Requests for Information on all work that MGP's Engineer designed.

F. Costs.

1. Design
 - i. The City has funded design of the City Westminster Way N. and N. 155th Street Intersection Project.
 - ii. MGP has separately funded design of MGP Turn Lane Project into the City Project.
 - iii. MGP has separately funded design of MGP's Sewer Line relocation and the Water Line Extensions into the City Project.
 - iv. The City agree to reimburse MGP their costs to design the Stormwater Line relocation.
 - v. MGP shall fund incorporation of the City's Stormwater Line relocation and MGP's Sewer Line relocation and the Water Line Extensions into the City Project.
 - vi. The City shall fund quality control review of the City Project construction bid package.
2. Construction
 - i. The City's contract package will contain separate schedules for tracking the costs of: a) intersection improvements; b) Stormwater Line Relocation; c) Water Line Extensions and Sewer Relocation.

- ii. MGP and the City shall agree to a reasonable distribution of generalized costs for items such as mobilization, traffic control, trenching, restoration and paving prior to award of the City Project construction contract.
 - iii. The City shall perform construction inspection and administration. The City and MGP shall agree to a reasonable distribution of these costs prior to award of the City Project construction contract.
 - iv. MGP shall pay the costs associated with certain improvements as follows:
 - a. MGP shall pay to the City the costs associated with MGP's Sewer Line Relocation and Water Line Extensions included in the City's contract based upon the bid amounts and change orders at the time of construction.
 - b. MGP will pay to the City the full amount of the costs associated with the Intersection Improvements on **Exhibits C and E** included in the City Project based upon the bid amounts and change orders at the time specified in the Development Agreement.
- 3. Determination of reimbursement of MGP frontage built by TCR north of Station 109+00 (see **Exhibit E**)
 - i. MGP will pay to the City the full amount of the costs of frontage improvements north of Station 109+00 based upon the quantities and an extension of agreed unit prices and associated general costs. The total reimbursement will be agreed upon by December 16, 2019.
 - ii. Payment will be made at the time specified in the Development Agreement.
- 4. Decommissioning of Stormwater Line
 - a. MGP is responsible for decommissioning the Stormwater Line.
 - b. MGP agrees to offset the cost of decommissioning the Stormwater Line against a portion of the City's cost for the design of the City CIP project.

G. Escrow Account and Payments.

- 1. Prior to award of the City Project construction contract, the City and MGP will set up an escrow account to facilitate MGP payments to the City.
- 2. Within thirty (30) days following bid opening, but not before January 1, 2020, MGP will deposit one hundred and ten percent (110%) of the cost of the work specified in Section 2.F.2.iv.a based upon the actual bid amounts.
- 3. The City will draw on the escrow account to pay for the work specified in Section 2.F.2.iv.a based upon monthly construction invoices.
- 4. Within sixty days of final contract acceptance or when actual costs of work associated with the work specified in Sections 2.F.2.iv.a are known, the City and MGP will audit the accounting for the work and reconcile the escrow account and if any additional monies are due to the City, MGP will pay those monies to the City within thirty (30) calendar days, any remaining funds will be returned to MGP within twenty (20) calendar days.

- H. Dispute Resolution of Costs.** If MGP and the City are unable to agree to a reasonable distribution of generalized costs or contract change order amounts, they shall commission a third-party cost estimator whose opinion shall be considered in negotiation prior to going to mediation. The Parties shall each be responsible for one half of the total cost of the third-party cost estimator's services.

Section 3. DESIGN STANDARDS.

- A. Design Standards.** The work outlined in **Exhibits E and F** shall conform to the following plans, standards and guidelines:
1. City of Shoreline Municipal Code.
 2. City of Shoreline Engineering Development Manual.
 3. City of Shoreline Standard Details.
 4. Washington State Department of Transportation Standard Plans and Specifications for Road, Bridge, and Municipal Construction (most recent addition with any published amendments).
 5. City of Shoreline Comprehensive Plan.
 6. City of Shoreline Transportation Master Plan.
 7. City of Shoreline Surface Water Master Plan.
 8. Washington State Department of Ecology Criteria for Sewage Works Design.
 9. Other Industry design standards as outlined in the aforementioned documents.

Section 4. MISCELLANEOUS.

- A. Authority.** Each signatory to this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the Party for which he or she is signing, and that he or she will defend and hold harmless the other Party and signatories from any claim that he or she was not fully authorized to execute this Agreement on behalf of the person or entity for whom he or she signed. Upon proper execution and delivery, this Agreement will have been duly entered into by the Parties and will constitute as against each Party a valid, legal and binding obligation that will be enforceable against each Party in accordance with the terms herein.
- B. Time of the Essence.** Time is of the essence in this Agreement.
- C. Headings.** Any titles or sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- D. Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action shall lie in King County Superior Court.
- E. Mediation.** Subject to the prior procedure set out in 2.H, the Parties shall mutually agree upon a mediator to assist them in resolving their differences. If the Parties cannot agree on a mediator, a mediator shall be designated by the American Arbitration

Association. Any mediator so designated must be acceptable to the Parties. The mediation will be conducted in King County, Washington. Any Party may terminate the mediation at any time. All communications during the mediation shall be confidential and shall be treated as settlement negotiations for the purpose of applicable rules of evidence, including Evidence Rule 408. However, evidence that is independently admissible shall not be rendered inadmissible by nature of its use during the mediation process. The mediator may not testify for either Party in any subsequent legal proceeding related to the dispute. No recording or transcript shall be made of the mediation proceedings. The cost of any mediation proceedings shall be shared equally by the Parties. Any cost for a Party's legal representation during mediation shall be borne by the hiring Party. If the Parties are unable to resolve the dispute after utilizing the methods set forth in this Section, then either Party may seek to enforce the provisions of this Agreement through any method afforded by law.

- F. Remedies.** Each Party shall have all available remedies at law or in equity to recover damages and compel the performance of the other Party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to and cumulative with any and all rights otherwise available at law or in equity. The exercise by either Party of one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any such other remedy for the same default or breach of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.
- G. Attorneys' Fees.** In any action to enforce or determine a Party's rights under this Agreement, the prevailing party (or the substantially prevailing party, if no one party prevails entirely) shall be entitled to reasonable attorneys' fees, expert witness fees, and costs, including fees and costs incurred in the appeal of any ruling of a lower court.
- H. Indemnification/Hold Harmless.** MGP shall defend, indemnify, and hold the City, its officers, officials, employees harmless from any and all claims, injuries, damages, losses or suits including attorney fees resulting from the negligent, gross negligent and/or intentional acts, errors or omissions of MGP, its agents, or employees arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City shall defend, indemnify, and hold MGP, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees resulting from the negligent, gross negligent and/or intentional acts, errors or omissions of the City, its agents, or employees arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of MGP. The City of Shoreline is a member of the Washington Cities Insurance Authority (WCIA), a self-insurance risk pool, as such, contractor cannot be named as an additional insured. The City shall provide a written acknowledgement/certification of current membership.
- I. Binding Effect; Assignability.** This Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns.

- J. No Third-Party Beneficiary Rights.** This Agreement is entered into for the benefit of the Parties only and shall confer no benefits, direct or implied, on any third persons.
- K. Cooperation in the Event of a Legal Challenge.** In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties agree to cooperate in defending such action.
- L. Other Necessary Acts.** Each Party shall execute and deliver to the other all such further instruments and documents and take such additional acts as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Party the full and complete enjoyment of rights and privileges hereunder.
- M. Interpretation of Agreement.** This Agreement is the result of arm's length negotiations between the Parties and shall not be construed against any Party by reason of its preparation of this Agreement.
- N. Severability.** In the event any portion of this Agreement shall be found to be invalid by any court of competent jurisdiction, then such holding shall not impact or affect the remaining provisions of this Agreement unless that court of competent jurisdiction rules that the principal purpose and intent of this Agreement should and/or must be defeated, invalidated or voided.
- O. Waiver.** No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the Party giving such waiver and no such waiver shall be deemed a waiver of any prior or subsequent breach or default.
- P. Counterparts.** This Agreement may be signed in any number of identical counterparts, each of which shall be considered an original even if it is transmitted by electronic means and taken together those identical counterparts will be considered to constitute one and the same instrument. The Effective Date of this agreement shall be the date when the last representative of the City and/or MGP executes and transmits a copy of the signed Agreement to the other Party.
- Q. Full Understanding.** The Parties each acknowledge, represent and agree that they have read this Agreement; that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel and any other advisors with respect thereto; and that they are executing this Agreement after sufficient review and understanding of its contents.
- R. Final and Complete Agreement.** This Agreement is integrated and constitutes the final and complete expression of the Parties on all subjects relating to this Agreement and may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all Parties. This Agreement supersedes and replaces all prior agreements, discussions and representations on all subjects discussed herein, without limitation. No

Party is entering into this Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Agreement and the exhibits hereto.

- S. Interpretation.** This Agreement has been reviewed and revised by legal counsel for both Parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Agreement. Nothing herein shall be construed as a waiver of the City's constitutional and statutory powers. Nothing herein shall be construed or implied that the City is contracting away its constitutional and statutory powers, except as otherwise authorized by law.
- T. Default/Notices.** If either Party breaches its obligations under this Agreement, the non-breaching party shall give the breaching party written notice of such breach and the opportunity to cure such breach for a period of thirty (30) days after delivery of the notice of breach. All notices which may be or are required to be given pursuant to this Agreement shall be in writing and delivered to the parties at the following addresses:

To City:

CITY OF SHORELINE
Attn: Debbie Tarry
City Mangers Office
17500 Midvale Avenue N
Shoreline, WA 98133
phone 206-801-2211
Email dtarry@shorelinewa.gov

With copy to:

Margaret J. King
Attn: Office of the City Attorney
17500 Midvale Avenue N
Shoreline, WA 98133
phone 206-801-2221
mking@shorelinewa.gov

To MGP:

MGP XII SB AURORA, LLC
c/o Merlone Geier Partners
Attn.: Jamas Gwilliam
4365 Executive Drive, Suite 1400
San Diego, CA 92121
phone: 858-259-9909
Email: jgwilliam@merlonegeier.com

With a copy to:

Alison Moss
Schwabe Williamson & Wyatt
1420 5th Ave., Suite 3400
Seattle, WA 98101
phone: 206-407-1563
AMoss@SCHWABE.com

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) days after deposit, postage prepaid in the U.S. mail, (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier, or (c) sent by email or facsimile transmission to the Party with a copy to the person provided above, receipt of which has been confirmed by telephone, and by regular mail, in which case notice shall be deemed delivered on the next business day following confirmed receipt, or (d) hand delivered, in which case notice shall be deemed delivered when actually delivered. Any notice given by counsel to a Party shall have the same effect as if given by such Party. The above addresses and phone numbers may be changed by written notice to the other Party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

CITY OF SHORELINE,
a Washington municipal corporation

By: Debbie Tarry
Its: City Manager

MGP XII SB AURORA, LLC
a Delaware limited liability company

By: Merlone Geier XII, LLC,
A California limited liability company

By: _____
Its: _____

Reviewed and Approved as to Form:

By: Margaret J. King
City Attorney

City of Shoreline


STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

I certify that I know or have satisfactory evidence that Debbie Tarry is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the City Manager of the City of Shoreline to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2019.



(Use this space for notarial stamp/seal)

Notary Public

Print Name _____

My commission expires

[Acknowledgments follow]

Developer

[illegible]

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of Merlone Geier XII, LLC, a California limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2019.

Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

EXHIBITS

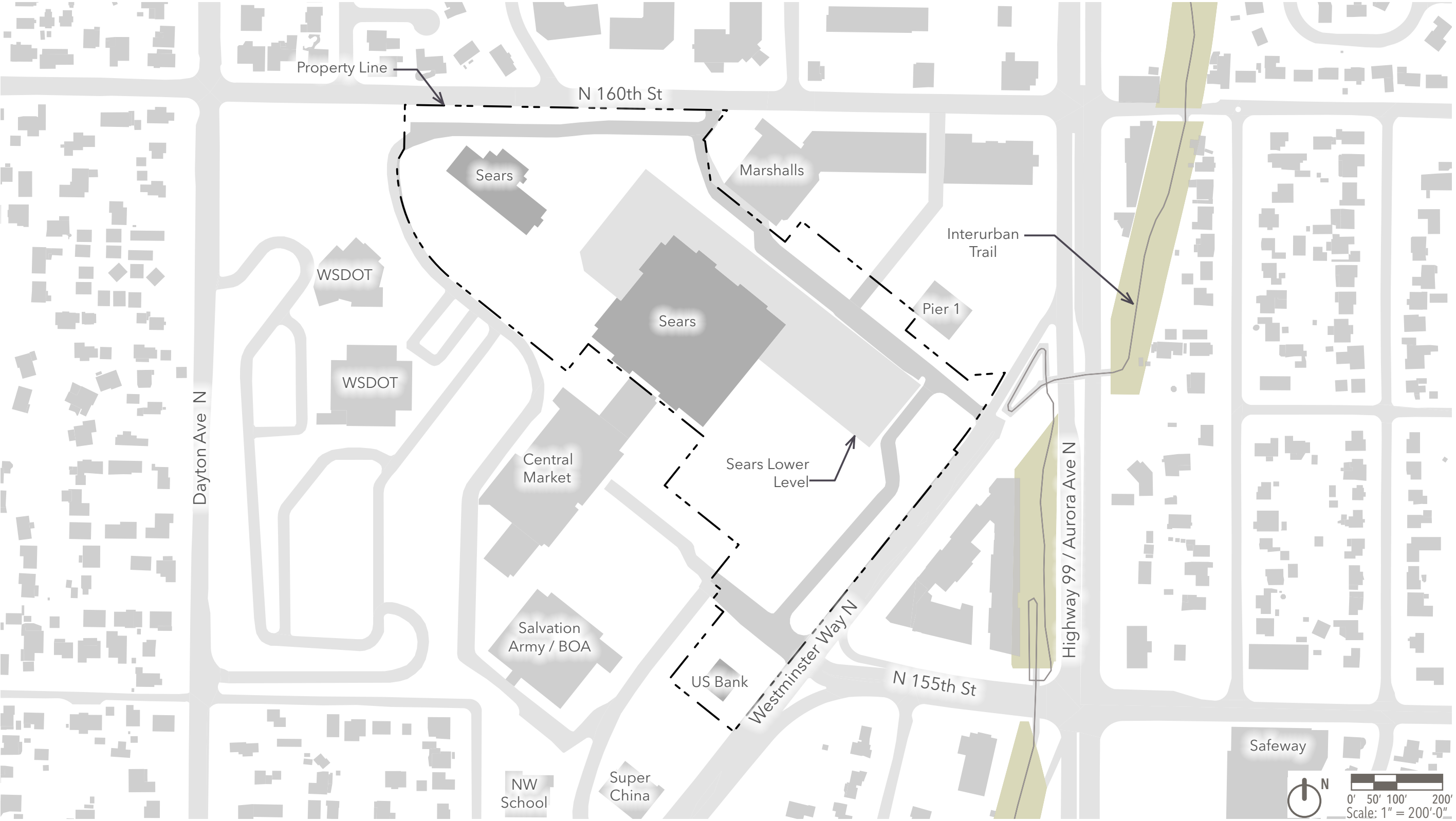
- A. Legal Description of MGP Property (Ex. A from Development Agreement)
- B. Depiction of MGP Property (Ex. B from Development Agreement)
- C. MGP's Frontage Improvements (Ex. G from Development Agreement)
- D. TCR's In Lieu Improvements (Fig. 3 in Alexan ROW Phasing Agreement)
- E. MGP's Funding Responsibility on Westminster Way N. Frontage and Intersection Improvements
- F. Relocation of Stormwater and Sewer Line and Water Line Extensions
- G. Temporary Construction Easement Drawing

Legal Description

LOT 2 OF KC SHORT PLAT #685084 REC #8603181210 LESS POR DAF - BEG AT NELY COR OF SD LOT 2 TH W ALG NLY LN OF SD LOT 2 89.49 FT TH S 37-27-53 W 82 FT TH S 52-32-07 E 5 FT TH S 09-08-56 E 89.44 FT TH N 37-27-53 E 197.69 FT TO POB & LESS POR DAF-BEG AT MOST SLY COR OF LOT 1 OF SD SP TH N 84-33-29 W 65.25 FT TO TPOB TH N 52-32-07 W 130 FT TH N 37-27-53 E 25 FT TH N 52-32-07 W 47 FT TH S 37-27-53 W 43 FT TH S 52-32-07 E 177 FT TH N 18 FT TO TPOB SD SP DAF - POR OF S 1/2 OF NW 1/4 & NE 1/4 OF SW 1/4 DESC AS FLS - BAAP ON SLY MGN OF N 160TH ST 453.20 FT E OF C/L OF DAYTON AVE N TH E ALG SD SLY MGN 1425.73 FT TO WLY MGN OF WESTMINSTER WY N TH ALG SD WLY MGN S 01-09-30 E 47.45 FT TH S ALG CRV TO RGT RAD OF 1081.27 FT ARC DIST 729.39 FT TH S 52-30-30E 10 FT TH S 37-29-30 W 773.52 FT TO NELY MGN OF PLAT OF AURORA SQUARE TH ALG SD PLAT N 52-33-49 W 179.32 FT TH N 37-26-11 E 188.31 FT TH N 52-31-47 W 35.05 FT TH N 37-28-13 E 34.00 FT TH N 52-31-47 W 30.00 FT TH N 37-28-13 E 99.50 FT TH N 52-31-47 W 205.00 FT TH N 37-28-13 E 135.50 FT TH N 52-31-47 W 320.00 FT TH S 37-28-13 W 75.00 FT TH N 52-31-47 W 148.00 FT TO MOST NLY COR OF SD PLAT TH N 52-32-02 W 168.87 FT TO BEG OF CRV TO RGT RAD 320.00 FT ARC DIST 291.64 FT TH N 28-00-00 E 31.76 FT TH N 00-18-57 W 95 FT M/L TO BEG - AKA LOT B OF KC LOT LN ADJ #8701010 APPROVED 1-22-87

(Parcel No. 182604-9014)

EXISTING SITE PLAN

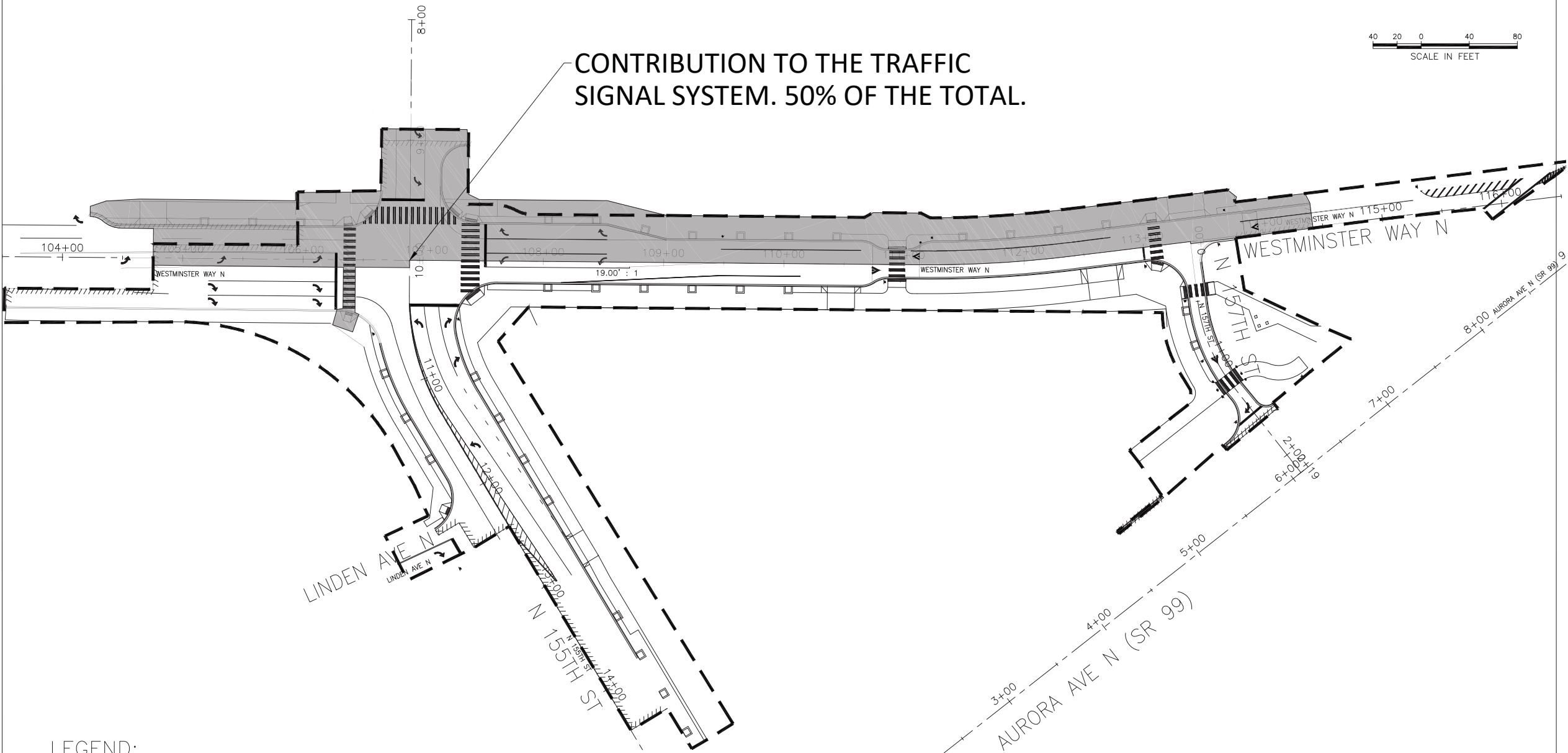


WESTMINSTER WAY TRANSPORTATION IMPROVEMENTS



40 20 0 40 80
SCALE IN FEET

CONTRIBUTION TO THE TRAFFIC
SIGNAL SYSTEM. 50% OF THE TOTAL.

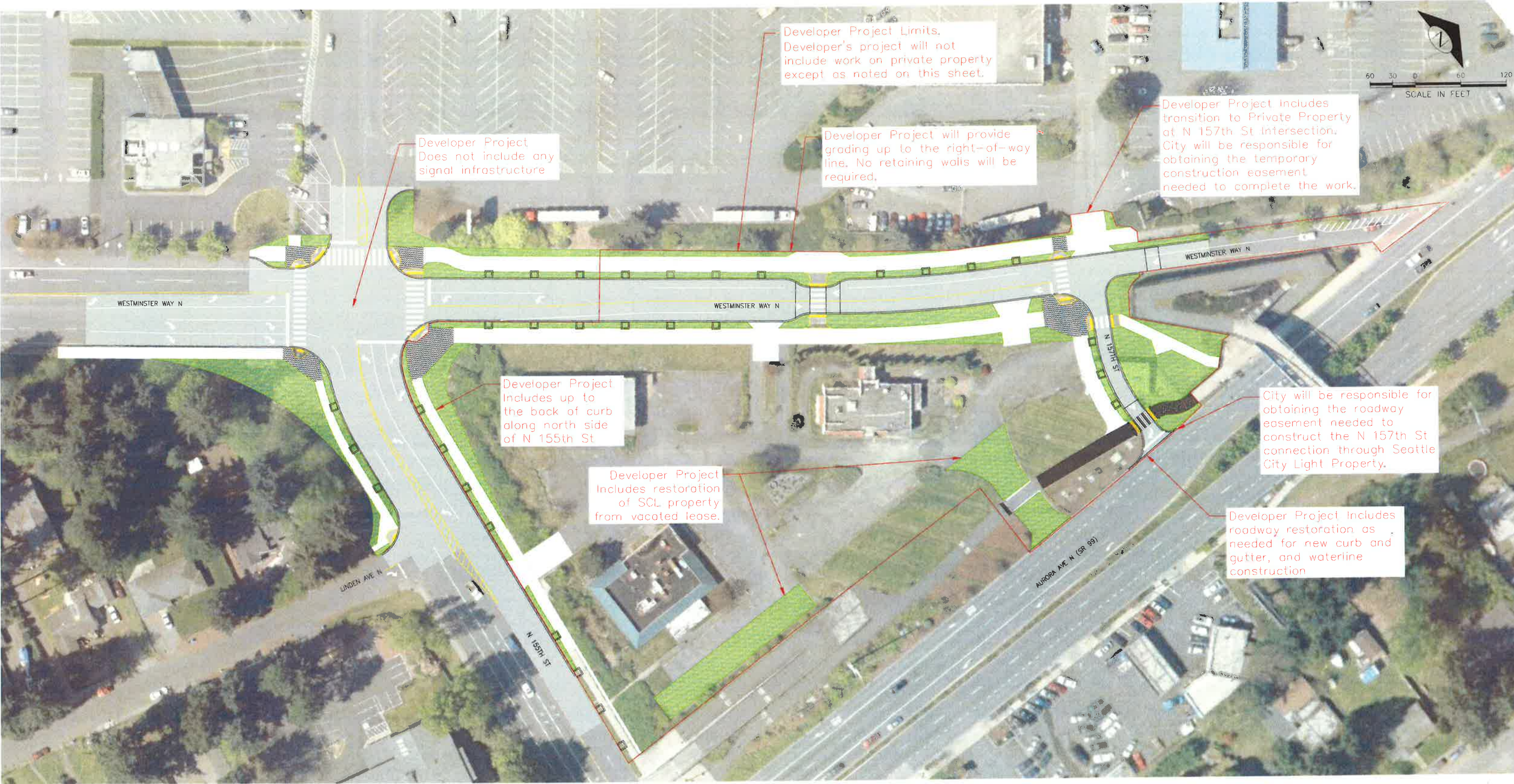


LEGEND:

- WESTMINSTER WAY N AND N 155TH ST INTERSECTION IMPROVEMENTS PROJECT LIMITS
- MERLONE GEIER PARTNERS PORTION OF IMPROVEMENTS

FIGURE 3: SCOPE OF IMPROVEMENTS – DEVELOPER PROJECT

Exhibit D

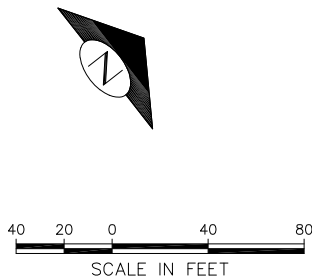


Developer Project to be constructed after the Completion of the City Project

Project Elements, schedule, and limits are approximate.

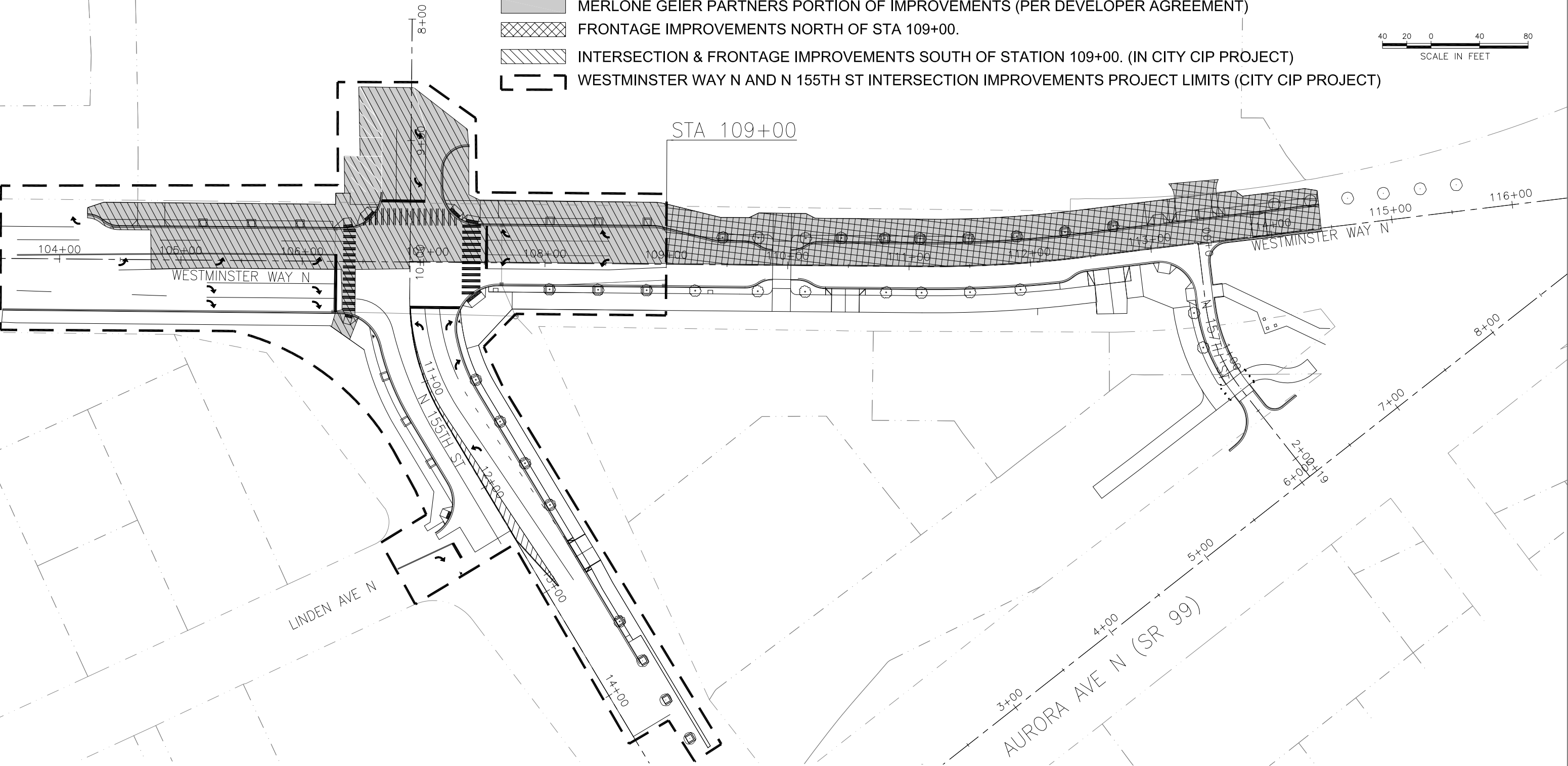
MGP FUNDING RESPONSIBILITY ON WESTMINSTER WAY N. FRONTAGE & INTERSECTION IMPROVEMENTS

Exhibit E



LEGEND:

- MERLONE GEIER PARTNERS PORTION OF IMPROVEMENTS (PER DEVELOPER AGREEMENT)
- FRONTAGE IMPROVEMENTS NORTH OF STA 109+00.
- INTERSECTION & FRONTAGE IMPROVEMENTS SOUTH OF STATION 109+00. (IN CITY CIP PROJECT)
- WESTMINSTER WAY N AND N 155TH ST INTERSECTION IMPROVEMENTS PROJECT LIMITS (CITY CIP PROJECT)

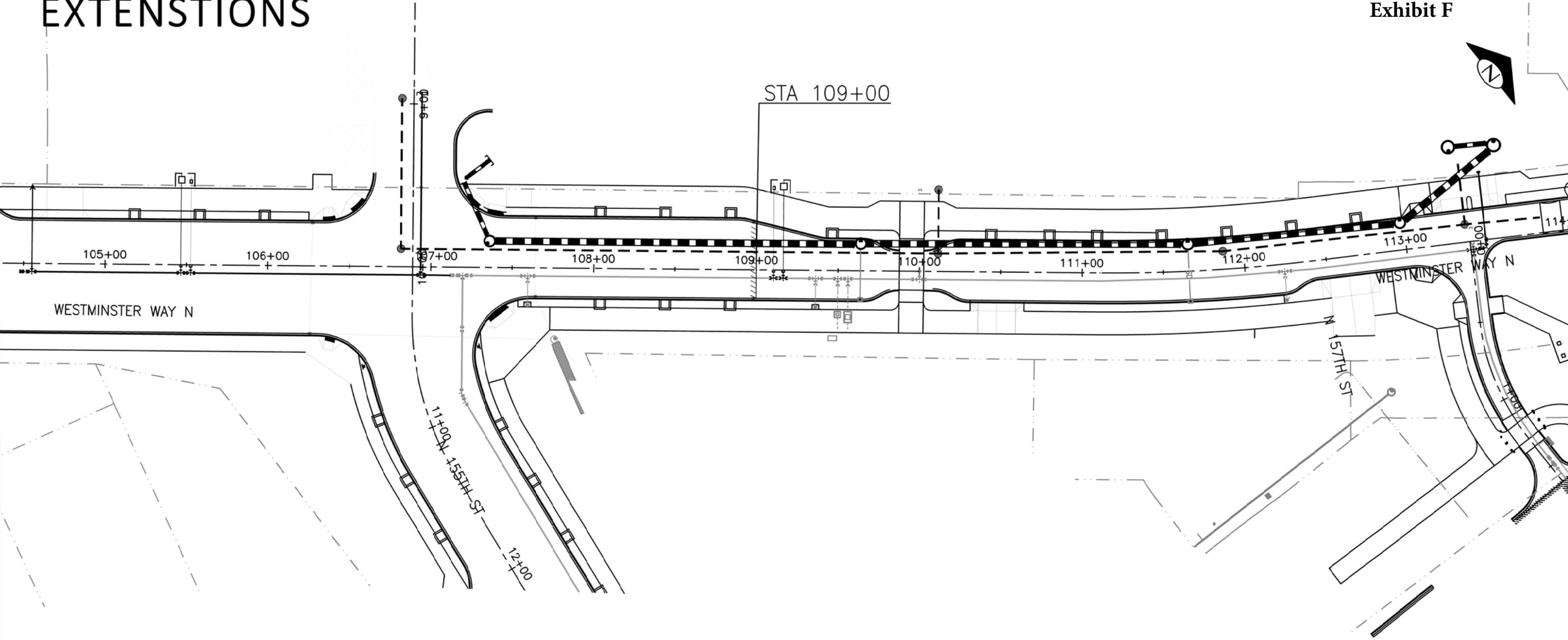


NOTES:
1. 50% OF SIGNAL SYSTEM PAID BY MGP.




DIAGRAMATIC - FOR DESIGN & CONSTRUCTION RESPONSIBILITY

RELOCATION OF STORMWATER AND SEWER LINES AND WATER LINE EXTENSTIONS

Exhibit F



LEGEND:

-  STORMWATER LINE RELOCATION PROJECT (CITY)
-  SEWER LINE RELOCATION PROJECT (MGP)
-  WATER LINE EXTENSTIONS (MGP)

NOT TO SCALE

DIAGRAMATIC - FOR DESIGN & CONSTRUCTION RESPONSIBILITY

Exhibit G

