

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF OLYMPIA, A WASHINGTON MUNICIPAL
CORPORATION, AND THE LOW-INCOME HOUSING INSTITUTE, A WASHINGTON
NONPROFIT CORPORATION, FOR DEVELOPMENT OF CERTAIN REAL PROPERTY**

THIS DEVELOPMENT AGREEMENT is effective as of the date of the last authorizing signature affixed hereto. The parties to this Agreement are the City of Olympia, a Washington municipal corporation, hereinafter the "City," and the Low-Income Housing Institute (LIHI), a non-profit corporation organized under the laws of the State of Washington, hereinafter the "Developer."

RECITALS

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

2. A development agreement made pursuant to that authority must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement.

3. The City and the Developer recognize development agreements must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

4. This Development Agreement, hereinafter the "Development Agreement", which will be by and between the City of Olympia and the Developer, relates to the development of real property commonly known as Martin Way Affordable Housing, which consists of property located at 2828 Martin Way East (hereinafter the "Property").

5. The Developer intends to provide on the Property approximately 111 units of housing affordable to low-income residents, and a shelter for approximately sixty (60) individuals experiencing homelessness, which will provide a public benefit to the Olympia community.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

GENERAL PROVISIONS

Section 1: The Project. The Project is the development and use of the Property, consisting of approximately 1.12 acres (Tax Parcel No. 69510000200) in the City of Olympia. The proposal describes the Project as a phased residential project, consisting of approximately 111 units of housing affordable to low-income residents, and a shelter for approximately sixty (60) individuals experiencing homelessness. It is anticipated that the Developer will be seeking approval, for each phase of the development, of a land use development application and associated building and other permits upon execution of this Development Agreement.

Section 2: *The Subject Property.* The Project site is legally described in Exhibit A, attached hereto and incorporated herein by this reference.

Section 3: *Definitions.* As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

“Adopting Resolution” means the Resolution which approves this Development Agreement, pursuant to RCW 36.70B.200.

“Certificate of occupancy” means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

“Council” means the duly elected legislative body governing the City of Olympia.

“Director” means the City’s Community Planning and Development Director.

“Effective Date” means the effective date of the Adopting Resolution.

“EDDS” means the Engineering Design and Development Standards” adopted by the City of Olympia. See OMC 12.02.020.

“Existing Land Use Regulations” means the ordinances adopted by the City Council of Olympia in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards, and specifications applicable to the development of the Subject Property, including, but not limited to the Comprehensive Plan, the City’s Official Zoning Map and development standards, Determinations made pursuant to the State Environmental Policy Act (SEPA), Concurrency Ordinance, the EDDS, and all other ordinances, codes, rules, and regulations of the City establishing standards in relation to the development of the subject property; and the division of land, whether through the subdivision process, the binding site plan process, or otherwise. This does not include any building or fire code that is state-mandated (See RCW 19.27.031); any other regulations resulting from superseding state or federal law; impact fees, mitigation fees, or any other fees or charges, except as specifically described in this agreement.

“Landowner” is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. The “Developer” is the Low-Income Housing Institute (LIHI).

“Project” means the anticipated development of the Subject Property, as specified in Section 1 and as provided for in all associated permits/approvals, and all incorporated exhibits.

Section 4: *Exhibits.* Exhibits to this Agreement are as follows:

Exhibit A – Legal description of the Subject Property.

Exhibit B – Illustration showing Development Phases, including design of improvements. This Development Agreement does not certify or pre-approve Exhibit B for land use review or any other permits.

Exhibit C – Drawings showing cross-sections and street frontage improvement standards to the Pattison Street NE and Martin Way East right of way adjacent to the Project, which will be constructed by the Developer as described in this Development Agreement and conveyed to the City. The sheet titled “Pattison Street NE Frontage Improvements” shows curb and channelization on Pattison Street NE from the recently completed intersection improvements for both future phases.

Section 5: Parties to Development Agreement. The parties to this Agreement are:

The “City” is the City of Olympia, the mailing address of which is P. O. Box 1967, Olympia, Washington 98507.

As indicated above, the “Developer” is a non-profit corporation whose mailing address is 2407 First Avenue, Seattle, WA 98121.

The “Landowner.” From time to time, as provided in this Agreement, the Subject Property or a portion thereof may be sold or otherwise lawfully disposed of to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

Section 6: Term of Agreement. This Agreement shall commence upon the effective date of the Adopting Resolution approving this Agreement and shall continue in force for a period of ten (10) years, unless extended or terminated as provided herein. Following the expiration of the term or any extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 7: Vested Rights of Developer; Uses and Standards & Phasing. During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Subject Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer under the existing land use regulations and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits hereto, or as expressly consented thereto by the Developer.

7.1 Whether developed in one phase or a series of phases as anticipated by Section 11, the following uses and standards shall be those in effect as of the date of this Agreement, whether set forth in this Agreement, or in the permits and approvals, if any, identified herein, and all exhibits incorporated herein: (a) the permitted uses, (b) the density and intensity of use, (c) the maximum height and size of proposed buildings, (d) provisions for reservation and dedication of land, and (e) the existing Land Use Regulations as defined in this Agreement, as applicable to the development of the Subject Property. This does not include any building or fire code that is state-mandated (See RCW 19.27.031); any other regulations resulting from superseding state or federal law impact fees; mitigation fees, or any other fees or charges, except as specifically described in this agreement.

7.2 It is the intent of this Agreement that the Developer shall take all actions necessary to extinguish the existing condominium division on the Subject Property prior to the time of demolition of the existing building by the Developer.

Section 8: Modifications. Any modifications from the approved permits or the exhibits attached hereto requested by Developer may be approved in accordance with the provisions of the City's code and under the existing Land Use Regulations and shall not require an amendment to this Agreement.

Section 9: Financing of Public Facilities.

Developer acknowledges and agrees that it shall participate in the funding of its pro-rata share of the costs of public improvements in accordance with the city code and under the existing Land Use Regulations.

Section 10: Land Use Development Application Fees and Impact Fees.

Land use fees and impact fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City. All impact fees shall be paid as set forth in the approved permit or approval, or as addressed in the Olympia Municipal Code.

Section 11: Phasing of Development. The parties acknowledge that, because the Development will be phased, certain improvements associated with the Project must be available to all phases of the Project, in order to address health, safety and welfare of the residents. Therefore, the parties agree that the improvements associated with the Project shall be constructed and developed in phases as described in this Agreement and set forth in its Exhibits, subject to approval through the City's land use review process.

Section 12: Improvement of Public Lands. Rights-Of-Way shall be improved and, if necessary, dedicated to the City as required in the permits/approvals for each phase of the development, consistent with this Agreement and as set forth in its Exhibits. No certificate of occupancy shall be issued for any building until all frontage improvements are installed by the Developer in accordance with this Development Agreement and accepted by the City. Issuance of a certificate of occupancy for any building and/or improvements to the property during Phase 1 shall not rely upon the undertaking or completion of Phase 2 frontage improvements.

Section 13: Default. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Olympia Municipal Code or state law for violations of this Development Agreement and the Code.

Section 14: Waiver of Local Improvement District (LID). Developer, property owner and all of their successors, heirs, or assigns of any type or character to the property waive objection, waive protest and agree to support the imposition on all or part of the property subject to this Agreement to construct the improvements listed in this Agreement if the public improvements are not constructed as set forth in this Agreement. This section survives the term of this Agreement and is perpetual.

After full completion of the public improvements and applicable bonds, the Public Works Director or designee is authorized to acknowledge that the public improvements have been fully constructed and have satisfactorily survived the time required by applicable bonds and therefore this waiver of LID in section 14 is prospectively no longer in effect after the acknowledgment by the Public Works Director.

Section 15. Termination. This Agreement shall expire and/or terminate as provided below:

15.1. This Agreement shall automatically expire and be of no further force and effect if the development contemplated in this Agreement and all of the permits and/or approvals issued by the City for such development are not substantially underway prior to expiration of such permits and/or approvals. Such expiration shall require no Council action. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development.

15.2. This Agreement shall expire and be of no further force and effect if the Developer does not construct the Project substantially as contemplated by the design documents identified in this Agreement, or if Developer submits applications for development of the Property that are inconsistent with such permits, approvals and with this Agreement.

15.3. This Agreement shall terminate upon the expiration of the term identified in Section 6 or when the Subject Property has been fully developed, whichever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated.

15.4. If not earlier terminated, this Agreement shall terminate as provided upon the passage of the time periods set forth in Section 6 without Council action.

Section 16: Effect upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City of Olympia Comprehensive Plan and its terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 17: *Effects of Termination on City.* Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination.

Section 18: *Assignment and Assumption.* The Developer shall have the right to sell, assign, or transfer this Agreement with all their rights, title, and interests therein to any person, firm or corporation at any time during the term of this Agreement.

Section 19: *Covenants Running with the Land.* The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

Section 20: *Amendment to Agreement; Effect of Agreement on Future Actions.*

20.1. This Agreement may be amended by mutual written consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement.

20.2. Nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during term of this Agreement to the extent required by a serious threat to public health and safety, or as a result of superseding state or federal law.

20.3. So long as mutually agreed upon, nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Subject Property upon bases other than those set out in 20.2. In the absence of such mutual agreement by the Parties, any such amendment may not become effective earlier than the termination date of this Agreement.

Section 21: *Releases.* Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 22: *Notices.* Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of both the City Manager and the Director of Community Planning and Development. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such

notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 23: *Applicable Law and Attorneys' Fees.* This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action shall lie in Thurston Superior Court or the U.S. District Court for Western Washington in Tacoma.

Section 24: *Third Party Legal Challenge.* In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City and the Developer will each bear their own cost of defense and all expenses incurred in the defense of such actions, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation.

Section 25: *Specific Performance.* The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

Section 26: *Severability.* If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the Resolution adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:


LOW-INCOME HOUSING INSTITUTE (LIHI):

By 
Sharon Lee, Executive Director
Date: 2/14/2020

CITY OF OLYMPIA:

By _____
Steven J. Burney, Interim City Manager
Date: _____

APPROVED AS TO FORM:

By 
City Attorney
(C.A.)

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On the ____ day of _____ 2020, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared STEVEN J. BURNEY, to me known to be the Interim City Manager of the CITY OF OLYMPIA, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute said instrument.

WITNESS my hand and official seal the day and year first above written.

Signature
Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

On the 14th day of February 2020, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Sharon Lee, to me known to be the Executive Director of the Low Income Housing Institute, a Washington non-profit corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said non-profit corporation for the uses and purposes therein mentioned and on oath states that she is authorized to execute said instrument.

WITNESS my hand and official seal the day and year first above written.



Aaron D. Long
Signature
Print Name: Aaron D. Long
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle
My commission expires 6/19/22

EXHIBIT "A"

UNIT A AND UNIT B OF AMENDED PLAT OF PRO-ARTS CONDOMINIUM, PHASE ONE, ACCORDING TO THE AMENDED PLAT RECORDED JANUARY 4, 1994 IN VOL. 3 OF CONDOMINIUMS, PAGES 92 AND 93, UNDER AUDITOR'S FILE NO. 9401040258, AND THE AMENDED DECLARATION OF CONDOMINIUM, RECORDED JANUARY 4, 1994 UNDER AUDITOR'S FILE NO. 9401040259.

IN THURSTON COUNTY, WASHINGTON..

EXHIBIT B

[Description of phases, to be included as part of Exhibit B along with site plans]

Phase 1

Reference **DA-1.1 – SITE PLAN - PHASE 1**, Exhibit B

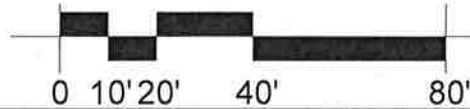
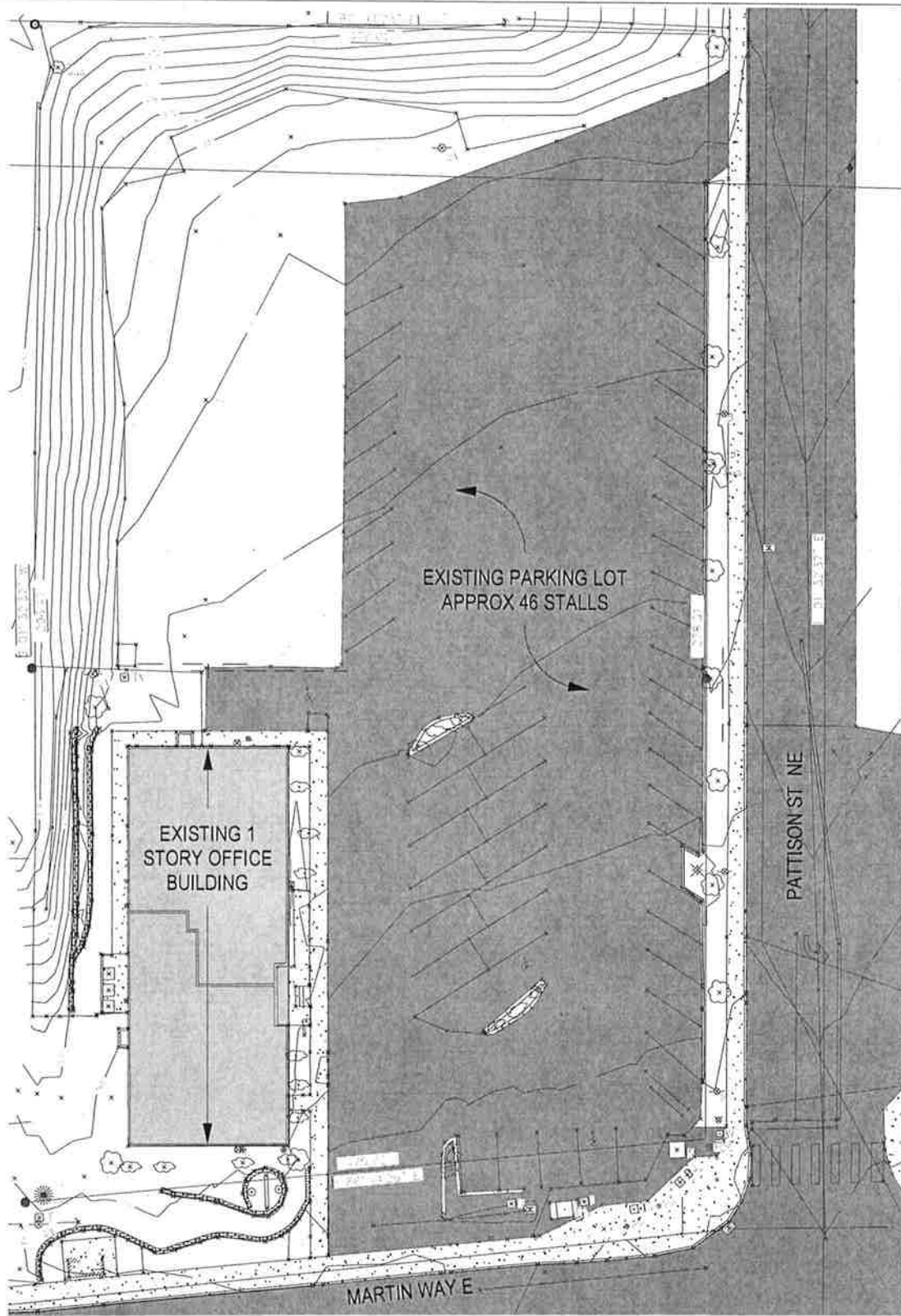
- Demolish surface parking area and stalls from Phase 1 build area. Maintain approximately 24 stalls in surface parking area to south. Add 4 new compact stalls to Phase 1 area.
- Construction of new building, consisting of approximately 65 low income dwelling units, and a homeless shelter for approximately 60 residents.
- Provide adequate Stormwater Management for both Phase 1 and 2 development.
- Provide trash/recycle enclosure to service both Phase 1 and Phase 2.
- Provide landscape improvements from the proposed Pattison Street driveway to the north of the site, including approximately 26 tree units as partial fulfillment of Urban Forestry requirements.
- Martin Way E - Maintain existing frontage, including sidewalk and planter strip.
- Provide full frontage improvements on entire Pattison St NE frontage per standard "Neighborhood Collector Street," drawing 4-2I in Exhibit C. Existing driveway access at the north of site on Pattison Street shall be removed, with a new driveway to be added mid-site, to establish new access between Phase 1 and Phase 2. Curb and channelization on Pattison Street NE from the recently completed intersection improvements for both future phases are included in Exhibit C on the sheet titled "Pattison Street NE Frontage Improvements."

Phase 2

Reference **DA-1.2 – SITE PLAN - PHASE 2**, Exhibit B

- Demolition of existing office building and associated parking lot.
- Construction of new building, consisting of approximately 47 low income dwelling units.
- Construction of new parking lot for approximately 13 additional stalls, for a total of 17 stalls, as established by the land use review process. The parties acknowledge this will require the Developer to apply for a parking modification that meets the criteria required by existing City land use regulations, which can be supported by the City.
- Provide landscape improvements for the remainder of the site, including any additional tree units required to fulfill Urban Forestry requirements.
- Provide full frontage improvements on Martin Way E per standard Arterial with bike lane drawing 4-2B in Exhibit C. Reuse and relocate existing bus structure to paved area within the Planting area B in City of Olympia "Arterial" Drawing 4-2B.

ORIGINAL SHEET SIZE 8 1/2" x 11"



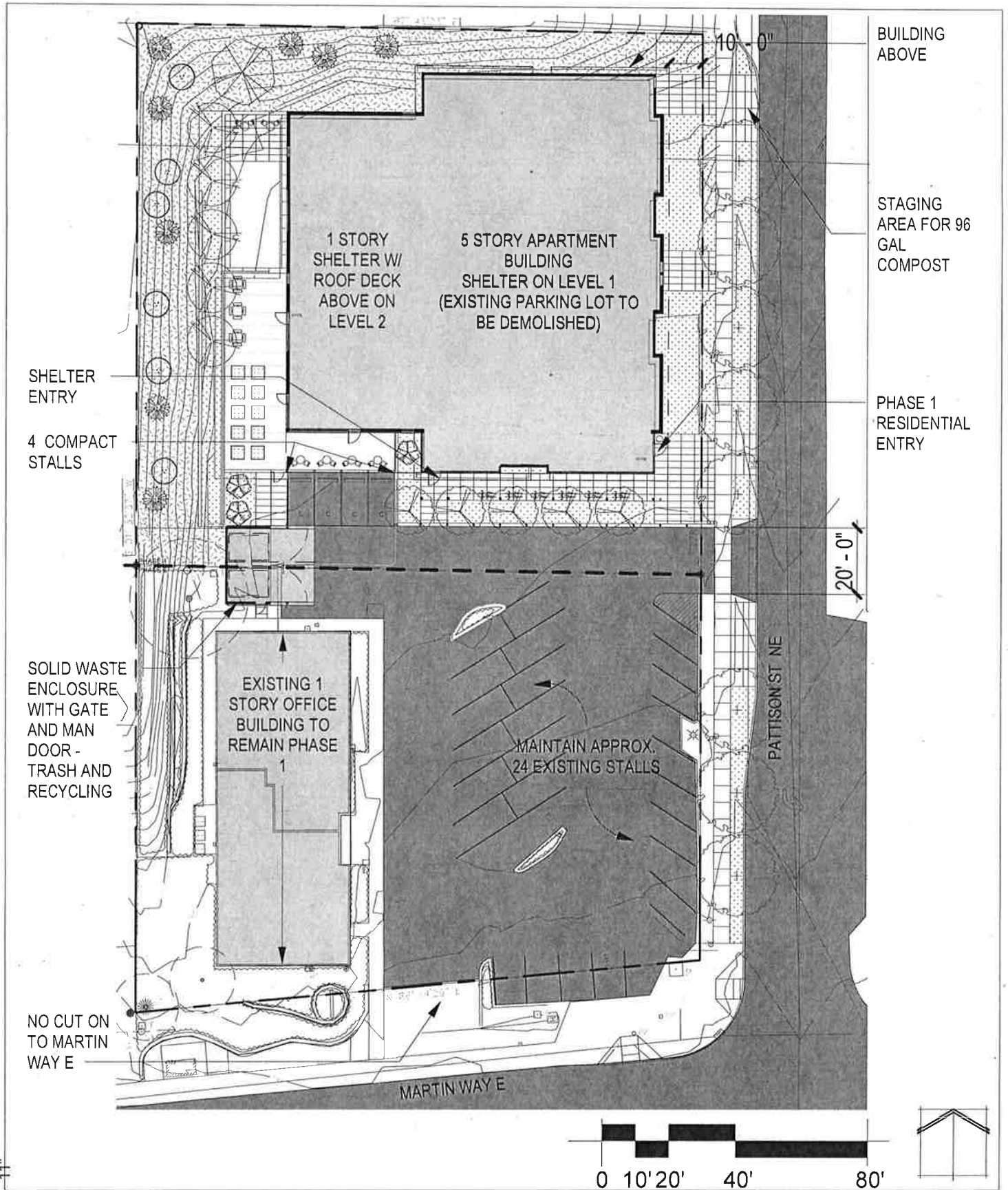
ENCORE
ARCHITECTS

1402 Third Avenue, Suite 1000
Seattle, WA 98101

encorearchitects.com

2828 MARTIN WAY - PHASE 1
EXISTING SITE PLAN

DA-1.0



ORIGINAL SHEET SIZE 8 1/2" x 11"

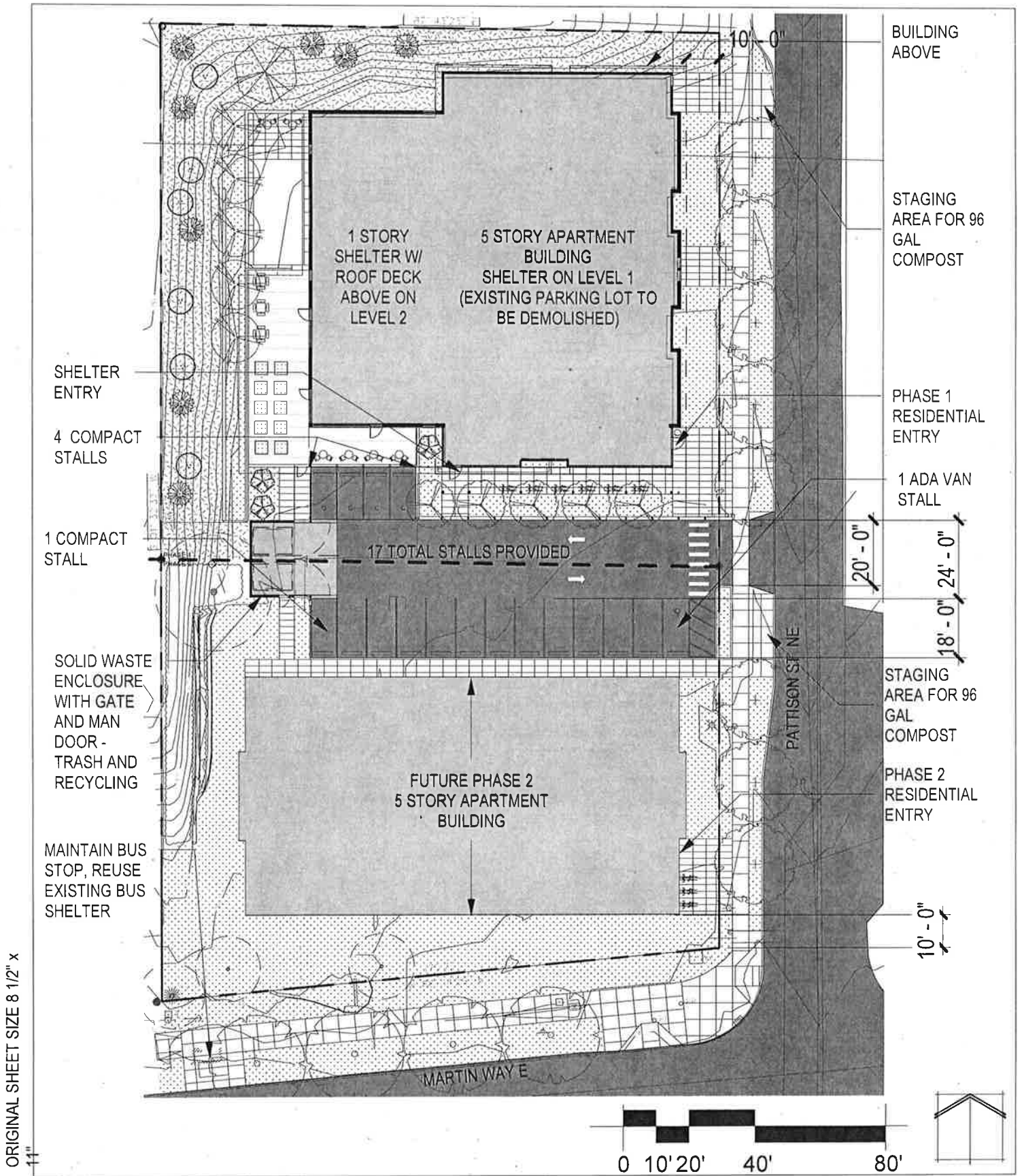
ENCORE ARCHITECTS

2828 MARTIN WAY - PHASE 1 SITE PLAN - PHASE 1

1402 Third Avenue, Suite 1000
Seattle, WA 98101

encorearchitects.com

DA-1.1



ENCORE
ARCHITECTS

2828 MARTIN WAY - PHASE 1

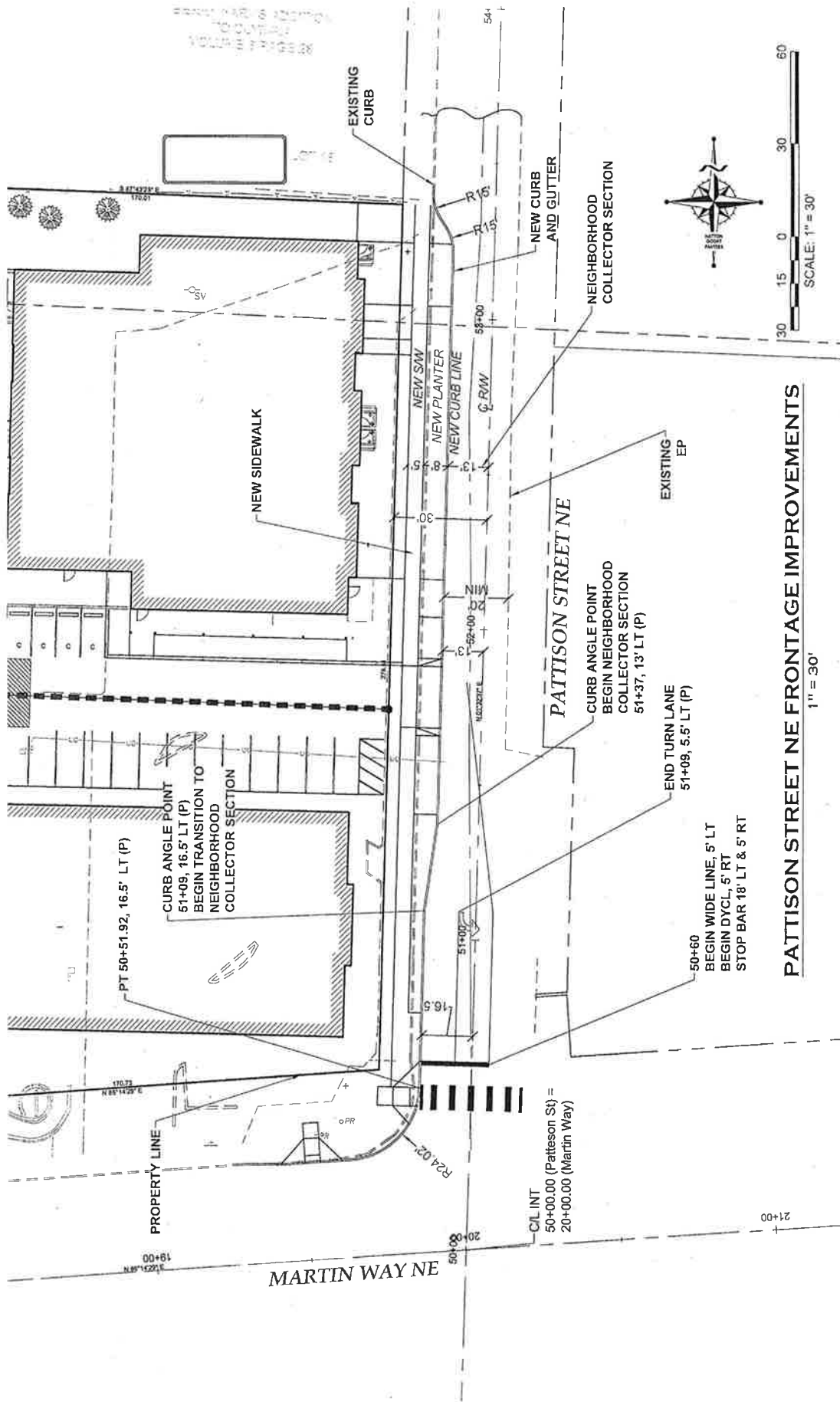
SITE PLAN - PHASE 2

1402 Third Avenue, Suite 1000
Seattle, WA 98101

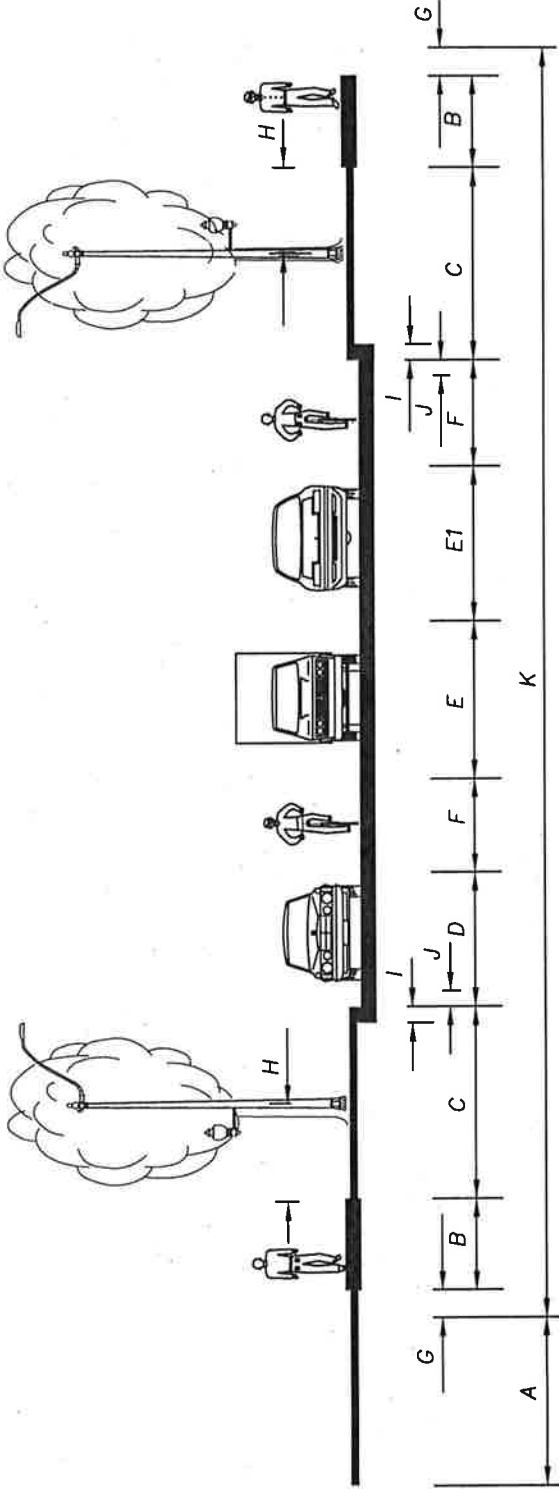
encorearchitects.com

DA-1.2

EXHIBIT C



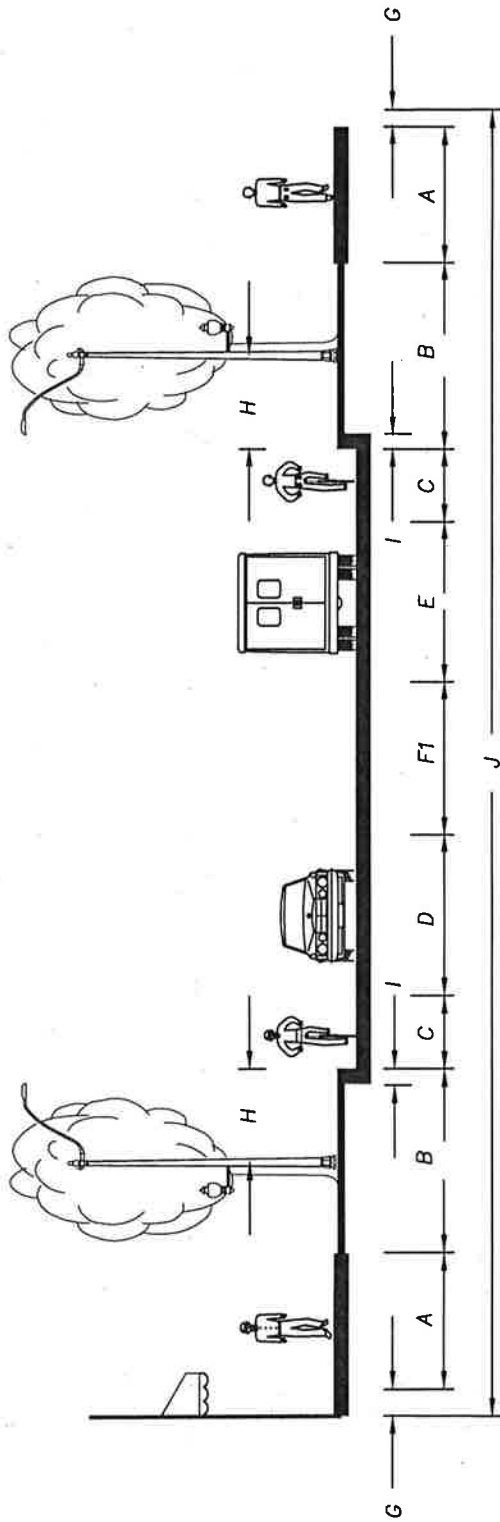
PATTISON STREET NE FRONTAGE IMPROVEMENTS
1" = 30'



DIMENSIONS = FEET

NUMBER OF LANES	EASEMENT		SIDEWALK	PLANTING	PARKING	LANE	LANE	BIKE LANE	R/W BEHIND SIDEWALK	CLEAR ZONE	CURB	GUTTER*	RIGHT OF WAY	SEE STANDARD DRAWING 4-6A FOR MINIMUM STRUCTURAL DESIGN AND STREET CROSS SLOPE DESIGN	SEE MINIMUM STREET DESIGN STANDARDS TABLE FOR ADDITIONAL DESIGN ELEMENTS
	A	B	C	D	E	E1	F	G	H	I	J	K			
2 LANES	10	5	8	7	10	9	0	1	4	0.5	1	54			
2 LANES CLASS II*	10	5	8	7	10	10	5	1	4	0.5	1	64			
2 LANES CLASS III*	10	5	8	7	14	14	0	2	4	0.5	1	64			
A= PRIVATE UTILITY EASEMENT															
*GUTTER NOT ALLOWED NEXT TO BIKE FACILITY															
ADT 500-3,000															

APPROVED BY FRAN R. EIDE, PE CITY ENGINEER	REVISED DATE 8/30/2018	CITY OF OLYMPIA NEIGHBORHOOD COLLECTOR STREET	STD. DWG. NO. 4-21
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DIMENSIONS = FEET

NUMBER OF LANES	SIDEWALK			PLANTING			BIKE LANE			LANE			LEFT TURN LANE			R/W BEHIND SIDEWALK			CLEAR ZONE			CURB			RIGHT OF WAY		
	A	B	C	D	E	F1	G	H	I	J	H	I	J	H	I	J	H	I	J	H	I	J	H	I	J		
2 LANES	8	10	5	10	10	0	1	5	0.5	68																	
3 LANES	8	10	5	10	10	11	1	5	0.5	79																	
4 LANES	8	10	5	10	10	0	1	5	0.5	88																	
5 LANES	8	10	5	10	10	11	1	5	0.5	99																	
SEE STANDARD DRAWING 4-6A FOR MINIMUM STRUCTURAL DESIGN AND STREET CROSS SLOPE DESIGN																											
SEE MINIMUM STREET DESIGN STANDARDS TABLE FOR ADDITIONAL DESIGN ELEMENTS																											
ADT 14,000-40,000																											

APPROVED BY FRAN R. EIDE, PE CITY ENGINEER	REVISED DATE 8/10/2015	CITY OF OLYMPIA ARTERIAL	STD. DWG. NO. 4-2B
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