

**Special City Council Meeting  
June 25, 2018 - 5:30 PM  
City Hall Council Chambers  
AGENDA**

**I. CALL TO ORDER**

- A. **Pledge of Allegiance**
- B. **Roll Call**

**II. CONSENT AGENDA**

*All matters listed on the Consent Agenda are considered by the City Council to be routine and will be enacted by one motion in the form listed.*

- A. Public Works Project No. CP1725 (Gaub)  
City Council to award Contract No. 18-09, to Lakeside Industries Inc. on their low bid of \$2,370,331.52 for Project No. CP1725, 2018 Citywide Patch and Overlay Project

***(RECOMMENDED ACTION: City Council approve the Consent Agenda.)***

**III. RESOLUTIONS**

- A. Resolution No. 5375 (Coleman)  
A Resolution of the City Council of the City of Auburn, Washington, authorizing the acceptance and appropriation of grant funds in the amount of Twenty-five Thousand Two Hundred Forty-two Dollars (\$25,242.00), and authorizing the Mayor to execute an interlocal agreement between the Washington State Department of Ecology and the City of Auburn to accept said funds for implementation of the 2017-2019 Local Solid Waste Financial Assistance Grant program

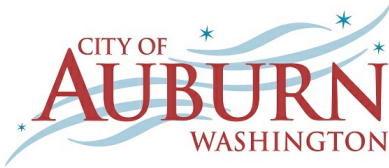
***(RECOMMENDED ACTION: City Council adopt Resolution No. 5375.)***

- B. Resolution No. 5376 (Barber)  
A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to take steps to comply in accordance with Section 41.50.152 of the Revised Code of Washington regarding a city employee cashing-out unused annual leave in excess of two hundred forty hours

***(RECOMMENDED ACTION: City Council adopt Resolution No. 5376.)***

**IV. ADJOURNMENT**

*Agendas and minutes are available to the public at the City Clerk's Office, on the City website (<http://www.auburnwa.gov>), and via e-mail. Complete agenda packets are available for review at the City Clerk's Office.*



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Public Works Project No. CP1725 (Gaub)

**Department:**

CD & PW

**Attachments:**

[Budget Status Sheet](#)

[Bid Tab Summary](#)

[Vicinity Map](#)

**Date:**

June 18, 2018

**Budget Impact:**

Current Budget: \$0

Proposed Revision:  
\$71,633.00

Revised Budget: \$0

**Administrative Recommendation:**

City Council award Contract No. 18-09, to Lakeside Industries Inc. on their low bid of \$2,370,331.52 for Project No. CP1725, 2018 Citywide Patch and Overlay Project.

**Background Summary:**

The City received 4 responsive bids and the low bid was approximately 8.3% above the engineer's estimate. Staff has performed reference checks and other verifications to determine that Lakeside Industries, Inc. meets the responsible bidding criteria and recommends award.

Bids for this contract came in higher than anticipated due to a recent spike in construction costs associated with high oil prices and a high demand for construction work. The two lowest bids received were within close range of each other, which indicates that re-advertising this project will not likely result in lower bids. Re-advertising the project for bids would also delay the project and push the construction work into the summer of 2019. Delaying this street preservation work would cause the arterial streets to further degrade and increase the costs to ultimately restore and preserve them. Therefore, it is in the public's best interest to award the contract to Lakeside Industries, Inc.

The major items of work include grinding and overlaying 6.55 lane-miles of Arterial and Collector streets, pavement patching on 0.44 lane-miles of Arterial roadway, constructing a thin asphalt overlay treatment on 3.28 lane-miles of local streets, and upgrading 39 ADA ramps.

Construction of this project is anticipated to start in late July 2018 and be complete in

November 2018.

A project budget shortfall of \$71,633.00 exists in the 105 (Local Street) Fund. A Budget Amendment will be necessary to fund the project and is anticipated to be included in Budget Amendment #7. A project budget contingency of \$50,215.00 remains in the 103 (Local Street Preservation) Fund.

**Reviewed by Council Committees:**

**Councilmember:**

**Staff:**

Gaub

**Meeting Date:** June 25, 2018

Item Number:

CA.A

# BUDGET STATUS SHEET

Project No: CP1725 Project Title: 2018 Citywide Patch and Overlay Project  
Project Manager: Jai Carter

Project Initiation (PMP) Date: January 31, 2018  
Advertisement Date: \_\_\_\_\_  
Award Date: \_\_\_\_\_

- ☐ Project Initiation
- ☐ Final Design
- ☒ Contract Award
- ☐ Change Order Approval
- ☐ Contract Final Acceptance

Updated: June 14, 2018

The "Future Years" column indicates the projected amount to be requested in future budgets.

## Funds Budgeted (Funds Available)

Funding	2017	2018	2019	Future Years	Total
103 Fund - Local Street Preservation	0	850,000	0	0	850,000
105 Fund - Arterial Street Preservation	0	1,700,000	0	0	1,700,000
Total	0	2,550,000	0	0	2,550,000

## Estimated Cost (Funds Needed)

Activity	2017	2018	2019	Future Years	Total
Design Engineering - City Costs	0	22,570	0	0	22,570
Construction Contract Bid	0	2,370,332	0	0	2,370,332
Construction Contingency (5%)	0	118,517	0	0	118,517
Materials Testing	0	10,000	0	0	10,000
Construction Engineering	0	50,000	0	0	50,000
Total	0	2,571,418	0	0	2,571,418

## 103 Fund - Local Street Preservation

	2017	2018	2019	Future Years	Total
*103 Funds Budgeted ( )	0	(850,000)	0	0	(850,000)
103 Funds Needed	0	799,785	0	0	799,785
<b>*103 Fund Project Contingency ( )</b>	<b>0</b>	<b>(50,215)</b>	<b>0</b>	<b>0</b>	<b>(50,215)</b>
<b>103 Funds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

## 105 Fund - Arterial Street Preservation

	2017	2018	2019	Future Years	Total
*105 Funds Budgeted ( )	0	(1,700,000)	0	0	(1,700,000)
105 Funds Needed	0	1,771,633	0	0	1,771,633
<b>*105 Fund Project Contingency ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>105 Funds Required</b>	<b>0</b>	<b>71,633</b>	<b>0</b>	<b>0</b>	<b>71,633</b>

\* ( # ) in the Budget Status Sections indicates Money the City has available.

## Bid Tabulation - Bid Totals Summary

Project: CP1725, 2018 Citywide Patch and Overlay Project , 18-09

Prepared By: City of Auburn

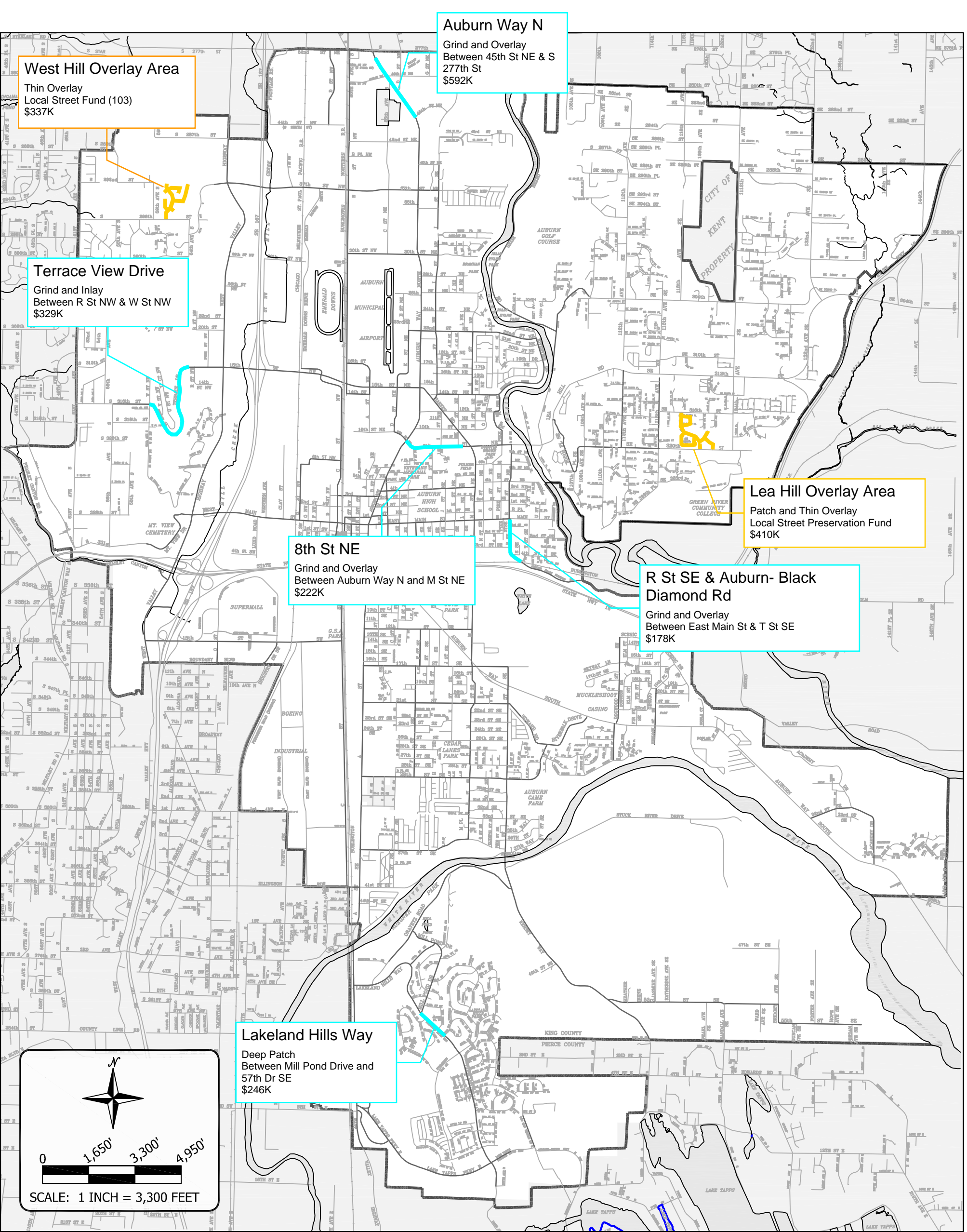
Bid Date: June 14, 2018

<b>ENGINEER'S ESTIMATE:</b>	<b>\$2,187,000.30</b>	<b>(not including tax)</b>
AVERAGE BASIC BID AMOUNT:	\$2,565,320.47	
BASIC BID SPREAD AMOUNT:	\$414,825.73	

		<b>Basic BID Amount</b>	<b>Total BID Amount</b>	<b>Spread \$</b>	<b>Spread %</b>
<b>LOW BIDDER:</b>	<b>Lakeside Industries</b>	<b>\$2,370,331.52</b>	<b>\$2,370,331.52</b>	<b>\$183,331.22</b>	<b>8.38%</b>
Second Bidder:	Miles Resources, LLC	\$2,438,145.20	\$2,438,145.20	\$251,144.90	11.48%

	<b>Basic BID (Tax not included)</b>	<b>Total BID (Including tax)</b>
Lakeside Industries	\$2,370,331.52	\$2,370,331.52
Miles Resources, LLC	\$2,438,145.20	\$2,438,145.20
Puget Paving and Construction, Inc.	\$2,667,647.90	\$2,667,647.90
Lakeridge Paving Company LLC	\$2,785,157.25	\$2,785,157.25

**NOTE:** An evaluation of whether a bidder is responsible or non-responsible was only made for the low bidder. This does not indicate, one way or the other, how other bidders would be considered if they were the low bidder.



# 2018 CITYWIDE PRESERVATION STREET SELECTION

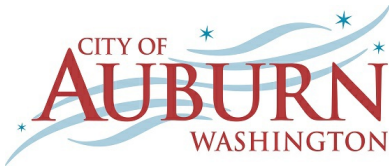
2018 Arterial Preservation Program

Proposed Citywide Patch and Overlay Project Streets

2018 Local Preservation Program

Proposed Local Street Preservation





## AGENDA BILL APPROVAL FORM

**Agenda Subject:**

Resolution No. 5375 (Coleman)

**Date:**

June 19, 2018

**Department:**

Finance

**Attachments:**

[Resolution No. 5375 and Grant Agreement](#)

**Budget Impact:****Administrative Recommendation:**

Approve Grant Receipt for \$25,242.00

**Background Summary:**

The Washington State Department of Ecology (Ecology) requests to enter into an interlocal agreement with the City of Auburn for the 2017-2019 Local Solid Waste Financial Assistance Grant Program (formerly known as Coordinated Prevention Grant Program). Ecology has appropriated a 75% grant in the amount of \$25,242.00 for the City to promote waste reduction and recycling. The remaining 25% match of \$8,414.00 will come from a King County Waste Reduction and Recycling Grant.

The City of Auburn Solid Waste Division will use the grant funds for the following programs:

1. Residential Recycling: Staff will promote waste reduction and recycling to residents through educational displays at community events, a community yard sale, and recycle cart checks.
2. School Education and Outreach: Staff and a consultant will provide waste reduction and recycling presentations to Auburn School District students. Grant funds may be used to partially fund a water bottle refill station at a school or schools.

**Reviewed by Council Committees:****Councilmember:****Staff:**

Coleman

**Meeting Date:** June 25, 2018

**Item Number:**

RES.A

## **RESOLUTION NO. 5 3 7 5**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE ACCEPTANCE OF GRANT FUNDS IN THE AMOUNT OF TWENTY-FIVE THOUSAND TWO HUNDRED FORTY-TWO DOLLARS (\$25,242.00), AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE WASHINGTON STATE DEPARTMENT OF ECOLOGY AND THE CITY OF AUBURN TO ACCEPT SAID FUNDS FOR IMPLEMENTATION OF THE 2017-2019 LOCAL SOLID WASTE FINANCIAL ASSISTANCE GRANT PROGRAM.

WHEREAS, King County and the City of Auburn have adopted the King County Solid Waste Management Plan, which includes recycling and waste reduction goals; and

WHEREAS, in order to help meet these goals, the Washington State Department of Ecology with King County Solid Waste Division has established a waste reduction and recycling grant program for the suburban cities; and

WHEREAS, this program provides funding to further the development of local waste reduction and recycling for Auburn businesses and residents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

**Section 1.** The Grant in the total amount of twenty-five thousand two hundred forty-two dollars (\$25,242.00) is accepted, which Grant constitutes reimbursement of funds for implementing the 2017-2019 Local Solid Waste Financial Assistance Grant Program.

**Section 2.** The Mayor of the City of Auburn is authorized to execute an Interlocal Agreement with the Washington State Department of Ecology for the



reimbursement of said funds. Said Agreement shall be in substantial conformity to the one attached hereto, designated Grant No.: W2RLSWFA-1719-AubuSW-00096, which is incorporated by this reference.

**Section 3.** The Mayor is hereby authorized to implement such administrative procedures as necessary to carry out directions of the legislation.

**Section 4.** This Resolution shall be in full force and effect upon passage and signatures hereon.

Dated and Signed this 25<sup>th</sup> day of June, 2018.

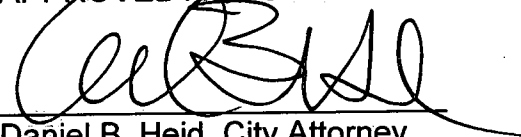
CITY OF AUBURN

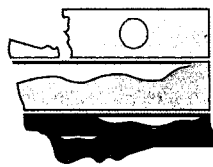
\_\_\_\_\_  
NANCY BACKUS, MAYOR

ATTEST:

\_\_\_\_\_  
Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Daniel B. Heid, City Attorney



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

**Agreement No. W2RLSWFA-1719-AubuSW-00096**

**WASTE 2 RESOURCES LOCAL SOLID WASTE FINANCIAL ASSISTANCE AGREEMENT**

**BETWEEN**

**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

**AND**

**CITY OF AUBURN**

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and CITY OF AUBURN, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

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**GENERAL INFORMATION**

Project Title:	2017-19 LSWFA City of Auburn IMP
Total Cost:	\$33,656.00
Total Eligible Cost:	\$33,656.00
Ecology Share:	\$25,242.00
Recipient Share:	\$8,414.00
The Effective Date of this Agreement is:	07/01/2017
The Expiration Date of this Agreement is no later than:	06/30/2019
Project Type:	Planning/Implementation

**Project Short Description:**

The City of Auburn will spend \$33,656.00 to conduct "back to basics" recycling outreach to residents and schools, and to also support waste prevention and reuse via tools and events. As a result, approximately 29.5 tons of potential waste will be either prevented or recycled by some 1,450 participants.

**Project Long Description:**

N/A

**Overall Goal:**

Provide regional solutions and intergovernmental cooperation; prevent or minimize environmental contamination through planning and project implementation; and comply with state and local solid and hazardous waste management plans and laws.

Agreement No: W2RLSWFA-1719-AubuSW-00096  
Project Title: 2017-19 LSWFA City of Auburn IMP  
Recipient Name: CITY OF AUBURN

**RECIPIENT INFORMATION**

Organization Name: CITY OF AUBURN

Federal Tax ID: 91-6001228

DUNS Number: 032942575

Mailing Address: 25 West Main St  
Auburn, WA 98001

Physical Address: 25 West Main St  
Auburn, Washington 98001

Organization Email: jenelson@auburnwa.gov

**Contacts**

<b>Project Manager</b>	Joan Nelson Solid Waste & Recycling Supervisor  25 West Main St Auburn, Washington 98001 Email: jenelson@auburnwa.gov Phone: (253) 931-5103
<b>Billing Contact</b>	Consuelo Rogel Financial Analyst  25 West Main Street Auburn, Washington 98001 Email: crogel@auburnwa.gov Phone: (253) 804-5023
<b>Authorized Signatory</b>	Nancy Backus Mayor  25 W Main St Auburn, Washington 98001 Email: nbackus@auburnwa.gov Phone: (253) 931-3041

Agreement No: W2RLSWFA-1719-AubuSW-00096  
Project Title: 2017-19 LSWFA City of Auburn IMP  
Recipient Name: CITY OF AUBURN

**ECOLOGY INFORMATION**

Mailing Address: Department of Ecology  
Waste 2 Resources  
PO BOX 47600  
Olympia, WA 98504-7600

Physical Address: Waste 2 Resources  
300 Desmond Drive SE  
Lacey, WA 98503

**Contacts**

<b>Project Manager</b>	Diana Wadley  3190 - 160th Ave SE Bellevue, Washington 98008-5452 Email: dwad461@ecy.wa.gov Phone: (425) 649-7056
<b>Financial Manager</b>	Diana Wadley  3190 - 160th Ave SE Bellevue, Washington 98008-5452 Email: dwad461@ecy.wa.gov Phone: (425) 649-7056

## AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology's authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

IN WITNESS WHEREOF: the parties hereto, having read this Agreement in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Washington State  
Department of Ecology

CITY OF AUBURN

By: \_\_\_\_\_

Laurie Davies  
Waste 2 Resources  
Program Manager

Date

By: \_\_\_\_\_

Nancy Backus  
Mayor

Date

Template Approved to Form by  
Attorney General's Office

## SCOPE OF WORK

Task Number: 1 Task Cost: \$20,156.00

Task Title: Residential Recycling/Waste Prevention

### Task Description:

#### Activity - Reducing Recycle Contamination

Working with residents, RECIPIENT will target neighborhoods to perform recycle bin visual inspections and tagging to help reduce contamination. RECIPIENT will estimate contamination during the check, tag accordingly, and then conduct follow-up visits to assess change.

RECIPIENT will use different forms of media and promotional methods to residents throughout the Agreement period. RECIPIENT will focus on a "Recycle More. Recycle Right" or "Back to Basics" approach to increase recycling and reduce contamination. Efforts may include, but are not limited to: producing waste reduction and recycling advertisements, flyers and postcards; providing educational table displays and staffing at approximately two City events related to promoting waste reduction/consumption; and the cart checks.

RECIPIENT is reminded that all grant-funded giveaway items must first be pre-approved by ECOLOGY. Additionally, RECIPIENT shall obtain ECOLOGY's approval for all Agreement-funded communication materials or documents related to the fulfillment of this Agreement, per section 18 of the General Terms and Conditions of this Agreement. Contact your Ecology Project Manager to obtain approval.

Reimbursement for costs incurred by contractors to implement work identified in this task are subject to the same eligibility and reimbursement requirements as the RECIPIENT, and require ECOLOGY approval.

#### Activity - Community Materials Exchange

RECIPIENT will coordinate a weekend when residents may exchange materials or money in a "Community Yard Sale." Benefits to residents participating as sellers include use of City-provided promotional materials, and inclusion on the City's map of sale sites. Benefits to buyers and the environment include a compilation of locations for more efficient trip planning, and reuse of items at a lower-than-new sales price.

### Task Goal Statement:

The goal of this task is to increase recycling, reduce contamination, and promote waste reduction among residents, bringing awareness to existing collection guidelines and programs, while inspiring residents to participate.

### Task Expected Outcome:

For Reducing Contamination, RECIPIENT will assess the change in contamination based on the difference between initial and follow-up cart checks. From the initial cart check to the follow-up cart check, RECIPIENT anticipates at least a 75% decrease in the number of carts found to contain contamination. RECIPIENT will also estimate the change in tonnage diverted into recycling.

To estimate residential contacts made, RECIPIENT will track the number of flyers, etc. distributed and the reach of advertising. To estimate participants, RECIPIENT will track attendance at events, and the number of cart checks. Surveys may also be used as appropriate, or hauler data for the areas reached with this task.

Agreement No: W2RLSWFA-1719-AubuSW-00096  
Project Title: 2017-19 LSWFA City of Auburn IMP  
Recipient Name: CITY OF AUBURN

To estimate the tons diverted from the waste stream via the Community Yard Sale, RECIPIENT will multiply 50 pounds by the number of sellers.

As a result of this task, over the Agreement period, RECIPIENT estimates an additional 25 tons recycled by participating residents.

RECIPIENT expects to make 22,500 residential contacts, resulting in 1,000 residential participants.

Recipient Task Coordinator: Joan Nelson & Kathleen Edman

**Residential Recycling/Waste Prevention**

**Deliverables**

Number	Description	Due Date
1.1	Work as defined in the Scope of Work for this Agreement is implemented.	06/30/2019



## SCOPE OF WORK

Task Number: 2 Task Cost: \$13,500.00

Task Title: Business Recycling/Waste Prevention

### Task Description:

Activity - School Waste Reduction and Recycling

RECIPIENT, with a consultant, will support the Auburn School District (ASD)'s continuing hard work to increase their diversion rate, reduce contamination of recycling and organics waste streams, and reduce overall waste. RECIPIENT will provide waste reduction and recycling presentations to students and work with school staff to ensure the school can provide the best waste management services possible.

RECIPIENT will provide the ASD Resource Conservation Manager (RCM) with advance notice of the dates and locations of the classroom presentations. RECIPIENT also will coordinate with the RCM to increase waste prevention and recycling through the promotion of the King County Green Schools and Washington Green Schools programs. In addition, the City may partially fund a water bottle refill station at a school or schools within the ASD to promote waste reduction.

Expected costs include consultant time, outreach printed materials, presentation props, and tools such as a water bottle refill station.

RECIPIENT is reminded that all grant-funded giveaway items must first be pre-approved by ECOLOGY. Additionally, RECIPIENT shall obtain ECOLOGY's approval for all Agreement-funded communication materials or documents related to the fulfillment of this Agreement, per section 18 of the General Terms and Conditions of this Agreement. Contact your Ecology Project Manager to obtain approval.

Reimbursement for costs incurred by contractors to implement work identified in this task are subject to the same eligibility and reimbursement requirements as the RECIPIENT, and require ECOLOGY approval.

### Task Goal Statement:

The goal of this task is to increase waste reduction and recycling awareness and practices in Auburn's schools, resulting in effective waste management behaviors both at home and school.

### Task Expected Outcome:

Over the two-year Agreement period, the RECIPIENT expects about 4.5 more tons recycled or reduced via approximately 450 students participating via reception of school outreach such as one of approximately 15 school presentations given.

RECIPIENT will track the number of students and staff reached through presentations or one-on-one meetings (participants), as well as notified of the availability of outreach (contacts). RECIPIENT estimates 20 more pounds will be recycled or reduced per year per student or staff member participating in a presentation.

If the water bottle refill station is realized, RECIPIENT will seek data regarding its waste reduction impact.

Agreement No: W2RLSWFA-1719-AubuSW-00096  
Project Title: 2017-19 LSWFA City of Auburn IMP  
Recipient Name: CITY OF AUBURN

Recipient Task Coordinator: Joan Nelson & Kathleen Edman

**Business Recycling/Waste Prevention**

**Deliverables**

Number	Description	Due Date
2.1	Work as defined in the Scope of Work for this Agreement is implemented.	06/30/2019

Funding Title:	City of Auburn IMP	Funding Type:	Grant
Funding Effective Date:	07/01/2017	Funding Expiration Date:	06/30/2019
Funding Source:			

**Description:** Local Solid Waste Financial Assistance

City of Auburn IMP	Task Total
Residential Recycling/Waste Prevention	\$ 20,156.00
Business Recycling/Waste Prevention	\$ 13,500.00

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## **Funding Distribution Summary**

### **Recipient / Ecology Share**

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
City of Auburn IMP	25.00 %	\$ 8,414.00	\$ 25,242.00	\$ 33,656.00
<b>Total</b>		<b>\$ 8,414.00</b>	<b>\$ 25,242.00</b>	<b>\$ 33,656.00</b>

## **AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

## **SPECIAL TERMS AND CONDITIONS**

## **GENERAL FEDERAL CONDITIONS**

**If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.**

### **A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION:**

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal

Agreement No: W2RLSWFA-1719-AubuSW-00096  
Project Title: 2017-19 LSWFA City of Auburn IMP  
Recipient Name: CITY OF AUBURN

remedies, including suspension and debarment.

8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

## **B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING**

### **REQUIREMENTS:**

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at [www.fsrs.gov](http://www.fsrs.gov) <http://www.fsrs.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

For more details on FFATA requirements, see [www.fsrs.gov](http://www.fsrs.gov) <http://www.fsrs.gov>.

## GENERAL TERMS AND CONDITIONS

### Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 1/22/2018 VERSION

##### 1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

##### 2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

##### 3. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
  - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
  - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
  - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
  - Make the IDP readily available to anyone working at the project site.
  - Discuss the IDP with staff and contractors working at the project site.
  - Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
    - Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
  - d) If any human remains are found while conducting work under this Agreement:

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- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

#### 4. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

#### 5. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

#### 6. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State Department of Enterprise Services' Statewide Payee Desk. RECIPIENT must register as a payee by submitting a Statewide Payee Registration form and an IRS W-9 form at the website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. For any questions about the vendor registration process contact the Statewide Payee Help Desk at (360) 407-8180 or email [payeehelpdesk@watech.wa.gov](mailto:payeehelpdesk@watech.wa.gov).
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

#### 7. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.



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ECOLGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

#### 8. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

#### 9. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

#### 10. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

#### 11. ENVIRONMENTAL DATA STANDARDS

- a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact

the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
  - Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
  - Submit the QAPP to ECOLOGY for review and approval before the start of the work.
- b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at: <http://www.ecy.wa.gov/eim>.
- c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at: <https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

## 12. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

## 13. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

## 14. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

## 15. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

## 16. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified

minority and women's businesses.

d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

## 17. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; and (f) the General Terms and Conditions.

## 18. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

## 19. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

## 20. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to

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authorize others to use the same for federal, state, or local government purposes.

b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.

d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.

e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:

1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.

2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.

g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

## 21. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.
- d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of

this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder. RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

## 22. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

## 23. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

## 24. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

## 25. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

## 26. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, and 100% post-consumer recycled paper.

For more suggestions visit ECOLOGY's web page: Green Purchasing, ,  
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 27. TERMINATION

- a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the

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RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination. Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

**Non-Performance.** The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement. Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

**b) For Convenience**

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**Non-Allocation of Funds.** ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the recipient/contractor through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the recipient/contractor. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

**c) By Mutual Agreement**

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

**d) In Event of Termination**

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work

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completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

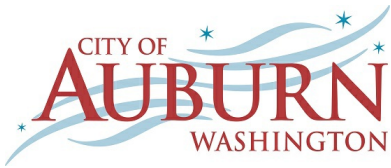
## 28. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

## 29. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.





## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Resolution No. 5376 (Barber)

**Date:**

June 20, 2018

**Department:**

Human Resources

**Attachments:**

[Resolution No. 5376](#)

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

City Council adopt Resolution No. 5376.

**Background Summary:**

According to Section 41.50.152 of the Revised Code of Washington (RCW), when an employee of the City, vested under one of the PERS Retirement Plans of the Washington State Department of Retirement Systems (DRS), is leaving the City's employ and has an accrual of unpaid leave in excess of two hundred forty (240) hours, the City shall provide notice thereof at a meeting conducted pursuant to RCW Chapter 42.30, the Open Public Meetings Act.

When the City of Auburn, as a PERS employer, proposes to enter into a contract with an employee or group of employees that may result in an excess compensation billing, the City must identify the compensation provision and the potential cost for excess compensation at an open public meeting, and shall give notice thereof, which notification shall also be in accordance with RCW Chapter 42.30.

Resolution No. 5376 provides the necessary notice required under Section 41.50.152 RCW.

**Reviewed by Council Committees:****Councilmember:****Staff:**

Barber

**Meeting Date:** June 25, 2018

Item Number:

RES.B

## **RESOLUTION NO. 5376**

**A RESOLUTION OF THE CITY COUNCIL, THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO TAKE STEPS TO COMPLY IN ACCORDANCE WITH SECTION 41.50.152 OF THE REVISED CODE OF WASHINGTON REGARDING A CITY EMPLOYEE CASHING-OUT UNUSED ANNUAL LEAVE IN EXCESS OF TWO HUNDRED FORTY HOURS**

WHEREAS, pursuant to Section 41.50.152 of the Revised Code of Washington (RCW), when an employee of the City, vested under one of the PERS Retirement Plans of the Washington State Department of Retirement Systems (DRS), is leaving the City's employ and has an accrual of unpaid leave in excess of two hundred forty (240) hours, the City shall provide notice thereof at a meeting conducted pursuant to RCW Chapter 42.30, the Open Public Meetings Act; and

WHEREAS, pursuant thereto, when the City of Auburn, as a PERS employer, proposes to enter into a contract with an employee or group of employees that may result in an excess compensation billing, the City must identify the compensation provision and the potential cost for excess compensation at an open public meeting, and shall give notice thereof, which notification shall also be in accordance with RCW Chapter 42.30; and

WHEREAS, at such public meeting, the City shall provide the following information:

- Full disclosure of the nature of the proposed compensation provision, which shall include an explanation of the pay provision and the services for which the employee is being compensated;
- An estimate of the cost of the excess compensation billing that the employer would have to pay as a result of the proposed compensation provision; and

WHEREAS, with the retirement of David B. Roselle, an employee of the city of Auburn vested under DRS Retirement Plan PERS 1, it is appropriate that the Mayor take such steps as are appropriate to comply with Section 41.50.152 RCW.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. The Mayor is authorized to enter into such agreements and execute Excess Compensation Benefit Invoices, with respect to retiring employee David B. Roselle, as are necessary to comply with the requirements of Section 41.50.152 RCW, the effects of which shall be in substantial conformity with the Excess Compensation Benefit Invoice, attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

Section 2. The Mayor is further authorized to take such other steps as may be necessary to carry out the intentions of this legislation, including but not limited to, notifying DRS of its compliance with the public notice requirement of Section 41.50.152 RCW.

Section 3 This Resolution shall be in full force and effect upon passage and signatures hereon.

Dated and Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

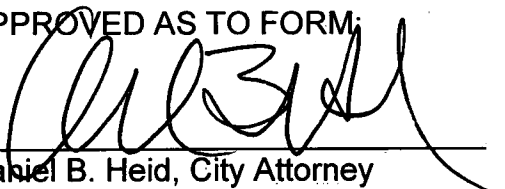
CITY OF AUBURN

ATTEST:

\_\_\_\_\_  
NANCY BACKUS, MAYOR

\_\_\_\_\_  
Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Daniel B. Heid, City Attorney

# EXHIBIT "A"

## STATE OF WASHINGTON DEPARTMENT OF RETIREMENT SYSTEMS PO Box 9018, Olympia, WA 98507-9018 **TOTAL EXCESS COMPENSATION BENEFIT INVOICE**

Regarding: ROSELLE, DAVID B  
Soc Sec Num: XXX-XX-6732  
Reason for Invoice: EXCESS COMPENSATION

Retirement Date: 05/01/2018  
Birth Date: 01/31/1955

AUBURN CITY OF  
ATTN: PAYROLL OFFICER  
25 W MAIN ST  
AUBURN WA 98001

Invoice Nbr: 01285489  
Invoice Date: 06/01/2018  
Report Group: 5035  
System/Plan: PERS 1

*Excess compensation liability is discussed in RCW 41.50.150 and DRS Notices 84-002, 95-010, & 98-001*

### Calculation of the Total Value of the Excess Compensation

1. Service Prior to 1947:	00.0000 years of service X 0.014285	0.000000
2. Service: (23.77 yrs x 2.0%)		0.475400
3. Vestment Or Nonduty Reduction:		1.000000
Total Service Value (1 + 2) x 3 =		0.475416
4. Reported Excess Compensation:	040.5396 x 047.60 (vacation hrs over 240)	\$1929.6850
5.	000.0000 x 0000.00 (sick leave hours)	\$0.0000
6. Other Dollars:		\$0.00
Total Excess Compensation (4 + 5 + 6) =		\$1929.6850
Monthly Excess Compensation:	\$1929.6850 / 24 (AFC months)	\$80.4035
Excess Benefit:	\$80.4035 (excess comp.) x 0.475416 (srvc val)	\$38.2251
Total Value of Excess Compensation:	\$38.2251 / 0.0076704 =	\$4983.46

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Your statement of account activity will show this amount as line item XC. **AMOUNT DUE: \$4,983.46**  
**DUE BY: 07/15/2018**

Upon receipt of this invoice, you are to notify DRS of your compliance with the public notice requirement.  
See RCW 41.50.152.

Questions about the calculation call: MERRILEE MEYER at (360) 664-7136  
Or Toll Free 1-800-547-6657, Ext. 47136

Return your payment to: Department of Retirement Systems  
PO Box 9018  
Olympia, WA 98507-9018