	<p>City Council Meeting July 15, 2019 - 7:00 PM City Hall Council Chambers AGENDA Watch the meeting LIVE!</p> <p>Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.</p>
---	--

I. CALL TO ORDER

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

II. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

III. APPOINTMENTS

- A. Auburn Tourism Board

City Council to confirm the appointment of Lacey Katz to the Auburn Tourism Board for a three-year term to expire December 31, 2021.

IV. AGENDA MODIFICATIONS

V. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. Public Hearings

- 1. Public Hearing for Franchise Agreement No. FRN19-0012 for Comcast

City Council to hold a public hearing in consideration of Franchise Agreement No. FRN19-0012 for Comcast Cable Communications, LLC and Comcast Cable Communications Management, LLC

- 2. Public Hearing for North Auburn Logistics Holdings, LLC Water Payback Agreement

City Council to hold a public hearing in consideration of North Auburn Logistics Holdings, LLC Water Payback Agreement

B. Audience Participation

This is the place on the agenda where the public is invited to speak to the City Council on any issue. Those wishing to speak are reminded to sign in on the form provided.

C. Correspondence - (There is no correspondence for Council review.)

VI. COUNCIL AD HOC COMMITTEE REPORTS

Council Ad Hoc Committee Chairs may report on the status of their ad hoc Council

Committees' progress on assigned tasks and may give their recommendation to the City Council, if any.

1. Finance Ad Hoc Committee (Chair Wales)

VII. 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. Minutes of the June 17, 2019 and June 24, 2019 Special City Council Meetings
- B. Minutes of the June 24, 2019 Study Session
- C. Minutes of the June 17, 2019 Regular Council Meeting
- D. Claims Vouchers (Fuhrer)
Claim voucher list dated July 1, 2019 which includes voucher numbers 454200 through 454424 in the amount of \$1,405,972.22 and five wire transfers in the amount of \$764,497.83.

Claim voucher list dated July 15, 2019 which included voucher numbers 454425 through 454802 in the amount of \$4,752,079.75 and 2 Wire transfers in the amount of \$527,418.16.
- E. Payroll Vouchers (Fuhrer)
Payroll check numbers 538497 through 538514 in the amount of \$593,201.79, electronic deposit transmissions in the amount of \$2,048,393.15 for a grand total of \$2,641,594.94 for the period covering June 13, 2019 to June 26, 2019.

Payroll check numbers 538515 through 538546 in the amount of \$245,428.24, electronic deposit transmissions in the amount of \$2,088,058.84 for a grand total of \$2,333,487.08 for the period covering June 27, 2019 to July 10, 2019.
- F. Setting Public Hearing Date for Franchise Agreement #FRN19-0013 (Gaub)
An Ordinance of the City Council of the City of Auburn, Washington, granting Seattle SMSA Limited Partnership, a Delaware Limited Partnership, d/b/a Verizon Wireless, a franchise for wireless telecommunications facilities
- G. Public Works Project No. CP1705 Gaub)
City Council to award Contract No. 19-18, to RW Scott Construction on their low bid of \$588,838.00 for Project No. CP1705, Auburn Way South (SR164) Sidewalk Improvements
- H. Public Works Project No. CP1802 (Gaub)
City Council to approve Change Order No. 1 in the amount not to exceed \$46,000.00 to Contract No. 19-01 for work on Project No. CP1802, Green River Pump Station Emergency Power Project
- I. Public Works Project No. CP1805 (Gaub)

City Council to award Contract No.19-19, to the lowest responsible bidder for Project No. CP1805, 2019 Sewer Repair and Replacement Project

J. Public Works Project No. CP1823 (Gaub)

City Council to award Contract No.19-20, to the lowest responsible bidder for Project No. CP1823, 2018 Storm Repair and Replacement Project

(RECOMMENDED ACTION: Move to approve the Consent Agenda.)

VIII. UNFINISHED BUSINESS

IX. NEW BUSINESS

X. ORDINANCES

A. Ordinance No. 6720 (Fuhrer)

An Ordinance of the City Council of the City of Auburn, Washington, amending Ordinance No. 6693, the 2019-2020 Biennial Operating Budget Ordinance, as amended by Ordinance No. 6712, authorizing amendment to the City of Auburn 2019-2020 budget as set forth in schedule "A" and schedule "B"

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6720.)

B. Ordinance No. 6722 (Gaub)

An Ordinance of the City Council of the City of Auburn, Washington, authorizing the Mayor to execute a payback agreement for utilities developer's extension between the City of Auburn and North Auburn Logistics Holdings, LLC

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6722.)

C. Ordinance No. 6724 (Gaub)

An Ordinance of the City Council of the City of Auburn, Washington, relating to abandoned utility services, clarifying the process for reestablishing utility services, amending Section 13.06.140, creating a new Section 13.20.235, and creating a new Section 13.48.295 to the Auburn City Code

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6724.)

D. Ordinance No. 6725 (Gaub)

An Ordinance of the City Council of the City of Auburn, Washington, relating to water utility, defining equivalent residential unit, and amending Section 13.06.010 of the Auburn City Code

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6725.)

XI. RESOLUTIONS

A. Resolution No. 5427 (Martinson)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to execute and administer an agreement between the City of Auburn and Racing to Equity Consulting Group for racial equity training and policy development

(RECOMMENDED ACTION: Move to adopt Resolution No. 5427.)

B. Resolution No. 5443 (Hinman)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to execute an amendment to the Interlocal Agreement between the City of Auburn and the City of Federal Way related to the Puget Sound Auto Theft Task Force

(RECOMMENDED ACTION: Move to adopt Resolution No. 5443.)

C. Resolution No. 5444 (Gaub)

A Resolution of the City Council of the City of Auburn, Washington relating to the Citywide LED Street Lighting and Controls Improvements; authorizing the Mayor to accept and expend grant funds and execute agreements related to those funds

(RECOMMENDED ACTION: Move to adopt Resolution No. 5444.)

XII. MAYOR AND COUNCILMEMBER REPORTS

At this time the Mayor and City Council may report on significant items associated with their appointed positions on federal, state, regional and local organizations.

A. **From the Council**

B. **From the Mayor**

XIII. 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

Agenda Subject:

Public Hearing for Franchise Agreement No. FRN19-0012 for Comcast

Date:

June 17, 2019

Department:

Public Works

Attachments:

[Draft Resolution No. 5431 Franchise Agreement No. FRN19-0012](#)

Budget Impact:

Current Budget: \$0
Proposed Revision: \$0
Revised Budget: \$0

Administrative Recommendation:

City Council to hold a public hearing in consideration of Franchise Agreement No. FRN19-0012 for Comcast Cable Communications, LLC and Comcast Cable Communications Management, LLC.

Background Summary:

Chapter 13.36.050 of the Auburn City Code requires the City to hold a public hearing to consider granting a franchise. Franchise Agreement No. FRN19-0012 would allow Comcast Cable Communications, LLC and Comcast Cable Communications Management, LLC to continue to operate a cable communications system within the City's rights-of-way. The public hearing was set by Council vote held on June 17, 2019.

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

Gaub

Meeting Date: July 15, 2019

Item Number:

PH.1

RESOLUTION NO. 5431

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE AGREEMENT BETWEEN THE CITY OF AUBURN AND COMCAST CABLE COMMUNICATIONS, LLC AND COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, A PENNSYLVANIA CORPORATION

WHEREAS, Comcast Cable Communications, LLC & Comcast Cable Communications Management, LLC ("Comcast") has applied to the City of Auburn ("City") for renewal of a non-exclusive Franchise for the right of entry, use, and occupation of certain public right(s)-of-way within the City, expressly to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, over, under, along and/or across those right(s)-of-way; and

WHEREAS, the City is authorized by Revised Code of Washington 35A.47.040 and Auburn City Code (ACC) 13.36.010 *et seq.* and ACC 20.06.010 to grant a non-exclusive franchise for the use of public streets, bridges, or other public ways for the transmission and distribution of electrical energy, signals and other methods of communication, including cable telecommunications and cable television; and

WHEREAS, following proper notice, the City Council held a public hearing on Comcast's request for a Franchise, at which time representatives of Comcast and interested citizens were heard in a full public proceeding affording opportunity for comment by any and all persons desiring to be heard; and

WHEREAS, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the City Council now deems it appropriate and in the best interest of the City and its inhabitants that the franchise be granted to Comcast.

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

Section 1. The Mayor is authorized to execute a Cable Television Franchise Agreement with Comcast Cable Communications, LLC and Comcast Cable Communications Management, LLC in substantially the same form as the Agreement attached as Exhibit A.

Section 2. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 3. This Resolution will take effect and be in full force on passage and signatures.

Dated and Signed this _____ day of _____, 2019.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Steven L. Gross, City Attorney

CABLE FRANCHISE AGREEMENT

Between the City of Auburn, Washington, and Comcast Cable Communications, LLC & Comcast Cable Communications Management, LLC d/b/a Comcast.

This Cable Franchise Agreement (“Franchise”) is made and entered into by and between The City of Auburn, Washington, a municipal corporation (City), and Comcast Cable Communications, LLC & Comcast Cable Communications Management, LLC d/b/a Comcast, a Pennsylvania corporation (collectively, “Grantee”). The City and Grantee are sometimes referred to hereinafter collectively as the “Parties.”

WHEREAS, the City is authorized by 47 USC § 541 *et seq.*, RCW 35A.47.040, ACC 20.06.010 and ACC Chapter 13.36 to grant and renew nonexclusive cable franchise agreements for the installation, operation, and maintenance of cable television systems and otherwise regulate cable communications services within the City’s incorporated boundary; and

WHEREAS, the City has reviewed Grantee's performance under the prior franchise and the quality of service during the prior franchise term, has identified the future cable-related needs and interests of the City and its citizens, and has determined that Grantee's plans for operating and maintaining its Cable System are adequate; and

WHEREAS, the public has had adequate notice and opportunity to comment on this Franchise during a public proceeding; and

WHEREAS, the Mayor and City Council has determined that is in the best interests of, and consistent with, the health, safety, and welfare of the citizens of the City to grant a franchise to Grantee to use public rights-of-way for the purposes specified in this Franchise and on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

SECTION 1: PRINCIPLES AND INTENT OF THE CITY

The following provisions are statements of the City's intent in entering into this Franchise, but do not necessarily reflect Grantee's intent and shall not supplant or modify specific provisions of the Franchise:

- 1.1. Ensure that Auburn stays at the forefront of cable service by keeping the Cable System up to date with features meeting the current and future cable-related needs and interests of the community;
- 1.2. Encourage the widest feasible scope and diversity of Programming and other services to all City residents consistent with community needs and interests;

- 1.3. Encourage competitive, affordable, and equal access to advanced communications services of all kinds to residents and businesses of the City of Auburn on a non-discriminatory basis;
- 1.4. Ensure that Auburn residents have the opportunity to view public, educational, and governmental Programming;
- 1.5. Ensure that rates and charges for cable Programming, equipment, and services provided over the Cable System are affordable and consistent with federal standards;
- 1.6. Ensure that Auburn residents receive high quality customer service;
- 1.7. Ensure that the City receives appropriate compensation for the use of its facilities and property and that installation and maintenance of cable Facilities comply with all applicable City regulations, and do not interfere with the City's legitimate use of its own facilities and property;
- 1.8. Encourage competition among Cable Operators and between Cable Operators and other providers of communications services;
- 1.9. Protect the City's interests and the health, safety, and welfare of its residents; and
- 1.10. Provide for timely mandatory Government Access to all Cable Systems in times of civil emergency.

SECTION 2: DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, and their derivations shall have the meanings given below unless the context clearly mandates a different interpretation. Where the context so indicates, the present tense shall imply the future tense, words in plural include the singular, and words in singular include the plural. The word “shall” is always mandatory, not merely directory, and the word “may” is discretionary. In the event that the meaning of any word or phrase not defined in this Section is uncertain, the definitions contained in FCC rules and regulations shall apply.

- 2.1 “Access” means the availability for Non-Commercial use by various governmental and educational agencies, institutions, and organizations in the community, including the City and its designees, of a particular Channel on the Cable System to distribute programming to Subscribers, as permitted under applicable law.
 - A. “Educational Access” means Access where Schools are the primary users having editorial control over programming and services.
 - B. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

- C. "Public Access" means Access for the public, including organizations, groups and individuals.
- 2.2 "Access Channel" means any Channel or portion of a Channel on a Cable System required by the Franchise to be set aside by the Grantee for public, education, or governmental use.
- 2.3 "Affiliated Entity" means, when used in connection with Grantee, any Person who owns or controls, is owned by or controlled by, or is under common ownership or control with Grantee.
- 2.4 "Basic Service" means the lowest Tier of Cable Service that includes, at a minimum, the retransmission of local television broadcast signals.
- 2.5 "Cable Act" shall mean the Communications Act of 1934, including the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, any and amendments thereto.
- 2.6 "Cable Operator" means any Person or group of Persons (A) who provides Cable Services over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System, or (B) who otherwise controls or, through any arrangement, is responsible for the management and operation of such a Cable System.
- 2.7 "Cable Service" means
- A. The one-way transmission to Subscribers of (1) Video Programming or (2) other Programming service, and
 - B. Subscriber interaction, if any, that is required for the selection or use of such Video Programming or other Programming service.
- 2.8 "Cable System" means Grantee's Facilities within the Franchise Area, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service, which includes Video Programming, and which is provided to multiple Subscribers within a community, but such term does not include:
- A. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
 - B. A facility that serves Subscribers without using any public right-of-way;
 - C. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. § 201 *et seq.*), except that such

facility shall be considered a Cable System (other than for purposes of 47 U.S.C. 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

D. An open video system that complies with 47 U.S.C. § 573; or

E. Any facilities of any electric utility used solely for operating its electric utility systems.

- 2.9 "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel, whether delivered in an analog or digital format.
- 2.10 "City Council" means the legislative body of the City of Auburn.
- 2.11 "Complaint" means a Subscriber's verbal or written contact with the Grantee to express a grievance or dissatisfaction concerning Cable Service that are not within the regulatory control of the City and does not include issues that are promptly resolved to the Subscriber's satisfaction.
- 2.12 "Designated Access Provider" means the entity or entities designated by the City to manage or co-manage the Access Channel and facilities, and may include the City as a Designated Access Provider.
- 2.13 "Demarcation Point" means the physical point at which the Cable System enters a Subscriber's home or building.
- 2.14 "Document" or "Records" means written or graphic materials, however produced or reproduced, or any other tangible permanent documents, including those maintained by computer or other electronic or digital means, maintained by the Grantee in the ordinary course of conducting its business.
- 2.15 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, designed for residential occupancy.
- 2.16 "Effective Date" means the Effective Date of this Franchise pursuant to subsection 3.4.
- 2.17 "Facility" means any distribution or component of the Cable System.
- 2.18 "FCC" means the Federal Communications Commission or its lawful successor.
- 2.19 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

2.20 "Franchise Fee" means consideration paid by Grantee for the privilege to construct and/or operate a Cable System in the Franchise Area as set forth in accordance with Section 622 of the Cable Act.

2.21 "Gross Revenues" means, for purposes of Franchise Fee calculations, all revenue received by the Grantee, in whatever form and from all sources, derived from the operation of the Grantee's Cable System to provide Cable Services, in the Franchise Area.

- A. Gross Revenues include, by way of illustration and not limitation, monthly fees charged to Subscribers for Cable Services, including Basic Service and all other Tiers of Cable Service, Pay-Per-View Service, Cable Service installation, disconnection, change-in-service and reconnection fees, Leased Access Channel fees, late fees, payments received by Grantee from programmers for carriage of Cable Services on the Cable System and recognized as revenue under generally accepted accounting principles (GAAP), revenues from rentals of Cable System equipment such as converters, advertising revenues, advertising sales commissions if recognized as revenue under GAAP, additional outlet fees, Franchise Fees, and revenues from home shopping Channels.
- B. Gross Revenues shall not include Bad Debt, provided that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected, or revenues received from telecommunications services.
- C. Gross Revenues shall be determined without deduction for (1) any operating expense; (2) any accrual; or (3) any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment, and revenue shall be counted only once in determining Gross Revenues.
- D. Gross Revenues also does not include capital contributions, taxes on services furnished by Grantee which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit, excluding Franchise Fees.
- E. This definition shall be construed so as to include all Gross Revenues to the maximum extent permitted by federal and State law, except to the extent specifically excluded in this subsection, and encompasses revenues that may develop in the future, whether or not anticipated.
- F. If a statutory change in State or federal law, or a decision of the FCC or a court of competent jurisdiction expands the categories of revenue available to the City for the Franchise Fee assessment beyond those permitted under this definition as of the Effective Date, that change shall automatically be included in the definition of Gross Revenues under this Franchise, provided that the City imposes the same requirement upon any other similarly situated multichannel video provider over which the City has jurisdiction and authority to impose such fees.

- 2.22 "Headend" means Grantee's primary facility for signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors, and other related equipment.
- 2.23 "Leased Access Channel" means a Channel or portion of a Channel made available by Grantee for Programming by others for a fee.
- 2.24 "Liquidated Damages" means any requirement imposed on the Grantee to pay specified sums to the City as a result of performance deficiencies and/or Franchise violations, as described in Section 13.8.
- 2.25 "Non-Cable Services" means any service that is distributed over the Cable System, other than a Cable Service.
- 2.26 "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers.
- 2.27 "Normal Operating Conditions" means service conditions within the control of the Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual-weather conditions. Those conditions that are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or Upgrade of the Cable System.
- 2.28 "Parent Corporation" means any existing or future corporation, entity, or Person with greater than fifty percent (50%) ownership or control over Grantee.
- 2.29 "Pay-Per-View" service means programming offered on a per-program or per-event basis for which a separate fee is charged.
- 2.30 "PEG Access" means Public Access, Educational Access, and Government Access, jointly or severally.
- 2.31 "Person" means any individual, partnership, association, joint stock company, trust, corporation or governmental entity.
- 2.32 "Right-of-Way" or "Rights-of-Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public Right-of-Way, including, but not limited to, general public utility easements, or Right-of-Way dedicated for compatible uses now or hereafter held by the City in the Franchise Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, upgrading and maintaining the Cable System. Right-of-Way shall also mean any easement now or hereafter held by the City within

the Franchise Area for the purpose of utility or public service use dedicated for compatible uses.

2.33 “School” means any State accredited public educational institution including, for example, primary and secondary Schools (K-12).

2.34 “State” means the State of Washington.

2.35 “Subscriber” means any Person who lawfully receives Cable Service provided by Grantee by means of the Cable System and whose premises are physically wired and lawfully activated to receive Cable Service from Grantee’s Cable System.

2.36 “Tier” means a group of Channels for which a separate periodic rate is charged.

2.37 “Video Programming” means programming provided by, or generally considered comparable to programming provided by television broadcast station.

SECTION 3: GRANT OF FRANCHISE

3.1 Grant of Franchise

- A. The City hereby grants to Grantee a nonexclusive Franchise authorizing Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under or in any Right-of-Ways within the Franchise Area for the purpose to install such wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment and to use existing poles as may be necessary or appurtenant for the deployment of Cable Services over the Cable System. This Franchise is subject to and shall be governed by all applicable provisions now existing or hereafter amended of federal, State and local laws and regulations, except as specifically provided for within this Franchise.
- B. This Franchise expressly authorizes Grantee to provide only Cable Services as allowed by applicable law, and to construct, operate, or maintain Cable System facilities in the Franchise Area. This Franchise is not a bar on Grantee’s provision of non-Cable Services. This Franchise does not relieve Grantee of any obligation it may have to comply with any local, state or federal requirements that lawfully apply to non-cable services.
- C. This Franchise shall constitute both a right to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.
- D. Grantee guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliated Entity of the Grantee directly involved in the offering of Cable Service in the Franchise Area, will also comply with the obligations of this Franchise.

- E. Unless otherwise stated in this Franchise, in the event of a conflict between the Auburn City Code and this Franchise, this Franchise shall control, and shall not be unilaterally altered by the City through subsequent ordinance, regulation, resolution, or other enactment of the City, except within the lawful exercise of the City's police power.
1. Grantee acknowledges, without waiving its right to challenge any City ordinance or regulation that conflicts with its rights under this Franchise, that its rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety, and welfare of the public, and Grantee agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such power.
 2. This Franchise shall not be interpreted to prevent the City from lawfully imposing additional conditions, including additional compensation conditions for use of the rights-of-way.
 3. No rights shall pass to Grantee by implication and this Franchise shall not include, nor be a substitute for:
 - a. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;
 - b. Any permit, agreement, or authorization required by the City for rights-of-way users in connection with operation on or in rights-of-way or public property, including, by way of example and not limitation, construction or excavation permits; or
 - c. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.
- F. This Franchise is intended to convey limited rights and interests only as to those rights-of-way in which the City has a proprietary interest, is not a warranty of title or interest in any rights-of-way, does not provide the Grantee with any interest in any particular location within the rights-of-way, and does not confer rights other than as expressly provided in the grant hereof.
- G. This City has granted this Franchise in reliance upon the Grantee's business skill, reputation, financial capacity, and character and may not be assigned, transferred, conveyed, or otherwise encumbered without the express written consent of the City pursuant to Section 15 of this Franchise.

3.2 Use of Rights-of-Way

- A. Any privilege claimed under this Franchise in any right-of-way shall be subordinated to any prior lawful occupancy of the right-of-way.
- B. Within parameters reasonably related to the City's role in protecting the public health, safety, and welfare, the City may require, through the permitting process, that the Cable System Facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular right-of-way and may deny access if Grantee is not willing to comply with the City's requirements.

3.3 Term

- A. The term of this Franchise, and all rights, privileges, obligations, and restrictions pertaining thereto, shall be ten (10) years from the Effective Date of this Franchise, unless terminated earlier as provided herein.
- B. The City and Grantee agree that any proceedings undertaken relative to the renewal of this Franchise shall be governed by and comply with the provisions of 47 U.S.C. § 546 and applicable ACC.
- C. If Grantee requests renewal of this Franchise in accordance with the provisions of Section 626 of the Cable Act prior to the expiration of its term or any extension thereof, the Franchise automatically continues month to month until renewed or until either party gives written notice at least one hundred eighty (180) days in advance of the intent not to renew the Franchise.

3.4 Acceptance and Effective Date

- A. This Franchise, and any rights granted hereunder, shall not become effective for any purpose unless and until Grantee files with the City Clerk (1) the Statement of Acceptance, Attached hereto as Exhibit A, and incorporated herein by this reference, (2) all verifications of insurance coverage specified under Section 6.3, (3) the security specified in Section 6.4, and (4) any outstanding application fees per the City fee schedule. These four items shall collectively be the "Franchise Acceptance." The Effective Date of this Franchise shall be the date upon which the City Clerk Receives the Franchise Acceptance.
- B. Should Grantee fail to file the Franchise Acceptance with the City Clerk within sixty (60) days after this Franchise is approved by City Council, this Franchise shall be null and void.

3.5 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, permits or licenses granted by the City to any Person to use any property for any purpose whatsoever, including the right of the City to use the same for any purpose it

deems fit, including the same or similar purposes allowed Grantee hereunder, and the City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for cable systems as the City deems appropriate.

3.6 Effect of Acceptance

By accepting this Franchise, Grantee: (A) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (B) agrees that it will not oppose the City's intervening, to the extent the City is legally entitled to do so, in any legal or regulatory proceeding affecting the Cable System; (C) accepts and agrees to comply with each and every provision of this Franchise; and (D) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

3.7 Modifications to this Franchise

- A. This Franchise is subject to the lawful terms and conditions of the Auburn City Code, as the same is now or is hereafter amended by the lawful exercise of the City's police powers.
- B. This Franchise may be amended at any time by mutual written agreement of the parties for any reason.
- C. Competitive Equity:
 - 1. The City reserves the right to grant additional franchises or similar authorizations to provide Video Programming services via Cable Systems or similar wireline systems located in the Right of Way. The City intends to treat wireline competitors in a nondiscriminatory manner in keeping with federal law. If, following the Effective Date of this Franchise, the City grants such an additional franchise or authorization to use the Right of Way to provide such services and Grantee believes the City has done so on terms materially more favorable than the obligations under this Agreement, then the provisions of this subsection will apply.
 - 2. As part of this Franchise, the City and Grantee have mutually agreed upon the following terms as a condition of granting the Franchise, which terms may place the Grantee at a significant competitive disadvantage if not required of a wireline competitor: the Franchise Fee, PEG Access funding, PEG Access Channels, records and reports, and customer service obligations (hereinafter "Material Obligations"). The City and Grantee agree that these Material Obligations bear no relationship to the technology employed by the Grantee or a wireline competitor and as such can reasonably be expected to be applied fairly across all wireline competitors. The City and Grantee further agree that this provision shall not require a word for word identical franchise or authorization for competitive equity so long as the regulatory and financial burdens on each entity are generally equivalent.

3. Within one (1) year of the adoption of a wireline competitor's franchise or similar authorization, Grantee must notify the City in writing of the Material Obligations in this Franchise that exceed the Material Obligations of the wireline competitor's franchise or similar authorization. The City shall have one hundred twenty (120) days to agree to allow Grantee to adopt the same Material Obligations provided to the wireline competitor, or dispute that the Material Obligations are different. In the event the City disputes that the Material Obligations are different, Grantee may bring an action in federal or State court for a determination as to whether the Material Obligations are different and as to what Franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the City that it elects to immediately commence the renewal process under 47 U.S.C. § 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.
4. Nothing in this subsection is intended to alter the rights or obligations of either party under applicable federal or State law, and it shall only apply to the extent permitted under applicable law and FCC orders. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received.
5. This provision does not apply if the City is ordered or required to issue a franchise on different terms and conditions, or it is legally unable to do so; and the relief is contingent on the new Cable Operator actually commencing provision of service in the market to its first customer. Should the new Cable Operator fail to continuously provide service for a period of six (6) months, the City has the right to implement this Franchise with its original terms upon one hundred eighty (180) days' notice to Grantee.
6. This subsection does not apply to open video systems, nor does it apply to common carrier systems exempted from franchise requirements pursuant to 47 U.S.C. § 571; or to systems that serve less than 5% (five percent) of the geographic area of the City; or to systems that only provide video services via the public Internet.

SECTION 4: FRANCHISE FEES AND FINANCIAL CONTROLS

4.1. Franchise Fees

As compensation for the use of the City's Rights-of-Way, Grantee shall pay as a Franchise Fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues, which shall commence on the Effective Date of this Franchise.

4.2. Payments

Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding quarter. Each payment shall be due and payable no later than thirty (30) days after the end of the preceding quarter, after which time interest will accrue. The quarters shall end respectively on the last day of March, June, September and December.

4.3. Acceptance of Payment

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

4.4. Franchise Fee Reports

Each payment shall be accompanied by a written report to the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form which includes a breakdown by category of Grantee's Gross Revenues and the computation of the payment amount.

4.5. Audits

A. Upon forty-five (45) days prior written notice, the City shall have the right to conduct an annual independent audit of Grantee's records necessarily related to the enforcement of this Franchise and to re-compute any amounts determined to be payable under this Franchise.

1. If Grantee cooperates in making all relevant records available to the City, the City will attempt to complete each audit within six (6) months, and the audit period shall be no greater than the previous three (3) years, unless the City has information relating to previous years beyond the three (3) years which raises doubt as to the accuracy of payments made under this or previous franchises, in which case an additional three (3) years may be audited.
2. Any undisputed amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee by the City, which notice shall include a copy of the audit findings.
3. If the audit shows that Franchise Fees have been underpaid by five percent (5%) or more in any calendar year, Grantee shall pay for the cost of the audit up to five thousand dollars (\$5,000) per year being audited for a maximum of 3 years.

B. If Grantee disputes all or part of the audit findings, then the parties shall meet in an attempt to resolve the matter. If the parties are unable to resolve the matter, then either of the parties may refer that matter to non-binding arbitration. Each party shall bear one-

half of the costs and expenses of the arbitration proceedings. The decision of the arbitrator(s) shall be subject to judicial review at the request of either party.

4.6. Late Payments

In the event any payment due the City is not timely made, Grantee shall pay, in addition to the amount due, interest at the rate of twelve percent (12%) per annum from the payment due date until the City receives the payment.

4.7. Underpayments

If a Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay, in addition to the amount due, interest at the rate of twelve percent (12%) per annum calculated from the date the underpayment was originally due until the date the City receives the payment.

4.8. Maximum Franchise Fees

- A. The parties acknowledge that, at present, applicable federal law limits the City to collecting a franchise fee of five percent (5%) of Gross Revenues in a 12-month period.
- B. In the event that at any time throughout the term of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Grantee's Gross Revenues and the City elects to do so, then this Franchise shall be amended by the parties consistent with such change provided however that all other Cable Operators within the Franchise Area are treated similarly.
- C. In the event that at any time throughout the term of this Franchise, the City may only collect an amount which is less than five percent (5%) of Grantee's Gross Revenues for franchise fees due to a change in federal law, then this Franchise shall be amended by the parties consistent with such change to provide for such lesser percentage.

4.9. Additional Commitments Not Franchise Fees

- A. No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay in full the Franchise Fee percentage listed in this Franchise. Although the total sum of Franchise Fee payments and additional Access capital contribution commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional Access capital contribution commitments are excluded from the definition of Franchise Fee herein and are not Franchise Fees, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees to be passed through to Subscribers.

- B. Additionally, any security fund, performance bond or letter of credit shall not be offset against Franchise Fees. Furthermore, the City and Grantee agree that any utility tax, business and occupation tax or similar generally applicable tax or fee shall be in addition to any Franchise Fees required herein and there shall be no offset against Franchise Fees subject to applicable law.
- C. If Grantee elects to offset certain non-cash commitments or initiatives against the Franchise Fee in accordance with applicable law, Grantee will provide the City ninety (90) days' advance written notice, to include a detailed schedule of the amount it intends to offset, and the cost basis for each schedule item. The City will have eighty (80) days from receipt of Grantee's notice to respond. The City reserves the right to terminate Grantee's provision of any non-cash commitments or initiatives.

4.10. Payment on Termination

- A. If this Franchise is lawfully terminated, the Grantee shall file with the City within ninety (90) days of the date of the termination, a financial statement, prepared by a certified public accountant, or representative of the Grantee's Controller or Chief Financial Officer, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year.
- B. Within thirty (30) days of the filing of the statement with the City, Grantee shall pay any unpaid Franchise Fee amounts as indicated.
- C. If the Grantee fails to pay its remaining financial obligations as required in this Franchise, the City may satisfy the same by utilizing the funds from any security provided by the Grantee.

4.11. Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use, utility, occupation and other taxes, business license fees or other payments.

4.12. Bundling of Cable and Non-Cable Services

In no event will the Grantee unlawfully evade or reduce applicable Franchise Fee payments required to be made to the City due to discounted bundled services. Customer billing shall be itemized by service(s), and Grantee shall comply with all applicable laws regarding rates for Cable Services and all applicable laws covering issues of cross subsidization.

SECTION 5: ADMINISTRATION AND REGULATION

5.1. Authority

The City shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable law, including the Cable Act, or to delegate that power and right, or any part thereof, to the extent permitted under law, to any agent in the sole discretion of the City.

5.2. Rate Regulation

All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the effective date shall be in accordance with applicable law.

5.3. Low Income Discount

As long as the Grantee offers Basic Service, the Grantee intends to offer a discount to those individuals who are low income (according to applicable federal guidelines) and either permanently disabled or 65 years of age or older and who are the legal owners or tenants of the Dwelling Unit. Such discounts will consist of thirty percent (30%) off of Basic Service or the Basic Service portion of digital service packages when not discounted by inclusion in other promotional or programming package rates at which time the promotional or programming package rate will apply.

The City acknowledges that discounted services reflect a voluntary initiative on the part of Grantee, and is not a requirement of this franchise. Subject to applicable law, should Grantee elect to discontinue the low income discount, Grantee shall first provide the City with ninety (90) days' prior notice.

5.4. Performance Evaluations

- A. Upon thirty (30) days written notification, the City may hold performance evaluation sessions, no more than once every twelve months, whenever necessary to ensure proper performance of the provisions of this Franchise.
- B. All evaluation sessions shall be open to the public.
- C. Topics which may be discussed at any evaluation session include, but are not limited to, construction issues, Cable Service rate structures, Franchise Fee payments, liquidated damages, free or discounted Cable Service, application of new technologies, Cable System performance, Cable Services currently provided and programming offered, future plans of Grantee for new services or programs, Subscriber Complaints, privacy, modifications to this Franchise, judicial and FCC rulings, line extension policies and the

City's or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

- D. During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require to perform the evaluation.

5.5. Leased Access Channel Rates

Grantee shall offer Leased Access Channel capacity on such terms and conditions and rates as may be negotiated with each lessee, subject to the requirements of Section 612 of the Cable Act. Upon request, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels or portions of such Channels provided by Grantee.

5.6. Late Fees

For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and changes in late fee rates shall be noticed to the City and applied in accordance with applicable law.

SECTION 6: INDEMNIFICATION AND INSURANCE REQUIREMENTS

6.1. Indemnification

- A. Indemnity: Grantee agrees to indemnify, defend and hold harmless the City, its elected officials, officers, authorized agents, boards, volunteers and employees, acting in official capacity, from and against any liability, damages or claims, costs, expenses, settlements or judgments arising out of, or resulting from the granting of this Franchise or Grantee's activities, any casualty or accident to Person or property that occurs as a result of any construction, excavation, operation, maintenance, reconstruction, relocation, or any other act or omission done pursuant to the terms of this Franchise, provided that the City shall give Grantee timely written notice of its obligation to indemnify the City. Notwithstanding the foregoing, Grantee shall not indemnify the City to the extent that any damages, liability or claims resulting from the willful misconduct, concurrent negligence of the City, its officers, authorized agents, or employees, attorneys, consultants, volunteers, or independent contractors for which the City is legally responsible, or for any activity or function conducted by any Person other than Grantee in connection with PEG Access and/or Emergency Alert System.
- B. Indemnification for Relocation: Grantee shall indemnify, defend and hold the City, its elected officials, officers, authorized agents, boards, volunteers, and employees harmless for any damages, claims, additional costs, or expenses payable by the City related to, arising out of, or resulting from Grantee's failure to remove, adjust or relocate any of its

facilities in the Rights-of-Way in a timely manner in accordance with any lawful relocation required by the City; including, but not limited to, claims for delay, damages, costs, and/or time asserted by any contractor performing public work for or on behalf of the City.

- C. Procedures and Defense: With respect to Grantee's indemnity obligations set forth herein, Grantee shall provide the defense of any claims or actions brought against the City or any other indemnified party. Nothing herein shall be deemed to prevent the City from cooperating with Grantee and participating in the defense of any litigation by its own counsel at its own cost and expense; provided, however, that after consultation with the City, Grantee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Grantee shall have the authority to decide the appropriateness and the amount of any such settlement. However, Grantee may not agree to any settlement of claims financially affecting the City without the City's written approval that shall not be unreasonably withheld.
- D. Duty to Give Notice: The City shall give Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. The City's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the obligation and duty to defend any claims arising thereunder, and the City shall cooperate fully therein.
- E. Separate Representation: If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall pay for the City's selected counsel, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit, or proceeding indemnified by Grantee.
- F. Inspection: Inspection or acceptance by the City of any work performed by Grantee at the time of completion of construction or maintenance projects shall not be grounds for avoidance of any of these covenants of indemnification.

6.2. Grantee's Further Responsibilities.

- A. Grantee shall indemnify and hold harmless the City from any workers' compensation claims to which Grantee may become subject during the Term of this Franchise. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided per this Franchise, Grantee waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against

Grantee by any of its employees or other third party. This waiver has been mutually negotiated by the parties.

- B. Grantee's indemnification obligations shall include indemnifying the City for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors even though Grantee may be immune under Title 51 RCW from direct suit brought by such employee.

6.3. Insurance Requirements

- A. Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance or equivalent self-insurance.
- B. Grantee shall maintain:
 - 1. Commercial General Liability ("CGL") insurance written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability: \$5,000,000.00 per occurrence, \$5,000,000.00 premises/operations, products/completed operations aggregate, personal/advertising inquiry liability, contractual liability, and independent contractors liability; and shall not exclude XCU/subsidence perils or any similar perils;
 - 2. Automobile Liability insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased, or hired vehicles, as applicable, with a minimum limit of \$5,000,000.00 each accident for bodily injury and property damage;
 - 3. Workers' Compensation insurance for the State as required by Title 51, Revised Code of Washington, Industrial Insurance, \$5,000,000.00 each accident/ each disease/ policy limit employers liability/Washington stop gap; and
 - 4. Excess or Umbrella Liability: \$5,000,000 each occurrence and \$5,000,000 policy limit.
- C. Additional Insured: The City its officers, employees, authorized agents, and volunteers shall be included as an additional insured under each of the insurance policies required in this Section except Workers' Compensation Insurance. Except for Workers' Compensation and employer's liability, all insurance policies required hereunder shall provide or be endorsed so that the City is covered as, and have the rights of, an additional insured with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or applicable law, or in the construction, operation, upgrade, maintenance, repair, replacement or ownership of the Cable System. Grantee shall provide to the City either (1) a copy of an endorsement covering the City as an Additional Insured for each insurance policy required in this Section and providing that such insurance shall apply as primary insurance on behalf of such Additional Insureds or (2) a copy of the blanket additional insured clause from the policies. Receipt by the City of

any certificate showing less coverage than required is not a waiver of Grantee's obligations to fulfill the requirements. Grantee's insurance coverage shall be primary insurance with respect to the City. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Grantee's insurance and shall not contribute to it. Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

- D. Coverage: Each policy shall provide that the insurance shall not be canceled or terminated so as to be out of compliance with these requirements without forty-five (45) days written notice first provided to the City via mail, and thirty (30) days' notice for nonpayment of any premium. If the insurance is canceled or terminated so as to be out of compliance with the requirements of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, until all work required to be performed under the terms of this Franchise is satisfactorily completed and, in the case of Commercial General Liability Insurance, for at least one (1) year after expiration of this Franchise. Any failure of Grantee to comply with the claim reporting provisions of the policy(ies) or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect the City. However, if coverage is not afforded under these circumstances, Grantee will indemnify the City for losses the City otherwise would have been covered for as an additional insured.
- E. Alternative Insurance: Grantee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Franchise. Each of the required insurance policies shall be with insurers qualified to do business in the State of Washington with a Best's rating of no less than "A- VII."
- F. Verification of Coverage: In addition to the other requirements of this Section, Grantee shall furnish the City with certificates of insurance reflecting at least the minimum coverage and policy limits required hereunder. The certificates for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.
- G. Grantee's policy shall not include any of the following endorsements, or their equivalent endorsements or exclusions:
 - 1. Contractual liability limitation (GCL Form 21 39 or equivalent),
 - 2. Amendment of insured contract definition (CGL Form 24 26 or equivalent),
 - 3. Limitation of coverage to designated premises or project (CGL Form 21 44 or equivalent),
 - 4. Any endorsement modifying or deleting the exception to the employer's liability exclusion,

5. Any “Insured vs. Insured” or “cross-liability” exclusion with respect to additional insureds, and

6. Any type of punitive, exemplary or multiplied damages exclusion.

H. Evidence of insurance shall be in the form of a certificate of insurance evidencing compliance with these requirements.

6.4. Franchise Security

A. Grantee shall provide a performance bond, in a form acceptable to the City, in the amount of One Hundred Fifty thousand dollars (\$150,000.00) to ensure the faithful performance of its responsibilities under this Franchise and applicable law. Grantee may be required to obtain additional security, such as generally applicable construction bonds, in accordance with the City’s permitting requirements. Grantee shall pay all premiums or costs associated with maintaining the security, and shall keep the same in full force and effect at all times and shall immediately replenish the bond upon foreclosure. Except as expressly provided herein or as otherwise specified in the City’s construction permitting requirements, the Grantee shall not be required to obtain or maintain other security as a condition of being awarded the Franchise. Grantee shall not cancel the performance bond without obtaining an alternative performance bond in conformance with this Franchise.

B. The security shall be subject to the approval of the City Engineer as to its adequacy under the requirements of this Section.

C. In the event Grantee shall fail to substantially comply with any one or more of the provisions of this Franchise, then there shall be recovered, jointly and severally, any damages suffered by the City as a result thereof, including but not limited to, staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of Facilities.

D. The security required by this Section shall not be construed to limit Grantee’s liability to the guarantee amount, or otherwise limit the City’s recourse to any remedy to which the City is otherwise entitled at law or in equity.

SECTION 7: CUSTOMER SERVICE

7.1. Customer Service Standards

The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC’s rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

7.2. Subscriber Privacy

Grantee shall comply with privacy rights of Subscribers in accordance with federal, State, and local laws.

SECTION 8: REPORTS AND RECORDS

8.1. Open Records

- A. The City shall have access to, and the right to inspect, any books and records of Grantee and its Affiliates which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise at Grantee's regional business office, during normal business hours, and without unreasonably interfering with Grantee's business operations.
- B. The City may, in writing, request copies of any such records or books that are not identified as proprietary or confidential, and Grantee shall provide such copies within thirty (30) days of the transmittal of such request.
 - 1. One copy of all reports and records required under this or any other Section shall be furnished to the City at the sole expense of Grantee.
 - 2. If the requested books and records are too voluminous, or identified as proprietary and confidential, or for security reasons cannot be copied or removed, then the City shall inspect them at Grantee's regional office.

8.2. Confidentiality

- A. Grantee shall not be required to disclose information to third parties that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate of Grantee that is not providing Cable Service in the Franchise Area.
- B. The City agrees to keep confidential any proprietary or confidential books or records of Grantee to the extent permitted by law; provided that Grantee shall be responsible for clearly and conspicuously identifying the records as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential or proprietary and how it may be treated as such under State or federal law.
- C. Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or State privacy law.
 - 1. For purposes of this subsection, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, as-built documents, fiber optic cable locations and maps, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant

to FCC rules, or other information that is reasonably determined by Grantee to be competitively sensitive.

2. If the City receives a demand from any Person for disclosure of any information designated by Grantee as proprietary or confidential, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the Person demanding access to such information within five (5) business days.

D. While it is not a legal obligation, the City, as a courtesy, will allow Grantee up to ten (10) business days to obtain and serve the City with a court injunction to prevent the City from releasing the Documents.

1. If Grantee fails to obtain a Court order and serve the City within the ten (10) business days, the City may release the Documents.
2. The City will not assert an exemption from disclosure on Grantee's behalf.

8.3. Maps and Records Required

Grantee shall make available to the City upon request:

1. A route map that depicts the general location of the Cable System facilities placed in the Right-of-Ways. The route map shall identify Cable System facilities as aerial or underground and is not required to depict cable types, number of cables, electronic equipment, and service lines to individual Subscribers. The Grantee shall also provide, if requested, an electronic format of the aerial/underground facilities in relation to a Right-of-Way centerline reference to allow the City to add this information to City's geographic information system program;
2. A copy of all FCC filings that relate to the operation of the Cable System in the Franchise area; and
3. A list of Grantee's Cable Services, rates, and Channel line-up.

8.4. Submittal of Documents

- A. Upon written request, Grantee shall submit to the City a copy of any application, notification, communication or document of any kind, submitted by Grantee or its Affiliates to any federal, State or local courts, regulatory agencies and other governmental bodies if such document directly relates to the operations of Grantee's Cable System within the Franchise Area.
- B. Grantee shall submit such documents to the City no later than thirty (30) days after receipt of the City's request. Grantee shall not claim confidential, privileged or

proprietary rights to such documents unless under federal, State, or local law such documents have been treated as confidential or determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

8.5. Annual Reports

Upon request, thirty (30) days after the end of the first quarter, Grantee shall submit to the City a written report containing the following information:

- A. The most recently completed annual corporate report;
- B. A Gross Revenue statement for the preceding fiscal year and all deductions and computations for the period, reviewed by a certified public accountant, who may also be the chief financial officer or controller of Grantee;
- C. A summary of the previous years' activities regarding the development of the Cable System, including, but not limited to, homes passed, beginning and ending plant miles, any technological changes occurring in the Cable System; and
- D. An executive summary of Subscriber Complaints received in the previous year.
- E. A description of planned construction, if any, for the current year.

SECTION 9: PROGRAMMING AND ACCESS

9.1. Broad Programming Categories

Grantee shall offer to all Subscribers a diversity of video programming services.

9.2. Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, trap or filter to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Such devices, traps or filters will be provided at no charge to the Subscriber, unless otherwise provided by federal law.

9.3. Access Channels

- A. The Grantee shall provide to the City three (3) standard digital format PEG Channels for Subscribers within the Franchise Area. The three PEG Channels shall include a Government Access Channel currently being programmed by the City; the City's Educational Access Channel currently being programmed by the Puget Sound

Educational Service; and the City's Public Access Channel currently being programmed by a designated access provider.

- B. The City acknowledges that the Grantee's Cable System provides additional benefits to access programming needs beyond the requirements listed above. This is accomplished through the inclusion of other regional access programming, including educational and public access, within the regional channel line-up that services the Franchise Area. The Grantee will endeavor to provide the Subscribers in the Franchise Area with the other regional access channels so long as the programmers offer them for use on the Cable System.
- C. Simulcast High Definition Access Channel:
 - 1. The Grantee agrees to simulcast the one (1) Government Access Channel in high-definition (HD PEG Channel) format under the following conditions:
 - a. Upon the City's request, the Grantee shall have twelve (12) months to activate the simulcast HD PEG Channel.
 - b. The Grantee shall be responsible for all capital engineering costs associated with fulfilling the request to activate the simulcast HD PEG Channels.
 - c. The City or any Designated Access Provider shall be responsible for acquiring all equipment necessary to produce programming in HD.
 - d. Upon activation of the simulcast HD PEG Channel, Comcast shall own and maintain the encoder equipment used to transmit the high-definition signal from City Hall (the demarcation point).
 - e. The City shall provide the HD PEG Channel signal as specified by the Grantee's engineering standards, as amended by the Grantee from time to time because of changes in technology.
 - 2. The City acknowledges that the simulcast HD PEG Channel will be available only to those Subscribers who elect to subscribe to Grantee's high-definition Cable Service, receive a high-definition set-top converter, and pay all fees associated therewith.
 - 3. Grantee shall have sole discretion to determine the Channel placement of the simulcast HD PEG Access Channel within its high-definition channel line-up.

9.4. Control and Connectivity of Access Channels

- A. The City may authorize designated access providers to control, operate and manage the use of any and all access facilities provided by Grantee under this Franchise, including,

without limitation, the operation of Access Channels. The City or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise.

- B. Regarding the City's and designated Access providers use of Access facilities and Access Channels, Grantee shall fully cooperate with requests from the City, and provide all necessary assistance related thereto.
- C. As of the effective date of this Franchise, the Grantee maintains and shall continue to maintain all existing fiber optic return line(s) to facilitate the City's current Access connectivity to Grantee's Headend. If the City desires to relocate or expand the fiber optic return line(s) to new location(s) over the term of this Franchise, upon one hundred twenty (120) days written request by the City and at the City's cost for Grantee's reasonable time and materials, the Grantee shall construct the requested new fiber optic return line(s).

9.5. Location and Quality of Access Channels

- A. All Access Channels provided to Subscribers under this Franchise shall be included by Grantee as a part of the lowest Tier of service provided to all Subscribers in the Franchise Areas or as otherwise provided by federal law. Grantee agrees to use reasonable efforts to place the Access Channel in the same vicinity as other local government access channels.
- B. The parties agree that it is the responsibility of the designated access provider(s) to provide a quality PEG signal, to the Grantee at the point of demarcation, which meets or exceeds the FCC technical standards. Notwithstanding the forgoing, the Grantee agrees that it will deliver to subscribers a PEG signal of the same quality it receives from the designated Access provider(s) without degradation and in accordance with the FCC technical standards. There shall be no restriction on Grantee's technology used to deploy and deliver standard digital or high definition signals so long as the requirements of the Franchise are otherwise met. FCC technical standards shall be used for all testing and assessment of quality under this section.
- C. The Grantee shall provide Headend and hub equipment and routine maintenance and repair and replace, if necessary, any of Grantee's equipment required to carry the Access signal to and from the City's and any other Access origination point and the Grantee's Headend and hubs for the Access Channels.
- D. If Grantee makes a change in its Cable System and related equipment and facilities, or in its signal delivery technology, which directly or indirectly affects the signal quality or method or type of transmission of Access programming or services, Grantee shall take necessary technical steps and provide necessary technical assistance, including the acquisition of all necessary equipment and full training of access personnel, to ensure that the capabilities of Access Channels and delivery of Access programming are not diminished or adversely affected by such change. For example, live and taped

programming must be cablecast with as good or better signal quality than existed prior to such change.

- E. Grantee shall provide as much notice as possible but not less than sixty (60) days advance written notice to the City prior to any relocation of an Access Channels. In connection with the movement of any of the City controlled Access Channels, Grantee shall provide a bill message on subscriber's bills.

9.6. Access Capital Contribution

- A. Grantee shall collect and remit to the City, as support for any lawful capital PEG use, thirty-five cents (\$.35) per Subscriber per month, payable quarterly with Franchise Fees as a "PEG Fee." The PEG Fee shall not be treated as franchise fees for purposes of 47 U.S.C. § 542 or any other purpose, and shall at no time be offset or deducted from franchise fee payments made to the City under this Franchise or applicable law.
- B. The City shall have discretion to allocate the PEG Fee in accordance with applicable law. To the extent the City makes access capital investments using City funds prior to receiving the monthly PEG Fee funds, the City is entitled to apply the subsequent monthly PEG Fee payments from Grantee toward such City capital investments. The City agrees that the PEG Fee may be treated as external costs under applicable federal law.
- C. Upon the Grantee's written request, the City shall submit a report no more frequently than annually on the use of the City specific Access Channels and capital PEG Fee. The City shall submit a report to the Grantee within one hundred twenty (120) days of a written request. The Grantee may review the records of the City regarding the use of the PEG Fee.
- D. The City shall dedicate the time, personnel and other resources needed to operate the Access Channels designated herein.

SECTION 10: GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1. Right to Construct

Subject to the other provisions of this Franchise, and applicable law, Grantee may perform all construction in the Right-of-Ways for any facility needed for the maintenance, operation or extension of Grantee's Cable System.

10.2. General Standard

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All equipment shall be durable and installed and maintained in accordance with good

engineering practices and comply with applicable law. Grantee shall on a daily basis ensure cleanup of all workplaces whether work is performed by Grantee or Grantee's agents.

10.3. Repair and Emergency Work

- A. In the event of an emergency, the Grantee may commence such repair and emergency response work as required under the circumstances, provided that the Grantee shall notify the City telephonically at 253.931.3010 during normal business hours and 253.876.1985 during non-business hours as promptly as possible. Such notification shall include the Grantee's emergency contact phone number for the corresponding response activity.
- B. During emergencies, except those involving imminent danger to the public health, safety or welfare, the City shall provide notice to Grantee, at a designated emergency response contact number, to allow Grantee the opportunity to respond and rectify the emergency without disrupting Cable Service. If after providing notice, there is no immediate response, the City may move Grantee's facilities.
- C. Grantee shall apply for appropriate permits for emergency or repair work within forty-eight (48) hours after the commencement of said work.

10.4. One Call

The Grantee shall, at its own expense, participate in the call before you dig program required under State law.

10.5. Permits Required

- A. Prior to doing any work in the Right-of-Way or other public property (with the exception of installations or general maintenance that involve no construction and with no disruption to the use of the Right-of-Ways or other public property), Grantee working directly or through a contractor, subcontractor, Affiliated Entity, or other Person shall apply for, and obtain, in advance, appropriate construction permits from the City.
- B. As part of the permitting process, the City may impose such conditions as are necessary for protecting the public or any and all facilities within such Right-of-Ways, and for providing for the proper restoration of such Right-of-Ways and to protect the public and the continuity of non-motorized or vehicular traffic. Grantee shall pay all generally applicable fees for the requisite City construction permits.
- C. Grantee agrees to comply with any required permit conditions and/or licenses.

10.6. Compliance with Applicable Codes

- A. City Codes: Grantee shall comply with all generally applicable City codes regarding the construction and use of the Right-of-Ways.

- B. Regulations and Safety Codes: Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) standards.

10.7. Least Interference

Work in the Right-of-Ways, or on other public property, shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and City residents. Grantee's Cable System shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the Right-of-Way by, or under, the City's authority. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

10.8. Undergrounding of Cable

- A. In all Areas of the City where all other utility lines are placed underground, Grantee shall construct and install its Facilities underground; and Grantee may only place Facilities aerially as allowed by ACC 13.32A as it currently exists or as amended.
- B. In the event that the provisions of this subsection conflict with the provisions of ACC 13.32A, the provisions of ACC 13.32A shall govern this Franchise.

10.9. Restoration of Property

- A. If in connection with the construction, operation, maintenance, upgrade, repair or replacement of the Cable System, the Grantee disturbs, alters, or damages any public property, the Grantee agrees that it shall at its own cost and expense pay for any damage and replace and restore any such property to the satisfaction of the City and in compliance with the permit requirements.
- B. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property as required by the Construction permit and applicable municipal code or any generally applicable ordinance or resolution of the City.
- C. If restoration is not satisfactorily and timely performed by the Grantee, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover all direct and indirect cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

10.10. Movement of Cable System Facilities

- A. Relocation at Request of City. Upon thirty (30) days prior written notice to Grantee, City shall have the right to require Grantee to relocate any part of the Cable System within the Right-of-Way when the public convenience, public interest, or safety, health or welfare of the public requires such change, and the expense thereof shall be paid by Grantee.
1. In the event of any capital improvement project exceeding \$500,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days written notice to Grantee.
 2. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City.
 3. Should Grantee fail to remove or relocate any such facilities by the date established by the City, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay.
 4. If the City requires Grantee to relocate its facilities located within the Right-of-Way, the City may provide Grantee with an alternate location within the Right-of-Way.
 5. If public funds are available to any Person using such Right-of-Way for the purpose of defraying the cost of any of the foregoing, the Grantee may make application for such funds.
- B. In the case of relocation projects where the City hires and designates an independent contractor to accommodate and coordinate the conversion of overhead utilities within a City capital improvement project, if the Grantee decides to participate in the joint trench opportunity then the Grantee shall enter into a separate agreement with the City that, at a minimum, requires the Grantee to pay all design, permitting, administration, coordination, and construction costs incurred by the City associated with the proportionate share of the joint trench utilized by the Grantee and the level of effort required to design, permit, administer, coordinate, and construct the joint utility trench to accommodate the Grantee's facilities.

10.11. Tree Trimming

The Grantee shall have the authority to conduct pruning and trimming for access to Cable System facilities in the Right-of-Way. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

10.12. Rights-of-Way Vacation

If any street, or portion thereof, used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated street, Grantee shall, without delay or expense to the City, remove its Facilities from such street.

10.13. Inspection of Facilities

Upon reasonable notice, the City may inspect any of Grantee's Facilities or equipment within the Rights-of-Way and on other public property. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Grantee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to inspect, repair and correct the unsafe condition if Grantee fails to do so, and to reasonably charge Grantee therefor.

10.14. Hazardous Substances

- A. Grantee shall comply with all applicable State and federal laws, statutes, regulations, and orders concerning hazardous substances, as described in RCW 70.105D.020, relating to the Cable System in the City's rights-of-way.
- B. Grantee shall maintain and inspect the Facilities located in the City's rights-of-way and immediately inform the City of any release of hazardous substances.
- C. Upon reasonable notice to Grantee, the City may inspect the Facilities in the City's rights-of-way to determine if any release of hazardous substances has occurred, or may occur, from, or related to, the Facilities.
- D. In removing or modifying the Facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto; provided, however, that if it is determined that the Facilities did not cause the release of hazardous substances, Grantee shall have no duty to remove such substances.
- E. Grantee agrees to forever indemnify the City against any claims, costs, and expenses of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances arising from, connected to, or incident to the Facilities in the City's rights-of-way.

10.15. Reservation of City Use of Rights-of-Way

- A. Grantee agrees that its use of the Franchise Area shall, at all times except in instances of prior right, be subordinate and subject to the City's needs for municipal infrastructure and

access to the Franchise Area and the public's right to travel, except as may be otherwise required by law.

- B. Should Grantee fail to remove, adjust, or relocate its Facilities by the date established by the City Engineer, or his/her designee, and provided in writing to Grantee, the City may effect such removal, adjustment, or relocation and recover the cost thereof from Grantee, including all costs and expenses incurred by the City due to Grantee's delay.
- C. Grantee agrees to coordinate its activities with the City and all other utilities located within the public rights-of-way within which Grantee is undertaking its activity.
- D. Grantee shall not construct the Cable System in any manner that requires any Subscriber to install any cable, wire, conduits, or other facilities, under or over a right-of-way.
- E. The City expressly reserves the right to prescribe how and where Grantee Facilities shall be installed within the public rights-of-way and may, from time to time, pursuant to applicable sections of this Franchise, require the removal, and/or replacement thereof in the public interest and safety at the expense of Grantee.

10.16. Work of Contractors, Subcontractors, and Affiliated Entities

- A. Grantee's contractors, subcontractors, and affiliated entities performing work benefitting Grantee shall be licensed and bonded according to the City's, and the State's, regulations and requirements.
- B. Work by contractors, subcontractors, and affiliated entities is subject to the same restrictions, limitations, and conditions as if the work were performed by Grantee.
- C. Grantee shall be responsible for all work performed by its contractors, subcontractors, or affiliated entities, and other Persons performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable laws, and shall be, jointly and severally, liable for all damages and correcting all damage caused by them.
- D. It is Grantee's responsibility to ensure that contractors, subcontractors, affiliated entities, or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.
- E. Grantee agrees to inspect its contractors and subcontractors on a regular basis and ensure that both its personnel, contractors, and subcontractors provide clean-up of all workplaces and adhere to industry safety as well as local safety standards.

10.17. Discontinuing Use of Facilities

- A. Whenever Grantee intends to discontinue using any Facility within the City's Rights-of-Way, Grantee shall submit for the approval of the authorizing City department, a complete description of the Facility and the date on which Grantee intends to discontinue using the Facility.
- B. Grantee may remove the Facility or request that the City permit it to remain in place.
- C. Notwithstanding Grantee's request that any such Facility remain in place, the City may require Grantee to remove the Facility from the City's Rights-of-Way or modify or maintain the Facility to protect the public health and safety or otherwise serve the public interest.
- D. The City may require Grantee to perform a combination of modification, maintenance, and/or removal of the Facility.
- E. Until such time as Grantee removes or modifies the Facility as directed by the City, or until the rights to, and responsibility for, the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as maintenance of the City's Rights-of-Way, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

10.18. Construction and Use of Poles

Grantee may negotiate and enter into pole attachment agreements with utilities maintaining poles in the Franchise Area in accordance with ACC 13.32(A) and on terms acceptable to Grantee and the affected utilities.

SECTION 11: CABLE SYSTEM ARCHITECTURE AND TECHNICAL STANDARDS

11.1. Subscriber Network

- A. **Cable System Functionality:** As of the Effective Date of this Franchise, Grantee provides its Cable Service utilizing a two-way hybrid fiber-coaxial Cable System architecture that deploys from Grantee's Headend to nodes throughout the City where the signal is converted to radio frequency and runs along the coaxial portion of the Cable System to Subscribers.

Over the term of this Franchise, Grantee shall maintain the Cable System in a manner consistent with, or in excess of, a typical 750 MHz Cable System.

- B. Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or applicable law.

11.2. Standby Power

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power supplies that supply back-up power for at least two (2) hours duration throughout the distribution networks and four (4) hours duration at all nodes and hubs.

11.3. Emergency Alert

Grantee shall provide an operating Emergency Alert System in accordance with and at the time required by the provisions of State and federal laws, including FCC regulations.

11.4. Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal technical standards, as they may be amended from time to time, regardless of the transmission technology utilized.

11.5. Cable System Performance Testing

- A. Grantee shall perform on its Cable System all technical tests presently or hereafter required by the FCC.
- B. Upon request, all required FCC technical performance tests may be witnessed by representatives of the City.
- C. Grantee shall maintain written records of its Cable System tests performed by or for Grantee. Copies of such test results will be provided to the City upon request.
- D. Grantee shall promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their reoccurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction.

11.6. Additional Tests

- A. In addition to the above, and to the extent applicable, where there exists other evidence which in the judgment of the City casts doubt upon the reliability or technical quality of the Cable System, after giving Grantee thirty (30) days prior written notice and a reasonable opportunity to cure, the City may require Grantee to conduct additional tests and analyze and report on the performance of the Cable System in the area having service problems.

B. Grantee shall fully cooperate with the City in performing such testing and shall prepare the results and a report if requested, within thirty (30) days after such testing. This report shall include the following information:

1. The nature of the evidence which precipitated the special tests;
2. The Cable System component tested;
3. The equipment used and procedures employed in testing;
4. The results of the testing and Cable System evaluation, including a description of any problem(s) found;
5. The method, if any, in which such problem was resolved; and
6. Any other information pertinent to said tests and analysis, which may be required.

SECTION 12: SERVICE EXTENSION AND SERVICE TO PUBLIC BUILDINGS

12.1. Service Availability

- A. Service Connections: Grantee shall provide Cable Service within seven (7) business days of a request by any potential residential subscriber within the City provided, however, that service can be installed via a standard installation, as described below. For purposes of this subsection, a request shall be deemed made on the date of signing a service agreement or receipt by Grantee of a verified verbal request. Grantee shall provide such service with no line extension charge, except as specifically authorized below, at a nondiscriminatory installation charge for a standard installation, consisting of a one hundred fifty (150) foot service drop from the cable plant in the Right-of-Way to the exterior demarcation point for residential subscribers, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations.
- B. For non-standard installations that cannot be accommodated without an extension of Grantee's Cable System, the Grantee may elect to provide Cable Service to the requesting resident(s) for the line extension on a time and material cost basis.
- C. Distribution Line Extension Charges: The Grantee must make Cable Service available to every residential Dwelling Unit within the Franchise Area where the minimum density is at least thirty (30) Dwelling Units per strand mile in areas served by overhead facilities and sixty (60) Dwelling Units per mile in areas served by underground facilities. The Grantee may elect to provide Cable Service to areas not meeting the above density standard and charge the requesting resident(s) for the line extension on a time and material cost basis.

- D. Grantee shall provide Cable Service to Multiple Dwelling Units in accordance with this Franchise and applicable laws.
- E. Annexation: In the event of annexation by the City, or as development occurs, any new territory shall become part of the territory for which this Franchise is granted.
 - 1. The Grantee shall construct and extend its Cable System so that it is able to provide Cable Service to any areas which may be acquired, developed or annexed by the City during the Franchise term, or otherwise added to the City's jurisdiction during the Franchise term, or any extension thereof.
 - 2. Access to Cable Service shall not be denied to any group of potential cable Subscribers because of the income of the residents of the area in which such group resides.
 - 3. The Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas but in no event to exceed twelve (12) months of Council Approval of the annexation, subject to the provisions on line extension herein.

12.2. Permission of Property Owner or Tenant for Installation, and Treatment of Property

- A. If the Facilities pass over or under private or publicly owned property, Grantee is solely responsible for obtaining all necessary permission from the property owner.
- B. Grantee shall not install or attach any of its Facilities to any property without first securing the written permission of the owner or tenant of any property involved, or of such other person who has the right to approve or disapprove the attachment (authorized party), except if there is an existing utility easement; and in the event that such permission or easement is later revoked, Grantee at the request of the authorized party shall promptly remove any of its facilities and promptly restore the property to its original condition at Grantee's expense.
- C. Grantee shall perform all such installations and removals in compliance with state and local law and shall be responsible for any damage to residences or other property caused by the installation or the removal.

12.3. Connection of City and Other Public Buildings

- A. Upon request through the designated City representative, the Grantee will make available without charge, as long as it is economically feasible, a standard installation and a minimum of one outlet of Basic Cable Services to City administrative buildings as designated by the City (whether they are owned or leased), and fire station(s), police station(s), libraries, access facilities, and K-12 public School(s).

- B. Grantee may additionally volunteer to provide a digital level of service, in addition to the Basic Cable Service, that provides access to national 24-hour news channels; provided that if the installation to such building does exceed one hundred twenty-five (125) aerial feet, the City or other agency agrees to pay the incremental cost of such installation in excess of one hundred twenty-five (125) feet or a necessary distribution line extension of the Cable System, including the cost of such excess labor and materials. The recipient of the service will secure any necessary right of entry.
- C. The Cable Service will not be used for commercial purposes, and the outlets will not be located in jail cells or areas open to the public, except for one outlet to be located in a public lobby in City buildings that will be used by the public for viewing City selected programming.
- D. The City will take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, loss or damage to the Cable System.
- E. If additional outlets of Cable Service are needed in such buildings, only the Grantee is authorized to complete the Cable Service expansion to support the outlet installation(s) and the building occupant will pay the standard installation fees. No other Cable Service fees shall be owed in connection with additional outlets.
- F. The City acknowledges that complimentary services reflect a voluntary initiative on the part of Grantee. Grantee does not waive any rights it may have regarding complimentary services under federal law or regulation. Subject to applicable law, should Grantee elect to offset governmental complimentary services against Franchise Fees, Grantee shall first provide the City with ninety (90) days' prior notice.

SECTION 13: FRANCHISE VIOLATIONS

13.1. Non-Material Franchise Violations

- A. Notice of Non-Material Violation: If the City believes that Grantee has failed to perform any non-material obligation under this Franchise, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default, and Grantee shall have thirty (30) days from the receipt of such notice to:
 - 1. Respond to the City, contesting the City's assertion that a default has occurred, and request a meeting in accordance with subsection B, below; or
 - 2. Cure the default; or
 - 3. Notify the City that Grantee cannot cure the default within thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall:

- a. Notify the City in writing and with specificity the exact steps that will be taken and the projected completion date of each step necessary to promptly cure the default; and
 - b. Request a meeting pursuant to subsection B below for the City to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.
- B. Meet and Confer: If Grantee does not cure the alleged default within the cure period stated above, or denies the default, or the City orders a meeting, the City shall set a meeting, not less than fifteen (15) business days after Grantee's receipt of written notice from the City, to investigate the existence of the alleged default or the timing and procedure required to cure a default, and provide Grantee with an opportunity to be heard and to present evidence in its defense.
- C. Notice to Correct: If, after the meeting, the City determines that a default exists, Grantee and the City may agree on a plan and schedule to cure the default, or the City shall order Grantee to correct or remedy the default within thirty (30) days, or within such additional time as the City determines.
- D. Determination of Default: The determination as to whether a non-material violation under this Franchise has occurred shall be within the discretion of the City, must be made in writing, and based upon findings that include Grantee's submissions; provided that any such determination may be subject to appeal to the City's hearing examiner or review by an arbitrator as described in Section 16.1.
- E. Enforcement: In the event Grantee does not cure the default within the time agreed upon by the Parties or ordered by the City and to the City's reasonable satisfaction, the City may recommend revocation of this Franchise pursuant to the procedures in subsection 13.2 or commence the arbitration procedures in section 16.1.

13.2. Material Franchise Violations

- A. The City shall notify the Grantee, in writing, of any alleged failure to comply with a material provision of this Franchise, which notice shall specify the alleged failure with reasonable particularity. The Grantee shall have thirty (30) days subsequent to receipt of the notice in which to:
 1. respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below; or
 2. cure the default; or

3. notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default.
 4. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City, in writing and in detail, as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.
- B. If Grantee does not cure the alleged material default within the cure period stated above, or by the projected completion date under this section, or denies the default and requests a meeting in accordance with this section, or the City orders a meeting in accordance with this section, the City shall set a meeting to investigate said issues and the existence of the alleged default. The City shall notify Grantee of the meeting, in writing, and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.
- C. If, after the meeting, the City determines that a default exists, Grantee and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order Grantee to correct or remedy the default or violation within thirty (30) days or within such other reasonable timeframe as the City shall determine. In the event Grantee does not cure the default within such time to the City's reasonable satisfaction, the City may:
1. recommend the revocation of this Franchise pursuant to the procedures in this franchise; or
 2. pursue any other legal or equitable remedy available under this Franchise or applicable law.
- D. The determination as to whether a material violation of this Franchise has occurred shall be within the discretion of the City. Any such determination by the City must be in writing and must be based upon findings that include Grantee's submissions, and such determination shall be subject to appeal to the City Council or review by a court of competent jurisdiction under applicable law.

13.3. Revocation

- A. The City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in any of the following circumstances:
1. if Grantee fails to cure any material obligation under this Franchise;

2. if Grantee willfully fails for more than three (3) days to provide continuous Cable Service;
 3. if Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or subscribers;
 4. if Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;
 5. if Grantee willfully misrepresents material facts in the negotiation of this Franchise; or
 6. if Grantee repeatedly breaches a material provision of the Customer Service Standards.
- B. Prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. Grantee shall have forty-five (45) days from receipt of such notice to object in writing and to state its reasons for such objection and provide any explanation or cure the alleged default. In the event the City does not receive a timely and satisfactory response from Grantee, it may then seek a termination of the Franchise in accordance with this section.
- C. The City shall submit a report and recommendation as to termination of the Franchise to the City's appointed hearing examiner who shall conduct a public hearing to determine if revocation of the Franchise is warranted. The hearing examiner shall act as the final decision maker for the City.
1. At least twenty one (21) calendar days prior to the public hearing, the City clerk shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the City shall hear any Persons interested therein; and provide that the Grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses, consistent with the adopted public hearing rules.
 2. The hearing examiner shall hear testimony, take evidence, hear oral argument and receive written briefs. A transcript may be made of such proceeding and the cost shall be shared equally between the parties. A complete record of the public hearing shall be completed including all exhibits introduced at the hearing and an electronic sound recording.
- D. Within thirty (30) days after the close of the hearing, the hearing examiner shall adopt a written recommendation to the City Council. If the decision of the hearing examiner is to

revoke and terminate the Franchise, the City Council shall declare that the Franchise is revoked and terminated, and any form of surety is forfeited, unless the City Council finds a clear error in the hearing examiner's decision. The City council's written decision shall include findings of fact and conclusions derived from those facts which support the decision of the City council.

- E. Grantee shall be bound by the City council's decision to revoke the Franchise unless an appeal to a court of competent jurisdiction is timely filed as allowed by applicable law.

13.4. Termination

- A. If this Franchise expires without lawful renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:
 - 1. Require Grantee to maintain and operate its Cable System on a month-to-month basis until a new cable operator is selected; or
 - 2. Purchase Grantee's Cable System in accordance with federal law.
- B. The City may order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within thirty (30) days following notice from the City. However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other, permitted and lawful, non-cable services and has any other authority under applicable law to maintain facilities in the public rights-of-way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.
- C. If Grantee fails to complete any removal required by subsection 10.10 to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs and expenses incurred within thirty (30) days after receipt of an itemized list of the costs and expenses, or the City may recover the costs and expenses through Grantee's security instruments if Grantee has not paid such amount regarding removal, which shall include reasonable attorneys' fees and other costs for work conducted by City staff or agents.

13.5. Receivership

- A. At the option of the City, subject to applicable law, this Franchise may be revoked after the appointment of a receiver or trustee to take over and conduct the business of Grantee or an Affiliated Entity whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:
 - 1. The receivership or trusteeship is timely vacated; or

2. The receiver or trustee has timely and fully complied with all the terms and provisions of this Franchise, and has remedies all defaults under this Franchise.

B. In the event that this Franchise is not revoked pursuant to subsection 13.4(A), the receiver or trustee shall execute an agreement duly approved by a court having jurisdiction, by which the receiver or trustee assumes and agrees to be bound by each and every term, provision and limitation of this Franchise.

13.6. Alternative Remedies

A. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

B. The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection otherwise available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law (including, for example, Section 635A of the Cable Act).

13.7. Remedies Cumulative

A. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

B. The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection otherwise available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law (including, for example, Section 635A of the Cable Act).

13.8. Assessment of Liquidated Damages

A. Because it may be difficult to calculate the harm to the City in the event of a breach of this Franchise by Grantee, the parties agree to liquidate damages as a reasonable estimation of the actual damages.

1. Nothing in this subsection is intended to preclude the City from exercising any other right or remedy with respect to a breach that continues past the time the City stops assessing liquidated damages for such breach.

2. The City shall first follow the violation procedures in section 13 for written notice to Grantee and a thirty (30) day right to cure period under this Franchise before assessing liquidated damages.
- B. The City shall not assess any liquidated damages if Grantee has cured or commenced to, and completes, the cure pursuant to this Franchise.
 - C. The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City.
 - D. Liquidated damages as defined by this subsection may be assessed for no more than one hundred and eighty (180) calendar days for any individual incident, after which time the City may implement other remedies as defined in this Franchise and under applicable law.
 - E. The Grantee may appeal (by pursuing judicial relief) any assessment of liquidated damages within thirty (30) days of paying the assessment.
 - F. Pursuant to the requirements outlined herein, liquidated damages shall not exceed the following amounts:
 1. One hundred dollars (\$100.00) per day for material departure from the FCC technical performance standards;
 2. One hundred dollars (\$100.00) per day for failure to provide the Access Channel or any equipment related thereto which is required hereunder;
 3. One hundred dollars (\$100.00) per day for each material violation of the Customer Service Standards;
 4. One hundred dollars (\$150.00) per day for failure to provide reports or notices as required by this Franchise;
 5. One hundred dollars (\$250.00) per day for failure to comply with construction, operation, or maintenance standards; and
 6. One hundred dollars (\$250.00) per day for any material breaches or defaults not previously listed.
 - G. Grantee's maintenance of the security required herein or by applicable code shall not be construed to excuse unfaithful performance by Grantee of this Franchise; to limit liability of Grantee to the amount of the security; or to otherwise limit the City's recourse to any other remedy available at law or equity.

13.9. Effect of Abandonment

- A. If Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may obtain an injunction, or operate the Cable System, or designate another entity to operate the Cable System temporarily until Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City.
- B. If the City operates the Cable System, or designates another entity to operate the Cable System, Grantee shall reimburse the City or the City's designee, as applicable, for all reasonable costs and expenses incurred.
- C. If Grantee permanently abandons its entire Cable System, for a period greater than 12 months, then, at the City's sole discretion, such Cable System may become the property of the City, and Grantee shall then submit to the City a bill of sale and other conveyance documents, to be approved in advance by the City Attorney, transferring ownership of such property to the City.

SECTION 14: FRANCHISE RENEWAL

Any renewal of this Franchise shall be governed by and comply with the applicable provisions of the ACC, the provisions of Section 47 U.S.C. § 546, as amended, unless the procedures or substantive protections set forth therein shall be deemed to be preempted or superseded by the provisions of any subsequent federal or State law.

SECTION 15: FRANCHISE TRANSFER OR ASSIGNMENT

- A. Subject to 47 U.S.C § 537, the Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person (hereinafter "Transfer of the Franchise") without the prior written consent of the City, which consent shall not be unreasonably withheld.
- B. Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party in Control of Grantee. The word "Control" as used herein is not limited to majority stock ownership but includes actual working Control in whatever manner exercised. Every change, transfer or acquisition of Control of Grantee, except as noted in subsection 15.H, shall make this Franchise subject to cancellation unless and until the City shall have consented thereto which consent shall not be unreasonably withheld.
- C. The parties to the Transfer of the Franchise or change of Control shall make a written request to the City for its approval of the Transfer of the Franchise or change of Control (a "Transfer Application") and shall furnish all information required by law. In

reviewing a Transfer Application, the City may inquire into any matter reasonably related to the ability and willingness of the prospective transferee or controlling party to perform, in accordance with 47 CFR § 76.502, and applicable ACC.

- D. In seeking the City's consent to a Transfer Application, the proposed transferee or controlling party shall indicate whether, as applicable, it:
1. Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law, or is currently under an indictment, investigation or complaint charging such acts;
 2. Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against it by any court of competent jurisdiction;
 3. Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a Cable System;
 4. Is financially solvent, by submitting financial data, including financial information as required by FCC Form 394; and
 5. Has the legal, financial and technical capability to enable it to maintain and operate the Cable System for the remaining Term of the Franchise.
- E. In reviewing a Transfer Application, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said Transfer of the Franchise or change of Control upon such terms and conditions as it deems reasonably appropriate and as are consistent with federal law; provided, however, that any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee. Additionally, such Person shall effect changes as promptly as practicable in the operation of the Cable System, if any changes are necessary to cure any violations or defaults presently in effect or ongoing.
- F. The City shall act by ordinance or resolution on the request within one hundred twenty (120) days of the request, provided it has received all information required by law, such as a completed FCC Form 394. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.
- G. Within sixty (60) days of closing of any Transfer of the Franchise or change of Control, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed(s), agreement(s), lease(s) or other written instrument(s) evidencing such Transfer of the Franchise or change of Control, certified and sworn to as correct by Grantee and the transferee or new controlling entity. In the case of a Transfer of the Franchise or change

of Control, the transferee or the new controlling entity shall upon request by the City file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law.

- H. Notwithstanding anything to the contrary in this Section 15, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an Affiliate; provided that the proposed assignee or transferee agrees in writing to comply with all of the provisions of the Franchise, subject to applicable law.
- I. Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise. In the event of a change in Control, the Grantee will continue to be bound by all provisions of the Franchise.
- J. The consent or approval of the City to any Transfer of the Franchise or change in Control shall not constitute a waiver or release of any rights of the City.

SECTION 16: ADDITIONAL PROVISIONS

16.1. Cumulative Rights

Subject to applicable law, all rights and remedies given to the City by this Franchise shall be in addition to, and cumulative with, any and all other rights and remedies, existing or implied, now or hereafter available to the City.

16.2. Costs to be Borne by Grantee

Grantee shall reimburse the City for all costs of publication of this Franchise, and any notices prior to any public hearing regarding this Franchise, contemporaneous with its acceptance of this Franchise.

16.3. Severability

If any Section, provision, or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or State laws or regulations, the remainder of this Franchise shall not be affected, except as is otherwise provided by this Franchise.

16.4. No Recourse Against the City of Auburn

Grantee's recourse against the City or its officials, boards, commissions, agents or employees for any claim arising from any provision or requirement of this Franchise shall be limited to injunctive and declaratory relief, except where Grantee's claim arises from acts or omissions of the City acting in a proprietary capacity, but only to the extent such relief is not prohibited

by federal law, which does not include granting, modifying, denying, terminating, or enforcing franchises.

16.5. Action by Agencies or Courts

Grantee shall promptly notify the City in the event that any agency of the State or federal governments or any court with competent jurisdiction requires Grantee to act inconsistently with any provisions of this Franchise.

16.6. Franchise Interpretation

- A. All captions, headings or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or sections to which they apply.
- B. Interpretation or construction of this Agreement shall not be affected by any determination as to who is the drafter of this Agreement, this Agreement having been drafted by mutual agreement of the parties.

16.7. Choice of Law and Forum

- A. This Franchise and the rights of the parties hereunder shall be governed by the interpreted in accordance with the laws of the State of Washington and venue for any action hereunder shall be in of the county in King County, Washington.
- B. Subject to the limitations set forth in RCW 4.84.330, each party agrees to bear its own costs and attorneys' fees generated by any dispute arising out of this Franchise.

16.8. Force Majeure

- A. If Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason of acts of god, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, or sabotage, to the extent such events prevent performance by Grantee and such event is beyond Grantee's control, Grantee shall have a reasonable time under the circumstances to perform such obligation under this Franchise, or to get a substitute for such obligation to the satisfaction of the City.
- B. If Grantee claims a force majeure event, Grantee shall give prompt written notice of the same to the City and shall set forth its plan of action to meet the obligations of this Franchise once the force majeure event no longer prevents Grantee's performance.

16.9. Conflict of Interest Cancellation

The City may, in its sole discretion, by written notice to Grantee, immediately terminate this Franchise if it is found, after due notice and examination by the City, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW.

16.10. Integration & Binding Effect

- A. This Franchise, together with any subsequent amendments or addendums, constitutes the entire agreement of the Parties and no other understandings, oral or otherwise, regarding this Franchise shall exist or bind any of the parties.
- B. This Franchise shall be binding upon, and the benefits and obligations provided for herein shall inure to and bind, the Parties and their respective successors and assigns, provided that this Section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Franchise.
- C. This Franchise is for the exclusive benefit of the Parties and it does not create a contractual relationship with, or exist for the benefit of, any third party, including contractors, subcontractors, affiliates, subsidiaries, or sureties.

16.11. Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise.

16.12. Discriminatory Practices Prohibited

Throughout the term of this Franchise, Grantee shall fully comply with all equal employment and nondiscrimination provisions of applicable law.

16.13. No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties, and neither party is authorized to, nor shall either party act towards third Persons or the public in any manner which would indicate any such relationship with the other, nor is Grantee granted any express or implied right or authority to assume or create any obligation or responsibility on behalf, or in the name, of the City.

16.14. Waiver

The failure of the City at any time to require performance by Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same, nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any

succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

16.15. Notice

Unless otherwise agreed to by the parties, any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

Grantee's address shall be:

Comcast Cable Communications, LLC &
Comcast Cable Communications Management, LLC
4020 Auburn Way N
Auburn, WA 98002
Attention: Franchise Director

With a copy to:

Comcast Cable Communications, LLC &
Comcast Cable Communications Management, LLC
15815 25th Ave W
Lynnwood, WA 98087
Attention: Franchising Department

City's address shall be:

City of Auburn
Community Development and Public Works Department
25 West Main Street
Auburn, WA 98001-4998
Attention: Engineering Aide

With a copy to:

City of Auburn
City Clerk's Office
25 West Main Street
Auburn, WA 98001-4998
Attention: City Clerk

STATEMENT OF ACCEPTANCE



AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Hearing for North Auburn Logistics Holdings, LLC Water
Payback Agreement

Date:

July 3, 2019

Department:

Public Works

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to hold a public hearing in consideration of North Auburn Logistics Holdings, LLC Water Payback Agreement. See Ordinance No. 6722 for further action on this item.

Background Summary:

North Auburn Logistics Holdings, LLC constructed water systems improvements along West Valley Highway and South 287th Street to provide water to their development. These improvements are eligible for a payback agreement between the Developer and the City of Auburn, where properties that connect to the water system improvements will reimburse North Auburn Logistics Holdings LLC for the properties' pro rata share of the cost of those improvements.

The date of the public hearing was set by consent on June 17, 2019.

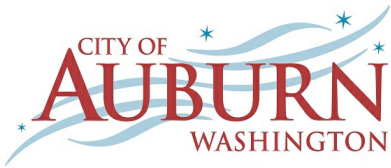
Reviewed by Council Committees:**Councilmember:****Staff:**

Gaub

Meeting Date: July 15, 2019

Item Number:

PH.2



AGENDA BILL APPROVAL FORM

Agenda Subject:

Minutes of the June 17, 2019 and June 24, 2019 Special City Council Meetings

Date:

July 11, 2019

Department:

Administration

Attachments:

[06-17-2019 Minutes](#)

[06-24-2018 Minutes](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

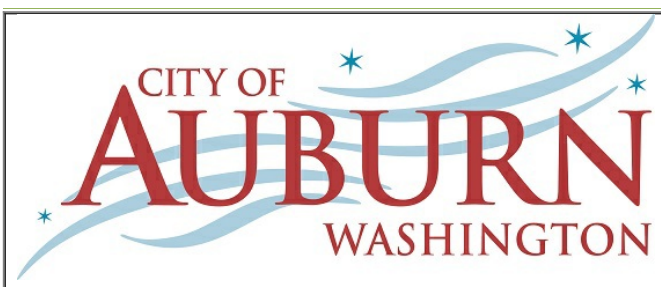
Revised Budget: \$0

Administrative Recommendation:**Background Summary:****Reviewed by Council Committees:****Councilmember:**

Meeting Date: July 15, 2019

Staff:

Item Number: CA.A



**Special City Council Meeting
June 17, 2019 - 6:00 PM
City Hall Council Chambers
MINUTES**

I. CALL TO ORDER

Mayor Nancy Backus called the meeting to order at 6:00 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street in Auburn.

A. Roll Call

Councilmembers present: Deputy Mayor Bill Pelozza, Bob Baggett, Larry Brown, Claude DaCorsi, John Holman, Yolanda Trout-Manuel and Largo Wales.

Department directors and staff members present included: City Attorney Steve Gross, Director of Public Works Ingrid Gaub, Director of Finance Shelley Coleman, Director of Innovation and Technology David Travis, Director of Parks and Recreation Daryl Faber, Director of Human Resources and Rick Management Candis Martinson, Police Commander Daniel O'Niel and Deputy City Clerk Teresa Mattingly.

II. DISCUSSION ITEMS

A. Budget Options

Director Coleman presented Council with an update on the proposal with BERK Consulting to perform a fiscal sustainability analysis. She discussed the scope of work, the firm's qualifications, project tasks and next steps.

Council discussed the importance of having a third party provide an analysis and is in consensus with moving forward with this project.

III. ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 6:16 p.m.

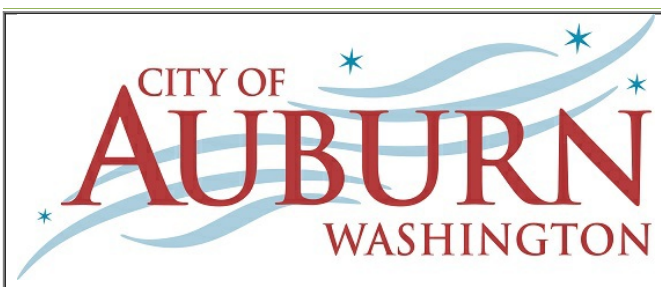
APPROVED this 15th day of July, 2019.

NANCY BACKUS, MAYOR

Teresa Mattingly, Deputy City Clerk

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.



**Special City Council Meeting
June 24, 2019 - 4:30 PM
City Hall Council Chambers
MINUTES**

I. CALL TO ORDER

Mayor Nancy Backus called the meeting to order at 4:30 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street in Auburn.

A. Roll Call

Councilmembers present: Deputy Mayor Bill Peloza, Bob Baggett, Larry Brown, John Holman, Yolanda Trout-Manuel and Largo Wales.
Councilmember Claude DaCorsi was excused.

Department directors and staff members present included: City Attorney Steve Gross, Director of Human Resources & Risk Management Candis Martinson, Director of Administration Dana Hinman, Director of Public Works Ingrid Gaub, Director of Community Development Jeff Tate, Director of Parks and Recreation Daryl Faber, Director of Innovation & Technology David Travis, Real Property Analyst Josh Arndt, Economic Development Coordinator Tanya Carter, Assistant Director of Engineering Services Jacob Sweeting, Planning Services Manager Jeff Dixon, Chief of Police Bill Pierson, and Deputy City Clerk Teresa Mattingly.

II. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. Public Hearings

1. Public Hearing for Resolution No. 5442 (Tate)

City Council to hold a public hearing in consideration of authorizing the amended and restated Development Agreement with Capital Acquisitions, LLC related to the Auburn Gateway Project

Director Tate provided Council with an update on the Development Agreement with Capital Acquisitions, LLC (dba Inland Group) related to the Auburn Gateway Project he discussed proposed changes to the development standards and the requirements of the Development Agreement.

Council discussed who is financially responsible for maintaining the open spaces, the public restrooms, additional traffic signals, how many commercial and residential units are planned and the where storm water storage will be located.

Director Tate advised Council, the City is not responsible for maintaining the open spaces or public restrooms, an additional traffic signal will be installed, there will be 500 residential units and 50 commercial units planned and storm water storage will be located in the open space area.

Mayor Backus opened the Public Hearing at 4:55 p.m.

Scott Morris, Inland Group

Mr. Morris stated Inland Group is the applicant and developer for the Auburn Gateway project. He discussed traffic impacts, changes to the area and reviewed the amenities that are proposed to be located onsite.

Nick Various, 30240 110th Pl. Auburn

Mr. Various advised Council that he is looking forward to seeing this development project move forward.

No one else came forward to speak. Mayor Backus closed the hearing at 5:03 p.m.

III. RESOLUTIONS

A. Resolution No. 5442 (Tate)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to enter into an amended and restated Development Agreement with Capital Acquisitions, LLC related to the Auburn Gateway Project

Councilmember Wales moved and Councilmember Brown seconded to approve Resolution No. 5442.

MOTION CARRIED UNANIMOUSLY. 6-0

A. EXECUTIVE SESSION

1. Executive Session

Mayor Backus recessed into executive session at 5:05 p.m. for 15 minutes pursuant to RCW 42.30.110(1F) to receive or evaluate a complaint or charge against a public official. City Attorney Gross attended the executive session.

Mayor Backus extended the executive session for 5 minutes. The meeting reconvened at 5:25 p.m.

IV. ADJOURNMENT

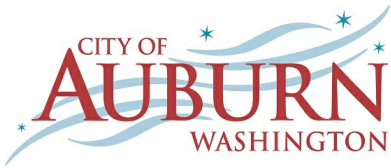
There being no further business to come before the Council, the meeting was adjourned at 5:25 p.m.

APPROVED this 15th day of July, 2019.

NANCY BACKUS, MAYOR

Teresa Mattingly, Deputy City Clerk

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

Agenda Subject:

Minutes of the June 24, 2019 Study Session

Department:

Administration

Attachments:

[06-24-2019 Minutes](#)

Date:

July 11, 2019

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:**Background Summary:****Reviewed by Council Committees:****Councilmember:**

Meeting Date: July 15, 2019

Staff:

Item Number: CA.B

	<p>City Council Study Session Finance, Technology and Economic Development Special Focus Area June 24, 2019 - 5:30 PM City Hall Council Chambers MINUTES Watch the meeting LIVE!</p> <p>Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.</p>
---	--

I. CALL TO ORDER

Deputy Mayor Pelozo called the meeting to order at 5:30 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street in Auburn.

A. Roll Call

Councilmembers present: Deputy Mayor Bill Pelozo, Bob Baggett, Larry Brown, John Holman, Yolanda Trout-Manuel and Largo Wales. Councilmember Claude DaCorsi was excused.

Mayor Nancy Backus and the following department directors and staff members were present: Assistant City Attorney Doug Ruth, Director of Administration Dana Hinman, Director of Public Works Ingrid Gaub, Right-of-Way Specialist Amber Price, Director of Innovation & Technology David Travis, Assistant Finance Director Kevin Fuhrer, Financial Planning Manager Bob Brooks, Police Commander Steve Stocker, and Deputy City Clerk Teresa Mattingly.

II. ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS

There were no announcements, reports or presentations.

III. AGENDA ITEMS FOR COUNCIL DISCUSSION

A. Ordinance No. 6723 (Gross) (5 Minutes)

An Ordinance amending Ordinance No. 4683 to correct a legal description related to a conditional use permit

Assistant City Attorney Ruth advised Council that Ordinance No. 6723 is to correct the legal description and an incorrect address in the 1996 Ordinance No. 4863 related to a conditional use permit at 3244 Auburn Way South.

B. Resolution No. 5431 (Gaub) (5 Minutes)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to execute a Franchise Agreement between the City of Auburn and Comcast Cable Communications, LLC and Comcast Cable Communications Management, LLC, a Pennsylvania Corporation

Right-of-Way Specialist Price presented Council with an update on Comcast Cable seeking to renew their franchise agreement for ten (10) years and discussed basic cable services provided.

IV. FINANCE, TECHNOLOGY AND ECONOMIC DEVELOPMENT DISCUSSION ITEMS

A. 1st Quarter 2019 Financial Report (Coleman) (15 Minutes)

Year to date through March 2019 status report based on financial data available as of April 24, 2019 for the period ending March 31, 2019 and sales tax information representing business activity that occurred through January 2019

Councilmember Wales presided over this section of the meeting.

Assistant Finance Director Fuhrer presented Council with an update on the 1st Quarter 2019 Financial Report and reviewed general fund revenues and expenditures including: taxes, franchise fees and business licenses. He also discussed the investment portfolio, operating and capital funds.

Deputy Mayor Peloza asked who will be on the Auburn Humane Society board to represent the City with pet licensing and was advised the new Director of Finance will retain that position.

B. Ordinance No. 6720 (Coleman) (15 Minutes)

An Ordinance of the City Council of the City of Auburn, Washington, amending Ordinance No. 6693, the 2019-2020 Biennial Operating Budget Ordinance, as amended by Ordinance No. 6712, authorizing amendment to the City of Auburn 2019-2020 budget as set forth in schedule "A" and schedule "B"

Manager Brooks provided Council with an update on Ordinance No. 6720, Budget Amendment 3 and discussed fund balance adjustments, revenue adjustments, funding adjustments and new funding requests.

Council discussed funding a third school resource officer, the budget for repairs to traffic signals caused by vehicular accidents, how the cost of damages to traffic signals is collected and funding for sidewalk repairs.

C. Cyber Security Update (Travis) (20 Minutes)

Director Travis presented Council with an update on Cyber Security and discussed what Cyber Security is, what the IT Department is doing to protect the City against cyber attacks, top threats, average cost of cybercrime, email threats and the mitigation strategy.

Council discussed getting information regarding Cyberbullying to the local schools, steps the City takes to backup its system, what the City would do in the event of a cyber attack and the new email alert when an email is received from outside the City.

V. OTHER DISCUSSION ITEMS

There was no other discussion.

VI. NEW BUSINESS

There was no new business.

VII. MATRIX

A. Matrix

Council discussed the Matrix and requested that the chair and vice chair on Animal Control be corrected to reflect Councilmember Baggett as the chair and Deputy Mayor Pelosa as the vice chair and to change the date on this item from July 8, 2019 to July 22, 2019. No other changes were made.

VIII. ADJOURNMENT

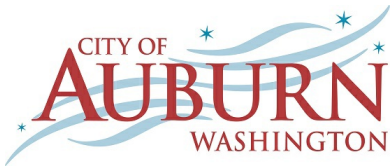
There being no further business to come before the Council, the meeting was adjourned at 6:41p.m.

APPROVED this 15th day of July, 2019.

BILL PELIZA, DEPUTY MAYOR

Teresa Mattingly, Deputy City Clerk

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

Agenda Subject:

Minutes of the June 17, 2019 Regular Council Meeting

Department:

Administration

Attachments:

[06-17-2019 Minutes](#)

Date:

July 11, 2019

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

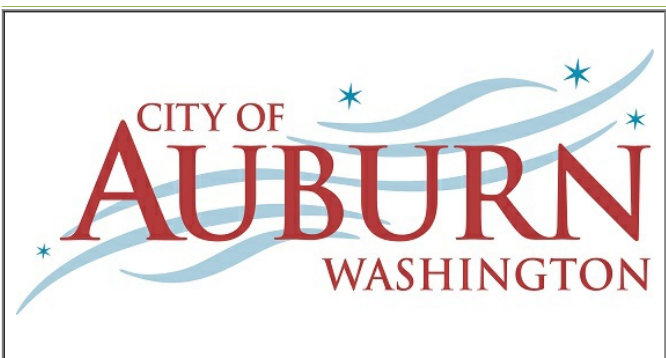
Revised Budget: \$0

Administrative Recommendation:**Background Summary:****Reviewed by Council Committees:****Councilmember:**

Meeting Date: July 15, 2019

Staff:

Item Number: CA.C

	<p style="text-align: center;">City Council Meeting June 17, 2019 - 7:00 PM City Hall Council Chambers MINUTES Watch the meeting LIVE!</p> <p style="text-align: center;">Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.</p>
---	--

I. **CALL TO ORDER**

A. **Pledge of Allegiance**

Mayor Nancy Backus called the meeting to order at 7:00 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street in Auburn and led those in attendance in the Pledge of Allegiance.

B. **Roll Call**

Councilmembers present: Deputy Mayor Bill Pelozza, Bob Baggett, Larry Brown, Claude DaCorsi, John Holman, Yolanda Trout-Manuel and Largo Wales.

Department directors and staff members present included: City Attorney Steve Gross, Director of Public Works Ingrid Gaub, Director of Finance Shelley Coleman, Director of Innovation and Technology David Travis, Director of Parks and Recreation Daryl Faber, Assistant Director of Engineering Services Jacob Sweeting, Police Commander Daniel O'Neil and Deputy City Clerk Teresa Mattingly.

II. **ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS**

A. **LGBTQ+ Pride Month Proclamation**

Mayor Backus to proclaim June 2019 as "LGBTQ+ Pride Month" in the city of Auburn.

Mayor Backus read and presented the proclamation to the following members of the Queer and Allies club at Green River College: Allison Jansen, Anne Hiles and Amanda Moore.

Ms. Jansen and the members of the Queer and Allies club thanked the Mayor and Council for their support and for proclaiming June 2019 as "LGBTQ + Pride Month".

III. **APPOINTMENTS**

There was no appointments.

IV. AGENDA MODIFICATIONS

Item 7. H. City Council to schedule a public hearing for Resolution No. 5442, authorizing the amended and restated Development Agreement with Capital Acquisitions, LLC related to the Auburn Gateway Project was added to the agenda.

Item 7. I. City Council to authorizing the Mayor to negotiate and execute a contract with Berk Consulting in an amount not to exceed \$70,000 to perform a fiscal sustainability analysis was added to the agenda.

V. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. Public Hearings

1. Public Hearing for Right-of-Way Vacation V1-18 (Gaub)
City Council to hold a Public Hearing in consideration of Right-of-Way Vacation V1-18.

Mayor Backus opened the public hearing at 7:07 p.m.

Bill Sherill 5875 S 326th Ct., Auburn
Mr. Sherill advised Council on behalf of himself and the Mountainview North-South Homeowners Association the HOA does not oppose the vacation of right-of-way or the establishment of a new right-of-way adjacent to their neighborhood. Mr. Sherill asked that the City work with potential developers to lessen the impact of the proposed development on the neighborhood and Mountainview Cemetery.

No one else came forward to speak. The Mayor closed the public hearing at 7:11 p.m.

2. Public Hearing for 2020-2025 Transportation Improvement Plan (Gaub)
City Council to hold a public hearing in consideration of adoption of the 2020-2025 Transportation Improvement.

Mayor Backus opened the public hearing at 7:12 p.m. No one came forward to speak, she closed the hearing.

B. Audience Participation

This is the place on the agenda where the public is invited to speak to the City Council on any issue. Those wishing to speak are reminded to sign in on the form provided.

Rory Cruikshank 32117 46th Pl. S, Auburn
Mr. Cruikshank expressed his concern regarding the high crime activity at 32143 46th Pl S and the lack of response by the City in the last six weeks.

Steve Vinton 32204 46th Pl S, Auburn
Mr. Vinton expressed his disappointment about the criminal activity in his

neighborhood and the lack of police response.

Val Erickson 535 M St NE, Auburn

Ms. Erickson stated she is angry over the criminal activity in their neighborhood and discussed electing a Council that will make crime a priority and requested more police presence.

Bob Zimmerman 33029 46th Pl S, Auburn

Mr. Zimmerman discussed his concerns with code violations and the attitude he has run into trying to get code violations and safety standards enforced.

Waylon Menzia 719 R St NE, Auburn

Mr. Menzia thanked the Mayor and Council for all the work they do.

C. Correspondence

There was no correspondence for Council to review.

VI. COUNCIL AD HOC COMMITTEE REPORTS

Council Ad Hoc Committee Chairs may report on the status of their ad hoc Council Committees' progress on assigned tasks and may give their recommendation to the City Council, if any.

Councilmember Wales, chair of the Finance ad hoc committee, reported she and Councilmember DaCorsi have reviewed the claims and payroll vouchers described on the Consent Agenda this evening and recommended their approval.

VII. 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. Minutes of the June 3, 2019 Regular Council Meeting

B. Minutes of the May 13, 2019 and June 10, 2019 Study Sessions

C. Claims Vouchers (Coleman)

Claims voucher list dated June 17, 2019 which includes voucher numbers 453989 through 454199 in the amount of \$4,980,929.04 and three wire transfers in the amount of \$502,375.86.

D. Payroll Vouchers (Coleman)

Payroll check numbers 538477 through 538496 in the amount of \$242,613.37, electronic deposit transmissions in the amount of \$2,102,351.41 for a grand total of \$2,344,964.78 for the period covering 5/30/2019 to 6/12/2019.

E. Setting Public Hearing Date for Franchise Agreement No. FRN19-0012 for Comcast (Gaub)

F. Public Works Project No. CP1726 (Gaub)

Award Contract No. 19-05, to Rodarte Construction, Inc. on their low bid of \$3,101,975.75 plus Washington State sales tax of \$113,298.27 for a total contract price of \$3,215,274.02 for Project No. CP1726, 2019 Local Street Reconstruction

G. Setting a Public Hearing Date for North Auburn Logistics Water Payback Agreement (Gaub)

H. Setting a Public Hearing for Auburn Gateway Project Development Agreement

City Council to schedule a Public Hearing for Resolution No. 5442, authorizing the amended and restated Development Agreement with Capital Acquisitions, LLC related to the Auburn Gateway Project

I. Fiscal Sustainability Analysis Agreement

City Council to authorizing the Mayor to negotiate and execute a contract with Berk Consulting in an amount not to exceed \$70,000 to perform a fiscal sustainability analysis

Deputy Mayor Peloza moved and Councilmember Brown seconded to approve the consent agenda as amended.

MOTION CARRIED UNANIMOUSLY. 7-0

VIII. UNFINISHED BUSINESS

There was no unfinished business.

IX. NEW BUSINESS

There was no new business.

X. ORDINANCES

A. Ordinance No. 6687 (Gaub)

An Ordinance of the City Council of the City of Auburn, Washington, approving the vacation of right-of-way in the vicinity of SE 328th Street and 60th Avenue South

Councilmember Holman moved and Councilmember Trout-Manuel seconded to approve Ordinance No. 6687.

MOTION CARRIED UNANIMOUSLY. 7-0

XI. RESOLUTIONS

A. Resolution No. 5378 (Gaub)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the dedication of a portion of City-owned property as City right-of-way

Councilmember DaCorsi moved and Councilmember Trout-Manuel seconded to approve Resolution No. 5378.

MOTION CARRIED UNANIMOUSLY. 7-0

B. Resolution No. 5432 (Gaub)

A Resolution of the City Council of the City of Auburn, Washington, approving and adopting the 2020-2025 Transportation Improvement Program of the City of Auburn

Councilmember Brown moved and Councilmember Baggett seconded to approve Resolution No. 5432.

MOTION CARRIED UNANIMOUSLY. 7-0

C. Resolution No. 5433 (Gaub)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to accept and expend Federal Grant Funds and execute an agreement with the Washington State Department of Transportation for the Auburn Way South Improvements – Hemlock Street SE to Poplar Street SE

Councilmember DaCorsi moved and Councilmember Holman seconded to approve Resolution No. 5433.

MOTION CARRIED UNANIMOUSLY. 7-0

D. Resolution No. 5435 (Coleman)

A Resolution of the City Council of the City of Auburn, Washington, approving the 2019 Comprehensive Solid Waste Management Plan for the King County Solid Waste System

Deputy Mayor Peloza moved and Councilmember Brown seconded to approve Resolution No. 5435.

MOTION CARRIED UNANIMOUSLY. 7-0

E. Resolution No. 5436 (Gaub)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to accept additional Federal grant funds to be administered through the Washington State Department of Transportation for CP1819 - A Street SE Preservation Project

Deputy Mayor Peloza moved and Councilmember Trout-Manuel seconded to approve Resolution No. 5436.

MOTION CARRIED UNANIMOUSLY. 7-0

F. Resolution No. 5437 (Hinman)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the

Mayor to execute an interlocal agreement between the City of Auburn and the Auburn School District for mutual aid during emergencies

Councilmember Brown moved and Councilmember Trout-Manuel seconded to approve Resolution No. 5437.

MOTION CARRIED UNANIMOUSLY. 7-0

G. Resolution No. 5439 (Gaub)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the City to apply for and, if awarded, to accept and expend grant funds in the amount of up to \$2,700,000.00 from the Federal Aviation Administration related to the Auburn Municipal Airport Runway Enhancement Project

Councilmember Wales moved and Councilmember DaCorsi seconded to approve Resolution No. 5439.

MOTION CARRIED UNANIMOUSLY. 7-0

XII. MAYOR AND COUNCILMEMBER REPORTS

At this time the Mayor and City Council may report on significant items associated with their appointed positions on federal, state, regional and local organizations.

A. From the Council

Deputy Mayor Peloza attended a meeting with Solid Waste to discuss recycling.

Councilmember Baggett attended the Emergency Management Advisory Committee meeting and the Pierce County Cities and Town meeting.

Councilmember DaCorsi attended via teleconference the Housing Advisory Board meeting.

B. From the Mayor

Mayor Backus thanked Director of Finance Shelley Coleman for her 23 years of service, her dedication and hard work. She also expressed her appreciation and wished her the greatest of happiness in her retirement.

XIII. ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 7:58 p.m.

APPROVED this 15th day of July, 2019.

NANCY BACKUS, MAYOR

Teresa Mattingly, Deputy City Clerk

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

Agenda Subject:

Claims Vouchers (Fuhrer)

Date:

June 27, 2019

Department:

City Council

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Claim Vouchers.

Background Summary:

Claim voucher list dated July 1, 2019 which includes voucher numbers 454200 through 454424 in the amount of \$1,405,972.22 and five wire transfers in the amount of \$764,497.83.

Claim voucher list dated July 15, 2019 which included voucher numbers 454425 through 454802 in the amount of \$4,752,079.75 and 2 Wire transfers in the amount of \$527,418.16.

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

Fuhrer

Meeting Date: July 15, 2019

Item Number:

CA.D



AGENDA BILL APPROVAL FORM

Agenda Subject:

Payroll Vouchers (Fuhrer)

Date:

June 27, 2019

Department:

City Council

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Payroll Vouchers.

Background Summary:

Payroll check numbers 538497 through 538514 in the amount of \$593,201.79, electronic deposit transmissions in the amount of \$2,048,393.15 for a grand total of \$2,641,594.94 for the period covering June 13, 2019 to June 26, 2019.

Payroll check numbers 538515 through 538546 in the amount of \$245,428.24, electronic deposit transmissions in the amount of \$2,088,058.84 for a grand total of \$2,333,487.08 for the period covering June 27, 2019 to July 10, 2019.

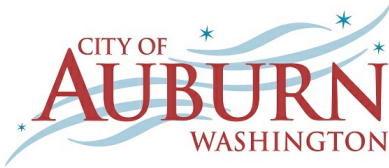
Reviewed by Council Committees:**Councilmember:****Staff:**

Fuhrer

Meeting Date: July 15, 2019

Item Number:

CA.E



AGENDA BILL APPROVAL FORM

Agenda Subject:

Setting Public Hearing Date for Franchise Agreement #FRN19-0013 (Gaub)

Date:

July 2, 2019

Department:

Public Works

Attachments:

[Draft Ordinance No. 6721](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Staff recommends that the City Council set the date of the Public Hearing for Franchise Agreement No. FRN19-0013 for Seattle SMSA Limited Partnership, dba Verizon Wireless as August 5, 2019, at 7:00 pm.

Background Summary:

Section 20.06.030 of the Auburn City Code Chapter requires the City to hold a public hearing before granting or denying a franchise agreement. Staff requests that the City Council set the date of the public hearing for Franchise Agreement No. FRN19-0013 for Seattle SMSA Limited Partnership, dba Verizon Wireless for August 5, 2019 at 7:00 pm in Council Chambers.

Franchise Agreement No. FRN19-0013, (Draft Ordinance No. 6721) is attached as back-up documentation. Section 20.06.010 of the Auburn City Code requires a franchise for any commercial utility or telecommunications operator or carrier or other person who wants to use public ways of the City and to provide telecommunications or commercial utility services to any person or area in the City.

Seattle SMSA Limited Partnership, dba Verizon Wireless has applied for a Franchise Agreement to be able to construct within the City's rights-of-way a small wireless facilities network. Seattle SMSA wants to provide personal wireless telecommunications and data communications services for the benefit of wireless communications subscribers in and around the City of Auburn.

The initial proposed build-out includes multiple locations on Lea Hill on City owned poles and PSE owned poles. The applicant is requesting the entire City as the proposed franchise area so that they can build out their small cell network. Exact locations, plans, engineering and construction schedules would be reviewed, approved and managed through the City's permitting processes that are a requirement of the Franchise Agreement.

Reviewed by Council Committees:

Councilmember:

Meeting Date: July 15, 2019

Staff:

Item Number:

Gaub

CA.F

ORDINANCE NO. 6721

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING SEATTLE SMSA LIMITED PARTNERSHIP, A DELAWARE LIMITED PARTNERSHIP, D/B/A VERIZON WIRELESS, A FRANCHISE FOR WIRELESS TELECOMMUNICATIONS FACILITIES

WHEREAS, Seattle SMSA Limited Partnership, a Delaware limited partnership, d/b/a Verizon Wireless ("Grantee"), has applied to the City of Auburn ("City") for a non-exclusive Franchise for the right of entry, use, and occupation of certain public right(s)-of-way within the City, to install, construct, erect, operate, maintain, repair, relocate and remove Grantee's facilities in, on, over, under, along and/or across those right(s)-of-way; and

WHEREAS, following proper notice, the City Council held a public hearing on Grantee's request for a Franchise; and

WHEREAS, based on the information presented at the public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the City Council now deems it appropriate and in the best interest of the City and its inhabitants to grant the franchise to Grantee.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN WASHINGTON, DO ORDAIN as follows:

Section 1. Grant of Right to Use; Franchise Area

A. Subject to the terms and conditions stated in this Agreement, the City grants to the Grantee general permission to enter, use, and occupy the Franchise Area, located within the incorporated area of the City. Grantee may locate the Grantee Facilities within the Franchise Area subject to all applicable laws, regulations, and permit conditions.

B. The Grantee is authorized to install, remove, construct, erect, operate, maintain, relocate, upgrade, replace, restore and repair Grantee Facilities to provide Telecommunications Services in the Franchise Area.

C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Grantee Facilities and Telecommunications Services, and it extends no rights or privilege relative to any facilities or services of any type, including Grantee Facilities and Telecommunications Services, on public or private property elsewhere within the City.

D. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including Franchises, impacting the Franchise Area, for any purpose that does not interfere with Grantee's rights under this Franchise.

E. Except as explicitly set forth in this Agreement, this Franchise does not waive any rights that the City has or may acquire with respect to the Franchise Area or any other City roads, rights-of-way, property, or any portions thereof. This Franchise shall be subject to the power of eminent domain, and in any proceeding under eminent domain, the Grantee acknowledges its use of the Franchise Area shall have no value.

F. The City reserves the right to change, regrade, relocate, abandon, or vacate any right-of-way within the Franchise Area. If, at any time during the term of this Franchise, the City vacates any portion of the Franchise Area containing Grantee Facilities, the City shall reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which the Grantee may continue to operate any existing Grantee Facilities under the terms of this Franchise for the remaining period set forth under Section 3.

G. The Grantee agrees that its use of Franchise Area shall at all times be subordinated to and subject to the City and the public's need for municipal infrastructure, travel, and access to the Franchise Area, except as may be otherwise required by law.

Section 2. Notice

A. Written notices to the parties shall be sent by a nationally recognized overnight courier or by certified mail to the following addresses, unless a different address shall be designated in writing and delivered to the other party. Any such notice shall become effective upon receipt by certified mail, confirmed delivery by overnight courier, or the date stamped received by the City.

City: Right-of-Way Specialist
Public Works Department - Transportation
City of Auburn
25 West Main Street
Auburn, WA 98001-4998
Telephone: (253) 931-3010; Fax: (253) 931-3048

with a copy to: City Clerk
City of Auburn
25 West Main Street

Auburn, WA 98001-4998

Grantee: Seattle SMSA Limited Partnership
d/b/a Verizon Wireless
Attn: Network Real Estate
180 Washington Valley Road
Bedminster, New Jersey 07921

With a copy to: Seattle SMSA Limited Partnership
d/b/a Verizon Wireless
Attn: Pacific Market General Counsel
15505 Sand Canyon Avenue
Irvine, CA 92618

B. Any changes to the above-stated Grantee information shall be sent to the City at City's notice addresses, referencing the number of this Ordinance.

C. The City may also contact Grantee at the following number during normal business hours and for emergency or other needs outside of normal business hours of the Grantee: 800-264-6620.

Section 3. Term of Agreement

A. This Franchise shall run for a period of five (5) years, from the effective date of this Franchise specified in Section 5.

B. Renewal Option of Term: The Grantee may renew this Franchise for one, additional five (5) year period upon submission and approval of the application specified under ACC 20.06.130, as it now exists or is amended, within the timeframe set forth in that section (currently not more than 240 and not less than 180 days prior to expiration of the then-current term). Any materials submitted by the Grantee for a previous application may be considered by the City in reviewing a current application, and the Grantee shall only submit those materials deemed necessary by the City to address changes in the Grantee Facilities or Telecommunications Services, or to reflect specific reporting periods mandated by the ACC.

C. Failure to Renew Franchise – Automatic Extension. If the Parties fail to formally renew this Franchise prior to the expiration of its term or any extension thereof, the Franchise automatically continues month to month until renewed or either party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise.

Section 4. Definitions

For the purpose of this agreement:

- A. "ACC" or "City Code" means the Auburn City Code.
- B. "Emergency" means a condition of imminent danger to the health, safety and welfare of persons or property located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots, acts of terrorism or wars.
- C. "Franchise Area" means all present and future Rights-of-Way as defined in Section 4.H. herein, within the City Limits as they currently exist or as amended in the future.
- D. "Grantee Facilities" means any and all equipment, appliances, attachments, appurtenances and other items necessary for Telecommunications Services or "personal wireless services" as defined in RCW 80.36.375 that are located in the Right-of-Way. It includes microcell, minor and small cell facilities and strand-mounted units.

Grantee Facilities do not include anything used to provide wireline services, front-haul or back-haul services, including fiber optic cables, coaxial cables, wires, conduit or other equipment, appliances, attachments and appurtenances. They do not include any equipment that is not within ten (10) feet of the pole (excluding any strand-mounted unit) or base station, or that is not within the Right-of-Way, or that is covered under a separate Franchise Agreement or agreement.
- E. "Grantee's Telecommunications Services" means the transmission and reception of wireless communications signals, including but not limited to personal wireless and data communications services, over Licensee's federally licensed frequencies, pursuant to all the rules and regulations of the Federal Communications Commission, and in accordance with the terms of this Agreement, for the benefit of wireless communications subscribers in and around the Franchise Area.
- F. "Maintenance" or "maintain" shall mean examining, testing, inspecting, repairing, maintaining, restoring and replacing the existing Grantee Facilities or any part thereof as required and necessary for safe operation.
- G. "Relocation" means permanent movement of Grantee Facilities required by the City, and not temporary or incidental movement of such facilities, or other revisions Grantee would accomplish and charge to third parties without regard to municipal request.

H. "Rights-of-Way" means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, shoulders, curbs, landscaping areas between sidewalks and curbs or shoulders, and other public rights-of-ways and similar public properties and areas to the extent that the City has the authority to grant permission to use any of the foregoing. It does not include structures, including poles and conduit, located in the right-of-way and, any other property owned by the City in its proprietary capacity.

Section 5. Acceptance of Franchise

A. This Franchise shall not become effective until Grantee files with the City Clerk (1) the Statement of Acceptance (Exhibit "A"), (2) all verifications of insurance coverage specified under Section 15, (3) the financial guarantees specified in Section 16, and (4) payment of any outstanding application fees per the City Fee Schedule. These four items shall collectively be the "Franchise Acceptance". The date that such Franchise Acceptance is filed with the City Clerk shall be the effective date of this Franchise.

B. Should the Grantee fail to file the Franchise Acceptance with the City Clerk within thirty (30) days after the effective date of the ordinance approving the Franchise, the City's grant of the Franchise will be null and void.

Section 6. Location, Siting, Construction and Maintenance

A. The Grantee shall apply for, obtain, and comply with the terms of all permits, approvals and facilities lease agreements as required under ACC Chapters 12.24, 13.32A and 20 for any work done within the Right-of-Way or to site Grantee Facilities on any facilities, structures or poles owned by third parties within the Right-of-Way or on any City-owned facilities, structures or poles within the Right-of-Way. City Council authorizes the Director of Public Works or the Director's designee to negotiate and execute all agreements necessary for the use of City owned property. Grantee shall comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work, which shall be done in a thorough and proficient manner.

Grantee shall be required to submit the appropriate application to the City related to siting within the public Right-of-Way as provided under this Franchise, for review and approval by the City Engineer, prior to submitting an application for a construction permit(s) for any and all locations in the public Right-of-Way, whether Grantee is proposing to locate on City owned facilities, structures or poles, or on third party owned facilities, structures or poles. The siting application shall be submitted to the City and shall be in addition to any other

required permits for construction, building, land use, zoning, lease agreements or other approvals as required by applicable City Code.

B. Grantee agrees to coordinate its activities with the City and all other utilities located in the public Right-of-Way within which Grantee is undertaking its activity.

C. The City expressly reserves the right to prescribe how and where Grantee Facilities shall be installed within the public Right-of-Way and may from time to time, pursuant to and in accordance with the applicable sections of this Franchise or the ACC, require the adjustment, securement, removal, relocation and/or replacement thereof in the public interest and safety at the expense of the Grantee.

D. Before commencing any work within the public Right-of-Way, the Grantee shall comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.

E. Tree Trimming. Upon prior written approval of the City and in accordance with City ordinances, Grantee shall have the authority to reasonably trim trees upon and overhanging streets, public rights-of-way, and public places in the Franchise Area to the extent necessary to prevent the branches of those trees from coming in physical contact with the Grantee Facilities. Grantee shall be responsible for debris removal from such activities. If such debris is not removed within twenty-four (24) hours of completion of the trimming, the City may, at its sole discretion, remove such debris and charge Grantee for the cost of removal. This section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require a land-clearing permit.

Section 7. Repair and Emergency Work

In the event of an emergency, the Grantee may commence repair and emergency response work as required under the circumstances. The Grantee shall notify the City telephonically during normal business hours (at 253-931-3010) and during non-business hours (at 253-876-1985) as promptly as possible, before such repair or emergency work commences, and in writing as soon thereafter as possible. Such notification shall include the Grantee's emergency contact phone number for the corresponding response activity. The City may commence emergency response work, at any time, without prior written notice to the Grantee, but shall notify the Grantee in writing as promptly as possible under the circumstances. Grantee will reimburse the City for the City's actual cost of performing emergency response work.

Section 8. Damages to City and Third-Party Property

Grantee agrees that if any of its actions under this Franchise impairs or damages any property, Grantee will restore, at its own cost and expense, the property to a safe condition. Upon returning property to a safe condition, the property shall then be returned to the condition it was in immediately prior to being damaged (if the safe condition of the property is not the same as that which existed prior to damage). Such repair work shall be performed and completed to the satisfaction of the City Engineer.

Section 9. Location Preference

A. Any structure, equipment, appurtenance or tangible property of a utility, other than the Grantee's, which was installed, constructed, completed or in place prior in time to Grantee's application for a permit to construct or repair Grantee Facilities under this Franchise shall have preference as to positioning and location with respect to the Grantee Facilities. However, to the extent that the Grantee Facilities are completed and installed prior to another telecommunication or utility operator's or carrier's submittal of a permit for new or additional structures, equipment, appurtenances or tangible property, then the Grantee Facilities shall have priority. These rules governing preference shall continue in the event of the necessity of relocating or changing the grade of any City road or right-of-way. A relocating utility shall not necessitate the relocation of another utility that otherwise would not require relocation. This Section shall not apply to any City facilities or utilities that may in the future require the relocation of Grantee Facilities. Such relocations shall be governed by Section 11.

B. Grantee shall maintain a minimum underground horizontal separation of five (5) feet from City water, sanitary sewer and storm sewer facilities and ten (10) feet from above-ground City water facilities. For development of new areas, the City, in consultation with Grantee and other telecommunication and utility purveyors or authorized users of the Rights-of-Way, will develop guidelines and procedures for determining specific telecommunications and utility locations.

Section 10. Grantee Information

A. Grantee agrees to supply, at no cost to the City, any information reasonably requested by the City to coordinate municipal functions with Grantee's activities and fulfill any municipal obligations under state law. This information shall include, at a minimum, as-built drawings of Grantee Facilities, including installation inventory, and maps and plans showing the location of existing Grantee

Facilities and planned Grantee Facilities(to the extent that maps and plans showing planned facilities are available) within the Rights of Way. This information may be requested either in hard copy or electronic format, compatible with the City's data base system, as now or hereinafter exists, including the City's Geographic Information System (GIS) data base. Upon the City's request, Grantee shall inform the City of its long range plans for installation, if such plans are available, so that the City may coordinate any future development with Grantee's proposed designs. If such plans are not immediately available, are not finalized, or are proprietary in nature, then Grantee is under no obligation to provide such information to the City. Should the Grantee fail, for any reason, to provide information regarding its long range plans or planned Grantee Facilities upon the City's request, then the City is under no obligation to coordinate with, account for or authorize their facilities in future Right-of-Way projects or the City's long range plans.

B. The parties understand that Washington law limits the ability of the City to shield from public disclosure any information given to the City; however, nothing in this Section shall be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards to protect the confidential or proprietary nature of the information. Accordingly, in the event the City receives a public records request under applicable state or federal law, the City agrees to notify the Grantee of such request related to the Grantee, and to give the Grantee ten (10) working days to obtain an injunction prohibiting the release of the records.

C. Grantee shall defend, indemnify and hold the City harmless for any loss or liability for fines, penalties, and costs (including attorneys' fees) imposed on the City because of non-disclosures requested by Grantee under Washington's public records act, provided the City has notified Grantee of the pending request.

Section 11. Relocation of Grantee Facilities

A. Pursuant to Auburn City Code Chapter 13 and Chapter 20 as currently written or as amended in the future, except as otherwise so required by law, Grantee agrees to relocate, remove, or reroute its facilities as ordered by the City Engineer at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Pursuant to the provisions of Section 14, Grantee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change, relocation, abandonment, or vacation of the Public Right-of-Way.

B. If securement, adjustment or relocation of the Grantee Facilities is necessitated by a request from a party other than the City, that party shall pay the Grantee the actual costs.

Section 12. Abandonment and or Removal of Grantee Facilities

A. Within one hundred and eighty days (180) of Grantee's permanent cessation of use of all or a portion of the Grantee Facilities, the Grantee shall, at the City's discretion, either abandon in place or remove the affected facilities.

B. Grantee may ask the City in writing to abandon, in whole or in part, all or any part of the Grantee Facilities. Any plan for abandonment of Grantee Facilities must be approved in writing by the City, which approval shall not be unreasonably withheld.

C. The parties expressly agree that this Section shall survive the expiration, revocation or termination of this Franchise.

Section 13. Undergrounding

A. The parties agree that this Franchise does not limit the City's authority under federal law, state law, or local ordinance, to require the undergrounding of utilities.

B. Subject to applicable law addressing the undergrounding of telecommunication facilities, whenever the City requires the undergrounding of aerial utilities in the Franchise Area, the Grantee shall underground the Grantee Facilities, in the manner specified by the City Engineer at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Where other utilities are present and involved in the undergrounding project, Grantee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trenching and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

Section 14. Indemnification and Hold Harmless

A. The Grantee shall defend, indemnify, and hold the City and its officers, officials, agents, contractors and employees, and volunteers harmless from any and all costs, claims, injuries, damages, losses, suits, or liabilities including attorneys' fees arising out of or in connection with the Grantee's performance (including Grantee's agents' or representatives' performances) under this Franchise, except to the extent such costs, claims, injuries, damages, losses, suits, or liabilities are caused or contributed to by the negligence or willful

misconduct of the City or its officers, officials, agents and employees. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the City, its officers, officials or employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence.

B. The Grantee shall hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee Facilities caused by maintenance and/or construction work performed by, or on behalf of, the City within the Franchise Area or any other City road, right-of-way, or other property, except to the extent any such damage or loss is directly caused by the negligence or willful misconduct of the City, or its employees, contractors and agents performing such work.

C. The Grantee acknowledges that neither the City nor any other public agency with responsibility for firefighting, emergency rescue, public safety or similar duties within the City has the capability to provide trench, close trench or confined space rescue. The Grantee, and its agents, assigns, successors, or contractors, shall make such arrangements as Grantee deems fit for the provision of such services with regard to work performed by or at the direction of Grantee. The Grantee shall hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee for the City's failure or inability to provide such services, and, pursuant to the terms of Section 14(A), the Grantee shall indemnify the City against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities based on the City's failure or inability to provide such services.

D. Acceptance by the City of any work performed by the Grantee shall not be grounds for avoidance of this section.

E. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of indemnity claims made by the City against Grantee or claims made by Grantee's employees directly against the City. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 15. Insurance

A. The Grantee shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property

which may arise from or in connection with the performance of the work hereunder by the Grantee, its officers, officials, and employees in the amounts and types set forth below:

1. Commercial Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a combined single limit for bodily injury and property damage of \$1,000,000.00 per accident including contractual liability. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01, or a substitute form used by Grantee, so long as it provides equivalent liability coverage.

2. Commercial General Liability insurance with limits of \$5,000,000.00 each occurrence for bodily injury and property damage and, \$5,000,000.00 general aggregate including \$5,000,000.00 products-completed operations aggregate limit, premises-operations, independent contractors, products-completed operations, personal injury and advertising injury and contractual liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured as their interest may appear under the Grantee's Commercial General Liability insurance policy with respect to the work performed under this Franchise by means of a blanket additional insured endorsement using ISO Additional Insured Endorsement for Ongoing Operations, CG 20 10 10 01 and Additional Insured Completed Operations Endorsement, CG 20 37 10 01, or substitute endorsements utilized by Grantee providing equivalent coverage.

3. Professional Liability insurance with limits of \$1,000,000.00 per claim and aggregate covering the negligence, acts, errors, and/or omissions of Grantee in the performance of professional services under this Franchise.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. The insurance policies shall:

1. Provide that the Grantee's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Grantee's insurance and shall not contribute with it.

2. Upon receipt of appropriate notice from its insurer(s), Grantee shall provide the City with thirty (30) days prior written notice of cancellation of any of the insurance policies required herein.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

D. Verification of Coverage. Grantee shall furnish the City with documentation of insurer's A.M. Best rating and with original certificates and a copy of amendatory endorsements, including but not necessarily limited to the blanket additional insured endorsements evidencing the insurance requirements of Grantee before commencement of the work.

E. Grantee shall not have the right to self-insure any of the above required insurance at any time throughout the life of this Franchise Agreement or the life of the Grantee's Facilities, unless Grantee and City enter into an amendment to this Franchise that provides otherwise. Further, any successors, assignees, transferees, contractors, agents or representatives of the Grantee shall not have the right to self-insure any of the above required insurance at any time throughout the life of this Franchise Agreement or the life of the Facilities.

F. Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 16. Performance Security

The Grantee shall provide the City with a bond or financial guarantee in the amount of Fifty Thousand Dollars (\$50,000.00) running for, or renewable for, the term of this Franchise, in a form and substance acceptable to the City, for all of the Grantee Facilities in the City. If Grantee fails to substantially comply with any one or more of the provisions of this Franchise, the City shall recover jointly and severally from the Grantee, bond or any surety of such financial guarantee, any actual and direct damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs and the cost of removal or abandonment of facilities. Grantee specifically agrees that its failure to comply with the terms of Section 19 shall constitute a material breach of this Franchise. Such a bond or financial guarantee shall not be construed to limit the Grantee's liability to the guarantee amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 17. Successors and Assignees

A. All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns, and independent contractors of the Grantee, and all rights and privileges, as well as all obligations

and liabilities of the Grantee shall inure to its successors, assignees and contractors equally.

B. This Franchise shall not be leased, assigned or otherwise alienated without the express prior consent of the City by ordinance.

C. Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than sixty (60) days prior to the proposed date of transfer: (1) Complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (2) All information required by the City of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (3) An application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

D. Prior to the City's consideration of a request by Grantee to consent to a Franchise assignment or transfer, the proposed Assignee or Transferee shall file with the City a written promise to unconditionally accept all terms of the Franchise, effective upon such transfer or assignment of the Franchise. The City is under no obligation to undertake any investigation of the transferor's state of compliance and failure of the City to insist on full compliance prior to transfer does not waive any right to insist on full compliance thereafter.

E. Transactions between affiliated entities are not exempt from the required City approval. Grantee shall promptly notify the City in writing prior to any proposed change in, or transfer of, or acquisition by any other party of control of the Grantee's company. Notification shall include those items set out in subsection 17.C (1) through (3) herein above.

Section 18. Dispute Resolution

A. In the event of a dispute between the City and the Grantee arising by reason of this Agreement, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Grantee to have oversight over the administration of this Agreement. The officers or representatives shall meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute.

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree

that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case, and such fees shall be included in the judgment.

Section 19. Enforcement and Remedies

A. If the Grantee shall willfully violate, or fail to comply with any of the provisions of this Franchise through negligence, or should it fail to heed or comply with any notice given to Grantee under the provisions of this Agreement, the City may, at its discretion, provide Grantee with written notice to cure the breach within thirty (30) days of receipt of written notification. If the parties determine the breach cannot be cured within thirty days, the City may specify a longer cure period, and condition the extension of time on Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty-day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Grantee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the bond or financial guarantee set forth in Section 16 for every day after the expiration of the cure period that the breach is not cured.

B. Should the City determine that Grantee is acting beyond the scope of permission granted herein for Grantee Facilities, and Grantee Services, the City reserves the right to cancel this Franchise and require the Grantee to apply for, obtain, and comply with all applicable City permits, franchises, or other City permissions for such actions, and if the Grantee's actions are not allowed under applicable federal and state or City laws, to compel Grantee to cease such actions.

Section 20. Compliance with Laws and Regulations

A. This Franchise is subject to, and the Grantee shall comply with all applicable federal and state or City laws, regulations and policies (including all applicable elements of the City's comprehensive plan), in conformance with federal laws and regulations, affecting performance under this Franchise (collectively, "Laws"). Furthermore, notwithstanding any other terms of this Agreement appearing to the contrary, the Grantee shall be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

B. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute

or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. The amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, the Grantee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days or within such other timeframe as determined by the City, of the call for negotiations, the City may enact the proposed amendment, by incorporating the Grantee's concerns to the maximum extent the City deems possible.

C. The City may terminate this Franchise upon thirty (30) days written notice to the Grantee, if the Grantee fails to comply with such amendment or modification. The City shall retract its notice of termination if the City determines that the Grantee is in compliance with the amendment or modification within such 30-day period. The City may grant longer than the 30-days to comply if the Grantee provides notice to the City of its intent to comply and can demonstrate good-faith efforts to reach compliance to the satisfaction of the City.

Section 21. License, Fees, Tax and Other Charges

Grantee shall pay promptly and before they become delinquent, all fees and charges for all applicable permits, licenses and construction approvals imposed by the City for Grantee's permitted use of the Grantee Facilities within the Rights-of-Way. This Franchise shall not exempt the Grantee from any future license, fee, tax, or charge, which the City may hereinafter adopt pursuant to authority granted to it under state or federal law for revenue or as reimbursement for use and occupancy of the Franchise Area.

Section 22. Consequential Damages Limitation

Notwithstanding any other provision of this Agreement, in no event shall either party be liable for any special, incidental, indirect, punitive, reliance, consequential or similar damages.

Section 23. Severability

If any portion of this Franchise is deemed invalid, the remainder portions shall remain in effect.

Section 24. Titles

The section titles are for reference only and should not be used for the purpose of interpreting this Franchise.

Section 25. Implementation.

The Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directions of this Franchise.

Section 26. Effective date.

This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Steven L. Gross, City Attorney

Published: _____

Exhibit A

STATEMENT OF ACCEPTANCE

Seattle SMSA Limited Partnership, a Delaware limited partnership, d/b/a Verizon Wireless, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

SEATTLE SMSA LIMITED PARTNERSHIP
d/b/a Verizon Wireless

By: Cellco Partnership, its General Partner

By: _____
Name: _____
Title: _____

Date: _____

STATE OF _____)
)ss.
COUNTY OF _____)

On this ____ day of _____, 2018, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of Cellco Partnership, General Partner of Seattle SMSA Limited Partnership, a Delaware limited partnership, d/b/a Verizon Wireless the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

Signature

NOTARY PUBLIC in and for the State of _____, residing at _____

MY COMMISSION EXPIRES: _____



AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Works Project No. CP1705 Gaub)

Date:

July 2, 2019

Department:

Public Works

Attachments:

[Budget Status Sheet](#)

[Bid Tab Summary](#)

[Vicinity Map](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council award Contract No. 19-18, to RW Scott Construction on their low bid of \$588,838.00 for Project No. CP1705, Auburn Way South (SR164) Sidewalk Improvements.

Background Summary:

The City received six (6) responsive bids and the low bid was approximately 13% below the engineer's estimate. Staff has performed reference checks and other verifications to determine that RW Scott Construction meets the responsible bidding criteria and recommends award.

The Auburn Way South (SR164) Sidewalk Improvements project consists of constructing a sidewalk on the north side of Auburn Way South from approximately 17th Street SE to Muckleshoot Plaza, completing the sidewalk gap that currently exists through this stretch of the Auburn Way South corridor.

It is anticipated that construction will begin in August 2019 and be complete by mid October 2019.

A project budget contingency of \$14,464.00 remains in the 328 Fund.

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

Gaub

Meeting Date: July 15, 2019

Item Number:

CA.G

BUDGET STATUS SHEET

Project No: **CP1705**

Project Title: **AWS Sidewalk Improvement Project**

Project Manager: **Matt Larson**

- ☐ Project Update

☐ Permission to Advertise

☒ Contract Award

☐ Change Order Approval

☐ Contract Final Acceptance

Date: 7/1/2019

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

Funds Budgeted (Funds Available)

Funding	Prior Years	2017 (Actual)	2018 (Actual)	2019	Total
328 Fund - Local Match		12,216	24,725	468,110	505,051
328 Fund -State TIB Grant		10,835	19,207	344,692	374,734
Total		23,051	43,932	812,802	879,785

Estimated Cost (Funds Needed)

Activity	Prior Years	2017 (Actual)	2018 (Actual)	2019	Total
Design Engineering - City Costs		23,051	43,932	35,000	101,983
Design Engineering - WSDOT (JA Acct. JZ 0331)				5,000	5,000
Construction Contract Bid				588,838	588,838
Authorized Construction Contingency				75,000	75,000
Construction - Other (LED Street Light Upgrades by PSE)				2,000	2,000
Construction Engineering - City Costs				75,000	75,000
Const. Engr. - WSDOT Inspection (JA Acct. No. JZ 0331)				7,500	7,500
Construction Engineering - Other (Materials Testing, etc.)				10,000	10,000
Total		23,051	43,932	798,338	865,321

328 Arterial Street Budget Status

	Prior Years	2017 (Actual)	2018 (Actual)	2019	Total
*328 Funds Budgeted ()		(23,051)	(43,932)	(812,802)	(879,785)
328 Funds Needed		23,051	43,932	798,338	865,321
*328 Fund Project Contingency ()		0	0	(14,464)	(14,464)
328 Funds Required		0	0	0	0

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

Bid Tabulation - Bid Totals Summary

Project: CP1705, Auburn Way South Sidewalk Improvements , 19-18
 Prepared By: City of Auburn
 Bid Date: June 27, 2019

	W/O Tax	Inc. Tax	
ENGINEER'S ESTIMATE:	\$674,425.00	\$674,425.00	(not including tax)
AVERAGE BID AMOUNT:	\$670,960.82	\$670,960.82	

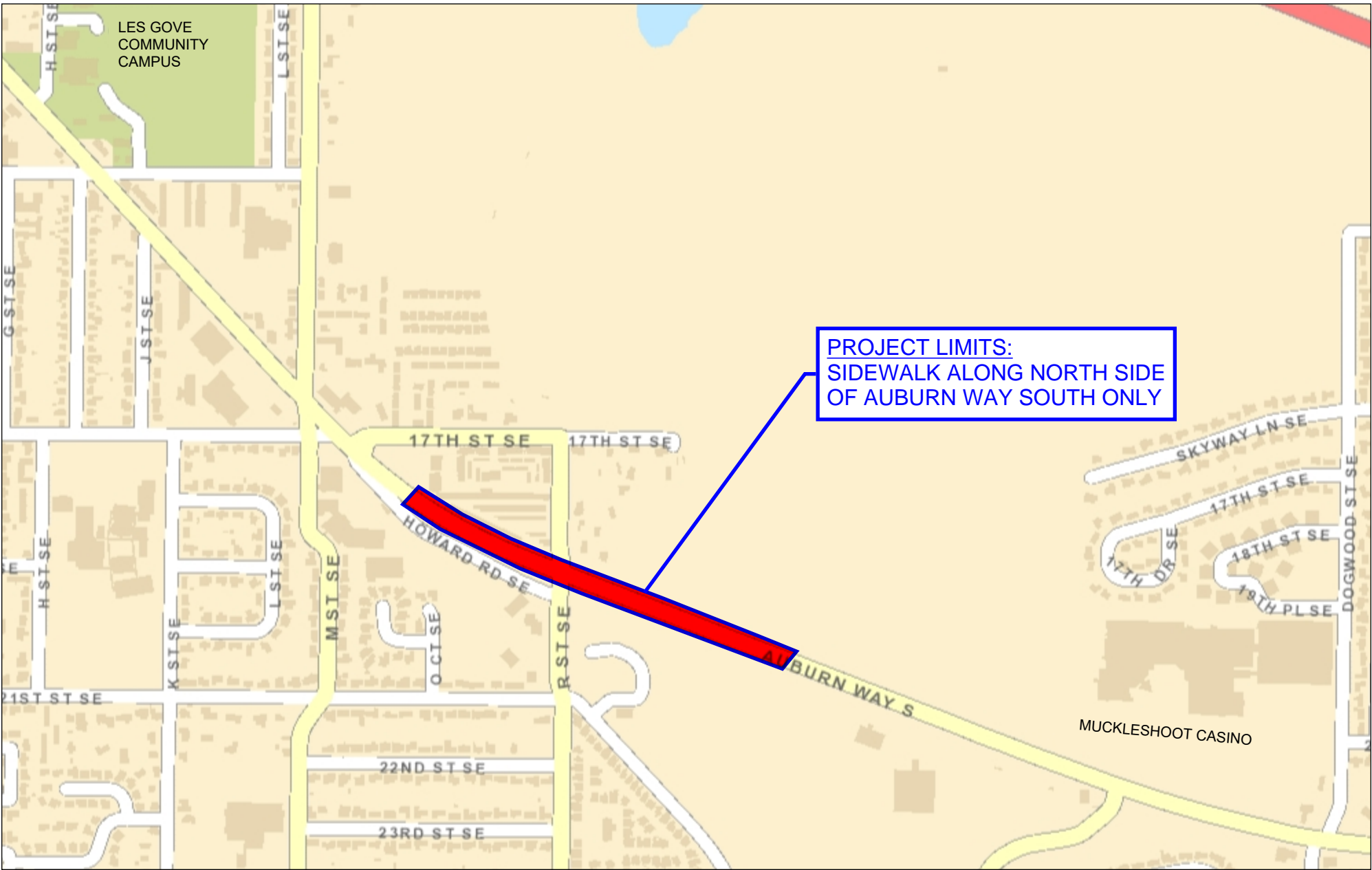
		Basic BID Amount	Total BID Amount	Total BID Spread \$	Total BID Spread %
LOW BIDDER:	R.W. Scott Construction Co.	\$588,838.00	\$588,838.00	-\$85,587.00	-12.69%
Second Bidder:	Pivetta Brothers Construction, Inc.	\$618,611.90	\$618,611.90	-\$55,813.10	-8.28%

	Basic BID (Tax not included)	Total BID (Including tax)
1. R.W. Scott Construction Co.	\$588,838.00	\$588,838.00
2. Pivetta Brothers Construction, Inc.	\$618,611.90	\$618,611.90
3. Rino Construction	\$632,377.00	\$632,377.00
4. Sound Pacific Construction	\$696,615.00	\$696,615.00
5. NPM Construction Co.	\$707,648.00	\$707,648.00
6. CCT Construction Inc.	\$781,675.00	\$781,675.00

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.

CP1705 Vicinity Map

Printed Date: 7/1/2019
Map Created by City of Auburn eGIS
Imagery Date: May 2015



PROJECT LIMITS:
SIDEWALK ALONG NORTH SIDE
OF AUBURN WAY SOUTH ONLY

1,333.3 0 666.7 1,333.3 Feet

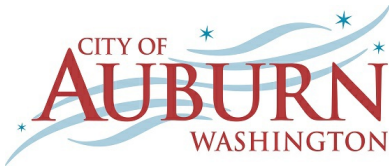
NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

1in = 667 ft

1: 8,000



Information shown is for general reference purposes only and does not necessarily represent exact geographic or cartographic data as mapped. The City of Auburn makes no warranty as to its accuracy.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Works Project No. CP1802 (Gaub)

Date:

July 3, 2019

Department:

Public Works

Attachments:

[Budget Status Sheet](#)

[Vicinity Map](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council approve Change Order No. 1 in the amount not to exceed \$46,000.00 to Contract No. 19-01 for work on Project No. CP1802, Green River Pump Station Emergency Power Project.

Background Summary:

The purpose of the project is to provide backup power using the engine generator at Well #5B, construct a generator building, install a fuel tank to supply fuel to the engine generator, modify existing electrical systems to accommodate new generator and install stormwater management facilities for new and existing storm runoff.

Change Order No 1. will compensate the Contractor to remove and install two new variable frequency drives as part of the electrical modifications to the new system. The new variable frequency drives will replace two original drives, one of which recently failed and another that is at the end of its service life. Variable frequency drives allow us to control the frequency and voltage supplied to pumps, increasing the life and efficiency of our water supply system.

A project budget contingency of \$36,587.00 remains in the 460 Water Fund.

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

Gaub

Meeting Date: July 15, 2019

Item Number:

CA.H

BUDGET STATUS SHEET

Project No: CP1802	Project Title: Green River Pump Station Emergency Power
Project Manager: Luis Barba	

Project Initiation (PMP) Date : 1/23/2017
 Advertisement Date: 3/7/2019
 Award Date: 4/15/2019

- ☐ Project Update

☐ Permission to Advertise

☐ Contract Award

☒ Change Order Approval

☐ Contract Final Acceptance

Updated: July 3, 2019

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

Funds Budgeted (Funds Available)

Funding	2018 (Actual)	2019	2020	Future Years	Total
460 Fund - Water	193,716	1,221,284	0	0	1,415,000
Total	193,716	1,221,284	0	0	1,415,000

Estimated Cost (Funds Needed)

Activity	2018 (Actual)	2019	2020	Future Years	Total
Design Engineering - City Costs	24,266	20,735	0	0	45,001
Design Engineering - Consultant Costs	169,450	35,550	0	0	205,000
Permitting	0	1,000	0	0	1,000
Design Engineering-Other	0	1,000	0	0	1,000
Construction Contract Bid	0	915,375	0	0	915,375
Change Order No. 1	0	46,000	0	0	46,000
Authorized Construction Contingency (10%)	0	91,537	0	0	91,537
Construction Engineering-Other	0	2,500	0	0	2,500
Construction Engineering - City Costs	0	40,000	0	0	40,000
Construction Engineering - Consultant Costs	0	20,000	0	0	20,000
Construction Engineering - Testing	0	10,000	0	0	10,000
Construction Engineering- Permitting	0	1,000	0	0	1,000
Total	193,716	1,184,697	0	0	1,378,413

460 Water Budget Status

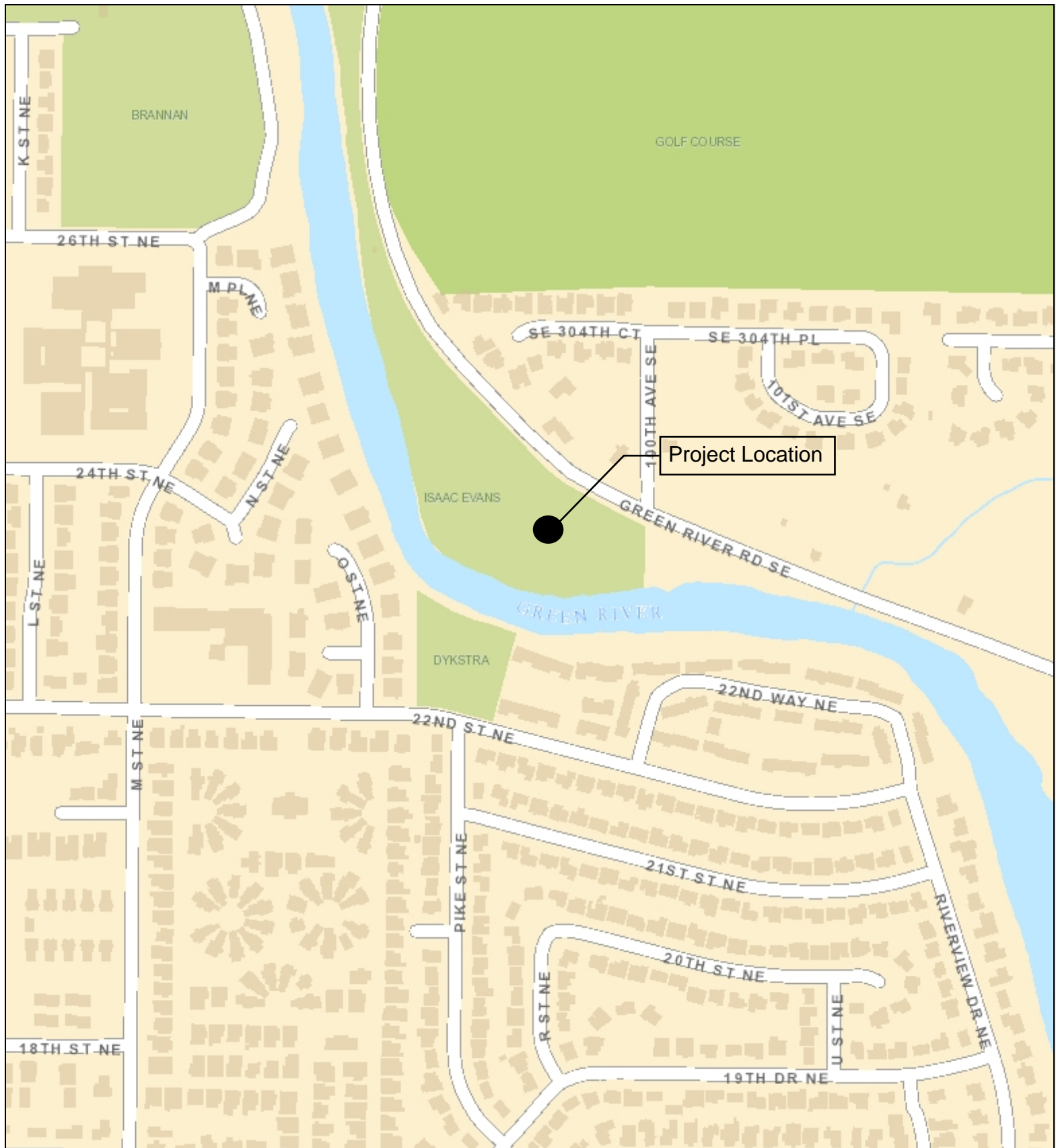
	2018 (Actual)	2019	2020	Future Years	Total
*460 Funds Budgeted ()	(193,716)	(1,221,284)	0	0	(1,415,000)
460 Funds Needed	193,716	1,184,697	0	0	1,378,413
*460 Fund Project Contingency ()	0	(36,587)	0	0	(36,587)
460 Funds Required	0	0	0	0	0

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

ENG-270, Revised 12/17

CP1802 Vicinity Map

Printed Date: 11/16/2017
Map Created by City of Auburn eGIS
Imagery Date: May 2015



0.1 0 0.1 0.1 Miles

NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

Information shown is for general reference purposes only and does not necessarily represent exact geographic or cartographic data as mapped. The City of Auburn makes no warranty as to its accuracy.





AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Works Project No. CP1805 (Gaub)

Date:

July 2, 2019

Department:

Public Works

Attachments:

[Budget Status Sheet](#)

[Vicinity Map](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council award Contract No.19-19, to the lowest responsible bidder for Project No. CP1805, 2019 Sewer Repair and Replacement Project.

Background Summary:

The 2019 Sewer Repair and Replacement Project will include the reconstruction of 8-inch diameter sanitary sewer pipe at four different project sites, approximately 3,450 linear feet, constructing an Ultra-Violet (UV)-Cured Cured-in-Place Pipe (CIPP); extending one sewer pipe to accommodate the installation of a new manhole structure, and installation of a new saddle manhole structure.

This work will be funded by the 461 Fund (Sewer), and is anticipated to begin in late July or early August 2019, and closeout construction by December 2019.

Because the bid opening was held on July 9, 2019. There was not adequate time for staff to compile the bid tabulation to include in the agenda packet. A revised agenda bill specifying the contractor and contract amount will be distributed to the Council at their meeting scheduled for July 15, 2019.

Updated information regarding the budget status will be presented with the revised agenda bill.

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

Gaub

Meeting Date: July 15, 2019

Item Number:

CA.I

BUDGET STATUS SHEET

Project No: CP1805	Project Title: 2019 Sewer Repair and Replacement
Project Manager: Jai Carter	

Initiation Date: June 6, 2018
 Advertisement Date: June 25, 2019
 Award Date: July 15, 2019

- ☐ 90% Design

☐ Permission to Advertise

☒ Contract Award

☐ Change Order Approval

☐ Contract Final Acceptance

Date: June 20, 2019

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

Funds Budgeted (Funds Available)

Funding	Prior Years	2018 (actual)	2019	Future Years	Total
431 Fund - Sewer		110,958	1,689,042		1,800,000
Total	0	110,958	1,689,042	0	1,800,000

Estimated Cost (Funds Needed)

Activity	Prior Years	2018 (actual)	2019	Future Years	Total
Design Engineering - City Costs		82,531	44,301		126,832
Design Engineering - Consultant Costs		28,428	138,029		166,457
Construction Estimate			949,000		949,000
Project Contingency (15%)			142,350		142,350
Construction Engineering - City Costs			100,000		100,000
Construction Engineering - Consultant Costs			25,000		25,000
Total	0	110,958	1,398,681	0	1,509,639

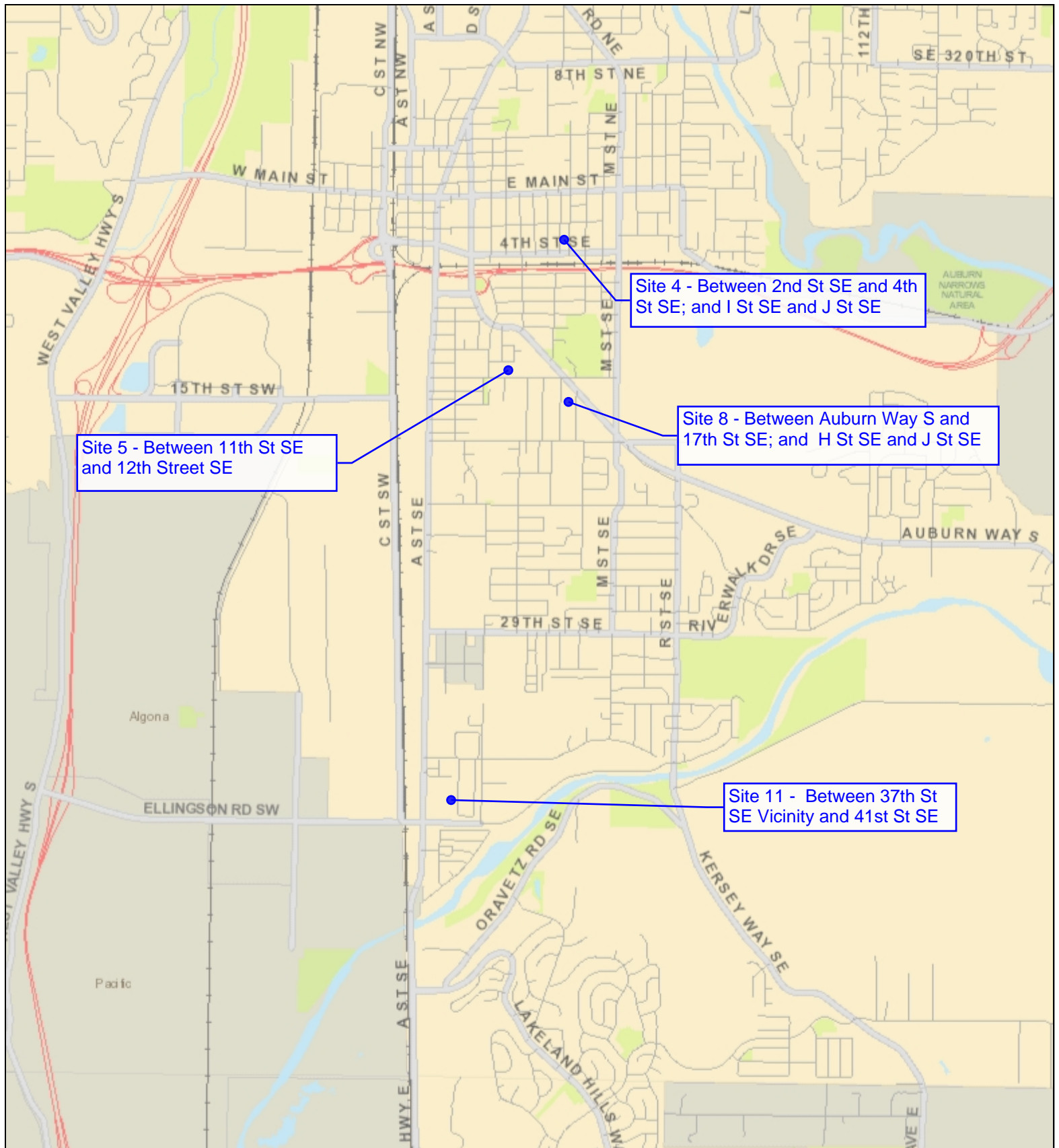
431 Sewer Budget Status

	Prior Years	2018 (actual)	2019	Future Years	Total
*431 Funds Budgeted ()	0	(110,958)	(1,689,042)	0	(1,800,000)
431 Funds Needed	0	110,958	1,398,681	0	1,509,639
*431 Fund Project Contingency ()	0	0	(290,361)	0	(290,361)
431 Funds Required	0	0	0	0	0

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

CP1805 - Vicinity Map

Printed Date: 7/2/2019
Map Created by City of Auburn eGIS
Imagery Date: May 2015



5,333.3 0 2,666.7 5,333.3 Feet

NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

Information shown is for general reference purposes only and does not necessarily represent exact geographic or cartographic data as mapped. The City of Auburn makes no warranty as to its accuracy.





AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Works Project No. CP1823 (Gaub)

Department:

Public Works

Attachments:

[Budget Status Sheet](#)

[Vicinity Map](#)

Date:

July 2, 2019

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council award Contract No.19-20, to the lowest responsible bidder for Project No. CP1823, 2018 Storm Repair and Replacement Project.

Background Summary:

The 2018 Storm Repair and Replacement Project includes improvements to the City's storm system at various locations with the purpose of replacing aging infrastructure, or addressing surface water runoff concerns. Specifically, improvements will include the installation of twelve new catch basins, three new overflow risers, approximately 730 lf of new storm drain, one new stormwater treatment structure, nine stormwater treatment structure retrofits, and one infiltration gallery.

This work will be funded by the 462 Fund (Storm), and is anticipated to begin in late July or early August 2019, and closeout construction by December 2019.

Because the bid opening was held on July 9, 2019. There was not adequate time for staff to compile the bid tabulation to include in the agenda packet. A revised agenda bill specifying the contractor and contract amount will be distributed to the Council at their meeting scheduled for July 15, 2019.

Updated information regarding the budget status will be presented with the revised agenda bill.

Reviewed by Council Committees:**Councilmember:**

Meeting Date: July 15, 2019

Staff:

Gaub

Item Number:

CA.J

BUDGET STATUS SHEET

Project No: CP1823	Project Title: 2018 Storm Repair and Replacement
Project Manager: Jai Carter	

Project Initiation (PMP) Date: August 9, 2018
 Advertisement Date: June 20, 2019
 Award Date: July 15, 2019

- ☐ Project Initiation

☐ Permission to Advertise

☒ Contract Award

☐ Final Design

☐ Contract Final Acceptance

Updated: June 19, 2019

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
462 Fund - Storm	0	34,903	1,072,097	0	1,107,000
Total	0	34,903	1,072,097	0	1,107,000

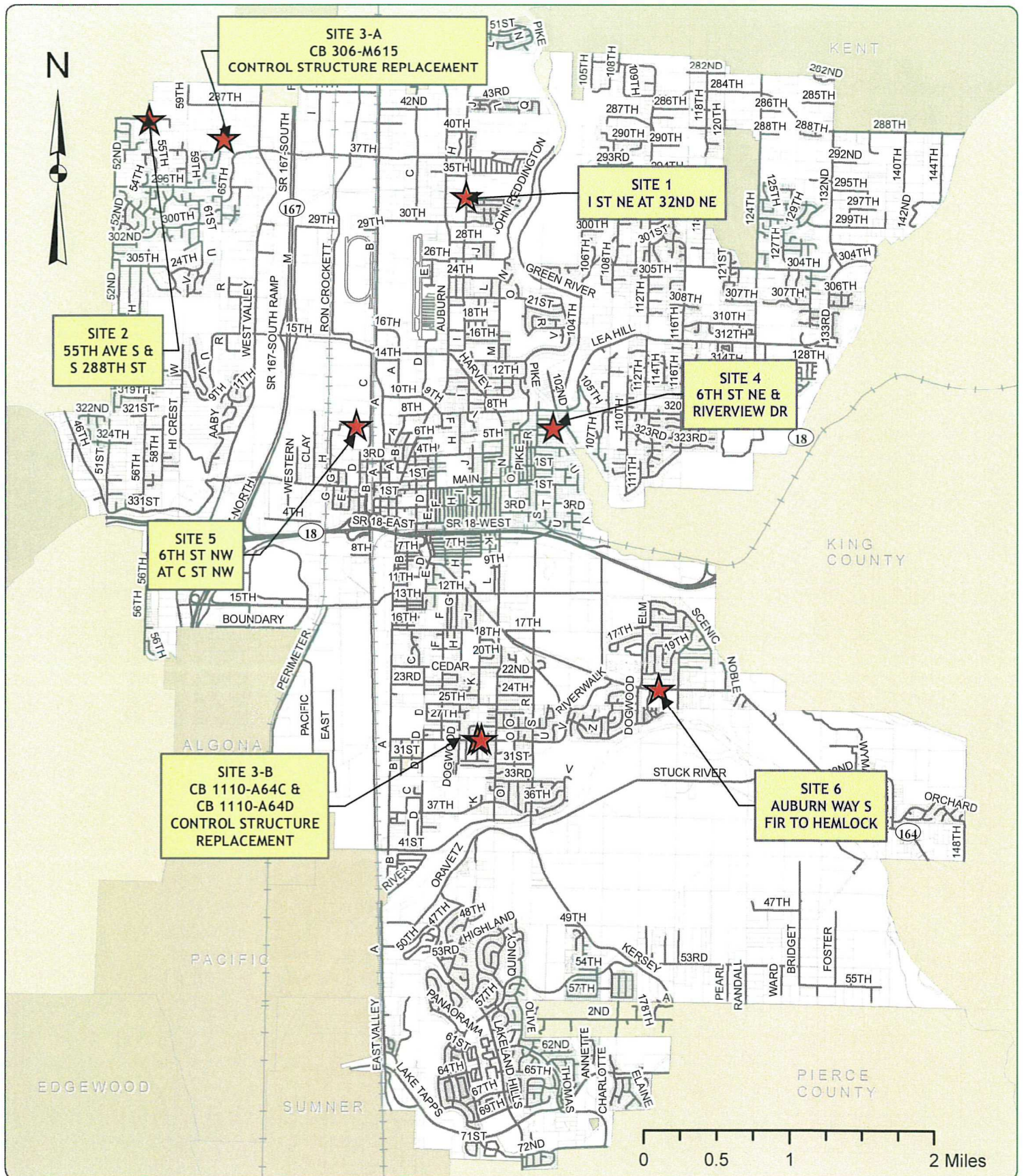
Estimated Cost (Funds Needed)

Activity	2017	2018	2019	Future Years	Total
Design Engineering - City Costs	0	26,011	20,000	0	46,011
Design Engineering - Consultant Costs	0	4,791	155,226	0	160,017
APS Locates	0	3,330	0	0	3,330
Title Reports	0	771	0	0	771
Construction Estimate	0	0	741,975	0	741,975
Construction Contingency (10%)	0	0	74,198	0	74,198
Materials Testing	0	0	8,000	0	8,000
Other	0	0	1,500	0	1,500
Construction Engineering - City Costs	0	0	40,000	0	40,000
Construction Engineering - Consultant Costs	0	0	10,000	0	10,000
Total	0	34,903	1,050,899	0	1,085,802

462 Storm Utility Budget Status

	2017	2018	2019	Future Years	Total
*462 Funds Budgeted ()	0	(34,903)	(1,072,097)	0	(1,107,000)
462 Funds Needed	0	34,903	1,050,899	0	1,085,802
*462 Fund Project Contingency ()	0	(0)	(21,198)	0	(21,198)
462 Funds Required	0	0	0	0	0

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



Printed On: 6/14/2018
Map ID: 4131

2018-19 STORM R&R VICINITY MAP



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6720 (Fuhrer)

Date:

July 3, 2019

Department:

Finance

Attachments:

[Memo](#)

[Ordinance No. 6720](#)

[Schedule A](#)

[Schedule B](#)

Budget Impact:**Administrative Recommendation:**

City Council to introduce and adopt Ordinance No. 6720.

Background Summary:

Ordinance No. 6720 (Budget Amendment #3) amends the 2019-2020 Revised Budget as presented in the attached transmittal memorandum and supporting attachments.

The proposed budget amendment has been revised to reflect updated working capital balance adjustments for enterprise and internal service funds.

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

Fuhrer

Meeting Date: July 15, 2019

Item Number:

ORD.A



Interoffice Memorandum

To: City Council
From: Shelley Coleman, Finance Director
CC: Nancy Backus, Mayor
Date: June 19, 2019
Re: Ordinance #6720 – 2019-2020 Budget Amendment #3

Budget Amendment #3 is the third amendment of the City of Auburn's 2019-2020 biennial budget. The main purpose of this budget amendment is to adjust budgeted 2019 beginning fund balances to match actual 2018 ending fund balances per accounting records. Additional items included in this amendment are recognition of new revenue, either grants or transfers in from other supporting funds, requests for additional budget authority for projects and removal of discontinued programs. To identify requested changes to each fund, please refer to the accompanying ***Schedule A, Summary of 2019 Budget Adjustments by Fund***.

This budget amendment has been revised to reflect updated working capital balance adjustments for enterprise and internal service funds.

Fund Balance Adjustments: This amendment adjusts City-wide 2019 budgeted beginning fund balances to reflect actual ending balances as of the end of 2018. City-wide beginning fund balances are adjusted by a net increase of \$10.4 million.

Revenue Adjustments: This amendment recognizes new grants and updated revenue projections, including:

• Federal grant for Auburn Way South widening project (cp1622)	\$ 1,297,500
• Increase in projected property tax revenues	275,000
• Increase MIT casino emergency service revenues	370,000
• Interlocal grant funding for a third school resource officer (from ASD)	60,000
• WSDOE grant to complete the City's shoreline master plan	15,400
• WA Assoc. of Sheriffs & Police Chiefs grant for a speed feedback sign	3,500
• Geocaching Event grant (from Fund 104)	1,100
TOTAL	\$ 2,022,500

Funding Adjustments: Funding adjustment requests included in this budget amendment increase or decrease spending authority for existing programs. Significant funding adjustment requests include:

- Funding to replace lead service lines: Due to the availability of a low-interest loan from the Drinking Water State Revolving Fund (DWSRF), the City can accelerate its plan to replace lead service lines and associated water mains. The authorized loan amount is \$3,000,000. The availability of these funds also means a planned \$100,000 State grant and \$50,000 in Water capital fund balance will not be utilized for this project.
- Budget for DWSRF loan: In 2018, the City was awarded a DWSRF loan for \$1,340,000 for the Coal Creek Springs transmission replacement project. During design, it was determined that the current approach was infeasible, and the loan was converted to pre-construction costs only in the amount of \$300,000. The change also affects \$347,000 in interfund loans and \$1,030,200 in Water capital fund balance that are no longer needed.
- LEOFF1 benefits (General Fund): This amendment reduces the 2019 budget for LEOFF1 benefits by \$628,300 to better reflect historical actual expenditure levels. The adjustment results in a higher General Fund ending fund balance.
- Salaries and Benefits for Second School Resource Officer (General Fund): This amendment provides budget of \$114,300 in 2019 for salaries and benefits associated with the school resource officer that was added in 2018 in Budget Amendment #6 (Ordinance No. 6684). The offsetting revenue from the Auburn School District is already incorporated into the 2019 budget.
- Budget for repairs to traffic signals caused by vehicular accidents: The City typically pays for these repairs and is then reimbursed by insurance companies. This budget amendment request, in the amount of \$100,000, is offset by additional revenues.
- Budget for East Auburn access project. Through an agreement, the Muckleshoot Indian Tribe (MIT) will reimburse the City's cost of \$100,000 to provide technical guidance and support to MIT for this project, which is funded by WSDOT and led by MIT. The additional budget requested includes \$20,000 in consultant support costs and \$80,000 in City labor and benefit costs.
- Revised estimates for aviation fuel sales at the Auburn Airport: This amendment would update the preliminary estimates made during budget development for expenditures and revenues associated with the sale of aviation fuel (AVGas), increasing both revenues and expenditures by \$80,000.
- Funding for sidewalks on Auburn Way South: This requested budget amendment would provide \$75,000 in additional budget for the project that is needed to cover the cost of additional design and construction elements being required by WSDOT and anticipated increases due to a regional increase in construction bids.

New Requests: Significant new funding requests include:

• 2020 Arterial Street Preservation project (Fund 105)	\$ 699,400
• Replace two message boards (Fund 560)	72,000
• Add third School Resource Officer (70% funded by ASD)	67,200
• Purchase a man-lift and trailer (Fund 560)	<u>22,000</u>
TOTAL	\$ 896,600

The following table summarizes the current and revised budget as a result of this amendment.

Table 1: 2019 Budget as Amended

2019 Budget as Amended (through BA#2)	\$ 333,333,982
Budget Amendment #3 (Ord #6720)	<u>18,829,533</u>
Budget as Amended	\$ 352,163,515

Attachments:

- ❖ 1. Proposed Ordinance #6720 (Budget Amendment #3)
- ❖ 2. Summary of proposed 2019 budget adjustments by fund and department (Schedule A)
- ❖ 3. Summary of proposed changes to adopted 2019 budget by fund (Schedule B)

ORDINANCE NO. 6720

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING ORDINANCE NO. 6693, THE 2019-2020 BIENNIAL OPERATING BUDGET ORDINANCE, AS AMENDED BY ORDINANCE NO. 6712, AUTHORIZING AMENDMENT TO THE CITY OF AUBURN 2019-2020 BUDGET AS SET FORTH IN SCHEDULE "A" AND SCHEDULE "B"

WHEREAS, the Auburn City Council at its regular meeting of December 3, 2018, adopted Ordinance No. 6693 which adopted the City of Auburn 2019-2020 Biennial budget; and

WHEREAS, the Auburn City Council at its regular meeting of April 1, 2019, adopted Ordinance No. 6712 (BA#1) which amended Ordinance No. 6693 which adopted the City of Auburn 2019-2020 Biennial budget; and

WHEREAS, the Auburn City Council at its regular meeting of May 20, 2019, adopted Ordinance No. 6719 (BA#2) which amended Ordinance No. 6712 which amended the City of Auburn 2019-2020 Biennial budget; and

WHEREAS, the City of Auburn deems it necessary to appropriate additional funds to the various funds of the 2019 budget as outlined in this Ordinance (BA#3); and

WHEREAS, this Ordinance has been approved by one more than the majority of all councilpersons in accordance with RCW 35A.34.200.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. **Amendment of the 2019-2020 Biennial Budget.** The 2019-2020 Biennial Budget of the City of Auburn is amended pursuant to Chapter 35A.34 RCW, to reflect the revenues and expenditures as shown on Schedule “A” attached hereto and incorporated herein by reference. The Mayor of the City of Auburn, Washington is hereby authorized to utilize revenue and expenditure amounts shown on said Schedule “A” and Schedule “B”. A copy of said Schedule “A” and Schedule “B” is on file with the City Clerk and available for public inspection.

Section 2. **Implementation.** The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 3. **Severability.** The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 4. **Effective date.** This Ordinance will take effect and be in force five days from and after its passage, approval, and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

Steven L. Gross, City Attorney

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
General Fund (#001)				
2019 Adopted Budget	18,037,042	72,145,986	77,788,165	12,394,863
Previous Budget Amendments	539,000	(27,700)	538,400	(27,100)
2019 Amended Budget	18,576,042	72,118,286	78,326,565	12,367,763
BA#3 (Ordinance #6720, Proposed):	3,074,234	941,000	1,147,900	2,867,334
General Fund Revenues:				
Increase budgeted property tax receipts to match long-term financial forecast	-	275,000	-	275,000
Increase budgeted revenue from MIT for casino emergency services	-	370,000	-	370,000
Community Development Department:				
WSDOE grant to complete the City's shoreline master plan	-	15,400	15,400	-
Budget for Crime Prevention Through Environ. Design training (w/ revenue offset)	-	8,800	8,800	-
Police Department:				
Continue funding for the second SRO (from 2018 BA#6; revenue already budgeted)	-	-	114,300	(114,300)
Budget for a third School Resource Officer 70% funded by ASD (no new FTEs)	-	67,200	14,200	53,000
New grant from WA Assoc. of Sheriffs & Police Chiefs for a speed feedback sign	-	3,500	3,500	-
Public Works Department:				
Incr. budget to cover repairs to traffic signals damaged by vehicular accidents	-	100,000	100,000	-
Add budget for East Auburn Access Project, to be funded by MIT	-	100,000	20,000	80,000
Administration Department:				
LTAC Board-approved grant to the City of Auburn for 2019 Geocaching Event	-	1,100	-	1,100
Non-Departmental:				
Reduce estimated LEOFF1 benefit expenditures to better reflect historical actuals	-	-	(628,300)	628,300
Adjust beginning fund balance / eliminate contra account (underexpenditures)	3,074,234	-	1,500,000	1,574,234
Revised 2019 Budget - Fund 001	21,650,276	73,059,286	79,474,465	15,235,097

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
Arterial Street Fund (#102)				
2019 Adopted Budget	1,492,777	1,633,100	1,781,400	1,344,477
Previous Budget Amendments and CIP Carry-Forwards	611,413	1,383,641	2,070,054	(75,000)
2019 Amended Budget	2,104,190	3,016,741	3,851,454	1,269,477
BA#3 (Ordinance #6720, Proposed):	(41,819)	1,526,400	1,575,000	(90,419)
Adjust beginning fund balance	(41,819)	-	-	(41,819)
Incr funding for sidewalks on AWS (cp1705) due to WSDOT req'ts and cost incr	-	-	75,000	(75,000)
Funding for AWS widening proj. (cp1622; funded by grant and traffic impact fees)	-	1,500,000	1,500,000	-
Correct contractor payment from 2018 (entered in F460 should have been F102)	-	26,400	-	26,400
Revised 2019 Budget - Fund 102	2,062,371	4,543,141	5,426,454	1,179,058
Local Street Fund (#103)				
2019 Adopted Budget	1,650,780	1,912,000	2,605,900	956,880
Previous Budget Amendments and CIP Carry-Forwards	899,476	-	899,476	-
2019 Amended Budget	2,550,256	1,912,000	3,505,376	956,880
BA#3 (Ordinance #6720, Proposed):	249,701	-	-	249,701
Adjust beginning fund balance	249,701	-	-	249,701
Revised 2019 Budget - Fund 103	2,799,957	1,912,000	3,505,376	1,206,581
Hotel/Motel Tax Fund (#104)				
2019 Adopted Budget	108,571	153,600	160,050	102,121
Previous Budget Amendments	6,650	-	41,650	(35,000)
2019 Amended Budget	115,221	153,600	201,700	67,121
BA#3 (Ordinance #6720, Proposed):	82,454	-	-	82,454
Adjust beginning fund balance	82,454	-	-	82,454
LTAC Board-approved grant to the City of Auburn for 2019 Geocaching Event	-	-	-	-
104.00.557.300.41 PROFESSIONAL SERVICES			(1,100)	
104.00.597.300.55 OPERATING TRANSFERS OUT			1,100	
Revised 2019 Budget - Fund 104	197,675	153,600	201,700	149,575

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
Arterial Street Preservation Fund (#105)				
2019 Adopted Budget	1,582,337	2,959,320	3,172,240	1,369,417
Previous Budget Amendments and CIP Carry-Forwards	998,143	793,170	1,791,313	-
2019 Amended Budget	2,580,480	3,752,490	4,963,553	1,369,417
BA#3 (Ordinance #6720, Proposed):	(536,021)	699,400	699,400	(536,021)
Adjust beginning fund balance	(536,021)	-	-	(536,021)
Transfer reserved REET funds for arterial street preservation projects (cp1926)	-	699,400	699,400	-
Revised 2019 Budget - Fund 105	2,044,459	4,451,890	5,662,953	833,396
Drug Forfeiture Fund (#117)				
2019 Adopted Budget	376,497	155,000	298,037	233,460
Previous Budget Amendments	-	-	-	-
2019 Amended Budget	376,497	155,000	298,037	233,460
BA#3 (Ordinance #6720, Proposed):	80,697	-	9,400	71,297
Adjust beginning fund balance	80,697	-	-	80,697
Increase salaries and benefits in the Drug Forfeiture Fund to reflect Police CBA	-	-	9,400	(9,400)
Revised 2019 Budget - Fund 117	457,194	155,000	307,437	304,757
Housing & Comm Develop Fund (#119)				
2019 Adopted Budget	36,458	590,000	590,000	36,458
Previous Budget Amendments	-	269,900	269,900	-
2019 Amended Budget	36,458	859,900	859,900	36,458
BA#3 (Ordinance #6720, Proposed):	6,446	-	-	6,446
Adjust beginning fund balance	6,446	-	-	6,446
Revised 2019 Budget - Fund 119	42,904	859,900	859,900	42,904

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
Recreation Trails Fund (#120)				
2019 Adopted Budget	64,326	7,100	-	71,426
Previous Budget Amendments	-	-	-	-
2019 Amended Budget	64,326	7,100	-	71,426
BA#3 (Ordinance #6720, Proposed):	1,550	-	-	1,550
Adjust beginning fund balance	1,550	-	-	1,550
Revised 2019 Budget - Fund 120	65,876	7,100	-	72,976
BIA Fund (#121)				
2019 Adopted Budget	109,473	55,200	90,000	74,673
Previous Budget Amendments	5,400	-	5,400	-
2019 Amended Budget	114,873	55,200	95,400	74,673
BA#3 (Ordinance #6720, Proposed):	940	-	-	940
Adjust beginning fund balance	940	-	-	940
Revised 2019 Budget - Fund 121	115,813	55,200	95,400	75,613
Cumulative Reserve Fund (#122)				
2019 Adopted Budget	10,124,312	180,200	142,200	10,162,312
Previous Budget Amendments and CIP Carry-Forwards	-	-	-	-
2019 Amended Budget	10,124,312	180,200	142,200	10,162,312
BA#3 (Ordinance #6720, Proposed):	33,754	-	-	33,754
Adjust beginning fund balance	33,754	-	-	33,754
Revised 2019 Budget - Fund 122	10,158,066	180,200	142,200	10,196,066

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
Mitigation Fees Fund (#124)				
2019 Adopted Budget	10,886,137	1,196,200	2,980,350	9,101,987
Previous Budget Amendments and CIP Carry-Forwards	962,356	416,200	1,228,556	150,000
2019 Amended Budget	11,848,493	1,612,400	4,208,906	9,251,987
BA#3 (Ordinance #6720, Proposed):	33,289	-	252,500	(219,211)
Adjust beginning fund balance	33,289	-	-	33,289
Funding for AWS widening proj. (cp1622; funded by grant and traffic impact fees)	-	-	202,500	(202,500)
Increase budget for Brannan Park synthetic infield project (cp1817)	-	-	50,000	(50,000)
Revised 2019 Budget - Fund 124	11,881,782	1,612,400	4,461,406	9,032,776
Local Revitalization 2010 C&D Bond Fund (#231)				
2019 Adopted Budget	11,396	590,300	589,800	11,896
Previous Budget Amendments	-	-	-	-
2019 Amended Budget	11,396	590,300	589,800	11,896
BA#3 (Ordinance #6720, Proposed):	3,436	-	-	3,436
Adjust beginning fund balance	3,436	-	-	3,436
Revised 2019 Budget - Fund 231	14,832	590,300	589,800	15,332
LID Guarantee Fund (#249)				
2019 Adopted Budget	1,618	30	-	1,648
Previous Budget Amendments	-	-	-	-
2019 Amended Budget	1,618	30	-	1,648
BA#3 (Ordinance #6720, Proposed):	15	-	-	15
Adjust beginning fund balance	15	-	-	15
Revised 2019 Budget - Fund 249	1,633	30	-	1,663

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
LID 350 Fund (#275)				
2019 Adopted Budget	8,709	7,350	7,400	8,659
Previous Budget Amendments	-	-	-	-
2019 Amended Budget	8,709	7,350	7,400	8,659
BA#3 (Ordinance #6720, Proposed):	(4,956)	-	-	(4,956)
Adjust beginning fund balance	(4,956)	-	-	(4,956)
Revised 2019 Budget - Fund 275	3,753	7,350	7,400	3,703
Golf/Cemetery 2016 Refunding Fund (#276)				
2019 Adopted Budget	-	374,100	374,100	-
Previous Budget Amendments	-	-	-	-
2019 Amended Budget	-	374,100	374,100	-
BA#3 (Ordinance #6720, Proposed):	19	-	-	19
Adjust beginning fund balance	19	-	-	19
Revised 2019 Budget - Fund 276	19	374,100	374,100	19
Parks Construction Fund (#321)				
2019 Adopted Budget	310,222	2,070,550	2,015,000	365,772
Previous Budget Amendments and CIP Carry-Forwards	184,924	1,100,085	1,285,009	-
2019 Amended Budget	495,146	3,170,635	3,300,009	365,772
BA#3 (Ordinance #6720, Proposed):	120,757	50,000	50,000	120,757
Adjust beginning fund balance	120,757	-	-	120,757
Increase budget for Brannan Park synthetic infield project (cp1817)	-	50,000	50,000	-
Revised 2019 Budget - Fund 321	615,903	3,220,635	3,350,009	486,529

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
Capital Improvements Fund (#328)				
2019 Adopted Budget	10,404,627	5,775,300	8,500,550	7,679,377
Previous Budget Amendments and CIP Carry-Forwards	1,709,627	839,333	2,698,960	(150,000)
2019 Amended Budget	12,114,254	6,614,633	11,199,510	7,529,377
BA#3 (Ordinance #6720, Proposed):	1,211,410	75,000	774,400	512,010
Adjust beginning fund balance	1,211,410	-	-	1,211,410
Incr funding for sidewalks on AWS (cp1705) due to WSDOT req'ts and cost incr	-	75,000	75,000	-
Transfer reserved REET funds for arterial street preservation projects (cp1926)	-	-	699,400	(699,400)
Revised 2019 Budget - Fund 328	13,325,664	6,689,633	11,973,910	8,041,387
Local Revitalization Fund (#330)				
2019 Adopted Budget	380,500	104,000	484,500	-
Previous Budget Amendments and CIP Carry-Forwards	6,000	-	6,000	-
2019 Amended Budget	386,500	104,000	490,500	-
BA#3 (Ordinance #6720, Proposed):	(4,512)	-	(4,512)	-
Adjust beginning fund balance	(4,512)	-	(4,512)	-
Revised 2019 Budget - Fund 330	381,988	104,000	485,988	-
Water Fund (#430)				
2019 Adopted Budget	3,787,175	15,678,500	14,334,065	5,131,610
Previous Budget Amendments and CIP Carry-Forwards	128,200	-	128,200	-
2019 Amended Budget	3,915,375	15,678,500	14,462,265	5,131,610
BA#3 (Ordinance #6720, Proposed):	4,052,091	3,135,100	2,323,700	4,863,491
Adjust beginning fund balance	4,052,091	-	-	4,052,091
Adjust budget for Drinking Water Revolving Fund loan to pre-construction only	-	135,100	(676,300)	811,400
Incr funding to replace lead service lines due to new DWSRF loan (cp1922)	-	3,000,000	3,000,000	-
Revised 2019 Budget - Fund 430	7,967,466	18,813,600	16,785,965	9,995,101

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
Sewer Fund (#431)				
2019 Adopted Budget	4,267,149	9,104,200	7,842,663	5,528,686
Previous Budget Amendments and CIP Carry-Forwards	25,100	-	25,100	-
2019 Amended Budget	4,292,249	9,104,200	7,867,763	5,528,686
BA#3 (Ordinance #6720, Proposed):	1,085,922	-	-	1,085,922
Adjust beginning fund balance	1,085,922	-	-	1,085,922
Revised 2019 Budget - Fund 431	5,378,171	9,104,200	7,867,763	6,614,608
Storm Drainage Fund (#432)				
2019 Adopted Budget	2,859,814	10,156,900	8,865,312	4,151,402
Previous Budget Amendments and CIP Carry-Forwards	26,800	-	26,800	-
2019 Amended Budget	2,886,614	10,156,900	8,892,112	4,151,402
BA#3 (Ordinance #6720, Proposed):	2,080,595	-	-	2,080,595
Adjust beginning fund balance	2,080,595	-	-	2,080,595
Revised 2019 Budget - Fund 432	4,967,209	10,156,900	8,892,112	6,231,997
Sewer Metro Sub Fund (#433)				
2019 Adopted Budget	3,184,467	18,372,500	18,215,600	3,341,367
Previous Budget Amendments	-	-	-	-
2019 Amended Budget	3,184,467	18,372,500	18,215,600	3,341,367
BA#3 (Ordinance #6720, Proposed):	383,462	-	-	383,462
Adjust beginning fund balance	383,462	-	-	383,462
Revised 2019 Budget - Fund 433	3,567,929	18,372,500	18,215,600	3,724,829

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
Solid Waste Fund (#434)				
2019 Adopted Budget	5,556,175	16,249,100	16,296,306	5,508,969
Previous Budget Amendments	-	-	-	-
2019 Amended Budget	5,556,175	16,249,100	16,296,306	5,508,969
BA#3 (Ordinance #6720, Proposed):	126,864	-	-	126,864
Adjust beginning fund balance	126,864	-	-	126,864
Revised 2019 Budget - Fund 434	5,683,039	16,249,100	16,296,306	5,635,833
Airport Fund (#435)				
2019 Adopted Budget	434,633	1,218,600	1,353,493	299,740
Previous Budget Amendments	40,000	-	53,200	(13,200)
2019 Amended Budget	474,633	1,218,600	1,406,693	286,540
BA#3 (Ordinance #6720, Proposed):	116,285	80,000	80,000	116,285
Adjust beginning fund balance	116,285	-	-	116,285
Revise budgeted revenues and expenditures for aviation fuel sales	-	80,000	80,000	-
Revised 2019 Budget - Fund 435	590,918	1,298,600	1,486,693	402,825
Cemetery Fund (#436)				
2019 Adopted Budget	441,060	1,187,000	1,363,962	264,098
Previous Budget Amendments	-	-	-	-
2019 Amended Budget	441,060	1,187,000	1,363,962	264,098
BA#3 (Ordinance #6720, Proposed):	309,598	-	-	309,598
Adjust beginning fund balance	309,598	-	-	309,598
Revised 2019 Budget - Fund 436	750,658	1,187,000	1,363,962	573,696

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
Water Capital Fund (#460)				
2019 Adopted Budget	138,010	9,037,400	6,612,686	2,562,724
Previous Budget Amendments and CIP Carry-Forwards	2,710,441	697,616	3,928,057	(520,000)
2019 Amended Budget	2,848,451	9,735,016	10,540,743	2,042,724
BA#3 (Ordinance #6720, Proposed):	(879,957)	1,876,700	796,500	200,243
Adjust beginning fund balance	(879,957)	-	-	(879,957)
Adjust budget for Drinking Water Revolving Fund loan to pre-construction only	-	(1,023,300)	(2,053,500)	1,030,200
Correct contractor payment from 2018 (entered in F460 should have been F102)	-	-	-	-
460.00.590.100.65 CONSTRUCTION PROJECTS			(26,400)	
460.00.597.100.55 OPERATING TRANSFER OUT			26,400	
Incr funding to replace lead service lines due to new DWSRF loan (cp1922)	-	2,900,000	2,850,000	50,000
Revised 2019 Budget - Fund 460	1,968,494	11,611,716	11,337,243	2,242,967
Sewer Capital Fund (#461)				
2019 Adopted Budget	11,210,691	734,700	2,895,900	9,049,491
Previous Budget Amendments and CIP Carry-Forwards	1,029,608	-	1,029,608	-
2019 Amended Budget	12,240,299	734,700	3,925,508	9,049,491
BA#3 (Ordinance #6720, Proposed):	146,047	-	-	146,047
Adjust beginning fund balance	146,047	-	-	146,047
Revised 2019 Budget - Fund 461	12,386,346	734,700	3,925,508	9,195,538
Storm Drainage Capital Fund (#462)				
2019 Adopted Budget	13,328,488	569,900	3,196,900	10,701,488
Previous Budget Amendments	464,293	181,965	646,258	-
2019 Amended Budget	13,792,781	751,865	3,843,158	10,701,488
BA#3 (Ordinance #6720, Proposed):	(1,496,283)	-	-	(1,496,283)
Adjust beginning fund balance	(1,496,283)	-	-	(1,496,283)
Revised 2019 Budget - Fund 462	12,296,498	751,865	3,843,158	9,205,205

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
Airport Capital Fund (#465)				
2019 Adopted Budget	146,405	2,093,700	2,140,500	99,605
Previous Budget Amendments and CIP Carry-Forwards	100,562	730,346	867,108	(36,200)
2019 Amended Budget	246,967	2,824,046	3,007,608	63,405
BA#3 (Ordinance #6720, Proposed):	(35,086)	-	-	(35,086)
Adjust beginning fund balance	(35,086)	-	-	(35,086)
Revised 2019 Budget - Fund 465	211,881	2,824,046	3,007,608	28,319
Cemetery Capital Fund (#466)				
2019 Adopted Budget	261,037	133,000	358,100	35,937
Previous Budget Amendments and CIP Carry-Forwards	-	22,442	22,442	-
2019 Amended Budget	261,037	155,442	380,542	35,937
BA#3 (Ordinance #6720, Proposed):	(7,685)	-	-	(7,685)
Adjust beginning fund balance	(7,685)	-	-	(7,685)
Revised 2019 Budget - Fund 466	253,352	155,442	380,542	28,252
Insurance Fund (#501)				
2019 Adopted Budget	1,928,070	21,000	180,600	1,768,470
Previous Budget Amendments	-	-	-	-
2019 Amended Budget	1,928,070	21,000	180,600	1,768,470
BA#3 (Ordinance #6720, Proposed):	4,456	-	-	4,456
Adjust beginning fund balance	4,456	-	-	4,456
Revised 2019 Budget - Fund 501	1,932,526	21,000	180,600	1,772,926

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
Workers' Comp Fund (#503)				
2019 Adopted Budget	2,128,988	1,171,200	818,115	2,482,073
Previous Budget Amendments	-	-	-	-
2019 Amended Budget	2,128,988	1,171,200	818,115	2,482,073
BA#3 (Ordinance #6720, Proposed):	(956,046)	-	-	(956,046)
Adjust beginning fund balance	(956,046)	-	-	(956,046)
Revised 2019 Budget - Fund 503	1,172,942	1,171,200	818,115	1,526,027
Facilities Fund (#505)				
2019 Adopted Budget	1,412,874	3,532,500	3,894,563	1,050,811
Previous Budget Amendments	136,000	(31,400)	288,000	(183,400)
2019 Amended Budget	1,548,874	3,501,100	4,182,563	867,411
BA#3 (Ordinance #6720, Proposed):	285,123	-	-	285,123
Adjust beginning fund balance	285,123	-	-	285,123
Revised 2019 Budget - Fund 505	1,833,997	3,501,100	4,182,563	1,152,534
Innovation & Technology Fund (#518)				
2019 Adopted Budget	2,573,504	6,429,110	6,437,640	2,564,974
Previous Budget Amendments	124,500	118,200	242,700	-
2019 Amended Budget	2,698,004	6,547,310	6,680,340	2,564,974
BA#3 (Ordinance #6720, Proposed):	96,070	-	-	96,070
Adjust beginning fund balance	96,070	-	-	96,070
Revised 2019 Budget - Fund 518	2,794,074	6,547,310	6,680,340	2,661,044

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
Equipment Rental Fund (#550)				
2019 Adopted Budget	3,091,626	2,007,606	2,746,591	2,352,641
Previous Budget Amendments	-	-	104,600	(104,600)
2019 Amended Budget	3,091,626	2,007,606	2,851,191	2,248,041
BA#3 (Ordinance #6720, Proposed):	331,225	-	-	331,225
Adjust beginning fund balance	331,225	-	-	331,225
Revised 2019 Budget - Fund 550	3,422,851	2,007,606	2,851,191	2,579,266
Equipment Rental Capital Fund (#560)				
2019 Adopted Budget	3,663,110	2,741,994	3,102,450	3,302,654
Previous Budget Amendments and CIP Carry-Forwards	46,400	75,200	371,500	(249,900)
2019 Amended Budget	3,709,510	2,817,194	3,473,950	3,052,754
BA#3 (Ordinance #6720, Proposed):	60,622	62,000	156,000	(33,378)
Replace two message board units that are past their useful lives (fully paid in)	-	-	72,000	(72,000)
Vehicle for third School Resource Officer (incl. \$60k in funding from ASD)	-	62,000	62,000	-
Adjust beginning fund balance	60,622	-	-	60,622
Purchase man-lift and trailer for Facilities Dept (funding in 2019 adopted budget)	-	-	22,000	(22,000)
Revised 2019 Budget - Fund 560	3,770,132	2,879,194	3,629,950	3,019,376
IT Capital Fund (#568)				
2019 Adopted Budget	1,169,997	-	869,300	300,697
Previous Budget Amendments and CIP Carry-Forwards	-	22,500	22,500	-
2019 Amended Budget	1,169,997	22,500	891,800	300,697
BA#3 (Ordinance #6720, Proposed):	356,536	12,200	12,200	356,536
Adjust beginning fund balance	356,536	-	-	356,536
Vehicle electronics for third School Resource Officer	-	12,200	12,200	-
Revised 2019 Budget - Fund 568	1,526,533	34,700	904,000	657,233

Schedule A
Summary of 2019 Budget Adjustments by Fund
Budget Amendment #3 (Ordinance #6720)

	Beg. Fund Balance	2019 Revenues	2019 Expenditures	Ending Fund Balance
Fire Pension Fund (#611)				
2019 Adopted Budget	2,205,369	120,900	215,120	2,111,149
Previous Budget Amendments	-	-	-	-
2019 Amended Budget	2,205,369	120,900	215,120	2,111,149
BA#3 (Ordinance #6720, Proposed):	27,922	-	5,000	22,922
Increase budget for actuarial services	-	-	5,000	(5,000)
Adjust beginning fund balance	27,922	-	-	27,922
Revised 2019 Budget - Fund 611	2,233,291	120,900	220,120	2,134,071
Cemetery Endowment Fund (#701)				
2019 Adopted Budget	1,817,409	45,000	33,000	1,829,409
Previous Budget Amendments and CIP Carry-Forwards	22,442	-	22,442	-
2019 Amended Budget	1,839,851	45,000	55,442	1,829,409
BA#3 (Ordinance #6720, Proposed):	56,978	-	-	56,978
Adjust beginning fund balance	56,978	-	-	56,978
Revised 2019 Budget - Fund 701	1,896,829	45,000	55,442	1,886,387
Grand Total - All Funds				
2019 Adopted Budget	121,191,833	194,308,846	207,147,258	108,353,421
Previous Budget Amendments	10,777,335	6,591,498	18,613,233	(1,244,400)
2019 Amended Budget	131,969,168	200,900,344	225,760,491	107,109,021
TOTAL BA#3 (Ordinance #6720, Proposed)	10,456,133	8,457,800	7,877,488	11,036,445
Revised 2019 Budget	142,425,301	209,358,144	233,637,979	118,145,466
		351,783,445		351,783,445

Schedule B

2019 Appropriations by Fund

Fund	2019 Adopted Budget	BA#1 (Ord #6712)	CIP CFs	BA#2 (Ord #6719)	BA#3 (Ord #6720)	Total Amendments	Revised Budget
General Fund (#001)	90,183,028	511,300	-	141,910	4,015,234	4,668,444	94,851,472
Arterial Street Fund (#102)	3,125,877	-	1,995,054	-	1,484,581	3,479,635	6,605,512
Local Street Fund (#103)	3,562,780	-	899,476	-	249,701	1,149,177	4,711,957
Hotel/Motel Tax Fund (#104)	262,171	6,650	-	-	82,454	89,104	351,275
Arterial Street Preservation Fund (#105)	4,541,657	-	1,791,313	-	163,379	1,954,692	6,496,349
Drug Forfeiture Fund (#117)	531,497	-	-	-	80,697	80,697	612,194
Housing & Comm Develop Fund (#119)	626,458	269,900	-	-	6,446	276,346	902,804
Recreation Trails Fund (#120)	71,426	-	-	-	1,550	1,550	72,976
BIA Fund (#121)	164,673	5,400	-	-	940	6,340	171,013
Cumulative Reserve Fund (#122)	10,304,512	-	84,400	-	33,754	118,154	10,422,666
Mitigation Fees Fund (#124)	12,082,337	150,000	1,228,556	-	33,289	1,411,845	13,494,182
1998 GO Library Bond Fund (#229)	-	-	-	-	-	-	-
City Hall Annex 2010 A&B Bond Fund (#230)	1,664,900	-	-	-	-	-	1,664,900
Local Revitalization 2010 C&D Bond Fund (#231)	601,696	-	-	-	3,436	3,436	605,132
SCORE Debt Service Fund (#238)	2,129,800	-	-	-	-	-	2,129,800
LID Guarantee Fund (#249)	1,648	-	-	-	15	15	1,663
LID 350 Fund (#275)	16,059	-	-	-	(4,956)	(4,956)	11,103
Golf/Cemetery 2016 Refunding Fund (#276)	374,100	-	-	-	19	19	374,119
Parks Construction Fund (#321)	2,380,772	-	1,285,009	-	170,757	1,455,766	3,836,538
Capital Improvements Fund (#328)	16,179,927	54,000	2,494,960	-	1,286,410	3,835,370	20,015,297
Local Revitalization Fund (#330)	484,500	-	6,000	-	(4,512)	1,488	485,988
Water Fund (#430)	19,465,675	115,200	13,000	-	7,187,191	7,315,391	26,781,066
Sewer Fund (#431)	13,371,349	12,100	13,000	-	1,085,922	1,111,022	14,482,371
Storm Drainage Fund (#432)	13,016,714	13,800	13,000	-	2,080,595	2,107,395	15,124,109
Sewer Metro Sub Fund (#433)	21,556,967	-	-	-	383,462	383,462	21,940,429
Solid Waste Fund (#434)	21,805,275	-	-	-	126,864	126,864	21,932,139
Airport Fund (#435)	1,653,233	40,000	-	-	196,285	236,285	1,889,518
Cemetery Fund (#436)	1,628,060	-	-	-	309,598	309,598	1,937,658
Water Capital Fund (#460)	9,175,410	-	3,408,057	-	996,743	4,404,800	13,580,210
Sewer Capital Fund (#461)	11,945,391	-	1,029,608	-	146,047	1,175,655	13,121,046
Storm Drainage Capital Fund (#462)	13,898,388	-	646,258	-	(1,496,283)	(850,025)	13,048,363
Airport Capital Fund (#465)	2,240,105	-	830,908	-	(35,086)	795,822	3,035,927
Cemetery Capital Fund (#466)	394,037	-	22,442	-	(7,685)	14,757	408,794
Insurance Fund (#501)	1,949,070	-	-	-	4,456	4,456	1,953,526
Workers' Comp Fund (#503)	3,300,188	-	-	-	(956,046)	(956,046)	2,344,142
Facilities Fund (#505)	4,945,374	104,600	-	4,500	285,123	394,223	5,339,597
Innovation & Technology Fund (#518)	9,002,614	242,700	-	13,500	96,070	352,270	9,354,884
Equipment Rental Fund (#550)	5,099,232	-	-	-	331,225	331,225	5,430,457
Equipment Rental Capital Fund (#560)	6,405,104	82,600	39,000	-	122,622	244,222	6,649,326
IT Capital Fund (#568)	1,169,997	22,500	-	-	368,736	391,236	1,561,233
Fire Pension Fund (#611)	2,326,269	-	-	-	27,922	27,922	2,354,191
SKHHP Fund (#654)	-	-	-	220,160	-	220,160	220,160
Cemetery Endowment Fund (#701)	1,862,409	-	22,442	-	56,978	79,420	1,941,829
Total	315,500,679	1,630,750	15,822,483	380,070	18,913,933	36,747,236	352,247,915



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6722 (Gaub)

Date:

July 2, 2019

Department:

Public Works

Attachments:

[Ordinance No. 6722](#)

[Exhibit A](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council introduce and adopt Ordinance No. 6722.

Background Summary:

North Auburn Logistics Holdings, LLC constructed water systems improvements along West Valley Highway and South 287th Street to provide water to their development. These improvements are eligible for a payback agreement between the Developer and the City of Auburn, where properties that connect to the water system improvements will reimburse North Auburn Logistics Holdings LLC for the properties' pro rata share of the cost of those improvements.

Ordinance No. 6722 authorizes the Mayor and City Clerk to execute a Payback Agreement with North Auburn Logistics Holdings, LLC. North Auburn Logistics Holdings, LLC completed the facility extension (FAC14-0007) for water facilities to serve their property. The water main was extended to and through their property and provides benefit to adjacent properties that currently do not have water service. The City of Auburn has established a Payback Agreement to provide reimbursement to the developer for the benefit received by the adjacent property owners.

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

Gaub

Meeting Date: July 15, 2019

Item Number:

ORD.B

ORDINANCE NO. 6722

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO
EXECUTE A PAYBACK AGREEMENT FOR UTILITIES
DEVELOPER'S EXTENSION BETWEEN THE CITY OF
AUBURN AND NORTH AUBURN LOGISTICS HOLDINGS,
LLC

WHEREAS, Chapter 13.40 of the Auburn City Code (ACC) authorizes the City Engineer to develop, implement, and administer facility extension payback agreements for utility improvements; and

WHEREAS, Chapter 3.25 of the ACC requires that the City Council conduct a public hearing to consider approving the payback agreements; and

WHEREAS, North Auburn Logistics Holdings, LLC, has constructed the utility improvements described in the payback agreement, Exhibit A, and has agreed to deed those improvements to the City; and

WHEREAS, pursuant to ACC 13.40.030, the City has received and approved plans for those improvements; and

WHEREAS, the City Council finds that entry into the payback agreement is in the best interest of the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON DO ORDAIN as a non-codified ordinance as follows:

Section 1. The Mayor is authorized to execute a Payback Agreement for Developer's Extension between the City and North Auburn Logistics Holdings, LLC, which agreement will be in substantial conformity with the agreement attached as Exhibit A.

Ordinance No. 6722
June 12, 2019
Page 1 of 2

Section 2. Constitutionality or Invalidity. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provisions to other persons or circumstances shall not be affected.

Section 3. Implementation. The Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 4. Effective Date. This Ordinance will take effect and be in force five (5) days from and after passage, approval, and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

Steven L. Gross, City Attorney

PUBLISHED: _____

Ordinance No. 6722
June 12, 2019
Page 2 of 2

**Exhibit A - North Auburn Logistics Water
Payback Agreement for Developers
Extension FAC14-0007**

Return Address:
City of Auburn
City Clerk
25 West Main
Auburn, WA 98001

Above this line reserved for recording information.

**PAYBACK AGREEMENT FOR UTILITIES
DEVELOPER'S EXTENSION**

Reference # (if applicable):	N/A	Additional on page:	_____
Grantor :	City of Auburn		
Grantee :	1) North Auburn Logistics Holdings, LLC	2)	
Legal Description / STR:	Section 25, T22N, R4E	Additional on page:	_____
Assessor's Tax Parcel ID#:	3522049016, 3522049024		

This Agreement made and entered into this _____ day of _____, 2019 by and between the **City of Auburn**, a municipal corporation of King County, Washington ("the CITY") and **North Auburn Logistics Holdings, LLC** ("the DEVELOPER"), whose address is 900 SW 16th Street, Suite 330, Renton WA 98057.

WHEREAS, pursuant to Chapter 35.91 RCW et seq., the CITY has by Ordinance No. 6722 adopted by the City Council of the CITY on the 15th day of July, 2019, approved the execution of this Payback Agreement with the DEVELOPER above and referring to the construction of certain facilities described in this Agreement; and

WHEREAS, the above-described DEVELOPER has offered and the CITY has agreed to accept the water facilities described in **Exhibit 1**, Bill of Sale, and attached and incorporated into this Agreement, as part of the utility systems of the CITY;

NOW THEREFORE, IN CONSIDERATION OF THE CONDITIONS AND COVENANTS, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

I. DEVELOPER

At the time of construction, the above-described DEVELOPER was the record OWNER of real property legally described as shown on **Exhibit 2** submitted by the DEVELOPER and attached in this Agreement.

“DEVELOPER” include successors, heirs, and assigns. The term ”DEVELOPER” includes a bankruptcy estate and a receivership as long as the City receives notice of the bankruptcy or receivership as the law requires for notice to creditors, and the DEVELOPER provides the notice required by section X of this agreement.

II. FACILITIES

The facilities which have been constructed by the DEVELOPER are as shown in the attached **Exhibit 3**, incorporated by this reference, and processed as a Developer Public Facility Extension, referenced as FAC14-0007, the original documents are on file at the office of the City Engineer. The facilities have been constructed in accordance with the ordinances and requirements of the CITY and the Engineering Design Standards governing the construction specifications for these facilities. The facilities have been approved by the City Engineer.

III. AREA OF FACILITY SERVICE BENEFIT

The properties benefited by the facilities (“Benefited Properties”) constructed by the DEVELOPER are legally described on **Exhibit 4** and are shown on **Exhibit 5**, which are by this reference incorporated in this Agreement. Any owner of real estate legally described within the benefit boundary as shown on the attached **Exhibits 4 and 5**, shall pay, as a condition for connecting to the facilities, the amount as identified in Section V. All property within the benefit boundary shall be subject to the connection fee as provided in this agreement as a condition of issuance of the connection permit by the CITY.

IV. TERMS

For a period of **20 years** from the date of this agreement, any owner (latecomer) of real estate legally described in Section III, **Exhibit 4**, or **Exhibit 5**, and which owner has not fully contributed their pro rata share to the original cost of the above-described facility, shall pay to the CITY the amounts specified in Section V of this agreement. The charge represents the fair pro rata share of the cost of construction of said facilities payable by the Benefited Properties.

Payment of the latecomer’s pro rata share will be required by the CITY at the time the CITY issues a utility permit for water service, as described in Auburn City Code (ACC) 13.06.050 to connect and use the system. A benefited property that constructs a facility extension that connects to the facilities included in this Payback Agreement is not

subject to payback payments until the benefited property (or each of the properties resulting from the subdivision of the benefited property) applies for utility service. Additionally, although stubs for utility service may be constructed to Benefited Properties as part of the facilities included in this Payback Agreement, no payback payments will be required until such time as those Benefited Properties apply for utility service.

The CITY shall reimburse the DEVELOPER within sixty (60) days of the date the City receives payment from a person requesting connection to the facilities.

V. AMOUNT OF REIMBURSEMENT

The DEVELOPER, its successors, heirs and assigns, agrees that the amounts which the DEVELOPER is reimbursed from the property owners as specified in Section III of this Agreement, represents a fair pro rata share reimbursement for the DEVELOPER'S construction of the facilities described in Section II of this Agreement.

The amount of reimbursement for water installed across the property frontage of a benefitted property will be \$53.56 times the length of the property frontage, as listed in **Exhibit 6**.

The total amount of reimbursement to the DEVELOPER for the facilities from all applicable charges shall not exceed **\$188,907.60**.

In the event that a benefitting property or properties is/are subdivided prior to connecting to the facilities, the City may reallocate the reimbursement amount(s) in a manner consistent with the methodology described above. The City will notify both the DEVELOPER and the property owner of any revisions to the reimbursement amounts.

VI. NOTICE AND HEARING

Prior to voting on the Ordinance authorizing this agreement, the CITY shall conduct a public hearing in accordance with ACC 3.25.080, including meeting the notification requirements of that section.

VII. EFFECT OF AGREEMENT

The provisions of this Agreement shall not be effective as to any owner of real estate not a party to this Agreement unless this Agreement has been recorded in the King County Recorder's Office prior to the time such owner receives a permit to connect to and use said facilities.

If for any reason, the CITY fails to secure a latecomer payment for Owner's fair pro rata share of the cost of the facilities before connection to the extension, the CITY is not liable for payment to the DEVELOPER.

Following approval of the Ordinance authorizing this agreement, the City will record the document at the appropriate County's Office. The DEVELOPER shall be responsible for correcting any portion of the document determined to not be recordable and any re-recording fees.

This agreement is subject to the provisions of Auburn City Code ("ACC") Chapter 3.25 and shall be void if the DEVELOPER is in violation of any term or condition of that Chapter as it exists on the date of execution of this agreement.

VIII. CURRENT ADDRESS & TELEPHONE NUMBER

The DEVELOPER will keep a current record of the Developer's address and telephone number on file with the City Engineer, and will within 30 days of any change of said address and/or telephone number, notify the City Engineer in writing. If the DEVELOPER fails to do so, the parties agree that the CITY may authorize connections and not incur any liability for the non-collection and/or non-reimbursement of charges to the DEVELOPER under this Agreement. Every two years from the effective date of this agreement, shown on page one, the DEVELOPER will notify the City Engineer of its current name, address, and telephone number. If the DEVELOPER fails to provide such information within sixty (60) days of each anniversary, the CITY may collect and retain any connection charges owed to the DEVELOPER under this contract.

The initial Contact Information and Address for Receipt of Reimbursement Funds is as follows:

Bart Brynstad
(Printed Name of Developer's Representative)
North Auburn Logistics Holdings, LLC
(Company Name)
1821 Dock St, Suite 100
(Mailing Address)
Tacoma, WA 98402
(City, State, Zip code)
(206) 248-0280
(Telephone/FAX)

IX. ADMINISTRATION

Any inquiries regarding the administration of this agreement shall be directed to the City Engineer.

X. COVENANT RUNNING WITH THE LAND

This Agreement is binding on the DEVELOPER, its successors, heirs and assigns and shall so be binding on the legal owners of all properties described within the benefit boundary of the area as shown in the attached **Exhibits 4, 5, and 6**, their successors, heirs and assigns.

XI. HOLD HARMLESS

- A. General Indemnification. The DEVELOPER will indemnify, defend, and hold the CITY and the CITY'S officials and agents harmless from all claims and costs of defense arising out of this agreement as a result of DEVELOPER actions, omissions, misconduct, or breach of contract, including but not limited to attorney's fees, expert witness fees, and the cost of the services of engineering and other personnel who's time is reasonably devoted to the preparation and attendance of depositions, hearings, arbitration proceedings, settlement conferences and trials growing out of the demands and/or actions of property owners incurred in the performance or completion of this Agreement. The DEVELOPER specifically holds the CITY and its officials and agents harmless and waives all claims related to the CITY's establishment and enforcement of the terms and conditions of this agreement, including the failure to locate a beneficiary, assigns, successor, trustee, or survivor of DEVELOPER.
- B. Indemnification Against Liens. The DEVELOPER further agrees to indemnify and defend the CITY from any loss on account of any lien against the facilities that arose on or prior to the date of CITY acceptance of the facilities. If the CITY incurs any expense in defense against any such lien or claim, or in taking any other action that is required of DEVELOPER under this Agreement, the CITY shall have a lien in the full amount thereof against any funds then or thereafter collected by the CITY pursuant to this Agreement.

XII. CONSTITUTIONALITY OR INVALIDITY

If any section, subsection, clause or phrase of this Agreement is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality does not affect the validity or constitutionality of the remaining portions of this Agreement, as it being expressly declared that this Agreement and each section, subsection, sentence, clause and phrase would have been prepared, proposed, adopted and approved and ratified irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid or unconstitutional.

CITY OF AUBURN

Nancy Backus, Mayor

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Steven L. Gross, City Attorney

DEVELOPER: North Auburn Logistics Holdings, LLC

Signature Bert G. Gagnier

Signature

TITLE: Local Partner

TITLE:

STATE OF WASHINGTON)
County of King) ss.

I certify that I know or have satisfactory evidence that Nancy Backus and Danielle E. Daskam were the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the **MAYOR** and **CITY CLERK** of the **CITY OF AUBURN** to be the free and voluntary act of such parties for the uses and purposes mentioned in this instrument.

Dated _____

Notary Public in and for the State of Washington
My appointment expires

STATE OF WASHINGTON)
COUNTY OF KING) ss

I certify that I know or have satisfactory evidence that Bart Brynstad and _____ are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the local Partner of Nash Auburn Logistics Holdings, LLC a corporation, to be the free and voluntary act of such parties for the uses and purposes mentioned in this instrument.

Dated 06/17/2019

Amylan
Abby L Vieser
Notary Public in and for the State of Washington
My appointment expires 04/26/2021

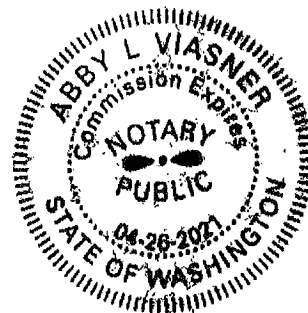


Exhibit 1
Payback Agreement 2019-01

Return Address:
City of Auburn
City Clerk
25 West Main
Auburn, WA 98001

Above this line reserved for recording information.

FAC14-0007
WATER, SANITARY SEWER, AND STORM
BILL OF SALE

Reference # (if applicable):	N/A
Grantor/Borrower:	North Auburn Logistics Holdings, LLC
Grantee/Assignee/Beneficiary:	City of Auburn
Legal Description/STR:	Section 35– Township 21N – Range 4E
Assessor's Tax Parcel ID #:	352204-9024 & 352204-9016

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the sum of TEN DOLLARS (\$10.00), and for the consideration of incorporating the Extension into the City system, and other good and sufficient consideration, receipt whereof is hereby acknowledged, the undersigned Grantor(s) **North Auburn Logistics Holdings, LLC** does by these presents hereby convey, setover, assign, transfer and warrant to the City of Auburn, a Municipal Corporation of the State of Washington, **2,223 LF of waterline, 1,735 LF of sanitary sewer, 504 LF of storm sewer, a 15 foot wide x 5.5 foot tall x 97.5 foot long culvert and all appurtenances** or any other associated public facility as shown on the public facility extension plans referred to as **FAC14-0007, the North Auburn Logistics development**. Situated within the following described real property, located in King County:

See EXHIBIT 'A' ATTACHED HERETO AND BY THIS REFERENCE MADE
A PART HEREOF.

and the said Grantor(s) hereby warrant(s) that they are the sole owner(s) of all the property above conveyed; that they have full power to convey the same and that they will defend the title of the said Grantee against any and all persons lawfully making claim thereto, and indemnify the City of Auburn for any costs, including Attorney fees in defending title.

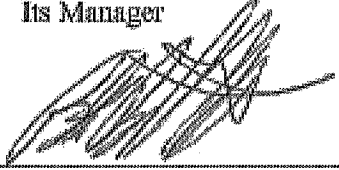
Exhibit 1 (continued)
Payback Agreement 2019-01

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by its proper officer(s) this 28 day of February, 2019.

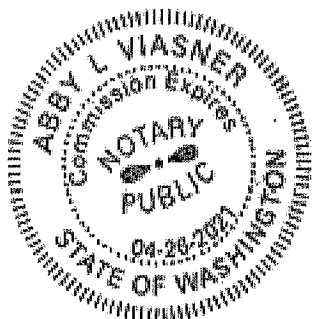
NORTH AUBURN LOGISTICS HOLDINGS, LLC,
a Delaware limited liability company

By: North Auburn Logistics Center Holdings PG, LLC,
a Delaware limited liability company,
Managing Member

By: PDC Seattle LLC,
a Delaware limited liability company,
Its Manager

By: 
Bart Brynstad
Local Partner

Dated 02/28/2019



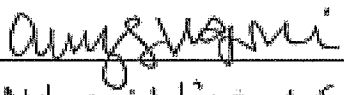

Abby L. Viasner
Notary Public in and for the State of Washington
Residing at Kent, WA
My appointment expires 04/28/2021

Exhibit 1 (continued)
Payback Agreement 2019-01

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL A AND TRACT A OF CITY OF AUBURN BOUNDARY LINE
ADJUSTMENT NO. BLA14-0006, RECORDED UNDER RECORDING NUMBER
20160601900006, RECORDS OF KING COUNTY, WASHINGTON, BEING A
PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF
SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., KING COUNTY,
WASHINGTON.

Exhibit 2
Payback Agreement 2019-01

Legal Description of Developer's Property

(TAX PARCEL #352204-9024)

PARCEL A, CITY OF AUBURN BOUNDARY LINE ADJUSTMENT NO. BLA14-0006, RECORDED JUNE 1, 2016 UNDER RECORDING NUMBER 20160601900006, IN VOLUME 344 OF PLATS, PAGES 56 AND 57, IN KING COUNTY, WASHINGTON.

TOGETHER WITH EASEMENT RIGHTS FOR ROAD PURPOSES OVER A 10 FOOT ROAD, AS RESERVED IN THAT CERTAIN WARRANTY DEED RECORDED DECEMBER 17, 1920 UNDER RECORDING NUMBER 1477534 IN VOLUME 1130 OF DEEDS, PAGE 199, IN KING COUNTY, WASHINGTON, AND AS RESERVED IN THAT CERTAIN QUIT CLAIM DEED RECORDED JUNE 18, 1958 UNDER RECORDING NUMBER 4912725, IN VOLUME 3797 OF DEEDS, PAGE 455, IN KING COUNTY, WASHINGTON.

(TAX PARCEL #352204-9016) - Tract A

TRACT A, CITY OF AUBURN BOUNDARY LINE ADJUSTMENT NO. BLA14-0006, RECORDED JUNE 1, 2016 UNDER RECORDING NUMBER 20160601900006, IN VOLUME 344 OF PLATS, PAGES 56 AND 57, IN KING COUNTY, WASHINGTON.

TOGETHER WITH EASEMENT RIGHTS FOR ROAD PURPOSES OVER A 10 FOOT ROAD, AS RESERVED IN THAT CERTAIN WARRANTY DEED RECORDED DECEMBER 17, 1920 UNDER RECORDING NUMBER 1477534 IN VOLUME 1130 OF DEEDS, PAGE 199, IN KING COUNTY, WASHINGTON, AND AS RESERVED IN THAT CERTAIN QUIT CLAIM DEED RECORDED JUNE 18, 1958 UNDER RECORDING NUMBER 4912725, IN VOLUME 3797 OF DEEDS, PAGE 455, IN KING COUNTY, WASHINGTON.

Exhibit 3
Payback Agreement 2019-01

Facilities Constructed

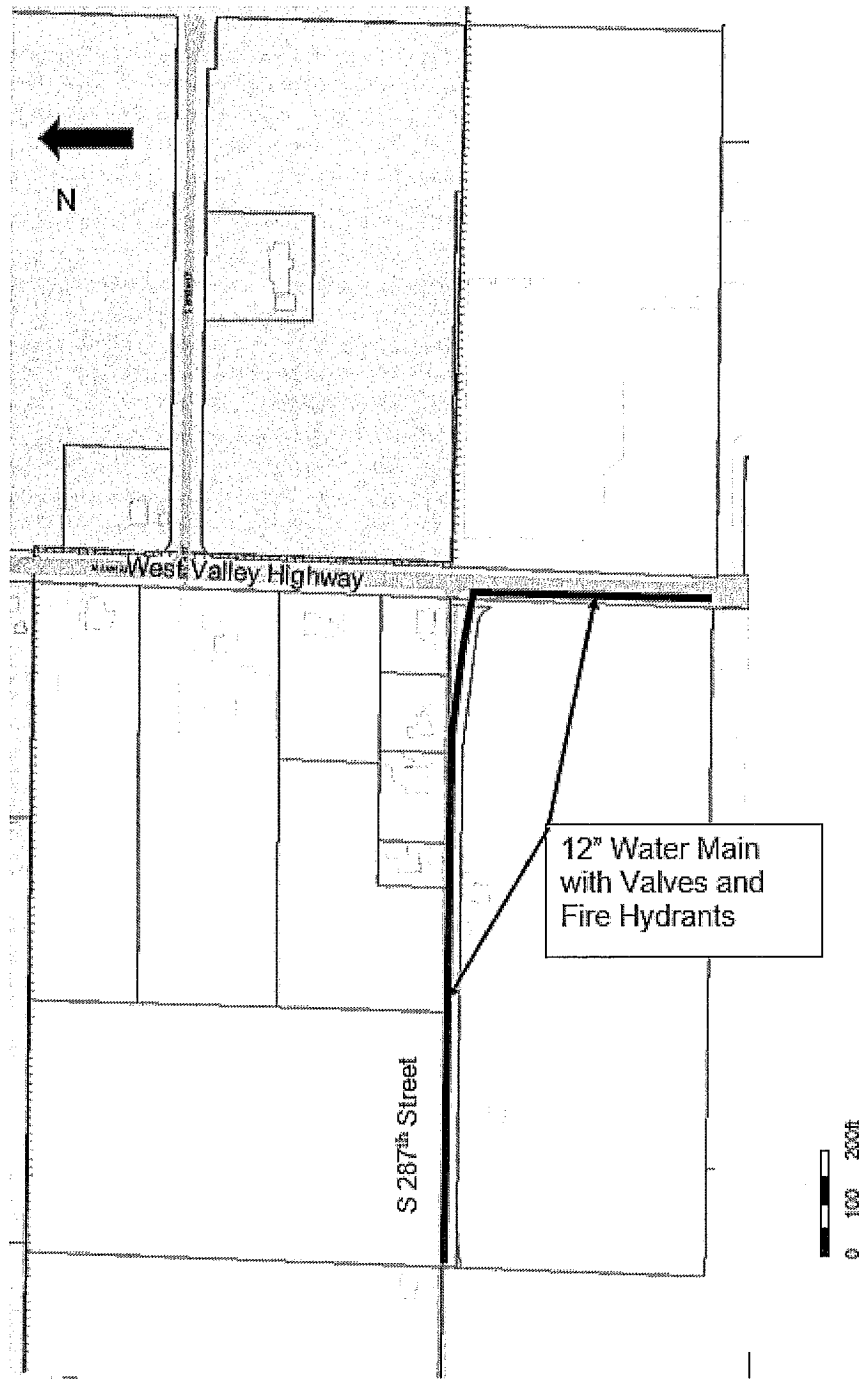


Exhibit 4
Payback Agreement 2019-01

Legal Description of Assessment Reimbursement Area and Benefitting Properties

(TAX PARCEL #352204-9022)

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., RECORDS OF KING COUNTY, WASHINGTON; THENCE ALONG THE SECTION LINE SOUTH 88°29'26" WEST 30 FEET; THENCE NORTH PARALLEL TO THE EAST LINE OF SAID SECTION, 516.18 FEET; THENCE SOUTH 88°29'26" WEST PARALLEL TO THE SOUTH LINE OF SAID SECTION 35 A DISTANCE OF 1291.29 FEET TO THE TRUE PLACE OF BEGINNING; THENCE NORTH PARALLEL TO THE EAST LINE OF SAID SECTION, 812.44 FEET TO THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 35, AS THE SAME IS NOW BOUNDED AND FENCED ON THE GROUND; THENCE NORTH 87°54'40" EAST ALONG THE SAID NORTH LINE

485.12 FEET; THENCE SOUTH 00°28'40" EAST 817.24 FEET; THENCE SOUTH 88°29'26" WEST 491.80 FEET TO THE TRUE POINT OF BEGINNING.

(TAX PARCEL #352204-9067)

THE NORTH 135 FEET OF THE SOUTH 651.18 FEET OF THE EAST 180 FEET OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON; EXCEPT THE EAST 30 FEET FOR ROAD; AND EXCEPT COUNTY ROAD.

(TAX PARCEL #352204-9028)

A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M. DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SUBDIVISION;

THENCE SOUTH 88°29'26" WEST ALONG THE SOUTHERLY LINE OF SAID SUBDIVISION 30.00 FEET;

THENCE NORTHERLY PARALLEL WITH EASTERLY LINE OF SAID SECTION A DISTANCE OF 516.18 FEET;

(continued next page)

Exhibit 4 (continued)
Payback Agreement 2019-01

THENCE SOUTH 88°29'26" WEST 150 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING 88°29'26" WEST 150 FEET;

THENCE NORTHERLY PARALLEL WITH EASTERLY LINE OF SAID SECTION A DISTANCE OF 135 FEET;

THENCE NORTH 88°29'26" EAST 150.00 FEET;

THENCE SOUTHERLY 135.00 FEET TO THE TRUE POINT OF BEGINNING.

(TAX PARCEL #352204-9046)

LOT 35-22-04 OF BLOCK 9046, SEC. 35, TOWNSHIP 22, RANGE 04; BEING THE NORTH 135 FT. OF THE SOUTH 651.18 FT. OF THE WEST 174 FT. OF THE EAST 504 FT., SUBJECT TO THE RIGHT OF WAY; RECORDS OF KING COUNTY, WASHINGTON.

(TAX PARCEL #352204-9082)

BEGINNING 651.18 FEET NORTH OF AND SOUTH 88°29'26" WEST FROM THE SOUTHEAST CORNER OF SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 EAST;

THENCE CONTINUING WEST 90 FEET;

THENCE SOUTH 135 FEET;

THENCE NORTH 88°29'26" EAST 90 FEET;

THENCE NORTH TO THE POINT OF BEGINNING.

(TAX PARCEL #352204-9047)

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON;

THENCE SOUTH 88°29' 26" WEST ALONG THE SOUTH LINE THEREOF 30 FEET;

THENCE NORTH PARALLEL TO THE EAST LINE OF SAID SECTION, 651.18 FEET;

(continued next page)

Exhibit 4 (continued)
Payback Agreement 2019-01

THENCE SOUTH 88°29'26" WEST 474 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID SUBDIVISION 135 FEET;

THENCE SOUTH 88°29'26" WEST 325.49 FEET;

THENCE NORTH 0°28'40" WEST 329.65 FEET; THENCE NORTH 87°54'40" EAST 478.02 FEET MORE OR LESS TO A POINT FROM WHICH THE EAST LINE OF SAID SUBDIVISION BEARS NORTH 87°54'40" EAST 354.51 FEET;

THENCE SOUTH 0°28'40" EAST 199.59 FEET MORE OR LESS TO A POINT FROM WHICH THE TRUE POINT OF BEGINNING BEARS SOUTH 88°29'26" WEST;

THENCE SOUTH 88°29'26" WEST 149.50 FEET MORE OR LESS TO THE TRUE POINT OF BEGINNING;

EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON,

THENCE SOUTH 88°29'26" WEST ALONG THE SOUTH LINE THEREOF 30 FEET;

THENCE NORTH PARALLEL TO THE EAST LINE OF SAID SECTION 651.18 FEET;

THENCE SOUTH 88°29'26" WEST 474 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID SUBDIVISION 135 FEET;

THENCE SOUTH 88°29'26" WEST 90 FEET;

THENCE NORTH 0°28'40" EAST 135 FEET;

THENCE NORTH 88°29'26" EAST 90 FEET TO THE TRUE POINT OF BEGINNING.

(continued next page)

Exhibit 4 (continued)
Payback Agreement 2019-01

(TAX PARCEL #362204-9013)

The south half of the following described tract:

BEGINNING AT A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, NORTH 89°05' WEST 217.17 FEET FROM THE SOUTHWEST CORNER OF TRACT 2 OF WHITE RIVER VALLEY HOME TRACTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 13 OF PLATS, PAGE 17, IN KING COUNTY, WASHINGTON;

THENCE NORTH 2°00' EAST ALONG A LINE WHICH IS PARALLEL WITH THE WEST LINE OF SAID TRACT 2 A DISTANCE OF 1,002.90 FEET, MORE OR LESS, TO THE SOUTH LINE OF A 60 FOOT COUNTY ROAD;

THENCE NORTH 89°05, WEST ALONG THE SOUTH LINE OF SAID COUNTY ROAD, 1,072.69 FEET,

MORE OR LESS, TO THE EAST LINE OF STATE ROAD NO. 69;

THENCE SOUTHERLY ALONG THE SAID EAST LINE TO THE SOUTH LINE OF THE SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER;

THENCE EAST ALONG SAID SOUTH LINE TO THE TRUE POINT OF BEGINNING;

EXCEPT PORTION CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO.718254 FOR HIGHWAY PURPOSES.

Exhibit 5
Payback Agreement 2019-01

Assessment Reimbursement Area

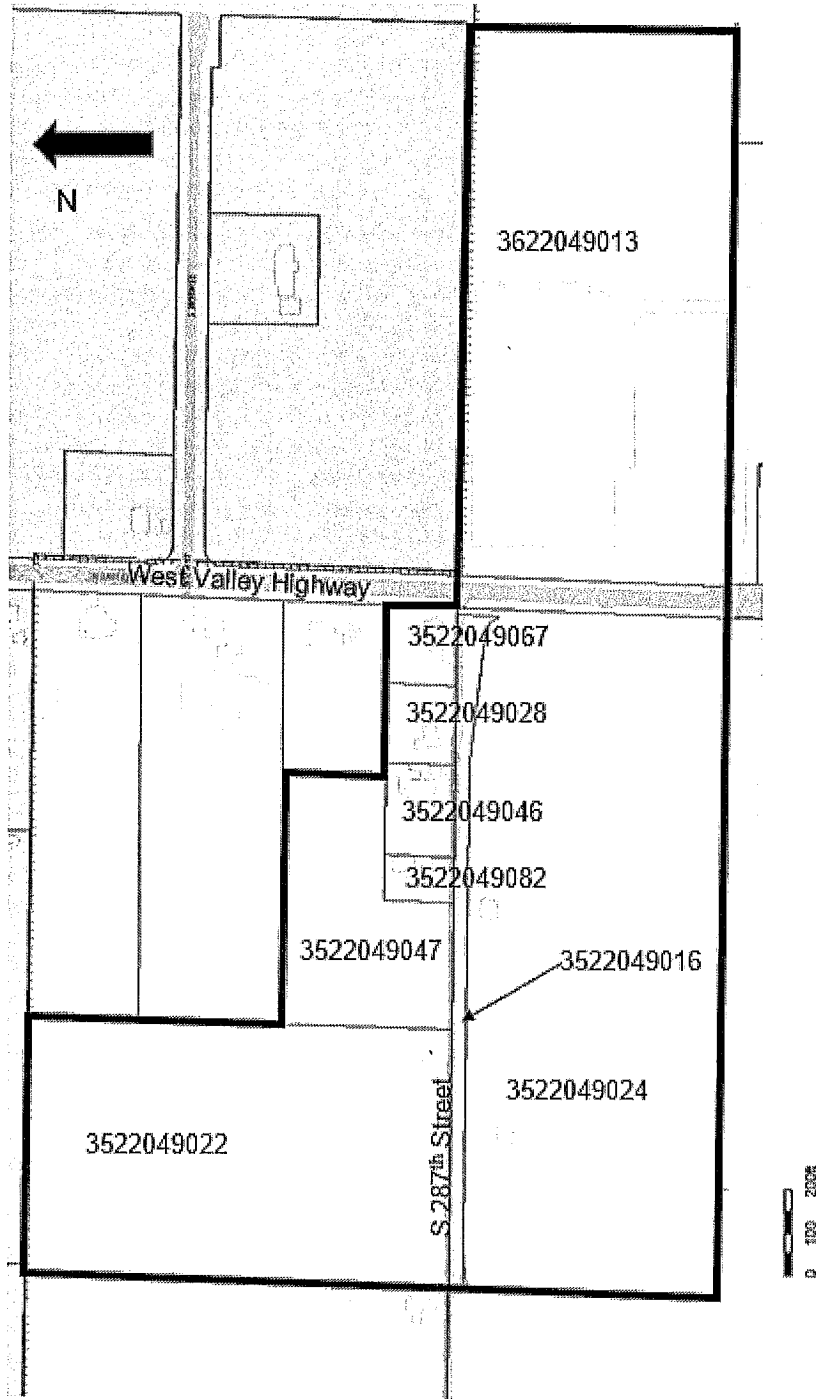


Exhibit 6
Payback Agreement 2019-01

Benefitting Properties Reimbursement Fees

Parcel Number	Street Address	Parcel Frontage (LF)	Proposed Assessment (%)	Assessment Amount⁽¹⁾	Amount Owning
352204-9022	6430 S 287th Street	492	13.6%	\$25,710.25	\$25,710.25
352204-9016	Tract A (vacant)	1,278	35.4%	\$66,783.93	\$0.00 ⁽²⁾
352204-9024	6603 S 287th Street	530	14.7%	\$27,696.00	\$0.00 ⁽²⁾
352204-9047	6610 S 287th Street	235	6.5%	\$12,280.30	\$12,280.30
352204-9082	6610 S 287th Street	90	2.5%	\$4,703.09	\$4,703.09
352204-9046	6638 S 287th Street	174	4.8%	\$9,092.65	\$9,092.65
352204-9028	6710 S 287th Street	150	4.1%	\$7,838.49	\$7,838.49
352204-9067	28543 W Valley Highway S	150	4.1%	\$7,838.49	\$7,838.49
362204-9013	Vacant land	516	14.3%	\$26,964.40	\$26,964.40
		3,615	100.0%	\$188,907.60	

⁽¹⁾ Based on total project cost of \$188,907.60 proportioned by property frontage.

⁽²⁾ Developer contribution made at time of construction.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6724 (Gaub)

Date:

July 3, 2019

Department:

Public Works

Attachments:

[Ordinance No. 6724](#)

[Exhibit A](#)

[Exhibit B](#)

[Exhibit C](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to introduce and adopt Ordinance No. 6725, Relating to Abandoned Utility Services and Amending ACC 13.06.140, Creating ACC 13.20.235, and Creating ACC 13.48.295.

Background Summary:

This ordinance is to create consistency for all three utilities (water, sewer, and storm) when a property discontinues utility service for a period of 5 years or more.

When the building on a property is demolished, the water and sewer service to the building is disconnected and billing for water and sewer ceases. If all of the impervious surfaces are removed, billing for stormwater also ceases. Current Water Code ACC 13.06.140 includes a provision that allows the City to charge all fees and charges to reinstate water service if service has been discontinued for 5 years or more. The rationale is that the customer has not contributed to the installation, operation, maintenance, repair, and replacement of the water system during that 5-year or longer period, and therefore should be treated the same as a new customer.

Staff recommends that City Code be amended to add this provision for sewer and storm, and to make the language consistent and clear for all 3 utilities. This provision is consistent with King County Wastewater Treatment Division's policy, which assesses a new Capacity Charge if sewer service is discontinued for 5 years or more.

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

Gaub

Meeting Date: July 15, 2019

Item Number:

ORD.C

ORDINANCE NO. 6724

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO ABANDONED UTILITY SERVICES, CLARIFYING THE PROCESS FOR REESTABLISHING UTILITY SERVICES, AMENDING SECTION 13.06.140, CREATING A NEW SECTION 13.20.235, AND CREATING A NEW SECTION 13.48.295 TO THE AUBURN CITY CODE

WHEREAS, utility connection fees are collected by the City to provide public utility services in a coordinated and efficient manner; and

WHEREAS, properties that have discontinued water, sewer, and/or storm water service for a period of five years or longer have not contributed to the installation, operation, maintenance, repair, and replacement of the public utility systems; and

WHEREAS, in consideration of the installation, operation, maintenance, repair, and replacement of the public utility systems, reestablishment of utility connections after a period of five or more years will require new application and payment before the City reconnects the utility service.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

Section 1. Amending City Code Section. Section 13.06.140 to the Auburn City Code is amended to read as shown in Exhibit A.

Section 2. New Section Added to City Code. A new section 13.20.235 to the Auburn City Code is created to read as shown in Exhibit B.

Section 1. New Section Added to City Code. A new section 13.48.295 to the Auburn City Code is created to read as shown in Exhibit C.

Section 2. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 3. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 4. Effective date. This Ordinance will take effect and be in force five days from and after its passage, approval, and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

Steven L. Gross, City Attorney

Published: _____

EXHIBIT A

13.06.140 Abandoned services.

A. A water service is considered to be disconnected when the City has removed the meter and service billing is stopped. Water service is abandoned when it has been disconnected for a period of five or more years.

B. When new building(s) are to be erected on the site of existing building(s) and it is desired to increase the size or change the location of the existing service connection, or ~~where to install a new~~ service connection ~~for the new building(s), the owner will apply to disconnect the existing service connection and to install the new service connection(s), and will pay all fees and charges for a new service connection as provided in the City's Fee Schedule. In determining System Development Charges owed for the new, upsized, or relocated service connection, the City may credit the owner for the ERUs associated with the existing service connection that is being replaced except for abandoned water services for which no credit will be applied to any premises is abandoned or no longer used for a period of five years, the city may cut out or remove such service connection, after which, should a service connection be required to the premises, a new service shall be placed only upon the owner's making an application and paying for a new connection in the regular manner, regardless if the service was disconnected or not.~~

C. To reestablish service to a property or building with an abandoned water service, the property or building owner will apply and pay for a new water service connection as defined in the Fee Schedule, with no credit for any previous fees and charges paid.

D. When service connection of any premises on an unpaved street does not exceed one inch in size and the same does not come from the main in front of the premises, the ~~City~~city shall, when a main is laid by the City in front of the premises, after notifying the owner or tenant thereof, transfer the service connection to the new main without charge for such portion as is on public property, and at the same time cut out the old service connection.

E. When a new main is laid in any street, owners of premises on the street, or within one-half block on side streets, who are being supplied with city water from a private main or a connection to a private service shall make application for service and shall connect up with a separate service connection to the main in front of premises. (Ord. 5849 § 1, 2004; Ord. 5216 § 1, 1999; Ord. 4878 § 3, 1996.)

EXHIBIT B

13.20.235 Abandoned sewer services.

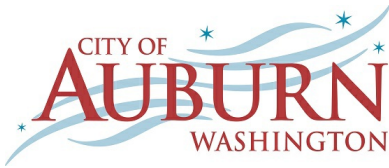
A. A sewer service is considered disconnected when the water meter has been removed by the City, the side sewer is capped, and service billing stopped. A sewer service is abandoned when it has been disconnected for a period of five or more years.

B. To reestablish service to a property or building with an abandoned sewer service, the property or building owner will apply and pay for a new sewer service connection as defined in the Fee Schedule, with no credit for any previous fees and charges paid.

EXHIBIT C

13.48.295 Abandoned storm services.

For a property that is subject to storm water billing under ACC 13.48.100, the storm water billing will stop on the City's acceptance of the completed demolition permit, if all hard surfaces have been removed. If the property has not paid for the cost of services provided by the storm water utility for a period of five years or more, on application for development or construction of hard surfaces on the property, the owner of the property will be required to apply and pay for a new storm water service connection as defined in the Fee Schedule, as though the property had never received storm service and with no credit for any previous fees and charges paid.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6725 (Gaub)

Date:

July 3, 2019

Department:

Public Works

Attachments:

[Ordinance No. 6725](#)

[Exhibit A](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to introduce and adopt Ordinance No. 6725, Amending ACC 13.06.010 Water Code to Define Equivalent Residential Unit (ERU).

Background Summary:

Ordinance No. 6725 clarifies the water code for the purposes of assessing Water System Development Charges (SDCs) by defining the term Equivalent Residential Unit (ERU) based on meter size. One ERU is the average amount of water used by a single family customer using a ¾-inch or 1-inch meter. Other customer classes with larger water meters represent multiples of 1 ERU. Water SDCs are computed based on the number of ERUs.

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

Gaub

Meeting Date: July 15, 2019

Item Number:

ORD.D

ORDINANCE NO. 6725

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO WATER UTILITY, DEFINING EQUIVALENT RESIDENTIAL UNIT, AND AMENDING SECTION 13.06.010 OF THE AUBURN CITY CODE

WHEREAS, single family homes are the most common water customer within the City and have relatively similar water use patterns and meter sizes, which supports the use of a defined equivalent residential unit approach for determining the amount of water demand; and

WHEREAS, the City Engineer determined a need to define the equivalent residential unit within the water utility chapter of the Auburn City Code to quantify the water demands of a customer based on the size of water meter serving that customer, when compared to the typical amount of water for a single-family residential customer.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

Section 1. Amendment to City Code. Section 13.06.010 of the Auburn City Code is amended to read as shown in Exhibit A.

Section 2. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 3. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 4. **Effective date.** This Ordinance will take effect and be in force five days from and after its passage, approval, and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

Steven L. Gross, City Attorney

Published: _____

EXHIBIT A

13.06.010 Definitions

As used in this chapter:

A. "Base rate" means the monthly charge for service from the water utility to recover costs incurred by the water utility such as administrative, meter reading, billing, collection, and fire standby service. Base rate does not include charges for water consumption quantity as registered through the required meter.

B. "Charge in lieu of assessment" means a charge made by the city on property which has not previously participated in the cost of a public water main directly serving the property.

C. "City of Auburn design and construction standards" means the requirements adopted under Chapter 12.04 ACC for storm drainage, sanitary sewer, street, and water design and construction.

D. "City services" means a customer class of water services serving the city of Auburn buildings and facilities.

E. "Commercial services" means a customer class of water services serving commercial retail, office facilities, and certain manufacturing/industrial businesses not meeting the requirements of the manufacturing/industrial service class of customers.

F. "Customer class" means groups of water service customers who have common characteristics for water use and are grouped for purposes of service and charges.

G. "Deduct Meter." Refer to ACC 13.20.010 for definition.

H. "DOH" is the abbreviation for the Washington State Department of Health, which is the state agency that has been granted authority through formal agreement with the Environmental Protection Agency to enforce the requirements of the federal Safe Drinking Water Act within the state of Washington.

I. "Equivalent Residential Unit (ERU)-" ~~Refer to ACC 13.41.030 for definition~~ means a unit representing the average quantity of water used by one average, full-time, single-family residence per day. An ERU is quantified by the size of water meter as listed below.

<u>Meter size, inches</u>	<u>Number of ERUs</u>
<u>3/4</u>	<u>1.0</u>
<u>1</u>	<u>1.0</u>
<u>1-1/2</u>	<u>3.33</u>
<u>2</u>	<u>5.33</u>

<u>3</u>	<u>10.67</u>
<u>4</u>	<u>16.67</u>
<u>6</u>	<u>33.33</u>
<u>8</u>	<u>53.33</u>
<u>10</u>	<u>76.67</u>

J. "Firm customer" refers to Auburn's retail customers and to those wholesale customers to whom Auburn is obligated, by written agreement, to provide a continuous, uninterrupted supply of water up to a specified amount.

K. "Interruptible customer" refers to those wholesale customers to whom Auburn, by written agreement, will provide a supply of water upon request up to a specified amount, subject to the availability of Auburn's water supply to provide such supply as reasonably determined by Auburn.

L. "Irrigation meter" means an approved city water meter connected to a public water service to determine the amount of water being used for landscape watering.

M. "Irrigation services" means a customer class of water services for the exclusive purpose of outdoor irrigation systems.

N. "Manufacturing/industrial services" means a customer class of water services to businesses identified by the city as being engaged in the manufacture of products, materials, equipment, machinery and supplies with a meter size of two inches or larger and a monthly annual average water consumption equal to or greater than 30,000 cubic feet.

O. "Multifamily residential services" means a customer class of water services to triplexes, apartment buildings, condominiums, mobile or manufactured home parks, and trailer courts.

P. "Owner/operator" means the owner and/or the person or persons owning or operating the premises served by a water service connection.

Q. "Premises" means a private home, building, apartment house, condominium, trailer court, mobile or manufactured home park, a group of adjacent buildings or property utilized under one owner/operator with respect to use of water and responsibility for payment therefor.

R. "Purity test" or "coliform/purity test" means collection and analysis of a water sample for presence of coliform bacteria.

S. "Quantity charge" means charges for the water quantity used by a water utility customer during a billing period as recorded by a water meter to recover costs of the water utility.

T. "School services" means a customer class of water services to public and private schools and colleges.

U. "Single-family residential services" means water services to individual single-family residences or to duplex units with one water meter or individual meters for each residential unit.

V. "UPC" means the Uniform Plumbing Code, including amendments, as adopted by the city.

W. "Utility" means the city of Auburn water utility or water division.

X. "Water service" means any connection to the city water system and shall be further defined by customer class.

Y. "Wholesale services" means water service to other municipal water utilities or public water districts. (Ord. 6690 § 1, 2018; Ord. 5849 § 1, 2004; Ord. 5216 § 1, 1999; Ord. 4878 § 3, 1996.)



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5427 (Martinson)

Department:

Human Resources

Attachments:

[Resolution 5427](#)

[Equity and Implicit Bias Program Contract](#)

Date:

July 9, 2019

Budget Impact:

Current Budget: \$0

Proposed

Revision:

\$99,000.00 for

2019; \$180,000.00

for 2020; and

\$131,000.00 for

2021

Revised Budget:

\$99,000.00 for

2019; \$180,000.00

for 2020; and

\$131,000.00 for

2021

Administrative Recommendation:

City Council adopt Resolution No 5427

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

Martinson

Meeting Date: July 15, 2019

Item Number:

RES.A

RESOLUTION NO. 5427

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AND ADMINISTER AN AGREEMENT BETWEEN THE CITY OF AUBURN AND RACING TO EQUITY CONSULTING GROUP FOR RACIAL EQUITY TRAINING AND POLICY DEVELOPMENT

WHEREAS, the City has identified an interest in racial equity training to provide professional development opportunities and racial equity policy development; and

WHEREAS, Racing to Equity Consulting Group is qualified to provide those services in a good and professional manner at a cost that is acceptable to the City.

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

Section 1. The Mayor is authorized to execute and administer an Agreement between the City and Racing to Equity Consulting Group which will be in substantial conformity with the Agreement attached as Exhibit A.

Section 2. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 3. This Resolution will take effect and be in full force on passage and signatures.

Dated and Signed this _____ day of _____, 2019.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Steven L. Gross, City Attorney

CITY OF AUBURN AGREEMENT FOR SERVICES

THIS AGREEMENT made and entered into on this ____ day of _____, 2019, by and between the **City of Auburn**, a municipal corporation of the State of Washington, (the “City”) and **Racing to Equity Consulting Group**, (the “Consultant”).

RECITALS:

1. The City is in need of specialized and qualified racial equity training to provide professional development opportunities and racial equity-to-policy development.
2. The City wants to hire the Consultant to provide these services in connection with the City’s work.
3. The Consultant is qualified and able to provide services in connection with the City’s needs for this work, and is willing and agreeable to provide the services on the terms and conditions in this Agreement.

AGREEMENT:

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. Scope of Services

The Consultant agrees to perform in a good and professional manner the tasks described in Exhibit “A.” The Consultant shall perform the services as an independent contractor and shall not be deemed, by virtue of this Agreement, to have entered into any partnership, joint venture, employment, or other relationship with the City.

2. Additional Services

If additional services with respect to related work are required beyond those specified in the Scope of Work, and not included in the compensation listed in this Agreement, the parties will amend this Agreement before the Consultant performs the additional services.

3. Consultant’s Representations

The Consultant represents and warrants that it has all necessary licenses and certifications to perform the services provided for in this Agreement, and is qualified to perform those services.

4. Acceptable Standards

The Consultant shall be responsible to provide, in connection with the services contemplated in this Agreement, work products and services of a quality and professional standard that meets generally recognized industry standards for similar work products and services.

5. Compensation

As compensation for the Consultant's performance of the services provided for in this Agreement, the City shall pay the Consultant the fees and costs specified on Exhibit "B." The Consultant shall submit to the City an invoice or statement of time spent on tasks included in the scope of work. The City, upon acceptance of the invoice or statement, shall process the invoice or statement in the next billing/claim cycle following receipt of the invoice or statement, and shall remit payment to the Consultant, subject to any conditions or provisions in this Agreement or Amendment. The not-to-exceed amounts for this agreement are \$99,000.00 for 2019; \$180,000.00 for 2020; and \$131,000.00 for 2021.

6. Time for Performance and Term of Agreement

The Consultant shall not begin any work under this Agreement until authorized in writing by the City. The Consultant shall perform the services in accordance with the direction and scheduling provided on Exhibit "A" unless otherwise agreed to in writing by the parties. All work under this Agreement shall be completed by no later than December 31, 2021, and in accordance with the deadlines set forth in the Scope of Services.

7. Ownership and Use of Documents

All documents, reports, memoranda, diagrams, sketches, plans, surveys, design calculations, working drawings and any other materials created or otherwise prepared by the Consultant as part of their performance under this Agreement will be owned by and become the property of the City, and may be used by the City for any purpose beneficial to the City.

8. Records Inspection and Audit

All compensation payments shall be subject to the adjustments for any amounts found upon audit or otherwise to have been improperly invoiced, and all records and books of accounts pertaining to any work performed under this Agreement shall be subject to inspection and audit by the City for a period of up to three (3) years from the final payment for work performed under this Agreement.

9. Continuation of Performance

In the event that any dispute or conflict arises between the parties while this Contract is in effect, the Consultant agrees that, notwithstanding such dispute or conflict, the Consultant shall continue to make a good faith effort to cooperate and continue work toward successful completion of assigned duties and responsibilities. Nothing in this section is intended to restrict or otherwise limit the Consultant's rights of termination set forth elsewhere in this Agreement.

10. Notices

Any written notices required by the terms of this Agreement shall be served on or mailed to the following addresses:

City of Auburn

Human Resources Manager
25 West Main Street
Auburn, WA 98001-4998
Phone: 253-931-3040
Fax: 253-288-4305
E-mail: humanresources@auburnwa.gov

Racing to Equity

Chief Equity Officer
10041 California Ave SW
Seattle, WA 98146-1071
Phone: 206-930-6436
Email: bernardo@r2esj.org

11. Notices

All notices or communications permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or deposited in the United States mail, postage prepaid, for mailing by certified mail, return receipt requested, and addressed, if to a party of this Agreement, to the address for the party set forth above.

Either party may change his, her or its address by giving notice in writing to the other party.

12. Insurance

The Consultant will procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work by the Consultant, or the Consultant's agents, representatives, employees, or subcontractors.

The Consultant will obtain insurance of the types described below:

A. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be as least as broad as Insurance Services Office (ISO) form CA 00 01. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

B. Commercial General Liability insurance will be at least as broad as ISO occurrence form CG 00 01 and will cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City will be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26. Commercial General Liability insurance will be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

C. Professional Liability insurance appropriate to the Consultant's profession. Professional Liability insurance will be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

D. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

The Consultant's insurance coverage will be primary insurance. Any insurance, self-insurance, or insurance pool coverage maintained by the City will be excess of the Consultant's insurance and will not contribute to it.

The Consultant will provide the City and all Additional Insureds for this work with written notice of any policy cancellation within five business days of their receipt of such notice.

Insurance is to be placed with an authorized insurer in Washington State. The insurer must have a current A.M. Best rating of not less than A:VII.

Consultant will furnish the City with certificates of insurance and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work. The City reserves the right to require that complete, certified copies of all required insurance policies be submitted to the City at any time. The City will pay no progress payments until the Consultant has fully complied with this section.

If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

13. Indemnification/Hold Harmless

The Consultant will defend, indemnify and hold the City and its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

If a court of competent jurisdiction determines that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

14. Assignment

Neither party to this Agreement shall assign any right or obligation hereunder in whole or in part, without the prior written consent of the other party hereto. No assignment or transfer of any interest under this Agreement shall be deemed to release the assignor from any liability or obligation under this Agreement, or to cause any such liability or obligation to be reduced to a secondary liability or obligation.

15. Nondiscrimination

The Consultant may not discriminate regarding any services or activities to which this Agreement may apply directly or through contractual, hiring, or other arrangements on the grounds of race,

color, creed, religion, national origin, sex, age, or where there is the presence of any sensory, mental or physical handicap.

16. Amendment, Modification or Waiver

No amendment, modification, or waiver of any condition, provision, or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or such party's or parties' duly authorized representative(s) and specifying with particularity the nature and extent of such amendment, modification, or waiver. Any waiver by any party of any default of the other party shall not affect or impair any right arising from any subsequent default.

17. Non-Availability of Funds

Every obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of that obligation. If funds are not allocated and available for the continuance of this Agreement, then this Agreement may be terminated by either party at the end of the period for which funds are available. No liability will accrue to either party if this provision is exercised, and the City will not be obligated or liable for any future payments or damages as a result of termination under this Section.

18. Termination for Cause

Either party may terminate this Agreement at any time while the Agreement is in effect upon thirty (30) days' prior written notice to the other party, if such other party breaches any material term or condition of this Agreement and fails to cure such breach within the thirty (30) day cure period. In the event of termination, the City shall only be obligated to pay Consultant for services actually rendered up to the date of termination.

19. Termination for Convenience

Notwithstanding anything in this Agreement to the contrary, this Agreement may be terminated by either party for convenience by delivery of a Notice of Termination with the effective date. In the event of termination pursuant to this Section 19, the City shall only be obligated to pay Consultant for services actually rendered up to the date of termination.

20. Parties in Interest

This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to and bind, the parties hereto and their respective successors and assigns, provided that this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the parties hereto and it does not create a contractual relationship with or exist for the benefit of any third party, including contractors, sub-contractors and their sureties.

21. Costs to Prevailing Party

In the event of such litigation or other legal action, to enforce any rights, responsibilities or obligations under this Agreement, the prevailing parties shall be entitled to receive its reasonable costs and attorney's fees.

22. Applicable Law

This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Washington and venue for any action hereunder shall be

in King County, Washington; provided, however, that it is agreed and understood that any applicable statute of limitation shall commence no later than the substantial completion by the Consultant of the services.

23. Captions, Headings and Titles

All captions, headings or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or sections to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa and masculine, feminine and neuter expressions shall be interchangeable. Interpretation or construction of this Agreement shall not be affected by any determination as to who is the drafter of this Agreement, this Agreement having been drafted by mutual agreement of the parties.

24. Severable Provisions

Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

25. Entire Agreement

This Agreement contains the entire understanding of the parties hereto in respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

//

//

//

26. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective the day and year first set forth above.

CITY OF AUBURN

**RACING TO EQUITY
CONSULTING GROUP**

Nancy Backus, Mayor

Signature

Name: _____

Title: _____

Federal Tax ID No: _____

Approved as to form:

Steve Gross, City Attorney

Exhibit A
Scope of Services

Racing To Equity will provide the following services:

- Development of Auburn’s racial equity policies and equity tools
- Racial Equity Adaptive Leadership (REAL) Training for management teams, as well as employees
- Strategic racial equity executive advising for Mayor, Directors, and leadership teams
- Research, analysis, and metric development for Auburn’s program
- Development of City’s “Racial Equity Team” including training and strategic advising during the first two years of the team’s creation
- Facilitating Auburn’s “Racial Affinity Caucusing” groups
- Strategic advising for City leaders on community engagement measures
- “Train-the-trainer” program development to support internal sustainability of the equity and implicit bias program

Exhibit B
Payment for Work

As compensation for the Consultant's performance of the services provided for in this Agreement, the City shall pay the Consultant the following:

- Compensation for 2019 is not-to-exceed \$99,000.00
- Compensation for 2020 is not-to-exceed \$180,000.00
- Compensation for 2021 is not-to-exceed \$131,000.00

The Consultant will submit to the City an invoice or statement of time spent on tasks included in the scope of services within thirty (30) days, and the City upon acceptance of the invoice or statement will process the invoice or statement in the next billing/claim cycle following receipt of the invoice or statement, and will remit payment to the Consultant, subject to any conditions or provisions in this Agreement.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5443 (Hinman)

Date:

July 9, 2019

Department:

Administration

Attachments:

[RES 5443 PSATT Lease Amendment](#)

[Exhibit A Draft Amendment to PSATT Lease](#)

[Original Lease Authorized through Resolution](#)

[5324](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Adoption of Resolution No. 5443 authorizing the mayor to amend the lease agreement for office space and vehicular parking of the Auburn Game Farm Park Administration Building with the Puget Sound Auto Theft Taskforce (PSATT) to reflect the current biennial grant funding cycles allowable funds used for PSATTs operational headquarters.

Background Summary:

The Puget Sound Auto Theft Taskforce (PSATT) is a joint operation between the cities of Auburn, Tukwila, Federal Way, Bonney Lake, Lakewood, Tacoma, the Pierce County Sheriff's Office, the King County Prosecutor's Office, and the Washington State Patrol. Auburn's participation in the PSATT was authorized by the council through Resolution No. 5303 with authorization to lease the Auburn Game Farm Park Administration Building for operational headquarters and vehicular parking through Resolution No. 5324.

PSATT is funded through a biennial grant by the Washington State Patrol, with grant funds being administered by the City of Federal Way as the lead agency. The grant allows for a portion of those funds to be used for leasing of office space, utilities and vehicle parking. The draft amendment proposed is reflective of the maximum amount allowed under this biennial grant cycle for office space and utilities.

The allocation of grant funds for the purpose of rent and utilities was reduced by roughly 40% from the previous grant cycle. However, due to the local and regional benefit the task force provides, staff believe that it is still in the public's best interest to allow PSATT to remain as tenant of the administration building given the reduced funding allocation.

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

Hinman

Meeting Date: July 15, 2019

Item Number:

RES.B

RESOLUTION NO. 5 4 4 3

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF AUBURN AND THE CITY OF FEDERAL WAY RELATED TO THE PUGET SOUND AUTO THEFT TASK FORCE

WHEREAS, Federal Way is the Lead Administrative Agency for the Puget Sound Auto Theft Task-Force (PSATT), established through an Interlocal agreement to combat automobile theft in the Puget Sound area through coordinated law enforcement; and

WHEREAS, the City and Federal Way entered into an Agreement adopted by Auburn City Council under Resolution 5324 for the establishment of office and vehicle parking space ("Original Agreement"); and

WHEREAS, Federal Way has notified the City that the grant amount has been reduced for the next funding cycle, and has asked the City to reduce the cost of the facility; and

WHEREAS, staff believes it to be in the best interest of the public to amend the Agreement both to support the Task Force and to keep a regular presence at the facility.

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

Section 1. The Mayor is authorized to execute an amendment to the Original Agreement between the City and the City of Federal Way, which agreement will be in substantial conformity with the agreement attached as Exhibit A.

Section 2. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 3. This Resolution will take effect and be in full force on passage and signatures.

Dated and Signed this _____ day of _____, 2019.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Steven L. Gross, City Attorney

**AMENDMENT TO THE INTERLOCAL AGREEMENT
BETWEEN THE CITY OF AUBURN AND THE CITY OF FEDERAL WAY
ESTABLISHING AND MAINTAINING OFFICE SPACE
FOR THE PUGET SOUND AUTO THEFT TASK-FORCE**

THIS AMENDMENT TO THE INTERLOCAL AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2019, between the **CITY OF AUBURN**, a municipal corporation of the State of Washington (“Auburn”), and the **CITY OF FEDERAL WAY** (“Federal Way”) (“Parties”).

RECITALS:

A. Federal Way is the Lead Administrative Agency for the Puget Sound Auto Theft Task-Force (PSATT), established through an Interlocal agreement, adopted by Auburn City Council under Resolution 5303 between the cities of Federal Way, Auburn, Bonney lake, Lakewood, Tacoma, and Tukwila, the Washington State Patrol, the Pierce County Sheriff’s Office, the King County Prosecutor’s Office, and the Pierce County Prosecutor’s Office, to combat automobile theft in the Puget Sound area through coordinated law enforcement; and

B. As the Lead Administrative Agency, Federal Way is authorized to expend Washington Auto Theft Prevention Authority grant funds for eligible expenses associated with the operation of the PSATT, including the leasing of office space for the operations of the PSATT; and

C. On November 6th, 2017 the Parties entered into an Agreement adopted by Auburn City Council under Resolution 5324 for the establishment of office and vehicle parking space; and

WHEREAS, Federal Way has notified the City that the grant amount has been reduced for the next funding cycle, and has asked the City to reduce the cost of the facility; and

WHEREAS, The City of Auburn believes it to be in the best interest of the public to amend the Agreement.

AGREEMENT:

1. Section 3 is amended by adding a new section F to read as follows:

F. For the grant cycle beginning July 1, 2019 and ending June 30, 2021, Federal Way agrees to pay a total of Two Thousand, Nine Hundred Sixteen Dollars and Sixty-Six Cents (\$2,916.66) per month for base rent and utilities.

2. Section 8 is amended by adding a new section J. Execution in Counterpart to read as follows:

J. Execution in Counterpart. This Agreement may be executed in any number of counterparts, each of which deemed to be an original against any party whose signature appears thereon, and all of which together constitute one and the same instrument. This Agreement will become binding

when one or more counterparts, individually or taken together bear the signatures of the parties reflected hereon as the signatories.

ALL OTHER TERMS AND CONDITIONS AGREED TO IN THE AGREEMENT INCLUDING THE TERMINATION PROVISION IDENTIFIED IN PARAGRAPH TWO SHALL REMAIN THE SAME.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF AUBURN

CITY OF FEDERAL WAY

Nancy Backus, Auburn Mayor

Jim Ferrell, Federal Way Mayor

Attest:

Attest:

Shawn Campbell, MMC, City Clerk

Stephanie Courtney, Federal Way City Clerk

Approved as to form:

Approved as to form:

Steven L. Gross, Auburn City Attorney

J. Ryan Call, Federal Way City Attorney

RESOLUTION NO. 5324

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF AUBURN AND THE CITY OF FEDERAL WAY RELATING TO THE LEASING OF AUBURN PROPERTY FOR JOINT POLICE TASK-FORCE USE

WHEREAS, the City of Auburn, through the adoption of Resolution No. 5303, is a member of the Puget Sound Auto Theft Task-Force (PSATT); and

WHEREAS, the Washington State Patrol, Pierce County Sheriff's Office, King County Prosecutor's Office, the Cities of Bonney Lake, Lakewood, Tacoma, Tukwila, and Federal Way are also members of the PSATT; and

WHEREAS, the interlocal agreement approved by Resolution No. 5303 establishes the City of Federal Way as the lead administrative agency, responsible for establishing accounting procedures for the PSATT; and

WHEREAS, the PSATT is in need of commercial space for the purpose of conducting PSATT business; and

WHEREAS, the City of Auburn owns suitable space and is willing to lease said space for PSATT use; and

WHEREAS, Revised Code of Washington Chapter 39.34 authorizes the City of Auburn and City of Federal Way to enter into an agreement for joint action, including the leasing of space for PSATT use.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO RESOLVE as follows:


Section 1. The Mayor is hereby authorized to execute an Interlocal Agreement with the City of Federal Way for the purpose of leasing the Auburn Game Farm Park Administrative Building to the Puget Sound Auto Theft Taskforce, in substantial conformity with the agreement attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 3. This Resolution shall take effect and be in force upon passage and signatures thereon.

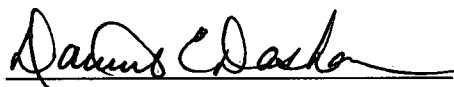
DATED and SIGNED this 6th day of November, 2017.

CITY OF AUBURN



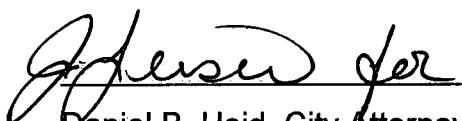
NANCY BACKUS, MAYOR

ATTEST:



Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

**CITY OF AUBURN – CITY OF FEDERAL WAY
INTERLOCAL AGREEMENT FOR
ESTABLISHING AND MAINTAINING OFFICE SPACE
FOR THE PUGET SOUND AUTO THEFT TASK-FORCE**

THIS INTERLOCAL AGREEMENT (Agreement) made and entered into, pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, on the 16th day of November, 2017, by and between the CITY OF AUBURN, a municipal corporation of the State of Washington (Auburn), and the CITY OF FEDERAL WAY, a municipal corporation of the State of Washington (Federal Way).

WHEREAS, Federal Way is the Lead Administrative Agency for the Puget Sound Auto Theft Task-Force (PSATT), established through an interlocal agreement between the cities of Federal Way, Auburn, Bonney lake, Lakewood, Tacoma, and Tukwila, the Washington State Patrol, the Pierce County Sheriff's Office, the King County Prosecutor's Office, and the Pierce County Prosecutor's Office, to combat automobile theft in the Puget Sound area through coordinated law enforcement; and

WHEREAS, as the Lead Administrative Agency, Federal Way is authorized to expend Washington Auto Theft Prevention Authority grant funds for eligible expenses associated with the operation of the PSATT, including the leasing of office space for the operations of the PSATT; and

WHEREAS, Auburn has unused office space in the administrative building at Auburn Game Farm Park, located in Auburn (the Premises), it is willing to lease to Federal Way for PSATT use at a discounted rate; and

WHEREAS, the PSATT is in need of office space for daily operations; and

WHEREAS, the parties wish to enter into an agreement for the leasing of the Premises for PSATT use and occupancy.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises herein, the parties hereto agree as follows:

1. PREMISES LEASED

- A. For and in consideration of the rent and faithful performance by Federal Way of the terms and conditions of this Agreement, Auburn does hereby lease to Federal Way, and Federal Way does hereby lease from Auburn, the Game Farm Park Administration Building and accompanying vehicle parking area located at 2840 Riverwalk Dr. SE, Auburn, WA 98002, (the Premises), depicted in Exhibit A attached hereto and incorporated herein by this reference. No other portion of Auburn's property, other than those areas depicted as the

“Administration Building” or “Vehicle Parking Area” in Exhibit A, are considered part of this Agreement. The parties further acknowledge and agree that Auburn reserves the right of immediate access through the Vehicle Parking Area at all times and without permission or consent of Federal Way for the right of storage and further use of the remaining portions of Auburn’s property.

- B. No building, structure, or improvements of any kind shall be erected, placed upon, operated or maintained on the Premises, nor shall any business or operation be conducted or carried on in violation of any ordinance, law, statute, by-law, order, or rule of any governmental agency having jurisdiction there over.

2. TERM

The term of this Agreement shall be for one (1) year, beginning on August 1, 2017 (the Commencement Date). Unless earlier terminated by either party, this Agreement shall automatically renew for one (1) year terms to coincide with the Washington Auto Theft Prevention Authority grant funding of the PSATT. In addition to any other termination provisions in this Agreement, either party may terminate this Agreement at any time, and for any reason, by providing thirty (30) days’ written notice to the other party.

3. RENT

- A. Federal Way agrees to pay Auburn a base rent equal to three-thousand dollars (\$3,000.00) per month, for the Premises.
- B. Federal Way further agrees to pay Auburn a flat rate for utilities, including but not limited to power, water, sewer, storm, garbage, security and janitorial services equal to two-thousand dollars (\$2,000.00) per month (utility charge). The utility charge shall be paid in quarterly installments during the term of this Agreement. In the event that the utility charge exceeds available state funding, Federal Way shall seek pro rata contribution from the participating PSATT agencies, pursuant to the vote of the PSATT Executive Board on October 5, 2017; the minutes of which are attached hereto as Exhibit B and incorporated herein by this reference.
- C. Base rent accrued between August 1, 2017, and October 31, 2017, shall be paid within thirty (30) days of the Commencement Date, and monthly thereafter.
- D. In the event this Agreement is terminated prior to the expiration of the term, Auburn shall refund to Federal Way a pro-rated portion of the base rent and utility charges paid, equivalent to the months remaining within the current term at the time this Agreement is terminated.
- E. The parties agree that this Agreement shall fulfill any invoicing requirements of the interlocal agreement establishing the PSATT.

4. MAINTENANCE

- A. Auburn shall be responsible for the sole cost and expense of all repairs and maintenance to the exterior of the Premises, including, but not limited to: landscaping, foundation, exterior walls, siding, exterior windows, exterior doors, roof, gutters and downspouts as well as all interior and exterior mechanical systems including: HVAC, electrical, plumbing and plumbing and electrical fixtures. Provided, however, that Auburn shall not be required to repair damage that results from the act of negligence by the members of PSATT beyond that required by the PSATT interlocal agreement liability and cost sharing provisions. If Auburn refuses or neglects to commence or complete repairs, Federal Way may, but shall not be required to, commence or complete the repairs and Auburn shall pay the costs thereof. Repairs made by Auburn due to the negligence of Federal Way shall be charged to Federal Way, and such charges shall include all direct and indirect costs.
- B. In the event that the Premises is damaged beyond use due to a fire, natural disaster, or act of god, this Agreement shall terminate upon ten (10) days' notice from Federal Way to Auburn that it intends to vacate the Premises.

5. INSURANCE COVERAGE, INDEMNIFICATION, AND HOLD HARMLESS

- A. Federal Way shall maintain insurance coverage, whether through the commercial insurance market, an insurance pool, self-insurance, or a combination thereof, adequate to meet the obligations of this Agreement, including the indemnifications contained herein and those in the interlocal agreement establishing the PSATT, and contractual liability coverage of applicable leases, licenses, permits, or agreements.
- B. To the extent provided for by the terms of the interlocal agreement establishing the PSATT, Federal Way shall defend, indemnify, and hold harmless Auburn, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Federal Ways' use of the Premises, or from the conduct of Federal Way's business, or from any activity, work or thing done, permitted, or suffered by Federal Way on or about the Premises, except only such injury or damage as shall have been occasioned by the sole gross negligence or willful misconduct of Auburn.
- C. Federal Way and Auburn hereby release and discharge each other from all claims, losses, and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the Premises or said building. This release shall apply only to the extent that such claim, loss, or liability is covered by insurance.

6. NOTICES

Any notice, consent, approval or other communication given by either party to the other relating to this Agreement shall be in writing, sent by both electronic mail and certified mail, return receipt

requested. Such notice may also be delivered by hand. If such notice is hand delivered or personally served, it shall be deemed effective immediately upon receipt. If sent by certified mail, return receipt requested, such notice shall be deemed given on the third business day following deposit in the United States mail, postage prepaid and properly addressed; if delivered by overnight courier, notice shall be deemed effective on the first business day following deposit with such courier; and if delivered by electronic communication, notice shall be deemed effective when sent.

The notice addresses of the parties are as follows:

To Auburn: City of Auburn
Attn: Josh Arndt
25 West Main St.
Auburn, WA 98001
Email: Jarndt@auburnwa.gov

To Federal Way: City of Federal Way
Attn: Andy Hwang
33325 8th Ave. S.
Federal Way, WA 98003
Email: andy.hwang@cityoffederalway.com

7. INSPECTION, ACCESS & POSTED NOTICES

Auburn and any of its agents shall at any time upon seventy-two (72) hours advance, written notice to PSATT, have the right enter upon and inspect the Premises provided; however, that (A) any Auburn personnel or agent shall be accompanied by a member of PSATT at all times, and (B) in the event Auburn determines, in its sole and absolute discretion, that an emergency situation exists on or adjacent to the Premises, no advance notice to Federal Way is required and Auburn may immediately enter upon and inspect the Premises. Auburn shall have the right to serve, or to post and to keep posted on the Premises, or on any part thereof, any notice permitted by law or by this Agreement, any other notice or notices that may at any time be required or permitted by law or by this Agreement. Auburn shall not be liable in any manner for any inconvenience, disturbance, loss of business, or other damages arising out of Auburn's entry on the Premises as provided in this Section except for such damage that is caused directly by, or through the gross negligence of, Auburn, its employees, agents, or representatives.

8. MISCELLANEOUS

- A. Choice of Law: This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington. Jurisdiction and venue for any action arising out of this Agreement shall be in King County, Washington.
- B. Captions & Headings: The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

- C. Relationship of the Parties: Unless otherwise specifically provided herein, no separate legal entity is created hereby, as each of the parties is contracting in its capacity as a municipal corporation of the State of Washington. The identity of the parties hereto is as set forth hereinabove. No provision of this Agreement shall relieve either party of its public agency obligations and/or responsibilities imposed by law.
- D. Severability: If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a final decision of any court having jurisdiction on the matter, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect, unless such court determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time either party shall have the right to terminate the Agreement.
- E. Integration: This Agreement constitutes the entire agreement between the parties as to the leasing of the Premises. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties. The parties acknowledge that this Agreement is executed pursuant to the interlocal agreement establishing the PSATT. In the event there is a conflict between this Agreement and the interlocal agreement establishing the PSATT, the interlocal agreement establishing the PSATT shall control.
- F. Interpretation: Interpretation or construction of this Agreement shall not be affected by any determination as to who is the drafter of this Agreement, this Agreement having been drafted by mutual agreement of the parties.
- G. Force Majeure: No party to this Agreement shall be held responsible for delay or default caused by terrorism, natural disasters, riots, acts of god and/or war that is beyond the reasonable control of the parties.
- H. Waiver: The failure of either party at any time to require performance by another party of any provisions of this Agreement will in no way affect the party's subsequent rights and obligations under that provision, and waiver by any party of the breach of any provision of this Agreement shall not be taken or held to be a waiver of any succeeding breach of such provision or as waiver of such provision itself.
- I. Signage – No fixed signage shall be permitted on the Premises whatsoever. If Federal Way wishes to utilize signage, Federal Way must first submit a written request to Auburn which specifically states what type of signage Federal Way wishes to utilize, the size and number of signs Federal Way is requesting to utilize and the location of where Federal Way's signage will go. Auburn reserves the right to approve, disapprove or modify Federal Way's request in its sole option and without recourse by Federal Way, which Auburn shall provide in writing within 21 days of receipt of Federal Way's request. Any and all signage approved

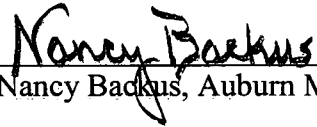
for use by Auburn shall be the sole and absolute cost of Federal Way, and consistent with the expenditures authorized by the interlocal agreement establishing the PSATT. All signage shall further be subject to and in accordance with the Auburn City Code, Chapter 18.56.

- J. Alarm Codes - Alarm code(s) will be provided for personnel access into the Premises. Alarm codes are subject to change as determined and in the sole discretion of Auburn. PSATT shall be notified prior to changing of the alarm codes. PSATT shall not provide any alarm codes to their customers or guests and PSATT shall immediately notify Auburn if the codes need to be changed to prevent access from a customer or employee to maintain security.
- K. No Brokers – Federal Way represents and warrants to Auburn that it has not engaged any broker, finder or other person who would be entitled to any commission or fees in respect of the negotiation, execution or delivery of this Agreement and shall indemnify and hold harmless Auburn against any loss, cost, liability or expense incurred by Auburn as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Federal Way.

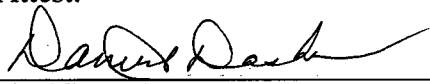
9. SIGNATURE

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

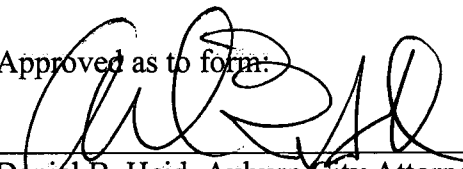
CITY OF AUBURN


Nancy Backus, Auburn Mayor

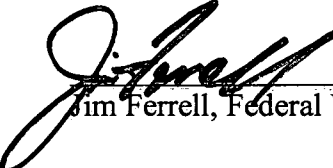
Attest:


Danielle Daskam, Auburn City Clerk

Approved as to form:


Daniel B. Heid, Auburn City Attorney


CITY OF FEDERAL WAY


Jim Ferrell, Federal Way Mayor

Attest:


Stephanie Courtney, Federal Way City Clerk

Approved as to form:

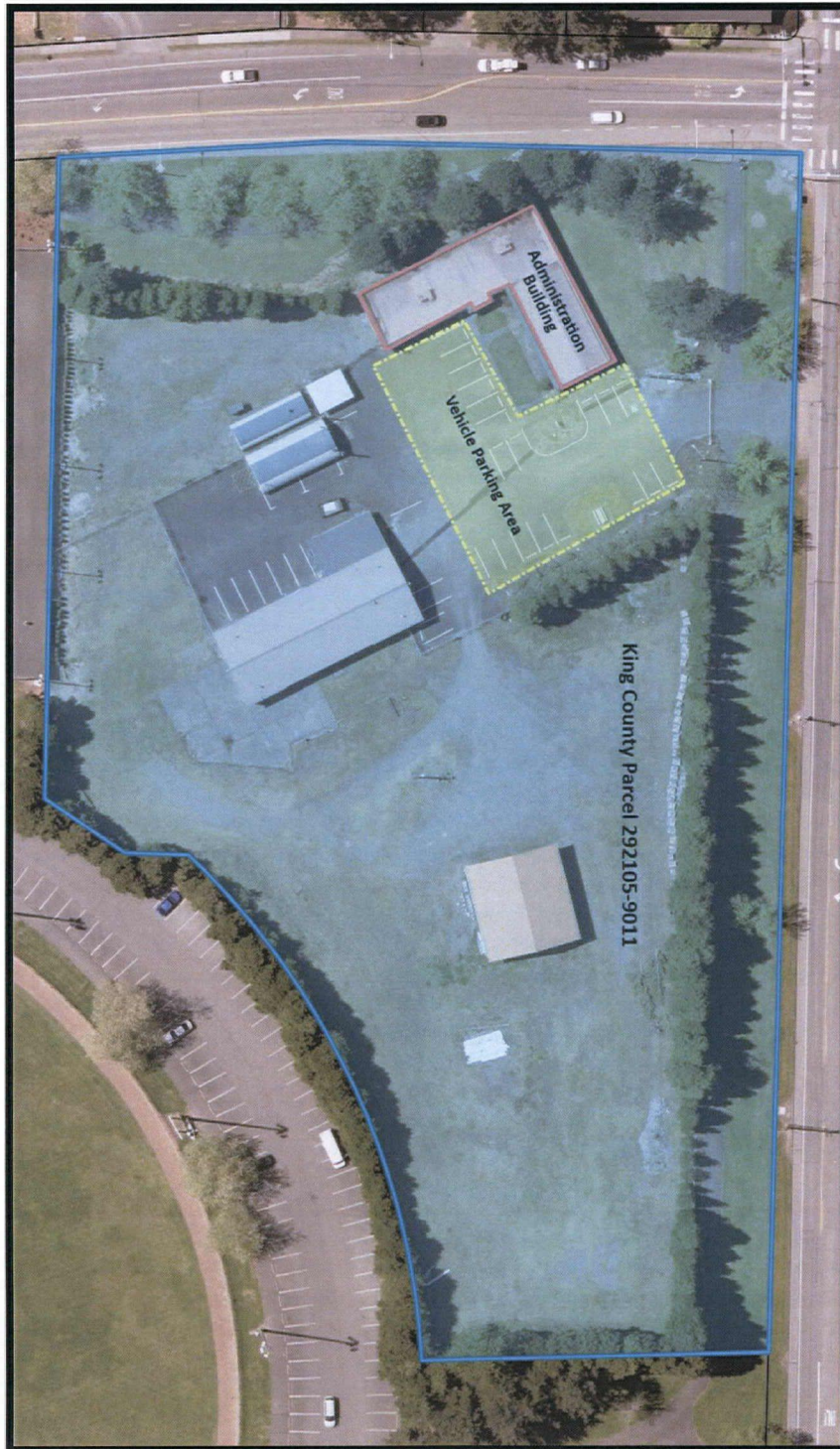

J. Ryan Call, Federal Way City Attorney

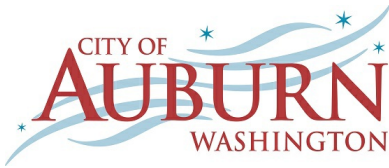
INTERLOCAL AGREEMENT

July 19, 2017

Page 6 of 7

Exhibit A





AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5444 (Gaub)

Date:

July 8, 2019

Department:

Public Works

Attachments:

[Resolution No. 5444](#)

[Exhibit A](#)

[Exhibit B](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council adopt Resolution No. 5444

Background Summary:

Resolution No. 5444 authorizes the Mayor to enter into agreements with the Washington Department of Commerce to receive Federal grant funds and the Washington State Department of Enterprise Services to manage the design, procurement and construction of the project.

This Project will install new energy efficient LED streetlights and controls on City owned street lights. The City has been awarded a \$500,000 Department of Commerce Energy Efficient grant to help fund this project. The City has enlisted the services of the Washington State Department of Enterprise Services energy group to provide management of the project. In addition the City anticipates applying for an energy saving rebate from Puget Sound Energy at completion of the project.

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

Gaub

Meeting Date: July 15, 2019

Item Number:

RES.C

RESOLUTION NO. 5444

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON RELATING TO THE CITYWIDE LED STREET LIGHTING AND CONTROLS IMPROVEMENTS; AUTHORIZING THE MAYOR TO ACCEPT AND EXPEND GRANT FUNDS AND EXECUTE AGREEMENTS RELATED TO THOSE FUNDS

WHEREAS, the City wishes to install new energy efficient LED streetlights and controls on its city-owned streetlights; and

WHEREAS, the City wishes to use the Washington State Department of Enterprise Services Energy Savings Performance Program and select an Energy Services Company (“ESCO”) to help manage, design, and construct the LED streetlights; and

WHEREAS, the City applied for and was granted a Federal Energy Efficiency Grant through the Washington State Department Commerce in the amount of \$500,000 to help finance new energy efficient LED streetlights and controls throughout the City; and

WHEREAS, the City has budgeted \$1,850,000 to match and fund the Project as documented in Auburn’s adopted Transportation Improvement program; and

WHEREAS, the City anticipates applying for a \$350,000 Energy Rebate from Puget Sound Energy to fund a portion of the project; and

WHEREAS, it is in the best interest of the City to accept the Department of Commerce grant funds, and use the Washington State Department of Enterprise Services Energy Program to manage, design, procure and construct the LED streetlights and controls improvements throughout the City.

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

Section 1. The Mayor is authorized to accept and expend federal grant funds and negotiate and execute Interagency agreements with the Washington State Department of Commerce and Washington State Department of Enterprise Services, in substantial conformity with the agreements attached (Exhibit A and Exhibit B). The Mayor is authorized to accept and expend additional grant funding from public or private sources as long as the City's matching requirements are within the approved budget.

Section 2. The Mayor is authorized to execute any necessary funding authorizations, supplemental amendments, and other contracts for all future phases of the Project, expending up to the total amount of the Project budget, and to implement administrative procedures necessary to carry out the directions of this legislation.

Section 3. This Resolution shall take effect and be in full force on passage and signature.

Dated and Signed this _____ day of _____, 2019.

CITY OF AUBURN

NANCY BACKUS
MAYOR

ATTEST:

Shawn Campbell, MMC
City Clerk

APPROVED AS TO FORM:

Steven L. Gross,
City Attorney



Department of Commerce

Capital Agreement with

<Local gov or recipient organization name here>

through

<Name of COMMERCE **program** issuing/administering contract here>

For

<List project title, if applicable, and/or describe the primary purpose for the funding or the intended outcome/deliverables in approx. 25 words or less>

Start date: <Month> <Day>, <Year>

THIS PAGE INTENTIONALLY LEFT BLANK

TABLE OF CONTENTS

Special Terms and Conditions	1
Face Sheet	1
1. Acknowledgement of Federal Funding	2
2. Contract Management	2
3. Compensation.....	2
4. Billing Procedures and Payment	2
5. Subcontractor Data Collection.....	3
6. Historical or Cultural Artifacts	3
7. Insurance	3
8. Use of Apprenticeship Program	4
9. Order of Precedence.....	4
General Terms and Conditions	5
1. Definitions	5
2. Administrative Cost Allocation.....	5
3. Allowable Costs	5
4. All Writings Contained Herein	5
5. Amendments.....	5
6. Americans with Disabilities Act (ADA)	5
7. Approval	5
8. Assignment.....	5
9. Attorney's Fees	6
10. Audit	6
11. Certification Regarding Debarment, Suspension or Ineligibility or Ineligibility and Voluntary Exclusion	7
12. Code Requirements	8
13. Confidentiality/Safeguarding of Information.....	8
14. Conformance	8
15. Conflict of Interest	8
16. Copyright Provisions	9
17. Disallowed Costs	9
18. Disputes.....	9
19. Duplicate Payment.....	10
20. Governing Law and Venue.....	10
21. Indemnification.....	10
22. Independent Capacity of the Contractor	10
23. Industrial Insurance Coverage	10
24. Laws	11
25. Licensing, Accreditation and Registration	13
26. Limitation of Authority	13
27. Local Public Transportation Coordination.....	13
28. Noncompliance With Nondiscrimination Laws	13
29. Notification of Tenant Rights/Responsibilities.....	14
30. Pay Equity.....	14
31. Political Activities	14
32. Prevailing Wage Law	14
33. Procurement Standards for Federally Funded Programs	14
34. Prohibition Against Payment of Bonus or Commission.....	15

35.	Publicity	15
36.	Recapture	15
37.	Records Maintenance	16
38.	Registration With Department of Revenue	16
39.	Right of Inspection	16
40.	Savings.....	16
41.	Severability	16
42.	Subcontracting.....	16
43.	Survival.....	16
44.	Taxes.....	17
45.	Termination for Cause	17
46.	Termination for Convenience	17
47.	Termination Procedures.....	17
48.	Treatment of Assets.....	18
49.	Waiver	18
50.	Work Hours and Safety Standards.....	18

Attachment A, Scope of Work

Attachment B, Budget

FACE SHEET

Contract Number: <insert number>

Washington State Department of Commerce
 <Select Division, Board, or Commission>
 <Insert Unit or Office>
 <Insert Program(s) and/or Project(s)>

1. Contractor <Insert legal name> <Insert mailing address> <Insert physical address> <Insert location>		2. Contractor Doing Business As (optional) <Insert DBA name> <Insert DBA mailing address> <Insert DBA physical address> <Insert DBA location>	
3. Contractor Representative <Insert name> <Insert title> <Insert phone> <Insert FAX> <Insert e-mail>		4. COMMERCE Representative <Insert name> <Insert mailing address> <Insert title> <Insert physical address> <Insert phone> <Insert location> <Insert FAX> <Insert e-mail>	
5. Contract Amount <Insert \$ amount>	6. Funding Source Federal: <input type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date <Insert date>	8. End Date <Insert date>
9. Federal Funds (as applicable) <Insert \$ amount>		10. Federal Agency <Insert name>	
		CFDA Number: <Insert number>	
10. Tax ID # <Insert number>	11. SWV # <Insert number>	12. UBI # <Insert number>	13. DUNS # <Insert number>
14. Contract Purpose <Briefly describe contract purpose>			
COMMERCE, defined as the Department of Commerce and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" - <insert title>, Attachment "B" - <insert title>, Attachment "C" - <insert title>, <etc.>			
FOR CONTRACTOR _____ <insert name>, <insert title> _____ Date		FOR COMMERCE _____ <insert name>, <insert title> _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

1. ACKNOWLEDGEMENT OF FEDERAL FUNDING

Federal Award Date: XXXX
Federal Award Identification Number (FAIN): XXXX
Total amount of the federal award: \$XXXXX
Awarding official: XXXX (XXX) XXX-XXXX

The Contractor agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Contractor describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the following statements:

"This project was supported by Grant No. < > awarded by <Federal Granting Agency> . Points of view in this document are those of the author and do not necessarily represent the official position or policies of the <Federal Granting Agency> . Grant funds are administered by the <COMMERCE Program> , Washington State Department of Commerce."

2. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

3. COMPENSATION

COMMERCE shall pay an amount not to exceed (\$) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Contractor's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

EXPENSES

Contractor shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Contractor for authorized expenses shall not exceed \$, which amount is included in the Contract total above.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Contractor shall receive compensation for travel expenses at current state travel reimbursement rates.

4. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE [*not more often than monthly.*]

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number . If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Duplication of Billed Costs

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

NOTE: *Optional Provision - COMMERCE shall withhold 10 percent from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).*

5. SUBCONTRACTOR DATA COLLECTION

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Contract performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

6. HISTORICAL OR CULTURAL ARTIFACTS

Certain capital construction projects may be subject to the requirements of Washington State Executive Order 05-05 "Archaeological and Cultural Resources". Contractor will cooperate with Commerce as may be required, to fulfill the requirements of EO-05-05. In the event that historical or cultural artifacts are discovered at the Project site during construction or rehabilitation, the Contractor or subcontractor shall immediately stop work and notify the local historical preservation officer and the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. If human remains are discovered, the Contractor shall immediately stop work and report the presence and location of the remains to the coroner and local enforcement, then contact DAHP and any concerned tribe's cultural staff or committee.

7. INSURANCE

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this contract.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Contractor shall submit to COMMERCE within fifteen (15) calendar days of the Contract start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Contract, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

Automobile Liability. In the event that performance pursuant to this Contract involves the use of vehicles, owned or operated by the Contractor or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Contractor shall maintain Professional Liability or Errors and Omissions Insurance. The Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under contract to the Contractor. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A.** The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
- B.** Subcontractors that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.
- C.** The Contractor shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

8. USE OF APPRENTICESHIP PROGRAM

For Housing Trust Fund contracts with one million dollars (\$1,000,000.00) or more awarded by the Housing Trust Fund, Contractor shall make best efforts to select builders/contractors that use an approved apprenticeship program as described in RCW 39.04.320. The apprenticeship program requires that a minimum of 15% of total labor hours be provided by Washington State Apprenticeship and Training Council (WSATC)-registered apprentices. The builders/contractors selected should meet the requirements of this law and should ask those who subcontract this work from them to use apprentice labor. Should such builders/contractors not be available, the Contractor may select the otherwise most responsible and responsive builders/contractors, and should document its efforts to comply with the law.

9. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- add any other attachments incorporated by reference on the Face Sheet

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the Contractor, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ADMINISTRATIVE COST ALLOCATION

Administrative costs that may be allowed are set forth in the Special Terms and Conditions. Administrative services shared by other programs shall be assigned to this Contract based on an allocation plan that reflects allowable administrative costs that support services provided under each Contract administered by the Contractor. An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed.

3. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

4. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

5. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

7. APPROVAL

This contract shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

8. ASSIGNMENT

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

9. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorney's fees and costs.

10. AUDIT

If the Contractor is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:

1. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
2. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Contractor is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Contractor shall notify COMMERCE they did not meet the single audit requirement.

The Contractor shall send all single audit documentation to auditreview@commerce.wa.gov.

11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

- A. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 2. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 4. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.
- B. Where the Contractor is unable to certify to any of the statements in this contract, the Contractor shall attach an explanation to this contract.
- C. The Contractor agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Contractor further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- a) The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

b) Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.

- E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

12. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

13. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:

1. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
2. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

- B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

- C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

14. CONFORMANCE

If any provision of this contract 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.

15. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Contractor and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the Commerce program administering this contract, including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the Contractor may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

16. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

17. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

18. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

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

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

19. DUPLICATE PAYMENT

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

20. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

21. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of, or resulting from, the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

22. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The Contractor will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

23. INDUSTRIAL INSURANCE COVERAGE

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

24. LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

25. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

26. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

27. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

28. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with COMMERCE. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

29. NOTIFICATION OF TENANT RIGHTS/RESPONSIBILITIES

The Contractor shall provide all tenants, if any, with information outlining tenant rights and responsibilities under the Washington State Landlord Tenant laws, Title 59, Revised Code of Washington.

The Contractor shall also provide all occupants of property acquired with U.S. Department of Housing and Urban Development (HUD) funds notice regarding their eligibility for relocation assistance. Such notices will be provided as required by the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended and referenced in 49 CFR part 24 and Section 104(d) of the Housing and Community Development Act of 1974, as amended and referenced in 24 CFR 570 and noted in HUD's Handbook No. 1378. Notifications will include but not be limited to:

- General Information Notice
- Notice of Displacement/Non-Displacement

30. PAY EQUITY

The Contractor agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- a. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;

- b. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:

(i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

(ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by the Department, if the Department or the Department of Enterprise services determines that the Contractor is not in compliance with this provision.

31. POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

32. PREVAILING WAGE LAW

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

33. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Contractor which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Contract.

A Contractor which is a nonprofit organization shall establish procurement policies in accordance with 2 CFR Part 200.

The Contractor's procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
3. Minimum procedural requirements, as follows:
 - a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
 - b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
 - c. Positive efforts shall be made to use small and minority-owned businesses.

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

- d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
 - e. Contracts shall be made only with reasonable subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
 - f. Some form of price or cost analysis should be performed in connection with every procurement action.
 - g. Procurement records and files for purchases shall include all of the following:
 - 1) Contractor selection or rejection.
 - 2) The basis for the cost or price.
 - 3) Justification for lack of competitive bids if offers are not obtained.
 - h. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
4. Contractor and Subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this contract is expected to exceed \$5,000.
- Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

34. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

35. PUBLICITY

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

36. RECAPTURE

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this contract.

37. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

38. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

39. RIGHT OF INSPECTION

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

40. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

41. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

42. SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

43. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

44. TAXES

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

45. TERMINATION FOR CAUSE

In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

46. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

47. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;

**GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

3. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor, under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
6. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
7. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

48. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

49. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

50. WORK HOURS AND SAFETY STANDARDS

The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)-Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Contract Work Hours Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act,

GENERAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS

each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Scope of Work

Budget



STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

*1500 Jefferson St. SE, Olympia, WA 98501
PO Box 41476, Olympia, WA 98504-1476*

June 11, 2019

TO: Scott Nutter, Traffic Operations Engineer
City of Auburn

FROM: Curtis Pate, Contracts Specialist, (360) 407-7913

RE Agreement No. 2019-529 A (1)
IGA - Street Lighting Fixtures & Controls

IAA No. K5481

McKinstry Essention LLC

SUBJECT: Funding Approval

The Dept. of Enterprise Services (DES), Energy Program, requires funding approval for the above referenced contract documents. The amount required is as follows:

ESCO Audit	\$ 85,937.00
Total Funding	\$ 85,937.00

In accordance with the provisions of RCW 43.88, the signature affixed below certifies to the DES Energy Program that the above identified funds are appropriated, allotted or that funding will be obtained from other sources available to the using client/agency. The using/client agency bears the liability for any issues related to the funding for this project

By _____
Name / Title

Date

Please sign and return this form to E&AS. If you have any questions, please call me.