	<p align="center"> City Council Meeting August 5, 2019 - 7:00 PM City Hall Council Chambers AGENDA Watch the meeting LIVE! </p> <p align="center"> Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded. </p>
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I. CALL TO ORDER

- A. Pledge of Allegiance
- B. Roll Call

II. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

- A. Introduction of Finance Director, Jamie Thomas

III. AGENDA MODIFICATIONS

IV. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. Public Hearings

- 1. Public Hearing for Franchise Agreement No. FRN19-0013 (Gaub)

City Council to hold a public hearing in consideration of Franchise Agreement No. FRN19-0013 for Seattle SMSA Limited Partnership, dba Verizon Wireless

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.)

V. 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)

VI. 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 July 22, Study Session
- B. Minutes of the July 15, 2019 Regular Council Meeting
- C. Claims Vouchers (Thomas)
Claim voucher list dated August 5, 2019 which includes voucher numbers 454803 through 455102, in the amount of \$2,011,136.28 and six wire transfers in the amount of \$804,957.44.
- D. Payroll Vouchers (Thomas)
Payroll check numbers 538547 through 538564 in the amount of \$552,844.60, electronic deposit transmissions in the amount of \$2,088,958.77 for a grand total of \$2,641,803.37 for the period covering July 11, 2019 to July 31, 2019.

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

VII. UNFINISHED BUSINESS

VIII. NEW BUSINESS

IX. ORDINANCES

- A. Ordinance No. 6723 (Gross)
An Ordinance of the City Council of the City of Auburn, Washington, amending Ordinance No. 4683 to correct a legal description related to a conditional use permit

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6723.)

X. RESOLUTIONS

- A. Resolution No. 5431 (Gaub)
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
- B. Resolution No. 5445 (Pierson)
A Resolution of the City Council of the City Of Auburn, Washington, authorizing the Mayor to execute an Interlocal Agreement among the Cities of Auburn, Bonney Lake, Lakewood, Puyallup, and Tacoma, and the Pierce County Sheriff, Pierce County Prosecuting Attorney, and the Washington State Department of Corrections, for the continued operation of the Tahoma Narcotics Enforcement Team

(RECOMMENDED ACTION: Move to adopt Resolution No. 5445.)

- C. Resolution No. 5446 (Gaub)
A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to accept and expend Federal Grant Funds administered by the Washington State Military Department for the Reservoir 1 Seismic Control Valve Project

(RECOMMENDED ACTION: Move to adopt Resolution No. 5446.)

XI. MAYOR AND COUNCILMEMBER REPORTS

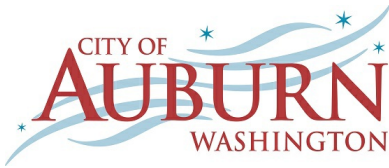
At this time the Mayor and City Council may report on significant items associated with their appointed positions on federal, state, regional and local organizations.

A. From the Council

B. From the Mayor

XII. 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. FRN19-0013
(Gaub)

Date:

July 16, 2019

Department:

Public Works

Attachments:

[Draft Ordinance No. 6721](#)

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. FRN19-0013 for Seattle SMSA Limited Partnership, dba Verizon Wireless

Background Summary:

Section 20.06.030 of the Auburn City Code requires the City to hold a public hearing before deciding to approve or reject a franchise application. Franchise Agreement No. FRN19-0013 for Seattle SMSA Limited Partnership, dba Verizon Wireless, would allow it to build and operate a small wireless facilities network within the City's rights-of-way. The public hearing was set by consent on July 15, 2019.

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

Gaub

Meeting Date: August 5, 2019

Item Number:

PH.1

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: _____ Date: _____
Name: _____
Title: _____

STATE OF _____)
)ss.
COUNTY OF _____)

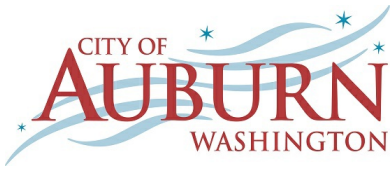
On this ____ day of _____, 2018, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of Cellco Partnership, General Partner of Seattle SMSA Limited Partnership, a Delaware limited partnership, d/b/a Verizon Wireless the company 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:

Minutes of the July 22, Study Session

Department:

City Council

Attachments:

[07-22-2019 Minutes](#)

Date:

July 31, 2019

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

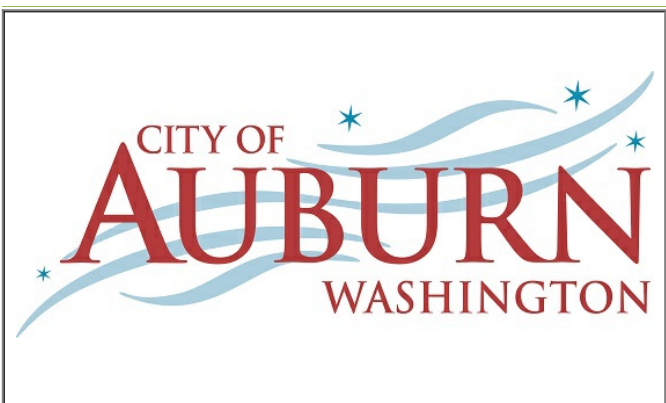
Revised Budget: \$0

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

Meeting Date: August 5, 2019

Staff:

Item Number: CA.A

	<p>City Council Study Session Muni Services SFA July 22, 2019 - 5:30 PM City Hall Council Chambers AGENDA</p> <p>Watch the meeting video</p> <p>Meeting videos are not available until 72 hours after the meeting has concluded.</p>
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I. CALL TO ORDER

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

Mayor Nancy Backus and the following department directors and staff members were present: Assistant City Attorney Doug Ruth, Director of Public Works Ingrid Gaub, Director of Community Development Jeff Tate, Director of Innovation & Technology David Travis, Assistant Director of Engineering Jacob Sweeting, Right-of-Way Specialist Amber Price, Police Commander Daniel O'Neil, Animal Control Officer Ray Peckham, Animal Control Officer Sarah Cattaneo, Assistant Police Chief Mark Caillier, and Deputy City Clerk Teresa Mattingly.

II. ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS

There was no announcement, report or presentation.

III. AGENDA ITEMS FOR COUNCIL DISCUSSION

A. Annual DOE Report – Boeing Plume (Tate) (15 Minutes)

Washington State Department of Ecology (DOE) Report to City Council on the Boeing Plume

Christa Colouzis with the Department of Ecology and Boeing Auburn Cleanup Site Manager Robin Harrover provided Council with an update on the Hazardous Waste Program at Boeing Auburn and discussed how contaminations happen, groundwater, soil and air contamination levels, regulations to avoid contaminating the environment, cleanup methods, and the current status of the Boeing Auburn cleanup process.

Council discussed the dispute resolution process if Boeing does not agree with the Hazardous Waste Cleanup Regulations and the timeframe

to clean up the entire site is 20 years.

B. Summary of House Bill 1406 Enacted in 2019 (Tate) (15 Minutes)

Washington State Legislature enacted HB 1406 which allows cities to capture a portion of State Sales Tax if directed towards affordable housing objectives.

Director Tate provided Council with an update on House Bill 1406 which would allow cities to retain a portion of the sales and use taxes paid in Auburn to support affordable housing objectives. He also discussed, collection options, what the funds can be used for and the next step would require the City to adopt a resolution of intent by January 28, 2020 and adopt final legislation by July 28, 2020.

Council discussed the benefits to the City of Auburn and would like to see this brought forward to Council for action.

C. Ordinance No. 6721 (Gaub) (5 Minutes)

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

Right-of-Way Specialist Price presented Council with Ordinance No. 6721, regarding the Franchise Agreement with Seattle SMSA Limited Partnership, dba Verizon Wireless and their application to be able to construct within the City's rights-of-way a small wireless facilities network. A Public Hearing to consider this application is scheduled on August 5, 2019.

D. 2018 State of Our Streets Summary (Gaub) (15 Minutes)

Assistant Director of Engineering Sweeting presented Council with an update on the 2018 State of Our Streets. Assistant Director Sweeting discussed the new dashboard that will be incorporated into the City's webpage which will provide the public with a quick look at the overall condition of the City's roadways and preservation program activities. Assistant Director Sweeting also discussed the average condition rating for collector and local streets, the overall condition of streets in the City degraded slightly from 2017 to 2018 and additional funding is needed for preservation programs to continue.

Council discussed which streets are included in the 17 percent of arterial and collector streets that are considered to be in very poor condition.

IV. MUNICIPAL SERVICES DISCUSSION ITEMS

A. Animal Control Update (Pierson) (15 Minutes)

Councilmember Brown presided over the Municipal Services discussion.

Animal Control Officers Peckham and Cattaneo provided Council with a year in review for Animal Control and discussed the number of current pet licenses, the number of dogs registered as dangerous or potentially

dangerous, injured animal costs, pet licensing requirements and fees, calls, reports and infraction stats, number of strays, and types of exotic and wild animals they have come into contact with.

B. Resolution No. 5445 (Pierson) (15 Minutes)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to execute an Interlocal Agreement among the cities of Auburn, Bonney Lake, Lakewood, Puyallup, and Tacoma, and the Pierce County Sheriff, Pierce County Prosecuting Attorney, and the Washington State Department of Corrections, for the continued operation of the Tahoma Narcotics Enforcement Team

Assistant Chief Caillier updated Council on Resolution No. 5445 and discussed the Interlocal Agreement with Washington State Department of Corrections for the continued operation of the Tahoma Narcotics Enforcement Team. The agreement replaces and updates the original 1986 agreement, clarifies certain roles and responsibilities among the participants and updates the procedures for processing claims against the Task Force or its members.

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 to add an update on Fireworks and Vision 2050 Puget Sound Regional Council (PSRC) to the Matrix with the dates to be determined.

VIII. ADJOURNMENT

There being no further discussion, the meeting was adjourned at 6:52 p.m.

APPROVED this 5th day of August, 2019.

BILL PELOZA , 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 July 15, 2019 Regular Council Meeting

Department:

City Council

Attachments:

[07-15-2019 Minutes](#)

Date:

July 31, 2019

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

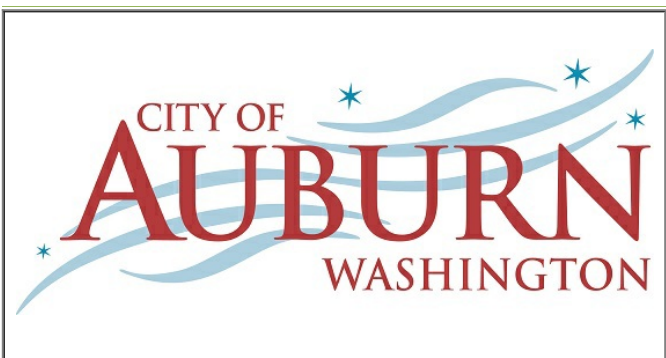
Revised Budget: \$0

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

Meeting Date: August 5, 2019

Staff:

Item Number: CA.B

	<p style="text-align: center;">City Council Meeting July 15, 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>
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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 Peloza, 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, Assistant Finance Director Kevin Fuhrer, Director of Innovation and Technology David Travis, Director of Parks and Recreation Daryl Faber, Director of Administration Dana Hinman, Utilities Engineering Manager Lisa Tobin, Director of Human Resources and Risk Management Candis Martinson, Police Commander Mike Hirman and City Clerk Shawn Campbell.

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.

Councilmember Holman moved and Councilmember Brown seconded to appoint Lacy Katz to the Auburn Tourism Board.

MOTION CARRIED UNANIMOUSLY. 7-0

IV. AGENDA MODIFICATIONS

Updated Public Works Project CP1823, CP1805 and Resolution No. 5427 have been provided to Council prior to the meeting.

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

Mayor Backus opened the public hearing at 7:03 p.m. No one came forward to speak, the public hearing was closed.

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

Mayor Backus opened the public hearing at 7:04 p.m. No one came forward to speak, the public hearing was closed.

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.

Vera Orlandic-Hodak, 4501 Kennedy Avenue SE, Auburn

Ms. Orlandic-Hodak spoke in favor of the equity training for the Council. She shared concerns that the scope did not go far enough. She stated the vote should wait until January 2020 when a new Council has been elected.

Victoria Mania, 19 F Street SE, Auburn

Ms. Mania spoke in favor of the equity training. She stated the cost of not having this type of training is too high and everyone needs to learn from each other.

Hannah Brenlan, 317 I Street SE, Auburn

Ms. Brenlan spoke in favor of the equity training and shared how this type of training helps various groups have tough conversations. She also spoke to the consultant regarding the content of the training and he advised her that the training includes a great deal of intersectionality training.

Sarah Edwards, 2901 Auburn Way South, Auburn

Ms. Edwards spoke in favor of the equity training. She said any tool the Council and City Staff can use to help interact better with the residents of the City is invaluable.

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.

1. Finance Ad Hoc Committee (Chair Wales)

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 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
- Deputy Mayor Peloza moved and Councilmember Holman seconded to approve the consent agenda.

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. 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"

Councilmember Holman moved and Councilmember Trout-Manuel seconded to adopt Ordinance No. 6720.

MOTION CARRIED UNANIMOUSLY. 7-0

- 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

Councilmember DaCorsi moved and Councilmember Wales seconded to adopt Ordinance No. 6722.

MOTION CARRIED UNANIMOUSLY. 7-0

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

Councilmember DaCorsi moved and Councilmember Baggett seconded to adopt Ordinance No. 6724.

MOTION CARRIED UNANIMOUSLY. 7-0

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

Councilmember DaCorsi moved and Councilmember Brown seconded to adopt Ordinance No. 6725.

MOTION CARRIED UNANIMOUSLY. 7-0

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

Councilmember Trout-Manuel moved and Councilmember Wales seconded to adopt Resolution No. 5427 as presented at the Council Meeting.

Director Martinson provided Council with the revised Resolution No. 5427. She discussed the amount of time staff spent researching various consultants prior to preparing the recommendation to Council.

Director Martinson introduced Bernardo Ruiz, Co-Founder & Lead Consultant, Racing to Equity and Dr. Nikum Pon, Chief Research & Evaluation Specialist, Education to Liberate Consulting. Mr. Ruiz provided Council with a brief history of his experience. Dr. Pon explained what his role will be in this program and his mission to cultivate a condition where all humans can flourish.

Councilmembers thanked staff for the modifications made to the resolution and the agreement. They discussed how the Council and staff have worked

together for a long time to have an agreement that Council is comfortable with.

Deputy Mayor Peloza expressed his frustration that the updated version of the resolution and contract were not provided to Council until the meeting.

Councilmember DaCorsi moved and Councilmember Wales seconded to make the two tasks spreadsheets as exhibit C to the Resolution.

MOTION TO AMEND CARRIED 5-2 Councilmembers Brown and Holman voted no.

MOTION CARRIED 6-1 Deputy Mayor Peloza voted no.

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

Councilmember Holman moved and Councilmember Trout-Manuel seconded to adopt Resolution No. 5443.

MOTION CARRIED UNANIMOUSLY. 7-0

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

Councilmember DaCorsi moved and Councilmember DaCorsi seconded to adopt Resolution No. 5444.

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**

Councilmember Trout-Manuel reported she attended the 4th of July Festivities at Les Gove Park, the West Coast Self Storage ribbon cutting and the Blue Ribbon Committee Meeting.

Councilmember DaCorsi reported he attended the King County Affordable Housing Committee meeting.

Councilmember Baggett reported he attended the Emergency Management Advisory Committee meeting.

B. From the Mayor

Mayor Backus reported she attended the US Conference of Mayors.

XIII. EXECUTIVE SESSION

1. Executive Session

Mayor Backus recessed into executive session at 8:05 p.m., after a 5 minute break, and would return at 8:25 p.m. pursuant to RCW 42.30.110(1) (F) to discuss a complaint against a City official. City Attorney Steve Gross and Director Martinson attended the executive session.

Mayor Backus announced at 8:25 p.m. the executive session will be extended by 10 minutes with Council returning at 8:35.

Mayor Backus reconvened the meeting at 8:36 p.m.

XIV. ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 8:36 p.m.

APPROVED this 5th day of August, 2019.

NANCY BACKUS, MAYOR Shawn Campbell, 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 (Thomas)

Date:

August 1, 2019

Department:

Finance

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

approve Claims Vouchers.

Background Summary:

Claim voucher list dated August 5, 2019 which includes voucher numbers 454803 through 455102, in the amount of \$2,011,136.28 and six wire transfers in the amount of \$804,957.44.

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

Meeting Date: August 5, 2019

Item Number: CA.C



AGENDA BILL APPROVAL FORM

Agenda Subject:

Payroll Vouchers (Thomas)

Date:

August 1, 2019

Department:

Finance

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 538547 through 538564 in the amount of \$552,844.60, electronic deposit transmissions in the amount of \$2,088,958.77 for a grand total of \$2,641,803.37 for the period covering July 11, 2019 to July 31, 2019.

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

Thomas

Meeting Date: August 5, 2019

Item Number:

CA.D



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6723 (Gross)

Date:

August 1, 2019

Department:

City Attorney

Attachments:

[Ordinance 6723](#)

[Ordinance 6723 Exh A](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Adopt Ordinance No. 6723.

Background Summary:

In 1996, the City Council adopted an ordinance, number 4863, that approved a CUP for a property at 3244 Auburn Way South, which was later subdivided. The ordinance contained both an incorrect legal description and an incorrect address for the parcel. The errors came to light when the Auburn School District proposed to purchase a property located nearby 3244 Auburn Way South. The property the school district is interested in purchasing lies within the defective legal description in the 1996 ordinance. Consequently, the title report for the purchase shows that property incorrectly being the subject of the CUP. Before purchasing the property, the school district would like to clear the title report of this error. Ordinance 6723 will correct the 1996 ordinance by replacing the legal description shown in exhibit A with the correct, subdivision legal description and insert the correct address for the property.

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

Gross

Meeting Date: August 5, 2019

Item Number:

ORD.A

ORDINANCE NO. 6723

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING ORDINANCE 4863 TO CORRECT A SCRIVINERS ERROR

WHEREAS, the city council enacted Ordinance 4863 on May 20, 1996 to approve a conditional use permit for construction of a drive-in restaurant (currently Flame Burger) at 3244 Auburn Way South.

WHEREAS, prior to the City Council enacting the ordinance, the subject parcel, along with adjoining parcels, were subdivided and the parcel was given a new legal description.

WHEREAS, the ordinance contained neither the new legal description nor a correctly described old legal description. Due to an error by the applicant, the ordinance instead contained a defective version of the old legal description, substituting Northeast for Northwest in the description.

WHEREAS, the ordinance also contained an incorrect street address for the subject parcel, which was located at 3244 not 3224 Auburn Way South.

WHEREAS, the Survey Supervisor for the City of Auburn has confirmed that the legal description and street address in the ordinance are incorrect, and he has identified the correct address and legal description.

WHEREAS, the Auburn School District, which is purchasing property within the defective legal description, has expressed interest in the City correcting Ordinance 4863 to remove confusion regarding the title history of the property the district is purchasing.

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

Section 1. Amendment to City Code. Ordinance 4863 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:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Steven L. Gross, City Attorney

Published: _____

Exhibit A

ORDINANCE NO. 4 8 6 3

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, PROVIDING FOR A CONDITIONAL USE PERMIT TO ALLOW THE CONSTRUCTION OF A DRIVE-IN RESTAURANT ON PROPERTY ZONED CN (NEIGHBORHOOD COMMERCIAL) LOCATED AT 32243244 AUBURN WAY SOUTH, WITHIN THE CITY OF AUBURN, WASHINGTON

WHEREAS, Application No. CUP0006-95 dated May 5, 1995, together with site plans therefore, has been submitted to the City of Auburn, Washington, by THOMAS BUCKLEY, requesting a Conditional Use Permit to allow for the construction of a drive-in restaurant in a CN (Neighborhood Commercial) zone located at 32243244 Auburn Way South, within the City of Auburn, Washington, hereinafter described in Section 2 of the Ordinance; and

WHEREAS, said request above referred to, was referred to the Hearing Examiner for study and public hearing thereon; and

WHEREAS, the Hearing Examiner, based upon staff review, held a public hearing to consider said petition in the Council Chambers of the Auburn City Hall, on April 16, 1996, at the conclusion of which the Hearing Examiner recommended the approval of the issuance of a Conditional Use Permit to allow for the construction of a drive-in restaurant in a NC (Neighborhood Commercial) zone; and

WHEREAS, the City Council, on May 6, 1996, considered said request and affirmed the Hearing Examiner's decision for the issuance of a Conditional Use Permit to allow for the construction of a drive-in restaurant in a CN (Neighborhood Commercial) zone, located on property situated at 32243244 Auburn Way South, within the City of Auburn, Washington, based upon the following Findings of Facts and Conclusions, to-wit:

FINDINGS OF FACT

1. The application, Andres Canenas, applies for a conditional use permit to allow the construction of an 82 seat restaurant containing a drive-in window.
2. The subject property is located at 32243244 Auburn Way South and is currently vacant. The property is zoned CN, (Neighborhood Commercial), and the subject zoning requires a conditional use permit if a restaurant has a seating capacity of more than 25. In addition, the conditional use permit is required for a drive-in window.
3. This zone is intended to provide for commercial uses which serve a limited neighborhood area. The conditional use permit review process is intended to regulate the compatibility of the use with the neighborhood.
4. Surrounding zoning and land uses in the vicinity include R-4, vacant, to the north; CN, Commercial, to the south; CN, vacant, to the east; and CN, commercial, to the west. The Comprehensive Plan designates the subject site for neighborhood commercial uses, and land located in all directions contains a similarly Comprehensive Plan designation except for property to the north which is designated for multiple family uses.
5. The site is located on Auburn Way South which is a heavily traveled major arterial. The vacant structure currently on the property is an eyesore.
6. The applicant is proposing to remodel and add to the existing structure. Which finished, the restaurant will be 3,000 square feet in area and will have 31 on-site parking spaces.
7. The subject property is 32,942 square foot lot which is part of a four lot short plat. All four lots have access from Auburn Way South along a common access.
8. A Mitigated Determination of Non-Significance containing 12 conditions of approval has been issued addressing storm drainage, erosion control, and traffic.

CONCLUSIONS OF LAW

1. The permit may be approved if it is consistent with criteria set forth in the Zoning Ordinance for the granting of a conditional use permit.
2. The first criteria is that the use have no more of an adverse effect on the health, safety, or comfort of persons living or working in the area than would a use generally permitted in the district. Given its location, the proposal will not have an adverse effect upon the area. The proposal will replace an abandoned structure and will ensure a coordinated access to the major arterial.

3. The Comprehensive Plan illustrates the area to be appropriate for uses such as this one. Accordingly, the proposal complies with the goals, policies, and objectives of the plan.
4. The proposal complies with all requires of the Zoning Ordinance.
5. The application contains drawings of building elevations which ensure that it will be compatible with the neighborhood.
6. The proposal will not adversely affect the public infrastructure since traffic improvements have been required as a result of the Mitigated Determination of Non-Significance.

For each of the above referenced reasons, the recommendation of the Hearing Examiner to the Auburn City Council on this Conditional Use Permit to allow the construction of a drive-in restaurant in a CN (Neighborhood Commercial) zone, located on property situated at ~~3224~~3244 Auburn Way South, is approved.

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

Section 1. The above cited Hearing Examiner's Findings of Fact and Conclusions, are herewith incorporated in this Ordinance.

Section 2. A Conditional Use Permit is hereby approved to allow the construction of a drive-in restaurant in a CN (Neighborhood Commercial) zone, located on property situated at ~~3224~~3244 Auburn Way South, within the City of Auburn, County of King, State of Washington, legally described on attached Exhibit "A," and made a part hereof as though set forth in full herein.

Section 3. Upon the passage, approval and publication of this Ordinance as provided by law, the City Clerk of the City of Auburn shall cause this Ordinance to be recorded in the office of the King County Auditor.

Section 4. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 5. 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: _____

CHARLES A. BOOTH
MAYOR

ATTEST:

Robin Wohlhueter,
City Clerk

APPROVED AS TO FORM:

Michael J. Reynolds,
City Attorney

Published: _____

EXHIBIT A

LEGAL DESCRIPTION

Lot 1

~~THAT PORTION OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER AND OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21 TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., KING COUNTY WASHINGTON, LYING SOUTH OF A LINE DRAWN PARALLEL WITH AND 250.00 FEET NORTH, WHEN MEASURED AT RIGHT ANGLES, OF THE NORTH MARGIN OF PRIMARY STATE HIGHWAY NO. 5 (AUBURN WAY SOUTH):~~

~~EXCEPT THE WEST 125.00 FEET OF SAID EAST HALF: AND~~

~~EXCEPT THAT PORTION OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M. KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:~~

~~BEGINNING AT THE INTERSECTION OF THE EAST LINE OF SAID WEST HALF WITH THE NORTH MARGIN OF PRIMARY STATE HIGHWAY NO. 5 (AUBURN WAY SOUTH): THENCE N 89 DEGREES, 43' 51" W, ALONG SAID MARGIN, A DISTANCE OF 50.00 FEET: THENCE N 00 DEGREES 46' 31" E, PARALLEL WITH SAID EAST LINE OF THE WEST HALF, A DISTANCE OF 205.01 FEET: THENCE N 67 DEGREES 24' 34" W, A DISTANCE OF 118.48 FEET TO A POINT ON A LINE DRAWN PARALLEL WITH AND 250.00 FEET NORTH OF SAID STREET MARGIN: THENCE S 89 DEGREES 43' 51" E, ALONG SAID LINE. A DISTANCE OF 160.00 FEET TO A POINT ON SAID EAST LINE OF THE HEREINBEFORE DESCRIBED SUBDIVISION: THENCE S 00 DEGREES 40' 31" W. ALONG SAID EAST LINE. A DISTANCE OF 250.01 FEET TO THE POINT OF BEGINNING.~~

LOT 1, CITY OF AUBURN SHORT PLAT NUMBER SPL0003-95, RECORDED UNDER RECORDING NUMBER 9508210641 RECORDS OF KING COUNTY, BEING A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 21 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN THE CITY OF AUBURN, KING COUNTY, WASHINGTON.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5431 (Gaub)

Date:

June 18, 2019

Department:

Public Works

Attachments:

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

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council adopt Resolution No. 5431 for Franchise Agreement No. FRN19-0012 for Comcast Cable Communications, LLC and Comcast Cable Communications Management, LLC.

Background Summary:

Chapter 13.36 of the Auburn City Code ("ACC") requires cable television providers to obtain a franchise to operate in the City.

Comcast seeks a 10 year Franchise. Comcast has operated in the City under a franchise since 2002 and as various preceding parent companies since 1978. It has applied to renew its franchise. The new agreement updates terms to comply with current federal law and regulations. Comcast continues to provide three Public, Education, and Government ("PEG") Channels, the equipment for which is paid for by a \$.35 per subscriber per month fee. (The City remains responsible for the cost of programming). Comcast continues to provide basic cable services without charge to public entities including schools, libraries, fire stations, and City buildings. It also continues to provide a 30% discount from the Basic Service charge for low-income, disabled, and senior customers.

A staff presentation was given at the June 24, 2019 Study Session discussing Draft Resolution No. 5431. A Public Hearing to consider this application and hear public comment was held before the City Council on July 15, 2019 in accordance with Auburn City Code Chapter 13.36.050.

Resolution No. 5431, if adopted by City Council, authorizes the Mayor to execute Franchise Agreement No. FRN19-0012 subject to terms and conditions outlined in the Agreement.

Reviewed by Council Committees:**Councilmember:**

Meeting Date: August 5, 2019

Staff:

Item Number:

Gaub

RES.A

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

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Franchise No. FRN19-0012

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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

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AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5445 (Pierson)

Date:

July 30, 2019

Department:

Police

Attachments:

[Resolution No. 5445](#)

[TNET agreement](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Council to approve Resolution 5445.

Background Summary:

This matter was discussed with Council at the July 22, 2019 Study Session.

Auburn has participated in a narcotics enforcement team with other Pierce County jurisdictions, and the state Department of Corrections, since 1986. The participants work with each other and a Drug Enforcement Administration Task Force to effectively investigate and enforce criminal laws relating to controlled substances.

This new ILA replaces and updates the original 1986 Agreement. It clarifies certain roles and responsibilities among the participants to be consistent with current state and federal laws and policies. It gives the Executive Board the authority to manage the day-to-day operations of the Task Force. It also updates the procedures for processing claims against the Task Force or its members.

This ILA has been reviewed by the chief law enforcement officers and legal counsel for all of the participants, as well as by WCIA.

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

Pierson

Meeting Date: August 5, 2019

Item Number:

RES.B

RESOLUTION NO. 5445

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT AMONG THE CITIES OF AUBURN, BONNEY LAKE, LAKEWOOD, PUYALLUP, AND TACOMA, AND THE PIERCE COUNTY SHERIFF, PIERCE COUNTY PROSECUTING ATTORNEY, AND THE WASHINGTON STATE DEPARTMENT OF CORRECTIONS, FOR THE CONTINUED OPERATION OF THE TAHOMA NARCOTICS ENFORCEMENT TEAM

WHEREAS, the cities of Auburn, Bonney Lake, Lakewood, Puyallup, and Tacoma, and the Pierce County Sheriff, Pierce County Prosecuting Attorney, and The Washington State Department Of Corrections share a common interest in investigating and enforcing the criminal laws related to controlled substances; and

WHEREAS, the parties in some combination have worked together since 1986 as a multi-jurisdictional task force, the Tahoma Narcotics Enforcement Team ("TNET") towards this purpose; and

WHEREAS, the parties agreed that the terms of the original ILA needed to be updated to reflect best practices and changes to applicable.

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

Section 1. The Mayor is authorized to execute an Interlocal Agreement among the cities of Auburn, Bonney Lake, Lakewood, Puyallup, and Tacoma, and the Pierce County Sheriff, Pierce County Prosecuting Attorney, and The Washington State Department Of Corrections for the continued operation of the Tahoma Narcotics Enforcement Team, 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

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN
THE CITY OF AUBURN, CITY OF BONNEY LAKE, CITY OF LAKEWOOD, CITY OF
PUYALLUP, CITY OF TACOMA, PIERCE COUNTY SHERIFF,
PIERCE COUNTY PROSECUTING ATTORNEY, &
WASHINGTON STATE DEPARTMENT OF CORRECTIONS

TAHOMA NARCOTICS ENFORCEMENT TEAM

I. PARTIES

The parties to this Agreement are the cities of Auburn, Bonney Lake, Lakewood, Puyallup, Tacoma, the Pierce County Sheriff's Department, the Pierce County Prosecuting Attorney, & the Washington State Department of Corrections.

II. AUTHORITY

This Agreement is entered into pursuant to Chapters 10.93, 39.34, and 53.08 of the Revised Code of Washington.

III. PURPOSE

The parties wish to establish and maintain a multi-jurisdictional team to effectively investigate and enforce the criminal laws relating to controlled substances. Individual employees participating in Tahoma Narcotics Enforcement Team ("TNET") are also assigned to a Drug Enforcement Administration (DEA) Task Force, known as DEA Group D-25, by separate agreement. This agreement is necessary and intended for the primary purpose of performing the administrative functions related to seizures and forfeitures under state law by the parties that may arise in support of the members' participation in the activities of DEA Group D-25.

IV. FORMATION

This Agreement will serve to update the terms and membership of the multi-jurisdictional task force originally formed in 1986. All prior Agreements relating to the formation and operation of TNET are hereby terminated and replaced by this Agreement. The team established by this Agreement will be known as the Tahoma Narcotics Enforcement Team ("TNET"), which was originally established in 1986. The members of TNET shall be the cities of Auburn, Bonney Lake, Lakewood, Puyallup, Tacoma, the Pierce County Sheriff's Department, the Pierce County Prosecuting Attorney, and the Washington State Department of Corrections. The future admission or elimination of a jurisdiction as a member of TNET may be accomplished by an addendum to this Agreement.

All assets acquired under the former TNET Agreement(s) shall remain the property of TNET and shall be retained and distributed per the terms of this Agreement.

TNET does and must operate confidentially and without public input. Therefore, the parties to this Agreement do not intend for this Agreement to create a separate legal entity subject to suit.

V. STATEMENT OF PURPOSE

Municipalities within the Puget Sound region have experienced an increase in urbanization and population densities. The ability to address crimes associated with controlled substances may stretch the resources of individual Police Department specialty units.

In 1989, the Washington State Legislature found that drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities. These findings hold true to this day.

Prior to the formation of TNET, law enforcement efforts directed at dealing with controlled substances crimes were, for the most part, conducted by law enforcement agencies working independently. A multi-jurisdictional effort to handle specific and complicated narcotics investigations has resulted in more effective pooling of personnel, the improved utilization of scarce funds, a reduction in the duplication of equipment, improved training, and a development of specialized expertise.

The formation of TNET has resulted in improved services for all the participating entities, increased safety for officers and the community, and improved cost effectiveness.

VI. TNET OBJECTIVES

Personnel from each participating jurisdiction who are assigned to TNET will form a combined investigation team. Each police officer is assigned to TNET via this Agreement, and TNET is accordingly assigned to the DEA through individual jurisdiction agreements with DEA Group D-25.

The objective of TNET is to provide enhanced and more efficient use of personnel, equipment, budgeted funds, and training. The combined TNET or individual detectives shall respond as able and as approved by the DEA Supervisor when requested by any of the participating agencies. TNET may be available to outside law enforcement agencies as permitted by laws relating to mutual aid and as approved by the DEA.

VII. DURATION/TERMINATION

The minimum term of this Agreement shall be one year, effective upon its adoption. This Agreement shall automatically renew, and TNET shall automatically continue in existence, for consecutive one-year terms without action of the legislative bodies of the participating jurisdictions, and unless and until terminated pursuant to the terms of this Agreement.

A jurisdiction may withdraw its participation in TNET by providing written notice of its withdrawal and serving such notice upon each Executive Board member of the remaining jurisdictions. A notice of withdrawal shall become effective 90 days after service of the notice on all participating members. The withdrawal of an individual jurisdiction from TNET shall not result in the termination of TNET.

If TNET withdraws its participation in the DEA Task Force, this Agreement and thus TNET shall remain in effect unless terminated as provided in this Agreement

TNET may be terminated by a majority vote of the Executive Board or by action of the majority of the legislative bodies of the participating jurisdictions. Any vote for termination by the Executive Board shall occur only when the police chief, Sheriff, or Prosecutor of each participating jurisdiction is present at the meeting in which such vote is taken.

VIII. TASK FORCE AGREEMENT

Unless TNET is terminated, each Board member shall, on an annual basis, affirm its jurisdiction's continued participation in TNET for the following year. Upon affirmation of the participation of each jurisdiction, TNET shall execute a task force agreement with DEA affirming the continuation of agency participation in TNET, and such task force agreement shall, on an annual basis, be forwarded to the US Department of Justice, Asset Forfeiture Money Laundering Section.

IX. GOVERNANCE

The affairs of TNET shall be governed by an Executive Board ("Board,") whose members are composed of the police chief/sheriff, or designee, from each participating jurisdiction and the Prosecuting Attorney, or designee. One member of the Board shall be elected by the Board to serve as Chair. Elections shall occur on an annual basis and the Board may either re-elect the existing Chair or elect another member of the board to serve as Chair for the following year. The Chair shall preside over Board meetings, prepare an agenda, lead discussions at meetings and serve as the point of contact for the DEA Supervisor of Group 25.

Each member of the Board shall have an equal vote on all Board decisions. Board decisions shall be made by a majority vote of the Board members, or their designees,

appearing at the meeting in which a decision is made. A majority of Board members or their designees, must be present at each meeting for any action taken to be valid.

The Board shall meet quarterly, unless otherwise determined by the Board. The Chair, or any Board member, may call extra meetings. The Chair shall provide no less than 48 hours' notice of all meetings to all members of the Board; PROVIDED, that in emergency situations, the Chair may conduct a telephonic or electronic (i.e. e-mail) meeting or a poll of individual Board members to resolve any issues related to the emergency, which shall count as a formal vote of the board.

X. PERSONNEL

The following personnel shall serve at the pleasure of the Board. Personnel may be removed for any reason by majority vote of the Board.

TNET Detectives: Each jurisdiction shall contribute one or more full-time commissioned officers to perform investigation work for the Team.

TNET Seizure Officer: A peace officer from a participating agency, who is assigned to TNET, shall be appointed as the Primary Seizure Officer by the Board. The Primary Seizure Officer, or designee, shall be responsible for coordinating the seizure of property for forfeiture under RCW 69.50.505 and shall prepare the Notice of Seizure and Intended Forfeiture for service on the property owner.

Legal Assistant: The TNET Legal Assistant shall be provided by the Pierce County Prosecuting Attorney on a reimbursable basis and shall work under the direction of the Board. The Legal Assistant shall follow all rules and policies of the Prosecutor's Office and shall be evaluated on an annual basis by the Team Chief of the Prosecutor's Drugs & Vice Unit. The Legal Assistant reports directly to the DEA Supervisor of Group D-25 and is responsible for unit accounting, reports, office support, and other duties as appropriate or listed herein. From time to time, the Prosecutor may reassign the designated Legal Assistant and select another qualified Legal Assistant to assume the position on the TNET.

Attorney: The Prosecutor's Office will provide a Deputy Prosecuting Attorney ("DPA") on a part-time basis to represent TNET in civil asset forfeiture hearings. The DPA shall have the discretion to exercise their professional judgment in accepting and litigating TNET civil asset forfeiture cases. The DPA will be responsible for reviewing and prosecuting civil asset forfeiture cases, and providing legal advice regarding same. From time to time, the Prosecutor may reassign the designated DPA and select another qualified DPA to assume the position on TNET.

Employees of Contributing Jurisdictions: The personnel assigned to TNET shall be considered employees of the contributing jurisdiction. That jurisdiction shall be solely

and exclusively responsible for the compensation and benefits for that employee. All rights, duties, and obligations of the employer and employee shall remain with that individual jurisdiction and none of the rights, duties and obligations of the employing jurisdiction shall shift to TNET or any other participating jurisdiction. Each jurisdiction shall be responsible for ensuring compliance with all applicable laws with regard to employees, and with provisions of any applicable collective bargaining agreements and civil service rules and regulations of the employing jurisdiction.

Presiding Officer: The chief law enforcement officer of each law enforcement agency of TNET designates the Pierce County Sheriff, or his designee, to serve as the Presiding Officer before whom civil asset forfeiture hearings will be held as set forth in 69.50 RCW.

XI. EQUIPMENT & TRAINING

Each participating jurisdiction shall provide the equipment of its participating TNET personnel. Each jurisdiction shall provide sufficient funds to update, replace, repair, and maintain the equipment and supplies used by its participating TNET personnel. Each jurisdiction shall provide sufficient funds to provide for the training of its participating TNET personnel.

The equipment, supplies, and training provided by each jurisdiction to its personnel participating in TNET shall be equal to those provided by the other participating jurisdictions.

The Board shall be responsible for recommending the purchase of additional equipment. Title to equipment purchased using TNET funds or forfeited property will be held by the Fiscal Agent or one of the participating jurisdictions as agreed to by the Board. The Board will ensure a record of the transaction is maintained. The Board must approve any joint capital expenditure for TNET equipment of \$1,500.00 or more. Approval for capital expenditures of less than \$1,500.00 may be authorized by the TNET Chair at their discretion.

Any equipment purchased with TNET funds with a value in excess of \$5,000 will be scheduled for insurance purposes by the Fiscal Agent. Any excess cost related to scheduling TNET equipment will be budgeted and reimbursed to the Fiscal Agent. In the event of a loss that is covered by insurance the equipment shall either be replaced utilizing the insurance proceeds or the proceeds distributed in equal shares to the members.

XII. FINANCIAL REQUIREMENTS

TNET utilizes a Fiscal Agent for all account transactions and accounting. One of the Jurisdictions will provide the services of the Fiscal Agent as approved by the Board.

The TNET chair, after consulting with TNET personnel, shall prepare a budget each year, which will be voted on for approval by the Board. The TNET operating budget relies primarily on TNET assets forfeited at the state and federal levels.

Participating Agencies may be reimbursed under Federal Grants. Grant funds are administered by the State of Washington and follow the state budget cycle of July 1 through June 30 of the following year. The Board will designate an Assigned Contractor for the grant. The Contractor will assume responsibility for the distribution of grant funds. Participating agencies shall bill the Contractor monthly. The Contractor, in turn, will bill the State for reimbursement from the grant. Upon receipt of funds, the Contractor shall reimburse the participating agencies. TNET shall fund one full-time legal assistant position from seized and recovered funds.

The DEA shall provide office space, storage space, parking, and phone service at no cost to TNET and the contributing jurisdictions.

XIII. DISTRIBUTION OF SEIZURE FUNDS

The TNET Board provides oversight of seized and forfeited assets via the Fiscal Agent. Forfeited assets may be distributed to participating agencies when deemed appropriate by the Board. The Board will endeavor to maintain adequate financial resources to fund ongoing operations of the TNET.

The Fiscal Agent for TNET shall be designated by a majority vote of the Board. The Fiscal Agent may be changed to another agency within TNET by a majority vote of the Board. The threshold amount will be \$150,000.00. For federal seizures under that threshold, the Fiscal Agent will submit form DAG 71 to DOJ on behalf of TNET. The Fiscal Agent shall establish a special fund designated "Operating fund of TNET joint board" which shall be set up and maintained to hold all monies received from federally forfeited assets. The purpose of this account is to fund TNET's direct operational expenses.

If a single federal seizure is greater than \$150,000.00, then each member agency will prepare and submit their own individual form DAG 71 to DOJ in order to receive a portion of seized funds.

XIV. DISTRIBUTION OF ASSETS UPON TERMINATION

On termination of TNET, each participating jurisdiction shall retain sole ownership of the equipment purchased and provided for its participating TNET personnel.

Any TNET assets shall be equally divided among the participating jurisdictions at the asset's fair market value at the time of termination. The value of the assets of TNET shall be determined by using commonly accepted methods of valuation. If two or more participating jurisdictions desire an asset, the final decision shall be made by arbitration (described below). Any property not claimed shall be declared surplus by the Board and

disposed of pursuant to state law for the disposition of surplus property. Proceeds from the sale or disposition of any TNET property, shall, after payment of any and all costs of sale or debts of the jurisdiction, be equally distributed to those jurisdictions participating in TNET at the time of termination. If one or more jurisdictions terminate their participation in TNET, but TNET continues to exist, the jurisdiction terminating participation shall be deemed to have waived any right or title to any property owned by TNET or to share in the proceeds at the time of termination.

Arbitration pursuant to this section shall occur as follows:

- a. The jurisdictions seeking to acquire an asset shall select an Arbitrator to determine which jurisdiction will receive the property. If the jurisdictions cannot agree to an Arbitrator, the chiefs of the jurisdictions participating in TNET upon termination shall meet to determine who the Arbitrator will be. The Arbitrator may be any person not employed by the jurisdictions that wish to acquire the asset(s).
- b. During a meeting with the Arbitrator, each jurisdiction seeking to acquire the asset(s) shall be permitted to make an oral and/or written presentation to the Arbitrator in support of its position.
- c. At the conclusion of the presentation, the Arbitrator shall determine which jurisdiction is to receive the asset(s). In making this determination, the Arbitrator shall consider each jurisdiction's overall contribution to TNET. The decision of the Arbitrator shall be final and binding and shall not be the subject of appeal or review.

XV. LIABILITY, HOLD HARMLESS, AND INDEMNIFICATION

It is the intent of the participating jurisdictions to provide services of TNET without the threat of being subject to liability to one another, and to fully cooperate in the defense of any claims or lawsuits arising out of or connected with TNET actions that are brought against the jurisdictions. To this end, the participating jurisdictions agree to indemnify and hold harmless each other and to equally share responsibility and liability for the acts and omissions of their participating personnel when acting in the furtherance of this Agreement. If an action is brought against any of the participating jurisdictions, each jurisdiction shall be responsible for an equal share of any award or settlement of claims of damages, fines, fees, costs, and attorney's fees, regardless of which jurisdiction or employee the action is taken against or which jurisdiction or employee is ultimately responsible for the conduct. The jurisdictions shall share equally regardless of the number of jurisdictions named in the lawsuit or claim or the number of officers from each jurisdiction named in the lawsuit or claim. This section shall be subject to the conditions and limitation set for in subsections A through F below.

- .
- .
- A. Costs of Defense. All jurisdictions shall contribute equally to the costs of defending any claims or lawsuits, regardless of the allegations. If punitive damages are awarded at trial, that portion of the award shall be the sole responsibility of the entity that employs the individual against whom the punitive damages were awarded.
- B. Collective Representation and Defense. The Board in consultation with each member's insurance or risk pool will select the attorney who will represent the member agencies. All members will contribute equally to paying that attorney. If any agency wants to hire and pay for its own attorney, it may do so, but will continue to be responsible for its share of the attorney selected by the Board.

If the attorney selected by the Board determines there is a potential conflict among members or jurisdictions, it may recommend the retention of conflict counsel for one or more jurisdictions or members. The cost of any conflict counsel will also be shared equally by all jurisdictions.

The "client" of any attorney selected by the Board will be each individual entity (town, city, etc.), as well as each team member, unless an entity specifically declines representation, or conflict counsel is assigned.

- C. Removal From Lawsuit. If a jurisdiction or employee is successful in withdrawing or removing the jurisdiction or employee from a lawsuit by summary judgement, qualified immunity, or otherwise, the jurisdiction shall nonetheless be required to pay its equal share of any award, settlement, costs or attorney's fees as a result of the lawsuit.
- D. Settlement Process. It is the intent of this Agreement that the jurisdictions act in good faith on behalf of each other in conducting settlement negotiations on liability claim or lawsuits so that, whenever possible, all parties agree with the settlement or, in the alternative, agree to proceed to trial. If a claim or lawsuit requires the sharing of liability, no individual jurisdiction shall be authorized to enter into a settlement agreement with a claimant or plaintiff unless all jurisdictions agree with the terms of the settlement. Any settlement made by an individual jurisdiction without the agreement of the remaining jurisdictions, when required, shall not relieve the settling jurisdiction from paying an equal share of any final settlement or award.
- E. No Waiver of Title 51 RCW. This section shall not be interpreted to waive any defense arising out of Title 51 RCW.

- F. Insurance. The failure of any insurance carrier or self-insured pooling organization to agree to or follow the terms of this section shall not relieve any individual jurisdiction from its obligations under this Agreement.

XVI. NOTICE OF CLAIMS, LAWSUITS, AND SETTLEMENTS

If a claim is filed, or a lawsuit is brought against a participating jurisdiction or its employees for actions arising out of their conduct in support of TNET operations, the jurisdiction shall promptly notify the other jurisdictions that the claim or lawsuit has been initiated. Any documentation, including the claim or legal complaints, shall promptly be provided to each participating jurisdiction.

Any jurisdiction or member who believes or knows that another jurisdiction would be liable for a claim, settlement, or judgement that arises from a TNET action or operation, shall have the burden of notifying each participating jurisdiction of all claims, lawsuits, settlements, or demands made to that jurisdiction.

XVII. PROCESSING OF CLAIMS

- A. Designation of Lead Jurisdiction. There will be a lead jurisdiction for processing a claim that is filed with and against members for alleged damages and injuries that occur as a result of TNET activities. The lead jurisdiction shall be the jurisdiction within which the action subject to the claim occurred; PROVIDED, that if the jurisdiction within which the action subject to the claim occurred did not participate in the action subject to the claim, the lead jurisdiction shall be the jurisdiction within which the TNET investigation or response originated. If a jurisdiction that was not involved in the action subject to the claim receives the claim, that jurisdiction shall notify the other jurisdictions in accordance with Section XVI of this Agreement and shall use its best efforts to determine who the appropriate lead jurisdiction is. Nothing in this Agreement waives or is intended to change any claim reporting responsibility that any entity has to its insurance carrier or risk pool.
- B. Assistance Responding to Claims. TNET personnel involved in the action subject to the claim shall assist the lead jurisdiction in responding to the claim. The TNET Legal Assistant shall be responsible for gathering all records relating to the claim. These records shall include, but are not limited to, incident reports, notes, transcripts, photos, evidence logs, recorded statements, documents from emergency dispatch centers, and warrants from all jurisdictions that participated in the action subject to the claim. The TNET Legal Assistant shall also provide a list of personnel who participated in the action subject to the claim and their contact information. The TNET Legal Assistant shall deliver all copies of the records to the lead jurisdiction promptly upon request.

C. Claims of \$5,000 or Less

- i. Lead Jurisdiction Responsibilities. The lead jurisdiction shall be responsible for working with the TNET Legal Assistant to gather records relating to the action subject to the claim. The lead jurisdiction shall provide records to its insurance provider or risk pool and shall assist its insurance provider or risk pool in assessing liability for acts associated with the claim. The lead jurisdiction shall notify the other jurisdictions of any determinations as to liability. In determining whether a claim should be paid, the lead jurisdiction and its insurance provider or risk pool shall, at a minimum, consider the potential legal defenses to the claim and the costs of defending the claim.
- ii. Liability Determination – Apportionment of Damages. The lead jurisdiction, with the assistance of its insurance provider or risk pool, shall determine whether a claim has merit and should be paid. If the lead jurisdiction determines that payment of a claim of \$5,000 or less is appropriate, such determination shall be final and binding upon other jurisdictions and payment shall be apportioned equally among all jurisdictions. The insurance provider or risk pool for the lead jurisdiction shall provide full payment to the claimant, and each jurisdiction shall reimburse the insurance provider or risk pool for its equal share of such payment.

Before payment of any claim, and as a condition of payment, the insurance provider or risk pool making payment shall obtain from the claimant a complete and total release of liability on behalf of all jurisdictions participating in TNET and each and every officer, agent, or volunteer of those participating jurisdictions.

If the lead jurisdiction determines that a claim does not have merit, the lead jurisdiction shall notify the other jurisdictions of the determination, which is binding on the other jurisdictions; PROVIDED, any other jurisdiction may determine that payment is appropriate and may pay such claim in full, but will not seek reimbursement from the other participating jurisdictions.

- iii. Letter From Insurance Adjusters. In the event the lead jurisdiction, in conjunction with its insurance provider or risk pool, determines that payment of a claim of \$5,000 or less is appropriate, the insurance provider or risk pool shall provide each of the participating jurisdictions with a letter stating the determination and the bases for such determination.

- D. Lead Jurisdiction Responsibilities. The lead jurisdiction shall schedule a meeting with all jurisdictions participating in TNET to discuss claims over \$5,000 and to determine the appropriate manner in which to respond and/or defend these claims.

The Board and persons listed in Section XIX of the Agreement shall be notified of the meeting.

XVIII. PROCESSING OF LAWSUITS

- A. Notification to Other Jurisdictions. In the event a jurisdiction is served with a lawsuit, that jurisdiction shall provide notice and documentation of the lawsuit to each of the other jurisdictions listed in Section XIX of this Agreement.
- B. Coordination of Initial Meeting. The jurisdiction that initially receives a lawsuit shall schedule a meeting or otherwise communicate with all the jurisdictions participating in TNET to discuss the lawsuit and to determine the appropriate manner in which to respond to and/or defend the lawsuit. The Board and persons listed in Section XX of this Agreement shall be notified of the meeting or other communication.

XIX. NOTIFICATION OF CLAIMS & LAWSUITS

Section XVI of the Agreement requires that the jurisdiction receiving a claim or lawsuit notify the other jurisdictions of the claim or lawsuit and provide documentation of that claim or lawsuit to the other jurisdictions. Nothing in the Agreement shall be deemed a waiver by any participating jurisdictions of the requirements set forth in Chapter 4.96 RCW, and the fact that a participating jurisdiction provides notice or copies of a claim to another jurisdiction shall not constitute a waiver of the requirement that a party who files suit against a jurisdiction first file a claim with the jurisdiction in accordance with Chapter 4.96 RCW. Moreover, nothing in this Agreement shall be deemed acceptance of service of a lawsuit, and the fact that a participating jurisdiction provides notice or copies of a lawsuit to another jurisdiction shall not be deemed adequate service of such lawsuit.

For the purposes of implementing Section XVI of this Agreement, the following persons from each jurisdiction shall receive any required notification or documentation:

City of Auburn

City of Auburn Risk Manager
25 West Main Street
Auburn, WA 98001
253-931-3040

City of Bonney Lake

Bonney Lake Risk Manager
9002 Main Street E
Bonney Lake, WA 98391
(253) 862-8602

City of Lakewood

City of Lakewood Risk Management
ATTN: Kat St. Pierre
City Hall, 6000 Main St. SW
Lakewood, WA 98499
253-589-2489

City of Puyallup

ATTN: City Attorney
333 South Meridian
Puyallup, WA 98371
253-864-4196

City of Tacoma

City of Tacoma
Office of the City Clerk
747 Market Street, Room 220
Tacoma, WA 98402

Pierce County

Pierce County Risk Management
955 Tacoma Avenue South, #303
Tacoma, WA 98402

Washington State Dept. of Corrections

David Phillips
Program Administrator-Community
Corrections Division
360-725-8324

XX. COMPLIANCE WITH THE LAW

TNET and all its members shall comply with all federal, state, and local laws that apply to TNET.

XXI. ALTERATIONS

This Agreement may be modified, amended, or altered by agreement of all participating agencies and such alteration, amendment or modification shall be effective when reduced to writing and executed in a manner provided for by this Agreement.

It is recognized that during the course of operations, it may become necessary to alter the Terms of the Agreement to provide for efficient operation of TNET and to meet the goals of TNET. It is further recognized that the Board has the expertise necessary to provide for the efficient operation of TNET. To that end, the jurisdictions agree that changes may be made to this Agreement, or addendums added to this Agreement, without prior approval of if the legislative bodies of the jurisdictions on the condition that such changes or addendums shall be effective only by a unanimous vote of all members of the Board.

XXII. RECORDS

Each jurisdiction shall maintain records relating to work performed by its employees assigned to TNET when working on non-DEA operations. The TNET Legal Assistant shall maintain records relating to the operation of TNET to the extent required by law. All records shall be available for full inspection and copying by each participating jurisdiction.

XXIII. FILING

Upon execution, this Agreement shall be filed with the Pierce County Auditor or, alternatively, listed by subject on the jurisdiction's website or other electronically retrievable public source.

XXIV. SEVERABILITY

If any part, paragraph, section, or provision of the Agreement is held to be invalid by any court of competent jurisdiction, such adjudication shall not affect the validity of any remaining section, part, or provision of this Agreement.

XXV. MUNICIPAL AUTHORIZATIONS

This Agreement shall be executed on behalf of each participating jurisdiction by its duly authorized representative and pursuant to an appropriate resolution or ordinance of the governing body of each participating jurisdiction. This Agreement shall be deemed effective as to each jurisdiction upon execution by the authorized representative of that jurisdiction. This Agreement may be executed by counterparts and be valid as if each authorized representative has signed one original document.

By signing below, the signor certifies that he or she has the authority to sign this Agreement on behalf of the jurisdiction, and the jurisdiction agrees to the terms of this Agreement.

City of Auburn

Print Name: Nancy Backus
Title: Mayor
Date: _____

City of Bonney Lake

Print Name: Neil Johnson, Jr.
Title: Mayor
Date: _____

City of Lakewood

Print Name: _____
Title: _____
Date: _____

City of Puyallup

Print Name: _____
Title: _____
Date: _____

City of Tacoma

Print Name: _____
Title: _____
Date: _____

Pierce County Sheriff's Department

Print Name: _____
Title: _____
Date: _____

Pierce County Prosecuting Attorney

Washington State Dept. of Corrections

Print Name: _____
Title: _____
Date: _____

Print Name: Debra Eisen,
Title: Contracts & Regulations Administrator
Date: _____



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5446 (Gaub)

Date:

July 30, 2019

Department:

Public Works

Attachments:

[Resolution No. 5446](#)

[Exhibit A](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council adopt Resolution No. 5446.

Background Summary:

The Reservoir 1 Seismic Control Valve project received a hazard mitigation grant administered by the Washington State Military Department. Construction of the Project was completed in early July 2019. Due to unforeseen circumstances, the project was not able to be completed and the grant money disbursed before the original contract, D16-010, expired on June 30, 2019. In order for the City to be reimbursed for its expenses associated with the project, the State and the City need to execute a new contract for the Project. The new contract will include the funding and project schedule of the original contract. The new contract will extend the Period of Performance for 6 months.

There are no consequences to having a new contract. The amount of funding and the scope of work are the same as before. This is a merely a formality so that the City can receive final reimbursement for the project.

Resolution No. 5446 authorizes the Mayor to execute an agreement between the City of Auburn and the Washington State Military Department for Hazard Mitigation Grant for the Reservoir 1 Seismic Control Valve project.

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

Gaub

Meeting Date: August 5, 2019

Item Number:

RES.C

RESOLUTION NO. 5446

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO ACCEPT AND EXPEND FEDERAL GRANT FUNDS ADMINISTERED BY THE WASHINGTON STATE MILITARY DEPARTMENT FOR THE RESERVOIR 1 SEISMIC CONTROL VALVE PROJECT

WHEREAS, the City was previously awarded a Washington State Military Department Hazard Mitigation Grant (Grant No. D16-010) for the Reservoir 1 Seismic Control Valve Project (Project), which the City accepted through Resolution 5285; and

WHEREAS, the City applied for and received approval from the Washington State Military Department for additional grant funding, which the City accepted through Resolution 5382; and

WHEREAS, the Project was completed in early July of 2019, however, due to extraordinary circumstances identified by the Washington Military Department Emergency Management Division the distribution of grant funds was not completed by the time the original contract expired on June 30, 2019; and

WHEREAS, it is in the best interest of the City to enter into a new Hazard Mitigation Grant Agreement with the State to receive reimbursement for the project construction.

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

Section 1. The Mayor is authorized to execute a Project grant agreement between the City and the State of Washington for the receipt and

utilization of hazard mitigation grant funds for the Project in substantial conformity with the grant agreement attached, marked as Exhibit A. In addition, the Mayor is authorized to negotiate, finalize, and execute any further necessary supplemental agreements related to the Project as may be needed, expending up to the total amount of the grant.

Section 2. The Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

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

Dated and Signed this _____ day of _____, 2019.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

Steve Gross, City Attorney

Exhibit A – Hazard Mitigation Grant Agreement

**Washington State Military Department
HAZARD MITIGATION GRANT AGREEMENT FACE SHEET**

1. Sub-Grantee Name and Address: City of Auburn 25 W. Main Street Auburn, WA 98001		2. Total Grant Amount: \$380,216.74 Up to \$285,162.56 F, \$47,527.09 S, \$47,527.09 L		3. Grant Number: E14-XXX	
4. Sub-Grantee Contact, phone/email: Lisa Tobin (253) 804-5062 ltobin@auburnwa.gov		5. Grant Start Date: <i>July 2, 2019</i>		6. Grant End Date: January 1, 2020	
7. Department Program Manager, phone/email: Tim Cook, (253) 512-7072 Tim.cook@mil.wa.gov		8. Data Universal Numbering System (DUNS): 032942575		9. UBI # (state revenue): 171-000-010	
10. Funding Authority: Washington State Military Department (the "Department"), and Federal Emergency Management Agency (FEMA)					
11. Funding Source Agreement #: FEMA-4168-DR-WA-6-R		12. Program Index # 744F2 / 742L3		13. Catalog of Federal Domestic Asst. (CFDA) # & Title: 97.039 (HMGP)	
14. TIN or SSN: 91-6001228					
15. Service Districts: (BY LEGISLATIVE DISTRICT): 30 th , 31 st & 47 th (BY CONGRESSIONAL DISTRICT): 8 th & 9 th		16. Service Area by County(ies): King and Pierce County		17. Women/Minority-Owned, State Certified?: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMWBE # _____	
18. Contract Classification: <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Collaborative Research <input type="checkbox"/> A/E <input type="checkbox"/> Other _____			19. Contract Type (check all that apply): <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency		
20. Contractor Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO _____			21. Contractor Type (check all that apply): <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input checked="" type="checkbox"/> SUBRECIPIENT <input checked="" type="checkbox"/> OTHER		
22. BRIEF DESCRIPTION: The purpose of this contract is a continuation of contract D16-010 including Amendments A and B. FEMA's Hazard Mitigation Grant Program provides grants for mitigation planning and cost-effective mitigation actions after a Presidential disaster declaration to reduce the risk of loss of life and property damage in future disasters. Title: Project 4168-6-R – Reservoir 1 Seismic Control Valve - Provide funds to City of Auburn to install seismic control valve at the City's largest reservoir, preventing water from escaping from the reservoir in case of an earthquake. Project details are noted in Attachment 3 - Certification and Assurances, Attachment 4 – Statement of Work and/or Description of the Project, Attachment 5 - Project Development Schedule, Attachment 6 - Project Budget, and the FEMA approved project application, each of which are incorporated herein by this reference.					
IN WITNESS WHEREOF, the Department and Sub-Grantee acknowledge and accept the terms of this Grant Agreement, exhibits, references and attachments hereto and have executed this Grant Agreement as of the date and year written below. This Grant Agreement Face Sheet; Special Terms & Conditions (Attachment 1); General Terms and Conditions (Attachment 2); Certification and Assurances (Attachment 3); Statement of Work and/or Description of Project (Attachment 4); Project Development Schedule (Attachment 5); Project Budget (Attachment 6); and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Grant Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Grant Agreement shall be deemed to exist or to bind any of the parties hereto.					
In the event of an inconsistency in this Grant Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: <ol style="list-style-type: none"> 1. Applicable Federal and State Statutes and Regulations 2. Statement of Work and/or Project Description as outlined in FEMA approved Project Application 3. Special Terms and Conditions 4. General Terms and Conditions, and, 5. Other provisions of the contract incorporated by reference. 					
WHEREAS, the parties hereto have executed this Grant Agreement on the day and year last specified below.					
FOR THE DEPARTMENT:			FOR THE SUB-GRANTEE:		
Signature _____ Date _____ Regan Anne Hesse, Chief Financial Officer Washington State Military Department			Signature _____ Date _____ Nancy Backus, Mayor City of Auburn		
BOILERPLATE APPROVED AS TO FORM:			APPROVED AS TO FORM:		
Brian E. Buchholz (signature on file) 1/28/2014					

**Washington State Military Department
SPECIAL TERMS AND CONDITIONS**

ARTICLE I - KEY PERSONNEL:

1. The individuals listed below shall be considered key personnel and point of contact. Any substitution by either party must be submitted in writing.

SUB-GRANTEE		MILITARY DEPARTMENT	
Name	Susan Fenhaus	Name	Tim Cook
Title	Water Utility Engineer	Title	State Hazard Mitigation Officer
E-Mail	sfenhaus@auburnwa.gov	E-Mail	Tim.cook@mil.wa.gov
Phone	253-804-5061	Phone	253-512-7072
Name	Lisa Tobin	Name	Ryan Chandler
Title	Utilities Engineering Manager	Title	Hazard Mitigation Grant Program Coordinator
E-Mail	ltobin@auburnwa.gov	E-Mail	Ryan.chandler@mil.wa.gov
Phone	253-804-5062	Phone	253-512-7460
Name	Consuelo Rogal	Name	
Title	Financial Analyst	Title	
E-Mail	crogel@auburnwa.gov	E-Mail	
Phone	253-804-5023	Phone	

ARTICLE II – ADMINISTRATIVE AND /OR FINANCIAL MANAGEMENT AND ACCOUNTING:

The SUB-GRANTEE shall comply with all applicable state and federal laws, regulations, and program guidance. A non-exclusive list of laws, regulations and guidance commonly applicable to FEMA grants are listed here for reference only, and include but are not limited to, the following:

1. Applicable FEMA CFR and Program Guidance provisions:
 - Title 44 Code of Federal Regulations (CFR) Part 206, Subpart N (206.430- .440), Hazard Mitigation Grant Program.
 - Title 44 CFR Part 79, Flood Mitigation Grants.
 - Title 44 CFR Part 80, Property Acquisition and Relocation for Open Space.
 - Title 44 CFR Part 7, Nondiscrimination in Federally Assisted Programs.
 - Title 44 CFR Part 9, Floodplain Management and Protection of Wetlands.
 - Title 44 CFR Part 10, Environmental Considerations.
 - Title 44 CFR Part 16, Enforcement of Nondiscrimination on the Basis of Handicap.
 - Title 44 CFR Part 17, Government wide Requirements for Drug-Free Workplace.
 - Title 44 CFR Part 18, New Restrictions on Lobbying.
 - *Hazard Mitigation Assistance Unified Guidance*, FEMA, July 12, 2013.
2. Cost Principles:
 - 2 CFR Part 220 – OMB Circular A-21, as revised, Cost Principles for Educational Institutions.
 - 2 CFR Part 225 as revised, Cost Principles for State, Local and Indian Tribal Governments.
 - 2 CFR Part 230 as revised, Cost Principles for Non-Profit Organizations.
3. Administrative Requirements:

- 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
 - OMB Circular A-102, as revised, Grants and Cooperative Agreements with State and Local Governments.
 - 2 CFR Part 215 – OMB Circular A-110, as revised, Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
4. Audit Requirements:
- OMB Circular A-133, as revised, Audits of States, Local Governments, and Non-Profit Organizations.
5. The Sub-Grantee shall comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note), and complete and return to the Department Attachment 7 attached to and made a part of this Agreement.

ARTICLE III – COMPENSATION SCHEDULE:

1. PROJECT FUNDING

The Department will administer the Hazard Mitigation Grant Program and will pass through the federal match and commit the required state match. The Sub-Grantee will commit the required local match.

- a. The total cost of the project (total project cost) for the purposes of this Grant Agreement is **\$380,216.74** dollars; PROVIDED that, if the total cost of the project when completed, or when this Grant Agreement is terminated, is actually less than above, the actual cost shall be substituted herein.
- b. The value of the contributions by the Sub-Grantee to the project shall be **\$47,527.09** dollars, or **12.5** percent, at minimum, of the total project cost. The Sub-Grantee's contributions may be cash or in-kind, must be from a non-federal source, must be reasonable, allowable and allocable, and must comply with all Federal requirements and regulations.
- c. When the Department enters into an agreement with the Federal Emergency Management Agency (FEMA) to contribute federal funds to this project, that federal contribution will be **\$285,162.56** dollars, or **75** percent of the total project cost, whichever is less.
- d. The value of the contributions by the Department to the project shall be **\$47,527.09** dollars, or **12.5** percent, at minimum, of the total project cost. The Department's contributions must be from a non-federal source and must comply with all Federal requirements and regulations.
- e. The Department shall not be obligated to pay any amount beyond that set out in Subsections c and d above, unless that additional amount has been approved in advance by both the Department and Sub-Grantee and is incorporated by written amendment into this Grant Agreement.
- f. Except as provided in Article III, 1. g. of this Agreement, some flexibility to shift funds between budget categories is allowed as follows: Transfer of funds between total direct cost categories in the approved budget will not be reimbursed without the prior written authorization of the Department and FEMA when such cumulative transfers among those approved cost categories exceed 10 percent of the total budget. Approved budget categories are as specified or defined in the Project Budget, Attachment #6.
- g. Transfer of funds between construction and non-construction budget categories is allowed only upon prior written approval and authorization of the Department. Approved budget categories are as specified or defined in the Project Budget, Attachment #6.

2. GRANT AGREEMENT PERIOD

Activities payable under this Grant Agreement and to be performed by the Sub-Grantee under this Grant Agreement shall only be those after the obligation of federal funds on September 15, 2016 and shall terminate on April 2, 2016. This period shall be referred to herein as the Grant Agreement Period and/or Period of Performance, unless expressly stated otherwise. Costs incurred during the Grant Agreement Period shall include pre-award costs authorized in writing by FEMA as well as eligible costs incurred after the effective date of the Grant Agreement Period and before termination.

- a. The Sub-Grantee shall complete the project as described in the FEMA approved project application 4168-6-R, incorporated in and made a part of this Agreement by reference, and as described in Attachments #4, #5 and #6. In the event of extenuating circumstances, the Sub-Grantee may request, in writing, that the Department extend the deadline for Grant Agreement completion. The Department may, in its sole discretion, extend the deadline only by written amendment to this Agreement.
- b. No expenditure made, or obligation incurred, before or after the Grant Agreement Period shall be eligible, in whole or in part, for grant funds with the exception of pre-award costs authorized in writing by FEMA. In addition to any remedy the Department may have under this Grant Agreement, the amounts set out in Article III, section 1. **Project Funding**, above, may be reduced to exclude any such expenditure from participation.
- c. Failure to complete the project in a timely manner, as outlined in Attachment #5, is a material breach of this Grant Agreement for which the Department is entitled to termination or suspension under Attachment 2, section A.32.

3. **PROJECT PAYMENT(s)**

The Department, using disaster funds from PL 93-288, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and the State of Washington, for the Hazard Mitigation Grant Program, shall issue payments to the Sub-Grantee as follows:

- a. Payment for eligible, reimbursable work completed and billed on an A-19, Voucher Distribution, upon receipt of acceptable documentation, to include, but not limited to, copies of receipts for all goods and services purchased, copies of invoices from contractors and subcontractors for work completed, and copies of timesheets for staff involved with the project, sign-in/sign-out sheets for donated personnel and/or volunteer time spent on the project, and documentation to support other in-kind contributions.
- b. The Department reserves the right to withhold disbursement of up to 10 percent of the total project cost, as specified in Article III, section 1, Project Funding, to the Sub-Grantee until the project has been completed and given final approval by the Department.
- c. Final Payment: Final payment of any remaining, or withheld, funds will be made within 60 days after submission by the Sub-Grantee of the final report, final A-19, Voucher Distribution, and completion of all final inspections by the Department.

Final payment by the Department also may be conditioned upon a financial review, if determined necessary by the Department. Adjustments to the final payment may be made following any audits conducted by the Department, Washington State Auditor's Office, the United States Inspector General, or their authorized representatives.

ARTICLE IV – DOCUMENTATION

The Sub-Grantee is required to retain all documentation which adequately identifies the source and application of all mitigation grant funds for six years following the closure of this grant. For all funds received, source documentation includes adequate accounting of actual costs and recoveries incurred.

ARTICLE V – REPORTS:

1. In addition to the reports as may be required elsewhere in this Grant Agreement, the Sub-Grantee shall promptly prepare and submit the following reports to the Department's Key Personnel:
 - a. Quarterly progress reports, no later than the 15th day following the end of the fiscal quarter, indicating the status of the project, to include a brief narrative on progress during the quarter. The report shall identify the costs incurred to date, the percentage of work completed, the anticipated completion date of the project, and whether cost under runs or over runs are expected. In addition, the Sub-Grantee should note any challenges or issues associated with the project. Failure to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments to the Sub-Grantee until a complete quarterly report is received by the Department.
 - b. A final report when the project is completed, prematurely terminated, or project assistance is terminated. The report shall include a final accounting of all expenditures and a description of work accomplished. If the project is not completed, the report shall contain an estimate of the percentage of completion, and shall indicate the degree of usefulness of the completed project. The report shall account for all expenditures not previously reported and shall include a summary for the entire project.

ARTICLE VI – TIME EXTENSIONS

A time extension request for Grant Agreement completion must be submitted by the Sub-Grantee to the Department no later than 60 days before the end of the Period of Performance. A time extension request must be in writing and identify the project, the reason the project has not been completed within the approved Period of Performance, a current status of the completion of the work, a detailed timeline for completion of the remaining elements, and an anticipated completion date for the completion of the remaining work. Failure to timely submit a complete time extension request may result in denial of the time extension and loss of funding for the project.

ARTICLE VII – SUBRECIPIENT MONITORING:

1. The Department may monitor the use of project funding, costs, and activities by the Sub-Grantee under this Grant Agreement during the Period of Performance and for the life of any equipment purchased under this Grant Agreement for compliance with federal and state laws and regulations, audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations. As a subrecipient of federal financial assistance under Circular A-133, the Sub-grantee shall complete and return to the Department Attachment 8 "OMB Circular A-133 Audit Certification Form" with the signed Grant Agreement and each fiscal year thereafter until the Grant Agreement is closed, which form is incorporated in and made a part of this Agreement.
2. Monitoring activities may include, but are not limited to:
 - a. Review of quarterly project performance reports;
 - b. Review of all documentation related to Sub-Grantee completion of Grant Agreement deliverables and compliance with the Grant Agreement;
 - c. Review of reimbursement requests to ensure allowability and consistency with Grant Agreement budget;
 - d. On-site visits with the Sub-Grantee and of the project to review work in progress, equipment records and inventories, verify source documentation for reimbursement requests and performance reports, verify other supporting documentation, and verify completion of the project funded under this Grant Agreement.

3. As a subrecipient of federal funds, the Sub-Grantee is required to meet or exceed the monitoring activities, as outlined above, for all contractors, consultants, and subrecipients who receive pass-through funding from this Grant Agreement.

ARTICLE VIII – CLOSE-OUT

To initiate close-out, the Sub-Grantee is required to certify in writing the date completed and total amount expended on the project on FINAL PROJECT REPORT form to the Department. After receipt of the FINAL PROJECT REPORT form, the Department will conduct a site inspection and review supporting documentation for compliance with the requirements of the Grant Agreement.

Prior to project close-out, the Sub-Grantee shall provide the Department with acceptable documentation supporting compliance with the Grant Agreement. General documentation supporting compliance with the Grant Agreement typically includes, but is not limited to, the following:

- Photographs of the structures or properties involved in the project **prior** to project implementation **and after** project implementation.
- Digital geospatial coordinates (latitude and longitude) for each structure with an accuracy of ± 20 meters (64) feet.
- Certificate of occupancy or equivalent documentation from the appropriate regulatory authority for each structure to certify it is code-compliant.
- Certification that the Sub-Grantee has met the environmental and historic preservation conditions of the grant award as described in this Grant Agreement.
- Copies of all compliance and consultation documentation required by the grant award as described in the Grant Agreement (e.g., coastal zone management consistency determination from Department of Ecology).
- Copies of all documentation related to inspection for and removal and disposal of asbestos and other hazardous materials from each property.

Specific additional documentation requirements for projects to acquire properties for open space include, but are not limited to, the following:

- Signed Statement of Voluntary Participation from owner of each acquired property.
- Documentation of dates of acquisition and structure demolition or removal from property for each property.
- Copy of recorded open space deed restrictions for each acquired property.
- Copy of AW-501 form filed with National Flood Insurance Program for each acquired repetitive loss property.
- Documentation of consultation with Army Corps of Engineers and State Department of Transportation regarding future use of each property.

Specific additional documentation requirements for projects to elevate structures above the base flood elevation include, but are not limited to, the following:

- Photographs of the structures prior to elevation, and front, rear and side photos post-elevation.
- Copies of the pre-project elevation certificate for each structure, or documentation of methodology used to calculate the first-floor elevations.
- Copies of the post-project elevation certificate for each structure.
- Copies of certificate of occupancy for each elevated structure to certify that it is code compliant.
- Certification by an engineer, floodplain manager or other senior official of the Sub-Grantee that each completed structural elevation is in compliance with local ordinances and National Flood Insurance Program regulations and technical bulletins.

- Copy of AW-501 form filed with National Flood Insurance Program for each elevated repetitive loss property.
- Copies of proof of flood insurance for each elevated structure.
- Copies of the recorded deed restriction related to maintenance of flood insurance for each property within the Special Flood Hazard Area.

The Department will consult with the Sub-Grantee regarding other documentation requirements of the Grant Agreement throughout the Period of Performance.

ARTICLE IX – ADDITIONAL SPECIAL CONDITIONS

1. CONSTRUCTION DOCUMENTS, CONTRACTS, CHANGE ORDERS

- a. Construction Document Approval: The Sub-Grantee agrees to submit one copy of all construction plans and specifications to the Department for review and approval **prior to** solicitation of bids for construction. Review by the Department will be for compliance with the terms of this Grant Agreement.
- b. Construction Contracts: Construction contracts shall be awarded through a process of competitive bidding, if required by federal, state and local law and in compliance with applicable procurement requirements of 44 CFR Part 13, section 13.36. Copies of all bids and contracts awarded shall be submitted to the Department upon request. Where all bids are substantially in excess of project estimates, the Department may, by notice in writing, suspend the project for determination of appropriate action, which may include termination of the Grant Agreement.
- c. Construction Change Order: All change orders must be in writing and shall be submitted to the Department. The Sub-Grantee shall pay any increase in the cost of the project as the result of a change order, unless the Department has agreed to the change with a written amendment to this Grant Agreement.

2. PROCUREMENT

The Sub-Grantee shall comply with the requirements of 44 CFR Part 13, section 13.36, Procurement, when procuring services, supplies, and property funded by this grant agreement. The Sub-Grantee must use its own procurement procedures which are consistent with applicable State and local laws and regulations, ***provided*** that the procurements conform to applicable Federal law and the standards identified in 44 CFR Part 13, section 13.36. Depending upon the scale of the procurement and the type of services or property to be procured under this Grant Agreement, the Sub-Grantee must use one of the following for its procurement:

- a. Small purchases. The Sub-Grantee shall obtain price or rate quotations from an adequate number of qualified sources for securing services, supplies, or other property that do not cost more than the federal simplified acquisition threshold, currently set at \$100,000.
- b. Sealed bids (formal advertising). The Sub-Grantee shall publicly solicit and award a firm-fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.
- c. Competitive proposals. The Sub-Grantee, when conditions are not appropriate for the use of sealed bids, shall solicit competitive proposals when more than one source is submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded.
- d. Non-competitive proposals. The Sub-Grantee may procure services or property through solicitation of a proposal from only one source, or after solicitation of a number of sources if competition is determined inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals, and one of the following circumstances applies: the item is available only from a single source; the public

exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; the Department authorizes noncompetitive proposals; or competition is determined inadequate after solicitation of a number of sources.

The Sub-Grantee must maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

The Sub-Grantee will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The Sub-Grantee will maintain records sufficient to detail the significant history of the procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

The Sub-Grantee will conduct all procurement transactions in a manner providing full and open competition consistent with the standards of 44 CFR Part 13, section 13.36.

3. ACQUISITION AND MANAGEMENT OF EQUIPMENT

The Sub-Grantee agrees that all equipment purchased under this Grant Agreement will be recorded and maintained in the Sub-Grantee's equipment inventory system, in compliance with 44 CFR 13.32, Equipment.

- a. Upon successful completion of the terms of this Grant Agreement, all equipment purchased through this Grant Agreement will be owned by the Sub-Grantee.
- b. The Sub-Grantee shall be responsible for any and all operation and maintenance expenses and for the safe operation of their equipment including all questions of liability.
- c. The Sub-Grantee shall maintain equipment records that include: a description of the property; the manufacturer's serial number, model number, or other identification number; the source of the equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; who holds title; the acquisition date; the cost of the equipment and the percentage of Federal participation in the cost; the location, use and condition of the equipment at the date the information was reported; and disposition data including the date of disposal and sale price of the property.
- d. Records for equipment shall be retained by the Sub-Grantee for a period of six years from the date of the disposition, replacement or transfer. If any litigation, claim, or audit is started before the expiration of the six year period, the records shall be retained by the Sub-Grantee until all litigation, claims, or audit findings involving the records have been resolved.
- e. The Sub-Grantee shall take a physical inventory of the equipment and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Sub-Grantee to determine the cause of the difference. The Sub-Grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
- f. The Sub-Grantee shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage or theft shall be investigated and a report generated.
- g. The Sub-Grantee will develop adequate maintenance procedures to keep the property in good condition.
- h. If the Sub-Grantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

- i. When original or replacement equipment is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:
 - i. Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of by the Sub-Grantee with no further obligation to the awarding agency.
 - ii. Items of equipment with a current per-unit fair market value of more than \$5,000 may be retained or sold and the Sub-Grantee shall compensate the Federal-sponsoring agency for its share.
 - j. As a subrecipient of federal funds, the Sub-Grantee must pass on equipment management requirements that meet or exceed the requirements outlined above for all contractors, consultants, and subrecipients who receive pass-through funding from this grant agreement.
4. As a recipient of federal financial assistance under this Agreement, the Sub-grantee shall comply with all applicable state and federal statutes, regulations, executive orders, and guidelines, including but not limited to the following:
- a. All applicable state and federal statutes, regulations and executive orders relating to nondiscrimination, including but not limited to the following: (a) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.) which prohibits discrimination on the basis of race, color or national origin; (b) the Civil Rights Act of 1968 (42 U.S.C. 3601), which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex; (c) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; (d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of disability; (e) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101 et seq.), which prohibits discrimination on the basis of age; (j) Clean Air Act of 1970, (k) Clean Water Act of 1977, (n) Coastal Wetlands Planning, (o) Protection, and Restoration Act of 1990, (f) the Fair Housing Amendments Act of 1988, as amended (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (g) the Americans with Disabilities Act, as amended (42 U.S.C. §§ 12101-12213) which prohibits discrimination on the basis of disability; and (h) Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency.
 - b. All applicable state and federal statutes, regulations, executive orders and guidelines relating to environmental and historical preservation, including but not limited to the following: (a) the Coastal Wetlands Planning, Protection and Restoration Act of 1990, as amended (16 U.S.C. 3951 et seq.), Executive Order 11990 and 44 CFR Part 9; (b) the Clean Air Act of 1970, as amended (42 U.S.C. §7401) and the Clean Water Act of 1977, as amended (38 U.S.C. §§ 1251-1387) and Executive Order 11738; (c) floodplains management pursuant to EO 11988, as amended; (e) the Coastal Zone Management Act of 1972, as amended (P.L. 92-583, 16 U.S.C. §§1451 et seq.); (d) the National Environmental Policy Act, as amended (42 U.S.C. §4321); (e) the Safe Drinking Water Act of 1974, as amended (PL 93-523); (f) the Endangered Species Act of 1973, as amended (PL 93-205); and (g) the National Historic Preservation Act, as amended (PL 89-665, 16 U.S.C. §470 et seq.) and 36 CFR Part 800.
 - c. The Drug-Free Workplace Act of 1988, as amended (41 U.S.C. §701 et seq., 2 CFR 3001, 44 CFR Part 17).
 - d. Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. §7104) and 2 CFR §175.

- e. The requirements of 45 CFR Part 46 Protection of Human Subjects for purposes of research, and the requirements in DHS Directive 026-04.
 - f. The requirements of the Animal Welfare Act of 1966, as amended (7 U.S.C. §2131 et. seq.).
 - g. The Flood Disaster Protection Act of 1973 the National Flood Insurance Act of 1968, as amended (42 U.S.C. §4001 et seq.).
 - h. The USA Patriot Act of 2001, as amended (18 U.S.C. §§175-175c).
 - i. The Fly America Act of 1974, as amended (49 U.S.C. §40118) and the interpretive guidelines issued by the Comptroller General of the United States March 31, 1981, amendment to Comptroller General Decision B138942.
 - j. The False Claims Act (FCA) (31 U.S.C. § 3729).
 - k. Section 6 of the Hotel and Motel Safety Act of 1990 (15 U.S.C. §2225(a), ensuring that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention Control Act of 1974, 15 U.S.C. §2225.
5. The Sub-grantee must comply with any Federal requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
 6. The Sub-grantee must obtain FEMA and Department of Homeland Security (DHS) approval prior to using the FEMA or DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
 7. The Sub-grantee must ensure that any project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
 8. If, during the past three years, the recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the Sub-grantee must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the Department for forwarding to the DHS awarding office and the DHS Office of Civil Rights and Civil Liberties. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the Sub-grantee, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Component and/or awarding office. The United States has the right to seek judicial enforcement of these obligations.
 9. If the Sub-grantee collects personally identifiable information (PII), the Sub-grantee must have a publically-available policy that describes what PII is collected, how the PII is used, whether the PII is shared with third parties, and how individuals may have their PII corrected as necessary.
 10. The Sub-grantee and any of its sub-recipients are required to be non-delinquent in repayment of any Federal debt.

Washington State Military Department
GENERAL TERMS AND CONDITIONS
Mitigation Grants

A.1 DEFINITIONS

As used throughout this Grant Agreement, the following terms will have the meaning set forth below:

- a. **"Department"** means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department.
- a. **"Sub-grantee"** means the government or other eligible legal entity to which a sub-grant is awarded and which is accountable to the Grantee for the use of the funds provided under this Grant Agreement, and includes all employees of the Sub-grantee and any sub-contractor retained by the Sub-grantee as permitted under the terms of this Grant Agreement. The term "Sub-grantee" and "Contractor" may be used interchangeably in this Agreement.
- b. **"Sub-grantee Agent"** means the official representative and alternate designated or appointed by the Sub-grantee in writing and authorized to make decisions on behalf of the Sub-grantee.
- c. **"Grantee"** means the government to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is an entire legal entity even if only a particular component of the entity is designated in the grant award document. For the purpose of this Grant Agreement, the state of Washington is the Grantee. The Grantee and the Department are one and the same.
- d. **"Monitoring Activities"** means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, authorities, and policies.
- e. **"Project"** shall mean those activities as described in the FEMA approved project application 4168-6-R, which are incorporated in and made a part of this Agreement by reference, and as described in Attachments #4, #5 and #6.
- g. **"PL"** – is defined and used herein to mean the Public Law.
- h. **"CFR"** – is defined and used herein to mean the Code of Federal Regulations.
- i. **"OMB"** – is defined and used herein to mean the Office of Management and Budget.
- j. **"WAC"** – is defined and used herein to mean the Washington Administrative Code.
- k. **"RCW"** – is defined and used herein to mean the Revised Code of Washington.

A.2 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

Non-federal entities, as subrecipients of a federal award, that expend \$500,000 or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with the Office of Management and Budget (OMB) Circular A-133-Audits of States, Local Governments, and Non-Profit Organizations (amended June 27, 2003, effective for fiscal years ending after December 31, 2003, and further amended June 26, 2007). Non-federal entities that spend less than \$500,000 a year in federal awards are exempt from federal audit requirements for that year, except as noted in Circular No. A-133. As defined in Circular A-133, the term "non-federal entity" means a State, local government, or non-profit organization, and the term "State" includes Indian tribes. Circular A-133 is available on the OMB Home Page at <http://www.omb.gov>.

Sub-grantees that qualify as subrecipients required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General and the OMB Compliance Supplement. The Sub-grantee has the responsibility of notifying its auditor and requesting an audit in compliance with Circular A-133, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS,

as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by Circular A-133.

The Sub-grantee shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any sub-contractors also maintain auditable records.

The Sub-grantee is responsible for any audit exceptions incurred by its own organization or that of its sub-contractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Sub-grantee must respond to Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The Department reserves the right to recover from the Sub-grantee all disallowed costs resulting from the audit.

Once the single audit has been completed, the Sub-grantee must send a full copy of the audit to the Department and a letter stating there were no findings, or if there were findings, the letter should provide a list of the findings. The Sub-grantee must send the audit and the letter no later than nine (9) months after the end of the Sub-grantee's fiscal year(s) to:

**Contracts Office
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

In addition to sending a copy of the audit, the Sub-grantee must include a corrective action plan for any audit findings and a copy of the management letter if one was received.

If Sub-grantee claims it is exempt from the audit requirements of Circular A-133, Sub-grantee must send a letter identifying this Grant Agreement and explaining the criteria for exemption no later than nine (9) months after the end of the Sub-grantee fiscal year(s) to:

**Contracts Office
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

The Department retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

The Sub-grantee shall include the above audit requirements in any sub-contracts.

Conducting a single or program-specific audit in compliance with Circular A-133 is a material requirement of this Grant Agreement. In the absence of a valid claim of exemption from the audit requirements of Circular A-133, the Sub-grantees failure to comply with said audit requirements may result in one or more of the following actions in the Department's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with Circular A-133; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.3 ADVANCE PAYMENTS PROHIBITED

The Department shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. Sub-grantee shall not invoice the Department in advance of delivery and invoicing of such goods or services.

A.4 AMENDMENTS AND MODIFICATIONS

The Sub-grantee or the Department may request, in writing, an amendment or modification of this Grant Agreement. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by

the authorized representatives of the Department and the Sub-grantee. No other understandings or agreements, written or oral, shall be binding on the parties.

A.5 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The Sub-grantee 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 telecommunication.

A.6 APPLICATION REPRESENTATION-MISREPRESENTATION, INACCURACY AND BREACH

The Department relies upon the Sub-Grantee's application in making its determinations as to eligibility for, selection for, and scope of funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Grant Agreement.

A.6 ASSURANCES

Department and Sub-grantee agree that all activity pursuant to this Grant Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations.

A.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Grant Agreement, the Sub-grantee certifies that the Sub-grantee is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Grant Agreement by any federal department or agency.

If requested by the Department, the Sub-grantee shall complete and sign a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Sub-grantee for this Grant Agreement shall be incorporated into this Grant Agreement by reference.

Further, the Sub-grantee agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The Sub-grantee certifies that it will ensure that potential sub-contractors or sub-recipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and sub-awards to sub-recipients for any amount. With respect to covered transactions, the Sub-grantee may comply with this provision by obtaining a certification statement from the potential sub-contractor or sub-recipient or by checking the System for Award Management (<http://www.sam.gov>) maintained by the federal government. The Sub-grantee also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/>).

A.8 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the Sub-grantee hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the Sub-grantee to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have

been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Grant Agreement, grant, loan, or cooperative agreement, the Sub-grantee will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the Sub-grantee will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.9 CONFLICT OF INTEREST

No officer or employee of the Department; no member, officer, or employee of the Sub-grantee or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such the Sub-grantee who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Grant Agreement. The Sub-grantee shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

A.10 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The Sub-grantee and all its contractors shall comply with, and the Department is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

In the event of the Sub-grantee's or its contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, the Department may rescind, cancel, or terminate the Grant Agreement in whole or in part in its sole discretion. The Sub-grantee is responsible for all costs or liability arising from its failure to comply with applicable law, regulation, executive order, OMB Circular or policy.

A.11 DISCLOSURE

The use or disclosure by any party of any information concerning the Department for any purpose not directly connected with the administration of the Department's or the Sub-grantee's responsibilities with respect to services provided under this Grant Agreement is prohibited except by prior written consent of the Department or as required to comply with the state Public Records Act, other law or court order.

A.12 DISPUTES

Except as otherwise provided in this contract, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative

appointed by the Department, a representative appointed by the Contractor and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member.

A.13 DUPLICATION OF BENEFITS

The Sub-Grantee agrees that the mitigation grant funds for which federal or state assistance is requested does not, or will not, duplicate benefits or funds received for the same purpose from any other source. The Sub-Grantee will pursue full payment of eligible insurance benefits for properties covered in a project under this Grant Agreement. The Sub-Grantee will repay any mitigation grant funds that are duplicated by other benefits, funds, or insurance proceeds.

A.14 HAZARDOUS SUBSTANCES

The Sub-Grantee shall inspect and investigate the proposed development/construction site for the presence of hazardous substances. The Sub-Grantee shall fully disclose to the Department the results of its inspection and investigation and all other knowledge the Sub-Grantee has as to the presence of any hazardous substances at the proposed development/construction project site. The Sub-Grantee will be responsible for any associated clean-up costs. "Hazardous Substance" is defined in RCW 70.105D.020 (10).

A.15 LEGAL RELATIONS

It is understood and agreed that this Grant Agreement is solely for the benefit of the parties to the Grant Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Grant Agreement.

To the extent allowed by law, the Sub-grantee, its successors or assigns, will protect, save and hold harmless the Department, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the Sub-grantee, its sub-contractors, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Grant Agreement.

To the extent allowed by law, the Sub-grantee further agrees to defend the Department and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Grant Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the Department; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the Department, and (2) the Sub-grantee, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Sub-grantee, or Sub-grantee's agents or employees.

Insofar as the funding source, the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), is an agency of the federal government, the following shall apply:

44 CFR 206.9 Non-liability. The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the federal government in carrying out the provisions of the Stafford Act.

A.16 LIMITATION OF AUTHORITY – Authorized Signature

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the Department's Authorized Signature representative and the Authorized Signature representative of the Sub-grantee or Alternate for the Sub-grantee, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Grant Agreement is not effective or binding unless made in writing and signed by both parties Authorized Signature representatives. Further, only the Authorized Signature representative or Alternate for the Sub-grantee shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

A.17 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the Department may unilaterally reduce the scope of work and budget or unilaterally terminate all or part of the Agreement as a "Termination for Cause" without providing the Sub-grantee an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the Department has no obligation to do so.

A.18 NONASSIGNABILITY

Neither this Grant Agreement, nor any claim arising under this Grant Agreement, shall be transferred or assigned by the Sub-grantee.

A.19 NONDISCRIMINATION

The Sub-grantee shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Grant Agreement.

A.20 NOTICES

The Sub-grantee shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and shall maintain a record of this compliance.

A.21 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The Sub-grantee represents and warrants that its work place does now or will meet all applicable federal and state safety and health regulations that are in effect during the Sub-grantee's performance under this Grant Agreement. To the extent allowed by law, the Sub-grantee further agrees to indemnify and hold harmless the Department and its employees and agents from all liability, damages and costs of any nature, including but not limited to, costs of suits and attorneys' fees assessed against the Department, as a result of the failure of the Sub-grantee to so comply.

A.22 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Department makes no claim to any capital facilities or real property improved or constructed with funds under this Grant Agreement, and by this grant of funds does not and will not acquire any ownership interest or title to such property of the Sub-grantee. The Sub-grantee shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the Department and the state of Washington and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.23 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.24 PRIVACY

Personal information collected, used or acquired in connection with this agreement shall be used solely for the purposes of this agreement. Sub-Grantee and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Department or as provided by law or court order. Sub-Grantee agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Department reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the Sub-Grantee through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the Department. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Sub-Grantee agrees to indemnify and hold harmless the Department for any damages related to the Sub-Grantee's unauthorized use, loss or disclosure of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

A.25 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Grant Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Grant Agreement 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.

A.26 PUBLICITY

The Sub-grantee agrees to submit to the Department prior to issuance all advertising and publicity matters relating to this Grant Agreement wherein the Department's name is mentioned or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Sub-grantee agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department. The Sub-grantee may copyright original work it develops in the course of or under this Grant Agreement; however, pursuant to 44 CFR 13.34, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Grant Agreement shall include an acknowledgement of FEMA's financial support, by CFDA number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.27 RECAPTURE PROVISION

In the event the Sub-grantee fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws and/or the provisions of the Grant Agreement, the Department reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life

of the project following Grant Agreement termination. Repayment by the Sub-grantee of funds under this recapture provision shall occur within 30 days of demand.

In the event the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs thereof, including attorney fees.

A.28 RECORDS

- a. The Sub-grantee agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the Sub-grantee's contracts, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Grant Agreement (the "records").
- b. The Sub-grantee's records related to this Grant Agreement and the projects funded may be inspected and audited by the Department or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the Sub-grantee with the terms of this Grant Agreement and to determine the appropriate level of funding to be paid under the Grant Agreement.
- c. The records shall be made available by the Sub-grantee for such inspection and audit, together with suitable space for such purpose, at any and all times during the Sub-grantee's normal working day.
- d. The Sub-grantee shall retain and allow access to all records related to this Grant Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Grant Agreement.

A.29 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the Department undertakes to assist the Sub-grantee with the project/statement of work/work plan (project) by providing grant funds pursuant to this Grant Agreement, the project itself remains the sole responsibility of the Sub-grantee. The Department undertakes no responsibility to the Sub-grantee, or to any third party, other than as is expressly set out in this Grant Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the Sub-grantee, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the Sub-grantee shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including but not limited to FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders.

The Sub-grantee shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the Sub-grantee in connection with the project. The Sub-grantee shall not look to the Department, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.30 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Grant Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Grant Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Grant Agreement are declared severable.

A.31 SUB-CONTRACTING

The Sub-grantee shall use a competitive procurement process in the award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or with OMB Circular A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, as applicable to the Sub-grantee.

As required by Section 694 of the "Post-Katrina Emergency Management Reform Act" (P.L. 109-295), which amended section 307 of the Stafford Act, 42 U.S.C. 5150, contracts or agreements with private organizations, firms or individuals for debris clearance, distribution of supplies, reconstruction, and other major disaster assistance activities, shall be awarded to those organizations, firms and individuals residing or doing business primarily in the geographical area affected by the disaster, to the extent feasible and practicable. Such contracts or agreements with private organizations, firms, or individuals, not residing or doing business primarily in the geographical area affected by the declared disaster shall be justified in writing in the Sub-Grantee's contract file, with documentation provided to the Department. Contracts in place prior to a declaration should be transitioned to such local organizations, firms or individuals unless the head of the Sub-Grantee organization determines that it is not feasible or practicable. This determination must be documented in the Sub-Grantee's grant agreement file, with documentation provided to the Department. The transition requirement should not be construed to require an Sub-Grantee to breach an existing contract.

Sub-Grantees must comply with the following provisions regarding procurement, and all Sub-Grantee contracts with sub-contractors must contain the following provisions regarding procurement, per 44 CFR Part 13.36(i):

- 1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (All contracts more than the simplified acquisition threshold).
- 2) Termination for cause and for convenience by the grantee or sub-grantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000).
- 3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub-grantees).
- 4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and sub-grants for construction or repair).
- 5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2,000 awarded by grantees and sub-grantees when required by Federal grant program legislation).
- 6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and sub-grantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).
- 7) Notice of awarding agency requirements and regulations pertaining to reporting.

- 8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- 9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- 10) Access by the grantee, the sub-grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 11) Retention of all required records for three years after grantees or sub-grantees make final payments and all other pending matters are closed.
- 12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (All contracts, sub-contracts, and sub-grants of amounts in excess of \$100,000).
- 13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

The Department reserves the right to review the Sub-Grantee procurement plans and documents, and require the Sub-Grantee to make changes to bring its plans and documents into compliance with the requirements of 44 CFR Part 13.36. The Sub-Grantee must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the Sub-Grantee and Department to make a determination on eligibility of project costs.

All sub-contracting agreements entered into pursuant to this Grant Agreement shall incorporate this Grant Agreement by reference.

A.32 SUB-GRANTEE NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Grant Agreement. The Sub-grantee, and/or employees or agents performing under this Grant Agreement are not employees or agents of the Department in any manner whatsoever. The Sub-grantee will not be presented as nor claim to be an officer or employee of the Department or of the State of Washington by reason of this Grant Agreement, nor will the Sub-grantee make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Department or of the State of Washington by reason of this Grant Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the Sub-grantee is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right and not by reason of this Grant Agreement.

A.33 TAXES, FEES AND LICENSES

Unless otherwise provided in this Grant Agreement, the Sub-grantee shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the Sub-grantee or its staff required by statute or regulation that are applicable to Grant Agreement performance.

A.34 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Grant Agreement, the Sub-grantee may terminate this Grant Agreement by providing written notice of such termination to the Department's Key Personnel identified in the Grant Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Grant Agreement, the Department, in its sole discretion and in the best interests of the State of Washington, may terminate this Grant Agreement in whole or in part by providing ten (10) calendar days written notice, beginning on the second day after mailing to the Sub-grantee. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the Grant Agreement, withhold further payments, or prohibit the Sub-grantee from incurring additional obligations of funds. In the event of termination, the Sub-grantee shall be liable for all damages as authorized by law. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.35 TERMINATION OR SUSPENSION FOR CAUSE

In the event the Department, in its sole discretion, determines the Sub-grantee has failed to fulfill in a timely and proper manner its obligations under this Grant Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the Sub-grantee unable to perform any aspect of the Grant Agreement, or has violated any of the covenants, agreements or stipulations of this Grant Agreement, the Department has the right to immediately suspend or terminate this Grant Agreement in whole or in part.

The Department may notify the Sub-grantee in writing of the need to take corrective action and provide a period of time in which to cure. The Department is not required to allow the Sub-grantee an opportunity to cure if it is not feasible as determined solely within the Department's discretion. Any time allowed for cure shall not diminish or eliminate the Sub-grantee liability for damages or otherwise affect any other remedies available to the Department. If the Department allows the Sub-grantee an opportunity to cure, the Department shall notify the Sub-grantee in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the Department, or if such corrective action is deemed by the Department to be insufficient, the Grant Agreement may be terminated in whole or in part.

The Department reserves the right to suspend all or part of the Grant Agreement, withhold further payments, or prohibit the Sub-grantee from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Sub-grantee, if allowed, or pending a decision by the Department to terminate the Grant Agreement in whole or in part.

In the event of termination, the Sub-grantee shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original Grant Agreement and the replacement or cover Grant Agreement and all administrative costs directly related to the replacement Grant Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the Sub-grantee: (1) was not in default or material breach, or (2) failure to perform was outside of the Sub-grantee's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.36 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the Department terminates this Grant Agreement, the Sub-grantee shall follow any procedures specified in the termination notice. Upon termination of this Grant Agreement and in addition to any other rights

provided in this Grant Agreement, the Department may require the Sub-grantee to deliver to the Department any property specifically produced or acquired for the performance of such part of this Grant Agreement as has been terminated.

If the termination is for convenience, the Department shall pay to the Sub-grantee agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the Department prior to the effective date of Grant Agreement termination, and the amount agreed upon by the Sub-grantee and the Department for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the Department, (iii) other work, services and/or equipment or supplies which are accepted by the Department, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Grant Agreement. If the termination is for cause, the Department shall determine the extent of the liability of the Department. The Department shall have no other obligation to the Sub-grantee for termination. The Department may withhold from any amounts due the Sub-grantee such sum as the Department determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this Grant Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the Department in writing, the Sub-grantee shall:

- a. Stop work under the Grant Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or sub-contracts for materials, services, supplies, equipment and/or facilities in relation to this Grant Agreement except as may be necessary for completion of such portion of the work under the Grant Agreement as is not terminated;
- c. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Sub-grantee under the orders and sub-contracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and sub-contracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the Department to the extent the Department may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the Grant Agreement had been completed, would have been required to be furnished to the Department;
- f. Complete performance of such part of the work as shall not have been terminated by the Department in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the Department may require, for the protection and preservation of the property related to this Grant Agreement which is in the possession of the Sub-grantee and in which the Department has or may acquire an interest.

A.37 TRAVEL AND SUBSISTENCE REIMBURSEMENT

Unless the Grant Agreement specifically provides for different rates, any travel or subsistence reimbursement allowed under the Agreement shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or

amended. The Sub-grantee may be required to provide to the Department copies of receipts for any travel related expenses other than meals and mileage (example: parking) that are authorized under this Agreement.

A.38 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The Sub-grantee is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Grant Agreement. The Sub-grantee may set utilization standards, based upon local conditions or may utilize the state of Washington MWBE goals, as identified in WAC 326-30-041.

A.39 WAIVERS

No conditions or provisions of this Grant Agreement can be waived unless approved in advance by the Department in writing. The Department's failure to insist upon strict performance of any provision of the Grant Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Grant Agreement.

A.40 VENUE

This Grant Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this Grant Agreement shall be the Superior Court of Thurston County, Washington. The Sub-grantee, by execution of this Grant Agreement acknowledges the jurisdiction of the courts of the State of Washington.

CERTIFICATION AND ASSURANCES**FEMA Form 20-16B: Assurances – Construction Programs**

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the nonfederal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without prior permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or state.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply, as applicable, with the Intergovernmental Personnel Act of 1970 (42 USC Sections 4701 et seq.) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).
9. Will comply, as applicable, with the Lead-Based Paint Poisoning Prevention Act (42 USC chapter 63), as amended.
10. Will comply, as applicable, with all state and federal statutes, regulations and executive orders relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (PL 88-352, 42 USC Section 2000d) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 USC Sections 1681 et seq.), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973 (PL 93-112), as amended (29 USC Section 794), which prohibits discrimination on the basis of disabilities; (d) the

Age Discrimination Act of 1975, as amended (42 USC Sections 6101 et seq.), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 42 USC Section 290-dd-2, as amended, relating to confidentiality of substance abuse patient records; (h) the Fair Housing Act (42 USC Section 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, as applicable, with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646), as amended, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply, as applicable, with the provisions of the Hatch Act (5 USC Sections 1501 et seq.), as amended, which limit the political activities of certain employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with labor and wage provisions related to certain federally assisted contracts (e.g., the wage rate requirements in the Davis-Bacon Act, 40 USC Sections 3141 et seq., as amended, the Copeland Anti-Kickback provisions in 40 USC Section 3145 and 18 USC Section 874, as amended, and the Contract Work Hours and Safety Standards in 40 USC Sections 3701 et seq.).
14. Will comply, as applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (PL 93-234), as amended.
15. Will comply, as applicable, with environmental standards which may be prescribed pursuant to the following: (a) protection and enhancement of environmental quality pursuant to the National Environmental Policy Act of 1969 (PL 91-190), as amended, and Executive Order (EO) 11514, as amended; (b) administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to federal contracts, grants, or loans pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990, as amended; (d) floodplains management pursuant to EO 11988, as amended; (e) the Coastal Zone Management Act of 1972 (PL 92-583), 16 USC Section 1451 et seq.; (f) Air Quality and Emission Limitations pursuant to 42 USC Section 7401 et seq.; (g) the Safe Drinking Water Act of 1974 (PL 93-523), as amended; and (h) the Endangered Species Act of 1973 (PL 93-205), as amended.
16. Will comply, as applicable, with the Wild and Scenic Rivers Act of 1968 (PL 90-542), 16 USC Section 1271 et seq., as amended.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966 (PL 89-665), as amended, 16 USC Section 470, as amended, EO 11593 (protection and enhancement of the cultural environment), and the Archaeological and Historic Preservation Act, 16 USC Section 469 et seq., as amended.
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984, the Single Audit Act Amendments of 1996, and applicable OMB Circulars.
19. Will comply with all applicable requirements of all other federal laws, Executive Orders, regulations, Circulars, and policies governing or applicable to this program.
20. Will comply, as applicable, with the Federal Fair Labor Standards Act, 29 USC Section 201 et seq..

21. Will obtain approval, if required, by the appropriate Federal agency of the final working drawings and specifications before the project is advertised or placed on the market for bidding; will construct the project, or cause it to be constructed, to final completion in accordance with the approved plans and specifications; will submit to the appropriate Federal agency for prior approval changes that alter the cost of the project, use of space, or functional layout; and will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.
22. Will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State, and local agencies for the maintenance and operation of such facilities.
23. Will require the facility to be designed to comply with the "American Standard Specification for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.- 1961, as modified (41 CFR 101-17.703). The applicant will be responsible for conducting inspections to ensure compliance with these specifications by the contractor.
24. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance obligates the applicant, or in the case of any transfer of such property, the transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
25. In making subgrants with nonprofit institutions under this Comprehensive Cooperative Agreement, it agrees that such grants will be subject to OMB Circular A-122, "Cost Principles for Nonprofit Organizations" included in Vol. 49, Federal Register, pages 18260 through 18277 (April 27, 1984).

Authorized Signature _____

Authorized Applicant Agent:

Nancy Backus, Mayor

Date:

Alternate Authorized Signature _____

Authorized Alternate Applicant Agent:

Lisa Tobin, Utilities Engineering Manager

Date:

STATEMENT OF WORK AND/OR DESCRIPTION OF PROJECT

Sub-Grantee: City of Auburn
PROJECT TITLE: Reservoir 1 Seismic Control Valve

The purpose of this project is for City of Auburn to install seismic control valve at the City of Auburn's Reservoir 1 preventing water from escaping from the reservoir in case of an earthquake. Reservoir 1 is located at 2003 Auburn Way South, Auburn, WA 98002.

A specific and more detailed scope of work is found in the FEMA approved Project Application 4168-6-R, which is incorporated herein by reference.

City of Auburn Agrees To:

1. Comply with the terms of this Agreement and all Attachments, including but not limited to, accomplish tasks and conditions outlined in the Statement of Work And/Or Description of Project-Attachment 4, comply with the Project Development Schedule-Attachment 5, and comply with the Project Budget-Attachment 6.
2. Submit quarterly reports that cover the previous three months no later than the 15th of the following month (or the next work day) in January, April, July and October until all requirements are fulfilled. Quarterly reports are required regardless of the level of work completed during the reporting period. Quarterly reports must include sufficient narrative to determine the degree to which the project has been implemented, the estimated time for completion, and significant developments such as delays or adverse conditions that might raise costs or delay completion, as well as favorable conditions allowing lower costs or earlier completion. Failure of the Sub-Grantee to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments until a complete quarterly report is received by the Department.
3. Submit pen-and-ink signed, approved invoice vouchers (state form A-19) for eligible, reimbursable work completed, no more frequently than monthly and no less frequently than quarterly. Each billing must identify the task(s) completed and any other funding identification pertinent to the task(s), including match. Supporting documentation is required for all costs, to include tracking of staff time spent on the project through timesheets or other documentation approved by the Department; dated invoices from all contractors and subcontractors for work completed; dated invoices for goods and services purchased; and documentation tracking in-kind contributions of personnel, equipment and supplies, if used on the project. Project costs must be tracked and reported by approved budget cost categories as found in Project Budget, Attachment 6. Documentation of expenditures by approved budget cost categories should be made on a separate spreadsheet or table and included with each A-19, along with documentation to substantiate all project costs.
4. Return by Department staff of invoices to the Sub-Grantee if the Sub-Grantee is unable to provide sufficient documentation to staff within 15 calendar days of the staff's written request for additional documentation to support the reimbursement request.
5. Submit a signed final project report before final reimbursement is made by the Department.
6. **PROGRAMMATIC, ENVIRONMENTAL AND HISTORIC PRESERVATION CONDITIONS**

In completing this project, the Sub-Grantee must adhere to the following programmatic, environmental and historic preservation conditions:

- a. Scope of Work Change: Requests for changes to the Scope of Work after grant award are permissible as long as they do not change the nature or total project cost of the activity, properties identified in the application, the feasibility and effectiveness of the project, or reduce the Benefit Cost Ratio below 1.0. Requests must be supported by adequate justification, including a description of the proposed change; a written explanation of the reason or reasons for the change; an outline of remaining funds available to support the change; and a full description of the work necessary to complete the activity.

A proposed change to the approved Scope of Work (as presented in the FEMA approved project application) must be submitted to the Department and FEMA in advance of implementation for re-evaluation for compliance with National Environmental Policy Act (NEPA) and other Laws and Executive Orders. Prior approval for a change to the approved Scope of Work must be obtained from the Department and FEMA before the change is implemented. Failure to obtain prior approval for a revised Scope of Work could result in ineligibility of resulting costs.

- b. Comply with all applicable federal, state and local laws and regulations. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding provided by this Grant Agreement.
- c. Ensure that all completed work is in compliance with applicable state and local buildings codes and flood damage prevention legislation.
- d. Monitor site work during ground-disturbing activities for evidence of potential archaeological resources that are uncovered. Sub-Grantee must halt the project in the event historically or archaeologically significant materials or sites (or evidence thereof) are discovered. By way of example, such evidence may include, but is not limited to, artifacts such as arrowheads, bone fragments, pottery shards, and features such as fire pits or structural elements. All reasonable measures must be taken to avoid or minimize harm to such resources until such time as the Sub-Grantee notifies the Department, and FEMA, in consultation with the State Historic Preservation Officer (SHPO) and appropriate Native American tribes, determines appropriate measures have been taken to ensure that the project is in compliance with the National Historic Preservation Act. In addition, upon discovery of human skeletal remains, the Sub-Grantee is required by state law to notify the county coroner and local law enforcement in the most expeditious manner possible and to immediately stop any activity which may cause further ground disturbance.
- e. Determine the presence of hazardous materials and/or toxic waste, and identifying, handling, managing, abating and disposing of such materials in accordance with the requirements and to the satisfaction of the governing local, state and federal agencies, including but not limited to the Washington Department of Ecology. Such materials may include, but are not limited to, asbestos, lead-based paint, propane cylinders, sand blasting residue, discarded paints and solvents, cleaning chemicals, containers of pesticides, lead-acid batteries, items containing chlorofluorocarbons (CFCs), motor oil and used oil filters, and unlabeled tanks or containers.
- f. Conduct work during the non-flood season as determined by the local floodplain administrator. However, should construction be required during the flood season, as determined by the local floodplain administrator, all construction equipment shall be staged in an area not susceptible to flood events or be readily transportable out of the floodplain to minimize flood damage.
- g. Dispose of all debris at an approved and permitted location. No debris shall be temporarily staged or disposed of in a floodplain and/or a wetland.
- h. Confirm with the State Department of Ecology whether this project will require a consistency determination under the Coastal Zone Management Act. If required, the Sub-Grantee shall obtain and comply with all requirements of the determination prior to starting the project.
- i. Select, implement, monitor, and maintain Best Management Practices (BMPs) to control soil erosion and sedimentation, reduce spills and pollution, and provide habitat protection. The acquisition site shall be stabilized from erosion and silt laden runoff by implementing these BMPs and securing the site from transient vehicle access. Any excavation and/or grading shall be done within and/or adjacent to the existing building footprint area and not beyond undisturbed portions of the site.
- j. Resubmit the project to the Department and FEMA prior to implementation if any in-water work will occur or if any work will occur below the ordinary high water mark of any

water resource in the area, so further coordination/consultation can take place with the National Marine Fisheries Service (NMFS) to determine whether appropriate measures have been taken to ensure the project is in compliance with the Endangered Species Act.

- k. Resubmit the project to the Department and FEMA for re-evaluation for compliance with national environmental policies if the "Project Limits" (including clearing, excavation, temporary staging, construction, and access areas) extend into: 1) an area not previously identified for environmental and historic preservation review, or 2) previously undisturbed ground. Additionally, all work on the project in these areas must stop until this re-evaluation is completed.
- l. National Historic Preservation Act Section 106 requirement: All proposed repair and construction activities on buildings listed in or eligible for the National Register of Historic Places (historic properties) should be done in-kind to match existing materials and form. In-kind means that the result of the proposed activities will match all physical and visual aspects of existing historic materials, including form, color and workmanship. In-kind mortar also will match the strength and joint tooling of existing historic mortar.
- m. (Additional requirements as noted by FEMA in grant award document).
- n. Cost overruns in excess of the approval budget are fully the responsibility of the Sub-Grantee, including those costs resulting from a change in the Scope of Work. The project must remain cost effective (i.e., Benefit Cost Ratio of 1.0 or greater) in the event of cost overrun.

For Hazard Mitigation Grant Program (HMGP) only: A request for additional funds to cover a cost overrun may be granted by the Department and FEMA only if funds are available within the HMGP ceiling for this disaster, FEMA-DR-4168-WA. A request for additional funds must be fully documented and justified.

7. SPECIAL FLOOD HAZARD AREA REQUIREMENTS

Pursuant to the Flood Disaster Protection Act of 1973, those structures that remain in the Special Flood Hazard Area (SFHA) after the implementation of the mitigation project, flood insurance must be maintained for the life of the structure. The SFHA is defined as the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year.

The following National Flood Insurance Program Eligibility Requirements contained in the 2013 Hazard Mitigation Assistance Unified Guidance apply to any project involving the alteration of existing structures, to include Mitigation Reconstruction projects that are sited within an SFHA.

- a. When the project is implemented, all structures that will not be demolished or relocated out of the SFHA must be covered by a National Flood Insurance Program (NFIP) flood insurance policy to an amount at least equal to the project cost or to the maximum limit of coverage made available with respect to the particular property, whichever is less.
- b. The Sub-Grantee (or property owner) must legally record with the county or appropriate jurisdiction's land records agency a notice that includes the name of the current property owner (including book/page reference to record of current title, if readily available), a legal description of the property, and the following notice of flood insurance requirements as identified on page 44 of the 2013 Hazard Mitigation Assistance Unified Guidance:

"This property has received Federal hazard mitigation assistance. Federal law requires that flood insurance coverage on this property must be maintained during the life of the property regardless of transfer of ownership of such property. Pursuant to 42 U.S.C. § 5154a, failure to maintain flood insurance on this property may prohibit the owner from receiving Federal disaster assistance with respect to this property in the event of a flood disaster. The Property Owner is also required to maintain this property in accordance with the floodplain management criteria of 44 CFR § 60.3 and City/County Ordinance."

- c. Copies of the recorded notices for each property will be provided to the Department at project closeout.

8. PROVISIONS APPLYING ONLY TO ACQUISITION OF PROPERTIES FOR OPEN SPACE

- a. The Sub-Grantee must ensure that prospective participants are informed in writing that property owner participation in this acquisition program is voluntary and that the Sub-Grantee will not use its eminent domain authority to acquire the property for the project purposes should negotiations fail.

Copies of the Statement of Voluntary Participation / Notice of Voluntary Interest signed by each participating property owner will be provided to the Department by project close-out.

- b. The Sub-Grantee agrees that land acquired for open space purposes under this grant will be restricted in perpetuity to open space uses and will be unavailable for the construction of flood damage reduction levees, transportation facilities, and other incompatible purposes.

- c. The Sub-Grantee agrees to prepare, execute and record Deed Restrictions for each affected property utilizing the current Model Deed Restriction provided on the FEMA website or available from the Department.

Copies of the recorded deed and attached deed restrictions for each property will be provided to the Department by project close-out.

- d. The Sub-Grantee accepts all of the requirements of the deed restriction governing the use of the land.

- e. The Sub-Grantee ensures that, prior to acquisition of the property, in consultation with the U.S. Army Corps of Engineers, it has addressed and considered the potential future use of these lands for the construction of flood damage reduction levees, has rejected consideration of such measures in the future in the project area, and instead has chosen to proceed with acquisition of permanent open space.

Documentation of this consultation and the Sub-Grantee's consideration of this issue will be provided to the Department by project close-out.

- f. The Sub-Grantee must, prior to acquisition of the property, consult with the Washington State Department of Transportation to ensure that no future planned improvements or enhancements are under consideration that will affect the proposed project area.

Documentation of this consultation will be provided to the Department by project close-out.

- g. The Sub-Grantee will remove existing buildings from acquired properties within 90 days of settlement. The Sub-Grantee will provide confirmation to the Department as to the date of demolition of each structure included in the project in its quarterly reports, as well as confirmation that the property has been returned to "natural" or park/open space condition.

The Sub-Grantee will provide digital latitude and longitude coordinates and digital photographs of each property site after project implementation to the Department by project close-out.

- h. The Sub-Grantee agrees to complete FEMA Form AW-501, NFIP Repetitive Loss Update Worksheet for each property identified on FEMA's Repetitive Loss list to document completion of mitigation on the property. The form is available on FEMA's Web site or available from the Department.

The Sub-Grantee will provide a copy of the completed form to the Department by project close-out.

- i. The Sub-Grantee agrees to comply with the requirements of 44 CFR § 80.19 Land Use and Oversight, which are incorporated into these conditions by reference. These requirements include, but are not limited to, the following (which are described further in the 2013 Hazard Mitigation Assistance Unified Guidance and the Addendum to the 2013

Hazard Mitigation Assistance Unified Guidance which are incorporated herein by reference):

1. Restriction on future disaster assistance for damages to the property.
2. Lists of allowable open space uses as well as uses generally not allowed on acquired open space land.
3. Provision for salvage of pre-existing structures and paved areas.
4. Requirements pertaining to future transfer of property interest.
5. Requirement for Sub-Grantee monitoring and inspection of the acquired property at least every 3 years. The Sub-Grantee will provide the Department with a report on the result of the inspection within 90 days of the inspection.
6. Provisions for enforcement of violation of open space requirements.

The Military Department Agrees To:

1. Provide staff coordination and input regarding grant administration for funding and technical assistance for project and reviews for mitigation construction projects, as necessary.
2. Reimburse City of Auburn within 30 days of receipt and approval of signed, dated invoice voucher(s) (state form A-19) with sufficient documentation of costs to include completion of tasks to date and dated invoices for goods and services purchased. Costs must be categorized according to the budget item and cost classification shown in the Project Budget, Attachment 6. The Department will return invoices to the Sub-Grantee if the Sub-Grantee is unable to provide sufficient documentation within 15 calendar days of the Department's written request for additional documentation to support the reimbursement request.
3. Coordinate with the staff of City of Auburn to schedule any sub-recipient monitoring, site visits or final inspections by Department staff.

PROJECT DEVELOPMENT SCHEDULE

Sub-Grantee: City of Auburn
 PROJECT TITLE: Reservoir 1 Seismic Control Valve

<i>DESCRIPTION OF ACTIVITY/TASK</i>	<i>SCHEDULED COMPLETION DATE</i>
Consultant selection	12/31/2016 Completed under D16-010
Contract negotiation/execution	3/31/2017 Complete under D16-010
Preliminary design	5/31/2017 Complete under D16-010
Detailed design	8/31/2017 Complete under D16-010
Permitting	10/31/2017 Complete under D16-010
Project bid	12/31/2017 Complete D16-010
Project construction	3/31/2018 Complete D16-010
Final project completion and close-out	12/28/2019
Total Time Required to Complete This Project: 36 months	
Quarterly Reports Due on Project Progress, Final Project Report and all documentation, site visits and inspections.	October 15, 2019; January 15, 2020;

PROJECT BUDGET

Sub-Grantee: City of Auburn
 PROJECT TITLE: Reservoir 1 Seismic control Valve

<i>APPROVED BUDGET CATEGORY</i>	<i>ESTIMATED COST</i>
Administrative and legal expenses, etc.	\$5,000 Expended under D16-010
Architectural, engineering, geotechnical, etc.	\$96,000 Expended under D16-010
Construction	\$27,800.26 Expended under D16-10
Remaining Construction	\$380,216.74
TOTAL	
\$509,017	

Tracking and Reporting Project Costs: Project expenses for which reimbursement is sought must be tracked and reported by approved budget cost categories, above. Documentation of expenditures by approved budget cost categories should be made on a separate spreadsheet or table and included with each A-19. Supporting documentation of all costs shall include, but not be limited to: tracking of staff time spent on the project through timesheets or other similar documentation; dated invoices from contractors and subcontractors for work completed; dated invoices for goods and services purchased; and documentation of in-kind contributions of personnel, equipment and supplies.

Final Payment: Final payment of any remaining, or withheld, funds will be made upon submission by the Sub-Grantee within 60 days of completion of the project of the final report and an A-19, Voucher Distribution, and completion of all final inspections by the Department. Final payment also may be conditioned upon a financial review, if determined necessary by the Department. Adjustments to the final payment may be made following any audits conducted by the Department, Washington State Auditor's Office, the United States Inspector General, or their authorized representatives.

Per HMGP program guidance, no cost overruns will be funded. If costs exceed the maximum amount of FEMA funding approved, the Applicant shall pay the costs in excess of the approved budget. Project must remain cost effective (i.e., Benefit Cost Ratio of 1.0 or greater) in the event of cost overrun.

For Hazard Mitigation Grant Program only: A request for additional funds to cover a cost overrun may be granted by the Department and FEMA only if funds are available within the HMGP ceiling for this disaster, FEMA-DR-4168-WA. A request for additional funds must be fully documented and justified.

ADDITIONAL AGREEMENT PROVISIONS AND WORKSHEET
For Compliance With The
Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282) (FFATA)

The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website. Federal awards include grants, subgrants, loans, awards, cooperative agreements and other forms of financial assistance as well as contracts, subcontracts, purchase orders, task orders, and delivery orders. The legislation does not require inclusion of individual transactions below \$25,000 or credit card transactions before October 1, 2008. However, if an award is initially below this amount yet later increased, the act is triggered. Due to this variability in compliance Subrecipients are **required** by the Military Department to be familiar with the FFATA requirements and complete this Worksheet for *each contract* for the State's submission in to the FFATA portal.

ADDITIONAL PROVISIONS

- A. This contract (subaward) is supported by federal funds, requiring compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act) and Office of Management and Budget Guidance (OMB). Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note). By entering into this contract, contractor agrees to provide all applicable reporting information to the Washington Military Department (WMD) required by FFATA and OMB Guidance.
- B. The FFATA requires the OMB to establish a publicly available online database (USASpending.gov) containing information about entities that are awarded Federal grants, loans, and contracts. As required by FFATA and OMB Guidance, certain information on the first-tier subawards related to Federal contracts and grants, and the executive compensation of awardees, must be made publicly available.
- C. For new Federal grants beginning October 1, 2010, if the initial subaward is equal to or greater than \$25,000, reporting of the subaward and executive compensation information is required. If the initial subaward is below \$25,000 but subsequent grant modifications result in a total subaward equal to or over \$25,000, the subaward will be subject to the reporting requirements as of the date the subaward exceeds \$25,000. If the initial subaward equals or exceeds \$25,000 but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the subaward continues to be subject to the reporting requirements of the Transparency Act and OMB Guidance.
- D. As a Federal grant subawardee under this contract, your organization is required by FFATA, OMB Guidance and this contract to provide the WMD, as the prime grant awardee, all information required for FFATA compliant reporting by WMD. This includes all applicable subawardee entity information required by FFATA and OMB Guidance, subawardee DUNS number, and relevant executive compensation data, as applicable.
 - 1. Data about your organization will be provided to USASpending.gov by the WMD. System for Award Management (SAM) is a government wide registration system for organizations that do business with the Federal Government. SAM stores information

about awardees including financial account information for payment purposes and a link to D&B for maintaining current DUNS information, www.sam.gov. WMD requires SAM registration and annual renewal by your organization to minimize unnecessary data entry and re-entry required by both WMD and your organization. It will also reduce the potential of inconsistent or inaccurate data entry.

2. Your organization must have a Data Universal Numbering System (DUNS) number obtained from the firm Dun and Bradstreet (D&B) (www.dnb.com). A DUNS number provides a method to verify data about your organization. D&B is responsible for maintaining unique identifiers and organizational linkages on behalf of the Federal Government for organizations receiving Federal assistance.
- E. The WMD, as the prime awardee, is required by FFATA to report names and total compensation of the five (5) most highly compensated officers of your organization (as the subawardee) if:
1. Your organization (the subawardee), in the preceding fiscal year, received 80 percent or more of its annual gross revenues from Federal awards and \$25,000,000 or more in annual gross revenues from Federal awards; and
 2. The public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.
- “Total compensation” for purposes of this requirement generally means the cash and non-cash value earned by the executive during the past fiscal year and includes salary and bonus; awards of stock, stock options and stock appreciation rights; and other compensation such as severance and termination payments, and value of life insurance paid on behalf of the employee, and as otherwise provided by FFATA and applicable OMB guidance.
- F. If (1) in the preceding fiscal year your organization received 80 percent or more of its annual gross revenues from Federal awards and \$25,000,000 or more in annual gross revenues from Federal awards, and (2) the public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986, insert the names and total compensation for the five most highly compensated officers of your organization in the table below.

WORKSHEET

Subrecipient Agency: City of Auburn				
Grant and Year: HMGP Hazard Mitigation Grant 2016		Agreement Number: FEMA-4168-DR-WA-6-R		
Completed by:	<u>Susan Fenhaus</u> <i>Name</i>	<u>Water Utility Engineer</u> <i>Title</i>	<u>253-804-5061</u> <i>Telephone</i>	
Date Completed: XXX 2019				
STEP 1				
Is your grant agreement less than \$25,000?	YES <input type="checkbox"/>	STOP, no further analysis needed, GO to Step 6	NO <input checked="" type="checkbox"/>	GO to Step 2
STEP 2				
In your preceding fiscal year, did your organization receive 80% or more of its annual gross revenues from federal funding?	YES <input type="checkbox"/>	GO to STEP 3	NO <input checked="" type="checkbox"/>	STOP, no further analysis needed, GO to Step 6
STEP 3				
In your preceding fiscal year, did your organization receive \$25,000,000 or more in federal funding?	YES <input type="checkbox"/>	GO to STEP 4	NO <input type="checkbox"/>	STOP, no further analysis
STEP 4				
Does the public have access to information about the total compensation* of senior executives in your organization?	YES <input type="checkbox"/>	STOP, no further analysis needed, GO to step 6	NO <input type="checkbox"/>	GO to STEP 5
STEP 5				
Executive #1	Name:			
	Total Compensation amount: \$			
Executive #2	Name:			
	Total Compensation amount: \$			
Executive #3	Name:			
	Total Compensation amount: \$			
Executive #4	Name:			
	Total Compensation amount: \$			
Executive #5	Name:			
	Total Compensation amount: \$			
STEP 6				
If your organization does not meet these criteria, specifically identify below each criteria that is not met for your organization: For Example: "Our organization received less than \$25,000." <u>Our organization received less than 80% from federal funding</u>				

Signature: _____ **Date:** _____

* Total compensation refers to:

- Salary and bonuses
- Awards of stock, stock options, and stock appreciation rights
- Other compensation including, but not limited to, severance and termination payments
- Life insurance value paid on behalf of the employee

Additional Resources:

<http://www.whitehouse.gov/omb/open>

<http://www.hrsa.gov/grants/ffata.html>

<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf>

<http://www.grants.gov/>

OMB Circular A-133 Audit Certification Form

Audits of States, Local Governments, and Non-Profit Organizations

Contact Information

Subrecipient (Sub-Grantee) Name (Agency, Local Government, or Organization): City of Auburn

Authorized Chief Financial Officer (Central Accounting Office): Jamie Thomas

Address: 25 W. Main Street Auburn, WA 98001

Email: jthomas@auburnwa.gov

Phone #: 253-804-5019

Purpose: As a pass-through agency of federal grant funds, the Washington Military Department/Emergency Management Division (WMD/EMD) is required by Office of Management and Budget (OMB) Circular A-133 to monitor activities of subrecipients to ensure federal awards are used for authorized purposes and ensure that subrecipients expending \$500,000 or more in federal awards during their fiscal year have met the OMB Circular A-133 Audit Requirements. Your entity is a subrecipient subject to such monitoring by MIL/EMD because it is a non-federal entity that expends federal grant funds received from MIL/EMD as a pass-through entity to carry out a federal program. OMB Circular A-133 can be found at http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf, and it should be consulted when completing this form.

Directions: As required by OMB Circular A-133, non-federal entities that expend \$500,000 in federal awards in a fiscal year shall have a single or program-specific audit conducted for that year. If your entity ***is not*** subject to A-133 requirements, you must complete Section A of this Form. If your entity ***is*** required to complete an A-133 Audit, you must complete Section B of this form. When completed, you must sign, date, and return this form with your grant agreement contract and every fiscal year thereafter until the grant agreement contract is closed. Failure to return this completed Audit Certification Form may result in delay of grant agreement processing, withholding of federal awards or disallowance of costs, and suspension or termination of federal awards.

SECTION A: Entities NOT subject to the audit requirements of OMB Circular A-133

Our entity is not subject to the requirements of OMB Circular A-133 because (check all that apply):

- ☐ We did not expend \$500,000 or more of *total* federal awards during the fiscal year.
- ☐ We are a for-profit agency.
- ☐ We are exempt for other reasons (describe):

However, by signing below, I agree that we are still subject to the audit requirements, laws and regulations governing the program(s) in which we participate, that we are required to maintain records of federal funding and to provide access to such records by federal and state agencies and their designees, and that WMD/EMD may request and be provided access to additional information and/or documentation to ensure proper stewardship of federal funds.

SECTION B: Entities that ARE subject to the requirements of OMB Circular A-133

(Complete the information below and check the appropriate box)

- ☒ We completed our last A-133 Audit on [enter date] 07/26/2018 for Fiscal Year ending [enter date] 12/31/17. There were no findings related to federal awards from WMD/EMD. No follow-up action is required by WMD/EMD as the pass-through entity.

A complete copy of the audit report, which includes exceptions, corrective action plan and management response, is either provided electronically to contracts.office@mil.wa.gov or provide the state auditor report number: Report No. 1021843.

- ☐ We completed our last A-133 Audit on [enter date] for Fiscal Year ending [enter date]. There were findings related to federal awards.

A complete copy of the audit report, which includes exceptions, corrective action plan and management response, is either provided electronically to contracts.office@mil.wa.gov or provide the state auditor report number:

- ☐ Our completed A-133 Audit will be available on [enter date] for Fiscal Year ending [enter date]. We will forward a copy of the audit report to you at that time unless it will be available online at: <http://www.>

I hereby certify that I am an individual authorized by the above identified entity to complete this form. Further, I certify that the above information is true and correct and all relevant material findings contained in audit report/statement have been disclosed. Additionally, I understand this Form is to be submitted every fiscal year for which this entity is a subrecipient of federal grant funds from MIL/EMD until the grant agreement contract is closed.

Signature of Authorized Chief Financial Officer: _____ Date: _____

Print Name & Title: Jamie Thomas, Director of Finance _____

WMD Form 1009-13, 8/19/2013