	<p align="center"> <b>City Council Meeting</b>  <b>August 19, 2019 - 7:00 PM</b>  <b>City Hall Council Chambers</b>  <b>AGENDA</b>  <b>Watch the meeting LIVE!</b> </p> <p align="center"> <b>Watch the meeting video</b>  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. International Overdose Awareness Day Proclamation  
Mayor Backus to proclaim August 31, 2019 as "International Overdose Awareness Day" in the city of Auburn.
- B. Children's Therapy Center Day Proclamation  
Mayor Backus to proclaim August 29, 2019 as "Children's Therapy Center Day" in the city of Auburn.
- C. Chief of Police Presentation

**III. APPOINTMENTS**

**IV. AGENDA MODIFICATIONS**

**V. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE**

- A. **Public Hearings - (No public hearing is scheduled for this evening.)**
- B. **Audience Participation**

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

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

**VI. COUNCIL AD HOC COMMITTEE REPORTS**

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

- 1. Finance Ad Hoc Committee (Chair Wales)

## VII. **CONSENT AGENDA**

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

- A. Minutes of the July 8, 2019 Study Session
- B. Minutes of the August 5, 2019 City Council Meeting
- C. Claim Vouchers (Thomas)  
Claim vouchers list dated August 19, 2019 which includes voucher numbers 455103 through 455288 in the amount of \$4,205,532.94 and three wire transfers in the amount of \$513,975.20
- D. Payroll Vouchers (Thomas)  
Payroll check numbers 538565 through 538588 in the amount of \$250,588.31, electronic deposit transmissions in the amount of \$2,078,956.12 for a grand total of \$2,329,544.43 for the period covering August 1, 2019 to August 14, 2019
- E. CP1720 Game Farm Park No. 4 Ballfield Lighting (Faber)  
CP1720 Game Farm Park improvement project allows for the purchase and installation of softball field lights on Game Farm Park Ball field #4
- F. Setting Public Hearing Date for Franchise Agreement  
#FRN190014 (Gaub)  
City Council to set the date of the Public Hearing for Franchise Agreement No. FRN19-0014 for New Cingular Wireless PCS, LLC to be held on September 3, 2019, at 7:00 pm

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

## VIII. **UNFINISHED BUSINESS**

### IX. **NEW BUSINESS**

### X. **ORDINANCES**

- A. Ordinance No. 6721 (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

**(RECOMMENDED ACTION: Move to adopt Ordinance No. 6721.)**

- B. Ordinance No. 6726 (Gaub)  
An Ordinance of the City Council of the City of Auburn, Washington, relating to the Limited Public Works Process and amending Section 3.12.100 of the Auburn City Code

**(RECOMMENDED ACTION: Move to adopt Ordinance No. 6726.)**

## **XI. RESOLUTIONS**

### **A. Resolution No. 5450 (Thomas)**

A Resolution of the City Council of the City of Auburn, Washington, authorizing the contribution and withdrawal of City monies in the State of Washington Local Government Investment Pool

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5450.)**

## **XII. MAYOR AND COUNCILMEMBER REPORTS**

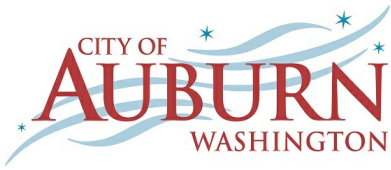
*At this time the Mayor and City Council may report on significant items associated with their appointed positions on federal, state, regional and local organizations.*

### **A. From the Council**

### **B. From the Mayor**

## **XIII. ADJOURNMENT**

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



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Minutes of the July 8, 2019 Study Session

**Department:**

City Council

**Attachments:**

[07-08-2019 Minutes](#)

**Date:**

August 8, 2019

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

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

**Meeting Date:** August 19, 2019

**Staff:**

**Item Number:** CA.A



**City Council Study Session PWCD SFA  
July 8, 2019 - 5:30 PM  
City Hall Council Chambers  
MINUTES**

**📺 Watch the meeting LIVE!**

**📺 Watch the meeting video**

Meeting videos are not available until 72 hours after the meeting has concluded.

**I. CALL TO ORDER**

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

**A. Roll Call**

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

Mayor Nancy Backus and the following department directors and staff members were present: Assistant City Attorney Kendra Comeau, Director of Public Works Ingrid Gaub, Director of Community Development Jeff Tate, Development Services Manager Jason Krum, Senior Planner Thaniel Gouk, Planner Cecile Malik, Director Of Parks Arts and Recreation Daryl Faber, Real Property Analyst Josh Arndt, Director of Human Resources Candis Martinson, Assistant Police Chief Mark Caillier, and City Clerk Shawn Campbell.

**II. ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS**

**III. AGENDA ITEMS FOR COUNCIL DISCUSSION**

**A. Racial Equity and Implicit Bias Initiative (Martinson) (30 Minutes)**

Director Martinson presented Council with the updated Racial Equity and Social Justice program scope. She reviewed the updated proposed training curriculum. She introduced the consultant team, Racing the Equity Group, Crux Consulting Group, Dr. Nikum Pon, Dr. Bryant Marks and Dr. John Powell.

Council discussed training for Councilmembers who will no longer be serving as Councilmembers in 2020, the branding of the presentation, ensuring all types of discrimination are addressed, the budget impact, a full time employee dedicated to this program and concerns about the cost raising over the not to exceed amount.

Mayor Backus stated one of the goals of this program is to create an office of Racial Equity. She also explained the current Council would need to be a part of the branding and helping set the platform for the program. She also stated the funding amount is a not to exceed amount and if there was a need for additional funds it would have to be approved by Council.

Director Martinson stated the focus for the program is to include all of the areas of concerns. The goal at the end of the first three years is to hire a full time employee. The Council training can be modified as Council desires.

Deputy Mayor Peloza called for a 6 minute recess at 7:24 p.m. The meeting reconvened at 7:30 p.m.

B. Resolution No. 5443 (Hinman) (10 Minutes)

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

Property Analyst Arndt provided Council with a presentation for Resolution No. 5443. He gave the history of the Interlocal Agreement for the Puget Sound Auto Task Force. He stated the funding for the Task Force was reduced so they have requested a reduction to the rent and utilities paid for the office building. Property Analyst Arndt stated the public benefits from having the Task Force in this building by not having a large vacant building and additional police presence in the area and in the park.

Council discussed the number of vehicles at the building, the rent and utility cost recovery to the City and the reduction of auto theft in the City.

IV. PUBLIC WORKS AND COMMUNITY DEVELOPMENT DISCUSSION ITEMS

A. King County Metro Presentation - I-Line and Mobility Plan (Gaub) (15 Minutes)

Councilmember DaCorsi Chaired the Public Works and Community Development Discussion Items portion of the meeting.

Item 4. D. was discussed first for the agenda.

Planner Malik introduced Greg McKnight and Natalie Westberg from King County Metro Transit.

Mr. McKnight and Ms. Westberg provided Council with a RapidRide overview, what the RapidRide proposed "I" Line route would be, the timeline for the I Line and area mobility plan.

Mr. McKnight explained that Phase One of the project is now completed. It included outreach and engagement from area stakeholders, tabling events (vender tables at community events), an online survey and outreach at bus stops. The Metro Transit convened a Mobility Board and recruited

members for the Partner Review Board. He reviewed the key themes gathered from the preliminary analysis. Ms. Westberg reviewed the needs identified in the analysis and the proposed solutions for those needs.

Mr. McKnight explained Phase 2 of the outreach and engagement will include the Auburn Community Picnics, additional tabling events, specific cultural events, Orca to Go Events, AuburnFest at Les Gove Park and another online event.

Council discussed how future growth could change where stops should be, the timeline for a grant application, a proposal for electric buses, the timeline for implementation and ability to push the timeline and the link between affordable housing and public transportation.

B. Ordinance No. 6722 (Gaub) (10 Minutes)

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

Water Utility Engineer Fenhaus provided Council with a summary of Ordinance No. 6722. She provided a brief explanation of the payback or latecomers agreements. The proposed latecomers agreement would be for seven properties that could benefit from the improvements.

C. Ordinance No. 6724 (Gaub) (10 Minutes)

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

Utilities Engineering Manager Tobin provided Council with a presentation on Ordinance No. 6724, abandoned utility service. The proposed ordinance would clarify the City Code for water, sewer and storm services.

D. Ordinance No. 6725 (Gaub) (5 Minutes)

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

Utilities Engineering Manager Tobin presented Council with Ordinance No. 6725. The proposed Ordinance would define what an equivalent residential unit (ERU) is and the standards for a ERU.

E. State-Mandated Shoreline Master Program and Critical Areas (Tate) (10 Minutes)

Staff to present an overview of the proposed changes necessitated from the State-mandated update to the City's Shoreline Master Program (SMP) and associated updates to the Critical Areas Ordinance (Ch. 16.10 ACC)

Senior Planner Gouk provided Council with an update on the Washington State mandated Shoreline Master Program for Critical areas. The City is required to update the Critical Areas Ordinance at the same time as the

Shoreline Master Program. This has been reviewed by the Planning Commission and will be back before the Planning Commission for a public hearing later this summer.

Council discussed the buffers from streams and wetlands, required monitoring of wetlands and impact on the owners of aquifers.

F. Overview of Building Code Compliance (Tate) (15 Minutes)

Staff to present an overview of State and local building and fire codes

Development Service Manager Krum provided Council with an overview of City of Auburn Building Code compliance, including legacy building codes. The International Code Council was formed in 1994 and created the International Building Code. Washington State updates the State Building Code every three years. The City adopts the State Code and any amendments every three years. He also reviewed the permit process, the requirement of builders to meet the code and the process regarding building code violations.

Deputy Mayor Pelozza chaired the remainder of the meeting.

V. OTHER DISCUSSION ITEMS

There were no other discussion items.

VI. NEW BUSINESS

There was no new business.

VII. MATRIX

A. Matrix

Council discussed the Matrix and requested to add a discussion on banning smoking and vaping in City parks and the South King County Bus Barn.

VIII. ADJOURNMENT

There being no further discussion, the meeting was adjourned at 8:23 p.m.

APPROVED this 19th day of August, 2019.

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BILL PELOZA , DEPUTY MAYOR

Shawn Campbell, City Clerk

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## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Minutes of the August 5, 2019 City Council Meeting

**Department:**

City Council

**Attachments:**

[08-05-2019 Minutes](#)

**Date:**

August 8, 2019

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

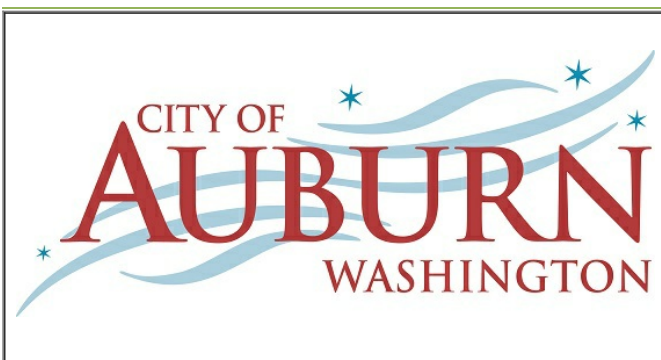
Revised Budget: \$0

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

**Meeting Date:** August 19, 2019

**Staff:**

**Item Number:** CA.B

	<p style="text-align: center;"><b>City Council Meeting</b>  <b>August 5, 2019 - 7:00 PM</b>  <b>City Hall Council Chambers</b>  <b>MINUTES</b>  <b>Watch the meeting LIVE!</b></p> <p style="text-align: center;"><b>Watch the meeting video</b>  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, Claude DaCorsi, John Holman, Yolanda Trout-Manuel and Largo Wales. Councilmembers Bob Baggett and Larry Brown were excused.

Department directors and staff members present included: City Attorney Steve Gross, Director of Public Works Ingrid Gaub, Finance Director Jamie Thomas, Police Chief Bill Pierson, Director of Innovation and Technology David Travis, Director of Parks and Recreation Daryl Faber, Director of Community Development Jeff Tate, Police Commander Dan O'Neil, and City Clerk Shawn Campbell.

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

Mayor Backus shared that former Mayor Chuck Booth passed away over the weekend. She expressed her condolences and noted some of Mayor Booths achievements during his time as Mayor.

## **III. AGENDA MODIFICATIONS**

Item II.A Introduction of Finance Director Jamie Thomas was removed from the agenda and Resolution No. 5449 was added as item X.D.

## **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

Mayor Backus opened the public hearing at 7:02 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.*

No one came forward to speak.

**C. Correspondence**

There was no correspondence for Council to 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)**

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.

**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.

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

MOTION CARRIED UNANIMOUSLY. 5-0

## **VII. UNFINISHED BUSINESS**

There was no unfinished business.

## **VIII. NEW BUSINESS**

Mayor Backus provided Council with a letter to Congressman Peter DeFazio and Congressman Sam Graves, members of the Transportation and Infrastructure Committee, urging them to support the H.R. 2247 bill promoting the "United Government Efforts to Save our Sound Act". She asked the Council if they wanted to discuss the City signing onto this letter to offer the City's support.

Councilmember Holman moved and Deputy Mayor Peloza seconded for the City of Auburn to sign onto the letter to urge the passing of H.R. 2247.

Council discussed the importance of this effort and the importance of the Puget Sound to the entire region.

MOTION CARRIED UNANIMOUSLY. 5-0

## **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

Councilmember Holman moved and Councilmember Trout-Manuel seconded to adopt Ordinance No. 6723.

MOTION CARRIED UNANIMOUSLY. 5-0

## **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

Councilmember DaCorsi moved and Councilmember Wales seconded to adopt Resolution No. 5431.

MOTION CARRIED UNANIMOUSLY. 5-0

### **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

Councilmember Holman moved and Councilmember Trout-Manuel seconded to adopt Resolution No. 5445.

MOTION CARRIED UNANIMOUSLY. 5-0

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

Councilmember DaCorsi moved and Councilmember Holman seconded to adopt Resolution No. 5446.

MOTION CARRIED UNANIMOUSLY. 5-0

D. Resolution No. 5449 (Gaub)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the City to apply for, and if awarded, to accept and expend grant funds in the amount of up to \$3,100,000.00 from the Federal Aviation Administration related to the Auburn Municipal Airport Runway Enhancement Program and amending Resolution 5439

Councilmember Wales moved and Councilmember Trout-Manuel seconded to adopt Resolution No. 5449.

MOTION CARRIED UNANIMOUSLY. 5-0

**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**

Councilmember Wales spoke about former Mayor Chuck Booth and the period of time when he worked for the Auburn School District. She highlighted some of his contributions for the Auburn School District and the community of Auburn.

Councilmember DaCorsi reported he attended the Affordable Housing Committee Meeting.

**B. From the Mayor**

Mayor Backus reported she attended two Regional Homelessness Collation meetings, a Sound Cities Oversight Board for Regional Homelessness meeting, a monthly Faith Leaders Round Table relating to homelessness, the SCORE Executive Board meeting, the SKHHP Board meeting, the White River Buddhist Temple Bon Odori Festival, the VFW

Post 1741 90th Anniversary Banquet and two community picnics.

Mayor invited everyone to the Auburn Fest activities.

## **XII. ADJOURNMENT**

There being no further business to come before the Council, the meeting was adjourned at 7:41 p.m.

APPROVED this 19th day of August, 2019.

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NANCY BACKUS, MAYOR

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Shawn Campbell, City Clerk

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## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Claim Vouchers (Thomas)

**Date:**

August 14, 2019

**Department:**

City Council

**Attachments:**

**No Attachments Available**

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

Approve Claim Vouchers

**Background Summary:**

Claim vouchers list dated August 19, 2019 which includes voucher numbers 455103 through 455288 in the amount of \$4,205,532.94 and three wire transfers in the amount of \$513,975.20.

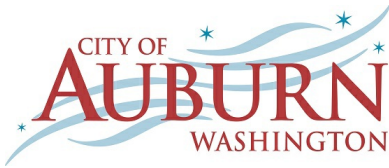
**Reviewed by Council Committees:****Councilmember:****Staff:**

Thomas

**Meeting Date:** August 19, 2019

Item Number:

CA.C



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Payroll Vouchers (Thomas)

**Date:**

August 14, 2019

**Department:**

City Council

**Attachments:**

**No Attachments Available**

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

Approve Payroll Vouchers

**Background Summary:**

Payroll check numbers 538565 through 538588 in the amount of \$250,588.31, electronic deposit transmissions in the amount of \$2,078,956.12 for a grand total of \$2,329,544.43 for the period covering 8/1/2019 to 8/14/2019.

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

Thomas

**Meeting Date:** August 19, 2019

**Item Number:**

CA.D





## AGENDA BILL APPROVAL FORM

**Agenda Subject:**

CP1720 Game Farm Park No. 4 Ballfield Lighting (Faber)

**Date:**

August 14, 2019

**Department:**

Parks/Art and Recreation

**Attachments:**

[COA Musco Game Farm 4 Lighting Contract](#)

[8.14.19](#)

[Game Farm Park SB 2019 KCDA Quote Revised](#)

[Copy of CP1720 BudgetStatusSheet](#)

[Vicinity Map Game Farm 4 Lighting Project](#)

**Budget Impact:**

Current Budget: \$1,050,000

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

Authorize the Mayor to enter into a contract with Musco Lighting for the purchase and installation of the lighting system. Project is bid through King County Directors Association of which the City of Auburn is a member.

**Background Summary:**

CP1720 Game Farm Park Improvements - The City of Auburn received a grant of \$150,000 through the King County Youth Sports Grant program. Remaining funding is through Park Impact Fees as this project increases the capacity of the field.

**Reviewed by Council Committees:**

Other: consent agenda

**Councilmember:****Staff:**

Faber

**Meeting Date:** August 19, 2019

Item Number:

CA.E

**NON-FORMALLY BID PUBLIC WORKS**  
**Project No. CP1720, Game Farm 4 Lighting Project**

THIS CONTRACT is entered into between the City of Auburn, a Washington Municipal Corporation ("City"), and Musco Lighting ("Contractor"), whose mailing address is PO Box 260, Muscatine, IA 52761.

RECITALS:

1. The City is in need of construction contracting services to complete the public work as described in this Contract.
2. Contractor is qualified to perform the construction contracting services described in the Scope of Work.
3. The City wishes to engage Contractor for the performances of these construction contracting services.
4. This contract was not formally bid because (check one)

☐ LIMITED PUBLIC WORKS CONTRACT: Engineer's Estimate < \$35,000.00 and this contract was awarded using the Limited Public Works process as described in RCW 39.04.155.

☐ SMALL PUBLIC WORKS CONTRACT (SINGLE TRADE WORK):  
Engineer's Estimate ≤ \$40,000.00

☐ SMALL PUBLIC WORKS CONTRACT (MULTIPLE TRADE WORK):  
Engineer's Estimate ≤ \$65,000.00

☐ EMERGENCY PUBLIC WORKS CONTRACT: Per RCW 39.04.280, this work is exempt from competitive bidding requirements because the work is considered an emergency, meaning unforeseen circumstances beyond the control of the City either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

☒ COOPERATIVE PURCHASING AGREEMENT: This contract is being let under #19-406 between The City of Auburn and Musco Lighting in accordance with RCW 39.34 (Interlocal Cooperation Act).

☐ Other \_\_\_\_\_.

## AGREEMENT

### 1) CONTRACTOR SERVICES

The Contractor shall do all work and furnish all tools, materials and equipment for the construction of Project No. CP1720 in accordance with this Contract form. Scope of work is as follows:

The Musco Light Structure System shall be “installed” by a licensed Electrical Contractor, registered in the State of Washington. The installation includes, delivering and unloading of the Musco equipment upon arrival to the job site, excavation of 6 augered holes, installation of the pre-cast concrete foundations and concrete backfill. Assembly and installation of 6 new galvanized steel poles, assembly and mounting of 36 luminaire assemblies, electrical enclosures, and wiring harnesses on each of the 6 poles. Wiring for the Lighting System is from the luminaire assemblies down to the remote electrical enclosures at the base of each pole where they will be terminated on the Musco supplied disconnect breaker.

Supply and install a new Musco control and monitoring cabinet compete with control zones to control all softball, tennis courts, and security lighting. Re-wire the existing controls currently servicing the softball fields, tennis courts and security lighting. Install all new conduit from the existing electrical distribution location to each of the 6 pole locations and an in-ground box near the base of each pole. Install new wiring from the new service cabinet to each in-ground box to the remote electrical enclosure on each Musco pole. Where they will land on the Musco supplied disconnect.

All necessary precautions will be taken to ensure the site is left in satisfactory condition

The Washington state Department of Labor and Industries electrical permit is included. Any additional required permits will be by others.

### 2) CITY OF AUBURN BUSINESS LICENSE

The Contractor, subcontractors, and lower tier subcontractors, shall have an active City of Auburn business license.

### 3) NOTICE TO PROCEED

A Notice to Proceed will be issued once the Contract has been fully executed by the Contractor and City, and all insurance and licensing requirements as set forth in the contract have been met. The Notice to Proceed Date shall be either the date the Contractor commenced contract work or the date the contract has been fully executed by the Contractor and City and all insurance and licensing requirements as set forth in the contract have been met, whichever occurs first.

### 4) TIME OF COMPLETION

The Contractor shall complete the work within 45 working days from the Notice to Proceed Date.

### 5) LIQUIDATED DAMAGES (CHECK ONE)

☒ Liquidated damages shall not apply to this contract.

☐ Liquidated damages shall apply to this contract as follows:

If said work is not completed within the time specified, the Contractor agrees to pay liquidated damages to the City as follows:

A. To pay (according to the following formula) liquidated damages for each working day beyond the number of working days established for physical completion, and

B. To authorize the Engineer to deduct these liquidated damages from any money due or coming due to the Contractor.

C. Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire Contract.

Formula:  $\text{Contract Price (without tax)} \times 0.15$ , divided by the original number of working days for completion.

### 6) HOURS OF WORK

Allowed hours of work are as specified in the City of Auburn Construction Standards, Part 1, Section 1-08.0(2) (Hours of Work), which by reference is incorporated as a part of this contract.

### 7) COMPENSATION

The Contractor shall do all work and furnish all tools, materials, and equipment for the work and services contemplated in this Contract for compensation as follows: (Check One)

- ☒ Lump Sum Amount
- ☐ Unit Bid Prices as listed in the Construction Work Quote Form
- ☐ Not to Exceed Amount, paid per the Force Account method as described in Section 1-09.6 of the current WSDOT Standard Specifications for Road, Bridge and Municipal Construction

The Lump Sum Amount, Total Unit Bid Price, or Not To Exceed Amount, as specified above is \$ 387,213.00, and Washington State Sales Tax of \$38,721.30 for a total of \$425,934.30.

This project is subject to use tax, which shall be included lump sum, unit bid, or time and material compensation amount listed herein.

The City's sales tax area is 1702 for work within King County and 2724 for work within Pierce County. No payment shall be issued until a Statement of Intent to Pay Prevailing Wages form, for the Contractor and each and every Subcontractor, has been approved by the State Department of Labor & Industries, and is received by the City.

**A. Performance Bond**

The Contractor shall furnish the City with an executed performance bond for the full Contract amount, unless the contract amount is \$150,000.00 or less and the Contractor has elected to have 10% retainage held by the City, in which case a performance bond is not required for this project.

**B. Retainage (check one)**

☐ This is a Limited Public Works Contract AND the City has waived retainage requirements.

☐ This contract is \$150,000.00 or less, therefore, the following applies:

The Contractor may elect to furnish a performance bond, in which case the City shall hold back retainage in the amount of 5% of any and all payments made to the Contractor, OR have the City retain, in lieu of the performance bond, 10% of the total Contract amount, pursuant to RCW 39.08.010. The Contractor shall execute a "Declaration of Option for Performance Bond or Additional Retainage" to indicate his/her option. In either case, the Contractor can choose to have the retainage held by the City in a non-interest bearing account, have it placed in an Escrow (interest bearing) Account, or submit a bond in lieu of retainage. Said retainage shall be held by the City for a period of 30 days after the Completion Date, or until receipt of all necessary releases from the State Department of Revenue and State Employment Security Department, including Affidavits of Wages paid for the Contractor and each

and every subcontractor, and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later.



This contract is over, \$150,000.00, therefore, the following applies:

The City shall hold back retainage in the amount of 5% of any and all payments made to the Contractor pursuant to RCW 39.08.010. The Contractor can choose to have the retainage held by the City in a non-interest bearing account, have it placed in an Escrow (interest bearing) Account, or submit a bond in lieu of retainage. Said retainage shall be held by the City for a period of 30 days after the Completion Date, or until receipt of all necessary releases from the State Department of Revenue and State Employment Security Department, including Affidavits of Wages paid for the Contractor and each and every subcontractor, and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

**C. Defective or Unauthorized Work**

The City reserves its right to withhold payment from the Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Contract; and extra work and materials furnished without the City's written approval. If the Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and the Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct the cost to complete the Contract work, including any additional costs, from any and all amounts due or to become due the Contractor.

**D. Final Payment: Waiver of Claims**

The signing of the Final Payment Form by the Contractor shall constitute a waiver of claims, except those previously and properly made and identified by the Contractor as unsettled at the time Final Payment Form is signed by the Contractor.

**8) INDEPENDENT CONTRACTOR**

The parties intend that an Independent Contractor - Employer Relationship will be created by this Contract, the City being interested only in the results obtained under this Contract.

**9) SUBCONTRACTING**

Work done by the Contractor's own organization shall account for at least 30 percent of the awarded Contract price. Before computing this percentage however, the Contractor may subtract

(from the awarded Contract price) the costs of any subcontracted work on items the Contract designates as specialty items.

The Contractor shall not subcontract work unless the City approves in writing. Each request to subcontract shall be on the form the City provides. If the City requests, the Contractor shall provide proof that the subcontractor has the experience, ability, and equipment the work requires.

The Contractor shall require each subcontractor to comply with RCW 39.12 (Prevailing Wages on Public Works) and to furnish all certificates and statements required by the Contract. No payment shall be issued until a Statement of Intent to Pay Prevailing Wages form, for the Contractor and each and every subcontractor, has been approved by the State Department of Labor & Industries, and is received by the City.

Along with the request to sublet, the Contractor shall submit the names of any contracting firms the subcontractor proposes to use as lower tier subcontractors. Collectively, these lower tier subcontractors shall not do work that exceeds 25 percent of the total amount subcontracted to a subcontractor. When a subcontractor is responsible for construction of a specific structure or structures, the following work may be performed by lower tier subcontractors without being subject to the 25 percent limitation:

- A. Furnishing and driving of piling, or
- B. Furnishing and installing concrete reinforcing and post-tensioning steel.

Except for the 25 percent limit, lower tier subcontractors shall meet the same requirements as subcontractors.

The City will approve the request only if satisfied with the proposed subcontractor's record, equipment, experience and ability. Approval to subcontract shall not:

1. Relieve the Contractor of any responsibility to carry out the Contract.
2. Relieve the Contractor of any obligations or liability under the Contract and the Contractor's bond.
3. Create any contract between the City and the subcontractor, or
4. Convey to the subcontractor any rights against the City.

The City will not consider as subcontracting: (1) purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready mix concrete, off-site fabricated structural steel, other off-site fabricated items, and any other materials supplied by established and recognized commercial

plants; or (2) delivery of these materials to the work site in vehicles owned or operated by such plants or by recognized independent or commercial hauling companies. However, the Washington State Department of Labor and Industries may determine that RCW 39.12 applies to the employees of such firms identified in A and B above in accordance with WAC 296-127.

If dissatisfied with any part of the subcontracted work, the City may request in writing that the subcontractor be removed. The Contractor shall comply with this request at once and shall not employ the subcontractor for any further work under the Contract.

This section does not create a contractual relationship between the City and any subcontractor. Also, it is not intended to bestow upon any subcontractor, the status of a third-party beneficiary to the Contract between the City and the Contractor.

## **10) TERMINATION**

The City may terminate this Contract for good cause. "Good cause" shall include, without limitation, any one or more of the following events:

- A. The Contractor's refusal or failure to supply a sufficient number of properly-skilled workers or proper materials for completion of the Contract work.
- B. The Contractor's failure to complete the work within the time specified in this Contract.
- C. The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.
- D. The Contractor's persistent disregard of federal, state or local laws, rules or regulations.
- E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.

After all the work contemplated by the Contract has been completed either by the Surety or the City, the City will calculate the total expenses and damages for the completed work. If the total expenses and damages are less than any unpaid balance due the Contractor, the excess will be paid by the City to the Contractor. If the total expenses and damages exceed the unpaid balance, the Contractor and the Surety shall be jointly and severally liable to, and shall pay the difference to, the City on demand.

## **11) PREVAILING WAGES**

Contractor shall file a "Statement of Intent to Pay Prevailing Wages" with the State of Washington Department of Labor & Industries prior to commencing the Contract work. The Contractor shall pay prevailing wages and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. The prevailing wage rate revision in effect



on the date the Contractor submitted the Construction Work Quote Form is attached and by this reference incorporated herein and made a part hereof. No payment shall be issued until a Statement of Intent to Pay Prevailing Wages form, for the Contractor and each and every subcontractor, has been approved by the State Department of Labor & Industries, and is received by the City. Retainage, if applicable, shall not be released until an Affidavit of Wages Paid form for the Contractor and each and every subcontractor, has been approved by the State Department of Labor & Industries, and is received by the City.

## **12) CHANGES**

The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Contractor determines, for any reason, that a change order is necessary, the Contractor must submit a written change order request to an authorized agent of the City within 10 calendar days of the date the facts and events giving rise to the requested change occurred. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City. If the Contractor fails to request a change order within the time allowed, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the Contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided below:

### **A. Procedure and Protest by the Contractor**

If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Contractor shall:

1. Within 2 days of receiving a written change order or oral order that the Contractor desires to protest, the Contractor shall give a signed written notice of protest to the City; and
2. Supplement the written protest within 14 calendar days with a written statement that provides the following information:
  - a. The date of the Contractor's protest.
  - b. The nature and circumstances that caused the protest.
  - c. The provisions in this Contract that support the protest.

- d. The estimated dollar cost, if any, of the protested work and how that estimate was determined.
- e. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

The Contractor shall keep complete records of extra costs and time incurred as a result of the protested work. The City shall have access to any of the Contractor's records needed for evaluating the protest.

- 3. The City will evaluate all protests, provided the procedures in this section are followed. If the City determines that a protest is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

**B. Contractor's Duty to Complete Protested Work**

In spite of any protest, the Contractor shall proceed promptly with the work as the City has ordered.

**C. Contractor's Acceptance of Changes**

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by the Contractor as provided in this section shall constitute full payment and final settlement of all claims for Contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

**D. Failure to Protest Constitutes Waiver**

By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

**E. Failure to Follow Procedures Constitutes Waiver**

By failing to follow the procedures of this section, the Contractor completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

### **13) CLAIMS**

The Contractor waives right to a claim if they have not followed the protest procedures outlined in this Contract. If resolution of a protest cannot be reached, and the Contractor wishes to pursue a claim, the Contractor shall give written notice of claim to the City within 15 calendar days of the City's notice of its final decision on the Contractor's protest. Any claim for damages, additional

payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Contract. At a minimum, a Contractor's written claim must include the information set forth regarding protests in this Contract.

Failure to provide a complete, written notification of claim within the time allowed shall be an absolute waiver of any claims arising in any way from the facts or events surrounding that claim or caused by that delay.

The Contractor must, in any event, file any claim or bring any suit arising from or connected with this Contract prior to signing the Final Payment Form.

#### **14) WARRANTY (CHECK ONE)**

- ☐ No warranty applies to the Contract Work.
- ☒ Warranty applies to the Contract Work as follows:

All defects in workmanship and materials that occur within one year of the Contract Completion date shall be corrected by the Contractor. When defects are corrected, the warranty for that portion of the work shall extend for one year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within 7 calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

#### **15) INDEMNIFICATION**

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

The City's inspection or acceptance of any of the Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Contract 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 Contractor and the City, its officers, officials, employees, agents and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

It is further specifically and expressly understood that this indemnification constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The parties acknowledge that they have mutually negotiated this waiver. The provisions of this section shall survive the expiration or termination of this Contract.

## **16) INSURANCE**

Insurance requirements shall be as specified in the City of Auburn Construction Standards, Part 1, Section 1-07.18 (Insurance) which by reference is incorporated is a part of this contract.

## **17) CORRESPONDENCE (CHECK ONE)**

- ☐ Submittals and formal Requests for Information (RFI) shall not be required for this contract.
- ☒ Submittals and Requests for Information (RFI) shall be as follows:
  - A. Requests for Information (RFI's). RFI's shall be made electronically and shall be transmitted via e-mail to [jwkelly@auburnwa.gov](mailto:jwkelly@auburnwa.gov). The e-mail subject line of electronic RFI's shall include the following: Project Name/Number as applicable – RFI Title/Subject. Each e-mail shall be limited to 7 MB's in size. All RFI's shall accompany the City of Auburn "CIP Construction Request for Information" (RFI) form as a cover letter with enough information provided for the Engineer to respond accordingly. The time required to evaluate and review RFI's is not the same for all RFI's. The Contractor shall allow a minimum of 10 calendar days, unless otherwise noted, for the Engineer to respond.
  - B. Submittals. All submittals shall be made electronically and shall be transmitted via e-mail to [jwkelly@auburnwa.gov](mailto:jwkelly@auburnwa.gov). The e-mail subject line of electronic submittals shall include the following: <<<Project Number>>>, <<<Project Name>>> - "Submittal Title". Each electronic email shall be limited to 7 MB's in size. All electronic submittals shall be clear, sharp high contrast electronic files in Word 2007, Excel 2007 or PDF formats. All submittals shall accompany the City of Auburn "Request for Submittal Approval" (RSA) form. Any submittals made without the RSA form or without all of the required information on the form filled out by the Contractor shall be rejected without review. No additional compensation or time extension shall be granted for a Contractor not supplying this form as a cover letter for their submittals or for an improperly filled out form. The RSA form shall be completed by the Contractor as follows:

- For any item being submitted to the City for review and approval for the first time, check the “New Submittal” box. The City will assign the item a submittal number. For items that have been previously submitted and require a re-submittal, check the “Re-submittal of No. \_\_\_\_” box and fill in the submittal number that was assigned by the City to the original submittal. For submittals that are providing Material Acceptance Documentation for a submittal that has been previously made, the Contractor shall check the “Material Acceptance Documentation for Submittal No. \_\_\_\_” box and fill in the submittal number that was assigned by the City for which the Contractor is supplying the acceptance documentation for.
- Fill in the Contract Number (I.E. ## - ##) and Contract/Project Name;
- Fill in the Project Identifying Number (I.E. CP#####);
- Fill in the Date the Submittal was transmitted to the City;
- Provide the Contractor’s name and, if applicable, the name of Subcontractor or supplier who prepared the submittal;
- The Contractor is strongly encouraged to submit only one material or item per RSA form, however if more than one material or item is listed on the form then provide a General Submittal Title that is applicable to the group. Do not group non-like materials or items on the same form;
- When applicable, provide the Bid Item number the submittal is referencing;
- Provide a submittal description (be specific). For material submittals, provide the Type of Material, the Manufacturer’s Product/Type, or the trade name of the product;
- When applicable, provide the Name and the Location of the Fabricator or the Manufacturer’s name or the Pit Number. This should be the actual manufacturer, not the supplier or distributor,
- Provide the Contract Specification section number(s) or the page number the submittal material is referencing, or you can list the Plan Sheet number; and
- For material submittals, indicate whether the submittal is requesting use of the WSDOT Qualified Product List (QPL) or if the submittal is a Request for Approval of Material (RAM) that is not in the QPL, by checking the appropriate box. For non-material submittals and for material acceptance documentation these boxes shall be left blank. If the Contractor elects to use a product listed in the QPL, the submittal documentation shall be prepared in accordance with the instructions in the WSDOT QPL program and shall be the most current list available at the time the product is proposed to be used.

## 18) MISCELLANEOUS

- A. Nondiscrimination. In the hiring of employees for the performance of work under this Contract, the Contractor, its subcontractors, or any person acting on behalf of Contractor shall not, by reason of race, religion, color, sex, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.
- B. Compliance with Laws. The Contractor shall comply with all federal, state and local laws, rules and regulations throughout every aspect in the performance of this Contract.
- C. Qualifications of Bidder. Before award of a public works contract, a bidder must meet at least the minimum qualifications of RCW 39.04.350(1) to be considered a responsible bidder and qualified to be awarded a public works project.
- D. Work Performed at Contractor's Risk. The Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of this Contract. All work shall be done at the Contractor's own risk, and the Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
- E. Nonwaiver of Breach. The failure of the City to insist upon strict performance of any of the terms and rights contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of those terms and rights and they shall remain in full force and effect.
- F. Governing Law. This Contract shall be governed and construed in accordance with the laws of the State of Washington. If any dispute arises between the City and the Contractor under any of the provisions of this Contract, resolution of that dispute shall be available only through the jurisdiction, venue and rules of the King County Superior Court, King County, Washington.
- G. Attorney's Fees. To the extent not inconsistent with RCW 39.04.240, in any claim or lawsuit for damages arising from the parties' performance of this Contract, each party shall be responsible for payment of its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit; however, nothing in this subsection shall limit the City's right to indemnification under Section 10 of this Contract.
- H. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of this Contract, unless otherwise notified. Any written notice shall become effective upon delivery, but in any event 3 calendar days

after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract.

- I. Assignment. Any assignment of this Contract by the Contractor without the written consent of the City shall be void.
- J. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and the Contractor.
- K. Severability. If any one or more sections, sub-sections, or sentences of this Contract are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this Contract and the remainder shall remain in full force and effect.
- L. Entire Contract. The written provisions and terms of this Contract, together with any referenced documents and attached Exhibits , supersede all prior verbal statements by any representative of the City, and those statements shall not be construed as forming a part of or altering in any manner this Contract. This Contract, referenced documents, and any attached Exhibits contain the entire Contract between the parties. Should any language in any referenced documents or Exhibits to this Contract conflict with any language contained in this Contract, the terms of this Contract shall prevail.

IN WITNESS WHEREOF, the parties below have executed this Contract.

CONTRACTOR

THE CITY OF AUBURN

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Print name here)

By \_\_\_\_\_ Nancy Backus

Its \_\_\_\_\_  
(Authorized representative)

Its \_\_\_\_\_ Mayor

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Contractor's State License No. \_\_\_\_\_

State Tax Registration (UBI) No. \_\_\_\_\_

Federal Tax ID # \_\_\_\_\_

Notices to be sent to:

Notices to be sent to:

Musco Lighting

Attn: Ryan Tighe  
PO Box 260  
Muscatine, IA 52761  
Phone: 800-825-6020  
E-mail: ryan.tighe@musco.com

CITY OF AUBURN

Attn: Jamie Kelly  
25 West Main Street  
Auburn, WA 98001  
Phone: 253.931.4011  
E-mail: jwkelly@auburnwa.gov

APPROVED AS TO FORM:

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Steve Gross, City Attorney





**Game Farm Park Softball**  
**Date: June 27<sup>th</sup>, 2019**  
**King County Directors Association**  
**Master Project: 1195250**  
**Contract Number: 19-406**  
**Quote #189111**  
**Expiration: 02/28/2021**

**Musco Equipment and Installation**

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TLC for LED Light-Structure System delivered to your site in Five Easy Pieces™

- 6 - pre-cast concrete foundations
- 6 – 60' & 70' Galvanized steel poles
- UL Listed remote electrical component enclosure
- Pole length wire harness
- 20 - Factory-aimed and assembled TLC/LED 1500 - field lighting luminaries
- 6 - Factory-aimed and assembled TLC/LED 900 - field lighting luminaries
- 6 - Factory-aimed and assembled TLC/LED 575 BT - luminaires
- Lighting control cabinets and Control Link (wireless control system)

Also Includes:

- 50% less spill and glare light than Musco's prior industry leading technology
- Musco Constant 25 warranty and maintenance program that eliminates your maintenance costs for 25 years, including labor and materials
- Guaranteed constant footcandles for 25 years, per IESNA RP-06-15
- Lighting Contactors sized for voltage and phase at the site and our Control & Monitoring System for flexible control and solid management of your lighting system

**Installation Breakdown**

- Deliver and unload Musco equipment
- Auger and set Musco pre-cast concrete foundation(s)
- Assemble and stand Musco equipment
- Trenching/boring and backfill
- Conduit, wire and in-ground boxes
- Supply and install new breakers, contactors and control equipment.
- Wire energize and commission
- Site cleanup
- Testing and train staff
- Prepare all appropriate operation/maintenance/repair manuals

**Scope of work:**

The Musco Light Structure System shall be "installed" by a licensed Electrical Contractor, registered in the State of Washington. The installation includes, delivering and unloading of the Musco equipment upon arrival to the job site, excavation of 6 augured holes, installation of the pre-cast concrete foundations and concrete backfill. Assembly and installation of 6 new galvanized steel poles, assembly and mounting of 36 light luminaire assemblies, electrical enclosures and wiring harnesses on each of the 6 poles. Wiring for the Lighting System is from the luminaire

assemblies down to the remote electrical enclosures at the base of each pole where they will be terminated on the Musco supplied disconnect breaker.

Supply and install a new Musco control and monitoring cabinet complete with control zones to control all softball, tennis courts and security lighting. Re-wire the existing controls currently servicing the softball fields, tennis courts and security lighting. Install all new conduit from the existing electrical distribution location to each of the 6 pole locations and an in-ground box near the base of each pole. Install new wiring from the new service cabinet to each in-ground box and from each in-ground box to the remote electrical enclosure on each Musco pole, where they will land on the Musco supplied disconnect.

All necessary precautions will be taken to ensure the site is left in satisfactory condition.

The Washington State Department of Labor and Industries electrical permit is included. Any additional required permits will be by others.

**Total Breakout of Equipment and Installation:**

<b>KCDA Contract Price – (300' x 300' x 300').....</b>	<b>\$260,093.00</b>
<b>Adder - Electrical installation.....</b>	<b>\$123,598.00</b>
<b>Performance and Payment Bond.....</b>	<b>\$3,522.00</b>

<b>Total Price (Equipment and Installation):</b>	<b><u>\$387,213.00</u></b>
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**Notes:**

Performance and payment bond is included in the quote at 9.18/1000%.

Pricing does NOT include taxes.

Purchase orders are to be sent directly to the KCDA along with a copy of this quote.

Delivery to the job site from the time of order, submittal approval, and confirmation of order details including voltage and phase, pole locations is 30 days. Current estimated delivery month is September 2018.

Due to the built-in custom light control per luminaire, pole locations need to be confirmed prior to production.

Light Levels and uniformities are guaranteed by MUSCO, any additional aiming required to meet the specified requirements shall be done by MUSCO.

Fax or Mail a copy of the Purchase Order to KCDA and Musco Sports Lighting:

KCDA  
Attn: Mark Pfeiffer  
P.O. Box 5550  
Kent, WA 98064  
Fax: 425-282-0675  
E-mail: [customerservice@kcda.org](mailto:customerservice@kcda.org)  
Phone: 800-422-5019

Musco Sports Lighting, LLC  
Attn: Ryan Tighe  
P.O. Box 260  
Muscatine, IA 52761  
Fax: 800-374-6402  
E-mail: [ryan.tighe@musco.com](mailto:ryan.tighe@musco.com)  
Phone: 800-825-6020

Thank you for considering Musco for your sports-lighting needs. Please contact me with any questions.

Tim Butz  
Musco Sports Lighting, LLC  
Phone: 503/720-6625  
E-mail: [tim.butz@musco.com](mailto:tim.butz@musco.com)

Yuli Diaz  
Musco Sports Lighting, LLC  
Phone: 800-754-6025  
E-mail: [yuli.diaz@musco.com](mailto:yuli.diaz@musco.com)

## BUDGET STATUS SHEET

<b>Project No:</b> CP1720	<b>Project Title:</b> Game Farm 4 Lighting
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**Project Manager:** Jamie Kelly

Project Initiation (PMP) Date: \_\_\_\_\_

Advertisement Date: N/A COOP

Award Date: 8/19/19

<b>Project Initiation</b>
<b>Permission to Advertise</b>
<b>X Contract Award</b>
<b>Change Order Approval</b>
<b>Contract Final Acceptance</b>

Updated: August 14, 2019

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

### Funds Budgeted (Funds Available)

Funding	2017	2018	2019	Future Years	Total
321 Fund - Unrestricted			0	0	0
Grant - Secured			150,000		150,000
Park Impact Fees			318,529		318,529
Park Impact Fees					0
					0
<b>Total</b>	0		468,529	0	468,529

### Estimated Cost (Funds Needed)

Activity	2017	2018	2019	Future Years	Total
Construction Contract	0	0	425,935	0	425,935
Construction Authorized Contingency (10%)	0	0	42,594	0	42,594
	0	0	0	0	0
	0	0	0	0	0
	0	0	0	0	0
	0	0	0	0	0
	0	0	0	0	0
	0	0	0	0	0
<b>Total</b>	0	0	468,529	0	468,529

### Project Budget Status (321 Funds)

	2017	2018	2019	Future Years	Total
Project Funds Budgeted	0	0	(468,529)	0	(468,529)
Project Funds Needed	0	0	468,529	0	468,529
<b>Project Contingency</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Funds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

## BUDGET STATUS SHEET

<b>Project No:</b> CPXXXX	<b>Project Title:</b> Project Name
<b>Project Manager:</b> Name	

Project Initiation (PMP) Date: \_\_\_\_\_  
 Advertisement Date: \_\_\_\_\_  
 Award Date: \_\_\_\_\_

<b>Project Initiation</b> <b>Permission to Advertise</b> <b>Contract Award</b> <b>Change Order Approval</b> <b>Contract Final Acceptance</b>
--

Updated: February 22, 2017

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

### Funds Budgeted (Funds Available)

Funding	2017	2018	2019	Future Years	Total
102 Fund - Unrestricted	0	0	0	0	0
102 Fund -State Grant	0	0	0	0	0
460 Fund - Water	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### Estimated Cost (Funds Needed)

Activity	2017	2018	2019	Future Years	Total
Design Engineering - City Costs	0	0	0	0	0
Design Engineering - Consultant Costs	0	0	0	0	0
Permitting	0	0	0	0	0
ROW - Property Acquisition	0	0	0	0	0
ROW - Property Acquisition - City Costs	0	0	0	0	0
ROW - Property Acquisition - Consultant Costs	0	0	0	0	0
Construction Estimate	0	0	0	0	0
Construction Contingency (15%)	0	0	0	0	0
Materials Testing	0	0	0	0	0
Other	0	0	0	0	0
Construction Engineering - City Costs	0	0	0	0	0
Construction Engineering - Consultant Costs	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### 102 Arterial Street Budget Status

	2017	2018	2019	Future Years	Total
*102 Funds Budgeted ( )	0	0	0	0	0
102 Funds Needed	0	0	0	0	0
<b>*102 Fund Project Contingency ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>102 Funds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### 460 Water Budget Status

	2017	2018	2019	Future Years	Total
*460 Funds Budgeted ( )	0	0	0	0	0
460 Funds Needed	0	0	0	0	0
<b>*460 Fund Project Contingency ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>460 Funds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

## BUDGET STATUS SHEET

<b>Project No:</b> CPXXXX	<b>Project Title:</b> Project Name
<b>Project Manager:</b> Name	

Project Initiation (PMP) Date: \_\_\_\_\_  
 Advertisement Date: \_\_\_\_\_  
 Award Date: \_\_\_\_\_

<b>Project Update</b> <b>Permission to Advertise</b> <b>Contract Award</b> <b>Change Order Approval</b> <b>Contract Final Acceptance</b>
--

Updated: February 22, 2017

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

### Funds Budgeted (Funds Available)

Funding	2017	2018	2019	Future Years	Total
102 Fund - Unrestricted	0	0	0	0	0
102 Fund -State Grant	0	0	0	0	0
460 Fund - Water	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### Estimated Cost (Funds Needed)

Activity	2017	2018	2019	Future Years	Total
Design Engineering - City Costs	0	0	0	0	0
Design Engineering - Consultant Costs	0	0	0	0	0
Permitting	0	0	0	0	0
ROW - Property Acquisition	0	0	0	0	0
ROW - Property Acquisition - City Costs	0	0	0	0	0
ROW - Property Acquisition - Consultant Costs	0	0	0	0	0
Construction Estimate	0	0	0	0	0
Construction Contingency (15%)	0	0	0	0	0
Materials Testing	0	0	0	0	0
Other	0	0	0	0	0
Construction Engineering - City Costs	0	0	0	0	0
Construction Engineering - Consultant Costs	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### 102 Arterial Street Budget Status

	2017	2018	2019	Future Years	Total
*102 Funds Budgeted ( )	0	0	0	0	0
102 Funds Needed	0	0	0	0	0
<b>*102 Fund Project Contingency ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>102 Funds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### 460 Water Budget Status

	2017	2018	2019	Future Years	Total
*460 Funds Budgeted ( )	0	0	0	0	0
460 Funds Needed	0	0	0	0	0
<b>*460 Fund Project Contingency ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>460 Funds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

## BUDGET STATUS SHEET

<b>Project No:</b> CPXXXX	<b>Project Title:</b> Project Name
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**Project Manager:** Name

Project Initiation (PMP) Date: \_\_\_\_\_

Advertisement Date: \_\_\_\_\_

Award Date: \_\_\_\_\_

Project Initiation
Permission to Advertise
Contract Award
Change Order Approval
Contract Final Acceptance

Updated: February 22, 2017

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

### Funds Budgeted (Funds Available)

Funding	2017	2018	2019	Future Years	Total
102 Fund - Unrestricted	0	0	0	0	0
102 Fund - State Grant	0	0	0	0	0
460 Fund - Water	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### Estimated Cost (Funds Needed)

Activity	2017	2018	2019	Future Years	Total
Design Engineering - City Costs	0	0	0	0	0
Design Engineering - Consultant Costs	0	0	0	0	0
Permitting	0	0	0	0	0
ROW - Property Acquisition	0	0	0	0	0
ROW - Property Acquisition - City Costs	0	0	0	0	0
ROW - Property Acquisition - Consultant Costs	0	0	0	0	0
Construction Estimate	0	0	0	0	0
Construction Contingency (15%)	0	0	0	0	0
Materials Testing	0	0	0	0	0
Other	0	0	0	0	0
Construction Engineering - City Costs	0	0	0	0	0
Construction Engineering - Consultant Costs	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### 102 Arterial Street Budget Status

	2017	2018	2019	Future Years	Total
*102 Funds Budgeted ( )	0	0	0	0	0
102 Funds Needed	0	0	0	0	0
<b>*102 Fund Project Contingency ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>102 Funds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### 460 Water Budget Status

	2017	2018	2019	Future Years	Total
*460 Funds Budgeted ( )	0	0	0	0	0
460 Funds Needed	0	0	0	0	0
<b>*460 Fund Project Contingency ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>460 Funds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

## BUDGET STATUS SHEET

<b>Project No:</b> CP1605	<b>Project Title:</b> Les Gove Crescent
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**Project Manager:** Jamie Kelly

Project Initiation (PMP) Date: \_\_\_\_\_

Advertisement Date: 2/1/18

Award Date: 2/20/18 Pending

<b>Project Initiation</b>
<b>Permission to Advertise</b>
<b>X Contract Award</b>
<b>Change Order Approval</b>
<b>Contract Final Acceptance</b>

Updated: February 14, 2018

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

### Funds Budgeted (Funds Available)

Funding	2017	2018	2019	Future Years	Total
321 Fund - Unrestricted Grant - Secured 328 Fund Park Impact Fees	561,542	100,000	0	0	661,542
<b>Total</b>	<b>561,542</b>	<b>100,000</b>	<b>0</b>	<b>0</b>	<b>661,542</b>

### Estimated Cost (Funds Needed)

Activity	2017	2018	2019	Future Years	Total
Big Daddy's Demolition and Restoration Project	77,079				77,079
Design Engineering - Consultant Costs	55,616	38,753	0	0	94,369
Permitting	0	4,221	0	0	4,221
Construction Contract	0	560,353	0	0	560,353
Construction Contract Authorized Contingency (10%)	0	56,035	0	0	56,035
Construction Engineering - City Costs	0	0	0	0	0
Construction Engineering - Consultant Costs	0	11,247	0	0	11,247
<b>Total</b>	<b>132,695</b>	<b>670,610</b>	<b>0</b>	<b>0</b>	<b>803,305</b>

### Project Budget Status

	2017	2018	2019	Future Years	Total
Project Funds Budgeted	(561,542)	(100,000)	0	0	(661,542)
Project Funds Needed	132,695	670,610	0	0	803,305
<b>Project Contingency</b>	<b>(428,847)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Funds Required</b>	<b>0</b>	<b>570,610</b>	<b>0</b>	<b>0</b>	<b>141,763</b>

## BUDGET STATUS SHEET

<b>Project No:</b> CP1605	<b>Project Title:</b> Project Name
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**Project Manager:** Jamie Kelly

Project Initiation (PMP) Date: \_\_\_\_\_

Advertisement Date: \_\_\_\_\_

Award Date: \_\_\_\_\_

Project Initiation  
Permission to Advertise  
Contract Award  
Change Order Approval  
Contract Final Acceptance

Updated: February 22, 2017

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

### Funds Budgeted (Funds Available)

Funding	2017	2018	2019	Future Years	Total
102 Fund - Unrestricted	0	0	0	0	0
102 Fund -State Grant	0	111,705	0	0	111,705
460 Fund - Water	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>111,705</b>	<b>0</b>	<b>0</b>	<b>111,705</b>

### Estimated Cost (Funds Needed)

Activity	2017	2018	2019	Future Years	Total
Design Engineering - City Costs	0	0	0	0	0
Design Engineering - Consultant Costs	0	0	0	0	0
Permitting	0	0	0	0	0
ROW - Property Acquisition	0	0	0	0	0
ROW - Property Acquisition - City Costs	0	0	0	0	0
ROW - Property Acquisition - Consultant Costs	0	0	0	0	0
Construction Contract Bid	0	0	0	0	0
Change Order No. #1	0	102,740	0	0	102,740
Authorized Const Contingency Remaining	0	0	0	0	0
Materials Testing	0	0	0	0	0
Other	0	0	0	0	0
Construction Engineering - City Costs	0	0	0	0	0
Construction Engineering - Consultant Costs	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>102,740</b>	<b>0</b>	<b>0</b>	<b>102,740</b>

### 102 Arterial Street Budget Status

	2017	2018	2019	Future Years	Total
*102 Funds Budgeted ( )	0	(111,705)	0	0	(111,705)
102 Funds Needed	0	102,740	0	0	102,740
<b>*102 Fund Project Contingency ( )</b>	<b>0</b>	<b>(8,965)</b>	<b>0</b>	<b>0</b>	<b>(8,965)</b>
<b>102 Funds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### 460 Water Budget Status

	2017	2018	2019	Future Years	Total
*460 Funds Budgeted ( )	0	0	0	0	0
460 Funds Needed	0	102,740	0	0	102,740
<b>*460 Fund Project Contingency ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>460 Funds Required</b>	<b>0</b>	<b>102,740</b>	<b>0</b>	<b>0</b>	<b>102,740</b>



## BUDGET STATUS SHEET

<b>Project No:</b> CPXXXX	<b>Project Title:</b> Project Name
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**Project Manager:** Name

Project Initiation (PMP) Date: \_\_\_\_\_

Advertisement Date: \_\_\_\_\_

Award Date: \_\_\_\_\_

Project Initiation
Permission to Advertise
Contract Award
Change Order Approval
Contract Final Acceptance

Updated: February 22, 2017

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

### Funds Budgeted (Funds Available)

Funding	2017	2018	2019	Future Years	Total
102 Fund - Unrestricted	0	0	0	0	0
102 Fund -State Grant	0	0	0	0	0
460 Fund - Water	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### Estimated Cost (Funds Needed)

Activity	2017	2018	2019	Future Years	Total
Design Engineering - City Costs	0	0	0	0	0
Design Engineering - Consultant Costs	0	0	0	0	0
Permitting	0	0	0	0	0
ROW - Property Acquisition	0	0	0	0	0
ROW - Property Acquisition - City Costs	0	0	0	0	0
ROW - Property Acquisition - Consultant Costs	0	0	0	0	0
Construction Contract Bid	0	0	0	0	0
Change Order No. #	0	0	0	0	0
Line Item Changes	0	0	0	0	0
Materials Testing	0	0	0	0	0
Other	0	0	0	0	0
Construction Engineering - City Costs	0	0	0	0	0
Construction Engineering - Consultant Costs	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### 102 Arterial Street Budget Status

	2017	2018	2019	Future Years	Total
*102 Funds Budgeted ( )	0	0	0	0	0
102 Funds Needed	0	0	0	0	0
<b>*102 Fund Project Contingency ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>102 Funds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### 460 Water Budget Status

	2017	2018	2019	Future Years	Total
*460 Funds Budgeted ( )	0	0	0	0	0
460 Funds Needed	0	0	0	0	0
<b>*460 Fund Project Contingency ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>460 Funds Required</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

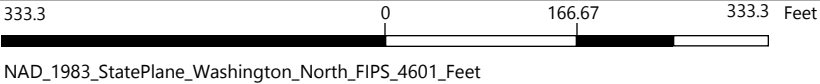
\* ( # ) in the Budget Status Sections indicates Money the City has available.

ENG-270, Revised 12/17



VICINITY MAP - GAME FARM 4 LIGHTING PROJECT

Printed Date: 8/14/2019  
Map Created by City of Auburn eGIS  
Imagery Date: May 2015



1 in = 166.67 ft 1:2,000

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





## AGENDA BILL APPROVAL FORM

**Agenda Subject:**

Setting Public Hearing Date for Franchise Agreement  
#FRN190014 (Gaub)

**Date:**

August 13, 2019

**Department:**

Public Works

**Attachments:**

[Draft Ordinance No. 6727 Franchise Agreement  
No. FRN19-0014](#)

**Budget Impact:**

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

**Administrative Recommendation:**

City Council to set the date of the Public Hearing for Franchise Agreement No. FRN19-0014.

**Background Summary:**

Section 20.06.030 of the Auburn City Code Chapter requires the City to hold a public hearing before granting or denying a franchise agreement. Staff requests that the City Council set the date of the public hearing for Franchise Agreement No. FRN19-0014 for New Cingular Wireless PCS, LLC for September 3, 2019 at 7:00 pm in Council Chambers.

Franchise Agreement No. FRN19-0014, (Draft Ordinance No. 6727) is attached as back-up documentation. Section 20.06.010 of the Auburn City Code requires a franchise for any commercial utility or telecommunications operator or carrier or other person who wants to use public ways of the City and to provide telecommunications or commercial utility services to any person or area in the City.

New Cingular Wireless PCS, LLC has applied for a Franchise Agreement to be able to construct within the City's rights-of-way a small wireless facilities network. New Cingular Wireless wants to provide personal wireless telecommunications and data communications services for the benefit of wireless communications subscribers in and around the City of Auburn.

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

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

Gaub

**Meeting Date:** August 19, 2019

**Item Number:**

CA.F



## **ORDINANCE NO. 6727**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING NEW CINGULAR WIRELESS PCS, LLC, A FRANCHISE FOR WIRELESS TELECOMMUNICATIONS FACILITIES**

WHEREAS, New Cingular Wireless PCS, LLC ("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 Wireless 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 Wireless Telecommunications Services, and it extends no rights or privilege relative to any facilities or services of any type, including Grantee Facilities and Wireless 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: New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Site No. City of Auburn Wireless Franchise Agreement (WA)  
1025 Lenox Park Blvd NE, 3<sup>rd</sup> Floor  
Atlanta, GA 30319

With a copy to: New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Dept – Network Operations  
Site No. City of Auburn Wireless Franchise Agreement (WA)  
208 S. Akard Street  
Dallas, TX 75202-4206

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) 832-6662.

### **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 or 35.99.010(7), respectively, 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 Wireless 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 by the sole 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 ISO Form CG 00 01 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 coverage. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be included 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 (or qualified self-insurance 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 or nonrenewal of any of the required insurance policies that are not replaced.

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 have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City.

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 (2) terminate Franchisee's use of the specific portion(s) of the ROW to which the default(s) pertains at the discretion of the City Engineer, or (3) 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:

\_\_\_\_\_  
Shawn Campbell, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven L. Gross, City Attorney

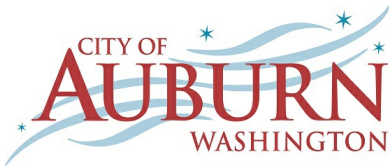
Published: \_\_\_\_\_

## STATEMENT OF ACCEPTANCE

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## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Ordinance No. 6721 (Gaub)

**Date:**

July 16, 2019

**Department:**

Public Works

**Attachments:**

[Ordinance No. 6721](#)

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

City Council introduce and adopt Ordinance No. 6721 for Franchise Agreement No. FRN19-0013 for Seattle SMSA Limited Partnership, dba Verizon Wireless.

**Background Summary:**

Section 20.06.010, Auburn City Code requires a franchise of any commercial utility or telecommunications operator or carrier or other person who wants to use public ways of the City and to provide telecommunications or commercial utility services to any person or area of the City.

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

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

A staff presentation was given at the July 22nd, 2019, Study Session discussing Draft Ordinance No. 6721. A Public Hearing to consider this application and hear public comment was held before the City Council on August 5, 2019, in accordance with Auburn City Code Chapter 20.06.030.

Ordinance No. 6721, if adopted by City Council, approves Franchise Agreement No. FRN19-0013 subject to terms and conditions outlined in the Ordinance.

**Reviewed by Council Committees:**

**Councilmember:**

**Staff:**

Gaub

**Meeting Date:** August 19, 2019

Item Number:

ORD.A



## **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:

\_\_\_\_\_  
Shawn Campbell, City Clerk

APPROVED AS TO FORM:

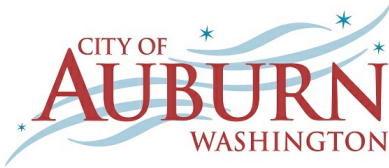
\_\_\_\_\_  
Steven L. Gross, City Attorney

Published: \_\_\_\_\_



## STATEMENT OF ACCEPTANCE

Page 81 of 101



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Ordinance No. 6726 (Gaub)

**Date:**

August 13, 2019

**Department:**

Public Works

**Attachments:**

[Ordinance No. 6726](#)

[Exhibit A](#)

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

City Council introduce and adopt Ordinance No. 6726.

**Background Summary:**

Ordinance 6726 authorizes a revision to Auburn City Code Chapter 3.12, Public Contracts. The ordinance includes a modification to contract authorities and processes for the Limited Public Works Process to be consistent with current RCW's.

Staff recommends that City Code 3.12.100 be amended to match the bid limit authorities to be in line with State competitive bid limits.

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

Gaub

**Meeting Date:** August 19, 2019

Item Number:

ORD.B

**ORDINANCE NO. 6726**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO THE LIMITED PUBLIC WORKS PROCESS AND AMENDING SECTION 3.12.100 OF THE AUBURN CITY CODE

WHEREAS, the Chapter 3.12 of the Auburn City Code sets forth the City's procedures and requirements related to public contracting; and

WHEREAS, the Washington State Legislature amended the small works roster contract procedures for limited public works processes during the 2019 legislative session and it is necessary to amend the City Code consistent with the statutory revisions; and

WHEREAS, the City finds it is advantageous to make the limited public works process as flexible as would be permitted under state law and to accommodate contracting needs that fall below the level of required competitive bidding; and

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

**Section 1. Amending City Code Section.** Section 3.12.100 to the Auburn City Code is amended to read as shown in Exhibit A.

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

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

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

INTRODUCED: \_\_\_\_\_

PASSED: \_\_\_\_\_

APPROVED: \_\_\_\_\_

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

ATTEST:

\_\_\_\_\_  
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven L. Gross, City Attorney

Published: \_\_\_\_\_

## EXHIBIT A

### 3.12.100 Limited Public Works Process

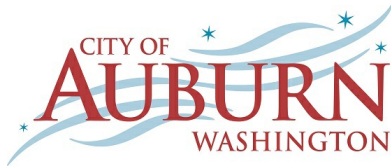
If the estimated cost of a work, construction, alteration, repair, or improvement project ~~is estimated to cost less than \$35,000, or~~ does not exceed the current statutory limit in RCW 39.04.155(3), the city may award such a contract using the limited public works process ~~provided under RCW 39.04.155(3).~~

Public works projects awarded under the limited public works process are exempt from the other requirements of the small works process provided under ACC 3.12.090.

For limited public works projects, the city shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder, as defined under RCW 39.04.010 and 39.04.350, and ACC 3.12.0~~15~~50. After an award is made, the quotations shall be open to public inspection and available by electronic request.

For limited public works projects, the city may waive the payment and performance bond requirements of Chapter 39.08 RCW and the retainage requirements of Chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, ~~and taxes,~~ increases, and penalties imposed under ~~RCW Titles 50, 51, and 82~~ RCW that may be due from the contractor for the limited public works project. However, the city shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

The city shall maintain a list of the contractors contacted and the contracts awarded during the previous 24 months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. (Ord. 6545 § 1, 2014; Ord. 5866 § 1, 2004. Formerly 3.12.036.)



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Resolution No. 5450 (Thomas)

**Date:**

August 13, 2019

**Department:**

Finance

**Attachments:**

[Resolution 5450](#)

[Attachment A - LGIP Investment Form](#)

[Prospectus](#)

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

City Council to approve Resolution No. 5450

**Background Summary:**

Resolution No. 5046, which was approved on April 21, 2014, designated Finance Director Shelley Coleman as the City's "authorized individual" to authorize all amendments, changes, or alterations to the Washington State Local Government Investment Pool (LGIP) Authorization Form including the designation of other individuals to make contributions and withdrawals on behalf of the City of Auburn.

With her recent retirement, the City is required to provide the LGIP with a Resolution which designates the current "authorized individual." At the time Resolution No. 5046 was adopted, the LGIP required the "authorized individual" to be cited by name. The LGIP has since dropped that requirement and now permits authorization at the position title level. Accordingly, the attached Resolution designates the Finance Director as the City of Auburn "authorized individual."

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

Thomas

**Meeting Date:** August 19, 2019

**Item Number:**

RES.A

## **RESOLUTION NO. 5450**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE CONTRIBUTION AND WITHDRAWAL OF CITY MONIES IN THE STATE OF WASHINGTON LOCAL GOVERNMENT INVESTMENT POOL

WHEREAS, in 1986, the Legislature created the Local Government Investment Pool ("LGIP") for the contribution and withdrawal of money by an authorized governmental entity for purposes of investment by the Office of the State Treasurer; and

WHEREAS, the City has contributed funds available for investment in the LGIP; and

WHEREAS, the City must authorize contributions and withdrawals by Resolution; and

WHEREAS, designees appointed by the City to contribute and withdraw City funds have received and read a copy of the prospectus and understand the risks and limitations of investing in the LGIP.

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

**Section 1.** The City Council authorizes the contribution and withdrawal of City monies in the LGIP in the manner prescribed by law, rule, and prospectus.

**Section 2.** The City Council approves the Local Government Investment Pool Transaction Authorization Form (Form) as completed by the Finance Director.

**Section 3.** The City Council designates the Finance Director, as the "authorized individual" to authorize all amendments, changes, or alterations to the Form or any other

documentation, including the designation of other individuals to make contributions and withdrawals on behalf of the City of Auburn.

**Section 4.** This delegation ends on written notice, by any method set forth in the prospectus, of the governing body that the authorized individual has been terminated or that the individual's delegation has been revoked. The Office of the State Treasurer will rely solely on the City of Auburn to provide notice of such revocation and is entitled to rely on the authorized individual's instructions until such time as said notice has been provided.

**Section 5.** The Form will remain in effect after revocation of the authorized individual's delegated authority, except that the authorized individual whose delegation has been terminated shall not be permitted to make further withdrawals or contributions to the LGIP on behalf of the City of Auburn. No amendments, changes, or alterations shall be made to the Form or any other documentation until the City passes a new resolution naming a new authorized individual.

**Section 6.** The City Council acknowledges that it has received, read, and understood the prospectus as provided by the Office of the State Treasurer. In addition, the City Council agrees that a copy of the prospectus will be provided to any person delegated or otherwise authorized to make contributions or withdrawals into or out of the LGIP and that said individuals will be required to read the prospectus prior to making any withdrawals or contributions or any further withdrawals or contributions if authorizations are already in place.

**Section 7.** The Mayor or designee is authorized to submit the Form on behalf of the City of Auburn.



**Section 8.** The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

**Section 9.** 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

**LOCAL GOVERNMENT INVESTMENT POOL AUTHORIZATION FORM**

Please fill out this form completely, including any existing information, as this form will **replace** the previous form.

<b>Entity Name:</b>
<b>Mailing Address:</b>

**Statement Delivery Options:**

☐ EMAIL: \_\_\_\_\_ ☐ FAX: \_\_\_\_\_ ☐ BOTH

**Note:** Statements can only be emailed to **ONE** address due to system restrictions

**Bank account where funds will be wired when a withdrawal is requested.**

(Note: Funds **will not** be transferred to any account other than listed)

<b>Bank Name:</b>
<b>Branch Location:</b>
<b>Bank Routing Number:</b>
<b>Accounting Number:</b>
<b>Account Name:</b>

**ACH Authorization:** ☐ Yes ☐ No

**Account Type:** ☐ Checking ☐ Savings ☐ General Ledger

By selecting "Yes" and by signing this form, I hereby authorize the WA Local Government Investment Pool to initiate credit entries to the account listed above. I acknowledge that the origination of ACH transactions to our account must comply with the provisions of U.S. law.

**Persons authorized to make deposits and withdrawals for entity listed above.**

<b>Name:</b>	<b>Title:</b>	<b>Phone Number:</b>	<b>Signature:</b>

**Online TM\$ Access:** ☐ Yes ☐ No

If you selected yes, please complete the online section on page 2

If you selected no, skip the online access section

## TM\$ Online Web Access

Note: Only complete this section if anyone wishes to have online access. Each Full access LGIP person must also be listed on the Transaction Authorization Form. [Please do not fill out the greyed-out areas]

	Service Type:				Account Type:	
Name:	Add	Delete	Modify	No Change	Full	View Only
Email:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Name:	Add	Delete	Modify	No Change	Full	View Only
Email:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Name:	Add	Delete	Modify	No Change	Full	View Only
Email:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Name:	Add	Delete	Modify	No Change	Full	View Only
Email:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Name:	Add	Delete	Modify	No Change	Full	View Only
Email:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OST Staff	
UserID	App Date
UserID	App Date
UserID	App Date
UserID	App Date
UserID	App Date
UserID	App Date

**By signing below, I certify I am authorized to represent the institution/agency for the purpose of this transaction.**

<i>(Authorized Signature)</i>	<i>(Title)</i>	<i>(Date)</i>
<i>(Print Authorized Name)</i>	<i>(E-mail address)</i>	<i>(Phone no.)</i>

**Any changes to these instructions must be submitted in writing to the Office of the State Treasurer.**

OFFICE OF THE STATE TREASURER  
[STACI.ASHE@TRE.WA.GOV](mailto:STACI.ASHE@TRE.WA.GOV)  
 PHONE: (360) 902-9017  
 FAX: (360) 902-9044

<b>Date Received:</b> ____ / ____ / ____
<b>Account Number:</b> _____
<b>OK'd by:</b> _____
<i>(For OST use only)</i> <b>04/26/19</b>

State of Washington    )  
 County of \_\_\_\_\_) ss.  
 Signed or attested before me by \_\_\_\_\_.  
 Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*Signature of Notary*

SEAL OR STAMP \_\_\_\_\_  
*Typed or printed name of Notary*  
 Notary Public in and for the State of Wash.

My appointment expires: \_\_\_\_\_

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LOCAL GOVERNMENT  
INVESTMENT POOL

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**Prospectus**

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August 2016



*James L. McIntire*  
*Washington State Treasurer*

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## I. The LGIP

The Local Government Investment Pool (the “LGIP”) is an investment pool of public funds placed in the custody of the Office of the Washington State Treasurer (the “State Treasurer”) for investment and reinvestment as defined by RCW 43.250.020. The purpose of the LGIP is to allow eligible governmental entities to participate with the state in the investment of surplus public funds, in a manner that optimizes liquidity and return on such funds. In establishing the LGIP, the legislature recognized that not all eligible governmental entities are able to maximize the return on their temporary surplus funds, and therefore it provided a mechanism whereby they may, at their option, utilize the resources of the State Treasurer to maximize the potential of their surplus funds while ensuring the liquidity of those funds.

The State Treasurer has established a sub-pool within the LGIP whose shares are offered by means of this Prospectus: The LGIP-Money Market Fund (the “LGIP-MMF” or the “Fund”). The State Treasurer has the authority to establish additional sub-pools in the future.

The Fund offered in this Prospectus seeks to provide current income by investing in high-quality, short term money market instruments. These standards are specific to the Fund, as illustrated in the following table. The LGIP-MMF offers daily contributions and withdrawals.

### FUND SNAPSHOT

The table below provides a summary comparison of the Fund’s investment types and sensitivity to interest rate risk. This current snapshot can be expected to vary over time.

Fund	Investment Types	Maximum Dollar-Weighted Average Maturity for LGIP-MMF
LGIP-Money Market Fund	Cash	60 days
Current Investments (as of July 1, 2016)	Bank Deposits US Treasury bills Repurchase agreements US Government agency obligations	

## Fees and Expenses

**Administrative Fee.** The State Treasurer charges pool participants a fee representing administration and recovery costs associated with the operation of the Fund. The administrative fee accrues daily from pool participants’ earnings prior to the earnings being posted to their account. The administrative fee will be paid monthly. In the event that there are no earnings, the administrative fee will be deducted from principal.

The chart below illustrates the operating expenses of the LGIP-MMF for past years, expressed in basis points as a percentage of fund assets.

**Local Government Investment Pool-MMF**  
**Operating Expenses by Fiscal Year (in Basis Points)**

			2009	2010	2011	2012	2013	2014	2015	2016
<i>Total Operating Expenses</i>			<i>0.88</i>	<i>0.64</i>	<i>0.81</i>	<i>0.68</i>	<i>0.87</i>	<i>0.88</i>	<i>0.95</i>	<i>0.88</i>

(1 basis point = 0.01%)

Because most of the expenses of the LGIP-MMF are fixed costs, the fee (expressed as a percentage of fund assets) will be affected by: (i) the amount of operating expenses; and (ii) the assets of the LGIP-MMF. The table below shows how the fee (expressed as a percentage of fund assets) would change as the fund assets change, assuming an annual fund operating expenses amount of \$950,000.

Fund Assets	\$8.0 bn	\$10.0 bn	\$12.0 bn
Total Operating Expenses (in Basis Points)	1.19	0.95	0.79

**Portfolio Turnover:** The Fund does not pay a commission or fee when it buys or sells securities (or “turns over” its portfolio). However, debt securities often trade with a bid/ask spread. Consequently, a higher portfolio turnover rate may generate higher transaction costs that could affect the Fund’s performance.

## II. Local Government Investment Pool – Money Market Fund

### Investment Objective

The LGIP-MMF will seek to effectively maximize yield while maintaining liquidity and a stable net asset value per share, e.g., all contributions will be transacted at \$1.00 net asset value per share.

### Principal Investment Strategies

The LGIP-MMF will seek to invest primarily in high-quality, short term money market instruments. Typically, at least 55% of the Fund’s assets will be invested in US government securities and repurchase agreements collateralized by those securities. The LGIP-MMF means a sub-pool of the LGIP whose investments will primarily be money market instruments. The LGIP-MMF will only invest in eligible investments permitted by state law. The LGIP portfolio will be managed to meet the portfolio maturity, quality, diversification and liquidity requirements set forth in GASB 79 for external investment pools who wish to measure, for financial reporting purposes, all of their investments at amortized cost. Investments of the LGIP-MMF will conform to the LGIP Investment Policy, the most recent version of which will be posted on the LGIP website and will be available upon request.

### Principal Risks of Investing in the LGIP-Money Market Fund

**Counterparty Credit Risk.** A party to a transaction involving the Fund may fail to meet its obligations. This could cause the Fund to lose the benefit of the transaction or prevent the Fund from selling or buying other securities to implement its investment strategies.

**Interest Rate Risk.** The LGIP-MMF’s income may decline when interest rates fall. Because the Fund’s income is based on short-term interest rates, which can fluctuate significantly over short periods, income risk is expected to

be high. In addition, interest rate increases can cause the price of a debt security to decrease and even lead to a loss of principal.

**Liquidity Risk.** Liquidity risk is the risk that the Fund will experience significant net withdrawals of Fund shares at a time when it cannot find willing buyers for its portfolio securities or can only sell its portfolio securities at a material loss.

**Management Risk.** Poor security selection or an ineffective investment strategy could cause the LGIP-MMF to underperform relevant benchmarks or other funds with a similar investment objective.

**Issuer Risk.** The LGIP-MMF is subject to the risk that debt issuers and other counterparties may not honor their obligations. Changes in an issuer's credit rating (e.g., a rating downgrade) or the market's perception of an issuer's creditworthiness could also affect the value of the Fund's investment in that issuer. The degree of credit risk depends on both the financial condition of the issuer and the terms of the obligation. Also, a decline in the credit quality of an issuer can cause the price of a money market security to decrease.

**Securities Lending Risk and Reverse Repurchase Agreement Risk.** The LGIP-MMF may engage in securities lending or in reverse repurchase agreements. Securities lending and reverse repurchase agreements involve the risk that the Fund may lose money because the borrower of the Fund's securities fails to return the securities in a timely manner or at all or the Fund's lending agent defaults on its obligations to indemnify the Fund, or such obligations prove unenforceable. The Fund could also lose money in the event of a decline in the value of the collateral provided for loaned securities or a decline in the value of any investments made with cash collateral.

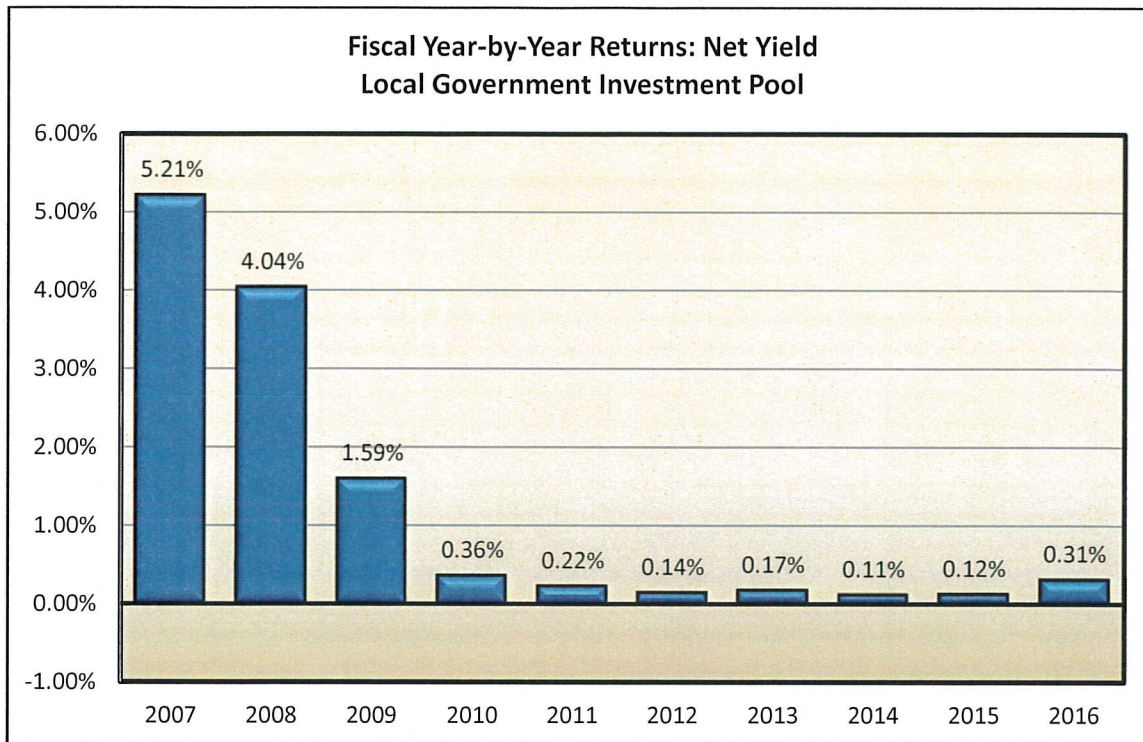
**Risks Associated with use of Amortized Cost.** The use of amortized cost valuation means that the LGIP-MMF's share price may vary from its market value NAV per share. In the unlikely event that the State Treasurer were to determine that the extent of the deviation between the Fund's amortized cost per share and its market-based NAV per share may result in material dilution or other unfair results to shareholders, the State Treasurer may cause the Fund to take such action as it deems appropriate to eliminate or reduce to the extent practicable such dilution or unfair results.

**An investment in the LGIP-MMF is not a bank deposit and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of investments at \$1 per share, pool participants could lose money by investing in the LGIP-MMF. There is no assurance that the LGIP-MMF will achieve its investment objective.**

## **Performance**

The following information is intended to address the risks of investing in the LGIP-MMF. The information illustrates changes in the performance of the LGIP-MMF's shares from year to year. Returns are based on past results and are not an indication of future performance. Updated performance information may be obtained on our website at [www.tre.wa.gov](http://www.tre.wa.gov) or by calling the LGIP toll-free at 800-331-3284.





<u>Local Government Investment Pool-Money Market Fund</u>			
<u>Average Accrued Net Yield</u>			
<u>1 Year</u>	<u>3 years</u>	<u>5 years</u>	<u>10 years</u>
0.31%	0.18%	0.17%	1.28%

## Transactions: LGIP-MMF

### General Information

The minimum transaction size (contributions or withdrawals) for the LGIP-MMF will be five thousand dollars. The State Treasurer may, in its sole discretion, allow for transactions of less than five thousand dollars.

### Valuing Shares

The LGIP-MMF will be operated using a net asset value (NAV) calculation based on the amortized cost of all securities held such that the securities will be valued at their acquisition cost, plus accrued income, amortized daily.

The Fund's NAV will be the value of a single share. NAV will normally be calculated as of the close of business of the NYSE, usually 4:00 p.m. Eastern time. If the NYSE is closed on a particular day, the Fund will be priced on the next day the NYSE is open.

NAV will not be calculated and the Fund will not process contributions and withdrawals submitted on days when the Fund is not open for business. The time at which shares are priced and until which contributions and withdrawals are accepted is specified below and may be changed as permitted by the State Treasurer.

To the extent that the LGIP-MMF's assets are traded in other markets on days when the Fund is not open for business, the value of the Fund's assets may be affected on those days. In addition, trading in some of the Fund's assets may not occur on days when the Fund is open for business.

#### **Transaction Limitations**

The State Treasurer reserves the right at its sole discretion to set a minimum and/or maximum transaction amount from the LGIP-MMF and to limit the number of transactions, whether contribution, withdrawal, or transfer permitted in a day or any other given period of time.

The State Treasurer also reserves the right at its sole discretion to reject any proposed contribution, and in particular to reject any proposed contribution made by a pool participant engaged in behavior deemed by the State Treasurer to be abusive of the LGIP-MMF.

A pool participant may transfer funds from one LGIP-MMF account to another subject to the same time and contribution limits as set forth in WAC 210.10.060.

Contributions deposited by ACH will be unavailable for withdrawal for a period of five business days following receipt of funds

#### **Contributions**

Pool participants may make contributions to the LGIP-MMF on any business day. All contributions will be effected by electronic funds to the account of the LGIP-MMF designated by the State Treasurer. It is the responsibility of each pool participant to pay any bank charges associated with such electronic transfers. Failure to submit funds by a pool participant after notification to the State Treasurer of an intended transfer will result in penalties. Penalties for failure to timely submit will be assessed to the account of the pool participant responsible.

**Notice of Wire contribution.** To ensure same day credit, a pool participant must inform the State Treasurer of any contribution over one million dollars no later than 9 a.m. on the same day the contribution is made. Contributions for one million dollars or less can be requested at any time prior to 10 a.m. on the day of contribution. For all other contributions over one million dollars that are requested prior to 10 a.m., a pool participant may receive same day credit at the sole discretion of the State Treasurer. Contributions that receive same day credit will count, for earnings rate purposes, as of the day in which the contribution was made. Contributions for which no notice is received prior to 10:00 a.m. will be credited as of the following business day.

**Notice of ACH contribution.** A pool participant must inform the State Treasurer of any contribution submitted through ACH no later than 2:00 p.m. on the business day before the contribution is made. Contributions that receive same day credit will count, for earnings rate purposes, as of the day in which the contribution was made. Contributions for which proper notice is not received as described above will not receive same day credit, but will be credited as of the next business day from when the contribution is made. Contributions deposited by ACH will be unavailable for withdrawal for a period of five business days following receipt of funds.

Notice of contributions may be given by calling the Local Government Investment Pool (800-331-3284) OR by logging on to State Treasurer's Treasury Management System ("TMS"). Please refer to the [LGIP-MMF Operations Manual](#) for specific instructions regarding contributions to the LGIP-MMF.

Direct deposits from the State of Washington will be credited on the same business day.

**Pricing.** Contribution requests received in good order will receive the NAV per unit of the LGIP-MMF next determined after the order is accepted by the State Treasurer on that contribution date.

#### **Withdrawals**

Pool participants may withdraw funds from the LGIP-MMF on any business day. Each pool participant shall file with the State Treasurer a letter designating the financial institution at which funds withdrawn from the LGIP-MMF shall be deposited (the "Letter"). This Letter shall contain the name of the financial institution, the location of the financial institution, the account name, and the account number to which funds will be deposited. This Letter shall be signed by local officials authorized to receive and disburse funds, as described in WAC 210-10-020.

Disbursements from the LGIP-MMF will be effected by electronic funds transfer. Failure by the State Treasurer to transmit funds to a pool participant after proper notification to the State Treasurer to disburse funds to a pool participant may result in a bank overdraft in the pool participant's bank account. The State Treasurer will reimburse a pool participant for such bank overdraft penalties charged to the pool participant's bank account.

**Notice of Wire withdrawal.** In order to withdraw funds from the LGIP-MMF, a pool participant must notify the State Treasurer of any withdrawal over one million dollars no later than 9 a.m. on the same day the withdrawal is made. Withdrawals for one million dollars or less can be requested at any time prior to 10 a.m. on the day of withdrawal. For all other withdrawals from the LGIP-MMF over one million dollars that are requested prior to 10 a.m., a pool participant may receive such withdrawal on the same day it is requested at the sole discretion of the State Treasurer. No earnings will be credited on the date of withdrawal for the amounts withdrawn. Notice of withdrawals may be given by calling the Local Government Investment Pool (800-331-3284) OR by logging on to TMS. Please refer to the LGIP-MMF Operations Manual for specific instructions regarding withdrawals from the Fund.

**Notice of ACH withdrawal.** In order to withdraw funds from the LGIP-MMF, a pool participant must notify the State Treasurer of any withdrawal by ACH no later than 2 p.m. on the prior business day the withdrawal is requested. No earnings will be credited on the date of withdrawal for the amounts withdrawn.

Notice of withdrawals may be given by calling the Local Government Investment Pool (800-331-3284) OR by logging on to TMS. Please refer to the LGIP-MMF Operations Manual for specific instructions regarding withdrawals from the Fund.

**Pricing.** Withdrawal requests with respect to the LGIP-MMF received in good order will receive the NAV per unit of the LGIP-MMF next determined after the order is accepted by the State Treasurer on that withdrawal date.

**Suspension of Withdrawals.** If the State Treasurer has determined that the deviation between the Fund's amortized cost price per share and the current net asset value per share calculated using available market quotations (or an appropriate substitute that reflects current market conditions) may result in material dilution or other unfair results, the State Treasurer may, if it has determined irrevocably to liquidate the Fund, suspend withdrawals and payments of withdrawal proceeds in order to facilitate the permanent termination of the Fund in an orderly manner. The State Treasurer will distribute proceeds in liquidation as soon as practicable, subject to the possibility that certain assets may be illiquid, and subject to subsequent distribution, and the possibility that the State Treasurer may need to hold back a reserve to pay expenses.

The State Treasurer also may suspend redemptions if the New York Stock Exchange suspends trading or closes, if US bond markets are closed, or if the Securities and Exchange Commission declares an emergency. If any of these events were to occur, it would likely result in a delay in the pool participants' redemption proceeds.

The State Treasurer will notify pool participants within five business days of making a determination to suspend withdrawals and/or irrevocably liquidate the fund and the reason for such action.

## **Earnings and Distribution**

### **LGIP-MMF Daily Factor**

The LGIP-MMF daily factor is a net earnings figure that is calculated daily using the investment income earned (excluding realized gains or losses) each day, assuming daily amortization and/or accretion of income of all fixed income securities held by the Fund, less the administrative fee. The daily factor is reported on an annualized 7-day basis, using the daily factors from the previous 7 calendar days. The reporting of a 7-day annualized yield based solely on investment income which excludes realized gains or losses is an industry standard practice that allows for the fair comparison of funds that seek to maintain a constant NAV of \$1.00.

### **LGIP-MMF Actual Yield Factor**

The LGIP-MMF actual yield factor is a net daily earnings figure that is calculated using the total net earnings including realized gains and losses occurring each day, less the administrative fee.

### **Dividends**

The LGIP-MMF's dividends include any net realized capital gains or losses, as well as any other capital changes other than investment income, and are declared daily and distributed monthly.

### **Distribution**

The total net earnings of the LGIP-MMF will be declared daily and paid monthly to each pool participant's account in which the income was earned on a per-share basis. These funds will remain in the pool and earn additional interest unless withdrawn and sent to the pool participant's designated bank account as specified on the Authorization Form. Interest earned will be distributed monthly on the first business day of the following month.

### **Monthly Statements and Reporting**

On the first business day of every calendar month, each pool participant will be sent a monthly statement which includes the pool participant's beginning balance, contributions, withdrawals, transfers, administrative charges, earnings rate, earnings, and ending balance for the preceding calendar month. Also included with the statement will be the monthly enclosure. This report will contain information regarding the maturity structure of the portfolio and balances broken down by security type.

### III. Management

The State Treasurer is the manager of the LGIP-MMF and has overall responsibility for the general management and administration of the Fund. The State Treasurer has the authority to offer additional sub-pools within the LGIP at such times as the State Treasurer deems appropriate in its sole discretion.

**Administrator and Transfer Agent.** The State Treasurer will serve as the administrator and transfer agent for the Fund.

**Custodian.** A custodian for the Fund will be appointed in accordance with the terms of the LGIP Investment Policy.

### IV. Miscellaneous

#### Limitation of Liability

All persons extending credit to, contracting with or having any claim against the Fund offered in this Prospectus shall look only to the assets of the Fund that such person extended credit to, contracted with or has a claim against, and none of (i) the State Treasurer, (ii) any subsequent sub-pool, (iii) any pool participant, (iv) the LGIP, or (v) the State Treasurer's officers, employees or agents (whether past, present or future), shall be liable therefor. The determination of the State Treasurer that assets, debts, liabilities, obligations, or expenses are allocable to the Fund shall be binding on all pool participants and on any person extending credit to or contracting with or having any claim against the LGIP or the Fund offered in this Prospectus. There is a remote risk that a court may not enforce these limitation of liability provisions.

#### Amendments

This Prospectus and the attached Investment Policy may be amended from time to time. Pool participants shall receive notice of changes to the Prospectus and the Investment Policy. The amended and restated documents will be posted on the State Treasurer website: [www.tre.wa.gov](http://www.tre.wa.gov).

Should the State Treasurer deem appropriate to offer additional sub-pools within the LGIP, said sub-pools will be offered by means of an amendment to this prospectus.

#### LGIP-MMF Contact Information

Internet: [www.tre.wa.gov](http://www.tre.wa.gov) Treasury Management System/TMS

Phone: 1-800-331-3284 (within Washington State)

Mail: Office of the State Treasurer  
Local Government Investment Pool  
PO Box 40200  
Olympia, Washington 98504  
FAX: 360-902-9044