	<p style="text-align: center;">City Council Meeting June 3, 2024 - 7:00 PM City Hall Council Chambers AGENDA Watch the meeting LIVE!</p> <p style="text-align: center;">Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.</p>
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I. CALL TO ORDER

II. LAND ACKNOWLEDGMENT

We would like to acknowledge the Federally Recognized Muckleshoot Indian Tribe, the ancestral keepers of the land we are gathered on today. We thank them for their immense contributions to our state and local history, culture, economy, and identity as Washingtonians.

III. PUBLIC PARTICIPATION

1. Public Participation

The Auburn City Council Meeting scheduled for Monday June 3, 2024 at 7:00 p.m. will be held in person and virtually.

Virtual Participation Link:

To view the meeting virtually please click the below link, or call into the meeting at the phone number listed below. The link to the Virtual Meeting is:

<https://www.youtube.com/user/watchauburn/live/?nomobile=1>

To listen to the meeting by phone or Zoom, please call the below number or click the link:

Telephone: 253 215 8782

Toll Free: 877 853 5257

Zoom: <https://us06web.zoom.us/j/81743679325>

A. Pledge of Allegiance

IV. Roll Call

V. ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS

A. LGBTQIA+ Pride Month

Mayor Backus to proclaim June 2024 as " LGBTQIA+ Pride Month" in the City of Auburn

B. Ride Transit Month

Mayor Backus to proclaim June 2024 as "Ride Transit Month" in the City of Auburn

VI. **AGENDA MODIFICATIONS**

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

A. **Audience Participation**

This is the place on the agenda where the public is invited to speak to the City Council on any issue.

1. The public can participate in-person or submit written comments in advance.

Participants can submit written comments via mail, fax, or email. All written comments must be received prior to 5:00 p.m. on the day of the scheduled meeting and must be 350 words or less.

Please mail written comments to:
City of Auburn
Attn: Shawn Campbell, City Clerk
25 W Main St
Auburn, WA 98001

Please fax written comments to:
Attn: Shawn Campbell, City Clerk
Fax number: 253-804-3116

Email written comments to:
publiccomment@auburnwa.gov

If an individual requires an accommodation to allow for remote oral comment because of a difficulty attending a meeting of the governing body, the City requests notice of the need for accommodation by 5:00 p.m. on the day of the scheduled meeting. Participants can request an accommodation to be able to provide remote oral comment by contacting the City Clerk's Office in person, by phone (253) 931-3039, or email to publiccomment@auburnwa.gov

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

VIII. **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 Baldwin)

IX. **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 May 20, 2024, City Council Meeting
- B. Minutes of the May 28, 2024, Study Session Meeting
- C. Setting the date for Public Hearing for the 2025-2030 Transportation Improvement Program (Gaub)
City Council to set the date for a Public Hearing for the 2025-2030 Transportation Improvement Plan
- D. Claims Vouchers (Thomas)
Claims voucher list dated May 29, 2024 which includes voucher number 475997 through voucher 476122, in the amount of \$4,372,668.17, nine electronic fund transfers in the amount of \$1,411.26, and three wire transfers in the amount of \$843,645.53
- E. Payroll Voucher (Thomas)
Payroll check numbers 539589 through 539589 in the amount of \$631,177.44, electronic deposit transmissions in the amount of \$2,551,260.42, a special payroll for Police Commissioned Comp Payout with electronic deposit transmission in the amount of \$20,128.25 for a grand total of \$3,202,566.11 for the period covering May 16, 2024 to May 29, 2024

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

X. UNFINISHED BUSINESS

XI. NEW BUSINESS

XII. RESOLUTIONS

- A. Resolution No. 5769 (Gaub)
A Resolution authorizing the Mayor to execute an Interlocal Agreement between the City of Auburn and King County related to the RapidRide I-Line Project
- B. Resolution No. 5770 (Gaub)
A Resolution accepting Washington State Department of Ecology grant funds for the purchase of a zero emission street sweeper vehicle

(RECOMMENDED ACTION: Move to adopt Resolution No. 5769.)

(RECOMMENDED ACTION: Move to adopt Resolution No. 5770.)

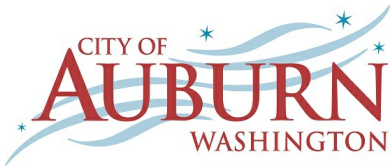
XIII. MAYOR AND COUNCILMEMBER REPORTS

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**

XIV. ADJOURNMENT

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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Minutes of the May 20, 2024, City Council Meeting

Department:

City Council

Attachments:

[05-20-2024 City Council Minutes](#)

Date:

May 28, 2024

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Background for Motion:

Background Summary:

Reviewed by Council Committees:

Councilmember:

Meeting Date: June 3, 2024

Staff:

Item Number: CA.A

	<p style="text-align: center;">City Council Meeting May 20, 2024 - 7:00 PM City Hall Council Chambers MINUTES Watch the meeting LIVE!</p> <p style="text-align: center;">Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.</p>
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I. CALL TO ORDER

Mayor Backus called the meeting to order at 7:00 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street.

II. LAND ACKNOWLEDGMENT

III. PUBLIC PARTICIPATION

1. Public Participation

The City Council Meeting was held in person and virtually.

A. Pledge of Allegiance

Mayor Backus led those in attendance in the Pledge of Allegiance.

IV. Roll Call

Councilmembers present: Hanan Amer, Kate Baldwin, Cheryl Rakes, Clinton Taylor, and Yolonda Trout-Manuel. Deputy Mayor Larry Brown and Councilmember Tracy Taylor were excused.

Mayor Nancy Backus and the following staff members present included: Acting City Attorney Doug Ruth, Chief of Police Mark Caillier, Director of Public Works Ingrid Gaub, Acting Director of Community Development Jason Krum, Director of Parks, Arts, and Recreation Daryl Faber, Director of Special Projects Jeff Tate, Business Systems Analyst Chrissy Malave, and Deputy City Clerk Hannah Scholl.

V. ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS

There were no announcements, Mayor's proclamations, or presentations.

VI. AGENDA MODIFICATIONS

The Public Hearing for Resolution No. 5766 a Development Agreement with Auburn 18 Business Park, LLC was added to the agenda.

VII. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. **Public Hearings**

1. Public Hearing for Resolution No. 5766 - Development Agreement

City Council to conduct a Public Hearing to consider a Development Agreement with Auburn 18 Business Park, LLC

Mayor Backus opened the Public Hearing at 7:02 p.m.

Virginia Haugen Auburn, WA

Virginia expressed concerns with the development agreement.

Mayor Backus closed the Public Hearing at 7:04 p.m.

B. **Audience Participation**

This is the place on the agenda where the public is invited to speak to the City Council on any issue.

1. The public can participate in-person or submit written comments in advance.

Virginia Haugen Auburn, WA

Virginia expressed concerns about the lack of public comments received.

C. **Correspondence**

There was no correspondence for Council to review.

VIII. **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 Baldwin)

Councilmember Baldwin, Chair of the Finance Ad Hoc Committee, reported she and Councilmember Amer reviewed the claims and payroll vouchers described on the agenda this evening and recommended their approval.

IX. **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 May 6, 2024, City Council Meeting

- B. Minutes of the May 13, 2024, Study Session Meeting

- C. Setting the date for Public Hearing for Zayo Group, LLC (Gaub)

City Council to set the date for a Public Hearing for Franchise Agreement No. FRN22-0003 for Zayo Group, LLC

- D. Claims Vouchers (Thomas)

Claims voucher list dated May 15, 2024 which includes voucher number 475841 through voucher 475996, in the amount of \$7,100,924.60, eleven electronic fund transfers in the amount of \$3,163.07, and three wire transfers in the amount of \$968,307.65

- E. Payroll Voucher (Thomas)

Payroll check numbers 539586 through 539588 in the amount of \$81,031.18, electronic deposit transmissions in the amount of \$2,801,750.89, for a grand total of \$2,882,782.07 for the period covering April 25, 2024 to May 15, 2024

Councilmember Trout-Manuel moved and Councilmember C. Taylor seconded to approve the consent agenda.

MOTION CARRIED UNANIMOUSLY. 5-0

X. UNFINISHED BUSINESS

There was no unfinished business.

XI. NEW BUSINESS

There was no new business.

XII. ORDINANCES

- A. Ordinance No. 6941 (Gaub)

An Ordinance granting to Fatbeam, LLC, a Washington Limited Liability Company, a Franchise for Wireline Telecommunications

Councilmember Baldwin moved and Councilmember Rakes seconded to approve Ordinance No. 6941.

MOTION CARRIED UNANIMOUSLY. 5-0

XIII. RESOLUTIONS

- A. Resolution No. 5766 (Krum)

A Resolution authorizing the Mayor to execute a Development Agreement between the City of Auburn and Auburn 18 Business Park, LLC to govern the future development of King County parcel number 2421049004

Councilmember C. Taylor moved and Councilmember Rakes seconded to adopt Resolution No. 5766.

Council discussed a scrivener's error in the Resolution.

MOTION CARRIED UNANIMOUSLY. 5-0

B. Resolution No. 5767 (Gaub)

A Resolution authorizing the Mayor to execute a Hazard Mitigation Grant Agreement with the Washington State Military Department and all other agreements relating to the Reservoir 2 Seismic Control Valve Project and if matching funds are within the budget to accept and expend grant funding for the Project

Councilmember Trout-Manuel moved and Councilmember C. Taylor seconded to adopt Resolution No. 5767.

MOTION CARRIED UNANIMOUSLY. 5-0

XIV. 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 Amer reported she attended the South King County Scholar-Athlete Breakfast, Washington State Enforcement Association Education (WSLEA) Conference, and Auburn's Junior Reserve Officers' Training Corps (JROTC) Military Ball and Awards Ceremony.

Councilmember Baldwin reported she attended the Racially Equitable, Diverse, and Inclusive (REDI) Coalition meeting, and the South King County Scholar-Athlete Breakfast.

Councilmember Rakes reported she attended the Law Enforcement Officers and Firefighters Disability (LEOFF) Board meeting, King County Public Health meeting, Mayor Coffee Hour at the Auburn Senior Activity Center, Auburn's JROTC Military Ball and Awards Ceremony, and Petpalooza.

Councilmember C. Taylor reported he attended the Junior Achievement BizTown City Hall Ribbon Cutting, the 95th Anniversary Ribbon Cutting Ceremony for the Rainbow Café, and Mayor Coffee Hour at the Auburn Senior Activity Center.

B. From the Mayor

Mayor Backus reported she attended the Junior Achievement BizTown City Hall Ribbon Cutting, 95th Anniversary Ribbon Cutting Ceremony for the Rainbow Café, Auburn's JROTC Military Ball and Awards Ceremony, and the South King County Scholar-Athlete Breakfast.

XV. ADJOURNMENT

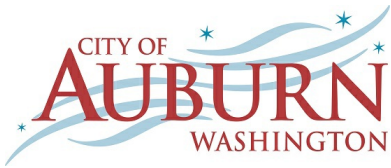
There being no further business to come before the Council, the meeting was adjourned at 7:23 p.m.

APPROVED this 3rd day of June 2024.

NANCY BACKUS, MAYOR

Hannah Scholl, Deputy City Clerk

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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Minutes of the May 28, 2024, Study Session Meeting

Date:

May 28, 2024

Department:

City Council

Attachments:

[05-28-2024 Study Session Minutes](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Background for Motion:

Background Summary:

Reviewed by Council Committees:

Councilmember:

Meeting Date: June 3, 2024

Staff:

Item Number: CA.B

	<p>City Council Study Session PWCD SFA May 28, 2024 - 5:30 PM City Hall Council Chambers MINUTES</p> <p><input type="text"/> Watch the meeting LIVE!</p> <p><input type="text"/> Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.</p>
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I. CALL TO ORDER

Councilmember Trout-Manuel 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. PUBLIC PARTICIPATION

Public Participation

The City Council Meeting was held in person and virtually.

B. Roll Call

Councilmembers present: Hanan Amer, Kate Baldwin, Cheryl Rakes, Clinton Taylor, Tracy Taylor, and Yolanda Trout-Manuel. Deputy Mayor Brown was excused.

Mayor Nancy Backus and the following staff members present included: Acting City Attorney Doug Ruth, Assistant Chief of Police Samuel Betz, Director of Public Works Ingrid Gaub, Director of Special Projects Jeff Tate, Director of Finance Jamie Thomas, Director of Parks, Arts, and Recreation Daryl Faber, Assistant Director of Public Works Jacob Sweeting, Senior Project Engineer Jeffrey Bender, Project Engineer Kim Troung, M&O Services General Manager Erik Cottle, M&O Support Supervisor Michele Weiss, Utility Billing Services Manager Joan Nelson, Business Systems Analyst Chrissy Malave, and Deputy City Clerk Hannah Scholl.

II. AGENDA MODIFICATIONS

There were no modifications to the agenda.

III. ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS

A. Briefing - Creative Districts (Krum/Faber) (15 Minutes)

Director's Faber and Tate provided Council with a presentation on the Creative Districts Program including a background of the program, how Creative Districts are defined, and the benefits of certification. They discussed examples of Creative Districts in other Washington cities, the

certification process, and opportunities within Auburn.

Council discussed the Business Improvement Area (BIA), maintenance, policies and regulations, funding, Diversity, Equity, and Inclusion (DEI), and timelines.

B. Briefing - Fleet Services (Gaub) (15 Minutes)

Manager Cottle and Supervisor Weiss provided Council with a presentation on Fleet Services including an overview of the duties, central stores, their mission statement, equipment rental statistics including repairs, fuel services, and shop certifications. They discussed purchasing, vehicle retention, fleet facility upgrades, the green fleet program, and telematics benefits.

Council discussed parking, telematics mapping, and certifications.

C. Briefing - Bonds 101 (Thomas) (30 Minutes)

Director Thomas provided Council with a presentation on Municipal Bonds including General Obligation (GO) Bonds, Revenue Debt, and Special Assessment Debt. She discussed Limited Tax General Obligation (LTGO) Bonds, Unlimited Tax General Obligation (UTGO) Bonds, the process of issuing bonds, current outstanding bonds, and current bonding needs.

Council discussed payoff timelines, and bonding needs.

D. Waste Management 2023 Annual Report Presentation (Thomas) (30 Minutes)

Manager Nelson and Laura Moser with Waste Management provided Council with a presentation on the 2023 Waste Management Annual Report including an overview of the Operations team, the Street Litter crew, 2023 waste statistics, multifamily outreach, community engagement, and Recycle Right events.

Council discussed community outreach, street litter, customer feedback, and recycling services.

Councilmember Trout-Manuel recessed the meeting at 6:55pm for 5 minutes.

Councilmember Trout-Manuel reconvened the meeting at 7:00pm.

IV. PUBLIC WORKS AND COMMUNITY DEVELOPMENT DISCUSSION ITEMS

A. Comprehensive Safety Action Plan (Gaub) (30 Minutes)

Councilmember T. Taylor Chaired this portion of the meeting.

Assistant Director Sweeting and Taylor Whitaker and Kendra Breiland with

Fehr & Peers provided Council with a presentation on the Auburn Comprehensive Safety Action Plan including the Safe Systems Approach, the process overview, crash statistics, higher risk areas and factors, and priority projects. They discussed engineering countermeasures, actionable and effective strategies, the Comprehensive Transportation Plan, next steps, and key milestones.

Council discussed community engagement and outreach.

B. Capital Projects Status Report and Feature Capital Project (Gaub) (20 Minutes)

Senior Engineer Bender provided Council with a presentation on the Capital Project Status Report including updates on current projects; CP2117 A Street Loop, CP2101 2023 Local Streets Preservation, and CP2125 D Street SE & 23rd Street SE Storm Improvements.

Engineer Troung provided Council with a presentation on the Featured Capital Project - CP2315 R Street SE Preservation 33rd Street SE to 37th Street SE including the project area, existing condition, the scope, purpose, and benefits of the project, and estimated budget and schedule.

Council discussed project status, tree planting, and sidewalk access.

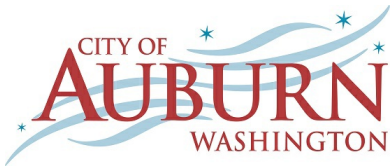
V. ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 7:35 p.m.

APPROVED this 3rd day of June 2024.

LARRY BROWN, DEPUTY MAYOR Hannah Scholl, Deputy City Clerk

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AGENDA BILL APPROVAL FORM

Agenda Subject:

Setting the date for Public Hearing for the 2025-2030
Transportation Improvement Program (Gaub)

Date:

May 24, 2024

Department:

Public Works

Attachments:

No Attachments Available

Budget Impact:

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

Administrative Recommendation:

City Council to set the date of the Public Hearing for the 2025-2030 Transportation Improvement Program for June 17, 2024 at 7:00pm.

Background for Motion:**Background Summary:**

The City Council is asked to set a time and date for a Public Hearing to adopt the Six Year Transportation Improvement Program (TIP). The Public Hearing is proposed to be held on June 17, 2024 during the City Council Meeting.

The TIP is a multiyear planning tool and document for the development of transportation facilities within the City and does not represent a financial commitment by the City. Once the TIP is approved, projects are budgeted and funded through the City's biennial budget. The TIP sets priorities for the allocation of secured and unsecured funding and is a prerequisite of most grant programs. Staff also uses the TIP to coordinate future transportation projects with needed utility improvements. The projects and programs identified in the TIP that increase the capacity of the transportation system or support mode shifts to reduce vehicle capacity needs, to address growth and development, provide the basis for the City's transportation impact fee program. The TIP also serves as the City's finance plan for projects and programs funded by the City's Transportation Benefit District.

RCW 35.77.010 requires that the TIP is amended by June 30 each year.

A summary of the proposed changes was presented at City Council Study Session on May 13, 2024.

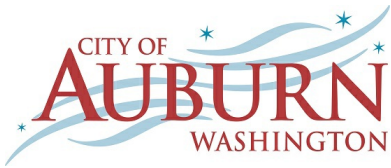
Reviewed by Council Committees:

Councilmember: Tracy Taylor

Staff: Gaub

Meeting Date: June 3, 2024

Item Number: CA.C



AGENDA BILL APPROVAL FORM

Agenda Subject:

Claims Vouchers (Thomas)

Date:

May 15, 2024

Department:

Finance

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Claim Vouchers.

Background for Motion:

Background Summary:

Claims voucher list dated May 29, 2024 which includes voucher number 475997 through voucher 476122, in the amount of \$4,372,668.17, nine electronic fund transfers in the amount of \$1,411.26, and three wire transfers in the amount of \$843,645.53.

Reviewed by Council Committees:

Councilmember: Kate Baldwin

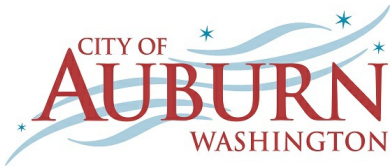
Staff:

Jamie Thomas

Meeting Date: June 3, 2024

Item Number:

CA.D



AGENDA BILL APPROVAL FORM

Agenda Subject:

Payroll Voucher (Thomas)

Date:

May 15, 2024

Department:

Finance

Attachments:

No Attachments Available

Budget Impact:

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

Administrative Recommendation:

Approve Payroll Vouchers.

Background for Motion:

Background Summary:

Payroll check numbers 539589 through 539589 in the amount of \$631,177.44, electronic deposit transmissions in the amount of \$2,551,260.42, and special payroll for Police Commissioned Comp Payout with electronic deposit transmission in the amount of \$20,128.25 for a grand total of \$3,202,566.11 for the period covering May 16, 2024 to May 29, 2024.

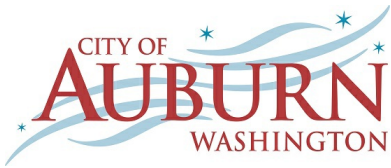
Reviewed by Council Committees:

Councilmember: Kate Baldwin

Staff: Jamie Thomas

Meeting Date: June 3, 2024

Item Number: CA.E



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5769 (Gaub)

Date:

May 24, 2024

Department:

Public Works

Attachments:

[Resolution No. 5769](#)

[Exhibit A](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council adopt Resolution No. 5769.

Background for Motion:

This Resolution authorizes an agreement between the City of Auburn and King County related to property acquired and dedicated as City Right-of-Way by King County and improvements to City roadways being constructed by King County as part of the County's RapidRide I-Line Project.

Background Summary:

King County (County) is implementing the RapidRide I-Line bus rapid transit project, which will upgrade the County's existing 160 Bus Route to connect the cities of Auburn, Kent, and Renton between the Renton Transit Center and the Auburn Transit Station via the Kent Sounder Station. As part of the I-Line project, the County will be constructing improvements that support transit system accessibility, speed, and reliability. Some of the improvements include roadway, sidewalk, and traffic signal systems that will be owned and operated by the City. Additionally, the County is dedicating portions of property it is acquiring as City Right-of-Way. Because the I-Line project improvements and property acquisition is funded, in part, by Federal Transit Administration (FTA) grants, federal law and FTA grant terms require the County to provide reasonable assurance that the property acquired and improvements constructed with the project continue to be used for transit purposes. Resolution No. 5769 authorizes the City to enter into a memorandum of agreement with the County that the City will continue to use the right-of-way dedicated and the improvements constructed by the County for the I-Line project for transit supporting purposes.

Reviewed by Council Committees:

Councilmember: Tracy Taylor

Staff: Ingrid Gaub

Meeting Date: June 3, 2024

Item Number: RES.A

RESOLUTION NO. 5769

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF AUBURN AND KING COUNTY RELATED TO THE RAPIDRIDE I LINE PROJECT

WHEREAS, King County (County) is planning, designing, constructing, and implementing the RapidRide I Line bus rapid transit (“BRT”) project, which will upgrade the County’s existing Route 160 bus route to connect the cities of Auburn, Kent, and Renton between the Renton Transit Center and the Auburn Sounder Station via the Kent Sounder Station (the “Project”);

WHEREAS, as part of the project, the County will construct transit improvements including upgraded passenger facility stations and amenities, off-board fare payment, speed and reliability improvements, and pedestrian access improvements, such as bus shelters, roadway widenings, turn lanes, and other street improvements (collectively, the “Project Improvements”);

WHEREAS, the County proposes to build some of the Project Improvements in the City’s right-of-way (“ROW”), while others will be constructed on private property that the County will acquire for the Project and dedicate as City of Auburn (City) ROW;

WHEREAS, the Project Improvements, the property to be acquired and dedicated, and their respective locations are depicted in plans approved under City Public Facility Extension Permit #FAC 22-0022;

WHEREAS, as part of the Project, the County is required to enter into a Developer Public Facility Extension Agreement, and to obtain a Right-of-Way Use Permit for the ongoing maintenance of any structures or improvements installed within the ROW;

WHEREAS, because the Project Improvements will be funded, in part, by Federal Transit Administration (“FTA”) grants, federal law and FTA grant terms require the County to maintain continuing control over the project property and improvements, which must remain available to be used for appropriate transit purposes for the duration of their useful life or until disposition;

WHEREAS, the Parties desire to enter into an Agreement to memorialize the process by which the County will acquire and/or improve and dedicate property as City ROW, and the conditions and requirements arising from FTA grant terms and guidance.

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

Section 1. The Mayor is authorized to execute an Agreement between the City and King County, which agreement will be in substantial conformity with the agreement attached as Exhibit A.

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

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

Dated and Signed this _____ day of _____, 2024.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Doug Ruth, Acting City Attorney



Moving forward together

Capital Division
Capital Delivery Section
201 S. Jackson Street
KSC-TR-0435
Seattle, WA 98104-3856

MEMORANDUM OF AGREEMENT BETWEEN CITY OF AUBURN AND KING COUNTY

This Memorandum of Agreement (“Agreement”) is made by and between the City of Auburn, a Washington municipal corporation (the “City”), and King County, a home rule charter county and political subdivision of the State of Washington (the “County”), each of which may be referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

- A. The County is planning, designing, constructing, and implementing the RapidRide I Line bus rapid transit (“BRT”) project, which will upgrade the County’s existing Route 160 bus route to connect the cities of Auburn, Kent, and Renton between the Renton Transit Center and the Auburn Sounder Station via the Kent Sounder Station (the “Project”).
- B. The improvements to be constructed as part of the Project include upgraded passenger facility stations and amenities, off-board fare payment, speed and reliability improvements, and pedestrian access improvements, such as bus shelters, roadway widenings, turn lanes, and other related street improvements (collectively, the “Project Improvements”).
- C. The County proposes to build some of the Project Improvements in the City’s right-of-way (“ROW”), while others will be constructed on private property that the County will acquire for the Project and dedicate as City ROW.
- D. The Project Improvements, the property to be acquired and dedicated, and their respective locations are depicted in plans approved under City of Auburn Permit #FAC 22-0022.
- E. The County’s construction and dedication of property and improvements as part of the City’s public rights-of-way is subject to the additional requirement to enter into a Developer Public Facility Extension Agreement, and to obtain a Right-of-Way Use Permit for the ongoing maintenance of any structures or improvements installed within the ROW.
- F. The Project Improvements are to be funded, in part, by Federal Transit Administration (“FTA”) grants. Federal law, regulations, and FTA grant terms and related guidance, including FTA Circular C 5010.1.E, require the County to maintain continuing control of

the use of property and improvements acquired or constructed with FTA funds, to the extent satisfactory to FTA. The project property and improvements must remain available to be used for appropriate transit purposes for the duration of their useful life or until disposition.

- G. The Parties desire to enter into this Agreement to memorialize the process by which the County will acquire and/or improve and dedicate property as City ROW, and the conditions and requirements arising from FTA grant terms and guidance.

AGREEMENT

NOW, THEREFORE, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants and performances contained herein, the Parties agree as follows:

1. Acquisition and Dedication of Property and Construction of Project Improvements.

- A. The County shall be solely responsible for the acquisition of any real property or interests therein needed for the Project within the City of Auburn, including but not limited to any property that will eventually become City ROW. The County will carry out such acquisition activities in conformity with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §4601, et. seq.) (“the Act”) and all other applicable federal, state, and county laws, and will be responsible for providing any relocation assistance required by the Act and such other laws.
- B. Prior to issuance of a Notice to Proceed for construction of the Project, the County will convey to the City by Statutory Warranty Deed, in substantially the form attached hereto as Exhibit A, the real property depicted and described in City of Auburn Permit #FAC 22-0022.
- C. Prior to issuance of a Notice to Proceed for construction of the Project, the County will obtain City approval and execution of a Developer Public Improvement Facility Extension Agreement (“FEA” or “Extension Agreement”) in substantially the form attached hereto as Exhibit B, and pay all fees required therein.
- D. Prior to issuance of a Notice to Proceed for construction of the Project, the County will obtain a Right-of-Way Use Permit from the City under Ch. 12.60 of the Auburn City Code, and keep said permit in force and effect for the useful life of the Project Improvements.
- E. The County will construct the Project Improvements on real property acquired as part of the Project and described in City of Auburn Permit #FAC 22-0022 and on existing City ROW.

2. City / County Control of Project Improvements. To enable the County to demonstrate satisfactory continuing control of the Project Improvements constructed with FTA funds, the

County intends to utilize Project Improvements constructed with FTA funds for transit functions and purposes throughout their useful life or until their disposition. As part of its operation and/or maintenance of public rights-of-way, the City may require the County to modify or relocate Project Improvements at the County's expense or, in the City's discretion the City may relocate or modify Project Improvements or permit the modification or relocation of Project Improvements within the City ROW at its own expense by third parties. In all such cases, the City and County shall coordinate to ensure that the modified or relocated Project Improvements support continued transit service, amenities, and access in such a way as to ensure no negative impact on the transit services or activities improved by the Project.

3. Term of Agreement: Unless otherwise provided herein, the term of this Agreement shall commence on the date that all Parties have signed it, and may only be terminated if both Parties agree in writing signed by an authorized representative of each Party.
4. Indemnification and Waiver: The Parties shall protect, defend, indemnify, and hold harmless the other Party and its officers, officials, employees, contractors, subcontractors, consultants, and/or authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgements, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, that Party's obligations performed or to be performed pursuant to the provisions of this Agreement. Neither Party shall be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their officers, officials, employees, contractors, subcontractors, consultants, and/or authorized agents, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the indemnifying Party, its officers, officials, employees, contractors, subcontractors, consultants, and/or authorized agents. The Parties agree that their obligations under this Section 4 extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees, contractors, subcontractors, consultants, and/or authorized agents. For this purpose only, the Parties, by mutual negotiation, hereby waive, with respect to the other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. This indemnification and waiver shall survive the termination of this Agreement.
5. Dispute Resolution: If a dispute between the Parties arises from this Agreement, the Parties agree to elevate the dispute for negotiation at the management level to resolve any issues. Should such negotiations fail to produce a satisfactory resolution, the Parties agree to participate in mediation before proceeding to any other legal remedy. Each Party shall be responsible for its own mediation fees and costs, except that the Parties agree to share the cost of a mediator equally.
6. Designated Representatives; Notice: All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) if delivered by hand and receipted for by the Party to whom said notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid, on

the third business day after the date on which it is so mailed. Notwithstanding the foregoing sentence, a Party may provide notice electronically via the email addresses listed below with delivery confirmation or read receipt (or both). A Party providing electronic notice shall bear the burden to prove the date that notice was delivered.

Auburn Designated Representative:

Jacob Sweeting, City Engineer
City of Auburn
25 West Main Street
Auburn, WA 98001
Phone: 253-804-3118
Email: jsweeting@auburnwa.gov

Metro Designated Representative:

Janine Robinson, Project Manager
King County Metro
KSC-TR-0431
201 S Jackson Street
Seattle, WA 98104
Phone: 206-477-7563
Email: janirobinson@kingcounty.gov

7. Governing Law; Venue: This Agreement shall be construed and enforced pursuant to the laws of the State of Washington, without giving effect to its conflicts of law rules or choice of law provisions. If either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, then the Parties agree that any such action or proceedings shall be brought in King County Superior Court. The Parties agree that each Party shall be solely responsible for payment of its own attorneys' fees, witness fees, and costs.
8. Legal Relations: This Agreement is solely for the benefit of the Parties hereto and creates no right, duty, privilege, or cause of action in any other person or entity not a party to it. No joint venture or partnership is formed as result of this Agreement. No employees or agents of one Party or its contractors shall be deemed, or represent themselves to be, employees of the other Party.
9. Records: All records for work authorized by this Agreement shall be held and kept available for inspection and audit by the Parties and the Federal government for a period of six (6) years from the date of termination of this Agreement or the date of any final payment authorized under this Agreement, whichever is later. Each Party shall have the right to fully access and examine said records during normal business hours and as often as it deems necessary. If a Party requires copies of any records from the other Party, the requesting Party agrees to pay the reasonable costs thereof. In the event of litigation or claim arising from the performance of this Agreement, the Parties agree to maintain the records and accounts until such litigation, appeal, or claims are resolved. The provisions of this Section 9 shall survive the termination of this Agreement.

- 10. Amendment: Any changes to the terms of this Agreement must be mutually agreed upon the Parties and incorporated by written amendment to this Agreement. Any amendment will not be binding or valid unless signed by persons authorized to bind the County and the City, respectively.
- 11. Severability: If any section, term, or provision of this Agreement is determined to be invalid, then the remainder of this Agreement shall not be affected and shall continue in full force and effect.
- 12. Independent Contractor: The Parties shall be deemed independent contractors for all purposes, and the employees of the Parties or any of their contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the other Party.
- 13. Authorization to Sign: The undersigned acknowledge that they are authorized to execute this Agreement and to bind their respective agency to the obligations set forth herein.
- 14. Counterparts: This Agreement may be executed in counterparts and each counterpart constitutes an original document. A Party may deliver executed signature pages to this Agreement by PDF, DocuSign, or other electronic means to the other Party, which PDF or other electronic copy shall be deemed to be an original executed signature page.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed effective as of the date and year set forth below.

KING COUNTY METRO

CITY OF AUBURN

 Michelle Allison
 King County Metro General Manager

 Nancy Backus
 City of Auburn Mayor

Dated: _____

Dated: _____

EXHIBIT A

Statutory Warranty Deed Template

Return Address:
City of Auburn
City Clerk
25 West Main Street
Auburn, WA 98001-4998

Above this line reserved for recording information

RIGHT OF WAY DEDICATION DEED
FAC22-0022

Reference # (if applicable):	N/A
Grantor/Borrower:	TBD
Grantee/Assignee/Beneficiary:	City of Auburn
Legal Description/STR:	XX ¼ Section – Section XX– Township – XXN – Range XE
Assessor’s Tax Parcel ID#:	Parcel Number

The Grantor(s), _____, for and in consideration of ten dollars, and other good and valuable consideration, in hand paid, dedicate and convey to the Grantee, CITY OF AUBURN a municipal corporation of the State of Washington, for right of way, public street and public utility purposes, to the same effect as if acquired by eminent domain under the laws of the State of Washington, the following described real property:

A Right-of-Way described as follows: Situated in the County of King, State of Washington.

SEE EXHIBITS ‘A’ AND ‘B’ ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

The above-described and dedicated rights are consistent with Section 2 of that Memorandum of Agreement between the City of Auburn and King County, dated ----, regarding real property acquired for the RapidRide I Line BRT project, a federally-funded mass transportation improvement project.

Dated this _____ day of _____, 2018

Grantor

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ and _____ is/are the person(s) who appeared before me, and said individual(s) acknowledged that he/she/they signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in this instrument.

Dated _____

DRAFT

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

/tlb
File:
ENG-169, Revised 5/18

Right of Way Dedication Deed
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EXHIBIT 'A'

DRAFT

EXHIBIT 'B'

DRAFT

EXHIBIT B

Template FAC Agreement

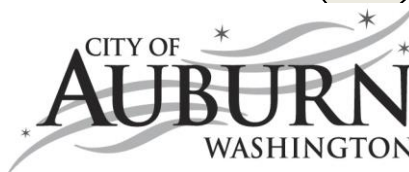
Return Address:
City of Auburn
City Clerk
25 West Main
Auburn, WA 98001

Above this line reserved for recording information.

DEVELOPER PUBLIC FACILITY EXTENSION AGREEMENT

PROJECT NAME
FACXX-XXXX

Reference # (if applicable):	N/A
Grantor/Borrower:	Legal Owner
Grantee/Assignee/Beneficiary:	City of Auburn
Legal Description/STR:	¼ Section – Section – Township – Range
Assessor's Tax Parcel ID #:	Tax Parcel number



City of Auburn
Public Works Department

25 West Main St.
Auburn, WA 98001-4998
(253) 931-3010

Agreement for Developer Public Facility Extension - FAC20-00xx Name

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AGREEMENT for DEVELOPER PUBLIC FACILITY EXTENSION

FACILITY EXTENSION NUMBER: FACXX-XXXX

The CITY of AUBURN ("City"), and KING COUNTY, a home rule charter county and political subdivision of the State of Washington, by and through its Metro Transit Department ("Developer"), enter into this Developer Public Facility Extension Agreement ("Agreement"). The City and Developer (each, a "Party" and collectively, the "Parties"), make the following expressed mutual promises and covenants regarding the Developer's proposed Developer Public Facility Extension ("Extension").

The City agrees to accept the public portions of the Extension for operation and maintenance if the Developer, at the Developer's expense, designs, constructs the Extension and conveys and transfers the public portions of the Extension to the City pursuant to the terms and conditions of this Agreement. This Agreement is valid and binding for the Extension designated in the Plans as defined in Section II and as summarized below:

Facility Extension Summary

Public facilities (Public Extension):

- XX LF of sanitary sewer
- XX LF of watermain
- XX LF of storm
- XX street improvements
- 1 - traffic signal
- 1 - sanitary sewer lift station
- Any other associated proposed or relocated public facilities shown in the Plans

Private facilities:

- XX LF of private street
- XX LF of private street storm
- Private Landscaping and Restoration/Mitigation of Critical Areas
- Any other associated proposed or relocated private facilities shown in the Plans

Final Extension content and quantities may vary from those summarized above and shall be based on the As-Built Records as defined in Section XIII.

Agreement for Developer Public Facility Extension - FAC20-00xx Name

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I. EXTENSION FEE

Extension fees are determined based on the City’s Fee Schedule in effect at the time this agreement is executed and based on the Scope of Work identified in the final Approved Plans.

The total extension fee is to be paid in full by the Developer to the City prior to, or with, the execution of this agreement.

This fee pays for the permit administration, plan review and coordination, field inspections and other City Administrative costs accrued during this project as described in the City’s Fee Schedule. The fee is based on the final approved plans and the Construction Period. The Parties agree that the City may require additional fees if the improvement quantities increase from those shown in the final Approved Plans, if the Developer exceeds the Construction Period, if the Developer’s work is incomplete or deficient and requires additional or re-inspection, or if the City incurs costs to obtain consulting support services to assist the City in its review, administration, and inspection of the Extension for Extension work that is beyond the City’s normal area of expertise or the City’s ability to review within a reasonable time.

Furthermore, the Developer is responsible to pay fees associated with the Valley Regional Fire Authority’s (VRFA) review of plans as requested by the City. The City will allocate these fees as established by the Auburn Fee Schedule.

II. PLANS

The Plans, as made part of this agreement by reference include the following items:

- Construction Drawing Set Titled: FAC20-XXXX, TITLE ON THE PLAN SET as signed and approved by the City on LIST DATE OF PLAN SIGNATURE
- Stormwater Pollution Prevention Plan (SWPPP) dated LIST DATE
- Stormwater Site Plan (SSP) dated LIST DATE
- City of Auburn Construction Standards Parts 1 and 2
- City of Auburn Design Standards
- Standard Specifications for Road, Bridge, and Municipal Construction, Washington State Department of Transportation Standard Plans

Any inconsistencies in the parts of the Plans will be resolved by the Parties in the order of precedence as listed above. Unless otherwise noted in the Plans, documents and standards incorporated into the Plans by reference will be the versions of said documents and standards that were/are current as of the Effective Date of this Agreement.

The Developer will carefully study and compare all plans and specifications and other documents and will, prior to ordering materials or performing work, report in writing to the City any error, inconsistency, or omission in respect to the plans and specifications, or mode of construction which

Agreement for Developer Public Facility Extension - FAC20-00xx Name
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it discovers. If the Developer, in the course of this study or in the accomplishment of the work, finds any discrepancy between the plans and specifications and the physical condition of the locality as represented in the plans and specifications, it will be the Developer's sole duty to inform the City immediately in writing, and the Developer will promptly investigate.

Changes or Deviations from the Plans (including the addition of phasing plans) will require the Developer to prepare and submit revised and/or additional Plans for City review. The Developer will pay all fees as indicated on the City Fee Schedule that are applicable to the review and administration of the proposed revisions and additions at the time the revised or additional Plans are submitted to the City for review. Any revised and/or additional Plans are made part of this agreement by reference on approval with signature(s) by the City AND, in cases when the revised and/or additional Plans would modify the Extension parameters used to determine the Extension Fees, an amendment to this agreement is executed that revises the Extension Fees to reflect the Extension Parameters as modified by the revised and/or additional Plans.

If design or construction activities on the extension(s) become inactive on the Developer's part for a period of six months, the City may require the Developer revise the Plans to conform to existing field conditions, or to meet current City design standards and regulations. The City may also require the execution of a new Agreement, in which case, this Agreement will become null and void.

III. PUBLIC RIGHT-OF-WAY AND EASEMENTS

At the Developer's expense, the City may require the Developer to secure and dedicate certain real property to the City as street right-of-way and/or easements. On receipt of a certified legal description(s) and exhibit(s) of street right-of-way and/or easements from the Developer, prepared by a licensed land surveyor or registered professional engineer, the City will prepare the necessary agreements, right-of-way dedication deed, easements, and real estate excise tax affidavit for the Developer's signature. The Developer will provide the City with a title report for the parcel(s) from which easements and/or right-of-way are being dedicated. Dedications will be free from encumbrances, except as approved by the City as noted on a Title Exceptions Report provided by the Developer with City Approval. The Developer will provide the City with title insurance policy(s) for right-of-way dedications in the amount of \$50.00 per square foot of right-of-way area dedicated or other amount as proposed by the Developer and accepted by the City Engineer. The Developer will execute and provide all required documents for street right-of-way dedication and/or easements prior to the start of construction of the Extension.

Where the Extension work includes the construction or use of private access tract(s), roadway(s), and/or private storm facilities on property not owned by the Developer, the Developer is responsible for securing all required property rights needed to construct, maintain, and utilize the private facilities. The Developer will provide documentation to the City to verify all necessary private property access, use, and construction rights.

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The street right-of-way dedication and any easements dedicated from someone other than the Developer will be recorded by the City prior to start of construction and the easement documents dedicated by the Developer will be held by the City until construction completion at which time the Developer will modify the documents as needed to reflect as-built conditions and re-submit to the City for review, approval, and recording by the City.

The Developer will execute and the City will record as applicable, easement and maintenance agreements for stormwater facilities, critical areas, and planting areas as determined to be required by the City.

IV. PAYBACK AGREEMENT

Developer agrees that the extension work is not eligible for payback and waives any and all rights or claims related to a payback agreement for the FAC extension work.

V. PERFORMANCE GUARANTEE

This section does not apply when the Developer is a public agency.

Before the City issues a Notice to Proceed, the Developer will be required to furnish an approved Performance Guarantee based on one hundred twenty-five percent (125%) of the City-estimated installation costs for the public improvements constructed within the existing and new right-of-way or when the City Engineer deems it to be in the City's best interest to secure a Performance Guarantee.

Two forms of Performance Guarantees are acceptable: 1) a Performance Bond or 2) an Assignment of Funds. The City Engineer may authorize another form of Performance Guarantee if the City Engineer determines that the proposed guarantee will provide an equivalent level of security.

The Developer may designate an Agent to provide the required Performance Guarantee to the City but the Developer will remain responsible for the contractual obligations set forth in this Agreement.

The Performance Bond will be issued in a penal sum equal to a minimum of the amount described above and will be conditioned on the performance by the Developer of all undertakings, covenants, terms, and conditions of the Agreement relating to the Extension. The Developer or Developer's Agent will execute that bond and a corporate bonding company licensed to transact that business in the State of Washington, and who are named on a current list of surety companies acceptable as published by the Insurance Commissioner's office, will act as surety.

The Developer will bear the expense of the bond. If at any time a surety on any bond is declared bankrupt, loses its right to do business in the State of Washington, or is removed from the list of approved surety companies, the Developer will substitute an acceptable bond or bonds in the form

and sum and signed by another surety or sureties as may be satisfactory to the City. The Developer will pay the premiums on that bond or bonds.

The Assignment of Funds will be in a required amount held in a Financial Institution acceptable by the City and secured under the use of the City of Auburn Standard Assignment of Funds form.

VI. INSURANCE

The City acknowledges, agrees, and understands that Developer maintains a fully funded self-insurance program for the protection and handling of Developer’s liabilities including injuries to persons and damage to property. The City acknowledges, agrees and understands that Developer is self-funded for all of its liability exposures. Developer shall, at its own expense, maintain through its fully funded self-insurance program, coverage for all of its liability exposures for this Agreement. Developer shall provide the City with at least thirty (30) days prior written notice of any material change in Developer’s self-funded insurance program and shall provide the City with a letter of self-insurance as adequate proof of coverage upon the City’s written request for the same. The City further acknowledges, agrees, and understands that Developer does not purchase commercial general liability insurance and is a self-insured governmental entity; therefore, Developer does not have the ability to name the City as an additional insured.

Without limiting the foregoing paragraph, the Developer will cause its contractor (the “Contractor”) to procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work by the Developer, the Developer’s agents, representatives, employees, and subcontractors. As between the Parties, the Developer is responsible for the cost of insurance.

The Contractor’s maintenance of insurance, its scope of coverage, and limits as required herein, will not be construed to limit the liability of the Developer to the coverage provided by the insurance, or otherwise limit the City’s recourse to any remedy available at law or in equity.

The Contractor’s required insurance will be of the types and coverage as stated below:

- A. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage will be at least as broad as Insurance Services Office (ISO) form CA 00 01. Automobile Liability insurance will include a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- B. Commercial General Liability insurance will be at least as broad as ISO occurrence form CG 00 01 and will cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance will be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an equivalent

endorsement. There will be no exclusion for liability arising from explosion, collapse, or underground property damage. The City will be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01, or substitute endorsements providing at least as broad coverage. The limits for the Commercial General Liability insurance policy will be no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, and a \$2,000,000 products- completed operations aggregate limit.

- C. Workers Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- D. Builders Risk insurance covering interests of the City, the Developer, Subcontractors, and Sub-subcontractors in the work. **Builders Risk insurance is only required for Extensions that include public buildings or public structures with an estimated value of \$1,000,000 or more, and as determined to be required by the City Engineer.** Builders Risk insurance will be on a special perils policy form and will insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, and collapse. The Builders Risk insurance will include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City based on a written request by the Developer and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance will be maintained until the City has granted substantial completion of the project. Builder's Risk Insurance will be written in the amount of the completed value of the project with no coinsurance provisions.

The Contractor's Automobile Liability, Commercial General Liability, and Builders Risk (if required) insurance policies will be primary insurance as respect to the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City will be in excess of the Contractor's insurance.

The Contractor will assume full responsibility for all loss or damage from any cause whatsoever to any tools, Developer's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Developer or the Developer's agents, suppliers, contractors, or subcontractors as well as to any temporary structures, scaffolding, and protective fences.

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The Developer and the City waive all rights against each other, any of their Contractors, Subcontractors, Sub-subcontractors, agents, and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work.

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

Developer will cause the Contractor to furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the Automobile Liability and Commercial General Liability insurance before beginning work. Before any exposure to loss may occur, the Developer will cause its Contractor to file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms, and endorsements related to this project. The City may request that the Developer cause its Contractor to furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

The Developer will cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Developer-provided insurance, except the Developer will have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Developer will ensure that the City is an additional insured on every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO Additional Insured endorsement CG 20 38 04 13.

The Developer will cause its Contractor to provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of that notice.

Failure on the part of the Developer to cause its Contractor to maintain the insurance as required will constitute a material breach of contract and the City may, after giving five business days' notice to the Developer to correct the breach take actions to protect the interests of the City, which may include, but are not limited to one or more of the following: order suspension of all construction activities, revoke permits issued to the Developer and its contractors, pursue remedy through the Contractor's surety, and terminate this FAC Agreement.

VII. INDEMNIFICATION

The Developer will defend, indemnify, and hold the City, its elected and appointed officials, employees, and agents harmless from any actions, causes of action, liabilities, claims, suits, judgments, liens, awards, demands, and damages of any kind including, property damage, personal injury, or death (including any claims brought by employees of the Developer or any

subcontractor) arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City will be indemnified and held harmless for all expenses, costs of litigation, and reasonable attorney's fees, expert witness fees, and costs of services of engineering and other personnel related to any that action, or incident to establishing the right to indemnification, to the extent that claims arise from any negligent act or omission or willful misconduct of the Developer, Contractor, any subcontractor, or their employees arising out of, or in any way related to, their performance of the Agreement, including without limitation the provision of services, personnel, facilities, equipment, support, supervision, or reviews.

If a court of competent jurisdiction determines that this Agreement is subject to RCW 4.24.115 then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Developer and the City, its officer, officials, employees and volunteers, the Developer's liability hereunder will be only to the extent of the Developer's negligence. The Developer expressly waives any immunity under industrial insurance, whether arising from RCW Title 51 entitled "Industrial Insurance" or any other statute or source solely for the benefit of the City and solely to the extent of the indemnity set forth in this Agreement. This waiver has been mutually negotiated by the Parties. The provisions of this action will survive the expiration or termination of this Agreement.

VIII. CONSTRUCTION WORK

The Developer will not start construction of any Extension(s) prior to the City's written issuance of Notice to Proceed. Notice to Proceed will not be issued prior to the Developer satisfying all of the following:

- A. Extension Fee paid in full in accordance with **Section I**.
- B. All Developer provided plans submitted and approved by the City in accordance with **Section II**.
- C. Provide all street right of way and easement dedication documents in accordance with **Section III**, including, but not limited to, Stormwater Easement and Maintenance Agreement (SWEMA), utility easements, and easements for critical areas and plantings.
- D. Schedule and attend a Pre-Construction Meeting with the City that includes the Developer's General Contractor(s) and Subcontractors performing significant items of work, as determined by the City. The Developer must request a pre-construction conference a minimum of two weeks in advance of the pre-construction conference date.
- E. Provide a Performance Bond or Assignment of Funds to the City per **Section V**.

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- F. Provide Certificate of Insurance to the City naming the City (and Developer if Contractor supplies insurance) as an additional insured per **Section VI**.
- G. Developer or its Contractor possess an Active Contractor's Labor & Industry license.
- H. Provide an Emergency Call List for Contractor and Subcontractors.
- I. Obtain a Business License through the Customer Service Center for all contractors and subcontractors when working within the City limits.
- J. Obtain Authorized Construction Period for construction work to be completed within the existing public right-of-way (see additional information in **Section VIII** herein), if applicable.)
- K. For work outside of Auburn's City limits, adequate County permits/approvals must be in place. The City will apply for the right-of-way permit(s) once plans are approved.
- L. If sewer extension, King County Waste Water Treatment Division approval is needed. The City will submit for approval, once plans are approved.
- M. Provide Proof of Contract for Non-City Utility Relocates. The Developer acknowledges the obligation to enter into a separate contract, at the Developer's expense, to relocate Non-City utility facilities as necessary to comply with City Standards where applicable.
- N. Obtain all necessary permits from the City of Auburn and other agencies or jurisdictions.
- O. Obtain and furnish a written copy of all executed private easements, rights of entry, and/or agreements with other property owners related to the work to be performed, including modification and reconnection of existing utility services and/or property access.
- P. Submit and receive approval from the City on the following: Schedule of Submittals (utilizing City template), Initial Haul Routes, Initial Traffic Control Plans, and Preliminary Schedule (see Item K).

The City may appoint Inspectors to assist in determining that the work and materials meet the Plan requirements and City standards. Inspectors have the authority to reject defective material and

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suspend work that is being done improperly, subject to the final decisions of the Engineer. Inspectors are not authorized to accept work, to accept materials, to issue instructions, or to give advice that is contrary to the Plans. Work done or material furnished which is not in accordance with the Plans will be at the Developer’s risk even if the Inspectors purport to approve the deviation from the Plans. Inspectors may advise the Developer of any faulty work or materials or infringements of the terms of this Agreement; however, failure of the Inspectors to advise the Developer does not constitute acceptance or approval.

All construction performed by the Developer will be in compliance with the Plans, and City design and construction standards. The Developer will be responsible for acquiring the City’s Construction Standards and having a copy of the Standards and Plans on-site during construction. The Developer agrees to comply with all Federal, State, County, and City regulations.

The Authorized Construction Period is the time frame, in calendar days, in which the Developer will complete all Extension work, including final clean up and all documentation required for extension acceptance as described in Section IX. The City and Developer will determine the Authorized Construction Period at the pre-construction conference. The Authorized Construction Period will start when construction of the Extension begins, which will be within 10 business days of the City’s issuance of Notice to Proceed. If the Extension work, including final clean up and all documentation required for extension acceptance, is not completed within the Authorized Construction Period, the City may assess additional extension fees in accordance with the City fee schedule and/or suspend all construction work except the work required to complete the public improvements and work to restore the right of way. If the public improvements and right of way restoration is not completed within the time period defined above or if construction activities become inactive for more than 6-months, the Developer agrees that the City may hire an independent contractor to complete the public improvements and right of way restoration as deemed necessary by the City and bill the Developer for the actual costs incurred or place a claim against the Performance Guarantee.

The City has the authority to decide all questions regarding the quality and acceptability of the materials furnished and of the work performed for the construction of the improvements. The City will also have the authority to suspend construction work, in whole or part, for the failure of the Developer to carry out the work in conformance with the Plans.

IX. ACCEPTANCE OF EXTENSION FOR OPERATION AND OWNERSHIP

The City agrees to accept the Extension for operation and ownership based on approval of the completion of all Extension Work and the Developer has provided the following to the City:

- A. Approved Warranty Guarantee (see **Section XI** herein).
- B. As-Built Records and Related AutoCAD File(s) (see Section XIII herein).

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Date, 2022

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- C. Executed and recorded Public Utility Easements and Right of Way Deeds (see Section III herein).
- D. Approved Developer Contribution Document provided for all facilities (see Section XVII herein).
- E. Final Storm Water Site Plan (Report) and Cover Letter. This letter will address any changes between the project’s original storm water site plan (report) and the final construction of detention/retention and water quality facilities (See Section XIV herein).
- F. Payment of applicable system development charges and paybacks.
- G. For complex facilities that have pump stations and traffic signals, additional prerequisites that have testing, training, operation manuals, component extended warranties, etc., will be required.
- H. Application and issuance of right-of-way use permit(s) or other applicable agreement(s) as needed for any Non-City owned facilities constructed with the project that reside or encroach upon the City right-of-way.

On approval and acceptance, the City will send a Final Acceptance letter to the Developer accepting the public extension for ownership and operation and, for subdivision projects, issue a Certificate of Improvements. For subdivision projects, the Developer may request partial acceptance of the Extension work in accordance with **Section X**.

For subdivision projects where the Extension includes public street lighting, the Developer agrees that it will be responsible for electricity costs for public street lighting until at least 50% + 1 of the lots in the subdivision are occupied and the Developer provides notification to the City that this threshold has been met with a request to transfer the electric bill into the City’s name.

The City will release the Performance Guarantee, if applicable, to the Developer within 30 days of the letter of acceptance.

X. PARTIAL ACCEPTANCE OF EXTENSION FOR SUBDIVISIONS

On written request from the Developer and for subdivision projects only, the City may agree to partial acceptance of the Extension work and issue a Certificate of Improvements allowing the Developer to seek finalization of the subdivision, subject to the following requirements:

- A. Extension work within the existing right-of-way is complete.
- B. All underground utility Extension work is complete.

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- C. In the sole opinion of the City Engineer, only minor street construction Extension work remains to be completed, such as the final lift of asphalt, adjustment of utility castings to grade, installation of monuments, planting of street trees, etc.
- D. Developer provides the City with an assignment of funds, irrevocable letter of credit, bond, or other security in lieu of completion for no less than 150% of the costs of the outstanding Extension work as determined by the City, in accordance with Auburn City Code Section 17.14.010.
- E. Conditions of acceptance as listed in Section IX (Items A thru H) have been satisfied for the Extension work completed and being accepted.
- F. The ability of the City to maintain and operate the facilities being accepted without any restrictions (access, etc.) as determined by the City.

Final acceptance of the improvements remaining will be in accordance with **Section IX** of this Agreement.

XI. WARRANTY GUARANTEE

The extension work performed under this Agreement will be guaranteed by the Developer during the Warranty Period, as defined herein, against defective design elements, materials, equipment, and workmanship and will also include the landscape establishment required in the Construction Standards per Section 8-02.3(13) (Plant Establishment). On receipt of notice from the City of failure of any part of the design, material, equipment, or workmanship during the warranty period, the affected part or parts will be re-designed and/or replaced with new materials or equipment by, and at the expense of, the Developer. Developer agrees to start work to remedy any defect within seven (7) days of written notice by the City and will complete the required work within a reasonable period of time.

The warranty period for this project will be 1-year, except as noted herein, and will begin on the date the City has accepted all extension work as complete and final. When partial acceptance has been granted, the warranty period will not begin until all work is complete and accepted.

If included in the Extension, the warranty period for the sewer lift station and traffic signal work will be 2-years.

Before Final Acceptance by the City, the Developer will provide a Warranty Guarantee in the amount of two thousand dollars (\$2,000) or ten percent (10%) of the City's estimated replacement costs of the improvements, whichever is greater.

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Two forms of Warranty Guarantees are acceptable: 1) a Warranty Bond or 2) an Assignment of Funds. Any request to use other forms of Warranty Guarantee will be determined on a case by case basis by the City Engineer. The City Engineer may authorize another form of Warranty Guarantee if the City Engineer determines that the proposed guarantee will provide an equivalent level of security.

The Developer may designate as an Agent, a contractor or engineer, to provide the required Warranty Guarantee to the City. In that event, the Developer will remain responsible for the contractual obligations set forth in this Agreement. If the Agent defaults on the Warranty Bond, this authorization for designation of an Agent does not preclude the City proceeding to foreclosure or demanding forfeiture of the bond against the Developer.

As between the Parties, the Developer will bear the full expense of the bond. If at any time a surety on any bond is declared bankrupt, loses its right to do business in the State of Washington, or is removed from the list of Surety companies acceptable on Federal bonds, the Developer will substitute or cause its Contractor to substitute an acceptable bond or bonds in that form and sum and signed by that other surety or sureties as may be satisfactory to the City.

The Assignment of Funds will be in a required amount held in a Financial Institution acceptable by the City and secured under the use of the City of Auburn Standard Assignment of Funds form. During this Warranty Guarantee period, the Developer will warrant that the materials and equipment furnished by the Developer for the Extension are in normal working order and condition except where abused or neglected by the City. The Developer will guarantee that it will repair or replace at its own expense any work or material that proves to be defective during that warranty period.

The Developer will be available approximately 60 calendar days prior to the expiration of the guarantee period to tour the project, with the City, in support of the City's effort to establish a list of corrective work required under the guarantee. Not more than 30-days prior to this inspection, the Developer will have all public sanitary sewer and storm lines cleaned and then inspected with a remote television unit by an approved firm, at the Developer's expense. The video will then be compared to the video made prior to acceptance to ensure that no substantial change has occurred.

If the City determines that there are no defective design elements, materials, equipment, and workmanship the City will release the Warranty Bond. If the re-inspection determines that there are defective design elements, materials, equipment, and workmanship, the Developer will re-design, replace, or repair said Extension and the City, at its option, may extend the warranty period for that replacement or repair for up to 1-year. The City will release the Warranty Bond after the warranty period has expired and all extensions are determined by the City to not have defective design elements, materials, equipment, and workmanship.

XII. TRANSFER OF PUBLIC PORTION OF EXTENSION TO CITY

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Upon the City’s issuance of Final Acceptance, the Developer agrees to transfer the title to the public portion of the Extension, as constructed and documented in the As-Built Records described in Section XIII of this Agreement, to the City by representing the following:

- A. The Developer is the lawful Owner of the public portion of the Extension and it is free from all encumbrances.
- B. The Developer has paid all bills for all labor and material used during construction of the Extension or has obtained lien waivers from all persons who have not been paid for their labor or material.
- C. The Developer has the right to transfer the public portion of the Extension to the City for the consideration of incorporation into the City system.
- D. The Developer will warrant the public portion of the Extension and defend the same against lawful claims and demands of all persons for one year from the date of Final Acceptance by the City, as described in Section IX of this Agreement.

The City will record this Agreement with the King County Recorder’s Office (for extension developments in King County), and the Pierce County Auditor (for extension developments in Pierce County). The Developer agrees to defend the title of the City against claims of all third parties claiming to own the same or claiming any interest or encumbrance to the public portion of the Extension.

XIII. AS-BUILT RECORDS

Before the City accepts the public portion of the Extension for operation and ownership, the Developer agrees to provide the City with As-Built Records for all items listed under the Facility Extension Summary per the following:

Step 1:

Developer submits Construction Record Drawings (also referred to as Construction Redlines) per Section 1-05.18 of the Engineering Construction Standards in electronic PDF format.

Step 2:

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Once the City approves the Construction Record Drawings, the Developer uses the approved Construction Record Drawings to prepare and submit electronic As-Built Records in accordance with the City's Development Construction Record Documents Informational Brochure.

XIV. FINAL STORM WATER SITE PLAN/REPORT

The Developer will update the storm water site plan/report to reflect as-built conditions. The Developer will submit the final storm water site plan/report with a cover letter certifying that the final plan/report reflect as-built conditions.

XV. RECORDED DOCUMENT REQUIREMENTS

Documents that are to be recorded will meet the following requirements:

- Documents will be per City standard document templates. Developer requested modifications to these templates may delay the Construction Notice to Proceed and may not be accepted by the City.
- Documents will be provided in both editable format (MS Word for legal descriptions, easements, deeds, and AutoCAD for exhibits) and non-editable format (PDF).
- All documents will be formatted to 8 ½ x 11-inch and 8 ½ x 14-inch paper size and have a minimum margin of 1-inch top, bottom and sides. Use of 8 ½ x 14-inch paper size will be limited to exhibit attachments.
- Any writing or markings, including the notary stamp, which intrudes into the document's margin area, may be cause for the document to be returned. Original documents used for recording **will not** be stapled.
- Documents will meet all other recording requirements as specified the applicable County's Recorder's Office.

XVI. SERVICE CONNECTIONS

For subdivision projects, there will be no water meter installation, connection to, or usage of, the public portion of the Extension before the City accepts the Extension for operation and ownership or the City has granted Partial Acceptance that includes acceptance of the water and sanitary sewer (including side sewer connections) Extensions in accordance with **Section X**. For non-subdivision projects, water meter installation, connection to, and usage may occur after the completion and City acceptance of the water and sanitary sewer (including side sewer connections) Extension work, with approval from the City Engineer. The following items are required for the City to accept the water and sewer Extension work separate from the acceptance of other Extension work: Completion of all punch list/correction work for the water and sewer Extension work, Developer submittal and City approval of Construction Redlines for the water and sewer Extension work, and Developer submittal of accurate and executed easements for the water and sewer Extension.

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The Developer will notify the City in writing of any intent to make service connections to the public portion of the Extension or any existing City system. Note that certain other utility permit fees and system development charges may be required prior to service connection. In addition, the City will supervise all service connections.

Connections to and utilization of the public portion of the Extension will not relieve the Developer of the obligation to correct defects in labor or materials as provided in **Section XI** of this Agreement. All City-authorized connections will be subject to the control, use, and operation of the City, which will be subject to all regulations and conditions of service.

XVII. DEVELOPER CONTRIBUTION DOCUMENTATION

As per ACC 13.40.040, a written statement as to the actual cost of the public utility and street extension(s) will be provided by the Developer prior to Final Acceptance on the City provided Developer Contribution Document form.

XVIII. SEPA REQUIREMENTS

Nothing in this Agreement will be construed as to limit the City of Auburn’s ability to require mitigation of any impacts of Developer’s proposed actions that are identified in the SEPA process or to waive any of the City’s authority to proceed in any way under the SEPA process.

XIX. AGREEMENT ALTERATIONS OR AMENDMENTS

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

Nothing in this section XIX will limit the remedies or rights of the Parties under this Agreement.

XX. ASSIGNMENT BINDING ON SUCCESSORS AND ASSIGNS

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

This Agreement is binding and the benefits and obligations provided for in this Agreement will inure to and bind the Parties and their respective successors and assigns, provided that this section

Agreement for Developer Public Facility Extension - FAC20-00xx Name
Date, 2022

XX will not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the Parties and it does not create a contractual relationship with or exist for the benefit of any third party, including contractors, sub-contractors and their sureties.

XXI. NO THIRD PARTY BENEFICIARIES

This Agreement is solely for the benefit of the Parties and no third party will be entitled to claim or enforce any rights here under except as specifically provided herein.

XXII. WAIVER

A failure by either Party to exercise its rights under this Agreement will not preclude that Party from subsequent exercise of its rights and will not constitute a waiver of any other rights under this Agreement unless stated to be that in writing, signed by an authorized representative of the Party, and attached to the original Agreement.

XXIII. GOVERNING LAW

This Agreement and the rights of the Parties will be construed and enforced in accordance with the Auburn City Code and the laws of the State of Washington, without giving effect to its conflicts of law rules or choice of law provisions. Any suit arising from this Agreement will be brought in the county where the project is located. The Parties agree that any applicable statute of limitation will begin to run on the final acceptance date of the Extension or, if the City declines to accept the extension, the date of the letter from the City declining to accept the Extension.

XXIV. SEVERABILITY

If any provisions of this Agreement or any provision of any document incorporated by reference are held invalid, that invalidity will not affect the other provisions of this Agreement that can be given effect without the invalid provision, if that remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement. To this end, the provisions of this Agreement are declared to be severable.

XXV. ATTORNEY FEES

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

XXVI. CAPTIONS, HEADINGS AND TITLES

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All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and will not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or sections to which they apply. As used herein, where appropriate, the singular will include the plural and vice versa and masculine, feminine, and neuter expressions will be interchangeable. Interpretation or construction of this Agreement will not be affected by any determination as to who is the drafter of this Agreement, this Agreement having been drafted by mutual agreement of the Parties. Each Party has had the opportunity to consult with its own legal counsel at its own cost and expense.

XXVII. RECORDING

An executed copy of this Agreement shall be recorded among the land records of **The King Pierce County Auditor or Recorder.**

XXVIII. ENTIRE AGREEMENT

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

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

SIGNATORY CITY OF AUBURN

DATE: _____

Jacob Sweeting, Assistant Director of Engineering/City Engineer

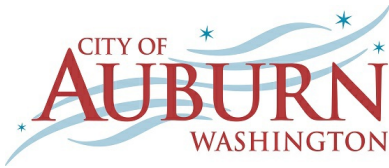
SIGNATORY – DEVELOPER

DATE: _____

Signature: _____

Printed Name: _____

Title: _____



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5770 (Gaub)

Date:

May 24, 2024

Department:

Public Works

Attachments:

[Resolution No. 5770](#)

[Exhibit A](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council adopt Resolution No. 5770.

Background for Motion:

This Resolution will provide funding for the City to purchase a zero-emission street sweeper vehicle to replace an existing gas-powered sweeper and furthers the City's green fleet goals.

Background Summary:

Resolution No. 5770 authorizes the Mayor to accept grant funds in the amount of \$609,722.06 for the purpose of purchasing a new all-electric street sweeper replacing an existing gas-powered street sweeper with required City match of \$154,430.51 which is within the City's budget. The City's adopted climate action plan includes considerations for greening the City's fleet to help reduce the City's carbon footprint. Several actions are currently in progress to allow the City to expand the use of zero-emission vehicles within the fleet and the purchase of this sweeper is one of these actions. The City's green fleet goals include increasing the use of zero-emission, hybrid, and alternative fuel vehicles.

Reviewed by Council Committees:

Councilmember: Tracy Taylor

Staff: Ingrid Gaub

Meeting Date: June 3, 2024

Item Number: RES.B

RESOLUTION NO. 5770

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, ACCEPTING WASHINGTON STATE DEPARTMENT OF ECOLOGY GRANT FUNDS FOR THE PURCHASE OF A ZERO EMISSION STREET SWEEPER VEHICLE

WHEREAS, the City's vehicle fleet includes an aging diesel powered street sweeper that is eligible for replacement;

WHEREAS, in its ongoing effort to reduce carbon emissions, the City seeks to replace this vehicle with a zero emission street sweeper;

WHEREAS, the Washington State Department of Ecology (DOE) has awarded the City \$609,722.06 in grant funds toward the purchase of a replacement zero emission street sweeper. The grant terms obligate the City to contribute \$152,430.51 toward the vehicle's purchase cost, which is anticipated to be \$762,152.57. Funding for the City's vehicle purchase cost share is available within the City's budget. A copy of the DOE grant is attached as Exhibit A to this Resolution; and

WHEREAS, acceptance of this DOE grant is in the City's best interest to update its vehicle fleet and to combat carbon emissions from City vehicles.

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

Section 1. The Mayor is authorized to sign a grant agreement with the Washington State Department of Ecology that substantially conforms to Exhibit A to this Resolution;

Section 2. The Mayor is authorized to negotiate, enter, and administer agreements as needed to spend the grant funds consistent with the grant terms and this Resolution, and to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

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

Dated and Signed this _____ day of _____, 2024.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Doug Ruth, Acting City Attorney



Agreement No. AQVWZEV-2325-ACDPWD-00027

AIR QUALITY VW DIESEL TO ZERO EMISSION REFUSE VEHICLE, STREET SWEEPER, PCHE AND FREIGHT SWITCHER AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF AUBURN - COMMUNITY DEVELOPMENT AND PUBLIC WORKS

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and City of Auburn - Community Development and Public Works, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	Refuse Vehicle, Street Sweeper, PCHE, Freight Decarbonization
Total Cost:	\$762,152.57
Total Eligible Cost:	\$762,152.57
Ecology Share:	\$609,722.06
Recipient Share:	\$152,430.51
The Effective Date of this Agreement is:	05/01/2024
The Expiration Date of this Agreement is no later than:	06/30/2026
Project Type:	Refuse Vehicle, Street Sweeper, Port Cargo Handling Equipment, Freight Switchers

Project Short Description:

To seek funds to upgrade an existing sweeper to a modern all-electric sweeper providing a reliable service and cleaner air to our citizens.

Project Long Description:

The objective of this project is to replace the City of Auburn's (city) aging street sweeper with an all-electric sweeper, aimed at significantly reducing tailpipe emissions and contributing to a cleaner environment. The city is seeking funding from Washington State Department of Ecology to support this initiative. The primary goal is to reduce air pollution in Auburn by replacing a current fossil-fueled street sweeper with an all-electric alternative. This will lead to a substantial decrease in greenhouse gas emissions and harmful pollutants. By adopting an electric sweeper, the city aims to improve energy efficiency while maintaining high-quality street cleaning services. Electric sweepers are more energy-efficient, resulting in cost savings over the long term. Lowering tailpipe emissions will have a direct positive impact on public

Agreement No: AQVWZEV-2325-ACDPWD-00027
Project Title: Refuse Vehicle, Street Sweeper, PCHE, Freight Decarbonization
Recipient Name: City of Auburn - Community Development and Public Works

health, reducing the risks associated with air pollution and respiratory diseases. This project aligns with the Department of Ecology's mission to protect and improve the environment. The city plans to use this project as a demonstration of the feasibility and benefits of electric street sweepers in hopes that it will inspire citizens and other municipalities to make similar eco-friendly choices. The project supports the broader sustainability goals of Washington State and the City of Auburn, contributing to the commitment to reducing carbon emissions and promoting clean energy alternatives.

Overall Goal:

Reduce harmful air pollution and greenhouse gas emissions associated with diesel vehicles and equipment. Help accelerate the transition to zero emission and increase public awareness of zero emission technology feasibility.

DRAFT

Agreement No: AQVWZEV-2325-ACDPWD-00027
 Project Title: Refuse Vehicle, Street Sweeper, PCHE, Freight Decarbonization
 Recipient Name: City of Auburn - Community Development and Public Works

RECIPIENT INFORMATION

Organization Name: City of Auburn - Community Development and Public Works

Federal Tax ID: 91-6001228
 UEI Number: LT4FLVEW5U28

Mailing Address: 25 West Main Street
 Auburn, WA 98001

Organization Email: igaub@auburnwa.gov

Contacts

<p>Project Manager</p>	<p>Tyler Thompson Fleet and General Services Manager</p> <p>1305 C Street Southwest Auburn, Washington 98001 Email: tthompson@auburnwa.gov Phone: (253) 288-3137</p>
<p>Billing Contact</p>	<p>Tyler Thompson Fleet and General Services Manager</p> <p>1305 C Street Southwest Auburn, Washington 98001 Email: tthompson@auburnwa.gov Phone: (253) 288-3137</p>
<p>Authorized Signatory</p>	<p>Nancy Backus Mayor</p> <p>25 W Main St Auburn, Washington 98001 Email: nbackus@auburnwa.gov Phone: (253) 931-3041</p>

Agreement No: AQVWZEV-2325-ACDPWD-00027
 Project Title: Refuse Vehicle, Street Sweeper, PCHE, Freight Decarbonization
 Recipient Name: City of Auburn - Community Development and Public Works

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
 AQVW
 PO BOX 47600
 Olympia, WA 98504-7600

Physical Address: AQVW
 300 Desmond Drive SE
 Lacey, WA 98503

Contacts

<p>Project Manager</p>	<p>Malaika Rosenfeld</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: MALR461@ecy.wa.gov Phone: (360) 800-7430</p>
<p>Financial Manager</p>	<p>Rose Bennett Contracts & Grants Specialist</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: RBEN461@ecy.wa.gov Phone: (360) 819-3456</p>

Agreement No: AQVWZEV-2325-ACDPWD-00027
 Project Title: Refuse Vehicle, Street Sweeper, PCHE, Freight Decarbonization
 Recipient Name: City of Auburn - Community Development and Public Works

SCOPE OF WORK

Task Number: 1 **Task Cost:** \$762,152.57

Task Title: Scrap and replace or repower vehicle/equipment.

Task Description:

Under this task, the RECIPIENT will permanently destroy (or "scrap") one diesel street sweeper in its fleet using a method described below and replace it with one zero emission street sweeper. The RECIPIENT will complete and submit an Eligibility Statement provided by ECOLOGY attesting the vehicle/equipment intended to be scrapped is diesel powered, owned by the applicant, powered by a 2009 or older engine, has been licensed and operated in Washington for at least two (2) years prior to July 2023, and is being replaced by vehicle(s)/equipment of the same vehicle class (for on-road vehicles), use case, and project category. RECIPIENT must ensure that the replacement vehicle/equipment purchased will operate in Washington State for a minimum of five (5) years.

The RECIPIENT must have a standard procurement process or follow current Washington State procurement laws for the solicitation of bids and the selection of vendors and contractors for the performance of any grant-assisted work, including the purchase of zero emission vehicles/equipment. RECIPIENT must provide documentation confirming procurement requirements are followed. Documentation must include:

- method of vendor notification of bid opportunity
- how many bidders were notified
- evaluation summary of bids received
- award letter or notice of contract award
- awarded contractor name, contract number, date contract was executed

Cooperative purchasing agreements or purchasing from the Washington State contract for zero emission vehicles/equipment and fueling infrastructure meets these requirements.

The RECIPIENT will provide to ECOLOGY documentation of the permanent destruction of the diesel street sweeper. Acceptable methods of permanent destruction required by the VW federal settlement agreement include: rendering the vehicle/equipment inoperable and available for recycling; at a minimum cutting a 3 inch by 3-inch hole in the engine block; disabling the chassis by cutting the vehicles/equipment's frame rails in half, if applicable. Documentation must include a completed and signed Certificate of Destruction (form provided by ECOLOGY), and verification photos of the permanent destruction, including side profile of the vehicle/equipment, prior to disabling; VIN tag or equipment serial number; Engine label (showing serial number, engine family number, and engine model year); engine block, prior to hole; engine block, after hole; cut frame rails or other cut structural components; others, as needed (examples provided by ECOLOGY). Other materials documenting the destruction may be acceptable with prior authorization from the Ecology project manager.

The RECIPIENT will submit quarterly Payment Requests/Progress Reports (PRPRs) to ECOLOGY in EAGL within 30 days of the end of each calendar quarter until the project is complete. NOTE: quarterly PRPRs must be submitted even when RECIPIENT is not requesting reimbursement.

Prior to reimbursement, RECIPIENT must submit via EAGL certification that the street sweeper has been received and is in use; photos of the new street sweeper; complete proof of destruction of the diesel street sweeper; an Equipment Purchase Report for any item costing more than \$5,000 (submitted via EAGL); and photos confirming the charging infrastructure is

Agreement No: AQVWZEV-2325-ACDPWD-00027
 Project Title: Refuse Vehicle, Street Sweeper, PCHE, Freight Decarbonization
 Recipient Name: City of Auburn - Community Development and Public Works

installed, activated, and available for use.

Upon project completion, the RECIPIENT will submit a final Recipient Closeout Report in EAGL.

Task Goal Statement:

The goal of this task is to reduce toxic diesel emissions by scrapping diesel vehicle/equipment and replacing or repowering with new zero emission vehicle/equipment.

Task Expected Outcome:

Purchasing of new or repowering of zero emission vehicle/equipment and scrapping of the replaced diesel vehicle/equipment.

Recipient Task Coordinator: Tyler Thompson

Scrap and replace or repower vehicle/equipment.

Deliverables

Number	Description	Due Date
1.1	RECIPIENT will submit engagement and outreach materials to ECOLOGY. This should be included in the quarterly PRPR or submitted by email if appropriate.	
1.2	RECIPIENT will submit documentation of the procurement process used to procure the replacement zero emission vehicles/equipment. This may be included in the quarterly PRPR.	
1.3	RECIPIENT will submit a copy of the purchase order to ECOLOGY. This should be included in the quarterly PRPR.	
1.4	RECIPIENT will submit the Certificate of Destruction (provided by ECOLOGY) and required destruction photos to ECOLOGY. This should be included in the quarterly PRPR.	
1.5	Prior to reimbursement, RECIPIENT will submit photos of the replacement vehicles/equipment as proof of delivery. This should be included in the quarterly PRPR.	
1.6	RECIPIENT will complete and submit an Equipment Purchase Report in EAGL for any item costing more than \$5,000.	
1.7	Recipient will notify ECOLOGY and submit photos when the charging infrastructure is installed, activated, and available for use. This may be included in the quarterly PRPR. If the charging infrastructure is not installed prior to vehicle/equipment delivery, RECIPIENT will demonstrate the ability to fuel the vehicle/equipment before any reimbursement is made.	
1.8	RECIPIENT will complete and submit a Recipient Close-Out Report in EAGL. This must be submitted before ECOLOGY approves the final payment request.	

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 Project Title: Refuse Vehicle, Street Sweeper, PCHE, Freight Decarbonization
 Recipient Name: City of Auburn - Community Development and Public Works

BUDGET

Funding Distribution EG240460

NOTE: *The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: AQVW Diesel to Zero Emission Vehicle Funding Type: Grant
 Funding Effective Date: 05/01/2024 Funding Expiration Date: 06/30/2026

Funding Source:

Title: General Fund Private Local Volkswagen Settlement

Fund: FD

Type: State

Funding Source %: 100%

Description: This agreement will provide assistance to the Washington Department of Ecology in its efforts to reduce diesel emissions and exposure throughout the State of Washington. The Washington Department of Ecology will use funds to scrap publicly or tribally owned street sweepers, refuse vehicles, freight switcher locomotives, and port cargo handling equipment and replace them with zero emission equipment, which will reduce emissions of diesel particulate matter and other pollutants such as nitrogen oxides, carbon monoxide and hydrocarbons.

Approved Indirect Costs Rate: Approved State Indirect Rate: 0%

Recipient Match %: 20%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? No

AQVW Diesel to Zero Emission Vehicle	Task Total
Scrap and replace or repower vehicle/equipment.	\$ 762,152.57

Total: \$ 762,152.57

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Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
AQVW Diesel to Zero Emission Vehicle	20.00 %	\$ 152,430.51	\$ 609,722.06	\$ 762,152.57
Total		\$ 152,430.51	\$ 609,722.06	\$ 762,152.57

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

GENERAL FEDERAL CONDITIONS

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

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

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

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7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

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

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

- Receives more than \$30,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

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

For more details on FFATA requirements, see www.fsr.gov <http://www.fsr.gov>.

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf) <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](https://sam.gov/SAM) <https://sam.gov/SAM> exclusion list.

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DRAFT

Agreement No: AQVWZEV-2325-ACDPWD-00027
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GENERAL TERMS AND CONDITIONS

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

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

07/01/2023 Version

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/2301002.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

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

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
 - * For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.
 - For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).

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b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
 - Make the IDP readily available to anyone working at the project site.
 - Discuss the IDP with staff, volunteers, and contractors working at the project site.
 - Implement the IDP when Cultural Resources or human remains are found at the project site.
- c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

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

6. COMMUNICATION

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

7. COMPENSATION

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

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other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

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

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

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

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

9. CONFLICT OF INTEREST

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

10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

11. DISPUTES

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

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

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such

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decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

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

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

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

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

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

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

14. INDEMNIFICATION

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

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

15. INDEPENDENT STATUS

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

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16. KICKBACKS

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

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

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

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

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

18. ORDER OF PRECEDENCE

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

19. PRESENTATION AND PROMOTIONAL MATERIALS

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

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

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

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

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

20. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to

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ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.

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

21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
 - 1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 - 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

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

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

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

23. RECOVERY OF FUNDS

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

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

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

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

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

24. SEVERABILITY

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

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

26. SUSPENSION

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

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27. SUSTAINABLE PRACTICES

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

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

For more suggestions visit ECOLOGY's web page, Green Purchasing,

<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

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

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

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

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

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

c) By Mutual Agreement

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

d) In Event of Termination

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

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

29. THIRD PARTY BENEFICIARY

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

30. WAIVER

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

End of General Terms and Conditions