	Special City Council Meeting August 26, 2024 - 5:00 PM City Hall Council Chambers AGENDA
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I. CALL TO ORDER

II. LAND ACKNOWLEDGEMENT

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 Special Auburn City Council Meeting scheduled for Monday, August 26, 2024 at 5:00 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: 253 205 0468

Toll Free: 888 475 4499

Zoom: <https://us06web.zoom.us/j/89786081856>

A. Pledge of Allegiance

IV. ROLL CALL

V. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

B. Audience Participation

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

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

VI. ORDINANCES

A. Ordinance No. 6946 (Gaub)

An Ordinance granting to New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company, a Franchise for Small Wireless Facilities Telecommunications

(RECOMMENDED ACTION: Move to approve Ordinance No. 6946.)

VII. RESOLUTIONS

A. Resolution No. 5783 (Whalen)

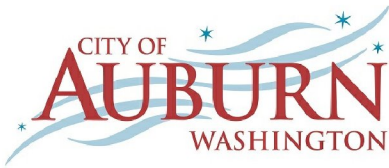
A Resolution authorizing the Mayor to sign a fourth amendment to an agreement between the City of Auburn and Totem Logistics, INC. related to Garbage/Waste Cleanup Services

(RECOMMENDED ACTION: Move to adopt Resolution No. 5783.)

VIII. EXECUTIVE SESSION

IX. 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:

Ordinance No. 6946 (Gaub)

Department:

Public Works

Attachments:

[Ordinance No. 6946](#)

Date:

August 12, 2024

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to approve Ordinance No. 6946.

Background for Motion:

This Ordinance would allow New Cingular Wireless PCS, LLC to continue to operate existing small wireless telecommunications facilities in the public ways within the city limits. New Cingular provides telecommunications services that includes but is not limited to personal wireless and data communications services.

Background Summary:

Section 20.02.040 of the Auburn City Code requires a franchise for any utility or telecommunications carrier or operator to use public ways of the City and to provide service to persons or areas inside or outside of the City.

New Cingular Wireless PCS, LLC has applied for a new franchise agreement to continue to operate their existing small wireless telecommunications facilities in the public ways within the city limits as their current Franchise Agreement will expire in the near future. New Cingular provides telecommunications services that includes but is not limited to personal wireless and data communications services.

The proposed agreement is consistent with the City's standard franchise agreement language and requires that any new small wireless facilities sites and repairs, upgrades, or improvements to the existing facilities are permitted and managed through the City's permitting processes. The proposed agreement would be valid for a term of 15 years.

A staff presentation was given at the August 12, 2024 Study Session discussing draft Ordinance No. 6946. A Public Hearing to consider this application and hear public comment was held before the City Council on August 19, 2024, in accordance with Auburn City Code 20.04.040.

Ordinance No. 6946 authorizes Franchise Agreement No FRN24-0002 with New Cingular Wireless PCS, LLC subject to the terms and conditions outlined in the Ordinance.

Reviewed by Council Committees:

Councilmember: Tracy Taylor
Meeting Date: August 26, 2024

Staff: Ingrid Gaub
Item Number: ORD.A

ORDINANCE NO. 6946

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO NEW CINGULAR WIRELESS PCS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, A FRANCHISE FOR SMALL WIRELESS FACILITIES TELECOMMUNICATIONS

WHEREAS, New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Franchisee"), has applied for a non-exclusive Franchise for the right of entry, use, and occupation of certain "public ways" as defined in Auburn City Code 20.02.020.Z within the City of Auburn ("City"), expressly to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, over, under, along and/or across those public ways; and

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

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

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

Section 1. Definitions

For the purpose of this Franchise and the interpretation and enforcement thereof, definitions of words and phrases shall be in accordance with the definitions set forth in this Franchise and in Auburn City Code 20.02.020. If there is a conflict between any of the definitions set forth in this Franchise and the definitions set forth in Auburn City Code 20.02.020, the definitions in this Franchise shall govern to the extent of such conflict.

A. "ACC" or "City Code" means the Auburn City Code.

B. "Franchise" means this agreement approved by Ordinance No. 6946 of the City which authorizes Franchisee Facilities to provide Franchisee Services in the Franchise Area.

C. “Franchise Area” means all present and future public ways within the City limits as they currently exist and within any future adjusted boundaries of the City limits to the extent that the City has the authority to grant permission to use any of the foregoing. It does not include structures, including poles and conduit, located in the public way and, any other property owned by the City in its proprietary capacity.

D. “Franchisee Facilities” means any and all equipment, appliances, attachments, appurtenances and other items necessary for Telecommunications service as defined in Auburn City Code 20.02.020.II or “personal wireless services” as defined in Chapter 80.36.375 RCW that are located in the public way. It includes microcell, minor and small cell facilities, and strand-mounted units.

Franchisee Facilities do not include anything used to provide wireline services, front-haul or back-haul services, including fiber optic cables, coaxial cables, wires, conduit or other equipment, appliances, attachments and appurtenances. They do not include any equipment that is not within ten (10) feet of the pole (excluding any strand-mounted unit) or base station, or that is not within the public way, or that is covered under a separate franchise agreement or agreement.

E. “Franchisee’s Services” means the transmission and reception of information by wireless communications signals, including but not limited to personal wireless and data communications services, over Franchisee’s federally licensed frequencies, pursuant to all the rules and regulations of the Federal Communications Commission, and in accordance with the terms of this Franchise, for the benefit of wireless communications subscribers in and around the Franchise Area. However, Franchisee’s Services will not include the provision of “cable service”, as defined by 47 U.S.C. §522(6), as amended, for which a separate franchise would be required.

Section 2. Grant of Right to Use Franchise Area

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

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

C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Franchisee Facilities and Franchisee’s

Services, and it extends no rights or privilege relative to any facilities or services of any type, including Franchisee Facilities and Franchisee's Services, on public or private property elsewhere within the City.

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

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

F. The City reserves the right to change, regrade, relocate, abandon, or vacate any public way within the Franchise Area. If, at any time during the term of this Franchise, the City vacates any portion of the Franchise Area containing Franchisee Facilities, the City may reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which the Franchisee may continue to operate any existing Franchisee Facilities under the terms of this Franchise for the remaining period set forth under Section 4.

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

H. The Franchisee agrees to provide the City with complete contact information for any client, lessee, sub-lessee, customer, or other entity that Franchisee allows to utilize, control, access, or otherwise provides services to, who will also use the Franchisee Facilities to provide services to their clients and customers either inside or outside the City limits. Such contact information shall be provided to the City a minimum of sixty (60) days prior to the start of such anticipated use so that the City may determine if Franchisee's client, lessee, sub-lessee, customer, or other entity is required to obtain a franchise agreement with the City prior to such use. If the client, lessee, sub-lessee, customer, or other entity is required to obtain a franchise agreement with the City, then the Franchisee shall not allow use, control, access, or otherwise provide services to such entity until the required franchise agreement has been obtained.

Section 3. Notice

A. Written notices to the parties shall be sent by a nationally recognized overnight courier or by certified mail to the following addresses, unless a different address shall be designated in writing and delivered to the other party. Any such notice shall become effective upon receipt by certified mail, confirmed delivery by overnight courier, or the date stamped received by the City. Any communication made by e-mail or similar method will not constitute notice pursuant to this Franchise. For Franchisee, the emergency contact is the Network Operations Center at 800-832-6662.

City: Right-of-Way Specialist
Public Works Department - Transportation
City of Auburn
25 West Main Street
Auburn, WA 98001-4998
Telephone: (253) 931-3010
Email Address: rowusepermit@auburnwa.gov

with a copy to: City Clerk
City of Auburn
25 West Main Street
Auburn, WA 98001-4998

Franchisee: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Site No. City of Auburn Wireless Franchise Agreement (WA)
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319
Telephone: 1-877-231-5447
Emergency Contact: 800-832-6662
Email Address: RELeaseadmin@att.com

with a copy to: New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept – Network Operations
Site No. City of Auburn Wireless Franchise Agreement (WA)
208 S Akard Street
Dallas, TX 75202-4206
Telephone: 1-877-231-5447
Email Address: RELeaseadmin@att.com

B. Any changes to the above-stated Franchisee information shall be sent to the City's Right-of-Way Specialist, Public Works Department –

Transportation Division, with copies to the City Clerk, referencing the title of this Franchise.

C. The above-stated Franchisee voice telephone numbers shall be staffed at least during normal business hours, Pacific time zone. The City may contact Franchisee at the following number for emergency or other needs outside of normal business hours of the Franchisee: (800)-832-6662.

Section 4. Term of Franchise

A. This Franchise shall run for a period of fifteen (15) years, from the effective date of Franchise Acceptance specified in Section 5 of this Franchise.

B. Automatic Extension. If the Franchisee fails to formally apply for a new franchise agreement prior to the expiration of this Franchise's term or any extension thereof, this Franchise automatically continues month to month until a new franchise agreement is applied for and approved under the then current process or until either party gives written notice at least one hundred and eighty (180) days in advance of intent to cancel this Franchise.

Section 5. Acceptance of Franchise

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

B. If the Franchisee fails to file the Franchise Acceptance with the City Clerk within thirty (30) days after the effective date of the ordinance approving the Franchise as described in Section 27 of this Franchise, the City's grant of the Franchise will be null and void.

Section 6. Location, Siting, Construction and Maintenance

A. The Franchisee shall apply for, obtain, and comply with the terms of all permits, approvals and facilities lease agreements as required under applicable law for any work done within the public way or to site Franchisee Facilities on any facilities, structures or poles owned by third parties within the public way or on any City-owned facilities, structures, or poles within the public way. City Council authorizes the Director of Public Works or the Director's designee to negotiate and execute all agreements necessary for the use of City owned property. Franchisee

shall comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work.

Franchisee shall be required to submit the appropriate application to the City related to siting within the public way as provided under this Franchise, for review and approval by the City Engineer for any and all locations in the public way, whether Franchisee is proposing to locate on City owned facilities, structures or poles, or on third party owned facilities, structures or poles. The siting application shall be in addition to any other required permits for construction, building, land use, zoning, lease agreements or other approvals as required by applicable law.

B. Franchisee agrees to coordinate its activities with the City and all other utilities located in the public way within which Franchisee is undertaking its activity.

C. The City expressly reserves the right to prescribe how and where Franchisee's Facilities shall be installed within the public way and may require the adjustment, securement, removal, relocation and/or replacement thereof in the public interest and safety at the expense of the Franchisee as provided for in Chapter 35.99 RCW.

D. Before beginning any work within the public way, the Franchisee will comply with the One Number Locator provisions of Chapter 19.122 RCW to identify existing utility infrastructure.

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

Section 7. Repair and Emergency Work

In the event of an emergency, the Franchisee may commence repair and emergency response work as required under the circumstances. The Franchisee shall notify the City telephonically during normal business hours (at 253-931-3010) and during non-business hours (at 253-876-1985) as promptly as possible, before such repair or emergency work commences, and in writing as soon thereafter as possible. Such notification shall include the Franchisee's emergency contact

phone number for the corresponding response activity. The City may commence emergency response work, at any time, without prior written notice to the Franchisee, but shall notify the Franchisee in writing as promptly as possible under the circumstances. Franchisee will reimburse the City for the City's actual cost of performing emergency response work.

Section 8. Damages to City and Third-Party Property

Franchisee agrees that if any of its actions, or the actions of any person, agent, or contractor acting on behalf of the Franchisee under this Franchise impairs or damages any City property, survey monument, or property owned by a third-party, Franchisee will restore, at its own cost and expense, the property to a safe condition. Upon returning property to a safe condition, the property shall then be returned to the condition it was in immediately prior to being damaged (if the safe condition of the property is not the same as that which existed prior to damage). All repair work shall be performed and completed to the satisfaction of the City Engineer.

Section 9. Location Preference

A. Any structure, equipment, appurtenance, or tangible property of a utility or other franchisee, other than the Franchisee's, which was installed, constructed, completed, or in place prior in time to Franchisee's application for a permit to construct or repair Franchisee's Facilities under this Franchise shall have preference as to positioning and location with respect to the Franchisee's Facilities. However, to the extent that the Franchisee's Facilities are completed and installed prior to another utility or other franchisee's submittal of a permit for new or additional structures, equipment, appurtenances, or tangible property, then the Franchisee's Facilities will have priority. These rules governing preference will continue when relocating or changing the grade of any City road or public way. A relocating utility or franchisee will not cause the relocation of another utility or franchisee that otherwise would not require relocation. This Section shall not apply to any City facilities or utilities that may in the future require the relocation of Franchisee's Facilities. Such relocations shall be governed by Section 10 and Chapter 35.99 RCW.

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

Section 10. Relocation of Franchisee's Facilities

A. Except as otherwise so required by law, Franchisee agrees to relocate, remove, or reroute its facilities as ordered by the City Engineer at no expense or liability to the City, except as may be required by Chapter 35.99 RCW. Pursuant to the provisions of Section 14, Franchisee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change, relocation, abandonment, or vacation of the public way.

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

Section 11. Abandonment and/or Removal of Franchisee Facilities

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

B. Franchisee may ask the City in writing to abandon, in whole or in part, all or any part of the Franchisee's Facilities. Any plan for abandonment of Franchisee's Facilities must be approved in writing by the City.

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

Section 12. Undergrounding

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

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

utility vaults. Fair share will be determined in comparison to the total number and size of all other utility facilities being undergrounded.

Section 13. Franchisee Information

A. Franchisee agrees to supply, at no cost to the City, any information reasonably requested by the City to coordinate municipal functions with Franchisee's activities and fulfill any municipal obligations under state law. This information will include, at a minimum, as-built drawings of Franchisee Facilities, including installation inventory, and maps and plans showing the location of existing Franchisee Facilities and planned Franchisee Facilities (to the extent that maps and plans showing planned facilities are available) within the public ways. This information may be requested either in hard copy or electronic format, compatible with the City's data base system, including the City's Geographic Information System (GIS) data base. Upon the City's request, Franchisee will inform the City of its long-range plans for installation, if such plans are available, so that the City may coordinate any future development with Franchisee's proposed designs. If such plans are not immediately available, are not finalized, or are proprietary in nature, then Franchisee is under no obligation to provide such information to the City. Should the Franchisee fail, for any reason, to provide information regarding its long-range plans or planned Franchisee Facilities upon the City's request, then the City is under no obligation to coordinate with, account for or authorize their facilities in future public way projects or the City's long-range plans.

B. The parties understand that Chapter 42.56 RCW and other applicable law may require public disclosure of information given to the City.

Section 14. Indemnification and Hold Harmless

A. Franchisee shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Franchisee's acts, errors or omissions, or from the conduct of Franchisee's business, or from any activity, work or thing done, permitted, or suffered by Franchisee arising from or in connection with this Franchise, except only such injury or damage as shall have been occasioned by the sole negligence or willful misconduct of the City.

However, should a court of competent jurisdiction determine that this Franchise 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 Franchisee and the City, its officers, officials, employees, and volunteers, the Franchisee's liability hereunder shall be only to the

extent of the Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Franchisee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Franchise.

B. The Franchisee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Franchisee's Facilities caused by maintenance and/or construction work performed by, or on behalf of, the City within the Franchise Area or any other City road, public way, or other property, except to the extent any such damage or loss is directly caused by the negligence or willful misconduct of the City, or its agent performing such work.

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

Section 15. Insurance

A. The Franchisee shall carry and maintain for the duration of this Franchise and as long as Franchisee has Facilities in the public way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Franchise and use of the public way.

B. No Limitation. The Franchisee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of the Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance. The Franchisee shall maintain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall 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. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be included as an additional insured under the Franchisee's Commercial General Liability insurance policy by endorsement with respect to this Agreement using ISO endorsement CG 20 12 05 09 if the Franchise is considered a master permit as defined by RCW 35.99.010, or CG 20 26 07 04 if it is not, or substitute endorsement providing at least as broad coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

3. Contractors Pollution Liability insurance shall be in effect throughout the entire Franchise covering losses caused by pollution conditions that arise from the operations of the Franchisee. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

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

5. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Franchisee's Commercial General Liability and Automobile Liability insurance. The City shall be included as an additional insured on the Franchisee's Excess or Umbrella Liability insurance policy.

D. Minimum Amounts of Insurance. The Franchisee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.

2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

3. Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and employer's liability insurance with limits of not less than \$1,000,000 per accident, per disease per employee and per disease policy limit.

5. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Franchisee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

E. Other Insurance Provisions. Franchisee's Commercial General Liability, Automobile Liability, Excess or Umbrella Liability, Contractors Pollution Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Franchisee's insurance and shall not contribute with it.

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

G. Subcontractors. The Franchisee shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Franchisee-provided insurance as set forth herein, including limits no less than what is required of Franchisee under this Franchise. The Franchisee shall ensure that the City is included as an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

H. Verification of Coverage. The Franchisee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of this Franchise. Upon request by the City in the event of a dispute of coverage the Franchisee shall furnish certified copies of all required applicable insurance policies, including endorsements, required in this Franchise and evidence of all subcontractors' coverage.

I. Notice of Cancellation. Franchisee shall provide the City with written notice of any policy cancellation within ten (10) calendar days of their receipt of such notice.

J. Failure to Maintain Insurance. Failure on the part of the Franchisee to maintain the insurance as required shall constitute a material breach of this Franchise, upon which the City may, after giving five business days' notice to the Franchisee to correct the breach, terminate this Franchise.

K. Franchisee – Self-Insurance. Franchisee will have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City. If the Franchisee is self-insured or becomes self-insured during the term of the Franchise, Franchisee or its affiliated parent entity shall comply with the following: (i) Franchisee shall submit a letter to the City stating which of the above required insurance provisions in this Section 15 Franchisee proposes to self-insure; (ii) provide the City, upon request, a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (iii) Franchisee or its parent company is responsible for all payments within the self-insured retention; and (vi) Franchisee assumes all defense and indemnity obligations as outlined in Section 14.

Section 16. Financial Security

The Franchisee will provide the City with a financial security in the amount of Fifty Thousand Dollars (\$50,000.00) running for, or renewable for, the term of this Franchise, in a form and substance acceptable to the City. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise, the City may recover jointly and severally from the principal and any surety of that financial security any damages suffered by the City as a result Franchisee's failure to comply, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities. Franchisee specifically agrees that its failure to comply with the terms of Section 19 will constitute damage to the City in the monetary amount set forth in that section. Any financial security will not be construed to limit the Franchisee's liability to the security amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 17. Successors and Assignees

A. All the provisions, conditions, regulations, and requirements contained in this Franchise are binding upon the successors, assigns of, and independent contractors of the Franchisee, and all rights and privileges, as well as all obligations and liabilities of the Franchisee will inure to its successors, assignees, and contractors equally as if they were specifically mentioned herein wherever the Franchisee is mentioned.

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

C. Franchisee and any proposed assignee or transferee will provide and certify the following to the City not less than ninety (90) days prior to the proposed date of transfer: (1) Complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (2) All information required by the City of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (3) An application fee in the amount established by the City's fee schedule, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

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

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

Section 18. Dispute Resolution

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

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise will be governed by and construed in accordance with the laws of the State of Washington. If any suit, arbitration, or other proceeding is instituted to enforce any term of this Franchise, the parties specifically understand and agree that venue will be exclusively in King County, Washington. The prevailing party in any such action will be entitled to its attorneys' fees and costs.

Section 19. Enforcement and Remedies

A. If the Franchisee willfully violates or fails to comply with any of the provisions of this Franchise through willful or unreasonable negligence or fails to comply with any notice given to Franchisee under the provisions of this Franchise, the City may, at its discretion, provide Franchisee with written notice to cure the breach within thirty (30) days of notification. If the City determines the breach cannot be cured within thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Franchisee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification, (2) terminate Franchisee's use of the specific portion(s) of the public way to which the default(s) pertains at the discretion of the City Engineer, or (3) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the financial guarantee set forth in Section 16 for every day after the expiration of the cure period that the breach is not cured.

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

Section 20. Compliance with Laws and Regulations

A. This Franchise is subject to, and the Franchisee will comply with all applicable federal and state or City laws, regulations, and policies (including all applicable elements of the City's comprehensive plan), in conformance with federal laws and regulations, affecting performance under this Franchise. The Franchisee will be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

B. The City reserves the right at any time to amend this Franchise to conform to any federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation enacted, amended, or adopted after the effective date of this Franchise if it provides Franchisee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. The

amendment will become automatically effective on expiration of the notice period unless, before expiration of that period, the Franchisee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations or within a time frame that the City deems reasonable but not to be less than thirty (30) days, the City may enact the proposed amendment, by incorporating the Franchisee's concerns to the maximum extent the City deems possible.

C. The City may terminate this Franchise upon thirty (30) days written notice to the Franchisee if the Franchisee fails to comply with such amendment or modification.

Section 21. License, Fees, Tax and Other Charges

Franchisee shall pay promptly and before they become delinquent, all fees and charges for all applicable permits, licenses and construction approvals imposed by the City for Franchisee's permitted use of the Franchisee's Facilities within the public way. This Franchise will not exempt the Franchisee from any future license, tax, or charge, which the City may adopt under state or federal law for revenue or as reimbursement for use and occupancy of the Franchise Area.

Section 22. Consequential Damages Limitation

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

Section 23. Severability

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

Section 24. Titles

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

Section 25. Implementation.

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

Section 26. Entire Franchise

This Franchise, as subject to the appropriate city, state, and federal laws, codes, and regulations, and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. All previous franchise agreements between the parties pertaining to Franchisee's operation of its Facilities are hereby superseded.

Section 27. Effective Date

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

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM

Shawn Campbell, MMC, City Clerk

Jason Whalen, City Attorney

PUBLISHED: _____

Exhibit A

STATEMENT OF ACCEPTANCE

New Cingular Wireless PCS, LLC, for itself, its successors, and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

Franchisee Name: New Cingular Wireless PCS, LLC
Address: 1025 Lenox Park Blvd NE, 3rd Floor
City, State, Zip: Atlanta GA 30319

By: _____
Its: _____

By: _____ Date: _____
Name: _____
Title: _____

STATE OF _____)
)ss.
COUNTY OF _____)

On this ____ day of _____, 20__, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of _____ the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

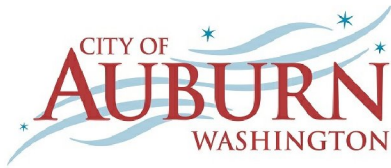
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

Signature

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

MY COMMISSION EXPIRES: _____

Ordinance No. 6946
June 24, 2024
Franchise Agreement No. FRN24-0002
Page 18 of 18



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5783 (Whalen)

Date:

August 22, 2024

Department:

Legal

Attachments:

[Resolution No. 5783](#)

[Agreement](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to adopt Resolution No. 5783.

Background for Motion:

More than 24,000 pounds of trash, debris and other garbage are removed from the streets, parks, parking lots and trails of Auburn per month under this contract. By ensuring that this work remains funded we are showing we care for the health, safety, well-being and the overall appearance of our City.

Background Summary:

On December 6th, 2022, the City entered into a contract with Totem Logistics Inc. (d/b/a) Junk King ("Junk King") for additional garbage and waste cleanup services, with work beginning in January of 2023. Originally funded by American Rescue Plan Act ("ARPA") funds, in January of 2024 the source of funding was changed to come from the City's solid waste enterprise fund. No general fund monies past or present have been used to fund this contract.

Since the start of this contract, Junk King has removed more than 482,000 pounds of trash from the streets, parks, parking lots, and trails of Auburn. Not approving this contract amendment will result in an interruption of this service resulting in not only a substantial negative visual appearance throughout the City, but a significant health and safety impact as well.

Reviewed by Council Committees:

Councilmember: Kate Baldwin

Staff:

Jason Whalen

Meeting Date: August 26, 2024

Item Number:

RES.A

RESOLUTION NO. 5783

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO
SIGN A FORTH AMENDMENT TO AN AGREEMENT
BETWEEN THE CITY OF AUBURN AND TOTEM LOGISTICS,
INC. RELATED TO GARBAGE/WASTE CLEANUP SERVICES

WHEREAS, following a City issued request for proposals, the City entered a December 6, 2022 agreement for \$350,000 in garbage and waste cleanup services with Totem Logistics, Inc. (d/b/a Junk King, "Junk King");

WHEREAS, section 17 of the agreement permits the parties to amend the agreement in writing; and

WHEREAS, the City has reached the contracts compensation limit, and the City needs additional ongoing garbage and waste cleanup services from Junk King. Accordingly, after reviewing the performance history under the agreement the parties wish to amend the agreement time to increase the compensation limit by an additional \$166,000 (for a total not to exceed amount of \$906,000). The proposed fourth amendment to the agreement is attached to this resolution as Exhibit A;

WHEREAS, the agreement and the first amendment were funded by City budgeted American Rescue Plan Act (ARPA) funds. Funding for amendments two, three and this proposed fourth amendment is available through the City's solid waste fund;

WHEREAS, enacting this fourth amendment to the Agreement will enable Junk King to continue providing its garbage and waste cleanup services throughout the City, which is in the best interests of the City and the health and safety of its residents.

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

Section 1. The Mayor is hereby authorized to sign a fourth amendment to the garbage/waste cleanup services agreement between the City and Totem Logistics, Inc., in accordance with Exhibit A to this Resolution.

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

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

Dated and Signed: _____

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Jason Whalen, City Attorney

Totem Logistics Inc, – Garbage/Waste Cleanup Services
Fourth Amendment – Budget Increase

THIS AMENDMENT is made and entered into on this _____ of _____, 2024 by and between the **CITY OF AUBURN (“City”)**, a municipal corporation of the State of Washington, and **Totem Logistics Inc, DBA Seattle Junk King. (“Contractor”)**, to amend the Contract for Services Agreement between the parties dated December 6, 2022.

RECITALS:

1. On December 6, 2022, the City and the Contractor entered into a contract for services (COA 2023-2024 Garbage/Waste Cleanup Services or “Original Contract”) which included a not to exceed compensation amount of \$350,000 based on the anticipated work and the available City budget at the time.
2. Section 17 of the Original Contract allows for amendments and modifications to be executed in writing by both parties.
3. On October 4, 2023 the Parties amended the Original Contract (First Amendment) to increase the compensation limit to \$445,000. And again on January 3, 2024 (Second Amendment) increasing the total not to exceed compensation limit to \$670,000. And again on June 10, 2024 (Third Amendment) increasing the total not to exceed compensation limit to \$739,500. The Original Contract and the amendments are collectively herein referred to as the “Contract”.
4. The Parties wish to amend the Contract for a fourth time to increase the compensation limit by an additional \$166,500, bringing the total not to exceed compensation limit to \$906,000.

AMENDMENT

NOW THEREFORE in consideration of their mutual covenants, conditions and promises, the Parties agree to amend the Contract as follows:

1. Section 3 of the Contract (entitled “Compensation”) is amended to read:

Compensation

As compensation for the Contractor’s performance of the services provided for in this Contract, the City will pay the Contractor the fees and costs at the costs and rates described in **Exhibit B** subject to additions and deductions by Change Order as provided in the contract documents. These payments will be full compensation for work performed or services rendered for all labor, materials, supplies, equipment, overhead, profit, and incidentals necessary to complete the work. The payment includes sales tax, if any. No payment shall be remitted by the City to the Contractor for any billing cycle until the City has received and approved of a Statement of Intent to Pay Prevailing Wages form for the entire project and

appropriate billing cycle payrolls have been approved by the State Department of Labor & Industries.

The Contractor will submit invoices to the City in the manner and on or before those dates described in **Exhibit B**. A sample invoice is attached to this Contract as **Exhibit C**. Upon acceptance of the invoice and receipt of the required intent and certified payrolls, the City will process the invoice in the next billing/claim cycle. **This Contract number (# COA 2023-2024 Garbage/Waste Cleanup Services Contract) must appear on all invoices submitted.** Copies of original supporting documents will be supplied to the City upon request.

Unless otherwise agreed to in writing the total contract compensation to Contractor shall not exceed ~~SEVENNINE HUNDRED THIRTYSIX THOUSAND DOLLARS AND 00/100 (\$739,500.00)~~ **906,000.00**. The Contractor will not undertake any work or otherwise financially obligate the City in excess of this amount without prior written authorization consistent with this Contract.

2. EXHIBIT B to the Contract (entitled “Payment Terms”) is amended to read:

**EXHIBIT B
Payment Terms**

Unless otherwise agreed to in writing the total contract compensation to Contractor shall not exceed ~~SEVENNINE HUNDRED THIRTYSIX THOUSAND DOLLARS AND 00/100 (\$739,500.00)~~ **906,000.00**.

Work shall be invoiced by the Contractor based upon semimonthly billing cycles. The first billing cycle of the month shall include dumping fees, hours of work performed at the contract rates shown below and any other appropriate billing expenses incurred from the 1st through the 15th calendar day of the month with the second billing cycle to include dumping fees, work performed and any other appropriate billing expenses incurred from the 16th through the last calendar day of the month.

Contract Rates

Description	Unit	Unit Proposal
Bid Item 1 – Hourly Wage:		
Administrative Personnel	Per Hour	\$ <u>110.00</u>
Lead Onsite Technician	Per Hour	\$ <u>99.40</u>
Junior Onsite Technician	Per Hour	\$ <u>88.04</u>
Equipment Operator	Per Hour	\$ <u>131.86</u>
Truck Driver	Per Hour	\$ <u>125.31</u>
*Bid Item 2 – Material Disposal	Per Ton	\$ <u>165.61</u>

**King County Dump Fees effective January 1, 2022, but subject to change.*

The Contractor shall endeavor to have invoices submitted to the City by the 23rd calendar day of the month for work performed in the months first semimonthly billing cycle (1st – 15th) and by the 8th calendar day of the month following the second semimonthly billing cycle (16th – last day of the month). All invoices submitted by the Contractor shall be in a form similar to that depicted in **Exhibit C** below or some other form acceptable to the City. Included with all invoices submitted to the City shall be the certified payroll approved by Washington State Labor & Industries. Upon receipt of each invoice submitted by the Contractor, the City shall work diligently to review and approve of said invoice or request additional documentation from the Contractor. Upon approval of a submitted invoice the City will process the invoice for payment in the City’s next available check run.

All invoices should be submitted to the City’s designated contract representative and in the manner described in Section 12 of the Contract.

3. All other terms of the Contract are to remain the same.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed effective as of the date set forth above.

CITY OF AUBURN	TOTEM LOGISTICS INC, DBA: SEATTLE JUNK KING
Nancy Backus, Mayor Approved as to form: Jason Whalen, City Attorney	David Scott Page, President