

City Council Study Session

July 25, 2016 - 5:30 PM

Auburn City Hall

AGENDA

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I. CALL TO ORDER

A. Roll Call

II. ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS

III. AGENDA ITEMS FOR COUNCIL DISCUSSION

A. Pioneer Cemetery Landmark Status (10 Minute Presentation/5 Minute Q&A) (Faber)

Pioneer Cemetery presentation as it relates to being named a landmark

B. City Code Amendments Relating to the Comprehensive Plan (5 Minute Presentation/5 Minute Q&A)* (Snyder)

Amendments to Chapter 14.22, correcting city code to reference recently adopted Comprehensive Plan documents

C. Ordinance No. 6606 (5 Minute Presentation/ 5 Minute Q&A)* (Snyder)

An Ordinance of the City Council of the City of Auburn, Washington, granting to City of Enumclaw Natural Gas, a franchise for gas utility

D. Ordinance No. 6611 (5 Minute Presentation/5 Minute Q&A)* (Snyder)

An Ordinance of the City Council of the City of Auburn, Washington, amending Section 17.14.005 of the Auburn City Code, relating to civil plan preparation, submittal and approval

E. Port of Seattle Economic Development Partnership Program (5 Minute Presentation/5 Minute Q&A)* (Hinman)

Port of Seattle Economic Development Partnership Program Grant Application

F. Main Street Urban Design (20 Minute Presentation/15 Minute Q&A)* (Snyder)

Presentation of final design and budget for improvements to Main Street between C Street SW and F Street SE based on citizen, staff, and Council feedback

G. Community Sustainability (15 Minute Presentation/10 Minute Q&A) (Snyder)

A review of City of Auburn Projects, Programs, and Activities

IV. 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.

**Denotes attachments included in the agenda packet.*



AGENDA BILL APPROVAL FORM

Agenda Subject:

Pioneer Cemetery Landmark Status (10 Minute Presentation/5Minute Q&A)

Date:

July 12, 2016

Department:

Parks/Art and Recreation

Attachments:

No Attachments Available

Budget Impact:

\$0

Administrative Recommendation:

Consider Pioneer Cemetery being named a landmark

Background Summary:

The City of Auburn is seeking designation of the Pioneer Cemetery as a City of Auburn Landmark through the King County Historic Preservation Program. Staff of the City as well as Jennifer Meisner, Preservation Officer with King County will discuss the process for nomination. In addition the history of the cemetery as well as its significance to the Auburn community will be presented.

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

Faber

Meeting Date: July 25, 2016

Item Number: DI.A



AGENDA BILL APPROVAL FORM

Agenda Subject:

City Code Amendments Relating to the Comprehensive Plan (5 Minute Presentation/5 Minute Q&A)

Date:

July 18, 2016

Department:

Community Development & [Chapter 14.22 Updates](#)
Public Works

Attachments:**Budget Impact:**

\$0

Administrative Recommendation:**Background Summary:**

On December 14, 2015 City Council took action on Ordinance No. 6584 to adopt the 2015 Core Comprehensive Plan, the Land Use Element, the Housing Element, the Capital Facilities Element, the Utilities Element, the Economic Development Element, the Parks and Recreation Element, and a series of supporting planning documents/appendices.

Chapter 14.22 of the Auburn City Code is titled "Comprehensive Plan". Chapter 14.22 is the section of City Code that incorporates the specific names of the chapters and documents that comprise the full Comprehensive Plan.

The purpose of the draft amendments to Chapter 14.22 is to update the names of the documents so that they are consistent with those titles that are used in Ordinance No. 6584.

Reviewed by Council Committees:

Other: Legal, Planning

Councilmember:**Staff:**

Snyder

Meeting Date: July 25, 2016

Item Number: DI.B

Chapter 14.22 COMPREHENSIVE PLAN

Sections:

- 14.22.010 Purpose.
- 14.22.020 Comprehensive plan adopted.
- 14.22.030 Early and continuous public participation.
- 14.22.040 Definitions.
- 14.22.050 Conformance and consistency.
- 14.22.060 Amendments and exceptions.
- 14.22.070 Periodic assessment.
- 14.22.080 Docketing.
- 14.22.090 Proposals for amendments.
- 14.22.100 Public hearing required by planning commission.
- 14.22.110 Decision criteria for plan amendments.

14.22.010 Purpose.

The city of Auburn comprehensive plan establishes the principles, goals, objectives and policies guiding future development of the city in compliance with Chapter 36.70A RCW, the Washington State Growth Management Act. The purpose of this chapter is to establish procedures and review criteria for amending the comprehensive plan and to provide provisions for public participation in the planning process.

14.22.020 Comprehensive plan adopted.

The city of Auburn comprehensive plan, as amended in April 1995 to comply with the Growth Management Act and as may subsequently be amended thereafter, consisting of the following elements, is hereby adopted by reference.

A. Elements and Chapters of the Comprehensive Plan.

1. Core Comprehensive Plan
2. The Land Use Element
3. The Housing Element
4. The Capital Facilities Element

5. The Utilities Element

6. The Transportation Element

7. The Economic Development Element

8. The Parks and Recreation Element

9. Comprehensive Plan Map.

Appendix A – Auburn Community Vision Report

Appendix B –Auburn Housing Needs and Characteristics Assessment

Appendix C – Auburn Housing Element Checklist

Appendix D – Auburn Health Impact Assessment

Appendix E – Auburn Public Participation Plan

Appendix F.1 – King County Buildable Lands Analysis

Appendix F.2 – Pierce County Buildable Lands Analysis

Appendix G – Auburn Airport Master Plan

Appendix H – Auburn Community Profile

Appendix I – Auburn Greenhouse Gas Inventory

Appendix J – Parks, Arts & Recreation Open Space Plan

B. Additional Documents of the Comprehensive Plan, that are incorporated by reference.

1. Comprehensive Transportation Plan.

2. Capital Facilities Plan.

3. Shorelines Management Program.

4. Comprehensive Water Plan

5. Comprehensive Sewer Plan
6. Comprehensive Drainage Plan .
7. Auburn Downtown Plan (May 2001).
8. Lakeland Hills Plan (1988).
9. Auburn Adventist Academy Plan (1991).
10. Auburn North Business Area Plan (1992).

14.22.030 Early and continuous public participation.

A. The city of Auburn encourages early and continuous public participation in the comprehensive planning process, and in other city-initiated planning programs that may be carried out under the overall framework of the plan. This chapter contains procedures for the consideration of potential amendments to any chapter or element of the comprehensive plan.

B. The director shall broadly disseminate information regarding the annual docketing and amendment process and identify a deadline for submittal of applications for inclusion in the annual amendment cycle. Applications submitted after the established deadline will be considered during the following annual amendment process.

14.22.040 Definitions.

A. "Amendment" means any change in the wording, context or substance of the comprehensive plan or a change to the comprehensive land use map or any other map contained or referenced within any plan chapter or element.

B. "Area-wide map amendment" means an amendment to the comprehensive land use map involving four or more contiguous or adjacent parcels under different ownership that would be similarly affected by a proposed map amendment.

C. "City-initiated planning program" means a planning program begun by resolution of the city council, or the planning commission, addressing a geographic sub-area of the city's urban growth area (such as a special area plan) or addressing a specific functional area (such as a utility plan).

D. "Director" means the director of the department of planning and development or his/her designee.

E. "Docket" means a list of suggested amendments to the comprehensive plan maintained by the director.

F. "Planning commission" is an appointed group serving in an advisory capacity to the city council as specified in Chapter 2.45 ACC.

14.22.050 Conformance and consistency.

The zoning, land division and other development codes contained or referenced within Auburn City Code shall be consistent with and implement the intent of the comprehensive plan. Capital budget decisions shall be made in conformity with the comprehensive plan.

14.22.060 Amendments and exceptions.

A. The comprehensive plan may only be amended pursuant to this chapter, no more frequently than once each calendar year as part of the annual cycle established herein, except as provided in subsection C of this section.

B. All amendments shall be considered concurrently so as to assess their cumulative impact.

C. Exceptions. Pursuant to Chapter 35A.70 RCW, under the following circumstances, amendments may be processed separately and in addition to the annual amendment cycle:

1. If an emergency exists, which is defined as an issue of community-wide significance that addresses the public health, safety, and general welfare;
2. To resolve an appeal of a comprehensive plan filed with the Growth Management Hearings Board or with the court;
3. To adopt or amend a shoreline master program under the procedures set forth in Chapter 90.58 RCW;
4. The initial adoption of a subarea plan or new element to the comprehensive plan;
5. The amendment of the capital facilities plan may occur concurrently with the adoption or amendment of the city budget.

14.22.070 Periodic assessment.

A. The director will periodically monitor the comprehensive plan and development regulations that implement the plan, assess the need for any amendments, and may add potential changes to the docket as specified in ACC 14.22.080. The assessment shall be based on, at a minimum:

1. Whether growth and development are occurring at a faster or slower rate than envisioned in the plan;
2. Whether the capacity to provide adequate services has diminished or increased;
3. The availability of land to meet demand;
4. Whether the assumptions on which the plan is based remain valid;
5. The effect of the plan on land values and housing is contrary to plan goals;
6. Whether sufficient change or lack of change in circumstances dictates the need for an amendment.

B. The city shall complete a comprehensive review of the comprehensive plan and development regulations in order to update it as appropriate and to ensure continued compliance with the Growth Management Act pursuant to RCW 36.70A.130.

14.22.080 Docketing.

A. In accordance with RCW 36.70A.470, suggested changes to the comprehensive plan which are not specific to any site may be submitted by any individual, organization or general or special purpose government and shall be coordinated by the director. The director shall create appropriate forms for such submittals that require the submittal to address the criteria outlined in subsection C of this section. The list shall be known as the “docket” and is the means to suggest a change or identify a deficiency in the comprehensive plan. An item may be submitted to the docket at any time during the calendar year. There is no fee associated with submitting an item to the docket.

B. Annually, the director shall review such suggestions with the city council and determine whether to direct them to the planning commission for consideration. The city council may decline to consider any item from the docket.

C. Proposed amendments on the docket may be considered appropriate for action if the following criteria are met:

1. A proposed comprehensive plan text amendment addresses a matter appropriate for inclusion in the plan;
2. The proposal demonstrates a strong potential to serve the public interest by implementing specifically identified goals and policies of the plan;

3. The proposal addresses the interests and changed needs of the entire city as identified in the plan;
4. The proposal does not raise policy or land use issues that are more appropriately addressed by an ongoing work program approved by the city council;
5. The proposal can be reasonably reviewed and evaluated, given existing staff and budget resources; and
6. The proposal has not been voted on by the city council in the last three years. This time limit may be waived by the city council if it is demonstrated that there exists either an obvious technical error or a change in circumstances that justifies the need for the amendment.

D. Any item on the docket that is not determined to be appropriate for action may be proposed under ACC 14.22.090, provided it is timely and properly filed.

14.22.090 Proposals for amendments.

A. Privately Initiated Amendments. A proposed amendment to the comprehensive plan, other than docketing pursuant to ACC 14.22.080, may be submitted by any individual, organization, corporation or partnership; general or special purpose government other than the city; or entity of any kind; provided, that if the proposal involves specific real property, the property owner has provided written consent to the proposal.

B. City-Initiated Amendments. The city council or the planning commission may initiate a planning program or any type of amendment to the comprehensive plan, regardless of whether site-specific or area-wide in scope.

C. Application. Except for city-initiated planning programs or individual amendments, all proposed amendments shall be submitted to the director on an approved form, together with required filing fees. An environmental checklist shall also be submitted if required. A proposed amendment request shall include the following information:

1. Name, address, phone number and e-mail address of the applicant and contact person and written consent of the property owner if the proposal affects specific property;
2. If the amendment concerns specific property, both a general description and legal description of the property;
3. A description of the plan amendment being requested;

4. Written statements addressing the purpose of the amendment, why it is being requested, and how it is consistent with the criteria listed in ACC 14.22.110;

5. If the request is for an amendment to the comprehensive land use map, an indication of what concurrent change in zoning is also being requested.

D. Department Report. The director shall prepare an assessment and recommendation on all proposed amendment requests and include this within a report that evaluates all requests concurrently.

14.22.100 Public hearing required by planning commission.

A. The planning commission shall hold at least one public hearing on all proposed amendments to the comprehensive plan. Notice of such public hearing shall be given pursuant to Chapter 1.27 ACC and, at a minimum, include the following:

1. For site-specific plan map amendments:

a. Notice shall be published once in the official newspaper of the city not less than 10 calendar days prior to the date of public hearing;

b. Notice shall be mailed by first class mail to all property owners of record within a radius of 300 feet of the proposed map amendment request, not less than 10 calendar days prior to the public hearing;

2. For area-wide plan map amendments:

a. Notice shall be published once in the official newspaper of the city not less than 10 calendar days prior to the date of public hearing;

b. Notice shall be mailed by first class mail to all property owners of record within the area subject to the proposed amendment;

c. Notice shall be posted in at least two conspicuous locations in the area subject to the proposed amendment not less than 10 calendar days prior to the date of the public hearing.

B. Notwithstanding the above, the director may expand the minimum noticing provisions noted above as deemed necessary.

C. Planning Commission Recommendation. The planning commission shall conduct a public hearing on all potential comprehensive plan amendments and shall make and forward a recommendation on each to the city

council. The planning commission shall adopt written findings and make a recommendation consistent with those findings to the city council.

D. The city council, if it elects to amend the comprehensive plan, shall adopt written findings and adopt said amendments by ordinance.

E. State Review. All comprehensive plan amendments considered by the planning commission shall be forwarded for state agency review consistent with RCW 36.70A.106.

F. Any appeal of an amendment to the comprehensive plan shall be made in accordance with Chapter 36.70A RCW.

14.22.110 Decision criteria for plan amendments.

A. The comprehensive plan was developed and adopted after significant study and public participation. The principles, goals, objectives and policies contained therein shall be granted substantial weight when considering a proposed amendment. Therefore, the burden of proof for justifying a proposed amendment rests with the applicant, who must demonstrate that the request complies with and/or relates to the following decision criteria:

1. The proposed change will further and be consistent with the goals and objectives of the plan and the plan will remain internally consistent;
2. Whether the capacity to provide adequate services is diminished or increased;
3. Assumptions upon which the comprehensive plan is based are found to be invalid;
4. A determination of change or lack of change in conditions or circumstances has occurred since the adoption of the latest amendment to the specific section of the comprehensive plan that dictates the need for a proposed amendment;
5. If applicable, a determination that a question of consistency exists between the comprehensive plan and Chapter 36.70A RCW, the countywide planning policies for either King and/or Pierce County, as appropriate, and Vision 2040: Growth and Transportation Strategy for the Puget Sound Region;
6. If the request is to change the land use designation of a specific property on the comprehensive land use map, the applicant must demonstrate one of the following:

- a. The current land use designation was clearly made in error or due to an oversight;
- b. The proposed land use designation is adjacent to property having a similar or compatible designation, or other conditions are present to ensure compatibility with surrounding properties;
- c. There has been a change in conditions since the current land use designation came into effect.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6606 (5 Minute Presentation/ 5 Minute Q&A)

Date:

July 14, 2016

Department:

CD & PW

Attachments:

[Draft Ordinance No. 6606](#)

Budget Impact:

\$0

Administrative Recommendation:

For discussion only.

Background Summary:

During review of facilities located in City right-of-way the City determined that City of Enumclaw Natural Gas is required to obtain a Franchise Agreement per Auburn City Code Chapter 20.06.010. Enumclaw has applied for a Franchise Agreement for a term of twenty (20) years to continue to operate within the City's rights of way natural gas transmission and distribution facilities for sale and service to customers within the City of Auburn.

Enumclaw's existing facilities currently serve customers located in south Auburn off of Auburn Way South in the Academy and Lemon Tree Lane neighborhoods and surrounding area. Enumclaw has no plans to expand services as the rest of Auburn is currently served by PSE. Any construction, maintenance, improvements or changes to Enumclaw's facilities are managed through the City's permitting processes that are a requirement of the Franchise Agreement. Safety of Enumclaw's facilities is regulated and inspected through the Washington Utilities and Transportation Commission.

A Public Hearing to consider this application and hear public comment is scheduled before the City Council on August 1, 2016 in accordance with Auburn City Code Chapter 20.06.030.

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

Snyder

Meeting Date: July 25, 2016

Item Number: DI.C

ORDINANCE NO. 6606

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO CITY OF ENUMCLAW NATURAL GAS, A FRANCHISE FOR GAS UTILITY

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

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

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

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

Section 1. Grant of Right to Use Franchise Area

A. Subject to the terms and conditions stated herein, the City grants to the Grantee general permission to enter, use, and occupy the right(s)-of-way and/or other public property specified in Exhibit "A", attached hereto and incorporated by reference (the "Franchise Area").

B. The Grantee is authorized to install, remove, construct, erect, operate, maintain, relocate and repair the types of facilities specified in Exhibit "B", attached hereto and incorporated by reference, and all necessary appurtenances thereto, ("Grantee Facilities") for provision of those services set forth in Exhibit "C" ("Grantee Services") in, along, under and across the Franchise Area.

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

right and interest and is not a warranty of title or interest in the City's right-of ways. The Agreement does not convey any right to Grantee to install Grantee Facilities on or to otherwise impact, city-owned or leased properties, easements, or rights-of way outside the ones identified in Exhibit A.

D. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including Franchises, impacting the Franchise Area, unless the City determines that entering into such agreements interferes with Grantee's right set forth herein.

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

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

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

H. This Franchise is subject to the provisions of Auburn City Code ("ACC"), including specifically ACC Chapter 20.10, "CONDITIONS OF PUBLIC WAY AGREEMENTS, FRANCHISES, AND FACILITIES LEASES", and all federal and state laws, codes and regulations as currently exist or as amended?. However, if the provisions of city code, as amended or superseded, conflict with any terms and conditions of this agreement, the provisions of this agreement shall govern. A conflict doesn't exist where this agreement is silent about a condition or matter addressed by city code.

Section 2. Notice

A. Whenever this Franchise calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed by certified mail to the recipient at the address set forth in this Section. If the date for making any payment, notice, or performing any act is a legal

holiday, payment or notice may be made or the act performed on the next succeeding business day which is not a legal holiday.

City: Engineering Aide,
Community Development and Public Works Department
City of Auburn
25 West Main Street
Auburn, WA 98001-4998
Telephone: (253) 931-3010; Fax: (253) 931-3048

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

Grantee: City of Enumclaw Gas Manager
2041 Railroad St
Enumclaw, WA 98022
360-825-5541
360-825-3505 (afterhours & emergency)

with a copy to: City Clerk
City of Enumclaw
1339 Griffin Avenue
Enumclaw, WA 98022

B. Any changes to the above-stated Grantee information shall be sent to the City's Engineering Aide, Community Development and Public Works Department, with copies to the City Clerk, referencing the title of this agreement.

C. The above-stated Grantee voice and fax telephone numbers shall be staffed at least during normal business hours, Pacific time zone.

Section 3. Term of Agreement

A. This Franchise shall run for a period of 20 (twenty) years, from the date of execution specified in Section 5.

B. Renewal Option of Term: The Grantee may renew this Franchise for an additional five (5) year period upon submission and approval of the

application specified under ACC 20.06.130, as it now exists or is amended, within the timeframe set forth therein (currently between 180 and 240 days prior to expiration of the then-current term). Any materials submitted by the Grantee for a previous application may be considered by the City in reviewing a current application, and the Grantee shall submit those materials that differ from the previous materials or as deemed necessary by the City to address changes in the Grantee Facilities or Grantee Services, or to reflect specific reporting periods mandated by the ACC.

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

Section 4. Definitions

For the purpose of this agreement:

“ACC” means the Auburn City Code.

“Emergency” means a condition of imminent danger to the health, safety and welfare of persons or property located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots, acts of terrorism or wars.

“Maintenance or Maintain” shall mean examining, testing, inspecting, repairing, maintaining and replacing the existing Grantee Facilities or any part thereof as required and necessary for safe operation.

“Relocation” means permanent movement of Grantee facilities required by the City, and not temporary or incidental movement of such facilities, or other revisions Grantee would accomplish and charge to third parties without regard to municipal request.

“Rights-of-Way” means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-ways and similar public properties and areas.

“Grantee Facilities” means, collectively, any and all natural gas systems owned or operated by Grantee, including but not limited to gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters meter-reading devise, fixtures, communication systems, and any and all other equipment appliances, attachments, appurtenances and other items necessary, convenient, or in any

way appertaining to any and all of the foregoing for the purpose of transmission of natural gas, whether the same be located over or under ground.

“Hazardous Substance” shall specifically include, but shall not be limited to, petroleum and petroleum products and their by-products, residue, and remainder in whatever form or state.

“Operate” or “Operations” shall mean the operation, use, and maintenance of Grantee Facilities, pursuant to the terms of this Agreement.

“Party” or “Parties” means collectively the City and Grantee, and individually either the City or Grantee.

“Public Works Project” means, any City capital improvement or the construction, relocation, expansion, repair, maintenance, or removal of any part of the Public Way or City-owned facilities located on or in the Public Way for: parks; streets; sidewalks; curbs; pedestrian and/or vehicle traffic; sewers, storm water drains; water facilities, and; City owned fiber optic cable, conduit or network facilities.

“Third Party” means any person, party, or entity other than the City and Grantee.

“FERC” means the Federal Energy Regulatory Commission, or such other successor regulatory agency having jurisdiction over interstate pipeline companies.

Section 5. Acceptance of Franchise

A. This Franchise, and any rights granted hereunder, shall not become effective for any purpose unless and until Grantee files with the City Clerk (1) the Statement of Acceptance, attached hereto as Exhibit “D,” and incorporated by reference, (2) all verifications of insurance coverage specified under Section 17, (3) the financial guarantees specified in Section 18 and (4) payment of any outstanding application fees per the City fee schedule. These four items shall collectively be the “Franchise Acceptance”. The date that such Franchise Acceptance is filed with the City Clerk shall be the effective date of this Franchise.

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

Section 6. Construction and Maintenance

A. The Grantee shall apply for, obtain, and comply with the terms of all permits required under ACC Chapter 12.24 for any work done upon Grantee Facilities. Grantee shall comply with all applicable City, State, and Federal codes, rules, regulations, and orders, as they now exist or as may be hereafter amended or superseded, in undertaking such work, which shall be done in a thorough and proficient manner.

Grantee's work within the Public Way which directly affects Grantee's construction, operation, and maintenance of Grantee Facilities shall be performed in accordance with Federal law and regulation.

B. Grantee agrees to coordinate its activities with the City and all other utilities located within the public right-of-way within which Grantee is under taking its activity. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Public Way informed of its intent to undertake such construction work.

C. In addition to complying with ACC 20.10.80, as hereafter amended or superseded, Grantee Facilities shall be located and maintained within the Right- of-way so as not to interfere with the reasonable ingress or egress to the properties abutting the right-of-ways as they exist at the time of installation of the Grantee Facilities. The City expressly reserves the right to prescribe how and where Grantee Facilities shall be installed within the public right-of-way and may from time to time, pursuant to the applicable sections of this Franchise, require, at no cost to the City, the removal, relocation and/or replacement thereof in the public interest and safety at the expense of the Grantee.

D. Grantee shall continuously be a member of the State of Washington One Number Locator service under RCW 19.122, or an approved equivalent as determined by the City, and shall comply with all such applicable rules and regulations. Before commencing any work within the public right-of-way, the Grantee shall comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.

E. Tree Trimming. Upon prior written approval of the City and in accordance with City ordinances, Grantee shall have the authority to reasonably trim trees upon and overhanging streets, public rights-of-way, and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with the Grantee Facilities. Grantee shall be responsible for debris removal from such activities. If such debris is not removed within twenty-four (24) hours of completion of the trimming, the City may, at its sole discretion, remove such debris and charge Grantee for the cost 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 a land clearing permit.

H. Markers demarcating the pipeline's location shall be placed on the surface at least every 100 yards in areas not under pavement so as to provide clear warning of the presence of the pipeline but in a manner that does not interfere with trails or other public uses in that area. Additionally, Grantee shall place continuous underground markers demarcating the pipeline's location each time Grantee digs to the pipeline for any reason.

Section 7. Repair and Emergency Work

In the event of an emergency, the Grantee may commence such repair and emergency response work as required under the circumstances, provided that the Grantee shall notify the City telephonically during normal business hours at 253-931-3010 and during non-business hours at 253-876-1985 as promptly as possible before such repair or emergency work commences, and in writing as soon thereafter as possible. Such notification shall include the Grantee's emergency contact phone number for the corresponding response activity. For any emergency or after normal business hour issues involving the Grantee's facilities which requires the Grantee's immediate response the City shall contact the Grantee at 360-825-3505 which is operated 24 hours a day, seven days a week. The City may act, at any time, without prior written notice in the case of emergency, but shall notify the Grantee in writing as promptly as possible under the circumstances of the nature of the emergency and the actions taken to address it.

Section 8. Damages to City and Third-Party Property

A. Grantee agrees that if any of its actions under this Franchise impairs or damages any City property, survey monument, or property owned by a third-party, Grantee will restore, at its own cost and expense, said property to a safe condition. Such repair work shall be performed and completed to the satisfaction of the City Engineer.

B. The City may at any time perform or have performed any and all work that it considers necessary to restore to a safe condition any area within the Public Way disturbed by Grantee in the performance of this Agreement. Grantee shall pay all reasonable costs of such work upon demand of the City.

C. All survey monuments which are disturbed or displaced by Grantee in its performance of any work under this Agreement shall be referenced and restored by Grantee, as per WAC 332-120, as from time to time amended, and all pertinent federal, state, and local standards and specifications.

Section 9. Location Preference

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

B. When constructing new facilities, or replacing or reconstructing facilities, Grantee shall maintain a minimum underground horizontal separation of five (5) feet from City water and five (5) feet from City sanitary sewer and storm sewer facilities; provided, that for development of new areas, the City, in consultation with Grantee and other utility purveyors or authorized users of the Public Way, will develop and follow the City's determination of guidelines and procedures for determining specific utility locations, subject additionally to this agreement .

Section 10. Grantee Information

A. Grantee agrees to supply, at no cost to the City, any information reasonably requested by the City Engineer to coordinate municipal functions with Grantee's activities and fulfill any municipal obligations under state law. Said information shall include, at a minimum, as-built drawings of Grantee Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within the City. Said information may be requested either in hard copy or electronic format, compatible with the City's data base system, as now or hereinafter existing, including the City's geographic information Service (GIS) data base. Grantee shall keep the City Engineer informed of its long-range plans for coordination with the City's long-range plans.

B. Upon the City's reasonable request, in connection with the design of any Public Works Project, Grantee shall verify the location of its underground Facilities within the Public Way by excavating (e.g., potholing) at no expense to the City. In the event Grantee performs such excavation, the City shall not require any restoration of the disturbed area in excess of restoration to the same condition as existed immediately prior to the excavation.

C. The parties understand that Washington law limits the ability of the City to shield from public disclosure any information given to the City. Grantee shall clearly mark any information that it provides to the City as "Proprietary" information if Grantee believes that disclosure of that information would be exempt under the trade secrets exemption in RCW 42.56.270. The City agrees that if it receives a request for Grantee's proprietary information, it will initially assert the exemption under 42.56.270, and will notify Grantee of the request.

The City shall not initiate legal action to prevent disclosure of Grantee's proprietary information. If a requestor files a lawsuit to compel disclosure, Grantee agrees to defend the action at Grantee's sole expense.

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

Section 11. Relocation of Grantee Facilities

A. Except as otherwise so required by law, Grantee agrees to relocate, remove, or reroute its facilities within thirty (30) days of being ordered by the City Engineer at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Such alternate location for relocation of Grantee's facilities shall be determined and approved jointly by the City and Grantee at no cost to the City. Pursuant to the provisions of Section 16, Grantee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change, relocation, abandonment, or vacation of the Public Way.

B. If a readjustment or relocation of the Grantee Facilities is necessitated by a request from a party other than the City, that party shall pay the Grantee the actual costs thereof. Any contractor doing work pursuant to contract with the City shall not be considered a Third Party for purposes of this section.

C. Any condition or requirement imposed by the City upon any Third Party (including, but not limited to, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of Grantee's Facilities within the Rights-of-Way shall be a condition or requirement causing relocation of Grantee's Facilities to occur subject to the provisions of Subsection B above; provided, however in the event the City reasonably determines and notifies Grantee that the primary

purpose of imposing such condition or requirement upon such Third party is to cause or facilitate the construction of a Public Works Project to be undertaken within a segment of the Right-of-Ways on the City's behalf and consistent with the City's Capital Facility Plan or Transportation Improvement Program, then Grantee shall relocate its Facilities within such segment of the Rights-of-Way in accordance with this Agreement.

D. As to any relocation of Grantee's Facilities whereby the cost and expense thereof is to be borne by Grantee in accordance with this Section 11, Grantee may, after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's receipt from Grantee of such written alternatives, the City shall evaluate such alternatives and shall advise Grantee in writing if one or more of such alternatives are suitable to accommodate the work which would otherwise necessitate relocation of Grantee's Facilities. In evaluating such alternatives, the City shall give each alternative proposed by Grantee full and fair consideration with due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. In the event the City determines that such alternatives are not appropriate, Grantee shall relocate its Facilities as otherwise provided in this Agreement.

E. Nothing in this Section 11 shall require Grantee to bear any cost or expense in connection with the relocation of any Facilities under benefit of easement independent of this Agreement or other rights not arising under this Agreement, nor shall anything in this Section 11 require the City to bear any such cost or expense. Nothing in this Section 11 shall be construed to be a waiver of any right of either Grantee or the City to contest any claim or assertion by the other of responsibility to pay such cost or expense.

F. Subject to ACC 20.10.160, in the event of an emergency posing a threat to public safety or welfare requires the relocation of Grantee's Facilities within the Rights-of-Way, the City shall give Grantee notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City (and subject to the issuance of any necessary order(s) of the (Washington Utilities and Transportation Commission), Grantee shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities.

Section 12. Abandonment and or Removal of Grantee Facilities

Subject to ACC 20.10.130, within one hundred and eighty days (180) of Grantee's permanent cessation of use of the Grantee Facilities, or any portion thereof, the Grantee shall (subject to any necessary approval(s) and/or order(s) to be provided by WUTC concerning abandonment), at the City's discretion, either abandon in place or remove the affected facilities. Abandonment or removal shall be at the sole cost and expense of Grantee. Any Facilities left in

place shall be made inert by purging all natural gas from such Facilities (including displacement of natural gas with an appropriate inert gas) and disconnecting and sealing such Facilities, all in compliance with applicable regulations and industry standards. The City's consent shall not relieve Grantee of the obligation and/or costs to subsequently remove or alter such Facilities in the event the City reasonably determines that such removal or alteration is necessary or advisable for the health and safety of the public, in which case Grantee shall perform such work at no cost to the City. The obligations contained in this Section shall survive the expiration, revocation, or termination of this Agreement.

Section 13. Encroachment Management

Grantee shall manage and inspect encroachments as defined by federal and applicable state and local laws, rules, regulations and industry standards, as now enacted or hereinafter amended, and any other future laws or regulations that are applicable to Grantee, the Facilities, and business operations. Upon notification to Grantee of planned construction by another within ten (10) feet of Grantee's pipeline, Grantee shall flag the precise location of its Facilities before the construction commences, provide a representative to inspect the construction when it commences, and periodically inspect thereafter to ensure that Grantee's pipeline is not damaged by the construction.

Section 14. Emergency Management, Leaks, Ruptures, and Emergency Response.

A. Annually, upon the request of the City, Grantee shall meet with the Valley Regional Fire Authority, the Auburn Police Department, and the City's Emergency Management Office to coordinate emergency management operations and, at least once a year, at the request of the City, Grantee personnel shall actively participate with the Valley Regional Fire Authority and the City in emergency preparedness drills or planning sessions.

B. Grantee shall have in place, at all times during the term of this Agreement, a system for remotely monitoring pressures and flows across the Public Way.

C. During the term of this Agreement, Grantee shall have a written emergency response plan and procedure for locating leaks and ruptures and for shutting down valves as rapidly as possible.

D. Upon acceptance of this Agreement, Grantee shall provide, for the City's approval and acceptance, a copy of its emergency response plans and procedures, including, but not limited to, emergency rupture response. If the parties disagree as to the adequacy of Grantee's emergency response plan, the parties will submit the plan to independent, third party review. If the review

recommends that Grantee make modifications or additions to Grantee's emergency response plan, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow the recommendations, Grantee shall provide a written report to the City explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute resolution provisions contained herein to resolve any dispute over whether to follow the recommendations. Upon completion of the review of Grantee's emergency plans and procedures set forth in this section, Grantee shall provide a copy of the plans and procedures to the City and to the Valley Regional Fire Authority.

E. Grantee's emergency plans and procedures shall designate Grantee's responsible local emergency response officials and a direct twenty four (24) hour emergency contact number for the control center operator. Grantee shall, after being notified of an emergency, cooperate with the City and make every effort to respond as soon as possible to protect the public's health, safety and welfare.

F. Grantee shall be solely responsible for all its necessary costs incurred in responding to any leak, rupture or other release of natural gas from Grantee's Facilities, including, but not limited to, detection and removal of any contaminants from air, earth or water, and all remediation costs.

G. If requested by the City in writing, Grantee shall provide a written summary concerning any leak or rupture within thirty (30) days of the event, including, but not limited to, the leak or rupture's date, time, amount, location, response, remediation and other agencies Grantee has notified.

H. The City may request that any substantial leak or rupture be investigated by an independent pipeline consultant selected by the City. Grantee shall be solely responsible for paying all of the consultant's costs and expenses incurred in investigating the occurrence and reporting the findings. Grantee shall meet and confer with the independent consultant following the consultant's investigation to address whether any modifications or additions to Grantee's pipeline(s) and/or Facilities may be warranted.

I. If the consultant recommends that Grantee make modifications or additions to Grantee's pipeline(s) and/or Facilities, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow the consultant's recommendations, Grantee shall provide a written report to the City explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute resolution provisions contained herein to resolve any dispute over whether to follow the consultant's recommendations.

Section 15. Maintenance, Inspection, and Testing.

Grantee shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of the pipeline or other activities permitted under this Agreement. Grantee shall operate, maintain, inspect, and test the Facilities in full compliance with all applicable federal, state, and local laws, rules, regulations, and industry standards, as now enacted or hereinafter amended, and any other future laws or regulations that are applicable to Grantee, the Facilities, and business operations.

Section 16. Indemnification and Hold Harmless

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

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

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

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

E. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The

provisions of this section shall survive the expiration or termination of this Agreement.

F. In addition to the promise of indemnification required by ACC 20.10.230, Grantee shall indemnify, defend and hold the City, its appointed and elective officials, agents, officers, employees, and volunteers harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorney's fees, made against the City on account of violation of any environmental laws applicable to the Grantee Facilities, or from any release of natural gas or Hazardous Substances on or from the Grantee Facilities. This indemnity includes, but is not limited to: (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; and (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws.

G. The grantee, franchisee, or lessee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the grantee, franchisee, or lessee's facilities as the result of any interruption of service due to damage or destruction of the user's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious actions on the part of the City, its officers, agents, employees, or contractors.

Section 17. Insurance

A. The Grantee shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Grantee, its agents, representatives, or employees in the amounts and types set forth below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a minimum combined single limit for bodily injury and property damage of \$2,000,000.00 (two million dollars) per accident. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance with limits no less than \$20,000,000.00 (twenty million dollars) each occurrence, \$20,000,000.00

(twenty million dollars) general aggregate and a \$20,000,000.00 (twenty million dollars) products-completed operations aggregate limit. Coverage shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, and personal injury and advertising injury and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage.

3. Professional Liability insurance with limits no less than \$1,000,000.00 per claim for all professional employed or retained Grantee to perform services under this Franchise.

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

B. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability, and Commercial General Liability insurance:

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

2. The Grantee's insurance shall not be cancelled by either party except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

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

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

E. Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self insurance is subject to approval by the City. Participation in a self-insured, governmental risk pool shall satisfy the conditions set forth above.

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

Section 18. Relationship of the Parties

A. Nothing in this Agreement shall be construed to create or confer any right or remedy upon any person(s) other than the City and Grantee. No action may be commenced or prosecuted against any Party by any Third Party claiming as a Third Party beneficiary of this Agreement. This Agreement shall not release or discharge any obligation or liability of any Third Party to either Party.

B. Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency relationship, or joint venture or to impose a trust, partnership, or agency duty, obligation or liability on or with regard to any party. Each party shall be individually and severally liable for its own duties, obligations, and liabilities under this Agreement.

C. Grantee accepts any privileges granted by the City in an "as is" condition. Grantee agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of Grantee's location of facilities or the facilities themselves in public property or rights of way or possible hazards or dangers arising from other uses of the public rights of way or other public property by the City or the general public. Grantee shall remain solely and separately liable for the function, testing, maintenance, replacement and repair of the pipeline or other activities permitted under this Agreement.

D. Except as specifically provided herein, this Agreement shall not create any duty of the City or any of its officials, employees or agents and no liability shall arise from any action or failure to act by the City or any of its officials, employees or agents in the exercise of powers reserved to the City. Further, this Agreement is not intended to acknowledge, create, imply or expand any duty or liability of the City with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in the City shall be deemed a duty to the general public and not to any specific party, group or entity.

Section 19. Successors and Assignees

A. All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns of, and independent

contractors of the Grantee, and all rights and privileges, as well as all obligations and liabilities of the Grantee shall inure to its successors, assignees and contractors equally as if they were specifically mentioned herein wherever the Grantee is mentioned.

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

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

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

Section 20. Dispute Resolution

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

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

Section 21. Enforcement and Remedies

A. If the Grantee shall willfully violate, or fail to comply with any of the provisions of this Franchise through willful or unreasonable negligence, or should it fail to heed or comply with any notice given to Grantee under the provisions of this agreement, the City may, at its discretion, provide Grantee with written notice to cure the breach within thirty (30) days of 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 Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Grantee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification, or (2) claim damages as provided in ACC 20.10.340 per day for every day after the expiration of the cure period that the breach is not cured.

B. Should the City determine that Grantee is acting beyond the scope of permission granted herein for Grantee Facilities and Grantee Services, the City reserves the right to cancel this Franchise upon thirty days (30) written notice to Grantee and require the Grantee to apply for, obtain, and comply with all applicable City permits, franchises, or other City permissions for such actions, and if the Grantee's actions are not allowed under applicable federal and state or City laws, to compel Grantee to cease such actions.

C. Interpretation or construction of this Franchise shall not be affected by any determination as to who is the drafter of this Franchise, this Franchise having been drafted by mutual agreement of the parties.

Section 22. Compliance with Laws and Regulations

A. In carrying out any authorized activities under the privileges granted herein, Grantee shall meet accepted industry standards and comply with all applicable laws, rules, and regulations, of any governmental entity with jurisdiction over the pipeline and its operation (specifically including, but not limited to, all requirements, rules, regulations, and orders of FERC and the applicable provisions of the City's comprehensive plan). This shall include all applicable laws, rules and regulations existing at the Effective Date of this Franchise or that may be subsequently enacted by any governmental entity with jurisdiction over Grantee or the pipeline(s) and the Facilities. Furthermore, notwithstanding any other terms of this agreement appearing to the contrary, the Grantee shall be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

B. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, the Grantee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the City may enact the proposed amendment, by incorporating the Grantee's concerns to the maximum extent the City deems possible.

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

Section 23. License, Tax and Other Charges

This Franchise shall not exempt the Grantee from any future license, tax, or charge which the City may hereinafter adopt pursuant to authority granted to it under state or federal law for revenue or as reimbursement for use and occupancy of the Franchise Area.

Section 24. Consequential Damages Limitation

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

Section 25. Force Majeure

In the event that either Party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a Third party; or any failure or delay in the performance by the other party, or a Third Party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with this Agreement. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner

under this Agreement. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event. The occurrence of a Force Majeure Event shall not alter or impair any of the provisions concerning liability and/or insurance as provided in this Agreement.

Section 26. Severability & Survival

In the event that a court or agency of competent jurisdiction declares a material provision of this Franchise to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to such amendments or modifications as are appropriate actions so as to give effect to the intentions of the parties as reflected herein. If severance from this Franchise of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Franchise, either party may apply to a court of competent jurisdiction to reform or reconstitute the Franchise so as to recapture the original intent of said particular provision(s). All other provisions of the Franchise shall remain in effect at all times during which negotiations or a judicial action remains pending.

All provisions, conditions and requirements of this Agreement that may be reasonably construed to survive the termination or expiration of this Agreement shall survive the termination or expiration of the Agreement. Subject to Section 15 above, the Parties' respective rights and interests under this Agreement shall inure to the benefit of their respective successors and assigns.

Section 27. Titles

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

Section 28. Implementation.

The parties each represent and warrant that they have full authority to enter into and to perform this Agreement, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Agreement, except such as may be routinely required and obtained in the ordinary course of business.

Whenever this Agreement sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of this Agreement.

Section 29. Entire Agreement

Draft Ordinance No. 6606
May 31, 2016
Page 20 of 26

This Agreement, 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 Agreements between the parties pertaining to GRANTEE's operation of its pipeline(s) and/or Facilities are hereby superseded.

Section 30. Effective date.

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

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

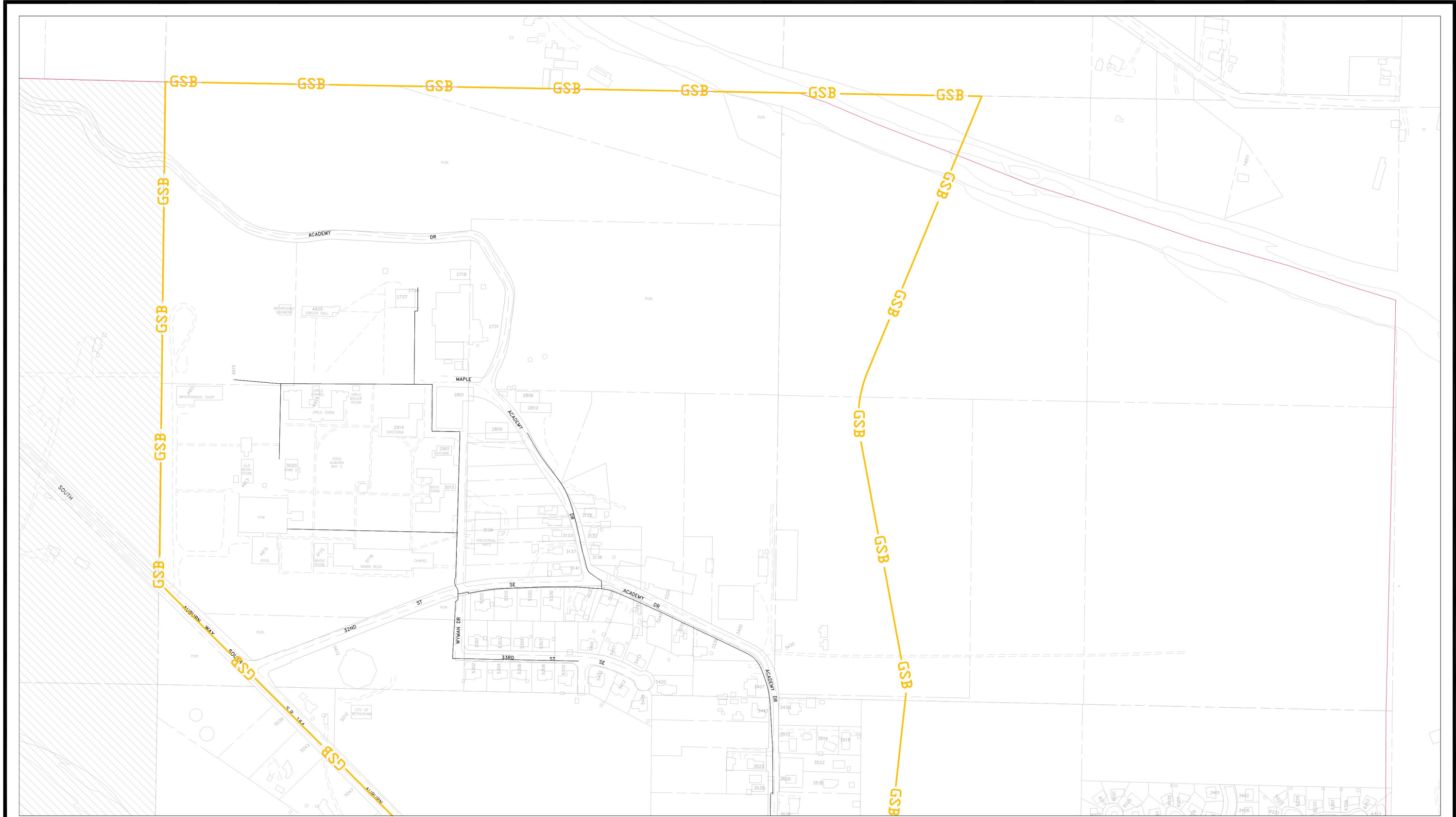
ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

Published: _____



SCALE IN FEET

0 100 200 400 800

1 inch = 400 feet

1:4800

CALL 2 DAYS BEFORE YOU DIG

1-800-424-5555

LEGEND

ACTIVE GAS MAIN

ABANDONED OR DEAD MAIN

GAS SERVICE

AUBURN CITY LIMITS

GAS SERVICE BOUNDARY

MUCKELSHOOT TRIBAL LANDS

S-21-N	S-20-N	S-19-N
S-21-S	S-20-S	S-19-S
T-21-N	T-20-N	T-19-N

City of Enumclaw

DEPARTMENT OF PUBLIC WORKS

1309 MYRTLE AVENUE, ENUMCLAW, WASHINGTON 98022

(360) 825-3593 - FAX (360) 825-7232

NATURAL GAS SYSTEM

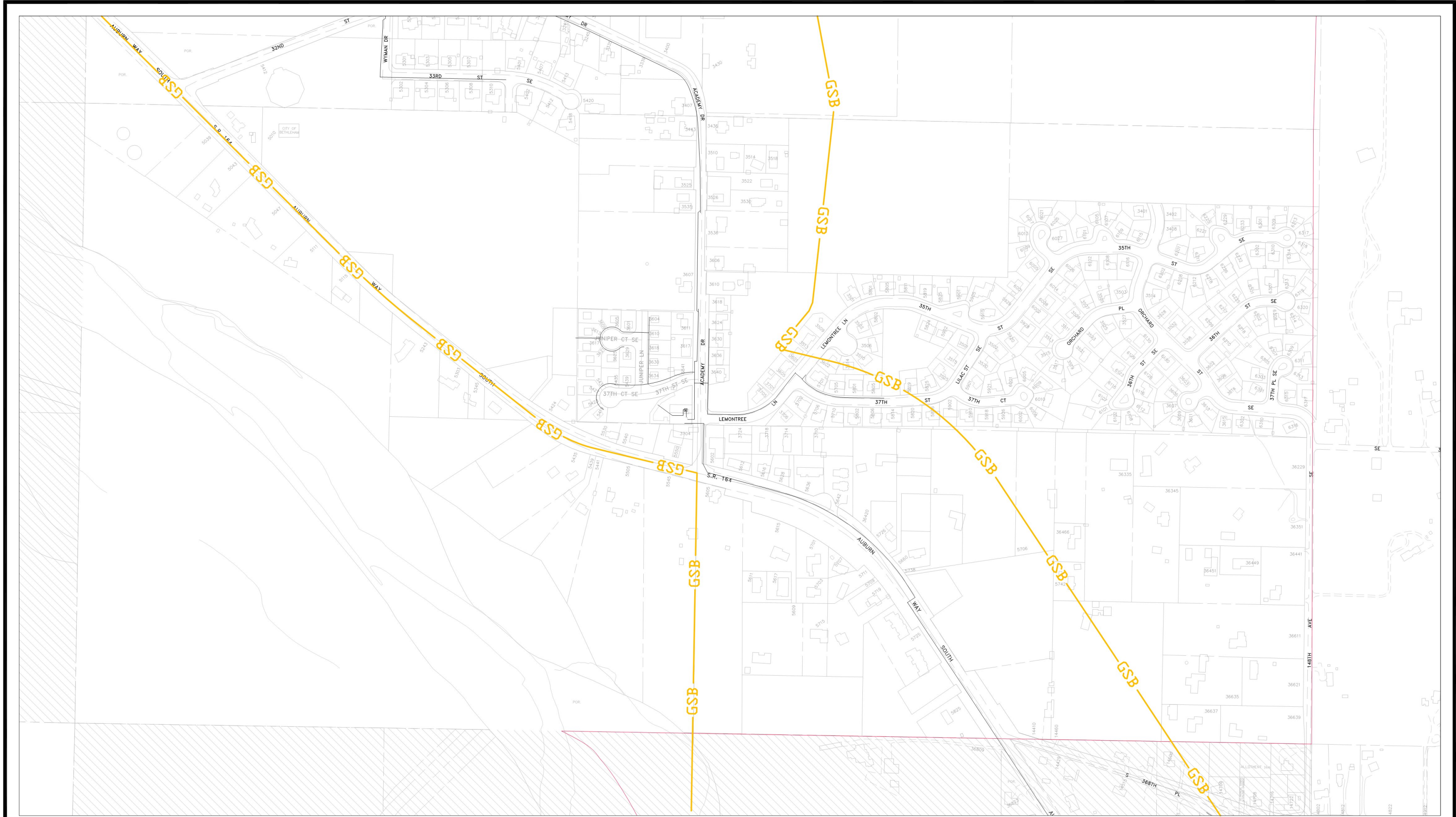
HALF-QUARTER SECTION

S-20(SOUTH)

S 1/2, NW 1/4, SEC. 27, T.21.N., R.05.E., W.M.

City of Enumclaw, King County, Washington, USA.

S OF S-20



SCALE IN FEET

0 100 400 800

50 200

1 inch = 400 feet

1:4800

CALL 2 DAYS BEFORE YOU DIG

1-800-424-5555

LEGEND

ACTIVE GAS MAIN

ABANDONED OR DEAD MAIN

GAS SERVICE

AUBURN CITY LIMITS

GAS SERVICE BOUNDARY

MUCKELSHOOT TRIBAL LANDS

S-20-S	S-19-S	S-18-S
T-20-N	T-19-N	T-18-N
T-20-S	T-19-S	T-18-S

City of Enumclaw

DEPARTMENT OF PUBLIC WORKS

1309 MYRTLE AVENUE, ENUMCLAW, WASHINGTON 98022

(360) 825-3593 - FAX (360) 825-7232

NATURAL GAS SYSTEM

HALF-QUARTER SECTION

T-19 (NORTH)

N 1/2, SE 1/4, SEC. 27, T.21.N., R.05.E., W.M.

City of Enumclaw, King County, Washington, USA.

N OF T-19

Exhibit B

One Main Gate Station
Two District Regulator Stations
One Corrosion Control Rectifier
One Odorizer
6 inch steel high pressure pipe operating at 250 psig
2 inch steel intermediate pipe operating at 40 psig
2 inch Polyethylene pipe operating at 40 psig
½" – 2" steel and plastic services

Exhibit C

Gas Services Provided by the City of Enumclaw Gas

1. 250,000 – 425,000 Btu/hr Residential Service Line and Meter Set.
2. 615,000 -800,000 Btu/hr Commercial or Industrial Service Line and Meter Sets.
3. 1.5 MMBtu/hr – 17 Mmbtu/hr Commercial or Industrial Service Line and Meter Sets.

EXHIBIT "D"

STATEMENT OF ACCEPTANCE

_____, 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.

[Grantee]

By: _____ Date: _____
Name:
Title:

STATE OF _____)
)ss.
COUNTY OF _____)

On this ____ day of _____, 2016, 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: _____



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6611 (5 Minute Presentation/5 Minute Q&A)

Date:

July 18, 2016

Department:

Community Development & [Ordinance No. 6611](#)
Public Works

Attachments:**Budget Impact:**

\$0

Administrative Recommendation:

City Council to introduce Ordinance No. 6611 for Chapter 17.14 Updates.

Background Summary:

Auburn City Code section 17.14.005 currently states that an applicant cannot submit their civil plans for review and consideration until after they have received preliminary plat approval from the Hearing Examiner. Community Development staff are proposing that an applicant be allowed to submit their civil plans for review earlier than preliminary plat approval. This will allow an applicant to experience several weeks to months of time savings for project reviews.

Subdivisions are reviewed in three general phases – (1) Preliminary Plat, (2) Civil Review (followed by construction of permitted civil improvements), (3) Final Plat. Because City code currently requires that an applicant wait until they have received preliminary plat approval it creates a window of time where the applicant is delayed while they wait to submit their civil plan review application. The draft amendment seeks to reduce their delay by 4 to 12 weeks because it changes the submittal milestone from “preliminary plat approval” to “staff recommendation”. A minimum 4 week time savings is realized because a staff recommendation is issued approximately 2 weeks before the Hearing Examiner conducts a hearing and the Hearing Examiner’s decision is generally rendered 2 weeks after the hearing. An additional 8 weeks of time savings will be realized for some projects that are appealed or where a request for reconsideration is submitted to the Hearing Examiner in instances where further clarification of the decision is needed.

Besides allowing for earlier submittal of civil plan applications, the draft amendments also include language that is intended to declare that an early submittal does not equate to a vesting right. The vesting right is still hinged to the Hearing Examiner’s decision. The reason this language is included is in the event that the Hearing

Examiner modifies the staff recommendation, it is the Hearing Examiner's decision that must be adhered to and not the staff recommendation. Because this type of scenario is possible there is additional draft language that is intended to point out that there is a modest amount of risk assumed by the applicant if they choose to submit early. Therefore, it is important to ensure that the applicant is aware that they are taking some risk and that they will not hold the City liable in the event they have submitted an early civil application and the Hearing Examiner modifies the staff recommendation (which could then result in the applicant having to modify the civil design that was submitted before the preliminary plat was approved).

Reviewed by Council Committees:

Other: Legal, Public Works, and Planning

Councilmember:

Staff: Snyder

Meeting Date: July 25, 2016

Item Number: DI.D

ORDINANCE NO. 6 6 1 1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON, AMENDING SECTION 17.14.005 OF
THE AUBURN CITY CODE, RELATING TO CIVIL PLAN
PREPARATION, SUBMITTAL AND APPROVAL

WHEREAS, the current provisions of the Auburn city code provides that plans for civil improvements shall be submitted to the city following preliminary plat approval; and

WHEREAS, the reason for the requirement that plans for facility extension agreements and other development related civil plans be submitted to the city following preliminary plat approval is to allow the city to measure the consistency of the subsequent civil plans against the approved preliminary plat; and

WHEREAS, there may be occasions when it would be advantageous for a developer to submit such civil plans in advance of the approval of the preliminary plat, so long as the City has conducted enough review of the preliminary plat application to gauge sufficiency for processing and feasibility of the proposal and the developer understands and agrees that the risks of doing so are born by the developer; and

WHEREAS, in order to authorize this opportunity for earlier submittal of plans, it is appropriate that the city code be amended to specify requirements related to such early submittal of civil plans.

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

Section 1. Amendment to City Code. That Section 17.14.005 of the Auburn City Code, be, and the same hereby is, amended to read as follows:

17.14.005 Plan preparation, submittal and approval.

A. Plans for improvements shall be prepared, signed, dated and stamped by a professional civil engineer registered in the state of Washington and shall be in accordance with city standards and specifications. Plans shall be submitted to the city, following preliminary plat approval, for circulation and review. No construction permit or approval shall be issued and no construction activity

Ordinance No. 6611
July 13, 2016
Page 1

shall commence relating to subdivision improvements until the plans required by this chapter have been approved and signed by the city engineer. Plans shall be consistent with the approved preliminary plat. All sanitary sewer, water, drainage and street improvements to be dedicated to the city shall be covered by a public facilities extension agreement, as required by ACC Titles 12 and 13.

B. For preliminary plats that were approved, but not constructed, prior to the effective date of the amendments to this chapter as adopted by the ordinance codified in this chapter, the owner/developer may choose to use the standards in effect at the time of the preliminary plat approval or, if approved by the city engineer, use the standards adopted pursuant to this chapter.

C. Notwithstanding the previous requirement that civil plans for improvements shall be submitted following approval of the preliminary plat, the city may, in its sole discretion, allow an applicant/developer to submit plans after the Department issues its recommendation to the Hearing Examiner and prior to preliminary plat approval, provided that the applicant/developer recognizes and acknowledges that the city's willingness to receive civil plans in advance of preliminary plat approval does not constitute a submittal which would vest any rights for the applicant/developer, and that the applicant/developer bears all risks of submitting plans in advance of preliminary plat approval. Furthermore, early submittal shall be allowed by the City only upon the applicant/developer entering into an agreement with the city whereby the applicant/developer agrees to the following:

1. That the application shall not be considered "complete" for any purpose under federal, state, or city law, until after the preliminary plat is approved, and all possible appeal periods of that approval have expired.

2. That since the application is not "complete," an early submitted application is not vested. Further, that the applicant/developer has no vested rights based on the filing of these plans, and that any comprehensive plan provisions, development regulations, or administrative regulations adopted prior to the date the preliminary plat is approved shall apply to the application.

3. That the applicant/developer waives, on behalf of itself, heirs, assigns, successors, etc., any claim based on the city agreeing to allow plan submission and review before preliminary plat approval.

4. That the applicant/developer will defend, indemnify, and hold the City harmless against any and all claims based on the city's agreement to allow submission and review before preliminary plat approval.

5. That the city's acceptance of plans -before preliminary plat approval does not create an obligation upon the city to accept plans prior to plat approval in the future. (Ord. 6239 § 1, 2009; Ord. 6186 § 9, 2008; Ord. 5164 § 1, 1998; Ord. 4296 § 2, 1988. Formerly 17.12.010.)

Section 2. Constitutionality or Invalidity. If any section, subsection clause or phase of this Ordinance is for any reason held to be invalid or unconstitutional such invalidity or unconstitutionality shall not affect the validity or constitutionality of the

remaining portions of this Ordinance, as it is being hereby expressly declared that this Ordinance and each section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, adopted and approved and ratified irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid or unconstitutional.

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

Section 4. Necessary for Immediate Effectiveness. That this ordinance is deemed to be necessary for immediate use in effect, and is declared to be an emergency ordinance effective upon passage by a number of votes by councilmembers constituting a quorum plus one.

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

INTRODUCED: _____

PASSED: _____

APPROVED: _____

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

Ordinance No. 6611

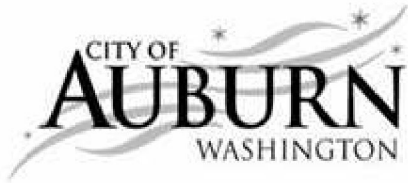
July 13, 2016

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APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

Published: _____



AGENDA BILL APPROVAL FORM

Agenda Subject:

Port of Seattle Economic Development Partnership
Program (5 Minute Presentation/5 Minute Q&A)

Date:

July 20, 2016

Department:

Administration

Attachments:

[Port of Seattle Economic Development
Partnership Program
Grant Overview](#)

Budget Impact:

\$0

Administrative Recommendation:

For discussion prior to anticipated adoption of resolution at August 1, 2016 City Council meeting.

Background Summary:

The Port of Seattle has authorized a new Economic Development Partnership Program to support local community economic development activities. More than \$962,000 is available to cities in King County as matching funds. Based on population, each city would receive between \$5,000 and \$65,000 for eligible activities. Each city will need to pass a resolution supporting their grant application and will have until August 17, 2016 to provide these resolutions in advance of the August 23, 2016 Port Commission meeting.

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

Hinman

Meeting Date: July 25, 2016

Item Number: DI.E

Port of Seattle Economic Development Partnership Program

The Port of Seattle is establishing a cooperative economic development fund for King County cities that advances the Port's Century Agenda, promotes the creation of middle class jobs, and supports local community economic development activities. The matching grant program fosters effective economic development partnerships that stimulate region-wide prosperity.

Eligible Activities:

- Business recruitment initiatives designed to attract new companies to King County
- Small business development, including disadvantaged business assistance projects
- Industry retention and expansion assistance (ex. Maritime, Aerospace, etc.)
- Tourism development including collateral, advertising, and publications to attract destination visitors to increase tourism expenditures
- Downtown revitalization
- Commercial or industrial property development
- Other community or economic development projects that tie to Port business interests*

Program Guidelines:

- The awards are available to 38 cities in King County, based on \$1 per capita formula.
- Awards are capped at \$65,000 with a minimum of \$5,000 for small cities.
- A 50 percent local match and a resolution of support/priority from the local jurisdiction is required.
- Funds cannot be used in capital projects.
- Cities may contract with local non-profits to deliver projects or manage initiatives.
- Cities may collaborate or aggregate regionally to enhance impact or outcomes.
- Projects should align with city's economic development strategy and support the Port's Century Agenda or business interests.
- Specific deliverables and costs must be identified and documented.
- Port funds will be released on a cost reimbursement basis with documentation.
- Cities are strongly encouraged to discuss proposed projects/uses of funds with Port of Seattle staff early in concept. The Port will accept applications during July and August 2016. All projects must have approval and be under contract no later than mid-September.

Questions or further detail, contact: Susan Chamberlain at Chamberlain.s@portseattle.org

** Port business interests tie to the health of aviation, maritime/logistics, manufacturing and construction/trades clusters. Tourism is another important industry to the Port.*

Economic Development

The Port's Economic Development Division is responsible for spurring our regional economy, sustaining and creating family-wage jobs by supporting small businesses, workforce development, tourism and leveraging real estate development to create jobs.

The Port owns property in King County that can be developed to provide jobs for thousands of people. Our Real Estate Strategic Plan is being prepared and will provide a roadmap to maximize the benefits and build regional prosperity.

Economic development partnership program

The Port of Seattle has authorized a new Economic Development Partnership Program to support local community economic development activities. More than \$962,000 is available to cities in King County as matching funds. Based on population, each city would receive between \$5,000 and \$65,000 for the following eligible activities:

- Business recruitment initiatives designed to attract new companies to a region or city
- Small business development (including incubator/accelerator projects)
- Industry retention and expansion assistance (ex. Maritime, Aerospace, etc.)
- Tourism development
- Downtown revitalization
- Commercial or industrial property development
- Other community or economic development projects that support new investment and job creation
- Cities may collaborate or aggregate regionally to enhance impact

Applying for the partnership program

To apply for the program, please read the program guidelines and eligible activities carefully and attend a workshop if you are able. Then, complete an application form and return it to application@portseattle.org. The Port will accept applications during July and August 2016. All projects must have approval and be under contract no later than mid-September.

- Partnership program [guidelines and eligible activities](#)
- Partnership program [application form](#)
- [Sample contract](#)

Please email Susan Chamberlain at chamberlain.s@portseattle.org with any questions you have about the program.

Select this link to read [FAQs about the partnership program](#).

Workshops

Workshops will be held in July to help cities further understand the use of the funds, best practices, and ways to maximize its uses.

July 13

11 a.m. – 12:30 p.m.
Bellevue City Hall, Room 1E-121 (first floor)
450 110th Ave NE
Bellevue, WA 98004

Port of Seattle staff held workshops for cities in King County to share information about the Port's new Economic Development Partnership Program developed to support local community economic development activities. More than \$962,000 is available as matching funds to the 38 cities of King County. Depending upon its population, each city would receive from \$5,000 and \$65,000. The funds will be used to support small businesses in growth, job creation, expansion, retention and recruitment.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Main Street Urban Design (20 Minute Presentation/15 Minute Q&A

Date:

July 20, 2016

Department:

Community Development & [Main Street Urban Design Final Rendering](#)
Public Works

Attachments:**Budget Impact:**

\$0

Administrative Recommendation:**Background Summary:**

Staff to provide a PowerPoint presentation of final design and budget for the Main Street Urban Design improvements.

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

Snyder

Meeting Date: July 25, 2016

Item Number: DI.F







ROOSTERTAIL
ROTISSERIE & DRINKS
EAT IN
TAKE OUT
CURBSIDE PICKUP
HAPPY HOUR
3-5 PM
EVERYDAY







AGENDA BILL APPROVAL FORM

Agenda Subject:

Community Sustainability (15 Minute Presentation/10 Minute Q&A)

Date:

July 21, 2016

Department:

Community Development & Public Works

Attachments:

No Attachments Available

Budget Impact:

\$0

Administrative Recommendation:**Background Summary:**

Staff to review the City of Auburn's Community Sustainability projects, programs and activities.

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

Snyder

Meeting Date: July 25, 2016

Item Number: DI.G