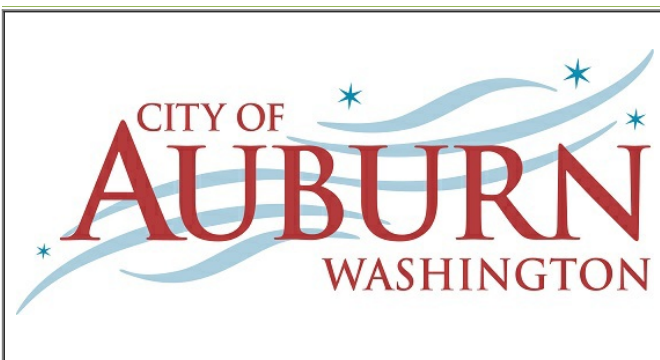


	City Council Meeting June 6, 2022 - 7:00 PM City Hall Council Chambers and Virtual AGENDA Watch the meeting LIVE! Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.
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I. CALL TO ORDER

II. PUBLIC PARTICIPATION

1. Public Participation

The Auburn City Council Meeting scheduled for Monday, June 6, 2022 at 7:00 p.m. will be held in person and virtually.

Virtual Participation Link:

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

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

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

Telephone: 253 215 8782

Toll Free: 888 475 4499

Zoom: <https://us06web.zoom.us/j/89854576688>

A. Pledge of Allegiance

B. Roll Call

III. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

A. Proclamation - Dr. Stephen H. Anderson Retirement Day

Mayor Backus to proclaim July 6, 2022 as the "One-Year Anniversary of Dr. Stephen H. Anderson's Retirement Day" in the City of Auburn.

B. Proclamation - Juneteenth 2022

Mayor Backus to proclaim June 20, 2022 as "Juneteenth 2022" in the City of Auburn.

C. Proclamation - LGBTQ+ Pride Month

Mayor Backus to proclaim June 2022 as "LGBTQ+ Pride Month" in the City of Auburn.

IV. AGENDA MODIFICATIONS

V. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. Public Hearings - (No public hearing is scheduled for this evening.)

B. Audience Participation

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

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

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

Please mail written comments to:

City of Auburn

Attn: Shawn Campbell, City Clerk

25 W Main St

Auburn, WA 98001

Please fax written comments to:

Attn: Shawn Campbell, City Clerk

Fax number: 253-804-3116

Email written comments to:

publiccomment@auburnwa.gov

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

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

VI. COUNCIL AD HOC COMMITTEE REPORTS

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

1. Finance Ad Hoc Committee (Chair Baggett)

VII. CONSENT AGENDA

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

- A. Minutes of the May 16, 2022 Regular City Council Meeting

- B. Minutes of the May 23, 2022 Study Session
- C. Claims Vouchers (Thomas)
Claims voucher list dated June 6, 2022 which includes voucher numbers 468007 through 468179, in the amount of \$4,073,804.86 and eight wire transfers in the amount of \$770,110.06
- D. Payroll Voucher (Thomas)
Payroll check numbers 539370 through 539373 in the amount of \$553,485.82, electronic deposit transmissions in the amount of \$2,234,487.97, also a special payroll for Police Commissioned Comp Payout with electronic deposit transmission in the amount of \$39,390.03 for a grand total of \$2,827,363.82 for the period covering May 12, 2022 to June 1, 2022
- E. Setting date for Public Hearing for 2023-2028 Transportation Improvement Program (Gaub)
City Council to set the date of the Public Hearing for the 2023-2028 Transportation Improvement Program
- F. Public Works Project No. CP2102 (Gaub)
City Council to approve an increase of \$225,000.00 in the total maximum authorized contract amount for Public Works Contract No. 21-33; Construction of Project No. CP2102 4th Street SE Preservation – Auburn Way South to L Street SE

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

VIII. UNFINISHED BUSINESS

IX. NEW BUSINESS

X. ORDINANCES

- A. Ordinance No. 6859 (Gaub)
An Ordinance amending Ordinance 6759 and extending the deadline to complete conditions associated with vacating Right-of-Way of a portion of the alley north of 3rd Street NE between B Street NE and Auburn Avenue within the City of Auburn

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6859.)

- B. Ordinance No. 6865 (Tate)
An Ordinance amending Ordinance No. 4456 to permit “Live/Work” land use for one parcel and consistency with current C-3, Heavy Commercial Zone

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6865.)

- C. Ordinance No. 6866 (Caillier/Comeau)
An Ordinance amending sections of the Auburn City Code, to conform to RCW changes resulting from ESSHB 1320

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6866.)

- D. Ordinance No. 6867 (Caillier/Comeau)

An Ordinance repealing Section 9.34.030 of the Auburn City Code, related to discharging firearms within the City

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6867.)

- E. Ordinance No. 6869 (Caillier/Comeau)

An Ordinance amending Section 10.36.263 of the Auburn City Code, related to continuous or multiple vehicle parking violations on City owned or controlled property

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6869.)

- F. Ordinance No. 6871 (Backus)

An Ordinance amending Section 2.63.010 of the Auburn City Code, to recognize Juneteenth and Native American Heritage Day as City legal holidays

(RECOMMENDED ACTION: Move to suspend City Council Procedure Rule 3.1(N)(2) requiring any Ordinance to be included on a Study Session agenda prior to being included in a Council Meeting agenda for consideration.)

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6871.)

XI. RESOLUTIONS

- A. Resolution No. 5667 (Gaub)

A Resolution accepting the Hazard Mitigation Grant for the Reservoirs 4 and 8 Seismic Retrofits Project

(RECOMMENDED ACTION: Move to adopt Resolution No. 5667.)

- B. Resolution No. 5668 (Faber)

A Resolution authorizing an updated Interlocal Cooperation Agreement with King County for the purpose of accepting funds in the amount of \$83,050.00 to reimburse the City for Property Purchases for Salmon Habitat

(RECOMMENDED ACTION: Move to adopt Resolution No. 5668.)

- C. Resolution No. 5669 (Comeau/Faber)

A Resolution approving the Purchase and Sale Agreement for the City's acquisition of real property, King County Parcel Number 0489000085

(RECOMMENDED ACTION: Move to adopt Resolution No. 5669.)

XII. MAYOR AND COUNCILMEMBER REPORTS

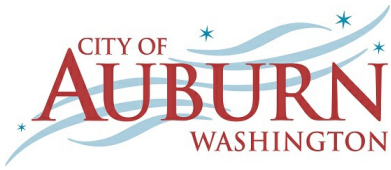
At this time the Mayor and City Council may report on significant items associated with their appointed positions on federal, state, regional and local organizations.

- A. **From the Council**

- B. **From the Mayor**

XIII. ADJOURNMENT

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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Minutes of the May 16, 2022 Regular City Council Meeting

Department:

Administration

Attachments:

[05-16-2022 Minutes](#)

Date:

June 2, 2022

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

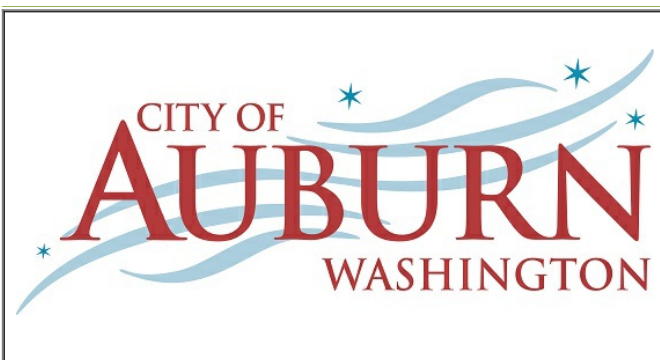
Revised Budget: \$0

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

Meeting Date: June 6, 2022

Staff:

Item Number: CA.A

	City Council Meeting May 16, 2022 - 7:00 PM City Hall Council Chambers and Virtual MINUTES Watch the meeting LIVE! Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.
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I. CALL TO ORDER

II. PUBLIC PARTICIPATION

1. Public Participation

The City Council Meeting was held in person and virtually.

A. Pledge of Allegiance

Mayor Nancy Backus called the meeting to order at 7:00 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street and led those in attendance in the Pledge of Allegiance.

B. Roll Call

Councilmembers present: Deputy Mayor Jeyaraj, Kate Baldwin, Larry Brown, Robyn Mulenga and Yolonda Trout-Manuel. Councilmembers Bob Baggett and Chris Stearns were excused.

Department directors and staff members present included:
Senior City Staff Attorney Harry Boesche, Director of Public Works Ingrid Gaub, Director of Innovation and Technology David Travis, Chief of Police Mark Caillier, Director of Finance Jamie Thomas, Innovation and Technical Support Specialist Chrissy Malave and Deputy City Clerk Hannah Scholl.

III. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

Mayor Backus made a Land Acknowledgement to the Muckleshoot Indian Tribe.

IV. AGENDA MODIFICATIONS

Resolution No. 5666 relating to a Homeless Management and Information System (HMIS) Data Sharing Interlocal Agreement with King County Regional Homelessness Authority was added to the Agenda.

V. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. Public Hearings - (No public hearing is scheduled for this evening.)

B. Audience Participation

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

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

Bob Darrigan 1045 325th PL, Federal Way
Mr. Darrigan spoke expressed his gratitude for the Auburn Noon Lions Fishing Derby event.

Bob Zimmerman 33029 46th Place South, Auburn
Mr. Zimmerman expressed his concerns with wild fires in Washington and code violations.

Thomas Rawls 4146 B PL NW, Auburn
Mr. Rawls provided Council with an overview of the Considerate Group and Joy Hour.

Tom Lyman 4146 B PL NW, Auburn
Mr. Lyman provided Council with an overview of the Considerate Group and Joy Hour.

C. Correspondence

There was no correspondence for Council to review.

VI. COUNCIL AD HOC COMMITTEE REPORTS

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

1. Finance Ad Hoc Committee (Chair Baggett)

Councilmember Baldwin, Co-Chair of the Finance ad hoc committee, reported she and Chair Baggett have reviewed the claims and payroll vouchers described on the agenda this evening and recommended their approval.

VII. CONSENT AGENDA

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

- A. Minutes of the April 25, 2022 and May 9, 2022 Study Session Meetings
- B. Minutes of the May 2, 2022 Regular City Council Meeting

C. Claims Vouchers (Thomas)

Claims voucher list dated May 16, 2022 which includes voucher numbers 467797 through 468006, in the amount of \$6,761,334.80 and four wire transfers in the amount of \$698,094.41

D. Payroll Voucher (Thomas)

Payroll check numbers 539362 through 539369 in the amount of \$75,744.10, electronic deposit transmissions in the amount of \$2,415,764.88 for a grand total of \$2,491,508.98 for the period covering April 28, 2022 to May 11, 2022

E. Setting date for Public Hearing for Ordinance No. 6862 (Gaub)

City Council to set date for Public Hearing for Ordinance 6862 Inland Washington, LLC Street Payback Agreement #PBK19-0001

F. Setting date for Public Hearing for Ordinance No. 6863 (Gaub)

City Council to set date for Public Hearing for Ordinance 6863 Inland Washington, LLC Street Payback Agreement #PBK19-0002

Deputy Mayor Jeyaraj moved and Councilmember Brown seconded to approve the consent agenda.

MOTION CARRIED UNANIMOUSLY. 5-0

VIII. UNFINISHED BUSINESS

There was no unfinished business.

IX. NEW BUSINESS

There was no new business.

X. ORDINANCES

A. Ordinance No. 6858 (Gaub)

An Ordinance granting to MCI Communications Services LLC, a Delaware Limited Liability Company, a franchise for wireline telecommunications

Deputy Mayor Jeyaraj moved and Councilmember Melunga seconded to adopt Ordinance No. 6858.

MOTION CARRIED UNANIMOUSLY. 5-0

B. Ordinance No. 6864 (Gaub)

An Ordinance repealing Ordinances 6767, 6777, 6788, and 6802 that provided for a temporary waiver of late fees for airport and utility accounts, in light of a public health emergency

Councilmember Brown moved and Councilmember Trout-Manuel seconded to adopt Ordinance No. 6864.

MOTION CARRIED UNANIMOUSLY. 5-0

XI. RESOLUTIONS

A. Resolution No. 5665 (Backus)

A Resolution authorizing the Mayor to execute an Interlocal Datashare Agreement with the Department of Social and Health Services.

Deputy Mayor Jeyaraj moved and Councilmember Melunga seconded to adopt Resolution No. 5665.

MOTION CARRIED UNANIMOUSLY. 5-0

B. Resolution No. 5666 (Backus)

A Resolution authorizing the Mayor to execute a Homeless Management and Information System (HMIS) Data Sharing Interlocal Agreement with King County Regional Homelessness Authority

Deputy Mayor Jeyaraj moved and Councilmember Trout-Manuel seconded to adopt Resolution No. 5666.

MOTION CARRIED UNANIMOUSLY. 5-0

XII. MAYOR AND COUNCILMEMBER REPORTS

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

A. From the Council

Deputy Mayor Jeyaraj reported that he attended the Auburn Noon Lions Fishing Derby.

B. From the Mayor

Mayor Backus reported she attended the Ribbon Cutting event at SEA AXE - Axe Throwing, the National Day of Prayer at City Hall, City of Pacific's Mayor, Leanna Guier's retirement event from the Washington State Association of Plumbers and Pipefitters, recorded a That's So Auburn! Podcast episode, the Battlefield Addiction 5k Run and an Eagle Scout event.

XIII. ADJOURNMENT

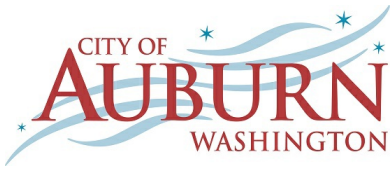
There being no further business to come before the Council, the meeting was adjourned at 7:32 p.m.

APPROVED this 6th day of June, 2022.

NANCY BACKUS, MAYOR

Hannah Scholl, Deputy City Clerk

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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Minutes of the May 23, 2022 Study Session

Department:

Administration

Attachments:

[05-23-2022 Minutes](#)

Date:

June 2, 2022

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

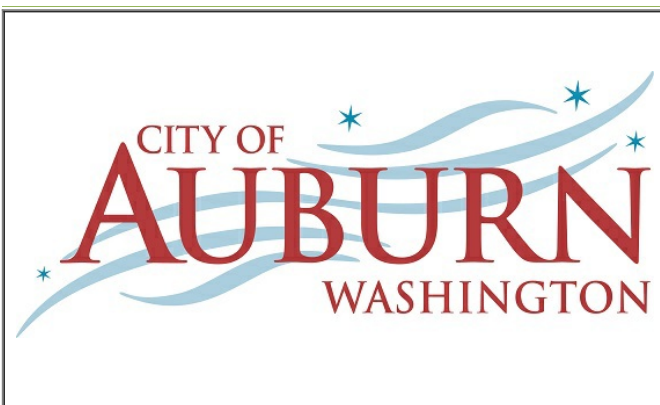
Revised Budget: \$0

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

Meeting Date: June 6, 2022

Staff:

Item Number: CA.B

	City Council Study Session Muni Services SFA May 23, 2022 - 5:30 PM City Hall Council Chambers and Virtual AGENDA Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.
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I. CALL TO ORDER

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

II. PUBLIC PARTICIPATION

A. Public Participation

The City Council Meeting was held in person and virtually.

B. Roll Call

Councilmembers present: Deputy Mayor James Jeyaraj, Kate Baldwin, Bob Baggett, Larry Brown and Chris Stearns. Councilmembers Robyn Mulenga and Yolanda Trout-Manuel were excused.

Department directors and staff members present include: City Attorney Kendra Comeau, Chief of Police Mark Caillier, Director of Public Works Ingrid Gaub, Planner Services Manager Jeff Dixon, Right-of-Way Specialist Amber Olds, Senior City Staff Attorney Harry Boesche, Senior Planner Josh Steiner, Emergency Manager Karissa Smith, Emergency Management Specialist Tyler Turner, Business Systems Analyst Jonathan Barbano and Deputy City Clerk Hannah Scholl.

III. ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS

A. Auburn Community Court Presentation (Comeau) (15 Minutes)

City Attorney Comeau and Prosecutor Flores provided Council with an update on Auburn Community Court including the purpose, history of diversion programs, types of diversion programs, eligibility criteria, process of graduation and compliance monitoring.

Council discussed rate of recidivism, average amount of cases charged per year, story of a Community Court graduate, eligibility criteria and the correlation to diversity and inclusion, top eligible crimes and referrals.

IV. AGENDA ITEMS FOR COUNCIL DISCUSSION

A. Ordinance No. 6859 (Gaub) (5 Minutes)

An Ordinance amending Ordinance 6759 and extending the deadline to complete conditions associated with vacating Right-of-Way of a portion of the alley north of 3rd Street NE between B Street NE and Auburn Avenue within The City of Auburn

Director Gaub introduced Specialist Olds who provided Council with a overview of Ordinance No. 6859 related to amending Ordinance No. 6759, extending deadline to complete conditions associated with proposed vacation of the Right-of-Way.

Council discussed development plans in the area.

B. Ordinance No. 6865 (Tate) (10 Minutes)

An Ordinance amending Ordinance No. 4456 to permit "Live/Work" land use for one parcel and consistency with current C-3, Heavy Commercial Zone

Planning Services Manager Dixon introduced Planner Steiner who provided Council with an overview of Auburn Townhomes Contract Rezone (REZ21-0001) including a project summary for REZ21-0001, history of the Rezone, land use, permitted uses, procedural considerations, Hearing Examiner and Staff recommendations.

Council discussed live/work space.

V. MUNICIPAL SERVICES DISCUSSION ITEMS

A. Emergency Management Presentation (Hinman) (20 Minutes)

Councilmember Baldwin Chaired this portion of the meeting.

Director Hinman introduced Manager Smith and Specialist Turner who provided Council with an overview of Auburn's Emergency Management Program including mitigation, preparation, response, recovery, Emergency Management staff, Program Areas, Emergency Operations Center (EOC), EOC Activations, incident process, emergency plans, training and exercises, education and outreach, Councils role in Emergency Management, upcoming goals, COVID update and Emergency Management's response to COVID-19.

Council discussed emergency plans, training for Councilmembers, Cascadia Rising exercise, process of sharing information, funding, Monkeypox, activation criteria and cyber-attacks.

B. Police Department Annual Report (Caillier) (15 Minutes)

Presentation highlighting the 2021 Auburn Police Department Annual Report

Chief Caillier provided Council with the 2021 Auburn Police Department Annual Report including staff additions, organizational chart, response times, calls for service, 2021 crime statistics, auto

theft, training, public records requests,

Council discussed crime statistics, vacancies within the Department and training.

C. Ordinance No. 6866 (Caillier/Comeau) (5 Minutes)

An Ordinance amending Sections of the Auburn City Code, to conform to RCW changes resulting from ESSHB 1320

City Attorney introduced Senior Staff Attorney Boesche and Chief Caillier who provided Council with an overview of Ordinance No. 6866 related to Domestic Violence enforcement in the City.

Council discussed the RCW related to cyber stalking.

D. Ordinance No. 6867 (Caillier/Comeau) (5 Minutes)

An Ordinance repealing Section 9.34.030 of the Auburn City Code, related to discharging firearms within the City

Senior Staff Attorney Boesche and Chief Caillier provided Council with an overview of Ordinance No. 6867 related to repealing cAuburn City Code regulating discharging firearms in the City.

E. Ordinance No. 6869 (Caillier/Comeau) (5 Minutes)

An Ordinance amending Section 10.36.263 of the Auburn City Code, related to continuous or multiple vehicle parking violations on City owned or controlled property

Senior Staff Attorney Boesche and Chief Caillier provided Council with an overview of Ordinance No. 6869 regarding adding enforcement measures related to repeat parking violations in City parking facilities.

Council discussed homeless individuals, abandoned cars, trespass admonishment, parking, City owned property, parking infractions.

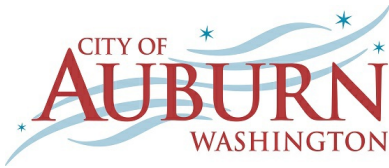
VI. ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 7:20 p.m.

APPROVED this 6th day of June 2022.

JAMES JEYARAJ, DEPUTY MAYOR Hannah Scholl, Deputy City Clerk

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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Claims Vouchers (Thomas)

Date:

June 1, 2022

Department:

Finance

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Claim Vouchers.

Background for Motion:**Background Summary:**

Claims voucher list dated June 6, 2022 which includes voucher numbers 468007 through 468179, in the amount of \$4,073,804.86 and eight wire transfers in the amount of \$770,110.06

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

Thomas

Meeting Date: June 6, 2022

Item Number:

CA.C



AGENDA BILL APPROVAL FORM

Agenda Subject:

Payroll Voucher (Thomas)

Date:

June 1, 2022

Department:

Finance

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Payroll Vouchers.

Background for Motion:**Background Summary:**

Payroll check numbers 539370 through 539373 in the amount of \$553,485.82, electronic deposit transmissions in the amount of \$2,234,487.97, also a special payroll for Police Commissioned Comp Payout with electronic deposit transmission in the amount of \$39,390.03 for a grand total of \$2,827,363.82 for the period covering May 12, 2022 to June 1, 2022

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

Thomas

Meeting Date: June 6, 2022

Item Number:

CA.D



AGENDA BILL APPROVAL FORM

Agenda Subject:

Setting date for Public Hearing for 2023-2028 Transportation Improvement Program (Gaub)

Date:

May 18, 2022

Department:

Public Works

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to set the date of the Public Hearing for the 2023-2028 Transportation Improvement Program as June 6, 2022, at 7:00 pm.

Background for Motion:**Background Summary:**

The City Council is asked to set a time and date for a public hearing to adopt the Six Year Transportation Improvement Program (TIP). The public hearing is proposed to be held on June 21, 2022 during the City Council Meeting.

The TIP is a multiyear planning tool and document for the development of transportation facilities within the City and does not represent a financial commitment by the City. Once the TIP is approved, projects are budgeted and funded through the City's biennial budget. The TIP sets priorities for the allocation secured and unsecured funding and is a prerequisite of most grant programs. Staff also uses the TIP to coordinate future transportation projects with needed utility improvements. The projects and programs identified in the TIP that increase the capacity of the transportation system to address growth and development provide the basis for the City's transportation impact fee program. Projects must also be included in the TIP to be eligible for state and federal grant funding.

RCW 35.77.010 requires that the TIP is amended by June 30 each year. A summary of the proposed changes was presented at City Council Study Session on May 9, 2022.

NEXT STEPS:

The public hearing and adoption are scheduled for the June 21, 2022 City Council meeting.

Reviewed by Council Committees:

Councilmember: Stearns

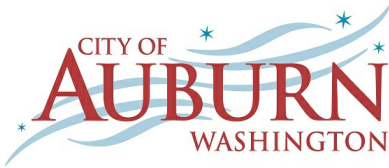
Staff:

Gaub

Meeting Date: June 6, 2022

Item Number:

CA.E



AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Works Project No. CP2102 (Gaub)

Date:

May 16, 2022

Department:

Public Works

Attachments:

[Vicinity Map](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve an increase of \$225,000.00 in the total maximum authorized contract amount for Public Works Contract No. 21-33; Construction of Project No. CP2102 4th Street SE Preservation – Auburn Way South to L Street SE.

Background for Motion:**Background Summary:**

Auburn City Code (ACC) Chapter 3.10 specifies the total maximum authorized contract amount for public work contracts based on contract value. The maximum authorized contract amount includes the original contract amount plus an authorized contingency. The code allows for administrative approval of change order work within the authorized contingency amount. If additional contingency exists within the overall project budget, the code also allows the City Council to increase the total maximum authorized contract amount, which is an increase to the authorized contingency available for administrative approval.

CP2102 4th Street SE Preservation project will reconstruct 4th Street SE from Auburn Way South to L Street SE. The project also includes replacement of underground utilities, improved street lighting, construction of an enhanced pedestrian crossing at J Street SE, construct sidewalk bulb-outs to encourage traffic calming and reduce pedestrian crossing distances and replace sidewalks and curb ramps, as needed.

During construction, differing site conditions were found that require the revision of the roadway pavement section to provide additional crushed rock base course under the proposed asphalt pavement section.

To fund these changes, an increase in the total authorized contract amount of \$225,000 will be required, which is available within the existing overall project budget. After the allocation of this additional construction contract contingency, the remaining project budget contingencies are as follows:

\$0.00 remains in the 103 Local Street Fund for the project.

\$374,997 remains in the 105 Arterial Street Fund for the project.

\$112,874 remains in the 460 Water Utility Fund for the project.

\$76,132 remains in the 461 Sewer Utility Fund for the project.

\$268,264 remains in the 462 Storm Utility Fund for the project.

Reviewed by Council Committees:

Councilmember: Stearns

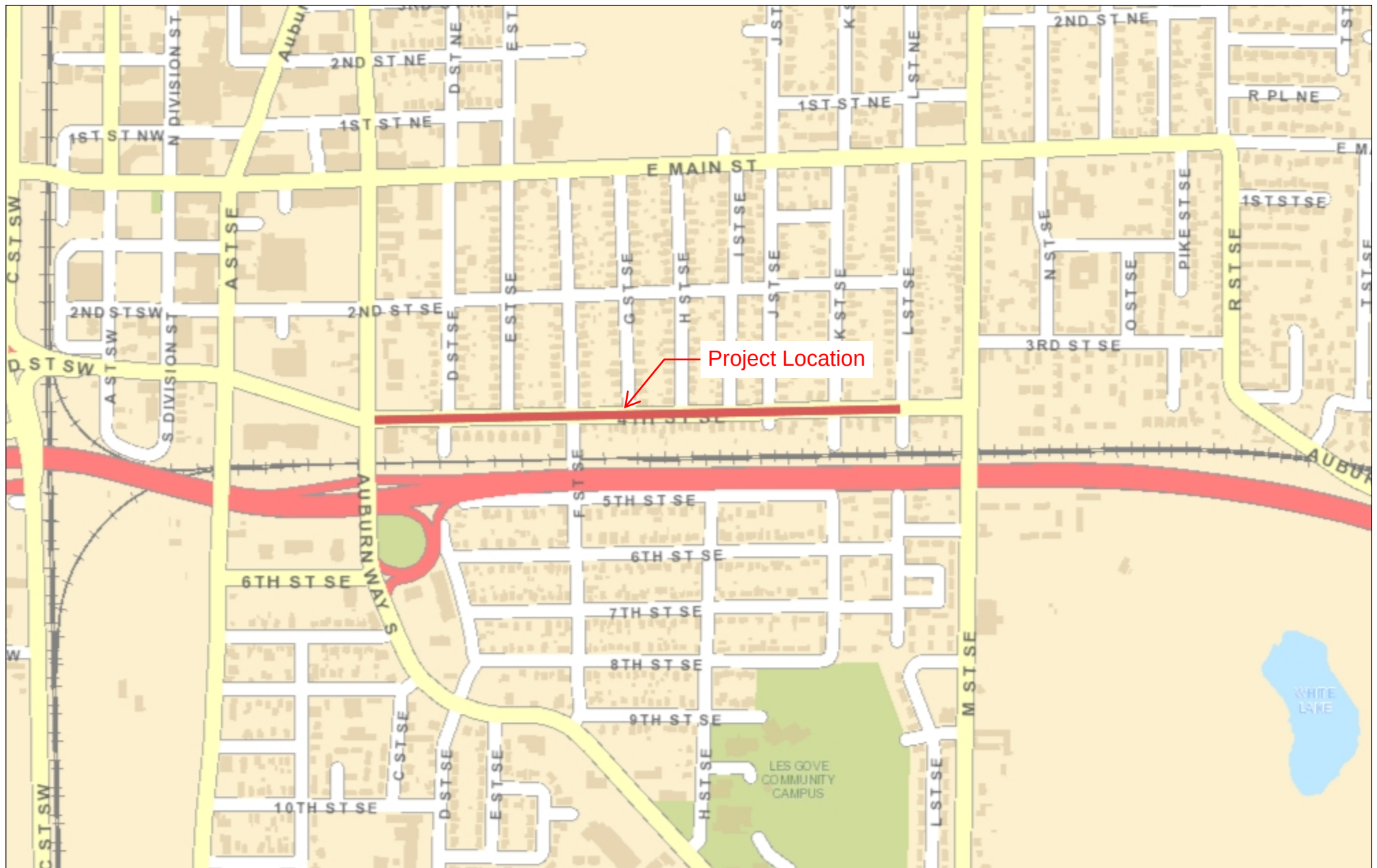
Staff: Gaub

Meeting Date: June 6, 2022

Item Number: CA.F

4th Street SE Preservation - Vicinity Map

Printed Date: 12/15/2020
Map Created by City of Auburn eGIS
Imagery Date: May 2015



1,333.3 0 666.7 1,333.3 Feet

NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

1 in = 667 ft

1:8,000

Page 22 of 150



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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6859 (Gaub)

Date:

May 12, 2022

Department:

Public Works

Attachments:

[Ordinance No. 6859](#)

[Exhibit A](#)

[Vicinity Map](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council adopt Ordinance No. 6859.

Background for Motion:

This Ordinance amends previous council actions to extend the time for the developer to complete conditions associated with Right-of-Way Vacation No. V1-19, which vacates a portion of the alley Right-of-Way north of 3rd Street NE between Auburn Avenue and B Street NE.

Background Summary:

Davis Property and Investment has requested an extension of time to complete conditions associated with Right-of-Way Vacation No. V1-19 that was previously approved on by City Council on March 16, 2020, under Ordinance No. 6759. The vacation is for the alley north of 3rd Street NE and between Auburn Avenue and B Street NE. An extension was previously granted by City Council on June 21, 2021, under Ordinance No. 6823. The current deadline to complete the conditions of the right-of-way vacation is September 16, 2021.

City Staff supports an extension to April 30, 2023, as the applicant just recently received approval of their development plans and notice to proceed with construction. This will align the development's completion of construction and the start of the City's capital project construction in the area.

If adopted, Ordinance No. 6859 amends Ordinance No. 6823 and 6759 extending the time for the developer to complete conditions associated with Right-of-Way Vacation No. V1-19. A depiction of the vacation area is included with Ordinance No. 6823, Exhibit A and the Vicinity Map, in the packet.

Reviewed by Council Committees:

Councilmember: Stearns

Staff:

Gaub

Meeting Date: June 6, 2022

Item Number:

ORD.A

ORDINANCE NO. 6859

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN WASHINGTON, AMENDING ORD. 6759 AND EXTENDING THE DEADLINE TO COMPLETE CONDITIONS ASSOCIATED WITH VACATING RIGHT-OF-WAY OF A PORTION OF THE ALLEY NORTH OF 3RD STREET NE BETWEEN B STREET NE AND AUBURN AVENUE WITHIN THE CITY OF AUBURN, WASHINGTON

WHEREAS, the City of Auburn, Washington ("City"), passed Ordinance No. 6759 on March 16, 2020, vacating its right-of-way located within a portion of the alley north of 3rd Street NE, between B Street NE and Auburn Avenue, within the City, subject to conditions outlined in that Ordinance; and,

WHEREAS, Section 1, Paragraph G of Ordinance No. 6759 required all conditions of the vacation to be completed by September 16, 2021 or the vacation and Ordinance would be null and void; and,

WHEREAS, pursuant to Auburn City Code (ACC) 12.48.090 and before the September 16 deadline in Ordinance No. 6759, the applicant requested additional time to complete the required vacation conditions in Ordinance No. 6759. The City Council granted the request by passing Ordinance No. 6823, which amended Ordinance No. 6759 to extend its vacation condition deadline to September 16, 2022. A copy of Ordinance No. 6823 is attached as Exhibit A to this Ordinance; and,

WHEREAS, by letter dated March 31, 2022, the applicant has indicated that due to factors outside the applicant's control, they will not be able to complete the vacation conditions by the September 16, 2022 deadline set by Ordinance No. 6823. The applicant

Ordinance No. 6859
ROW Vacation V1-19
May 16, 2022
Page 1 of 3

requests additional time to complete the conditions, and estimates completion by April 30, 2023; and,

WHEREAS, the City has determined that the applicant has made a good faith effort to meet the vacation conditions required by Ordinance 6759, and that the applicant's request to extend the condition completion deadline to April 30, 2023 is reasonable and in the public interest given the unforeseeable circumstances encountered by the applicant; and,

WHEREAS, the City Council has considered and approves the applicant's request for extension.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON DO ORDAIN as a non-codified ordinance as follows:

Section 1. Amendment of City Ordinance. Section 1, paragraph G of Ordinance No. 6759 is amended to read as follows:

G. This vacation shall be effective upon completion of the provisions in paragraph E and F, above. The above described provisions must be completed by ~~September 16, 2021~~ April 30, 2023 or the vacation and Ordinance will be null and void.

All other provisions of Ordinance No. 6759 shall remain in full force and effect.

Section 2. Constitutionality or Invalidity. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provisions to other persons or circumstances shall not be affected.

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

Section 4. Effective Date. This Ordinance shall take effect and be in force

Ordinance No. 6859
ROW Vacation V1-19
May 16, 2022
Page 2 of 3

five (5) days from and after passage, approval, and publication as provided by law.

Section 5. Recordation. The City Clerk is directed to record this Ordinance together with Ordinance No. 6823 and Ordinance No. 6759 with the office of the King County Auditor only upon completion of those provisions set forth in Ordinance No. 6759, at which time the vacation pursuant to Ordinance No. 6759 shall be effective under Auburn City Code 12.48.080.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

PUBLISHED: _____

ORDINANCE NO. 6823

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN WASHINGTON, AMENDING THE DEADLINE TO COMPLETE CONDITIONS ASSOCIATED WITH VACATING RIGHT-OF-WAY OF A PORTION OF THE ALLEY NORTH OF 3RD STREET NE BETWEEN B STREET NE AND AUBURN AVENUE WITHIN THE CITY OF AUBURN, WASHINGTON

WHEREAS, the City of Auburn, Washington ("City"), approved Ordinance No. 6759 on March 16, 2020, a copy of which is attached as Exhibit A, vacating right-of-way located within a portion of the alley north of 3rd Street NE, between B Street NE and Auburn Avenue, within the City, subject to conditions outlined in Ordinance No. 6759; and,

WHEREAS, Section 1, Paragraph G of Ordinance No. 6759 required that all conditions of the vacation be completed by September 16, 2021 or the vacation and Ordinance will be null and void; and,

WHEREAS, the applicant has requested additional time to complete those provisions set forth in Section 1, Paragraphs E, F and G of Ordinance No. 6759; and,

WHEREAS, the City has determined that the applicant's request to have until September 16, 2022, is reasonable in light of unforeseeable circumstances and in the public interest to continue the deadline; and,

WHEREAS, the City Council has considered the request for extension.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON DO ORDAIN as a non-codified ordinance as follows:

Section 1. Extension. The deadline for completion in Section 1, Paragraph G of Ordinance No. 6759 is continued to September 16, 2022.

Ordinance No. 6823
ROW Vacation V1-19
May 26, 2021
Page 1 of 2

Section 2. Constitutionality or Invalidity. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provisions to other persons or circumstances shall not be affected.

Section 3. Implementation. The mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this location.

Section 4. Effective Date. This Ordinance shall take effect and be in force five (5) days from and after passage, approval, and publication as provided by law.

Section 5. Recordation. The City Clerk is directed to record this Ordinance together with Ordinance No. 6759 with the office of the King County Auditor only upon completion of those provisions set forth in Ordinance No. 6759, at which time the vacation pursuant to Ordinance No. 6759 shall be effective under Auburn City Code 12.48.080.

INTRODUCED: JUN 2 1 2021

PASSED: JUN 2 1 2021

APPROVED: JUN 2 1 2021

Nancy Backus
NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell
Shawn Campbell, MMC, City Clerk

Kendra Comeau
Kendra Comeau, City Attorney

PUBLISHED: June 24, 2021 in The Granite Times

Ordinance No. 6823
ROW Vacation V1-19
May 26, 2021
Page 2 of 2

ORDINANCE NO. 6759

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN WASHINGTON, VACATING RIGHT-OF-WAY OF A PORTION OF THE ALLEY NORTH OF 3RD STREET NE BETWEEN B STREET NE AND AUBURN AVENUE WITHIN THE CITY OF AUBURN, WASHINGTON

WHEREAS, the City of Auburn, Washington ("City"), has received a petition signed by at least two-thirds (2/3) of the owners of property abutting to right-of-way located within a portion of the alley north of 3rd Street NE, between B Street NE and Auburn Avenue, within the City, requesting vacation of the right-of-way; and,

WHEREAS, as required by Chapter 12.48 of the Auburn City Code, a public hearing was held in connection with the possible vacation, with notice having been provided pursuant to statute; and,

WHEREAS, the City Council has considered all matters presented at the public hearing on the proposed vacation, held on the 16th day of March, 2020, at the Auburn City Council Chambers in Auburn, Washington.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON DO ORDAIN as a non-codified ordinance as follows:

Section 1. Vacation. That the right of way located at a portion of the Alley north of 3rd Street NE, between B Street NE and Auburn Avenue located within the City of Auburn, Washington, legally described as follows:

THAT PORTION OF THE ALLEY, BEING 10 FEET IN WIDTH, ADJACENT TO AND COINCIDENT WITH THE EAST LINE OF LOTS 3 THROUGH 6, BLOCK 2 OF THE PLAN OF MEADOW ADDITION TO AUBURN, ACCORDING TO THE PLAT

THEREOF RECORDED IN VOLUME 18 OF PLATS, PAGE 68,
IN KING COUNTY, WASHINGTON, DESCRIBED AS
FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 6
OF SAID BLOCK 2 OF SAID PLAT;
THENCE SOUTH 89°17'20" EAST, 57.00 FEET ALONG THE
SOUTH LINE OF SAID LOT 6 TO THE SOUTHWEST
CORNER OF THAT PORTION CONVEYED TO THE CITY OF
AUBURN FOR STREET PURPOSES BY DEED RECORDED
UNDER RECORDING NO. 7807170275;
THENCE NORTH 76°21'00" EAST, 44.37 FEET ALONG THE
NORTH LINE, TO THE NORTHEAST CORNER OF SAID
PORTION CONVEYED TO THE CITY OF AUBURN, BEING
THE WEST MARGIN OF SAID ALLEY AND THE TRUE POINT
OF BEGINNING;
THENCE NORTH 00°38'08" EAST, 169.00 FEET ALONG
SAID WEST MARGIN TO THE NORTHEAST CORNER OF
LOT 3 OF SAID PLAN OF MEADOW ADDITION TO AUBURN;
THENCE ALONG THE NORTHERLY PROLONGATION OF
SAID LOT 3, SOUTH 89°17'30" EAST, 10.00 FEET TO THE
EAST MARGIN OF SAID ALLEY;
THENCE SOUTH 00°38'08" WEST, 165.00 FEET ALONG
SAID EAST MARGIN TO THE MOST WESTERLY
NORTHWEST CORNER OF THAT PORTION CONVEYED
TO THE CITY OF AUBURN FOR STREET PURPOSES BY
DEED RECORDED UNDER RECORDING NO. 7807170274;
THENCE SOUTH 68°53'49" WEST, 10.77 FEET TO SAID
NORTHEAST CORNER OF THAT PORTION CONVEYED TO
THE CITY OF AUBURN FOR STREET PURPOSES BY DEED
RECORDED UNDER RECORDING NO. 7807170275 AND
THE WEST MARGIN OF SAID ALLEY AND THE POINT OF
BEGINNING.

CONTAINS 1,670 SQUARE FEET, MORE OR LESS. (0.038
ACRES +/-)

[Also identified as Exhibit "A".]

and as shown on the survey, a copy of which is attached, marked Exhibit "B" is vacated and
the property lying in the right-of-way described, shall inure and belong to those persons

Ordinance No. 6759
ROW Vacation V1-19
January 6, 2020
Page 2 of 6

entitled to receive the property in accordance with RCW 35.79.040, conditioned upon the following:

A. Reservation in favor of the City of a perpetual Nonexclusive Easement under, over, through and across the vacated right-of-way as described above for the purpose of laying, maintaining, and installing future and existing sanitary sewer facilities and including a reservation in favor of the City of the right to grant easements for utilities over, under and on all portions of the vacated right-of-way as described above.

The City shall have the absolute right, at times as may be necessary for immediate entry upon said Easement Area for the purpose of maintenance, inspection, construction, repair or reconstruction of the above improvements without incurring any legal obligation or liability.

The City shall have the absolute right to place any type of driving surface within said Easement Area deemed necessary by the City.

The owners of the adjacent properties agree and shall not in any way block, restrict or impede access and egress to or from said Easement Area, and /or in any way block, restrict or impede full use of the real property within the Easement Area by the City for the above described purposes. No building, wall, rockery, fence, trees, or structure of any kind shall be erected or planted, nor shall any fill material be placed within the boundaries of said Easement Area, without the express written consent of the City. No excavation shall be made within three feet of said facilities and the surface level of the ground within the Easement Area shall be maintained at the elevation as currently

existing.

This easement shall be a covenant running with the adjacent property parcels and burden said real estate, and shall be binding on the successors, heirs and assigns of all parties.

B. Under the terms of the reservation set out in Paragraph A above and in accordance with RCW 35.79.030, the City grants a private utility easement to Puget Sound Energy over, under, and upon the vacated right-of-way as described above for the construction, operation, maintenance, repair, replacement, improvement and removal of electric distribution facilities. The owners of the adjacent property shall not erect any structures on the easement and shall not place trees or other obstructions on the easement that would interfere with the exercise of Grantees' rights.

C. Under the terms of the reservation set out in Paragraph A above and in accordance with RCW 35.79.030, the City grants a private utility easement to CenturyLink over, under and upon the vacated right-of-way as described above for the construction, operation, maintenance, repair, replacement, improvement and removal of wireline telecommunications facilities. The owners of the adjacent properties shall not erect any structures on the easement and shall not place trees or other obstructions on the easement that would interfere with the exercise of Grantees' rights.

D. It is provided, however that such reserved or granted utility and access easements as set out in Paragraphs A, B and C above may be modified to accommodate a removal, relocation and sitting of the affected utility lines if the City and the property

owners on whose property the utility lines are located agree to the removal relocations and sitting being paid by said property owners and with the removal relocation and sitting being done in conformity with applicable standards.

E. The property owners of Parcel Nos. 5405100015 and 5405100025 shall reserve and grant a public access easement across those parcels from the southern terminus of the existing public alley (following vacation) to B Street NE and shall construct such public access easement to City standards for the purposes of allowing vehicular, pedestrian and emergency access to and from the southern terminus of the existing public alley (following vacation) to and from B Street NE.

F. Direct access from the vacation area to 3rd Street NE and from Parcel No. 0492000480 to Auburn Avenue shall be permanently closed. The Developer will be required to remove curb cuts and driveways and replace with sidewalks in accordance with City Standards upon reservation and construction of such access easement in paragraph E, above.

G. This vacation shall be effective upon completion of the provisions in paragraph E and F, above. The above described provisions must be completed by September 16, 2021 or the vacation and Ordinance will be null and void.

Section 2. Constitutionality or Invalidity. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provisions to other persons or circumstances shall not be affected.

Section 3. Implementation. The mayor is authorized to implement such

administrative procedures as may be necessary to carry out the directives of this location.

Section 4. Effective Date. This Ordinance shall take effect and be in force five (5) days from and after passage, approval, and publication as provided by law.

Section 5. Recordation. The City Clerk is directed to record this Ordinance with the office of the King County Auditor only upon completion of those provisions set forth in Section 1, Paragraphs E, F, and G, above, at which time the vacation pursuant to this Ordinance shall be effective under Auburn City Code 12.48.080.

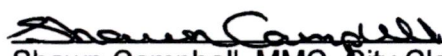
INTRODUCED: MAR 16 2020

PASSED: MAR 16 2020

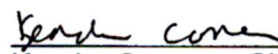
APPROVED: MAR 16 2020


NANCY BACKUS, MAYOR

ATTEST:


Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:


Kendra Comeau, City Attorney

PUBLISHED: March 19th 2021 in The Seattle Times

Ordinance No. 6759
ROW Vacation V1-19
January 6, 2020
Page 6 of 6

EXHIBIT "A"

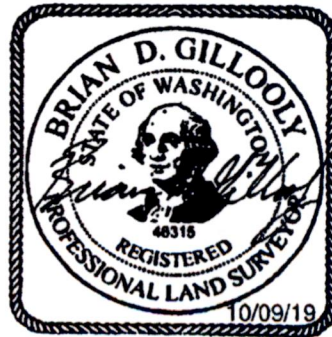
LEGAL DESCRIPTION

RIGHT-OF-WAY VACATION

THAT PORTION OF THE ALLEY, BEING 10 FEET IN WIDTH, ADJACENT TO AND COINCIDENT WITH THE EAST LINE OF LOTS 3 THROUGH 6, BLOCK 2 OF THE PLAN OF MEADOW ADDITION TO AUBURN, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 18 OF PLATS, PAGE 68, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

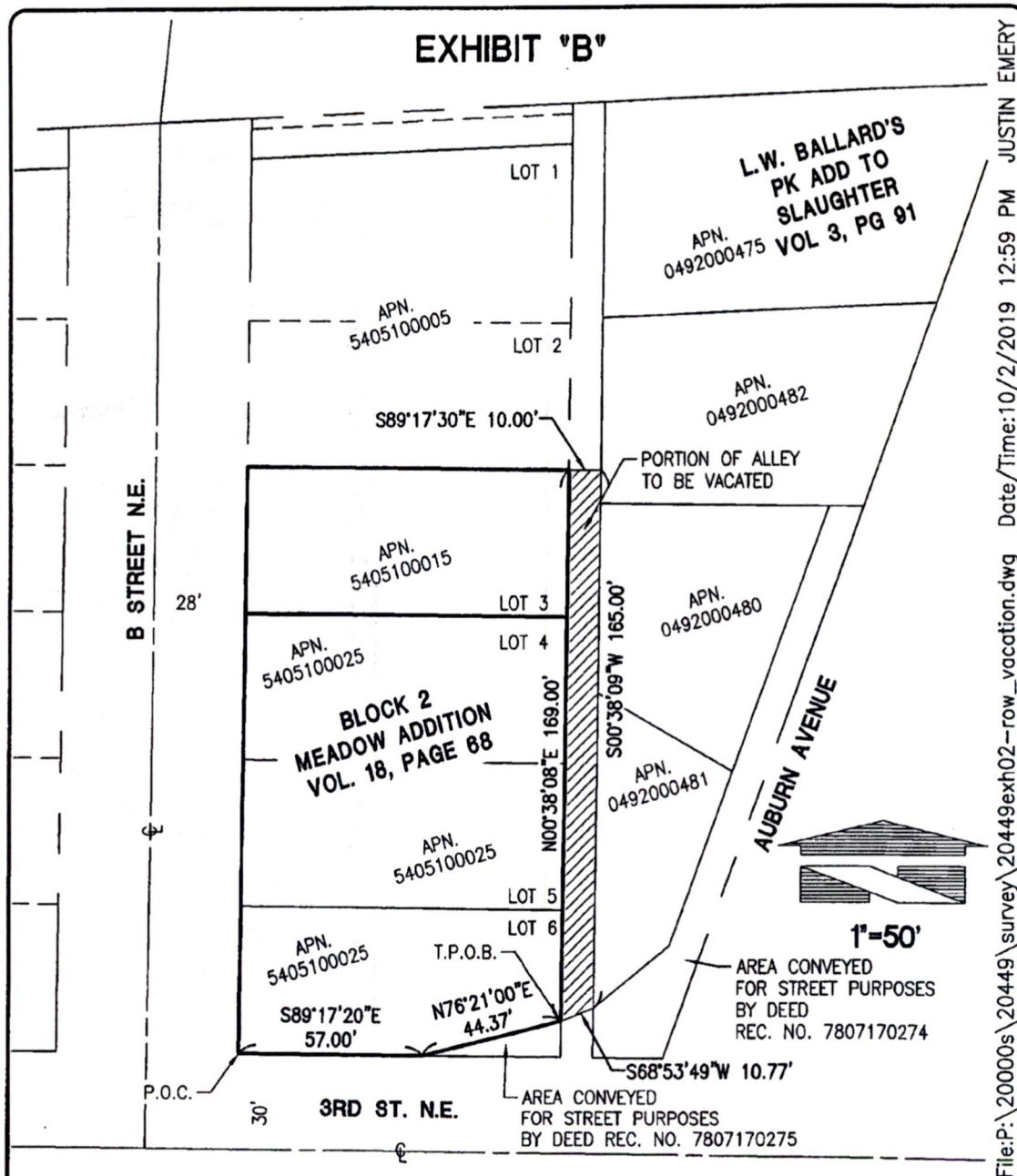
COMMENCING AT THE SOUTHWEST CORNER OF LOT 6 OF SAID BLOCK 2 OF SAID PLAT;
THENCE SOUTH 89°17'20" EAST, 57.00 FEET ALONG THE SOUTH LINE OF SAID LOT 6 TO THE SOUTHWEST CORNER OF THAT PORTION CONVEYED TO THE CITY OF AUBURN FOR STREET PURPOSES BY DEED RECORDED UNDER RECORDING NO. 7807170275;
THENCE NORTH 76°21'00" EAST, 44.37 FEET ALONG THE NORTH LINE, TO THE NORTHEAST CORNER OF SAID PORTION CONVEYED TO THE CITY OF AUBURN, BEING THE WEST MARGIN OF SAID ALLEY AND THE TRUE POINT OF BEGINNING;
THENCE NORTH 00°38'08" EAST, 169.00 FEET ALONG SAID WEST MARGIN TO THE NORTHEAST CORNER OF LOT 3 OF SAID PLAN OF MEADOW ADDITION TO AUBURN;
THENCE ALONG THE NORTHERLY PROLONGATION OF SAID LOT 3, SOUTH 89°17'30" EAST, 10.00 FEET TO THE EAST MARGIN OF SAID ALLEY;
THENCE SOUTH 00°38'08" WEST, 165.00 FEET ALONG SAID EAST MARGIN TO THE MOST WESTERLY NORTHWEST CORNER OF THAT PORTION CONVEYED TO THE CITY OF AUBURN FOR STREET PURPOSES BY DEED RECORDED UNDER RECORDING NO. 7807170274;
THENCE SOUTH 68°53'49" WEST, 10.77 FEET TO SAID NORTHEAST CORNER OF THAT PORTION CONVEYED TO THE CITY OF AUBURN FOR STREET PURPOSES BY DEED RECORDED UNDER RECORDING NO. 7807170275 AND THE WEST MARGIN OF SAID ALLEY AND THE POINT OF BEGINNING.

CONTAINS 1,670 SQUARE FEET, MORE OR LESS. (0.038 ACRES +/-)



Project Name: Merritt Building
March 13, 2019
Revised September 19, 2019
Job No. 20449

BDG / JSE
20449L.001.doc

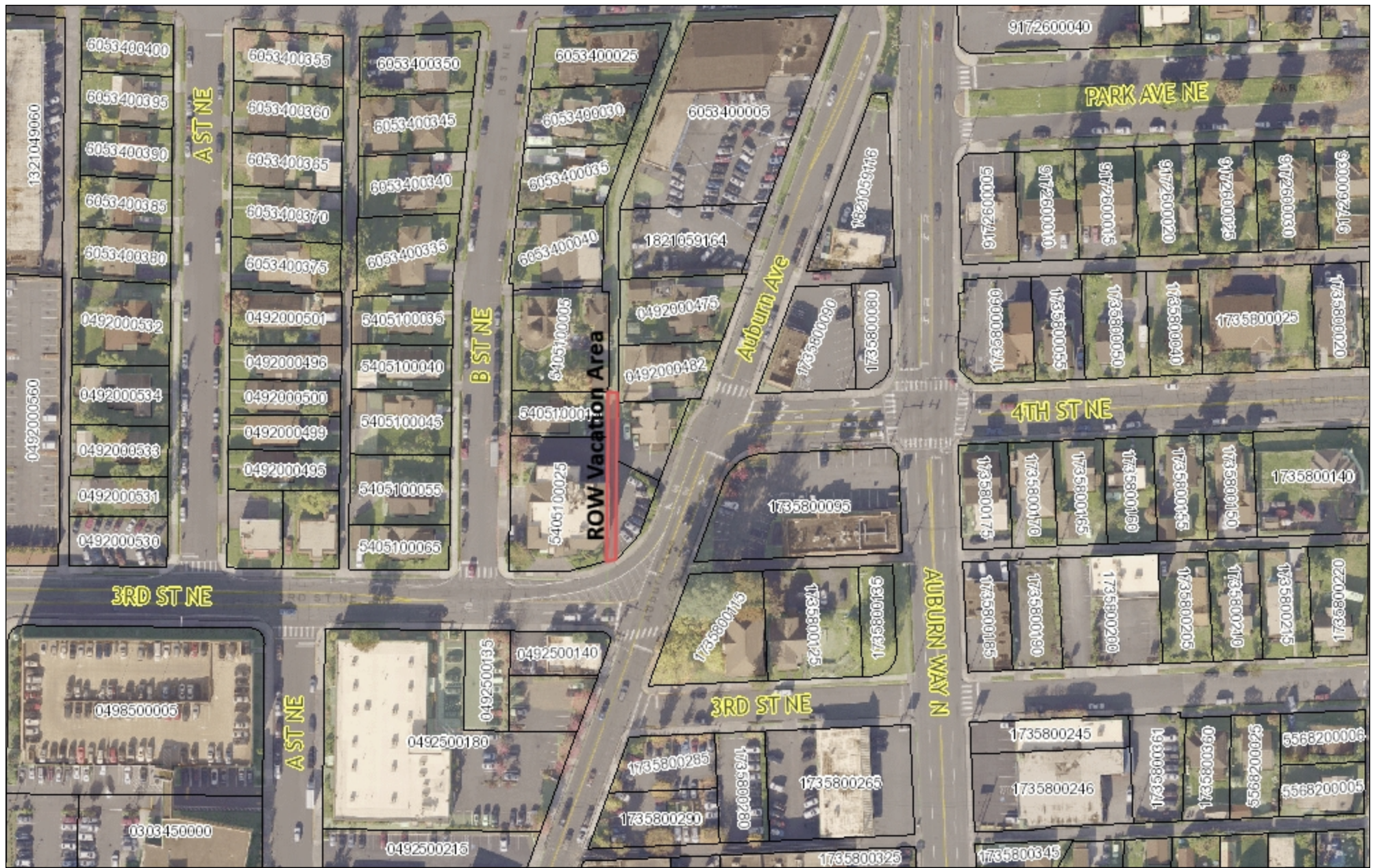


File:P:\20000s\20449\survey\20449exh02-row_vacation.dwg Date/Time:10/2/2019 12:59 PM JUSTIN EMERY

SCALE: HORIZONTAL 1"=50' VERTICAL N/A		For: CITY OF AUBURN		JOB NUMBER 20449	
 18215 72ND AVENUE SOUTH KENT, WA 98032 (425)251-6222 (425)251-8782 FAX CIVIL ENGINEERING, LAND PLANNING, SURVEYING, ENVIRONMENTAL SERVICES		Title: RIGHT OF WAY VACATION		20449L.001.DOC SHEET 1 of 1	
DESIGNED	XXX	DRAWN	JSE	CHECKED	DJS
APPROVED		BDG	DATE		09/19/19

ROW Vacation #V1-19 Alley north of 3rd St NE between B St NE & Auburn Ave

Printed Date: 12/13/2019
Map Created by City of Auburn eGIS
Imagery Date: May 2015



262.7 0 131.4 262.7 Feet

NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

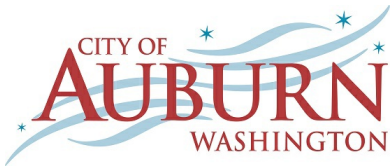
1 in = 131 ft

1:1,576

Page 38 of 150



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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6865 (Tate)

Date:

June 1, 2022

Department:

Community Development

Attachments:

[Attachment A - ORD 6865 - Contract Rezone](#)

[Attachment B - ORD 6865 - Exhibit A](#)

[Attachment C - ORD 6865 - Exhibit B](#)

[Attachment D - ORD 6865 - Vicinity Map](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to introduce and adopt Ordinance No. 6865 approving Auburn Townhomes Amendment (Rezone) without conditions as recommended by the Hearing Examiner.

Background for Motion:

Ordinance No. 6865 amends the contract rezone adopted as Ordinance 4456 to include Live/Work as a permitted use within only the subject parcel King Co. Parcel No. 000080-0053

Background Summary:

Request to amend contract rezone (Ordinance No. 4456) of approx. 7.7 acres (four parcels) of C-3, Heavy Commercial zoned properties to include "Live/Work" as an allowed use for parcel (King Co. Parcel No. 000080-0053) of the four original parcels. The other three parcels included in original contract rezone are not part of this contract rezone amendment application request and are already developed and will remain consistent with requirements outlined in Section 4 of Ordinance No. 4456. A contract rezone was implemented at the time patterned after the C-3, Heavy Commercial but with a more limited range of allowed uses. The "Live/Work" was not included as a permitted use in the contract rezone adopted in September 1990 because this was not a typical use at the time, however current city code allows "Live/Work" as a permitted use in C-3, Heavy Commercial zone per Section 18.23.030.

On April 20, 2022 a public hearing was held, and the Hearing Examiner recommended to City Council that the Auburn Townhomes contract rezone amendment be adopted without conditions. A Determination of Non-Significance was issued on February 10, 2022 and no public comments were received during the public comment period and there were no appeals.

Ordinance No. 6865 and related materials were presented at the May 23, 2022 City Council Study Session.

Reviewed by Council Committees:

Councilmember: Stearns

Meeting Date: June 6, 2022

Staff:

Item Number:

Tate

ORD.B

ORDINANCE NO. 6 8 6 5

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON, AMENDING ORDINANCE NO.
4456 TO PERMIT “LIVE/WORK” LAND USE FOR ONE
PARCEL AND CONSISTENCY WITH CURRENT C-3,
HEAVY COMMERCIAL ZONE.

WHEREAS, the City Council of the City of Auburn, Washington, adopted, on
September 4, 1990, Ordinance No. 4456 which approved a contract rezone consisting of
four parcels from M-1, Light Industrial to C-3, Heavy Commercial; and

WHEREAS, Ordinance No. 4456 was adopted as a contract rezone patterned after
the then, range of land uses allowed in the C-3, Heavy Commercial zoning district but
with a more limited set of land uses that were appropriate given the vicinity and to reduce
or avoid impacts; and

WHEREAS, Ordinance No. 4456 included an extensive list of authorized uses
within the contract rezone, which did not include “Live/Work” as a permitted use because
the development type was not typical; and

WHEREAS, ACC 18.23.030 currently allows for “Live/Work” land uses in the city’s
C-3, Heavy Commercial zoning district; and

WHEREAS, Brent Lambeth, of Lambeth Architecture, Applicant’s Representative,
submitted a rezone application on October 13, 2022 for King County Parcel No. 000080-
0053; and

WHEREAS, the environmental impacts of the proposed rezone were considered
in accordance with procedures of the State Environmental Policy Act with a Determination
of Non-Significance issued on February 10, 2022; and

WHEREAS, after proper notice published in the City’s official newspaper at least

ten (10) days prior to the date of public hearing, the City of Auburn Hearing Examiner heard public testimony and took evidence and exhibits into consideration; and

WHEREAS, on April 20, 2022 the City of Auburn Hearing Examiner recommended approval of the contract rezone amendment application, and made and entered findings of fact and conclusions of law based thereon in support of that recommendation, as set forth in the Findings of Fact, Conclusions of Law and Recommendation of the Hearing Examiner attached hereto, marked as Exhibit “A” and incorporated herein by this reference; and

WHEREAS, the City Council concurs with the findings of fact and conclusions of law of the Hearing Examiner; and

WHEREAS, Section 4, of Ordinance No. 4456, marked as Exhibit “B” is amended as follows, only for King County Parcel No. 000080-0053, to add the following:

ZZ. Live/Work Units

The three other parcels indicated in Ordinance No. 4456 are to remain consistent with Section 4 requirements indicated in Ordinance No. 4456.

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

Section 1. Adoption of the Hearing Examiner’s Findings of Fact and Conclusions of Law. The City Council adopts the findings of fact and conclusions of law based thereon, made and entered by the Hearing Examiner in support of the

recommendation to the City Council, as set forth in the “Findings of Fact, Conclusions of Law and Recommendation for the Auburn Townhomes Rezone, City File Number REZ21-0001, dated May 4, 2022”, attached hereto, marked as Exhibit “A”.

Section 2. Approval. The City Council adopts and approves the request to amend Ordinance No. 4456 to allow “Live/Work” as a permitted applicable to King County Parcel No. 000080-0053.

Section 3. 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 5. Recordation. Upon the passage, approval and publication of this Ordinance as provided by law, the City Clerk of the City of Auburn shall cause this Ordinance to be recorded in the office of the King County Auditor’s Division.

Section 6. Implementation. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 7. 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: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

Published: _____

CITY CLERK'S OFFICE
CITY OF AUBURN
25 West Main
Auburn, WA 98001

\$15.00

ORDINANCE NO. 4 4 5 6

AN ORDINANCE OF THE CITY OF AUBURN, WASHINGTON, PROVIDING FOR THE REZONING OF PROPERTY LOCATED ON THE NORTH SIDE OF 16TH STREET N.W. BETWEEN "A" STREET N.E. AND "B" STREET N.W., WITHIN THE CITY OF AUBURN, WASHINGTON, CHANGING THE ZONING CLASSIFICATION THEREOF FROM M-1 (LIGHT INDUSTRIAL) TO C-3 (HEAVY COMMERCIAL) AND COMPREHENSIVE PLAN MAP AMENDMENT FROM LIGHT INDUSTRIAL TO HEAVY COMMERCIAL.

WHEREAS, Application No. REZ0004-90 has been submitted to the Council of the City of Auburn, Washington, by LONE PROPERTIES, requesting the rezone and Comprehensive Plan Map amendment of the real property hereinafter described in Section 2 of the Ordinance, which application was dated June 20, 1990; and,

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

WHEREAS, the Planning Commission, based upon staff review, held a public hearing to consider said petition in the Council Chambers of the Auburn City Hall, on August 7, 1990, at the conclusion of which the Planning Commission recommended the approval of the request for rezone and Comprehensive Plan amendment of said property based upon the following Findings of Fact and Conclusions, to-wit:

90/10/05

REC'D F

12.00

REC'D FEE

2.00

CASHED

*14.00

55

9010051316

FINDINGS OF FACT

1. The applicant is requesting a rezone from M-1 (Light Industrial), to C-3 (Heavy Commercial). A Comprehensive Plan Map amendment from light industrial to heavy commercial is being processed as well. The parcel is 7.7± acres in size and lies on the north side of 16th Street between "B" St. N.E. and the Auburn Airport.
2. The majority of the parcel is vacant. A temporary structure, to accommodate a new bank, is located on the easterly portion of the parcel. The permanent bank facility will be under construction within a year.
3. The adjoining parcel to the north is vacant and zoned M-1. This was the site of the Auburn Downs proposal. To the east is the Auburn Airport, to the south is a vacant parcel owned by Metro, across 16th Street to the south is a vacant parcel zoned C-3 (Heavy Commercial). To the west is "B" Street and the Burlington Northern Railroad tracks.
4. The parcel may be more appropriate for commercial uses in that the property is near the 15th Street commercial corridor, fronts on an arterial (16th Street), commercial zoning exists across 16th Street, and a commercial use, i.e. bank, is being built on the parcel.
5. Even though the parcel may be more appropriate for commercial uses, there needs to be assurances that a strip commercial development will not result. There also need to be assurances that the number of accesses to the abutting arterials will be limited in order to facilitate traffic flow, and the proposed uses need to be consistent and compatible with the character of the area.

6. These assurances can be attained through the execution of a contract rezone. Section 18.68.060 of the Zoning Ordinance allows for a contract rezone in order to mitigate any impacts that may result from the rezone.

7. The applicant has submitted a letter and site plan which indicate his desire to provide for a coordinated business development.

8. Related Comprehensive Plan Findings:

OBJECTIVE 20.3. To encourage the appropriate use of areas adjacent to heavily travelled arterials while minimizing land use and traffic conflicts by:

- a. Managing the continued commercial development of existing commercial arterials in a manner which minimizes traffic and land use conflicts.*
- d. Planning and establishing new arterials in a manner which prevents strip commercial development.*

POLICIES:

20.3.1. The City shall identify those existing commercial arterials that are appropriate for continued general (heavy) commercial development, and those arterials that are appropriate for continued or future limited (i.e. professional office type) commercial development.

20.3.2. The City shall encourage the grouping of individual commercial enterprises along commercial arterials in order to promote the sharing of parking areas, access drives and signs. Such grouping can be encouraged through land division regulations, sign regulations and development standards.

20.3.3. The City shall review its standards relating to the number, size and location of driveways to ensure consistency with goals and policies relating to arterial commercial development.

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CONCLUSIONS OF LAW

It is concluded that the Comprehensive Plan Map amendment and rezone may be approved based upon the following:

1. It is concluded that the rezone and Comprehensive Plan Map amendment may be approved if a contract rezone is executed that limits uses, and sets forth requirements and standards for the number and location of driveways, streetscape design, shared parking lots, shared signage and architectural design.

2. The contract rezone would be consistent with the policies of the Comprehensive Plan, the existing zoning and uses in the area, and the changing character of the area to commercial uses.

For each of the above referenced reasons, the recommendation of the Planning Commission to the Auburn City Council on the requested rezone and Comprehensive Plan Map amendment is approved.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN AS FOLLOWS:

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

1 Section 2. The property located on the north side of
2 16th Street N.W. between "A" Street N.E. and "B" Street N.E.
3 and legally described as follows, situate in the City of
4 Auburn, County of King, State of Washington, be and the same
5 is hereby rezoned from M-1 (Light Industrial) to C-3 (Heavy
6 Commercial) togetherwith a Comprehensive Plan Map Amendment
7 from Light Industrial to Heavy Commercial:
8

9 That portion of the South half of the Joseph
10 Brannon Donation Land Claim No. 38, situated
11 in the West half of Section 7, Township 21
12 North, Range 5 East, W.M.; and the East half
13 of Section 12, Township 21 North, Range 4
14 East, W.M., in King County, Washington,
15 being described as follows:

16 Beginning at the point of intersection of
17 the East margin of "B" Street Northwest with
18 the North line of said South half of said
19 Donation Land Claim;

20 Thence S 89°06'01" E, along said North line,
21 a distance of 1,090.76 feet, to a point
22 1,510.00 feet West of the East line of said
23 Donation Land Claim;

24 Thence S 00°42'32" W, parallel with said
25 East line, a distance of 329.70 feet, to the
26 North line of a parcel belonging to "Metro
Park and Ride";

 Thence N 89°29'03" W, along said North line,
a distance of 258.55 feet, to a point of
intersection with the Northerly projection
of the East margin of "A" Street Northwest;
thence S 00°40'40" W along said projection,
a distance of 268.43 feet, to said margin;

1
2 Thence Northwesterly along said East margin
3 of "A" Street Northwest and changing into
4 the Northerly margin of 16th Street
5 Northwest, along a curve to the left with a
6 radius of 330.04 feet, a central angle of
7 89°45'30", an arc length of 517.03 feet and
8 a chord which bears N 44°12'02" W, 465.77
9 feet

10 Thence N 89°04'50" W, along said Northerly
11 margin of 16th Street Northwest, a distance
12 of 476.63 feet; thence N 44°11'08" W, a
13 distance of 38.13 feet, to the East margin
14 of said "B" Street Northwest; thence N
15 00°42'35" E along said margin, a distance of
16 244.01 feet, to the point of beginning.

17 **Section 3.** The applicant prepare a master site plan, to
18 be approved by the Planning Director, indicating the number
19 and location of driveways, landscape design, sign plan and a
20 compatible architectural design for all buildings within the
21 rezoned area.

22 The plan shall be approved by the Planning Director prior
23 to building permits being applied for. This would except the
24 bank which has received prior administrative approval.

25 All other subsequent uses/buildings would have to be
26 consistent with the site plan. The Planning Director shall
approve individual site plans including building and parking
lot layout.

Section 4. The following uses to be allowed will be
those as permitted by Section 18.30.020 as listed below:

- 1 B. Art, music and photography studios;
- 2 J. Bakery and pastry shops, products made must be sold
at retail on the premises;
- 3 K. Banking and related financial institutions;
- 4 P. Civic, social and fraternal associations;
- 5 S. Day-care, including home based, mini day-care, day-
care centers, preschool or nursery schools;
- 6 T. Delicatessens;
- 7 U. Drycleaning and laundry services;
- 8 Y. Grocery stores;
- 9 Z. Health and physical fitness clubs
- 10 AA. Hobby shops;
- 11 CC. Hotels;
- 12 KK. Motels;
- 13 MM. Newsstands;
- 14 OO. Personal service shops;
- 15 PP. Pharmacies;
- 16 QQ. Printing and publishing;
- 17 RR. Professional offices;
- 18 VV. Restaurants;
- 19 WW. Retail stores and shops, including department and
variety stores which offer for sale the following
and similar related goods:
- 20 1. Antiques;
- 21 2. Art supplies;
- 22 3. Automobile parts and accessories;
- 23 4. Baked goods;
- 24 5. Beverages;
- 25 6. Bicycles;
- 26 7. Books and magazines;
8. Candy, nuts and confectionery;
9. Clothing;
10. Computers;
11. Dairy products;
12. Dry goods;
13. Flowers and house plants;
14. Fruits and vegetables;
15. Furniture and home furnishings;
16. Garden and farm supplies;
17. Hardware, including electrical, heating,
plumbing, glass, paint, wallpaper, and related
goods;
18. Home garden supplies;

19. Household appliances;
20. Household pets;
21. Housewares;
22. Jewelry and clocks;
23. Meat, fish, and poultry, pre-processed;
24. Notions;
25. Nursery and horticultural products;
26. Office supplies and equipment;
27. Photographic equipment, including finishing;
28. Radio, television, and stereos;
29. Shoes;
30. Sporting goods;
31. Stationery;
32. Toys.

YY. Schools, including art, business, barber, beauty, dancing, driving, martial arts and music.

Section 5. All uses shall be conducted inside of a building except automobile parking, refuse containers, and incidental utility structures. The refuse containers and utility structures shall be screened from the public streets and adjoining properties.

Section 6. Upon the passage, approval and publication of this Ordinance as provided by law, the City Clerk of the City of Auburn shall cause this Ordinance to be recorded in the office of the King County Auditor, Division of Records and Elections.

Section 7. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

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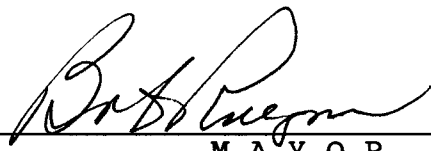
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Section 8. This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

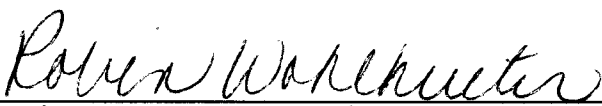
INTRODUCED: 9-4-90

PASSED: 9-4-90

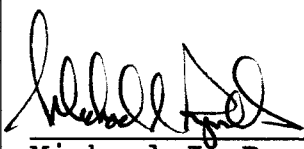
APPROVED: 9-4-90


MAYOR

ATTEST:


Robin Wohlhueter, City Clerk

APPROVED AS TO FORM:


Michael J. Reynolds,
Acting City Attorney

PUBLISHED: 9-9-90

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

I, Robin Wohlhueter, the duly appointed, qualified City

Clerk of the City of Auburn, a Municipal Corporation and Code City, situate in the County of King, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 4456 of the ordinances of the City of Auburn, entitled "AN ORDINANCE."

I certify that said Ordinance No. 4456 was duly passed by the Council and approved by the Mayor of the said City of Auburn, on the the 4th day of September A.D., 1990.

I further certify that said Ordinance No. 4456 was published as provided by law in the Valley Daily News, a daily newspaper published in the City of Auburn, and of general circulation therein, on the 9th day of September, A.D., 1990.

Witness my hand and the official seal of the City of Auburn this
December 28, 1990, A.D.



Robin Wohlhueter
City Clerk
City of Auburn

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BEFORE THE HEARING EXAMINER FOR THE CITY OF AUBURN

Phil Olbrechts, Hearing Examiner

RE: Auburn Townhomes Rezone REZ21-0001	FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION
---	--

INTRODUCTION

The Applicant has requested an amendment to a contract rezone, specifically to authorize live/work units as a permitted use at a parcel located on the north side of 16th St. NW between ‘A’ St. NW and ‘B’ St.. It is recommended that the City Council approve the requested amendment.

The proposed amendment is straightforward and relatively minor. The City Council approved a contract rezone for the project site in 1990. The contract rezone included an extensive list of authorized uses. Live/work units were not included in that list because that use was not recognized in the City’s zoning code at the time. The contract rezone designated the property as C-3, the same zoning that applies to properties on the west, east and south sides of the project site. Live/work units are currently permitted outright in the C-3 zone¹. As discussed in more detail below, existing surrounding uses are generally compatible with live/work units, most notably a hotel on the east side of the project site and short-term housing on the west side.

¹ Although live/work units are authorized in the C-3 zone, it appears that the same contract rezone that applies to the subject property also applies to other properties north of 16th as well. See Ex. 8, p. 5. In this regard, live/work units may not be authorized in some of the surrounding C-3 property. As shown in the zoning map excerpt below, however, the project site is in a large area of C-3 zoned property that extends significantly south of 16th.

TESTIMONY

A computer-generated transcript has been prepared of the appeal hearing to provide an overview of the hearing testimony. The transcript is provided for informational purposes only as Appendix A. Since the transcript is computer generated, it is not 100% accurate, but does provide a useful indication of what testimony was presented during the hearing.

EXHIBITS

Exhibits 1-9 identified in the Exhibit List at page 6 of the April 20, 2022 staff report were admitted into the record during the April 20, 2022 public hearing.

FINDINGS OF FACT

Procedural:

1. Applicant. The Applicant is Rajinder Khera, Swami Investments, 7812 120th Street Surrey, BC V3W3N2.
2. Hearing. A virtual hearing on the application was held on April 20, 2022 at 5:30 p.m., Zoom Meeting ID No. 863 7728 1404.

Substantive:

3. Site/Proposal Description. The Applicant has requested an amendment to a contract rezone, specifically to authorize live/work units as a permitted use at a parcel located on the north side of 16th St. NW between 'A' St. NW and 'B' St.. The City Council approved the contract rezone in 1990 for four parcels totaling 7.7 acres. The parcel subject to the rezone is approximately 7,500 square feet in area². Live/Work is not included as a permitted use in the contract rezone.

A live/work unit is defined by ACC 18.04.527 as follows:

“Live/work unit” means an integrated housing unit and working space, occupied and utilized by a single household in a structure, either single dwelling or multi-unit dwelling, that has been designed or structurally modified to accommodate joint residential occupancy and work activity, and which includes:

A. A complete dwelling unit; and

² The staff report identifies the project site as rectangular with a width of 50 feet and length of 150 feet.

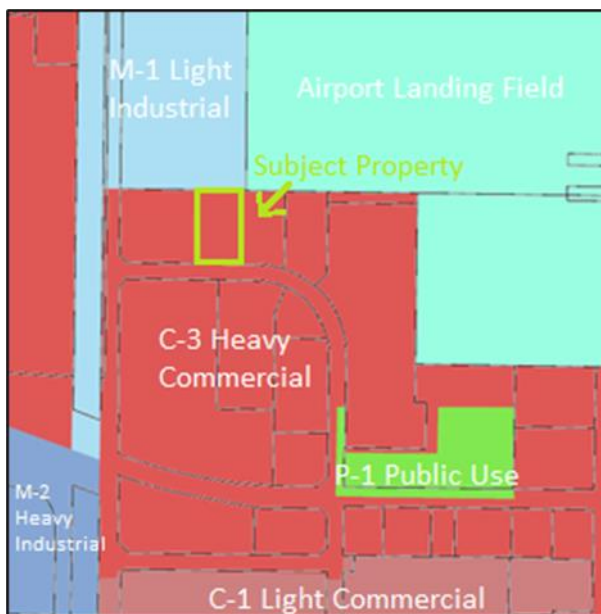
1 B. Working space reserved for and regularly used by one or more
2 occupants of the dwelling unit.

3 *The difference between a live/work unit and a work/live unit (defined in*
4 *ACC 18.04.913) is that the “work” component of a live/work unit is*
5 *secondary to its residential use, and may include only commercial*
6 *activities and pursuits that are compatible with the character of a quiet*
7 *residential environment, while the work component of a work/live unit is*
8 *the primary use, to which the residential component is secondary.*

9 Live/work units are currently authorized in the C-3 zone (Heavy Commercial
10 District), which is the zoning of the adjoining properties to the south, east and west
11 (however, see Footnote No. 1).

12 According to the SEPA checklist for the project site, Ex. 3, the property is
13 undeveloped and currently used for overflow parking.

14 4. Characteristics of the Area: As previously mentioned, parcels to the
15 south, east and west are zoned C-3. The parcel to the north is zoned M-1 Light
16 Industrial. The subject parcel is located on the north side of 16th St. NW with a
17 Comfort Inn Hotel located on its east side and a former Clarion Hotel located on its
18 west side. The C-3 parcels located across 16th St. are either vacant or occupied by
19 Public Storage and Self Storage. McKeeson Warehousing is located to the north and
20 an airfield to the northeast. According to the testimony of staff, the Clarion Hotel has
21 recently been purchased by King County to be used for short term housing. As of a
22 couple weeks prior to the hearing, staff testified that the Clarion property was “gated
23 off.” Surrounding zoning is depicted in the zoning map excerpt pasted below:



1 5. Adverse Impacts. There are no significant adverse impacts associated
2 with the proposal. The proposed live/work addition to the contract rezone is
3 compatible with the lodging and residential uses currently in place on the adjoining
4 Clarion/King County and Comfort in parcels. Live/work units are also already
5 permitted use in the C-3 zone, which adjoins the property on three sides. It is also not
6 anticipated that live/work units will create any more significant impacts than all the
7 other more intense uses already authorized in the contract rezone. The uses
8 authorized by the contract rezone are identified in a list of almost 70 uses, including
9 retail stores, hotels, schools and personal service shops. See Ex. 8. In terms of
10 surrounding uses creating adverse impacts to live/work units, the existing uses
11 identified in Finding of Fact No. 4 appear to be well suited for proximity to
12 residential use, except for the airport landing field and warehouse use located to the
13 north.

9 There are no critical areas at the project site except for an aquifer recharge area,
10 which is present at a large portion of the City. The live/work units in any event would
11 not be expected to create any greater impact to critical areas than the multitude of
12 uses already authorized by the contract rezone. 16th St. NW, which serves the site, is
13 a two-lane minor arterial. Live/work units are not anticipated to create any greater
14 traffic demand on 16th in comparison to other uses authorized for the project site. As
15 identified in the staff report, any development on the site would be required to
16 provide adequate facilities of public and private utilities such as water, sewer, and
17 electricity.

15 CONCLUSIONS OF LAW

16 Procedural:

17 1. Authority of Hearing Examiner. ACC 18.68.030(B)(1)(a) grants the Hearing
18 Examiner with the authority to review and make a recommendation on rezone requests
19 to the City Council if the Planning Director determines that the rezone requests are
20 consistent with the Comprehensive Plan. The Planning Director has determined that
21 the rezone request is consistent with the Comprehensive Plan.

21 Substantive:

22 2. Comprehensive Plan Land Use Map Designation. The Comprehensive
23 Plan Land Use Map designation for the proposed rezone area is Heavy Commercial.

24 3. Case Law Review Criteria and Application. The proposal meets the legal
25 criteria for approval of a site-specific rezone.

As with many local jurisdictions, the Auburn City Code does not include any criteria
for rezone applications. Washington appellate courts have imposed some rezone
criteria. Those courts require that the proponents of a rezone establish that conditions

1 have substantially changed since the original zoning and that the rezone must bear a
2 substantial relationship to the public health, safety, morals or welfare. *See Ahmann-*
3 *Yamane, LLC v. Tabler*, 105 Wn. App. 103, 111 (2001). If a rezone “implements” the
Comprehensive Plan, a showing that a change of circumstances has occurred is not
required. *Id.* at 112.

4 The public health, safety and welfare criterion is easily met. As determined in
5 Finding of Fact No. 5, the proposal will not create any significant adverse impacts.
6 The proposal will also facilitate the accommodation of urban growth in the City,
which meets numerous policy objectives of the Growth Management Act.

7 The change in circumstances criterion is not so easily addressed due to some
8 ambiguities in that judicial requirement. Staff have taken the position that no change
9 in circumstances is required because the proposal “implements” the comprehensive
10 plan by being consistent with the comprehensive plan. As testified by Mr. Steiner
11 during the hearing, the proposed contract amendment is consistent with the
12 comprehensive plan because it would not necessitate an amendment to the
13 comprehensive plan “Heavy Commercial” map designation.

14 The staff position is reasonable, however also somewhat questionable. RCW
15 36.70A.120 already requires zoning code amendments to be consistent with the
16 comprehensive plan. Consequently, the staff position on what “implements” means
17 renders the judicial standard for change of circumstances entirely meaningless.
18 Under the judicial standard, a change of circumstances is only evaluated if a proposed
19 rezone is inconsistent with the comprehensive plan. But RCW 36.70A.120 prohibits
20 the approval of inconsistent rezones, so there would be no reason to ever consider
21 change of circumstances.

22 It is recognized that RCW 36.70A.120 was adopted in 1993 and the judicial
23 requirement for implementing the comprehensive plan traces back to opinions issued
24 before that date. It is possible that the courts have simply neglected to update their
25 rezone criteria to factor in the impact of RCW 36.70A.120. Taking a moderately
conservative approach, however, it is best to presume that the *Ahmann-Yamane, LLC*
court was aware of current law when it applied the comprehensive plan criterion. *See*
State v. Koontz, No. 30879-1-III (Wash. Ct. App. Nov. 26, 2013) (“*The judge is*
presumed to know the law.”).

26 Miriam Webster defines “implement” as “*to give practical effect to and ensure of*
27 *actual fulfillment by concrete measures.*” At the least, if implementing the
28 comprehensive plan is to mean more than simply being consistent with the plan, the
29 proposed rezone should better serve to fulfill the objectives of the plan than currently
30 allowed uses. The “live/work” amendment arguably does provide for that better fit
31 by adding to the variety of housing in Auburn. The housing element of the
comprehensive plan references a need and goal for a variety of housing in multiple
sections. *See* Comprehensive Plan Affordable Housing Element Vision (H-1),

1 Conditions and Trends (H-2, H-4), Healthy Homes and Neighborhoods (H-5), Variety
2 Policy No. H-10.

3 Even if the proposal isn't construed as implementing the comprehensive plan, it still
4 meets the rezone criteria for approval because of a change in circumstances. As
5 testified by staff, the King County housing and Comfort Inn uses that surround the
6 project site were added to the area after the contract rezone was originally adopted in
7 1990. The addition of these uses qualifies as a change in circumstances since they
8 provide better assurance that live work arrangements on the subject property will be
9 compatible with surrounding uses as opposed to the wide range of uses otherwise
10 permitted in the C-3 zone.

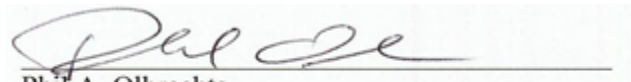
11 An even more compelling change in circumstance is that the "live/work" use wasn't a
12 use that was recognized in Auburn's zoning code in 1990. According to staff, the
13 concept was more recently adopted into the C-3 zoning designation. In short, the
14 proposed amendment seeks to take advantage of a residential use that didn't exist
15 when the contract rezone was adopted.

16 For the reasons identified above, the proposed rezone is justified by both a change in
17 circumstances and arguably because it serves to implement the comprehensive plan.
18 All criteria for a rezone are met.

19 **RECOMMENDATION**

20 It is recommended that the City Council approve REZ21-0001.

21 DATED this 4th day of May, 2022.

22 
23 Phil A. Olbrechts

24 City of Auburn Hearing Examiner
25

Exhibit D – Site Vicinity





AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6866 (Caillier/Comeau)

Date:

May 25, 2022

Department:

Police

Attachments:

[Ordinance No. 6866](#)

[Ordinance No. 6866 Exhibit A ACC 9-26](#)

[Ordinance No. 6866 Exhibit B ACC 9-42](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council adopt Ordinance No. 6866.

Background for Motion:

Ordinance number 6866 amends ACC 9.26.900 and ACC 9.42.900 to make correct references to newly created RCW 7.105.

Background Summary:

Ordinance number 6866 amends ACC 9.26.900 and ACC 9.42.900 related to domestic violence enforcement in the City. These amendments are required to conform to recent state law changes in ESSHB 1320, which moved several current RCW's related to domestic violence to newly created RCW chapter 7.105. Ordinance 6866 updates current City Code to make the correct references to the new RCW chapter, which takes effect on July 1st, 2022. Staff recommends the adoption of this ordinance.

Reviewed by Council Committees:

Councilmember: Jeyaraj

Staff:

Caillier/Comeau

Meeting Date: June 6, 2022

Item Number:

ORD.C

ORDINANCE NO. 6866

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING SECTIONS OF THE AUBURN CITY CODE TO CONFORM TO RCW CHANGES RESULTING FROM ESSHB 1320

WHEREAS, Auburn City Code (ACC) sections 9.26.900 and 9.42.900 adopt by reference several sections of RCW 10.14 and RCW 26.50 pertaining to domestic violence and harassment enforcement;

WHEREAS, on May 10, 2021, the State Legislature passed ESSHB 1320, which moves the RCW sections adopted by ACC 9.26.900 and 9.42.900 from RCW chapters 10.14 and 26.50 to RCW 7.105, a newly created RCW chapter. This State law change takes effect on and after July 1, 2022;

WHEREAS, revising ACC 9.26.900 and 9.42.900 is necessary to update these adopted RCW references to conform with the RCW changes resulting from the passage of ESSHB 1320.

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

Section 1. Amendment to City Code. Section 9.26.900 of the Auburn City Code is amended to read as set forth in Exhibit A to this Ordinance.

Section 2. Amendment to City Code. Section 9.42.900 of the Auburn City Code is amended to read as set forth in Exhibit B to this Ordinance.

Section 3. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 4. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 5. Effective date. Upon its passage, approval, and publication as provided by law, and to coincide with the effective date in ESSHB 1320, this Ordinance will take effect and be in force on and after July 1, 2022.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

Published: _____

EXHIBIT A—ORDINANCE NO. 6866

ACC 9.26.900 Statutes incorporated by reference.

The following statutes are incorporated in this chapter by reference, as now enacted or hereafter amended:

RCW

<u>RCW</u> 9A.36.150	Interfering with the reporting of domestic violence
<u>RCW</u> 9A.42.080	Abandonment of a dependent person in the third degree
<u>RCW</u> 10.99.010	Purpose— ~~I and intent~~
<u>RCW</u> 10.99.020	Definitions
<u>RCW</u> 10.99.040	~~Restrictions upon and d~~ Duties of court— <u>No-contact order</u>
<u>RCW</u> 10.99.045	Appearances by defendant— <u>Defendant's history</u> — ~~No-~~ contact order
<u>RCW</u> 10.99.080	~~Domestic violence~~) <u>p</u> Penalty assessments
<u>RCW</u> 26.09.300	Restraining orders—Notice—Refusal to comply—Arrest— Penalty—Defense—Peace officers, immunity
<u>RCW</u> 7.105	<u>All sections within RCW Chapter 7.105</u>
<u>26.50.010</u>	<u>Definitions</u>
<u>26.50.020</u>	<u>Commencement of action—Jurisdiction—Venue</u>
<u>26.50.030</u>	<u>Petition for order for protection—Availability of forms and— instructional brochures—Filing fee, when required— Bond not required</u>
<u>26.50.040</u>	<u>Application for leave to proceed in forma pauperis</u>
<u>26.50.050</u>	<u>Hearing—Service—Time</u>
<u>26.50.060</u>	<u>Relief—Realignment of designation of parties</u>
<u>26.50.070</u>	<u>Ex parte temporary order for protection</u>
<u>26.50.080</u>	<u>Issuance of order—Assistance of peace officer— Designation of appropriate law enforcement agency</u>
<u>26.50.090</u>	<u>Order—Service—Fees</u>
<u>26.50.110</u>	<u>Violation of order—Penalties</u>
<u>26.50.130</u>	<u>Order—Modification—Transmittal</u>
<u>26.50.140</u>	<u>Peace officers—Immunity</u>
<u>26.50.200</u>	<u>Title to real estate—Effect</u>
<u>26.50.210</u>	<u>Proceedings additional</u>

EXHIBIT B—ORDINANCE NO. 6866

ACC 9.42.900 Statutes incorporated by reference.

The following statutes are incorporated in this chapter by reference, [as now enacted or hereafter amended](#):

[RCW](#)

RCW 9.61.240	Telephone harassment – Permitting telephone to be used
RCW 9.61.250	Telephone harassment – Offense, where deemed committed
RCW 9A.46.030	Place where committed
RCW 9A.46.040	Court-ordered requirements upon person charged with crime – Violation
RCW 9A.46.050	Arrestment – No-contact order
RCW 9A.46.060	Crimes included in harassment
RCW 9A.46.080	Order restricting contact – Violation
RCW 9A.46.090	Nonliability of peace officer
RCW 9A.46.100	“Convicted,” time when
RCW 9A.46.110(6)	Stalking [Definitions]
RCW 7.105.455	Enforcement and penalties—Antiharassment protection orders
~~10.14.170~~	~~Criminal penalty [Harassment]~~



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6867 (Caillier/Comeau)

Department:

Police

Attachments:

[Ordinance No. 6867](#)

Date:

May 25, 2022

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to adopt Ordinance No. 6867

Background for Motion:

Ordinance 6867 repeals section 9.34.030 of the Auburn City Code in order to be in compliance with the 2022 Washington State Supreme Court ruling in Bass V. City of Edmonds.

Background Summary:

Ordinance 6867 repeals ACC section 9.34.030 which regulates discharging firearms in the City. Similarly, RCW 9.41.230 regulates discharging firearms throughout the State. ACC 9.34.900 has already adopted RCW 9.41.230 by reference. The 2022 State Supreme Court ruling in Bass v. City of Edmonds declared the State fully occupies and preempts the field of firearms regulation. This decision establishes that ACC 9.34.030 is preempted by State RCW and staff recommends the adoption of this ordinance.

Reviewed by Council Committees:

Councilmember: Jeyaraj

Staff:

Caillier/Comeau

Meeting Date: June 6, 2022

Item Number:

ORD.D

ORDINANCE NO. 6867

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, REPEALING SECTION 9.34.030 OF THE AUBURN CITY CODE, RELATED TO DISCHARGING FIREARMS WITHIN THE CITY

WHEREAS, Auburn City Code (ACC) section 9.34.030 regulates discharging firearms in the City. RCW 9.41.230 similarly regulates discharging firearms throughout the State. The City has adopted RCW 9.41.230 by reference in ACC 9.34.900;

WHEREAS, RCW 9.41.290 provides that the State fully occupies and preempts the field of firearms regulation;

WHEREAS, in Bass v. City of Edmonds (No. 99596-6, Wash. April 21, 2022), the Washington Supreme Court invalidated an Edmonds firearms ordinance that conflicted with State firearms law. The Court ruled that RCW 9.41.290 preempted the Edmonds ordinance;

WHEREAS, the Bass decision establishes that ACC 9.34.030 is similarly preempted by State law and should be repealed.

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

Section 1. Repeal of City Code Section. Section 9.34.030 of the Auburn City Code is hereby repealed.

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

Section 3. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision,

section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

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

Introduced: _____

Passed: _____

Approved: _____

CITY OF AUBURN

NANCY BACKUS, MAYOR

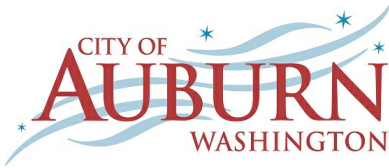
ATTEST:

Shawn Campbell, City Clerk

APPROVED AS TO FORM:

Kendra Comeau, City Attorney

PUBLISHED: _____



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6869 (Caillier/Comeau)

Department:

Police

Attachments:

[Ordinance No. 6869](#)

[Ordinance No. 6869 Exhibit A](#)

Date:

May 25, 2022

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council adopt Ordinance No. 6869.

Background for Motion:

Ordinance 6869 amends ACC 10.36.263 to add enforcement measures related to repeat parking violations in City parking facilities. Generally, Ordinance 6869 will allow the City to pursue criminal enforcement of repeat offenders in City parking lots. For example, cars that return to a City lot day after day, can be given a trespass admonishment, can be impounded in addition to the general infraction route. This will help us have a longer lasting impact with additional options to use.

Background Summary:

Ordinance 6869 amends ACC 10.36.263 to add enforcement measures related to repeat parking violations in City parking facilities. The Ordinance defines a "multiple offender" within a 24 hour period and a corresponding infraction. The amendment adds the ability of the City to issue a trespass admonishment to an individual associated with a vehicle, after being found by a court to have committed 3 or more separately issue parking infractions at the specific location. It also adds the ability to impound a vehicle that has been found by a court to have committed 3 or more separately issued parking infractions at a specific location.

Reviewed by Council Committees:

Councilmember: Jeyaraj

Meeting Date: June 6, 2022

Staff:

Item Number:

Caillier/Comeau

ORD.E

ORDINANCE NO. 6869

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING SECTION 10.36.263 OF THE AUBURN CITY CODE RELATED TO CONTINUOUS OR MULTIPLE VEHICLE PARKING VIOLATIONS ON CITY OWNED OR CONTROLLED PROPERTY

WHEREAS, Auburn City Code (ACC) section 10.36.263 regulates continuous and multiple parking violations on City owned or controlled property as a \$50.00 infraction;

WHEREAS, repeat and ongoing parking violations at various locations in the City continue to impact motorists and the community despite the provisions of ACC 10.36.263;

WHEREAS, ACC 10.63.263 should be updated to add potential enforcement measures that will more effectively address repeat and ongoing parking violations within the City. Adopting such measures would be in the best interests of the City and its residents.

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

Section 1. Amendment to City Code. Section 10.36.263 of the Auburn City Code is amended to read as set forth in Exhibit A to this Ordinance.

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

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

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

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

Published: _____

EXHIBIT A—ORDINANCE NO. 6869

ACC 10.36.263 Continuous or multiple parking—~~Multiple~~ violations.

A. Continuous or multiple parking violations. Any person or vehicle in continuous violation of any parking restriction in this title within a single 24 hour period, or any person or vehicle found in violation of in continuous violation of any the parking restriction in time limit provisions of this title 3 or more separate times within a single 24-hour period, ~~or any person who commits multiple violations of the parking time limit provisions of this title, within the same 24-hour period,~~ may also be ~~additionally cited under this section~~ as a multiple offender. ~~This offense is and such act shall be an infraction which shall be~~ punishable by a \$50.00 ~~fine of \$50.00~~.

B. Additional penalties for multiple parking violations.

1. Trespass admonishment. In addition to the subparagraph A penalties, City officials may issue trespass admonishments to any person owning, operating or otherwise associated with a vehicle parked at a City owned or controlled parking lot or facility after being found by a court to have committed 3 or more separately issued parking infractions at the location. The issued admonishment may prohibit the person from returning to the location for a time period specified in the admonishment.

2. Vehicle impound. Vehicles parked on a City right of way or at a City owned or controlled parking lot or facility after being found by a court to have committed 3 or more separately issued parking infractions at the location may be impounded by the Chief of Police or designee. Redemption of any such impounded vehicle shall be as provided in RCW 46.55 and other applicable law.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6871 (Backus)

Department:

Administration

Attachments:

[Ordinance 6871](#)

[Ordinance 6871 Exhibit](#)

Date:

June 1, 2022

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to adopt Ordinance No. 6871

Background for Motion:**Background Summary:**

Ordinance 6871 recognizes Juneteenth and Native American Heritage Day as city legal holidays.

Reviewed by Council Committees:

Councilmember: Jeyaraj

Meeting Date: June 6, 2022

Staff:

Backus

Item Number:

ORD.F

ORDINANCE NO. 6871

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON, AMENDING SECTION 2.63.010
OF THE AUBURN CITY CODE TO RECOGNIZE
JUNETEENTH AND NATIVE AMERICAN HERITAGE DAY
AS CITY LEGAL HOLIDAYS

WHEREAS, Auburn City Code (ACC) section 2.63.010 sets forth legal holidays that City employees are entitled to observe;

WHEREAS, on May 13, 2021, the Washington State Legislature passed SHB 1016, amending RCW 1.16.050 to add June 19 as a State legal holiday to be known as “Juneteenth”;

WHEREAS, on June 17, 2021, President Biden enacted PL 117-17, amending 5 U.S.C. §6103 to add June 19 as a federally recognized legal public holiday to be known as “Juneteenth National Independence Day”;

WHEREAS, RCW 1.16.050(1)(k) recognizes the day after Thanksgiving as a State holiday known as “Native American Heritage Day”; and

WHEREAS, the City wishes to enact similar legislation recognizing June 19 and the day after Thanksgiving as annually occurring City legal holidays. In doing so, the City adopts by reference the State Legislature’s findings contained in Section 1 of SHB 1016, and Governor Jay Inslee’s recitals in his November 25, 2021 Proclamation of Native American Heritage Month and Native American Heritage Day.

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

Section 1. Amendment to City Code. Section 2.63.010 of the Auburn City Code is amended to read as set forth on Exhibit A to this Ordinance.

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

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

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

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

Published: _____

EXHIBIT A – ORD. 6871

ACC 2.63.010 City Legal Holidays~~Designated generally.~~

A. City holidays generally. All monthly and hourly employees of the city shall be entitled to observe the following legal holidays, with the exception of ~~those~~ employees specifically assigned to operating duties, emergency work, or special maintenance service, who shall ~~said employees to~~ be granted one working day off in lieu of the holiday:

1. The first day of January, commonly known as New Year's Day;
2. The third Monday of January, being celebrated as the anniversary of the birth of Martin Luther King, Jr.;

3. The third Monday of February, known as Presidents' Day, celebrating being celebrated as the anniversary iesy of the birth s of Abraham Lincoln and George Washington;

4. The last Monday of May, commonly known as Memorial Day;

5. The nineteenth day of June, recognized as Juneteenth, a day of remembrance for the day that African Slaves learned of their freedom;

65. The fourth day of July, being the anniversary of the Declaration of Independence;

76. The first Monday in September, to be known as Labor Day;

87. The eleventh day of November, to be known as Veterans' Day;

98. The fourth Thursday in November, to be known as Thanksgiving Day;

10. The day immediately following the fourth Thursday in November, to be known as Native American Heritage Day, and the day immediately following;

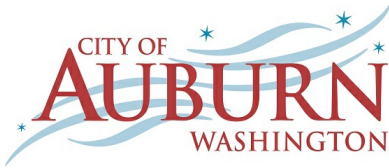
119. December 25th, commonly called Christmas Day; and

120. Any day designated by public proclamation of the chief executive of the state as a legal holiday or as a day of thanksgiving.

B. Employee election of two additional holidays. In addition to the holidays specified in subsection A of this section, City employees of the city shall be entitled to select two additional paid holidays per calendar year in addition to those specified in subsection A of this section by consulting with their supervisor in accordance with City policies. Subject to City operational requirements, the selected additional holidays may include ~~Each employee of the city may select the days on which the employee desires to~~

~~take the additional holidays provided for in this subsection after giving two weeks' notice to employee's supervisor; provided, however, any employee may elect to take the day before Christmas and the day before New Year's Day as the additional holiday, subject to operational requirements of the city.~~

C. Labor agreements unaffected. Nothing in this section shall be construed to have the effect of increasing adding or reducing deleting the number of employee paid holidays provided for in existing labor agreements between employees and the city.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5667 (Gaub)

Date:

May 25, 2022

Department:

Public Works

Attachments:

[Resolution No. 5667](#)

[Exhibit A](#)

[Vicinity Map \(Reservoir 4\)](#)

[Vicinity Map \(Reservoir 8\)](#)

Budget Impact:

\$121,768.65

Administrative Recommendation:

City Council adopt Resolution No. 5667.

Background for Motion:

This resolution accepts grant funding for a project to retrofit water reservoirs 4a, 4b, 8a, and 8b with seismic valves to protect from catastrophic failures and loss of water supply in the event of an earthquake.

Background Summary:

Reservoirs 4a, 4b, 8a, and 8b are water storage reservoirs with a total capacity of 5.7 million gallons. Large diameter pipes convey water from the reservoirs to the distribution system. If a pipe breaks during an earthquake, the large volume of water in the reservoir could quickly flow out of the reservoir, causing potential local flooding, property damage, and loss of pressure, drinking water, and fire flow capability within the water distribution system. The Reservoirs 4 and 8 Seismic Retrofits project will install seismic control valves that will automatically close, keeping water in the reservoir and maintaining water supplies and pressures for both firefighting and consumption needs. It will also prevent water from escaping the reservoirs that could create a secondary flooding emergency.

Due to the importance of maintaining critical water facilities during an emergency, this project has been awarded a Federal Emergency Management Agency (FEMA) grant through the Washington State Military Department in the total amount of \$1,448,781.25, which includes State and Federal funds. The estimated required match from the City is \$206,968.75, for a total project cost of \$1,655,750.00. The required match funds are available in the City's capital water fund (460), of which \$85,200 is already budgeted towards the project and the remaining funds will be requested through a future budget amendment in 2022 (for design funds) and in the budget process for 2023 (for construction funds) for a total increase of budget (excluding grant funds) of \$121,768.65 above the current authorized budget.

Resolution No. 5667 accepts the hazard mitigation grant funds and authorizes the Mayor to execute the funding agreement and additional agreements that may be needed to implement the project within the allocated project budget. The grant requires that the project be

completed by December 31, 2024.

Reviewed by Council Committees:

Councilmember: Stearns

Staff: Gaub

Meeting Date: June 6, 2022

Item Number: RES.A

RESOLUTION NO. 5667

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON, ACCEPTING THE HAZARD
MITIGATION GRANT FOR THE RESERVOIRS 4 AND 8 SEISMIC
RETROFITS PROJECT

WHEREAS, Reservoirs 4a, 4b, 8a, and 8b are storage reservoirs that provide a combined storage capacity of 5.7 million gallons for the City's water system; and

WHEREAS, large diameter pipes convey water from the reservoir to the distribution system; and

WHEREAS, if a pipe breaks during an earthquake, the large volume of water in the reservoirs could quickly flow out of the reservoirs, causing local flooding, and loss of pressure within the water distribution system; and

WHEREAS, installation of automatic seismic control valves will retain water in the reservoirs and lessen the negative impacts of an earthquake; and

WHEREAS, installation of seismic control valves at the City's reservoirs was identified in the City's Comprehensive Water Plan (October 2015); and

WHEREAS, the City applied for and received approval from the Washington State Military Department for a Hazard Mitigation Grant to provide partial funding for the project entitled "Reservoirs 4 and 8 Seismic Retrofits"; and

WHEREAS, it is in the best interest of the City to use federal grant monies to finance capital improvements to the water utility system.

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

Section 1. The Mayor is authorized to accept and expend federal grant funds and execute agreements with the Washington State Military Department, in substantial conformity with the agreement attached, Exhibit A. The Mayor is authorized to accept and expend additional grant funding from public or private sources as long as the City's matching requirements are within the approved budget.

Section 2. The Mayor is authorized to execute any necessary funding authorizations, supplemental amendments, and other contracts for all future phases of the Project, expending up to the total amount of the Project budget, and to implement administrative procedures necessary to carry out the directions of this legislation.

Section 3. This Resolution shall take effect and be in full force on passage and signature.

Dated and Signed this _____ day of _____, 2022.

CITY OF AUBURN

NANCY BACKUS
MAYOR

ATTEST:

Shawn Campbell,
City Clerk

APPROVED AS TO FORM:

Kendra Comeau
City Attorney

Resolution No. 5667
May 17, 2022
Page 3

Resolution 5667 Exhibit A
Washington State Military Department
HAZARD MITIGATION GRANT AGREEMENT FACE SHEET

1. Subrecipient Name and Address: City of Auburn 25 West Main Street Auburn WA, 98001		2. Total Grant Amount: \$1,655,750.00 F: \$1,241,812.50; S: \$206,968.75; L: \$206,968.75		3. Grant Number: XXX-XXX	
4. Subrecipient Contact, phone/email: Jacob Sweeting (253) 804-3118 jsweeting@auburnwa.gov		5. Grant Start Date: April 12, 2022		6. Grant End Date: December 31, 2024	
7. Department Program Manager, phone/email: Tim Cook, (253) 512-7072 tim.cook@mil.wa.gov		8. Unique Entity ID (UEI): LT4FLVEW5U28		9. UBI # (state revenue): <u>171-000-010</u>	
10. Funding Authority: Washington State Military Department (the "DEPARTMENT"), and Federal Emergency Management Agency (FEMA)					
11. Funding Source Agreement #: FEMA-5320-09-R		12. Program Index # 744F2 / 742L3		13. Assistance Listing # & Title: 97.039 (HMGP)	
14. Total Federal Award Amount: \$1,241,812.50		15. Federal Award Date: 04/12/2022		16. TIN or SSN: 91-6001228	
17. Service Districts: (BY LEGISLATIVE DISTRICT): 30th (BY CONGRESSIONAL DISTRICT): 8th		18. Service Area by County(ies): King County		19. Women/Minority-Owned, State Certified?: ☒ N/A ☐ NO ☐ YES, OMWBE # _____	
20. Contract Classification: ☐ Personal Services ☐ Client Services ☒ Public/Local Gov't ☐ Research/Development ☐ A/E ☐ Other _____			21. Contract Type (check all that apply): ☐ Contract ☒ Grant ☒ Agreement ☐ Intergovernmental (RCW 39.34) ☐ Interagency		
22. Contractor Selection Process: ☒ "To all who apply & qualify" ☐ Competitive Bidding ☐ Sole Source ☐ A/E RCW ☐ N/A ☐ Filed w/OFM? ☐ Advertised? ☐ YES ☐ NO _____			23. Contractor Type (check all that apply) ☐ Private Organization/Individual ☐ For-Profit ☒ Public Organization/Jurisdiction ☒ Non-Profit ☐ VENDOR ☒ SUBRECIPIENT ☒ OTHER		
24. PURPOSE/DESCRIPTION: FEMA's Hazard Mitigation Grant Program provides grants for mitigation planning and cost-effective mitigation actions after a Presidential disaster declaration to reduce the risk of loss of life and property damage in future disasters. Title: City of Auburn Reservoir 4 and 8 Seismic Retrofit . The purpose of this Agreement is to provide funds to the SUBRECIPIENT for the herein proposed project as noted in Statement of Work and/or Description of the Project (Attachment 3), Project Development Schedule (Attachment 4), Project Budget (Attachment 5), and the FEMA approved project application, each of which are incorporated herein by this reference. The DEPARTMENT is the Recipient and Pass-through Entity of the Presidential Disaster Declaration #FEMA-FM-5320-WA project FM-5320-09-R City of Auburn Reservoir 4 and 8 Seismic Retrofit and FEMA State Agreement, which are incorporated by reference, and makes a subaward of Federal award funds to the SUBRECIPIENT pursuant to this Agreement. The SUBRECIPIENT is accountable to the DEPARTMENT for use of Federal award funds provided under this Agreement and the associated matching funds.					
IN WITNESS WHEREOF, the DEPARTMENT and SUBRECIPIENT acknowledge and accept the terms of this Agreement, exhibits, references and attachments hereto and have executed this Agreement as of the date and year written below. This Agreement Face Sheet; Special Terms & Conditions (Attachment 1); General Terms and Conditions (Attachment 2); Statement of Work and/or Description of Project (Attachment 3); Project Development Schedule (Attachment 4); Project Budget (Attachment 5); and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.					
In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: 1. Applicable Federal and State Statutes and Regulations 2. DHS Standard Terms and Conditions 3. Presidential Declaration, FEMA State Agreement, and other associated documents 4. Statement of Work and/or Project Description as outlined in FEMA approved Project Application 5. Special Terms and Conditions 6. General Terms and Conditions, and, 7. Other provisions of the contract incorporated by reference.					
WHEREAS, the parties hereto have executed this Agreement on the day and year last specified below. FOR THE DEPARTMENT: _____ Signature Date Regan Anne Hesse, Chief Financial Officer Washington State Military Department APPROVED AS TO FORM: _____ Signature on File Date Brian E. Buchholz 4/17/2020 FOR THE SUBRECIPIENT: _____ Signature Date Nancy Backus, Mayor City of Auburn APPROVED AS TO FORM: _____ Date					

Attachment 1**Washington State Military Department
SPECIAL TERMS AND CONDITIONS****ARTICLE I. KEY PERSONNEL:**

The individuals listed below shall be considered key personnel for point of contact under this Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

SUBRECIPIENT		MILITARY DEPARTMENT	
Name	Jacob Sweeting	Name	Tim Cook
Title	City Engineer	Title	State Hazard Mitigation Officer
E-Mail	jsweeting@auburnwa.gov	E-Mail	tim.cook@mil.wa.gov
Phone	253-804-3118	Phone	253-512-7072
Name	Ingrid Gaub	Name	Mathew Lebens
Title	Public Works Director	Title	Hazard Mitigation Program Supervisor
E-Mail	igaub@auburnwa.gov	E-Mail	Matthew.Lebens@mil.wa.gov
Phone	253-804-3113	Phone	(253) 433-5293
Name		Name	Chris Credle
Title		Title	Hazard Mitigation Program Coordinator
E-Mail		E-Mail	Christopher.credle@mil.wa.gov
Phone		Phone	(253) 414-5291

ARTICLE II ADMINISTRATIVE REQUIREMENTS

The SUBRECIPIENT shall comply with all applicable state and federal laws, rules, regulations, requirements, and program guidance identified or referenced in this Agreement and the informational documents published by FEMA applicable to the Presidential Disaster Declaration including, but not limited to, all criteria, restrictions, and requirements of the "FEMA State Agreement" published by FEMA and the federal regulations commonly applicable to FEMA grants, all of which are incorporated herein by reference. The FEMA Award Letter and its attachments are incorporated in this Agreement as Attachment 6.

The SUBRECIPIENT acknowledges that since this Agreement involves federal award funding, the period of performance described herein may begin prior to the availability of appropriated federal funds. The SUBRECIPIENT agrees that it will not hold the DEPARTMENT, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

A. STATE AND FEDERAL REQUIREMENTS FOR HAZARD MITIGATION GRANTS:

The following requirements apply to all FEMA Hazard Mitigation Grants administered by the DEPARTMENT.

1. SUBAWARDS & CONTRACTS BY SUBRECIPIENTS

- a. The SUBRECIPIENT must make a case-by-case determination whether each agreement it makes for the disbursement of HMGP funds received under this Agreement casts the party receiving the funds in the role of a subrecipient or contractor in accordance with 2 CFR 200.331.

2. PROJECT FUNDING

The DEPARTMENT will administer the **Hazard Mitigation Grant Program (HMGP)** and will pass through the federal match and commit the available state match. The SUBRECIPIENT will commit the required local match.

- a. The total cost of the project (total project cost) for the purposes of this Agreement is **\$1,655,750.00** dollars; PROVIDED that, if the total cost of the project when completed, or when this Agreement is terminated, is actually less than above, the actual cost shall be substituted herein.
- b. The value of the contributions by the SUBRECIPIENT to the project shall be **\$206,968.75** dollars, or **12.5** percent, at minimum, of the total project cost. The SUBRECIPIENT's contributions may be cash or in-kind, must be from a non-federal source, must be reasonable, allowable and allocable, and must comply with all Federal requirements and regulations.
- c. When the DEPARTMENT enters into an agreement with the Federal Emergency Management Agency (FEMA) to contribute federal funds to this project, that federal contribution will be **\$1,241,812.50** dollars, or **75** percent of the total project cost, whichever is less.
- d. The value of the contributions by the DEPARTMENT to the project shall be **\$206,968.75** dollars, or **12.5** percent, at minimum, of the total project cost. The DEPARTMENT's contributions must be from a non-federal source and must comply with all Federal requirements and regulations.
- e. The DEPARTMENT shall not be obligated to pay any amount beyond that set out in Subsections c and d above, unless that additional amount has been approved in advance by both the DEPARTMENT and SUBRECIPIENT and is incorporated by written amendment into this Agreement.
- f. A written amendment will be required if the SUBRECIPIENT expects cumulative transfers between project budgets, as identified in the Project budget (Attachment 5) and the Statement of Work and/or description of Project (Attachment 3), to exceed 10% of the Grant Agreement Amount. Any changes to project budgets other than in compliance with this paragraph will not be reimbursed.

3. GRANT AGREEMENT PERIOD

Activities payable under this Agreement and to be performed by the SUBRECIPIENT under this Agreement shall only be those after the obligation of federal funds on **April 12, 2022** and shall terminate on **December 31, 2024**. This period shall be referred to herein as the Grant Agreement Period and/or Period of Performance, unless expressly stated otherwise. Costs incurred during the Grant Agreement Period shall include pre-award costs authorized in writing by FEMA as well as eligible costs incurred after the effective date of the Grant Agreement Period and before termination.

- a. The SUBRECIPIENT shall complete the project as described in the FEMA approved project application **FM-5320-09-R**, incorporated in and made a part of this Agreement by reference, and as described in Attachments 3, 4, and 5. In the event of extenuating circumstances, the SUBRECIPIENT may request, in writing, that the DEPARTMENT extend the deadline for Grant Agreement completion.
- b. The Grant Agreement Period shall only be extended by (1) written notification of FEMA approval of the Grant Agreement Period followed by execution of a mutually agreed written amendment, or (2) written notification from the DEPARTMENT to the SUBRECIPIENT addressing extensions of the Department's underlying federal grant performance period or to provide additional time for completion of the SUBRECIPIENT's project(s).
- c. No expenditure made, or obligation incurred, before or after the Grant Agreement Period shall be eligible, in whole or in part, for grant funds with the exception of pre-award costs authorized in writing by FEMA. In addition to any remedy the DEPARTMENT may have under this Agreement, the amounts set out in Article II, section A.2 **Project Funding**, above, may be reduced to exclude any such expenditure from participation.

- d. Failure to complete the project in a timely manner, as outlined in Attachment 4, is a material breach of this Agreement for which the DEPARTMENT is entitled to termination or suspension under Attachment 2, section A.36.

4. REIMBURSEMENT AND BUDGET REQUIREMENTS

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

- a. All payment requests shall be made to the SUBRECIPIENT upon submission and approval of eligible, reimbursable work completed and billed on an A-19, form, State of Washington Invoice Voucher Distribution. Approval is subject to receipt of acceptable documentation by the DEPARTMENT, to include, but not limited to, copies of receipts for all goods and services purchased, copies of invoices from contractors and subcontractors for work completed, and copies of timesheets for staff involved with the project, sign-in/sign-out sheets for donated personnel and/or volunteer time spent on the project, and documentation to support other in-kind contributions.
- b. The DEPARTMENT reserves the right to withhold disbursement of up to 10 percent of the total project cost, as specified in Article II, Section A.2.f Project Funding, to the SUBRECIPIENT until the project has been completed and given final approval by the DEPARTMENT.
- c. Final Payment: Final payment of any remaining, or withheld, funds will be made within 60 days after submission by the SUBRECIPIENT of the final report, final A-19, Voucher Distribution, and completion of all final inspections by the DEPARTMENT.
Final payment by the DEPARTMENT also may be conditioned upon a financial review, if determined necessary by the DEPARTMENT. Adjustments to the final payment may be made following any audits conducted by the DEPARTMENT, Washington State Auditor's Office, the United States Inspector General, or their authorized representatives.
- d. Within the total Grant Amount of this Agreement, budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.
- e. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Amount of this Agreement.
- f. For travel costs, SUBRECIPIENTS shall comply with 2 CFR 200.475 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without written approval by DEPARTMENT's Key Personnel.
- g. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the SUBRECIPIENT consistent with record retention requirements of this Agreement, and be made available upon request by the DEPARTMENT, and local, state, or federal auditors.
- h. The SUBRECIPIENT will submit reimbursement requests to the DEPARTMENT by submitting a properly completed State A-19 Invoice Form, Interagency Electronic Funds Transfer, or Agency/Business invoice with support documentation detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted by email to both the DEPARTMENT's Hazard Mitigation Program Coordinator and the Program Manager no later than the due dates listed within the Grant Timeline (Attachment 4), but not more frequently than monthly.
- i. All work under this Agreement must end on or before the Grant Agreement End Date, and the final reimbursement request must be submitted to the DEPARTMENT within 45 days after the Grant Agreement End Date, except as otherwise authorized by written amendment of this Agreement and issued by the DEPARTMENT.

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- j. If applicable, no costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the SUBRECIPIENT, its contractor, or any non-federal entity to which the SUBRECIPIENT makes a subaward, and is invoiced by the vendor.
- k. Failure to timely submit complete reports and reimbursement requests as required by this Agreement (including but not limited to those reports in the Project Development Schedule Attachment 4) will prohibit the SUBRECIPIENT from being reimbursed until such complete reports and reimbursement requests are submitted and the DEPARTMENT has had reasonable time to conduct its review. Final reimbursement requests will not be approved for payment until the SUBRECIPIENT is current with all reporting requirements contained in this Agreement.
- l. SUBRECIPIENTS shall only use federal award funds under this Agreement to supplement existing funds, and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose.

The SUBRECIPIENT may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

5. REPORTING REQUIREMENTS

In addition to the reports as may be required elsewhere in this Agreement, the SUBRECIPIENT shall promptly prepare and submit the following reports to the DEPARTMENT's Key Personnel:

- a. Quarterly progress reports, no later than the 15th day following the end of the fiscal quarter, indicating the status of the project, to include a brief narrative on progress during the quarter. The report shall identify the costs incurred to date, the percentage of work completed, the anticipated completion date of the project, and whether cost under runs or over runs are expected. In addition, the SUBRECIPIENT should note any challenges or issues associated with the project. Failure to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments to the SUBRECIPIENT until a complete quarterly report is received by the DEPARTMENT.
- b. A final report when the project is completed, prematurely terminated, or project assistance is terminated. The report shall include a final accounting of all expenditures and a description of work accomplished. If the project is not completed, the report shall contain an estimate of the percentage of completion, and shall indicate the degree of usefulness of the completed project. The report shall account for all expenditures not previously reported and shall include a summary for the entire project.
- c. The SUBRECIPIENT shall submit a quarterly progress report describing current activities as outlined in the Timeline.
- d. The SUBRECIPIENT shall submit a Final Report with final reimbursement no later than 45 days after Agreement End Date.
- e. The SUBRECIPIENT shall also comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note), and complete and return to the DEPARTMENT the FFATA Form located at <http://mil.wa.gov/emergency-management-divison/grants/requiredgrantforms>; which is incorporated by reference and made a part of this Agreement.

6. PROCUREMENT

The SUBRECIPIENT shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, **Attachment 2**, A.11.

7. TIME EXTENSIONS

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

8. SUBRECIPIENT MONITORING

- a. The DEPARTMENT will monitor the activities of the SUBRECIPIENT from award to closeout. The goal of the DEPARTMENT'S monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the SUBRECIPIENT shall complete and return to the DEPARTMENT 2 CFR Part 200 Subpart F Audit Certification Form" located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms> with the signed Agreement and each fiscal year thereafter until the Agreement is closed, which is incorporated by reference and made a part of this Agreement.
- c. Monitoring activities may include, but are not limited to:
 - i. review of financial and performance reports;
 - ii. monitoring and documenting the completion of Agreement deliverables;
 - iii. documentation of phone calls, meetings, e-mails, and correspondence;
 - iv. review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement work plan, budget, and federal requirements;
 - v. observation and documentation of Agreement related activities, such as exercises, training, funded events, and equipment demonstrations;
 - vi. on-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The SUBRECIPIENT is required to meet or exceed the monitoring activities, as outlined above and in 2 CFR Part 200, for any non-federal entity to which the SUBRECIPIENT makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a Corrective Action Plan.

9. CLOSE-OUT

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

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

- Photographs of the structures or properties involved in the project **prior** to project implementation **and after** project implementation.
- Digital geospatial coordinates (latitude and longitude) for each structure with an accuracy of ± 20 meters (64) feet.
- Certificate of occupancy or equivalent documentation from the appropriate regulatory authority for each structure to certify it is code-compliant.

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- Certification that the SUBRECIPIENT has met the environmental and historic preservation conditions of the grant award as described in this Agreement.
- Copies of all compliance and consultation documentation required by the grant award as described in the Agreement (e.g., coastal zone management consistency determination from Department of Ecology).
- Copies of all documentation related to inspection for and removal and disposal of asbestos and other hazardous materials from each property.

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

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

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

- Photographs of the structures prior to elevation, and front, rear and side photos post-elevation.
- Copies of the pre-project elevation certificate for each structure, or documentation of methodology used to calculate the first-floor elevations.
- Copies of the post-project elevation certificate for each structure.
- Copies of certificate of occupancy for each elevated structure to certify that it is code compliant.
- Certification by an engineer, floodplain manager or other senior official of the SUBRECIPIENT that each completed structural elevation is in compliance with local ordinances and National Flood Insurance Program regulations and technical bulletins.
- Copy of AW-501 form filed with National Flood Insurance Program for each elevated repetitive loss property.
- Copies of proof of flood insurance for each elevated structure.
- Copies of the recorded deed restriction related to maintenance of flood insurance for each property within the Special Flood Hazard Area.

The DEPARTMENT will consult with the SUBRECIPIENT regarding other documentation requirements of the Agreement throughout the Period of Performance.

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

10. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

All SUBRECIPIENTS must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that SUBRECIPIENTS of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance

in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

a. Construction Documents, Contracts, Change Orders

- i. Construction Document Approval: The SUBRECIPIENT agrees to submit one copy of all construction plans and specifications to the DEPARTMENT for review and approval prior to solicitation of bids for construction.
- ii. The SUBRECIPIENT shall use a competitive procurement process in the procurement and award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 2 CFR Part 200.318 General procurement standards through 200.326 Contract Provisions. Copies of all bids and contracts awarded shall be submitted to the DEPARTMENT upon request. Where all bids are substantially in excess of project estimates, the DEPARTMENT may, by notice in writing, suspend the project for determination of appropriate action, which may include termination of the Agreement.
- iii. Construction Change Order: All change orders must be in writing and shall be submitted to the DEPARTMENT. The SUBRECIPIENT shall pay any increase in the cost of the project as the result of a change order, unless the DEPARTMENT has agreed to the change with a written amendment to this Agreement.

a. If applicable, SUBRECIPIENTS and any non-federal entity to which the SUBRECIPIENT makes a subaward shall comply with 2 CFR 200.318 – 200.326, to include but not limited to:

- i. Upon successful completion of the terms of this Agreement, all equipment and supplies purchased through this Agreement will be owned by the SUBRECIPIENT, or a recognized non-federal entity to which the SUBRECIPIENT has made a subaward, for which a contract or other means of legal transfer of ownership is in place.
- ii. All equipment, and supplies as applicable, purchased under this Agreement will be recorded and maintained in the SUBRECIPIENT's inventory system.
- iii. Equipment records shall include: a description of the property; the manufacturer's serial number, model number, or other identification number; the source of the equipment, including the Federal Award Identification Number (FAIN); Assistance Listing number; who holds the title; the acquisition date; the cost of the equipment and the percentage of Federal participation in the cost; the location, use and condition of the equipment at the date the information was reported; and disposition data including the date of disposal and sale price of the property.
- iv. The SUBRECIPIENT shall take a physical inventory of the equipment and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the SUBRECIPIENT to determine the cause of the difference. The SUBRECIPIENT shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

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- v. The SUBRECIPIENT shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment and supplies including all questions of liability. The SUBRECIPIENT shall develop appropriate maintenance schedules and procedures to ensure the equipment and supplies are well maintained and kept in good operating condition.
 - vi. The SUBRECIPIENT must obtain and maintain all necessary certifications and licenses for the equipment.
 - vii. The SUBRECIPIENT shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated and a report generated and sent to the Department.
 - viii. If the SUBRECIPIENT is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return.
 - ix. If, upon termination or at the Grant Agreement End Date, there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value which will not be needed for any other Federal award, or when original or replacement equipment is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, the SUBRECIPIENT must comply with following procedures:
 - a) The SUBRECIPIENT may retain the supplies for use on other non-Federal related activities or sell them, but must compensate the Federal sponsoring agency for its share.
 - b) The SUBRECIPIENT must dispose of equipment as follows:
 - i). Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of by the SUBRECIPIENT with no further obligation to the awarding agency.
 - ii). Items of equipment with a current per-unit fair market value of more than \$5,000 may be retained or sold and the SUBRECIPIENT shall compensate the Federal-sponsoring agency for its share.
 - x. Records for equipment shall be retained by the SUBRECIPIENT for a period of six years from the date of the disposition, replacement, or transfer. If any litigation, claim, or audit is started before the expiration of the six year period, the records shall be retained by the SUBRECIPIENT until all litigation, claims, or audit findings involving the records have been resolved.
- b. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using Federal award funds.
 - c. Equipment purchased with DHS federal award funds is to be marked with "Purchased with funds provided by the U.S. Department of Homeland Security" when practicable.
 - d. As a SUBRECIPIENT of federal funds, the SUBRECIPIENT must pass on equipment and supply management requirements that meet or exceed the requirements outlined above to any non-federal entity to which the SUBRECIPIENT makes a subaward of federal award funds under this Agreement.

B. DHS FFY22 STANDARD TERMS AND CONDITIONS

As a SUBRECIPIENT of HMGP funding, the SUBRECIPIENT shall comply with all applicable FEMA/DHS terms and conditions of the FEMA Award Letter and its associated documents for DHS, which are incorporated in and made a part of this Agreement as Attachment 6.

A.1 DEFINITIONS

a. **"DEPARTMENT"** means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the DEPARTMENT, or any of the officers or other officials lawfully representing that Department. DEPARTMENT is a recipient of a federal award directly from a federal awarding agency and is pass-through entity making a subaward to a subrecipient under this Agreement.

c. **“Monitoring Activities”** means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities, and policies.

d. **“Project”** shall mean those activities as described in the FEMA approved project application (insert application number), which are incorporated in and made a part of this Agreement by reference, and as described in Attachments 3, 4, and 5.

e. **“Investment Justification”** means grant application investment justification submitted by the SUBRECIPIENT describing the project for which federal funding is sought and provided under this Agreement. Such grant application investment justification is hereby incorporated in and made a part of this Agreement by reference.

A.2 ADVANCE PAYMENTS

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

A.3 AMENDMENTS AND MODIFICATIONS

The SUBRECIPIENT or the DEPARTMENT may request, in writing, an amendment or modification of this Agreement. Modifications may be requested for Grant Agreement end date, budget or scope change. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the DEPARTMENT and the SUBRECIPIENT. No other understandings or agreements, written or oral, shall be binding on the parties.

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE “ADA” 28 CFR Part 35.

The SUBRECIPIENT must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

A.5 APPLICATION REPRESENTATION-MISREPRESENTATION, INACCURACY AND BREACH

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

A.6 ASSURANCES

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations.

A.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

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

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The SUBRECIPIENT shall complete, sign, and return a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms>. Any such form completed by the SUBRECIPIENT for this Agreement shall be incorporated into this Agreement by reference.

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

A.8 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the SUBRECIPIENT hereby certifies that to the best of their knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the SUBRECIPIENT to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the SUBRECIPIENT will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the SUBRECIPIENT will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.9 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The SUBRECIPIENT and all its contractors shall comply with, and the DEPARTMENT is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, as supplemented by Department of Labor regulations (41 CFR chapter 60); Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3); Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5); Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR part 15); Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5); Energy Policy and Conservation Act (PL 94-163, 89 Stat. 871, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Title 44 of the Federal Regulations, 2 CFR Part 3002, Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12),

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State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations.

In the event of the SUBRECIPIENT's or its contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, the DEPARTMENT may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion.

The SUBRECIPIENT is responsible for all costs or liability arising from its failure to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A10. CONFLICT OF INTEREST

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

A.11 CONTRACTING & PROCUREMENT

a. The SUBRECIPIENT shall use a competitive procurement process in the procurement and award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 2CFR Part 200.318 General procurement standards through 200.326 Contract Provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the SUBRECIPIENT under this Agreement must include the following provisions, as applicable:

1) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

2) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage

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determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

The procurement process followed shall be in accordance with 2 CFR Parts 200 and 3002, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, as applicable to the SUB-GRANTEE. All subcontracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in 150

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connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

10) Procurement of recovered materials -- As required by 2 CFR 200.322, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

11) Notice of Federal awarding agency requirements and regulations pertaining to reporting.

12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.

13) Access by the DEPARTMENT, the SUBRECIPIENT, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

14) Retention of all required records for six years after the SUBRECIPIENT has made final payments and all other pending matters are closed.

15) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

- b. The DEPARTMENT reserves the right to review the SUBRECIPIENT procurement plans and documents, and require the SUBRECIPIENT to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.318 through 200.326/. The SUBRECIPIENT must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the SUBRECIPIENT and DEPARTMENT to make a determination on eligibility of project costs.
- c. All sub-contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.12 DISCLOSURE

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

A.13 DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the Contractor and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member.

A.14 DUPLICATION OF BENEFITS

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The SUBRECIPIENT agrees that the funds for which federal or state assistance is requested does not, or will not, duplicate benefits or funds received for the same loss from any other source. The SUBRECIPIENT will pursue, and require sub-recipients to pursue, full payment of eligible insurance benefits for properties or any other losses covered in a project under this Agreement. The SUBRECIPIENT will repay the DEPARTMENT any funds provided under this grant agreement that are duplicated by other benefits, funds, or insurance proceeds. The SUBRECIPIENT will also seek recovery against any party or parties whose negligence or other intentional or tortious conduct may have caused or contributed to the expenditures for which these grants funds are provided. The SUBRECIPIENT will repay the DEPARTMENT any funds recovered by settlement, judgment or other court order in an action to recover funds provided by this grant. The SUBRECIPIENT shall notify the DEPARTMENT as early as possible and work cooperatively in conjunction with the DEPARTMENT and FEMA to ensure appropriate apportionment of any duplicated or recovered payment.

A.15 HAZARDOUS SUBSTANCES

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

A.16 LEGAL RELATIONS

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

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

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

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

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

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

A.17 LIMITATION OF AUTHORITY – Authorized Signature

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the DEPARTMENT's Authorized Signature representative and the Authorized Signature representative of the SUBRECIPIENT or Alternate for the SUBRECIPIENT, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties Authorized Signature representatives. Further, only the Authorized Signature

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representative or Alternate for the SUBRECIPIENT shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

A.18 LOSS OR REDUCTION OF FUNDING

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

A.19 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the SUBRECIPIENT.

A.20 NONDISCRIMINATION

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

A.21 NOTICES

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

A.22 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/ HEALTH ACT (OSHA/WISHA)

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

A.23 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

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

A.24 POLITICAL ACTIVITY

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

A.25 PRIVACY

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

The DEPARTMENT reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the SUBRECIPIENT through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the DEPARTMENT. Salting is the act of placing

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a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

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

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

A.26 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.27 PUBLICITY

The SUBRECIPIENT agrees to submit to the DEPARTMENT prior to issuance all advertising and publicity matters relating to this Agreement wherein the DEPARTMENT's name is mentioned or language used from which the connection of the DEPARTMENT's name may, in the DEPARTMENT's judgment, be inferred or implied. The SUBRECIPIENT agrees not to publish or use such advertising and publicity matters without the prior written consent of the DEPARTMENT.

The SUBRECIPIENT may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CDR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

The SUBRECIPIENT shall include language which acknowledges the funding contribution of the DEPARTMENT and FEMA to this project in any release or other publication developed or modified for, or referring to, the project.

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

A.28 RECAPTURE PROVISION

In the event the SUBRECIPIENT fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws and/or the provisions of the Agreement, the DEPARTMENT reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the SUBRECIPIENT of funds under this recapture provision shall occur within 30 days of demand.

In the event the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs and expenses thereof, including attorney fees from the SUBRECIPIENT.

A.29 RECORDS

- a. The SUBRECIPIENT agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the SUBRECIPIENT's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The SUBRECIPIENT's records related to this Agreement and the projects funded may be inspected and audited by the DEPARTMENT or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the SUBRECIPIENT with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.

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- c. The records shall be made available by the SUBRECIPIENT for such inspection and audit, together with suitable space for such purpose, at any and all times during the SUBRECIPIENT's normal working day.
- d. The SUBRECIPIENT shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

A.30 RECOVERY OF FUNDS

Any person who intentionally causes a condition for which funds are provided under this Agreement shall be liable for the costs incurred by the state and federal governments in responding to such disaster. In addition to its own duty to recover duplicated funds or funds expended due to the intentional or negligent actions of others. SUBRECIPIENT will cooperate in a reasonable manner with the DEPARTMENT and the United States in efforts to recover expenditures under this Grant Agreement.

A.31 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

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

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

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

The SUBRECIPIENT shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the SUBRECIPIENT in connection with the project.

The SUBRECIPIENT shall not look to the DEPARTMENT, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.32 SEVERABILITY

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

A.33 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

Non-federal entities, as SUBRECIPIENTS of a federal award, that expend \$750,000 or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than \$750,000 a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a State, local government, Indian tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or SUBRECIPIENT.

SUBRECIPIENTS that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The SUBRECIPIENT has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200 Subpart F.

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

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

Once the single audit has been completed and it includes any audit findings, the SUBRECIPIENT must send a full copy of the audit to the DEPARTMENT and its corrective action plan no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to:

Contracts Office

Washington Military Department

Finance Division, Building #1 TA-20

Camp Murray, WA 98430-5032

If SUBRECIPIENT claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, SUBRECIPIENT must send a letter identifying this Agreement and explaining the criteria for exemption no later than nine (9) months after the end of the SUBRECIPIENT fiscal year(s) to the address listed above.

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

The SUBRECIPIENT shall include the above audit requirements in any subawards.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT's failure to comply with said audit requirements may result in one or more of the following actions in the DEPARTMENT's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.34 SUBRECIPIENT NOT EMPLOYEE

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

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

A.35 TAXES, FEES AND LICENSES

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

A.36 TERMINATION FOR CONVENIENCE

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

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

A.37 TERMINATION OR SUSPENSION FOR CAUSE

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

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

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

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

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

A.38 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the DEPARTMENT terminates this Agreement, the SUBRECIPIENT shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the DEPARTMENT may require the SUBRECIPIENT to deliver to the DEPARTMENT any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

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

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the DEPARTMENT shall determine the extent of the liability of the DEPARTMENT. The DEPARTMENT shall have no other obligation to the SUBRECIPIENT for

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termination. The DEPARTMENT may withhold from any amounts due the SUBRECIPIENT such sum as the DEPARTMENT determines to be necessary to protect the DEPARTMENT against potential loss or liability.

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

After receipt of a notice of termination, and except as otherwise directed by the DEPARTMENT in writing, the SUBRECIPIENT shall:

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

A.39 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The SUBRECIPIENT shall comply with 2 CFR §200.321 and will take all necessary affirmative steps allowed by law to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will take all necessary affirmative steps allowed by law to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The following steps are required by the subrecipient if any contracts with contractors or sub-contractors are entered into under the original contract award:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

The SUBRECIPIENT may also set utilization standards, based upon local conditions or may utilize the State of Washington MWBE goals, as identified in. WAC 326-30-041.

A.40 VENUE

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

A.41 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the DEPARTMENT in writing. The DEPARTMENT's failure to insist upon strict performance of any provision

Resolution 5667 Exhibit A

of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

STATEMENT OF WORK AND/OR DESCRIPTION OF PROJECT

SUBRECIPIENT: **City of Auburn**
 PROJECT TITLE: **City of Auburn Reservoir 4 and 8 Seismic Retrofit**

The purpose of this project is for **The City of Auburn** to

(Provide brief, nontechnical description of the project, to include address(es) of structures/properties involved) **complete seismic retrofits at 4 Reservoirs, including seismic control valves on existing piping. Reservoir 4A & 4B at 30455 132nd Avenue SE, Auburn, WA 98092 Lat/Long: 47.32821, -122.16690; Reservoir 8A & 8B 5037 Auburn Way S, Auburn, WA 98092 Lat/Long: 47.27870, -122.16495.**

A specific and more detailed scope of work is found in the FEMA approved Project Application **FM-5320-09-R** which is incorporated herein by reference.

City of Auburn Agrees To:

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

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

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

A proposed change to the approved Scope of Work (as presented in the FEMA approved project application) must be submitted to the DEPARTMENT and FEMA in advance of implementation for re-evaluation for compliance with National Environmental Policy Act (NEPA) and other Laws and Executive Orders. Prior approval for a change to the approved Scope of Work must be obtained from the

Resolution 5667 Exhibit A

DEPARTMENT and FEMA before the change is implemented. Failure to obtain prior approval for a revised Scope of Work could result in ineligibility of resulting costs.

- b. Comply with all applicable federal, state and local laws and regulations. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding provided by this Agreement.
- c. Ensure that all completed work is in compliance with applicable state and local buildings codes.
- d. Monitor site work during ground-disturbing activities for evidence of potential archaeological resources that are uncovered. SUBRECIPIENT must halt the project in the event historically or archaeologically significant materials or sites (or evidence thereof) are discovered. By way of example, such evidence may include, but is not limited to, artifacts such as arrowheads, bone fragments, pottery shards, and features such as fire pits or structural elements. All reasonable measures must be taken to avoid or minimize harm to such resources until such time as the SUBRECIPIENT notifies the DEPARTMENT, and FEMA, in consultation with the State Historic Preservation Officer (SHPO) and appropriate Native American tribes, determines appropriate measures have been taken to ensure that the project is in compliance with the National Historic Preservation Act. In addition, upon discovery of human skeletal remains, the SUBRECIPIENT is required by state law to notify the county coroner and local law enforcement in the most expeditious manner possible and to immediately stop any activity which may cause further ground disturbance.
- e. Determine the presence of hazardous materials and/or toxic waste, and identifying, handling, managing, abating and disposing of such materials in accordance with the requirements and to the satisfaction of the governing local, state and federal agencies, including but not limited to the Washington Department of Ecology. Such materials may include, but are not limited to, asbestos, lead-based paint, propane cylinders, sand blasting residue, discarded paints and solvents, cleaning chemicals, containers of pesticides, lead-acid batteries, items containing chlorofluorocarbons (CFCs), motor oil and used oil filters, and unlabeled tanks or containers.
- f. Dispose of all debris at an approved and permitted location. No debris shall be temporarily staged or disposed of in a floodplain and/or a wetland.
- g. Confirm with the State Department of Ecology whether this project will require a consistency determination under the Coastal Zone Management Act. If required, the SUBRECIPIENT shall obtain and comply with all requirements of the determination prior to starting the project.
- h. Select, implement, monitor, and maintain Best Management Practices (BMPs) to control soil erosion and sedimentation, reduce spills and pollution, and provide habitat protection. The acquisition site shall be stabilized from erosion and silt laden runoff by implementing these BMPs and securing the site from transient vehicle access. Any excavation and/or grading shall be done within and/or adjacent to the existing building footprint area and not beyond undisturbed portions of the site.
- i. (Additional requirements as noted by FEMA in grant award document).
- j. Cost overruns in excess of the approval budget are fully the responsibility of the SUBRECIPIENT, including those costs resulting from a change in the Scope of Work. The project must remain cost effective (i.e., Benefit Cost Ratio of 1.0 or greater) in the event of cost overrun.

For Hazard Mitigation Grant Program (HMGP) only: A request for additional funds to cover a cost overrun may be granted by the DEPARTMENT and FEMA only if funds are available within the HMGP ceiling for this disaster, **FEMA-FM-5320-WA**. A request for additional funds must be fully documented and justified.

The Military Department Agrees To:

1. Provide staff coordination and input regarding grant administration for funding and technical assistance for project and reviews for mitigation construction projects, as necessary.
2. Except as otherwise provided in Article II, A.4, of this Agreement, reimburse **City of Auburn** within 30 days of receipt and approval of signed, dated invoice voucher(s) (state form A-19) with sufficient documentation of costs to include completion of tasks to date and dated invoices for goods and services purchased. Costs must be categorized according to the budget item and cost classification shown in the Project Budget, Attachment 5. The DEPARTMENT will return invoices to the SUBRECIPIENT if the SUBRECIPIENT is unable to provide sufficient documentation within 15 calendar days of the DEPARTMENT's written request for additional documentation to support the reimbursement request.

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3. Coordinate with the staff of City of Auburn to schedule any sub-recipient monitoring, site visits or final inspections by DEPARTMENT staff.

PROJECT DEVELOPMENT SCHEDULE

SUBRECIPIENT: **City of Auburn**
 PROJECT TITLE: **City of Auburn Reservoir 4 and 8 Seismic Retrofit**

<i>DESCRIPTION OF ACTIVITY/TASK</i>	<i>SCHEDULED COMPLETION DATE</i>
Consultant Selection/Contract Execution	8/31/22
Design	8/31/23
Permitting	10/31/23
Bid Project/Execute Construction Contract	1/31/24
Project Construction	10/31/24
Final Inspection and Closeout	12/31/24
Total Time Required to Complete This Project: <u>29</u> months	
Quarterly Reports Due on Project Progress, Final Project Report and all documentation, site visits and inspections.	July 15, <u>2022</u> ; October 15, <u>2022</u> ; January 15, <u>2023</u> ; April 15, <u>2023</u> ; July 15, <u>2023</u> ; October 15, <u>2023</u> ; January 15, <u>2024</u> ; April 15, <u>2024</u> ; July 15, <u>2024</u> ;

PROJECT BUDGET

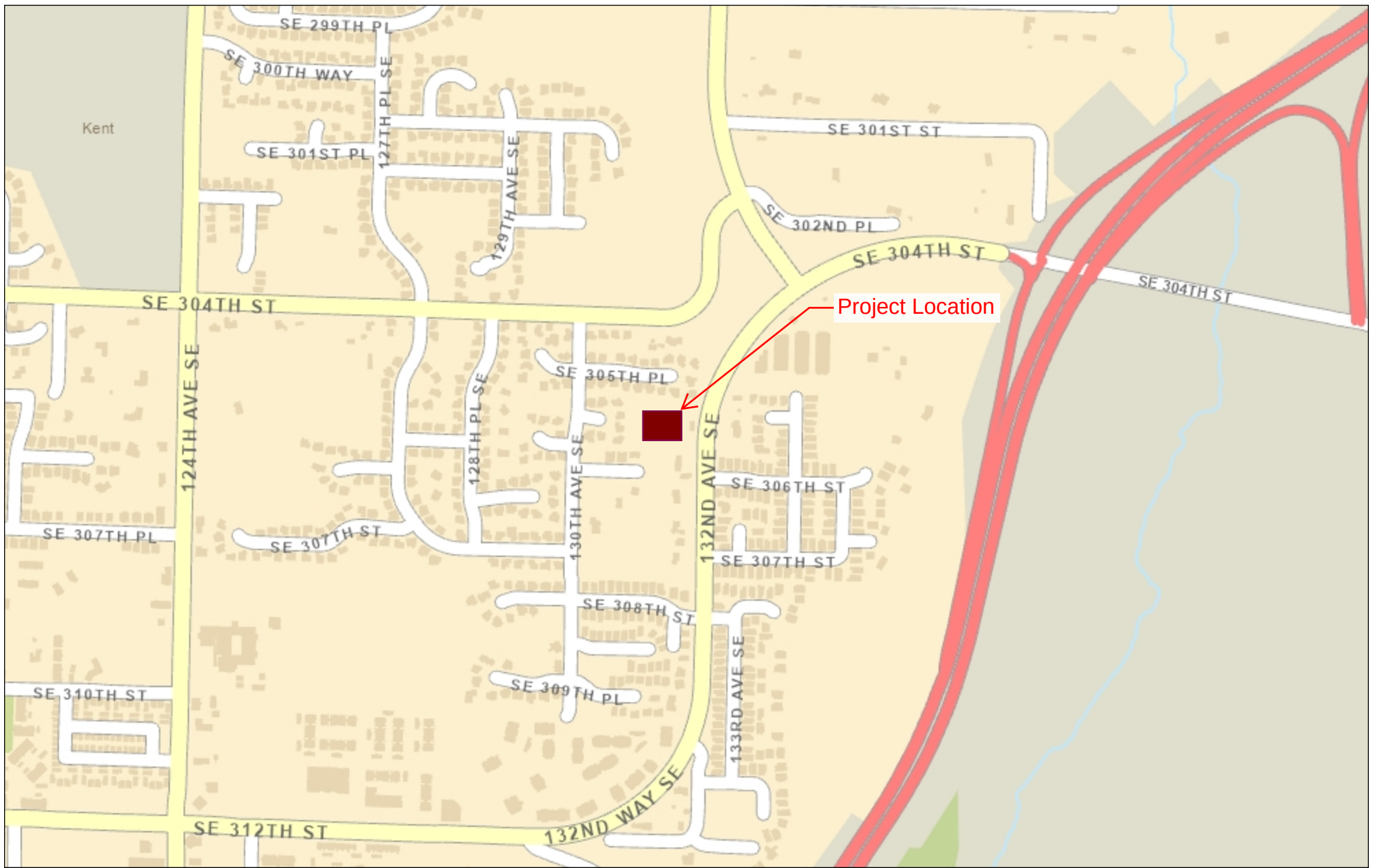
SUBRECIPIENT: **City of Auburn**
 PROJECT TITLE: **City of Auburn Reservoir 4 and 8 Seismic Retrofit**

<i>APPROVED BUDGET CATEGORY</i>	<i>ESTIMATED COST</i>
Project Management Costs, Legal Expenses, etc.	\$45,750.00
Architectural, Engineering, Geotechnical, etc.	\$390,000.00
Project Inspection Fees	\$180,000.00
Construction	\$1,040,000.00
	<i>Subtotal</i>
	\$86,855.22
SubMC – This category is restricted to eligible grant administration costs, including indirect costs, and is limited to 5% of eligible <i>project</i> expenditures. The amount shown here reflects the maximum amount available, based on the approved project budget.	\$80,000.00
TOTAL	
\$1,655,750.00	
Tracking and Reporting Project Costs: Project expenses for which reimbursement is sought must be tracked and reported by approved budget cost categories, above. Documentation of expenditures by approved budget cost categories should be made on a separate spreadsheet or table and included with each A-19. Supporting documentation of all costs shall include, but not be limited to: tracking of staff time spent on the project through timesheets or other similar documentation; dated invoices from contractors and subcontractors for work completed; dated invoices for goods and services purchased; and documentation of in-kind contributions of personnel, equipment and supplies. Final Payment: Final payment of any remaining, or withheld, funds will be made upon submission by the SUBRECIPIENT within 60 days of completion of the project of the final report and an A-19, Voucher Distribution, and completion of all final inspections by the DEPARTMENT. Final payment also may be conditioned upon a financial review, if determined necessary by the DEPARTMENT. Adjustments to the final payment may be made following any audits conducted by the DEPARTMENT, Washington State Auditor's Office, the United States Inspector General, or their authorized representatives.	

For Hazard Mitigation Grant Program only: A request for additional funds to cover a cost overrun may be granted by the DEPARTMENT and FEMA only if funds are available within the HMGP ceiling for this disaster, **FEMA-FM-5320-WA**. A request for additional funds must be fully documented and justified.

Reservoir 4A and 4B Seismic Retrofits - Vicinity Map

Printed Date: 5/24/2022
Map Created by City of Auburn eGIS
Imagery Date: May 2015



1,333.3	0	666.7	1,333.3	Feet
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NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

$$1\text{ in} = 667 \text{ ft}$$

1: 8,000

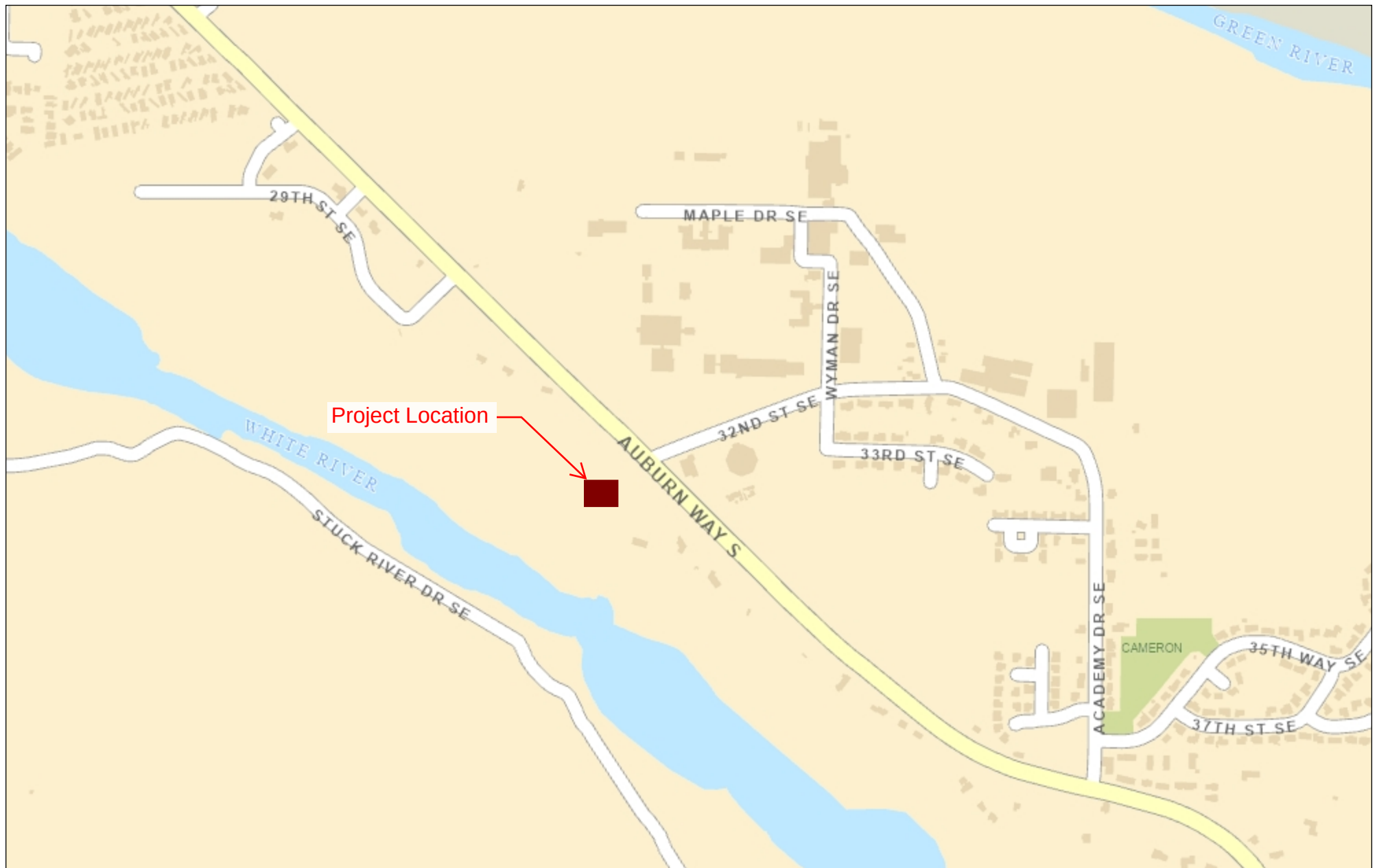
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Information shown is for general reference purposes only and does not necessarily represent exact geographic or cartographic data as mapped. The City of Auburn makes no warranty as to its accuracy.

Reservoir 8A and 8B Seismic Retrofits - Vicinity Map

Printed Date: 5/24/2022
Map Created by City of Auburn eGIS
Imagery Date: May 2015



1,333.3 0 666.7 1,333.3 Feet

NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

1 in = 667 ft

1:8,000



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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5668 (Faber)

Date:

May 31, 2022

Department:

Parks/Art and Recreation

Attachments:

[Res 5668](#)

[Interlocal Agreement](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Resolution 5668 authorizes the Mayor to Execute an updated Interlocal Cooperative Agreement with King County for the purpose of accepting funds in the amount of \$83,050.00 to reimburse the City for the property purchases for salmon habitat

Background for Motion:

On January 17, 2022, the City Council approved Resolution 5614, which concerned two agreements, an updated King County Conservation Futures grant agreement and a WRIA grant agreement. The Conservation Futures agreement was not attached to the resolution, instead the WRIA agreement was attached twice. Due to the fact that the Conservation Futures Agreement was not attached to the resolution, the mayor is not authorized to execute the updated agreement. The County updated the Conservation Futures agreement in order to address inconsistencies between the agreement and the King County Code, to allow use of bond proceeds for certain projects, and to make other technical changes. This agreement appropriates \$83,050.00 of Conservation Futures levy funds to reimburse the City for purchase of 7.33 acres along Mill Creek, a salmon bearing tributary of the Green River.

Background Summary:

Resolution 5668 authorizes the Mayor to enter into an Interlocal Agreement with King County for reimbursement of funds related to salmon habitat.

Reviewed by Council Committees:

Councilmember: Jeyaraj

Staff: Faber

Meeting Date: June 6, 2022

Item Number: RES.B

RESOLUTION NO. 5668

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN UPDATED INTERLOCAL COOPERATION AGREEMENT WITH KING COUNTY FOR THE PURPOSE OF ACCEPTING FUNDS IN THE AMOUNT OF \$83,050.00 TO REIMBIURSE THE CITY FOR PROPERTY PURCHSASES FOR SALMON HABITAT.

WHEREAS, on January 17, 2022, the City Council approved Resolution 5614, which concerned two agreements, an updated King County Conservation Futures grant agreement and a WRIA grant agreement, and

WHEREAS, the Conservation Futures agreement was not attached to the resolution, instead the WRIA agreement was attached twice; and

WHEREAS, because the updated Conservation Futures Agreement was not attached to the resolution, the mayor is not authorized to execute the updated agreement, and.

WHEREAS, King County updated the Conservation Futures agreement in order to address inconsistencies between the agreement and the King County Code, to allow use of bond proceeds for certain projects, and to make other technical changes; and

WHEREAS, the agreement appropriates \$83,050.00 of Conservation Futures levy funds to reimburse the City for purchase of 7.33 acres along Mill Creek, a salmon bearing tributary of the Green River.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON HEREBY RESOLVES AS FOLLOWS:

Section 1. Acceptance. The City of Auburn City Council authorizes the Mayor of the City of Auburn to execute the agreement attached as Exhibit A, concerning King County Conservation Futures grant funds.

Section 2. Implementation. The Mayor of the City of Auburn is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this resolution.

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

Dated and Signed: _____

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

EXHIBIT A

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN KING COUNTY AND THE CITY OF AUBURN
FOR CONSERVATION FUTURES-FUNDED
OPEN SPACE ACQUISITION PROJECTS**

THIS INTERLOCAL COOPERATION AGREEMENT is a grant agreement entered into between the CITY OF AUBURN (“City”) and KING COUNTY (“County”), (collectively, “parties”).

Article I. Recitals

On February 27, 1989, the King County Council passed Ordinance 8867, which established a process to allocate the proceeds of the Conservation Futures Fund.

On September 21, 1989, the King County Council passed Ordinance 9128, which established a Conservation Futures Levy Fund to provide for the receipt and disbursement of Conservation Futures tax levy proceeds and established conditions for use of the Fund, including conditions covering allowable costs and expenses.

On July 21, 2003, the King County Council passed Ordinance 14714, authorizing funding allocation procedures for King County Conservation Futures tax levy collections and amending Ordinance 8867, Section 2, as amended.

The Conservation Futures Advisory Committee has recommended an allocation of Conservation Futures proceeds to specific projects from the Conservation Futures Levy Fund following notification to the cities that proceeds were available, provision of an opportunity for the cities to respond and receipt by the committee of requests for funding, all pursuant to Ordinance 8867, as amended by Ordinance 14714.

Starting in 1990 and through 2017, the King County Executive, as authorized by the King County Council, executed Interlocal Cooperation Agreements with the cities of Auburn, Bellevue, Black Diamond, Bothell, Burien, Carnation, Covington, Des Moines, Duvall, Enumclaw, Federal Way, Issaquah, Kenmore, Kent, Kirkland, Lake Forest Park, Mercer Island, Milton, Newcastle, Normandy Park, North Bend, Pacific, Redmond, Renton, Sammamish, Seattle, Shoreline, Snoqualmie and Tukwila, and Vashon Park District. Many of these agreements were amended over time to add new projects.

The existing Interlocal Cooperation Agreements remain in place with an indefinite term for the projects for which Conservation Futures proceeds were disbursed. The agreements require the properties to be maintained as open space in perpetuity.

The King County Council, by Ordinance 18978, has approved a new Interlocal Cooperation Agreement for future projects in order to add terms for the use of bond proceeds for certain projects, achieve consistency between the agreement and the King County Code, and make other technical changes.

Pursuant to chapter 39.34 RCW, the parties agree to the following:

Article II. Definitions

1. Open Space

The term “open space” or “open space land” means: (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly; or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes,

or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife reserves, natural reservations or sanctuaries, or other open space, or (v) enhance recreational activities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land of not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of “farm and agricultural land” conservation under subsection (8) of RCW 84.34.020. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b) (iii) of this subsection for the purpose of promoting conservation of wetlands.

2. Project

The term “Project” means the specific projects described in Exhibit A or added by follow-on amendments to disburse proceeds pursuant to Section 8.2 of this agreement.

3. Conservation Futures

The term “Conservation Futures” means developmental rights which may be acquired by purchase, gift, grant, bequest, devise, lease or otherwise, except by eminent domain, and may consist of fee simple or any lesser interest, development right, easement, covenant, or other contractual right necessary to protect, preserve, maintain, improve restore, limit future use of, or otherwise conserve open space land, all in accordance with chapter 84.34 RCW and K.C.C. chapter 26.12.

Article III. Purpose of the Agreement

The purpose of this agreement is to create a cooperative arrangement between the City and the County relating to the Project and to define the terms and conditions governing both parties' obligations created by this agreement.

Article IV. Term of Agreement

This agreement shall be continued in full force and effect and binding upon the parties hereto upon execution of the agreement by both parties. The terms of the agreement shall be indefinite. The agreement will be terminated if the City is: 1) unable or unwilling to expend the proceeds provided through this agreement; 2) unable or unwilling to satisfy the matching requirements contained in this agreement; and 3) upon reimbursement by the City to the County of all unexpended proceeds provided by the County pursuant to this agreement in the manner and amounts described below and payment of all amounts due pursuant to Section 8.1.

Article V. Conditions of Agreement

Section 5.1 – Project Descriptions. Proceeds available pursuant to this agreement may be used only for the Projects listed in Exhibit A, such substituted Projects as may be approved by the County as set forth below, or Projects added by follow-on amendments to disburse proceeds pursuant to Section 8.2 of this agreement. All County funded Projects must meet open space criteria as described in chapter 84.34 RCW and K.C.C. chapter 26.12.

Section 5.2 – Use of Proceeds. Proceeds provided to the City pursuant to this agreement as well as moneys provided by the City as match pursuant to this agreement may be used only to pay capital costs related to property acquisition. Those costs include

appraisals, title searches, negotiations, administrative overhead, and the cost of actual acquisition or purchase options, and all other costs meeting the requirements of K.C.C. 26.12.010. The City shall have the property valued by an appraisal performed by an independent state-certified real estate appraiser with a current general real estate appraiser license, and reviewed by an independent state-certified general real estate appraiser. In requesting reimbursement of proceeds for the Project, the City shall demonstrate to the County compliance with this Section 5.2. Proceeds utilized pursuant to this agreement may not be used to purchase land obtained through the exercise of eminent domain.

Section 5.3 – Completion/Substitution/Deletion of Projects. The City shall complete the Project described in Section 5.1 of this Agreement within a two-year period from the effective date of the County ordinance appropriating funding for the Project. If the City does not meet this two-year requirement, unless the City demonstrates to the Advisory Committee a compelling reason for continuance of CFT funding for the Project beyond the two-year limit or a reprogramming request is timely approved as provided for below, the County shall be released from any obligation to fund the Project, and the County in its sole discretion may reallocate such proceeds for other projects in other jurisdictions. The City may submit specific requests for project reprogramming to the County for its approval within the two-year period. All projects proposed for reprogramming must meet open space criteria as described in chapter 84.34 RCW and K.C.C. chapter 26.12, be submitted for recommendation by the County’s Advisory Committee or its successor, and be approved by action of the King County Council. All

reprogramming requests shall be submitted to the County's Department of Natural Resources and Parks, Open Space Acquisitions Unit, or its successor.

Section 5.4 – Eminent Domain. If any Project requires the exercise of eminent domain to acquire the property, all proceeds provided pursuant to this agreement plus accrued interest on such proceeds shall be reprogrammed as provided in this agreement or repaid to the County.

Article VI. Responsibilities of the City

Section 6.1 – Matching Requirements. Except for acquisitions of property interests in opportunity areas, as defined by K.C.C. 26.12.003, any Project funded by Conservation Futures Levy proceeds shall be supported by the City in which the Project is located with a matching contribution, which is no less than the amount of Conservation Futures Levy proceeds allocated to the Project. This contribution may be in the form of cash, land match with a valuation verified by an appraisal by an independent state-certified real estate appraiser with a current general real estate appraiser license, or the cash value, excluding King County conservation futures contributions, of other open spaces acquired within the previous two years from the date of submittal of the application by the City. The appraisal, to be reviewed, shall have been performed within two years of the application deadline set for the annual allocation of conservation futures tax levy proceeds under which the Property received funding. Properties considered as land match or cash value of other open space acquisitions should be directly linked to the property under application. Any City match, other than cash, shall require County

approval. County approval and County acceptance of the City's match will be transmitted in writing to the City by the County's Designated Representative.

Section 6.2 – Reporting. All proceeds received pursuant to this agreement and accrued interest therefrom will be accounted for separately from all other City moneys, accounts and moneys. Until the property described in the Project is acquired and all proceeds provided pursuant to this agreement have been expended, the City shall provide the reports required by K.C.C. 26.12.035.

Section 6.3 – Disposition of Remaining Proceeds. If the City does not expend all proceeds obligated to be provided through this agreement and no substitute project is requested or approved as to the excess proceeds, such proceeds, if held by the City, shall be refunded to the County. For purposes of this section, "proceeds" shall include all moneys obligated to be provided by the County plus interest accrued by the City on such moneys. Any proceeds in excess of those required to be provided by the County for the actual costs of the Project shall remain with the County for use in its sole discretion.

Section 6.4 – Maintenance in Perpetuity. Except as provided in this Section 6.4, the City, and any successor in interest, agree to maintain properties acquired with proceeds provided pursuant to this agreement as open space in perpetuity and, as required by the County, to include in the real property records notice of this restriction. Projects carried out by the City in whole or in part with funds provided for under the terms of this agreement shall not be transferred or conveyed except by agreement with an agency or nonprofit organization as defined in K.C.C. 26.12.003, which shall provide that the land

or interest in land shall be continued to be used for the purposes of K.C.C. chapter 26.12, and in strict conformance with the uses authorized under chapter 84.34 RCW.

The City shall not change the status or use of properties acquired with proceeds provided pursuant to this agreement unless the City provides equivalent lands or cash in exchange for the land to be changed to a different use. The land shall be valued in its changed status or use, and not based upon its value as open space, and the replacement land or payment amount must be approved by the County. If requested by the County, at its own cost the City will provide the County an appraisal performed within the previous year by an independent state-certified real estate appraiser with a current general real estate appraiser license. The value established by the appraisal will not be binding on the County. If the County approves replacement land, the City shall complete the replacement within one year of approval. If the County approves cash reimbursement, the City shall pay the County within 90 days of approval.

Section 6.5 – Tax Covenants. The City acknowledges that proceeds provided by the County for a Project may be proceeds of tax-exempt bonds (the “Bonds”) subject to certain requirements of the Internal Revenue Code of 1986, as amended (the “Tax Code”), including any implementing regulations and any administrative or judicial interpretations. The City will comply with Tax Code requirements, including those set forth in Exhibit B, which is incorporated herein, applicable to Bond-financed Projects identified in Exhibit A, which is incorporated herein, as well as Bond-financed Projects identified in subsequent amendments to this agreement.

Article VII. Responsibilities of the County

Subject to the terms of this agreement, the County will provide Conservation Futures Tax Levy proceeds in the amounts and for the Projects identified in Exhibit A as well as in those amounts and for those Projects identified in subsequent amendments to this agreement. The City may request additional proceeds; however, the County has no obligation to provide proceeds to the City in excess of the amount shown in Exhibit A. The County assumes no obligation for future support of the Project described herein except as expressly set forth in this agreement.

Article VIII. Other Provisions

Section 8.1 – Hold Harmless and Indemnification.

A. The County assumes no responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of the City, its employees, contractors or others by reason of this agreement. The City shall protect, indemnify, and save harmless the County, its officers, agents and employees from any and all claims, cost and whatsoever occurring or resulting from: 1) the City's failure to pay any compensation, fees, wages, benefits, or taxes; and 2) the supplying to the City of work, services, materials or supplies by City employees, agents, or other contractors, or suppliers in connection with or in support of performance of this agreement.

B. The City further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception, which occurs due to the negligent or intentional acts of this agreement by the City, its officer, employees, agents, or representatives arising out of the performance of the terms of this agreement.

C. The City shall protect, indemnify, and save harmless the County from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the City, its officers, employees, or agents in the performance of its obligations under the terms of this agreement. For the purposes of this agreement only, the City agrees to waive the immunity granted it for industrial insurance claims pursuant to Title 51 RCW to the extent necessary to extend its obligations under this paragraph to any claim, demand, or cause of action brought by or on behalf of any employee, including judgments, awards, and costs arising therefrom including attorney's fees.

D. To the extent permitted by law, and except to the extent caused by the sole negligence of the County, the City agrees, at its expense, to pay, and to indemnify and hold the County, its officers, employees or agents harmless of, from and against, any and all claims, damages, demands, losses, liens, liabilities, penalties, fines, taxes, lawsuits, and other proceedings and costs and expenses (including attorneys' fees) of every conceivable kind, character or nature whatsoever, arising directly or indirectly from or out of, or in any way connected with any examination or audit of any Bond issued to finance or refinance costs of any Bond-financed Project identified in Exhibit A as well as Bond-financed Projects identified in subsequent amendments to this agreement by the Internal Revenue Service, or any determination by the Internal Revenue Service or a court of competent jurisdiction that the interest on any such Bond is or should be subject to federal income taxation; provided, however, that the City shall not be liable for any payment made by the County with respect to any settlement of any such examination or

audit, or of any other proceeding related thereto, entered into without the consent of the City.

Section 8.2 – Amendment. The parties reserve the right to amend or modify this agreement. Amendments or modifications to disburse proceeds approved by the County Council must be by written instrument signed by the parties substantially in the form of Exhibit C. Other amendments also must be approved by the respective City and County Councils.

Section 8.3 – Contract Waiver. No waiver by either party of any term or condition of this agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this agreement. No waiver shall be effective unless made in writing.

Section 8.4 – Entirety. This agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This agreement merges and supersedes all prior negotiations, representations and agreements between the parties relating to the Project and constitutes the entire agreement between the parties. The parties recognize that time is of the essence in the performance of the provisions of this agreement.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces set forth below:

KING COUNTY

Dow Constantine
King County Executive

Date: _____
Acting under the authority of
Ordinance 18978

Approved as to form:

Dan Satterberg
King County Prosecuting Attorney

CITY OF AUBURN

Nancy Backus
Mayor

Date: _____
Acting under the authority of
Resolution 5668

Approved as to form:

Kendra Comeau
City Attorney

EXHIBIT A

2022 CONSERVATION FUTURES LEVY CITY OF AUBURN ALLOCATION

Jurisdiction	Project	Allocation
Auburn	Mill Creek Assemblage	\$83,050
TOTAL		\$83,050

Project Description:

Project #1141597: Auburn – Mill Creek Assemblage

The City of Auburn proposes to acquire property for future habitat improvement of wetlands and the riparian corridor of Mill Creek, a salmon-bearing tributary to the Green River. The city has identified 7.33 acres as current targets, with a total of 12.18 acres in the long-term scope. Project funding was authorized in King County Ordinance 19364.

Is this a Bond-financed Project? No

EXHIBIT B

Tax Covenants

The City acknowledges that proceeds provided by the County for the Project may be proceeds of Bonds subject to certain requirements of the Tax Code. The City will take all actions with respect to the Project, and proceeds received for the Project, necessary to assure the exclusion of interest on the Bonds from the gross income of the owners of the Bonds, including but not limited to the following:

(a) Expenditure of Proceeds. The City will expend proceeds of the Bonds received from the County for capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Tax Code. Bond proceeds may be expended to pay, or reimburse the City for, Project capital expenditures or to repay interim indebtedness incurred for capital expenditures of the Project.

(b) Notice. The City will provide notice of action taken or planned to issue any tax-exempt indebtedness, including bonds, bank loans, or other tax-exempt indebtedness, to finance Project costs.

(c) Treatment as Grant.

- (1) The City is a governmental entity possessing substantial taxing, eminent domain and police powers and constituting a political subdivision of the State.
- (2) The City is not acting as an agent of the County.
- (3) The grant of proceeds for the Project does not impose any obligation or condition to directly or indirectly repay any amount to the County (excluding obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer).
- (4) The grant is required to be used for open space as required under Article II but does not impose any conditions relating to the use of the Project or other property of the City by the County or any of its agencies or authorities.
- (5) This agreement is a grant agreement.

(d) Limitations on Disposition of Project. The City will not sell or otherwise dispose of any components of the Project without prior approval by the County and compliance with timeframes for completion of land replacement or cash reimbursement as provided in Section 6.4.

(e) Record Retention. The City will retain its records of all accounting and monitoring it carries out with respect to the Bond proceeds received and with respect to the

Project for at least three years after the Bonds mature or are redeemed as provided in the amendment granting such Bond proceeds to the City.

(f) Cooperation. The City will provide tax certificates when and as requested by the County or County's bond counsel in order to establish or maintain the tax-exempt status of the Bonds. The City will cooperate in any audit of the Bonds by the Internal Revenue Service, including disclosure of any record, contracts and other materials relating to the Bond proceeds received by the City and the Project.

EXHIBIT C

**AMENDMENT TO THE CONSERVATION FUTURES
INTERLOCAL COOPERATION AGREEMENT
BETWEEN KING COUNTY AND THE CITY OF _____
FOR OPEN SPACE ACQUISITION PROJECTS**

Preamble

The King County Council, through Ordinance 9128, has established a Conservation Futures Levy Fund and appropriated proceeds to King County and certain cities. This amendment is entered into to provide for the allocation of additional proceeds made available for open space acquisition.

THIS AMENDMENT is entered into between the CITY OF _____ and KING COUNTY, and amends and attaches to and is part thereof of the existing Interlocal Cooperation Agreement entered into between the parties on the _____ day of (Month), (Year), as previously amended.

The parties agree to the following amendment:

The Interlocal Cooperation Agreement is hereby amended by adding Exhibit 1, attached hereto.

In all other respects, the terms, conditions, duties and obligations of both parties shall remain the same as agreed to in the Interlocal Cooperation Agreement as previously amended.

Once fully executed, this Amendment shall be incorporated into the existing Interlocal Cooperation Agreement as if fully set forth, and shall become Amendment ____.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces set forth below:

KING COUNTY

CITY OF AUBURN

Dow Constantine
King County Executive

Mayor

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Dan Satterberg
King County Prosecuting Attorney

City Attorney

EXHIBIT 1

**[YEAR] CONSERVATION FUTURES LEVY PROCEEDS
CITY OF _____ ALLOCATION**

Jurisdiction	Project Name (Project Number)	Allocation
[City Name]	[Project Name] ([Project Number])	\$
TOTAL		\$

Project Description:

[Project Number] [City Name] – [Project Name]
[Project Description used in legislation approving proceeds]

Is this a Bond-financed Project?



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5669 (Comeau/Faber)

Date:

June 1, 2022

Department:

Legal

Attachments:

[Resolution No. 5669](#)

[Max House Purchase and Sale Agreement](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Resolution No. 5669.

Background for Motion:

City staff recommend the adoption of Resolution 5669, approving the purchase and sale agreement for the purchase of real property, King County parcel number 0489000085.

Background Summary:

On July 24, 2021, a fire severely damaged the building (commonly known as the Max House) situated on King County parcel number 0489000085. Damage from the fire caused the Max House building to have to be demolished. As a result, the Auburn Avenue Theater, located next to the Max House property, is unusable.

Previous investments by the City into this block include the development of the Arts and Culture Center, Auburn Arts Alley and the tree lighting around the B Street parking lot.

Purchase of the Max House property will not only further support the previous investments made, but show continued dedication to Auburn's downtown, Auburn residents, the creative arts, and the formation of an Art's District by providing the additional property needed to redevelop and/or reconstruct the Theater.

Staff commissioned an appraisal prior to making the offer to purchase. The offer is for the full listing amount, which is consistent with the consideration of the appraisal.

Reviewed by Council Committees:

Councilmember: Baggett

Staff:

Comeau/Faber

Meeting Date: June 6, 2022

Item Number:

RES.C

RESOLUTION NO. 5669

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON, APPROVING THE PURCHASE
AND SALE AGREEMENT FOR THE CITY'S ACQUISITION OF
REAL PROPERTY, KING COUNTY PARCEL NUMBER
0489000085.

WHEREAS, on July 24, 2021, a fire severely damaged the building, situated on King County parcel number 0489000085, commonly known as the Max House; and

WHEREAS, the City-owned Auburn Avenue Theater located adjacent to the north of the Max House sustained significant damaged from this same fire; and

WHEREAS, damage from the fire, as well as the work associated with the fire, has caused the Auburn Avenue Theater to be unusable and created the need to redevelop or reconstruct the theater; and

WHEREAS, after demolishing the Max House the owners of the property elected to list the property for public sale; and

WHEREAS, the City recognizes the importance of having a vibrant, creative district in the downtown core to benefit the residents of Auburn; and

WHEREAS, the City has previously invested funds into this block to develop the Arts and Culture Center, Auburn Arts Alley, and the Auburn Ave as economic drivers and destination locations in downtown Auburn; and

WHEREAS, acquiring King County parcel 0489000085 provides the additional property needed to redevelop and/or reconstruct a Theater located in largely the same area as the existing Theater and on the same block as previous Creative District investments have been made.

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

Section 1. The Auburn City Council approves the City's purchase of King County parcel number 0489000085 in substantial conformity with the terms of the purchase and sale agreement attached as "Exhibit A."

Section 2. The Mayor is authorized to implement those administrative procedures and/or execute minor amendments necessary to carry out the directives of this Resolution.

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

Dated and Signed: _____

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this “Agreement”) is entered into as of the 12 day of April, 2022 (“Effective Date”), by and between the **City of Auburn**, a Washington municipal corporation (“City” or “Buyer”), and **Auburn WA Max House LLC**, a Washington Limited Liability Company (“Seller”). Seller and Buyer are collectively referred to as the “Parties.”

RECITALS

A. Seller owns certain real property located at 101 E Main Street in Auburn, Washington, also known as King County Parcel Nos. 048900-0085 (the “Subject Property”), legally described in attached **Exhibit A**.

B. Seller wishes to sell, and Buyer wishes to buy, the Subject Property owned by Seller described in **Exhibit A**, listing the property for sale with the real estate sales firm, Marcus & Millichap.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which the Parties mutually acknowledge, Buyer and Seller agree as follows:

1. **Certain Defined Terms.** For purposes of this Agreement, the following capitalized terms in this Agreement will have the following definitions:

1.1 “Closing” or “Close of Escrow” means the recordation of the Deed in the Official Records and Seller’s receipt of the Purchase Price.

1.2 “Closing Date” means the date which is thirty (30) days after the expiration or waiver of the due diligence and feasibility review period.

1.3 “Deposit” means an amount of nine thousand five hundred dollars (\$9,500), plus any other amounts designated as a Deposit in this Agreement.

1.4 “Escrow” means the escrow opened with Escrow Agent for the consummation of the transaction described in this Agreement.

1.5 “Escrow Agent” means Chicago Title Company, located at: 701 5th Avenue, Suite 2700, Seattle, WA 98104. 206.628.5612

1.6 “Official Records” means the official real property records of King County, Washington.

1.7 “Permitted Exceptions” has the meaning as set forth in Section 6.1 below.

1.8 “Purchase Price” has the meaning as set forth in Section 3.

1.9 “Title Company” means Chicago Title Company.

1.10 “Title Policy” means the then current Seller-purchased standard coverage ALTA owner’s policy of title insurance issued by the Title Company to Buyer with coverage in the amount of purchase price, showing title to the Subject Property vested in Buyer subject only to the Permitted Exceptions.

1.11 “Offer Expiration Date” means that date the Seller shall have to accept, counter, or reflect this offer before this offer becomes automatically revoked. Offer Expiration Date is N/A.

2. Purchase and Sale. Buyer agrees to buy, and Seller agrees to sell, all Seller’s rights, title and interest in the real property legally described in **Exhibit A** (the “Subject Property”) on the terms and conditions set forth in this Agreement.

3. Purchase Price; Cash Payment. The Purchase Price is **Four Hundred Twelve Thousand Nine Hundred Twenty Dollars and no cents (\$412,920.00)**, which will be payable in full at Closing. The Deposit will be applied to the Purchase Price due at Closing. The Purchase Price payment by Buyer will be via wire transfer of collected federal funds.

4. Earnest Money Deposit. On execution of this Agreement, Buyer will deposit with Escrow Agent **Nine Thousand Five Hundred Dollars and no cents (\$9,500.00)** in cash (the “Deposit”), which the Escrow Agent will hold as an earnest money deposit for this transaction. The Deposit will be held in Escrow and applied or disposed of by the Escrow Agent based on the terms of this Agreement. The Deposit will not be refunded and will become property of Seller upon expiration of Buyer’s Due Diligence and Feasibility period.

5. Due Diligence and Feasibility. Due Diligence and Feasibility Period. Buyer shall have the right for a period of **two months** from the Effective Date of this Agreement (the “Due Diligence Period”) to conduct Buyer’s due diligence and feasibility review, examination and inspection of all matters pertaining to its acquisition of the Subject Property, including such inspections, tests, and surveys as Buyer deems appropriate to determine the suitability of the Subject Property for Buyer’s intended use. Buyer is solely responsible to determine its ability to use the Subject Property for its intended use and is solely responsible for submitting all necessary applications for City, State, and Federal permits necessary to determine feasibility. If, based upon Buyer’s review, examination and inspection, Buyer determines in its sole discretion that it intends to acquire the Subject Property, then Buyer shall promptly notify Seller of such determination in writing prior to the expiration of the Due Diligence Period. In the event that Buyer fails to deliver such notice to Seller on or before the expiration of the Due Diligence Period, Buyer will be deemed to be satisfied and to have waived its right to terminate this Agreement pursuant to this subsection. If Buyer timely and affirmatively advises Seller in writing of its

dissatisfaction based on its Due Diligence review, then this Agreement automatically terminates, the Parties' rights under this Agreement shall be of no further force or effect and the Deposit will be returned to Buyer.

6. Title Policy. Promptly after mutual execution of this Agreement, Seller will obtain and deliver to Buyer a standard coverage preliminary title insurance commitment covering the Subject Property from the Title Company (the "Commitment"). The Title Company will be instructed to deliver a copy of the Commitment and copies of exceptions to Buyer, Seller, and the Parties' respective counsel. Approval by Buyer of the exceptions to title set forth in the Commitment (other than as hereinafter set forth) will be a condition precedent to Buyer's obligation to purchase the Subject Property. Unless Buyer gives written notice that it disapproves the exceptions to title shown on the Commitment (other than the exceptions to title approved by Buyer and described in Section 6.1 below), stating the exceptions so disapproved, within fourteen (14) calendar days after the date of delivery of the Commitment to Buyer, Buyer will be deemed to have approved such exceptions. If Buyer disapproves any title exceptions, Seller will have a ten (10) calendar day period after its receipt of Buyer's written notice of disapproval of the same within which to provide written notice to Buyer as to which of such disapproved title exceptions Seller will remove (or cause to be removed) from title; provided, however, that Seller will not be required to actually remove such exception(s) until Closing. If, for any reason, Seller's notice given pursuant to the immediately preceding sentence does not covenant to remove all of Buyer's disapproved title exceptions at or prior to Closing, Buyer has the right to terminate this Agreement by written notice to Seller and Escrow Agent given within ten (10) calendar days after the earlier of the expiration of such ten (10) calendar day period or the date Seller informs Buyer that it does not intend to remove the disapproved items (the "Termination Notice"). Buyer's failure to deliver the Termination Notice within such ten (10) day period will be deemed Buyer's approval of any such previously disapproved title exception. If Buyer delivers the Termination Notice within such ten (10) day period, the obligation of Seller to sell, and Buyer to buy, the Subject Property will terminate and Escrow Agent is instructed to promptly return Buyer's Deposit.

6.1 Permitted Exceptions. In addition to such other exceptions to title as may be approved by Buyer pursuant to the provisions of Section 6 above, Buyer shall accept title to the Subject Property subject to the following (collectively, the "Permitted Exceptions"):

The printed exceptions which appear in the then current ALTA form standard coverage owner's policy of title insurance issued by Title Company in the State of Washington; and items created by, or on behalf of, Buyer.

7. Buyer's Right of Entry. Buyer, and its agents and consultants, at Buyer's sole expense and risk, may enter the Subject Property during the term of this Agreement for the purpose of Buyer's due diligence and feasibility study of the Property. Buyer will (a) exercise care at all times on or about the Subject Property, and (b) take precautions for the prevention of injury to persons or damage to property on or about the Subject Property.

Any physical alteration of the Subject Property in connection with Buyer's study will be restored by Buyer immediately upon demand by Seller, at Buyer's sole expense. Buyer indemnifies Seller against any loss, damage, or claim resulting from Buyer's inspections and tests. Buyer is not Seller's agent in connection with such activities and has no authority to allow any liens to encumber the Subject Property. Buyer shall keep the Subject Property free from all mechanics', materialmen's and other liens, and all claims, arising from any work or labor done, services performed, or materials and supplies furnished in with Buyer's actions in the exercise of its right of entry on the Subject Property and Buyer will maintain all insurance as required by Seller with respect to activities on the Subject Property.

8. Closing.

8.1 Time for Closing. This purchase and sale will be closed in the office of Escrow Agent on the Closing Date. Buyer and Seller will place in Escrow with Escrow Agent all instruments, documents and monies necessary to complete the sale under this Agreement. Funds held in Escrow pursuant to Escrow instructions will be deemed, for purposes of this definition, as available for disbursement to Seller. Neither party needs to be physically present at the Closing.

8.2 Seller Exchange. Buyer agrees to cooperate should Seller elect to sell the Property as part of a like-kind exchange under IRC Section 1031. Seller's contemplated exchange shall not impose upon Buyer any additional liability, financial obligation, nor will it affect the Closing date, and Seller agrees to hold Buyer harmless from any liability that might arise from such exchange. This Agreement is not subject to or contingent upon Seller's ability to acquire a suitable exchange property or effectuate an exchange. In the event any exchange contemplated by Seller should fail to occur, for whatever reason, the sale of the Property shall nonetheless be consummated as provided herein.

8.3 Closing Costs.

8.3.1 Seller's Costs. Associated with the sale and conveyance of the Subject Property, Seller will pay; (a) one half of the escrow fees and cost, (b) all premiums charged for the issuance of an ALTA Standard Coverage Owner's Policy, including applicable tax, (c) all real estate excise tax fees owed, (d) Seller's share of prorations, (e) Seller's own legal fees and fees of its own consultant, including but not limited to real estate broker commissions owed in connection with this Agreement.

8.3.2 Buyer's Costs. Associated with the sale and conveyance of the Subject Property, Buyer will pay; (a) one half of the escrow fees and cost, (b) all premiums charged for any additional endorsements, or extended coverage Buyer may require or request, including applicable sales tax, (c) the recording fees for the Deed; and (d) Buyer's share of prorations, if any.

8.3.3 Other Costs. All other costs and expenses will be charged according to local industry customs.

8.3.4 Real Property Taxation. Seller will be responsible for all real property taxes due and owing prior to the Closing.

8.4 Closing Documents.

8.4.1 Seller's Documents. At Closing, Seller will deliver to Escrow Agent the following instruments and documents:

- a. An executed and acknowledged Statutory Warranty Deed acceptable to Buyer;
- b. The executed real estate excise tax affidavit to accompany the Deed; and
- c. An executed nonforeign person affidavit in the form required under Section 1445 of the Internal Revenue Code.

8.4.2 Buyer's Documents. At Closing, Buyer shall deliver to Escrow Agent the following funds, instruments and documents:

- a. The balance of the Purchase Price in accordance with Section 3; and
- b. An executed real estate excise tax affidavit.

9. **Possession**. Buyer will be entitled to possession of the Subject Property upon Closing.

10. **Representations and Warranties**.

10.1 Seller's Representations and Warranties. In addition to any other representations or warranties of City elsewhere in this Agreement, Seller represents and warrants to Buyer now, and as of the Date of Closing, that:

10.1.1 Authority. Seller has full power and authority to execute this Agreement and perform Seller's obligations and all necessary action to authorize this transaction has been taken, except as specifically provided herein.

10.1.2 Hazardous Substances. Seller has not received notification of any kind from any governmental agency suggesting that the Subject Property is or may be targeted for a Hazardous Substances cleanup; to the best of Seller's knowledge the Subject Property has not been used (a) for the storage, disposal or discharge of oil, solvents, fuel, chemicals or any type of toxic, dangerous, hazardous or biological waste or substance (collectively, "Hazardous Substances"), or (b) as a landfill or waste disposal site; to the best of Seller's knowledge the Subject Property has not been contaminated with any Hazardous Substances; and (c) to the best of Seller's knowledge, there are no underground storage tanks on the Subject Property. Buyer agrees to waive Seller's Disclosure Statement under RCW 64.06.010 with the exception of item 6 "Environmental" under RCW

64.06.013 which Seller shall deliver to Buyer within five (5) business days following execution of this Agreement. A blank copy of the Environmental Section of Seller's Disclosure Statement is attached as **Exhibit B** for reference. Prior to closing, Buyer will be responsible to evaluate the property for Hazardous Substances and Seller will be given the opportunity, but will not be obligated, to remediate any concerns brought to the attention of environmental authorities.

10.1.3 Buyer's Representations and Warranties. In addition to any other representations and warranties of Buyer elsewhere in this Agreement, Buyer represents and warrants to Seller now, and as of the Date of Closing, that (a) Buyer has full power to execute, deliver and carry out the terms and provisions of this Agreement, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement; and (b) the individual executing this Agreement on behalf of Buyer has the authority to bind Buyer to the terms and conditions of this Agreement.

10.1.4 "As is" condition of Subject Property. The Purchase Price reflects that Buyer is purchasing the Subject Property "as is," "where is," and "with all faults," except to the extent of representations and warranties specifically made by Seller or in the Statutory Warranty Deed or other documents to be delivered by Seller at Closing.

11. Maintenance of Subject Property; Risk of Loss, Condemnation.

11.1 Maintenance of Subject Property. From the date of this Agreement until the Closing Date (or any earlier termination of this Agreement), Seller agrees to maintain the Subject Property in substantially the same condition existing as of the Effective Date, ordinary wear and tear, damage by casualty accepted.

11.2 Risk of Loss; Condemnation. Risk of loss of or damage to the improvements on the Subject Property will be borne by Seller at all times until the Closing Date and no event of casualty or damage shall affect the parties' obligations under the Agreement or the Purchase Price, however, Buyer will have the right to receive any insurance proceeds due Seller in connection with any casualty or damage and Seller covenants to maintain commercially reasonable casualty insurance in place with respect to the Subject Property at all times prior to Closing. Seller shall promptly notify Buyer of any condemnation or eminent domain proceeding which affects or may affect the Subject Property. In the event of any condemnation or eminent domain proceeding by any entity other than City, or a deed in lieu of or under threat thereof, which affects a material portion of the Subject Property, Buyer may elect either to terminate this Agreement, or to purchase the Subject Property in the condition existing on the Closing Date without adjustment of the Purchase Price.

12. Default.

12.1 Time of Essence. Time is of the essence for this Agreement.

12.2 Seller's Remedies for Buyer's Default or Failure to Close. If Buyer fails, without legal excuse, to complete the purchase of the Subject Property in accordance with this Agreement, Seller's sole and exclusive remedies shall be to retain the Deposit as liquidated damages. Buyer expressly agrees that the retention of the Deposit by Seller represents a reasonable estimation of the damages in the event of Buyer's default and failure to close, that actual damages may be difficult to ascertain, and that this provision does not constitute a penalty. In this respect, Buyer and Seller acknowledge that these damages have been specifically negotiated between Buyer and Seller and will compensate Seller for delaying the eventual sale of the Subject Property and to compensate Seller or its costs and expenses associated with this Agreement.

12.3 Buyer's Remedies for Seller's Default. If Seller fails to complete the sale of the Subject Property in accordance with this Agreement, Buyer's remedy will be to terminate this Agreement or to seek specific performance.

13. Notices. All notices, demands and other communications required or permitted to be given shall be in writing and shall be sent by personal delivery (including by means of professional messenger or courier service) or registered or certified mail, postage-prepaid, return-receipt requested, or by electronic mail (email) at the addresses provided. Notice shall be deemed to have been given if personally delivered or sent by electronic mail (email), upon receipt, if sent by mail, two (2) days after duly placed in the U.S. Mail to all of the addresses designated for such party.

The Parties' respective addresses for notices are as follows:

<u>TO THE CITY</u>	<u>TO SELLER</u>
City of Auburn – Real Estate Division Attn: Josh Arndt 25 West Main Auburn, WA 98001 253.288.4325 Jarndt@auburnwa.gov With copies to: City of Auburn – Legal Department Attn: Kendra Comeau 25 West Main St Auburn, WA 98001 253.804.3108 KComeau@auburnwa.gov	Marcus & Millichap Attn: Timothy Ufkes 601 Union Street Seattle, WA 98101 206.399.9337 Timothy.Ufkes@MarcusMillichap.com With copies to:

Notice of change of address shall be given by written notice in the manner detailed in this Section.

14. General.

14.1. Entire Agreement. This is the entire Agreement (including the attached Exhibits) of Buyer and Seller with respect to the matters covered hereby and supersedes all prior agreements between them, written or oral. This Agreement may only be modified or amended in writing, signed by Buyer and Seller. Any waivers must be in writing. No waiver of any right or remedy in the event of default will constitute a waiver of such right or remedy in the event of any subsequent default. Venue for disputes under this Agreement is the Superior Court of King County, Washington.

14.2 Choice of Law. This Agreement will be governed by the laws of the State of Washington.

14.3 No Third Party Beneficiaries/Severability. This Agreement is for the benefit only of the Parties and shall inure to the benefit of and bind the heirs, personal representatives, successors and permitted assigns of the parties. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14.4 Survival of Rights, Duties, and Obligations. The Parties' rights, duties, covenants, and obligations shall survive Closing and the expiration or earlier termination of this Agreement.

14.5 Indemnification. From and after Closing, and for a period of ten (10) years from the Closing Date, Seller shall indemnify, defend, and hold Buyer harmless from and against any and all claims and agency orders or requirements relating to or arising out of, directly or indirectly, the Subject Property, except to the extent caused by the negligence or willful misconduct of Buyer.

14.6 Signing Authority. Each of the Parties represents and warrants that the individual signing this Agreement on its behalf is duly authorized to enter into this Agreement and to execute and legally bind such Party to it. The City of Auburn's signing authority is subject to Section 14.11.

14.7 Attorneys' Fees. In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party is entitled to recover from the other party such sum as the Court may adjudge reasonable as attorneys' fees, including fees incurred at trial, on any appeal and in any petition for review.

14.8 Exclusivity. During the term of this Agreement, Seller will not market nor list the Subject Property for sale, nor accept any offers from third parties with respect to sale of the Subject Property.

14.9 Reservation of Police Power. Notwithstanding anything to the contrary set forth in this Agreement, Buyer understands and acknowledges that City's authority to exercise its police (regulatory) powers in accordance with applicable law shall not be deemed limited by the provisions of this Agreement.

14.10 Counterparts. This Agreement and any amendments that may come to exist, may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. All counterparts collectively constitute a single instrument.

14.11 Approval by Auburn City Council. The Parties acknowledge and agree that this Agreement is subject to the approval and ratification of the Auburn City Council.

14.12 No Broker. No broker, finder, agent or similar intermediary has acted for or on behalf of the Buyer. Any broker, finder, agent or similar intermediary acting for or on behalf of the Seller, if any, shall be paid from Seller's proceeds in accordance with Section 8.2.1 above.

14.13 Exhibits. The following exhibits are attached and incorporated into this Agreement by reference.

- (i) **Exhibit A – Legal Description of the Subject Property**
- (ii) **Exhibit B – Seller Disclosure, Environmental**

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SIGNATURE PAGE

BUYER

CITY OF AUBURN

DocuSigned by:



4/12/2022

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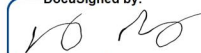
Nancy Backus, Mayor

Date:

SELLER

Auburn WA Max House LLC

DocuSigned by:



4/7/2022 | 22:23:26 PDT

AD9801BB37B54E2...

Signature:

Date:

Yuan Zhang

Print Name:

Approved as to Form:

DocuSigned by:



4/11/2022

2178102FD29D417...

Kendra Comeau, Auburn City Attorney

Title:

300 Lenora Street Suite 246
Seattle, WA 98121

Address:

206 898 0062

Contact Info:

EXHIBIT “A”

Legal Description

LOT 8 AND THE WEST 20 FEET OF LOT 9 IN BLOCK 14 OF PLAT OF L. W. BALLARD'S 3RD ADDITION TO SLAUGHTER, AS PER PLAT RECORDED IN VOLUME 8 OF PLATS, PAGE 47, RECORDS OF KING COUNTY; EXCEPT THAT PORTION THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CUASE NO 140546, FOR AUBURN AVENUE; SITUATED IN THE CITY OF AUBURN, COUNTY OF KING, STATE OF WASHINGTON.

King County Parcel number - 0489000085

EXHIBIT “B”
Seller Disclosure – Environmental

ENVIRONMENTAL DISCLOSURE		Yes	No	Don't Know	N/A
A	Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?				
B	Does any part of the property contain fill dirt, waste, or other fill materials?				
C	Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?				
D	Are there any shorelines, wetlands, floodplains, or critical areas on the property?				
E	Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?				
F	Has the property been used for commercial or industrial purposes?				
G	Is there any soil or groundwater contamination?				
H	Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?				
I	Has the property been used as a legal or illegal dumping site?				
J	Has the property been used as an illegal drug manufacturing site?				
K	Are there any radio towers in the area that cause interference with cellular telephone reception?				

If you answered yes to any of the following please give further details here.