City Council Meeting
May 20, 2024 - 7:00 PM
City Hall Council Chambers
AGENDA
Watch the meeting LIVE!

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

I. CALL TO ORDER

II. LAND ACKNOWLEDGMENT

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

III. PUBLIC PARTICIPATION

1. Public Participation

   The Auburn City Council Meeting scheduled for Monday May 20, 2024 at 7:00 p.m. will be held in person and virtually.

   Virtual Participation Link:

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

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

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

   Telephone: 253 215 8782
   Toll Free: 877 853 5257
   Zoom: https://us06web.zoom.us/j/82907673381

A. Pledge of Allegiance

IV. Roll Call

V. ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS

VI. AGENDA MODIFICATIONS

VII. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. Audience Participation

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

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

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

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

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

   Email written comments to:
   publiccomment@auburnwa.gov

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

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

VIII. COUNCIL AD HOC COMMITTEE REPORTS

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

1. Finance Ad Hoc Committee (Chair Baldwin)

IX. CONSENT AGENDA

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

A. Minutes of the May 6, 2024, City Council Meeting

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

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

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

D. Claims Vouchers (Thomas)

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

E. Payroll Voucher (Thomas)

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

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

X. UNFINISHED BUSINESS

XI. NEW BUSINESS

XII. ORDINANCES

A. Ordinance No. 6941 (Gaub)

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

(RECOMMENDED ACTION: Move to approve Ordinance No. 6941.)

XIII. RESOLUTIONS

A. Resolution No. 5766 (Krum)

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

(RECOMMENDED ACTION: Move to adopt Resolution No. 5766.)

B. Resolution No. 5767 (Gaub)

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

(RECOMMENDED ACTION: Move to adopt Resolution No. 5767.)

XIV. MAYOR AND COUNCILMEMBER REPORTS

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

A. **From the Council**

B. **From the Mayor**

XV. 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 6, 2024, City Council Meeting

Date:
May 16, 2024

Department:
City Council

Attachments:
05-06-2024 Minutes

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

Administrative Recommendation:

Background for Motion:

Background Summary:

Reviewed by Council Committees:

Councilmember:

Staff:

Meeting Date: May 20, 2024

Item Number: CA.A

CITY OF AUBURN WASHINGTON	**City Council Meeting** **May 6, 2024 - 7:00 PM** **City Hall Council Chambers** **MINUTES** **Watch the meeting LIVE!** **Watch the meeting video** Meeting videos are not available until 72 hours after the meeting has concluded.

I. CALL TO ORDER

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

II. LAND ACKNOWLEDGMENT

III. PUBLIC PARTICIPATION

1. Public Participation

The City Council Meeting was held in person and virtually.

A. Pledge of Allegiance

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

IV. Roll Call

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

Mayor Nancy Backus and the following staff members present included: Acting City Attorney Doug Ruth, Chief of Police Mark Caillier, Director of Public Works Ingrid Gaub, Acting Director of Community Development Jason Krum, Police Sergeant Josh Gustafson, Senior Center Manager Radine Lozier, Business Systems Analyst Chrissy Malave, and City Clerk Shawn Campbell.

V. APPOINTMENTS

A. Junior City Council

City Council to approve the appointments of Rowan Santos and Prableen Kaur to Auburn Junior City Council for a two year term expiring August 31, 2026

Councilmember C. Taylor moved and Councilmember Rakes seconded to approve the appointments of Rowan Santos and Prableen Kaur to the

Auburn Junior City Council for a two-year term expiring on August 31, 2026.

MOTION CARRIED UNANIMOUSLY. 5-0

VI. ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS

A. Police Promotional Ceremony (Caillier)

Chief Caillier introduced Sergeant Gustafson and provided a brief history of his career in the City of Auburn. He gave Sergeant Gustafson the Oath of Honor, and Sergeant Gustafson's family pinned his badge.

Mayor Backus recessed the meeting at 7:07 p.m. for 5 minutes.

Mayor Backus reconvened the meeting at 7:12 p.m.

Mayor Backus recognized Chief Caillier for 30 years of service with the City, and provided a brief history of his career in the City of Auburn.

B. National Police Week and Peace Officers Memorial Day

Mayor Backus proclaimed May 12, 2024 to May 18, 2024, as "National Police Week"
and May 15, 2024 as "Peace Officers Memorial Day" in the City of Auburn.

Chief Caillier accepted the proclamation.

C. Professional Municipal Clerks Week

Mayor Backus proclaimed May 5, 2024, to May 11, 2024, as "Professional Municipal Clerks Week " in the City of Auburn.

City Clerk Campbell accepted the proclamation and extended her gratitude to her team in the City Clerk's Office.

D. Affordable Housing Week

Mayor Backus proclaimed May 13, 2024 to May 17, 2024, as "Affordable Housing Week" in the City of Auburn.

Acting Director Krum accepted the proclamation and thanked Mayor and Council for recognizing Affordable Housing Week. He also spoke about the City's Housing Repair Program.

E. Asian American, Native Hawaiian and Pacific Islander Heritage Month

Mayor Backus proclaimed May 2024 as "Asian American, Native Hawaiian and Pacific Islander Heritage Month" in the City of Auburn.

Pastor Rome Ulia and family accepted the proclamation, they thanked Mayor and Council for their support.

F. Jewish American Heritage Month

Mayor Backus proclaimed May 2024 as "Jewish American Heritage Month" in the City of Auburn.

G. Older Americans Month

Mayor Backus proclaimed May 2024 as "Older Americans Month" in the City of Auburn.

Senior Center Manager Lozier and Senior Center Participant and Volunteer Janice Workman, thanked Mayor and Council for recognizing Older Americans Month.

VII. AGENDA MODIFICATIONS

Voucher No. 475709 was moved from New Business to the Consent Agenda.

VIII. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. Public Hearings

1. Public Hearing for Fatbeam, LLC Franchise Agreement No. FRN23-0005

   City Council to conduct a Public Hearing to consider Franchise Agreement No. FRN23-0005 for Fatbeam, LLC

   Mayor Backus opened the Public Hearing at 7:35 p.m.

   Virginia Haugen, Auburn
   Virginia expressed that they wished they knew more information regarding the Franchise Agreement.

   Mayor Backus closed the Public Hearing at 7:36 p.m.

B. Audience Participation

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

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

   Mark Celich, Auburn
   Mark expressed concerns regarding stalking, harassment, and trafficking.

Bob Darrigan, Federal Way
Bob shared that they just finished their 20th Annual Noon Lions Special Needs Fishing Derby and thanked the Mayor, Council and staff for their support.

Virginia Haugen, Auburn
Virginia expressed concerns regarding unlicensed, and unregulated businesses.

C. **Correspondence**

There was no correspondence for Council to review.

IX. COUNCIL AD HOC COMMITTEE REPORTS

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

1. Finance Ad Hoc Committee (Chair Baldwin)

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

X. 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. April 15, 2024, City Council Meeting Minutes

B. Minutes of the April 18, and April 19, 2024, Special City Council Meetings

C. Minutes of the April 22, 2024, Study Session Meeting

D. Claims Vouchers (Thomas)

Claims voucher list dated May 1, 2024 which includes voucher number 475664 through voucher 475708 and voucher 475710 through 475840, in the amount of $7,363,923.19, six electronic fund transfers in the amount of $1,150.83, and nine wire transfers in the amount of $1,302,151.67

E. Payroll Voucher (Thomas)

Payroll check numbers 539584 through 539584 in the amount of $624,985.07, electronic deposit transmissions in the amount of $2,588,379.71, for a grand total of $3,213,364.78 for the period covering April 11, 2024 to April 24, 2024

F. Claim Voucher (Thomas)

Claims voucher dated May 1, 2024, which includes voucher number 475709, in the amount of $69,500.00

Councilmember Amer moved and Councilmember T. Taylor seconded to approve the consent agenda as amended.

Councilmember Rakes stated she has a remote interest in Claim Voucher No. 475709.

MOTION CARRIED UNANIMOUSLY. 5-0

XI. UNFINISHED BUSINESS

There was no unfinished business.

XII. NEW BUSINESS

There was no new business.

XIII. MAYOR AND COUNCILMEMBER REPORTS

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

A. From the Council

Councilmember Amer reported she attended the Clean Sweep event, Master Builder King County Elected Officials Reception, Junior Achievement Celebration event, the Auburn Mountainview Multicultural Fair, Messiah Lutheran Church 100th Anniversary Celebration, Community Leadership Institute Graduation Ceremony, and the Kent-Auburn Tamba Fundraising dinner.

Councilmember Rakes reported she attended the Clean Sweep event, Pete von Reichbauer's King County Spring Leadership Reception, Auburn Police Department Ride Along, Auburn Mountainview Multicultural Fair, the Auburn Valley Humane Society (AVHS) Fundraiser event, and the Messiah Lutheran Church 100th Anniversary Celebration.

Councilmember T. Taylor reported she attended the Clean Sweep event, Spring Leadership dinner, YMCA Stand Against Racism event, and the AVHS Fundraiser event.

Councilmember Trout-Manuel reported she attended the Auburn Mountainview Multicultural Fair, Messiah Lutheran Church 100th Anniversary Celebration, Blue Ribbon Committee meeting, School Bus Road-e-o, and represented the HELO Committee at the White House.

B. **From the Mayor**

Mayor Backus reported she attended the Clean Sweep event, Bring Your Children to Work Day, AVHS fundraiser, Noon Lions Club Special Needs Fishing Derby, El día de los niños/El día de los libros (Children's Day/Book Day), United States Conference of Mayors event, and the Kent-Auburn Tamba Fundraising dinner.

XIV. **ADJOURNMENT**

There being no further business to come before the Council, the meeting was adjourned at 8.01 p.m.

APPROVED this 20th day of May 2024.

_____ _____

NANCY BACKUS, MAYOR Shawn Campbell, City Clerk

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AGENDA BILL APPROVAL FORM

Agenda Subject:
Minutes of the May 13, 2024, Study Session Meeting

Date:
May 16, 2024

Department:
City Council

Attachments:
05-13-2024 Minutes

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

Administrative Recommendation:

Background for Motion:

Background Summary:

Reviewed by Council Committees:

Councilmember:

Staff:

Meeting Date: May 20, 2024

Item Number: CA.B

CITY OF AUBURN WASHINGTON	**City Council Study Session Finance and Internal Service Special Focus Area** **May 13, 2024 - 5:30 PM** **City Hall Council Chambers** **MINUTES** **Watch the meeting LIVE!** **Watch the meeting video** Meeting videos are not available until 72 hours after the meeting has concluded.

I. CALL TO ORDER

Councilmember Trout-Manuel called the meeting to order at 5:30 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street in Auburn.

II. PUBLIC PARTICIPATION

A. Public Participation

The City Council Meeting was held in person and virtually.

B. Roll Call

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

Mayor Nancy Backus and the following staff members present included: Acting City Attorney Doug Ruth, Assistant Chief of Police Samuel Betz, Director of Public Works Ingrid Gaub, Acting Director of Community Development Jason Krum, Director of Special Projects Jeff Tate, Director of Human Services Kent Hay, Director of Equity and Inclusion Brenda Goodson-Moore, Assistant Director of Public Works Jacob Sweeting, Director of Administration Dana Hinman, Director of Parks, Arts, and Recreation Daryl Faber, Director of Innovation and Technology David Travis, Senior Traffic Engineer James Webb, Business Systems Analyst Chrissy Malave, and Deputy City Clerk Hannah Scholl.

III. AGENDA MODIFICATIONS

There were no modifications to the agenda.

IV. ANNOUNCEMENTS REPORTS AND PRESENTATIONS

A. Briefing - Human Services Funding Overview (Hay/Tate) (15 Minutes)

An overview of the Human Services Program, application cycle, including outreach, and technical assistance

6898

Director's Tate and Hay provided Council with an overview of the Human Services Funding Update including the General Fund, 2025-2026 application review timeline, background of the program, priority funding and areas, eligibility, outreach, technical assistance and support, and the Human Services Committee review.

Council discussed the Human Services Committee, contract management, ARPA funds, community engagement, and the Share 1 App.

B. Presentation from Junior City Council (Hinman) (15 Minutes)

Presentation from Emily Helms, Patricia Amadeo, Lawand Muhsen, and Nnamdi Ometu members of the Auburn Junior City Council

Director Hinman introduced Emily Helms, Patricia Amadeo, Lawand Muhsen, and Nnamdi Ometu, members of the Auburn Junior City Council (AJCC) who provided Council with a presentation on their experience at the National League of Cities Conference, the National Alliance on Mental Illness (NAMI), and Puget Sound Educational Service District (PSESD). They discussed the recent growth within the Junior City Council, and asked Council to let them know how they can get more involved.

Council discussed NAMI, student outreach, and the AJCC meeting schedule.

V. AGENDA ITEMS FOR COUNCIL DISCUSSION

A. 2023 Photo Enforcement Report (Gaub) (20 Minutes)

Assistant Director Sweeting provided Council with an overview of the 2023 Photo Enforcement Report including history of the program, objectives for implementing, the initial study, camera locations, citations and warnings statistics from 2023, and next steps.

Council discussed citations, and camera locations.

B. 2025-2030 Transportation Improvement Program and 2025 Transportation Impact Fee Update (Gaub) (20 Minutes)

Engineer Webb provided Council with a presentation on the 2025-2030 Transportation Improvement Program (TIP) including an overview of the program, annual update, projects that are being removed and projects being added, additional changes, and funding. He also discussed the Transportation Benefit District, 2025 Traffic Impact Fees, and next steps.

Council discussed projects, and Traffic Impact Fees.

C. Resolution No. 5766 (Krum) (15 Minutes)

Staff to present a draft Development Agreement between the City of Auburn and Industrial Reality Group (IRG) that pertains to the Pacific Point Site (formerly the GSA site)

Director Tate provided Council with a presentation on Resolution No. 5766 and the Development Agreement with Industrial Reality Group (IRG) including the site location, site orientation, and the process timeline.

Council discussed permitting processes, and future development plans.

VI. ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 6:59 p.m.

APPROVED this 20th day of May 2024.

_____ _____

LARRY BROWN, DEPUTY MAYOR Hannah Scholl, Deputy City Clerk

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15 6898

AGENDA BILL APPROVAL FORM

Agenda Subject:
Setting the date for Public Hearing for Zayo Group, LLC (Gaub)

Date:
May 13, 2024

Department:
Public Works

Attachments:
No Attachments Available

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

Administrative Recommendation:

City Council to set the date of the Public Hearing for Franchise Agreement No. FRN22-0003 for Zayo Group, LLC for a Wireline Telecommunications Franchise for June 17, 2024 at 7:00pm.

Background for Motion:

Background Summary:

Section 20.04.040 of the Auburn City Code requires the City to hold a Public Hearing before granting or denying a franchise agreement. Staff requests that the City Council set the date of the Public Hearing for Franchise Agreement No. FRN22-0003 for Zayo Group, LLC for a Wireline Telecommunications Franchise for June 17, 2024 at 7:00 pm.

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

Zayo Group, LLC has applied for a new franchise agreement to continue to operate their existing fiber optic telecommunications facilities located in the public ways within the City Limits as their current Franchise agreement has expired. Zayo provides telecommunications services that include telecommunications capacity and dark fiber, transmission of voice, data, or other electronic information, non-switched, dedicated and private line services, and high capacity fiber optic transmission services to firms, businesses and institutions. The proposed agreement is consistent with the City's standard franchise agreement language.

Reviewed by Council Committees:

Councilmember: Tracy Taylor
Staff: Ingrid Gaub
Meeting Date: May 20, 2024
Item Number: CA.C

AGENDA BILL APPROVAL FORM

Agenda Subject:
Claims Vouchers (Thomas)

Date:
May 15, 2024

Department:
Finance

Attachments:
No Attachments Available

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

Administrative Recommendation:

Approve Claim Vouchers.

Background for Motion:

Background Summary:

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

Reviewed by Council Committees:

Councilmember: Kate Baldwin
Staff: Jamie Thomas
Meeting Date: May 20, 2024
Item Number: CA.D

AGENDA BILL APPROVAL FORM

Agenda Subject:
Payroll Voucher (Thomas)

Date:
May 15, 2024

Department:
Finance

Attachments:
No Attachments Available

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

Administrative Recommendation:

Approve Payroll Vouchers.

Background for Motion:

Background Summary:

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

Reviewed by Council Committees:

Councilmember: Kate Baldwin
Staff: Jamie Thomas
Meeting Date: May 20, 2024
Item Number: CA.E

AGENDA BILL APPROVAL FORM

Agenda Subject:
Ordinance No. 6941 (Gaub)

Date:
April 17, 2024

Department:
Public Works

Attachments:
Ordinance No. 6941

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

Administrative Recommendation:

City Council to approve Ordinance No. 6941.

Background for Motion:

This Ordinance would allow Fatbeam, LLC to continue to operate their existing Fiber Optic Telecommunications Facilities located in the public ways within the City Limits as their current Franchise Agreement is set to expire in the near future. Fatbeam provides telecommunications, telephone service, internet access and wide area network connectivity to education, government, hospitals, and other enterprise level customers.

Background Summary:

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

Fatbeam, LLC has applied for a new franchise agreement to continue to operate their existing fiber optic telecommunications facilities located in the public ways within the City Limits as their current Franchise Agreement is set to expire in the near future. Fatbeam provides telecommunications, telephone service, internet access and wide area network connectivity to education, government, hospitals, and other enterprise level customers.

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

A staff presentation was given at the April 22, 2024, Study Session discussing draft Ordinance No. 6941. A Public Hearing to consider this application and hear public comment was held before the City Council on May 6, 2024, in accordance with Auburn City Code 20.04.040.

Ordinance No. 6941 authorizes Franchise Agreement No FRN23-0005 with Fatbeam, LLC subject to the terms and conditions outlined in the Ordinance.

Reviewed by Council Committees:

Councilmember: Tracy Taylor **Staff:** Ingrid Gaub

ORDINANCE NO. 6941

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO FATBEAM, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, A FRANCHISE FOR WIRELINE TELECOMMUNICATIONS

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

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

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

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

Section 1. Definitions

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

A. "ACC" means the Auburn City Code.

B. "Franchise" means this agreement approved by Ordinance No. 6941 of the City which authorizes Franchisee Facilities to provide Franchisee Services in the Franchise Area.

C. "Franchisee's Facilities" means fiber optic and broad band communications services constructed and operated within the public ways including all cables, wires, conduits, ducts, pedestals, and any associated

converter equipment or other items necessary for Telecommunications Services as defined in RCW 35.99.010(7), that are located in the Franchise Area.

Franchisee's Facilities do not include facilities used to provide wireless services, including antennas or other equipment, appliances, attachments and appurtenances associated with wireless telecommunications facilities. Franchisee's facilities do not include small wireless facilities, microcell, minor facility, or small cell facilities, as defined in RCW 80.36.375. Franchisee's facilities do not include any facilities that are not located within the Franchise Area or that are covered under a separate franchise agreement or agreement.

D. "Franchisee's Services" means any telecommunications service, telecommunications capacity, or dark fiber, provided by the Franchisee using its Facilities, including, but not limited to, the transmission of voice, data or other electronic information, or other subsequently developed technology that carries a signal over fiber optic cable. Franchisee's Services will also include non-switched, dedicated and private line, high capacity fiber optic transmission services to firms, businesses or institutions within the City and other lawful services not prohibited by this Ordinance However, Franchisee's Services will not include the provision of "cable services", as defined by 47 U.S.C. §522, as amended, for which a separate franchise would be required.

Section 2. Grant of Right to Use Franchise Area

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

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

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

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

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

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

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

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

Section 3. Notice

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

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

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

Franchisee: Fatbeam, LLC
Attn: Jim Williams
2065 W Riverstone Drive, Suite 202
Coeur D Alene, ID 83814
Telephone: (509) 344-1008
Email Address: regulatory@fatbeam.com

B. Any changes to the above-stated Franchisee information shall be sent to the City's Right-of-Way Specialist, Public Works Department – Transportation Division, with copies to the City Clerk, referencing the title of this Franchise.

C. The above-stated Franchisee voice telephone numbers shall be staffed at least during normal business hours, Pacific time zone. The City may contact Franchisee at the following number for emergency or other needs outside of normal business hours of the Franchisee: (509) 344-1008.

Section 4. Term of Franchise

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

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

Section 5. Acceptance of Franchise

A. This Franchise will not become effective until Franchisee files with the City Clerk (1) the Statement of Acceptance (Exhibit "A"), (2) all verifications of insurance coverage specified under Section 16, (3) the financial security specified in Section 17, and (4) payment of any outstanding application fees required in the City Fee Schedule. These four items will collectively be the "Franchise Acceptance". The date that such Franchise Acceptance is filed with the City Clerk will be the effective date of this Franchise.

B. If the Franchisee fails to file the Franchise Acceptance with the City Clerk within thirty (30) days after the effective date of the ordinance approving the Franchise as described in Section 28 of this Franchise, the City's grant of the Franchise will be null and void.

Section 6. Construction and Maintenance

A. The Franchisee shall apply for, obtain, and comply with the terms of all permits required under applicable law for any work done within the City. Franchisee will comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work.

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

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

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

E. Tree Trimming. Upon prior written approval of the city the Franchisee shall have the authority to trim trees upon and overhanging streets, public ways and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with the Franchisee's Facilities. Franchisee shall be responsible for debris removal from such activities. If such debris is not removed within 24 hours, the City may, at its sole discretion, remove such debris and charge the Franchisee for the cost thereof. This section does not, in any instance, grant automatic authority to clear vegetation for purposes of

providing a clear path for radio signals. Any such general vegetation clearing will require other permits as necessary from the City.

Section 7. Trench Repair for Street Restorations

A. At any time during the term of this Franchise, if a Franchisee Facility or trench within the Franchise Area causes a street to crack, settle, or otherwise fail, the City will notify Franchisee of the deficiency and Franchisee agrees to restore the deficiency and repair the damage within thirty (30) days of written notice by the City.

B. For purposes of the Section, “street” shall mean all City owned improvements within a public way, including, but is not limited to, the following: pavement, sidewalks, curbing, above and below-ground utility facilities, and traffic control devices.

Section 8. Repair and Emergency Work

In the event of an emergency, the Franchisee may commence repair and emergency response work as required under the circumstances. The Franchisee will notify the City telephonically during normal business hours (at 253-931-3010) and during non-business hours (at 253-876-1985) as promptly as possible, before such repair or emergency work commences, and in writing as soon thereafter as possible. Such notification shall include the Franchisee’s emergency contact phone number for corresponding response activity. The City may commence emergency response work, at any time, without prior written notice to the Franchisee, but will notify the Franchisee in writing as promptly as possible under the circumstances. Franchisee will reimburse the City for the City’s actual cost of performing emergency response work.

Section 9. Damages to City and Third-Party Property

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

Section 10. Location Preference

A. Any structure, equipment, appurtenance or tangible property of a utility or other franchisee, other than the Franchisee's, which was installed, constructed, completed or in place prior in time to Franchisee's application for a permit to construct or repair Franchisee's Facilities under this Franchise shall have preference as to positioning and location with respect to the Franchisee's Facilities. However, to the extent that the Franchisee's Facilities are completed and installed before another utility or other franchisee's submittal of a permit for new or additional structures, equipment, appurtenances, or tangible property, then the Franchisee's Facilities will have priority. These rules governing preference shall continue when relocating or changing the grade of any City road or public way. A relocating utility or franchisee will not cause the relocation of another utility or franchisee that otherwise would not require relocation. This Section will not apply to any City facilities or utilities that may in the future require the relocation of Franchisee's Facilities. Such relocations will be governed by Section 11 and Chapter 35.99 RCW.

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

Section 11. Relocation of Franchisee Facilities

A. Except as otherwise so required by law, Franchisee agrees to relocate, remove, or reroute its facilities as ordered by the City Engineer at no expense or liability to the City, except as may be required by Chapter 35.99 RCW. Pursuant to the provisions of Section 15, Franchisee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change, relocation, abandonment, or vacation of the public way.

B. If a readjustment or relocation of the Franchisee Facilities is necessitated by a request from a party other than the City, that party shall pay the Franchisee the actual costs associated with such relocation.

Section 12. Abandonment and or Removal of Franchisee Facilities

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

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

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

Section 13. Undergrounding

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

B. Whenever the City requires the undergrounding of aerial utilities in the Franchise Area, the Franchisee will underground the Franchisee's Facilities in the manner specified by the City Engineer at no expense or liability to the City, except as may be required by Chapter 35.99 RCW. Where other utilities are present and involved in the undergrounding project, Franchisee will only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's Facilities. Common costs will include necessary costs for common trenching and utility vaults. Fair share will be determined in comparison to the total number and size of all other utility facilities being undergrounded.

Section 14. Franchisee Information

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

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

Section 15. Indemnification and Hold Harmless

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

However, should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Franchisee and the City, its officers, officials, employees, and volunteers, the Franchisee's liability hereunder shall be only to the extent of the Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Franchisee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Franchise.

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

C. The Franchisee acknowledges that neither the City nor any other public agency with responsibility for firefighting, emergency rescue, public safety or similar duties within the City has the capability to provide trench, close trench or confined space rescue. The Franchisee, and its agents, assigns, successors, or contractors, will make such arrangements as Franchisee deems fit for the provision of such services. The Franchisee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Franchisee for the City's failure or inability to provide such services, and, pursuant to the terms of Section 15(A), the Franchisee will indemnify the City against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities based on the City's failure or inability to provide such services.

Section 16. Insurance

A. The Franchisee shall procure and maintain for the duration of this Franchise and as long as Franchisee has Facilities in the public way, insurance

against claims for injuries to persons or damage to property which may arise from or in connection with the Franchise and use of the public way.

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

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

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

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

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

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

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

D. Minimum Amounts of Insurance. The Franchisee shall maintain insurance that meets or exceeds the following limits:

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

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

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

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

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

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

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

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

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

I. Notice of Cancellation. Franchisee shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

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

K. City Full Availability of Franchisee Limits. If the Franchisee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Franchisee, irrespective of whether such limits maintained by the Franchisee are greater than those required by this Franchise or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Franchisee.

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

Section 17. Financial Security

The Franchisee will provide the City with a financial security in the amount of Fifty Thousand Dollars ($50,000.00) running for, or renewable for, the term of this Franchise, in a form and substance acceptable to the City. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise,

the City may recover jointly and severally from the principal and any surety of that financial security any damages suffered by the City as a result Franchisee's failure to comply, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities. Franchisee specifically agrees that its failure to comply with the terms of Section 20 will constitute damage to the City in the monetary amount set forth in that section. Any financial security will not be construed to limit the Franchisee's liability to the security amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 18. Successors and Assignees

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

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

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

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

Section 19. Dispute Resolution

A. In the event of a dispute between the City and the Franchisee arising by reason of this Franchise, the dispute will first be referred to the operational officers or representatives designated by City and Franchisee to have oversight

over the administration of this Franchise. The officers or representatives will meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties will make a good faith effort to achieve a resolution of the dispute.

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

Section 20. Enforcement and Remedies

A. If the Franchisee willfully violates, or fails to comply with any of the provisions of this Franchise through willful or unreasonable negligence, or fails to comply with any notice given to Franchisee under the provisions of this Franchise, the City may, at its discretion, provide Franchisee with written notice to cure the breach within thirty (30) days of notification. If the City determines the breach cannot be cured within thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty-day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Franchisee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification, or (2) claim damages of Two Hundred Fifty Dollars ($250.00) per day against the financial guarantee set forth in Section 17 for every day after the expiration of the cure period that the breach is not cured.

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

Section 21. Compliance with Laws and Regulations

A. This Franchise is subject to, and the Franchisee will comply with all applicable federal and state or City laws, regulations and policies (including all applicable elements of the City's comprehensive plan), in conformance with federal laws and regulations**,** affecting performance under this Franchise. The Franchisee

will be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

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

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

Section 22. License, Tax and Other Charges

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

Section 23. Consequential Damages Limitation

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

Section 24. Severability

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

Section 25. Titles

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

Section 26. Implementation

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

Section 27. Entire Franchise

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

Section 28. Effective Date.

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

INTRODUCED: _____
PASSED: _____
APPROVED: _____

_____
NANCY BACKUS, MAYOR

ATTEST:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM

_____
Doug Ruth, Acting City Attorney

PUBLISHED: _____

EXHIBIT “A”

STATEMENT OF ACCEPTANCE

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

Franchisee Name: Fatbeam, LLC
Address _____
City, State, Zip _____

By: _____ Date: _____
Name:
Title:

STATE OF _____)
)ss.
COUNTY OF _____)

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

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

_____
Signature

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

MY COMMISSION EXPIRES: _____

AGENDA BILL APPROVAL FORM

Agenda Subject:
Resolution No. 5766 (Krum)

Date:
May 15, 2024

Department:
Community Development

Attachments:
Resolution 5766
Resolution 5766 - Exhibit A

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

Administrative Recommendation:

City Council adopt Resolution No. 5766.

Background for Motion:

Resolution 5766 authorizes the Mayor to enter into a Development Agreement between the City of Auburn and Auburn 18 Business Park, LLC for the property located at King County parcel #2421049004. The agreement establishes site specific standards for the long term development and use of the property. Additionally, Auburn 18 Business Park, LLC will provide a contribution of $4 million that is intended to be used to support the redevelopment of the City's downtown theater.

Background Summary:

A Development Agreement is an agreement between a property owner and a city that articulates modified development standards for a specific site. It is a tool allowed under RCW 36.70B.170 and 36.70B.210. Generally speaking, Development Agreements offer an opportunity for a property owner to have more customized regulations that govern their property in exchange for the City or community to receive added benefit. They are generally used for sites that are large and/or have special circumstances that make application of the general "recipe" style development articulated in the adopted zoning code difficult or that results in loss of opportunity.

In this particular draft agreement the property owner is seeking to have more flexibility in the uses allowed on the site in exchange for a $4 million contribution for the City's downtown Theater rebuild project. The property is currently zoned C-3 Heavy Commercial. It was previously zoned M-1 Light Industrial. The owner seeks to establish a mix of C-3 and M-1 uses on the site. Staff will explain how this mix of uses is consistent with the Comprehensive Plan, prior SEPA environmental review evaluations, and our communications during the auction process when the federal government marketed the property.

The draft development agreement was presented to City Council on May 13, 2024. The version of the Development Agreement that is attached to Resolution 5766 as Exhibit A has been slightly modified as compared to the version that was presented at City Council Study Session on May 13th. These modifications help add clarity to the Term described in Section

5 and the Vesting language in Section 6.

Reviewed by Council Committees:

Councilmember:	Tracy Taylor	**Staff:**	Jason Krum
Meeting Date:	May 20, 2024	Item Number:	RES.A

RESOLUTION NO. 5766

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF AUBURN AND AUBURN 18 BUSINESS PARK, LLC TO GOVERN THE FUTURE DEVELOPMENT OF KING COUNTY PARCEL NUMBER 2421049004

WHEREAS, RCW 36.70B.170 – 36.70B.210 allow cities to enter into development agreements in order to provide greater flexibility in city development standards in exchange for greater certainty in the development, options for impact mitigation, and development that generates greater public benefit than might be provided under existing code; and

WHEREAS, in 2022, Industrial Realty Group LLC (the parent company of Auburn 18 Business Park LLC) acquired Parcel No. 2421049004, located at 2899 C ST SW ("the Property"), for the purpose of constructing new buildings, outdoor storage, parking, and other site improvements; and

WHEREAS, the 127 acre Property was formerly owned and used by the Federal Government Services Administration and is currently zoned C-3 Heavy Commercial; and

WHEREAS, Auburn 18 Business Park LLC and the City now desire that development of the Property occur according to the terms and conditions described in the development agreement attached to this resolution as "Exhibit A"; and

WHEREAS, pursuant to RCW 36.70B.200, on May 13, 2024 the City Council discussed the proposed development agreement at a regularly-held study session and held a duly-noted public hearing on the proposed agreement on May 20, 2024; and

WHEREAS, it is in the public interest of the City to enter into a development agreement with Auburn 18 Business Park LLC regarding the Property.

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

Section 1. The Mayor is authorized to execute a Development Agreement between the City and Auburn 18 Business Park LLC, which agreement will be in substantial conformity with the agreement attached as “Exhibit A”.

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

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

Dated and Signed this 20th day of May, 2024.

CITY OF AUBURN

_____
NANCY BACKUS, MAYOR

ATTEST:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
Douglas P Ruth, Acting City Attorney

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into this ___ day of _____, 2024 ("Effective Date"), by and between the City of Auburn ("City"), a Washington municipal corporation, and Auburn 18 Business Park, LLC and Auburn Land, LLC (collectively, "Owner"), Delaware limited liability companies. The City and Owner are referred to collectively as the Parties and individually as a Party.

RECITALS

A. RCW 36.70B.170 through 36.70B.210 authorize cities to enter into development agreements with property owners to govern future development of real property. Under RCW 36.70B.170, development agreements must "set forth the development standards and other provisions that shall apply and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement."

B. Owner is the owner of the property generally known as the Auburn 18 Business Park ("Property"), located at King County Parcel #2421049004 in the City, legally described on Attachment A and depicted on Attachment B. The Property is zoned C-3 Heavy Commercial under the Auburn City Code ("ACC" or "City Code"). Owner may redevelop all or part of the Property and seeks confirmation of the use and development standards that would apply to such future redevelopment.

C. The City owns the Auburn Avenue Theater ("Theater") located at 10 Auburn Avenue in the City. The Theater has been closed since 2021 due to damage caused by fire at an adjacent apartment building. The City plans to develop a new theater building to replace the Theater ("New Auburn Theater").

D. This Agreement will provide mutual benefit to the Parties and to the residents and businesses of the City. The Agreement will further the City's goals and policies as described in the Comprehensive Plan and is consistent with applicable development regulations.

E. A development agreement must be approved by ordinance or resolution after a public hearing. A public hearing was held on May 20, 2024, and the City Council approved this Agreement by Resolution 5766 on _____, 2024. The approval of this Agreement constitutes a land use decision under RCW Ch. 36.70C.

F. Now therefore, in consideration of the mutual promises set forth in this Agreement and the benefit to both the Owner and City, the Parties agree as follows:

AGREEMENTS

1. Development. The Owner may redevelop the Property after the Effective Date of this Agreement with new buildings, outdoor storage, parking, and other site improvements ("Development"). No project has been proposed or applications submitted. The future Development will require building and other construction permits from the City, which shall be governed by the ACC and this Agreement.

2. Development Standards. Prior to the Development of the Property, the Owner may lease all or parts of the Property and the currently existing buildings and improvements and may make tenant improvements ("Pre-Development Use"). Pre-Development Use of the Property and Development of the Property occurring subsequent to the Effective Date shall be governed by Sections 2.a-n, Section 3 and Section 6 of this Agreement and, except as provided in those Sections, the provisions of the City Code identified in Section 2 of this Agreement in effect on the Effective Date ("Vested City Code"), except as otherwise provided in Section 2.o of this Agreement.

a. Use. "Building contractor, heavy"; "Manufacturing, assembling and packaging – Medium intensity," as those terms are defined in ACC Sections 18.04.194 and 18.04.616; and "Warehouse and distribution" uses including the uses described in the 2022 North American Industry Classification Code System ("NAICS") Codes 4841, 4842, 4882, 4885, 4889 and 4931, including all uses within these categories, shall be permitted uses on the Property, in addition to uses otherwise permitted in the C3 zone under the Vested City Code.

b. Public Improvements. For the purpose of determining required half-street improvements per ACC 12.64A and the Engineering Design Standards ("EDS") Section 10.03.03, the existing Property frontages along C Street SW and 15th Street SW shall be considered fully improved and removal, replacement, upgrading of those existing frontages is not required for Development of the Property in accordance with this Agreement except as needed to accommodate new or modified accesses to/from the Property as reasonably determined by the City based on a traffic impact analysis ("TIA") prepared as part of any application for Development approval(s).

c. Undergrounding of existing overhead wires per ACC 13.32A on, and along the Property frontages, shall not be required for Development of the Property in accordance with this agreement.

d. Right-of-way dedication per ACC 12.64A shall not be required for Development of the Property in accordance with this Agreement, except that Owner shall dedicate as a condition of Development Approval sufficient property to provide a 40-foot corner curb radius as required by the EDS at the southwest corner of the intersection of C Street SW and 15th Street SW. Owner may also be required as a condition of Development approval to construct improvements at this intersection to mitigate the impacts of increased

traffic resulting from Development of the Property, as reasonably determined by the City based on a TIA. Owner may also be required to dedicate additional right-of-way as a condition of Development approval, to provide for public improvements associated with any modified or new access to the Property from public rights-of-way, to the extent such public improvements are required to mitigate impacts of Development of the Property as reasonably determined by the City based on a TIA.

e. Access. Development of the Property in accordance with this agreement shall be exempt from that portion of EDS Section 10.08.01 that limits projects to a single driveway access to a City street. All other Engineering Design Standards related to driveways in effect at the time of Development approval (except for Section 10.08.01's single driveway access limitation) shall apply.

f. 15th Street SW Railroad Crossing. The Owner shall be responsible for any improvements to the existing railroad crossing on 15th Street SW that serves the Property ("Crossing Improvements") that may be required by the Washington Utilities and Transportation Commission (UTC) due to any new or increased rail service to/from the Property associated with Development of the Property under this Agreement. Improvements may include, but are not limited to, crossing gates, flashing lights, interconnect conduit and cabling, additional street lighting, signage, and pavement markings. Nothing in this Agreement relieves the City or others of responsibility (if any) for completion of Crossing Improvements that may be required for reasons not related to the Owner's uses or Development of the Property under this Agreement.

g. Outdoor storage. Outdoor storage shall be allowed on up to 50% of the Property.

h. Parking. Based on the reduced parking demand anticipated for Development, a minimum onsite parking ratio of 1 space: 2700 square foot ("SF") of floor area shall be required for all uses on the Property.

i. Screening, Fencing and Landscaping. Screening shall not be required except that fencing and landscaping adjacent to 15th Street SW and landscaping adjacent to C Street SW shall be provided as required by the City Code in existence as of the Effective Date, subject to any limitations required by the Public Works Department to ensure proper functioning of the existing storm drainage system for C Street SW. Fencing with a maximum height of 8 feet, including barbed wire, shall be allowed on the Property. Opacity requirements of the City Code in existence as of the Effective date shall not apply to fences located on the western, eastern or southern sides of the Property, provided that landscaping along C Street SW shall be provided as required by the City Code in existence as of the Effective Date.

j. On-Site Lighting. Light poles with a maximum height of 40 feet shall be allowed on the Property.

k. Loading. Loading and unloading docks may be visible from the street without the provision of an additional 10-foot width of landscaping along the abutting street, provided that landscaping along C Street shall be provided as required by the City Code in existence as of the Effective Date, subject to any limitations required by the Public Works Department to ensure proper functioning of the existing storm drainage system for C Street SW.

l. On-Site Trees. Existing trees on private property may be removed to accommodate development of the Property.

m. Stormwater. Development of the Property shall comply with the applicable City of Auburn Surface Water Management Manual ("SWMM") that is in effect at the time of submittal of any complete building or site development permit application except that Development of the Property in accordance with this agreement may utilize storm pump systems, subject to all design requirements for pump systems in Section III-D.6, City Supplement, to the SWMM. Subject to City confirmation of conformance with such design requirements, any deviation that may otherwise have been required for a pump system is deemed approved.

n. Impact Fees. Owner shall pay and City shall collect impact fees under Title 19 of the City Code as a condition of Development approvals, subject to the provisions of this Section 2(o). For Development permits issued within 12 months of the Effective Date, Owner shall pay transportation impact fees calculated under the provisions of Ch. 19.04 and associated impact fee rate schedules of the City Code in effect as of the Effective Date. For Development permits issued after 12 months following the Effective Date, transportation impact fees shall be imposed and paid by Owner per the then-current ACC Ch. 19.04 as it may be amended from time to time. If an existing building on the Property is demolished, the Owner shall be entitled to a credit against transportation impact fees ("TIF") for subsequent Development on the Property, calculated and applied as follows. The Owner may utilize the TIF credit for Development on any portion of the Property regardless of any future division of the Property. TIF credits that are awarded must be used within 5 years of the date of issuance of a demolition permit for the building generating the credit. A TIF credit is "used" when a building permit has been issued. The amount of traffic impact fee ("TIF") credit generated by the demolition of Buildings 7, 8, 11 and 12, as depicted on Attachment B, shall be calculated as shown on Attachment C. The amount of TIF credit generated by demolition of any other building on the Property shall be based on the TIF calculation methodology in the applicable TIF rate schedule, as defined in this Section 2(n), using the square footage and land use of the building existing at the time of issuance of a demolition permit.

o. Vesting.

i. *Vested City Code*. The Vested City Code shall consist of the following Sections and Chapters of ACC Titles 16, 17 and 18 in effect on the Effective Date of this Agreement:

Section 16.06.130 Substantive authority
Chapter 17.24 Binding Site Plans
Section 18.02.120 Permitted land uses established
Chapter 18.04 Definitions (as the defined terms are used in the Vested City Code)
Chapter 18.23 Commercial and Industrial Zones
Section 18.31.030 Height limitations - Exceptions
Section 18.31.040 Lots
Section 18.31.070 Setbacks
Section 18.31.180 Performance standards
Chapter 18.41A Temporary Uses
Chapter 18.47 Electric Vehicle Infrastructure
Chapter 18.50 Landscaping and Screening
Chapter 18.52 Off-Street Parking and Loading
Chapter 18.53 Master Plans
Chapter 18.55 Outdoor Lighting
Chapter 18.56 Signs
Chapter 18.57 Standards for Specific Land Uses

Except as expressly stated in this Agreement, any amendments to or additions to the Vested City Code made during the term of this Agreement shall not apply to or affect the conditions of Development approvals or the standards set out in Section 2.a-n and Section 3 of this Agreement. A complete copy of the Vested City Code is included as Attachment D, which shall not be included in the recorded copy of this Agreement but shall be available on file at the Auburn Department of Community Development.

ii. *Exemptions*. Amendments, additions, increases or other changes to the following plans, policies, laws, ordinances, regulations, fees and monetary charges, adopted by the City following the Effective Date, are exempt from the vesting provided in Section 2.o(i) of this Agreement:

(a) Permit application, permit review, and inspection fees applicable to any application for Development;

(b) Water, sewer and stormwater connection charges, general facility charges, and monthly service charges, as the Council may from time to time adopt and/or amend; and

(c) The Washington State Building Code, including without limitation the International Building Code and such other International or other Uniform Codes adopted by the Washington State Building Code Council and/or the City from time to time, including electrical, building, plumbing, fire and other ancillary uniform or international construction codes adopted pursuant to Chs. 19.27 or 19.27A RCW;

(d) Impact fees imposed under Title 16 of the ACC, except as otherwise specifically provided in this Agreement;

(e) City of Auburn Engineering Design Standards, except as otherwise specifically provided in this Agreement;

(f) The City's authority to require additional SEPA review and/or mitigation under Ch. 43.21C and Ch. 197-11 WAC in connection with applications for Development Approvals; provided however that the Project shall be vested to the City's substantive SEPA policies and regulations in effect on the Effective Date;

(g) Any law, ordinance, rule, regulation or policy adopted by the City pursuant to RCW 36.70B.170(4), following written notice to Owner and an opportunity to be heard, that the City deems necessary to address a serious threat to public health and safety;

(h) Procedural ordinances or regulations of the City which are not substantive, relating to hearing bodies, notices, applications, findings, records, hearings, reports, recommendations and appeals and any other matter of procedure; provided, however, that the Project is vested to the requirements and processes for Binding Site Plans in Ch. 17.24 ACC and any BSP-related provisions of this Agreement in effect on the Effective Date;

(i) Any plans, polices, ordinances, regulations or Vested City Code that the City must change by direction of, or the City reasonably determines to be necessary to change to comply with, the requirements of any state or federal law or the directive of any state or federal agency or court, in order to avoid being in violation of state or federal law or to preserve the City's eligibility to receive shared revenues, grants or other funding, but only to the extent necessary to comply with such state or federal law. To the extent that the City can comply with such state or federal law or directive by adopting changes to plans, polices, ordinances or regulations that apply prospectively, this exemption shall not apply to permit retroactive changes to the terms, conditions or Vested City Code provisions to which the Project is vested under this Agreement;

(j) Taxes of any nature of general applicability throughout the City; and

iii. *Subsequent Code Amendments*. If mutually agreed by Owner and City, the Owner may develop the Property in accordance with one or more amendments to the Vested City Code adopted after the Effective Date, without the obligation to comply with other subsequently adopted City Code provisions. The City's decision whether to agree to

application of such amendments to the Vested City Code may be made administratively by the City's Community Development Director. Any such agreement must apply the entirety of an amended City Code section or chapter, as applicable, which shall apply to all future Development from the time of such Code amendment through the Term of this Agreement.

3. Phasing. It is recognized that site wide improvements such as landscaping are not efficiently accomplished in conjunction with each building and/or each tenant improvement so it is therefore appropriate to identify mutually agreed upon site areas that trigger phased site improvements. Attachment B depicts generalized areas of phased development that guide the timing of design and construction of site improvements. Phases are intended to correlate more to area of land rather than timeframe which means that build out of different phases may occur at the same time. The phases depicted in Attachment B are general and not intended to be exact. At the Owner's option, phases shown in Attachment B may be broken into separate sub-phases or combined provided the decision to split or combine is focused on adding clarity to when phased site improvements are triggered. Across the entirety of the site, and within all phases, the following principles shall apply:

a. Lighting fixtures shall be uniform throughout the site. This applies to parking lot lights, wayfinding lights, lighting for signage, security lighting, and fixtures used on buildings.

b. Wayfinding signage and campus monument signs shall use a consistent design approach where color, font, and lighting technique match.

c. Landscape species shall be consistent across all phases. This applies to perimeter landscaping, parking lot islands, and landscaping associated with individual buildings.

d. Screening techniques shall be uniform across the site. This includes landscaping, fencing, and walls used to screen storage areas and laydown yards.

e. Bushes and hedges installed in early phases shall be maintained to an agreed upon height until landscaping growth installed in later phases has the ability to match early growth.

f. Striping for parking, ADA paths, fire lanes, and similar features shall be installed in conjunction with each phases.

g. The City may require utilities serving one phase to extend into another phase if necessary to meet the requirements of the EDS in effect at the time of Development approval or as determined by the City in the exercise of reasonable discretion to the extent necessary for provision of utility service.

4. Theater. In consideration for the mutual promises of and certainty provided by this Agreement, Owner agrees to voluntarily contribute $4 million dollars to the City for the design, permitting and construction of the New Auburn Theater, subject to the following terms and conditions:

a. The payment shall be made within six months of the Effective Date of this Agreement; provided, that if this Agreement is appealed, then the payment shall not be due until the validity of the Agreement is upheld by the highest appeal body with jurisdiction to hear the appeal.

b. The payment shall be held in a reserve account and may only be expended to fund the design, permitting or construction of the New Auburn Theater; provided that if the City decides not to proceed with development of the New Auburn Theater, the City may use the payment for another development project determined by the City to have equivalent public benefit. Subject to the foregoing, the City may expend the payment at any time during the Term of this Agreement or any extension thereof, and the Owner waives and releases, for itself and any and all successors, heirs or assigns, any claim for refund under RCW 82.02.020 or .080.

5. Term. This Agreement shall remain in effect for 50 years from the Effective Date ("Term") provided that:

a. Development of new buildings and/or renovations of existing buildings on the Property shall occur within 15 years of the Effective Date of this Agreement.

b. Development that occurs after the 15 year development period is vested to the uses set forth in Section 2.a of this Agreement but is otherwise not governed by the Vested City Code and shall otherwise comply with the then-current City Code.

c. Buildings and uses established under subsection 5.a and 5.b above shall be considered "conforming" for the full 50 year term of this agreement.

6. Conforming structures, improvements and uses. Amendments to the City Code during the Term of this Agreement shall not be deemed to create nonconforming structures, improvements, or uses. Structures, improvements and uses that are consistent with this Agreement shall be considered conforming, and such uses may continue and such structures and improvements may be maintained, repaired, remodeled and replaced, consistent with the standards to which they are vested, for the Term of this Agreement.

7. Amendments. The Owner may apply for amendments to this Agreement. "Minor Amendments" are those that do not increase the gross floor area of potential Development by more than 10% or do not significantly increase the environmental impacts of development on the Property, unless those impacts are mitigated to a level that is less than

significant. Minor Amendments may include, but are not limited to, development standard deviations in addition to those provided in Section 2. Minor Amendments relating to zoning and land use shall be approved administratively by the City's Community Development Director and Minor Amendments related to the EDS or other engineering standards by the City's Public Works Director. All other amendments are Major Amendments and shall be approved using the approval process required for this Agreement.

8. Default and Remedies.

a. Default. Any failure by a Party to perform any material action required under this Agreement shall constitute a default, unless such failure is compelled by order of a court, subject to the notice and opportunity to cure provided in Section 7.b.

b. Notice and Opportunity to Cure. Except as expressly provided otherwise in this Agreement, no party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from the other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure.

c. Rights of Non-Defaulting Party. Except as set forth herein, a party not in default under this Agreement shall have all rights and remedies provided by law or equity, including without limitation damages, specific performance, or writs to compel performance or require action consistent with this Agreement.

d. Attorneys' Fees. In any action to enforce or determine a party's rights under, this Agreement, the prevailing party shall be entitled to attorney's fees and costs.

9. Notices. All notices required to be given under this Agreement shall be given in writing and shall be deemed delivered on the date of hand delivery of the notice or the date that is three days after mailing of the notice by certified or registered mail, return receipt, postage prepaid, to the parties at the addresses set forth below:

If to Owner: _____
_____
_____
_____

If to City: _____
_____
_____

The Parties, by notice given, may designate any further or different address to which subsequent notices are to be sent.

10. Governing Law. This Agreement shall be governed by the laws of the State of Washington.

11. Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement and no party other than the Owner and the City shall be entitled to enforce this Agreement.

12. Mutual Drafting. Both the City and Owner have participated fully in the drafting of this Agreement, and the rule of construction of ambiguities against the drafter shall not apply to either Party.

13. Covenant Running with the Land. The provisions of this Agreement shall run with the land and shall be binding upon and inure to the benefit of the Parties, their successors and assigns.

14. Recording. This Agreement shall be recorded with the Office of the King County Recorder.

15. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter of this Agreement. There are no other agreements, oral or written, except as expressly set forth in this Agreement. This Agreement supersedes all previous agreements, oral or written, except as expressly set forth in this Agreement. This Agreement may be modified only by a written instrument duly executed by the Parties following the amendment process described in Paragraph 6 of this Agreement.

17. Authority. The obligations to dedicate property, implement mitigation measures, make impact fee or other payments, or to fund or to provide services, infrastructure, or other facilities agreed to by Owner in this Agreement are made pursuant to, authorized by and/or are consistent with applicable law, including without limitation RCW 43.21C.060, WAC 197-11-350, RCW 36.70B.170(4), RCW 82.02.020 and the Washington State and United States Constitutions. Each Party represents and warrants that it has the power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to deliver and perform its obligations under this Agreement.

18. Counterparts. This Agreement may be executed in counterparts, with each Party sending a .pdf of its signature to the other Party by electronic mail transmission. This Agreement, when fully executed and signature pages exchanged as provided herein shall be effective as the original document.

19. Attachments. This Agreement includes the following Attachments, which are incorporated by reference:

a. Attachment A: Legal description of Property.

b. Attachment B: Depiction of Property and Phasing Plan.

c. Attachment C: TIF credit calculations.

d. Attachment D: Vested City Codes

20. Indemnification. Owner releases and agrees to defend, indemnify and hold harmless the City and all of its elected and appointed officials and its employees from all liability, claims, causes of action, fees (including reasonable attorneys' and expert fees), penalties, appeals and costs, including but not limited to the costs of defense of any claim or appeal brought by a third party, arising in connection with the approval of or otherwise relating to this Agreement or any Development under this Agreement, except to the extent resulting from the sole negligence of the City or its officers, agents or employees in performance of this Agreement, and except in connection with any action by either Party to enforce this Agreement or in connection with any other matter in which the Owner and City are adverse.

21. Interpretation. The parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of the City's authority to enter into development agreements pursuant to RCW 36.70B.170 – .210, except that this Agreement shall be construed to exclude from the scope of this Agreement and to reserve to the City that police power authority granted to the City by the Washington State constitution or by general law and which is prohibited by law from being subject to a mutual agreement with consideration.

Executed as of the date written above:

AUBURN 18 BUSINESS PARK, LLC,
a Delaware limited liability company

By: IRG Value Fund I Manager, LLC,
a Delaware limited liability company,
Its Manager

By: _____
Richard H. Klein
Chief Financial Officer

AUBURN LAND, LLC,
a Delaware limited liability company

By: IRG Value Fund I Manager, LLC,
a Delaware limited liability company,
Its Manager

By: _____
Richard H. Klein
Chief Financial Officer

CITY OF AUBURN,
a Washington municipal corporation

By: _____
Its: _____

STATE OF _____)
) ss
COUNTY OF _____)

This record was acknowledged before me on _____, 2024, by Richard Klein, as Chief Financial Officer of IRG Value Fund I Manager, LLC, a Delaware limited liability company.

_____
Notary Public for the State of _____
residing in _____, _____
(City) (State)
Print name:_____
Commission expires:_____

Stamp

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

This record was acknowledged before me on _____, 2024, by _____, as _____ of THE CITY OF AUBURN, a municipal corporation.

_____
Notary Public for the State of Washington
residing in _____, _____
(City) (State)
Print name:_____
Commission expires:_____

Stamp

Attachment A

Legal Description of Property

A PARCEL OF LAND WITHIN THE EAST HALF OF SECTION 24 AND WITHIN THE NORTHEAST QUARTER OF SECTION 25, ALL IN TOWNSHIP 21 NORTH, RANGE 4 EAST W.M., SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 25 AS MONUMENTED BY AN EXISTING BRASS DISC, FROM WHICH POINT THE WEST QUARTER CORNER OF SAID SECTION BEARS NORTH 89°11'20 WEST, 2599.20 FEET DISTANT AND THE SOUTH QUARTER CORNER OF SAID SECTION BEARS SOUTH 1°10'46" WEST 2642.32 FEET DISTANT; THENCE NORTH 01°10'46" EAST A DISTANCE OF 50.01 FEET; THENCE SOUTH 89°11'20 EAST, A DISTANCE OF 121.20 FEET TO THE BEGINNING OF A 603.11 FOOT RADIUS CURVE TO THE LEFT; THENCE EASTERLY, ALONG SAID CURVE, AN ARC DISTANCE OF 336.65 FEET, THROUGH A CENTRAL ANGLE OF 31°58'55"; THENCE NORTH 58°49'45" EAST A DISTANCE OF 547.73 FEET;

THENCE NORTH 01°10'37" WEST A DISTANCE OF 671.78 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUE NORTH 01°10'37" WEST A DISTANCE OF 4962. 96 FEET TO A 6"x 6" CONCRETE MONUMENT IN THE NORTHEAST QUARTER OF SAID SECTION 24 ON THE SOUTH MARGIN OF AN EASEMENT FOR 15TH STREET SOUTHWEST RIGHT-OF-WAY CONVEYED TO THE CITY OF AUBURN BY INSTRUMENT RECORDED UNDER RECORDING NUMBER 6160979; THENCE CONTINUE NORTH 01°10'37" WEST A DISTANCE OF 60.00 FEET TO THE NORTH MARGIN OF SAID EASEMENT; THENCE NORTH 88°50'37" EAST, ALONG SAID NORTH MARGIN, A DISTANCE OF 614.90 FEET; THENCE NORTH 00°55'34" WEST A DISTANCE OF 40.00 FEET;
THENCE NORTH 88°50'37" EAST, ALONG SAID NORTH MARGIN, A DISTANCE OF 501.55 FEET TO THE WESTERLY MARGIN OF THE RIGHT-OF-WAY FOR "C" STREET SOUTHWEST;

THENCE SOUTH 01°10'47" EAST, ALONG SAID WESTERLY MARGIN, A DISTANCE OF 100.00 FEET TO THE SOUTH MARGIN OF SAID EASEMENT FOR 15TH STREET SOUTHWEST RIGHT-OF-WAY; THENCE CONTINUE SOUTH 01°10'47" EAST, ALONG SAID WESTERLY MARGIN, A DISTANCE OF 4975. 64 FEET TO A POINT IN THE NORTHEAST QUARTER OF SAID SECTION 25;

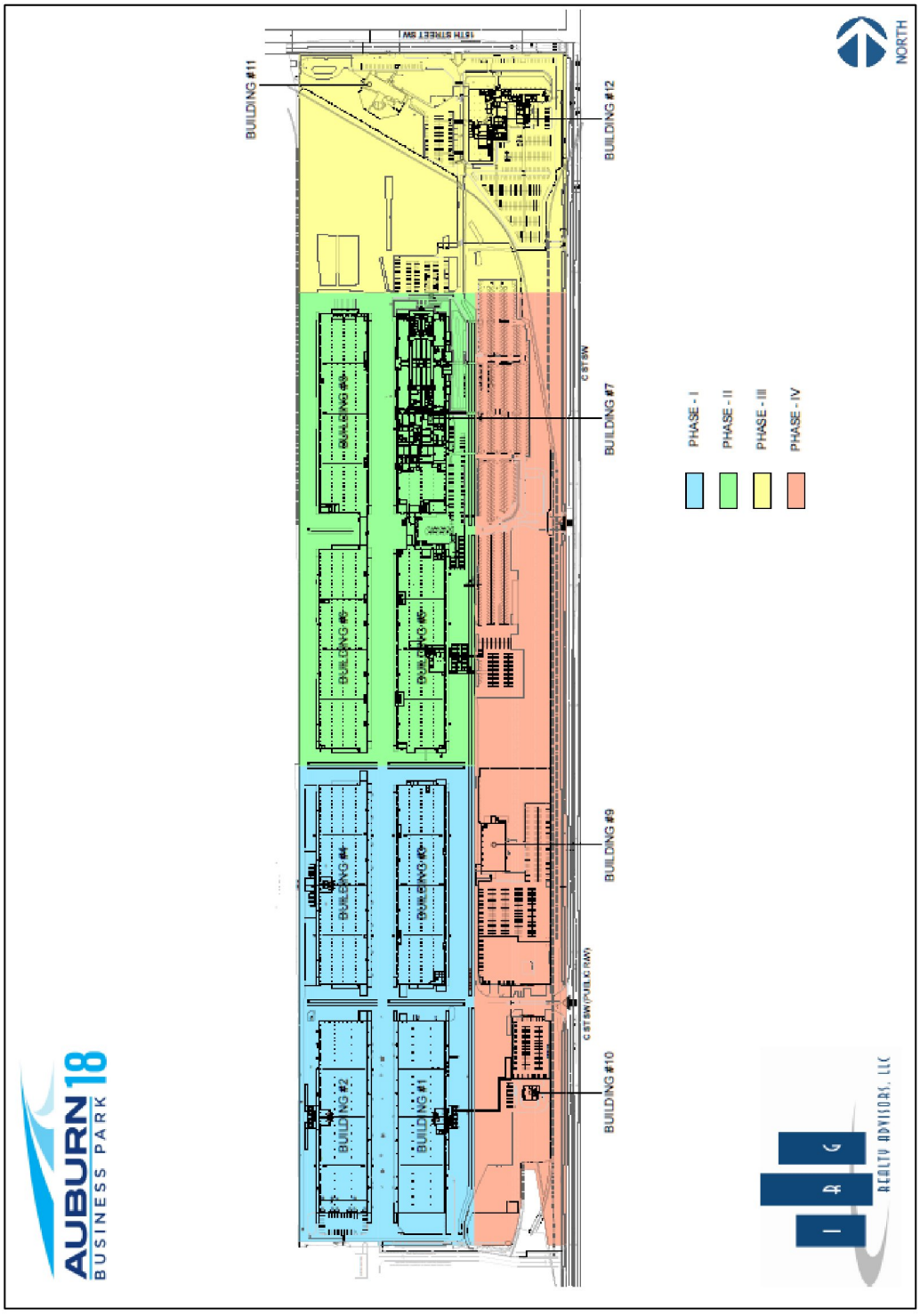
THENCE SOUTH 88°42'23" WEST A DISTANCE OF 73.72 FEET;
THENCE NORTH 11°16'27" WEST A DISTANCE OF 321.28 FEET TO
AN EXISTING TACK IN LEAD IN A CONCRETE MONUMENT;

THENCE NORTH 89°27'57" WEST A DISTANCE OF 57.68 FEET TO A POINT WHICH IS 0.05 FEET SOUTH AND 0.13 FEET WEST OF AN EXISTING TACK IN LEAD IN A CONCRETE MONUMENT; THENCE SOUTH 01°10'36" EAST A DISTANCE OF 91.99 FEET TO THE BEGINNING OF A 603.11 FOOT RADIUS CURVE TO THE RIGHT, SAID

POINT BEING NORTH 01°10'36" WEST A DISTANCE OF 0.33 FEET FROM AN EXISTING TACK IN LEAD IN A CONCRETE MONUMENT; THENCE SOUTHWESTERLY, ALONG SAID CURVE, AN ARC DISTANCE OF 235.75 FEET, THROUGH A CENTRAL ANGLE OF 22°23'45"; THENCE NORTH 89°06'10" WEST A DISTANCE OF 22.29 FEET; THENCE NORTH 01°17'37" WEST A DISTANCE OF 2.58 FEET; THENCE SOUTH 88°42'23" WEST A DISTANCE OF 527.94 FEET; THENCE NORTH 01°08'29" WEST A DISTANCE OF 14.47 FEET;
THENCE SOUTH 88°51'31" WEST A DISTANCE OF 333.47 FEET TO THE TRUE POINT OF BEGINNING.

Attachment B

Depiction of Property and Phasing Plan



Attachment C

Traffic Impact Fee Credit Calculations
Buildings 7, 8, 11, 12

Building	Existing Land Use	Building Area (SF)	Impact Fee Rate (2024)	Impact Fee
7	Office	181,903	$13.21	$2,402,939
7	Warehouse	28,307	$3.56	$100,773
				$2,503,712
8	Warehouse	182,571	$3.56	$649,953
11	Daycare	8,065	$44.45	$358,489
12	Office	105,771	$13.21	$1,397,235
			TOTAL CREDIT =	**$4,909,388**

Attachment D

Vested City Code

AGENDA BILL APPROVAL FORM

Agenda Subject:
Resolution No. 5767 (Gaub)

Date:
May 6, 2024

Department:
Public Works

Attachments:
Resolution No. 5767
Exhibit A
Vicinity Map

Budget Impact:

Administrative Recommendation:

City Council to adopt Resolution No. 5767.

Background for Motion:

This Resolution authorizes the Mayor to accept grant funding for a project that will install a Seismic Valve and Vault at Reservoir 2 to protect from catastrophic failures in the event of an earthquake.

Background Summary:

Reservoir 2 is a water storage reservoir with a total capacity of 3.6 million gallons. Large diameter pipes convey water from the reservoir 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 Reservoir 2 Seismic Control Valve project will install a seismic control valve and vault 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 reservoir 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 $1,268,750.00, which includes State and Federal funds. The estimated required match from the City is $181,250.00, for a total project cost of $1,450,000.00. The required match funds are available in the City's capital water fund (460).

Resolution No. 5767 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.

Reviewed by Council Committees:

Councilmember: Tracy Taylor **Staff:** Ingrid Gaub

RESOLUTION NO. 5767

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A HAZARD MITIGATION GRANT AGREEMENT WITH THE WASHINGTON STATE MILITARY DEPARTMENT AND ALL OTHER AGREEMENTS RELATING TO THE RESERVOIR 2 SEISMIC CONTROL VALVE PROJECT AND IF MATCHING FUNDS ARE WITHIN THE BUDGET TO ACCEPT AND EXPEND GRANT FUNDING FOR THE PROJECT

WHEREAS, Reservoir 2 is a water reservoir with a storage capacity of 3.6 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 reservoir could quickly flow out of the reservoir, causing local flooding, and loss of pressure within the water distribution system; and

WHEREAS, installation of an automatic seismic control valve will retain water in the reservoir 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 in the amount of $1,268,750.00 for the project entitled "Reservoirs 2 Seismic Control Valve project"; 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; and

WHEREAS, the 2023-2024 City of Auburn budget identifies $181,250.00 in City required matching water funds for the Reservoir 2 Seismic Control Vale Project.

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 hazard mitigation grant funds for the Reservoir 2 Seismic Control Valve project and execute grant agreements with the Washington State Military Department in substantial conformity with the agreement attached as Exhibit A. The Mayor is authorized to accept and expend additional grant funding from public or private sources as long as the amounts for any City matching fund requirements are within the approved City budget.

Section 2. The Mayor is authorized to execute any necessary funding authorizations, supplemental amendments, and other contracts for all future phases of the Reservoir 2 Seismic Control Valve 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 _____, 2024.

CITY OF AUBURN

_____
NANCY BACKUS
MAYOR

ATTEST:

_____
Shawn Campbell,
City Clerk

APPROVED AS TO FORM:

_____
Doug Ruth
Acting City Attorney

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: $1,450,000.00 **State: $181,250.00** **Federal: $1,087,500.00** **Local: $181,250.00** **SubMC: $0.00**	3. Grant Number: **D24-051**
4. Subrecipient Contact, phone/email: **Ryan Vondrak, (253)931-3086** **rvondrak@auburnwa.gov**	5. Grant Start Date: **November 28, 2023**	6. Grant End Date: **June 8, 2026**
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): **171-000-010**

10. Funding Authority:
Washington State Military Department (the "DEPARTMENT"), and **Federal Emergency Management Agency** (FEMA)

11. Federal Funding Identification #: **BRIC 2021** **EMS-2021-BR-044-0009**	12. Federal Award Date **November 28, 2023**	13. Assistance Listing # & Title: **97.047 (BRIC)**
14. Program Index # & OBJ/SUB-OBJ: **(Fed) 714BR NZ, (State) 712BS NZ, (SubMC) 714BP**	15. TIN or SSN: **91-6001228**	
16. Service Districts: (BY LEGISLATIVE DISTRICT): **30th** (BY CONGRESSIONAL DISTRICT): **8th**	17. Service Area by County(ies): **King County**	18. Women/Minority-Owned, State Certified?: **x** N/A ☐ NO ☐ YES, OMWBE #_____

19. Contract Classification: ☐ Personal Services ☐ Client Services **x** Public/Local Gov't ☐ Research/Development ☐ A/E ☐ Other_____	20. Contract Type (check all that apply): ☐ Contract **x** Grant **x** Agreement ☐ Intergovernmental (RCW 39.34) ☐ Interagency
21. Contractor Selection Process: **x** "To all who apply & qualify" ☐ Competitive Bidding ☐ Sole Source ☐ A/E RCW ☐ N/ALT ☐ Filed w/OFM? ☐ Advertised? ☐ YES ☐NO _____	22. Contractor Type (check all that apply) ☐ Private Organization/Individual ☐ For-Profit **x** Public Organization/Jurisdiction **x** Non-Profit ☐ VENDOR **x** SUBRECIPIENT **x** OTHER

23. PURPOSE/DESCRIPTION:
FEMA's Building Resilient Infrastructure and Communities (BRIC) program is designed to promote a national culture of preparedness and public safety through encouraging investments to protect the nation's communities and infrastructure and through strengthening national mitigation capabilities to foster resilience. The BRIC program seeks to fund effective and innovative projects that will reduce risk and increase resilience and serve as a catalyst to encourage the whole community to invest in and adopt policies related to mitigation.
Title: Reservoir 2 Seismic Control Valve. 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 EMS-2021-BR-044-0009 Reservoir 2 Seismic Control Valve 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, including all referenced attachments which are hereby incorporated and made a part hereof, and have executed this Agreement as of the date 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.

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/FEMA Award and program documents**
3. **Work Plan, Schedule, and Budget**
4. **Special Terms and Conditions**
5. **General Terms and Conditions, and,**
6. **Other provisions of the Agreement 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

BOILERPLATE APPROVED AS TO FORM:
Dierk Meierbachtol 4/4/2023
Assistant Attorney General

FOR THE SUBRECIPIENT:

_____
Signature Date
Nancy Backus, Mayor
City of Auburn

APPROVED AS TO FORM:

_____
Date

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	**Ryan Vondrak**	Name	**Tim Cook**
Title	**Utilities Engineering Manager**	Title	**State Hazard Mitigation Officer**
E-Mail	**rvondrak@auburnwa.gov**	E-Mail	**tim.cook@mil.wa.gov**
Phone	**253-931-3086**	Phone	**253-512-7072**
Name	**Ingrid Gaub**	Name	**Ryan Chandler**
Title	**Public Works Director**	Title	**HMA Program Supervisor**
E-Mail	**igaub@auburnwa.gov**	E-Mail	**ryan.chandler@mil.wa.gov**
Phone	**253-804-3113**	Phone	**253-512-7460**
Name	**Senait Gebreeyesus**	Name	**Nicole Canning**
Title	**Water Utility Engineer**	Title	**HMA Program Coordinator**
E-Mail	**sgebreeyesus@auburnwa.gov**	E-Mail	**nicole.canning@mil.wa.gov**
Phone	**253-804-5061**	Phone	**253-512-7236**

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 DHS/FEMA applicable to the BRIC program including, but not limited to, all criteria, restrictions, and requirements of the Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) 2021, the federal regulations commonly applicable to FEMA grants, and the FEMA Award Letter and its attachments, all of which are incorporated herein by reference.

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 DHS/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 BRIC 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.

b. If the SUBRECIPIENT becomes a pass-through entity by making a subaward to a non-federal entity as its subrecipient:

i. The Subrecipient must comply with all federal laws and regulations applicable to pass-through entities of BRIC funds, including, but not limited to, those contained in 2 CFR 200.

ii. The Subrecipient shall require its subrecipient(s) to 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 DHS/FEMA applicable to **EMS-2021-BR-044-0009**, including, but not limited to, all criteria, restrictions, and requirements of the *Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) 2021* BRIC document, the Manual, the DHS Award Letter for the Grant, and the federal regulations commonly applicable to DHS/FEMA grants.

iii. The SUBRECIPIENT shall be responsible to the DEPARTMENT for ensuring that all BRIC federal award funds provided to its subrecipients, and associated matching funds, are used in accordance with applicable federal and state statutes and regulations, and the terms and conditions of the federal award set forth in Attachment 2 of this Agreement.

2. PROJECT FUNDING

The DEPARTMENT will administer EMS-2021-BR-044-0009 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 for the purposes of this Agreement is **$1,450,000.00** 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 **$181,250.00** 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 **$1,087,500.00** 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 **$181,250.00** dollars, or 12.5 percent, at minimum, of the total project cost and is contingent on legislative approval of DEPARTMENT funding pursuant to the prerequisites provided in subsection g. The DEPARTMENT's contributions must be from a non-federal source and must comply with all Federal requirements and regulations.

e. The Federal Emergency Management Agency (FEMA) has contributed federal funds for SUBRECIPIENT Management Costs (SubMC). SubMC includes costs for administering the grant and indirect costs. This federal contribution is in addition to the federal award for project costs and is suitable for 100% reimbursement for eligible expenses. The maximum amount available for SubMC is **$0.00** dollars, limited to 5% of the eligible project expenditures for administrative, indirect, or overhead costs, whichever is less.

f. The DEPARTMENT shall not be obligated to pay any amount beyond that set out in Subsections c, d, and e 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.

g. The Washington State Legislature may authorize the DEPARTMENT to provide a match to the SUBRECIPIENT's non-federal share of eligible projects. Provision of a match by the DEPARTMENT, if authorized by the Washington State Legislature, shall not require amendment of this Agreement. If DEPARTMENT match funds are committed to the non-federal share by the DEPARTMENT pursuant to legislative authorization, the DEPARTMENT will formally notify the SUBRECIPIENT of the match in writing which will include information identifying any related reduction in the SUBRECIPIENT's percentage commitment.

h. 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 **November 28, 2023** and shall terminate on **June 8, 2026**. 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 EMS-2021-BR-044-0009, 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.37.

4. REIMBURSEMENT AND BUDGET REQUIREMENTS

The DEPARTMENT, using mitigation funds from 42 U.S.C. § 5133 (Pub. L. No. 93-288, Section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, and the State of Washington, for the BRIC 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 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, SUBRECIPIENT 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.

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 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 an *Audit Certification/FFATA* Form. This form is required to be completed once per calendar year, per SUBRECIPIENT, and not per agreement. The DEPARTMENT'S Contracts Office will request the SUBRECIPIENT submit an updated form at the beginning of each calendar year in which the SUBRECIPIENT has an active agreement.

6. PROCUREMENT

a. The SUBRECIPIENT shall comply with all procurement requirements of 2 CFR Part 200.317 through 200.327 and as specified in the General Terms and Conditions, **Attachment 2**, A.11.
b. For all contracts expected to exceed $250,000, the DEPARTMENT may request pre-procurement documents, such as request for proposals, invitations for bids and independent cost estimates. This request may apply to any non-federal entity to which the SUBRECIPIENT makes a subaward, at which point the SUBRECIPIENT will be responsible for reviewing and approving procurement requests of any non-federal entity to which the SUBRECIPIENT makes an award.
c. For all sole source contracts expected to exceed the micro-purchase threshold per 2 CFR 200.1, the SUBRECIPIENT must submit justification to the DEPARTMENT for review and approval. This requirement must be passed on to any non-federal entity to which the SUBRECIPIENT makes a subaward, at which point the SUBRECIPIENT will be responsible for reviewing and approving sole source justifications to any non-federal entity to which the SUBRECIPIENT makes an award.

7. TIME EXTENSIONS

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 along with the signed Agreement. The SUBRECIPIENT shall complete and return the form to the DEPARTMENT each fiscal year thereafter until the Agreement is closed. The form is incorporated by reference herein 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; and
   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:

a. Photographs of the structures or properties involved in the project **prior** to project implementation **and after** project implementation.

b. Digital geospatial coordinates (latitude and longitude) for each structure with an accuracy of ± 20 meters (64) feet.

c. Certificate of occupancy or equivalent documentation from the appropriate regulatory authority for each structure to certify it is code-compliant.

d. Certification that the SUBRECIPIENT has met the environmental and historic preservation conditions of the grant award as described in this Agreement.

e. 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).

f. 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:

a. Signed Statement of Voluntary Participation from the owner of each acquired property.

b. Documentation of dates of acquisition and structure demolition or removal from property for each property.

c. Copy of recorded open space deed restrictions for each acquired property.

d. Copy of the AW-501 form filed with the NFIP for each acquired repetitive loss property.

e. Documentation of consultation with the Army Corps of Engineers and Washington 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:

a. Photographs of the structures prior to elevation, and front, rear and side photos post-elevation.

b. Copies of the pre-project elevation certificate for each structure, or documentation of methodology used to calculate the first-floor elevations.

c. Copies of the post-project elevation certificate for each structure.

d. Copies of the certificate of occupancy for each elevated structure to certify that it is code compliant.

e. 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 NFIP regulations and technical bulletins.

f. Copy of the AW-501 form filed with the NFIP for each elevated repetitive loss property.

g. Copies of proof of flood insurance for each elevated structure.

h. 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.

11. ENVIRONMENTAL AND HISTORICAL PRESERVATION

a. The SUBRECIPIENT shall ensure full compliance with the DHS/FEMA Environmental Planning and Historic Preservation (EHP) program. EHP program information can be found at https://www.fema.gov/grants/guidance-tools/environmental-historic, which is incorporated into and made a part of this Agreement.

b. Projects that have historical impactors or the potential to impact the environment, including, but not limited to, construction of communication towers; modification or renovation of existing buildings, structures and facilities; or new construction including replacement of facilities, must participate in the DHS/FEMA EHP review process prior to initiation. Modification of existing buildings, including minimally invasive improvements such as attaching monitors to interior walls, and training or exercises occurring outside in areas not considered previously disturbed, also require a DHS/FEMA EHP review before project initiation.

c. The EHP review process involves the submission of a detailed project description that includes the entire scope of work, including any alternatives that may be under consideration, along with supporting documentation so FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties.

d. The SUBRECIPIENT agrees that to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The EHP review process **must be completed, and FEMA approval received by the SUBRECIPIENT, before any work is started** for which reimbursement will be later requested. Expenditures for projects started before completion of the EHP review process, and receipt of approval by the SUBRECIPIENT will not be reimbursed.

12. ADDITIONAL SPECIAL CONDITIONS

a. Construction Documents, Contracts, Change Orders

i. Construction Document Approval: Upon request, the SUBRECIPIENT agrees to submit one copy of all construction plans and specifications to the DEPARTMENT prior to solicitation of bids. This request is to ensure bid set consistency with the subgrant's approved scope of work.

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. 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.

13. EQUIPMENT AND TRACKABLE ASSETS MANAGEMENT

a. If applicable, the SUBRECIPIENT and any non-federal entity to which the SUBRECIPIENT makes a subaward shall comply with 2 CFR 200.317 through 200.327, and all Washington State procurement requirements, when procuring any equipment or trackable assets under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200 to include but not limited to:

i. Upon successful completion of the terms of this Agreement, all equipment and trackable assets 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 trackable assets as applicable, purchased under this Agreement will be recorded and maintained in the SUBRECIPIENT's inventory system.

iii. Inventory records shall include:

A. Description of the property

B. Manufacturer's serial number, or other identification number

C. Funding source for the property, including the Federal Award Identification Number (FAIN) (Face Sheet, Box 11)

D. Assistance Listings Number (formerly CFDA Number) (Face Sheet, Box 13)

E. Who holds the title

F. Acquisition date

G. Cost of the property and the percentage of federal participation in the cost

H. Location, use, and condition of the property at the date the information was reported

I. 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 trackable assets as applicable, 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.

v. The SUBRECIPIENT shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment and trackable assets including all questions of liability. The SUBRECIPIENT shall develop appropriate maintenance schedules and procedures to ensure the equipment and trackable assets are well maintained and kept in good operating condition.

vi. 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'S Key Personnel.

vii. The SUBRECIPIENT must obtain and maintain all necessary certifications and licenses for the equipment.

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. For disposition, if upon termination or at the Grant Agreement End Date, when original or replacement trackable assets or equipment acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the SUBRECIPIENT must comply with the following procedures:

A. For Trackable assets: If there is a residual inventory of unused trackable assets exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the trackable assets are not needed for any other federal award, the SUBRECIPIENT must retain the trackable assets for use on other activities or sell them, but must, in either case, compensate the federal government for its share. The amount of compensation must be computed in the same manner as for equipment.

B. For Equipment:

1. Items with a current per-unit fair-market value of $5,000 or less may be retained, sold, transferred, or otherwise disposed of with no further obligation to the federal awarding agency.

2. Items with a current per-unit fair-market value in excess of $5,000 may be retained or sold. The SUBRECIPIENT shall compensate the

federal awarding agency in accordance with the requirements of 2 CFR 200.313 (e) (2).

ix. 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. The SUBRECIPIENT shall comply with the DEPARTMENT'S Purchase Review Process, which is incorporated by reference and made part of this Agreement. No reimbursement will be provided unless the appropriate approval has been received.

c. 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.

d. If funding is allocated to emergency communications, the SUBRECIPIENT must ensure that all projects comply with SAFECOM Guidance on Emergency Communications Grants, located at https://www.cisa.gov/safecom/funding, ensuring the investments are compatible, interoperable, resilient, and support national goals and objectives for improving emergency communications.

e. Effective August 13, 2020, FEMA recipients and SUBRECIPIENT, as well as their contractors and subcontractors, may not obligate or expend any FEMA award funds to:

i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or

iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

This prohibition regarding certain telecommunications and video surveillance services or equipment is mandated by section 889 of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018)*. Recipients and SUBRECIPIENTS may use DHS/FEMA grant funding to procure replacement equipment and services impacted by this prohibition, provided the costs are otherwise consistent with the requirements of the Manual and applicable NOFO.

Per subsections 889(f)(2)-(3) of the FY 2019 NDAA, and 2 CFR 200.216, covered telecommunications equipment or services means:

i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
iii. Telecommunications or video surveillance services provided by such entities or using such equipment; or
iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The SUBRECIPIENT must pass through equipment and trackable assets management requirements that meet or exceed the requirements outlined above to any non-federal entity to which the SUBRECIPIENT makes a subaward under this Agreement.

B. DHS FFY24 STANDARD TERMS AND CONDITIONS

As a SUBRECIPIENT of BRIC 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.

Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants

A.1 DEFINITIONS

As used throughout this Agreement, the following terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

a. "Agreement" means this Grant Agreement.
b. "**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. The 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. "**SUBRECIPIENT**" when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the DEPARTMENT. However, the definition of "SUBRECIPIENT" is the same as in 2 CFR 200.93 for all other purposes.
d. "**Monitoring Activities**" means all administrative, construction, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.
e. "**Project**" means those actions funded through the Hazard Mitigation Assistance Grant Program and described in approved Project Worksheets. Projects may include one or more of the following: reimbursement of costs for emergency response, debris removal and/or repair or restoration of damaged public facilities. A project may be a small, large, improved, or alternate project.

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, except as required under 2 CFR 200.305 for federal grants. SUBRECIPIENT shall not invoice the DEPARTMENT in advance of delivery and invoicing of such goods or services, except as authorized under 2 CFR 200.305.

Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C §5121-5207), Advance Payment process, FEMA may process a SUBRECIPIENT project worksheet which is provided to the state of Washington for direct disbursement to SUBRECIPIENT Pursuant to these provisions and RCW 43.88.160(5), these grant funds are not subject to the advance payments prohibition and will be disbursed immediately to SUBRECIPIENT as grants authorized by law with subsequent authentication and certification of expenditures.

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. In addition, as a SUBRECIPIENT of FEMA funding, the SUBRECIPEINT shall comply with all applicable DHS terms and conditions as specified in B.3. Statement of Assurances of the Hazard Mitigation Assistance Program and Policy Guide dated March 23, 2023.

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.

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" (https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.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 31 U.S.C. 1352.

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), 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.

A.10 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 2 CFR Part 200.318 General procurement standards through 200.327, 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, 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 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 or subrecipient 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.

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 or SUBRECIPIENT 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 governmentwide 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 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).
16. Pursuant to Executive Order 14005 and Build America, Buy America Act (BABAA) OMB Memo-22-11, the DEPARTMENT requires that SUBRECIPIENTS shall not use funds made available for a Federal financial assistance program for infrastructure, unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. Any previously obligated awards may be subject to BABAA requirements if award revisions are made after January 1, 2023. The Act requires the following Buy America preference:
    a. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; AND
    b. All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; AND
    c. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

    Such requirements must be consistent with the law, including cost and contracting requirements of 2 CFR Part 200. Further guidance on BABAA can be found at: https://www.congress.gov/bill/117th-congress/house-bill/3684/text.
17. 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 2 CFR 200.327. 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.
18. 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 SUBRECIPIENT 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

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 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 70A.305.020.

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 and the Authorized Signature of the assigned SUBRECIPIENT Agent or Alternate for the SUBRECIPIENT Agent, 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 representative or Alternate for the SUBRECIPIENT shall have authority to sign reimbursement requests, certification of project completion, time extension requests, amendment and modification requests, requests for changes to project status, 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 or suspend 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 workplace 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 and 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 Agreement. The monitoring, auditing or investigating may include but is not limited to "salting" by the DEPARTMENT. Salting is the act of placing 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 Agreement 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 CFR 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 the DEPARTMENT and FEMA's financial support, by CFDA 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, regulations, 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.

A.29 RECORDS AND REPORTS

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.

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) year 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 grant 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 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 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.

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

The SUBRECIPIENT is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. 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 includes and 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@mil.wa.gov
Subject: City of Auburn, Single Audit and Corrective Action Plan

OR

Contracts Office
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032

If Contractor claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the 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's 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 or of the State of Washington 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 DEPARTMENTs Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

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 e-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's 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 the 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 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 sub-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 DEPATMENT 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 <u>UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)</u>

The SUBRECIPIENT shall comply with 2 CFR §200.321 and will take all necessary affirmative steps 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 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 Thurston County, 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 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: Reservoir 2 Seismic Control Valve

The purpose of this project is for City of Auburn :

To install a seismic control valve at the City of Auburn's Reservoir 2. Reservoir 2 stores 3.6 million gallons of drinking water. It serves as one of the main sources of potable water for 33,635 people. In the event of an earthquake, the seismic valve will automatically shut, preventing water from escaping through ruptured pipelines. This safeguard will protect the water supply, as well as help prevent flooding caused by pipeline leaks. The project design phase will include a seismic evaluation to confirm that Reservoir 2 does not require additional retrofits. Any necessary additional seismic retrofits identified in the study will be prioritized for future mitigation action. The seismic valve will be installed to the northwest of the reservoir, beneath a section of the parking lot at 32115 195th PL SE, Auburn, WA 98092 between Buildings A and B. The ground disturbance area for this project will be approximately 25' x 25' and 10' deep, with a total volume of approximately 6,250 cubic feet. The controls for the seismic valve will be integrated into the City's SCADA system.

A specific and more detailed scope of work is found in the FEMA approved Project Application EMS-2021-BR-044-0009, 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. SUBRECIPIENT is required to return all final closeout documentation to the DEPARTMENT within 45 days following the Period of Performance End Date determined by FEMA's Notice of Award. The DEPARTMENT reserves the right to withhold the final reimbursement request until final closeout documentation is submitted by the SUBRECIPIENT to the satisfaction of the DEPARTMENT. No final reimbursements shall be paid if submitted more than 60 days after the Period of Performance End Date.
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 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 and flood damage prevention legislation.

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. Conduct work during the non-flood season as determined by the local floodplain administrator. However, should construction be required during the flood season, as determined by the local floodplain administrator, all construction equipment shall be staged in an area not susceptible to flood events or be readily transportable out of the floodplain to minimize flood damage.

g. 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.

h. 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.

i. 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.

j. Resubmit the project to the DEPARTMENT and FEMA prior to implementation if any in-water work will occur or if any work will occur below the ordinary high water mark of any water resource in the area, so further coordination/consultation can take place with the National Marine Fisheries Service (NMFS) to determine whether appropriate measures have been taken to ensure the project is in compliance with the Endangered Species Act.

k. Resubmit the project to the DEPARTMENT and FEMA for re-evaluation for compliance with national environmental policies if the "Project Limits" (including clearing, excavation, temporary staging, construction, and access areas) extend into: 1) an area not previously identified for environmental and historic preservation review, or 2) previously undisturbed ground. Additionally, all work on the project in these areas must stop until this re-evaluation is completed.

l. National Historic Preservation Act Section 106 requirement: All proposed repair and construction activities on buildings listed in or eligible for the National Register of Historic Places (historic properties) should be done in-kind to match existing materials and form. In-kind means that the result of the proposed activities will match all physical and visual aspects of existing historic materials, including form, color and workmanship. In-kind mortar also will match the strength and joint tooling of existing historic mortar.

m. <u>Additional requirements as noted by FEMA in grant award document</u>:

a. Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

b. This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.

c. If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

n. 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.

7. <u>SPECIAL FLOOD HAZARD AREA REQUIREMENTS</u>

Pursuant to the Flood Disaster Protection Act of 1973, those structures that remain in the Special Flood Hazard Area (SFHA) after the implementation of the mitigation project, flood insurance must be maintained for the life of the structure. The SFHA is defined as the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year.

The following National Flood Insurance Program Eligibility Requirements contained in the 2023 Hazard Mitigation Assistance Program and Policy Guide apply to any project involving the alteration of existing structures, to include Mitigation Reconstruction projects that are sited within an SFHA.

a. When the project is implemented, all structures that will not be demolished or relocated out of the SFHA must be covered by a National Flood Insurance Program (NFIP) flood insurance policy to an amount at least equal to the project cost or to the maximum limit of coverage made available with respect to the particular property, whichever is less.

b. The SUBRECIPIENT (or property owner) must legally record with the county or appropriate jurisdiction's land records agency a notice that includes the name of the current property owner (including book/page reference to record of current title, if readily available), a legal description of the property, and the following notice of flood insurance requirements as identified on page 244 of the 2023 Hazard Mitigation Assistance Program and Policy Guide:

> "This property has received Federal hazard mitigation assistance. Federal law requires that flood insurance coverage on this property must be maintained during the life of the property regardless of transfer of ownership of such property. Pursuant to 42 U.S.C. § 5154a, failure to maintain flood insurance on this property may prohibit the owner from receiving Federal disaster assistance with respect to this property in the event of a flood disaster. The Property Owner is also required to maintain this property in accordance with the floodplain management criteria of 44 CFR § 60.3 and City/County Ordinance."

c. Copies of the recorded notices for each property will be provided to the DEPARTMENT at project closeout.

8. <u>PROVISIONS APPLYING ONLY TO ACQUISITION OF PROPERTIES FOR OPEN SPACE</u>

a. The SUBRECIPIENT must ensure that prospective participants are informed in writing that property owner participation in this acquisition program is voluntary and that the SUBRECIPIENT will not use its eminent domain authority to acquire the property for the project purposes should negotiations fail.

Copies of the Statement of Voluntary Participation signed by each participating property owner will be provided to the DEPARTMENT by project close-out.

b. The SUBRECIPIENT agrees that land acquired for open space purposes under this grant will be restricted in perpetuity to open space uses and will be unavailable for the construction of flood damage reduction levees, transportation facilities, and other incompatible purposes and agrees to comply with the requirements of 44 CFR Part 80 Property Acquisition and Relocation for Open Space.

c. The SUBRECIPIENT agrees to prepare, execute and record Deed Restrictions for each affected property utilizing the current Model Deed Restriction provided on the FEMA website or available from the DEPARTMENT.

   Copies of the recorded deed and attached deed restrictions for each property will be provided to the DEPARTMENT by project close-out.

d. The SUBRECIPIENT accepts all of the requirements of the deed restriction governing the use of the land.

e. The SUBRECIPIENT ensures that, prior to acquisition of the property, in consultation with the U.S. Army Corps of Engineers, it has addressed and considered the potential future use of these lands for the construction of flood damage reduction levees, has rejected consideration of such measures in the future in the project area, and instead has chosen to proceed with acquisition of permanent open space.

   Documentation of this consultation and the SUBRECIPIENT's consideration of this issue will be provided to the DEPARTMENT by project close-out.

f. The SUBRECIPIENT must, prior to acquisition of the property, consult with the Washington State Department of Transportation to ensure that no future planned improvements or enhancements are under consideration that will affect the proposed project area.

   Documentation of this consultation will be provided to the DEPARTMENT by project close-out.

g. The SUBRECIPIENT will remove existing buildings from acquired properties within 90 days of settlement. The SUBRECIPIENT will provide confirmation to the DEPARTMENT as to the date of demolition of each structure included in the project in its quarterly reports, as well as confirmation that the property has been returned to "natural" or park/open space condition.

   The SUBRECIPIENT will provide digital latitude and longitude coordinates and digital photographs of each property site after project implementation to the DEPARTMENT by project close-out.

h. The SUBRECIPIENT agrees to complete FEMA Form AW-501, NFIP Repetitive Loss Update Worksheet for each property identified on FEMA's Repetitive Loss list to document completion of mitigation on the property. The form is available on FEMA's Web site or available from the DEPARTMENT.

   The SUBRECIPIENT will provide a copy of the completed form to the DEPARTMENT by project close-out.

i. The SUBRECIPIENT agrees to comply with the requirements of 44 CFR § 80.19 Land Use and Oversight, which are incorporated into these conditions by reference. These requirements include, but are not limited to, the following (which are described further in the 2023 Hazard Mitigation Assistance Program and Policy Guide which are incorporated herein by reference):

   1. Restriction on future disaster assistance for damages to the property.
   2. Lists of allowable open space uses as well as uses generally not allowed on acquired open space land.
   3. Provision for salvage of pre-existing structures and paved areas.
   4. Requirements pertaining to future transfer of property interest.
   5. Requirement for SUBRECIPIENT monitoring and inspection of the acquired property at least every 3 years. The SUBRECIPIENT will provide the DEPARTMENT with a report on the result of the inspection within 90 days of the inspection.
   6. Provisions for enforcement of violation of open space requirements.

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 45 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 request for additional documentation to support the reimbursement request. Any reimbursement requests that are returned to the SUBRECIPIENT and are not returned within the 15 calendar days will be required to submit a revised reimbursement request with a new signature and date.

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: Reservoir 2 Seismic Control Valve

DESCRIPTION OF ACTIVITY/TASK	***SCHEDULED COMPLETION DATE (months)***
Consultant Selection/Contract Execution	3
Design	13
Permitting	15
Bid Project/Execute Construction Contract	17
Project Construction	23
Project Inspection and Closeout	29
Total Time Required to Complete This Project: 29 months	
Quarterly Reports Due on Project Progress, Final Project Report and all documentation, site visits and inspections.	April 15, 2024; July 15, 2024; October 15, 2024; January 15, 2025; April 15, 2025; July 15, 2025; October 15, 2025; January 15, 2026; April 15, 2026; July 15, 2026

PROJECT BUDGET

SUBRECIPIENT: City of Auburn
PROJECT TITLE: Reservoir 2 Seismic Control Valve

APPROVED BUDGET CATEGORY	***ESTIMATED COST***
Project Inspection Fees	$6,000.00
Construction	$822,500.00
Architectural & Engineering Fees	$338,400.00
Other Architectural & Engineering Fees (Seismic)	$283,100.00
	Project Total *$1,450,000.00*
SubMC – This category is restricted to eligible grant administration costs, including indirect costs, and is limited to 5% of eligible *project* expenditures. The amount shown here reflects the maximum amount available, based on the approved project budget.	$0.00
TOTAL (Project Total + SubMC):	**$1,450,000.00**

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.

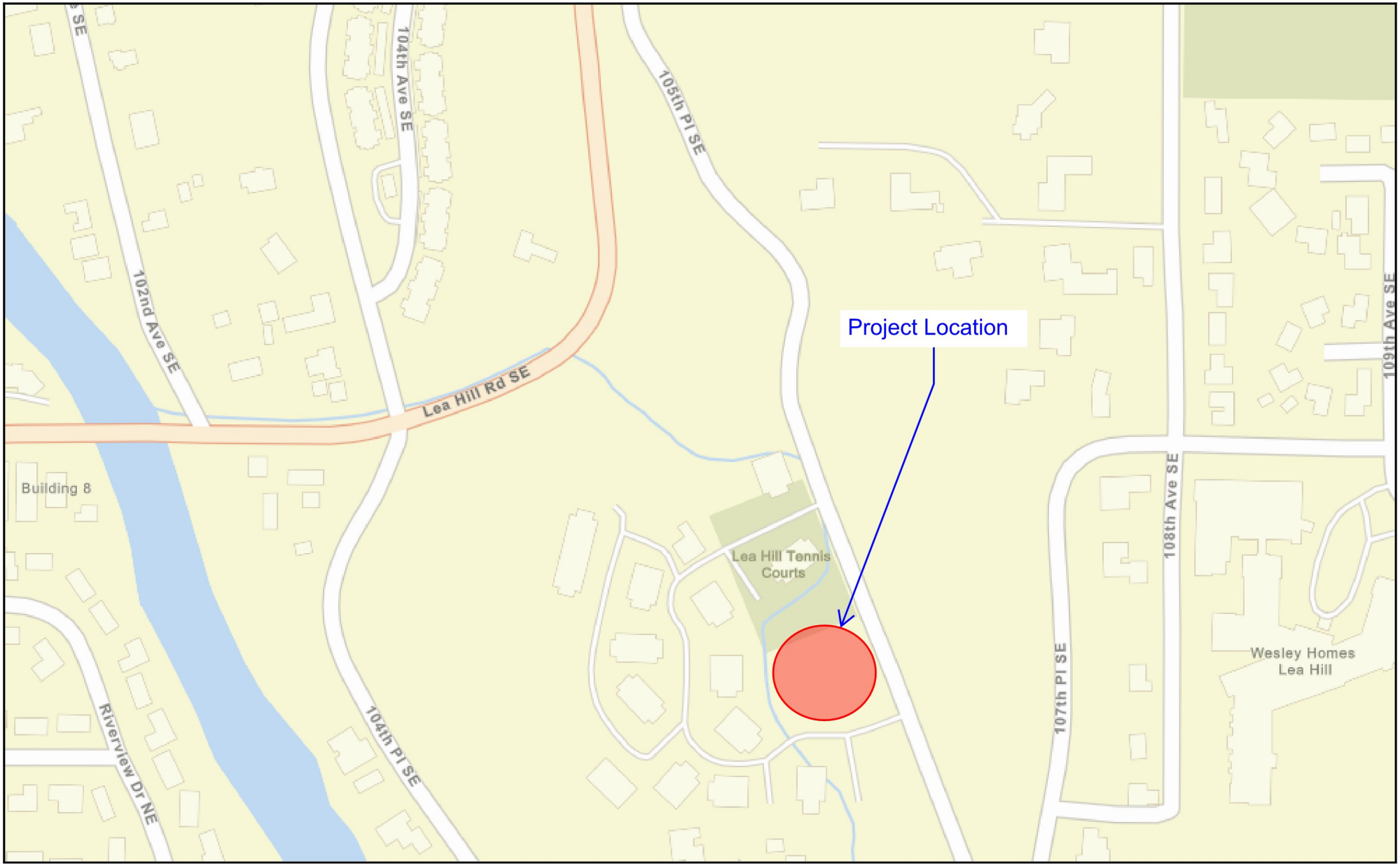
Final Payment: Final payment of any remaining, or withheld, funds will be made upon submission by the SUBRECIPIENT within 60 days of completion of the project of the final report and an A-19, Voucher Distribution, and completion of all final inspections by the DEPARTMENT. Final payment also may be conditioned 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.

Per 2023 Hazard Mitigation Assistance Program and Policy Guide, no cost overruns will be funded. If costs exceed the maximum amount of FEMA funding approved, the SUBRECIPIENT shall pay the costs in excess of the approved budget.

Reservoir 2 Seismic Control Valve project

Printed On: 4/19/2024

Map created by City of Auburn eGIS



0 450 900 ft

WGS84 Web Mercator (Auxiliary Sphere)

1: 4514

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.

CITY OF AUBURN
WASHINGTON

TO: Members of the City Council,
Mayor Backus,
Department Directors

FROM: Hannah Scholl, Deputy City Clerk

SUBJECT: Agenda Modification

DATE: May 20, 2024

The May 20, 2024, City Council Meeting Agenda is modified to add the following item:

VII. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. Public Hearings

1. Public Hearing for Resolution No. 5766 – Development Agreement
City Council to conduct a Public Hearing to consider a Development Agreement with Auburn 18 Business Park, LLC – King County parcel number 242104-9004