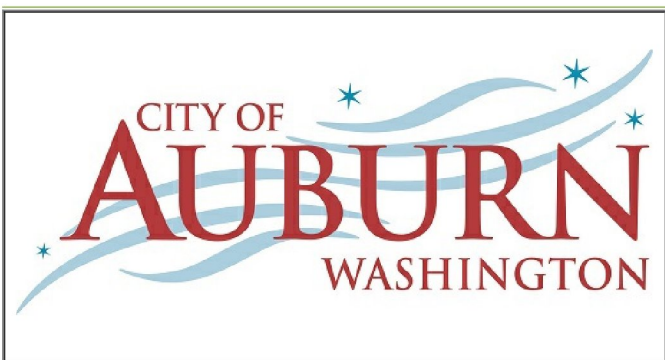


|                                                                                   |                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p><b>City Council Meeting</b><br/> <b>April 3, 2023 - 7:00 PM</b><br/> <b>City Hall Council Chambers</b><br/> <b>AGENDA</b><br/> <b>Watch the meeting LIVE!</b></p> <p><b>Watch the meeting video</b><br/> Meeting videos are not available until 72 hours after the meeting has concluded.</p> |
|-----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## **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 April 3, 2023 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/87666139439>

### **A. Pledge of Allegiance**

## **IV. Roll Call**

## **V. ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS**

### **A. Arbor Day**

Mayor Backus to proclaim April 28, 2023 as "Arbor Day" in the City of Auburn

### **B. National Public Safety Telecommunicators Week**

Mayor Backus to proclaim April 9, 2023 through April 15, 2023 as "National Public



Safety Telecommunicators Week" in the City of Auburn

C. Sikh Heritage Month

Mayor Backus to proclaim April as "Sikh Heritage Month" in the City of Auburn

D. Junior City Council Presentation (Hinman)

The Auburn Junior City Council to provide a report to the Auburn City Council on their activities and goals

## VI. APPOINTMENTS

A. Appointment to Human Services Commission

City Council to approve the appointment of David Wright and Adriel Foxley to the Human Services Commission, for a three year term expiring December 31, 2025

**(RECOMMENDED ACTION: Move to approve the appointment of David Wright and Adriel Foxley to the Human Services Commission, for a three year term to expire December 31, 2025.)**

B. Appointment to Salary Commission

City Council to approve the appointment of Katherine Murray to the Salary Commission, for a four year term expiring December 31, 2026.

**(RECOMMENDED ACTION: Move to approve the appointment of Katherine Murray to the Salary Commission, for a four year term to expire December 31, 2026.)**

## VII. AGENDA MODIFICATIONS

## VIII. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

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

B. Audience Participation

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

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

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

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

Please fax written comments to:  
Attn: Shawn Campbell, City Clerk

Fax number: 253-804-3116

Email written comments to:  
publiccomment@auburnwa.gov

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

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

**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)
2. Mayoral Benefits and Leave Compensation Review Ad Hoc Committee (Chair Baldwin)

**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. Minutes of the March 6, 2023 Regular City Council Meeting
- B. Minutes of the March 13, 2023 Study Session Meeting
- C. Minutes of the March 20, 2023 Special City Council Meeting
- D. Claims Voucher (Thomas)

Claims voucher list dated March 20, 2023 which includes voucher number 471293 through 471447, in the amount of \$4,659,856.47 and two wire transfers in the amount of \$957,038.33

Claims voucher list dated April 3, 2023 which includes voucher number 471448 through 471550, in the amount of \$4,720,925.59 and three wire transfers in the amount of \$841,459.18

- E. Payroll Voucher (Thomas)

Payroll check numbers 539475 through 539478 in the amount of \$78,165.14, electronic deposit transmissions in the amount of \$2,575,889.59 for a grand total of \$2,654,054.73 for the period covering March 2, 2023 to March 15, 2023

Payroll check numbers 539479 through 539481 in the amount of \$722,979.29, electronic deposit transmissions in the amount of \$2,447,751.14 for a grand total of

\$3,170,730.43 for the period covering March 16, 2023 to March 29, 2023

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

**XI. UNFINISHED BUSINESS**

**XII. NEW BUSINESS**

**XIII. RESOLUTIONS**

**A. Resolution No. 5704 (Comeau)**

A Resolution authorizing the Mayor to execute a Utility Easement on City Property in favor of Puget Sound Energy

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5704.)**

**B. Resolution No. 5705 (Faber)**

A Resolution authorizing the Mayor to execute a Capital Grant Agreement with King County, Washington for Parks Capital and Open Space Program Funds, and to appropriate and expend the Grant Funds

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5705.)**

**C. Resolution No. 5708 (Comeau)**

A Resolution authorizing the Mayor to execute an Allocation Agreement and Participation Forms related to Opioid Pharmacy and Manufacturer Settlements

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5708.)**

**D. Resolution No. 5709 (Gaub)**

A Resolution authorizing the Mayor to execute the Aquatic Easements from the Washington Department of Natural Resources for the Lea Hill Bridge and associated City-Owned Utilities

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5709.)**

**XIV. MAYOR AND COUNCILMEMBER REPORTS**

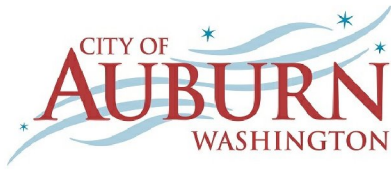
*At this time the Mayor and City Council may report on significant items associated with their appointed positions on federal, state, regional and local organizations.*

**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 March 6, 2023 Regular City Council Meeting

**Department:**

City Council

**Attachments:**

[03-06-2023 Minutes](#)

**Date:**

March 29, 2023

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

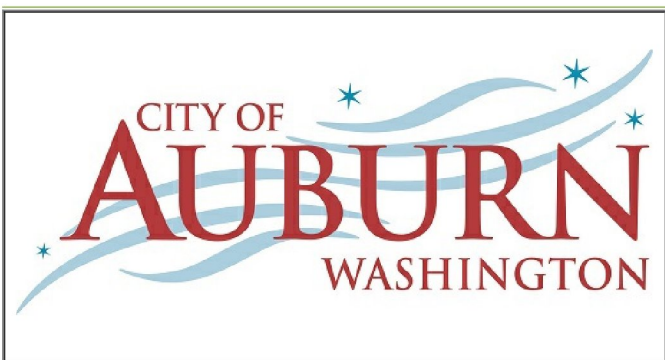
**Administrative Recommendation:****Background for Motion:****Background Summary:****Reviewed by Council Committees:****Councilmember:**

**Meeting Date:** April 3, 2023

**Staff:**

Item Number: CA.A



|                                                                                   |                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p style="text-align: center;"><b>City Council Meeting</b><br/> <b>March 6, 2023 - 7:00 PM</b><br/> <b>City Hall Council Chambers</b><br/> <b>MINUTES</b><br/> <b>Watch the meeting LIVE!</b></p> <p style="text-align: center;"><b>Watch the meeting video</b><br/> Meeting videos are not available until 72<br/> hours after the meeting has concluded.</p> |
|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## **I. CALL TO ORDER**

## **II. LAND ACKNOWLEDGMENT**

## **III. PUBLIC PARTICIPATION**

### **1. Public Participation**

The City Council Meeting was held in person and virtually.

#### **A. Pledge of Allegiance**

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

## **IV. Roll Call**

Councilmembers present: Deputy Mayor James Jeyaraj, Bob Baggett, Kate Baldwin, Larry Brown, Robyn Mulenga, and Cheryl Rakes. Councilmember Trout-Manuel was excused.

Department directors and staff members present included: City Attorney Kendra Comeau, Director of Finance Jamie Thomas, Director of Parks, Arts and Recreation Daryl Faber, Senior Staff Attorney Doug Ruth, Chief of Police Mark Caillier, Director of Public Works Ingrid Gaub, Director of Equity and Inclusion Brenda Goodson-Moore, Director of Innovation and Technology David Travis, Development Services Manager Jason Krum, Business Systems Analyst Chrissy Malave, and City Clerk Shawn Campbell.

## **V. ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS**

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

## **VI. AGENDA MODIFICATIONS**

There were no modifications to the agenda.

## **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.

### **Written Public Comments:**

Waverly Mitchell

Ms. Mitchell expressed her gratitude for Aunty's Place Early Learning & Child Care Center and owner Phanta Tofa.

Kristen Reinken

Ms. Reinken expressed her gratitude for Aunty's Place Early Learning & Child Care Center.

### **In-Person Public Comments:**

Answorth Jackson 14318 SE 279th St. Kent WA

Mr. Jackson, Chair of the Board of Advisors for the YMCA located in Kent, shared the services the Kent YMCA offers.

Jerold Smiley Auburn WA

Mr. Smiley thanked the Mayor, Council, and staff for the work they do for the community.

Phanta Tofa 5111 S 291st St. Auburn WA

Ms. Tofa, owner and operator of Aunty's Place Early Learning & Child Care Center, shared her frustration with the conflict between the Auburn City Code and DCYF Regulations.

Virginia Haugen 2503 R ST SE Auburn WA

Ms. Haugen expressed her concerns regarding Resolution No. 5700.

Shirley Chittenden 1440 22nd St. SE Auburn WA

Ms. Chittenden expressed concerns regarding City employee benefits received, and the affordable housing in Auburn.

## **B. Correspondence**

There was no correspondence for Council to review.

## **VIII. COUNCIL AD HOC COMMITTEE REPORTS**

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

1. Finance Ad Hoc Committee (Chair Baldwin)

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

2. Mayoral Benefits and Leave Compensation Review Ad Hoc Committee (Chair Baldwin)

Councilmember Baldwin, Chair of the Mayoral Benefits and Leave Compensation Review ad hoc committee, reported the committee met and reviewed the requested documents. The committee will meet again on March 10 and 14, 2023.

**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 February 21, 2023 City Council Meeting

B. Minutes of the February 27, 2023 Study Session Meeting

C. Claims Voucher (Thomas)

Claims voucher list dated March 6, 2023 which includes voucher number 471176 through 471292, in the amount of \$2,020,804.49 and 5 wire transfers in the amount of \$827,151.10

D. Payroll Voucher (Thomas)

Payroll check numbers 539472 through 539474 in the amount of \$626,039.64, electronic deposit transmissions in the amount of \$2,387,564.44 for a grand total of \$3,013,604.08 for the period covering February 16, 2023 to March 1, 2023

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

MOTION CARRIED UNANIMOUSLY. 6-0

**X. UNFINISHED BUSINESS**

There was no unfinished business.

**XI. NEW BUSINESS**

There was no new business.

## **XII. RESOLUTIONS**

### **A. Resolution No. 5700 (Tate)**

A Resolution authorizing agreements for the funding of Affordable Housing Projects, as recommended by the South King Housing and Homelessness Partners (SKHHP) Executive Board, utilizing funds contributed by the City to the SKHHP Housing Capital Fund

Councilmember Rakes moved and Deputy Mayor Jeyaraj seconded to approve Resolution No. 5700.

MOTION CARRIED UNANIMOUSLY. 6-0

## **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 Baggett reported on the status of a case of Tuberculosis in Pierce County, and the upcoming Tacoma-Pierce County Opioid Task Force Annual Summit.

Councilmember Rakes reported she attended the 25th Annual Asian Pacific New Year Celebration.

### **B. From the Mayor**

Mayor Backus reported she attended the Good Eggs Breakfast, Ribbon Cutting at the Joy Hour, toured the Sound Transit Ballard Link addition and the Lynnwood to Everett Link Extension, hosted the South King Housing and Homeless Partners Executive Director on a tour of affordable housing in Auburn, and did an interview with Live from Seattle.

#### **1. Executive Session**

Mayor Backus adjourned into an executive session at 7:29 p.m. per RCW 42.30.110(1)(i) to discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency for 15 minutes. City Attorney Comeau, Senior Staff Attorney Ruth, and Director of Public Works Gaub were required to attend. There is anticipated action after the executive session.

Mayor Backus reconvened the meeting at 7:45 p.m.

2. Resolution No. 5707

Deputy Mayor Jeyaraj moved and Councilmember Brown seconded to approve Resolution No. 5707.

MOTION CARRIED UNANIMOUSLY. 6-0

**XIV. ADJOURNMENT**

There being no further business to come before the Council, the meeting was adjourned at 7:46 p.m.

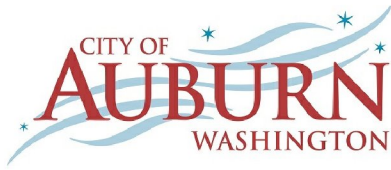
APPROVED this 3rd day of April, 2023.

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NANCY BACKUS, MAYOR

Shawn Campbell, City Clerk

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## AGENDA BILL APPROVAL FORM

---

**Agenda Subject:**

Minutes of the March 13, 2023 Study Session Meeting

**Department:**

City Council

**Attachments:**

[03-13-2023 Minutes](#)

**Date:**

March 29, 2023

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

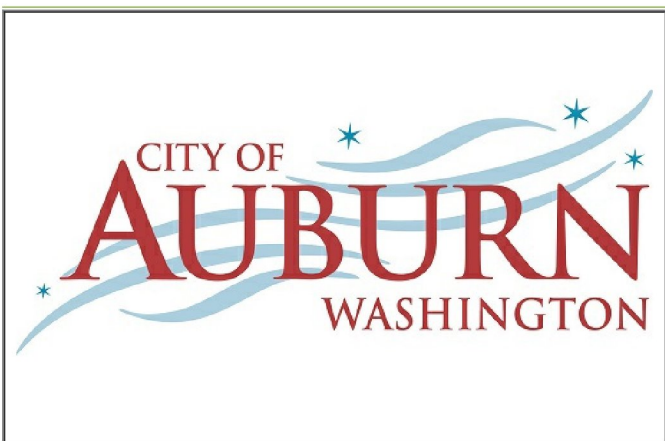
Revised Budget: \$0

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

**Meeting Date:** April 3, 2023

**Staff:**

Item Number: CA.B

|                                                                                   |                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p><b>City Council Study Session Finance,<br/>Technology and Economic Development<br/>Special Focus Area<br/>March 13, 2023 - 5:30 PM<br/>City Hall Council Chambers<br/>MINUTES<br/>Watch the meeting LIVE!</b></p> <p><b>Watch the meeting video</b><br/>Meeting videos are not available until 72<br/>hours after the meeting has concluded.</p> |
|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. CALL TO ORDER

II. PUBLIC PARTICIPATION

A. Public Participation

The City Council Meeting was held in person and virtually.

B. Roll Call

Councilmembers present: Deputy Mayor James Jeyaraj, Bob Baggett, Kate Baldwin, Larry Brown, Cheryl Rakes, and Yolanda Trout-Manuel. Councilmember Robyn Mulenga was excused.

Department directors and staff members present include: Senior City Staff Attorney Harry Boesche, Assistant Chief of Police Samuel Betz, Director of Innovation and Technology David Travis, Director of Finance Jamie Thomas, 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

There were no announcements, reports, or presentations.

V. FINANCE, TECHNOLOGY AND ECONOMIC DEVELOPMENT DISCUSSION ITEMS

A. 4th Quarter 2022 Financial Report Update (Thomas) (10 Minutes)

This portion of the meeting was Chaired by Chair Baldwin.

Director Thomas provided Council with an overview of the 2022 4th Quarter Financial Report including the General Fund Revenue overview, Tax Revenue, Property Tax, Retail Sales and Use Tax, comparison of Retail Sales Tax collections by group, Utility Tax including Water, Sewer,

Storm, Solid Waste, Electric, Natural Gas, Cable, and Telephone tax rate. She also discussed the Business and Occupation Tax, and other taxes including Criminal Justice Sales Tax, Admissions Tax, Gambling Tax, Leasehold Excise Tax, and Franchise Fees, Licenses and Permits, Intergovernmental Revenue, charges for services including General Government, Public Safety, Development Services, and Culture and Recreation. Director Thomas also provided Council with an overview of the General Fund Expenditures including expenditures by department, ARPA Funds update, Non-General Fund highlights, and Enterprise Funds.

Council discussed tax adjustments, number of available off-duty Police Officers, ARPA Funds, Solid Waste Rate increases, and recruitment. Council also discussed the Council Retreat, agenda, and budget.

## VI. ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 6:13 p.m.

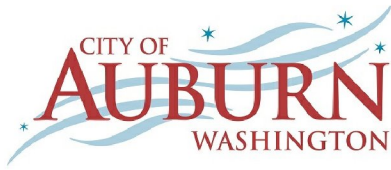
APPROVED this 3rd day of April 2023.

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JAMES JEYARAJ, DEPUTY MAYOR      Hannah Scholl, Deputy City Clerk

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## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Minutes of the March 20, 2023 Special City Council Meeting

**Department:**

City Council

**Attachments:**

[03-20-2023 Minutes](#)

**Date:**

March 29, 2023

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

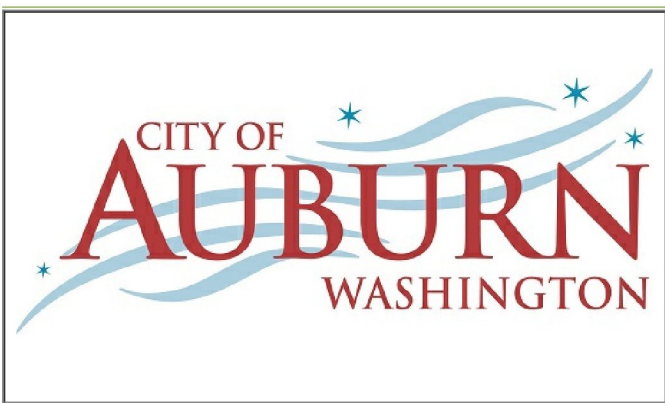
Revised Budget: \$0

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

**Meeting Date:** April 3, 2023

**Staff:**

Item Number: CA.C

|                                                                                   |                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p align="center"> <b>City Council Meeting</b><br/> <b>March 20, 2023 - 7:00 PM</b><br/> <b>SPECIAL MEETING - City Hall Council</b><br/> <b>Chambers</b><br/> <b>MINUTES</b><br/> <b>Watch the meeting LIVE!</b> </p> <p align="center"> <b>Watch the meeting video</b><br/> Meeting videos are not available until 72<br/> hours after the meeting has concluded. </p> |
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## **I. CALL TO ORDER**

## **II. LAND ACKNOWLEDGMENT**

## **III. PUBLIC PARTICIPATION**

### **1. Public Participation**

The Special City Council Meeting was held in person and virtually.

### **A. Pledge of Allegiance**

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

## **IV. Roll Call**

Councilmembers present: Deputy Mayor James Jeyaraj, Bob Baggett, Kate Baldwin, Larry Brown, Robyn Mulenga, Cheryl Rakes, and Yolanda Trout-Manuel.

Department directors and staff members present included: Senior City Staff Attorney Harry Boesche, Police Commander Dave Colglazier, Director of Finance Jamie Thomas, Human Resources and Risk Management Director Candis Martinson, and City Clerk Shawn Campbell.

## **V. EXECUTIVE SESSION**

### **1. Executive Session**

Mayor Backus adjourned into an executive session at 7:03 p.m. per RCW 42.30.110(1)(i) to discuss with legal counsel representing the agency in matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party,

when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency for 15 minutes. Senior City Staff Attorney Boesche, Director of Human Resources Martinson, Director of Finance Thomas, Third-Party Administrator (TPA) Representative Dawn Bristlin,(TPA) Eberle Vivian, and outside Counsel Ryan Miller were required to attend. There is anticipated action after the executive session.

Mayor Backus extend the executive session by 5 minutes.

Mayor Backus reconvened the meeting at 7:28 p.m.

## 2. Settlement Agreement

Deputy Mayor Jeyaraj moved and Councilmember Trout-Manuel seconded to authorize Attorney Ryan Miller, and the Law Firm of Hall & Miller, to explore a potential settlement regarding the pending Worker's Compensation Claim, Claim No. SM06179, to authorize Ryan Miller to offer up the remaining balance of the City's liability under its excess policy, and to offer any authority provided by the excess carrier, in order to obtain a Global Settlement. Provided, Final Settlement of this Claim will be subject to Council review and approval of a written Settlement Agreement.

## VI. 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.

No public comments were received and no one came forward to speak.

## VII. ADJOURNMENT

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

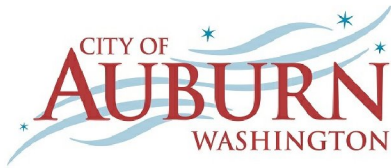
APPROVED this 3rd day of April, 2023.

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NANCY BACKUS, MAYOR

Shawn Campbell, City Clerk

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## AGENDA BILL APPROVAL FORM

---

**Agenda Subject:**

Claims Voucher (Thomas)

**Date:**

March 16, 2023

**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 March 20, 2023 which includes voucher number 471293 through 471447, in the amount of \$4,659,856.47 and two wire transfers in the amount of \$957,038.33.

Claims voucher list dated April 3, 2023 which includes voucher number 471448 through 471550, in the amount of \$4,720,925.59 and three wire transfers in the amount of \$841,459.18.

**Reviewed by Council Committees:**

**Councilmember:** Baldwin

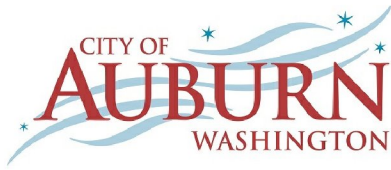
**Staff:**

Thomas

**Meeting Date:** April 3, 2023

Item Number:

CA.D



## AGENDA BILL APPROVAL FORM

---

**Agenda Subject:**

Payroll Voucher (Thomas)

**Date:**

March 16, 2023

**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 539475 through 539478 in the amount of \$78,165.14, electronic deposit transmissions in the amount of \$2,575,889.59 for a grand total of \$2,654,054.73 for the period covering March 2, 2023 to March 15, 2023.

Payroll check numbers 539479 through 539481 in the amount of \$722,979.29, electronic deposit transmissions in the amount of \$2,447,751.14 for a grand total of \$3,170,730.43 for the period covering March 16, 2023 to March 29, 2023.

**Reviewed by Council Committees:**

**Councilmember:** Baldwin

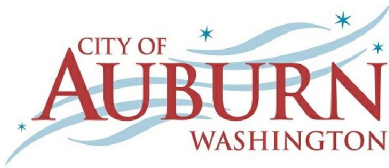
**Staff:**

Thomas

**Meeting Date:** April 3, 2023

Item Number:

CA.E



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Resolution No. 5704 (Comeau)

**Date:**

March 14, 2023

**Department:**

Legal

**Attachments:**

[Resolution No. 5704](#)

[Exhibit A PSE Utility Easement](#)

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

City Council to approve Resolution No. 5704.

**Background for Motion:**

This easement allows Puget Sound Energy legal access to work in within the easement area and defines the roles and responsibilities of the City and Puget Sound Energy.

**Background Summary:**

Puget Sound Energy is a gas and electric utility provider. PSE has existing utility facilities located along the northern boundary of City-owned real property identified as King County parcel number 7331400135 (the City Property"). These facilities exist on the City property without having the property rights to be there. Because these facilities supply critical utilities to several commercial and residential properties located along the northern boundary of the City Property, it is in the best interest of the public that the facilities be allowed to remain along the northern boundary of the City Property. Further, executing an easement in favor of Puget Sound Energy will clearly establish the approved location of the facilities as well as the rights, benefits, and responsibilities of each party.

**Reviewed by Council Committees:**

**Councilmember:** Jeyaraj

**Staff:**

Comeau

**Meeting Date:** April 3, 2023

Item Number:

RES.A

## **RESOLUTION NO. 5704**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A UTILITY EASEMENT ON CITY PROPERTY IN FAVOR OF PUGET SOUND ENERGY

WHEREAS, the City of Auburn owns real property identified as King County parcel number 7331400135 (the "Property"); and

WHEREAS, Puget Sound Energy has utility facilities ("PSE Facilities") located along the Property's northern boundary line that serve a number of commercial and residential properties in that area; and

WHEREAS, it is in the best interest of the City and PSE to have a utility easement agreement in place that identifies the location of the PSE Facilities, and sets forth the rights, benefits and responsibilities of each party regarding the facilities and the Property.

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

**Section 1.** The Auburn City Council authorizes the Mayor to execute and convey the utility easement attached as "Exhibit A" to PSE. By its terms, this conveyance will be at no cost to either party.

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



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

Dated and Signed: \_\_\_\_\_

CITY OF AUBURN

\_\_\_\_\_  
NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Shawn Campbell, MMC, City Clerk

\_\_\_\_\_  
Kendra Comeau, City Attorney

**RETURN ADDRESS:**

**Puget Sound Energy, Inc.  
Attn: ROW Department  
PO Box 97034 / BEL08W (SAM)  
Bellevue, WA 98009-9734  
Attn: Sam Meldrum**



**EASEMENT**

**REFERENCE #:**

**GRANTOR (Owner):**

**CITY OF AUBURN**

**GRANTEE (PSE):**

**PUGET SOUND ENERGY, INC.**

**SHORT LEGAL:**

**Portion of the NW ¼ of the SW ¼ Sect. 18, T21N, R5E, W.M., King County**

**ASSESSOR'S PROPERTY TAX PARCEL: 733140-0135**

For and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **CITY OF AUBURN**, a municipal corporation of the State of Washington ("Owner" herein), hereby grants and conveys to **PUGET SOUND ENERGY, INC.**, a Washington corporation ("PSE" herein), for the purposes described below, a nonexclusive perpetual easement over, under, along across and through the following described real property (the "Property" herein) in King County, State of Washington:

**SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.**

Except as may be otherwise set forth herein PSE's rights shall be exercised upon that portion of the Property ("Easement Area" herein) described as follows:

**SEE EXHIBITS "B" & "C" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.**

**1. Purpose.** PSE shall have the right to use the Easement Area to construct, operate, maintain, repair, replace, improve, remove, upgrade and extend one or more utility systems for purposes of transmission, distribution and sale of electricity. Such systems may include, but are not limited to:

**Underground facilities.** Conduits, lines, cables, vaults, switches and transformers for electricity; fiber optic cable and other lines, cables and facilities for communications; semi-buried or ground-mounted facilities and pads, manholes, meters, fixtures, attachments and any and all other facilities or appurtenances necessary or convenient to any or all of the foregoing.

Following the initial construction of all or a portion of its systems, PSE may, from time to time, construct such additional facilities as it may require for such systems. PSE shall have the right of access to the Easement Area over and across the Property to enable PSE to exercise its rights granted in this easement.

**2. Easement Area Clearing and Maintenance.** PSE shall have the right, but not the obligation to cut, remove and dispose of any and all brush, trees or other vegetation in the Easement Area. PSE shall also have the right, but not the obligation, to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, trees or other vegetation in the Easement Area.

**3. Trees Outside Easement Area.** PSE shall have the right to cut, trim remove and dispose of any trees located on the Property outside the Easement Area that could, in PSE's sole judgment, interfere with or create a hazard to PSE's systems. PSE shall, except in the event of an emergency, prior to the exercise of such right, identify such trees and make a reasonable effort to give Owner prior notice that such trees will be cut, trimmed, removed or disposed. Owner shall be entitled to compensation for the actual market value of merchantable timber (if any) cut and removed from the Property by PSE.

**4. Restoration.** Following initial installation, repair or extension of its facilities, PSE shall, to the extent reasonably practicable, restore landscaping and surfaces and portions of the Property affected by PSE's work to the condition existing immediately prior to such work, unless said work was done at the request of Owner, in which case Owner shall be responsible for such restoration. All restoration which is the responsibility of PSE shall be performed as soon as reasonably possible after the completion of PSE's work and shall be coordinated with Owner so as to cause the minimum amount of disruption to Owner's use of the Property.

**5. Owner's Use of Easement Area.** Owner reserves the right to use the Easement Area for any purpose not inconsistent with the rights herein granted, provided, however, Owner shall not excavate within or otherwise change the grade of the Easement Area or construct or maintain any buildings or structures on the Easement Area and Owner shall do no blasting within 300 feet of PSE's facilities without PSE's prior written consent.

**6. Indemnity.** PSE agrees to indemnify Owner from and against liability incurred by Owner as a result of the negligence of PSE or its contractors in the exercise of the rights herein granted to PSE, but nothing herein shall require PSE to indemnify Owner for that portion of any such liability attributable to the negligence of Owner or the negligence of others.

**7. Termination.** The rights herein granted shall continue until such time as PSE terminates such right by written instrument. If terminated, any improvements remaining in the Easement Area shall become the property of Owner. No termination shall be deemed to have occurred by PSE's failure to install its systems on the Easement Area.

**8. Successors and Assigns.** PSE shall have the right to assign, apportion or otherwise transfer any or all of its rights, benefits, privileges and interests arising in and under this easement. Without limiting the generality of the foregoing, the rights and obligations of the parties shall be binding upon their respective successors and assigns.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

OWNER: **CITY OF AUBURN**

By: \_\_\_\_\_  
(name)

Printed  
Name: \_\_\_\_\_

Its: \_\_\_\_\_  
(title)

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person(s) who signed as \_\_\_\_\_, of **CITY OF AUBURN**, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be his/her/their free and voluntary act and deed and the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned; and on oath stated that he/she/they was authorized to execute the said instrument on behalf of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)

**NOTARY PUBLIC** in and for the State of Washington, residing at \_\_\_\_\_

My Appointment Expires: \_\_\_\_\_

Notary seal, text and all notations must be inside 1" margins

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**APN: 733140-0135**

**THAT PORTION OF PARCEL A, CITY OF AUBURN LOT LINE ADJUSTMENT NO. BLA 13-0007, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDING NO. 20131108900002, RECORDS OF KING COUNTY, STATE OF WASHINGTON;**

**TOGETHER WITH VACATED ADJOINING ALLEY, ACCORDING TO CITY OF AUBURN ORDINANCE NO. 3200, RECORDED UNDER RECORDING NOS. 7710130225 AND 7711100780, RECORDS OF KING COUNTY, STATE OF WASHINGTON;**

**AND**

**TOGETHER WITH VACATED ADJOINING ROAD AND ALLEY, ACCORDING TO CITY OF AUBURN ORDINANCE NO. 6614, RECORDED UNDER RECORDING NO. 20161010000262, RECORDS OF KING COUNTY, STATE OF WASHINGTON.**

## EXHIBIT "B"

### PSE EASEMENT LEGAL DESCRIPTION

THAT PORTION OF PARCEL A, CITY OF AUBURN BOUNDARY LINE ADJUSTMENT NO. BLA13-0007 RECORDED UNDER RECORDING NO. 20131108900002, RECORDS OF KING COUNTY, WASHINGTON, TOGETHER WITH VACATED ADJOINING ALLEY PER CITY OF AUBURN ORDINANCE NO. 3200 UNDER RECORDING NOS. 7710130225 AND 7711100780, AND TOGETHER WITH VACATED ADJOINING ROAD AND ALLEY PER CITY OF AUBURN ORDINANCE NO. 6614 UNDER RECORDING NO. 20161010000262, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL A;  
THENCE SOUTH 87°31'17" WEST, ALONG THE NORTHERLY LINE OF SAID PARCEL A AND THE SOUTHERLY RIGHT-OF-WAY MARGIN OF ALLEY DESCRIBED IN DEED, RECORDED UNDER KING COUNTY RECORDING NO. 1018859, A DISTANCE OF 481.76 FEET;  
THENCE SOUTH 01°01'17" WEST 18.73 FEET;  
THENCE SOUTH 88°47'53" WEST 12.17 FEET TO AN ANGLE POINT IN SAID NORTHERLY LINE;  
THENCE SOUTH 88°47'53" WEST, ALONG SAID NORTHERLY LINE, 6.72 FEET;  
THENCE SOUTH 78°39'06" WEST 31.11 FEET;  
THENCE NORTH 01°12'07" WEST 1.38 FEET;  
THENCE SOUTH 88°47'53" WEST 12.83 FEET TO THE WESTERLY LINE OF SAID PARCEL A AND THE EASTERLY RIGHT-OF-WAY MARGIN OF A STREET SE (MAIN STREET);  
THENCE SOUTH 01°02'41" WEST, ALONG SAID EASTERLY MARGIN, 16.01 FEET;  
THENCE NORTH 88°47'53" EAST 13.45 FEET;  
THENCE NORTH 01°12'07" WEST 4.46 FEET;  
THENCE NORTH 78°39'06" EAST 32.01 FEET;  
THENCE NORTH 88°47'53" EAST 27.63 FEET;  
THENCE NORTH 01°01'17" EAST 18.94 FEET;  
THENCE NORTH 87°31'17" EAST 37.60 FEET;  
THENCE SOUTH 02°28'43" EAST 4.50 FEET;  
THENCE NORTH 87°31'17" EAST 9.00 FEET;  
THENCE SOUTH 02°28'43" EAST 4.00 FEET;  
THENCE NORTH 87°31'17" EAST 18.00 FEET;  
THENCE NORTH 02°28'43" WEST 8.50 FEET;  
THENCE NORTH 87°31'17" EAST 86.75 FEET;  
THENCE SOUTH 02°28'43" EAST 3.50 FEET;  
THENCE NORTH 87°31'17" EAST 14.00 FEET;  
THENCE NORTH 02°28'43" WEST 3.50 FEET;  
THENCE NORTH 87°31'17" EAST 94.00 FEET;  
THENCE SOUTH 02°28'43" EAST 7.00 FEET;  
THENCE NORTH 87°31'17" EAST 16.00 FEET;  
THENCE NORTH 02°28'43" WEST 7.00 FEET;  
THENCE NORTH 87°31'17" EAST 51.00 FEET;  
THENCE SOUTH 02°28'43" EAST 6.50 FEET;  
THENCE NORTH 87°31'17" EAST 16.00 FEET;  
THENCE NORTH 02°28'43" WEST 6.50 FEET;  
THENCE NORTH 87°31'17" EAST 129.38 FEET TO THE EASTERLY LINE OF SAID PARCEL A;  
THENCE NORTH 01°02'42" EAST, ALONG SAID EASTERLY LINE, 10.02 FEET TO THE POINT OF BEGINNING;

SAID EASEMENT CONTAINS 6,173 SQUARE FEET, MORE OR LESS;

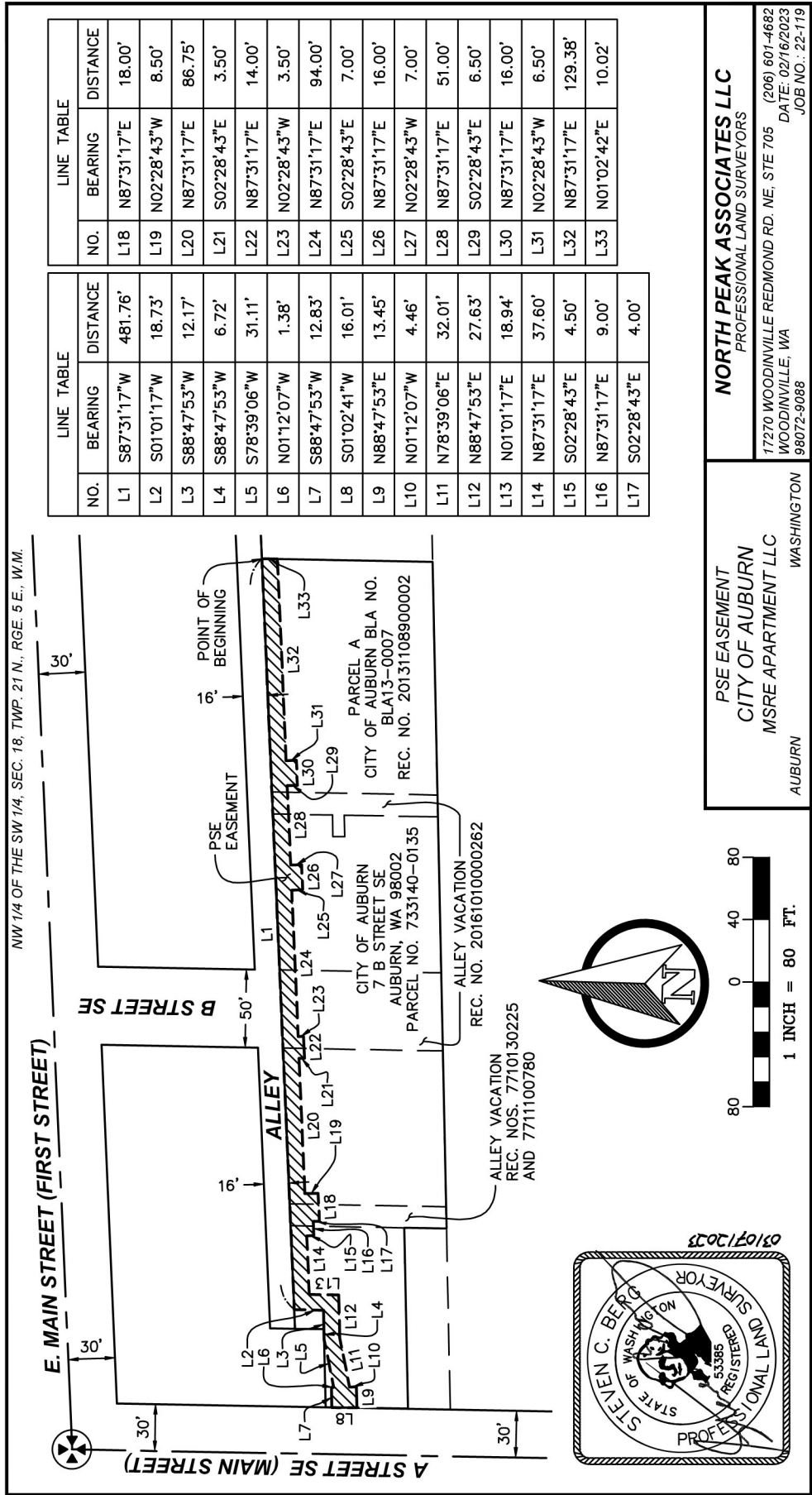
SITUATE IN KING COUNTY, WASHINGTON.

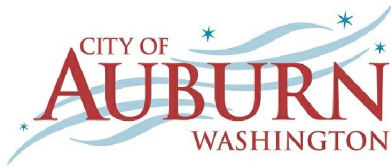


MSRE APARTMENT LLC  
JOB NO. 22-119  
FEBRUARY 16, 2023

STEVEN C. BERG, P.L.S.  
NORTH PEAK ASSOCIATES LLC  
17270 WOODINVILLE REDMOND RD NE, STE 705  
WOODINVILLE, WASHINGTON 98072

EXHIBIT "C"  
Easement Illustration





## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Resolution No. 5705 (Faber)

**Date:**

March 16, 2023

**Department:**

Parks, Arts & Recreation

**Attachments:**

[Resolution No. 5705](#)

[Exhibit A](#)

**Budget Impact:**

King County Grant

Acceptance: \$234,925

**Administrative Recommendation:**

City Council to approve Resolution No. 5705.

**Background for Motion:**

Resolution 5705 accepts grant funding awarded to the City by King County's Parks Capital and Open Space Program to implement several construction projects at Cedar Lanes Park.

**Background Summary:**

King County has granted the City with \$234,925 from the Parks Capital and Open Space Program for amenities at Cedar Lanes Park. These amenities include a new restroom, picnic shelter, bicycle storage building, and parking and pathway improvements. City-matching funds from Park Impact Fees are \$338,000.

**Reviewed by Council Committees:**

**Councilmember:** Baldwin

**Staff:** Faber

**Meeting Date:** April 3, 2023

**Item Number:** RES.B



**RESOLUTION NO. 5705**

A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF AUBURN, WASHINGTON, AUTHORIZING  
THE MAYOR TO EXECUTE A CAPITAL GRANT  
AGREEMENT WITH KING COUNTY, WASHINGTON  
FOR PARKS CAPITAL AND OPEN SPACE  
PROGRAM FUNDS, AND TO APPROPRIATE AND  
EXPEND THE GRANT FUNDS

WHEREAS, King County's Parks Capital and Open Space Program provides grants to projects that that expand and improve recreation opportunities, including the development of active and passive recreation and trail facilities; and

WHEREAS, the City of Auburn desires to add amenities to the 7 acre Cedar Lanes Park in coordination with construction of the new mountain bike skills course and pump track. These amenities include a restroom, picnic shelter, storage container (for City bike programs), and parking and pathway improvements; and

WHEREAS, The King County Parks and Recreation Division has accepted the City of Auburn's Cedar Lanes Amenities project as a grant fund recipient; and

WHEREAS, the Grant shall provide up to \$234,925.00 to the City for construction of the amenities; and

WHEREAS, execution of a Capital Project Grant Agreement with King County is a condition for receipt of the capital grant funds.

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

**Section 1.** The Mayor is authorized to execute with King County a capital grant agreement substantially similar to the one attached as Exhibit A.

**Section 2.** The Mayor is authorized to expend the grant funds and implement such administrative procedures as may be necessary to carry out the directives of this legislation.

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

Dated and Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF AUBURN

\_\_\_\_\_  
NANCY BACKUS, MAYOR

ATTEST:

\_\_\_\_\_  
Shawn Campbell, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kendra Comeau, City Attorney



**PARKS CAPITAL AND OPEN SPACE PROGRAM**  
**CAPITAL PROJECT GRANT AGREEMENT**

Department/Division: Natural Resources and Parks / Parks and Recreation

Grant Recipient: City of Auburn Parks Department

Project: Cedar Lanes Amenities

Award Amount: \$234,925.00 Project#: 1144509 Contract#: 6328584

Term Period: \_\_\_\_\_ To 11/31/2024

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THIS AGREEMENT is a grant agreement entered into between City of Auburn Parks Department (the “Grant Recipient”) and King County (the “County”) (collectively the “Parties”) for an active recreation, passive recreation, local trail, or other capital project in a park or recreational facility using a Parks Capital and Open Space Program grant.

**RECITALS**

- A. Ordinance 18890, which took effect May 13, 2019, called for a special election to authorize the King County parks, recreation trails and open space levy. On August 6, 2019, King County voters approved the levy, which included funding for capital projects for active and passive recreation, local trails, or capital projects in parks and recreation facilities in order to construct new and improve existing recreation facilities to address the pressures of rapid growth in King County.
- B. Motion 15378, Section A.1., and Attachment A, further delineated the use of levy funds for the Parks Capital and Open Space Grants Program and the guidelines governing that use.
- C. Ordinance 19166, Attachment A established the grant award criteria and the process for the distribution of Parks Capital and Open Space Grants as well as the proposed composition of an advisory committee to review and make recommendations on the grant awards.
- D. King County, a home rule charter county and political subdivision of the State of Washington, is authorized to administer the Parks Capital and Open Space Grant Program and enter into agreements for the use of the grant funds with King County towns, cities, or metropolitan parks districts for capital projects for active and passive recreation, local trails, or capital projects in parks and recreation facilities.

- E. Grant Recipient is a City.
- F. The Parks Capital and Open Space Grant Program Advisory Committee has recommended an allocation of levy grant funds to specific projects, pursuant to Ordinance 19433
- G. King County has selected Grant Recipient to receive a Parks Capital and Open Space Grant award in the amount of \$234,925.00 (“Grant Award Funds”) in order to construct, improve, or repair the Project described below and in the attached exhibits.

NOW THEREFORE, in consideration of the promises, covenants, and other provisions set forth in this Agreement, the Parties agree as follows:

### **GRANT AWARD TERMS AND CONDITIONS**

#### 1. DEFINITIONS

##### 1.1 Project.

The term “Project” means the design, development and construction of the Facility described in **Exhibit A**. Grant Award Funds available pursuant to this Agreement may only be used for the Project. To complete the Project, Grant Recipient shall use the Grant Award Funds to design, develop, and construct the Facility, as set forth in **Exhibit B**, consistent with the requirements set forth in this Agreement and in the following attached exhibits, which are incorporated herein by reference:

|                                     |                              |                              |
|-------------------------------------|------------------------------|------------------------------|
| <input checked="" type="checkbox"/> | Map of Facility and Location | Attached hereto as Exhibit A |
| <input checked="" type="checkbox"/> | Scope of Work                | Attached hereto as Exhibit B |
| <input checked="" type="checkbox"/> | Project Budget               | Attached hereto as Exhibit C |
| <input checked="" type="checkbox"/> | Insurance Requirements       | Attached hereto as Exhibit D |
| <input checked="" type="checkbox"/> | Notice of Grant              | Attached hereto as Exhibit E |

- 1.2 Map of Facility and Location. This Agreement applies to the Project to improve the park and recreational facility (“Facility”) which is located at:

**1002 25th Street SE, Auburn, WA. 98002**

See **Exhibit A** for a depiction of the Facility and a map of specific Facility location and boundaries.

- 1.3 Scope of Work. Grant Recipient shall provide a scope of work (“Scope of Work”), attached hereto as **Exhibit B**, which describes the Project in detail and includes a description of the various design, development, permitting, and construction milestones required for completion of the Project and intended use of the Grant

Award Funds. Grant Recipient shall apply the funds received from the County for the Project under this Agreement in accordance with the Scope of Work, attached hereto as **Exhibit B**.

1.4 **Project Budget.** Grant Recipient shall work with King County to develop a Project Budget, attached hereto as **Exhibit C**. King County shall provide the Grant Award Funds to the Grant Recipient to pay for costs and expenditures related to the Project, as set forth in **Exhibits B and C**. Grant Award Funds provided to Grant Recipient may only be used to pay for costs and expenditures related to the Project, as set forth in **Exhibits B and C**.

1.5 **Contractor.** Contractor shall include any contractor or consultant hired by Grant Recipient, including any of the contractor's or consultant's subcontractors or subconsultants.

2. **EFFECTIVE DATE**

The Agreement shall be effective upon signature by both Parties ("Effective Date").

3. **TERM**

The term ("Term") of this Agreement shall begin on the Effective Date and end on **11/31/2024**. This Agreement shall remain in effect until such time as it is amended in writing or terminated as provided herein.

4. **AMENDMENTS**

This Agreement together with the attached exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole Agreement between the Parties. This Agreement may be amended only by an instrument, in writing, duly executed by the Parties. Either party may request changes to this Agreement, however, changes that deviate substantially from the proposal submitted to and approved by the Advisory Committee and the King County Council will need to be approved by those entities.

5. **NOTICES**

Unless otherwise specified in the Agreement, all notices or documentation required or provided pursuant to this Agreement shall be in electronic form and shall be deemed duly given when received at the addresses first set forth below via electronic mail.

| <b>KING COUNTY</b>                     | <b>City of Auburn Parks Department</b> |
|----------------------------------------|----------------------------------------|
| Rusty Milholland                       | Thaniel Gouk                           |
| Program Manager, Community Investments | Parks Planning and Development Manager |
| King County Parks                      | City of Auburn Parks Department        |
| 201 S Jackson Street Suite #5702       | 25 West Main Street                    |
| Seattle, WA 98104                      | Auburn, WA. 98001                      |
| 206-477-4577                           | 253-931-4011                           |
| butch.lovelace@kingcounty.gov          | tgouk@auburnwa.gov                     |

Either Party hereto may, at any time, by giving ten (10) days written notice to the other Party to designate any other address in substitution of the foregoing address to which



such notice or communication shall be given.

6. DISBURSEMENT OF GRANT FUNDS

- 6.1 The County may authorize, at County’s sole discretion, release of a portion of the Grant Award Funds to Grant Recipient, upon execution of this Agreement, and receipt of Grant Recipient’s County-approved completed Scope of Work and Project Budget (see Section 1 and **Exhibits B and C**).
- 6.2 The County shall initiate authorization for payment and disbursement of Grant Award Funds after approval of sufficiently detailed Project-related invoices submitted by Grant Recipient. The County shall make payment to Grant Recipient not more than thirty (30) days after a complete and accurate invoice and any other required documentation is received and approved.
- 6.3 Grant Recipient shall submit the final invoice, supporting documentation and any outstanding deliverables, as specified in the Scope of Work (**Exhibit B**) and Project Budget (**Exhibit C**), within thirty (30) days of the date this Agreement expires or is terminated. If the Grant Recipient’s final invoice, supporting documentation and reports are not submitted by the day specified in this subsection, the County will be relieved of all liability for payment to Grant Recipient of the amounts set forth in said invoice or any subsequent invoice.

7. GRANT REPORTING

All Grant Award Funds received pursuant to this Agreement and accrued interest therefrom will be accounted for separately from all other Grant Recipient accounts and moneys. Until the Project is completed, and all proceeds provided pursuant to this Agreement have been expended, the Grant Recipient shall provide reports to the King County Project Manager on a schedule determined by the County.

8. COMPLETION OF THE PROJECT

Grant Recipient shall complete the Project described in Section 1.1 and **Exhibits A, B and C** of this Agreement. If Grant Recipient cannot complete the Project, as specified by the Scope of Work and deliverables set forth in **Exhibit B**, the County shall be released from any obligation to fund the Project, and the County in its sole discretion may reallocate such funds for other projects in other jurisdictions.

Pursuant to Section 19, Termination, this Agreement will be terminated if the Grant Recipient is unable or unwilling to expend the Grant Award Funds for the Project as provided in this Agreement. The Grant Recipient may not redirect Grant Award Funds for a purpose other than completion of the Project as approved by the Advisory Committee and King County Council.

9. COMMUNICATION AND KING COUNTY MILESTONE NOTIFICATION

Grant Recipient shall recognize County as a “grant sponsor” for the Project in the following manner:

- 9.1 Events: Grant Recipient shall invite and recognize “King County Parks” at all events promoting the Project, and at the final Project dedication.
- 9.2 Community Relations: Grant Recipient shall recognize “King County Parks” as a

“grant sponsor” in all social media, websites, brochures, banners, posters, press releases, and other promotional material related to the Project.

9.3 King County Parks Notification: Grant Recipient shall notify the King County Parks Project Manager 30 days prior to any major milestone, such as a groundbreaking or opening dates.

9.4 King County Council Notification: If Grant Recipient is a city or town notification to the King County Council 30 days prior to any major milestone, such as a groundbreaking or opening dates is, required.

9.5 Signage: Grant Recipient shall recognize “King County Parks” on any signage as a funder/contributor of project/facility. Grant Recipient is required to use appropriate King County logo on any signage and communications.

10. DISPOSITION OF REMAINING GRANT AWARD FUNDS

If Grant Recipient does not expend all proceeds obligated to be provided through this Agreement, such proceeds, if held by Grant Recipient, shall be refunded to the County. For purposes of this section, “proceeds” shall include all Grant Award Funds obligated to be provided by the County plus interest accrued by Grant Recipient on the grant funds. Any proceeds in excess of those required to be provided by the County for the actual costs of the Project shall remain with the County for use in its sole discretion.

11. PUBLIC ACCESS

The Grant Award is provided to Grant Recipient for the Project for the purpose of land protection and recreation for the citizens of King County. Therefore, Grant Recipient and any successor in interest agree to maintain the Facility for public use as required by Ordinances 18890 and 19166, and the Parks Capital and Open Space Grant program requirements specified in Moton 15378. The Facility shall be open and accessible to the public at reasonable hours and times. Grant Recipient shall notify the public of the availability of use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information. Fees for use of the Facility shall be no greater than those generally charged by public operators of similar facilities in King County.

Notwithstanding temporary closure for required maintenance or repairs, the minimum period of time Grant Recipient must ensure the Project is available for public use is thirty (30) years. If the Facility is retired or otherwise removed from use before the end of the thirty-year period, then the Grant Recipient shall reimburse the Grant Award Funds to King County. **Grant Recipient’s duties under this Section 11 will survive the expiration or earlier termination of this Agreement.**

12. NOTICE OF GRANT

Upon completion of construction of the Facility, Grant Recipient shall record the executed Notice of Grant, attached hereto as **Exhibit E**.



13. CONSTRUCTION OF THE FACILITY

13.1 Capital Improvements.

Grant Recipient shall design, develop, and construct mutually agreed upon Facility, features, and amenities in accordance with all applicable design(s), timelines, restrictions, environmental considerations, permitting determinations, neighborhood impact mitigations, and all other requirements in coordination with King County Parks staff. All contracted work by Grant Recipient, its agents, representatives, or subcontractors, shall be bonded and properly insured to ensure the complete and safe design and construction of all facilities, features, and amenities. As between Grant Recipient and King County, Grant Recipient will be solely responsible to comply with all applicable authorities and to obtain all necessary permits, approvals, and endorsements for the Project.

13.2 Warranties.

With respect to all warranties, express or implied, for work performed or materials supplied in connection with the Project, Grant Recipient shall:

- Obtain all warranties, express or implied, that would be given in normal commercial practice from suppliers, manufacturers, contractors or installers;
- Require all warranties be executed, in writing;
- Be responsible to enforce any warranty of a contractor, subcontractor, manufacturer, or supplier.

If, within an applicable warranty period, any part of the Facility or work performed to construct the Facility is found not to conform to specifications, permit requirements, or industry standard, Grant Recipient shall correct it promptly.

13.3 Right to Inspect- Construction.

King County personnel or agents may inspect the construction project at any time provided that such persons observe due regard for workplace safety and security. King County may require Grant Recipient or its contractors to stop work if King County deems work stoppage necessary to remedy construction defects or to address risks to health, safety, or welfare. Grant Recipient specifically understands, acknowledges, and agrees that at a minimum, King County will inspect the Facility construction project before final completion of the Project.

13.4 Design.

Grant Recipient has retained a licensed architect and/or licensed professional engineer, registered in the State of Washington, who will prepare a Project design for the Facility and exterior landscaping, which visually blends with the setting. King County shall review the design plans for the Project in concept and reserves the right to approve the final design of the Project, consistent with established zoning, design code, or both.

13.5 Construction Site/Work Fencing.

Grant Recipient will be solely responsible for the site work, required permits, and



grading for the Project. Grant Recipient will ensure the work area is properly barricaded, and will ensure that signage is installed, directing unauthorized persons not to enter onto the construction site during any phase of development or construction. Unless otherwise agreed by the Parties in writing, fencing will be placed around work areas. In addition, construction areas will be kept clean and organized during development periods. Grant Recipient will be responsible for site security, traffic, and pedestrian warnings at the site during the development and construction phases.

13.5 Alteration of Site or Facility after Construction.

After the Facility is completed and accepted by Grant Recipient and King County as defined herein, Grant Recipient will not make any material alteration to the Facility without express, written consent by King County.

13.6 Development and Construction Fees and Expenses.

Grant Recipient will be responsible to obtain and pay for all necessary permits, fees, and expenses associated with the Project.

13.7 Public Works Laws.

To the extent applicable, Grant Recipient will comply with all public works laws, regulations, and ordinances, including but not limited to those related to prevailing wages (see RCW 39.12), retainage (see RCW 60.28), bonding (see RCW 39.08), use of licensed contractors (see RCW 39.06), and competitive bidding (see RCW 36.32 and RCW 35.21.278). Grant Recipient will indemnify and defend King County should it be sued or made the subject of an administrative investigation or hearing for a violation of such laws, regulations, and ordinances in connection with the improvements.

13.8 Contractor Indemnification and Hold Harmless.

Grant Recipient will require its construction contractors and subcontractors to defend, indemnify, and hold King County, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney's fees and costs, arising out of or in connection with the design, development, and construction of the Facility (hereinafter "Design and Construction Phase"), except for injuries and damages caused by the negligence of King County.

13.9 Minimum Scope and Limits of Insurance.

Grant Recipient shall maintain, and/or require its Contractor(s) to maintain the minimum scope and limits of insurance as required in Exhibit D – Insurance Requirements.

14. INTERNAL CONTROL AND ACCOUNTING SYSTEM

Grant Recipient shall establish and maintain a system of accounting and internal controls which complies with applicable, generally accepted accounting principles, and governmental accounting and financial reporting standards in accordance with Revised Code of Washington (RCW) Chapter 40.14.

15. MAINTENANCE OF RECORDS

- 15.1 Grant Recipient shall maintain accounts and records, including personnel, property, financial, Project records, including Agreement deliverables, and other such records as may be deemed necessary by the County to ensure proper accounting for all Grant Award Funds and compliance with this Agreement.
- 15.2 These records shall be maintained for a period of six (6) years after the expiration or earlier termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14.
- 15.3 Grant Recipient shall inform the County in writing of the location, if different from the Grant Recipient address listed in Section 5 of this Agreement of the aforesaid books, records, documents, and other evidence and shall notify the County in writing of any changes in location within ten (10) working days of any such relocation.

16. RIGHT TO INSPECT

King County reserves the right to review and approve the performance of Grant Recipient with regard to this Agreement, and, at its sole discretion, to inspect or audit the Grant Recipient's records regarding this Agreement and the Project upon seventy-two (72) hours' notice during normal business hours.

17. COMPLIANCE WITH ALL LAWS AND REGULATIONS

Grant Recipient shall comply with all applicable laws, ordinances and regulations in using funds provided by the County, including, without limitation, those relating to providing a safe working environment to employees and, specifically, the requirements of the Washington Industrial Safety and Health Act (WISHA); and, to the extent applicable, those related to "public works," payment of prevailing wages, and competitive bidding of contracts. The Grant Recipient specifically agrees to comply and pay all costs associated with achieving such compliance without notice from King County; and further agrees that King County, does not waive this Section by giving notice of demand for compliance in any instance. The Grant Recipient shall indemnify and defend the County should it be sued or made the subject of an administrative investigation or hearing for a violation of such laws related to this Agreement.

18. CORRECTIVE ACTION

- 18.1 If the County determines that a breach of contract has occurred or does not approve of the Grant Recipient's performance, it will give the Grant Recipient written notification of unacceptable performance. Grant Recipient will then take corrective action within a reasonable period of time, as may be defined by King County in its sole discretion in its written notification to Grant Recipient.
- 18.2 King County may withhold any payment owed Grant Recipient until the County is satisfied that corrective action has been taken or completed.



19. TERMINATION

- 19.1 King County may terminate this Agreement in whole or in part, with or without cause, at any time during the Term of this Agreement, by providing Grant Recipient ten (10) days advance written notice of the termination.
- 19.2 If the termination results from acts or omissions of Grant Recipient, including but not limited to misappropriation, nonperformance of required services, or fiscal mismanagement, Grant Recipient shall return to the County immediately any funds, misappropriated or unexpended, which have been paid to Grant Recipient by the County.
- 19.3 Any King County obligations under this Agreement beyond the current appropriation biennium are conditioned upon the County Council's appropriation of sufficient funds to support such obligations. If the Council does not approve such appropriation, then this Agreement will terminate automatically at the close of the current appropriation biennium.
- 19.4 The Agreement will be terminated if the Grant Recipient is unable or unwilling to expend the Grant Award Funds as specified in Section 1 and **Exhibits B and C**, or upon reimbursement by the Grant Recipient to the County of all unexpended proceeds provided by the County pursuant to this Agreement and payment of all amounts due pursuant to Section 6.

20. FUTURE SUPPORT; UTILITIES AND SERVICE

The County makes no commitment to support the services contracted for herein and assumes no obligation for future support of the activity contracted for herein except as expressly set forth in this Agreement. Grant Recipient understands, acknowledges, and agrees that the County shall not be liable to pay for or to provide any utilities or services in connection with the Project contemplated herein.

21. HOLD HARMLESS AND INDEMNIFICATION

Grant Recipient shall protect, indemnify, and save harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) Grant Recipient's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) work, services, materials, or supplies performed or provided by Grant Recipient's employees or other suppliers in connection with or support of the performance of this Agreement.

Grant Recipient further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Agreement by the Grant Recipient, its officers, employees, agents, representatives, or subcontractors. This duty to repay the County shall not be diminished or extinguished by the expiration or prior termination of the Agreement.

Grant Recipient agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out of,

or is incidental to any use of or occurrence on the Project that is the subject of this Agreement, or Grant Recipient's exercise of rights and privileges granted by this Agreement, except to the extent of the County's sole negligence. Grant Recipient's obligations under this Section shall include:

- A. The duty to promptly accept tender of defense and provide defense to the County at the Grant Recipient's own expense;
- B. Indemnification of claims made by Grant Recipient's employees or agents; and
- C. Waiver of Grant Recipient's immunity under the industrial insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify King County, which waiver has been mutually negotiated by the parties.

In the event it is necessary for the County to incur attorney's fees, legal expenses or other costs to enforce the provisions of this Section, all such fees, expenses and costs shall be recoverable from the Grant Recipient.

In the event it is determined that RCW 4.24.115 applies to this Agreement, the Grant Recipient agrees to protect, defend, indemnify and save the County, its officers, officials, employees and agents from any and all claims, demands, suits, penalties, losses damages judgments, or costs of any kind whatsoever for bodily injury to persons or damage to property (hereinafter "claims"), arising out of or in any way resulting from the Grant Recipient's officers, employees, agents and/or subcontractors of all tiers, acts or omissions, performance of failure to perform the rights and privileges granted under this Agreement, to the maximum extent permitted by law or as defined by RCW 4.24.115, as now enacted or hereafter amended.

A hold harmless provision to protect King County similar to this provision shall be included in all Agreements or subcontractor Agreements entered into by Grant Recipient in conjunction with this Agreement. **Grant Recipient's duties under this Section 21 will survive the expiration or earlier termination of this Agreement.**

22. NONDISCRIMINATION

King County Code ("KCC") chapters 12.16 through 12.19 apply to this Agreement and are incorporated by this reference as if fully set forth herein. In all hiring or employment made possible or resulting from this Agreement, there shall be no discrimination against any employee or applicant for employment because of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

23. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.



24. PROJECT MAINTENANCE; EQUIPMENT PURCHASE, MAINTENANCE, AND OWNERSHIP

- A. As between the County and Grant Recipient, Grant Recipient shall be responsible to operate and maintain the completed Project at its own sole expense and risk. Grant Recipient shall maintain the completed Project in good working condition consistent with applicable standards and guidelines. Grant Recipient understands, acknowledges, and agrees that the County is not responsible to operate or to maintain the Project in any way.
- B. Grant Recipient shall be responsible for all property purchased pursuant to this Agreement, including the proper care and maintenance of any equipment.
- C. Grant Recipient shall establish and maintain inventory records and transaction documents (purchase requisitions, packing slips, invoices, receipts) of equipment and materials purchased with Grant Award Funds.

**Grant Recipient's duties under this Section 24 shall survive the expiration of this Agreement.**

25. ASSIGNMENT

Grant Recipient shall not assign any portion of rights and obligations under this Agreement or transfer or assign any claim arising pursuant to this Agreement without the written consent of the County. Grant Recipient must seek such consent in writing not less than fifteen (15) days prior to the date of any proposed assignment.

26. WAIVER OF BREACH OR DEFAULT

Waiver of breach of any provision in this Agreement shall not be deemed to be a waiver of any subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the County, which shall be attached to the original Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent defaults.

27. TAXES

Grant Recipient agrees to pay on a current basis all taxes or assessments levied on its activities and property, including, without limitation, any leasehold excise tax due under RCW Chapter 82.29A; PROVIDED, however, that nothing contained herein will modify the right of the Grant Recipient to contest any such tax, and Grant Recipient shall not be deemed to be in default as long as it will, in good faith, be contesting the validity or amount of any such taxes.

28. WASHINGTON LAW CONTROLLING; WHERE ACTIONS BROUGHT

This Agreement is made in and will be in accordance with the laws of the State of Washington, which will be controlling in any dispute that arises hereunder. Actions pertaining to this Agreement will be brought in King County Superior Court, King County, Washington.

29. PUBLIC DOCUMENT

This Agreement will be considered a public document and will be available for inspection and copying by the public.

30. LEGAL RELATIONS

Nothing contained herein will make, or be deemed to make, County and Grant Recipient a partner of one another, and this Agreement will not be construed as creating a partnership or joint venture. Nothing in this Agreement will create, or be deemed to create, any right, duty or obligation in any person or entity not a party to it.

31. PERMITS AND LICENSES

Grant Recipient shall develop and run the Project in accordance with all applicable laws and regulatory requirements including environmental considerations, permitting determinations, and other legal requirements. All activities and improvements shall be performed by Grant Recipient at its sole expense and liability. Grant Recipient shall, at its sole cost and expense, apply for, obtain and comply with all necessary permits, licenses and approvals required for the Project.

32. INTERPRETATION OF COUNTY RULES AND REGULATIONS

If there is any question regarding the interpretation of any County rule or regulation, the County decision will govern and will be binding upon the Grant Recipient.

33. ENTIRE AGREEMENT

This Agreement, including its attachments, constitutes the entire Agreement between the County and Grant Recipient. It supersedes all other agreements and understandings between them, whether written, oral or otherwise.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the first date written.

City of Auburn Parks Department

King County

By \_\_\_\_\_

By \_\_\_\_\_

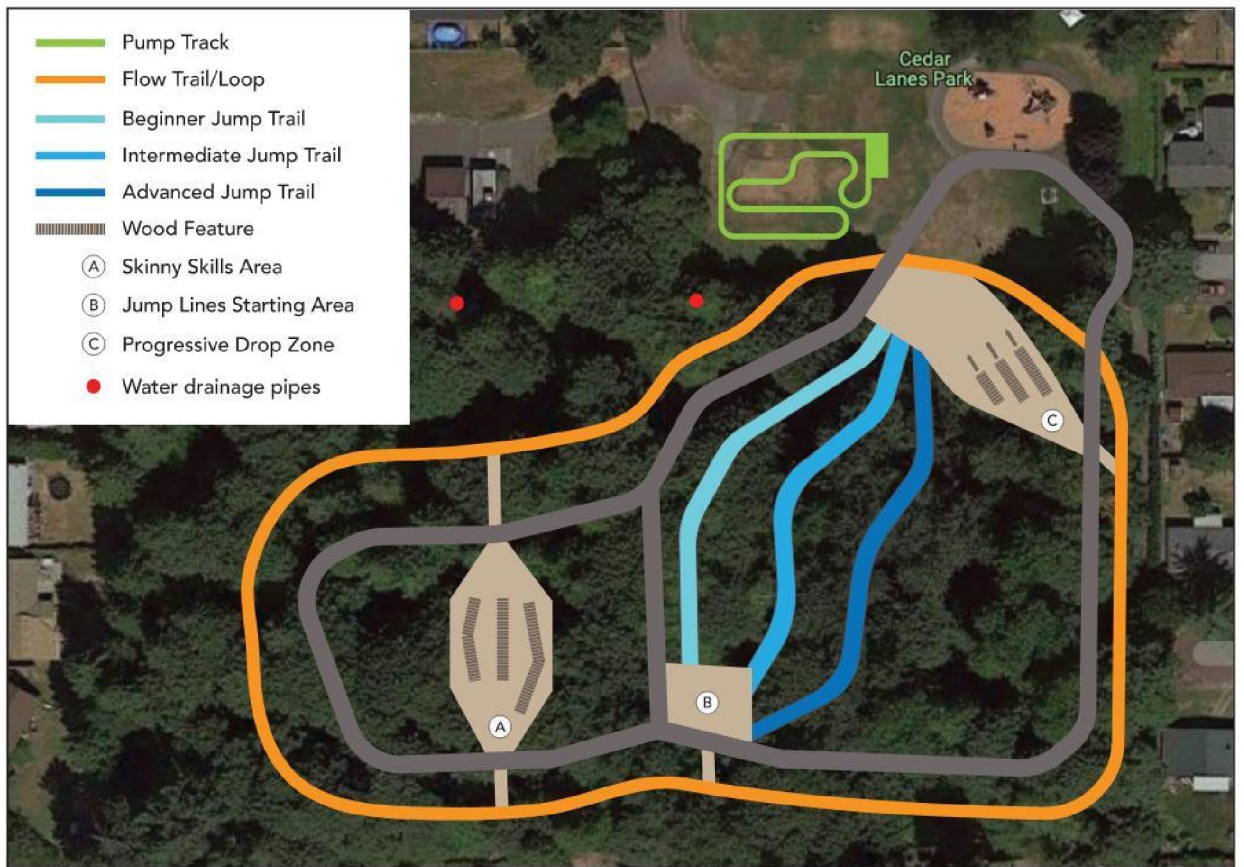
Title \_\_\_\_\_

Title \_\_\_\_\_

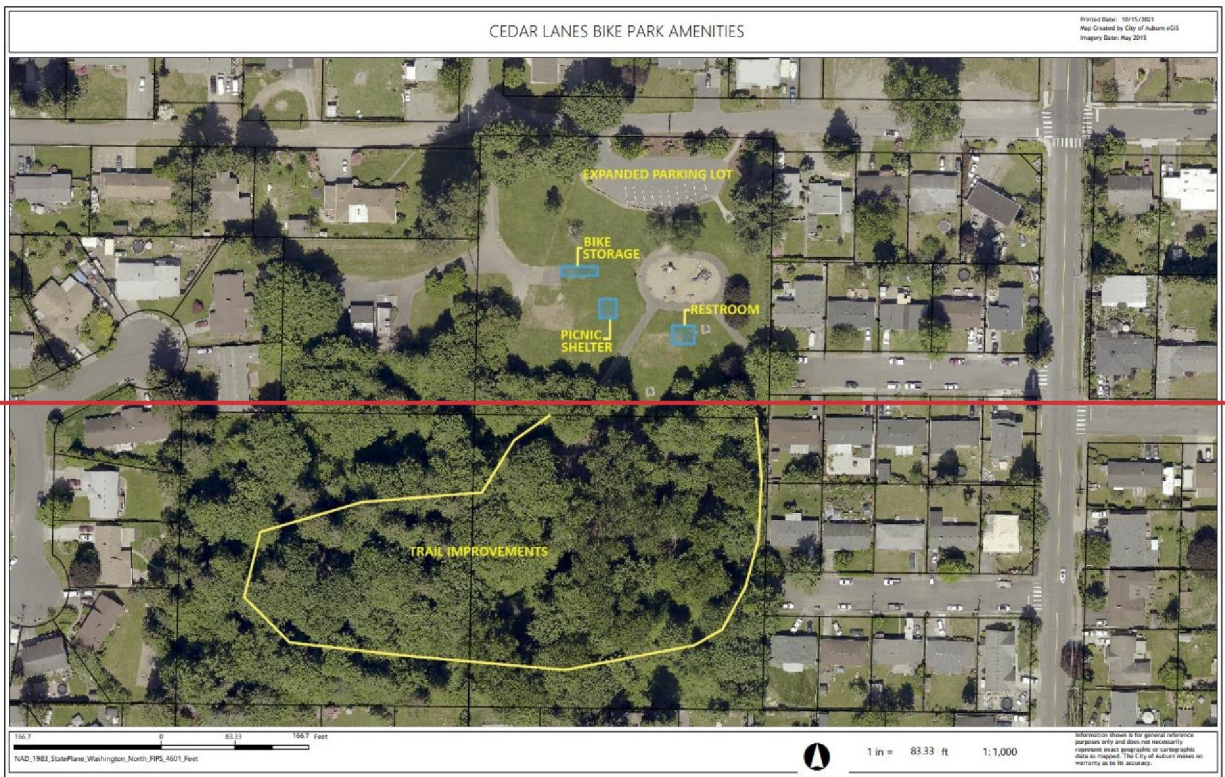
Date \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT A – MAP OF FACILITY AND LOCATION**







## **EXHIBIT B – SCOPE OF WORK**



### **Levy Grant**

Capital and Open Space Grants

#### **Scope of Services**

The City of Auburn will add new restrooms, expanded parking, storage, and pedestrian paths to Cedar Lanes Bike Park project that is in design.

| Milestones |                                             | Estimated Completion Date | Deliverables     |
|------------|---------------------------------------------|---------------------------|------------------|
| 1          | Project design and permitting               | 5/2023                    | Completed design |
| 2          | Construction of parking, paths              | 10/2023                   |                  |
| 3          | Installation of water meter and connection  | 10/2023                   |                  |
| 4          | Installation of picnic shelter and restroom | 10/2023                   |                  |

**EXHIBIT C – PROJECT BUDGET****Project Budget****Organization and Project Name: City of Auburn Parks Department- Cedar Lanes Amenities**

| Project Tasks                                  |                                       | Project Costs    | Grant Request    |
|------------------------------------------------|---------------------------------------|------------------|------------------|
| <b>Planning / Design / Permits</b>             |                                       |                  |                  |
|                                                | Civil Design                          | \$30,000         | \$20,000         |
|                                                |                                       |                  | \$0              |
|                                                |                                       |                  | \$0              |
| <b>Construction / Installation / Materials</b> |                                       |                  | \$0              |
|                                                | Precast Restroom                      | \$141,607        | \$94,405         |
|                                                | Picnic shelter                        | \$32,415         | \$21,610         |
|                                                | Water meter and connection            | \$33,389         | \$22,259         |
|                                                | Storage Container                     | \$7,650          | \$5,100          |
|                                                | Parking and Paths                     | \$75,000         | \$50,000         |
| <b>Other</b>                                   |                                       |                  | \$0              |
|                                                | Contingency                           |                  | \$0              |
|                                                | Tax                                   | \$32,326         | \$21,551         |
|                                                | Project Management (Max 15% of grant) |                  | \$0              |
| <b>TOTALS</b>                                  |                                       | <b>\$352,387</b> | <b>\$234,925</b> |



## **EXHIBIT D – INSURANCE REQUIREMENTS**

### **1. Insurance Requirements**

- 1.1. Grant Recipient shall purchase and maintain, at its sole cost and expense, the minimum insurance set forth below. By requiring such minimum insurance, the County does not and shall not be deemed or construed to have assessed the risks that may be applicable to Grant Recipient, or any Contractor under this Agreement, or in any way limit the County's potential recovery to insurance limits required hereunder. To the contrary, this Agreement's insurance requirements may not in any way be construed as limiting any potential liability to the County or the County's potential recovery from Grant Recipient. Grant Recipient and any Contractor shall assess their own risks and if they deem appropriate and/or prudent, maintain greater limits and/or broader coverage.
- 1.2. Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage shall apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.
- 1.3. Each insurance policy shall be written on an "occurrence" basis; excepting insurance for Professional Liability (Errors and Omissions), and/or Pollution Liability, and/or Cyber Liability (Technology Errors and Omissions). These coverages required by this Agreement may be written on a "claims made" basis.

If coverage is approved and purchased on a "claims made" basis, the coverage provided under that insurance shall be maintained through: (i) consecutive policy renewals for not less than three (3) years from the date of completion of the Project which is subject of this Agreement or, if such renewals are unavailable, (ii) the purchase of a tail/extended reporting period for not less than three (3) years from the date of completion of the Project which is the subject of this Agreement.

### **2. Evidence and Cancellation of Insurance**

- 2.1. Upon execution of the Agreement, and within thirty (30) days of request by the County, Grant Recipient shall furnish the County certificates of insurance and endorsements certifying the issuance of all insurance required by this Agreement. All evidence of insurance shall be signed by a properly authorized officer, agent, general agent, or qualified representative to the insurer(s), shall certify the name of the insured(s), the type and amount of insurance, the location and operations to which the insurance applies, the inception and expiration dates, shall specify the form numbers of any endorsements issued to satisfy this Agreement's insurance requirements, and shall state that the County shall receive notice at least thirty (30) days prior to the effective date of any cancellation, lapse, or material change in the policy(s). Similar documentation confirming renewal of required insurance shall be provided on each insurance renewal date.

- 2.2. The County reserves the right to require complete, certified copies of all required insurance policies, including all endorsements and riders, which may be redacted of any confidential or proprietary information. Grant Recipient shall deliver such policies to the County within five (5) business days of County's request.
- 2.3. County's receipt or acceptance of Grant Recipient's or any Contractor's evidence of insurance at any time without comment or objection, or County's failure to request certified copies of such insurance, does not waive, alter, modify, or invalidate any of the insurance requirements set forth in this **Exhibit D** or, consequently, constitute the County's acceptance of the adequacy of Grant Recipient's or any Contractor's insurance or preclude or prevent any action by County against Grant Recipient for breach of the requirements of this section.

### 3. Minimum Scope and Limits of Insurance

- 3.1. Grant Recipient shall maintain the following types of insurance and minimum insurance limits:
  - 3.1.1. Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury, personal and advertising injury, and property damage. Coverage shall be at least as broad as that afforded under ISO form number CG 00 01. Such insurance shall include coverage for, but not limited to premises liability, products and completed operations, ongoing operations, and contractual liability. Limits may be satisfied by a single primary limit or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy and satisfy all other requirements applicable to liability insurance including but not limited to additional insured status for the County.
  - 3.1.2. Professional Liability (Errors and Omissions): Grant Recipient @or its Contractor(s) shall procure and maintain Professional Liability (Errors and Omissions) insurance with minimum limits of \$1,000,000 per claim and in the aggregate
  - 3.1.3. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as that afforded under ISO form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. Limits may be satisfied by a single primary limit or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy. @Policy shall be endorsed to include endorsement CA 9948 (or its substantive equivalent).
  - 3.1.4. Workers Compensation: Workers Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Project by applicable Federal or "Other States" State Law.



- 3.1.5. Employers Liability or “Stop Gap” coverage: \$1,000,000 each occurrence and shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability), or, in monopolistic states including but not limited to Washington, the protection provided by the “Stop Gap” endorsement to the commercial general liability policy.
- 3.1.6. Builder’s Risk/Installation Floater Insurance: Grant Recipient or its Contractor(s) shall procure and maintain prior to and for the duration of the construction phase of the Project, “All Risk” Builder’s Risk insurance or Installation Floater insurance at least as broad as ISO form number CP0020 (Builder’s Risk Coverage Form) with ISO form number CP0020 (Causes of Loss – Special Form). The coverage shall insure for direct physical loss to property of the entire term of the Project, for 100% of the replacement value and include earthquake coverage Policy shall include a waiver of subrogation in favor of King County.
4. Other Insurance Provisions and Requirements
- 4.1. All insurance policies purchased and maintained by Grant Recipient and any Contractor required in this Agreement shall contain, or be endorsed to contain the following provisions:
- 4.1.1. With respect to all liability policies except Professional Liability (Errors and Omissions) and Workers Compensation:
- 4.1.1.1. King County, its officials, employees and agents shall be covered as additional insured for full coverage and policy limits as respects liability arising out of activities performed by or on behalf of the Grant Recipient, its agents, representatives, employees, or Contractor(s) in connection with this Agreement. Additional Insured status shall include products-completed operations CG 20 100 11/85 or its substantive equivalent. The County requires the endorsement(s) to complete the Agreement.
- 4.1.2. With respect to all liability policies (except Workers Compensation):
- 4.1.2.1. Coverage shall be primary insurance as respects the County, its officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officials, employees or agents shall not contribute with any Grant Recipient’s, or Contractor(s) insurance or benefit the Grant Recipient, or any Contractor, or their respective insurers in any way.
- 4.1.2.2. Insurance shall expressly state that it applies separately to each insured and additional insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of insurer’s liability.
5. Waiver of Subrogation
- 5.1. Grant Recipient, its Contractor(s), and their respective insurance carriers release and waive all rights of subrogation against King County, its officials, agents and employees for damages caused by fire or other perils which can be insured by a property insurance policy. This provision shall be valid and enforceable only to the extent permissible by the applicable property insurance policies.
6. Deductibles/Self-Insured Retentions

- 6.1. Any deductible and/or self-insured retention of the policies shall not in any way limit the County's right to coverage under the required insurance, or to Grant Recipient's, or any Contractor's liability to the County, and shall in all instances be the sole responsibility of Grant Recipient or its Contractor, even if no claim has been made or asserted against them.
7. Acceptability of Insurers
  - 7.1. Unless otherwise approved by the County, insurance is to be placed with insurers with an A.M. Best rating of no less than A:VIII.
  - 7.2. Professional Liability (Errors and Omissions) insurance may be placed with insurers with an A.M. Best rating of no less than B+:VII.
  - 7.3. If at any time any of the foregoing policies fail to meet the above stated requirements, Grant Recipient shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for review.
8. Self-Insurance
  - 8.1. If the Grant Recipient is a governmental entity or municipal corporation, Grant Recipient may maintain a fully funded self-insurance program or participate in an insurance pool for the protection and handling of its liabilities including injuries to persons and damage to property.
9. Contractors
  - 9.1. Grant Recipient shall include all Contractors as insureds under its policies or, alternatively, Grant Recipient must require each of its Contractors to procure and maintain appropriate and reasonable insurance coverage and insurance limits to cover each of the Contractor's liabilities given the scope of work and services being provided herein. To the extent reasonably commercially available, insurance maintained by any Contractor must comply with the specified requirements of this **Exhibit D**, including the requirement that all liability insurance policies (except Professional Liability and Workers Compensation) provided by the Contractor(s) must include the County, its officials, agents and employees as additional insured for full coverage and policy limits. Grant Recipient is obligated to require and verify that each Contractor(s) to maintain the required insurance and ensure the County is included as additional insured. Upon request by the County, and within five (5) business days, Grant Recipient must provide evidence of each Contractor(s) insurance coverage, including endorsements.
10. Work Site Safety
  - 10.1. Grant Recipient shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. Grant Recipient shall comply with all applicable federal, state and local safety regulations governing the job site, employees, and Contractors.

**EXHIBIT E- NOTICE OF GRANT**

Upon Recording Return To:  
King County  
Department of Natural Resources and Parks  
Parks and Recreation Division  
201 S Jackson Street, KSC-NR-5702  
Seattle, WA 98104-3855

Document Title:  
Reference No. of Related Document:  
Legal Description:  
Assessor's Parcel No.:

**NOTICE OF GRANT**

This Notice of Grant is effective as of the \_\_\_\_ day of \_\_\_\_\_, 202\_, and is made and executed by the Parks Capital and Open Space Grant recipient, the City of Auburn and King County (the “County”), a political subdivision of the State of Washington.

The City is the owner of the in King County, State of Washington (the “Property”), legally described and attached hereto in **Exhibit A**.

Pursuant to a Parks Capital and Open Space Grant Agreement, between the King County and the City, dated \_\_\_\_\_ (“Grant Agreement”), attached hereto as **Exhibit B**, the City has constructed a Facility Improvement to the “Facility” on the Property for the purpose of providing recreation for the public. A map of the Property and Facility is attached hereto as **Exhibit C**.

The City hereby agrees to be bound by the terms of the Grant Agreement including the obligation to ensure public access to the Facility.

IN WITNESS WHEREOF, the City and King County have executed this Notice of Grant on the date set forth above.

City of Auburn Parks Department

KING COUNTY

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_



STATE OF WASHINGTON    )  
                                          ) ss.  
COUNTY OF KING        )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the City of Auburn Parks Department to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON    )  
                                          ) ss.  
COUNTY OF KING        )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KING COUNTY, a political subdivision of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**NOTICE OF GRANT EXHIBIT A-  
LEGAL DESCRIPTION**

DRAFT

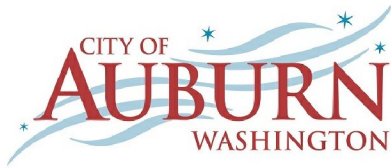


**NOTICE OF GRANT EXHIBIT B-  
GRANT AGREEMENT**

DRAFT

**NOTICE OF GRANT EXHIBIT C-  
PROPERTY AND FACILITY MAP**

DRAFT



## AGENDA BILL APPROVAL FORM

**Agenda Subject:**

Resolution No. 5708 (Comeau)

**Date:**

March 16, 2023

**Department:**

Legal

**Attachments:**

[Resolution No. 5708](#)

[Allocation Agreement II](#)

[Participation Form Allergan](#)

[Participation Form - CVS](#)

[Participation Form - Teva](#)

[Participation Form - Walgreens](#)

[Participation Form - Walmart](#)

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

City Council to approve Resolution No. 5708.

**Background for Motion:**

The State of Washington recently negotiated settlement agreements with several pharmaceutical and manufacturing companies that played a role in creating the opioid crisis. The settlements reserve a portion of the funds for local governments. To receive funds from the settlements, the City must sign participation forms with each of the pharmaceutical and/or manufacturing companies as well as enter into an allocation agreement with the State. The city's portion of the settlement funds will be allocated over 15 years and must be used to remediate/abate the opioid pandemic.

**Background Summary:**

In 2022, the State of Washington settled lawsuits against three opioid distributors for approximately \$430.2 million dollars. The city was eligible to receive some of these funds and through enacting Resolution No. 5682 this council authorized the mayor to obtain the funds.

Presently, the State is pursuing settlements with five pharmaceutical and manufacturing companies. Although the amount that the State receives through the settlements depends on the number of eligible cities and towns that join, the Attorney General estimates that the five settlements could provide \$434.4 million to the State, half of which (\$217.2 million) would go to counties and cities. Similar to the first ("Distributor") settlement, in order to receive funds, the City is required to sign participation forms with each of the named pharmaceutical and manufacturing companies, as well as enter into an Allocation Agreement with the State. Any amount the City receives must be spent on opioid remediation, including mitigating the effects of the crisis. If not all eligible cities and counties approve the settlement, the settlement will be reduced or eliminated, depending on the number of participating cities.

**Reviewed by Council Committees:**

**Councilmember:** Jeyaraj

**Meeting Date:** April 3, 2023

**Staff:**

Comeau

Item Number:

RES.C

## **RESOLUTION NO. 5708**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN ALLOCATION AGREEMENT AND PARTICIPATION FORMS RELATED TO OPIOID PHARMACY AND MANUFACTURER SETTLEMENTS

WHEREAS, in 2022, the State of Washington settled a lawsuit against three opioid distributors whose actions and practices contributed to the opioid crisis currently facing the State and Washington localities; and

WHEREAS, on September 19, 2022, the City Council adopted Resolution No. 5682 authorizing the Mayor to execute a Memorandum of Understanding and related documents that enabled the City to participate in, and receive funds from, the settled lawsuit; and

WHEREAS, in December 2022, the State of Washington joined in a second set of settlements that resolved litigation against five companies (CVS, Walgreens, Walmart, Teva, and Allergan) whose pharmaceutical and manufacturing practices contributed to the opioid crisis; and

WHEREAS, the Attorney General's Office estimates that these five settlements could total \$434.4 million for Washington state; and

WHEREAS, the settlements are contingent on a high percentage of eligible cities and counties joining the settlements; and

WHEREAS, if all eligible cities and counties join the settlements the local governments will receive half of the settlement funds (217.2 million), which must be used on abating the opioid crisis in their communities; and



WHEREAS, participating in the settlements requires the City to sign an allocation agreement, which releases the five manufacturers from any potential city claims, and five participation forms, which document the city's willingness to participate in the terms of the settlements; and

WHEREAS, in light of the devastating effects of the opioid crisis on the City and the surrounding region, and the need for additional funding to support opioid treatment and prevention, it is appropriate for the City to join in the settlements.

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

**Section 1.** The Mayor is authorized to execute the five Participation Forms and the Allocation Agreement II, attached hereto, enabling the City to participate in, and receive money from, opioid pharmacy and manufacturer settlements.

**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.

Dated and Signed: \_\_\_\_\_

CITY OF AUBURN

\_\_\_\_\_  
NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Shawn Campbell, MMC, City Clerk

\_\_\_\_\_  
Kendra Comeau, City Attorney

**WASHINGTON STATE ALLOCATION AGREEMENT GOVERNING THE  
ALLOCATION OF FUNDS PAID BY CERTAIN SETTLING OPIOID  
MANUFACTURERS AND PHARMACIES**

**JANUARY 27, 2023**

This Washington State Allocation Agreement Governing the Allocation of Funds Paid by Certain Settling Opioid Manufacturers and Pharmacies (the “Allocation Agreement II”) governs the distribution of funds obtained from (1) Walmart, (2) Teva, (3) Allergan, (4) CVS, and (5) Walgreens (the “Settling Entities”) in connection with the resolution of any and all claims by the State of Washington and the counties, cities, and towns in Washington State (“Local Governments”) against the Settling Entities via the following settlements:

- Walmart Settlement Agreement dated November 12, 2022 and any subsequent amendments (“Walmart Settlement”).
- Teva Public Global Settlement Agreement dated November 22, 2022 and any subsequent amendments (“Teva Settlement”).
- Allergan Public Global Settlement Agreement dated November 22, 2022 and any subsequent amendments (“Allergan Settlement”).
- CVS Settlement Agreement dated December 9, 2022 and any subsequent amendments (“CVS Settlement”).
- Walgreens Settlement Agreement dated December 9, 2022 and any subsequent amendments (“Walgreens Settlement”).

Collectively, the Walmart Settlement, the Teva Settlement, the Allergan Settlement, the CVS Settlement, and the Walgreens Settlement shall be referred to as “the Settlements”. Each of the Settlements can be accessed at <https://nationalopioidsettlement.com/>. The terms and definitions of each of the respective Settlement are incorporated into this Allocation Agreement II, and any undefined terms in this Allocation Agreement II are as defined in the Settlements.

1. This Allocation Agreement II is intended to be a State-Subdivision Agreement as defined in the Settlements. This Allocation Agreement II shall be interpreted to be consistent with the requirements of a State-Subdivision Agreement in the Settlements.
2. This Allocation Agreement II shall become effective only if all of the following occur:
  - A. The State of Washington joins one of the Settlements and becomes a Settling State as provided for in the respective Settlement.
  - B. One of the Settlements becomes final and effective and a Consent Judgment is filed and approved as provided for in the respective Settlement.

- C. The number of Local Governments that execute and return this Allocation Agreement II satisfies the participation requirements for a State-Subdivision Agreement as specified in one of the Settlements, Washington is a Settling State for that Settlement, and a Consent Judgment has been filed and approved for that Settlement.
3. Requirements to become a Participating Local Government. To become a Participating Local Government that can participate in this Allocation Agreement II with respect to any one of the Settlements, a Local Government must do all of the following:
- A. The Local Government must execute and return this Allocation Agreement II.
  - B. The Local Government must release its claims against the Settling Entities identified in the respective Settlement and agree to be bound by the terms of the Settlement by timely executing and returning the Participation Form for that Settlement. The forms are attached hereto as Exhibits 1-5.
  - C. Litigating Subdivisions, also referred to as Litigating Local Governments, must dismiss the Settling Entities identified in the respective Settlement with prejudice from their lawsuits.
  - D. Each of the Local Governments that is eligible to participate in this Allocation Agreement II has previously executed and signed the One Washington Memorandum of Understanding Between Washington Municipalities (“MOU”) agreed to by the Participating Local Governments in Washington State, which is attached hereto as Exhibit 6. By executing this Allocation Agreement II, the local government agrees and affirms that the MOU applies to and shall govern the Local Government Share as modified by this Allocation Agreement II for each of the Settlements in which the Local Government participates.
- A Local Government that meets all of the conditions in this paragraph for any of the Settlements shall be deemed a “Participating Local Government” for that Settlement. A Local Government can be a “Participating Local Government” for less than all of the Settlements. If a Local Government is a Participating Local Government for less than all of the Settlements, the Local Government can only receive a portion of the Washington Abatement Amount for the specific Settlement(s) for which it is a Participating Local Government.
4. This Allocation Agreement II applies to the following, all of which collectively shall be referred to as the “Washington Abatement Amount”:
- A. For the Walmart Settlement, the State of Washington’s allocation of the (1) Global Settlement Remediation Amount and (2) Additional Remediation Amount.

- B. For the Teva Settlement, the State of Washington's allocation of the (1) Net Abatement Amount and (2) Additional Restitution Amount.
- C. For the Allergan Settlement, the State of Washington's allocation of the (1) Global Settlement Abatement Amount and (2) Additional Restitution Amount.
- D. For the CVS Settlement, the State of Washington's allocation of the (1) Maximum Remediation Payment and (2) Additional Remediation Amount.
- E. For the Walgreens Settlement, the State of Washington's allocation of the (1) Adjusted State Remediation Payment and (2) Additional Remediation Amount.

As specified in each of the Settlements, the Washington Abatement Amount will vary dependent on the percentage of Participating Local Governments and whether there are any Later Litigating Subdivisions.

- 5. The Teva Settlement provides the option for Settling States to obtain Settlement Product or the discretion to convert any portion of the Settlement Product allocated to the Settling State into a cash value equaling twenty percent (20%) of the WAC value of the Settling State's allocated Settlement Product in specified years. It shall be solely the decision of the State regarding whether to convert any portion of the Settlement Product allocated to Washington into a cash value or to obtain the Settlement Product. If the State elects to obtain Settlement Product, the State in its sole discretion shall make all decisions related to the Settlement Product, including but not limited to where, how, and to whom it shall be distributed. For purposes of calculating the division of the Washington Abatement Amount in Paragraph 10 of this Allocation Agreement II, the Settlement Product allocated to Washington shall be considered "State Share" and shall have the cash value assigned to it in the Teva Public Global Settlement Agreement dated November 22, 2022.
- 6. This Allocation Agreement II does not apply to the State Cost Fund, State AG Fees and Costs, or any attorneys' fees, fees, costs, or expenses referred to in the Settlement or that are paid directly or indirectly via the Settlements to the State of Washington ("State's Fees and Costs").
- 7. This Allocation Agreement II and the MOU are a State Back-Stop Agreement. The Settling Entities are paying a portion of the Local Governments' attorneys' fees and costs as provided for in the Settlements. The total contingent fees an attorney receives from the Contingency Fee Fund in the Settlements, the MOU, and this Allocation Agreement II combined cannot exceed 15% of the portion of the LG Share paid to the Litigating Local Government that retained that firm to litigate against the Settling Entities (i.e., if City X filed suit with outside counsel on a contingency fee contract and City X receives \$1,000,000 from the Walmart

Settlement, then the maximum that the firm can receive is \$150,000 for fees as to the Walmart Settlement; if City X did not retain the same firm for potential litigation against CVS and City X receives \$1,000,000 from the CVS Settlement, then the firm receives no fees from the CVS Settlement.)

8. No portion of the State's Fees and Costs and/or the State Share as defined in Paragraphs 6 and 10 of this Allocation Agreement II shall be used to fund the Government Fee Fund ("GFF") referred to in Paragraph 12 of this Allocation Agreement II and Section D of the MOU, or in any other way to fund any Participating Local Government's attorneys' fees, costs, or common benefit tax.
9. The Washington Abatement Amount shall and must be used by the State and Participating Local Governments for future Opioid Remediation as defined in the Settlements, except as allowed by the Settlements.
10. The State and the Participating Local Governments agree to divide the Washington Abatement Amount as follows:
  - A. Fifty percent (50%) to the State of Washington ("State Share").
  - B. Fifty percent (50%) to the Participating Local Governments ("LG Share").
11. The LG Share shall be distributed to Participating Local Governments pursuant to the MOU attached hereto as Exhibit 6 as amended and modified in this Allocation Agreement II.
12. For purposes of this Allocation Agreement II only, the MOU is modified as follows and any contrary provisions in the MOU are struck:
  - A. Exhibit A of the MOU is replaced by Exhibit E of each of the respective Settlements.
  - B. The definition of "Litigating Local Governments" in Section A.4 of the MOU shall mean Litigating Subdivisions as defined in each the respective Settlements.
  - C. The definition of "National Settlement Agreement" in Section A.6 of the MOU shall mean the Settlements.
  - D. The definition of "Settlement" in Section A.14 of the MOU shall mean the Settlements.
  - E. The MOU is amended to add new Section C.4.g.vii, which provides as follows:

"If a Participating Local Government receiving a direct payment  
(a) uses Opioid Funds other than as provided for in the respective Settlements, (b) does not comply with conditions for receiving



direct payments under the MOU, or (c) does not promptly submit necessary reporting and compliance information to its Regional Opioid Abatement Counsel (“Regional OAC”) as defined at Section C.4.h of the MOU, then the Regional OAC may suspend direct payments to the Participating Local Government after notice, an opportunity to cure, and sufficient due process. If direct payments to Participating Local Government are suspended, the payments shall be treated as if the Participating Local Government is foregoing their allocation of Opioid Funds pursuant to Section C.4.d and C.4.j.iii of the MOU. In the event of a suspension, the Regional OAC shall give prompt notice to the suspended Participating Local Government and the Settlement Fund Administrator specifying the reasons for the suspension, the process for reinstatement, the factors that will be considered for reinstatement, and the due process that will be provided. A suspended Participating Local Government may apply to the Regional OAC to be reinstated for direct payments no earlier than five years after the date of suspension.”

- F. The amounts payable to each law firm representing a Litigating Local Government from the GFF shall be consistent with the process set forth in the *Order Appointing the Fee Panel to Allocate and Disburse Attorney’s Fees Provided for in State Back-Stop Agreements*, Case No. 1:17-md-02804-DAP Doc #: 4543 (June 17, 2022). JoJo Tann (the “GFF Administrator”), who is authorized by the MDL Fee Panel (David R. Cohen, Randi S. Ellis and Hon. David R. Herndon (ret.)) to calculate the amounts due to eligible counsel from each State Back-Stop fund (i.e., the GFF) (*see id.* at p. 4), will oversee and confirm the amounts payable to each law firm representing a Litigating Local Government from the GFF. Upon written agreement between the law firms representing the Litigating Local Governments on the one hand and the Washington Attorney General’s Office on the other, in consultation with the Washington State Association of Counties and the Association of Washington Cities, the GFF Administrator may be replaced by another person, firm, or entity.
- G. The GFF set forth in the MOU shall be funded by the LG Share of the Washington Abatement Amount only. To the extent the common benefit tax is not already payable by the Settling Entities as contemplated by Section D.8 of the MOU, the GFF shall be used to pay Litigating Local Government contingency fee agreements and any common benefit tax referred to in Section D of the MOU, which shall be paid on a pro rata basis to eligible law firms as determined by the GFF Administrator.
- H. To fund the GFF, fifteen percent (15%) of the LG Share shall be deposited in the GFF from each LG Share settlement payment until the Litigating Subdivisions’ contingency fee agreements and common benefit tax (if any) referred to in Section D of the MOU are satisfied. Under no

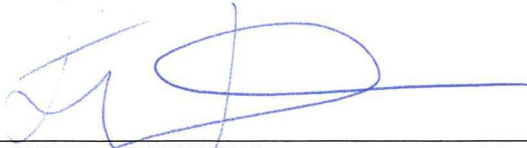
circumstances will any Primary Subdivision or Litigating Local Government be required to contribute to the GFF more than 15% of the portion of the LG Share allocated to such Primary Subdivision or Litigating Local Government. In addition, under no circumstances will any portion of the LG Share allocated to a Litigating Local Government be used to pay the contingency fees or litigation expenses of counsel for some other Litigating Local Government.

- I. The maximum amount of any Litigating Local Government contingency fee agreement (from the Contingency Fee Fund of the respective Settlements) payable to a law firm permitted for compensation shall be fifteen percent (15%) of the portion of the LG Share paid to the Litigating Local Government that retained that firm (i.e., if City X filed suit with outside counsel on a contingency fee contract and City X receives \$1,000,000 from the Walmart Settlement, then the maximum that the firm can receive is \$150,000 for fees.) The firms also shall be paid documented expenses due under their contingency fee agreements that have been paid by the law firm attributable to that Litigating Local Government. Consistent with Agreement on Attorneys' Fees, Costs, and Expenses, which is Exhibit R of the Settlements, amounts due to Participating Litigating Subdivisions' attorneys under this Allocation Agreement II shall not impact (i) costs paid by the subdivisions to their attorneys pursuant to a State Back-Stop agreement, (ii) fees paid to subdivision attorneys from the Common Benefit Fund for common benefit work performed by the attorneys pursuant to Exhibit R of the Settlements, or (iii) costs paid to subdivision attorneys from the MDL Expense Fund for expenses incurred by the attorneys pursuant to the Settlements.
- J. Under no circumstances may counsel receive more for its work on behalf of a Litigating Local Government than it would under its contingency agreement with that Litigating Local Government. To the extent a law firm was retained by a Litigating Local Government on a contingency fee agreement that provides for compensation at a rate that is less than fifteen percent (15%) of that Litigating Local Government's recovery, the maximum amount payable to that law firm referred to in Section D.3 of the MOU shall be the percentage set forth in that contingency fee agreement.
- K. For the avoidance of doubt, both payments from the GFF and the payment to the Participating Litigating Local Governments' attorneys from the Contingency Fee Fund in the respective Settlements shall be included when calculating whether the aforementioned fifteen percent (15%) maximum percentage (or less if the provisions of Paragraph 10.J of this Allocation Agreement II apply) of any Litigating Local Government contingency fee agreement referred to above has been met.

- L. To the extent there are any excess funds in the GFF, the GFF Administrator and the Settlement Administrator shall facilitate the return of those funds to the Participating Local Governments as provided for in Section D.6 of the MOU.
13. In connection with the execution and administration of this Allocation Agreement II, the State and the Participating Local Governments agree to abide by the Public Records Act, RCW 42.56 *et seq.*
  14. All Participating Local Governments, Regional OACs, and the State shall maintain all non-transitory records related to this Allocation Agreement II as well as the receipt and expenditure of the funds from the Settlements for no less than five (5) years.
  15. If any party to this Allocation Agreement II believes that a Participating Local Government, Regional OAC, the State, an entity, or individual involved in the receipt, distribution, or administration of the funds from the Settlements has violated any applicable ethics codes or rules, a complaint shall be lodged with the appropriate forum for handling such matters, with a copy of the complaint promptly sent to the Washington Attorney General, Complex Litigation Division, Division Chief, 800 Fifth Avenue, Suite 2000, Seattle, Washington 98104.
  16. To the extent (i) a region utilizes a pre-existing regional body to establish its Opioid Abatement Council pursuant to the Section 4.h of the MOU, and (ii) that pre-existing regional body is subject to the requirements of the Community Behavioral Health Services Act, RCW 71.24 *et seq.*, the State and the Participating Local Governments agree that the Opioid Funds paid by the Settling Entities are subject to the requirements of the MOU and this Allocation Agreement II.
  17. Upon request by any of the Settling Entities, the Participating Local Governments must comply with the Tax Cooperation and Reporting provisions of the respective Settlement.
  18. Venue for any legal action related to this Allocation Agreement II (separate and apart from the MOU or the Settlements) shall be in King County, Washington.
  19. Each party represents that all procedures necessary to authorize such party's execution of this Allocation Agreement II have been performed and that such person signing for such party has been authorized to execute this Allocation Agreement II.

**FOR THE STATE OF WASHINGTON:**

ROBERT W. FERGUSON  
Attorney General



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JEFFREY G. RUPERT  
Division Chief

Date: 1-27-23

**FOR THE PARTICIPATING LOCAL GOVERNMENT:**

Name of Participating Local Government: \_\_\_\_\_

Authorized signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT 1**  
**Subdivision Settlement Participation Form**  
**(Exhibit K of the Walmart Settlement)**

## **EXHIBIT K**

### **Subdivision Participation Form**

|                      |        |
|----------------------|--------|
| Governmental Entity: | State: |
| Authorized Official: |        |
| Address 1:           |        |
| Address 2:           |        |
| City, State, Zip:    |        |
| Phone:               |        |
| Email:               |        |

The governmental entity identified above ("Governmental Entity"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated November 14, 2022 ("Walmart Settlement"), and acting through the undersigned authorized official, hereby elects to participate in the Walmart Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Walmart Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Walmart Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event within 14 days of the Effective Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in In re National Prescription Opiate Litigation, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs' Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopioidsettlement.com/>.
3. The Governmental Entity agrees to the terms of the Walmart Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Walmart Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Walmart Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Walmart Settlement.
7. The Governmental Entity has the right to enforce the Walmart Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Walmart Settlement, including but not limited to all provisions of Section X (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Walmart Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Walmart Settlement shall be a complete bar to any Released Claim.
9. In connection with the releases provided for in the Walmart Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Walmart Settlement.

10. Nothing herein is intended to modify in any way the terms of the Walmart Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Walmart Settlement in any respect, the Walmart Settlement controls.



I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT 2**  
**Subdivision Settlement Participation Form**  
**(Exhibit K of the Teva Settlement)**



**Exhibit K**  
**Subdivision and Special District Settlement Participation Form**

|                       |        |
|-----------------------|--------|
| Governmental Entity:  | State: |
| Authorized Signatory: |        |
| Address 1:            |        |
| Address 2:            |        |
| City, State, Zip:     |        |
| Phone:                |        |
| Email:                |        |

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Agreement dated November 22, 2022 (“*Teva Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Teva Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Teva Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Teva Settlement as provided therein.
2. Following the execution of this Settlement Participation Form, the Governmental Entity shall comply with Section III.B of the Teva Settlement regarding Cessation of Litigation Activities.
3. The Governmental Entity shall, within 14 days of the Reference Date and prior to the filing of the Consent Judgment, file a request to dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in In re National Prescription Opiate Litigation, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
4. The Governmental Entity agrees to the terms of the Teva Settlement pertaining to Subdivisions as defined therein.
5. By agreeing to the terms of the Teva Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
6. The Governmental Entity agrees to use any monies it receives through the Teva Settlement solely for the purposes provided therein.
7. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity’s state where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Teva Settlement.



8. The Governmental Entity has the right to enforce the Teva Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision or Participating Special District, hereby becomes a Releasor for all purposes in the Teva Settlement, including but not limited to all provisions of Section V (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Teva Settlement are intended by Released Entities and the Governmental Entity to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Teva Settlement shall be a complete bar to any Released Claim.
10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision or Participating Special District as set forth in the Teva Settlement.
11. In connection with the releases provided for in the Teva Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Teva Settlement.

12. Nothing herein is intended to modify in any way the terms of the Teva Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Teva Settlement in any respect, the Teva Settlement controls.

I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT 3**  
**Subdivision Settlement Participation Form**  
**(Exhibit K of the Allergan Settlement)**

**EXHIBIT K**  
**Subdivision and Special District Settlement Participation Form**

|                       |        |
|-----------------------|--------|
| Governmental Entity:  | State: |
| Authorized Signatory: |        |
| Address 1:            |        |
| Address 2:            |        |
| City, State, Zip:     |        |
| Phone:                |        |
| Email:                |        |

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Agreement dated November 22, 2022 (“*Allergan Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Allergan Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Allergan Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Allergan Settlement as provided therein.
2. Following the execution of this Settlement Participation Form, the Governmental Entity shall comply with Section III.B of the Allergan Settlement regarding Cessation of Litigation Activities.
3. The Governmental Entity shall, within fourteen (14) days of the Reference Date and prior to the filing of the Consent Judgment, file a request to dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the MDL Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
4. The Governmental Entity agrees to the terms of the Allergan Settlement pertaining to Subdivisions and Special Districts as defined therein.
5. By agreeing to the terms of the Allergan Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
6. The Governmental Entity agrees to use any monies it receives through the Allergan Settlement solely for the purposes provided therein.



7. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Allergan Settlement.
8. The Governmental Entity has the right to enforce the Allergan Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision or Participating Special District, hereby becomes a Releasor for all purposes in the Allergan Settlement, including, but not limited to, all provisions of **Section V (Release)**, and along with all departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Allergan Settlement are intended to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Allergan Settlement shall be a complete bar to any Released Claim.
10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision or Participating Special District as set forth in the Allergan Settlement.
11. In connection with the releases provided for in the Allergan Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Allergan Settlement.

12. Nothing herein is intended to modify in any way the terms of the Allergan Settlement, to which the Governmental Entity hereby agrees. To the extent this Settlement Participation Form is interpreted differently from the Allergan Settlement in any respect, the Allergan Settlement controls.





I have all necessary power and authorization to execute this Settlement Participation Form on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT 4**  
**Subdivision Settlement Participation Form**  
**(Exhibit K of the CVS Settlement)**

## **EXHIBIT K**

### **Subdivision Participation and Release Form**

|                       |        |
|-----------------------|--------|
| Governmental Entity:  | State: |
| Authorized Signatory: |        |
| Address 1:            |        |
| Address 2:            |        |
| City, State, Zip:     |        |
| Phone:                |        |
| Email:                |        |

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated December 9, 2022 (“*CVS Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the CVS Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the CVS Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the CVS Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
3. The Governmental Entity agrees to the terms of the CVS Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the CVS Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the CVS Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the CVS Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the CVS Settlement.
7. The Governmental Entity has the right to enforce the CVS Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the CVS Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the CVS Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The CVS Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the CVS Settlement.
10. In connection with the releases provided for in the CVS Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the CVS Settlement.



11. Nothing herein is intended to modify in any way the terms of the CVS Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the CVS Settlement in any respect, the CVS Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT 5**  
**Subdivision Settlement Participation Form**  
**(Exhibit K of the Walgreens Settlement)**



## **EXHIBIT K**

### **Subdivision Participation and Release Form**

|                       |        |
|-----------------------|--------|
| Governmental Entity:  | State: |
| Authorized Signatory: |        |
| Address 1:            |        |
| Address 2:            |        |
| City, State, Zip:     |        |
| Phone:                |        |
| Email:                |        |

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated December 9, 2022 (“*Walgreens Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Walgreens Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Walgreens Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the Walgreens Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
3. The Governmental Entity agrees to the terms of the Walgreens Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the Walgreens Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Walgreens Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Walgreens Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the Walgreens Settlement.
7. The Governmental Entity has the right to enforce the Walgreens Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Walgreens Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Walgreens Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Walgreens Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Walgreens Settlement.
10. In connection with the releases provided for in the Walgreens Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Walgreens Settlement.



11. Nothing herein is intended to modify in any way the terms of the Walgreens Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Walgreens Settlement in any respect, the Walgreens Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT 6**  
**One Washington Memorandum of Understanding Between Washington Municipalities**

## **ONE WASHINGTON MEMORANDUM OF UNDERSTANDING BETWEEN WASHINGTON MUNICIPALITIES**

Whereas, the people of the State of Washington and its communities have been harmed by entities within the Pharmaceutical Supply Chain who manufacture, distribute, and dispense prescription opioids;

Whereas, certain Local Governments, through their elected representatives and counsel, are engaged in litigation seeking to hold these entities within the Pharmaceutical Supply Chain of prescription opioids accountable for the damage they have caused to the Local Governments;

Whereas, Local Governments and elected officials share a common desire to abate and alleviate the impacts of harms caused by these entities within the Pharmaceutical Supply Chain throughout the State of Washington, and strive to ensure that principals of equity and equitable service delivery are factors considered in the allocation and use of Opioid Funds; and

Whereas, certain Local Governments engaged in litigation and the other cities and counties in Washington desire to agree on a form of allocation for Opioid Funds they receive from entities within the Pharmaceutical Supply Chain.

Now therefore, the Local Governments enter into this Memorandum of Understanding (“MOU”) relating to the allocation and use of the proceeds of Settlements described.

### **A. Definitions**

As used in this MOU:

1. “Allocation Regions” are the same geographic areas as the existing nine (9) Washington State Accountable Community of Health (ACH) Regions and have the purpose described in Section C below.
2. “Approved Purpose(s)” shall mean the strategies specified and set forth in the Opioid Abatement Strategies attached as Exhibit A.
3. “Effective Date” shall mean the date on which a court of competent jurisdiction enters the first Settlement by order or consent decree. The Parties anticipate that more than one Settlement will be administered according to the terms of this MOU, but that the first entered Settlement will trigger allocation of Opioid Funds in accordance with Section B herein, and the formation of the Opioid Abatement Councils in Section C.
4. “Litigating Local Government(s)” shall mean Local Governments that filed suit against any Pharmaceutical Supply Chain Participant pertaining to the Opioid epidemic prior to September 1, 2020.

5. “Local Government(s)” shall mean all counties, cities, and towns within the geographic boundaries of the State of Washington.

6. “National Settlement Agreements” means the national opioid settlement agreements dated July 21, 2021 involving Johnson & Johnson, and distributors AmerisourceBergen, Cardinal Health and McKesson as well as their subsidiaries, affiliates, officers, and directors named in the National Settlement Agreements, including all amendments thereto.

7. “Opioid Funds” shall mean monetary amounts obtained through a Settlement as defined in this MOU.

8. “Opioid Abatement Council” shall have the meaning described in Section C below.

9. “Participating Local Government(s)” shall mean all counties, cities, and towns within the geographic boundaries of the State that have chosen to sign on to this MOU. The Participating Local Governments may be referred to separately in this MOU as “Participating Counties” and “Participating Cities and Towns” (or “Participating Cities or Towns,” as appropriate) or “Parties.”

10. “Pharmaceutical Supply Chain” shall mean the process and channels through which controlled substances are manufactured, marketed, promoted, distributed, and/or dispensed, including prescription opioids.

11. “Pharmaceutical Supply Chain Participant” shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution, and/or dispensing of a prescription opioid, including any entity that has assisted in any of the above.

12. “Qualified Settlement Fund Account,” or “QSF Account,” shall mean an account set up as a qualified settlement fund, 468b fund, as authorized by Treasury Regulations 1.468B-1(c) (26 CFR §1.468B-1).

13. “Regional Agreements” shall mean the understanding reached by the Participating Local Counties and Cities within an Allocation Region governing the allocation, management, distribution of Opioid Funds within that Allocation Region.

14. “Settlement” shall mean the future negotiated resolution of legal or equitable claims against a Pharmaceutical Supply Chain Participant when that resolution has been jointly entered into by the Participating Local Governments. “Settlement” expressly does not include a plan of reorganization confirmed under Title 11 of the United States Code, irrespective of the extent to which Participating Local Governments vote in favor of or otherwise support such plan of reorganization.



15. “Trustee” shall mean an independent trustee who shall be responsible for the ministerial task of releasing Opioid Funds from a QSF account to Participating Local Governments as authorized herein and accounting for all payments into or out of the trust.

16. The “Washington State Accountable Communities of Health” or “ACH” shall mean the nine (9) regions described in Section C below.

## **B. Allocation of Settlement Proceeds for Approved Purposes**

1. All Opioid Funds shall be held in a QSF and distributed by the Trustee, for the benefit of the Participating Local Governments, only in a manner consistent with this MOU. Distribution of Opioid Funds will be subject to the mechanisms for auditing and reporting set forth below to provide public accountability and transparency.

2. All Opioid Funds, regardless of allocation, shall be utilized pursuant to Approved Purposes as defined herein and set forth in Exhibit A. Compliance with this requirement shall be verified through reporting, as set out in this MOU.

3. The division of Opioid Funds shall first be allocated to Participating Counties based on the methodology utilized for the Negotiation Class in *In Re: National Prescription Opiate Litigation*, United States District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP. The allocation model uses three equally weighted factors: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. The allocation percentages that result from application of this methodology are set forth in the “County Total” line item in Exhibit B. In the event any county does not participate in this MOU, that county’s percentage share shall be reallocated proportionally amongst the Participating Counties by applying this same methodology to only the Participating Counties.

4. Allocation and distribution of Opioid Funds within each Participating County will be based on regional agreements as described in Section C.

## **C. Regional Agreements**

1. For the purpose of this MOU, the regional structure for decision-making related to opioid fund allocation will be based upon the nine (9) pre-defined Washington State Accountable Community of Health Regions (Allocation Regions). Reference to these pre-defined regions is solely for the purpose of

drawing geographic boundaries to facilitate regional agreements for use of Opioid Funds. The Allocation Regions are as follows:

- King County (Single County Region)
- Pierce County (Single County Region)
- Olympic Community of Health Region (Clallam, Jefferson, and Kitsap Counties)
- Cascade Pacific Action Alliance Region (Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Thurston, and Wahkiakum Counties)
- North Sound Region (Island, San Juan, Skagit, Snohomish, and Whatcom Counties)
- SouthWest Region (Clark, Klickitat, and Skamania Counties)
- Greater Columbia Region (Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Walla Walla, Whitman, and Yakima Counties)
- Spokane Region (Adams, Ferry, Lincoln, Pend Oreille, Spokane, and Stevens Counties)
- North Central Region (Chelan, Douglas, Grant, and Okanogan Counties)

2. Opioid Funds will be allocated, distributed and managed within each Allocation Region, as determined by its Regional Agreement as set forth below. If an Allocation Region does not have a Regional Agreement enumerated in this MOU, and does not subsequently adopt a Regional Agreement per Section C.5, the default mechanism for allocation, distribution and management of Opioid Funds described in Section C.4.a will apply. Each Allocation Region must have an OAC whose composition and responsibilities shall be defined by Regional Agreement or as set forth in Section C.4.

3. King County's Regional Agreement is reflected in Exhibit C to this MOU.

4. All other Allocation Regions that have not specified a Regional Agreement for allocating, distributing and managing Opioid Funds, will apply the following default methodology:

- a. Opioid Funds shall be allocated within each Allocation Region by taking the allocation for a Participating County from Exhibit B and apportioning those funds between that Participating County and its Participating Cities and Towns. Exhibit B also sets forth the allocation to the Participating Counties and the Participating Cities or Towns within the Counties based on a default allocation formula. As set forth above in Section B.3, to determine the allocation to a county, this formula utilizes: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. To determine the allocation within a county, the formula utilizes historical federal data showing how the specific Counties and the Cities and Towns within the Counties have

made opioids epidemic-related expenditures in the past. This is the same methodology used in the National Settlement Agreements for county and intra-county allocations. A Participating County, and the Cities and Towns within it may enter into a separate intra-county allocation agreement to modify how the Opioid Funds are allocated amongst themselves, provided the modification is in writing and agreed to by all Participating Local Governments in the County. Such an agreement shall not modify any of the other terms or requirements of this MOU.

b. 10% of the Opioid Funds received by the Region will be reserved, on an annual basis, for administrative costs related to the OAC. The OAC will provide an annual accounting for actual costs and any reserved funds that exceed actual costs will be reallocated to Participating Local Governments within the Region.

c. Cities and towns with a population of less than 10,000 shall be excluded from the allocation, with the exception of cities and towns that are Litigating Participating Local Governments. The portion of the Opioid Funds that would have been allocated to a city or town with a population of less than 10,000 that is not a Litigating Participating Local Government shall be redistributed to Participating Counties in the manner directed in C.4.a above.

d. Each Participating County, City, or Town may elect to have its share re-allocated to the OAC in which it is located. The OAC will then utilize this share for the benefit of Participating Local Governments within that Allocation Region, consistent with the Approved Purposes set forth in Exhibit A. A Participating Local Government's election to forego its allocation of Opioid Funds shall apply to all future allocations unless the Participating Local Government notifies its respective OAC otherwise. If a Participating Local Government elects to forego its allocation of the Opioid Funds, the Participating Local Government shall be excused from the reporting requirements set forth in this Agreement.

e. Participating Local Governments that receive a direct payment maintain full discretion over the use and distribution of their allocation of Opioid Funds, provided the Opioid Funds are used solely for Approved Purposes. Reasonable administrative costs for a Participating Local Government to administer its allocation of Opioid Funds shall not exceed actual costs or 10% of the Participating Local Government's allocation of Opioid Funds, whichever is less.

f. A Local Government that chooses not to become a Participating Local Government will not receive a direct allocation of Opioid Funds. The portion of the Opioid Funds that would have been allocated to a Local Government that is not a Participating Local Government shall be

redistributed to Participating Counties in the manner directed in C.4.a above.

g. As a condition of receiving a direct payment, each Participating Local Government that receives a direct payment agrees to undertake the following actions:

- i. Developing a methodology for obtaining proposals for use of Opioid Funds.
- ii. Ensuring there is opportunity for community-based input on priorities for Opioid Fund programs and services.
- iii. Receiving and reviewing proposals for use of Opioid Funds for Approved Purposes.
- iv. Approving or denying proposals for use of Opioid Funds for Approved Purposes.
- v. Receiving funds from the Trustee for approved proposals and distributing the Opioid Funds to the recipient.
- vi. Reporting to the OAC and making publicly available all decisions on Opioid Fund allocation applications, distributions and expenditures.

h. Prior to any distribution of Opioid Funds within the Allocation Region, The Participating Local Governments must establish an Opioid Abatement Council (OAC) to oversee Opioid Fund allocation, distribution, expenditures and dispute resolution. The OAC may be a preexisting regional body or may be a new body created for purposes of executing the obligations of this MOU.

i. The OAC for each Allocation Region shall be composed of representation from both Participating Counties and Participating Towns or Cities within the Region. The method of selecting members, and the terms for which they will serve will be determined by the Allocation Region's Participating Local Governments. All persons who serve on the OAC must have work or educational experience pertaining to one or more Approved Uses.

j. The Regional OAC will be responsible for the following actions:

- i. Overseeing distribution of Opioid Funds from Participating Local Governments to programs and services within the Allocation Region for Approved Purposes.

- ii. Annual review of expenditure reports from Participating Local Jurisdictions within the Allocation Region for compliance with Approved Purposes and the terms of this MOU and any Settlement.
- iii. In the case where Participating Local Governments chose to forego their allocation of Opioid Funds:
  - (i) Approving or denying proposals by Participating Local Governments or community groups to the OAC for use of Opioid Funds within the Allocation Region.
  - (ii) Directing the Trustee to distribute Opioid Funds for use by Participating Local Governments or community groups whose proposals are approved by the OAC.
  - (iii) Administrating and maintaining records of all OAC decisions and distributions of Opioid Funds.
- iv. Reporting and making publicly available all decisions on Opioid Fund allocation applications, distributions and expenditures by the OAC or directly by Participating Local Governments.
- v. Developing and maintaining a centralized public dashboard or other repository for the publication of expenditure data from any Participating Local Government that receives Opioid Funds, and for expenditures by the OAC in that Allocation Region, which it shall update at least annually.
- vi. If necessary, requiring and collecting additional outcome-related data from Participating Local Governments to evaluate the use of Opioid Funds, and all Participating Local Governments shall comply with such requirements.
- vii. Hearing complaints by Participating Local Governments within the Allocation Region regarding alleged failure to (1) use Opioid Funds for Approved Purposes or (2) comply with reporting requirements.

5. Participating Local Governments may agree and elect to share, pool, or collaborate with their respective allocation of Opioid Funds in any manner they choose by adopting a Regional Agreement, so long as such sharing, pooling, or collaboration is used for Approved Purposes and complies with the terms of this MOU and any Settlement.

6. Nothing in this MOU should alter or change any Participating Local Government's rights to pursue its own claim. Rather, the intent of this MOU is to join all parties who wish to be Participating Local Governments to agree upon an allocation formula for any Opioid Funds from any future binding Settlement with one or more Pharmaceutical Supply Chain Participants for all Local Governments in the State of Washington.

7. If any Participating Local Government disputes the amount it receives from its allocation of Opioid Funds, the Participating Local Government shall alert its respective OAC within sixty (60) days of discovering the information underlying the dispute. Failure to alert its OAC within this time frame shall not constitute a waiver of the Participating Local Government's right to seek recoupment of any deficiency in its allocation of Opioid Funds.

8. If any OAC concludes that a Participating Local Government's expenditure of its allocation of Opioid Funds did not comply with the Approved Purposes listed in Exhibit A, or the terms of this MOU, or that the Participating Local Government otherwise misused its allocation of Opioid Funds, the OAC may take remedial action against the alleged offending Participating Local Government. Such remedial action is left to the discretion of the OAC and may include withholding future Opioid Funds owed to the offending Participating Local Government or requiring the offending Participating Local Government to reimburse improperly expended Opioid Funds back to the OAC to be re-allocated to the remaining Participating Local Governments within that Region.

9. All Participating Local Governments and OAC shall maintain all records related to the receipt and expenditure of Opioid Funds for no less than five (5) years and shall make such records available for review by any other Participating Local Government or OAC, or the public. Records requested by the public shall be produced in accordance with Washington's Public Records Act RCW 42.56.001 *et seq.* Records requested by another Participating Local Government or an OAC shall be produced within twenty-one (21) days of the date the record request was received. This requirement does not supplant any Participating Local Government or OAC's obligations under Washington's Public Records Act RCW 42.56.001 *et seq.*

#### **D. Payment of Counsel and Litigation Expenses**

1. The Litigating Local Governments have incurred attorneys' fees and litigation expenses relating to their prosecution of claims against the Pharmaceutical Supply Chain Participants, and this prosecution has inured to the benefit of all Participating Local Governments. Accordingly, a Washington



Government Fee Fund (“GFF”) shall be established that ensures that all Parties that receive Opioid Funds contribute to the payment of fees and expenses incurred to prosecute the claims against the Pharmaceutical Supply Chain Participants, regardless of whether they are litigating or non-litigating entities.

2. The amount of the GFF shall be based as follows: the funds to be deposited in the GFF shall be equal to 15% of the total cash value of the Opioid Funds.

3. The maximum percentage of any contingency fee agreement permitted for compensation shall be 15% of the portion of the Opioid Funds allocated to the Litigating Local Government that is a party to the contingency fee agreement, plus expenses attributable to that Litigating Local Government. Under no circumstances may counsel collect more for its work on behalf of a Litigating Local Government than it would under its contingency agreement with that Litigating Local Government.

4. Payments from the GFF shall be overseen by a committee (the “Opioid Fee and Expense Committee”) consisting of one representative of the following law firms: (a) Keller Rohrback L.L.P.; (b) Hagens Berman Sobol Shapiro LLP; (c) Goldfarb & Huck Roth Riojas, PLLC; and (d) Napoli Shkolnik PLLC. The role of the Opioid Fee and Expense Committee shall be limited to ensuring that the GFF is administered in accordance with this Section.

5. In the event that settling Pharmaceutical Supply Chain Participants do not pay the fees and expenses of the Participating Local Governments directly at the time settlement is achieved, payments to counsel for Participating Local Governments shall be made from the GFF over not more than three years, with 50% paid within 12 months of the date of Settlement and 25% paid in each subsequent year, or at the time the total Settlement amount is paid to the Trustee by the Defendants, whichever is sooner.

6. Any funds remaining in the GFF in excess of: (i) the amounts needed to cover Litigating Local Governments’ private counsel’s representation agreements, and (ii) the amounts needed to cover the common benefit tax discussed in Section C.8 below (if not paid directly by the Defendants in connection with future settlement(s), shall revert to the Participating Local Governments *pro rata* according to the percentages set forth in Exhibits B, to be used for Approved Purposes as set forth herein and in Exhibit A.

7. In the event that funds in the GFF are not sufficient to pay all fees and expenses owed under this Section, payments to counsel for all Litigating Local Governments shall be reduced on a *pro rata* basis. The Litigating Local Governments will not be responsible for any of these reduced amounts.

8. The Parties anticipate that any Opioid Funds they receive will be subject to a common benefit “tax” imposed by the court in *In Re: National Prescription Opiate Litigation*, United States District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP (“Common Benefit Tax”). If this occurs, the Participating Local Governments shall first seek to have the settling defendants pay the Common Benefit Tax. If the settling defendants do not agree to pay the Common Benefit Tax, then the Common Benefit Tax shall be paid from the Opioid Funds and by both litigating and non-litigating Local Governments. This payment shall occur prior to allocation and distribution of funds to the Participating Local Governments. In the event that GFF is not fully exhausted to pay the Litigating Local Governments’ private counsel’s representation agreements, excess funds in the GFF shall be applied to pay the Common Benefit Tax (if any).

#### **E. General Terms**

1. If any Participating Local Government believes another Participating Local Government, not including the Regional Abatement Advisory Councils, violated the terms of this MOU, the alleging Participating Local Government may seek to enforce the terms of this MOU in the court in which any applicable Settlement(s) was entered, provided the alleging Participating Local Government first provides the alleged offending Participating Local Government notice of the alleged violation(s) and a reasonable opportunity to cure the alleged violation(s). In such an enforcement action, any alleging Participating Local Government or alleged offending Participating Local Government may be represented by their respective public entity in accordance with Washington law.

2. Nothing in this MOU shall be interpreted to waive the right of any Participating Local Government to seek judicial relief for conduct occurring outside the scope of this MOU that violates any Washington law. In such an action, the alleged offending Participating Local Government, including the Regional Abatement Advisory Councils, may be represented by their respective public entities in accordance with Washington law. In the event of a conflict, any Participating Local Government, including the Regional Abatement Advisory Councils and its Members, may seek outside representation to defend itself against such an action.

3. Venue for any legal action related to this MOU shall be in the court in which the Participating Local Government is located or in accordance with the court rules on venue in that jurisdiction. This provision is not intended to expand the court rules on venue.

4. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Participating Local Governments approve the use of electronic signatures for execution of this MOU. All use of electronic signatures

shall be governed by the Uniform Electronic Transactions Act. The Parties agree not to deny the legal effect or enforceability of the MOU solely because it is in electronic form or because an electronic record was used in its formation. The Participating Local Government agree not to object to the admissibility of the MOU in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

5. Each Participating Local Government represents that all procedures necessary to authorize such Participating Local Government's execution of this MOU have been performed and that the person signing for such Party has been authorized to execute the MOU.

**[Remainder of Page Intentionally Left Blank – Signature Pages Follow]**

**This One Washington Memorandum of Understanding Between Washington Municipalities is signed this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by:**

\_\_\_\_\_

**Name & Title** \_\_\_\_\_

**On behalf of** \_\_\_\_\_

4894-0031-1574, v. 2

# **EXHIBIT A**

# OPIOID ABATEMENT STRATEGIES

## PART ONE: TREATMENT

### A. TREAT OPIOID USE DISORDER (OUD)

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including all forms of Medication-Assisted Treatment (MAT) approved by the U.S. Food and Drug Administration.
2. Support and reimburse services that include the full American Society of Addiction Medicine (ASAM) continuum of care for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including but not limited to:
  - a. Medication-Assisted Treatment (MAT);
  - b. Abstinence-based treatment;
  - c. Treatment, recovery, or other services provided by states, subdivisions, community health centers; non-for-profit providers; or for-profit providers;
  - d. Treatment by providers that focus on OUD treatment as well as treatment by providers that offer OUD treatment along with treatment for other SUD/MH conditions, co-usage, and/or co-addiction; or
  - e. Evidence-informed residential services programs, as noted below.
3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.
4. Improve oversight of Opioid Treatment Programs (OTPs) to assure evidence-based, evidence-informed, or promising practices such as adequate methadone dosing.
5. Support mobile intervention, treatment, and recovery services, offered by qualified professionals and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction and for persons who have experienced an opioid overdose.
6. Support treatment of mental health trauma resulting from the traumatic experiences of the opioid user (e.g., violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (e.g., surviving family members after an overdose



or overdose fatality), and training of health care personnel to identify and address such trauma.

7. Support detoxification (detox) and withdrawal management services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including medical detox, referral to treatment, or connections to other services or supports.
8. Support training on MAT for health care providers, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.
9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
10. Provide fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.
11. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (DATA 2000) to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a DATA 2000 waiver.
12. Support the dissemination of web-based training curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service-Opioids web-based training curriculum and motivational interviewing.
13. Support the development and dissemination of new curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service for Medication-Assisted Treatment.

## **B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY**

Support people in treatment for and recovery from OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Provide the full continuum of care of recovery services for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including supportive housing, residential treatment, medical detox services, peer support services and counseling, community navigators, case management, and connections to community-based services.
2. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.

3. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including supportive housing, recovery housing, housing assistance programs, or training for housing providers.
4. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
5. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
6. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
7. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.
8. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to manage the opioid user in the family.
9. Provide training and development of procedures for government staff to appropriately interact and provide social and other services to current and recovering opioid users, including reducing stigma.
10. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.

**C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED  
(CONNECTIONS TO CARE)**

Provide connections to care for people who have – or are at risk of developing – OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.
2. Support Screening, Brief Intervention and Referral to Treatment (SBIRT) programs to reduce the transition from use to disorders.
3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.

4. Purchase automated versions of SBIRT and support ongoing costs of the technology.
5. Support training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.
6. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, or persons who have experienced an opioid overdose, into community treatment or recovery services through a bridge clinic or similar approach.
7. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or persons that have experienced an opioid overdose.
8. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.
9. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or to persons who have experienced an opioid overdose.
10. Provide funding for peer navigators, recovery coaches, care coordinators, or care managers that offer assistance to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or to persons who have experienced on opioid overdose.
11. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.
12. Develop and support best practices on addressing OUD in the workplace.
13. Support assistance programs for health care providers with OUD.
14. Engage non-profits and the faith community as a system to support outreach for treatment.
15. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
16. Create or support intake and call centers to facilitate education and access to treatment, prevention, and recovery services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.

17. Develop or support a National Treatment Availability Clearinghouse – a multistate/nationally accessible database whereby health care providers can list locations for currently available in-patient and out-patient OUD treatment services that are accessible on a real-time basis by persons who seek treatment.

**D. ADDRESS THE NEEDS OF CRIMINAL-JUSTICE-INVOLVED PERSONS**

Address the needs of persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are involved – or are at risk of becoming involved – in the criminal justice system through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Support pre-arrest or post-arrest diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including established strategies such as:
  - a. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative (PAARI);
  - b. Active outreach strategies such as the Drug Abuse Response Team (DART) model;
  - c. “Naloxone Plus” strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;
  - d. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (LEAD) model;
  - e. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative;
  - f. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise and to reduce perceived barriers associated with law enforcement 911 responses; or
  - g. County prosecution diversion programs, including diversion officer salary, only for counties with a population of 50,000 or less. Any diversion services in matters involving opioids must include drug testing, monitoring, or treatment.
2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction to evidence-informed treatment, including MAT, and related services.
3. Support treatment and recovery courts for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, but only if these courts provide referrals to evidence-informed treatment, including MAT.

4. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are incarcerated in jail or prison.
5. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are leaving jail or prison have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.
6. Support critical time interventions (CTI), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.
7. Provide training on best practices for addressing the needs of criminal-justice-involved persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, case management, or other services offered in connection with any of the strategies described in this section.

**E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME**

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, and the needs of their families, including babies with neonatal abstinence syndrome, through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Support evidence-based, evidence-informed, or promising treatment, including MAT, recovery services and supports, and prevention services for pregnant women – or women who could become pregnant – who have OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.
2. Provide training for obstetricians or other healthcare personnel that work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
3. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with Neonatal Abstinence Syndrome get referred to appropriate services and receive a plan of safe care.
4. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.

5. Offer enhanced family supports and home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including but not limited to parent skills training.
6. Support for Children's Services – Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

|                      |
|----------------------|
| PART TWO: PREVENTION |
|----------------------|

**F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS**

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.
2. Academic counter-detailing to educate prescribers on appropriate opioid prescribing.
3. Continuing Medical Education (CME) on appropriate prescribing of opioids.
4. Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.
5. Support enhancements or improvements to Prescription Drug Monitoring Programs (PDMPs), including but not limited to improvements that:
  - a. Increase the number of prescribers using PDMPs;
  - b. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs or by improving the interface that prescribers use to access PDMP data, or both; or
  - c. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD.
6. Development and implementation of a national PDMP – Fund development of a multistate/national PDMP that permits information sharing while providing appropriate safeguards on sharing of private health information, including but not limited to:
  - a. Integration of PDMP data with electronic health records, overdose episodes, and decision support tools for health care providers relating to OUD.



- b. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation's Emergency Medical Technician overdose database.
7. Increase electronic prescribing to prevent diversion or forgery.
8. Educate Dispensers on appropriate opioid dispensing.

**G. PREVENT MISUSE OF OPIOIDS**

Support efforts to discourage or prevent misuse of opioids through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Corrective advertising or affirmative public education campaigns based on evidence.
2. Public education relating to drug disposal.
3. Drug take-back disposal or destruction programs.
4. Fund community anti-drug coalitions that engage in drug prevention efforts.
5. Support community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction – including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA).
6. Engage non-profits and faith-based communities as systems to support prevention.
7. Support evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.
8. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.
9. Support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
10. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.
11. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses or other school staff, to

address mental health needs in young people that (when not properly addressed) increase the risk of opioid or other drug misuse.

#### **H. PREVENT OVERDOSE DEATHS AND OTHER HARMS**

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Increase availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, opioid users, families and friends of opioid users, schools, community navigators and outreach workers, drug offenders upon release from jail/prison, or other members of the general public.
2. Provision by public health entities of free naloxone to anyone in the community, including but not limited to provision of intra-nasal naloxone in settings where other options are not available or allowed.
3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, and other members of the general public.
4. Enable school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.
5. Expand, improve, or develop data tracking software and applications for overdoses/naloxone revivals.
6. Public education relating to emergency responses to overdoses.
7. Public education relating to immunity and Good Samaritan laws.
8. Educate first responders regarding the existence and operation of immunity and Good Samaritan laws.
9. Expand access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.
10. Support mobile units that offer or provide referrals to treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
11. Provide training in treatment and recovery strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
12. Support screening for fentanyl in routine clinical toxicology testing.

## PART THREE: OTHER STRATEGIES

### **I. FIRST RESPONDERS**

In addition to items C8, D1 through D7, H1, H3, and H8, support the following:

1. Current and future law enforcement expenditures relating to the opioid epidemic.
2. Educate law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.

### **J. LEADERSHIP, PLANNING AND COORDINATION**

Support efforts to provide leadership, planning, and coordination to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Community regional planning to identify goals for reducing harms related to the opioid epidemic, to identify areas and populations with the greatest needs for treatment intervention services, or to support other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
2. A government dashboard to track key opioid-related indicators and supports as identified through collaborative community processes.
3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
4. Provide resources to staff government oversight and management of opioid abatement programs.

### **K. TRAINING**

In addition to the training referred to in various items above, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis.
2. Invest in infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, or implement other

strategies to abate the opioid epidemic described in this opioid abatement strategy list (e.g., health care, primary care, pharmacies, PDMPs, etc.).

## **L. RESEARCH**

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, and evaluation of programs and strategies described in this opioid abatement strategy list.
2. Research non-opioid treatment of chronic pain.
3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.
4. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.
5. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (e.g. Hawaii HOPE and Dakota 24/7).
6. Research on expanded modalities such as prescription methadone that can expand access to MAT.

## EXHIBIT B

| County                       | Local Government     | % Allocation  |
|------------------------------|----------------------|---------------|
| <b><u>Adams County</u></b>   |                      |               |
|                              | Adams County         | 0.1638732475% |
|                              | Hatton               |               |
|                              | Lind                 |               |
|                              | Othello              |               |
|                              | Ritzville            |               |
|                              | Washtucna            |               |
|                              | <b>County Total:</b> | 0.1638732475% |
| <b><u>Asotin County</u></b>  |                      |               |
|                              | Asotin County        | 0.4694498386% |
|                              | Asotin               |               |
|                              | Clarkston            |               |
|                              | <b>County Total:</b> | 0.4694498386% |
| <b><u>Benton County</u></b>  |                      |               |
|                              | Benton County        | 1.4848831892% |
|                              | Benton City          |               |
|                              | Kennewick            | 0.5415650564% |
|                              | Prosser              |               |
|                              | Richland             | 0.4756779517% |
|                              | West Richland        | 0.0459360490% |
|                              | <b>County Total:</b> | 2.5480622463% |
| <b><u>Chelan County</u></b>  |                      |               |
|                              | Chelan County        | 0.7434914485% |
|                              | Cashmere             |               |
|                              | Chelan               |               |
|                              | Entiat               |               |
|                              | Leavenworth          |               |
|                              | Wenatchee            | 0.2968333494% |
|                              | <b>County Total:</b> | 1.0403247979% |
| <b><u>Clallam County</u></b> |                      |               |
|                              | Clallam County       | 1.3076983401% |
|                              | Forks                |               |
|                              | Port Angeles         | 0.4598370527% |
|                              | Sequim               |               |
|                              | <b>County Total:</b> | 1.7675353928% |

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Clark County

|                      |                      |
|----------------------|----------------------|
| Clark County         | 4.5149775326%        |
| Battle Ground        | 0.1384729857%        |
| Camas                | 0.2691592724%        |
| La Center            |                      |
| Ridgefield           |                      |
| Vancouver            | 1.7306605325%        |
| Washougal            | 0.1279328220%        |
| Woodland***          |                      |
| Yacolt               |                      |
| <b>County Total:</b> | <b>6.7812031452%</b> |

### Columbia County

|                      |                      |
|----------------------|----------------------|
| Columbia County      | 0.0561699537%        |
| Dayton               |                      |
| Starbuck             |                      |
| <b>County Total:</b> | <b>0.0561699537%</b> |

### Cowlitz County

|                      |                      |
|----------------------|----------------------|
| Cowlitz County       | 1.7226945990%        |
| Castle Rock          |                      |
| Kalama               |                      |
| Kelso                | 0.1331145270%        |
| Longview             | 0.6162736905%        |
| Woodland***          |                      |
| <b>County Total:</b> | <b>2.4720828165%</b> |

### Douglas County

|                      |                      |
|----------------------|----------------------|
| Douglas County       | 0.3932175175%        |
| Bridgeport           |                      |
| Coulee Dam***        |                      |
| East Wenatchee       | 0.0799810865%        |
| Mansfield            |                      |
| Rock Island          |                      |
| Waterville           |                      |
| <b>County Total:</b> | <b>0.4731986040%</b> |

### Ferry County

|                      |                      |
|----------------------|----------------------|
| Ferry County         | 0.1153487994%        |
| Republic             |                      |
| <b>County Total:</b> | <b>0.1153487994%</b> |

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Franklin County

|                      |                      |
|----------------------|----------------------|
| Franklin County      | 0.3361237144%        |
| Connell              |                      |
| Kahlotus             |                      |
| Mesa                 |                      |
| Pasco                | 0.4278056066%        |
| <b>County Total:</b> | <b>0.7639293210%</b> |

### Garfield County

|                      |                      |
|----------------------|----------------------|
| Garfield County      | 0.0321982209%        |
| Pomeroy              |                      |
| <b>County Total:</b> | <b>0.0321982209%</b> |

### Grant County

|                      |                      |
|----------------------|----------------------|
| Grant County         | 0.9932572167%        |
| Coulee City          |                      |
| Coulee Dam***        |                      |
| Electric City        |                      |
| Ephrata              |                      |
| George               |                      |
| Grand Coulee         |                      |
| Hartline             |                      |
| Krupp                |                      |
| Mattawa              |                      |
| Moses Lake           | 0.2078293909%        |
| Quincy               |                      |
| Royal City           |                      |
| Soap Lake            |                      |
| Warden               |                      |
| Wilson Creek         |                      |
| <b>County Total:</b> | <b>1.2010866076%</b> |



## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Grays Harbor County

|                      |                      |
|----------------------|----------------------|
| Grays Harbor County  | 0.9992429138%        |
| Aberdeen             | 0.2491525333%        |
| Cosmopolis           |                      |
| Elma                 |                      |
| Hoquiam              |                      |
| McCleary             |                      |
| Montesano            |                      |
| Oakville             |                      |
| Ocean Shores         |                      |
| Westport             |                      |
| <b>County Total:</b> | <b>1.2483954471%</b> |

### Island County

|                      |                      |
|----------------------|----------------------|
| Island County        | 0.6820422610%        |
| Coupeville           |                      |
| Langley              |                      |
| Oak Harbor           | 0.2511550431%        |
| <b>County Total:</b> | <b>0.9331973041%</b> |

### Jefferson County

|                      |                      |
|----------------------|----------------------|
| Jefferson County     | 0.4417137380%        |
| Port Townsend        |                      |
| <b>County Total:</b> | <b>0.4417137380%</b> |

## EXHIBIT B

| County                    | Local Government     | % Allocation          |
|---------------------------|----------------------|-----------------------|
| <b><u>King County</u></b> |                      |                       |
|                           | King County          | 13.9743722662%        |
|                           | Algona               |                       |
|                           | Auburn***            | 0.2622774917%         |
|                           | Beaux Arts Village   |                       |
|                           | Bellevue             | 1.1300592573%         |
|                           | Black Diamond        |                       |
|                           | Bothell***           | 0.1821602716%         |
|                           | Burien               | 0.0270962921%         |
|                           | Carnation            |                       |
|                           | Clyde Hill           |                       |
|                           | Covington            | 0.0118134406%         |
|                           | Des Moines           | 0.1179764526%         |
|                           | Duvall               |                       |
|                           | Enumclaw***          | 0.0537768326%         |
|                           | Federal Way          | 0.3061452240%         |
|                           | Hunts Point          |                       |
|                           | Issaquah             | 0.1876240107%         |
|                           | Kenmore              | 0.0204441024%         |
|                           | Kent                 | 0.5377397676%         |
|                           | Kirkland             | 0.5453525246%         |
|                           | Lake Forest Park     | 0.0525439124%         |
|                           | Maple Valley         | 0.0093761587%         |
|                           | Medina               |                       |
|                           | Mercer Island        | 0.1751797481%         |
|                           | Milton***            |                       |
|                           | Newcastle            | 0.0033117880%         |
|                           | Normandy Park        |                       |
|                           | North Bend           |                       |
|                           | Pacific***           |                       |
|                           | Redmond              | 0.4839486007%         |
|                           | Renton               | 0.7652626920%         |
|                           | Sammamish            | 0.0224369090%         |
|                           | SeaTac               | 0.1481551278%         |
|                           | Seattle              | 6.6032403816%         |
|                           | Shoreline            | 0.0435834501%         |
|                           | Skykomish            |                       |
|                           | Snoqualmie           | 0.0649164481%         |
|                           | Tukwila              | 0.3032205739%         |
|                           | Woodinville          | 0.0185516364%         |
|                           | Yarrow Point         |                       |
|                           | <b>County Total:</b> | <b>26.0505653608%</b> |

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### **Kitsap County**

|                      |                      |
|----------------------|----------------------|
| Kitsap County        | 2.6294133668%        |
| Bainbridge Island    | 0.1364686014%        |
| Bremerton            | 0.6193374389%        |
| Port Orchard         | 0.1009497162%        |
| Poulsbo              | 0.0773748246%        |
| <b>County Total:</b> | <b>3.5635439479%</b> |

### **Kittitas County**

|                      |                      |
|----------------------|----------------------|
| Kittitas County      | 0.3855704683%        |
| Cle Elum             |                      |
| Ellensburg           | 0.0955824915%        |
| Kittitas             |                      |
| Roslyn               |                      |
| South Cle Elum       |                      |
| <b>County Total:</b> | <b>0.4811529598%</b> |

### **Klickitat County**

|                      |                      |
|----------------------|----------------------|
| Klickitat County     | 0.2211673457%        |
| Bingen               |                      |
| Goldendale           |                      |
| White Salmon         |                      |
| <b>County Total:</b> | <b>0.2211673457%</b> |

### **Lewis County**

|                      |                      |
|----------------------|----------------------|
| Lewis County         | 1.0777377479%        |
| Centralia            | 0.1909990353%        |
| Chehalis             |                      |
| Morton               |                      |
| Mossyrock            |                      |
| Napavine             |                      |
| Pe Ell               |                      |
| Toledo               |                      |
| Vader                |                      |
| Winlock              |                      |
| <b>County Total:</b> | <b>1.2687367832%</b> |

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Lincoln County

|                      |                      |
|----------------------|----------------------|
| Lincoln County       | 0.1712669645%        |
| Almira               |                      |
| Creston              |                      |
| Davenport            |                      |
| Harrington           |                      |
| Odessa               |                      |
| Reardan              |                      |
| Sprague              |                      |
| Wilbur               |                      |
| <b>County Total:</b> | <b>0.1712669645%</b> |

### Mason County

|                      |                      |
|----------------------|----------------------|
| Mason County         | 0.8089918012%        |
| Shelton              | 0.1239179888%        |
| <b>County Total:</b> | <b>0.9329097900%</b> |

### Okanogan County

|                      |                      |
|----------------------|----------------------|
| Okanogan County      | 0.6145043345%        |
| Brewster             |                      |
| Conconully           |                      |
| Coulee Dam***        |                      |
| Elmer City           |                      |
| Nespelem             |                      |
| Okanogan             |                      |
| Omak                 |                      |
| Oroville             |                      |
| Pateros              |                      |
| Riverside            |                      |
| Tonasket             |                      |
| Twisp                |                      |
| Winthrop             |                      |
| <b>County Total:</b> | <b>0.6145043345%</b> |

### Pacific County

|                      |                      |
|----------------------|----------------------|
| Pacific County       | 0.4895416466%        |
| Ilwaco               |                      |
| Long Beach           |                      |
| Raymond              |                      |
| South Bend           |                      |
| <b>County Total:</b> | <b>0.4895416466%</b> |

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Pend Oreille County

|                      |                      |
|----------------------|----------------------|
| Pend Oreille County  | 0.2566374940%        |
| Cusick               |                      |
| Ione                 |                      |
| Metaline             |                      |
| Metaline Falls       |                      |
| Newport              |                      |
| <b>County Total:</b> | <b>0.2566374940%</b> |

### Pierce County

|                      |                       |
|----------------------|-----------------------|
| Pierce County        | 7.2310164020%         |
| Auburn***            | 0.0628522112%         |
| Bonney Lake          | 0.1190773864%         |
| Buckley              |                       |
| Carbonado            |                       |
| DuPont               |                       |
| Eatonville           |                       |
| Edgewood             | 0.0048016791%         |
| Enumclaw***          | 0.0000000000%         |
| Fife                 | 0.1955185481%         |
| Fircrest             |                       |
| Gig Harbor           | 0.0859963345%         |
| Lakewood             | 0.5253640894%         |
| Milton***            |                       |
| Orting               |                       |
| Pacific***           |                       |
| Puyallup             | 0.3845704814%         |
| Roy                  |                       |
| Ruston               |                       |
| South Prairie        |                       |
| Steilacoom           |                       |
| Sumner               | 0.1083157569%         |
| Tacoma               | 3.2816374617%         |
| University Place     | 0.0353733363%         |
| Wilkeson             |                       |
| <b>County Total:</b> | <b>12.0345236870%</b> |

### San Juan County

|                      |                      |
|----------------------|----------------------|
| San Juan County      | 0.2101495171%        |
| Friday Harbor        |                      |
| <b>County Total:</b> | <b>0.2101495171%</b> |

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Skagit County

|                      |                      |
|----------------------|----------------------|
| Skagit County        | 1.0526023961%        |
| Anacortes            | 0.1774962906%        |
| Burlington           | 0.1146861661%        |
| Concrete             |                      |
| Hamilton             |                      |
| La Conner            |                      |
| Lyman                |                      |
| Mount Vernon         | 0.2801063665%        |
| Sedro-Woolley        | 0.0661146351%        |
| <b>County Total:</b> | <b>1.6910058544%</b> |

### Skamania County

|                      |                      |
|----------------------|----------------------|
| Skamania County      | 0.1631931925%        |
| North Bonneville     |                      |
| Stevenson            |                      |
| <b>County Total:</b> | <b>0.1631931925%</b> |

### Snohomish County

|                      |                       |
|----------------------|-----------------------|
| Snohomish County     | 6.9054415622%         |
| Arlington            | 0.2620524080%         |
| Bothell***           | 0.2654558588%         |
| Brier                |                       |
| Darrington           |                       |
| Edmonds              | 0.3058936009%         |
| Everett              | 1.9258363241%         |
| Gold Bar             |                       |
| Granite Falls        |                       |
| Index                |                       |
| Lake Stevens         | 0.1385202891%         |
| Lynnwood             | 0.7704629214%         |
| Marysville           | 0.3945067827%         |
| Mill Creek           | 0.1227939546%         |
| Monroe               | 0.1771621898%         |
| Mountlake Terrace    | 0.2108935805%         |
| Mukilteo             | 0.2561790702%         |
| Snohomish            | 0.0861097964%         |
| Stanwood             |                       |
| Sultan               |                       |
| Woodway              |                       |
| <b>County Total:</b> | <b>11.8213083387%</b> |

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Spokane County

|                      |                      |
|----------------------|----------------------|
| Spokane County       | 5.5623859292%        |
| Airway Heights       |                      |
| Cheney               | 0.1238454349%        |
| Deer Park            |                      |
| Fairfield            |                      |
| Latah                |                      |
| Liberty Lake         | 0.0389636519%        |
| Medical Lake         |                      |
| Millwood             |                      |
| Rockford             |                      |
| Spangle              |                      |
| Spokane              | 3.0872078287%        |
| Spokane Valley       | 0.0684217500%        |
| Waverly              |                      |
| <b>County Total:</b> | <b>8.8808245947%</b> |

### Stevens County

|                      |                      |
|----------------------|----------------------|
| Stevens County       | 0.7479240179%        |
| Chewelah             |                      |
| Colville             |                      |
| Kettle Falls         |                      |
| Marcus               |                      |
| Northport            |                      |
| Springdale           |                      |
| <b>County Total:</b> | <b>0.7479240179%</b> |

### Thurston County

|                      |                      |
|----------------------|----------------------|
| Thurston County      | 2.3258492094%        |
| Bucoda               |                      |
| Lacey                | 0.2348627221%        |
| Olympia              | 0.6039423385%        |
| Rainier              |                      |
| Tenino               |                      |
| Tumwater             | 0.2065982350%        |
| Yelm                 |                      |
| <b>County Total:</b> | <b>3.3712525050%</b> |

### Wahkiakum County

|                      |                      |
|----------------------|----------------------|
| Wahkiakum County     | 0.0596582197%        |
| Cathlamet            |                      |
| <b>County Total:</b> | <b>0.0596582197%</b> |



## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Walla Walla County

|                      |                      |
|----------------------|----------------------|
| Walla Walla County   | 0.5543870294%        |
| College Place        |                      |
| Prescott             |                      |
| Waitsburg            |                      |
| Walla Walla          | 0.3140768654%        |
| <b>County Total:</b> | <b>0.8684638948%</b> |

### Whatcom County

|                      |                      |
|----------------------|----------------------|
| Whatcom County       | 1.3452637306%        |
| Bellingham           | 0.8978614577%        |
| Blaine               |                      |
| Everson              |                      |
| Ferndale             | 0.0646101891%        |
| Lynden               | 0.0827115612%        |
| Nooksack             |                      |
| Sumas                |                      |
| <b>County Total:</b> | <b>2.3904469386%</b> |

### Whitman County

|                      |                      |
|----------------------|----------------------|
| Whitman County       | 0.2626805837%        |
| Albion               |                      |
| Colfax               |                      |
| Colton               |                      |
| Endicott             |                      |
| Farmington           |                      |
| Garfield             |                      |
| LaCrosse             |                      |
| Lamont               |                      |
| Malden               |                      |
| Oakesdale            |                      |
| Palouse              |                      |
| Pullman              | 0.2214837491%        |
| Rosalia              |                      |
| St. John             |                      |
| Tekoa                |                      |
| Uniontown            |                      |
| <b>County Total:</b> | <b>0.4841643328%</b> |

## EXHIBIT B

| County                      | Local Government     | % Allocation         |
|-----------------------------|----------------------|----------------------|
| <b><u>Yakima County</u></b> |                      |                      |
|                             | Yakima County        | 1.9388392959%        |
|                             | Grandview            | 0.0530606109%        |
|                             | Granger              |                      |
|                             | Harrah               |                      |
|                             | Mabton               |                      |
|                             | Moxee                |                      |
|                             | Naches               |                      |
|                             | Selah                |                      |
|                             | Sunnyside            | 0.1213478384%        |
|                             | Tieton               |                      |
|                             | Toppenish            |                      |
|                             | Union Gap            |                      |
|                             | Wapato               |                      |
|                             | Yakima               | 0.6060410539%        |
|                             | Zillah               |                      |
|                             | <b>County Total:</b> | <b>2.7192887991%</b> |

# Exhibit C

## **KING COUNTY REGIONAL AGREEMENT**

King County intends to explore coordination with its cities and towns to facilitate a Regional Agreement for Opioid Fund allocation. Should some cities and towns choose not to participate in a Regional Agreement, this shall not preclude coordinated allocation for programs and services between the County and those cities and towns who elect to pursue a Regional Agreement. As contemplated in C.5 of the MOU, any Regional Agreement shall comply with the terms of the MOU and any Settlement. If no Regional Agreement is achieved, the default methodology for allocation in C.4 of the MOU shall apply.

**EXHIBIT K**  
**Subdivision and Special District Settlement Participation Form**

|                       |        |
|-----------------------|--------|
| Governmental Entity:  | State: |
| Authorized Signatory: |        |
| Address 1:            |        |
| Address 2:            |        |
| City, State, Zip:     |        |
| Phone:                |        |
| Email:                |        |

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Agreement dated November 22, 2022 (“*Allergan Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Allergan Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Allergan Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Allergan Settlement as provided therein.
2. Following the execution of this Settlement Participation Form, the Governmental Entity shall comply with Section III.B of the Allergan Settlement regarding Cessation of Litigation Activities.
3. The Governmental Entity shall, within fourteen (14) days of the Reference Date and prior to the filing of the Consent Judgment, file a request to dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the MDL Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
4. The Governmental Entity agrees to the terms of the Allergan Settlement pertaining to Subdivisions and Special Districts as defined therein.
5. By agreeing to the terms of the Allergan Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
6. The Governmental Entity agrees to use any monies it receives through the Allergan Settlement solely for the purposes provided therein.



7. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Allergan Settlement.
8. The Governmental Entity has the right to enforce the Allergan Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision or Participating Special District, hereby becomes a Releasor for all purposes in the Allergan Settlement, including, but not limited to, all provisions of **Section V (Release)**, and along with all departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Allergan Settlement are intended to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Allergan Settlement shall be a complete bar to any Released Claim.
10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision or Participating Special District as set forth in the Allergan Settlement.
11. In connection with the releases provided for in the Allergan Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Allergan Settlement.

12. Nothing herein is intended to modify in any way the terms of the Allergan Settlement, to which the Governmental Entity hereby agrees. To the extent this Settlement Participation Form is interpreted differently from the Allergan Settlement in any respect, the Allergan Settlement controls.



I have all necessary power and authorization to execute this Settlement Participation Form on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## **EXHIBIT K**

### **Subdivision Participation and Release Form**

|                       |        |
|-----------------------|--------|
| Governmental Entity:  | State: |
| Authorized Signatory: |        |
| Address 1:            |        |
| Address 2:            |        |
| City, State, Zip:     |        |
| Phone:                |        |
| Email:                |        |

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated December 9, 2022 (“*CVS Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the CVS Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the CVS Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the CVS Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
3. The Governmental Entity agrees to the terms of the CVS Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the CVS Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the CVS Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the CVS Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the CVS Settlement.
7. The Governmental Entity has the right to enforce the CVS Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the CVS Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the CVS Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The CVS Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the CVS Settlement.
10. In connection with the releases provided for in the CVS Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the CVS Settlement.



11. Nothing herein is intended to modify in any way the terms of the CVS Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the CVS Settlement in any respect, the CVS Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**Exhibit K**  
**Subdivision and Special District Settlement Participation Form**

|                       |        |
|-----------------------|--------|
| Governmental Entity:  | State: |
| Authorized Signatory: |        |
| Address 1:            |        |
| Address 2:            |        |
| City, State, Zip:     |        |
| Phone:                |        |
| Email:                |        |

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Agreement dated November 22, 2022 (“*Teva Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Teva Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Teva Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Teva Settlement as provided therein.
2. Following the execution of this Settlement Participation Form, the Governmental Entity shall comply with Section III.B of the Teva Settlement regarding Cessation of Litigation Activities.
3. The Governmental Entity shall, within 14 days of the Reference Date and prior to the filing of the Consent Judgment, file a request to dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in In re National Prescription Opiate Litigation, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopiodsettlement.com>.
4. The Governmental Entity agrees to the terms of the Teva Settlement pertaining to Subdivisions as defined therein.
5. By agreeing to the terms of the Teva Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
6. The Governmental Entity agrees to use any monies it receives through the Teva Settlement solely for the purposes provided therein.
7. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity’s state where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Teva Settlement.



8. The Governmental Entity has the right to enforce the Teva Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision or Participating Special District, hereby becomes a Releasor for all purposes in the Teva Settlement, including but not limited to all provisions of Section V (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Teva Settlement are intended by Released Entities and the Governmental Entity to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Teva Settlement shall be a complete bar to any Released Claim.
10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision or Participating Special District as set forth in the Teva Settlement.
11. In connection with the releases provided for in the Teva Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Teva Settlement.

12. Nothing herein is intended to modify in any way the terms of the Teva Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Teva Settlement in any respect, the Teva Settlement controls.



I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## **EXHIBIT K**

### **Subdivision Participation and Release Form**

|                       |        |
|-----------------------|--------|
| Governmental Entity:  | State: |
| Authorized Signatory: |        |
| Address 1:            |        |
| Address 2:            |        |
| City, State, Zip:     |        |
| Phone:                |        |
| Email:                |        |

The governmental entity identified above ("*Governmental Entity*"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated December 9, 2022 ("*Walgreens Settlement*"), and acting through the undersigned authorized official, hereby elects to participate in the Walgreens Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Walgreens Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the Walgreens Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs' Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
3. The Governmental Entity agrees to the terms of the Walgreens Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the Walgreens Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Walgreens Settlement solely for the purposes provided therein.





6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Walgreens Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the Walgreens Settlement.
7. The Governmental Entity has the right to enforce the Walgreens Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Walgreens Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Walgreens Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Walgreens Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Walgreens Settlement.
10. In connection with the releases provided for in the Walgreens Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Walgreens Settlement.



11. Nothing herein is intended to modify in any way the terms of the Walgreens Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Walgreens Settlement in any respect, the Walgreens Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## **EXHIBIT K**

### **Subdivision Participation Form**

|                      |        |
|----------------------|--------|
| Governmental Entity: | State: |
| Authorized Official: |        |
| Address 1:           |        |
| Address 2:           |        |
| City, State, Zip:    |        |
| Phone:               |        |
| Email:               |        |

The governmental entity identified above ("Governmental Entity"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated November 14, 2022 ("Walmart Settlement"), and acting through the undersigned authorized official, hereby elects to participate in the Walmart Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Walmart Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Walmart Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event within 14 days of the Effective Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in In re National Prescription Opiate Litigation, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs' Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopioidsettlement.com/>.
3. The Governmental Entity agrees to the terms of the Walmart Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Walmart Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Walmart Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Walmart Settlement.
7. The Governmental Entity has the right to enforce the Walmart Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Walmart Settlement, including but not limited to all provisions of Section X (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Walmart Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Walmart Settlement shall be a complete bar to any Released Claim.
9. In connection with the releases provided for in the Walmart Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Walmart Settlement.

10. Nothing herein is intended to modify in any way the terms of the Walmart Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Walmart Settlement in any respect, the Walmart Settlement controls.



I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

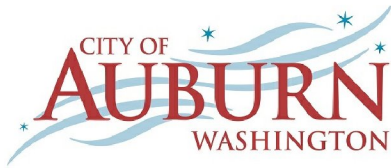
Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_





## AGENDA BILL APPROVAL FORM

**Agenda Subject:**

Resolution No. 5709 (Gaub)

**Date:**

March 28, 2023

**Department:**

Public Works

**Attachments:**

[Resolution No. 5709](#)

[Draft Bridge Easement](#)

[Draft Utility Easement](#)

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

City Council to approve Resolution No. 5709.

**Background for Motion:**

This Resolution authorizes the Mayor to execute easements with the Washington Department of Natural Resources for the Lea Hill Bridge and associated city-owned utilities that are required for the City to be able to perform on-going maintenance and repairs of the bridge and utilities.

**Background Summary:**

The Washington Department of Natural Resources (DNR) has jurisdiction over State Owned Aquatic Lands (SOAL) and the Green River is located within the SOAL. The Lea Hill Bridge and associated city-owned utilities spans over the Green River, therefore DNR requires that the City obtain aquatic easements for those City facilities. King County did not obtain the aquatic easement from DNR for the bridge prior to annexation of the bridge into the City of Auburn.

Resolution No. 5709 authorizes the Mayor to execute the required aquatic easements from DNR for the Lea Hill Bridge and associated city-owned utilities.

**Reviewed by Council Committees:**

**Councilmember:** Brown

**Staff:**

Gaub

**Meeting Date:** April 3, 2023

Item Number:

RES.D

## **RESOLUTION NO. 5709**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE THE AQUATIC EASEMENTS FROM THE WASHINGTON DEPARTMENT OF NATURAL RESOURCES FOR THE LEA HILL BRIDGE AND ASSOCIATED CITY-OWNED UTILITIES

WHEREAS, the Washington Department of Natural Resources has jurisdiction over State Owned Aquatic Lands (the "Property"); and

WHEREAS, the Green River is located within the Property; and

WHEREAS, the City of Auburn's Lea Hill Bridge and associated city-owned utilities spans over the Property; and

WHEREAS, it is required that the City obtain aquatic easements for the bridge, road improvements and associated City-owned utilities from the Washington Department of Natural Resources, and the easements will set forth the rights, benefits and responsibilities of each party regarding the facilities and the Property.

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

**Section 1.** The Auburn City Council authorizes the Mayor to execute the aquatic easements for the bridge and City-owned utilities attached as "Exhibit A" from the Washington Department of Natural Resources. By its terms, this conveyance will be at no cost to either party.

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



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

Dated and Signed: \_\_\_\_\_

CITY OF AUBURN

\_\_\_\_\_  
NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Shawn Campbell, MMC, City Clerk

\_\_\_\_\_  
Kendra Comeau, City Attorney

**THIS DRAFT DOES NOT CONSTITUTE AN OFFER  
NOR A COMMITMENT TO EXTEND AN OFFER**

When recorded, return to:  
City of Auburn  
25 West Main Street  
Auburn, WA 98001



**AQUATIC LANDS EASEMENT**

**Easement No. 51-104137**

Grantor: Washington State Department of Natural Resources  
Grantee(s): CITY OF AUBURN  
Abbreviated Legal Description: SW1/4 SW1/4 Section 8 and NW1/4 NW1/4 Section 17,  
Township 21 North, Range 5 East, W.M.  
Complete Legal Description on Page 31  
Auditor Reference Number(s) 20230111900004  
Assessor's Property Tax Parcel or Account Number: Not Applicable  
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with  
this Easement: Not Applicable

THIS EASEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and CITY OF AUBURN, a government agency ("Grantee"). State has authority to enter into this Easement under Chapter 43.12 RCW, Chapter 43.30 RCW, and Title 79 of the Revised Code of Washington (RCW).

THEREFORE, the Parties agree as follows:

**THIS DRAFT DOES NOT CONSTITUTE AN OFFER  
NOR A COMMITMENT TO EXTEND AN OFFER  
SECTION 1 GRANT OF EASEMENT**

**1.1 Easement Defined.**

- (a) State grants and conveys to Grantee a nonexclusive in gross easement, subject to the terms and conditions of this agreement, over, upon, and under shorelands and bedlands legally described in Exhibit A (“Easement Property”). In this agreement, the term “Easement” means this agreement and the rights granted.
- (b) This Easement is subject to all valid interests of third parties noted in the records of King County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) This Easement does not include any right to harvest, collect or damage any natural resources, including, but not limited to, aquatic life or living plants; any water rights; any mineral rights; or any right to excavate or withdraw sand, gravel, or other valuable materials.
- (d) This Easement is not exclusive. State may enter and use the Easement Property for any purpose or permit others to enter and use the Easement Property for any purpose so long as such use does not unreasonably interfere with the rights granted herein.

**1.2 Survey and Easement Property Descriptions.**

- (a) Grantee’s obligation to provide a true and accurate description of the Easement Property is a material term of this Easement. Grantee warrants that the record of survey referenced in Exhibit A includes a true and accurate description of the Easement Property, and the location of the Improvements existing on the Easement Property.
- (b) Grantee’s use of any state-owned aquatic lands outside the Easement Property boundaries is a material breach of this Easement and State may seek remedies under Section 14 of this Easement in addition to any other remedies afforded by law or equity or otherwise.

**1.3 Condition of Easement Property.** State makes no representation regarding the condition of the Easement Property, Improvements located on the Easement Property, the suitability of the Easement Property for Grantee’s Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Easement Property, or the existence of hazardous substances on the Easement Property.

**SECTION 2 USE**

**2.1 Permitted Use.** This Easement is granted for the purpose of and is limited to:

a three lane vehicle bridge (the “Permitted Use”).

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Exhibit B includes additional details about the Permitted Use, the Easement Property, and the Improvements. The Permitted Use is subject to the restrictions and additional obligations set forth in this Easement. The Permitted Use of this Easement shall not be changed or modified without the written consent of State, which shall be at State's sole discretion.

**2.2 Restrictions on Permitted Use and Operations.**

- (a) Grantee shall not cause or permit:
  - (1) Damage to land or natural resources on the Easement Property or adjacent state-owned aquatic lands, regardless of whether the damages are a direct or indirect result of the Permitted;
  - (2) Waste on the Easement Property or adjacent state-owned aquatic lands; or
  - (3) Deposit of material or filling activity on the Easement Property or adjacent state-owned aquatic lands, unless approved by State in writing. This prohibition includes, but is not limited to, any deposit of fill, rock, earth, ballast, wood waste, hydrocarbons, refuse, garbage, waste matter (including, but not limited to, chemical, biological, or toxic wastes), pollutants, or other matter.
- (b) Nothing in this Easement shall be interpreted as an authorization to dredge the Easement Property.
- (c) Grantee shall immediately notify State if Grantee breaches any of the terms and conditions of this Easement.
- (d) State's failure to notify Grantee of Grantee's failure to comply with all or any of the restrictions set out in this Paragraph 2.2 does not constitute a waiver of any remedies available to State.
- (e) Grantee's compliance with the restrictions in this Paragraph 2.2 does not limit Grantee's liability under any other provision of this Easement or the law.

**2.3 Conformance with Laws.** Grantee shall keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Grantee's use of the Easement Property.

**2.4 Liens and Encumbrances.** Unless expressly authorized by State in writing, Grantee shall keep the Easement Property free and clear of any liens and encumbrances arising out of or relating to the Permitted Use or Grantee's use of the Easement Property.

**2.5 Interference with Other Uses.**

- (a) Grantee shall exercise Grantee's rights under this Easement in a manner that minimizes or avoids interference with the rights of State, the public, or others with valid rights to use or occupy the Easement Property or surrounding lands and water.
- (b) To the fullest extent reasonably possible, Grantee shall place and construct Improvements in a manner that allows unobstructed movement in and on the waters above and around the Easement Property.



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- (c) Except in an emergency, Grantee shall provide State with written notice regarding the start of construction or other Significant Activity on the Easement Property at least sixty (60) days in advance (“Notice of Significant Activity”). “Significant Activity” means any activity that may affect the use or enjoyment of the Easement Property or adjacent state-owned aquatic lands by the State of Washington, public, or others with valid rights to use or occupy the Easement Property or adjacent state-owned aquatic lands.
- (d) Grantee shall mark the location of any hazards associated with the Permitted Use and any hazards associated with the Improvements in a manner that ensures reasonable notice to the public, including, but not limited to, boaters, kayakers, swimmers, and divers.

**SECTION 3 TERM**

**3.1 Term Defined.** The term of this Easement is Twelve (12) years, beginning on the 1st day of May, 2023 (the “Commencement Date”), and ending on the 30th day of April, 2035 (the “Termination Date”), unless terminated sooner under the terms of this Easement (the “Term”). Whenever the phrase “termination of this Easement” or “termination of the Easement” is used in this Easement, it shall refer to the ending, termination, cancellation, or expiration of the Easement.

**3.2 Renewal of Easement and/or Application for New Easement.**

This Easement does not provide a right of renewal. Grantee may apply for a new Easement, which State has discretion to grant. Grantee must apply for a new Easement at least one (1) year prior to Termination Date.

**3.3 End of Term.**

- (a) Removal of Improvements: Prior to the termination of this Easement, Grantee shall remove Improvements in accordance with Section 7.
- (b) Restoration of the Easement Property:
  - (1) Prior to the termination of this Easement, Grantee shall restore the Easement Property to its condition before the installation of any Improvements on the Easement Property.
  - (2) Restoration of the Easement Property is to be done at Grantee’s expense and to the satisfaction of State. Restoration of the Easement Property is considered to be Work, as described in Section 7 of the Easement. Grantee’s plans for restoring the Easement Property shall be submitted to State for prior approval in accordance with Section 7 of this Easement.
  - (3) If Grantee fails to restore the condition of the Easement Property as required by this Paragraph, State may take steps reasonably necessary to remedy Grantee’s failure. Upon demand by State, Grantee shall pay all costs of State’s remedy, lost revenue resulting from the condition of the

**THIS DRAFT DOES NOT CONSTITUTE AN OFFER  
NOR A COMMITMENT TO EXTEND AN OFFER**

Easement Property, and administrative costs associated with State's remedy.

- (c) **Vacation of Property:** Upon the termination of this Easement, Grantee shall cease all operations on and use of the Easement Property.

**SECTION 4 FEES**

**4.1 Fee.** For the Term, Grantee shall pay to State an administrative fee calculated in accordance with RCW 79.110.120. Grantee's payment is due thirty (30) days after Grantee receives State's invoice. State's invoice is a "notice" under Section 15 of this Easement; and the invoice shall be deemed received by Grantee when the notice is effective under Section 15. Any payment not paid by State's close of business on the date due is past due.

**4.2 Payment Place.** Grantee shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

**SECTION 5 OTHER EXPENSES**

**5.1 Utilities.** Grantee shall pay all fees charged for utilities required or needed by the Permitted Use.

**5.2 Taxes and Assessments.** Grantee shall pay all taxes, assessments, and other governmental charges applicable or attributable to the Easement, the Grantee-Owned Improvements, or the Permitted Use.

**5.3 Proof of Payment.** If required by State, Grantee shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Easement requires Grantee to pay.

**SECTION 6 LATE PAYMENTS AND OTHER CHARGES**

**6.1 Failure to Pay.** Failure to pay any fees or other expenses due under this Easement is a breach by Grantee. State may seek remedies in Section 14 as well as late charges and interest as provided in this Section 6. In addition, if Grantee fails to pay any amounts due to third parties under this Easement, State may pay the amount due, and recover its cost in accordance with this Section 6.

**6.2 Late Charge.** If State does not receive any payment within ten (10) days of the date due, Grantee shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

**THIS DRAFT DOES NOT CONSTITUTE AN OFFER  
NOR A COMMITMENT TO EXTEND AN OFFER**

**6.3 Interest Penalty for Past Due Fees and Other Sums Owed.**

- (a) Grantee shall pay interest on the past due fees at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Fees not paid by the close of business on the due date will begin accruing interest the day after the due date.
- (b) If State pays or advances any amounts for or on behalf of Grantee, Grantee shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Grantee of the payment or advance. This includes, but is not limited to State's payment of taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials, costs of removal and disposal of Improvements under any provision of this Easement, or other amounts not paid when due.

**6.4 Referral to Collection Agency and Collection Agency Fees.** If State does not receive full payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Grantee shall pay collection agency fees in addition to the unpaid amount.

**6.5 No Accord and Satisfaction.** If Grantee pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

**SECTION 7 IMPROVEMENTS, PERSONAL PROPERTY, AND WORK**

**7.1 Improvements and Personal Property Defined.**

- (a) "Improvements," consistent with RCW 79.105 through 79.140, are additions within, upon, or attached to the Easement Property. Improvements include, but are not limited to, fill, structures and fixtures.
- (b) "Personal Property" means items that can be removed from the Easement Property without (1) injury to the Easement Property, adjacent state-owned lands or Improvements or (2) diminishing the value or utility of the Easement Property, adjacent state-owned lands or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by the State of Washington. State-Owned Improvements include any construction, alteration, or addition to State-Owned Improvements made by Grantee.
- (d) "Grantee-Owned Improvements" are (1) Improvements owned by Grantee that are existing on the Easement Property on the Commencement Date or (2) Improvements made by Grantee with State's consent.



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- (e) “Unauthorized Improvements” are Improvements made on the Easement Property during the Term without State’s prior consent or Improvements made by Grantee that do not conform with plans submitted to and approved by State.
- (f) “Improvements Owned by Others” are Improvements made by others with a right to occupy or use the Easement Property or adjacent state-owned lands.

**7.2 Existing Improvements.**

On the Commencement Date, the following Grantee-Owned Improvements are located on the Easement Property: three lane vehicle bridge, aerial and in conduit fiber optic cable, power, water and sewer. On the Commencement Date, the following Improvements Owned by Others are located on the Easement Property: gas main.

**7.3 Construction, Major Repair, Modification, and Other Work.**

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, and removal of Improvements ( collectively “Work”).
- (b) Except in an emergency, Grantee shall not conduct any Work without State’s prior written consent. Grantee shall obtain State’s prior written consent as follows:
  - proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities, unless Grantee and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Grantee shall submit plans and specifications to State at least ninety (90) days before commencement of Work.
- (2) State may deny consent if State determines that denial is in the best interests of the State of Washington or if the proposed Work does not comply with Paragraph 7.4. State may impose additional conditions intended to protect and preserve the Easement Property or adjacent state-owned aquatic lands.
- (3) State will not approve plans to construct new Improvements or expand existing Improvements in or over habitats designated by State as important habitat, including, but not limited to: native aquatic vegetation, commercial geoduck tracts, forage fish spawning areas, and salmon critical habitat. Grantee shall confirm location of important habitat on Property, if any, with State before submitting plans and specifications in accordance with Paragraph 7.3.
- (c) Grantee shall immediately notify State of emergency Work. Upon State’s request, Grantee shall provide State with as-built plans and specifications of emergency Work.
- (d) Grantee shall not commence Work until Grantee or Grantee’s contractor has:
  - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Grantee or Grantee’s contractor shall maintain the performance and payment bond until the costs of the Work, including all laborers and material persons, are paid in full.

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- (2) Obtained all required permits.
- (3) Provided Notice of Significant Activity in accordance with Paragraph 2.5(c).
- (e) Grantee shall preserve and protect Improvements Owned by Others, if any.
- (f) Grantee shall preserve all legal land subdivision survey markers and witness objects ("Markers"). If disturbance of a Marker will be a necessary consequence of Grantee's construction, Grantee shall reference and/or replace the Marker in accordance with all applicable laws and regulations current at the time, including, but not limited to Chapter 58.24 RCW. At Grantee's expense, Grantee shall retain a registered professional engineer or licensed land surveyor to reestablish destroyed or disturbed Markers in accordance with United States General Land Office standards.
- (g) Before completing Work, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to its natural condition before the Work began. If Work is intended for removal of Improvements at End of Term, Grantee shall restore the Easement Property in accordance with Paragraph 3.3, End of Term.
- (h) Upon completing Work, Grantee shall promptly provide State with as-built plans and specifications. State may also require Grantee to obtain an updated record of survey showing the Easement Property boundaries and the as-built location of all Improvements on the Easement Property.
- (i) State shall not charge additional fees for authorized Improvements installed by Grantee on the Easement Property during this Term, but State may charge additional fees for such Improvements if and when the Grantee or successor obtains a subsequent use authorization for the Easement Property and State has waived the requirement for removal of Improvements as provided in Paragraph 7.5.

**7.4 Standards for Work.** Grantee shall comply with State's standards for Work current at the time Grantee submits plans and specifications for State's approval. Grantee shall ascertain State's current standards for Work as follows:

- (a) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Easement, Grantee shall request State to provide Grantee with State's current standards for Work on state-owned aquatic lands.
- (b) Within thirty (30) days of receiving Grantee request, State shall provide Grantee with State's current standards for Work, which will be effective for the purpose of State's approval of Grantee's proposed Work, provided Grantee submits plans and specifications for State's approval within two (2) years of Grantee's request for State's current standards for Work.
- (c) If Grantee fails to (1) make a request for State's current standards for Work or (2) timely submit plans and specifications to State after receiving State's current standards for Work, Grantee shall, at Grantee's sole expense, make changes in plans or Work necessary to conform to State's current standards for Work upon State's demand.

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**7.5 Grantee-Owned Improvements at End of Easement.**

- (a) Disposition.
  - (1) Grantee shall remove Grantee-Owned Improvements in accordance with Paragraph 7.3 upon the termination of the Easement unless State waives the requirement for removal.
  - (2) Grantee-Owned Improvements remaining on the Easement Property on the termination of the Easement shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.
  - (3) If Grantee-Owned Improvements remain on the Easement Property after the termination of the Easement without State's consent, State may remove all Improvements and Grantee shall pay State's costs of removal and disposal.
- (b) Conditions Under Which State May Waive Removal of Grantee-Owned Improvements.
  - (1) State may waive removal of any Grantee-Owned Improvements whenever State determines that it is in the best interests of the State of Washington.
  - (2) If Grantee enters into a new Easement, State may waive requirement to remove Grantee-Owned Improvements. State also may consent to Grantee's continued ownership of Grantee-Owned Improvements.
  - (3) State may waive requirement to remove Grantee-Owned Improvements upon consideration of a timely request from Grantee, as follows:
    - (i) Grantee shall submit its request to leave Grantee-Owned Improvements to State at least one (1) year before the Termination Date.
    - (ii) State, within ninety (90) days of receiving Grantee's request, will notify Grantee whether State consents to any Grantee-Owned Improvements remaining. State has no obligation to grant consent.
    - (iii) State's failure to respond to Grantee's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Grantee's Obligations if State Waives Removal.
  - (1) Grantee shall not remove a Grantee-Owned Improvement if State waives the requirement for removal of that Grantee-Owned Improvement.
  - (2) Grantee shall maintain such Grantee-Owned Improvements in accordance with this Easement until the termination of this Easement. State may require Grantee to take appropriate steps to decommission the structure. Grantee is liable to State for cost of repair if Grantee causes or allows damage to Grantee-Owned Improvements State has designated to remain.
  - (3) State may condition its waiver of removal on Grantee entering into a new Easement for the Grantee-Owned Improvements.

**7.6 Unauthorized Improvements.**

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.



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- (b) The placement of Unauthorized Improvements on the Easement Property is a breach of this Easement and State may require removal of any or all Unauthorized Improvements. If State requires removal of Unauthorized Improvements and if Grantee fails to remove the Unauthorized Improvements, State may remove the Unauthorized Improvements and Grantee shall pay for the cost of removal and disposal.
- (c) In addition to requiring removal of Unauthorized Improvements, State may charge Grantee a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until the time the Unauthorized Improvements are removed.
- (d) If State consents to Unauthorized Improvements remaining on the Easement Property, upon State's consent, the Unauthorized Improvements will be treated as Grantee-Owned Improvements and the removal and ownership of such Improvements shall be governed by Paragraph 7.5. If State consents to the Unauthorized Improvements remaining on the Easement Property, State may charge a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until State consents.

**7.7 Personal Property.**

- (a) Grantee retains ownership of Personal Property unless Grantee and State agree otherwise in writing.
- (b) Grantee shall remove Personal Property from the Easement Property by the termination of the Easement. Grantee is liable for damage to the Easement Property and to any Improvements that may result from removal of Personal Property.
- (c) State may remove, sell, or dispose of all Personal Property left on the Easement Property after the termination of the Easement.
  - (1) If State conducts a sale of Personal Property, State shall first apply proceeds to State's costs of removing the Personal Property, State's costs in conducting the sale, and any other payment due from the Grantee to State. State shall pay the remainder, if any, to the Grantee. Grantee shall be liable for any costs of removing the Personal Property and conducting the sale that exceed the proceeds received by State.
  - (2) If State disposes of Personal Property, Grantee shall pay for the cost of removal and disposal.

**SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

**8.1 Definitions.**

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule,

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regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.

- (b) “Release or threatened release of Hazardous Substance” means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) “Utmost care” means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the utmost care required under RCW 70A.305.040(3)(a)(iii) of the Washington State Model Toxics Control Act.
- (d) “Grantee and affiliates” when used in this Section 8 means Grantee or Grantee’s subgrantees, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Easement Property with the Grantee’s permission.
- (e) “Liabilities” as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys’ fees and disbursements), penalties, or judgments.

**8.2 General Conditions.**

- (a) Grantee’s obligations under this Section 8 extend to the area in, on, under, or above:
  - (1) The Easement Property and
  - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
  - (1) Grantee shall exercise the utmost care with respect to Hazardous Substances.
  - (2) As relates to the Permitted Use, Grantee shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

**8.3 Current Conditions and Duty to Investigate.**

- (a) State makes no representation about the condition of the Easement Property or adjacent state-owned aquatic lands. Hazardous Substances may exist in, on, under, or above the Easement Property or adjacent state-owned aquatic lands.
- (b) This Easement does not impose a duty on State to conduct investigations or supply information to Grantee about Hazardous Substances.
- (c) Grantee is responsible for conducting all appropriate inquiry and gathering sufficient information concerning the Easement Property and the existence, scope, and location of Hazardous Substances on or near the Easement Property necessary for Grantee to meet Grantee’s obligations under this Easement and utilize the Easement Property for the Permitted Use.

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**8.4 Use of Hazardous Substances.**

- (a) Grantee and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Grantee shall not undertake, or allow others to undertake by Grantee's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to the Permitted Use or Grantee's use of the Property results in a violation of law:
  - (1) Grantee shall submit to State any plans for remedying the violation, and
  - (2) Grantee shall implement any measures to restore the Easement Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.

**8.5 Management of Contamination.**

- (a) Grantee and affiliates shall not undertake activities that:
  - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
  - (2) Result in human or environmental exposure to contaminated sediments, if any;
  - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Grantee shall allow reasonable access to:
  - (1) Employees and authorized agents of the United States Environmental Protection Agency (EPA), the Washington State Department of Ecology, health department, or other similar environmental agencies; and
  - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Easement Property. Grantee may negotiate an access agreement with such parties, but Grantee may not unreasonably withhold such agreement.

**8.6 Notification and Reporting.**

- (a) Grantee shall immediately notify State if Grantee becomes aware of any of the following:
  - (1) A release or threatened release of Hazardous Substances;
  - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
  - (3) Any lien or action arising from Hazardous Substances;
  - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
  - (5) Any notification from the EPA or the Washington State Department of Ecology that remediation or removal of Hazardous Substances is or may be required at the Easement Property.



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- (b) Grantee's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a), and to any other property used by Grantee in conjunction with the Easement Property if a release of Hazardous Substances on the other property could affect the Easement Property.
- (c) Grantee shall provide State with copies of all documents Grantee submits to any federal, state, or local authorities concerning environmental impacts or proposals relative to the Easement Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollutant Discharge Elimination System permits (NPDES); United States Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality Certifications; Substantial Shoreline Development permits; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Easement Property.

**8.7 Indemnification.**

- (a) Grantee shall fully indemnify, defend, and hold harmless State from and against any Liabilities that arise out of, or relate to:
  - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Grantee and affiliates occurring whenever Grantee uses or has used the Easement Property;
  - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Grantee and affiliates occurring whenever Grantee uses or has used the Easement Property.
- (b) Grantee shall fully indemnify, defend, and hold harmless State for any Liabilities that arise out of or relate to Grantee's breach of obligations under Paragraph 8.5.
- (c) If Grantee fails to exercise care as described in Paragraph 8.2(b)(2), Grantee shall fully indemnify, defend, and hold harmless State from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances.

**8.8 Reservation of Rights.**

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.
- (b) The Parties expressly reserve all such rights, claims, immunities, and defenses that either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.



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**8.9 Cleanup.**

- (a) If Grantee's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standards, Grantee shall, at Grantee's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- (b) If a cleanup is eligible for the Washington State Department of Ecology's Voluntary Cleanup Program, Grantee may undertake a cleanup of the Easement Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Grantee cooperates with the Department of Natural Resources in development of cleanup plans. Grantee shall not proceed with Voluntary Cleanup without the Department of Natural Resources' approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Easement. Grantee's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Easement.

**8.10 Sampling by State, Reimbursement, and Split Samples.**

- (a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Easement Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Grantee's obligations regarding Hazardous Substances under this Easement, Grantee shall promptly reimburse State for all costs associated with such Tests, provided State gave Grantee thirty (30) days' advance notice in nonemergencies, and reasonably practical notice in emergencies.
- (c) In nonemergencies, Grantee is entitled to obtain split samples of Test samples, provided Grantee gives State written notice requesting split samples at least ten (10) days before State conducts Tests. Upon demand, Grantee shall promptly reimburse State for additional cost, if any, of split samples.
- (d) If either Party conducts Tests on the Easement Property, the conducting Party shall provide the other Party with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) days of a written request by the other Party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Grantee shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

**SECTION 9 NATURE OF ESTATE AND ASSIGNMENT**

This Easement shall be in gross for the sole benefit of Grantee's use associated with the Permitted Use. This Easement shall not run with the land. This Easement is indivisible. Grantee shall not sell, convey, mortgage, assign, pledge, grant franchises for, or otherwise transfer or

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encumber any part of Grantee's interest in this Easement or any part of Grantee's interest in the Easement Property without State's prior written consent, which shall be at State's sole discretion. State reserves the right to reasonably change the terms and conditions of this Easement upon State's consent to requests made under this Section 9.

**SECTION 10 INDEMNITY, INSURANCE, FINANCIAL SECURITY**

**10.1 Indemnity.**

- (a) Grantee shall indemnify, defend, and hold harmless State, its employees, officials, officers, and agents from any Claim arising out of the Permitted Use, any Claim arising out of activities related to the Permitted Use, and any Claim arising out of the use of the Easement Property by Grantee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees, to the fullest extent permitted by law and subject to the limitations provided below.
- (b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, penalties, or judgments attributable to: bodily injury; sickness; disease; death; damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to tangible property, diminution in value of tangible property, damages resulting from loss of use of tangible property, and loss or diminution of natural resource values.
- (c) State shall not require Grantee to indemnify, defend, and hold harmless State, its employees, officials, officers, and agents for a Claim caused solely by or resulting solely from the negligence or willful act of State or State's employees, officials, officers, or agents.
- (d) Grantee specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW in connection with its obligation to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents. Further, Grantee's obligation under this Easement to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable to or for any third party under the workers' compensation acts.
- (e) Only to the extent RCW 4.24.115 applies and requires such a limitation, if a Claim, is caused by or results from the concurrent negligence of (a) State or State's employees, officials, officers, or agents and (b) the Grantee or Grantee's agents or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the Grantee and those acting on its behalf.
- (f) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Grantee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold harmless State for Hazardous Substances.



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**10.2 Insurance Terms.**

(a) Insurance Required.

- (1) Grantee certifies that on the Commencement Date of this Easement it is a member of a self-insured risk pool for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Grantee shall provide to State evidence of its status as a member of a self-insured risk pool. Upon request by State, Grantee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Grantee shall provide State with at least thirty (30) days' written notice prior to any material changes to Grantee's self-insured funding mechanism. If during the Term Grantee's self-insurance plan fails to provide coverage equal to that required in Paragraph 10.2 and Paragraph 10.3 of this Easement, Grantee shall procure additional commercial insurance coverage to meet the requirements of this Easement. The requirements in Paragraphs 10.2(a)(3) and (4) only apply where the Grantee procures additional commercial insurance to meet the requirements of this Easement.
- (2) Unless State agrees to an exception, Grantee shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of A.M. Best's Insurance Reports. Grantee may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
- (3) All general liability, excess, umbrella, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as an additional insured by way of endorsement.
- (4) All property, builder's risk, and equipment breakdown insurance must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as loss payees.
- (5) All insurance provided in compliance with this Easement must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

(b) Waiver.

- (1) Grantee waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Easement covers these damages.

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- (2) Except as prohibited by law, Grantee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Easement.
- (c) Proof of Insurance.
  - (1) Grantee shall provide State with a certificate(s) and endorsement(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Easement and, if requested, copies of policies to State.
  - (2) The certificate(s) of insurance must reference the Easement number.
  - (3) Receipt of such certificates, endorsements, or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Easement, as follows:
  - (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
  - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State twenty (20) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
  - (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
  - (2) Grantee shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Grantee fails to procure and maintain the insurance required in this Easement within fifteen (15) days after Grantee receives a notice to comply from State, State may either:
  - (1) Terminate this Easement, or
  - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Grantee shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.3 from the date of State's notice of the expenditure until Grantee's repayment.
- (g) General Terms.
  - (1) State does not represent that coverage and limits required under this Easement are adequate to protect Grantee.
  - (2) Coverage and limits do not limit Grantee's liability for indemnification and reimbursements granted to State under this Easement.
  - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to Easement Property first to restore the Easement Property, then to pay the cost of the reconstruction, then to pay State any sums in arrears, and then to Grantee.

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**10.3 Insurance Types and Limits.**

- (a) General Liability Insurance.
  - (1) Grantee shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Easement Property and/or arising out of the Permitted Use and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the “each occurrence” limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the “each occurrence” limit.
  - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
  - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers’ Compensation.
  - (1) State of Washington Workers’ Compensation.
    - (i) Grantee shall comply with all State of Washington workers’ compensation statutes and regulations. Grantee shall provide workers’ compensation coverage for all employees of Grantee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with the Permitted Use or related activities.
    - (ii) If Grantee fails to comply with all State of Washington workers’ compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Grantee shall indemnify State. Indemnity shall include all fines; payment of benefits to Grantee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
  - (2) Longshore and Harbor Workers’ and Jones Acts. The Longshore and Harbor Workers’ Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 30104) may require Grantee to provide insurance coverage in some circumstances. Grantee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with the law. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.



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- (c) Employers' Liability Insurance. Grantee shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
- (d) Property Insurance.
  - (1) Grantee shall buy and maintain property insurance covering all real property and fixtures, equipment, Improvements and betterments (regardless of whether owned by Grantee or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived.
  - (2) Grantee shall buy and maintain equipment breakdown insurance covering all real property and fixtures, equipment, Improvements and betterments (regardless of whether owned by Grantee or State) from loss or damage caused by the explosion of equipment, fired or unfired vessels, electric or steam generators, electrical arcing, or pipes.
  - (3) In the event of any loss, damage, or casualty that is covered by one or more of the types of insurance described above, the Parties shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned on such proceeds, for use according to the terms of this Easement. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).
  - (4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:
    - (i) Repair and restore damaged Improvements to their former condition, or
    - (ii) Replace and restore damaged Improvements with new Improvements on the Easement Property of a quality and usefulness at least equivalent to, or more suitable than, damaged Improvements.
- (e) Builder's Risk Insurance.
  - (1) Grantee shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Grantee, all contractors, and subcontractors in the work as insured.

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- (2) Insurance described above must cover or include the following:
  - (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
  - (ii) The entire work on the Easement Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
  - (iii) Portions of the work located away from the Easement Property but intended for use at the Easement Property, and portions of the work in transit;
  - (iv) Scaffolding, falsework, and temporary buildings located on the Easement Property; and
  - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
- (3) Grantee or Grantee's contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
- (f) Business Auto Policy Insurance.
  - (1) Grantee or Grantee's contractor(s) shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than One Million Dollars (\$1,000,000) per accident. Such insurance must cover liability arising out of "Any Auto."
  - (2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.
- (g) Protection and Indemnity Insurance (P&I). Whenever any Work requires a vessel to be operated on the property, Grantee or Grantee's contractor(s) shall procure and maintain P&I insurance with limits of liability not less than One Million Dollars (\$1,000,000) for the duration of such Work. The P&I insurance must cover, at a minimum, all claims relating to injuries or damages to persons or property sustained in, on, or about the property; fuel spills; wreck removal; salvage; injuries to passengers and crew of the vessel; and damages to nets and fishing lines. If necessary, Grantee shall procure and maintain commercial umbrella liability insurance covering claims for these risks. Grantee shall submit proof of this P&I insurance to State prior to Commencing any such Work.
- (h) Hull Insurance. Grantee or Grantee's contractor shall procure and maintain hull insurance for each vessel owned and/or operated by the Grantee or Grantee's contractor on the Easement Property. The coverage amount of each hull insurance policy must be equal to the value of the covered vessel.



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**10.4 Financial Security.**

- (a) On the Commencement Date of this Easement, Grantee is not required to procure and maintain a corporate security bond or other financial security (“Security”). During the Term, State may require Grantee to procure and maintain Security upon any of the events listed in Paragraph 10.4(c)(1). Grantee’s failure to maintain the Security in the required amount during the Term constitutes a breach of this Easement.
- (b) All Security must be in a form acceptable to State.
  - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of A.M. Best’s Insurance Reports, unless State approves an exception in writing. Grantee may submit a request to the Risk Manager for the Department of Natural Resources for an exception to this requirement.
  - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
  - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
  - (1) State may require an adjustment in the Security amount:
    - (i) As a condition of approval of assignment of this Easement,
    - (ii) Upon a material change in the condition or disposition of any Improvements, or
    - (iii) Upon a change in the Permitted Use.
  - (2) Grantee shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any breach by Grantee in its obligations under this Easement, State may collect on the Security to offset the liability of Grantee to State. Collection on the Security does not (1) relieve Grantee of liability, (2) limit any of State’s other remedies, (3) reinstate the Easement or cure the breach or (4) prevent termination of the Easement because of the breach.

**SECTION 11 MAINTENANCE AND REPAIR**

**11.1 State’s Repairs.** State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Easement Property, or any part thereof, during the Term.

**11.2 Grantee’s Repairs and Maintenance.**

- (a) Grantee shall, at its sole cost and expense, keep and maintain the Easement Property and all Grantee-Owned Improvements in good order and repair, in a

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clean, attractive, and safe condition. Grantee shall repair all damage caused or permitted by Grantee to Improvements Owned by Others on the Easement Property.

- (b) Grantee shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property or to any Grantee-Owned Improvements on the Easement Property that may be required by any public authority having jurisdiction over the Easement Property and requiring it for public health, safety and welfare purposes.
- (c) Except as provided in Paragraph 11.2(d), all additions, repairs, alterations, maintenance, replacements or changes to the Easement Property and to any Grantee-Owned Improvements on the Easement Property shall be made in accordance with, and ownership shall be governed by, Section 7 above.
- (d) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Grantee-Owned Improvements. Routine maintenance or repair that does not require regulatory permits does not require authorization from State pursuant to Section 7.
- (e) Upon completion of maintenance activities, Grantee shall remove all debris and restore the Easement Property to the condition prior to the commencement of Work.

**SECTION 12 DAMAGE OR DESTRUCTION**

**12.1 Damage to Improvements.**

- (a) In the event of any damage to or destruction of any Improvements on the Easement Property, Grantee shall immediately notify State, with subsequent written notice to State within five (5) days.
- (b) Grantee shall be solely responsible for any reconstruction, repair, or replacement of any Grantee-Owned Improvements. If Grantee elects not to reconstruct, repair, or replace all or a portion of any damaged Improvements, Grantee shall promptly remove any damaged or destroyed Improvements and restore the Easement Property. Any reconstruction, repair, or replacement of Improvements is governed by Section 7 Improvements, Personal Property, and Work, and Section 11, Maintenance and Repair, and any Additional Obligations in Exhibit B.
- (c) If Grantee is in breach of this Easement at the time damage or destruction occurs to Grantee-Owned Improvements, State may elect to terminate the Easement without giving Grantee an opportunity to cure, and State may retain any insurance proceeds payable as a result of the damage or destruction.

**12.2 Damage to Land or Natural Resources**

- (a) In the event of any damage to or destruction to the land or natural resources on the Easement Property, Grantee shall immediately notify State, with subsequent written notice to State within five (5) days. In the event of any damage or

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destruction to land or natural resources on adjacent state-owned aquatic lands that is attributable to Grantee's use of the Property, to the Permitted Use, or to related activities, Grantee shall immediately notify State, with subsequent written notice to State within five (5) days.

- (b) Grantee, at Grantee's sole cost, shall remedy any damages to land or natural resources on the Easement Property and adjacent state-owned aquatic lands that are attributable to Grantee's use of the Property, the Permitted Use, or related activities, in accordance with a plan approved by State. Grantee shall also compensate State for any lost or damaged natural resource values in accordance with Paragraph 12.2(c).
- (c) Compensation for lost resource values:
  - (1) If damages to the land or natural resources result in lost or damaged natural resource values, Grantee shall compensate State with (1) monetary compensation; (2) the completion of a project approved by State that includes replacing, enhancing, or otherwise providing in-kind habitats, resources, or environments on other state-owned aquatic lands in order to offset the damage and impacts; or (3) a mixture of both monetary compensation and a project. State shall have the discretion to determine if Grantee will compensate with monetary compensation, a project, or both. If State requires monetary compensation, the value of damages shall be determined in accordance with Paragraph 12.2(c)(2).
  - (2) If State requires monetary compensation under Paragraph 12.2(c)(1), unless the Parties otherwise agree on the value, a three-member panel of professional appraisers or resource economists will determine the measure of lost resource values, and issue a written decision. The appraisers or resource economists shall be qualified to assess economic value of natural resources. State and Grantee each shall appoint and compensate one member of the panel. By consensus, the two appointed members shall select the third member, who will be compensated by State and Grantee equally. The panel shall base the calculation of compensation on generally accepted valuation principles. The written decision of the majority of the panel shall bind the Parties.
- (d) If damage to land or natural resources on the Easement Property or adjacent state-owned aquatic lands are attributable to Grantee's use of the Property, to the Permitted Use, or to related activities, or if such damage occurs when Grantee is in breach of the Easement, State may elect to terminate the Easement in accordance with Section 14. If State elects to terminate the Easement, Grantee is still responsible for restoring any damages to land or natural resources on the Easement Property and adjacent state-owned aquatic lands, and for compensating State for any lost resource values in accordance with Paragraph 12.2(c). State may retain any insurance proceeds payable as a result of the damage or destruction.
- (e) State may, with or without terminating the Easement, at the sole expense of Grantee, remedy any damages and complete a project that offsets lost or damaged



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natural resource values. If State takes any such actions, upon demand by State, Grantee shall pay all costs incurred by State.

**12.3 State's Waiver of Claim.** State does not waive any claims for damage or destruction of the Easement Property or adjacent state-owned aquatic lands unless State provides written notice to Grantee of each specific claim waived.

**12.4 Insurance Proceeds.** Grantee's duties under Paragraphs 12.1 and 12.2 are not conditioned upon the availability of any insurance proceeds to Grantee from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

### **SECTION 13 CONDEMNATION**

In the event of condemnation, the Parties shall allocate the condemnation award between State and Grantee based upon the ratio of the fair market value of (1) Grantee's rights in the Easement Property and Grantee-Owned Improvements and (2) State's interest in the Easement Property; the reversionary interest in Grantee-Owned Improvements, if any; and State-Owned Improvements, if any. In the event of a partial taking, the Parties shall compute the ratio based on the portion of Easement Property or Improvements taken. If Grantee and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

### **SECTION 14 REMEDIES AND TERMINATION**

**14.1 Termination by Breach.** State may terminate this Easement upon Grantee's failure to cure a breach of the terms and conditions of this Easement. Unless otherwise stated in this Easement, State shall provide Grantee written notice of breach, and Grantee shall have sixty (60) days after receiving the notice to cure the breach. State may extend the cure period if breach is not reasonably capable of cure within sixty (60) days. This sixty (60) day cure period does not apply where State terminates this Easement under Paragraph 10.2(f) or Section 12.

**14.2 Termination by Nonuse.** If Grantee does not use the Easement Property for a period of three (3) successive years, this Easement terminates without further action by State and Grantee's rights revert to State. Grantee shall still be responsible for complying with all end of Term requirements.

**14.3 Termination by Grantee.** Grantee may terminate this Easement upon providing State with sixty (60) days written notice of intent to terminate. If Grantee terminates under this Paragraph, the date of Grantee's termination shall be deemed the Termination Date and Grantee shall comply with all end of Term requirements. Grantee is not entitled to any refunds of Easement fees already paid to State.

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**14.4 Remedies Not Exclusive.** The remedies specified under this Section 14 are not exclusive of any other remedies or means of redress to which State is lawfully entitled for Grantee's breach or threatened breach of any provision of this Easement.

**SECTION 15 NOTICE AND SUBMITTALS**

**15.1 Notice.** Following are the locations for delivery of notice and submittals required or permitted under this Easement. Any Party may change the place of delivery upon ten (10) days' written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES  
Shoreline District  
950 Farman Avenue North  
Enumclaw, WA 98022

Grantee: City of Auburn  
25 West Main Street  
Auburn, WA 98001

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Easement number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

**15.2 Contact Persons.** On the Commencement Date, the following persons are designated day-to-day contact persons. Any Party may change the Contact Person upon reasonable notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES  
Shoreline District  
950 Farman Avenue North  
Enumclaw, WA 98022  
Phone: (360) 825-1631  
Email: [aquaticleasing.shoreline@dnr.wa.gov](mailto:aquaticleasing.shoreline@dnr.wa.gov)

Grantee: City of Auburn, Public Works  
Phone: (253)931-3010

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SECTION 16 MISCELLANEOUS**

**16.1 Authority.** Grantee and the person or persons executing this Easement on behalf of Grantee represent that Grantee is qualified to do business in the State of Washington, that Grantee has full right and authority to enter into this Easement, and that each and every person signing on behalf of Grantee is authorized to do so. Upon State's request, Grantee shall provide evidence satisfactory to State confirming these representations.

**16.2 Successors and Assigns.** Subject to the limitations set forth in Section 9, this Easement binds and inures to the benefit of the Parties, their successors, and assigns.

**16.3 Headings.** The headings used in this Easement are for convenience only and in no way define, limit, or extend the scope of this Easement or the intent of any provision.

**16.4 Entire Agreement.** This Easement, including the exhibits, attachments, and addenda, if any, contains the entire agreement of the Parties. This Easement merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Easement Property.

**16.5 Waiver.**

- (a) The waiver of any breach of any term, covenant, or condition of this Easement is not a waiver of such term, covenant, or condition; of any subsequent breach of the same; or of any other term, covenant, or condition of this Easement. State's acceptance of a payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.
- (b) The renewal of the Easement, extension of the Easement, or the issuance of a new Easement to Grantee, does not waive State's ability to pursue any rights or remedies under the Easement.

**16.6 Cumulative Remedies.** The rights and remedies of State under this Easement are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

**16.7 Time is of the Essence.** TIME IS OF THE ESSENCE as to each and every provision of this Easement.

**16.8 Language.** The word "Grantee" as used in this Easement applies to one or more persons and regardless of gender, as the case may be. The singular includes the plural, and the neuter includes the masculine and feminine. If there is more than one Grantee, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Grantee in the collective. The word "Party" means either or both State and Grantee, depending on the context.



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**16.9 Invalidity.** The invalidity, voidness, or illegality of any provision of this Easement does not affect, impair, or invalidate any other provision of this Easement.

**16.10 Applicable Law and Venue.** This Easement is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Easement is in the Superior Court for Thurston County, Washington.

**16.11 Statutory Reference.** Any reference to a statute or rule means that statute or rule as presently enacted or hereafter amended or superseded.

**16.12 Recordation.** At Grantee's expense and no later than thirty (30) days after receiving the fully-executed Easement, Grantee shall record this Easement in the county in which the Easement Property is located. Grantee shall include the parcel number of the upland property used in conjunction with the Easement Property, if any. Grantee shall provide State with recording information, including the date of recordation and file number.

**16.13 Modification.** No modification of this Easement is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

**16.14 Survival.** Any obligations of Grantee not fully performed upon termination of this Easement do not cease, but continue as obligations of the Grantee until fully performed.

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**16.15 Exhibits and Attachments.** All referenced exhibits and attachments are incorporated in this Easement unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

CITY OF AUBURN

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
By:  
Title:  
Address: 25 West Main Street  
Auburn, WA 98001

Phone:

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
By: ALEXANDRA K. SMITH  
Title: Deputy Supervisor for Forest Resilience,  
Regulation, and Aquatics  
  
Address: 950 Farman Avenue North  
Enumclaw, WA 98022

Aquatic Lands Easement  
Template approved as to form this  
10th day of January 2022  
Jennifer Clements, Assistant Attorney General

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REPRESENTATIVE ACKNOWLEDGMENT**

*Notarized online using audio-video communication*

STATE OF                                 )  
                                                      ) ss  
County of                                 )

I certify that I know or have satisfactory evidence that ***[NAME UPPERCASE]*** is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the ***[type of authority]*** of ***[name of corporation]*** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

***This notarial act involved the use of communication technology.***

Dated: \_\_\_\_\_, 20\_\_

(Seal or stamp)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public in and for the State of  
Washington, residing at

\_\_\_\_\_  
My appointment expires \_\_\_\_\_

## STATE ACKNOWLEDGMENT

*Notarized online using audio-video communication*

STATE OF WASHINGTON) ) ss.  
County of )

I certify that I know or have satisfactory evidence that ALEXANDRA K. SMITH is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Deputy Supervisor for Forest Resilience, Regulation, and Aquatics of the Department of Natural Resources, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

*This notarial act involved the use of communication technology.*

Dated: \_\_\_\_\_, 20\_\_

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of  
Washington, residing at

My appointment expires \_\_\_\_\_

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**EXHIBIT A**

**PROPERTY DESCRIPTION**

**Agreement Number 51-104137**

1. That real property legally defined and shown as Easement Parcel Detail in that Record of Survey recorded in King County, Washington on January 11, 2023 under Instrument Number 20230111900004 and in Volume 478 of Surveys at page 46 and 47.

**2. SQUARE FOOTAGE OF EASEMENT:**

Total square feet      8,425

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EXHIBIT B**

**1. DESCRIPTION OF PERMITTED USE**

**A. Existing Facilities.**

Continued use of existing three lane vehicle bridge located over the Green River within the City of Auburn located in King County.

Other improvements on the bridge include aerial and in conduit fiber optic cable, power line, water line, sewer line (City of Auburn easement 51-104138) and gas line (Puget Sound Energy easement 51-086661).

**B. Proposed Work.** Grantee proposes no new facilities or Work.

**2. ADDITIONAL OBLIGATIONS**

None

Aquatic Lands Easement  
Template approved as to form this  
10th day of January 2022  
Jennifer Clements, Assistant Attorney General



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When recorded, return to:  
City of Auburn  
25 West Main Street  
Auburn, WA 98001



**AQUATIC LANDS EASEMENT**

**Easement No. 51-104138**

Grantor: Washington State Department of Natural Resources  
Grantee(s): CITY OF AUBURN  
Abbreviated Legal Description: Govt. Lot. 2 and 3 (NW1/4 NW1/4) Section 17, Township 21 North, Range 5 East, W.M. a Govt. Lot. 5 and 8 (SW1/4 SW1/4) Section 8, Township 21 North, Range 5 East, W.M.  
Complete Legal Description on Page 31 and 32  
Auditor Reference Number(s) 20230111900008, 20230111900007, 20230111900006, 20230111900005, 20230111900009  
Assessor's Property Tax Parcel or Account Number: Not Applicable  
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this Easement: Not Applicable

THIS EASEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and the CITY OF AUBURN, a government agency ("Grantee"). State has authority to enter into this Easement under Chapter 43.12 RCW, Chapter 43.30 RCW, and Title 79 of the Revised Code of Washington (RCW).

THEREFORE, the Parties agree as follows:

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**SECTION 1 GRANT OF EASEMENT**

**1.1 Easement Defined.**

- (a) State grants and conveys to Grantee a nonexclusive in gross easement, subject to the terms and conditions of this agreement, over, upon, and under those bedlands and shorelands legally described in Exhibit A (“Easement Property”). In this agreement, the term “Easement” means this agreement and the rights granted.
- (b) This Easement is subject to all valid interests of third parties noted in the records of King County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) This Easement does not include any right to harvest, collect or damage any natural resources, including, but not limited to, aquatic life or living plants; any water rights; any mineral rights; or any right to excavate or withdraw sand, gravel, or other valuable materials.
- (d) This Easement is not exclusive. State may enter and use the Easement Property for any purpose or permit others to enter and use the Easement Property for any purpose so long as such use does not unreasonably interfere with the rights granted herein.

**1.2 Survey and Easement Property Descriptions.**

- (a) Grantee’s obligation to provide a true and accurate description of the Easement Property is a material term of this Easement. Grantee warrants that the record of survey referenced in Exhibit A includes a true and accurate description of the Easement Property, and the location of the Improvements existing on the Easement Property.
- (b) Grantee’s use of any state-owned aquatic lands outside the Easement Property boundaries is a material breach of this Easement and State may seek remedies under Section 14 of this Easement in addition to any other remedies afforded by law or equity or otherwise.

**1.3 Condition of Easement Property.** State makes no representation regarding the condition of the Easement Property, Improvements located on the Easement Property, the suitability of the Easement Property for Grantee’s Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Easement Property, or the existence of hazardous substances on the Easement Property.

**SECTION 2 USE**

**2.1 Permitted Use.** This Easement is granted for the purpose of and is limited to:

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Water line, Sewer line, power line, aerial fiber optic cable and fiber optic cable in conduit (the “Permitted Use”).

Exhibit B includes additional details about the Permitted Use, the Easement Property, and the Improvements. The Permitted Use is subject to the restrictions and additional obligations set forth in this Easement. The Permitted Use of this Easement shall not be changed or modified without the written consent of State, which shall be at State’s sole discretion.

**2.2 Restrictions on Permitted Use and Operations.**

- (a) Grantee shall not cause or permit:
  - (1) Damage to land or natural resources on the Easement Property or adjacent state-owned aquatic lands, regardless of whether the damages are a direct or indirect result of the Permitted Use;
  - (2) Waste on the Easement Property or adjacent state-owned aquatic lands; or
  - (3) Deposit of material or filling activity on the Easement Property or adjacent state-owned aquatic lands, unless approved by State in writing. This prohibition includes, but is not limited to, any deposit of fill, rock, earth, ballast, wood waste, hydrocarbons, refuse, garbage, waste matter (including, but not limited to, chemical, biological, or toxic wastes), pollutants, or other matter.
- (b) Nothing in this Easement shall be interpreted as an authorization to dredge the Easement Property.
- (c) Grantee shall immediately notify State if Grantee breaches any of the terms and conditions of this Easement.
- (d) State’s failure to notify Grantee of Grantee’s failure to comply with all or any of the restrictions set out in this Paragraph 2.2 does not constitute a waiver of any remedies available to State.
- (e) Grantee’s compliance with the restrictions in this Paragraph 2.2 does not limit Grantee’s liability under any other provision of this Easement or the law.

**2.3 Conformance with Laws.** Grantee shall keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Grantee’s use of the Easement Property.

**2.4 Liens and Encumbrances.** Unless expressly authorized by State in writing, Grantee shall keep the Easement Property free and clear of any liens and encumbrances arising out of or relating to the Permitted Use or Grantee’s use of the Easement Property.

**2.5 Interference with Other Uses.**

- (a) Grantee shall exercise Grantee’s rights under this Easement in a manner that minimizes or avoids interference with the rights of State, the public, or others with valid rights to use or occupy the Easement Property or surrounding lands and water.



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- (b) To the fullest extent reasonably possible, Grantee shall place and construct Improvements in a manner that allows unobstructed movement in and on the waters above and around the Easement Property.
- (c) Except in an emergency, Grantee shall provide State with written notice regarding the start of construction or other Significant Activity on the Easement Property at least sixty (60) days in advance (“Notice of Significant Activity”). “Significant Activity” means any activity that may affect the use or enjoyment of the Easement Property or adjacent state-owned aquatic lands by the State of Washington, public, or others with valid rights to use or occupy the Easement Property or adjacent state-owned aquatic lands.
- (d) Grantee shall mark the location of any hazards associated with the Permitted Use and any hazards associated with the Improvements in a manner that ensures reasonable notice to the public, including, but not limited to, boaters, kayakers, swimmers, and divers.

**SECTION 3 TERM**

**3.1 Term Defined.** The term of this Easement is thirty (30) years, beginning on the 1st day of May, 2023 (the “Commencement Date”), and ending on the 30th day of April, 2053 (the “Termination Date”), unless terminated sooner under the terms of this Easement (the “Term”). Whenever the phrase “termination of this Easement” or “termination of the Easement” is used in this Easement, it shall refer to the ending, termination, cancellation, or expiration of the Easement.

**3.2 Renewal of Easement and/or Application for New Easement.**

This Easement does not provide a right of renewal. Grantee may apply for a new Easement, which State has discretion to grant. Grantee must apply for a new Easement at least one (1) year prior to Termination Date.

**3.3 End of Term.**

- (a) Removal of Improvements: Prior to the termination of this Easement, Grantee shall remove Improvements in accordance with Section 7.
- (b) Restoration of the Easement Property:
  - (1) Prior to the termination of this Easement, Grantee shall restore the Easement Property to its condition before the installation of any Improvements on the Easement Property.
  - (2) Restoration of the Easement Property is to be done at Grantee’s expense and to the satisfaction of State. Restoration of the Easement Property is considered to be Work, as described in Section 7 of the Easement. Grantee’s plans for restoring the Easement Property shall be submitted to State for prior approval in accordance with Section 7 of this Easement.
  - (3) If Grantee fails to restore the condition of the Easement Property as required by this Paragraph, State may take steps reasonably necessary to

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remedy Grantee's failure. Upon demand by State, Grantee shall pay all costs of State's remedy, lost revenue resulting from the condition of the Easement Property, and administrative costs associated with State's remedy.

- (c) **Vacation of Property:** Upon the termination of this Easement, Grantee shall cease all operations on and use of the Easement Property.

**SECTION 4 FEES**

**4.1 Fee.** For the Term, Grantee shall pay to State an administrative fee calculated in accordance with RCW 79.110.240 of Eight Thousand Six Hundred Dollars (\$8,600), which is due and payable on or before the Commencement Date. Any payment not paid by State's close of business on the date due is past due.

**4.2 Payment Place.** Grantee shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

**SECTION 5 OTHER EXPENSES**

**5.1 Utilities.** Grantee shall pay all fees charged for utilities required or needed by the Permitted Use.

**5.2 Taxes and Assessments.** Grantee shall pay all taxes, assessments, and other governmental charges applicable or attributable to the Easement, the Grantee-Owned Improvements, or the Permitted Use.

**5.3 Proof of Payment.** If required by State, Grantee shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Easement requires Grantee to pay.

**SECTION 6 LATE PAYMENTS AND OTHER CHARGES**

**6.1 Failure to Pay.** Failure to pay any fees or other expenses due under this Easement is a breach by Grantee. State may seek remedies in Section 14 as well as late charges and interest as provided in this Section 6. In addition, if Grantee fails to pay any amounts due to third parties under this Easement, State may pay the amount due, and recover its cost in accordance with this Section 6.

**6.2 Late Charge.** If State does not receive any payment within ten (10) days of the date due, Grantee shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

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**6.3 Interest Penalty for Past Due Fees and Other Sums Owed.**

- (a) Grantee shall pay interest on the past due fees at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Fees not paid by the close of business on the due date will begin accruing interest the day after the due date.
- (b) If State pays or advances any amounts for or on behalf of Grantee, Grantee shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Grantee of the payment or advance. This includes, but is not limited to State's payment of taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials, costs of removal and disposal of Improvements under any provision of this Easement, or other amounts not paid when due.

**6.4 Referral to Collection Agency and Collection Agency Fees.** If State does not receive full payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Grantee shall pay collection agency fees in addition to the unpaid amount.

**6.5 No Accord and Satisfaction.** If Grantee pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

**SECTION 7 IMPROVEMENTS, PERSONAL PROPERTY, AND WORK**

**7.1 Improvements and Personal Property Defined.**

- (a) "Improvements," consistent with RCW 79.105 through 79.140, are additions within, upon, or attached to the Easement Property. Improvements include, but are not limited to, fill, structures and fixtures.
- (b) "Personal Property" means items that can be removed from the Easement Property without (1) injury to the Easement Property, adjacent state-owned lands or Improvements or (2) diminishing the value or utility of the Easement Property, adjacent state-owned lands or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by the State of Washington. State-Owned Improvements include any construction, alteration, or addition to State-Owned Improvements made by Grantee.
- (d) "Grantee-Owned Improvements" are (1) Improvements owned by Grantee that are existing on the Easement Property on the Commencement Date or (2) Improvements made by Grantee with State's consent.



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- (e) “Unauthorized Improvements” are Improvements made on the Easement Property during the Term without State’s prior consent or Improvements made by Grantee that do not conform with plans submitted to and approved by State.
- (f) “Improvements Owned by Others” are Improvements made by others with a right to occupy or use the Easement Property or adjacent state-owned lands.

**7.2 Existing Improvements.**

On the Commencement Date, the following Grantee-Owned Improvements are located on the Easement Property: three lane vehicle bridge, aerial and in conduit fiber optic cable, power, water and sewer. On the Commencement Date, the following Improvements Owned by Others are located on the Easement Property: gas main.

**7.3 Construction, Major Repair, Modification, and Other Work.**

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, and removal of Improvements ( collectively “Work”).
- (b) Except in an emergency, Grantee shall not conduct any Work without State’s prior written consent. Grantee shall obtain State’s prior written consent as follows:
  - (1) Grantee shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities, unless Grantee and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Grantee shall submit plans and specifications to State at least ninety (90) days before commencement of Work.
  - (2) State may deny consent if State determines that denial is in the best interests of the State of Washington or if the proposed Work does not comply with Paragraph 7.4. State may impose additional conditions intended to protect and preserve the Easement Property or adjacent state-owned aquatic lands.
- (c) Grantee shall immediately notify State of emergency Work. Upon State’s request, Grantee shall provide State with as-built plans and specifications of emergency Work.
- (d) Grantee shall not commence Work until Grantee or Grantee’s contractor has:
  - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Grantee or Grantee’s contractor shall maintain the performance and payment bond until the costs of the Work, including all laborers and material persons, are paid in full.
  - (2) Obtained all required permits.
  - (3) Provided Notice of Significant Activity in accordance with Paragraph 2.5(c).
- (e) Grantee shall preserve and protect Improvements Owned by Others, if any.

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- (f) Grantee shall preserve all legal land subdivision survey markers and witness objects ("Markers"). If disturbance of a Marker will be a necessary consequence of Grantee's construction, Grantee shall reference and/or replace the Marker in accordance with all applicable laws and regulations current at the time, including, but not limited to Chapter 58.24 RCW. At Grantee's expense, Grantee shall retain a registered professional engineer or licensed land surveyor to reestablish destroyed or disturbed Markers in accordance with United States General Land Office standards.
- (g) Before completing Work, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to its natural condition before the Work began. If Work is intended for removal of Improvements at End of Term, Grantee shall restore the Easement Property in accordance with Paragraph 3.3, End of Term.
- (h) Upon completing Work, Grantee shall promptly provide State with as-built plans and specifications. State may also require Grantee to obtain an updated record of survey showing the Easement Property boundaries and the as-built location of all Improvements on the Easement Property.
- (i) State shall not charge additional fees for authorized Improvements installed by Grantee on the Easement Property during this Term, but State may charge additional fees for such Improvements if and when the Grantee or successor obtains a subsequent use authorization for the Easement Property and State has waived the requirement for removal of Improvements as provided in Paragraph 7.5.

**7.4 Standards for Work.**

- (a) Applicability of Standards for Work.
  - (1) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five-year period following the Commencement Date. Work commences when State approves plans and specifications.
  - (2) If Grantee commences Work five years or more after the Commencement Date, Grantee shall comply with State's current standards for Work.
  - (3) If Grantee commences Work five years or more after the Commencement Date, Grantee shall ascertain State's current standards for Work as follows:
    - (i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Easement, Grantee shall request State to provide Grantee with State's current standards for Work on state-owned aquatic lands.
    - (ii) Within thirty (30) days of receiving Grantee's request, State shall provide Grantee with State's current standards for Work, which will be effective for the purpose of State's approval of Grantee's proposed Work, provided Grantee submits plans and specifications for State's approval within two (2) years of Grantee's request for standards.

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- (iii) If State does not timely provide State's current standards for Work upon Grantee's request, the standards for Work under Paragraph 7.4(b) apply to Grantee's Work, provided Grantee submits plans and specifications as required by Paragraph 7.3 within two (2) years of Grantee's request for State's current standards for Work.
  - (iv) If Grantee fails to (1) make a request for State's current standards for Work or (2) timely submit plans and specifications to State after receiving State's current standards for Work, Grantee, at Grantee's sole expense, shall make changes in plans or Work necessary to conform to State's current standards for Work upon State's demand.
- (b) The following standards for Work apply to Work commenced in the five-year period following the Commencement Date.

**7.5 Grantee-Owned Improvements at End of Easement.**

- (a) Disposition.
  - (1) Grantee shall remove Grantee-Owned Improvements in accordance with Paragraph 7.3 upon the termination of the Easement unless State waives the requirement for removal.
  - (2) Grantee-Owned Improvements remaining on the Easement Property on the termination of the Easement shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.
  - (3) If Grantee-Owned Improvements remain on the Easement Property after the termination of the Easement without State's consent, State may remove all Improvements and Grantee shall pay State's costs of removal and disposal.
- (b) Conditions Under Which State May Waive Removal of Grantee-Owned Improvements.
  - (1) State may waive removal of any Grantee-Owned Improvements whenever State determines that it is in the best interests of the State of Washington.
  - (2) If Grantee enters into a new Easement, State may waive requirement to remove Grantee-Owned Improvements. State also may consent to Grantee's continued ownership of Grantee-Owned Improvements.
  - (3) State may waive requirement to remove Grantee-Owned Improvements upon consideration of a timely request from Grantee, as follows:
    - (i) Grantee shall submit its request to leave Grantee-Owned Improvements to State at least one (1) year before the Termination Date.
    - (ii) State, within ninety (90) days of receiving Grantee's request, will notify Grantee whether State consents to any Grantee-Owned Improvements remaining. State has no obligation to grant consent.
    - (iii) State's failure to respond to Grantee's request to leave Improvements within ninety (90) days is a denial of the request.



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- (c) Grantee's Obligations if State Waives Removal.
  - (1) Grantee shall not remove a Grantee-Owned Improvement if State waives the requirement for removal of that Grantee-Owned Improvement.
  - (2) Grantee shall maintain such Grantee-Owned Improvements in accordance with this Easement until the termination of this Easement. State may require Grantee to take appropriate steps to decommission the structure. Grantee is liable to State for cost of repair if Grantee causes or allows damage to Grantee-Owned Improvements State has designated to remain.
  - (3) State may condition its waiver of removal on Grantee entering into a new Easement for the Grantee-Owned Improvements.

**7.6 Unauthorized Improvements.**

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) The placement of Unauthorized Improvements on the Easement Property is a breach of this Easement and State may require removal of any or all Unauthorized Improvements. If State requires removal of Unauthorized Improvements and if Grantee fails to remove the Unauthorized Improvements, State may remove the Unauthorized Improvements and Grantee shall pay for the cost of removal and disposal.
- (c) In addition to requiring removal of Unauthorized Improvements, State may charge Grantee a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until the time the Unauthorized Improvements are removed.
- (d) If State consents to Unauthorized Improvements remaining on the Easement Property, upon State's consent, the Unauthorized Improvements will be treated as Grantee-Owned Improvements and the removal and ownership of such Improvements shall be governed by Paragraph 7.5. If State consents to the Unauthorized Improvements remaining on the Easement Property, State may charge a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until State consents.

**7.7 Personal Property.**

- (a) Grantee retains ownership of Personal Property unless Grantee and State agree otherwise in writing.
- (b) Grantee shall remove Personal Property from the Easement Property by the termination of the Easement. Grantee is liable for damage to the Easement Property and to any Improvements that may result from removal of Personal Property.
- (c) State may remove, sell, or dispose of all Personal Property left on the Easement Property after the termination of the Easement.
  - (1) If State conducts a sale of Personal Property, State shall first apply proceeds to State's costs of removing the Personal Property, State's costs

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in conducting the sale, and any other payment due from the Grantee to State. State shall pay the remainder, if any, to the Grantee. Grantee shall be liable for any costs of removing the Personal Property and conducting the sale that exceed the proceeds received by State.

- (2) If State disposes of Personal Property, Grantee shall pay for the cost of removal and disposal.

**SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

**8.1 Definitions.**

- (a) “Hazardous Substance” means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) “Release or threatened release of Hazardous Substance” means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) “Utmost care” means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the utmost care required under RCW 70A.305.040(3)(a)(iii) of the Washington State Model Toxics Control Act.
- (d) “Grantee and affiliates” when used in this Section 8 means Grantee or Grantee’s subgrantees, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Easement Property with the Grantee’s permission.
- (e) “Liabilities” as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys’ fees and disbursements), penalties, or judgments.

**8.2 General Conditions.**

- (a) Grantee’s obligations under this Section 8 extend to the area in, on, under, or above:
  - (1) The Easement Property and
  - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
  - (1) Grantee shall exercise the utmost care with respect to Hazardous Substances.
  - (2) As relates to the Permitted Use, Grantee shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

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**8.3 Current Conditions and Duty to Investigate.**

- (a) State makes no representation about the condition of the Easement Property or adjacent state-owned aquatic lands. Hazardous Substances may exist in, on, under, or above the Easement Property or adjacent state-owned aquatic lands.
- (b) This Easement does not impose a duty on State to conduct investigations or supply information to Grantee about Hazardous Substances.
- (c) Grantee is responsible for conducting all appropriate inquiry and gathering sufficient information concerning the Easement Property and the existence, scope, and location of Hazardous Substances on or near the Easement Property necessary for Grantee to meet Grantee's obligations under this Easement and utilize the Easement Property for the Permitted Use.

**8.4 Use of Hazardous Substances.**

- (a) Grantee and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Grantee shall not undertake, or allow others to undertake by Grantee's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to the Permitted Use or Grantee's use of the Property results in a violation of law:
  - (1) Grantee shall submit to State any plans for remedying the violation, and
  - (2) Grantee shall implement any measures to restore the Easement Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.

**8.5 Management of Contamination.**

- (a) Grantee and affiliates shall not undertake activities that:
  - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
  - (2) Result in human or environmental exposure to contaminated sediments, if any;
  - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Grantee shall allow reasonable access to:
  - (1) Employees and authorized agents of the United States Environmental Protection Agency (EPA), the Washington State Department of Ecology, health department, or other similar environmental agencies; and
  - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Easement Property. Grantee may negotiate an access agreement with such parties, but Grantee may not unreasonably withhold such agreement.



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**8.6 Notification and Reporting.**

- (a) Grantee shall immediately notify State if Grantee becomes aware of any of the following:
  - (1) A release or threatened release of Hazardous Substances;
  - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
  - (3) Any lien or action arising from Hazardous Substances;
  - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
  - (5) Any notification from the EPA or the Washington State Department of Ecology that remediation or removal of Hazardous Substances is or may be required at the Easement Property.
- (b) Grantee's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a), and to any other property used by Grantee in conjunction with the Easement Property if a release of Hazardous Substances on the other property could affect the Easement Property.
- (c) Grantee shall provide State with copies of all documents Grantee submits to any federal, state, or local authorities concerning environmental impacts or proposals relative to the Easement Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollutant Discharge Elimination System permits (NPDES); United States Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality Certifications; Substantial Shoreline Development permits; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Easement Property.

**8.7 Indemnification.**

- (a) Grantee shall fully indemnify, defend, and hold harmless State from and against any Liabilities that arise out of, or relate to:
  - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Grantee and affiliates occurring whenever Grantee uses or has used the Easement Property;
  - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Grantee and affiliates occurring whenever Grantee uses or has used the Easement Property.
- (b) Grantee shall fully indemnify, defend, and hold harmless State for any Liabilities that arise out of or relate to Grantee's breach of obligations under Paragraph 8.5.
- (c) If Grantee fails to exercise care as described in Paragraph 8.2(b)(2), Grantee shall fully indemnify, defend, and hold harmless State from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances.

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**8.8 Reservation of Rights.**

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.
- (b) The Parties expressly reserve all such rights, claims, immunities, and defenses that either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

**8.9 Cleanup.**

- (a) If Grantee's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standards, Grantee shall, at Grantee's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- (b) If a cleanup is eligible for the Washington State Department of Ecology's Voluntary Cleanup Program, Grantee may undertake a cleanup of the Easement Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Grantee cooperates with the Department of Natural Resources in development of cleanup plans. Grantee shall not proceed with Voluntary Cleanup without the Department of Natural Resources' approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Easement. Grantee's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Easement.

**8.10 Sampling by State, Reimbursement, and Split Samples.**

- (a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Easement Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Grantee's obligations regarding Hazardous Substances under this Easement, Grantee shall promptly reimburse State for all costs associated with such Tests, provided State gave Grantee thirty (30) days' advance notice in nonemergencies, and reasonably practical notice in emergencies.
- (c) In nonemergencies, Grantee is entitled to obtain split samples of Test samples, provided Grantee gives State written notice requesting split samples at least ten (10) days before State conducts Tests. Upon demand, Grantee shall promptly reimburse State for additional cost, if any, of split samples.

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- (d) If either Party conducts Tests on the Easement Property, the conducting Party shall provide the other Party with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) days of a written request by the other Party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Grantee shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

**SECTION 9 NATURE OF ESTATE AND ASSIGNMENT**

This Easement shall be in gross for the sole benefit of Grantee's use associated with the Permitted Use. This Easement shall not run with the land. This Easement is indivisible. Grantee shall not sell, convey, mortgage, assign, pledge, grant franchises for, or otherwise transfer or encumber any part of Grantee's interest in this Easement or any part of Grantee's interest in the Easement Property without State's prior written consent, which shall be at State's sole discretion. State reserves the right to reasonably change the terms and conditions of this Easement upon State's consent to requests made under this Section 9.

**SECTION 10 INDEMNITY, INSURANCE, FINANCIAL SECURITY**

**10.1 Indemnity.**

- (a) Grantee shall indemnify, defend, and hold harmless State, its employees, officials, officers, and agents from any Claim arising out of the Permitted Use, any Claim arising out of activities related to the Permitted Use, and any Claim arising out of the use of the Easement Property by Grantee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees, to the fullest extent permitted by law and subject to the limitations provided below.
- (b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, penalties, or judgments attributable to: bodily injury; sickness; disease; death; damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to tangible property, diminution in value of tangible property, damages resulting from loss of use of tangible property, and loss or diminution of natural resource values.
- (c) State shall not require Grantee to indemnify, defend, and hold harmless State, its employees, officials, officers, and agents for a Claim caused solely by or resulting solely from the negligence or willful act of State or State's employees, officials, officers, or agents.
- (d) Grantee specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW in connection with its obligation to indemnify, defend, and hold harmless State and its



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employees, officials, officers, and agents. Further, Grantee's obligation under this Easement to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable to or for any third party under the workers' compensation acts.

- (e) Only to the extent RCW 4.24.115 applies and requires such a limitation, if a Claim, is caused by or results from the concurrent negligence of (a) State or State's employees, officials, officers, or agents and (b) the Grantee or Grantee's agents or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the Grantee and those acting on its behalf.
- (f) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Grantee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold harmless State for Hazardous Substances.

**10.2 Insurance Terms.**

- (a) Insurance Required.
  - (1) Grantee certifies that on the Commencement Date of this Easement it is a member of a self-insured risk pool for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Grantee shall provide to State evidence of its status as a member of a self-insured risk pool]. Upon request by State, Grantee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Grantee shall provide State with at least thirty (30) days' written notice prior to any material changes to Grantee's self-insured funding mechanism. If during the Term Grantee's self-insurance plan fails to provide coverage equal to that required in Paragraph 10.2 and Paragraph 10.3 of this Easement, Grantee shall procure additional commercial insurance coverage to meet the requirements of this Easement. The requirements in Paragraphs 10.2(a)(3) and (4) only apply where the Grantee procures additional commercial insurance to meet the requirements of this Easement.
  - (2) Unless State agrees to an exception, Grantee shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of A.M. Best's Insurance Reports. Grantee may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
  - (3) All general liability, excess, umbrella, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as an additional insured by way of endorsement.

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- (4) All property, builder's risk, and equipment breakdown insurance must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as loss payees.
- (5) All insurance provided in compliance with this Easement must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
  - (1) Grantee waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Easement covers these damages.
  - (2) Except as prohibited by law, Grantee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Easement.
- (c) Proof of Insurance.
  - (1) Grantee shall provide State with a certificate(s) and endorsement(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Easement and, if requested, copies of policies to State.
  - (2) The certificate(s) of insurance must reference the Easement number.
  - (3) Receipt of such certificates, endorsements, or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Easement, as follows:
  - (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
  - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State twenty (20) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
  - (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
  - (2) Grantee shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Grantee fails to procure and maintain the insurance required in this Easement within fifteen (15) days after Grantee receives a notice to comply from State, State may either:
  - (1) Terminate this Easement, or
  - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Grantee shall pay to State the full amount paid

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by State, together with interest at the rate provided in Paragraph 6.3 from the date of State's notice of the expenditure until Grantee's repayment.

- (g) General Terms.
  - (1) State does not represent that coverage and limits required under this Easement are adequate to protect Grantee.
  - (2) Coverage and limits do not limit Grantee's liability for indemnification and reimbursements granted to State under this Easement.
  - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to Easement Property first to restore the Easement Property, then to pay the cost of the reconstruction, then to pay State any sums in arrears, and then to Grantee.

**10.3 Insurance Types and Limits.**

- (a) General Liability Insurance.
  - (1) Grantee shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Easement Property and/or arising out of the Permitted Use and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
  - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
  - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
  - (1) State of Washington Workers' Compensation.
    - (i) Grantee shall comply with all State of Washington workers' compensation statutes and regulations. Grantee shall provide workers' compensation coverage for all employees of Grantee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with the Permitted Use or related activities.
    - (ii) If Grantee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such



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employees, Grantee shall indemnify State. Indemnity shall include all fines; payment of benefits to Grantee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.

- (2) Longshore and Harbor Workers' and Jones Acts. The Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 30104) may require Grantee to provide insurance coverage in some circumstances. Grantee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with the law. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employers' Liability Insurance. Grantee shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
- (d) Property Insurance.
  - (1) Grantee shall buy and maintain property insurance covering all real property and fixtures, equipment, Improvements and betterments (regardless of whether owned by Grantee or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived.
  - (2) Grantee shall buy and maintain equipment breakdown insurance covering all real property and fixtures, equipment, Improvements and betterments (regardless of whether owned by Grantee or State) from loss or damage caused by the explosion of equipment, fired or unfired vessels, electric or steam generators, electrical arcing, or pipes.
  - (3) In the event of any loss, damage, or casualty that is covered by one or more of the types of insurance described above, the Parties shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned on such proceeds, for use according to the terms of this Easement. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).
  - (4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:
    - (i) Repair and restore damaged Improvements to their former condition, or
    - (ii) Replace and restore damaged Improvements with new Improvements on the Easement Property of a quality and

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usefulness at least equivalent to, or more suitable than, damaged Improvements.

- (e) Builder's Risk Insurance.
  - (1) Grantee shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Grantee, all contractors, and subcontractors in the work as insured.
  - (2) Insurance described above must cover or include the following:
    - (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
    - (ii) The entire work on the Easement Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
    - (iii) Portions of the work located away from the Easement Property but intended for use at the Easement Property, and portions of the work in transit;
    - (iv) Scaffolding, falsework, and temporary buildings located on the Easement Property; and
    - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
  - (3) Grantee or Grantee's contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
  - (4) Grantee or Grantee's contractor(s) shall buy and maintain equipment breakdown insurance covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Grantee, all contractors, and subcontractors in the work as insured.
- (f) Business Auto Policy Insurance.
  - (1) Grantee or Grantee's contractor(s) shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than [One Million Dollars (\$1,000,000) per accident. Such insurance must cover liability arising out of "Any Auto."
  - (2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

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**10.4 Financial Security.**

- (a) On the Commencement Date of this Easement, Grantee is not required to procure and maintain a corporate security bond or other financial security (“Security”). During the Term, State may require Grantee to procure and maintain Security upon any of the events listed in Paragraph 10.4(c)(1). Grantee’s failure to maintain the Security in the required amount during the Term constitutes a breach of this Easement.
- (b) All Security must be in a form acceptable to State.
  - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of A.M. Best’s Insurance Reports, unless State approves an exception in writing. Grantee may submit a request to the Risk Manager for the Department of Natural Resources for an exception to this requirement.
  - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
  - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
  - (1) State may require an adjustment in the Security amount:
    - (i) As a condition of approval of assignment of this Easement,
    - (ii) Upon a material change in the condition or disposition of any Improvements, or
    - (iii) Upon a change in the Permitted Use.
  - (2) Grantee shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any breach by Grantee in its obligations under this Easement, State may collect on the Security to offset the liability of Grantee to State. Collection on the Security does not (1) relieve Grantee of liability, (2) limit any of State’s other remedies, (3) reinstate the Easement or cure the breach or (4) prevent termination of the Easement because of the breach.

**SECTION 11 MAINTENANCE AND REPAIR**

**11.1 State’s Repairs.** State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Easement Property, or any part thereof, during the Term.

**11.2 Grantee’s Repairs and Maintenance.**



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- (a) Grantee shall, at its sole cost and expense, keep and maintain the Easement Property and all Grantee-Owned Improvements in good order and repair, in a clean, attractive, and safe condition. Grantee shall repair all damage caused or permitted by Grantee to Improvements Owned by Others on the Easement Property.
- (b) Grantee shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property or to any Grantee-Owned Improvements on the Easement Property that may be required by any public authority having jurisdiction over the Easement Property and requiring it for public health, safety and welfare purposes.
- (c) Except as provided in Paragraph 11.2(d), all additions, repairs, alterations, maintenance, replacements or changes to the Easement Property and to any Grantee-Owned Improvements on the Easement Property shall be made in accordance with, and ownership shall be governed by, Section 7 above.
- (d) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Grantee-Owned Improvements. Routine maintenance or repair that does not require regulatory permits does not require authorization from State pursuant to Section 7.
- (e) Upon completion of maintenance activities, Grantee shall remove all debris and restore the Easement Property to the condition prior to the commencement of Work.

**SECTION 12 DAMAGE OR DESTRUCTION**

**12.1 Damage to Improvements.**

- (a) In the event of any damage to or destruction of any Improvements on the Easement Property, Grantee shall immediately notify State, with subsequent written notice to State within five (5) days.
- (b) Grantee shall be solely responsible for any reconstruction, repair, or replacement of any Grantee-Owned Improvements. If Grantee elects not to reconstruct, repair, or replace all or a portion of any damaged Improvements, Grantee shall promptly remove any damaged or destroyed Improvements and restore the Easement Property. Any reconstruction, repair, or replacement of Improvements is governed by Section 7 Improvements, Personal Property, and Work, and Section 11, Maintenance and Repair, and any Additional Obligations in Exhibit B.
- (c) If Grantee is in breach of this Easement at the time damage or destruction occurs to Grantee-Owned Improvements, State may elect to terminate the Easement without giving Grantee an opportunity to cure, and State may retain any insurance proceeds payable as a result of the damage or destruction.

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**12.2 Damage to Land or Natural Resources**

- (a) In the event of any damage to or destruction to the land or natural resources on the Easement Property, Grantee shall immediately notify State, with subsequent written notice to State within five (5) days. In the event of any damage or destruction to land or natural resources on adjacent state-owned aquatic lands that is attributable to Grantee's use of the Property, to the Permitted Use, or to related activities, Grantee shall immediately notify State, with subsequent written notice to State within five (5) days.
- (b) Grantee, at Grantee's sole cost, shall remedy any damages to land or natural resources on the Easement Property and adjacent state-owned aquatic lands that are attributable to Grantee's use of the Property, the Permitted Use, or related activities, in accordance with a plan approved by State. Grantee shall also compensate State for any lost or damaged natural resource values in accordance with Paragraph 12.2(c).
- (c) Compensation for lost resource values:
  - (1) If damages to the land or natural resources result in lost or damaged natural resource values, Grantee shall compensate State with (1) monetary compensation; (2) the completion of a project approved by State that includes replacing, enhancing, or otherwise providing in-kind habitats, resources, or environments on other state-owned aquatic lands in order to offset the damage and impacts; or (3) a mixture of both monetary compensation and a project. State shall have the discretion to determine if Grantee will compensate with monetary compensation, a project, or both. If State requires monetary compensation, the value of damages shall be determined in accordance with Paragraph 12.2(c)(2).
  - (2) If State requires monetary compensation under Paragraph 12.2(c)(1), unless the Parties otherwise agree on the value, a three-member panel of professional appraisers or resource economists will determine the measure of lost resource values, and issue a written decision. The appraisers or resource economists shall be qualified to assess economic value of natural resources. State and Grantee each shall appoint and compensate one member of the panel. By consensus, the two appointed members shall select the third member, who will be compensated by State and Grantee equally. The panel shall base the calculation of compensation on generally accepted valuation principles. The written decision of the majority of the panel shall bind the Parties.
- (d) If damage to land or natural resources on the Easement Property or adjacent state-owned aquatic lands are attributable to Grantee's use of the Property, to the Permitted Use, or to related activities, or if such damage occurs when Grantee is in breach of the Easement, State may elect to terminate the Easement in accordance with Section 14. If State elects to terminate the Easement, Grantee is still responsible for restoring any damages to land or natural resources on the Easement Property and adjacent state-owned aquatic lands, and for compensating



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State for any lost resource values in accordance with Paragraph 12.2(c). State may retain any insurance proceeds payable as a result of the damage or destruction.

- (e) State may, with or without terminating the Easement, at the sole expense of Grantee, remedy any damages and complete a project that offsets lost or damaged natural resource values. If State takes any such actions, upon demand by State, Grantee shall pay all costs incurred by State.

**12.3 State's Waiver of Claim.** State does not waive any claims for damage or destruction of the Easement Property or adjacent state-owned aquatic lands unless State provides written notice to Grantee of each specific claim waived.

**12.4 Insurance Proceeds.** Grantee's duties under Paragraphs 12.1 and 12.2 are not conditioned upon the availability of any insurance proceeds to Grantee from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

### **SECTION 13 CONDEMNATION**

In the event of condemnation, the Parties shall allocate the condemnation award between State and Grantee based upon the ratio of the fair market value of (1) Grantee's rights in the Easement Property and Grantee-Owned Improvements and (2) State's interest in the Easement Property; the reversionary interest in Grantee-Owned Improvements, if any; and State-Owned Improvements, if any. In the event of a partial taking, the Parties shall compute the ratio based on the portion of Easement Property or Improvements taken. If Grantee and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

### **SECTION 14 REMEDIES AND TERMINATION**

**14.1 Termination by Breach.** State may terminate this Easement upon Grantee's failure to cure a breach of the terms and conditions of this Easement. Unless otherwise stated in this Easement, State shall provide Grantee written notice of breach, and Grantee shall have sixty (60) days after receiving the notice to cure the breach. State may extend the cure period if breach is not reasonably capable of cure within sixty (60) days. This sixty (60) day cure period does not apply where State terminates this Easement under Paragraph 10.2(f) or Section 12.

**14.2 Termination by Nonuse.** If Grantee does not use the Easement Property for a period of three (3) successive years, this Easement terminates without further action by State and Grantee's rights revert to State. Grantee shall still be responsible for complying with all end of Term requirements.

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**14.3 Termination by Grantee.** Grantee may terminate this Easement upon providing State with sixty (60) days written notice of intent to terminate. If Grantee terminates under this Paragraph, the date of Grantee's termination shall be deemed the Termination Date and Grantee shall comply with all end of Term requirements. Grantee is not entitled to any refunds of Easement fees already paid to State.

**14.4 Remedies Not Exclusive.** The remedies specified under this Section 14 are not exclusive of any other remedies or means of redress to which State is lawfully entitled for Grantee's breach or threatened breach of any provision of this Easement.

**SECTION 15 NOTICE AND SUBMITTALS**

**15.1 Notice.** Following are the locations for delivery of notice and submittals required or permitted under this Easement. Any Party may change the place of delivery upon ten (10) days' written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES  
Aquatic Resources, Shoreline District  
950 Farman Avenue North  
Enumclaw, WA 98022

Grantee: City of Auburn  
25 West Main Street  
Auburn, WA 98001

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Easement number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

**15.2 Contact Persons.** On the Commencement Date, the following persons are designated day-to-day contact persons. Any Party may change the Contact Person upon reasonable notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES  
Shoreline District  
950 Farman Avenue North  
Enumclaw, WA 98022  
Phone: (360) 825-1631  
Email: [aquaticleasing.shoreline@dnr.wa.gov](mailto:aquaticleasing.shoreline@dnr.wa.gov)

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Grantee: City of Auburn, Public Works  
Phone: (253)931-3010

**SECTION 16 MISCELLANEOUS**

**16.1 Authority.** Grantee and the person or persons executing this Easement on behalf of Grantee represent that Grantee is qualified to do business in the State of Washington, that Grantee has full right and authority to enter into this Easement, and that each and every person signing on behalf of Grantee is authorized to do so. Upon State's request, Grantee shall provide evidence satisfactory to State confirming these representations.

**16.2 Successors and Assigns.** Subject to the limitations set forth in Section 9, this Easement binds and inures to the benefit of the Parties, their successors, and assigns.

**16.3 Headings.** The headings used in this Easement are for convenience only and in no way define, limit, or extend the scope of this Easement or the intent of any provision.

**16.4 Entire Agreement.** This Easement, including the exhibits, attachments, and addenda, if any, contains the entire agreement of the Parties. This Easement merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Easement Property.

**16.5 Waiver.**

- (a) The waiver of any breach of any term, covenant, or condition of this Easement is not a waiver of such term, covenant, or condition; of any subsequent breach of the same; or of any other term, covenant, or condition of this Easement. State's acceptance of a payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.
- (b) The renewal of the Easement, extension of the Easement, or the issuance of a new Easement to Grantee, does not waive State's ability to pursue any rights or remedies under the Easement.

**16.6 Cumulative Remedies.** The rights and remedies of State under this Easement are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

**16.7 Time is of the Essence.** TIME IS OF THE ESSENCE as to each and every provision of this Easement.

**16.8 Language.** The word "Grantee" as used in this Easement applies to one or more persons and regardless of gender, as the case may be. The singular includes the plural, and the neuter includes the masculine and feminine. If there is more than one Grantee, their obligations are joint

Aquatic Lands Easement (1/10/2022) Page 26 of 33 Easement No. 51-104138



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and several. The word “persons,” whenever used, shall include individuals, firms, associations, and corporations. The word “Parties” means State and Grantee in the collective. The word “Party” means either or both State and Grantee, depending on the context.

**16.9 Invalidity.** The invalidity, voidness, or illegality of any provision of this Easement does not affect, impair, or invalidate any other provision of this Easement.

**16.10 Applicable Law and Venue.** This Easement is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Easement is in the Superior Court for Thurston County, Washington.

**16.11 Statutory Reference.** Any reference to a statute or rule means that statute or rule as presently enacted or hereafter amended or superseded.

**16.12 Recordation.** At Grantee’s expense and no later than thirty (30) days after receiving the fully-executed Easement, Grantee shall record this Easement in the county in which the Easement Property is located. Grantee shall include the parcel number of the upland property used in conjunction with the Easement Property, if any. Grantee shall provide State with recording information, including the date of recordation and file number.

**16.13 Modification.** No modification of this Easement is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

**16.14 Survival.** Any obligations of Grantee not fully performed upon termination of this Easement do not cease, but continue as obligations of the Grantee until fully performed.

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**16.15 Exhibits and Attachments.** All referenced exhibits and attachments are incorporated in this Easement unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

CITY OF AUBURN

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
By:  
Title:  
Address:  
Phone:

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
By: ALEXANDRA K. SMITH  
Title: Deputy Supervisor for Forest Resilience,  
Regulation, and Aquatics  
Address: 950 Farman Avenue North  
Enumclaw, WA 998022

Aquatic Lands Easement  
Template approved as to form this  
10th day of January 2022  
Jennifer Clements, Assistant Attorney General



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REPRESENTATIVE ACKNOWLEDGMENT**

*[Notarized online using audio-video communication]*

STATE OF                                 )  
                                                      ) ss  
County of                                 )

I certify that I know or have satisfactory evidence that ***[NAME UPPERCASE]*** is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the ***[type of authority]*** of CITY OF AUBURN to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

***[This notarial act involved the use of communication technology.]***

Dated: \_\_\_\_\_, 20\_\_

(Seal or stamp)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public in and for the State of  
Washington, residing at

\_\_\_\_\_  
My appointment expires \_\_\_\_\_

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STATE ACKNOWLEDGMENT

*Notarized online using audio-video communication*

STATE OF WASHINGTON) ss.  
County of )

I certify that I know or have satisfactory evidence that ALEXANDRA K. SMITH is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Deputy Supervisor for Forest Resilience, Regulation, and Aquatics of the Department of Natural Resources, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

*This notarial act involved the use of communication technology*

Dated: \_\_\_\_\_, 20\_\_

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of  
Washington, residing at

My appointment expires \_\_\_\_\_

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**EXHIBIT A**

**Water Main**

1. That real property legally defined and shown as 10' easement centered on existing water main in that Record of Survey recorded in King County, Washington on January 11, 2023 under Instrument Number 20230111900008 and in Volume 478 of Surveys at page 54 and 55.

2. SQUARE FOOTAGE OF EASEMENT:

Total square feet            1,240

**Power Line**

1. That real property legally defined and shown as 10' easement centered on existing buried power line and conduit in that Record of Survey recorded in King County, Washington on January 11, 2023 under Instrument Number 20230111900007 and in Volume 478 of Surveys at page 52 and 53.

2. SQUARE FOOTAGE OF EASEMENT:

Total square feet            1,388

**Sewer Line**

1. That real property legally defined and shown as 10' easement centered on existing sewer main in that Record of Survey recorded in King County, Washington on January 11, 2023 under Instrument Number 20230111900006 and in Volume 478 of Surveys at page 50 and 51.

2. SQUARE FOOTAGE OF EASEMENT:

Total square feet            1,390

**Fiber Optic (buried)**

1. That real property legally defined and shown as 10' easement centered on existing buried fiber optic conduit in that Record of Survey recorded in King County, Washington on January 11, 2023 under Instrument Number 20230111900005 and in Volume 478 of Surveys at page 48 and 49.

2. SQUARE FOOTAGE OF EASEMENT:

Total square feet            1,361

**THIS DRAFT DOES NOT CONSTITUTE AN OFFER  
NOR A COMMITMENT TO EXTEND AN OFFER**

Fiber Optic (aerial)

1. That real property legally defined and shown as 10' easement centered on existing aerial fiber optic line in that Record of Survey recorded in King County, Washington on January 11, 2023 under Instrument Number 20230111900009 and in Volume 478 of Surveys at page 56 and 57.

2. SQUARE FOOTAGE OF EASEMENT:

Total square feet        1,252

**THIS DRAFT DOES NOT CONSTITUTE AN OFFER  
NOR A COMMITMENT TO EXTEND AN OFFER  
EXHIBIT B**

**1. DESCRIPTION OF PERMITTED USE**

**A. Existing Facilities.**

Continued use of existing aerial and in conduit fiber optic cable, power line, water line, and sewer line located over the Green River within the City of Auburn located in King County.

Other improvements include a three lane bridge (City of Auburn easement 51-104137) and gas line (Puget Sound Energy easement 51-086661).

**B. Proposed Work.** Grantee proposes no new facilities or Work.

**2. ADDITIONAL OBLIGATIONS**

None

Aquatic Lands Easement  
Template approved as to form this  
10th day of January 2022  
Jennifer Clements, Assistant Attorney General