

**City Council
Regular Meeting
January 21, 2025 - 7:00 PM
City Hall Council Chambers**

AGENDA

CALL TO ORDER

LAND ACKNOWLEDGEMENT

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

PUBLIC PARTICIPATION

- A. The Auburn City Council Meeting scheduled for Tuesday, January 21, 2025 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 number below or click the link:

Telephone: 253 215 8782

Toll Free: 888 475 4499

Zoom: <https://us06web.zoom.us/j/84912848917>

PLEDGE OF ALLEGIANCE

ROLL CALL

ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS

- A. Martin Luther King Jr. Day
Mayor Backus to proclaim January 20, 2025, as "Martin Luther King Jr. Day" in the City of Auburn

APPOINTMENTS

- A. Airport Advisory Board
City Council to approve the appointment of Gregory Ramig to the Airport Advisory Board for a three-year term expiring December 31, 2027

(RECOMMENDED ACTION: Move to approve the appointment of Gregory Ramig to

the Airport Advisory Board, for a three-year term to expire December 31, 2027.)

- B. Arts Commission
City Council to approve the appointments of Andrea Dailey and Dr. Carol Danner to the Arts Commission for a three-year term expiring December 31, 2027

(RECOMMENDED ACTION: Move to approve the appointments Andrea Dailey and Dr. Carol Danner to the Arts Commission, for a three-year term to expire December 31, 2027.)

- C. Business Improvement Area (BIA) Committee
City Council to approve the reappointments of Darren Jones, Ronnie Roberts, and John Rottle to the BIA Committee for a three-year term expiring December 31, 2027

(RECOMMENDED ACTION: Move to approve the reappointments of Darren Jones, Ronnie Roberts, and John Rottle to the BIA Committee for a three-year term expiring December 31, 2027.)

- D. Planning Commission
City Council to approve the reappointment of Kent Sprague to the Planning Commission for a three-year term expiring December 31, 2027

(RECOMMENDED ACTION: Move to approve the reappointment of Kent Sprague to the Planning Commission for a three-year term expiring December 31, 2027.)

- E. Transportation Advisory Board
City Council to approve the appointment of Janice Bellinger to the Transportation Advisory Board, for the Senior (55+) Resident position for a three-year term expiring December 31, 2027

(RECOMMENDED ACTION: Move to approve the appointment of Janice Bellinger to the Transportation Advisory Board, for the Senior (55+) Resident position for a three-year term expiring December 31, 2027.)

AGENDA MODIFICATIONS

PUBLIC HEARINGS

- A. Public Hearing for City of Kent Franchise Agreement No. FRN24-0003 (Gaub)
A Public Hearing to consider Franchise Agreement No. FRN24-0003 for City of Kent Water Facilities
- B. Public Hearing for Resolution No. 5799 - Development Agreement (Krum)
A Public Hearing to consider a Development Agreement with Portofino Group I, LLC

AUDIENCE PARTICIPATION

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

- A. 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: Hannah Scholl, Acting City Clerk
25 W Main St
Auburn, WA 98001

Please fax written comments to:
Attn: Hannah Scholl, Acting City Clerk
Fax number: 253-804-3116

Email written comments to: publiccomment@auburnwa.gov

If an individual requires 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 accommodation to be able to provide a remote oral comment by contacting the City Clerk's Office in person, by phone (253) 931-3039, or by email (publiccomment@auburnwa.gov).

CORRESPONDENCE

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 from the December 16, 2024, City Council Meeting
- B. Claims Vouchers (Thomas)
Claims voucher list dated December 31, 2024 which includes voucher numbers 478436 through voucher 478621, in the amount of \$6,135,339.49, twelve electronic fund transfers in the amount of \$5,597.38 and nine wire transfers in the amount of \$7,560,605.46

Claims voucher list dated January 15, 2025 which includes voucher numbers 478622 through voucher 478676, voucher 478678 through voucher 478797 and voucher 478799 in the amount of \$9,741,177.26, six electronic fund transfers in the amount of \$2,203.83 and one wire transfer in the amount of \$809,556.32
- C. Claims Vouchers (Thomas)
Claims voucher list dated January 15, 2025 which includes voucher number 478677, in the amount of \$1,633.28, and voucher number 478798, in the amount of \$2,500.00
- D. Payroll Voucher (Thomas)
Payroll check numbers 539630 through 539632 in the amount of \$676,833.24, electronic deposit transmissions in the amount of \$2,719,630.29, for a grand total of \$3,396,463.53 for the period covering December 12, 2024 to December 25, 2024

Payroll check numbers 539633 through 539639 in the amount of \$83,575.56, electronic deposit transmissions in the amount of \$2,709,919.65, also a special payroll for sick leave cashout payroll check number 539640 through 539640 in the amount of \$703.86 and electronic deposit transmission in the amount of \$22,627.48 for a grand total of

\$2,816,826.55 for the period covering December 26, 2024 to January 15, 2025

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

UNFINISHED BUSINESS

NEW BUSINESS

ORDINANCES

- A. Ordinance No. 6965 (Whalen)
An Ordinance relating to the burden of proof in Dangerous Dog Appeals, and amending Section 2.46.120 of the Auburn City Code

(RECOMMENDED ACTION: Move to approve Ordinance No. 6965.)

- B. Ordinance No. 6966 (Whalen)
An Ordinance relating to bases for eviction from rental housing, and repealing Section 5.23.070 of the Auburn City Code

(RECOMMENDED ACTION: Move to approve Ordinance No. 6966.)

RESOLUTIONS

- A. Resolution No. 5799 (Krum)
A Resolution authorizing the Mayor to execute a Development Agreement between the City of Auburn and Portofino Investment Group I LLC, to Govern the Future Development of King County Parcel Numbers 1085623960, 1085623970, 1085623980, And 1085623990

(RECOMMENDED ACTION: Move to adopt Resolution No. 5799.)

- B. Resolution No. 5802 (Whalen)
A Resolution authorizing the Mayor to execute an agreement between the City of Auburn and Utopia Landscaping, LLC for Landscaping Services

(RECOMMENDED ACTION: Move to adopt Resolution No. 5802.)

- C. Resolution No. 5805 (Admin)
A Resolution authorizing the Mayor to execute a Conservation Grant Agreement between the City of Auburn and Puget Sound Energy

(RECOMMENDED ACTION: Move to adopt Resolution No. 5805.)

- D. Resolution No. 5807 (Gaub)
A Resolution authorizing the Mayor to execute and administer agreements accepting grants from the Washington State Department of Transportation and Federal Highway Administration for 3 Projects: 1) A Street SE Preservation (37th Street SE to Lakeland Hills Way), 2) 1st Street NE/NW And N Division Street Pedestrian Improvements, and 3) C Street SW Preservation (GSA Signal to Ellingson Rd SE)

(RECOMMENDED ACTION: Move to adopt Resolution No. 5807.)

- E. Resolution No. 5808 (Caillier)

A Resolution authorizing the Mayor to accept a Grant Award from the Office of the Attorney General of Washington

(RECOMMENDED ACTION: Move to adopt Resolution No. 5808.)

F. Resolution No. 5809 (Caillier)

A Resolution authorizing the Mayor to enter a contract with Flock Group, Inc for the installation of Traffic Safety Cameras

(RECOMMENDED ACTION: Move to adopt Resolution No. 5809.)

MAYOR AND COUNCILMEMBER REPORTS

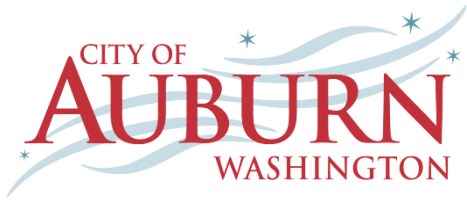
At this time the Mayor and City Council may report on significant items associated with their appointed positions on federal, state, regional and local organizations.

A. From the Council

B. From the Mayor

ADJOURNMENT

Agendas and minutes are available to the public at the City Clerk's Office and on the City website (<http://www.auburnwa.gov>).



AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Hearing for City of Kent Franchise Agreement No. FRN24-0003
(Gaub)

A Public Hearing to consider Franchise Agreement No. FRN24-0003 for
City of Kent Water Facilities

Meeting Date:

January 21, 2025

Department:

Public Works

Attachments:

Draft Ordinance No. 6962,
Vicinity Map

Budget Impact:**Administrative Recommendation:**

City Council to hold a Public Hearing in consideration of Franchise Agreement No. FRN24-0003 for
City of Kent for a Water Franchise.

Background for Motion:**Background Summary:**

Section 20.04.040 of the Auburn City Code requires the City to hold a Public Hearing before granting
or denying a Franchise Agreement. Franchise Agreement No. FRN24-0003 for the City of Kent will
allow Kent to continue to operate their existing water facilities in the public ways within the Auburn
City limits.

The date of the Public Hearing was set by consent on December 16, 2025.

Councilmember: Tracy Taylor

Staff: Ingrid Gaub

ORDINANCE NO. 6962

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO CITY OF KENT, A WASHINGTON MUNICIPAL CORPORATION, A FRANCHISE FOR WATER FACILITIES

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

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

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

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

Section 1. Definitions

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

- A. “ACC” means the Auburn City Code.
- B. “Fire Flow” means the measure of sustained flow of available water required for firefighting of a specific building or structure within a specific area at 20 pounds per square inch residual pressure and shall be corrected to the lowest gallonage available based on peak-period demands and seasonal demands.
- C. “Fire Hydrant” means a public fire hydrant situated and maintained to provide water for firefighting purposes. Public fire hydrants are without restriction

as to use for that purpose. The location of a fire hydrant is such that it is accessible for immediate use of the fire authority at all times.

D. "Force Majeure Event" means and shall include without limitation, war, civil disturbance; flood, earthquake or other Act of God; storm or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service; laws, regulations, rules or orders of any governmental agency; a public health emergency as declared by the State of Washington or local County governing the Franchise Area; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a third party; or any failure or delay in the performance by the other party, or third party who is not an employee, agent or contractor of the party claiming a Force Majeure Event, in connection with this Franchise.

E. "Franchise" means this agreement approved by Ordinance No. 6962 of the City which authorizes Franchisee Facilities to provide Franchisee Services in the Franchise Area.

F. "Franchise Area" means the public ways specified in Exhibit "A".

G. "Franchisee Facilities" means water supply transmission and distribution mains, interties, pipes, Fire Hydrants, valves, water services and meters, water system communication and monitoring equipment, and all other appurtenances necessary or convenient for the purpose of providing water service, including any part thereof used or usable for the delivery of water for Fire Flow and fire suppression purposes, that are constructed, operated, owned, and maintained within the public ways that are located in the Franchise Area.

H. "Franchisee Services" means providing potable water service for human consumption or other domestic use, including residential, commercial, and wholesale use, and Fire Flow and fire suppression purposes. A water service extends from the public water main to and including the water meter and is owned and maintained by the Franchisee.

I. "Public Improvement" means any capital improvement, maintenance, or repair that is undertaken by or on behalf of the City and is funded by the City (either directly or indirectly with its own funds or with other public monies obtained by the City), including any capital improvement within the City's adopted Transportation Improvement Plan or Capital Facilities Plan.

Section 2. Grant of Right to Use Franchise Area

A. Subject to the terms and conditions stated in this Franchise, the City grants to the Franchisee general permission to enter, use, and occupy the public

ways within the Franchise Area, located within the incorporated area of the City. Franchisee may locate the Franchisee's Facilities within the Franchise Area subject to all applicable laws, regulations, and permit conditions.

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

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

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

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

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

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

Section 3. Notice

A. Written notices to the parties shall be sent by a nationally recognized overnight courier or by certified mail to the following addresses unless a different address is designated in writing and delivered to the other party. Any such written notice shall become effective upon receipt by certified mail, confirmed delivery by

overnight courier, or the date stamped received by the City. Any communication made by telephone, e-mail, or similar method will not constitute notice pursuant to this Franchise, except where expressly permitted in this Franchise.

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

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

Franchisee: City of Kent
Attn: City of Kent Water Manager- Public Works Operations
220 Fourth Avenue South
Kent, WA 98032
Telephone: 253-856-5600
Email Address: PWOps@KentWA.gov

with a copy to: City of Kent
Attn: City Clerk
220 Fourth Avenue South
Kent, WA 98032
Telephone: 253-856-5725
Email Address: CityClerk@KentWA.gov

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

C. The above-stated Franchisee voice telephone numbers shall be staffed at least during normal business hours, Pacific time zone. The City may contact Franchisee at the following number for emergency or other needs outside of normal business hours of the Franchisee: (253-856-5600).

Section 4. Term of Franchise

A. This Franchise shall run for a period of twenty (20) years, from the date of Franchise Acceptance as described in Section 5 of this Franchise.

B. Automatic Extension. If the Franchisee fails to formally apply for a new franchise agreement prior to the expiration of this Franchise's term or any extension thereof, this Franchise automatically continues month to month until a new franchise agreement is applied for and approved under the then current process or until either party gives written notice at least one hundred and eighty (180) calendar days in advance of intent to cancel this Franchise. Franchisee shall be responsible for paying applicable fees for month-to-month Franchise status per the City of Auburn fee schedule in effect at the time the Agreement goes into month-to-month status.

Section 5. Acceptance of Franchise

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

B. If the Franchisee fails to file the Franchise Acceptance with the City Clerk within thirty (30) calendar days after the effective date of the ordinance approving the Franchise as described in Section 26 of this Franchise, the City's grant of the Franchise will be null and void.

Section 6. Construction and Maintenance

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

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

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

D. Franchisee's Facilities shall be constructed, installed, maintained, and repaired within the Franchise Area so as to provide safety of persons and property, and not interfere with the free passage of traffic, all in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations of the City.

E. If work performed under this Franchise by the Franchisee makes it necessary to turn off or diminish water pressure or potential Fire Flow to any Fire Hydrant, the Franchisee shall notify Valley Regional Fire Authority (VRFA) by telephone at 253-288-5870, email at fire.marshall@vrfa.org, or written notice, that water pressure or Fire Flow conditions may be affected. Except in the case of an emergency, the notice shall be provided at least forty-eight (48) hours prior to the water pressure or potential Fire Flow being suspended or diminished. If more than one Fire Hydrant will be affected, the Franchisee shall provide a map of the affected area to VRFA. Out-of-service Fire Hydrants must be identified as not operational by covering with a properly secured burlap or plastic bag. Fire Hydrants should be returned to full service as soon as reasonably possible or no longer than two (2) calendar days from the date service was suspended or diminished. The Franchisee shall notify VRFA when the Fire Hydrant(s) is/are returned to full service.

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

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

H. Franchisee shall notify the City by email or written notice, a minimum of fifteen (15) calendar days in advance of discharge of Franchisee water supply from a reservoir into the City's storm water system in the Franchise Area. The City will review to ensure the ability of the City storm system to handle the additional water. The City may deny any request based on the needs of the City but will work with the Franchisee to coordinate a mutually agreed upon time to discharge water to the City storm system. Any approval by the City for the Franchisee to discharge water into the City storm system must be in writing. Any Franchisee water

discharged to the City's storm water system must comply with all applicable federal and state water quality standards and the City's NPDES permit relating to the City's storm water system. The Franchisee will employ appropriate BMPs to ensure City's storm water system capacity is not exceeded or damaged.

I. Flushing of water system and other Franchisee activities not identified in paragraph H above shall not require advance notification. Any Franchisee water discharged to the City's storm water system must comply with all applicable federal and state water quality standards and the City's NPDES permit relating to the City's storm water system. The Franchisee will employ appropriate BMPs to ensure City's storm water system capacity is not exceeded or damaged.

Section 7. Repair and Restorations

A. If the City Engineer determines that Franchisee's Facilities or Franchisee's construction, maintenance, repair, relocation, or replacement of facilities within the Franchise Area is the cause of damage, degradation, failure, or substandard condition of a Street, during the term of this Franchise, the City will notify Franchisee by email or written notice and Franchisee will repair or replace the subject Street in accordance with City Engineering Design Standards and subject to applicable permits, within ninety (90) calendar days of the City's notification unless granted additional time by the City Engineer. If the City determines the subject Street condition poses an immediate threat to health, safety, vital traffic operations, property, or critical areas, Section 8 shall apply.

B. For purposes of this Section, "street" shall mean all City owned improvements within a public way, including, but not limited to, the following: pavement, sidewalks, curbing, above and below-ground utility facilities, traffic control devices, landscape areas, and vegetation in unopened rights-of-way.

Section 8. Emergency Repair Work

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

B. The City may commence emergency response work, at any time, without prior written notice to the Franchisee, but will notify the Franchisee, by email or in writing, as promptly as possible under the circumstances. Franchisee

will reimburse the City for the City's actual cost of performing emergency response work.

Section 9. Damages to City and Third-Party Property

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

Section 10. Location Preference

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

B. When constructing new Franchisee Facilities, or replacing or reconstructing Franchisee Facilities, Franchisee shall maintain minimum underground separation requirements from all City water, sanitary sewer, and storm water facilities in accordance with the City Engineering Design and Construction Standards; provided, that for development of new areas, the City, in consultation with Franchisee and other utility purveyors or authorized users of the Franchise Area, will develop and follow the City's determination of guidelines and procedures for determining specific utility locations, subject additionally to this agreement.

Section 11. Relocation of Franchisee Facilities

A. Whenever the City causes a Public Improvement to be constructed within the Franchise Area, and such Public Improvement requires the relocation of Franchisee Facilities within the Franchise Area (for purposes other than those described in Section 11.B below):

1. The City shall provide Franchisee with written notice requesting such relocation, along with review plans and/or other detailed document(s) for the Public Improvement that are sufficiently complete as determined by the City Engineer to allow for Franchisee's initial evaluation and coordination of the relocation. The City shall provide the Franchisee with the City's anticipated construction schedule and the date, either before or during the construction of the Public Improvement, the City requires the Franchisee to complete the relocation. If the Franchisee desires clarification, alternatives to relocation, or a relocation schedule that varies from that provided by the City, the Franchisee will provide written request to the City within fourteen (14) calendar days of receiving the relocation notice from the City and then Section 11.A.2 shall apply to the relocation, otherwise, the Franchisee agrees to conduct the relocation as required by the City and Section 11.A.2 shall not apply to the relocation.

2. Subject to the notice requirement of Section 11.A.1, the City and Franchisee shall discuss relocation requirements and schedule, and jointly identify and define the project requirements, schedule, and timeframe of relocation that the Parties agree shall govern the relocation. The Parties will document the mutual agreement of these terms in writing. Except as approved otherwise in writing by the City, in no case shall the Franchisee's relocation be completed more than 180 calendar days after initial notification by the City.

3. Franchisee shall relocate such Franchisee Facilities within the Franchise Area, at no charge to the City and in accordance with the relocation schedule required by the City or otherwise mutually agreed upon by the Parties per Section 11.A.2.

B. Whenever (i) any public or private development within the Franchise Area, other than a Public Improvement, requires the relocation of Franchisee Facilities within the Franchise Area to accommodate such development: or (ii) the City requires the relocation of Franchisee Facilities within the Franchise Area for the benefit of any person or entity other than the City (including, without limitation, any conditions or requirement imposed by the City on such person or entity pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development), then in such event, Franchisee shall have

the right as a condition of such relocation, to (i) require such developer, person or entity to cause such relocation to occur at their own expense, subject to Franchisee's review and approval of design plans prepared by such developer, person or entity; or (ii) to require such developer, person or entity to make payment to Franchisee, at a time and upon terms acceptable to Franchisee, for any and all costs and expenses incurred by Franchisee in connection with such relocation of Franchisee Facilities.

C. Subject to the terms of this Section 11 and consistent with Section 14 and to the maximum extent provided by applicable law, Franchisee shall reimburse the City for any costs, expenses, and/or damages incurred as a result of: 1) The Franchisee not providing the City accurate or sufficient location or other information regarding Franchise Facilities during design or construction of the Public Improvement, or 2) Franchisee's delay in meeting the mutually-established schedule for the relocation work required to accommodate a Public Improvement to the extent the delay is directly caused by Franchisee's breach of its obligations under this Section 11 with respect to the relocation of Franchise Facilities in accordance with the mutually established schedule for the relocation work.

D. Nothing in this Section 11 shall require Franchisee to bear any cost or expense in connection with the location or relocation of any Franchise Facilities then existing pursuant to easement or such other rights not derived from this Franchise.

E. In the event that a conflict with Franchise Facilities is discovered during construction of a capital improvement, within seven (7) calendar days of this determination, the City and Franchisee shall discuss relocation requirements and schedule, and jointly identify and define the relocation requirements, schedule, and timeframe of relocation that the Parties agree shall govern the relocation. The Parties may agree to include relocation as part of the City's capital improvement with Franchisee reimbursing the costs of design, City inspection time, and relocation of Franchise Facilities. The Parties will document the mutual agreement of these terms in writing. Additionally, any and all damages or costs associated with the conflict shall be subject to Section 11.C.

Section 12. Abandonment and or Removal of Franchise Facilities

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

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

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

Section 13. Franchisee Information

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

B. The parties understand that Chapter 42.56 RCW and other applicable law may require public disclosure of information given to the City. In the event the City receives a request under Chapter 42.56 RCW involving Franchisee's information described in Section 13.A., the City shall provide email notice to Franchisee at least ten (10) days prior to release of any records that either 1) Could be excluded from public records release to protect public safety and security, including pump station and reservoir as-built records, system operating plans, vulnerability assessments, and other records the City determines the Franchisee may seek to exclude from public records release for this reason; or 2) Records the Franchisee has labelled with the statement "DO NOT RELEASE BEFORE NOTIFYING THE CITY OF KENT" or similar statement. The warning statement shall also reference this agreement by number, be in red lettering, in 16 font or greater, and on the front of the electronic or paper document.

Section 14. Indemnification and Hold Harmless

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

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

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

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

D. The Franchisee shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable law. The Franchisee's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The Franchisee shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any works therein. The services of the City or City's consultant personnel in conducting construction review of the Franchisee's work relating to the Franchise is not intended to include review of the adequacy of the Franchisee's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such job site within the public way. The Franchisee shall provide safe access for the City and its inspectors to adequately inspect the work and its conformance with applicable law and the Franchise.

E. Indemnification for Relocation. Franchisee will defend, indemnify, and hold the City harmless for any damages, claims, additional costs or reasonable expenses and attorneys' fees, including contractor construction delay damages, assessed against or payable by the City and arising out of or resulting from Franchisee's negligence or willful misconduct contributing to Franchisee's failure to remove, adjust, or relocate any of its facilities in the public way in accordance with any relocation required by the City, provided that Franchisee will not be liable under this Section if Franchisee's failure to remove, adjust, or relocate any of its facilities is the result of a Force Majeure Event.

Section 15. Insurance

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

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

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

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, pollution liability, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under the Franchisee's Commercial General Liability insurance policy with respect this Franchise.

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

3. Contractor's Pollution Liability insurance shall be in effect throughout the entire Franchise covering losses caused by pollution conditions that arise from the operations of the Franchisee. Contractor's Pollution Liability shall cover bodily injury, property damage, cleanup costs,

and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

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

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

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

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

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

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

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

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

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

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

G. Contractors and Subcontractors. The Franchisee shall cause each and every contractor and subcontractor to provide insurance coverage that complies with all applicable requirements of the Franchisee-provided insurance as set forth herein, except that the Franchisee shall have sole responsibility for determining the limits of coverage required to be obtained by contractors and subcontractors. The Franchisee shall ensure that the City is an additional insured on each and every contractor's and subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

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

I. Notice of Cancellation. Franchisee shall provide the City with email or written notice of any policy cancellation within five (5) calendar days of their receipt of such notice.

J. Failure to Maintain Insurance. Failure on the part of the Franchisee to maintain the insurance as required shall constitute a material breach of this Franchise, upon which the City may, after giving five (5) calendar days' written notice to the Franchisee to correct the breach, terminate the Franchise.

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

L. Franchisee – Self-Insurance. Franchisee will have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City. If the Franchisee is self-insured or becomes self-insured during the term of the Franchise, Franchisee or its affiliated parent entity shall comply with the following: (1) Franchisee shall submit a letter to the City stating which of the above required insurance provisions in this Section 15

Franchisee proposes to self-insure; (2) provide the City, upon request, a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (3) Franchisee or its parent company is responsible for all payments within the self-insured retention; and (4) Franchisee assumes all defense and indemnity obligations as outlined in Section 14.

Section 16. Financial Security

Pursuant to the authority in ACC 20.02.280.A, the City's Public Works Director has determined that the Franchisee shall not be required to provide the City with financial security for this Franchise.

Section 17. Successors and Assignees

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

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

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

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

Section 18. Dispute Resolution

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

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

Section 19. Enforcement and Remedies

A. If the Franchisee willfully violates or fails to comply with any of the provisions of this Franchise through willful or unreasonable negligence or fails to comply with any notice given to Franchisee under the provisions of this Franchise, the City may, at its discretion, provide Franchisee with written notice to cure the breach within thirty (30) calendar days of notification. If the City determines the breach cannot be cured within thirty (30) calendar days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) calendar day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Franchisee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification, or (2) impose liquidated damages of Two Hundred Fifty Dollars (\$250.00) per day for every day after the expiration of the cure period that the breach is not cured. The parties agree that the actual damages to the City from Franchisee failing to cure are not easily calculated and agree that the liquidated damages amount are a reasonable forecast of just compensation.

B. If the City determines that Franchisee is acting beyond the scope of permission granted in this Franchise for Franchisee Facilities and Franchisee Services, the City reserves the right to cancel this Franchise and require the Franchisee to apply for, obtain, and comply with all applicable City permits, franchises, or other City permissions for such actions, and if the Franchisee's

actions are not allowed under applicable federal and state or City laws, to compel Franchisee to cease those actions.

C. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise, Franchisee agrees to be responsible for any damages the City suffers as a result of Franchisee's failure (including, but not limited to: City staff time, material and equipment costs; compensation or indemnification of third parties; and the cost of removal or abandonment of facilities). Franchisee also specifically agrees that its failure to comply with the terms of this Section 19 will constitute damage to the City in the monetary amount set forth in subsection A of this Section.

Section 20. Compliance with Laws and Regulations

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

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

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

Section 21. License, Tax and Other Charges

A. The City reserves the right to impose, to the extent authorized by law, a utility tax on the Franchisee and/or to charge the Franchisee a reasonable fee for services provided or rights granted under this Franchise.

B. The Franchisee agrees that it shall be subject to all authority now or later possessed by the City or any other governing body having competent jurisdiction to fix just, reasonable, and compensatory rates for services under this Franchise.

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

Section 22. Consequential Damages Limitation

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

Section 23. Severability

If any portion of this Franchise is deemed invalid, the remainder portions will remain in effect, unless doing so will deny a party valuable consideration.

Section 24. Titles

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

Section 25. Implementation

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

Section 26. Effective Date

This Ordinance will take effect and be in force five (5) calendar days from and after its passage, approval and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Jason, Whalen, City Attorney

Published: _____

EXHIBIT "A"

Franchise Area

AREA A {KING COUNTY FRANCHISE 13083 AREA IN AUBURN INCLUDING 124TH AVENUE S NORTH OF BRIDGES}

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING EAST OF THE WEST LINE OF THE GREEN RIVER;

ALSO, THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 22 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING EAST OF THE WEST LINE OF THE GREEN RIVER; EXCEPT THAT PORTION WITHIN THE CITY OF KENT ACCORDING TO CITY OF KENT ORDINANCE NUMBER 3171 RECORDED UNDER KING COUNTY RECORDING NUMBER 9407281510;

ALSO, THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 22 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

ALSO, THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 22 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON; EXCEPT THAT PORTION WITHIN THE CITY OF KENT LIMITS ACCORDING TO CITY OF KENT ORDINANCE NUMBER 3171 RECORDED UNDER KING COUNTY RECORDING NUMBER 9407281510;

ALSO, THE WEST 30 FEET OF THE SOUTH 700 FEET OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 22 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

AREA B {BRIDGES AND ADJACENT 124TH AVENUE S RIGHT OF WAY AND SE 288TH STREET}

ALSO, BRIDGES, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 245 OF PLATS, PAGES 001 THROUGH 038, RECORDS OF KING COUNTY, WASHINGTON;

ALSO, GOVERNMENT LOT 3, SECTION 4, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

ALSO, THE NORTH 26 FEET OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

ALSO, ALL OF 124TH AVE SE RIGHT OF WAY LYING NORTH OF THE EASTERLY PROLONGATION OF THE SOUTHERLY RIGHT OF WAY LINE OF THE 68 FOOT WIDE RIGHT OF WAY OF SE 292ND St LYING WITHIN THE NORTHEAST QUARTER AND THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, EXCEPT GOVERNMENT LOT 3;

AREA C {S 277TH STREET CORRIDOR}

ALSO, ALL OF SOUTH 277TH STREET RIGHT OF WAY BOUNDED ON THE WEST BY THE WEST MARGIN OF CITY OF AUBURN CITY LIMITS AS DESCRIBED IN CITY OF AUBURN ORDINANCE NUMBER 3420. AND BOUNDED ON THE EAST BY THE EAST MARGIN OF THE CITY OF AUBURN CITY LIMITS ACCORDING TO CITY OF AUBURN RESOLUTION NUMBER 5101 AS DESCRIBED IN KING COUNTY RECORDING NUMBER 20150623000988, LYING WITHIN THE NORTH HALF OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., AND THE NORTH HALF OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON.

EXHIBIT "B"

STATEMENT OF ACCEPTANCE

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

Franchisee Name _____

Address _____

City, State, Zip _____

By: _____

Date: _____

Name:

Title:

STATE OF _____)

)ss.

COUNTY OF _____)

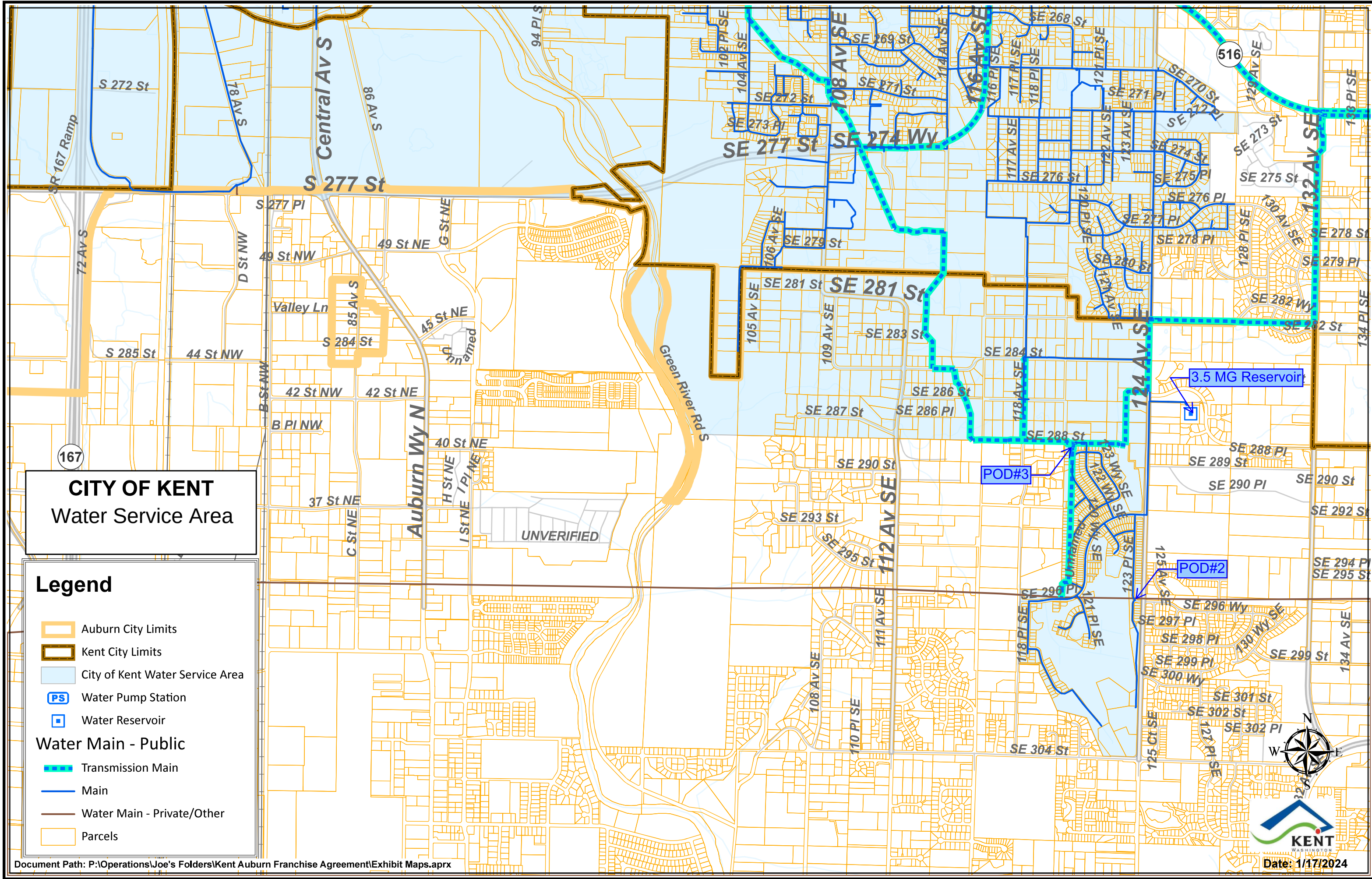
On this ____ day of _____, 20__, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of _____, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary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

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

Signature

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

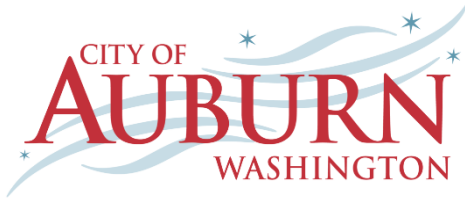
MY COMMISSION EXPIRES: _____



CITY OF KENT
Water Service Area

Legend

- Auburn City Limits
- Kent City Limits
- City of Kent Water Service Area
- Water Pump Station
- Water Reservoir
- Water Main - Public
 - Transmission Main
 - Main
 - Water Main - Private/Other
- Parcels



AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Hearing for Resolution No. 5799 - Development Agreement (Krum)
A Public Hearing to consider a Development Agreement with Portofino
Group I, LLC

Meeting Date:

January 21, 2025

Department:

Community Development

Attachments:

None

Budget Impact:**Administrative Recommendation:**

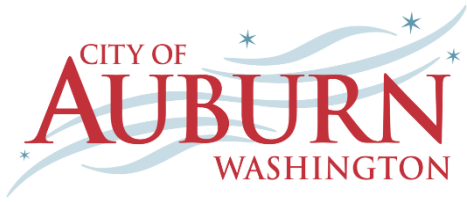
City Council to hold a Public Hearing in consideration of a Development Agreement with Portofino Investment Group I, LLC, for future development of King County parcel numbers 1085623960, 1085623970, 1085623980, and 1085623990.

Background for Motion:**Background Summary:**

For more information please refer to Resolution No. 5799.

Councilmember: Tracy Taylor

Staff: Jason Krum



AGENDA BILL APPROVAL FORM

Agenda Subject:

Minutes from the December 16, 2024, City Council Meeting

Meeting Date:

January 21, 2025

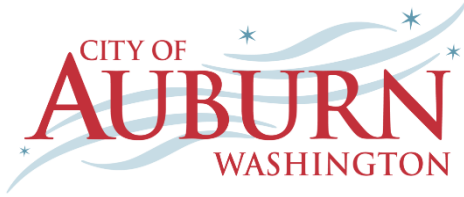
Department:

City Council

Attachments:

12-16-2024 Minutes

Budget Impact:**Administrative Recommendation:****Background for Motion:****Background Summary:****Councilmember:****Staff:**



**City Council
Regular Meeting
December 16, 2024 - 7:00 PM
City Hall Council Chambers**

MINUTES

CALL TO ORDER

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.

LAND ACKNOWLEDGEMENT

Mayor Backus acknowledged the Federally Recognized Muckleshoot Indian Tribe as the ancestral keepers of the land we are gathered on today.

PUBLIC PARTICIPATION

The City Council Meeting was held in person and virtually.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Councilmembers present: Deputy Mayor Larry Brown, Hanan Amer, Kate Baldwin, Clinton Taylor, Tracy Taylor, and Acting Deputy Mayor Yolonda Trout-Manuel. Councilmember Cheryl Rakes arrived at 7:05 p.m.

Mayor Nancy Backus and the following staff members present included: City Attorney Jason Whalen, Chief of Police Mark Caillier, Director of Public Works Ingrid Gaub, Director of Community Development Jason Krum, Director of Parks, Arts, and Recreation Daryl Faber, and City Clerk Shawn Campbell.

ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS

- A. National Foundation of Women Legislators Woman of Excellence Award Presentation

City of Federal Way Councilmembers and Co-State Directors of the National Foundation of Women Legislators, Susan Honda and Lydia Assefa-Dawson,

presented Acting Deputy Mayor Trout-Manuel the Elected Woman of Excellence Award.

AGENDA MODIFICATIONS

There were no modifications to the agenda.

AUDIENCE PARTICIPATION

Written Comments:

Linda Redman - Auburn, WA

Linda provided comments regarding homelessness, community building and beautifying Auburn.

Brooke Frickleton - Seattle, WA

Brooke provided comments regarding the 2024 Comprehensive Plan Periodic Update.

In-Person Comments:

Tina Marie - Auburn, WA

Tina provided comments regarding homelessness, and wished the Council Happy Holidays.

Virginia Haugen - Auburn, WA

Virginia congratulated Councilmember Trout-Manuel on the Woman of Excellence Award, and spoke about safety in the schools.

EXECUTIVE SESSION

Mayor Backus adjourned into executive session at 7:13 p.m. per RCW 42.30.110(1)(i)(ii) and (iii) to discuss with legal counsel potential litigation that may be commenced against the City, and the legal risks of a proposed action when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency for 15 minutes. Mayor Backus, Councilmembers, City Attorney Jason Whalen, and Director of Public Works Ingrid Gaub were required to attend.

Mayor Backus reconvened the meeting at 7:31 p.m.

CORRESPONDENCE

There was no correspondence for Council to review.

CONSENT AGENDA

- A. Minutes of the December 2, 2024, Special City Council Meeting
- B. Minutes of the November 25, 2024, and December 9, 2024, Study Session Meetings
- C. Claims Vouchers (Thomas)
Claims voucher list dated December 11, 2024, which includes voucher numbers 478306 through voucher 478435, in the amount of \$5,306,112.88, nine electronic fund transfers in the amount of \$1,981.22 and nine wire transfers in the amount of \$791,627.00
- D. Payroll Voucher (Thomas)
Payroll check numbers 539627 through 539629 in the amount of \$81,214.00, electronic deposit transmissions in the amount of \$2,913,016.94, for a grand total of \$2,994,230.94 for the period covering November 28, 2024, to December 11, 2024
- E. Setting the date for the Public Hearing for City of Kent Franchise Agreement (Gaub)
City Council to set the date of the Public Hearing for Franchise Agreement No. FRN24-0003 for City of Kent

Acting Deputy Mayor Trout-Manuel moved and Councilmember Amer seconded to approve the consent agenda.

MOTION CARRIED UNANIMOUSLY. 7-0

UNFINISHED BUSINESS

There was no unfinished business.

ORDINANCES

- A. Ordinance No. 6959 (Krum)
An Ordinance relating to the Subdivision Code, Zoning Code, and the Comprehensive Plan, amending Chapters 14.22, 17.01, 17.04, 17.12, 17.14, 18.02, 18.04, 18.07, 18.09, 18.21, 18.23, 18.25, 18.29, 18.31, 18.32, 18.35, 18.49, 18.50, 18.52, 18.55, 18.56, 18.57, and creating new Chapter 17.27 of the Auburn City Code

Councilmember T. Taylor moved and Councilmember Baldwin seconded to approve Ordinance No. 6959.

MOTION CARRIED UNANIMOUSLY. 7-0

B. Ordinance No. 6960 (Krum)

An Ordinance relating to completion of the 2024 Periodic Comprehensive Plan Update requirements under the Washington State Growth Management Act and adoption of the updated Elements, Appendices, Plans incorporated by reference, Land Use Map, and Zoning Map

Councilmember T. Taylor moved and Councilmember C. Taylor seconded to approve Ordinance No. 6960.

MOTION CARRIED UNANIMOUSLY. 7-0

RESOLUTIONS

A. Resolution No. 5801 (Gaub)

A Resolution authorizing the Mayor to execute and administer an agreement accepting Grants from the Washington State Transportation Improvement Board for the Auburn Way South Widening and Regional Growth Center Improvement Projects

Councilmember T. Taylor moved and Acting Deputy Mayor Trout-Manuel seconded to adopt Resolution No. 5801.

MOTION CARRIED UNANIMOUSLY. 7-0

After the vote of Deputy Mayor, Mayor Backus read the correct the Resolution title: "A Resolution authorizing the Mayor to execute and administer an agreement accepting Grants from the Washington State Transportation Improvement Board for the 49th Street Access to Transit Project".

NEW BUSINESS

A. Selection of Deputy Mayor (Council)

Mayor Backus read the Council Rules of Procedure section regarding the election of the Deputy Mayor and explained the role and expectations of the Deputy Mayor.

Mayor Backus asked the Councilmembers for nominations for Deputy Mayor. Councilmember Amer nominated Councilmember T. Taylor and Deputy Mayor Brown nominated Councilmember Rakes.

Council discussed challenges and the role of the Deputy Mayor.

Mayor Backus provided both nominees two minutes to speak to the Council.

Mayor Backus thanked Deputy Mayor Brown and Acting Deputy Mayor Trout-Manuel for their work in the past year.

Mayor Backus asked for votes for the two nominated Councilmembers.

Councilmember T. Taylor received 3 votes and Councilmember Rakes received 4 votes.

Mayor Backus announced that Councilmember Rakes will be appointed as the Deputy Mayor for 2025.

MAYOR AND COUNCILMEMBER REPORTS

A. From the Council

Deputy Mayor Brown thanked his fellow Councilmember and the Mayor for their support during his absence.

Councilmember Amer wished everyone a Happy Holiday and New Year.

Councilmember Baldwin reported she attended the Auburn Municipal Airport Open House, Santa Parade and Tree Lighting, the Good Eggs Breakfast, and the Muckleshoot Holiday Reception.

Councilmember Rakes reported she attended the Law Enforcement Officers and Firefighters (LEOFF) Disability Board Meeting, We Build Washington Ribbon Cutting at Junior Achievement, Good Eggs Breakfast, Muckleshoot Holiday Reception, Pete von Reichbauer's King County Holiday Leadership and Volunteer Recognition event, and the Breakfast with Santa event.

Councilmember C. Taylor reported he attended the We Build Washington Ribbon Cutting at Junior Achievement, Muckleshoot Holiday Reception, South King County Reception, and the Sound Cities Association (SCA) Annual meeting.

Councilmember T. Taylor reported she attended the Valley Regional Fire Authority Board of Governance meeting, Sound Cities Public Issues Committee (PIC) meeting, and the See Ya Later Foundation Seeds of Hope Breakfast event.

Acting Deputy Mayor Trout-Manuel reported she attended the Red, White, and Blue Holiday Concert, Domestic Violence Task Force meeting, Good Egg Breakfast, Pete von Reichbauer's King County Holiday Leadership and Volunteer Recognition event, and the Breakfast with Santa event.

B. From the Mayor

Mayor Backus reported she attended an Outgoing Reception for Pierce County Executive Bruce Dammeier. She reported that she will be attending the South Sound Legislative Breakfast, Mayor's Open House at the Junior Achievement Building, and will be working with the Auburn Food Bank and Valley Regional Fire Authority to provide Toys for Kids and Holiday Food Baskets. The Mayor thanked Staff and Council for their dedication.

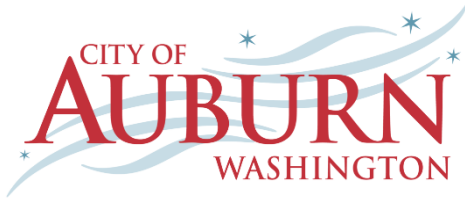
ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 8:14 p.m.

APPROVED this 21st day of January 2025.

NANCY BACKUS, MAYOR

Shawn Campbell, City Clerk



AGENDA BILL APPROVAL FORM

Agenda Subject:

Claims Vouchers (Thomas)

Claims voucher list dated December 31, 2024 which includes voucher numbers 478436 through voucher 478621, in the amount of \$6,135,339.49, twelve electronic fund transfers in the amount of \$5,597.38 and nine wire transfers in the amount of \$7,560,605.46

Claims voucher list dated January 15, 2025 which includes voucher numbers 478622 through voucher 478676, voucher 478678 through voucher 478797 and voucher 478799 in the amount of \$9,741,177.26, six electronic fund transfers in the amount of \$2,203.83 and one wire transfer in the amount of \$809,556.32

Meeting Date:

January 21, 2025

Department:

Finance

Attachments:

None

Budget Impact:**Administrative Recommendation:**

City Council to approve Claim Vouchers.

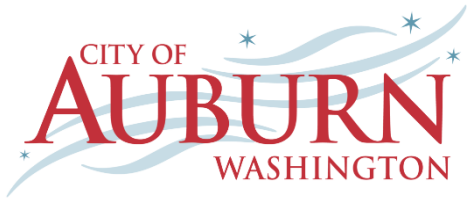
Background for Motion:**Background Summary:**

Claims voucher list dated December 31, 2024 which includes voucher numbers 478436 through voucher 478621, in the amount of \$6,135,339.49, twelve electronic fund transfers in the amount of \$5,597.38 and nine wire transfers in the amount of \$7,560,605.46.

Claims voucher list dated January 15, 2025 which includes voucher numbers 478622 through voucher 478676, voucher 478678 through voucher 478797 and voucher 478799 in the amount of \$9,741,177.26, six electronic fund transfers in the amount of \$2,203.83 and one wire transfer in the amount of \$809,556.32

Councilmember: Kate Baldwin

Staff: Jamie Thomas



AGENDA BILL APPROVAL FORM

Agenda Subject:

Claims Vouchers (Thomas)
Claims voucher list dated January 15, 2025 which includes voucher number 478677, in the amount of \$1,633.28, and voucher number 478798, in the amount of \$2,500.00

Meeting Date:

January 21, 2025

Department:

Finance

Attachments:

None

Budget Impact:**Administrative Recommendation:**

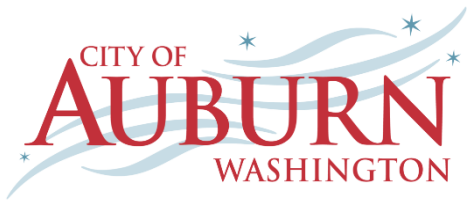
City Council to approve Claim Vouchers.

Background for Motion:**Background Summary:**

Claims voucher list dated January 15, 2025 which includes voucher number 478677, in the amount of \$1,633.28, and voucher number 478798, in the amount of \$2,500.00.

Councilmember: Kate Baldwin

Staff: Jamie Thomas



AGENDA BILL APPROVAL FORM

Agenda Subject:

Payroll Voucher (Thomas)
Payroll check numbers 539630 through 539632 in the amount of \$676,833.24, electronic deposit transmissions in the amount of \$2,719,630.29, for a grand total of \$3,396,463.53 for the period covering December 12, 2024 to December 25, 2024

Meeting Date:

January 21, 2025

Payroll check numbers 539633 through 539639 in the amount of \$83,575.56, electronic deposit transmissions in the amount of \$2,709,919.65, also a special payroll for sick leave cashout payroll check number 539640 through 539640 in the amount of \$703.86 and electronic deposit transmission in the amount of \$22,627.48 for a grand total of \$2,816,826.55 for the period covering December 26, 2024 to January 15, 2025

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

Department:

Finance

Attachments:

None

Budget Impact:**Administrative Recommendation:**

City Council to approve Payroll Vouchers.

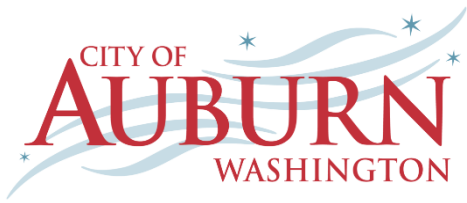
Background for Motion:**Background Summary:**

Payroll check numbers 539630 through 539632 in the amount of \$676,833.24, electronic deposit transmissions in the amount of \$2,719,630.29, for a grand total of \$3,396,463.53 for the period covering December 12, 2024 to December 25, 2024.

Payroll check numbers 539633 through 539639 in the amount of \$83,575.56, electronic deposit transmissions in the amount of \$2,709,919.65, also a special payroll for sick leave cashout payroll check number 539640 through 539640 in the amount of \$703.86 and electronic deposit transmission in the amount of \$22,627.48 for a grand total of \$2,816,826.55 for the period covering December 26, 2024 to January 15, 2025.

Councilmember: Kate Baldwin

Staff: Jamie Thomas



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6965 (Whalen)

An Ordinance relating to the burden of proof in Dangerous Dog Appeals, and amending Section 2.46.120 of the Auburn City Code

Meeting Date:

January 21, 2025

(RECOMMENDED ACTION: Move to approve Ordinance No. 6965.)

Department:

Legal

Attachments:

Ordinance No. 6965, Ordinance
No. 6965 Exhibit

Budget Impact:**Administrative Recommendation:**

City Council to approve Ordinance No. 6965.

Background for Motion:

Ordinance No. 6965 would amend Section 2.46.120 of the Auburn City Code to accurately identify and prescribe the burden of proof in an appeal of a dangerous dog determination. Ordinance No. 6965 would place the burden of proof on the City as required to protect the appellant's due process rights.

Background Summary:

Auburn City Code permits the City to deem dogs "dangerous" or "potentially dangerous" if the dog's actions meet the requirements of those designations. The designation then results in increased requirements for owners, including insurance coverage requirements and restraint requirements. When the City deems a dog dangerous or potentially dangerous, the owner may appeal the designation and seek review by a Hearing Examiner. In Dangerous Dog Designation Appeals, owners are afforded constitutional due process protections. Due process requires that the burden of proof in Dangerous Dog Appeals to fall on the City. Current Code does not specify a burden of proof for these types of matters and the default places the burden of proof on the appellant, in this case the dog's owner.

This Code revision is necessary to accurately identify and prescribe the burden of proof in an appeal of a dangerous dog determination, protect the dog owners' constitutional due process rights, and comply with *Mansour v. King County*, 131 Wn. App. 255, 128 P.2d 1241 (2006).

Councilmember: Cheryl Rakes

Staff: Jason Whalen

ORDINANCE NO. 6965

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO THE BURDEN OF PROOF IN DANGEROUS DOG APPEALS, AND AMENDING SECTION 2.46.120 OF THE AUBURN CITY CODE

WHEREAS, the City of Auburn provides a mechanism for individuals whose dog has been deemed dangerous or potentially dangerous pursuant to City Code to appeal that designation to a hearing examiner; and

WHEREAS, the City Code prescribes the burden of proof in appeals before the hearing examiner; and

WHEREAS, *Mansour v. King County*, 131 Wn. App. 255, 128 P.2d 1241 (Div. 1, 2006), requires the burden of proof to be on the City in a dangerous dog appeal to prove the dog meets the definition of a dangerous or potentially dangerous dog; and

WHEREAS, the code revision is necessary to accurately identify and prescribe the burden of proof in an appeal of a dangerous dog determination.

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

Section 1. Amendment to City Code. ACC 2.46.120 of the Auburn City Code is amended to read as shown in Exhibit A.

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

Section 3. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application of it to any person

or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

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

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Jason Whalen, City Attorney

Published: _____

2.46.120 Burden of proof.

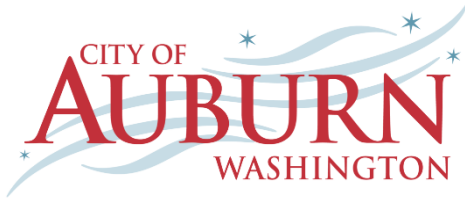
Unless otherwise provided for in the Auburn City Code, the burden of proof before the hearing examiner shall be as follows:

A. *Appeal Hearings.* The applicant/appellant shall have the burden of proof, by a preponderance of the evidence, as to material factual issues except where applicable city code provisions or state law provides otherwise.

B. *Land Use Application Hearings.* For an application to be approved, a preponderance of the evidence presented at the hearing must support the conclusion that the application meets the legal decision criteria that apply.

C. *Dangerous Dog Appeals.* For appeals of a potentially dangerous dog and/or dangerous dog determination, the city shall have the burden of proving, by a preponderance of the evidence, that the animal at issue meets the City Code's definition of a potentially dangerous dog or dangerous dog.

D. *Code Enforcement Hearings.* The city shall have the burden of proving, by a preponderance of the evidence, that a code violation has occurred and that the proposed corrective action is reasonable.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6966 (Whalen)
An Ordinance relating to bases for eviction from rental housing, and
repealing Section 5.23.070 of the Auburn City Code

Meeting Date:

January 21, 2025

(RECOMMENDED ACTION: Move to approve Ordinance No. 6966.)

Department:

Legal

Attachments:

Ordinance No. 6966, Ordinance
No. 6966 Exhibit

Budget Impact:**Administrative Recommendation:**

City Council to approve Ordinance No. 6966.

Background for Motion:

Ordinance No. 6966 would repeal Section 5.23.070 of the Auburn City Code to remove the bases for eviction from rental housing from the City Code to achieve consistency with State law.

Background Summary:

Auburn City Code (ACC) Section 5.23.070 was implemented in 2020 and outlined the bases which constituted "just cause" for eviction within the City of Auburn. Landlord-tenant relations, responsibilities, and rights are an area of increased state regulation. The Residential Landlord-Tenant Act, Chapter 59.18 RCW, provides for the bases of eviction in residential tenancies throughout the state and prescribes the rights, responsibilities, and procedures for parties to an eviction.

Section 5.23.070 contains departures from State law, which were examined in *Valley Cities Counseling and Consultation v. Eddines* 31 Wn. App. 2d 863, 553 P.3d 693 (Div. 1. 2024). The *Eddines* Court found Section 5.23.070 conflicted with State law and State law preempts at least one of the bases for eviction outlined in Section 5.23.070. The Court found that the City is unable to modify or exclude the bases outlined in State law, and would further be unable to modify the procedural provisions or requirements of the Residential Landlord Tenant Act contained in Chapter 59.18 RCW.

The proposed repeal of Section 5.23.070 was reviewed by the Legal Department and Community Development. It achieves legal compliance with the *Eddines* ruling, compliance with State law, and the bases for eviction and procedures outlined in the Residential Landlord-Tenant Act remain valid law applicable to residential tenancies in the City of Auburn.

Councilmember: Yolanda Trout-Manuel

Staff: Jason Whalen

ORDINANCE NO. 6966

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO BASES FOR EVICTION FROM RENTAL HOUSING, AND REPEALING SECTION 5.23.070 OF THE AUBURN CITY CODE

WHEREAS, the City of Auburn implemented through ACC 5.23.070 restrictions on eviction in the City to an enumerated list of circumstances constituting just cause for eviction,

WHEREAS, said provision of City Code having been reviewed in *Valley Cities Counseling and Consultation v. Eddines*, 31 Wn. App. 2d 863, 553 P.3d 693 (Div. 1. 2024), and said court decision having found Chapter 59.18 RCW in conflict with ACC 5.23.070.A,

WHEREAS, a code repeal is necessary to accurately reflect the law applicable in the City of Auburn and correct any conflicts with Chapter 59.18 RCW,

WHEREAS, with the code repeal, the bases for eviction contained in Chapter 59.18 RCW will remain applicable to the City of Auburn,

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

Section 1. Amendment to City Code. ACC 5.23.070 of the Auburn City Code is repealed, and shall be modified as shown in Exhibit A.

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

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

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

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

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Jason Whalen, City Attorney

Published: _____

5.23.070 Just cause eviction.

~~A. Pursuant to provisions of the Washington State Residential Landlord-Tenant Act (RCW [59.18.290](#)), owners may not evict residential tenants without a court order, which can be issued by a court only after the tenant has an opportunity in a show cause hearing to contest the eviction (RCW [59.18.380](#)). Owners of housing units shall not evict or attempt to evict any tenant, refuse to renew or continue a tenancy after expiration of the rental agreement, or otherwise terminate or attempt to terminate the tenancy of any tenant unless the owner can prove in court that just cause exists. Owners may not evict residential tenants from rental housing units if the units are not licensed with the city of Auburn as required by Chapter [5.22](#) ACC, regardless of whether just cause for eviction may exist. An owner is in compliance with licensing requirement if the rental housing unit is licensed with the city of Auburn pursuant to Chapter [5.22](#) ACC before entry of a court order authorizing eviction or before a writ of restitution is granted. A court may grant a continuance in an eviction action in order to give the owner time to license the rental housing unit. The reasons for termination of tenancy listed below, and no others, shall constitute just cause under this section:~~

- ~~1. The tenant fails to comply with a 14-day notice to pay rent or vacate pursuant to RCW [59.12.030\(3\)](#); a 10-day notice to comply or vacate pursuant to RCW [59.12.030\(4\)](#); or a three-day notice to vacate for waste, nuisance (including a drug-related activity nuisance pursuant to Chapter [7.43](#) RCW), or maintenance of an unlawful business or conduct pursuant to RCW [59.12.030\(5\)](#);~~
- ~~2. The tenant habitually fails to pay rent when due which causes the owner to notify the tenant in writing of late rent four or more times in a 12-month period;~~
- ~~3. The tenant fails to comply with a 10-day notice to comply or vacate that requires compliance with a material term of the rental agreement or that requires compliance with a material obligation under RCW [59.18.130](#);~~
- ~~4. The tenant habitually fails to comply with the material terms of the rental agreement which causes the owner to serve a 10-day notice to comply or vacate three or more times in a 12-month period;~~
- ~~5. The owner seeks possession so that the owner or a member of his or her immediate family may occupy the unit as that person's principal residence and no substantially equivalent unit is vacant and available in the same building, and the owner has given the tenant at least 90 days' advance written notice of the date the tenant's possession is to end. The director of community development may reduce the time required to give notice to no less than 60 days if the director of community development determines that delaying occupancy will result in a personal hardship to the owner or to the owner's immediate family. Personal hardship may include but is not limited to hardship caused by illness or accident, unemployment, or job relocation. There is~~

~~a rebuttable presumption of a violation of this subsection if the owner or a member of the owner's immediate family fails to occupy the unit as that person's principal residence for at least 60 consecutive days during the 90 days immediately after the tenant vacated the unit pursuant to a notice of termination or eviction using this subsection as the cause for eviction;~~

~~6. The owner elects to sell a dwelling unit subject to the provisions of this chapter and gives the tenant at least 90 days' written notice prior to the date set for vacating, which date shall coincide with the end of the term of a rental agreement, or if the agreement is month to month, with the last day of a monthly period. The director of community development may reduce the time required to give notice to no less than 60 days if the director of community development determines that providing 90 days' notice will result in a personal hardship to the owner. Personal hardship may include but is not limited to hardship caused by illness or accident, unemployment, or job relocation. For the purposes of this subsection, an owner "elects to sell" when the owner makes reasonable attempts to sell the dwelling within 30 days after the tenant has vacated, including, at a minimum, listing it for sale at a reasonable price with a realty agency or advertising it for sale at a reasonable price in a newspaper of general circulation. There shall be a rebuttable presumption that the owner did not intend to sell the unit if:~~

~~a. Within 30 days after the tenant has vacated, the owner does not list the single-family dwelling unit for sale at a reasonable price with a realty agency or advertise it for sale at a reasonable price in a newspaper of general circulation, or~~

~~b. Within 90 days after the date the tenant vacated or the date the property was listed for sale, whichever is later, the owner withdraws the rental unit from the market, rents the unit to someone other than the former tenant, or otherwise indicates that the owner does not intend to sell the unit;~~

~~7. The tenant's occupancy is conditioned upon employment on the property and the employment relationship is terminated;~~

~~8. The owner seeks to do substantial rehabilitation in the building and gives the tenant at least 120 days' written notice prior to the date set for vacating. To utilize this basis as the rationale for termination, the owner must obtain at least one permit necessary for the rehabilitation before terminating the tenancy;~~

~~9. The owner elects to demolish the building, convert it to a cooperative, or convert it to a nonresidential use and gives the tenant at least 120 days' written notice prior to the date set for vacating. To utilize this basis as the rationale for termination, the owner must obtain a permit necessary to demolish or change the use before terminating any tenancy or converting the building to a condominium;~~

~~10. The owner seeks to discontinue use of a housing unit unauthorized by ACC Title [18](#) after receipt of a notice of violation;~~

~~11. The owner seeks to reduce the number of individuals residing in a dwelling unit to comply with the maximum limit of individuals allowed to occupy one dwelling unit as required by ACC Titles [15](#) and [18](#), and:~~

~~a. —~~

~~i. The number of such individuals was more than is lawful under the current version of ACC Title [15](#) or [18](#), and~~

~~ii. That number has not increased with the knowledge or consent of the owner, and~~

~~iii. The owner is either unwilling or unable to obtain a permit to allow the unit with that number of residents; and~~

~~b. The owner has served the tenants with a 30-day notice, informing the tenants that the number of tenants exceeds the legal limit and must be reduced to the legal limit; and~~

~~c. After expiration of the 30-day notice, the owner has served the tenants with and the tenants have failed to comply with a 10-day notice to comply with the limit on the number of occupants or vacate; and~~

~~d. If there is more than one rental agreement for the unit, the owner may choose which agreements to terminate; provided, that the owner may either terminate no more than the minimum number of rental agreements necessary to comply with the legal limit on the number of occupants, or, at the owner's option, terminate only those agreements involving the minimum number of occupants necessary to comply with the legal limit;~~

~~12. An emergency order requiring that the housing unit be vacated and closed has been issued pursuant to ACC Title [15](#) and the emergency conditions identified in the order have not been corrected;~~

~~13. The owner seeks to discontinue sharing with a tenant of the owner's own housing unit, i.e., the unit in which the owner resides, seeks to terminate the tenancy of a tenant of an accessory dwelling unit that is accessory to the housing unit in which the owner resides, or seeks to terminate the tenancy of a tenant in a single-family dwelling unit and the owner resides in an accessory dwelling unit on the same lot. This subsection does not apply if the owner has received a notice of violation of the development standards of ACC Title [19](#);~~

~~14. A tenant, or with the consent of the tenant, the tenant's subtenant, sublessee, resident, or guest, has engaged in criminal activity on the premises, or on the property or public right-of-way abutting the premises, and the owner has specified in the notice of termination the crime alleged to have been committed and the general facts supporting the allegation, and has assured that the department has recorded receipt of a copy of the notice of termination. For purposes of this subsection a person has "engaged in criminal activity" if he or she:~~

a. ~~Engages in drug-related activity that would constitute a violation of Chapter [69.41](#), [69.50](#), or [69.52](#) RCW; or~~

b. ~~Engages in activity that is a crime under the laws of this state, but only if the activity substantially affects the health or safety of other tenants or the owner.~~

B. ~~Any rental agreement provision which waives or purports to waive any right, benefit or entitlement created by this section shall be deemed void and of no lawful force or effect.~~

C. ~~With any termination notices required by law, owners terminating or refusing to renew or continue a tenancy protected by this section shall advise the affected tenant or tenants in writing of the reasons for the termination and the facts in support of those reasons.~~

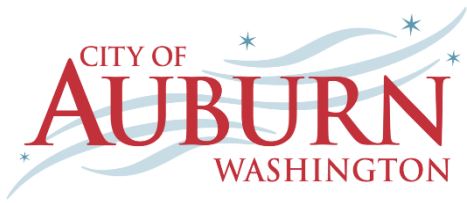
D. ~~If a tenant who has received a notice of termination or nonrenewal of tenancy claiming subsection [\(A\)\(5\)](#), [\(A\)\(6\)](#) or [\(A\)\(13\)](#) of this section as the grounds for termination believes that the owner does not intend to carry out the stated reason for eviction and makes a complaint to the director of community development, then the owner must, within 10 days of being notified by the director of community development of the complaint, complete and file with the director of community development a certification stating the owner's intent to carry out the stated reason for the eviction. The failure of the owner to complete and file such a certification after a complaint by the tenant shall be a defense for the tenant in an eviction action based on this ground.~~

E. ~~In any action commenced to evict, refuse to renew or continue a tenancy after expiration of the rental agreement, or to otherwise terminate the tenancy of any tenant, it shall be a defense to the action that there was no just cause for such eviction or termination as provided in this section.~~

F. ~~It shall be a violation of this section for any owner to evict or attempt to evict any tenant, refuse to renew or continue a tenancy after expiration of the rental agreement, or otherwise terminate or attempt to terminate the tenancy of any tenant using a notice which references subsection [\(A\)\(5\)](#), [\(A\)\(6\)](#), [\(A\)\(8\)](#), [\(A\)\(11\)](#), [\(A\)\(12\)](#) or [\(A\)\(13\)](#) of this section as grounds for eviction or termination of tenancy without fulfilling or carrying out the stated reason for or condition justifying the termination of such tenancy.~~

G. ~~An owner who evicts or attempts to evict a tenant, refuses to renew or continue a tenancy after expiration of the rental agreement, or who terminates or attempts to terminate the tenancy of a tenant using a notice which references subsection [\(A\)\(5\)](#), [\(A\)\(6\)](#) or [\(A\)\(8\)](#) of this section as the grounds for eviction or termination of tenancy without fulfilling or carrying out the stated reason for or condition justifying the termination of such tenancy shall be liable to such tenant in a private right for action for damages up to \$2,000, costs of suit, or arbitration and reasonable attorney's fees.~~

Repealed by Ord. 6966.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5799 (Krum)

A Resolution authorizing the Mayor to execute a Development Agreement between the City of Auburn and Portofino Investment Group I LLC, to Govern the Future Development of King County Parcel Numbers 1085623960, 1085623970, 1085623980, And 1085623990

Meeting Date:

January 21, 2025

(RECOMMENDED ACTION: Move to adopt Resolution No. 5799.)

Department:

Community Development

Attachments:

Resolution No. 5799, Res 5799
Attachment A DEVELOPMENT
AGREEMENT

Budget Impact:**Administrative Recommendation:**

City Council to adopt Resolution No. 5799.

Background for Motion:

Resolution No. 5799 authorizes the Mayor to enter into a Development Agreement between the City of Auburn and Portofino Investment Group I, LLC for the property located at the four referenced King County parcels. The agreement establishes site specific standards for the long-term development and use of the property.

Background Summary:

A Development Agreement is an agreement between a property owner and a City that articulates the vesting of specific development standards and conditions for a specific site. It is a tool allowed under RCW 36.70B.170 and 36.70B.210. Generally speaking, Development Agreements offer an opportunity for a property owner to establish a recognized term of vesting for regulations that govern their property in exchange for the City or community to receive added benefit. They are generally used for sites that are large, are anticipated to be under development for a long period of time, and/or have special circumstances.

In this particular agreement, the property owner is seeking to vest identified regulations and standards to support the development of a proposed middle housing project of between 107 and 132 residential units of various triplex, fourplex, and fiveplex configurations. The draft agreement also identifies access via private roads and establishes road sections for vehicle and pedestrian access. The agreement also defines applicable parking requirements associated with the proposed project along with other various regulations.

The draft agreement also includes a financial contribution by the property owner to the City for a portion of the costs of the design, permitting and construction of Traffic Improvement Project # I-16, a roundabout intersection project at 116th Ave. SE and SE 304th Street

A Public Hearing for the Development Agreement was scheduled to be held on January 21, 2025, prior to recommendation for action.

Councilmember: Tracy Taylor

Staff: Jason Krum

RESOLUTION NO. 5799

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF AUBURN AND PORTOFINO INVESTMENT GROUP I LLC, TO GOVERN THE FUTURE DEVELOPMENT OF KING COUNTY PARCEL NUMBERS 1085623960, 1085623970, 1085623980, AND 1085623990

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

WHEREAS, in 2022, Portofino Investment Group I LLC acquired Parcel Nos. 108562390, 1085623970, 1085623980, and 1085623990, located northwest of the intersection of SE 304th St. and 124th Ave. SE (“the Property”), for the purpose of constructing new buildings, parking, and other site improvements; and

WHEREAS, Portofino Investment Group I LLC and the City now desire that development of the Property occur according to the terms and conditions described in the development agreement attached to this resolution as “Attachment A”; and

WHEREAS, pursuant to RCW 36.70B.200, on January 21, 2025 the City Council held a duly-noted public hearing on the proposed agreement; and

WHEREAS, it is in the public interest of the City to enter into a development agreement with Portofino Investment Group I LLC regarding the Property.

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

Section 1. The Mayor is authorized to execute a Development Agreement between the City and Portofino Investment Group I LLC, which agreement will be in substantial conformity with the agreement attached as "Attachment A".

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

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

Dated and Signed:_____.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Jason Whalen, City Attorney

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into this ____ day of _____, 2025 (“Effective Date”), by and between the City of Auburn (“City”), a Washington municipal corporation, and Portofino Investment Group I, LLC, a Washington limited liability company (“Owner”). The City and Owner are referred to collectively as the Parties and individually as a Party.

RECITALS

- A. RCW 36.70B.170 through 36.70B.210 authorize cities to enter into development agreements with property owners to govern future development of real property. Under RCW 36.70B.170, development agreements must “set forth the development standards and other provisions that shall apply and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement.”
- B. Owner is the owner of the property generally known as the Copper Creek (“Property”), generally located at northwest corner of SE 304th Street and 124th Avenue SE in the City, legally described on Exhibit A and depicted on Exhibit B. Owner may develop all or part of the Property and seeks confirmation of the use and development standards that would apply to such future development.
- C. The City intends to design and construct intersection and street improvements in the vicinity of the Project.
- D. This Agreement will provide mutual benefit to the Parties and to the residents of the City. The Agreement will further the City’s goals and policies as described in the Comprehensive Plan and Washington State’s Middle Housing Bill (E2SHB 1110).
- E. A development agreement must be approved by ordinance or resolution after a public hearing. A public hearing was held on January 21, 2025, and the Auburn City Council approved this Agreement by Ordinance 5799 on January 21, 2025. The approval of this Agreement constitutes a land use decision under RCW Ch. 36.70C.
- F. Now therefore, in consideration of the mutual promises set forth in this Agreement and the benefit to both the Owner and City, the Parties agree as follows:

AGREEMENTS

- 1. Development. The Owner may develop the Property after the Effective Date of this Agreement with a minimum of 107 and a maximum of 134 new residential, zero lot line townhouse style dwelling units as generally depicted on the site plan attached hereto as Exhibit C (“Development”). No project has been proposed or applications submitted. The future Development will require a preliminary and final subdivision per Auburn City Code Chapters. 17.20 and 17.12, respectively, SEPA environmental review per Auburn City Code Chapter 16.06, a facility extension agreement, building permits, and other construction and development permits from the City, which shall be governed by this Agreement.

2. Development Standards. Washington State's Middle Housing Bill (E2SHB 1110) generally requires cities within Washington to allow zero lot line subdivisions for the creation of middle housing as defined therein subject to certain exceptions and timelines. City and Owner agree that the Development constitutes middle housing as described in E2SHB 1110. As of the Effective Date, the City's existing Subdivision and Zoning Code includes only partial provisions or development regulations for zero lot line subdivisions of townhouse style residential dwelling units while the term for implementation of E2SHB 1110 remains active. Therefore, consistent with E2SHB 1110, the City and Owner acknowledge and agree that development of the Property occurring subsequent to the Effective Date shall be vested to and governed by the following development standards for the term of this Agreement and such standards are agreed to with consideration of the entirety of the terms of the Agreement and the mutual benefits conveyed to each by the Agreement:

2.1 Development Regulations.

- a. Unit Count: Minimum of 107 units; maximum of 134 units on fee simple lots.
- b. ADUs/Multigenerational Housing Units. Minimum of 5% of the dwelling units in the Development shall include ground floor ensuites plus upper story ensuites to promote ADUs and/or multigenerational living arrangements. For example, if Owner develops 107 dwelling units on the Property, then at least five (5) of those dwelling units shall include ground floor ensuites in addition to upper story ensuites.
- c. Signage. Development's monument sign shall be lit with landscape accents.
- d. CPTED. Crime Prevention Through Environmental Design (CPTED) principles shall be incorporated into the Development, including enhanced front door security, ground level front windows, and appropriate landscaping.
- e. Homeowner's Association (HOA). City staff shall be included in the Development's HOA handoff meeting.
- f. Building Height: Maximum building height for residences and accessory buildings and structures is 35 feet.
- g. Minimum Lot Area. Minimum lot area inapplicable to Development's townhome development on fee simple lots. Lot area determined for Development by applying minimum setbacks to building units, depending on if a townhome is an end or interior unit.
The minimum lot area for the parent lot prior to subdivision shall be a minimum lot area of 2700 square feet for every four dwelling units.
- h. Minimum Lot Width.
 - i. Townhome Interior Units – Minimum lot width determined by width of townhome unit, with a minimum of 15 feet.
 - ii. Townhome End Units – Minimum lot width determined by width of townhome unit plus required side yard setback, with a minimum of 25 feet.
- i. Minimum Setbacks to Units:

- i. Front – 10’
 - ii. Front Loaded Garage – 20’
 - iii. End Unit Side – 5’
 - iv. Interior Unit Side – 0’
 - v. End Unit Side adjacent to Street Side or Vehicle Access Tract – 10’
 - vi. Rear – 10’
 - vii. Alley Load Garage (Rear) – 15’
- j. Maximum Lot Coverage. Not applicable to townhomes constructed in the Development.
- k. Maximum Impervious Area: The maximum impervious area will be 80%, calculated based on the entirety of the land area for the Property subject to this Agreement, legally described in Exhibit A.
- l. Minimum Landscaped Open Space –10% for townhome development, calculated on an overall project basis.
- m. Parks and Recreation: Fee-in-lieu for dedication of recreation space within Development to meet minimum park dedication required for subdivisions.

2.2 Private Roads and Tracts. The Development shall be served by the private roads and private tracts as depicted on Exhibit C hereto and subject to the following standards:

2.2.1 General Standards Applicable to All Roads and Tracts within Development:

- a. All roads and tracts within Development shall be private; however, Fire Access Requirements and Points of Access Requirements shall be met (i.e., second access point if greater than 30 units).
- b. Roadway geometrics for all roads and tracts in Development shall meet standards for Fire Access, as identified in February 2024 City of Auburn Engineering and Design Standards 7.05.04 entitled “Fire Authority and Hydrant Access”:
 - i. Minimum Width – 20’
 - ii. Minimum Inside Radius – 28’
 - iii. Minimum Centerline Radius – 38’
 - iv. Minimum Outside Radius – 48’
- c. No planter strips required on any road or tract within the Development.
- d. Street trees within the Development will be located behind the sidewalk but still require root barrier and appropriate tree selection to reduce/eliminate potential for root damage to sidewalks and roads/tracts in the future.
- e. Roads and tracts shall be placed in access tracts or access easements on the final plat in lieu of right-of-way. Tract lines to be placed at back of sidewalk or back of concrete curb or, in the case of an alley or Utility Access, the edge of asphalt.

- f. Allow for a cross-slope from edge to edge of road or tract in lieu of a crown road section where appropriate drainage is provided.
- g. Design speed of 15 MPH for all streets and tracts and posted for 10MPH.
- h. Address any sight distance issues at the access to public roads, at the road curves and at the access points to a private road per the Engineering Design Standards issued February 8, 2024 (“Engineering Design Standards”).
- i. No parking, road intersection, or aisle intersection will occur within 40 ft from the right-of-way line on Property.
- j. All sections of private roads and tracts where no parking is allowed shall be signed and marked as fire lane no parking per ACC 10.36.175.

2.2.2 Applicable Road Standards. The standards applicable to each road section included within the Development are depicted on Exhibit G attached hereto and the location of each type of road section is shown on Exhibit C.

2.2.3 Commercial Driveway Aprons. The three (3) points of access with public streets shown on Exhibit C may be designed as commercial driveway aprons.

2.2.4 Hammerheads: Allow the use of a Hammerhead in lieu of a Cul De Sac that meets City and VRFA standards in the locations shown on Exhibit C.

2.2.5 Utility Access:

- a. This road is exempt from the roadway geometrics listed in Section 2.2.1(b) above, Engineering Design Standards apply.

2.2.6 Emergency Vehicle Access (EVA):

- a. Access shall be for Emergency Vehicle access only and be gated per City standards with separate pedestrian access to 124th Ave SE.
- b. Access shall provide connection between the trail north of the EVA to the public right-of-way.

2.3 Utilities. Provide standard easements for the sewer utility and provide adequate separation from the proposed buildings to the City’s sewer utility as determined by the City in its reasonable discretion but in no case wider than authorized in existing City code and Engineering Design Standards.

2.4 General. Except as otherwise provided in this Agreement, the use and development of the Property shall be governed by the provisions of the City Code in effect on the Effective Date and, for a period of 1-year following the Effective Date, the impact fee schedules in effect on the Effective Date. Following expiration of this 1-year period, the use and development of the Property shall be subject to the impact fee schedule adopted in the City Code and any City Code

provision which dictates the calculation or application of impact fees. Nothing in this Agreement affects any interpretations of the City Code issued prior to the Effective Date.

- 2.5 Public Health and Safety. Pursuant to RCW 36.70B.170(4), the City reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

3. Parking:

- a. Guest Parking: 1 stall for every 5 townhouse units (either parallel or perpendicular) that do not have driveway depth parking (20' driveways).
- b. Off-Street Parking: Required off-street parking of two (2) vehicles per unit may be met on lot, either in a garage, in a driveway of adequate length (20') or a combination thereof. The 20' required driveway length referenced in this subsection shall exclude any adjacent sidewalk.

4. Transportation Improvements. Pursuant to Auburn City Code Ch. 12.64A, Owner and City agree to the following terms and conditions:

- a. Owner shall contribute \$1.2 million dollars (\$1,200,000.00) to the City for the design, permitting and construction of a roundabout intersection located at 116th Ave SE and SE 304th Street (the "Roundabout Payment").
- b. Owner shall pay its proportionate share of the costs for the development impacts to the future roundabout at the intersection of 116th Ave SE and SE 304th Street. The parties hereby agree that the Project's proportionate share for this improvement is \$57,800 (the "Proportionate Share Contribution to Roundabout").
- c. Owner shall complete the public improvements along the Property frontage of SE 304th Street and 124th Ave SE as shown on Exhibits E and F.
- d. Timing of Transportation Payments. Owner shall pay to the City the Roundabout Payment and its Proportionate Share Contribution to Roundabout on a prorated basis as a building permit for each dwelling unit in the Development is issued, i.e., the total cost of the Roundabout Payment plus the Proportionate Share Contribution to Roundabout divided by the total number of units approved by City for the Development. Owner acknowledges and agrees that the total Roundabout Payment and Proportionate Share Contribution to Roundabout shall be paid to City no later than 12/31/2026. If Owner fails to timely make this transportation payment, the City may, as one of its remedies, stop issuing building permits for dwelling units within the Development.

5. Park Improvements. As a condition of annexation of the Property to the City of Auburn, the homeowners' association for the Development took title from the City of Kent of certain sensitive area and open tracts described as King County Parcel Nos. 108562-3810 (Tract B); 108562-3830 (Tract I); 108562-3870 (Tract Y); 108562-3920 (Tract TT) (the "Copper Creek Open Space Property"). The Copper Creek Open Space Property includes numerous trails and associated amenities. In consideration of said homeowners' association's ownership and maintenance of the Copper Creek Open Space Property and the additional benefits to the City contained in this Agreement, the City hereby agrees to waive Owner's payment of its Park Impact Fees for the Development.
6. Term. This Agreement shall remain in effect for 10 years from the Effective Date ("Term").
7. Conforming structures, improvements and uses. Amendments to the City Code or the expiration of this Agreement shall not create nonconforming structures, improvements, or uses. Structures, improvements and uses that are consistent with this Agreement shall be considered conforming. Such uses may continue, and such structures and improvements may be maintained, repaired, remodeled and replaced, consistent with the standards in Section 1. This provision shall survive termination of this Agreement.
8. Amendments. The Owner may apply for amendments to this Agreement. Minor amendments are those that do not increase the unit count of potential development on the Property by more than 10% and do not significantly increase the environmental impacts of development on the Property, unless those impacts are mitigated to a level that is less than significant. Minor amendments may include, but are not limited to, development standard deviations in addition to those provided in Section 2. Minor amendments shall be approved administratively in writing by the City's Community Development Director in coordination with the City's Public Works Director. All other amendments are major amendments and shall be approved in writing using the approval process required for this Agreement.
9. Default and Remedies.
 - a. Default. Any failure by a Party to perform any material action required under this Agreement shall constitute a default, unless such failure is compelled by order of a court, subject to the notice and opportunity to cure provided in Section 7.b.
 - b. Notice and Opportunity to Cure. Except as expressly provided otherwise in this Agreement, no party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from the other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure.

- c. Rights of Non-Defaulting Party. Except as set forth herein, a party not in default under this Agreement shall have all rights and remedies provided by law or equity, including without limitation damages, specific performance, or writs to compel performance or require action consistent with this Agreement. In no event shall any Party be liable hereunder for punitive, consequential or indirect damages, including lost profits.
 - d. Attorneys' Fees. In any action to enforce or determine a party's rights under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.
- 10. Notices. All notices required to be given under this Agreement shall be given in writing and shall be deemed delivered on the date of hand delivery of the notice or the date that is three days after mailing of the notice by certified or registered mail, return receipt, postage prepaid, to the parties at the addresses set forth below:
 - If to Owner: Portofino Investment Group I, LLC
c/o Oakpointe
3025 112th Ave NE, Suite 100
Bellevue WA 98004
 - If to City: Jason Krum
Director of Community Development
City of Auburn
25 West Main St.
Auburn, WA 98001

The Parties, by notice given, may designate any further or different address to which subsequent notices are to be sent.
- 11. Governing Law. This Agreement shall be governed by the laws of the State of Washington.
- 12. Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement and no party other than the Owner and the City shall be entitled to enforce this Agreement.
- 13. Mutual Drafting. Both the City and Owner have participated fully in the drafting of this Agreement, and the rule of construction of ambiguities against the drafter shall not apply to either Party.
- 14. Covenant Running with the Land. The provisions of this Agreement shall run with the land and shall be binding upon and inure to the benefit of the Parties, their successors and assigns. Written notice of assignment shall be provided by Owner to City within ten (10) business days of the effective date of any assignment.
- 15. Recording. This Agreement shall be recorded with the Office of the King County Recorder by Owner following mutual execution at its sole cost and expense.

16. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter of this Agreement. There are no other agreements, oral or written, except as expressly set forth in this Agreement. This Agreement supersedes all previous agreements, oral or written, except as expressly set forth in this Agreement. This Agreement may be modified only by a written instrument duly executed by the Parties following the amendment process described in Section 8 of this Agreement.
17. Severability. If any provisions of this Agreement are determined to be unenforceable or invalid in a final decree or judgment by a court of law, then the remainder of this Agreement not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect.
18. Authority. Each Party represents and warrants that it has the power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to deliver and perform its obligations under this Agreement.
19. Counterparts. This Agreement may be executed in counterparts, with each Party sending a .pdf of its signature to the other Party by electronic mail transmission. This Agreement, when fully executed and signature pages exchanged as provided herein shall be effective as the original document.
20. Exhibits. This Agreement includes the following Exhibits, which are incorporated by reference:
 - a. Exhibit A: Legal description of Property.
 - b. Exhibit B: Depiction of Property.
 - c. Exhibit C: Site Plan
 - d. Exhibit D: Intentionally Deleted
 - e. Exhibit E: Depiction of 124th Public Improvements Along Property Frontage
 - f. Exhibit F: Depiction of 304th Public Improvements Along Property Frontage
 - g. Exhibit G: Road Section Standards

[signatures on the following page]

CITY OF AUBURN,
a Washington municipal corporation

By: _____

Its: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she/they signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this _____ day of _____, 2025.

(Signature)

(Print Name)

Notary Public in and for the State of Washington

Residing at: _____

My commission expires: _____

Approved as to Legal Form:

By: _____

Jason Whalen, Auburn City Attorney

EXHIBIT A

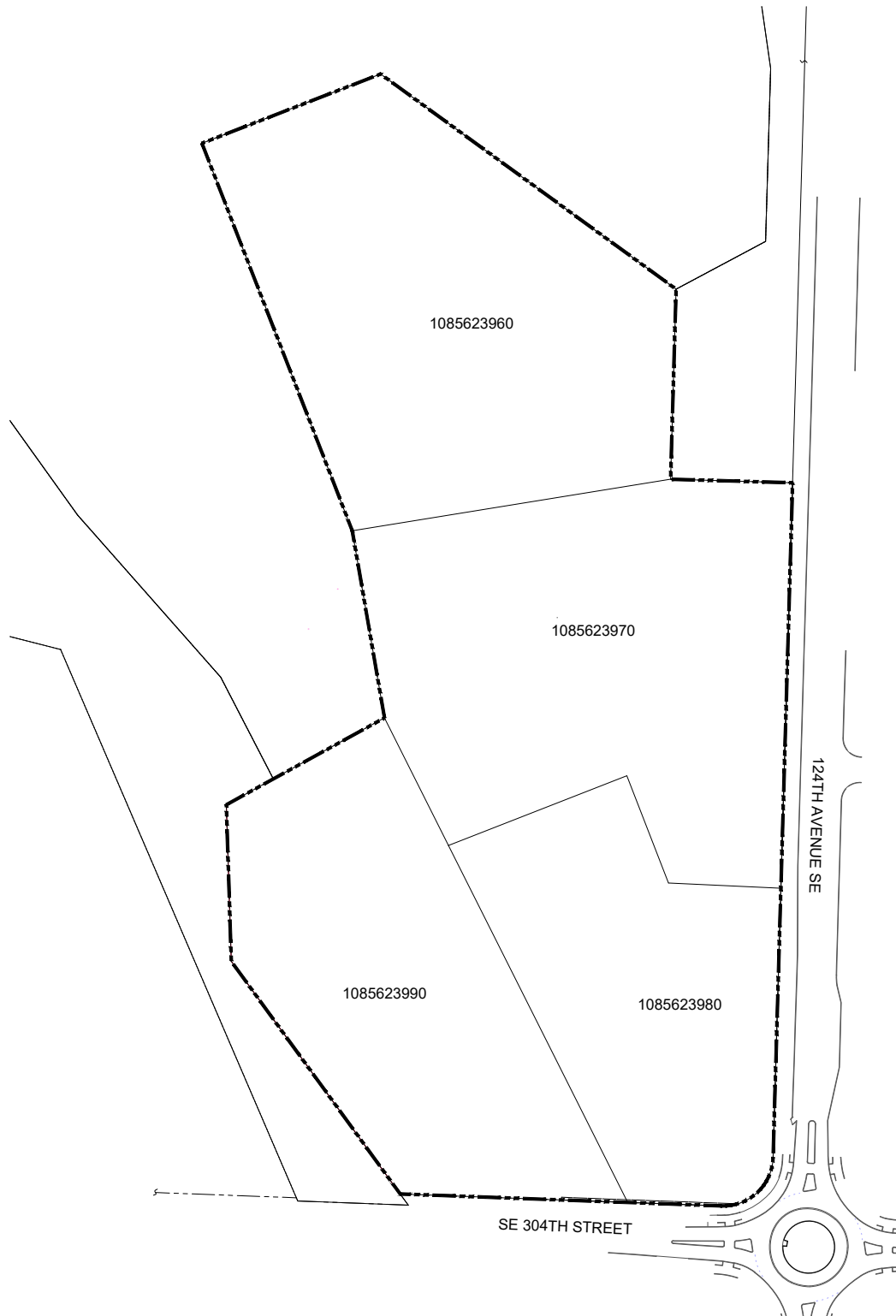
Legal Description of Property

TRACTS LLL, MMM, NNN, AND 000, BRIDGES, A PLANNED UNIT DEVELOPMENT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 245 OF PLATS, PAGES 1 THROUGH 38, INCLUSIVE, RECORDS OF KING COUNTY, WASHINGTON;

AS AMENDED BY AFFIDAVIT OF MINOR CORRECTION OF MAP RECORDED UNDER RECORDING NUMBER 20081118000634.

EXHIBIT B

Depiction of Property



City of Auburn/Portofino Investment Group I
Development Agreement – Exhibit B
Resolution 5799

EXHIBIT C

Site Plan

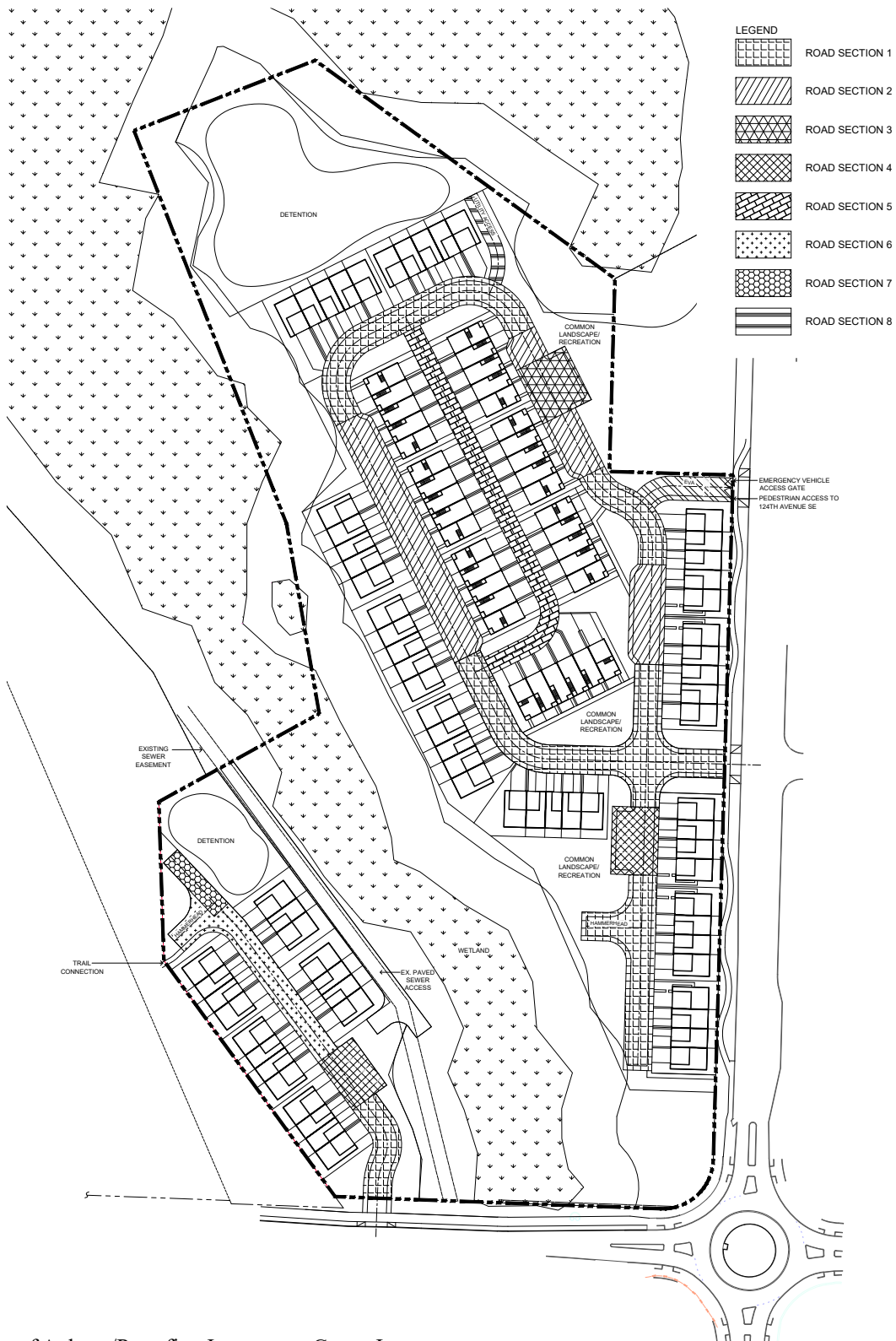


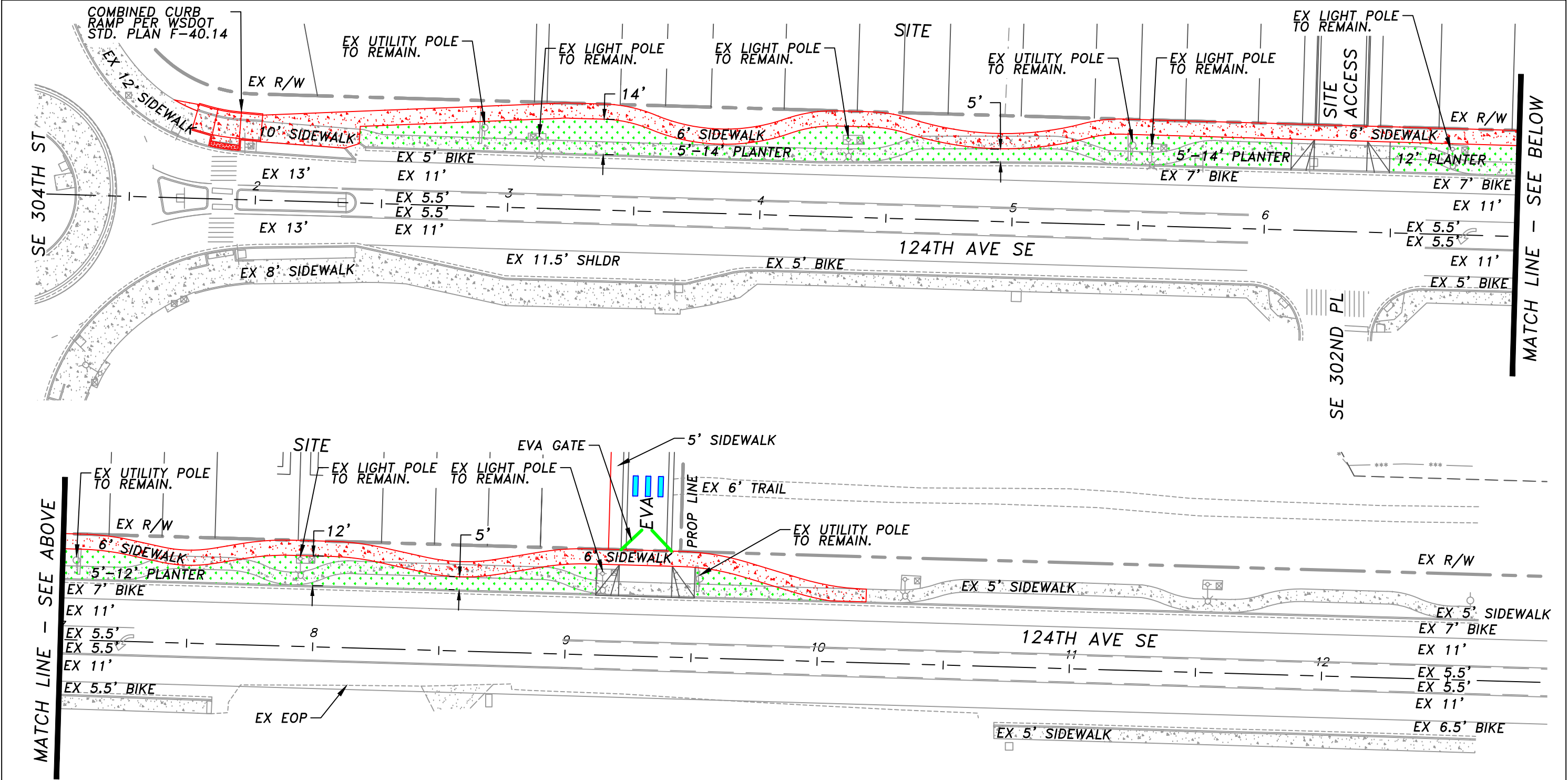
EXHIBIT D

Intentionally Deleted

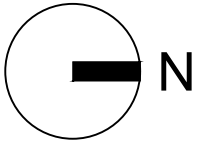
EXHIBIT E

Depiction of 124th Public Improvements Along Property Frontage

EXHIBIT E - 124TH AVE SE



LEGEND	
	EXISTING CHANNELIZATION
	EXISTING ROW
	PROPOSED CURB
	PROPOSED CHANNELIZATION





Transportation Engineering NorthWest

Transportation Planning | Design | Traffic Impact & Operations
11400 SE 8th Street, Suite 200, Bellevue, WA 98004 | Office (425) 889-6747
Project Contact: Grant Lewis
Phone: 952-270-9089

OAKPOINTE COPPER CREEK AUBURN, WASHINGTON		SHEET
124TH AVE SE HALF-STREET CONCEPT		2
		OF 2

DATE: 10/16/2024

EXHIBIT F

Depiction of 304th Public Improvements Along Property Frontage

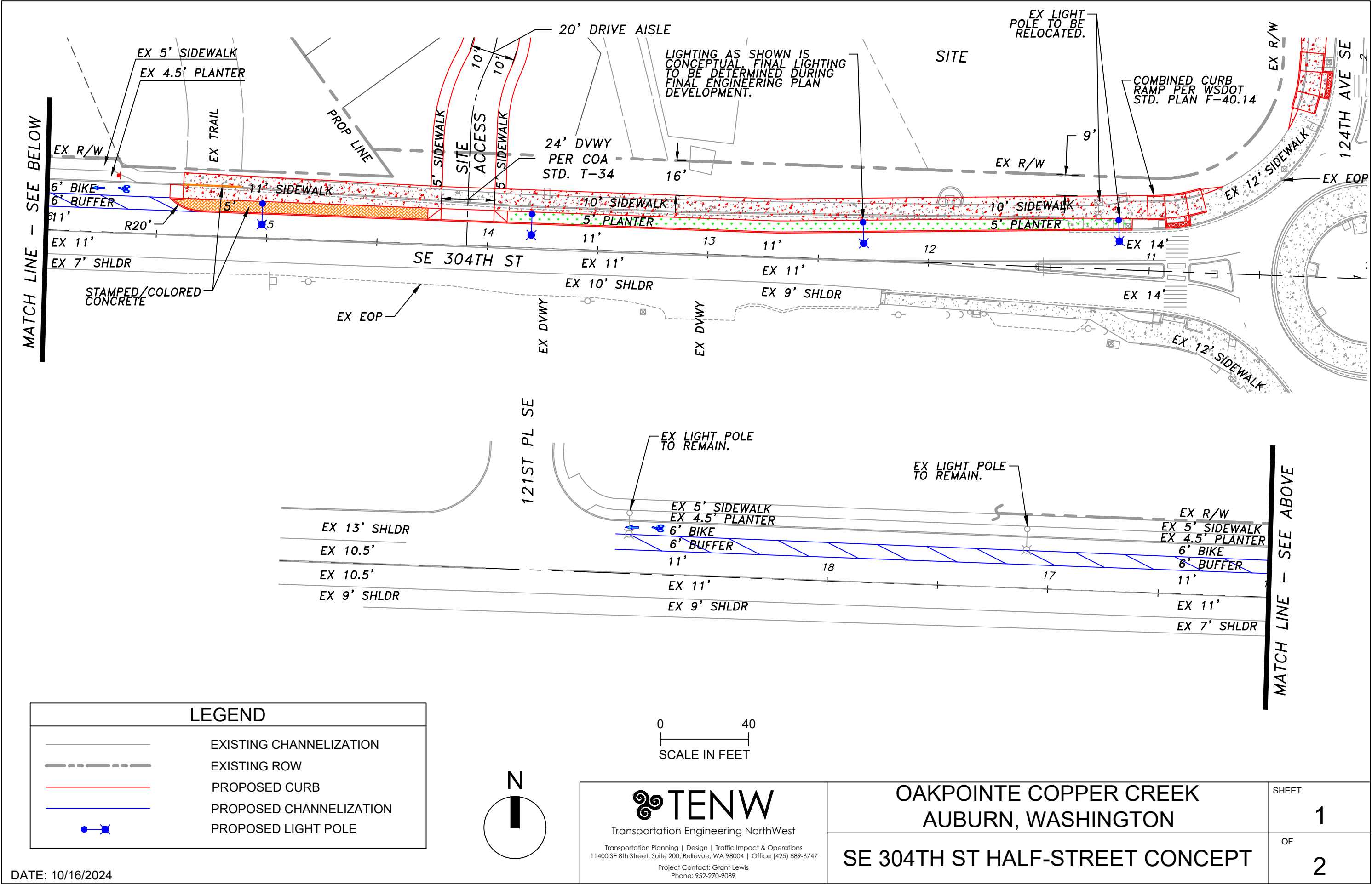
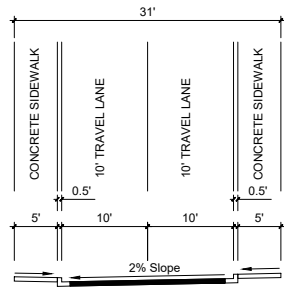


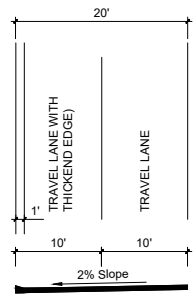
EXHIBIT G

Road Section Standards

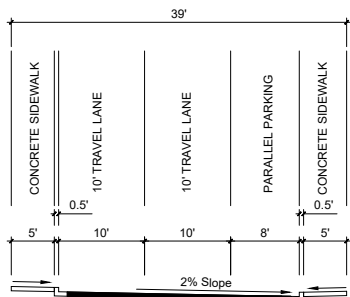
EXHIBIT G - ROAD SECTIONS



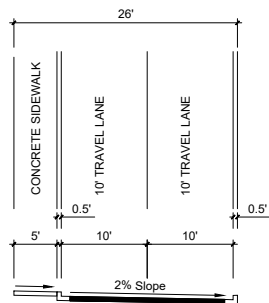
ROAD SECTION 1



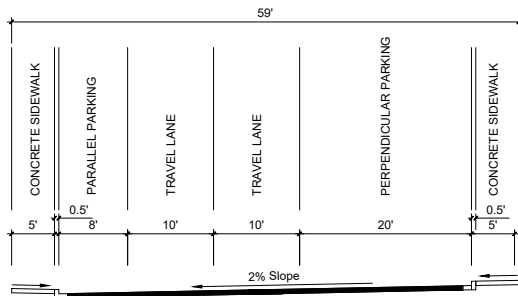
ROAD SECTION 5



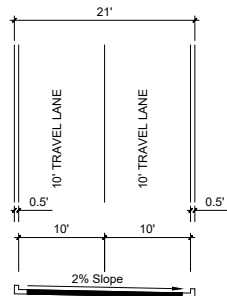
ROAD SECTION 2



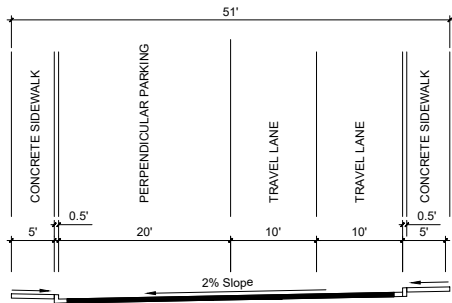
ROAD SECTION 6



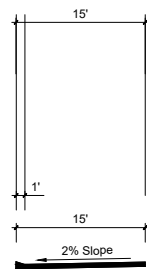
ROAD SECTION 3



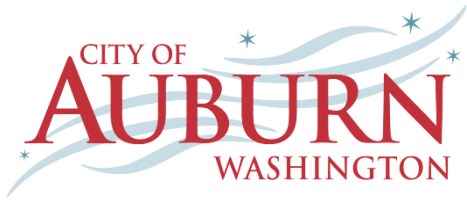
ROAD SECTION 7



ROAD SECTION 4



ROAD SECTION 8



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5802 (Whalen)

A Resolution authorizing the Mayor to execute an agreement between the City of Auburn and Utopia Landscaping, LLC for Landscaping Services

Meeting Date:

January 21, 2025

(RECOMMENDED ACTION: Move to adopt Resolution No. 5802.)

Department:

Legal

Attachments:

Resolution No. 5802, Contract

Budget Impact:

\$150,000.00

Administrative Recommendation:

City Council to adopt Resolution No. 5802.

Background for Motion:

Resolution No. 5802 would allow approval of the contract with Utopia Landscaping, LLC for limited-service landscaping cleanup and maintenance at various City locations.

Background Summary:

The City entered into a 2-year contract with Utopia Landscaping LLC ("Utopia") for limited-service landscaping cleanup and maintenance for 2023-2024 after Utopia's bid was selected. Following a City issued request for proposal, Utopia is selected for another 2-year contract with the City for limited-service landscaping cleanup and maintenance effective upon execution of the contract. The services performed by Utopia include general landscape clean-up and maintenance, snow removal and de-icing at 7 City-owned sites throughout downtown. Utopia may also provide a Spring cleanup, Fall cleanup and/or specific projects as deemed necessary. The services provided are not within areas serviced by City staff. The Auburn community and City employees will realize a public benefit from the services provided by Utopia.

Councilmember: Kate Baldwin

Staff: Jason Whalen

RESOLUTION NO. 5802

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF AUBURN AND UTOPIA LANDSCAPING, LLC FOR LANDSCAPING SERVICES

WHEREAS, following a City issued request for proposal, the City has selected Utopia Landscaping, LLC for limited-service landscape cleanup and maintenance, snow removal, de-icing, turf cleaning and other related services at various City locations;

WHEREAS, the City and Utopia Landscaping, LLC intend to enter into a contract for the landscaping-related services;

WHEREAS, a copy of the proposed contract is attached to this Resolution as Exhibit A; and

WHEREAS, the Auburn community will realize a public benefit from the services provided by Utopia Landscaping, LLC.

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

Section 1. The Mayor is authorized to execute an Agreement between the City and Utopia Landscaping, LLC, which agreement will be in substantial conformity with the agreement attached hereto.

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

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

Dated and Signed: _____

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Jason Whalen, City Attorney

CITY OF AUBURN CONTRACT FOR SERVICES

Limited-Service Landscape Cleanup & Maintenance Contract **Utopia Landscaping, LLC**

THIS CONTRACT made and entered into on this _____ of _____, 2025 (the “Commencement Date”), by and between the **CITY OF AUBURN (“City”)**, a municipal corporation of the State of Washington, and **Utopia Landscaping, LLC** (UBI #604820674) (**“Contractor”**), whose address is 22503 91st Ave E #30, Graham, WA 98338.

RECITALS:

- 1) The City of Auburn’s Real Estate Division oversees and manages certain real estate generally located in the City’s downtown area (hereinafter referred to both singularly and collectively as the “Sites”).
- 2) On November 8, 2024, the Real Estate Division published a Request for Proposals (RFP) seeking proposals for Limited-Service Landscape Cleanup & Maintenance work. RFP responses were due by 3PM PST on December 5, 2024.
- 3) The City received two responses. Upon reference checking the lowest bidder, the references were not favorable. Therefore, the City determined them to not be a responsible bidder and elected to proceed with the other bidder, Utopia Landscaping, LLC whose references were favorable.

In consideration of the conditions and the mutual promises and covenants contained in this Contract, the parties agree as follows:

1. Scope of Services

The Contractor agrees to perform tasks and services described in **Exhibit A (“Work Description”)** at those locations listed and depicted in **Exhibit B (collectively or individually referred to as the “Site(s)”)**. The Contractor will perform the work and service in a quality and professional manner acceptable to the City. The Contractor will, without additional compensation, correct or revise any negligent errors, omissions or other deficiencies in its services whether during or after the Term of this Contract. Any approval by the City of Contractor’s services or payment for work will not in any way relieve the Contractor of responsibility for the adequacy of its services.

The City and the Contractor will work together to determine which services will be provided throughout the year and when those services will be performed. The City makes no

representation that all of the services provided for in the Work Description will be performed as part of this Contract.

The Contractor shall supply all labor, materials, tools, protective clothing, gear and equipment that is required or needed to perform the services and dispose of the waste materials.

The Contractor shall also provide for and pay for the appropriate disposal of materials and debris it removes from the Sites out of the proceeds of this Contract.

The Contractor acknowledges that the Sites are active public and City employee parking lots or other active motor and emergency vehicle areas. The Contractor warrants that it will use due diligence and care and take all necessary safety precautions when working on or around the Sites. Contractor further warrants that it will take all reasonable precautions to ensure the safety of people and property on or about the Site, whether it be associated with the City or the public. Any neglect to take reasonable precautions when working on or around the Sites will be considered Defective Work and subject to the provisions described in Section 5.0 below.

2. Contractor's Representations

The Contractor represents and warrants that it is qualified to perform those services described in **Exhibit A** and has or can obtain all necessary licenses, tools, skills and personal protective equipment to perform those services. Where applicable, the Contractors that it will adhere to Washington State Department of Ecology's Best Management Practices ("BMPs") (S406 relating to de-icing, S411 relating to Landscaping and Vegetation Management, & S431 relating to washing structures), copies for which are attached for reference as **Addendum 1**. Contractor will be responsible for the supervision/management of its crew and ensure all necessary safety precautions and procedures are followed to protect its employees and the public.

Prior to commencing any work associated with this Contract, Contractor shall supply the City with the copies of the following documents:

- Active State of Washington business and contractor's licenses
- City of Auburn active business license
- Certificate of Insurance meeting the terms set forth in Section 13 below.

Contractor warrants that any person conducting work on behalf of this contract, not having at least thirty (30%) percent ownership in the company shall be paid wages at or above the prevailing wage rate for Landscape Maintenance or other appropriate trade category for King County as of the RFP advertise date referenced in the recitals.

Contractor further represents that the person signing this Contract on behalf of Contractor has all requisite authority to bind Contractor to the terms and conditions of this Contract.

3. Compensation

As compensation for the Contractor's performance of the services provided for in this Contract, the City will pay the Contractor for work performed and in the manner (per task, or hourly labor) and at the contract rates described in **Exhibit C ("Contract Rates")**, subject to additions and deductions by change order as may come to exist.

"Per Task" – Contract Rates paid "per task" are inclusive of any and all taxes, fees, equipment rental, etc. associated with completing the task.

"Hourly Rate" – Contract Rates paid "per hour" are for labor only. All other costs and fees required to complete the work will be reimbursed by the City at the actual cost (including tax) paid by the Contractor. This can include dumping fees, cost of materials (excluding tools) and the cost of any equipment rental needed to complete the work. The Contractor will be expected to provide proof of incurred expense in order to have such expenses reimbursed by the City. Hourly rates may be charged for all time spent completing the work, including hauling, dumping of materials, picking up and returning equipment etc. Milage, fuel or any administrative or management fees are expressly not reimbursable under this Contract.

These payments will be full compensation for services rendered, including all labor, materials, supplies, equipment, overhead, profit, and incidentals necessary to complete the work unless otherwise described.

The Contractor will submit invoices to the City upon completion of requested work, or upon such other time and intervals agreed to by the Parties. Upon i) receipt and approval of the invoice, ii) receipt of the required prevailing wage intent and affidavit, if needed, and iii) acceptance of the services rendered, the City will process the invoice in the next billing/claim cycle, and will remit payment to the Contractor, subject to any conditions or provisions in this Contract or Amendment.

4. Retainage and Prevailing Wages

If Contractor uses labor by any employee or an owner owning less than 30 % in the company while performing the services of this contract, then Contractor shall file a "Statement of Intent to Pay Prevailing Wages" with the State of Washington Department of Labor & Industries prior to commencing work. The Contractor shall pay prevailing wages and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions to any non-owner performing labor for this contract. The prevailing wage rate revision effective date, November 8, 2024 is linked in **Exhibit D** and by this reference incorporated herein and made a part hereof. In the event of employee labor or owners with less than 30% ownership interest in the company is used to provide work for the contract, the City will not issue payment to Contractor until the City receives a Department of Labor and Industries approved Statement of Intent to Pay Prevailing Wages form, copies of certified payroll approved by Washington State Labor and Industries (L&I)

and an L&I approved Affidavit for the Contractor and each and every subcontractor providing work for the contract.

5. Defective or Unauthorized Work

The City reserves its right to withhold payment from the Contractor for any defective, unauthorized or incomplete work. Defective, unauthorized or incomplete work includes, without limitation: work that does not conform to the requirements of this Contract, any extra work charged for without the City's written approval. If the Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and the Contractor shall be liable to the City for any additional costs incurred by the City. If the Contractor as part of its work creates unnecessary or unreasonable impact to the Sites, the contractor shall be responsible for restoration of the impacted areas at their sole cost and expense plus additional costs that shall not be charged against this Contract. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct the cost to complete the Contract work, including any additional costs, from any and all amounts due or to become due the Contractor.

6. Term, and Termination of the Contract

This Contract will commence on the Commencement Date and unless otherwise terminated for cause or convenience as described below, the Contract will expire on **12/31/2026 ("Expiration Date")**.

Termination for cause. Except as provided in Section 13, either party may terminate this Contract upon not less than seven (7) days from issuing written notice to the other party if the other party fails substantially to perform in accordance with the terms of this Contract through no fault of the party terminating the Contract. The notice will identify the reason(s) for termination, and specify the effective date of termination. In the event of a default by Contractor, City may suspend all payments otherwise due to Contractor and the City will have no further obligations to Contractor.

Termination for Convenience. The City may terminate this Contract upon not less than seven (7) days written notice, which shall contain the effective date of termination, to the Contractor. If this Contract is terminated through no fault of the Contractor, the Contractor will be compensated for work performed prior to termination in accordance with the rate of compensation provided in **Exhibit A**. This payment shall fully satisfy and discharge the City of all obligations and liabilities owed the Contractor, who shall not be liable for any anticipated profits or other consequential damages resulting from the termination.

Upon receipt of a termination notice, the Contractor will promptly discontinue all work and deliver any outstanding invoice for services performed to the City immediately.

All rights and remedies provided in this Section are not exclusive of any other rights or remedies that may be available to the City, whether provided by Law, equity, in any other Contract between the parties or otherwise.

7. Changes, Protest and Claims

Either party may request a written change order for any change in the Contract work during the performance of this Contract. Such requests will not invalidate this Contract.

Contractor must submit a written change order request to an authorized City agent within 3 calendar days of the date the facts and events giving rise to the requested change occurred. If Contractor fails to request a change order within this deadline, Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the Contract work.

The City may order extra work in writing, or may make changes to the Contract work by altering, adding to, or deducting from the Scope of Work. The Contractor shall proceed with the change order work upon receiving a written change order from the City.

If the City determines that a change initiated by the City or Contractor increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment and will attempt, in good faith, to reach agreement with the Contractor. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided below:

A. Procedure and Protest by the Contractor. If the Contractor disagrees with anything required by a change order or other written order from the City, including any direction, instruction, interpretation, or determination by the City, the Contractor shall:

1. Within 5 days of receiving the change order that the Contractor desires to protest, the Contractor shall give a signed written notice of protest to the City; and

2. Supplement the written protest within 14 calendar days with a written statement that provides the following information:

- a. The date of the Contractor's protest.
- b. The nature and circumstances that caused the protest.
- c. The provisions in this Contract that support the protest.
- d. The estimated dollar cost, if any, of the protested work and how that estimate was determined.
- e. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

The Contractor shall keep complete records of extra costs and time incurred as a result of the protested work. The City shall have access to any of the Contractor's records needed for evaluating the protest.

3. The City will evaluate all protests, provided the procedures in this section are followed. If the City determines that a protest is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

B. Contractor's Duty to Complete Protested Work. In spite of any protest, the Contractor shall proceed promptly with the work as the City has ordered.

C. Contractor's Acceptance of Changes. The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by the Contractor as provided in this section shall constitute full payment and final settlement of all claims for Contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the City any written order (including directions, instructions, interpretations, and determination).

E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Contractor completely waives any claims for protested work and accepts from the City any written order (including directions, instructions, interpretations, and determination).

G. Claims. The Contractor waives right to a claim if they have not followed the protest procedures outlined in this Contract. If resolution of a protest cannot be reached, and the Contractor wishes to pursue a claim, the Contractor shall give written notice of claim to the City within 15 calendar days of the City's notice of its final decision on the Contractor's protest. Any claim for damages, additional payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Contract. At a minimum, a Contractor's written claim must include the information set forth regarding protests in this Contract.

Failure to provide a complete, written notification of claim within the time allowed shall be an absolute waiver of any claims arising in any way from the facts or events surrounding that claim or caused by that delay. The Contractor must, in any event, file any claim or bring any suit arising from or connected with this Contract prior to signing the Final Payment Form. THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED

BY CONTRACTOR AS UNSETTLED AT THE TIME FINAL PAYMENT IS MADE AND ACCEPTED.

8. Records Inspection and Audit

All compensation payments will be subject to the adjustments for any amounts found upon audit or otherwise to have been improperly invoiced, and all records and books of accounts pertaining to any services performed under this Contract will be subject to inspection and audit by the City for a period of up to three (3) years from the final payment for work performed under this Contract. If any litigation, claim, dispute, or audit is initiated before the expiration of the three (3) year period, all records and books of account pertaining to any work performed under this Contract will be retained until all litigation, claims, disputes, or audit are finally resolved.

9. Continuation of Performance

In the event that any dispute or conflict arises between the parties while this Contract is in effect, the Contractor agrees that, notwithstanding such dispute or conflict, the Contractor will continue to make a good faith effort to cooperate and continue to work toward successful completion of the delivery of services and its contractual responsibilities.

10. Independent Contractor

The Contractor will perform the services as an independent contractor and will not be deemed, by virtue of this Contract and performance of its provisions, to have entered into any partnership, joint venture, employment or other relationship with the City. Nothing in this Contract creates any contractual relationship between the Contractor's employee, agent, or subcontractor and the City.

11. Administration of Contract & Designated Representative

This Contract will be administered by Pedro Vazquez, on behalf of the Contractor, and by the Mayor of the City, or designee, on behalf of the City. The City designates those individuals listed below to act as administrators of this Contract on behalf of the City. Any written notices required by the terms of this Contract will be served on or mailed to the following addresses:

City of Auburn

Real Estate Division
Josh Arndt
25 West Main St
Auburn WA 98001-4998
Phone: 253.288.4325
Email: jarndt@auburnwa.gov

Utopia Landscaping, LLC

Pedro Vazquez
22503 91st Ave E #30
Graham, WA 98338
Phone: 253.389.9887
Email:
Utopialandscapelipf@gmail.com

12. Notices

All notices or communications permitted or required to be given under this Contract will be in writing or electronic transmission (email) and will be deemed to have been duly given if delivered in person or sent by regular mail, postage prepaid, and addressed, if sent by email it will be deemed delivered when sent by the sending party, if to a party of this Contract, to the address for the party set forth above. If addressed to a non-party, the notice will be sent, in the foregoing manner, to the address designated by a party to this Contract.

Either party may change its address by giving notice in writing to the other party.

13. Insurance

A. Insurance Term. The Contractor shall procure and maintain insurance, as required in this Section, without interruption from the commencement of the Contractor's work through the term of the Contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

B. No Limitation. The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the Public Entity's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance. The Contractor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability. insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an endorsement providing at least as broad coverage. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Public Entity shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the Public Entity using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
3. Workers' Compensation Coverage as required by the Industrial Insurance laws of the State of Washington.

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

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate, and \$2,000,000 products-completed operations aggregate limit.

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

F. Other Insurance Provision. The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain or be endorsed to contain that they shall be primary insurance as respect the Public Entity. Any insurance, self-insurance, or self-insured pool coverage maintained by the Public Entity shall be excess of the Contractor's insurance and shall not contribute with it.

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

H. Verification of Coverage. The Contractor shall furnish the Public Entity with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Contractor before commencement of the work. Upon request by the Public Entity, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this Contract and evidence of all subcontractors' coverage.

I. Subcontractors' Insurance. The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the Public Entity is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

J. Notice of Cancellation. The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the Public Entity is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

K. Failure to Maintain Insurance. The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the Public Entity is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

14. Indemnification/Hold Harmless

The Contractor shall defend, indemnify and hold the Public Entity, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the Public Entity.

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

15. Assignment and Subcontracting

Neither party to this Contract will assign any right or obligation hereunder in whole or in part, without the prior written consent of the other party. No assignment or transfer of any interest under this Contract will release the assignor from any liability or obligation under this Contract, or to cause any such liability or obligation to be reduced to a secondary liability or obligation.

The Contractor shall not subcontract work unless the City approves in writing. If the City requests, the Contractor shall provide proof that the subcontractor has the experience, ability, and equipment the work requires.

The Contractor shall require each subcontractor to comply with RCW 39.12 (Prevailing Wages on Public Works) and to furnish all certificates and statements required by the Contract. No payment shall be issued until a Statement of Intent to Pay Prevailing Wages form, for the Contractor and each and every subcontractor, has been approved by the State Department of Labor & Industries, and is received by the City.

Approval to subcontract shall not:

1. Relieve the Contractor of any responsibility to carry out the Contract.
2. Relieve the Contractor of any obligations or liability under the Contract and the Contractor's bond.
3. Create any contract between the City and the subcontractor, or
4. Convey to the subcontractor any rights against the City.

This section does not create a contractual relationship between the City and any subcontractor. Also, it is not intended to bestow upon any subcontractor, the status of a third-party beneficiary to the Contract between the City and the Contractor.

16. Nondiscrimination

The Contractor may not discriminate regarding any services or activities to which this Contract may apply directly or through contractual, hiring, or other arrangements on the grounds of race, color, creed, religion, national origin, sex, age, or where there is the presence of any sensory, mental or physical handicap.

17. Amendment, Modification or Waiver

No amendment, modification, or waiver of any condition, provision, or term of this Contract will be valid or of any effect unless made in writing, signed by the party or parties to be bound, or the party's or parties' duly authorized representative(s) and specifying with particularity the nature and extent of such amendment, modification or waiver. Any waiver, approval or acceptance, or payment by any party will not affect or impair that party's rights arising from any default by the other party.

18. Parties in Interest

This Contract is binding upon, and the benefits and obligations hereto will inure to and bind, the parties and their respective successors and assigns, although this section will not be deemed to permit any transfer or assignment otherwise prohibited by this Contract. This Contract is for the exclusive benefit of the parties and it does not create a contractual relationship with or exist for the benefit of any third party, including contractors, subcontractors and their sureties.

19. Force Majeure

Any delay in the performance of any obligation under this Contract shall be excused, if and so long as the performance of the obligation is prevented, delayed or otherwise hindered by any act not within the control of a party such as fire, cyber/ransomware attack, earthquake, flood, explosion, actions of the elements, riots, mob violence, strikes, pandemic, lockouts, and emergency orders of the state or federal government.

20. Applicable Law

This Contract and the rights of the parties will be governed by with the laws, regulations, and ordinances of the City, of the State of Washington, and King County. Venue for any action involving this Contract will be in the county in which the property or project is located, and if not site specific, then in King County. It is agreed that any applicable statute of limitation will commence no later than the substantial completion by the Contractor of the services.

21. Captions, Headings and Titles

All captions, headings or titles in the paragraphs or sections of this Contract are inserted for convenience of reference only and will not constitute a part of this Contract or act as a limitation of the scope of the particular paragraph or sections to which they apply. Where appropriate, the singular will include the plural and vice versa and masculine, feminine and neuter expressions will be interchangeable. Interpretation or construction of this Contract will not be affected by any determination as to who is the drafter of this Contract, this Contract having been drafted by mutual Contract of the parties.

22. Severable Provisions

Each provision of this Contract is intended to be severable. If any provision is illegal or invalid for any reason, such illegality or invalidity will not affect the validity of the remaining provisions.

23. Entire Contract

This Contract together with any subsequent amendments or addendums contains the entire understanding of the parties in respect to the transactions contemplated and supersedes all prior representations, Contracts and understandings between the parties, either oral or written. No other understandings, oral or otherwise, regarding this Contract shall bind any party.

24. Non-Availability of Funds

Every obligation of the City under this Contract is conditioned upon the availability of funds appropriated or allocated for the performance of such obligation; and if funds are not allocated and available for the continuance of this Contract, then this Contract may be terminated by the City at the end of the period for which funds are available, without the seven (7) days' notice provided by Section 6. No liability will accrue to the City in the event this provision is exercised, and the City will not be obligated or liable for any future payments or damages as a result of termination under this Section.

25. Counterparts

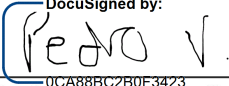
This Contract may be executed in multiple counterparts, each of which will be one and the same Contract and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed effective the day and year first set forth above.

CITY OF AUBURN

UTOPIA LANDSCAPING, LLC

Nancy Backus, Mayor

DocuSigned by:


0CA88BC2B0F3423...
Pedro Vazquez, Owner

1/3/2025

Approved as to Form

Jason Whalen, City Attorney

EXHIBIT A

Work Description

Time of Year	Work Item / Frequency	Description
Fall	Prune trees <i>(as needed)</i>	• Prune/trim trees • Collect trimmings / clean work area • Dispose trimmings at an appropriate facility • Rent equipment as needed
	Trim hedges & other vegetation <i>(annually)</i>	• Trim all hedges and plants located within landscape areas • Collect trimmings / clean work area • Dispose trimmings at an appropriate facility
	Collect leaves & other debris <i>(2x per month Oct. – Dec.)</i>	• Collect leaves & other vegetation debris throughout site • Dispose of leaves & other vegetation at an appropriate site
	Storm cleanup <i>(as needed)</i>	• Collect vegetation debris throughout site • Dispose of collected debris at an appropriate facility • Rent equipment as needed
Winter / As Needed	Snow removal & De-icing <i>(as needed)</i>	• Plow/remove snow throughout drive isles and walkways (vehicle plowing/snow blowing vs. hand shoveling as appropriate) • Ensure vehicles do not get blocked in • Pile moved snow appropriately onsite to cause least amount of disruption to the site • Dispense environmentally friendly de-icing agent throughout site
	De-icing only <i>(as needed)</i>	• Dispense environmentally friendly de-icing agent throughout site
Spring	Weeding <i>(annually)</i>	• Remove weeds from site landscape areas • Collect and dispose of weeds at an appropriate facility • Clean work areas appropriate
	Refresh bark (Medium) <i>(annually)</i>	• Bring in and dispense bark thoroughly throughout landscape areas • Clean work areas as appropriate
	Pressure washing curbing, parking	• Pressure wash interiors, exteriors, and doors of trash enclosures • Pressure wash curbing and parking stops

	stops and trash enclosures <i>(as needed)</i>	- Contractor will be responsible for bringing in water - Collect waste/runoff water and debris and dispose of at an appropriate facility as directed in the Best Management Practices in Exhibit B attached - Clean work area as appropriate
	Plant replacement <i>(as needed)</i>	- Remove dead, dying or other identified plants, bushes or shrubs as directed by City - Collect and dispose of removed vegetation at an appropriate facility - Replace or plant shrubs, bushes or other plants as directed and in a location determined by the City - Clean work area as appropriate
As Indicated	Mow, Trim, & Blow	- Mow, trim & blow landscape islands, and the East Field of 12th Street Property <i>(weekly April – September)</i> - Mow or weed eat West Field & Fenced Area of 12th Street Property <i>(as needed)</i>
	Pet Area Turf Cleaning <i>(monthly)</i>	Pressure wash & scrub with pet-friendly chemical cleaning agent 740 square feet of synthetic turf

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EXHIBIT B

Sites

Site #	Lot Name	Address	Parcel #	Description
1	Kiss & Ride	(behind Oddfellas)	7815700172	• 22 stall short term public parking • Landscape areas with vegetation & two 30' deciduous trees • Two CMU trash enclosures
2		<i>Intentionally Omitted</i>		
3	B Street / Mural Lot	137 E Main St Auburn, 98002	0489000040 0483000085 0483000080	• 63 stall public parking lot w/ alley • Landscape areas around the perimeter and interior • Four 30' deciduous trees
4	Safeway Lot	7 B Street SE Auburn, 98002	7331400135	• 125 stall public parking lot • Minimal landscape areas • Multiple 20'+ deciduous trees • Four cement & wood slated trash enclosures
5	D Street Lot	350 E Main St Auburn, 98002	4890000005	• 20 stall public parking lot • Perimeter landscape areas on two sides • Three 40'+ deciduous trees & one conifer tree
6	Justice Center	340 E Main St Auburn, 98002	7331400465 7331400485 7331400486 7331400500 7331400510	• Active use public safety building w/ some restricted exterior areas • 46 restricted area parking spaces • 65 guest parking spaces • Multiple interior and exterior landscape areas • Multiple large and small deciduous & coniferous trees
7	JC Employee Lot	20 D Street SE Auburn, 98002	8698100030 8698100035	• 55 stall employee parking lot for the

			8698100040	public safety building - Minimal landscape areas - Large and small hedges around perimeter - Multiple deciduous and coniferous trees
8	12 th Street Property	735 12 th Street SE Auburn, WA 98002	1921059160 1921059161 1921059111 1921059140 1921059088	- Former medical office property w/ a remaining 55 stall surface lot w/ landscape islands and shrub perimeter - Several deciduous and conifer trees of various sizes - Two separate large field areas (west field area approx. .3acres) (east field area approx. .32 acres) "Fenced Area" is the location of the former building.

#	Lot Name	Aerial Site Photo
1	Kiss & Ride	
2		INTENTIONALLY OMITTED

3	B Street / Mural Lot	
4	Safeway Lot	

5	D Street Lot	
6	Justice Center	

7	JC Employ ee Lot	
8	12 th St Prop.	

EXHIBIT C
Contract Rates

- ❖ All task prices are to be inclusive of all taxes and fees
- ❖ All hourly prices are for 1hr of labor only, materials, dump fees, taxes to be reimbursed separately by City at actual cost.

Site 1	Work Item	Bid Type	Bid Proposal
Kiss & Ride Behind Oddfellas	Prune Trees	Per hour labor	\$ <u>330.00</u> /hr
	Trim hedges & other vegetation	Per Task	\$ <u>551.00</u> /Task
	Collect leaves & other debris (Task = 2x per month \$\$ w/ bi-weekly visit Oct. – Dec.)	Per Month (Task)	\$ <u>264.48</u> /Month (Task)
	Storm cleanup	Per hour labor	\$ <u>330.00</u> /hr
	Snow removal & de-icing	Per Task	\$ <u>793.44</u> /Task
	De-ice only	Per Task	\$ <u>495.90</u> /Task
	Weeding	Per Task	\$ <u>440.80</u> /Task
	Refresh bark (Medium Bark)	Per Task	\$ <u>936.70</u> /Task
	Pressure washing curbing, parking stops & trash enclosures	Per Task	\$ <u>1,079.96</u> /Task
	Plant Replacement	Per hour labor	\$ <u>330.00</u> /Task
Site 2	Work Item	Bid Type	Bid Proposal
Intentionally Omitted			

<u>Site 3</u>	<u>Work Item</u>	<u>Bid Type</u>	<u>Bid Proposal</u>
B Street / Mural Lot 137 E Main St	Prune Trees	Per hour labor	\$ <u>330.00</u> /hr
	Trim hedges & other vegetation	N/A	<u>Not Applicable</u>
	Collect leaves & other debris (Task = 2x per month \$\$ w/ bi-weekly visit Oct. – Dec.)	Per Month (Task)	\$ <u>330.60</u> /Month (Task)
	Storm cleanup	Per hour labor	\$ <u>330.00</u> /hr
	Snow removal & de-icing	Per Task	\$ <u>1,322.40</u> /Task
	De-ice only	Per Task	\$ <u>892.62</u> /Task
	Weeding	Per Task	\$ <u>903.64</u> /Task
	Refresh bark (Medium Bark)	Per Task	\$ <u>1,057.92</u> /Task
	Pressure washing curbing, parking stops & trash enclosures	Per Task	\$ <u>936.70</u> /Task
	Plant Replacement	Per hour labor	\$ <u>330.00</u> /Task
	Pet Area Turf Cleaning (Task = 1x cleaning per month)	Per Month (Task)	\$ <u>1,046.90</u> /Month (Task)

<u>Site 4</u>	<u>Work Item</u>	<u>Bid Type</u>	<u>Bid Proposal</u>
Safeway Lot 7 B Street SE	Prune Trees	Per hour labor	\$ <u>330.00</u> /hr
	Trim hedges & other vegetation	Per Task	\$ <u>551.00</u> /Task
	Collect leaves & other debris (Task = 2x per month \$\$ w/ bi-weekly visit Oct. – Dec.)	Per Month (Task)	\$ <u>495.90</u> /Month (Task)
	Storm cleanup	Per hour labor	\$ <u>330.00</u> /hr
	Snow removal & de-icing	Per Task	\$ <u>1,322.40</u> /Task
	De-ice only	Per Task	\$ <u>936.70</u> /Task
	Weeding	Per Task	\$ <u>771.40</u> /Task
	Refresh bark	Per Task	\$ <u>1,046.90</u> /Task

	(Medium Bark)		
	Pressure washing curbing, parking stops & trash enclosures	Per Task	\$ <u>1,322.40</u> /Task
	Plant Replacement	Per hour labor	\$ <u>330.00</u> /Task

<u>Site 5</u>	<u>Work Item</u>	<u>Bid Type</u>	<u>Bid Proposal</u>
D Street Lot 350 E Main St	Prune Trees	Per hour labor	\$ <u>330.00</u> /hr
	Trim hedges & other vegetation	N/A	Not Applicable __
	Collect leaves & other debris (Task = 2x per month \$\$ w/ bi-weekly visit Oct. – Dec.)	Per Month (Task)	\$ <u>242.44</u> /Month (Task)
	Storm cleanup	Per hour labor	\$ <u>330.00</u> /hr
	Snow removal & de-icing	Per Task	\$ <u>826.50</u> /Task
	De-ice only	Per Task	\$ <u>606.10</u> /Task
	Weeding	Per Task	\$ <u>551.00</u> /Task
	Refresh bark (Medium Bark)	Per Task	\$ <u>881.60</u> /Task
	Pressure washing curbing, parking stops & trash enclosures	Per Task	\$ <u>826.50</u> /Task
	Plant Replacement	Per hour labor	\$ <u>330.00</u> /Task

<u>Site 6</u>	<u>Work Item</u>	<u>Bid Type</u>	<u>Bid Proposal</u>
Justice Center 340 E Main St	Prune Trees	Per hour labor	\$ <u>330.00</u> /hr
	Trim hedges & other vegetation	Per Task	\$ <u>2,755</u> /Task
	Collect leaves & other debris (Task = 2x per month \$\$ w/ bi-weekly visit Oct. – Dec.)	Per Month (Task)	\$ <u>881.60</u> /Month (Task)
	Storm cleanup	Per hour labor	\$ <u>330.00</u> /hr
	Snow removal & de-icing	Per Task	\$ <u>1,653</u> /Task
	De-ice only	Per Task	\$ <u>991.80</u> /Task

	Weeding	Per Task	\$ <u>1,719.12</u> /Task
	Refresh bark (Medium Bark)	Per Task	\$ <u>2,093.80</u> /Task
	Pressure washing curbing, parking stops & trash enclosures	Per Task	\$ <u>1,542.80</u> /Task
	Plant Replacement	Per hour labor	\$ <u>330.00</u> /Task

<u>Site 7</u>	<u>Work Item</u>	<u>Bid Type</u>	<u>Bid Proposal</u>
JC Employee Lot 20 D Street SE	Prune Trees	Per hour labor	\$ <u>330.00</u> /hr
	Trim hedges & other vegetation	Per Task	\$ <u>1,322.40</u> /Task
	Collect leaves & other debris (Task = 2x per month \$\$ w/ bi-weekly visit Oct. – Dec.)	Per Month (Task)	\$ <u>308.56</u> /Month (Task)
	Storm cleanup	Per hour labor	\$ <u>330.00</u> /hr
	Snow removal & de-icing	Per Task	\$ <u>1,322.40</u> /Task
	De-ice only	Per Task	\$ <u>936.70</u> /Task
	Weeding	Per Task	\$ <u>826.50</u> /Task
	Refresh bark (Medium Bark)	Per Task	\$ <u>1,267.30</u> /Task
	Pressure washing curbing, parking stops & trash enclosures	Per Task	\$ <u>1,046.90</u> /Task
	Plant Replacement	Per hour labor	\$ <u>330.00</u> /Task

<u>Site 8</u>	<u>Work Item</u>	<u>Bid Type</u>	<u>Bid Proposal</u>
12 th Street Property 735 12 th Street SE	Mow, blow & trim Parking Lot & East Field (Task = per month \$\$ w/ weekly visit April – September).	Per Month (Task)	\$ <u>705.28</u> /Month (Task)
	Mow Fenced Area (as directed. Task = 1 visit)	Per Task	\$ <u>716.30</u> /Task
	Mow West Field (as directed. Task = 1 visit)	Per Task	\$ <u>1,080.00</u> /Task

	Collect leaves & other debris <i>(Task = 2x per month \$\$ w/ bi-weekly visit Oct. – Dec. in the Parking Lot)</i>	Per Month (Task)	\$ <u>705.28</u> /Month (Task)
	Trim hedges & other vegetation	Per Task	\$ <u>1,046.90</u> /Task
	Storm cleanup	Per hour labor	\$ <u>330.00</u> /hr
	Prune Trees	Per hour labor	\$ <u>330.00</u> /hr

Exhibit D

Prevailing Wage Rates

- **County work performed:** King
- **Effective Date of wages:** November 8, 2024
- **Washington State Department of Labor and Industries Wage Lookup**
 - https://secure.lni.wa.gov/wagelookup/?utm_medium=email&utm_source=govdeliver
[y](#)

ADDENDUM 1

Best Management Practices (BMPs)

S406 BMPs for Streets and Highways

Description of Pollutant Sources: These BMPs apply to the maintenance and de-icing/antiicing of streets and highways. De-icing products can be conveyed during storm events to inlets/catch basins or to receiving waters after application. Leaks and spills of these products can also occur during their handling and storage. Equipment and processes using during maintenance can contribute pollutants such as oil and grease, suspended solids, turbidity, high pH, and metals.

Pollutant Control Approach: Apply good housekeeping practices, preventative maintenance, properly train employees, and use materials that cause less adverse effects on the environment.

Applicable BMPs:

De-icing and Anti-Icing Operations

- Adhere to manufacturer's guidelines and industry standards of use and application.
- Store and transfer de and anti-icing materials on impervious containment pads, or an equivalent spill/leak containment area in accordance with [S429 BMPs for Storage or Transfer \(Outside\) of Solid Raw Materials, Byproducts, or Finished Products](#).
- Sweep/clean up accumulated de and anti-icing materials and grit from roads as soon as possible after the road surface clears.
- Minimize use in areas where runoff or spray from the roadway immediately enters sensitive areas such as fish-bearing streams.

Maintenance Operations

- Use drip pans or absorbents wherever concrete, asphalt, asphalt emulsion, paint product, and drips are likely to spill, such as beneath discharge points from equipment.
- Cover and contain nearby storm drains to keep runoff from entering the drainage system.
- Collect and contain all solids, slurry, and rinse water. Do not allow these to enter gutters, storm drains, or drainage ditches or onto the paved surface of a roadway or driveway.
- Designate an area onsite for washing hand tools and collect that water for disposal.
- Conduct all fueling of equipment in accordance with [S419 BMPs for Mobile Fueling of Vehicles and Heavy Equipment](#).

- Do not use diesel fuel for cleaning or prepping asphalt tools and equipment.
- Sweep areas as frequently as needed. Collect all loose aggregate and dust for disposal. Do not hose down areas into storm drains.
- Store all fuel, paint, and other products on secondary containment.
- Conduct paint striping operations during dry weather.

Recommended Additional BMPs:

- Where feasible and practicable, use roadway de-icing chemicals that cause the least adverse environmental impact. Apply only as needed using minimum quantities. Consider the Pacific Northwest Snowfighters Qualified Products List when selecting roadway deicers and anti-icers.
- Intensify roadway and drainage structure cleaning in early spring to help remove particulates from road surfaces.
- Include limits on toxic metals in the specifications for de/anti-icers.
- Install catch basin inserts to collect excess sediment and debris as necessary. Inspect and maintain catch basin inserts to ensure they are working correctly.
- Research admixtures (e.g. corrosion inhibitors, surfactants) to determine what additional pollutants may be an issue. Verify with the local jurisdiction if there are any restrictions on admixtures.

S411 BMPs for Landscaping and Lawn / Vegetation Management

Description of Pollutant Sources: Landscaping can include grading, soil transfer, vegetation planting, and vegetation removal. Examples include weed control on golf course lawns, access roads, and utility corridors and during landscaping; and residential lawn/plant care. Proper management of vegetation can minimize excess nutrients and pesticides.

Pollutant Control Approach: Maintain appropriate vegetation to control erosion and the discharge of stormwater pollutants. Prevent debris contamination of stormwater. Where practicable, grow plant species appropriate for the site, or adjust the soil properties of the site to grow desired plant species.

Applicable BMPs:

- Install engineered soil/landscape systems to improve the infiltration and regulation of storm- water in landscaped areas.
- Select the right plants for the planting location based on proposed use, available maintenance, soil conditions, sun exposure, water availability, height, sight factors, and space available.
- Ensure that plants selected for planting are not on the noxious weed list. For example, butterfly bush often gets planted as an ornamental but is actually on the noxious weed list.

The Washington State Noxious Weed List can be found at the following webpage:
<https://www.nwcb.wa.gov/printable-noxious-weed-list>

- Do not dispose of collected vegetation into waterways or storm sewer systems.
- Do not blow vegetation or other debris into the drainage system.
- Dispose of collected vegetation such as grass clippings, leaves, sticks by composting or recycling.
- Remove, bag, and dispose of class A & B noxious weeds in the garbage immediately.
- Do not compost noxious weeds as it may lead to spreading through seed or fragment if the composting process is not hot enough.
- Use manual and/or mechanical methods of vegetation removal (pincer-type weeding tools, flame weeders, or hot water weeders as appropriate) rather than applying herbicides, where practical.

- Use at least an eight-inch "topsoil" layer with at least 8 percent organic matter to provide a sufficient vegetation-growing medium.
 - Organic matter is the least water-soluble form of nutrients that can be added to the soil. Composted organic matter generally releases only between 2 and 10 percent of its total nitrogen annually, and this release corresponds closely to the plant growth cycle. Return natural plant debris and mulch to the soil, to continue recycling nutrients indefinitely.
- Select the appropriate turfgrass mixture for the climate and soil type.
 - Certain tall fescues and rye grasses resist insect attack because the symbiotic endo- phytic fungi found naturally in their tissues repel or kill common leaf and stem-eating lawn insects.
- The fungus causes no known adverse effects to the host plant or to humans.
- Tall fescues and rye grasses do not repel root-feeding lawn pests such as Crane Fly larvae.
- Tall fescues and rye grasses are toxic to ruminants such as cattle and sheep
 - Endophytic grasses are commercially available; use them in areas such as parks or golf courses where grazing does not occur.
 - Local agricultural or gardening resources such as Washington State University Extension office can offer advice on which types of grass are best suited to the area and soil type.
- Use the following seeding and planting BMPs, or equivalent BMPs, to obtain information on grass mixtures, temporary and permanent seeding procedures, maintenance of a recently planted area, and fertilizer application rates: [BMP C120: Temporary and Permanent Seeding](#), [BMP C121: Mulching](#), [BMP C123: Plastic Covering](#), and [BMP C124: Sodding](#).
- Adjusting the soil properties of the subject site can assist in selection of desired plant species. Consult a soil restoration specialist for site-specific conditions.

Recommended Additional BMPs:

- Conduct mulch-mowing whenever practicable.
- Use native plants in landscaping. Native plants do not require extensive fertilizer or pesticide applications. Native plants may also require less watering.
- Use mulch or other erosion control measures on soils exposed for more than one week during the dry season (May 1 to September 30) or two days during the rainy season (October 1 to April 30).

- Till a topsoil mix or composted organic material into the soil to create a well-mixed transition layer that encourages deeper root systems and drought-resistant plants.
- Apply an annual topdressing application of 3/8” compost. Amending existing landscapes and turf systems by increasing the percent organic matter and depth of topsoil can:
 - Substantially improve the permeability of the soil.
 - Increase the disease and drought resistance of the vegetation.
 - Reduces the demand for fertilizers and pesticides.
- Disinfect gardening tools after pruning diseased plants to prevent the spread of disease.
- Prune trees and shrubs in a manner appropriate for each species.
- If specific plants have a high mortality rate, assess the cause and replace with another more appropriate species.
- When working around and below mature trees, follow the most current American National Standards Institute (ANSI) ANSI A300 standards (see http://www.tcia.org/TCIA/BUSINESS/ANSI_A300_Standards_/TCIA/BUSINESS/A300_Standards/A300_Standards.aspx?hkey=202ff566-4364-4686-b7c1-2a365af59669) and International Society of Arboriculture BMPs to the extent practicable (e.g., take care to minimize any damage to tree roots and avoid compaction of soil).
- Monitor tree support systems (stakes, guys, etc.).
 - Repair and adjust as needed to provide support and prevent tree damage.
 - Remove tree supports after one growing season or maximum of 1 year.
 - Backfill stake holes after removal.
- When continued, regular pruning (more than one time during the growing season) is required to maintain visual sight lines for safety or clearance along a walk or drive, consider relocating the plant to a more appropriate location.
- Make reasonable attempts to remove and dispose of class C noxious weeds.
- Re-seed bare turf areas until the vegetation fully covers the ground surface.
- Watch for and respond to new occurrences of especially aggressive weeds such as Himalayan blackberry, Japanese knotweed, morning glory, English ivy, and reed canary grass to avoid invasions.
- Plant and protect trees per [BMP T5.16: Tree Retention and Tree Planting](#).
- Aerate lawns regularly in areas of heavy use where the soil tends to become compacted. Conduct aeration while the grasses in the lawn are growing most vigorously. Remove

layers of thatch greater than ¾-inch deep.

- Set the mowing height at the highest acceptable level and mow at times and intervals designed to minimize stress on the turf. Generally mowing only 1/3 of the grass blade height will prevent stressing the turf.
- Mowing is a stress-creating activity for turfgrass.
- Grass decreases its productivity when mowed too short and there is less growth of roots and rhizomes. The turf becomes less tolerant of environmental stresses, more disease prone and more reliant on outside means such as pesticides, fertilizers, and irrigation to remain healthy.

Additional BMP Information:

- King County's *Best Management Practices for Golf Course Development and Operation* (King County, 1993) has additional BMPs for Turfgrass Maintenance and Operation.

- King County, Seattle Public Utilities, and the Saving Water Partnership have created the following natural lawn and garden care resources that include guidance on building healthy soil with compost and mulch, selecting appropriate plants, watering, using alternatives to pesticides, and implementing natural lawn care techniques.

- *Natural Yard Care - Five steps to make your piece of the planet a healthier place to Live*

(King County and SPU, 2008)

- *The Natural Lawn & Garden Series: Smart Watering* (Saving Water Partnership, 2006)

- *Natural Lawn Care for Western Washington* (Saving Water Partnership, 2007)

- *The Natural Lawn & Garden Series: Growing Healthy Soil; Choosing the Right Plants; and Natural Pest, Weed and Disease Control* (Saving Water Partnership, 2012)

- The International Society of Arboriculture (ISA) is a group that promotes the professional practice of arboriculture and fosters a greater worldwide awareness of the benefits of trees through research, technology, and education. ISA standards used for managing trees, shrubs, and other woody plants are the American National Standards Institute (ANSI) A300 standards. The ANSI A300 standards are voluntary industry consensus standards developed by the Tree Care Industry Association (TCIA) and written by the Accredited Standards Committee (ASC). The ANSI standards can be found on the ISA website: www.isa-arbor.com/education/publications/index.aspx

- Washington State University's *Gardening in Washington State* website at <http://gardening.wsu.edu> contains Washington State specific information about vegetation management based on the type of landscape.

▫ See the *Pacific Northwest Plant Disease Management Handbook* ([Pscheidt and Ocamb, 2016](#)) for information on disease recognition and for additional resources.

S431: BMPs for Washing and Steam Cleaning Structures (Amended)

General

Wash water shall be discharged to the sanitary sewer with appropriate pretreatment to remove solids.

If heavy accumulations of solids are to be removed during washing, then appropriate pretreatment to capture those solids must be provided. Volume II of the SWMMWW contains temporary sediment removal BMPs that can be utilized to capture solids before discharging wastewater to the sanitary sewer system.

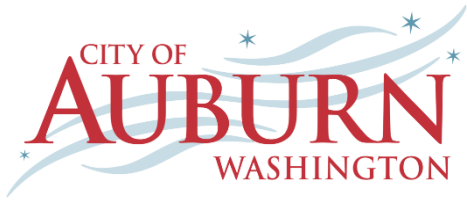
Two-step washing may be allowed at all facilities discharging to the sanitary sewer. Provisions must be in place to neutralize the wash water prior to introduction into the sanitary sewer system.

Facilities with dedicated wash pads with a catch basin having a tee discharge and/or pretreatment equipment, sampling and monitoring ports will be required. Additionally, the installation of a valve may be required to prevent discharge from the system in the event of a spill. All ports must be accessible for inspection and sampling at all times. Any equipment needed for access must be available at all times. Contact the City of Auburn Sanitary Sewer Utility for more information 253-931-3010,

Other Washing Events

Pressure washing of building facades, rooftops, pavement, and other large surfaces must be conducted in such a way that all of the runoff is collected for proper disposal.

Sediment removal BMPs include those as described in Volume II of the SWMMWW and include measures such as check dams, sorbent booms, and catch basin inserts. Temporary curbs, dikes, or berms may be used to direct the water to a collection point or catch basins may be covered to help contain the water. The collected water, provided it meets limits established by King County Wastewater Treatment Division or defined in Chapter 13.20 of the Auburn City Code, should be disposed of to the sanitary sewer. Contact the City of Auburn Sanitary Sewer Utility at 253-931-3010 for more information on allowable discharges to the sanitary sewer. On a case by case basis, if runoff does not contain pollutants, following appropriate pretreatment, such as filtration or sedimentation, then this water may be allowed to be discharged to the storm drainage system. Contact the City of Auburn Storm Drainage Utility at 253-931-3010 for more information.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5805 (Admin)
A Resolution authorizing the Mayor to execute a Conservation Grant Agreement between the City of Auburn and Puget Sound Energy

Meeting Date:

January 21, 2025

(RECOMMENDED ACTION: Move to adopt Resolution No. 5805.)

Department:

Administration

Attachments:

RES 5805, Proposal P1486410.0

Budget Impact:**Administrative Recommendation:**

City Council to adopt Resolution No. 5805.

Background for Motion:

Resolution No. 5805 will execute a Conservation Grant Agreement between Puget Sound Energy (PSE) and the City of Auburn, which would provide grant funding for the installation and replacement of pneumatic controls at City Hall.

Background Summary:

Currently Auburn's City Hall pneumatic controls (HVAC) are obsolete and currently operating on a proprietary protocol. The Conservation Grant will offset a portion of the cost of replacing the current HVAC controls and will conserve energy costs in the long-term.

Councilmember: Kate Baldwin

Staff:

RESOLUTION NO. 5805

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF AUBURN, WASHINGTON, AUTHORIZING THE
MAYOR TO EXECUTE A CONSERVATION GRANT
AGREEMENT BETWEEN THE CITY OF AUBURN AND
PUGET SOUND ENERGY

WHEREAS, Puget Sound Energy offers grants for electricity and natural gas conservation measures installed or implemented at facilities that receive electric or natural gas service from Puget Sound Energy; and

WHEREAS, the City intends to install or implement conservation measures and is requesting a grant from Puget Sound Energy; and

WHEREAS, the Conservation Grant would provide funding to assist with the installation and implementation of the conservation measures.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN,
KING COUNTY, WASHINGTON, HEREBY RESOLVES as follows.

Section 1. The Mayor of the City of Auburn and the Auburn City Clerk are hereby authorized to execute a Conservation Grant Agreement between the City of Auburn and Puget Sound Energy which agreement shall be in substantial conformity with the Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

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

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

Jason Whalen, City Attorney

CONSERVATION GRANT AGREEMENT

This AGREEMENT is made this 19th day of December, 2024, by and between **PUGET SOUND ENERGY** (“PSE”) and **CITY OF AUBURN** (“Participant”).

RECITALS

- A. Under PSE’s Electric Schedule 250, Gas Schedule 250, Electric Schedule 83, and Gas Schedule 183, as currently in effect and on file with the Washington Utilities and Transportation Commission (collectively, “Tariffs”), PSE offers grants for certain conservation measures installed or implemented at facilities that receive electric or natural gas service from PSE.
- B. Participant intends to install or implement conservation measures and is requesting a grant from PSE.

AGREEMENTS

PSE and Participant agree as follows:

1. **PROJECT PREMISES/METER LOCATION ADDRESS: 25 W MAIN ST AUBURN WA 98001 - AUBURN CITY HALL - CONTROLS** *(Please note: meter location/address may differ from the site mailing address).* Participant will install or implement the conservation measures listed in paragraph 2 (“Conservation Measures”) at the above located facilities (the “Premises”). Participant represents either (a) that it is the owner or otherwise has the lawful authority to make the statements herein on behalf of the owner of the Premises, or (b) that it is the lawful tenant of the Premises and that it has obtained written authorization from the owner of the Premises.
2. **Conservation Measures.** Participant represents that it will purchase equipment or materials or has entered or will enter into an agreement with one or more contractors (the “Contractor”) for the purchase and installation or implementation at the Premises of the Conservation Measures which may be detailed in **Attachment C: Attachment to Conservation Grant**, at the following costs:

	Conservation Measures	Measure Life kWh	Measure Life Therm	Total Cost ¹	Eligible Grant ²
1.	HVAC Control - Base - Custom	10	10	\$18,250.00	\$18,250.00
2.	HVAC Control - Performance - Custom	10	10	\$207,989.00	\$207,989.00
	TOTAL (includes sales tax)			\$226,239.00	\$226,239.00

¹ Participant represents that the total cost of the Conservation Measures is the net amount of its obligation with respect thereto.

² The grant amount may be reduced at PSE's sole discretion in the event of project cost reductions or additional energy savings benefiting Participant. See Section 3.

3. **Grant.** Upon the execution by both parties and PSE's receipt of this Conservation Grant Agreement within 90 days of the agreement date, PSE agrees to grant the Participant, after installation by Participant of the Conservation Measures, an amount equal to the eligible Conservation grant. The parties agree that the Conservation Measures must be installed and the Grant paid within 24 months of the signing of this Conservation Grant Agreement. If for any reason the installed cost of the Conservation Measures is less than the amount shown above and on Attachment C, PSE may decrease pro rata the amount of the Grant. In the event Participant's energy usage benefits from other PSE-sponsored energy efficiency programs the Grant paid to Participant may, at PSE's sole discretion, be reduced to reflect such benefits. Participant shall be responsible for paying any amount in excess of the amount of the Grant.
4. **Separate Contract.** Participant acknowledges and agrees that PSE is not, and shall not be deemed to be, a party to any purchase or installation contract relating to Conservation Measures, which shall be installed pursuant to a contract between Participant and its Contractor(s). Participant expressly acknowledges that PSE's involvement with respect to any aspect of the Conservation Measures is limited to the furnishing of the Grant. **PSE HAS NOT MADE AND DOES NOT MAKE (AND PARTICIPANT ACKNOWLEDGES THAT PSE DOES NOT MAKE) ANY IMPLIED OR EXPRESS WARRANTY (INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS) REPRESENTATION, OR PROMISE WITH RESPECT TO EITHER (A) THE CONSERVATION MEASURES, (B) ANY MATERIALS AND LABOR REQUIRED FOR OR USED IN THE INSTALLATION OF THE CONSERVATION MEASURES, OR (C) THE INSTALLATION OF THE CONSERVATION MEASURES.**
5. **Final Cost Documentation, Access & Inspection:** Participant agrees to promptly provide PSE, upon request, and for a period no shorter than the longest applicable measure life: (1) documentation verifying equipment purchased and/or work performed in connection with the Conservation Measures installed; (2) reasonable access to and inspection of the Facility and Conservation Measures installed therein before, during and/or after implementation; and (3) reasonable access to, inspection and use of energy usage data related to the Conservation Measures including release of utility bills and Facility energy consumption information following implementation.
6. **Release.** Participant releases PSE from any and all claims, losses, harm, costs, liabilities, damages and expenses directly or indirectly resulting from or in connection with (a) the Conservation Measures, (b) any materials and labor required for or used in the installation of the Conservation Measures, (c) the installation of the Conservation Measures, or (d) the identification, handling and disposal of any associated hazardous waste materials.
7. **Disclaimer.** PSE conducts energy analyses at the request of its customers to determine the extent to which conservation measures are cost-effective. Any estimate of energy savings made by PSE in connection with any such analyses is solely for the purpose of determining the cost-effectiveness of the particular conservation measures and not to be used for any other purpose. PSE has not and does not make any promise, warranty or representation with respect to any savings in energy consumption from Conservation Measures.
8. **Termination.** In the event a Participant's contribution to PSE's recovery of energy efficiency program costs is affected by all or a portion of Participant's electric and/or gas delivery service being provided by a party other than PSE, then Participant shall refund to PSE an amount equal to the ratio of the unused Measure Life

of the measure(s) to the total Measure Life of such Conservation Measure(s) multiplied by the dollar amount of the Grant with respect to such Conservation Measure(s).

9. **Incorporation of tariffs by reference.** This Agreement and the *Attachment To Conservation Grant* are subject to the terms of the Tariffs, incorporated herein by reference. Specific terms and conditions from one or more conservation schedules from similar filed tariffs may also apply, as determined by PSE at its sole discretion, based on various criteria. A complete list of conservation schedules is available at:

<https://www.pse.com/en/pages/rates/electric-tariffs-and-rules>

10. **Entire Agreement.** This Agreement and its attachments set forth the entire agreement between the parties and supersede any and all prior agreements with respect to the Conservation Measures. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in writing and signed by both parties.

PUGET SOUND ENERGY

PARTICIPANT
CITY OF AUBURN

By:  _____

By: _____

Name: Leslie Wright

Print Name: _____

Title: Mgr. Business Energy Management

Title: _____

Federal Tax I.D. No.: _____

ATTACHMENT C TO CONSERVATION GRANT

Conservation Measure(s) shall consist of the following:

FOR BASE INCENTIVE:

A. System Upgrade Requirements: Upgrade HVAC controls with a new DDC system. Control features shall at least include those listed in attachment D requirements checklist. Not all individual HVAC systems will receive all the upgrades proposed but each system will receive energy efficient upgrades.

B. Facility Guide: Contractor shall provide a Facility Guide to the building operator(s) which includes the items in the "PSE Facility Guide Outline" dated 2-26-15. The Facility Guide shall be in both written and electronic format and remotely accessible by the operator, preferably with a link from the DDC user interface.

C. Operator Training: Contractor shall provide training based on the Facility Guide instructing the building operator on the proper operation of the building control system.

D. Functional Performance Testing: Contractor shall complete the Controls Upgrade Functional Performance Tests (FPT) provided or pre-approved by PSE. These tests must show that the FPT passed, indicating the controls are operating to meet the approved sequences of operation and that all features are installed. PSE will review the FPTs and provide guidance for If the submitted tests do not demonstrate that the controls are working and installed to meet the requirements, PSE will provide written feedback on what is not working and needs to be modified/resubmitted. The contractor will then be given an opportunity to submit the tests and demonstrate that the system operates as specified. If the second set of FPTs does not demonstrate that the systems are meeting the requirements, PSE may adjust or remove an incentive. PSE has discretion to pay incentives due to extenuating circumstances.

The above specifications are solely for the purpose of defining energy-related components of Conservation Measure(s) for which the Grant is offered. Puget Sound Energy is not responsible for ensuring the health, safety, comfort, or well-being of workers or facility occupants or the suitability of equipment selected for the intended application. It is the responsibility of the grant Participant and the Participant's hired designers, contractors, consultants to ensure compliance of the Conservation Measure(s) with Participant's needs and all applicable codes and standards.

The following shall be submitted by Participant prior to Grant payment:

- ☒ Completed Request for Taxpayer I.D. Number ("W-9").
- ☒ Copies of invoicing (no purchase orders, quotes, or estimates) for all expenses, including but not limited to equipment, materials, and labor associated with installation of Conservation Measure(s).
- ☐ Other (specify):

ATTACHMENT C TO CONSERVATION GRANT

Conservation Measure(s) shall be verified as follows prior to Grant payment:

FOR BASE INCENTIVE:

A. Contractor shall provide PSE the final sequences of operations for pre-approval prior to installation. PSE will verify the written sequences of operation meet the requirements.

B. Contractor shall verify and document proper installation and operation of the DDC system to PSE and Owner, using the Functional Performance Tests (FPTs) provided or approved by PSE. Typically, the contractor will be given a maximum of two chances to provide submittals that demonstrate proper operation.

C. After the FPT results are provided showing the system is operating correctly, PSE will do a site visit and may repeat any test procedures. Controls contractor and/or commissioning agent must be present to run through these tests and manipulate the controls system as requested by PSE.

D. PSE will verify on-site and/or through screenshots that the DDC graphical user interface meets the program requirements.

E. PSE will verify that the Facility Guide is onsite and is accessible to the operator both in paper and electronically.

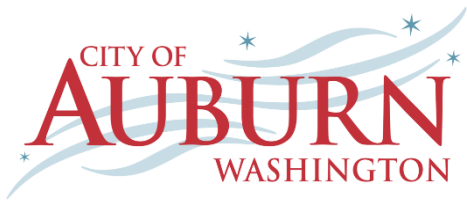
F. Training of operators will be verified for PSE by the operators accomplishing the following tasks:

1. Describing the training received from the contractor and satisfaction with the training.
2. Demonstrating the ability to display and set normal and temporary schedules and set points.
3. Describing the basic system controls such as: duct static reset, DAT reset, optimum start, economizing, zone scheduling, night setback and warm-up.
4. Demonstrating how to set up trends of simultaneous points and view graphs and data. FOR

PERFORMANCE INCENTIVE: A. PSE shall review and analyze metered energy data and any facility changes provided by the owner to determine if the system is operating efficiently to meet or exceed 6% savings for the facility. The method of performance savings analysis is listed previously in this grant agreement attachment. To assist in this analysis the customer will provide a list of changes to the building and operations that significantly impact the energy usage during the performance period. This information will include trends of the new box fans for the fan energy use adjustment. Specific project deliverables required from Participant prior to Grant payment include: See grant attachment.

ATTACHMENT C TO CONSERVATION GRANT

If intended energy savings are not being achieved by Conservation Measure(s) because specified equipment efficiency parameters or performance parameters defined above are not used, Participant shall be required to correct such deficiencies prior to Grant payment. Failure to comply with specified equipment efficiency or performance parameters may result in forfeiture or reduction of Grant payment.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5807 (Gaub)

A Resolution authorizing the Mayor to execute and administer agreements accepting grants from the Washington State Department of Transportation and Federal Highway Administration for 3 Projects: 1) A Street SE Preservation (37th Street SE to Lakeland Hills Way), 2) 1st Street NE/NW And N Division Street Pedestrian Improvements, and 3) C Street SW Preservation (GSA Signal to Ellingson Rd SE)

Meeting Date:

January 21, 2025

(RECOMMENDED ACTION: Move to adopt Resolution No. 5807.)

Department:

Public Works

Attachments:

Resolution No. 5807, Vicinity
Maps

Budget Impact:**Administrative Recommendation:**

City Council to adopt Resolution No. 5807.

Background for Motion:

Resolution No. 5807 authorizes the Mayor to enter into agreements to accept and utilize Washington State Department of Transportation (WSDOT) and Federal Highway Administration (FHWA) grant funds in the amount of \$2,270,000 for the A Street SE Preservation (37th Street SE to Lakeland Hills Way), 1st Street NE/NW and N Division Street Pedestrian Improvements, and C Street SW Preservation (GSA Signal to Ellingson Rd SE) projects.

Background Summary:

Resolution No. 5807 authorizes the Mayor to enter into agreements to accept and utilize WSDOT and FHWA grant funding awarded to the City totaling the amount of \$2,270,000 to support the implementation of three different transportation improvement projects as followed:

- A Street SE Preservation (37th Street SE to Lakeland Hills Way) construction funds only in the amount of \$905,000
- 1st Street NE/NW and N Division Street Pedestrian Improvements, design and construction funds in the amount of \$500,000
- C Street SW Preservation (GSA Signal to Ellingson Rd SE), construction funds only in the amount of \$865,000

Councilmember: Tracy Taylor

Staff: Ingrid Gaub

RESOLUTION NO. 5807

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AND ADMINISTER AGREEMENTS ACCEPTING GRANTS FROM THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION AND FEDERAL HIGHWAY ADMINISTRATION FOR 3 PROJECTS: 1) A STREET SE PRESERVATION (37TH STREET SE TO LAKELAND HILLS WAY), 2) 1ST STREET NE/NW AND N DIVISION STREET PEDESTRIAN IMPROVEMENTS, AND 3) C STREET SW PRESERVATION (GSA SIGNAL TO ELLINGSON RD SE)

WHEREAS, the City applied for, and has been awarded, competitive grants to fund three projects (Projects) that will design and construct improvements to the City's transportation systems;

WHEREAS, the Projects are included in the City's Transportation Improvement Program (TIP) as follows:

- 1) A Street SE Preservation (37th Street SE to Lakeland Hills Way) (P-10);
- 2) 1st Street NE/NW and N Division Street Pedestrian Improvements (N-5);
- 3) C Street SW Preservation (GSA Signal to Ellingson Rd SE) (P-7); and

WHEREAS, the total estimated grant funds awarded for the Projects are approximately \$2,270,000 and the total local match required is approximately \$306,450 which are available from various City funds and other funding sources as shown in the TIP.

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

Section 1. The Mayor is authorized to execute and administer three grant agreements with the Washington State Department of Transportation for a total of \$2,270,000 or any other amount authorized by WSDOT for the Projects as long as local matching funds are available.

Section 2. The Mayor is authorized to negotiate, enter, and administer agreements to spend the grant funds for the Projects, and to implement other administrative procedures necessary to carry out the directives of this legislation.

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

Dated and Signed this _____ day of _____, 2025.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Jason Whalen, City Attorney

A Street SE Preservation, 37th St SE to Lakeland Hills Way

Printed Date: 4/10/2020
Map Created by City of Auburn eGIS
Imagery Date: May 2015



1,504.7 0 752.3 1,504.7 Feet

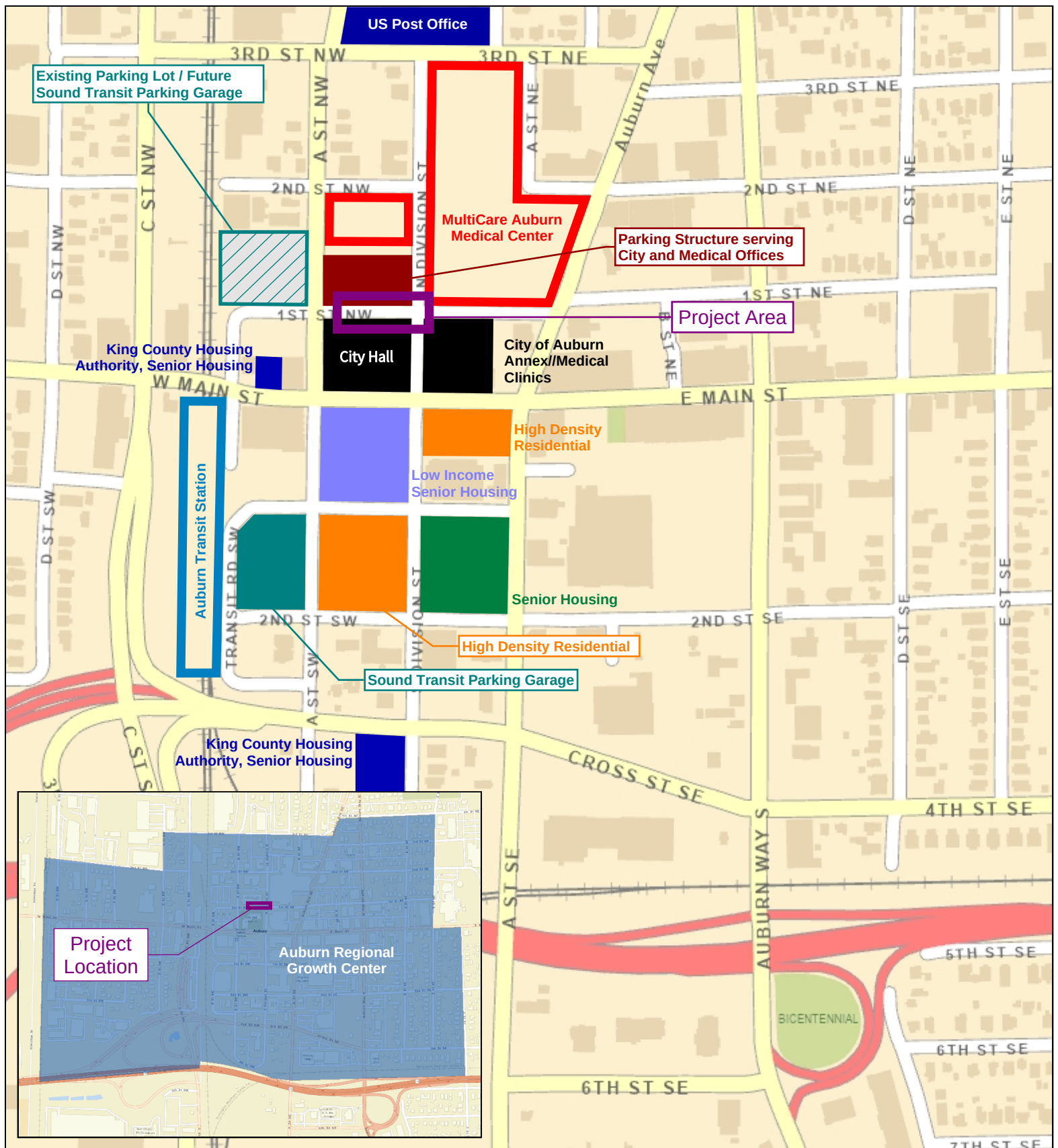
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Information shown is for general reference purposes only and does not necessarily represent exact geographic or cartographic data as mapped. The City of Auburn makes no warranty as to its accuracy.



1st St NE/NW & N Division St Pedestrian Improvements

Printed Date: 4/14/2022
Map Created by City of Auburn eGIS
Imagery Date: May 2015



752.3 0 376.2 752.3 Feet

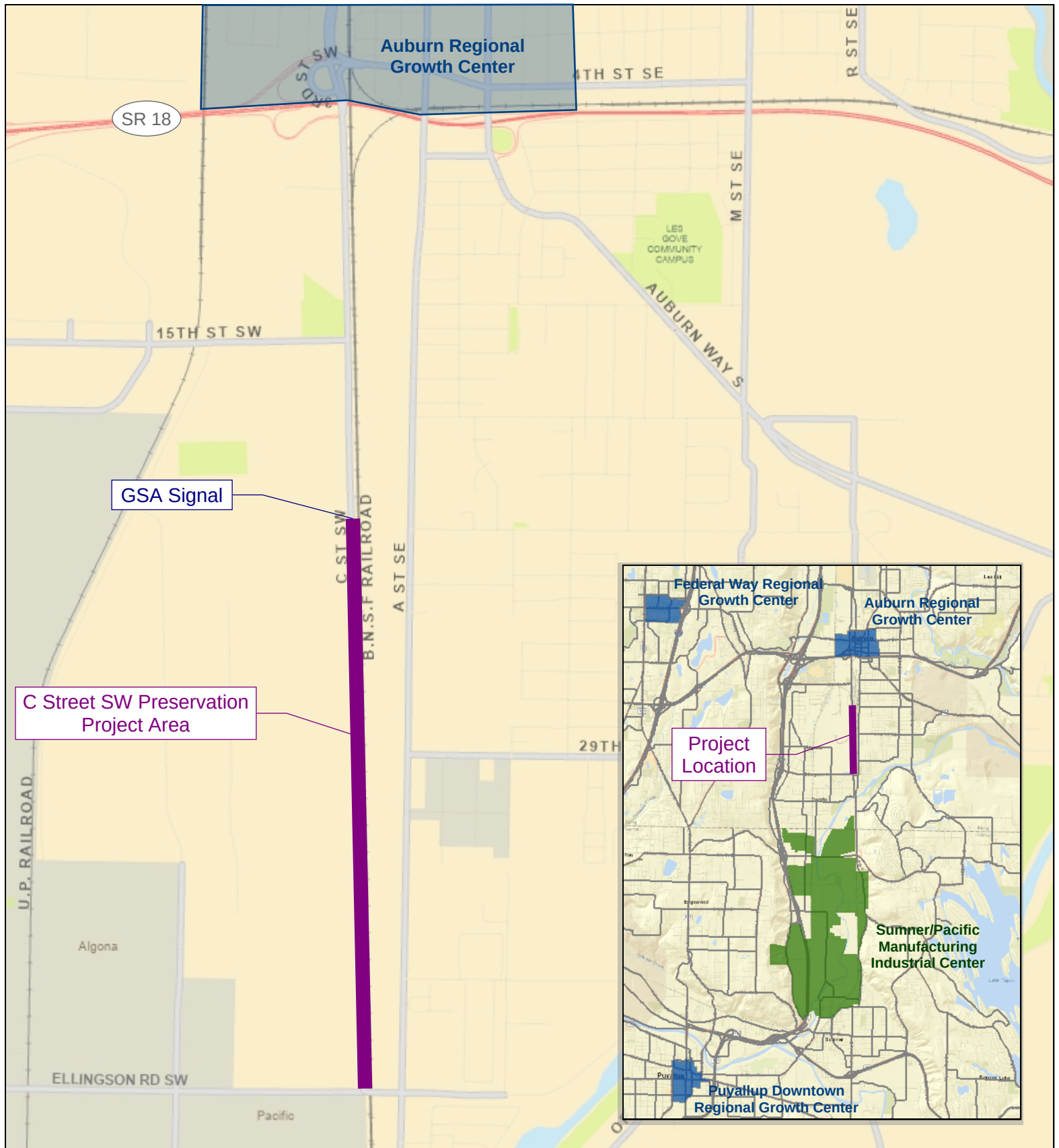
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Information shown is for general reference purposes only and does not necessarily represent exact geographic or cartographic data as mapped. The City of Auburn makes no warranty as to its accuracy.



C Street SW Preservation

Printed Date: 4/13/2022
Map Created by City of Auburn eGIS
Imagery Date: May 2015

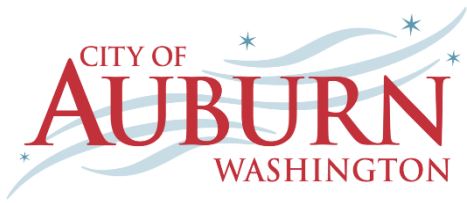


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Information shown is for general reference purposes only and does not necessarily represent exact geographic or cartographic data as mapped. The City of Auburn makes no warranty as to its accuracy.





AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5808 (Caillier)

A Resolution authorizing the Mayor to accept a Grant Award from the Office of the Attorney General of Washington

Meeting Date:

January 21, 2025

(RECOMMENDED ACTION: Move to adopt Resolution No. 5808.)

Department:

Police

Attachments:

Resolution No. 5808, Award
Letter to Auburn PD, Award
Agreement

Budget Impact:

\$203,628.00 Grant Award

Administrative Recommendation:

City Council to adopt Resolution No. 5808.

Background for Motion:

The Auburn Police Department applied for and received a grant award of \$203,628.00, from the Office of the Attorney General of Washington to provide for the purchase of National Integrated Ballistic Information Network (NIBIN) Equipment to analyze evidence and test-fired casings to help combat gun violence.

Background Summary:

The Office of the Attorney General of Washington (AGO) received settlement funds as the result of a lawsuit that recently concluded. The AGO made these funds available to police agencies to help promote firearms safety, combatting gun violence, or supporting victims of gun violence. The Auburn Police Department applied for and received \$203,628 in grant funding to purchase NIBIN Equipment to analyze evidence and test-fired casings. This equipment will help support regional efforts to combat gun violence and will be available to police agencies in our region. The award is specific to the purchase of this equipment.

Councilmember: Cheryl Rakes

Staff: Mark Caillier

RESOLUTION NO. 5808

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO ACCEPT A GRANT AWARD FROM THE OFFICE OF THE ATTORNEY GENERAL OF WASHINGTON

WHEREAS, the Auburn Police Department (APD) applied for, and has been awarded a grant from the Office of the Attorney General of Washington in the amount of \$203,628; and

WHEREAS, the grant is specific to the APD with the purpose of promoting firearms safety, combatting gun violence, or supporting victims of gun violence by providing funding to APD specifically to purchase National Integrated Ballistic Information Network (NIBIN) equipment for processing evidence and test-fired casings; and

WHEREAS, the Auburn Police Department will fully utilize the grant amount of \$203,628 to purchase NIBIN equipment to help combat gun violence within the City of Auburn.

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

Section 1. The City of Auburn and Auburn Police Department are authorized to accept the grant award of \$203,628, according to the terms and conditions set forth in the Award Letter attached to this Resolution;

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

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

Dated and Signed _____.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Jason Whalen, City Attorney



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Consumer Protection Division
800 Fifth Avenue • Suite 2000 • MS TB 14 • Seattle WA 98104-3188
(206) 464-7745

December 13, 2024

Auburn Police Department
Statewide Vendor Number: SWV0002069-09
Attn: Commander Feero
340 E Main St Suite 201
Auburn, WA 98002

RE: **Cy Pres Award**
State v. Federal Way Discount Guns, LLC, et al.
King County Cause No. 22-2-20064-2-SEA

Dear Commander Feero:

The Washington State Attorney General's Office (AGO) helps keep the marketplace free from unfair and deceptive practices by enforcing Washington's Consumer Protection Act in state and federal courts. As a result of one of these cases, *State v. Federal Way Discount Guns, LLC, et al.*, King County Cause No. 22-2-20064-2-SEA, the AGO has *cy pres* funds to offer local law enforcement agencies.

Thank you for submitting an application for *cy pres* funding to assist your agency in promoting firearms safety, combatting gun violence, or supporting victims of gun violence. This award is made pursuant to the Consent Decree entered into in the above matter and RCW 19.86 and RCW 43.10, and all funds must be expended or returned within 24 months of the date the check is issued.

I am pleased to offer Auburn Police Department the amount of \$203,628 as support for your important work in addressing gun violence. Please complete and return the enclosed agreement so that my office can issue the funds. Information regarding this award will be publicly disclosed. If you would like to make a public announcement about this award, please provide our office with the opportunity to comment in advance on the proposed media release. Please contact Brionna Aho, Communications Director, 360-753-2727, brionna.aho@atg.wa.gov, to coordinate the release with the AGO Public Affairs staff.

ATTORNEY GENERAL OF WASHINGTON

Commander Feero
December 13, 2024
Page 2

Thank you for your dedicated service to our community. If you have questions about this award or any of the conditions that apply to it, please contact FISGrants@atg.wa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to be 'BF', is written over the word 'Sincerely,'.

BOB FERGUSON
Washington State Attorney General

AGREEMENT

Tax Status: **Auburn Police Department** confirms it is currently registered as a State Government Agency with the Internal Revenue Service. Should there be any change to your organization's status, you must advise us immediately. Likewise, if there are any changes in your organizational leadership or key personnel during the funding term, please inform our office immediately.

Use of Funds: As explained in the application materials, **Auburn Police Department** is required to use these funds solely to promote firearms safety, combat gun violence, or support victims of gun violence in the manner detailed in your application. **Auburn Police Department** shall adhere to its application for funding to **purchase National integrated Ballistic Information Network (NIBIN) equipment for processing evidence and test-fired casings**. Funds and earnings thereon may not be expended, borrowed, pledged, or transferred for any reason other than carrying out the purpose for which they were awarded. Funds may not be used for lobbying or for any political purposes. The funds are not for general operating costs or for planning. Funds may not be used to supplant existing funding for ongoing projects or programs. It may not be used to supplement general operational or administrative costs, or for salaries, benefits, overhead, or infrastructure, except in the delivery of contracted services that support the development of technology, partnership and program coordination, outreach and education delivery, and/or data recovery and analysis specifically for the activities specified in your application.

Payment of Funds: The funds shall be disbursed to your organization via check within approximately 10 business days of the return of this signed agreement. Funds are to be expended within 24 months of issuance.

Record Keeping and Certification: The funds must be tracked separately from any other monies; Auburn Police Department is required to keep a detailed accounting of their use, supported by source documentation. **Auburn Police Department** agrees to retain documentation to support all expenditures made with the funds, including receipts and invoices. **Auburn Police Department** also agrees that if requested, it will make their books and records related to the funds available for State Auditor inspection at no cost and at reasonable times and upon notice of no less than five business days.

Reporting: At the end of the 24-month funding period, **Auburn Police Department** will return any funds that remain unspent, regardless of the status of the project. By December 31, 2026, or

three months after the funds are fully expended, **Auburn Police Department** agrees to prepare a report, utilizing the attached template, certifying the use of the funds. The Final Funding Certification should be sent to Cherie Norris, AGO Grants Coordinator and Supervisor, at the Washington State Attorney General's Office, via email FISGrants@atg.wa.gov.

Responsibilities of the Parties: Each party of this agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act, or omission of any person, agency, firm, or corporation not a part to this agreement. Neither party will be considered the agent of the other party to this agreement.

Public Records: Records related to the award of these funds and this agreement are public records and will be disclosed by both parties upon request, pursuant to RCW 42.56, the Public Records Act.

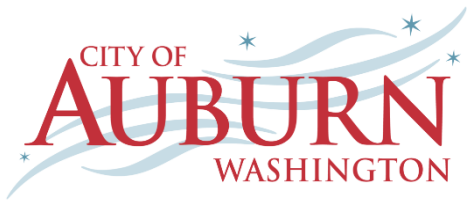
Washington State Attorney General's Office

Date

By signing below, Auburn Police Department agrees to all the terms and conditions as set forth above and incorporated herein. The AGO will disburse funds upon receipt of this signed agreement.

[Organization's Authorized signer, Title]
Auburn Police Department

Date



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5809 (Caillier)

A Resolution authorizing the Mayor to enter a contract with Flock Group, Inc for the installation of Traffic Safety Cameras

Meeting Date:

January 21, 2025

(RECOMMENDED ACTION: Move to adopt Resolution No. 5809.)

Department:

Police

Attachments:

Resolution No. 5809, WA -
Auburn PD - Law Enforcement
Agreement - (1)

Budget Impact:

\$124,000.00

Administrative Recommendation:

City Council to adopt Resolution No. 5809.

Background for Motion:

The City of Auburn currently contracts with Flock Group, Inc to provide 20 Safety Cameras, which are currently installed and operating within the City. To further enhance the City's effort to reduce and prevent crime, the City seeks to acquire and install an additional 20 Flock Safety Cameras at additional locations in the City. The proposed costs provided by Flock Group, Inc, is for \$124,000.00 over a twenty-four-month term.

Background Summary:

The City of Auburn currently contracts with Flock Group, Inc to provide 20 Safety Cameras, which are currently installed and operating within the City. The deployment of these 20 cameras have helped the Auburn Police Department to be more successful in solving crimes and reducing auto theft within the City. To further enhance the City's effort to reduce and prevent crime, the City seeks to acquire and install an additional 20 Flock Safety Cameras at additional locations in the City. The Police Department has identified the 20 additional proposed locations the cameras will be installed, which will enhance City-Wide coverage. The proposed costs provided by Flock Group, Inc, is for \$124,000.00 over a twenty-four-month term.

Councilmember: Cheryl Rakes

Staff: Mark Caillier

RESOLUTION NO. 5809

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO ENTER A CONTRACT WITH FLOCK GROUP, INC FOR THE INSTALLATION OF TRAFFIC SAFETY CAMERAS

WHEREAS, the City of Auburn currently has contracted Flock Group, Inc. to provide 20 safety cameras which are currently installed and operating within the City; and

WHEREAS, the City of Auburn, by and through the Auburn Police Department's utilization of the Flock safety cameras, has experienced a measurable decrease in vehicle thefts and associated crime; and

WHEREAS, to further enhance the City's efforts to reduce and prevent crime, the City seeks to acquire and install an additional 20 Flock safety cameras at additional locations within the City, and Flock Group, Inc. has provided the proposed costs to deploy the additional cameras at \$124,000 over a twenty-four (24) month term.

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

Section 1. The Mayor of the City of Auburn is authorized to execute an order form (contract) to supplement the existing, previously executed contract with Flock Group, Inc. to acquire twenty (20) additional Flock Safety Falcon cameras, with associated professional services, for a contract sum not to exceed \$124,000,00, for an Initial Term of twenty-four (24) months following the execution of the contract. A copy of the proposed contract order form is attached as Exhibit A.

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

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

Dated and Signed _____.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Jason Whalen, City Attorney

Flock Safety + WA - Auburn PD

Flock Group Inc.
1170 Howell Mill Rd, Suite 210
Atlanta, GA 30318

MAIN CONTACT:
Garret Thomson
garret.thomson@flocksafety.com
3606329332



ORDER FORM

This order form (“**Order Form**”) hereby incorporates and includes the terms of the previously executed agreement (the “**Terms**”) which describe and set forth the general legal terms governing the relationship (collectively, the “**Agreement**”). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

This additional services Agreement will be effective when this Order Form is executed by both Parties (the “**Effective Date**”)

Customer:	WA - Auburn PD	Initial Term:	24 Months
Legal Entity Name:	WA - Auburn PD	Renewal Term:	24 Months
Accounts Payable Email:	sbetz@auburnwa.gov	Payment Terms:	Net 30
Address:	25 W Main St Auburn, Washington 98001	Billing Frequency:	Annual Plan - Invoiced at First Camera Validation.
		Retention Period:	30 Days

Hardware and Software Products

Annual recurring amounts over subscription term

Item	Cost	Quantity	Total
Flock Safety Platform			\$60,000.00
Flock Safety LPR Products			
Flock Safety Falcon ®	Included	20	Included

Professional Services and One Time Purchases

Item	Cost	Quantity	Total
One Time Fees			
Flock Safety Professional Services			
Professional Services - Standard Implementation Fee	\$650.00	2	\$1,300.00
Professional Services - Existing Infrastructure Implementation Fee	\$150.00	18	\$2,700.00

Subtotal Year 1:	\$64,000.00
Annual Recurring Subtotal:	\$60,000.00
Estimated Tax:	\$12,772.00
Contract Total:	\$124,000.00

*Taxes shown above are provided as an estimate. Actual taxes are the responsibility of the Customer. This Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a “**Renewal Term**”) unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

Billing Schedule

Billing Schedule	Amount (USD)
Year 1	
At First Camera Validation	\$64,000.00
Annual Recurring after Year 1	\$60,000.00
Contract Total	\$124,000.00

*Tax not included

Product and Services Description

Flock Safety Platform Items	Product Description
Flock Safety Falcon ®	Law enforcement grade infrastructure-free (solar power + LTE) license plate recognition camera with Vehicle Fingerprint ™ technology (proprietary machine learning software) and real-time alerts for unlimited users.
Professional Services - Standard Implementation Fee	One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief.
Professional Services - Existing Infrastructure Implementation Fee	One-time Professional Services engagement. Includes site and safety assessment of existing vertical infrastructure location, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief.

FlockOS Features & Description

FlockOS Features	Description
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By executing this Order Form, Customer represents and warrants that it has read and agrees to all of the terms and conditions contained in the previously executed agreement.
The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.

Customer: WA - Auburn PD

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

PO Number: _____