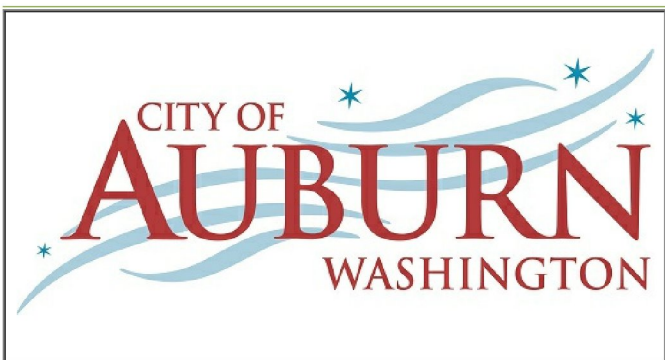


	City Council Meeting January 21, 2020 - 7:00 PM City Hall Council Chambers AGENDA Watch the meeting LIVE! Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.
---	---

I. CALL TO ORDER

- A. Pledge of Allegiance
- B. Roll Call

II. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

III. APPOINTMENTS

- A. Arts Commission

City Council to confirm the following appointments to the Arts Commission. All terms will expire December 31, 2022.

- John Harris
- Ana Kear
- Ann Nataili
- Suzie Newbury
- Kent Sprague
- Dinah Rau

IV. AGENDA MODIFICATIONS

V. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

- A. Public Hearings

- 1. Public Hearing for Modification of the City Transportation Improvement Program (TIP) (Gaub)

City Council to hold a Public Hearing in consideration of the adoption of changes to the 2020-2025 Transportation Improvement Program

- B. Audience Participation

This is the place on the agenda where the public is invited to speak to the City Council on any issue. Those wishing to speak are reminded to sign in on the form provided.

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

VI. COUNCIL AD HOC COMMITTEE REPORTS

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

1. Finance Ad Hoc Committee
2. Council Dias Seating Arrangement Ad Hoc Committee

VII. CONSENT AGENDA

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

A. Minutes of the January 6, 2020 Regular Council Meeting

B. Claim Vouchers (Thomas)

2019 Vouchers:

Claim voucher list dated January 21st, 2020 which includes voucher numbers 456938 and 456942 through 457131, in the amount of \$3,736,214.93 and one wire transfer in the amount of \$588,586.25

2020 Vouchers:

Claim voucher list dated January 21st, 2020 which includes voucher numbers 456939 through voucher 456941 and voucher 457132 through voucher 457195, in the amount of \$1,752,607.98 and one wire transfer in the amount of \$636.00

C. Payroll Vouchers (Thomas)

Payroll check numbers 538791 through 538828 in the amount of \$247,601.23 and electronic deposit transmissions in the amount of \$2,072,021.43 for a grand total of \$2,319,622.66 for the period covering January 1, 2020 to January 15, 2020

D. Public Works Project No. CP1823 (Gaub)

Approve Change Order No. 2 in the amount not to exceed \$16,000.00 to Contract No. 19-20 for work on Project No. CP1823 – 2018 Storm Repair and Replacement Project

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

VIII. UNFINISHED BUSINESS

A. Special Focus Area Appointments

Approval of the 2020 Special Focus Area Chairs and Vice Chair Appointments.

(RECOMMENDED ACTION: Move to approve Special Focus Area Chairs and Vice Chair Appointments.)

IX. NEW BUSINESS

X. RESOLUTIONS

A. Resolution No. 5484 (Gaub)

A Resolution authorizing the Mayor to execute an agreement accepting a grant from the Washington State Transportation Improvement Board for design and construction of the 2nd Street SE Preservation Project

(RECOMMENDED ACTION: Move to adopt Resolution No. 5484.)

B. Resolution No. 5485 (Gaub)

A Resolution authorizing the Mayor to execute an agreement accepting a grant from the Washington State Transportation Improvement Board for design and construction of the M Street SE Sidewalks Project

(RECOMMENDED ACTION: Move to adopt Resolution No. 5485.)

C. Resolution No. 5486 (Gaub)

A Resolution approving and adopting the Modification of the 2020-2025 Transportation Improvement Program of the City of Auburn

(RECOMMENDED ACTION: Move to adopt Resolution No. 5486.)

D. Resolution No. 5487 (Gaub)

A Resolution authorizing the Mayor to execute a Fifth Amendment to the Transit Service Direct Financial Partnership Agreement between the City of Auburn, King County, and Pierce County Public Transit Benefit Authority (Pierce Transit)

(RECOMMENDED ACTION: Move to adopt Resolution No. 5487.)

E. Resolution No. 5489 (Hinman)

A Resolution relating to an airport lease and authorizing the Mayor to negotiate and execute an airport office and tie down lease with Classic Helicopter Corp

(RECOMMENDED ACTION: Move to adopt Resolution No. 5489.)

F. Resolution No. 5493 (Hinman/Comeau)

A Resolution authorizing the Mayor to negotiate and execute agreements among the City of Auburn, LEXI LLC, and Auburn Professional Plaza LLC., related to the development of property

(RECOMMENDED ACTION: Move to adopt Resolution No. 5493.)

XI. 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.

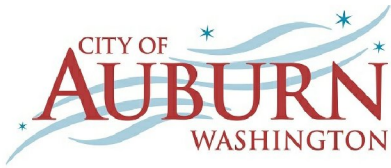
A. **From the Council**

B. **From the Mayor**

XII. ADJOURNMENT

Agendas and minutes are available to the public at the City Clerk's Office, on the City website

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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Hearing for Modification of the City Transportation Improvement Program (TIP) (Gaub)

Date:

January 13, 2020

Department:

Public Works

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to hold a public hearing in consideration of the adoption of changes to the 2020-2025 Transportation Improvement Program. See Resolution No. 5486 for further action on this item.

Background Summary:

Previous TIP modifications were made with annual TIP updates adopted in June 2019 and October 2019. Since then, changes in available project funding and the addition of a new project associated with recent grant awards necessitates additional modifications to meet obligation requirements of the grants. These changes are summarized below.

SUMMARY OF PROPOSED AMENDMENTS TO THE 2020-2025 TIP

Modifications: The following existing project is proposed to be revised:

- TIP P-3: 2nd Street SE Reconstruction (\$0.98M) – The project would reconstruct 2nd Street SE between A Street SE and Auburn Way S. TIB grant funding for the project was awarded in November 2019.

Additions: The following project is proposed to be added to the updated TIP:

- TIP N-10: M Street SE Sidewalk Improvements (\$0.67M) – The project would fund the design and construction of sidewalk improvements along M Street SE between Auburn Way S and 8th Street SE. TIB grant funding for the project was awarded in November 2019.

The date of the public hearing was set by consent on January 6, 2020.

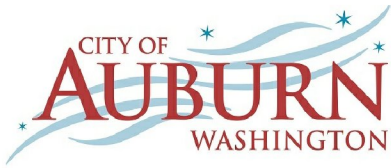
Reviewed by Council Committees:**Councilmember:****Staff:**

Gaub

Meeting Date: January 21, 2020

Item Number:

PH.1



AGENDA BILL APPROVAL FORM

Agenda Subject:

Minutes of the January 6, 2020 Regular Council Meeting

Department:

City Council

Attachments:

[01-06-2020 Minutes](#)

Date:

January 15, 2020

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

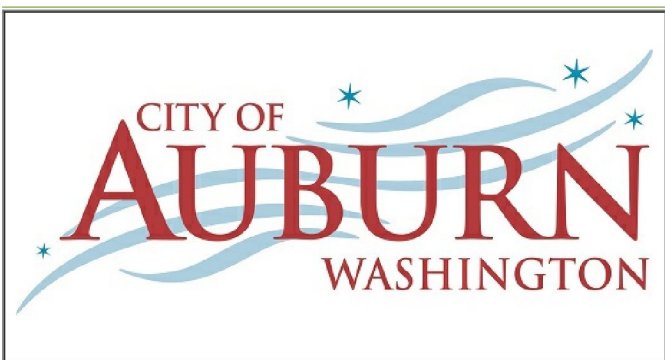
Revised Budget: \$0

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

Meeting Date: January 21, 2020

Staff:

Item Number: CA.A

	City Council Meeting January 6, 2020 - 7:00 PM City Hall Council Chambers MINUTES Watch the meeting LIVE! Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.
---	--

I. **CALL TO ORDER**

A. **Pledge of Allegiance**

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

B. **Roll Call**

Councilmembers present: Deputy Mayor Claude DaCorsi, Bob Baggett, Larry Brown, James Jeyaraj, Robyn Mulenga, Chris Stearns and Yolanda Trout-Manuel.

Mayor Nancy Backus and the following department directors and staff members were present: City Attorney Kendra Comeau, Director of Finance Jamie Thomas, Director of Human Resources and Risk Management Candis Martinson, Director of Public Works Ingrid Gaub, Director of Community Development Jeff Tate, Director of Parks, Arts, and Recreation Daryl Faber, Director of Innovation and Technology David Travis, Director of Administration Dana Hinman and City Clerk Shawn Campbell.

II. **ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS**

Department Directors introduced themselves to Council and shared the divisions under each department.

III. **APPOINTMENTS**

A. **Junior City Council**

City Council to confirm the following appointments to the Junior City Council. All terms will expire August 31, 2021:

- Kailee Sin
- Kelly Oh
- Madelyn Nichole Taylor
- Briseyda Sandate

Deputy Mayor DaCorsi moved and Councilmember Trout-Manuel seconded to appoint Kailee Sin, Kelly Oh, Madelyn Nichole Taylor and Briseyda Sandate to the Auburn Junior City Council with all terms to expire August 31, 2021.

MOTION CARRIED UNANIMOUSLY. 7-0

IV. **AGENDA MODIFICATIONS**

There were no modifications to the agenda.

V. **CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE**

Each Department Director shared with the Council a brief description of items managed within their departments.

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

B. **Audience Participation**

This is the place on the agenda where the public is invited to speak to the City Council on any issue. Those wishing to speak are reminded to sign in on the form provided.

Ken Holden, 3611 I Street NE, Auburn
Mr. Holden spoke about concerns when using the Reddington Trail.

Waylon Menzia, 719 R Street NE, Auburn
Thanked Council for appointing the new Junior City Councilmembers.

C. **Correspondence**

There was no correspondence for Council to review.

VI. **COUNCIL AD HOC COMMITTEE REPORTS**

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

1. Finance Ad Hoc Committee

Deputy Mayor DaCorsi, Co-Chair of the Finance ad hoc committee, reported he reviewed the claims and payroll vouchers described on the Consent Agenda this evening and recommended their approval.

VII. **CONSENT AGENDA**

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

A. Minutes of the December 16, 2019 Regular Council Meeting

B. Claim Vouchers (Thomas)

2019 Vouchers:

Claim voucher list dated January 6, 2020 which includes voucher numbers 456748 through 456917 in the amount of \$1,140,582.38 and seven wire transfers in the amount of \$807,230.92

2020 Vouchers:

Claims voucher list dated January 6, 2020 which include voucher numbers 456918 through 456937 in the amount of \$347,458.51 and one wire transfer in the amount of \$15,912.22

C. Payroll Vouchers (Thomas)

Payroll check numbers 538774 through 538790 in the amount of \$590,284.76, electronic deposit transmissions in the amount of \$2,008,536.03 for a grand total of \$2,598,820.79 for the period covering December 12, 2019 to December 31, 2019

D. Public Works Project No. CP1807 (Gaub)

City Council to award Contract No. 19-04, to Northwest Cascade, Inc. on their total low bid of \$787,843.10 for Project No. CP1807, Water Meter Vaults and Lids Replacement

E. Public Works Project No. CP1917 (Gaub)

City Council to award Contract No. 19-10, to Nordvind Sewer Service, LLC on their total low bid of \$373,724.04 for Project No. CP1917, Deduct Meter Replacement, Phase 1

F. Setting the date of the Public Hearing for Modification of the City Transportation Improvement Program (TIP) (Gaub)

City Council to set the date of the Public Hearing to Modify the Adopted 2020-2025 Transportation Improvement Program (TIP)

Deputy Mayor DaCorsi moved and Councilmember Baggett seconded to approve the consent agenda.

MOTION CARRIED UNANIMOUSLY. 7-0

VIII. UNFINISHED BUSINESS

There was no unfinished business.

IX. NEW BUSINESS

A. Confirmation of Deputy Mayor

City Council to confirm the selection of Councilmember Claude DaCorsi as Deputy Mayor

Councilmember Brown moved and Councilmember Jeyaraj seconded to confirm the appointment of Councilmember DaCorsi as the Deputy Mayor.

B. Ad Hoc Committee for City Council Seating

Selection of Ad Hoc Committee for the seating assignments for City Council Meetings

Deputy Mayor DaCorsi appointed Councilmember Trout-Mauel, Councilmember Baggett and himself to the Council Seating ad hoc committee.

C. Finance Ad Hoc Committee

Selection of Finance Ad Hoc Committee

Deputy Mayor DaCorsi selected Councilmember Baggett and Councilmember Sterns to staff the Finance ad hoc Committee.

X. **RESOLUTIONS**

A. Resolution No. 5488 (Travis)

A Resolution authorizing the Mayor to negotiate and execute agreements between the City of Auburn, SHI International Corporation and Area Electronics Systems, Inc. for network infrastructure services

Deputy Mayor DaCorsi moved and Councilmember Trout-Manuel seconded to adopt Resolution No. 5488.

MOTION CARRIED UNANIMOUSLY. 7-0

XI. **MAYOR AND COUNCILMEMBER REPORTS**

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

A. **From the Council**

Deputy Mayor DaCorsi reported he attended a Federal Legislative Committee Meeting for the Association of Washington Cities.

Councilmember Brown reported he is working on bringing games for the 2026 World Cup to the State of Washington.

Councilmember Trout-Manuel shared her pleasure with the diversity of the Council.

B. **From the Mayor**

Mayor Backus shared the work of the local non-profits over the holidays, she attended the Ribbon Cutting for the Pacific Ballroom Dance studio and Congresswoman Kim Shrier's Town Hall meeting.

XII. ADJOURNMENT

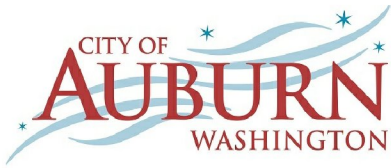
There being no further business to come before the Council, the meeting was adjourned at 7:28 p.m.

APPROVED this 21st day of January, 2020.

NANCY BACKUS, MAYOR

Shawn Campbell, City Clerk

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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Claim Vouchers (Thomas)

Date:

January 16, 2020

Department:

City Council

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Claim Vouchers

Background Summary:

2019 Vouchers:

Claim voucher list dated January 21st, 2020 which includes voucher numbers 456938 and 456942 through 457131, in the amount of \$3,736,214.93 and one wire transfer in the amount of \$588,586.25.

2020 Vouchers:

Claim voucher list dated January 21st, 2020 which includes voucher numbers 456939 through voucher 456941 and voucher 457132 through voucher 457195, in the amount of \$1,752,607.98 and one wire transfer in the amount of \$636.00.

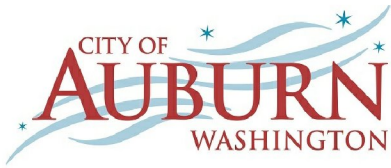
Reviewed by Council Committees:**Councilmember:****Staff:**

Thomas

Meeting Date: January 21, 2020

Item Number:

CA.B



AGENDA BILL APPROVAL FORM

Agenda Subject:

Payroll Vouchers (Thomas)

Date:

January 16, 2020

Department:

City Council

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Payroll Vouchers

Background Summary:

Payroll check numbers 538791 through 538828 in the amount of \$247,601.23 and electronic deposit transmissions in the amount of \$2,072,021.43 for a grand total of \$2,319,622.66 for the period covering January 1, 2020 to January 15, 2020.

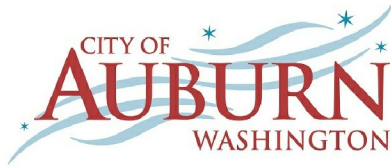
Reviewed by Council Committees:**Councilmember:****Staff:**

Thomas

Meeting Date: January 21, 2020

Item Number:

CA.C



AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Works Project No. CP1823 (Gaub)

Department:

Public Works

Attachments:

[Vicinity Map](#)

Date:

January 14, 2020

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council approve Change Order No. 2 in the amount not to exceed \$16,000.00 to Contract No. 19-20 for work on Project No. CP1823 2018 Storm Repair and Replacement Project.

Background Summary:

The purpose of this project is to replace aging storm drainage infrastructure and provide improvements to the existing system at various locations around the City of Auburn.

Change order #2 will authorize additional contract funds to address unexpected private utility conflicts and tree removals at Site 2 - S 288th Street and 55th Avenue S. These conflicts were not originally identified during design and the added costs would exceed the contract amount and construction contingency as authorized in Auburn City Code 3.10.026. If this work was not addressed, the storm drainage infrastructure at this site would not connect to the infiltration facility that was constructed as part of this project and would likely result in localized flooding.

This change order increases the estimated total project cost to approximately \$969,785.00, which is \$137,215.00 less than the adopted project budget in the 462 Storm Utility Fund.

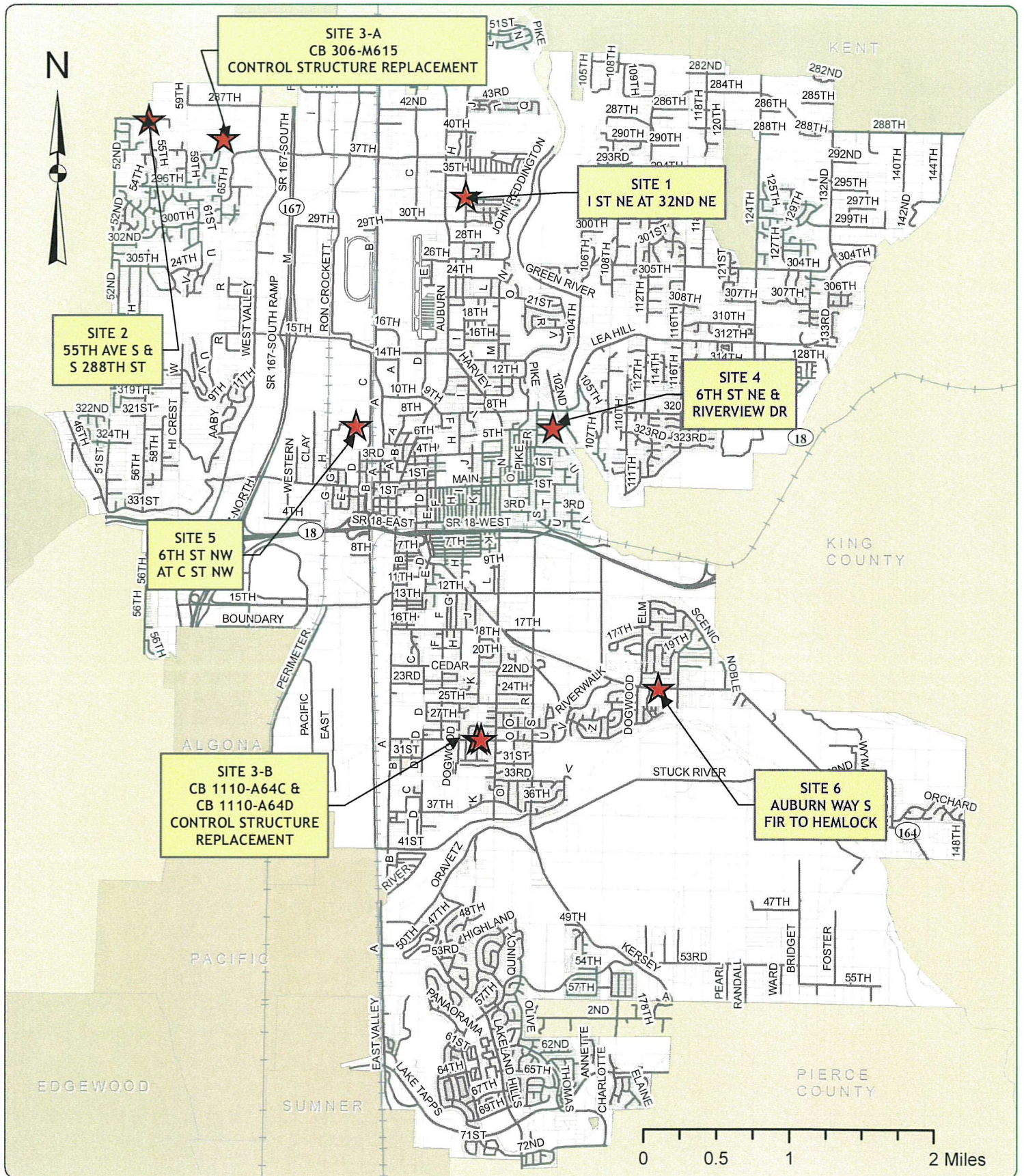
Reviewed by Council Committees:**Councilmember:****Staff:**

Gaub

Meeting Date: January 21, 2020

Item Number:

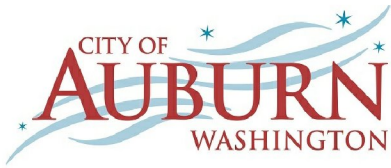
CA.D



Printed On: 6/14/2018
Map ID: 4131

2018-19 STORM R&R VICINITY MAP

Information shown on this map is for informational 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:

Special Focus Area Appointments

Department:

Administration

Attachments:

[Speical Focus Areas](#)

Date:

January 16, 2020

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

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

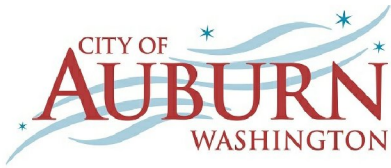
Meeting Date: January 21, 2020

Staff:

Item Number: UB.A

SPECIAL FOCUS AREAS

COMMUNITY WELLNESS	FINANCE TECHNOLOGY & ECONOMIC DEVELOPMENT	PUBLIC WORKS & COMMUNITY DEVELOPMENT	MUNICIPAL SERVICES
PUBLIC HEALTH AND WELLNESS COMMUNITY & NEIGHBORHOOD SERVICES HOMELESSNESS & HOMELESSNESS PREVENTION HOUSING QUALITY, AFFORDABILITY & ATTAINABILITY HUMAN & SOCIAL SERVICES DOMESTIC VIOLENCE SERVICES COMMUNITY EQUITY	EQUIPMENT RENTAL FACILITIES INNOVATION & TECHNOLOGY CITY REAL PROPERTY BUSINESS DEVELOPMENT SISTER CITIES INTERNATIONAL	UTILITIES TRANSPORTATION SUSTAINABILITY ENVIRONMENTAL PROTECTION CULTURAL ARTS & PUBLIC ARTS PLANNING & ZONING PERMITS & DEVELOPMENT RIGHT OF WAY MANAGEMENT AIRPORT AIRPORT BUSINESS	POLICE SCORE JAIL DISTRICT COURT PARKS & RECREATION ANIMAL CONTROL SOLID WASTE EMERGENCY PLANNING MULTIMEDIA CEMETERY
Councilmember Trout-Manuel, Chair Councilmember Mulenga, Vice Chair	Councilmember Baggett, Chair Councilmember DaCorsi, Vice Chair	Councilmember Brown, Chair Councilmember Stearns, Vice Chair	Councilmember Stearns, Chair CouncilmemberJeyaraj, Vice Chair
2020 MEETING DATES March 9, 2020 May 11, 2020 July 13, 2020 September 14, 2020 November 9, 2020	2020 MEETING DATES January 27, 2020 March 23, 2020 May 26, 2020 July 27, 2020 September 28, 2020 November 23, 2020	2020 MEETING DATES February 10, 2020 April 13, 2020 June 8, 2020 August 10, 2020 October 13, 2020 December 14, 2020	2020 MEETING DATES February 24, 2020 April 27, 2020 June 22, 2020 August 24, 2020 October 26, 2020 December 28, 2020



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5484 (Gaub)

Date:

January 14, 2020

Department:

Public Works

Attachments:

[Resolution No. 5484](#)

[Vicinity Map](#)

Budget Impact:

\$393,502.00

Administrative Recommendation:

City Council adopt Resolution No. 5484.

Background Summary:

Resolution No. 5484 authorizes the Mayor to accept a state grant from the Washington State Transportation Improvement Board (TIB) in the amount of \$590,253.00 to finance the design and construction of the 2nd Street SE Preservation Project. This resolution was discussed at the Council study session on January 13th, 2020.

This project will reconstruct 2nd Street SE between A Street SE and Auburn Way S. The reconstruction will utilize full depth reclamation techniques. The project will also remove fixed objects within the clear zone, remove barriers to ADA access, and install new LED street lighting.

It is anticipated that this project will begin construction in late summer of 2021.

The estimated City match required to fully fund the project is \$393,502.00, of which \$50,000.00 is available in the adopted 2020 budget from the Arterial Street Preservation Program (105 Arterial Street Preservation Fund, Project P-1) and is sufficient for the planned work in 2020. The remaining required match funding for 2021 will be requested as part of the 2021-2022 budget from the 105 Fund.

Reviewed by Council Committees:**Councilmember:**

Meeting Date: January 21, 2020

Staff:

Item Number:

Gaub

RES.A

RESOLUTION NO. 5484

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF AUBURN, WASHINGTON, AUTHORIZING THE
MAYOR TO EXECUTE AN AGREEMENT ACCEPTING A
GRANT FROM THE WASHINGTON STATE
TRANSPORTATION IMPROVEMENT BOARD FOR
DESIGN AND CONSTRUCTION OF THE 2nd STREET SE
PRESERVATION PROJECT

WHEREAS, the City of Auburn's adopted Transportation Improvement Plan includes the 2nd Street SE Preservation project (Project) that will reconstruct 2nd Street SE from A Street SE to Auburn Way South; and

WHEREAS, the City received a grant in the amount of \$590,253 from the Washington State Transportation Improvement Board (TIB) to assist in the design and construction of the Project; and

WHEREAS, an estimated \$395,000 is needed from the City to fully fund the project; and

WHEREAS, a portion of the required City funding is available in the approved City budget (approximately \$50,000 from the Arterial Street Preservation Program) and the remaining required funds of an estimated \$345,000 will be requested in the 2021 – 2022 budget.

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

Section 1. The Mayor is authorized to execute a grant agreement with the Washington State Transportation Improvement Board for \$590,253 or any other amount

authorized by the Board for the 2nd Street SE Preservation Project as long as matching funds are available.

Section 2. The Mayor is authorized to enter into agreements to spend the grant funds for the Project, 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 _____, 2020.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

Shawn Campbell, City Clerk

APPROVED AS TO FORM:

Kendra R. Comeau, City Attorney

2nd Street SE Preservation

Printed Date: 8/2/2019
Map Created by City of Auburn eGIS
Imagery Date: May 2015



666.7 0 333.3 666.7 Feet

NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

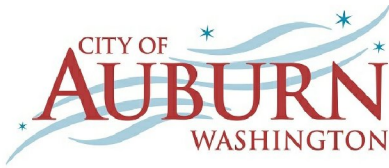
1in = 333 ft

1:4,000



Page 22 of 96

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. 5485 (Gaub)

Date:

January 14, 2020

Department:

Public Works

Attachments:

[Resolution No. 5485](#)

[Vicinity Map](#)

Budget Impact:

\$224,552.00

Administrative Recommendation:

City Council adopt Resolution No. 5485.

Background Summary:

Resolution No. 5485 authorizes the Mayor to accept a state grant from the Washington State Transportation Improvement Board (TIB) in the amount of \$450,000.00 to finance the design and construction of the M Street SE Sidewalks Project. This resolution was discussed at the Council study session on January 13th, 2020.

The project will design and construct sidewalks along the M Street SE corridor between Auburn Way S and 8th Street SE. The project will complete the missing sections of sidewalk along the west side of M Street SE between Auburn Way S and 8th Street SE and on the east side of M Street SE between Auburn Way S and 12th Street SE. The project will construct approximately 2,000 linear feet of new sidewalk to match adjacent widths. The project will also construct ADA compliant curb ramps, relocate existing utility poles and overhead signage to provide ADA access.

It is anticipated that this project will begin construction in late summer of 2021.

The estimated City match required to fully fund the project is \$224,552.00, of which \$25,000.00 is available in the adopted 2020 budget from the Pedestrian Safety and Accessibility Program (102 Arterial Street Fund, Project N-1) and is sufficient for the planned work in 2020. The remaining required match amount for 2021 will be requested as part of the 2021-2022 budget from the 102 Fund.

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

Gaub

Meeting Date: January 21, 2020

Item Number:

RES.B

RESOLUTION NO. 5485

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF AUBURN, WASHINGTON, AUTHORIZING THE
MAYOR TO EXECUTE AN AGREEMENT ACCEPTING A
GRANT FROM THE WASHINGTON STATE
TRANSPORTATION IMPROVEMENT BOARD FOR
DESIGN AND CONSTRUCTION OF THE M STREET SE
SIDEWALKS PROJECT

WHEREAS, the City of Auburn's adopted Comprehensive Transportation Plan establishes policies to build the City's non-motorized transportation system to enhance and encourage pedestrian travel in Auburn; and

WHEREAS, M Street SE between 8th Street SE and Auburn Way South has sections without sidewalks to support pedestrians; and

WHEREAS, the City received a grant in the amount of \$450,000 from the Washington State Transportation Improvement Board (TIB) to assist in the design and construction of the M Street SE Sidewalk Project (Project), which will enhance and encourage pedestrian travel on M Street SE; and

WHEREAS, an estimated \$225,000 is needed from the City to fully fund the project; and

WHEREAS, a portion of the required City funding is available in the approved City budget (approximately \$25,000 from the Citywide Pedestrian Accessibility and Safety Program) and the remaining required funds of an estimated \$200,000 will be requested in the 2021 – 2022 budget.

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

Section 1. The Mayor is authorized to negotiate and execute a grant agreement with the Washington State Transportation Improvement Board for \$450,000 or any other amount authorized by the Board for the Project as long as matching funds are available.

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

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

Dated and Signed this _____ day of _____, 2020.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

Shawn Campbell, City Clerk

APPROVED AS TO FORM:

Kendra R. Comeau, City Attorney

TIP# N-10 - M Street SE Sidewalk Improvements

Printed Date: 12/18/2019
Map Created by City of Auburn eGIS
Imagery Date: May 2015

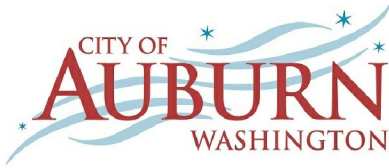


1,333.3 0 666.7 1,333.3 Feet

NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

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. 5486 (Gaub)

Date:

January 13, 2020

Department:

Public Works

Attachments:

[Resolution No. 5486](#)

[Exhibit A](#)

[Vicinity Maps](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council adopt Resolution No. 5486.

Background Summary:

Resolution No. 5486 authorizes the City Council to adopt modifications to the 2020-2025 Transportation Improvement Program.

Previous TIP modifications were made with the annual TIP updates adopted in June 2019 and October 2019. Since then, changes in available project funding and the addition of a new project associated with recent grant awards necessitates additional modifications in order to meet obligation requirements of the grants.

SUMMARY OF PROPOSED AMENDMENTS TO THE 2020-2025 TIP

Modifications: The following existing project is proposed to be revised:

- TIP P-3: 2nd Street SE Reconstruction (\$0.98M) – The project would reconstruct 2nd Street SE between A Street SE and Auburn Way S. TIB grant funding for the project was awarded in November 2019.

Additions: The following project is proposed to be added to the updated TIP:

- TIP N-10: M Street SE Sidewalk Improvements (\$0.67M) – The project would fund the design and construction of sidewalk improvements along M Street SE between Auburn Way S and 8th Street SE. TIB grant funding for the project was awarded in November 2019.

A public hearing for the TIP was set by consent agenda at the January 6, 2020 Council Meeting. The hearing is scheduled to be held at the January 21, 2020 Council Meeting in advance of the adoption of this resolution.

Reviewed by Council Committees:

Councilmember:

Meeting Date: January 21, 2020

Staff:

Item Number:

Gaub

RES.C

RESOLUTION NO. 5486

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, APPROVING AND ADOPTING THE MODIFICATION OF THE 2020-2025 TRANSPORTATION IMPROVEMENT PROGRAM OF THE CITY OF AUBURN

WHEREAS, RCW 35.77.010 requires that the legislative body of each City prepare and adopt a comprehensive Transportation Improvement Program for the ensuing six years, but only after conducting a public hearing; and

WHEREAS, a public hearing to review the 2020-2025 Transportation Improvement Program for the City of Auburn was held on January 21, 2020 at the hour of 7:00 p.m. in the Council Chambers of the Auburn City Hall, pursuant to notice published in the legal newspaper of the City of Auburn on January 9, 2020.

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

Section 1. The modifications to the 2020-2025 comprehensive Transportation Improvement Program are adopted, which will be in substantial conformity with the attached Exhibit "A."

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

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

Dated and Signed this _____ day of _____, 2020.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

Six Year Transportation Improvement Plan

ARTERIAL PRESERVATION FUND (105)

TIP# P-3

Project Title: **2nd Street SE Preservation**
 Project No: **TBD**
 Project Type: **Preservation**
 Project Manager: **TBD**

STIP# AUB-N/A

LOS Corridor ID# N/A

Description:

This project will reconstruct 2nd Street SE between A Street SE and Auburn Way S. The reconstruction will utilize full depth reclamation techniques. The project will also remove fixed objects within the clear zone, remove barriers to ADA access, and install new LED street lighting.

Progress Summary:

Grant funding for this project was awarded by TIB in 2019. The design phase will be started in 2020 and construction completed during 2021.

Future Impact on Operating Budget:

This project will have no impact on the operating budget for street maintenance.

Activity:	2019 YE		Budget			Forecast Project Cost				Total Project Cost
	Prior to 2019	Estimate	2020	2021	2022	2023	2024	2025	Beyond 2025	
Funding Sources:										
Arterial Preservation Fund	-	-	46,000	347,502	-	-	-	-	-	393,502
Secured Grant	-	-	69,000	521,253	-	-	-	-	-	590,253
Other	-	-	-	-	-	-	-	-	-	-
Total Funding Sources:	-	-	115,000	868,755	-	-	-	-	-	983,755
Capital Expenditures:										
Design	-	-	115,000	-	-	-	-	-	-	115,000
Right of Way	-	-	-	-	-	-	-	-	-	-
Construction	-	-	-	868,755	-	-	-	-	-	868,755
Total Expenditures:	-	-	115,000	868,755	-	-	-	-	-	983,755

Six Year Transportation Improvement Plan

TIP# N-10

ARTERIAL STREET FUND (102)

Project Title: **M Street SE Sidewalk Improvements**
 Project No: **TBD**
 Project Type: **Non-Motorized**
 Project Manager: **TBD**

STIP# AUB-N/A

LOS Corridor ID# N/A

Description:

The project will design and construct sidewalks along the M Street SE corridor between Auburn Way S and 8th Street SE. The project will complete the missing sections of sidewalk along the west side of M Street SE between Auburn Way S and 8th Street SE, and will complete the missing segments of sidewalk along the east side between Auburn Way S and 12th Street SE. The project will construct approximately 2,000 linear feet of new sidewalk to match adjacent widths. The project will also construct ADA compliant curb ramps, relocate existing utility poles and overhead signage to provide ADA access.

Progress Summary:

Grant funding for the project was awarded by TIB in 2019. The design phase will be started in 2020 and construction completed during 2021.

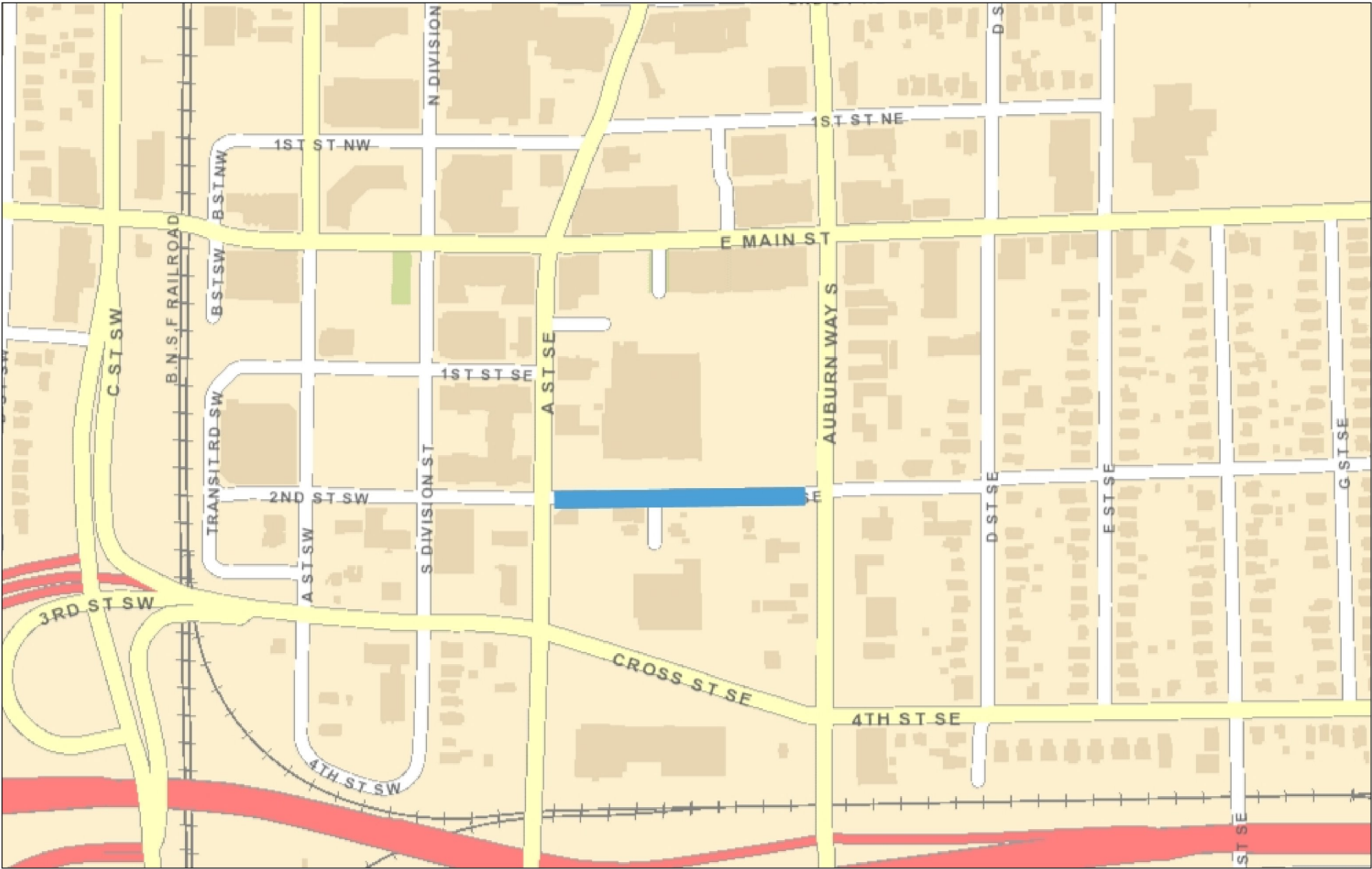
Future Impact on Operating Budget:

This project will have no impact on the operating budget for street maintenance.

Activity:	2019 YE		Budget			Forecast Project Cost				Total Project Cost
	Prior to 2019	Estimate	2020	2021	2022	2023	2024	2025	Beyond 2025	
Funding Sources:										
Unrestricted Street Revenue	-	-	14,980	209,562	-	-	-	-	-	224,542
Secured Grant	-	-	30,020	419,980	-	-	-	-	-	450,000
Traffic Impact Fees	-	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	-	-	-
Total Funding Sources:	-	-	45,000	629,542	-	-	-	-	-	674,542
Capital Expenditures:										
Design	-	-	45,000	-	-	-	-	-	-	45,000
Right of Way	-	-	-	-	-	-	-	-	-	-
Construction	-	-	-	629,542	-	-	-	-	-	629,542
Total Expenditures:	-	-	45,000	629,542	-	-	-	-	-	674,542

TIP# P-3 - 2nd Street SE Preservation

Printed Date: 10/14/2019
Map Created by City of Auburn eGIS
Imagery Date: May 2015



666.7 0 333.3 666.7 Feet

NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

1in = 333 ft

1:4,000



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.

TIP# N-10 - M Street SE Sidewalk Improvements

Printed Date: 12/18/2019
Map Created by City of Auburn eGIS
Imagery Date: May 2015

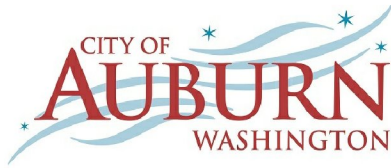


1,333.3 0 666.7 1,333.3 Feet

NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

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. 5487 (Gaub)

Date:

January 14, 2020

Department:

Public Works

Attachments:

[Resolution No. 5487](#)

[Exhibit A](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council adopt Resolution No. 5487.

Background Summary:

Resolution No. 5487 authorizes the Mayor to execute a 5th Amendment to the Transit Service Direct Financial Partnership Agreement between the City of Auburn, King County and the Pierce County Transit Benefit Authority (Pierce Transit) that established the Route 497 service. The Route 497 service provides a transit connection between Lakeland Hills and the Auburn Station. The current agreement expires in February 2019 and the amendment will extend the agreement term until September 2020. City staff continue to work with King County and Pierce Transit to complete a new agreement that would continue the Route 497 service beyond September 2020.

The proposed cost to the City of Auburn for this service is \$118,262.43 and is within the adopted 2020 budget for the 102 Arterial Street Fund. This route serves over 80,000 riders per year and has an average of 330 weekday boardings.

Resolution was discussed at the January 13, 2020 Council study session.

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

Gaub

Meeting Date: January 21, 2020

Item Number:

RES.D

RESOLUTION NO. 5487

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A FIFTH AMENDMENT TO THE TRANSIT SERVICE DIRECT FINANCIAL PARTNERSHIP AGREEMENT BETWEEN THE CITY OF AUBURN, KING COUNTY, AND PIERCE COUNTY PUBLIC TRANSIT BENEFIT AUTHORITY (PIERCE TRANSIT)

WHEREAS, on December 22, 2008 the City of Auburn, King County, and Pierce County Public Transit Benefit Authority (collectively referred to as the “Parties”) entered into a Transit Service Direct Financial Partnership Agreement (the “Agreement”) to provide the Lakeland Hills-Auburn Sounder Station route (“Route 497”); and

WHEREAS, The agreement has been amended three times to extend the service beyond the expiration date in the original agreement and once to add additional service stops; and

WHEREAS, the third amendment extended service until February 9, 2020; and

WHEREAS, there is a continued need to provide the Route 497 service to alleviate parking issues in downtown Auburn and traffic congestion on roads between the Lakeland Hills neighborhood and the Auburn Sounder Station; and

WHEREAS, the Parties desire to continue the Route 497 service; and

WHEREAS, King County does not desire to extend the agreement term beyond September 2020 because the funding program King County has utilized to provide its contribution to the 497 Route expires in September 2020; and

WHEREAS, there is an understanding between the Parties that they will work together to prepare another amendment or new agreement that addresses the King County funding issue to allow the Route 497 agreement to continue beyond September 2020.

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

Section 1. That the Mayor is authorized to execute a 5th amendment to the Transit Service Direct Financial Partnership Agreement between the City of Auburn and King County, which amendment shall be in substantial conformity with the amendment attached as Exhibit "A".

Section 2. That the Mayor is authorized to implement such administrative procedures as may be 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 _____, 2020.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

Shawn Campbell, City Clerk

APPROVED AS TO FORM:

Kendra R. Comeau, City Attorney

AMENDMENT No. 5
to the
TRANSIT SERVICE DIRECT FINANCIAL PARTNERSHIP AGREEMENT
between
KING COUNTY
and
THE CITY OF AUBURN, WASHINGTON
and
PIERCE TRANSIT

This Amendment No. 5 to the Transit Service Direct Financial Partnership Agreement ("Amendment No. 5" or the "Third Amendment") is made by and between King County, a home rule charter county of the State of Washington, by and through its Metro Transit Department (hereinafter the "County" or "Metro Transit") and the City of Auburn (the "City") and the Pierce County Public Transportation Benefit Authority ("Pierce Transit"), both Washington municipal corporations (referred to collectively as "Service Partner," whether one entity or multiple entities), all of which entities may be referred to hereinafter separately as "Party" or together as "Parties."

WHEREAS, on December 22, 2008 the Parties entered into a Transit Service Direct Financial Partnership Agreement (the "Agreement"); and

WHEREAS, Section 4.1 of the Agreement provides that each service specified in Attachment A to the Agreement will expire five (5) years after the start of service, unless extended pursuant to the terms of the Agreement; and

WHEREAS, Section 4.1 of the Agreement further provides that if, after five (5) years the enhanced transit service described in Section 1 of Attachment A to the Agreement is deemed viable by the County pursuant to the performance indicators set forth in Section 2.2 of the Agreement and the additional performance benchmarks specified in Attachment A of the Agreement, and the Parties desire to have Pierce Transit continue to provide the enhanced transit service beyond the initial period, the Agreement may be extended by the Parties; and

WHEREAS, the transit service enhancements provided for in Part I of Attachment A in the Agreement were implemented on or about February 9, 2010; and

WHEREAS, in December 2014 the Parties extended the Agreement to provide the enhanced transit service described in Part I of Attachment A (i.e., Lakeland Hills-Auburn Sounder Station route) until March 12, 2016, during which the Parties agreed to evaluate whether or not to extend the Agreement again consistent with the provisions of Section 4.1 of the Agreement; and

WHEREAS, in January 2016 the Parties extended the Agreement to provide the enhanced transit service described in Part I of Attachment A (i.e., Lakeland Hills-Auburn Sounder

Station route) until February 9, 2020, and adjusted the monetary contributions of the Parties to reflect increases to Pierce Transit's operating and capital costs for providing Route 497; and

WHEREAS, in January 2018 the Parties agreed to implement additional trips on the Route 497 and adjust the monetary contributions for each Party accordingly; and

WHEREAS, Section 8 of the Agreement provides that the Agreement may be amended or modified by written agreement of the Parties, and further provides that such amendments and modifications may be made for the County by Metro's General Manager when such amendments are consistent with the intent and purpose of the Agreement; and

WHEREAS, the Parties agree that the performance indicators set forth in the agreement for Route 497 have been met; and

WHEREAS, the Parties desire to continue the Route 497 partnership service; and

WHEREAS, the King County Transit Now agreement utilized by the County to fund its share of this Route 497 partnership will reach the end of its 10-year term in September 2020; and

WHEREAS, there is an understanding between the Parties that they will work together to determine the appropriate contracting mechanism for continuing the Route 497 partnership beyond September 2020;

NOW, THEREFORE, in consideration of the terms, conditions and mutual covenants set forth herein, the Parties agree to amend the Agreement as follows:

1. Extension of Term of Agreement

As provided for in Section 4.1, the enhanced transit service described in Part I of Attachment A (Lakeland Hills Service) in the Agreement is extended until September 30, 2020.

2. Lakeland Hill Service Cost

Operating Cost:

The operating cost for the Lakeland Hills service (Rt. 497) beginning on February 10, 2020 will be based on Pierce Transit's hourly rate of \$102.97.

Capital Cost:

In addition to the operating costs, the Parties agree to pay for Pierce Transit's capital costs associated with the Lakeland Hills service. The total capital cost for this extension period from February 2020 to September 2020 is \$56,853.89.

Monetary Contributions:

The Parties agree that beginning February 10, 2020 and through the term of this extension, the costs for continuing to provide nine (9) weekday AM northbound and nine (9) weekday PM southbound trips on the Lakeland Hills service (Route 497) will be divided equally between the three parties, King County, City of Auburn and Pierce Transit.

The total Service costs for this extension period are estimated below. The Parties will each be responsible for one-third (1/3) of the total costs.

Feb 2020 – Sept 2020	Operating Cost (\$102.97/hr x 2,893.4 hrs.)	Capital Cost	TOTAL COST
AUBURN	\$99,311.13	\$18,951.30	\$118,262.43
KING COUNTY	\$99,311.13	\$18,951.30	\$118,262.43
PIERCE TRANSIT	\$99,311.13	\$18,951.30	\$118,262.43
TOTAL:	\$297,933.39	\$56,853.90	\$354,787.29

3. No Other Modifications.

Except as specifically provided for in this Amendment No. 5, all other provisions of the Agreement shall remain unchanged and in full force and effect.

4. Effective Date.

This Amendment No. 5 shall be effective upon execution by the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Amendment No. 5 to the Agreement as of the date set forth below their signatures.

KING COUNTY

By: _____
Rob Gannon
General Manager, Metro Transit Department

Date: _____

CITY OF AUBURN

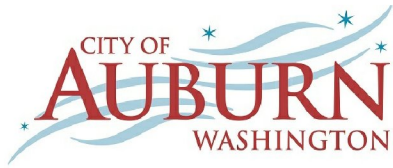
By: _____
Nancy Backus
Mayor
City of Auburn

Date: _____

PIERCE TRANSIT

By: _____
Sue Dreier
Chief Executive Officer
Pierce Transit

Date: _____



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5489 (Hinman)

Date:

January 15, 2020

Department:

Administration

Attachments:

[RES 5489 - Classic Helicopter Corp Lease](#)

[Term Sheet with Premises](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council adopt Resolution No. 5489.

Background Summary:

Classic Helicopter Corp. was an existing tenant on the Auburn Municipal Airport between June of 2016 and December 2019. Toward the end of Classic Helicopter's previous Auburn Airport term, Classic Helicopter was sold. The new owner wishes to maintain a presence on the Auburn Airport.

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

Hinman

Meeting Date: January 21, 2020

Item Number:

RES.E

RESOLUTION NO. 5489

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO AN AIRPORT LEASE AND AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AN AIRPORT OFFICE AND TIE DOWN LEASE WITH CLASSIC HELICOPTER CORP.

WHEREAS, The Auburn municipal airport has office space and aircraft tie downs available for lease to private airport-related businesses; and

WHEREAS, Classic Helicopter Corp is interested in leasing such office and tie down space for their aircraft rental, flight instruction and scenic tours business; and

WHEREAS, the public, and airport customers benefit from having Skyline Leasing LLC located on the airport.

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

Section 1. The Mayor is authorized to negotiate and execute a lease between the City of Auburn and Classic Helicopter Corp., in substantial conformity with the attached "Term Sheet".

Section 2. The Mayor is authorized to implement those administrative procedures 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

Kendra Comeau, City Attorney

Classic Helicopter terms for the Auburn Airport

December 18, 2019
Classic Helicopter Corporation
Attn: Dan Dolan

Term Sheet

Premises: That "Instr 2" portion of the Airport Administration Building as depicted in the attached "Premises" Exhibit.

A single available tie-down located anywhere on the Auburn Municipal Airport

Tenant is taking the Premises As-is, where-is.

Base Rental Rate: \$605.00 per month will be inclusive of the Premises identified above and all common area usage and maintenance fees, utilities (excluding internet & communication services) and security fees.

Leasehold Tax: A State mandated Leasehold Tax in the amount of 12.84% will be charged to the gross monthly rental payments.

Common Area Fees: Included as part of the base rental rate.

Rental Adjustments: City reserves the right to adjust the base rental rate as it deems necessary by providing Tenant with 30 day advanced written notice.

Uses: Aircraft rental, Flight instruction & Helicopter tours.

Term: Month-to-month.

Internet & Communication Services: Tenant is responsible at its sole cost and expense for establishing and maintaining its own internet and communication services.

Auburn City Council: The terms contained within are subject to the ratification of the Auburn City Council. If approved both parties will take reasonable steps to execute a formal lease based in substantial conformity to the terms contained within this term sheet.

Each party by signing below acknowledges and agrees to the terms as set forth above.

Tenant

Signature: 

Print Name: Daniel J. Dolan

Title: CEO

Landlord

Signature: _____

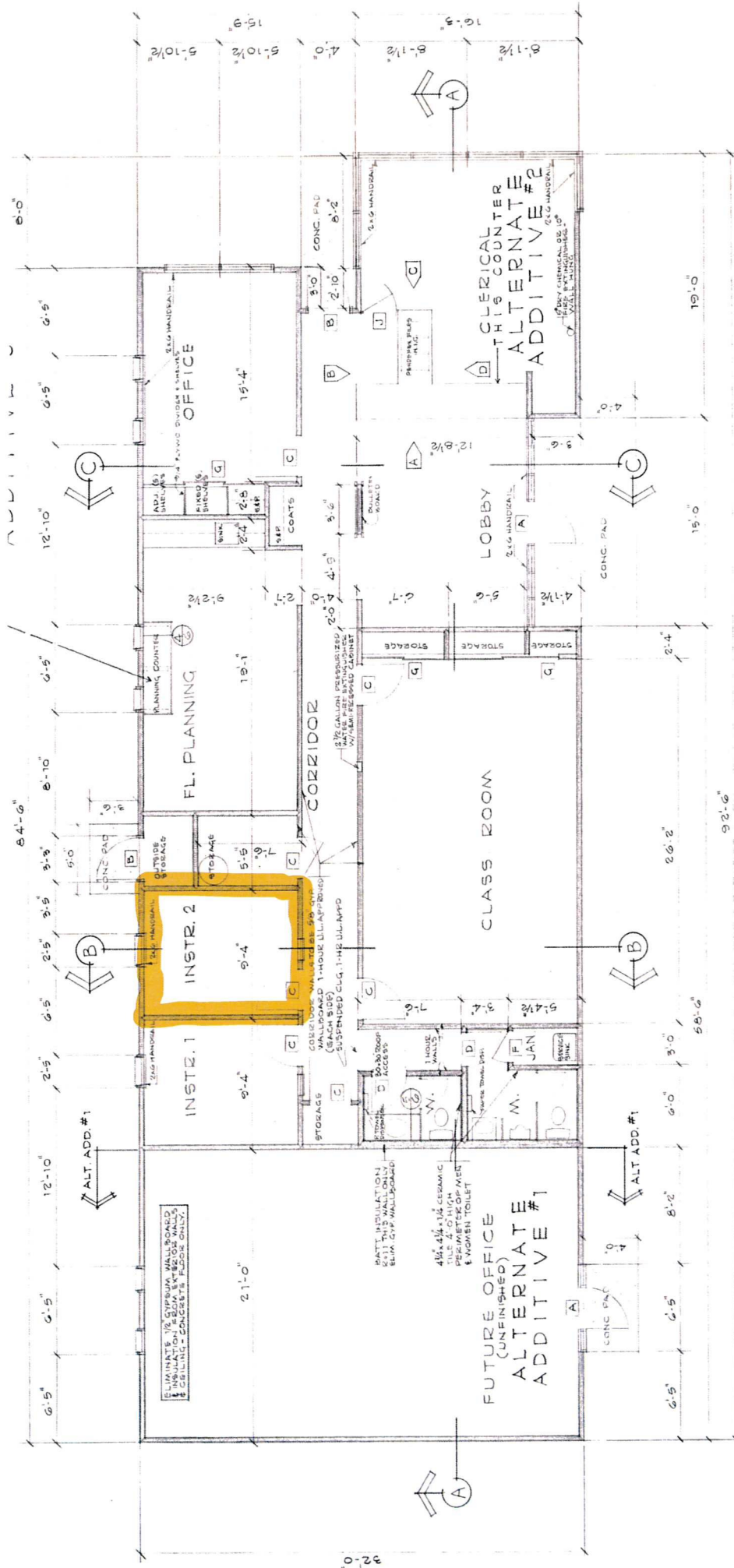
Print Name: _____

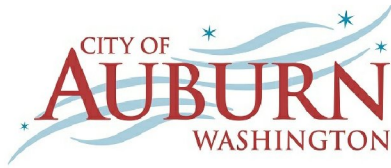
Title: _____

Date: 12/22/19

Date: _____

Classic Helicopter Premises





AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5493 (Hinman/Comeau)

Date:

January 15, 2020

Department:

Administration

Attachments:

[Resolution No. 5493](#)

[Exhibit A](#)

[Staff memo for amendments](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council adopt Resolution No. 5493.

Background Summary:

Currently, Auburn owns the "Mel's Lot" at 1st NW & A Street. Part of the property is used as a parking lot for Auburn employees. The other part is leased to Multicare for their parking. The lot fulfills the parking requirement for the portion of the annex building that the city owns. These parking stalls are protected by a "Parking Access Easement" that was created when the annex building was built. When the city purchased the Mel's Lot, it entered into a Development Rights Agreement with the prior owner, APP LLC. In 2019, the owner of those rights, now Lexi LLC, exercised its option under the 2010 Development Rights Agreement to regain title to the lot. The agreement requires the city to reconvey the lot to Lexi LLC upon that company meeting several criteria. Lexi LLC has since met those criteria, one of which was obtaining city approval of development applications for development of the lot. In response, Lexi LLC has proposed changes to the Development Rights Agreement to reflect the conveyance of the lot and the new relationship between the city and Lexi LLC. The firm has also proposed corresponding amendments to the Parking Easement Agreement. As part of the conveyance of Mel's lot to Lexi LCC, the company will release some of their permit applications and application appeals that were made extraneous when the firm decided against providing substitute parking on other lots and rather chose to keep the parking spots on the Mel's Lot.

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

Hinman/Comeau

Meeting Date: January 21, 2020

Item Number:

RES.F

RESOLUTION NO. 5493

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AGREEMENTS AMONG THE CITY OF AUBURN, LEXI LLC, AND AUBURN PROFESSIONAL PLAZA LLC RELATED TO THE DEVELOPMENT OF PROPERTY

WHEREAS, in 2009-2010 the City entered into an agreement with Auburn Professional Plaza, LLC ("APP") under which APP would construct an office building across the street from City Hall called the One Main Plaza building, a portion of which would be used by the City as office space commonly referred to as the City Hall Annex ("Annex"); and,

WHEREAS, parking for the Annex was located off-site in what is commonly referred to as the "Mel's Lot" located at A St. NW and 1st St. NW; and,

WHEREAS, in February 2010, the City adopted Resolution 4574, authorizing the Mayor to enter into a Development Rights Agreement with APP that allowed APP to develop the Mel's Lot, and to take title to the property, as long as it replaced the Annex parking; and,

WHEREAS, Lexi LLC ("Lexi"), as successor to APP, has met the conditions in the Development Rights Agreement that require the City to convey to Lexi fee title of the property on which the City's parking is located; and,

WHEREAS, the Development Rights Agreement requires the parties to amend documents related to the parking in order to effect the changed circumstances.

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

Section 1. The Mayor is authorized to negotiate and execute agreements among the City of Auburn, Lexi LLC, and Auburn Professional Plaza, LLC, in substantial conformity with the agreements attached as Exhibit A.

Section 2. The Mayor is authorized to implement those administrative procedures 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

Kendra R. Comeau, City Attorney

AFTER RECORDING RETURN TO:

Lexi, LLC
c/o Michael John Klein, CPA
30300 Agoura Road, Ste. 270
Agoura Hills, CA 91301

AMENDED AND RESTATED DEVELOPMENT RIGHTS AGREEMENT

Grantor:	CITY OF AUBURN, and AUBURN PROFESSIONAL PLAZA, LLC, a Washington limited liability company
Grantee:	LEXI, LLC, a Washington limited liability company
Legal Description:	Parcel A of City of Auburn Declaration of Lot Combination BLA 19-0005, recorded May 9, 2019 under King County recording number 20190509000812, also known as Block 7, Map of L.W. Ballard's Park Addition to Slaughter, according to the Plat Thereof recorded in Volume 3 of Plats, Page 91, records of King County, Washington; together with the vacated West 10 feet of Silver Street (now "A" Street NW) adjoining, except that portion conveyed to the City of Auburn by Deed recorded November 18, 2009 under King County recording number 20091118001497.
Tax Parcel Nos.:	0492000460, 0492000461 and 0492000463
Related Documents:	20100514000044

**AMENDED AND RESTATED
DEVELOPMENT RIGHTS AGREEMENT**

This AMENDED AND RESTATED DEVELOPMENT RIGHTS AGREEMENT (“Agreement”) is entered into as of January __, 2020, by and between THE CITY OF AUBURN, a code city of the state of Washington (“City”), AUBURN PROFESSIONAL PLAZA, LLC, a Washington limited liability company (“APP”), and LEXI, LLC, a Washington limited liability company (“Lexi”), with reference to the following facts:

INTRODUCTION

I. On May 14, 2010, a Development Rights Agreement was entered into by and between the City, as Grantor, and APP, as Grantee, which Development Rights Agreement was recorded under King County recording number 20100514000044 (“Original DRA”).

II. On January 31, 2019, APP assigned all of its right, title, powers and interest as Grantee under the Original DRA to Lexi, as reflected in the Assignment of Grantee’s Interest in Development Rights Agreement recorded under King County recording number 20190131000785.

III. On February 1, 2019, a Memorandum of Exercise of Grantee’s Rights Pursuant to Development Rights Agreement was recorded under King County, Washington recording number 201902013000726.

IV. Notwithstanding its assignment referenced in Introduction II, APP retained rights as a Condo Unit Owner in the APP Parking Spaces.

V. The City, APP and Lexi wish to amend the Original DRA and restate it, with changes, in its entirety.

RECITALS

A. A Parking Easement Agreement was entered into as of November 17, 2009 by and between APP, as Grantor, and APP, as Grantee, and recorded under King County, Washington recording number 20091118001355 (“PEA”).

B. The PEA granted to APP an easement and right to use one hundred twenty (120) automobile parking spaces (the “Parking Spaces”) on the “Grantor Property,” commonly referred to as the Mel’s Property. The Mel’s Property is now legally described as Parcel A

of City of Auburn Declaration of Lot Combination BLA 19-0005, recorded May 9, 2019 under King County recording number 20190509000812, also known as Block 7, Map of L.W. Ballard's Park Addition to Slaughter, According to the Plat Thereof recorded in Volume 3 of Plats, Page 91, records of King County, Washington; together with the vacated West 10 feet of Silver Street (now "A" Street NW) adjoining, except that portion conveyed to the City of Auburn by Deed recorded November 18, 2009 under King County recording number 20091118001497. The Mel's Property is listed by the King County Tax Assessor as Assessor's Parcel Nos. 0492000460, 0492000461 and 0492000463.

C. The "Grantee Property" described in the PEA, together with the appurtenant easement rights granted to that real property in the PEA, was submitted by APP on May 12, 2010 to condominium status in a Condominium Declaration for One Main Street Professional Plaza, a Condominium, under King County recording number 20100512000511 (the "One Main Declaration"), together with a Survey Map and Plans recorded under King County recording number 20100512000510. Article 8 of the One Main Declaration assigned the one hundred twenty (120) parking spaces that were the subject of the PEA as Limited Common Elements to specific Units in the One Main Street Professional Plaza Condominium in Schedule B to the One Main Declaration, as amended.

D. On May 14, 2010, the City acquired fee simple title to the Mel's Property from APP in a Statutory Warranty Deed under King County recording number 20100514000042. Also, on May 14, 2010, the Original DRA was entered into by and between the City, as Grantor, and APP, as Grantee. Among other things, the Original DRA granted to APP the right to reacquire and develop the Mel's Property "in any manner that Grantee shall determine in its sole judgment," subject to the provisions of the Original DRA and applicable law.

E. On August 28, 2013, in conjunction with the sale by the City to APP of what was then-designated as Unit 380 described in the One Main Declaration, seven (7) of the one hundred twenty (120) Limited Common Element parking spaces that were the subject of the PEA and were assigned to City-owned Units in the One Main Street Professional Plaza Condominium were reassigned to APP-owned Unit 162 in the One Main Street Professional Plaza Condominium. (See Warranty Deed recorded under King County recording number 20130828001054 and Amendment No. 1 to Condominium Declaration for One Main Street Professional Plaza a Condominium, King County recording number 20130828001056.) These seven (7) parking spaces are referred to as the "APP Parking Spaces," the remaining one hundred thirteen (113) parking spaces assigned to City-owned Units in the One Main Street Professional Plaza Condominium are referred to as the "City

Parking Spaces” and, together the APP Parking Spaces and the City Parking Spaces are referred to as the “Condo Parking Spaces.”

F. On October 2, 2017, APP filed with the City a Completed Environmental Checklist Application, a Preliminary Stormwater Site Plan including a Preliminary Geotechnical Engineering Report, a Traffic Impact Analysis, a Rough Grading and TESC Plan, and related submittals for that certain First Street Plaza Medical Office & Parking Garage project (“First Street Plaza”) on the Mel’s Property, consisting of site preparation and construction of a four-story private parking structure for approximately 204 vehicles and a separate, three-story approximately 42,000 square foot medical office building. On September 17, 2018, the City issued Notice of Application (NOA) and Mitigated Determination of Non-Significance (MDNS) First Street Plaza Medical Office & Parking Garage SEP17-0018. No appeals were timely filed and the MDNS became the final decision of the City.

G. On November 1, 2018, APP filed Application No. MIS18-0016 with the City for Design Review approval of First Street Plaza. Based on supporting documents and revisions filed in January, February and April 2019, the project consisted of site preparation and construction of a four-story private parking structure for approximately 192 vehicles and a separate, three-story approximately 42,000 square foot medical office building on the Mel’s Property.

H. On January 30, 2019, APP notified the City of its election to exercise its rights under Paragraphs 1 and 2 of the Original DRA. Paragraph 1 of the Original DRA relates to development of the Mel’s Property. Paragraph 2 of the Original DRA relates to providing Substituted Property for the 120 parking spaces on the Mel’s Property.

I. On January 31, 2019, APP assigned all of its right, title, powers and interest as Grantee under the Original DRA to Lexi, as reflected in the Assignment of Grantee’s Interest in Development Rights Agreement under King County recording number 20190131000785. On February 1, 2019, a Memorandum of Exercise of Grantee’s Rights Pursuant to Development Rights Agreement was recorded under King County recording number 201902013000726.

J. On February 14, 2019, Lexi filed Building Permit Application File No. BLD19-0021. On March 14, 2019, the City advised Lexi that the Building Permit Application File No. BLD19-0021 was complete and, subject to fulfillment of other conditions, could be approved.

K. On February 14, 2019, Lexi notified the City that the initial development of the Mel's Property would consist of two tall decorative railroad signs as more particularly described in Building Permit Application File No. BLD19-0021, with additional development consisting of First Street Plaza, and requested that the City convey fee simple title to the Mel's Property to Lexi as provided in the Original DRA. The February 14, 2019 notice identified the Substituted Property proposed to be provided by Lexi pursuant to Paragraph 2 of the Original DRA, consisting of the "Alley Lots" (also known from time to time as the "A Street Parcels,") the "C Street Parcel," and the "Auburn Way North Parcel."

L. On February 14, 2019, Lexi filed applications to develop parking lots on the Alley Lots (FAC19-0009), the C Street Parcel (FAC19-0008) and the Auburn Way North Parcel (FAC19-0007). On February 15, 2019, the City advised Lexi that those applications were complete. (On April 12, 2019, Lexi notified the City that it intended to withdraw its application to develop a parking lot on the Auburn Way North Parcel and was adding additional contiguous parcels to the C Street Parcel "C Street Parcels").)

M. On or about February 18, 2019, Lexi filed applications for deferral of half-street improvements for the Alley Lots (SDR19-0006) and the C Street Parcels (SDR19-0005). On March 1, 2019, the Auburn City Engineer issued decisions denying Lexi's requests.

N. On February 28, 2019, the Central Puget Sound Regional Transit Authority ("Sound Transit") adopted Resolution No. R2019-05 authorizing Sound Transit's chief executive officer to acquire the Mel's Property and all property rights therein by purchase or condemnation proceedings, and to reimburse eligible relocation and reestablishment expenses, for the purpose of constructing a new parking garage on the Mel's Property for Sound Transit's Auburn Station Parking and Access Improvements Project.

O. On March 4, 2019, the City responded to Lexi's February 14, 2019 notice and request, indicating that the City was unable to convey title at that time because (i) Building Permit BLD19-0021 was not yet issued or ready for issuance, (ii) an assignment or dedication of funds to pay for the development had not yet been provided, and (iii) permits for development of the Substituted Property under Paragraph 2 of the Original DRA were not yet issued or ready for issuance.

P. On March 29, 2019, Lexi appealed the City Engineer's March 1, 2019 decisions denying deferral of half-street improvements for the Alley Lots (SDR19-0006) and the C Street Parcels (SDR19-0005). On April 19, 2019, the City's Director of Public Works issued decisions affirming and modifying the City Engineer's March 1, 2019 decisions

denying deferral of half-street improvements. On May 17, 2019, Lexi appealed the April 19, 2019 decisions of the City's Director of Public Works to the City Hearing Examiner. Those appeals are pending as of the date of this Agreement (the "Pending Appeals").

Q. On July 26, 2019, the City's Director of Community Development issued a Notice of Decision on Application No. MIS18-0016 approving the Design Review for First Street Plaza, subject to conditions. No appeals were timely filed and the Notice of Decision became the final decision of the City.

R. On July 30, 2019, the City issued Building Permit BLD19-0021 to Lexi.

S. On November 25, 2019, Sound Transit indicated by letter that it will provide 120 parking spaces to replace the Condo Parking Spaces in the new parking garage it proposes to construct on the Mel's Property.

AGREEMENT

In consideration of the covenants and promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lexi, APP and the City enter into this Amended and Restated Development Rights Agreement, as follows:

1. Conveyance of Mel's Property. Within ten (10) days after the date of City Council approval of this Agreement, the City shall submit into escrow an executed Statutory Warranty Deed in the form attached as Exhibit A, conveying title to the Mel's Property to Lexi. Title to the Mel's Property will be conveyed to Lexi subject only to the PEA and the Title Exceptions attached as Exhibit B. Lexi shall pay all applicable real estate transfer excise tax (if any), recording and escrow fees, and title insurance premiums. Subject to the PEA and the Title Exceptions, Lexi will be entitled to possession of the Mel's Property on closing.

2. Development of the Mel's Property. As part of its fee ownership, Lexi shall have the exclusive right from time to time to develop and redevelop the Mel's Property as First Street Plaza or in any other manner that Lexi shall determine in its sole judgment, subject to: (a) the provisions of this Agreement; (b) the provisions of the PEA; and (c) compliance with all applicable governmental codes, laws, and regulations. In connection with any such development or redevelopment of the Mel's Property Lexi may leave the Condo Parking Spaces in their current locations or change their locations on the Mel's Property. In any such development or redevelopment in which the Condo Parking Spaces are not intended

to remain in their current locations, Lexi shall, except as otherwise provided hereinafter, at its expense, relocate from time to time the Condo Parking Spaces within any such development or redevelopment on the Mel's Property. The City and APP, as owners of Units in the One Main Street Professional Plaza Condominium to which the City Parking Spaces are assigned, shall provide written consent to all necessary or appropriate development applications and related documents submitted by Lexi to governmental authorities. Provided, that nothing in this Agreement shall obligate the City to exercise any of its regulatory powers in favor of Lexi, and Lexi is not relieved of its obligations to obtain any necessary permits. The City, APP and Lexi shall from time to time execute an amendment to this Agreement showing the relocation of the Condo Parking Spaces, and once the replacement Condo Parking Spaces have been completed, the parties shall amend the PEA to reflect the relocated Condo Parking Spaces and to set forth terms and provisions pertaining to operating expenses, management, insurance and indemnity comparable to those set forth herein. Further, the City, APP and/or Lexi, as applicable, as members of the owners association of One Main Street Professional Plaza, a Condominium, shall also from time to time execute and record amendments to the Condominium Documents of One Main Street Professional Plaza necessary to show the relocated Condo Parking Spaces that are associated with the affected Units in said Condominium. Neither the City nor APP shall have the right to develop the Mel's Property while Lexi is the fee owner.

3. Deposit of Funds. Within five (5) days after the date of City Council approval hereof, Lexi shall deposit the sum of fifteen thousand and no/100 dollars (\$15,000.00) into a segregated bank account at Umpqua Bank, Auburn, Washington branch to cover the anticipated costs to construct the development authorized under Building Permit Application File No. BLD19-0021. Lexi shall cause Umpqua Bank to provide the City with an Assignment of Funds on the City's standard form in connection with the bank account, evidencing that the funds are on deposit and cannot be withdrawn absent City written consent.

4. Deletion of Paragraph 2 of the Original DRA, and Withdrawal of Election Under Original DRA ¶2. Paragraph 2 (along with the entirety) of the Original DRA has been deleted effective as of the date of recordation of this Agreement. Further, the City acknowledges that, as of the effective date of this Agreement, APP's January 30, 2019 election to exercise its rights under Paragraph 2 of the Original DRA is withdrawn and of no further effect. APP's election to exercise its rights under Paragraph 1 of the Original DRA remains effective except as modified by this Agreement.

5. Amendment of Parking Easement Agreement. On approval of this Agreement by the Auburn City Council, the parties shall execute and submit into escrow an amendment to the PEA in the form attached as Exhibit C.

6. Operations. If there are more parking spaces in the development on the Mel's Property than the one hundred twenty (120) Condo Parking Spaces required to be provided by Lexi for the benefit of the City and APP as owners of the Condo Units under this Agreement, the term "Parking Lot" shall mean the parking garage or facility in that development or on the property. Lexi shall reasonably determine the portion of the Operating Expenses allocable to the Parking Lot and the parties shall share such costs based upon the number of parking spaces allocated to each of Lexi, the City and APP.

(a) "Operating Expenses" means all costs and expenses incurred in connection with: (i) all utility services provided to the Parking Lot; (ii) all permits, licenses and certificates necessary to operate, manage, maintain and repair the Parking Lot; (iii) all Insurance Costs; (iv) the purchase or rental of supplies, tools, equipment and materials to the extent they are used in connection with the use, operation, maintenance, repair or restoration of the Parking Lot; (v) expenses incurred in order to comply with any laws, regulations or governmental requirements of any kind; (vi) wages, salaries and other compensation and benefits for all persons, only to the extent that they were engaged in connection with the operation, maintenance, repair, or restoration of, and providing security services for the Parking Lot, including employer's Social Security taxes, unemployment taxes or insurance, and any other taxes which may be levied on those wages, salaries, compensation and benefits; (vii) all Property Taxes; (viii) all operating costs of the Parking Lot and all systems and equipment servicing the Parking Lot and component services, including, but not limited to, janitorial service, security, trash removal, cleaning, management, maintenance, repair and replacement of lighting, gates, fences, barriers, signs, walkways, driveways, curbs, security and access equipment, devices, and systems, and drainage facilities; (ix) resurfacing, repair, repaving and re-striping of the Parking Lot and the surrounding areas and sidewalks providing access thereto; (x) removal of ice and snow from the Parking Lot and its entrances and exits; and (xi) any service or maintenance contracts related to the operation, maintenance, repair, or restoration of the Parking Lot.

(b) "Property Taxes" means all federal, state, county or local governmental or municipal taxes, assessments, levies, fees, charges or other impositions of every kind and nature levied against the Parking Lot including, without limitation, real and personal property taxes, general and special assessments, transit taxes, water and sewer rent or other similar taxes, fees or changes in taxes assessed in lieu of any of the foregoing. If the Property Taxes for Condo Parking Spaces are separately assessed against Lexi, and the remainder of the Mel's Property is separately assessed, then Property Taxes shall not be part of Operating Expenses that are to be paid proportionately. The parties each agree to cooperate with the other, including attending meetings with the tax assessor, to facilitate such separate assessment or an accurate billing and calculation of Property Taxes as contemplated by this Agreement.

(c) “Insurance Costs” means all property and liability insurance premiums with respect to the Parking Lot required to be carried by Lexi as provided below, including any deductibles incurred in connection with any covered loss.

(i) Lexi shall maintain or cause to be maintained, subject to reasonable deductibles as Lexi may determine, property insurance on the Parking Lot in an amount not less than 100% of the full replacement cost of such improvements, without deduction for depreciation, including the cost of debris removal, insuring against loss or damage by fire and such other risks as may be covered from time to time by a “Causes of Loss–Special Form” policy or its equivalent and those other insurable hazards and containing those additional coverages and endorsements as the parties or their respective lenders may request from time to time. The property insurance may cover loss due to earthquake, earth movement and/or flood, as determined by Lexi. Lexi may maintain this property insurance in whole or in part under blanket policies. The cost of the property insurance, including any deductibles paid and any earthquake, earth movement and/or flood insurance premiums, shall be included as part of the Operating Expenses; provided the cost of any additional coverages and endorsements requested by the City or APP shall not be part of Operating Expenses, but paid solely by the requesting party.

(ii) Lexi, on behalf of the parties, shall at all times, at its sole cost and expense, keep in full force and effect a policy of commercial general liability insurance insuring against claims or liability arising out of the use or maintenance of the Parking Lot in an amount which is not less than Two Million Dollars (\$2,000,000.00) per occurrence, covering bodily injury to persons, including death, and damage to property, and including automobile liability coverage and contractual liability endorsement; shall insure the hazards of the insured party's operations on the Parking Lot, including the acts of its independent contractors; and shall name the other parties to this Agreement as an “additional insured.” Notwithstanding the foregoing, if a party is the City of Auburn, (the “Governmental Owner”) insurance for all of the Condo Parking Spaces may be completely met by the Governmental Owner's membership in the Washington Cities Insurance Authority (“WCIA”), a municipal insurance pool. So long as the Governmental Owner is providing the insurance for all of the Condo Parking Spaces, through WCIA, the Governmental Owner will not be required to provide policies or certificates of insurance, and will not be required to name Lexi, APP or any other party or person as an “additional insured”, “additional named insured”, “named insured,” “loss payee,” or any similar designation. The Governmental Owner shall provide reasonable evidence of its continued participation in WCIA on request of another party.

(iii) The parties, in the exercise of their commercial business judgment, acknowledge that the use of insurance is the best way to protect against the risk of loss to their respective properties and economic interests. Accordingly, (a) the City hereby waives its right of recovery, claims, actions or causes of action against APP and Lexi for loss or damage to the Mel's Property or the Parking Lot, or any personal property therein belonging to the City and its officers, employees, and agents (collectively, the "City Parties") to the extent of any insurance proceeds paid to the party suffering the loss and any additional insurance proceeds that would have been paid to the party suffering the loss had the insurance required under this Agreement been carried by such party; (b) Lexi hereby waives its right of recovery, claims, actions or causes of action against the City and APP for loss or damage to the Mel's Property or the Parking Lot, or any personal property therein belonging to Lexi and its officers, employees, members, and agents ("Lexi Parties") to the extent of any insurance proceeds paid to the party suffering the loss and any additional insurance proceeds that would have been paid to the party suffering the loss had the party obtained the same insurance coverage required under this Agreement had been carried, and (c) APP hereby waives its right of recovery, claims, actions or causes of action against the City and Lexi for loss or damage to the Mel's Property or the Parking Lot, or any personal property therein belonging to APP and its officers, employees, members, and agents ("APP Parties") to the extent of any insurance proceeds paid to the party suffering the loss and any additional insurance proceeds that would have been paid to the party suffering the loss had the party obtained the same insurance coverage required under this Agreement had been carried. Each party shall cause any insurance policy obtained by it (including the insurance required under this Article 6) to provide that the insurance company waives all right to recover by way of subrogation against the other.

(d) Subject to the waiver of claims hereinabove provided, (i) the City shall defend, indemnify and hold harmless Lexi and APP from and against all claims, demands, losses, liabilities, damages, actions, proceedings, expenses and costs (including reasonable attorneys' fees and costs of suit) of any nature whatsoever brought by third parties and arising out of or resulting from the City's use of the Parking Lot, or from any other activity, work, or thing done, permitted or suffered by the City in, on or about the Mel's Property; (b) Lexi shall defend, indemnify and hold harmless the City and APP from and against all claims, demands, losses, liabilities, damages, actions, proceedings, expenses and costs (including reasonable attorneys' fees and costs of suit) of any nature whatsoever brought by third parties and arising out of or resulting from Lexi's use of the Parking Lot, or from any other activity, work, or thing done, permitted or suffered by the Lexi in, on or about the Mel's Property, and (c) APP shall defend, indemnify and hold harmless the City and Lexi

from and against all claims, demands, losses, liabilities, damages, actions, proceedings, expenses and costs (including reasonable attorneys' fees and costs of suit) of any nature whatsoever brought by third parties and arising out of or resulting from APP's use of the Parking Lot, or from any other activity, work, or thing done, permitted or suffered by the Lexi in, on or about the Mel's Property. In the event of concurrent negligence, the indemnifying party shall only be liable for that portion of liability related to the percentage of its respective negligence or misconduct.

7. Condemnation. If Sound Transit or another governmental authority acquires the Mel's Property by eminent domain or otherwise, Lexi, as the fee owner, shall have the sole right and authority to negotiate with Sound Transit regarding the price and terms of acquisition and the sole right to establish, through agreement or litigation, the amount of just compensation to be paid for the Mel's Property. Provided, however, that the City and APP shall have the right to establish through negotiation, agreement, or litigation with Sound Transit the amount to be paid to each of them for any damages to the value of their respective Condominium Units.

If Sound Transit or another governmental authority acquires the Mel's Property by eminent domain or otherwise and constructs a parking garage on the Mel's Property and provides a total of one hundred twenty (120) parking spaces in that garage as replacement parking under the PEA for the benefit of APP and the City as Condo Unit Owners, the parties agree to modify the Condo Declarations so that the City shall be assigned one hundred thirteen (113) and APP shall be assigned seven (7) parking spaces in the garage to replace the existing Condo Parking Spaces.

If Sound Transit or another governmental authority acquires the Mel's Property through eminent domain or otherwise and provides one hundred twenty (120) replacement parking spaces on the Mel's Property, all compensation of any kind or nature paid or given by Sound Transit for and/or in connection with any acquisition of the Mel's Property, other than provision to the City of one hundred thirteen (113) and to APP of seven (7) parking spaces on the Mel's Property and any compensation paid for damages to the value of the City's and APP's respective Condominium Units, shall be payable to Lexi alone and the City and APP shall have no right, claim or interest in that compensation.

If Sound Transit or another governmental authority acquires the Mel's Property through eminent domain or otherwise but does not provide one hundred twenty (120) replacement parking spaces on the Mel's Property and instead provides such replacement parking spaces in a location other than the Mel's Property that is of lesser value to the City and APP for their intended use, then the compensation paid by Sound Transit or such other

condemning authority for the diminished value to the Condominium Units and for any other damages to the Condominium Units resulting from relocation of the parking spaces shall be paid ninety-four percent (94%) to the City and six percent (6%) to APP, in proportion to their respective shares of the 120 Condo Parking Spaces, and all other compensation paid for the taking of the Mel's Property shall be paid to Lexi.

If Sound Transit or another governmental authority acquires the Mel's Property through eminent domain or otherwise but does not provide one hundred twenty (120) replacement parking spaces on the Mel's Property or elsewhere, then the compensation paid by Sound Transit or such other condemning authority for the cost to secure replacement parking spaces elsewhere and the diminished value to the Condominium Units and for any other damages to the Condominium Units resulting from relocation of the parking spaces shall be paid ninety-four percent (94%) to the City and six percent (6%) to APP, in proportion to their respective shares of the 120 Condo Parking Spaces, and all other compensation paid for the taking of the Mel's Property shall be paid to Lexi.

8. Further Approvals and Documentation. This Agreement shall become effective on the effective date of approval by the City Council and signature of the parties. The parties will execute and deliver those other and further documents reasonably required to carry out the intent of this Agreement.

9. Suspension and Dismissal of Pending Appeals. The parties agree to suspend the Pending Appeals pending approval of this Agreement by the Auburn City Council and to jointly notify the Hearing Examiner of the agreement and request. On approval of this Agreement by the Auburn City Council, Lexi will promptly dismiss the Pending Appeals and release the City from all claims related to the Pending Appeals, in the form attached as Exhibit D.

10. Construction. This Agreement was negotiated, drafted, and approved by the Parties. Any rule that would otherwise require an ambiguity in this Agreement to be construed against the drafting party is waived.

11. Attorneys' Fees. In connection with this Agreement and its performance, Lexi, APP and the City shall each pay their own attorney's fees. If there is any default or other breach by a party to this Agreement, the prevailing party shall be entitled to recover attorney's fees in any action to enforce the provisions of this Agreement. "Attorney's fees" means all reasonable legal fees and charges, including but not limited to appellate fees and charges, paralegal fees and charges, court, filing, and process fees, marshal's and sheriffs' fees and charges, investigative fees and charges, and all other related sums.

12. Force Majeure. Any delay in the performance of any obligation under this Agreement 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 (other than lack or inability to procure money to fulfill its commitments and obligations under this Agreement) such as fire, earthquake, flood, explosion, actions of the elements, war, riots, mob violence, inability to procure labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, operation of laws, orders of governmental or military authorities.

13. Severability. If any one or more of the provisions of this Agreement, or the applicability of any provision to a specific situation, shall be held invalid or unenforceable, that provision shall be modified to the extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision shall not be affected.

14. Governing Law. This Agreement shall be governed and interpreted solely by the laws of the State of Washington. Venue for any action shall solely be in King County, Washington.

15. Recitals and Captions. The Introduction and Recitals are an integral part of this Agreement and are incorporated herein for the purpose of interpreting this Agreement. Captions of Sections and subsections of this Agreement are for convenience only and shall not be considered in resolving any questions of interpretation or construction of any term, covenant or provision.

16. Time. Time is of the essence of this Agreement and of each and every provision hereof.

17. Agreement Supersedes the Original DRA. This Amended and Restated Development Rights Agreement supersedes and replaces the Original DRA in its entirety, and contains the complete agreement of the parties with respect to the subject matter of the Agreement.

18. Non-Waiver. No covenant, term or condition of this Agreement (including breach) shall be deemed waived unless expressly waived in a written instrument executed by the waiving party specifically reciting the covenant, term or condition (including breach) being

waived, and any waiver of one covenant, term, condition or breach, shall not be deemed to be a waiver of any preceding or succeeding, covenant, term, condition, or breach.

19. Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed or two (2) business days after deposit in the U.S. mail, postage prepaid, certified or registered mail, return receipt requested at the following addresses:

Lexi: Lexi, LLC
P.O. Box 1294
Auburn, Washington 98071-1294
Attn: President

With concurrent copies to:

Lexi LLC c/o Michael John Klein. CPA
30300 Agoura Road, Suite 270
Agoura Hills, California 91301

And to:

Lexi LLC c/o Anthony L. Rafel, Esq.
Rafel Law Group PLLC
4126 E. Madison St. Ste. 202
Seattle, Washington 98112

APP: Auburn Professional Plaza, LLC
P.O. Box 1294
Auburn, Washington 98071-1294
Attn: President

With concurrent copies to:

Auburn Professional Plaza, LLC c/o Michael J Klein. CPA
30300 Agoura Road, Suite 270
Agoura Hills, California 91301

And to:

Auburn Professional Plaza, LLC c/o Anthony L. Rafel, Esq.
Rafel Law Group PLLC

4126 E. Madison St. Ste. 202
Seattle, Washington 98112

City of Auburn:

City of Auburn
25 West Main Street
Auburn, Washington 98001-4998
Attention: Mayor

With concurrent copies to:

City of Auburn
25 West Main Street
Auburn, Washington 98001-4998
Attention: Director of Administration

And to:

City of Auburn
25 West Main Street
Auburn, Washington 98001-4998
Attention: City Attorney

or to any other or additional addresses as any party may from time to time designate by providing notice in writing to the other parties.

[This page ends here.]

IN WITNESS WHEREOF, Lexi, LLC, Auburn Professional Plaza, LLC and the City of Auburn have duly executed this Agreement as of the day and year first written above.

LEXI, LLC
a Washington limited liability company

By: Oliphant Real Estates Services, Inc.
a Washington corporation
its manager and managing member

By: _____
Jeffrey L. Oliphant, President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____

COUNTY OF _____

On _____, 2020, before me, _____, Notary Public, personally appeared Jeffrey L. Oliphant, satisfactorily proven to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which he acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

AUBURN PROFESIONAL PLAZA, LLC
a Washington limited liability company

By: Oliphant Real Estates Services, Inc.
a Washington corporation
its manager and managing member

By: _____
Jeffrey L. Oliphant, President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____

COUNTY OF _____

On _____, 2020, before me, _____, Notary Public, personally appeared Jeffrey L. Oliphant, satisfactorily proven to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which he acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

THE CITY OF AUBURN, WASHINGTON
a municipal corporation

By: _____
Nancy Backus, Mayor

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____

COUNTY OF _____

On _____, 2020, before me, _____, Notary Public, personally appeared Nancy Backus, satisfactorily proven to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same in her authorized capacity, and that by her signature on the instrument the person(s), or the entity upon behalf of which she acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

EXHIBIT A

[Statutory Warranty Deed from City to Lexi]

Return Address:
City of Auburn
City Clerk
25 West Main
Auburn, WA 98001

Above this line reserved for recording information.

STATUTORY WARRANTY DEED

Reference # (if applicable):	20091118001497; 20091118001355
Grantor:	City of Auburn, a Washington Municipal Corporation
Grantee:	Lexi, LLC, a Washington Limited Liability Company
Abbreviated Legal Description:	PTN SE ¼, NE ¼, SEC. 13, T21N, R4E, WM
Assessor's Tax Parcel ID#:	049200-0460; 049200-0461; 049200-0463

For and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor, **the City of Auburn**, a municipal corporation of the State of Washington conveys and warrants to **Lexi, LLC**, a Washington limited liability company ("Grantee"), its successors and assigns, the property legally described as follows:

BLOCK 7 IN L.W. BALLARD'S PARK ADDITION TO SLAUGHTER, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 3 OF PLATS, PAGE 91, IN KING COUNTY, WASHINGTON;
TOGETHER WITH THE VACATED WEST 10 FEET OF SILVER STREET (NOW "A" STREET N.W.) ADJOINING;
EXCEPT THAT PORTION CONVEYED TO THE CITY OF AUBURN BY DEED RECORDED NOVEMBER 18, 2009, UNDER RECORDING NUMBER 20091118001497.

SUBJECT TO that Parking Easement Agreement dated November 17, 2009 under Recording Number 20091118001355, as amended by the Development Rights Agreement dated May 14, 2010 under Recording Number 20100514000044, and the First Amendment to the Parking Easement Agreement dated _____, 2020 under Recording Number 2020_____.

EXHIBIT B

[Title Exceptions]

**SCHEDULE B, PART II
EXCEPTIONS**
(continued)

SPECIAL EXCEPTIONS

1. Covenants, conditions, restrictions, recitals, reservations, easements, easement provisions, dedications, building setback lines, notes, statements, and other matters, if any, but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on survey:

Recording No.: 20040322900011

2. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Puget Sound Energy, Inc.
Purpose: Electric transmission and/or distribution system and sale of electricity
Recording Date: October 27, 2009
Recording No.: 20091027001708
Affects: the North 13.00 feet of the East 15.00 feet of Parcel C

3. Parking Easement Agreement and the terms and provisions thereof:

Executed by: Auburn Professional Plaza LLC, a Washington limited liability company
Recording Date: November 18, 2009
Recording No.: 20091118001355

4. Storm Water Easement and Maintenance Agreement and the terms and provisions thereof:

Executed by: City of Auburn, a municipal corporation and Auburn Professional Plaza. LLC
Recording Date: November 18, 2009
Recording No.: 20091118001493

5. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of Auburn
Purpose: Water line and appurtenances
Recording Date: November 18, 2009
Recording No.: 20091118001494
Affects: portion on easterly portion of Parcel C as described and delineated in said document

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Chicago Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



**SCHEDULE B, PART II
EXCEPTIONS**
(continued)

6. Local Improvement District No Protest Agreement and the terms and provisions thereof:

Executed by: City of Auburn, a municipal corporation and Auburn Professional Plaza, LLC
Recording Date: November 18, 2009
[Recording No.: 20091118001495](#)

7. Agreement for Deferral of Improvements and the terms and provisions thereof:

Executed by: City of Auburn, a municipal corporation and Auburn Professional Plaza, LLC
Recording Date: November 18, 2009
[Recording No.: 20091118001496](#)

8. Revocable License for Pedestrian and Vehicular Access

Recording Date: February 18, 2010
[Recording No.: 20100218000151](#)

9. Development Rights Agreement and the terms and provisions thereof:

Executed by: City of Auburn and Auburn Professional Plaza LLC, a Washington limited liability company
Recording Date: May 14, 2010
[Recording No.: 20100514000044](#)

The right, title and interest of Auburn Professional Plaza LLC in said agreement was assigned to Lexi, LLC, a Washington limited liability company by instrument recorded under [recording number 20190131000785](#).

Memorandum of exercise of grantee's rights pursuant to development rights agreement

Recording Date: February 13, 2019
[Recording No.: 20190213000726](#)

10. Covenants, conditions, restrictions, recitals, reservations, easements, easement provisions, dedications, building setback lines, notes, statements, and other matters, if any, but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on survey:

[Recording No.: 20190122900008](#)

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Chicago Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



**SCHEDULE B, PART II
EXCEPTIONS**
(continued)

11. Covenants, conditions, restrictions, recitals, reservations, easements, easement provisions, dedications, building setback lines, notes, statements, and other matters, if any, but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on Declaration of Lot Combination:

Recording No: 20190509000812

12. The property herein described is carried on the tax rolls as exempt. However, it will become taxable on the date of the execution of a conveyance to a taxable entity and subject to the lien of real property taxes for the balance of the year from that date:

Tax Account Numbers: 049200-0460, 049200-0463 and 049200-0461
Levy Code: 0133

13. Conservation and other special taxes and charges, payable February 15, delinquent if first half unpaid on May 1, second half delinquent if unpaid on November 1 of the tax year (amounts do not include interest and penalties):

Year: 2019
Tax Account No.: 049200-0460
Levy Code: 0133

General and Special Taxes:

Billed: \$14.74
Paid: \$14.74
Unpaid: \$0.00

Affects: Portion of herein described premises

14. Conservation and other special taxes and charges, payable February 15, delinquent if first half unpaid on May 1, second half delinquent if unpaid on November 1 of the tax year (amounts do not include interest and penalties):

Year: 2019
Tax Account No.: 049200-0463
Levy Code: 0133

General and Special Taxes:

Billed: \$14.64
Paid: \$14.64
Unpaid: \$0.00

Affects: Portion of herein described premises

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Chicago Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



**SCHEDULE B, PART II
EXCEPTIONS**
(continued)

15. Conservation and other special taxes and charges, payable February 15, delinquent if first half unpaid on May 1, second half delinquent if unpaid on November 1 of the tax year (amounts do not include interest and penalties):

Year: 2019
Tax Account No.: 049200-0461
Levy Code: 0133

General and Special Taxes:

Billed: \$14.65
Paid: \$14.65
Unpaid: \$0.00

Affects: Remainder of herein described premises

16. Liability for Sewer Treatment Capacity Charges, if any, affecting certain areas of King, Pierce and Snohomish Counties. Said charges could apply to property connecting to the metropolitan sewerage facilities or reconnecting or changing its use and/or structure after February 1, 1990.
Please contact the King County Wastewater Treatment Division, Capacity Charge Program, for further information at 206-296-1450 or Fax No. 206-263-6823 or email at CapChargeEscrow@kingcounty.gov.

* A map showing sewer service area boundaries and incorporated areas can be found at:
<http://www.kingcounty.gov/services/gis/Maps/vmc/Utilities.aspx>

Unrecorded Sewer Capacity Charges are not a lien on title to the Land.

NOTE: This exception will not appear in the policy to be issued.

17. The search did not disclose any open mortgages or deeds of trust of record, therefore the Company reserves the right to require further evidence to confirm that the property is unencumbered, and further reserves the right to make additional requirements or add additional items or exceptions upon receipt of the requested evidence.
18. Any unrecorded leaseholds, right of vendors and holders of security interests on personal property installed upon the Land and rights of tenants to remove trade fixtures at the expiration of the terms.

END OF SCHEDULE B, PART II

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Chicago Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



EXHIBIT C

[Amendment to Parking Easement Agreement]

AFTER RECORDING RETURN TO:

Auburn Professional Plaza LLC
c/o Michael John Klein, CPA
30300 Agoura Road, Suite 270
Agoura Hills, CA 91301

FIRST AMENDMENT TO PARKING EASEMENT AGREEMENT

Grantor:	CITY OF AUBURN; and LEXI, LLC, a Washington limited liability company
Grantee:	AUBURN PROFESSIONAL PLAZA LLC, a Washington limited liability company; and ONE MAIN STREET PROFESSIONAL PLAZA OWNERS ASSOCIATION, a Washington nonprofit corporation
Legal Description:	Parcel A of City of Auburn Declaration of Lot Combination BLA19-0005, recorded May 9, 2019 under King County recording number 20190509000812, also known as Block 7, Map of L.W. Ballard's Park Addition to Slaughter, according to the Plat Thereof recorded in Volume 3 of Plats, Page 91, records of King County, Washington; together with the vacated West 10 feet of Silver Street (now "A" Street NW) adjoining, except that portion conveyed to the City of Auburn by Deed recorded November 18, 2009 under King County recording number.20091118001497
Tax Parcel Nos.:	0492000460, 0492000461 and 0492000463
Related Documents:	20091118001355, 20100512000511, 20100512000510

FIRST AMENDMENT TO PARKING EASEMENT AGREEMENT

This FIRST AMENDMENT TO PARKING EASEMENT AGREEMENT (“First Amendment”) is entered into as of January __, 2020, by and between THE CITY OF AUBURN, a code city of the state of Washington (“City”), LEXI, LLC, a Washington limited liability company (“Lexi”), ONE MAIN STREET PROFESSIONAL PLAZA OWNERS ASSOCIATION, a Washington nonprofit corporation (“One Main”), and AUBURN PROFESSIONAL PLAZA LLC, a Washington limited liability company (“APP”), with reference to the following facts:

RECITALS

A. A Parking Easement Agreement was entered into as of November 17, 2009 by and between Auburn Professional Plaza LLC, as Grantor, and Auburn Professional Plaza LLC, as Grantee, and recorded under King County recording number 20091118001355 (“PEA”).

B. The PEA granted to APP an easement and right to use one hundred twenty (120) automobile parking spaces on the “Grantor Property,” commonly referred to as the “Mel’s Property.” The Mel’s Property is legally described as Block 7, Map of L.W. Ballard’s Park Addition to Slaughter, According to the Plat Thereof recorded in Volume 3 of Plats, Page 91, records of King County, Washington; together with the vacated West 10 feet of Silver Street (now “A” Street NW) adjoining, and is listed as King County Tax Assessor’s Parcel Nos. 0492000460, 0492000461 and 0492000463.

C. The “Grantee Property” described in the PEA, together with the appurtenant easement rights granted to that real property in the PEA, was submitted by APP on May 12, 2010 to condominium status in a Condominium Declaration for One Main Street Professional Plaza, a Condominium, recorded under King County recording number 20100512000511 (the “One Main Declaration”), together with a Survey Map and Plans recorded in the official records of King County, Washington under recording number 20100512000510. Article 8 of the One Main Declaration assigned the 120 parking spaces that were the subject of the PEA as Limited Common Elements to specific Units in the One Main Street Professional Plaza Condominium in Schedule B to the One Main Declaration, as amended.

D. On May 14, 2010, the City acquired fee simple title to the Mel’s Property from APP in a Statutory Warranty Deed recorded under King County recording number 20100514000042. Also, on May 14, 2010, a Development Rights Agreement was entered into by and between the City, as Grantor, and APP, as Grantee, and recorded in the official records of King County,

Washington under recording number 20100514000044 (“Original DRA”). The Original DRA granted to APP the right to reacquire and develop the Mel’s Property “in any manner that Grantee shall determine in its sole judgment,” subject to the provisions of the Original DRA and applicable law.

E. On August 28, 2013, in conjunction with the sale by the City to APP of what was then-designated as Unit 380 described in the One Main Declaration, seven (7) of the one hundred twenty (120) Limited Common Element parking spaces that were the subject of the PEA and were assigned to City owned Units in the One Main Street Professional Plaza Condominium were reassigned to APP-owned Unit 162 in the One Main Street Professional Plaza Condominium. (See Warranty Deed recorded under King County recording number 20130828001054, and Amendment No. 1 to Condominium Declaration for One Main Street Professional Plaza a Condominium, recorded under King County recording number 20130828001056.) These seven (7) parking spaces are referred to as the “APP Parking Spaces,” the remaining one hundred thirteen (113) parking spaces assigned to City owned Units in the One Main Street Professional Plaza Condominium are referred to as the “City Parking Spaces,” and together the City Parking Spaces and the APP Parking Spaces are referred to as the “Condo Parking Spaces.”

F. On January 30, 2019, APP notified the City of its election to exercise its rights under the Original DRA.

G. On January 31, 2019, APP assigned all of its right, title, powers and interest as Grantee under the Original DRA to Lexi, LLC, a Washington limited liability company (“Lexi”), as reflected in the Assignment of Grantee’s Interest in Development Rights Agreement recorded under King County recording number 20190131000785. On February 1, 2019, a Memorandum of Exercise of Grantee’s Rights Pursuant to Development Rights Agreement was recorded under King County recording number 201902013000726. Notwithstanding this assignment, APP retained ownership rights in the APP Parking Spaces on the Mel’s Property.

H. On January ___, 2020, Lexi and the City entered into an Amended and Restated Development Rights Agreement, which supersedes and replaces the Original DRA in its entirety.

NOW, THEREFORE, in consideration of the covenants and promises contained in this Agreement and the Amended and Restated Development Rights Agreement Lexi, APP, and the City amend the PEA as follows:

1. Section 3.1 is amended by adding the following sentences at the end of the section:

No Party shall have the right to use the Parking Spaces allocated to it in any manner that would materially impact the other Parties' use of the Grantor Property under this Easement.

2. Section 3.2 is deleted in its entirety.

3. The following new subsections are added to Article 3:

3.6 Restricted Access System. Grantor or Grantee may implement an access card, sticker or other identification or entrance system; provided (i) the access system does not restrict continuous access to the Parking Lot by the Grantee Parties designated by Grantee and (ii) if applicable, Grantor promptly provides Grantee with sufficient parking identification, key-cards, or other access devices (including temporary passes and replacements for lost or stolen identification, cards or devices) necessary for continuous access. Grantor or Grantee may impose a reasonable charge for providing identification, cards, or devices, provided that charge does not exceed the actual out-of-pocket administrative and replacement cost incurred in obtaining, operating, managing and otherwise producing such identification, cards or devices.

3.7 Other Easements. Grantor shall have the right to grant other persons easement rights on or across the Grantor Property only if those easement rights do not interfere with the easements and rights granted to Grantees under this Agreement or the rights granted to Lexi under that certain Amended and Restated Development Rights Agreement between the City of Auburn and Auburn Professional Plaza, LLC, as Grantor, and Lexi, LLC, as Grantee.

4. Article 4 is deleted in its entirety.

5. Section 6.7 is deleted in its entirety.

6. Section 7.1 is amended to delete the following words from the first sentence thereof: "or Grantor provides Substitute Property in which the Parking Spaces are in a garage".

7. Section 8.3 is deleted in its entirety and replaced with the following new Section 8.3:

8.3 Condemnation Award. Grantee and/or Unit Owners in One Main Street Professional Plaza, a Condominium, the Declaration of which was recorded under King County recording number 20100512000511, as their interests may appear, are entitled to receive and keep all damages, awards or payments resulting from any loss or damage to

Grantee's and/or Unit Owners' rights under this Agreement, as provided in this Agreement and the Amended and Restated DRA. Grantee (and/or Unit Owners) may file a separate claim with the condemning authority for any loss of or damage to Grantee's (or Unit Owners') rights under this Agreement and the Amended and Restated DRA. If the condemning authority does not enter separate awards for the taking of the Grantor Property on the one hand and the taking of the Parking Easement on the other hand, or does not allocate the award between the Grantor Property on the one hand and the Parking Easement on the other hand, Grantee and/or Unit Owners may request the court make an allocation of the award as provided in the Amended and Restated DRA.

8. Section 10.4 is deleted in its entirety and replaced with the following new Section 10.4:

10.4 Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed or two (2) business days after deposit in the U.S. mail, postage prepaid, certified or registered mail, return receipt requested at the following addresses:

APP: Auburn Professional Plaza, LLC
P.O. Box 1294
Auburn, Washington 98071-1294
Attn: President

With concurrent copies to:

Auburn Professional Plaza, LLC c/o Michael J Klein. CPA
30300 Agoura Road, Suite 270
Agoura Hills, California 91301

And to:

Auburn Professional Plaza, LLC
c/o Anthony L. Rafel, Esq.
Rafel Law Group PLLC
4126 E. Madison St. Ste. 202
Seattle, Washington 98112

City of Auburn:

City of Auburn
25 West Main Street
Auburn, Washington 98001-4998
Attention: Mayor

With concurrent copies to:

City of Auburn
25 West Main Street
Auburn, Washington 98001-4998
Attention: Director of Administration

And to:

City of Auburn
25 West Main Street
Auburn, Washington 98001-4998
Attention: City Attorney

Lexi:

Lexi, LLC
P.O. Box 1294
Auburn, Washington 98071-1294
Attn: President

With concurrent copies to:

Lexi, LLC c/o Michael John Klein. CPA
30300 Agoura Road, Suite 270
Agoura Hills, California 91301

And to:

Lexi, LLC c/o Anthony L. Rafel, Esq.
Rafel Law Group PLLC
4126 E. Madison St. Ste. 202
Seattle, Washington 98112

One Main:

One Main Street Professional Plaza Owners Association
P.O. Box 1294
Auburn, Washington 98071-1294
Attn: President

With concurrent copies to:

One Main Street Professional Plaza Owners Association
c/o Michael John Klein. CPA
30300 Agoura Road, Suite 270
Agoura Hills, California 91301

And to:

Anthony L. Rafel, Esq.
Rafel Law Group PLLC
4126 E. Madison St. Ste. 202
Seattle, Washington 98112

And to:

City of Auburn
25 West Main Street
Auburn, Washington 98001-4998
Attention: City Attorney

or to such other or additional addresses as any party may from time to time designate by providing written notice to all other parties.

9. Section 10.5 is deleted in its entirety and replaced with the following new Section 10.5:

10.5 Construction. This Agreement was negotiated, drafted, and approved by the Parties. Any rule that would otherwise require an ambiguity in this Agreement to be construed against the drafting party is waived.

10. Except as expressly modified in this Amendment, the PEA shall remain in full force and effect.

[This page ends here.]

IN WITNESS WHEREOF, the parties have duly executed this First Amendment as of the day and year first written above.

AUBURN PROFESSIONAL PLAZA LLC
a Washington limited liability company

By: Oliphant Real Estates Services, Inc.
a Washington corporation
its manager and managing member

By: _____
Jeffrey L. Oliphant, President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____

COUNTY OF _____

On _____, 2020, before me, _____, Notary Public, personally appeared Jeffrey L. Oliphant, satisfactorily proven to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which he acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

THE CITY OF AUBURN, WASHINGTON
a municipal corporation

By: _____
Nancy Backus, Mayor

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____

COUNTY OF _____

On _____, 2020, before me, _____, Notary Public, personally appeared Nancy Backus, satisfactorily proven to me to be the persons whose name is subscribed to the within instrument and acknowledged that she executed the same in her authorized capacity, and that by her signature on the instrument the person(s), or the entity upon behalf of which she acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

LEXI, LLC
a Washington limited liability company

By: Oliphant Real Estates Services, Inc.
a Washington corporation
its manager and managing member

By: _____
Jeffrey L. Oliphant, President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____

COUNTY OF _____

On _____, 2020, before me, _____, Notary Public, personally appeared Jeffrey L. Oliphant, satisfactorily proven to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which he acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

ONE MAIN STREET PROFESSIONAL PLAZA
OWNERS ASSOCIATION
a Washington corporation

By: _____
Jeffrey L. Oliphant, President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____

COUNTY OF _____

On _____, 2020, before me, _____, Notary Public, personally appeared Jeffrey L. Oliphant, satisfactorily proven to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which he acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

EXHIBIT D

[Withdrawal of Appeal and Release]

**WITHDRAWAL OF APPEAL
AND RELEASE**

For good and valuable consideration spelled out in more detail in the Amended and Restated Development Agreement between the City of Auburn, Lexi LLC, and Auburn Professional Plaza, LLC dated _____, the receipt of which is acknowledged, Lexi, LLC, its affiliates, successors, and assigns, agrees as follows:

1. Except as set forth herein, the permit applications designated on Attachment 1 hereto related to the development of parking lots on Auburn Way North, C St. NW, and A St., all in the city of Auburn, are withdrawn as of the date of this document. All other permit applications by or on behalf of Lexi, LLC on file with the City of Auburn shall remain active and shall be processed in the ordinary course of business.

2. All appeals related to the permit applications designated on Attachment 1 hereto are withdrawn, and Lexi agrees to prepare and submit a joint motion to dismiss the appeals with prejudice not later than 10 working days after the effective date of the Amended and Restated Development Rights Agreement.

3. Lexi, LLC releases and forever discharges the City, its officials, attorneys, employees, and agents from every claim, demand, and cause of action whatsoever, of every kind and nature, whether presently known or unknown, suspected or unsuspected, arising or alleged to have arisen as a result of or in connection with the permits designated on Attachment 1 hereto, whether based in tort, contract, civil rights, delay of development, and/or any other theory of recovery, and excepting only the obligations created by the Amended and Restated Development Agreement.

4. Lexi, LLC reserves the right and neither the withdrawal of the permit applications designated on Attachment 1 hereto, the dismissal of the appeals referenced in paragraph 2 hereto, nor anything herein shall prohibit Lexi, LLC from filing with the City new future applications (and associated requests for permits, variations, deviations and the like) concerning the Alley Lots and/or the C Street Parcels, that contain requests that were part of the withdrawn permit applications and dismissed appeals, and the foregoing release (Paragraph 3) shall not apply to such new future applications. Any such new future filing shall be governed by the laws and regulations in effect at the time of such filing.

Lexi, LLC by _____

Record #	Status	Result	Source	Type	Address
C Street NW Lots (Norbe+ Lots)					
FAC19-0008	REVIEW RETURNED	LEXI LLC: C STREET PARKING LOT	Project Description	FACILITYEXTEN	15 C ST NW AUBURN
MIS19-0003	IN REVIEW	LEXI, LLC: NEW SURFACE PARKING LOT	Project Description	MISCELLANEOUS	15 C ST NW AUBURN
SDR19-0005	DENIED	LEXI LLC: C STREET PARKING	Project Description	STREET DELAY REQUEST	15 C ST NW AUBURN
SDR19-0009	VOID/WITHDRAWN	LEXI, LLC: C STREET LOTS	Project Description	STREET DELAY REQUEST	15 C ST NW AUBURN
DEV19-0017	APPROVED	C ST PARKING DRIVEWAY LOCATION	Project Description	DEVIATION	15 C ST NW AUBURN
Auburn Way North Lot					
FAC19-0007	REVIEW RETURNED	LEXI LLC AUBURN WAY PARKING LOT	Project Description	FACILITYEXTEN	206 AUBURN WAY N AUBURN
MIS19-0002	IN REVIEW	LEXI, LLC: NEW SURFACE LOT PARKING	Project Description	MISCELLANEOUS	206 AUBURN WAY N AUBURN
SDR19-0004	DENIED	LEXI LLC AUBURN WAY PARKING LOT	Project Description	STREET DELAY REQUEST	206 AUBURN WAY N AUBURN
DEM19-0013	HOLD	LEXI, LLC: DEMO MULTIFAMILY BLDG & GARAGE	Permit Description	DEMOLITIO	206 AUBURN WAY N AUBURN
A Street SW Lots (Alley Lots)					
SDR19-0006	DENIED	LEXI LLC: A STREET PARKING	Project Description	STREET DELAY REQUEST	10 2ND ST SW AUBURN
FAC19-0009	REVIEW RETURNED	LEXI LLC: A-STREET PARKING LOT	Project Description	FACILITYEXTEN	222 A ST SW AUBURN
MIS19-0004	IN REVIEW	LEXI, LLC: NEW SURFACE PARKING LOT	Project Description	MISCELLANEOUS	222 A ST SW AUBURN
SEP19-0005	IN REVIEW	LEXI, LLC: NEW SURFACE PARKING LOT	Project Description	SEPADETERMINATION	222 A ST SW AUBURN
SDR19-0008	VOID/WITHDRAWN	LEXI, LLC: ALLEY LOTS	Project Description	STREET DELAY REQUEST	222 A ST SW AUBURN
DEV19-0016	DENIED	A ST PARKING DRIVEWAYS	Project Description	DEVIATION	222 A ST SW AUBURN



Memorandum

To: City Council

From: Dana Hinman, Director of Administration
Kendra Comeau, City Attorney
Doug Ruth, Assistant City Attorney

Date: January 9, 2020

Re: "Mel's Lot" – Amendments to Development and Other Agreements

Staff seeks Council's authorization for the Mayor to sign agreements amending an existing development agreement, parking easement agreement, and miscellaneous documents related to the City Hall Annex. The purpose of this memorandum is to provide background information related to these documents.

BACKGROUND

In 2009, the city entered into an agreement with Auburn Professional Plaza, LLC ("APP"). Under that agreement, APP would build what was to become the One Main Plaza Building and the City would lease certain units in that building, with an option to buy those units. Parking for the City units was provided off-site in an APP-owned parking lot at the corner of 1st Street NW and A Street NW. This is commonly referred to as the "Mel's Lot" because it was the site of the former Mel's Lumber company.

The City exercised its option to purchase in 2010. As part of that purchase, APP conveyed the Mel's Lot to the City, but kept the right to develop the lot for 10 years. The Development Rights Agreement ("DRA") gave APP two options. It could replace parking on the Mel's Lot, or it could substitute new parking, as long as the substitute parking was within 1000' of the One Main Plaza Building. The DRA requires the City to convey title of the Mel's Lot to APP once APP has met certain conditions designed to show that the City can issue Lexi permits to construct its proposed project, and that it has the financial ability to construct those projects.

APP filed certain permit applications In October 2017 to develop the Mel's Lot into a medical office building and a four-story parking structure. It filed additional permit applications through 2018.

In January 2019, APP formally notified the City that it intended to exercise its right to develop the property under the DRA, and that it was exercising Option 2, to substitute parking instead of replacing it on-site.

Meanwhile, in February 2019 Sound Transit authorized acquisition of the Mel's Lot to construct a new parking garage on that site.

Throughout 2019, APP took several actions in support of its development. It assigned its rights under the DRA to a new entity, Lexi LLC ("Lexi"). It modified its development plan to be conducted in two phases: installation of decorative railroad signs, followed by construction of the medical office building and parking garage. Lexi also filed permits for development of the substitute parking lots. These permits are in various stages of processing. Some have been approved, others are on hold pending certain appeals.

CURRENT ACTION NEEDED

The DRA requires Lexi and the City to take certain administrative actions, including amending the Development Agreement to reflect the choices made by Lexi, and to amend other related documents, such as the Parking Easement. Most of the proposed amendments are ministerial – they will just reflect the decisions Lexi has already made in exercising its development rights.

However, there are a few changes that are substantive.

1. Lexi exercised its choice to construct substitute parking off the Mel's Lot and on to two separate properties that are each within the 1000' feet allowed. With Sound Transit's clear statement that it intends to build the replacement parking in the new structure on the Mel's Lot, Lexi asks the City to allow it to withdraw that choice.
2. The Original DRA gives Lexi the sole right to negotiate terms of acquisition of the property. The parties have agreed that, while Lexi has the right to negotiate for its fee interest, both the City and APP will have the right to negotiate directly with a condemning agency any compensation that may be owed for their interests as owners of condominium units.
3. Lexi also agrees to remove the condition in both the DRA and the Parking Easement that allows it to move locate the parking on property other than the Mel's Lot.

Staff recommends Council authorize the Mayor to sign agreements necessary to amend the existing agreements.