

**City Council Meeting
January 4, 2016 - 7:00 PM
Auburn City Hall
AGENDA**

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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

- A. Miss Auburn Scholarship Program Days Proclamation
Mayor Backus to proclaim January 22 and 23, 2016 as Miss Auburn and Miss Auburn's Outstanding Teen Days in the city of Auburn.

III. APPOINTMENTS

- A. Election of Deputy Mayor
- B. Arts Commission Appointment
City Council to confirm the appointment of Trudi Moses to the Arts Commission for a three year term to expire January 31, 2018.
- C. Board and Commission Reappointments
City Council to confirm the following board and commission reappointments for three year terms ending December 31, 2018:

Airport Board
John Theisen

Arts Commission
Nancy Colson

Cemetery Board
Arnie Galli

Human Services Committee
JoAnne Walters

Parks & Recreation Board
Vicki Gilthvedt

Planning Commission

Jack Smith
Roger Lee

Salary Commission
Terry Hurlbut

IV. **AGENDA MODIFICATIONS**

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

A. **Public Hearings**

1. **Public Hearing for Right-of-Way Vacation V2-15 (Snyder)**

City Council to conduct a public hearing on the proposed vacation of right-of-way of 64th Avenue South, south of South 300th Street (Vacation V2-15)

2. **Public Hearing for Franchise Agreement No. 13-37, Amendment No. 1* (Snyder)**

City Council to conduct a public hearing on the application from T-Mobile West, LLC, for a non-exclusive franchise for the right of entry, use and occupation of certain public right(s)-of way within the city, expressly to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, upon, along and/or across those right(s)-of-way. The purpose of the public hearing is to determine public benefit and impact, applicant compliance, public right-of-way capacity to accommodate the telecommunication system, potential disruption of public right-of way, and present and future use of the public right-of-way.

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.

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 7, 2015 City Council Meeting***

B. **Minutes of the December 14, 2015 Special City Council Meeting***

C. **Claims Vouchers (Coleman)**

Claims voucher numbers 436561 through 436758 in the amount of \$4,817,116.39 and two wire transfers in the amount of \$668,673.73 and dated December 21, 2015.

D. **Claims Vouchers (Coleman)**

2015 claims voucher numbers 436760 through 436926 in the amount of \$2,618,709.34 and two wire transfers in the amount of \$146,002.97 and dated January 4, 2016.

2016 claims voucher numbers 436759 and 436927 through 436938 in the amount of \$92,765.32 and dated January 4, 2016.

E. **Payroll Vouchers (Coleman)**

Payroll check numbers 536087 through 536125 in the amount of \$952,932.59, electronic deposit transmissions in the amount of \$1,396,176.60 for a grand total of \$2,349,109.19 for the period covering November 26, 2015 to December 16, 2015.

F. **Payroll Vouchers (Coleman)**

Payroll check numbers 536126 through 536156 in the amount of \$667,926.47, electronic deposit transmissions in the amount of \$1,373,159.91 for a grand total of \$2,041,086.38 for the period covering December 17, 2015 to December 30, 2015.

G. **Public Works Project No. CP1208* (Snyder)**

City Council approve Change Order No. 2 in the amount of \$54,681.35 to Contract No. 14-10 for work on Project No. CP1208 (Sewer Pump Station Improvements)

(RECOMMENDED ACTION: City Council approve the Consent Agenda.)

VIII. UNFINISHED BUSINESS

IX. NEW BUSINESS

X. ORDINANCES

A. **Ordinance No. 6575, First Reading* (Snyder)**

An Ordinance of the City Council of the City of Auburn, Washington, amending Ordinance No. 6491 and the T-Mobile West, LLC Franchise No.13-37 to add an additional location

(RECOMMENDED ACTION: City Council adopt Ordinance No. 6575.)

B. **Ordinance No. 6576, First Reading* (Snyder)**

An Ordinance of the City Council of the City of Auburn Washington, vacating right-of-way of 64th Avenue South, south of South 300th Street, within the City of Auburn, Washington

(RECOMMENDED ACTION: City Council adopt Ordinance No. 6576.)

C. **Ordinance No. 6580, First Reading* (Snyder)**

An Ordinance of the City Council of the City of Auburn, Washington, relating to planning; adopting annual Comprehensive Plan text amendments pursuant to the provisions of RCW Chapter 36.70A

(RECOMMENDED ACTION: City Council adopt Ordinance No. 6580.)

D. **Ordinance No. 6581, First Reading* (Snyder)**

An Ordinance of the City Council of the City of Auburn, Washington, amending Sections 19.02.115, 19.02.120, 19.02.130 and 19.02.140 of the Auburn City Code relating to school impact fees

(RECOMMENDED ACTION: City Council adopt Ordinance No. 6581.)

E. **Ordinance No. 6583, Second Reading* (Snyder)**

An Ordinance of the City Council of the City of Auburn, Washington, amending Section 19.04.040 of the Auburn City Code, entitled "Assessment of Impact Fees" for the purpose of revising code language to clarify intent

(RECOMMENDED ACTION: City Council adopt Ordinance No. 6583.)

XI. **RESOLUTIONS**

A. **Resolution No. 5193* (Roscoe)**

A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to execute an Agreement between the City of Auburn and the International Association of Machinists and Aerospace Workers District Lodge No. 160

(RECOMMENDED ACTION: City Council adopt Resolution No. 5193.)

B. **Resolution No. 5195* (Roscoe)**

A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to execute an Interlocal Agreement for the EHCW VEBA Trust Cooperative

(RECOMMENDED ACTION: City Council adopt Resolution No. 5195.)

XII. **MAYOR AND COUNCILMEMBER REPORTS**

At this time the Mayor and City Council may report on their significant City-related activities since the last regular Council meeting.

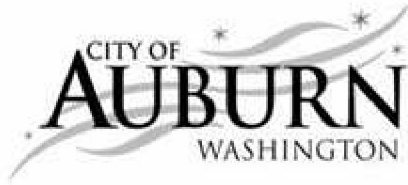
A. **From the Council**

B. **From the Mayor**

XIII. **ADJOURNMENT**

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

*Denotes attachments included in the agenda packet.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Hearing for Right-of-Way Vacation V2-15

Date:

November 24, 2015

Department:

CD & PW

Attachments:

No Attachments Available

Budget Impact:

\$0

Administrative Recommendation:

City Council to conduct a Public Hearing in consideration of Right-of-Way Vacation V2-15. For further action on this item see Ordinance No. 6576.

Background Summary:

Per Auburn City Code Chapter 12.48 a public hearing shall be held to consider the proposed right-of-way vacation for V2-15 for the right-of-way of 64th Avenue South, south of South 300th Street. The date of the public hearing was set by Resolution No. 5179 on December 7, 2015.

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

Snyder

Meeting Date: January 4, 2016

Item Number: PH.1



AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Hearing for Franchise Agreement No. 13-37,
Amendment No. 1

Date:

November 25, 2015

Department:

CD & PW

Attachments:

[T-Mobile Site Rendering](#)

Budget Impact:

\$0

Administrative Recommendation:

City Council to hold a public hearing in consideration of Franchise Agreement No. 13-37, Amendment No. 1.

Background Summary:

Per Auburn City Code Chapter 20.06.030 a public hearing shall be held to consider the proposed Franchise Agreement No. 13-37 Amendment No. 1 for T-Mobile West, LLC to operate and build a telecommunications system within the City's rights of way. The date of the public hearing was set by Resolution No. 5176 on December 7, 2015.

The attached T-Mobile Site Rendering is reflective of what T-Mobile is proposing to build in the City's right-of-way.

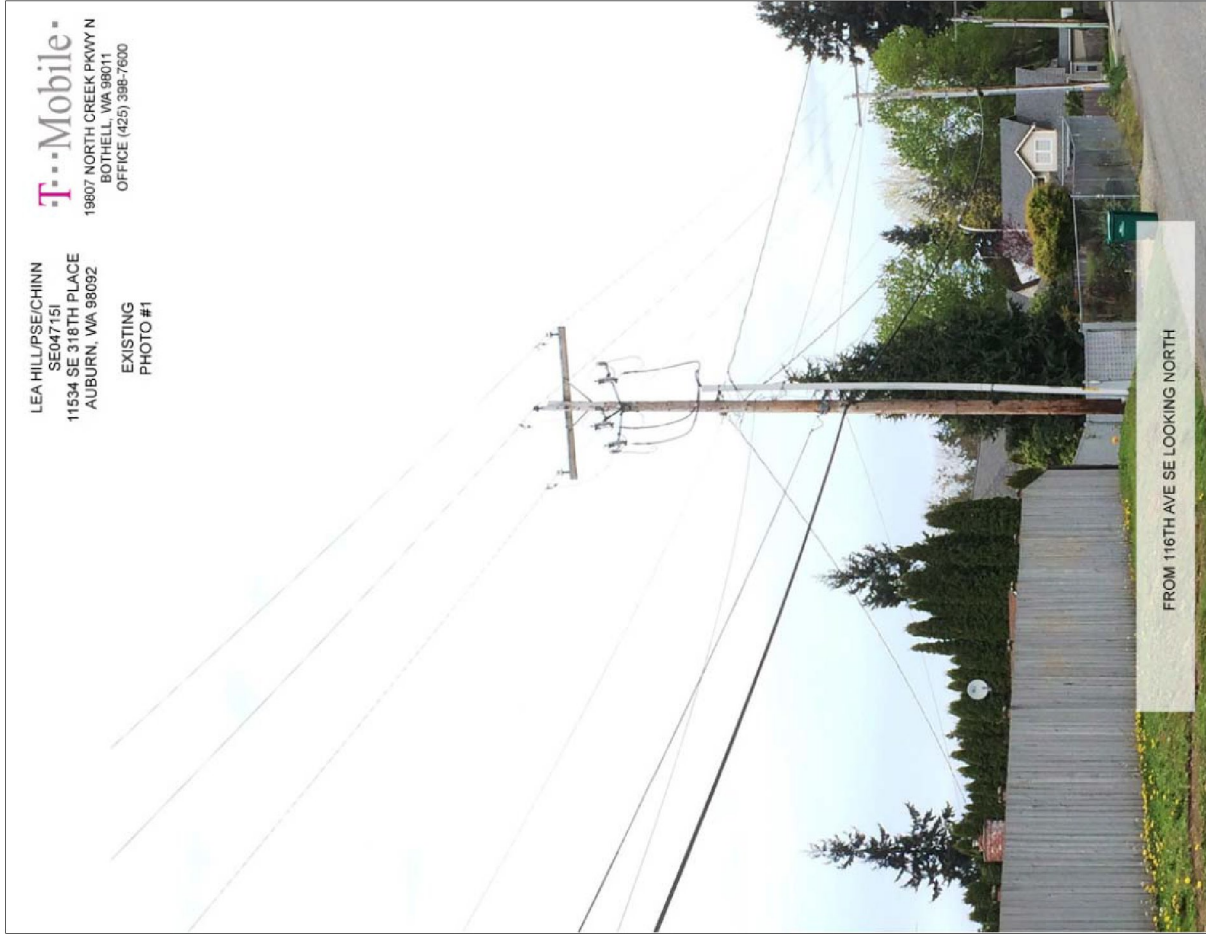
Reviewed by Council Committees:**Councilmember:****Staff:**

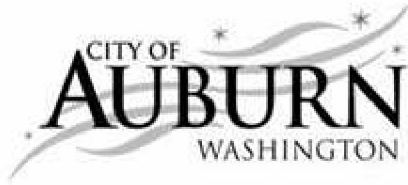
Snyder

Meeting Date: January 4, 2016

Item Number: PH.2

T-Mobile Site Rendering





AGENDA BILL APPROVAL FORM

Agenda Subject:

Minutes of the December 7, 2015 City Council Meeting

Date:

December 29, 2015

Department:

Administration

Attachments:

[Minutes](#)

Budget Impact:

\$0

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

Meeting Date: January 4, 2016

Item Number: CA.A



**City Council Meeting
December 7, 2015 - 7:00 PM
Auburn City Hall
MINUTES**

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 located in Auburn City Hall, 25 West Main Street in Auburn, and led those in attendance in the Pledge of Allegiance.

B. Roll Call

City Councilmembers present: Deputy Mayor Holman, Rich Wagner, Bill Pelosa, Largo Wales, Wayne Osborne, Claude DaCorsi and Yolanda Trout.

Department Directors and staff members present included: Parks, Arts and Recreation Director Daryl Faber, City Attorney Daniel B. Heid, Innovation and Technology Director Paul Haugan, Chief of Police Bob Lee, Human Resources and Risk Management Director Rob Roscoe, Community Development and Public Works Director Kevin Snyder, Finance Director Shelley Coleman, Director of Administration Dana Hinman, Property and Facilities Analyst Josh Arndt, Assistant Director of Engineering Services/City Engineer Ingrid Gaub, Assistant Director of Community Development Services Jeff Tate, and City Clerk Danielle Daskam.

II. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

A. Proclamation - Buy Local Campaign

Mayor Backus to proclaim November 28th - December 31st, 2015 as "Buy Local Campaign" in the City of Auburn and encourage residents to support our local retail establishments.

Mayor Backus read a proclamation declaring November 28 to December 31, 2015 as "Buy Local Campaign" in the city of Auburn and encouraged residents to support local retail and restaurant establishments during the holiday season and throughout the year.

B. Auburn Valley Humane Society Loan Repayment Presentation

Executive Director Phil Morgan, Auburn Valley Humane Society, to update the City Council on the loan repayment.

Phil Morgan, Executive Director of the Auburn Valley Humane Society (AVHS), and representatives from the AVHS Board and volunteers were in attendance to provide the City Council with an update on AVHS and significant milestones. Using PowerPoint slides, Mr. Morgan reviewed the formation of AVHS and the partnership between AVHS and the City of Auburn. In 2011, the City Council, by resolution, entered into a Professional Services Agreement with the Auburn Valley Humane Society to provide sheltering and licensing sales for lost and abandoned animals for the City of Auburn, and AVHS opened its doors to the public on January 1, 2013 at 4910 A Street SE. Mr. Morgan reviewed the animal statistics and was pleased to announce the AVHS shelter has not euthanized any adoptable animals. Volunteers are an integral part of the success of AVHS.

and AVHS volunteers have spent 76,887 hours cleaning kennels and cages, feeding and caring for animals, greeting customers, fostering animals and assisting in fundraisers and events.

Rick Oliveira, current president of the AVHS Board, shared the mission of AVHS to provide shelter, quality care and love for all lost, mistreated and abandoned animals in Auburn. AVHS utilizes all available resources to ensure each animal is placed into a loving and forever home and promotes responsible pet ownership through education and outreach.

AVHS Past President Dr. Don Edwards presented a check in the amount of \$102,548.00 check to the City as repayment of a loan for startup funds. Dr. Edwards thanked the community for their support which allowed AVHS to repay the loan one year early. Dr. Edwards thanked former Councilmember John Partridge for his work and support in creation of AVHS.

III. **APPOINTMENTS**

A. **Board and Commission Appointments**

City Council to approve the following boards and commission appointments:

Arts Commission

Heather Longhurst to be appointed to the Auburn Arts Commission for a three year term to expire December 31, 2018.

Deputy Mayor Holman moved and Councilmember Trout seconded to confirm the appointment of Heather Longhurst to the Arts Commission.

MOTION CARRIED UNANIMOUSLY. 7-0

Auburn Lodging Tax Advisory Board

Sharon Khera to be appointed to the Auburn Lodging Tax Advisory Board for a three year term to expire December 31, 2018.

Deputy Mayor Holman moved and Councilmember Osborne seconded to confirm the appointment of Sharon Khera to the Auburn Lodging Tax Advisory Board.

MOTION CARRIED UNANIMOUSLY. 7-0

Civil Service Commission

Heidi Harris to be appointed to fill the unexpired term of Roger Thordarson for a term to expire on December 31, 2016.

Deputy Mayor Holman moved and Councilmember Wales seconded to confirm the appointment of Heidi Harris to the Civil Service Commission.

MOTION CARRIED UNANIMOUSLY. 7-0

IV. **AGENDA MODIFICATIONS**

Resolution No. 5187 was added to the agenda.

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

A. **Public Hearings**

No public hearing was 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.

Virginia Haugen, 2503 R St SE, Auburn

Ms. Haugen commented that she enjoyed the Santa Parade. Ms. Haugen also commented favorably regarding the Mary Olson Farm and the Auburn Valley Humane Society.

Auburn Police Detective Doug Faini and Auburn Police Sergeant Dan O'Neill Detective Faini and Sergeant O'Neill spoke in support of Resolution Nos. 5185 and 5186, which approve the Collective Bargaining Agreements for the Auburn Police Guild and the Auburn Police Sergeants' Association for 2016-2018. They thanked Human Resources and Risk Management Director Rob Roscoe and his team for a fair collective bargaining agreement.

C. Correspondence

There was 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 recommendations to the City Council, if any.

Councilmember Wales reported on behalf of the Council ad hoc committee that reviews claims and payroll vouchers. Councilmember Wales reported Councilmember Osborne and she reviewed the claims and payroll vouchers as presented on this evening's Consent Agenda and recommends their approval.

Mayor Backus noted next year's ad hoc committee will have new membership. Councilmember Wales advised the ad hoc committee will consist of Councilmembers Trout and DaCorsi.

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 November 16, 2015 Regular City Council Meeting
- B. Minutes of the November 12, 2015 Special City Council Meeting
- C. Claims Vouchers (Coleman)
Claims voucher numbers 436310 through 436560 in the amount of \$4,091,000.02 and four wire transfers in the amount of \$1,382,110.60 and dated December 7, 2015.
- D. Payroll Vouchers (Coleman)
Payroll voucher numbers 536009 through 536086 in the amount of \$408,216.41 and electronic deposit transmissions in the amount of \$1,437,372.73 for a grand total of \$1,845,589.14 for the period covering November 12, 2015 to November 25, 2015.
- E. Public Works Project No. CP1109 (Snyder)
City Council approve Final Pay Estimate No. 3 to Contract No. 15-05 in the amount of \$159,515.80 and accept construction of Project No. CP1109 - Hi Crest Drive Storm Pipeline Repair and Replacement

Deputy Mayor Holman moved and Councilmember Osborne seconded to approve the Consent Agenda.

MOTION CARRIED UNANIMOUSLY. 7-0

VIII. UNFINISHED BUSINESS

There was no unfinished business.

IX. NEW BUSINESS

There was no new business.

X. ORDINANCES

- A. Ordinance No. 6570, Second Reading (Coleman)
An Ordinance of the City Council of the City of Auburn, Washington, amending Ordinance No. 6533, the 2015-2016 Biennial Budget ordinance, as amended by Ordinance No. 6558 and Ordinance No. 6563, authorizing amendment to the City of Auburn 2015-2016 budget as set forth in Schedule "A" and Schedule "B"
First reading of Ordinance No. 6570 occurred on November 16, 2015.

MOTION TO ADOPT ORDINANCE NO. 6570 CARRIED UNANIMOUSLY. 7-0

- B. Ordinance No. 6571, Second Reading (Coleman)
An Ordinance of the City Council of the City of Auburn, Washington, amending Ordinance No. 6533, the 2015-2016 Biennial Budget ordinance, as amended by Ordinance No. 6558, Ordinance No. 6563, and Ordinance No. 6570, authorizing amendment to the City of Auburn 2015-2016 Budget as set forth in Schedule "A" and Schedule "B"

The first reading of Ordinance No. 6571 occurred on November 16, 2015.

MOTION TO ADOPT ORDINANCE NO. 6571 CARRIED UNANIMOUSLY. 7-0

- C. Ordinance No. 6582, First Reading (Snyder)
An Ordinance of the City Council of the City of Auburn, Washington, amending Section 10.41.020 of the Auburn City Code, entitled "Restricted Parking Zone Established" for the purpose of revising code language to clarify intent

Deputy Mayor Holman moved and Councilmember Pelozo seconded to adopt Ordinance No. 6582.

Councilmember Osborne moved and Councilmember Wagner seconded to table Ordinance No. 6582 and refer it to a Council study session.

MOTION CARRIED UNANIMOUSLY. 7-0

- D. Ordinance No. 6583, First Reading (Snyder)
An Ordinance of the City Council of the City of Auburn, Washington, amending Section 19.04.040 of the Auburn City Code, entitled "Assessment of Impact Fees" for the purpose of revising code language to clarify intent

Deputy Mayor Holman moved and Councilmember Wales seconded to adopt Ordinance No. 6583.

- E. Ordinance No. 6584, First Reading (Snyder)
An Ordinance of the City Council of the City of Auburn, Washington, adopting the 2015 City of Auburn Comprehensive Plan

Deputy Mayor Holman moved and Councilmember DaCorsi seconded to adopt Ordinance No. 6584.

Councilmember Wales noted some schools were inadvertently omitted from the document.

Councilmember Peloza noted page 491 includes the term "marketing director" which should be replaced with "appropriate responsible person".

Director Snyder stated he will provide the working matrixes, that were provided to Planning Commission members, to Councilmembers for their information.

Councilmember Osborne commended staff for their work on the Plan.

Deputy Mayor Holman advised he received copies of two letters from the Puget Sound Regional Council commending Auburn staff for the Plan document.

XI. RESOLUTIONS

A. Resolution No. 5176 (Snyder)

A Resolution of the City Council of the City of Auburn, Washington, setting a public hearing to consider an amendment to Franchise Agreement No. 13-37 Ordinance No. 6491 with T-Mobile West LLC to add an additional location

Councilmember Osborne moved and Councilmember Trout seconded to adopt Resolution No. 5176.

Councilmember Osborne advised the Resolution sets a public hearing on January 4, 2016 on the request of T-Mobile to erect an antenna on a 74-foot pole.

MOTION CARRIED UNANIMOUSLY. 7-0

B. Resolution No. 5179 (Snyder)

A Resolution of the City Council of the City of Auburn, Washington, setting a public hearing to consider the vacation of right-of-way of 64th Avenue South, South of South 300th Street, within the City of Auburn, Washington

Councilmember Osborne moved and Councilmember DaCorsi seconded to adopt Resolution No. 5179.

Councilmember Osborne advised the Resolution sets a date for a public hearing on a vacation petition.

MOTION CARRIED UNANIMOUSLY. 7-0

C. Resolution No. 5181 (Heid)

A Resolution of the City Council of the City of Auburn, Washington, amending the City of Auburn Fee Schedule to adjust for 2016 fees

Deputy Mayor Holman moved and Councilmember Peloza seconded to adopt Resolution No. 5181.

MOTION CARRIED UNANIMOUSLY. 7-0

D. Resolution No. 5185 (Roscoe)

A Resolution of the City Council of the City of Auburn, Washington, approving the Collective Bargaining Agreement between the City of Auburn and the Auburn Police Guild for 2016-2018

Councilmember Wales moved and Deputy Mayor Holman seconded to adopt Resolution No. 5185.

Councilmember Wales expressed appreciation to Human Resources and Risk Management Director Roscoe for professional representation of administration throughout the negotiation of the contract.

Councilmember DaCorsi expressed appreciation and gratitude to the Auburn police officers.

MOTION CARRIED UNANIMOUSLY. 7-0

- E. Resolution No. 5186 (Roscoe)
A Resolution of the City Council of the City of Auburn, Washington, approving the Collective Bargaining Agreement between the City of Auburn and the Auburn Police Sergeants' Association for 2016-2018

Councilmember Wales moved and Councilmember Trout seconded to adopt Resolution No. 5186.

Councilmember Wales spoke in support of the Resolution and thanked Human Resources and Risk Management Director Roscoe and Auburn Police for their leadership.

MOTION CARRIED UNANIMOUSLY. 7-0

- F. Resolution No. 5187
A Resolution of the City Council of the City of Auburn, Washington, establishing a moratorium on acceptance or processing of applications and other licenses, permits and approvals for residential uses in property within the C-1, Light Commercial Zone

Resolution No. 5187 was added to the agenda.

Councilmember Pelosa moved and Deputy Mayor Holman seconded to adopt Resolution No. 5187.

Director Snyder explained the Resolution would establish a one-year moratorium on the acceptance and processing of applications, licenses and other associated applications for residential uses in the C-1, Light Commercial Zone. Director Snyder reported over the last year, staff members have received applications for residential uses in the C-1 Zone and through that effort, staff members have had internal conversations and consultations with the Mayor about the continued appropriateness of residential uses in the C-1 Zone. The City currently has 261 parcels assigned the C-1 zoning designation.

Councilmember Wagner expressed support for the moratorium. He suggested staff emphasize that the moratorium would not affect current applications.

Deputy Mayor Holman stated he was hesitant to support the moratorium at first; however, since the moratorium affects only residential uses in a C-1 zone and with the assurance the moratorium will likely last less than a year, he will support the Resolution.

MOTION CARRIED UNANIMOUSLY. 7-0

- G. Resolution No. 5188 (Mayor Backus)

A Resolution of the City Council of the City of Auburn, Washington, updating the City of Auburn's vision statement and mission statement and establishing the City of Auburn's Core Values

Councilmember Wales moved and Councilmember DaCorsi seconded to adopt Resolution No. 5188.

MOTION CARRIED UNANIMOUSLY. 7-0

- H. Resolution No. 5189 (Snyder)
A Resolution of the City Council of the City of Auburn, Washington, dedicating property acquired by the City of Auburn for the S. 277th Reconstruction Project as right-of-way

Deputy Mayor Holman moved and Councilmember Osborne seconded to adopt Resolution No. 5189.

MOTION CARRIED UNANIMOUSLY. 7-0

- I. Resolution No. 5190 (Roscoe)
A Resolution of the City Council of the City of Auburn, Washington, approving the Collective Bargaining Agreement between the City of Auburn and the Auburn Police Management Association for 2016-2018

Councilmember Osborne moved and Deputy Mayor Holman seconded to adopt Resolution No. 5190.

Councilmember Osborne advised Resolution No. 5190 approves a Collective Bargaining Agreement with the Police Commanders.

MOTION CARRIED UNANIMOUSLY. 7-0

- J. Resolution No. 5191 (Snyder)
A Resolution of the City Council of the City of Auburn, Washington, authorizing the City to expend funds to abate the litter, junk, weeds and attractive nuisance in the City of Auburn and authorizing steps to recover the City's costs thereof

Councilmember Peloza moved and Councilmember Trout seconded to adopt Resolution No. 5191.

Councilmember Peloza stated code enforcement has identified four properties that require abatement of litter, junk, weeds, inoperable vehicles, and attractive nuisances.

MOTION CARRIED UNANIMOUSLY. 7-0

XII. MAYOR AND COUNCILMEMBER REPORTS

At this time the Mayor and City Council may report on their significant City-related activities since the last regular Council meeting.

A. From the Council

Councilmember DaCorsi reported on his attendance at the Association of Washington Cities (AWC) Legislative Priorities Committee, where the Committee re-emphasized the AWC city priorities for the 2016 legislative session: infrastructure, sustainability, emergency responsiveness, the Public Records Act, human services/homelessness and affordable housing.

Councilmember Peloza reported he attended the South County Area

Transportation Board meeting.

Councilmember Trout reported she attended the Domestic Violence Initiative Regional Task Force meeting. The Task Force will be changing its name to the Coalition Ending Gender Bias Violence.

Councilmember Osborne thanked the Council and citizens for the opportunity to serve the citizens of Auburn for the last four years on the City Council. Councilmember Osborne also thanked City staff for the work they do for the City. Councilmember Osborne thanked Mayor Backus and Councilmembers for their assistance, guidance and friendship.

B. From the Mayor

Mayor Backus reported on her attendance at the Lakeview Elementary DARE graduation, the Sound Cities Association annual meeting, the Lakeland Elementary DARE graduation, the Tree Lighting and Santa Parade, and emceed the Red, White and Blue Concert at the Performing Arts Center.

Mayor Backus thanked Councilmember Osborne for his service on the Council and his past service on the Planning Commission and Airport Advisory Board. Mayor Backus expressed her appreciation to Councilmember Osborne for his time dedicated to the citizens of Auburn.

XIII. ADJOURNMENT

There being no further business, the meeting adjourned at 8:16 p.m.

APPROVED this 4th day of January, 2016.

NANCY BACKUS, MAYOR

Danielle Daskam, City Clerk



AGENDA BILL APPROVAL FORM

Agenda Subject:

Minutes of the December 14, 2015 Special City Council Meeting

Date:

December 23, 2015

Department:

Administration

Attachments:

[12-14-2015 Special Meeting Minutes](#)

Budget Impact:

\$0

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

Meeting Date: January 4, 2016

Staff:

Item Number: CA.B



**Special City Council Meeting
December 14, 2015 - 5:30 PM
Auburn City Hall
MINUTES**

I. CALL TO ORDER

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

City Councilmembers present: Deputy Mayor John Holman, Rich Wagner, Bill Peloza, Largo Wales, Wayne Osborne, Yolanda Trout and Claude DaCorsi.

Department Directors and staff members present included: City Attorney Daniel B. Heid, Community Development and Public Works Director Kevin Snyder, Assistant Director of Engineering Services/City Engineer Ingrid Gaub, Assistant Director of Community Development Services Jeff Tate, Planning Services Manager Jeff Dixon, Utilities Engineering Manager Lisa Tobin, Water Utility Engineer Susan Fenhaus, Code Compliance Officer Jason Arbogast, Code Compliance Officer Chris Barack, Code Compliance Officer Tami Kapule, Parks, Arts and Recreation Director Daryl Faber, Innovation and Technology Director Paul Haugan, Director of Administration Dana Hinman, Police Chief Bob Lee, Police Sergeant Dan O'Neil, Police Officer Jason Blake, Finance Director Shelley Coleman, and Deputy City Clerk Shawn Campbell.

II. ACTION

A. Ordinance No. 6584 (Second Reading) (Snyder)

An Ordinance of the City Council of the City of Auburn, Washington, adopting the 2015 City of Auburn Comprehensive Plan

Assistant Director Tate explained the City is required to update the Comprehensive Plan. The City has chosen to overhaul the entire plan to make it a more readable, usable focused document. Many jurisdictions hire consultants to update their Comprehensive Plan, the City chose to update this plan in-house. City staff has been working on this update for over two years, including 16 different authors within the City, input from every department and Planning Commissioners.

Mayor Backus thanked staff for their time and effort on this Comprehensive Plan update.

MOTION CARRIED. 7-0

B. Public Works Project No. C207A (Snyder)

City Council approve Final Pay Estimate No. 6 to Small Works Contract No. 14-17 in the amount of \$2,308.50 and accept construction of Project No. C207A, A Street NW Extension Offsite Wetland Mitigation Project – Phase 2 Planting

Councilmember Osborne moved and Councilmember Wales seconded to accept final Pay Estimate No. 6 for Small Works Contract No. 14-17 and to

Page 1 of 2

accept Public Works Project No. C207A.

Councilmember Pelosa asked what the scope of work was for this project. Assistant Director Gaub explained when the project was started the contractor did the initial planting. Now that the project is complete the contractor is required to do a second phase of planting. The second phase included items that are more ground cover or plants that need shade provided by the first planting.

MOTION CARRIED. 7-0

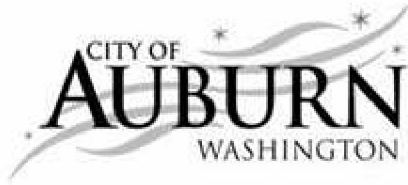
III. ADJOURNMENT

There being no further business to come before the Council, the meeting adjourned at 5:39 p.m.

APPROVED this 4th day of January, 2016.

NANCY BACKUS, MAYOR

Shawn Campbell, Deputy City Clerk



AGENDA BILL APPROVAL FORM

Agenda Subject:

Claims Vouchers

Date:

December 17, 2015

Department:

Finance

Attachments:

No Attachments Available

Budget Impact:

\$0

Administrative Recommendation:

City Council approve claims vouchers.

Background Summary:

Claims voucher numbers 436561 through 436758 in the amount of \$4,817,116.39 and two wire transfers in the amount of \$668,673.73 and dated December 21, 2015.

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

Coleman

Meeting Date: January 4, 2016

Item Number: CA.C



AGENDA BILL APPROVAL FORM

Agenda Subject:

Claims Vouchers

Date:

December 29, 2015

Department:

Finance

Attachments:

No Attachments Available

Budget Impact:

\$0

Administrative Recommendation:

City Council approve claims vouchers.

Background Summary:

2015 claims voucher numbers 436760 through 436926 in the amount of \$2,618,709.34 and two wire transfers in the amount of \$146,002.97 and dated January 4, 2016.

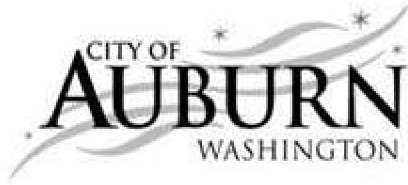
2016 claims voucher numbers 436759 and 436927 through 436938 in the amount of \$92,765.32 and dated January 4, 2016.

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

Coleman

Meeting Date: January 4, 2016

Item Number: CA.D



AGENDA BILL APPROVAL FORM

Agenda Subject:

Payroll Vouchers

Date:

December 17, 2015

Department:

Finance

Attachments:

No Attachments Available

Budget Impact:

\$0

Administrative Recommendation:

City Council to approve payroll vouchers

Background Summary:

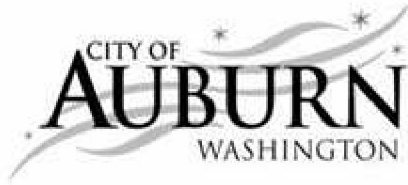
Payroll check numbers 536087 through 536125 in the amount of \$952,932.59, electronic deposit transmissions in the amount of \$1,396,176.60 for a grand total of \$2,349,109.19 for the period covering November 26, 2015 to December 16, 2015.

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

Coleman

Meeting Date: January 4, 2016

Item Number: CA.E



AGENDA BILL APPROVAL FORM

Agenda Subject:

Payroll Vouchers

Date:

December 29, 2015

Department:

Administration

Attachments:

No Attachments Available

Budget Impact:

\$0

Administrative Recommendation:

City Council to approve payroll vouchers

Background Summary:

Payroll check numbers 536126 through 536156 in the amount of \$667,926.47, electronic deposit transmissions in the amount of \$1,373,159.91 for a grand total of \$2,041,086.38 for the period covering December 17, 2015 to December 30, 2015.

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

Coleman

Meeting Date: January 4, 2016

Item Number: CA.F



AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Works Project No. CP1208

Date:

December 21, 2015

Department:

CD & PW

Attachments:

[Improvement Matrix](#)

[Vicinity Map](#)

[CP1208 Budget Status Sheet](#)

Budget Impact:

\$0

Administrative Recommendation:

City Council approve Change Order No. 2 in the amount of \$54,681.35 to Contract No. 14-10 for work on Project No. CP1208 (Sewer Pump Station Improvements)

Background Summary:

This project is constructing various improvements to 11 City sanitary sewer pump stations that include upgrading the ability of maintenance staff to access and maintain wet wells, installation of new back-up generator systems, site improvements such as fencing, lighting, and equipment shelters, and establishment of cathodic protection systems. See the attached Improvement Matrix for specific improvements at each sewer pump station site.

This change order includes the following work: 1) Work needed to address the Department of Labor and Industry's (L&I) comments made during its inspection of the completed project work that were unforeseeable at the time of bidding. 2) Installation of a specialized connector at the R Street Pump Station to allow a portable generator to be plugged in for added emergency power protection. 3) Completion of the contract work required disturbance of a larger area than originally anticipated. Change order includes additional asphalt paving and sidewalk replacement to address those areas.

A project increase of \$38,998.00 within the 431 Sewer Fund will be necessary, however it will not require a budget adjustment due to contingency funds that are available to be transferred from Project No. CP1512, 2015 Sewer Repair and Replacement.

Reviewed by Council Committees:

Councilmember:

Staff:

Snyder

Meeting Date: January 4, 2016

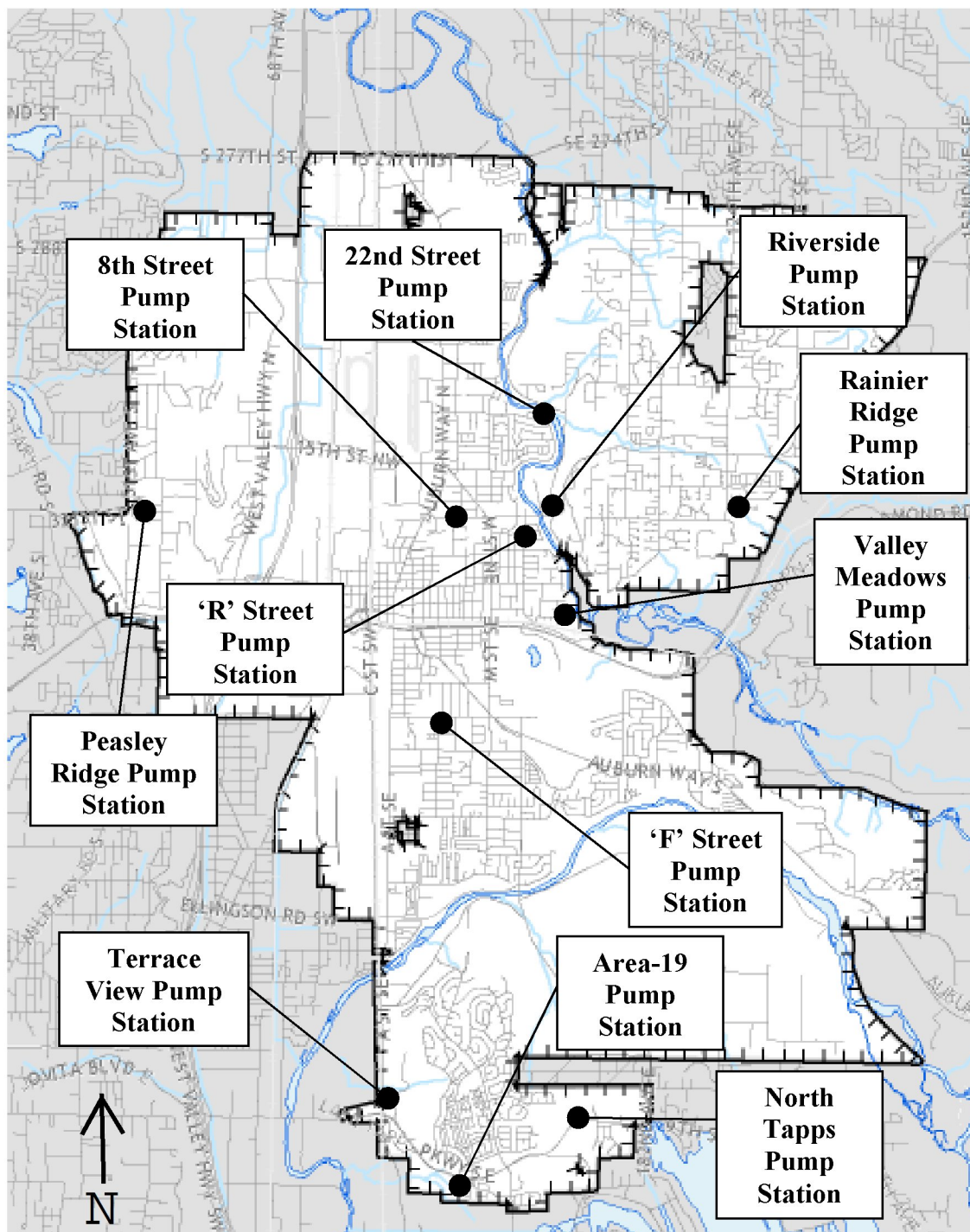
Item Number: CA.G

CP1208
Sewer Pump Station Improvement Matrix

	Generator System	Cathodic Protection System	Wet Well Access Improvements	Site Improvements		
				Fencing	Shelter	Lighting
22nd Street NE	X	X	X	X	X	X
8th Street NE	X	X	X	X	X	X
Area 19		X				
F Street SE		X	X			
North Tapps		X				
Peasley Ridge		X				
R Street NE	X	X	X	X	X	X
Rainier Ridge		X	X			
Riverside		X				
Terrace View		X				
Valley Meadows	X	X	X	X	X	X

Sewer Pump Station Improvements Project

Vicinity Map



BUDGET STATUS SHEET

Project No: CP1208 **Project Title:** Sewer Pump Station Improvements Project

Project Manager: Joel Chalmers

Initiation Date: 9/3/13
 Advertisement Date: 8/26/14
 Award Date: 9/15/14

- ☐ Project Initiation

☐ Permission to Advertise

☐ Contract Award

☒ Change Order #2

☐ Contract Final Acceptance

Date: December 17, 2015

The "Future Years" column indicates the projected amount to be requested in future budgets.

Funds Budgeted (Funds Available)

Funding	Prior Years	2014 (Actual)	2015	Total
431 Fund - Sewer	109,153	92,801	1,229,047	1,431,001
Total	109,153	92,801	1,229,047	1,431,001

Estimated Cost (Funds Needed)

Activity	Prior Years	2014	2015	Total
Design Engineering - City Costs	39,477	47,470	22	86,970
Design Engineering - Consultant Costs	69,675	24,650	2,854	97,179
Construction Contract Bid		0	1,089,274	1,089,274
Authorized Contingency		0	20,000	20,000
Change Order No. 1		0	22,843	22,843
Change Order No. 2			54,681	54,681
Easement Acquisition		3,237	0	3,237
Construction Other - Misc.			8,849	8,849
Construction Engineering - City Costs		17,444	57,523	74,967
Construction Engineering - Consultant Costs		0	12,000	12,000
Total	109,153	92,801	1,268,046	1,470,000

431 Sewer Budget Status

	Prior Years	2014	2015	Total
*431 Funds Budgeted ()	(109,153)	(92,801)	(1,229,047)	(1,431,001)
431 Funds Needed	109,153	92,801	1,268,046	1,469,999
*431 Fund Project Contingency ()	(0)	0	0	0
431 Funds Required	0	0	38,999	38,998

* (#) in the Budget Status Sections indicates Money the City has available.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6575, First Reading

Date:

December 3, 2015

Department:

CD & PW

Attachments:

[Ordinance No. 6575](#)

[Ordinance No. 6491](#)

[Drawing A-2 SE04715I](#)

Budget Impact:

\$0

Administrative Recommendation:

City Council adopt Ordinance No. 6575.

Background Summary:

Per Auburn City Code Chapter 20.06.120, Amendment of franchise, a new franchise application shall be required of any commercial utility or telecommunications carrier or operator that desires to extend its franchise territory or to locate its utility or telecommunications facilities in public ways of the city which are not included in a franchise previously granted under this title.

T-Mobile West, LLC has applied for an amendment to their existing Franchise Agreement to be able to operate and build within the City's rights of way an additional wireless telecommunications facility adjacent to 11534 SE 318th Place. The applicant proposes to replace the existing 33'8" wood Puget Sound Energy (PSE) pole located in the City right of way on 116th Avenue SE with a new 54' PSE pole that they would then attach wireless transmission antennas to. In addition, the facilities would also include underground conduits connecting the equipment on the pole to associated ground equipment located on private property at 11534 SE 318th Place. Per T-Mobile's application, this new site will provide much needed in-building coverage in the area of 116th Avenue SE and SE 320th Street and the surrounding neighborhoods. Exact locations, plans, engineering and construction schedule would be reviewed, approved and managed through the City's permitting processes that are a requirement of the existing Franchise Agreement.

A Public Hearing will be held January 4, 2016 on this amendment. Public notices of the hearing were mailed to properties within 1000 feet of the proposed pole location.

Reviewed by Council Committees:

Councilmember:

Staff: Snyder

Meeting Date: January 4, 2016

Item Number: ORD.A

ORDINANCE NO. 6575

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON, AMENDING ORDINANCE NO.
6491 AND THE T-MOBILE WEST, LLC FRANCHISE NO.13-
37 TO ADD AN ADDITIONAL LOCATION

WHEREAS, On February 18, 2014, the City Council adopted Ordinance No. 6491, granting a wireless communications franchise to T-Mobile West, LLC ("Grantee"); and

WHEREAS, T-Mobile West LLC wishes to add an additional site within the City; and

WHEREAS, following proper notice, the City Council held a public hearing on the Grantee's request for an Amendment to Franchise Agreement No. 13-37, at which time representatives of Grantee and interested citizens were heard in a full public proceeding affording opportunity for comment by any and all persons desiring to be heard; and

WHEREAS, based upon the foregoing recital clauses and from information presented at such public hearing and from facts and circumstances developed or discovered through independent study and investigation, the City Council in compliance with RCW 35.99 now deems it appropriate and in the best interest of the City and its inhabitants that the Amendment to Franchise Agreement No. 13-37 be granted to the Grantee.

Ordinance No. 6575
Franchise Agreement No. 13-37, Amendment No. 1
October 1, 2015
Page 1 of 6

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

Section 1. Exhibits A and B of Ordinance No. 6491 are hereby replaced with Exhibits A and B, attached hereto and incorporated herein by this reference, and a new Exhibit D-1 is added as an Exhibit to Ordinance No. 6491, which additional Exhibit is also attached hereto and incorporated herein by this reference.

Section 2. All other provisions of Ordinance No. 6491 shall remain unchanged and in full force and effect.

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

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

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

FIRST READING: _____

SECOND READING: _____

PASSED: _____

APPROVED: _____

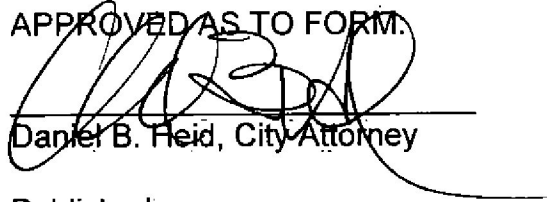
Ordinance No. 6575
Franchise Agreement No. 13-37, Amendment No. 1
October 1, 2015
Page 2 of 6

NANCY BACKUS, MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

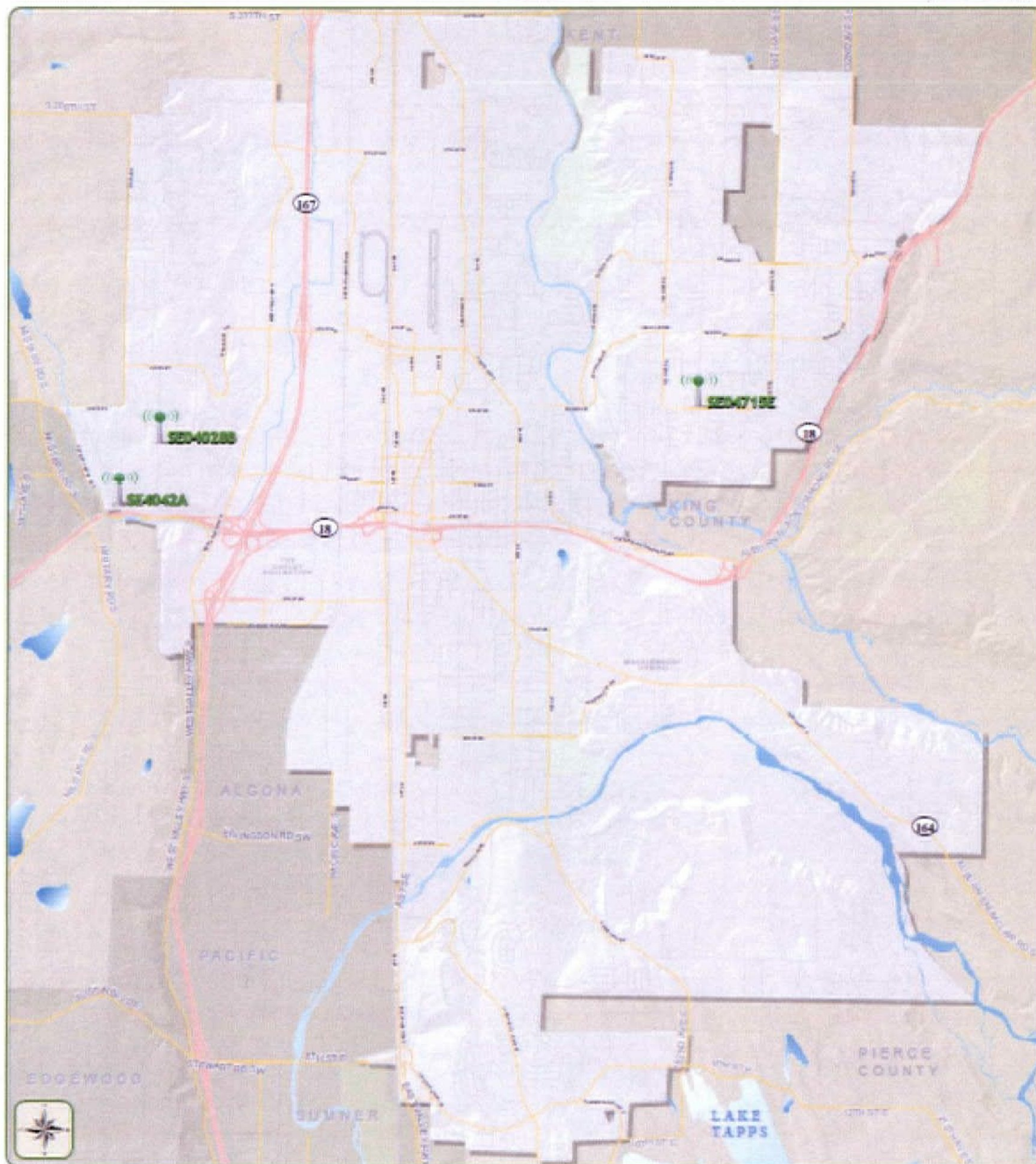


Daniel B. Heid, City Attorney

Published: _____

Ordinance No. 6575
Franchise Agreement No. 13-37, Amendment No. 1
October 1, 2015
Page 3 of 6

Exhibit "A" - T-Mobile Franchise Area



T-Mobile Facilities	Hydrology	Political Boundaries	Transportation
SE040288	Streams	City of Auburn	Arterials
SE04042A	Lakes and Rivers	Surrounding Cities	Highways
SE04719E		King and Pierce Counties	Locals

Printed On: 3/8/2015
Map ID: 4327

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.

Ordinance No. 6575
Franchise Agreement No. 13-37, Amendment No. 1
October 1, 2015
Page 4 of 6

EXHIBIT "B"

GRANTEE FACILITIES

EXISTING T-MOBILE FACILITIES IN CITY OF AUBURN ROW

Site ID: SE4042A, "Peasley Canyon"
Location: 33043 46th Place South
Auburn, WA 98001
Description: Telecommunications Facility consisting of above ground radio equipment cabinets located in a 12'x17' cedar wood fence enclosure in the Right-of-Way (ROW), with antennas collocated on an existing 88' above-ground wooden utility pole in the ROW with connecting underground conduit.

Site ID: SE04028B, Mountain View Cemetery/PR
Location: 5605 S 324th Place
Auburn, WA 98001
Description: Telecommunications Facility consisting of antennas located on an existing 75' above-ground round wood utility pole in the Right of Way with connecting underground conduit to the radio equipment cabinets located on adjacent private property.

NEW T-MOBILE FACILITIES IN CITY OF AUBURN ROW

Site ID: SE04715I, Lea Hill
Location: 11534 SE 318th Place
Auburn, WA 98092
Description: Telecommunications Facility consisting of antennas located on a new utility replacement pole in the Right of Way with connecting underground conduit to ground equipment located on private property.

EXHIBIT "D-1"

STATEMENT OF ACCEPTANCE

T-Mobile West LLC, a Delaware limited liability company, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

T-Mobile West LLC,
a Delaware limited liability company

By: _____ Date: _____
Name:
Title: PNW Area Director, Engineering &
Operations

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this ____ day of _____, 201_, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of T-Mobile West LLC, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

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

Signature

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

MY COMMISSION EXPIRES: _____

Ordinance No. 6575
Franchise Agreement No. 13-37, Amendment No. 1
October 1, 2015
Page 6 of 6

ORDINANCE NO. 6491

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO T-MOBILE WEST LLC, A DELAWARE LIMITED LIABILITY COMPANY, A FRANCHISE FOR TELECOMMUNICATIONS

WHEREAS, T-Mobile West LLC, a Delaware limited liability company("Grantee") has applied to the City of Auburn ("City") for a non-exclusive Franchise for the right of entry, use, and occupation of certain public right(s)-of-way within the City, expressly to install, construct, erect, operate, maintain, modify, repair, relocate and remove its facilities in, on, over, under, along and/or across those right(s)-of-way ("Franchise"); and

WHEREAS, with respect to some of these facilities, they were previously installed the public rights of ways with the permission of King County, which managed those right(s)-of-way prior to the annexation of those rights of way into the City of Auburn; and

WHEREAS, following proper notice, the City Council held a public hearing on Grantee's request for a Franchise, at which time representatives of Grantee and interested citizens were heard in a full public proceeding affording opportunity for comment by any and all persons desiring to be heard; and

WHEREAS, with respect to those facilities previously installed by authorization of King County, this agreement supersedes and replaces all agreements between Grantee and King County; and

WHEREAS, based upon the foregoing recital clauses, and from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the City Council in compliance with RCW 35.99 now deems it appropriate and in the best interest of the City and its inhabitants that the franchise be granted to Grantee.

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

Section 1. Grant of Right to Use Franchise Area

A. Subject to the terms and conditions stated herein, pursuant to RCW 35.99 the City grants to the Grantee general permission to enter, use, and occupy the public right(s)-of-way of the City. However, Grantee shall not extend its occupation of the public rights of way beyond the two facilities that presently

occupy the rights of way as specified in Exhibit "A", attached hereto and incorporated by reference (the "Franchise Area"), without having first obtained an amendment to this agreement and site specific permits from the City authorizing Grantee to install telecommunications equipment at such other locations than specified in Exhibit "A".

B. This Franchise does not authorize the use of the public rights of ways for any facilities or services other than for wireless telecommunications facilities.

C. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including Franchises, impacting the Franchise Area, unless the City determines that entering into such agreements interferes with Grantee's rights set forth herein.

D. Except as explicitly set forth herein, this Franchise does not waive any rights that the City has or may hereafter acquire with respect to City rights-of-way. This Franchise shall be subject to the power of eminent domain, and in any proceeding under eminent domain, Grantee acknowledges that the City has the power of eminent domain and that Grantee's remedies in the event of the exercise of such power are set forth in RCW 35.99 and other applicable law.

E. The City reserves the right to change, regrade, relocate, abandon, or vacate any public right-of-way. If, at any time during the term of this Franchise, the City vacates any portion of the rights of way containing Grantee Facilities, the City shall reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which the Grantee may continue to operate any existing Grantee Facilities under the terms of this Franchise for the remaining period set forth under Section 3.

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

Section 2. Notice

A. Except as defined in the respective filing and emergency work provisions of Sections 5 and 7 herein, all notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. City or Grantee may from time to time

designate any other address for this purpose by providing written notice to the other party effective thirty (30) days after the provision thereof.

City: City of Auburn
Engineering Aide, Transportation
25 West Main Street
Auburn, WA 98001-4998
Telephone: (253) 931-3010; Fax: (253) 931-3048

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

Grantee: T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attention: Lease Compliance/ City of Auburn Franchise

B. Any changes to the above-stated Grantee information shall be sent to the City, referencing the title of this agreement.

C. The above-stated voice and fax telephone numbers shall be staffed at least during normal business hours, Pacific time zone.

Section 3. Term of Agreement

A. This Franchise shall run for a period of five (5) years, from the date of execution specified in Section 5.

B. **Renewal Option of Term:** The Grantee may renew this Franchise for an additional five (5) year period upon submission and approval of the application specified under ACC 20.06.130, as it now exists or is amended, within the timeframe set forth therein (currently 240 to 180 days prior to expiration of the then-current term), which approval shall not be unreasonably withheld, conditioned or delayed. Any materials submitted by the Grantee for a previous application may be considered by the City in reviewing a current application, and the Grantee shall only submit those materials reasonably deemed necessary by the City to address changes in the Grantee Facilities or Grantee Services, or to reflect specific reporting periods mandated by the ACC.

C. Failure to Renew Franchise – Automatic Extension. If the Parties fail to formally renew this Franchise prior to the expiration of its term or any extension thereof, the Franchise automatically continues month to month until renewed or until either party gives written notice at least one hundred eighty (180) days in advance of the intent not to renew the Franchise.

Section 4. Definitions

For the purpose of this agreement:

“ACC” means the Auburn City Code.

“Emergency” means a condition of imminent danger to the health, safety and welfare of persons or property located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots, acts of terrorism or wars.

“Maintenance or Maintain” shall mean examining, testing, inspecting, repairing, maintaining, modifying and/or replacing the existing Grantee Facilities or any part thereof as required and necessary for safe operation.

“Relocation” means permanent movement of Grantee facilities required by the City, and not temporary or incidental movement of such facilities, or other revisions Grantee would accomplish and charge to third parties without regard to municipal request.

“Rights-of-Way” means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, and easements, owned or controlled by the City.

Section 5. Acceptance of Franchise

A. This Franchise, and any rights granted hereunder, shall not become effective for any purpose unless and until Grantee files with the City Clerk (1) the Statement of Acceptance, attached hereto as Exhibit “D,” and incorporated by reference, (2) all verifications of insurance coverage specified under Section 15, and (3) the financial guarantees specified in Section 16 (collectively, “Franchise Acceptance”). The date that such Franchise Acceptance is filed with the City Clerk shall be the effective date of this Franchise.

B. Should the Grantee fail to file the Franchise Acceptance with the City Clerk within thirty (30) days after the effective date of the ordinance approving the Franchise, the City’s grant of the Franchise will be null and void.

Section 6. Construction and Maintenance

A. The Grantee shall apply for, obtain, and comply with the terms of all permits required under ACC Chapter 12.24 for any work done upon Grantee Facilities. Grantee shall comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work, which shall be done in a thorough and proficient manner.

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

C. The City expressly reserves the right to prescribe how and where Grantee Facilities shall be installed within the public right-of-way and may from time to time, pursuant to the applicable sections of this Franchise, require the removal, relocation and/or replacement thereof in the public interest and safety in compliance with applicable law.

D. Before commencing any work involving excavation within the public right-of-way, the Grantee shall comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.

E. Tree Trimming. Upon prior written approval of the City and in accordance with City ordinances, Grantee shall have the authority to reasonably trim trees upon and overhanging streets, public rights-of-way, and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with the Grantee Facilities. Grantee shall be responsible for debris removal from such activities. If such debris is not removed within twenty-four (24) hours of completion of the trimming, the City may, at its sole discretion, remove such debris and charge Grantee for the cost thereof. This section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require an additional and separate approval from the City.

Section 7. Access, Repair and Emergency Work

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

any emergency or after normal business hour issues involving the Grantee's facilities which requires the Grantee's immediate response the City shall contact the Grantee at their network operations center telephonically at 888-662-4662, which is operated 24 hours a day, seven days a week. The City may commence emergency response work, at any time, without prior written notice to the Grantee, but shall notify the Grantee in writing as promptly as possible under the circumstances of the nature of the emergency and the actions taken to address it.

Section 8. Damages to City and Third-Party Property

Grantee agrees that if any of its actions under this Franchise impairs or damages any City property, survey monument, or property owned by a third-party, Grantee will restore, at its own cost and expense, said property to a safe condition. Such repair work shall be performed and completed pursuant to City Code..

Section 9. Location Preference and Interference

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

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

Section 10. Grantee Information

A. Grantee agrees to supply, at no cost to the City, any information reasonably requested by the City to coordinate municipal functions with

Grantee's activities and fulfill any municipal obligations under state law. Said information shall include, at a minimum, as-built drawings of Grantee Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within the Rights-of-Way. Said information may be requested either in hard copy or electronic format, compatible with the City's data base system, as now or hereinafter existing, including the City's geographic information Service (GIS) data base. Grantee shall keep the City informed of its long-range plans for coordination with the City's long-range plans.

B. The parties understand that Washington law limits the ability of the City to shield from public disclosure any information given to the City. Accordingly, the City agrees to notify the Grantee of requests for public records related to the Grantee, and to give the Grantee a reasonable amount of time to obtain an injunction to prohibit the City's release of records.

C. Grantee shall indemnify and hold harmless the City for any loss or liability for fines, penalties, and costs (including attorneys fees) imposed on the City because of non-disclosures requested by Grantee under Washington's open public records act, provided the City has notified Grantee of the pending request and has given Grantee ten working days to obtain an injunction to prohibit the City's release of records.

Section 11. Relocation of Grantee Facilities

A. Except as otherwise so required by law, Grantee agrees to relocate, remove, or reroute its facilities as ordered by the City Engineer at no expense or liability to the City, except as may be required by RCW Chapter 35.99 in the event the Franchise Area is required for use by the City in performance of its municipal services. In such event, City will give Grantee prior written notice of the need for such relocation of the Franchise Area. Notwithstanding the foregoing however, and pursuant to the provisions of Section 14, Grantee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other similar losses in connection with any such change, relocation, abandonment, or vacation of the right-of-way(s).

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

Section 12. Abandonment and or Removal of Grantee Facilities

A. Within one hundred and eighty days (180) of Grantee's permanent cessation of use of the Grantee Facilities, or any portion thereof, the Grantee shall, at the City's discretion, remove the affected facilities, or, with the City's

written permission, abandon in place such facilities whereupon they will transfer to the City in their AS IS and WHERE IS condition without need of execution of any further documentation formalizing the transfer, and without representation or warranty of any kind or nature provided the Grantee shall provide to the City drawings, maps or other documentation about said facilities to the reasonable satisfaction of the City. Following such transfer, Grantee shall no longer be responsible for any liability, maintenance, repair or removal obligations related to or arising from the transferred facilities.

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

Section 13. Undergrounding

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

B. Whenever the City requires the undergrounding of aerial utilities in the Franchise Area, the Grantee shall underground those portions of Grantee Facilities that can be installed underground in the manner specified by the City Engineer at no expense or liability to the City, except as may be required by RCW Chapter 35.99 or other applicable law. Where other utilities are present and involved in the undergrounding project, Grantee shall only be required to pay its fair share of common costs borne by all utilities it utilizes, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trenching and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded and the use thereof by all applicable parties

Section 14. Indemnification and Hold Harmless

A. The Grantee shall defend, indemnify, and hold the City and its officers, officials, agents, employees, and volunteers harmless from any and all costs, claims, injuries, damages, losses, suits, or liabilities of any nature including attorneys' fees to the extent caused by Grantee's performance under this Franchise, except to the extent such costs, claims, injuries, damages, losses, suits, or liabilities are caused by the negligence of the City, its agents, contractors, employees or invitees. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the

City, its officers, officials, employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence.

B. The Grantee shall hold the City harmless from any liability for any damage or loss to the Grantee Facilities caused by maintenance and/or construction work performed by, or on behalf of, the City within the Franchise Area or any other City road, right-of-way, or other property, except to the extent any such damage or loss is directly caused by the negligence or intentional misconduct of the City, its agents, contractors, employees or invitees performing such work.

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

D. Acceptance by the City of any work performed by the Grantee shall not be grounds for avoidance of this section.

E. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this agreement with respect to acts or events occurring prior thereto.

Section 15. Insurance

A. The Grantee shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Grantee, its agents, representatives, or employees in the amounts and types set forth below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a minimum combined single limit for

bodily injury and property damage of \$1,000,000 per accident. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$1,000,000 products-completed operations aggregate limit. Coverage shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, and personal injury liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect to the work performed under this Franchise using ISO Additional Insured Endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Professional Liability insurance with limits no less than \$1,000,000 per claim carried by all licensed professionals employed or retained by Grantee to perform services under this Franchise.

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

B. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability, and Commercial General Liability insurance:

1. The Grantee's insurance coverage shall be primary insurance with respect to claims alleging Grantee's negligence. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Grantee's insurance and shall not contribute with it.

2. The Grantee's insurance shall be endorsed to state that coverage shall not be cancelled by either party except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

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

D. **Verification of Coverage.** Grantee shall furnish the City with documentation of insurer's A.M. Best rating and with original certificates and a copy of amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

E. Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self insurance is subject to approval by the City.

F. Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 16. Performance Security

The Grantee shall provide the City with a bond, or other financial guarantee in a form and substance reasonably acceptable to the City, in the amount of Fifty Thousand Dollars (\$50,000) running for, or renewable for, the term of this Franchise. In the event Grantee shall fail to substantially comply with any one or more of the provisions of this agreement within the applicable cure or grace period, then there shall be recovered jointly and severally from the principal and any surety of such financial guarantee any damages suffered by City as a direct result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Grantee specifically agrees that its failure to comply with the terms of Section 19 shall constitute damage to the City in the monetary amount set forth therein. Such a financial guarantee shall not be construed to limit the Grantee's liability to the guarantee amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 17. Successors and Assignees

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

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

notwithstanding, Grantee may assign this Franchise in whole or in part without the need for the City's consent to any entity that controls, is controlled by, or is under common control with Grantee, or to any entity resulting from any merger or consolidation with Grantee, or to any partner of Grantee or to any partnership in which Grantee is a general partner, or to any person or entity that acquires all of the assets of Tenant as a going concern.

C. For any assignment requiring City consent, Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than sixty (60) days after the proposed date of transfer: (a) Complete information setting forth the nature, term and conditions of the proposed assignment or transfer (redacted for any financial terms); (b) All information reasonably required by the City of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (c) An application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

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

E. Upon assignment, Grantee shall be relieved of all liabilities and obligations hereunder accruing thereafter and City shall look solely to the assignee for performance under this agreement and all such obligations accruing thereafter hereunder provided such assignee accepts all such obligations in writing within thirty (30) days of the date of assignment and is of substantially similar financial strength or credit worthiness as Grantee.

Section 18. Dispute Resolution

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

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This

Franchise shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case, and such fees shall be included in the judgment.

Section 19. Enforcement and Remedies

A. If the Grantee shall willfully violate, or fail to comply with any of the provisions of this Franchise through willful or unreasonable negligence, or should it fail to heed or comply with any notice given to Grantee under the provisions of this agreement, the City may, at its discretion, provide Grantee with written notice to cure the breach within thirty (30) days of notification. If the City determines the breach cannot be cured within thirty (30) days, the City may specify a longer cure period, and condition the extension of time on Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Grantee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the financial guarantee set forth in Section 16 for every day after the expiration of the cure period that the breach is not cured.

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

Section 20. Compliance with Laws and Regulations

A. This Franchise is subject to, and the Grantee shall comply with all applicable federal and state or City laws, regulations and policies (including all applicable elements of the City's comprehensive plan), in conformance with federal laws and regulations, affecting performance under this Franchise. Furthermore, notwithstanding any other terms of this agreement appearing to the contrary, the Grantee shall be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

B. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, if required by such statute or regulation, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, the Grantee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the City may enact the proposed amendment, by incorporating the Grantee's concerns to the maximum extent the City deems possible, or Grantee may terminate this agreement without further liability or penalty subject to its prompt removal of the Grantee Facilities in compliance with applicable terms herein.

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

Section 21. License, Tax and Other Charges

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

Section 22. Consequential Damages Limitation

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

Section 23. Severability

If any portion of this Franchise is deemed invalid, the remainder portions shall remain in effect provided the provision deemed invalid is not a material term to this agreement.

Section 24. Titles

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

Section 25. Implementation.

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

Section 26. Termination.

Grantee shall have the right to terminate this agreement with respect to an individual Franchise Area authorized hereunder, without penalty, upon one hundred twenty (120) days prior written notice. In such event, all applicable fees and/or costs set forth herein shall be equitably adjusted as of the effective date of termination

Section 27. Effective date.

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

INTRODUCED: FEB 18 2014
PASSED: FEB 18 2014
APPROVED: FEB 18 2014


NANCY BACKUS, MAYOR

ATTEST:

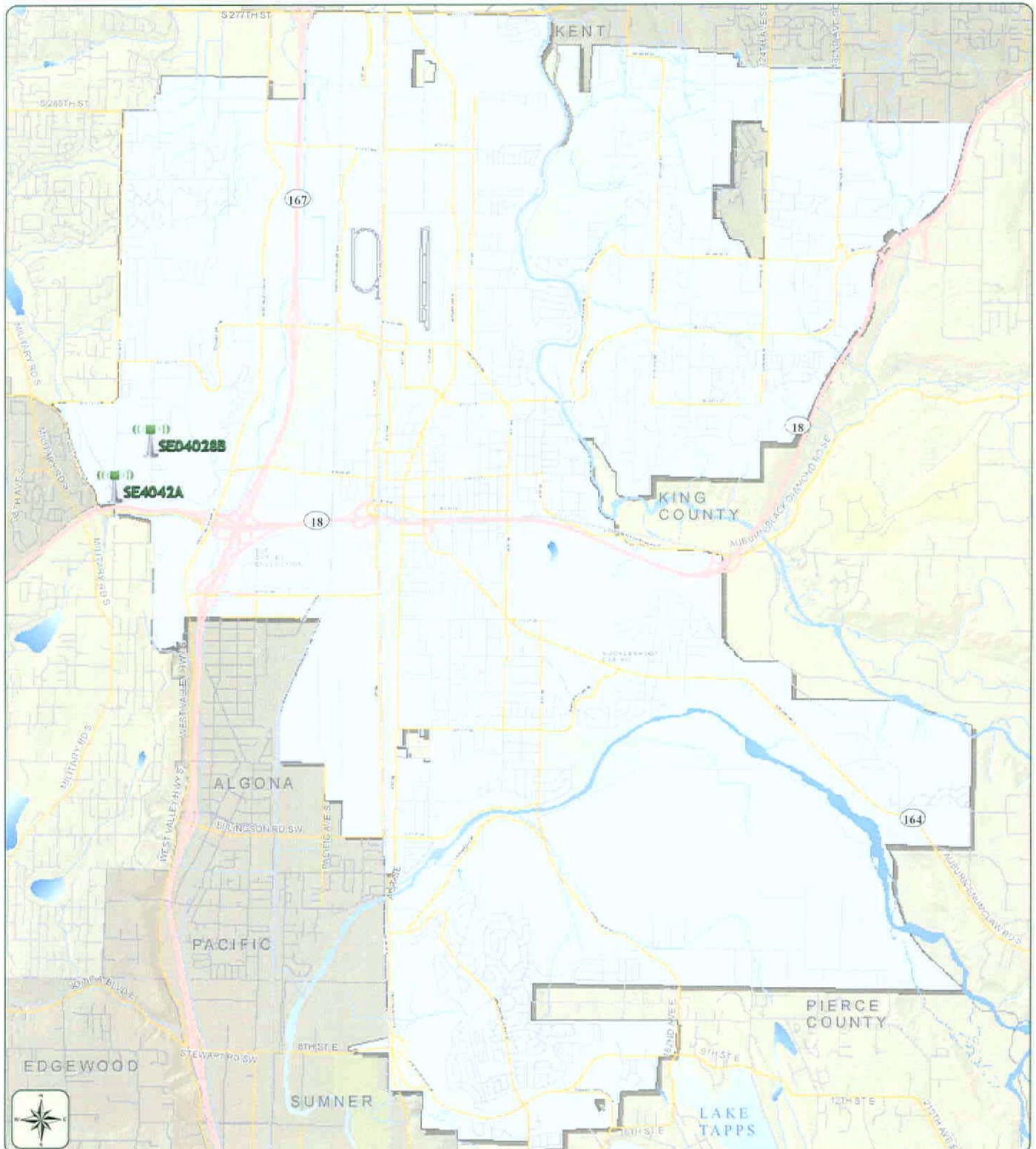

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

Published: February 24, 2014 in The Seattle Times

Exhibit "A" - T-Mobile Franchise Area



Ordinance No. 6491
Exhibit A
February 11, 2014
Page 1 of 1

T Mobile Facilities



Hydrology



Political Boundaries



Transportation



Printed On: 1/27/2015
Map ID: 4337

Information shown is for general information purposes only and does not necessarily represent exact geographic or cartographic data as mapped. The City of Auburn is not responsible for any errors or omissions.

EXHIBIT "B"

GRANTEE FACILITIES

EXISTING T-MOBILE FACILITIES IN CITY OF AUBURN ROW

Site ID: SE4042A, "Peasley Canyon"

Location:

33043 46th Place South

Auburn, WA 98001

Description: Telecommunications Facility consisting of above ground radio equipment cabinets located in a 12'x17' cedar wood fence enclosure in the Right-of-Way (ROW), with antennas collocated on an existing 88' above-ground wooden utility pole in the ROW with connecting underground conduit.

Site ID: SE04028B, Mountain View Cemetery/PR

Location:

5605 S 324th Place

Auburn WA 98001

Description: Telecommunication Facility consisting of antennas located on an existing 75' above-ground wood utility pole in the Right of Way with connecting underground conduit to the radio equipment cabinets located on adjacent private property.

EXHIBIT "C"

GRANTEE SERVICES

SERVICES PROVIDED BY T-MOBILE WITHIN THE CITY OF AUBURN:

Telecommunications Services authorized by the Federal Communications Commission; including but not limited to the following:

THE TRANSMISSION, AMPLIFICATION AND RECEPTION OF RADIO COMMUNICATION SIGNALS, INCLUDING BUT NOT LIMITED TO THOSE RELATED TO:

- VOICE,
- DATA,
- IMAGES AND VIDEO
- E-911/EMERGENCY ACCESS
- 3-G AND 4-G

EXHIBIT "D"

STATEMENT OF ACCEPTANCE

T-Mobile West LLC, A Delaware limited liability company, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

T-Mobile West LLC
A Delaware limited liability company

By: [Signature] Date: 3/6/14
Name: Jay Noceto
Title: PNW Area Director, Engineering & Operations

[Signature]

3/4/14

STATE OF WASHINGTON

COUNTY OF KING)ss.
)

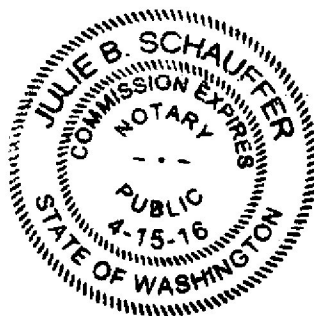
On this 6th day of March, 2014, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, Jay Noceto of T-Mobile West LLC, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

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

[Signature]
Signature

[Signature]
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle

MY COMMISSION EXPIRES: 4/15/16



PROJECT INFORMATION:
LEA HILL/PSE/CHINN
SE047151
11534 SE 318TH PLACE
AUBURN, WA 98092

ISSUED FOR:
BUILDING PERMIT

REVISION HISTORY:		CHK. BY:
NO.	DATE: DESCRIPTION:	
1	8/19/2015 REV PERI REQUESTS	BUT
2	8/26/2015 REV PERI REQUESTS	BUT
3	8/12/2015 REV POLE HEIGHT	BUT
4	8/4/2015 ISSUED DESIGN REVIEW	BUT

PLANS PREPARED BY:
B. J. THOMAS, P.E.
7607 80TH AVE NE
MARYSVILLE, WA 98270
206-851-1106

DRAWN BY: JL
CHK. BY: BJ



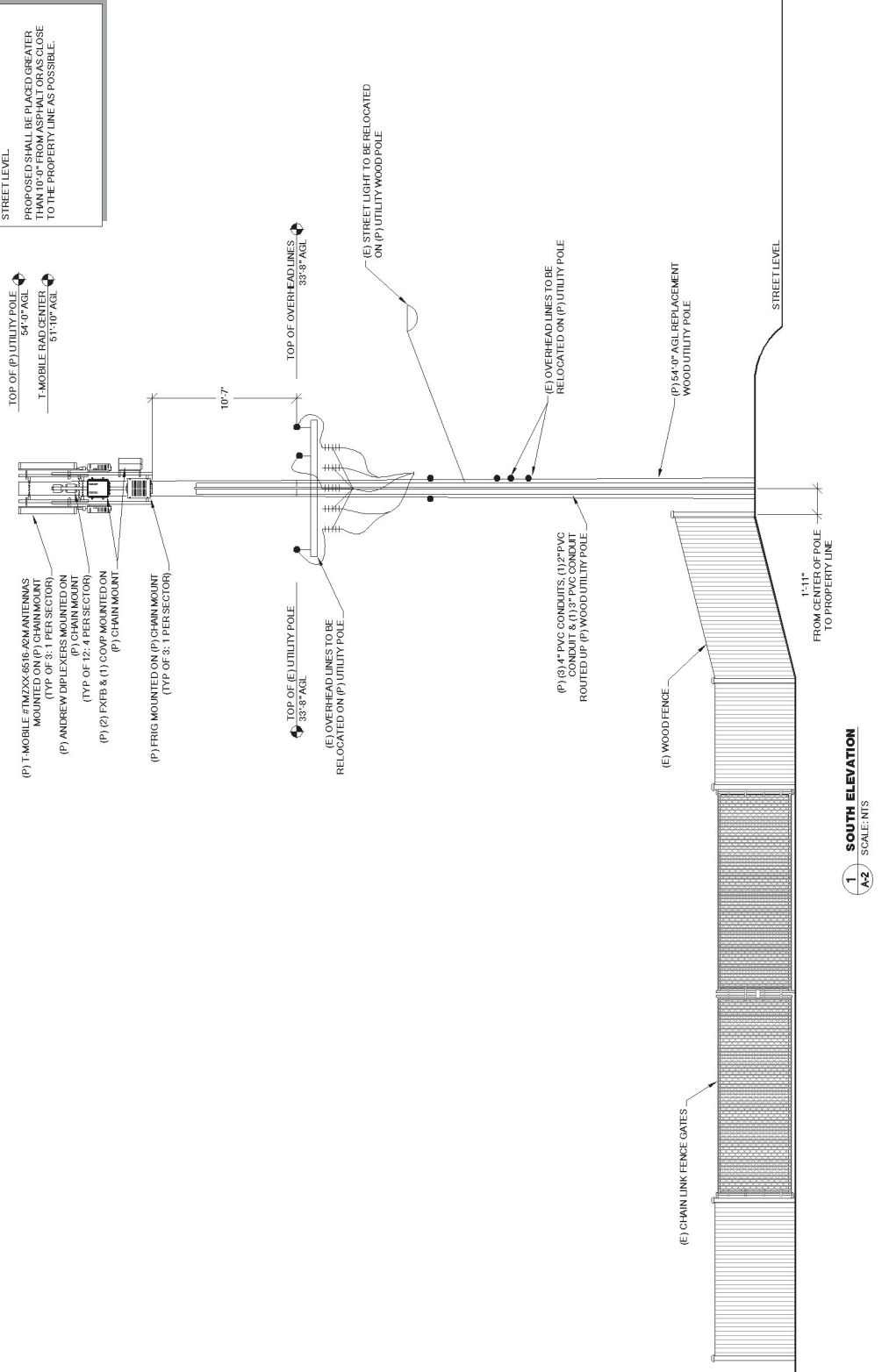
DRAWING INFORMATION:
DO NOT SCALE DRAWINGS. CONTRACTOR MUST VERIFY ALL DIMENSIONS AND ADVISE CONSULTANTS OF ANY DISCREPANCIES. THE INFORMATION CONTAINED IN THIS SET OF DRAWINGS IS SUPERSEDED BY THE LATEST REVISION. THE INFORMATION CONTAINED IN THIS SET OF DRAWINGS OR DISCLOSURE OTHER THAN WHICH IS RELATED TO NAMED CLIENT IS STRICTLY PROHIBITED.

DRAWING TITLE:
SITE ELEVATION

DRAWING NUMBER:
A-2

PAINT NOTE:
PROPOSED ANTENNAS/ATTACHMENTS & EQUIPMENT TO BE PAINTED TO MATCH (P) WOOD UTILITY POLE.

POLE NOTE:
PROPOSED POLE SHALL BE PLACED DEEP ENOUGH TO BE STRUCTURALLY SOUND AT STREET LEVEL.
PROPOSED SHALL BE PLACED GREATER THAN 10'-0" FROM ASPHALT GRAS CLOSE TO THE PROPERTY LINE AS POSSIBLE.





AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6576, First Reading

Date:

November 25, 2015

Department:

CD & PW

Attachments:

[Ordinance No. 6576](#)

[Exhibits A & B](#)

[Staff Report](#)

[Vicinity Maps](#)

Budget Impact:

\$0

Administrative Recommendation:

City Council adopt Ordinance No. 6576.

Background Summary:

Schneider Homes Inc. has applied to the City for vacation of the right-of-way of the south 137.85 feet of 64th Avenue South, south of South 300th Street, shown on Exhibit "B". The applicant currently owns the adjacent parcel to the east and west and is proposing to incorporate the right-of-way into development of the adjacent property.

The application has been reviewed by City staff and utility purveyors who have an interest in this right-of-way. Through this review City staff has determined that the right of way is no longer necessary to meet the needs of the City and could be vacated.

Ordinance No. 6576, if adopted by City Council, approves Vacation No. V2-15 and vacates the right-of-way subject to conditions outlined in the Ordinance.

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

Snyder

Meeting Date: January 4, 2016

Item Number: ORD.B

ORDINANCE NO. 6 5 7 6

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
AUBURN WASHINGTON, VACATING RIGHT-OF-WAY OF
64TH AVENUE SOUTH, SOUTH OF SOUTH 300TH STREET,
WITHIN THE CITY OF AUBURN, WASHINGTON

WHEREAS, the City of Auburn, Washington ("City"), has received a petition by not less than two-thirds (2/3) of the owners of property adjacent to right-of-way located at the south 137.85 feet of 64th Avenue South, south of South 300th Street, within the City requesting vacation of the same; and

WHEREAS, the City Council of the City of Auburn, Washington ("City Council"), has, after a review of its needs for streets and right-of-ways in the vicinity of the south 137.85 feet of 64th Avenue South, south of South 300th Street within the City, determined that consideration should be given to the vacation of the same; and

WHEREAS, a public hearing was held in connection with the possible vacation, with notice having been provided pursuant to statute; and

WHEREAS, the City Council has considered all matters presented at the public hearing on the proposed vacation, held on the 4th day of January, 2016, at the Auburn City Council Chambers in Auburn, Washington.

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

Section 1. Vacation. That the right of way located at the south 137.85 feet of 64th Avenue South, south of South 300th Street, located within the City of Auburn, Washington, legally described as follows:

Ordinance No. 6576
ROW Vacation V2-15
October 14, 2015
Page 1 of 5

That portion of the north half of the northwest quarter of the southeast quarter of the southeast quarter of Section 2, Township 21 North, Range 4 East, W.M., in King County, Washington described as follows;

Commencing at the northwest corner of said subdivision; thence N89°52'01"E, along the north line thereof, 30.01 feet to the east line of the west 30.00 feet of said subdivision; thence S00°58'36"W, along said east line 190.89 feet to the POINT OF BEGINNING of the herein described tract; thence continuing S00°58'36"W, along said east line, 137.85 feet to the south line of said subdivision; thence S89°48'39"W, along said south line, 30.01 feet to the west line of said subdivision; thence N00°58'36"E, along said west line 137.66 feet; thence N89°48'39"E 18.33 feet to a point of tangency with a 358.00 foot radius curve to the left; thence easterly along said curve, through a central angle of 01°52'12" a distance of 11.68 feet to the to THE POINT OF BEGINNING.

Contains 4,131± square feet, (1.0948±acres)

[Also identified as Exhibit A hereto.]

and as shown on the survey, a copy of which is attached hereto, marked Exhibit "B" and incorporated herein by this reference, the same is hereby vacated and the property lying in said portion of right-of-way described hereinabove, shall inure and belong to those persons entitled to receive the property in accordance with RCW 35.79.040, conditioned upon the following;

A. In accordance with RCW 35.79.030, the City reserves and grants said reservation to Puget Sound Energy and Bonneville Power Administration (collectively "Grantees"), a non-exclusive easements for access over, under and on the all portions of the vacated right-of-way as described above, subject to the following:

1. The developers of Wyncrest Division II and owners of the adjacent

Ordinance No. 6576
ROW Vacation V2-15
October 14, 2015
Page 2 of 5

property shall not in any way block, restrict or impede access and egress to or from said Easement Area, and/or in any way block, restrict or impede full use of the real property within the Easement Area by the Grantees for the above described purposes.

2. No building, wall, rockery, fence, trees, or structure of any kind shall be erected or planted, nor shall any fill material be placed within the boundaries of said Easement Area, without the express written consent of the Grantees. No excavation shall be made within Easement Area and the surface level of the ground within the Easement Area shall be maintained at the elevation as currently existing.

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

B. The easements as set out in Paragraph A above, shall automatically expire and shall be extinguished upon recordation and construction of an alternate access easement to each of the Grantees.

C. In accordance with RCW 35.79.0360 and ACC 12.48.085, compensation to the City of Auburn, shall be made by the owner or owners of property adjacent thereto in the total amount of Twenty Thousand Seven Hundred (\$20,700.00) Dollars for the full appraised value of the right-of-way, which has been right-of-way for more than twenty-five (25) years and for which public funds were expended. The Twenty Thousand Seven Hundred (\$20,700.00) Dollars payment shall be made within one-hundred and eighty (180) days of the date hereof

Ordinance No. 6576
ROW Vacation V2-15
October 14, 2015
Page 3 of 5

D. This vacation shall be effective upon completion of the provisions in paragraph A through C, above. If the above described provisions are not completed as set forth above, this Ordinance shall be null and void.

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

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

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

Section 5. Recordation. The City Clerk is directed to record this Ordinance with the office of the King County Auditor.

FIRST READING: _____

SECOND READING: _____

PASSED: _____

APPROVED: _____

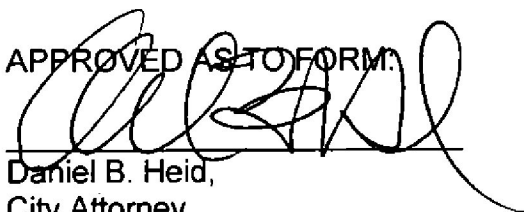
NANCY BACKUS, MAYOR

Ordinance No. 6576
ROW Vacation V2-15
October 14, 2015
Page 4 of 5

ATTEST:

Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM:



Daniel B. Heid,
City Attorney

PUBLISHED: _____

Ordinance No. 6576
ROW Vacation V2-15
October 14, 2015
Page 5 of 5

Exhibit A

**D.R. STRONG
CONSULTING ENGINEERS
KIRKLAND WA 98033**

DRS Project No. 12072
9/21/15

LEGAL DESCRIPTION: 64TH AVENUE S. RIGHT OF WAY VACATION

That portion of the north half of the northwest quarter of the southeast quarter of the southeast quarter of Section 2, Township 21 North, Range 4 East, W.M., in King County, Washington described as follows;

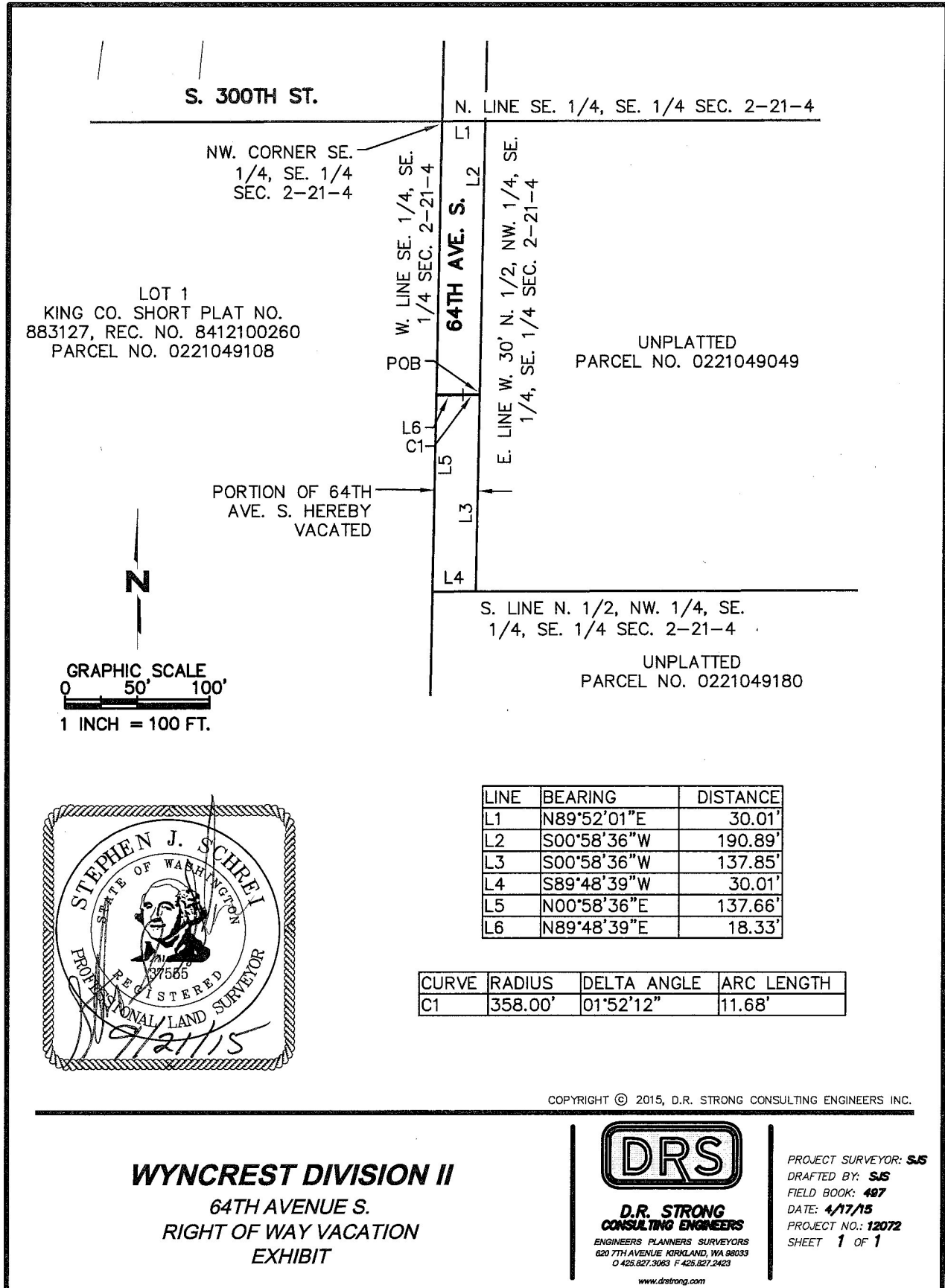
Commencing at the northwest corner of said subdivision; thence N89°52'01"E, along the north line thereof, 30.01 feet to the east line of the west 30.00 feet of said subdivision; thence S00°58'36"W, along said east line 190.89 feet to the POINT OF BEGINNING of the herein described tract; thence continuing S00°58'36"W, along said east line, 137.85 feet to the south line of said subdivision; thence S89°48'39"W, along said south line, 30.01 feet to the west line of said subdivision; thence N00°58'36"E, along said west line 137.66 feet; thence N89°48'39"E 18.33 feet to a point of tangency with a 358.00 foot radius curve to the left; thence easterly, along said curve, through a central angle of 01°52'12" a distance of 11.68 feet to THE POINT OF BEGINNING.

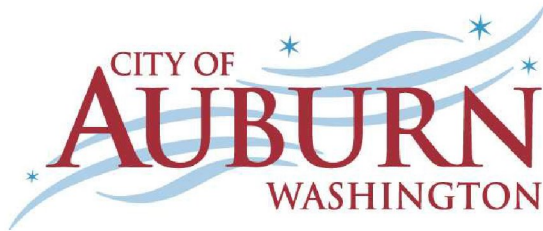
Contains 4,131± square feet, (0.0948±acres)



R:\2012\0\12072\2\Documents\Legals\64th Ave-S_ROW-Vacation_12072.doc

Exhibit B





RIGHT-OF-WAY VACATION STAFF REPORT

Right-of-Way (ROW) Vacation Number V2-15

Applicant: Schneider Homes Inc.

Property Location: Right-of-Way located at the south 137.85 feet of 64th Avenue South, south of South 300th St.

Description of right-of-way:

This ROW proposed for vacation consists of the south 137.85 feet of 64th Avenue South, south of South 300th Street. The proposed ROW is adjacent to Parcel No. 0221049108 on the west side, Parcel No. 0221049049 on the east side, Parcel No. 0221049180 on the south side and City right-of-way on the north side. The west and east adjacent parcels are owned by the applicant and the south adjacent parcel is owned by Puget Sound Energy (PSE). The proposed area of ROW for vacation is approximately 4,131± square feet.

The ROW was originally deeded to King County as real property to settle a property tax debt on July 18, 1963. The property was used as right-of-way by King County and formally converted to right-of-way by the County on September 23, 1987. The ROW was annexed into the City of Auburn on January 1, 2008.

See Exhibits "A" and "B" for legal description and survey.

Proposal:

The Applicant proposes that the City vacate the above described right-of-way so that they can include the area in development of the adjoining parcels. The right-of-way is to be incorporated into a building lot in the approved preliminary plat of Wyncrest Division II.

Applicable Policies & Regulations:

- RCW's applicable to this situation - meets requirements of RCW 35.79.
- MUTCD standards - not affected by this proposal.
- City Code or Ordinances - meets requirements of ACC 12.48.
- Comprehensive Plan Policy - not affected.
- City Zoning Code - not affected.

Public Benefit:

- The vacated area may be subject to property taxes.
- The street vacation decreases the Right-of-Way maintenance obligation of the City.

Discussion:

The vacation application was circulated to Puget Sound Energy (PSE), Comcast, CenturyLink, Lakehaven Utility District, Bonneville Power Administration, Tacoma Public Utilities, B.P. Olympic Pipeline and City staff.

1. Puget Sound Energy (PSE) – Comments and clarification of the location of existing facilities in 64th Avenue South were requested from PSE several times but they have failed to respond with additional information. It appears that PSE does not have any existing facilities in the proposed vacation area and due to PSE's failure to respond with additional information it has been determined that a facilities easement over the proposed vacation area is not needed and will not be reserved. PSE owns the parcel adjacent to the south of the right-of-way and has obtained an alternate access easement across the proposed plat, but has requested that an access easement be reserved until such time as an alternate access is built.

2. Tacoma Public Utilities – Tacoma Water Supply does not access the second supply pipeline using 64th Avenue South and will not require a reservation of easement when Auburn vacates the right-of-way.
3. B.P. Olympic Pipe Line Company – Comments were received from B.P. Olympic Pipe Line Company. They have facilities located to the south of the adjacent PSE parcel but will not require an access easement as they have other means of accessing their facilities from other locations.
4. Bonneville Power Administration (BPA) - Comments were received from Bonneville Power Administration. They have facilities located to the south of the adjacent PSE parcel which they access across to reach their facilities. An access easement over the proposed vacation area will need to be reserved until such time as an alternate access easement from the developer is provided and built.
5. Comcast – Comcast has facilities attached to the PSE poles near the proposed area of vacation but as long as the poles are not impacted by the vacation they do not require an easement.
6. CenturyLink – CenturyLink does not have any existing facilities located in the proposed vacation area and does not require an easement.
7. Lakehaven Utility District – There are no existing Lakehaven water or sewer facilities in the proposed vacation area and an easement is not required. Future service to this area will be provided under a developer extension agreement between the developer and Lakehaven Utility District.
8. Water – No comments on Auburn Water. This area is served by Lakehaven Utility District.
9. Sewer – No comments on Auburn Sewer. This area is served by Lakehaven Utility District
10. Storm –No comments.
11. Transportation – No comments.
12. Planning – No comments.
13. Fire – No comments
14. Police – No comments.
15. Streets – No comments.
16. Construction –No comments.
17. Innovation and Technology – No comments

Assessed Value:

ACC 12.48 states “The city council may require as a condition of the ordinance that the city be compensated for the vacated right-of-way in an amount which does not exceed one-half the value of the right-of-way so vacated, except in the event the subject property or portions thereof were acquired at public expense or have been part of a dedicated public right-of-way for 25 years or more, compensation may be required in an amount equal to the full value of the right-of-way being vacated. The city engineer shall estimate the value of the right-of-way to be vacated based on the assessed values of comparable properties in the vicinity. If the value of the right-of-way is determined by the city engineer to be greater than \$2,000, the applicant will be required to provide the city with an appraisal by an MAI appraiser approved by the city engineer, at the expense of the applicant. The city reserves the right to have a second appraisal performed at the city’s expense.”

RCW 35.79.030 states the vacation “shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property or portions thereof were acquired at public expense, the city or town may require the owners of the property abutting the street or alley to compensate the city or town in an amount that does not exceed the full appraised value of the area vacated.”

An appraisal by an MAI appraiser of the subject right-of-way was required to be submitted by the applicant. The appraisal was reviewed and found to be acceptable. The appraisal values the right-of-way in an “ACROSS THE FENCE VALUE” at \$20,700.00. The right-of-way has been right-of-way for more than 25 years and was acquired through deed to King County, for settlement of a property tax debt, as real property on July 18, 1963, converted to right-of-way by the County on September 23, 1987 and annexed into the City of Auburn on January 1, 2008.

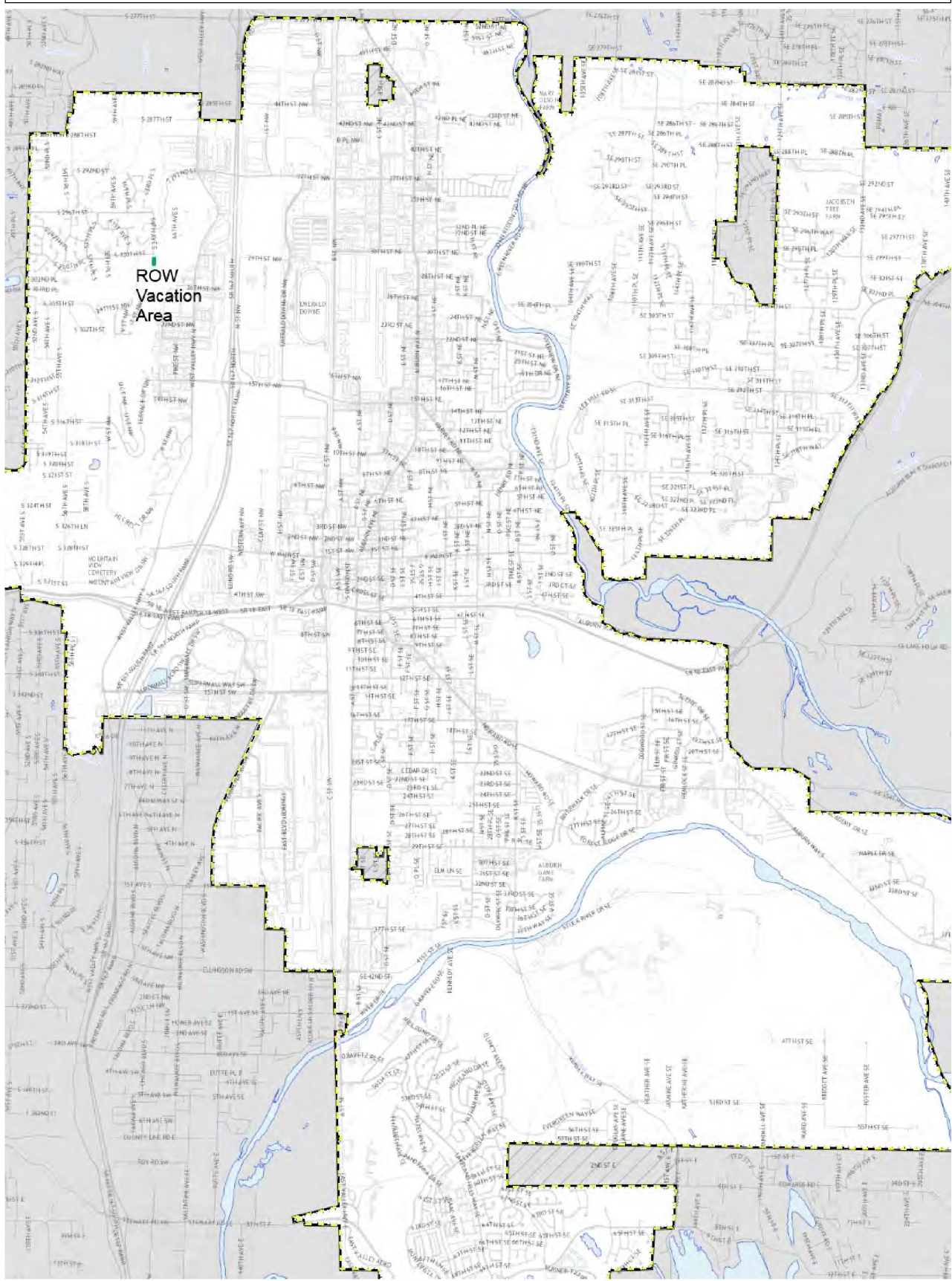
Recommendation:

Staff recommends that the street vacation be granted subject to the following conditions:

1. An access easement shall be reserved for PSE and Bonneville Power Administration along the entire length and width of the vacated ROW until such time as alternate access easements are provided and built by the developer of Wyncrest Division II. No construction or grading of any kind may take place in the easement area until such time as these easements are extinguished.
2. Staff recommends that compensation for the value of the right-of-way be required in the full amount of the appraised value of \$20,700.00 since the right-of-way has been right-of-way for more than 25 years and it was originally acquired to settle a property tax debt with King County.

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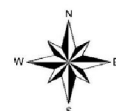
ROW Vacation #V2-15 Schneider Homes Inc. - 64th Avenue South
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Printed Date: 10/20/2015

Map Created by City of Auburn eGIS

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





AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6580, First Reading

Date:

December 29, 2015

Department:

Community Development
and Public Works

Attachments:

[Staff Report](#)
[Ordinance No. 6580](#)
[Summary Matrix](#)

Budget Impact:

\$0

Administrative Recommendation:

City Council adopt Ordinance No. 6580.

Background Summary:

Please see the attached Staff Report.

Reviewed by Council Committees:

Other: Legal, Community Development

Councilmember:

Staff: Snyder

Meeting Date: January 4, 2016

Item Number: ORD.C



AGENDA BILL APPROVAL FORM

Agenda Subject Ordinance No. 6580 2015 Annual Comprehensive Plan Amendments – City Initiated Plan Policy/Text Amendments, CPA15-0001		Date: December 15, 2015
Department: Community Development & Public Works	Attachments: Ordinance No. 6580 Summary Matrix See policy/text amendment sections of the binder	Budget Impact: N/A
Administrative Recommendation: City Council to introduce and approve Ordinance No. 6580 amending the Comprehensive Plan to include 2015 City-Initiated Annual Comprehensive Plan Amendments.		
Background Summary: The City of Auburn adopted amendments to its Comprehensive Plan in 1995 in response to the Washington State Growth Management Act (GMA) requirements, as amended. Since then the Auburn Comprehensive Plan has been amended annually. This year the City is also updating the Comprehensive Plan in response to the periodic update required under the WA State Growth Management Act (GMA). The City adopted an updated Comprehensive Plan in response to the periodic updates required under the GMA on December 14, 2015 by Ordinance No. 6584. Comprehensive plan amendments can be initiated by the City of Auburn (city-initiated) and by private citizens (privately-initiated). This year the city is initiating: • Five policy/text amendments. • <i>(No map amendments are currently being processed with this year's amendment process)</i> <i>The city received three privately-initiated plan map amendments by the submittal deadline. However, the processing of these has been postponed to allow the environmental review process to be completed, as required. These are listed in the docket, but the applications are not included in the notebooks. These will be considered at a future, yet-to-be-determined time.</i> This staff report and recommendation addresses Comprehensive Policy/Text (P/T) Amendments P/T # 1 through # 5. This is the only staff report associated with the annual comprehensive plan amendment process.		
Reviewed by Council & Committees: ☐ Arts Commission ☐ Airport ☐ Hearing Examiner ☐ Human Services ☐ Park Board ☒ Planning Comm. COUNCIL COMMITTEES: ☐ Finance ☐ Municipal Services ☐ Planning & Dev. ☐ Public Works ☐ Other _____		Reviewed by Departments & Divisions: ☐ Building ☐ Cemetery ☐ Finance ☐ Fire ☐ Legal ☒ Public Works ☐ M&O ☐ Mayor ☐ Parks ☒ Planning ☐ Police ☐ Human Resources
Action: Committee Approval: ☐ Yes ☐ No Council Approval: ☐ Yes ☐ No Referred to _____ Until _____ Call for Public Hearing ____/____/____ Tabled _____ Until _____		
Councilmember: _____		Staff: Dixon
Meeting Date: December 14, 2015		Item Number: _____

In terms of process, the Comprehensive plan amendments are initially reviewed during a public hearing process before the City of Auburn Planning Commission, who then provides a recommendation to the City Council for final action. City Council consideration and action on the amendments generally occurs but is not required prior to the end of the year.

At its December 8, 2015 public hearing, the Planning Commission reviewed the following annual comprehensive plan amendments:

- P/T #1 – Incorporate Auburn School District Capital Facilities Plan
- P/T #2 – Incorporate Dieringer School District Capital Facilities Plan
- P/T #3 – Incorporate Federal Way School District Capital Facilities Plan
- P/T #4 – Incorporate Kent School District Capital Facilities Plan
- P/T #5 – Incorporate City of Auburn Capital Facilities Plan

The Planning Commission has forward its recommendation for **approval** to the City council on all comprehensive plan amendments.

A. Findings

1. RCW 36.70A.130 (Washington State Growth Management Act (GMA)) provides for amendments to locally adopted GMA comprehensive plans. Except in limited circumstances provided for in State law, comprehensive plan amendments shall be considered by the city or county legislative body no more frequently than once per year.
2. The City of Auburn established a June 5, 2015 deadline for the submittal of privately-initiated comprehensive plan applications (map or policy/text). Notice to the public of the filing deadline was provided on the City's website, the Seattle Times Newspaper, and sent to a compiled "interested parties" notification list in May 2015. The City received three privately-initiated plan map amendments by the submittal deadline. However, the processing of these has bene postponed to allow the environmental review process to be completed, as required by City and state law. These applications have been listed in the docket, but the application materials are not provided in the notebooks. These applications will be considered at a future unspecified time.
3. The City of Auburn received annual updates to the four school district Capital Facilities Plans whose districts occur within the City of Auburn. These Capital Facilities Plans, as well as the City's Capital Facilities Plan are referenced in Chapter 5, Capital Facilities, of the existing Auburn Comprehensive Plan and Volume 3, Capital Facilities Element, of the Updated Comprehensive Plan. The incorporation of the Capital Facilities Plans is processed as Policy/Text (P/T) amendments.
4. The environmental review under the State Environmental Policy Act (SEPA) for the school district capital facilities plans were prepared separately by each school district acting as their own lead agency, as allowed by state law. Each district issued separate Determinations of Non-Significance (DNS).
5. The environmental review under the State Environmental Policy Act (SEPA) for the remaining amendment resulted in a Determination of Non-Significance (DNS) issued for the City-initiated Comprehensive Plan Amendments on November 2, 2015 (City File # SEP15-0030). The comment period ended November 16, 2015 and the appeal period ended

November 30, 2015. The City did not receive any comments in response to the issuance of the Determination of Non-Significance (DNS).

6. Auburn City Code Chapter 14.22 outlines the process for submittal of privately-initiated amendments and the general processing of comprehensive plan amendments as follows:

“Section 14.22.100

- A. The planning commission shall hold at least one public hearing on all proposed amendments to the comprehensive plan. Notice of such public hearing shall be given pursuant to Chapter 1.27 ACC and, at a minimum, include the following:
 1. For site-specific plan map amendments:
 - a. Notice shall be published once in the official newspaper of the city not less than 10 calendar days prior to the date of public hearing;
 - b. Notice shall be mailed by first class mail to all property owners of record within a radius of 300 feet of the proposed map amendment request, not less than 10 calendar days prior to the public hearing;
 2. For area-wide plan map amendments:
 - a. Notice shall be published once in the official newspaper of the city not less than 10 calendar days prior to the date of public hearing;
 - b. Notice shall be mailed by first class mail to all property owners of record within the area subject to the proposed amendment;
 - c. Notice shall be posted in at least two conspicuous locations in the area subject to the proposed amendment not less than 10 calendar days prior to the date of the public hearing.
 - B. Notwithstanding the above, the director may expand the minimum noticing provisions noted above as deemed necessary.
 - C. Planning Commission Recommendation. The planning commission shall conduct a public hearing on all potential comprehensive plan amendments and shall make and forward a recommendation on each to the city council. The planning commission shall adopt written findings and make a recommendation consistent with those findings to the city council.
 - D. The city council, if it elects to amend the comprehensive plan, shall adopt written findings and adopt said amendments by ordinance.
 - E. State Review. All comprehensive plan amendments considered by the planning commission shall be forwarded for state agency review consistent with RCW 36.70A.106.
 - F. Any appeal of an amendment to the comprehensive plan shall be made in accordance with Chapter 36.70A RCW. (Ord. 6172 § 1, 2008.)”
7. As provided in the City Code, the Comprehensive Plan amendments are initially reviewed during a public hearing process before the City of Auburn Planning Commission, who then provides a recommendation to the City Council for final action. City Council consideration and action on the amendments generally occurs, but is not required, prior to the end of the year.
 8. Pursuant to RCW 36.70A.106, the proposed comprehensive plan amendments outlined in this agenda bill were sent to the Washington State Office of Commerce and other state agencies as required for the state review on November 6, 2015. The Washington State Office of Commerce acknowledged receipt by letter dated November 9, 2015. No comments have been received from the Washington State Department of Commerce or other state agencies as of the writing of this report.

9. Due to the nature and limited number of policy/text changes, and the lack of private initiated map amendments, the optional process for conducting a public open house was not conducted as provided for in the city code.
10. The notice of public hearing was published on November 12, 2015 in the Seattle Times which is at least 10-days prior to the Planning Commission public hearing scheduled for December 8, 2015.
11. On December 8, 2015 the Planning Commission conducted a public hearing on the proposed annual amendments as part of the process required by code.
12. On December 14, 2015 the City Council in a regular Study Session reviewed the proposed annual amendments.
13. The following report identifies the Comprehensive Plan Map Policy/Text (P/T) amendments that were considered by the Planning Commission at their December 8, 2015 public hearing with the Planning Commission recommendation.

-----December 8, 2015 Planning Commission Public Hearing -----

Comprehensive Plan Map Amendments (File No. CPA15-0001)

(No map amendments are currently proposed with this year's amendment process)

Comprehensive Plan Policy/Text Amendments (File No. CPA15-0001)

P/T #1

Incorporate the Auburn School District Capital Facilities Plan 2015 through 2021 into the City of Auburn Comprehensive Plan.

Discussion

The Auburn School District has provided the City with its annually updated Capital Facilities Plan (CFP) covering from 2015-2021. The CFP was adopted by the Auburn School District School Board of Directors on June 8, 2015 and has been subject to separate SEPA review and a Determination of Non Significance (DNS). Information contained in the School District CFP serves as the basis for the City's collection of school impact fees on behalf of the school district. The Planning Commission action is incorporation of the Auburn School District Capital Facilities Plan into the City's Comprehensive Plan.

The CFP includes the following:

- six-year enrollment projections
- Auburn school district level of service standards
- An inventory of existing facilities
- The district's overall capacity of the 6-year period
- District capital construction Plan
- Impact fee calculations

A review of the Auburn School District's updated Capital Facilities Plan indicates the District is requesting a change in the fee obligations. The net fee obligation for single-family

dwellings is proposed to be \$5,330.88, an increase of \$1,193.67 and the requested fee for multiple-family dwellings is \$2,625.01, a decrease of \$893.16. The actual impact fee to be established is set by ordinance by the Auburn City Council.

Planning Commission Recommendation

Planning Commission recommends approval of the Auburn School District Capital Facilities Plan 2015 through 2021 to the City Council

P/T#2

Incorporate the Dieringer School District Capital Facilities Plan 2016-2021 into the City of Auburn Comprehensive Plan.

Discussion

The Dieringer School District has provided the City with its annually updated Capital Facilities Plan 2016 - 2021. The CFP was adopted by the Dieringer School District Board of Directors on June 15, 2015. The CFP has been subject to separate SEPA review and a DNS. Information contained in the School District CFP serves as the basis for the City's collection of school impact fees on behalf of the school district. The Planning Commission action is incorporation of the School District Capital Facilities Plan into the City's Comprehensive Plan.

The CFP includes the following:

- Overview
- An inventory of existing facilities
- six-year enrollment projections
- standard of service
- Capacity projects
- Finance plan
- Impact fee calculations

A review of the Dieringer School District's updated Capital Facilities Plan indicates the District is requesting a change in the fee obligations. The net fee obligation for single-family dwellings is proposed to be \$4,672.00, an increase of \$1,402.00 and the requested fee for multiple family dwellings is \$1,518.00; a decrease of \$207.00. The actual impact fee to be established is set by ordinance by the Auburn City Council.

Planning Commission Recommendation

Planning Commission recommends approval of the Dieringer School District Capital Facilities Plan 2016-2021 to the City Council.

P/T #3

Incorporate the Federal Way School District 2016 Capital Facilities Plan into the City of Auburn Comprehensive Plan.

Discussion

The Federal Way School District has provided the City with its annually updated Capital Facilities Plan 2016. The CFP was adopted by the Federal Way School District School Board July 28, 2015. The CFP has been subject to separate SEPA review and a DNS. Information contained in the School District CFP serves as the basis for the City's collection of school impact fees on behalf of the school district. The Planning Commission action is incorporation of the School District Capital Facilities Plan into the City's Comprehensive Plan.

The CFP includes the following:

- Introduction
- Inventory of educational facilities & non-instructional facilities
- Needs forecast, existing & new facilities
- Six-year finance plan
- Maps of district boundaries
- Building capacities & portable locations
- Student forecast
- Capacity summaries
- Impact fee calculations
- Summary of changes from the 2015 plan

A review of the Federal Way School District's updated Capital Facilities Plan indicates the District is requesting a change in the fee obligations. The net fee obligation for single-family dwellings is proposed to be \$2,899.00, representing a decrease of \$2,275.00 and the requested fee for multi-family dwellings is \$506.00, a decrease of \$1,328.00. The actual impact fee to be established is set by ordinance by the Auburn City Council.

Planning Commission Recommendation

Planning Commission recommends approval of the Federal Way School District's 2016 Capital Facilities Plan to the City Council.

P/T #4

Incorporate the Kent School District Capital Facilities Plan 2015-2016 to 2020-2021 into the City of Auburn Comprehensive Plan.

Discussion

The Kent School District has provided its annually updated 2015-2016 to 2020-2021 Capital Facilities Plan. The CFP was adopted by the Kent School District School Board on July 14, 2015 and has been subject to separate SEPA review and a DNS. Information contained in the School District CFP serves as the basis for the City's collection of school impact fees on behalf of the school district. The Planning Commission action is incorporation of the School District Capital Facilities Plan into the City's Comprehensive Plan.

The CFP includes the following:

- Executive Summary
- Six-year enrollment projection & history
- District standard of service
- Inventory, capacity & maps of existing schools
- Six-year planning & construction plan
- Portable classrooms
- Projected classroom capacity
- Finance Plan, cost basis and impact fee schedules
- Summary of changes to previous plan

A review of the Kent School District's updated Capital Facilities Plan indicates the District is requesting a change in the fee obligations. The net fee obligation for single-family dwellings is proposed to be \$4,990.00, representing a decrease of \$496.00 and the requested fee for

multi-family dwellings is \$2,163.00, a decrease of \$1,215.00. The actual impact fee to be established is set by ordinance by the Auburn City Council.

Planning Commission Recommendation

Planning Commission recommends approval of the Kent School District Capital Facilities Plan 2015-2016 to 2020-2021 to the City Council.

CPM #5

Incorporate the City of Auburn's 6-year Capital Facilities Plan 2016-2021, into the City's Comprehensive Plan.

Discussion

A Capital Facilities Plan is one of the comprehensive plan elements required by the Washington State Growth Management Act (GMA) (RCW 36.70A). The GMA requires that a capital facilities plan include an inventory of existing capital facilities (showing locations and capacities), a forecast of future needs for such capital facilities, proposed locations and capacities of new or expanded capital facilities, and a minimum of a six-year plan to finance capital facilities with identified sources of funding. The proposed City of Auburn 6-year Capital Facilities Plan 2016-2021 satisfies the GMA requirements for a capital facilities element as part of the Comprehensive Plan.

Each comprehensive plan prepared under the GMA must include a capital facilities plan element. More specifically, RCW 36.70A.070 (3) of the GMA requires the following:

“A capital facilities plan element consisting of:

- (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities;
- (b) a forecast of the future needs of such capital facilities;
- (c) the proposed locations and capacities of expanded or new capital facilities;
- (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and
- (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.”

A capital facility is defined as a structure, street or utility system improvement, or other long-lasting major asset, including land. Capital facilities are provided for public purposes. Capital facilities include, but are not limited to, the following: streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreation facilities, and police and fire protection facilities. These capital facilities include necessary ancillary and support facilities.

The memo dated November 10, 2014 prepared by the City's Finance Department contained in the three ring binder highlights the major changes in the CFP from last year. The proposed City of Auburn 6-year Capital Facilities Plan 2016-2021 is incorporated by reference in the Comprehensive Plan, Chapter 5, Capital Facilities. This will be incorporated into the “Capital Facilities Element” of the updated Comprehensive Plan (GMA required periodic update).

Planning Commission Recommendation

Planning Commission recommends approval of the City of Auburn's 6-year Capital Facilities Plan 2016-2021 to the City Council with the revised Pages 2, 3, 195, 197 and 202 as recommended by staff.

ORDINANCE NO. 6 5 8 0

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO PLANNING; ADOPTING ANNUAL COMPREHENSIVE PLAN TEXT AMENDMENTS PURSUANT TO THE PROVISIONS OF RCW CHAPTER 36.70A

WHEREAS, on August 18, 1986, the City Council of the City of Auburn adopted a Comprehensive Plan by Resolution No. 1703 which includes a Map establishing the location of the Comprehensive Plan Land Use Designations throughout the City; and

WHEREAS, on April 17, 1995, the Auburn City Council adopted Comprehensive Plan Amendments by Resolution No. 2635 to comply with the Washington State Growth Management Act; and

WHEREAS, on September 5, 1995, the Auburn City Council reaffirmed that action by its adoption of Ordinance No. 4788; and

WHEREAS, on December 14, 2015, the Auburn City Council adopted an updated Comprehensive Plan which includes a Map establishing the location of the Comprehensive Plan Land Use Designations throughout the City by Ordinance No. 6584; and

WHEREAS, the City of Auburn published in the *Seattle Times Newspaper* an advertisement that the City was accepting comprehensive plan amendment applications and established a deadline for submittal of June 5, 2015; and

WHEREAS, the City of Auburn received privately-initiated map amendments (File Nos. CPA14-0002, CPA14-0003 & CPA15-0002) however these applications were not complete for processing; and

WHEREAS, the City of Auburn initiated five text/policy amendments (File No. CPA15-0001); and

WHEREAS, the Comprehensive Plan text/policy amendments were processed by the Community Development & Public Works Department as proposed Year 2015 annual amendments to the City of Auburn Comprehensive Plan; and

WHEREAS, maintaining a current Capital Facilities Plan is required of the City in order to meet regulations of the Growth Management Act under RCW 36.70A; and

WHEREAS, the environmental impacts of the proposed Year 2015 Comprehensive Plan amendments were considered in accordance with procedures of the State Environmental Policy Act (File No. SEP15-0030) and were determined to have no environmental significance; and

WHEREAS, the proposed amendments were transmitted to the Washington State Department of Commerce, Growth Management Services Division and other State agencies for the 60-day review period in accordance with RCW 36.70A.106; and

WHEREAS, after proper notice published in the City's official newspaper at least ten (10) days prior to the date of hearing, the Auburn Planning Commission on December 8, 2015, conducted a public hearing on the proposed amendments; and

WHEREAS, at the public hearing the Auburn City Planning Commission heard and considered the public testimony and the evidence and exhibits presented to it; and

WHEREAS, the Auburn City Planning Commission thereafter made recommendations to the City Council on the proposed Year 2015 annual Comprehensive Plan map and text amendments; and

WHEREAS, on December 15, 2014, the Auburn City Council reviewed the Planning Commission's recommendations to the City Council; and

WHEREAS, on January 4, 2016, the Auburn City Council considered the proposed Comprehensive Plan amendments as recommended by the City of Auburn Planning Commission.

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

Section 1. The 2015 annual Comprehensive Plan city-initiated Text Amendments (CPA15-0001), as set forth in Exhibit "A" attached hereto and incorporated herein by reference, are adopted and approved. The City Clerk shall file Exhibit "A" along with this Ordinance and keep them available for public inspection. The full text of the Capital Facilities Plan of the City and the four school district's Capital Facilities Plans are adopted with the City's Comprehensive Plan, copies of which shall be on file with the Office of the City Clerk. The City Clerk shall file them along with this Ordinance and keep them available for public inspection. Council adopts both the Planning Commission's recommendations, dated December 8, 2015, and the Findings and Conclusions outlined in the December 15, 2015, staff report, attached as Exhibit "B".

Section 2. The 2015 Comprehensive Plan amendments modify the Comprehensive Plan adopted on August 18, 1986, by Resolution No. 1703; and adopted by Ordinance No. 4788 on September 5, 1995; and adopted December 14, 2015 by Ordinance No. 6584.

Section 3. The adopted Comprehensive Plan as amended is designated as a basis for the exercise of substantive authority under the Washington State Environmental Policy Act by the City's responsible environmental official in accordance with RCW. 43.21C.060.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any of the Comprehensive Plan amendments adopted herein, is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 5. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation to include incorporating into one document the adopted Comprehensive Plan map and text amendments, attached hereto as Exhibit "A" and Exhibit "B" preparing and publishing the amended Comprehensive Plan.

FIRST READING: _____

SECOND READING: _____

PASSED: _____

APPROVED: _____

Nancy Backus
MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

Ordinance No. 6580
December 22, 2015

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read 'DBH', is written over a horizontal line.

Daniel B. Heid, City Attorney

Published: _____

Exhibit "A"

*The Auburn, Dieringer, Federal Way, and Kent School District
Capital Facilities Plans*

City of Auburn Capital Facilities Plan

(See "Comp. Plan Policy/Text Amendments" tab in the working binder)

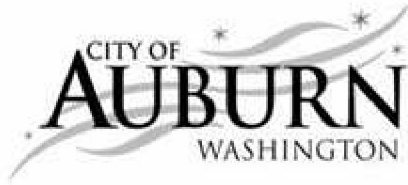
Exhibit "B"

Agenda bill/staff report dated December 15, 2015.

Year 2015 Annual Comprehensive Plan Amendment (CPA) Summary Matrix

(CPM = Comprehensive Plan Map Amendment; P/T = Policy/Text Amendment)

P/T #	Title	Description	Staff Recommendation	Planning Commission Recommendation	City Council Action	Notes
P/T #1	Auburn School District Capital Facilities Plan	Incorporate Auburn School District 2015-2021 Capital Facilities Plan, as part of the Auburn Comprehensive Plan.	Approval	Approval		PC Hearing was conducted on December 8, 2015. Bob Kenworthy, Assistant Director, Capital Projects, Auburn School District, testified in favor of the request. Virginia Haugen testified in favor.
P/T #2	Dieringer School District Capital Facilities Plan	Incorporate the Dieringer School District Capital Facilities Plan 2016-2021 as part of the Auburn Comprehensive Plan.	Approval	Approval		PC Hearing was conducted on December 8, 2015. No public testimony.
P/T #3	Federal Way Capital Facilities Plan	Incorporate Federal Way School District 2016 Capital Facilities Plan, as part of the Auburn Comprehensive Plan.	Approval	Approval		PC Hearing was conducted on December 8, 2015. Due to conflict, Tanya Nascimento, Enrollment and Demographic Analyst, Federal Way School District, submitted a letter for the hearing dated November 8, 2015 supporting the request. No public testimony.
P/T #4	Kent School District Capital Facilities Plan	Incorporate Kent School District 2015/2016 – 2020/2021 Capital Facilities Plan, as part of the Auburn Comprehensive Plan.	Approval	Approval		PC Hearing was conducted on December 8, 2015. Ralph Fortunato, CSBC, Director of Fiscal Services for the Kent School District testified in favor of the request. Virginia Haugen testified in favor.
P/T #5	City of Auburn's 6-year Capital Facilities Plan	Incorporate the City of Auburn's 6-year Capital Facilities Plan 2016-2020, into the City's Comprehensive Plan.	Approval	Approval The PC recommended approval with the 5 revised pages.		PC Hearing was conducted on December 8, 2015. Virginia Haugen testified in favor. The Planning Commission's packet and distribution, identified that Pages 2, 3, 195, 197, and 202 of the CHP needed to change to reflect revised schedule for the City Council Chambers Remodel Project (Project cp1518). The PC recommended approval with the revised 5 pages.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6581, First Reading

Date:

December 29, 2015

Department:

Community Development
and Public Works

Attachments:

[Staff Report](#)

[Ordinance No. 6581](#)

[Impact Fee Table Comparison for CFPs](#)

Budget Impact:

\$0

Administrative Recommendation:

City Council adopt Ordinance No. 6581.

Background Summary:

Please see the attached staff report on Ordinance No. 6581.

Reviewed by Council Committees:

Other: Legal, Community Development

Councilmember:**Staff:**

Snyder

Meeting Date: January 4, 2016

Item Number: ORD.D



AGENDA BILL APPROVAL FORM

Agenda Subject: ZOA15-0005; Ordinance No. 6581 related to year 2016 revision of school district impact fees		Date: December 28, 2015		
Department: Community Development & Public Works Dept.	Attachments: Ordinance No. 6581 Table Comparison of Impact Fees indicated in each CFPs	Budget Impact: (none)		
Administrative Recommendation: City Council to discuss school impact fee ordinance revisions				
Background Summary: Title 19 (Impact Fees) of the Auburn City Code contains standards and regulations pertaining to the imposition of impact fees in the City of Auburn. Specifically, Chapter 19.02 (School Impact Fees) addresses the establishment, calculation, collection and amendment of school impact fees within the municipal boundaries of the City of Auburn. The city originally established school impact fees in 1998 by Ordinance No. 5078. Portions of four school districts lie within the City limits. Pursuant to Code Section 19.02.060 (Annual Council Review) of the Auburn City Code, on at least an annual basis, the Auburn City Council shall review the information submitted by the Districts pursuant to ACC 19.02.050. The review shall be in conjunction with any update of the capital facilities plan element of the city's comprehensive plan. The City Council may also at this time determine if an adjustment to the amount of the impact fees is necessary. The City of Auburn annual Comprehensive Plan Amendment process for 2015 included requests for City approval of the Capital Facilities Plans of the four districts as follows: * 2015 - 2021 Auburn School District Capital Facilities Plan; * 2016-2021 Dieringer School District Capital Facilities Plan; * 2016 Federal Way School District Capital Facilities Plan; and * 2015-2016 through 2020-2021 Kent School District Capital Facilities Plan. These requests were submitted in accordance with the provisions of Section 19.02.050 (Submission of District Capital Facilities Plan and Data) of the Auburn City Code. The School Districts' Capital Facilities Plans are contained in the working notebooks (three ring binders) for the 2015 Annual Comprehensive Plan Amendments, distributed to the City Council prior to the 12-14-15 study session.				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> Reviewed by Council & Committees: ☐ Arts Commission ☐ Airport ☐ Hearing Examiner ☐ Human Services ☐ Park Board ☒ Planning Comm. COUNCIL COMMITTEES: ☐ Finance ☐ Municipal Serv. ☒ Planning & CD ☐ Public Works ☐ Other _____ </td> <td style="width: 50%; vertical-align: top;"> Reviewed by Departments & Divisions: ☐ Building ☐ Cemetery ☐ Finance ☐ Fire ☒ Legal ☐ Public Works ☐ M&O ☐ Mayor ☐ Parks ☒ Planning ☐ Police ☐ Human Resources </td> </tr> </table>			Reviewed by Council & Committees: ☐ Arts Commission ☐ Airport ☐ Hearing Examiner ☐ Human Services ☐ Park Board ☒ Planning Comm. COUNCIL COMMITTEES: ☐ Finance ☐ Municipal Serv. ☒ Planning & CD ☐ Public Works ☐ Other _____	Reviewed by Departments & Divisions: ☐ Building ☐ Cemetery ☐ Finance ☐ Fire ☒ Legal ☐ Public Works ☐ M&O ☐ Mayor ☐ Parks ☒ Planning ☐ Police ☐ Human Resources
Reviewed by Council & Committees: ☐ Arts Commission ☐ Airport ☐ Hearing Examiner ☐ Human Services ☐ Park Board ☒ Planning Comm. COUNCIL COMMITTEES: ☐ Finance ☐ Municipal Serv. ☒ Planning & CD ☐ Public Works ☐ Other _____	Reviewed by Departments & Divisions: ☐ Building ☐ Cemetery ☐ Finance ☐ Fire ☒ Legal ☐ Public Works ☐ M&O ☐ Mayor ☐ Parks ☒ Planning ☐ Police ☐ Human Resources			
Action: Committee Approval: ☐ Yes ☐ No Council Approval: ☐ Yes ☐ No Call for Public Hearing ____/____/____ Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____				
Councilmember:		Staff: Dixon		
Meeting Date: January 4, 2016		Item Number:		

Definition

The city's code section 19.02 contains the city's regulations governing school impact fees. It provides the following definition:

"Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for school facilities needed to serve new growth and development that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the school facilities, and that is used for such facilities that reasonably benefit the new development.

Related Authority

Other key points of the city's regulations include:

- ▽ The impact fee shall be based on a capital facilities plan adopted by the district and incorporated by reference by the city as part of the capital facilities element of the city's comprehensive plan, adopted pursuant to Chapter 36.70A RCW, for the purpose of establishing the fee program.
- ▽ Separate fees shall be calculated for single-family and multifamily types of dwelling units, and separate student generation rates must be determined by the district for each type of dwelling unit.
- ▽ The fee shall be calculated on a district-wide basis using the appropriate factors and data supplied by the district. The fee calculations shall also be made on a district-wide basis to assure maximum utilization of all available school facilities in the district which meet district standards.
- ▽ As a condition of the city's authorization and adoption of a school impact fee ordinance, the city and the applicable district shall enter into an interlocal agreement governing the operation of the school impact fee program, and describing the relationship and liabilities of the parties. The agreement must provide that the district shall hold the city harmless for all damages.
- ▽ On an annual basis (by July 1st or on a date agreed to by district and the city and stipulated in the interlocal agreement), any district for which the city is collecting impact fees shall submit the Capital facilities plan and supporting information to the city.
- ▽ Applicants for single-family and multifamily residential building permits shall pay the total amount of the impact fees assessed before the building permit is issued, using the impact fee schedules in effect, unless the fee has been deferred pursuant to City Ordinance No. 6341.
- ▽ The impact fee calculation shall be based upon the formula set forth in ACC 19.02.110, "Impact fee formula". The formula is the city's determination of the appropriate proportionate share of the costs of public school capital facilities needed to serve new growth and development to be funded by school impact fees based on the factors defined in ACC 19.02.020. Based on this formula, the "Fee Obligation" is the "Total Unfunded Need" x 50% = Fee Calculation.

The Capital Facilities Plans that were approved by the school boards contain proposed school impact fees for each of the Districts. The requests for adjustment of the school impact fees are required to be submitted concurrent with the submittal of the Capital Facilities Plans. A separate letter request is only required to be submitted to the city when the fee adjustment is requested to increase.

Council Review and Decision

The setting of the actual fees occurs through separate Council action amending Chapter 19.02 of the Auburn City Code. Section 19.02.060, (Annual Council Review) specifies the following:

On at least an annual basis, the city council shall review the information submitted by the district pursuant to ACC 19.02.050. The review shall be in conjunction with any update of the capital facilities plan element of the city's comprehensive plan. The city council may also at this time determine if an adjustment to the amount of the impact fees is necessary; provided, that any school impact fee adjustment that would increase the school impact fee shall require the submittal of a written request for the adjustment by the applicable school district concurrent with the submittal of the annual capital facilities plan pursuant to ACC 19.02.050. In making its decision to adjust impact fees, the city council will take into consideration the quality and completeness of the information provided in the applicable school district capital facilities plan and may decide to enact a fee less than the amount supported by the capital facilities plan.

Section 19.02.060 establishes that the Auburn City Council is not obligated to accept the fees proposed by the School Districts within their submitted Capital Facilities Plans and may establish fees that the Council determines are more appropriate and consistent with the public's interest in reasonably mitigating school impacts within the affected portion of the City.

Recommendation

The Dieringer School District submitted a proposed fee calculation of \$5,330.88 for single family residential and \$2625.01 for multiple family residential based on their Capital Facilities Plan. Related to this, the Pierce County Council by Ordinance No. 2015-76s adopted November 10, 2015 and effective January 1, 2016, established a school impact fee for the Dieringer School District of \$3,330.00 for single family residential and \$1,518.00 for multiple family residential. (The Dieringer School District is the only school district common to both the jurisdictions of the City of Auburn and Pierce County). Pierce County imposes the same maximum school impact fee for all school districts located in Pierce County.

To be consistent, it is appropriate to establish a fee applicable to Auburn for the Dieringer School district that is the same as Pierce County's fee since it is more appropriate and consistent with the public's interest in reasonably mitigating school impacts within the affected portion of the City. The draft Ordinance will be prepared to reflect school impact fees that are the same as Pierce County's school impact fee and differs from what the Dieringer School District has requested, as historically has been done.

Scheduling of Actions

A discussion of the School District Capital Facilities Plans school impact fee changes was held at the City Council Work Session on December 14, 2015 and an Ordinance and first reading of the proposed ordinance No. 6581 is scheduled for January 4, 2016.

ORDINANCE NO. 6 5 8 1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON AMENDING SECTIONS 19.02.115, 19.02.120, 19.02.130 AND 19.02.140 OF THE AUBURN CITY CODE RELATING TO SCHOOL IMPACTS FEES

WHEREAS, the City of Auburn has adopted a school impact fee ordinance and collects school impact fees on behalf of certain school districts located or located in part within the City of Auburn; and

WHEREAS, the Auburn School District, Dieringer School District, Federal Way School District, and the Kent School District, each being located in part within the City of Auburn, have provided the City of Auburn with updated capital facilities plans to be considered during the City's 2015 annual comprehensive plan amendment process that addresses among other things, the appropriate school impact fee for single family residential dwellings and multi- family residential dwellings for each district; and

WHEREAS, the Auburn School District issued a Determination of Non-Significance for the 2015 - 2021 Auburn School District Capital Facilities Plan May 22, 2015; the Dieringer School District issued a Determination of Non- Significance for the 2016-2021 Dieringer School District Capital Facilities Plan June 1, 2015; the Federal Way School District issued a Determination of Non-Significance for the 2016 Federal Way School District Capital Facilities Plan May 8, 2015 and December 25, 2015; and

Ordinance No. 6581
December 28, 2015
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the Kent School District issued a Determination of Non-Significance for the 2015-2016 through 2020-2021 Kent School District Capital Facilities Plan July 17, 2015; and

WHEREAS the City of Auburn issued a Determination of Non-Significance (DNS) on November 2, 2015 for the City of Auburn Year 2015 city-initiated comprehensive plan map and text amendments (File No. SEP15-0030), and

WHEREAS, after proper notice published in the City's official newspaper at least ten (10) days prior to the date of hearing, the Auburn Planning Commission on December 8, 2015 conducted public hearings on the proposed Auburn School District 2015-2021 Capital Facilities Plan, the proposed Dieringer School District 2016 - 2021 Capital Facilities Plan; the proposed Federal Way School District 2016 Capital Facilities Plan; and for the proposed Kent School District 2015-2016 through 2020-2021 Capital Facilities Plan; and

WHEREAS, following the conclusion of the public hearing on December 8, 2015, and subsequent deliberations, the Auburn Planning Commission, following individual positive motions, made separate recommendations to the Auburn City Council on the approval of the Auburn School District 2015-2021 Capital Facilities Plan, the Dieringer School District 2016 - 2021 Capital Facilities Plan; the Federal Way School District 2016 Capital Facilities Plan; and for the Kent School District 2015-2016 through 2020-2021 Capital Facilities Plan; and

WHEREAS, the Auburn City Council reviewed the recommendations of the Auburn Planning Commission on the school district capital facilities plans at a regularly

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December 28, 2015
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scheduled study session on December 14, 2015; and

WHEREAS, the Auburn City Council considered the recommendations of the Auburn Planning Commission on the capital facilities plans at a regularly scheduled meeting on January 4, 2016, and a positive motion approved the Auburn School District 2015-2021 Capital Facilities Plan, the Dieringer School District 2016 - 2021 Capital Facilities Plan; the Federal Way School District 2016 Capital Facilities Plan; and for the Kent School District 2015-2016 through 2020-2021 Capital Facilities (Ordinance No. 6580); and

WHEREAS, on December 14, 2015 the Auburn City Council at a regularly scheduled study session reviewed amendments to Title 19 (Impact Fees) and more specifically, Chapter 19.02 (School Impact Fees) pertaining to school impact fees for single family residential dwelling units and multi-family dwelling units to be applied in the City of Auburn for the Auburn School District; Dieringer School District, Federal Way School District, and the Kent School District; respectively, based on the aforementioned capital facilities plans for each of these districts; and

WHEREAS, the Auburn City Code provides for adjustments to school impact fees based on a review of the capital facilities plans for each of the districts; and

WHEREAS, Section 19.02.060 (Annual Council Review) of the Auburn City Code specifies that the Auburn City Council will in making its decision to adjust impact fees take into consideration the quality and completeness of the information provided in the applicable school district capital facilities plan and may decide to enact a fee less than

Ordinance No. 6581
December 28, 2015
Page 3 of 7

the amount supported by the capital facilities plan. NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amendment to the City Code. Section 19.02.115 of the Auburn City Code is hereby amended to read as follows.

19.02.115 Impact fee calculation and schedule for the Dieringer School District.

The impact fee calculation and schedule below is based upon a review of the impact fee calculation for single-family residences and for multifamily residences set forth in the most recent version of the Dieringer School District Capital Facilities Plan adopted by the Auburn city council as an element of the Auburn comprehensive plan. The calculation is the determination of the appropriate proportionate share of the costs of public school capital facilities needed to serve new growth and development to be funded by school impact fees based on the factors defined in ACC 19.02.020.

Effective January 1, ~~2015~~2016, or the effective date of this ordinance whichever is later, the school impact fee shall be as follows:

Per Single-Family Dwelling Unit ~~\$3,270.00~~\$3,330.00

Per Multifamily Dwelling Unit ~~\$1,725.00~~\$1,518.00

(Ord. 6445 § 1, 2013; Ord. 6393 § 1, 2011; Ord. 6341 § 2, 2011; Ord. 6340 § 1, 2010; Ord. 6279 § 1, 2009; Ord. 6214 § 1, 2008; Ord. 6134 § 1, 2007; Ord. 6060 § 1, 2006; Ord. 5950 § 2, 2005.)

Section 2. Amendment to the City Code. Section 19.02.120 of the Auburn City Code is hereby amended to read as follows.

19.02.120 Impact fee calculation and schedule for the Auburn School District.

The impact fee calculation and schedule is based upon a review of the impact fee calculation for single-family residences and for multifamily

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December 28, 2015
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residences set forth in the most recent version of the Auburn School District's Capital Facilities Plan adopted by the Auburn city council as an element of the Auburn comprehensive plan. The calculation is the determination of the appropriate proportionate share of the costs of public school capital facilities needed to serve new growth and development to be funded by school impact fees based on the factors defined in ACC 19.02.020.

Effective January 1, 2015~~2016~~, or the effective date of this ordinance whichever is later, the school impact fee shall be as follows:

Per Single-Family Dwelling Unit ~~\$4,137.24~~ \$5,330.88

Per Multifamily Dwelling Unit ~~\$3,518.17~~ \$2,625.01

(Ord. 6445 § 2, 2013; Ord. 6393 § 2, 2011; Ord. 6341 § 2, 2011; Ord. 6340 § 2, 2010; Ord. 6279 § 2, 2009; Ord. 6214 § 2, 2008; Ord. 6134 § 2, 2007; Ord. 6060 § 2, 2006; Ord. 5950 § 1, 2005; Ord. 5793 § 1, 2003; Ord. 5232 § 1, 1999.)

Section 3. Amendment to the City Code. Section 19.02.130 of the Auburn City

Code is hereby amended as follows.

19.02.130 Impact fee calculation and schedule for the Kent School District.

The impact fee calculation and schedule is based upon a review of the impact fee and calculation for single-family residences and for multifamily residences set forth in the most recent version of the Kent School District's Capital Facilities Plan adopted by the Auburn city council as an element of the Auburn comprehensive plan. The calculation is the determination of the appropriate proportionate share of the costs of public school capital facilities needed to serve new growth and development to be funded by school impact fees based on the factors defined in ACC 19.02.020.

Effective January 1, 2015~~2016~~, or the effective date of this ordinance whichever is later, the school impact fee shall be as follows:

Per Single-Family Dwelling Unit ~~\$5,486.00~~ \$4,990.00

Per Multifamily Dwelling Unit ~~\$3,378.00~~ \$2,163.00

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December 28, 2015
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(Ord. 6445 § 3, 2013; Ord. 6393 § 3, 2011; Ord. 6341 § 2, 2011; Ord. 6340 § 3, 2010; Ord. 6279 § 3, 2009; Ord. 6214 § 3, 2008; Ord. 6134 § 3, 2007; Ord. 6060 § 3, 2006; Ord. 5950 § 1, 2005; Ord. 5233 § 1, 1999.)

Section 4. Amendment to the City Code. Section 19.02.140 of the Auburn City

Code is hereby amended to read as follows.

19.02.140 Impact fee calculation and schedule for the Federal Way School District.

The impact fee calculation and schedule is based upon a review of the impact fee and calculation for single-family residences and for multifamily residences set forth in the most recent version of the Federal Way School District's Capital Facilities Plan adopted by the Auburn city council as an element of the Auburn comprehensive plan. The calculation is the determination of the appropriate proportionate share of the costs of public school capital facilities needed to serve new growth and development to be funded by school impact fees based on the factors defined in ACC 19.02.020.

Effective January 1, ~~2015~~2016, or the effective date of this ordinance whichever is later, the school impact fee shall be as follows:

Per Single-Family Dwelling Unit ~~\$5,171.00~~ \$2,899.00

Per Multifamily Dwelling Unit ~~\$1,834.00~~ \$506.00

(Ord. 6445 § 4, 2013; Ord. 6393 § 4, 2011; Ord. 6341 § 2, 2011; Ord. 6340 § 4, 2010; Ord. 6279 § 4, 2009; Ord. 6214 § 4, 2008; Ord. 6134 § 4, 2007; Ord. 6060 § 4, 2006; Ord. 6042 § 1, 2006.)

Section 5. Constitutionality and Invalidity. If any section, subsection sentence, clause, phrase or portion of this Ordinance, is for any reason held invalid or unconstitutional by any Court of competent jurisdiction such portion shall be deemed a

Ordinance No. 6581
December 28, 2015
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separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

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

Section 7. Effective Date. This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

FIRST READING: _____

SECOND READING: _____

PASSED: _____

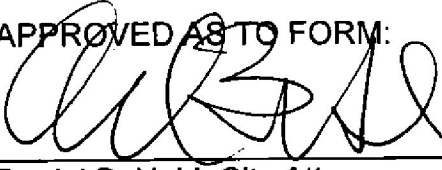
APPROVED: _____

NANCY BACKUS, Mayor

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

Published: _____

Ordinance No. 6581
December 28, 2015
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School Impact Fee Proposal (Effective Year 2016)

School District	Multiple Family					Single Family				
	Past 2015 fee, Per ACC 19.02	CFP says:	Requested Amount	Change?	Amount Proposed in Ord # 6581	Past 2015 fee, Per ACC 19.02	CFP says:	Requested Amount	Change?	Amount Proposed in Ord # 6581
Auburn	\$3,518.17	\$2,625.01 Page 28	\$2,625.01	Decrease of \$893.16	\$2,625.01	\$4,137.21	\$5,330.88 Page 28	\$5,330.88	Increase of \$1,193.67	\$5,330.88
Dieringer	\$1,725.00	\$1,518.00 Page 13	\$1,518.00	Decrease of \$207.00	\$1,518.00	\$3,270.00	\$4,672.00 Page 13	\$4,672.00	Increase of \$1,402.00	\$3,330.00
Federal Way	\$1,834.00	\$506.00 Page 28 & 30	\$506.00	Decrease of \$1,328.00	\$506.00	\$5,171.00	\$2,899.00 Page 28 & 30	\$2,899.00	Decrease of \$2,275.00	\$2,899.00
Kent	\$3,378.00	\$2,163.00 Page 31	\$2,163.00	Decrease of \$1,215.00	\$2,163.00	\$5,486.00	\$4,990.00 Page 30	\$4,990.00	Decrease of \$496.00	\$4,990.00

CFP = Capital Facilities Plan
ACC = Auburn City Code



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6583, Second Reading

Date:

December 28, 2015

Department:

CD & PW

Attachments:

[Ordinance No. 6583](#)

Budget Impact:

\$0

Administrative Recommendation:

City Council introduce and adopt Ordinance No. 6583.

Background Summary:

Ordinance No. 6583 authorizes an amendment to Chapter 19.04.040, Assessment of Impact Fees, of the Auburn City Code.

The proposed amendment to the assessment of Traffic impact fees would allow applicants to pay the lowest rate in effect between the time that a building permit is submitted to the City and the time that the City issues the permit to the applicant. The City updates the Traffic Impact Fees annually. These updates can be either an increase or a decrease depending on the capacity projects included and the projected future growth of the city. In addition, the process to obtain a building permit from the City can vary depending on the complexity of the project and the number of other permits that may be required and can take a few weeks to several months and can span over the period of time the City may change the fee. The proposed code revision would allow an applicant to benefit from a reduction in the fee that may occur prior to their construction of any improvements.

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

Snyder

Meeting Date: January 4, 2016

Item Number: ORD.E

ORDINANCE NO. 6 5 8 3

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING SECTION 19.04.040 OF THE AUBURN CITY CODE, ENTITLED "ASSESSMENT OF IMPACT FEES" FOR THE PURPOSE OF REVISING CODE LANGUAGE TO CLARIFY INTENT

WHEREAS, a review of the current Auburn City Code provisions revealed a need to clarify the language regarding the assessment of the traffic impact fees; and

WHEREAS, the City Council updates the traffic impact fees on an annual basis; and

WHEREAS, applicants may be within the building permit review process as the time of a change in the fees; and

WHEREAS, if the applicant has not begun construction of their project or paid the traffic impact fee they should be able to take advantage of a reduction in the fee amount; and

WHEREAS, it is appropriate for the City to have the flexibility to allow the lowest rate in effect between the application and issuance of a building permit.

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

Section 1. AMENDMENT TO CITY CODE. That Section 19.04.040 of the Auburn City Code be, and the same hereby is, amended to read as follows:

19.04.040 Assessment of impact fees.

A. Effective July 1, 2001, the city shall collect impact fees, based on the fee schedule of the city of Auburn, from any applicant seeking a building permit from the city for any development activity within the city.

B. Effective May 19, 2003, where a change in use increases the trip generation by more than one whole PM peak hour trip, the director shall calculate a transportation impact fee based on the increases in the trip generation rate.

C. The director shall apply a heavy truck adjustment factor to the transportation impact fees for industrial land uses, addressing the percentage of vehicle trips for such uses made by trucks of three or more axles and the street capacity used by such trucks in comparison to other vehicles.

D. The amount of impact fees shall be ~~determined at based on the lowest rate in effect between the time an applicant submits a complete application for a building permit and the time of permit issuance using the impact fee schedules then in effect~~, or pursuant to an independent fee calculation accepted by the director pursuant to ACC 19.04.050, and adjusted for any credits pursuant to ACC 19.04.060.

E. Payment of impact fees shall be made by the feepayer at the time the building permit is issued. The amount to be paid shall not be increased for any applicant that submitted a complete application for the building permit before the city established the impact fee rates.

F. Applicants that have been awarded credits prior to the submittal of the complete building permit application pursuant to ACC 19.04.060 shall submit, along with the complete building permit application, a copy of the letter or certificate prepared by the director pursuant to ACC 19.04.060 setting forth the dollar amount of the credit awarded. Impact fees, as determined after the application of appropriate credits, shall be collected from the feepayer at the time the building permit is issued.

G. The department shall not issue a building permit unless and until the impact fees have been paid or credit(s) awarded.

H. For complete single-family building permit applications for new development, redevelopment or a change in use, and prior to or at the time of issuance of any single-family residential building permit for a dwelling unit that is being constructed, the applicant may elect to record a covenant against title to the property on forms prepared and provided by the city that requires payment of transportation impact fees due and owing by providing for automatic payment through escrow of these transportation impact fees due and owing to be paid no later than at time of closing of the sale of the unit or at final inspection or issuance of certificate of occupancy or 18 months from the date of issuance of the original building permit, whichever comes first. Failure to pay shall result in the following:

1. If 30 days after the city has sent the responsible party written notification of its obligation to pay the charges established in this chapter the full amount remains unpaid, the responsible party shall be subject to the enforcement provisions of ACC 1.25.030 and 1.25.065. Written notification shall be by regular and certified mail and to the most current available contact information on file with the city. For the purposes of applying ACC 1.25.030 and 1.25.065, the responsible party shall constitute a property owner, the property(ies) for which a permit(s) has been issued shall constitute the property(ies) on which the violation is occurring, and the impact fee amount remaining unpaid shall constitute a violation occurring on the permitted property(ies) under these sections.

2. Any unpaid charges adopted by this chapter that are outstanding 30 days from the date the charges are due shall constitute a lien against the property(ies) for which a permit(s) has been issued in the amount of the unpaid charges. In addition to the actions authorized in subsection (H)(1) of this section, the city may record a lien against the permitted property(ies) in the amount of the unpaid charges and may immediately suspend any permits previously issued for the lot or unit associated with the current development activity and shall limit the granting of any future permits for the lot or unit until such time that all outstanding water, sanitary sewer and storm drainage development charges are paid in full.

3. The appeals process authorized in ACC 19.04.080 shall not apply to determinations made pursuant to this section.

I. For complete multifamily building permit applications for new development, redevelopment or a change in use, and prior to or at the time of issuance of any multifamily residential building permit that is being constructed, the applicant may elect to record a covenant against title to the property on forms prepared and provided by the city that requires payment of transportation impact fees due and owing by providing for automatic payment through escrow of these transportation impact fees due and owing to be paid no later than at time of closing of the sale of the unit or at final inspection or issuance of certificate of occupancy or 18 months from the date of issuance of the original building permit, whichever comes first. Failure to pay shall result in the following:

1. If 30 days after the city has sent the responsible party written notification of its obligation to pay the charges established in this chapter the full amount remains unpaid, the responsible party shall be subject to the enforcement provisions of ACC 1.25.030 and 1.25.065. Written notification shall be by regular and certified mail and to the most current available contact information on file with the city. For the purposes of applying ACC 1.25.030 and 1.25.065, the responsible party shall constitute a property owner, the property(ies) for which a permit(s) has been issued shall constitute the property(ies) on which the violation is occurring, and the impact fee amount remaining unpaid shall constitute a violation occurring on the permitted property(ies) under these sections.

2. Any unpaid charges adopted by this chapter that are outstanding 30 days from the date the charges are due shall constitute a lien against the property(ies) for which a permit(s) has been issued in the amount of the unpaid charges. In addition to the actions authorized in subsection (I)(1) of this section, the city may record a lien against the permitted property(ies) in the amount of the unpaid charges and may immediately suspend any permits previously issued for the lot or unit associated with the current development activity and shall limit the granting of any future permits for the lot or unit until such time that all outstanding water, sanitary sewer and storm drainage development charges are paid in full.

3. The appeals process authorized in ACC 19.04.080 shall not apply to determinations made pursuant to this section.

J. For nonresidential development composed of new development, redevelopment or a change in use and inclusive of commercial office and retail uses, light and heavy manufacturing uses, but excluding warehousing and

distribution uses, and institutional development including but not limited to public and private schools and colleges and hospitals, and prior to the issuance of any permit application and following the execution of a payment agreement on forms prepared and provided by the city, the applicant may elect to pay transportation impact fees due and owing, less any credits awarded, no later than prior to issuance of certificate of occupancy or 18 months from the date of issuance of the original building permit, whichever comes first. Failure to pay shall result in the following:

1. If 30 days after the city has sent the responsible party written notification of its obligation to pay the charges established in this chapter the full amount remains unpaid, the responsible party shall be subject to the enforcement provisions of ACC 1.25.030 and 1.25.065. Written notification shall be by regular and certified mail and to the most current available contact information on file with the city. For the purposes of applying ACC 1.25.030 and 1.25.065, the responsible party shall constitute a property owner, the property(ies) for which a permit(s) has been issued shall constitute the property(ies) on which the violation is occurring, and the impact fee amount remaining unpaid shall constitute a violation occurring on the permitted property(ies) under these sections.

2. Any unpaid charges adopted by this chapter that are outstanding 30 days from the date the charges are due shall constitute a lien against the property(ies) for which a permit(s) has been issued in the amount of the unpaid charges. In addition to the actions authorized in subsection (J)(1) of this section, the city may record a lien against the permitted property(ies) in the amount of the unpaid charges and may immediately suspend any permits previously issued for the lot or unit associated with the current development activity and shall limit the granting of any future permits for the lot or unit until such time that all outstanding water, sanitary sewer and storm drainage development charges are paid in full.

3. The appeals process authorized in ACC 19.04.080 shall not apply to determinations made pursuant to this section. (Ord. 6455 § 3, 2013; Ord. 6341 § 3, 2011; Ord. 6005 § 1, 2006; Ord. 5763 § 1, 2003; Ord. 5506 § 1, 2001.)

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

Section 3. SEVERABILITY. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.

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

FIRST READING: _____

SECOND READING: _____

PASSED: _____

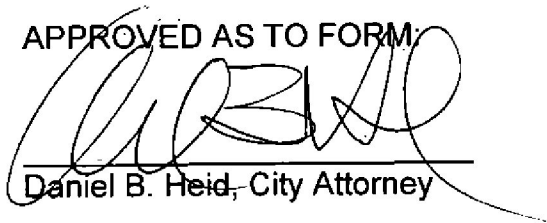
APPROVED: _____

ATTEST:

NANCY BACKUS, MAYOR

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

PUBLISHED: _____



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5193

Date:

December 24, 2015

Department:

Human Resources

Attachments:

[Resolution No. 5193](#)

[Exhibit A](#)

Budget Impact:

\$0

Administrative Recommendation:

City Council adopt Resolution No. 5193.

Background Summary:

For the purposes of setting forth the mutual understanding of the parties as to conditions of employment for those employees for whom the city recognizes the Union as the collective bargaining representative.

Reviewed by Council Committees:

Other: Executive Council

Councilmember:**Staff:**

Roscoe

Meeting Date: January 4, 2016

Item Number: RES.B

RESOLUTION NO. 5 1 9 3

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF AUBURN AND THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS DISTRICT LODGE NO. 160

WHEREAS, this Agreement is between the City of Auburn and the International Association of Machinists and Aerospace Workers, Local 160 for the purposes of setting forth the mutual understanding of the parties as to conditions of employment for those employees for whom the City recognizes the International Association of Machinists and Aerospace Workers, Local 160 as the collective bargaining representative; and

WHEREAS, the City of Auburn recognizes the International Association of Machinists and Aerospace Workers, Local 160 as the exclusive bargaining representative of all employees designated as International Association of Machinists and Aerospace Workers, Local 160.

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

Section 1. That the Mayor is hereby authorized to execute the Collective Bargaining Agreement between the City of Auburn and the International Association of Machinists and Aerospace Workers, Local 160, which agreement shall be in substantial conformity with the agreement attached hereto as Exhibit A and incorporated herein by this reference.

Section 2. The Mayor is 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 upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 20____.

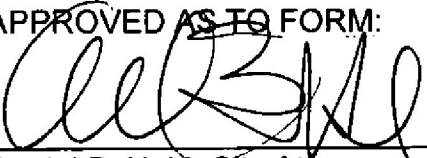
CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

**I
Exhibit A
FINAL AGREEMENT**

NON-COMMISSIONED UNIT

CITY OF AUBURN

AND

INTERNATIONAL ASSOCIATION OF MACHINISTS

AND AEROSPACE WORKERS

DISTRICT LODGE NO. 160

2016-2018

AGREEMENT

NON-COMMISSIONED UNIT

BY AND BETWEEN

CITY OF AUBURN

AND

INTERNATIONAL ASSOCIATION OF MACHINISTS

AND AEROSPACE WORKERS

DISTRICT LODGE NO. 160

January 1, 2016 – December 31, 2018

PREAMBLE

This Agreement is between the City of Auburn (hereinafter called the "City") and the International Association of Machinists and Aerospace Workers, District Lodge No. 160, (hereinafter called "Union") for the purposes of setting forth the mutual understanding of the parties as to conditions of employment for those employees for whom the city recognizes the Union as the collective bargaining representative.

Effective: January 1, 2016

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Article I

RECOGNITION AND BARGAINING UNIT

Section 1. The City recognizes the Union as the exclusive bargaining representative for all employees designated by the classifications set forth in Appendix "A" and as certified by the Public Employment Relations Commission Case No. 7784-E-89-1327, February 1989, excluding confidential employees, supervisors, and all other employees.

Section 2.

Full-Time, Regular Employees: Full-time employee means any employee who regularly works forty (40) hours or more per week for more than (4) consecutive calendar months in a calendar year.

Part-Time, Regular Employees: Part-time, regular employee is an employee who regularly works less than forty (40) hours per week, but not less than thirty (30) hours per week, for more than four (4) consecutive calendar months in a calendar year. Such employees shall accrue vacation, sick leave, and holiday benefits in the direct ratio that their regular work hours bears to forty (40) hours per week.

All employees doing bargaining unit work must be members under one of the above classifications. This provision shall not include temporary or occasional workers providing no more than six hundred (600) hours are worked by these two (2) groups per year.

Note: Salary step advancement for part-time employees shall be based upon completed months of service as set forth in Appendix "A".

Article 2

UNION MEMBERSHIP

Section 1. All active, full-time employees covered by this Agreement shall become members of the Union within thirty-one (31) days from the date of employment, and shall remain members of the Union in good standing as a condition of continued employment.

For the purposes of this section, membership in the Union shall be deemed to have been maintained if the employee has not failed to tender his/her normal monthly dues and/or initiation fee for an accumulative period of two (2) months.

Regarding regular, part-time employees, it is acknowledged that the Union will determine the proportion of the regular monthly dues payable to the Union by such employees, after considering the ratio that their regular work hours bears to forty (40) hours per week.

Section 2. Failure by an employee to abide by the above provisions shall constitute a cause for discharge of such employee provided that when an employee fails to fulfill the above obligation, the Union shall provide the employee and the City thirty (30) days notification in writing of the Union's request to initiate discharge action. During this period the employee may make restitution in the amount which is overdue. Should the employee make such restitution, the request for discharge shall be withdrawn.

Section 3. PAYROLL DEDUCTION FOR UNION DUES. The City agrees to deduct monthly dues required of the employees in the bargaining unit who voluntarily execute a wage assignment authorization form. The City will deposit such dues with International Association of Machinists and Aerospace Workers, District Lodge 160, IAM&AW, 9135 – 15th Place South, Seattle, Washington, 98108. Upon issuance and transmission of such dues and initiation fees to the Union, the City's responsibility shall cease with the respect to such deductions. The Union and each employee authorizing the assignment of wages for payment of Union dues hereby undertake to indemnify and hold the City harmless from all claims, demands, suits, or other forms of liability that may arise against the City for, or on account of, any deduction made by the wages of such employee.

Section 4. POLITICAL ENDORSEMENTS. By remitting dues to the Union, the City does not thereby endorse any expenditure, political or otherwise, made by the Union.

Article 3

UNION REPRESENTATION: ACCESS TO EMPLOYEES

Section 1. The Business Representative of the Union shall be allowed access to all facilities of the City wherein the employees covered under this contract may be working for the purposes of investigating grievances, provided such representative or steward does not interfere with the normal work processes. No Union member or officer shall conduct any Union business on City time and no Union meetings will be held on City time or premises unless authorized by the Chief of Police, or designee. Off-duty meetings may be scheduled and held on City premises.

Section 2. The City agrees that employees covered by this Agreement shall not be discharged or discriminated against for upholding Union principles or for performing duties authorized by the Union so long as these activities do not interfere with normal work processes of the City.

Section 3. The employer will attempt to allow such members of the Union as may be designated by the Union, not to exceed three (3), leave from duty without loss of pay for the purposes of direct participation as members of the Union negotiating team in labor negotiations with the City of Auburn including mediation.

Note: Chief retains right not to allow three (3) based on Department staffing needs.

Article 4

NONDISCRIMINATION

It is mutually agreed that there shall be no discrimination of any protected class as defined under the federal, state, and/or local laws, unless based upon a bonafide occupational qualification. The Union, employees, and management representatives shall work cooperatively to assure the achievement of equal employment opportunity. Furthermore, employees who feel they have been discriminated against shall be encouraged to use the grievance procedure set up under this Agreement prior to seeking relief through other channels. Grievances under this Article shall not be subject to step four of the grievance procedure (Arbitration).

Article 5

HOURS OF WORK AND OVERTIME

Section 1. The Chief of Police shall establish regular work schedules for the members of the bargaining unit, such that the working hours for the employees shall be equivalent to forty (40) hours per week on an annualized basis. The City will determine the applicable workweeks in which to implement a 9x80 schedule. The following terms will govern compensation and benefits:

- a. Once scheduled for the 9x80 work schedule, no changes to the schedule or "swaps" will be allowed unless agreed to by the City.
- b. Holidays shall be nine (9) hour days. If the holiday falls on a day which the employee is not scheduled to work, the employee will "bank" nine (9) hours of holiday for use during the next calendar year, at the supervisor's discretion (Christmas can be carried into January of the following year).
- c. Every effort will be made by the employees to schedule personal appointments on the "flex day" (day off). Exceptions shall be approved by the Chief of Police (or designee during absences).
- d. The City reserves the right to discontinue the 9x80 work schedule program in whole or in part at any time based on operational needs or necessity.

The normal workday shall be up to nine (9) hours inclusive of the lunch period.

Section 2. Except as otherwise provided in this Article, employees shall be paid at the rate of time and a half (1½) of their hourly base rate for:

- A. All hours worked outside the regularly assigned shift in any one (1) day;
- B. All hours worked on a scheduled day off as a result of a rescheduled holiday;

- C. The hours worked on the first and last day of a changed shift unless written notice no less than seven (7) calendar days in advance of the shift change from the employee's regular shift is given to the employee, or if the employee only works one (1) day, without prior notice.

All overtime must be authorized by the Chief of Police, or designee. Where possible, overtime shall be assigned equitably, subject to employee qualifications, as determined by management, to perform the work. Employees shall have the first right of refusal of any overtime opportunities within his/her respective job classifications, before it is offered to bargaining unit employees in other classifications.

In the event of unscheduled overtime within the classification, overtime will first be offered by seniority to on-duty employees holding the same classification. If additional coverage is needed, the overtime will be first offered to the incoming employees holding the same classification by seniority.

In the event of scheduled overtime, qualified employees will be asked to volunteer for such, and assignment of the overtime will be in order of seniority. If an insufficient number of employees volunteer, the scheduled overtime will be assigned on a mandatory basis to qualified employees. In all cases in computing overtime, the nearest one-quarter (1/4) hour shall be used.

Section 3. COMPENSATORY TIME. Payment for authorized overtime hours worked shall be pay or compensatory time at the employee's option to be exercised at the time earned.

Compensatory time shall be earned and accumulated at the rate of time and a half (1 ½) hours for each overtime hour worked, provided that the maximum allowable accrued shall be one hundred (100) hours of compensation. Overtime worked beyond that cap will be compensated by pay only. Effective November 30th of each year, all compensatory time accrued as of the 30th of November of that year minus thirty (30) hours will be cashed out at the employee's then current rate of pay (base plus longevity) on the first payday of December. At the option of the employee, any or all of the remaining thirty (30) hours may be paid at that time, but no more than thirty (30) hours may be carried over into the following calendar year.

The City may require that employees use existing compensatory time, specifying the date on which it is to be used. In the event an employee requests the use of accrued compensatory time on a particular date, and the City does not grant that request, the parties agree that one year is a reasonable time within which to schedule and grant time off.

Section 4. CALLBACK. If an employee is called to duty or is scheduled for court during off hours, he/she will be guaranteed a minimum of three (3) hours at time and a half (1 ½) times his/her hourly base rate, except where such attendance is an extension of the end of his/her regularly scheduled shift, at which time normal overtime procedures will apply.

Section 5. Employees formally placed on standby status shall be compensated on the basis of four (4) hours straight-time pay for eight (8) hours or fraction thereof. If an employee is actually called back to work, normal overtime shall apply. Employees will be compensated when called back either normal overtime or four (4) hours straight time, which ever is greater.

The employer will pay for all hours from the time employees leave the Auburn Police Department to the time they return to the Auburn Police Department for all court duty outside the City limits.

Section 6. Unless otherwise required by the Fair Labor Standards Act (FLSA), the employee agrees to waive any overtime compensation due as a result of the employee's attendance at any Washington State Law Enforcement Training Commission's Basic School or other authorized training programs. Compensation for off-duty attendance at authorized training programs shall be agreed upon in advance between the employee and the police administration, in accordance with the following guidelines:

- A. Employee shall be paid time and a half (1 ½) for training required by the employer and in session beyond the employee's normally scheduled shift in one (1) day.
- B. Employee shall waiver any compensation for voluntary training programs.
- C. **TRAINING.** The Employer agrees to provide a minimum of twenty (20) hours of job-related training per calendar year.

Section 7. CANCELLATION OF COURT APPEARANCE. When an employee complies with all departmental procedures on the day prior to a court appearance, and is notified on the date that the court appearance is still scheduled for the next day, the employee shall be entitled to receive the minimum payments provided by this Agreement, even if the court appearance is thereafter canceled.

Section 8. REST AND LUNCH BREAKS. As a general rule, employees may combine their 15-minute rest breaks with their 30-minute lunch break. Employees must be immediately available by cell phone, Nextel, or other communicative device so that they are able to return to the worksite within ten (10) minutes of contact. Failure to be able to contact the employee may result in discipline.

Article 6

CLASSIFICATION AND SALARIES

Section 1. Employees covered by this Agreement shall be compensated in accordance with the pay plan attached to this Agreement and marked Appendix "A". This Appendix

shall be considered a part of this Agreement. Paydays for employees covered by this Agreement shall be on the 8th and 23rd of each month.

Section 2. All employees shall be reimbursed for educational expenses for job-related classes or degrees, but such classes must have the prior approval of the Chief of Police, or designee.

Section 3. Effective January 1, 1986, longevity pay shall be applied to the straight time hourly rates of all employees covered by this Agreement who have completed continuous service in accordance with the following schedule:

LONGEVITY PAY SCHEDULE

5 Years	2.0%
8 Years	3.5%
11 Years	5.0%
14 Years	6.5%
17 Years	8.0%
19 Years	9.0%
25 Years	10.0%

Section 4. Non-supervisory employees conducting training will be paid an additional two percent (2%) of the employee's base pay for that time actually involved in training.

Section 5. Employees who have two (2) years of full-time experience in one of the classifications covered by this Agreement, as determined by the Employer, within the previous four (4) years of applying with the City of Auburn, may start at step 2 of that classification's pay scale (i.e. two (2) years as a Police Specialist Supervisor may start at Step 2 of the Police Services Supervisor classification, etc.).

Section 6. Shift Differential. Employees assigned to work a graveyard shift shall receive a \$0.50 per hour worked as a shift differential premium.

Article 7

HOLIDAYS

Section 1. The following twelve (12) days are designated as Holidays:

New Year's Day	Veteran's Day
President's Day	Thanksgiving Day
Memorial Day	Day After Thanksgiving
Independence Day	Christmas Eve
Labor Day	Christmas Day
Martin Luther King Day	Floating Holiday (1)

Section 2. An employee who works on an observed holiday as set forth in Section 7.1 shall be compensated (paid) at the rate of two and one-half (2 ½) times the employee's regular hourly rate of pay for each hour worked inclusive of holiday pay, or have the option of receiving time and a half (1 ½) times his/her hourly base pay for hours worked and receive one (1) holiday banked, to be taken at a time agreeable to the employee and the Chief of Police, or designee. Hours worked in excess of the employee's regular shift on that holiday shall be compensated (paid) at two and one-half (2 ½) of the employee's base pay.

Any employee who works the following listed holidays shall be paid triple his/her base rate, or may elect to be paid double his/her base rate in addition to receiving a day off in lieu of that holiday:

1. Thanksgiving Day
2. Christmas Day

Section 3. For employees assigned to rotating shifts, the designated holidays shall be:

New Year's Day	January 1
Martin Luther King Day	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day After Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas	December 25

For all other employees, the designated holidays shall be as specified in Section 1 above with the provision that whenever any designated holiday falls upon a Sunday, the following Monday shall be the recognized holiday, and whenever any designated holiday falls on a Saturday, the preceding Friday shall be the recognized holiday.

A holiday is defined as nine (9) hours. Employees may accrue up to a maximum of thirty-six (36) hours of holiday leave, but in no event shall an employee accumulate in excess of thirty-six (36) hours. Anything over thirty-six (36) hours will be cashed out.

Section 4. A request to take a Floating Holiday may be made by an employee at any time prior to a shift assignment for which it is to be used. It may be approved by the unit or shift commander so long as there remains the required number of personnel on duty for that shift.

Management will make a reasonable effort to accommodate the employee's request to take a floating holiday, after considering the operational needs of the Police Department. Early request (i.e., more than sixty (60) days prior to the date requested) will be acted upon by the Chief, or designee, within thirty (30) days of the date the initial request is made.

Section 5. Employees terminating service after completion of probation, other than for just cause, shall receive compensation for vested unused holiday time. One floater will be earned prior to July 1st and one floater will be earned after July 1st.

Section 6. Based upon management approval, employees on non-rotating schedules electing to work the holiday on the date listed in Article 7, Section 1, shall be paid the employee's normal rate of pay and bank the holiday.

Article 8

VACATIONS

Section 1. Annual vacations with pay shall be granted to eligible employees on the following basis; for service less than one (1) year vacation leave credit shall accrue at the rate of one (1) working day for each month of continuous service commencing from the date of most recent employment with the City; for continuous service of more than one (1) year, vacation leave credit shall accrue at the following rate:

Upon completion of 1 st year of continuous service	112 hours per year
Upon completion of 5 th year of continuous service	136 hours per year
Upon completion of 10 th year of continuous service	160 hours per year
Upon completion of 15 th year of continuous service	176 hours per year
Upon completion of 20 th year of continuous service	192 hours per year

An employee who terminates employment during the first six (6) months of employment shall not be entitled to accrued annual vacation leave or payment.

Section 2. Each full-time and regular, part-time employee of the City shall be entitled to accumulate unused, vacation leave not to exceed a maximum of two (2) year's annual vacation leave.

All vacation leave shall be taken at a time mutually agreeable between the employee and the Police Chief, or designee.

Section 3. Primary selection of vacation leave shall be made by January 1st of each calendar year. Secondary selection of vacation leave shall be made by March 1st. Seniority within the employee's classification, in either case, shall be given preferences when selections cannot otherwise be made on a voluntary basis.

Section 4. Employees who have completed six (6) months of service, and are separated from employment, shall be entitled to payment for vacation leave not taken that has accrued to date of separation. In the event of the death of an employee in active service with the City, accrued vacation leave that has not been taken shall be paid in the same manner that salary due the decedent is paid for any vacation leave earned in the preceding year, and in the current year, and not taken prior to the death of such employees.

Section 5. The minimum increment vacation may be taken is one half (½) hour.

Article 9

HEALTH AND WELFARE

A healthcare, dental care, orthodontics, and life insurance program shall be granted to eligible, active, full-time employees and their dependents. Said programs and arrangements shall consist of:

1. Association of Washington Cities Regence HealthFirst Plan (PPO) with the City paying one hundred percent (100%) of the premium for employees through the duration of the contract. The City shall pay eighty-five percent (85%) of the premium for the employee's qualified and eligible spouse and dependent(s), with the employee paying the remaining amount of the monthly premium for his/her spouse's and dependents' medical insurance for the duration of the contract.
2. Group Health Plan 2, \$10 co-pay, with the City paying the premium up to a maximum amount the City would pay for the employee's spouse and dependent(s) if the employee selected Regence HealthFirst (PPO), whichever is less, with the employee paying the remaining amount of the monthly premium for his/her spouse's and each dependent's medical insurance.
3. Washington Dental Service, Plan F, Northwest IAM Benefit Trust Dental Plan #125; (It is understood between the parties that the Union and/or employee is responsible for any difference in premium between the WDS Plan F and Benefit Trust Dental Plan); or the Willamette Dental Plan. The City will pay up to what it pays for the applicable Washington Dental Service Plan F for those choosing Willamette.
4. Vision Service Plan (VSP), full family, \$10 deductible;
5. Standard Life Insurance for \$10,000; and
6. Association of Washington Cities Orthodontics (Plan 1).

The City shall provide additional workers' compensation premiums now paid by Police Service Specialists who perform matron duties on occasion.

AWC has already indicated that the HealthFirst (zero deductible) and the Group Health (Plan 2 - \$10 copay) are terminating effective January 1, 2018. Therefore, effective January 1, 2018, the eligible employees and their dependent(s) will automatically be enrolled into the AWC HealthFirst 250 plan and/or the Group Health Plan 3 \$20 Co-pay/\$200 Deductible plan. With this change effective January 1, 2018, the City will pay one hundred percent (100%) of the premium for employees through the duration of the contract. The City shall pay ninety percent (90%) of the premium for the employee's qualified and eligible spouse and dependent(s), with the employee paying the remaining amount of the monthly premium for his/her spouse's and dependents' medical insurance for the duration of the contract.

Additionally, all health reimbursement account contributions will cease, if the Affordable Care Act continues to be counted towards the "Cadillac" tax provisions, regardless if it is an employee or employer contribution. This change will become effective on December 31st, 2017, if no agreement has been made between both parties related to the replacement medical plan.

The Union agrees to continue to cooperate with the City in the study of cost containment measures. The City may self-insure medical, dental, and/or vision insurance coverage or select a new medical, dental, and/or vision insurance plan and shall make every effort to maintain substantially equivalent benefits at a reasonable cost. The City and the Union shall meet to explore alternative insurance coverage prior to selecting any new medical, dental, and/or vision insurance plan. The City recognizes its responsibility to bargain with the Union the impact of those decisions. The Union will appoint one member to the City's Health Care Cost Containment Committee. This committee will be activated effective July 1, 2017, and the Union will have an opportunity to discuss changing medical plans for January 1, 2018 coverage.

The Union and current employees agree to the City's tobacco use policy as it currently exists, or is hereafter amended, during the term of this Agreement.

VEBA: The City has adopted the VEBA Medical Reimbursement Plan. The City agrees to provide a mandatory payroll deduction for this post Retirement Medical Insurance Trust. All contributions made on behalf of each eligible employee will be consistent with the terms and conditions of the collective bargaining agreement in effect at the time, and based on the individual's annual base salary. It is understood that all defined eligible employees will be required to sign and submit to the City a VEBA Membership Enrollment Form.

The VEBA Plan shall be funded by a semi-monthly employee deduction, determined by the collective bargaining unit, in an amount or a percentage (not less than \$25.00 per month) of the employee's base annual salary. The City will match the employee's first one percent (1.0%) of employee base wages, semi-monthly.

After December 31, 2017, all contributions to the VEBA plan will cease, if the Affordable Care Act continues to be counted towards the "Cadillac" tax provisions. In lieu of the 1% contribution, the employer will increase base wages by 0.8%.

Article 10

PENSIONS

Pensions for employees and contributions to pension funds shall be provided in accordance with the laws of the State of Washington for eligible employees.

Article 11

JURY DUTY

Time off with pay will be granted for jury duty. The employee must give the Chief of Police, or designee, notice of call for jury duty at the time of notification. In order for the employee to receive his/her regular rate of pay while serving on jury duty, the employee must furnish a written statement from the appropriate public official showing the date and time served. If the employee is scheduled for jury duty and is not needed for all or a major part of the employee's regularly, scheduled shift, the employee will be on the honor system to advise his/her supervisor of his/her status. Employees are not required to return to the City per diem received for jury duty from the Court.

Article 12

SICK, DISABILITY, BEREAVEMENT, EMERGENCY, AND UNION LEAVE

Section 1. Sick leave credit shall accumulate for eligible employees at the rate eight (8) hours per month. Sick leave is accumulated a maximum nine hundred and sixty (960) hours, except as provided in Section 9 below. Sick leave credit may be used for time off with pay for bona fide cases of incapacitating sickness or injury and for the period of disability resulting from pregnancy or childbirth, or in accordance with the federal Family and Medical Leave Act (FMLA) or Washington Family Care Act. Any employee found to have abused sick leave by falsification or misrepresentation of same shall be subject to disciplinary action.

- a. Employees are required to use accrued paid time off during any state or federal FMLA absence before using leave without pay.
- b. FMLA usage computations will be based upon a rolling twelve (12) month year beginning on the date an employee takes his/her first FMLA leave.

Section 2. A verifying statement of the employee's physician may be required by the Chief of Police, or designee, at his/her option, whenever an employee claims sick leave after the fourth claim in any calendar year or when the employee is absent for three (3) days or longer.

Section 3. Employees incapacitated by illness or injury shall notify the Chief of Police, or designee, as far in advance as possible before he/she is to report to duty. During periods of extended illness, employees shall keep the Chief of Police, or designee, informed as to their progress and potential date of return to work.

Section 4. Employees shall be allowed up to three (3) days leave with pay for death in the immediate family upon approval of the department head. Immediate family includes the father, father-in-law, mother, mother-in-law, spouse, brother, sister, children, grandchildren, grandparents, step-children, brother-in-law, sister-in-law, and in situations of *loco parentis* of the employee. Upon approval of the Police Chief, or designee, the employee may be eligible to use sick leave if bereavement exceeds three (3) days.

Section 5. An employee shall be allowed use of family sick leave per applicable federal and state laws.

- A. For the actual time during an employee's regularly scheduled shift that the employee must attend to the immediate needs of the dependent child, adult child with a disability, spouse, registered domestic partner, parent, parent-in-law, or grandparent with a serious or emergency health condition.
- B. An employee is expected to return to work as soon as he/she can be relieved or is no longer needed.
- C. In any incident of family illness/injury, the employee may be required to furnish a doctor's certificate stating what the illness/injury is and that the employee's presence is required.

Section 6. An employee may use up to twelve (12) work weeks of leave each year in accordance with the provisions of the FMLA as follows:

An employee who has worked for the City at least twelve (12) months, including at least 1250 hours in the last twelve (12) months, may be entitled to twelve (12) workweeks of paid/unpaid leave in any twelve (12) month period (1) to care for a newborn or newly adopted child or newly placed foster child; (2) to care for a child, parent, or spouse who has a serious or terminal health condition; or (3) to attend to a personal serious health condition.

An employee must give the Chief of Police, or designee, at least thirty (30) days written notice by completing a Leave Request Form, in advance of the anticipated date of the leave when it is to begin (14 days notice for a child's terminal illness). If the employee is unable to give the required notice, notice must be given, in writing, as soon as possible.

While on FMLA, the employee must use all accrued, but unused leave, including sick leave, vacation, compensatory time, and/or any other paid leave accrued prior to using unpaid leave.

Use of the above paid leave will apply toward the twelve (12) work week entitlement, and is not in addition to entitlement. Upon return from the leave, the employee is entitled to return to the same, position held when the leave began unless the position would have been eliminated had the employee not been on leave.

Care for a newborn or newly adopted child or newly placed foster child. FMLA leave must be taken within twelve (12) months of the birth, adoption, or placement of a child. If both parents are employed by the City, together they are entitled to a total of twelve (12) workweeks of paid/unpaid leave under this paragraph. In the case of maternity, any leave taken prior to the birth of the child for prenatal care, or inability to work prior to the actual birth, will be assessed towards the twelve (12) workweek period.

Time loss due to disability prior to or following giving birth will be assessed towards the twelve (12) workweek period. Intermittent or reduced leave for birth or placement for adoption or foster care of a child may only be taken with Chief of Police approval. Certification by a healthcare provider may be required.

Care of a child, parent, or spouse who has a serious or terminal health condition, or to attend to a person serious health condition. Certification and/or second or third options by a healthcare provider may be required for leave approval. Recertification may be required every thirty (30) days. A fitness for duty certificate signed by the consulting physician may be required upon return from leave.

Leave may be requested and granted on an intermittent basis or on a reduced work week schedule if medically necessary. The employee must provide medical certification within fifteen (15) days of the date requested. The employee must attempt to schedule his/her intermittent or reduced leave so as not to disrupt the City's operations.

Section 7. Employees hired after 1/1/93 shall not be eligible to receive any cash payment for accrued sick leave at separation of employment for any reason. Upon certification of death of the employee, the employee's estate shall be paid 25% of the accrued, unused sick leave balance of the deceased employee at the employee's then hourly rate.

Section 8. When an employee has accumulated nine hundred and sixty (960) hours, of sick leave, sick leave shall continue to accumulate at the normal rate of eight (8) hours per month until the end of the calendar year at which time all sick time accumulated by the employee in excess of nine hundred and sixty (960) hours shall be paid at twenty five percent (25%) of the employee's then hourly base rate.

Section 9. In order to provide an incentive for using sick leave only as necessary, members of the unit shall be entitled to bonus days off for non-use of sick leave during a

calendar year. Employees who use no sick leave in a calendar year shall be entitled to two (2) bonus days off in the following year. Employees who use up to sixteen hours sick leave in a calendar year shall be entitled to one (1) bonus day off. Use of bonus days shall not affect sick leave balances.

Section 10. In the event of injury or illness for which an employee receives Workers' Compensation, the employee shall be permitted to use accrued, sick leave to supplement any time loss payment, proportionately, to make up any difference between the amount of the time loss check and the employee's regular semi-monthly paycheck (keeping the employee "whole"). If the total amount of sick leave payments plus time loss payments exceeds the employee's regular semi-monthly wage, the employee shall be required to "buy back" their used sick leave by submitting to the City, time loss payments from the State.

When an employee suffers an injury sustained from an act of violence peculiar to the duties and responsibilities of police support employees and is temporarily, totally disabled and unable to work as the proximate result of that on-the-job injury as covered by Workers' Compensation Industrial Insurance laws, the City shall compensate the affected employee for his/her regular basic salary (kept on salary as defined by RCW 51.32.090), as if he/she had continued to work, for a period not to exceed one thousand and forty (1,040) hours from the initial injury, or the termination of the disability, whichever comes first. This benefit shall only be granted prospectively from the date Workers' Compensation benefits are applied for, unless the employee fails to make timely application because of physical incapacitation or for reasons beyond the employee's control.

Section 11. The City shall pay a five thousand dollar (\$5,000) death benefit to the estate of a non-commissioned employee in the bargaining unit who is killed in the line of duty. Such payment shall be for funeral and related expenses.

Section 12. LEAVE FOR UNION BUSINESS. Employees shall be granted time off with approval of the Chief of Police, or designee, without pay, to attend Union functions approved by the District.

Article 13

UNIFORM ALLOWANCE

Employees hired on or after January 1, 1994, will be on the quartermaster system and will be issued their full complement of uniforms/equipment according to the list of agreed upon items attached to this Agreement as Appendix B. Thereafter, the City shall replace required uniforms on an as needed basis, as determined by the Police Chief, or designee.

Effective January 1, 1996, all employees on the quartermaster system will be entitled to have up to four items cleaned per week.

Effective January 1, 1997, all uniforms/equipment revert to the ownership of the City.

Article 14

EMPLOYMENT PRACTICES

Section 1. LAYOFF. Personnel reductions through layoff procedures and reinstatement from such layoffs shall be based upon seniority by classification, with last hired to be first laid off. If seniority is equal, layoffs will be based upon performance as determined by the City. A laid off employee shall be eligible for rehire for a period of one (1) year after one (1) year of service and two (2) years after two (2) or more years of service. An employee who is recalled to work after layoff shall be reemployed in the same position, and at the same step in the salary range, which he/she occupied at the time of layoff. Recalled employees will retain the same seniority that they held at the time of layoff.

Section 2. SENIORITY. Whenever employees are appointed to a classification effective the same date, seniority shall be established by the earliest date of hire with the City.

Section 3 WORKING OUT OF CLASSIFICATION. Any employee who is assigned to perform the duties of a higher paying classification by the appropriate authority will be compensated for hours worked in the performance of such duties at Step 1 of the pay grade of the position being filled or the next highest step that ensures the out-of-class employee approximately a five (5) percent increase to the maximum of the out-of-class pay grade. The employee shall be compensated a minimum of four (4) hours at that higher rate. When the work performed is more than four (4) hours in duration, the employee shall be compensated for the entire shift.

Section 4. SUBCONTRACTING. In the event the City lays off a regular, full-time employee and decides to subcontract the majority of that work the employee was doing (during the period the employee retains layoff rights), the laid off employee will be given the opportunity to accept a position with the subcontractor, if possible, with no loss in wages. Notification and placement will be agreed upon between Union and City. If the laid off employee rejects the opportunity when given, such employee's rights under this provision shall cease.

Section 5. NEW TECHNOLOGY. If an employee is placed on layoff status due to new technology and a subsequent job opening occurs within the bargaining unit in that classification (or in a new classification created by such new technology), the laid off employee that qualifies for such job shall be given first consideration. Such recall rights shall be limited to the time frames set forth in Section 1 herein.

Section 6. DRUG TEST. No employee shall be required to take, or be subjected to, any random alcohol or drug testing as a condition of continued employment, except for reasonable cause or when otherwise allowed by law or any courts of competent jurisdiction. The Union shall cooperate with the City in fulfilling its obligations to comply with the Drug Free Workplace Act of 1988, and acknowledges the City's right to

implement reasonable policies to assure compliance. Any employee disciplined or discharged for violation of such policy shall have the right to appeal such action through the grievance procedures.

Section 7. MILITARY LEAVE. An employee who is a member of the Washington National Guard or a Federal Reserve Military Unit is entitled to leave from his/her duties with full pay for official military duty in accordance with RCW 38.40.060. Such leaves are in addition to any other leave or vacation benefits.

Section 8. LIE DETECTOR TEST. No employee shall be required to take, or be subjected to, any lie detector test as a condition of continued employment.

Section 9. PROBATIONARY EMPLOYEES. All new employees shall serve a probationary period of twelve (12) months. The union may not question the discipline or dismissal of any probationary employee, nor shall the dismissal be the subject of a grievance.

The probationary period for employees being transferred/promoted to another position in the bargaining unit shall be six (6) months. If an employee's performance in the new position is found to be unacceptable, the employee shall be returned to the position from which the employee was promoted or transferred, if an opening exists.

Section 10. LIABILITY COVERAGE. The City will continue to provide liability coverage consistent with the terms of the City's insurance policies and/or any self-insurance program maintained by the City.

Article 15

MANAGEMENT RIGHTS

Section 1. DIRECTION OF WORKFORCE. The Union recognizes the prerogative of the City to operate and manage its affairs in all respects in accordance with its lawful mandate, and the powers of authority, which the City has not specifically abridged, delegated, or modified by this Agreement are retained by the City, including but not limited to, the right to contract services of any and all types. The direction of its working force is vested exclusively in the City. This shall include, but not be limited to, the rights to (a) direct employees; (b) hire, promote, transfer, assign, and train employees; (c) suspend, demote, discharge, or take disciplinary action against employees for just cause; (d) relieve employees from duty because of lack of work or other legitimate reasons; (e) maintain the efficiency of the operation entrusted to the City, (f) determine methods, means, work schedules, and personnel by which such operations are to be conducted; (g) control the departmental budget and (h) take any actions necessary in conditions of emergency regardless of prior commitments and to carry out the mission of the agency; provided, however, that items (a) through (h) shall be consistent with City

ordinances, personnel policies and procedures, and may be limited by the terms of this Agreement.

Section 2. CITY RULES AND REGULATIONS. The City shall have the right to make such reasonable direction, rules, and regulations as may be deemed necessary by the City for the conduct and the management of the affairs of the City, and the Union agrees that the employees shall be bound by and obey such directions, rules, and the regulations insofar as the same do not conflict.

Section 3. APPLICATION OF POLICIES AND PROCEDURES. Rules and regulations shall be made available by the City in writing to all employees. Formal disciplinary action against an employee for violation of Police Department policies and procedures may be subject to the grievance procedure.

Article 16 **GRIEVANCE PROCEDURE**

Section 1. For the purpose of the Agreement, the term "grievance" means any dispute between the Employer and the Union concerning an alleged breach or violation of this Agreement.

Step 1. An alleged grievance shall be taken up with the employee's immediate supervisor and shift commander within ten (10) working days of its alleged occurrence. The parties agree to make every effort to settle the grievance promptly at this level.

In the event the grievance is unresolved, the Union and employee shall process the grievance to Step 2 of the Grievance Procedure contained herein within ten (10) days of the meeting with the employee's immediate supervisor.

Step 2. The grievance shall be reduced to written form, and sent to Human Resources, by the aggrieved employee stating the section of the Agreement violated and explaining the grievance in detail and remedy sought. The employee and the Union representative shall present the written grievance to the Division Commander, Human Resources Director, and the Chief of Police. The Chief of Police, or designee, will conduct a meeting within five (5) working days of receipt of the written grievance. The Chief of Police shall make a decision on the matter in writing within ten (10) working days from such meeting. Copies of the Chief's decision will be furnished to the aggrieved, the Union representative, and the Director of Human Resources. Grievances involving suspension, demotion, or discharge shall begin at Step 2.

Step 3. A grievance remaining unresolved after the decision has been rendered in Step 2 shall be transmitted to Human Resources in writing within ten (10) working days whereupon the Mayor shall conduct an investigatory hearing within

five (5) working days of the receipt of the written grievance. The Mayor shall render a decision within five (5) working days of such hearing.

Step 4. Should the grievance not be resolved in Step 3 and should further consideration be desired by the grievant, a written notification requesting arbitration must be filed with the Mayor within ten (10) working days. The parties shall mutually select a disinterested third party to serve as Arbitrator. In the event the Employer and Union are unable to agree on an Arbitrator, the Arbitrator shall be selected by the process of elimination from a panel of seven (7) Arbitrators furnished by the American Arbitration Association (AAA). The order of elimination shall be determined by flip of coin. The request to AAA shall state the issue to be decided. The Arbitrator shall confine himself/herself to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted to him/her. The Arbitrator shall have jurisdiction and authority only to interpret, apply, or determine compliance with the specific terms of the Agreement and shall not have jurisdiction to add to, detract from, or alter in any way, the provisions of this Agreement. The decision within the jurisdiction of the Arbitrator shall be final and binding upon both parties. The parties shall evenly divide the costs of the Arbitrator and any AAA services or charges with each party paying its own costs. If both parties desire a stenographic record, the expenses of the same shall be borne equally. If only one party desires a stenographic record then that party shall pay the costs of the preparation of its own copy and one for the Arbitrator and the declining party shall not be provided a copy.

Utilization of the grievance procedure (including arbitration) by the Union, or any employee, shall constitute an election of remedies and a waiver of any and all rights by the appealing employee, Union, and all persons it represents, to litigate or otherwise contest the appealed subject matter in any court or other available forum. Likewise, litigation or other contest of the subject matter in any court or other contest of the subject matter in any court or other available forum shall constitute an election of remedies and a waiver of the right to arbitrate the matter.

Section 2. Any time limits stipulated in the grievance procedure may be extended for stated periods of time by the appropriate parties by mutual agreement in writing. Pending final decision of any grievance by any of the above procedures, work shall continue without interruption.

If the Union steward or employee contacts the employee's supervisor within the Step 1 timeframes and orally identifies an issue as a grievance, the grievance shall be considered timely. The Union or employee shall reduce such grievance to writing as soon thereafter as possible, if the issue is not resolved.

Section 3. Any grievance that involves or affects a significant portion of the employees in the bargaining unit may be introduced by the Union in written form to the Chief of

Police as set forth in Step 2 of the grievance procedure, and processed as set forth therefrom.

Section 4. Election of Remedy – An employee may elect to either pursue an appeal to the Civil Service Commission or continue with the contractual grievance procedure, but not both. In the event the grievance is unresolved after the Step 1 meeting, the Union and/or employee shall determine whether to appeal the grievance through the Civil Service Commission or process the grievance to Step 2 of the grievance procedure contained herein within five (5) days of the meeting with the employee's immediate supervisor. Should the employee choose to file an appeal with the Civil Service Commission, the employee shall provide the Employer and the Union with written notice of such election.

If an employee chooses to appeal through the Civil Service Commission, he/she shall not be represented by the Union. The employee and/or Union must comply with the time requirements for submitting an appeal and/or grievance as provided for in the Agreement or applicable rules.

Article 17

STRIKES OR LOCKOUTS

During the term of this Agreement, neither the Union nor any employee shall cause, engage in, sanction, encourage, direct, request, or assist in a slow-down, work stoppage, interruption of work strike of any kind, including a sympathy strike, refusal to perform any customarily assigned duties, sick leave absence which is not bona fide, or other interference with City functions by employees under this Agreement, against the City.

The Union and its representatives will undertake every reasonable measure to prevent and/or terminate all such strikes, slow-downs, or stoppage of work. Any concerted action by any employee shall be deemed a work stoppage if any of the above activities has occurred.

The City may discipline or discharge any employee who violates this Article. This remedy shall not be exclusive of any other remedy available to the City. The sole question which may be processed through the grievance and arbitration procedure in the event of discipline or discharge for violation of this Article is whether in fact the employee did violate this Article. During the term of this Agreement, the City shall not cause, permit, or engage in any lockout of its employees. The employee, Union, and City shall comply with applicable State Law pertaining to strikes or lockouts.

Article 18

BULLETIN BOARDS

The City shall permit the reasonable and lawful use of bulletin boards by the Union for the posting of notices relating to official Union business.

Article 19

LEGALITY OF NEGOTIATED AGREEMENT

Should any term or provision of this Agreement be in conflict with any State or Federal statute or other applicable law or regulation binding upon the Employer, such law or regulation shall prevail. In such event, however, the remaining terms and provisions of this Agreement will continue to full force and effect. No City Ordinance or Resolution shall modify or change any Article of this Agreement during the life of this Agreement.

If any Article or Section of this Agreement shall be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Article or Section shall be restrained by such tribunal, the remainder of this Agreement shall not be affected thereby, and the parties shall enter into immediate collective negotiations for the purpose of arriving at a mutually satisfactory replacement for such Article or Section.

Article 20

ENTIRE AGREEMENT

The Agreement expressed herein in writing constitutes the entire Agreement between the parties and no oral statement shall add to or supersede any of its provisions. However, additions, deletions, and/or modifications to this Agreement may be made during its term by mutual agreement of the parties. Such agreements shall be supplemental to this Agreement, signed and dated by both parties.

Article 21

RETENTION OF BENEFITS

This Agreement shall not operate to reduce any benefits not specified in this Agreement, which are currently enjoyed by any of the employees in the bargaining unit, i.e.,:

1. Less than one (1) full day's compensatory time off may be taken with verbal approval of the Shift Commander or Unit Commander.

2. Availability to the Chief of Police or other administrative personnel by an individual employee, under appropriate circumstances, need not follow chain of command.
3. Direct access to the Chief of Police or other administrative personnel by the Union representatives shall be permitted to discuss employer-employee problems with the chain of command.

Article 22

INVESTIGATIONS, INTERROGATIONS, AND APPLICATION OF DISCIPLINE

Employees subject to investigation of alleged wrongdoing will be notified in writing of the outcome of the investigation and finding within forty-eight (48) hours after completion of such investigation and finding.

Employee Protection. All employees within the bargaining unit shall be entitled to the following protection, which shall be consistent with the policies and procedures of the City of Auburn. The wide ranging powers and duties given to the employer and employees involve them in all manner of contracts and relationships with the public and other City of Auburn employees.

Application of Discipline. Any formal discipline of employees shall be applied by the Chief of Police, or his/her designees. Discipline shall include, but not necessarily be limited to, oral warnings, written warnings, suspensions, demotions, or discharge for just cause. No employee covered by this Agreement shall formally discipline another employee, except an employee in the bargaining unit who is formally vested with such authority by the Chief of Police, or his/her designee.

An employee subject to discipline shall be afforded the right to have the Union Steward and/or Union representative present, if requested by the employee.

Employee warning letters shall be provided to the employee and the Union, when requested by the employee.

Investigations and Interrogations.

- A. The employee shall be informed in writing of the nature of the investigation and whether he/she is a witness or a suspect before any interrogation commences, including information necessary to reasonably apprise him/her of allegations of such complaint.
- B. Any interrogation of an employee shall be at a reasonable hour, when employee is on duty unless the exigencies of the investigation dictate otherwise. Where practicable, interrogations shall be scheduled for the daytime.

- C. The interrogation (which shall not violate the employee's Constitutional rights) shall take place at a City facility, except when impractical. The employee shall be afforded an opportunity and facilities to contact and consult privately with the Union Steward and/or Union Business Representative before being interrogated. The Union Steward and/or a Union Business Representative shall be present during the interrogation, if requested by the employee, but may not participate in the interrogation except to counsel the employee in private.
- D. The questioning shall not be overly long and the employee shall be entitled to such reasonable intermissions, as he/she shall request for personal necessities, telephone calls, and counseling.
- E. The employee shall not be subjected to any offensive language, nor shall he/she be treated with dismissal, transfer, or other disciplinary punishment as a guise to attempt to obtain his/her resignation, nor shall he/she be intimidated in any other manner. No promises or rewards shall be made as an inducement to answer questions.
- F. All employees may request an attorney of their choosing to be present during a department investigation. The cost of such attorney shall be paid by the employee.

Article 23

CIVIL SERVICE COVERAGE

The parties hereby agree that full-time employees of the City of Auburn Police Department in the classifications of Police Services Receptionist; Police Services Specialist; Parking Control Attendant; Police Services Specialist Supervisor; Animal Control Officer; and Evidence ID Technician; (collectively "Employees") will be covered by City of Auburn Civil Service Rules in accordance with the provisions of Washington State Law (RCW 41.12.050), except as otherwise set forth herein.

The parties agree the following Civil Service Rules shall not apply to the employees:

Civil Service Rules 6.01, 6.02, and 6.03. Classifications and reclassifications will continue to be performed pursuant to City policy.

Civil Service Rule 9. Pre-employment examinations, including medical examinations, psychological examinations, background checks, etc., will continue to be performed pursuant to City policy.

Civil Service Rule 12.01. The probationary period for transfers and promotions, which is set forth in Article 14, Section 9, of the Agreement shall remain in effect.

Civil Service Rule 14 and its subparts. Management rights as provided for in Article 15 of the Agreement, and all of its subparts, shall remain in effect.

Civil Service Rule 15. Leaves of absences shall continue to be governed by the Agreement and City policy.

Civil Service Rules 16.07, 16.08, and 16.09. Article 14, Section 9, of the Agreement shall apply to the discipline or discharge of a probationary employee.

Article 24

TERMS OF AGREEMENT

Section 1. This Agreement is effective January 1, 2016, and shall remain in full force and effect through December 31, 2018. Pursuant to the provisions of RCW 41.56, the City agrees to commence negotiations with the Union within one (1) month of receiving the Union's request to bargain for the purpose of negotiating wages, hours, and other terms and conditions of employment for employees covered by this Agreement.

Signed this _____ day of _____, 2016, at
Auburn, Washington.

City of Auburn

International Association of Machinists
and Aerospace Workers of District
Lodge No. 160

By: _____
Mayor

By: _____
Business Representative

By: _____
Director of Human Resources/
Risk Management

By: _____
City Clerk

Approved As To Form:

By: _____
City Attorney

Appendix "A"

STRAIGHT-TIME HOURLY RATE OF PAY

Effective January 1, 2016, the employees represented by this Agreement shall receive wage increases as follows:

Police Services Specialists – 2% + 1.5% Market Adjustment for a total of 3.5%.

Police Services Supervisors – 2% + 0.6% Market Adjustment for a total of 2.6%.

Parking Control Attendants – 2% + 0.3% Market Adjustment for a total of 2.3%.

Evidence Technicians – 2%

Animal Control Officer- 2%

Effective January 1, 2017, the employees represented by this Agreement shall receive wage increases of 2%.

Effective January 1, 2018, the employees represented by this Agreement shall receive wage increases of 1.5% effective January 1 and a 1% wage increase effective July 1.

Appendix “B”

This appendix lists all uniform and equipment items for all Police Services, Evidence/ID Technicians, and the Parking Control Attendant staff members.

QUARTERMASTER SYSTEM (LIST OF UNIFORM AND EQUIPMENT ITEMS)

Receptionist/Police Services Specialist/Supervisors:

Five shirts (combination of short and long sleeve)

Three pair uniform trousers

One sweater, jacket, or vest

One metal nameplate

One pair of shoes or boots (Voucher method up to \$125 per year, to be replaced as needed)

One leather or nylon pants belt

One Auburn Police Identification Card

Evidence/ID Tech Staff:

Four long sleeve uniform shirts

Four short sleeve uniform shirts

Four pair uniform trousers

One uniform sweater (Command Crew-neck)

One uniform coverall

One baseball style cap

One winter uniform jacket

One metal name plate – magnetic attachment – for uniform shirt

One official badge

One pair shoes – black leather, polished toe and heel (Voucher method up to \$100)

One pair boots – black leather, polished toe and heel (Voucher method up to \$250)

One leather or nylon pants belt

One pair black leather gloves

One Auburn Police Department patch (baseball cap size)

Two Auburn Police shoulder patches for each shirt

Two Auburn Police shoulder patches for winter jacket

One fleece jacket

One Auburn Police Identification Card

Parking Control Attendant Staff:

Six Uniform Shirts – At least one (1) must be long sleeve

Four pair of uniform trousers

One baseball style cap

One winter uniform jacket

One rain coat – yellow

One reflective vest

One uniform nylon windbreaker jacket
One clip-on style tie
One Auburn style Police tie clip
One name plate, metal for uniform shirt
One official badge
One pair shoes – black leather, polished toe and heel (Voucher method up to \$100)
One pair boots – black leather, polished toe and heel (Voucher method up to \$250)
One duty equipment belt
One nylon or pants belt
Four belt keepers
One pair black leather gloves
One pair winter black leather gloves
One portable radio holder
One flashlight with belt holder
One folding knife with belt holder
One hazmat glove holder for duty belt
One metal citation holder
One holder for “officer daily log book”
One nylon gear bag
One metal forms holder
One nylon key holder
One Auburn Police Identification Card
One pair gortex rain pants
One stripe of appropriate served years stripes for left sleeve of each long sleeved shirt
Two Auburn Police shoulder patches per shirt
Two Auburn Police shoulder patches per sweater
Two Auburn Police shoulder patches per winter jacket
One ballistic vest

Animal Control Officer:

One jacket with hood
Two jumpsuits
Three name badges
Three position badges
Three official Auburn PD badges
One baseball cap
One pair boots
One belt
One underbelt
One cell phone pouch
One glove pouch
One baton with holster
One department cell phone
Twelve belt keepers (6 per jumpsuit)
One key keeper

One dog-handler gloves
One radio with holster and microphone
One flashlight with charger and holster
One go bag
Six Auburn Police shoulder patches (2 per garment)
Three back labels of "Animal Control" (1 per garment)



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5195

Date:

December 30, 2015

Department:

Human Resources

Attachments:

[Resolution No. 5195](#)
[Interlocal Agreement](#)

Budget Impact:

\$0

Administrative Recommendation:

City Council adopt Resolution No. 5195.

Background Summary:

The intent is to enter into an Interlocal Agreement for the formation of the joint VEBA Trust through Employers Health Coalition of Washington (EHCW). The initial members are Kirkland, Mount Vernon, and Auburn. The Plan and Trust were initially established by the City of Kirkland. However, the Plan and Trust are transferring to a joint powers entity created by two or more public agencies pursuant to the authority granted for joint or cooperative action under applicable law. The purpose of the Plan is to provide employees with an opportunity to receive reimbursement for certain healthcare expenses as provided in this Plan. It is the intent of the Plan Sponsor that the benefits provided and payable under this Plan be eligible for exclusion from the gross income of participants. In addition, it is the intention of the Plan Sponsor that the Plan qualify as a Health Reimbursement Arrangement (HRA) under IRS Revenue Ruling 2002-41 (June 26, 2002) and IRS Notice 2002-45 (June 26, 2002)

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

Roscoe

Meeting Date: January 4, 2016

Item Number: RES.C

RESOLUTION NO. 5 1 9 5

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT FOR THE EHCW VEBA TRUST COOPERATIVE

WHEREAS, Chapter 39.34 of the Revised Code of Washington permits units of local government to cooperate with other units of local government to perform functions and activities jointly on a mutually advantageous basis; and

WHEREAS, in light of this, the Cities of Auburn, Kirkland and Mount Vernon have established the EHCW Veba Trust Cooperative ("the Cooperative") to provide certain benefits for their employees and employees' dependents; and

WHEREAS, the Cities of Auburn, Kirkland and Mount Vernon have also agreed to establish a process for funding and administering the employee benefits including but not limited to making contributions to a trust established by the Cooperative for that purpose.

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

Section 1. That the Mayor is hereby authorized to execute an Interlocal Agreement for the EHCW VEBA Trust Cooperative which agreement shall be in substantial conformity with the agreement attached hereto as Exhibit A and incorporated herein by this reference.

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 upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 20_____.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

**INTERLOCAL AGREEMENT
for the
EHCW VEBA Trust Cooperative**

Effective January 1, 2016

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INTRODUCTION

This Agreement, dated January 1, 2016, made by and among the legal entities set forth in Appendix A ("Initial Affiliates"), attached hereto and expressly incorporated herein, establishes the EHCW VEBA Trust Cooperative (the "Cooperative").

WHEREAS, Chapter 39.34 of the Revised Code of Washington ("RCW") permits units of local government to cooperate with other units of local government to perform functions and activities jointly on a mutually advantageous basis; and

WHEREAS, in view of this, the Initial Affiliates have established in full force and effect the Cooperative to provide certain benefits for their employees and employees' dependents; and

WHEREAS, each Initial Affiliate has also agreed to establish a process for funding and administering the employee benefits pursuant to this Agreement including, but not limited to, making contributions required pursuant to this Agreement to a trust established by the Cooperative for that purpose.

NOW, THEREFORE, each Affiliate, in exchange for the mutual covenants, promises and obligations contained herein, promises and agrees as follows:

ARTICLE I. ESTABLISHMENT AND PURPOSE OF THE COOPERATIVE

- 1.01 The Initial Affiliates hereby establish an employee benefit cooperative, known as the EHCW VEBA Trust Cooperative (the "Cooperative"). This Agreement, and thereby the Cooperative, shall continue in force unless or until terminated pursuant to Article XVI. This Agreement is intended to be an Interlocal Agreement for Washington Public Agencies Joint Purchasing Program authorized by the Washington Cooperation Act, Revised Code of Washington Chapter 39.
- 1.02 The governing body of the Cooperative shall be known hereinafter as the "Board." The Board shall operate pursuant to the duties and authority described in applicable law, this Agreement, and any duly adopted Policies & Procedures.
- 1.03 The purpose of the Cooperative is to make available and facilitate the administration of certain employee benefit Cooperatives offered by the Affiliates to their employees and employees' dependents. The parties to this Agreement acknowledge that the provision of benefits of the type to be provided through the Cooperative is a function or activity each Affiliate has the authority to perform as described in Section 39.34.030 of the RCW.
- 1.04 This Agreement is intended to satisfy the agreement requirements under Section 39.34.030 of the RCW.
- 1.05 The establishment of the Cooperative, including the creation of an Account under Article VIII of this Agreement, is not intended by the Affiliates, jointly or individually, to constitute the transaction of an insurance business within the State of Washington. The intent is to make available through the Cooperative employee benefit Plan(s) and benefit-related services and to utilize the Cooperative to achieve efficiencies including, but not limited to, reduced administrative costs and efficiencies by providing similar services to each Affiliate.

ARTICLE II. DEFINITIONS

In addition to the terms defined elsewhere in the Agreement, each of the following terms shall have the meaning set forth below:

- 2.01 **ACCOUNT** – An account or accounts established and funded by the Affiliates to:
- (a) pay the joint administrative expenses of and fund certain benefit Plan(s) granted by each Affiliate to their respective employees and employees' dependents; and
 - (b) pay any other expenditure authorized by the terms of this Agreement.
- An Account may be accomplished through another entity and includes the Trust.
- 2.02 **AFFILIATE** – A unit of local government that is recognized as a "public agency" under Section 39.34.020 of the RCW and participates in the Cooperative. There are two classifications of Affiliates used in this Agreement: (1) Initial Affiliates, and (2) New Affiliates. Collectively, the two classifications are referred to as "Affiliates."
- 2.03 **AGREEMENT** – This Interlocal Agreement for the EHCW VEBA Trust Cooperative as may be amended from time to time, including all documents in the same form executed by Affiliates.
- 2.04 **ALTERNATE** – A person designated by an Affiliate to act on behalf of the Affiliate if the Representative is unavailable to do so as set forth in Section 3.01.
- 2.05 **BENEFICIARY** – A person designated by a Participant, or by the terms of a Plan, who is or may become entitled to a benefit under that Plan.
- 2.06 **BOARD** – The governing body of the Cooperative established pursuant to Article III of the Agreement.
- 2.07 **CHAIRPERSON** – A Representative who serves as the Chairperson of the Board having been elected by the Board.
- 2.08 **COOPERATIVE** – The entity known as the EHCW VEBA Trust Cooperative established through this Agreement and authorized under applicable law, including Chapter 39.34 of the RCW.
- 2.09 **EFFECTIVE DATE** – The Effective Date of this Agreement shall be the date upon which (1) at least two eligible public sector entities sign the Agreement, and (2) the publication requirements under Section 39.34.030 of the RCW have been satisfied.
- 2.10 **FISCAL YEAR** – The twelve (12) consecutive calendar month period commencing each January 1st.
- 2.11 **FUND BALANCE** – Excess of assets over liabilities at any point and time using generally accepted accounting principles.
- 2.12 **INITIAL AFFILIATE** – An Affiliate that is an original signatory to this Agreement as reflected in Appendix A.
- 2.13 **NEW AFFILIATE** – An Affiliated that is not an Initial Affiliate and becomes an Affiliate through the process described in Article XVII.
- 2.14 **PARTICIPANT** – Any employee or former employee of an Affiliate, or eligible Beneficiary, who is or may become eligible to receive a benefit of any type from a Plan.

- 2.15 **PARTICIPATION AGREEMENT** - The document required to be completed and executed by a New Affiliate through which an Affiliate agrees to participate in the Cooperative and adopts this Agreement. It may identify particular terms and conditions of participation, and provide other employer specific information. An Initial Affiliate may also execute a Participation Agreement reflecting particular terms and conditions of participation and other employer specific information. Executed Participation Agreements shall be attached hereto at Appendix D.
- 2.16 **PLAN(S)** - The program(s) of benefits made available through the Cooperative, pursuant to this Agreement, and permitted to be provided under Code Section 501(c)(9) through a VEBA. Current versions of the Plan(s) available pursuant to this Agreement shall be attached to this Agreement as Appendix C. Participation in a particular Plan is not automatic or guaranteed. An Affiliate must duly adopt the Plan.
- 2.17 **PLAN CONSULTANT** - The person or entity appointed pursuant to Section 3.02(d) who shall:
- (a) Be the principal manager of the Cooperative;
 - (b) Supervise and control the day to day operations of the Cooperative;
 - (c) Carry out the purpose of the Cooperative as directed by this Agreement and as may be directed from time to time by the Board; and
 - (d) Perform those duties set forth in Section 7.03.
- 2.18 **POLICIES & PROCEDURES** - The policies and procedures, if any, adopted by the Board for the uniform, smooth, and efficient operation of the Cooperative in furtherance of the Agreement. Once adopted, such Policies & Procedures may be changed from time to time.
- 2.19 **QUORUM** - A Quorum is the percentage of possible Representatives necessary for the Board to hold a meeting and conduct Cooperative business. A Quorum is present when a majority (more than fifty percent (50%)) of the Representatives are personally present at a duly called meeting. Telephonic participation constitutes personal presence to the extent permitted by applicable law and as specified in Policies & Procedures.
- 2.20 **REPRESENTATIVE** - Each Affiliate's designated individual to serve and act on behalf of the Affiliate on the Board set forth in Section 3.01.
- 2.21 **RESERVES** - Amount established through an excess of payments over expenses established to pay, all or in part, unexpected costs and expenses.
- 2.22 **TRUST** - The tax exempt trust established under Code Section 501(c)(9) of the Code (a/k/a/ "VEBA"), which has been established and/or maintained by the Cooperative for the purpose of funding the provision of benefits under one or more Plan(s).

ARTICLE III. AUTHORITY AND DUTIES OF THE BOARD

- 3.01 The Cooperative shall be managed by the Board pursuant to the terms of this Agreement. The Board shall consist of one Representative from each Affiliate to be designated by such Affiliate. Each Affiliate may also designate one Alternate to attend and vote at any and all Board meetings in lieu of the Representative.
- 3.02 The Board shall have the authority and duties to accomplish the purposes set forth in Article I above and, in furtherance of such authority and duties, shall:

- (a) Establish Cooperatives of benefits and a tax exempt trust recognized under Code Section 501(c)(9) (a/k/a "VEBA") in accordance with Section 9.02;
- (b) Seek to maximize the value of the Affiliates' and Cooperative's benefit dollars;
- (c) Serve as the "Plan Administrator" and exercise all authority of the Plan Administrator as further provided in the Plan(s) and Trust, including the authority to interpret the Plan(s), adjudicate claims for benefits under the Plan(s), direct the investment of Trust assets, and appoint an investment advisor to manage the investment of Trust assets;
- (d) Select, enter into a contract with, and/or hire a Plan Consultant, agents, employees, independent contractor, attorneys, auditor, and such other persons as may be necessary to administer and accomplish the purpose of the Cooperative; provided, however, that the Cooperative shall not have the authority to enter into, modify, or terminate any collective bargaining agreement with Affiliate employers; further provided, however, that the Board shall retain ultimate authority and responsibility for the administration of the Cooperative, the Plan(s), and the Trust;
- (e) Appoint committees, including an executive committee, and delegate to such committee(s) any authority and duties as it deems appropriate;
- (f) Carry out education and other Cooperatives relating to health, accident and other claims management and reductions;
- (g) Direct the collection and payment of funds to be used for the administration of the Cooperative and the provision of benefits under the Plan(s).
- (h) Invest funds in accordance with the investment policy established by the Board and consistent with applicable law;
- (i) Select one or more depositories for the funds of the Cooperative;
- (j) Cause to be purchased insurance adopted by the Board;
- (k) Prepare, review and approve the annual budget of the Cooperative and a monthly report of the financial affairs of the Cooperative;
- (l) In its discretion, obtain, approve and submit to each Affiliate annually an audited report of the financial affairs of the Cooperative, made by a certified public accountant within six (6) months from the end of that Fiscal Year in accordance with generally accepted auditing standards;
- (m) Recommend changes in policy to Affiliates;
- (n) Recommend the compensation for all such agents, employees and independent contractor;
- (o) Change, amend or modify the Plan(s);
- (p) Cause to be purchased fidelity bonds and/or fiduciary liability coverage for employees (if any) or other persons, as required by this Agreement, as required by law, or otherwise determined to be appropriate by the Board;
- (q) Establish and recommend monthly and supplementary (if necessary) payments to the Account;

- (r) Review and ultimately rule upon employee benefit claim disputes;
- (s) In accordance with the provisions of Article XVII, expel any individual Affiliate from the Cooperative for failure to perform its obligations under this Agreement; and
- (t) Carry out such other activities as are necessarily implied or required to carry out the purposes of the Cooperative specified in Article I or the specific activities enumerated in this Article III.

With respect to the above described authority and duties, the Board shall fulfill its duties consistent with applicable statutory requirements and limitations under Chapter 39.34 of the RCW.

- 3.03 No one serving on the Board shall receive any compensation (or other payment) from the Cooperative for services on the Board.

ARTICLE IV. GOALS OF THE COOPERATIVE

- 4.01 The goals of the Cooperative shall be:

- (a) To provide quality benefits for Participants and Beneficiaries consistent with financial responsibilities and restraints.
- (b) To seek Increased efficiencies to minimize benefits' costs, including actual benefit payments and administrative expenses.
- (c) To attain and maintain Reserves if deemed appropriate by the Board. The purpose of the Reserves is to have sufficient funds available to pay all incurred but not yet paid claims at any given time and to minimize the impact of short term cash flow fluctuations.
- (d) To assure that all providers of service are effectively discharging their responsibilities.
- (e) To comply with legal requirements and monitor legislative developments.
- (f) To maximize the value of the Affiliates' and Cooperative's benefit dollars.

**ARTICLE V.
MEETINGS OF THE BOARD**

- 5.01 Regular meetings of the Board shall be held as often as necessary to carry out the purpose of the Cooperative but no less one (1) time each Fiscal Year (referred to as a "required regular meeting").
- 5.02 The time, date and location of the required regular meeting of the Board shall be determined by the Board. The required regular meeting will be scheduled at the beginning of the Fiscal Year. Additional meetings may be set as needed.
- 5.03 Special meetings of the Board may be called by its Chairperson or by any two (2) Representatives.
- 5.04 Three (3) to ten (10) business days written notice of regular or special meetings of the Board shall be given to each Representative and an agenda specifying the subject of any special meeting shall accompany such notice. Business conducted at special meetings shall be limited to those items specified in the agenda.
- 5.05 Minutes of all meetings of the Board shall be taken at such meeting with a copy subsequently provided to each Representative.
- 5.06 All meetings of the Board shall be conducted in the manner required by applicable law. In the event of any conflict between any provision of this Agreement and any provision of applicable law, this Agreement shall be deemed modified to the extent necessary to comply with such law. In addition to any notices of meetings the Chairperson may be required to serve under this Agreement, the Chairperson shall cause to be published any schedule or notice of meetings of the Board if, and as, required by law.
- 5.07 Each Affiliate shall be entitled to one (1) vote on the Board through its Representative or Alternate. No proxy votes or absentee votes shall be permitted. Voting shall be conducted in accordance with the Policies & Procedures established pursuant to Section 5.08 and applicable law.
- 5.08 The Board may establish rules governing its own conduct and procedure, consistent with this Agreement. Such rules shall be included as part of the Policies and Procedures of the Cooperative. Except as modified by the Board pursuant to this Section or applicable law, Roberts Rules of Order (latest edition) shall govern all meetings of the Board.

**ARTICLE VI.
OFFICERS**

- 6.01 Officers must be Representatives when elected and throughout the term of office. Officers of the Cooperative shall consist of a Chairperson and other officers as may be described in the Policies & Procedures. Terms of office are two (2) years. The Board shall elect officer(s) at a duly called meeting. The Chairperson will be elected on even years and serve for two (2) consecutive years. Through its Policies & Procedures, the Board may from time to time establish other offices and may elect a Representative to serve in any of such offices. The Board may fill any vacancies which may occur in such offices for the remainder of a term.

ARTICLE VII.
PLAN CONSULTANT & OTHER SERVICE PROVIDERS

- 7.01 The Board shall contract with a Plan Consultant whose duties and authority are described in 7.03 below.
- 7.02 The fee of the Plan Consultant shall be determined by the Board and shall be payable pursuant to the contract between the Plan Consultant and the Cooperative unless or until otherwise revised by the Board.
- 7.03 The Plan Consultant shall be the principal operating manager of the Cooperative and shall supervise and control day-to-day operations of the Cooperative and carry out the purpose of the Cooperative as directed by the Board. Among the duties and authority of the Plan Consultant shall be the following:
- (a) To sign on behalf of the Cooperative any Instrument which the Board has authorized to be executed, by a formal vote or written authority, and, in general, to perform all duties incident to the office of the Plan Consultant and such other duties as may be prescribed by the Board consistent with this Agreement from time to time.
 - (b) To make recommendations regarding policy decisions, the creation of other Board offices and the retention of agents, employees and independent contractor.
 - (c) At each regular meeting of the Board and at such other times as requested to do so by the Board, to present a full report of the Plan Consultant's activities and the fiscal condition of the Cooperative.
 - (d) Within the constraints of the budget approved by the Board, to make or direct distributions from the Account for payment of benefit claims and the administrative expenses of the Cooperative and maintain accurate and detailed records and accounts of all transactions.
 - (e) Act as liaison with other service providers, the Board, and Representatives.
 - (f) Deposit all funds as directed by the Board in depositories selected by the Board.
 - (g) Prepare Board agendas in conjunction with the Chairperson.
 - (h) Monitor monthly billings to ensure that they are received in a timely fashion and in the correct amount.
 - (i) Be readily available for consultation with any Interested employer regarding benefits as determined by the Board and approved by each Affiliate.
 - (j) Upon request of the Board, solicit new Affiliates and/or facilitate the solicitation of new Affiliates.

Notwithstanding the above list of duties and authority, the Board, through the Policies & Procedures, may (1) limit the duties and authority as it deems appropriate, and (2) add to or expand the duties and authority as it deems appropriate.

- 7.04 The Board shall contract with a person or persons qualified to manage the Trust.
- 7.05 The Board may contract with a person or persons who shall be responsible for administrative operations of the Plan, including recordkeeping, reporting, processing of benefit claims, and paying the day-to-day expenses of the Cooperative as authorized and directed by the Board.

**ARTICLE VIII.
ACCOUNT**

- 8.01 It is intended that the Account contain sufficient funds at all times to pay the anticipated benefits and costs and the appropriate administrative expenses of the Cooperative.
- 8.02 Payments into the Account shall be made in amounts determined by the funding policy adopted by the Board and in accordance with the payment schedule determined by the Board.
- 8.03 During any Fiscal Year, the Affiliate shall be required to make payments into the Account for those Participants and/or Beneficiaries within the covered classes who are covered under the Plan(s) available through such Affiliate.
- 8.04 If, during any Fiscal Year, the Plan Consultant, in its discretion, determines that the funds available in the Account are insufficient to meet a Plan's current or anticipated future administrative expenses, the Plan Consultant may recommend supplementary payments for approval by the Board. The Plan Consultant shall recommend the total amount of the supplementary payments needed and a recommended allocation of such amounts among the Affiliates.
- 8.05 The Board, in its discretion, may charge an assessment to new Affiliates ("New Affiliate Assessment"), to cover all or a part of the administrative costs to the Cooperative of adding the Affiliate. The terms and conditions, including amount and duration, of a New Affiliate Assessment shall be determined by the Board.

**ARTICLE IX.
PLAN(S) OF BENEFITS AND TRUST**

- 9.01 The Cooperative may, from time to time, offer one or more Plans to provide life, medical, accident or disability benefits for Affiliate employees or employees' dependents and to have such Plan or Plans administered under this Agreement. The Initial Plan shall be adopted by the Board. Thereafter, the Board may, from time to time, amend the Plan(s) (including the terms and conditions thereof) and adopt new or additional Plans. The Board hereby also grants authority to amend the Plan(s) and adopt new or additional Plans to the Plan Consultant in accordance with the Policies & Procedures. Notwithstanding the foregoing, the Board reserves the authority to review such actions by the Plan Consultant and to approve or disapprove such actions at a duly called meeting of the Board.
- 9.02 The Board, in its discretion, shall establish and maintain a Trust for all or certain Plan(s) made available through this Agreement in accordance with applicable law. The terms and conditions of the Trust may be changed from time to time by the Board in accordance with the Trust agreement. Pursuant to its authority in Section 3.02, the Board may hire appropriate service providers with respect to the Trust.
- 9.03 The Plan Consultant and Plan Supervisor shall be notified of any such change or new or additional Plan and/or Trust as soon as practicable but in all events at least sixty (60) days prior to the effective date of the change or adoption of the new or additional Plan and/or Trust.
- 9.04 The current Plan(s) and Trust at any time are attached to this Agreement in Appendix C.

**ARTICLE X.
MATTERS REQUIRING APPROVAL**

- 10.01 The presence of a Quorum shall be required for the transaction of Cooperative business at any duly called meeting of the Board. For this purpose, presence may be in person or by telephone. Except as specifically otherwise noted below, an act by a majority of the Representatives at a meeting at which a Quorum is present shall be the act of the Board. In the absence of a Quorum, a majority of the Representatives present may adjourn any meeting from time to time until a Quorum is present. If a Quorum is present when a duly called meeting of the Board is convened, the Representatives present may continue to transact business until adjournment, notwithstanding that the withdrawal of a number of Representatives originally present leaves less than required for a Quorum.
- 10.02 The following are "special business matters" requiring approval of seventy-five percent (75%), rounded up if a fraction, of all Affiliates as evidenced by resolution of the governing body of each Affiliate:
- (a) Amendments to this Agreement;
 - (b) Merger of the Cooperative with another cooperative; and
 - (c) Termination of the Cooperative.

**ARTICLE XI.
OBLIGATIONS OF AFFILIATES**

- 11.01 The obligations of each Affiliate shall be as follows:
- (a) Commit to an initial term of participation of three (3) years.
 - (b) To appropriate or budget and pay promptly all payments to the Account in such amounts and by such times as are established within the scope of this Agreement;
 - (c) To cooperate fully with the Plan Consultant, the Cooperative's attorneys and auditor and any agent, employee, officer or independent contractor of the Cooperative in any matter relating to the purpose and powers of the Cooperative;
 - (d) To review all proposed changes to a Plan prior to the Board's final vote on such changes;
 - (e) To provide a prompt listing of any new or separated employees in accordance with the parameters set by the service providers;
 - (f) To notify promptly all of its Plan Participants and Beneficiaries of the withdrawal or expulsion of such Affiliate from this Agreement;
 - (g) To act promptly on all matters requiring Board approval and to not withhold such approval unreasonably or arbitrarily; and
 - (h) To purchase and maintain appropriate insurance covering liability arising out of the Affiliate's participation in the Cooperative, including any liability arising from the actions of the Affiliate's Representative (or Alternate) acting in his/her scope of authority under this Agreement.
- 11.02 At the discretion of the Board, non-performance of Affiliate obligations, whether in whole or in part, may be the basis for a recommendation to expel pursuant to Article XIV.

**ARTICLE XII.
LIABILITY OF BOARD OR OFFICERS**

- 12.01 The Representatives, Alternates, and officers shall discharge their duties solely and collectively in the interest of the Plan Participants and Beneficiaries under the Plan, and:
- (a) For the exclusive purpose of:
 - 1) providing benefits to Participants and Benefits under the Plan; and
 - 2) defraying reasonable expense of administering the Plan.
 - (b) With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
 - (c) In accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the law.
- 12.02 To the fullest extent permitted by applicable law, the Representatives, Alternates, and officers shall not be liable for any mistake in judgment or other action made, taken or omitted by them in good faith; nor for any action made, taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of Cooperative funds, or failure to invest. No Representative, Alternate or officer shall be liable for any action taken or omitted by any other Representative, Alternate or officer. No Representative shall be required to give a bond or other security to guarantee the faithful performance of his/her duties hereunder except as required by this Agreement or by law. The Cooperative may purchase insurance providing fiduciary liability coverage for officers, Representative and/or Alternates.

**ARTICLE XIII.
CONTRACTUAL OBLIGATION**

- 13.01 The obligations and responsibilities of the Affiliates set forth in this Agreement, including the obligation to take no action inconsistent with this Agreement, as originally written or validly amended, shall remain a continuing obligation and responsibility of each Affiliate. This Agreement may be enforced in law or equity either by the Cooperative itself or by any Affiliate. The consideration for the duties imposed upon the Affiliates by this Agreement is based upon the mutual promises and agreements of the Affiliates set forth herein and the advantages gained by the Affiliates through reduced administrative costs for the processing of employee benefits.
- 13.02 Except to the extent of the limited financial payments described in Article VIII, no Affiliate agrees by this Agreement to be responsible for any claims of any kind against any other Affiliate. The Affiliates intend in the creation of the Cooperative to establish an organization for joint administration of employee benefits within the scope set forth in this Agreement only and do not intend to create between the Affiliates any relationship of partnership, surety, indemnification or liability for the debts of or claims against another.

**ARTICLE XIV.
EXPULSION OF AN AFFILIATE**

- 14.01 Following reasonable efforts to informally resolve a situation, an Affiliate may be expelled from the Cooperative for failing to perform or fulfill the responsibilities assigned to Affiliates under the Agreement or for any other action or failure to act determined by the Board to be detrimental to the interests of the Cooperative.
- 14.02 The expulsion of an Affiliate must be approved by a seventy-five percent (75%), rounded up if a fraction, vote of all Representatives, excluding the Representative of the Affiliate whose expulsion is being voted upon as evidenced by resolution of the governing body of each Affiliate. Following reasonable attempts by the Board to resolve the situation, the expulsion proceedings set out below shall be followed.
- 14.03 No Affiliate may be expelled except after written notice from the Board of the reason for the expulsion and after a reasonable opportunity of not less than fifteen (15) days to cure. Within such fifteen (15) day period, the Affiliate may request a hearing before the Board prior to any decision being made as to whether to recommend expulsion. The Board shall set the date for such hearing, which shall not be less than fifteen (15) days after expiration of the time period for correction. The Board may appoint a hearing officer to conduct such hearing and make recommendations to the Board based upon findings of the fact; provided, however, if the hearing is conducted by a hearing officer, the Affiliate may request a further hearing before the full Board. Such request shall be in writing and addressed to the Chairperson. The Board or hearing officer may recommend a decision at the close of the hearing or within fifteen (15) days thereafter. The expulsion of an Affiliate, following the notice and hearing as set forth in this Section, shall be final when approved as specified in Section 10.02 and shall become effective thirty (30) days following such approval, unless a different effective date is agreed to by the Board and the expelled Affiliate. At such a hearing, the appealing Affiliate may not vote or be the hearing officer.
- 14.04 After expulsion, the former Affiliate shall continue to be fully liable for (a) any payment due to the Account with respect to the period prior to the date of expulsion, (b) any other unfulfilled obligation arising at any time attributable to the period prior to the date of expulsion, and (c) any other unfulfilled obligation as if it was still an Affiliate of the Cooperative.
- 14.05 The Cooperative shall have no obligation with respect to expenses incurred under a Plan by a Participant or Beneficiary covered through an expelled Affiliate after the effective date of such expulsion. No claim under a Plan by a Participant or Beneficiary covered through an expelled Affiliate for an expense that was incurred before the effective date of expulsion shall be paid if not presented to the Cooperative, or its designated agent, within ninety (90) days after the effective date of expulsion (i.e., any such claim will not be paid by the Plan). Except as provided below, the obligation of the Cooperative to administer claims for expenses incurred under a Plan by a Participant or Beneficiary covered through an expelled Affiliate prior to the effective date of expulsion ("run-out claims") shall continue for such claims as may have been filed or which are filed within ninety (90) days after the effective date of the expulsion of the Affiliate. Payment and administration of any claims for expenses incurred prior to the effective date of an Affiliate's expulsion that are submitted for payment after such ninety (90) day period shall be the sole responsibility of the expelled Affiliate.

**ARTICLE XV.
VOLUNTARY WITHDRAWAL FROM THE COOPERATIVE**

- 15.01 After the initial three (3) year commitment, an Affiliate may withdraw upon one hundred and twenty (120) days advance written notice to the Cooperative or by such other lesser advance notice deemed reasonable by the Board in its sole discretion. Upon the Board's receipt of a notice of withdrawal, the withdrawal of such Affiliate is irrevocable unless such revocation is allowed at the sole discretion of the Board. Upon an Affiliate's submission of a notice of withdrawal, such Affiliate forfeits all of its voting rights in its own right and as a Representative on the Board, unless allowed to vote on any particular matter at the sole discretion of the Board. The rights and duties of the Cooperative with respect to a withdrawing Affiliate in the Cooperative shall be as set forth below.
- 15.02 After voluntary withdrawal, the former Affiliate shall continue to be fully liable for (a) any payment due to the Account with respect to the period prior to the date of withdrawal, (b) any other unfulfilled obligation arising at any time attributable to the period prior to the date of withdrawal, and (c) any other unfulfilled obligation as if it was still an Affiliate of the Cooperative.
- 15.03 The Cooperative shall have no obligation with respect to claims incurred under a Plan by a Participant or Beneficiary covered through a withdrawing Affiliate after the effective date of such withdrawal. No claim under a Plan by a Participant or Beneficiary covered through a withdrawing Affiliate that was incurred before the effective date of voluntary withdrawal shall be paid if not presented to the Cooperative, or its designated agent, within one hundred twenty (120) days after the effective date of the voluntary withdrawal (i.e., any such claim will not be paid by the Plan). Except as provided below, the obligation of the Cooperative to administer claims incurred under the Plan by a Participant or Beneficiary covered through a withdrawing Affiliate prior to the effective date of withdrawal ("run-out claims") shall continue for such claims as may have been filed or which are filed within one hundred twenty (120) days after the effective date of the voluntary withdrawal of the Affiliate. Payment and administration of any claims for expenses incurred prior to the effective date of an Affiliate's voluntary withdrawal that are submitted for payment after such one hundred twenty (120) day period shall be the sole responsibility of the withdrawing Affiliate.

**ARTICLE XVI.
TERM & TERMINATION OF THE COOPERATIVE**

- 16.01 The Cooperative shall exist until terminated. The withdrawal of any Affiliate does not impact the continued existence of the Cooperative. And, the Cooperative's continued existence does not preclude an Affiliate from withdrawing.
- 16.02 The Cooperative shall terminate upon the occurrence of any one of the following events:
- (a) A final determination by a court of competent jurisdiction, after all appeals have been exhausted or time for appeal has expired, that the Cooperative is invalid, contrary to law, or insolvent; or
 - (b) Upon a vote of Affiliates described in Article X.
- 16.03 Upon termination of the Cooperative, and to the extent not precluded by applicable law, the rights and duties of the Cooperative to each Affiliate and the rights and duties of each Affiliate to the Cooperative shall be the same as those with respect to a withdrawing Affiliate as outlined in Article XV.

**ARTICLE XVII.
NEW AFFILIATES**

- 17.01 The Cooperative shall consider applications from potential additional Affiliates provided a completed formal application has been submitted by the potential Affiliate.
- 17.02 The addition of a new Affiliate, including all terms and conditions of such acceptance, shall be determined by the Plan Consultant.
- 17.03 Once approved for participation by the Plan Consultant, the entity will be an Affiliate upon the completion of and receipt by the Plan Consultant of a Participation Agreement.
- 17.04 Approved new Affiliates normally enter the Cooperative at the beginning of Fiscal Year. Entry in to the Cooperative at other times may be permitted, the terms and conditions of which to be mutually agreed upon by the New Affiliate and the Cooperative. In its discretion, the Plan Consultant may allow entry to the Cooperative at other times and may impose restrictions, limitations, etc. with respect to such entry.

**ARTICLE XVIII.
MISCELLANEOUS**

- 18.01 **Notice** – Any notice required by this Agreement shall be in writing and shall be deemed to have been given when deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt requested and addressed as follows:

- (a) If to the Cooperative: to the then current Chairperson of the Board at the address of the then current Plan Consultant.
- (b) If to an Affiliate: to the address set forth on Appendix A or to such other address as any part to this Agreement may from time to time specify in writing to the other parties and to the Cooperative.

Any notice required by this Agreement may be waived in writing by the party(ies) to whom such notice is required to be provided hereunder. Attendance by an Affiliate at a meeting constitutes waiver of notice to that meeting, except (1) where the Affiliate objects at the beginning of the meeting to the transaction of business at the meeting because the meeting was not lawfully called or convened, and; (2) the Affiliate does not thereafter participate in the meeting.

- 18.02 **Section Headings** – The section headings inserted in this Agreement are for convenience only and are not intended to and shall be construed to limit, enlarge or affect the scope or intent of this Agreement or the meaning of any provision hereof.
- 18.03 **Validity and Savings Clause** – In the event any provision of this Agreement shall be declared by a final judgment of a Court of competent jurisdiction to be unlawful or unconstitutional or invalid as applied to any Affiliate, the lawfulness, constitutionality or validity of the remainder of this Agreement shall not be deemed affected thereby.
- 18.04 **Counterparts** – This Agreement and any amendments thereto may be executed in any number of counterparts which taken together constitute a single instrument.
- 18.05 **Entire Agreement** - All the agreements, covenants, representations, and warranties between the Affiliates expressed or implied, oral or written, concerning the subject matter of this Agreement are contained in this Agreement. All prior and contemporaneous conversations,

negotiations, agreements, representations, covenants and warranties, concerning the subject matter of this Agreement, are merged into this Agreement.

18.06 **Applicable Law.** The Cooperative shall comply with all notification, registration, filings or other obligations required by Chapter 39.34 of the RCW.

18.07 **Representative Disqualification.** An individual shall be disqualified from serving as, or continuing to serve as, a Representative of the Board if such individual is not employed by the Affiliate he/she represents.

IN WITNESS WHEREOF, the following Initial Affiliates have caused this Agreement to be executed by their duly authorized officers and their undersigned representatives as of the date above written.

City of Kirkland

By: _____

Title: _____

Date: _____

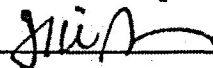
City of Auburn

By: _____

Title: _____

Date: _____

City of Mount Vernon

By: 

Title: MAYOR

Date: Dec 15, 2015

APPENDIX A
LIST OF INITIAL AFFILIATES

City of Kirkland
City of Auburn
City of Mount Vernon

APPENDIX B
LIST OF AFFILIATES AS OF 01/01/2016

City of Kirkland
City of Auburn
City of Mount Vernon

**APPENDIX C
PLAN(S)**

See attached, a copy of the most recent official Plan documentation each benefit Plan(s) and the most recent official Trust documentation.

APPENDIX D
PARTICIPATION AGREEMENTS

**FUNDED HEALTH REIMBURSEMENT ARRANGEMENT
BASIC PLAN DOCUMENT**

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**ARTICLE I.
INTRODUCTION**

- 1.1 **Establishment.** An executed Adoption Agreement plus this Basic Plan Document constitute the "Plan." The effective date of the Plan is set forth in the Adoption Agreement. The Plan and Trust are initially being established a single Employer. However, it is anticipated that in the future sponsorship of the Plan and Trust will be transferred to a joint powers entity created by two or more public agencies pursuant to the authority granted for joint or cooperative action under applicable state law.
- 1.2 **Purpose.** The purpose of the Plan is to provide certain Employees with an opportunity to receive reimbursement for certain Health Care Expenses as provided in this Plan. It is the intention of the Plan Sponsor that the benefits provided and payable under this Plan be eligible for exclusion from the gross income of Participants as provided by Sections 105(b) and 106 of the Code. In addition, it is the intention of the Plan Sponsor that the Plan qualify as a Health Reimbursement Arrangement ("HRA") under IRS Revenue Ruling 2002-41 (June 26, 2002) and IRS Notice 2002-45 (June 26, 2002).
- 1.3 **HIPAA Privacy and Security Rules.** This Plan is a "covered entity" for purposes of the Privacy Rules and Security Rules as described in greater detail in Article VIII below.
- 1.4 **Not ERISA Plan.** Because it is a governmental plan, this Plan is not an employee welfare benefit plan for purposes of ERISA.
- 1.5 **Trust.** This Plan is intended to be funded through a Trust, reflected in a separate document.

ARTICLE II. DEFINITIONS

The following words and phrases are used in this Plan and shall have the meanings set forth in this Article unless a different meaning is clearly required by the context or is defined within an Article.

- 2.1 **Adoption Agreement** means the separate agreement, or portions thereof, completed and executed by the Plan Sponsor setting forth the Plan Sponsor's selection of options under the Plan.
- 2.2 **Authorized Representative** means, for the claims and appeal procedures, the person entitled to act on behalf of the claimant with respect to a benefit claim or appeal. In order for the Plan to recognize a person as an Authorized Representative, written notification to that effect signed by the claimant and notarized must be received by the Plan. An assignment for purposes of payment is *not* designation of an "Authorized Representative."
- 2.3 **Basic Plan Document** means this document, which together with an executed Adoption Agreement constitutes the Plan for the Plan Sponsor.
- 2.4 **Claims Administrator** means the person or entity designated by and under contract with the Plan Administrator to perform certain administrative functions, including, but not limited to, claims administration and recordkeeping.
- 2.5 **Claims Run-out Period** means the period of time following the end of a Plan Year (Section 5.3) or the termination of a Participant's participation in the Plan (Section 5.7) during which the Participant may submit claims to the Plan for expenses incurred during the Plan Year or the Participant's participation (as the case may be).
- 2.6 **Code** means the Internal Revenue Code of 1986, as amended from time to time.
- 2.7 **Covered Individual** means a Participant, Dependent of a Participant and the Spouse of a Participant, and any other person appropriately covered under the Plan.
- 2.8 **Dependent** means as defined in the Adoption Agreement.
- 2.9 **Employee** means any person employed by an Employer and on the Employer's W-2 payroll on or after the Effective Date. Employee does not include the following:
 - (a) Any self-employed individual as described in Section 401(c) of the Code;
 - (b) Any employee included within a unit of employees covered by a collective bargaining agreement unless such agreement expressly provides for coverage of the employee under this Plan;
 - (c) Any employee who is a nonresident alien and receives no earned income from the Employer from sources within the United States;
 - (d) Any employee who is a leased employee as defined in Section 414(n)(2) of the Code;
 - (e) An individual classified by the Employer as a contract worker, independent contractor, temporary employee, or casual employee, whether or not any such persons are on the Employer's W-2 payroll or are determined by the IRS or others to be common-law employees of the Employer; and
 - (f) Any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency such as "Kelly," "Manpower," etc., whether or not such individuals are determined by the IRS or others to be common-law employees of the Employer.

- 2.10 **Employer** means an entity that (a) satisfies any conditions described in the Adoption Agreement; (b) has been approved by the Plan Administrator for participation in the Plan; and (c) has entered into a Participation Agreement.
- 2.11 **Employer Contribution** means a nonelective contribution made by an Employer on behalf of its Eligible Employees in accordance with Section 6.1. The Employer Contribution is an amount that has not been actually or constructively received by the Participant, and it is made available to the Participant exclusively for reimbursement of eligible expenses under the Plan. Employer Contributions may include mandatory salary reduction contributions.
- 2.12 **Entry Date** means the date as of which an Employee becomes a Participant in this Plan as set forth in the Adoption Agreement.
- 2.13 **ePHI** means PHI maintained or transmitted in electronic media, including, but not limited to, electronic storage media (i.e., hard drives, digital memory medium) and transmission media used to exchange information in electronic storage media (i.e., internet, extranet, and other networks). PHI transmitted via facsimile and telephone is not considered to be transmissions via electronic media.
- 2.14 **ERISA** means the Employee Retirement Income Security Act of 1974 and regulations thereunder, as amended from time to time.
- 2.15 **HC Account** means "health care account" and is the record keeping account established under the Plan for each Participant.
- 2.16 **Health Care Expense** means as defined in the Adoption Agreement, provided it is defined no more broadly than the description in IRS Revenue Ruling 2002-41 and IRS Notice 2002-45. Notwithstanding the foregoing, if the Employer sponsors a cafeteria plan, Health Care Expense shall not include premiums that may be paid on a pre-tax basis in accordance with the terms of such cafeteria plan, which may include premiums for major medical coverage provided by the Employer and premiums for coverage under an insurance contract, health maintenance organization agreement, or other benefit agreement providing coverage issued on a non-group, individual basis. To the extent Health Care Expense is defined in the Adoption Agreement to include premiums for qualified long-term care insurance, the amount of such premium that will qualify as a Health Care Expense shall be limited to the portion that constitutes "eligible long-term care premiums" as defined in Section 213(d)(10) of the Code. "Health Care Expense" may include over-the-counter drugs and medicine (other than insulin) only if such drug or medicine has been prescribed, as required by Section 106(f) of the Code. Notwithstanding the foregoing, if the Plan is an integrated HRA and the group medical plan in which a Participant is enrolled does not provide at least 60% minimum value, then, during the period of time in which such a Participant is receiving contributions to the Plan, Health Care Expense for such a Participant shall be defined no more broadly than allowed under applicable law.
- 2.17 **HIPAA** means the Health Insurance Portability and Accountability Act of 1996 and regulations thereunder, as amended from time to time.
- 2.18 **Health Reimbursement Arrangement ("HRA")** means the Employer-funded medical reimbursement program within the meaning of IRS Revenue Ruling 2002-41 (June 26, 2002) and IRS Notice 2002-45 (June 26, 2002).
- 2.19 **Highly Compensated Individual** means an individual who is (1) one of the 5 highest paid officers of an Employer, or (2) among the highest paid 25 percent of an Employer's Employees, except (1) Employees who have not completed 3 years of service, (2) Employees who have not attained age 25, (3) part-time or seasonal Employees, (4) Employees not included in the plan who are included under a collective bargaining agreement, and (5) Employees who are nonresident aliens and who receive no earned income from a source within the United States.
- 2.20 **Limited Scope Health Care Expense** means, unless provided otherwise in the Adoption Agreement, a

Health Care Expense for dental or vision care that qualifies as an expense for medical care under Section 213(d) of the Code. "Limited Scope Health Care Expense" may include over-the-counter drugs and medicine only if such drug or medicine has been prescribed, as required by Section 106(f) of the Code.

- 2.21 **Managing Body** means the person or persons with authority to make decisions for an Employer.
- 2.22 **Participant** means any Employee (or former Employee) who is or may become eligible to receive a benefit through this Plan, or whose beneficiary may be eligible to receive any such benefits pursuant to Article IV. In addition, Participant includes persons "deemed" to be Participants under a specific provision of this Plan.
- 2.23 **Participation Agreement** means an agreement entered into by an Employer and the Plan Administrator pursuant to which the Employer agrees to participate in the Plan and Trust and be bound by their terms.
- 2.24 **PHI** means health information that:
- (a) Is created or received by a health care provider, health plan, or health care clearinghouse;
 - (b) Relates to the past, present, or future physical or mental health or condition of an individual (including "genetic information" as that term is defined in the Genetic Information Nondiscrimination Act of 2008); the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - (c) Either identifies the individual or reasonably could be used to identify the individual.
- 2.25 **Plan** means this Plan as may be amended from time to time. It consists of a completed Adoption Agreement plus the Basic Plan Document. The name of the Plan is specified in the Adoption Agreement.
- 2.26 **Plan Administrator** means the entity, person or persons determined under Section 9.1.
- 2.27 **Plan Sponsor** means the entity that has established this Plan by completing and executing the Adoption Agreement or the entity that has responsibility for maintaining the Plan. The Plan Sponsor is identified in the Adoption Agreement.
- 2.28 **Plan Year** means the twelve (12) month period beginning and ending as indicated in the Adoption Agreement. The initial Plan Year may be a "short" Plan Year beginning and ending as indicated in the Adoption Agreement. The records of the Plan will be kept based upon the Plan Year.
- 2.29 **Privacy Rules** means the *Standards of Privacy of Individually Identifiable Health Information* at 45 C.F.R. part 160 and part 164 at subparts A and E.
- 2.30 **Security Incident** means "security incident" as defined in 45 C.F.R. Section 164.304, which generally defines "security incident" to include attempted or successful unauthorized access, use, disclosure, modification, or destruction of ePHI.
- 2.31 **Security Rules** means the Security Standards and Implementation Specifications at 45 C.F.R. Part 160 and Part 164, subpart C.
- 2.32 **Spouse** means "Spouse" as defined in the Adoption Agreement.
- 2.33 **Trust** means the trust identified in the Adoption Agreement, created for the purpose of accepting and holding Employer Contributions, and limited other contributions, made under the Plan.
- 2.34 **Trustee** means the person or persons identified as a "Trustee" under the Trust.

**ARTICLE III.
ADOPTING EMPLOYERS**

- 3.1 **Adoption of Plan.** Upon approval by the Plan Administrator, an employer may adopt the Plan by resolution duly adopted by its Managing Body, as represented and warranted in the Participation Agreement, and upon execution of a Participation Agreement.
- 3.2 **Employer Withdrawal.** In the event two or more Employers participate in the Plan and the Trust, the following rules shall govern the withdrawal of an Employer.
- (a) **Voluntary.** Any Employer may, upon ninety (90) days advance written notice to the Plan Administrator, withdraw from the Plan and the Trust.
 - (b) **Involuntary.** The Plan Administrator may expel an Employer from the Trust for cause upon ten (10) days written notice and failure to correct any act or omission constituting cause.

The Plan Administrator reserves the right to notify all impacted Covered Individuals of an Employer's withdrawal. If an Employer's participation in the Plan and Trust terminates as provided herein, Trust assets attributable to the withdrawing Employer shall be handled in accordance with the provisions of the Trust.

ARTICLE IV.
ELIGIBILITY AND PARTICIPATION OF EMPLOYEES

- 4.1 **Eligibility Requirements.** Each Employee shall be eligible to participate in this Plan upon meeting the eligibility requirements set forth in the Adoption Agreement and the Employer's Participation Agreement.
- 4.2 **Participant Status.** An Employee who has met the eligibility requirements described in Section 4.1 shall become a Participant as of the Employee's Entry Date.
- 4.3 **Conditions of Participation.** As a condition of participation and receipt of benefits under this Plan, the Participant agrees to:

- (a) Observe all Plan rules and regulations;
- (b) Consent to inquiries by the Claims Administrator and Plan Administrator with respect to any provider of services involved in a claim under this Plan;
- (c) Submit to the Plan Administrator all notifications, reports, bills, and other information required by the Plan or which the Claims Administrator and Plan Administrator may reasonably require; and
- (d) Cooperate with all reasonable requests of the Claims Administrator and Plan Administrator that may be necessary for the proper administration of the Plan.

Failure to do so relieves the Plan, Plan Administrator, Claims Administrator, and Plan Sponsor of any obligations under this Plan with respect to that Participant and any others claiming entitlement to benefits under this Plan through that Participant and shall result in the termination of the Participant's participation in the Plan.

- 4.4 **Coverage Options.** The Plan consists of one or more of the following coverage options as described below.

- (a) One or more of the following coverage options, as indicated in the Adoption Agreement, are available under the Plan:
 - (i) **Full Scope Option.** Participants may receive reimbursement for Health Care Expenses incurred by themselves and their Spouses and Dependents.
 - (ii) **Limited Scope Option.** Participants may receive reimbursement for only Limited Scope Health Care Expenses incurred by themselves and their Spouses and Dependents.
 - (iii) **Suspended Account Option.** Participants may receive no reimbursements from their HC Accounts. However, the balance of the Participant's HC Account will be preserved for use in subsequent Plan Years.
- (b) Participants will be covered under the "Full Scope Option" unless the Participant elects in writing and in a manner specified by the Plan Administrator to participate in another available coverage option. Notwithstanding the foregoing, if provided in the Adoption Agreement, Participants enrolled in a high deductible health plan (as defined in Section 223 of the Code) sponsored by the Employer shall automatically be enrolled in the coverage option specified in the Adoption Agreement. If an election of coverage options is required, such an election shall be effective on a Plan Year basis, shall be made prior to the beginning of the Plan Year, shall be irrevocable during the Plan Year, and shall automatically renew for subsequent Plan Years unless the Participant makes an election (in the manner specified above) to participate in a different coverage option for such subsequent Plan Year.
- (c) If a Participant changes coverage options, the following rules apply with respect to claims for

reimbursement under the Plan:

- (i) Expenses will be eligible for reimbursement under the Plan in accordance with the coverage option in which the Participant is enrolled at the time the expense is incurred. For example, if a Participant who is enrolled in the "Limited Scope Option" incurs an expense for something other than a Limited Scope Health Care Expense, that expense cannot be reimbursed under the Plan at any time in the future (e.g., if the Participant subsequently becomes covered under the "Full Scope Option").
- (ii) Notwithstanding the foregoing, unless provided otherwise in the Adoption Agreement, a Health Care Expense incurred while the Participant is covered under the "Full Scope Option" will not be reimbursed if the claim for such expense is submitted after the Participant has become covered under another coverage option and such expense is not reimbursable under the new coverage option. For example, if a Participant incurs an expense for something other than a Limited Scope Health Care Expense while covered under the "Full Scope Option," that expense cannot be reimbursed if the claim is submitted after the Participant becomes covered under the "Limited Scope Option."

4.5 **Waiver of Participation.** A Participant may elect to permanently waive future participation in and reimbursements under this Plan (the "opt out election"). The opportunity to make an opt out election will be made available annually and upon termination of the Participant's employment with the Employer. An opt out election shall be made in accordance with procedures established by the Plan Administrator. If the opt out election is made during the election opportunity provided annually, the opt out election will be effective as of the last day of the Plan Year in which it is made. If the opt out election is made during the election opportunity provided upon termination of employment, the opt out election will be effective on the date specified in the Adoption Agreement. If a Participant makes an opt out election, no reimbursements will be provided by the Plan to that Participant for eligible expenses incurred after the effective date of the opt out election. However, unless otherwise prohibited by applicable law (including regulatory guidance), a Participant making an opt out election may continue to submit claims for eligible expenses incurred prior to the effective date of the opt out election until the close of the applicable claim Claims Run-out Period.

4.6 **Termination of Contributions.** Unless provided otherwise in the Adoption Agreement, a Participant shall cease to be eligible to receive contributions under this Plan at midnight of the earliest of the following dates:

- (a) The date of the death of the Participant;
- (b) The date of termination of the Participant's employment with the Employer;
- (c) The date of the Participant's failure to meet the eligibility requirements of Section 4.1, as may be amended from time to time in accordance with Article X;
- (d) The date on which the Participant's Employer ceases to participate in the Plan and Trust; or
- (e) The date of termination of the Plan in accordance with Article X.

Termination of contributions under this Plan shall not prevent a former Participant from receiving continuation coverage required by applicable law.

4.7 **Termination of Participation.** Unless provided otherwise in the Adoption Agreement, a Participant automatically ceases to be a Participant at midnight of the earliest of the following dates:

- (a) The date of the termination of the Participant's employment with the Employer;
- (b) The date of the death of the Participant;
- (c) The date the balance of the Participant's HC Account reaches zero, if no further contributions will be made to said account under Article VI;
- (d) The date on which the Participant's Employer ceases to participate in the Plan and Trust; or
- (e) The date of termination of the Plan in accordance with Article X.

Participation may also terminate for cause, including for failing to comply with the conditions of participation described in Section 4.3 and/or for making fraudulent or improper claims. In certain cases, if participation is terminated for cause, the Participant's coverage may be terminated retroactively to the date on which the event giving rise to the cause occurred. Termination of participation in this Plan shall not prevent a former Participant from receiving continuation coverage required by applicable law.

**ARTICLE V.
BENEFITS UNDER THE PLAN**

- 5.1 **Benefits.** The Plan shall reimburse Health Care Expenses and Limited Scope Health Care Expenses in accordance with Section 4.4 and this Article V.
- 5.2 **Health Care ("HC") Account.** The Participant's HC Account will be credited with the Employer Contribution. A Participant's HC Account will be decreased from time to time in the amount of payments made to the Participant for benefits.
- 5.3 **Claims for Reimbursement.** A Participant may obtain reimbursement of Eligible Expenses by submitting a paper claim or through an electronic payment card as described below.

- (a) **Paper Claims.** A Participant may make a claim by completing a claim form and submitting such form to the Claims Administrator setting forth at least the following:

- (1) the amount, date and nature of the expense, including the identity of the individual who incurred the expense;
- (2) the name of the person or entity to which the expense was paid or is owed;
- (3) the Participant's statement that the expense has not been reimbursed and the Participant will not seek reimbursement for the expense; and
- (4) such other information as the Claims Administrator may require.

Such claim form shall be accompanied by such bills, invoices, receipts, explanations of benefits ("EOB") issued by a health plan, or other statements from an independent third party as is necessary to establish that an Eligible Expense has been incurred and the amount of the expense. The Claims Administrator is entitled to rely on the information provided on the claim form in processing claims under this Plan. A claim must be submitted for payment within the time period indicated in the Adoption Agreement. Where circumstances beyond the Participant's control prevent submission within the described time frame, notice of a claim with an explanation of the circumstances may be accepted by the Claims Administrator as a timely filing. Claims shall be determined in accordance with Article VII.

- (b) **Electronic Payment Card.** A Participant may receive reimbursement of an Eligible Expense by use of an electronic payment card at the time the Eligible Expense is incurred. The use of the electronic payment card shall be subject following conditions:

- (1) The electronic payment card will be deactivated when a Participant's participation in the Plan terminates.
- (2) The balance of the electronic payment card shall be limited to 90% of the balance of the Participant's HC Account.
- (3) A Participant must certify in writing prior to issuance of the electronic payment card that:
 - (i) the electronic payment card will be used only for Eligible Expenses that have not been reimbursed under any other plan covering similar benefits; and
 - (ii) the Participant will not seek reimbursement for any expense paid with the electronic payment card under any other plan covering benefits.

The electronic payment card shall include a statement providing that each use of the card shall constitute a reaffirmation of the certification.

- (4) The electronic payment card may be used only at merchants who are health care providers (e.g., doctor's office, hospital, pharmacy, etc.) or other merchants identified in applicable IRS guidance.
- (5) Each time the electronic payment card is used, a Participant shall obtain and retain a third party statement from the health care provider containing the information necessary to substantiate that the expense paid by the card was an Eligible Expense.
- (6) Claims shall be substantiated if one of the following conditions is satisfied:
 - (i) The Participant provides, upon request by the Claims Administrator (or its designee), the third party statement with respect to the claim.
 - (ii) The payment was made to a merchant who is a health care provider and it matches a specific co-payment the Participant has under a group medical or group dental plan sponsored by the Plan Sponsor or a multiple of that co-payment of not more than five (5) times the dollar amount of the co-payment.
 - (iii) The payment was made to a merchant who is a health care provider and is for an expense with the same amount, duration, and health care provider as a previously approved expense under this Plan.
 - (iv) The payment was made to a merchant who is a health care provider and the electronic claim file with respect to the expense is accompanied by an electronic or written confirmation from the health care provider that verifies the nature and amount of the expense and that the expense is an Eligible Expense.
 - (v) The electronic payment card is used at a merchant (of any kind) that participates in an inventory information approval system developed by the card provider that verifies, at the time of purchase, that the goods being purchased constitute medical care.
- (7) Special rules apply to the use of the electronic payment card to purchase over-the-counter drugs and medicines other than insulin. Notwithstanding the rules described above regarding the use of the card to purchase medical care, the card may be used to purchase such over-the-counter drugs and medicines only in the following circumstances:
 - (i) At any 90% pharmacy if the expense is substantiated after the purchase in accordance with paragraph (6)(i) above.
 - (ii) At drug stores, pharmacies, non-health care merchants that have pharmacies, and mail order or web-based merchants that sell prescription drugs if (a) the cardholder presents the prescription to the pharmacist; (b) the pharmacist assigns a prescription number and dispenses the over-the-counter drug or medicine in accordance with applicable law; (c) the pharmacy retains a record of the transaction, including the name on prescription, prescription number, date, and the amount of the purchase; (d) the pharmacy's records are accessible by the employer or its agent; (e) the debit card system does not allow over-the-counter drugs or medicines without a prescription number; and (f) the expense is substantiated in accordance with the standard rules described above in paragraph (6).
 - (iii) At merchants having healthcare related merchant codes (other than merchants described in item ii above) if the expense is substantiated in accordance with the standard rules described above in paragraph (6).

- (8) A Participant shall repay the Plan for a payment with respect to any claim not substantiated (and therefore not eligible for reimbursement) as required above. The Plan shall handle unsubstantiated claims as required under the Code and applicable regulations.
- (9) The use of an electronic payment card does not constitute a "claim" under the claims procedures.

5.4 **Incurred Expenses.**

- (a) **Reimbursement for Incurred Expenses.** An expense is "incurred" when the Participant is provided with the care giving rise to the eligible expense, not when the service is billed or paid. The Plan provides reimbursements only for incurred expenses; reimbursements shall not be made for future projected expenses.
- (b) **Expenses Incurred After Participation Begins.** To be reimbursable, the Participant must have incurred an eligible expense after his/her Entry Date. Notwithstanding anything herein to the contrary, if (1) an Employer sponsored or participated in a health reimbursement arrangement prior to participating in this Plan (the "predecessor HRA"), and (2) the account balances of such Employer's Employees and former Employees under the predecessor HRA have been transferred or contributed to this Plan (as described in the Employer's Participation Agreement), then for purposes of the rule described in this Section 5.2(b) this Plan shall be treated as a successor of the predecessor HRA and a Participant's Entry Date shall be the date on which he/she began participation in the predecessor HRA.
- (c) **Post-Employment Plans.** In addition to the foregoing, if provided in the Adoption Agreement, the Participant must have incurred the eligible expense after termination of employment with his/her Employer or such other event identified in the Adoption Agreement. Notwithstanding the foregoing, if the Adoption Agreement provides that eligible expenses must be incurred after termination of employment and a Participant with an HC Account balance is rehired by an Employer after having terminated employment, then any eligible expenses incurred by the Participant (or the Participant's Spouse or Dependents) during the Participant's period of reemployment by the Employer shall not be eligible for reimbursement under the Plan. The restriction on reimbursements described in the preceding sentence shall apply regardless of: (1) the length of the period of time between the initial separation from service and the reemployment; (2) the nature of the Participant's employment upon rehire (e.g., whether the Participant is rehired on part-time, temporary, seasonal, etc. basis); and (3) any other factor (e.g., vesting status, the number of hours per week the Participant is reemployed to work, etc.). Upon such reemployed Participants subsequent termination of employment with the Employer, the Participant shall again become eligible to receive reimbursements from his or her HC Account for eligible expenses incurred after his or her reemployment ends.

5.5 **Timing of Reimbursement.** Participants shall be reimbursed weekly.

5.6 **Maximum Reimbursement.** The maximum reimbursement a Participant may receive at any time shall be the amount of the Participant's HC Account balance at the time the reimbursement request is processed. The maximum reimbursement requirements apply to the Participant, Spouse, and Dependents on an aggregate basis, not an individual basis. If a Participant's claim is for an amount that is more than the Participant's current HC Account balance, the excess, unreimbursed part of the claim will be carried into the subsequent month(s), to be paid as the balance of the Participant's HC Account becomes adequate. Notwithstanding the foregoing, the excess, unreimbursed portion of a claim will not be carried over into the subsequent month(s) if no further contributions will be made to the Participant's HC Account under Article VI.

5.7 Termination of Participation.

- (a) **Termination of Employment.** Notwithstanding anything herein to the contrary, unless specifically provided otherwise in the Adoption Agreement, the former Participant may continue to access the HC Account following termination of employment for purposes of obtaining reimbursement of eligible expenses. Such access shall continue until the earliest to occur of the events identified in Section 4.7(b), (c), (d), or (e). Such access shall also be provided to those individuals, if any, who at the time of the termination of the Participant's participation were the Participant's Spouse or Dependents. Such access to the Participant's HC Account by a Spouse and Dependents shall cease upon the earlier of the date of termination of the Participant's access or the date the Spouse ceases to be a Spouse or the Dependent ceases to be a Dependent, as the case may be. If continuation coverage is required by applicable law, the access described in this Section 5.7(a) shall be provided only if offered as and selected in lieu of such continuation coverage.
- (b) **Death.**
- i. Notwithstanding anything herein to the contrary, unless specifically provided otherwise in the Adoption Agreement, in the event a Participant's participation in the Plan terminates because of the Participant's death, the Participant has no surviving Spouse or Dependents, and the former Participant incurred a Health Care Expense prior to the Participant's death that would have been reimbursable out of the Participant's HC Account but that has not been submitted for reimbursement, the deceased Participant's estate may submit such Health Care Expense for reimbursement in accordance with Section 5.3. A certified copy of the deceased Participant's death certificate and proof that the person acting upon behalf of such Participant's estate has authority to do so must be submitted with such claims.
 - ii. Notwithstanding anything herein to the contrary, unless specifically provided otherwise in the Adoption Agreement, the deceased Participant's surviving Spouse, if any, may continue to access the Participant's HC Account for purposes of obtaining reimbursement of Health Care Expenses until the earlier of: (1) the date on which the HC Account balance reaches zero; or (2) the date on which the surviving Spouse dies. No claim shall be paid to a surviving Spouse pursuant to this subsection (ii) unless a certified copy of the deceased Participant's death certificate has been provided to the Claims Administrator. If continuation coverage is required by applicable law, the access described in this Section 5.7(b)(ii) shall be provided only if offered as and selected in lieu of such continuation coverage.
 - iii. Notwithstanding anything herein to the contrary, unless specifically provided otherwise in the Adoption Agreement, the deceased Participant's surviving Dependents, if any, may continue to access the Participant's HC Account for purposes of obtaining reimbursement of Health Care Expenses until the earlier of: (1) the date on which the HC Account balance reaches zero; or (2) the date the last surviving Dependent dies. No claim shall be paid to a surviving Dependent pursuant to this subsection (iii) unless a certified copy of the deceased Participant's death certificate has been provided to the Claims Administrator. If continuation coverage is required by applicable law, the access described in this Section 5.7(b)(iii) shall be provided only if offered as and selected in lieu of such continuation coverage.
 - iv. No one other than the Participant's Spouse and Dependents may have access to the Participant's HC Account following the Participant's death.

- 5.8 **Nondiscrimination.** This Plan is intended to be nondiscriminatory and to meet the nondiscrimination requirements under applicable sections of the Code. If the Plan Administrator or an Employer determines before or during any Plan Year, that the Plan may fail to satisfy any nondiscrimination requirement imposed by the Code or any limitation on benefits provided to Highly Compensated Individuals, the Plan Administrator or Employer shall take such action as the Plan Administrator or Employer deems appropriate, under rules uniformly applicable to similarly situated Participants, to assure compliance with such requirements or limitation.
- 5.9 **HC Account Forfeitures.** Unless provided otherwise in the Adoption Agreement, any amount remaining in a Participant's HC Account shall be forfeited following the later to occur of: (1) the termination of Participant's participation in the Plan (including, but not limited to, the Participant's election to opt out under Section 4.5), (2) the termination of any continuation coverage provided by the Plan under applicable law, or (3) the termination of any coverage provided by the Plan in lieu of continuation coverage required by applicable law; provided that where participation or coverage is terminated because of the death of the Participant, forfeiture shall not occur until the expiration of the time period contained in Section 5.3 for the submission of claims. Notwithstanding the forgoing, a Participant's HC Account shall also be forfeited if: (i) the balance of the HC account is less than \$25, (ii) no further contributions shall be made to the HC Account, and (iii) no claim has been submitted by the Participant for a period of six (6) months. In addition, the portion of the Participant's HC Account that is not vested shall be forfeited upon the Participant's termination of employment. A Participant's interest in his/her HC Account shall vest as provided in the Adoption Agreement. Forfeited amounts shall be used for the purposes described in the Adoption Agreement. However, except as allowed under the Trust, no amounts will revert to an Employer. If the Adoption Agreement indicates that forfeitures shall be contributed to the HC Accounts of other Participants, the following rules shall apply. Forfeitures occurring during a Plan Year shall be held in a separate subaccount until the close of the Plan Year. Immediately following the close of the Plan Year, the forfeitures shall be contributed to the HC Accounts of all Participants employed by the Employer of the Participant who experienced the forfeiture on the last day of such Plan Year in the manner provided in the Adoption Agreement (i.e., on a per capita or pro rata basis). To the extent the full balance of the forfeiture subaccount cannot be allocated as provided in the Adoption Agreement (e.g., because the balance does not divide evenly among the number of Participants), any balance remaining shall be held in the forfeiture subaccount until the end of the subsequent Plan Year and allocated at that time.
- 5.10 **Medical Support Orders.** Notwithstanding any provision of this Plan to the contrary this Plan shall recognize medical child support orders as required under applicable state law or under the Child Support Performance and Incentive Act of 1998. Participants involved in a divorce or child custody matter should be directed to have their legal counsel contact the Plan Administrator.
- 5.11 **Coordination with Cafeteria Plan.** To the extent a Participant's Employer also sponsors a medical reimbursement program as part of its cafeteria plan within the meaning of Section 125 of the Code, a Participant participates in the medical reimbursement program, and the Participant or a Covered Individual covered through such a Participant incurs an eligible expense that is also eligible for reimbursement under the medical reimbursement program, which program pays first is described in the Adoption Agreement.

5.12 Further Limitations on Benefits.

- (a) This Plan does not cover expenses incurred for any loss caused by or resulting from injury or disease for which benefits are payable under any worker's compensation law or other employer, union, association or governmental sponsored group insurance plan.
- (b) This Plan does not cover expenses incurred for any loss caused by or resulting from injury or disease for which benefits are received by the Participant, the Participant's Spouse or the Participant's Dependent under any health and accident insurance policy or program, whether or not premiums are paid by the Employer or by the Participant, the Participant's Spouse or the Participant's Dependent child.
- (c) Amounts reimbursed under a dependent care assistance program described in Section 129 of the Code shall not be reimbursed under this Plan.
- (d) Other limitations, if any, as set forth in the Adoption Agreement.

**ARTICLE VI.
CONTRIBUTIONS AND TRUST**

- 6.1 **Employer Contributions.** An Employer shall make a fixed contribution per Participant as provided in the Employer's Participation Agreement. Notwithstanding anything herein to the contrary, an Employer shall not be required to make contributions for Participants who are not the Employer's Employees or former Employees.
- 6.2 **No Employee Contributions.** Except for contributions required for continuation coverage as described in Article XII, no contributions other than Employer Contributions are required nor will they be accepted.
- 6.3 **Trust.** All contributions shall be held in the Trust. The investment of the assets of the Trust shall be directed as provided in the Adoption Agreement. Notwithstanding the foregoing, the investment of any assets of the Trust that constitute forfeitures shall be directed by the Plan Administrator until such time, if any, that such forfeitures are allocated to the HC Accounts of other Participants.

ARTICLE VII.
CLAIMS DETERMINATIONS AND REVIEW OF DENIED CLAIM

The following procedures apply:

- 7.1 **General Provisions.** All claims and appeals will be adjudicated in a manner so that the independence and impartiality of the persons involved in making the determination are ensured. Decisions regarding hiring, compensation, termination, and similar matters with respect to any individual involved in the determination (e.g., a claims adjudicator or medical expert) shall not be based upon the likelihood that the individual will support a denial of benefits.

7.2 **Initial Claim Determination.**

- (a) **Time Frame for Decision.** The Plan must determine the claim within thirty (30) days of receipt of the claim.
- (b) **Extension of Time.** If the Plan is not able to determine the claim within this time period due to matters beyond its control, the Plan may take an additional period of up to fifteen (15) days to determine the claim. If this additional time will be needed, the Plan must notify the claimant or the claimant's Authorized Representative prior to the expiration of the initial thirty (30) day time period for determining the claim. This extension is only available once.

Notification: The notification of the need for the extension must include a description of the "matters beyond the Plan's control" that justify the extension and the date by which a decision is expected.

- (c) **Incomplete Claims.** There is no special rule if a claim is incomplete. Incomplete claims can be addressed through the extension of time described above. If the reason for the extension is the failure to provide necessary information and the claimant is appropriately notified, the Plan's period of time to make a decision is "tolled."

Tolling: The period of time in which the Plan must determine a claim is suspended from the date upon which notification of the missing necessary information is sent until the date upon which the claimant responds.

Notification: For this purpose, notification can be made orally to the claimant or the health care professional, unless the claimant requests written notice.

The notification will include a time frame in which the necessary information must be provided. Once the necessary information has been provided, the Plan must decide the claim within the extension described above. If the requested information is not provided within the time specified, the claim may be decided without that information.

7.3 **Decision.**

- (a) **Notification of Decision.** Written (or electronic) notification of the Plan's determination must be provided to the claimant or the claimant's Authorized Representative. Such notification must be provided only where the decision is adverse. The notification will be provided in a culturally and linguistically appropriate manner in accordance with 45 CFR § 147.136, to the extent such regulation applies to the Plan.

"Adverse" means:

- A denial, reduction, or termination of a benefit;
- A failure to provide or make payment (in whole or in part) for a benefit; or
- A rescission of coverage under the Plan, which is a cancellation or discontinuance of coverage under the Plan that has retroactive effect other than a cancellation or discontinuance attributable to a failure to timely pay or make required premiums or contributions toward coverage.

(b) **Adverse Decision.** For adverse claim determinations, the notification shall at a minimum:

- Include information sufficient to identify the claim involved, including the date of service, the identity of the health care provider, and the claim amount, and to inform the claimant of the right to receive, upon request, the diagnosis and treatment codes (if any) and their corresponding meanings upon request;
- State the specific reason(s) for the determination, including the denial code (if any) and its corresponding meaning, and describe the Plan's standard, if any, used to make the determination;
- Reference specific Plan provision(s) upon which the determination is based;
- Describe additional material or information necessary to complete the claim and why such information is necessary;
- Describe the internal appeals and external review processes (if any) available under the Plan, including how to initiate an appeal and the procedures and time limits applicable to an appeal;
- Disclose any internal rule, guidelines, protocol or similar criterion relied on in making the adverse determination (or state that such information will be provided free of charge upon request);
- Where the decision involves scientific or clinical judgment, disclose either (1) an explanation of the scientific or clinical judgment applying the terms of the Plan to claimant's medical circumstances, or (2) a statement that such explanation will be provided at no charge upon request; and
- Disclose the availability of and contact information for any applicable office of health insurance consumer assistance or ombudsman established to assist individuals with the internal claims and appeals and external review processes (if any).

Notice of the adverse determination may be provided in written or electronic form. Electronic notices will be provided in a form that complies with applicable legal requirements.

(c) **Not Adverse Decision.** For claim determinations that are not adverse, notice will be provided that informs the claimant or the claimant's Authorized Representative the claim has been accepted.

7.4 **Access to Relevant Documents.**

In order (1) to evaluate whether to request review of an adverse determination, and (2) if review is requested, to prepare for such review, the claimant or the claimant's Authorized Representative will have access to all relevant documents.

Relevant: A document, record or other information is "relevant" if it was relied upon in making the determination, or was submitted to the Plan, considered by the Plan, or generated in the course of making the benefit determination without regard to whether it was relied upon.

7.5 **Appealing a Denied Claim.**

If a claim is denied, in whole or part, the claimant or the claimant's Authorized Representative may request the denied claim be reviewed.

- (a) **Requesting Review.** The claimant or the claimant's Authorized Representative has a period of one-hundred eighty (180) days to appeal the claim determination. The appeal request must be in writing and should be sent to the address specified in the notification of adverse decision described above.
- (b) **Full and Fair Review.** The claimant will have the right to review the claim file and to present evidence and testimony. The claimant will be provided, free of charge, with new or additional evidence considered, relied upon, or generated by the Plan in connection with the claim as soon as possible and sufficiently in advance of the date on which the notice of final internal adverse benefit determination is required to give the claimant a reasonable opportunity to respond prior to that date. Before the Plan issues a final internal adverse benefit determination based on a new or additional rationale, the claimant will be provided, free of charge, with the rationale as soon as possible and sufficiently in advance of the date on which the notice of final internal adverse benefit determination is required to give the claimant a reasonable opportunity to respond prior to that date. The review of the adverse benefit determinations will take into account all new information, whether or not presented or available at the initial determination. No deference will be afforded to the initial determination.
- (c) **Consultation with Independent Medical Expert.** In the case of a claim denied on the grounds of a medical judgment, a health professional with appropriate training and experience will be consulted. The health care professional who is consulted on appeal will not be the individual who was consulted, if any, during the initial determination or a subordinate of that individual.

Disclosure: If the advice of a medical or vocational expert was obtained by the Plan in connection with the claim denial, the names of each such expert shall be provided, regardless of whether the advice was relied upon.

- (d) **Time Frame for Decision.** If claimant or the claimant's Authorized Representative requests a review of a denied claim within the time frame described above, the Plan Administrator shall review the claim and make a determination no later than sixty (60) days from the date the review request was received.
- (e) **Decision.** The review of the claim will be conducted by the Plan Administrator. It will be made by a person different from the person who made the initial determination and such person will not be a subordinate of the original decision maker. The information in the administrative record shall be reviewed. Additional information submitted shall be considered. The decision shall be based upon that information plus the terms of the Plan and past interpretations of the same and similar Plan provisions. The Plan may rely upon protocols, guidelines, or other criterion.
- (f) **Notification of Decision.** Written (or electronic) notification of the Plan's determination must be provided to the claimant or the claimant's Authorized Representative. Such notification must be provided whether the decision is adverse or not adverse. The notification will be provided in a culturally and linguistically appropriate manner in accordance with 45 CFR § 147.136, to the extent such regulation applies to the Plan.

"Adverse" means:

- A denial, reduction, or termination of a benefit;
- A failure to provide or make payment (in whole or in part) for a benefit, or
- A rescission of coverage under the Plan, which is a cancellation or discontinuance of coverage under the Plan that has retroactive effect other than a cancellation or discontinuance attributable to a failure to timely pay or make required premiums or contributions toward coverage.

(g) **Adverse Decision.** For adverse appeal determinations, the notification shall reflect at least the following:

- Include information sufficient to identify the claim involved, including the date of service, the identity of the health care provider, and the claim amount, and to inform the claimant of the right to receive, upon request, the diagnosis and treatment codes (if any) and their corresponding meanings upon request;
- Contain a discussion of the determination, including the specific reason(s) for the determination, the denial code (if any) and its corresponding meaning, and the Plan's standard, if any, used to make the determination;
- Reference specific Plan provision(s) upon which the determination is based;
- Describe the external review process (if any) available under the Plan;
- Disclose any internal rules, guidelines, protocol or similar criterion relied on in making the adverse determination (or state that such information will be provided free of charge upon request);
- A statement indicating entitlement to receive upon request, and without charge, reasonable access to or copies of all documents, records or other information relevant to the determination;
- Where the decision involves scientific or clinical judgment, disclose either (1) an explanation of the scientific or clinical judgment applying the terms of the Plan to claimant's medical circumstances, or (2) a statement that such explanation will be provided at no charge upon request; and
- Disclose the availability of and contact information for any applicable office of health insurance consumer assistance or ombudsman established to assist individuals with the external review process (if any).

Notice of the adverse determination may be provided in written or electronic form. Electronic notices will be provided in a form that complies with applicable legal requirements.

(h) **Not Adverse Decision.** For claim determinations that are not adverse, notice will be provided that informs the claimant or the claimant's Authorized Representative the decision has been reversed, and the claim accepted.

- 7.6 **Deemed Exhaustion.** If the Plan fails to adhere to the requirements described in 45 CFR § 147.136(b)(2), the claimant will be deemed to have exhausted the internal claims and appeals process as provided in 45 CFR § 147.136(b)(2)(ii)(F), to the extent such regulation applies to the Plan.
- 7.7 **External Review.** The Plan will provide any applicable external review process that may be required to be provided by a health reimbursement arrangement under 45 CFR § 147.136, to the extent such regulation applies to the Plan.

**ARTICLE VIII.
HIPAA PRIVACY AND SECURITY PROVISIONS**

The Privacy Rules and Security Rules under HIPAA apply to the Plan.

- 8.1 **Use and Disclosure of PHI.** The Plan will use PHI to the extent allowed by, and in accordance with, the uses and disclosures permitted by HIPAA. Specifically, the Plan will use and disclose PHI for purposes related to health care treatment, payment for health care and health care operations. The Plan will also use and disclose PHI as required by law and as permitted by authorization of the subject of PHI. If the Plan discloses PHI to the Plan Sponsor in accordance with this Article VIII, the Plan Sponsor may use and further disclosure PHI for the same purposes and in the same situations as the Plan may use and disclose PHI, provided that such use or disclosure is for Plan administration functions performed by the Plan Sponsor for the Plan or is required by law or permitted by authorization. All uses and disclosures of PHI, whether by the Plan or by the Plan Sponsor, shall be limited to the minimum PHI necessary to accomplish the intended purpose of the use or disclosure in accordance with HIPAA. Notwithstanding the foregoing, neither the Plan nor the Plan Sponsor shall use PHI that is genetic information in a manner that is prohibited by the Genetic Information Nondiscrimination Act of 2008.
- (a) **Payment** includes activities undertaken by the Plan to obtain premiums or determine or fulfill its responsibility for coverage and provision of Plan benefits that relate to an individual to whom health care is provided. These activities include, but are not limited to, the following:
- (1) Determination of eligibility, coverage and cost sharing amounts (for example, cost of a benefit, plan maximums and co-payments as determined for an individual's claim);
 - (2) Coordination of benefits;
 - (3) Adjudication of health benefits claims (including appeals and other payment disputes);
 - (4) Subrogation of health benefit claims;
 - (5) Establishing employee contributions;
 - (6) Risk adjusting amounts due based on enrollee health status and demographic characteristics;
 - (7) Billing, collection activities and related health care data processing;
 - (8) Claims management and related health care data processing, including auditing payments, investigating and resolving payment disputes and responding to participant inquiries about payments;
 - (9) Obtaining payment under a contract for reinsurance (including stop-loss and excess of loss insurance);
 - (10) Medical necessity reviews or reviews of appropriateness of care or justification of charges;
 - (11) Utilization review, including pre-certification, preauthorization, concurrent review and retrospective review;
 - (12) Disclosure to consumer reporting agencies related to the collection of premiums or reimbursement (the following PHI may be disclosed for payment purposes: name and address, date of birth, Social Security number, payment history, account number and name and address of provider and/or health Plan); and

(13) Reimbursement to the Plan.

(b) **Health care operations** include, but are not limited to, the following activities:

- (1) Quality assessment;
- (2) Population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, disease management, contacting health care providers and patients with information about treatment alternatives and related functions;
- (3) Rating provider and Plan performance, including accreditation, certification, licensing or credentialing activities;
- (4) Underwriting, premium rating and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and ceding, securing or placing a contract for reinsurance of risk relating to health care claims (including stop-loss insurance and excess of loss insurance);
- (5) Conducting or arranging for medical review, legal services and auditing function, including fraud and abuse detection and compliance programs;
- (6) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the Plan, including formulary development and administration, development or improvement of payment methods or coverage policies;
- (7) Business management and general administration activities of the Plan, including, but not limited to:
 - a. Management activities relating to the implementation of and compliance with HIPAA's administrative simplification requirements;
 - b. Customer service, including data analyses for policyholders;
- (8) Resolution of internal grievances; and
- (9) Due diligence in connection with the sale or transfer of assets to a potential successor in interest, if the potential successor in interest is a covered entity under HIPAA or following completion of the sale or transfer, will become a covered entity.

8.2 **Plan Sponsor's Obligations under the Privacy Rules.** Under the Privacy Rules, the Plan may not disclose PHI to the Plan Sponsor unless the Plan Sponsor certifies that the Plan document has been amended to provide that the Plan will make such disclosures only upon receipt of a certification from the Plan Sponsor that the Plan has been amended to include certain conditions to the Plan Sponsor's receipt of PHI and that Plan Sponsor agrees to those conditions. By adopting this Plan document, the Plan Sponsor certifies that the Plan has been amended as required by the Privacy Rules and that it agrees to the following conditions, thereby allowing the Plan to disclose PHI to the Plan Sponsor. The Plan Sponsor agrees to:

- (a) Not use or further disclose PHI other than as permitted or required by the Plan document or as required by law;
- (b) Ensure that any agents, including a subcontractor, to whom the Plan provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Plan Sponsor with respect to such PHI;

- (c) Not use or disclose PHI for employment related actions and decisions unless authorized by an individual;
- (d) Not use or disclose PHI in connection with any other benefit or employee benefit plan of the Plan Sponsor unless authorized by an individual;
- (e) Report to the Plan any PHI use or disclosure of which it becomes aware that is inconsistent with the uses or disclosures permitted hereunder and/or may constitute a "breach" as that term is defined in HIPAA;
- (f) Make PHI available for access by the individual who is the subject of the PHI in accordance with HIPAA;
- (g) Make PHI available for amendment and incorporate any amendments to PHI in accordance with HIPAA;
- (h) Make available the information required to provide an accounting of disclosures in accordance with HIPAA;
- (i) Make internal practices, books and records relating to the use and disclosure of PHI received from Plan available to the HHS Secretary for the purposes of determining the Plan's compliance with HIPAA; and
- (j) If feasible, return or destroy all PHI received for the Plan that the Plan Sponsor still maintains in any form, and retain no copies of such PHI when no longer needed for the purpose for which disclosure was made (or if return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction infeasible).

8.3 Plan Sponsor's Obligations under Security Rules. If the Plan Sponsor creates, receives, maintains, or transmits ePHI (other than enrollment and disenrollment information and Summary Health Information, which are not subject to these restrictions), the Plan Sponsor will:

- (a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI;
- (b) Ensure that any agents, including subcontractors, who create, receive, maintain, or transmit ePHI on behalf of Plan Sponsor implement reasonable and appropriate security measures to protect the ePHI;
- (c) Report to the Plan any Security Incident of which it becomes aware; and
- (d) Implement reasonable and appropriate security measures to ensure that only those persons identified in Section 8.4 have access to ePHI and that such access is limited to the purposes identified in Section 8.5.

8.4 Adequate separation between the Plan and the Plan Sponsor must be maintained. In accordance with HIPAA, only the representatives and agents of the Plan Sponsor who are involved in the administration of the Plan may be given access to PHI and ePHI.

8.5 Limitation of PHI and ePHI Access and Disclosure. The persons described in Section 8.4 above may only have access to, and use and disclose, PHI and ePHI for Plan administration functions that the Plan Sponsor performs for the Plan.

8.6 Noncompliance Issues. If the person described in Section 8.4 above does not comply with this Plan document, the Plan Sponsor shall provide a mechanism for resolving issues of noncompliance, including, but not limited to, disciplinary action against such person.

ARTICLE IX.
PLAN ADMINISTRATION

9.1 Plan Administrator.

- (a) The Plan Administrator shall be responsible for the general supervision of the Plan and shall have authority to control and manage the operation and administration of the Plan. The Plan Administrator shall perform any and all acts necessary or appropriate for the proper management and administration of the Plan.
- (b) The Plan Sponsor shall be the Plan Administrator unless it designates a person or persons other than itself to be the Plan Administrator. The Plan Sponsor shall also be the Plan Administrator if the person or persons so designated cease to be the Plan Administrator.
- (c) The Plan Administrator may designate an individual or entity to act on its behalf with respect to certain powers, duties, and/or responsibilities regarding the operation and administration of this Plan.

9.2 Plan Administrator Absolute Authority. Any and all questions or controversies of whatever character, arising in any manner in connection with the Plan or the operation thereof, shall be submitted to the Plan Administrator and shall be considered and determined by the Plan Administrator. The Plan Administrator shall have the sole and absolute discretion to construe and interpret the Plan, including but not limited consideration of any and all of the provisions, rules, regulations, or procedures used to interpret the Plan. Benefits under the Plan shall be paid only if the Plan Administrator determines in its sole and absolute discretion that the claimant is entitled to such benefits. To the extent any Plan Administrator duties are delegated to others, the Plan Administrator retains the ultimate right and responsibility, in its sole and absolute discretion, to ultimately decide all appeals. Any exercise by the Plan Administrator (or its delegate) of the Plan Administrator's sole and absolute discretionary authority with respect to the construction and interpretation of the Plan, including but not limited to eligibility for coverage and entitlement to benefits, shall be final and binding.

9.3 Agent for Service of Legal Process. The agent for service of legal process for the Plan is the Plan Administrator.

9.4 Allocation of Responsibility for Administration. The Plan Administrator shall have the sole responsibility for the administration of this Plan as is specifically described in this Plan. The designated representatives of the Plan Administrator shall have only those specific powers, duties, responsibilities, and obligations as are specifically given to them under this Plan. The Plan Administrator warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan authorizing or providing for such direction, information or action. It is intended under this Plan that the Plan Administrator shall be responsible for the proper exercise of its own powers, duties, responsibilities, and obligations under this Plan and shall not be responsible for any act or failure to act of an Employee or Employer. Neither the Plan Administrator nor the Plan Sponsor makes any guarantee to any Participant in any manner for any loss or other event because of the Participant's participation in this Plan.

9.5 Rules and Decisions. Except as otherwise specifically provided in the Plan, the Plan Administrator may adopt such rules and procedures as it deems necessary, desirable, or appropriate. All rules and decisions of the Plan Administrator shall be uniformly and consistently applied to all Participants in similar circumstances. When making a determination or calculation, the Plan Administrator shall be entitled to rely upon information furnished by a Participant, the Employer, or legal counsel, or other entity acting on behalf of the Employer or the Plan Administrator.

9.6 Records and Reports. The Plan Administrator shall be responsible for complying with all reporting, filing and disclosure requirements for the Plan.

- 9.7 **Authorization of Benefit Payments.** The Plan Administrator (or the Claims Administrator as its designee) shall issue directions to the Trustee concerning all benefits which are to be paid from the Trust, pursuant to the provisions of the Plan, and warrants that all such directions are in accordance with the Plan.
- 9.8 **Other Powers and Duties of the Administrator.** The Plan Administrator shall also have such other duties and powers as may be necessary to discharge its duties under the Plan including, but not limited to, the following:
- (a) Discretion to construe and interpret the Plan in a non-discriminatory manner, to decide all questions of eligibility and to determine all questions arising in the administration and application of the Plan;
 - (b) To receive from the Employer and from Participants such information as shall be necessary for the proper administration of the Plan;
 - (c) To furnish the Plan Sponsor, upon request, such annual reports with respect to the administration of the Plan as are reasonable and appropriate; and
 - (d) To appoint individuals to assist in the administration of the Plan and any other agents the Plan Administrator deems advisable including legal and actuarial counsel. The Plan Administrator shall not have the power to add to, subtract from, or modify any of the terms of the Plan, to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for a benefit under this Plan.

ARTICLE X.
PLAN AMENDMENT AND TERMINATION

- 10.1 **Amendment by Plan Sponsor.** The Plan Sponsor reserves the right to amend, alter, or wholly revise this Plan or the Adoption Agreement, prospectively or retrospectively, at any time, and the interest of each Participant is subject to the powers so reserved. The Plan Sponsor expressly may amend, alter or wholly revise this Plan or the Adoption Agreement if it determines it necessary or desirable, with or without retroactive effect, to comply with the law. Such changes shall not affect any right to benefits that accrued prior to such amendments. Such amendment shall be made in writing and shall be delivered promptly to the Claims Administrator, Plan Administrator, and Trustee.
- 10.2 **Plan Sponsor's Right to Terminate.** Although the Plan Sponsor expects the Plan to be maintained for an indefinite time, the Plan Sponsor reserves the right to terminate the Plan or any portion of the Plan at any time. Such termination shall not affect any right to benefits that accrued prior to such termination. Such action shall be made in writing and shall be delivered to the Claims Administrator, Plan Administrator, and Trustee at least ninety (90) days prior to the effective date of the termination.

**ARTICLE XI.
GENERAL PROVISIONS**

- 11.1 **No Reversion to the Plan Administrator, Plan Sponsor, or Employer.** Except as specifically allowed under the Trust, no part of the corpus or income of the Trust shall revert to the Plan Administrator, the Plan Sponsor, or an Employer, or be used for or diverted to, purposes other than the exclusive benefit of participants and other persons entitled to benefits under the Plan.
- 11.2 **Persons Dealing With Trust.** No person dealing with the Trust shall be required to see to the application of any money paid or property delivered to the Trust, or to determine whether or not the Trust is acting pursuant to any authority granted to them under the Trust.
- 11.3 **Non-Alienation of Benefits.** Benefits payable under this Plan shall not be subject to anticipation, alienation, sale, transfer, execution, or levy of any kind either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the Participant, prior to actually being received by the person entitled to the benefit under the terms of the Plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable under the Plan shall be void. The Plan Sponsor, Plan Administrator and/or Claims Administrator shall not in any manner be made liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under the Plan.
- 11.4 **Action by Plan Sponsor.** Whenever the Plan Sponsor, under the terms of this Plan, is permitted or required to do or perform any act or matter or thing, it shall be done and performed by the Plan Sponsor or such representatives of the Plan Sponsor as it may designate.
- 11.5 **No Guarantee of Tax Consequences.** Notwithstanding any provision in this Plan to the contrary, this Plan makes no commitment or guarantee that any amounts paid to or on behalf of a Participant under this Plan will be excludable from the Participant's gross income for federal or state income tax purposes. It shall be the obligation of each Participant to determine whether each payment is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Plan Administrator if the Participant has reason to believe that any such payment is not so excludable.
- 11.6 **Compensation and Expenses.** The cost of administering the Plan and Trust shall be paid as described in the Adoption Agreement.
- 11.7 **Governing Law.** This Plan shall be construed and enforced according to the laws of the State identified in the Adoption Agreement, except to the extent preempted by federal law.
- 11.8 **Family and Medical Leave Act of 1993 ("FMLA").** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner consistent with FMLA, to the extent the Employer is subject to such law.
- 11.9 **Newborns' and Mothers' Health Protection Act ("NMHPA").** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner consistent with NMHPA. Federal law requires the following statement be included in the Plan document, verbatim:

Under federal law, group health plans and health insurance issuers offering group health insurance generally may not restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, the plan or issuer may pay for a shorter stay if the attending physician (e.g., your physician, nurse, or midwife, or a physician assistant), after consultation with the mother, discharges the mother or newborn earlier. Also, under federal law, plans and issuers may not set the level of benefits or out-of-pocket costs so that any later portion of the 48-hour (or 96-hour) stay is treated in a manner less favorable to the mother or newborn than any earlier portion of the stay. In addition, a plan or issuer may not, under federal law, require that a physician or other health care

provider obtain authorization for prescribing a length of stay of up 48 hours (or 96 hours). However, to use certain providers or facilities, or to reduce your out-of-pocket costs, you may be required to obtain precertification. For information on pre-certification, contact your Plan Administrator.

- 11.10 **Women's Health and Cancer Rights Act of 1998 ("WHCRA").** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner consistent with WHCRA.
- 11.11 **Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner consistent with COBRA. The Plan Administrator may, within the parameters of the law, establish uniform policies by which to provide such continuation coverage required by COBRA and such policies shall be incorporated herein by reference.
- 11.12 **Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA").** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner consistent with USERRA. The Plan Administrator may, within the parameters of the law, establish uniform policies by which to provide such continuation coverage required by USERRA and such policies shall be incorporated herein by reference.
- 11.13 **Plan Not a Contract of Employment.** The Plan is not an employment agreement and does not assure the continued employment of any Employee or Participant for any period of time. Nothing contained in the Plan shall interfere with the Employer's right to discharge an Employee at any time, regardless of the effect such discharge may have upon the individual as a Participant in this Plan.
- 11.14 **Erroneous Payments.** If the Plan makes a payment for benefits in excess of the benefits required by the Plan or makes a payment to or on behalf of an individual who is not currently covered by the Plan, the Plan shall be entitled to recover such erroneous payment from the recipient thereof.
- 11.15 **Medicare Secondary Payer.** The Plan shall comply with the Medicare secondary payer rules found in 42 U.S.C. § 1395y. In general, the Plan shall pay benefits primary to Medicare if any one of the following conditions is satisfied: (a) any Employer employed twenty (20) or more employees for each working day in at least twenty (20) weeks in either the calendar year in which the claim is made or the preceding calendar year, the Participant is employed by the Employer, and the Participant is actually covered by Medicare by reason of obtaining the age of 65; (b) any Employer employed 100 or more employees on at least 50% of its regular business days during the calendar year preceding the year in which the claim was made, the Participant is employed by the Employer, and the Participant is actually covered by Medicare by reason of disability; and (c) the Participant is entitled to Medicare by reason of end stage renal disease and the claim is made during the thirty (30) month period beginning in the first month in which such Participant is entitled to benefits under Medicare (regardless of whether he/she applies for such benefits). In all other cases, the Plan shall pay benefits secondary to Medicare. Notwithstanding the foregoing, in the case of age-based Medicare coverage, the Plan may pay benefits secondary to Medicare with respect to any Participant employed by an Employer that employed fewer than twenty (20) employees for each working day in at least twenty (20) weeks in either the calendar year in which the claim is made or the preceding calendar year, provided the Plan has elected in accordance with applicable law to not have the Medicare secondary payer rules apply with respect to such Participants.
- 11.16 **Medicare Part D.** The Plan shall cooperate with Medicare Part D prescription drug plans (and Covered Individuals who are enrolled in such plans) with respect to coordination of benefits between the Plan and the Medicare Part D plan, including the provision of information to the Medicare Part D plan (or the Covered Individuals) regarding the benefits provided under the Plan for costs covered by the Medicare Part D plan. Covered Individuals enrolled in Medicare Part D plans shall cooperate with the Plan so that the Plan may perform its obligations under this subsection.
- 11.17 **Exhaustion of Administrative Remedies; Statute of Limitations.** For all claims subject to the administrative procedures described in Article VII, exhaustion of those administrative procedures is required prior to the initiation of a legal action. Thereafter, unless specifically provided otherwise in the

Adoption Agreement, legal action by a Participant, or someone on behalf of a Participant, must be initiated within one (1) year of receipt of the written notification of denial upon appeal. To the extent exhaustion of the appeal process is not required, a Participant, or someone on behalf of the Participant, must initiate legal action within one (1) year of having submitted the initial claim request to the Plan Administrator, or its designee. No legal action may be brought by a Participant, or someone on behalf of the Participant, after expiration of the applicable limitations period. This Section 11.17 shall apply to the extent the provisions hereof are not prohibited by applicable law.

11.18 **Michelle's Law.** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner as required by Michelle's Law.

11.19 **Health Care Reform.** The Plan is intended to be exempt from the provisions of the Patient Protection and Affordable Health Care Act ("PPACA"), as amended by the Health Care and Education Reconciliation Act ("Reconciliation Act"), to the fullest extent allowed by law. The Plan may be exempt from one or more provisions of PPACA for the following reasons:

- (a) If provided in the Adoption Agreement, the Plan is intended to be a grandfathered plan within the meaning of section 1251 of PPACA.
- (b) If, to be eligible to receive contributions under the Plan, a Participant must be covered under an employer-sponsored group medical plan (whether sponsored by the Plan Sponsor, an Employer, or another employer), then the Plan is intended to be an integrated HRA as defined under applicable regulatory guidance.
- (c) If expenses must be incurred after the Participant's termination of employment with an Employer to be reimbursable under the Plan (as provided in Section 5.4), the Plan is intended to cover fewer than two current Employees of the Employers (i.e., the Plan is a "retiree-only" HRA).
- (d) If provided in the Adoption Agreement, the Plan is intended to be an excepted benefit under the HIPAA portability rules.

For purposes of the foregoing, to the extent necessary to ensure the Plan is either an integrated HRA, a retiree-only HRA, or an excepted benefit under HIPAA, the Plan described in this document shall be disaggregated into separate plans each of which will be either an integrated HRA, a retiree-only HRA, or an excepted benefit under HIPAA. In the event such disaggregation is necessary, each disaggregated plan shall be treated and operated as a separate plan for all purposes.

**EMPLOYERS HEALTH COALITION VEBA
PARTICIPATION AGREEMENT**

This Participation Agreement is entered into by and between City of Auburn ("Employer") and the Plan Administrator of the EHC VEBA HRA (the "Plan") to reflect the parties' agreement regarding the Employer's participation in the Plan and the EHC VEBA Trust (the "Trust"). The parties hereby agree as follows:

1. **Benefits.** The Employer hereby agrees to participate in the Plan and Trust for the purpose of providing coverage under the Plan to its eligible employees. The Plan Administrator consents to such participation. The Employer agrees to comply with the terms and conditions of the Plan and Trust as well as of this Participation Agreement. The Employer further agrees that the Plan Administrator shall have power to construe the provisions of the Plan and Trust, and agrees to abide by the decisions of the Plan Administrator and its authorized representatives with respect to the maintenance and administration of the Plan and Trust to the extent such decision is made in good faith and in accordance with the Plan and Trust.

2. **Eligibility.** In addition to satisfying the eligibility requirements described in the Plan, employees of the Employer must satisfy the following conditions to become participants in the Plan:

☒ Employment Classification (e.g., union, part-time, full-time) (*Describe*): _____

The plan benefits both active and terminated employees

☒ Coverage under a specified group medical plan (*Describe*): _____

Union members OR Employees covered under Employer Group Health Plan

☐ Coverage under the group medical plan sponsored by the Employer

☐ Other (*Describe*): _____

3. **Contributions.** The Employer will make the following contributions to the Plan and Trust:

One Time Contribution:

☒ Amount (*Describe*):

The amount of the eligible employee's final account balance under the HRA/VEBA administered by HRA VEBA Service Group will be transferred to the Plan.

☐ Restrictions, if any (*Describe*): _____

Contributed on (*Identify Date*): On or around January 1, 2016

Recurring Contributions:

☒ Amount (*Describe*): _____

See attached Accumulated Sick Leave Reimbursement Schedule

☐ Per month

☐ Per quarter

☐ Per year

☒ Other (*Describe*): **Semi-monthly**

☐ Restrictions, if any (*Describe*): _____

☒ Annual Contribution of Accumulated Paid Time Off, Vacation, or Sick Leave (*Describe*):

See attachment

☒ Contribution of Accumulated Paid Time Off, Vacation, or Sick Leave Upon Termination of Employment (*Describe*): **See attachment**

4. **Participation of Retirees.** Notwithstanding anything in the Plan to the contrary with respect to termination of contributions and participation in the Plan, if provided below, former employees of the Employer may continue to receive contributions to the Plan and/or continue to participate in the Plan despite the fact their employment with the Employer has terminated.

☒ N/A – no retiree coverage provided.

☐ Retiree coverage shall be provided as follows (*Describe eligible retirees and terms and conditions of their continued participation*):

5. **Administrative Fees.** Administrative fees of the Plan and Trust incurred with respect to individuals participating in the Plan through the Employer shall be paid as follows:

☐ Fixed fees shall be paid by the Employer; asset-based fees shall be charged to the Participant and paid from the Participant's HC Account.

☐ All fees shall be paid by the Employer.

☒ All fees shall be charged to the Participant and paid from the Participant's HC Account.

☐ Other (*Describe*): _____

6. **Cooperation with Service Providers.** The Employer shall cooperate with all third parties providing services to the Plan and Trust. The Employer shall provide to such service providers any and all information reasonably requested for the purpose of enrolling eligible employees into the Plan, allocating contributions to participant accounts, and the like.

7. **Obligations With Respect to COBRA.** The Plan Administrator acknowledges that the Plan is responsible for providing COBRA coverage to eligible covered employees and their eligible

dependents under the Public Health Services Act. To enable the Plan to satisfy its COBRA obligations, the Employer will notify the Plan Administrator within 30 days of the following "qualifying events" (as that term is defined under COBRA) with respect to its employees covered by the Plan: (1) the death of the covered employee; or (2) the termination (other than by reason of such employees' gross misconduct), or reduction of hours, of the covered employees' employment. The Employer agrees to comply with any statutory changes in its notification obligations that become effective during the term of this Agreement. The Employer agrees to indemnify the Plan against all losses that the Plan and/or the Plan Administrator incurs as a result of the Employer's failure to comply with its notification obligations set forth in this Section 7.

8. **Plan and Trust Obligations.** The Employer understands that the Plan and Trust shall not be obligated to provide benefits to any eligible employee of Employer unless and until the Plan Administrator accepts this Agreement by signing where indicated below.
9. **Amendment.** This Agreement may be amended at any time by the written consent of the Employer and the Plan Administrator.
10. **Term.** The provisions of this Agreement shall become effective as of January 1, 2016, and shall remain in effect until the Employer ceases participation in the Plan and Trust in accordance with the terms thereof.
11. **Authority.** This Agreement is the valid and binding obligation of the Employer, enforceable in accordance with its terms. The adoption of the Plan and execution and performance of this Agreement has been duly authorized by all necessary action of the Employer's governing body. The Employer has the full legal right, power and authority to enter into and perform the Agreement. Each party represents that this Agreement has been executed by a duly authorized representative.

IN WITNESS WHEREOF, the Employer and the Union hereby execute this Agreement effective as of the date specified in Section 10 above.

EMPLOYER

By: _____
Title _____

PLAN ADMINISTRATOR

By: _____
Title _____

Teamsters Union Local No. 117

- Semi-monthly Contributions
- The City will contribute 2.75% of the employee's semi-monthly base salary.
- Employees are required to contribute 1% of their semi-monthly base salary.

Accumulated Sick Leave Reimbursement

All employees eligible for sick leave reimbursement will vote on the percentage of reimbursement to be contributed the following year. The Union will notify the City by November 30th the percentage to be contributed.

When an employee has accumulated 960 hours of sick leave, sick leave shall continue to accumulate at the normal rate of 4 hours per pay period until the end of the calendar year at which time all sick leave accumulated by the employee in excess of 960 hours shall be paid at 25% of the employee's then hourly rate and contributed to the VEBA/HRA based upon the percentage voted upon as described above.

All employees who are eligible to receive sick leave cash out upon retirement or termination of employment in good standing shall transfer the voted upon percentage to the VEBA/HRA.

International Association of Machinists and Aerospace Workers Local 160

- Semi-monthly Contributions
- The City will make a contribution to match the employee's first 1% base wages.
- Employees are required to contribute 3%

Annual Accumulated Sick Leave Reimbursement

When an employee has accumulated 960 hours of sick leave, sick leave shall continue to accumulate at the normal rate of 8 hours per month until the end of the calendar year at which time all sick leave accumulated in excess of 960 hours shall be reimbursed at 25% of the employee's then hourly base rate and contributed to the VEBA/HRA.

Police Sergeants' Association

- Available to Commissioned LEOFF II employees that do not have a military medical retirement plan.
- Semi-monthly contributions
- Employees are required to contribute 1% base pay period salary.

Annual Accumulated Sick Leave Reimbursement

When an employee accumulates 960 hours of sick leave, the sick leave shall continue to accumulate at the normal rate of 8 hours per month until the end of the calendar year at which time all sick leave accumulated in excess of 960 hours shall be reimbursed at 25% of the employee's then hourly base rate and contributed to the VEBA/HRA.

Accumulated Sick Leave Reimbursement at Separation of Employment

Employees hired prior to 12/1/93, upon retirement, death or termination of good standing shall contribute reimbursed unused sick leave in the following manner:

<u>Years of Service</u>	<u>Percent of Accrued Sick Leave</u>
0 – 4 years	0% (except death in the line of duty, 25%)
5 – 14 years	25%
15 – 24 years	50%
25 years and over	100%

Employees hired after 11/30/93 shall contribute reimbursed unused sick leave up to a maximum of 960 hours.

<u>Years of Service</u>	<u>Percent of Accrued Sick Leave</u>
-------------------------	--------------------------------------

0 – Completion of 14 years	0%
14 years and over	35% upon retirement, death or disability retirement
25 years and over	45% with a minimum of 480 hours of bank sick leave upon separation of employment in good standing.

Police Management Association

- Available to Commissioned LEOFF II employees belonging to the Police Management Assoc. bargaining unit who do not have a military medical retirement plan.
- Bi-monthly Contributions
- The City will contribute 2% of employee's base pay period salary.
- Employees are required to contribute 2% of their base annual salary

Annual Accumulated Sick Leave Reimbursement

When an employee accumulates 960 hours of sick leave, the sick leave shall continue to accumulate at the normal rate of 8 hours per month until the end of the calendar year at which time all sick leave accumulated in excess of 960 hours shall be reimbursed at 25% of the employee's then hourly rate and contributed to the VEBA/HRA.

Accumulated Sick Leave Reimbursement at Separation of Employment

Upon retirement, death, or termination of good standing, employees shall be reimbursed at current rate of pay for unused accrued sick leave up to a maximum of 960 hours in accordance with the following schedule based on continuous years of service. These reimbursements will be made into the VEBA/HRA.

<u>Years of Service</u>	<u>Percent of Accrued Sick Leave</u>
0 – 4 years	0% (except death in the line of duty, 25%)
5-14 years	25%
15-24 years	50%
25 years and over	100%

Employees hired into the Commissioned Officers Guild or the Auburn Police Management Association after November 30, 1993 shall not be subject to the above sick leave cash out provisions but shall be reimbursed for 35% of accumulated and unused sick leave upon separation of employment in good standing, retirement, death, or disability retirement. This reimbursement will be contributed to the VEBA/HRA.

Employees hired into the Commissioned Officers Guild or the Auburn Police Management Association after November 30, 1993 with a minimum of 480 hours of accumulated and unused sick leave and a minimum of 25 years of service shall be reimbursed for 45% of accumulated and unused sick leave upon separation of employment in good standing, retirement, death, or disability retirement. This reimbursement will be contributed to the VEBA/HRA.

Commanders are reimbursed for 100% of accumulated and unused sick leave. This reimbursement will be contributed to the HRA/VEBA.

Police Guild

- Semi-monthly Contributions
- The City will make a contribution of 1% of base pay period salary
- Employees are required to contribute 1% base annual salary

Annual Accumulated Sick Leave Reimbursement

When an employee has accumulated 960 hours of sick leave, sick leave shall be continue to accumulate at the normal rate of 8 hours per month until the end of the calendar year at which time all sick time accumulated by the employee in excess of 960 hours shall be paid at 25% of the employee's then hourly base rate and contributed to the HRA/VEBA.

Accumulated Sick Leave Reimbursement at Retirement

All employees covered by this collective bargaining agreement who retire from the City of Auburn will transfer unused accumulated sick leave to the VEBA/HRA. The members of the Commissioned Unit who are eligible to retire each year will vote on the provision each year prior to the year in which they will retire. The Guild will notify HR of the result of the vote (yes or no on the provision and the percentage of contribution) by November 30th.

For employees hired into the collective bargaining unit prior to December 1, 1993 upon retirement, death or termination of good standing the employee shall be reimbursed at current rate of pay for unused accrued sick leave up to a maximum of 960 hours in accordance with the following schedule based on continuous years of service. These reimbursements will be made into the VEBA/HRA.

<u>Years of Service</u>	<u>% of Accrued Unused Sick Leave</u>
0-4 years	0% (except death in line of duty; 25%)
5-14 years	25%
15-24 years	50%
25 years and over	100%

Employees hired into the collective bargaining unit after November 30, 1993, shall be reimbursed at the current rate of pay for unused accrued sick leave up to a maximum of 960 hours in accordance with the following schedule based on continuous years of service. These reimbursements will be made into the VEBA/HRA.

<u>Years of Service</u>	<u>% of Accrued Unused Sick Leave</u>
0-14 years	0%
14 years	35% Upon retirement, death or disability retirement
25 years and over	45% With a minimum of 480 hours of banked, unused sick leave upon separation from employment in good standing

Unaffiliated Employees

- Semi-monthly Contribution
- Upper management employees will make a 3% employee contribution
- General unaffiliated employees will make a 1.5% employee contribution
- The City will make a 2% contribution for all eligible unaffiliated employees

Applicable to employees hired on or after 1/1/1985

Annual Accumulated Sick Leave Reimbursement

Employees who have exceeded an accumulation of 960 hours of sick leave and would otherwise lose the excess at the end of the calendar year, the City will pay an employee 25% of the accumulated and unused sick leave over 960 hours on record as of December 31 of each year and contribute it to

the VEBA/HRA.

Accumulated Sick Leave Reimbursement at Separation of Employment

When separating from employment, employees who have in excess of 960 hours accrued at the time of separation will be reimbursed at 25% of the difference between the accrued amount and 960 hours. This reimbursement will be contributed to the VEBA/HRA.