City Council
Regular Meeting
November 3, 2025 - 7:00 PM
City Hall Council Chambers

AGENDA

CALL TO ORDER

LAND ACKNOWLEDGEMENT

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

PUBLIC PARTICIPATION

A. The Auburn City Council Meeting scheduled for Monday, November 3, 2025, at 7:00 p.m. will be held in person and virtually.

Virtual Participation Link:
To view the meeting virtually please click the below link, or call into the meeting at the phone number listed below. The link to the Virtual Meeting is:
https://www.youtube.com/user/watchauburn/live/?nomobile=1

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

Telephone: 253 205 0468
Toll Free: 888 475 4499
Zoom: https://us06web.zoom.us/j/88451642942

PLEDGE OF ALLEGIANCE

ROLL CALL

ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS

AGENDA MODIFICATIONS

PUBLIC HEARINGS

A. Public Hearing for Ordinance No. 6995 (Krum)
City Council to hold a Public Hearing to consider an Ordinance relating to the adoption of a 6-month moratorium extension for Energy Storage System facilities proposed to be located in the City of Auburn

B. Public Hearing for Soos Creek Water and Sewer District Franchise Agreement No. FRN25-0004 (Gaub)
City Council to hold a Public Hearing in consideration of Franchise Agreement No. FRN25-0004 for Soos Creek Water and Sewer District for a Sanitary Sewer Franchise

C. Public Hearing for Hyperfiber of Washington, LLC dba Ripple Fiber Franchise Agreement No. FRN25-0005 (Gaub)
City Council to hold a Public Hearing in consideration of Franchise Agreement No. FRN25-0005 for Hyperfiber of Washington, LLC dba Ripple Fiber for a Wireline Telecommunications Franchise

PUBLIC COMMENT

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

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

Participants can submit written comments via mail, fax, or email. All written comments must be received prior to 5:00 p.m. on the day of the scheduled meeting and must be 350 words or less.
Please mail written comments to:
City of Auburn
Attn: Shawn Campbell, City Clerk
25 W Main St
Auburn, WA 98001

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

Email written comments to: publiccomment@auburnwa.gov

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

CORRESPONDENCE

CONSENT AGENDA

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

A. Minutes from the October 6, 2025, and October 20, 2025, City Council Meetings

B. Minutes from the October 13, 2025, and October 27, 2025, Study Session Meetings

C. Claims Vouchers (Thomas)
Claims voucher list dated October 22, 2025, which includes voucher numbers 481606 through voucher 481771, in the amount of $4,299.591.61, nine electronic fund transfers in the amount of $1,737.12 and two wire transfers in the amount of $599,505.51

D. Payroll Voucher (Thomas)
Payroll check numbers 539742 through 539747 in the amount of $694,775.60, electronic deposit transmissions in the amount of $2,752,989.77, for a grand total of $3,447,765.37 for the period covering October 16, 2025, to October 29, 2025

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

UNFINISHED BUSINESS

NEW BUSINESS

ORDINANCES

A. Ordinance No. 6995 (Krum)
An Ordinance continuing the moratorium enacted on May 10, 2025, pursuant to Ordinance No. 6978 and as amended by Ordinance No. 6995 on the acceptance, processing, and/or approval of applications for building and land use development for Energy Storage System facilities (ESS) proposed to be located in any zone within the City of Auburn

(RECOMMENDED ACTION: Move to approve Ordinance No. 6995.)

RESOLUTIONS

A. Resolution No. 5869 (Krueger)
A Resolution authorizing the Mayor, or Designee, to execute an agreement between the City of Auburn and Department of Social and Health Services for Respite Care Payments

(RECOMMENDED ACTION: Move to adopt Resolution No. 5869.)

MAYOR AND COUNCILMEMBER REPORTS

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

A. From the Council

B. From the Mayor

ADJOURNMENT

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

AGENDA BILL APPROVAL FORM

Agenda Subject:
Public Hearing for Ordinance No. 6995 (Krum)
City Council to hold a Public Hearing to consider an Ordinance relating to the adoption of a 6-month moratorium extension for Energy Storage System facilities proposed to be located in the City of Auburn

Meeting Date:
November 3, 2025

Department:
Community Development

Attachments:
None

Budget Impact:

Administrative Recommendation:
City Council to hold a Public Hearing in consideration of Ordinance No. 6995 for a proposed temporary 6-month extension to the existing moratorium on Energy Storage System Facilities proposed to be located within the City of Auburn.

Background for Motion:

Background Summary:
On May 5, 2025, Auburn City Council approved Ordinance No. 6978 imposing a temporary 6-month moratorium on the acceptance, processing, and/or approval of applications for building and land use development for energy storage system facilities (ESS) proposed to be located in any zone within the City of Auburn. This Public Hearing is in consideration of a proposed temporary six (6) month extension to this existing moratorium. See Ordinance No. 6995 materials for additional information.

Councilmember: Tracy Taylor

Staff: Jason Krum

AGENDA BILL APPROVAL FORM

Agenda Subject:
Public Hearing for Soos Creek Water and Sewer District Franchise Agreement No. FRN25-0004 (Gaub)
City Council to hold a Public Hearing in consideration of Franchise Agreement No. FRN25-0004 for Soos Creek Water and Sewer District for a Sanitary Sewer Franchise

Meeting Date:
November 3, 2025

Department:
Public Works

Attachments:
Draft Ordinance No. 7005, Sewer Service Area Map

Budget Impact:

Administrative Recommendation:
City Council to hold a Public Hearing in consideration of Franchise Agreement No. FRN25-0004 for Soos Creek Water and Sewer District for a Sanitary Sewer Franchise.

Background for Motion:

Background Summary:
Section 20.04.040 of the Auburn City Code requires the City to hold a Public Hearing before granting or denying a Franchise Agreement. Franchise Agreement No. FRN25-0004 for Soos Creek Water and Sewer District will allow Soos Creek to continue to operate their existing sanitary sewer facilities in the public ways within the Auburn City limits.

The date of the Public Hearing was set by consent on October 20, 2025.

Councilmember: Tracy Taylor

Staff: Ingrid Gaub

ORDINANCE NO. 7005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO SOOS CREEK WATER AND SEWER DISTRICT, A WASHINGTON MUNICIPAL CORPORATION, A FRANCHISE FOR SANITARY SEWER FACILITIES

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

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

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

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

Section 1. Definitions

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

A. "ACC" means the Auburn City Code.

B. "Force Majeure Event" means and shall include without limitation, war, civil disturbance; flood, earthquake or other Act of God; storm or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service; laws, regulations, rules or orders of any governmental agency; a public health emergency as declared by the State of Washington or local County governing the Franchise Area; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a third party;

or any failure or delay in the performance by the other party, or third party who is not an employee, agent or contractor of the party claiming a Force Majeure Event, in connection with this Franchise.

C. "Franchise" means this agreement approved by Ordinance No. 7005 of the City which authorizes Franchisee Facilities to provide Franchisee Services in the Franchise Area.

D. "Franchise Area" means all public ways within the current city limits and within any future adjusted boundaries of the city limits and which are also within the Franchisee's service area boundary per the Service Area Agreement between the City and the Franchisee authorized under Resolution No. 3391 as amended, and per applicable law. The effective date of any such changes in the city limits will be the effective date(s) of any future annexations.

E. "Franchisee Facilities" means pipes, including service laterals, manholes, cleanouts, pump stations, treatment facilities, and all other appurtenances necessary or convenient for the purposes of providing wastewater collection and conveyance, that are constructed, operated, owned, and maintained within the public ways that are located in the Franchise Area.

F. "Franchisee Services" means providing wastewater collection and conveyance for treatment and disposal. Sewer service extends from the sewer main, through a service lateral, to the cleanout or right-of-way line.

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

Section 2. Grant of Right to Use Franchise Area

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

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

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

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

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

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

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

Section 3. Notice

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

City: Right-of-Way Specialist
Public Works Department - Transportation
City of Auburn
25 West Main Street

Auburn, WA 98001-4998
Telephone: (253) 931-3010
Rowusepermit@auburnwa.gov

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

Franchisee: Soos Creek Water and Sewer District
Attn: General Manager
14616 SE 192nd Street
Renton, WA 98058
Telephone:253-630-9900
Customer_Service@sooscreek.com

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

C. The above-stated Franchisee voice telephone numbers shall be staffed at least during normal business hours, Pacific time zone. The City may contact Franchisee at the following number for emergency or other needs outside of normal business hours of the Franchisee: (253) 630-9900.

Section 4. Term of Franchise

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

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

Section 5. Acceptance of Franchise

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

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

Section 6. Construction and Maintenance

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

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

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

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

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

F. Tree Trimming. Upon prior written approval of the City the Franchisee shall have the authority to trim trees upon and overhanging streets, public ways and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with the Franchisee's Facilities.

Franchisee shall be responsible for debris removal from such activities. If such debris is not removed within twenty-four (24) hours, the City may, at its sole discretion, remove such debris and charge the Franchisee for the cost thereof. This Section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require other permits as necessary from the City.

Section 7. Repair and Restorations

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

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

Section 8. Emergency Repair Work

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

B. The City may commence emergency response work at any time, without prior notice to the Franchisee, but will notify the Franchisee telephonically as promptly as possible under the circumstances and in writing soon thereafter. Franchisee will reimburse the City for the City's actual cost of performing emergency response work.

Section 9. Damages to City and Third-Party Property

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

Section 10. Location Preference

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

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

Section 11. Relocation of Franchisee Facilities

A. Whenever the City causes a Public Improvement to be constructed within the Franchise Area, and such Public Improvement requires the relocation of

Franchisee Facilities within the Franchise Area (for purposes other than those described in Section 11.B below):

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

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

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

B. Whenever (i) any public or private development within the Franchise Area, other than a Public Improvement, requires the relocation of Franchisee Facilities within the Franchise Area to accommodate such development: or (ii) the City requires the relocation of Franchisee Facilities within the Franchise Area for the benefit of any person or entity other than the City (including, without limitation, any conditions or requirement imposed by the City on such person or entity pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development), then in such event, Franchisee shall have the right as a condition of such relocation, to require such developer, person or entity to make payment to Franchisee, at a time and upon terms acceptable to Franchisee, for any and all costs and expenses incurred by Franchisee in connection with such relocation of Franchisee Facilities.

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

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

E. In the event that a conflict with Franchise Facilities is discovered during construction of a Public Improvement, Section 11.A.2 shall apply except that in no case shall the Franchisee's relocation be completed more than 7 calendar days after the conflict discovery and notification by the City, except as agreed upon otherwise by the City. Additionally, any and all costs associated with the conflict shall be subject to Section 11.C.

Section 12. Abandonment and or Removal of Franchisee Facilities

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

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

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

Section 13. Franchisee Information

A. Franchisee agrees to supply, at no cost to the City, any information requested by the City that the City determines is necessary to coordinate municipal functions with Franchisee's activities and fulfill any municipal obligations under state law. Said information will include, at a minimum, as-built drawings of Franchisee's Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within the City. Said information may be requested either in hard copy or electronic format, compatible with the City's database system, including the City's Geographic Information System (GIS) database. Franchisee and the City will meet upon request from either Party, generally at 1-year intervals for the purpose of sharing known plans each Party may have that could affect the other Party's use and management of the Franchise Area.

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

Section 14. Indemnification and Hold Harmless

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

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

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

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

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

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

Section 15. Insurance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII. This requirement may be fulfilled by the Franchisee's membership and coverage in Enduris, a self-insured municipal risk pool.

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

H. Verification of Coverage. The Franchisee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of this Franchise. Upon request by the City, the Franchisee shall furnish certified copies of all required insurance policies, including endorsements required in this Franchise and evidence of all contractors and subcontractors' coverage. In the alternative, either party to this agreement may fulfill the insurance obligations contained herein by maintaining membership in a joint self-insurance program authorized by RCW 48.62. In this regard, the parties understand that the party to this agreement who is a member of such a program is not able to name the other party as an "additional insured" under the liability coverage provided by the joint self-insurance program.

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

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

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

L. Franchisee – Self-Insurance. Franchisee will have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City. If the Franchisee is self-insured or becomes self-insured during the term of the Franchise, Franchisee or its affiliated parent entity shall comply with the following: (1) Franchisee shall submit a letter to the City stating which of the above required insurance provisions in this Section 15 Franchisee proposes to self-insure; (2) provide the City, upon request, a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (3) Franchisee or its parent company is responsible for all payments within the self-insured retention; and (4) Franchisee assumes all defense and indemnity obligations as outlined in Section 14.

Section 16. Financial Security

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

Section 17. Successors and Assignees

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

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

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

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

Section 18. Dispute Resolution

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

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

Section 19. Enforcement and Remedies

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

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

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

Section 20. Compliance with Laws and Regulations

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

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

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

Section 21. License, Tax and Other Charges

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

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

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

Section 22. Consequential Damages Limitation

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

Section 23. Severability

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

Section 24. Titles

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

Section 25. Implementation

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

Section 26. Effective Date

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

INTRODUCED: ____________________

PASSED: _________________________

APPROVED: ______________________

____
NANCY BACKUS, MAYOR

ATTEST:

____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

____
Jason Whalen, Acting City Attorney

Published: ____

EXHIBIT “A”

STATEMENT OF ACCEPTANCE

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

Franchisee Name ______________________
Address ___________________________
City, State, Zip ______________________

By: ____________________________ Date: _____________________
Name:
Title:

STATE OF ______________)
)ss.
COUNTY OF ____________)

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

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

____
Signature

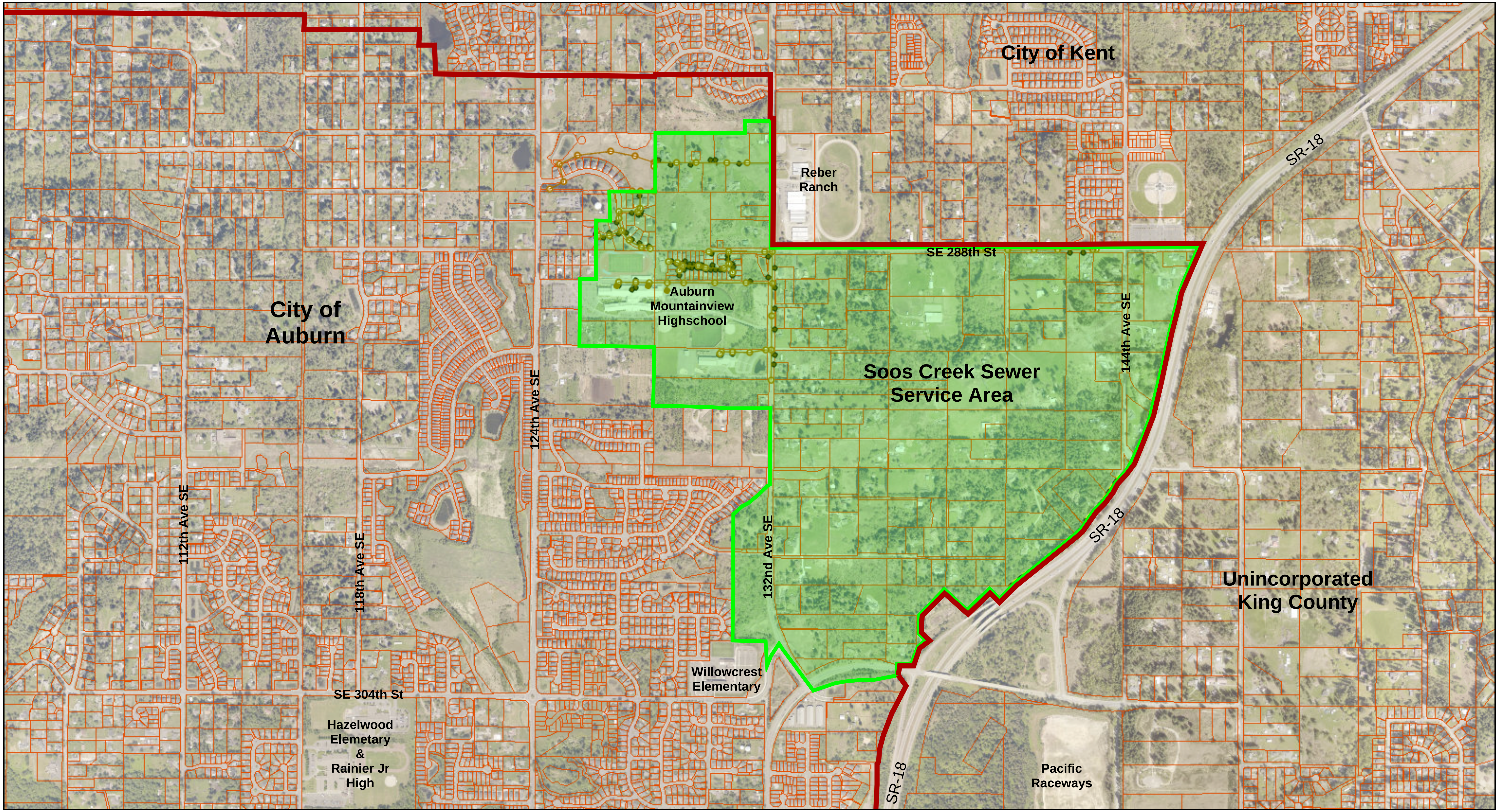
____
NOTARY PUBLIC in and for the State of
__________, residing at ________________

MY COMMISSION EXPIRES: ____________

Soos Creek Water and Sewer District - Sewer Service Area

Auburn City Limits
Soos Creek Sewer Service Area

Printed On: 10/21/2025
Map created by City of Auburn eGIS



0 1500 3000 ft

WGS84 Web Mercator (Auxiliary Sphere)

1: 18056

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

CITY OF AUBURN WASHINGTON

AGENDA BILL APPROVAL FORM

Agenda Subject:
Public Hearing for Hyperfiber of Washington, LLC dba Ripple Fiber Franchise Agreement No. FRN25-0005 (Gaub)
City Council to hold a Public Hearing in consideration of Franchise Agreement No. FRN25-0005 for Hyperfiber of Washington, LLC dba Ripple Fiber for a Wireline Telecommunications Franchise

Meeting Date:
November 3, 2025

Department:
Public Works

Attachments:
Draft Ordinance No. 7007

Budget Impact:

Administrative Recommendation:
City Council to hold a Public Hearing in consideration of Franchise Agreement No. FRN25-0005 for Hyperfiber of Washington, LLC dba Ripple Fiber for a Wireline Telecommunications Franchise.

Background for Motion:

Background Summary:
Section 20.04.040 of the Auburn City Code requires the City to hold a Public Hearing before granting or denying a Franchise Agreement. Franchise Agreement No. FRN25-0005 for Hyperfiber of Washington, LLC dba Ripple Fiber will allow Hyperfiber to install fiber optic cable and electronic infrastructure in the public ways within the City limits. Hyperfiber intends to provide business and residential data and telecommunications services to customers located inside the City limits.

The date of the Public Hearing was set by consent on October 20, 2025.

Councilmember: Tracy Taylor

Staff: Ingrid Gaub

ORDINANCE NO. 7007

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO HYPERFIBER OF WASHINGTON, LLC DBA RIPPLE FIBER, A DELAWARE LIMITED LIABILITY COMPANY, A FRANCHISE FOR WIRELINE TELECOMMUNICATIONS.

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

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

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

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

Section 1. Definitions

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

A. "ACC" means the Auburn City Code.

B. "Franchise" means this agreement approved by Ordinance No. 7007 of the City which authorizes Franchisee Facilities to provide Franchisee Services in the Franchise Area.

C. "Franchisee's Facilities" means fiber optic and broad band communications services constructed and operated within the public ways including all cables, wires, conduits, ducts, pedestals, and any associated converter equipment or other items necessary for Telecommunications Services as defined in RCW 35.99.010(7), that are located in the Franchise Area.

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

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

Section 2. Grant of Right to Use Franchise Area

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

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

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

D. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including franchise agreements, impacting the

Franchise Area, for any purpose that does not interfere with Franchisee's rights under this Franchise.

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

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

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

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

Section 3. Notice

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

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

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

Franchisee: Hyperfiber of Washington, LLC dba Ripple Fiber
Attn: Lance van der Spuy
6000 Fairview Rd., Suite 300
Charlotte, NC 28210
Telephone: (470) 807-0922
Email Address: Lance@ripplefiber.com

with a copy to: Ripple Fiber
Attn: Joshua Runyan, Esq.
Address: 6000 Fairview Rd., Suite 300
Charlotte, NC 28210
Telephone: 704-989-3217
Email Address: josh@ripplefiber.com

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

C. The above-stated Franchisee voice telephone numbers shall be staffed at least during normal business hours, Pacific time zone. The City may contact Franchisee at the following number for emergency or other needs outside of normal business hours of the Franchisee: 800-359-5767.

Section 4. Term of Franchise

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

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

Section 5. Acceptance of Franchise

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

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

Section 6. Construction and Maintenance

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

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

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

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

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

Section 7. Trench Repair for Street Restorations

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

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

Section 8. Repair and Emergency Work

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

Section 9. Damages to City and Third-Party Property

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

Section 10. Location Preference

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

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

Section 11. Relocation of Franchisee Facilities

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

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

Section 12. Abandonment and or Removal of Franchisee Facilities

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

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

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

Section 13. Undergrounding

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

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

Section 14. Franchisee Information

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

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

Section 15. Indemnification and Hold Harmless

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

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

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

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

Section 16. Insurance

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

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

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

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

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

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

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

5. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Franchisee's Commercial General

Liability and Automobile Liability insurance. The City shall be named as an additional insured on the Franchisee's Excess or Umbrella Liability insurance policy.

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

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

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

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

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

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

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

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

G. Subcontractors. The Franchisee shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Franchisee-provided insurance as set forth herein, including limits no less than what is required of Franchisee under this Franchise. The

Franchisee shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

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

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

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

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

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

Section 17. Financial Security

The Franchisee will provide the City with a financial security in the amount of Fifty Thousand Dollars ($50,000.00) running for, or renewable for, the term of this Franchise, in a form and substance acceptable to the City. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise, the City may recover jointly and severally from the principal and any surety of that financial security any damages suffered by the City as a result Franchisee's failure to comply, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities. Franchisee specifically agrees that its failure to comply with the terms of Section 20 will constitute damage to the City in the monetary amount set forth in that section. Any financial security will not be construed to limit the Franchisee's liability to the security amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 18. Successors and Assignees

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

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

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

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

Section 19. Dispute Resolution

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

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

Section 20. Enforcement and Remedies

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

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

Section 21. Compliance with Laws and Regulations

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

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

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

Section 22. License, Tax and Other Charges

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

Section 23. Consequential Damages Limitation

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

Section 24. Severability

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

Section 25. Titles

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

Section 26. Implementation

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

Section 27. Entire Franchise

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

Section 28. Effective Date.

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

INTRODUCED: ____________________
PASSED: __________________________
APPROVED: ______________________

____
NANCY BACKUS, MAYOR

ATTEST:

____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

____
Jason Whalen, City Attorney

PUBLISHED: ____

EXHIBIT "A"

STATEMENT OF ACCEPTANCE

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

Franchisee Name: Hyperfiber of Washington, LLC dba Ripple Fiber
Address: ____________________________________
City, State, Zip: ______________________________

By: _________________________________ Date: ________________________
Signature

Name: ______________________________
Title: _______________________________

STATE OF ________________)
)ss.
COUNTY OF ______________)

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

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

____
Signature

____
NOTARY PUBLIC in and for the State of
____________, residing at __________________

MY COMMISSION EXPIRES: ______________

AGENDA BILL APPROVAL FORM

Agenda Subject:
Minutes from the October 6, 2025, and October 20, 2025, City Council Meetings

Meeting Date:
November 3, 2025

Department:
City Council

Attachments:
10-06-2025 Minutes, 10-20-2025 Minutes

Budget Impact:

Administrative Recommendation:

Background for Motion:

Background Summary:

Councilmember:

Staff:

City Council
Regular Meeting
October 6, 2025 - 7:00 PM
City Hall Council Chambers

MINUTES

CALL TO ORDER

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

LAND ACKNOWLEDGEMENT

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

PUBLIC PARTICIPATION

The City Council Meeting was held in person and virtually.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

Mayor Nancy Backus and the following staff members present included: Chief of Police Mark Caillier, Director of Public Works Ingrid Gaub, Director of Community Development Jason Krum, Director of Human Resources Candis Martinson, Deputy City Attorney Paul Byrne, and City Clerk Shawn Campbell.

ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS

A. Active Aging Week

Mayor Backus proclaimed October 6, 2025, through October 12, 2025, as "Active Aging Week" in the City of Auburn.

Zhanna Denisyuk, Senior Community Manager of Legacy Plaza, accepted the proclamation and thanked the Mayor and Council for recognizing Active Aging Week.

B. Indigenous Peoples’ Day

Mayor Backus proclaimed October 13, 2025, as "Indigenous Peoples’ Day" in the City of Auburn.

C. Domestic Violence Awareness Month

Mayor Backus proclaimed October 2025, as "Domestic Violence Awareness and Prevention Month" in the City of Auburn.

Officer Bennett accepted the proclamation and thanked the Mayor and Council for their support. She shared resources provided to victims.

D. Filipino American History Month

Mayor Backus proclaimed October 2025, as "Filipino American History Month" in the City of Auburn.

Pastor Ofa Langi and guests accepted the proclamation. They thanked the Mayor and Council for recognition of Filipino American History Month.

E. Hindu Heritage Month

Mayor Backus proclaimed October 2025, as "Hindu Heritage Month" in the City of Auburn.

AGENDA MODIFICATIONS

There were no modifications to the agenda.

AUDIENCE PARTICIPATION

Written Comments:
The City Clerk's Office received written comments from Tina Simmons which were forwarded to Mayor and Council prior to the meeting.

In-Person Comments:
Trista Sutherland and Virginia Haugen provided comments.

CORRESPONDENCE

There was no correspondence for Council to review.

CONSENT AGENDA

A. Minutes from the September 15, 2025, City Council Meeting

B. Minutes from the September 22, 2025, Study Session Meeting

C. Claims Vouchers (Thomas)
Claims voucher list dated September 24, 2025, which includes voucher

numbers 481352 through voucher 481488, in the amount of $5,544,447.72, eleven electronic fund transfers in the amount of $2,086.37, and two wire transfers in the amount of $1,190,317.54

D. Payroll Voucher (Thomas)
Payroll check numbers 539730 through 539733 in the amount of $701,612.09, electronic deposit transmissions in the amount of $2,956,037.79, for a grand total of $3,657,649.88 for the period covering September 11, 2025, to October 1, 2025

Deputy Mayor Rakes moved and Councilmember Amer seconded to approve the consent agenda.

MOTION CARRIED UNANIMOUSLY. 7-0

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

There was no new business.

ORDINANCES

A. Ordinance No. 6982 (Krum)
An Ordinance amending Chapters 14.03 and 18.60 of the Auburn City Code relating to Home Occupations

Councilmember T. Taylor moved and Councilmember Amer seconded to approve Ordinance No. 6982.

MOTION CARRIED UNANIMOUSLY. 7-0

B. Ordinance No. 6994 (Gaub)
An Ordinance granting to Ezee Fiber Texas, LLC, a Delaware Limited Liability Company, a Franchise for Wireline Telecommunications

Councilmember C. Taylor moved and Councilmember T. Tayor seconded to approve Ordinance No. 6994.

MOTION CARRIED UNANIMOUSLY. 7-0

C. Ordinance No. 7001 (Krum)
An Ordinance amending Sections 15.20.020, 15.20.030, 15.20.040, 15.20.050, 15.20.060, and 15.20.070 of the Auburn City Code relating to the International Property Maintenance Code

Councilmember Stirgus moved and Councilmember Amer seconded to approve Ordinance No. 7001.

MOTION CARRIED UNANIMOUSLY. 7-0

D. Ordinance No. 7002 (Whalen/Martinson)
An Ordinance establishing a Municipal Court, and adding Chapter 2.14 of the Auburn City Code

Deputy Mayor Rakes moved and Councilmember Trout-Manuel seconded to approve Ordinance No. 7002.

Council discussed the costs of court and justice services.

MOTION CARRIED UNANIMOUSLY. 7-0

RESOLUTIONS

A. Resolution No. 5859 (Gaub)
A Resolution authorizing the Mayor to execute an Interlocal Agreement between the City of Auburn and King County relating to the City of Auburn's AWOS, Beacon and Emergency Generator Project

Councilmember T. Taylor moved and Councilmember Amer seconded to adopt Resolution No. 5859.

MOTION CARRIED UNANIMOUSLY. 7-0

B. Resolution No. 5861 (Gaub)
A Resolution authorizing the Mayor to execute and administer an agreement accepting a grant from the Washington State Department of Transportation and the Pedestrian and Bicycle Safety Program relating to Project No. CP2509, Downtown Bike to Transit — 10th Street NE/NW

Councilmember C. Taylor moved and Councilmember Stirgus seconded to adopt Resolution No. 5861.

Council discussed the value to the community.

MOTION CARRIED UNANIMOUSLY. 7-0

C. Resolution No. 5862 (Gaub)
A Resolution authorizing the Mayor to execute and administer an agreement accepting a grant from the Washington State Department of Transportation and Freight Mobility Strategic Investment Board relating to Project No. CP2311, East Valley Highway Widening

Councilmember C. Taylor moved and Councilmember Stirgus seconded to adopt Resolution No. 5862.

MOTION CARRIED UNANIMOUSLY. 7-0

D. Resolution No. 5864 (Gaub)
A Resolution authorizing the Mayor to execute and administer an agreement accepting a grant from the Washington State Department of Commerce relating to project No. CP2414, Downtown Auburn Theater

Councilmember Baldwin moved and Councilmember Amer seconded to adopt Resolution No. 5864.

MOTION CARRIED UNANIMOUSLY. 7-0

E. Resolution No. 5865 (Caillier)
A Resolution authorizing the Mayor to execute and administer an agreement accepting a grant from the Association of Washington Cities - Co-Responder Program with Project Be Free

Deputy Mayor Rakes moved and Councilmember Stirgus seconded to adopt Resolution No. 5865.

MOTION CARRIED UNANIMOUSLY. 7-0

MAYOR AND COUNCILMEMBER REPORTS

A. From the Council

Councilmembers provided reports on the events that they attended.

B. From the Mayor

Mayor Backus provided a report on the events she attended.

ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 8:05 p.m.

APPROVED this 3rd day of November 2025.

NANCY BACKUS, MAYOR	Shawn Campbell, City Clerk

City Council
Regular Meeting
October 20, 2025 - 7:00 PM
City Hall Council Chambers

MINUTES

CALL TO ORDER

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

LAND ACKNOWLEDGEMENT

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

PUBLIC PARTICIPATION

The City Council Meeting was held in person and virtually.

PLEDGE OF ALLEGIANCE

Girl Scout Troop No. 46021 led those in attendance in the Pledge of Allegiance.

ROLL CALL

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

Mayor Nancy Backus and the following staff members present included: Chief of Police Mark Caillier, Director of Public Works Ingrid Gaub, Director of Community Development Jason Krum, Deputy City Attorney Paul Byrne, and Deputy City Clerk Hannah Scholl.

ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS

A. Diwali, Festival of Lights

Mayor Backus proclaimed October 18, 2025, to October 22, 2025, as "Diwali, Festival of Lights" in the City of Auburn.

B. Red Ribbon Week

Mayor Backus proclaimed October 23, 2025, through October 31, 2025, as "Red Ribbon Week" in the City of Auburn.

Kelly Murray of Cascade Middle School accepted the proclamation and thanked both the Mayor and Council for their support.

C. Financial Literacy Week

Mayor Backus proclaimed October 20, 2025, through October 24, 2025, as Financial Literacy Week in the City of Auburn.

Erica Chen and Jasmine Nguyen, Auburn Mountainview High School DECA Students, accepted the proclamation and thanked both the Mayor and Council for their support.

APPOINTMENTS

A. City Council to approve the appointment of Nazli Shamdeen to the Auburn Junior City Council for a two-year term expiring August 31, 2026

Deputy Mayor Rakes moved and Councilmember Amer seconded to approve the appointment of Nazli Shamdeen to the Auburn Junior City Council for a two-year term expiring August 31, 2026.

MOTION CARRIED UNANIMOUSLY. 6-0

AGENDA MODIFICATIONS

Ordinance No. 6995 was removed from the agenda and the Financial Literacy Week proclamation was added to the agenda.

AUDIENCE PARTICIPATION

Written Comments:
The City Clerk's Office received written comments from Linda Redman and James DeLay which were forwarded to Mayor and Council prior to the meeting.

In-Person Comments:
Nancy Peterson and Virginia Haugen provided comments.

CORRESPONDENCE

There was no correspondence for Council to review.

CONSENT AGENDA

A. Setting the date the for Public Hearing for Soos Creek Water and Sewer District Franchise Agreement (Gaub)

B. Setting the date for a Public Hearing for Hyperfiber of Washington, LLC dba Ripple Fiber Franchise Agreement (Gaub)

C. Claims Vouchers (Thomas)
Claims voucher list dated October 8, 2025 which includes voucher numbers 481489 through voucher 481522, voucher numbers 481524 through voucher 481605 in the amount of $3,848,482.30, sixteen electronic fund transfers in the amount of $21,280.78, and one wire transfer in the amount of $296,260.85

D. Claims Vouchers (Thomas)
Claims voucher dated October 8, 2025 which includes voucher number 481523 in the amount of $7,322.48

E. Payroll Voucher (Thomas)
Payroll check numbers 539734 through 539741 in the amount of $86,678.56, electronic deposit transmissions in the amount of $2,910,175.35, for a grand total of $2,996,853.91 for the period covering October 2, 2025 to October 15, 2025

Deputy Mayor Rakes moved and Councilmember Stirgus seconded to approve the consent agenda.

MOTION CARRIED UNANIMOUSLY. 6-0

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

There was no new business.

ORDINANCES

RESOLUTIONS

A. Resolution No. 5860 (Whalen)
A Resolution amending the City of Auburn Fee Schedule to adjust for 2026 Fees

Councilmember Baldwin moved and Councilmember C. Taylor seconded to adopt Resolution No. 5860.

MOTION CARRIED UNANIMOUSLY. 6-0

B. Resolution No. 5866 (Krum)
A Resolution relating to the endorsement of the 2026 Valley Regional Fire Authority Fee Schedule as adopted by the VRFA Board of Governance

Councilmember T. Taylor moved and Councilmember Amer seconded to adopt Resolution No. 5866.

MOTION CARRIED UNANIMOUSLY. 6-0

MAYOR AND COUNCILMEMBER REPORTS

A. From the Council

Councilmembers provided reports on the events that they attended.

B. From the Mayor

Mayor Backus reminded everyone of Auburn's Trunk or Treat event.

ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 7:30 p.m.

APPROVED this 3rd day of November 2025.

NANCY BACKUS, MAYOR	Hannah Scholl, Deputy City Clerk

CITY OF AUBURN WASHINGTON

AGENDA BILL APPROVAL FORM

Agenda Subject:	**Meeting Date:**
Minutes from the October 13, 2025, and October 27, 2025, Study Session Meetings	November 3, 2025

Department:	**Attachments:**	**Budget Impact:**
City Council	10-13-2025 Minutes, 10-27-2025 Minutes	

Administrative Recommendation:

Background for Motion:

Background Summary:

Councilmember:

Staff:

City Council
Study Session
Municipal Services Special Focus Area
October 13, 2025 - 5:30 PM
City Hall Council Chambers

MINUTES

CALL TO ORDER

Deputy Mayor Cheryl Rakes called the meeting to order at 5:30 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street.

PUBLIC PARTICIPATION

The Study Session Meeting was held in person and virtually.

ROLL CALL

Councilmembers present: Deputy Mayor Cheryl Rakes, Hanan Amer, Lisa Stirgus, Tracy Taylor, Clinton Taylor, and Yolanda Trout-Manuel. Councilmember Kate Baldwin arrived at 5:32 p.m.

Mayor Nancy Backus and the following staff members present included: City Attorney Jason Whalen, Assistant Chief of Police Samuel Betz, Director of Community Development Jason Krum, Director of Public Works Ingrid Gaub, Director of Parks, Arts, and Recreation Julie Krueger, Recreation Manager Kevin Witte, Recreation Program Coordinator Monique Hokett, and City Clerk Shawn Campbell.

AGENDA MODIFICATIONS

There were no modifications made to the agenda.

ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS

A. Auburn Area Connect Chamber of Commerce Council Update (Krum) (10 Minutes)
A presentation to update on events, connections made, and impact made on the community

Executive Director Kacie Bray of the Auburn Area Connect Chamber of Commerce, provided Council with an update on their 2025 Recap including the economic development contract, business connect events, Auburn Area Connects Spotlight awards, ribbon cuttings, golf tournament, ways they are connecting the Auburn brand, and the new website.

Council discussed the Leadership Institute, success measurements, coordinating with City updates, events promoted, website tracking, collaborating with the City on City-sponsored events, tourism, business retention, Chamber engagement, and Downtown Area in connection with the Chamber.

MUNICIPAL SERVICES DISCUSSION ITEMS

A. Teen Programming through Auburn Parks, Arts, & Recreation (Krueger) (15 minutes)

Director Kruger, Manager Witte, and Coordinator Hokett provided Council with a presentation on the Parks, Arts, and Recreation Teen Programs, including the after-school program, transportation to the Recreation Center, community partnerships, Late Night program, teen programs, youth sports program, and staffing.

Council discussed scholarships for events, school partnerships, communications from schools, retention rates, AmeriCorp staffing, busses from West Auburn High School, input from participants, program wishlist, teen takeover, number of teens the faculty could service daily, volunteer staff, teen summer jobs, connection between the Senior Center and the teen center, donations, and needed supplies.

B. 2023-2025 Crime Statistics Update (Caillier) (15 Minutes)

Assistant Chief Betz provided Council with an update on the 2023-2025 Crime Statistics including calls for service, the reporting districts, crime types by district year to date, regional comparison data, average daily population of SCORE, booking by agencies, juvenile crime, shooting incidents in 2025, use of technology, and staffing.

Council discussed the CRT Team, crime reporting, notices of criminals in the area, juvenile crime, decrease in statistics, speeding and street racing, text messages to 911, response times and crime by district. Areas that Council wanted additional information on are time spent on active crime, shooting incidents in 2024 and 2023, and incorporating stats in the Municipal Services SFA Meetings.

AGENDA ITEMS FOR COUNCIL DISCUSSION

A. 2026 VRFA Fee Schedule Presentation (Krum) (10 Minutes)

Tim Day, VRFA Deputy Chief, and Mark Horaski, VRFA Chief Financial Officer, provided Council with an overview of the 2026 Valley Regional Fire Authority

(VRFA) Fee Schedule, including the statutory basis for fees, the calculation framework, the incident data, the asset list, development growth, existing asset cost basis, capital improvement plan, future assist cost basis, fee schedule scaling, residential scaling, proposed change to the fee schedule, and the comparison study.

Council discussed the impact on affordable housing, the impact on individual builders, the reduced tax levy on existing taxpayers, billing, and levy dollars.

B. Resolution No. 5860 (Whalen) (15 Minutes)
A Resolution amending the City of Auburn Fee Schedule to adjust for 2026 Fees

Directors Krum, Krueger, and Gaub provided Council with an overview of Resolution No. 5860 including the attempt to have a cost recovery model, and proposed changes to the fee schedule.

Council discussed driving range fees, Traffic Impact Fees, downtown land use fees, and World Cup preparations.

C. Ordinance No. 6995 (Krum) (10 Minutes)
An Ordinance continuing the moratorium enacted on May 10, 2025, pursuant to Ordinance No. 6978 and as amended by Ordinance No. 6995 on the acceptance, processing, and/or approval of applications for building and land use development for Energy Storage System facilities (ESS) proposed to be located in any zone within the City of Auburn

Director Krum and Manager Teague provided Council with an overview of Ordinance No. 6995 including a background of the moratorium, requested extension on the extension of the moratorium, and the proposed timeline.

ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 8:01 p.m.

APPROVED this 3rd day of November 2025.

CHERYL RAKES, DEPUTY MAYOR	Shawn Campbell, City Clerk

City Council
Study Session
Community Wellness Special Focus Area
October 27, 2025 - 5:30 PM
City Hall Council Chambers

MINUTES

CALL TO ORDER

Deputy Mayor Cheryl Rakes called the meeting to order at 5:30 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street.

PUBLIC PARTICIPATION

The Study Session Meeting was held in person and virtually.

ROLL CALL

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

Mayor Nancy Backus and the following staff members present included: City Attorney Jason Whalen, Assistant Chief of Police Samuel Betz, Director of Community Development Jason Krum, Director of Public Works Ingrid Gaub, Director of Finance Jamie Thomas, Financial Planning Manager Frank Downard, Right-of-Way Specialist Amber Olds, Building Official Crue Woodard, Housing Repair Program Coordinator Joel Asbjornsen, and Deputy City Clerk Hannah Scholl.

EXECUTIVE SESSION

Deupty Mayor Rakes adjourned into an Executive Session at 5:33 p.m. for 15 minutes per RCW 42.30.110(1)(f) to receive and evaluate complaints or charges brought against a public officer or employee. In addition to the City Councilmembers, City Attorney Whalen was required to attend. There was no anticipated action.

Deputy Mayor Rakes extended the session at 5:43 p.m. for an additional 15 minutes.

Deputy Mayor Rakes extended the session at 6:00 p.m. for an additional 5 minutes.

Deputy Mayor Rakes extended the session at 6:06 p.m. for an additional 10 minutes.

Deputy Mayor Rakes reconvened the meeting at 6:15 p.m.

AGENDA MODIFICATIONS

There were no modifications made to the agenda.

ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS

A. Ordinance No. 7004 (Thomas) (60 Minutes)
Water, Sanitary, Sewer and Storm Drainage Utility Rate Study Presentation

Manager Downard introduced Project Manager Brooke Tacia with FCS Group, who provided Council with a presentation on the Water, Sanitary, Sewer, and Storm Drainage Utility Rate Study, including rate-setting background, rate-setting process, revenue requirement objectives, key assumptions, key components, and survey results. They also discussed the Cost of Service Analysis, Rate Design, proposed rates, and next steps.

Council discussed impacts on low-income families, and rates.

COMMUNITY WELLNESS DISCUSSION ITEMS

A. Housing Repair Program Update (Krum) (15 Minutes)

Councilmember Trout-Manuel, Chair of the Community Wellness Special Focus Area, chaired this portion of the meeting.

Building Official Woodard and Coordinator Asbjornsen provided Council with an update on the Housing Repair Program including qualification requirements, eligible repairs, and GovQA work orders. They shared various before and after's of completed repairs.

Council discussed repair follow-ups, number of homes served, eligible repairs, and partnerships.

AGENDA ITEMS FOR COUNCIL DISCUSSION

A. Ordinance No. 7005 (Gaub) (10 Minutes)
An Ordinance granting to Soos Creek Water and Sewer District, a Washington Municipal Corporation, a Franchise for Sanitary Sewer Facilities

Specialist Olds provided Council with an overview of Ordinance No. 7005 including service area and the terms of the agreement.

B. Ordinance No. 7007 (Gaub) (10 Minutes)
An Ordinance granting to Hyperfiber of Washington, LLC dba Ripple Fiber, a Delaware Limited Liability Company, a Franchise for Wireline Telecommunications

Specialist Olds provided Council with an overview of Ordinance No. 7007 including service area and the terms of the agreement.

Council discussed tree trimming requirements.

ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 7:22 p.m.

APPROVED this 3rd day of November 2025.

CHERYL RAKES, DEPUTY MAYOR	Hannah Scholl, Deputy City Clerk

AGENDA BILL APPROVAL FORM

Agenda Subject:
Claims Vouchers (Thomas)
Claims voucher list dated October 22, 2025, which includes voucher numbers 481606 through voucher 481771, in the amount of $4,299.591.61, nine electronic fund transfers in the amount of $1,737.12 and two wire transfers in the amount of $599,505.51

Meeting Date:
November 3, 2025

Department:
Finance

Attachments:
None

Budget Impact:

Administrative Recommendation:
City Council to approve Claims Vouchers.

Background for Motion:

Background Summary:
Claims voucher list dated October 22, 2025, which includes voucher numbers 481606 through voucher 481771, in the amount of $4,299.591.61, nine electronic fund transfers in the amount of $1,737.12 and two wire transfers in the amount of $599,505.51.

Councilmember: Kate Baldwin

Staff: Jamie Thomas

AGENDA BILL APPROVAL FORM

Agenda Subject:
Payroll Voucher (Thomas)
Payroll check numbers 539742 through 539747 in the amount of $694,775.60, electronic deposit transmissions in the amount of $2,752,989.77, for a grand total of $3,447,765.37 for the period covering October 16, 2025, to October 29, 2025

Meeting Date:
November 3, 2025

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

Department:
Finance

Attachments:
None

Budget Impact:

Administrative Recommendation:
City Council to approve Payroll Vouchers.

Background for Motion:

Background Summary:
Payroll check numbers 539742 through 539747 in the amount of $694,775.60, electronic deposit transmissions in the amount of $2,752,989.77, for a grand total of $3,447,765.37 for the period covering October 16, 2025, to October 29, 2025.

Councilmember: Kate Baldwin

Staff: Jamie Thomas

AGENDA BILL APPROVAL FORM

Agenda Subject:
Ordinance No. 6995 (Krum)
An Ordinance continuing the moratorium enacted on May 10, 2025, pursuant to Ordinance No. 6978 and as amended by Ordinance No. 6995 on the acceptance, processing, and/or approval of applications for building and land use development for Energy Storage System facilities (ESS) proposed to be located in any zone within the City of Auburn

Meeting Date:
November 3, 2025

(RECOMMENDED ACTION: Move to approve Ordinance No. 6995.)

Department:	**Attachments:**	**Budget Impact:**
Community Development	Ordinance No. 6995	

Administrative Recommendation:
City Council to approve Ordinance No. 6995.

Background for Motion:
This Ordinance will establish a six (6) month extension to the moratorium on permitting applications and activity related energy storage systems to allow staff additional opportunity to develop appropriate siting, construction, and operational requirements.

Background Summary:
Ordinance No. 6995 is a six (6) month extension to the moratorium enacted by Ordinance No. 6978 pertaining to the halting of acceptance, processing, and/or approval of applications for building and land use development for energy storage system facilities (ESS) including battery energy storage systems (BESS) proposed to be located in any zone within the City of Auburn.

In support of the development of the proposed development regulations, staff conducted a roundtable discussion with industry experts on October 2, 2025, to provide necessary context and industry trends in developing our regulatory code.

Staff requests additional time to consider the guidance of the industry experts and prepare for additional coordination with City of Auburn Staff, City of Auburn residents, City of Auburn Planning Commission, and City of Auburn Council in accordance with the Revised Code of Washington (RCW) section 35A.63.220, RCW 36.70A.390, and Section 5 of Ordinance No. 6995.

Staff presented the proposed changes to City Council at Study Session on October 13, 2025.

Councilmember: Tracy Taylor

Staff: Jason Krum

ORDINANCE NO. 6995

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, CONTINUING THE MORATORIUM ENACTED ON MAY 10, 2025, PURSUANT TO ORDINANCE NO. 6978 AND AS AMENDED BY ORDINANCE NO. 6995 ON THE ACCEPTANCE, PROCESSING, AND/OR APPROVAL OF APPLICATIONS FOR BUILDING AND LAND USE DEVELOPMENT FOR ENERGY STORAGE SYSTEM FACILITIES (ESS) PROPOSED TO BE LOCATED IN ANY ZONE WITHIN THE CITY OF AUBURN

WHEREAS, Energy Storage Systems (ESS) including Battery Energy Storage Systems (BESS) are defined as installations designed to store critical electrical energy for later use, typically consisting of batteries, power conversion systems, and control equipment, a primary function of Energy Storage Systems is to store excess electricity generated by the grid during periods of low demand or high renewable energy production, such as from solar or wind sources, the stored energy can then be discharged when demand is high or when renewable energy generation is low, stabilizing the electrical grid and improving overall efficiency and reliability;

WHEREAS, the City's development regulations, specifically the land use category of "Utility facilities and substations" in ACC 18.07.030 and "Utility transmission or distribution line or substation" in ACC 18.23.030, are not currently defined to include the recent technological changes and business models in Energy Storage Systems or supporting infrastructure, but are understood to include public regional utility (PSE) agencies that provide public services such as transformers, substations, pumpstations and smaller scale grid infrastructure;

WHEREAS, applying the current regulations in Title 18 ACC to new technologies and business models could lead to approval of ESS projects that are undesirable, unsafe, and/or inconsistent with long-term planning goals and objectives of the City;

WHEREAS, the Auburn City Council makes the following findings of fact in support of a moratorium under RCW 36. 70A.390, and identified the following unknown risks and economic factors, that may be relevant in assessing the desirability of, and siting concerns associated with, ESS in the City:

A. The City currently does not have specific zoning or development standards applicable to ESS;
B. Thermal runaway at a BESS presents a significant burden to emergency personnel as fires may burn for an inordinate amount of time, requiring increased lengths for monitoring and containment, leaving other areas of the city vulnerable to high response times;
C. Exceptional amounts of water is required in the event of a thermal runaway to protect other cells from reaching a critical temperature and to suppress the compromised cell, water used to control the emergency may contain hazardous chemicals and materials such as cyanide and hydrofluoric acid that may leach into the City's protected critical areas identified in Chapter 16.10 ACC;
D. Due to the exceptional amounts of water required to suppress a thermal event, it is not known if the City, or the surrounding water districts have the capacity to provide a constant flow of high-volume water;
E. BESS may create potentially hazardous air quality concerns in the event of an emergency;
F. In the event of an emergency, it is unknown what the impacts to regional

transportation routes, businesses, and residents if an evacuation zone is established;

G. ESS may produce impacts to wildlife that are not currently well understood by the City;

H. ESS facilities located within the L-F Airport Landing Field District may pose a significant risk to public health, safety, and welfare if an aircraft collision occurs;

I. ESS facilities and their supporting infrastructure may be more appropriate for the industrial (M-1 and M-2) zones in the City due to their scale, land use, and potential impacts to life and safety of the general public;

J. It is unknown what fiscal or economic development benefits would flow to the City if ESS facilities were permitted within the City;

WHEREAS, the City Council held a public hearing on 7:00 PM on May 5, 2025, to adopt findings following the conclusion of a public hearing of Ordinance No. 6978,

WHEREAS, further discussions with industry leaders are needed to better understand the potential impacts of ESS facilities and to vet proposed code amendments language requested to be performed by staff on behalf of the City,

WHEREAS, the potential adverse impacts on public health, property, safety, and welfare of the City and community of the moratorium authorized under Ordinance No. 6978 expires before staff can complete necessary research, further justifies a moratorium under RCW 35A.63.220 and the designation of this ordinance as necessary for the protection of public health, public property, or the public peace by the Council, the moratorium imposed herein promotes the public good and is necessary for the protection of public health, property, safety, and welfare;

WHEREAS, to promote public health, safety, and welfare, the City Council deemed it necessary and proper to extend the moratorium on land use and development permit applications related to BESS for an additional period of six (6) months by holding a public hearing on November 3rd, 2025 at 7:00 PM to adopt findings following the conclusion of a public hearing for Ordinance Number 6995;

WHEREAS, it would be an efficient use of resources and an appropriate exercise of its planning authority under the Growth Management Act, Chapter 36.70A RCW, and Chapter 35A.63 RCW for the City to integrate and analyze whether, and under what regulatory parameters, ESS be allowed uses within the City;

WHEREAS, the City possesses land use jurisdiction and regulatory authority over the City's incorporated lands; and

WHEREAS, the adoption of this moratorium is exempt from the threshold determination requirements under the State Environmental Policy Act;

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

Section 1. Findings of Fact. The recitals set forth above are hereby adopted as the City Council's findings of fact in support of the moratorium established by this ordinance, The City Council may, in its discussion, adopt additional findings after the public hearing referenced in Section 4 below.

Section 2. Moratorium Imposed. Pursuant to RCW 35A.63.220, and RCW 36.70A.390, a temporary moratorium is hereby extended upon Tier II and Tier III ESS facilities in any zone within the City of Auburn. This moratorium also applies to the City's acceptance, processing, or approval of any applications, building permits, and land use permits for ESS facilities including without limitation;

A. Administrative Use permits;
B. Conditional Use permits;
C. Building permits;
D. Grading permits;
E. Short plats;
F. Subdivisions;
G. Binding site plans;
H. Reasonable use exceptions;
I. Variances from Title 18 ACC regulations;
J. Deviations from any City of Auburn engineering design and construction standards or other technical codes for ESS facility within the City or any other type of development permit, approval, or code interpretation in connection with the same; and
K. Any other development permits related to ESS facilities.

The moratorium codified herein shall not apply to Tier I residential Battery Energy Storage Systems that serve as a back-up source of energy, load shedding, and storage of solar energy. Fires and other emergencies typically seen from Tier I BESS are limited in their impacts to the safety, well being, and health of the community.

Section 3. **Term of Moratorium.** The moratorium imposed by this Ordinance shall become effective date described in Section 8, and shall continue in effect for an additional period of six (6) months, provided that the moratorium shall automatically expire upon the effective date of zoning and land use regulations adopted by City Council to address siting, construction, and operation of ESS located within the City of Auburn.

Section 4. **Public Hearing.** Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council has held a public hearing at the City Council's regular meeting at 7:00 PM on November 3rd, 2025, in order to take public testimony on this moratorium.

Section 5. **Referral to Staff; Work Plan.** City Staff and the Auburn Planning Commission are hereby authorized and requested, as part of their ongoing work related to ESS facilities to study the issues identified in this ordinance and to develop recommendations for whether ESS facilities should be allowed uses within the City and, if so, what zoning regulations and public processes are needed to protect the health, safety, and welfare of the community and ensure that such facilities are developed in a manner that is compatible with the overall plan and vision of the City. These recommendations shall be reviewed and considered by the Auburn City Council for inclusion as a Chapter in Title 18 of Auburn City Code and/or other official controls of the City.

A. The City of Auburn Planning Commission shall be authorized and directed to hold public hearings and public meetings to fully receive and consider statements, testimony, positions and other documentation or evidence related to the issue of the ESS, including, but not limited to, regulations related to the siting, construction, and operation.

B. The Planning Commission and City staff are authorized and directed to review the experiences of other jurisdictions, the status of legal cases, and statistical data, information, studies and other evidence compiled by other municipalities, of adverse impacts of such ESS, and to review State and Federal law and regulations and the regulations, ordinances and codes adopted by other municipalities to address ESS, and any information that is pertinent to consideration of ESS, including but not limited to siting, construction, and operation.

C. The City of Auburn Planning Commission shall work with City Staff and the community of the City to develop proposals for regulation of ESS land use and zoning considerations, to be forwarded in their recommendations to the City Council for inclusion in ordinances and ultimate adoption as a apart of the City Code of the City of Auburn, including regulations related to siting, construction, and operation of ESS.

D. The Mayor, in consultation with the City Attorney, Community Development Director, Public Works Director, Police Chief, Emergency Management, Fire Marshal, and other staff, shall periodically advise and report to the City Council as to the status of hearings, meetings, and information development regarding actives of the Planning Commission and City Staff relative to the evaluation, consideration, and development of regulations concerning ESS, including, but not limited to, siting, construction, and operation, until adoption of a comprehensive ordinance as developed, relating to ESS becoming effective in the conjunction with the termination of the moratorium referred to in this ordinance.

Section 6. **Implementation.** The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 7. **Severability.** The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

<u>Section 8.</u> **<u>Effective date.</u>** This Ordinance will take effect and be in force five days from and after its passage, approval, and publication as provided by law.

INTRODUCED: _______________

PASSED: ____________________

APPROVED: _________________

____
NANCY BACKUS, MAYOR

ATTEST:

____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

____
Jason Whalen, City Attorney

Published: ____

AGENDA BILL APPROVAL FORM

Agenda Subject:
Resolution No. 5869 (Krueger)
A Resolution authorizing the Mayor, or Designee, to execute an agreement between the City of Auburn and Department of Social and Health Services for Respite Care Payments

Meeting Date:
November 3, 2025

(RECOMMENDED ACTION: Move to adopt Resolution No. 5869.)

Department:
Parks, Arts & Recreation

Attachments:
Resolution No. 5869 , City of Auburn Interlocal RiCS 2664-66428 DRAFT

Budget Impact:

Administrative Recommendation:
City Council to adopt Resolution No. 5869.

Background for Motion:
Resolution No. 5869 would authorize the Mayor, or her designee, to enter into an Interlocal Agreement with the Deptartment of Social and Health Services to allow payments toward recreation program fees for participants who are unable to pay.

Background Summary:
The City currently has an agreement with the Department of Social and Health Services (DSHS) to receive payments for program participants who qualify for state assistance to attend recreational programs. The current agreement is set to expire on December 31, 2025. This new Interlocal Agreement will allow the City to continue to bill DSHS for programs attended by an approved participant.

Approval of this Resolution would authorize the Mayor, or her designee, to enter into the Interlocal Agreement.

Councilmember: Cheryl Rakes

Staff: Julie Krueger

RESOLUTION NO. 5869

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR, OR DESIGNEE, TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF AUBURN AND DEPARTMENT OF SOCIAL AND HEALTH SERVICES FOR RESPITE CARE PAYMENTS

WHEREAS, in 2023, City of Auburn entered into an agreement with the Department of Social and Health Services (DSHS) for respite care payments; and

WHEREAS, the current agreement expires December 31, 2025;

WHEREAS, it is necessary and appropriate for the City to enter into a new Interlocal Agreement with DSHS for respite care payments.

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

Section 1. The Mayor, or her designee, is authorized to execute an Interlocal Agreement between the City and Department of Social and Health Services, which agreement will be in substantial conformity with the agreement attached hereto.

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

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

Dated and Signed this 3rd day of November, 2025.

CITY OF AUBURN

____
NANCY BACKUS, MAYOR

ATTEST:

____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

____
Jason Whalen, City Attorney

DSHS Washington State Department of Social and Health Services	**INTERLOCAL AGREEMENT** Respite in Community Settings	DSHS Agreement Number: 2664-66428

This Agreement is by and between the State of Washington Department of Social and Health Services (DSHS) and the Contractor identified below, and is issued pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW.	Program Contract Number: Contractor Contract Number: P1 SSL: 102970301

CONTRACTOR NAME City of Auburn	CONTRACTOR doing business as (DBA) AUBURN CITY OF - 01	
CONTRACTOR ADDRESS 25 W Main St Auburn, WA 98002	WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI) 171-000-010	DSHS INDEX NUMBER 22473

CONTRACTOR CONTACT Kevin Witte	CONTRACTOR TELEPHONE (425) 259-5261	CONTRACTOR FAX	CONTRACTOR E-MAIL ADDRESS kwitte@auburnwa.gov

DSHS ADMINISTRATION Developmental Disabilities Admin	DSHS DIVISION Division of Developmental Disabilities	DSHS CONTRACT CODE 1803LP-64

DSHS CONTACT NAME AND TITLE Gina M. Thomas Contract Specialist	DSHS CONTACT ADDRESS 840 N Broadway 540 Everett, WA 98201

DSHS CONTACT TELEPHONE (425)740-6443	DSHS CONTACT FAX (425)252-1364	DSHS CONTACT E-MAIL ADDRESS gina.thomas@dshs.wa.gov

IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? No	ASSISTANCE LISTING NUMBER(S)

AGREEMENT START DATE 01/01/2026	**AGREEMENT END DATE** 12/31/2028	MAXIMUM AGREEMENT AMOUNT Fee For Service

EXHIBITS. The following Exhibits are attached and are incorporated into this Agreement by reference:
Exhibits (specify): A - DDA Policies & Agreements
☐ **No Exhibits.**

The terms and conditions of this Agreement are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise regarding the subject matter of this Agreement, between the parties. The parties signing below represent they have read and understand this Agreement, and have the authority to execute this Agreement. This Agreement shall be binding on DSHS only upon signature by DSHS.

CONTRACTOR SIGNATURE Draft - Please Do Not Sign	PRINTED NAME AND TITLE	DATE SIGNED
DSHS SIGNATURE Draft - Please Do Not Sign	PRINTED NAME AND TITLE	DATE SIGNED

DSHS General Terms and Conditions

1. **Definitions**. The words and phrases listed below, as used in this Contract, shall each have the following definitions:

a. "Central Contracts and Legal Services" means the DSHS central headquarters contracting office, or successor section or office.

b. "Confidential Information" or "Data" means information that is exempt from disclosure to the public or other unauthorized persons under RCW 42.56 or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.

c. "Contract" or "Agreement" means the entire written agreement between DSHS and the Contractor, including any Exhibits, documents, or materials incorporated by reference. The parties may execute this contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.

d. "CCLS Chief" means the manager, or successor, of Central Contracts and Legal Services or successor section or office.

e. "Contractor" means the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, "Contractor" includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.

f. "Debarment" means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.

g. "DSHS" or the "Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.

h. "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key;" a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 256 bits for symmetric keys, or 2048 bits for asymmetric keys. When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.

i. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.

j. "Physically Secure" means that access is restricted through physical means to authorized individuals only.

k. "Program Agreement" means an agreement between the Contractor and DSHS containing special terms and conditions, including a statement of work to be performed by the Contractor and payment to be made by DSHS.

l. "RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at http://apps.leg.wa.gov/rcw/.

m. "Regulation" means any federal, state, or local regulation, rule, or ordinance.

n. "Secured Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access. Secured Areas may include buildings, rooms or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.

o. "Subcontract" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.

p. "Tracking" means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.

q. "Trusted Systems" include only the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.

r. "WAC" means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at http://apps.leg.wa.gov/wac/.

2. **Amendment.** This Contract may only be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.

3. **Assignment.** The Contractor shall not assign this Contract or any Program Agreement to a third party without the prior written consent of DSHS.

4. **Billing Limitations.**

a. DSHS shall pay the Contractor only for authorized services provided in accordance with this Contract.

b. DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.

c. The Contractor shall not bill and DSHS shall not pay for services performed under this Contract, if the Contractor has charged or will charge another agency of the state of Washington or any other party for the same services.

5. **Compliance with Applicable Law and Washington State Requirements.**

a. **Applicable Law**. Throughout the performance of this Agreement, Contractor shall comply with all federal, state, and local laws, regulations, and executive orders to the extent they are applicable to this Agreement.

b. **Civil Rights and Nondiscrimination**. Contractor shall comply with all federal and state civil rights and nondiscrimination laws, regulations, and executive orders to the extent they are applicable to this Agreement, including, but not limited to, and as amended, Titles VI and VII of the Civil Rights Act of 1964; Sections 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act (ADA); Executive Order 11246; the Health Insurance Portability and Accountability Act of 1996 (HIPAA); the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and Chapter 49.60 of the Revised Code of Washington, Washington's Law Against Discrimination. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

In the event of the Contractor's noncompliance or refusal to comply with any applicable nondiscrimination laws, regulations, and executive orders, this Agreement may be rescinded, canceled, or terminated in whole or in part.

c. **Nondiscrimination.**

(1) **Nondiscrimination Requirement**. During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.

(2) **Obligation to Cooperate**. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).

d. **Certification Regarding Russian Government Contracts and/or Investments**. The Contractor, by signature to this Contract, certifies that the Contractor is not presently an agency of the Russian government, an entity which is Russian-state owned to any extent, or an entity sanctioned by the United States government in response to Russia's invasion of Ukraine. The Contractor also agrees to include the above certification in any and all Subcontracts into which it enters. The Contractor shall immediately notify DSHS if, during the term of this Contract, Contractor no longer complies with this certification. DSHS may immediately terminate this Contract by providing Contractor written notice if Contractor does not comply with this certification during the term hereof. This is a requirement under Directive of the Governor 22-03.

e. **Reporting Certain Requests from the Federal Government or Law Enforcement Entities**. Contractor shall report to DSHS, within 24 hours, all non-routine requests from a law enforcement authority or federal agency for any of the following: (i) health care information, as defined in RCW 70.02.010, (ii) program eligibility information for individuals, or (iii) information that may identify a health care provider's or facilities delivery of health care services to noncitizens, or delivery of protected health care services as defined in RCW 7.115.010 (gender affirming treatment and reproductive health care services that are lawful in the state of Washington). This is a requirement under Chapter 424, Laws of 2025.

Examples of non-routine requests include surveys, requests for disclosure, subpoenas, and other mechanisms for obtaining data or information. Additionally, search warrants or other requests for disclosure are considered non-routine if they expressly seek data or information about services to noncitizens, gender affirming services, or reproductive health care services.

6. Confidentiality.

a. The Contractor shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with Contractor's performance of the services contemplated hereunder, except:

   (1) as provided by law; or,

   (2) in the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.

b. The Contractor shall protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:

   (1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.

   (2) Physically Securing any computers, documents, or other media containing the Confidential Information.

   (3) Ensure the security of Confidential Information transmitted via fax (facsimile) by:

      (a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.

      (b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.

      (c) Verifying after transmittal that the fax was received by the intended recipient.

   (4) When transporting six (6) or more records containing Confidential Information, outside a Secured Area, do one or more of the following as appropriate:

      (a) Use a Trusted System.

      (b) Encrypt the Confidential Information, including:

         i. Encrypting email and/or email attachments which contain the Confidential Information.
         ii. Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.

      Note: If the DSHS Data Security Requirements Exhibit is attached to this contract, this item, 6.b.(4), is superseded by the language contained in the Exhibit.

   (5) Send paper documents containing Confidential Information via a Trusted System.

   (6) Following the requirements of the DSHS Data Security Requirements Exhibit, if attached to this contract.

c. Upon request by DSHS, at the end of the Contract term, or when no longer needed, Confidential Information shall be returned to DSHS or Contractor shall certify in writing that they employed a DSHS approved method to destroy the information. Contractor may obtain information regarding approved destruction methods from the DSHS Contact identified on the cover page of this Contract.

d. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping, or incineration.

e. Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the DSHS Contact designated on the contract within one (1) business day of discovery. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

7. **Digital Accessibility**. If this Contract includes the acquisition, procurement, development, modification or enhancement of public-facing digital content or tools; including websites, applications, and media (Covered Technology), the following requirements shall apply:

a. All Covered Technology under this Contract must meet Level AA compliances with Web Content Accessibility Guidelines (WCAG) 2.2.

b. Contractor shall validate compliance with this requirement through either a third-party accessibility validation report, a Vendor Product Accessibility Template (VPAT), or compliance review documentation.

c. Should the Covered Technology under this Contract fails to meet the required compliance level, the Contractor shall submit a remediation plan addressing all issues identified to the DSHS Contact identified on the cover page of this Contract. DSHS may immediately terminate this Contract by providing the Contractor written notice if the Contractor fails to timely remediate all issues identified.

8. **Debarment Certification.** The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). The Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify DSHS if, during the term of this Contract, Contractor becomes Debarred. DSHS may immediately terminate this Contract by providing Contractor written notice if Contractor becomes Debarred during the term hereof.

9. **E-Signature and Records.** An electronic signature or electronic record of this Contract or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract or such other ancillary agreement for all purposes.

10. **Governing Law and Venue.** This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

11. **Independent Contractor.** The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Department. The Contractor, his or her employees, or agents performing under this Contract will not hold himself/herself out as, nor claim to be, an officer or employee of the Department by reason hereof, nor will the Contractor, his or her employees, or agent make any claim of right, privilege or benefit that would accrue to such officer or employee.

12. **Inspection.** The Contractor shall, at no cost, provide DSHS and the Office of the State Auditor with reasonable access to Contractor's place of business, Contractor's records, and DSHS client records, wherever located. These inspection rights are intended to allow DSHS and the Office of the State Auditor to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and these Contract terms. These inspection rights shall survive for six (6) years following this Contract's termination or expiration.

13. **Maintenance of Records.** The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. All records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract.

    Without agreeing that litigation or claims are legally authorized, if any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

14. **Order of Precedence.** In the event of any inconsistency or conflict between the General Terms and Conditions and the Special Terms and Conditions of this Contract or any Program Agreement, the inconsistency or conflict shall be resolved by giving precedence to these General Terms and Conditions. Terms or conditions that are more restrictive, specific, or particular than those contained in the General Terms and Conditions shall not be construed as being inconsistent or in conflict.

15. **Severability.** If any term or condition of this Contract is held invalid by any court, the remainder of the Contract remains valid and in full force and effect.

16. **Survivability.** The terms and conditions contained in this Contract or any Program Agreement which, by their sense and context, are intended to survive the expiration or termination of the particular agreement shall survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality, Disputes; Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination Procedure, and Treatment of Property.

17. **Contract Renegotiation, Suspension, or Termination Due to Change in Funding.**

    If the funds DSHS relied upon to establish this Contract or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this contract but prior to the normal completion of this Contract or Program Agreement:

    a. At DSHS's discretion, the Contract or Program Agreement may be renegotiated under the revised funding conditions.

    b. At DSHS's discretion, DSHS may give notice to Contractor to suspend performance when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.

        (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.

        (2) When DSHS determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written

notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption. For purposes of this subsubsection, “written notice” may include email.

(3) If the Contractor’s proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

c. DSHS may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to DSHS in the event the termination option in this section is exercised.

18. **Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Contract. Only the CCLS Chief or designee has the authority to waive any term or condition of this Contract on behalf of DSHS.

Additional General Terms and Conditions – Interlocal Agreements:

19. **Disputes**. Both DSHS and the Contractor (“Parties”) agree to work in good faith to resolve all conflicts at the lowest level possible. However, if the Parties are not able to promptly and efficiently resolve, through direct informal contact, any dispute concerning the interpretation, application, or implementation of any section of this Agreement, either Party may reduce its description of the dispute in writing, and deliver it to the other Party for consideration. Once received, the assigned managers or designees of each Party will work to informally and amicably resolve the issue within five (5) business days. If managers or designees are unable to come to a mutually acceptable decision within five (5) business days, they may agree to issue an extension to allow for more time.

If the dispute cannot be resolved by the managers or designees, the issue will be referred through each Agency’s respective operational protocols, to the Secretary of DSHS (“Secretary”) and the Contractor’s Agency Head (“Agency Head”) or their deputies or designated delegates. Both Parties will be responsible for submitting all relevant documentation, along with a short statement as to how they believe the dispute should be settled, to the Secretary and Agency Head.

Upon receipt of the referral and relevant documentation, the Secretary and Agency Head will confer to consider the potential options of resolution, and to arrive at a decision within fifteen (15) business days. The Secretary and Agency Head may appoint a review team, a facilitator, or both, to assist in the resolution of the dispute. If the Secretary and Agency Head are unable to come to a mutually acceptable decision within fifteen (15) business days, they may agree to issue an extension to allow for more time.

The final decision will be put in writing, and will be signed by both the Secretary and Agency Head. If the Agreement is active at the time of resolution, the Parties will execute an amendment or change order to incorporate the final decision into the Agreement. The decision will be final and binding as to the matter reviewed and the dispute shall be settled in accordance with the terms of the decision.

If the Secretary and Agency Head are unable to come to a mutually acceptable decision, the Parties will request intervention by the Governor, per RCW 43.17.330, in which case the governor shall employ whatever dispute resolution methods that the governor deems appropriate in resolving the dispute.

Both Parties agree that, the existence of a dispute notwithstanding, the Parties will continue without delay to carry out all respective responsibilities under this Agreement that are not affected by the dispute.

20. Hold Harmless.

a. The Contractor shall be responsible for and shall hold DSHS harmless from all claims, loss, liability, damages, or fines arising out of or relating to the Contractor's, or any Subcontractor's, performance or failure to perform this Agreement, or the acts or omissions of the Contractor or any Subcontractor. DSHS shall be responsible for and shall hold the Contractor harmless from all claims, loss, liability, damages, or fines arising out of or relating to DSHS' performance or failure to perform this Agreement.

b. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.

21. Ownership of Material. Material created by the Contractor and paid for by DSHS as a part of this Contract shall be owned by DSHS and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the Contractor uses to perform the Contract but is not created for or paid for by DSHS is owned by the Contractor and is not "work made for hire"; however, DSHS shall have a perpetual license to use this material for DSHS internal purposes at no charge to DSHS, provided that such license shall be limited to the extent which the Contractor has a right to grant such a license.

22. Subrecipients.

a. General. If the Contractor is a subrecipient of federal awards as defined by 2 CFR Part 200 and this Agreement, the Contractor shall:

(1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Assistance Listing Numbers (ALN) title and number, award number and year, name of the federal agency, and name of the pass-through entity;

(2) Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;

(3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;

(4) Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;

(5) Comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget (OMB) Circular or regulation; and

(6) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination

Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to https://ojp.gov/about/offices/ocr.htm for additional information and access to the aforementioned Federal laws and regulations.)

b. Single Audit Act Compliance. If the Contractor is a subrecipient and expends $1,000,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:

(1) Submit to the DSHS contact person the data collection form and reporting package specified in 2 CFR Part 200, Subpart F, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;

(2) Follow-up and develop corrective action for all audit findings; in accordance with 2 CFR Part 200, Subpart F; prepare a "Summary Schedule of Prior Audit Findings" reporting the status of all audit findings included in the prior audit's schedule of findings and questioned costs.

c. Overpayments. If it is determined by DSHS, or during the course of a required audit, that the Contractor has been paid unallowable costs under this or any Program Agreement, DSHS may require the Contractor to reimburse DSHS in accordance with 2 CFR Part 200.

23. Termination.

a. Default. If for any cause, either party fails to fulfill its obligations under this Agreement in a timely and proper manner, or if either party violates any of the terms and conditions contained in this Agreement, then the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given 15 working days to correct the violation or failure. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice from the aggrieved party to the other party.

b. Convenience. Either party may terminate this Interlocal Agreement for any other reason by providing 30 calendar days' written notice to the other party.

c. Payment for Performance. If this Interlocal Agreement is terminated for any reason, DSHS shall only pay for performance rendered or costs incurred in accordance with the terms of this Agreement and prior to the effective date of termination.

24. Treatment of Client Property. Unless otherwise provided, the Contractor shall ensure that any adult client receiving services from the Contractor has unrestricted access to the client's personal property. The Contractor shall not interfere with any adult client's ownership, possession, or use of the client's property. The Contractor shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination of the Contract, the Contractor shall immediately release to the client and/or the client's guardian or custodian all of the client's personal property.

Special Terms and Conditions

1. **Definitions Specific to Special Terms**. The words and phrases listed below, as used in this Contract, shall each have the following definitions:

   a. "Assistance" means help provided to a Client for the purpose of aiding him/her in the performance of tasks.

   b. "Authorized" means DDA Case Resource Manager, or Social Worker approval of funding for services as evidenced by a social service authorization in ProviderOne.

   c. "Case Resource Manager (CRM)" means the DSHS or DDA worker assigned to a Client.

   d. "Client" means an individual whom DSHS has determined eligible to receive DDA services.

   e. "Culturally Appropriate" means responsive to a Client's cultural beliefs and values, ethnic norms, language needs, religion, and individual differences.

   f. "DDA" means the Developmental Disabilities Administration within DSHS.

   g. "Family" means a parent, child, sibling, aunt, uncle, cousin, grandparent, grandchild, grandniece, or grandnephew, including such relatives when related through adoption or marriage or registered domestic partnership.

   h. "Nurse Delegation" means:

      (1) Services in compliance with WAC 246-840-910 through 246-840-970 by a registered nurse to provide training and nursing management for nursing assistants who perform delegated nursing tasks.

      (2) Delegated nursing tasks include, but are not limited to, administration of non-injectable medications, except for insulin, blood glucose testing, and tube feedings.

      (3) Services include the initial visit, care planning, competency testing of the nursing assistant, consent of the Client, additional instruction, and supervisory visits.

      (4) Clients who receive nurse delegation services must be considered "stable and predictable" by the delegated nurse.

   i. "Personal care services" means those specific services under WAC 388-106 provided to DSHS Clients.

   j. "Physical Assistance" means the provision of hands-on assistance for any task necessary.

   k. "Positive Behavior Support Plan" means a written plan developed to implement strategies to relate to others and direct interventions to decrease challenging behaviors.

   l. "Positive Behavior Support Principles" means addressing a challenging behavior that focuses on changing the physical and interpersonal environment and increasing a person's skills so that the person is able to get their needs met without having to resort to a challenging behavior.

   m. "Primary Caregiver(s)" or "Caregiver" means the person who provides the majority of your care and supervision.

   n. "Protective Supervision" means supervision to ensure the safety and well-being of a Client, exclusive of those responsibilities that should be assumed by a legal representative.

o. “Respite Care” means short-term, intermittent relief for persons who live with and provide care for individuals with developmental and intellectual disabilities on either an emergency or a planned basis.

p. “Service Plan” means the Person-Centered Service Plan or Individual Support Plan, which is a written plan for long-term care service delivery, which identifies ways to meet the Client’s needs with the most appropriate services or supports as, described under chapter WAC 388-828.

q. “Transportation Services” means the process of transporting and accompanying a Client from one location to another in accordance with the client’s needs.

r. “Unsupervised access” means:

(1) An individual will or may have the opportunity to be alone with a child, juvenile, or a vulnerable adult; and

(2) Neither a qualified employee, contract employee, volunteer, nor student intern of the agency, or entity nor a relative or guardian of the child, juvenile or vulnerable adult is present.

2. **Purpose**. The purpose of this Contract is to provide short-term intermittent respite care in order to provide relief for primary caregivers as described under chapter 388-845 WAC. Respite Care can be provided in Community Centers, Senior Centers, Parks and Recreation Departments, and Summer Programs.

3. **Licenses, Registrations, and Certifications.**

a. The Contractor is required to follow all laws, rules, and policies applicable to their license, registration, and/or certification.

b. The Contractor shall meet the training requirements associated with their license, registration, and/or certification.

c. When licensing, certification, and contract requirements differ, the Contractor shall meet the highest standard.

d. In the event that any required license of the Contractor is revoked or expired, this Contract shall be suspended, without the necessity of written notice by DSHS, as of the effective date of revocation or the actual date of expiration. In the case of license revocation, this Contract shall then be terminated in accordance with the terms of this Contract, and such termination shall be effective on the effective date of the license revocation.

e. The provision of Respite Care services cannot result in the licensed provider exceeding their licensed capacity.

4. **General Requirements.**

a. DSHS shall request services from the Contractor on an as needed basis. This Contract does not obligate DSHS to authorize services to the Contractor.

b. Respite Care provided under the terms of this Contract must be pre-approved in writing by DSHS in accordance with the Client’s Service Plan, and shall be provided in a manner that is culturally appropriate for the Client and the Client's family.

c. All services shall be provided in a manner consistent with the published rules and policies of DSHS and within the scope of acceptable practice as determined by DSHS.

d. The Contractor must emphasize Positive Behavior Support Principles in the provision of all services to Clients. Positive Behavior Support is based on respect, dignity, and personal choice.

5. **Contractor Qualifications.** The Contractor must:

a. Be licensed by the State of Washington as a business under chapter 19.02 RCW and shall meet or exceed the minimum licensing requirements under chapter 458-02 WAC.

b. Contractors shall hold all appropriate endorsements, licenses and certifications in addition to Washington State Business license as applicable to their business operation.

c. Contractors outside of Washington State must maintain equivalent licensure or certification requirements as paragraph a. and b. above according to their states' requirements for business operation.

d. Publish on a publically accessible website the services offered by the contractor and make publically accessible the services offered by the contractor. The contractor's website must include:

(1) The identified number of service hours being provided in the program/class/event including days/date and start and end time;

(2) Activities that will occur during program/class/event; and

(3) The rate schedule for the program/class/event.

e. The Contractor shall ensure that they or their employees possess the following minimum qualifications:

(1) Meet minimum age requirements as required by license, certification or rule;

(2) Possess the following minimum standards of knowledge and experience:

(a) General knowledge of acceptable standards of performance, including the necessity to perform dependably, report punctually, maintain flexibility, and to demonstrate kindness and caring to the Client;

(b) Knowledge of when and how to contact the Client's legal representative and the Client's CRM;

(c) Adequate skills to read, either directly or through an interpreter, understand, and implement the services authorized in the plan;

(d) Adequate communication skills to convey and understand, either directly or through an interpreter, information required to implement the Client's written Service Plan(s) and verbal instructions; and

(e) Adequate skills to maintain provider records of services performed and payments received.

f. The Contractor shall ensure that employees and volunteers:

(1) Understand specific directions for providing the care that an individual Client requires;

(2) Meet the need of the client as identified in the Service Plan;

(3) Provide services within the scope of practice for their profession/skill level;

(4) Observe the Client for change in health status, including weakness, confusion, and loss of appetite;

(5) Identify problem situations and take appropriate action;

(6) Respond to emergencies without direct supervision; and

(7) Respect and consider the Client's individual differences and preferences when performing routine tasks in a culturally appropriate manner, as described in the DDA Guiding Values.

g. The Contractor shall cooperate with DSHS in the evaluation of the Contractor's performance under the terms of this Contract including the following:

(1) Follow-up contact with Clients, their families, legal representatives or primary caregivers regarding their satisfaction with the services provided;

(2) Investigation and documentation of all complaints about the service provided; and

(3) Periodic monitoring of service documentation records, verification of provider qualifications, and of billing and payment data in ProviderOne.

6. **Statement of Work**. The Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

a. Obtain information about the Client's identified needs and care requirements, and ensure that the Client's needs are met while providing services. This includes following the guidance of any written plans for Client support such as the Service Plan, Nurse Delegation assessment or Positive Behavior Support Plan.

b. Contact the Client's CRM if the Contractor has not heard from the Client or the Client's primary caregiver within seven (7) days of the Contractor's receipt of the service authorization.

c. Make arrangements with the primary caregiver for emergency medical treatment should this become a necessity.

d. Deliver Respite Care in a manner consistent with WAC 388-845-1600 through 1620 and DDA Policies. See **Exhibit A, DDA Policies & Agreements.**

e. Provide all support needs as identified in the Service Plan including personal care, physical assistance, support and protective supervision to the Client in daily routine activities and to prevent injury to him or herself and to others.

f. Maintain transportation records to document the dates, times, destinations, and distances of each Client's transportation services. Upon request, the Contractor shall make the records available to DSHS or DSHS/designee for review and audit.

g. Maintain sufficient vehicle and passenger insurance coverage and current driver's license in accordance with chapter 308-104 and 308-106 WAC.

h. Operate and maintain the transportation vehicle(s) in a manner consistent with protecting and promoting the Client's health and welfare.

i. Contractor shall not require client, client's guardian and/or client's legal representative to enter into any agreement releasing or limiting Contractor's legal liability for injuries arising out of premises operation, acts of independent contractors, products completion, or personal injuries sustained due to contractor's negligence in connection with providing services under this contract unless contractor, at the same time, requires client, client's guardian and/or client's legal representative to release the State of Washington and all of its agencies, agents, contractors, servants and employees from liability for any acts of contractor causing injuries arising out of premises operation, acts of independent contractors, products completion, or personal injuries sustained due to contractor's negligence in connection with providing services under this Contract.

7. **Parks and Recreation Department**. Parks and Recreation Department contractors are required to comply with the following additional terms:

a. Parks and Recreation Departments are city, county or other publically operated parks and recreation department for the purpose of providing leisure time activities and facilities and recreational facilities, of a nonprofit nature as a public service as defined under RCW 36.69.010.

b. Meet the definition of a park and recreation district under RCW 36.68 and RCW 36.69.

c. Obtain all required licenses, permits or certifications applicable to the program operated by the Parks and Recreation Department.

8. **Additional Client Rights:**

a. In compliance with Title VI of the Civil Rights Act of 1964, and under RCW 2.42.010, RCW 2.43.010, and RCW 49.60.010, the Contractor shall ensure that Limited English Proficient (LEP) Clients have access to a certified, or, if non-certifiable language, to an otherwise qualified language interpreter, who has successfully passed the DSHS language test. The Contractor shall also ensure that DSHS Clients have access to documents translated into the Client's primary language. To request a qualified interpreter, you must register at https://hcauniversal.com/new-req1.a.uester-registration/ or email scheduling@ulsonline.net. For additional information, visit their Provider FAQs page.

b. In compliance with the Americans with Disabilities Act (ADA) of 1990, under RCW 2.42.010 and RCW 49.60.010, the Contractor shall ensure that deaf, deaf-blind, or hard of hearing Clients have access to the services of an interpreter certified by the National Association of the Deaf (NAD) as a Sign Language Interpreter, or a qualified interpreter having a Registry of Interpreters for the Deaf (RID).

9. **Duty to Report Suspected Abuse, Abandonment, Neglect or Financial Exploitation.** The Contractor and its employees must immediately report all instances of suspected abandonment, abuse, financial exploitation or neglect of a vulnerable adult under RCW 74.34.035 or a child under RCW 26.44.030.The report shall be made to the Department's current state abuse hotline, 1-866-363-4276 (END-HARM). The Contractor must also report all suspected instances to the Client's case manager. If

the notice to the Client's case manager was verbal then it must be followed up by written notification within one business day. Further, when required by RCW 74.34.035, the Contractor and the Contractor's employees must immediately make a report to the appropriate law enforcement agency.

10. **Significant Change in Client's Condition.** The Contractor agrees to report any significant change in the Client's condition within twenty-four (24) hours to the Client's Case Manager.

11. **Death of Clients.** The Contractor shall report all deaths of DSHS Clients receiving services under this Contract to the Client's case manager within one hour upon notification of the death. The Contractor shall follow up with written notification of the Client's death to the Client's case manager within one business day.

12. **Provider Screenings.**

    a. The State must ensure the Department does not pay federal funds to excluded persons or entities. States are also required to check for the death of an individual provider, agency owner or authorized official prior to contracting. The required ownership and control information for individuals with ownership interest of five percent (5%) or more, officers and managing employees will be obtained from the Medicaid Provider Disclosure Statement and checked against all required federal exclusion lists, and the Social Security Death Master List, prior to finalizing a contract.

    b. The Contractor will report any change in ownership, managing employees, and/or those with a controlling interest to the Department within thirty-five (35) days of such a change so that these individuals can be screened against the required federal exclusion lists as well as the Social Security Death Master List. For detailed instructions, please refer to the Medicaid Provider Disclosure Statement.

13. **Duty to Disclose Business Transactions.**

    a. Under 42 CFR 455.104, the Contractor is required to provide disclosures from individuals with ownership interest, managing employees, and those with a controlling interest. The State must obtain certain disclosures from providers and complete screenings to ensure the State does not pay federal funds to excluded person or entities. Contractor must complete and submit a Medicaid Provider Disclosure Statement, DSHS Form 27-094. According to 42 CFR 455.104(c) (1), disclosures must be provided:

        (1) When the prospective Contractor submits their initial application;

        (2) When the prospective Contractor signs the contract;

        (3) Upon request of the Department at contract revalidation/renewal;

        (4) Within thirty-five (35) days after any change in ownership of the Contractor entity.

    b. Failure to submit the requested information may cause the Department to refuse to enter into an agreement or contract with the Contractor or to terminate existing agreements. The State will recover any payments made to a disclosing entity that fails to disclose ownership or control information, as required by 42 CFR 455.104.

    c. Under 42 CFR 455.105(b), within thirty-five (35) days of the date of a request by the Secretary of the U.S. Department of Health and Human Services or DSHS, the Contractor must submit full and complete information related to Contractor's business transactions that include:

(1) The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than $25,000 during the twelve (12) month period ending on the date of the request; and

(2) Any significant business transactions between the Contractor and any wholly owned supplier, or between the Contractor and any subcontractor, during the five (5) year period ending on the date of the request.

d. Failure to comply with requests made under this term may result in denial of payments until the requested information is disclosed. See 42 CFR 455.105(c).

14. **Background Check.** The signatory for this contract agrees to undergo and successfully complete a DSHS criminal history background check conducted by DSHS every three years or more often as required by program rule or as otherwise stated in the contract, and as required under RCW 43.20A.710, RCW 43.43.830 through 43.43.842. If the Contractor has owners, administrators, subcontractors, employees or volunteers who may have unsupervised access to Clients in the course of performing the work under this Contract, the Contractor shall require those owners, administrators, subcontractors, employees or volunteers to successfully complete a criminal history background check prior to any unsupervised access and at least every three years thereafter or more often if required by program rule or as otherwise stated in the contract. The Contractor must maintain documentation of successful completion of required background checks.

15. **False Claims Act Education Compliance.** Federal law requires any entity receiving annual Medicaid payments of five (5) million or more to provide education regarding federal and state false claims laws for all of its employees, contractors and/or agents. If Contractor receives at least five (5) million or more in annual Medicaid payments under one or more provider identification number(s), the Contractor is required to establish and adopt written policies for all employees, including management, and any contractor or agent of the entity, including detailed information about both the federal and state False Claims Acts and other applicable provisions of Section 1902(a)(68) of the Social Security Act. The law requires the following:

Contractor must establish written policies to include detailed information about the False Claims Act, including references to the Washington State False Claims Act;

a. Policies regarding the handling and protection of whistleblowers;

b. Policies and procedures for detecting and preventing fraud, waste, and abuse;

c. Policies and procedures must be included in an existing employee handbook or policy manual, but there is no requirement to create an employee handbook if none already exists.

16. **Bribes and Kickbacks.** Federal law stipulates that Medicaid participants be offered free choice among qualified providers, therefore any exclusive relationship between the Contractor and any other Medicaid service is prohibited.

17. **State or Federal Audit Requests.** The Contractor is required to respond to State or Federal audit requests for records or documentation, within the timeframe provided by the requestor. The Contractor must provide all records requested to either State or Federal agency staff or their designees.

18. **Drug-Free Workplace.** The Contractor agrees he or she and all employees or volunteers shall not use or be under the influence of alcohol, marijuana, illegal drugs, and/or any substances that impact the Contractor's ability to perform duties under this Contract.

Special Terms and Conditions

19. Execution and Waiver. This Contract shall be binding on DSHS only upon signature by DSHS with an Authorized Countersignature. Only the Contracting Officer or the Contracting Officer's designee has authority to waive any provision of this Contract on behalf of DSHS.

20. Consideration. Total consideration payable to Contractor for satisfactory performance of the work under this Contract shall be based on the following:

a. DSHS shall pay the Contractor at the published rate, for services provided under this contract. The Contractor hereby waives written notice of subsequent rate changes. Subsequent rate changes will not require a revised Contract and are not disputable. Current rates are published at: https://www.dshs.wa.gov/altsa/management-services-division/office-rates-management.

b. DSHS will only reimburse the Contractor for the number of hours authorized and provided per client. DSHS will pay the contractor at an established rate in 15-minute intervals. The Contractor will be reimbursed up to the Contractor's published rate for services provided unless that rate exceeds the equivalent of 15 minute intervals of service the client received.

c. Transportation services must be written in the client's Service Plan. Mileage shall be paid at current State of Washington rates, as published by the Office of Financial Management, for miles driven while transporting one Client to a waiver service. Transportation is to and from the respite service and must be provided in accordance with WAC chapter 388-845.

d. Transportation as a component of the Respite in Community Settings service must be included in the total published rate.

e. Administrative functions, such as record keeping, travel to work site, billing, and report development are not billable as separate services but are included in the established rate schedule

f. DSHS shall not pay the Contractor separately for the cost of other expenses such as equipment rental, meals and snacks for all day activities this must be rolled into the cost of the service.

21. Billing and Payment.

a. The Contractor shall bill for authorized services using the ProviderOne Payment system, which is the state of Washington's Medicaid management system.

b. Billing instructions are located at https://www.hca.wa.gov/billers-providers-partners/providerone/providerone-billing-and-resource-guide

c. The Contractor agrees to accept this payment as total and complete remuneration for services provided under this Contract to DSHS Clients. DSHS clients cannot be billed fees beyond the hourly contracted rate for the service Respite in Community Settings.

d. DSHS shall not pay the Contractor for cancelled or missed appointments, nor for scheduled hours of service when Clients are not seen or served by the Contractor.

e. Only DSHS shall have the authority to authorize services under this Contract.

f. Respite care is a service authorized in 15 minute increments. DSHS shall not pay for more respite units than is received by the client. Client can pay for services provided that exceed waiver allotment as long as it does not surpass the contracted rate.

g. DSHS shall only reimburse or pay for services which are authorized and within the scope of respite services.

h. The contractor shall provide invoices or documentation of the dates of service, duration of time and total cost prior to service being provided. The CRM will create an authorization in CARE in “reviewing” status. After confirmation that the service is completed appropriately, the CRM will change the status of the authorization to “approved” which will allow the authorization to be claimed.

i. The contractor shall provide invoices after service provided, as requested by DSHS

j. If DSHS pays the Contractor for services authorized but not provided by the Contractor, the amount paid shall be considered an overpayment.

k. If this Contract is terminated for any reason, DSHS shall pay for only those services authorized and provided through the date of termination.

l. Payment shall be considered timely if made by DSHS within thirty (30) days Payment shall be sent to the address designated by Contractor. DSHS may, at its discretion, terminate the Contract or withhold payments claimed by Contractor for services rendered if Contractor fails to satisfactorily comply with any term or condition of this Contract.

22. Insurance.

a. DSHS certifies that it is self-insured under the State’s self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which it is found liable.

b. The Contractor certifies, by checking the appropriate box below, initialing to the left of the box selected, and signing this Agreement, that:

________ ☐ The Contractor is self-insured or insured through a risk pool and shall pay for losses for which it is found liable; or

________ ☐ The Contractor maintains the types and amounts of insurance identified below and shall, prior to the execution of this Agreement by DSHS, provide certificates of insurance to that effect to the DSHS contact on page one of this Agreement.

<u>Commercial General Liability Insurance (CGL)</u> – to include coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - $2,000,000; General Aggregate - $4,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds.

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Exhibit A

DDA Policies & Agreements

Policies

The following DDA Policies are hereby incorporated as Contractor Requirements.

5.06	Client Rights
5.13	Protection from Abuse: Mandatory Reporting
5.14	Positive Behavior Support Principles
5.19	Positive Behavior Support for Children & Youth
6.15	Nurse Delegation Services

Policies can be located at **https://www.dshs.wa.gov/dda/policies-and-rules/policy-manual.** In the event DSHS updates or changes these policies, the revised policy/policies will be incorporated into this Contract without the requirement of an amendment.

DDA Guiding Values:

The DDA Guiding Values can be located at:
https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/DDA%20Guiding%20Values%20Booklet.pdf

Disability Rights of Washington (DRW) Agreement:

The following access agreement is regarding "Disability Rights of Washington (DRW) rights and responsibilities. The agreement can be located at:
https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/WPAS.pdf.

**Note: WPAS has changed its name to "Disability Rights of Washington (DRW)" and DDD has changed its name to "Developmental Disabilities Administration (DDA)*