



**City Council  
Regular Meeting  
May 18, 2026 - 7:00 PM  
City Hall Council Chambers**

**AMENDED**

**AGENDA**

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## **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, May 18, 2026, at 7:00 p.m. will be held in person and virtually.

Virtual Participation Link:

To view the meeting virtually please click the below link, or call into the meeting at the phone number listed below. The link to the Virtual Meeting is:

<https://www.youtube.com/user/watchauburn/live/?nomobile=1>

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

Telephone: 253 215 8782

Toll Free: 877 853 5257

Zoom: <https://us06web.zoom.us/j/88534309939>

## **PLEDGE OF ALLEGIANCE**

## **ROLL CALL**

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

- A. National Public Works Week  
Mayor Backus to proclaim May 17 through May 23, 2026, as "National Public Works Week" in the City of Auburn

## **AGENDA MODIFICATIONS**

## **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](mailto: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](mailto: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 April 27, 2026, Study Session Meeting
- B. Minutes from the May 4, 2026, City Council Meeting
- C. Setting the date for a Public Hearing for Lake Meridian Water District Franchise
- D. Claims Voucher (Thomas)  
Claims voucher dated April 23, 2026, which includes voucher number 483525 in the amount of \$511,931.95
- E. Claims Vouchers (Thomas)  
Claims voucher list dated May 6, 2026, which includes voucher numbers 483526 through voucher 483665, in the amount of \$5,380,938.04, twenty-three electronic fund transfers in the amount of \$5,608.09, and five wire transfers in the amount of \$1,141,862.68
- F. Payroll Vouchers (Thomas)  
Payroll check numbers 539821 through 539828 in the amount of \$87,967.59, electronic deposit transmissions in the amount of \$3,079,051.26, a special payroll for a time card correction, electronic deposit transmission in the amount of \$2,427.36, for a grand total of \$3,169,446.21 for the period covering April 30, 2026, to May 13, 2026

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

### **UNFINISHED BUSINESS**

## NEW BUSINESS

### RESOLUTIONS

- A. Resolution No. 5897 (Whalen/Krueger)  
A Resolution authorizing the Mayor to execute an updated Interlocal Agreement with King County to accept funds in the amount of \$2,121,000 to purchase the Soos Creek Botanical Garden Property

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5897.)**

- B. Resolution No. 5900 (Whalen/Krueger)  
A Resolution authorizing the Mayor to execute on behalf of the City, a Purchase and Sale Agreement with Maurice Skagen for real property commonly known as the Soos Creek Botanical Garden and Heritage Center

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5900.)**

- C. Resolution No. 5901 (Whalen/Krueger)  
A Resolution authorizing the Mayor to execute on behalf of the City, an Operating Agreement for Services with the Soos Creek Botanical Garden Foundation for continued operations, improvement and maintenance of the Soos Creek Botanical Garden and Heritage Center

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5901.)**

- D. Resolution No. 5907 (Whalen)  
A Resolution authorizing the Mayor to execute on behalf of the City, a Lease Termination and Surrender Agreement with Classic Helicopter Corp

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5907.)**

- E. Resolution No. 5908 (Whalen/Krueger)  
A Resolution authorizing the Mayor to execute on behalf of the City, a Purchase and Sale Agreement with the Soos Creek Botanical Garden Foundation for the acquisition of real property used for the Soos Creek Botanical Garden and Heritage Center

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5908.)**

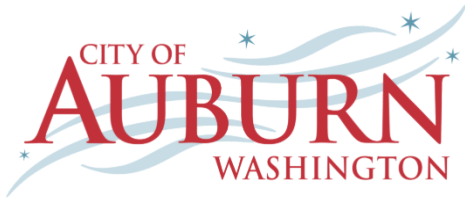
### MAYOR AND COUNCILMEMBER REPORTS

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**

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**Agenda Subject:**

Minutes from the April 27, 2026, Study Session Meeting

**Meeting Date:**

May 18, 2026

**Department:**

City Council

**Attachments:**

04-27-2026 Minutes

**Budget Impact:**

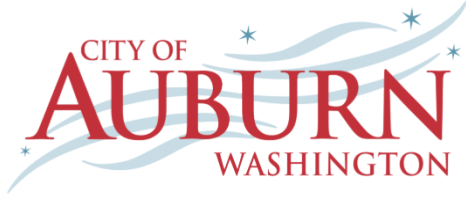
**Administrative Recommendation:**

**Background for Motion:**

**Background Summary:**

**Councilmember:**

**Staff:**



**City Council  
Study Session  
Community Wellness SFA  
April 27, 2026 - 5:30 PM  
City Hall Council Chambers**

**MINUTES**

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**CALL TO ORDER**

Deputy Mayor Tracy Taylor 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 Tracy Taylor, Hanan Amer, Kate Baldwin, Brian Lott, Cheryl Rakes, and Clinton Taylor. Councilmember Lisa Stirgus appeared virtually via Zoom 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 Public Works Ingrid Gaub, Assistant Director of Public Works Jacob Sweeting, Director of Parks, Arts, and Recreation Julie Krueger, Arts Program Supervisor Allison Hyde, Director of Finance Jamie Thomas, Parks Resource Navigation Program Coordinator Min Feng, Resource Navigation Program Office Assistant Lindsey Pritchard, Senior Center Manager Radine Lozier, and Deputy City Clerk Rebecca Wood-Pollock.

**AGENDA MODIFICATIONS**

An Executive Session was added to the agenda.

**ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS**

There were no announcements, reports, or presentations.

**COMMUNITY WELLNESS DISCUSSION ITEMS**

- A. Auburn Senior Activity Center Resource Navigation Program (Krueger) (20 Minutes)

Director Krueger introduced Min Feng, Lindsey Pritchard, and Radine Lozier with the Auburn Senior Resource Center who provided Council with a presentation on the Auburn Senior Activity Center Resource Navigation Program, including an overview of the Veterans, Seniors, & Human Services Levy (VSHSL) and its services provided to the community, funds received, the referrals process, the role of Resource Navigators, common resources, program impact, 2025 program highlights, and the levy funding process. Council discussed the importance of resources made available to senior citizens, the Better Age pilot program, future funding, outreach to different populations, returning clients, cost for clients, and thanked staff for their work.

B. Public Art for Centennial Viewpoint Park (Krueger) (20 Minutes)

Director Krueger introduced Arts Program Supervisor Allison Hyde who provided Council with a presentation on the Public Art for Centennial Viewpoint Park, including the history of the artwork site and Centennial Park, and the City's process and timeline for selecting new artwork. She introduced artists Sharon Warman Agnor and Ben Dye, who created the design and discussed details about the project, including location, materials, concept, and sculptural elements. Council discussed the materials, weathering, and expressed support for the project.

## **AGENDA ITEMS FOR COUNCIL DISCUSSION**

A. Ordinance No. 7022 (Thomas) (5 Minutes)

An Ordinance relating to housekeeping amendments for recently adopted tax ordinances, and amending Section 3.53.020 and Chapter 3.62 of the Auburn City Code

Director Thomas presented Council with a presentation on Ordinance No. 7022, including clerical and housekeeping amendments.

B. 4th Quarter 2025 Financial Report (Thomas) (30 Minutes)

Director Thomas provided Council with a presentation on the 4th Quarter 2025 Financial Report, including a General Fund revenue overview, taxes, licenses and permits, intergovernmental revenues, charges for services, and other revenues. She also provided an overview of General Fund expenditures, an ARPA update, and Non-General Fund highlights for capital leads and enterprise funds.

## **COUNCIL REPORTS**

Deputy Mayor T. Taylor, Councilmember Baldwin, Councilmember C. Taylor, and Councilmember Stirgus provided reports.

## **EXECUTIVE SESSION**

Deputy Mayor T. Taylor adjourned into an Executive Session per RCW 42.30.110(1)(i) to discuss with legal counsel representing the agency litigation or potential litigation to which the agency is or likely to become a party, when public knowledge regarding the discussion is likely to result in adverse legal or financial consequence to the agency for 20 minutes at 6:54 p.m. Councilmembers, Mayor Backus, City Attorney Whalen, Director Gaub, and Assistant Director Sweeting were required to attend, there was no action following the Executive Session.

Deputy Mayor T. Taylor extended the Executive Session for 20 minutes at 7:15 p.m.

Deputy Mayor T. Taylor extended the Executive Session for 10 minutes at 7:33 p.m.

Deputy Mayor T. Taylor extended the Executive Session for 10 minutes at 7:44 p.m.

Deputy Mayor T. Taylor extended the Executive Session for 5 minutes at 7:55 p.m.

Deputy Mayor T. Taylor extended the Executive Session for 5 minutes at 8:00 p.m.

Deputy Mayor T. Taylor extended the Executive Session by 5 minutes at 8:05 p.m.

Deputy Mayor T. Taylor reconvened the meeting at 8:10 p.m.

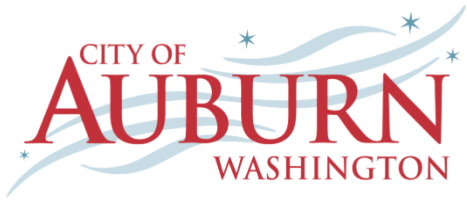
## **ADJOURNMENT**

There being no further business to come before the Council, the meeting was adjourned at 8:57 p.m.

APPROVED this 18th day of May 2026.

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TRACY TAYLOR, DEPUTY MAYOR

\_\_\_\_\_  
Rebecca Wood-Pollock, Deputy City Clerk



**AGENDA BILL APPROVAL FORM**

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**Agenda Subject:**

Minutes from the May 4, 2026, City Council Meeting

**Meeting Date:**

May 18, 2026

**Department:**

City Council

**Attachments:**

05-04-2026 Minutes

**Budget Impact:**

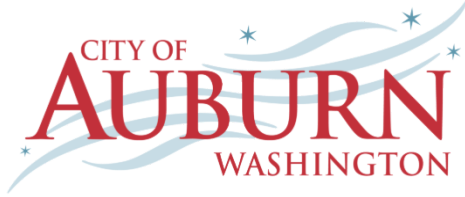
**Administrative Recommendation:**

**Background for Motion:**

**Background Summary:**

**Councilmember:**

**Staff:**



**City Council  
Regular Meeting  
May 4, 2026 - 7:00 PM  
City Hall Council Chambers**

**MINUTES**

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**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 Tracy Taylor, Hanan Amer, Kate Baldwin, Brian Lott, Lisa Stirgus, and Clinton Taylor. Councilmember Cheryl Rakes was excused.

Mayor Nancy Backus and the following staff members present included: City Attorney Jason Whalen, Chief of Police Mark Caillier, Director of Public Works Ingrid Gaub, Director of Parks, Arts, and Recreation Julie Krueger, Director of Finance Jamie Thomas, and City Clerk Shawn Campbell.

**ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS**

A. Older Americans Month

Mayor Backus proclaimed May 2026, as "Older Americans Month" in the City of Auburn.

Director Krueger thanked the Mayor and Council for recognizing Older

Americans Month.

B. Jewish American Heritage Month

Mayor Backus proclaimed May 2026, as "Jewish American Heritage Month" in the City of Auburn.

C. Asian American, Native Hawaiian, and Pacific Islander Heritage Month

Mayor Backus proclaimed May 2026, as "Asian American, Native Hawaiian, and Pacific Islander Heritage Month" in the City of Auburn.

Government Relations & Policy Advisor Utemei thanked the Mayor and Council for recognizing Asian American, Native Hawaiian, and Pacific Islander Heritage Month.

D. Municipal Clerks Week

Mayor Backus proclaimed May 3 through May 9, 2026, as "Municipal Clerks Week" in the City of Auburn.

City Clerk Campbell thanked the Mayor and Council for recognizing Municipal Clerk's Week.

E. National Police Week

Mayor Backus proclaimed May 10 through May 16, 2026, as "National Police Week" in the City of Auburn.

Chief Caillier thanked the Mayor and Council for recognizing National Police Week.

F. Childhood Apraxia of Speech Day

Mayor Backus proclaimed May 14, 2026, as "Childhood Apraxia of Speech Day" in the City of Auburn.

Michelle Heetje and Avery thanked the Mayor and Council for recognizing Childhood Apraxia of Speech Day.

G. National Peace Officers Memorial Day

Mayor Backus proclaimed May 15, 2026, as "National Peace Officers Memorial Day" in the City of Auburn.

H. Affordable Housing Week

Mayor Backus proclaimed May 18 through May 22, 2026, as "Affordable Housing Week" in the City of Auburn.

I. Senator Kauffman Legislative Updates (Mayor)

Senator Kauffman provided Council with a Washington State Legislative Session update.

Mayor Backus thanked Senator Kauffman for her willingness to work for the City.

### **AGENDA MODIFICATIONS**

There were no modifications to the agenda.

### **PUBLIC COMMENT**

Shirley Chittenden and Rocky Salvador provided comments.

### **CORRESPONDENCE**

There was no correspondence for Council to review.

### **CONSENT AGENDA**

- A. Minutes from the April 13, 2026, Special City Council Meeting
- B. Minutes from the April 13, 2026, Study Session Meeting
- C. Minutes from the April 20, 2026, City Council Meeting
- D. Claims Vouchers (Thomas)  
Claims voucher list dated April 22, 2026, which includes voucher numbers 483383 through voucher 483419, voucher numbers 483421 through 483524 in the amount of \$3,303,320.44, twelve electronic fund transfers in the amount of \$19,254.20, and three wire transfers in the amount of \$529,313.93
- E. Claims Vouchers (Thomas)  
Claims voucher dated April 22, 2026, which includes voucher number 483420 in the amount of \$13,474.49
- F. Payroll Vouchers (Thomas)  
Payroll check numbers 539815 through 539820 in the amount of \$829,745.29, electronic deposit transmissions in the amount of \$2,858,142.20, for a grand total of \$3,687,887.49 for the period covering April 9, 2026, to April 29, 2026

Deputy Mayor T. Taylor moved and Councilmember Amer 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**

- A. Ordinance No. 7022 (Thomas)  
An Ordinance relating to housekeeping amendments for recently adopted Tax Ordinances, and amending Section 3.53.020 and Chapter 3.62 of the Auburn City Code

Councilmember Amer moved and Councilmember Stirgus seconded to approve Ordinance No. 7022.

MOTION CARRIED UNANIMOUSLY. 6-0

## **RESOLUTIONS**

- A. Resolution No. 5904 (Krueger)  
A Resolution authorizing the Mayor to approve the conceptual design, fabricate, and install a public art piece into Centennial Viewpoint Park

Councilmember C. Taylor moved and Councilmember Baldwin seconded to adopt Resolution No. 5904.

MOTION CARRIED UNANIMOUSLY. 6-0

- B. Resolution No. 5905 (Thomas)  
A Resolution authorizing the Mayor to execute an agreement between the City of Auburn and King County to implement the 2026-2027 Local Hazardous Waste Management Program and to accept and expend program grant funds

Councilmember Amer moved and Councilmember Taylor seconded to adopt Resolution No. 5905.

MOTION CARRIED UNANIMOUSLY. 6-0

- C. Resolution No. 5906 (Thomas)  
A Resolution authorizing the Mayor to execute an agreement between the City of Auburn and King County to implement the 2026-2027 Waste Reduction and Recycling Grant Program and to accept and expend program grant funds

Councilmember Stirgus moved and Councilmember Baldwin seconded to adopt Resolution No. 5906.

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 provided a report on the events she attended.

## **ADJOURNMENT**

There being no further business to come before the Council, the meeting was adjourned at 8:02 p.m.

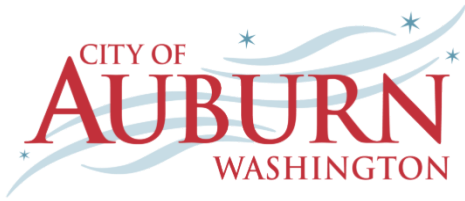
APPROVED this 18th day of May 2026.

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NANCY BACKUS, MAYOR

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Shawn Campbell, City Clerk



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Setting the date for a Public Hearing for Lake Meridian Water District Franchise

**Meeting Date:**

May 18, 2026

**Department:**

Public Works

**Attachments:**

None

**Budget Impact:****Administrative Recommendation:**

City Council to set the date of the Public Hearing for Franchise Agreement No. FRN25-0003 for Lake Meridian Water District for a Water Franchise as June 1, 2026, at 7:00 pm.

**Background for Motion:****Background Summary:**

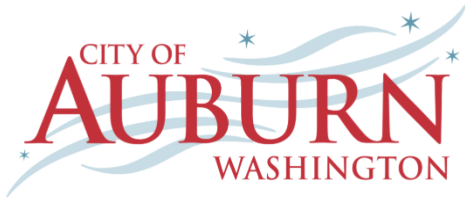
Section 20.04.040 of the Auburn City Code requires the City to hold a Public Hearing before granting or denying a Franchise Agreement. Staff requests that the City Council set the date of the Public Hearing for the proposed Franchise Agreement No. FRN25-0003 for Lake Meridian Water District for a Water Franchise as June 1, 2026, at 7:00 pm.

Section 20.02.040 of the Auburn City Code requires a franchise for any utility or telecommunications carrier or operator to use public ways of the City and to provide service to persons or areas inside or outside of the City.

Lake Meridian Water District has applied for a new Franchise Agreement to continue to operate their existing water facilities in the public ways within the Auburn City limits. The facilities currently provide potable water service for human consumption or other domestic use, including residential, commercial and wholesale use, and fire suppression purposes within the portion of Lake Meridian's water service boundary area that is within the Auburn City limits. The proposed agreement is consistent with the City's standard Franchise Agreement language.

**Councilmember:** Tracy Taylor

**Staff:** Ingrid Gaub



**AGENDA BILL APPROVAL FORM**

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**Agenda Subject:**

Claims Voucher (Thomas)  
Claims voucher dated April 23, 2026, which includes voucher number 483525 in the amount of \$511,931.95

**Meeting Date:**

May 18, 2026

**Department:**

Finance

**Attachments:**

None

**Budget Impact:**

**Administrative Recommendation:**

City Council to approve Claims Vouchers.

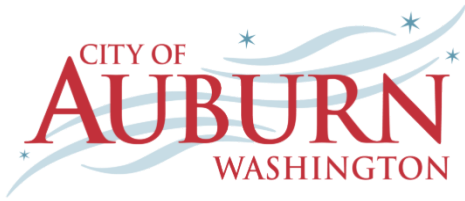
**Background for Motion:**

**Background Summary:**

Claims voucher dated April 23, 2026, which includes voucher number 483525 in the amount of \$511,931.95.

**Councilmember:** Hanan Amer

**Staff:** Jamie Thomas



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Claims Vouchers (Thomas)  
Claims voucher list dated May 6, 2026, which includes voucher numbers 483526 through voucher 483665, in the amount of \$5,380,938.04, twenty-three electronic fund transfers in the amount of \$5,608.09, and five wire transfers in the amount of \$1,141,862.68

**Meeting Date:**

May 18, 2026

**Department:**

Finance

**Attachments:**

None

**Budget Impact:****Administrative Recommendation:**

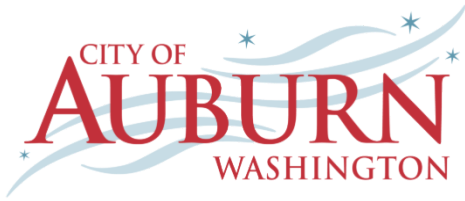
City Council to approve Claims Vouchers.

**Background for Motion:****Background Summary:**

Claims voucher list dated May 6, 2026, which includes voucher numbers 483526 through voucher 483665, in the amount of \$5,380,938.04, twenty-three electronic fund transfers in the amount of \$5,608.09, and five wire transfers in the amount of \$1,141,862.68.

**Councilmember:** Hanan Amer

**Staff:** Jamie Thomas



**AGENDA BILL APPROVAL FORM**

**Agenda Subject:**

Payroll Vouchers (Thomas)  
Payroll check numbers 539821 through 539828 in the amount of \$87,967.59, electronic deposit transmissions in the amount of \$3,079,051.26, a special payroll for a time card correction, electronic deposit transmission in the amount of \$2,427.36, for a grand total of \$3,169,446.21 for the period covering April 30, 2026, to May 13, 2026

**Meeting Date:**

May 18, 2026

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

**Department:**

Finance

**Attachments:**

None

**Budget Impact:**

**Administrative Recommendation:**

City Council to approve Payroll Vouchers.

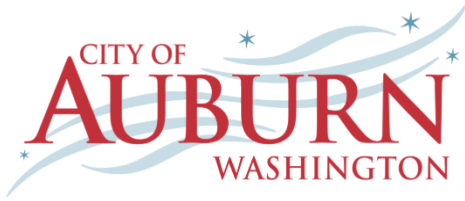
**Background for Motion:**

**Background Summary:**

Payroll check numbers 539821 through 539828 in the amount of \$87,967.59, electronic deposit transmissions in the amount of \$3,079,051.26, a special payroll for a time card correction, electronic deposit transmission in the amount of \$2,427.36, for a grand total of \$3,169,446.21 for the period covering April 30, 2026, to May 13, 2026.

**Councilmember:** Hanan Amer

**Staff:** Jamie Thomas



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Resolution No. 5897 (Whalen/Krueger)

A Resolution authorizing the Mayor to execute an updated Interlocal Agreement with King County to accept funds in the amount of \$2,121,000 to purchase the Soos Creek Botanical Garden Property

**Meeting Date:**

May 18, 2026

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5897.)**

**Department:**

Parks, Arts & Recreation

**Attachments:**

Resolution No. 5897, Exhibit A,  
Presentation

**Budget Impact:****Administrative Recommendation:**

City Council to adopt Resolution No. 5897.

**Background for Motion:**

Resolution No. 5897 would authorize the Mayor to execute an updated Interlocal Agreement with King County to accept funds in the amount of \$2,121,000 to purchase the Soos Creek Botanical Garden Property.

**Background Summary:**

Resolution No. 5614 and 5668, adopted by the City Council, authorized the Mayor to sign updated agreements with King County to receive funds from the Conservation Futures Tax (CFT) Levy. This Resolution, No. 5897, authorizes the Mayor to sign and execute an updated CFT Interlocal Agreement with King County to accept funds in the amount of \$2,121,000 to purchase the Soos Creek Botanical Garden Property.

**Councilmember:** Tracy Taylor

**Staff:** Jason Whalen, Julie Krueger

**RESOLUTION NO. 5897**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN UPDATED INTERLOCAL AGREEMENT BETWEEN THE CITY OF AUBURN AND KING COUNTY FOR THE PURPOSE OF ACCEPTING FUNDS IN THE AMOUNT OF \$2,121,000 TO PURCHASE THE SOOS CREEK BOTANICAL GARDEN PROPERTY

WHEREAS, on January 17, 2022, the City Council approved Resolution 5614, which authorized the Mayor to sign an updated agreement with King County to receive funds from the Conservation Futures Tax (CFT) Levy; and

WHEREAS, on June 6, 2022, the City Council approved Resolution 5668, to correct Resolution 5614, and authorizing the Mayor to sign the correct agreement with King County; the corrected agreement included both grant agreements (CFT and WRIA), where the original resolution incorrectly two identical versions (two WRIA contracts); and

WHEREAS, the owner of the Soos Creek Botanical Gardens reached out to City Staff in the Fall of 2023 with the idea of selling and/or gifting the Soos Creek Botanical Gardens to the City, for the benefit of the public, with the City applying for a CFT grant to fund the purchase of the Gardens, in part. In the Spring of 2025, the City applied for a CFT grant in the amount of \$2,121,000 to purchase the Gardens; and

WHEREAS, the CFT grant application was determined to meet the match requirements and thus no City funds are being used to acquire the Gardens. To complete the purchase, the owner will gift to the City the fair market value of the Gardens over and above the CFT grant amount; and

WHEREAS, in December of 2025 the King County Council passed Ordinance No. 20023, awarding the CFT grant funds to the City to purchase the Gardens; and

WHEREAS, the City has worked with the Gardens owner and the Soos Creek Botanical Garden Foundation to create an Operations and Maintenance Agreement for the ongoing operations of the Gardens to be owned by the City, which is included in Resolution No. 5901; and

WHEREAS, to receive the CFT grant funds for the acquisition of the Gardens, a budget amendment will be required by the City Council to appropriate the associated revenues and expenditures within the City's adopted budget. This will be accomplished through adoption in the City's next budget amendment process.

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

**Section 1.** The Mayor is authorized to execute an Updated Interlocal Agreement between the City and King County, which agreement will be in substantial conformity with the agreement attached hereto as Exhibit A.

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

**Section 3.** The City Clerk is authorized to make necessary corrections to this Resolution including, but not limited to, the correction of scrivener's/clerical errors, references, Resolution numbering, section/subsection numbers, and any references thereto.

**Section 4.** This Resolution will take effect and be in full force on passage and signatures.

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

CITY OF AUBURN

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

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Jason Whalen, City Attorney

**EXHIBIT A**

**AMENDMENT TO THE CONSERVATION FUTURES  
INTERLOCAL COOPERATION AGREEMENT  
BETWEEN KING COUNTY AND THE CITY OF AUBURN  
FOR OPEN SPACE ACQUISITION PROJECTS**

The King County Council, through Ordinance 9128, has established a Conservation Futures Levy Fund and appropriated proceeds to King County and certain cities. This amendment is entered into to provide for the allocation of additional proceeds made available for open space acquisition.

THIS AMENDMENT is entered into between the CITY OF AUBURN and KING COUNTY, and amends and attaches to and is part thereof of the existing Interlocal Cooperation Agreement entered into between the parties on the 22nd day of August, 2022, as previously amended.

The parties agree to the following amendment:

The Interlocal Cooperation Agreement is hereby amended by adding Exhibit 1, attached hereto.

In all other respects, the terms, conditions, duties and obligations of both parties shall remain the same as agreed to in the Interlocal Cooperation Agreement as previously amended.

Once fully executed, this Amendment shall be incorporated into the existing Interlocal Cooperation Agreement as if fully set forth, and shall become Amendment 4.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces set forth below:

KING COUNTY

CITY OF AUBURN

\_\_\_\_\_  
Girmay Zahilay  
King County Executive

\_\_\_\_\_  
Nancy Backus  
Mayor

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

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

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Leesa Manion  
King County Prosecuting Attorney

\_\_\_\_\_  
Jason Whalen  
City Attorney

**EXHIBIT 1**

**2026 CONSERVATION FUTURES LEVY PROCEEDS  
CITY OF AUBURN ALLOCATION**

Jurisdiction	Project Name	Allocation
Auburn	Soos Creek Botanical Garden Preservation	\$2,121,000
TOTAL		\$2,121,000

**Project Description:**

**Project #1150331: Auburn – Soos Creek Botanical Garden Preservation (match waiver)**

The City of Auburn seeks to purchase approximately 18 acres of the Soos Creek Botanical Garden, located in the Lea Hill portion of the city. The purchase of this property would provide protection for a fish-bearing stream, Soosette Creek, and the opportunity to redress historic disparities in access to open space. Preservation of the garden would keep this land protected in perpetuity as a community asset and as a botanical garden of regional significance in south King County. This project was determined to merit a match waiver. Project funding was authorized in King County Ordinance 20023.

**Is this a Bond-financed Project? No**

# SOOS CREEK BOTANICAL GARDENS

## KING COUNTY CONSERVATION FUTURES

### RESOLUTION NO. 5897, 5900, 5901 CFT GRANT ACCEPTANCE, PURCHASE AND SALE AGREEMENT, AND OPERATING AGREEMENT

PRESENTED BY:

THANIEL GOUK, PARKS PLANNING & DEVELOPMENT MANAGER

JOSH ARNDT, REAL ESTATE MANAGER

---

AUBURN  
VALUES

S E R V I C E

E N V I R O N M E N T

E C O N O M Y

C H A R A C T E R

S U S T A I N A B I L I T Y

W E L L N E S S

C E L E B R A T I O N

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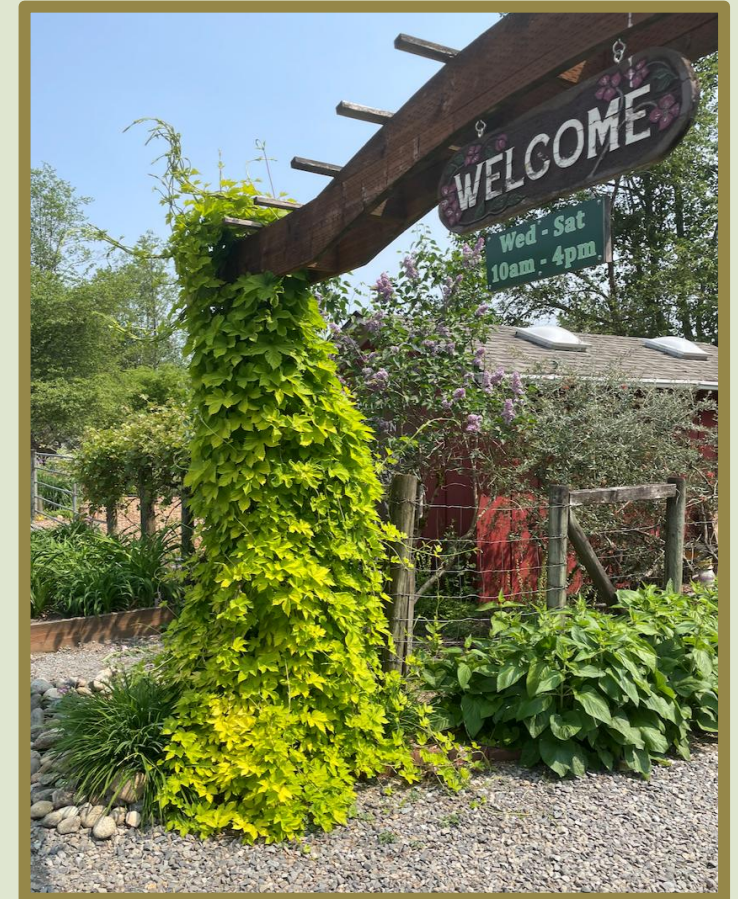
# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE

- **Background**

- King County Conservation Futures Tax Levy Grant (common acronym “CFT”)
- Goal – to preserve and create open and green spaces within King County

- **Timeline**

- **Fall 2023-2024** – Discussions with Soos Creek Botanical about potential purchase of the Gardens by the City with CFT Grant
- **Spring 2025** – City applies for CFT Grant for \$2.1M (estimated assessed value as request amount)
- **May 2025** – Presentation to CFT Committee
- **Winter 2025** – King County Council approves CFT Grant



# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE

## About the Gardens

- **Management:** Operated by Soos Creek Botanical Garden Foundation
- **Scenic Retreat:** 23-acre garden offering tranquility and education.
- **Unique Plant Life:** Rare perennials and native Pacific Northwest landscapes.
- **Immersive Trails:** Paths through meadows, woodlands, and a year-round creek.
- **Wildlife Habitat:** Pond garden supporting local ecosystems.
- **Community Garden:** Sustainable food education; donations to Auburn Food Bank.
- **Events & Lectures:** Tours, gardening talks, and cultural performances.
- **Heritage Center:** Displays local history through photos, maps, and artifacts.



# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE

## About the Gardens - Garden Map and Amenities



1. Plant Sale Area	2. Rain Garden & Alder Grove	3. Rosarian Walk	4. Heritage Flower Garden	5. Elizabeth Fenzl Garden Room	6. Hoop House and Nursery Area
7. Soos Creek Demonstration Garden	8. Louie / Christensen Aviary	9. Schaefer Pond Garden	10. Carlmas Long Borders	11. Ole and Sarah Skagen Cedar Grove	12. Ravine Garden
13. Wildflower Prairie Meadow	14. Oie Native Woodland	15. Leonard and Olive Skagen Woods	16. Soos Creek Heritage Center	17. The Pavilion by the Pond	18. The Red Barn

# SOOS CREEK BOTANICAL GARDENS



SERVICE • ENVIRONMENT • ECONOMY • CHARACTER • SUSTAINABILITY • WELLNESS • CELEBRATION

# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE



# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE



# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE



# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE

## Public Benefits

- Access to Diverse & Underserved Audiences
  - Free & Reduced Cost Admissions
  - Free Curriculum for Public Schools
  - Increased Outreach
  - Broadening Programming
- Garden Amenities and Features
- Education Programs
- Preservation of Traditional & Historical Cultures and Crafts
- Cultural Content Production
- Career Building Opportunities
- Partnerships & Resource Sharing



Students Releasing Frye into the Stream

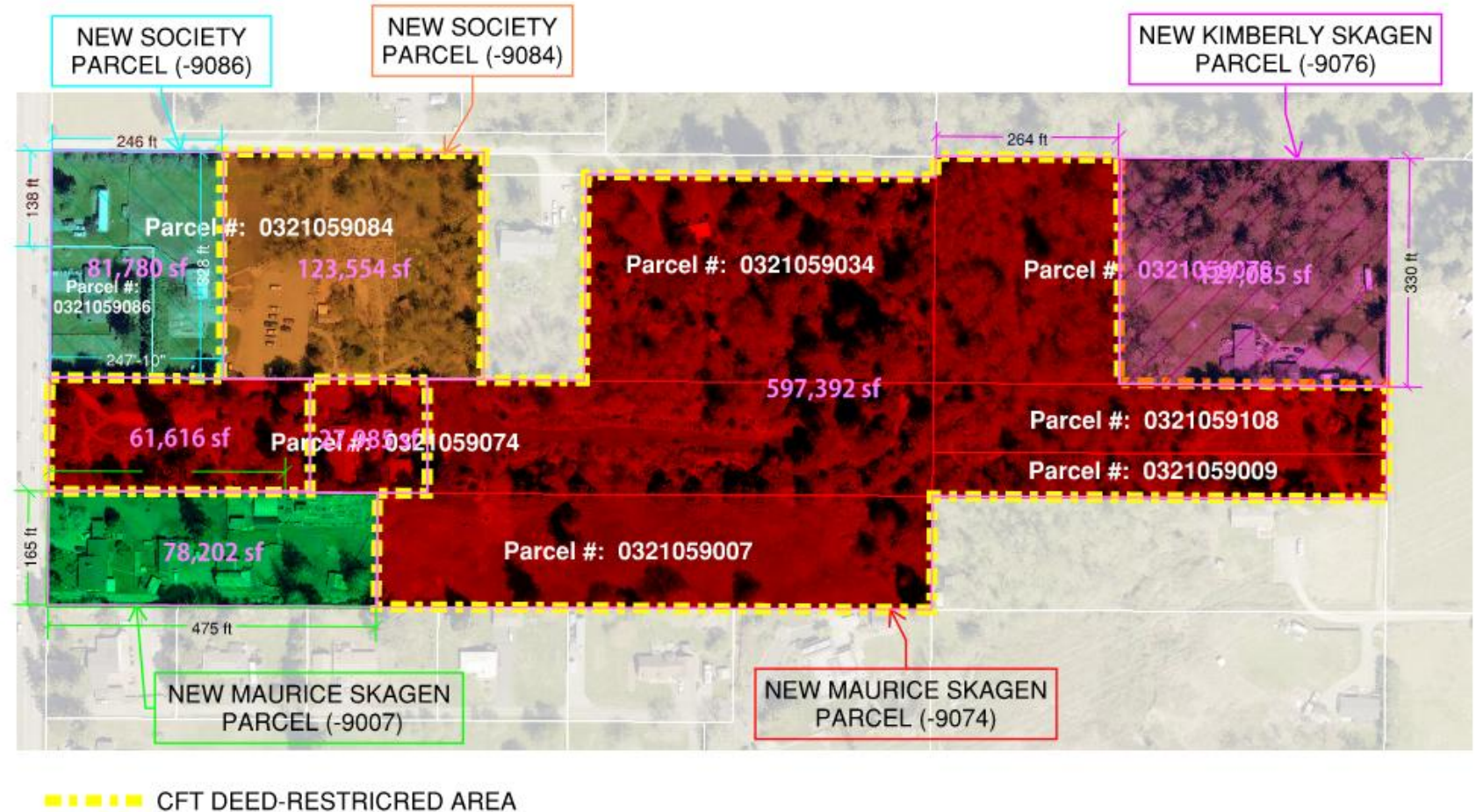


Community Gardens

# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE

## Original CFT Application Map

- Yellow dashed line shows deed-restricted area per CFT rules
- Red area is Skagen-owned
- Orange Area shows Foundation-owned



# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE

## Revised CFT Map



# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE

## Revised CFT Map

- Yellow dashed line shows revised CFT boundary
  - Changes due to appraised value of property vs. CFT request value
- Green dashed line shows area removed and will be a future application request for CFT funds
- Red hatched area shows the area not included in the CFT Boundary (but part of purchase)
  - This area contains the main home and museum (note: this is no change from the original application)

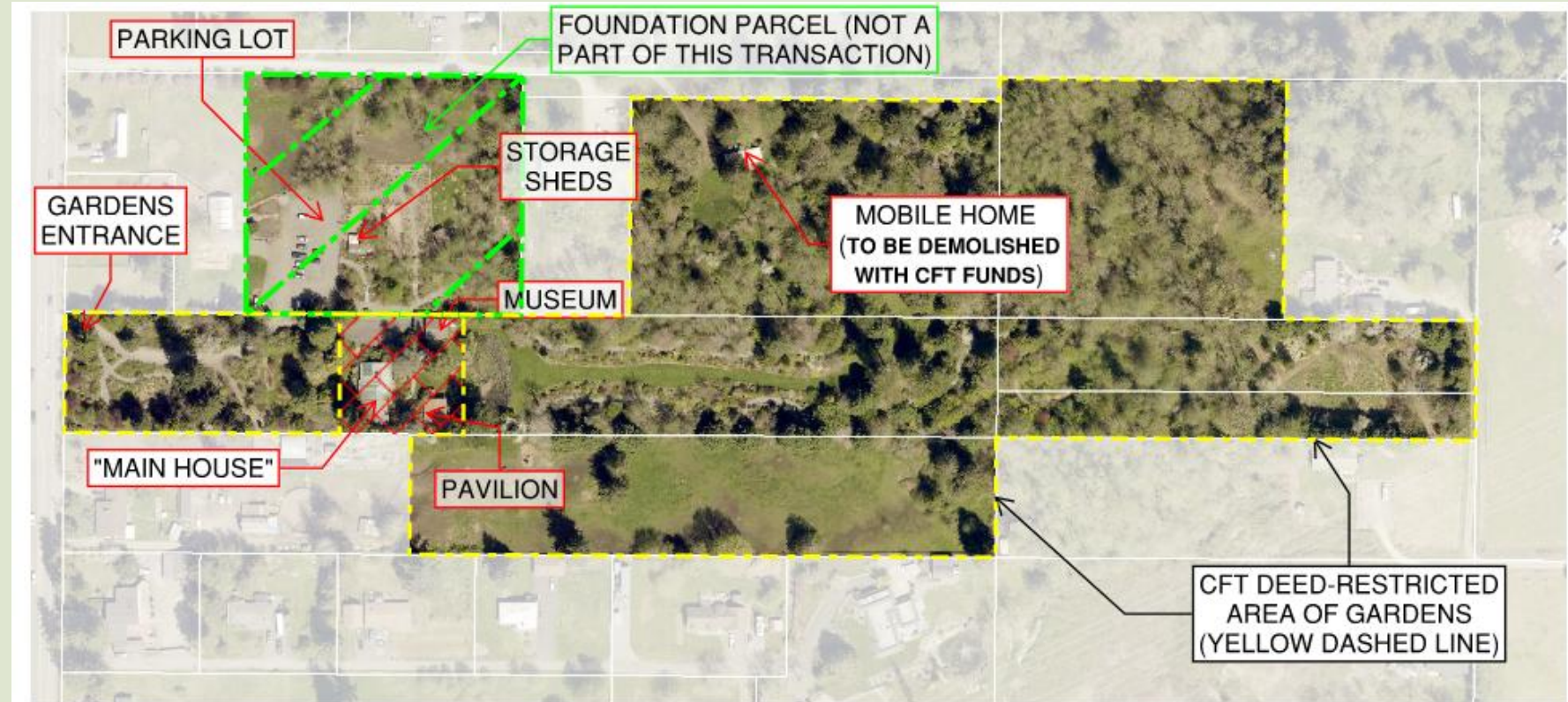


# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE

## What would the ownership of the properties look like?

### Notes:

- The “Main House” would be leased back to Maurice Skagen as his residence.
- The “Mobile Home” would be demolished with additional CFT funds expected early 2026 (request already submitted for CFT funds)



# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE

## Documents for Review

- **Resolution No. 5897**
  - ILA Amendment
- **Resolution No. 5900**
  - Purchase and Sale of Morris “Maurice” Skagen Property
  - Includes Maurice Skagen Lease
- **Resolution No. 5901**
  - Operating Agreement with The Soos Creek Botanical Garden Foundation
  - Includes Easement for Ingress, Egress, Parking & Operations Easement encumbering Foundation Parcel

# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE

## Resolution No. 5897 – Interlocal Agreement with King County to Accept CFT Funds

- Original ILA signed in 2022 (Mill Creek Assemblage)
  - Amendments to this ILA are required each time new grants are approved
    - ILA Amendments 1 through 3 – Downtown Auburn Open Space Acquisition and Demolition (site for the new downtown park)
- **This new ILA Amendment** is required to receive this grant (attached to Resolution) and authorize a future budget amendment.
  - Includes \$1.83M in cash for the property purchase plus the additional funds for closing costs, title reports, appraisals, etc. (\$2.1M)

# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE

## **Resolution No. 5900 – Purchase and Sale Agreement for the Gardens**

- Authorizes the Mayor to execute the purchase of the Gardens from Maurice Skagen
- Purchase price for the Gardens is \$2.63M (total)
  - \$1.83M cash
  - \$800,000 equity from Maurice Skagen
    - CFT will not fund the main house and museum
- In exchange for the \$800,000 equity conveyance, City & Skagen will enter into a no-rent lease for the main house for up to the rest of his life (condition of sale).
- Sale of the property does not include personal property or museum artifacts – Foundation will own
- Boundary line adjustment

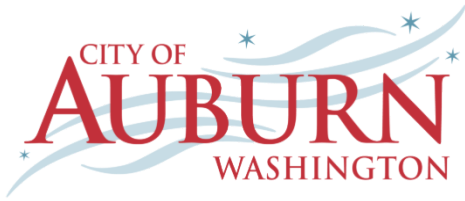
# SOOS CREEK BOTANICAL GARDENS – CFT PURCHASE

## **Resolution No. 5901 – Operating Agreement with the Soos Creek Botanical Garden Foundation**

- Authorizes the Mayor to execute the Operating Agreement with the Soos Creek Botanical Garden Foundation
  - Establishes that the City will not pay the Foundation any monetary compensation for the Foundation’s performance of the Operating Agreement, nor will the Foundation pay the City for its use of the garden or its facilities.
  - Outlines the duties and responsibilities of the Foundation
    - Keep the City apprised hours of operation, Foundation/Garden events, etc.
    - Perform all maintenance to the garden, facilities, & equipment at Foundation’s expense
    - Periodic meetings with and reporting to the City
  - Reserves the rights for the City to request use of the Garden and its facilities
  - Easement for Ingress, Egress, Parking & Operations encumbering the Foundation parcel

# QUESTIONS?

Sage Creek Botanical Garden and Herbarium Center



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Resolution No. 5900 (Whalen/Krueger)  
A Resolution authorizing the Mayor to execute on behalf of the City, a Purchase and Sale Agreement with Maurice Skagen for real property commonly known as the Soos Creek Botanical Garden and Heritage Center

**Meeting Date:**

May 18, 2026

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5900.)**

**Department:**

Legal

**Attachments:**

Resolution No. 5900, Exhibit A,  
Exhibit B

**Budget Impact:****Administrative Recommendation:**

City Council to adopt Resolution No. 5900.

**Background for Motion:**

This purchase represents a unique opportunity for the City to preserve a significant environmental, cultural, and educational resource for current and future generations, while leveraging grant funding to remove financial impact to the City.

**Background Summary:**

The Soos Creek Botanical Garden property is a well-established community asset that has long served the Auburn area and surrounding communities as a valued local attraction, educational resource, and site of historic and environmental significance. Both Maurice Skagen and the City share the goal of preserving and protecting the properties' conservation values, plant collections, historic features, and the broad public benefits it provides to the Auburn community and the region. These benefits include open space preservation, environmental stewardship, educational programming, and cultural historical enrichment.

Funding for the purchase will come from King County Conservation Futures Tax Levy grant funds as authorized by Resolution No. 5897.

Following acquisition, the City intends to enter into: (i) a no-rent lease agreement with Mr. Skagen for the main residential home in exchange for the substantial equity gift Mr. Skagen provided as part of the City's purchase of the property (Exhibit B to this Resolution No. 5900); and (ii) a no-cost agreement with a third party for the continued management, operation, and maintenance of the Garden, including its grounds, plant collections, and structures (Resolution No. 5901). This operational partnership will help ensure the ongoing stewardship, preservation, and public benefit of the Garden consistent with its historic use and longstanding community value.

**Councilmember:** Hanan Amer

**Staff:** Jason Whalen, Julie Krueger

**RESOLUTION NO. 5900**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY, A PURCHASE AND SALE AGREEMENT WITH MAURICE SKAGEN FOR REAL PROPERTY COMMONLY KNOWN AS THE SOOS CREEK BOTANICAL GARDEN AND HERITAGE CENTER

WHEREAS, for many years, the real property known as the Soos Creek Botanical Garden and Heritage Center has served the Auburn community as a local attraction, an educational resource, and a site of historic significance and conservation; and

WHEREAS, the owner of the property has expressed a desire to sell the property to the City in order to preserve its educational, historic, and conservation values; and

WHEREAS, acceptance of King County Conservation Futures Tax Levy grant funding, as authorized under Resolution No. 5897, will fully fund the acquisition of the property, and no City general funds or other budgeted City resources will be adversely impacted by the purchase; and

WHEREAS, in exchange for the substantial equity gift, and as a condition of the property sale, the City and Mr. Skagen intend to enter into a no-rent lease of the main residential home on the property; and

WHEREAS, the City intends to enter into an agreement with a third party at no cost to the City for the continued management, operation, and maintenance of the gardens, plant collections, buildings, and grounds to ensure the ongoing stewardship and public benefit of the property,

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

**Section 1.** The Mayor is authorized to, (i) execute the purchase and sale agreement attached as Exhibit A (the “Agreement”) and the lease agreement (the “Lease”) attached as Exhibit B, and any future amendments to the Agreement or the Lease as appropriate, so long as those amendments do not increase the purchase price of the Property; and (ii) execute all necessary documents to complete the closing of the purchase transaction to acquire the Property consistent with the terms and conditions of the Agreement.

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

**Section 3.** The City Clerk is authorized to make necessary corrections to this Resolution including, but not limited to, the correction of scrivener’s/clerical errors, references, Resolution numbering, section/subsection numbers, and any references thereto.

**Section 4.** This Resolution will take effect and be in full force on passage and signatures.

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

CITY OF AUBURN

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

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Jason Whalen, City Attorney

## BARGAIN PURCHASE AND SALE AGREEMENT

This BARGAIN PURCHASE AND SALE AGREEMENT (this “Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2026 (“Effective Date”), by and between the **City of Auburn**, a Washington municipal corporation (“City” or “Buyer”), and **Morris W. Skagen**, an unmarried individual (“Seller”). Seller and Buyer are collectively referred to as the “Parties.” Morris W. Skagen goes by “Maurice Skagen” for most purposes, and may also be referred to as “Maurice” in this Agreement and in related documents.

### RECITALS

A. Seller owns certain real property consisting of approximately 20.73 acres (the “Skagen Parcels”) comprising a large portion of what is being generally referred to as the Soos Creek Botanical Garden (“Garden”). The remainder of the Garden is owned by The Soos Creek Botanical Garden Foundation, a Washington nonprofit corporation (“Foundation”), which is pursuing the sale of its portion of the Garden (the “Foundation Parcel”) to the City via a separate agreement.

B. Seller wishes to preserve and protect the conservation qualities and the benefits the Garden brings to Auburn and surrounding communities.

C. The City also wishes to preserve and protect these qualities and benefits the Garden brings to Auburn and surrounding communities.

D. To enable the transaction detailed in this Agreement, the Parties mutually desire to complete a boundary line adjustment (as detailed below in Section 4) of Seller’s portion of the Garden which will result in a single tax parcel owned by Seller, which will constitute approximately 15.93 acres and is the property Seller wishes to sell and Buyer wishes to buy under the terms and conditions contained within this Agreement (the Subject Property - as defined in **Section 2** below).

E. Due to Buyer’s funding constraints, Seller desires to voluntarily donate to Buyer the value of an approximately 28,000 square-foot portion of the Subject Property that includes Seller’s main house and the adjacent museum/office building (the “Donated Portion”) and is generally depicted in **Exhibit B**.

F. This Agreement shall be approved through the ratification of a Resolution 5900 by the Auburn City Council.

### AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which the Parties mutually acknowledge, Buyer and Seller agree as follows:

1. **Certain Defined Terms.** For purposes of this Agreement, the following capitalized terms in this Agreement will have the following definitions:

1.1 “Closing” or “Close of Escrow” means the recordation of the Deed in the Official Records and Seller’s receipt of the Purchase Price.

1.2 “Closing Date” means that date which shall be no later than thirty (30) days following the recording of the Boundary Line Adjustment described in Section 4.

1.3 “Deposit” means an amount of Ten Thousand Dollars (\$10,000), plus any other amounts designated as a Deposit in this Agreement.

1.4 “Due Diligence” means Buyer’s investigation and review of the Subject Property within Buyer’s discretion, as limited and further provided herein.

1.5 “Diligence and Review Period” means the period during which Buyer completes its Due Diligence on the Subject Property, which period shall last until the date of King County’s recording of the BLA detailed in Section 4.

1.6 “Escrow” means the escrow opened with Escrow Agent for the consummation of the transaction described in this Agreement.

1.7 “Escrow Agent” or “Title Company” means Stewart Title Guaranty Company – Commercial Services, located at: 1420 5<sup>th</sup> Avenue, Suite 440, Seattle, WA 98101. 206.770.8849

1.8 “Official Records” means the official real property records of King County, Washington.

1.9 “Permitted Exceptions” has the meaning as set forth in Section 6.1 below.

1.10 “Purchase Price” has the meaning as set forth in Section 3.

1.11 “Title Policy” means the then-current Buyer-purchased standard coverage ALTA owner’s policy of title insurance issued by the Title Company to Buyer with coverage in the amount of the Purchase Price, showing title to the Subject Property vested in Buyer subject only to the Permitted Exceptions.

2. **Purchase and Sale.** Buyer agrees to purchase, and Seller agrees to sell, all of Seller’s right, title, and interest in the real property legally described in **Exhibit A** and generally depicted in **Exhibit B** (the “Subject Property”), on the terms and conditions set forth in this Agreement. The exact boundaries of the Subject Property to be conveyed at Closing under this Agreement shall be determined through the completion of the Boundary Line Adjustment described in **Section 4**. The Parties acknowledge and agree that Exhibit A will be amended before Closing to reflect the final legal description of the Subject

Property after the Boundary Line Adjustment has been completed; however, the resulting property is anticipated to be substantially similar to the “New Maurice Skagen Parcel (-9074)” referenced in **Exhibit B**. The Parties understand and agree that no equipment or other personal property is included in the sale under this Agreement, as Seller intends for the Foundation to own and be responsible for such items in furtherance of the public benefit provided by the Garden. Any personal property Seller desires to transfer to Buyer within Seller’s discretion shall be the subject of a separate agreement between Seller and Buyer.

**3. Purchase Price; Cash Payment.** The Purchase Price is **Two Million Six Hundred Thirty Thousand and 00/100 Dollars (\$2,630,000.00)**. Of the Purchase Price, **\$1,830,000** will be payable at Closing, and the remaining **\$800,000** is being donated by Seller to Buyer in the form of an equity gift. Buyer will pay the Purchase Price at Closing by wire transfer of collected federal funds. Seller understands and acknowledges that the amount paid by Buyer at Closing does not include the value of the donated portion, and Seller confirms that it is voluntarily donating this portion to Buyer as part of the Subject Property. The Deposit will be applied to the non-gifted portion of the Purchase Price due at Closing.

**3.1 Earnest Money Deposit.** On execution of this Agreement, Buyer will deposit with Escrow Agent **Ten Thousand and 00/100 Dollars (\$10,000.00)** in cash (the “Deposit”), which the Escrow Agent will hold as an earnest money deposit for this transaction. The Deposit will be held in Escrow and applied or disposed of by the Escrow Agent based on the terms of this Agreement. The Deposit will not be refunded and will become property of Seller upon waiver of Buyer’s Diligence & Review Period.

**4. Boundary Line Adjustment.** Buyer, at its sole cost and expense, shall pursue and complete a boundary line adjustment (“BLA”) that, upon completion, will create a parcel consisting of approximately 15.93 acres that is substantially similar to the area depicted in red and labeled “New Maurice Skagen Parcel (-9074)” on the Boundary Line Adjustment Depiction attached as **Exhibit B**. Seller shall cooperate and participate in the BLA process by timely executing all required documents and authorizations. Buyer shall be solely responsible for obtaining all necessary permits, paying all associated costs, and completing all required work and documentation, including the recording of the finalized BLA. The BLA shall not be recorded until the Parties and Escrow Agent have confirmed everything is ready for Closing under Sections 8 and 9 and Buyer and Seller have notified Escrow Agent in writing that they desire to proceed with Closing.

**5. Records.** Within fourteen (14) days of the Effective Date, Seller shall provide Buyer or make available for Buyer’s review all materials that exist and that are in Seller’s actual possession or reasonable control including but not limited to (collectively and individually defined as “Records”):

- (a) All surveys, plats, plans, or as-builts relating to the Subject Property; (if any)

- (b) All warranties and guarantees affecting any portion of the Subject Property; (if any);
- (c) Notice of any existing litigation affecting or relating to the Subject Property and any copies of any pleadings concerning any litigation;
- (d) Any documentation of known environmental hazards affecting or potentially affecting the Subject Property;
- (e) Copies of all Permits held by Seller, or any agent of the Seller, in connection with its ownership and operations of the Subject Property;
- (f) Copies of all final, written environmental assessment reports concerning the Subject Property performed by or for the Seller in connection with its ownership of the Subject Property which Seller, or any agent of the Seller, may possess;
- (g) Copies of all vendor and supplier service contracts in connection with the Subject Property, including but not limited to any agreements with the Foundation (“Operational Contracts”);
- (h) Copies of all existing tenant leases or licenses, affecting the Subject Property, records showing the amount of any deposits being held by the Seller and payment history of the tenant(s) covering the last 12 months; and
- (i) Copies of any utility or access agreements, and/or covenants, affecting the Subject Property.

If, based upon Buyer’s review of any such Records described in this Section 5, Buyer determines in its sole discretion that it intends not to acquire the Subject Property, then Buyer shall promptly notify Seller of such determination in writing no later than forty-five (45) days following the Effective Date or before recording of the BLA, whichever is earlier. In the event that Buyer fails to deliver such notice to Seller on or before the forty-fifth (45<sup>th</sup>) day, Buyer will be deemed to be satisfied and to have waived its right to terminate this Agreement pursuant to this subsection. If Buyer advises Seller in writing on or before the forty-fifth (45<sup>th</sup>) day, then this Agreement shall automatically terminate, and the Parties’ rights and obligations under this Agreement shall be of no further force or effect and the Deposit will be returned to Buyer.

**6. Title Policy.** Promptly after mutual execution of this Agreement, Escrow Agent will obtain and deliver to Buyer, Seller, and the Parties’ respective counsel, a standard coverage preliminary title insurance commitment covering the Subject Property from the Title Company (the “Commitment”), together with copies of all title exceptions. Approval by Buyer of the exceptions to title set forth in the Commitment (other than as hereinafter set forth) will be a condition precedent to Buyer’s obligation to purchase the Subject Property. Unless Buyer gives written notice that it disapproves the exceptions to title shown on the Commitment (other than the exceptions to title approved by Buyer and described in Section 6.1 below), stating the exceptions so disapproved, within fourteen (14) calendar days after the date of delivery of the Commitment to Buyer, Buyer will be deemed to have approved such exceptions. If Buyer disapproves any title exceptions, Seller will have a ten

(10) calendar day period after its receipt of Buyer's written notice of disapproval of the same within which to provide written notice to Buyer as to which of such disapproved title exceptions Seller will remove (or cause to be removed) from title; provided, however, that Seller will not be required to actually remove such exception(s) until Closing. If, for any reason, Seller's notice given pursuant to the immediately preceding sentence does not covenant to remove all of Buyer's disapproved title exceptions at or prior to Closing, Buyer has the right to terminate this Agreement by written notice to Seller and Escrow Agent given within ten (10) calendar days after the earlier of the expiration of such ten (10) calendar day period or the date Seller informs Buyer that it does not intend to remove the disapproved items (the "Termination Notice"). Buyer's failure to deliver the Termination Notice within such ten (10) day period will be deemed Buyer's approval of any such previously disapproved title exception. If Buyer delivers the Termination Notice within such ten (10) day period, the obligation of Seller to sell, and Buyer to buy, the Subject Property will terminate and Escrow Agent shall promptly return Buyer's Deposit.

**6.1 Permitted Exceptions.** In addition to such other exceptions to title as may be approved by Buyer pursuant to the provisions of Section 6 above, Buyer shall accept title to the Subject Property subject to the following (collectively, the "Permitted Exceptions"): (i) the printed exceptions which appear in the then current ALTA form standard coverage owner's policy of title insurance issued by Title Company in the State of Washington; (ii) all non-delinquent property taxes and assessments, (iii) the rights of the tenants under the leases (excluding therefrom any rights or option to purchase all of any part of the Property), and (iv) all matters created by or on behalf of Buyer, including without limitation the BLA completed under Section 4 herein.

**7. Buyer's Right of Entry.** Buyer, and its agents and consultants, at Buyer's sole expense and risk, may enter the Subject Property during the term of this Agreement for the purpose of Buyer's Diligence & Review of the Subject Property. Buyer warrants that it will (a) exercise care at all times on or about the Subject Property, (b) take necessary precautions for the prevention of injury to persons or damage to property on or about the Subject Property and (c) comply with any advance notice requirements in any leases by tenants of the Subject Property. Any physical alteration of the Subject Property in connection with Buyer's Due Diligence shall be restored by Buyer so that the Subject Property and improvements are in substantially the same condition they were in prior to inspection, at Buyer's sole expense. Buyer indemnifies and holds harmless Seller against any loss, damage, or claim including attorneys' and experts' fees, and court costs, resulting from Buyer's presence on Subject Property, inspections and tests in connection with Buyer's Due Diligence. This indemnity shall survive the Closing or any termination of this Agreement. Buyer is not Seller's agent in connection with such activities and has no authority to allow any liens to encumber the Subject Property. Buyer shall keep the Subject Property free from all mechanics', materialmen and other liens, and all claims, arising from any work or labor done, services performed, or materials and supplies furnished in with Buyer's actions in the exercise of its right of entry on the Subject Property and Buyer will

maintain all insurance as required by Seller with respect to activities on the Subject Property. All of Buyer's representatives who visit the Subject Property must have required insurance coverage and provide 48 hours of notice as required under this Agreement.

Buyer shall not perform any invasive testing beyond a Phase I Assessment and a Regulated Building Materials (or similar) Survey or contact the tenants or property management personnel without obtaining Seller's prior written consent, which may not be unreasonably withheld.

**8. Conditions to Closing.** In addition to any other conditions contained in this Agreement, the following are conditions precedent or concurrent to Closing which must be satisfied in order for Closing to occur:

**8.1 Operating Agreement with the Soos Creek Botanical Garden Foundation.** The Parties acknowledge and agree that as a condition of Closing, Buyer must concurrently successfully execute an Operating or Services Agreement (hereinafter "Operating Agreement") with the Foundation, hereby a third-party to this Agreement, for the ongoing operations and maintenance of the Garden. The Operating Agreement between the Foundation and the City shall be in substantial conformity to that attached as **Exhibit C** to this Agreement. The Parties agree to delay the Closing of this Agreement as necessary for the City to complete the execution of the Operating Agreement with the Foundation.

**8.2 Maurice Skagen Leaseback.** The Parties acknowledge and agree that as a condition of Closing, Seller requires that it concurrently enter into a lease with Buyer for Seller's continued occupancy of Seller's main residence and adjacent premises (the "Lease"), with such Lease commencing immediately after Closing. The Lease shall be in substantial conformity to that attached as **Exhibit D** to this Agreement.

**9. Closing.**

**9.1** Time for Closing. This purchase and sale will be closed in the office of Escrow Agent no later than the Closing Date. Buyer and Seller will place in Escrow with Escrow Agent all instruments, documents, and funds in U.S. Dollars necessary to complete the purchase and sale under this Agreement. Funds held in Escrow pursuant to Escrow instructions will be deemed, for purposes of this definition, as available for disbursement to Seller. Neither party needs to be physically present at the Closing.

**9.2 Closing Costs.**

**9.2.1 Seller's Costs.** Associated with the sale and conveyance of the Subject Property, Seller will pay: (a) Seller's own legal fees and fees of its own consultants, including but not limited to real estate broker commissions owed in connection with this Agreement, if any; and (b) Seller's share of prorations not otherwise described in Sections

9.2.1 – 9.2.5, including but not limited to utilities, assumed service, management and/or maintenance contracts, etc.

**9.2.2 Buyer's Costs.** Associated with the sale and conveyance of the Subject Property, Buyer will pay; (a) the full Escrow fees and cost, (b) the full costs and fees for the title insurance policy issued to Buyer, together with applicable taxes, cost of all endorsements, and/or extended coverage Buyer may require or request, (c) the recording fees for the Deed, (d) any and all excise taxes resulting from the sale, unless otherwise exempt under the provisions of WAC 458-61A-206, (e) sales tax due on any personal property conveyed to Buyer, if any, (f) Buyer's legal, consultant fees and all costs related to its Due Diligence, and (g) Buyer's share of prorations not otherwise described in Sections 9.2.1 – 9.2.5.

**9.2.3 Other Costs.** All other costs and expenses will be charged according to local industry customs.

**9.2.4 Real Property Taxation.** Seller will be responsible for the prorated real property taxes due and owing prior to the Closing Date.

**9.2.5 Pro-Ration of Rents.** Rents, if any, shall be prorated as of the Closing Date. Any refundable deposits and/or prepaid rents shall be transferred to Buyer at Closing.

### **9.3 Closing Documents.**

**9.3.1 Seller's Documents.** At Closing, Seller will deliver to Escrow Agent the following instruments and documents:

- a. An executed and acknowledged Bargain and Sale Deed ("Deed") subject to all Permitted Exceptions.
- b. The executed real estate excise tax affidavit to accompany the Deed.
- c. An executed nonforeign person affidavit in the form required under Section 1445 of the Internal Revenue Code.
- d. A Rent Roll and Operational Accounting Documents related to any leases provided for in Section 5(h), dated as of the Closing Date.
- e. A bill of sale for any personal property conveyed to Buyer, if any.
- f. An executed copy of the Lease in substantial conformity to that attached as **Exhibit D.**

**9.3.2 Buyer's Documents.** At or before Closing, Buyer shall deliver to Escrow Agent the following funds, instruments and documents:

- a. The balance of the Purchase Price in accordance with Section 3;
- b. An executed real estate excise tax affidavit; and

- c. An executed copy of the Lease in substantial conformity to that attached as **Exhibit D**.

**10. Possession.** Buyer will be entitled to possession of the Subject Property, subject to the Lease and all tenancies disclosed to Buyer as provided in Section 5 and other Permitted Exceptions to title, upon Closing.

**11. Representations and Warranties.**

**11.1 Seller's Representations and Warranties.** In addition to any other representations or warranties to City elsewhere in this Agreement, Seller represents and warrants to Buyer that, to the best of Seller's knowledge:

**11.1.1 Authority.** Seller has full power and authority to execute this Agreement and perform Seller's obligations and all necessary action to authorize this transaction has been taken, except as specifically provided herein.

**11.1.2 Hazardous Substances.** Seller has not received notification of any kind from any governmental agency suggesting that the Subject Property is or may be targeted for a Hazardous Substances cleanup; to Seller's Knowledge the Subject Property has not been used (a) for the storage, disposal or discharge of oil, solvents, fuel, chemicals or any type of toxic, dangerous, hazardous or biological waste or substance (collectively, "Hazardous Substances"), or (b) as a landfill or waste disposal site; to Seller's Knowledge the Subject Property has not been contaminated with any Hazardous Substances; and (c) to Seller's Knowledge, there are no underground storage tanks on the Subject Property. Buyer agrees to waive Seller's Disclosure Statement under RCW 64.06.010 with the exception of item 6 "Environmental" under RCW 64.06.013 which Seller shall deliver to Buyer within five (5) business days following execution of this Agreement. A Seller completed copy of the Environmental Section of Seller's Disclosure Statement is attached as **Exhibit E** for reference.

Notwithstanding the foregoing, based on the age of the improvements located on the Subject Property, Buyer should presume the presence of asbestos and lead-based paint.

As used in this Agreement, the phrase "to Seller's Knowledge" or words of similar import shall mean the actual present knowledge of Maurice Skagen, about the matters so stated, without investigation of any kind or nature and expressly excludes imputed knowledge.

If after the opening of Escrow either party comes to have actual knowledge of a fact or circumstance which would render a representation or warranty by Seller herein inaccurate in any material respect, that party shall promptly advise the other party thereof in writing. Buyer shall have, as its sole and exclusive remedy, the option, exercisable by the later of (a) the end of Diligence & Review Period or (b) five (5) business days after such notice is given, to either (i) terminate this Agreement and receive a return of the Deposit or (ii) to waive such

inaccuracy in writing, in which latter event it shall be deemed to have waived all claims and causes of action against Seller related thereto.

EXCEPT AS MODIFIED PURSUANT TO THE PRECEDING PARAGRAPH, SELLER'S REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN WILL EXPRESSLY SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT, WILL NOT BE MERGED INTO THE CLOSING DOCUMENTS, AND WILL BE DEEMED INCORPORATED INTO THE DEED. TO MAKE ANY CLAIM BASED ON SELLER'S BREACH OF ANY OF THESE WARRANTIES OR REPRESENTATIONS, BUYER SHALL GIVE NOTICE OF SUCH BREACH TO SELLER WITHIN ONE YEAR AFTER THE DATE OF RECORDING OF THE DEED. SELLER SHALL ACCEPT AND PERFORM AS REQUESTED BY BUYER IN SAID NOTICE OR REJECT THE CLAIM IN WRITING WITHIN THIRTY (30) DAYS AFTER RECEIPT OF THE NOTICE FROM BUYER. IF SELLER REJECTS SUCH CLAIM, BUYER SHALL BRING AN ACTION AGAINST SELLER FOR SUCH BREACH WITHIN FORTY-FIVE (45) DAYS AFTER BUYER RECEIVES SELLER'S WRITTEN REJECTION. IF BUYER DOES NOT GIVE WRITTEN NOTICE OF SUCH A CLAIM WITHIN SAID ONE-YEAR PERIOD OR BRING AN ACTION WITHIN SAID 45-DAY PERIOD, THEN BUYER'S RIGHT TO MAKE CLAIM BASED ON BREACH OF SELLER'S REPRESENTATIONS AND WARRANTIES WILL BE TERMINATED.

\_\_\_\_\_  
Buyer's Initials

\_\_\_\_\_  
Seller's Initials

**11.1.3 Buyer's Representations and Warranties.** In addition to any other representations and warranties of Buyer elsewhere in this Agreement, Buyer represents and warrants to Seller now, and as of the Closing Date, that (i) Buyer has full power to execute, deliver and carry out the terms and provisions of this Agreement, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement; and (ii) the individual executing this Agreement on behalf of Buyer has the authority to bind Buyer to the terms and conditions of this Agreement.

**11.1.4 "As Is" condition of Subject Property.** OTHER THAN THE MATTERS REPRESENTED IN SECTION 11 HEREOF OR THE DOCUMENTS MADE AVAILABLE BY SELLER PURSUANT TO SECTION 5, BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY OF SELLER'S AGENTS OR REPRESENTATIVES. SELLER SPECIFICALLY DISCLAIMS ANY REPRESENTATION, WARRANTY OR ASSURANCE WHATSOEVER TO BUYER AND NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, MAY BE RELIED UPON BY BUYER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF ANY PORTION OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO (a) ANY IMPLIED OR EXPRESS

WARRANTY OF MERCHANTABILITY, (b) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (d) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY AND (e) THE COMPLIANCE OR LACK THEREOF OF THE REAL PROPERTY OR THE IMPROVEMENTS WITH GOVERNMENTAL REGULATIONS, IT BEING THE EXPRESS INTENTION OF SELLER AND BUYER THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE DOCUMENTS MADE AVAILABLE BY SELLER PURSUANT TO SECTION 5, THE PROPERTY WILL BE CONVEYED AND TRANSFERRED TO BUYER IN ITS PRESENT CONDITION AND STATE OF REPAIR, "AS IS" AND "WHERE IS", WITH ALL FAULTS. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE, EXPERIENCED AND SOPHISTICATED BUYER OF REAL ESTATE, AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF BUYER'S CONSULTANTS IN PURCHASING THE PROPERTY. DURING THE INSPECTION PERIOD, BUYER WILL CONDUCT SUCH INDEPENDENT INSPECTIONS OF THE PROPERTY AND RELATED MATTERS AS BUYER DEEMS NECESSARY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND WILL RELY UPON SAME AND NOT UPON ANY STATEMENTS OF SELLER (EXCLUDING THE MATTERS REPRESENTED BY SELLER IN SECTION 11 HEREOF OR THE DOCUMENTS MADE AVAILABLE BY SELLER PURSUANT TO SECTION 5) OR OF ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT OR ATTORNEY OF SELLER. BUYER ACKNOWLEDGES THAT ALL INFORMATION OBTAINED OR THAT WILL BE OBTAINED BY BUYER WAS OR WILL BE OBTAINED FROM A VARIETY OF SOURCES AND SELLER WILL NOT BE DEEMED TO HAVE REPRESENTED OR WARRANTED THE COMPLETENESS, TRUTH OR ACCURACY OF ANY OF THE DOCUMENTS OR OTHER SUCH INFORMATION HERETOFORE OR HEREAFTER FURNISHED TO BUYER THAT WAS CREATED, PREPARED, COMPILED, OR AUTHORED BY ANY PERSON OR ENTITY OTHER THAN SELLER OR ANY OF ITS AGENTS OR AFFILIATES. EXCEPT AS MAY BE EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT OR THE DOCUMENTS MADE AVAILABLE BY SELLER PURSUANT TO SECTION 5, UPON CLOSING, BUYER WILL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND SELLER WILL SELL AND CONVEY TO BUYER, AND BUYER WILL ACCEPT THE PROPERTY, "AS IS, WHERE IS," WITH ALL FAULTS. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN. BUYER, WITH BUYER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND

WAIVERS SET FORTH IN THIS AGREEMENT, AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF. BUYER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH HEREIN ARE AN INTEGRAL PART OF THIS AGREEMENT. THE TERMS AND CONDITIONS OF THIS SECTION 11.1.4 WILL EXPRESSLY SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT, WILL NOT BE MERGED INTO THE CLOSING DOCUMENTS AND WILL BE DEEMED INCORPORATED INTO THE DEED.

**12. Maintenance of Subject Property; Risk of Loss, Condemnation.**

**12.1 Maintenance of Subject Property.** From the Effective Date of this Agreement until the Closing Date (or any earlier termination of this Agreement), Seller agrees to maintain the Subject Property in substantially the same condition existing as of the Effective Date, ordinary wear and tear accepted.

**12.2 Risk of Loss; Condemnation.** Risk of loss of or damage to the improvements on the Subject Property will be borne by Seller (except for losses or damage caused by Buyer) at all times until the Closing Date and no event of casualty or damage shall affect the Parties' obligations under the Agreement or the Purchase Price. However, in the case of casualty occurring after the Effective Date, Buyer will have the right to receive any insurance proceeds due Seller in connection with any casualty or damage and Seller covenants to maintain commercially reasonable casualty insurance in place with respect to the Subject Property at all times prior to Closing. Seller or Buyer shall promptly notify Buyer or Seller of any condemnation or eminent domain proceeding which affects or may affect the Subject Property. In the event of any condemnation or eminent domain proceeding by any entity other than City, or a deed in lieu of or under threat thereof, which affects a material portion of the Subject Property, Buyer may elect either to terminate this Agreement, or to purchase the Subject Property in the condition existing on the Closing Date without adjustment of the Purchase Price.

**13. Default.**

**13.1 Time of Essence.** Time is of the essence for this Agreement.

**13.2 Seller's Election of Remedies.** Should Buyer default under this Agreement, Seller may, at its sole and exclusive remedy, terminate this Agreement and keep that portion of the Deposit that does not exceed five percent (5%) of the Purchase Price as liquidated damages as the sole and exclusive remedy. Buyer and Seller agree that retention of the Deposit by Seller as outlined above, represents a reasonable estimation of damages in the event of Buyer's default, as actual damages would be difficult to ascertain, and further that this provision does not constitute a penalty. In this respect, Buyer and Seller acknowledge that these damages have been specifically negotiated between Buyer and Seller and are,

inter alia, to compensate Seller for delaying the eventual sale of the Subject Property and to compensate Seller or its costs and expenses associated with this Agreement.

**13.3 Buyer’s Remedies for Seller’s Default.** If Seller fails to complete the sale of the Subject Property in accordance with this Agreement, Buyer’s remedy will be to terminate this Agreement or to seek specific performance.

**14. Notices.** All notices, demands and other communications required or permitted to be given shall be in writing and shall be sent by personal delivery (including by means of professional messenger or courier service) or registered or certified mail, postage-prepaid, return-receipt requested, or by electronic mail (email) at the addresses provided. Notice shall be deemed to have been given if personally delivered or sent by electronic mail (email), upon receipt, if sent by mail, two (2) days after duly placed in the U.S. Mail to all of the addresses designated for such party.

The Parties’ respective addresses for notices are as follows:

<u>TO THE BUYER</u>	<u>TO SELLER</u>
City of Auburn – Real Estate Division Attn: Josh Arndt 25 West Main Auburn, WA 98001 253.288.4325 Jarndt@auburnwa.gov	Maurice Skagen 29308 132 <sup>nd</sup> Ave SE Auburn, WA 98092 253.631.3292 mauriceskagen@comcast.net
With copies to:	With copies to:
City of Auburn – Legal Department Attn: Jason Whalen 25 West Main St Auburn, WA 98001 253.804.5026 JWhalen@auburnwa.gov	Draper Law PLLC Adam Draper 6833 32 <sup>nd</sup> Ave. NE Seattle, WA 98115 206.348.8240 adam@draperlawpllc.com

Notice of change of address shall be given by written notice in the manner detailed in this Section.

**15. General.**

**15.1 Entire Agreement.** This is the entire Agreement (including the attached Exhibits) of Buyer and Seller with respect to the matters covered hereby and supersedes all prior agreements between them, written or oral. This Agreement may only be modified or amended in writing, signed by Buyer and Seller. Any waivers must be in writing. No waiver of any right or remedy in the event of default will constitute a waiver of such right

or remedy in the event of any subsequent default. Venue for disputes under this Agreement is the Superior Court of King County, Washington.

**15.2 Choice of Law.** This Agreement will be governed by the laws of the State of Washington.

**15.3 No Third-Party Beneficiaries/Severability.** This Agreement is for the benefit only of the Parties and shall inure to the benefit of and bind the heirs, personal representatives, successors and permitted assigns of the Parties. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**15.4 Survival of Rights, Duties, and Obligations.** The Parties' rights, duties, covenants, and obligations shall survive Closing and the expiration or earlier termination of this Agreement.

**15.5 Indemnification.** Until Buyer's acquisition of the Subject Property at Closing, Seller shall indemnify, defend, and hold Buyer harmless from and against any and all claims and agency orders or requirements relating to or arising out of, directly or indirectly, the Subject Property, except to the extent caused by the negligence or willful misconduct of Buyer.

**15.6 Signing Authority.** Each of the Parties represents and warrants that the individual signing this Agreement on its behalf is duly authorized to enter into this Agreement and to execute and legally bind such Party to it. The City of Auburn's signing authority is subject to Section 15.12.

**15.7 Attorneys' Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party is entitled to recover from the other party such sum as the Court may adjudge reasonable as attorneys' fees, including fees incurred at trial, on any appeal and in any petition for review.

**15.8 Exclusivity.** During the term of this Agreement, Seller will not market nor list the Subject Property for sale, nor accept any offers from third parties with respect to the sale of the Subject Property.

**15.9 Information Transfer.** In the event this Agreement is terminated, Buyer agrees to deliver to Seller within ten (10) days of Seller's written request copies of all materials received from Seller and any non-privileged plans, studies, reports, inspections, appraisals, surveys, drawings, permits, applications or other development work product relating to the Property in Buyer's possession or control as of the date this Agreement is terminated.

**15.10 Reservation of Police Power.** Notwithstanding anything to the contrary set forth in this Agreement, Buyer understands and acknowledges that City's authority to exercise its police (regulatory) powers in accordance with applicable law shall not be deemed limited by the provisions of this Agreement.

**15.11 Counterparts.** This Agreement and any amendments that may come to exist, may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. All counterparts collectively constitute a single instrument.

**15.12 Approval by Auburn City Council.** The Parties acknowledge and agree that this Agreement is subject to and contingent upon the approval and ratification of the Auburn City Council, by resolution.

**15.13 No Broker.** No broker, finder, agent or similar intermediary has acted for or on behalf of the Buyer. Any broker, finder, agent or similar intermediary acting for or on behalf of the Seller, if any, shall be paid from Seller's proceeds in accordance with Section 9.2.1 above.

**15.14 Assignment.** Buyer's rights and obligations under this Agreement are not assignable without the prior written consent of Seller, which shall not be withheld unreasonably; provided, however, Buyer may assign this Agreement without the consent of Seller, but with notice to Seller, to any entity under common control and ownership of Buyer, provided no such assignment shall relieve Buyer of its obligations hereunder. The party identified as the initial Buyer shall remain responsible for those obligations of Buyer stated in this Agreement notwithstanding any assignment.

**15.15 Exhibits.** The following exhibits are attached and incorporated into this Agreement by reference.

**Exhibit A – Legal Description of the Subject Property**

**Exhibit B – Boundary Line Adjustment Depiction**

**Exhibit C – Operating Agreement with the The Soos Creek Botanical Garden Foundation**

**Exhibit D – Maurice Skagen Lease**

**Exhibit E – Seller Disclosure – Environmental**

*SIGNATURES ON THE FOLLOWING PAGE*

**SIGNATURE PAGE**

**BUYER**

**SELLER**

CITY OF AUBURN

\_\_\_\_\_  
Nancy Backus, Mayor                      Date:

\_\_\_\_\_  
Morris W. Skagen                      Date:

Approved as to Form:

\_\_\_\_\_  
Jason Whalen, Auburn City Attorney

\_\_\_\_\_

**EXHIBIT A**  
**Legal Description of the Subject Property**  
**Parcel # 032105-9074**  
**(Revised Parcel B)**

THAT PORTION OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER TOGETHER WITH THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS;

**COMMENCING** AT THE WEST QUARTER CORNER OF SAID SECTION 3, AS MONUMENTED BY CITY OF AUBURN MONUMENT 1419, AN ENCASED BRASS PLUG IN CONCRETE NEAR THE CENTER OF 132ND AVE SE;

**THENCE** ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, NORTH 01° 29' 47" EAST, 988.05 FEET;

**THENCE** DEPARTING SAID WEST LINE, SOUTH 88° 43' 54" EAST, 30.00 FEET TO THE EAST RIGHT OF WAY MARGIN OF 132ND AVE SE, ALSO BEING THE SOUTHWEST CORNER OF LOT A, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155 RECORDED UNDER RECORDING NO. 9612301254 AND AS CORRECTED PER BOUNDARY LINE ADJUSTMENT NO. L96L0155, RECORDED UNDER RECORDING NO. 20020211002613 AND **THE POINT OF BEGINNING**;

**THENCE** CONTINUING ALONG THE SOUTH LINE OF SAID KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155, SOUTH 88° 43' 54" EAST, 779.34 FEET TO THE SOUTHWEST CORNER OF LOT 2, KING COUNTY SHORT PLAT NO. 477101, RECORDED UNDER RECORDING NO. 7711221019;

**THENCE** ALONG THE WEST LINE OF SAID LOT 2 OF SAID SHORT PLAT, NORTH 01° 29' 47" EAST, 299.45 FEET TO THE NORTH LINE OF SAID LOT 2;

**THENCE** ALONG SAID NORTH LINE SOUTH 88° 44' 20" EAST, 509.29 FEET TO THE SOUTHEAST CORNER OF TRACT "X" OF SAID SHORT PLAT;

**THENCE** ALONG THE EAST LINE OF SAID TRACT "X" NORTH 01° 28' 40" EAST, 30.00 FEET TO THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

**THENCE** ALONG THE NORTH LINE OF SAID SUBDIVISION SOUTH 88° 44' 20" EAST, 262.85 FEET;

**THENCE** DEPARTING SAID NORTH LINE SOUTH 01° 28' 40" WEST, 329.55 FEET TO THE SOUTH LINE OF THE NORTH HALF OF SAID SUBDIVISION;

**THENCE** ALONG SAID SOUTH LINE SOUTH 88° 43' 54" EAST, 369.50 FEET TO THE SOUTHEAST CORNER OF SAID NORTH HALF;

**THENCE** ALONG THE EAST LINE OF THE SOUTH HALF OF SAID SUBDIVISION SOUTH 01° 28' 07" WEST, 164.80 FEET;

**THENCE** NORTH 88° 43' 30" WEST, 659.37 FEET TO THE EAST LINE OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

**THENCE** ALONG SAID EAST LINE SOUTH 01° 28' 40" WEST, 164.79 FEET TO THE SOUTHEAST CORNER OF SAID NORTH HALF;

**THENCE** ALONG THE SOUTH LINE OF SAID NORTH HALF NORTH 88° 43' 27" WEST, 812.79 FEET;

**THENCE** DEPARTING SAID SOUTH LINE NORTH 01° 29' 51" EAST, 165.00 FEET;

**THENCE** NORTH 88° 43' 27" WEST, 476.00 FEET TO SAID EAST RIGHT OF WAY MARGIN;

**THENCE** ALONG SAID EAST MARGIN NORTH 01° 29' 47" EAST, 164.35 FEET TO **THE POINT OF BEGINNING.**

CONTAINING 693,798 SQUARE FEET (15.93 ACRES), MORE OR LESS.

**TOGETHER WITH** AN UNDIVIDED INTEREST IN TRACT "X" AS DELINEATED ON SAID KING COUNTY SHORT PLAT NO. 477101;

**TOGETHER WITH** A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE NORTH 30 FEET OF THE WEST HALF OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

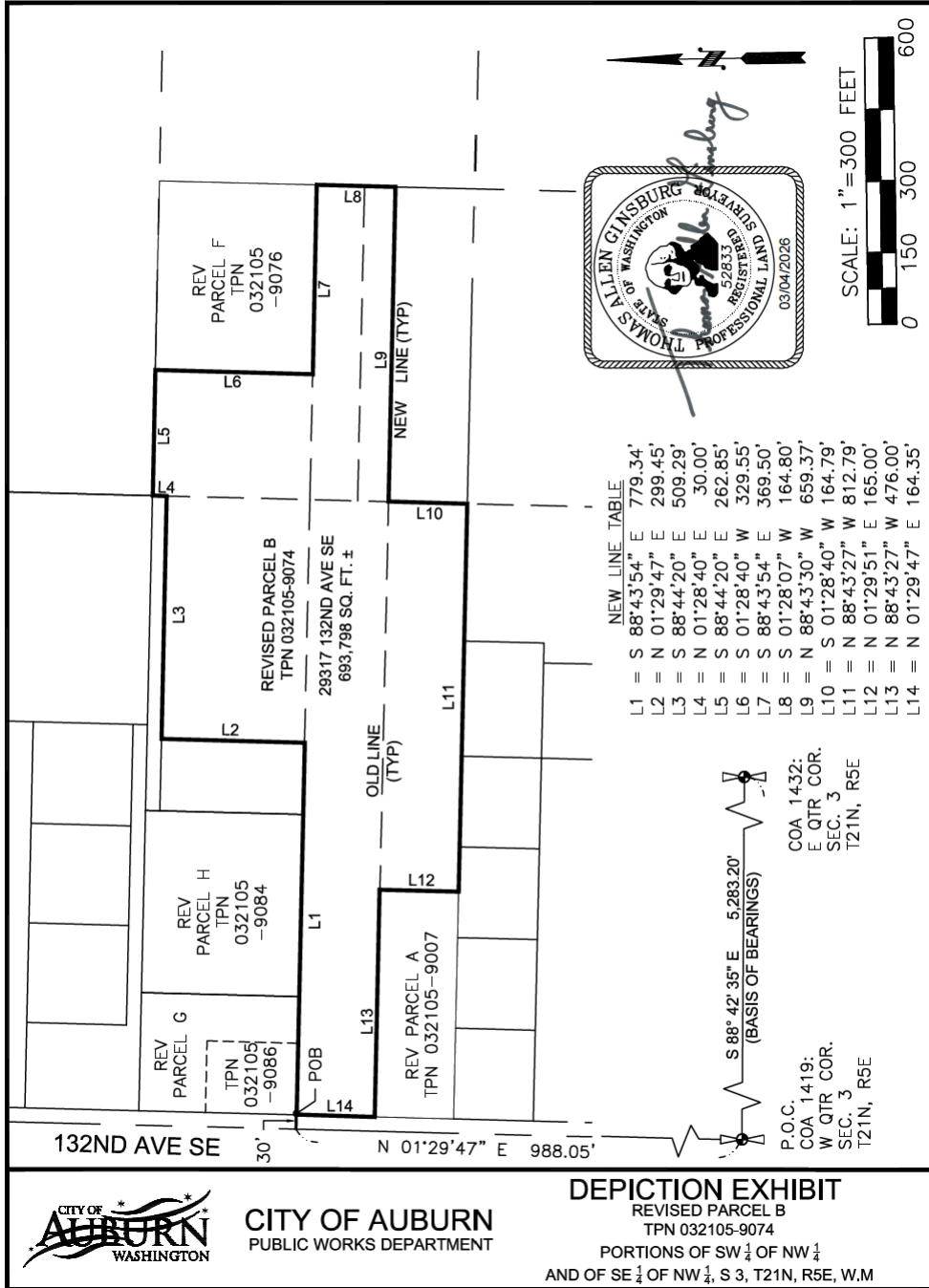
EXCEPT THE WEST 30 FEET THEREOF LYING WITHIN 132ND AVENUE SOUTHEAST.

**TOGETHER WITH** A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER, ACROSS AND UNDER THE EAST 30 FEET, AND THE SOUTH 30 FEET OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE WEST 15 FEET OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION.



# EXHIBIT B

## Boundary Line Adjustment Depiction (Revised Parcel B)



**EXHIBIT C**  
**Operating Agreement with the The Soos Creek Botanical Garden Foundation**  
**(Cover Page)**

**CITY OF AUBURN**  
**OPERATING AGREEMENT FOR SERVICES**  
**SOOS CREEK BOTANICAL GARDEN FOUNDATION**

THIS OPERATING AGREEMENT FOR SERVICES (“Agreement”) is made and entered into on this \_\_\_\_\_ of \_\_\_\_\_, 2026, by and between the **CITY OF AUBURN (“City”)**, a municipal corporation of the State of Washington, and **THE SOOS CREEK BOTANICAL GARDEN FOUNDATION**, a Washington nonprofit corporation (UBI Number 602 961 230) (**“Foundation”**), whose mailing address is 29308 132nd Ave SE, Auburn, WA 98092. Individually, the City and the Foundation are referred to herein as a “Party,” and collectively, as the “Parties.”

**RECITALS:**

1. By Bargain and Sale Deed dated \_\_\_\_\_, and recorded under King County Recording No. \_\_\_\_\_, the City is the owner of that certain real property commonly known as Soos Creek Botanical Garden & Heritage Center, located at 29308 132<sup>nd</sup> Ave SE, Auburn, King County, Washington 98092, legally described as set forth on **Exhibit A**, and as depicted on **Exhibit B** (the “Property”). The Property consists of approximately 15.93 acres of land and contains a main house and attached aviary, an open pavilion for events, and an additional structure, the Heritage Center, and all its historical items and personal property contents, which is devoted to the history of the early settlers of the area called the Soos Creek Plateau.
2. The Property was acquired by the City with King County Conservation Futures Tax Levy (“CFT”) Funds, in part, and as a result of the charitable gift and benevolence of Morris (or Maurice) W. Skagen, whose Norwegian immigrant ancestors purchased the acreage on which the Property is located, in part, between 1891 and 1905, in the early years following Auburn’s incorporation. The City intends to acquire an additional 2.89 acres legally described and set forth on **Exhibit E**, and depicted on **Exhibit F** from the Foundation when CFT funds become available (the “Foundation Property”). Because of the utilization of CFT funds to acquire the Property, a relevant portion of the Property and the Foundation Property is and will be (in the case of the Foundation Property) subject to and restricted by a deed restriction covenant, effectively maintaining both properties as open space for the benefit of the public, consistent with the charitable intent of Maurice Skagen and the Foundation.
3. The Soos Creek Botanical Garden Foundation (Foundation) is a Washington nonprofit corporation, registered as a 501(c)(3) entity with EIN 27-1104322. The Foundation was initially formed in 2009 as The James Daly and Morris Skagen Garden Foundation,<sup>1</sup> for the purpose of “the preservation and enhancement of exceptional gardens for the benefit of the public,” among other related purposes.

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<sup>1</sup> On June 17, 2010, the Articles of Incorporation were amended to change the name of the nonprofit entity to The Soos Creek Botanical Garden Foundation.

Since that time, and prior to the City's acquisition of the Property, the Foundation, along with Mr. Daly and Mr. Skagen, has improved, maintained, and operated the Property (in addition to other adjacent property parcels, not acquired by the City) for the benefit of the public as the Soos Creek Botanical Garden & Heritage Center (hereinafter, the "Garden"). Per the Garden's website, the Garden "provides a diversity of gardens based upon international, regional, and historical gardens, while providing education and conversation of horticulture, the environment, and history". See [www.sooscreekbotanicalgarden.org](http://www.sooscreekbotanicalgarden.org).

4. It was a required condition in each of the purchase and sale contracts between the City and Foundation and the City and Mr. Skagen that the Parties would enter into this Agreement in order to establish the Foundation's continuing operation and maintenance of the Garden after the City's acquisition. Neither the City, the Foundation nor Mr. Skagen would have agreed to the City's acquisition of the Property unless the Foundation continues to operate and maintain the Garden as long as it is adequately able to do so.

5. The City and the Foundation mutually desire for the Foundation to continue to maintain and operate the Property and when acquired, the Foundation Property, as the Soos Creek Botanical Garden & Heritage Center as the Foundation has done since its founding in 2009, order to preserve its natural and historical significance and to ensure the Property remains an asset in perpetuity for the benefit of the public, including the residents of the City of Auburn as well as those local and regional patrons of Soos Creek Botanical Garden & Heritage Center.

6. Until such time when the City acquires the Foundation Property, the City will require the Foundation to execute an easement for ingress, egress, parking and operations substantially in the form attached as **Exhibit D**.

**AGREEMENT:**

In consideration of the recitals set forth above, and the conditions and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

1. Foundation's Duties and Responsibilities

The Foundation agrees to continue to operate, maintain, and improve the Property, and when acquired, the Foundation Property, as part of the Garden in order to maintain and enhance a regionally significant botanical garden and collection of native species, as well as non-native species compatible with the region, while providing education and conservation of horticulture, the environment, and history consistent with those duties and responsibilities as outlined on **Exhibit C (the "Services")**.

2. Additional Services

The Parties may, within their respective discretion, agree to amend this Agreement if additional property is acquired or if additional services are required beyond those specified in **Exhibit C**. An amendment must be written and agreed to by the Parties before Foundation performs any additional

services, and it must specify the nature, scope, and payment terms, if any, for the additional services. If the period for completing additional services makes the advance signing of an amendment impractical, the Parties agree to perform only the additional services approved in writing by their authorized representative pending the signing of an Amendment as set forth in this Section.

3. Foundation's Representations, Qualifications, and Financial Strength

Foundation represents and warrants that it has all the required licenses, certifications, qualifications, and operational finances necessary to perform the services in this Agreement and agrees to maintain its 501(c)(3) status during the entire term of this Agreement. Foundation represents that its signatory to this Agreement has the requisite legal authority to bind Foundation to the terms and conditions of this Agreement.

4. No Rent or Compensation to be Paid

a. **No Rent or Compensation to be Paid to either Party.** The City obtained CFT funds to acquire the Property, in part, with the balance of the purchase price gifted to the City by Maurice Skagen. In consideration of the fact the Foundation is a 501(c)(3) charitable organization whose purpose and mission is to provide public benefit via its work at the Garden, including particularly to the residents of the City of Auburn, the City and Foundation agree that no rent will be payable by the Foundation to the City for its use of the Garden, nor shall the City pay the Foundation any monetary compensation for the Foundation's performance of this Agreement, including the performance of those Services set forth on **Exhibit C**, absent mutual agreement and contingent upon available funding. The Parties agree to work cooperatively in the Foundation's attempts to acquire available grant funding that would enhance the operation and offerings of the Garden to the public, including without limitation via applications to various potentially applicable Washington State and King County grant programs.

b. **Prevailing Wage.** The Foundation will pay its non-volunteer personnel, if any, the applicable prevailing wage for all laborers and staff in the performance of the Services. The minimum prevailing wage rate paid for each year shall be the rate in effect on January 1 of each year. The Foundation shall file annually its Intent to Pay Prevailing Wages form and an Affidavit of Wages Paid form with the Department of Labor & Industries.

c. **Leasehold Excise Tax.** If Washington State requires the City to collect a Leasehold Excise Tax (LET) because the Foundation is deemed to have a leasehold interest in all or any portion of the Property or Garden, owed by the City, then the Foundation will be responsible for the LET, at 12.84% of the value then determined for the leasehold interest.

5. Time for Performance, Term, and Termination of Agreement

a. **Term.** The term of this Agreement commences upon the Closing of the transaction whereby the City acquires the Property (the "Effective Date"). Once commenced, the Foundation shall perform all Services set forth in **Exhibit C**, for an initial term of ten

(10) years (“Initial Term”). This Agreement shall be automatically extended in five (5) year increments (“Extension Terms”) unless terminated earlier as provided herein. Any Extension Term shall be effectuated by a written notice, addendum, or amendment to this Agreement, which amendment shall include such modified or additional terms and conditions as the Parties may agree upon within their respective discretion.

- b. **Termination.** In recognition of the Parties’ mutual intent that the Foundation continue operating and maintaining the Property as the Garden for as long as it is reasonably able to do so, as reflected in the above Recitals, the Parties agree that this Agreement may only be terminated for cause or necessity.

**Termination for Cause.** Either party may terminate this Agreement for cause with written notice to the other Party. A termination is “for cause” if a party substantially fails to perform in accordance with the terms of this Agreement through no fault of the other Party, if said Party fails to correct or perform within thirty (30) days of receipt of written notice (or such other period of notice as may be specified in this Agreement ), or within such longer time as the Parties agree upon in the event correction is not reasonably possible within 30 days. The notice will specify the termination reason(s) and the termination effective date, and the correction action(s) necessary to prevent termination. If the City terminates this Agreement for cause, all City payments otherwise due to Foundation, if any, will be suspended and the City will have no further obligations to Foundation.

**Termination for Necessity.** Either Party may terminate this Agreement out of necessity upon at least ninety (90) days advance written notice to the other Party. A termination is out of “necessity” if a party can no longer reasonably perform in accordance with the terms of this Agreement through no fault of the other Party, and such failure is due to financial hardship, severe casualty loss to the Property preventing the ongoing operation of the Property as the Garden for public benefit, or a similar type(s) of problem that the terminating party has been unable to resolve despite good faith efforts including engaging in discussions with the non-terminating party. The notice shall specify the termination reason(s) and the termination effective date. If the termination is by the City, the City will compensate Foundation for those compensable services performed, if any, up to the Termination Date, if eligible for compensation. The compensation will fully satisfy the City’s obligations under this Agreement and will discharge the City from any further obligations and liabilities to the Foundation (including any Foundation claims of anticipated profits or other consequential damages resulting from the termination).

- c. **Surrender of Possession upon Termination.** Upon receipt of any termination notice, the Foundation will, no later than the termination effective date, deliver possession of all structures on the Property in which the Foundation has possession, discontinue all services, and deliver to the City all vendor information and contracts, keys for all gates

and buildings/structures, reports, summaries, and such other documents, information and materials the Foundation has accumulated, prepared, or obtained in performing this Agreement (whether fully or partially completed). The Parties agree that as long as Mr. Skagen is leasing the primary residence on the Property (which lease is under a separate agreement between the City and Mr. Skagen), the Foundation will not be deemed to have possession of such residence for purposes of this Agreement, unless the Foundation has leased or subleased a portion of the primary residence for Foundation purposes – in which case such portion shall be subject to this Section 5c.

- d. The rights and remedies in this Section do not exclude any other legal or equitable rights or remedies available to the City.

#### 6. Ownership and Use of Documents

The City will own all documents related to the maintenance and operations of the Property including, reports, memoranda, diagrams, sketches, plans, surveys, working drawings and any other materials that the Foundation creates or prepares in performing this Agreement (the “Work Products”), provided, however, City understands and agrees that the City does not own Foundation donor information and the Foundation cannot disclose donor information. The City may use these Work Products for any lawful purpose. Foundation acknowledges that this Agreement and the Work Products are public records subject to RCW 42.56 unless exempt from public records disclosure requirements. The Foundation agrees to fully assist the City in identifying, locating, and copying any records Foundation possesses that the City determines in its sole discretion are responsive to a Public Records request. The City agrees to process Public Records requests with appropriate exemptions from disclosure requirements.

#### 7. Records Inspection and Audit

All City payments to the Foundation, if any, are subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced. The City may inspect and audit any Foundation records and books of account pertaining to any work performed under this Agreement for up to 3 years after the City’s final payment to Foundation. If any litigation, claim, dispute, or audit is initiated before this 3-year period expires, Foundation shall retain all records and books of account for any work performed under this Agreement until final resolution of any such litigation, claim, dispute, or audit.

#### 8. Continuation of Performance

If any dispute or conflict arises between the Parties while this Agreement is in effect, the Foundation agrees to cooperate and continue in good faith toward successful completion of its responsibilities under this Agreement notwithstanding such dispute or conflict.

#### 9. Independent Contractor

The Foundation will perform the Services as an independent contractor and will not be deemed by virtue of this Agreement or the performance of it to be in a partnership, joint venture, employment, or other relationship with the City. Nothing in this Agreement creates any contract relationship between the City and the Foundation’s volunteers, employees, agents, or subcontractors. The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to Foundation or any employee of Foundation.

10. Administration of Agreement

This Agreement will be administered by \_\_\_\_\_, on behalf of the Foundation, and by the City of Auburn Mayor (or designee) on behalf of the City.

11. Notices

Notices or communications permitted or required under this Agreement will be written and delivered to the following addresses:

<b>Notice to the City:</b>	<b>Notice to Foundation:</b>
<hr/> Director of Parks & Recreation City of Auburn 25 West Main St Auburn WA 98001-4998 Phone: (253) 931-3043 Email: parks@auburnwa.gov	<hr/> The Soos Creek Botanical Garden Foundation Attn: Matt Jennings 29308 132 <sup>nd</sup> Ave SE Auburn, WA 98092 Phone: (415) 370-7468 Add Phone: (253) 639-0949 Email: <a href="mailto:MJ2543@gmail.com">MJ2543@gmail.com</a> Add Email: <a href="mailto:info@sooscreekbottaninalgarden.org">info@sooscreekbottaninalgarden.org</a>

Either party may change its above address by giving written notice to the other party. Notices to non-parties will be delivered as designated by a party to this Agreement.

12. Insurance

The Foundation will, at its sole expense, procure and maintain for the duration of this Agreement and for thirty (30) days thereafter insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of this Agreement by the Foundation, its agents, representatives, or employees. Foundation’s maintenance of insurance as required by the Agreement will not be construed to limit the liability of the Foundation to the coverage provided by such insurance or otherwise limit the City’s recourse to any remedy available at law or in equity.

The Foundation will obtain insurance of the types described below:

- a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage will be at least as broad as Insurance Services Office (ISO) form CA 00 01 (Foundation may use a substitute form providing equivalent liability coverage).
- b. Commercial General Liability insurance will be at least as broad as ISO occurrence form CG 00 01 and will cover liability arising from premises, operations, stop-gap independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City will be named as an additional insured under the Foundation's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO Additional Insured endorsement CG 20 26.
- c. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- d. Tenant Discrimination Liability Insurance, applicable if the Foundation leases or subleases any portion of the Property for residential purposes (e.g. a garden caretaker). The City will be named as an additional insured under the Foundation's Tenant discrimination Liability insurance policy.

For Automobile Liability and Commercial General Liability insurance, the policies are to contain or be endorsed to contain that Foundation's insurance coverage will be primary insurance with respect to the City. Any insurance, self-insurance, or self-insurance pool coverage maintained by the City will be excess of the Foundation's insurance and will not contribute to it.

Insurance is to be placed with an authorized insurer in Washington State. The insurer must have a current A.M. Best rating of not less than A:VII.

The Foundation will furnish the City with original certificates of insurance and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of this Agreement before commencement of the work.

The City reserves the right to require that complete, certified copies of all required insurance policies and/or evidence of all subcontractors' coverage be submitted to the City at any time. The City may withhold payment, if any is due, if the Foundation does not fully comply with this request.

If the Foundation maintains higher insurance limits than the minimums shown below, the City will be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Foundation, irrespective of whether such limits maintained by the Foundation are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Foundation.

The Foundation will provide the City with written notice of any policy cancellation within two business days of their receipt of such notice. Failure by the Foundation to maintain the insurance as required will constitute a material breach of this agreement, upon which the City may, after giving five (5) business days' notice to the Foundation to correct the breach, immediately terminate the agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the City's sole discretion, offset against funds due the Foundation from the City, if any.

13. Insurance Minimums

The Foundation shall provide:

- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- Commercial General Liability (CGL): Coverage shall be no less than \$2,000,000 each occurrence with \$2,000,000 aggregate, and \$2,000,000 products completed operations aggregate limit.
- Builders Risk. May be required up to the amount of the completed value of a new building or major construction project.
- Tenant Discrimination Liability: Coverage shall be no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit. Applicable if the Foundation leases or subleases any portion of the Property for residential purposes (e.g. a garden caretaker).

14. Indemnification/Hold Harmless

Except for injuries and damages caused by the sole negligence of the City, the Foundation will defend, indemnify and hold the City and its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits of every kind, including attorney fees and litigation expenses, arising out of or resulting from the acts, errors, or omissions of the Foundation, its employees, agents, representatives, or subcontractors, including employees, agents, or representatives of its subcontractors, made in the performance of the Services required by this Agreement, or arising out of worker's compensation, unemployment compensation, or unemployment disability compensation claims.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Foundation and the City, its officers, officials, employees, and volunteers, the Foundation's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Foundation's negligence.

It is further specifically and expressly understood that this indemnification constitutes the Foundation'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 will survive the expiration or termination of this Agreement.

15. No Acts in Contravention of Foundation Nonprofit Status.

Regardless of any provisions herein, the City understands and agrees that nothing in this Agreement (including Exhibit C) requires the Foundation to provide private inurement or impermissible private benefit, or otherwise take any action that violates or jeopardizes in any way the Foundation's 501(c)(3) charitable status or its status as a Washington nonprofit corporation governed by Chapter 24.03A RCW.

16. Assignment

Neither party to this Agreement may partially or wholly assign any right or obligation in it without the other Party's prior written consent. No assignment or transfer of any interest under this Agreement will release the assignor from any liability or obligation under this Agreement or cause any such liability or obligation to be reduced to a secondary liability or obligation.

16. Nondiscrimination

The Foundation may not engage in any unfair practice identified in RCW 49.60.180 and/or 42 U.S.C. §2000e-2 in the performance of any services or activities under this Agreement (either directly or through contractual, hiring, or other arrangements).

17. Amendment, Modification and Waiver

No amendment, modification, or waiver of any condition, provision, or term of this Agreement will be valid or effective unless written and signed by the Party to be bound (or the Party's authorized representative), specifying the nature and extent of such amendment, modification or waiver. Any waiver, approval or acceptance, or payment by any Party will not affect or impair that Party's rights arising from any default by the other Party.

18. Parties in Interest

This Agreement will bind (and its benefits and obligations will inure to) the Parties and their respective successors and assigns. This section will not permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the Parties, and it does not create a contractual relationship with or exist for the benefit of any third party (including contractors, sub-contractors and sureties).

19. Force Majeure

Delays in performing this Agreement will be excused to the extent caused by acts outside a Party's control, such as fires, cyber/ransomware attacks, earthquakes, floods, explosions, actions of the elements, riots, mob violence, strikes, pandemics, labor strikes or lockouts, and state or federal government emergency orders.

20. Applicable Law/Venue/Dispute Resolution

This Agreement and the rights of the Parties under it will be governed by the laws, regulations, and ordinances of the City, King County, and the State of Washington. Venue for actions involving this Agreement will be in King County Superior Court. An applicable statute of limitation will

commence no later than the Foundation's substantial completion of the Services in this Agreement. Prior to commencing any legal action involving this Agreement, the Parties agree to engage in informal or formal mediation with a mediator mutually agreed to by the Parties, with the cost of the mediation shared equally.

21. Captions, Headings and Titles

All captions, headings or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and will not act to limit the scope of their paragraph or section. Where appropriate, the singular will include the plural (and vice versa), and masculine, feminine and neuter expressions will be interchangeable. This Agreement has been drafted by mutual agreement of the Parties, and it will be interpreted and/or constructed without regard to its drafter.

22. Severable Provisions

Each provision of this Agreement is intended to be severable. The illegality or invalidity of any provision in this Agreement will not affect the validity of the Agreement's remaining provisions.

23. Entire Agreement

This Agreement (together with any subsequent amendments or addendums) contains the entire understanding of the Parties regarding its subject matter, and it supersedes all prior oral or written representations, agreements and understandings between the parties. No other oral or written understandings regarding this Agreement shall bind any Party.

24. Non-Availability of Funds

Every City obligation under this Agreement is contingent on the availability of appropriated or allocated City funds, to the extent City funds are required - if at all - for the City to perform a given obligation. If funds required for the City's performance are not allocated and available, the City may terminate this Agreement for necessity at the end of the available funding period, subject the required Section 5 notice period. The City will not be liable if it exercises this provision and will not be obligated or liable for any future payments or damages as a result of termination under this Section.

25. Counterparts

This Agreement may be executed in multiple counterparts, with each counterpart being one and the same Agreement, and the Agreement will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below, with the term of the Agreement beginning on the Effective Date set forth above.

**CITY OF AUBURN**, a Washington

**THE SOOS CREEK BOTANICAL GARDEN  
FOUNDATION**, a Washington nonprofit  
corporation

\_\_\_\_\_  
Nancy Backus, Mayor

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

\_\_\_\_\_  
Signature

Name:

Title:

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

Approved as to form:

\_\_\_\_\_  
Jason M. Whalen, Auburn City Attorney

**EXHIBIT A (To the Operating Agreement)  
Legal Description of the Property  
(Revised Parcel B)**

THAT PORTION OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER TOGETHER WITH THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS;

**COMMENCING** AT THE WEST QUARTER CORNER OF SAID SECTION 3, AS MONUMENTED BY CITY OF AUBURN MONUMENT 1419, AN ENCASED BRASS PLUG IN CONCRETE NEAR THE CENTER OF 132ND AVE SE;

**THENCE** ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, NORTH 01° 29' 47" EAST, 988.05 FEET;

**THENCE** DEPARTING SAID WEST LINE, SOUTH 88° 43' 54" EAST, 30.00 FEET TO THE EAST RIGHT OF WAY MARGIN OF 132ND AVE SE, ALSO BEING THE SOUTHWEST CORNER OF LOT A, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155 RECORDED UNDER RECORDING NO. 9612301254 AND AS CORRECTED PER BOUNDARY LINE ADJUSTMENT NO. L96L0155, RECORDED UNDER RECORDING NO. 20020211002613 AND **THE POINT OF BEGINNING**;

**THENCE** CONTINUING ALONG THE SOUTH LINE OF SAID KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155, SOUTH 88° 43' 54" EAST, 779.34 FEET TO THE SOUTHWEST CORNER OF LOT 2, KING COUNTY SHORT PLAT NO. 477101, RECORDED UNDER RECORDING NO. 7711221019;

**THENCE** ALONG THE WEST LINE OF SAID LOT 2 OF SAID SHORT PLAT, NORTH 01° 29' 47" EAST, 299.45 FEET TO THE NORTH LINE OF SAID LOT 2;

**THENCE** ALONG SAID NORTH LINE SOUTH 88° 44' 20" EAST, 509.29 FEET TO THE SOUTHEAST CORNER OF TRACT "X" OF SAID SHORT PLAT;

**THENCE** ALONG THE EAST LINE OF SAID TRACT "X" NORTH 01° 28' 40" EAST, 30.00 FEET TO THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

**THENCE** ALONG THE NORTH LINE OF SAID SUBDIVISION SOUTH 88° 44' 20" EAST, 262.85 FEET;

**THENCE** DEPARTING SAID NORTH LINE SOUTH 01° 28' 40" WEST, 329.55 FEET TO THE SOUTH LINE OF THE NORTH HALF OF SAID SUBDIVISION;

**THENCE** ALONG SAID SOUTH LINE SOUTH 88° 43' 54" EAST, 369.50 FEET TO THE SOUTHEAST CORNER OF SAID NORTH HALF;

**THENCE** ALONG THE EAST LINE OF THE SOUTH HALF OF SAID SUBUDIVISION SOUTH 01° 28' 07" WEST, 164.80 FEET;

**THENCE** NORTH 88° 43' 30" WEST, 659.37 FEET TO THE EAST LINE OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

**THENCE** ALONG SAID EAST LINE SOUTH 01° 28' 40" WEST, 164.79 FEET TO THE SOUTHEAST CORNER OF SAID NORTH HALF;

**THENCE** ALONG THE SOUTH LINE OF SAID NORTH HALF NORTH 88° 43' 27" WEST, 812.79 FEET;

**THENCE** DEPARTING SAID SOUTH LINE NORTH 01° 29' 51" EAST, 165.00 FEET;

**THENCE** NORTH 88° 43' 27" WEST, 476.00 FEET TO SAID EAST RIGHT OF WAY MARGIN;

**THENCE** ALONG SAID EAST MARGIN NORTH 01° 29' 47" EAST, 164.35 FEET TO **THE POINT OF BEGINNING.**

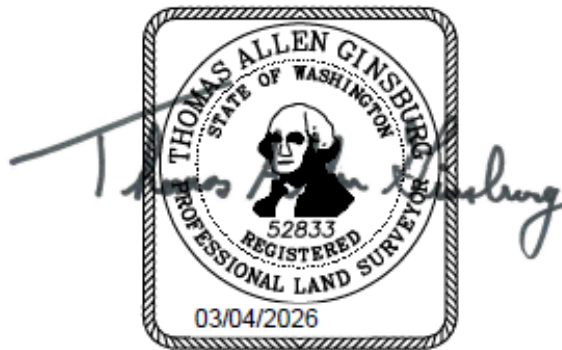
CONTAINING 693,798 SQUARE FEET (15.93 ACRES), MORE OR LESS.

**TOGETHER WITH** AN UNDIVIDED INTEREST IN TRACT "X" AS DELINEATED ON SAID KING COUNTY SHORT PLAT NO. 477101;

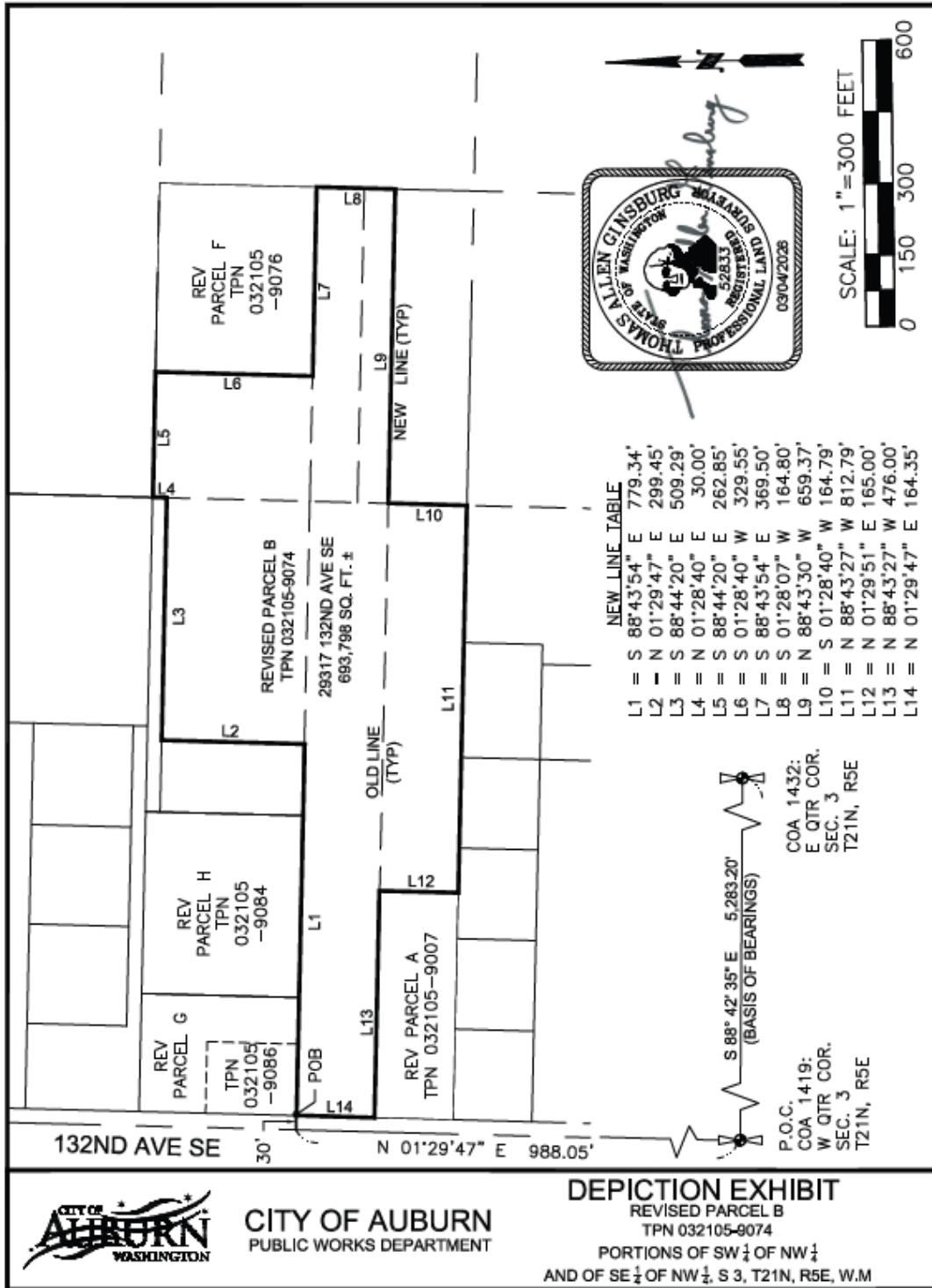
**TOGETHER WITH** A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE NORTH 30 FEET OF THE WEST HALF OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET THEREOF LYING WITHIN 132ND AVENUE SOUTHEAST.

**TOGETHER WITH** A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER, ACROSS AND UNDER THE EAST 30 FEET, AND THE SOUTH 30 FEET OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE WEST 15 FEET OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION.



**EXHIBIT B (To the Operating Agreement)  
Depiction of the Property  
(Revised Parcel B)**



**CITY OF AUBURN**  
PUBLIC WORKS DEPARTMENT

**DEPICTION EXHIBIT**

REVISED PARCEL B  
 TPN 032105-9074  
 PORTIONS OF SW 1/4 OF NW 1/4  
 AND OF SE 1/4 OF NW 1/4, S 3, T21N, R5E, W.M

**EXHIBIT C (To the Operating Agreement)  
The Services**

**Foundation Maintenance Responsibilities.** The Foundation shall maintain all of the following at its sole cost and expense:

**Garden:** The Foundation shall operate, maintain, and improve the Garden, including its plant collections, as it currently exists on and within the Property. The Foundation may modify existing garden areas or establish new areas within the Property, provided such work remains consistent with the mission and purpose of a public botanical garden.

**Irrigation:** If irrigation systems are to be installed in the future, the Foundation shall be responsible for their installation, operation, maintenance, repair, and replacement as necessary.

**Equipment:** The Foundation shall be responsible for and perform all maintenance and repair of onsite equipment owned by the Foundation or the City, if any, that is used by the Foundation for Garden Maintenance. If equipment needs replacement, the Foundation shall replace said equipment in a timely manner, to not disrupt Garden operations.

**Buildings:** The Foundation shall be responsible for all maintenance of all buildings on the Garden and within the Property, provided, however, that the Foundation shall be responsible for the “Main House” or a portion thereof only if and when the primary purpose of the Main House or a portion thereof (e.g. a Garden caretaker apartment) is to support the Garden operations. Thus, as of the Effective Date of the Services Agreement, the Foundation shall be responsible for the “Soos Creek Heritage Center”, the “Pavilion by the Pond”, the aviary (attached to the Main House), and all Garden-related outbuildings, including but not limited to the “Hoop Nursery”, greenhouses, sheds, and other structures, whether currently located on the Garden or installed in the future for Garden-related purposes. Maintenance shall include, but not be limited to, normal and routine maintenance (e.g. painting, minor repairs, replacing light bulbs, pest control, etc.), as well as Capital Improvements (e.g. roof replacement, siding repairs, system replacements, etc.). In the event of significant Capital Improvements or other significant alterations or improvements desired by the Foundation – with “significant” defined as improvements or alterations exceeding ten thousand dollars (\$10,000) in total cost – the Foundation shall obtain the City’s written consent prior to engaging in such work, with such consent not unreasonably withheld. The Foundation may, but is not required to, consult with the City for minor repairs, replacements, or routine maintenance. The Foundation shall be responsible for the investigation and acquisition of any permits needed, with City as owner cooperating as needed for such permits.

**Historic/Cultural Effects:** The Foundation shall be responsible for maintaining artwork, furniture, photos, historic tools and equipment, newspaper articles, etc. (collectively, the

“Historic/Cultural Effects”) as part of its maintenance of the Soos Creek Heritage Center. Additionally, after Maurice Skagen no longer resides in the Main House, the Foundation shall also be responsible for maintaining such Historic/Cultural Effects that Mr. Skagen determines within his discretion to leave in the Main House.

**All Other Site Appurtenances:** The Foundation shall be responsible for all maintenance, repair, and replacement of all site appurtenances, including but not limited to, the entrance gate, parking areas, water/sewage/electrical systems, kiosks, memorials, benches, and fencing. City and Foundation mutually understand and agree that existing and future memorials placed on the Property by the Foundation are intended to be permanent, e.g. the granite memorial bench near the vegetable garden, and shall be replaced if damaged.

**Vehicle and Pedestrian Areas:** The Foundation shall be responsible for maintaining the grounds of the Garden in a safe and well-maintained condition, including, without limitation, parking areas, roads, driveways, walkways, pathways, patios, and other vehicle and pedestrian areas located within the Property.

**Soosette Creek:** The Foundation shall conduct its activities within the Property in a manner that complies with all applicable State and City regulations governing Soosette Creek and its associated critical areas and buffers. Nothing in this Agreement shall prohibit the Foundation from coordinating educational or habitat-related activities associated with the creek (e.g. children releasing salmon frye) and in coordination with applicable organizations (e.g. Muckleshoot Indian Tribe, State of Washington, etc.).

### **Foundation Operational Responsibilities.**

**Hours of the Garden and Soos Creek Heritage Center:** The City and Foundation acknowledge that the Garden is an asset meant to be enjoyed by and open to the public. The Foundation shall consult with the City but ultimately shall have the final authority to determine the days, times, or seasons when the Garden is open to the public or for private events. The Foundation shall keep the City apprised of such open hours, special events, etc. so that the City may assist in public outreach.

**Educational Uses and Fundraising:** The Foundation, at its sole discretion, may continue to offer the Garden and its amenities for educational purposes, including but not limited to, public education (e.g. schools), private education (e.g. garden workshops), and for fundraising events, compliant with its tax-exempt status.

### **City Rights and Responsibilities.**

**City use of the Property and Buildings:** The City may request use of portions of the Property or Garden facilities for City-related events or gatherings. Any such use shall be coordinated with the Foundation and shall be subject to availability and the Foundation's scheduling of Garden operations, programs, and private rentals. The Foundation may, at its discretion, permit such use and may charge the City the same or a discounted rate consistent with the Foundation's facility rental policies. Nothing in this Agreement obligates the Foundation to provide facilities for City use without charge.

Use of any facilities subject to a residential occupancy, including without limitation Maurice Skagen's lease of the main house on his former property, shall only occur if such use is permitted under the terms of that occupancy. City events approved under this section shall be scheduled in coordination with the Foundation, and the City shall be responsible for reasonable cleanup and restoration of the facilities following such use.

**Public Outreach:** The City may include Foundation and Garden events and other information in City-sponsored public outreach (e.g. e-blasts, social media posts, etc.), though it is not required to do so. The Foundation should keep in contact with City Staff to assist in said efforts for public outreach. If the Foundation provides its own public outreach, the Foundation shall not indicate that the City is a sponsor of said events or information provided.

**Periodic Meetings & Reports:** The Foundation and City shall coordinate quarterly meetings, at a time and location as is convenient for each party. Reports, as may be listed in the Foundation Services Agreement, shall be provided in a timely manner to the City.

**Financial Responsibilities of Foundation.** The City and Foundation acknowledge that the purpose of the City's acquisition of the Property and Garden was to ensure in perpetuity the opportunity to continue the historic use of the Property as public gardens, open space and cultural/historic education for the benefit of the Auburn community. The Foundation shall be financially responsible for its Maintenance Responsibilities and Operational Responsibilities, as outlined above. The Foundation intends to rely in part for its financial stability on a donor-advised endowment intended to be created by the investment and benevolence of Garden and Foundation co-founder Maurice Skagen. To the extent allowed by the entity managing such endowment (e.g. the Seattle Foundation or a similar philanthropic management organization), the City will be listed as contingent beneficiary of any such endowment created, provided that all income and principal of the endowment is used solely to maintain and improve the Property and Garden for public benefit as contemplated herein and in accordance with the governing instruments for any such endowment. The Foundation and City acknowledge that in the event the Foundation becomes insolvent or is otherwise unable to maintain the Garden, Property, and

other associated buildings, as described in this Agreement, the City shall receive the full financial benefit, as designated contingent beneficiary of any endowment established for the ongoing maintenance and operation of the Property and Garden, subject to any dissolution/wind-down requirements the Foundation must meet in accordance with its 501(c)(3) status and as a Washington nonprofit corporation governed by Chapter 24.03A RCW. Notwithstanding the City's receipt of available income from the endowment, if financial resources are insufficient to maintain the Garden, then, in the City's sole determination, the Garden and Property may revert to natural open space, for the benefit of the public. If the Foundation is unable to maintain the buildings and other built structures on the Property, the City retains the rights to use the endowment funds, to maintain any such buildings or structures, in such conditions as determined by the City, in the City's sole discretion but subject to the requirement that any donated funds must be used for the charitable purpose(s) for which they were donated.

The City understands and agrees that nothing in the Services Agreement or this Exhibit C shall require the Foundation to provide private inurement or impermissible private benefit, or otherwise take any action that violates or jeopardizes in any way its 501(c)(3) charitable status or its status as a Washington nonprofit corporation governed by Chapter 24.03A RCW.

Subject to the terms and conditions of the Agreement, the Foundation may enter into an agreement with another nonprofit organization to take over the Foundation responsibilities as described herein, subject to the City's written approval and consent, which shall not be unreasonably withheld.

**EXHIBIT D (To the Operating Agreement)  
Easement for Ingress, Egress, Parking & Operations**

**(Cover Page)**

RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:

City of Auburn  
25 W Main  
Auburn, WA 98001  
ATTN: Josh Arndt

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of or any warranty contained in the document itself.

Reference # (if applicable):  
Grantor: **The Soos Creek Botanical Garden Foundation, a Washington nonprofit corporation**  
Grantee: **City of Auburn, a Washington municipal corporation**  
Tax Parcel ID Numbers:  
Q-S-T-R of burdened property:  
Full Legal Descriptions Located: **Exhibits A & B**

**EASEMENT FOR INGRESS, EGRESS, PARKING & OPERATIONS**

**THIS EASEMENT FOR INGRESS, EGRESS, PARKING & OPERATIONS** (“Easement”) by and between The Soos Creek Botanical Garden Foundation, a Washington nonprofit corporation (“Grantor”), and City of Auburn, a Washington municipal corporation (“Grantee”) is effective as of \_\_\_\_\_ (the “Effective Date”).

**I. RECITALS**

A. Grantor is the owner of real property described and depicted in **Exhibit A**, attached hereto and incorporated herein by reference (“Grantor Property”).

B. Grantee is the owner of real property described and depicted in **Exhibit B**, attached hereto and incorporated herein by reference (“Grantee Property”).

C. The Grantor and Grantee intend for the Grantee to purchase Grantor’s Property upon availability of King County Conservation Futures Tax Levy grant funding.

D. Until such time, Grantee requests that Grantor enter into this Easement Agreement for the Grantor to operate the Botanical Garden (defined below) located on Grantee’s Property.

E. Grantor's Property provides supportive services such as storage and parking for the Botanical Garden, therefore the parties wish to memorialize the synergies of the two properties until such time as the funds are available for Grantee to purchase Grantor's Property.

## II. EASEMENT

1. Grant of Easement. Grantor hereby grants and conveys to Grantee a perpetual non-exclusive blanket easement upon, over, across, and through Grantor's Property (the "Easement Area") for the purposes of ingress, egress, parking, and general support of Grantee's Property in the operations of Soos Creek Botanical Garden (the "Botanical Garden").

1.1 Grantor reserves the right to control, amend, alter, direct, or redirect the flow and direction of traffic on Grantor's Property, and to restrict Grantee's use of the Easement to daytime hours and at other times when Grantee's use of the Easement may interfere with Grantor's reasonable use of the Easement Area for Botanical Garden purposes.

1.2 Grantor is responsible (at its sole cost and discretion) to maintain, repair, replace, and/or reconfigure (together "Work") the surface and subsurface of the Easement Area so long as the Work does not impede or diminish the supportive and operational services Grantor's Property provides to the Botanical Garden, provided, however, that Grantee is responsible for repairing any damage (beyond ordinary wear and tear) resulting from Grantee's employees, agents, guests, licensees, lessees and officials' use of the Easement Area.

2. Conditions of Easement. The Easement is granted subject to and conditioned upon the following terms, conditions, and covenants which the parties, their agents, tenants, successors and assigns, agree to fully observe and perform:

2.1 Rights of Easement. Grantee's right to use the Easement Area shall extend equally to Grantee's employees, agents, guests, licensees, lessees and officials. For the purposes of this Easement, all shall be collectively considered the "Grantee."

3. General Provisions. The following general provisions shall also apply to this Easement:

3.1 Running Covenants. The terms, conditions, rights and obligations contained in this Easement shall be covenants running with the land and shall inure to and bind the successors, assigns, heirs, and personal representatives of the parties.

3.2 Applicable Law. This Easement shall be governed by and construed in accordance with the laws of the State of Washington.

3.3 Recording. Grantee shall record this Easement with the King County Recorder at its expense. Grantee shall provide Grantor with a copy of the recorded Easement.

3.4 Attorneys' Fees. If either party brings suit to enforce or interpret this Easement, a court judgment to the substantially prevailing party shall include that party's attorneys' fees and legal costs and expenses of the suit. Awarded attorneys' fees and expenses shall include those incurred before, during and after trial, including those related to any appeal.

3.5 Authority. Each of the individuals whose signature appears below represents and warrants that he or she has full authority to execute this Easement on behalf of the party on whose behalf he or she has affixed his or her signature to this Easement.

**GRANTOR:**

**GRANTEE:**

The Soos Creek Botanical Garden Foundation, a Washington nonprofit corporation

CITY OF AUBURN, a Washington municipal corporation

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

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

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

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

Name(printed): \_\_\_\_\_

Name (printed): Nancy Backus

Title:

Title: Mayor

**[GRANTOR'S NOTARY BOX]**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (s)he signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the (Title)\_\_\_\_\_ of THE SOOS CREEK BOTANICAL GARDEN FOUNDATION, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**[GRANTEE'S NOTARY BOX]**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ I certify that I know or have satisfactory evidence that NANCY BACKUS is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the MAYOR of the CITY OF AUBURN, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT A (to the easement)  
GRANTOR PROPERTY**

THE WEST HALF OF THE NORTH QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M.;

EXCEPT THE WEST 277.50 FEET THEREOF;

CONTAINING 125,771 SQUARE FEET (2.89 ACRES), MORE OR LESS.

TOGETHER WITH AND SUBJECT TO AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE NORTH 30 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3.

**EXHIBIT B (To the easement)  
GRANTEE PROPERTY**

THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

EXCEPT THE WEST 506.00 FEET OF THE SOUTH 165.00 FEET THEREOF;

EXCEPT THE WEST 30 FEET THEREOF CONVEYED TO KING COUNTY FOR ROAD PURPOSES BY DEED RECORDED UNDER RECORDING NO. 2680897.

**TOGETHER WITH;**

LOT 2, KING COUNTY SHORT PLAT NO. 477101, RECORDED UNDER RECORDING NO. 7711221019, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH AN UNDIVIDED INTEREST IN TRACT X AS DELINEATED ON SAID SHORT PLAT;

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE NORTH 30 FEET OF THE WEST HALF OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET THEREOF LYING WITHIN 132ND AVENUE SOUTHEAST.

**TOGETHER WITH;**

THE WEST 262.85 FEET OF THE NORTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

**TOGETHER WITH;**

THE NORTH HALF OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER, ACROSS AND UNDER THE EAST 30 FEET, AND THE SOUTH 30 FEET OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE WEST 15 FEET OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION.

CONTAINING 693,798 SQUARE FEET (15.93 ACRES), MORE OR LESS.

**EXHIBIT E (to the Operating Agreement)  
Legal Description of the Foundation Property  
(Revised Parcel H)**

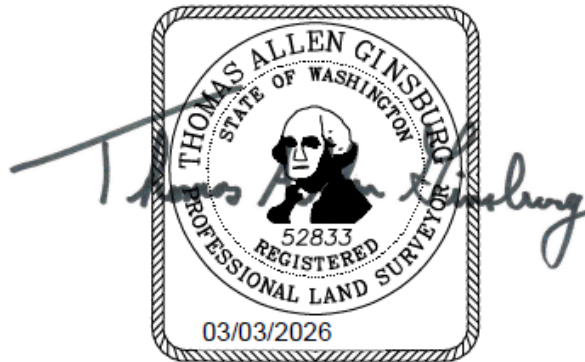
LOT B, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155 RECORDED UNDER RECORDING NO. 9612301254 AND AS CORRECTED PER BOUNDARY LINE ADJUSTMENT NO. L96L0155, RECORDED UNDER RECORDING NO. 20020211002613 BEING A PORTION OF THE WEST HALF OF THE NORTH QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M.;

EXCEPT THAT PORTION OF SAID LOT B LYING WEST OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE MOST NORTHERLY NORTHWEST CORNER OF SAID LOT B, ALSO BEING A POINT ON THE EAST RIGHT OF WAY MARGIN OF 132ND AVE SE, THENCE ALONG THE NORTH LINE OF SAID LOT B, SOUTH 88° 44' 20" EAST, 247.50 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING SAID NORTH LINE SOUTH 01° 29' 47" WEST, 329.39 FEET TO THE SOUTH LINE OF SAID LOT B AND THE TERMINUS OF SAID DESCRIBED LINE;

CONTAINING 125,771 SQUARE FEET (2.89 ACRES), MORE OR LESS.





**EXHIBIT D**  
**Morris Skagen Lease**

**(Cover Page)**

**RESIDENTIAL LEASE AGREEMENT**  
**Morris W. Skagen**

**I. Recitals**

1. Maurice W. Skagen is the former owner of approximately 15.93 acres of real property located in the City of Auburn in King County, Washington (the "Property"), the majority of which Property operates as a public botanical garden (the Botanical Garden").
2. In 2026, Mr. Skagen sold the Property to the City of Auburn, including the Botanical Garden (the "Sale").
3. Included in the Sale were Mr. Skagen's primary residential dwelling, having an address of 29308 132<sup>nd</sup> Ave SE, Auburn, 98092 (the "House"), and an adjacent building that houses a historical museum that is part of the Botanical Garden (together, the "Skagen Buildings").
4. While Mr. Skagen agreed to contribute the value of the Skagen Buildings to the City as an in-kind donation, the City agreed to lease the House rent-free to Mr. Skagen after the Sale. A City-commissioned appraisal determined a fair market allocation of value for the Skagen Buildings in the amount of Eight Hundred Thousand Dollars (\$800,000), and the parties agreed that the City would grant Mr. Skagen a rent-free lease of the House for a term terminating upon his death or upon his voluntary vacation of the House.

**II. Agreement**

**THIS LEASE AGREEMENT** ("Lease") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the City of Auburn ("City") and Morris W. Skagen ("Tenant").

**FOR AND IN CONSIDERATION** of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **PREMISES.** The City leases to Tenant according to the terms and conditions set forth herein the House having the address 29308 132<sup>nd</sup> Ave SE, Auburn, WA, King County and in a non-exclusive capacity, the adjacent parking areas (collectively the "Premises").
2. **TERM.** This Lease shall commence immediately upon the close of Sale and shall terminate upon the earlier of the following: (1) Tenant voluntarily vacates the Premises within Tenant's sole and absolute discretion; or (2) Tenant's death. If Tenant wishes to voluntarily terminate this Lease, Tenant shall provide City with written notice ("Termination Notice") no less than ninety (90) days prior to the intended termination date, which shall be stated in the Termination Notice. However, where a health issue or other exigent circumstance necessitates Tenant's voluntary

termination of this Lease, Tenant shall provide as much notice to City as reasonably possible under the circumstances. In the event of a Tenant default, after providing Tenant with written notice and giving Tenant ninety (90) days from receipt of such notice to cure the problem/condition causing the default, the City may terminate this Lease for cause. City shall otherwise comply with written notice and notice period requirements under applicable law, including but not limited to RCW 59.18, and local code.

If this Lease is terminated due to Tenant's death, City shall permit the personal representative of Tenant's estate, or any person lawfully authorized to act on behalf of the estate, reasonable access to the Premises to remove Tenant's personal property in accordance with Tenant's wishes. The estate shall have up to ninety (90) days from the date of death to remove all personal property from the Premises and vacate, provided, however, that personal property designated by Tenant within Tenant's sole and absolute discretion shall stay on the Premises as part of the historic nature of the house and the overall future benefit of the house to the City and the public. During this period, the estate shall be responsible for maintaining the Premises in good condition and for payment of all utilities.

Except for personal property designated by Tenant to remain in the Premises after the end of the Lease, any personal property remaining after the removal period may be disposed of by City in accordance with applicable law. City shall be entitled to recover from Tenant's estate any costs and fees associated with the removal and disposal of Tenant's personal property, any unpaid utility charges, and any cleaning reasonably necessary to return the Premises to acceptable condition, plus an additional ten (10%) percent of such documented costs and fees for administrative and management fees.

**3. CONSIDERATION.** In conjunction with Tenant's conveyance of the Property to City including Tenant's in-kind donation of the equity value of the Skagen Buildings to City in connection with the Sale, the parties acknowledge and agree that no rent or other monetary consideration shall be due from Tenant for the use and occupancy of the Premises during the Term of this Lease. City waives any right to require rental payments, other than applicable leasehold excise tax from Tenant unless otherwise expressly set forth herein. Tenant understands and acknowledges that this rent-free Lease may necessarily be treated as income for federal tax purposes, such that City may issue Tenant a 1099 Form for each year of this Lease.

**4. USE OF PREMISES.** Except as otherwise provided in this Section 4, this Lease is restricted solely for the use and occupancy of the Tenant.

**4.1. CAREGIVER.** Tenant shall be entitled to have an in-home Caregiver reside within the Premises. The Caregiver shall be subject to the conditions and obligations of this Lease, but shall not benefit or be awarded tenancy to the Premises in their own right. For the purposes of this Lease the term "Caregiver" shall mean: an individual who resides in the Premises solely for the purpose of providing bona fide caregiving, assistance, or support services to Tenant. The Caregiver is not a tenant, not an occupant, not a co-tenant, and not a party to this Lease, and has no right of possession or occupancy independent of Tenant. The Caregiver's right

to be present in the Premises is within Tenant's sole and absolute discretion and is strictly incidental to and contingent upon; i) the continued residency of Tenant, and ii) the active provision of Caregiver services to Tenant.

**4.2. LIVE-IN GUEST.** In addition to the Caregiver, Barbara Gilman is also allowed to reside in the Premises as a guest of Tenant. Barbara Gilman is not a tenant, not an occupant, not a co-tenant, and not a party to this Lease, and has no right of possession or occupancy independent of Tenant.

**4.3. GARDEN CARETAKER.** City and Tenant understand that the Soos Creek Botanical Garden (Foundation) may desire to have a caretaker of the Botanical Garden reside on the Premises. While the parties understand and agree that any such arrangement would be subject to a separate agreement between the City and the Foundation, the parties also understand and agree that it is within Tenant's sole and absolute discretion whether to allow such a residence on the Premises during this Lease.

**5. CONDITION OF PREMISES.** The Tenant stipulates, represents and warrants that Tenant occupied the Premises as their personal residence prior to the Sale and as such Tenant is fully aware of and accepts the condition of the Premises in its "as is" condition as of the Commencement of this Lease. Upon commencement of this Lease the parties shall complete a checklist describing the condition of the Premises which shall be in substantial conformity to the checklist attached as **Exhibit A**.

Tenant further warrants that during the Term of this Lease it will not cause or allow anything that will degrade the condition of the Premises. Normal wear and tear and acts of god notwithstanding.

**6. ASSIGNMENT AND SUB-LETTING.** The Tenant is not permitted to assign or sublet this Lease under any circumstances.

**7. ALTERATIONS AND IMPROVEMENTS.** The Tenant shall make no alterations or improvements on the Premises without the prior written consent of the City, which the City may withhold or condition in its sole and absolute discretion. City hereby gives its written consent for Tenant to make alterations or improvements that are reasonably necessary for Tenant's health and/or mobility purposes on the Premises, provided Tenant gives at least fifteen (15) days' written notice to City in advance of such alterations or improvements.

**8. LIABILITY AND INDEMNIFICATION.** The Tenant shall indemnify, defend, and hold harmless the City, its employees, officials and agents against any and all claims, demands and lawsuits, and shall pay all costs and attorney's fees incurred in the defense thereof, for any injury to persons or property damage, including claims from Tenant's caretakers, guests, and invitees allegedly resulting from any act, incident, or accident arising from or relating to the Tenant's use of the Premises except such loss or damage, or cost incurred in defense, which arises out of

the sole negligence of the City. The Tenant's obligation to indemnify the City shall not be relieved by its obligation to provide insurance coverage set forth below.

Tenant agrees to waive immunity under the industrial insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify City, and Tenant agrees that this waiver has been mutually negotiated by the parties.

Except in the event of negligence or willful misconduct of City, City shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise or property of Tenant, its employees, invitees or customers, or any other person in or about the Premises. In no event shall City be liable for consequential damages.

**9. INSURANCE.** Tenant agrees to at all times during the term of the Lease, at its own expense, maintain and keep in effect the following insurance policies at the stated limits.

- A renters insurance policy (HO-4 or equivalent) providing not less than Two Hundred and Fifty Thousand (\$250,000) in personal liability coverage per occurrence. Tenant's policy shall cover losses or damages to the Premises caused by Tenant, Tenant's guests, or Tenant's pets, including but not limited to fire, smoke, water discharge, and other negligent acts. Tenant is responsible for insuring Tenant's personal property, and City shall have no liability for loss or damage to Tenant's belongings. Tenant shall provide proof of insurance upon commencement of the Lease and upon each policy renewal. City shall be listed as an "interested party" for notice of cancellation or non-renewal. Failure to maintain required insurance is a material breach of this Lease.
- General liability coverage providing not less than Five Hundred Thousand (\$500,000) in liability protection per occurrence for bodily injury and property damage arising out of Tenant's use or occupancy of the Premises. This coverage may be satisfied through the renters insurance policy stated above or through an equivalent stand-alone liability policy.
- Pet Liability Insurance. If Tenant is permitted to keep any pet or animal in the Premises, Tenant shall maintain pet liability insurance coverage, either as part of Tenant's renters insurance policy or through a separate rider or policy in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000) for bodily injury or property damage caused by the pet. Tenant remains fully responsible for all damage or injury caused by Tenant's pet, regardless of insurance coverage.

Insurance coverages shall not be suspended, voided, cancelled, or reduced in limits until after forty-five (45) days' prior notice is provided to the City. The failure to maintain the insurance coverages at the amounts listed above shall be a breach of this Lease and may result in default and eviction by the City, in the event Tenant has not cured the issue within thirty (30) days from receipt of notice from the City detailing the insurance issue.

**10. HAZARDOUS MATERIALS.** The Tenant shall not keep on the Premises any item of a dangerous, flammable or explosive character that might unreasonably increase the danger of fire or explosion on the Premises or that might be considered hazardous or extra hazardous by any responsible insurance company.

**11. UTILITIES.** Tenant shall be responsible for arranging for and timely paying for all utility services required on the Premises, which shall be in the Tenant's name; provided, water service (if not served by a well) for the Premises shall be in the name of the City. Water bills shall be mailed to the Tenant, and failure of the Tenant to pay any water bill shall be a breach of this Lease. The Tenant has signed the Tenant Release Form, attached hereto as **Exhibit B** and incorporated by reference, authorizing the water bills to be mailed to the Tenant.

**12. REPAIR AND MAINTAINANCE OF PREMISES.**

**City Responsibilities.** City shall maintain the Premises and all building systems in a safe and habitable condition and in compliance with all applicable laws. Except as otherwise provided in this Lease, City shall be responsible for the repair and maintenance of the following which the parties acknowledge may be done through a third-party agreement:

- Structural components of the Premises, including the roof, exterior walls, foundation, and building envelope.
- Major building systems, including plumbing, electrical, heating, water heater, and ventilation systems.
- Appliances – stove/range, dishwasher (if any), refrigerator, washer and dryer (if any).
- Smoke detectors, carbon monoxide detectors, locks, exterior doors, windows, and any safety related components required by law.

**Tenant Responsibilities.** Tenant shall maintain the Premises in a clean, sanitary, and safe condition and shall promptly notify City in writing of any condition requiring repair. Tenant shall be responsible for the following:

- Routine cleaning and housekeeping, including proper disposal of garbage.
- Minor maintenance such as replacing light bulbs, smoke detector/carbon monoxide detector batteries, and furnace filters. Tenant shall be required to replace furnace filters on a not less than quarterly basis.
- Keeping drains, toilets, and plumbing fixtures free of improper materials and obstructions.
- Damage caused by Tenant, Tenant's guests, or pets.
- Costs to repair or replace any appliance or fixture damaged through misuse or negligence.

Tenant shall provide City, or City's agents with reasonable access to the Premises for inspection, maintenance, and repairs in accordance with applicable notice requirements.

**13. SERVICE OF NOTICES.** All notices required by this agreement and applicable state or local law to be served by the Tenant upon the City shall be mailed or emailed to the following address:

CITY	TENANT
<p>Real Estate Division            Attn: Josh Arndt            25 W Main            Auburn, WA 98001            253.288.4325  <a href="mailto:Jarndt@auburnwa.gov">Jarndt@auburnwa.gov</a></p> <p><u>With Copies to</u></p> <p>City Attorney’s Office            25 W Main            Auburn, WA 98001  <a href="mailto:JWhalen@auburnwa.gov">JWhalen@auburnwa.gov</a></p>	<p>Morris W. Skagen            29308 132<sup>nd</sup> Ave SE            Auburn, WA 98092            (253) 247-5052  <a href="mailto:mauriceskagen@comcast.net">mauriceskagen@comcast.net</a></p> <p><u>With Copies to</u></p> <p>Matt Jennings            29308 132<sup>nd</sup> Ave SE            Auburn, WA 98092            (415) 370-7468  <a href="mailto:mj2543@gmail.com">mj2543@gmail.com</a></p>

All notices required by this agreement and applicable state or local law to be served by the City upon the Tenant shall be mailed or emailed to the email or address listed above, and personally delivered and left at the Premises with a person of suitable age. If no one of suitable age is home, a copy of the notice shall be posted in a conspicuous place on the Premises. All notices required by this agreement to be delivered by Tenant to the City shall be mailed or emailed to the email or address listed above.

**14. VACATING THE PREMISES.** Upon termination of this agreement, the Tenant and its caregivers, guests, or other invitees (but not including a Botanical Garden caretaker who is associated with the Foundation, if one resides on the Premises) shall vacate the Premises, return all keys to the City, remove all personal property belonging to the Tenant (except for such items as Tenant chooses within his discretion to leave in the Premises) and leave the Premises in the same condition as the Tenant found them except for normal wear and tear. Such actions shall be in accordance with the timelines in Section 2 above.

**15. ENTRY BY CITY.** Except in the case of an emergency, the City shall only enter the Premises after giving the Tenant at least four (4) calendar days advance notice. The City shall only enter at reasonable times, for the purpose of inspecting the Premises, making repairs or improvements, supplying necessary or agreed services or showing the Premises to workers or contractors.

**16. COMPLIANCE WITH APPLICABLE LAWS & REGULATIONS.** The Tenant shall not knowingly commit or willfully permit to be committed on the Premises any act or thing contrary to the laws, rules or regulations of any federal, state or local governmental authority. The Tenant specifically agrees to comply and pay all costs associated with achieving such compliance in the event Tenant is responsible for such contrary act or thing.

**17. DAMAGE, DESTRUCTION & CASUALTY.** Tenant shall promptly notify City of any damage to the Premises resulting from fire or any other casualty. If the Premises shall be damaged by fire or other casualty, City may at its sole discretion, elect to promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond City's control, restore the structural components of the Premises. Such restoration shall be subject to modifications required by zoning and building codes and other Laws. Upon the occurrence of any damage to the Premises, Tenant shall assign to City all insurance proceeds payable to Tenant under Tenant's insurance pertaining to all tenant improvements and fixtures in the Premises (but not Tenant's personal property), and City shall repair any damage to the tenant improvements installed in the Premises and shall return such tenant improvements to their original condition or better. Alternatively, if a casualty renders the Premises uninhabitable as reasonably determined by the City, City may elect, according to the Residential City Tenant Act, not to rebuild and/or restore the Premises and instead terminate this Lease by providing Tenant 120 days' notice in writing of such termination. In the event City elects not to rebuild or restore the Premises, Tenant has the right to all insurance proceeds payable to Tenant under Tenant's insurance and Tenant may within his discretion choose to rebuild and/or restore the Premises using insurance proceeds and any other funds at Tenant's disposal, subject to City's prior written approval which shall not be unreasonably withheld. The City shall not be liable for any interruption of Tenant's business due to any casualty.

**18. QUIET ENJOYMENT.** The Tenant, upon Tenant's performance of all the Tenant's agreements contained herein and the Tenant's observance of all rules and regulations, shall and may peacefully and quietly have, hold and enjoy said Premises for the term hereof.

**19. RIGHTS AND REMEDIES.** The rights and remedies under this Lease are cumulative, and either party's using any one right or remedy will not preclude or waive that party's right to use any other. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

**20. NO LIEN.** Tenant shall discharge any mechanic's lien filed against the Premises within thirty (30) days after the receipt of notice thereof, and shall promptly inform City of any such notice. If the lien is not discharged within this period, City shall have the right, but not the obligation, to discharge the lien by payment, bonding or otherwise, and the costs and expenses to City of doing so shall be paid to the City by Tenant on demand as additional rent.

**21. GOVERNING LAW.** This Lease shall be governed, construed and interpreted by, through and under the Laws of the State of Washington, in particular, the Residential Landlord Tenant Act, RCW Chapter 59.18, and all applicable local code.

**22. SEVERABILITY.** If any provision of this Lease or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Lease nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

**23. BINDING EFFECT.** The covenants, obligations and conditions herein contained shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the parties hereto.

**24. DESCRIPTIVE HEADINGS.** The descriptive headings used herein are for convenience of reference only and they are not intended to have any effect whatsoever in determining the rights or obligations of the City or Tenant.

**25. CONSTRUCTION.** The pronouns used herein shall include, where appropriate, either gender or both, singular and plural.

**26. NON-WAIVER.** No indulgence, waiver, election or non-election by City under this Lease shall affect Tenant's duties and liabilities hereunder.

**27. MODIFICATION.** The parties hereby agree that this document contains the entire agreement between the parties and this Lease shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the parties hereto.

*[SIGNATURES ON THE FOLLOWING PAGE]*

CITY OF AUBURN

TENANT

\_\_\_\_\_  
Nancy Backus, Mayor  
Date: \_\_\_\_\_

\_\_\_\_\_  
Morris W. Skagen  
Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

STATE OF WASHINGTON )  
 )ss.  
County of King )

I certify that I know or have satisfactory evidence that Nancy Backus and Shawn Campbell were the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the **MAYOR** and **CITY CLERK** of the CITY OF AUBURN to be the free and voluntary act of such parties for the uses and purposes mentioned in this instrument.

Dated \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) :ss  
COUNTY OF \_\_\_\_\_ )

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

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_



**EXHIBIT A (To the Lease)  
Description of Unit**

Address: \_\_\_\_\_

Tenant: \_\_\_\_\_

Room	Walls	Floor/ Carpets	Windows	Blinds/ Curtains	Doors	Closets	Cabinets/ Counters	Fixtures	Heaters	Appliances	Other
1.											
2.											
3.											
4.											
5.											
6.											
7.											

- 1 = New
- 2 = Good
- 3 = Fair
- 4 = Poor

Signed: \_\_\_\_\_

\_\_\_\_\_  
City(s)

\_\_\_\_\_  
Tenant(s)

DATE:

**EXHIBIT B (To the Lease)  
Tenant Utility Release Form  
(Cover Page)**



**RESIDENTIAL LEASE AGREEMENT**  
**Morris W. Skagen**

**I. Recitals**

1. Maurice W. Skagen is the former owner of approximately 15.93 acres of real property located in the City of Auburn in King County, Washington (the "Property"), the majority of which Property operates as a public botanical garden (the Botanical Garden").
2. In 2026, Mr. Skagen sold the Property to the City of Auburn, including the Botanical Garden (the "Sale").
3. Included in the Sale were Mr. Skagen's primary residential dwelling, having an address of 29308 132<sup>nd</sup> Ave SE, Auburn, 98092 (the "House"), and an adjacent building that houses a historical museum that is part of the Botanical Garden (together, the "Skagen Buildings").
4. While Mr. Skagen agreed to contribute the value of the Skagen Buildings to the City as an in-kind donation, the City agreed to lease the House rent-free to Mr. Skagen after the Sale. A City-commissioned appraisal determined a fair market allocation of value for the Skagen Buildings in the amount of Eight Hundred Thousand Dollars (\$800,000), and the parties agreed that the City would grant Mr. Skagen a rent-free lease of the House for a term terminating upon his death or upon his voluntary vacation of the House.

**II. Agreement**

**THIS LEASE AGREEMENT** ("Lease") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the City of Auburn ("City") and Morris W. Skagen ("Tenant").

**FOR AND IN CONSIDERATION** of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **PREMISES.** The City leases to Tenant according to the terms and conditions set forth herein the House having the address 29308 132<sup>nd</sup> Ave SE, Auburn, WA, King County and in a non-exclusive capacity, the adjacent parking areas (collectively the "Premises").
2. **TERM.** This Lease shall commence immediately upon the close of Sale and shall terminate upon the earlier of the following: (1) Tenant voluntarily vacates the Premises within Tenant's sole and absolute discretion; or (2) Tenant's death. If Tenant wishes to voluntarily terminate this Lease, Tenant shall provide City with written notice

("Termination Notice") no less than ninety (90) days prior to the intended termination date, which shall be stated in the Termination Notice. However, where a health issue or other exigent circumstance necessitates Tenant's voluntary termination of this Lease, Tenant shall provide as much notice to City as reasonably possible under the circumstances. In the event of a Tenant default, after providing Tenant with written notice and giving Tenant ninety (90) days from receipt of such notice to cure the problem/condition causing the default, the City may terminate this Lease for cause. City shall otherwise comply with written notice and notice period requirements under applicable law, including but not limited to RCW 59.18, and local code.

If this Lease is terminated due to Tenant's death, City shall permit the personal representative of Tenant's estate, or any person lawfully authorized to act on behalf of the estate, reasonable access to the Premises to remove Tenant's personal property in accordance with Tenant's wishes. The estate shall have up to ninety (90) days from the date of death to remove all personal property from the Premises and vacate, provided, however, that personal property designated by Tenant within Tenant's sole and absolute discretion shall stay on the Premises as part of the historic nature of the house and the overall future benefit of the house to the City and the public. During this period, the estate shall be responsible for maintaining the Premises in good condition and for payment of all utilities.

Except for personal property designated by Tenant to remain in the Premises after the end of the Lease, any personal property remaining after the removal period may be disposed of by City in accordance with applicable law. City shall be entitled to recover from Tenant's estate any costs and fees associated with the removal and disposal of Tenant's personal property, any unpaid utility charges, and any cleaning reasonably necessary to return the Premises to acceptable condition, plus an additional ten (10%) percent of such documented costs and fees for administrative and management fees.

**3. CONSIDERATION.** In conjunction with Tenant's conveyance of the Property to City including Tenant's in-kind donation of the equity value of the Skagen Buildings to City in connection with the Sale, the parties acknowledge and agree that no rent or other monetary consideration shall be due from Tenant for the use and occupancy of the Premises during the Term of this Lease. City waives any right to require rental payments, other than applicable leasehold excise tax from Tenant unless otherwise expressly set forth herein. Tenant understands and acknowledges that this rent-free Lease may necessarily be treated as income for federal tax purposes, such that City may issue Tenant a 1099 Form for each year of this Lease.

**4. USE OF PREMISES.** Except as otherwise provided in this Section 4, this Lease is restricted solely for the use and occupancy of the Tenant.

**4.1. CAREGIVER.** Tenant shall be entitled to have an in-home Caregiver reside within the Premises. The Caregiver shall be subject to the conditions and obligations of this Lease, but shall not benefit or be awarded tenancy to the Premises in their own right. For the purposes of this Lease the term "Caregiver" shall mean: an

individual who resides in the Premises solely for the purpose of providing bona fide caregiving, assistance, or support services to Tenant. The Caregiver is not a tenant, not an occupant, not a co-tenant, and not a party to this Lease, and has no right of possession or occupancy independent of Tenant. The Caregiver's right to be present in the Premises is within Tenant's sole and absolute discretion and is strictly incidental to and contingent upon; i) the continued residency of Tenant, and ii) the active provision of Caregiver services to Tenant.

**4.2. LIVE-IN GUEST.** In addition to the Caregiver, Barbara Gilman is also allowed to reside in the Premises as a guest of Tenant. Barbara Gilman is not a tenant, not an occupant, not a co-tenant, and not a party to this Lease, and has no right of possession or occupancy independent of Tenant.

**4.3. GARDEN CARETAKER.** City and Tenant understand that the Soos Creek Botanical Garden (Foundation) may desire to have a caretaker of the Botanical Garden reside on the Premises. While the parties understand and agree that any such arrangement would be subject to a separate agreement between the City and the Foundation, the parties also understand and agree that it is within Tenant's sole and absolute discretion whether to allow such a residence on the Premises during this Lease.

**5. CONDITION OF PREMISES.** The Tenant stipulates, represents and warrants that Tenant occupied the Premises as their personal residence prior to the Sale and as such Tenant is fully aware of and accepts the condition of the Premises in its "as is" condition as of the Commencement of this Lease. Upon commencement of this Lease the parties shall complete a checklist describing the condition of the Premises which shall be in substantial conformity to the checklist attached as **Exhibit A**.

Tenant further warrants that during the Term of this Lease it will not cause or allow anything that will degrade the condition of the Premises. Normal wear and tear and acts of god notwithstanding.

**6. ASSIGNMENT AND SUB-LETTING.** The Tenant is not permitted to assign or sublet this Lease under any circumstances.

**7. ALTERATIONS AND IMPROVEMENTS.** The Tenant shall make no alterations or improvements on the Premises without the prior written consent of the City, which the City may withhold or condition in its sole and absolute discretion. City hereby gives its written consent for Tenant to make alterations or improvements that are reasonably necessary for Tenant's health and/or mobility purposes on the Premises, provided Tenant gives at least fifteen (15) days' written notice to City in advance of such alterations or improvements.

**8. LIABILITY AND INDEMNIFICATION.** The Tenant shall indemnify, defend, and hold harmless the City, its employees, officials and agents against any and all claims, demands and lawsuits, and shall pay all costs and attorney's fees incurred in the defense thereof, for any injury to persons or property damage, including claims from Tenant's

caretakers, guests, and invitees allegedly resulting from any act, incident, or accident arising from or relating to the Tenant's use of the Premises except such loss or damage, or cost incurred in defense, which arises out of the sole negligence of the City. The Tenant's obligation to indemnify the City shall not be relieved by its obligation to provide insurance coverage set forth below.

Tenant agrees to waive immunity under the industrial insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify City, and Tenant agrees that this waiver has been mutually negotiated by the parties.

Except in the event of negligence or willful misconduct of City, City shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise or property of Tenant, its employees, invitees or customers, or any other person in or about the Premises. In no event shall City be liable for consequential damages.

**9. INSURANCE.** Tenant agrees to at all times during the term of the Lease, at its own expense, maintain and keep in effect the following insurance policies at the stated limits.

- A renters insurance policy (HO-4 or equivalent) providing not less than Two Hundred and Fifty Thousand (\$250,000) in personal liability coverage per occurrence. Tenant's policy shall cover losses or damages to the Premises caused by Tenant, Tenant's guests, or Tenant's pets, including but not limited to fire, smoke, water discharge, and other negligent acts. Tenant is responsible for insuring Tenant's personal property, and City shall have no liability for loss or damage to Tenant's belongings. Tenant shall provide proof of insurance upon commencement of the Lease and upon each policy renewal. City shall be listed as an "interested party" for notice of cancellation or non-renewal. Failure to maintain required insurance is a material breach of this Lease.
- General liability coverage providing not less than Five Hundred Thousand (\$500,000) in liability protection per occurrence for bodily injury and property damage arising out of Tenant's use or occupancy of the Premises. This coverage may be satisfied through the renters insurance policy stated above or through an equivalent stand-alone liability policy.
- Pet Liability Insurance. If Tenant is permitted to keep any pet or animal in the Premises, Tenant shall maintain pet liability insurance coverage, either as part of Tenant's renters insurance policy or through a separate rider or policy in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000) for bodily injury or property damage caused by the pet. Tenant remains fully responsible for all damage or injury caused by Tenant's pet, regardless of insurance coverage.

Insurance coverages shall not be suspended, voided, cancelled, or reduced in limits until after forty-five (45) days' prior notice is provided to the City. The failure to maintain the insurance coverages at the amounts listed above shall be a breach of this

Lease and may result in default and eviction by the City, in the event Tenant has not cured the issue within thirty (30) days from receipt of notice from the City detailing the insurance issue.

**10. HAZARDOUS MATERIALS.** The Tenant shall not keep on the Premises any item of a dangerous, flammable or explosive character that might unreasonably increase the danger of fire or explosion on the Premises or that might be considered hazardous or extra hazardous by any responsible insurance company.

**11. UTILITIES.** Tenant shall be responsible for arranging for and timely paying for all utility services required on the Premises, which shall be in the Tenant's name; provided, water service (if not served by a well) for the Premises shall be in the name of the City. Water bills shall be mailed to the Tenant, and failure of the Tenant to pay any water bill shall be a breach of this Lease. The Tenant has signed the Tenant Release Form, attached hereto as **Exhibit B** and incorporated by reference, authorizing the water bills to be mailed to the Tenant.

**12. REPAIR AND MAINTAINANCE OF PREMISES.**

**City Responsibilities.** City shall maintain the Premises and all building systems in a safe and habitable condition and in compliance with all applicable laws. Except as otherwise provided in this Lease, City shall be responsible for the repair and maintenance of the following which the parties acknowledge may be done through a third-party agreement:

- Structural components of the Premises, including the roof, exterior walls, foundation, and building envelope.
- Major building systems, including plumbing, electrical, heating, water heater, and ventilation systems.
- Appliances – stove/range, dishwasher (if any), refrigerator, washer and dryer (if any).
- Smoke detectors, carbon monoxide detectors, locks, exterior doors, windows, and any safety related components required by law.

**Tenant Responsibilities.** Tenant shall maintain the Premises in a clean, sanitary, and safe condition and shall promptly notify City in writing of any condition requiring repair. Tenant shall be responsible for the following:

- Routine cleaning and housekeeping, including proper disposal of garbage.
- Minor maintenance such as replacing light bulbs, smoke detector/carbon monoxide detector batteries, and furnace filters. Tenant shall be required to replace furnace filters on a not less than quarterly basis.
- Keeping drains, toilets, and plumbing fixtures free of improper materials and obstructions.
- Damage caused by Tenant, Tenant's guests, or pets.
- Costs to repair or replace any appliance or fixture damaged through misuse or negligence.

Tenant shall provide City, or City’s agents with reasonable access to the Premises for inspection, maintenance, and repairs in accordance with applicable notice requirements.

**13. SERVICE OF NOTICES.** All notices required by this agreement and applicable state or local law to be served by the Tenant upon the City shall be mailed or emailed to the following address:

CITY	TENANT
Real Estate Division Attn: Josh Arndt 25 W Main Auburn, WA 98001 253.288.4325 <a href="mailto:Jarndt@auburnwa.gov">Jarndt@auburnwa.gov</a>  <u>With Copies to</u>  City Attorney’s Office 25 W Main Auburn, WA 98001 <a href="mailto:JWhalen@auburnwa.gov">JWhalen@auburnwa.gov</a>	Morris W. Skagen 29308 132 <sup>nd</sup> Ave SE Auburn, WA 98092 (253) 247-5052 <a href="mailto:mauriceskagen@comcast.net">mauriceskagen@comcast.net</a>  <u>With Copies to</u>  Matt Jennings 29308 132nd Ave SE Auburn, WA 98092 (415) 370-7468 <a href="mailto:mj2543@gmail.com">mj2543@gmail.com</a>

All notices required by this agreement and applicable state or local law to be served by the City upon the Tenant shall be mailed or emailed to the email or address listed above, and personally delivered and left at the Premises with a person of suitable age. If no one of suitable age is home, a copy of the notice shall be posted in a conspicuous place on the Premises. All notices required by this agreement to be delivered by Tenant to the City shall be mailed or emailed to the email or address listed above.

**14. VACATING THE PREMISES.** Upon termination of this agreement, the Tenant and its caregivers, guests, or other invitees (but not including a Botanical Garden caretaker who is associated with the Foundation, if one resides on the Premises) shall vacate the Premises, return all keys to the City, remove all personal property belonging to the Tenant (except for such items as Tenant chooses within his discretion to leave in the Premises) and leave the Premises in the same condition as the Tenant found them except for normal wear and tear. Such actions shall be in accordance with the timelines in Section 2 above.

**15. ENTRY BY CITY.** Except in the case of an emergency, the City shall only enter the Premises after giving the Tenant at least four (4) calendar days advance notice. The City shall only enter at reasonable times, for the purpose of inspecting the Premises, making

repairs or improvements, supplying necessary or agreed services or showing the Premises to workers or contractors.

**16. COMPLIANCE WITH APPLICABLE LAWS & REGULATIONS.** The Tenant shall not knowingly commit or willfully permit to be committed on the Premises any act or thing contrary to the laws, rules or regulations of any federal, state or local governmental authority. The Tenant specifically agrees to comply and pay all costs associated with achieving such compliance in the event Tenant is responsible for such contrary act or thing.

**17. DAMAGE, DESTRUCTION & CASUALTY.** Tenant shall promptly notify City of any damage to the Premises resulting from fire or any other casualty. If the Premises shall be damaged by fire or other casualty, City may at its sole discretion, elect to promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond City's control, restore the structural components of the Premises. Such restoration shall be subject to modifications required by zoning and building codes and other Laws. Upon the occurrence of any damage to the Premises, Tenant shall assign to City all insurance proceeds payable to Tenant under Tenant's insurance pertaining to all tenant improvements and fixtures in the Premises (but not Tenant's personal property), and City shall repair any damage to the tenant improvements installed in the Premises and shall return such tenant improvements to their original condition or better. Alternatively, if a casualty renders the Premises uninhabitable as reasonably determined by the City, City may elect, according to the Residential City Tenant Act, not to rebuild and/or restore the Premises and instead terminate this Lease by providing Tenant 120 days' notice in writing of such termination. In the event City elects not to rebuild or restore the Premises, Tenant has the right to all insurance proceeds payable to Tenant under Tenant's insurance and Tenant may within his discretion choose to rebuild and/or restore the Premises using insurance proceeds and any other funds at Tenant's disposal, subject to City's prior written approval which shall not be unreasonably withheld. The City shall not be liable for any interruption of Tenant's business due to any casualty.

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**22. SEVERABILITY.** If any provision of this Lease or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Lease nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

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**27. MODIFICATION.** The parties hereby agree that this document contains the entire agreement between the parties and this Lease shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the parties hereto.

*[SIGNATURES ON THE FOLLOWING PAGE]*

CITY OF AUBURN

TENANT

\_\_\_\_\_  
Nancy Backus, Mayor  
Date: \_\_\_\_\_

\_\_\_\_\_  
Morris W. Skagen  
Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

STATE OF WASHINGTON )  
 )ss.  
County of King )

I certify that I know or have satisfactory evidence that Nancy Backus and Shawn Campbell were the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the **MAYOR** and **CITY CLERK** of the CITY OF AUBURN to be the free and voluntary act of such parties for the uses and purposes mentioned in this instrument.

Dated \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at  
My appointment expires\_\_\_\_\_

STATE OF WASHINGTON )  
 ) :ss  
COUNTY OF \_\_\_\_\_ )

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

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at  
My appointment expires\_\_\_\_\_

EXHIBIT A

DESCRIPTION OF UNIT

Address: \_\_\_\_\_

Tenant: \_\_\_\_\_

Room	Walls	Floor/ Carpets	Windows	Blinds/ Curtains	Doors	Closets	Cabinets/ Counters	Fixtures	Heaters	Appliances	Other
1.											
2.											
3.											
4.											
5.											
6.											
7.											

- 1 = New
- 2 = Good
- 3 = Fair
- 4 = Poor

Signed: \_\_\_\_\_

\_\_\_\_\_

City(s)

\_\_\_\_\_

Tenant(s)

DATE: \_\_\_\_\_

EXHIBIT B

TENANT UTILITY RELEASE FORM

(Cover Page)



FINANCE DEPARTMENT  
UTILITIES DIVISION  
TENANT RELEASE

FOR OFFICE USE ONLY

Date Received \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Received By \_\_\_\_\_  
How Received \_\_\_\_\_

Today's Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_ CITY OF AUBURN UTILITY ACCOUNT # \_\_\_\_\_-000  
(Date Tenant is Moving In)

*This must be completed or the paperwork will not be processed. We do NOT back-date service.*

Please add tenant to billing for this address: 29308 132nd Ave SE, Auburn, 98092 Garbage Container Size, if Applicable: \_\_\_\_\_  
*Service Address*

Tenant Name: Morris Skagen

Tenant Billing Address: 29308 132nd Ave SE, Auburn, 98092  
*Tenant Billing Address Tenant City / State / Zip*

Tenant Phone Number: ( 253 ) 247.5052 Tenant Email: mauriceskagen@comcast.net

I understand that the utility bill will remain my responsibility and I agree to pay it if my tenant does not. I understand that utility billings are a lien against the property served and that failure to pay same will result in foreclosure of such lien as prescribed by the laws of the State of Washington.

For accuracy of billing, it is my responsibility to notify you of vacancy or other changes in billing information as soon as possible. If I fail to notify the City of changes in occupancy, it will be my responsibility to work out how the bill will be prorated with my tenant.

I also understand that the utility bill will not be sent to the tenant until all accounts for this address are in good standing, with all previous account balances paid. This additional tenant billing is an accommodation to me, but I remain the party with whom the City is contracting for utilities. **This accommodation is for my sole benefit and does not create a contractual relationship between the tenant and the City of Auburn.**

I also understand that each time there is a change of tenants, I must renew this agreement. **Each time** I close an account there will be a Final Bill Fee and each time I open a new account there will be a **New Account Set-Up Fee**. These fees are listed at [auburnwa.gov](http://auburnwa.gov) in the Utilities section. I further understand that if neither the tenant nor I pay any unpaid bill on this account that no similar agreement will be allowed by the City of Auburn.

*Property Owner Signature*

Josh Arndt

*Property Owner Print Name*

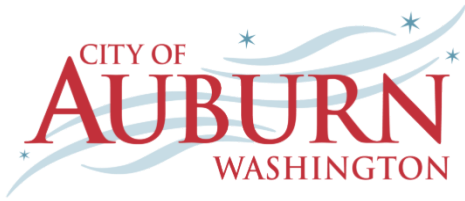
Property Owner's Address: 25 W Main, Auburn, WA 98001  
*Property Owner Address Property Owner City / State / Zip*

Property Owner's Phone: 253.288.4325

Property Owner's Driver's License or Tax ID: \_\_\_\_\_

Property Owner's Email Address: jarndt@auburnwa.gov

Have you applied for your City of Auburn rental housing business license?  Yes  No



## AGENDA BILL APPROVAL FORM

---

**Agenda Subject:**

Resolution No. 5901 (Whalen/Krueger)

A Resolution authorizing the Mayor to execute on behalf of the City, an Operating Agreement for Services with the Soos Creek Botanical Garden Foundation for continued operations, improvement and maintenance of the Soos Creek Botanical Garden and Heritage Center

**Meeting Date:**

May 18, 2026

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5901.)**

**Department:**

Legal

**Attachments:**

Resolution No. 5901, Exhibit A -  
Operating Agreement, Exhibit B -  
Easement for Ingress, Egress,  
Parking, & Operations

**Budget Impact:****Administrative Recommendation:**

City Council to adopt Resolution No. 5901.

**Background for Motion:**

The Soos Creek Botanical Garden Foundation has provided exceptional stewardship of the Botanical Garden, and this Resolution will help ensure the continuation of that important work. The City is pleased that we can support the ongoing care and preservation of the Garden.

**Background Summary:**

The Soos Creek Botanical Garden property is a well-established community asset that has long served the Auburn area and surrounding communities as a valued local attraction, educational resource, and site of historic and environmental significance. Since 2009, the Soos Creek Botanical Garden Foundation—originally formed as the James Daly and Morris Skagen Garden Foundation—has been responsible for the care and operation of the Garden. This Operating Agreement will ensure the Foundation’s continued stewardship and ongoing work at the Garden.

Mr. Skagen will place the proceeds from the sale of the Garden property, as described in Resolution No. 5900, into an endowment for the Foundation. This endowment will enable the Foundation to operate without financial support from the City.

Additionally, the City intends to purchase an adjacent property that provides parking and other supporting areas for the Garden, contingent upon the availability of grant funding. Proceeds from that transaction will also be directed to the Foundation to support its continued operations. Until such time as the additional property can be purchased from the Foundation, the parties will enter into an

easement for Ingress, Egress, Parking & Operations.

**Councilmember:** Hanan Amer

**Staff:** Jason Whalen, Julie Krueger

**RESOLUTION NO. 5901**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY, AN OPERATING AGREEMENT FOR SERVICES WITH THE SOOS CREEK BOTANICAL GARDEN FOUNDATION FOR THE CONTINUED OPERATIONS, IMPROVEMENT AND MAINTENANCE OF THE SOOS CREEK BOTANICAL GARDEN AND HERITAGE CENTER

WHEREAS, The Soos Creek Botanical Garden Foundation (the “Foundation”), a Washington nonprofit corporation, originally formed under a different non-profit entity name has improved, maintained, and operated the Soos Creek Botanical Garden & Heritage Center (the “Garden”) for the benefit of the public since 2009; and

WHEREAS, it was a required condition in the purchase and sale contract between the City and Mr. Skagen that the Foundation and the City of Auburn (the “City”) enter into an Operating Agreement with the Foundation for the continued operations, improvement, and maintenance of the Garden; and

WHEREAS, the Foundation has agreed to perform and will perform the duties and services provided for in the Operating Agreement at no cost to the City,

WHEREAS, until such time as the City acquires the portion of the Garden owned by the Foundation the parties will enter into an easement for ingress, egress, parking & operations (the “Easement”),

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

**Section 1.** The Mayor is authorized to execute the Operating Agreement attached as Exhibit A (the “Agreement”) and the Easement attached as Exhibit B, and

any future amendments to the Agreement or Easement as appropriate subject to Auburn City Code 3.10.020.

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

**Section 3.** The City Clerk is authorized to make necessary corrections to this Resolution including, but not limited to, the correction of scrivener's/clerical errors, references, Resolution numbering, section/subsection numbers, and any references thereto.

**Section 4.** This Resolution will take effect and be in full force on passage and signatures.

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

CITY OF AUBURN

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

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Jason Whalen, City Attorney

**CITY OF AUBURN**  
**OPERATING AGREEMENT FOR SERVICES**  
**SOOS CREEK BOTANICAL GARDEN FOUNDATION**

THIS OPERATING AGREEMENT FOR SERVICES (“Agreement”) is made and entered into on this \_\_\_\_\_ of \_\_\_\_\_, 2026, by and between the **CITY OF AUBURN (“City”)**, a municipal corporation of the State of Washington, and **THE SOOS CREEK BOTANICAL GARDEN FOUNDATION**, a Washington nonprofit corporation (UBI Number 602 961 230) (“**Foundation**”), whose mailing address is 29308 132nd Ave SE, Auburn, WA 98092. Individually, the City and the Foundation are referred to herein as a “Party,” and collectively, as the “Parties.”

**RECITALS:**

1. By Bargain and Sale Deed dated \_\_\_\_\_, and recorded under King County Recording No. \_\_\_\_\_, the City is the owner of that certain real property commonly known as Soos Creek Botanical Garden & Heritage Center, located at 29308 132<sup>nd</sup> Ave SE, Auburn, King County, Washington 98092, legally described as set forth on **Exhibit A**, and as depicted on **Exhibit B** (the “Property”). The Property consists of approximately 15.93 acres of land and contains a main house and attached aviary, an open pavilion for events, and an additional structure, the Heritage Center, and all its historical items and personal property contents, which is devoted to the history of the early settlers of the area called the Soos Creek Plateau.

2. The Property was acquired by the City with King County Conservation Futures Tax Levy (“CFT”) Funds, in part, and as a result of the charitable gift and benevolence of Morris (or Maurice) W. Skagen, whose Norwegian immigrant ancestors purchased the acreage on which the Property is located, in part, between 1891 and 1905, in the early years following Auburn’s incorporation. The City intends to acquire an additional 2.89 acres legally described and set forth on **Exhibit E**, and depicted on **Exhibit F** from the Foundation when CFT funds become available (the “Foundation Property”). Because of the utilization of CFT funds to acquire the Property, a relevant portion of the Property and the Foundation Property is and will be (in the case of the Foundation Property) subject to and restricted by a deed restriction covenant, effectively maintaining both properties as open space for the benefit of the public, consistent with the charitable intent of Maurice Skagen and the Foundation.

3. The Soos Creek Botanical Garden Foundation (Foundation) is a Washington nonprofit corporation, registered as a 501(c)(3) entity with EIN 27-1104322. The Foundation was initially formed in 2009 as The James Daly and Morris Skagen Garden Foundation,<sup>1</sup> for the purpose of “the preservation and enhancement of exceptional gardens for the benefit of the public,” among other related purposes. Since that time, and

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<sup>1</sup> On June 17, 2010, the Articles of Incorporation were amended to change the name of the nonprofit entity to The Soos Creek Botanical Garden Foundation.

prior to the City's acquisition of the Property, the Foundation, along with Mr. Daly and Mr. Skagen, has improved, maintained, and operated the Property (in addition to other adjacent property parcels, not acquired by the City) for the benefit of the public as the Soos Creek Botanical Garden & Heritage Center (hereinafter, the "Garden"). Per the Garden's website, the Garden "provides a diversity of gardens based upon international, regional, and historical gardens, while providing education and conversation of horticulture, the environment, and history". See [www.sooscreekbotanicalgarden.org](http://www.sooscreekbotanicalgarden.org).

4. It was a required condition in each of the purchase and sale contracts between the City and Foundation and the City and Mr. Skagen that the Parties would enter into this Agreement in order to establish the Foundation's continuing operation and maintenance of the Garden after the City's acquisition. Neither the City, the Foundation nor Mr. Skagen would have agreed to the City's acquisition of the Property unless the Foundation continues to operate and maintain the Garden as long as it is adequately able to do so.

5. The City and the Foundation mutually desire for the Foundation to continue to maintain and operate the Property and when acquired, the Foundation Property, as the Soos Creek Botanical Garden & Heritage Center as the Foundation has done since its founding in 2009, order to preserve its natural and historical significance and to ensure the Property remains an asset in perpetuity for the benefit of the public, including the residents of the City of Auburn as well as those local and regional patrons of Soos Creek Botanical Garden & Heritage Center.

6. Until such time when the City acquires the Foundation Property, the City will require the Foundation to execute an easement for ingress, egress, parking and operations substantially in the form attached as **Exhibit D**.

#### **AGREEMENT:**

In consideration of the recitals set forth above, and the conditions and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

1. Foundation's Duties and Responsibilities

The Foundation agrees to continue to operate, maintain, and improve the Property, and when acquired, the Foundation Property, as part of the Garden in order to maintain and enhance a regionally significant botanical garden and collection of native species, as well as non-native species compatible with the region, while providing education and conservation of horticulture, the environment, and history consistent with those duties and responsibilities as outlined on **Exhibit C (the "Services")**.

2. Additional Services

The Parties may, within their respective discretion, agree to amend this Agreement if additional property is acquired or if additional services are required beyond those specified in **Exhibit C**. An amendment must be written and agreed to by the Parties before Foundation performs any additional services, and it must specify the nature, scope, and payment terms, if any, for the additional services. If the period for completing additional services makes the advance signing of an amendment

impractical, the Parties agree to perform only the additional services approved in writing by their authorized representative pending the signing of an Amendment as set forth in this Section.

3. Foundation's Representations, Qualifications, and Financial Strength

Foundation represents and warrants that it has all the required licenses, certifications, qualifications, and operational finances necessary to perform the services in this Agreement and agrees to maintain its 501(c)(3) status during the entire term of this Agreement. Foundation represents that its signatory to this Agreement has the requisite legal authority to bind Foundation to the terms and conditions of this Agreement.

4. No Rent or Compensation to be Paid

a. **No Rent or Compensation to be Paid to either Party.** The City obtained CFT funds to acquire the Property, in part, with the balance of the purchase price gifted to the City by Maurice Skagen. In consideration of the fact the Foundation is a 501(c)(3) charitable organization whose purpose and mission is to provide public benefit via its work at the Garden, including particularly to the residents of the City of Auburn, the City and Foundation agree that no rent will be payable by the Foundation to the City for its use of the Garden, nor shall the City pay the Foundation any monetary compensation for the Foundation's performance of this Agreement, including the performance of those Services set forth on **Exhibit C**, absent mutual agreement and contingent upon available funding. The Parties agree to work cooperatively in the Foundation's attempts to acquire available grant funding that would enhance the operation and offerings of the Garden to the public, including without limitation via applications to various potentially applicable Washington State and King County grant programs.

b. **Prevailing Wage.** The Foundation will pay its non-volunteer personnel, if any, the applicable prevailing wage for all laborers and staff in the performance of the Services. The minimum prevailing wage rate paid for each year shall be the rate in effect on January 1 of each year. The Foundation shall file annually its Intent to Pay Prevailing Wages form and an Affidavit of Wages Paid form with the Department of Labor & Industries.

c. **Leasehold Excise Tax.** If Washington State requires the City to collect a Leasehold Excise Tax (LET) because the Foundation is deemed to have a leasehold interest in all or any portion of the Property or Garden, owed by the City, then the Foundation will be responsible for the LET, at 12.84% of the value then determined for the leasehold interest.

5. Time for Performance, Term, and Termination of Agreement

a. **Term.** The term of this Agreement commences upon the Closing of the transaction whereby the City acquires the Property (the "Effective Date"). Once commenced, the Foundation shall perform all Services set forth in **Exhibit C**, for an initial term of ten (10) years ("Initial Term"). This Agreement shall be automatically extended in five (5) year increments ("Extension Terms") unless terminated earlier as provided herein. Any Extension Term shall be effectuated by a written notice, addendum, or amendment to this

Agreement, which amendment shall include such modified or additional terms and conditions as the Parties may agree upon within their respective discretion.

- b. **Termination.** In recognition of the Parties' mutual intent that the Foundation continue operating and maintaining the Property as the Garden for as long as it is reasonably able to do so, as reflected in the above Recitals, the Parties agree that this Agreement may only be terminated for cause or necessity.

**Termination for Cause.** Either party may terminate this Agreement for cause with written notice to the other Party. A termination is "for cause" if a party substantially fails to perform in accordance with the terms of this Agreement through no fault of the other Party, if said Party fails to correct or perform within thirty (30) days of receipt of written notice (or such other period of notice as may be specified in this Agreement), or within such longer time as the Parties agree upon in the event correction is not reasonably possible within 30 days. The notice will specify the termination reason(s) and the termination effective date, and the correction action(s) necessary to prevent termination. If the City terminates this Agreement for cause, all City payments otherwise due to Foundation, if any, will be suspended and the City will have no further obligations to Foundation.

**Termination for Necessity.** Either Party may terminate this Agreement out of necessity upon at least ninety (90) days advance written notice to the other Party. A termination is out of "necessity" if a party can no longer reasonably perform in accordance with the terms of this Agreement through no fault of the other Party, and such failure is due to financial hardship, severe casualty loss to the Property preventing the ongoing operation of the Property as the Garden for public benefit, or a similar type(s) of problem that the terminating party has been unable to resolve despite good faith efforts including engaging in discussions with the non-terminating party. The notice shall specify the termination reason(s) and the termination effective date. If the termination is by the City, the City will compensate Foundation for those compensable services performed, if any, up to the Termination Date, if eligible for compensation. The compensation will fully satisfy the City's obligations under this Agreement and will discharge the City from any further obligations and liabilities to the Foundation (including any Foundation claims of anticipated profits or other consequential damages resulting from the termination).

- c. **Surrender of Possession upon Termination.** Upon receipt of any termination notice, the Foundation will, no later than the termination effective date, deliver possession of all structures on the Property in which the Foundation has possession, discontinue all services, and deliver to the City all vendor information and contracts, keys for all gates and buildings/structures, reports, summaries, and such other documents, information and materials the Foundation has accumulated, prepared, or obtained in performing this Agreement (whether fully or partially completed). The Parties agree that as long as Mr. Skagen is leasing the primary residence on the Property (which lease is under a separate

agreement between the City and Mr. Skagen), the Foundation will not be deemed to have possession of such residence for purposes of this Agreement, unless the Foundation has leased or subleased a portion of the primary residence for Foundation purposes – in which case such portion shall be subject to this Section 5c.

- d. The rights and remedies in this Section do not exclude any other legal or equitable rights or remedies available to the City.

6. Ownership and Use of Documents

The City will own all documents related to the maintenance and operations of the Property including, reports, memoranda, diagrams, sketches, plans, surveys, working drawings and any other materials that the Foundation creates or prepares in performing this Agreement (the “Work Products”), provided, however, City understands and agrees that the City does not own Foundation donor information and the Foundation cannot disclose donor information. The City may use these Work Products for any lawful purpose. Foundation acknowledges that this Agreement and the Work Products are public records subject to RCW 42.56 unless exempt from public records disclosure requirements. The Foundation agrees to fully assist the City in identifying, locating, and copying any records Foundation possesses that the City determines in its sole discretion are responsive to a Public Records request. The City agrees to process Public Records requests with appropriate exemptions from disclosure requirements.

7. Records Inspection and Audit

All City payments to the Foundation, if any, are subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced. The City may inspect and audit any Foundation records and books of account pertaining to any work performed under this Agreement for up to 3 years after the City’s final payment to Foundation. If any litigation, claim, dispute, or audit is initiated before this 3-year period expires, Foundation shall retain all records and books of account for any work performed under this Agreement until final resolution of any such litigation, claim, dispute, or audit.

8. Continuation of Performance

If any dispute or conflict arises between the Parties while this Agreement is in effect, the Foundation agrees to cooperate and continue in good faith toward successful completion of its responsibilities under this Agreement notwithstanding such dispute or conflict.

9. Independent Contractor

The Foundation will perform the Services as an independent contractor and will not be deemed by virtue of this Agreement or the performance of it to be in a partnership, joint venture, employment, or other relationship with the City. Nothing in this Agreement creates any contract relationship between the City and the Foundation’s volunteers, employees, agents, or subcontractors. The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security

or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to Foundation or any employee of Foundation.

10. Administration of Agreement

This Agreement will be administered by \_\_\_\_\_, on behalf of the Foundation, and by the City of Auburn Mayor (or designee) on behalf of the City.

11. Notices

Notices or communications permitted or required under this Agreement will be written and delivered to the following addresses:

Notice to the City:	Notice to Foundation:
<p>Director of Parks &amp; Recreation            City of Auburn            25 West Main St            Auburn WA 98001-4998            Phone: (253) 931-3043            Email: parks@auburnwa.gov</p>	<p>The Soos Creek Botanical Garden Foundation            Attn: Matt Jennings            29308 132<sup>nd</sup> Ave SE            Auburn, WA 98092            Phone: (415) 370-7468            Add Phone: (253) 639-0949            Email: <a href="mailto: MJ2543@gmail.com">MJ2543@gmail.com</a>            Add Email:  <a href="mailto: info@sooscreebotanicalgarden.org">info@sooscreebotanicalgarden.org</a></p>

Either party may change its above address by giving written notice to the other party. Notices to non-parties will be delivered as designated by a party to this Agreement.

12. Insurance

The Foundation will, at its sole expense, procure and maintain for the duration of this Agreement and for thirty (30) days thereafter insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of this Agreement by the Foundation, its agents, representatives, or employees. Foundation’s maintenance of insurance as required by the Agreement will not be construed to limit the liability of the Foundation to the coverage provided by such insurance or otherwise limit the City’s recourse to any remedy available at law or in equity.

The Foundation will obtain insurance of the types described below:

- a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage will be at least as broad as Insurance Services Office (ISO) form CA 00 01 (Foundation may use a substitute form providing equivalent liability coverage).

- b. Commercial General Liability insurance will be at least as broad as ISO occurrence form CG 00 01 and will cover liability arising from premises, operations, stop-gap independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City will be named as an additional insured under the Foundation's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO Additional Insured endorsement CG 20 26.
- c. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- d. Tenant Discrimination Liability Insurance, applicable if the Foundation leases or subleases any portion of the Property for residential purposes (e.g. a garden caretaker). The City will be named as an additional insured under the Foundation's Tenant discrimination Liability insurance policy.

For Automobile Liability and Commercial General Liability insurance, the policies are to contain or be endorsed to contain that Foundation's insurance coverage will be primary insurance with respect to the City. Any insurance, self-insurance, or self-insurance pool coverage maintained by the City will be excess of the Foundation's insurance and will not contribute to it.

Insurance is to be placed with an authorized insurer in Washington State. The insurer must have a current A.M. Best rating of not less than A:VII.

The Foundation will furnish the City with original certificates of insurance and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of this Agreement before commencement of the work.

The City reserves the right to require that complete, certified copies of all required insurance policies and/or evidence of all subcontractors' coverage be submitted to the City at any time. The City may withhold payment, if any is due, if the Foundation does not fully comply with this request.

If the Foundation maintains higher insurance limits than the minimums shown below, the City will be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Foundation, irrespective of whether such limits maintained by the Foundation are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Foundation.

The Foundation will provide the City with written notice of any policy cancellation within two business days of their receipt of such notice. Failure by the Foundation to maintain the insurance as required will constitute a material breach of this agreement, upon which the City may, after giving five (5) business days' notice to the Foundation to correct the breach, immediately terminate the agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in

connection therewith, with any sums so expended to be repaid to the City on demand, or at the City's sole discretion, offset against funds due the Foundation from the City, if any.

13. Insurance Minimums

The Foundation shall provide:

- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- Commercial General Liability (CGL): Coverage shall be no less than \$2,000,000 each occurrence with \$2,000,000 aggregate, and \$2,000,000 products completed operations aggregate limit.
- Builders Risk. May be required up to the amount of the completed value of a new building or major construction project.
- Tenant Discrimination Liability: Coverage shall be no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit. Applicable if the Foundation leases or subleases any portion of the Property for residential purposes (e.g. a garden caretaker).

14. Indemnification/Hold Harmless

Except for injuries and damages caused by the sole negligence of the City, the Foundation will defend, indemnify and hold the City and its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits of every kind, including attorney fees and litigation expenses, arising out of or resulting from the acts, errors, or omissions of the Foundation, its employees, agents, representatives, or subcontractors, including employees, agents, or representatives of its subcontractors, made in the performance of the Services required by this Agreement, or arising out of worker's compensation, unemployment compensation, or unemployment disability compensation claims.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Foundation and the City, its officers, officials, employees, and volunteers, the Foundation's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Foundation's negligence.

It is further specifically and expressly understood that this indemnification constitutes the Foundation'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 will survive the expiration or termination of this Agreement.

15. No Acts in Contravention of Foundation Nonprofit Status.

Regardless of any provisions herein, the City understands and agrees that nothing in this Agreement (including Exhibit C) requires the Foundation to provide private inurement or impermissible private benefit, or otherwise take any action that violates or jeopardizes in any way the Foundation's

501(c)(3) charitable status or its status as a Washington nonprofit corporation governed by Chapter 24.03A RCW.

16. Assignment

Neither party to this Agreement may partially or wholly assign any right or obligation in it without the other Party's prior written consent. No assignment or transfer of any interest under this Agreement will release the assignor from any liability or obligation under this Agreement or cause any such liability or obligation to be reduced to a secondary liability or obligation.

16. Nondiscrimination

The Foundation may not engage in any unfair practice identified in RCW 49.60.180 and/or 42 U.S.C. §2000e-2 in the performance of any services or activities under this Agreement (either directly or through contractual, hiring, or other arrangements).

17. Amendment, Modification and Waiver

No amendment, modification, or waiver of any condition, provision, or term of this Agreement will be valid or effective unless written and signed by the Party to be bound (or the Party's authorized representative), specifying the nature and extent of such amendment, modification or waiver. Any waiver, approval or acceptance, or payment by any Party will not affect or impair that Party's rights arising from any default by the other Party.

18. Parties in Interest

This Agreement will bind (and its benefits and obligations will inure to) the Parties and their respective successors and assigns. This section will not permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the Parties, and it does not create a contractual relationship with or exist for the benefit of any third party (including contractors, sub-contractors and sureties).

19. Force Majeure

Delays in performing this Agreement will be excused to the extent caused by acts outside a Party's control, such as fires, cyber/ransomware attacks, earthquakes, floods, explosions, actions of the elements, riots, mob violence, strikes, pandemics, labor strikes or lockouts, and state or federal government emergency orders.

20. Applicable Law/Venue/Dispute Resolution

This Agreement and the rights of the Parties under it will be governed by the laws, regulations, and ordinances of the City, King County, and the State of Washington. Venue for actions involving this Agreement will be in King County Superior Court. An applicable statute of limitation will commence no later than the Foundation's substantial completion of the Services in this Agreement. Prior to commencing any legal action involving this Agreement, the Parties agree to engage in informal or

formal mediation with a mediator mutually agreed to by the Parties, with the cost of the mediation shared equally.

21. Captions, Headings and Titles

All captions, headings or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and will not act to limit the scope of their paragraph or section. Where appropriate, the singular will include the plural (and vice versa), and masculine, feminine and neuter expressions will be interchangeable. This Agreement has been drafted by mutual agreement of the Parties, and it will be interpreted and/or constructed without regard to its drafter.

22. Severable Provisions

Each provision of this Agreement is intended to be severable. The illegality or invalidity of any provision in this Agreement will not affect the validity of the Agreement's remaining provisions.

23. Entire Agreement

This Agreement (together with any subsequent amendments or addendums) contains the entire understanding of the Parties regarding its subject matter, and it supersedes all prior oral or written representations, agreements and understandings between the parties. No other oral or written understandings regarding this Agreement shall bind any Party.

24. Non-Availability of Funds

Every City obligation under this Agreement is contingent on the availability of appropriated or allocated City funds, to the extent City funds are required - if at all - for the City to perform a given obligation. If funds required for the City's performance are not allocated and available, the City may terminate this Agreement for necessity at the end of the available funding period, subject the required Section 5 notice period. The City will not be liable if it exercises this provision and will not be obligated or liable for any future payments or damages as a result of termination under this Section.

25. Counterparts

This Agreement may be executed in multiple counterparts, with each counterpart being one and the same Agreement, and the Agreement will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below, with the term of the Agreement beginning on the Effective Date set forth above.

**CITY OF AUBURN**, a Washington  
municipal corporation

**THE SOOS CREEK BOTANICAL GARDEN  
FOUNDATION**, a Washington nonprofit  
corporation

\_\_\_\_\_  
Nancy Backus, Mayor

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

\_\_\_\_\_  
Signature

Name:

Title:

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

Approved as to form:

\_\_\_\_\_  
Jason M. Whalen, Auburn City Attorney

**EXHIBIT A**  
**Legal Description of the Property**  
**(Revised Parcel B)**

THAT PORTION OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER TOGETHER WITH THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS;

**COMMENCING** AT THE WEST QUARTER CORNER OF SAID SECTION 3, AS MONUMENTED BY CITY OF AUBURN MONUMENT 1419, AN ENCASED BRASS PLUG IN CONCRETE NEAR THE CENTER OF 132ND AVE SE;

**THENCE** ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, NORTH 01° 29' 47" EAST, 988.05 FEET;

**THENCE** DEPARTING SAID WEST LINE, SOUTH 88° 43' 54" EAST, 30.00 FEET TO THE EAST RIGHT OF WAY MARGIN OF 132ND AVE SE, ALSO BEING THE SOUTHWEST CORNER OF LOT A, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155 RECORDED UNDER RECORDING NO. 9612301254 AND AS CORRECTED PER BOUNDARY LINE ADJUSTMENT NO. L96L0155, RECORDED UNDER RECORDING NO. 20020211002613 AND **THE POINT OF BEGINNING**;

**THENCE** CONTINUING ALONG THE SOUTH LINE OF SAID KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155, SOUTH 88° 43' 54" EAST, 779.34 FEET TO THE SOUTHWEST CORNER OF LOT 2, KING COUNTY SHORT PLAT NO. 477101, RECORDED UNDER RECORDING NO. 7711221019;

**THENCE** ALONG THE WEST LINE OF SAID LOT 2 OF SAID SHORT PLAT, NORTH 01° 29' 47" EAST, 299.45 FEET TO THE NORTH LINE OF SAID LOT 2;

**THENCE** ALONG SAID NORTH LINE SOUTH 88° 44' 20" EAST, 509.29 FEET TO THE SOUTHEAST CORNER OF TRACT "X" OF SAID SHORT PLAT;

**THENCE** ALONG THE EAST LINE OF SAID TRACT "X" NORTH 01° 28' 40" EAST, 30.00 FEET TO THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

**THENCE** ALONG THE NORTH LINE OF SAID SUBDIVISION SOUTH 88° 44' 20" EAST, 262.85 FEET;

**THENCE** DEPARTING SAID NORTH LINE SOUTH 01° 28' 40" WEST, 329.55 FEET TO THE SOUTH LINE OF THE NORTH HALF OF SAID SUBDIVISION;

**THENCE** ALONG SAID SOUTH LINE SOUTH 88° 43' 54" EAST, 369.50 FEET TO THE SOUTHEAST CORNER OF SAID NORTH HALF;

**THENCE** ALONG THE EAST LINE OF THE SOUTH HALF OF SAID SUBDIVISION SOUTH 01° 28' 07" WEST, 164.80 FEET;

**THENCE** NORTH 88° 43' 30" WEST, 659.37 FEET TO THE EAST LINE OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

**THENCE** ALONG SAID EAST LINE SOUTH 01° 28' 40" WEST, 164.79 FEET TO THE SOUTHEAST CORNER OF SAID NORTH HALF;

**THENCE** ALONG THE SOUTH LINE OF SAID NORTH HALF NORTH 88° 43' 27" WEST, 812.79 FEET;

**THENCE** DEPARTING SAID SOUTH LINE NORTH 01° 29' 51" EAST, 165.00 FEET;

**THENCE** NORTH 88° 43' 27" WEST, 476.00 FEET TO SAID EAST RIGHT OF WAY MARGIN;

**THENCE** ALONG SAID EAST MARGIN NORTH 01° 29' 47" EAST, 164.35 FEET TO **THE POINT OF BEGINNING.**

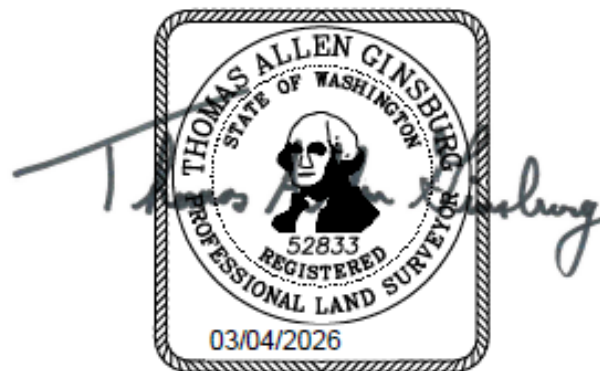
CONTAINING 693,798 SQUARE FEET (15.93 ACRES), MORE OR LESS.

**TOGETHER WITH** AN UNDIVIDED INTEREST IN TRACT "X" AS DELINEATED ON SAID KING COUNTY SHORT PLAT NO. 477101;

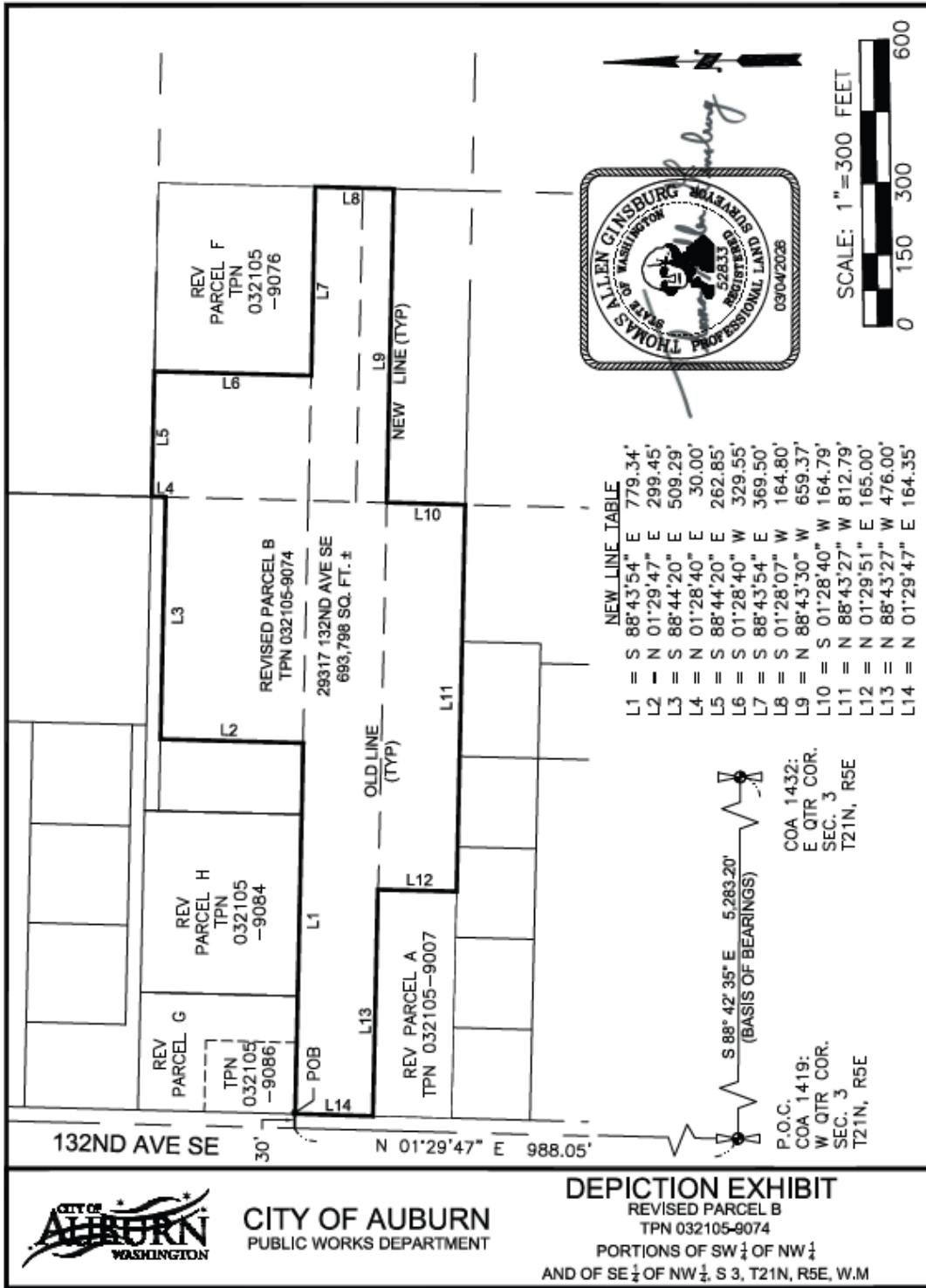
**TOGETHER WITH** A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE NORTH 30 FEET OF THE WEST HALF OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET THEREOF LYING WITHIN 132ND AVENUE SOUTHEAST.

**TOGETHER WITH** A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER, ACROSS AND UNDER THE EAST 30 FEET, AND THE SOUTH 30 FEET OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE WEST 15 FEET OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION.



**EXHIBIT B**  
**Depiction of the Property**  
**(Revised Parcel B)**



**CITY OF AUBURN**  
 PUBLIC WORKS DEPARTMENT

**DEPICTION EXHIBIT**  
 REVISED PARCEL B  
 TPN 032105-9074  
 PORTIONS OF SW 1/4 OF NW 1/4  
 AND OF SE 1/4 OF NW 1/4, S 3, T21N, R5E, W.M

**EXHIBIT C**  
**The Services**

**Foundation Maintenance Responsibilities.** The Foundation shall maintain all of the following at its sole cost and expense:

**Garden:** The Foundation shall operate, maintain, and improve the Garden, including its plant collections, as it currently exists on and within the Property. The Foundation may modify existing garden areas or establish new areas within the Property, provided such work remains consistent with the mission and purpose of a public botanical garden.

**Irrigation:** If irrigation systems are to be installed in the future, the Foundation shall be responsible for their installation, operation, maintenance, repair, and replacement as necessary.

**Equipment:** The Foundation shall be responsible for and perform all maintenance and repair of onsite equipment owned by the Foundation or the City, if any, that is used by the Foundation for Garden Maintenance. If equipment needs replacement, the Foundation shall replace said equipment in a timely manner, to not disrupt Garden operations.

**Buildings:** The Foundation shall be responsible for all maintenance of all buildings on the Garden and within the Property, provided, however, that the Foundation shall be responsible for the “Main House” or a portion thereof only if and when the primary purpose of the Main House or a portion thereof (e.g. a Garden caretaker apartment) is to support the Garden operations. Thus, as of the Effective Date of the Services Agreement, the Foundation shall be responsible for the “Soos Creek Heritage Center”, the “Pavilion by the Pond”, the aviary (attached to the Main House), and all Garden-related outbuildings, including but not limited to the “Hoop Nursery”, greenhouses, sheds, and other structures, whether currently located on the Garden or installed in the future for Garden-related purposes. Maintenance shall include, but not be limited to, normal and routine maintenance (e.g. painting, minor repairs, replacing light bulbs, pest control, etc.), as well as Capital Improvements (e.g. roof replacement, siding repairs, system replacements, etc.). In the event of significant Capital Improvements or other significant alterations or improvements desired by the Foundation – with “significant” defined as improvements or alterations exceeding ten thousand dollars (\$10,000) in total cost – the Foundation shall obtain the City’s written consent prior to engaging in such work, with such consent not unreasonably withheld. The Foundation may, but is not required to, consult with the City for minor repairs, replacements, or routine maintenance. The Foundation shall be responsible for the investigation and acquisition of any permits needed, with City as owner cooperating as needed for such permits.

**Historic/Cultural Effects:** The Foundation shall be responsible for maintaining artwork, furniture, photos, historic tools and equipment, newspaper articles, etc. (collectively, the “Historic/Cultural Effects”) as part of its maintenance of the Soos Creek Heritage Center.

Additionally, after Maurice Skagen no longer resides in the Main House, the Foundation shall also be responsible for maintaining such Historic/Cultural Effects that Mr. Skagen determines within his discretion to leave in the Main House.

**All Other Site Appurtenances:** The Foundation shall be responsible for all maintenance, repair, and replacement of all site appurtenances, including but not limited to, the entrance gate, parking areas, water/sewage/electrical systems, kiosks, memorials, benches, and fencing. City and Foundation mutually understand and agree that existing and future memorials placed on the Property by the Foundation are intended to be permanent, e.g. the granite memorial bench near the vegetable garden, and shall be replaced if damaged.

**Vehicle and Pedestrian Areas:** The Foundation shall be responsible for maintaining the grounds of the Garden in a safe and well-maintained condition, including, without limitation, parking areas, roads, driveways, walkways, pathways, patios, and other vehicle and pedestrian areas located within the Property.

**Soosette Creek:** The Foundation shall conduct its activities within the Property in a manner that complies with all applicable State and City regulations governing Soosette Creek and its associated critical areas and buffers. Nothing in this Agreement shall prohibit the Foundation from coordinating educational or habitat-related activities associated with the creek (e.g. children releasing salmon fry) and in coordination with applicable organizations (e.g. Muckleshoot Indian Tribe, State of Washington, etc.).

### **Foundation Operational Responsibilities.**

**Hours of the Garden and Soos Creek Heritage Center:** The City and Foundation acknowledge that the Garden is an asset meant to be enjoyed by and open to the public. The Foundation shall consult with the City but ultimately shall have the final authority to determine the days, times, or seasons when the Garden is open to the public or for private events. The Foundation shall keep the City apprised of such open hours, special events, etc. so that the City may assist in public outreach.

**Educational Uses and Fundraising:** The Foundation, at its sole discretion, may continue to offer the Garden and its amenities for educational purposes, including but not limited to, public education (e.g. schools), private education (e.g. garden workshops), and for fundraising events, compliant with its tax-exempt status.

### **City Rights and Responsibilities.**

**City use of the Property and Buildings:** The City may request use of portions of the Property or Garden facilities for City-related events or gatherings. Any such use shall be coordinated with the Foundation and shall be subject to availability and the Foundation's scheduling of Garden operations, programs, and private rentals. The Foundation may, at its discretion, permit such use and may charge the City the same or a discounted rate consistent with the Foundation's facility rental policies. Nothing in this Agreement obligates the Foundation to provide facilities for City use without charge.

Use of any facilities subject to a residential occupancy, including without limitation Maurice Skagen's lease of the main house on his former property, shall only occur if such use is permitted under the terms of that occupancy. City events approved under this section shall be scheduled in coordination with the Foundation, and the City shall be responsible for reasonable cleanup and restoration of the facilities following such use.

**Public Outreach:** The City may include Foundation and Garden events and other information in City-sponsored public outreach (e.g. e-blasts, social media posts, etc.), though it is not required to do so. The Foundation should keep in contact with City Staff to assist in said efforts for public outreach. If the Foundation provides its own public outreach, the Foundation shall not indicate that the City is a sponsor of said events or information provided.

**Periodic Meetings & Reports:** The Foundation and City shall coordinate quarterly meetings, at a time and location as is convenient for each party. Reports, as may be listed in the Foundation Services Agreement, shall be provided in a timely manner to the City.

**Financial Responsibilities of Foundation.** The City and Foundation acknowledge that the purpose of the City's acquisition of the Property and Garden was to ensure in perpetuity the opportunity to continue the historic use of the Property as public gardens, open space and cultural/historic education for the benefit of the Auburn community. The Foundation shall be financially responsible for its Maintenance Responsibilities and Operational Responsibilities, as outlined above. The Foundation intends to rely in part for its financial stability on a donor-advised endowment intended to be created by the investment and benevolence of Garden and Foundation co-founder Maurice Skagen. To the extent allowed by the entity managing such endowment (e.g. the Seattle Foundation or a similar philanthropic management organization), the City will be listed as contingent beneficiary of any such endowment created, provided that all income and principal of the endowment is used solely to maintain and improve the Property and Garden for public benefit as contemplated herein and in accordance with the governing instruments for any such endowment. The Foundation and City acknowledge that in the event the Foundation becomes insolvent or is otherwise unable to maintain the Garden, Property, and other associated buildings,

as described in this Agreement, the City shall receive the full financial benefit, as designated contingent beneficiary of any endowment established for the ongoing maintenance and operation of the Property and Garden, subject to any dissolution/wind-down requirements the Foundation must meet in accordance with its 501(c)(3) status and as a Washington nonprofit corporation governed by Chapter 24.03A RCW. Notwithstanding the City's receipt of available income from the endowment, if financial resources are insufficient to maintain the Garden, then, in the City's sole determination, the Garden and Property may revert to natural open space, for the benefit of the public. If the Foundation is unable to maintain the buildings and other built structures on the Property, the City retains the rights to use the endowment funds, to maintain any such buildings or structures, in such conditions as determined by the City, in the City's sole discretion but subject to the requirement that any donated funds must be used for the charitable purpose(s) for which they were donated.

The City understands and agrees that nothing in the Services Agreement or this Exhibit C shall require the Foundation to provide private inurement or impermissible private benefit, or otherwise take any action that violates or jeopardizes in any way its 501(c)(3) charitable status or its status as a Washington nonprofit corporation governed by Chapter 24.03A RCW.

Subject to the terms and conditions of the Agreement, the Foundation may enter into an agreement with another nonprofit organization to take over the Foundation responsibilities as described herein, subject to the City's written approval and consent, which shall not be unreasonably withheld.

**EXHIBIT D**  
**Easement for Ingress, Egress, Parking & Operations**  
**(Cover Page)**

RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:

City of Auburn  
25 W Main  
Auburn, WA 98001  
ATTN: Josh Arndt

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of or any warranty contained in the document itself.

Reference # (if applicable):  
Grantor: **The Soos Creek Botanical Garden Foundation, a Washington nonprofit corporation**  
Grantee: **City of Auburn, a Washington municipal corporation**  
Tax Parcel ID Numbers:  
Q-S-T-R of burdened property:  
Full Legal Descriptions Located: **Exhibits A & B**

## EASEMENT FOR INGRESS, EGRESS, PARKING & OPERATIONS

**THIS EASEMENT FOR INGRESS, EGRESS, PARKING & OPERATIONS** (“Easement”) by and between The Soos Creek Botanical Garden Foundation, a Washington nonprofit corporation (“Grantor”), and City of Auburn, a Washington municipal corporation (“Grantee”) is effective as of \_\_\_\_\_ (the “Effective Date”).

### I. RECITALS

A. Grantor is the owner of real property described and depicted in **Exhibit A**, attached hereto and incorporated herein by reference (“Grantor Property”).

B. Grantee is the owner of real property described and depicted in **Exhibit B**, attached hereto and incorporated herein by reference (“Grantee Property”).

C. The Grantor and Grantee intend for the Grantee to purchase Grantor’s Property upon availability of King County Conservation Futures Tax Levy grant funding.

D. Until such time, Grantee requests that Grantor enter into this Easement Agreement for the Grantor to operate the Botanical Garden (defined below) located on Grantee's Property.

E. Grantor's Property provides supportive services such as storage and parking for the Botanical Garden, therefore the parties wish to memorialize the synergies of the two properties until such time as the funds are available for Grantee to purchase Grantor's Property.

## **II. EASEMENT**

1. Grant of Easement. Grantor hereby grants and conveys to Grantee a perpetual non-exclusive blanket easement upon, over, across, and through Grantor's Property (the "Easement Area") for the purposes of ingress, egress, parking, and general support of Grantee's Property in the operations of Soos Creek Botanical Garden (the "Botanical Garden").

1.1 Grantor reserves the right to control, amend, alter, direct, or redirect the flow and direction of traffic on Grantor's Property, and to restrict Grantee's use of the Easement to daytime hours and at other times when Grantee's use of the Easement may interfere with Grantor's reasonable use of the Easement Area for Botanical Garden purposes.

1.2 Grantor is responsible (at its sole cost and discretion) to maintain, repair, replace, and/or reconfigure (together "Work") the surface and subsurface of the Easement Area so long as the Work does not impede or diminish the supportive and operational services Grantor's Property provides to the Botanical Garden, provided, however, that Grantee is responsible for repairing any damage (beyond ordinary wear and tear) resulting from Grantee's employees, agents, guests, licensees, lessees and officials' use of the Easement Area.

2. Conditions of Easement. The Easement is granted subject to and conditioned upon the following terms, conditions, and covenants which the parties, their agents, tenants, successors and assigns, agree to fully observe and perform:

2.1 Rights of Easement. Grantee's right to use the Easement Area shall extend equally to Grantee's employees, agents, guests, licensees, lessees and officials. For the purposes of this Easement, all shall be collectively considered the "Grantee."

3. General Provisions. The following general provisions shall also apply to this Easement:

3.1 Running Covenants. The terms, conditions, rights and obligations contained in this Easement shall be covenants running with the land and shall inure to and bind the successors, assigns, heirs, and personal representatives of the parties.

3.2 Applicable Law. This Easement shall be governed by and construed in accordance with the laws of the State of Washington.

3.3 Recording. Grantee shall record this Easement with the King County Recorder at its expense. Grantee shall provide Grantor with a copy of the recorded Easement.

3.4 Attorneys' Fees. If either party brings suit to enforce or interpret this Easement, a court judgment to the substantially prevailing party shall include that party's attorneys' fees and legal costs and expenses of the suit. Awarded attorneys' fees and expenses shall include those incurred before, during and after trial, including those related to any appeal.

3.5 Authority. Each of the individuals whose signature appears below represents and warrants that he or she has full authority to execute this Easement on behalf of the party on whose behalf he or she has affixed his or her signature to this Easement.

**GRANTOR:**

**GRANTEE:**

The Soos Creek Botanical Garden Foundation, a Washington nonprofit corporation

CITY OF AUBURN, a Washington municipal corporation

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

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

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

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

Name(printed): \_\_\_\_\_

Name (printed): Nancy Backus

Title:

Title: Mayor

**[GRANTOR'S NOTARY BOX]**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (s)he signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the (Title)\_\_\_\_\_ of THE SOOS CREEK BOTANICAL GARDEN FOUNDATION, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**[GRANTEE'S NOTARY BOX]**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ I certify that I know or have satisfactory evidence that NANCY BACKUS is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the MAYOR of the CITY OF AUBURN, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT E**  
**Legal Description of the Foundation Property**  
**(Revised Parcel H)**

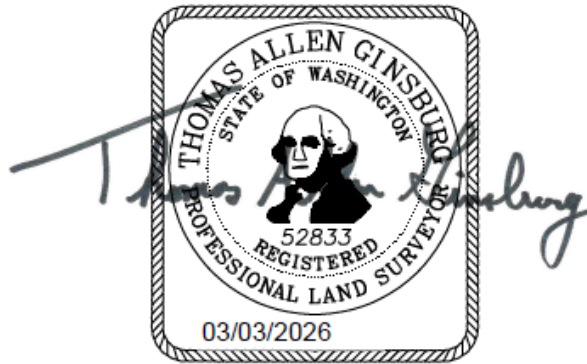
LOT B, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155 RECORDED UNDER RECORDING NO. 9612301254 AND AS CORRECTED PER BOUNDARY LINE ADJUSTMENT NO. L96L0155, RECORDED UNDER RECORDING NO. 20020211002613 BEING A PORTION OF THE WEST HALF OF THE NORTH QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M.;

EXCEPT THAT PORTION OF SAID LOT B LYING WEST OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE MOST NORTHERLY NORTHWEST CORNER OF SAID LOT B, ALSO BEING A POINT ON THE EAST RIGHT OF WAY MARGIN OF 132ND AVE SE, THENCE ALONG THE NORTH LINE OF SAID LOT B, SOUTH 88° 44' 20" EAST, 247.50 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING SAID NORTH LINE SOUTH 01° 29' 47" WEST, 329.39 FEET TO THE SOUTH LINE OF SAID LOT B AND THE TERMINUS OF SAID DESCRIBED LINE;

CONTAINING 125,771 SQUARE FEET (2.89 ACRES), MORE OR LESS.





RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:

City of Auburn  
25 W Main  
Auburn, WA 98001  
ATTN: Josh Arndt

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of or any warranty contained in the document itself.

Reference # (if applicable):  
Grantor: **The Soos Creek Botanical Garden Foundation, a Washington nonprofit corporation**  
Grantee: **City of Auburn, a Washington municipal corporation**  
Tax Parcel ID Numbers:  
Q-S-T-R of burdened property:  
Full Legal Descriptions Located: **Exhibits A & B**

**EASEMENT FOR INGRESS, EGRESS, PARKING & OPERATIONS**

**THIS EASEMENT FOR INGRESS, EGRESS, PARKING & OPERATIONS** (“Easement”) by and between The Soos Creek Botanical Garden Foundation, a Washington nonprofit corporation (“Grantor”), and City of Auburn, a Washington municipal corporation (“Grantee”) is effective as of \_\_\_\_\_ (the “Effective Date”).

**I. RECITALS**

A. Grantor is the owner of real property described and depicted in **Exhibit A**, attached hereto and incorporated herein by reference (“Grantor Property”).

B. Grantee is the owner of real property described and depicted in **Exhibit B**, attached hereto and incorporated herein by reference (“Grantee Property”).

C. The Grantor and Grantee intend for the Grantee to purchase Grantor’s Property upon availability of King County Conservation Futures Tax Levy grant funding.

D. Until such time, Grantee requests that Grantor enter into this Easement Agreement for the Grantor to operate the Botanical Garden (defined below) located on Grantee’s Property.

E. Grantor's Property provides supportive services such as storage and parking for the Botanical Garden, therefore the parties wish to memorialize the synergies of the two properties until such time as the funds are available for Grantee to purchase Grantor's Property.

## II. EASEMENT

1. Grant of Easement. Grantor hereby grants and conveys to Grantee a perpetual non-exclusive blanket easement upon, over, across, and through Grantor's Property (the "Easement Area") for the purposes of ingress, egress, parking, and general support of Grantee's Property in the operations of Soos Creek Botanical Garden (the "Botanical Garden").

1.1 Grantor reserves the right to control, amend, alter, direct, or redirect the flow and direction of traffic on Grantor's Property, and to restrict Grantee's use of the Easement to daytime hours and at other times when Grantee's use of the Easement may interfere with Grantor's reasonable use of the Easement Area for Botanical Garden purposes.

1.2 Grantor is responsible (at its sole cost and discretion) to maintain, repair, replace, and/or reconfigure (together "Work") the surface and subsurface of the Easement Area so long as the Work does not impede or diminish the supportive and operational services Grantor's Property provides to the Botanical Garden, provided, however, that Grantee is responsible for repairing any damage (beyond ordinary wear and tear) resulting from Grantee's employees, agents, guests, licensees, lessees and officials' use of the Easement Area.

2. Conditions of Easement. The Easement is granted subject to and conditioned upon the following terms, conditions, and covenants which the parties, their agents, tenants, successors and assigns, agree to fully observe and perform:

2.1 Rights of Easement. Grantee's right to use the Easement Area shall extend equally to Grantee's employees, agents, guests, licensees, lessees and officials. For the purposes of this Easement, all shall be collectively considered the "Grantee."

3. General Provisions. The following general provisions shall also apply to this Easement:

3.1 Running Covenants. The terms, conditions, rights and obligations contained in this Easement shall be covenants running with the land and shall inure to and bind the successors, assigns, heirs, and personal representatives of the parties.

3.2 Applicable Law. This Easement shall be governed by and construed in accordance with the laws of the State of Washington.

3.3 Recording. Grantee shall record this Easement with the King County Recorder at its expense. Grantee shall provide Grantor with a copy of the recorded Easement.

3.4 Attorneys' Fees. If either party brings suit to enforce or interpret this Easement, a court judgment to the substantially prevailing party shall include that party's attorneys' fees and legal costs and expenses of the suit. Awarded attorneys' fees and expenses shall include those incurred before, during and after trial, including those related to any appeal.

3.5 Authority. Each of the individuals whose signature appears below represents and warrants that he or she has full authority to execute this Easement on behalf of the party on whose behalf he or she has affixed his or her signature to this Easement.

**GRANTOR:**

**GRANTEE:**

The Soos Creek Botanical Garden Foundation, a Washington nonprofit corporation

CITY OF AUBURN, a Washington municipal corporation

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

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

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

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

Name(printed): \_\_\_\_\_

Name (printed): Nancy Backus

Title:

Title: Mayor

**[GRANTOR'S NOTARY BOX]**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (s)he signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the (Title)\_\_\_\_\_ of THE SOOS CREEK BOTANICAL GARDEN FOUNDATION, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**[GRANTEE'S NOTARY BOX]**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ I certify that I know or have satisfactory evidence that NANCY BACKUS is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the MAYOR of the CITY OF AUBURN, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT A  
GRANTOR PROPERTY**

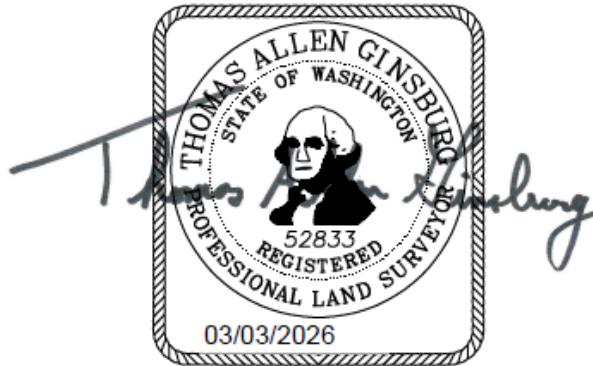
LOT B, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155 RECORDED UNDER RECORDING NO. 9612301254 AND AS CORRECTED PER BOUNDARY LINE ADJUSTMENT NO. L96L0155, RECORDED UNDER RECORDING NO. 20020211002613 BEING A PORTION OF THE WEST HALF OF THE NORTH QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M.;

EXCEPT THAT PORTION OF SAID LOT B LYING WEST OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE MOST NORTHERLY NORTHWEST CORNER OF SAID LOT B, ALSO BEING A POINT ON THE EAST RIGHT OF WAY MARGIN OF 132ND AVE SE, THENCE ALONG THE NORTH LINE OF SAID LOT B, SOUTH 88° 44' 20" EAST, 247.50 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING SAID NORTH LINE SOUTH 01° 29' 47" WEST, 329.39 FEET TO THE SOUTH LINE OF SAID LOT B AND THE TERMINUS OF SAID DESCRIBED LINE;

CONTAINING 125,771 SQUARE FEET (2.89 ACRES), MORE OR LESS.



**EXHIBIT B  
GRANTEE PROPERTY**

THAT PORTION OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER TOGETHER WITH THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS;

**COMMENCING** AT THE WEST QUARTER CORNER OF SAID SECTION 3, AS MONUMENTED BY CITY OF AUBURN MONUMENT 1419, AN ENCASED BRASS PLUG IN CONCRETE NEAR THE CENTER OF 132ND AVE SE;

**THENCE** ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, NORTH 01° 29' 47" EAST, 988.05 FEET;

**THENCE** DEPARTING SAID WEST LINE, SOUTH 88° 43' 54" EAST, 30.00 FEET TO THE EAST RIGHT OF WAY MARGIN OF 132ND AVE SE, ALSO BEING THE SOUTHWEST CORNER OF LOT A, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155 RECORDED UNDER RECORDING NO. 9612301254 AND AS CORRECTED PER BOUNDARY LINE ADJUSTMENT NO. L96L0155, RECORDED UNDER RECORDING NO. 20020211002613 AND **THE POINT OF BEGINNING**;

**THENCE** CONTINUING ALONG THE SOUTH LINE OF SAID KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155, SOUTH 88° 43' 54" EAST, 779.34 FEET TO THE SOUTHWEST CORNER OF LOT 2, KING COUNTY SHORT PLAT NO. 477101, RECORDED UNDER RECORDING NO. 7711221019;

**THENCE** ALONG THE WEST LINE OF SAID LOT 2 OF SAID SHORT PLAT, NORTH 01° 29' 47" EAST, 299.45 FEET TO THE NORTH LINE OF SAID LOT 2;

**THENCE** ALONG SAID NORTH LINE SOUTH 88° 44' 20" EAST, 509.29 FEET TO THE SOUTHEAST CORNER OF TRACT "X" OF SAID SHORT PLAT;

**THENCE** ALONG THE EAST LINE OF SAID TRACT "X" NORTH 01° 28' 40" EAST, 30.00 FEET TO THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

**THENCE** ALONG THE NORTH LINE OF SAID SUBDIVISION SOUTH 88° 44' 20" EAST, 262.85 FEET;

**THENCE** DEPARTING SAID NORTH LINE SOUTH 01° 28' 40" WEST, 329.55 FEET TO THE SOUTH LINE OF THE NORTH HALF OF SAID SUBDIVISION;

**THENCE** ALONG SAID SOUTH LINE SOUTH 88° 43' 54" EAST, 369.50 FEET TO THE SOUTHEAST CORNER OF SAID NORTH HALF;

**THENCE** ALONG THE EAST LINE OF THE SOUTH HALF OF SAID SUBDIVISION SOUTH 01° 28' 07" WEST, 164.80 FEET;

**THENCE** NORTH 88° 43' 30" WEST, 659.37 FEET TO THE EAST LINE OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

**THENCE** ALONG SAID EAST LINE SOUTH 01° 28' 40" WEST, 164.79 FEET TO THE SOUTHEAST CORNER OF SAID NORTH HALF;

**THENCE** ALONG THE SOUTH LINE OF SAID NORTH HALF NORTH 88° 43' 27" WEST, 812.79 FEET;

**THENCE** DEPARTING SAID SOUTH LINE NORTH 01° 29' 51" EAST, 165.00 FEET;

**THENCE** NORTH 88° 43' 27" WEST, 476.00 FEET TO SAID EAST RIGHT OF WAY MARGIN;

**THENCE** ALONG SAID EAST MARGIN NORTH 01° 29' 47" EAST, 164.35 FEET TO **THE POINT OF BEGINNING.**

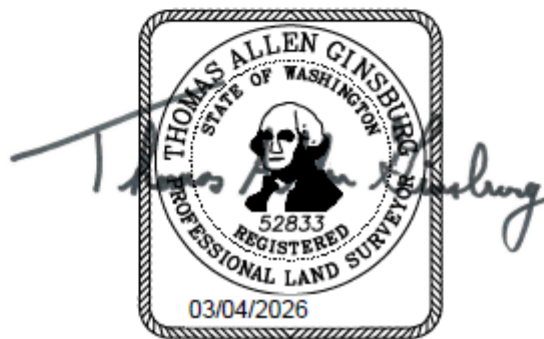
CONTAINING 693,798 SQUARE FEET (15.93 ACRES), MORE OR LESS.

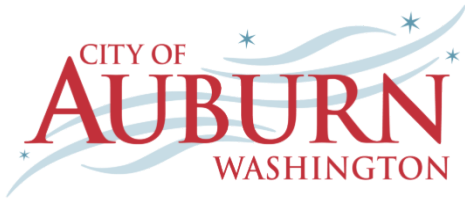
**TOGETHER WITH** AN UNDIVIDED INTEREST IN TRACT "X" AS DELINEATED ON SAID KING COUNTY SHORT PLAT NO. 477101;

**TOGETHER WITH** A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE NORTH 30 FEET OF THE WEST HALF OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET THEREOF LYING WITHIN 132ND AVENUE SOUTHEAST.

**TOGETHER WITH** A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER, ACROSS AND UNDER THE EAST 30 FEET, AND THE SOUTH 30 FEET OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE WEST 15 FEET OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION.





## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Resolution No. 5907 (Whalen)

A Resolution authorizing the Mayor to execute on behalf of the City, a Lease Termination and Surrender Agreement with Classic Helicopter Corp

**Meeting Date:**

May 18, 2026

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5907.)**

**Department:**

Legal

**Attachments:**

Resolution No. 5907, Classic Helicopter - Lease Termination and Surrender Agreement

**Budget Impact:****Administrative Recommendation:**

City Council to adopt Resolution No. 5907.

**Background for Motion:**

Given the quick notice and good faith but unsuccessful effort by the tenant to secure a replacement aircraft that would allow them to continue operations on the Airport, we believe it is in the City's best interest to execute this Termination and Surrender Agreement and focus on quickly reletting the space to another aeronautical tenant that has the ability to generate a revenue for themselves and the Airport.

**Background Summary:**

Classic Helicopter Corp. has provided helicopter tours and flight training at the Auburn Municipal Airport since December 2020, utilizing leased aircraft. On Friday, March 6, 2026, as he was preparing to leave for vacation, owner Dan Dolan received a call from the lessor of the helicopters informing him that the aircraft had been sold and would be delivered to their new owners the following day.

On Monday, March 9, 2026, Real Estate Manager Josh Arndt and Airport Manager Tim Mensonides were notified of the sale. The three met shortly thereafter to assess the situation and its potential ramifications. Mr. Dolan expressed his intent to attempt to secure replacement aircraft; however, he acknowledged that, if unsuccessful, he would be unable to generate revenue sufficient to meet his lease obligations.

In mid-April, the parties met again, at which time Mr. Dolan informed Mr. Arndt and Mr. Mensonides that he had been unable to obtain replacement aircraft.

Following that meeting, Mr. Arndt and Mr. Mensonides evaluated the available options and determined that entering into an agreement for the voluntary early termination and surrender of the

Lease would be more cost-effective. This approach would allow the Airport to relet the premises to a tenant with the ability to perform, rather than pursue legal action against a tenant that retains possessory rights but lacks the ability to meet its financial obligations.

**Councilmember:** Hanan Amer

**Staff:** Jason Whalen

**RESOLUTION NO. 5907**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY, A LEASE TERMINATION AND SURRENDER AGREEMENT WITH CLASSIC HELICOPTER CORP

WHEREAS, the City of Auburn (“City”) and Classic Helicopter Corp., (“Classic”) entered into a lease agreement for office space and tie-downs at the Auburn Municipal Airport (the “Airport”), as authorized by Resolution 5560 and as subsequently extended by “Extension Option 1 of 2” (collectively the “Lease”), which Lease is currently scheduled to expire on December 31, 2027; and

WHEREAS, Classic utilized leased helicopters in connection with its business operations at the Airport; and

WHEREAS, on March 9, 2026, Classic notified the City that all helicopters used in its business operations had been sold by the lessor without prior notice to Classic; and

WHEREAS, despite good faith efforts, Classic was unable to secure replacement helicopters necessary to continue its operations at the Airport; and

WHEREAS, due to Classic’s inability to secure replacement helicopters and its prompt notification to the City regarding the sale of its helicopters, the parties desire to enter into an agreement providing for the early termination of the Lease and surrender of the Premises described therein.

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

**Section 1.** The Mayor is authorized to execute the Early Termination and Surrender Agreement of the Lease and surrender of the Premises described therein, attached as Exhibit A.

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

**Section 3.** The City Clerk is authorized to make necessary corrections to this Resolution including, but not limited to, the correction of scrivener's/clerical errors, references, Resolution numbering, section/subsection numbers, and any references thereto.

**Section 4.** This Resolution will take effect and be in full force on passage and signatures.

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

CITY OF AUBURN

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

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Jason Whalen, City Attorney

**LEASE TERMINATION &  
SURRENDER AGREEMENT  
(Classic Helicopter Corp.)**

This Lease Termination and Surrender Agreement (“Agreement”) is effective as of the \_\_\_\_\_ day of May, 2026 (the “Agreement Date”), by and between The City of Auburn, a Washington municipal corporation (“Landlord”) and Classic Helicopter Corp., a Washington corporation (“Tenant”).

**I. RECITALS**

1. Landlord and Tenant entered into a Lease Agreement dated December 16, 2020, for office space and tie-downs on the Auburn Municipal Airport (the “Airport”), which was ratified by the Auburn City Council pursuant Resolution 5560. The Lease was subsequently amended on September 30, 2021 (the “First Amendment”) and extended by agreement on October 31, 2024 (“Extension Option 1 of 2”). The Lease, as amended and extended is herein referred to collectively as the “Lease” and is currently scheduled to expire on December 31, 2027.

2. Tenant provided helicopter tours and helicopter flight training utilizing leased helicopter aircraft.

3. On March 9, 2026, Tenant notified Landlord (Real Estate Manager & Airport Manager) by phone and email that the helicopters leased by Tenant had been sold and were no longer available for Tenant’s use.

4. Tenant attempted in earnest but was unable to secure replacement aircraft to continue Tenant’s operations on the Airport.

5. Due to Tenant’s inability to secure replacement aircraft, Landlord and Tenant mutually desire to enter into an agreement for the early termination of the Lease, subject to the conditions set forth in this Early Termination & Surrender Agreement (this “Agreement”).

6. The Auburn City Council approved this Agreement through its ratification of Resolution 5907

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Landlord and Tenant hereby agree as follows:

**II. AGREEMENT**

1. **Termination.** The Lease between Landlord and Tenant, including any option rights thereunder, shall terminate effective April 30, 2026 (“Termination Date”) which Termination Date may be applied retroactively to a date prior to the Effective Date of this Agreement. The parties acknowledge and agree that Tenant has turned over all keys, key fobs, and possession of the Premises (as defined in the Lease) to Landlord on or before the Termination Date.

2. **Surrender of Premises and Personal Property.** On or before the Termination Date, Tenant shall have fully vacated and surrendered the Premises in a condition acceptable to Landlord and in accordance with the terms of this Agreement. Tenant agrees that all Tenant Improvements, whether installed by Landlord or Tenant during the term of the Lease, shall remain on the Premises and shall become the property of Landlord as of the Termination Date. To the extent Tenant leaves any personal property on or within the Premises, such personal property shall be deemed abandoned by Tenant and shall become the property of Landlord as of the Termination Date and may be removed or disposed of by Landlord in its sole discretion.

3. **Fees.** Landlord and Tenant acknowledge that all Rent (as defined in the Lease) has been paid through the Termination Date. The parties further agree that no Rent shall accrue or be owed after the Termination Date, and that no termination fee shall be imposed under this Agreement; provided, however, that Tenant shall remain responsible for and shall timely pay all utility charges attributable to the Premises through the Termination Date, regardless of when such charges are billed.

4. **Mutual Release.**

a. **Release of Landlord.** As consideration for the terms and conditions of this Agreement, including Landlord's acceptance of the early termination and surrender of the Lease, Tenant agrees and does hereby release the Landlord, and its partners, owners, officers, directors, agents, employees, and attorneys from any and all claims and causes of action, known or unknown, arising out of the Lease and including without limitation, all property damage or loss of Tenant's quiet enjoyment of the Premises, claims arising in contract or tort and arising out of the Tenant's occupancy of the Premises subject to the Lease, whether express or implied, or claims otherwise arising from any acts or omissions occurring prior to the date hereof, whether or not the subject of any lawsuit. Those obligations of Landlord set forth herein shall survive and are not released until said termination and surrender of the Premises has been completed as set forth in this Agreement.

b. **Release of Tenant.** As consideration for the terms and conditions of this Agreement, including Tenant's early termination and surrender of the Premises, Landlord agrees and does hereby release the Tenant, and its members, owners, officers, directors, agents, employees, and attorneys from any and all claims and causes of action, known or unknown, claims arising in contract or tort, whether express or implied, or claims otherwise arising from any acts or omissions occurring prior to the date hereof, whether or not the subject of any lawsuit. Those obligations of Tenant set forth herein shall survive and are not released until said termination and surrender of the Premises has been completed as set forth in this Agreement. Landlord agrees that provided Tenant pays and all costs and expenses as required under this Agreement, Tenant shall have no further obligation for the payment of rent and/or for any other obligations under the Lease for the Premises.

5. **Representation and Warranties.** Tenant and Landlord each represent and warrant to the other as follows:

a. That said party has the authority to enter into this Agreement and to perform under this Agreement;

b. That said party has not breached the Lease, including without limitation, entering into any agreement to sublease the Premises to anyone else; and

c. That said party has no knowledge of any liens on the Premises due to Tenant's activities.

6. **General Provisions.**

a. Time is of the essence in the performance of the parties' respective obligations set forth in this Agreement.

b. This Agreement constitutes the entire understanding of the parties and all prior agreements, representations, and understandings between the parties, whether oral or written, are deemed null, all of the foregoing having been merged into this Agreement. The parties acknowledge that each party has had the opportunity to have independent legal review and/or its counsel have reviewed and revised this Agreement and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement or any amendments or exhibits to this Agreement or any document executed and delivered by either party in connection with this Agreement.

c. This Agreement shall be construed under Washington law and venue for any claims arising out of this Agreement shall be in King County, Washington.

d. If for any reason, any provision of this Agreement shall be held to be unenforceable, it shall not affect the validity or enforceability of any other provision of this Agreement.

e. This Agreement, including Exhibits and/or addenda, if any, expresses the entire agreement of the parties and supersedes any and all previous agreements between the parties with regard to the Premises and the Lease. There are no other understandings, oral or written, which in any way alter or enlarge its terms, and there are no warranties or representations of any nature whatsoever, either expressed or implied, except as may be set forth herein.

f. This Agreement may be executed in counterparts. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original.

g. The parties hereto agree that each party shall be responsible for their own attorneys' fees and costs incurred in the negotiation for and preparation of this Agreement. In the event any dispute between the parties over the terms of this Agreement results in litigation, venue shall be in Pierce County and the prevailing party in any such action shall be reimbursed by the

non-prevailing party for all reasonable costs and expenses, including, without limitation, reasonable attorneys' and experts' fees and costs incurred by the prevailing party in connection with such litigation or other proceeding and any appeal thereof. Such costs, expenses and fees shall be included in and made a part of the judgment recovered by the prevailing party, if any, including any appeal.

h. Except as modified herein, all other covenants, terms and conditions of the Lease remain in full force and effect. In the event of any conflict between the terms of the Lease and this Agreement, the terms of this Agreement shall govern.

*(Signatures to follow.)*

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

**LANDLORD:**  
**City of Auburn**

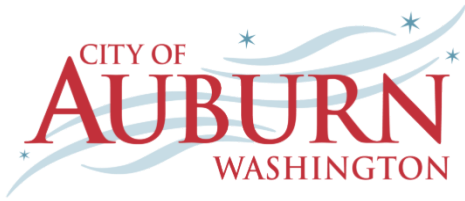
**TENANT:**  
**Classic Helicopter Corp.**

By: \_\_\_\_\_  
Nancy Backus, Mayor

By: \_\_\_\_\_  
Daniel Dolan, President

Approved as to form:

By: \_\_\_\_\_  
Jason Whalen, City Attorney



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Resolution No. 5908 (Whalen/Krueger)

A Resolution authorizing the Mayor to execute on behalf of the City, a Purchase and Sale Agreement with the Soos Creek Botanical Garden Foundation for the acquisition of real property used for the Soos Creek Botanical Garden and Heritage Center

**Meeting Date:**

May 18, 2026

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5908.)**

**Department:**

Legal

**Attachments:**

Resolution No. 5908, Exhibit A -  
Purchase & Sale Agreement

**Budget Impact:****Administrative Recommendation:**

City Council to adopt Resolution No. 5908.

**Background for Motion:**

In combination with the Skagen property purchase authorized under Resolution No. 5900, this acquisition constitutes a substantial benefit to the City of Auburn and the surrounding communities, safeguarding this important cultural and environmental asset for current and future generations.

**Background Summary:**

The Soos Creek Botanical Garden property is a well-established community asset that has long served the Auburn area and surrounding communities as a valued local attraction, educational resource, and site of historic and environmental significance.

The majority of the Garden property is owned by Morris "Maurice" Skagen, whose property the City is acquiring pursuant to Resolution No. 5900. The remaining portion of the Garden property, though significantly smaller and generally consisting of a gravel parking lot and a future garden area, is owned by the Soos Creek Botanical Garden Foundation.

The King County Conservation Futures Tax Levy grant funds awarded for these acquisitions are insufficient to cover both the Foundation and Skagen property purchases. Rather than delay the acquisition while the City seeks additional grant funding, the Foundation has agreed to accept up to \$50,000 less than the appraised value of its property. The purchase and sale agreement attached to this resolution reflects that agreement.

**Councilmember:** Hanan Amer

**Staff:** Jason Whalen, Julie Krueger

**RESOLUTION NO. 5908**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY, A PURCHASE AND SALE AGREEMENT WITH THE SOOS CREEK BOTANICAL GARDEN FOUNDATION FOR THE ACQUISTION OF REAL PROPERTY USED FOR THE SOOS CREEK BOTANICAL GARDEN AND HERITAGE CENTER

WHEREAS, for many years, the real property known as the Soos Creek Botanical Garden and Heritage Center has served the Auburn community as a local attraction, an educational resource, and a site of historic significance and conservation; and

WHEREAS, The Soos Creek Botanical Garden Foundation (the "Foundation") owns a portion of the real property used for the Soos Creek Botanical Garden and Heritage Center (the "Foundation Parcel" or "Property"); and

WHEREAS, The Foundation desires to sell the Foundation Parcel to the City of Auburn ("City"); and

WHEREAS, The City intends to purchase the remainder of the real property making up the Soos Creek Botanical Garden and Heritage Center from Morris "Maurice" Skagen as authorized under Resolution No. 5900; and

WHEREAS, acceptance of King County Conservation Futures Tax Levy grant funding, as authorized under Resolution No. 5897, will fully fund the acquisition of the Foundation Parcel, and no City general funds or other budgeted City resources will be used or adversely impacted by the purchase; and

WHEREAS, pursuant to Resolution No. 5901, the City intends to enter into an agreement with the Foundation, at no cost to the City, for the continued management, operation, and maintenance of the gardens, plant collections, buildings, and grounds to

ensure the ongoing stewardship and public benefit of the Soos Creek Botanical Garden and Heritage Center.

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

**Section 1.** The Mayor is authorized to, (i) execute the purchase and sale agreement attached as Exhibit A (the “Agreement”) and any future amendments to the Agreement as appropriate, so long as those amendments do not increase the purchase price of the Property; and (ii) execute all necessary documents to complete the closing of the purchase transaction to acquire the Property consistent with the terms and conditions of the Agreement.

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

**Section 3.** The City Clerk is authorized to make necessary corrections to this Resolution including, but not limited to, the correction of scrivener’s/clerical errors, references, Resolution numbering, section/subsection numbers, and any references thereto.

**Section 4.** This Resolution will take effect and be in full force on passage and signatures.

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

CITY OF AUBURN

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

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Jason Whalen, City Attorney

## BARGAIN PURCHASE AND SALE AGREEMENT

This BARGAIN PURCHASE AND SALE AGREEMENT (this “Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2026 (“Effective Date”), by and between the **City of Auburn**, a Washington municipal corporation (“City” or “Buyer”), and **The Soos Creek Botanical Garden Foundation**, a Washington nonprofit corporation (“Seller”). Seller and Buyer are collectively referred to as the “Parties.”

### RECITALS

A. Seller owns certain real property consisting of approximately 4.76 acres (the “Foundation Parcels”), the eastern area of which comprises the northwest portion (including the parking lot) of what is being generally referred to as the Soos Creek Botanical Garden (“Garden”). The remainder of the Garden is owned by Morris (aka Maurice) W. Skagen (“Skagen”), who is simultaneously pursuing the sale of his portion of the Garden (the “Skagen Parcel”) to the City via a separate agreement.

B. Seller wishes to preserve and protect the conservation qualities and the benefits the Garden brings to Auburn and surrounding communities.

C. The City also wishes to preserve and protect these qualities and benefits the Garden brings to Auburn and surrounding communities.

D. To enable the transaction detailed in this Agreement, the Parties mutually desire to complete a boundary line adjustment (as detailed below in Section 4) of the Foundation Parcels which will result in a single tax parcel comprising the portion of the Garden owned by Seller, constituting approximately 2.89 acres that is the property Seller wishes to sell and Buyer wishes to buy under the terms and conditions contained within this Agreement (the Subject Property - as defined in **Section 2** below).

E. In 2025, Buyer secured a Conservation Futures Grant from King County in a total amount of Two Million One Hundred and Twenty-One Thousand Dollars (\$2,121,000) (the “Grant”) towards the acquisition costs of both the Subject Property and the Skagen Parcel. Buyer anticipates spending approximately \$1,830,000 towards the purchase price of the Skagen Parcel and an additional to-be-determined amount towards eligible reimbursable City costs including appraisal, survey and closing. The Parties understand and acknowledge that this will leave less than the full amount of the Purchase Price (defined below) in available Grant funding towards Seller’s Subject Property.

F. Although the Subject Property appraised at Three Hundred Thousand Dollars (\$300,000), due to Buyer’s Grant funding constraints and in order to sell the Subject Property to Buyer on a similar timeframe as the Skagen Parcel, Seller desires to voluntarily donate to Buyer a portion of the fair market value of the Subject Property on the terms and conditions detailed herein.

G. This Agreement shall be approved through the ratification of a Resolution 5908 by the Auburn City Council.

## **AGREEMENT**

Now therefore, for good and valuable consideration, the receipt and sufficiency of which the Parties mutually acknowledge, Buyer and Seller agree as follows:

**1. Certain Defined Terms.** For purposes of this Agreement, the following capitalized terms in this Agreement will have the following definitions:

**1.1** “Closing” or “Close of Escrow” means the recordation of the Deed in the Official Records and Seller’s receipt of the Purchase Price.

**1.2** “Closing Date” means that date which shall be no later than thirty (30) days following the recording of the Boundary Line Adjustment described in Section 4.

**1.3** “Deposit” means an amount of Ten Thousand Dollars (\$10,000), plus any other amounts designated as a Deposit in this Agreement.

**1.4** “Due Diligence” means Buyer’s investigation and review of the Subject Property within Buyer’s discretion, as limited and further provided herein.

**1.5** “Diligence and Review Period” means the period during which Buyer completes its Due Diligence on the Subject Property, which period shall last until the date of King County’s recording of the BLA detailed in Section 4.

**1.6** “Escrow” means the escrow opened with Escrow Agent for the consummation of the transaction described in this Agreement.

**1.7** “Escrow Agent” or “Title Company” means Stewart Title Guaranty Company – Commercial Services, located at: 1420 5<sup>th</sup> Avenue. Suite 440, Seattle, WA 98101. 206.770.8849

**1.8** “Official Records” means the official real property records of King County, Washington.

**1.9** “Permitted Exceptions” has the meaning as set forth in Section 6.1 below.

**1.10** “Purchase Price” has the meaning as set forth in Section 3.

**1.11** “Title Policy” means the then-current Buyer-purchased standard coverage ALTA owner’s policy of title insurance issued by the Title Company to Buyer with

coverage in the amount of the Purchase Price, showing title to the Subject Property vested in Buyer subject only to the Permitted Exceptions.

**2. Purchase and Sale.** Buyer agrees to purchase, and Seller agrees to sell, all of Seller's right, title, and interest in the real property legally described in **Exhibit A** and generally depicted in **Exhibit B** (the "Subject Property"), on the terms and conditions set forth in this Agreement. The exact boundaries of the Subject Property to be conveyed at Closing under this Agreement shall be determined through the completion of the Boundary Line Adjustment described in **Section 4**. The Parties acknowledge and agree that Exhibit A may be amended before Closing to reflect the final legal description of the Subject Property after the Boundary Line Adjustment has been completed; however, the resulting property is anticipated to be substantially similar to the "Revised Parcel H" referenced in **Exhibit B**. The Parties understand and agree that no equipment or other personal property (such as garden tools, etc.) is included in the sale under this Agreement, as Seller intends for the Foundation to own and be responsible for such items in furtherance of the public benefit provided by the Garden.

**3. Purchase Price; Cash Payment.** The Purchase Price is **Three Hundred Thousand and 00/100 Dollars (\$300,000.00)**. Of the Purchase Price, the amount of Grant funds left after Buyer's purchase of the Skagen Parcel (including closing and other reimbursable costs associated with that purchase) and coverage of Buyer's acquisition costs for this Agreement shall be payable at Closing, with the remaining amount donated by Seller to Buyer in the form of a public benefit equity gift. However, in the event the amount left in the Grant attributable to the Purchase Price is less than Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00) such that Seller's donated equity would exceed \$50,000, Seller in their sole and absolute discretion retains the right to terminate this Agreement with the Earnest Money returned to Buyer and neither party having any further rights or obligations to the other except those specified herein.

At least fifteen (15) days before the Closing Date, Buyer shall provide an estimated itemized statement showing the remaining Grant funds available to be put towards the Purchase Price. If such amount is estimated to be less than \$250,000, Seller shall then have five (5) business days from receipt of the statement to notify Buyer in writing of its election to terminate this Agreement or proceed to Closing.

Buyer will pay the Purchase Price at Closing by wire transfer of collected federal funds. Seller understands and acknowledges that the amount paid by Buyer at Closing will include only the remaining Grant amount, and Seller confirms it will voluntarily donate the remainder of the Purchase Price to Buyer as part of the Subject Property, subject to Seller's rights in this Section 3. The Deposit will be applied to the non-gifted portion of the Purchase Price due at Closing.

**3.1 Earnest Money Deposit.** On execution of this Agreement, Buyer will deposit with Escrow Agent **Ten Thousand and 00/100 Dollars (\$10,000.00)** in cash (the

“Deposit”), which the Escrow Agent will hold as an earnest money deposit for this transaction. The Deposit will be held in Escrow and applied or disposed of by the Escrow Agent based on the terms of this Agreement. The Deposit will not be refunded and will become property of Seller upon waiver of Buyer’s Diligence & Review Period.

**4. Boundary Line Adjustment.** Buyer, at its sole cost and expense, shall pursue and complete a boundary line adjustment (“BLA”) that, upon completion, will create a parcel consisting of approximately 2.89 acres that is substantially similar to the area depicted in red and labeled “Revised Parcel H” on the Boundary Line Adjustment Depiction attached as **Exhibit B**. Seller shall cooperate and participate in the BLA process by timely executing all required documents and authorizations. Buyer shall be solely responsible for obtaining all necessary permits, paying all associated costs, and completing all required work and documentation, including the recording of the finalized BLA. The BLA shall not be recorded until the Parties and Escrow Agent have confirmed everything is ready for Closing under Sections 8 and 9 and Buyer and Seller have notified Escrow Agent in writing that they desire to proceed with Closing.

**5. Records.** Within fourteen (14) days of the Effective Date, Seller shall provide Buyer or make available for Buyer’s review all materials that exist and that are in Seller’s actual possession or reasonable control including but not limited to (collectively and individually defined as “Records”):

- (a) All surveys, plats, plans, or as-builts relating to the Subject Property; (if any)
- (b) All warranties and guarantees affecting any portion of the Subject Property; (if any);
- (c) Notice of any existing litigation affecting or relating to the Subject Property and any copies of any pleadings concerning any litigation;
- (d) Any documentation of known environmental hazards affecting or potentially affecting the Subject Property;
- (e) Copies of all Permits held by Seller, or any agent of the Seller, in connection with its ownership and operations of the Subject Property;
- (f) Copies of all final, written environmental assessment reports concerning the Subject Property performed by or for the Seller in connection with its ownership of the Subject Property which Seller, or any agent of the Seller, may possess;
- (g) Copies of all vendor and supplier service contracts in connection with the Subject Property, including but not limited to any agreements with the Foundation (“Operational Contracts”);
- (h) Copies of all existing tenant leases or licenses, affecting the Subject Property, records showing the amount of any deposits being held by the Seller and payment history of the tenant(s) covering the last 12 months; and
- (i) Copies of any utility or access agreements, and/or covenants, affecting the Subject Property.

If, based upon Buyer's review of any such Records described in this Section 5, Buyer determines in its sole discretion that it intends not to acquire the Subject Property, then Buyer shall promptly notify Seller of such determination in writing no later than forty-five (45) days following the Effective Date or before recording of the BLA, whichever is earlier. In the event that Buyer fails to deliver such notice to Seller on or before the forty-fifth (45<sup>th</sup>) day, Buyer will be deemed to be satisfied and to have waived its right to terminate this Agreement pursuant to this subsection. If Buyer advises Seller in writing on or before the forty-fifth (45<sup>th</sup>) day, then this Agreement shall automatically terminate, and the Parties' rights and obligations under this Agreement shall be of no further force or effect and the Deposit will be returned to Buyer.

**6. Title Policy.** Promptly after mutual execution of this Agreement, Escrow Agent will obtain and deliver to Buyer, Seller, and the Parties' respective counsel, a standard coverage preliminary title insurance commitment covering the Subject Property from the Title Company (the "Commitment"), together with copies of all title exceptions. Approval by Buyer of the exceptions to title set forth in the Commitment (other than as hereinafter set forth) will be a condition precedent to Buyer's obligation to purchase the Subject Property. Unless Buyer gives written notice that it disapproves the exceptions to title shown on the Commitment (other than the exceptions to title approved by Buyer and described in Section 6.1 below), stating the exceptions so disapproved, within fourteen (14) calendar days after the date of delivery of the Commitment to Buyer, Buyer will be deemed to have approved such exceptions. If Buyer disapproves any title exceptions, Seller will have a ten (10) calendar day period after its receipt of Buyer's written notice of disapproval of the same within which to provide written notice to Buyer as to which of such disapproved title exceptions Seller will remove (or cause to be removed) from title; provided, however, that Seller will not be required to actually remove such exception(s) until Closing. If, for any reason, Seller's notice given pursuant to the immediately preceding sentence does not covenant to remove all of Buyer's disapproved title exceptions at or prior to Closing, Buyer has the right to terminate this Agreement by written notice to Seller and Escrow Agent given within ten (10) calendar days after the earlier of the expiration of such ten (10) calendar day period or the date Seller informs Buyer that it does not intend to remove the disapproved items (the "Termination Notice"). Buyer's failure to deliver the Termination Notice within such ten (10) day period will be deemed Buyer's approval of any such previously disapproved title exception. If Buyer delivers the Termination Notice within such ten (10) day period, the obligation of Seller to sell, and Buyer to buy, the Subject Property will terminate and Escrow Agent shall promptly return Buyer's Deposit.

**6.1 Permitted Exceptions.** In addition to such other exceptions to title as may be approved by Buyer pursuant to the provisions of Section 6 above, Buyer shall accept title to the Subject Property subject to the following (collectively, the "Permitted Exceptions"): (i) the printed exceptions which appear in the then current ALTA form standard coverage owner's policy of title insurance issued by Title Company in the State of Washington; (ii) all non-delinquent property taxes and assessments, and (iii) all matters

created by or on behalf of Buyer, including without limitation the BLA completed under Section 4 herein.

7. **Buyer's Right of Entry.** Buyer, and its agents and consultants, at Buyer's sole expense and risk, may enter the Subject Property during the term of this Agreement for the purpose of Buyer's Diligence & Review of the Subject Property. Buyer warrants that it will (a) exercise care at all times on or about the Subject Property, (b) take necessary precautions for the prevention of injury to persons or damage to property on or about the Subject Property and (c) comply with any advance notice requirements in any leases by tenants of the Subject Property. Any physical alteration of the Subject Property in connection with Buyer's Due Diligence shall be restored by Buyer so that the Subject Property and improvements are in substantially the same condition they were in prior to inspection, at Buyer's sole expense. Buyer indemnifies and holds harmless Seller against any loss, damage, or claim including attorneys' and experts' fees, and court costs, resulting from Buyer's presence on Subject Property, inspections and tests in connection with Buyer's Due Diligence. This indemnity shall survive the Closing or any termination of this Agreement. Buyer is not Seller's agent in connection with such activities and has no authority to allow any liens to encumber the Subject Property. Buyer shall keep the Subject Property free from all mechanics', materialmen and other liens, and all claims, arising from any work or labor done, services performed, or materials and supplies furnished in with Buyer's actions in the exercise of its right of entry on the Subject Property and Buyer will maintain all insurance as required by Seller with respect to activities on the Subject Property. All of Buyer's representatives who visit the Subject Property must have required insurance coverage and provide 48 hours of notice as required under this Agreement.

Buyer shall not perform any invasive testing beyond a Phase I Assessment and a Regulated Building Materials (or similar) Survey or contact the tenants or property management personnel without obtaining Seller's prior written consent, which may not be unreasonably withheld.

8. **Conditions to Closing.** In addition to any other conditions contained in this Agreement, the following are conditions precedent or concurrent to Closing which must be satisfied in order for Closing to occur:

**8.1 Operating Agreement with the Soos Creek Botanical Garden Foundation.**

The Parties acknowledge and agree that as a condition of Closing, Buyer must concurrently successfully execute an Operating or Services Agreement (hereinafter "Operating Agreement") with Seller for the ongoing operations and maintenance of the Garden. The Operating Agreement between Seller and Buyer shall be in substantial conformity to that attached as **Exhibit C** to this Agreement. The Parties agree to delay the Closing of this Agreement as necessary for Buyer to complete the execution of the Operating Agreement with Seller.

**8.2 Termination of 2010 Easement for Ingress, Egress and Maintenance.** The Parties acknowledge and agree that as a condition of Closing, Seller must terminate before or at Closing the “Easement for Ingress, Egress and Maintenance” recorded in 2010 under King County recording number 20101230000076 (“2010 Easement”). Seller understands this requires a termination agreement signed by both Seller as Grantee and Morris W. Skagen as the current Grantor party in interest under the 2010 Easement, with such termination agreement recorded among the land records of King County before recording of the Deed under this Agreement.

**9. Closing.**

**9.1** Time for Closing. This purchase and sale will be closed in the office of Escrow Agent no later than the Closing Date. Buyer and Seller will place in Escrow with Escrow Agent all instruments, documents, and funds in U.S. Dollars necessary to complete the purchase and sale under this Agreement. Funds held in Escrow pursuant to Escrow instructions will be deemed, for purposes of this definition, as available for disbursement to Seller. Neither party needs to be physically present at the Closing.

**9.2 Closing Costs.**

**9.2.1 Seller’s Costs.** Associated with the sale and conveyance of the Subject Property, Seller will pay: (a) Seller’s own legal fees and fees of its own consultants, including but not limited to real estate broker commissions owed in connection with this Agreement, if any; and (b) Seller’s share of prorations not otherwise described in Sections 9.2.1 – 9.2.4, including but not limited to utilities, assumed service, management and/or maintenance contracts, etc.

**9.2.2 Buyer’s Costs.** Associated with the sale and conveyance of the Subject Property, Buyer will pay; (a) the full Escrow fees and cost, (b) the full costs and fees for the title insurance policy issued to Buyer, together with applicable taxes, cost of all endorsements, and/or extended coverage Buyer may require or request, (c) the recording fees for the Deed, (d) any and all excise taxes resulting from the sale, unless otherwise exempt under the provisions of WAC 458-61A-206, (e) sales tax due on any personal property conveyed to Buyer, if any, (f) Buyer’s legal, consultant fees and all costs related to its Due Diligence, and (g) Buyer’s share of prorations not otherwise described in Sections 9.2.1 – 9.2.4.

**9.2.3 Other Costs.** All other costs and expenses will be charged according to local industry customs.

**9.2.4 Real Property Taxation.** Seller will be responsible for the prorated real property taxes due and owing prior to the Closing Date.

### **9.3 Closing Documents.**

**9.3.1 Seller's Documents.** At Closing, Seller will deliver to Escrow Agent the following instruments and documents:

- a. An executed and acknowledged agreement terminating the 2010 Easement;
- b. An executed and acknowledged Bargain and Sale Deed ("Deed") subject to all Permitted Exceptions;
- c. The executed real estate excise tax affidavit to accompany the Deed; and
- d. An executed nonforeign person affidavit in the form required under Section 1445 of the Internal Revenue Code.

**9.3.2 Buyer's Documents.** At or before Closing, Buyer shall deliver to Escrow Agent the following funds, instruments and documents:

- a. The balance of the Purchase Price in accordance with Section 3; and
- b. An executed real estate excise tax affidavit.

**10. Possession.** Buyer will be entitled to possession of the Subject Property upon Closing.

### **11. Representations and Warranties.**

**11.1 Seller's Representations and Warranties.** In addition to any other representations or warranties to City elsewhere in this Agreement, Seller represents and warrants to Buyer that, to the best of Seller's knowledge:

**11.1.1 Authority.** Seller has full power and authority to execute this Agreement and perform Seller's obligations and all necessary action to authorize this transaction has been taken, except as specifically provided herein.

**11.1.2 Hazardous Substances.** Seller has not received notification of any kind from any governmental agency suggesting that the Subject Property is or may be targeted for a Hazardous Substances cleanup; to Seller's Knowledge the Subject Property has not been used (a) for the storage, disposal or discharge of oil, solvents, fuel, chemicals or any type of toxic, dangerous, hazardous or biological waste or substance (collectively, "Hazardous Substances"), or (b) as a landfill or waste disposal site; to Seller's Knowledge the Subject Property has not been contaminated with any Hazardous Substances; and (c) to Seller's Knowledge, there are no underground storage tanks on the Subject Property. Buyer agrees to waive Seller's Disclosure Statement under RCW 64.06.010 with the exception of item 6 "Environmental" under RCW 64.06.013 which Seller shall deliver to Buyer within five (5) business days following execution of this Agreement. A Seller completed

copy of the Environmental Section of Seller’s Disclosure Statement is attached as **Exhibit D** for reference.

Notwithstanding the foregoing, based on the age of the improvements located on the Subject Property, Buyer should presume the presence of asbestos and lead-based paint.

As used in this Agreement, the phrase “Seller’s Knowledge” or words of similar import shall mean the actual present knowledge of Matt Jennings, member of Seller’s Board of Directors, about the matters so stated, without investigation of any kind or nature and expressly excludes imputed knowledge.

If after the opening of Escrow either party comes to have actual knowledge of a fact or circumstance which would render a representation or warranty by Seller herein inaccurate in any material respect, that party shall promptly advise the other party thereof in writing. Buyer shall have, as its sole and exclusive remedy, the option, exercisable by the later of (a) the end of Diligence & Review Period or (b) five (5) business days after such notice is given, to either (i) terminate this Agreement and receive a return of the Deposit or (ii) to waive such inaccuracy in writing, in which latter event it shall be deemed to have waived all claims and causes of action against Seller related thereto.

EXCEPT AS MODIFIED PURSUANT TO THE PRECEDING PARAGRAPH, SELLER’S REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN WILL EXPRESSLY SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT, WILL NOT BE MERGED INTO THE CLOSING DOCUMENTS, AND WILL BE DEEMED INCORPORATED INTO THE DEED. TO MAKE ANY CLAIM BASED ON SELLER’S BREACH OF ANY OF THESE WARRANTIES OR REPRESENTATIONS, BUYER SHALL GIVE NOTICE OF SUCH BREACH TO SELLER WITHIN ONE YEAR AFTER THE DATE OF RECORDING OF THE DEED. SELLER SHALL ACCEPT AND PERFORM AS REQUESTED BY BUYER IN SAID NOTICE OR REJECT THE CLAIM IN WRITING WITHIN THIRTY (30) DAYS AFTER RECEIPT OF THE NOTICE FROM BUYER. IF SELLER REJECTS SUCH CLAIM, BUYER SHALL BRING AN ACTION AGAINST SELLER FOR SUCH BREACH WITHIN FORTY-FIVE (45) DAYS AFTER BUYER RECEIVES SELLER’S WRITTEN REJECTION. IF BUYER DOES NOT GIVE WRITTEN NOTICE OF SUCH A CLAIM WITHIN SAID ONE-YEAR PERIOD OR BRING AN ACTION WITHIN SAID 45-DAY PERIOD, THEN BUYER’S RIGHT TO MAKE CLAIM BASED ON BREACH OF SELLER’S REPRESENTATIONS AND WARRANTIES WILL BE TERMINATED.

\_\_\_\_\_  
Buyer’s Initials

\_\_\_\_\_  
Seller’s Initials

**11.1.3 Buyer’s Representations and Warranties.** In addition to any other representations and warranties of Buyer elsewhere in this Agreement, Buyer represents and warrants to Seller now, and as of the Closing Date, that (i) Buyer has full power to execute,

deliver and carry out the terms and provisions of this Agreement, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement; and (ii) the individual executing this Agreement on behalf of Buyer has the authority to bind Buyer to the terms and conditions of this Agreement.

**11.1.4 “As Is” condition of Subject Property.** OTHER THAN THE MATTERS REPRESENTED IN SECTION 11 HEREOF OR THE DOCUMENTS MADE AVAILABLE BY SELLER PURSUANT TO SECTION 5, BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY OF SELLER’S AGENTS OR REPRESENTATIVES. SELLER SPECIFICALLY DISCLAIMS ANY REPRESENTATION, WARRANTY OR ASSURANCE WHATSOEVER TO BUYER AND NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, MAY BE RELIED UPON BY BUYER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF ANY PORTION OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO (a) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (b) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (d) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY AND (e) THE COMPLIANCE OR LACK THEREOF OF THE REAL PROPERTY OR THE IMPROVEMENTS WITH GOVERNMENTAL REGULATIONS, IT BEING THE EXPRESS INTENTION OF SELLER AND BUYER THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE DOCUMENTS MADE AVAILABLE BY SELLER PURSUANT TO SECTION 5, THE PROPERTY WILL BE CONVEYED AND TRANSFERRED TO BUYER IN ITS PRESENT CONDITION AND STATE OF REPAIR, “AS IS” AND “WHERE IS”, WITH ALL FAULTS. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE, EXPERIENCED AND SOPHISTICATED BUYER OF REAL ESTATE, AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF BUYER’S CONSULTANTS IN PURCHASING THE PROPERTY. DURING THE INSPECTION PERIOD, BUYER WILL CONDUCT SUCH INDEPENDENT INSPECTIONS OF THE PROPERTY AND RELATED MATTERS AS BUYER DEEMS NECESSARY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND WILL RELY UPON SAME AND NOT UPON ANY STATEMENTS OF SELLER (EXCLUDING THE MATTERS REPRESENTED BY SELLER IN SECTION 11 HEREOF OR THE DOCUMENTS MADE AVAILABLE BY SELLER PURSUANT TO SECTION 5) OR OF ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT OR ATTORNEY OF SELLER. BUYER ACKNOWLEDGES THAT ALL INFORMATION OBTAINED OR THAT WILL BE OBTAINED BY BUYER WAS OR WILL BE OBTAINED FROM A VARIETY OF SOURCES AND SELLER WILL NOT BE DEEMED TO HAVE REPRESENTED OR WARRANTED THE COMPLETENESS, TRUTH OR ACCURACY OF ANY OF THE DOCUMENTS OR OTHER SUCH

INFORMATION HERETOFORE OR HEREAFTER FURNISHED TO BUYER THAT WAS CREATED, PREPARED, COMPILED, OR AUTHORED BY ANY PERSON OR ENTITY OTHER THAN SELLER OR ANY OF ITS AGENTS OR AFFILIATES. EXCEPT AS MAY BE EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT OR THE DOCUMENTS MADE AVAILABLE BY SELLER PURSUANT TO SECTION 5, UPON CLOSING, BUYER WILL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND SELLER WILL SELL AND CONVEY TO BUYER, AND BUYER WILL ACCEPT THE PROPERTY, "AS IS, WHERE IS," WITH ALL FAULTS. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN. BUYER, WITH BUYER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT, AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF. BUYER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH HEREIN ARE AN INTEGRAL PART OF THIS AGREEMENT. THE TERMS AND CONDITIONS OF THIS SECTION 11.1.4 WILL EXPRESSLY SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT, WILL NOT BE MERGED INTO THE CLOSING DOCUMENTS AND WILL BE DEEMED INCORPORATED INTO THE DEED.

## **12. Maintenance of Subject Property; Risk of Loss, Condemnation.**

**12.1 Maintenance of Subject Property.** From the Effective Date of this Agreement until the Closing Date (or any earlier termination of this Agreement), Seller agrees to maintain the Subject Property in substantially the same condition existing as of the Effective Date, ordinary wear and tear accepted.

**12.2 Risk of Loss; Condemnation.** Risk of loss of or damage to the improvements on the Subject Property will be borne by Seller (except for losses or damage caused by Buyer) at all times until the Closing Date and no event of casualty or damage shall affect the Parties' obligations under the Agreement or the Purchase Price. However, in the case of casualty occurring after the Effective Date, Buyer will have the right to receive any insurance proceeds due Seller in connection with any casualty or damage and Seller covenants to maintain commercially reasonable casualty insurance in place with respect to the Subject Property at all times prior to Closing. Seller or Buyer shall promptly notify Buyer or Seller of any condemnation or eminent domain proceeding which affects or may affect the Subject Property. In the event of any condemnation or eminent domain

proceeding by any entity other than City, or a deed in lieu of or under threat thereof, which affects a material portion of the Subject Property, Buyer may elect either to terminate this Agreement, or to purchase the Subject Property in the condition existing on the Closing Date without adjustment of the Purchase Price.

**13. Default.**

**13.1 Time of Essence.** Time is of the essence for this Agreement.

**13.2 Seller’s Election of Remedies.** Should Buyer default under this Agreement, Seller may, at its sole and exclusive remedy, terminate this Agreement and keep that portion of the Deposit that does not exceed five percent (5%) of the Purchase Price as liquidated damages as the sole and exclusive remedy. Buyer and Seller agree that retention of the Deposit by Seller as outlined above, represents a reasonable estimation of damages in the event of Buyer’s default, as actual damages would be difficult to ascertain, and further that this provision does not constitute a penalty. In this respect, Buyer and Seller acknowledge that these damages have been specifically negotiated between Buyer and Seller and are, inter alia, to compensate Seller for delaying the eventual sale of the Subject Property and to compensate Seller or its costs and expenses associated with this Agreement.

**13.3 Buyer’s Remedies for Seller’s Default.** If Seller fails to complete the sale of the Subject Property in accordance with this Agreement, Buyer’s remedy will be to terminate this Agreement or to seek specific performance.

**14. Notices.** All notices, demands and other communications required or permitted to be given shall be in writing and shall be sent by personal delivery (including by means of professional messenger or courier service) or registered or certified mail, postage-prepaid, return-receipt requested, or by electronic mail (email) at the addresses provided. Notice shall be deemed to have been given if personally delivered or sent by electronic mail (email), upon receipt, if sent by mail, two (2) days after duly placed in the U.S. Mail to all of the addresses designated for such party.

The Parties’ respective addresses for notices are as follows:

<u>TO THE BUYER</u>	<u>TO SELLER</u>
City of Auburn – Real Estate Division	The Soos Creek Botanical Garden Foundation
Attn: Josh Arndt	Attn: Matt Jennings
25 West Main	29308 132nd Ave SE
Auburn, WA 98001	Auburn, WA 98092
253.288.4325	Phone: (253) 639-0949; (415) 370-7468
Jarndt@auburnwa.gov	mj2543@gmail.com

With copies to:

City of Auburn – Legal Department  
Attn: Jason Whalen  
25 West Main St  
Auburn, WA 98001  
253.804.5026  
JWhalen@auburnwa.gov

With copies to:

Draper Law PLLC  
Adam Draper  
6833 32<sup>nd</sup> Ave. NE  
Seattle, WA 98115  
206.348.8240  
adam@draperlawpllc.com

Notice of change of address shall be given by written notice in the manner detailed in this Section.

**15. General.**

**15.1 Entire Agreement.** This is the entire Agreement (including the attached Exhibits) of Buyer and Seller with respect to the matters covered hereby and supersedes all prior agreements between them, written or oral. This Agreement may only be modified or amended in writing, signed by Buyer and Seller. Any waivers must be in writing. No waiver of any right or remedy in the event of default will constitute a waiver of such right or remedy in the event of any subsequent default. Venue for disputes under this Agreement is the Superior Court of King County, Washington.

**15.2 Choice of Law.** This Agreement will be governed by the laws of the State of Washington.

**15.3 No Third-Party Beneficiaries/Severability.** This Agreement is for the benefit only of the Parties and shall inure to the benefit of and bind the heirs, personal representatives, successors and permitted assigns of the Parties. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**15.4 Survival of Rights, Duties, and Obligations.** The Parties' rights, duties, covenants, and obligations shall survive Closing and the expiration or earlier termination of this Agreement.

**15.5 Indemnification.** Until Buyer's acquisition of the Subject Property at Closing, Seller shall indemnify, defend, and hold Buyer harmless from and against any and all claims and agency orders or requirements relating to or arising out of, directly or indirectly, the Subject Property, except to the extent caused by the negligence or willful misconduct of Buyer.

**15.6 Signing Authority.** Each of the Parties represents and warrants that the individual signing this Agreement on its behalf is duly authorized to enter into this Agreement and to execute and legally bind such Party to it. The City of Auburn's signing authority is subject to Section 15.12.

**15.7 Attorneys' Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party is entitled to recover from the other party such sum as the Court may adjudge reasonable as attorneys' fees, including fees incurred at trial, on any appeal and in any petition for review.

**15.8 Exclusivity.** During the term of this Agreement, Seller will not market nor list the Subject Property for sale, nor accept any offers from third parties with respect to the sale of the Subject Property.

**15.9 Information Transfer.** In the event this Agreement is terminated, Buyer agrees to deliver to Seller within ten (10) days of Seller's written request copies of all materials received from Seller and any non-privileged plans, studies, reports, inspections, appraisals, surveys, drawings, permits, applications or other development work product relating to the Property in Buyer's possession or control as of the date this Agreement is terminated.

**15.10 Reservation of Police Power.** Notwithstanding anything to the contrary set forth in this Agreement, Buyer understands and acknowledges that City's authority to exercise its police (regulatory) powers in accordance with applicable law shall not be deemed limited by the provisions of this Agreement.

**15.11 Counterparts.** This Agreement and any amendments that may come to exist, may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. All counterparts collectively constitute a single instrument.

**15.12 Approval by Auburn City Council.** The Parties acknowledge and agree that this Agreement is subject to and contingent upon the approval and ratification of the Auburn City Council, by resolution.

**15.13 Approval by Seller's Board of Directors.** The Parties acknowledge and agree that this Agreement is subject to and contingent upon the approval and ratification of The Soos Creek Botanical Garden Foundation's Board of Directors, by resolution.

**15.14 No Broker.** No broker, finder, agent or similar intermediary has acted for or on behalf of the Buyer. Any broker, finder, agent or similar intermediary acting for or on behalf of the Seller, if any, shall be paid from Seller's proceeds in accordance with Section 9.2.1 above.

**15.15 Assignment.** Buyer's rights and obligations under this Agreement are not assignable without the prior written consent of Seller, which shall not be withheld unreasonably; provided, however, Buyer may assign this Agreement without the consent of Seller, but with notice to Seller, to any entity under common control and ownership of Buyer, provided no such assignment shall relieve Buyer of its obligations hereunder. The party identified as the initial Buyer shall remain responsible for those obligations of Buyer stated in this Agreement notwithstanding any assignment.

**15.16 Exhibits.** The following exhibits are attached and incorporated into this Agreement by reference.

**Exhibit A – Legal Description of the Subject Property**

**Exhibit B – Boundary Line Adjustment Depiction**

**Exhibit C – Operating Agreement**

**Exhibit D – Seller Disclosure – Environmental**

*SIGNATURES ON THE FOLLOWING PAGE*

**SIGNATURE PAGE**

**BUYER**  
**City of Auburn**

**SELLER**  
**The Soos Creek Botanical Garden  
Foundation**

\_\_\_\_\_  
Nancy Backus, Mayor                      Date:

\_\_\_\_\_  
Matt Jennings                              Date:

Its:

Approved as to Form:

\_\_\_\_\_  
Jason Whalen, Auburn City Attorney

**EXHIBIT A**  
**Legal Description of the Subject Property**  
**Parcel # 0321059084 Post BLA**  
**(Revised Parcel H)**

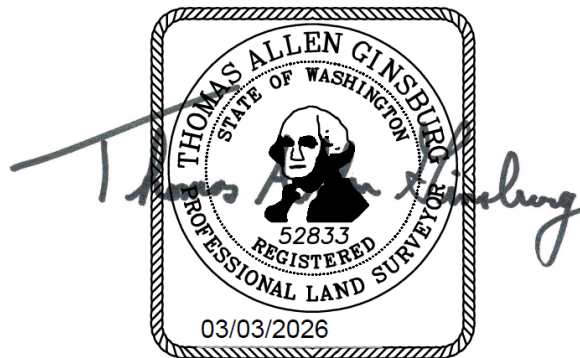
LOT B, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155 RECORDED UNDER RECORDING NO. 9612301254 AND AS CORRECTED PER BOUNDARY LINE ADJUSTMENT NO. L96L0155, RECORDED UNDER RECORDING NO. 20020211002613 BEING A PORTION OF THE WEST HALF OF THE NORTH QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M.;

EXCEPT THAT PORTION OF SAID LOT B LYING WEST OF THE FOLLOWING DESCRIBED LINE:

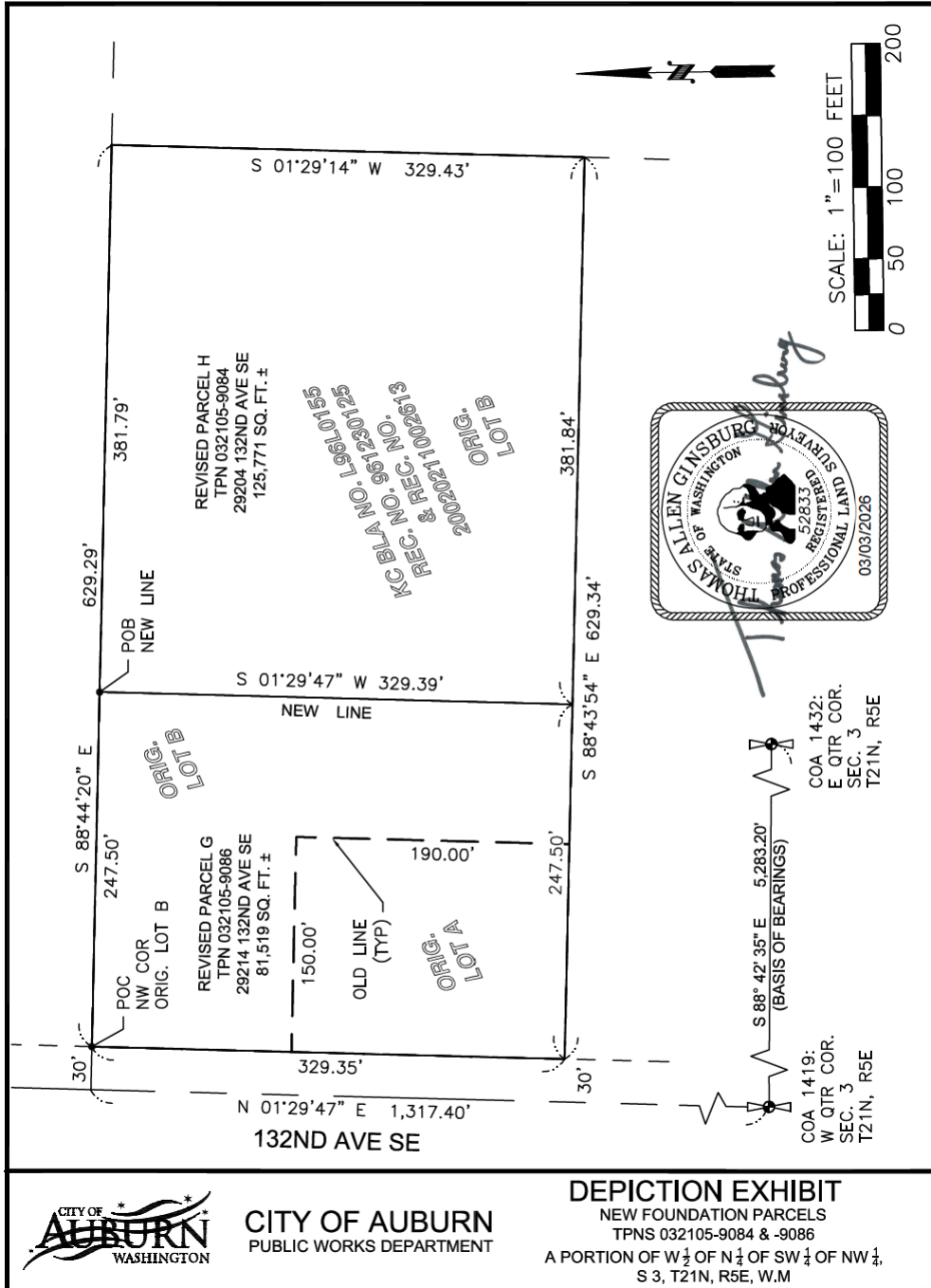
COMMENCING AT THE MOST NORTHERLY NORTHWEST CORNER OF SAID LOT B, ALSO BEING A POINT ON THE EAST RIGHT OF WAY MARGIN OF 132ND AVE SE, THENCE ALONG THE NORTH LINE OF SAID LOT B, SOUTH 88° 44' 20" EAST, 247.50 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING SAID NORTH LINE SOUTH 01° 29' 47" WEST, 329.39 FEET TO THE SOUTH LINE OF SAID LOT B AND THE TERMINUS OF SAID DESCRIBED LINE;

CONTAINING 125,771 SQUARE FEET (2.89 ACRES), MORE OR LESS.



**EXHIBIT B**  
**Depiction of the Subject Property**  
**Parcel # 0321059084 Post BLA**  
**(Revised Parcel H)**



**EXHIBIT C**  
**Operating Agreement**

**(Cover Page)**

**CITY OF AUBURN**  
**OPERATING AGREEMENT FOR SERVICES**  
**SOOS CREEK BOTANICAL GARDEN FOUNDATION**

THIS OPERATING AGREEMENT FOR SERVICES (“Agreement”) is made and entered into on this \_\_\_\_\_ of \_\_\_\_\_, 2026, by and between the **CITY OF AUBURN (“City”)**, a municipal corporation of the State of Washington, and **THE SOOS CREEK BOTANICAL GARDEN FOUNDATION**, a Washington nonprofit corporation (UBI Number 602 961 230) (“**Foundation**”), whose mailing address is 29308 132nd Ave SE, Auburn, WA 98092. Individually, the City and the Foundation are referred to herein as a “Party,” and collectively, as the “Parties.”

**RECITALS:**

1. By Bargain and Sale Deed dated \_\_\_\_\_, and recorded under King County Recording No. \_\_\_\_\_, the City is the owner of that certain real property commonly known as Soos Creek Botanical Garden & Heritage Center, located at 29308 132<sup>nd</sup> Ave SE, Auburn, King County, Washington 98092, legally described as set forth on **Exhibit A**, and as depicted on **Exhibit B** (the “Property”). The Property consists of approximately 15.93 acres of land and contains a main house and attached aviary, an open pavilion for events, and an additional structure, the Heritage Center, and all its historical items and personal property contents, which is devoted to the history of the early settlers of the area called the Soos Creek Plateau.
2. The Property was acquired by the City with King County Conservation Futures Tax Levy (“CFT”) Funds, in part, and as a result of the charitable gift and benevolence of Morris (or Maurice) W. Skagen, whose Norwegian immigrant ancestors purchased the acreage on which the Property is located, in part, between 1891 and 1905, in the early years following Auburn’s incorporation. The City intends to acquire an additional 2.89 acres legally described and set forth on **Exhibit E**, and depicted on **Exhibit F** from the Foundation when CFT funds become available (the “Foundation Property”). Because of the utilization of CFT funds to acquire the Property, a relevant portion of the Property and the Foundation Property is and will be (in the case of the Foundation Property) subject to and restricted by a deed restriction covenant, effectively maintaining both properties as open space for the benefit of the public, consistent with the charitable intent of Maurice Skagen and the Foundation.
3. The Soos Creek Botanical Garden Foundation (Foundation) is a Washington nonprofit corporation, registered as a 501(c)(3) entity with EIN 27-1104322. The Foundation was initially formed in 2009 as The James Daly and Morris Skagen Garden Foundation,<sup>1</sup> for the purpose of “the preservation and enhancement of exceptional gardens for the benefit of the public,” among other related purposes.

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<sup>1</sup> On June 17, 2010, the Articles of Incorporation were amended to change the name of the nonprofit entity to The Soos Creek Botanical Garden Foundation.

Since that time, and prior to the City's acquisition of the Property, the Foundation, along with Mr. Daly and Mr. Skagen, has improved, maintained, and operated the Property (in addition to other adjacent property parcels, not acquired by the City) for the benefit of the public as the Soos Creek Botanical Garden & Heritage Center (hereinafter, the "Garden"). Per the Garden's website, the Garden "provides a diversity of gardens based upon international, regional, and historical gardens, while providing education and conversation of horticulture, the environment, and history". See [www.sooscreekbotanicalgarden.org](http://www.sooscreekbotanicalgarden.org).

4. It was a required condition in each of the purchase and sale contracts between the City and Foundation and the City and Mr. Skagen that the Parties would enter into this Agreement in order to establish the Foundation's continuing operation and maintenance of the Garden after the City's acquisition. Neither the City, the Foundation nor Mr. Skagen would have agreed to the City's acquisition of the Property unless the Foundation continues to operate and maintain the Garden as long as it is adequately able to do so.

5. The City and the Foundation mutually desire for the Foundation to continue to maintain and operate the Property and when acquired, the Foundation Property, as the Soos Creek Botanical Garden & Heritage Center as the Foundation has done since its founding in 2009, order to preserve its natural and historical significance and to ensure the Property remains an asset in perpetuity for the benefit of the public, including the residents of the City of Auburn as well as those local and regional patrons of Soos Creek Botanical Garden & Heritage Center.

6. Until such time when the City acquires the Foundation Property, the City will require the Foundation to execute an easement for ingress, egress, parking and operations substantially in the form attached as **Exhibit D**.

#### **AGREEMENT:**

In consideration of the recitals set forth above, and the conditions and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

1. Foundation's Duties and Responsibilities

The Foundation agrees to continue to operate, maintain, and improve the Property, and when acquired, the Foundation Property, as part of the Garden in order to maintain and enhance a regionally significant botanical garden and collection of native species, as well as non-native species compatible with the region, while providing education and conservation of horticulture, the environment, and history consistent with those duties and responsibilities as outlined on **Exhibit C (the "Services")**.

2. Additional Services

The Parties may, within their respective discretion, agree to amend this Agreement if additional property is acquired or if additional services are required beyond those specified in **Exhibit C**. An amendment must be written and agreed to by the Parties before Foundation performs any additional

services, and it must specify the nature, scope, and payment terms, if any, for the additional services. If the period for completing additional services makes the advance signing of an amendment impractical, the Parties agree to perform only the additional services approved in writing by their authorized representative pending the signing of an Amendment as set forth in this Section.

3. Foundation’s Representations, Qualifications, and Financial Strength

Foundation represents and warrants that it has all the required licenses, certifications, qualifications, and operational finances necessary to perform the services in this Agreement and agrees to maintain its 501(c)(3) status during the entire term of this Agreement. Foundation represents that its signatory to this Agreement has the requisite legal authority to bind Foundation to the terms and conditions of this Agreement.

4. No Rent or Compensation to be Paid

a. **No Rent or Compensation to be Paid to either Party.** The City obtained CFT funds to acquire the Property, in part, with the balance of the purchase price gifted to the City by Maurice Skagen. In consideration of the fact the Foundation is a 501(c)(3) charitable organization whose purpose and mission is to provide public benefit via its work at the Garden, including particularly to the residents of the City of Auburn, the City and Foundation agree that no rent will be payable by the Foundation to the City for its use of the Garden, nor shall the City pay the Foundation any monetary compensation for the Foundation’s performance of this Agreement, including the performance of those Services set forth on **Exhibit C**, absent mutual agreement and contingent upon available funding. The Parties agree to work cooperatively in the Foundation’s attempts to acquire available grant funding that would enhance the operation and offerings of the Garden to the public, including without limitation via applications to various potentially applicable Washington State and King County grant programs.

b. **Prevailing Wage.** The Foundation will pay its non-volunteer personnel, if any, the applicable prevailing wage for all laborers and staff in the performance of the Services. The minimum prevailing wage rate paid for each year shall be the rate in effect on January 1 of each year. The Foundation shall file annually its Intent to Pay Prevailing Wages form and an Affidavit of Wages Paid form with the Department of Labor & Industries.

c. **Leasehold Excise Tax.** If Washington State requires the City to collect a Leasehold Excise Tax (LET) because the Foundation is deemed to have a leasehold interest in all or any portion of the Property or Garden, owed by the City, then the Foundation will be responsible for the LET, at 12.84% of the value then determined for the leasehold interest.

5. Time for Performance, Term, and Termination of Agreement

a. **Term.** The term of this Agreement commences upon the Closing of the transaction whereby the City acquires the Property (the “Effective Date”). Once commenced, the Foundation shall perform all Services set forth in **Exhibit C**, for an initial term of ten

(10) years (“Initial Term”). This Agreement shall be automatically extended in five (5) year increments (“Extension Terms”) unless terminated earlier as provided herein. Any Extension Term shall be effectuated by a written notice, addendum, or amendment to this Agreement, which amendment shall include such modified or additional terms and conditions as the Parties may agree upon within their respective discretion.

- b. **Termination.** In recognition of the Parties’ mutual intent that the Foundation continue operating and maintaining the Property as the Garden for as long as it is reasonably able to do so, as reflected in the above Recitals, the Parties agree that this Agreement may only be terminated for cause or necessity.

**Termination for Cause.** Either party may terminate this Agreement for cause with written notice to the other Party. A termination is “for cause” if a party substantially fails to perform in accordance with the terms of this Agreement through no fault of the other Party, if said Party fails to correct or perform within thirty (30) days of receipt of written notice (or such other period of notice as may be specified in this Agreement ), or within such longer time as the Parties agree upon in the event correction is not reasonably possible within 30 days. The notice will specify the termination reason(s) and the termination effective date, and the correction action(s) necessary to prevent termination. If the City terminates this Agreement for cause, all City payments otherwise due to Foundation, if any, will be suspended and the City will have no further obligations to Foundation.

**Termination for Necessity.** Either Party may terminate this Agreement out of necessity upon at least ninety (90) days advance written notice to the other Party. A termination is out of “necessity” if a party can no longer reasonably perform in accordance with the terms of this Agreement through no fault of the other Party, and such failure is due to financial hardship, severe casualty loss to the Property preventing the ongoing operation of the Property as the Garden for public benefit, or a similar type(s) of problem that the terminating party has been unable to resolve despite good faith efforts including engaging in discussions with the non-terminating party. The notice shall specify the termination reason(s) and the termination effective date. If the termination is by the City, the City will compensate Foundation for those compensable services performed, if any, up to the Termination Date, if eligible for compensation. The compensation will fully satisfy the City’s obligations under this Agreement and will discharge the City from any further obligations and liabilities to the Foundation (including any Foundation claims of anticipated profits or other consequential damages resulting from the termination).

- c. **Surrender of Possession upon Termination.** Upon receipt of any termination notice, the Foundation will, no later than the termination effective date, deliver possession of all structures on the Property in which the Foundation has possession, discontinue all services, and deliver to the City all vendor information and contracts, keys for all gates

and buildings/structures, reports, summaries, and such other documents, information and materials the Foundation has accumulated, prepared, or obtained in performing this Agreement (whether fully or partially completed). The Parties agree that as long as Mr. Skagen is leasing the primary residence on the Property (which lease is under a separate agreement between the City and Mr. Skagen), the Foundation will not be deemed to have possession of such residence for purposes of this Agreement, unless the Foundation has leased or subleased a portion of the primary residence for Foundation purposes – in which case such portion shall be subject to this Section 5c.

- d. The rights and remedies in this Section do not exclude any other legal or equitable rights or remedies available to the City.

#### 6. Ownership and Use of Documents

The City will own all documents related to the maintenance and operations of the Property including, reports, memoranda, diagrams, sketches, plans, surveys, working drawings and any other materials that the Foundation creates or prepares in performing this Agreement (the “Work Products”), provided, however, City understands and agrees that the City does not own Foundation donor information and the Foundation cannot disclose donor information. The City may use these Work Products for any lawful purpose. Foundation acknowledges that this Agreement and the Work Products are public records subject to RCW 42.56 unless exempt from public records disclosure requirements. The Foundation agrees to fully assist the City in identifying, locating, and copying any records Foundation possesses that the City determines in its sole discretion are responsive to a Public Records request. The City agrees to process Public Records requests with appropriate exemptions from disclosure requirements.

#### 7. Records Inspection and Audit

All City payments to the Foundation, if any, are subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced. The City may inspect and audit any Foundation records and books of account pertaining to any work performed under this Agreement for up to 3 years after the City’s final payment to Foundation. If any litigation, claim, dispute, or audit is initiated before this 3-year period expires, Foundation shall retain all records and books of account for any work performed under this Agreement until final resolution of any such litigation, claim, dispute, or audit.

#### 8. Continuation of Performance

If any dispute or conflict arises between the Parties while this Agreement is in effect, the Foundation agrees to cooperate and continue in good faith toward successful completion of its responsibilities under this Agreement notwithstanding such dispute or conflict.

#### 9. Independent Contractor

The Foundation will perform the Services as an independent contractor and will not be deemed by virtue of this Agreement or the performance of it to be in a partnership, joint venture, employment, or other relationship with the City. Nothing in this Agreement creates any contract relationship between the City and the Foundation’s volunteers, employees, agents, or subcontractors. The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to Foundation or any employee of Foundation.

10. Administration of Agreement

This Agreement will be administered by \_\_\_\_\_, on behalf of the Foundation, and by the City of Auburn Mayor (or designee) on behalf of the City.

11. Notices

Notices or communications permitted or required under this Agreement will be written and delivered to the following addresses:

<b>Notice to the City:</b>	<b>Notice to Foundation:</b>
<hr/> Director of Parks & Recreation City of Auburn 25 West Main St Auburn WA 98001-4998 Phone: (253) 931-3043 Email: parks@auburnwa.gov	<hr/> The Soos Creek Botanical Garden Foundation Attn: Matt Jennings 29308 132 <sup>nd</sup> Ave SE Auburn, WA 98092 Phone: (415) 370-7468 Add Phone: (253) 639-0949 Email: <a href="mailto:MJ2543@gmail.com">MJ2543@gmail.com</a> Add Email: <a href="mailto:info@sooscreekbotanicalgarden.org">info@sooscreekbotanicalgarden.org</a>

Either party may change its above address by giving written notice to the other party. Notices to non-parties will be delivered as designated by a party to this Agreement.

12. Insurance

The Foundation will, at its sole expense, procure and maintain for the duration of this Agreement and for thirty (30) days thereafter insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of this Agreement by the Foundation, its agents, representatives, or employees. Foundation’s maintenance of insurance as required by the Agreement will not be construed to limit the liability of the Foundation to the coverage provided by such insurance or otherwise limit the City’s recourse to any remedy available at law or in equity.

The Foundation will obtain insurance of the types described below:

- a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage will be at least as broad as Insurance Services Office (ISO) form CA 00 01 (Foundation may use a substitute form providing equivalent liability coverage).
- b. Commercial General Liability insurance will be at least as broad as ISO occurrence form CG 00 01 and will cover liability arising from premises, operations, stop-gap independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City will be named as an additional insured under the Foundation's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO Additional Insured endorsement CG 20 26.
- c. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- d. Tenant Discrimination Liability Insurance, applicable if the Foundation leases or subleases any portion of the Property for residential purposes (e.g. a garden caretaker). The City will be named as an additional insured under the Foundation's Tenant discrimination Liability insurance policy.

For Automobile Liability and Commercial General Liability insurance, the policies are to contain or be endorsed to contain that Foundation's insurance coverage will be primary insurance with respect to the City. Any insurance, self-insurance, or self-insurance pool coverage maintained by the City will be excess of the Foundation's insurance and will not contribute to it.

Insurance is to be placed with an authorized insurer in Washington State. The insurer must have a current A.M. Best rating of not less than A:VII.

The Foundation will furnish the City with original certificates of insurance and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of this Agreement before commencement of the work.

The City reserves the right to require that complete, certified copies of all required insurance policies and/or evidence of all subcontractors' coverage be submitted to the City at any time. The City may withhold payment, if any is due, if the Foundation does not fully comply with this request.

If the Foundation maintains higher insurance limits than the minimums shown below, the City will be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Foundation, irrespective of whether such limits maintained by the Foundation are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Foundation.

The Foundation will provide the City with written notice of any policy cancellation within two business days of their receipt of such notice. Failure by the Foundation to maintain the insurance as required will constitute a material breach of this agreement, upon which the City may, after giving five (5) business days' notice to the Foundation to correct the breach, immediately terminate the agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the City's sole discretion, offset against funds due the Foundation from the City, if any.

13. Insurance Minimums

The Foundation shall provide:

- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- Commercial General Liability (CGL): Coverage shall be no less than \$2,000,000 each occurrence with \$2,000,000 aggregate, and \$2,000,000 products completed operations aggregate limit.
- Builders Risk. May be required up to the amount of the completed value of a new building or major construction project.
- Tenant Discrimination Liability: Coverage shall be no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit. Applicable if the Foundation leases or subleases any portion of the Property for residential purposes (e.g. a garden caretaker).

14. Indemnification/Hold Harmless

Except for injuries and damages caused by the sole negligence of the City, the Foundation will defend, indemnify and hold the City and its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits of every kind, including attorney fees and litigation expenses, arising out of or resulting from the acts, errors, or omissions of the Foundation, its employees, agents, representatives, or subcontractors, including employees, agents, or representatives of its subcontractors, made in the performance of the Services required by this Agreement, or arising out of worker's compensation, unemployment compensation, or unemployment disability compensation claims.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Foundation and the City, its officers, officials, employees, and volunteers, the Foundation's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Foundation's negligence.

It is further specifically and expressly understood that this indemnification constitutes the Foundation'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 will survive the expiration or termination of this Agreement.

15. No Acts in Contravention of Foundation Nonprofit Status.

Regardless of any provisions herein, the City understands and agrees that nothing in this Agreement (including Exhibit C) requires the Foundation to provide private inurement or impermissible private benefit, or otherwise take any action that violates or jeopardizes in any way the Foundation's 501(c)(3) charitable status or its status as a Washington nonprofit corporation governed by Chapter 24.03A RCW.

16. Assignment

Neither party to this Agreement may partially or wholly assign any right or obligation in it without the other Party's prior written consent. No assignment or transfer of any interest under this Agreement will release the assignor from any liability or obligation under this Agreement or cause any such liability or obligation to be reduced to a secondary liability or obligation.

16. Nondiscrimination

The Foundation may not engage in any unfair practice identified in RCW 49.60.180 and/or 42 U.S.C. §2000e-2 in the performance of any services or activities under this Agreement (either directly or through contractual, hiring, or other arrangements).

17. Amendment, Modification and Waiver

No amendment, modification, or waiver of any condition, provision, or term of this Agreement will be valid or effective unless written and signed by the Party to be bound (or the Party's authorized representative), specifying the nature and extent of such amendment, modification or waiver. Any waiver, approval or acceptance, or payment by any Party will not affect or impair that Party's rights arising from any default by the other Party.

18. Parties in Interest

This Agreement will bind (and its benefits and obligations will inure to) the Parties and their respective successors and assigns. This section will not permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the Parties, and it does not create a contractual relationship with or exist for the benefit of any third party (including contractors, sub-contractors and sureties).

19. Force Majeure

Delays in performing this Agreement will be excused to the extent caused by acts outside a Party's control, such as fires, cyber/ransomware attacks, earthquakes, floods, explosions, actions of the elements, riots, mob violence, strikes, pandemics, labor strikes or lockouts, and state or federal government emergency orders.

20. Applicable Law/Venue/Dispute Resolution

This Agreement and the rights of the Parties under it will be governed by the laws, regulations, and ordinances of the City, King County, and the State of Washington. Venue for actions involving this Agreement will be in King County Superior Court. An applicable statute of limitation will

commence no later than the Foundation's substantial completion of the Services in this Agreement. Prior to commencing any legal action involving this Agreement, the Parties agree to engage in informal or formal mediation with a mediator mutually agreed to by the Parties, with the cost of the mediation shared equally.

21. Captions, Headings and Titles

All captions, headings or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and will not act to limit the scope of their paragraph or section. Where appropriate, the singular will include the plural (and vice versa), and masculine, feminine and neuter expressions will be interchangeable. This Agreement has been drafted by mutual agreement of the Parties, and it will be interpreted and/or constructed without regard to its drafter.

22. Severable Provisions

Each provision of this Agreement is intended to be severable. The illegality or invalidity of any provision in this Agreement will not affect the validity of the Agreement's remaining provisions.

23. Entire Agreement

This Agreement (together with any subsequent amendments or addendums) contains the entire understanding of the Parties regarding its subject matter, and it supersedes all prior oral or written representations, agreements and understandings between the parties. No other oral or written understandings regarding this Agreement shall bind any Party.

24. Non-Availability of Funds

Every City obligation under this Agreement is contingent on the availability of appropriated or allocated City funds, to the extent City funds are required - if at all - for the City to perform a given obligation. If funds required for the City's performance are not allocated and available, the City may terminate this Agreement for necessity at the end of the available funding period, subject the required Section 5 notice period. The City will not be liable if it exercises this provision and will not be obligated or liable for any future payments or damages as a result of termination under this Section.

25. Counterparts

This Agreement may be executed in multiple counterparts, with each counterpart being one and the same Agreement, and the Agreement will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below, with the term of the Agreement beginning on the Effective Date set forth above.

**CITY OF AUBURN**, a Washington

**THE SOOS CREEK BOTANICAL GARDEN  
FOUNDATION**, a Washington nonprofit  
corporation

\_\_\_\_\_  
Nancy Backus, Mayor

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

\_\_\_\_\_  
Signature

Name:

Title:

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

Approved as to form:

\_\_\_\_\_  
Jason M. Whalen, Auburn City Attorney

**EXHIBIT A (To the Operating Agreement)**  
**Legal Description of the Property**  
**(Revised Parcel B)**

THAT PORTION OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER TOGETHER WITH THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS;

**COMMENCING** AT THE WEST QUARTER CORNER OF SAID SECTION 3, AS MONUMENTED BY CITY OF AUBURN MONUMENT 1419, AN ENCASED BRASS PLUG IN CONCRETE NEAR THE CENTER OF 132ND AVE SE;

**THENCE** ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, NORTH 01° 29' 47" EAST, 988.05 FEET;

**THENCE** DEPARTING SAID WEST LINE, SOUTH 88° 43' 54" EAST, 30.00 FEET TO THE EAST RIGHT OF WAY MARGIN OF 132ND AVE SE, ALSO BEING THE SOUTHWEST CORNER OF LOT A, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155 RECORDED UNDER RECORDING NO. 9612301254 AND AS CORRECTED PER BOUNDARY LINE ADJUSTMENT NO. L96L0155, RECORDED UNDER RECORDING NO. 20020211002613 AND **THE POINT OF BEGINIING**;

**THENCE** CONTINUING ALONG THE SOUTH LINE OF SAID KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L96L0155, SOUTH 88° 43' 54" EAST, 779.34 FEET TO THE SOUTHWEST CORNER OF LOT 2, KING COUNTY SHORT PLAT NO. 477101, RECORDED UNDER RECORDING NO. 7711221019;

**THENCE** ALONG THE WEST LINE OF SAID LOT 2 OF SAID SHORT PLAT, NORTH 01° 29' 47" EAST, 299.45 FEET TO THE NORTH LINE OF SAID LOT 2;

**THENCE** ALONG SAID NORTH LINE SOUTH 88° 44' 20" EAST, 509.29 FEET TO THE SOUTHEAST CORNER OF TRACT "X" OF SAID SHORT PLAT;

**THENCE** ALONG THE EAST LINE OF SAID TRACT "X" NORTH 01° 28' 40" EAST, 30.00 FEET TO THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

**THENCE** ALONG THE NORTH LINE OF SAID SUBDIVISION SOUTH 88° 44' 20" EAST, 262.85 FEET;

**THENCE** DEPARTING SAID NORTH LINE SOUTH 01° 28' 40" WEST, 329.55 FEET TO THE SOUTH LINE OF THE NORTH HALF OF SAID SUBDIVISION;

**THENCE** ALONG SAID SOUTH LINE SOUTH 88° 43' 54" EAST, 369.50 FEET TO THE SOUTHEAST CORNER OF SAID NORTH HALF;

**THENCE** ALONG THE EAST LINE OF THE SOUTH HALF OF SAID SUBDIVISION SOUTH 01° 28' 07" WEST, 164.80 FEET;

**THENCE** NORTH 88° 43' 30" WEST, 659.37 FEET TO THE EAST LINE OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

**THENCE** ALONG SAID EAST LINE SOUTH 01° 28' 40" WEST, 164.79 FEET TO THE SOUTHEAST CORNER OF SAID NORTH HALF;

**THENCE** ALONG THE SOUTH LINE OF SAID NORTH HALF NORTH 88° 43' 27" WEST, 812.79 FEET;

**THENCE** DEPARTING SAID SOUTH LINE NORTH 01° 29' 51" EAST, 165.00 FEET;

**THENCE** NORTH 88° 43' 27" WEST, 476.00 FEET TO SAID EAST RIGHT OF WAY MARGIN;

**THENCE** ALONG SAID EAST MARGIN NORTH 01° 29' 47" EAST, 164.35 FEET TO **THE POINT OF BEGINNING.**

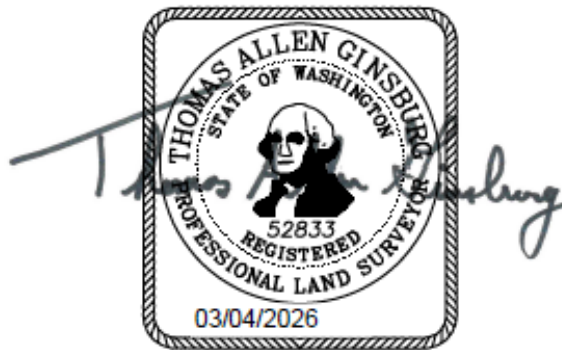
CONTAINING 693,798 SQUARE FEET (15.93 ACRES), MORE OR LESS.

**TOGETHER WITH** AN UNDIVIDED INTEREST IN TRACT "X" AS DELINEATED ON SAID KING COUNTY SHORT PLAT NO. 477101;

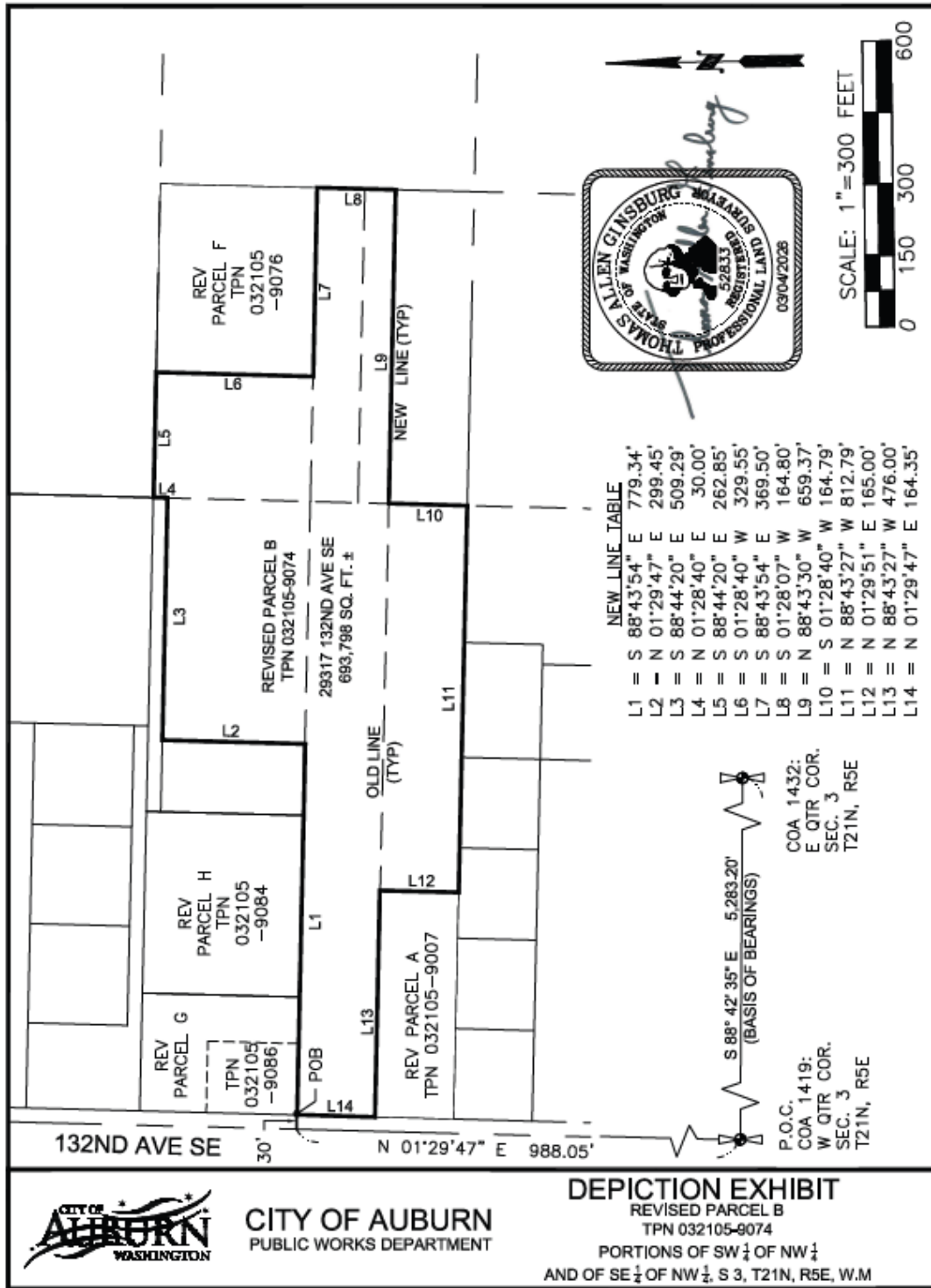
**TOGETHER WITH** A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE NORTH 30 FEET OF THE WEST HALF OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET THEREOF LYING WITHIN 132ND AVENUE SOUTHEAST.

**TOGETHER WITH** A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER, ACROSS AND UNDER THE EAST 30 FEET, AND THE SOUTH 30 FEET OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE WEST 15 FEET OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION.



**EXHIBIT B (To the Operating Agreement)  
 Depiction of the Property  
 (Revised Parcel B)**



**EXHIBIT C (To the Operating Agreement)  
The Services**

**Foundation Maintenance Responsibilities.** The Foundation shall maintain all of the following at its sole cost and expense:

**Garden:** The Foundation shall operate, maintain, and improve the Garden, including its plant collections, as it currently exists on and within the Property. The Foundation may modify existing garden areas or establish new areas within the Property, provided such work remains consistent with the mission and purpose of a public botanical garden.

**Irrigation:** If irrigation systems are to be installed in the future, the Foundation shall be responsible for their installation, operation, maintenance, repair, and replacement as necessary.

**Equipment:** The Foundation shall be responsible for and perform all maintenance and repair of onsite equipment owned by the Foundation or the City, if any, that is used by the Foundation for Garden Maintenance. If equipment needs replacement, the Foundation shall replace said equipment in a timely manner, to not disrupt Garden operations.

**Buildings:** The Foundation shall be responsible for all maintenance of all buildings on the Garden and within the Property, provided, however, that the Foundation shall be responsible for the “Main House” or a portion thereof only if and when the primary purpose of the Main House or a portion thereof (e.g. a Garden caretaker apartment) is to support the Garden operations. Thus, as of the Effective Date of the Services Agreement, the Foundation shall be responsible for the “Soos Creek Heritage Center”, the “Pavilion by the Pond”, the aviary (attached to the Main House), and all Garden-related outbuildings, including but not limited to the “Hoop Nursery”, greenhouses, sheds, and other structures, whether currently located on the Garden or installed in the future for Garden-related purposes. Maintenance shall include, but not be limited to, normal and routine maintenance (e.g. painting, minor repairs, replacing light bulbs, pest control, etc.), as well as Capital Improvements (e.g. roof replacement, siding repairs, system replacements, etc.). In the event of significant Capital Improvements or other significant alterations or improvements desired by the Foundation – with “significant” defined as improvements or alterations exceeding ten thousand dollars (\$10,000) in total cost – the Foundation shall obtain the City’s written consent prior to engaging in such work, with such consent not unreasonably withheld. The Foundation may, but is not required to, consult with the City for minor repairs, replacements, or routine maintenance. The Foundation shall be responsible for the investigation and acquisition of any permits needed, with City as owner cooperating as needed for such permits.

**Historic/Cultural Effects:** The Foundation shall be responsible for maintaining artwork, furniture, photos, historic tools and equipment, newspaper articles, etc. (collectively, the

“Historic/Cultural Effects”) as part of its maintenance of the Soos Creek Heritage Center. Additionally, after Maurice Skagen no longer resides in the Main House, the Foundation shall also be responsible for maintaining such Historic/Cultural Effects that Mr. Skagen determines within his discretion to leave in the Main House.

**All Other Site Appurtenances:** The Foundation shall be responsible for all maintenance, repair, and replacement of all site appurtenances, including but not limited to, the entrance gate, parking areas, water/sewage/electrical systems, kiosks, memorials, benches, and fencing. City and Foundation mutually understand and agree that existing and future memorials placed on the Property by the Foundation are intended to be permanent, e.g. the granite memorial bench near the vegetable garden, and shall be replaced if damaged.

**Vehicle and Pedestrian Areas:** The Foundation shall be responsible for maintaining the grounds of the Garden in a safe and well-maintained condition, including, without limitation, parking areas, roads, driveways, walkways, pathways, patios, and other vehicle and pedestrian areas located within the Property.

**Soosette Creek:** The Foundation shall conduct its activities within the Property in a manner that complies with all applicable State and City regulations governing Soosette Creek and its associated critical areas and buffers. Nothing in this Agreement shall prohibit the Foundation from coordinating educational or habitat-related activities associated with the creek (e.g. children releasing salmon frye) and in coordination with applicable organizations (e.g. Muckleshoot Indian Tribe, State of Washington, etc.).

### **Foundation Operational Responsibilities.**

**Hours of the Garden and Soos Creek Heritage Center:** The City and Foundation acknowledge that the Garden is an asset meant to be enjoyed by and open to the public. The Foundation shall consult with the City but ultimately shall have the final authority to determine the days, times, or seasons when the Garden is open to the public or for private events. The Foundation shall keep the City apprised of such open hours, special events, etc. so that the City may assist in public outreach.

**Educational Uses and Fundraising:** The Foundation, at its sole discretion, may continue to offer the Garden and its amenities for educational purposes, including but not limited to, public education (e.g. schools), private education (e.g. garden workshops), and for fundraising events, compliant with its tax-exempt status.

### **City Rights and Responsibilities.**

**City use of the Property and Buildings:** The City may request use of portions of the Property or Garden facilities for City-related events or gatherings. Any such use shall be coordinated with the Foundation and shall be subject to availability and the Foundation's scheduling of Garden operations, programs, and private rentals. The Foundation may, at its discretion, permit such use and may charge the City the same or a discounted rate consistent with the Foundation's facility rental policies. Nothing in this Agreement obligates the Foundation to provide facilities for City use without charge.

Use of any facilities subject to a residential occupancy, including without limitation Maurice Skagen's lease of the main house on his former property, shall only occur if such use is permitted under the terms of that occupancy. City events approved under this section shall be scheduled in coordination with the Foundation, and the City shall be responsible for reasonable cleanup and restoration of the facilities following such use.

**Public Outreach:** The City may include Foundation and Garden events and other information in City-sponsored public outreach (e.g. e-blasts, social media posts, etc.), though it is not required to do so. The Foundation should keep in contact with City Staff to assist in said efforts for public outreach. If the Foundation provides its own public outreach, the Foundation shall not indicate that the City is a sponsor of said events or information provided.

**Periodic Meetings & Reports:** The Foundation and City shall coordinate quarterly meetings, at a time and location as is convenient for each party. Reports, as may be listed in the Foundation Services Agreement, shall be provided in a timely manner to the City.

**Financial Responsibilities of Foundation.** The City and Foundation acknowledge that the purpose of the City's acquisition of the Property and Garden was to ensure in perpetuity the opportunity to continue the historic use of the Property as public gardens, open space and cultural/historic education for the benefit of the Auburn community. The Foundation shall be financially responsible for its Maintenance Responsibilities and Operational Responsibilities, as outlined above. The Foundation intends to rely in part for its financial stability on a donor-advised endowment intended to be created by the investment and benevolence of Garden and Foundation co-founder Maurice Skagen. To the extent allowed by the entity managing such endowment (e.g. the Seattle Foundation or a similar philanthropic management organization), the City will be listed as contingent beneficiary of any such endowment created, provided that all income and principal of the endowment is used solely to maintain and improve the Property and Garden for public benefit as contemplated herein and in accordance with the governing instruments for any such endowment. The Foundation and City acknowledge that in the event the Foundation becomes insolvent or is otherwise unable to maintain the Garden, Property, and

other associated buildings, as described in this Agreement, the City shall receive the full financial benefit, as designated contingent beneficiary of any endowment established for the ongoing maintenance and operation of the Property and Garden, subject to any dissolution/wind-down requirements the Foundation must meet in accordance with its 501(c)(3) status and as a Washington nonprofit corporation governed by Chapter 24.03A RCW. Notwithstanding the City's receipt of available income from the endowment, if financial resources are insufficient to maintain the Garden, then, in the City's sole determination, the Garden and Property may revert to natural open space, for the benefit of the public. If the Foundation is unable to maintain the buildings and other built structures on the Property, the City retains the rights to use the endowment funds, to maintain any such buildings or structures, in such conditions as determined by the City, in the City's sole discretion but subject to the requirement that any donated funds must be used for the charitable purpose(s) for which they were donated.

The City understands and agrees that nothing in the Services Agreement or this Exhibit C shall require the Foundation to provide private inurement or impermissible private benefit, or otherwise take any action that violates or jeopardizes in any way its 501(c)(3) charitable status or its status as a Washington nonprofit corporation governed by Chapter 24.03A RCW.

Subject to the terms and conditions of the Agreement, the Foundation may enter into an agreement with another nonprofit organization to take over the Foundation responsibilities as described herein, subject to the City's written approval and consent, which shall not be unreasonably withheld.

**EXHIBIT D (To the Operating Agreement)  
Easement for Ingress, Egress, Parking & Operations**

**(Cover Page)**

RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:

City of Auburn  
25 W Main  
Auburn, WA 98001  
ATTN: Josh Arndt

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of or any warranty contained in the document itself.

Reference # (if applicable):

Grantor: **The Soos Creek Botanical Garden Foundation, a Washington nonprofit corporation**

Grantee: **City of Auburn, a Washington municipal corporation**

Tax Parcel ID Numbers:

Q-S-T-R of burdened property:

Full Legal Descriptions Located: **Exhibits A & B**

## EASEMENT FOR INGRESS, EGRESS, PARKING & OPERATIONS

**THIS EASEMENT FOR INGRESS, EGRESS, PARKING & OPERATIONS** (“Easement”) by and between The Soos Creek Botanical Garden Foundation, a Washington nonprofit corporation (“Grantor”), and City of Auburn, a Washington municipal corporation (“Grantee”) is effective as of \_\_\_\_\_ (the “Effective Date”).

### I. RECITALS

A. Grantor is the owner of real property described and depicted in **Exhibit A**, attached hereto and incorporated herein by reference (“Grantor Property”).

B. Grantee is the owner of real property described and depicted in **Exhibit B**, attached hereto and incorporated herein by reference (“Grantee Property”).

C. The Grantor and Grantee intend for the Grantee to purchase Grantor’s Property upon availability of King County Conservation Futures Tax Levy grant funding.

D. Until such time, Grantee requests that Grantor enter into this Easement Agreement for the Grantor to operate the Botanical Garden (defined below) located on Grantee’s Property.

E. Grantor's Property provides supportive services such as storage and parking for the Botanical Garden, therefore the parties wish to memorialize the synergies of the two properties until such time as the funds are available for Grantee to purchase Grantor's Property.

## II. EASEMENT

1. Grant of Easement. Grantor hereby grants and conveys to Grantee a perpetual non-exclusive blanket easement upon, over, across, and through Grantor's Property (the "Easement Area") for the purposes of ingress, egress, parking, and general support of Grantee's Property in the operations of Soos Creek Botanical Garden (the "Botanical Garden").

1.1 Grantor reserves the right to control, amend, alter, direct, or redirect the flow and direction of traffic on Grantor's Property, and to restrict Grantee's use of the Easement to daytime hours and at other times when Grantee's use of the Easement may interfere with Grantor's reasonable use of the Easement Area for Botanical Garden purposes.

1.2 Grantor is responsible (at its sole cost and discretion) to maintain, repair, replace, and/or reconfigure (together "Work") the surface and subsurface of the Easement Area so long as the Work does not impede or diminish the supportive and operational services Grantor's Property provides to the Botanical Garden, provided, however, that Grantee is responsible for repairing any damage (beyond ordinary wear and tear) resulting from Grantee's employees, agents, guests, licensees, lessees and officials' use of the Easement Area.

2. Conditions of Easement. The Easement is granted subject to and conditioned upon the following terms, conditions, and covenants which the parties, their agents, tenants, successors and assigns, agree to fully observe and perform:

2.1 Rights of Easement. Grantee's right to use the Easement Area shall extend equally to Grantee's employees, agents, guests, licensees, lessees and officials. For the purposes of this Easement, all shall be collectively considered the "Grantee."

3. General Provisions. The following general provisions shall also apply to this Easement:

3.1 Running Covenants. The terms, conditions, rights and obligations contained in this Easement shall be covenants running with the land and shall inure to and bind the successors, assigns, heirs, and personal representatives of the parties.

3.2 Applicable Law. This Easement shall be governed by and construed in accordance with the laws of the State of Washington.

3.3 Recording. Grantee shall record this Easement with the King County Recorder at its expense. Grantee shall provide Grantor with a copy of the recorded Easement.

3.4 Attorneys' Fees. If either party brings suit to enforce or interpret this Easement, a court judgment to the substantially prevailing party shall include that party's attorneys' fees and legal costs and expenses of the suit. Awarded attorneys' fees and expenses shall include those incurred before, during and after trial, including those related to any appeal.

3.5 Authority. Each of the individuals whose signature appears below represents and warrants that he or she has full authority to execute this Easement on behalf of the party on whose behalf he or she has affixed his or her signature to this Easement.

**GRANTOR:**

**GRANTEE:**

The Soos Creek Botanical Garden Foundation, a Washington nonprofit corporation

CITY OF AUBURN, a Washington municipal corporation

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

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

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

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

Name(printed): \_\_\_\_\_

Name (printed): Nancy Backus

Title:

Title: Mayor

**[GRANTOR'S NOTARY BOX]**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (s)he signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the (Title)\_\_\_\_\_ of THE SOOS CREEK BOTANICAL GARDEN FOUNDATION, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**[GRANTEE'S NOTARY BOX]**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ I certify that I know or have satisfactory evidence that NANCY BACKUS is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the MAYOR of the CITY OF AUBURN, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT A (to the easement)  
GRANTOR PROPERTY**

THE WEST HALF OF THE NORTH QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M.;

EXCEPT THE WEST 277.50 FEET THEREOF;

CONTAINING 125,771 SQUARE FEET (2.89 ACRES), MORE OR LESS.

TOGETHER WITH AND SUBJECT TO AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE NORTH 30 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3.

**EXHIBIT B (To the easement)  
GRANTEE PROPERTY**

THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

EXCEPT THE WEST 506.00 FEET OF THE SOUTH 165.00 FEET THEREOF;

EXCEPT THE WEST 30 FEET THEREOF CONVEYED TO KING COUNTY FOR ROAD PURPOSES BY DEED RECORDED UNDER RECORDING NO. 2680897.

**TOGETHER WITH;**

LOT 2, KING COUNTY SHORT PLAT NO. 477101, RECORDED UNDER RECORDING NO. 7711221019, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH AN UNDIVIDED INTEREST IN TRACT X AS DELINEATED ON SAID SHORT PLAT;

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE NORTH 30 FEET OF THE WEST HALF OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET THEREOF LYING WITHIN 132ND AVENUE SOUTHEAST.

**TOGETHER WITH;**

THE WEST 262.85 FEET OF THE NORTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

**TOGETHER WITH;**

THE NORTH HALF OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON;

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER, ACROSS AND UNDER THE EAST 30 FEET, AND THE SOUTH 30 FEET OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE WEST 15 FEET OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION.

CONTAINING 693,798 SQUARE FEET (15.93 ACRES), MORE OR LESS.

**EXHIBIT D**  
**Seller Disclosure – Environmental**

<b>ENVIRONMENTAL DISCLOSURE</b>		<b>Yes</b>	<b>No</b>	<b>Don't Know</b>	<b>N/A</b>
<b>A</b>	Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?				
<b>B</b>	Does any part of the property contain fill dirt, waste, or other fill materials?				
<b>C</b>	Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?				
<b>D</b>	Are there any shorelines, wetlands, floodplains, or critical areas on the property?				
<b>E</b>	Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?				
<b>F</b>	Has the property been used for commercial or industrial purposes?				
<b>G</b>	Is there any soil or groundwater contamination?				
<b>H</b>	Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?				
<b>I</b>	Has the property been used as a legal or illegal dumping site?				
<b>J</b>	Has the property been used as an illegal drug manufacturing site?				
<b>K</b>	Are there any radio towers in the area that cause interference with cellular telephone reception?				
<p><b>If you answered yes to any of the following, please give further details here.</b></p>					