



**Public Works Committee
December 17, 2012 - 3:30 PM
Annex Room 2
AGENDA**

I. CALL TO ORDER

- A. **Roll Call**
- B. **Announcements**
- C. **Agenda Modifications**

II. CONSENT AGENDA

- A. **Approval of Minutes***

III. RESOLUTIONS

- A. **Resolution No. 4881* (Mund)**

A Resolution of the City Council of the City of Auburn, Washington, Authorizing the Renewal of Public Way Agreement (PWA) 99-02 and Amending the Terms of the Agreement with the Olympic Pipeline Company

- B. **Resolution No. 4890* (Para)**

A Resolution of the City Council of the City of Auburn, Washington, Authorizing the Mayor to Award and Execute an Agreement with the Lowest Responsible Bidder for Construction of Small Public Works Contract Number 12-22 for Project MS1203. 15th St SW and West Valley Highway Signal #128 Repairs

- C. **Resolution No. 4891* (Truong)**

A Resolution of the City Council of the City of Auburn, Washington, Authorizing the Mayor to Accept a Grant from the Washington State Transportation Improvement Board for the Auburn Way South and M Street - 17th Street SE Intersection Improvements

IV. DISCUSSION ITEMS

- A. **Resolution No. 4887* (Lein)**

A Resolution of the City Council of the City of Auburn, Washington, Authorizing the Mayor and City Clerk to Execute a Lease Agreement Between the City of Auburn and Congressman Dave Reichert, a Member of the U.S. House Of Representatives

- B. **Resolution No. 4892* (Heineman)**

A Resolution of the City Council of the City of Auburn, Washington, Authorizing the Mayor and City Clerk to Execute a Contract for Public Defense Services for January 1, 2013 - June 30, 2013 Between the City and the Law Offices of Matthew J. Rusnak

- C. **Ordinance No. 6442* (S. Wagner)**

Proposed Amendments to the Auburn City Code Concerning the Relocation of and

Amendments to the Hearing Examiner Chapter

- D. **King County Service Agreement Proposal* (Para)**
- E. Green River Community College Proposed SE 320th Street Improvements (Para)
- F. **Capital Project Status Report* (Gaub)**
- G. **Action Tracking Matrix* (Dowdy)**

V. **ADJOURNMENT**

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

*Denotes attachments included in the agenda packet.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Approval of Minutes

Date:

December 11, 2012

Department:

Public Works

Attachments:

[December 3, 2012 Draft Minutes](#)

Budget Impact:

\$0

Administrative Recommendation:

Public Works Committee to approve the minutes of the November 19, 2012 Public Works Committee meeting.

Background Summary:

See attached draft minutes.

Reviewed by Council Committees:

Public Works

Councilmember: Wagner

Staff:

Meeting Date: December 17, 2012

Item Number: CA.A



**Public Works Committee
December 3, 2012 - 3:30 PM
Annex Room 2
MINUTES**

I. CALL TO ORDER

Chairman Rich Wagner called the meeting to order at 3:30 p.m. in Conference Room #2, located on the second floor of Auburn City Hall, One East Main Street, Auburn, Washington, 98002.

A. Roll Call

Chairman Wagner, Vice-Chair Bill Peloza, and Member Osborne were present. Also present during the meeting were: Mayor Pete Lewis, Public Works Director Dennis Dowdy, City Engineer/Assistant Director Dennis Selle, Assistant City Engineer Ingrid Gaub, Utilities Engineer Dan Repp, Transportation Manager Pablo Para, Street Systems Engineer Seth Wickstrom, Project Engineer Kim Truong, Planning Manager Elizabeth Chamberlain, Principal Planner Jeff Dixon, Customer Services Manager Brenda Goodson-Moore, Finance Director Shelley Coleman, citizens Jolene Alexander and Scott Ponderlick and Public Works Secretary Jennifer Cusmir.

B. Announcements

There were no announcements.

C. Agenda Modifications

There were no agenda modifications.

II. CONSENT AGENDA

A. Approval of Minutes

Councilmember Peloza moved and Councilmember Osborne seconded to approve the minutes of the November 19, 2012 Public Works Committee Meeting.

Chairman Wagner asked about the outcome of the Trust Lands Utility Agreement. Director Dowdy answered that the Legal Department is still working on the agreement with the Muckleshoot Indian Tribe (MIT).

Chairman Wagner asked staff to include the action items documented during the discussion on System Development Charges to the Action

Matrix.

Motion Carried Unanimously. 3-0.

B. Public Works Project No. CP1224 (Wickstrom)

Councilmember Pelosa moved and Councilmember Osborne seconded to recommend City Council grant permission to enter into Consultant Agreement No. AG-C-428 with Jacobs Engineering Group, Inc for engineering services for Project No. CP1224, 2013 Local Street Pavement Reconstruction Project.

Chairman Wagner asked when the project costs for utility work will be available. Street Systems Engineer Wickstrom answered when the project is about halfway into design there should be an accurate estimate for the project's cost in order to determine if utility funds are available to meet the need. The estimate should be ready early 2013.

Chairman Wagner asked the project be placed on the Action Matrix to be reviewed at 50% design.

Street Systems Engineer Wickstrom answered questions asked by Chairman Wagner regarding the consultant costs listed on the budget status sheet and the amount listed in the scope of work.

Assistant City Engineer Gaub explained that the main reason a consultant is being used for the project is due to the size of the project, the amount of utility and roadwork and the timeframe staff has to get the project out to construction by summer 2013, in response to a question asked by Member Osborne.

Motion Carried Unanimously. 3-0.

C. Public Works Project No. CP1211 (Truong)

Councilmember Pelosa moved and Councilmember Osborne seconded to recommend City Council approve Final Pay Estimate No. 2 to Small Works Contract No. 12-12 in the amount of \$0.00 and accept construction of Project No. 1211 Downtown Sculpture Garden.

Chairman Wagner spoke about the dedication of the Sculpture Garden and commended the City departments for their corporation on the project.

Chairman Wagner noted that the City will consider purchasing the People's Choice Award.

Motion Carried Unanimously. 3-0.

III. DISCUSSION ITEMS

A. Leak Adjustment Request - Appeal (Coleman)

Councilmember Pelosa moved and Councilmember Osborne seconded to change the leak adjustment policy to include the footprint of the whole house, the amount of the leak adjustment to remain the same, \$500.00, and to make the policy change retroactive.

Finance Director Coleman explained the circumstances of the water leak being considered and stated the application for a leak adjustment does not meet the criteria of the leak adjustment policy.

Finance Director Coleman stated that staff can continue bringing leak adjustments to the Committee for consideration or the Finance Department may be granted leeway in making adjustment decisions up to a certain amount.

The water customer, Ms. Alexander, addressed the Committee and provided the Committee with a brief explanation of her circumstances. Ms. Alexander noted that when she was first notified of the leak, and following several subsequent notifications, she could not locate any leak.

Chairman Wagner clarified that the Committee will be discussing not only Ms. Alexander's leak adjustment, but also the ongoing adjustment policy. Finance Director confirmed that to be correct.

Finance Director Coleman stated that if the City makes an adjustment, per the current policy, the adjustment would be \$468.84, if the leak had met the adjustment criteria.

Chairman Wagner and the Committee discussed the current policy.

Finance Director Coleman answered questions asked by Vice-Chair Pelosa regarding what the amount of Ms. Alexander's adjustment would be if the leak met the current criteria of the policy.

Chairman Wagner pointed out that the Committee may decide to change the policy and make that change retroactive so that the changes would apply to Ms. Alexander's case.

The Committee discussed whether or not to make utility account adjustment when leaks occur inside a house and not only when they occur in the service line.

Finance Director Coleman explained how the leak adjustment amounts are calculated.

Member Osborne recommended a policy change stating if there is a leak between the service line and inside the structure would qualify for the \$500.00 adjustment. Any amount beyond the \$500.00 would need to go to the Committee for approval.

Finance Director Coleman asked for additional policy guidance, asking if under the house included leaking toilets and/or lines to ancillary structures which are not inspected facilities. Chairman Wagner stated the ancillary structures and irrigations systems would not be included under the change policy, Vice-Chair Pelozo agreed.

The Committee and staff discussed what other hardships may be considered in relation to leak adjustments on utility accounts.

The Committee and staff discussed how customers' diligence and effort in making repairs is determined.

Motion Carried Unanimously. 3-0.

- B. 2012 Annual Comprehensive Plan Amendments (Dixon)
Review and discuss the 2012 annual Comprehensive Plan Amendments and Planning Commission recommendations.

Principal Planner Dixon reviewed the agenda packet content including in the Summary Matrix. The matrix summarizes the five Comprehensive Plan map amendments and seven policy and text amendments. Dixon stated that the amendments are either publicly initiated amendments or the privately initiated amendments from applicants.

Principal Planner Dixon explained that all of the details, application materials, maps, and staff reports, related to the amendments are in the Comprehensive Plan Working Binders provided to the Committee.

T

he Committee and staff reviewed CPA #3 on the Year 2012 Annual Comprehensive Plan Amendment (CPA) Summary Matrix, Map No. 14.1, File No. CPA12-0003, Locke Property This is the request to change the designation from "Single Family Residential" to "High Density Residential" for a 1.88-acre property as a private map amendment.

Principal Planner Dixon explained the related issue of the wrong Comprehensive Plan designation for two adjacent parcels and not the

one that is the subject of the Comprehensive Plan Amendment request. The Committee and staff reviewed the mapped comprehensive plan designations and the zoning map.

Principal Planner Dixon explained that the wrong designation for the two adjacent properties is attributable to a scrivener's error at the adoption of Ordinance No. 6138 in 2007. He recounted the history leading to the ordinance and the council's legislative intent. He noted there were both public meetings in the Lea Hill area and a Citizen Advisory Committee, providing input to the Comprehensive Plan designations during annexation process.

Chairman Wagner asked if any other properties that were designated multi-family were rezoned single-family in the Lea Hill Area at the time. Planning Manager Chamberlain answered that there following annexation, the area in question, was down-zoned. Chamberlain explained property owners in the annexation area were notified and two public hearings were held before Council and the Planning Commission. Chairman Wagner asked if some of the parcels surrounding the applicant's parcel were multi-family prior to annexation and down-zoning. Planning Manager Chamberlain responded that they were and pointed out of the map which properties were multi-family.

Chamberlain explained that during the zoning and Comprehensive Plan changes, prior to the annexation becoming effective, a greater amount of the area was multi-family and the Council, working with the Citizen Advisory Committee and through the public hearings, moved to designate only what was already developed as multi-family as multi-family and any other parcels that were vacant or had a single-family house on them they were down-zoned to Single Family Residential and R5. Principal Planner Dixon stated that Council consciously made that decision to limit the amount of multiple family development allowed, in order to make sure infrastructure improvements were keeping pace with development on Lea Hill.

Vice-Chair Pelozo asked what the next step for denial of the application is. Principal Planner Dixon answered that the Planning Commission held a public hearing on the amendment and established a record for the request and the staff report made a recommendation for denial. The Planning Commission also made a recommendation for denial. The request will go back to the Planning and Community Development Committee on December 10th, to make recommendation for the full Council action potentially on December 17, 2012.

The Committee and staff discussed the existing infrastructure in the

Lea Hill vicinity.

The Committee and staff continued review of the Year 2012 Annual Comprehensive Plan Amendment (CPA) Summary Matrix.

The Committee and staff reviewed P/T #6, Revisions to Chapters 2 and 5 of the City's Comprehensive Transportation Plan.

Principal Planner Dixon stated the changes to Chapter 2 are related to the roadway capacity improvement projects and the cost estimates that are featured in Table 2-3 of the plan. The narrative, table and map all needed to be updated to correspond.

Chairman Wagner spoke about including the streets/projects that were designated as priorities at the Council Transportation Retreat being included on page 2-15 or Project Groups A, B, and C, in the Comprehensive Transportation Plan.

Principal Planner Dixon stated bulleted items on page 2-15 refer to intersections that are not in the City's jurisdiction but should be evaluated for program improvements. These are not part of the document proposed for changing. Transportation Manager Para stated the projects discussed at the Council Retreat are listed in the preceding section in Project Group A. Para explained that Project Group B includes projects scheduled outside the 6-year planning period and Project Group C and projects not in the City, but projects that the City would like to see completed.

At the Committee's request, he Committee and staff discussed the general introductory explanation of corridor level of service in Chapter 2.

In relation to page 2-9, the Committee discussed a concern that a focus on "corridor level of service" may restrict management of individual signals and disadvantage local circulation. North/south traffic flow versus east/west traffic flow along Auburn Way was discussed. Chairman Wagner requested Corridor Level of Service be added to the Committee's Action Matrix.

Chairman Wagner spoke about downtown traffic circulation and the important of keeping eat/west bound traffic moving through the downtown area.

Transportation Manager Para stated there is a Comprehensive Transportation Plan update scheduled for the next biennium, in response to a question asked by Chairman Wagner. The update process will begin in 2013 and be completed in 2014.

Transportation Manager Para spoke about operational changes that could be made to the way the signals are timed that would help address the traffic flow concerns of the Committee.

Chairman Wagner and Mayor Lewis spoke about whether or not to include a statement regarding more consideration being given to local circulation than has been given in the past under the corridor level of service policy, in the Comprehensive Plan. It was decided not to include any statement in the Comprehensive Plan amendments under consideration at this time and to add the question of level of corridor service to the Action Matrix and future Transportation Plan.

The Committee and staff discussed mentioning event traffic and modeling in the Comprehensive Plan. Transportation Manager Para stated that event traffic cannot be included in the transportation model, but can be addressed by separate model runs. He offered that event traffic is something that can be included in the next Transportation Plan update. Member Osborne asked that the subject be added to the Action Matrix.

Transportation Manager Para answered questions asked by the Committee regarding the modeling of event traffic and traffic generated by the White River Amphitheater.

To focus on the currently-proposed amendments, Transportation Manager Para explained that in the proposed update of the Comprehensive Plan, staff was focusing on updating a few key issues that were impacting the ability to complete the current development reviews and to update the project list to be current with the City's impact fee system and the current Transportation Plan, in response to a question asked by Vice-Chair Peloza.

Chairman Wagner recommended adding information regarding the cost of maintenance of the existing street system to the future update of the Transportation Plan.

In addition to Figure 2-6, Chairman Wagner and staff spoke about including a larger scale map of the regional view of transportation in the future update of Comprehensive Transportation Plan.

Related to Policy TR-4, page 5-2, the Committee discussed revision of the policy to recognize both, safety and efficiency as prioritized over driving convenience.

Chairman Wagner suggested the word "all" be removed from TR-28, page 5-5. Staff agreed the change would be made as part of the

current Comprehensive Plan amendments.

The Committee and staff discussed alley-loaded residential subdivision developments. The committee asked that the future Transportation Plan update should include promotion and incentives for alley-loaded lot access within residential subdivisions.

The Committee and staff discussed the feasibility of roundabouts and whether or not roundabouts should be noted as being preferred over traffic signals in relation to Policy TR-110. Since the policy is qualified with “whenever feasible and appropriate” no change was considered necessary.

C. Review Arterial Street Needs (Para)

The Committee reviewed the maps which listed the costs associated with the Arterial Street Needs. Director Dowdy point out the \$20M cost of waiting to fund road repairs.

D. 2013 Sidewalk Repair Project Areas (Wickstrom)

Member Osborne asked if the sidewalk were ever ground. Assistant Director/City Engineer Selle answered in some cases the sidewalk can be ground down however, this is usually a maintenance action versus a capital project.

The Committee agreed with the selected project areas.

E. Resolution No. 4885 (Dowdy)

A Resolution of the City Council of the City of Auburn, Washington, Declaring Certain Items of Property as Surplus and Authorizing their Disposal

The Committee supported adoption of Resolution No. 4885.

F. Capital Project Status Report (Gaub)

Item 11 – C207A – A Street NW Corridor Phase I: Assistant City Engineer Gaub stated the City is in the process of resubmitted the petition with the UTC and BSNF. The UTC meets on December 13th and if the petition is approved the corridor may be able to open as early as December 14th depending on the UTC’s decision

Item 22 – CP1120 – Lea Hill Safe Routes to Schools Improvements: Chairman Wagner asked for a Committee review at 50% design.

Item 27 – CP1024 – AWS and M Street SE Intersection Improvements: Assistant City Engineer Gaub reported that a TIB grant has been received and funds the next phase of this project.

Item D – CP1016 – Fenster Levee Project: Vice-Chair Pelozza reported that there was a meeting regarding the \$327K in SRFB funding this week and he will look into it.

G. Action Tracking Matrix (Dowdy)

Chairman Wagner asked for Item E to be expanded to address the steps for SDC's for 2012 discussed at the last meeting and that the items mentioned during the meeting be added.

IV. **ADJOURNMENT**

There being no further business to come before the Public Works Committee, the meeting was adjourned at 4:57 p.m.

Approved this 17th day of December, 2012.

Rich Wagner, Chair

Jennifer Cusmir, Department Secretary



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 4881

Date:

November 27, 2012

Department:

Public Works

Attachments:

[Resolution No. 4881](#)

[Exhibit A](#)

[Resolution No. 4298](#)

Budget Impact:

\$0

Administrative Recommendation:

Public Works Committee recommend City Council to adopt Resolution No. 4881.

Background Summary:

Olympic Pipe Line Company has applied for renewal of their current Public Way Agreement No 99-02 which was authorized by Resolution No. 4298 (please see attached document) and is set to expire on February 26, 2013. This agreement is for an existing 14 inch diameter pipeline used for the interstate transportation of petroleum products located in the right-of-way at the locations specified in Exhibit A of Resolution No 4298. This pipeline does not serve any customers inside of the city limits nor does the applicant currently have any plans to offer service inside the city limits. A Public Way Agreement is required when a commercial utility desires to occupy specific space in the City's right-of-way for the sole purpose of providing commercial utility services to areas outside the City.

The current Public Way Agreement was reviewed by city staff and the applicant and it was determined that the agreement still meets the needs of the City and the applicant with only minor amendments to the agreement to reflect renewal.

Resolution No. 4881 amends the current agreement to reflect these changes and authorizes Olympic Pipe Line Company's pipeline facilities to remain in the right-of-way for an additional five year term per the conditions set forth in PWA 99-02 upon filing with the City Clerk a Statement of Acceptance which is marked "Exhibit A".

Reviewed by Council Committees:

Planning And Community Development, Public Works

Councilmember: Wagner

Staff: Mund

Meeting Date: December 17, 2012

Item Number: RES.A

RESOLUTION NO. 4881

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE RENEWAL OF PWA 99-02 AND AMENDING THE TERMS OF THE AGREEMENT.

WHEREAS, Olympic Pipeline Company has applied to the City for renewal of PWA 99-02, which was authorized by Resolution No. 4298, and

WHEREAS, the City has reviewed the Grantee's renewal application and determined that renewal of the Public Way Agreement authorized by Resolution No. 4881 with minor amendments is in the best interest of the City and the citizens of Auburn.

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

Section 1. The City approves Grantee's application for the first renewal with the amendments and under the conditions set forth in this Resolution.

Section 2. Section 3, "Terms of Agreement" of Resolution No. 4298 is amended to read as follows;

A. This Public Way Agreement shall run for an additional five year period from the date of execution specified in Section 5.

Section 3. Acceptance of Amendments

A. This Amendment and any rights granted hereunder shall not become effective for any purpose unless and until Grantee files with

Resolution No. 4881
PWA 12-36
November 13, 2012
Page 1 of 3

the City Clerk the Statement of Acceptance, attached hereto as Exhibit “A”, and incorporated by reference. The date that such Statement of Acceptance is filed with the City Clerk shall be the effective date of the renewal, which the City has assigned “PWA 12-36”.

B. Should the Grantee fail to file the Statement of Acceptance with the City Clerk within 30 days after the effective Date of the ordinance approving the Amendatory Renewal, said renewal and corresponding agreement will automatically terminate and shall be null and void.

Section 4. Implementation The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 5. Severability The provisions of this resolution are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this resolution, or the validity of its application to other persons or circumstances.

Section 6. Effective date This Resolution shall be in full force and effect upon passage and signatures hereon.

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PWA 12-36
November 13, 2012
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Dated and Signed this ____ day of _____, 2012.

CITY OF AUBURN

Peter B. Lewis
Mayor

ATTEST:

Danielle Daskam

APPROVED AS TO FORM:

Daniel B. Heid
City Attorney

RESOLUTION NO. 4 2 9 8

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A PUBLIC WAY AGREEMENT BETWEEN THE CITY OF AUBURN AND OLYMPIC PIPE LINE COMPANY, INC.

WHEREAS, Olympic Pipe Line Company Inc. has applied to the City for a non-exclusive Public Way Agreement for the right of entry, use, and occupation of certain public rights-of-way within the City of Auburn, expressly to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, upon, along and/or across those right(s)-of-way; and

WHEREAS, on February 4, 2008, the Auburn City Council conducted a public hearing to take public comments on Olympic Pipe Line Company's application; and

WHEREAS, the City has reviewed Olympic Pipe Line Company's application and the information received at the public hearing and has determined that the location of Olympic Pipe Line Company's facilities within the requested rights-of-way is in the best interest of the City and the citizens of Auburn,

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

Resolution No. 4298
January 8, 2008
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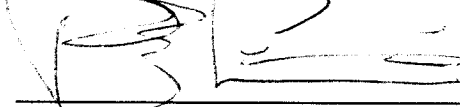
Section 1. The Mayor of the City of Auburn and the Auburn City Clerk are hereby authorized to execute a Public Way Agreement between the City of Auburn and Olympic Pipe Line Company Inc. which agreement shall be in substantial conformity with the Agreement a copy of which is attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

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

Section 3. This resolution shall be in full force and effect upon passage and signatures hereon.

Dated and Signed this 4th day of February, 2008.

CITY OF AUBURN



PETER B. LEWIS
MAYOR


ATTEST:



Danielle E. Daskam, City Clerk

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January 8, 2008
Page 2 of 3

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

Resolution No. 4298
January 8, 2008
Page 3 of 3

CITY OF AUBURN PUBLIC WAY AGREEMENT WITH
OLYMPIC PIPE LINE COMPANY

This Public Way Agreement is entered into by and between the City of Auburn, Washington, a municipal corporation ("City") and Olympic Pipe Line Company, a Delaware corporation ("Grantee").

WHEREAS, Grantee has applied to the City for a non-exclusive Public Way Agreement for the right of entry, use, and occupation of certain public right(s)-of-way within the City of Auburn, expressly to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, upon, along and/or across those right(s)-of-way; and

WHEREAS, the City has reviewed the Grantee's application and determined that the location of Grantee's facilities within the requested right(s)-of-way is in the best interest of the City and the citizens of Auburn,

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the parties hereto agree as follows:

Section 1. Notice

A. Written notices to the parties shall be sent by certified mail to the following addresses, unless a different address shall be designated in writing and delivered to the other party.

City: Right-of-Way Manager
City of Auburn
25 West Main Street
Auburn, WA 98001-4998
Telephone: (253) 931-3010; Fax: (253) 931-3048

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

Grantee: Olympic Pipe Line Company
Attention: Right-of-Way Department
2319 Lind Avenue
Renton, WA 98055

B. Any changes to the above-stated Grantee information shall be sent to the City's Right-of-Way Manager, with copies to the City Clerk, referencing the title of this agreement.

C. The above-stated Grantee voice and fax telephone numbers shall be staffed at least during normal business hours of 8 AM to 5 PM Pacific Standard time.

Section 2. Grant of Right to Use Public Way

A. Subject to the terms and conditions stated herein, the City grants to the Grantee general permission to enter, use, and occupy the right(s)-of-way and other City-owned property specified in Exhibit "A," attached hereto and incorporated by reference (the "Public Way").

B. The Grantee is authorized to install, remove, construct, erect, operate, maintain, relocate and repair the facilities specified in Exhibit "B," attached hereto and incorporated by reference, and all necessary appurtenances thereto, ("Grantee Facilities") for provision of the services specified in Exhibit "B" ("Grantee Services") in, along, under and across the Public Way, for the sole purpose of providing Grantee Services to persons or areas outside the City.

C. This Public Way Agreement does not authorize the use of the Public Way for any facilities or services other than Grantee Facilities and Grantee Services, and it extends no rights or privilege relative to any facilities or services of any type, including Grantee Facilities and Grantee Services, elsewhere within the City.

D. This Public Way Agreement is non-exclusive and does not prohibit the City from entering into other agreements, including Public Way Agreements, impacting the Public Way, unless the City determines that entering into such agreements interferes with Grantee's right set forth herein.

E. Except as explicitly set forth herein, this Public Way Agreement does not waive any rights that the City has or may hereafter acquire with respect to the Public Way or any other City roads, rights-of-way, property, or any portions thereof. This Public Way Agreement shall be subject to the power of eminent domain.

F. The City reserves the right to change, regrade, relocate, abandon, or vacate the Public Way. If, at any time during the term of this Public Way Agreement, the City vacates any portion of the Public Way, the City shall reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which the Grantee may continue to operate the Grantee

Facilities under the terms of this Public Way Agreement for the remaining period set forth under Section 3.

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

H. Should the Grantee seek to use the Public Way to provide services, including Grantee Services, to City residents or businesses, the Grantee shall apply for, obtain, and comply with the terms of a City franchise agreement for such use.

Section 3. Term of Agreement

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

Section 4. Definitions

For the purpose of this agreement:

"ACC" means the Auburn City Code.

"Construct or Construction" means removing, replacing, and repairing existing pipeline(s) and/or Facilities and may include, but is not limited to, digging and/or excavating for the purposes of removing, replacing, and repairing existing pipeline(s) and/or Facilities.

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

"Environmental Laws" means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D RCW all as amended from time to time; and any other valid and applicable federal, state, or local statute, code, or

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PUBLIC WAY AGREEMENT
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ordinance or valid and applicable federal or state administrative rule, regulation, ordinance, order, decree, or other valid and applicable governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment.

“Hazardous Substance” means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant, including all substances designated under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. § 136 et seq.; the Washington Hazardous Waste management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D, RCW; all as amended from time to time; and any other federal, state, or local statute, code or ordinance or lawful rule, regulation, order, decree, or other governmental authority as now or at any time hereafter in effect. The term shall specifically include Petroleum and Petroleum Products. The term shall also be interpreted to include any substance which, after release into the environment, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities.

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

“Petroleum or Petroleum Products” shall include, but is not limited to, motor gasoline, diesel fuel, and aviation jet fuel, and shall exclude natural gas.

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

“Rights-of-Way” means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-ways and similar public properties and areas.

Section 5. Acceptance of Public Way Agreement

A. This Public Way Agreement, and any rights granted hereunder, shall not become effective for any purpose unless and until Grantee files with the City Clerk (1) the Statement of Acceptance, attached hereto as Exhibit “C,” and incorporated by reference, (2) all verifications of insurance coverage specified

Version Date: 2/4/08
PUBLIC WAY AGREEMENT
Page 4

under Section 15, and (3) the financial guarantees specified in Section 16 (collectively, "Public Way Acceptance"). The date that such Public Way Acceptance is filed with the City Clerk shall be the effective date of this Public Way Agreement.

B. Should the Grantee fail to file the Public Way Acceptance with the City Clerk within 30 days after the effective date of the resolution approving the Public Way Agreement, said agreement will automatically terminate and shall be null and void.

C. The Grantee acknowledges and warrants by acceptance of the rights and privileges granted herein, that it has carefully read and fully comprehends the terms and conditions of this Public Way Agreement and is willing to and does accept all reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Public Way Agreement, and believes that the same are consistent with all local, state and federal laws and regulations currently in effect, including the Federal Pipeline Safety Act (49 U.S.C. 60101 et seq.) and the Pipeline Safety Code of Federal Regulations (Title 49 CFR Part 186-199). If in the future the Grantee becomes aware that a provision of this Public Way Agreement may be unlawful or invalid, it will not use such potential invalidity to unilaterally ignore or avoid such provision. Instead, the Grantee will promptly advise the City of the potential invalidity or illegality, and the parties will meet within thirty (30) days and endeavor jointly to cure the invalidity or illegality.

Section 6. Construction and Maintenance

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

B. Grantee agrees to coordinate its activities with the City and all other utilities located within the Public Way.

C. The City expressly reserves the right to exercise its police powers to regulate the manner in which Grantee may perform excavation or other work within the Public Way and may from time to time, pursuant to the applicable sections of this Public Way Agreement, require the removal, relocation and/or replacement thereof in the public interest and safety at the expense of the Grantee, provided such exercise shall not be in conflict with Federal regulations 49 CFR Part 195.

D. Before commencing any work within the Public Way, the Grantee shall comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.

E. Within thirty (30) days of completing any work within the Public Way, the Grantee shall provide updated and corrected as-built drawings and a survey showing the location, depth and other characteristics of the Grantee Facilities within the Public Way Agreement Area.

F. Nothing in this Public Way Agreement shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Grantee's plans and designs or to ascertain whether Grantee's proposed or actual construction, testing, maintenance, repairs, replacement or removal is adequate or sufficient or in conformance with the plans and specifications reviewed by the City.

Section 7. Repair and Emergency Work

A. In the event of an emergency, the Grantee may commence such repair and emergency response work as required under the circumstances, provided that the Grantee shall immediately notify the Valley Regional Fire Authority of the situation by means of a call to the 911 dispatch system. Grantee shall also notify the City Right-of-Way Manager in writing as promptly as possible, before such repair or emergency work commences, or as soon thereafter as possible, if advance notice is not practicable. The City may act, at any time, without prior written notice in the case of emergency, but shall notify the Grantee as promptly as possible under the circumstances.

B. Grantee agrees to provide the Valley Regional Fire Authority and the City Office of Emergency Management, on request, information regarding Grantee's Facilities and Emergency Response Planning.

Section 8. Damages to City and Third-Party Property

Grantee agrees that should any of its actions under this Public Way Agreement impairs or damages any City property, survey monument, or property owned by a third-party, Grantee will restore, at its own cost and expense, said property to a safe condition. Such repair work shall be promptly performed and completed to the satisfaction of the City Engineer.

Section 9. Location Preference

A. Any structure, equipment, appurtenance or tangible property of a privately-owned utility, other than the Grantee's, which was installed, constructed, completed or in place prior in time to Grantee's application for a permit to construct

or repair Grantee Facilities under this Public Way Agreement shall have preference as to positioning and location with respect to the Grantee Facilities. However, to the extent that the Grantee Facilities are completed and installed prior to new or additional structures, equipment, appurtenances or tangible property of an earlier privately-owned utility being installed or completed, then the Grantee Facilities shall have priority. These rules governing preference shall continue in the event of the necessity of relocating or changing the grade of any such City road or right-of-way. A relocating utility shall not necessitate the relocation of another utility that otherwise would not require relocation. This Section shall not apply to any City facilities or utilities that may in the future require the relocation of Grantee Facilities. Such relocations shall be governed by Section 11.

B. Grantee shall locate its pipeline in accordance with federal pipeline regulations, and shall maintain spacing from water pipes and other utilities as required under 49 CFR 195.250.

Section 10. Grantee Information

A. Grantee agrees to supply, at no cost to the City, reasonable information regarding the location and general description of Grantee's Facilities within the City to the Director of Public Works, or Right-of-Way Manager. Said information shall include, at a minimum; as-built drawings of Grantee Facilities; installation inventory; and maps and plans showing the location of existing or planned facilities within the City. Said information may be requested either in hard copy and/or electronic format, compatible with the City's data base system, as now or hereinafter existing, including the City's geographic information Service (GIS) data base. Grantee shall keep the Right-of-Way Manager informed of its long-range plans for coordination with the City's long-range plans.

B. The parties understand that Washington law limits the ability of the City to shield from public disclosure any information given to the City. Accordingly, the parties agree to work together to avoid disclosures of information which would result in economic loss or damage to Grantee because of mandatory disclosure requirements to third persons. The City shall give Grantee reasonable notice of public records requests for Grantee documents, and Grantee shall indemnify and hold harmless the City for any loss or liability for costs for attorneys fees because of non-disclosures requested by Grantee or enjoined by a court pursuant to a motion brought by the Grantee under Washington's open public records law.

Section 11. Relocation, of Grantee Facilities

A. Except as otherwise so required by law, Grantee agrees to relocate, remove, or reroute its facilities at its sole expense and liability and at no expense or liability to the City, or as further provided by Title 20 ACC, as ordered

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PUBLIC WAY AGREEMENT
Page 7

by the City Engineer, and upon three hundred sixty (360) days written notice from the City. Pursuant to the provisions of Section 14, Grantee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change, relocation, abandonment, or vacation of the Public Way.

B. In the event that the Public Way shall become a Primary State Highway as provided by law, the State Department of Transportation may order the Grantee to perform or undertake, at its sole expense, changes to the location of Grantee Facilities so that the same shall not interfere with such state highway and so that such facilities shall conform to such new grades or routes as may be established.

C. If a readjustment or relocation of the Grantee Facilities is necessitated by a request from a party other than the City, that party shall pay the Grantee the actual costs thereof. However, in the event the City reasonably determines and notifies the Grantee that the primary purpose for requiring such changes to or relocation of the Grantee's facilities by a third party is to cause or facilitate the construction of an Improvement Project consistent with the City Capital Investment Plan, Transportation Improvement Program, or the Transportation Facilities Program, or other similar plan, then the Grantee shall change or otherwise relocate its Facilities at Grantee's sole cost, expense and risk.

Section 12. Abandonment and or Removal of Grantee Facilities

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

B. In the event of the abandonment, relocation, or removal of all or a portion of the pipeline(s) or Facilities, Grantee shall, at its own cost, restore the Public Way to as good or better condition as it was in before the work began.

C. If the City and the Grantee agree that all or a portion of the Grantee Facilities should be abandoned in place, the Grantee may purge its Facilities and abandon them in place.

D. Grantee shall be responsible for the preparation and cost of any environmental review required for the abandonment, relocation, or removal of Grantee Facilities. The City's consent to the abandonment of Grantee Facilities in place shall not relieve the Grantee of the obligation and costs to remove or to alter such Facilities in the future in the event the City or other governmental entity with authority over the Grantee Facilities reasonably determines that

removal or alterations is necessary or advisable for the health and safety of the public.

E. The parties expressly agree that this Section shall survive the expiration, revocation or termination of this Public Way Agreement.

Section 13. Undergrounding

This Section intentionally left blank.

Section 14. Indemnification and Hold Harmless

A. The Grantee shall defend, indemnify, and hold the City and its officers, officials, agents, employees, and volunteers harmless from any and all costs, claims, injuries, damages, losses, suits, or liabilities of any nature including attorneys' fees arising out of or in connection with the Grantee's performance under this Public Way Agreement, except to the extent such costs, claims, injuries, damages, losses, suits, or liabilities are caused by the negligence of the City.

B. The Grantee shall hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee Facilities caused by maintenance and/or construction work performed by, or on behalf of, the City within the Public Way or any other City road, right-of-way, or other property, except to the extent any such damage or loss is directly caused by the negligence of the City, or its agent performing such work.

C. The indemnification set forth in Section 14(A), shall include costs, claims, injuries, damages, losses, suits, or liabilities arising from (a) Grantee's violation of any Environmental Laws applicable to the Facilities or (b) from any release of a Hazardous Substance on or from the Facilities. This indemnity includes but is not limited to (a) liability for a governmental agency's costs of removal or remedial action for Hazardous Substances; (b) damages to natural resources caused by Hazardous Substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to Hazardous Substances; and (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any Environmental Laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

D. The Grantee acknowledges that neither the City nor any other public agency with responsibility for fire fighting, emergency rescue, public safety or similar duties within the City has the capability to provide trench, close trench or confined space rescue. The Grantee, and its agents, assigns, successors, or contractors, shall make such arrangements as Grantee deems fit for the provision of such services. The Grantee shall hold the City harmless from any

liability arising out of or in connection with any damage or loss to the Grantee for the City's failure or inability to provide such services, and, pursuant to the terms of Section 14(A), the Grantee shall indemnify the City against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities based on the City's failure or inability to provide such services.

E. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the City, its officers, officials, employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the City's and Grantee's waivers of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of the indemnifications set forth in this Section 14. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

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

Section 15. Insurance

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

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a minimum combined single limit for bodily injury and property damage of \$2,000,000 per accident. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance with limits no less than \$100,000,000 each occurrence, \$100,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit. Coverage shall be written on ISO occurrence form CG 00 01 or equivalent and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal injury and advertising injury and liability assumed under an insured contract. Aggregate limit of \$100,000,000 can be satisfied by Excess Liability. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or

underground property damage. The City shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect to the work performed under this Public Way Agreement using ISO Additional Insured Endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. Employer's Liability \$2,000,000 per occurrence (Stop Gap Liability included in Employer's Liability.)

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

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

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

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

D. Verification of Coverage. Grantee shall furnish the City with original certificates and a copy of amendatory endorsements, including but not necessarily limited to the additional insured endorsement or equivalent, evidencing the insurance requirements of the Consultant before commencement of the work.

E. Any deductibles shall be the sole responsibility of the Grantee. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability.

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

G. Section 14, Indemnification and Hold Harmless, and this Section 15, Insurance, shall survive the termination of this Agreement and shall continue

for as long as Grantee Facilities remain operating in the Public Way or until a new Public Way Agreement supersedes this Agreement.

Section 16. Performance Security

Pursuant to ACC Chapter 20.10, the Grantee shall provide the City with a security bond as specified in ACC Section 20.10.250, in a form and substance acceptable to the City, securing the Grantee's faithful compliance with the terms of this Public Way Agreement. Such guarantees shall be in the amount of fifty thousand dollars (\$50,000.00).

Section 17. Successors and Assignees

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

B. This public way agreement shall not be leased, assigned or otherwise alienated without the express consent of the City by resolution, which approval shall not be unreasonably withheld.

C. Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than 120 days prior to the proposed date of transfer: (a) Complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (b) All information required by the City of an applicant for a Public Way Agreement with respect to the proposed assignee or transferee; and, (c) An application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

Section 18. Dispute Resolution

A. In the event of a dispute between the City and the Grantee arising by reason of this Agreement, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Grantee to have oversight over the administration of this Agreement. The officers or representatives shall meet within fifteen (15) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute.

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

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

Section 19. Enforcement and Remedies

A. If the Grantee shall willfully violate, or fail to comply with any of the provisions of this Public Way Agreement through willful intent or gross negligence, or should it fail to heed or comply with any notice given to Grantee under the provisions of this agreement, the City may, at its discretion, provide Grantee with written notice to cure the breach within thirty (30) days of notification. If the City determines the breach cannot be cured within thirty days, the City may specify a longer cure period, and condition the extension of time on Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Grantee does not comply with the specified conditions, the Grantee, and its successors or assignees, shall forfeit all rights conferred hereunder, and the Public Way Agreement may be revoked or annulled by the City with no further notification.

B. Should the City determine that Grantee is acting beyond the scope of permission granted herein for Grantee Facilities and Grantee Services, the City reserves the right to cancel this Public Way Agreement upon thirty days (30) written notice to Grantee and require the Grantee to apply for, obtain, and comply with all applicable City permits, franchises, or other City permissions for such actions, and if the Grantee's actions are not allowed under the Auburn City Code, to compel Grantee to cease such actions.

Section 20. Compliance with Laws and Regulations

A. This Public Way Agreement is subject to, and the Grantee shall comply with all applicable federal and state or City laws, regulations and policies (including all applicable elements of the City's comprehensive plan), in conformance with federal laws and regulations, affecting performance under this Public Way Agreement. Furthermore, notwithstanding any other terms of this agreement appearing to the contrary, the Grantee shall be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Public Way, provided that said ordinances are not in conflict with federal pipeline safety regulations.

Version Date: 2/4/08
PUBLIC WAY AGREEMENT
Page 13

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

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

Section 21. License, Tax and Other Charges

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

Section 22. Consequential Damages Limitation

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

Section 23. Severability


If any portion of this Public Way Agreement is deemed invalid, the remainder portions shall remain in effect.

Section 24. Titles

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

DATED and SIGNED this 21st day of February, 2008.

CITY OF AUBURN

A handwritten signature in black ink, appearing to read "P. B. Lewis", written over a horizontal line.

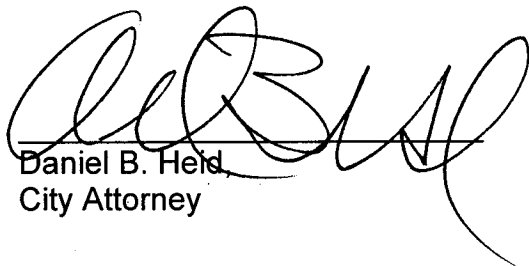
PETER B. LEWIS
MAYOR

ATTEST:

A handwritten signature in black ink, appearing to read "Danielle E. Daskam", written over a horizontal line.

Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "Daniel B. Heid", written over a horizontal line.

Daniel B. Heid,
City Attorney



(WITH LAND PARCEL)

Legend

- Hand valve
 - Intersection Point
 - Mainline pipeline
 - School
 - Road
 - Hydro
 - City name
 - Mileposts
 - Indian Reserv. Bdry.
 - Wash-Ore.. Parcel
 - Auburn boundary
- Mile Post

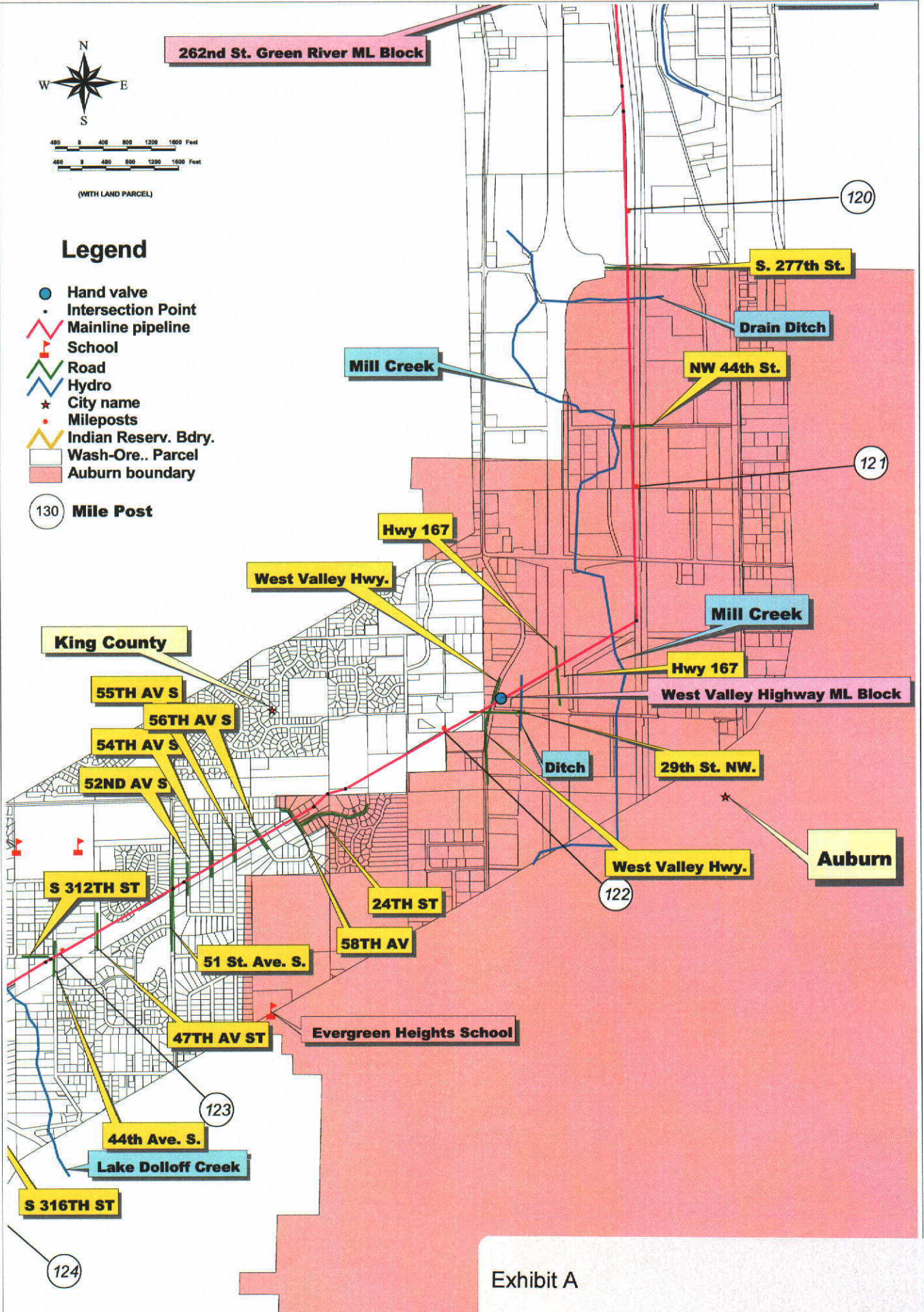


Exhibit A

EXHIBIT B

A 14 inch diameter pipeline for the interstate transportation of petroleum products.

No local service is provided.

The pipeline location is shown in Exhibit A.

EXHIBIT "C"

STATEMENT OF ACCEPTANCE

Olympic Pipe Line Company, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Public Way Agreement attached hereto and incorporated herein by this reference.

OLYMPIC PIPE LINE COMPANY

By: Steven E. Mauding Date: 2-26-08
Name: Steven E. Mauding
Title: Vice President

STATE OF)
)ss.
COUNTY OF)

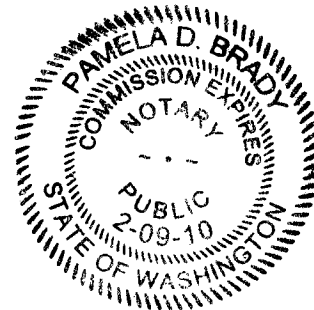
On this 26 day of February, 2008, before me the undersigned, a Notary Public in and for the State of WA, duly commissioned and sworn, personally appeared, Steven E. Mauding of Olympic Pipe Line Company, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

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

Pamela D. Brady
Signature

Pamela D. Brady
NOTARY PUBLIC in and for the State of
WA, residing at Seattle, WA

MY COMMISSION EXPIRES: 2/09/10





AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 4890

Date:

December 10, 2012

Department:

Public Works

Attachments:

[Resolution No. 4890](#)

[Budget Status Sheet](#)

[Vicinity Map](#)

Budget Impact:

\$0

Administrative Recommendation:

Public Works Committee recommend City Council adopt Resolution No. 4890.

Background Summary:

The span wire traffic signal located at 15th St SW and West Valley Highway was damaged in a traffic collision. Interim repairs were completed to maintain the safety and operations of the intersection while staff completed the engineering design for the final repairs. The work includes replacing the two damaged traffic signal poles and all associated wiring improvements.

The bid opening was held on December 12, 2012 which did not allow enough time for staff to complete the bid tabulation and contractor verification prior to the Committee meeting; therefore, staff is requesting authorization for the Mayor to award this contract to the lowest responsible bidder to avoid delay of the project.

A budget adjustment may be necessary to move unexpended funds from 2012 to the 2013 budget.

Reviewed by Council Committees:

Finance, Public Works

Councilmember: Wagner

Staff: Para

Meeting Date: December 17, 2012

Item Number: RES.B

RESOLUTION NO. 4890

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO AWARD AND EXECUTE AN AGREEMENT WITH THE LOWEST RESPONSIBLE BIDDER FOR CONSTRUCTION OF SMALL PUBLIC WORKS CONTRACT NUMBER 12-22 FOR PROJECT MS1203, 15TH ST SW AND WEST VALLEY HIGHWAY SIGNAL #128 REPAIRS.

WHEREAS, the City Council of the City of Auburn has approved a project to repair the signal at 15th St SW and West Valley Highway, and

WHEREAS, a project Bid Opening for the construction of the roadway took place on December 12, 2012 which did not allow enough time for staff to complete the bid verification prior to the City Council meeting; and

WHEREAS, waiting to award the construction contract until the next regularly scheduled meeting would result in a three week delay of the construction start date; and

WHEREAS, the City of Auburn Public Works Department will assess the bids received and identify the Lowest Responsible Bidder; and

WHEREAS, it is in the public interest to award and execute public works construction contract 12-22, with all expediency to complete the permanent repairs.

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

Section 1. The Mayor of the City of Auburn is hereby authorized to review bids, award, and execute an Agreement between the City of Auburn and the Lowest

Responsible Bidder for Project Number MS1203, Public Works Contract Number 12-22, 15th St SW and West Valley Highway signal #128 repairs, which agreement shall conform with the Bid Documents, provided that the bid amount does not exceed the project budget.

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

Section 3. This resolution shall be in full force and effect upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 2012.

CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

Resolution No. 4890
December 10, 2012
Page 2 of 2

BUDGET STATUS SHEET

Project No: MS1203 **Project Title:** 15th ST SW and West Valley Hwy Signal# 128 Repairs

Project Manager: Scott Nutter

Advertisement Date: _11/28/12_

Award Date: _____

- Initiation/Consultant Agreement
- Permission to Advertise
- Contract Award
- Change Order Approval
- Contract Final Acceptance

Date: Dec 10, 2012

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

Funds Budgeted (Funds Available)

Funding	Prior Years	2012	Future Years	Total
General Fund - Engineering 48 Repairs and Maint		60,000 0		60,000 0
Total	0	60,000	0	60,000

Estimated Cost (Funds Needed)

Activity	Prior Years	2012	Future Years	Total
Design Engineering - City Costs**		0		0
Construction Estimate		50,000		50,000
Authorized Contingency (20%)		10,000		10,000
Construction Engineering - City Costs**		0		0
Total	0	60,000	0	60,000

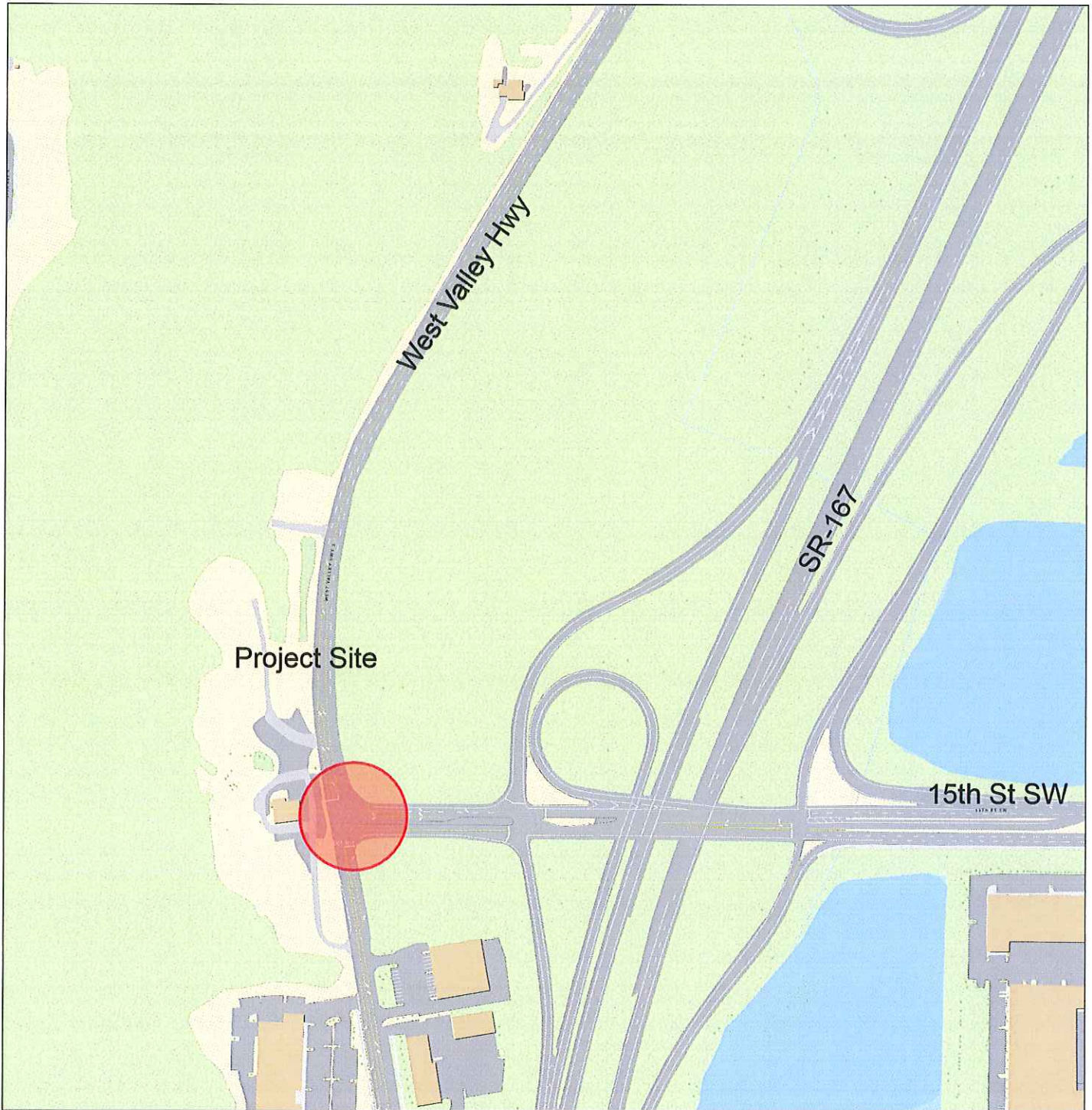
** Costs for City staff time are charged against the Engineering General Fund Budget

001 Engineering General Fund Budget Status

	Prior Years	2012	Future Years	Total
*001 Funds Budgeted ()	0	(60,000)	0	(60,000)
001 Funds Needed	0	60,000	0	60,000
*001 Fund Project Contingency ()	0	0	0	0
001 Funds Required	0	0	0	0

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

15th St SW & W Valley Hwy Signal #128 Repairs



Printed Date:12/10/2012
Map Created by City of Auburn eGIS

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





AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 4891

Date:

December 10, 2012

Department:

Public Works

Attachments:

[Resolution No. 4891](#)

[Vicinity Map](#)

Budget Impact:

\$0

Administrative Recommendation:

Public Works Committee recommend that City Council adopt Resolution No. 4891.

Background Summary:

The City received a state funded grant through the Washington State Transportation Improvement Board in the amount of \$450,000 to design and construct improvements to Auburn Way South (AWS) and M St/17th St SE intersection.

The grant will fund design and construction of the following improvements:

1. Add a right turn pocket for westbound to northbound AWS traffic;
2. Improve the curb radius;
3. Complete necessary traffic signal modifications at AWS & M St;
4. Construct new street lights at the intersection of AWS and M St and on the north side of AWS between M St SE and 17th St SE; and
5. Realign the intersection of 17th St SE at AWS.

Resolution No. 4891 authorizes the Mayor to accept a grant from the Washington State Transportation Improvement Board for improvements to the AWS and M St/17th St SE intersection.

Reviewed by Council Committees:

Finance, Public Works

Councilmember: Wagner

Staff: Truong

Meeting Date: December 17, 2012

Item Number: RES.C

RESOLUTION NO. 4 8 9 1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO ACCEPT A GRANT FROM THE WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD FOR THE AUBURN WAY SOUTH AND M STREET - 17th STREET SE INTERSECTION IMPROVEMENTS

WHEREAS, the City desires to improve traffic flow, reduce congestion, improve pedestrian access, improve lighting, traffic flow, sight distance, and geometric improvements at the intersection of Auburn Way South and M Street SE - 17th Street SE; and

WHEREAS, the need to improve the intersection of Auburn Way South and M Street SE is recognized in Auburn's adopted Six Year Transportation Improvement Program; and

WHEREAS, the City received a state grant through the Washington State Transportation Improvement Board in the amount of \$450,000.00 to finance the design, property acquisition and construction of improvements to the intersection of Auburn Way South and M Street - 17th Street SE; and

WHEREAS, it is in the best interest of the City to use Transportation Improvement Board grant monies to finance capital improvements to the transportation system.

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

Section 1. That the Mayor is hereby authorized to accept the Washington State Transportation Improvement Board grant for \$450,000.00 for the Auburn Way South and M Street - 17th Street SE intersection improvements.

Section 2. That the Mayor is authorized to implement such other administrative procedures as may be necessary to carry out the directives of this legislation. Including authorization for the Mayor to execute any necessary agreements required by the Washington State Transportation Improvement Board for the Project, expending up to the total amount of the grant of \$450,000.00.

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

Dated and Signed this _____ day of _____, 2012.

CITY OF AUBURN

PETER B. LEWIS
MAYOR

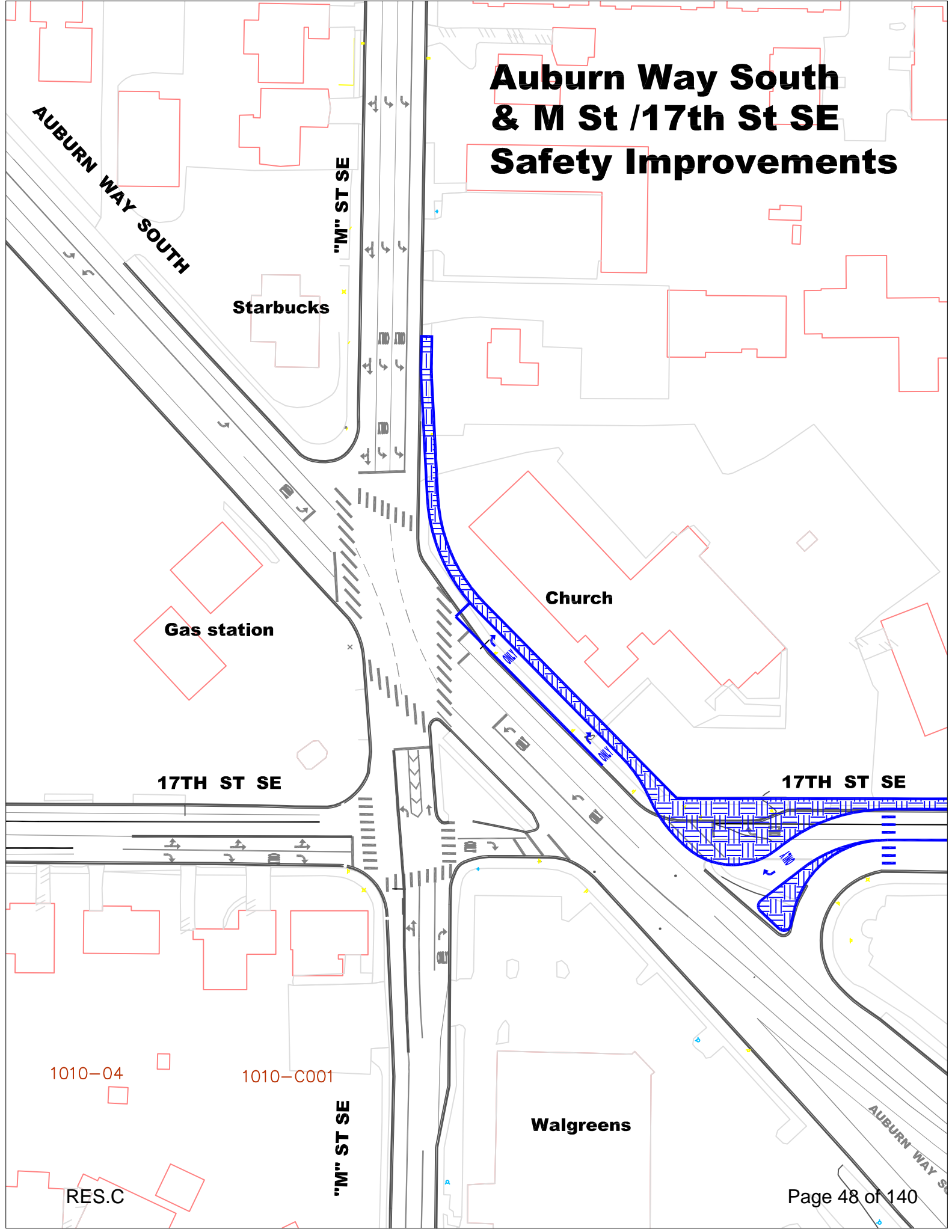
ATTEST:

Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM:

Daniel B. Heid,
City Attorney

Auburn Way South & M St /17th St SE Safety Improvements





AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 4887

Date:

December 11, 2012

Department:

Administration

Attachments:

[Res 4887](#)

Budget Impact:

\$0

Administrative Recommendation:

City Council to adopt Resolution No. 4887.

Background Summary:

Reviewed by Council Committees:

Finance, Public Works

Councilmember: Partridge

Staff: Lein

Meeting Date: December 17, 2012

Item Number: DI.A

RESOLUTION NO 4887

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE LEASE AGREEMENT BETWEEN THE CITY OF AUBURN AND CONGRESSMAN DAVE REICHERT, A MEMBER OF THE U S HOUSE OF REPRESENTATIVES

WHEREAS, the City owns office space property located at 2nd First Street Southeast in Auburn, Washington, and

WHEREAS, Congressman Dave Reichert, a member of the U S House of Representatives, desires to lease a part of suite A of the office property at a cost that is acceptable to the City

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

Section 1. The Mayor and the Auburn City Clerk are hereby authorized to execute a Lease Agreement between the City of Auburn and Congressman Dave Reichert, which lease shall be in substantial conformity with the District Office Lease Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

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

Section 3. This resolution shall be in full force and effect upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 20_____


CITY OF AUBURN

PETER B. LEWIS, MAYOR

ATTEST

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

District Office Lease – Instructions

NO LEASE OR ATTACHMENT CAN BE SIGNED BEFORE THEY HAVE BEEN APPROVED BY THE ADMINISTRATIVE COUNSEL.

The term for a District Office Lease for the 113th Congress may not commence prior to January 3, 2013.

Members should endeavor to lease space through the last day of a congressional term rather than the last day of a calendar year. For the 113th Congress, leases should end on January 2, 2015, not December 31, 2014.

- The preamble has three blank lines to be filled in: (1) Landlord's name; (2) Landlord's address; and (3) Member/Member-Elect's name.
- Section 1 has three blank lines to be filled in: (1) Square footage of office that is being leased (optional); (2) Street address of office being leased; and (3) City, state and ZIP code where office is being leased.
- Section 2 has four boxes that can be checked on whether any parking is included in the lease – two of the options each have a blank line to be filled in if the lease includes any assigned and/or unassigned parking spaces.
- Section 3 has two blank lines to be filled in: (1) Date lease begins (must be on or after January 3, 2013); and (2) Date lease ends (must be on or before January 2, 2015).
- Section 4 has one blank line for the monthly rent amount (write "zero" if no rent is to be paid).
- Section 5 has one blank line – the number of days' notice required for either party to terminate the lease before the end of the term. A standard period is 30 days, but any figure is acceptable. If the lease may not be terminated early, enter "N/A" in this blank.
- Sections 1–10, other than filling in the blanks, may not be altered or deleted.
- Section 11 has space provided to list any additional lease provisions.
- **Prior to either party signing a lease, the Member/ Member-Elect must submit the proposed lease, accompanied by a copy of the District Office Lease Attachment for the 113th Congress, to the Administrative Counsel for review and approval.** If the proposed terms and conditions of the lease are determined to be in compliance with applicable law and House Rules and Regulations, the Administrative Counsel will notify the Member/Member-Elect that (s)he may proceed with the signing of the lease. Please submit the proposed lease and District Office Lease Attachment either by e-mail in PDF form (leases@mail.house.gov) or fax (202-225-6999).
- **The Member/ Member-Elect is required to personally sign the documents. A signed and dated District Office Lease Attachment must accompany this lease.**
- Once signed by both parties, the Lease and the District Office Lease Attachment must be submitted to the Administrative Counsel for final approval. They may be sent by email in PDF form or faxed to 202-225-6999, but the originals still must be submitted by inter office mail (217 Ford House Office Building, Washington, D.C. 20515) after emailing or faxing.
- If approved, Administrative Counsel will send them to Finance so that payment can begin. If there are errors, you will be contacted and required to correct them before the lease is approved.

U.S. House of Representatives

Washington, D C. 20515

District Office Lease

(Page 1 of 2 – 113th Congress)

Pursuant to 2 U.S.C. § 57, and the Regulations of the Committee on House Administration (as modified from time to time by Committee Order) relating to office space in home districts, the City of Auburn, Washington, 25 W. Main Street, Auburn, WA 98001

(Landlord's name) Congressman Dave Reichert (Landlord's street address, city, state, ZIP code) Auburn, WA 98001 ("Lessor"), and a Member/Member-Elect of the U.S. House of Representatives ("Lessee"), agree as follows:

- 1. Location. Lessor shall lease to Lessee square feet of office space located at Part of Suite A, 2 1st Street SE (Office street address) Auburn, WA 98001 (Office city, state and ZIP)
2. Parking. The Lease includes (please check any and all that apply):
- parking spaces that are assigned
- parking spaces that are unassigned
- General off-street parking on an as available basis
- No off-street parking
3. Term. Lessee shall have and hold the leased premises for the period beginning January 3, 2013 and ending December 31, 2014. The term of this District Office Lease ("LEASE") may not exceed two years and may not extend beyond January 2, 2015, which is the end of the constitutional term of the Congress to which the Member is elected.
4. Rent. The monthly rent shall be \$75.00, and is payable in arrears on or before the last day of each calendar month. Rent payable under this LEASE shall be prorated on a daily basis for any fraction of a month of occupancy
5. Early Termination. This Lease may be terminated by either party giving 30 days prior written notice to the other party. The commencement date of such termination notice shall be the date such notice is delivered or, if mailed, the date such notice is postmarked.
6. Payments. During the term of this Lease, rent payments under Section 4 shall be remitted to the Lessor by the Chief Administrative Officer of the U.S. House of Representatives ("CAO") on behalf of the Lessee.
7. District Office Lease Attachment for 113th Congress. The District Office Lease Attachment attached hereto is incorporated herein by reference, and this Lease shall have no force or effect unless and until accompanied by an executed District Office Lease Attachment for the 113th Congress.
8. Counterparts. This Lease may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

U.S. House of Representatives

Washington, D.C. 20515

District Office Lease

(Page 2 of 2 – 113th Congress)

- 9. **Section Headings.** The section headings of this Lease are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.
- 10. **Modifications.** Any amendments, additions or modifications to this Lease inconsistent with Sections 1 through 9 above shall have no force or effect to the extent of such inconsistency
- 11. **Other** Additionally, the Lessor and the Lessee agree to the following:
City to pay all utilities except phone and internet/data. Tenant to be responsible for custodial services within the leased premises, and for expendables such as light bulbs, furnace or air filters.

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease as of the later date written below by the Lessor or the Lessee.

Peter B Lewis, Mayor

Print Name (Lessor/Landlord)

Print Name (Lessee)

Lessor Signature

Lessee Signature

Date

Date



This District Office Lease must be accompanied by an executed District Office Lease Attachment.

District Office Lease Attachment- Instructions

The District Office Lease Attachment (“Attachment”) is a four-page document that must accompany *every* Lease or District Office Lease Amendment (“Amendment”) that is submitted for a Member/Member-Elect’s District Office.

NO LEASE, AMENDMENT OR ATTACHMENT CAN BE SIGNED BEFORE THEY HAVE BEEN APPROVED BY THE ADMINISTRATIVE COUNSEL.

The term of a District Office Lease or Amendment for the 113th Congress may not commence prior to January 3, 2013.

Members should endeavor to lease space through the last day of a congressional term rather than the last day of a calendar year For the 113th Congress, leases should end on January 2, 2015, not December 31, 2014.

Four things are required:

1. The signature of the Landlord and date;
2. The signature of the Member/ Member-Elect of Congress and date;
3. Contact information for the person in the Member/ Member-Elect’s office whom we should call if there are any problems or questions (scheduler, etc.); and
4. The signature from the Office of the Administrative Counsel.

A few things to keep in mind:

- **The Member/ Member-Elect is required to personally sign the documents.**
- **The Attachment SHALL NOT have any provisions deleted or changed.**
- Even if rent is zero, an Attachment is still required.
- **Prior to either party signing a Lease or Amendment, the Member/ Member-Elect must submit the proposed Lease or Amendment, accompanied by a copy of the Attachment, to the Administrative Counsel for review and approval.** If the Administrative Counsel determines that the proposed terms and conditions of the Lease or Amendment are in compliance with applicable law and House Rules and Regulations, the Administrative Counsel will notify the Member/Member-Elect that (s)he may proceed with the execution of the Lease or Amendment. Please submit the proposed Lease or Amendment and Attachment either by e-mail in PDF form (leases@mail.house.gov) or by fax (202-225-6999).
- Once signed by both parties, the Lease or Amendment and the Attachment must be submitted to the Administrative Counsel for final approval. The Attachment should be submitted at the same time the Lease or Amendment is sent to the Administrative Counsel. They may be sent by email in PDF form or faxed to (202-225-6999), but the originals still must be submitted by interoffice mail (217 Ford House Office Building, Washington, D.C. 20515) after emailing or faxing.
- Without a properly signed and submitted Attachment, the Lease or Amendment cannot be approved and payments will not be made.
- The parties agree that any charges for default, early termination or cancellation of the Lease or Amendment which result from actions taken by or on behalf of the Lessee shall be the sole responsibility of the Lessee, and are not reimbursable from the Member’s Representational Allowance.

District Office Lease Attachment

(Page 1 of 4 – 113th Congress)

1. **Incorporated District Office Lease Attachment.** Lessor (Landlord) and Lessee (Member/Member-Elect of the U.S. House of Representatives) agree that this District Office Lease Attachment (“Attachment”) is incorporated into and made part of the Lease (“Lease”) and, if applicable, District Office Lease Amendment (“Amendment”) to which it is attached.
2. **Performance.** Lessor expressly acknowledges that neither the U.S. House of Representatives (“House”) nor its Officers are liable for the performance of the Lease. Lessor further expressly acknowledges that payments made by the Chief Administrative Officer of the House (“CAO”) to Lessor to satisfy Lessee’s rent obligations under the Lease – which payments are made solely on behalf of Lessee in support of his/her official and representational duties as a Member of the House – shall create no legal obligation or liability on the part of the CAO or the House whatsoever. Lessee shall be solely responsible for the performance of the Lease and Lessor expressly agrees to look solely to Lessee for such performance.
3. **Modifications.** Any amendment to the Lease must be in writing and signed by the Lessor and Lessee. Lessor and Lessee also understand and acknowledge that the Administrative Counsel for the CAO (“Administrative Counsel”) must review and give approval of any amendment to the Lease prior to its execution.
4. **Compliance with House Rules and Regulations.** Lessor and Lessee understand and acknowledge that the Lease shall not be valid, and the CAO will not authorize the disbursement of funds to the Lessor, until the Administrative Counsel has reviewed the Lease to determine that it complies with the Rules of the House and the Regulations of the Committee on House Administration, and approved the Lease by signing on page 4 of this Attachment.
5. **Payments.** The Lease is a fixed term lease with monthly installments for which payment is due in arrears on or before the end of each calendar month. In the event of a payment dispute, Lessor agrees to contact the Office of Finance of the House at 202-225-7474 to attempt to resolve the dispute before contacting Lessee.
6. **Void Provisions.** Any provision in the Lease purporting to require the payment of a security deposit shall have no force or effect. Furthermore, any provision in the Lease purporting to vary the dollar amount of the rent specified in the Lease by any cost of living clause, operating expense clause, pro rata expense clause, escalation clause, or any other adjustment or measure during the term of the Lease shall have no force or effect.
7. **Certain Charges.** The parties agree that any charge for default, early termination or cancellation of the Lease which results from actions taken by or on behalf of the Lessee shall be the sole responsibility of the Lessee, and shall not be paid by the CAO on behalf of the Lessee.
8. **Death, Resignation or Removal.** In the event Lessee dies, resigns or is removed from office during the term of the Lease, the Clerk of the House may, at his or her sole option, either: (a) terminate the Lease by giving thirty (30) days prior written notice to Lessor; or (b) assume the obligation of the Lease and continue to occupy the premises for a period not to exceed sixty (60) days following the certification of the election of the Lessee’s successor. In the event the Clerk elects to terminate the Lease, the commencement date of such thirty (30) day termination notice shall be the date such notice is delivered to the Lessor or, if mailed, the date on which such notice is postmarked.

District Office Lease Attachment

(Page 2 of 4 – 113th Congress)

9. **Term.** The term of the Lease may not exceed the constitutional term of the Congress to which the Lessee has been elected. The Lease may be signed by the Member-Elect before taking office. Should the Member-Elect not take office to serve as a Member of the 113th Congress, the Lease will be considered null and void.
10. **Early Termination.** If either Lessor or Lessee terminates the Lease under the terms of the Lease, the terminating party agrees to promptly file a copy of any termination notice with the Office of Finance, U.S. House of Representatives, B-245 Longworth House Office Building, Washington, D.C. 20515, and with the Administrative Counsel, Office of the Chief Administrative Officer, U.S. House of Representatives, 217 Ford House Office Building, Washington, D.C. 20515.
11. **Notification upon Occurrence of Certain Events.** Lessor agrees to promptly notify Lessee in writing in the event Lessor sells, transfers, or otherwise disposes of the leased premises; in the event Lessor is placed in bankruptcy proceedings (whether voluntarily or involuntarily); in the event the leased premises is foreclosed upon; or in the event of any similar occurrence. Lessee shall promptly file a copy of any such notice with the Office of Finance, U.S. House of Representatives, B-245 Longworth House Office Building, Washington, D.C. 20515.
12. **Estoppel Certificates.** Lessee agrees to sign an estoppel certificate relating to the leased premises (usually used in instances when the Lessor is selling or refinancing the building) upon the request of the Lessor. Such an estoppel certificate shall not require the review and approval of the Administrative Counsel.
13. **Maintenance of Common Areas.** Lessor agrees to maintain in good order, at its sole expense, all public and common areas of the building including, but not limited to, all sidewalks, parking areas, lobbies, elevators, escalators, entryways, exits, alleys and other like areas.
14. **Maintenance of Structural Components.** Lessor also agrees to maintain in good order, repair or replace as needed, at its sole expense, all structural and other components of the premises including, but not limited to, roofs, ceilings, walls (interior and exterior), floors, windows, doors, foundations, fixtures, and all mechanical, plumbing, electrical and air conditioning/heating systems or equipment (including window air conditioning units provided by the Lessor) serving the premises.
15. **Lessor Liability for Failure to Maintain.** Lessor shall be liable for any damage, either to persons or property sustained by Lessee or any of his or her employees or guests, caused by Lessor's failure to fulfill its obligations under Sections 13 and 14
16. **Initial Alterations.** Lessor shall make any initial alterations to the leased premises, as requested by Lessee and subject to Lessor's consent, which shall not be unreasonably withheld. The cost of such initial alterations shall be included in the annual rental rate.
17. **Federal Tort Claims Act.** Lessor agrees that the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80, satisfies any and all obligations on the part of the Lessee to purchase private liability insurance. Lessee shall not be required to provide any certificates of insurance to Lessor.

District Office Lease Attachment

(Page 3 of 4 – 113th Congress)

18. **Limitation of Liability** Lessor agrees that neither Lessee nor the House nor any of the House's officers or employees will indemnify or hold harmless Lessor against any liability of Lessor to any third party that may arise during or as a result of the Lease or Lessee's tenancy
19. **Compliance with Laws.** Lessor shall be solely responsible for complying with all applicable permitting and zoning ordinances or requirements, and with all local and state building codes, safety codes and handicap accessibility codes (including the Americans with Disabilities Act), both in the common areas of the building and the leased space of the Lessee.
20. **Electronic Funds Transfer** Lessor agrees to accept monthly rent payments by Electronic Funds Transfer and agrees to provide the Office of Finance, U.S. House of Representatives, with all banking information necessary to facilitate such payments.
21. **Refunds.** Lessor shall promptly refund to the CAO, without formal demand, any payment made to the Lessor by the CAO for any period for which rent is not owed because the Lease has ended or been terminated.
22. **Conflict.** Should any provision of this Attachment be inconsistent with any provision of the attached Lease or attached Amendment, the provisions of this Attachment shall control, and those inconsistent provisions of the Lease or the Amendment shall have no force and effect to the extent of such inconsistency
23. **Construction.** Unless the clear meaning requires otherwise, words of feminine, masculine or neuter gender include all other genders and, wherever appropriate, words in the singular include the plural and vice versa.
24. **Fair Market Value.** The Lease or Amendment is entered into at fair market value as the result of a bona fide, arms-length, marketplace transaction. The Lessor and Lessee certify that the parties are not relatives nor have had, or continue to have, a professional or legal relationship (except as a landlord and tenant).
25. **District Certification.** The Lessee certifies that the office space that is the subject of the Lease is located within the district the Lessee was elected to represent unless otherwise authorized by Regulations of the Committee on House Administration.
26. **Counterparts.** This Attachment may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
27. **Section Headings.** The section headings of this Attachment are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

[Signature page follows.]

District Office Lease Attachment

(Page 4 of 4 – 113th Congress)

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease Attachment as of the later date written below by the Lessor or the Lessee.

Peter B Lewis, Mayor

Print Name (Lessor)

Print Name (Lessee)

Lessor Signature

Lessee Signature

Date

Date

From the Member's Office, who is the point of contact for questions?

Name _____ Phone (____) _____ E-mail _____@mail.house.gov

This District Office Lease Attachment and the attached Lease or Amendment have been reviewed and are approved, pursuant to Regulations of the Committee on House Administration.

Signed _____ Date _____ 20____
(Administrative Counsel)

Send completed forms to: Administrative Counsel, 217 Ford House Office Building, Washington, D C. 20515
Copies may also be faxed to 202-225-6999



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 4892

Date:

December 10, 2012

Department:

Human Resources

Attachments:

[Resolution No. 4892](#)

[Public Defence Contract](#)

Budget Impact:

\$0

Administrative Recommendation:

City Council adopt Resolution No. 4892.

Background Summary:

The City shall make public defense services available to all persons who so qualify after application to and approval of the Court or an independent public defense screen or are in custody and directly appointed by the Court.

Reviewed by Council Committees:

Finance, Public Works

Councilmember: Partridge

Staff: Heineman

Meeting Date: December 17, 2012

Item Number: DI.B

RESOLUTION NO. 4892

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONTRACT FOR PUBLIC DEFENSE SERVICES FOR JANUARY 1, 2013 – JUNE 30, 2013 BETWEEN THE CITY AND THE LAW OFFICES OF MATTHEW J. RUSNAK

WHEREAS, the State legislature finds that effective legal representation should be provided for indigent persons consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where right to counsel attaches; and

WHEREAS, the City of Auburn Municipal Court presides over cases involving indigent persons and the City of Auburn provides Public Defense Services; and

WHEREAS, the City of Auburn desires to continue to contract its Public Defense Services; and

WHEREAS, it is fiscally responsible for the City of Auburn maintain its contract with the Law Offices of Matthew Rusnak; and

WHEREAS, the Law Offices of Matthew Rusnak is providing effective and efficient Public Defense Services for the City of Auburn.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Purpose. The City Council hereby authorizes the execution of the Agreement between the City of Auburn and THE LAW OFFICES OF MATTHEW J. RUSNAK, to execute a Contract for Public Defense Services for January 1, 2013 through June 30, 2013, in substantial conformity with the contract attached hereto and denominated as Exhibit "A" and incorporated herein by reference.

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

Section 3. This resolution shall be in full force and effect upon passage and signatures hereon.

DATED and SIGNED this _____ day of _____ 2012.

CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam
City Clerk

APPROVED AS TO FORM:

Daniel B. Heid
City Attorney

Resolution No. 4892
December 10, 2012
Page 3

**PUBLIC DEFENSE SERVICES CONTRACT
CITY OF AUBURN, WASHINGTON
JANUARY 1, 2013-June 30, 2013**

THIS AGREEMENT made and entered into by the City of Auburn, hereinafter referred to as "CITY," and The Law Offices of Matthew J Rusnak, hereinafter referred to as "PUBLIC DEFENDER," do hereby agree to the following terms and conditions.

I APPOINTMENT OF DEFENDANTS FOR PUBLIC DEFENSE SERVICES.

A. General:

1 The CITY shall make public defense services available to all persons who so qualify after application to and approval of the Court or an independent public defense screen or are in custody and directly appointed by the Court. The PUBLIC DEFENDER will provide legal representation for each of these defendants from court appointment or screening through trial, sentencing, post conviction review, and any appeals to Superior court or Washington appellate courts. The PUBLIC DEFENDER, or subcontractor of the PUBLIC DEFENDER, will provide defense services at daily in-custody bail hearings, will attend the arraignment calendar, and will be available, in person, to talk to and meet indigent defendants at the Auburn Detention Center, South Corrections Entity (SCORE), or other alternative locations. The PUBLIC DEFENDER will also provide representation for the Mental Health Court calendar and a Community calendar should one be established during the term of the contract.

2. The City shall be responsible for screening. Upon appointment, the screener shall immediately deliver to the PUBLIC DEFENDER the screener's document on each case that is assigned. The screener shall be responsible for delivering a letter of introduction, which has been provided by the PUBLIC DEFENDER to every defendant who qualifies for and is appointed to be represented by the PUBLIC DEFENDER.

C Reporting Procedures.

1 PUBLIC DEFENDER: The PUBLIC DEFENDER shall file monthly reports, with the CITY indicating the following: (1) the first, middle and last name of each defendant who has been appointed and a Notice of Appearance was filed, (2) date of appointment, criminal cause number(s) for the defendant; and (3) if the case was "conflicted" at any time during the process. Further, the report shall designate whether the defendant was appointed by the Court or by the screener. In addition, the PUBLIC DEFENDER shall provide a monthly report to the CITY showing all cases in which the defendant has been sentenced or acquitted. All reports are due to the CITY on the 1st

day of the month following the appointment and filing of the Notice of Appearance or case disposition, along with the invoice, based on actual case count.

2. The PUBLIC DEFENDER shall include in its monthly reports the case count information required by Section 16 of this Agreement.

II. RESPONSIBILITIES OF PUBLIC DEFENDER

A. The PUBLIC DEFENDER shall be responsible to provide competent professional legal services to the defendants represented. The PUBLIC DEFENDER shall employ and/or associate a sufficient number of attorneys and staff to provide such service. The CITY shall incur no extra cost for the employed and/or associated attorneys and staff. The PUBLIC DEFENDER and each attorney so employed and/or associated shall be an active member in good standing of the Washington State Bar Association. Any attorney employed and/or associated by the PUBLIC DEFENDER who does not have at least three (3) years of experience shall practice under the direct supervision of any attorney who does have three (3) years experience. Such experience shall include at least one-third emphasis on criminal defense.

B. Legal interns involved in the representation of defendants in court must have all of their work reviewed and/or countersigned by a supervising attorney. No legal intern shall have sole responsibility for administering and representing any of the defendants appointed and represented pursuant to the contract herein.

C. Case loads of the PUBLIC DEFENDER and any individual attorneys employed and/or associated therewith should be limited to that level of assignments which allows an attorney to give each defendant's case sufficient time and effort to ensure effective representation. On June 15, 2012, the Washington Supreme Court issued Order No. 25700-A-1004 ("Order"), adopting new standards for indigent defense, and certification of compliance. Section 3.1 of the Order requires that the CITY establish the maximum number of cases that each attorney will be expected to handle. The Order does not impose a specific or recommended case limit until October 2013. At that time, the Order suggests a guideline of four hundred (400) cases per attorney (if the CITY does not use a weighted case counting system). In order to determine a maximum number of cases, the CITY, in coordination with the PUBLIC DEFENDER, have reviewed the 2012 public defense case load to date. Based on that review, the CITY has determined that the following factor warrants an upward deviation from the proposed maximum unweighted case limit guideline:

1. The experience level of the staff at the PUBLIC DEFENDER'S office shows that each attorney has over 10 years of criminal defense experience. This allows them to more efficiently analyze charges, which in turn allows them to provide effective

advice to their clients. As a result, the experienced attorneys are capable of handling more cases while still providing effective representation

D All attorneys representing defendants pursuant to the contract herein shall comply with the following (1) attend at least an average of fifteen (15) hours of continuing legal education each year, of which at least an average of seven (7) hours shall be specifically related to criminal defense or trial practice, (2) have regular and routine review of their caseload with a supervising attorney to ensure that there is objective monitoring and evaluation of each attorney

III. SERVICES PROVIDED BY THE PUBLIC DEFENDER

A. Scope of Service

1 The PUBLIC DEFENDER shall represent each defendant from the date of appointment (or at in-custody hearings as the case may be), through sentencing and the first appeal of right pursuant to the RALJ rules. The PUBLIC DEFENDER or the CITY may request rescreening of a defendant whose case is on appeal. Appeals shall not be considered new case assignments. In addition, the PUBLIC DEFENDER shall be present at arraignment hearings on stand-by should a defendant request legal advice.

2. Case defined. A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. In courts of limited jurisdiction, multiple citations from the same incident can be counted as one (1) case, provided, that a case shall not exceed four (4) criminal counts on a maximum of two (2) criminal citations arising out of the same general course of conduct over a short period of time. Example a single person charged with three (3) different Driving While License Suspended charges would be counted as three (3) separate cases because the incidents necessarily took place at separate times. However, a single individual charged with Reckless Driving, DUI, Hit and Run (Attended) and Driving While License Suspended arising out of one incident (on two citations) would count as one (1) case.

3 Case Count: A case is counted where: (1) Pretrial: Each pretrial case is counted only once Irrespective of any subsequent reappointments pursuant to FTA. They will be counted at the time of first appointment. Cases subsequently conflicted, or where a private attorney is hired, will be noted on the next monthly report, but is not counted as a PUBLIC DEFENDER case, (2) Post trial convictions: Case where a defendant was previously represented by the PUBLIC DEFENDER, that were previously counted when they were in pretrial status, will not be counted unless they FTA at a post conviction hearing. Post conviction cases where defendants FTA and

Public Defender Contract
January 1 2013-June 30, 2013

subsequently reappointed to the PUBLIC DEFENDER will be counted again, however, this shall occur only once. No matter how many times a defendant FTA and the PUBLIC DEFENDER is reappointed when the case is in the post-conviction status, the case will be recounted only once. In the future, the PUBLIC DEFENDER agrees to complete representation for any client for which a Notice of Appearance has been filed, even if court proceedings continue beyond the date when a successor PUBLIC DEFENDER becomes responsible for public defense services. This does not include post conviction reviews.

4 The PUBLIC DEFENDER may associate or employ additional or different attorneys to represent defendants at no extra cost to the CITY. Any counsel associated with or employed by the PUBLIC DEFENDER shall have the authority to perform the services called for herein. All associated counsel hired pursuant to this section shall be admitted to practice pursuant to the rules of the Supreme Court of the State of Washington. Sufficient counsel shall be provided to represent defendants during vacation, illnesses, and settings in more than one (1) courtroom. No legal interns shall be used unless agreed to by the CITY in advance. No attorney shall handle more than six hundred (600) public defense cases annually during the term of this Agreement. This limit applies to the individual attorney for all courts in which the attorney practices.

The PUBLIC DEFENDER agrees to pay each subconsultant under this agreement for satisfactory performance of its contract no later than forty-five (45) days from the receipt of each payment the consultant receives from the CITY. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the CITY.

5 Conflict Cases: Both parties agree that cases will be conflicted only when a recognized conflict occurs (not a potential conflict). Upon discovery of an actual conflict with the representation of a specific defendant by the PUBLIC DEFENDER (as defined in the Rules of Professional Conduct), the PUBLIC DEFENDER shall immediately inform the CITY, the court, and the defendant in writing of the conflict by issuing a Notice of Intent to Withdraw. Only a partner in the PUBLIC DEFENDER'S firm will be permitted to make the final decision regarding whether a conflict actually exists. The PUBLIC DEFENDER will assist the City with a list of qualified law firms with which the CITY can contract for conflict public defense services. A minimum of four (4) conflict firms will be maintained on the list.

6 Upon receiving notice of a conflict of interest and agreeing thereto, it will be the CITY'S financial responsibility to pay alternative counsel to represent the defendant. The Court will rotate, in order, "conflicted" cases to each firm. However, if the CITY contests the Notice of Intent to Withdraw, then the CITY shall immediately file a note for motion regarding the propriety of the withdrawal and request that the court notify the defendant and the PUBLIC DEFENDER of the date, time, and nature of the

hearing. All parties shall be bound by the court's ruling or any appeal therefrom

7 Office appointments for the defendants appointed to the PUBLIC DEFENDER should be made available at least during regular business hours of 8:00 a.m. until 5:00 p.m., Monday through Friday. Office appointments should be made available, at an office located in the City of Auburn, within a reasonable distance from the municipal courthouse and on or near a public transportation service route. Appointments shall be available at the courthouse for defendants who are otherwise unable to obtain transportation to the PUBLIC DEFENDER'S office. Local non-service-charge phone service throughout the municipality shall be available as well as toll free and collect phone service from the CITY jail and the King County jails.

8 The PUBLIC DEFENDER will make every effort to coordinate cases with CITY prosecutors at least once per week, in advance of upcoming court dates.

9 The PUBLIC DEFENDER will be available for all calendars pursuant to the will of the court. Public Defense requirements would generally appear as follows. Jail is defined as either the SCORE facility or Auburn Detention facility. Staffing of SCORE requirements must ensure no calendar down time.

Day	Number of Lawyers	Comments
Monday (every other)	3	Motions & bench trials (1 in CR 1) & interpreter calendar (1 in CR 2 & 1 in Jail)
Monday (opposite)	As determined by PUBLIC DEFENDER	Jury trials
Tuesday	3	Pre-trial (3 in CR 1) then Jail (1)
Wednesday	2	In custody (2 in Jail)
Thursday (a.m.)	2	Arraignment (1 in CR 1 then 1 Jail)
Thursday (p.m.)	2	Review Calendars (1 in ea CR)
Friday (a.m.)	2	In custody (2 in Jail)
Friday (every other)	1	Readiness (1 in CR 2)
Friday p.m. (every other)	1	Probation review (1 in CR 2)

10 The PUBLIC DEFENDER shall provide to the City of Auburn Police Department and Auburn Detention Center the telephone number or numbers at which the PUBLIC DEFENDER can be reached twenty-four (24) hours each day for critical stage advice to defendants during the course of police investigations and/or arrests, as required by statute, case law, and applicable court rule in municipal misdemeanor cases.

11 The PUBLIC DEFENDER shall provide to the screener for dissemination to every represented defendant a letter in plain, simple, and concise language outlining the defendant's responsibilities with regard to the attorney-client relationship

12. The PUBLIC DEFENDER shall institute and maintain a procedure to review the defendants' complaints. Complaints, which are not immediately resolved by the PUBLIC DEFENDER, shall be referred to the Washington State Bar Association and/or the court.

13 Assignment or Subcontractors: No assignment or transfer of the Contract or of any interest in the Contract shall be made by the PUBLIC DEFENDER without the prior written consent of the CITY

14 All documents, reports, memoranda, plans, and/or any other materials created or otherwise prepared by the contractor as part of his performance of this Agreement (the "Work Products") shall be owned by and become the property of the CITY, and may be used by the CITY for any purpose beneficial to the CITY. The consultant may retain copies of any documents, reports, etc. it authors.

15. If the Conflict Public Defender has been appointed as conflict counsel in a case, the Conflict Public Defender shall file a notice of appearance with the court, and shall serve a copy on the City Attorney. If the case is a RALJ appeal, the notice shall be filed in the Superior Court, with a copy to the Municipal Court and the City Attorney.

16 Caseload Monitoring:

a. The purpose of this Section is to provide data to support the CITY'S possible adoption of a case weighting system, and to establish caseload limits. Using the case weighting system currently adopted by the City of Kent (Attachment A), the PUBLIC DEFENDER shall track assigned cases. Every month, the PUBLIC DEFENDER shall provide a report that shows the total number of cases assigned, broken down by the types of cases in Attachment A. The PUBLIC DEFENDER will meet with the CITY at least once per quarter to review the report, and discuss whether Kent's weighting system accurately reflects the amount of work performed by the DEFENDER.

b Factors to consider: In evaluating the proposed weighting system, the PUBLIC DEFENDER shall consider (and shall include in each report) the effect of the criteria in Section 3.3 of the ORDER. The PUBLIC DEFENDER shall recommend adjustments to caseloads based on the experience of the attorneys, and shall provide justification for those adjustments. The PUBLIC DEFENDER shall recommend adjustments to the case weighting system based on the effect of

Stipulated Orders of Continuance, Deferred prosecution, or other alternative dispositions. The PUBLIC DEFENDER shall also recommend adjustments based on dispositions such as diversions, or reductions to infractions, or other alternative dispositions that do not include a plea of guilty (as provided for in Section 3 6(B)(v) of the ORDER.

IV COMPENSATION

Compensation to the PUBLIC DEFENDER for public defense services beginning January 1, 2013 through June 30, 2013 shall be paid at the rate of Thirty Thousand Four Hundred Sixteen Dollars and Sixty-Six Cents (\$30,416.66)/month.

In the event the PUBLIC DEFENDER files an appeal on behalf of a qualified client, the CITY will pay an additional Four Hundred Dollars (\$400 00) to the PUBLIC DEFENDER upon its litigation and disposition. Should the CITY file an appeal in a case involving the PUBLIC DEFENDER, the CITY will pay the PUBLIC DEFENDER an additional Four Hundred Dollars (\$400 00) upon its litigation and disposition. In addition, the CITY will pay for transcription costs required for the appeal, regardless of which party files the appeal.

All videotapes, COs, audiotapes, video disks, photocopies, color copies of images, or other media associated with discovery shall be provided by the CITY at no cost to the PUBLIC DEFENDER.

The PUBLIC DEFENDER will submit an invoice no later than the 15th day of each month. Pursuant to regular CITY policy regarding payment for services rendered, the CITY shall make payment to the PUBLIC DEFENDER on the first day following the first CITY Council meeting following the timely submittal of the PUBLIC DEFENDER report and invoice.

The PUBLIC DEFENDER agrees and understands that he/she is an independent contractor and not the agent or employee of the CITY. The manner and means of providing the professional services herein are under the sole control of the PUBLIC DEFENDER. The PUBLIC DEFENDER shall be solely responsible for reporting his/her hours, earnings, income tax, and social security to the applicable federal and state agencies. The PUBLIC DEFENDER understands that he/she is not entitled to any of the benefits provided by an employer to employees including, but not limited to, paid leave, health insurance coverage, retirement programs, and/or unemployment insurance.

V. TERM OF CONTRACT

This Agreement shall remain in full force and effect from January 1, 2013,

Public Defender Contract
January 1, 2013- June 30, 2013

through June 30, 2013. This Agreement may be annually extended or renewed under the terms of this Agreement, or as modified by agreement of both parties, at the conclusion of the term of this Agreement. Such extension or renewal shall be in writing, upon agreement of both Parties.

VI. POLICY AGAINST DISCRIMINATION

The PUBLIC DEFENDER shall not discriminate in employment practices on the basis of race, creed, color, age, disability, religion, sex or sexual orientation and follow the CITY's policy on nondiscrimination. The PUBLIC DEFENDER should comply with all local, state, and federal laws regarding discrimination.

VII. PUBLIC DEFENSE STANDARDS

The PUBLIC DEFENDER shall comply with the Rules of Professional Conduct. The PUBLIC DEFENDER shall comply with the City of Auburn Standards for Public Defense as adopted by the CITY on August 20, 2012, pursuant to Resolution 4849 and any future standards for public defense services that may be adopted by the CITY pursuant to Chapter 10 101 030 of the RCW. The PUBLIC DEFENDER shall submit a copy of the affidavit it files with the Municipal Court, stating that the PUBLIC DEFENDER is in compliance with such standards to the Director of Human Resources/Risk & Facilities Management. This affidavit shall be submitted thirty (30) days after the PUBLIC DEFENDER has received a copy of such standards.

VIII. INSURANCE AND INDEMNIFICATION

Insurance

The PUBLIC DEFENDER shall be responsible for maintaining, during the term of this Agreement and at its sole cost and expense, the types of insurance coverages and in the amounts described below. The PUBLIC DEFENDER shall furnish evidence, satisfactory to the CITY, of all such policies. During the term hereof, the PUBLIC DEFENDER shall take out and maintain in full force and affect the following insurance policies.

a. Commercial General Liability insurance, insuring the CITY and the PUBLIC DEFENDER against loss or damages arising from premises, operations, independent contractors, and personal injury and advertising injury. The CITY shall be named as an insured under the PUBLIC DEFENDER's Commercial General Liability insurance policy with respect to the work performed for the CITY, with minimum liability limits of \$1,000,000 combined single limit for personal injury, death, or property damage in any one occurrence.

b. Such workmen's compensation and other similar insurance as may be required by law

c. Professional errors and omissions liability insurance with minimum liability limits of \$1,000,000

No Limitation. PUBLIC DEFENDER's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the PUBLIC DEFENDER to the coverage provided by such insurance, or otherwise limit the CITY'S recourse to any remedy available at law or in equity

If, for any reason, the PUBLIC DEFENDER loses its professional liability insurance coverage, the PUBLIC DEFENDER must immediately notify the CITY'S Director of Human Resources/Risk and Facilities Management.

Other Insurance Provisions

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

a. The PUBLIC DEFENDER's insurance coverage shall be primary insurance as respect to the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be excess of the PUBLIC DEFENDER's insurance and shall not contribute with it.

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

Indemnification

The PUBLIC DEFENDER shall indemnify, defend, and hold harmless the CITY and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, including attorney fees, by any reason of or arising out of the act or omission of the PUBLIC DEFENDER, its officers, agents, employees, or any of them relating to or arising out of the performance of this Agreement except for injuries and damages caused by the sole negligence of the CITY. If a final judgment is rendered against the CITY, its officers, agents, employees, and/or any of them, or jointly against the CITY and the PUBLIC DEFENDER and their respective officers, agents and employees, or any of them, the PUBLIC DEFENDER shall satisfy the same to the extent that such judgment was due to the PUBLIC DEFENDER's negligent acts or omissions.

IX. TERMINATION OF CONTRACT

A. Grounds for Immediate Termination. The CITY retains the right to immediately terminate this contract in the event any of the following incidents occurs.

1 Failure to provide timely proof of comprehensive professional liability insurance due at any of the times required herein.

2. Loss of comprehensive professional liability insurance coverage regardless of the reason therefor

3 Any action that, at the sole discretion of the CITY, could bring discredit on the CITY

B Additionally, either the CITY or the PUBLIC DEFENDER may terminate this contract in the event of the following.

- 1 Any other breach of this contract; or
2. Violation of the Rules of Professional Conduct; or
- 3 Good and Sufficient Cause

Such termination under this subpart is effective only if the party terminating the contract has provided written notice of the deficiency to the second party, and the deficiency is not corrected in a timely manner to the reasonable satisfaction of the first party

Written notice of termination under Section IX (B) shall be given by the party terminating this contract to the other not less than sixty (60) days prior to the effective date of the termination.

C In the event of termination or upon completion of the contract, the following conditions may apply: (1) the PUBLIC DEFENDER shall be relieved of any further responsibility for receiving new case assignments under this contract; (2) the PUBLIC DEFENDER will continue to represent those defendants assigned prior to the date of termination and who have a trial date set and shall complete representation in all such cases, provided that, after termination or completion of the contract pursuant to court rules and the Rules of Professional Conduct, the PUBLIC DEFENDER may withdraw from any case as permitted by court rule.

DATED this _____ Day of _____, 2012.

CITY OF AUBURN

Peter B Lewis
Mayor

ATTEST

Danielle E. Daskam
City Clerk

Date

APPROVED AS TO FORM

Daniel Heid
City Attorney

Date

Law Offices of Matthew J. Rusnak

Representative

Date

APPENDIX A TO
 JANUARY 1, 2013- JUNE 30, 2013 PUBLIC DEFENSE CONTRACT

Allowing Minor to Frequent Bar	1/3
Allow Unauthorized Person to Drive	1/3
Altered License	1/3
Assault:	
Domestic Violence	1
Non Domestic Violence	1
With Sexual Intent	2
Animal Cruelty	1
Attempted Assault	2/3
Attempted Forgery	2/3
Attempted Theft	2/3
Canceled Plates/Registration	1/3
Complicity	2/3
Commercial License Needed	1/3
Concealed Weapon	2/3
Conspiracy	2/3
Counterfeiting Trademark	2/3
Criminal Attempt	2/3
Criminal Trespass	1/3
Custodial Interference	1
Cyber Stalking	1
Dangerous Animal at Large	2/3
Discharge of Firearm	2/3
Disorderly Conduct	1/3
Display of Weapon	2/3
DUI	1
OWLS 1	1/2
DWLS2	1/2
DWLS3	1/3
Criminal Assistance	1/3
Escape	2/3
Failure to Transfer Title	1/3
Failure to Disperse	1/3
Failure to Obey	1/2
Failure to Obey Flagman	1/2
Failure to Obtain Vehicle License	1/3
Failure to Stop	1/2
Failure to Secure Load	1
Failure to Surrender License	1/3

Public Defender Contract
 January 1 2013- June 30, 2013

False Identification	1/2
False Insurance Card	1/2
False Information	1/2
False Reporting	1/2
False Statement	1/2
Fraud Dr License	1/2
Furnishing Liquor to Minor	1/2
Harm to a Police Dog	1
Harassment	1
Telephone Harassment	1
Domestic Violence Harassment	1
Hit and Run Attended	1
Hit and Run Unattended	1/2
Illegal Fireworks	1/3
Illegal Use of Dealer Plate	1/3
Immoral Conduct with a Minor	1
Indecent Exposure	1
Inhale Toxic Fumes	1
Interfering with reporting to 911	2/3
Invalid Trip Permit	1/3
Loiter for Prostitution	1/2
Malicious Mischief Domestic Violence	1
Malicious Mischief Non-Domestic Violence	2/3
Minor Frequenting a Tavern	1/2
Minor Intoxicated in Public	1/2
Minor in Possession/Consumption	1/2
Neglect of a Child	1
Negligent Driving 1	1
No Valid Operator's License	1/3
Obstructing	2/3
Operating Vehicle without Cert. of Ownership	1/3
Operating Vehicle without Ignition Interlock	1/2
Patronizing a Prostitute	1/2
Physical Control	1
Possession of Drug Paraphernalia	1/2
Possession of Marijuana	1/2
Possession of Stolen Property	2/3
Possession/Making Burglary Tools	2/3
Possession another's ID	1/2
Possession of Legend	2/3
Prostitution	1/2
Provoking Assault	2/3
Public Disturbance	1/3

Public Defender Contract
January 1 2013-June 30, 2013

Reckless Driving	2/3
Reckless Burning	2/3
Reckless Endangerment	2/3
Refuse to Cooperate	1/2
Crimes Requiring Registration as Sex Offender	2
Resisting Arrest	2/3
Selling Liquor to Minor	1/2
Stalking	1
Tampering with Property of Others	1/2
Tampering with a Witness	1
Theft 3	2/3
Theft of Rental Property	2/3
Unlawful Issuance of Bank Check	2/3
Unlawful Bus Conduct	1/2
Unlawful Camping	1/3
Unlawful Racing	2/3
Vehicle Prowl	2/3
Vehicle Trespass	2/3
Violation of Anti-harassment Order	2/3
Violation of No Contact Order	2/3
Violation of Instruction Permit	1/3
Violation of Occupancy License	1/3
Violation of Protection Order	2/3
Violation of Restraining Order	2/3
Violation of S.O.A.P Order	1/2
Weapons Capable of Harm	2/3



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6442

Date:

December 7, 2012

Department:

Planning and Development

Attachments:

[Memorandum](#)

[Ordinance No. 6442](#)

Budget Impact:

\$0

Administrative Recommendation:

For discussion only.

Background Summary:

See attached memorandum.

Reviewed by Council Committees:

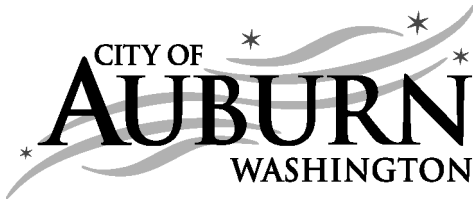
Planning And Community Development, Public Works Other: Planning Commission,
Legal

Councilmember: Wagner

Staff: S. Wagner

Meeting Date: December 17, 2012

Item Number: DI.C



Memorandum

To: Councilmember Rich Wagner, Chair, Public Works Committee
Councilmember Bill Pelosa, Vice Ch., Public Works Committee
Councilmember Wayne Osborne, Public Works Committee

From: Stuart Wagner, AICP, Planner

CC: Elizabeth Chamberlain, AICP, Planning Manager

Date: December 11, 2012

Re: Discussion of proposed code amendments to Hearing Examiner Chapter - Ordinance No. 6442.

Background

The Public Works Committee recently went over zoning code amendments to Title 18 – Zoning of the Auburn City Code (Code Update Project - Phase 2, Group 2). The Committee recommended approval of those amendments to full City Council and on November 5, 2012 the City Council adopted them. Planning staff had intended to bring changes to the Hearing Examiner Chapter (18.66 ACC) with the previous code amendments, but they were not at a point to move forward. The remaining item for review are the changes related to the Hearing Examiner Chapter (18.66 ACC).

On November 7, 2012 the Planning Commission held a duly noticed public hearing on the amendments. At the close of the public hearing, the Planning Commission concurred with staff and made a recommendation to the City Council for adoption of the proposed code amendments.

Discussion

The role of the Hearing Examiner, as codified in Auburn City Code (ACC), goes beyond land use matters. The Hearing Examiner is also the appeal body on many contested administrative decisions such as utility billing disputes, dangerous dog determinations, or building and code violations but Chapter 18.66 ACC – Hearing Examiner is only written for the purposes of land use matters. As such, the Hearing Examiner Chapter is better suited in Title 2 – Administrative and Personnel where other positions, boards, committees, and commissions are listed.

In addition to relocating the Hearing Examiner Chapter to Title 2, staff in consultation with the legal department and current Hearing Examiner, amended the Chapter in several places. The following is a summary of those changes:

- The Hearing Examiner as the appeal body to administrative decisions is referenced throughout the code. In order to bring clarity and ease of use to the code, staff has

added a new “areas of jurisdiction” section that shows everything the Hearing Examiner is responsible for.

- The current code has the planning department as the department that receives all applications and appeals. It also lists the planning department in charge of writing reports that summarize the issues involved. The code has been modified to read “responsible parties” instead of the planning department because land use matters are not the only cases the Hearing Examiner reviews.
- Most jurisdictions have a “burden of proof” section in their code. Staff has added this section to the Hearing Examiner Chapter to indicate which party (applicant/appellant or City) is responsible for proving their case.
- The current code only gives the Hearing Examiner 10 calendar days to provide a written decision. The code has been modified to 10 working days, thereby giving the examiner additional time to write his decision. This new timeline also matches state law (RCW 35.63.170)
- Chapter 18.66 ACC is referenced throughout the Auburn Municipal Code. All references have been changed to Chapter 2.46 ACC.

Attached to this memorandum are the code amendments reviewed by the Planning Commission and the Planning and Community Development Committee, now in ordinance format. Ordinance No. 6442 is scheduled a discussion item for the December 17, 2012 Public Works Committee meeting and as an action item for the City Council Meeting also on December 17, 2012.

Enclosures

1. Ordinance 6442 – ACC Chapter 2.46 (Originally 18.66 ACC)

ORDINANCE NO. 6 4 4 2

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING SECTIONS 3.60.036, 3.94.090, 3.94.100, 3.94.120, 10.02.120, 12.24.090, 12.64A.060, 13.32A.130, 13.41.070, 15.76.040, 16.06.330, 16.08.080, 16.10.150, 16.10.160, 16.10.170, 17.06.030, 17.10.050, 17.20.030, 17.22.030, 18.46A.040, 18.49.090, 18.62.030, 18.62.080, 18.64.020, 18.64.055, 18.68.030, 18.70.050, 18.70.060, 18.76.130 AND 19.06.080 OF THE AUBURN CITY CODE; AND AMENDING AND RELOCATING CHAPTER 18.64 TO A NEW CHAPTER, 2.46 TO THE AUBURN CITY CODE; ALL RELATING TO THE OFFICE OF THE HEARING EXAMINER

WHEREAS, from time to time, amendments to the City of Auburn zoning code are appropriate, in order to update and better reflect the current development needs and standards of the City; and

WHEREAS, the proposed zoning code amendments recodifies Chapter 18.66 – Hearing Examiner, moving it from Title 18 – Zoning and into Title 2 – Administrative and Personnel. It also amends the Chapter in several places to clarify the powers of the hearing examiner, what he or she is responsible for as well as amending the timelines in which written decisions by the hearing examiner are given.; and

WHEREAS, following proper notice, the City of Auburn Planning Commission held a public hearing on November 7, 2012, on the proposed code amendments regarding the Hearing Examiner; and

WHEREAS, after fully considering the testimony and information presented at the public hearing, on November 7, 2012, the Planning Commission made its recommendations for code amendments to the City of Auburn City Council; and

Ordinance No. 6442
November 29, 2012
Page 1 of 30

WHEREAS, the City Council has reviewed and considered the Planning Commission recommendations; and

WHEREAS, environmental review on the proposal has been completed in accordance with the requirements of the State Environmental Policy Act (SEPA) with a final determination of non-significance (DNS) issued July 16, 2012; and

WHEREAS, pursuant to RCW 36.70A.106, the proposed zoning code amendments were sent to the Washington State Department of Commerce, Growth Management Services, and other state agencies as required for the 60-day state review; and

WHEREAS, no comments regarding the proposed zoning code amendments have been received from the Department of Commerce or other state agencies; and

WHEREAS, the City Council finds that the proposed amendments improve the readability and use of the City Code and improves the City's development review process.

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

Section 1. Amendment to City Code. That Section 3.60.036 of the Auburn

City Code be and the same amended to read as follows:

3.60.036 Construction sales tax exemption.

A. 1. The following purchasers in the eligible target business class who have paid the tax imposed by this chapter on construction materials, fixed equipment, or machinery installation, or on sales of or charges made for labor and services rendered in respect to such construction or installation of such machinery or equipment, are eligible for an exemption as provided for in this section: for property zoned downtown urban center (DUC), C-3 (heavy commercial district), and C-4 (mixed-use commercial), purchases directly related to the construction of new commercial buildings or redevelopment of existing vacant buildings 25,000 square feet or greater or

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expansion of existing commercial buildings that creates new or expanded building floor area that generates sales tax revenue.

2. For property zoned downtown urban center (DUC), purchases directly related to the construction of new commercial buildings less than 25,000 square feet, or redevelopment of existing buildings less than 25,000 square feet, where the cost of the improvement is at least 25 percent of the current assessed value of the improvements on the property pursuant to the assessment records of King or Pierce County, as applicable.

3. For property zoned M-1 (light industrial district), M-2 (heavy industrial district) and EP (environmental park district), purchases directly related to the construction of new commercial buildings, redevelopment of existing buildings that result in a change of occupancy from warehouse use to manufacturing use, or redevelopment of existing buildings where the cost of the improvement is at least 25 percent of the current assessed value of the improvements on the property pursuant to the assessment records of King or Pierce County, as applicable.

B. Beginning on the effective date of the ordinance codified in this section through a date four years after the effective date, a purchaser is eligible for an exemption specified under this section from the local sales and use tax paid under this chapter, as authorized under RCW 82.14.030(2), up to a maximum of 20 percent of taxes imposed and paid to the city of Auburn not to exceed \$100,000. The purchaser is eligible for an exemption under this section in the form of a refund.

C. For purposes of this section, the following definitions apply:

1. "Change of occupancy" means a change of the purpose for which a building is used or intended to be used. The term shall also include the building or portion thereof in which such change of occupancy is made. Change of occupancy is not intended to include change of tenants or proprietors.

2. "Commercial building" means a structure that has, as its primary purpose, a commercial use as that term is defined in ACC 18.04.240.

3. "Expansion" means to add to the floor area of a building.

4. "Purchaser" means a person or entity that is the recipient of a good or service.

D. Eligible Target Business Classes.

1. The construction sales tax exemption specified in subsection (A)(1) of this section shall only apply to those businesses engaged in normal business activities under the following classifications of businesses occurring within the specified zoning designations:

a. General Merchandise, Warehouse Club, SuperCenter – Sales Tax Classification Code 45291;

b. Building Materials and Garden Home Center – Sales Tax Classification Code 44411;

c. Electronics and Appliances – Sales Tax Classification Code 44311;

d. Full Service Restaurants – Sales Tax Classification Code 722110;

e. New and Used Automobile and Light Utility Truck Dealers – Sales Tax Classification Code 44110;

f. Bowling Centers – Sales Tax Classification Code 713950;

g. Motion Picture Theaters (excluding drive-in theaters) – Sales Tax Classification Code 512131; and

h. Hotels – Sales Tax Classification Code 72110.

2. The construction sales tax exemptions specified in subsections (A)(2) and (3) of this section shall apply to all businesses located in the DUC, EP, M-1, and M-2 zoning districts as set forth in those subsections.

E. Application for Refund.

1. A purchaser claiming an exemption and applying for a refund under this section must pay the tax imposed by ACC 3.60.020. The purchaser may then apply to the city for a refund in a form and manner prescribed by the city and shall submit information that the city deems adequate to justify the exemption, including but not limited to:

- a. Identification of the vendor/contractor;
- b. North American Industry Classification System (NAICS) code under which the tax was reported;
- c. Name and Unified Business Identifier (UBI) number of the vendor/contractor on the Combined Excise Tax Return filed with the state of Washington; and
- d. Detailed information supporting the amounts reported under the State Use and Sales Tax section of the above report for Location Codes 1702 and 2724.

2. A purchaser may not apply for a refund under this section more frequently than once per quarter. The purchaser must specify the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. The purchaser must retain all records provided to the city in making its claim.

3. The city shall determine eligibility under this section based on the information provided by the purchaser, which is subject to audit verification by the city. If the city verifies eligibility, it shall remit eligible taxes paid to the purchaser.

F. Appeals. Any applicant aggrieved by an action of the city concerning eligibility or computation of remittance under this section may file a written appeal to the city's hearing examiner in accordance with Chapter ~~2.4618.66~~ ACC within 14 calendar days of receipt of the city's decision. The hearing examiner is specifically authorized to hear and decide such appeals and the decision of the hearing examiner shall be the final action of the city. (Ord. 6376 § 2, 2011.)

Section 2. Amendment to City Code. That Section 3.94.090 of the Auburn

City Code be and the same amended to read as follows:

3.94.090 Extension of conditional certificate – Required findings – Denial – Appeal.

A. The conditional certificate may be extended by the director for a period not to exceed 24 consecutive months. The owner shall submit a written request stating the grounds for the extension together with a fee of \$500.00 for the city's administrative cost to process the request. The director may grant an extension if the director finds that:

1. The anticipated failure to complete construction within the required time period is due to circumstances beyond the control of the owner; and
2. The owner has been acting, and could reasonably be expected to continue to act, in good faith and with due diligence; and
3. All the conditions of the original contract between the owner and the city will be satisfied upon completion of the project.

B. If an extension is denied, the director shall state in writing the reason for denial and shall send notice to the owner's last known address within 10 working days of the denial. An owner may appeal the denial of an extension to the hearing examiner by filing a notice of appeal with the city clerk within 14 calendar days after issuance of the notice of the denial. The appeal before the hearing examiner shall follow the provisions of Chapter ~~2.4618.66~~ ACC. The hearing examiner's decision shall be the final decision of the city and is not subject to further appeal. (Ord. 5779 § 1, 2003.)

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Section 3. Amendment to City Code. That Section 3.94.100 of the Auburn

City Code be and the same amended to read as follows:

3.94.100 Final certificate – Application – Issuance – Denial – Appeal.

A. Upon completion of the construction as provided in the contract between the owner and the city, and upon issuance of a temporary certificate of occupancy, or a permanent certificate of occupancy if no temporary certificate is issued, the owner may request a final certificate of tax exemption. The owner shall file with the director such information as the director may deem necessary or useful to evaluate eligibility for the final certificate, which shall at a minimum include:

1. An audited statement of expenditures made with respect to each multifamily housing unit and the total expenditures made with respect to the entire property, including total project costs, which statement shall be approved by the city of Auburn finance director.

2. A description of the completed work and a statement of qualification for the exemption.

3. A statement that the work was completed within the required three-year period or any approved extension; and

B. At the time of application for final certificate under this section the owner shall pay to the city a fee of \$50.00 to cover the city's administrative costs.

C. Within 30 calendar days of receipt of all materials required for a final certificate, the director shall determine whether the completed work is consistent with the contract between the city and owner, whether all or a portion of the completed work is qualified for exemption under this chapter and, if so, which specific improvements satisfy the requirements of this chapter.

D. If the director determines that the project has been completed in accordance with the contract between the owner and the city and the requirements of this chapter, the city shall file a final certificate of tax exemption with the assessor within 10 calendar days of the expiration of the 30-calendar-day period provided under subsection C of this section.

E. The director is authorized to cause to be recorded or to require the owner or owners to record in the real property records of the appropriate office of the county in which the property is located, the contract with the city required under ACC 3.94.050, or such other document(s) as will identify such terms and conditions of eligibility for exemption under this chapter as the director deems appropriate for recording.

F. The director shall notify the owner in writing that the city will not file a final certificate if the director determines that the project was not completed within the required three-year period or any approved extension, or was not completed in accordance with the contract between the owner and the city and the requirements of this chapter, or the owner's property is otherwise not qualified for the limited exemption under this chapter.

G. The owner may appeal the director's decision to the hearing examiner by filing a notice of appeal with the city clerk within 14 calendar days after the issuance of the notice of the denial. The appeal before the hearing examiner shall follow the provisions for appeal contained in Chapter ~~2.4648.66~~ ACC. The owner may appeal the hearing examiner's decision to the King County superior court according to the procedures contained in RCW 34.05.510 through 34.05.598, as provided in RCW 84.14.090(6), within 30 days of notification by the city to the owner of the decision. (Ord. 5779 § 1, 2003.)

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Section 4. Amendment to City Code. That Section 3.94.120 of the Auburn

City Code be and the same amended to read as follows:

3.94.120 Cancellation of tax exemption – Appeal.

A. If at any time the director determines that the property no longer complies with the terms of the contract or with the requirements of this chapter, or the use of the property for any reason no longer qualifies for the tax exemption, the tax exemption shall be cancelled and additional taxes, interest and penalties imposed pursuant to state law.

B. If the owner intends to convert the multifamily housing to another use the owner must notify the director and the King County assessor within 60 days of the change in use. Upon such change in use, the tax exemption shall be cancelled and additional taxes, interest and penalties imposed pursuant to state law.

C. Upon determining that a tax exemption shall be cancelled, the director shall notify the property owner by certified mail, return receipt requested. The property owner may appeal the determination by filing a notice of appeal with the city clerk within 30 calendar days after issuance of the decision by the director, specifying the factual and legal basis for the appeal. The appeal before the hearing examiner shall follow the procedures set forth in ACC ~~2.4618-66.1400~~ through ~~2.4618-66.160~~. At the appeal hearing, all affected parties may be heard and all competent evidence received. The hearing examiner shall affirm, modify, or repeal the decision to cancel the exemption based on the evidence received. The hearing examiner shall give substantial weight to the director's decision to cancel the exemption, and the burden of proof and the burden of overcoming the weight accorded to the director's decision shall be upon the appellant. An aggrieved party may appeal the hearing examiner's decision to the King County superior court in accordance with the procedures in RCW 34.05.510 through 34.05.598, as provided in RCW 84.14.110(2), within 30 days after issuance of the decision of the hearing examiner. (Ord. 5779 § 1, 2003.)

Section 5. Amendment to City Code. That Section 10.02.120 of the

Auburn City Code be and the same amended to read as follows:

10.02.120 Appeals.

A. Employers may file a written appeal of final administrative decisions regarding the following actions:

1. Rejection of an employer's proposed CTR program.

2. Denial of an employer's request for a waiver or modification of any of the requirements under this chapter or a modification of the employer's CTR program.

B. Appeals of the public works director's determinations made pursuant to this chapter must be filed with the city's public works department within 20 days after the final administrative decision is issued. Appeals shall be heard by the city's hearing examiner in accordance with Chapter ~~2.4618-66~~ ACC. Determinations on appeals shall be based on whether the decision being appealed was consistent with applicable state law and the guidelines of the State Task Force. The hearing examiner's determination shall be final unless appealed to the superior court of the county in which the employer's primary offices/facilities are located within the city of Auburn in accordance with the procedures in RCW 34.05.510 through 34.05.598, and with the

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appeal being filed with the city clerk within 30 days after issuance of the decision of the hearing examiner. (Ord. 6218 § 1, 2010; Ord. 6182 § 1, 2008; Ord. 5246 § 1 (Exh. A), 1999; Ord. 4602 § 2, 1993.)

Section 6. Amendment to City Code. That Section 12.24.090 of the Auburn City Code be and the same amended to read as follows:

12.24.090 Contest of city engineer's decision.

Any person aggrieved by the granting or denying of a construction permit pursuant to this chapter shall have the right of review by the public works director as follows:

A. All complaints filed pursuant to this section must be filed in writing with the public works director within 10 working days of the date of the decision being contested;

B. All complaints filed pursuant to this section shall specify the error of law or fact, or new evidence which could not have been reasonably available at the time of the city engineer's decision, which shall constitute the basis of the complaint;

C. Upon receipt of a timely written notice of complaint, the public works director shall review the materials submitted and determine whether to uphold or modify the city engineer's decision. If in the public works director's judgment, the city engineer's decision should be amended in favor of resolving the complaint, he or she shall so direct the same. If the director upholds the city engineer's decision, he or she shall prepare a written staff paper detailing the rationale of the city engineer's decision and findings of fact for conduct of a hearing by the hearing examiner;

D. The public works director shall schedule the hearing before the hearing examiner in accordance with ACC 1.25.090 and Chapter ~~2.4618.66~~ ACC and notify the contesting party of the scheduled hearing in accordance with ACC 18.70.040. (Ord. 5677 § 4, 2002; Ord. 5042 § 1 (Exh. C), 1998.)

Section 7. Amendment to City Code. That Section 12.64A.060 of the Auburn City Code be and the same amended to read as follows:

12.64A.060 Appeal and enforcement.

A. Appeals of determinations by the city engineer made pursuant to this chapter shall be filed with the city's public works director within 20 working days after the final city engineer decision is issued. The public works director shall have 15 working days to review the appeal, decide whether to uphold or modify the city engineer's decision, and notify the applicant of such decision.

B. Appeals of decisions of the public works director made pursuant to this chapter shall be filed with the public works department within 20 working days after the date of the notice of the public works director's decision. Appeals shall be heard by the city's hearing examiner pursuant to Chapter ~~2.4618.66~~ ACC. Decisions of the hearing examiner shall be based on whether the decision being appealed was consistent with applicable state law and city codes. The hearing examiner's determination shall be final unless appealed as provided herein.

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C. Appeals of decisions of the hearing examiner under this chapter shall be final unless appealed to the superior court of the county in which the proposed public improvements are located within the city of Auburn, which appeals shall be in accordance with the procedures in RCW 34.05.510 through 34.05.598; provided, that the notice of appeal of the hearing examiner's decision shall be filed with the city clerk within 30 days after issuance of the decision of the hearing examiner.

D. When appealing a determination under this chapter, at any stage of appeal, the applicant/appellant must indicate if the appeal pertains to:

1. The determination of the required improvements in the public right-of-way;
2. The determination to require or deny a deferral of said improvements; and/or
3. The determination to require the payment of a fee in lieu for a deferral instead of an executed and recorded agreement.

E. The associated building, grading or special permit shall not be issued until all appeals are concluded. (Ord. 6182 § 2, 2008; Ord. 6083 § 2, 2007.)

Section 8. Amendment to City Code. That Section 13.32A.130 of the Auburn City Code be and the same amended to read as follows:

13.32A.130 City project process and requirements.

A. City Responsibilities.

1. When service from underground electric and telecommunication utility facilities becomes available in all or part of a conversion area, the city engineer shall issue a directive to the owners of all structures or improvements with service connections to the existing or temporary overhead utility facilities in the area by means of mailing a certified notice stating that:

- a. Service from the underground utility facilities is available;
- b. To facilitate completion of the city's project, all electric and telecommunication service connections from the existing aerial utility facilities within the area to any structure or improvement must be decommissioned, disconnected and removed within 90 calendar days after the date of mailing;
- c. Should such owner fail to complete conversion of such service connections from the aerial system to the underground system within 90 calendar days after the date of mailing, the city will order the electric and telecommunication utilities to disconnect and remove the service connections;
- d. The owner may object to the disconnection and removal of the service lines as provided in subsection D of this section.

2. Time in consummating such connection and disconnection of aerial services is of the essence and such notice to the property owner or occupant of the affected premises may be mailed.

B. Property Owner's Responsibilities.

1. Such conversion of the service connection, including installation of any underground service connections, shall be completed within 90 calendar days of the city's mailing set forth in subsection A of this section and RCW 35.96.050 that service from the underground utility facilities is available.

2. Property owners wishing to discontinue utility service shall provide written notice of that intent to the city engineer within 30 calendar days of receipt of the city engineer's notice that the underground system is available for service.

3. If the owner of any structure or improvement with a service connection to an existing aerial electric and/or telecommunication utility facility within a conversion area fails to convert the service connection from aerial to underground service within 90 calendar days after the date of the mailing of the notice set forth in subsection A of this section, the city engineer shall order the electric and/or telecommunication utilities to disconnect and remove all such service connection; provided, that if the owner has filed written objections to such disconnection and removal with the city clerk within 30 calendar days after the mailing, then the city shall not order such disconnection and removal until after the appeal hearing on such objections.

C. Financial Responsibilities.

1. For city projects, the cost of relocating existing utility aerial distribution facilities shall be borne by the serving utility and the city in accordance with the filed tariffs or franchise agreement. In absence of a filed tariff or franchise agreement, the cost of the relocation of existing aerial distribution facilities shall be borne by the serving utility.

2. For city projects, the undergrounding of the service connections for real property served by the aerial electric or telecommunication utility facilities that are being relocated underground shall be at the owner(s)'s expense, including:

a. Decommission, disconnect, and remove the service connections from those utility facilities to any structures or improvements located on the property.

b. Either install underground service connections to those structures/improvements on the property or, upon approval of the city engineer, discontinue utility service to one or more of the structures/improvements on the property.

3. All such conversion of utility facilities to underground facilities may be undertaken by local improvement district or as otherwise permitted by law and as further authorized by RCW 35.96.030 and 35.96.040.

D. Appeal Procedures.

1. A property owner may object to the disconnection and removal of an aerial service connection by filing a written objection thereto with the city clerk within 30 calendar days after the date of the mailing of the notice set forth in subsection A of this section. Failure to object within such time will constitute a waiver of the owner's right thereafter to object to such disconnection and removal.

2. Upon the timely filing by the owner of an objection, the owner shall have the right to file an appeal of the city engineer's directive, which shall be heard by the city of Auburn hearing examiner.

3. All appeals filed pursuant to this section must be filed in writing with the public works director within 10 working days of the filing date of the owner's written objection and shall specify the error of law or fact, or new evidence which could not have been reasonably available at the time of the city engineer's decision, which shall constitute the basis of the complaint.

4. Upon receipt of a timely written appeal, the public works director shall review the materials submitted and prepare a written staff report detailing the rationale of the city engineer's directive and findings of fact for the hearing examiner.

5. The public works director shall schedule the hearing in accordance with Chapter ~~2.4618.66~~ ACC and notify the contesting party of the scheduled hearing. (Ord. 6238 § 2, 2009.)

Section 9. Amendment to City Code. That Section 13.41.070 of the

Auburn City Code be and the same amended to read as follows:

13.41.070 Appeals.

Appeals of the public works director's determinations made pursuant to this chapter shall be filed with the public works department and shall be heard by the city's hearing examiner pursuant to Chapter ~~2.4618-66~~ ACC. Determinations on appeals shall be based on whether the decision being appealed was consistent with applicable state law and city codes. The hearing examiner's determination shall be final unless appealed to the superior court of the county in which the property subject to the utility system development charges is located within the city of Auburn, in accordance with the procedures in RCW 34.05.510 through 34.05.598, and with the appeal being filed with the city clerk within 30 days after issuance of the decision of the hearing examiner. (Ord. 6391 § 1, 2011; Ord. 6341 § 1, 2011; Ord. 6182 § 3, 2008; Ord. 5801 § 1, 2003; Ord. 4830 § 1, 1996; Ord. 4479 § 2, 1990; Ord. 3510 § 7, 1980.)

Section 10. Amendment to City Code. That Section 15.76.040 of the

Auburn City Code be and the same amended to read as follows:

15.76.040 Appeal procedure.

A. Any person aggrieved by a decision of the commission designating or rejecting a nomination for designation of a landmark or issuing or denying a certificate of appropriateness may, within 35 calendar days of mailing notice of such designation or rejection of nomination, or of such issuance or denial or approval of a certificate of appropriateness, appeal such decision in writing to the hearing examiner pursuant to Chapter ~~2.4618-66~~ ACC. The written notice of appeal shall be filed with the planning director and shall be accompanied by a statement setting forth the grounds for the appeal, supporting documents, and argument.

B. If, after examination of the written appeal and the record, the examiner determines that:

1. An error in fact may exist in the record, it shall remand the proceeding to the commission for reconsideration or, if the council determines that:

2. The decision of the commission is based on an error in judgment or conclusion, it may modify or reverse the decision of the commission.

C. The examiner's decision shall be based solely upon the record; provided, that the examiner may at his or her discretion publicly request additional information of the appellant, the commission or the planning director.

D. The examiner shall take final action on any appeal from a decision of the commission by entering written findings of fact and conclusions of law from the record and reasons therefrom which support its action. The examiner may adopt all or portions of the commission's findings and conclusions.

E. The decision of the examiner is final unless an appeal is filed pursuant to ACC 18.66.160. An appeal may also be filed by the King County landmarks and heritage commission to the planning director, who will forward the appeal to the city council.

F. The action of the city council sustaining, reversing, modifying or remanding a decision of the examiner shall be final unless within twenty calendar days from the date of the action an aggrieved person obtains a writ of certiorari from the superior court of King or Pierce County, state of Washington, for the purpose of review of the action taken. (Ord. 5212 § 1 (Exh. M), 1999; Ord. 4733 § 2, 1995.)

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Section 11. Amendment to City Code. That Section 16.06.330 of the

Auburn City Code be and the same amended to read as follows:

16.06.330 Council review – Limitations for appeals.

A. The decision of the hearing examiner on a threshold determination appeal may be appealed to the superior court in the county in which the subject property is located, which appeal shall be in accordance with the provisions of RCW 43.21C.060 and 43.21C.075. Any such appeal allowed by RCW 43.21C.060 and 43.21C.075 must be brought within the time limits specified in ACC ~~2.4618-66.460~~.

B. Such council review shall be conducted on the record compiled by the hearing examiner, consistent with other applicable law. (Ord. 6186 § 2, 2008; Ord. 4840 § 1, 1996.)

Section 12. Amendment to City Code. That Section 16.08.080 of the

Auburn City Code be and the same amended to read as follows:

16.08.080 Application – Hearing – Required.

A. The hearing examiner shall hold at least one public hearing on each application for a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance on shorelines within the city. The public hearing shall be held not less than 30 days following the final publication of the notice required by ACC 16.08.050.

B. The notice and conduct of the public hearing shall be in accordance with Chapter ~~2.4618-66~~ ACC. (Ord. 6235 § 1, 2009; Ord. 6095 § 1, 2008; Ord. 4840 § 1, 1996; Ord. 4225 § 1, 1987; 1957 code § 11.94.050(a).)

Section 13. Amendment to City Code. That Section 16.10.150 of the

Auburn City Code be and the same amended to read as follows:

16.10.150 Reasonable use provision.

A. The standards and requirements of these regulations are not intended, and shall not be construed or applied in a manner, to deny all reasonable use of private property. If an applicant demonstrates to the satisfaction of the hearing examiner that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions.

B. Applications for a reasonable use exception shall be processed as a Type III decision, pursuant to ACC 14.03.030 and Chapter ~~2.4618-66~~ ACC.

C. An applicant for relief from strict application of these standards shall demonstrate that all of the following criteria are met:

1. No reasonable use with less impact on the critical area and its buffer is possible.

There is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, reductions in density and similar factors, that would allow a reasonable and economically viable use with fewer adverse impacts;

- 2. The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas;
 - 3. All reasonable mitigation measures have been implemented or assured;
 - 4. The inability to derive reasonable use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition; and
 - 5. The applicant shall demonstrate that the use would not cause a hazard to life, health or property.
- D. The burden of proof shall be on the applicant to provide evidence in support of the application and to provide sufficient information on which any decision has to be made.
- E. Approval of a reasonable use exception shall not eliminate the need for any other permit or approval otherwise required for a proposal by applicable city codes.
- F. Except when application of this title would deny all reasonable use of a site, an applicant who seeks an exception from the regulations of the title shall pursue a variance as provided in ACC 16.10.160. (Ord. 5894 § 1, 2005.)

Section 14. Amendment to City Code. That Section 16.10.160 of the Auburn City Code be and the same amended to read as follows:

16.10.160 Variances.

Applications for variances to the strict application of the terms of this chapter to a property may be submitted to the city. Minor variances, defined as up to and including 10 percent of the requirement, may be granted by the director as a Type II decision as defined by Chapter 14.03 ACC. Variances requests which exceed 10 percent may be granted by the hearing examiner as a Type III decision, pursuant to ACC 14.03.030 and Chapter ~~2.4648.66~~ ACC. Approval of variances from the strict application of the critical area requirements shall conform to the following criteria:

- A. There are unique physical conditions peculiar and inherent to the affected property which makes it difficult or infeasible to strictly comply with the provisions of this section;
- B. The variance is the minimum necessary to accommodate the building footprint and access;
- C. The proposed variance would preserve the functions and values of the critical area, and/or the proposal does not create or increase a risk to the public health, safety and general welfare, or to public or private property;
- D. The proposed variance would not adversely affect surrounding properties adjoining;
- E. Adverse impacts to critical areas resulting from the proposal are minimized; and
- F. The special circumstances or conditions affecting the property are not a result of the actions of the applicant or previous owner. (Ord. 5894 § 1, 2005.)

Section 15. Amendment to City Code. That Section 16.10.170 of the Auburn City Code be and the same amended to read as follows:

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16.10.170 Special exception for public agencies and utilities.

A. If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

B. Exception Request and Review Process. An application for a public agency and utility exception shall be made to the city and shall include a critical area identification form; critical area report, including mitigation plan, if necessary; and any other related project documents such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in subsection D of this section.

C. Hearing Examiner Review. The hearing examiner shall review the application and director's recommendation, and conduct a public hearing pursuant to the provisions of Chapter ~~2.4618-66~~ ACC. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection D of this section.

D. Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions follow:

1. There is no other practical alternative to the proposed development with less impact on critical areas;
2. The application of this chapter would unreasonably restrict the ability to provide utility services to the public;
3. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
4. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with other applicable regulations and standards.

E. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 5894 § 1, 2005.)

Section 16. Amendment to City Code. That Section 17.06.030 of the

Auburn City Code be and the same amended to read as follows:

17.06.030 Administrative review.

A boundary line adjustment shall be reviewed in accordance with ACC Title 14 as a Type I decision.

A. The planning director shall forward copies of the proposed boundary line adjustment plan to the building official, public works department and fire authority, who shall review the plan and submit comments to the planning director.

B. Following receipt of the comments of those consulted under subsection A of this section, the planning director shall approve or deny the requested boundary line adjustment. Following a decision, the director shall notify the applicant to file a final Mylar drawing for signatures. The Mylar shall be transmitted to the appropriate county office for recording. The boundary line adjustment must be recorded within 30 days or the boundary line adjustment shall be null and void. A recorded Mylar copy shall be provided to the city.

C. An aggrieved person may appeal the director's decision on a boundary line adjustment, within 14 days of mailing the director's decision, to the hearing examiner, in accordance with procedures prescribed in ACC 18.70.050(B) through (E). The hearing examiner's decision shall be final unless appealed to superior court as prescribed in ACC ~~2.4618.66~~.160. (Ord. 6239 § 1, 2009; Ord. 6186 § 14, 2008; Ord. 6061 § 5, 2006; Ord. 6006 § 4, 2006; Ord. 5170 § 1, 1998; Ord. 4840 § 1, 1996; Ord. 4296 § 2, 1988. Formerly 17.16.030)

Section 17. Amendment to City Code. That Section 17.10.050 of the Auburn City Code be and the same amended to read as follows:

17.10.050 Hearing examiner review of preliminary plats.

A. Pursuant to the provisions of Chapter ~~2.4618.66~~ ACC, the hearing examiner shall within 14 calendar days of the closure of the public hearing approve, deny, or approve with conditions the preliminary plat. The hearing examiner shall not recommend approval of the preliminary plat unless he finds the proposed subdivision is in conformance with the findings of fact as outlined in ACC 17.10.070.

B. Pursuant to the provisions of ACC ~~2.4618.66~~.150, the planning director or any interested party affected by the recommendation of the examiner who asserts that the hearing examiner based that recommendation on an erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for review by the examiner within seven calendar days after the written decision of the examiner has been rendered. The request for reconsideration shall set forth the specific errors relied upon by such appellant, and the examiner may, after review of the record, take further action as the examiner deems proper. The examiner may request further information which shall be provided within 14 calendar days of the examiner's request. The examiner's written decision on the request for consideration shall be transmitted to all parties of record within 14 calendar days of receipt of the request for reconsideration or receipt of the additional information requested, whichever is later. (Ord. 6418 § 6, 2012; Ord. 6239 § 1, 2009; Ord. 6186 § 4, 2008; Ord. 5140 § 1, 1998; Ord. 4840 § 1, 1996; Ord. 4296 § 2, 1988. Formerly 17.06.050.)

Section 18. Amendment to City Code. That Section 17.20.030 of the Auburn City Code be and the same amended to read as follows:

17.20.030 Public hearing.

The hearing examiner shall conduct a public hearing pursuant to ACC ~~2.4618.66~~.130 on the application for an alteration and may approve or deny the application for alteration of the subdivision after determining the public use and interest to be served by the alteration of the subdivision. (Ord. 6239 § 1, 2009; Ord. 6186 § 17, 2008; Ord. 4296 § 2, 1988. Formerly 17.22.030.)

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Section 19. Amendment to City Code. That Section 17.22.030 of the

Auburn City Code be and the same amended to read as follows:

17.22.030 Public hearing.

The hearing examiner shall conduct a public hearing pursuant to ACC ~~2.4618-66~~.130 on the application for a vacation and may recommend to the council to approve or deny the application for vacation of the subdivision after determining the public use and interest to be served by the vacation of the subdivision. The council shall adopt by ordinance any approval of a vacation pursuant to this chapter. (Ord. 6239 § 1, 2009; Ord. 4296 § 2, 1988. Formerly 17.20.030.)

Section 20. Amendment to City Code. That Section 18.46A.040 of the

Auburn City Code be and the same amended to read as follows:

18.46A.040 Appeals of decisions.

Appeals of administrative decisions issued under the provisions of this chapter shall be made to the city of Auburn hearing examiner in accordance with the provisions of Chapter ~~2.4618-66~~ ACC, as amended. Appeals of the hearing examiner decision may be appealed in accordance with applicable provisions of Chapter ~~2.4618-66~~ ACC. (Ord. 6268 § 2, 2009.)

Section 21. Amendment to City Code. That Section 18.49.090 of the

Auburn City Code be and the same amended to read as follows:

18.49.090 Appeals.

Appeals of administrative decisions regarding eligibility for flexible development shall be made to the hearing examiner as outlined in Chapters ~~2.4618-66~~ and 18.70 ACC. (Ord. 6245 § 19, 2009.)

Section 22. Amendment to City Code. That Section 18.62.030 of the

Auburn City Code be and the same amended to read as follows:

18.62.030 Permit.

Any surface mining of material shall only be allowed after a surface mining operations permit has been issued, after a public hearing. A request for a surface mining operations permit shall be heard by the hearing examiner in accordance with the provisions of Chapter ~~2.4618-66~~ ACC. The hearing examiner's approval of the permit may require mitigating conditions of approval as well as financial guarantees to ensure compliance with the permit and the provisions of this chapter. The hearing examiner's determination shall be final unless appealed to the superior

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court in which the subject property is located, and which appeal shall be in accordance with the procedures in RCW 34.05.510 through 34.05.598, and with the appeal being filed with the city clerk within 30 days after issuance of the decision of the hearing examiner. Determinations on appeals shall be based on whether the decision being appealed was consistent with applicable state law and city codes.

Section 23. Amendment to City Code. That Section 18.62.080 of the

Auburn City Code be and the same amended to read as follows:

18.62.080 Years of operation.

A. At the initial approval of an operations permit a master permit will be given for the lifetime of the mineral resource at the mining site. These mines must be located within the city's comprehensive plan designated mineral resource areas. Mines located outside the city's comprehensive plan designated mineral resource areas may be granted a permit for up to 10 years and may be renewed but will be treated as a new application.

B. Operations under a master permit must be reviewed by the planning director at the end of each subsequent 10 years. The operator of the mine must submit to the planning director, at least six months prior to the end of each 10-year period, evidence that the mining operation is in compliance with the conditions of the master permit and the standards contained within this chapter. This evidence shall include the submittal of the existing topography in a computer disk form that is compatible with the city's system. The operator shall also provide an estimate of the amount of material that has been removed, an estimate of when mining is to be complete, identification of any areas where mining has been completed and whether restoration has begun or is anticipated to begin.

C. The master permit shall remain in effect if it is found the operations are in compliance with the conditions of the master permit, the standards contained within this chapter, and there have been no significant adverse impacts that have occurred that were not previously identified and effectively mitigated.

D. If the planning director determines that operations are not in compliance with the conditions of the master permit or the standards contained within this chapter, or that significant adverse impacts have resulted from the operation and have not been mitigated, then the planning director shall so advise the mining operator in writing within 90 days from receipt of the materials provided by the mining operator under subsection B of this section. If the planning director determines that operations are not in compliance with the conditions of the master permit, the planning director shall advise the mining operator of any noncompliance and proposed corrections/revisions, including a time frame during which such corrections/revisions are to be made. If significant adverse impacts have occurred that were not previously identified and mitigated, the planning director shall advise the mining operator of any required corrections/revisions to the master permit to include such mitigation. If new operation standards have been adopted pursuant to this chapter the planning director shall advise the mining operator of any required revisions to the master permit to reflect the new standards, if determined applicable and practical by the planning director.

The mining operator shall have 90 days from receipt of the planning director's notice under this subsection to make the required corrections/revisions or to appeal the planning director's decision to the hearing examiner pursuant to Chapter ~~2.4618-66~~ ACC. The hearing examiner

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may affirm, modify, or disaffirm the planning director's determination. If the mining operator does not appeal the planning director's determination then the mining operator shall make the corrections/revisions proposed by the planning director and the master permit shall be modified to incorporate the revisions/corrections. If the mining operator does not make the corrections/revisions as required by the city then the building official shall proceed with enforcement action under Chapter 1.25 ACC.

E. If permits for mines located outside the city's comprehensive plan designated mineral resource area are not renewed then the surface mining operations shall cease and the mine reclaimed pursuant to the requirements of Chapter 78.44 RCW. (Ord. 5060 § 1, 1998.)

Section 24. Amendment to City Code. That Section 18.64.020 of the Auburn City Code be and the same amended to read as follows:

18.64.020 Process.

A. Administrative Use Permits. An application for an administrative use permit shall be reviewed in accordance with ACC Title 14 as a Type II decision, subject to the additional provisions of this section. The planning director or designee shall make the final decision unless the application is forwarded to the hearing examiner pursuant to subsection (A)(2) of this section, in which case the hearing examiner will make the final decision.

1. Additional Public Notice Requirements. Administrative use permits for uses in the following zones shall be subject to the additional public notice requirements in subsections (A)(1)(a) and (b) of this section: R-C residential conservancy zone, C-N neighborhood shopping district, C-1 light commercial district, C-2 neighborhood business district, C-3 heavy commercial district, M-1 light manufacturing district, M-2 heavy manufacturing district, BP business park district:

a. The mailing radius requirement of ACC 14.07.040(A) shall be increased to 500 feet; and

b. In addition to the methods of providing notice required by ACC 14.07.040, public notice shall be posted on the city's website.

2. Following the public comment period provided for in ACC Title 14, the planning director or designee shall:

a. Review the information in the record and render a decision pursuant to the procedural requirements of ACC Title 14; or

b. Within 10 days following the close of the public comment period, forward the application to the hearing examiner for a public hearing and final decision in accordance with Chapter ~~2.4648.66~~ ACC if the planning director or designee determines that one or more of the following exists:

i. Public comments indicate a substantial degree of concern, controversy, or opposition to the proposal; or

ii. A public hearing is necessary to address issues of vague, conflicting, or inadequate information; or

iii. The application raises a sensitive or controversial public policy issue; or

iv. A public hearing might clarify issues involved in the permit decision.

c. When a public hearing before the hearing examiner is deemed necessary by the planning director or designee:

i. The city shall provide written notice to the applicant within 10 days following the closing of the public comment period that the application is being forwarded to the hearing examiner for public hearing and decision pursuant to the procedural requirements of this chapter. The notice shall specify the reason the application is being forwarded to the hearing examiner;

ii. Processing of the application shall not proceed until any supplemental permit review fees set forth in the city of Auburn fee schedule are received; and

iii. The application shall be deemed withdrawn if the supplemental fees are not received within 30 days of the applicant notification by the city.

B. Conditional Use Permits. An application for a conditional use permit shall be reviewed in accordance with ACC Title 14 as a Type III decision. A request for a conditional use permit shall be heard by the hearing examiner in accordance with the provisions of Chapter ~~2.4618.66~~ ACC. The hearing examiner shall make the final decision.

C. When a proposal includes more than one element that require administrative use and/or conditional use approval, the following review processes shall apply:

1. For proposals with multiple administrative use elements, a single administrative use permit application will be required; provided, that findings of fact pursuant to ACC 18.64.040 are made for each element.

2. For proposals with administrative and conditional use elements, a single conditional use permit application will be required; provided, that findings of fact pursuant to ACC 18.64.040 are made for each element. (Ord. 6269 § 22, 2009; Ord. 6185 § 5, 2008; Ord. 5811 § 6, 2003; Ord. 4875 § 1, 1996; Ord. 4840 § 1, 1996; Ord. 4304 § 1(45), 1988; Ord. 4229 § 2, 1987.)

Section 25. Amendment to City Code. That the Section 18.64.055 of the

Auburn City Code be and the same amended to read as follows:

18.64.055 Appeals.

A. Administrative Use Permits. Any affected party may appeal the planning director's final decision to the hearing examiner as provided for in Chapters 14.13 and 18.70 ACC. If the planning director forwards an application to the hearing examiner for a public hearing and decision pursuant to ACC 18.64.020(A)(2)(b), a request for reconsideration and/or appeal of the hearing examiner's final decision may be submitted as provided for in Chapter ~~2.4618.66~~ ACC. The planning director's decision to forward an application to the hearing examiner for public hearing and decision may not be appealed.

B. Conditional Use Permits. Any affected party may submit a request for reconsideration and/or appeal the hearing examiner's final decision as provided for in Chapter ~~2.4618.66~~ ACC. (Ord. 6269 § 22, 2009.)

Section 26. Amendment to City Code. That the code section reference in

Section 18.68.030 of the Auburn City Code be and the same amended to read as follows:

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18.68.030 Public hearing process.

A. Text Amendments. With the exception of purely administrative or procedural amendments, the planning commission shall conduct at least one public hearing on all amendments to this title. The planning commission shall make a recommendation to the city council who may or may not conduct a public hearing.

B. Zoning Map Amendments.

1. Rezones Initiated by an Applicant Other Than City. All applications for a rezone shall be reviewed by the planning director prior to the scheduling of a public hearing. After review of the application, the director shall determine which of the following two processes should occur to properly hear the rezone:

a. If the rezone is consistent with the comprehensive plan, then the hearing examiner shall conduct a public hearing on the rezone and make a recommendation to the city council pursuant to ACC ~~2.4618.66~~.170;

b. If the rezone is in conflict with the comprehensive plan, or there are no policies that relate to the rezone, or the policies are not complete, then a comprehensive plan amendment must be approved by the city council prior to the rezone being scheduled for a public hearing in front of the hearing examiner. The planning commission shall conduct a public hearing on the comprehensive plan amendment and make a recommendation to the city council.

2. Areawide Zoning and Rezoning, Initiated by the City. The planning commission shall conduct a public hearing and make a recommendation to the city council. If applicable, a comprehensive plan amendment may also be processed.

C. City Council Decision. The city council may affirm, modify or disaffirm any recommendation of the planning commission or hearing examiner with regard to amendments of the text or map of this title. (Ord. 6198 § 4, 2008; Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

Section 27. Amendment to City Code. That Section 18.70.050 of the

Auburn City Code be and the same amended to read as follows:

18.70.050 Administrative appeals.

Appeals from any administrative decision made under this title may be appealed to the hearing examiner pursuant to Chapter ~~2.4618.66~~ ACC.

A. Any person wishing to appeal an administrative decision shall first render in writing a request for an administrative decision from the appropriate city official. The city official shall issue in writing a decision within five working days of the written request.

B. If the requester seeks to appeal that decision to the hearing examiner, any such appeal shall be filed with the planning director within 14 days of mailing the city's written decision. The city shall extend the appeal period for an additional seven days for appeals that are accompanied by a final mitigated determination of nonsignificance or final EIS.

C. The planning director shall notify any other city official that may be affected by the appeal.

D. The appeal shall then be processed in the same manner as any other application for a hearing examiner decision pursuant to Chapter ~~2.4618.66~~ ACC.

E. The examiner shall conduct a public hearing pursuant to ACC 18.70.040 and consider any facts pertinent to the appeal. The examiner may affirm the decision, remand for further proceedings, or reverse the decision if the decision is:

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1. In violation of constitutional provisions;
2. In excess of the authority of the official;
3. Made upon an unlawful procedure;
4. Affected by other error of law;
5. Clearly erroneous; or
6. Arbitrary or capricious. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

Section 28. Amendment to City Code. That Section 18.70.060 of the Auburn City Code be and the same amended to read as follows:

18.70.060 Appeal of hearing examiner's decision.

The hearing examiner's decisions may be appealed to superior court in the manner prescribed by Chapter ~~2.4618-66~~ ACC. (Ord. 6185 § 10, 2008; Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

Section 29. Amendment to City Code. That Section 18.76.130 of the Auburn City Code be and the same amended to read as follows:

18.76.130 Hearing examiner review.

Pursuant to the provisions of Chapter ~~2.4618-66~~ ACC the hearing examiner shall conduct a public hearing on all requests for a major amendment to a PUD. The examiner's decision shall be in the form of a recommendation to the city council. (Ord. 5092 § 1, 1998.)

Section 30. Amendment to City Code. That Section 19.06.080 of the Auburn City Code be and the same amended to read as follows:

19.06.080 Appeals.

A. Any feepayer may pay the impact fees imposed by this chapter under protest in order to obtain a building permit. Appeals regarding the impact fees imposed on any development activity may only be made by the feepayer of the property where such development activity will occur. No appeal submitted under protest shall be permitted unless and until the impact fees at issue have been paid. Alternatively, any feepayer may appeal the impact fees determined by the director without first paying the fees, providing the applicant is willing to provide a satisfactory security of the appealed fee amount in accordance with the requirements of ACC 17.14.010(A) prior to issuance of the building permit. Alternatively, any feepayer may appeal the impact fees determined by the director without first paying the fees, provided the applicant is willing to postpone issuance of the building permit until after the appeal process when the revised final fee is known.

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B. Determinations of the director with respect to the applicability of the impact fees to a given development activity, the availability or value of a credit, or the director's decision with respect to the independent fee calculation, or any other determination which the director is authorized to make pursuant to this chapter, can be appealed to the hearing examiner.

C. Appeals shall be taken within 10 days of the director's issuance of a written determination by filing with the office of the hearing examiner a notice of appeal specifying the grounds thereof and depositing the necessary fee, which is set forth in the existing fee schedules for appeals of administrative decisions. The director shall transmit to the office of the hearing examiner all papers constituting the record for the determination, including, where appropriate, the independent fee calculation.

D. The hearing examiner shall fix a time for the hearing of the appeal, give notice to the parties in interest, and decide the same as provided in Chapter ~~2.4618.66~~ ACC. At the hearing, any party may appear in person or by agent or attorney.

E. The hearing examiner is authorized to make findings of fact regarding the applicability of the impact fees to a given development activity, the availability or amount of the credit, or the accuracy or applicability of an independent fee calculation. The decision of the hearing examiner shall be final, except as provided in subsection (G) of this section.

F. The hearing examiner may, so long as such action is in conformance with the provisions of this chapter, reverse or affirm, in whole or in part, or may modify the determinations of the director with respect to the amount of the impact fees imposed or the credit awarded upon a determination that it is proper to do so based on principles of fairness, and may make such order, requirements, decision or determination as ought to be made, and to that end shall have the powers which have been granted to the director by this chapter.

G. Any feepayer aggrieved by any decision of the office of the hearing examiner may appeal the hearing examiner's final decision as provided in Chapter ~~2.4618.66~~ ACC. (Ord. 6341 § 4, 2011; Ord. 5977 § 1, 2005.)

Section 31. Relocation and Amendment to City Code. That Chapter 18.66 is

amended and recodified as a New Chapter, 2.46 of the Auburn City Code to read as follows:

**Chapter ~~2.4618.66~~
HEARING EXAMINER**

Sections:

2.4618.66.010	Title.
2.4618.66.020	General objectives.
2.4618.66.030	Creation of the hearing examiner.
2.46.035	<u>Powers and areas of jurisdiction</u>
2.4618.66.040	Appointment and term.
2.4618.66.050	Removal.
2.4618.66.060	Qualifications.
2.4618.66.070	Examiner pro tempore – Duties.
2.4618.66.080	Hearing examiner – Conflict of interest.

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- ~~2.4618.66.090~~ Freedom from improper influence.
- ~~18.66.100~~ Duties of the examiner — Applications and decisions.
- ~~2.4618.66.100110~~ Applications.
- ~~2.4618.66.110120~~ Report by ~~planning~~ department.
- 2.46.120 Burden of Proof
- ~~2.4618.66.130~~ Public hearing.
- ~~2.4618.66.140~~ Examiner's decision and recommendations – Findings required.
- ~~2.4618.66.150~~ Request for reconsideration.
- ~~2.4618.66.160~~ Appeal of final decisions.
- ~~2.4618.66.170~~ Hearing examiner's recommendation.
- ~~2.4618.66.180~~ Council action.
- ~~2.4618.66.190~~ Review of chapter by council.

2.4618.66.010 Title.

This chapter shall be hereafter known as the "hearing examiner" chapter and may be cited as such and will be hereinafter referred to as "this chapter". (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

2.4618.66.020 General objectives.

It is the general objective of this chapter to:

- A. Provide a single, efficient, integrated, land use regulatory decision-making process and public hearing system;
- B. Render land use regulatory decisions and recommendations to the city council;
- C. Provide a greater degree of due process in land use regulatory decision-making and public hearings;
- D. Separate land use policy formulation from land use policy administration processes. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)
- E. Provide an efficient and effective administrative adjudicatory system for review of contested administrative determinations.

2.4618.66.030 Creation of the hearing examiner.

The office of the hearing examiner, hereinafter referred to as "examiner," is hereby created. The examiner shall interpret, review, and implement land use regulations as provided in this title and other ordinances, issues and matters as assigned, delegated and/or referred to the examiner. The term examiner shall likewise include the examiner pro tem. (Ord. 6185 § 8, 2008; Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

2.46.035 Powers and Areas of Jurisdiction.

The Hearing Examiner shall have the power to receive and examine available information, conduct public hearings, prepare a record thereof and enter findings of fact, conclusions based upon those facts and enter decisions as provided by ordinance. Notwithstanding any other provision in the Auburn Municipal Code, the Hearing Examiner's areas of jurisdiction shall include those matters contained in this chapter.

A. The decision of the Hearing Examiner on the following matters shall be final:

- 1. Appeals of assessed civil penalties (ACC 1.25.065 (E))¹
- 2. Appeals regarding the city's decision on refunds from the construction sales tax exemption (ACC 3.60.036 (F))

¹ The appeal shall be processed and the hearing conducted according to the provisions of ACC 15.07.130

3. Appeals from the planning director's denial of an application for a multi-family tax exemption (MFTE) (ACC 3.94.070 (F))

4. Appeals from the planning director's denial of an extension of a conditional certificate for MFTE ACC 3.94.090 (B))

5. Appeals of a dangerous dog determination (ACC 6.35.020 (D))

6. Appeals of a decision by the planning director regarding expansion of hours for construction noise (ACC 8.28.010 (B)(8)(d))

7. Appeals of a decision by the city engineer regarding construction permits (ACC 12.24.090 (C))

4-8. Appeals of a decision by the city engineer regarding undergrounding of utilities (ACC 13.32A.130 (D))

2-9. Appeals of decisions by the building official or fire code official regarding building and code violations (ACC 15.07.130)²

10. Applications for a shoreline conditional use permit (ACC 16.08.054), (note that by statutes, the State Department of Ecology has final approval authority)

B. The decision of the Hearing Examiner on the following matters shall be final unless such decision is appealed to the City Council as provided in this chapter:

1. Appeals from denial, civil penalty suspension or revocation of a business license (ACC 5.15.070)

2. Appeals from denial of a rental housing business license (ACC 5.22.060 (D))

3. Appeals from revocation or notice of intent to revoke a rental housing business license (ACC 5.22.080 (B))

C. The decision of the Hearing Examiner on the following matters shall be the final administrative decision of the City:

1. Appeals from the planning director's denial of a final certificate for Multifamily Property Tax Exemption MFTE (ACC 3.94.100 (B))

2. Appeals from the planning director's cancellation of a tax exemption for MFTE (ACC 3.94.120 (C))

3. Appeals of a decision by the public works director regarding commute trip reductions (ACC 10.02.130)

4. Appeals from denial of an adult entertainment establishment license, issuance or renewal (ACC 5.30.070)

5. Appeals of a decision by the public works director regarding required public improvements (ACC 12.64A.060)

6. Appeals of a decision by the public works director regarding system development charges (ACC 13.41.070)

7. Hear and resolve tenant complaints against landlords regarding utility billing practices (3rd party billing) (ACC 13.52.050)

8. Appeals of a decision by the planning director on a relocation report and plan related to the closure of a mobile home park (ACC 14.20.110)

9. Appeals of a decision by the floodplain administrator on floodplain development permits (ACC 15.68.125)

10. Appeals of a decision by the landmarks and heritage commission on historical designations (ACC 15.76.040)

11. Appeals of a decision by the SEPA responsible official on threshold determinations (ACC 16.06.250) – public hearing needed

12. Appeals from Critical Area Review decisions (ACC 16.10.140)

² The appeal shall be processed and the hearing conducted according to the provisions of ACC 15.07.130

13. Applications for a reasonable use exception due to critical area regulations (ACC 16.10.150)

14. Applications for a buffer width variance of critical areas regulations which exceeds 10 percent of a quantifiable standard. (ACC 16.10.160)

15. Applications for a public agency special exception to critical area regulations (ACC 16.10.170)

16. Appeals from a decision of the planning director regarding boundary line adjustments (ACC 17.06.030)

17. Applications for a preliminary plat (ACC 17.10.050)

18. Applications for modification of standards and specifications related to a preliminary plat (ACC 17.18.010)

19. Applications for alteration of any subdivision (ACC 17.20.030)

20. Appeals from a decision of the planning director regarding site plan approval of a business park (ACC 18.36.020 (B))

21. Applications for a special home occupation permit (ACC 18.60.040A)

22. Applications for a surface mining permit (ACC 18.62.030)

23. Appeals from a decision of the planning director regarding administrative use permits (ACC 18.64.020(A))

24. Applications for a conditional use permit (ACC 18.64.020 (B))

25. Applications for a variance (ACC 18.70.010)

26. Appeals from a decision of the planning director regarding administrative variances (ACC 18.70.015)

27. Applications for a special exception (ACC 18.70.020)

28. Applications for a variance in the regulatory floodplain (ACC 18.70.025)

29. Appeals from any administrative decision under Title 18 – Zoning (ACC 18.70.050)

30. Appeals from a decision of the planning director regarding fire impact fees (ACC 19.06.080)

31. Appeals from a decision of the parks director regarding park impact fees (ACC 19.08.040)

D. On the following matters, the Hearing Examiner shall enter findings of fact, conclusions of law, and recommendations to the City Council:

1. Applications for vacating a subdivision or portion of a subdivision, or any land dedicated for public use, except rights-of-way associated with public streets (ACC 17.22.030)

2. Application for a business park (conceptual approval) (ACC 18.36.020 (A))

3. Applications for a rezone (zoning map amendment) initiated by an applicant other than the city (ACC 18.68.030).

4. Applications for major amendments to the Lakeland Hills PUD (ACC 18.76.130)

2.4618.66.040 Appointment and term.

The hearing examiner shall be appointed by the mayor and subject to confirmation by the Auburn city council. In the event that the appointed examiner is unable to perform the duties of office for whatever reason, or in the event of a vacancy in office, the mayor shall appoint an examiner pro tem who shall have the authorities herein provided. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

2.4618.66.050 Removal.

The examiner or the examiner pro tem may be removed from office at any time by the mayor. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

2.4618.66.060 Qualifications.

The examiner and the examiner pro tem shall be appointed solely with regard to their qualifications for the duties of the office which shall include, but not be limited to, appropriate educational experience such as in urban planning, land use law and public administration. Wherever feasible, the mayor shall endeavor to appoint qualified candidates who reside in the Auburn area. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

2.4618.66.070 Examiner pro tempore – Duties.

~~The examiner pro tem, in the event of the absence or inability of the examiner to act, shall have all the duties and powers of the examiner. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)~~
shall have the power to perform the duties of the hearing examiner whenever the hearing examiner is absent, has a conflict of interest, or otherwise so requests.

The qualifications for hearing examiner pro tem are the same as for the hearing examiner.

2.4618.66.080 Hearing examiner – Conflict of interest.

The examiner shall not conduct or participate in any hearing or decision in which the examiner has a direct or indirect personal interest which might exert such influence upon the examiner that might interfere with his decision-making process. Any actual or potential conflict of interest shall be disclosed by the hearing examiner to the parties immediately upon discovery of such conflict.

~~Participants in the land use regulatory process appearing before the Hearing Examiner have the right, insofar as possible, to have the examiner free from personal interest or prehearing contracts on land use regulatory matters considered by him or her. It is recognized that there is a countervailing public right to free access to public officials on any matter. If such personal or prehearing interest contact impairs the examiner's ability to act on the matter, the hearing examiner shall state and shall abstain therefrom to the end that the proceeding is fair and has the appearance of fairness, unless all parties agree in writing to have the matter heard by said examiner. If all parties do not agree and the hearing examiner must abstain, the mayor shall be notified and the mayor shall appoint a hearing examiner~~
shall assign the matter to a hearing examiner pro tem to sit in the hearing examiner's stead. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

2.4618.66.090 Freedom from improper influence.

No council member, city official, or any other person shall attempt to interfere with, or improperly influence the examiner or examiner pro tempore in the performance of his designated duties. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

~~18.66.100 Duties of the examiner – Applications and decisions.~~

~~For cases and actions as prescribed by ordinance, the examiner shall receive and examine available information, conduct public hearings, prepare a record thereof, and enter findings of fact, conclusions based upon those facts, and a decision. As provided by ordinance, such decision may be a recommendation or a final action subject to appeal as provided by ordinance. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)~~

2.4618.66.100110 Applications and appeals.

Applications and appeals requiring a determination by the hearing examiner shall be filed with the department that has responsibility for the ordinance that is the subject of the application or appeal. ~~planning department~~

~~A. Within 28 days of receipt of an application the planning department shall determine whether the application is complete. If complete, the application shall be accepted. If not complete, the planning department shall request that the applicant provide additional information as necessary to complete the application. Where applicable, this process shall meet the requirements for completion as set forth in ACC Title 14.~~

~~B. The applicant shall be advised of the date of acceptance of the application and of the environmental determination, if one is made. The applicant shall be advised of the date of any public hearing at least 10 calendar days prior to the hearing. If pursuant to ACC Title 14, an open record predecision hearing is required and the threshold determination requires public notice pursuant to Chapter 16.06 ACC, then the threshold determination shall be issued at least 15 days prior to the open record predecision hearing. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)~~

A. Applications requiring a hearing examiner decision shall be scheduled for hearing promptly upon notification by the that the application is complete and ready for scheduling.

B. Promptly following receipt of a timely appeal, the hearing examiner shall schedule a hearing consistent with the requirements of the applicable ordinance(s) and these rules.

2.4618.66.110120 Report by planning department.

~~When a matter identified in section 2.46.035 has been set for public hearing, the responsible department~~ When such application has been set for public hearing, if required, the planning department shall coordinate and assemble the comments and recommendations of other city departments and other governmental agencies having an interest in the subject application and shall prepare a report summarizing the issues involved, and the responsible department's findings and recommendation. ~~planning department findings of fact, recommended conditions and/or recommended action.~~ This report shall be transmitted to the examiner at least four calendar days prior to the scheduled hearing. Copies of this report shall be mailed to the applicant prior to the hearing and shall be made available to the public for the cost of reproduction prior to the scheduled hearing. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

2.46.120 Burden of proof.

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

A. Appeal hearings:

The applicant/appellant shall have the burden of proof, by a preponderance of the evidence, as to material factual issues except where applicable City code provisions or state law provide otherwise.

B. Land use application hearings:

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

C. Code enforcement hearings:

The City shall have the burden of proving, by a preponderance of the evidence, that a code violation has occurred and that the proposed corrective action is reasonable.

2.4618.66.130 Public hearing.

A. Before rendering a decision or recommendation on any application for which a public hearing is required, the examiner shall hold a public hearing thereon. Unless otherwise required

by the Auburn City Code, all hearings conducted by the examiner shall be open record hearings. Notice of the place and time of the public hearing shall be given as provided in the ordinance governing the application. If none is specifically set forth, the following notice requirements shall be followed:

1. Be given not less than 10 days prior to the date of the hearing;

2. Set forth the time, place and purpose of such hearing;

~~4.3. Be provided in accordance with the requirements of ACC 14.07.040. (Ord. 5811 § 9, 2003; Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.) such notice shall be given in accordance with ACC 18.70.040~~

B. The examiner shall have the power to prescribe rules and regulations for the conduct of hearings under this chapter subject to review by the city council and to administer oaths and preserve order.

C. At the close of the testimony the examiner may close the public hearing, continue the hearing to a time and date certain, or close the public hearing pending the submission of additional information on or before a date certain.

D. Until a final action on the application is taken, the examiner may dismiss the application for failure to diligently pursue the application after notice is given to all parties of record.

E. If a project consists of different actions which require separate hearings to be held for each action, one consolidated hearing shall be held as required by ACC Title 14. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

2.4618-66-140 Examiner's decision and recommendations – Findings required.

A. Unless the time is extended pursuant to this section, within 10 calendar working days of the conclusion of a hearing, or the date set for submission of additional information pursuant to this chapter, the examiner shall render a written decision, including findings from the record and conclusions therefrom, and shall transmit a copy of such decision by regular mail, postage prepaid, to the applicant and other parties of record in the case who have requested notice of the decision at the public hearing. The person mailing the decision shall prepare an affidavit of mailing, in standard form, and the affidavit shall become a part of the record of the proceeding. In the case of applications requiring city council approval, the examiner shall transmit his decision to the city council.

B. In extraordinary cases, the time period for filing of the recommendation or the decision of the examiner may be extended for not more than 20 calendar working days after the conclusion of the hearing if the examiner finds that the amount and the nature of the evidence to be considered, or receipt of additional information which cannot be made available within the normal decision period, requires the extension. Notice of the extension, stating the reasons therefore, shall be sent to all parties of record in the manner set forth in this section for notification of the examiner's decision.

When acting on land use matters:

C. Conditions. The examiner's recommendation or decision may be to grant or deny the application, or the examiner may require of the applicant such conditions, modifications and restrictions as the examiner finds necessary to make the application compatible with the environment and carry out the goals and objectives of the comprehensive plan, this title, the land division ordinance, other codes and ordinances of the city of Auburn, and the approved preliminary plat, if applicable. Conditions, modifications and restrictions which may be imposed shall be founded in the body of legislation approved by the city council. Performance bonds may be required to insure compliance with the conditions, modifications and restrictions.

D. Termination of Decision. The city declares that circumstances surrounding land use decisions change rapidly over a period of time. In order to assure the compatibility of a decision

with current needs and concerns, any such decision shall be limited in duration, unless the action or improvements authorized by the decision is implemented promptly. Any application, except a rezone, approved pursuant to this chapter shall be implemented within two years of such approval unless other time limits are prescribed elsewhere. Any application which is not so implemented shall terminate at the conclusion of that period of time and become null and void. The examiner may grant one extension of time for a maximum of one year for good cause shown. The burden of justification shall rest with the applicant. For large-scale or phased projects the examiner may at the time of approval or recommendation set forth time limits for expiration which exceed those prescribed in this section for such extended time limits as are justified by the record of the action. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

2.4618.66-150 Request for reconsideration.

The ~~planning~~responsible director or an interested party affected by the final decision or recommendation of the examiner who asserts that the hearing examiner based that recommendation or decision on an erroneous procedure, errors of law or fact, or error in judgment, ~~or the discovery of new evidence~~ which could not be reasonably available at the prior hearing may make a written request for review by the examiner within seven calendar days after the written decision of the examiner has been rendered. The request for reconsideration shall set forth the specific errors relied upon by such appellant, and the examiner may, after review of the record, take further action as the examiner deems proper. The examiner may request further ~~information~~argument which shall be provided within 10 calendar days of the examiner's request. The examiner's written decision on the request for consideration shall be transmitted to all parties of record within 10 ~~calendar~~working days of receipt of the request for reconsideration or receipt of the additional ~~information~~argument requested, whichever is later. The date of the hearing examiner's final decision for appeal purposes shall be construed as the date of the hearing examiner's decision on the reconsideration request. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

2.4618.66-160 Appeal of final decisions.

The ~~planning~~responsible director or any interested party affected by the examiner's written final decision may appeal the decision to superior court of the county in which the project is located. (Ord. 6185 § 7, 2008; Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

2.4618.66-170 Hearing examiner's recommendation.

A. For actions requiring the hearing examiner's recommendation as provided by ordinance, the examiner's recommendation shall be forwarded to the city council within 10 ~~calendar~~working days of the examiner's decision. The recommendation shall be placed on the next agenda of the city council. The city council upon its review of the record may:

1. Affirm the recommendation;
2. Remand the recommendation to the hearing examiner;
3. Schedule a closed record public hearing before the city council.

B. Any aggrieved person may request the city council to conduct its own closed record hearing. Upon its own closed record hearing the city council may affirm, reject, modify the hearing examiner's recommendation or take whatever action it deems appropriate pursuant to law. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

2.4618.66-180 Council action.

Ordinance No. 6442
November 29, 2012
Page 28 of 30

Any application requiring action by the city council shall be evidenced by minute entry unless otherwise required by law. When taking any such final action, the council shall make and enter findings of fact from the record and conclusions therefrom which support its action. Unless otherwise specified, the city council shall be presumed to have adopted the hearing examiner's findings and conclusions.

A. All applications requiring council action shall be placed on the council's agenda for consideration.

B. The action of the council approving, modifying or rejecting the hearing examiner's decision or recommendation shall be final and conclusive, subject to any writ of review pursuant to law. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

2.4618.66-190 Review of chapter by council.

The city council may on an annual basis review the content and effect of this chapter on the city of Auburn and its citizens. The method of review may include a public hearing open to all interested citizens. The council after review and consideration shall at that time decide to modify, repeal, or retain all of or part of this chapter. (Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)

Section 32. Implementation. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 33. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 37. Effective date. This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

CITY OF AUBURN

PETER B. LEWIS, MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

Published: _____



AGENDA BILL APPROVAL FORM

Agenda Subject:

King County Service Agreement Proposal

Date:

December 11, 2012

Department:

Public Works

Attachments:

[Memo](#)

[Exhibit 1](#)

[Exhibit 2](#)

Budget Impact:

\$0

Administrative Recommendation:**Background Summary:**

See attached.

Reviewed by Council Committees:

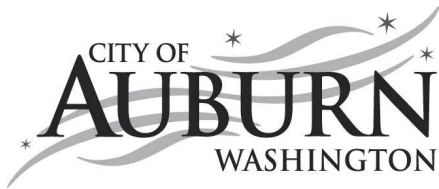
Public Works

Councilmember:

Staff: Para

Meeting Date: December 17, 2012

Item Number: DI.D



Memorandum Engineering Division

To: Public Works Committee, Mayor Lewis
From: Pablo Para, Transportation Manager
CC: Dennis Dowdy, Dennis Selle, Ingrid Gaub
Date: December 17, 2012
Re: King County Service Agreement

Purpose:

The purpose of this memo is to review the proposed King County Interlocal road services agreement with King County. Since 2008 the City has contracted with King County for annual maintenance of striping, pavement markings, bridge inspections, other miscellaneous roadway maintenance, and emergency call out services. Staff is very please with King County's continued performance, responsiveness, cost of services, and quality of work.

Existing Agreement: (Attached Exhibit 1)

The existing "Interlocal Agreement" must be processed through each jurisdictions legal department, Council, and re-authorized annually. This becomes a very involved and lengthy administrative process for both agencies.

Proposed Agreement: (Attached Exhibit 2)

The proposed service agreement is also an "Interlocal Agreement" and the wording is consistent with the service agreements that King County currently utilizes with over 20 other cities. The agreement incorporates comments from legal and risk management. The advantages with this agreement is that it renews automatically every year unless either agency notifies the other of its intent to terminate. This allows the City to still review the need for such services annually, but does not require the City to go through a lengthy negotiation and adoption process with the County if it chooses to continue to contract with the County for any such services.

Implementation:

Similar to the existing agreement the proposed agreement will be implemented as follows:

- Specific services are requested by the City on an as needed Task Order basis subsequent to execution of the interlocal agreement.
- For each Task Order the City identifies the scope or work to be performed, time parameters, and sets any applicable special requirements particular to the work being performed.
- The County provides the City with estimated cost of service for each Task Order in advance of the City authorization to proceed.
- Each individual Task Orders is subject to the council authorized budget limits.

EXHIBIT 1

INTERLOCAL AGREEMENT FOR PROVISION OF ROAD RELATED MAINTENANCE SERVICES TO BE PERFORMED BY KING COUNTY ROAD SERVICES DIVISION

THIS AGREEMENT is made and entered into this ___ day of _____, 2012. The parties ("Parties") to this Agreement are King County, a political subdivision of the State of Washington ("County") and the City of Auburn, a State of Washington municipal corporation ("City").

RECITALS

- A. The City owns public roads and traffic devices which require maintenance.
- B. The City wishes to contract with the County for the performance of certain road maintenance and repair services such as striping and pavement markings; bridge inspections and related maintenance repair; and emergency related maintenance and repair services.
- C. The County is agreeable to performing the maintenance and repair services on the terms and conditions hereinafter set forth and in consideration of the mutual covenants and agreements herein contained.
- D. The Parties can achieve cost savings and benefits in the public's interest by having the County perform the maintenance and repair services for the City at the City's expense.
- E. Pursuant to RCW 39.34, the Interlocal Cooperation Act, the Parties are each authorized to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

- 1. Work
 - 1.1 Scope of Work. The County Road Services Division shall perform the maintenance and repair services described on the attached Exhibit 1, Scope of Work.
 - 1.2 Modification of Work. If the City desires to modify the Scope of Work, it shall notify the County. If the County agrees, the Parties shall prepare an amended Scope of Work, which will be attached hereto as Exhibit 2. The amended Scope of Work shall bear the signature of the Road Services Division Director for the County and the Director of Public Works for the City, authorizing the amended work.
- 2. County Personnel Standards

The County is acting hereunder as an independent contractor so that:

- a. County employees performing maintenance and repair services hereunder shall be for all purposes employees of the County;
- b. Control of County personnel standards of performance, discipline, and all other aspects of employment shall be governed entirely by the County.

3. Compensation

- 3.1 Costs. The City shall pay the County for actual costs (direct labor, employee benefits, equipment rental, materials and supplies, utilities, permits, and administrative overhead costs) for the maintenance and repair services performed by the County. Administrative overhead costs shall be charged as a percentage of direct labor costs.
- 3.2 Billing. The County will bill the City for the cost of work performed. The bill will reflect actual costs and administrative overhead, as described in Section 3.1 above. Payments are due within 30 days of the City's receipt of said invoice.

4. Permits

The City is responsible for obtaining any permits or other authorizations that may be necessary for the County to perform the maintenance and repair services under this Agreement.

5. County Responsibilities

- 5.1 County Status. The County will act as a contractor only and will not purport to represent the City professionally.
- 5.2 County Performance. The County shall perform the maintenance and repair services requested by the City as described in the Scope of Work. The County will furnish all necessary labor, supervision, machinery, equipment, materials, and supplies to perform the maintenance and repair services requested by the City in the Scope of Work.
 - 5.2.1 The County understands that the City has appropriated \$185,000 for this work. In order to ensure the City does not exceed its appropriation authority, the City and the County agree that the City will not request, and the County will not perform any work that would result in the County billing the City in excess of this amount until additional funds are appropriated.
- 5.3 Timing of Work. The County will make every effort to recognize pertinent City deadlines for completion of the requested maintenance and repair services, and will notify the City of any hardship or other inability to perform the work requested, including postponement of work due to circumstances requiring the County to prioritize its resources toward

emergency-related work.

6. Duration

This Agreement is effective upon signature by both parties, and shall remain in effect until completion of the 2012 work and payment of all sums due hereunder. Either party may terminate this Agreement by a written notice received by the other party at least five business days before the date of termination.

7. Force Majeure

The County's performance under this Agreement shall be excused during any period of force majeure. Force majeure is defined as any condition that is beyond the reasonable control of the County, including but not limited to, natural disaster, severe weather conditions, contract disputes, labor disputes, epidemic, pandemic, delays in acquiring right-of-way or other necessary property or interests in property, permitting delays, or any other delay resulting from a cause beyond the reasonable control of the County.

8. Dispute Resolution

- 8.1 In the event of a dispute between the Parties regarding this Agreement, the Parties shall attempt to resolve the matter informally.
- 8.2 If the Parties are unable to resolve the matter informally, the matter shall be decided by the Director of the King County Road Services Division and the Public Works Director of the City. If the Parties are unable to reach a mutual agreement, either Party may refer the matter to non-binding mediation.
- 8.3 Unless otherwise expressly agreed to by the Parties in writing, both the County and the City shall continue to perform all their respective obligations under this Agreement during the resolution of the dispute.
- 8.4 This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. In the event any party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the Parties hereto agree that such action or proceedings shall be brought in a court of competent jurisdiction in King County Washington.

9. Notice

Any notice, including notice of termination, or information required to be given to the Parties under this Agreement may be sent to the following addresses unless otherwise specified:

City:

County:

City of Auburn
Director of Public Works
25 W Main Street
Auburn WA 98001-4998

King County Department of Transportation
Roads Services Division
Division Director
KSC-TR-0313
201 S. Jackson St
Seattle, WA 98104-3856

10. Liability

The City and the County agree to defend, indemnify and hold harmless each other, their respective officials, agents and employees, from and against any and all claims, damages, injuries, liabilities, actions, fines, penalties, costs and expenses (including reasonable attorney fees) that arise out of or are related to the negligent acts or omissions of the indemnifying party and its officials, agents, employees acting within the course and scope of their employment and in the performance of said Party's obligations under this Agreement or the exercise of a Party's rights and privileges under this Agreement. In the event any such liability arises from the concurrent negligence of the indemnifying Party and the other Party, or any of their respective actors, the indemnity obligation of this section shall apply only to the extent of the negligence of the indemnifying Party and its actors.

The foregoing provisions specifically and expressly intend to constitute a waiver of each party's immunity under industrial insurance, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

11. Applicable Laws

Washington law shall govern the interpretation of this Agreement. King County shall be the venue of any arbitration or lawsuit arising out of this Agreement.

12. Authority

Each individual executing this Agreement on behalf of the City and the County represents and warrants that such individuals are duly authorized to execute and deliver the Agreement on behalf of the City or the County.

13. Audits and Inspections

The records and documents pertaining to all matters covered by this Agreement shall be retained and be subject to inspection, review or audit by the County or the City during the term of this Agreement and for three (3) years thereafter.

14. Entire Agreement and Amendments

This Agreement contains the entire agreement of the parties hereto and supersedes any and all prior

oral or written representations or understandings. This Agreement may only be amended by mutual, written agreement between the parties, provided that the Scope of Work may be amended as described in Section 1.2 above.

15. No Third Party Rights

Nothing contained herein is intended to, nor shall be construed to, create any rights in any third party, or to form the basis for any liability on the part of the parties to this Agreement, or their officials, officers, employees, agents or representatives, to any third party.

16. Waiver of Breach

Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

17. Headings

The headings in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

18. Invalid Provisions

If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected if such remainder would then continue to serve the purposes and objectives of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date last written below.

KING COUNTY

CITY OF AUBURN

King County Executive

City Mayor

Date

Date

Approved as to Form

King County Deputy Prosecuting
Attorney

Approved as to Form

City Attorney

EXHIBIT 1 **Scope of Work**

City Striping and Pavement Markings

The City requests citywide replacement striping, raised pavement markings (RPMs) and thermoplastics services in 2012. The City will identify specific locations that will be striped twice in 2012. Locations for thermoplastics and raised pavement markings will also be provided by the City.

Schedule

- Since striping, RPMs and thermoplastics installations are weather dependent services, specific scheduling date(s) will be mutually determined between the City representative, Pablo Para and the County representative, George Dudley.

Cost Estimate

- Without an accurate inventory of striping, RPMs and thermoplastics in the City, the County is unable to provide a cost estimate.
- The City's budget for these services is \$125,000.
- The County will therefore do approximately \$125,000 worth of striping, RPMs and thermoplastics.
- The City agrees that the County cannot guarantee that all striping, RPMs and thermoplastics in the City can be accomplished within the City's budget.
- If the County cannot accomplish all the citywide striping, RPMs and thermoplastics within the City's budget, the City may increase the budget necessary to complete the requested work.

Bridge Inspections and Related Maintenance Repair Work

The City requests bridge inspections per the 2012 bridge schedule for eleven city bridges per the National Bridge Inspection Standards as published in the Code of Federal Regulations, 23 CFR 650 Subpart C and the State of Washington Bridge inspection Manual. In addition, the City may requests bridge maintenance repair work under this Agreement as a result of the inspections. The County will provide cost estimates for any maintenance repair work requested by the City.

Schedule

- The bridge inspections will occur in the summer or fall of 2012.
- Any related bridge maintenance repair work will be scheduled as mutually agreed by the County and the City.

Cost Estimate

- The cost estimate is approximately \$10,000 for the inspections of eleven city-owned bridges in 2012.
- The cost estimate for any related bridge maintenance repair work will be provided upon the city's request to have the County perform such repair work.

Emergency Call Out Services

The City requests the provision of emergency related maintenance/repair work including, but not limited to the following:

- Traffic signal related maintenance/repair work for signal pole knockdowns, signal controller failures, and others.
- Bridge maintenance/repair work such as clearing wood and log debris and others.

Schedule

Emergency call out services will be scheduled and done based on availability of County crews as this service is anticipated to be needed during time of emergency such as a flooding or a storm that may similarly impact County roads and facilities.

EXHIBIT 2

INTERLOCAL AGREEMENT BETWEEN KING COUNTY AND THE CITY OF AUBURN FOR PROVISION OF SERVICES BY THE KING COUNTY ROAD SERVICES DIVISION

THIS AGREEMENT is made and entered into by and between King County, hereinafter called the "County," and the City of Auburn, hereinafter called the "City."

RECITALS

- A. The City owns public roads and traffic devices which require maintenance and/or other improvements.
- B. The City wishes the County Road Services Division to provide or perform certain services for the City.
- C. The parties can achieve cost savings and benefits in the public's interest by having the County complete those services for the City at the City's expense.
- D. This Agreement establishes the City's role and responsibilities as the recipient of such services and the County's role and responsibilities as the provider of such services.
- E. The parties are authorized by RCW Chapter 39.34 to enter into an interlocal cooperation agreement of this nature.

NOW, THEREFORE, the parties agree as follows:

TERMS AND CONDITIONS:

1. Services

- 1.1 The County Road Services Division will, upon the City's request, provide the City with Traffic Maintenance, Road Maintenance, Construction Management and Engineering, Environmental services and other road related services. Examples of the types of Traffic and Road Maintenance services to be provided are contained in Exhibit 1 of this Agreement. The services provided to the City shall be any service that the City requests to the extent that the County Road Services Division is able to provide such service.
- 1.2 The County shall only perform services as requested by the City through the procedure described in Section 2 below.
- 1.3 The County shall act as a contractor of services only and will not purport to represent the City professionally other than in providing the services requested.

- 1.4 The County shall be the lead agency for the completion of work items requested by the City. The County shall provide services in the type, nature, and magnitude requested by the City.
- 1.5 In the event either party decides to make changes to the work items requested that alters the original scope of work, written notification from the City authorizing such changes shall be required preceding any such work.

2. Procedure for Requesting Services

- 2.1 The City shall request services furnished by the County through the procedure identified in Exhibit 2 of this Agreement.
- 2.2 The County shall provide the City with a cost estimate for individual service requests.

3. County and City Coordination

- 3.1 The City and County shall notify each other in writing of their respective operations liaison(s) responsible for administering day-to-day operational activities related to the provision of services under this Agreement.
- 3.2 The County and City liaisons shall meet as needed to review performance or to resolve problems or disputes. Any problems or disputes which cannot be resolved by the City and County liaisons shall be referred to the authorized City representative and the Road Services Division Director.

4. Personnel and Equipment

- 4.1 The County is acting hereunder as an independent contractor so that:
 - a. control of personnel standards of performance, discipline, and all other aspects of work shall be governed entirely by the County;
 - b. except as described in 4.3 below, all persons rendering service hereunder shall be for all purposes employees of the County.
- 4.2 The County shall furnish all personnel, resources, and materials deemed by the County to be necessary to provide the services herein described and subsequently requested and authorized by the City.
- 4.3 In the event the County uses a contractor to perform one or more of the services requested by the City, the appropriate supervision and inspection of the contractor's work will be performed by the County.

5. Compensation

- 5.1 Costs. The City will pay the County for actual costs (direct labor, employee benefits, equipment rental, materials and supplies, utilities, permits, and administrative overhead costs) for the services provided by the County as set forth herein. Administrative overhead costs for each work item shall be charged as a percentage of direct labor costs.
- 5.2 Billing. The County shall bill the City monthly for the costs of services provided. The monthly bill will reflect actual costs plus the administrative overhead set forth in Section 5.1 above. Payments are due within 30 days of the City's receipt of said invoice.
- 5.3 Extraordinary Costs. Whenever the City desires to modify a requested service, it shall notify the County in writing of that desire, and the County shall, before providing the modified service, advise the City in writing as to whether the modification would result in any increased or extraordinary costs and the amount thereof. If, after receiving such notification, the City authorizes the modification of service in writing, then it shall be responsible for actual costs for the modified services requested by the City. If the City decides not to authorize the modification of service, it shall notify the county in writing, and advise the county whether service shall continue as originally requested or the City cancels the request. If the City cancels the request, the City shall be responsible for all cost incurred by the County prior to and in connection with the cancellation.
- 5.4. The County understands that the City has appropriated a certain amount of money for work to be conducted under this Agreement. In order to ensure the City does not exceed its appropriation authority, the City and the County agree that City will not request, and the County will not perform any work that would result in the County billing the City in excess of the amount appropriated by the Auburn City Council for services to be provided during each calendar year.

6. City Responsibilities

- 6.1 The City hereby gives authority to the County to perform services within the City limits for the purposes of carrying out this Agreement.
- 6.2 The City is responsible for obtaining any permits or other authorizations that may be necessary for the County to carry out the work under this Agreement.
- 6.3 Nothing in this Section shall alter the status of the County and the Road Services Division as an independent contractor of the City, and the County's actions shall not be deemed to be those of the City when exercising the authority granted in this Section 6.

6.4 The City is responsible for determining the amount of appropriations available during each budget year for service to be provided under this Agreement, and for notifying the County not later than January 30 of this year of the maximum amount available.

7. County Responsibilities

7.1 The County shall furnish and supply all necessary labor, supervision, machinery, equipment, materials, and supplies to perform the services requested by the City.

7.2 The County shall make every effort to recognize pertinent City deadlines for completion of services, and shall notify the City of any hardship or other inability to perform the services requested, including postponement of work due to circumstances requiring the County to prioritize its resources toward emergency-related work outside of the City limits.

8. Duration

8.1 This Agreement is effective upon signature by both parties, and shall remain in effect for the remainder of the calendar year in which it is signed and throughout the following calendar year.

8.2 Thereafter, this Agreement shall renew automatically from year to year effective January 1 to December 31 of each calendar year, unless either party notifies the other in writing to terminate or make substantial changes to this Agreement by September 1 of the preceding calendar year.

9. Force Majeure

The County's performance under this Agreement shall be excused during any period of force majeure. Force majeure is defined as any condition that is beyond the reasonable control of the County, including but not limited to, natural disaster, severe weather conditions, contract disputes, labor disputes, epidemic, pandemic, delays in acquiring right-of-way or other necessary property or interests in property, permitting delays, or any other delay resulting from a cause beyond the reasonable control of the County.

10. Dispute Resolution

10.1 In the event of a dispute between the Parties regarding this Agreement, the Parties shall attempt to resolve the matter informally.

10.2 If the Parties are unable to resolve the matter informally, the matter shall be decided by the Director of the King County Road Services Division and the Public Works Director of the City. If the Parties are unable to reach a mutual agreement, either Party may refer the matter to non-binding mediation.

10.3 Unless otherwise expressly agreed to by the Parties in writing, both the County and the City shall continue to perform all their respective obligations under this Agreement during the resolution of the dispute.

10.4 This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. In the event any party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the Parties hereto agree that such action or proceedings shall be brought in a court of competent jurisdiction as provided for in RCW 36.01.050(1) .

11. Liability

The City and the County agree to defend, indemnify and hold each other, their respective officials, agents and employees, harmless from and against any and all claims, damages, injuries, liabilities, actions, fines, penalties, costs and expenses (including reasonable attorney fees) that arise out of or are related to the negligent acts or omissions of the indemnifying party and its officials, agents, employees acting within the course and scope of their employment and in the performance of said party's obligations under this Agreement or the exercise of a party's rights and privileges under this Agreement. In the event any such liability arises from the concurrent negligence of the indemnifying party and the other party, or any of their respective actors, the indemnity obligation of this section shall apply only to the extent of the negligence of the indemnifying party and its actors.

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 County and the City, its officers, officials, employees, and volunteers, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party, and each party shall have the right to seek contribution from the other party in proportion to the percentage of negligence attributable to the other party. It is further specifically and expressly understood that the indemnification provided herein constitutes the Parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

12. Insurance

The County certifies that it is fully self-insured. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the County's insurance and shall not contribute with it.

13. Audits and Inspections

The records and documents pertaining to all matters covered by this Agreement shall be retained and be subject to inspection, review, or audit by the County or the City during the term of this Agreement and for three (3) years after termination.

14. Entire Agreement and Amendments

This Agreement contains the entire written agreement of the parties hereto and supersedes any and all prior oral or written representations or understandings. This Agreement may be amended at any time by mutual, written agreement between the parties.

15. Invalid Provisions

If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected if such remainder would then continue to serve the purposes and objectives of the parties.

16. Other Provisions

16.1 Nothing contained herein is intended to, nor shall be construed to create any rights in any party not a signatory to this Agreement, or to form the basis for any liability on the part of the City and the County, or their officials, employees, agents or representatives, to any party not a signatory to this Agreement.

16.2 Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

16.3 The headings in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

16.4 This Agreement contains the entire agreement of the parties and any representations or understandings, whether oral or written, not incorporated herein are excluded.

17. No Third Party Rights

Nothing contained herein is intended to, nor shall be construed to, create any rights in any third party, or to form the basis for any liability on the part of the parties to this Agreement, or their officials, officers, employees, agents or representatives, to any third party.

18. Waiver of Breach

Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date last written below.

KING COUNTY

CITY OF AUBURN

King County Executive

City Mayor

Date

Date

Approved as to Form

Approved as to Form

King County Deputy Prosecuting
Attorney

City Attorney

Exhibit 1

1. Traffic Services: The following are examples of traffic services provided by the County. Actual services provided will be those requested by the City, and the County shall provide such services in the magnitude, nature, and manner requested by the City. The City shall set its own service level standards and policies for all roadway features. The County is merely a contractor for the purpose of implementing City roadway service standards and policies.
 - 1.1 Sign Maintenance: Replacing faded sign faces and rotten posts, straightening leaning posts, cleating uncleated posts, relocating signs for visibility or pedestrian safety, maintenance of vandalized signs or signs damaged by vehicle accidents, inspection of signs to check for reflectivity, cutting or trimming bushes or limbs blocking visibility, removal of signs when appropriate, installation of new signs upon City request.
 - 1.2 Signal Maintenance: Replacing and cleaning light systems for signal and flasher displays and signs, installation and repair of vehicle detector loops, checking and adjusting signal timing, examining traffic signal operation to assure it is operating as intended, inspecting hardware for wear or deficiencies, testing and repairing of electronic control devices and components, repair or replacement of signal and flasher displays and supports or wiring external to controller cabinets, modification of controller cabinets, testing of new and modified cabinets and control devices, traffic counter testing and repair, preventative maintenance.
 - 1.3 Sign Fabrication: Design and fabricate signs of any size as needed by the City.
 - 1.4 Crosswalks: Refurbishing with thermoplastics and temporary tape and removal when appropriate.
 - 1.5 Stop Bars: Refurbishing with thermoplastics and temporary tape and removal when appropriate.
 - 1.6 Arrows/Legends: Remarking worn arrows and removing when appropriate.
 - 1.7 Curb Painting: Maintenance of curbing, islands, and parking stalls.
 - 1.8 Raised Pavement Markers: Removal and replacement of raised pavement markers or rumble bars.
 - 1.9 Striping: Painting linear road stripes on pavement, such as centerlines, edge lines, radius and channelization, removal of lines, stripes, or symbols.
 - 1.10 Street Lights: Replacement of light bulbs in existing street lights not maintained by power companies, repair and replacement of street light heads, poles, or wiring.

- 1.11 Utility Locating: Locating underground traffic facilities for utilities or other digging operations.
- 1.12 Flasher/Crosswalk Preventative Maintenance: Examining to assure equipment is operating as intended and inspecting hardware for wear or deficiencies.
- 2. Roadway Maintenance: The following are examples of roadway maintenance services provided by the County. Actual services provided will be those requested by the City, and the County shall provide such services in the magnitude, nature, and manner requested by the City. The City shall set its own service level standards and policies for all roadway features. The County is merely a contractor for the purpose of implementing City roadway service standards and policies.
 - 2.1 Traveled Roadway Surface: Patching, crack pouring, pre-level work, pavement replacement, grading, dust control.
 - 2.2 Shoulders: Restoration construction, paving, curb and gutter repair, spraying, extending pavement edge.
 - 2.3 Drainage: Installation of drainage pipe, curb, catch basins, culvert headers/trash racks; hand ditching, drainage pipe repair, catch basin and manhole cleaning, blade ditching/shoulder pulling, drainage systems cleaning, pipe marking, drainage preparation, catch basin repair, culvert header/trash rack replacement and repair, bucket ditching, catch basin replacement, erosion control, catch basin/manhole cover replacement, silt removal, Ditchmaster ditch cleaning.
 - 2.4 Structures: Installation of rock, gabion and rip-rap walls, guardrails, fencing, median barrier walls; rock wall repair or replacement, guidepost installation, guardrail repair, retaining wall repair, median barrier replacement, guardrail post removal, fencing repair, bridge repair.
 - 2.5 Traffic and Pedestrian Facilities: Concrete sidewalk installation, sidewalk/walkway repair, hazardous material cleanup, street sweeping, street flushing, snow and ice control, maintaining traffic control barricades.
 - 2.6 Roadside: Landscape restoration, slope/shoulder mowing, litter pickup, hand brushing, danger tree removal, landscape maintenance, slide removal, ornamental tree maintenance, tree trimming, hand mowing, roadside spraying, tansy ragwort spraying, washout repair.

Exhibit 2

Services Request Process

1. City liaison completes a “Request and Approval for Services” (Form A attached).
2. City Mayor, or designee, signs under the heading “Authorization for Request of Services” on the Form B.
3. The Form A is transmitted to the County liaison.
4. The County liaison delegates the request to the appropriate Section for review.
5. A County Section representative will complete Form A of the “Request and Approval for Services.” Form B will include the recommended action, cost estimate, and proposed schedule. If the Road Services Division is unable to provide the requested service, a notation will be made on the Form B, and the form will be returned to the City in a timely manner.
6. The County’s cost estimate will include all applicable costs for the service requested as described in Section 5.1 of the Agreement.
7. If the cost estimate is \$500 or less, the County may proceed with the requested service as authorized by the City representative on Form A. If the cost estimate is over \$500, Form B is transmitted to the City liaison for authorization. The signed Form B is then transmitted back to the County.
8. The County shall complete the requested work upon receipt of the signed Form B. If the County is unable to complete the work in accordance with the proposed schedule, it shall notify the City immediately.
9. The County and City liaisons maintain a file of all service requests.
10. The County liaison maintains a tracking system of all the service requests and provides the City with an updated report at least quarterly.

**REQUEST AND APPROVAL FOR SERVICES
CITY OF AUBURN**

FORM A

Request Number:

Date:

Nature of Request:

Location:

Requester Name:

Address:

Telephone:

Authorization for Request of Services:

City Authorized Signature

Date

FORM B

Date:

Project/Work Order Number:

Recommended Action:

Cost Estimate:

Proposed Schedule:

Authorization to Proceed:

Date Completed:

Director, Road Services Division

Date

City Authorized Signature
(if cost estimate over \$500)

Date



AGENDA BILL APPROVAL FORM

Agenda Subject:

Capital Project Status Report

Date:

December 11, 2012

Department:

Public Works

Attachments:

[Capital Project Status Report](#)

Budget Impact:

\$0

Administrative Recommendation:

Background Summary:

See attached report.

Reviewed by Council Committees:

Public Works

Councilmember: Wagner

Staff: Gaub

Meeting Date: December 17, 2012

Item Number: DI.F

CAPITAL PROJECT STATUS REPORT

Date: December 12, 2012

No.	Proj. No.	Location/Description	Priority Group (1-3)	Project Budget (\$)						Total Estimated Costs	Design		Construction		Project Manager	Status
				Street Funds (102/105/103)	Water (430)	Sewer (431)	Storm (432)	Other	Total Budget		% Complete	Adv. Date	% Complete	Finish Date		
1	CP1211	Downtown Sculpture Garden: This project will provide for the implementation of an annually rotating sculpture garden through out the downtown area. This portion of the project will construct up to 10 foundations for the sculptures as the budget allows. Art selections are being done through the Arts Commission process with the Parks Department.	-					70,484 (LRF) 10,000 (General fund)	80,484	58,568	100%	Jul-12	100%	Oct-12	Truong	Complete
2	CP1109	2011 Storm Pipeline Repair and Replacement, Phase 1: This project will construct storm drainage repairs and improvements on academy drive Ss, 37th Street NW, and 36th Street NE.	-		232,400				232,400	219,090	100%	Sep-11	100%	Oct-12	Lee	Final Pay is in process.
3	CP1206	2012 Pavement Patching, Chip Seal, and Overlay Project: This project will complete pavement patching, chip seals and overlay work on both arterial/collector and local streets throughout the City.	-	1,300,000				539,500 (SOS)	1,839,500	1,839,500	100%	Jun-12	100%	Nov-12	Wickstrom	This project combines the remaining 2012 SOS non-rebuild streets with the 2012 arterial/collector preservation program. Final Pay is in process.
4	CP0921	Bi-Annual Sanitary Sewer Repair & Replacement: This project will repair or replace sanitary sewer facilities (manholes, pipes, etc.) throughout the City.	-	117,000	835,635	5,000			957,635	853,985	100%	May-12	100%	Nov-12	Lee	Final Pay is in process.
5	CP1112	2011/2012 Sidewalk Improvement Project: This project will complete repairs and replacement of existing sidewalks at various locations within the City.	-					235,000 (328)	235,000	229,320	100%	Jul-12	100%	Nov-12	Wickstrom	Final Pay is in process.
6	CP1116	Downtown Pedestrian Lighting Replacement: This project will replace the existing teal lights that have reached the end of their service life with lights meeting the current downtown standards.	-					485,000 (LRF Bond)	485,000	485,000	100%	Sep-11	100%	Nov-12	Truong	Final Pay is in process.
7	EM0902	Temporary Flood Control Barrier Removal: This project will remove the 5 miles of temporary barriers installed in 2009 to address the potential for flooding from the diminished capacity of the Howard Hanson Dam.	-					2,140,694 (KCFCD)	2,140,694	2,129,222	100%	Jul-12	100%	Dec-12	Truong	Work is complete and final pay is in process.
8	CP1215	Banner Pole Foundation Repair: This project will replace the foundation of the banner pole located at the NE corner of E Main Street and B Street NE.	-					30,000 (328)	30,000	30,000	100%	Oct-12	99%	Dec-12	Truong	Work is nearly complete.
9	CP0817	2009 Sewer & Storm Pump Station Replacement - Phase C, White River: This project will complete maintenance and repairs at the White River storm pump station.	-					2,306,571	2,306,571	2,304,593	100%	Nov-10	99%	Jan-13	Dunsdon	Pump Station is in service. Punchlist work is all that remains.

CAPITAL PROJECT STATUS REPORT

Date: December 12, 2012

No.	Proj. No.	Location/Description	Priority Group (1-3)	Project Budget (\$)					Total Estimated Costs	Design		Construction		Project Manager	Status	
				Street Funds (102/105/103)	Water (430)	Sewer (431)	Storm (432)	Other		Total Budget	% Complete	Adv. Date	% Complete			Finish Date
10	C410A	S. 277th Wetland Mitigation. Monitoring: This project is an annual project to complete the requirement monitoring and maintenance of the wetland mitigation sites for the S. 277th Grade Separation Project. Sites are located on the North geodecke property and at the corner of 44th StNW and Frontage Road. Permits require the City to monitor the sites for 10 years.	-	143,597					143,597	143,374	100%	Apr-11	98%	May-13	Dunsdon	Construction Work is complete, however, the project is in the 1-year plant establishment period and the finish date reflects this. Budget shown is for multiple years of this 10 year process. Budget for 2012 only is \$57,050.
11	C207A	A. Street NW Corridor - Phase 1: This project will complete the design and permitting efforts associated with the arterial street corridor 'A' Street NW from 14th Street NW south to 3rd Street NW.	-	1,202,526 (102 and TIF)	405,993		12,188	6,580,740 (Fed Grants) 1,285,170 (Developer In-Kind) 407,560 (Developer)	9,894,177	9,654,009	100%	May-11	97%	Jan-13	Gaub	Roadway connection from 3rd to 5th is open to local traffic only. Work is nearly completed with the exception of final Landscaping which is anticipated to begin in December and be completed in January.
12	CP0909	Lakeland Hills Booster Pump Station: This project will update/replace the existing pump station in the Lakeland Hills water service area in order to meet fire flow demands.	-						2,760,982	2,760,982	100%	Oct-10	95%	Jan-13	Vondrak	Final SCADA design has been provided by the SCADA Upgrade Project. Operational testing will begin in December. Once complete, demolition of the existing station can begin.
13	CP1103	132nd Ave SE Tacoma Pipeline 5 Interlie: This project includes design and construction of infrastructure on 132nd Ave SE and the Tacoma Pipeline 5 for the purchase of water from adjacent purveyors.	-		1,290,000				1,290,000	1,275,638	100%	Feb-12	80%	Feb-13	Dunsdon	Work is underway.
14	C524A	SCADA System Improvement: This project will upgrade the City's SCADA system to meet Public Works goals.	-		2,666,200	1,994,500	1,014,000		5,674,700	4,998,512	100%	Nov-09	80%	Dec-12	Lee	Implementation Contract executed. Preliminary Design and Final Design are Complete. Installation of the Controls at M&O is complete and conversion of all 3 test sites are complete. The remaining site conversions are underway.
15	C201A	M Street Underpass (Grade Separation): The purpose of this project is to grade separate 'M' Street SE from the Burlington Northern Santa Fe Stampede Pass Rail line in Phase 1 and completion of the Auburn Black Diamond Road Bypass connection is a future phase.	-	5,166,560	150,000				22,314,174	22,314,174	100%	Dec-11	57%	Jul-13	Vondrak	M Street Road Closure in place through May 2013, weather dependant. Setting of the Girders for the 1st Bridge is tentatively scheduled for Jan 3rd due to delays from BNSF.

CAPITAL PROJECT STATUS REPORT

Date: December 12, 2012

No.	Proj. No.	Location/Description	Priority Group (1-3)	Project Budget (\$)						Total Estimated Costs	Design		Construction		Project Manager	Status
				Street Funds (102/105/103)	Water (430)	Sewer (431)	Storm (432)	Other	Total Budget		% Complete	Adv. Date	% Complete	Finish Date		
16	CP0915	<u>Well 1 Improvements - Transmission Lines:</u> This project is the first phase of a larger project and will replace water lines from the Well 1 Site to the Howard Road Corrosion Control Facility to accommodate the replacement of Well 1. This project will also upgrade the existing storm line on M Street SE to accommodate the Well 1 Improvements.	-	1,943,697	831,904				2,775,601	2,031,866	100%	Oct-12	0%	Apr-13	Lee	Pre-construction meeting held Dec. 6th and work began the week of Dec. 10th.
17	CP0909	<u>Academy Booster Pump Station:</u> This project will update/replace the existing pump station in the Academy water service area in order to meet fire flow demands.	-	3,526,255					3,526,255	3,168,295	100%	Sep-12	0%	Jan-14	Vondrak	Work is in suspension waiting on material procurement. Work is anticipated to begin in late January.
18	CP1108	<u>2011/12 Citywide Storm Pond Cleaning:</u> This project will complete the removal of sediment from 8 storm drainage ponds located throughout the City and clean the ditch along A Street SE/East Valley Highway.	1		360,000				360,000	335,800	95%	Mar-13		Oct-13	Lee	Project schedule is revised to complete this work during the summer of 2013 due to water levels.
19	CP1118	<u>Auburn Way South Pedestrian Improvements - Dogwood to Fir Street:</u> This project will construct a new street lighting system, landscaped median island, a designated mid-block crosswalk, relocation of existing utility poles, and modifications to the existing signal at Dogwood St. This project also includes a public education element for pedestrian safety.	1	100,000				740,830 (State) 100,000 (Federal)	940,830	940,830	55%	Jul-13		Oct-14	Dunsdon	Consultant design work is underway.
20	CP1119	<u>Auburn Way South Corridor Improvements - Fir St. SE to Hemlock St. SE:</u> This project will widen AWS between Fir and Hemlock Streets from 3 lanes to 5 lanes and includes new sidewalks, street lighting, transit improvements and install a new signal at Hemlock St.	1	849				2,426,400 (TIB) 606,600 (MIT)	3,033,849	3,033,849	55%	Jul-13		Oct-14	Dunsdon	Consultant design work is underway.
21	CP0915	<u>Well 1 Improvements - Well Replacement:</u> This project will rehabilitate or replace Well 1 so that it can function at full capacity and complete modifications to the Howard Road Corrosion Control Facility.	1	2,476,568					2,476,568	2,400,000	45%	Mar-13		Dec-13	Lee	Design work underway. Project is anticipated to be under construction in 2013.
22	CP1109	<u>2011 Storm Pipeline Repair and Replacement. Phase 2:</u> This project will construct storm drainage improvements on H-Crest Drive NW.	1		165,000				165,000	178,310	30%	Apr-13		Aug-13	Lee	Design work underway but is not anticipated to be under construction this year.
23	CP1120	<u>Lea Hill Safe Routes to Schools Improvements:</u> This project will complete improvements for safe walking routes to Hazelwood Elem., Lea Hill elem., and Rainer Middle School along 116th Ave. SE and SE 312 St.	1					398,500 (Federal) 21,597 (ASD)	420,097	420,097	30%	Apr-13		Aug-13	Truong	Design work underway. Construction anticipated in 2013 to be during the summer. Agreement with ASD for their portion of the work is complete.

CAPITAL PROJECT STATUS REPORT

Date: December 12, 2012

No.	Proj. No.	Location/Description	Priority Group (1-3)	Project Budget (\$)						Total Estimated Costs	Design		Construction		Project Manager	Status	
				Street Funds (102/105/103)	Water (430)	Sewer (431)	Storm (432)	Other	Total Budget		% Complete	Adv. Date	% Complete	Finish Date			
24	CP1107	<u>Fulmer Wellfield Improvements:</u> This project will be done in phases. The first phase 1A will complete investigation of the Fulmer Wellfield area to determine the required analysis and drilling program needed to utilize the full water rights. Phase 1B will complete a drilling and testing program as well as an alternatives analysis. Phase 2 will complete the physical improvements.	1		2,200,000					2,200,000		30%	Mar-13		Mar-14	Lamothe	The estimated costs are for the Phase 1A only and will be revised when this phase is completed. Consultant work is underway and pump test data is under evaluation.
25	C512A	<u>Well 4 Improvements:</u> This project will construct a new building to house a standby generator and disinfection equipment.	2		747,138					747,138		5%	Sep-13		Apr-14	Dunsdon	Consultant design work is underway.
26	CP1024	<u>AWS and M Street SE Intersection Improvements:</u> This project will complete design work only for improvements at the intersection per Option 2 selected by the Public Works Committee to address capacity and safety concerns.	2	250,000				450,000 (TIB)		700,000		30%	Sep-13		May-14	Truong	AWS/M St. SE - Installed protected left turn for eastwest bound traffic on AWS turning onto M St. SE (Completed) 17th/M St. SE - restrict left turn movements from 17th to M. (Completed) AWS/M St. SE Pre-Design - Preliminary configuration and footprint of the intersection is completed and Option 2 was selected by the Committee, June 2012. Final design work is underway. TIB grant obligation is in process.
27	CP0765	<u>Lakeland Hills Reservoir Improvement:</u> This project will provide various improvements at the reservoir, including painting, seismic upgrades, and facility modifications.	2		400,000					400,000		75%	Jun-13		Dec-13	Vondrak	Project is dependent upon completion of the Lakeland Hills Booster Station improvements.
28	CP0624	<u>Well 5 Upgrade:</u> This project will construct a new well facility including emergency generator and disinfection capability.	3		751,900					751,900		0%	Jan-13		Dec-13	Lee	Consultant scoping in process.
29	CP0906	<u>2009 Gateway Project:</u> This project will construct a new gateway sign at East Valley Highway and Lake Tapps Parkway.	3					100,000 (Gen Fund)		100,000		30%	Hold		Hold	Lee	Easement acquisition completed. Project on hold.
30	C229A	<u>BNSF/EVH Pedestrian Undercrossing:</u> This project will construct a pedestrian undercrossing of both East Valley Highway (A St SE) and the BNSF rail tracks just north of the White River.	3					385,000 (State)		385,000		60%	Hold		Hold	Dunsdon	Final design on hold pending BNSF issues. Additional funds will be required to complete design, environmental permitting, and construction.
CPS TOTAL				8,163,532	19,435,733	2,830,135	4,927,063	34,010,689	69,367,152	74,500,017							

SOS PROGRAM STATUS REPORT

Date: December 12, 2012

D.I.F

No.	Proj. No.	Location/Description	Priority Group (1-3)	Project Budget (\$)					Total Estimated Costs	Design		Construction		Project Manager	Status	
				Local Street Funds (103)	Water (430)	Sewer (431)	Storm (432)	Other		Total Budget	% Complete	Adv. Date	% Complete			Finish Date
31	CP1201	<p>2012 Local Street Pavement Reconstruction: This project will rehabilitate and rebuild deficient pavement on local streets throughout the City including: J St SE bwn 2nd and 4th St. SE 22nd St. SE bwn M and R St. SE 27th/H/28th St. SE East of F St. SE Water and storm improvements will also be completed on these streets.</p> <p>Other SOS Projects: CP1206, Pavement Patching, Chip Seals, and Overlays.</p>	N/A	1,350,080	500,000	-	118,500	-	1,968,580	1,569,727	100%	Jun-12	95%	Mar-13	Wickstrom	Work is nearly complete on 22nd Street SE and on 28th/H/27th Street locations. Roadway work on J Street SE is underway; however, final paving is weather dependant.
				539,500					539,500	539,500					Wickstrom	For status see CP1206
		2012 SOS Program Totals		1,889,580	500,000	-	118,500	-	2,508,080	2,109,227						
32	CP1224	<p>2013 Local Street Reconstruction: This project will complete the reconstruction of the following local roadways: 23rd St SE - M to R St SE H St NE - 4th to 8th 5th St NE - H to Cul-de-sac Park Ave - Awn to Park Also included in this project is the replacement of waterline on V St SE, from 2nd to 4th St SE.</p> <p>Other SOS Projects: 2013 Pavement Patching, Chip Seals, and Overlays.</p>	1	2,425,000	500,000	200,000	200,000		3,325,000	2,935,000	0%	May-13		Dec-13	Wickstrom	Consultant Contract execution in process
			N/A	164,250					164,250	164,250					Wickstrom	
		2013 SOS Program Totals		2,589,250	500,000	200,000	200,000	-	3,489,250	3,099,250						
		2012 & 2013 TOTAL SOS PROGRAM		4,478,830	1,000,000	200,000	318,500	-	5,997,330	5,208,477						

Date: December 12, 2012

OTHER PROJECTS - ACTION BY OTHER COMMITTEE

No.	Proj. No.	Location/Description	Total Budget	Total Estimated Costs	Design		Construction		Staff Manager	Action Committee	Status
					% Complete	Adv. Date	% Complete	Finish Date			
A	CP1210	Auburn Valley Humane Society Site Improvements: This project will complete parking lot, access, water service and sewer service improvements to the City's property located at 4910 A Street SE as required for the tenant agreement with Auburn Valley Humane Society.	179,490	137,273	100%	Jun-12	100%	Nov-12	Dunsdon	MSC	Complete.
B	CP0616	Wayfinding - Pedestrian Kiosks: This project will complete the design of the downtown Pedestrian Kiosk and install these structures at up to 9 locations within the Downtown area.	101,000	116,050	100%	Dec-12		Jul-13	Vondrak	PCDC	Bid documents are being finalized. FHWA approval for construction is pending.
C	CP1115	City Hall NW Plaza Improvements: This project will renovate the NW entrance to City Hall similar to the recent improvements on the south side of City Hall. Work will include new pavement, updated lighting, ADA Ramp upgrades and new City Hall signage.	475,977	458,570	99%	Apr-13		Sep-13	Chamberlain	PCDC	Consultant work is on hold.
D	CP1016	Fenster Levee Project: This project will complete new levee improvements on the Fenster Levee along the Green River.	939,100	1,265,000	60%	N/A		Apr-14	Andersen	PCDC	Work will be completed by King County. Secured funding is from 4 Grants and matching storm funds. Planning has submitted for an additional 327k in SRFB funding which won't be finalized until this fall. Pre-Design work is complete. The Agreement with King County is being executed.
TOTAL OTHER PROJECTS			1,695,567	1,976,893							



AGENDA BILL APPROVAL FORM

Agenda Subject:

Action Tracking Matrix

Date:

December 11, 2012

Department:

Public Works

Attachments:

[Action Tracking Matrix](#)

Budget Impact:

\$0

Administrative Recommendation:

Background Summary:

See attached matrix.

Reviewed by Council Committees:

Public Works

Councilmember: Wagner

Staff: Dowdy

Meeting Date: December 17, 2012

Item Number: DI.G

Public Works Committee - Action Tracking Matrix

No.	Item Description	Contact	Next PWC Review Date	Est. Comp. Date	Status
A	Sidewalk Program Funding Sources	Para	11/1/13		Pending initial discussion with the Committee for 2015-2016 budget
B	Track completed project on the 2012 Active Capital Improvement Projects Map	Gaub			Ongoing - Quarterly updates, next one in January
C	Fulmer Well-Field Feasibility Study Updates	Repp	3/18/13		Initial study finding are not yet completed.
D	Turns on Red and Flashing Yellow Arrows - Cost Estimate for Signs	Para	1/7/13		Preparing Inventory of Right Turn Arrows, recommendation for signage, and cost estimate.
E	System Development Charges (SDCs)	Repp	11/1/2013		Yearly Review of SDCs
F	SDC and Cost of Service Analysis Scope	Repp	1/21/2013	7/31/2013	Consultant preparing scope and budget
G	SDC Burden for Single Family Home	Repp	1/21/2013	1/21/2013	
H	Payback/Charge in-lieu Process	Repp	2/18/1931	2/18/2013	Review current City process
I	CP1224, 2013 Local Street Pavement Reconstruction Project	Wickstrom	4/15/2013	4/15/2013	50% Design Review
J	CP1120, Lea Hill Safe Routes to Schools Improvement	Truong	4/1/2013	4/1/2013	50% Design Review
K	Comprehensive Transportation Plan Update	Webb	6/3/2013	11/1/2014	Discussion of LOS Standards (Corridors: N/S vs E/W), modeling scenarios Incorporating "Event Traffic", & safety versus efficiency policy.