APPENDIX D

SERVICE AREA AGREEMENTS INTERLOCAL AGREEMENTS WHOLESALE WATER AGREEMENTS

ORDINANCE	NΩ	2383
ONDINGIOL	110.	2303

AN ORDINANCE OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO THE CITY OF TACOMA AND ITS ASSIGNS, THE RIGHT, PRIVILEGE AND AUTHORITY TO CONSTRUCT AND MAINTAIN A TRANSMISSION MAIN IN CERTAIN STREETS IN THE CITY OF AUBURN FOR THE TRANSMISSION OF FRESH WATER FOR MUNICIPAL PURPOSES.

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

Section 1. GRANT AND TERMS. That there be and is hereby granted to the City of Tacoma a municipal corporation and its assigns, the right, privilege, authority and franchise for a period of fifty (50) years from and after passage of this Ordinance to lay down, build, construct and maintain and operate, through and across certain streets of the City of Auburn, underground pipes and conduits for thepurpose of transmitting fresh water for municipal purposes.

Section 2. TRANSMISSION MAIN. For the purpose aforesaid, the grantee and its assigns are hereby granted the right, liberty and privilege of laying down, relaying, connecting, disconnecting, and repairing such transmission main through and under the avenues, streets, lanes, alleys and public highways, and public parks and grounds of the City of Auburn as may be necessary, proper and convenient for transmitting the fresh water supply of the grantee through the city limits of the grantor.

Section 3. PLANS AND SPECIFICATIONS. Before said grantee and assigns shall begin the construction of the transmission main underneath the said streets or places in the City of Auburn, it shall file with the City Engineer of the grantor detailed plans, specifications and profiles of the pipeline and shall show the place in said streets or places proposed to be used for and/or crossed by said pipeline, the size of the pipeline and its depth from the surface of the ground. The said plans, specifications and profiles shall be approved by the City Engineer of the grantee and a permit granted for the same before any excavation or the construction of said pipes shall be commenced, which appropal shall not be unreasonably withheld. The grantee upon receiving such construction permit shall hasten the work of construction with all convenient speed and shall repair the pavement or surface in as good condition as it was before being disturbed by said grantee and repair it with the same kind of material as now laid on said streets or surface and subject to the approval of the City Engineer of the grantor, shall place an inspector upon the said street during the reconstruction of the pavement thereon and the salary of such inspector shall be paid by the grantee, and said street shall not be torn up in any event for a longer period than ninety (90) days after the said grantee shall begin the work of construction. If the grantee shall fail to build said street or surface in

as good condition as it was before or shall fail to rebuild it at all, the grantor may proceed to repair said street or surface and charge the expense thereof to the grantee. All excavations shall be carefully guarded so as to prevent accidents by reason thereof, and the grantee shall save the grantor free and harmless of and from all costs, damages and expenses of any kind whatsoever occasioned by such work or by the maintenance of such conduits and pipes through and across the street or place and should any final judgment be recovered against said city on account of any damages, said grantee shall forthwith pay the same, including grantor's reasonable attorney fees and costs, after having been notified in writing to do so by the grantor, and the failure of said grantee to make such payment within a period of sixty (60) days after such notice has been given shall operate as a forfeiture of the rights and privileges herein granted; provided, however, that the grantor shall in any suit brought against it on account of such damages and within twenty (20) days after service of process upon it give written notice to the grantee of the pendency of said suit, and thereon, grantee shall have the option of defending said litigation on behalf of the City at its own cost.

Section 4. NOT TO INTERFERE WITH OTHER PIPES. Said pipes shall be laid down in such manner as not to interfere with the sewer or water pipes or any other pipes in said streets and places and all pipes and conduits to be laid down by the grantee shall be of first quality material.

Section 5. FRANCHISE NOT EXCLUSIVE. Nothing in this Ordinance shall be construed as granting to the said grantee and assigns an exclusive right or prevent the granting to other companies or individuals a franchise for like purposes.

Section 6. SERVICE AVAILABILITY. In the event that the City has need for additional domestic water and the grantee determines that it can provide such water from the transmission line and at the rates it charges other consumers, similarly located, the grantee shall so make available points of distribution in order to provide the additional supply so determined.

Section 7. ACCEPTANCE. In order to claim the rights and privileges granted by this franchise, the grantee or assigns shall, within thirty (30) days after the approval of this Ordinance, file with the City Clerk of the grantor its acceptance in writing of the franchise granted by this Ordinance.

<u>Section 8.</u> <u>EFFECTIVE DATE.</u> That this Ordinance shall take effect five (5) days from and after its passage, approval and publication as provided by law.

INTRODUCED: <u>SEPTEMBER 2, 1969</u>

PASSED:

SEPTEMBER 15, 1969

APPROVED:

SEPTEMBER 15, 1969

Robert & Saines

ATTEST:

APPROVED AS TO FORM:

City Attorney

PUBLISHED:

- June

RESOLUTION NO. 9 3 1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK OF THE CITY OF AUBURN, TO ENTER INTO AN AGREEMENT WITH KING COUNTY WATER DISTRICT NO. 111, FOR THE ESTABLISHMENT OF A BOUNDARY BETWEEN THE SERVICE AREAS OF THE PARTIES.

THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AT A REGULAR MEETING DULY ASSEMBLED, HEREWITH RESOLVES:

THAT the Mayor and City Clerk of the City of Auburn, are hereby authorized to enter into an agreement with King County Water District No. 111, for the establishment of a boundary between the service areas of the parties. A copy of said agreement is attached hereto, denominated as Exhibit "A" and made a part hereof as though set forth in full herein.

DATED and SIGNED this 4th day of December, 1978.

CITY OF AUBURN

ATTEST:

Coralu A. M. Connehey City Clerk

AGREEMENT ESTABLISHING USE AND SERVICE AREAS OF THE PARTIES

AGREEMENT between King County Water District No. 111, a special purpose district of the state of Washington, hereinafter called "District," and the City of Auburn, a municipal corporation of the state of Washington, hereinafter called "City."

- Purpose. The District and the City have previously informally agreed to the establishment of a boundary between the service areas of the two parties and are now desirous of confirming the previous understanding and agreement in writing.
- Agreement. It is hereby agreed between the parties that the boundary between the areas served by each of the parties shall be as follows:

Beginning at the intersection of a line which is 330 feet south of and parallel with the north line of Section 3, Township 21 North, Range 5 East, W.M. with the northwesterly margin of S.R. 18; thence west along a line which is 330 feet south of, and parallel with, the north line of Sections 3 and 4, to the west line of the northeast one quarter of said Section 4.

District shall serve the area lying generally north of said boundary line and City shall serve the area lying generally south of said boundary line.

DATED: $Q N_{OU}$, 1978.

KING COUNTY WATER DISTRICT NO. 111

Commissioner

Robert R. Sparks, Commissioner

Wilson, Commissioner

CITY OF AUBURN

By Coralle a. M. Connelly

OCT 0 9 1989

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR OF THE CITY OF AUBURN TO ENTER INTO A SERVICE AREA BOUNDARY AGREEMENT BETWEEN THE CITY OF AUBURN AND WATER DISTRICT NO. 124.

THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AT A REGULAR MEETING DULY ASSEMBLED HEREWITH RESOLVES THAT:

THE Mayor of the City of Auburn is herewith authorized to enter into a Service Area Boundary Agreement between the City of Auburn and Water District No. 124. A copy of said agreement is attached hereto, denominated as Exhibit "A" and made a part hereof as though set forth in full herein.

DATED and SIGNED this 15th day of October, 1979.

CITY OF AUBURN

ATTEST:

Coraleca. Mc Connelsey

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RECORDS & LITECTIONS
KING COUNTY

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Resolution No. 1021 10-12-79

SERVICE AREA BOUNDARY AGREEMENT

THIS AGREEMENT made and entered into this of day of Marketine, 1977 by and between City of Auburn, a municipal corporation located in King County, Washington, hereinafter referred to as "City", and WATER DISTRICT NO. 124, a municipal corporation located in King County, Washington, hereinafter referred to as "District 124":

WITNESSETH:

- 1. That the purpose of this Agreement is:
 - To define current service area boundaries, and
- B) To establish a method for altering those boundaries in order to provide for:
 - Maximum efficient use of existing and future facilities.
 - 2) Maximum flexibility between the service areas in order to allow the continued and future existence of interties between the parties herein.
 - 3) Maximum public water system coordination.
 - Orderly and efficient public water system planning.
- 2. That the current service area boundary between the City and the District 124 is as is set forth on Exhibit "A" attached hereto and incorporated herein by reference.
- 3. That in the event either the City or District 124 desire to change the existing boundary such a change shall be by mutual agreement.
- 4. That provisions for looped systems and interties are to be encouraged so as to provide:
- A) For the most efficient use of current and future facilities.
- B) For maximum service to consumers at the lowest possible cost.
- C) For mutual aid between the City and District 124 in the event of an emergency.

- D) For maximum public water system coordination.
- 5. That both the City and District 124 recognize that they are "Purveyors" as defined in R.C.W. 70.116.030(4) and hereby acknowledge their duties under R.C.W. 70.116 and the regulations promulgated thereunder and adhere to the purposes described therein.

DATED this 20 TH day of NOVAMBER., 1974.

CITY OF AUBURN

King County, Washington

WATER DISTRICT NO. 124
King County, Washington

President and Commissioner

Commissioner

Secretary and Commissioner

LEGAL DESCRIPTION OF SERVICE AREA BOUNDARY LINE BETWEEN CITY OF AUBUPN AND KING COUNTY WATER DISTRICT #124

COMMENCING AT THE NORTHEAST CORNER OF LOT 5, BLOCK 39, JOVITA HEIGHTS, LOCATED IN THE SOUTHWEST QUARTER, SECTION 23, T. 21 N., R 4 E., W.M.;

THENCE NORTHWESTERLY TO A POINT ON THE NORTH LINE OF LOT 8, LOCATED 400' EAST OF THE NORTHWEST CORNER OF LOT 8, BLOCK 25, OF SAID JOVITA HEIGHTS, WHEREIN SAID LINE CROSSES THE EXISTING AUBURN CITY LIMITS LOCATED ON IOWA DRIVE;

THENCE NORTHERLY ALONG A LINE 400° EAST OF AND PARALLEL TO THE WEST LINE OF LOT 7 THROUGH LOT 1 OF BLOCK 25, JOVITA HEIGHTS, TO A POINT ON THE NORTH LINE OF SAID LOT 1;

THENCE EASTERLY 50' ALONG THE NORTH LINE OF SAID LOT 1 TO THE SOUTHERLY EXTENSION OF THE EASTERLY RIGHT OF WAY LINE OF 58TH AVENUE SOUTH (PENNSYLVANIA AVENUE);

THENCE NORTHERLY ALONG SAID RIGHT OF WAY LINE TO THE SOUTH LINE OF SECTION 14, T. 21 N., R 4 E., W.M.;

THENCE EAST ALONG THE SOUTH LINE OF SECTION 14 TO THE SOUTH 1/4 CORNER OF SAID SECTION 14;

THENCE NORTH ALONG THE CENTERLINE OF SAID SECTION 14 TO THE INTERSECTION OF SAID CENTERLINE WITH THE CENTERLINE OF MOUNTAIN VIEW DRIVE (331ST STREET OR OLD CEMETARY HILL ROAD);

THENCE MEANDERING EASTERLY AND NORTHERLY ALONG THE CENTERLINE OF MOUNTAIN VIEW DRIVE TO THE INTERSECTION OF SAID STREET CENTERLINE WITH THE E-W CENTERLINE OF SECTION 14;

THENCE NORTHERLY ALONG THE SOUTHERLY EXTENSION OF HI-CREST DRIVE TO THE SOUTH LINE OF HI-CREST ADDITION NO. 2, LOCATED IN SECTION 14, T.21N., R. 4 E., W.M.;

THENCE WESTERLY ALONG SAID SOUTH LINE TO THE SOUTHWESTERLY CORNER OF SAID ADDITION (S.W. CORNER OF LOT 9);

THENCE NORTHEASTERLY ALONG THE WESTERLY LINE OF SAID HI-CREST ADDITION #2 TO THE NORTHWESTERLY CORNER OF SAID PLAT, WHICH IS ALSO THE SOUTHWEST CORNER OF KNICKER-BOCKER HEIGHTS ADDITION;

THENCE NORTH ALONG THE WEST BOUNDARY OF SAID KNICKERBOCKER HEIGHTS ADDITION AND ALSO THE WEST BOUNDARY OF ABBY'S FIRST ADDITION TO A POINT ON THE SOUTH LINE OF SECTION 11, T. 21 N., R. 4 E., W.M.;

THENCE NORTHERLY ALONG THE WEST LINE OF THE E 1/2, E 1/2, SECTIONS :11 AND 2, T 21 N R. 4 E., W.M., TO A POINT 329' NORTH OF THE SOUTH LINE OF SAID SECTION 2;

THENCE NORTHEASTERLY A DISTANCE OF 2,150' MORE OR LESS, TO A POINT ON THE EAST LINE OF SAID SECTION 2, WHICH POINT IS LOCATED 655' SOUTH OF THE EAST 1/4 CORNER OF SECTION 2, T. 21 N., R 4 E., W.M.;

THENCE NORTH ALONG THE EAST LINE OF SAID SECTION 2 TO A POINT 836' NORTH OF THE EAST 1/4 CORNER OF SAID SECTION 2;

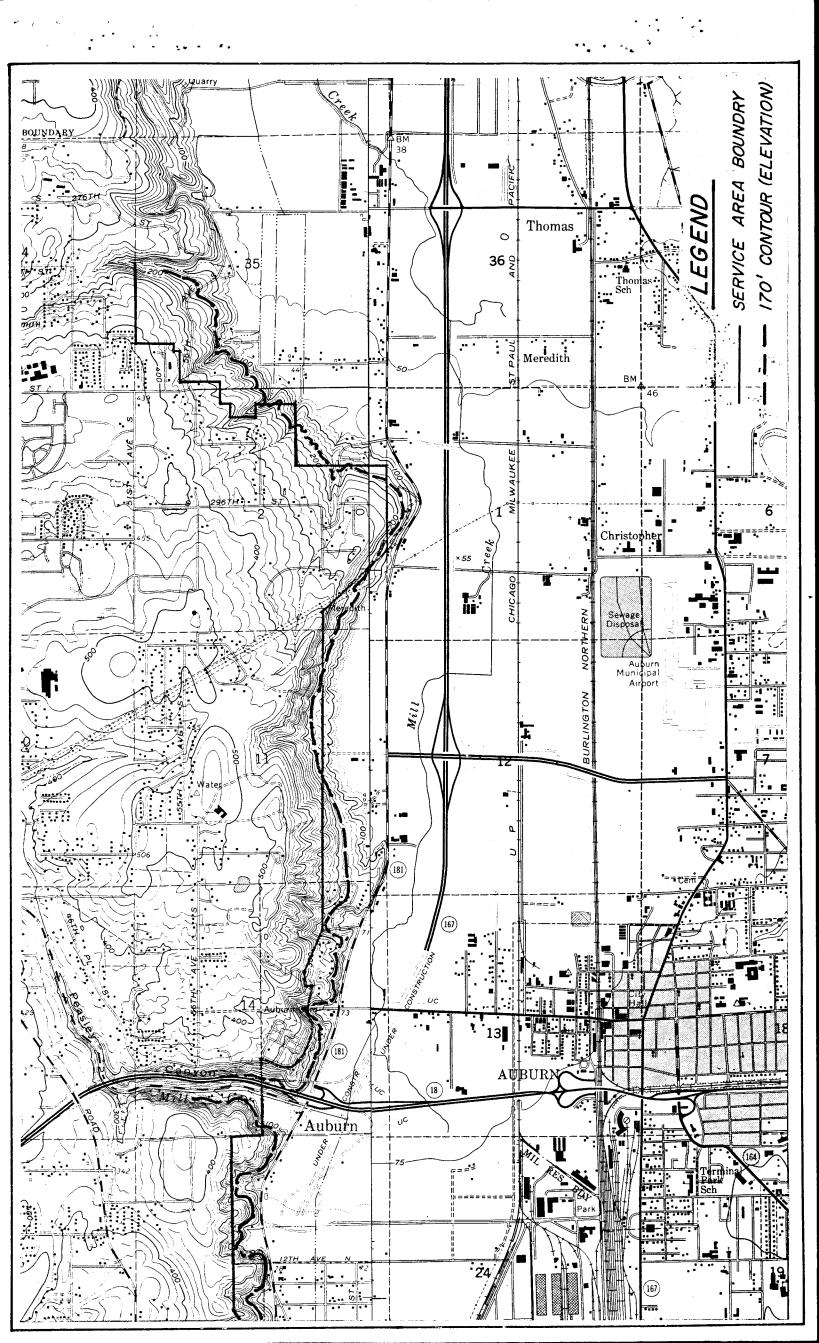
THENCE WEST TO THE WEST LINE OF THE E 1/2, E 1/2, SECTION 2, T.21N., R4E., W.M.;

THENCE NORTH ALONG SAID WEST LINE TO A POINT 351' SOUTH OF THE NORTH LINE OF SAID SECTION 2;

THENCE WESTERLY AND PARALLEL TO AND 351' SOUTH OF THE NORTH LINE OF SECTION 2, TO A POINT ON THE N-S CENTERLINE OF SAID SECTION 2;

THENCE SOUTHERLY 60' ALONG SAID N-S CENTERLINE;

THENCE WESTERLY AND NORTHERLY ALONG THE APRIL, 1979 BOUNDARY TO THE WEST 1/4 CORNER OF SECTION 35, T. 22 N., R 4 E., W.M., WHICH IS THE TERMINAL POINT OF THIS BOUNDARY DESCRIPTION:



RESOLUTION NO. 1 3 4 1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR OF THE CITY OF AUBURN, TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF AUBURN AND KING COUNTY WATER DISTRICT NO. 87 CONCERNING THE TRANSFER OF KING COUNTY WATER DISTRICT NO. 87'S WATER SYSTEM TO THE CITY OF AUBURN.

THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH RESOLVES THAT:

THE Mayor of the City of Auburn, Washington, is herewith authorized and directed to execute an Agreement between the City of Auburn and King County Water District No. 87 concerning the transfer of King County Water District No. 87's water system. A copy of said Agreement is attached hereto, denominated as Exhibit "A" and made a part hereof as though set forth in full herein.

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

DATED and SIGNED this 6th day of July, 1982.

ASSEQUEL MAYOR

ATTEST:

Coralee Mc Connelley City Cherk

Resolution No. 1341 7/6/82

AGREEMENT CONCERNING TRANSFER OF KING COUNTY WATER DISTRICT NO. 87'S WATER SYSTEM TO THE CITIES OF AUBURN AND KENT

April 1, 1982

IT IS AGREED by and between WATER DISTRICT 87, King County, a Washington Municipal Corporation ("WD 87"); and the Cities of AUBURN ("Auburn") and KENT, ("Kent") Washington, collectively, "the cities") as follows:

1. Authority

This agreement is entered into pursuant to RCW 35A.13.070, which authorizes one or more cities and water districts to contract regarding ownership of property, providing or water service, and operation of facilities.

2. Transfer of Water System

The ownership of WD 87's entire "water system" shall, as of the above date, be transferred and conveyed to Auburn and Kent, in the manner provided below.

The term "water system" shall include, but not be limited to, all WD 87 water mains and appurtenances; hydrants; easements; licenses; franchises; permits and facilities, rights and assets of any kind or nature whatsoever.

Said transfer is subject to the cities' performance of all of the terms and conditions of this agreement.

The cities hereby accept their respective portions of the water system on the terms of this agreement.

3. Division of System

The entire WD 87 water system lying southerly of the following described line will become the property of the Auburn and the remaining portion of the water system (lying northerly of the following described line) shall become the property of Kent:

Starting at a point of intersection on the westerly boundary line of WD #87 which is the easterly margin of the Chicago Milwaukee and St Paul Railroad right-of-way with the southerly right-of-way line of S. 277th street and projecting easterly therefrom along said southerly right-of-way line to an intersection point with the easterly margin of the Burlington Northern Railroad right-of-way thence northerly therefrom along said easterly line to an intersection point with the northerly right-of-way line of S. 277th street thence projecting easterly therefrom along said northerly right-of-way line to the easterly boundary line of WD #87 which is the westerly line of S.S. Highway #5 (aka) East Valley Highway.

WD 87's customer records will be divided between the cities, according to the above division of the water system and any temporary services.

The limited hand tools and miscellaneous personal property owned by WD 87 will be transferred to Auburn.

4. Connection to Auburn System

The cost of inter-connecting the WD 87 water system to Auburn's water system shall be paid for from monies presently in the WD 87 maintenance fund.

The City of Kent is presently connected to the WD 87 water system, and no further connections are presently needed.

5. Costs and Expenses/WD 87 Money

The following shall be paid from WD 87 money, in the following order of priority:

WD 87 routine debts and expenses.

WD 87's attorney's fees for drafting of this agreement, and related work.

Any attorney's fees and/or costs in obtaining boundary review board or other governmental approvals (per paragraph 10 hereof).

Cost of inter-conecting the WD 87 system to Auburn's water system (per paragraph 4 hereof).

To the extent that any WD 87 money remains after payment of the above, the same shall be divided evenly between the cities proportionate to the number of WD 87 customers to be served permanently by the cities.

To the extent that the WD 87 funds are inadequate to pay all of the above, then the City of Auburn shall bear any remaining cost of inter-connecting the water systems. If there is insufficient WD 87 money to pay all of the other above-listed items in full (other than WD debts), then any amount remaining due shall be borne by the cities according to the same permanent customer ratio as above.

6. Service Interruptions

The cities each agree that transfer of the water system will not result in any interruption of water service to any WD 87 customer other than that normally experienced in the day-to-day operation of the respective water systems.

7. Water Rates

The cities each agree that former WD 87 customers shall, following transfer and in the future, be charged for water service, and pay the same connection and other charges, as the cities charge in each case, its other customers in the same class of service. Sevice shall also be of the same quality as that received by other customers in the same class.

8. Temporary Service

Auburn and Kent recognize, and agree, that until their respective water systems are readily available within the present WD 87 service area, each will have to extend temporary water service to existing customers on the opposite side from them on the above described boundary line. During such temporary service, the customers shall pay the serving city's rates and charges, and the serving city will maintain the water mains, hydrants and meters serving those temporary customers.

The city temporarily serving such customers will turn over the customers to the other city on request. Both cities agree to cooperate in the transition of these customers from one city to the other and agree that water service to the customers will not be interrupted unnecessarily during the transition.

No property temporarily served by one of the cities shall be assessed, or otherwise required to pay, for new water mains or facilities in order to transfer their services over to the other city unless said property is specifically benefitted beyond the availability of the existing service.

No new water services including five hydrants and five service lines will be connected to a water main owned by one city but temporarily being utilized to serve the above said customers (property), without the written consent of the other city.

9. Preferential Employment

The employees of WD 87 shall be entitled to offers of comparable full-time employment from both Auburn and Kent, in accordance with RCW 35.13A.090.

10. Governmental Approvals

If, in the opinion of either city, it is necessary to so obtain approval of this agreement by the King County Boundary Review Board, King County Council, and/or any other governmental body, then that city shall so notify the other parties to this agreement prior to transfer of WD 87's remaining monies to the cities.

The cities shall determine, between themselves, which city (or WD 87) shall obtain such approval(s). Regardless of who obtains the approval(s), the cost thereof shall be paid from WD 87 funds to the extent available.

11. Financial Records

WD 87's financial and other records are available on request, for inspection and copying by either of the cities.

12. WD 87 Indebtedness

WD 87 shall, as above, pay all of its debts from its present funds. WD 87 warrants that on the effective date of this agreement it will have no debts. Further WD 87 has no bonds, warrants or similar oblications outstanding, and will not issue any in the future. WD 87 also warrants that it does not have any ULID or other assessments receivable, and will not form any improvement districts in the future.

WD 87 warrants that, to the best of its knowledge and the knowlege of its Water Commissioners, there are no pending, asserted or threatened claims, suits or liens against it or any of its water system, monies or other assets. IF WD 87 or any its commissioners should receive notice or knowledge of any such claim, suit or lien prior to the effective date of this agreement, WD 87 will immediately notify other cities. The Water Commissioners of WD 87 shall not be personally liable for the foregoing warranties; and shall not be personally liable for performance of any of the terms of this agreement unless they shall, by Board of Water Commissioners's action, vote or otherwise cause te breach of this agreement.

13. WD 87 Continuing Authority.

Following the effective date of this agreement, WD 87 shall remain a municipal corporation, and its commissioners shall remain in office for at least their present terms of office, unless WD 87 is sooner dissolved as set forth below. During the continued existence of WD 87, its commissioner shall not exercise any rights, privileges, powers or functions provided by law to WD 87, except at the request of one or both of the cities. If such request is made by only one of the parties, then such actions shall be taken only with respect to that city's portion of the WD 87 water system. The WD 87 Commissioners shall not be obliged to undertake any action unless it is necessary to implement, clarify or carry out this agreement and, in such case, the other city(ies) requesting the action shall thereby agree to save the WD 87 Commissioners harmless from any liability in respect to the same.

14. Dissolution of WD 87.

Any one or more of the parties to this agreement, or anyone else having standing to do so, may petition and/or take such steps having standing to do so, may petition and/or take such steps as are necessary to dissolve WD 87 under any available statutory authority and procedure. In the event that WD 87 has not been dissolved within five (5) years of the effective date of this agreement, then the cities agree that they will immediately thereafter petition for the dissolution of WD 87 pursuant of RCW 57.90 governing the disincorporation of special districts that have not actively carried out any of the district's purposes or functions for a period of

five years, or any similar or other statutes then in effect. The cost of such disincorporation shall be borne by the cities in the same proportion as other expenses are provided for in this agreement.

15. Approval by Parties

This agreement shall be submitted to the governing bodies of each of the parties and approved by City Ordinance and Water District Resolution. Certified copies of said ordinances and resolution shall be furnished each of the parties to this agreement. Adoption of said ordinances and resolution shall serve in lieu of signature to this agreement. Notwithstanding the effective date set forth as the beginning of this agreement, this agreement shall be effective 45 days after it is approved by all three (3) parties.

DATED as of the date set forth hereinabove.

CITY OF AUBURN

CITY OF KENT

WATER DISTRICT NO. 87, KING COUNTY

RESOLUTION NO. 2 1 1 4

Resolution No. 2114 July 31, 1990 Page 1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A SATELLITE WATER SYSTEM SERVICE CONTRACT FOR BRAUNWOOD ESTATES (PREVIOUSLY SALTMARK ESTATES)

THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH RESOLVES THAT:

Section 1. AUTHORIZATION. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute a Satellite Water System Service Contract for Braunwood Estates (previously Saltmark Estates). A copy of said Contract is attached hereto and denominated Exhibit "A".

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

DATED and SIGNED this 6th day of August, 1990.

CITY OF AUBURN

MAVOR

Resolution No. 2114 July 31, 1990 Page 2

CITY OF AUBURN

WATER DEPARTMENT

SATELLITE WATER SYSTEM SERVICE CONTRACT

FOR BRAUNWOOD ESTATES (PREVIOUSLY SALTMARK ESTATES)

IT IS AGREED by and between the CITY OF AUBURN ("the City") and the undersigned ("the Owners") as follows:

- 1. Parties. The City is a municipal corporation organized under and existing by virtue of Chapter 57 of the Revised Code of Washington. The Owners are, collectively, the owners of property provided water service by a water source and distribution system which is independent of and unconnected to another public or private water system (the "satellite system").
- 2. Legal Description. The property presently served, and to be served in the future, by the satellite system is located in King County, Washington and is legally described as follows:

THE SW 1/4 OF THE NE 1/4 OF SECTION 33, TWP 21 N., R. 5 E., W.M. AND THE W 1/2 OF THE SE 1/4 OF THE NE 1/4 OF SECTION 33, TWP 21 N., R. 5 E., W.M.

The above property is inside the City's service area under the South King County Coordinated Water Supply Plan.

- 3. City Services. The City will provide services to the satellite system, as identified below:
 - * Operation and management of the satellite system from the tail piece on the house side of the meters to the well source.
 - * Routine inspection, maintenance and repair of the satellite system in accordance with reasonable and accepted standards and practices for public water systems.
 - * Emergency repairs, within a reasonable time after the owners have notified the City.
 - * Preparation and filing of reports and other data (including water sample testing) as required.
- 4. City Charges. The property owners within the plat of Braunwood Estates agree to pay the following to the City:
 - A. Services charges. The City will charge for the aboveidentified services at a rate equivalent to that

applied in the Auburn City Code, Title 13, Chapter 13.04.

- B. Connection Charge. All persons connecting to the City's water system are obliged to pay a standard service installation charge as identified in the Auburn City Code, Title 13, Chapter 13.04.
- C. Reserve Account. All parcels within said plat, upon connection to the City's water system, shall pay to the City one thousand dollars (\$1,000) per parcel as a reserve account.

The reserve account can be utilized for water system repair, replacement or maintenance at the City's discretion, upon completion of the one (1) year maintenance period, as set out in the Developers Extension Agreement.

The property owners are not entitled to return of the reserve account money or interest on the reserve account, and the money in the account may be co-mingled with other Water Department funds.

5. Terms and Conditions. This Agreement includes all of the terms and conditions in the Auburn City Code as applicable and as amended in the future.

Without limiting the foregoing, it is agreed as follows:

- A. The City owns the satellite water system and will provide service as set forth above, performed in accordance with accepted public utility practices.
- B. The property owners hereby agree to limit the total number of connections irrigating their property at any one time to seven (7). The restrictive irrigation requirements shall be conducted by address on an odd and even number basis. The even numbered addresses shall be permitted to irrigate on even numbered calendar days, while the odd numbered addresses shall be permitted to irrigate on the odd numbered calendar days. The design of private irrigation systems shall be limited to a maximum of ten (10) gallons per minute total consumption for each lot.
- C. The property owners hereby agree in the event that the satellite system water source is interrupted, due to unpredictable conditions, such as severe volume reductions, contaminated water or any other unforeseen condition, the City at its discretion may utilize the alternate well site as described on the development plan or any other reasonable measure to ensure a source of water.

- 10. **Integration.** This Agreement constitutes the entire agreement between the parties. There are no other verbal or written agreements or representations which modify or affect this Agreement.
- 11. Covenant Running with the Property. It is agreed that this Contract is a covenant running with the property described in Paragraph 2 above and any other properties receiving water in the future from the satellite system, and shall be binding on the owners of all such property, their heirs and successors and it shall be recorded as an encumbrance against each of the thirteen (13) land parcels.

Terr	a Bayre, Inc.	for les.	
	WYOND O	(. W/W/	HELLO,
Aúth	brized signatur	re .	•
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CITY OF AUBURN

MAYOR

ATTEST:

Robin Wohlhueter, City Clerk

APPROVED AS TO FORM:

City Attorney

Res 2114

SATELLITE WATER SYSTEM SERVICE CONTRACT Page 5

STATE OF WASHINGTON)
) SS.
On this Oth day of , 191(, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared to me known to be the President and Secretary, respectively, of the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that I was affixed in the corporate seal of said corporation.
orporade boar or bara corporadion.
Witness my hand and official seal hereto affixed the day and year first above written.
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT
STATE OF WASHINGTON)
COUNTY OF KING)
On this day of, 19, before me undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, to me known to be the
Mayor and City Clerk, respectively, of the City of Auburn, a municipal corporation, and the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.
WITNESS my hand and official seal hereto affixed the day and year first above written.
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF AUBURN AND THE CITY OF BONNEY LAKE FOR OPERATING AND MAINTAINING A PUBLIC WATER SYSTEM.

whereas, the cities of Auburn and Bonney Lake are responsible for operating and maintaining a public water system in accordance with federal, state and local laws and regulations; and

WHEREAS, the parties recognize the responsibility of public water utilities to provide for the highest quality of water and reliability of service to their customers at reasonable cost; and

WHEREAS, the parties further recognize that water resources are finite and vulnerable, and the prudent use and management of these resources requires cooperation among utilities;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DULY ASSEMBLED, HEREWITH RESOLVES THAT:

Section 1. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute an Interlocal Agreement between the City of Auburn and the City of Bonney Lake for operating and maintaining a public water system in accordance with federal, state and local laws and regulations.

CITY ATTORNEY City of Auburn 25 W. Main Auburn, WA 98001 (206) 931-3030

CITY OF AUBURN

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INTERLOCAL AGREEMENT BETWEEN

ORIGINAL

THE CITY OF BONNEY LAKE .

AND

THE CITY OF AUBURN

This agreement made and entered into this <u>/5th</u> day of <u>luguet</u> 19<u>9</u>, by and between the City of Auburn (hereinafter referred to as "Auburn"), and the City of Bonney Lake (hereinafter referred to as "Bonney Lake"), WITNESSETH THAT:

WHEREAS, Auburn and Bonney Lake are responsible for operating and maintaining a public water system in accordance with federal, state and local laws and regulations, and

WHEREAS, the parties recognize the responsibility of public water utilities to provide for the highest quality of water and reliability of service to their customers at reasonable cost, and

WHEREAS, The parties further recognize that water resources are finite and vulnerable, and the prudent use and management of these resources requires cooperation among utilities, and

NOW, THEREFORE, the City of Bonney Lake and the City of Auburn enter into the following agreement.

A. RECITALS

- Bonney Lake will sell water to Auburn for the purpose of serving a maximum of two rural-residential domestic service connections for lots that abut the Pierce/King County (Auburn City Limits) line, in vicinity of Kersey Way S. E.
- 2. City of Auburn would install their own meters to individual services and one of these services would be to tax lot 9056 on Kersey Way S. E., adjacent to the county line.
- 3. The meter shall be in the Bonney Lake water service area. (Pierce County) The City of Auburn shall pay the connection charge plus the actual cost of the meter installation. The City of Bonney Lake shall own the meter.
- 4. The size of the meter shall be determined by the City of Auburn.
- All the properties served within the City of Auburn water service area will be the responsibility of the City of Auburn.
- 6. Bonney Lake will sell water to the City of Auburn at the standard Outside the City rates. Per Bonney Lake Municipal Code Section 13.04.100(C).
- Bonney Lake shall only furnish domestic needs for the two (2) rural residential connections. Bonney Lake is not responsible for fire flow.

RES No. 2551 Exhibit "A"

- 8. The City of Auburn will require new service connections from this supply to be protected by a residential fire sprinkler system in accordance with Auburn Fire Department ordinance.
- This agreement shall become null and void at the time Auburn has water available through it's own system to serve these properties.
- 10. The City of Bonney Lake shall use reasonable effort to provide a regular uninterrupted supply of water to Auburn. Bonney Lake shall not be liable for any shortage or interruption in delivery of water. In addition Bonney Lake shall not be liable for any failure, interruption or shortage of water or any loss or damage resulting therefrom, occasioned by any cause beyond the control of the City of bonney Lake
- 11. Auburn shall be a customer of Bonney Lake and shall be given the same consideration as any other customer under the City's rules, regulations, and Municipal Codes, for domestic service only.
- 12. This Agreement to provide water services by Bonney Lake shall continue from year to year on the anniversary date of the later approval date shown below, unless notice of intent not to renew this Agreement is provided by the Mayor of the City of Bonney Lake in writing to the Mayor of the City of Auburn on or before the anniversary date.

Charles G. Booth

MAYOR

DATED: 8-15-94

ATTEST:

City Clerk, City of Auburn

DATED: 6-28-94

DATED: 6-28-94

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Acting City Attorney, City of Auburn

RES No. 2551 Exhibit "A"

CITY OF AUBURN

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RESOLUTION NO. 2 7 2 1

A RESOLUTION OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK OF THE CITY OF AUBURN, TO EXECUTE INTERLOCAL AGREEMENT NO. 2 FOR THE LEA HILL INTERTIE PROJECT BETWEEN THE COVINGTON WATER DISTRICT, KING COUNTY WATER DISTRICT #111 AND THE CITY OF AUBURN.

THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREBY RESOLVES THAT:

The Mayor and City Clerk of SECTION 1. the City of Auburn, Washington, are hereby authorized to execute Interlocal Agreement No. 2 for the Lea Hill Intertie Project between the Covington Water District, King County District #111 and the City of Auburn. A copy of Agreement is attached hereto, denominated as Exhibit "A" and made a part hereof as though set forth in full herein.

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

Interlocal Agreement 2 for the

Lea Hill Intertie Project

between

Covington Water District, King County Water District #111, and the City of Auburn

I. Project Title: Lea Hill Intertie, consisting of construction and operation of piping, pump stations, meters, and source facilities for a water supply intertie between the City of Auburn (Auburn), Covington Water District (CWD) and King County Water District #111 (WD111), jointly termed the Participants. The project facilities are as shown on Exhibit A - Facilities Plan.

II. General:

- A. This Interlocal Agreement 2 (IA2) is consistent with the Joint Operating Agreement (JOA) of the South King County Regional Water Association (SKCRWA) dated 26 July 1995.
- B. There is an immediate need to provide for additional water supply to meet the needs of CWD and WD111, and meet the emergency needs of Auburn.
- C. Performance by Auburn under IA2 shall be subject to its pre-existing contractual and/or water supply obligations to Algona, Kent, Muckleshoot Indian Tribe, and Pacific. Future Interlocal Agreements shall be subject to the terms and conditions of IA2. It is the intent of Auburn to create a first in time, first in service approach to wholesale of water within the limitations of Auburn's water rights and/or supply capacity.
- D. Auburn has the necessary water system capacity to meet a portion of the near term, interruptable, public water supply needs of CWD and WD111. CWD and WD111 have the necessary system capacity to meet a portion of the emergency needs of Auburn.
- E. Each Participant desires to develop firm supplies to meet long term, continuing needs.
- F. Each Participant hereby identifies its authorized representative as the "General Manager" of CWD, the "General Manager" of WD111, and as the "City Engineer" of Auburn.
- G. For wholesale water purposes per Section 4. C. of the JOA, the following interties exist or are expected to exist in the near future for the Participants to IA2:

- 1. CWD
 - a) Auburn (future)
 - b) Black Diamond (future)
 - c) Tacoma (future)
 - d) King County Water District 94 (future)
 - e) WD111, and
 - f) Cedar River Water and Sewer District.
- 2. WD111
 - a) Auburn,
 - b) CWD,
 - c) Kent, and
 - d) Soos Creek Water and Sewer District.
- 3. Auburn
 - a) Algona,
 - b) Kent,
 - c) WD111,
 - d) Pacific,
 - e) Bonney Lake,
 - f) Lakehaven Utility District (future),
 - g) Muckleshoot Indian Tribe (future), and
 - g) CWD (future).
- H. Interlocal Agreement No. 1, 132nd Avenue Interim Intertie Project, dated 7
 November 1995, is terminated by mutual agreement of the WD111 and Auburn
 upon completion of the improvements described in Exhibit B of this IA2.

III. Description of Project:

- A. The project facilities are generally described in the Engineering Report prepared by EES, dated September 1995, and any subsequent amendments thereto.
- B. The project includes design, construction, and operation of facilities to provide water as follows:

Year	Auburn	CWD	WD111	Total
	Maximum	Maximum Day	Maximum Day	Maximum Day
	Day Demand	Demand	Demand	Demand
	(mgd)	(mgd)	(mgd)	(mgd)
1998	2.0	1.0	2.0	5.0
2000	2.0	1.5	2.5	6.0
2002	2.0	2.5	2.5	7.0
2005	2.0	2.5	2.5	7.0
2010	2.0	2.5	2.5	7.0

Additional water may be available as mutually agreed to by the Auburn City Council and the Board of Commissioners of either District. Water is to be provided from the Auburn system to the Lea Hill Reservoir Site, and then to the pipeline on 132nd SE running north to the Districts. The project will provide for flow control facilities as necessary and a master meter which will be used to measure the water supplied. The reverse order is used for water to be provided from the Districts to Auburn.

- C. Respective Facility Ownership, Capacity Rights, and responsibility for operation, maintenance, and renewal and/or replacement (r/r) are as described in Exhibit B. Operational parameters shall be as defined in Exhibit C Project Criteria.
- D. Auburn will design, construct and maintain the facilities constructed under IA2 in accordance with reasonably accepted water utility standards for similar municipal water utilities. Facilities will be designed in compliance with the City's adopted design standards as described in the 1995 Comprehensive Water Plan.
- E. The participants agree that an independent Value Engineering Analysis will be done at the 75 percent design level.

IV. Project Costs:

- A. The project costs are estimated as shown on Exhibit D Project Cost. Final project costs shall be reviewed and approved by the Participants. The Participants shall maintain individual cost records on their expenses for the project. Auburn will retain a consultant to maintain total cost records for the project.
- B. Costs associated with the development of new water sources will be shared based on the basis quantity of water each Participant is allocated from the sources.
- V. Project Financing: The Participants shall fully finance and pay for their proportionate share as shown in Exhibit D Project Cost. The Districts shall deposit funds with Auburn to perform the project work for the proposed facilities in accordance with the schedule shown in Exhibit E Project Schedule.

VI. Service Charges:

A. Auburn has prepared a Cost of Service Study to determine the cost of service to its customers. A customer classification for "wholesale" has been created, and rates for service charges shall be based on a rate study for the wholesale customer classification. Auburn will regularly update the cost of service analysis. Wholesale water rates will be based on costs of providing the service. Cost of developing the initial Cost of Service Study and Rate Study will be included within the project costs.

- B. WD111 and CWD shall provide a rate to Auburn to be applied for emergency service charges. Such rate shall be based on costs of providing the service, or, in the interim until a Cost of Service / Rate Study is completed, shall be equal to or less than Auburn's current wholesale rate.
- C. Adjustments to the service charges will be made in accordance with Section 4.H. of the JOA.

VII. Project Coordination:

- A. The Participants shall meet monthly for project coordination, or more frequently as needed.
- B. Auburn will retain a consultant to be the overall Project Coordinator.
 Assignment of responsibilities to the Project Coordinator shall be by agreement of the Participants' authorized representatives.
- C. The Participants shall be responsible for design, construction management, and commissioning of facilities to be constructed in conformity to facility ownership. Responsibilities may be assigned otherwise by agreement of the Participants' authorized representatives.

VIII. Conditions of Service:

- A. Auburn does not presently have the necessary capacity (i.e., water supply and/or water rights) to guarantee delivery of firm uninterruptible water. It is acknowledged and agreed that in the event Auburn experiences any failure or decreased capacity for any reason or increased demand within its retail service area, the supply to the Districts may be immediately reduced or stopped under such conditions at the sole discretion of Auburn. The Districts agree that Auburn may take such action irrespective of any cost, investment in capacity, or other reliance which may have been placed upon the intertie facilities and interruptible water supply referenced in this IA2.
- B. The Districts specifically acknowledge and agree that failure of Auburn to obtain additional primary water rights in excess of Auburn needs shall be cause for not bringing the Districts on a par with Auburn customers. For purposes of this IA2, on par shall mean: Upon receiving new primary water rights for additional water sources in the amount of at least 7 mgd the quantities of water described in paragraph III. B., the Districts will be served on the same basis and with the same reliability as service is provided to Auburn's retail customers, and Auburn will include the maximum total quantity of water cited in paragraph III. B. in all of its water system planning as if the quantity was served to direct service customers and any curtailment, restrictions or limitations on delivery would be on the same basis as curtailment, restrictions, or limitations on delivery to retail customers.

- C. The Participants will proceed with development and implementation of projects in accordance with the project schedule shown in Exhibit E to increase firm system capacity and a wholesale supply capacity as described in paragraph III. B., designed to ensure service to the Districts. It is anticipated the necessary projects required to provide firm supply will be proposed wells numbers 6 and 7 described in the City's 1995 Comprehensive Water Plan. The City has obtained Supplemental Water Rights for the proposed wells numbers 6 and 7. It is the intent of the Auburn to obtain Primary Water Rights for wells number 6 and 7 and additional new wells, if required, sufficient to provide the quantities of water described in paragraph III. B. which shall bring the Districts on a par with Auburn customers.
- D. It is the intent of Auburn to provide the water described in paragraph III. B. whenever it is available subject to the limitations described in paragraphs VIII. A. and B. Auburn shall use reasonable diligence and best efforts to provide immediate notice in the event it becomes aware that it may not be able to fulfill the requirements of paragraph III. B. for any reason.
- IX. Term of Duration of Agreement: This IA2 shall remain in full force unless terminated by mutual agreement of the Participants.

X. Amendments:

- A. This IA2 may be amended only in writing by agreement signed by the Participants.
- B. The authorized representatives shall have authority to update exhibits attached hereto. The exhibits shall be updated and/or revised only upon written agreement signed by the Participants' authorized representatives. Updates must be ratified by Auburn's City Council.

XI. Dispute Resolution:

- A. Should a dispute arise between the participants regarding the technical aspects of the planning, design, construction, funding, or operation of the facilities contemplated under IA2, the authorized representatives of the participants, as defined in paragraph II. E., shall meet and select two persons who, along with the authorized representatives of the participants, will form a dispute resolution panel to resolve the dispute. Should the dispute resolution panel not be able to reach a mutually satisfactory resolution the dispute will be resolved as described below.
- B. Legal disputes between the participants to IA2 shall be resolved through the use of mediation by a mediator mutually acceptable to the participants with each participant agreeing to equally share the cost of the mediator. Should the participants not be able to satisfactorily resolve the dispute through mediation, the forum for resolution shall be King County Superior Court. The substantially prevailing party will be entitled to attorney fees and costs.

XII. Hold Harmless: Each Participant agrees to indemnify and hold harmless the other participant from and against any loss, cost, damage, or expense of any kind and nature arising out of injury to person or damage to property in any manner caused by the negligent act or omission of the indemnified individual participant in the performance of its work pursuant to or in connection with this IA2.

XIII. Severability: If any provision of this IA2 is invalid or unenforceable the remaining provisions shall remain in force and effect.

IN WITNESS WHEREOF, the Participants hereto have caused this IA2 to be executed by their proper Officers on the 2nd day of October, 1996.

Attest:

By: Robin Warlhulter

Approved as to Form:

By Murallynda

Covington Water District

Bv· .

Title: President

ard of lommissioners

Date: 10/1/96

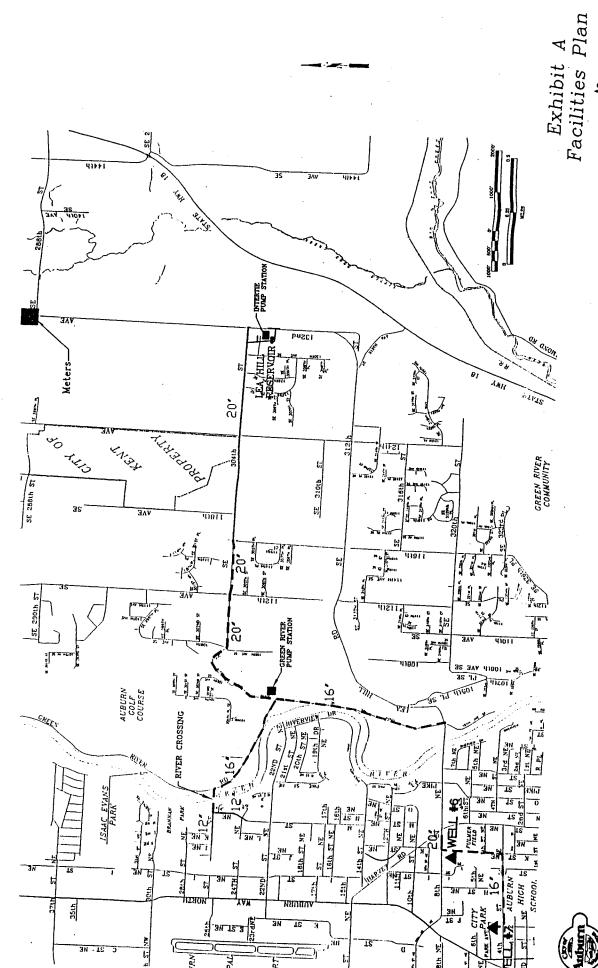
King County Water District #11

J. J. Kanil

Title: PROS BO OF Com

Date: 9/26/96

6 of 6



Lea Hill Intertie Project

Interlocal Agreement 2

Exhibit A Facilities Plan (Continued)

Exhibit A	
Update Approval	
Auburn Carlo	

WD111: ______, Dated: ______

Auburn:	, Dated: 11-10-92
CWD: (all the first	Dated: 10 -09-49
WDy11: Lange	, Dated: 11/6/9
Auburn:	, Dated:
CWD:	, Dated:
WD111:	, Dated:
Auburn:	, Dated:
CWD:	, Dated:

Exhibit B

Facility Ownership, Capacity Rights, Operation, Maintenance, and Renewal and Replacement Responsibilities

to

Interlocal Agreement 2

for

Lea Hill Intertie Project

Facility	Location	Facility Ownership	Capacity Rights	Operation, Maintenance, & Renewal/Replacement Responsibility
New Lea Hill Pump Station	Green River Road & 104 th SE	Auburn	WD111 2.5 MGD CWD 2.5 MGD	Auburn
Lea Hill Booster Pump Station	Lea Hill Reservoir Site	Auburn	WD111 and CWD 95% Auburn 5% (note 2)	Auburn
Flow Control, Telemetry	Lea Hill Reservoir Site	Auburn	WD111 and CWD 95% Auburn 5% (note 2)	Auburn
Meter Station	Intersection of 132 nd SE and SE 288 th Street	Auburn	WD111 and CWD 95% Auburn 5% (note 2)	Auburn
16-inch Waterline	Green River Road 26 nd NE to 104 th SE	Auburn	Note 3	Auburn
16-inch Green River crossing	Under Green River at 26 nd NE	Auburn	Note 3	Auburn
16-inch Waterline	104th SE, NE 8 th to Green River Road	Auburn	Note 3	Auburn
20-inch Waterline	SE 304 th , New Lea Hill Pump Station to 116 th SE	Auburn	Note 3	Auburn
Well #6	City	Auburn	Note 3	Auburn
Well #7	City	Auburn	Note 3	Auburn
16-inch Waterline & PRV	K Street SE, 22 nd Street SE to 21 st Street SE	Auburn	Note 3	Auburn
12-inch Waterline	M Street SE, Well 1 to 6 th Street SE	Auburn	Note 3	Auburn
12-inch Waterline	6th Street SE, M Street SE to F Street SE	Auburn	Note 3	Auburn
12-inch Waterline	F Street SE, 6 th Street SE to 2 nd Street SE	Auburn	Note 3	Auburn

Note 2: Auburn capacity right is in recognition of the emergency capability of the facility.

Note 3: Capacity right is not specific to facility, however participation in constructing the facility provides capacity right to 5 MGD from Auburn's water system.

Exhibit B Facility Ownership, Capacity Rights, Operation, Maintenance, and Renewal and Replacement Responsibilities (Continued)

Exhibit	В
Update	Approval

1.	Auburn:	_, Dated:
	CWD:	
	WD111:	
2.	Auburn:	, Dated:
	CWD:	, Dated:
	WD111:	, Dated:
3.	Auburn:	, Dated:
	CWD:	, Dated:
	WD111:	, Dated:

Exhibit C Project Criteria

to

Interlocal Agreement 2

for

Lea Hill Intertie Project

Project Criteria:

- Waterlines shall be sized as shown on Exhibit A.
- No storage shall be included in the project. All storage required to enable the Districts to optimally use facilities constructed shall be provided by the Districts.
- Pumping Facilities shall be constructed to provide flow rates as described in paragraph III. B.
- The New Lea Hill Pump Station is to operate at design capacity with one pump in stand-by mode.
- The Lea Hill Booster Pump Station is to operate at design capacity with one pump in stand-by mode.
- Pump Stations to be designed with single speed pumps.
- Emergency Power not provided at pump stations.
- Flow rates to the Districts from Auburn through the facilities shall be set for constant flow for full 24 hour periods, subject to reasonable hydraulic and mechanical tolerances.
- The Districts will notify Auburn by 9:00 AM if the District requests adjustment of the desired pumping rate for the following day, except in case of an emergency.
- In the event Auburn desires emergency water from the Districts, the Districts will provide Auburn a daily estimate of the volume of water which will likely be available during the following 24 hour period.

Exhibit C Update Approval

1.	Auburn:	, Dated:
	CWD:	, Dated:
	WD111:	, Dated:
2.	Auburn:	, Dated:
	CWD:	, Dated:
	WD111:	, Dated:

Exhibit D Project Costs

to

Interlocal Agreement No. 2

for

Lea Hill Intertie Project

D = 1.00	Total Est.	Est. Auburn Cost		WD1	11 Cost	CV	MD Cost
Description	Cost	Percent	Cost	Percent	Cost	Percent	Cost
INSIDE AUBURN							0031
PIPING							
20" along 304th from Pump Station to	\$570,000	10%	\$57,000	45%	\$256,500	45%	\$256,500
116th Ave SE (WS-105,106)	ļ			}			W250,500
16" on approx 26th from "M" to Pump Station	\$395,000	20%	\$79,000	40%	\$158,000	40%	\$158,000
(under Green R., incl crossing) (WS-102,103)	1			1	•		4,00,000
16" east of Green River from 8th St.	\$335,000	20%	\$67,000	40%	\$134,000	40%	\$134,000
to Pump Station (WS-101)	1			Í			4.04,000
Meter Station @ 132nd SE and SE 288th	\$35,000	5%	\$1,750	47.5%	\$16,625	47.5%	\$16,625
12" M Street from Well 1 to 6th Street SE (WS-110)	\$120,000	5%	\$6,000	47.5%	\$57,000	47.5%	\$57,000
12' 6th Street SE from M Street to F Street (WS-111, WS-112	\$140,000	5%	\$7,000	47.5%	\$66,500	47.5%	\$66,500
12" F Street from 6th Street to 2nd Street SE (WS-113)	\$85,000	5%	\$4,250	47.5%	\$40,375	47.5%	\$40,375
K Street Parallel pipeline and PRV (WS-114)	\$65,000	5%	\$3,250	47.5%	\$30,875	47.5%	\$30,875
PIPING SUBTOTA	\$1,745,000		\$225,250	1 .	\$759,875		\$759,875
PUMP STATIONS				 	0.00,0.0		\$133,013
Green River Pump Station (WS-104)	\$350,000	10%	\$35,000	45%	\$157,500	45%	\$157,500
Intertie Pump Station (WS-107)	\$245,000	5%	\$12,250	47.5%	\$116,375	47.5%	\$116,375
PUMP STATIONS SUBTOTAL	\$595,000	-	\$47,250	-	\$273,875	77.576	\$273,875
NEW SUPPLY FACILITIES							92/3,6/3
Drill and Develop Well #6 and Well #7 (7 mgd)	\$1,250,000	28.6%	\$357,143	35.7%	\$446,429	35.7%	£440,400
(S-106,S-108,S-109,S-110)	1		,	33.773	44-0,423	33.776	\$446,429
TOTAL ESTIMATED CONSTRUCTION COST	\$3,590,000	17.5%	\$629,643	41.2%	\$1,480,179	41.2%	\$1.490.470
PRELIMINARY PROJECT COSTS					01,100,110	71.270	\$1,480,179
Cost of Service Study / Rate Study	\$41,000	62.2%	\$25,502	18,9%	\$7,749	18.9%	\$7.740
Consultant Srevices (Jan 91 to Dec 94)			,		51,,,45	10.576	\$7,749
Feasibility Studies and Water Rights Analysis	\$41,522	33.3%	\$13,841	33.3%	\$13,841	33.3%	\$13,841
Development of Interlocal Agreement	\$9,406	33.3%	\$3,135	33.3%	\$3,135	33.3%	\$3,135
Final Engineering Report	\$7,198	17.5%	\$1,262	41,2%	\$2,968	41.2%	\$2,968
PRELIMINARY PROJECT COSTS SUBTOTAL	\$99,126		\$43,740		\$27,693	71.270	\$27,693
AILLIED COST					,		\$27,093
Contingency (15.0%)	\$538,500	17.5%	\$94,446	41.2%	\$222,027	41.2%	\$222,027
State Sales Tax (8.2%)	\$294,380	17.5%	\$51,631	41.2%	\$121,375	41.2%	\$121,375
Engineering Design (6.5%)	\$233,350	17.5%	\$40,927	41.2%	\$96,212	41.2%	\$96,212
Construction Engineering (7.5%)	\$269,250	17.5%	\$47,223	41.2%	\$111,013	41.2%	\$111,013
Legal (1.0%)	\$35,900	17.5%	\$6,296	41.2%	\$14,802	41.2%	\$14,802
Fiscal (1.0%)	\$35,900	17.5%	\$6,296	41.2%	\$14,802	41.2%	\$14,802
Administration (2.0%)	\$71,800	17.5%	\$12,593	41.2%	\$29,604	41.2%	\$29,604
Permits, Agency Approvals (3.0%)	\$107,700	17.5%	\$18,889	41.2%	\$44,405	41.2%	\$44,405
Engineering Surveys (2.5%)	\$89,750	17.5%	\$15,741	41.2%	\$37,004	41.2%	\$37,004
Land/ROW (3.3%)	\$118,470	17.5%	\$20,778	41.2%	\$48,846	41.2%	\$48,846
TOTAL ALLIED COST (50.0%)	\$1,795,000		\$314,821		\$740,089	- 1.2./V	\$740,089
OTAL PROJECT COST	\$5,484,126		\$988,205	9	2,247,960		\$2,247,960

Exhibit D - Update approval			
1. Auburn:	Dated:	2. Aubum:	Dated:
CWD:	Dated:	CWD:	Dated:
WD111:	Dated:	WD111:	Dated:

Exhibit D • Project Costs

tn Interlocal Agreement No. 2 for Lea Hill Intertie Project

revised 29 August 1997

Total Lea Hill Intertie Project Costs

		1 6:: :				,					
DESCRIPTION	PR Numbers	Original Estimates		flevised 29-Aug-97		Percent	im Cost		11 Cost		CWO Cost
CURRENT PROJECTS		Lanna		25-AUG-97		Percent	Cost	Percent	Cost	Percent	Cost
PIPING INSIDE AUBURN	7	i		1		i		ł		1	
20" along 304th from Pump Station to	PR609	\$570,000)	\$644,000		10%	\$64,400	45%	\$289,800	45%	\$289,800
116th Ave SE (WS-105,106) Sewer Une installed in same area for Aubum				1		1					4200,000
16" on approx 26th from "M" to Pump Station	PR610			\$200,000		100%	\$200,000	0%		0%	
Green River Road (WS-103)	PHOID	\$395,000	,	\$265,000			***				
Green River Crossing (WS-102)	PR615	1		\$265,000		20%	\$53,000 \$160,000	40% 40%		40%	\$106,000
16" east of Green River from 8th St.	PR611	\$335,000	1	\$379,000		20%	\$75,800	40%			\$320,000 \$151,600
to Pump Station (WS-101)	1	ł					*		\$101,000	1	\$131,000
Meter Stations Covington Water District Meter		\$25,000	+	,		5%	\$0	47 5%	\$0	47.5%	\$0
Water District #111 Meter	Covington P.O.			\$22,000		5%	\$1,100			95.0%	\$20.900
PIPING SUBTOTAL	W.D.#111 P.O.	\$1,335,000		\$22,000		5%	\$1,100	95.0%	\$20,900	└	
PUMP STATIONS	7	\$1,535,000		\$2,332,000		23.8%	\$555,400	38.1%	\$888,300	38.1%	\$888,300
Green River Pump Station (WS-104)	PR612	\$350,000		\$660,000		10%	\$66,000	45%	\$297.000	45%	\$297.000
Intertie Pump Station (WS-107)	PR613	\$245,000		\$570,000		5%	\$28,500	47.5%	\$270,750	47.5%	\$297,000
PUMP STATIONS SUBTOTAL	4	\$595,000		\$1,230,000		7.7%	\$94,500	46.2%	\$557,750	46.2%	\$567,750
NEW SUPPLY FACILITIES Well #6 (S-106, S-106)											
Drill and Develop	PR585	\$625,000		1		ŀ				l	
Conveyance Line	1	1		\$190,000		28.6%	\$54,286	35.7%	\$67,857	35 7%	\$67,857
Pump Station		1		\$612.000		28.6% 28.6%	\$0	35.7%	\$0	35.7%	\$0
Well #6 Total	i	\$625,000	-	\$802,000		20.6% -	\$174.857 \$229,143	35 7%.	\$218,571 \$286,429	35.7%_	\$218.571
	1			1		ł	5 LL0,140		\$200,425	i	\$286,429
Well #7 (S-109, S-110)	PR591	\$625,000		Ì	•	l				ĺ	
Drill and Develop Conveyance Line		1		\$190,000		28.6%	\$54,340	35.7%	\$67,830	35.7%	\$67,830
Pump Station				\$479,000		28.6%	\$136,994	35.7%	\$171,003	35.7%	\$171,003
Conservation Garden/Parks				\$630,000		28 6%	\$180.180	35.7%	\$224,910	35.7%	\$224,910
Well #7 Total		\$625,000	-	\$1,358,000		100.0%_	\$59,000	0.0%		0.0%_	
NEW SUPPLY FACILITIES SUBTOTAL		\$1,250,000		\$2,160,000	-	30.5%	\$430,514 \$659,657	34.7%	\$463,743 \$750,172	34.7%	\$463,743
TOTAL ESTIMATED CONSTRUCTION COST		\$3,180,000		\$5,722,000		22.9%	\$1,309,557	38.6%	\$2,206,222	38.6%	\$750,172 \$2,206,222
ALLIED COSTS]							V-1-1-1		32,200,222
Contingency State Sales Tax	Ì	\$477.000			10 0%	22.9%	\$130,956	38.6%	\$220,622	38.6%	\$220 622
Water Supply Program *	PR616	\$260,760	8 2%	\$492,092	8.6%		\$112,622	38 6%	\$189,735	38 6%	\$189,735
Engineering Design	[FROID	\$206,700	6 5%	\$538,944		50.9%	\$274,237	24.6%	\$132,354	24.6%	\$132,354
Portico Group	ļ	\$21,0,700	6 37	\$69,755		22.9%	*** ***		1		ļ
MBEI		Ì		\$292.113		22.9%	\$15,964 \$66,854	38 6% 38 6%	\$26,895 \$112,630	38.6%	\$26,895
SAB		ł		\$22,500		22.9%	\$5.149	38.6%	\$8,675	38.6% 38.6%	\$112.630 \$8.675
CH2M & Hiff IA#2				\$247,093		22.9%	\$56,551	38 6%	\$95,271	38.6%	\$95,271
CH2M & Hill Horizontal Direction Drilling				\$135,000		20.0%	\$27,000	40.0%	\$54,000	40.0%	\$54,000
PGG Wells HDR				\$48,420		22.9%	\$11,082	38.6%	\$18,669	38.6%	\$18,669
Aubum		ļ		\$15,000 \$50,000		22.9%	\$3,433	38.6%	\$5,784	38.6%	\$5,784
Subtotal	1	1		\$879,882		22.9%	\$11,443	38.6%	\$19.278	38.6%	\$19,278
Engineering Construction	ļ	\$238,500	7.5%	#075,002		22.470	\$197,476	38.8%	\$341,203	38.8%	\$341,203
Portico Group				\$7,751		22.9%	\$1,774	38 6%	\$2,988	38.6%	\$2,986
MBEI		i		\$32,457		22.9%	\$7,428	38 6%	\$12,514	38.6%	\$12,514
S&B CH2M & Hill [A#2]		\$2,500		22.9%	\$572	38.6%	\$964	38.6%	\$964
PGG Wells		l		\$30,077		22.9%	\$6.884	38.6%	\$11,597	38.6%	\$11,597
Arbum Daily Inspection				\$48,420 \$350,000		22.9% 22.9%	\$11,082	38.6%	\$18,669	38.6%	\$18,669
Subtotal				\$471,205		22.9%	\$80,102 \$107,842	38.6% 38.6%	\$134,949	38 6%	\$134,949
legal .		\$31,800	1 0%	\$35,000		22.9%	\$8,010	38.6%	\$181,682 \$13,495	38 6% 38 6%	\$181,682
Fiscal		\$31,800	1.0%			22.010	~	30.074	\$10,495	30 676	\$13,495
CCA, Inc.		Ì		\$25.000		22.9%	\$5,722	38.6%	\$9,639	38.6%	\$9,639
Aubum		1		\$75,000		22.9%	\$17,165	38.6%	\$28,918	38.6%	\$28,918
Subtotal Administration	PR616			\$100,000		22.9%	\$22,886	38.6%	\$38,557	38.6%	\$38,557
Aubum	PAGIS	\$63,600	2.0%						i		ŀ
HCWL				\$55,000 \$71,496	1	22.9% 22.9%	\$12,587	38.6%	\$21,206	38.6%	\$21,206
Subtotal				\$126,496	ŀ	22.9%	\$16,363 \$28,950	38.6%	\$27,567 \$48,773	38.6%	\$27,567
Permits, Agency Approvals		\$95,400	3.0%	\$75,000	- }	22.9%	\$17.165	38 6%	\$28,918	38 6% 38 6%	\$48,773 \$28,918
Engineering Surveys		\$79,500	2.5%	\$60,000	ı	22.9%	\$13,732	38.6%	\$23,134	38.6%	\$23,134
and Purchase/Use		\$104,940	3.3%		·		i				
Green River Pump Station Welt #6				\$50,000	Ī	22.9%	\$11,443	38.6%	\$19,278	38.6%	\$19,278
Well #7				\$50,000	ŀ	22.9%	\$11,443	38.6%	\$19,278	38.6%	\$19,278
Subtotal				\$50,000 \$150,000	- 1	22.9%	\$11,443	38.6%	\$19,278	38.6%	\$19.278
TOTAL ALLIED COST		\$1,590,000	50.0%		61.2%	27.1%	\$34,330 \$948,205	38.5%	\$57,835 \$1,276,307	38 6% 36.5%	\$57,835
PRELIMINARY PROJECT COSTS			- 7				70.70,843		+1,270,307	30.3%	\$1,276,307
Cost of Service Study / Rate Study *	Fully Complete	\$41,000	l	\$41,000		62.2%	\$25,502	18.9%	\$7,749	18.9%	\$7,749
Consultant Services			1		1						**.,,
Feasibility Studies and Water Rights Analysis Development of Joint Operating Agreement	Covington	\$41,522	1	\$41,522	İ	33.3%	\$13,841	33.3%	\$13,841	33.3%	\$13,841
Final Engineering Report	end WD#111 P.O.'s	\$9,406	ļ	\$16,652	- 1	37.5%	\$6,244	25.0%	\$4,163	37.5%	\$6,245
PRELIMINARY PROJECT COSTS SUBTOTAL	F.U. 8	\$7,198 \$99,126		\$7,198		22 9%	\$1,647	38.6%	\$2,775	38.6%	\$2,775
OTAL COSTS - CURRENT PROJECTS		\$4,869,126		\$106,372 \$9,329,190		24.7%	\$47,234 \$2,304,996	26.8% 37.6%	\$28,528	28.8%	\$30,610
		- ,, 20,, 123		40,020,180	-+	27.176	PE,307,990	31.0%	\$3,511,056	37.7%	\$3,513,138
UTURE PROJECTS	1		- 1		- 1		Į.		- 1		- 1
2" M Street from Well 1 to 6th Street SE (WS-110)	i	\$120,000		\$120,000	- 1	5%	\$6,000	47.5%	\$57,000	47 5%	\$57,000
2 6th Street SE from M Street to F Street (WS-111,WS-112) 2 F Street from 6th Street to 2nd Street SE (WS-113)		\$140,000		\$140,000	- 1	5%	\$7,000	47.5%	\$66,500	47.5%	\$66,500
Street Parallel pipeline and PRV (WS-114)	Į	\$85,000		\$85,000	- 1	5%	\$4,250	47 5%	\$40,375	47.5%	\$40,375
TOTAL ESTIMATED CONSTRUCTION COSTS		\$65,000		\$65,000		5%	\$3,250	47.5%	\$30,875	47.5%	\$30,875
	1	\$410,000		\$410,000	- 1	5.0%	\$20,500	47.5%	\$194,750	47.5%	\$194,750
TOTAL ALLIED COSTS		\$30E AAR	80 CV	4007 000	****						
OTAL COSTS - FUTURE PROJECTS	ŀ	\$205,000 \$615,000	50.0%		50.0%	5.0%	\$10,250	47.5% 47.5%	\$97,375	47.5%	97,375
TOTAL ALUED COSTS OTAL COSTS - FUTURE PROJECTS	ļ	\$205,000 \$615,000	50.0%	\$205,000 \$615,000	50.0%	5.0% 5.0%		47.5% 47.5%			

Exhibit D - Update approval			
1. Aubum Const	Date: 11-10-91	2. Auburn:	Date:
CWD: Tradition	Date: 10-09-97	CWD;	Date:
woin far your	Date: 11 - 6 - 97	WD111:	Date:

23.5% \$2,335,746

Exhibit E - Project Schedule

to

Interlocal Agreement 2

for

Lea Hill Intertie Project

Activity	Date
Execute IA2	September 3, 1996
Rates for service charges provided	September 15, 1996
CWD and WD111 each to provide \$200,000 deposit to Auburn	October 15, 1996
CWD and WD111 each to provide \$200,000 deposit to Auburn	January 10, 1997
CWD and WD111 each to provide \$400,000 deposit to Auburn	April 25, 1997
CWD and WD111 each to provide \$500,000 deposit to Auburn	July 6, 1997
CWD and WD111 each to provide \$500,000 deposit to Auburn	January 5, 1998
Complete Construction of Wells 6 and 7	January 15, 1998
CWD and WD111 each to provide \$600,000 deposit to Auburn	April 6, 1998
Complete River Crossing	July 6, 1998
CWD and WD111 each to provide \$500,000 deposit to Auburn	July 6, 1998
CWD and WD111 each to provide \$350,000 deposit to Auburn	October 5, 1998
CWD and WD111 each to provide \$350,000 deposit to Auburn	May 7, 1999
Complete Construction of Waterlines and Pump Stations	May 14, 1999
Commissioning	May 28, 1999

Exhibit E - Project Schedule (Continued)

Activity	Date
Interim Project Cost Accounting	June 30, 1999
CWD and WD111 each to provide \$200,000 deposit to Auburn	July 5, 1999
Balancing Payment per Interim Accounting	July 26, 1999
Obtain Primary Water Rights for Wells 6 and 7	January 3, 2000
Final project Cost Accounting	March 17, 2000
Final CWD and WD111 Balancing Payment to Auburn	April 17, 2000

Exhibit E Update Approval

1.	Auburn: Cerson	_, Dated: _ // - 10 - 9 }		
	CWD: prelitlepilisen	, Dated: <u>10 -09 - 97</u>		
	WD111 Jan Sond	, Dated: 11/6/97		
2.	Auburn:	, Dated:		
	CWD:	, Dated:		
	WD111:	, Dated:		
3.	Auburn:	Dated:		
J.	Adouin.			
	CWD:	, Dated:		
	WD111:	, Dated:		

REF. H:\PROJ\PR616-17\E97-954

RESOLUTION NO. 2 7 8 2

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A NEW FRANCHISE AGREEMENT BETWEEN THE CITY OF AUBURN AND KING COUNTY TO CONSTRUCT, OPERATE AND MAINTAIN A WATER SYSTEM IN COUNCIL DISTRICTS 7, 9 AND 13, UNTIL YEAR 2021, AND A SHORT TERM FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A SEWER SYSTEM IN COUNCIL DISTRICT 7, 9 AND 13 UNTIL MARCH, 1998.

THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLE, HEREWITH RESOLVES THAT:

SECTION 1. AGREEMENT The Mayor of the City of Auburn is herewith authorized to execute a Franchise Agreement between the City of Auburn and King County to construct, operate and maintain a water system in Council Districts 7, 9 and 13, until year 2021, and a short term franchise to construct, operate and maintain a sewer system in Council Districts 7,9, and 13 until March, 1998. A copy of said Agreement is attached hereto, denominated as Exhibit "A", and a copy of King County Ordinance No. 12473 approving the franchise is

hereof as though set forth in full herein. SECTION 2. AUTHORIZATION. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation. DATED and SIGNED this 5th day of August, 1996. CITY OF AUBURN MAYOR

Resolution No. 2782 November 14, 1996 Page 2



In the matter of the application for a franchise to operate, maintain, repair, and construct water mains and service lines, and appurtenances in, over, along, and under County roads and rights-of-way in King County, Washington.

The application of the CITY OF AUBURN for a franchise to operate, maintain, repair and construct water mains and service lines, and appurtenances in, over, along, and under County roads and rights-of-way located within the area described in attached Exhibit "A" has been heard on this day of Septem bere, 1996. All of the property described in Exhibit "A" lies outside the limits of any incorporated Town or City.

Legal notice of the franchise application and of the hearing has been given as is required by law.

The King County Council, having considered the interests proposed and advanced, and finding that the granting of this franchise is in the public interest, ORDERS that a franchise be granted to the CITY OF AUBURN, the Grantee, subject to the conditions set forth in Exhibit "B" attached hereto, this franchise and Ordinance No. 12473. This franchise grants the right, privilege, authority and franchise to operate, maintain, repair and construct mains and service lines and appurtenances as a part of its distribution system in, over, along, and under County roads and rights-of-way located within the area described in Exhibit "A".

This franchise is granted subject to all of the te Ordinance No. 1247 and Exhibit "B", and shall exp	erms and conditions contained herein, within ire in twenty-five years on $9/30$, $202/$.			
Dated this 14 day of October, 19	<u>96</u> .			
	KING COUNTY, WASHINGTON			
	BY Lang Fache			
	TITLE King County Gentive			
The undersigned accepts all the rights, privileges, and duties of this franchise subject to all terms, conditions, stipulations, and obligations contained herein, within Ordinance /2473 and Exhibit "B".				
	CITY OF AUBURN GRANTEE			
	BY Charles A. Booth			
	TITLE Mayor			
Dated this 26 Hday of No Vember	, 19 <i>96</i> .			

Exhibit "A"

Beginning at the northwest corner of the George E King Donation Land Claim No. 40 situate in Section 31. Township 22 North, Range 5 East, W.M. also known as the southeast corner of the R H Beatty Donation Land Claim No. 37 and No. 44 situate in Section 31, Township 22 North, Range 5 East, W.M. and in Section 36, Township 22 North, Range 4 East, W.M.; Thence westerly along the south boundary of said R H Beatty Donation Land Claim No. 37 and 44 and the south boundary of the John M. Thomas Donation Land Claim No. 42 situate in Section 36, Township 22 North, Range 4 East, W.M. to the easterly boundary of the corporate city limits of the City of Auburn as described in the City of Auburn annexation Ordinance No. 4770; Thence northerly along said easterly boundary of the corporate city limits, 49.5 feet; thence easterly along a line parallel with said south boundary of the John M Thomas Donation Land Claim No. 42 an the south boundary of said R H Beatty Donation Land Claim No. 37 and 44 to the east boundary of said R H Beatty Donation Land Claim No 37 and 44; Thence easterly along a line parallel with and 49.5 feet north, measured at right angles of the north boundary of said George E King Donation Land Claim No. 40, and along said parallel line extended easterly, to the thread of the Green River: Thence southerly along said thread of the Green River to the north boundary of said George E King Donation Land Claim No. 40, extended easterly; thence westerly to the point of beginning. Together with:

Beginning with the northwest corner of Section 5, Township 21 North, Range 5 East, W.M. Thence easterly along the north boundary of said Section 5 to the thread of the Green River as described in the City of Auburn Annexation Ordinance No. 2511; Thence southerly along said thread of the Green River to the south boundary of Government No. 4, situate in Section 5, Township 21 North, Range 5 East, W.M., extended westerly; Thence easterly along said south boundary to the easterly margin of the Green River Road and the westerly boundary of the City of Auburn Annexation No. 4710; Thence northerly along said westerly boundary of the City of Auburn Annexation No. 4710 to the north boundary of the south 30.00 feet of Section 32, Township 22 North, Range 5 East, W.M.; Thence westerly along said north boundary to said thread of the Green River as described in the City of Auburn Annexation Ordinance No. 2511; Thence southerly along said thread of the Green River to said north boundary of Section 5.

Beginning at the southwest corner of the S E 1/4 of the S W 1/4 of Section of Section 32. Township 22 North, Range 5 East, W.M.; Thence northerly along the west boundary of said S E 1/4 of the S W 1/4 of Section 32 to the north boundary of the South 30.00 feet of said Section 32: Thence easterly along said north boundary of Section 32 and along the north boundary of the south 30.00 feet of Section 33, Township 22 North, Range 5 East, W.M. to the west boundary of the east 285 feet of the S W 1/4 of said Section 33 as measured along the south boundary of said Section 33; Thence southerly along said west boundary to said south boundary of Section 33; Thence southerly along a line parallel with the east boundary of the West 1/2 of Section 4, Township 21 North, Range 5 East, W.M.; Thence easterly parallel with the north boundary of said Section 4, a distance of 100 feet; Thence southerly parallel with said east boundary of the West 1/2 of Section 4, a distance of 114.00 feet; Thence easterly parallel with said north boundary of Section 4. a distance of 155.00 feet to the west boundary of the east 30.00 feet of said West 1/2 of Section 4; Thence southerly along said west boundary of the east 30.00 feet to the south boundary of the North 1/2 of the South 1/2 of said Section 4; Thence easterly along said south boundary and along the south boundary of the North 1/2 of the South 1/2 of Section 3, Township 21 North, Range 5 East, W.M. to the northwesterly margin of Primary State Highway No. 2, also known as State Route 18; Thence southerly and westerly along said northwesterly margin to the easterly corporate city limits of the City of Auburn; Thence northerly and westerly along said easterly corporate city limits of the City of Auburn to the south boundary of Government Lot No. 4 in Section 5, Township 21 North, Range 5 East, W.M. extended westerly; Thence easterly to the southeast corner of said Government Lot No 4; Thence northerly to the point of beginning. Together with:

Beginning at the southwest corner of the N E 1/4 of the S W 1/4 of Section 21, Township 21 North, Range 5 East, W.M., said point located on the easterly corporate city limits of the City of Auburn; Thence northerly along said corporate city limits of the City of Auburn to the southeasterly margin of said Primary State Highway No. 2, also known as State Route No. 18; Thence northeasterly along said southeasterly margin to the thread of the Green River; Thence southeasterly along said thread of the Green River to the east boundary of Section 26, Township 21 North, Range 5 East, W.M.; Thence southerly along said east boundary of Section 26 and southerly along the east boundary of Section 35; Thence westerly along the south boundary of said Section 35 to the thread of the White River and the easterly corporate city limits of the City of Auburn; Thence north and westerly along said easterly corporate city limits of the City of Auburn; Thence north and westerly along said easterly corporate city limits of the City of Auburn to the point of beginning.

Together with:

Beginning at the southwest corner of Section 36, Township 22 North, Range 4 East, W.M.; Thence northerly along the westerly boundary of said Section 36 to the northerly margin of South 277th Street, also known as 52nd Street N W, which is the southerly corporate limits of the City of Kent: Thence easterly along said northerly margin of South 277th Street and along the southerly corporate limits of the City of Kent and along the northerly corporate limits of the City of Auburn to the westerly margin of Auburn Way North; Thence southeasterly along said westerly margin 2100 feet, more or less, to the westerly corporate city limits of the City of Auburn as described in the City of Auburn Ordinance No. 2511; Thence southerly along said westerly corporate city limits to the southerly boundary of the W A Cox Donation Land Claim No. 38 and 41; Thence westerly along said southerly boundary to the easterly boundary of the Plat of White River Valley Home Tracts as recorded in Volume 13 of Plats, Page 17, records of King County, Washington; Thence northerly along said easterly boundary of the Plat of White River Valley Home Tracts to the northeast corner of Tract 20 of said Plat of White River Valley Home Tracts; Thence westerly along the north boundary of said Tract 20 to the westerly margin of 80th Avenue South; Thence southerly along said westerly margin of 80th Avenue South to the southerly boundary of Section 36, Township 22 North, Range 4 East, W.M. Thence westerly to the point of beginning.

Less that portion of the above described franchise areas lying within the corporate city limits of the City of Auburn, Washington and less that portion of the above described franchise areas lying within the corporate city limits of the City of Work Workington.

within the corporate city limits of the City of Kent, Washington.

EXHIBIT "B"

TERMS AND CONDITIONS APPLICABLE TO UTILITIES FRANCHISES GRANTED BY KING COUNTY

THIS FRANCHISE is subject to the following terms and conditions:

1. **DEFINITIONS**

References to any County official or office also refers to any office that succeeds to any or all of the responsibilities of the named office or official. References to laws or "applicable laws" include federal, state, and local laws and regulations adopted pursuant to those laws; unless otherwise stated, references to laws include laws now in effect, as the same may be amended from time to time during the operation of this franchise. In addition, the following definitions shall apply:

<u>Cable Services</u>. The term "Cable Services" is used as defined in 47 United States Code 522 (5), as amended.

<u>Cable System</u>. The term "Cable System" is used as defined in 47 United States Code 522 (6), and King County Code 6.a.010 (J) as amended.

<u>County Road Rights-of-Way.</u> The term "County Road Rights-of-Way" includes any road, street, avenue, or alley located within the area described in the attached Exhibit "A", it does not include recreational or nature trails except where the trails intersect or are within roads, streets, avenues or alleys.

<u>Director</u>. The term "Director" refers to the chief executive of the King County Department of Transportation.

<u>Grantee.</u> The term "Grantee" refers to the CITY OF AUBURN its successors and those assignees approved pursuant to paragraph 16 herein.

<u>Utility</u>. The term "utility" refers either to the Grantee or, depending on the context, to any other person, firm, or corporation, public or private, which may hold a franchise to maintain and operate similar facilities in, under, over, across, and along any of the County property described in Exhibit "A".

<u>Council</u>. The term "Council" refers to the King County Council, acting in its official capacity. <u>Other Governing Body</u>. The term "Other Governing Body" refers to any public official or other public board or body as may have the power and jurisdiction to permit or regulate the installation and maintenance of utilities and other facilities in, under, over, across, and along any of the county property described in Exhibit "A".

2. ACCEPTANCE BY GRANTEES OF TERMS AND CONDITIONS

The full acceptance of this franchise and all of its terms and conditions shall be filed with the Clerk of the Council within forty-five (45) days from _______, 19_____, by the Grantee. Full acceptance of this franchise is a condition precedent to its taking effect, and unless this franchise is accepted within the time specified, this grant will be null and void and have no force or effect.

3. NON-EXCLUSIVE FRANCHISE

This franchise is not exclusive. It does not prohibit King County from granting franchises for other public or private utilities, in, under, over, across, and along any County property, including County road rights-of-way.

This franchise does not prevent or prohibit King County from constructing, altering, maintaining or using any County road rights-of-way covered by this franchise. King County retains full power to make all changes, relocations, repair, maintenance, etc. as it may deem fit.

4. JURISDICTION

This franchise is intended to convey limited rights and interest only as to those roads and rights- ofway in which King County has an actual interest. It is not a warranty of title or of interest in County road rights-of-way.

Whenever any of the County road rights-of-way as designated in this franchise, by reason of the subsequent incorporation of any Town or City or extension of the limits of any Town or City, shall later fall within the City or Town limits, this franchise shall continue in force and effect until such time as the incorporation and/or annexation is complete according to applicable State law, after which time the County will no longer have any responsibility for maintenance of any County roads, rights-of-way or other County property within the area of annexation/incorporation.

None of the rights granted to the Grantee shall affect the jurisdiction of King County over County road rights-of-way or the County's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating.

All of the rights herein granted shall be subject to and governed by this franchise; provided, however, that nothing in this franchise may be construed in any way as limiting King County's rights to adopt ordinances which are necessary to protect the health, safety and welfare of the general public.

5. REGULATION OF USE AND CONTROL

This franchise does not deprive King County of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the County road rights-of-way covered by this franchise.

This franchise authorizes the use of County rights-of-way solely for the delivery by the Grantee of natural gas to it customers. Additional uses of County rights-of-way by the Grantee, including for cable communication services, shall first require a separate franchise from King County which conforms to the requirements of K.C.C. 6.27 as amended, or K.C.C. 6.27A as amended, and other applicable law.

Any use of the Grantee's equipment of facilities in County rights-of-way by others, including for telecommunication or cable communication services, is prohibited unless separately authorized and approved in writing by King County. The Grantee agrees that prior to authorizing any person to use the Grantee's equipment or facilities located in County rights-of-way, the Grantee will require the user to provide the Grantee with an affidavit that it has obtained the necessary franchise or other approval from the County to operate and provide the proposed service in County rights-of-way. At least thirty (30) day prior to executing any agreement with a potential user for the use of the Grantee's equipment or facilities, the Grantee shall fax the affidavit to the King County Office of Cable Communication at 206-296-0842.

6. EMINENT DOMAIN

This franchise and the limited rights and interests for the operation, maintenance, repair, and construction of Grantee's transmission and service lines and appurtenances are subject to the exercise of eminent domain. In the event of an exercise of eminent domain by King County, the value to be attributed to all the rights and interests granted under this franchise shall not exceed the actual amount the Grantee paid to King County in obtaining this franchise.

7. ENFORCEMENT

Failure of King County, on one or more occasions to exercise a right or to require compliance or performance under this franchise or any applicable law, shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Failure of King County to enforce or exercise its rights under any provision of this franchise or applicable law does not constitute a waiver of its rights to enforce or exercise a right in any other provision of this franchise or applicable law.

8. INDEMNITY AND HOLD HARMLESS

The Grantee agrees to indemnify and hold harmless King County as provided herein to the maximum extent possible under law. Accordingly, the Grantee agrees for itself, its successors, and assigns to defend, indemnify and hold harmless King County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Grantee's exercise of rights and privileges granted by this franchise. The Grantee's obligations under this section shall include:

- (a) Indemnification for such claims whether or not they arise from the sole negligence of the Grantee, the concurrent negligence of both parties, or the negligence of one or more third parties.
- (b) The duty to promptly accept tender of defense and provide defense to the County at the Grantee's own expense.

- (c) Indemnification of claims made by the Grantee's own employees or agents.
- (d) Waiver of the Grantee's immunity under the industrial insurance provisions of Title 51 RCW, which waiver has been mutually negotiated by the parties.

In the event it is necessary for the County to incur attorney's fees, legal expenses, or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from the Grantee.

In the event it is determined that RCW 4.24.115 applies to this franchise agreement, the Grantee agrees to defend, hold harmless and indemnify King County to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of King County to the full extent of Grantee's negligence. Grantee agrees to defend, indemnify and hold harmless the County for claims by Grantee's employees and agrees to waiver of its immunity under Title 51 RCW, which waiver has been mutually negotiated by the parties.

King County shall give the Grantee timely written notice of the making of any claim or of the commencement of any such action, suit, or other proceeding covered by the indemnity in this section. In the event any such claim arises, the County or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the duty to defend, settle, or compromise any claims arising hereunder and the County shall cooperate fully therein.

Notwithstanding the above, the County shall have no obligation to tender a defense as a condition of the indemnity where there is a material conflict between the interests of the Grantee and King County.

9. <u>VACATION</u>

If at any time King County vacates any County road rights-of-way covered by this franchise, King County will not be held liable for any damages or loss to the Grantee by reason of such vacation. King County may, after giving thirty (30) days written notice to the Grantee, terminate this franchise with respect to any County road rights-of-way vacated.

10. REPAIR, REMOVAL OR RELOCATION

The Grantee hereby covenants, at its own expense, to repair, remove, or relocate existing facilities including all appurtenant facilities and service lines connecting its system to users, within King County road rights-of-way if such repair, removal, or relocation is required by King County for any County road purpose. Such repair, removal, or relocation shall not be unreasonably required.

The grantee shall, at no expense to the County, adjust, remove or relocate existing facilities within County road rights-of-way, including all appurtenant facilities and service lines connecting its system to users, if the County determines such adjustment, removal or relocation is reasonably necessary to allow for an improvement or alteration planned by the County in such road right-ofway. The County shall give the Grantee written notice of such requirement as soon as practicable, at the beginning of the pre-design stage for projects that are part of the County's capital improvement program, including such available information as is reasonably necessary for the Grantee to plan for such adjustment, removal or relocation.

For projects that are a part of the County's capital improvement program, in addition to any other notice given to the Grantee, the County shall provide a vertical and horizontal profile of the roadway and drainage facilities within it, both existing and as proposed by the County, and the proposed construction schedule; notwithstanding any permit conditions that may later be applied to the County project, this initial design information shall be given at least 180 days before construction is scheduled to begin, except in cases of urgent construction or emergencies. The Grantee shall respond to this notice, and to any later notices of revised designs based on permit conditions, within no more than thirty (30) days by providing to the County the best available information as to the location of all of the Grantee's facilities, including all appurtenant facilities and service lines connecting its system to users and all facilities that it has abandoned, within the area proposed for the public works project.

The County shall offer the Grantee the opportunity to participate in the preparation of bid documents for the selection of a contractor to perform the public works project as well as all required adjustments, removals or relocations of the Grantee's facilities. Such bid documents shall provide for an appropriate cost allocation between the parties. The County shall have sole authority to choose the contractor to perform such work. The Grantee and the County may negotiate an agreement for the Grantee to pay the County for its allocation of costs, but neither party shall be bound to enter into such an agreement. Under such an agreement, in addition to the Grantee's allocation of contractor costs, the Grantee shall reimburse the County for cost, such as for inspections or soils testing, related to the Grantee's work and reasonably incurred by the County in the administration of such joint construction contracts. Such costs shall be calculated as the direct salary cost of the time of County professional and technical personnel spent productively engaged in such work, plus overhead costs at the standard rate charged by the County on other similar projects, including joint projects with other County agencies.

11. REQUIREMENT OF CONSTRUCTION PERMITS

The Grantee, its successors or assigns, has the right, privilege, and authority to enter the County road rights-of-way for the purpose of operating, maintaining, repairing or construction its transmission and service lines and appurtenances on the condition that it obtains permits approved by the Director and Property Services Division and, when applicable, by the Department of Development and Environmental Services. Applications for work permits shall be presented to the Property Services Division which may require copies of plans, blueprints, cross-sections, or further detailing of work to be done. In the event of an emergency, the Grantee may immediately commence the necessary work and shall apply the next business day for the work permit. Any work done, whether by Grantee, its contractors, or third parties will include necessary paving, patching, grading and any other reasonably necessary repair or restoration to the County road rights-of-way. All work shall be done to the satisfaction of the Director.

All equipment, lines and appurtenances which are used in the operation, maintenance, repair or construction of the Grantee's service and which are located within the County road rights-of-way shall be considered to be part of the Grantee's system and shall be the responsibility of the Grantee. All permits for the operation, maintenance, repair or construction of said system shall be applied for and given in the name of the Grantee, who will be responsible for all work done under the permit. The Grantee remains responsible whether the work is done by the Grantee, its contractors, or by third parties.



The Grantee shall, at no expense to the County, assume the following obligations with respect to the facilities connected to its system that are within County road rights-of-way and which it does not own, including appurtenant facilities and service lines connecting its system to users:

- The Grantee shall apply for, upon request and on behalf of the owner of the facilities, a County right-of-way construction permit for any repairs required for such facilities; provided such owner agrees to reimburse the Grantee for all costs incurred by the Grantee and any other reasonable conditions the Grantee requires as a precondition to applying for the permit. All work to be performed in the County right-of-way shall comply with all conditions of the County permit and all applicable County requirements. The Grantee may at its option perform any part of the repair with its own forces or require the owner to employ a contractor for that purpose, provided such contractor is approved by the County;
- (b) In the event that the County determines emergency repair of such facilities is necessary to halt or prevent significant damage to County road rights-of-way or significant threats to the health, safety and welfare of parties other than the owner or the occupants of the building served by such facilities, the Grantee shall take prompt remedial action to correct the emergency to the County's approval, which the County shall not unreasonably withhold;
- When the County or its contractor provides notice to the Grantee, pursuant to RCW 19.122, of its intent to excavate within County road rights-of-way, the Grantee shall provide to the County or its contractor the best information available from the Grantee's records or, where reasonable, from the use of locating equipment as to the location of such facilities, including surface markings where these would reasonably be of use in the excavation. If the Grantee fails to make good faith efforts to provide the above information within the deadlines provided by RCW 19.122, the Grantee shall hold the County harmless for all reasonable costs that result from damage to such facilities if such damage occurs as a result of the failure to provide such information. Nothing in this subsection is intended or shall be construed to create any rights in any third party or to form the basis for any obligation or liability on the part of the County or the Grantee toward any third party, nor is anything in this subsection intended to be construed to alter the rights and responsibilities of the parties under RCW 19.122, as amended.

12. <u>RESTORATION OF COUNTY ROAD RIGHTS-OF-WAY</u>

After work on, under or adjacent to County road rights-of-way, the Grantee is responsible for and will leave all County road rights-of-way in as good a condition as they were in before any work was done. In the event that the Grantee, its contractors, or third parties working under permit should fail to restore County road rights-of-way to the satisfaction of the Director, King County may make such repairs or restorations as are necessary to return the County road rights-of-way to its pre-work condition. Upon presentation of an itemized bill for repairs or restorations, including the costs of labor and equipment, the Grantee will pay the bill within thirty (30) days. If suit is brought upon the Grantee's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of King County, then the Grantee shall pay all of the actual costs, including interest from the date the bill was presented, disbursements, and attorney's fees and litigation related costs incurred.

13. PERFORMANCE OF WORK

The Grantee covenants that in consideration for the rights and privileges granted by this franchise, all work performed by the Grantee on County road rights-of-way shall conform to all County requirements including, but not limited to, the requirements of the current edition of the County Road Standards in force when the work is performed and all traffic control shall also conform to the current edition of the Manual of Uniform Traffic Control Devices in force when the work is performed.

14. BLASTING REQUIREMENTS

The right to operate, maintain, repair and construct Grantee's distribution and service lines and appurtenances granted by this franchise does not preclude King County, its agents or contractors from blasting, grading, or doing other road work to the Grantee's lines and appurtenances. Except in the case of an emergency, the Grantee will be given ten (10) business days written notice of any blasting so that the Grantee may protect its lines and appurtenances. If the Grantee notifies the County within ten (10) business days that the facilities will have to be relocated to protect them from blasting, the County will defer the blasting for up to ninety (90) days from the date of the original notice. In no event will the Grantee be given less than two (2) business days written notice of any blasting. Notification of any excavation shall be provided through the One-Call System as provided by RCW 19.122, as hereinafter amended.

15. SURVEY MARKERS AND MONUMENTS

It shall be the responsibility of the Grantee performing any construction work in the County road rights-of-way to restore any survey markers or monuments disturbed by such construction in accordance with RCW 58.09.130, and as hereinafter amended.

16. ASSIGNMENT

The Grantee shall not have the right to assign this franchise without the consent of the Metropolitan King County Council given by Ordinance. No assignment shall be effective unless an acceptance by the assignee of all rights, conditions, terms, provisions, and responsibilities contained within the franchise, as well as surety bonds which the Council deems necessary to be posted are received. Council approval of the assignment may be made subject to the assignee's acceptance of new or modified terms of the franchise.

17. EXPIRATION AND RENEWAL

To the extent described in Exhibit "A", all rights granted by this franchise to County road rights-of-way outside incorporated Towns and Cities apply to all existing County road rights-of-Way improved and unimproved and to all County road rights-of-way acquired by King County during the term of this franchise.

If the Grantee has initiated a renewal of this franchise before it expires, the County may, at its sole discretion, extend the term of the franchise on a month to month basis for up to one year. Should the County elect to extend the franchise, written notice shall be provided to the Grantee before the franchise expiration date.

If the Grantee has not applied for a renewal of this franchise before it expires, King County has the right to remove or relocate any lines and appurtenances of the Grantee as is reasonably necessary for the public's health, welfare, safety, or convenience including, but not limited to, the safe operation of County roads, franchise holders, or for the construction, renewing, altering, or improving of any County road right-of-way, or for the installation of lines and/or facilities of other franchise holders. Grantee shall be liable for the costs incurred in any removal or relocation of its lines and appurtenances under this section. Costs include the expense of labor and equipment.

Upon expiration of this franchise, the Grantee shall continue to be responsible for the operation and maintenance of existing facilities in the County road rights-of-way until removed, assigned to another franchised utility or abandoned; however, the Grantee shall not have the right to provide additional services or construct new facilities. King County will issue permits required for the repair and maintenance of the existing facilities in accordance with K.C.C. 14.44.055 as amended and Section 11 of this franchise. This section and sections 8, 10-13 and 15 of this franchise shall continue in force until such time as the lines are removed from County road rights-of-way, assigned to another franchised utility, or abandoned in place with the approval of the Manager of the Department of Transportation, Road Services Division.

18. RESERVATION OF RIGHTS

King County specifically reserves for itself the right to impose a utility tax on the Grantee if such taxing authority is granted by State of Washington and the local option is exercised by the King County Council.

King County also specifically reserves the right to exercise authority it has or may acquire in the future to secure and receive fair market compensation for the use of its property, pursuant to an ordinance. If King County elects to exercise such authority, the fair market compensation requirement for Grantee shall be imposed by ordinance not less than one hundred eighty (180) days after written notice ("Compensation Notice") is delivered to the Grantee, said Compensation Notice identifying with specificity the definition, terms and/or formula to be used in determining such fair market compensation. Acceptance of King County's definition terms and/or formula identified in the Compensation Notice will occur if the Grantee accepts in writing within thirty (30) days of receipt of the Compensation Notice; or, if Grantee takes no action in writing within thirty (30) days of receipt of the Compensation Notice; in which case the applicable ordinance that the King County Council passes will be determinative.

Nothing in this section shall be construed as an agreement by the Grantee of King County's right to exercise authority it has or may acquire in the future to secure and receive fair market compensation for the use of property. Nothing in this section shall be construed to prohibit the Grantee from challenging, in King County Superior Court or a court of competent jurisdiction, the legality of such right.

Grantee's rejection of the definition, terms, and/or formula identified in the Compensation Notice will only occur if such rejection is in written form, identifying with specificity the grounds for such rejection, and delivered to King County within thirty (30) days after receipt of the Compensation Notice, in which case the below identified arbitration terms will apply:

- (a) The Grantee and King County will select one arbitrator each, and the two selected arbitrators will select a third arbitrator. If the two arbitrators have not selected a third arbitrator within thirty (30) days after the selection of the last selection of the two, either the Grantee or King County may apply to the presiding judge of the King County Superior Court for the appointment of a third arbitrator. The three arbitrators will determine the method for determining the fair market compensation for the County property used by the Grantee. The arbitration procedure employed shall be consistent with the rules and procedures of the American Arbitration Association. The decision of a majority of the arbitrators will bind both the Grantee and King County. At the conclusion of the arbitration, the arbitrators will submit written reports to the Grantee and King County which shall contain all pertinent evidence that led to their conclusion together with an explanation of their reasoning for such conclusion.
- (b) The fees of the arbitrators selected by each party shall be paid by that party, and the fees of the third arbitrator shall be paid one-half by the County and the Grantee. The other costs of the proceeding shall be shared equally by the County and the Grantee.
- (c) In event that the question of fair market compensation is not resolved prior to the effective date specified by the ordinance authorizing said compensation, the arbitration decision will be applied retroactively to the effective date in the ordinance. The Grantee will pay the retroactive sum plus interest in the amount of twelve percent (12%) per annum.

Nothing in this franchise may be construed to limit the exercise of authority now or later possessed by the County or any other governing body having competent jurisdiction to fix just, reasonable and compensatory rates or other requirements for services under this franchise. Nothing in this section shall be construed to prohibit the Grantee from challenging, in King County Superior Court or a court of competent jurisdiction, the authority of the County or any other governing body to fix rates or other requirements for services.

19. COMPLIANCE WITH LAWS

Grantee shall conform to all applicable federal, state and local laws and regulations including, but not limited to, the State Environmental Policy Act and King County environmental standards and ordinances.

20. NON-DISCRIMINATION CLAUSE

In all hiring or employment made possible or resulting from this franchise agreement, there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

No person shall be denied, or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this agreement on the grounds of sex, sexual orientation, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.

Any violation of this provision shall be considered a violation of a material provision of this agreement and shall be grounds for cancellation, termination or suspension in whole or in part, of the agreement by the County and may result in ineligibility for further County agreements.

The Grantee shall make the best efforts to make opportunities for employment and/or contracting services available to women and minority persons. The Grantee recognizes that King County has a policy of promoting affirmative action, equal opportunity and has resources available to assist Grantee in these efforts.

21. PENALTY FOR VIOLATION OF CONDITIONS

If the Grantee shall violate or fail to comply with any of the material terms, conditions, or responsibilities of this franchise through neglect or failure to obey or comply with any notice given the Grantee under the provisions of this franchise or if the Grantee abandons its franchise, the Council may revoke this franchise. King County shall give written notice of its intent to revoke this franchise. A public hearing shall be scheduled within forty-five (45) days following the notification. The decision to revoke this franchise will become effective ninety (90) days following the public hearing if the County, by ordinance, finds:

- A. That the Grantee has not substantially cured the violation or failure to comply which was the basis of the notice; or
- B. that the violation or failure to comply which was the basis of the notice is incapable of cure; or
- C. that the Grantee has repeatedly violated or failed to comply with any of the material terms, conditions, or responsibilities of the franchise, even though the individual violations have been cured; and
 - D. that the revocation of the franchise is in the public interest.

During the forty-five (45) days following the notification, the Grantee shall have the opportunity to remedy the failure to comply.

22. RIGHT OF APPEAL

Decisions, requirements, or approvals of the Director are binding on the parties to this document. Appeals from the Director's determinations will be made by filing a complaint with the King County Superior Court.

23. SEVERANCE

This franchise gives effect to purposes and uses which are consistent with economical and efficient services rendered in the public interest. If any provision of this franchise, or its application is determined to be invalid by a court of law, then the remaining provisions of this franchise shall continue and remain valid unless the dominant purpose of the franchise would be prevented or the public interest is no longer served.

Revised 07/25/96

FRANCHISE EXTENSION AGREEMENT

RECITALS

WHEREAS, the City of Auburn currently holds water and sewer Franchise 7543 granted by King County, Washington for the operation of its sewer and water system in unincorporated King County; and

WHEREAS, the City of Auburn franchise expired on November 30, 1994; and

WHEREAS, the City of Auburn has requested a renewal of said franchise; and

WHEREAS, a water and sewer franchise was approved by the Council under Ordinance 7543 on May 22, 1989. This extension is for the sewer portion only; and

WHEREAS, the water franchise for that portion of the water system will be incorporated in the franchise for proposed Ordinance No. 96-682, which consolidates all of the City of Auburn water franchises into one franchise agreement; and

WHEREAS, the City of Auburn, King County and the Utilities Technical Review Committee recommend that said franchise be extended until March 1, 1998 to give the City the opportunity to complete and obtain approval of its updated sewer comprehensive plan; and

WHEREAS, no objections have been raised to the granting of this request; and

WHEREAS, King County has approved the extension of this franchise until March 1, 1998 through the passage of Ordinance No. <u>13473</u> subject to the conditions contained in the ordinance and this agreement.

NOW, THEREFORE, King County, Washington and the City of Auburn, agree as follows:

- 1. The terms of King County Water and Sewer Franchise 7543 is hereby approved and extended so that it will now expire on March 1, 1998.
- 2. All other conditions of King County Water and Sewer Franchise 7543 shall remain in full force and effect and are not modified or amended by this agreement or Ordinance No.

THIS AGREEMENT entered into this 26th day of November, 1996.						
CITY OF AUBURN, WASHINGTON	KING COUNTY, WASHINGTON					
BY: Charles A. Booth	BY: In Jacke					
TITLE: Mayor	TITLE:					
DATE: 11-26-96	DATE: 0 ctober 17, 1996					

CHRISTOPHER VANCE
Introduced By: Brian Derdowski
Proposed No: 96-682

ORDINANCE NO. 12473

AN ORDINANCE approving a franchise for the City of Auburn to construct, operate and maintain water system in Council Districts 7, 9 and 13, and a short term franchise to construct, operate and maintain a sewer system in Council Districts 7, 9 and 13, and authorizing the Executive to execute the franchise agreements.

STATEMENT OF FACTS:

- 1. The City of Auburn has filed an application for franchises in council districts 7, 9 and 13 to construct, operate and maintain water and sewer systems to serve residential, multifamily and commercial areas in accordance with R.C.W. 36.55.010 and K.C.C. 6.27.
- 2. The city's comprehensive plan for water was approved on June 17, 1996, by King County Ordinance 12342.
- 3. The city's sewer plan was approved in 1982. K.C.C. 13.24.110 requires that the sewer plan be updated by the end of 1996, and further, that it be updated every 6 years or that a demonstration be made that the plan is consistent with the 1994 King County Comprehensive Plan. There is no documentation offered to show that such a demonstration has been made.
 - 4. The existing franchises expired in May of this year.
 - 5. The application has been referred to the relevant county departments for review.
 - 6. The King County executive has recommended approval of the franchise.
- 7. The Utilities Technical Review Committee reviewed and approved the district's franchise, legal description and map on April 26, 1995.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The granting of a franchise to the City of Auburn to construct, operate and maintain a water system within King County is hereby approved for a period of twenty-five years. The granting of a franchise extension to the City of Auburn to construct, operate and maintain a sewer system within King County until March 1, 1998 is hereby approved. The extension period is provided to allow time for the City to demonstrate its compliance with K.C.C. 13.24.110. The King County executive is authorized to enter into and execute the water system franchise and the sewer franchise extension for the terms specified, which by this reference is fully incorporated herein. Said franchises shall

include all of the general and special conditions required by the county.

SECTION 2. If within 45 days after the granting of this franchise, the applicant shall have failed to sign the written acceptance incorporated herein, then the rights and privileges granted herein shall be forfeited and said franchise shall be null and void.

INTRODUCED AND READ for the first time this 19 day of Lugust, 1996.

PASSED by a vote of 12 to 0 this 30th day of September 1996.

KING COUNTY, COUNCIL KING COUNTY, WASHINGTON

ATTEST:

Clerk of the Council

APPROVED this 4 day of

1996.

King County Executive

Attachments:

- A. Franchise Agreement for Water
- B. Franchise Extension for Sewer

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE SETTLEMENT AGREEMENT BETWEEN THE CITY OF AUBURN AND THE CITY OF BONNEY LAKE.

several related disputes regarding the provision of water service to a development known as "Lakeland Hills South" within Auburn's currently-designated Pierce County Potential Annexation Area; and

WHEREAS, Auburn and Bonney Lake are currently involved in

WHEREAS, Auburn is currently seeking to annex a portion of its Pierce County Potential Annexation Area; and

WHEREAS, Bonney Lake is currently opposing said annexation proposal; and

WHEREAS, Bonney Lake has initiated litigation against Auburn in Pierce County Superior Court alleging tortious interference with a contractual relationship; and

WHEREAS, Auburn has threatened legal and/or administrative action with respect to various water rights owned by Bonney Lake; and

WHEREAS, Bonney Lake has threatened legal and/or administrative action with respect to various water rights owned by Auburn; and

WHEREAS, the parties hereto desire to enter into a settlement agreement, the express intent of which is to settle all claims and disputes between Auburn and Bonney Lake relating to the provision of water service to Auburn's Pierce County Potential Annexation Area and related water rights issues; and

WHEREAS, Bonney Lake and Auburn are both desirous of entering into cooperative arrangements to provide for the efficient and cost-effective provision of water to their customers.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH RESOLVES AS FOLLOWS:

Section 1. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute the Settlement Agreement between the City and the City of Bonney Lake. A copy of said Settlement Agreement is attached hereto, designated as Exhibit "A" and incorporated by reference in this Resolution.

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

DATED and SIGNED this 2nd day of March, 1998.

CITY OF AUBURN

MAYOR

Resolution No. 2925 February 27, 1998 Page 3

SETTLEMENT AGREEMENT

CITY OF AUBURN AND CITY OF BONNEY LAKE

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into this day of March, 1998, by and between the CITY OF AUBURN, ("Auburn"), a municipal corporation, and the CITY OF BONNEY LAKE ("Bonney Lake"), a municipal corporation.

WHEREAS, Auburn and Bonney Lake are currently involved in several related disputes regarding the provision of water service to a development known as Lakeland Hills South ("LHS") within Auburn's currently-designated Pierce County Potential Annexation Area ("PC PAA");

WHEREAS, Auburn is currently seeking to annex a portion of its PC PAA; and

WHEREAS, Bonney Lake is currently opposing said annexation proposal; and

WHEREAS, Bonney Lake has initiated litigation against Auburn in Pierce County Superior Court alleging tortious interference with a contractual relationship; and

WHEREAS, Auburn has threatened legal and/or administrative action with respect to various water rights owned by Bonney Lake; and

Exhibit "A"
Auburn Resolution No. 2925

WHEREAS, Bonney Lake has threatened legal and/or administrative action with respect to various water rights owned by Auburn; and

WHEREAS, the parties hereto desire to enter into a settlement agreement, the express intent of which is to settle all claims and disputes between Auburn and Bonney Lake relating to the provision of water service to Auburn's PC PAA and related water rights issues; and

WHEREAS, Bonney Lake and Auburn are both desirous of entering into cooperative arrangements to provide for the efficient and cost-effective provision of water to their customers.

NOW, THEREFORE, the parties agree as follows:

- 1. Bonney Lake's claims against Auburn in Pierce County Cause No. 97-2-05212-8 shall be dismissed with prejudice and without costs to either party.
- 2. Bonney Lake shall withdraw its opposition to Auburn's proposed annexation of a portion of Auburn's PC PAA in Pierce County Boundary Review Board Case No. A-97-5.
- 3. Auburn recognizes and agrees to Bonney Lake's exclusive right to serve with water all portions of Bonney Lake's water service area as designed by the 1995 Pierce County Coordinated Water System Plan for a period of seven years from the effective date of any Auburn annexation of

any area within such service area. It is understood that Auburn anticipates multiple annexation proceedings regarding such areas. Bonney Lake shall not oppose such annexation proposals, and pursuant to this paragraph, Bonney Lake shall have the exclusive right to serve each annexation area for seven years from the effective date of annexation.

- 4. Upon the expiration of each seven-year period, or sooner if requested by Bonney Lake, provided for in paragraph 3 with respect to a particular portion of Bonney Lake's water service area, Auburn shall, at its option, have the exclusive right to serve such area with water, subject to the further requirements and conditions contained in paragraphs 5 and 6 of this Agreement.
- Upon the expiration of each seven-year period, or requested by Bonney Lake, provided for sooner if paragraph 3 with respect to a particular portion of Bonney Lake's water service area, Bonney Lake shall, at Auburn's option, transfer to Auburn, by bill of sale, all of its ownership rights in water system facilities located within and used to serve such area, with the exception of facilities retained by Bonney Lake in accordance with paragraph 6, below. Auburn shall have no obligation to compensate Bonney Lake for such facilities as are transferred by Bonney Lake pursuant to this Section.

Facilities to be transferred pursuant to this paragraph shall include water pipes, but shall not include source or storage facilities, including but not limited to Bonney Lake's Tacoma Point Wells and Tacoma Point Reservoir, nor those facilities reserved to Bonney Lake under paragraph 6.

In contemplation of Auburn's anticipated eventual takeover of water service from Bonney Lake within Auburn's annexation area, and for the purpose of providing Bonney Lake a looped system after Auburn's takeover of water service within its annexed areas hereunder, Auburn shall, prior to the takeover of service within any portion of Bonney Lake's current water service area, construct or cause to be constructed and transfer or cause to be transferred to Bonney Lake, free of charge, future 12" water transmission line as shown on the attached Exhibit A to the southern boundary of Auburn's PC PAA; provided, that in the event the particular alignment shown on Exhibit A shall prove impractical or unavailable, such lines shall be constructed in an alignment as mutually agreed to by the parties. Auburn shall construct or cause these facilities to be constructed and transferred to Bonney Lake without regard to the progress or lack of progress of the development of LHS. Such facilities shall be constructed in accordance with applicable Bonney Lake standards. In addition, Auburn will

not take over water service from Bonney Lake, and Bonney Lake will retain ownership of its water system, within that area shown on Exhibit B, attached hereto. This area will remain part of Bonney Lake's water service area and the facilities serving it will remain part of Bonney Lake's perpetuity, notwithstanding possible system in annexation of the area by Auburn at any time in the future.

- Auburn shall guarantee Bonney Lake the right, in perpetuity, to transport water through Auburn's corporate boundaries within Pierce County, in order that Bonney Lake's ability to serve its water service area as recognized in this Agreement is not hindered or rendered impractical. Such quarantee shall be effectuated by the execution of such agreements, franchises, licenses easements, other documents as are appropriate, on terms that are in no respect less favorable or advantageous to Bonney Lake than those governing the operations of Auburn's own water utility within its corporate limits. Auburn shall not condemn or otherwise interfere with any Bonney Lake "water facilities covered by this paragraph or paragraph $8.6\,$
- Neither Auburn nor any of its agents, employees, attorneys orcontractors shall challenge, directly, indirectly or through third parties, through legal or administrative proceedings or any other means, Bonney Lake's

Settlement Agreement

existing water rights, including but not limited to Bonney Lake's water rights associated with its Tacoma Point Wells. The rights associated with its Tacoma Point Wells are, specifically, as follows:

- (1) Lake Tapps Water Co. Certificate No. C 2809-A, with a date of priority 1/23/57, for 100gpm and 45af;
- Tacoma Point Well No. 2 Certificate No. C G2-4-C 26852, with a date of priority of 2/5/86, for 1000gpm and 800af; and
- (3) Tacoma Point Well No. 4 Permit Number G2-27693, with a date of priority of 1/30/90, for 1200gpm and 1600af.

Because of production problems associated with Bonney Lake's current wells at Tacoma Point, Auburn's agreement not to protest or interfere extends to and includes Bonney Lake's drilling of another well or wells at Tacoma Point to achieve full production of its certificated and permitted water rights. It also includes Bonney Lake's effort to proceed to certificate on its permit rights in Tacoma Point Well No. 4, referenced above. Bonney Lake agrees not to seek to increase its water rights in the Tacoma Point well field for any appropriation beyond these permitted/certificated levels. Bonney Lake shall not challenge, directly,

indirectly or through third parties, through legal or administrative proceedings or any other means, Auburn's existing water rights or Auburn's efforts to use those rights in order to serve its PC PAA with water, including any application to permit the withdrawal of water from wells located within LHS commonly known as Lakeland wells 5b and 5c, provided that such rights in Lakeland wells 5b and 5c are supplemental to Auburn's existing rights in wells 5 and For purposes of this paragraph, the word "challenge" 5a. shall include both direct actions, such as the filing of any lawsuit, complaint or letter of protest, as well as indirect actions, such as assisting, facilitating, encouraging or approving any such actions on the part of a third party. Each party will terminate and withdraw any pending challenges to the other's water rights that have been initiated.

Each party expressly reserves the right to challenge any application for new water right or change in water right that is made after the date of this Agreement; provided, that any application for certification of a water right for which a party already holds a permit shall not be deemed an application for new water right or change in water right made after the date of this Agreement.

- 9. In order to facilitate the practical and efficient provision of water service to the portion of LHS outside Bonney Lake's current water service area, the parties will work together cooperatively to agree on an amendment of their respective water service area boundaries in this area.
- 10. At such time as either party wishes to pursue the development of additional water source or supply or water storage facilities in the vicinity of LHS, the party will provide notice of same to the other party and the parties will thereupon meet to confer with respect to their respective needs and interests in regard to additional source, supply or storage. Should it appear that the interests of the parties are sufficiently aligned, the parties will mutually agree to join in the development of said additional source, supply or storage facilities, on such terms as the parties may agree are equitable.
- 11. In the future, at such time as Auburn's water system has been more fully developed in the area of LHS and/or on its common boundary with Bonney Lake's water service area, the parties may agree that it is in their mutual best interests, and the best interests of their respective customers, to enter into an agreement providing for one or more interties between their water systems to be constructed.

- 12. Each party agrees to sign such documents and to take such actions as are necessary to implement the purpose and intent of this Agreement.
- 13. Time is of the essence under this Agreement. The terms of this Agreement shall be specifically enforceable by the parties hereto.
- 14. Each of the individuals signing this Agreement on behalf of a party warrants that he/she has the authority to sign the Agreement and thereby to bind the party on whose behalf he/she signs.
- 15. This Agreement shall be binding on the heirs, successors and assigns of the parties.
- 16. This Agreement is designed strictly for the purpose of compromising disputed claims and avoiding the expense and risks of litigation. The Agreement shall be construed according to the fair intent of the language as a whole, and not for or against either party.
- 17. In the event of any disputes arising out of the implementation or enforcement of this Agreement, the parties agree to submit said disputes first to mediation and, if mediation is unsuccessful, then to binding arbitration in accordance with Ch. 7.04 RCW; provided, however, that each party reserves the right to seek injunctive or other similar equitable relief from a court of competent jurisdiction in

order to preserve the status quo pending any mediation or arbitration or to otherwise protect a right or remedy that might otherwise be lost if such interim relief were not obtained.

18. This Agreement shall not waive Auburn's right to assess and collect any taxes, assessments or fees which it is otherwise authorized under law to assess or collect on any water service; provided, that Auburn's assessment and collection of any such taxes, assessments or fees with respect to any area served with water by Bonney Lake shall be upon the same terms as Auburn's assessment and collection of any such taxes, assessments or fees with respect to areas served with water by Auburn.

CITY OF AUBURN

: Charles H.

CHARLES A. BOOTH

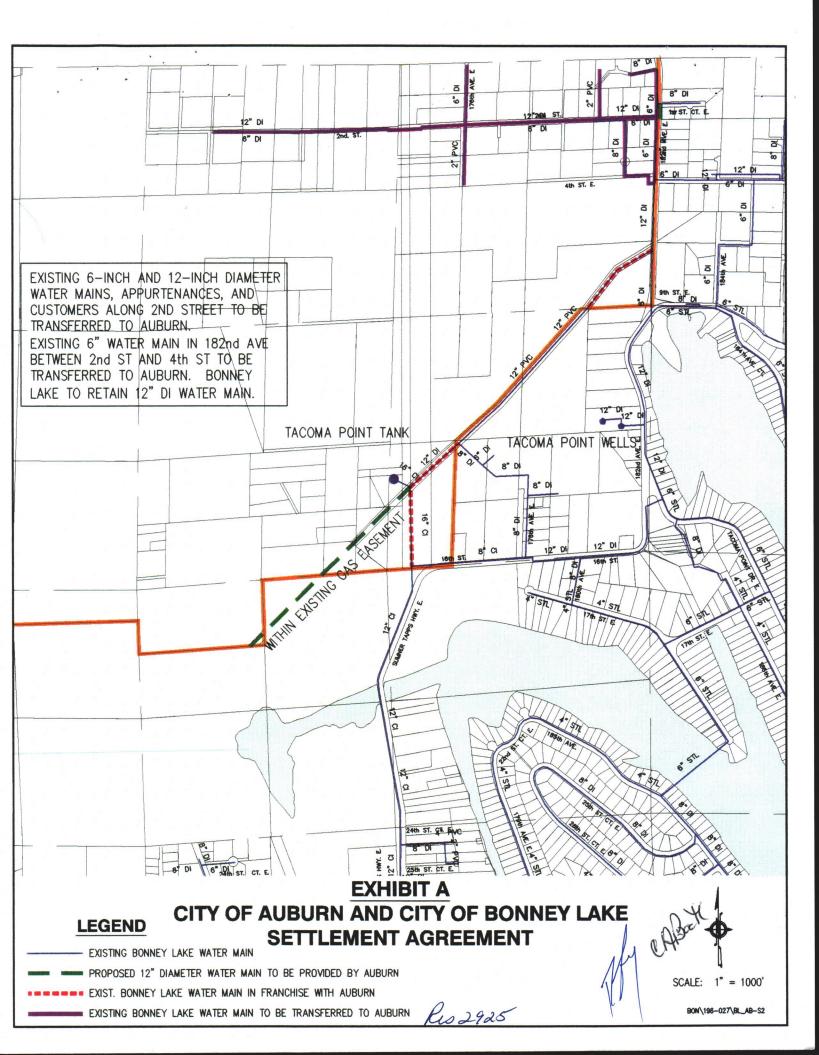
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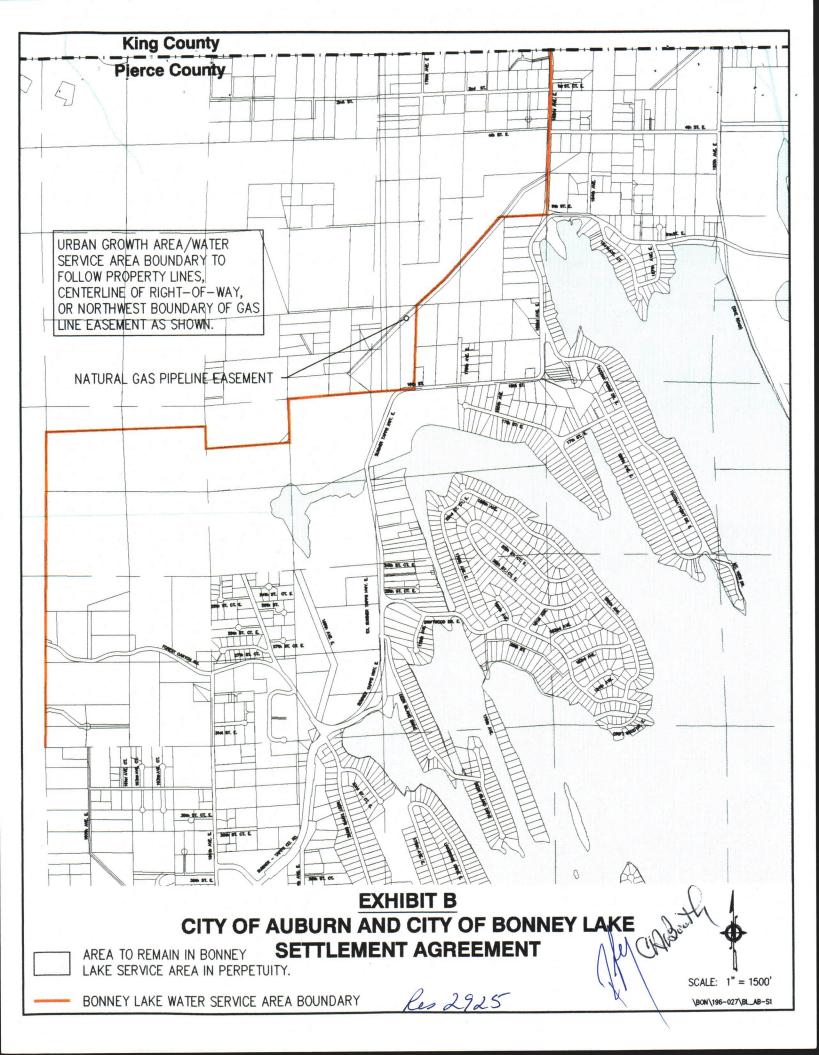
CLTY OF SONNEY LAKE

BA:

Its: MAZ

Exhibit "A" Resolution No. 2925





RESOLUTION NO. 3 0 1 8

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A SERVICE AREA AGREEMENT BETWEEN THE CITY AND THE CITY OF BONNEY LAKE TO ESTABLISH A BOUNDARY BETWEEN THEIR CONTIGUOUS SERVICE AREA RELATING TO WATER SERVICE.

WHEREAS, Bonney Lake is engaged in the business of providing water service to the public located in certain areas of Pierce County in the State of Washington; and

WHEREAS, the City of Auburn is engaged in the business of providing water service to the public located in certain areas of King and Pierce Counties in the State of Washington; and

WHEREAS, the parties desire to enter into a formal Service Area Agreement to establish a boundary between their contiguous service area in Pierce County in order to avoid any duplication or overlap of water service and to provide the most efficient service to their respective customers; and

WHEREAS, the City of Auburn and the City of Bonney Lake have entered into a Settlement Agreement related to water service to the Lakeland Hills South development in which, according to Section 9, the Cities have agreed to work together cooperatively to facilitate a practical efficient boundary between the two systems.

THEREFORE, THE COUNCIL OF THE CITY OF AUBURN, NOW, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH RESOLVES THAT:

Section 1. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute a Service Area Agreement between the City and the City of Bonney Lake to establish a boundary between their contiguous service area relating to water service. A copy of said Agreement is attached hereto, denominated as Exhibit "A" and made a part hereof as though set forth in full herein.

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

DATED this 7th day of December, 1998.

CITY OF AUBURN

Charles BOOTH

MAYOR

ATTEST: Danielle E. Daskam, City Clerk APPROVED AS TO FORM: Michael J. Reynolds, City Attorney

SERVICE AREA AGREEMENT

This Agreement, dated <u>December 10</u>, 1998, is made and entered into by and between the City of Bonney Lake, a Washington municipal corporation, ("Bonney Lake") and the City of Auburn, a Washington municipal corporation ("Auburn").

Whereas, Bonney Lake is engaged in the business of providing water service to the public located in certain areas of Pierce County in the State of Washington. Auburn is engaged in the business of providing water service to the public located in certain areas of King and Pierce Counties in the State of Washington, and;

Whereas, the parties desire to enter into a formal service area agreement to so establish a boundary between their contiguous service area in Pierce county in order to avoid any duplication or overlap of water service and to provide the most efficient service to their respective customers, and;

Whereas, The City of Auburn and the City of Bonney Lake have entered into a Settlement Agreement related to water service to the Lakeland Hills South development in which, according to section 9, the Cities have agreed to work together cooperatively to facilitate a practical efficient boundary between the two systems.

Bonney Lake and Auburn therefore agree as follows:

- 1. This Agreement is entered into pursuant to the Pierce County Coordinated Water System Plan which Plan and Appendices are incorporated herein by this reference.
- 2. The contiguous water service boundary between **Bonney Lake** and **Auburn** is agreed upon by both parties as shown on the attached maps (Exhibit "A") and as described in Exhibit "B", which by this reference are incorporated herein.
- 3. Bonney Lake and Auburn may by mutual written amendment(s) to this Agreement make such adjustments to the service boundary as they may mutually agree upon from time to time so that water service to new service locations in close proximity to the service boundary may be provided in an efficient, effective and economical manner. Any such adjustments shall be documented by modifying the attached maps which when so modified and agreed to by the parties shall constitute amendments to this Agreement. Minor adjustments consisting of ten acres or less may be authorized by the Public Works Director or Superintendent of each party.
- 4. Except as specifically set forth herein, this Agreement shall not modify the Settlement Agreement referenced above.

IN WITNESS WHEREOF, we have hereunto set our hands and seals.

CITY OF AUBURN

CHARLES A. BOOTH, MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Michael J. Reynolds, City Attorney

STATE OF WASHINGTON)

County of King

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

Dated 12-21-98

O PUBLIC S O PUBLIC S OF WASHINGTON

Samara & Bottell

Notary Public in and for the State of Washington

residing at King Co

My appointment expires 10-9-99

Service Area Agreement
City of Bonney Lake and City of Auburn
11/16/98 Page 2 of 3

CITY OF BUNNEY LAKE
h/ // // 7
1 low
BOB YOUNG, MAYOR
BOD TOOMO, MATOR
,

STATE OF WASHINGTON)	
)	SS.
County of Pierce)	

I certify that I know or have satisfactory evidence that Bob Young was the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the MAYOR of the CITY OF BONNEY LAKE to be the free and voluntary act of such parties for the uses and purposes mentioned in this instrument.

Dated 12-10-98

Mona R. Musquere
Notary Public in and for the State of Washington
residing at Bonney Ask
My appointment expires 9-1-2002

ExhibH "B"

LEGAL DESCRIPTION FOR PROPOSED AUBURN/BONNEY LAKE WATER SERVICE AREAS OF SECTION 6, TOWNSHIP 20 NORTH, RANGE 5 EAST OF W.M., PIERCE COUNTY, WASHINGTON;

LINE DESCRIBED AS THE BORDER BETWEEN THE CITY OF AUBURN AND BONNY LAKE WATER SERVICE AREAS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTH QUARTER CORNER OF SECTION 6, TOWNSHIP 20 NORTH, RANGE 5 EAST; THENCE NORTH 01°12' 59" EAST A DISTANCE OF 713.61 FEET TO THE NORTHERLY MARGIN OF LAKE TAPPS PARKWAY EAST:

THENCE IN A NORTHWESTERLY DIRECTION ALONG THE NORTH LINE OF SAID PARKWAY, NORTH 71° 22' 39" WEST A DISTANCE OF 440.58 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS POINT BEARING NORTH 18° 37' 21" EAST A DISTANCE OF 960.00 FEET; THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 11° 22' 29", AN ARC DISTANCE OF 190.59 FEET; THENCE LEAVING SAID MARGIN NORTH 01° 28' 45" WEST A DISTANCE OF 2,629.81 FEET;

THENCE NORTH 58° 56' 04" EAST A DISTANCE OF 532.96 FEET;
THENCE NORTH 37° 29' 20" EAST A DISTANCE OF 178.29 FEET;
THENCE NORTH 49° 21' 27" EAST A DISTANCE OF 410.04 FEET TO A POINT OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS POINT BEARING NORTH 49° 37' 08" EAST HAVING A DISTANCE OF 454.00 FEET;
THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 27° 21' 25" AN ARC DISTANCE OF 216.77 FEET;
THENCE SOUTH 67° 44' 15" EAST A DISTANCE OF 47.08 FEET TO A POINT OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS POINT BEARING SOUTH 69° 16' 55" EAST A DISTANCE OF 927.50 FEET THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 10° 09' 01" AN ARC DISTANCE OF 164.31 FEET;

THENCE SOUTH 10° 34' 04" WEST A DISTANCE OF 163.57 FEET; THENCE IN A NORTHEASTERLY DIRECTION ALONG THE NORTH LINE OF LOT G OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE #9808310329, NORTH 75° 13' 36" EAST A DISTANCE OF 548.99 FEET TO THE EASTERLY LINE OF LOT G:

THENCE NORTH 11° 28' 56" WEST A DISTANCE OF 56.64 FEET TO THE SOUTHERLY LINE OF LOT B PER SAID BOUNDARY LINE ADJUSTMENT; THENCE NORTH 75° 13' 36" EAST A DISTANCE OF 560.63 FEET TO THE WESTERLY MARGIN OF LAKELAND HILLS WAY S.E.;

THENCE NORTH 14° 46' 24" WEST A DISTANCE OF 138.04 FEET; THENCE LEAVING SAID WESTERLY MARGIN NORTH 75° 13' 36" EAST A DISTANCE OF 63.00 FEET TO THE EASTERLY MARGIN OF LAKELAND HILLS WAY S.E.;

THENCE IN A NORTHWESTERLY DIRECTION ALONG SAID MARGIN NORTH 14° 46' 24" WEST A DISTANCE OF 353.16 FEET TO THE BEGINNING OF A

CURVE TO THE LEFT HAVING A RADIUS POINT BEARING SOUTH 75° 13 '36" WEST A DISTANCE OF 545.67 FEET;

THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 19° 07' 09" AN ARC DISTANCE OF 182.08 FEET TO THE POINT OF A CURVE TO THE RIGHT HAVING A RADIUS POINT BEARING NORTH 60° 27' 56" EAST A DISTANCE OF 35.00 FEET;

THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 84° 32' 04" AN ARC DISTANCE OF 51.64 FEET; THENCE NORTH 55° 00' 00" EAST A DISTANCE OF 208.52 FEET; THENCE NORTH 53° 05' 27" EAST A DISTANCE OF 150.08 FEET:

THENCE NORTH 55° 00' 00' EAST A DISTANCE OF 166.23 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS POINT BEARING NORTH 35° 00' 00" WEST A DISTANCE OF 430.00 FEET;

THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 37° 44′ 40" AN ARC DISTANCE OF 283.27 FEET TO THE POINT OF A CURVE TO THE LEFT HAVING A RADIUS POINT BEARING NORTH 72° 44′00" WEST A DISTANCE OF 1,030.00 FEET;

THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 00° 56' 13" AND AN ARC DISTANCE OF 16.84 FEET TO THE NORTHERLY SECTION LINE OF SECTION 6, TOWNSHIP 20 NORTH, RANGE 5 EAST:

THENCE ALONG THE NORTH LINE OF SECTION 6 SOUTH 88° 34' 43" EAST A DISTANCE OF 808.23 FEET TO THE NORTHEAST CORNER OF SAID SECTION 6 TERMINUS OF SAID BOUNDARY

98119C.001

RESOLUTION NO. 3 0 1 9

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN EMERGENCY FIRE FLOW PROTECTION AGREEMENT BETWEEN THE CITY AND THE CITY OF BONNEY LAKE.

WHEREAS, by Resolution No. 2925 the City of Auburn approved an agreement with Bonney Lake on water service; and

WHEREAS, by unanimous adoption at the March 2, 1998
Council Workshop, Bonney Lake approved an agreement with the
City of Auburn on water service; and

WHEREAS, the Lakeland PUD in Pierce County is located in the Bonney Lake water service area as defined in the 1995 Pierce County Coordinated Water System Plan; and

WHEREAS, in the Lakeland Annexation and Utilities Agreement, Ordinance No. 4867, and Amendment to the Lakeland Annexation and Utilities Agreement, Resolution No. 2955, The Lakeland Company, hereinafter referred to as TLC agreed to comply with City of Auburn's urban service standards; and

WHEREAS, by separate agreement The Lakeland PUD in Pierce County is served by the Auburn Fire Department, as agreed in Section 16 of the Amendment to the Lakeland Annexation and Utilities Agreement, Resolution No. 2955, and the Lakeland Annexation and Utilities Agreement, Ordinance No. 4867; and

WHEREAS, the City of Auburn's minimum fire flow service standard is 2500 gpm for 3 hours with residual pressure of 20 psi, as defined in the 1995 Comprehensive Water Plan and amended in 1997 by Ordinance No. 5051; and

WHEREAS, TLC desires to build Multi-Family Developments
Division 1 Phase 4 (1P4) and Lots 5, 6, and 7, hereinafter
referred to as the "Multifamily Development Area", in the
immediate future, within the Lakeland PUD in the Bonney Lake
Water Service Area; and

WHEREAS, TLC has requested Bonney Lake enter into an agreement with the City of Auburn to provide an emergency intertie for fire flow in order that TLC's development meet AUBURN's fire flow service standards; and

WHEREAS, Bonney Lake is unable at this time to meet AUBURN's fire flow requirements and desires to enter into an agreement for an emergency intertie for fire flow for the proposed Lakeland Company "Multifamily Development Area"; and

WHEREAS, the City of Auburn's water service area abuts BONNEY LAKE's water service area, and Auburn's system has adequate infrastructure to provide the emergency intertie for fire flow protection to the "Multifamily Development Area"; and

WHEREAS, AUBURN is willing to provide emergency fire flow to TLC's proposed "Multifamily Development Area", in consideration of Lakeland's agreement to pay to the City of Auburn a fire flow development charge; and

WHEREAS, TLC, pursuant to a separate agreement, has agreed to compensate the City of Auburn for Auburn's providing to Bonney Lake, pursuant to this agreement, an intertie for emergency fire flows to the proposed "Multifamily Development Area".

NOW, THEREFORE, THE COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH RESOLVES THAT:

Section 1. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute an Emergency Fire Flow Protection Agreement between the City and the City of Bonney Lake. A copy of said Agreement is attached hereto, denominated as Exhibit "A" and made a part hereof as though set forth in full herein.

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

1	DATED this 7 th day of December, 1998.
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6	Charles A
7	CHARLE
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10	ATTEST:
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13	Daniel & Daslam
14	Danielle E. Daskam, City Clerk
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16	
17	APPROVED AS TO FORM:
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19	
20	July Lilens Line
21 '	Michael J. Reynolds,
22	City Attorney
23	
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CITY OF AUBURN

CHARLES A. BOOTH MAYOR

26

EMERGENCY FIRE FLOW PROTECTION AGREEMENT

City of Auburn and the City of Bonney Lake

THIS AGREEMENT made and entered into by and between the City of Auburn, hereinafter referred to as "AUBURN" and the City of BONNEY LAKE, hereinafter referred to as "BONNEY LAKE".

WITNESSETH:

WHEREAS, By Resolution 2925 AUBURN approved an agreement with BONNEY LAKE on water service, and

WHEREAS, By unanimous adoption at the March 2, 1998 Council Workshop, BONNEY LAKE approved an agreement with AUBURN on water service, and

WHEREAS, the Lakeland PUD in Pierce County is located in the BONNEY LAKE water service area as defined in the 1995 Pierce County Coordinated Water System Plan, and

WHEREAS, in the Lakeland Annexation and Utilities Agreement, Ord. 4867, and Amendment to the Lakeland Annexation and Utilities Agreement, Res. 2955, The Lakeland Company, hereinafter referred to as TLC agreed to comply with AUBURN's urban service standards, and

WHEREAS, by separate agreement The Lakeland PUD in Pierce County is served by the AUBURN Fire Department, as agreed in Section 16 of the Amendment to the Lakeland Annexation and Utilities Agreement, Res. 2955, and the Lakeland Annexation and Utilities Agreement, Ord. 4867, and

WHEREAS, AUBURN's minimum fire flow service standard is 2500 gpm for 3 hours with residual pressure of 20 psi, as defined in the 1995 Comprehensive Water Plan and amended in 1997 by Ordinance 5051, and

WHEREAS, TLC desires to build Multi-Family Developments Division 1 Phase 4 (1P4) and Lots 5, 6, and 7, hereinafter referred to as the "MULTIFAMILY DEVELOPMENT AREA", in the immediate future, within the Lakeland PUD in the BONNEY LAKE Water Service Area,

WHEREAS, TLC has requested BONNEY LAKE enter into an agreement with AUBURN to provide an emergency intertie for fire flow in order that TLC's development meet AUBURN's fire flow service standards, and

WHEREAS, BONNEY LAKE is unable at this time to meet AUBURN's fire flow requirements and desires to enter into an agreement for an emergency intertie for fire flow for the proposed Lakeland Company "MULTIFAMILY DEVELOPMENT AREA", and

WHEREAS, AUBURN's water service area abuts BONNEY LAKE's water service area, and AUBURN's system has adequate infrastructure to provide the emergency intertie for fire flow protection to the "MULTIFAMILY DEVELOPMENT AREA", and

WHEREAS, AUBURN is willing to provide emergency fire flow toTLC's proposed "MULTIFAMILY DEVELOPMENT AREA", in consideration of Lakeland's agreement to pay to AUBURN a fire flow development charge, and

WHEREAS, TLC, pursuant to a separate agreement, has agreed to compensate AUBURN for AUBURN's providing to BONNEY LAKE, pursuant to this agreement, an intertie for emergency fire flows to the proposed "MULTIFAMILY DEVELOPMENT AREA, and

NOW THEREFORE, IT IS MUTUALLY AGREED as follows:

- 1. In the event a fire flow emergency occurs within the Lakeland South Multi-Family Developments of Division 1 Phase 4 (1P4) and Lots 5, 6, and 7, hereinafter referred to as the "MULTIFAMILY DEVELOPMENT AREA", requiring fire flows beyond what the BONNEY LAKE System can deliver, the AUBURN Fire Chief, or his/her designee, is hereby authorized to open the valve in the water main between the two systems to provide the required fire flow.
- 2. The authorization granted in section 1 above herein is intended to serve as emergency fire flow protection for the "MULTIFAMILY DEVELOPMENT AREA", only. Water shall not be withdrawn from the AUBURN Water System for any other purpose than that described in section 1, without prior written approval from AUBURN.
- 3. A fire flow emergency is defined as a fire event that requires fire flow capacity beyond that which the BONNEY LAKE System is able to provide as required under AUBURN's 1995 Comprehensive Water Plan and amended in 1997 by Ordinance 5051, to the "MULTIFAMILY DEVELOPMENT AREA".
- 4. In the event if it becomes necessary for the AUBURN Fire Chief or his/her designee to open the valve as described in the above sections no fees will be charged to BONNEY LAKE for water consumed.
- 5. This agreement does not authorize or permit AUBURN to utilize water from the BONNEY LAKE Water System.

- 6. This agreement shall terminate when BONNEY LAKE provides documentation that demonstrates to AUBURN that infrastructure has been developed to meet AUBURN's urban service standards for fire flow.
- 7. Each participant agrees to defend, indemnify and hold harmless the other participant from and against any liability, loss, cost, damage, or expense of any kind and nature arising out of injury to person or damage to property in any manner caused by the negligent act or omission of the indemnifying individual participant in performance of its work pursuant to in connection with this agreement.
- 8. Should a dispute arise between the parties that cannot be resolved satisfactorily, a mediator mutually acceptable to the parties shall resolve the dispute through the use of mediation at equal cost to each party. Should the parties not be able to satisfactorily resolve the dispute through mediation, the forum for resolution shall be Pierce County Superior Court. The prevailing party will be entitled to attorney fees and costs.
- 9. If any provision of this agreement shall be unenforceable or invalid for any reason, the remaining sections shall be in force and effect.
- 10. In the event TLC fails to make payment as provided in its Emergency Fire Flow Protection Agreement with AUBURN, AUBURN is under no obligation to provide emergency fire flow to BONNEY LAKE for the MULTI-FAMILY DEVELOPMENT AREA.

IN WITNESS WHEREOF, we have hereunto set our hands and seals.

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		(CITY OF AUBURN	~
		Cho	ules A. Booth CHARLES A. BOOTH	<i>)</i> -
			MAYOR	
ATTEST:				
Danielle E. Daskan City Clerk	<u>kan</u> n,	_		
APPROVED AS TO	O FORM:			
Whall forke				
Michael J. Reynold City Attorney	s,			
STATE OF WASHI	NGTON))ss.			
County of King	}			
Danielle E. Daskan persons acknowled were authorized to and CITY CLERK	n were the persons valged that they signed execute the instrument of the CITY OF AUB auses and purposes	who appeared be I this instrument ent and acknowl URN to be the fi	, on oath stated that tl edged it as the MAYC ee and voluntary act o	DR
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Emergency Fire Flow Protection Agreement City of Auburn and City of Bonney Lake 11/13/98 Page 4 of 5

CITY OF BONNEY LAKE

STATE OF WASHINGTON)	
)	SS.
County of Pierce)	

I certify that I know or have satisfactory evidence that Bob Young was the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the **MAYOR** of the CITY OF BONNEY LAKE to be the free and voluntary act of such parties for the uses and purposes mentioned in this instrument.

Dated 12-10-98

Mona R. Musquare

Notary Public in and for the State of Washington residing at Bonney Fire

My appointment expires 9-1-2002

LM/bd

REF. H:/FAC/FAC2385/E98-1268

Emergency Fire Flow Protection Agreement City of Auburn and City of Bonney Lake 11/13/98 Page 5 of 5

CITY OF AUBURN AND PIERCE COUNTY TO CONSTRUCT,

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ACROSS, UNDER, AND UPON CERTAIN PUBLIC ROADS AND HIGHWAYS IN PIERCE COUNTY, WASHINGTON UNTIL SEPTEMBER, 2003. WHEREAS, the City of Auburn wishes to expand their water line system to areas outside the current boundaries; and

WHEREAS, the City of Auburn has applied to Pierce County and has been granted a nonexclusive franchise to construct and maintain water pipelines with appurtenances for a water system in, across, under, upon, along and over certain public roads and highways in Pierce County, Washington, as hereinafter set forth:

AN ORDINANCE OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING

THE MAYOR TO EXECUTE A NEW FRANCHISE AGREEMENT BETWEEN THE

MAINTAIN WATER PIPELINES FOR A WATER SYSTEM OVER, IN, ALONG,

OPERATE AND

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

AGREEMENT. The Mayor of the City of Auburn Section 1. herewith authorized to execute a Franchise Agreement between the City of Auburn and Pierce County to construct, operate, and maintain water pipelines for a water system over, in, across, under, and upon certain public roads and highways in Pierce County Washington. A copy of said Agreement is attached hereto, denominated as Exhibit "A", and a copy of Pierce County Ordinance No. 98-72 approving the franchise is

attached hereto denominated as Exhibit "B", and made a part hereof as though set forth in full herein.

Section 2. AUTHORIZATION. 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 Ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication, as provided by law.

INTRODUCED:	October	19,	1998	

PASSED: October 19, 1998

APPROVED: October 19, 1998

CHARLES A. BOOTH
MAYOR

Michael J. Reynolds, City Attorney

Published: 10-23-98

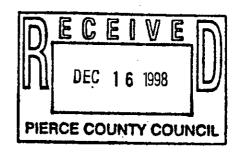
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Ordinance No. 5163 September 30, 1998 Page 2



Return Address

Sandy Bassett Pierce County Council 930 Tacoma Ave S, Room 1046 Tacoma, WA 98402

Please print legibly or type information.

Document Title(s) (Or transactions contained therein): 1. Ordinance No: 98-72 2. 3. 4.	PEC 3 1 1998 TY OF AUBURN LERKS OFFICE
Grantor(s) (Last name first, then first name and initials): 1. Pierce County 2. 3. 4. 5. Additional Names on Page of Document	OFFICE
Grantee(s) (Last name first, then first name and initials): 1. Ordinance Number 98-72 2. 3. 4. 5. Additional Names on Page of Document.	
Legal Description (Abbreviated: i.e., lot, block, plat; or section, township, range) in Sections 5, 6, 7 & 8, Township 20 North, Range 4 East. Legal Description is on Page 5 & 6 of Document.	
Reference Number(s) (Of documents assigned or released):	
n/a	
☐ Additional Reference Numbers on Page of Document	
Assessor's Property Tax Parcel/Account Number	
Not assigned.	
The Auditor/Recorder will rely on the information provided on this cover sheet. The the document to verify the accuracy or completeness of the indexing information provided	staff will not read ided herein.

FILE NO. 80 PROPOSAL NO. 98-72

Sponsored by: Councilmember Jan Shabro

Requested by: County Executive/Public Works and Utilities Department

ORDINANCE NO. 98-72

AN ORDINANCE OF THE PIERCE COUNTY COUNCIL GRANTING A NON-EXCLUSIVE FRANCHISE TO THE CITY OF AUBURN, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, FOR LOCATION OF WATER LINES ON CERTAIN COUNTY-OWNED RIGHTS-OF-WAY; AND AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE THE FRANCHISE.

WHEREAS, The City of Auburn, a municipal corporation of the State of Washington, has applied for a non-exclusive franchise to construct, operate, and maintain a water line system in, across, over, upon, along, and under certain County roads, highways, and other County property in Pierce County, Washington, as hereinafter set forth; and

WHEREAS, Said application came on regularly for hearing before the Pierce County Council on the date set forth below under the provisions of Chapter 36.55, State Session Laws of 1937; and

WHEREAS, It appears to the Council that notice of said hearing has been duly given to the public and those interested in providing the same service applied for by the applicant as required by law and that it is in the public interest to grant the franchise; NOW, THEREFORE, BE IT ORDAINED by the Council of Pierce County:

<u>Section 1</u>. A non-exclusive franchise, a copy of which is attached hereto and identified as Exhibit "A", is hereby given and

1 of 2

Exhibit B', Ordinance 5163

ORDINANCE NO. 98-72, continued

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 In the Matter of the Application of)
the City of Auburn, a municipal)
corporation of the State of Washington,)
for a franchise to construct, operate)
and maintain water pipelines for a)
Water System over, in, along, across,)
under and upon certain Public Roads)
and Highways in Pierce County Washington)

Application of City of Auburn, a municipal corporation of the State of Washington, for a non-exclusive franchise to construct and maintain water pipelines with appurtenances for a water system in, across, under, upon, along and over certain public roads and highways in Pierce County, Washington, as hereinafter set forth, having come on regularly for hearing before the County Council of Pierce County, Washington, under the provisions of Chapter 36.55, Revised Code of Washington, and it appearing to the Council that notice of said

EXHIBIT

FRANCHISE

"A"

NOW, THEREFORE, IT IS ORDERED, that a franchise be, and the same is hereby given and granted to City of Auburn, a municipal corporation of the State of Washington, hereinafter called the "Grantee" for a term of five (5) years from and after the date of filing this franchise with the Clerk of the Pierce County Council. This franchise is a license for the privilege, and authority to construct, maintain, and operate for the said period of time, a water pipeline with appurtenances for a water system in, across, under,

Hearing has been duly given as required by law, and that it is in the

public interest to grant the franchise herein granted;

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Exhibit A" Ordinance 5/63

EXHIBIT "A" TO 98-72

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upon, along and over the public roads and highways in Pierce County, Washington, to wit:

BEGINNING AT THE EASTERLY MARGIN OF THE BURLINGTON NORTHERN RAILROAD RIGHT-OF-WAY, AKA NORTHERN PACIFIC RAILROAD RIGHT-OF-WAY, AT THE NORTH BOUNDARY OF SECTION 1, TOWNSHIP 20 NORTH, RANGE 4 EAST, WM.; THENCE EASTERLY ALONG SAID NORTH BOUNDARY OF SECTION 1, TO THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 20 NORTH, RANGE 5 EAST, WM.; THENCE EASTERLY ALONG THE NORTH BOUNDARY OF SAID SECTION 6 AND ALONG THE NORTH BOUNDARY OF SECTION 5, TOWNSHIP 20 NORTH, RANGE 5 EAST, WM. TO THE NORTHEAST CORNER OF SAID SECTION 5; THENCE SOUTHERLY ALONG THE EAST BOUNDARY OF SAID SECTION 5 TO THE EASTERLY MARGIN OF 182nd AVENUE EAST; THENCE SOUTHERLY ALONG SAID EASTERLY MARGIN OF 182nd AVENUE EAST TO THE SOUTHERLY MARGIN OF 16th STREET EAST, AKA NORTH TAPPS ROAD; THENCE WESTERLY ALONG SAID SOUTHERLY MARGIN OF 16th STREET EAST TO A POINT ON THE SOUTH BOUNDARY OF THE NORTH 30.00 FEET OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 20 NORTH, RANGE 5 EAST, WM.; THENCE WESTERLY ALONG SAID SOUTH BOUNDARY OF THE NORTH 30.00 FEET OF THE NORTHEAST QUARTER OF SECTION 8 TO THE SOUTHWEST CORNER THEREOF; THENCE NORTHERLY ALONG THE WESTERLY BOUNDARY OF SAID NORTHEAST QUARTER OF SECTION 8 TO THE NORTHWEST CORNER THEREOF; THENCE WESTERLY ALONG SAID NORTH BOUNDARY OF SECTION 8 TO THE NORTHEAST CORNER OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 8; THENCE SOUTHERLY ALONG THE EAST BOUNDARY OF SAID NORTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8 TO THE SOUTHEAST CORNER THEREOF; THENCE WESTERLY ALONG

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EXHIBIT "A" TO _98-72

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THE SOUTH BOUNDARY OF SAID NORTH HALF OF THE NORTHWEST QUARTER OF NORTHWEST QUARTER OF SECTION 8 TO THE SOUTHWEST CORNER THEREOF; THENCE NORTHERLY ALONG THE WEST BOUNDARY OF SAID SECTION 8 TO THE SOUTHEAST CORNER OF THE NORTH 330.00 FEET OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 20 NORTH, RANGE 5 EAST, WM.; THENCE WESTERLY ALONG THE SOUTH BOUNDARY OF SAID NORTH 330.00 FEET OF THE NORTHEAST QUARTER OF SECTION 7 TO THE SOUTHWEST CORNER THEREOF; THENCE NORTHERLY TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 6; THENCE WESTERLY ALONG THE SOUTH BOUNDARY OF SAID SECTION 6 TO THE SOUTHEAST CORNER OF GOVERNMENT LOT No. 7 IN SAID SECTION 6; THENCE NORTHERLY ALONG THE EAST BOUNDARY OF SAID GOVERNMENT LOT No. 7 TO THE NORTHEAST CORNER THEREOF; THENCE WESTERLY ALONG THE NORTH BOUNDARY OF SAID GOVERNMENT LOT No. 7 TO THE EASTERLY MARGIN OF SAID BURLINGTON NORTHERN RAILROAD RIGHT-OF-WAY; THENCE NORTHERLY ALONG SAID EASTERLY MARGIN OF THE BURLINGTON NORTHERN RAILROAD RIGHT-OF-WAY TO THE POINT OF BEGINNING.

I

In the construction and installations of water system appurtenances and the excavation of trenches on county roads for the purposes of laying, relaying, connecting, disconnecting, and repairing mains and pipes and making connections between the same to the dwellings and other buildings of the consumers, the Grantee shall be governed by and conform to the general rules adopted by the Public Works and Utilities - Transportation Services of Pierce County, Washington; and the Grantee, at no expense to the County, shall

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complete all such work and shall repair the county roads and leave the same in as good condition as before the work was commenced; PROVIDED, HOWEVER, that no such work shall be done prior to the obtaining of a permit therefor issued by the Pierce County Public Works and Utilities Director (hereinafter "Director"), which permits shall set forth conditions pertaining to the work to be done and specifications for the restoration of the roads to the same condition as they were prior to such work; and PROVIDED FURTHER, the Director may in his or her discretion require a bond in a sum sufficient to guarantee to Pierce County that such roads shall be restored to the same condition as existed prior to such work. If the Grante's does not repair the county roads to the satisfaction of the Director, the County Department of Public Works and Utilities - Transportation Services may, at its sole discretion, repair such county roads, or cause them to be repaired, and the Grantee hereby agrees to reimburse the County of Pierce for the cost of such work, including overhead costs.

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The water mains and pipes shall be laid down as directed by the Director at a depth of not less than thirty-six inches below the surface of the ground along the county roads, and in such a manner as not to interfere unnecessarily with the construction of sewers and drains, nor with the grading of the county roads. All surface appurtenances to the water system shall be installed or constructed as approved by the Director.

II

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All work done under this franchise shall be done in a thorough and professional manner. During the laying of water pipes and conduits and the digging of ditches therefor, the Grantee shall leave ditches in such a way as to interfere as little as possible with public travel and shall take all due and necessary precautions to insure that damage or injury shall not occur or arise by reason of such work; and that where any ditches or trenches are left open at night, the Grantee shall place at all crossings suitable lights in such a position to guard against danger, and the Grantee shall be liable for all property damage or personal injury which may be caused by reason of any injury sustained through its negligence by reason of any person, animal or property being injured through any negligence of the Grantee, or by reason of any damage caused through the neglect to properly guard any ditches or trenches dug or maintained by the Grantee. The Director may specify actions to be taken to insure the safety of the public and the Grantee shall comply with such specifications.

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The County of Pierce, in the granting of this franchise does not waive any rights which it now holds or may hereafter acquire and this order shall not be construed so as to deprive the County of Pierce of any powers, rights, or privileges which it now has or may hereafter acquire, including the right of eminent domain, to regulate the use and control of the county roads covered by this franchise, or to go upon any and all county roads and highways for the purpose of

9812020061

constructing and improving the same in such a manner as the County of Pierce, or its representatives may elect.

Grantee shall provide a certificate of insurance showing

evidence of commercial general liability and property damage

liability insurance, which includes but is not limited to, the

operations of the Grantee, the Grantee's protective liability,

products-completed operations coverage, broad form blanket

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27 28 COVERAGES

contractual liability:

Commercial General Liability Insurance Bodily Injury Liability

Property Damage Liability

LIMITS OF LIABILITY

\$1,000,000 Each Occurrence

> \$250,000 Each Occurrence

or COMBINED SINGLE LIMIT COVERAGE OF \$1,000,000

The general requirements of the policy shall contain:

Pierce County is named as an additional insured as respects
in this lease and such insurance as is carried by the

Grantee for the operation of its facility.

In the event of non-renewal, cancellation or material change in the coverage provided, thirty days written notice will be furnished to the County prior to the date of non-renewal, cancellation, or change. Such notice shall be

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 sent to the Director, Public Works and Utilities Transportation Services, 2401 South 35th Street, Suite 150,
Tacoma, Washington 98409.

Pierce County has no obligation to report occurrences to the insurance companies unless a claim is filed with the Pierce County Council; and Pierce County has no obligations to pay premiums.

The Grantee's insurance policies shall contain a "cross liability" endorsement substantially as follows: The inclusion of more than one Insured under this policy shall not affect the rights of any Insured as respects any claim, suit, or judgment made or brought by or for any other insured or by or for any employee of any other Insured. This policy shall protect each Insured in the same manner as though a separate policy has been issued to each, except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the company would have been liable had only one Insured been named.

The Grantee's insurance is primary over any insurance that may be carried by Pierce County. Grantee agrees to provide proof of insurance each year to Pierce County.

The Grantee agrees to defend, indemnify, and save harmless
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 Pierce County, its appointed and elected officials and employees, from and against all loss or expense, including but not limited to, judgments, settlements, attorney's fees and costs by reasons of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury including death at any time resulting therefrom, sustained by any person or persons, and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Grantee, its contractors, its or their employees or agents, Pierce County, its appointed or elected officers, or its employees or agents, except only such injury or damage as shall have been occasioned by the sole negligence of Pierce County, its appointed or elected officials or employees.

If the claim, suit, or action for injuries, death, or damages as provided for in the preceding paragraph of this franchise agreement is caused by or results from the concurrent negligence of (a) Pierce County or Pierce County's agents or employees, and (b) the Grantee, or the Grantee's agents or employees, the indemnity provisions provided for in the preceding paragraph of this franchise shall be valid and enforceable only to the extent of the Grantee's negligence.

Grantee specifically and expressly waives any immunity under Industrial Insurance Title 51 RCW, and acknowledges that this waiver was mutually agreed upon by the parties herein.

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If, at any time, the County of Pierce shall vacate any public street, road or alley which is subject to rights granted by this franchise, the Pierce County Council may, at their option, and by giving thirty days written notice to the Grantee, its successors and assigns, terminate this franchise with reference to such county road, street, or alley so acquired and the County of Pierce shall not be liable for any damages or loss to the Grantee by reason of such termination.

VIT

If, at any time, a new county road is created or established, and constructed, or an existing county road is reconstructed, realigned, or its grade is changed, or if sewer or drainage facilities, or any other facilities, within future or existing county road right-of-way are constructed, reconstructed, maintained, or relocated (all such work to be called "County Projects" hereinafter) and if the installation of the facilities as allowed in this franchise) and all supplements and changes thereto, should interfere in any manner with any such county projects then the Grantee at no expense to the Pierce County shall, upon notice, change the location or adjust the elevation of its facilities so that such facilities shall not interfere with such county projects.

When relocation of Grantee's facilities are required by such county projects the following procedures shall be followed:

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1	1.	Pierce County shall make available to Grantee a list of
2		anticipated projects for each new budget period as soon
3		as is reasonably practicable.
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5	2.	Pierce County shall provide to Grantee two sets of
6		preliminary plans for individual projects as soon as such
7		plans are developed to a state of reasonable certainty,
8		and shall advise Grantee of the anticipated date of start
9		of work on such projects.
10		
11	з.	Grantee shall, when requested by Pierce County in
12		writing, locate their facilities in the field, show those
13		locations on one set of the preliminary plans provided,
14		and return that set to Pierce County Public Works and
15		Utilities - Transportation Services within four weeks of
16		receiving the written request.
17		·
18	4.	Pierce County shall provide to Grantee final plans for
19	i	such projects as soon as such plans are available and
20		shall confirm or correct the anticipated date of start of
21	•	work on such projects.
22		· ·
23	5.	Pierce County shall assist Grantee in determining how its
24		facilities shall be relocated. Such assistance by Pierce
25		County shall include, at a minimum, copies of plans (as

required above) and specifications for such county

projects, and information known to Pierce County as to

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 existing survey control available for location of such county projects. Such assistance shall not subject Pierce County to any liability for the costs of relocating the subject facilities a second time if Grantee incorrectly relocated its facilities the first time.

- 6. When requested, Pierce County and Grantee shall meet to discuss how county projects and utility relocations can be accomplished with the least impact on the other.

 Pierce County's decision shall be final in such matters, but shall not be unreasonable.
- 7. Relocation of Grantee's facilities shall be completed in a timely manner defined as follows:

Relocation of Grantee's facilities shall normally be accomplished in advance of county projects. In the event relocation of Grantee's facilities shall be done concurrently with such projects, Pierce County shall be so notified and agree to a written schedule for relocation. Compliance with such a written schedule shall be Grantee's duty. In no event shall relocation of Grantee's facilities interfere with the prosecution of county projects.

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- manner as required above, Pierce County may relocate, or cause to be relocated, such facilities of Grantee as Pierce County deems necessary, and in the manner Pierce County deems necessary, in its sole discretion. Grantee hereby indemnifies and holds Pierce County, its employees, officers, officials and agents totally free and harmless from all and any liability which may arise from damages caused by the relocation by Pierce County of the facilities of Grantee, even if such damages and liability arise from the negligence of Pierce County, its employees, officers, officials and agents.
- Grantee hereby indemnifies and hold harmless Pierce
 County, its officers, officials, and employees, from
 damages which may arise from Grantees's failure to
 relocate its facilities in accordance with the dates for
 completion of relocation of facilities set forth above,
 or any other act or omission by Grantee, its
 contractor(s), agents, officers, or employees related to
 the provisions of this franchise.
- 10. It shall be conclusively presumed that Pierce County will have suffered damages as a result of exercising its rights as set forth in Item 8, above, and compensation for such damages will be difficult to ascertain, and, therefore, Grantee shall compensate Pierce County for

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such damages in the amount of twice the amount of the cost of such relocation of Grantee's facilities by Pierce County.

- 11. The exercise of its rights, as set forth in Item 8, above, by Pierce County in no way relieves Grantee of completing and/or finalizing the relocation of its facilities at no expense to Pierce County if the relocation work done by Pierce County is incomplete.
- In the event a law suit is brought by Pierce County against Grantee to collect damages presumed under Item 10, above, for the exercise by Pierce County of its rights under Item 8, above, Grantee hereby agrees the only issue will be the actual cost to Pierce County for relocating Grantee's facilities. The party prevailing in such an action shall be allowed its legal fees and costs.

VIII

The Grantee shall not sell, transfer, or assign this franchise without first securing the written permission to do so upon such terms and conditions as determined by the Council of Pierce County. If such permission is granted, the terms and conditions set forth herein shall be binding on the Grantee's successors and assigns unless others are imposed by the Council of Pierce County when such permission is granted.

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This franchise is granted upon the further express condition that it shall not be an exclusive franchise and shall not, in any manner, prohibit the County of Pierce from granting any other franchise over, in, along, under, upon, and across any of the said county roads of any kind and character or territories that may be deemed proper by the Pierce County Council, and this franchise shall not in any way prevent the County of Pierce from using the county roads and highways, or affect the jurisdiction over them and every part of them by the County of Pierce with full power to make the necessary repairs, changes and alterations in the same and like manner as though this franchise had never been granted.

Pierce County reserves for itself the right to so change, amend, modify or amplify this franchise to conform to any state statute, order of the Washington Utilities and Transportation Commission or county regulation, ordinance or right-of-way regulation, as may hereafter be enacted, adopted or promulgated. And this franchise may be terminated at any time upon ninety days written notice to the Grantee to terminate this franchise if the Grantee fails to comply with its terms and conditions, or if the Grantee fails to comply with such changes, amendments, modifications or amplifications and upon termination Pierce County shall have a lien upon all equipment and materials erected or placed under this franchise, which lien may be enforced to reimburse Pierce County for any reasonable expenses and payments incurred in terminating this franchise and to cure defaults by the Grantee.

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Grantee agrees to and shall provide available financial information to the County upon reasonable request. Grantee agrees to and shall during regular business hours and at its office located in Pierce County, Washington, allow agents of Pierce County access for inspection and reproduction of all of Grantee's business records, gross revenue reports, or rules and regulations relevant to a determination of the gross revenues received by Grantee from the area served by the facilities permitted by this franchise.

X

In the event that the territory covered by this franchise shall at any time during the franchise period be included within the limits of any incorporated city or town, the authorities of said city or town shall have the right, to be exercised at their discretion, to acquire by purchase or condemnation, any part of such pipes, conduits and water system other than transmission lines at a price to be based upon the reasonable value of the same at the time, without any additional value for the franchise or any unexpired period thereof, and upon such acquirement, this grant and franchise shall immediately terminate.

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Grantee acknowledges that Pierce County Charter Section 9.20 franchises provides in part: "All franchises shall be subject to the right of the County, or the people acting for themselves through referendum, to repeal for cause, amend, or modify the franchise in the interest of the public" and agrees to said condition.

XI

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EXELST "A" TO 98-12

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Any failure to render adequate service to the patrons of said water system, or the discontinuance of such water services without fault on the part of the patron or patrons involved, for a period of thirty days, shall work a forfeiture of this franchise, at the discretion of the Pierce County Council unless the failure should result from causes beyond human control.

XIII

Venue and jurisdiction for any controversy arising from this franchise shall be in Pierce County, Washington.

XIV

The full acceptance of this franchise and all its terms and conditions within thirty days from September 28 , 1998 , by the City of Auburn, a municipal corporation of the State of Washington, in writing, is to be filed with the Clerk of the Pierce County Council and shall be a condition precedent to its taking effect, and unless the franchise is accepted within such time, this franchise shall be null and void.

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1	Pursuant to RCW 36.55.080, a copy of this franchise shall be							
2	N. Company of the com							
3	DATED at Tacoma, Washington, this 26th day of October							
4	19							
5	Last Hechan							
6	Pierce County Executive							
7								
8	"Manington accepts and agrees to comply with all the towns and							
9	Charles D. Beeth							
10	Name							
11	Charles A. Booth Name Printed							
12	Mayor							
13	Title							
14 15								
16	City of Auburn, a municipal corporation of the State of Washington							
17	October 10 1000							
18	October 19, 1998 Date							
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Pierce County

Office of the County Council

930 Tacoma Avenue South, Room 1046 Tacoma, Washington 98402-2176 (253) 798-7777 FAX (253) 798-7509 1-800-992-2456

STATE OF WASHINGTON)
COUNTY OF PIERCE)

I, SANDY BASSETT, Deputy Clerk of the Pierce County Council, do hereby certify that the attached is a full, true, and correct copy of the following document:

ORDINANCE NO. 98-72

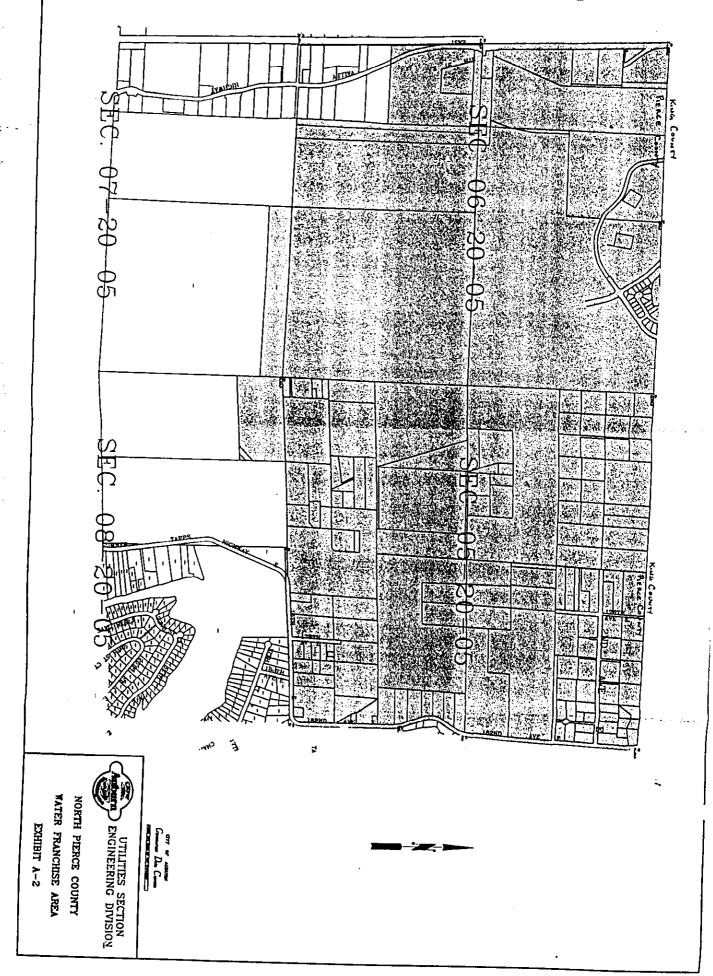
The original of this document is currently located in the Office of the Pierce County Council, 930 Tacoma Avenue South, Room 1046, Tacoma, Washington 98402.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of Pierce County, Washington, this 20th day of Monther, 1998.

PIERCE COUNTY COUNCIL
PIERCE COUNTY, WASHINGTON

Sandy Bassett

Deputy Clerk of the Council



1	Pursuant to RCW 36.55.080, a copy of this franchise shall be					
2	recorded in the Office of the Pierce County Auditor.					
3	DATED at Tacoma, Washington, this 26th day of October					
4	19 <u>98</u> .					
5	Jua total					
6	Prerce County Executive					
7	City of Auburn, a municipal corporation of the State of					
8	washington accepts and agrees to comply with all the terms and					
9	Churke D. Booth					
10	Name Name					
11	Charles A. Booth					
12	Name Printed					
13	Mayor Title					
14						
15	City of Auburn, a municipal corporation of the State					
16	of Washington					
17	October 19, 1998					
18	Date					
19	t					
20						
21						
22						

RESOLUTION NO. 2 9 5 5

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE FIRST AMENDMENT TO LAKELAND ANNEXATION AND UTILITIES AGREEMENT BETWEEN THE CITY AND THE LAKELAND COMPANY, INC.

WHEREAS, the City and The Lakeland Company, Inc. have previously entered into the Lakeland Annexation and Utilities Agreement in June, 1996; and

WHEREAS, disputes arose between the parties on the interpretation and enforcement of the said Agreement and the parties now desire to resolve any disputes with respect to that Agreement and with respect to all claims and obligations between the parties arising from events which pre-date the execution on of this Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH RESOLVES AS FOLLOWS:

Section 1. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute First Amendment to Lakeland Annexation and Utilities Agreement with The Lakeland Company, Inc. A copy of said Agreement is attached hereto, denominated as Exhibit "A" and made a part hereof as though set forth in full herein.

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

DATED this 4th day of May, 1998.

CITY OF AUBURN

MAYOR

Danielle E. Daskam,

Michael J. Reynolds,

Resolution No. 2955 April 29, 1998 Page 2

AUDITOR'S NOTE

LEGIBILITY FOR RECORDING AND COPYING UN-SATISFACTORY IN A PORTION OF THIS INSTRU-MENT WHEN RECEIVED

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

RECORDER'S COVER SHEET
Document Title(s) (or transactions contained therein): 1. Amendment to Lakeland Annexation and Utilities Agreement 2. 3.
4.
Reference Number(s) of Documents assigned or released: NONE
☑Additional reference #'s on page3 of document
Grantee (Last name first, then first name and initials)
1. The Lakeland Company2.3.4.
Grantor: (Last name first) 1. AUBURN, CITY OF 2. 3. 4.
Legal Description (abbreviated: i.e. lot, block, plat or section, township, range) SEC 6 TWP 20 N Range 5
Additional legal is on page 31 of document.
Assessor's Property Tax Parcel/Account Number: 0520061012, 0520061013, 0520061014, 0520052038, 0520061015, 0520052039, 0520061016, 0520082006, 0520082010, 0520064000, 0520063000, 0520053001, 0520053004, 0520053004, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520053014, 0520062027, 0520062028, 0520053038, 0520053030, 0520063000, 0520064000, 0520063008
Assessor Tax # not yet assigned

AMENDMENT

TO

LAKELAND ANNEXATION AND UTILITIES AGREEMENT

THIS AGREEMENT made and entered into this // day of May, 1998, by and between the CITY OF AUBURN, a municipal corporation, organized under Title 35A, Optional Municipal Code, hereinafter referred to as "CITY" and THE LAKELAND COMPANY, INC., a Washington corporation, its heirs, successors and assigns and all related entities and all shareholders, and/or owners, jointly and severally and their marital communities, including all parties that have an interest in the property affected by this Agreement, herein referred to as "TLC".

WHEREAS, the parties to this Agreement have previously entered into the Lakeland Annexation and Utilities Agreement, referred to as "PRE-ANNEXATION/UTILITIES

AGREEMENT" in June, 1996, which agreement was approved by Auburn City Council under Ordinance No. 4867; and

WHEREAS, disputes arose between the parties on the interpretation and enforcement of the Pre-Annexation/Utilities Agreement referred to above, and the parties desire to resolve any disputes with respect to all claims and obligations between the parties arising from events which pre-date the execution of this Agreement; and

WHEREAS, the parties desire to end all disputes and claims, including any and all claims for damages, attorney fees and costs arising from events which pre-date the execution of this Agreement; and

WHEREAS, the parties have engaged in numerous meetings to resolve all issues between the parties and this Agreement reflects a compromised position between the parties for the purposes of attaining a complete settlement; and

WHEREAS, it is the intent of this Agreement that the agreement entitled Lakeland Annexation and Utilities Agreement, recorded under Recording No. 9608120131 shall remain in force and effect except as specifically amended by this Agreement; and

WHEREAS, the parties acknowledge that a dispute existed between the City of Bonney Lake and the CITY with respect to

water service, which dispute has been settled between the City of Bonney Lake and the CITY and in such settlement comments were taken from TLC and incorporated into the final Settlement Agreement between the CITY and Bonney Lake; and

WHEREAS, it is the intent of the parties that the CITY proceed with the annexation of the TLC property and that TLC develops that property which is either annexed or will be annexed in accordance with the standards and land use polices and procedures of the CITY; and

WHEREAS, this Agreement and the requirements for any monetary payment from TLC to the CITY under this Agreement were specifically requested by TLC to result in a more marketable development for TLC and any payments are acknowledged to be not requested by the CITY but placed in the Agreement by TLC unilaterally and is not considered payment under RCW 82.02.020; and

WHEREAS, the parties acknowledge that TLC, in cooperation with the State of Washington and other local government units, other than the City of Auburn, is proceeding with the construction of the certain portions of the Lake Tapps Parkway East, as defined in a mitigation agreement executed between Pierce County and TLC and that the CITY has no responsibility to construct, make any

payments nor guarantee in any way any obligations for the construction of TLC's portion of the Parkway project. However, the parties acknowledge the importance of this construction project to TLC and that the execution of this Agreement is vital to TLC's ability to secure financing for its construction, and understand that the sole purpose of the expedited handling of this Agreement is to obtain a resolution of disputes prior to May 4, 1998. May 4, 1998 is a TLC funding date which requires this Agreement for TLC to obtain the necessary funding to construct this roadway; and

WHEREAS, the parties acknowledge the existence of an Agreement referred to as the "Crabtree Agreement" and agree that the settlement provisions in this Agreement settle all disputes including but not limited to any claims that TLC may have as a successor under the Crabtree Agreement; and

WHEREAS, the Crabtree Agreement and all its terms, including those terms relating to customer equivalent charges for services, expire on June 6, 1998; and

WHEREAS, the parties agree that TLC has had input with regard to the resolution of the CITY and the City of Bonney Lake dispute and agree that the settlement provisions in this Agreement settle any claims TLC may have against the CITY with respect to water, including but not limited to the

providing of water, the providing of water pressure, fire flow or any other claims related to the water utility.

NOW, THEREFORE, BASED UPON MUTUAL COVENANTS TO BE DERIVED, THE PARTIES AGREE AS FOLLOWS:

1. LAKELAND ANNEXATION AND UTILITIES AGREEMENT:

The parties reaffirm the terms and conditions of the Lakeland Annexation and Utilities Agreement recorded under Recording No. 9608120131, except as specifically amended herein.

This Agreement affects that real property identified on the map attached hereto and incorporated by reference as Exhibit "1" and legally described on attached Exhibit "2", hereafter referred to as "TLC Property".

3. DEVELOPMENTAL APPROVALS FROM PIERCE COUNTY:

The parties acknowledge that as provided in the PRE-ANNEXATION/UTILITIES AGREEMENT, paragraphs 2.2,2.9,2.13, and 4.1, prior to annexation of the subject project TLC, must obtain developmental approvals from Pierce County and in so doing agrees to comply with the Pierce County requirements and the CITY standards and land use polices and procedures.

In the event that the imposition of CITY standards on a development application submitted to Pierce County for

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an area not yet annexed to the CITY would result in the denial of the application by Pierce County, then the Pierce County standard will prevail. The CITY agrees to provide sewer service consistent with the terms and conditions of this Agreement.

4. POLICE AND FIRE SERVICES:

Upon annexation the CITY will provide to the area annexed, police and fire services that it provides to its other citizens. Fire service shall be provided to the annexed property provided that TLC has met all requirements of ACC Titles 15, and Chapter 13.16 as it relates to fire flow, and provided that the CITY may contract fire services if it cannot practicably provide fire service to some of the annexed area. Sprinklers shall be required for multifamily and commercial development. Sprinklers shall be required for single-family residential development only if necessary to satisfy the CITY's fire flow standards as described in Title 15.

5. PARKS:

Paragraph 4.5, "Parks", of the PRE-ANNEXATION/
UTILITIES AGREEMENT, is amended to read as follows:

- 4.5(a) TLC shall dedicate to CITY, one developed 15-acre park, one undeveloped 15-acre park, two developed 5-acre parks, and a linear park along Lakeland Hills Way for a total of approximately 42.91 acres.
- The parks will be located as indicated on Exhibit 1. Except for the linear park and Park P4, the topography and soil conditions shall be approved by the CITY to ensure each site is suitable for active park use. CITY has reviewed Park P4 and agrees to accept undeveloped park "as is". The park locations indicated on Exhibit 1 are acceptable to the CITY. However, the parties acknowledge that in order to locate the parks where indicated on Exhibit 1, TLC must obtain a major amendment approval pursuant to Pierce County Code. TLC agrees to process the major amendment application by submitting an application to the CITY and Pierce County concurrently within 30-days of execution of this Agreement. reserving the right to review any other aspects of the major amendment, the CITY agrees not to object to the proposed park locations.
- 4.5(c) As soon as reasonably possible upon legal segregation, but no later than six months after approval of the preliminary plat for Lakeland Division One,

TLC shall dedicate Park P4 to the CITY. The linear park depicted on Exhibit 1 shall be designed to standards approved by the CITY Parks Director and shall be developed concurrent with construction of Lakeland Hills Way. CITY agrees that TLC's commitment to dedicate Park P4 and the linear park, as described in this Agreement, satisfies the CITY's concurrency and mitigation requirements for issuance of 800 residential building permits. Prior to the issuance of residential building permits for 801 dwelling units within the PUD, TLC shall develop and dedicate Park P2 to the CITY or make arrangements for dedication and use acceptable to the CITY as necessitated by financing. CITY and TLC agree that upon dedication of Parks P2 and P4, TLC shall have satisfied concurrency requirements for issuance of residential building permits for a total of 2,173 dwelling units. Thereafter, prior to the issuance of residential building permits for dwelling units in excess of a total of 2,173, CITY and TLC agree that additional park improvements must be dedicated to CITY (or the land dedicated, the improvements bonded, and an improvement schedule agreed upon) consistent with the formula described below:

Lakeland-Resolution No. 2955, Exhibit "A"
May 6, 1998 Page 8 [c/agree/mjr-final]

The ratio of improved parks required per thousand population shall be calculated based upon the following mathematical assumptions:

- 3,408 units approved in Lakeland South
- 42.91 acres of both improved and unimproved parks required
- 2.8 residents per household assumed for conversion of people to units

Accordingly the ratio of improved park required per thousand population shall be calculated as follows:

Total (42.91 acs / (3408 x 2.8 = 9542)) =
4.5 acres combined parks/1000
population

Less (15.0 acs / (739 x 2.8 = 2069)) = 7.25
acres of unimproved park/1000
(27.91 acs / (2669 x 2.8 = 7473)) = 3.73 acres
of unimproved park/1000

Based upon the foregoing calculations, TLC shall be entitled to the issuance of 95.62 residential building permits for each acre of improved park dedicated to the CITY (or unimproved/bonded park) dedicated to the CITY.

4.4 TLC and CITY shall work cooperatively in development of specific plans that meet CITY park standards. Each party shall respond promptly to proposals and submittals relating to the design and construction of park improvements. The CITY reserves final approval authority of park plans and CITY approval must be granted prior to

construction. The level of improvements required in Parks P1, P2 and P3 shall be based upon \$1.82 per square foot of total park areas for P1, P2 and P3. The cost per square foot is based upon improvements made to Lakeland Hills Park in 1992 and the improvements shall be made at that rate adjusted by Consumer Price Index from 1992 until the date of Park plan approval by the CITY. The CITY has the right to distribute improvement funds between and among the Parks but in any event, TLC's financial obligation shall not exceed the total per square foot cost as specified above.

4.5(d) The CITY shall assume the responsibility for proper maintenance of the parks dedicated to it, provided, however, that the CITY may allow TLC to provide additional maintenance within parks dedicated to the CITY with the CITY's written consent. Except for Park P4, TLC must give CITY 1-year notice prior to dedication of any park land to the CITY.

4.5(e) TLC and/or appropriate homeowner associations, agree to develop, own, maintain, repair, and pay real estate taxes and assessments (if any) on all other park areas indicated on Exhibit 1 which are less than five acres in size.

4.5(f) The CITY agrees that TLC's satisfactory performance of the terms contained in this Section of the Agreement shall constitute full and complete satisfaction of the CITY's park standards and requirements and shall be deemed to meet all park mitigation and concurrency requirements for the development of the TLC Property.

4.5(g) TLC agrees that any park impact fees paid to Pierce County pursuant to Pierce County requirements will not affect or reduce the park commitments to the CITY contained in this Agreement.

4.5(h) In addition to the parks referenced in this Section, TLC agrees to develop recreational trails within the relocated power line haul road depicted on Exhibit 1 pursuant to a design and construction schedule to be mutually determined by CITY and TLC. Upon completion of trail construction, maintenance of this recreational trail shall be the responsibility of the CITY.

6. INSPECTING AGENCY:

A building permit that has been issued by Pierce County shall be inspected by Pierce County even if the subject property is annexed after permit approval. Building permits approved by the CITY shall be inspected by the CITY.

7. COVENANT RUNNING WITH THE LAND:

The parties agree that this Agreement is a covenant running with the land and is binding and benefiting the TLC Property. In order to insure that purchasers of homes, rental, commercial or other properties may obtain title free of the encumbrances of this Agreement, the issuance of a building permit for such property shall be satisfactory evidence of compliance with all provisions of this Agreement.

8. SCHOOL IMPACT FEE ORDINANCE:

The parties acknowledge that at the request of the Dieringer School District, and without objection by TLC, the CITY has enacted a School Impact Fee Ordinance. TLC agrees not to challenge the School Impact Fee Ordinance and agrees not challenge any school impact fees up to \$1425 for single-family and \$750 for multifamily. The CITY reserves the right to increase the above fees in the future, TLC reserves the right to challenge any school impact fees which exceed the above stated amounts.

9. PROTOCOL FOR SUBMISSION OF APPLICATIONS:

Paragraph 4.1(b) of the PRE-ANNEXATION/UTILITIES AGREEMENT is amended as follows:

Lakeland-Resolution No. 2955, Exhibit "A"

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For TLC Property not yet annexed, and therefore under Pierce County jurisdiction, development applications shall be submitted to Pierce County. However, TLC agrees to simultaneously submit all such applications, except singlefamily building and grading permits, to the CITY. Except as provided in paragraph 2 of this Agreement, TLC agrees comply with all applicable CITY standards and land use polices and procedures as determined by City Planning Director. Failure to comply with the provisions of this "Default" be determined a paragraph shall Agreement. To assure such compliance, TLC agrees to pay to CITY liquidated damages in the amount of \$1,000 per day for each day that development is in Default. Notwithstanding any other provision of this Agreement, the liquidated damages shall not begin to accrue if the Default is cured within thirty (30) days from the date that the CITY mails or delivers written notice of the Default to The Lakeland Company, PO Box 3866, Bellevue, Washington 98009 Default is capable of being cured and the cure cannot be reasonable completed within the thirty (30) day cure period, the cure period shall be extended up to ninety (90) days so long as TLC has commenced action to cure within the thirty (30) day cure period and is proceeding to cure the Default with due diligence.

The decision of the CITY Planning Director may be appealed to the CITY Hearing Examiner within thirty (30) days from the date written decision. The day of filing of the appeal to the Hearing Examiner shall stay accrual of the liquidated damages. The stay of damages shall be released on the effective date of the Hearing Examiner's written decision. If the Hearing Examiner's decision is appealed, pursuant to paragraph 5.3 of the PRE-ANNEXATION/UTILITIES AGREEMENT, accrual of liquidated damages shall be stayed aqain until а written decision is issued by mediator/arbitrator pursuant to provisions of Section 5.3 of the PRE-ANNEXATION/UTILITIES AGREEMENT. However, in no event shall any stay following appeal of the Hearing Examiner's decision exceed ninety (90) days.

Those permit applications filed with Pierce County which are considered complete and approved by Pierce County before annexation shall be built in compliance with the conditions placed upon it by Pierce County and pursuant to the conditions of this Agreement.

10. RELEASES:

The parties to this Agreement hereby release, discharge, resolve and settle any and all claims arising from events which pre-date the execution of this Agreement including their officials, employees, staff, consultants, shareholders, owners, attorneys, and including attorney fees and costs, including but not limited to claims involving providing of water or other utilities and any claims that TLC may claim to have under the Crabtree Agreement. This Agreement is not intended to waive or release any claims or address any disputes or potential disputes that TLC may have with the City of Bonney Lake.

11. TRANSPORTATION:

Paragraph 4.3 of the PRE-ANNEXATION/UTILITIES AGREEMENT is replaced in its entirety by the following:

TLC agrees to pay the CITY at the time a building permit is issued by either CITY or Pierce County, the following:

- (1) \$839.57 per detached single-family residential unit,
- (2) \$544.94 per attached single-family or multifamily unit,
- (3) \$187.26 per residence for residential units within the senior housing zone, and

(4) \$2.18 per gross foot of commercial or retail structures.

For building permits which are issued by Pierce County prior to execution of this Agreement, TLC shall pay the above amounts for such permits within 30 days of execution of this Agreement.

The fee amounts described above shall be adjusted to reflect the increase in the Consumer Price Index for the Seattle-Metropolitan area beginning as the base year January 1, 2000 and on January 1st each year thereafter the percentage difference of each year shall equal the adjustment

Payment of these fees shall constitute complete satisfaction of any transportation mitigation and concurrency requirements for the development of the TLC Property.

TLC agrees that all streets shall be constructed consistent with CITY standards including design criteria, construction specifications, operational criteria, and approved engineering submittals, except that the CITY may agree to modify the standards for private streets.

The parties acknowledge that there is a transportation cap which will allow a generation of up to

800 pm peak hour trips for TLC development and that the development of TLC property subject to this Agreement cannot exceed that capacity cap until the extension of Lakeland Hills Way to the Lake Tapps Parkway and the construction of TLC's portion of the Lake Tapps Parkway East connection 8th Street East required in the as TLC/Pierce transportation mitigation agreement. The Lake Tapps Parkway East project is identified as Lake Tapps Parkway East (WEST), MAP ID No. 166, in the 1998-2003 Transportation Improvement Program for Pierce County. Upon completion of The Lake Tapps Parkway East connection to 8th Street East as described in the TLC/Pierce County transportation mitigation agreement, the transportation cap shall expire.

The calculation of peak hour trips shall be determined at building permit approval.

The CITY shall consider the 800 pm peak hour trips to be present in the transportation system in its review of development applications for property not included in Exhibits 1 and 2.

12. STORM WATER:

Paragraph 4.4(a) of the PRE-ANNEXATION/UTILITIES AGREEMENT is amended as follows:

The CITY agrees to receive the storm water from the

Lakeland property described herein subject to the construction and dedication of necessary infrastructure which meets CITY standards including design criteria, specifications, operational criteria, construction approved engineering submittals upon the effective date of annexation under the same terms and conditions as storm water is received from other developments within the CITY, including payment of any charges required by the CITY's utility ordinances provided, the water received from properties in TLC property not yet annexed shall be of the same quality and flow rate as from the property prior to development, shall not exceed the capacity of the CITY's existing storm drainage system, and shall be subject to the same charges as any other property in the CITY for storm water.

The CITY and TLC acknowledge that substantial mater storm drainage planning has been completed for TLC properties in the form of the Comprehensive Drainage Plan Lakeland Hills Development Area, prepared by CH2Mhill Engineers, dated March 1991 and the Lakeland Hills South Development Area Conceptual Storm Drainage Plan, prepared by Stephen/Dowl Engineers, dated March 1995. Both parties also acknowledge that supplemental drainage basin information

will need to be developed by TLC to address changed conditions such as the Lake Tapps Parkway, certain differences between CITY and County standards, and impacts associated with grading activities. In addition, the parties agree that TLC will need to continue to develop more precise drainage subbasin planning information to insure the adequacy and timely staging of necessary storm drainage facilities associated with specific development proposals.

13. SANITARY SEWER:

Paragraph 4.4(b) "SEWER", PRE-ANNEXATION/UTILITIES AGREEMENT is replaced in its entirety as follows:

The CITY shall allow the TLC Property to connect to the CITY's sanitary sewer utility under the same terms and conditions as if the property were within the CITY limits subject to obtaining expanded service area boundaries and all other terms of this Agreement, including, but not limited to, Section 3. The CITY shall apply to Pierce County for any franchise that would be required for the property not yet annexed with the understanding that applying for the franchise and any subsequent Pierce County approval does not waive any conditions set forth herein for the provision of sanitary sewer service.

For the orderly development of its property TLC

will need sanitary sewer from the CITY prior to CITY's annexation of the subject property. TLC agrees to construct all sanitary sewer in accordance with CITY standards including design criteria, construction specifications, operational criteria and approved engineering submittals, and the CITY agrees, upon verification, of TLC's compliance with its standards to connect to the CITY system the TLC system for sanitary sewer upon payment of all charges set forth in Auburn City Code.

The CITY and TLC acknowledge that substantial master sanitary sewer planning has been completed for TLC properties in the form of the Comprehensive Sanitary Sewer Study Lakeland Hills Development Area, prepared by Dowl Engineers, dated March 1991. Both parties also acknowledge that supplemental sanitary sewer information will need to be developed by TLC to address changed conditions such as impacts associated with and grading density changes activities. In addition, the parties agrees that TLC will need to continue to develop more precise sanitary sewer subbasin planning information to insure the adequacy and timely staging of necessary storm drainage facilities associated with specific development proposals.

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14. WATER:

Paragraph 4.4(c) is amended as follows:

The parties acknowledge that pursuant to the Settlement Agreement with the City of Bonney Lake, the City of Bonney Lake is the water purveyor for portions of the TLC Property as set forth in the Settlement Agreement. In the event the CITY determines that the City of Bonney Lake water system fails to provide adequate fire flow pursuant to Title 15 of the Auburn City Code the CITY agrees to work in good faith with the City of Bonney Lake in an attempt to help achieve a system which meets the CITY requirements for the provision of urban water services.

Immediately upon legal segregation of the relevant parcels, TLC shall convey title to the CITY of the following: the water wells commonly known as 5b and 5c, the water rights it owns or controls on such wells, and the property depicted on the easements which were granted to the CITY as indicated in Exhibit 3. The CITY and TLC agree that the use of the real property described in Exhibit 3 shall be subject to the restrictions indicated in Exhibit 4.

As consideration for TLC's conveyance of the water wells and the real property described in Exhibit 3, the CITY agrees to pay TLC the appraised value for the land and a

mutually agreeable fair market value for the wells up to a maximum of \$370,000, adjusted at 10% per annum until closing of the conveyance. TLC agrees to convey the subject property free and clear of all liens and encumbrances and provide the CITY with a policy of title insurance in the value of the purchase price insuring the property free and clear of all liens and encumbrances and agrees to provide a Statutory Warranty Deed.

16. FIRE:

The parties acknowledge that the property subject to this Agreement which is not yet annexed may not be provided fire service directly by the CITY. TLC shall arrange for fire service coverage through Fire District 22 and any agreement between TLC and Fire District 22 shall contain provisions which allow termination upon annexation by the CITY, so that the property may be served by the CITY if the CITY chooses to provide fire services directly rather than by contract. Upon forty-five (45) days written notice from the City of its intent to provide fire service directly or by contract with another service provider, TLC agrees to provide Fire District 22 thirty (30) days written notice of termination. For all building permits issued subsequent to the forty-five (45) day notice period, TLC agrees to pay

mitigation fees to the CITY at the time of building permit issuance for developments within the annexed property, in the amounts indicated below:

- \$419.78 per detached single-family residential unit.
- \$272.47 per attached single or multi-family residential unit.
- 3. \$93.63 per residential unit within the Senior Housing Zone.
- 4. \$1.09 per gross foot of commercial or retail structures.

The above amounts shall be adjusted to reflect the increase in the Consumer Price Index for the Seattle-Metropolitan area beginning as the base year January 1, 2000 and on January 1st of each year thereafter the percentage difference shall equal the adjustment. Payment of these fees shall constitute complete satisfaction of any fire service mitigation and concurrency requirements by CITY for the property described herein.

17. PENDING APPLICATIONS IN PIERCE COUNTY:

The development applications indicated on Exhibit 5, attached hereto and incorporated by reference, were submitted to Pierce County by TLC prior to annexation. The CITY agrees to allow TLC to process the applications indicated on Exhibit 5 through Pierce County's development

review process to issuance of a final decision, even if the subject property is annexed to the CITY prior to completion of the Pierce County review process.

CITY OF AUBURN

CHARLES A. BOOTH

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Michael J. Reynolds,

City Attorney

THE LAKELAND COMPANY, INC.

By:

Its: Chainman & Ru Bonnd

STATE OF WASHINGTON)

(COUNTY OF KING)

GIVEN UNDER my hand and official seal the date

Panola S. Burke

NOTARY PUBLIC in and for the State of Washington, residing at Relevant

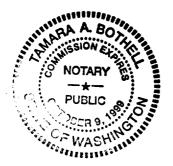
MY COMMISSION expires: 5-15-2000

STATE OF WASHINGTON)

COUNTY OF KING)

On this 11th day of May, 1998, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared CHARLES BOOTH and DANIELLE E. DASKAM, personally known to me to be the Mayor and City Clerk, respectively, of the CITY OF AUBURN, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes mentioned in the instrument.

GIVEN UNDER my hand and official seal the date hereinabove set forth.

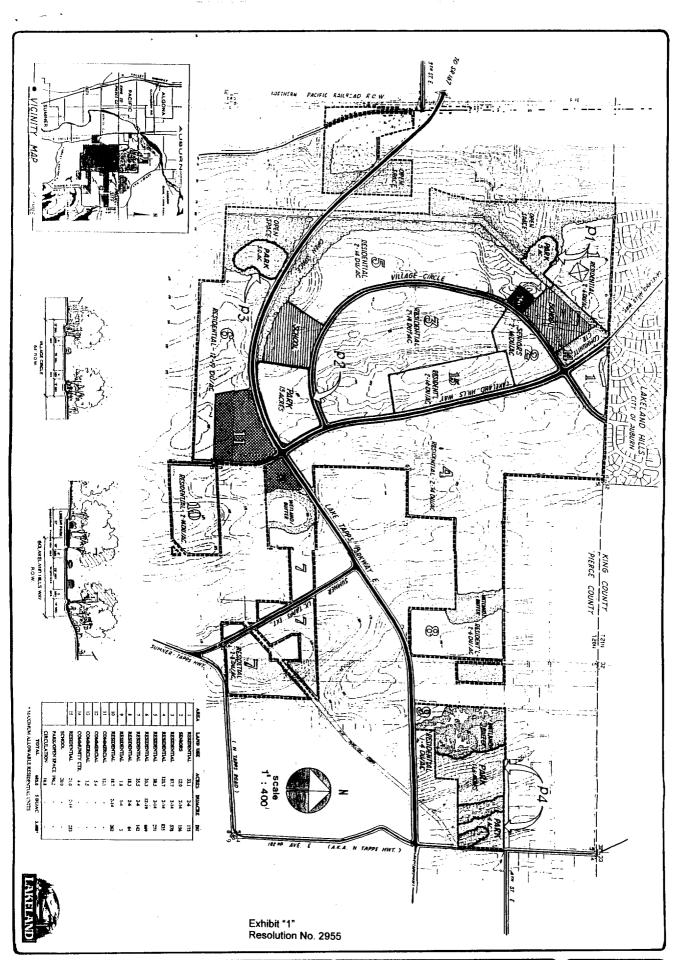


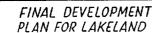
NOTARY PUBLIC in and for the State of Washington, residing at fing Co.

MY COMMISSION expires: 10-9-99

EXHIBIT 1

EXHIBIT 1
First Amendment to Lakeland Annexation and Utilities Agreement









RESOLUTION NO. 3190

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 1 TO THE BILATERAL COMPLIANCE AGREEMENT BETWEEN THE CITY AND THE STATE DEPARTMENT OF PUBLIC HEALTH.

WHEREAS, the City entered into a Bilateral Compliance Agreement in 1996, which identified a step plan to meet the provisions of the Lead and Copper Rule of the Safe Drinking Water Act; and

WHEREAS, the step plan must be expanded to include treatment for Well 6 and Well 7, as they are supplemental supply for the City's water system; and

WHEREAS, it has been determined the timeline for completion of the project must be expanded to account for the development of the new wells;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH RESOLVES THAT:

SECTION 1. The Mayor and City Clerk of the City of Auburn, Washington, are herewith authorized to execute Amendment No. 1 to the Bilateral Compliance Agreement between the City of Auburn and the State Department of Health, including treatment for Well 6 and Well 7 and modifying

Resolution No. 3190 January 21, 1999 Page 1 the timeline for the treatment facility to be operational. A copy of said Amendment is attached hereto and denominated as Exhibit "A".

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

DATED and SIGNED this 6TH day of March, 2000.

CITY OF AUBURN

CHARLES A. BOOTH

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Michael J. Reynolds,

City Attorney

BILATERAL COMPLIANCE AGREEMENT Amendment No. 1

Water System Name: City of Auburn Water System

Subject: Compliance with the Lead and Copper Rule, Chapter 246-290-WAC

The following compliance agreement is hereby established between the Department of Health (hereafter, Department), and City of Auburn Water System (hereafter, City).

The Department and the City agree on the following corrosion control issues, approaches and schedules:

- 1. Auburn has slightly exceeded the copper action level at the 90th percentile per the Lead and Copper Rule (1.5 and 1.57 mg/L copper at 90th percentile compared to standard of 1.3 mg/L copper for medium size systems).
- 2. The best utility system approach is to adjust the pH of the water in the distribution system to reduce corrosiveness towards copper, and may include other appropriate measures such as replacement of susceptible materials, changes to electrical grounding practices, etc.
- 3. Corrosion control optimization is realized when the elevated pH levels will have caused the following:
 - Copper levels are reduced and maintained below the action level of 1.3 mg/L at the 90th percentile (see items 4 and 5 for clarifications);
 - No significant adverse impacts of the treatment on bacteriological quality in the distribution system;
 - No significant adverse impacts of the treatment on domestic customer satisfaction (e.g., red water due to disturbances in unlined cast irons);
 and
 - No significant adverse impact on commercial and industrial customers, health care facilities, and wastewater facilities.

Any significant adverse impacts occurring as a result of corrosion control will be investigated and documented along with possible mitigation measures in a report prepared by the City and submitted to DOH.

- 4. The 90th percentile copper level will be calculated using the original 60 monitoring sites per the Lead and Copper Rule plus an estimated 30 additional monitoring sites in the vicinity of untreated sources. Results of all analyses of samples from all monitoring sites in the system will be evaluated in one sampling pool to determine Lead and Copper Rule Compliance. The limits of the zones surrounding untreated sources are depicted on Exhibit 1.
- 5. Untreated sources of supply will be sampled within the limits of the zones of influence using the number of connections and the population of the zone and a factor of 2.5 people per connection as a conversion factor as follows:

Population	Number of Sample Sites	
<100	5	_
101—500	10	
501—3,300	20	
3,301—10,000	40	

Sample sites will be selected per the Lead and Copper Rule. Any previous monitoring sites in the untreated zones of influence will be retained and can be used in lieu of a new site.

6. Treatment is anticipated in 4 stages at this time.

Source	Stage
Coal Creek Springs, plus blending of well (#4)	1
Well #2, 6 and 7	1
Well #1	To be determined.
Well #4	2. if needed
West Hill Springs	3, if needed
Wells 5 and 5A (Lakeland Hills)	No treatment. Monitoring indicates supply is not corrosive.
Wells 3Aand3B	To be determined.
Future Sources	To be determined.

7. Monitoring will be conducted after each stage to determine if optimization is achieved. If optimization is achieved, no further treatment stages are needed. If optimization is not achieved, the City plans to proceed to next stage with Department approval.

8. Schedule for Stage 1.

Project Schedule for Stage 1	Date
Submit Lead and Copper Compliance Report DOH July 1, 1995 – Schedule Met	July 19, 1995
Finalized BCA (assumed start)	October 7, 1996
Submit 30% Design Reports for Coal Creek and Fulmer Field to DOH	October 1999
DOH Approval of 30 % Design Reports	Pending
BCA Amendment No. 1	March 20, 2000
Submit Final Plans and Specifications	September 15, 2000
DOH Approval of the Final Plans and Specifications	October 12, 2000
Complete Construction of Facilities	July 18, 2002
Monitoring Report - 2 Rounds	July 17, 2003
Submit Report to Determine if System is Optimized	October 23, 2003

9. If the Lead and Copper Rule is amended or changed, the Department and City will review the changes and their effects on the City, and if needed, will jointly renegotiate this agreement.

The City of Auburn agrees to perform the following:

Submit a project report and construction documents. In accordance with WAC 246-290-110 and 120 submit for review and approval a project report (Predesign Engineering Report) and construction documents (plans and specifications) for the installation of the corrosion control treatment equipment approved by the Department.

Construct corrosion control treatment facilities. Complete the installation of Stage 1 corrosion control treatment facilities in accordance with Department approved construction documents prior to July 18, 2002.

Monitor water quality parameters. Monitor water quality parameters in accordance with Title 40 CFR Chapter 1 Part 141.87(c), (d), and (e) beginning on July 19, 2002.

Monitor tap water quality for lead and copper. Monitor tap water quality in accordance with Title 40 CFR Chapter 1 Part 141.86 (d) and complete two sixmonth monitoring compliance periods prior to July 19, 2003.

Well #4. Discharge Well #4 into Reservoir #1 for blending under normal operating procedures. Monthly production records will be kept to document where the water is directed and made available to the Department upon request. Department will allow Well No. 4 to be discharged directly into the distribution system should distribution system pressure drop below 35 psi during an emergency (fire, main break, etc.).

Optimization Report. Prepare and submit an optimization report that addresses copper monitoring results, any significant adverse effects that may reasonably be associated with corrosion control, any copper staining incidents that occur in the untreated zones of influence, and any copper staining or corrosion incidents in new construction. The report will document what action the City plans to take to address these occurrences. Further, the optimization report will recommend a pH operating range for optimization and will recommend if Stage 2 treatment needs to be implemented.

The Department of Health agrees to:

Concur with Optimization. The Department agrees that optimization is achieved, that Auburn will be considered in compliance with the LCR, and that no further stages of implementation will be required when the following conditions are met.

- Copper levels are reduced and maintained below the action level of 1.3 mg/L at the 90th percentile (see items 4 and 5 for clarifications);
- No significant adverse impacts of the treatment on bacteriological quality in the distribution system;
- No significant adverse impacts of the treatment on domestic customer satisfaction; and
- No significant adverse impact on commercial and industrial customers, health care facilities, and wastewater facilities.

The Department will also consider the Optimization Report in determining compliance with the LCR.

Defer enforcement. The Department shall not initiate any enforcement actions for violations of the Lead and Copper Rule as long as the conditions of this agreement are being met.

Renegotiate agreement. The Department will negotiate the level of activity or the schedules in this agreement if requested by the City.

Terminate agreement. The Department agrees to terminate this agreement within 30 days upon request by the City.

All documents or reports required by this agreement, questions about compliance and request to modify this agreement shall be directed to DOH-Northwest Drinking Water Operations, 1511 3rd Avenue, Suite 719, Seattle, Washington 98101.

CITY OF AUBURN

(Charles A. Booth
-	Charles A. Booth, Mayor
Date	3-6-2000

ATTEST:

APPROVED AS TO FORM:

Michael J. Reynolds, City Attorney

WASHINGTON STATE DEPARTMENT HEALTH

Phone (206)

LRM/bd

REF. H:\PROJ\PR629-21\E00-133

RECEIVED

FEB 1 4 2000

Exhibit 1
Auburn Water System
Limits of Zones of Influences for Untreated Sources

RESOLUTION NO. 3383

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO PERFORM THE NECESSARY ADMINISTRATIVE MEASURES TO APPROVE AUBURN'S WITHDRAWAL FROM THE EXISTING SOUTH KING COUNTY REGIONAL WATER ASSOCIATION JOINT OPERATING AGREEMENT, DATED OCTOBER 8, 1996, AND TO INDICATE AUBURN'S ACCEPTANCE AND CONTINUANCE AS A SIGNATORY MEMBER OF THE REVISED SOUTH KING COUNTY REGIONAL WATER ASSOCIATION JOINT OPERATING AGREEMENT DATED DECEMBER 19, 2000.

WHEREAS, Auburn is a member of the South King County Regional Water Association (SKCRWA) consisting of the cities of Algona, Black Diamond, Kent, and Pacific, and Lakehaven Utility District, Soos Creek Water & Sewer District, and King County Water District #111 as authorized by Resolution No. 2568, adopted June 5, 1995, and modified by Resolution No. 2781, adopted December 2, 1996; and

WHEREAS, the Board of Directors of the SKCRWA saw a need to make certain amendments to the Joint Operating Agreement, dated October 8, 1996, to provide clarification to the intent of the agreement; and

WHEREAS, the Board of Directors of the SKCRWA have now prepared and recommended for approval by each participatory member an update of the Joint Operating Agreement to which Auburn is a signatory member.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN.

WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH

RESOLVES AS FOLLOWS:

Section 1. The Mayor and City Clerk of the City of Auburn are hereby

authorized to perform the necessary administrative measures to approve

Auburn's withdrawal from the existing SKCRWA Joint Operating Agreement,

dated October 8, 1996, and to indicate Auburn's acceptance and continuance

as a signatory member of the revised SKCRWA Joint Operating Agreement,

dated December 19, 2000. A copy of said Agreement is attached hereto and

denominated as Exhibit "A" and incorporated by reference in this Resolution.

Section 2. The Mayor is hereby authorized to implement such

administrative procedures as may be necessary to carry out the directives of

this legislation.

Resolution No. 3383 August 17, 2001 DATED and SIGNED this 4 day of September, 2001.

CHARLES A. BOOTH MAYOR

ATTEST:

Dantelle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Michael J. Reynolds,

City Attorney



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

RECORDER'S COVER SHEET

Document Title(s) (or transactions of	ontained therein):	
Interlocal Agreement – South King C Agreement	ounty Regional Water Ass	ociation Joint Operating
rigiodinant		13/31
Reference Number(s) of Document Additional reference #'s on page of do	ts assigned or released:	FILED BY PNWT W3474-12
Grantor(a)/Parrayer(a) (Last name	5-4 4b- 5-4	
Grantor(s)/Borrower(s) (Last name Auburn, City of	iirst, then first name and ii	nitiais)
Grantee/Assignee/Beneficiary: (La		
South King County Regional Water A	ssociation	
	· · · · · · · · · · · · · · · · · · ·	
Legal Description (abbreviated: i.e.	lot, block, plat or section,	township, range)
PER RCW 39.34		
☐ Additional legal is on page of document.		
Assessor's Property Tax Parcel/Ac	accumt Number	
Assessor S Property Tax Parcel/AC		
N/A		
☐ Assessor Tax # not yet assigned	10 00 - 120	
	AXIMITAL OLIVER	

examined as its province executive or as to its effect upon title.

SOUTH KING COUNTY REGIONAL WATER ASSOCIATION JOINT OPERATING AGREEMENT

December 19, 2000

WHEREAS, an adequate and safe water supply for South King County Regional Water Association (SKCRWA) and its members is vital to both existing citizens and in implementing the long-term comprehensive plans of SKCRWA members; and

WHEREAS, the State and SKCRWA prepared a Coordinated Water System Plan (CWSP) for South King County; and

WHEREAS, projects that provide for the coordinated and cooperative use and operation of supply, transmission, storage, treatment, and pumping facilities to minimize cost, provide for improved water quality, protect the environment, provide for emergency needs, and maximize the best use of the resource is in the best interest of the citizens of the region;

WHEREAS, the current and near-term water needs of the local governments and SKCRWA require steps to establish a cooperative subregional water supply system; and

WHEREAS, the SKCRWA is committed to cooperate toward regional solutions for both emergency and long range water supply needs: and

WHEREAS, the SKCRWA signatory members developed a Joint Operating Agreement in 1995 and revised the Joint Operating Agreement in 1996 and now want to further revise the Agreement.

NOW THEREFORE, the SKCRWA signatory members of this Joint Operating Agreement (JOA), agree as follows:

1. **GENERAL**

- A. The Signatory Members acknowledge the requirement to incorporate land use planning as defined by the Growth Management Act with water supply planning; and
- B. The Signatory Members recognize the benefits of developing a subregional water supply system that will allow the optimum use of surface and groundwater to better manage and protect the area's water resources; and
- C. The Signatory Members will hold an Annual Meeting about September 30th to review the status of this JOA and any Amendments as well as other problems of mutual concern. The specific date, time, and location of the meeting will be set by mutual agreement.

- D. Merger shall mean when two signatory members merge or when a signatory member and a non-signatory member merge.
- E. Termination This agreement shall cease to be binding on or to any signatory member that is not in good standing or whenever a merger occurs.

2. INTENT

- A. The general intent is to create a method for the Signatory Members to cooperatively use certain existing facilities and construct new facilities needed to develop a subregional water system. The Signatory Members may mutually agree by Interlocal Agreement to produce additional water and distribute it within the Subregional Service Area, with or without change to their retail service area.
- B. The JOA provides a framework for joint development of specific projects that may include two or more Participants. Each facility, project, and/or intertie shall be developed under a separate Interlocal Agreement (IA) consistent with this JOA subject to approval by appropriate affected city council and/or water district boards. The specific intent of this JOA is to make provisions for a standardized form to create or expand cooperative agreements to meet the public water supply needs for both emergency and long-term use, and to establish a basis for agreement between Participants for financing, ownership, construction, and operation of mutually beneficial projects required to achieve cooperative objectives. These projects may include common facilities with other Agencies outside the SKCRWA planning area.

Interlocal Agreements (IA) negotiated under the provisions of this JOA shall speak for themselves and should reference the version of the JOA, which is in place at the time that the agreement is reached. It is the intent of the Signatory Members that any Interlocal Agreements negotiated under the JOA would survive the withdrawal of a Signatory Member from the JOA or from the South King County Regional Water Association.

It is further the specific intent of this JOA to preserve Signatory Members' existing water rights and protect the established or planned interest and needs of each Signatory Member with respect to sources of water.

Suggested content for an Interlocal Agreement is shown in Exhibit A.

- C. It is the desire of the Signatory Members that this JOA be incorporated into the South King County CWSP at the next update.
- D. The term "Participant" as used in this JOA shall mean all the signatories of an IA consistent with and implemented subsequent to this JOA.

E. The term "Signatory Members" as used in this JOA shall mean a member, in good standing, of the South King County Regional Water Association who has signed this JOA. Good standing includes but is not limited to being current on all dues to the SKCRWA.

3. SUBREGIONAL SERVICE AREA AND FACILITIES

- A. "Subregional Service Area" shall mean the Signatory Members' Designated Water Service Areas identified in the CWSP or as approved by amendments to the CWSP or as identified in a Signatory Member's approved Comprehensive Water Plan.
- B. "Subregional Facilities" shall mean:
 - (a) that portion of the Participants' sources, interties, transmission, and storage systems required to supply water to the service areas of the Participants or new facilities as defined by a separate IA pursuant to this JOA.
 - (b) those designated capacities within a Participant system as specifically defined in an appropriate IA.
- C. "Facility Ownership". Ownership of the physical facilities that exist on the date of this JOA shall remain with the individual Signatory Members. Unless otherwise agreed to within a specific IA, ownership and operational responsibilities of new facilities shall be based generally on location in designated service areas, with capacity rights defined by appropriate IA.

4. WATER SUPPLY - CAPACITY RIGHTS

- A. <u>Capacity Rights</u> Participants may purchase capacity by IA. Any changes in these capacity rights shall be recognized by an IA, approved by the appropriate affected city councils and/or water district boards.
- B. Additional JOA Participants Other agencies may purchase capacity rights in subregional facilities subject to the provisions of paragraph 4.C. Other agencies who become Signatory Members of the SKCRWA and become Participants in future projects undertaken under this JOA and future IAs will be assessed past costs associated with development of this JOA as specified in Exhibit B.

C. Wholesaling Water -

- a) A Signatory Member may wholesale water through lease or otherwise, delivered through subregional facilities to areas outside of the Signatory Member's Service Area, so long as the other Signatory Members' capacity rights are not negatively impacted. Signatory Members of the SKCRWA agree that, where feasible and mutually beneficial, they will coordinate planning and development of water resources.
- b) Signatory Members further agree that prior to entering into any agreement to deliver long term water supply or construct joint facilities with a non-Signatory Member agency, they will first make a good faith effort to offer such supplies and/or capacities to Signatory Members (provide the right of first refusal). Such offers shall be made on a cost of service basis as established by separate IA. Signatory Members shall have 60 days to respond.
- c) Signatory Members agree that when entering into any agreement to deliver long term water supply or construct joint facilities with a non-Signatory Member agency in accordance with this JOA, they will include and collect for remittance to the SKCRWA a fee for reimbursement of the costs for development of the JOA as specified in Exhibit B.
- d) Regular meetings of the SKCRWA shall be the forum for making Signatory Members aware of discussions regarding water sales and joint projects, however all offers of participation or requests for participation shall be in writing with copies to other Signatory Members.
- D. <u>Conservation</u> All Participants will develop and implement a conservation plan that is consistent with State guidelines. Additional or supplemental conservation requirements beyond basic programs may be included in a specific Interlocal Agreement.
- E. <u>Curtailment</u> In general, curtailment for delivery of "firm water" shall be on a uniform percentage basis for both wholesale and retail customers and curtailment for delivery of "interruptible water" shall be on a "last in first out" basis as determined by the date of formal agreement. Specific curtailment requirements and provisions shall be included in Interlocal Agreements implemented under this JOA.
- F. Quality An objective of the Signatory Members is to maintain the quality of the water in the subregional facilities at or above the quality required by the State drinking water standards. The purchasing Participant will be responsible for ensuring water quality blending analyses and other water quality issues are resolved to their own satisfaction. The Signatory Members may meet periodically to ensure that water quality and operational issues are addressed, and that needed

information is exchanged in a timely fashion. The written results of these meetings will be circulated in a timely manner to all members and participants and reviewed at the annual meeting.

- G. <u>Additional Facilities</u> Projected needs will be identified by the Participants based on the Participant's designated service areas. As five or more years may be needed to bring major new source capacity capabilities on line, five-year and ten-year forecasts are required, and must be updated whenever a Participant becomes aware of any significant change in their forecast demand. These will be discussed jointly as they arise, and reviewed at the annual meeting.
- H. <u>Financing</u> Each Project IA will include pertinent details of financing for that project. Financial participation in existing and additional facilities will be based on each Participant's projected need for each facility, as designated capacity rights.
- I. <u>Cost of Service Charge</u> The Signatory Members and Participants will establish wholesale water sales charges for both emergency and long-term supply that include: (1) capital cost, (2) fixed operating cost, and (3) a variable operating cost based on quantity of water delivered based on actual costs of providing the service.

Fixed and variable operating and maintenance costs payments will be made monthly per meter and use rates. Projected annual rate adjustments and documentation shall be provided at the annual meeting. Any rate increase will be effective beginning January 1, of the following year.

- (1) The Rates and Charges for the capital, operation, and maintenance of the system shall be based on the following:
 - (a) <u>Capital Cost</u> Those construction related costs incurred for Capacity Rights. Capital Costs for facilities contracted solely for a specific project (described in an IA) are allocated based on designated capacity to be purchased.

Capital costs shall include the debt service for each Participant. Such debt service shall be defined as the actual debt service on debt issued for the Participant's proportionate share of capacity rights, or if no debt is issued for the Participant's costs by the financing Participant, the amortized value at the interest rate of the most recent revenue bond issued by the financing Participant over 20 years. However, should all capital costs be paid in full by any Participant purchasing capacity rights prior to the time of the financing Participant incurring the costs, no interest charges shall be assigned to the Participant purchasing capacity rights.

Capital Costs associated with a supplying Participant's construction of their internal water system facilities may be included in the fixed and variable operating costs as appropriate, using cost of service principles, in the same manner as those costs are included in the supplying Participant's customer rate base.

- (b) <u>Fixed Operating Cost</u> The cost of labor, supervision, supplies, utilities, services, taxes, insurance, and all other costs required to operate and maintain the system other than those items included under Variable Operating Cost. The operating cost will include an allocation for renewal and replacement.
- (c) <u>Variable Operating Cost</u> Those costs directly proportionate to the volume of water produced, including chemicals, electric power, and other costs required to meet customer and system needs not included in (a) and (b) above.

(2) <u>Accounting</u>

Subregional facilities accounting shall be documented in accordance with generally accepted accounting practices acceptable to the Participants.

. <u>ADMINISTRATIVE, LEGAL AND OTHER PROVISIONS</u>

- A. Each Signatory Member shall designate in writing their representative responsible for coordination and implementation of the JOA and the subsequent IAs. The designated individuals will be the primary contact for all project approvals and communication and shall prepare and publish a schedule and plan to facilitate the planning, design and day-by-day operation of facilities associated with the subsequent IAs.
- B. Signatory Members in good standing may propose Amendments to this JOA at any time. Signatory Members in good standing shall vote on proposed Amendments at the Annual Meeting. A quorum of Signatory Members present shall approve any Amendments to this JOA prior to their submittal to Signatory Members city councils and/or utility district boards for approval. A Special Meeting of the Signatory Members may be called for the purpose of amending this JOA by two thirds of the Signatory Members in good standing.
- C. A Signatory Member may withdraw from this JOA by providing 120 days notice to other Signatory Members. Notice shall be provided to each Signatory Member in writing and shall include the reason for withdrawal.

- D. Any Signatory Member that withdraws from the SKCRWA also withdraws from this JOA.
- E. This JOA shall remain in full force unless terminated in writing by mutual agreement of all Signatory Members in good standing. Termination of the JOA or withdrawal by any signatory member shall not affect any Interlocal Agreements negotiated under a JOA.
- F. A Signatory Member who merges with any Agency which is not a Signatory Member of this JOA must withdraw from the JOA. The merged agency would then be allowed to reapply for Signatory Membership in the JOA as the merged Agency.

Agency.	
IN WITNESS WHEREOF, the SKCRWA executed by their proper Officers on the _Z	By: Sembles Algoria Title: City of Algoria Date: 8-7-0
Approved As To Form: By: Series Steller	

By: Charles A. Both
Title: Mayor
City of Auburn
Date: September 4, 2001

Attest:

Approved As To Form:

Her Michael Dis

December 19, 2000

	By:
	Title:
	City of Black Diamond
	Date:
Attest:	
By:	
2)	
Approved As To Form:	
Ву:	
Attest: Opy: Approved As To Form: By: C. Vinson Official C. Vinson Official Confidence By: Mayar Title: Mayar City of Kent Date: 4-4-01	
2	_
	By:
	Title:
	Lakehaven Utility District
	Date:
•	
Attest:	
By:	
Approved As To Form:	
By:	

Soos Creek Water and Sewer District Date: Y(Y/0 (Attest: By: Approved As To Form: By:____ Title: (King County Water Distric #111 Date: 4-16-01 Attest: Approved As To Form:

By: Ву: ____ Title: City of Pacific Date: _____ Attest: By:_____ Approved As To Form: By:____

Title: DISTAIL

South King County Regional Water Association Joint Operating Agreement

Exhibit A Check List for Interlocal Agreements

1. Project Title

General

- List of Utilities to be parties to the Interlocal Agreement (IA) and approval of the appropriate city councils and/or water district boards.
- Consistency with the Joint Operating Agreement (JOA).
- Description of need for the project.
- Listing of potential wholesale customers for the water in accordance with Section 4.C of the JOA.
- Recognition of assessment of costs associated with development of JOA in accordance with Section 4.B of the JOA.
- Recognition of right of first refusal to excess capacity of Signatory Members of the South King County Regional Water Association (SKCRWA) in accordance with Section 4.C of the JOA.
- Recognition that capacity and water rights are available to meet the needs of the IA.

3. Description of Project

- Include a drawing (or description) which identifies all the facilities to be considered within
 the IA. Included within the description should be all jointly or solely owned facilities that
 are to be operated or paid for by a party to the IA.
- Description of long term ownership of the facility.
- Identification of the party responsible for operation and/or maintenance of the facility.
- Identification of the party responsible for payment for the design and construction of the facility.

4. Project Costs, Financing, Capacity Rights

- Description of all project costs and the allocation to each party.
- Definition of capacity rights for all facilities.
- Definition of cost sharing for long-term maintenance for each facility.
- Definition of method of reimbursement for moneys expended (if required).
- Description of any applicable latecomer fees or hook-up charges.
- Description of requirements for record keeping and monitoring of costs.

Project Design and Construction Management

- Definition of overall project management responsibilities.
- Definition of design and construction management responsibilities for individual facilities.
- Description of basic periodic meeting schedule for review of project progress.

6. Conditions of Service

- Limitations to source sharing or delivery of water (if any).
- Design criteria for the project facilities.
- Minimum and maximum flow rates and pressures.
- Items specifically excluded from the project.

7. Term of Duration of the Agreement

 Discussion of the length of time the agreement is in effect as well as the method to terminate the agreement and succeeding agencies' obligations.

8. Amendments

- Method by which the agreement could be amended.
- 9. Hold Harmless, Liability Language, etc.

South King County Regional Water Association Joint Operating Agreement

Exhibit B Computation of Charges

Initial Computation based on 8 shares.

Cost to the three participants of IA2.

Covington and Auburn, three share \$ 6,244 WD 111, two shares = \$ 4,163

Final Computation based on 12 shares.

Ultimate use charge

Reimbersement for Development and initial use (to Covington, WD 111, and Auburn)

\$ 16,652	Cost for deve	elopment.	
Covington	WD 111	Aubum	
\$ 8,326 \$ 6,244 \$ 2,081	\$ 8,326 \$ 4,163 \$ 4,163	\$ - \$ 6,244 \$ (6,244)	development cost use charge IA2
\$ 2,081	\$ 4,163	\$ -	recovery charge IA2 (Auburn)
\$ 6,244 \$ 4,163 \$ 2,081	\$ 4,163 \$ 2,775 \$ 1,388	\$ 6,244 \$ 4,163 \$ 2,081	ultimate use charge remaining reimb.
\$ 463 \$ 1,619	\$ 463 \$ 925	\$ 463 \$ 1,619	recovery charge IA3 (Algona) remaining reimb.

REVISED BYLAWS of REGIONAL WATER ASSOCIATION OF SOUTH KING COUNTY

L MEMBERSHIP

A. <u>Regular Members</u>. Governmental Bodies providing water service in South King County are entitled to regular membership in this Corporation, upon approval by the Board of Directors and payment of any then required fees and/or dues.

The term "member" as used in these Bylaws shall mean "regular member" unless otherwise designated.

B. <u>Affiliate Members.</u> Any governmental body, Association of Water Purveyors, water purveyor, individual or business, may become an Affiliate Member upon approval by the Board of Directors and payment of any then required fees and/or dues,

Affiliate Members have no proprietary or other interest in the Corporation; are not entitled to vote: are not entitled to attend meetings as a matter of right: and have no right to participate in any distributions, in dissolution or otherwise, by the Corporation.

Affiliate Members may, with the approval of the Board of Directors, attend any regular meeting and participate in all discussions at any regular meeting.

C. <u>Assignment</u>. Neither regular nor affiliate membership in this Corporation is assignable by the member

II. DIRECTORS

- A. <u>Number</u>. The Articles of Incorporation provide for not less than three nor more than twenty-five Directors. At the present, there shall be as many Directors as there shall be regular members, plus the Alternate Directors provided for herein below. The number of Directors and Alternate Directors may be changed by the membership at any regular meeting or at a special meeting called for that purpose.
- **B.** <u>Qualifications</u>. Directors and Alternate Directors must be elected officials or the designee of members of the Corporation. Each regular member shall be entitled to select one Director and two Alternate Directors provided herein below.
- C. Selection and Term. Directors and Alternate Directors shall normally be selected by the Regular Member prior to the Annual Meeting and serve for a term of one year, or until such time

thereafter as their successors shall be selected by the Regular Member. Notice of selection shall be in a written form satisfactory to the Board of Directors.

- **D.** Alternate Directors. In the absence of a Director at a meeting of the Board of Directors, or in the event that a Director is unavailable or unable to act on any matter between meetings, an Alternate Director representing the same member may attend the meeting and vote and/or act outside a meeting. Members may designate the order in which their Alternate Directors may act. In the absence of such designations it shall be as agreed by that member's Alternate Directors.
- E. <u>Vacancies</u>. The Regular Member in accordance with the Selection requirements of these Bylaws shall fill any vacancies occurring among its Directors and Alternate Directors.
- **F.** Board of Directors. The Director from each Regular Member, or in the absence of the Director, the Alternate Director shall constitute the Board of Directors of the Corporation.

No one need look beyond the fact that a vote or act was performed by either a Director or an Alternate Director. All such votes and actions shall be binding on the Corporation and may be relied upon as the act of the Board of Directors and the Corporation by all persons dealing with the Corporation.

G. <u>Compensation</u>. Directors shall not receive any compensation for acting as such but may be reimbursed for expenses incurred in the business of the Corporation, provided the expenses were approved in advance by the Board of Directors or Executive Committee.

III. AFFILIATE DELEGATES

- A. Affiliate Delegates. Each Affiliate Member shall be entitled to an Affiliate Delegate and an Alternate Affiliate Delegate.
- A. <u>Qualifications</u>. Affiliate Delegates and Alternate Affiliate Delegates may be elected officials of or a designee of the Affiliate Member.
- C. Selection <u>and Term</u>. Affiliate Delegates and Alternate Affiliate Delegates shall be selected by the Affiliate Member and serve until such time thereafter as their successors shall be selected by the Affiliate Member. Notice of selection shall be in a written form satisfactory to the Board of Directors.
- D. <u>Vacancies</u>. The Affiliate Member in accordance with the selection requirements of these Bylaws shall fill any vacancies occurring among its Affiliate Delegates and Alternate Affiliate Delegates.

F. <u>Compensation</u>. Affiliate Delegates and Alternate Affiliate Delegates shall not receive any compensation from the Corporation.

IV. OFFICERS AND COMMITTEES

- A. <u>Number</u>. The Officers of the Corporation shall be a President, Vice- President, Secretary and a Treasurer. In addition to the foregoing, the Board of Directors may elect such assistant or other Officers as the Board, from time to time, deems appropriate.
- **B.** <u>Term.</u> Officers shall be elected by the Board of Directors at the Annual Meeting of the Board of Directors, and shall serve for a term of one year, commencing on their election, or until such time as their successors are elected.
- C. <u>Vacancies</u>. The Board of Directors may fill a vacancy in any office for the un-expired portion of the term.
- **D.** <u>Qualifications</u>. No person may serve as an Officer of the Corporation unless he/she is also a Director or Alternate Director.
- E. <u>President</u>. The President shall be the managing Executive Officer of the Corporation and shall be subject to the ultimate authority of the Board of Directors and/or any Executive or other committees appointed by it, have general charge of the business of the Corporation.

The President shall, together with the Secretary, execute all documents and instruments which are required in the ordinary course of the Corporation's business or which are required by law to be executed by the Corporation.

- F. <u>Vice-President</u>. In the absence of the President, or his/her inability or refusal to act, the Vice-President shall perform the duties of the President, and, when so acting, shall have all the powers of and be subject to all of the restrictions upon the President.
- G. Secretary. The Secretary shall, in person or through any Assistant Secretary or authorized employee: (a) Keep the minutes of all meetings; (b) give all notices which must be given under these Bylaws or by statute: (c) be custodian of the corporate records and seal; and (d) in general, perform all of the duties incident to the office of Secretary and such other duties as, from time to time, may be assigned to him/her by the President or by the Board of Directors.
- H. <u>Treasurer</u>. The Treasurer shall, in person or through any Assistant Treasurer or authorized employee: (a) Have charge and custody of all funds and securities of the Corporation; (b) deposit all corporate moneys in the name of the Corporation in such Banks as shall be selected by the Board Of Directors: and (c) in general, perform all of the duties incident to the office of Treasurer

and such other duties as, from time to time, may be assigned to him/her by the President or by the Board of Directors.

- I. <u>Assistant Secretary and Assistant Treasurer</u>. Any Assistant Secretary or Assistant Treasurer, when elected, may act in the absence, death, inability or refusal to act, of the Secretary or Treasurer, respectively. In addition, any Assistant Secretary or Treasurer shall perform such duties as shall be assigned to him/her, from time to time, by the Board of Directors or the Secretary or Treasurer.
- J. Executive Committee. The President, Vice-President, Secretary and Treasurer shall constitute the Executive Committee of the Corporation and shall be allowed to act on behalf of the Board of Directors whenever action is required and it is not practicable for the Board of Directors to call a meeting and act. Any action of the Executive Committee shall require the votes of three of the Executive Committee members. Actions taken by the Executive Committee shall be brought to the next Regular Meeting of the Board of Directors for ratification.
- K. <u>Audit Committee.</u> The President shall annually appoint an Audit Committee. The Audit Committee shall review the financial condition and financial transactions of the Corporation at the end of each calendar year. The Audit Committee shall include the Treasurer, as chair, and at least two additional Delegates or Alternate Delegates from different Members. The Audit Committee shall report its findings to a Regular Meeting of the Board of Directors.
- K. <u>Evaluation Committee</u>. The President shall annually appoint an Evaluation Committee. The Evaluation Committee shall complete a performance review and evaluation of any employees of the Corporation. Employee reviews and evaluations shall normally be completed by December 1, and shall generally cover the previous 12 months. The President shall serve as chair of the Evaluation Committee and the committee shall include at least two additional Delegates or Alternate Delegates from different Members. The Evaluation Committee shall report its findings to a Regular Meeting of the Board of Directors.
- L. Other Committees. The President, with the approval of the Board of Directors, may establish other committees as may be appropriate to conduct the business of the Corporation. The President shall appoint the members of and the chair for any committee established under this paragraph. Committees shall consist of at least three Delegates or Alternate Delegates from different Members. Affiliate Members may serve on committees established under this paragraph, with full participation in discussion and other committee work, however Affiliate Members shall have no vote in the committee. Committees established under this paragraph shall terminate in 12 months from the time of formation, unless reestablished by the Board of Directors. Committees formed under this paragraph shall report to the Board of Directors at a Regular Meeting of the Board of Directors.

V. MEETINGS

- A. Regular Meetings. The Board of Directors shall generally meet monthly at a regularly scheduled time and place as necessary to conduct the business of the Corporation. The Board of Directors may change the time and place of Regular Meetings or cancel a Regular Meeting as necessary to meet the needs of the Directors and the Corporation. The Directors shall be notified in writing of the time and place of regular meetings. Upon each Director being so notified, no further notice of regular meetings need be given unless the time and place thereof is changed.
- **B.** Annual Meeting. The Annual Meeting of the Board of Directors shall be the January Regular Meeting of the Board of Directors.
- C. Joint Operating Agreement Annual Meeting. The Regular Members who are signatory members of the Joint Operating Agreement shall normally hold a Joint Operating Agreement Annual Meeting in September. The Board of Directors shall set the time and place for the Joint Operating Agreement Annual Meeting and the President shall preside. All business of the Joint Operating Agreement Annual Meeting shall be conducted with the same procedures and manner as other meetings of the Corporation, except as required by the terms of the Joint Operating Agreement. The Directors of signatory members of the Board of Directors shall be notified in writing of the time and place of the Joint Operating Agreement. Upon each Director being so notified, no further notice of regular meetings need be given unless the time and place thereof is changed.
- **D.** Special Meetings. Special meetings of the Board of Directors may be called at any time by or at the request of the President or any three Directors. The President or Directors calling the special meeting shall give notice of the purpose thereof to the Corporation. The Secretary shall then fix the date, place and time of the meeting and give notice thereof, and of its purpose to all of the Directors at least five days in advance of the meeting.
- E. <u>Quorum</u>. A majority of the Regular Members of the Corporation, present in person or by proxy shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

The vote of a majority of the Regular Members present, in person or by proxy, shall be necessary for the adoption of any matters unless a greater percentage is required by state law.

F. <u>Informal Action</u>. Any action which must or might be taken at a meeting of the Board of Directors, or any committee thereof, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors or committee members as the case may be.

VI. VOTING

- A. <u>General</u>. Each Regular Member shall be entitled to one vote on each matter submitted to a vote at a meeting of the Corporation.
- **B.** <u>Proxies</u>. Regular Members may vote in person or by proxy. A proxy, to be valid, must be in writing; signed by the member; and submitted to the Corporation prior to voting. No proxy shall be valid after thirteen months from the date of its execution, unless otherwise provided in the proxy
- C. <u>Mail</u> Voting. At the discretion of the Board of Directors, voting may be conducted by mail. In such case, a written ballot shall be sent to each Regular Member at least twenty days in advance of the date for canvass of the votes. The written ballot shall contain and describe the issues or persons to be voted upon and shall provide space for the Regular Member to vote for or against the issue or for the candidates of his or her choice.

VII. CORPORATION FUNDS

- A. <u>Deposits</u>. All funds of the Corporation, other than a reasonable amount for petty cash, shall be deposited, in the name of the Corporation, in such banks or other depositories as the Board of Directors shall select.
- **B.** Checks. All disbursements by the Corporation, other than small amounts from petty cash, shall be by check, drawn direct to the ultimate payees and signed by at least two Directors of the Corporation.

VIII. EMPLOYEES

- A. <u>Employees</u>. The Board of Directors may employ or appoint such organizations and persons, as it deems appropriate, and shall establish or approve salaries and/or other charges for such services. Employees shall not be elected or appointed officials, or employees of any regular member entity, and shall serve at the will of the Board of Directors. The Regional Water Association of South King County is an at will employer.
- B. Annual Review. Annually, the Board of Directors, with the assistance of the Evaluation Committee, shall review the performance and compensation of any employees of the Corporation.

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IX. MEMBER AGREEMENTS

- A. Member Agreements. From time to time, the Board of Directors may offer member agreements to members for consideration and or participation. Approval or participation in any agreement so offered shall not be a condition of membership in the Corporation.
- B. Joint Operating Agreement. The South King County Regional Water Association Joint Operating Agreement is a Member Agreement as defined in these Bylaws. As such, participation in the Joint Operating Agreement is not a condition of membership in the Corporation.

X. AMENDMENTS

The Board of Directors, may adopt new Bylaws, or may alter, amend or repeal these Bylaws, at a Regular Meeting, or at a Special Meeting, provided such meeting is held with proper notice as required by these Bylaws or through the mail voting procedures of the Corporation.

XII. DUES AND CHARGES

Membership fees, dues and/or other charges; the time for payment thereof; and procedures in the event of delinquency; shall be as established, from time to time, by the Board of Directors.

XIL CONTRACTS, LOANS AND CHECKS

- A. <u>Contracts</u>. The Board of Directors may authorize any Officer or Officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.
- A. <u>Loans</u>. No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors, or the Executive Committee, if such authority is delegated it by the Board of Directors. Such authority when granted may be general or confined to specific instances.
- C. <u>Loans to Directors and Officers</u>. The Corporation shall make no loans to its Directors or Officers. Any director who votes for or assents to the making of a loan to a Director or Officer of the Corporation, and any Officer or Officers participating in the making of such loan, shall be jointly and severally liable to the Corporation for the amount of such loan until repayment thereof.

XIII. SEAL

The Board of Directors shall provide for a corporate seal, which shall have inscribed thereon the name of the Corporation and the words. "State of Washington', and "Corporate Seal". Until changed by the Board of Directors, the Corporations seal shall be that affixed to this page.

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ADOPTED this 2/	day of Lanceary, 2002.	
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		DIRECTOR

RESOLUTION NO. 3374

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, AND RESOLUTION NO. 3358 REPEALING WASHINGTON, **RESOLUTION** AUTHORIZATION THEREFOR AND APPROVING THIS NO.3374 AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN EMERGENCY WATER SYSTEM INTERTIE AGREEMENT BETWEEN THE CITY OF AUBURN AND THE CITY OF KENT.

WHEREAS, Resolution No. 3358 authorizing the execution of an Emergency Water System Intertie Agreement was approved by the City Council on June 18, 2001; and

WHEREAS, the Emergency Water System Intertie Agreement attached as Exhibit "A" to Resolution No. 3358 was a draft of the final Emergency Water System Intertie Agreement agreed to by Auburn and Kent; and

WHEREAS, changes were made by both parties to the draft agreement attached to Resolution No. 3358 that were intended to be in the agreement executed by both parties; and

WHEREAS, pursuant to RCW 35A.11.040, Auburn and Kent have legal authority to exercise their powers and perform any of their functions as set forth in RCW 39.34; and

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, Auburn and Kent have legal authority to cooperate with other localities on the basis of mutual advantage and provision of services; and

WHEREAS, the City of Auburn and the City of Kent currently have an emergency water system intertie; and

WHEREAS, the existing intertie station is going to be removed and relocated as part of the South 277th Street Improvement project; and

WHEREAS, a temporary emergency water system intertie will be constructed and available for use during the South 277th Street Improvement project; and

WHEREAS, an agreement outlining the design, construction and operation of the temporary and permanent emergency water system intertie is needed.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH **RESOLVES THAT:**

Section 1. Pursuant to RCW 39.34, the Interlocal Cooperation Act, Auburn and Kent have legal authority to cooperate with other localities on the basis of mutual advantage and provision of services.

The Mayor and City Clerk of the City of Auburn are herewith Section 2. authorized to execute the Emergency Water System Intertie Agreement which was agreed to between the City and the City of Kent. A copy of said Agreement is attached hereto, denominated as Exhibit "A" and made a part hereof as though set forth in full herein.

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

DATED this was day of august, 2001.

CITY OF AUBURN

CHARLES A. BOOTH **MAYOR**

ATTEST:

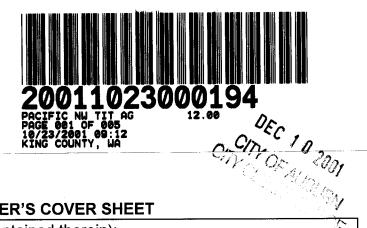
Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Michael J. Reynolds,

City Attorney



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

N/A Government Interlocal

☐ Assessor Tax # not yet assigned

RECORDER'S COVER SHEET

Document Title(s) (or transactions contained therein):

1. EMERGENCY WATER SYSTEM INTER	RTIE AGREEMENT (RES 3374)
Reference Number(s) of Documents assigne	d or released: .5112.
Additional reference #'s on page of document	WIZ95-12
Grantor(s) (Last name first, then first name and	d initials)
1. Auburn, City of	Said accuments; were rest to make the m
	recommedation only it has not been
Grantee: (Last name first) 1. Kent, City of	reaction is a proper speculion of
Legal Description (abbreviated: i.e. lot, block	, plat or section, township, range)
N/A Government Interlocal	
Additional legal is on page of document.	
Assessor's Property Tax Parcel/Account Nu	ımber

EMERGENCY WATER SYSTEM INTERTIE AGREEMENT Kent/Auburn Intertie Agreement No. 1

THIS AGREEMENT made and entered into by and between the City of Auburn, hereinafter referred to as Auburn, and, the City of Kent, hereinafter referred to as Kent, for the purposes of planning, designing, constructing, maintaining, and operating an emergency system intertie between the respective parties,

WITNESSETH:

WHEREAS, both Cities have water facilities in the vicinity, and

WHEREAS, both Cities can increase fire protection and emergency water supply reliability for their customers, and

WHEREAS, the Cities are willing to provide the necessary services to increase fire fighting and emergency supply reliability upon the terms and conditions set forth herein,

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

- 1. The emergency water system intertie is intended to be operated manually as a two way emergency supply between the Auburn and Kent Systems. The intertie facility shall be located near South 277th Street at the Water Service Area Boundaries between the two cities. An existing intertie located at B Street NE and South 277th Street will be replaced with a temporary metering station and eventually a permanent metering station. Final location and configuration of the facilities shall be determined at the time of final design.
- 2. The emergency water system intertie shall be operated only in the event of an emergency. For purposes of this agreement, an emergency shall be defined as resulting from a water shortage, a major water line break, fire demand, contamination to the water supply system, mechanical equipment failure, electrical equipment failure or Puget Sound Energy facility failure, or any other agreed upon emergency within the water supply system.
- 3. Auburn has acquired the right of way for the metering station and Kent will design and administer the contract for the construction of the temporary facilities within the right of way acquired by the City of Auburn. The permanent facilities will be constructed as part of the South 277th Street Improvement Project. All of the facilities will be designed and constructed in accordance with reasonably accepted water utility standards for similar municipal water utilities. Auburn will own and maintain the piping, interior

equipment, emergency meter and interior appurtenances, and all piping up to the Kent side of the vault for both the temporary and permanent metering stations.

- 4. Upon completion of construction, Auburn will transfer ownership of all exterior appurtenances, and all piping which is located on the Kent side of the vault, to Kent. Kent will own and maintain the exterior appurtenances and all piping on Kent's side of the vault.
- Each City will each have unlimited access to the vault via a dual padlock or ownership of keys to the vault.
- 6. Each City will operate the respective normally locked valve inside of the vault. Auburn will solely unlock and operate the locked valve on Auburn's side of the meter and Kent will solely unlock and operate the locked valve on Kent's side of the meter.
- 7. The procedure for operating the intertie in the event of such emergency shall be as follows:
 - A. Each City shall determine that an emergency of sufficient magnitude has occurred which warrants the need to request that the intertie be activated.
 - B. The Public Works Director or appointed person or authorized personnel shall provide a verbal request to the other City's Public Works Director or appointed person. Upon agreement that an emergency exists which shall allow for the intertie to be opened, the intertie will be activated as soon as reasonably possible. Both Cities' personnel shall be present at the vault to open the valves to activate the facility.
 - C. The City requesting the activation shall provide a written confirmation of the request not less than 24 hours after the verbal request, or on the first day of normal business after the verbal request.
 - D. The intertie shall remain activated until the City requesting activation determines that the need for activation of the emergency intertie has ceased and shall request in writing to close the intertie.
 - E. In case of emergency or whenever the public health, safety, or the equitable distribution of water so demands, the City supplying the water may change, reduce or limit the time for or temporarily discontinue the supply of water without notice; water service may be temporarily interrupted, limited for purposes of making repairs,

extensions or doing other necessary work; and the City supplying the water shall not be responsible for any damage resulting from interruption, change or failure of the water supply, and the City receiving the water (City requesting activation) shall save and hold harmless the City supplying the water from any loss, damages or suites to or by customers of the City receiving the water resulting from interruption, change or failure of water supply provided by this Agreement, except damages arising out of the City supplying the water's negligence. Prior to a planned interruption or limiting of service, the City supplying the water will notify the City receiving the water of such not less than three days prior to the service disruption. The City supplying the water agrees to use best efforts and reasonable diligence to notify the City receiving the water as soon after it becomes aware of the need for service disruption and further will, to the extent practical, limit the service disruption to daylight hours.

- 8. Auburn shall read the meter upon activation and upon deactivation of the intertie. The city supplying the water shall verify the information and shall then calculate and invoice the other City for the water used during the request. The invoice shall be calculated by the total water used during the event. The rate shall be at the current Auburn or Kent Wholesale Rate depending on which city is supplying the water. This shall be complete payment for the water, labor, and administration of activating the intertie.
- 9. The total project costs shall include costs for consulting design service, and construction. These costs shall be paid for by the City of Kent. The project costs shall be reviewed and agreed upon by Public Work Directors of both Cities at the beginning and end of each stage described above. Each City is responsible for associated staff, administration and legal costs associated with the implementation of the agreement.
- 10. To the extent allowed by law, the City of Kent shall defend, indemnify, and hold harmless the City of Auburn, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs, expenses of litigation, attorney's fees, penalties and damages of whatsoever kind or nature arising out of or in connection with or incident to an act or omission of the City of Kent, its employees, agents, and contractors in the performance of the City of Kent's obligations under the Agreement and this Amendment. This indemnification provision shall include, but is not limited to, all claims against the City of Auburn by an employee or former employee of the City of Kent or its contractors and, as to such claims, the City of Kent expressly waives all immunity and limitation of liability under Title 51 RCW.

To the extent allowed by law, the City of Auburn shall defend, indemnify and hold harmless the City of Kent, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs, expenses of litigation, attorney's fees, penalties, and damages or whatsoever kind or nature arising our of, in connection with or incident to an act or omission of the City of Auburn, its employees, agents, and contractors in the performance of the City of Auburn's obligations under this Agreement. This indemnification obligation shall include, but is not limited to, all claims against the City of Kent by an employee or former employee of the City of Auburn or its contractors and, as to such claims, the City of Auburn expressly waives all immunity and limitation of liability under Title 51 RCW.

11. This Agreement shall remain in force until terminated by either party hereto upon 60-days written notice to the other party. Any project costs, incurred up to the date of such notice, as described herein, shall be shared in accordance with the provisions of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals.

CITY OF AUBURN King County, Washington

By: Charles A Bath 08-07-0,
Mayor Date

Approved as to form:

City Attorney Date

CITY OF KENT King County, Washing®

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Mayor D

Date 8-29-01

Approved as to form:

By: ________

8-29-01

r.City Attorney Sinum Stocktol Date

H:\WQWATER UTILITY\INTERTIES\KENT\KENT EIA - FINAL.DOC

RESOLUTION NO. 3 5 3 4

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A REVISED WATER SYSTEM INTERTIE AGREEMENT NO. 3A BETWEEN THE CITY OF AUBURN AND THE CITY OF ALGONA.

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, Auburn and Algona have legal authority to cooperate with other localities on the basis of mutual advantage and provision of services; and

WHEREAS, the City of Auburn and the City of Algona executed Interlocal Agreement No. 3 (IA No. 3), dated August 19, 1996; and

WHEREAS, information and exhibits in IA No. 3 need to be updated to reflect current status; and

WHEREAS, the Algona well and water right were not completely conveyed by Algona to Auburn as intended under IA No. 3; and

WHEREAS, it is the desire of Algona and Auburn to finalize the IA No. 3 agreement with respect to facilities constructed and agree on a method of payment for constructed and proposed facilities.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH **RESOLVES THAT:**

Section 1. Pursuant to RCW 39.34, the Interlocal Cooperation Act,

Auburn and Algona have legal authority to cooperate with other localities on the basis of mutual advantage and provision of services.

Section 2. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute a revised Water System Intertie Agreement No. 3A between the City and the City of Algona. A copy of said Agreement is attached hereto, denominated as Exhibit "1" and made a part hereof as though set forth in full herein.

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

DATED this 21 day of October, 2002.

CITY OF AUBURN

PETER B. LEWIS MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Danuer B. Heid, City Attorney

Oily Allomey



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

RECORDER'S COVER SHEET

RECORDER 3 COVER	
Document Title(s) (or transactions contained there	in): 31/49
Interlocal Agreement	PNWT W4881-12
Reference Number(s) of Documents assigned or Additional reference #'s on page of document	released:
Grantor(s)/Borrower(s) (Last name first, then first a Auburn, City of	,
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:	THE STATE OF THE PROPERTY AND THE STATE OF T
Grantee/Assignee/Beneficiary: (Last name first) Algona, City of	10 TO MO A SEE SHE SHE WARRANTEN SHE
Legal Description (abbreviated: i.e. lot, block, plat	or section, township, range)
PER RCW 39.34	
☐ Additional legal is on page of document.	
Assessor's Property Tax Parcel/Account Number	er
N/A	
☐ Assessor Tax # not yet assigned	

WATER SYSTEM INTERTIE AGREEMENT Algona/Auburn Intertie Agreement No. 3A

THIS AGREEMENT made and entered into by and between the City of Auburn, hereinafter referred to as "Auburn", and, the City of Algona, hereinafter referred to as "Algona", for the purposes of modifying Interlocal Agreement 3 between Algona and Auburn and establishing a payment schedule for the system intertie between the respective parties,

WITNESSETH:

WHEREAS, both Cities have executed Interlocal Agreement 3 (IA#3) for the Algona Intertie Project dated August 19, 1996; and

WHEREAS, both Cities agreed that the following facilities were to be built and funded in part or in whole by Algona as a part of IA#3:

- 1. Five (5) Meter Stations
- 2. A Future Reservoir in Lakeland Hills
- 3. Wells 6 and 7; and

WHEREAS, this agreement identifies one time capital facilities charges for the above referenced projects that serve to increase the capacity of service to the City of Algona; and

WHEREAS, Algona agreed to deed over its primary Water Right(s) (instantaneous flow rate (Qi) of 500 gpm, annual flow rate (Qa) of 175 acre feet per year), well facilities and well property protection zone easement to Auburn in exchange for Auburn providing a portion of the Algona long term water supply; and

WHEREAS, the Cities agreed to terminate a number of preexisting agreements; and

WHEREAS, Algona agreed to implement a water conservation program consistent with Auburn's conservation program; and

WHEREAS, Algona agreed to maintain its 100,000 gallons of system storage, participate in an additional 100,000 gallons of storage in the Auburn system or provide for the storage otherwise; and

WHEREAS, Algona granted Auburn permission to construct, own, operate, maintain, repair and replace Auburn water facilities within Algona right of way at Auburn expense; and

WHEREAS, the Boeing Company "Welded Duct Facility" was transferred to Algona as a direct service customer and the existing meter was converted to a master meter; and

WHEREAS, a 180,000 gallon share of the IA#3 proposed 1.7 million gallon Lakeland Hills Reservoir was to be financed by Algona in accordance with the Algona January 1997 Water

System Plan and with Auburn storage criteria in accordance with the schedule contained in Exhibit D of IA#3; and

WHEREAS, Auburn agreed to provide Algona up to 525,000 gallons of average day demand (ADD) and 1,114,000 gallons of maximum day demand (MDD) through 2014; and

WHEREAS, the estimated project costs were shown in Exhibit D of IA#3 and those estimated costs were understated; and

WHEREAS, the Algona City well and associated water rights were not completely conveyed by Algona to Auburn as intended under IA#3, and

WHEREAS, it is the desire of Algona and Auburn to finalize the IA#3 agreement with respect to facilities constructed and agree on a method of payment for constructed and proposed facilities

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

In order to provide for the construction and operation of water supply facilities, piping and meters for a water supply intertie, and reservoir capacity, all between Auburn and Algona, the Participants mutually agree:

- 1. Interlocal Agreement 3 (IA#3) for the Algona Intertie Project between the City of Algona and the City of Auburn, dated August 19, 1996 and adopted by City of Auburn Resolution No. 2770 is hereby superceded by this Agreement.
- 2. Algona shall convey to Auburn Algona's City well and any and all associated water rights by Bill of Sale, included as Exhibit F. The well location is depicted on Exhibit A. In addition, Algona shall convey a Well Site Easement included as Exhibit G, and Access Easement included as Exhibit H for the aforementioned well. All costs for said conveyances will be included within the costs of projects planned under this Agreement. In event of future well abandonment by Auburn, any and all related easements shall be vacated by Auburn, and Algona and others shall no longer be bound thereby.
- 3. Algona shall have and implement a conservation program. The conservation program shall, at a minimum, be consistent with Auburn's conservation program and include field testing for leak detection, repair of leaks and public information actions equal to Auburn's public information actions. Algona's water conservation plan shall be included in the 2002 Algona Water System Plan.
- 4. So long as it continues to purchase wholesale water from Auburn, Algona shall continue to maintain and provide no less than the existing storage in its 100,000 gallon reservoir in its westerly service area. Alternately, Algona may elect to increase participation by 100,000 gallons within the future Auburn reservoir per Exhibit B herein, or acquire storage otherwise (such as

from Lakehaven Utility District) and terminate the continued operation of the existing reservoir in its westerly service area.

- 5. Algona hereby grants Auburn the right to construct, own, operate, maintain, repair, and replace Auburn's municipal water system including pipes, fire hydrants, valves, meters, and other appurtenances located within Algona right-of-way as shown on Exhibit A, in perpetuity per the terms and conditions herein.
 - 5.1. Auburn shall provide to Algona copies of available record drawings showing the location of Auburn's water system within Algona right-of-way.
 - 5.2. Except for the normal operation of Auburn's water system, Auburn shall notify Algona prior to any major waterline improvements or replacements which may interfere with or disrupt any other utilities and/or passage of traffic within Algona. Algona shall notify Auburn prior to any street or other utility improvement which may interfere or disrupt Auburn's water system.
 - 5.3. Auburn shall be responsible to pay for costs associated with improvements to Auburn's water system including necessary street patches. In the event that Algona constructs any street improvements on those rights-of-way containing Auburn's water system, Auburn shall be responsible to adjust all water system appurtenances to finish grade, including lowering or raising said pipelines at conflict with Algona improvements.
- 6. Algona agrees to financially participate in the supplemental supply development of a portion of Auburn's Well # 6 and Well # 7, in accordance with Exhibit D.
- 7. This Agreement shall include construction and operation of up to five individual master meter stations. Three master meter stations, including the one currently serving the Boeing "Welded Duct Facility", and two installed under IA#3 are as shown on Exhibit A. The remaining two meter stations will be located and constructed at the discretion of Algona. For adequate water distribution to be obtained, it may also be necessary for Algona to construct additional piping and connections, at its own expense.
- 8. Algona agrees to transfer title to Auburn for any water lines between existing master meter stations and the existing Auburn mains. Any piping between future master meter stations and Auburn mains will be similarly transferred by Algona to Auburn. Title will be transferred with a bill of sale and the water pipe will be regulated under Paragraphs 5 and 13 of this Agreement.
- 9. This Agreement shall include future construction of a reservoir by Auburn within the Lakeland Hills development area within Pierce County, Washington. The volume of the new reservoir is presently estimated to be approximately 2.65 million gallons, and this capacity is to be shared with Algona. Financial participation is to be based on a capacity percentage basis by any and all municipalities sharing in the capacity, whether the actual storage volume usage for

any such municipality is directly derived from the reservoir or not. Algona's capacity shall be 180,000 gallons, exclusive of the provision of Paragraph 4 of this Agreement.

10. Algona projects the need for supply source in the following quantities:

Year	Average Daily Demand (mgd)	Maximum Daily Demand (mgd)
2004	0.457	0.945
2009	0.491	1.029
2014	0.525	1.114

- 11. Additional water supply may be available as mutually agreed to in writing by the Auburn City Council and the Algona City Council.
- 12. Respective facility ownership, capacity rights, and responsibility for operation, maintenance, and renewal and/or replacement (r/r) are as specifically described in Exhibit B. Operational parameters shall be as specifically defined in Exhibit C.
- 13. Distribution water pipelines within the city limits of a Participant shall be owned and the responsibility of that Participant, with the exception of Auburn facilities specifically identified on Exhibit A, and permitted by Paragraph 5.
- 14. Retail customers whose property lies within the city limits of a Participant shall be the retail customers of that Participant.
- 15. For Auburn facilities within Algona, as specifically identified on Exhibit A, Algona hereby grants a franchise to Auburn.
- 16. Auburn shall design, construct and maintain its facilities constructed under this Agreement in accordance with the design standards described in the 2001 Auburn Comprehensive Water Plan, and the updates thereto.
- 17. Both Participants shall exercise good faith and use best efforts in estimating project costs. However, the foregoing notwithstanding, each Participant shall be responsible for and shall pay for one hundred percent (100%) of its actual, proportionate share of the project costs, regardless of the estimate. The project costs are estimated as shown in Exhibit D. The Participants shall maintain individual cost records of their expenses for the project. Auburn will maintain overall coordinated project cost records. Algona has the right to review the design of each project in Exhibit D, prior to the project being bid. Auburn shall allow sufficient time in the project schedule for this review. Should potential cost savings to the design be identified that are not in conflict with accepted industry design standards, Algona and Auburn shall work in good faith and cooperatively to incorporate the potential cost savings into the final design.

- 18. The Participants shall fully finance and pay for their proportionate share of cost as shown in Exhibit D. Algona shall deposit funds with Auburn to perform the project work for the proposed facilities in accordance with the schedule shown in Exhibit E. As future actual costs of projects in Exhibit D are determined, Auburn will notify Algona of such updates and the authorized representatives will execute an update to Exhibit D which will supercede all prior dated versions of Exhibit D.
- 19. Auburn has prepared a cost of service study to determine the cost of service to its customers. A customer classification for "wholesale-Algona" has been created, and rates for service charges are based on a rate study for this customer classification. Auburn will regularly update the cost of service analysis. Wholesale water rates to Algona will be based on costs of providing the service.
- 20. For purposes of this Agreement, each Participant identifies its authorized representative as the "Mayor" of Algona and as the "City Engineer" of Auburn.
- 21. The Participants shall meet as needed for project coordination.
- 22. The Participants shall be responsible for design, construction management, and commissioning of all facilities to be constructed in accordance with ownership of the facility. Responsibilities may be assigned otherwise by agreement of the Participants' authorized representatives.
- 23. It is acknowledged and agreed that in the event Auburn experiences any system failure or decreased capacity for any reason, the supply to Algona may be curtailed to an equal percentage of use as Auburn's curtailment is implemented. Such curtailment shall be imposed by Algona on Algona retail customers immediately and simultaneously as such curtailment is imposed by Auburn on Auburn retail customers.
- 24. It is the intent of Auburn to provide the water described in Paragraph 10 whenever it is available subject to the limitations described in Paragraph 23. Auburn shall use reasonable diligence and best efforts to provide immediate notice in the event it becomes aware that it may not be able to fulfill the requirements of Paragraph 10 for any reason.
- 25. Auburn possesses the short-term (approximately five (5) years) capacity to meet the storage requirements for Algona. Long-term storage requirements for Algona shall be met by Algona financial participation within the next increment of storage to be constructed by Auburn. Algona's minimum financial participation shall provide for construction of storage volume capacity of 180,000 gallons, inclusive of standby, equalization, and fire protection volume storage. Such 180,000 gallon capacity is in addition to Algona's existing 100,000 gallon reservoir storage in its westerly service area.
- 26. Algona's water supply needs above the 0.525 mgd average daily demand, and the 1.114 mgd maximum daily demand, both identified in Paragraph 10 will be dependent upon negotiation of an amendment to this Agreement.

- 27. This Agreement shall remain in full force unless terminated by mutual agreement of the Participants.
- 28. This Agreement may be amended only in writing by approval signed by the Participants.
- 29. The authorized representatives shall have authority to update Exhibits attached hereto. The Exhibits shall be updated and/or revised only upon written agreement signed by the Participants' authorized representatives. Updates must be ratified by each Participant's City Council.
- 30. Algona agrees to indemnify, defend and hold harmless Auburn, its officers, directors, employees and agents, and their successors and assigns, from any and all costs or claims arising out of or in any way resulting from Algona's default, failure of performance, or negligent conduct associated with this Agreement. It is further agreed that Auburn shall provide water to Algona consistent with its provision of water to all of its retail water customers, and the failure of the Auburn water system to deliver flow to Algona, in whole or in part, as described in this Agreement, so long as Auburn is providing water to Algona consistent with its provision of water to the rest of its retail water customers, and consistent herewith, shall not give rise to an action against Auburn, and Algona agrees to indemnify, defend and hold harmless Auburn, its officers, directors, employees and agents, and their successors and assigns, from any and all costs or claims arising out of or in any way resulting from any such failure of the Auburn water system to deliver flow to Algona, in whole or in part. This indemnification provision shall include, but is not limited to, all claims against Auburn by an employee or former employee of Algona or their contractors and, as to such claims, Algona expressly waives all immunity and limitation of liability under Title 51 RCW.

Auburn agrees to indemnify, defend and hold harmless Algona, their officers, directors, employees and agents, and their successors and assigns, from any and all costs or claims arising out of or in any way resulting from Auburn's default, or negligent conduct associated with this Agreement. This indemnification provision shall include, but is not limited to, all claims against Algona by an employee or former employee of Auburn or its contractors and, as to such claims, Auburn expressly waives all immunity and limitation of liability under Title 51 RCW.

31. The parties shall make good faith efforts to resolve by informal discussion any dispute arising under or in connection with this Agreement. If at any time either party to this Agreement determines that such informal discussions will not result in a resolution of the dispute, such party may request formal discussion by both parties. If formal discussion by the parties does not resolve the dispute, a settlement conference shall be held within thirty (30) days of the unsuccessful resolution meeting. The settlement conference will be held at the Seattle office of Judicial Arbitration and Mediation Services, Inc. ("JAMS"). The complaining party must contact JAMS to schedule the conference. The parties may agree on a retired judge from the JAMS panel. If they are unable to agree, JAMS will provide a list of three available judges and each party may strike one. The remaining judge will serve as the mediator at the settlement conference.

32. If any provision of this Agreement is invalid or unenforceable the remaining provisions shall remain in force and effect.

IN WITNESS WHEREOF, the Participants hereto have caused this Agreement to be executed by their proper Officers on the date shown below.

City of Auburn

Its: Mayor

Date: _____

Attest by:

Approved as to Form by:

City of Algona

By: Slambulla

Its: <u>Mayoe</u>

Date: 11-6-02

Attest by:

Approved as to Form by:

Pa

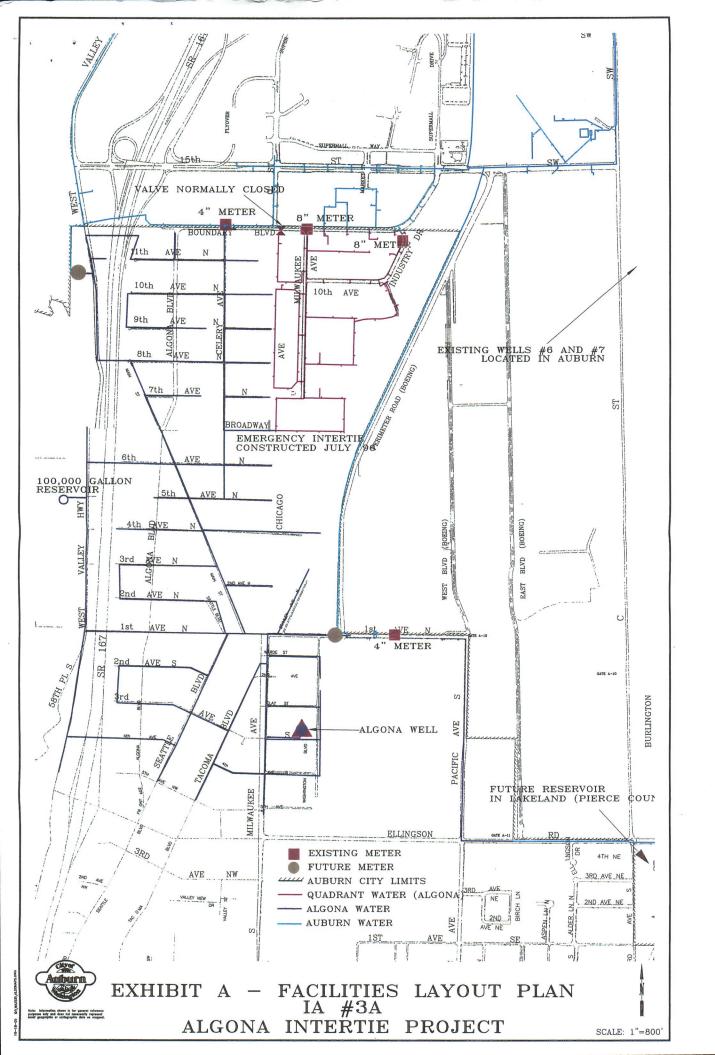


Exhibit A Facilities Layout Plan

WATER SYSTEM INTERTIE AGREEMENT Algona/Auburn Intertie Agreement No. 3A (continued)

1.	Auburn:	, Dated:
	Algona:	, Dated:
2.	Auburn:	, Dated:
	Algona:	, Dated:
3.	Auburn:	, Dated:
	Algona:	, Dated:

Exhibit B

Facility Ownership, Capacity Rights, Operation, Maintenance, and Renewal and Replacement Responsibilities

to

WATER SYSTEM INTERTIE AGREEMENT Algona/Auburn Intertie Agreement No. 3A

Facility	Location	Facility Ownership	Capacity Rights	Operation, Maintenance, & Renewal/Replacement Responsibility
Meter Station 1, existing for Boeing	200' easterly of the Intersection of 1st Avenue North and Perimeter Road	Auburn	100% Algona	Auburn
Meter Station 2, existing	Intersection of Milwaukee Avenue and Boundary Boulevard	Auburn	100% Algona	Auburn
Meter Station 3, existing	Intersection of Industry Drive North and Boundary Boulevard	Auburn	100% Algona	Auburn
Meter Station 4 future	Presently unknown, but probably near intersection of West Valley Highway and Boundary Boulevard extended	Auburn	100% Algona	Auburn
Meter Station 5 future	Presently unknown, but probably near intersection of UP RR and 1st Avenue North	Auburn	100% Algona	Auburn
Algona Well, existing	+/-150' northwesterly of intersection of Washington Boulevard and 3rd Ave South	Auburn	100% Auburn	Auburn
Lakeland Hills Reservoir, future	Lakeland Hills, Pierce County	Auburn	180,000 gallons Algona; remainder Auburn	Auburn
Supply (Qi) existing supplemental water rights	Well #6, Fulmer Field Well #7, City Park	Auburn	1,114,000 gpd Algona; remainder Auburn	Auburn

Exhibit B

Facility Ownership, Capacity Rights, Operation, Maintenance, and Renewal and Replacement Responsibilities

to

WATER SYSTEM INTERTIE AGREEMENT Algona/Auburn Intertie Agreement No. 3A (continued)

1.	Auburn:	, Dated:
	Algona:	, Dated:
2.	Auburn:	, Dated:
	Algona:	, Dated:

Exhibit C Project Criteria

to

WATER SYSTEM INTERTIE AGREEMENT Algona/Auburn Intertie Agreement No. 3A

Project Criteria:

- Meter Stations to be sized on flow volume criteria as opposed to line size.
- Maximum (Qi) daily demand flow is 1.114 million gallons per day for total of all meter stations supply to Algona, except in case of fire or emergency.
- Maximum annual (Qa) average daily demand flow is 0.525 million gallons per day for total of all meter stations supply to Algona.
- Each meter station shall be calibrated annually for the first three years of operations, and thereafter at the discretion of Auburn.
- Reservoir capacity for Algona is 180,000 gallons of the estimated 2.65 mg total capacity in the proposed Lakeland Hills Reservoir.
- Total of all meter stations supply to Algona necessary for peak hourly flow and fire flow shall be determined by Algona, and such data provided to Auburn for meter station design and/or station design review.

1.	Auburn:	, Dated:
	Algona:	_, Dated:
2.	Auburn:	_, Dated:
	Algona:	_, Dated:

Exhibit D Project Cost Estimate

to

WATER SYSTEM INTERTIE AGREEMENT Algona/Auburn Intertie Agreement No. 3A

	IA#3		Incurred To Da	
Description	Estimated Cost	Expenditures to Date	Auburn	Algona
METER STATIONS	(includes allied costs)			
2-inch @ Boeing	N/A	N/A	N/A	N/A
8-inch @ Industry Drive	\$25,740	\$76,723	\$31,757	\$44,966
8-inch @ Milwaukee	\$25,740	\$76,723	\$31,757	\$44,966
8-inch (Future)	\$28,600	N/A	0%	100%
8-inch (Future)	\$31,460	N/A	0%	100%
Subtotal Meter Stations	\$111,540	\$153,446	\$63,514	\$89,932
SUPPLY FACILITIES				
Well #6		\$1,057,507	\$990,514	\$66,993
Well #7		\$2,387,050	\$2,235,829	\$151,221
Subtotal Supply Facilities	\$1,787,500	\$3,444,557	\$3,226,343	\$218,214
PRELIMINARY COSTS				
Algona Well/Water Rights	\$5,000	\$5,000	\$5,000	\$0
Conveyance				
Algona Water Rights	N/A	N/A	\$30,000	(\$30,000)
Well Easements	\$2,000	\$2,000	\$2,000	\$0
SKCRWA JOA Development	\$5,800	\$5,800	\$0	\$5,800
COS/Rate Study	\$1,627	\$1,627	\$0	\$1,627
Subtotal Preliminary Costs	\$14,427	\$14,427	\$37,000	(\$22,573)
COSTS TO DATE	N/A	\$3,612,430	\$3,326,857	\$285,573
PAYMENTS TO DATE	N/A	N/A	(\$3,326,857)	(\$85,300)
BALANCE OWING	N/A	N/A	\$0	\$200,273
STORAGE FACILITIES				
Lakeland Hills Res.	\$2,700,000	N/A	\$2,520,000	\$180,000
Subtotal Storage Facilities	\$2,700,000	N/A	\$2,520,000	\$180,000
Estimated Total PROJECT COST	\$4,613,467	\$6,312,430	\$5,846,857	\$465,573

1.	Auburn:	, Dated:
	Algona:	, Dated:
2.	Auburn:	, Dated:
	Algona:	, Dated:

Exhibit E - Project Schedule

to

WATER SYSTEM INTERTIE AGREEMENT Algona/Auburn Intertie Agreement No. 3A

Activity	Date
Execute Interlocal Agreement #3	Completed
Complete master meter stations design for initial two stations	Completed
Algona to provide well, water rights and easements conveyance to Auburn	November 2002
Award master meter stations construction contract	Completed
Complete construction of master meter stations #2 and #3	Completed
Final master meter stations and conveyance project cost accounting	Completed
Interim payment of \$85,300 from Algona	Completed
Final Auburn Wells 6 and 7 cost accounting	Completed
Execute Interlocal Agreement #3A	November 2002
Future construction of master meter stations #4 and #5	To be determined
Algona to provide \$200,273 to Auburn for partial payment of cost incurred to date	31 March 2003
Algona to provide \$180,000 to Auburn for partial payment for future Reservoir	Due at Construction Contract Award
Final project cost accounting	31 March 2008
Final IA #3A balancing payment from Algona	30 April 2008

Exhibit E - Project Schedule

to

WATER SYSTEM INTERTIE AGREEMENT Algona/Auburn Intertie Agreement No. 3A

Update Approval

1.	Auburn:	, Dated:
	Algona:	, Dated:
2.	Auburn:	, Dated:
	Algona:	• Dated:

Exhibit F – Bill of Sale for Algona's Well to WATER SYSTEM INTERTIE AGREEMENT Algona/Auburn Intertie Agreement No. 3A (follows)

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

Above this line reserved for recording information.

	BILL OF SALE	
Reference # (if applicable):	N/A	Additional on page:
Grantor/Borrower:	1) City of Algona	2)
	•	Additional on page:
Grantee/Assignee/Beneficiary:	City of Auburn	
Legal Description/STR:	NW, SW1/4, 25-21-4E	Additional on page:
Assessor's Tax Parcel ID#:	954300-0570	

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the sum of ONE DOLLAR (\$1.00), and for the consideration of incorporating the facilities into the City system, and other good and sufficient consideration, receipt whereof is hereby acknowledged, the undersigned Grantor City of Algona, a Municipal Corporation in King County, Washington, do by these presents hereby convey, setover, assign, transfer and warrant to the City of Auburn, a Municipal Corporation in King County, Washington, a well and waterworks supplying water for public use, the associated ground water right (EXHIBIT 'A', Certificate Number GI-22769C), and all appurtenances or any other associated public facility generally consisting of a ten (10) inch casing to approximately 65 feet below ground surface. Situated within the following described real property.

See EXHIBIT 'B' ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

and the said Grantor(s) hereby warrant(s) that they are the sole owner(s) of all the property above conveyed; that they have full power to convey the same and that they will defend the title of the said Grantee against any and all persons lawfully making claim thereto, and indemnify the City of Auburn for any costs, including Attorney fees in defending title.

	City of Al	TODA GDANT	∩R		
	City of Aig	gona, GRANT	OK		
	GLENN W	ILSON, MAY	'OR		_
STATE OF WASHINGTO			•		•
County of King)ss.)		•		
certify that I know or hav	e satisfactory e	vidence that _			·
is the person who a his instrument, on oath sta	appeared before	e me, and said	person ackno	wledged that	he/she signe
his instrument, on oath stances in the	ited that he/she	was authorize	u to execute t	of	
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f such party for the uses a	na parposes me	entionea in this	s instrument.		
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		Notary Publics residing at _ My appoints	lic in and for ment expires	the State of V	Vashington
		Notary Publics at _ My appoints	lic in and for	the State of V	Vashington
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STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

CERTIFICATE OF WATER RIGHT

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Ground Wa	TEF dissued in accordance with t amendments thereto, and th			OF 1915, and Y.) TIFICATE FIUMBER
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December 10, 1976	(1-22709			
				
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This is to certify that the hi of a right to the use of the subject to the provisions co- use of said waters has been firmed by the Department of	ntained in the Permit issue perfected in accordance of the Permit issue perfected in accordance of the perfect	ed by the Departi with the laws of the ecord as shown.	nent of Ecology, on he State of Washingt	al fluit sold richt (O IIIC
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Area served by City of Algona

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STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

PROOF OF APPROPRIATION OF WATER

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Subscribed and swarn to before the this		Novar Public	,

FFY n4n-1-76

Exhibit G – Well Site Easement

to

WATER SYSTEM INTERTIE AGREEMENT Algona/Auburn Intertie Agreement No. 3A (follows)

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

Above this line reserved for recording information.

EASEMENT

Well Site Easement				
Reference # (if applicable):	N/A	Additional on page:		
Grantor/Borrower:		2)		
		Additional on page:		
Grantee/Assignee/Beneficiary:				
Legal Description/STR:	NW, SW1/4, 25-21-4E	Additional on page:		
Assessor's Tax Parcel ID#:	954300-0570			

For and in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration in hand paid, receipt of which is hereby acknowledged, and for benefits to be derived by the Grantor herein, Grantor, City of Algona, a municipal corporation of King County, Washington, hereby conveys and warrants to the City of Auburn, Grantee herein, a municipal corporation of King County, Washington, its successors and assigns, a perpetual Nonexclusive Easement under, over, through and across the following described real property for the purpose of operating, maintaining, installing and decommissioning a well and waterworks supplying water for public use AND APPURTENANCES THEREOF, said real property being described as follows:

SEE EXHIBITS "A" AND "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

This easement is given under the threat of and in lieu of Eminent Domain.

Said Grantee shall have the absolute right, at times as may be necessary, for immediate entry upon said Easement for the purpose of maintenance, inspection, construction, repair, reconstruction or decommissioning of the above improvements without incurring any legal obligation or liability therefore.

Said Grantee shall have the absolute right to place any type of driving surface within said Easement deemed necessary by the Grantee.

EASEMENT Page 1 of 4

Said Grantor shall not in any way block, restrict or impede access and egress to or from said Easement, and/or in any way block, restrict or impede full use of the real property within the above-described Easement by said Grantee for the above-described purposes. Said Grantor may fence across said Easement and/or along the boundaries of said Easement provided that a gate is constructed in said fence. Said gate shall be of sufficient length and location to allow the Grantee full use of, and access and egress to and from the real property within the above-described Easement. If said gate is to be locked, keys shall be provided to the Grantee.

Dated this day of _	, 2002.	
•	City of Algona, GRANTOR	
	GLENN WILSON, MAYOR	<u>.</u>
STATE OF WASHINGTO	ON)	
County of King)ss.)	
I certify that I know or have	e satisfactory evidence that	
is/are the person(s) who ap he/she/they signed this inst for the uses and purposes n	andand peared before me, and said individual(s) acknorument and acknowledged it to be his/her/their mentioned in this instrument.	wledged that
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EXHIBIT "A"

ALGONA WATER WELL EASEMENT 3RD AVENUE SOUTH AND WASHINGTON BOULEVARD

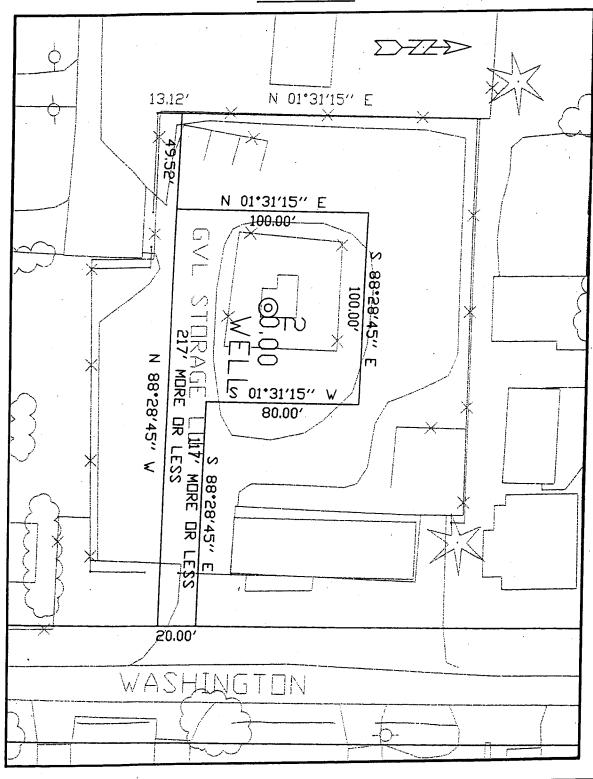
THAT PORTION OF LOTS 23 AND 24 AND 25 AND 26 AND 27 AND 28 AND 29 AND 30, ALL IN BLOCK 4 OF WOOD'S ALGONA ADDITION, DIVISION NUMBER 1 TO THE CITY OF SEATTLE AS RECORDED IN VOLUME 19 OF PLATS, PAGE 36, RECORDS OF KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 30; THENCE NORTH 01°31'15" EAST ALONG THE WEST BOUNDARY OF SAID LOT 30, A DISTANCE OF 13.12 FEET; THENCE SOUTH 88°28'45" EAST, 49.52 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 01°31'15" EAST, 100.00 FEET; THENCE SOUTH 88°28'45" EAST, 100.00 FEET; THENCE SOUTH 01°31'15" WEST, 80.00 FEET; THENCE SOUTH 88°28'45" EAST, 117 FEET MORE OR LESS TO THE WEST MARGIN OF WASHINGTON BOULEVARD; THENCE SOUTHERLY 20.00 FEET MORE OR LESS ALONG SAID WEST MARGIN OF WASHINGTON BOULEVARD TO A POINT WHICH BEARS SOUTH 88°28'45" EAST FROM SAID TRUE POINT OF BEGINNING; THENCE NORTH 88°28'45" WEST, 217 FEET MORE OR LESS TO SAID TRUE POINT OF BEGINNING.

SITUATE IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER

OF SECTION 25, TOWNSHIP 21 NORTH, RANGE 4 EAST, W. M.

EXHIBIT "B"



EASEMENT

Page 4 of 4

Exhibit H - Access Easement

to

WATER SYSTEM INTERTIE AGREEMENT Algona/Auburn Intertie Agreement No. 3A (follows)

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

Above this line reserved for recording information.

Reference # (if applicable): N/A Additional on page: _____ Grantor/Borrower: 1) City of Algona 2) Additional on page: _____ Grantee/Assignee/Beneficiary: City of Auburn Legal Description/STR: NW, SW1/4, 25-21-4E Additional on page: _____ Assessor's Tax Parcel ID#: 954300-0570

For and in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration in hand paid, receipt of which is hereby acknowledged, and for benefits to be derived by the Grantor herein, Grantor, City of Algona, a municipal corporation of King County, Washington, hereby conveys and warrants to the City of Auburn, Grantee herein, a municipal corporation of King County, Washington, its successors and assigns, a perpetual Nonexclusive Easement under, over, through and across the following described real property for the purpose of ingress and egress, said real property being described as follows:

SEE EXHIBITS "A" AND "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

This easement is given under the threat of and in lieu of Eminent Domain.

Said Grantee shall have the absolute right, at times as may be necessary, for immediate entry upon said Easement for the purpose of maintenance, inspection, construction, repair or reconstruction of the above improvements without incurring any legal obligation or liability therefore.

Said Grantee shall have the absolute right to place any type of driving surface within said Easement deemed necessary by the Grantee.

Said Grantor shall not in any way block, restrict or impede access and egress to or from said Easement, and/or in any way block, restrict or impede full use of the real property within the

EASEMENT Page 1 of 4

constructed in said fence. Said gate shall be of sufficient length and location to allow the Grantee full use of, and access and egress to and from the real property within the above-described Easement. If said gate is to be locked, keys shall be provided to the Grantee. This Easement shall be a covenant running with the above-described real property and burden said real estate, and shall be binding on the successors, heirs and assigns of all parties hereto. Dated this _____, 2002. City of Algona, GRANTOR GLENN WILSON, MAYOR STATE OF WASHINGTON) County of King I certify that I know or have satisfactory evidence that ____ __and is/are the person(s) who appeared before me, and said individual(s) acknowledged that he/she/they signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in this instrument. Dated _____ Notary Public in and for the State of Washington residing at __ My appointment expires ___ REF. H:\FORMS\FC087 (4/98) **EASEMENT**

Page 2 of 4

above-described Easement by said Grantee for the above-described purposes. Said Grantor may fence across said Easement and/or along the boundaries of said Easement provided that a gate is

EXHIBIT "A"

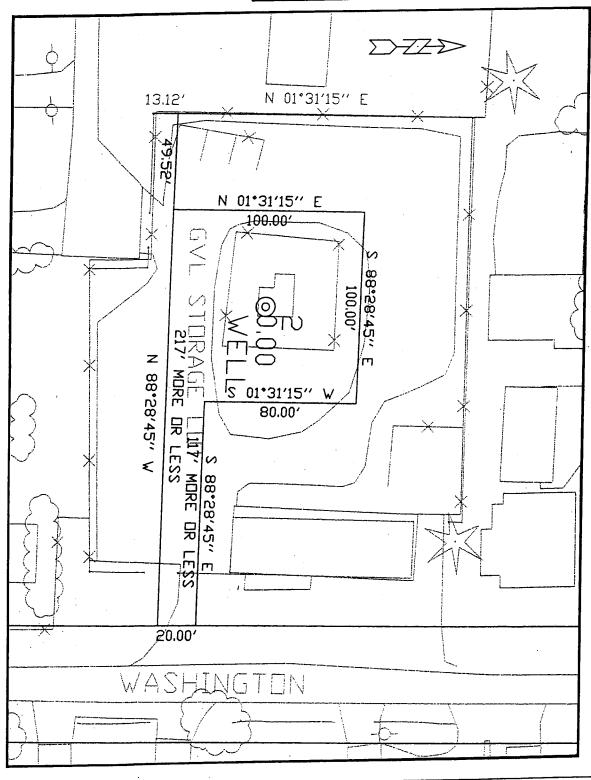
ALGONA WATER WELL EASEMENT 3RD AVENUE SOUTH AND WASHINGTON BOULEVARD

THAT PORTION OF LOTS 23 AND 24 AND 25 AND 26 AND 27 AND 28 AND 29 AND 30, ALL IN BLOCK 4 OF WOOD'S ALGONA ADDITION, DIVISION NUMBER 1 TO THE CITY OF SEATTLE AS RECORDED IN VOLUME 19 OF PLATS, PAGE 36, RECORDS OF KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 30; THENCE NORTH 01°31'15" EAST ALONG THE WEST BOUNDARY OF SAID LOT 30, A DISTANCE OF 13.12 FEET; THENCE SOUTH 88°28'45" EAST, 49.52 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 01°31'15" EAST, 100.00 FEET; THENCE SOUTH 88°28'45" EAST, 100.00 FEET; THENCE SOUTH 01°31'15" WEST, 80.00 FEET; THENCE SOUTH 88°28'45" EAST, 117 FEET MORE OR LESS TO THE WEST MARGIN OF WASHINGTON BOULEVARD; THENCE SOUTHERLY 20.00 FEET MORE OR LESS ALONG SAID WEST MARGIN OF WASHINGTON BOULEVARD TO A POINT WHICH BEARS SOUTH 88°28'45" EAST FROM SAID TRUE POINT OF BEGINNING; THENCE NORTH 88°28'45" WEST, 217 FEET MORE OR LESS TO SAID TRUE POINT OF BEGINNING.

SITUATE IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 21 NORTH, RANGE 4 EAST, W. M.

EXHIBIT "B"



EASEMENT Page 4 of 4

RESOLUTION NO. 3434

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN EMERGENCY WATER SYSTEM INTERTIE AGREEMENT BETWEEN THE CITY OF AUBURN AND THE CITY OF BONNEY LAKE.

WHEREAS, pursuant to RCW 35A.11.040, Auburn and Bonney Lake have legal authority to exercise their powers and perform any of their functions as set forth in RCW 39.34; and

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act,

Auburn and Bonney Lake have legal authority to cooperate with other localities

on the basis of mutual advantage and provision of services; and

WHEREAS, the City of Auburn and the City of Bonney Lake currently have water facilities in the vicinity; and

WHEREAS, both cities can increase fire protection and emergency water supply reliability for their customers; and

WHEREAS, both cities are willing to provide the necessary services to increase fire fighting and emergency supply reliability upon the terms and conditions set for in the Emergency Water System Intertie Agreement.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH RESOLVES THAT:

Section 1. Pursuant to RCW 39.34, the Interlocal Cooperation Act,

Auburn and Bonney Lake have legal authority to cooperate with other localities

on the basis of mutual advantage and provision of services.

Section 2. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute an Emergency Water System Intertie Agreement between the City and the City of Bonney Lake. A copy of said Agreement is attached hereto, denominated as Exhibit "A" and made a part hereof as though set forth in full herein.

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

DATED this 4 day of Morety, 2002.

CITY OF AUBURN

PETER B. LEWIS **MAYOR**

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



Return Address: Auburn City Clerk City of Auburn 25 West Main St

25 West Main St.		
Auburn, WA 98001		
REC	ORDER'S COVER SHEET	<i>5</i> /ə3
Document Title(s) (or transaction	ns contained therein):	
		FILED BY DNW W3474-12
Interiocal Agreement – Emergend	y Water System Intertie Agre	ement
	_	
Reference Number(s) of Docum	nents assigned or released:	
Additional reference #'s on page	of document	
Grantor(s)/Borrower(s) (Last na	me first, then first name and	initials)
Auburn, City of		
Grantee/Assignee/Beneficiary:	(Last name first)	
Bonney Lake, City of		
Legal Description (abbreviated:	i.e. lot, block, plat or section	, township, range)
PER RCW 39.34		
Additional legal is on page of documer	nt.	
Assessor's Property Tay Pares	VA	
Assessor's Property Tax Parce		
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Assessor Tax # not yet assigned	30 000770.000000000000000000000000000000	And the second of the second o
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as to its official approxima

EMERGENCY WATER SYSTEM INTERTIE AGREEMENT Bonney Lake/Auburn Intertie Agreement No. 3

THIS AGREEMENT made and entered into by and between the City of Auburn, hereinafter referred to as Auburn, and, the City of Bonney Lake, hereinafter referred to as Bonney Lake, for the purposes of planning, designing, constructing, maintaining, and operating an emergency system intertie between the respective parties,

WITNESSETH:

WHEREAS, both Cities have water facilities in the vicinity, and

WHEREAS, both Cities can increase fire protection and emergency water supply reliability for their customers, and

WHEREAS, the Cities are willing to provide the necessary services to increase fire fighting and emergency supply reliability upon the terms and conditions set forth herein,

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

- 1. The emergency water system intertie is designed to be operated manually as a two way emergency supply between the Auburn and Bonney Lake Systems. The facility shall be located in Evergreen Way SE at the Water Service Area Boundaries between the two cities. Final location and configuration of the facilities shall be determined at the time of final design. Initially the Intertie is assumed to be a one-way supply from Bonney Lake to Auburn.
- 2. The emergency water system intertie shall be operated only in the event of an emergency. For purposes of this agreement, an emergency shall be defined as resulting from a water shortage, a major water line break, fire demand, contamination to the water supply system, mechanical equipment failure, electrical equipment failure or Puget Sound Energy facility failure, or any other agreed upon emergency within the water supply system.
- 3. Auburn will design and administer the contract for the construction of the metering station. The facility will be designed and constructed in accordance with reasonably accepted water utility standards for similar municipal water utilities. Auburn will own and maintain the piping, interior equipment, emergency meter and interior appurtenances, and all piping up to the Bonney Lake side of the vault for the metering station.

Exhibit A Resolution No. 3434

- 4. Upon completion of construction, Auburn will transfer ownership of all exterior appurtenances, and all piping, which is located on the Bonney Lake side of the vault, to Bonney Lake. Bonney Lake will own and maintain the exterior appurtenances and all piping on Bonney Lake's side of the vault.
- 5. Each City will each have unlimited access to the vault via a dual padlock or ownership of keys to the vault.
- 6. Each City will operate the respective normally locked valve inside of the vault. Auburn will solely unlock and operate the locked valve on Auburn's side of the meter and Bonney Lake will solely unlock and operate the locked valve on Bonney Lake's side of the meter.
- 7. The procedure for operating the intertie in the event of such emergency shall be as follows:
 - A. Each City shall determine that an emergency of sufficient magnitude has occurred which warrants the need to request that the intertie be activated.
 - B. The Public Works Director or appointed person or authorized personnel shall provide a verbal request to the other City's Public Works Director or appointed person. Upon agreement that an emergency exists which shall allow for the intertie to be opened, the intertie will be activated as soon as reasonably possible. Both Cities' personnel shall be present at the vault to open the valves to activate the facility.
 - C. The City requesting the activation shall provide a written confirmation of the request not less than 24 hours after the verbal request, or on the first day of normal business after the verbal request.
 - D. The intertie shall remain activated until the City requesting activation determines that the need for activation of the emergency intertie has ceased and shall request in writing to close the intertie.
 - E. In case of emergency or whenever the public health, safety, or the equitable distribution of water so demands, the City supplying the water may change, reduce or limit the time for or temporarily discontinue the supply of water without notice; water service may be temporarily interrupted, limited for purposes of making repairs, extensions or doing other necessary work; and the City supplying the water shall not be responsible for any damage resulting from interruption, change or failure of the water supply, and the City

receiving the water (City requesting activation) shall save and hold harmless the City supplying the water from any loss, damages or suites to or by customers of the City receiving the water resulting from interruption, change or failure of water supply provided by this Agreement, except damages arising out of the City supplying the water's negligence. Prior to a planned interruption or limiting of service, the City supplying the water will notify the City receiving the water of such not less than three days prior to the service disruption. The City supplying the water agrees to use best efforts and reasonable diligence to notify the City receiving the water as soon after it becomes aware of the need for service disruption and further will, to the extent practical, limit the service disruption to daylight hours.

- 8. Auburn shall read the meter upon activation and upon deactivation of the intertie. The city supplying the water shall verify the information and shall then calculate and invoice the other city for the water used during the request. The invoice shall be calculated by the total water used during the event. The rate shall be at the current Auburn Wholesale Rate or the lowest Bonney Lake retail rate depending on which city is supplying the water. This shall be complete payment for the water, labor, and administration of activating the intertie.
- 9. The total project costs shall include costs for consulting design service, and construction. Auburn shall bear the total project costs, until and unless it can be demonstrated that Bonney Lake can benefit from the intertie. At such time, the parties agree to negotiate the fair share of the total actual project costs that correspond to the benefit Bonney Lake could receive. Bonney Lake agrees to pay such fair share of the total project costs upon billing for same by Auburn. Bonney Lake will have the right to build an intertie from Auburn to Bonney Lake at another location. Bonney Lake will bear the cost of building a separate intertie. Each City is responsible for associated staff, administration and legal costs associated with the implementation of the agreement.
- 10. To the extent allowed by law, the City of Bonney Lake shall defend, indemnify, and hold harmless the City of Auburn, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs, expenses of litigation, attorney's fees, penalties and damages of whatsoever kind or nature arising out of or in connection with or incident to an act or omission of the City of Bonney Lake, its employees, agents, and contractors in the performance of the City of Bonney Lake's obligations under the Agreement and this Amendment. This indemnification provision shall include, but is not limited to, all claims against the City of Auburn by an employee or former employee of the City of Bonney Lake or its contractors and, as to such claims, the City of

Bonney Lake expressly waives all immunity and limitation of liability under Title 51 RCW.

To the extent allowed by law, the City of Auburn shall defend, indemnify and hold harmless the City of Bonney Lake, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs, expenses of litigation, attorney's fees, penalties, and damages or whatsoever kind or nature arising our of, in connection with or incident to an act or omission of the City of Auburn, its employees, agents, and contractors in the performance of the City of Auburn's obligations under this Agreement. This indemnification obligation shall include, but is not limited to, all claims against the City of Bonney Lake by an employee or former employee of the City of Auburn or its contractors and, as to such claims, the City of Auburn expressly waives all immunity and limitation of liability under Title 51 RCW.

11. This Agreement shall remain in force until terminated by either party hereto upon 60-days written notice to the other party. Any project costs, incurred up to the date of such notice, as described herein, shall be shared in accordance with the provisions of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals.

CITY OF AUBURN King County, Washington

By: Mayor

Approved as to form:

City Attorney Date

Date

CITY OF BONNEY LAKE Pierce County, Washington

By: / Mayor

Mayor Date /

Approved as to form:

City Attorney

Date

ORDINANCE NO. <u>5 5 9 2</u>

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO

EXECUTE A FRANCHISE AGREEMENT BETWEEN THE CITY OF BONNEY LAKE AND THE CITY OF AUBURN, ALLOWING THE CITY OF BONNEY

LAKE TO CONNECT, INSTALL, OPERATE, MAINTAIN AND REPAIR A WATER SYSTEM, FACILITIES, AND APPURTENANCES IN, OVER, ALONG, ACROSS AND UNDER THE FRANCHISE AREA FOR THE PURPOSE OF

PROVIDING WATER SERVICE.

WHEREAS, the City of Auburn and the City of Bonney Lake have

entered into a Settlement Agreement, executed March 5, 1998 pursuant to

Resolution 2925 adopted March 2, 1998, related to water service to the

Lakeland Hills South development in which, according to Section 3, Auburn

recognizes and agrees to Bonney Lake's exclusive right to serve with water all

portions of Bonney Lake's water service area as designated by the 1995 Pierce

County Coordinated Water System Plan; and

WHEREAS, the City of Auburn and the City of Bonney Lake have entered into a

Service Area Agreement, executed December 10, 1998 pursuant to Resolution

3018 adopted December 7, 1998, which revised the boundary between their

respective water service areas; and

WHEREAS, the City of Auburn has annexed portions of the City of

Bonney Lake's water service area; and

Ordinance No. 5592 April 9, 2002

WHEREAS, according to Section 7 of said Settlement Agreement, the

City of Auburn guaranteed the City of Bonney Lake the right to transport water

through Auburn's corporate boundaries within Pierce County, and

WHEREAS, Section 7 of said Settlement Agreement states that the

guarantee to transport water shall be effectuated by the execution of

easements, agreements, franchises, licenses or other documents as are

appropriate; and

WHEREAS, the City of Bonney Lake desires to connect, install, operate,

maintain and repair a water system, facilities, and appurtenances in, over,

along, across and under the franchise area for the purpose of providing water

service.

WHEREAS, in order to maintain control over the use of City of Auburn

right-of-ways by utilities operating within the City of Auburn, it is appropriate to

enter into franchise agreements with such utilities; and

WHEREAS, City of Bonney Lake is such a utility, and has negotiated this

franchise agreement with the City of Auburn acceptable to both parties; and

WHEREAS, the City of Auburn has determined that it is in the best

interests of the public to grant the City of Bonney Lake a franchise on the terms

and conditions set forth in this Agreement.

Ordinance No. 5592 April 9, 2002

NOW, THEREFORE, CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, DO ORDAIN AS FOLLOWS:

Section 1. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute a Franchise Agreement between the City of Bonney Lake and the City. A copy of said Agreement is attached hereto, denominated as Exhibit "A" and made a part hereof as though set forth in full herein.

<u>Section 2.</u> 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 Ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication, as provided by law.

INTRODUCED: May 6, 2002

PASSED: May 6, 2002

APPROVED: May 6, 2002

PETER B. LEWIS MAYOR ATTEST:

Danielle Daskam

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid City Attorney

Outlished: 5/10/02

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

RECORDER'S COVER SHEET	
Document Title(s) (or transactions contained therein):	16/34
Franchise Agreement	134 PNWT
Reference Number(s) of Documents assigned or released: Additional reference #'s on page of document	P-W4866-12
Grantor(s)/Borrower(s) (Last name first, then first name and in Auburn, City of	nitials)
Grantee/Assignee/Beneficiary: (Last name first) Bonney Lake, City of	\$ A
Legal Description (abbreviated: i.e. lot, block, plat or section,	township, range)
Portion of Section 6, Section 5, Section 7 and Section 8, Towns East WM	ship 20 North, Range 5
Additional legal is on page of document.	
Assessor's Property Tax Parcel/Account Number	
N/A	
Assessor Tax # not yet assigned	

EXHIBIT "A"

CITY OF AUBURN, WASHINGTON FRANCHISE AGREEMENT WITH THE CITY OF BONNEY LAKE

WHEREAS, the City of Auburn and the City of Bonney Lake have entered into a Settlement Agreement, executed March 5, 1998 pursuant to Resolution 2925 adopted March 2, 1998, related to water service to the Lakeland Hills South development in which, according to Section 3, Auburn recognizes and agrees to Bonney Lake's exclusive right to serve with water all portions of Bonney Lake's water service area as designated by the 1995 Pierce County Coordinated Water System Plan; and

WHEREAS, the City of Auburn and the City of Bonney Lake have entered into a Service Area Agreement, executed December 10, 1998 pursuant to Resolution 3018 adopted December 7, 1998, which revised the boundary between their respective water service areas; and

WHEREAS, the City of Auburn has annexed portions of the City of Bonney Lake's water service area; and

WHEREAS, according to Section 7 of said Settlement Agreement, the City of Auburn guaranteed the City of Bonney Lake the right to transport water through Auburn's corporate boundaries within Pierce County; and

WHEREAS, Section 7 of said Settlement Agreement states that the guarantee to transport water shall be effectuated by the execution of easements, agreements, franchises, licenses or other documents as are appropriate; and

WHEREAS, the City of Bonney Lake desires to connect, install, operate, maintain and repair a water system, facilities, and appurtenances in, over, along, across and under the franchise area for the purpose of providing water service.

WHEREAS, in order to maintain control over the use of City of Auburn right-of-ways by utilities operating within the City of Auburn, it is appropriate to enter into franchise agreements with such utilities; and

WHEREAS, City of Bonney Lake is such a utility, and has negotiated this franchise agreement with the City of Auburn acceptable to both parties; and

WHEREAS, the City of Auburn has determined that it is in the best interests of the public to grant the City of Bonney Lake a franchise on the terms and conditions set forth in this Agreement.

NOW, THEREFORE THE CITY OF AUBURN AND THE CITY OF BONNEY LAKE AGREE AS FOLLOWS:

SECTION 1 DEFINITIONS

Where used in this franchise ("Franchise"), the following definitions shall apply:

- 1.1 "Franchisee" means the City of Bonney Lake, a Washington municipal corporation, and its respective successors and assigns.
 - 1.2 "City" means the City of Auburn, a Washington municipal corporation.
- 1.3 "Franchise Area" means all of the public roads, streets, avenues, alleys, highways, and other rights-of-way of the City as now laid out, platted, dedicated or improved; and any and all public roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved within the area as described with Exhibit "1" attached hereto, which is by this reference incorporated, as if fully set forth herein; provided, that the Franchise Area shall not include or convey any right to Franchisee to install facilities on or to otherwise use City owned or leased properties outside the Franchise Area.
- 1.4 "Facilities" means the Franchisee's water system, lines, mains, appurtenances, and all other necessary or convenient facilities for the purpose of providing water service.
- 1.5 "Ordinance" means this ordinance setting forth the terms and conditions of the franchise granted to the Franchisee.

SECTION 2 FRANCHISE GRANT

Subject to the terms and conditions set forth in this ordinance, the City grants to the Franchisee the right to construct and install water pipelines and appurtenances and to excavate trenches in City roads for the purposes of constructing, installing, operating, maintaining, removing, and replacing mains and pipes and making connections between the same to the dwellings and other buildings of the consumers. In exercising the foregoing rights, the Franchisee shall be governed by and conform to the general rules adopted by the Public Works Department of the City of Auburn, and the Franchisee, at no expense to the City, shall complete all work and shall replace and restore the City roads to the condition of the City roads existing immediately prior to such disturbance; PROVIDED. HOWEVER, that no such work shall be done prior to the obtaining of a permit therefor issued by the City's Public Works Director (hereinafter "Director"), which permit shall set forth conditions pertaining to the work to be done and specifications for the restoration of the roads to the same condition as they were prior to such work. If the Franchisee does not repair the City roads to the satisfaction of the Director, the City may, at its sole discretion. repair such City roads, or cause them to be repaired, and the Franchisee hereby agrees to reimburse the City for the cost of such work, including overhead costs.

SECTION 3 FRANCHISE TERM

This Franchise is and shall remain in full force and effect from the effective date of this Ordinance forward, for a period not to exceed seven (7) years from the effective date of any Auburn annexation of any area within the boundary defined in Exhibit 1, for said area, but subject to earlier termination in accordance with the terms and conditions of the Settlement Agreement, provided, that this Franchise shall not take effect and the Franchisee shall have no rights under this Franchise unless the Franchisee files a written acceptance of this Franchise with the City pursuant to Section 4 of this Agreement.

SECTION 4 ACCEPTANCE BY GRANTEE OF TERMS AND CONDITIONS

The full acceptance of this Franchise and all of its terms and conditions shall be filed with the City Clerk within forty-five (45) days from the date of this Ordinance, by the Franchisee. Full acceptance of this Franchise is a condition precedent to its taking effect, and unless this Franchise is accepted within the time specified, this grant will be null and void and have no force or effect.

SECTION 5 NON-EXCLUSIVE FRANCHISE

This Franchise is not exclusive. It does not prohibit the City from granting franchises for other public or private utilities in, over, along, across, and under any City property, including the Franchise Area. This Franchise does not prevent or prohibit the City from constructing, altering, maintaining or using any of the Franchise Area. The City retains full power to make all changes, relocations; repair, maintenance or other work to or in the Franchise Area as the City deems fit.

SECTION 6 JURISDICTION

This Franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which the City has an actual interest. It is not a warranty of title or of interest in City road rights-of-way. None of the rights granted to the Franchisee shall affect the jurisdiction of the City over City road rights-of-way or the City's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating.

SECTION 7 REGULATION OF USE AND CONTROL

This Franchise does not deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City road rights-of-way covered by this Franchise. The City reserves the right and power at all times to exercise its police powers with respect to the time, manner and location of the placement of the Franchisee's Facilities.

SECTION 8 EMINENT DOMAIN

This Franchise and the limited rights and interests granted by this Franchise are subject to the exercise of eminent domain. In the event of an exercise of eminent domain by the City, the value to be attributed to all the rights and interests granted under this Franchise shall not exceed the actual amount the Franchisee paid to the City in obtaining this Franchise.

SECTION 9 VACATION

If at any time the City vacates any City rights-of-way covered by this Franchise, the City will not be held liable for any damages or loss to the Franchisee by reason of such vacation. The City may, after giving thirty (30) days written notice to the Franchisee terminate this Franchise with respect to any City road or rights-of-way vacated.

SECTION 10 ENFORCEMENT

The City's failure to enforce any provision of this Franchise does not constitute a waiver of its right to enforce that provision or any other provision of this Franchise.

SECTION 11 INDEMNITY AND HOLD HARMLESS

- 11.1 The Franchisee shall defend, indemnify and hold harmless the City, its appointed and elected officials, and its employees and agents from and against liability for all claims, actions, injuries, demands, liabilities, losses, costs, damages and judgments, including costs of defense thereof, (collectively referred to as "damages") for injury to persons, death or property damage caused by, arising out of, or incidental to the Franchisee's exercise of the rights and privileges granted by this Franchise, except for damages caused by or arising out of the City's sole negligence. In the event that any such claim or demand for damages is presented to or filed with the City, or if any suit or action is initiated against the City based on such claims or demands for damages, the City shall promptly notify the Franchisee of the claim, demand, suit or action and the Franchisee shall have the right, at its election and its sole cost and expense, to settle and compromise such claim, demand, suit or action, or defend the same at the Franchisee's sole cost and expense.
- 11.2 If it is determined that RCW 4.24.115 applies to this Franchise, the Franchisee agrees to defend, hold harmless and indemnify the City to the maximum extent permitted under that statute, and specifically for the Franchisee's negligence concurrent with that of the City to the full extent of the Franchisee's negligence.

SECTION 12 INSURANCE

- 12.1 The Franchisee shall keep a policy of insurance in force with a minimum limit of five million dollars (\$5,000,000.00). Verification of insurance coverage is a condition precedent to the effectiveness of this Agreement.
- 12.2 The insurance shall be maintained in full force and effect at the Franchisee's sole expense throughout the term of the Franchise, and, should such insurance be terminated, this Agreement shall terminate as of the date of the termination of insurance coverage.
- 12.3 The coverage provided by the Franchisee's insurance policies shall be primary to any insurance maintained by the City except as to losses or damages attributable to the sole negligence of the City. Any insurance maintained by the City that might relate to this Franchise shall be in excess to the Franchisee's insurance and shall not contribute with or to it. The City has no obligation to report occurrences to the insurance companies unless a claim is filed with the City's City Council; and the City has no obligations to pay the Franchisee's premiums.
- work related to this Franchise in compliance with all applicable federal, state, county and city statutes, rules, regulations, ordinances, orders and codes. The Franchisee's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The Franchisee shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any works therein. The services of the City or City's consultant personnel in conducting construction review of the Franchisee's work relating to the Franchise is not intended to include review of the adequacy of the Franchisee's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such Franchise Area or job site. The Franchisee shall provide

safe access for the City and its inspectors to adequately inspect the work and its conformance with applicable statutes, ordinances, rules, regulations, and the Franchise.

SECTION 13 INSTALLATION, REPAIR, REMOVAL OR RELOCATION

- 13.1 The Franchisee shall, at no expense to the City, expeditiously repair all existing Facilities that it owns within the Franchise Area, including any damage caused directly or indirectly by its Facilities, all appurtenant Facilities and service lines connecting its system to users, if the City requires such repair for any reasonable purpose.
- 13.2 The Franchisee shall, at no expense to the City, adjust, remove or relocate existing Facilities within the Franchise Area, including all appurtenant Facilities and service lines connecting its system to users, if the City determines such adjustment, removal or relocation is reasonably necessary to allow for an improvement or alteration planned by the City. The City shall give the Franchisee written notice of such requirement as soon as practicable. The written notice shall include all available information, such as plans and specifications, as is reasonably necessary for the Franchisee to plan for such adjustment, removal or relocation.
- 13.3 Franchisee's Facilities shall be constructed, installed, maintained and repaired within the Franchise Area so as to provide safety of persons and property, and not interfere with the free passage of traffic, all in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations of the City.
- 13.4 For projects that are a part of the City's capital improvement program, in addition to any other notice given to the Franchisee, the City shall provide a copy of the capital improvement plan and six (6) year transportation improvement plan when requested. Further the City shall provide a vertical and horizontal profile of the roadway and drainage facilities within it, both existing and as proposed by the City, and the proposed construction schedule. The initial design information shall be given at least one hundred and eighty (180) days before construction is scheduled to begin, except in cases of urgent construction or emergencies. The Franchisee shall respond to this notice, and to any later notices of revised designs, within twenty (20) days of the date of the notice, by providing to the City the Franchisee's best available information as to the location of all the Franchisee's Facilities, including all appurtenant Facilities and service lines connecting its system to users and all Facilities that it has abandoned, within the area proposed for the project.
- The City shall offer the Franchisee the opportunity to participate in the preparation of bid documents for the selection of a contractor to perform the public works project as well as all required adjustments, removals or relocations of the Franchisee's Facilities. The City shall have sole authority to choose the contractor to perform such work. Such bid documents shall provide for an appropriate cost allocation between the parties. In addition to the Franchisee's allocation of contractor costs, the Franchisee shall reimburse the City for all costs, to include but not be limited to legal, engineering, inspections, administration and/or soils testing, related to the Franchisee's work and reasonably incurred by the City in the administration of such joint construction contracts. Such costs shall include the direct salary cost of the time of City professional and technical personnel, including the City's consultants, spent productively engaged in such work, plus overhead costs at the standard rate charged by the City on other similar projects.

13.6 It is understood that emergency situations may arise that could threaten public health and/or continued operation of the Franchisee's utility system and the Franchisee may be unable to notify the City in the manner prescribed in Section 14 of this Franchise. In such a situation the Franchisee shall immediately correct the hazardous situation and continue to use best efforts to contact the City staff. The Emergency Phone Number for the City of Auburn is (253) 931-3053, and the City of Bonney Lake is (253) 862-8602. Dialing 911 is advised for emergency situations.

SECTION 14 REQUIREMENT OF CONSTRUCTION PERMITS

- 14.1 The Franchisee has the right, privilege and authority to enter the City road rights-of-way for the purpose of constructing, installing, operating, maintaining, replacing or repairing its Facilities on the condition that it obtains construction, excavation, and right-of-way use permits issued by the City. Any work performed, whether by Franchisee, its contractors, or third parties, shall include necessary paving, patching, grading and any other reasonably necessary repair or restoration to the City rights-of-way. All work shall be done to the City's satisfaction.
- 14.2 All equipment, pipelines and appurtenances which are used in the construction, installation, operation, maintenance or repair of the Franchisee's Facilities and which are located within the City road rights-of-way and owned by the Franchisee shall be considered to be part of the Franchisee's system and shall be the responsibility of the Franchisee. All permits for the construction, installation, operation, maintenance or repair of the Franchisee's system shall be applied for and given in the name of the Franchisee, who will be responsible for all work done under the permit. The Franchisee remains responsible whether the work is performed by the Franchisee, its contractors, or by third parties.
- 14.3 When required by the Public Works Director, the Franchisee shall post a bond to the City in the amount sufficient for any road repair or restoration. The amount of the bond shall be set by the City and must be filed with the City before a permit will be issued.

SECTION 15 PERFORMANCE OF WORK

- 15.1 Any work performed by the Franchisee in the Franchise Area shall conform to all City ordinances and requirements including, but not limited to, Auburn City Code and the City's Design and Construction Standards in force when the work is performed. All traffic control shall conform to the current edition of the Uniform Traffic Control Devices in force when the work is performed.
- 15.2 If work performed under this Franchise makes it necessary to turn off or diminish water pressure to any fire hydrant, the Franchisee shall notify the City's Fire Department by telephone and by written notice, that water pressure or fire flow conditions have been affected. Except in the case of an emergency, the notice shall be provided at least 48 hours prior to the water pressure being turned off or diminished. If more than one fire hydrant will be affected, the Franchisee shall provide a map of the affected area to the Fire Department. Out-of-service fire hydrants must be identified as not operational by covering with a properly secured burlap or plastic bag. Fire hydrants should be returned to full service as soon as reasonably possible or no longer than two working days from the

date service was diminished. The Franchisee shall notify the City's Fire Department when the hydrant is returned to full service.

SECTION 16 RESTORATION OF CITY RIGHTS-OF-WAY

After performing work on, under or adjacent to City road rights-of-way, the Franchisee is responsible for and shall leave all City road rights-of-way in the condition of the City roads rights-of-way existing immediately prior to such disturbance. If the Franchisee, its contractors, or third parties working under permit should fail to diligently restore City road rights-of-way to the satisfaction of the City, the City may make such repairs or restorations as are necessary to return the City road rights-of-way to a condition reasonably comparable to the condition of the City roads rights-of-way existing immediately prior to such disturbance. Upon presentation of an itemized bill for repairs or restorations, including all applicable costs, both direct and indirect, to include but not be limited to the cost of labor, tools, materials and equipment, the Franchisee shall pay the bill within sixty-five (65) days.

SECTION 17 GUARANTEE

The Franchisee shall guarantee work and materials furnished and completed by the Franchisee under this Franchise for a period of two (2) years from the date the City approves the work and/or restoration.

SECTION 18 INFORMATION ON LOCATION OF FACILITIES

Prior to the effective date of this ordinance, the Franchisee shall provide the City with all information requested by the City regarding the location of the Franchisee's current Facilities, including but not limited to copies of all record drawings for such Facilities. If the Franchisee performs any work to install, repair, reconstruct, or replace Facilities in the Franchise Area after this ordinance's effective date, the Franchisee shall provide the City with all information requested by the City regarding the location of those Facilities, including but not limited to copies of record drawings.

SECTION 19 COORDINATION OF WORK IN FRANCHISE AREA

To facilitate the coordination of work in City rights-of-way, if either the Franchisee or the City plans to make excavations in the Franchise Area, the party planning such excavation shall provide written notice to the other of the planned excavation, affording the other party the opportunity to share in the excavation; provided, that (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made, (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties, and (3) either party may deny such request for safety reasons.

SECTION 20 BLASTING REQUIREMENTS

The Franchisee's right to construct, install, operate, maintain and repair Facilities does not preclude the City, its agents or contractors from blasting, grading, or doing other road work contiguous to the Franchisee's Facilities. When practical, the City shall give the Franchisee forty-eight (48) hours notice of blasting or excavating.

SECTION 21 SURVEY MARKERS AND MONUMENTS

Before any work is performed under this Franchise, the Franchisee shall establish two or more reference marks to all monuments and markers of every nature relating to

Ordinance No. 5592 Exhibit "A" Page 7 of 12 subdivisions, plats, rights-of-way, and all other surveys. The reference points shall be located so that they will not be disturbed during any of Franchisee's operations under this Franchise. The method of referencing monuments or other markers or points shall be approved by the City before placement. The replacement of all markers or monuments disturbed during any construction of the Franchisee shall be made as promptly as conditions permit. The cost of monuments or markers lost, destroyed, or disturbed and the expense or replacement with approved markers or monuments shall be borne by the Franchisee.

SECTION 22 RESERVATION OF RIGHTS

- 22.1 The City reserves the right to impose a utility tax on the Franchisee, and/or to charge the Franchisee a reasonable fee for services provided or rights granted under this Franchise, to the extent authorized by law.
- 22.2 The Franchisee agrees that it shall be subject to all authority now or later possessed by the City or any other governing body having competent jurisdiction to fix just, reasonable and compensatory rates for services under this Franchise.
- 22.3 The City reserves the right, upon thirty (30) days written notice to the Franchisee, to amend or modify the provisions or conditions of this Franchise to conform to any state, county, federal, or City statute, ordinance, rule or regulation. The City may terminate this Franchise upon thirty (30) days written notice to the Franchisee if the Franchisee fails or refuses to comply with such amendment or modification.

SECTION 23 ASSIGNMENT

The Franchisee shall not have the right to assign this Franchise without the written consent of the City. No assignment shall be effective unless an acceptance by the assignee of all rights, conditions, terms, provisions and responsibilities contained within the Franchise, as well as surety bonds which the City deems necessary to be posted, are received as allowed by law. The City's approval of the assignment may be made subject to the assignee's acceptance of new or modified terms of the Franchise.

SECTION 24 PENALTY FOR VIOLATION OF CONDITIONS

If the Franchisee fails to comply with any material term, condition or responsibility under this Franchise, the City may provide the Franchisee with written notice of the City's intent to revoke the Franchise if the Franchisee's failure is not cured within thirty (30) days of the date of the notice. During the thirty (30) days following the date of the notice, the Franchisee shall have the opportunity to remedy the failure to comply. A public hearing shall be scheduled before the Auburn City Council at least thirty (30) days following the notification on the issue of the revocation. If at the hearing, the City Council finds that grounds exist to revoke the Franchise under this paragraph and that the revocation is in the public interest, the City Council may by ordinance revoke the Franchise. The revocation shall be effective ninety (90) days after the public hearing.

SECTION 25 EXPIRATION AND RENEWAL

25.1 If the Franchisee requests a renewal of this Franchise prior to its expiration date, the City may, at the City's sole discretion, extend the term of this Franchise for up to one year beyond the expiration date to allow for processing of the renewal. If the

City elects to extend the term of this Franchise, written notice of the extension shall be provided to the Franchisee prior to the Franchise expiration date.

- 25.2 If the Franchisee has not requested a renewal of this Franchise prior to its expiration date, the City has the right, upon thirty (30) day's prior notice to the Franchisee, to remove or relocate any of the Franchisee's Facilities as is reasonably necessary for the public's health, welfare or safety, or for the construction, alteration, or improvement of the Franchise Area, or for the construction or installation of lines or facilities of other franchise holders. The Franchisee shall be liable for costs incurred in any removal or relocation of the Franchisee's Facilities under this section.
- 25.3 Upon the expiration of this Franchise, the Franchisee shall continue to be responsible for the operation and maintenance of the Franchisee's existing facilities in the Franchise Area, but shall not have the right to provide additional services. This Section and Sections 11, 13, 14, 15, 16, 19, and 21 of this Franchise shall continue in force until such time as the Franchisee's Facilities are abandoned to the City in accordance with the terms and conditions of the Settlement Agreement.

SECTION 26 COMPLIANCE WITH LAWS

The Franchisee shall conform to all applicable federal, state and local laws and regulations including, but not limited to, the State Environmental Policy Act and the City's Environmental Standards and Ordinances.

SECTION 27 NON-DISCRIMINATION CLAUSE

In all hiring or employment made possible or resulting from this Franchise, there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupation qualification. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this agreement on the grounds of sex, sexual orientation, race, color, national origin, age, except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.

SECTION 28 NOTICE

Any notice or information required or permitted under this Franchise may be sent to the following addresses unless otherwise specified:

City of Auburn: City Engineer 25 West Main Street Auburn, WA 98001-4998 253-931-3010

City of Bonney Lake: Public Works Director 19306 Bonney Lake Blvd. Bonney Lake, WA 98390-0944 253-862-8602

SECTION 29 ATTORNEYS' FEES

If either party commences litigation against the other party relating to the performance or alleged breach of this Franchise, the prevailing party shall be entitled to all costs, including reasonable attorneys' fees incurred, relating to such litigation, including those incurred in any appeal.

SECTION 30 SEVERANCE

If any term, provision, condition or portion of this Franchise is held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect, unless the dominant purpose of the Franchise would be prevented or the public interest would no longer be served, as determined by the City.

SECTION 31 EFFECTIVE DATE

This ordinance having been introduced at least five days prior to its date of passage and submitted to the city attorney, and being approved by at least a majority of the entire city council at a regular city council meeting, shall take effect and be in force five days after its passage, approval and publication as required by law.

SECTION 32 EXISTING UTILITIES

This Franchise shall govern City of Bonney Lake, new and existing water Facilities within the City of Auburn.

PASSED by Auburn's City Council this		2002 . 199
APPROVED by Auburn's Mayor this	day of <u>May</u>	_, 2.00 2 _, 199
	A STATE OF THE PROPERTY OF THE	- <u></u>
	PETER B. LEWIS, Mayor	⊇
ATTEST/AUTHENTICATE:	City of Auburn	
Dawell & Dashan	-61	
DANIELLE E. DASKAM, Auburn City Clerk		
APPROVED AS TO EORM:		
W S		
DANIEL B. HEID, Auburn City Attorney	Date	

THE CITY OF BONNEY LAKE, a municipal corporation of the State of Washington, accepts all the rights, privileges and duties of this franchise subject to all terms, conditions, stipulations and obligations contained herein.
PASSED by Bonney Lake's City Council this <u>a64</u> day of <u>Musch</u> ,
APPROVED by Bonney Lake's Mayor this
abut fly
ATTEST: Kotter L. Grung Mayor City of Bonney Lake
But Butcher, Bonney Lake City Clerk Date 3/37/20
APPROVED AS TO FORM: Some Diagram Bonney Lake City Attorney Date
FILED WITH THE CITY CLERK:
PASSED BY AUBURN'S CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
AUBURN ORDINANCE NO: 5592
BONNEY LAKE ORBINANCE NO: 965

Exhibit 1

AUBURN/BONNEY LAKE WATER FRANCHISE AREA LEGAL DESCRIPTION

THAT PORTION OF SECTION 6, TOWNSHIP 20 NORTH, RANGE 5 EAST, W.M., SECTION 5, TOWNSHIP 20 NORTH, RANGE 5 EAST, W.M., SECTION 8, TOWNSHIP 20 NORTH, RANGE 5 EAST, W.M., SECTION 7, TOWNSHIP 20 NORTH, RANGE 5 EAST, W.M., PIERCE COUNTY, WASHINGTON; DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 6; THENCE NORTH 01°12'59" EAST A DISTANCE OF 713.61 FEET TO THE NORTHERLY MARGIN OF LAKE TAPPS PARKWAY EAST; THENCE IN A NORTHWESTERLY DIRECTION ALONG THE NORTH LINE OF SAID PARKWAY, NORTH 71°22'39" WEST A DISTANCE OF 440.58 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS POINT BEARING NORTH 18°37'21" EAST A DISTANCE OF 960.00 FEET; THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 11°22'29", AN ARC DISTANCE OF 190.59 FEET; THENCE LEAVING SAID MARGIN NORTH 01°28'45" WEST A DISTANCE OF 2,629.81 FEET; THENCE NORTH 58°56'04" EAST A DISTANCE OF 532.96 FEET; THENCE NORTH 37°29'20" EAST A DISTANCE OF 178.29 FEET; THENCE NORTH 49°21'27" EAST A DISTANCE OF 410.04 FEET TO A POINT OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS POINT BEARING NORTH 49°37'08" EAST HAVING A DISTANCE OF 454.00 FEET; THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 27°21'25" AN ARC DISTANCE OF 216.77 FEET; THENCE SOUTH 67°44'15" EAST A DISTANCE OF 47.08 FEET TO A POINT OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS POINT BEARING SOUTH 69°16'55" EAST A DISTANCE OF 927.50 FEET; THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 10°09'01" AN ARC DISTANCE OF 164.31 FEET; THENCE SOUTH 10°34'04" WEST A DISTANCE OF 163.57 FEET; THENCE IN A NORTHEASTERLY DIRECTION ALONG THE NORTH LINE OF LOT G OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE #9808310329, NORTH 75°13'36" EAST A DISTANCE OF 548.99 FEET TO THE EASTERLY LINE OF LOT G; THENCE NORTH 11°28'56" WEST A DISTANCE OF 56.64 FEET TO THE SOUTHERLY LINE OF LOT B PER SAID BOUNDARY LINE ADJUSTMENT; THENCE NORTH 75°13'36" EAST A DISTANCE OF 560.63 FEET TO THE WESTERLY MARGIN OF LAKELAND HILLS WAY SE; THENCE NORTH 14°46'24" WEST A DISTANCE OF 138.04 FEET; THENCE LEAVING SAID WESTERLY MARGIN NORTH 75°13'36" EAST A DISTANCE OF 63.00 FEET TO THE EASTERLY MARGIN OF LAKELAND HILLS WAY SE; THENCE IN A NORTHWESTERLY DIRECTION ALONG SAID MARGIN NORTH 14°46'24" WEST A DISTANCE OF 353.16 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS POINT BEARING SOUTH 75°13'36" WEST A DISTANCE OF 545.67 FEET; THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 19°07'09" AN ARC DISTANCE OF 182.08 FEET TO THE POINT OF A CURVE TO THE RIGHT HAVING A RADIUS POINT BEARING NORTH 60°27'56" EAST A DISTANCE OF 35.00 FEET; THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 84°32'04" AN ARC DISTANCE OF 51.64 FEET; THENCE NORTH 55°00'00" EAST A DISTANCE OF 208.52 FEET; THENCE NORTH 53°05'27" EAST A DISTANCE OF 150.08 FEET; THENCE NORTH 55°00'00' EAST A DISTANCE OF 166.23 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS POINT BEARING NORTH 35°00'00" WEST A DISTANCE OF 430.00 FEET; THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 37°44'40" AN ARC DISTANCE OF 283.27 FEET TO THE POINT OF A CURVE TO THE LEFT HAVING A RADIUS POINT BEARING NORTH 72°44'00" WEST A DISTANCE OF 1,030.00 FEET; THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 00°56'13" AND AN ARC DISTANCE OF 16.84 FEET TO THE NORTHERLY SECTION LINE OF SECTION 6, TOWNSHIP 20 NORTH, RANGE 5 EAST; THENCE ALONG THE NORTH LINE OF SECTION 6, SOUTH 88°34'43" EAST A DISTANCE OF 808.23 FEET TO THE NORTHEAST CORNER OF SAID SECTION 6; THENCE EASTERLY ALONG THE NORTH BOUNDARY OF SAID SECTION 5 TO THE NORTHEAST CORNER THEREOF; THENCE SOUTHERLY ALONG THE EAST BOUNDARY OF SAID SECTION 5 TO THE SOUTHEAST CORNER

THEREOF; THENCE WESTERLY ALONG THE SOUTH BOUNDARY OF SAID SECTION 5 TO THE SOUTH QUARTER CORNER THEREOF; THENCE WESTERLY ALONG THE NORTH BOUNDARY OF SAID SECTION 8 TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8; THENCE SOUTHERLY ALONG THE EAST BOUNDARY OF SAID NORTHWEST QUARTER OF SECTION 8 TO THE SOUTH BOUNDARY OF THE NORTH HALF OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 87; THENCE WESTERLY ALONG SAID SOUTH BOUNDARY TO THE EAST BOUNDARY OF SAID SECTION 7; THENCE NORTHERLY ALONG SAID EAST BOUNDARY TO THE SOUTH BOUNDARY OF THE NORTH 330.00 FEET OF THE NORTHEAST QUARTER OF SAID SECTION 7; THENCE WESTERLY ALONG SAID SOUTH BOUNDARY OF THE NORTH 330.00 FEET OF THE NORTHEAST QUARTER OF SAID SECTION 7 TO THE WEST BOUNDARY OF SAID NORTHEAST QUARTER OF SECTION 7; THENCE NORTHERLY ALONG SAID WEST BOUNDARY TO THE SAID SOUTH QUARTER CORNER OF SECTION 6 AND THE POINT OF BEGINNING

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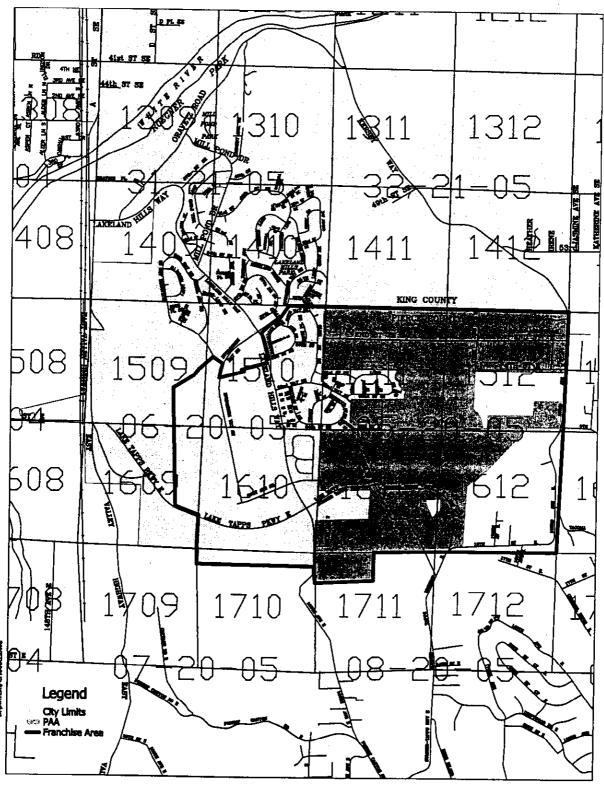


Exhibit 1

RESOLUTION NO. 3444

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN EMERGENCY WATER SYSTEM INTERTIE AGREEMENT BETWEEN THE CITY OF AUBURN AND COVINGTON WATER DISTRICT AND WATER DISTRICT #111.

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act,
Auburn, Covington Water District (Covington) and Water District #111 (#111)
have legal authority to cooperate with other localities on the basis of mutual
advantage and provision of services; and

WHEREAS, Auburn has existing water interties and associated water supply agreements with Covington and #111, and

WHEREAS, Auburn will enter into Emergency Water Supply Agreement
No. 1 with Lakehaven Utility District, hereinafter referred to as "LUD", whereby
LUD can provide water it has available, in the event of an emergency, and

WHEREAS, the LUD Intertie No. 1 and agreement can increase the reliability of Auburn's water supply for Covington and #111 if water is available from LUD in the event of an emergency,

WHEREAS, it is in the public interest for the parties herein to enter into an emergency water supply agreement,

NOW, THEREFORE, THE COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH RESOLVES THAT:

Section 1. Pursuant to RCW 39.34, the Interlocal Cooperation Act, Auburn, Covington and #111 have legal authority to cooperate with other localities on the basis of mutual advantage and provision of services.

Section 2. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute the Emergency Water System Intertie Agreement between the City and Covington Water District and Water District #111 with minor administrative changes if required. A copy of said Agreement is attached hereto, denominated as Exhibit "A" and made a part hereof as though set forth in full herein.

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

CITY OF AUBURN

PETER B. LEWIS MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid,

City Attorney

EMERGENCY WATER SUPPLY AGREEMENT

Auburn/Covington/Water District #111

THIS AGREEMENT made and entered into by and between the City of Auburn, hereinafter referred to as "Auburn", and Covington Water District, hereinafter referred to as "Covington", and Water District #111, hereinafter referred to as "#111".

WITNESSETH:

WHEREAS, Auburn has existing water interties and associated water supply agreements with Covington and #111, and

WHEREAS, Auburn has entered into Emergency Water Supply Agreement No. 1 with Lakehaven Utility District, hereinafter referred to as "LUD", whereby LUD can provide water it has available, in the event of an emergency, and

WHEREAS, the LUD Intertie No. 1 and agreement can increase the reliability of Auburn's water supply for Covington and #111 if water is available from LUD in the event of an emergency.

WHEREAS, it is in the public interest for the parties herein to enter into an emergency water supply agreement,

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

- Intertie Project Description. LUD has granted to Auburn the right to connect, for the purposes described herein, an emergency intertie and appurtenances to the end of the 16-inch water main located in the vicinity of 15th Street Northwest and Terrace Drive in Auburn, Washington, more specifically shown on Exhibit A. The intertie facility shall be sited on property owned by Auburn.
- 2. Intertie Project Payment. Covington and #111 agree to pay for the design and construction of the emergency intertie described in Paragraph No. 1, and the replacement of +/- 140 linear feet of existing water main with a 16-inch transmission line in 15th St NW, between "R" St. NW and the proposed intertie vault. Covington will act as the contracting agency, paying for purchase and installation of the facilities described herein. Water District #111 will act as the design agency, providing design and construction support services. At the completion of construction, the total of design, construction support, purchase, and installation costs shall be summed and divided evenly between Covington and #111. The intertie facilities and piping are to be designed and constructed in accordance with Auburn's design standards. The emergency intertie shall comply with all LUD resolutions and rules applicable to a connection to LUD's water system including, but not limited to, the requirements that the LUD provide written approval of plans and specifications for the connection of intertie facilities prior to construction. Upon completion of the emergency intertie project, Covington will transfer to

Auburn through Bill of Sale all facilities constructed under this Agreement. Auburn will transfer through Bill of Sale to LUD ownership of and maintenance responsibility for the meter, associated appurtenances necessary to monitor emergency use of the intertie, the gate valve upstream of the vault and all piping upstream of that gate valve. Auburn will retain ownership of and maintenance responsibility for the vault, control valve, and all other piping and appurtenances.

- 3. Intertie Project Purpose. The emergency intertie described in Paragraph No. 1 herein is being installed to provide an emergency water supply. In the event Auburn perceives that curtailment of water supply to Covington or #111 will be necessary, Auburn will notify the parties of the situation and request whether or not the parties would like the LUD intertie activated. If Covington or #111 would like the LUD intertie activated, the requesting party must submit such request to Auburn in writing. Upon receipt of a request from Covington or #111, Auburn will submit a written request to LUD. Water shall not be withdrawn from the supply without the prior written approval of LUD. At the time approval is sought, Auburn shall state the requested time of commencement of use, the expected duration of withdrawal and quantity of water to be withdrawn. Auburn shall request an extension or termination of intertie operation in writing, if the duration of expected withdrawal is extended or shortened.
- 4. Payment of Service and Quantity Charges. Covington and #111 shall pay Auburn all monthly service charges, and quantity charges for any water received from LUD for the benefit of Covington and #111. Monthly service and quantity charge rates shall be established by LUD resolution for the use of an 8-inch meter and the applicable water rate. The rate for emergency water use will be the greater of LUD's rate to Auburn plus a wheeling charge, or the Auburn Wholesale rate for Covington and #111 as established by City Ordinance. These rates may be revised without notice to Covington and #111 and such revised rates shall apply to emergency water deliveries made pursuant to this agreement. Examples of the current rates are included in Exhibit B.

5. Conditions of Use.

- (a.) In the event LUD determines that the use of the emergency intertie is or will impose a negative impact to the public health, safety, or the equitable distribution of water within LUD, LUD may change, reduce or limit the time of use, or temporarily discontinue the supply of water without notice;
- (b.) In the event LUD must change, reduce, limit or temporarily discontinue service, Auburn may be required to change, reduce or limit the time of use, or temporarily discontinue the supply of water without notice to Covington and #111;
- (c.) Water service may be temporarily interrupted, limited for purposes of making repairs, extensions or doing other necessary work; and
- (d.) Prior to a planned interruption or limiting of service as set forth in (c) above the City will notify Covington and #111 of such planned

- interruption or limiting of service. The City agrees to use best efforts to notify Covington and #111 as soon after it becomes aware of the need for such a service disruption.
- (e.) Activation procedures are as described in Exhibit C
- 6. **Water Quality.** Water available to the parties to this Agreement shall be in compliance with all applicable state and federal drinking water laws, regulations and standards.
- 7. **Discontinuation of Use.** In the event of non-performance of any provision herein by Covington and/or #111, Auburn may shut off water supplied pursuant to this Agreement.
- 8. Hold Harmless. Covington and #111 agree to indemnify, defend and hold harmless Auburn, its officers, directors, employees and agents, and their successors and assigns, from any and all costs or claims arising out of or in any way resulting from Covington's and #111's default, failure of performance, or negligent conduct associated with this Agreement, and any failure of the Auburn water system to deliver flow to Covington and #111, in whole or in part, as described in this Agreement. This indemnification provision shall include, but is not limited to, all claims against Auburn by an employee or former employee of Covington and #111 or their contractors and, as to such claims, Covington and #111 expressly waive all immunity and limitation of liability under Title 51 RCW.

Auburn agrees to indemnify, defend and hold harmless Covington and #111, their officers, directors, employees and agents, and their successors and assigns, from any and all costs or claims arising out of or in any way resulting from Auburn's default, or negligent conduct associated with this Agreement. This indemnification provision shall include, but is not limited to, all claims against Covington and #111 by an employee or former employee of Auburn or its contractors and, as to such claims, Auburn expressly waives all immunity and limitation of liability under Title 51 RCW.

- 9. **Agreement Termination.** This Agreement may be terminated by mutual agreement of all parties hereto upon 60-days written notice to the other parties.
- 10. Dispute Resolution. The parties shall make good faith efforts to resolve by informal discussion any dispute arising under or in connection with this Agreement. If at any time a party to this Agreement determines that such informal discussions will not result in a resolution of the dispute, such party may request formal discussion by all parties identified in Paragraph 11. If formal discussion by the parties identified in Paragraph 11 does not resolve the dispute, a settlement conference shall be held within thirty (30) days of the unsuccessful resolution meeting. The settlement conference will be held at the Seattle office of Judicial Arbitration and Mediation Services, Inc. ("JAMS"). The complaining party must contact JAMS to schedule the conference. The parties may agree on a retired judge from the JAMS panel.

If they are unable to agree, JAMS will provide a list of three available judges and each party may strike one. The remaining judge will serve as the mediator at the settlement conference.

11. **Notices.** Notices should be sent to the parties at the following addresses:

Public Works Director City of Auburn 25 West Main Street Auburn, WA 98001 General Manager Covington Water District 18631 SE 300th Place Covington, WA 98042

General Manager Water District #111 27224 144th Avenue SE Covington, WA 98042

IN WITNESS WHEREOF, we have hereunto set our hands and seals.

CITY OF AUBURN King County, Washington	COVINGTON WATER DISTRICT King County, Washington	
By: 4/1/02 Mayor Date	By:	
Approved as to form:	Approved as to form:	
By: () 2/14/52 Date	By: General Counsel Date	·
WATER DISTRICT #111 King County, Washington		
By: General Manager Date		
Approved as to form:		
By: General Counsel Date		

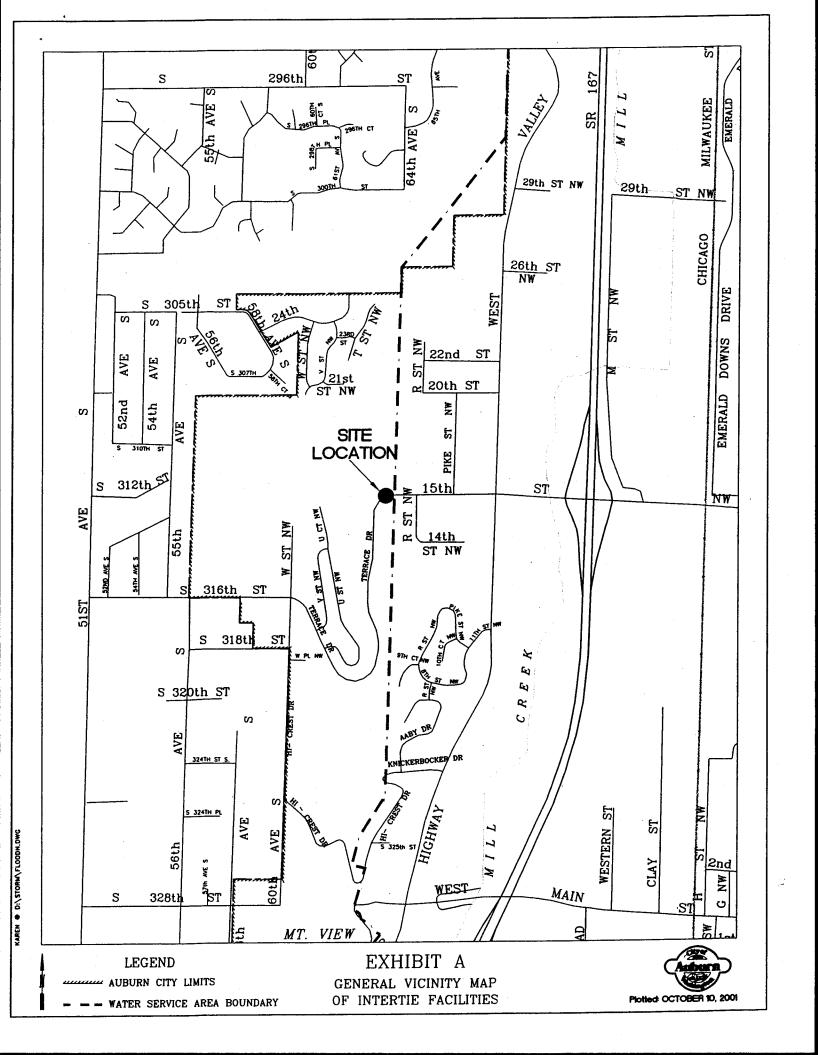


Exhibit B

EMERGENCY WATER SUPPLY AGREEMENT

Auburn/ Covington/Water District #111

Example of Monthly Meter Cost:

In accordance with Auburn/LUD Emergency Intertie Agreement #1, LUD currently does not have an adopted monthly rate for an 8" meter, and would use Tacoma Public Utilities' (TPU) monthly meter rate until such time as Lakehaven adopts a rate for this size meter.

TPU's rate for an 8" meter is

\$804.00 (Effective 4/23/01)

Cost to Covington and #111

\$402.00 each

\$1.242 /ccf in 2002

Example of Emergency Water Rates in 2002

Covington and #111 Water Use Rate equals

Emergency Intertie Water Use Rate (based on LUD rate to Auburn)	\$1.092 /ccf in 2002	
Auburn Wheeling Rate	\$0.15 /ccf	
Total	\$1.242 /ccf	
Auburn Water Utility Rates (Ord 5291)		
Wholesale #111 (and Covington)	\$1.10 /ccf*	

* Rate subject to change due to a proposed take or pay agreement between Auburn and Covington and #111

Exhibit C

EMERGENCY WATER SUPPLY AGREEMENT Auburn/ Covington/Water District #111

Operation Procedures

- 1. Water supply requests of Covington and/or #111, or any combination of the two, plus Auburn water use exceeds available supply from Auburn due to an emergency.
- 2. Auburn determines that it can not provide requested supply and therefore must curtail flow to Covington and/or #111. Auburn notifies Covington and #111 of need to curtail.
- 3. Covington and/or #111 request Lakehaven Intertie be activated by Auburn.
- 4. Auburn notifies Lakehaven of emergency and asks how much water Lakehaven can supply and for how long.
- 5. Lakehaven responds with rate and duration.
- 6. Auburn requests Intertie be activated for a given flow rate and duration.
- a) If Lakehaven plus Auburn supply will be greater or equal to the supply requested by Covington and #111

Flush line, read the meter and open the intertie When the emergency is over, close intertie and read meter

b) If Lakehaven plus Auburn supply still is less than the requested supply, Auburn notifies Covington and #111 of available supply and requests a breakdown of how the LUD supply plus the Auburn supply is to be distributed. When this information is received:

Flush line, read the meter and open the intertie When the emergency is over, close intertie and read meter

Deactivation

- 8. If Auburn determines that the water supply emergency is over and it can supply Auburn plus Covington and #111's requested water supply without use of the LUD intertie, Auburn will request of LUD that the intertie be closed.
- 9. If LUD determines that it must reduce or terminate supply, LUD will notify Auburn (subject to Paragraph 5 (a) of this Agreement). Auburn will notify Covington and #111 (subject to Paragraph 5 (b) of this Agreement) that flow will be curtailed, and request how the parties would like any available water distributed.

RESOLUTION NO. 3482

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN INTERIM WATER SALES AGREEMENT BETWEEN THE CITY OF AUBURN AND COVINGTON WATER DISTRICT AND WATER DISTRICT No. 111.

WHEREAS, Covington Water District (Covington), King County Water District No. 111 (WD 111) and the City of Auburn (Auburn) are authorized to enter into this Agreement under the authority of their respective enabling legislation and under the authority of Chapter 39.34 RCW, the Interlocal Cooperation Act; and

WHEREAS, the parties desire to avoid unpredictable water sales and create a predictable and reliable cost for wholesale water to be sold by Auburn to Covington and WD 111, and

WHEREAS, it is in the public interest for the parties herein to enter into an interim water sales agreement,

NOW, THEREFORE, THE COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH RESOLVES THAT:

Section 1. Pursuant to RCW 39.34, the Interlocal Cooperation Act, Auburn, Covington and WD 111 have legal authority to cooperate with other localities on the basis of mutual advantage and provision of services.

Section 2. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute the Interim Water Sales Agreement between Auburn and Covington and WD 111 with minor administrative changes if required. A copy of said

Agreement is attached hereto, denominated as Exhibit "A" and made a part hereof as though set forth in full herein.

<u>Section 3.</u> The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

<u>Section 4.</u> This resolution shall be in full force and affect upon passage and signatures hereon.

DATED this 17 day of ______, 2002.

CITY OF AUBURN

PETER B. LEWIS MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid,

City Attorney

Page 2

Return Address: Auburn City Clerk City of Auburn 25 West Main St. Auburn, WA 98001 20030714002731 PACIFIC NU TIT IAG 25.00

PACIFIC NW 111 1H PAGE 001 OF 008 07/14/2003 15:21 KING COUNTY, WA

RECORDER'S COVER	₹ SHEET		
Document Title(s) (or transactions contained therein):			
Interlocal Agreement (RES 3482) Interim Water Sales Agreement しょフォルン			
Reference Number(s) of Documents assigned or released: Additional reference #'s on page of document			
Grantor(s)/Borrower(s) (Last name first, then first Auburn, City of	name and initials)		
	A STATE OF THE STA		
Grantee/Assignee/Beneficiary: (Last name first)1. Covington Water District2. King County Water District 111	ACCOMMODERS IN OBJECT ORSES SOFT LAND SK B EMMENT AND TO INTERNITATION OF A SKB MENT AND TO INTERNITATION OF A		
Legal Description (abbreviated: i.e. lot, block, pla	t or section, township, range)		
PER RCW 39.34 Additional legal is on page of document.			
Assessor's Property Tax Parcel/Account Number			
N/A			
Assessor Tax # not yet assigned			

Exhibit "A"

INTERIM WATER SALES AGREEMENT between COVINGTON WATER DISTRICT, KING COUNTY WATER DISTRICT NO. 111 and the CITY of AUBURN

This Agreement ("Agreement") is made and entered into this ______ day of June, 2002, by and between Covington Water District (Covington) a Municipal Corporation, King County Water District No. 111 (WD III), a Municipal Corporation (collectively referred to herein as "the Districts") and the City of Auburn (Auburn), a Municipal Corporation.

Recitals:

- A. The parties to this Agreement are also parties to "Interlocal Agreement 2 for the Lea Hill Intertie Project between Covington Water District, King County Water District #111, and the City of Auburn" ("IA2").
- B. The parties desire to avoid unpredictable water sales and create a predictable and reliable cost for wholesale water to be sold by Auburn to the Districts.
- C. By guaranteeing a minimum purchase of water for a given period of time, i.e., a take or pay approach, the cost of water, which to a significant extent is based on peaking factors, can be minimized for all of Auburn's customers.

Exhibit "A" Resolution 3482

- D. This Agreement is intended to establish a rate for a fixed block of water for the mutual benefit of the parties of this Agreement.
- E. It is in the interest of the Districts to have a predictable supply of water available, and in Auburn's interest to have a predictable and consistent source of revenue from the sale of such water.
- F. The parties are authorized to enter into this Agreement under the authority of their respective enabling legislation and under the authority of Chapter 39.34 RCW, the Interlocal Cooperation Act.
- G. The 1.5 million gallons of water per day ("MGD") take or pay water
 provided for in this Agreement is a portion of and not in addition to the 5
 MGD as addressed in IA2.

Now, therefore, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties hereby agree as follows:

1) TAKE OR PAY: The Districts agree to purchase an average of 1.5

MGD of water from Auburn on a take or pay basis. Take or pay shall

mean that the Districts shall pay for 1.5 MGD whether or not the water is
actually taken by the Districts (the "take or pay" water also referred to in
this Agreement as "the Block" of water; provided the Block of water may
be modified as set forth in Paragraph 4 "Annual Review and Adjustment"
herein). If the Districts cannot accept 1.5 mgd due to an emergency, as

Exhibit "A" Resolution 3482

defined in Paragraph 6, they will be billed for the water they receive at the Block rate.

- 2) CHARGES FOR WATER: The Districts shall pay the rate per one hundred cubic feet of water ("CCF") for the 1.5 MGD Block shown in Exhibit 1, attached hereto, which is by this reference incorporated, except as further addressed in Paragraph 3 herein. Any water taken in excess ("Excess Water") of the Block during the winter (October 1 through May 31) shall be billed at the winter overage rate shown in Exhibit 1 and during the summer (June 1 through September 30) shall be billed at the summer overage rate shown in Exhibit 1. Any water taken during an emergency within the Covington and/or WD 111 systems, as defined in Paragraph 6, shall be billed at the 1.5 mgd Block rate. Auburn shall send one monthly bill to WD 111 for all water purchased by the Districts.
- shall be defined as a block of water to be delivered at an average rate of 1.5 MGD measured over a rolling 3 day period with total quantities delivered within any single day being no more than 10% more or less than 1.5 MGD. If the Districts are unable for any reason to accept the Block of water, the minimum monthly payment shall be 1.5 MGD multiplied by the rate then in effect pursuant to Paragraph 2 above. If Auburn is unable to deliver the amount of water requested by the Districts, up to the Block of water, then Auburn will bill the Districts for the amount of water actually delivered at the

Exhibit "A" Resolution 3482

block rate pursuant to Paragraph 2 above. For the take or pay water Block provided for herein, the Districts will be served on the same basis and with the same reliability as service is provided to Auburn's retail customers, and any curtailment, restrictions or limitations on delivery shall be on same basis as curtailment, restrictions or limitations on delivery to Auburn's retail customers.

- 4) ANNUAL REVIEW AND ADJUSTMENT: The initial Block of 1.5 MGD shall remain in effect through December 31, 2005. Each year, the "take or pay" Block may be adjusted by mutual agreement. By September 1 of each year the Districts shall notify Auburn of their intent to continue without change or request an increase in the Block quantity. Any requested change in the Block quantity would be effective January 1 of the year following the request. In the event that neither party communicates its intent under this provision, the Block shall be deemed to continue unchanged.
- 5) TERM: This Agreement shall remain in full force and effect from the first day of the month following the execution of this Agreement through

 December 31, 2005; provided that this Agreement shall automatically be renewed for an additional year at the conclusion of the term of this Agreement or any extension thereof unless any party provides the others with notice of an intent not to extend this Agreement, which notice shall be received by the other parties not less than one year prior to the expiration of the term of this Agreement or any extension thereof. The termination of this Agreement shall

Exhibit "A" Resolution 3482 not affect any rights or obligations under IA2.

6) EMERGENCIES: For purposes of this Agreement, an emergency shall be defined as resulting from a water shortage, a major water line break, fire demand, contamination to the water supply system, mechanical equipment failure, electrical equipment failure or Puget Sound Energy facility failure, or any other mutually agreed upon emergency within the water supply system.

An emergency period shall be for no more than five (5) working days without written request by the Districts and approval by Auburn in writing to extend the emergency period.

The City may change, reduce or limit the time for or temporarily discontinue any water supplied for an emergency in excess of the Block quantity without notice. Prior to a planned interruption or limiting of emergency service, the City will notify the Districts of such not less than three days prior to the service disruption. The City agrees to use best efforts and reasonable diligence to notify the Districts as soon after it becomes aware of the need for emergency service disruption and further will, to the extent practical, limit the service disruption to daylight hours.

7) JOINT AND SEVERAL OBLIGATION: The obligation of the Districts as set forth therein shall be a Joint and Several obligation of the Districts.
Allocation of the take or pay Block of water and the payment for such water shall be negotiated between the Districts outside of this Agreement.

Exhibit "A" Resolution 3482

In witness whereof the participants hereto have caused this Agreement to
be executed by their proper officers on the 17 day of
June, 2002.
City of Auburn by:
Title: MANGE
Approved as to form by:
Title: Daniel B. Heid, City Attorney
Covington Water District by: fredtht wil sou
Title: <u>Skueral Manager</u>
Water District #111 by:
Title: GENERAL MANAGER

Interim Water Sales Agreement
Between
Covington Water District,
King County Water District No. 111
And the
City of Auburn

Exhibit 1

	Take or Pay Monthly Rates			
Year	Base Charge*	1.5 MGD Rate	Winter Overage	Summer Overage
2002	\$175.00	\$0.70	\$0.80	\$1.85
2003	\$175.00	\$0.75	\$0.85	\$2.00
2004	\$175.00	\$0.80	\$0.90	\$2.10
2005	\$175.00	\$0.85	\$0.95	\$2.20

^{*} Covington and WD 111 are each responsible for paying a Base Charge of \$175.00 per month per district.

RESOLUTION NO. 3443

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN EMERGENCY WATER SYSTEM INTERTIE AGREEMENT BETWEEN THE CITY OF AUBURN AND LAKEHAVEN UTILITY DISTRICT.

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act,

Auburn and Lakehaven Utility District (LUD) have legal authority to cooperate

with other localities on the basis of mutual advantage and provision of services;

and

WHEREAS, the City has water facilities in the vicinity of a water main of LUD, and

WHEREAS, the City can increase the reliability of water for its customers, including Covington Water District and Water District No. 111, if water is available from LUD in the event of an emergency, and

WHEREAS, LUD is willing to provide to the City emergency service upon the terms and conditions set forth herein,

NOW, THEREFORE, THE COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH RESOLVES THAT:

Section 1. Pursuant to RCW 39.34, the Interlocal Cooperation Act,

Auburn and Lakehaven Utility District have legal authority to cooperate with other localities on the basis of mutual advantage and provision of services.

Section 2. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute the Emergency Water System Intertie Agreement between

the City and Lakehaven Utility District with minor administrative changes if required. A copy of said Agreement is attached hereto, denominated as Exhibit "A" and made a part hereof as though set forth in full herein.

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

Resolution No. 3443 03/14/02

CITY OF AUBURN

PETER B. LEWIS MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

Resolution No. 3443 03/14/02

Page 3



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

RECORDER'S COVER	R SHEET	
Document Title(s) (or transactions contained there	in): 9/27 PNUT	
Interlocal Agreement – Emergency Water Supply Agreement		
Reference Number(s) of Documents assigned or released: Additional reference #'s on page of document		
Grantor(s)/Borrower(s) (Last name first, then first Auburn, City of	name and initials)	
•	Said Scaumentel, when they ha	
	removed by Harris I supplement Title 90	
Grantee/Assignee/Beneficiary: (Last name first) 1. Lakehaven Utility District	DODOCOMOCINATO CON LE MAS NOT PROFE EXAMINEM AS TO EXCHANGE AMACHINATOR OF AS TO BIS REPORT AREA TO TO	
Legal Description (abbreviated: i.e. lot, block, plan	t or section, township, range)	
PER RCW 39.34		
Additional legal is on page of document.		
Assessor's Property Tax Parcel/Account Number	er	
☐ Assessor Tax # not yet assigned		

EMERGENCY WATER SUPPLY AGREEMENT Lakehaven/Auburn Intertie No. 1

THIS AGREEMENT made and entered into by and between the City of Auburn, hereinafter referred to as "City", and Lakehaven Utility District, hereinafter referred to as "District".

WITNESSETH:

WHEREAS, the City has water facilities in the vicinity of a water main of the District, and

WHEREAS, the City can increase the reliability of water for its customers, including Covington Water District and Water District No. 111, if water is available from the District in the event of an emergency, and

WHEREAS, the District is willing to provide to the City emergency service upon the terms and conditions set forth herein,

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

- 1. The District hereby grants to the City the right to connect, for the purposes described herein, a water meter and appurtenances to the end of the 16-inch water main located in the vicinity of 15th Street Northwest and Terrace Drive in King County, Washington, more specifically shown on Exhibit A. The intertie facility shall be sited on property owned by the City.
- 2. The meter described in Paragraph No. 1 herein is installed to provide an emergency water supply. Water shall not be withdrawn from the supply without the prior written approval of the District. At the time approval is sought, the City shall state the requested time of commencement of use, the expected duration of withdrawal and the quantity of water to be withdrawn. The City shall request in writing an extension of, or reduction in the duration of the withdrawal if the duration of the withdrawal is expected to vary from the original estimate. The District and City shall read the meter upon activation and upon deactivation of the intertie. The District may periodically bill the City for water used while the intertie is in operation or may bill for all such use after the withdrawal has ended.
- 3. It is anticipated by the parties that because the facility will be funded by agencies with emergency or interruptible water supply agreements with the City (specifically Covington Water District and Water District #111), the City may be called upon by adjoining agencies to provide an emergency supply of water beyond the City's ability to produce such supply, and therefore requests for emergency service under this Agreement may originate on behalf of those adjoining agencies.

- 4. Upon completion of the Emergency Intertie construction, the District will own and maintain the meter, associated appurtenances necessary to monitor emergency use of the intertie, the gate valve upstream of the vault and all piping upstream of the meter. The City will own and maintain the vault, control valve, and all other piping and appurtenances downstream of the meter (see Exhibit B). The City and the District shall have mutual access to the vault for periodic inspection and maintenance or repair of their respective facilities.
- 5. The City shall comply with all District resolutions and rules applicable to a connection to the District's water system including, but not limited to, the requirement that the District provide written approval of plans and specifications for the connection of intertie facilities prior to construction.
- 6. The City shall pay to the District the base monthly service charge and quantity charge for any water received. Monthly service and quantity charge rates shall be established or amended by District resolution for the use of an eight (8)-inch meter and the applicable water rate. The rate for emergency water use will be the greater of the District's adopted summer non-residential (Commercial/Public Authority) water rate or the City of Tacoma's (Tacoma) adopted wholesale water rate plus a District wheeling rate determined by the District. Examples of the current rates are included in Exhibit C. The District or Tacoma may revise these rates from time to time without notice to the City and such revised rates shall apply to emergency water deliveries made pursuant to this agreement.
- 7. This Agreement shall not authorize or permit the City to take water from the connection described herein beyond what is described in paragraph 2, 3, and Exhibit D.

8. Conditions

- (a.) In the event the District determines that the use of the emergency intertie is or will impose a negative impact to the public health, safety, or the equitable distribution of water within the District, the District may change, reduce or limit the time for, or temporarily discontinue, the withdrawal of water without notice;
- (b.) Water service may be temporarily interrupted or otherwise limited for purposes of making repairs, extensions or doing other necessary work to the water system; and
- (c.) Prior to a planned interruption or limiting of service as set forth in (b) above the District will notify the City of such planned interruption or limiting of service. The District agrees to use best efforts to notify the City as soon after it becomes aware of the need for such a service disruption.
- (d.) Operating conditions are as described in Exhibit C
- 9. Payment of all invoices for services and charges from the District shall be paid within 45 days of the invoice date.
- 10. In the event of non-performance of any provision herein by the City, District may shut off water supplied pursuant to this Agreement.

- 11. The use of this intertie is contingent upon receiving approval of same from the Department of Health pursuant to applicable regulations.
- 12. The City agrees to indemnify, defend and hold harmless the District, its officers, directors, employees and agents, and their successors and assigns, from any and all costs or claims arising out of or in any way resulting from the City's default, failure of performance, or negligent conduct associated with this Agreement. This indemnification provision shall include, but is not limited to, all claims against the District by an employee or former employee of the City or their contractors and, as to such claims, the City expressly waives all immunity and limitation of liability under Title 51 RCW.

The District agrees to indemnify, defend and hold harmless the City, its officers, directors, employees and agents, and their successors and assigns, from any and all costs or claims arising out of or in any way resulting from the District's default, failure of performance or negligent conduct associated with this Agreement. This indemnification provision shall include, but is not limited to, all claims against the City by an employee or former employee of the District or its contractors and, as to such claims, the District expressly waives all immunity and limitation of liability under Title 51 RCW.

- 13. The parties shall make good faith efforts to resolve by informal discussion any dispute arising under or in connection with this Agreement. Should a dispute arise between the parties that cannot be resolved satisfactorily, a mediator mutually acceptable to the parties shall resolve the dispute through the use of mediation at equal cost to each party. Should the Parties not be able to satisfactorily resolve the dispute through mediation, the forum for resolution shall be the King County Superior Court. The prevailing party shall be entitled to attorney fees and costs.
- 14. This Agreement may be terminated by either party hereto upon 60-days written notice to the other party.
- 15. Notices should be sent to the City and the District at the following addresses:

Public Works Director City of Auburn 25 West Main Street Auburn, WA 98001 General Manager Lakehaven Utility District P.O. Box 4249 Federal Way, WA 98003

IN WITNESS WHEREOF, we have hereunto set our hands and seals.

CITY OF AUBURN King County, Washington

Date

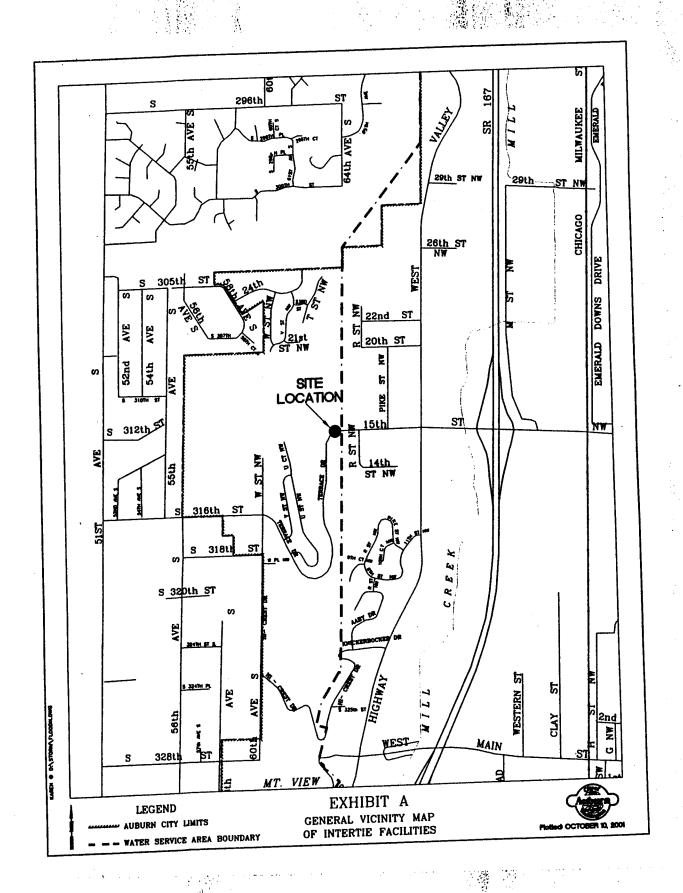
Approved as to form:

LAKEHAVEN UTILITY DISTRICT

King County, Washington

General Manager

Approved as to form:



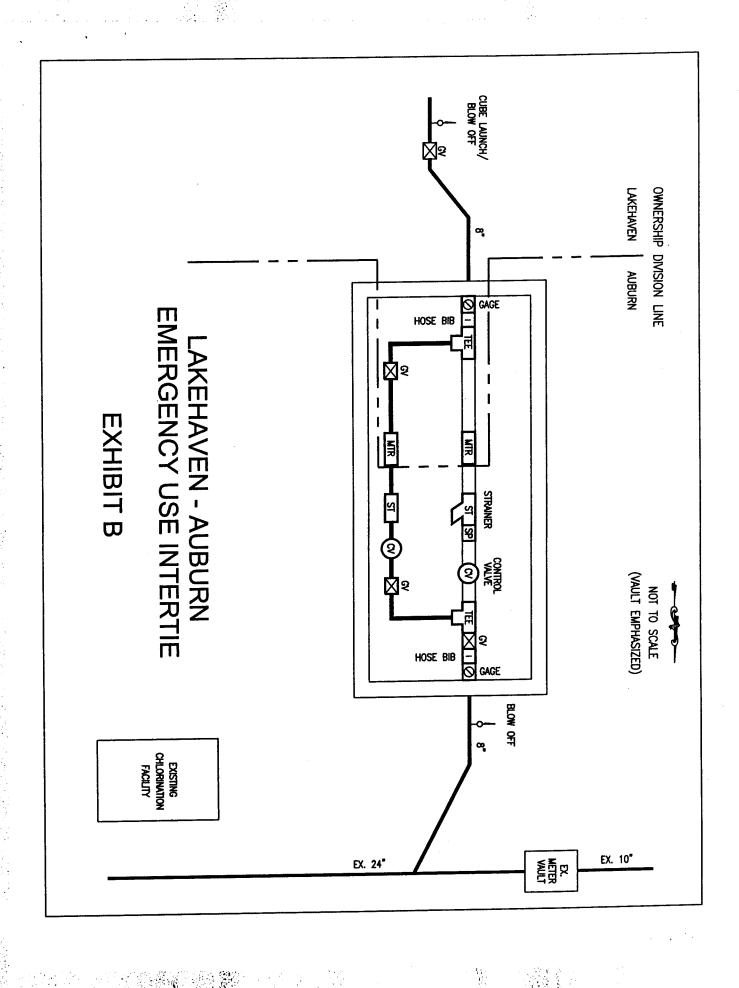


Exhibit C

Example of Monthly Meter Cost:

Lakehaven currently does not have an adopted monthly rate for an 8" meter, and would use an amount near Tacoma's monthly meter rate until such time as Lakehaven adopts a rate for this size meter.

Tacoma's rate for an 8" meter is

\$815.04 (Effective 4/23/01)

Lakehaven's proposed starting monthly rate:

\$804.00

Example of Emergency Water Rates in 2002

Lakehaven Utility District Rates (Resolution 99-906)

Commercial/Public Authority Water Rate

1.060 \$/ccf (Effective 1/1/2000)

City of Tacoma Rates (Ordinance No. 26800) plus Lakehaven Wheeling Rate

Summer Wholesale Water Rate to Lakehaven

0.912 \$/ccf (Effective 4/22/02)

Lakehaven Wheeling Rate

0.180 \$/ccf (Current Estimate)

Total

1.092 \$/ccf

Emergency Water Use Rate equals

1.092 \$/ccf in 2002

Exhibit D Operating Conditions

- 1. Prior to intertie activation the 16" water main upstream of the District's meter shall be flushed by the District. Any costs incurred by the District beyond labor time and the cost of water used for the flushing operation shall be paid by the City.
- 2. The City will maintain a back pressure-sustaining feature within the metering facility in order to maintain adequate pressure within the District's service area while also preventing uncontrolled flows. The District will maintain the right to authorize or direct the City to change the minimum up-stream pressure setting if an adjustment is warranted to increase flow capacity or maintain adequate pressure in the District's distribution system. The initial settings for the pressure-sustaining valve shall be noted on the approved construction plans and shall be stored in a waterproof container in the vault. Records of any future revised pressure settings shall be maintained and noted on the "record drawings" for the metering facility retained by the parties, and the information stored in the vault shall be updated.
- 3. The City will control the delivery flow rate from Lakehaven. The current estimated maximum allowable flow rate from Lakehaven is 1750 gpm (or 2.5 mgd) more or less, so long as Lakehaven customers are not impacted. The City's system has the capacity to receive water at a maximum instantaneous rate of up to approximately 5 mgd.
- 4. The District and City will coordinate the telemetry system so each will receive the signal required for its operation and monitoring.

Return Address: Auburn City Clerk City of Auburn 25 West Main St. Auburn WA 98001 20060210002263
PACIFIC NW TIT INTERLOCA 91.00
PACE001 OF 050
02/10/2005 15:46
KING COUNTY, WA

Addulli, WA 90001
RECORDER'S COVER SHEET
Document Title(s) (or transactions contained therein):
Interlocal Agreement (RES 3644)
Reference Number(s) of Documents assigned or released: Additional reference #'s on page of document
Grantor(s)/Borrower(s) (Last name first, then first name and initials) Auburn, City of
Grantee/Assignee/Beneficiary: (Last name first) 1. Pacific, City of
Legal Description (abbreviated: i.e. lot, block, plat or section, township, range)
PER RCW 39.34
Additional legal is on page of document.
Assessor's Property Tax Parcel/Account Number N/A
Assessor Tax # not yet assigned

Said document(s) were filed for record by Pacific Northwest Title as accommodation only. It has not been examined as to proper execution or as to its affect upon title.

RESOLUTION NO. 3644

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO THE ANNEXATION OF A PORTION OF PROPERTY TO THE CITY OF AUBURN SIMULTANEOUSLY TO ITS DEANNEXATION FROM THE CITY OF PACIFIC, PURSUANT TO RCW 35.10.217(2)

WHEREAS, the City Council of the City of Auburn adopted Resolution No. 3617 on May 19, 2003, and Resolution No. 3619 on June 16, 2003, notifying the King County Boundary Review Board of the City's intent to annex property to the City of Auburn simultaneous to its de-annexation from the City of Pacific; and

WHEREAS, the City Council of the City of Pacific has concurred with the annexation and de-annexation through its Resolution No. 527 on May 27, 2003, and Resolution No. 530 on June 9, 2003; and

WHEREAS, the King County Boundary Review Board has consented to and approved the annexation and de-annexation; and

WHEREAS, in connection with such annexation/de-annexation, the cities of Auburn and Pacific have committed to coordinate and cooperate with respect to any planning, transportation, utility or development issues that affect the cities; and

WHEREAS, the annexation/de-annexation will result in a change in the water service areas of the cities; and

WHEREAS, Pacific desires to be granted the right to a future franchise for ingress, egress and utilities in the vicinity of the King/Pierce County line on East Valley Highway in order to access the parcels to the west of the Burlington Northern Santa Fe right-of-way; and

WHEREAS, Auburn desires to be granted a franchise for its existing facilities in A Street SE remaining in Pacific after the annexation/de-annexation; and

WHEREAS, the cities wish to amend the existing emergency intertie agreements and relocate the emergency intertie facility serving Pacific on Lakeland Hills Way; and

WHEREAS, the cities have mutual interests in the development "Vista Heights" that currently straddles the existing cities' boundaries and will be completely contained within Auburn when the annexation/de-annexation is finalized; and

WHEREAS, Auburn desires to treat and retain public storm water in public facilities; and

WHEREAS, Auburn and Pacific have agreed that Pacific will, by bill of sale, transfer their interest in the public facilities within the annexation/de-annexation area to Auburn; and

WHEREAS, Auburn and Pacific have agreed that Auburn will provide operation and maintenance services for the portion of A Street SE remaining in Pacific; and

WHEREAS, the requirements of the State Environmental Policy Act and applicable Environmental Procedures have been complied with; and

WHEREAS, a Public Hearing was held on October 6, 2003, for which notice was provided pursuant to the requirements of RCW 35.10.217(2) and at which hearing all persons wishing to speak to the annexation and de-annexation were heard; and

WHEREAS, the City Council of the City of Auburn passed its Resolution No. 3643 on October 6, 2003, finalizing the annexation of a portion of property to the City of Auburn and simultaneous to its de-annexation from the City of Pacific.

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

Section 1. The Mayor is hereby authorized to execute agreements in substantial conformity with the following agreements attached hereto and incorporated herein by this reference:

The Water Service Area Adjustment Agreement marks as Exhibit A,

The Emergency Water System Intertie Agreement marked as Exhibit B,

The Auburn Franchise Agreement With the City of Pacific marked as Exhibit C,

The Pacific Franchise Agreement with the City of Auburn marked as Exhibit D

The Vista Heights Development Agreement marked as Exhibit E,

The Bill of Sale for infrastructure being transferred from Pacific to Auburn marked as Exhibit F, and

An interlocal agreement for maintenance and operation services on a portion of A Street SE attached as Exhibit G.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation, including transmitting a copy of this Resolution to the City Clerk of Pacific.

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

CITY OF AUBURN

PETER B. LEWIS **MAYOR**

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

EXHIBIT A WATER SERVICE AREA AGREEMENT

This Agreement made and entered into by and between the City of Pacific, a Washington municipal corporation, ("**Pacific**") and the City of Auburn, a Washington municipal corporation ("**Auburn**").

Whereas, Pacific is engaged in the business of providing water service to the public located in certain areas of King County in the State of Washington. Auburn is engaged in the business of providing water service to the public located in certain areas of King and Pierce Counties in the State of Washington, and;

Whereas, the parties desire to enter into a formal service area agreement to revise the boundary between their contiguous service areas in King county in order to avoid any duplication or overlap of water service and to provide the most efficient service to their respective customers, and;

Whereas, Auburn and Pacific have by resolution annexed/de-annexed an area legally described in Attachment "1" attached hereto and shown on the map (Attachment "2") attached hereto. The Cities have agreed to work together cooperatively to facilitate a practical efficient boundary between the two systems.

Pacific and Auburn therefore agree as follows:

- 1. This Agreement is entered into pursuant to the South King County Coordinated Water System Plan which Plan and Appendices are incorporated herein by this reference.
- 2. The contiguous water service boundary between **Pacific** and **Auburn** is agreed upon by both parties as shown on the attached map (Attachment "2") and as legally described in Attachment "3", which by this reference are incorporated herein.
- 3. Pacific and Auburn may by mutual written amendment(s) to this Agreement make such adjustments to the service boundary as they may mutually agree upon from time to time so that water service to new service locations in close proximity to the service boundary may be provided in an efficient, effective and economical manner. Any such adjustments shall be documented by modifying the attached maps which when so modified and agreed to by the parties shall constitute amendments to this Agreement. Minor adjustments consisting of ten acres or less may be authorized by the Public Works Director of the City of Auburn and the Community Development Director of the City of Pacific.
- 4. Except as specifically set forth herein, this Agreement shall not modify the Resolutions regarding the Annexation/De-annexation process referenced above.

- 5. **Auburn** will work with Pacific to assist in the negotiations with a Tacoma Second Supply Project Partner (SSP Partner) for future water supply for **Pacific**. The rate for water sold to Pacific from a SSP Partner shall be the rate charged Auburn for the water plus a wheeling charge to be established using cost of service principles.
- 6. **Pacific** will pay Auburn its costs associated with increasing the capacity of the Auburn Tacoma Second Supply Pipeline connection(s) to allow the wheeling of up to one (1) million gallon per day peak day demand and up to one half million gallon per day average day demand through Auburn to Pacific.
- 7. Water available to the **Pacific** pursuant to this Agreement shall be in compliance with all applicable state and federal drinking water laws, regulations and standards.
- 8. If **Pacific** requires additional or different treatment facilities in order for the wheeled water to comply with their water quality goals or standards then **Pacific** will install such treatment facilities on the **Pacific** side of the intertie meters at their expense. If **Auburn** and **Pacific** determine that treatment is required to meet the mutual water quality goals and standards then the treatment facilities will be installed as near the point of connection to the Tacoma pipeline as practical. The treatment facility costs will be shared based upon the capacity required by each city.

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

CITY OF AUBURN	CITY OF PACIFIC
King County, Washington	King County, Washington
	Loward Erickson
PETER B. LEWIS, MAYOR	HOWARD ERICKSON, MAYOR
OCT 2 0 2003 Date	Date Cetator 31, 2003
ATTEST: Danud Charlan	ATTEST:
Danielle E. Daskam, CMC, City Clerk	Randy Reed, CMC, City Clerk
APPROVED AS TO FORM:	APPROVED AS TO FORM:

Exhibit A Resolution No. 3644 Page 2 of 2

ATTACHMENT 1

ANNEXATION LEGAL DESCRIPTION AREA IN VICINITY OF "A" STREET SOUTHEAST (EAST VALLEY HIGHWAY) AND LAKELAND HILLS WAY SOUTHEAST

THAT PORTION OF GOVERNMENT LOTS 3 AND 4 IN THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W. M., AND THE EAST HALF OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3 IN SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., SAID CORNER ALSO BEING AN ANGLE POINT IN THE WEST BOUNDARY OF THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE NORTHWEST CORNER OF THE LANDS DESCRIBED IN CITY OF PACIFIC ANNEXATION ORDINANCE NUMBER 319:

THENCE EAST ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 3, AND THE BOUNDARY COMMON TO SAID LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 319 A DISTANCE OF 1280 FEET MORE OR LESS TO THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 3:

THENCE SOUTH ALONG THE EAST LINE OF SAID GOVERNMENT LOTS 3 AND 4, AND THE BOUNDARY COMMON TO SAID LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 319 TO THE SOUTHEAST CORNER OF SAID CITY OF PACIFIC ORDINANCE 319 AND TO A LINE PARALLEL WITH AND 825 FEET NORTHERLY OF THE SOUTH LINE OF SAID GOVERNMENT LOT 4;

THENCE WEST ALONG THE BOUNDARY COMMON TO SAID LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 319, AND ALONG SAID PARALLEL LINE A DISTANCE OF 1300 FEET, MORE OR LESS, TO THE WEST LINE OF SAID SECTION 31;

THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION 31 AND THE BOUNDARY COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226 TO THE SOUTHWEST CORNER OF SAID SECTION 31;

THENCE WEST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST AND ALONG THE SOUTH LINE OF THE LANDS ANNEXED TO THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226 A DISTANCE OF 70 FEET, MORE OR LESS, TO THE EAST LINE OF THE BURLINGTON NORTHERN SANTA FE (BNSF) RAILROAD RIGHT-OF-WAY (100 FEET IN WIDTH);

THENCE NORTH ALONG SAID EAST LINE OF THE BNSF RAILROAD RIGHT-OF-WAY TO A LINE PARALLEL WITH AND 100 FEET NORTHERLY OF SAID SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36:

THENCE WEST ALONG LAST SAID PARALLEL LINE 100 FEET TO THE WEST LINE OF SAID BURLINGTON NORTHERN SANTA FE (BNSF) RAILROAD RIGHT-OF-WAY;

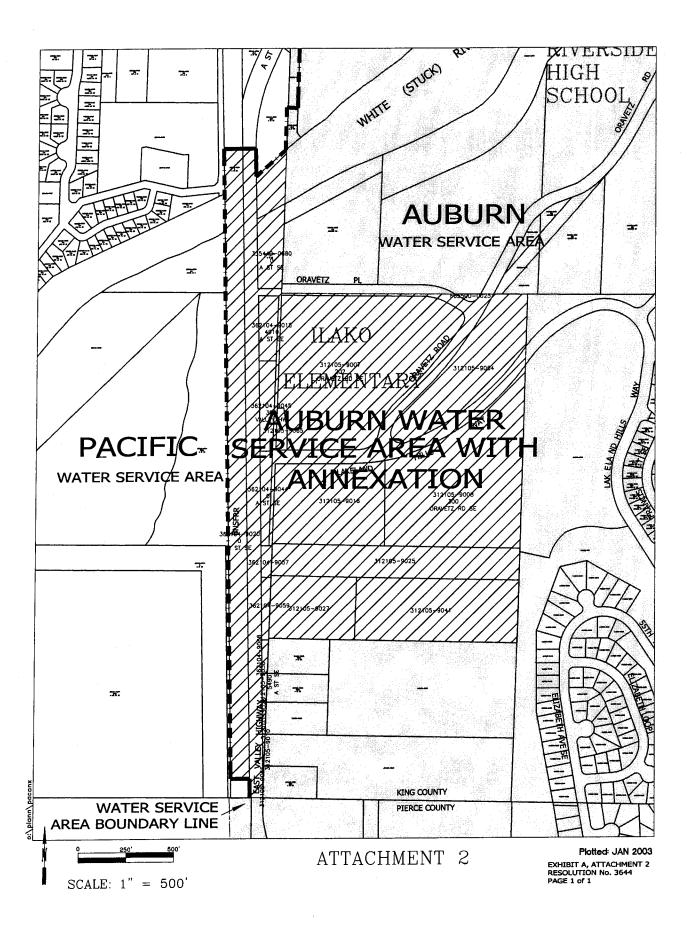
THENCE NORTH ALONG SAID WEST LINE OF THE BNSF RAILROAD RIGHT-OF-WAY A DISTANCE OF 3280 FEET, MORE OR LESS, TO A LINE PARALLEL WITH AND 1884 FEET SOUTHERLY (WHEN MEASURED ALONG THE WEST LINE OF SAID RAILROAD RIGHT-OF-WAY) FROM THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36;

THENCE EASTERLY ALONG LAST SAID PARALLEL LINE A DISTANCE OF 175 FEET, MORE OR LESS, TO THE EAST RIGHT-OF WAY LINE OF EAST VALLEY HIGHWAY ("A" STREET SE); THENCE SOUTHERLY ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 150 FEET, MORE OR LESS, TO THE NORTH BANK OF THE WHITE RIVER (STUCK RIVER);

THENCE NORTHEASTERLY ALONG SAID NORTH BANK OF THE WHITE RIVER A DISTANCE OF 200 FEET, MORE OR LESS, TO THE LINE COMMON TO THE LANDS ANNEXED TO THE CITY OF

AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226, AND THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M.; THENCE SOUTH ALONG SAID LINE COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226, AND THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 31 A DISTANCE OF 700 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SITUATE IN KING COUNTY, WASHINGTON.



ATTACHMENT 3

WATER SERVICE AGREEMENT LINE – BOUNDARY AFTER ANNEXATION (IN THE E 1/2 OF SEC. 36 TWP 21N, R 4E, AND W 1/2 OF SEC. 31 TWP 21N, R 5E. W.M.)

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M., SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE SOUTHEAST CORNER OF THE LANDS ANNEXED TO THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226:

THENCE WEST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36, AND ALONG SAID SOUTH LINE OF THE LANDS ANNEXED TO THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226 A DISTANCE OF 70 FEET, MORE OR LESS, TO THE EAST LINE OF THE BURLINGTON NORTHERN SANTA FE (BNSF) RAILROAD RIGHT-OF-WAY (100 FEET IN WIDTH) AND THE TRUE POINT OF BEGINNING OF THIS WATER SERVICE AGREEMENT LINE; THENCE NORTH ALONG SAID EAST LINE OF THE BNSF RAILROAD RIGHT-OF-WAY TO A LINE PARALLEL WITH AND 100 FEET NORTHERLY OF SAID SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36:

THENCE WEST ALONG SAID PARALLEL LINE 100 FEET TO THE WEST LINE OF SAID BURLINGTON NORTHERN SANTA FE (BNSF) RAILROAD RIGHT-OF-WAY;

THENCE NORTH ALONG SAID WEST LINE OF THE BNSF RAILROAD RIGHT-OF-WAY A DISTANCE OF 3280 FEET, MORE OR LESS, TO A LINE PARALLEL WITH AND 1884 FEET SOUTHERLY (WHEN MEASURED ALONG THE WEST LINE OF SAID RAILROAD RIGHT-OF-WAY) FROM THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36;

THENCE EASTERLY ALONG LAST SAID PARALLEL LINE A DISTANCE OF 175 FEET, MORE OR LESS, TO THE EAST RIGHT-OF WAY LINE OF EAST VALLEY HIGHWAY ("A" STREET SE); THENCE SOUTHERLY ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 150 FEET, MORE OR LESS, TO THE NORTH BANK OF THE WHITE RIVER (STUCK RIVER);

THENCE NORTHEASTERLY ALONG SAID NORTH BANK OF THE WHITE RIVER A DISTANCE OF 200 FEET, MORE OR LESS, TO THE LINE COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226, AND THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36;

THENCE NORTH ALONG THE LINE COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226, AND THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36 A DISTANCE OF 258 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF THE LANDS CONVEYED TO THE CITY OF AUBURN BY DEED RECORDED UNDER RECORDING NUMBER 8009050525, RECORDS OF SAID COUNTY;

THENCE EAST 50 FEET ALONG THE NORTH LINE OF SAID LANDS TO THE NORTHEAST CORNER THEREOF;

THENCE NORTH 346.82 FEET TO A POINT 50 FEET EAST OF THE SOUTHWEST CORNER OF TRACT "B" OF CITY OF AUBURN LOT LINE ADJUSTMENT LLA-5-87 RECORDED UNDER RECORDING NUMBER 8704220781, RECORDS OF KING COUNTY;

THENCE WEST ALONG THE SOUTH LINE OF SAID TRACT "B" TO THE SOUTHWEST CORNER OF SAID TRACT "B" AND THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36; THENCE NORTH ALONG THE WEST LINE OF SAID TRACT "B", THE LINE COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226, AND THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36 A DISTANCE OF 54.22 FEET, MORE OR LESS, TO SAID EAST RIGHT-OF-WAY LINE OF EAST VALLEY HIGHWAY ("A" STREET SE); THENCE SOUTHWESTERLY ALONG SAID EAST RIGHT-OF-WAY LINE TO THE SOUTHEAST

THENCE SOUTHWESTERLY ALONG SAID EAST RIGHT-OF-WAY LINE TO THE SOUTHEAST CORNER OF THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 1171;

THENCE WEST ALONG SAID SOUTH LINE TO THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN SAID CITY OF AUBURN ORDINANCE NUMBER 1171; THENCE NORTHERLY ALONG THE WEST LINE OF THE LANDS DESCRIBED IN SAID CITY OF AUBURN ORDINANCE NUMBER 1171 TO THE NORTH LINE OF SAID SECTION 36 AND THE TERMINUS OF THIS WATER SERVICE AGREEMENT LINE.

SITUATE IN KING COUNTY, WASHINGTON.

EXHIBIT B

EMERGENCY WATER SYSTEM INTERTIE AGREEMENT Pacific/Auburn Intertie Agreement No. 3

THIS AGREEMENT made and entered into by and between the City of Auburn, hereinafter referred to as Auburn, and, the City of Pacific, hereinafter referred to as Pacific, for the purposes of planning, designing, constructing, maintaining, and operating an emergency system intertie between the respective parties,

WITNESSETH:

WHEREAS, both Cities have water facilities in the vicinity, and

WHEREAS, both Cities can increase fire protection and emergency water supply reliability for their customers, and

WHEREAS, the Cities are willing to provide the necessary services to increase fire fighting and emergency supply reliability upon the terms and conditions set forth herein.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

- 1. The Cities hereby concurrently terminate, with the execution of this Agreement the Water Sales Agreement Between City of Auburn and City of Pacific, dated November 4, 1991 and the Water Service Agreement dated July 27, 1984.
- 2. The four-inch (4") water service connection on Ellingson Road near Pacific's well field will continue to function as an emergency water supply under the terms and conditions of this agreement and the supply of emergency water through this facility will be one-way from Auburn to Pacific.
- 3. The new emergency water system intertie will be designed to be operated manually as a two way emergency supply between the Auburn and Pacific Systems. The facility shall be located on East Valley Highway in the vicinity of the Water Service Area Boundaries between the two cities. Final location and configuration of the facilities shall be determined at the time of final design.
- 4. The emergency water system interties shall be operated only in the event of an emergency. For purposes of this agreement, an emergency shall be defined as resulting from a water shortage, a major water line break, fire demand, contamination to the water supply system, mechanical

- equipment failure, electrical equipment failure or Puget Sound Energy facility failure, or any other agreed upon emergency within the water supply system.
- 5. Auburn will design and administer the contract for the construction of the new metering station. The facility will be designed and constructed in accordance with reasonably accepted water utility standards for similar municipal water utilities. Construction of the metering station will occur in the future at a mutually agreed upon time. Auburn will own and maintain the piping, interior equipment, emergency meter and interior appurtenances, and all piping up to the Pacific side of the vault for the metering station.
- 6. Upon completion of construction, Auburn will transfer ownership of all exterior appurtenances, and all piping that is located on the Pacific side of the vault, to Pacific. Pacific will own and maintain the exterior appurtenances and all piping on Pacific's side of the vault.
- 7. Each City will have unlimited access to the vault via a dual padlock or ownership of keys to the vault.
- 8. Each City will operate the respective normally locked valve inside of the vault. Auburn will solely unlock and operate the locked valve on Auburn's side of the meter and Pacific will solely unlock and operate the locked valve on Pacific's side of the meter.
- 9. The procedure for operating the interties in the event of such emergency shall be as follows:
 - A. Each City shall determine that an emergency of sufficient magnitude has occurred which warrants the need to request that the one or both interties be activated.
 - B. Upon agreement that an emergency exists, the authorized representative of each City shall allow for one or both of the interties to be opened. The intertie(s) will be activated as soon as reasonably possible. Both Cities' personnel shall be present at the vault(s) to open the valves to activate the facility.
 - C. The City requesting the activation shall provide a written confirmation of the request not less than 24 hours after the verbal request, or on the first day of normal business after the verbal request.

- D. The intertie(s) shall remain activated until the City requesting activation determines that the need for activation of the emergency intertie(s) has ceased and shall request in writing to close the intertie.
- In case of emergency or whenever the public health, safety, or the Ε. equitable distribution of water so demands, the City supplying the water may change, reduce or limit the time for or temporarily discontinue the supply of water without notice; water service may be temporarily interrupted, limited for purposes of making repairs, extensions or doing other necessary work; and the City supplying the water shall not be responsible for any damage resulting from interruption, change or failure of the water supply, and the City receiving the water (City requesting activation) shall save and hold harmless the City supplying the water from any loss, damages or suites to or by customers of the City receiving the water resulting from interruption, change or failure of water supply provided by this Agreement, except damages arising out of the City supplying the water's negligence. Prior to a planned interruption or limiting of service, the City supplying the water will notify the City receiving the water of such not less than three days prior to the service disruption. The City supplying the water agrees to use best efforts and reasonable diligence to notify the City receiving the water as soon after it becomes aware of the need for service disruption and further will, to the extent practical, limit the service disruption to daylight hours.
- 10. Auburn shall read the meter(s) upon activation and upon deactivation of the intertie(s). The City supplying the water shall verify the information and shall then calculate and invoice the other City for the water used during the request. The total water used during the event shall be used to calculate the invoice. The rate for water consumed through the emergency interties shall be at the Auburn Wholesale Rate to Algona in effect at the time the water is used. This shall be complete payment for the water, labor, and administration of activating the intertie(s).
- 11. The total project costs for the construction of the new intertie shall include costs for consulting design service, and construction. Auburn shall bear the project costs in exchange for facilities transferred to Auburn as a part of the Lakeland Hills area annexation/de-annexation. Each City is responsible for associated staff, administration and legal costs associated with this implementation of the agreement.
- 12. To the extent allowed by law, the City of Pacific shall defend, indemnify, and hold harmless the City of Auburn, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs,

expensés of litigation, attorney's fees, penalties and damages of whatsoever kind or nature arising out of or in connection with or incident to an act or omission of the City of Pacific, its employees, agents, and contractors in the performance of the City of Pacific's obligations under the Agreement and this Amendment. This indemnification provision shall include, but is not limited to, all claims against the City of Auburn by an employee or former employee of the City of Pacific or its contractors and, as to such claims; the City of Pacific expressly waives all immunity and limitation of liability under Title 51 RCW.

To the extent allowed by law, the City of Auburn shall defend, indemnify and hold harmless the City of Pacific, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs, expenses of litigation, attorney's fees, penalties, and damages or whatsoever kind or nature arising our of, in connection with or incident to an act or omission of the City of Auburn, its employees, agents, and contractors in the performance of the City of Auburn's obligations under this Agreement. This indemnification obligation shall include, but is not limited to, all claims against the City of Pacific by an employee or former employee of the City of Auburn or its contractors and, as to such claims, the City of Auburn expressly waives all immunity and limitation of liability under Title 51 RCW.

- 13. This Agreement shall remain in force until terminated by either party hereto upon 60-days written notice to the other party. Any project costs, incurred up to the date of such notice, as described herein, shall be shared in accordance with the provisions of this Agreement.
- 14. Water available to the Pacific pursuant to this Agreement shall be in compliance with all applicable state and federal drinking water laws, regulations and standards.
- 15. If Pacific requires additional or different treatment facilities in order for the water received under this agreement to comply with their water quality goals or standards then Pacific will install such treatment facilities on the Pacific side of the intertie meters at their expense.
- 16. If Auburn requires additional or different treatment facilities in order for the water received under this agreement to comply with their water quality goals or standards then Auburn will install such treatment facilities on the Auburn side of the intertie meters at their expense.

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

CITY OF AUBURN
King County, Washington

PETER B. LEWIS, MAYOR

OCT 2 0 2003

Date

Danielle E. Daskam, CMC, City Clerk

APPROVED AS TO FORM:

CITY OF PACIFIC King County, Washington

CITY OF PACIFIC King County, Washington

CITY OF PACIFIC King County, Washington

Laura Ciclosof

HOWARD ERICKSON, MAYOR

Date Octobro 31, 2003

ATTEST:

ATTEST:

ATTEST:

APPROVED AS TO FORM:

APPROVED AS TO FORM:

AMALL ALL

APPROVED AS TO FORM:

Albert A. Abuan, City Attorney

Daniel B. Heid, City Attorney

EXHIBIT "C"

CITY OF AUBURN, WASHINGTON FRANCHISE AGREEMENT WITH THE CITY OF PACIFIC

WHEREAS, the City of Auburn (Auburn) and the City of Pacific (Pacific) have agreed to the annexation/de-annexation a portion of property described in Attachment "1" relating to among other things East Valley Highway (EVH) from the north end of the White River bridge to the King-Pierce County line in which, Auburn recognizes and agrees to Pacific's right to access a portion of EVH near the King/Pierce County line for ingress, egress and utilities; and

WHEREAS, Auburn and Pacific have entered into a Water Service Area Agreement, which revised the boundary between their respective water service areas; and

WHEREAS, the City of Auburn and Pacific have entered into an Emergency Water System Intertie Agreement; and

WHEREAS, according to said Emergency Water System Intertie Agreement, Auburn guaranteed Pacific the right to wheel water through Auburn's water system for an associated wheeling charge; and

WHEREAS, in order to maintain control over the use of Auburn right-of-ways by Pacific within Auburn, it is appropriate to enter into franchise agreements with Pacific; and

WHEREAS, Pacific has negotiated this franchise agreement with Auburn acceptable to both parties; and

WHEREAS, Auburn has determined that it is in the best interests of the public to grant Pacific a franchise on the terms and conditions set forth in this Agreement.

NOW, THEREFORE THE CITY OF AUBURN AND THE CITY OF PACIFIC AGREE AS FOLLOWS:

SECTION 1 DEFINITION

Where used in this franchise ("Franchise"), the following definitions shall apply:

- 1.1 "Franchisee" means the City of Pacific, a Washington municipal corporation, and its respective successors and assigns.
 - 1.2 "City" means the City of Auburn, a Washington municipal corporation.

- 1.3 "Franchise Area" means that portion of East Valley Highway where Pacific will own, operate and maintain utilities as described with Attachment 2" attached hereto, which is by this reference incorporated, as if fully set forth herein; provided, that the Franchise Area shall not include or convey any right to Franchisee to install facilities on or to otherwise use City owned or leased properties outside the Franchise Area.
- 1.4 "Facilities" means the Franchisee's utility system, lines, mains, appurtenances, and all other necessary or convenient facilities for the purpose of providing water service.
- 1.5 "Agreement" means this Agreement setting forth the terms and conditions of the franchise granted to the Franchisee.

SECTION 2 FRANCHISE GRANT

Subject to the terms and conditions set forth in this Agreement, the City grants to the Franchisee the right to construct and install water pipelines and appurtenances and to excavate trenches in City roads for the purposes of constructing, installing, operating, maintaining, removing, and replacing mains and pipes and making connections between the same to the dwellings and other buildings of the consumers. In exercising the foregoing rights, the Franchisee shall be governed by and conform to the general rules adopted by the Public Works Department of the City of Auburn, and the Franchisee, at no expense to the City, shall complete all work and shall replace and restore the City roads to the condition of the City roads existing immediately prior to such disturbance; PROVIDED, HOWEVER, that no such work shall be done prior to the obtaining of a permit therefor issued by the City's Public Works Director (hereinafter "Director"), which permit shall set forth conditions pertaining to the work to be done and specifications for the restoration of the roads to the same condition as they were prior to such work. If the Franchisee does not repair the City roads to the satisfaction of the Director, the City may, at its sole discretion, repair such City roads, or cause them to be repaired, and the Franchisee hereby agrees to reimburse the City for the cost of such work, including overhead costs.

SECTION 3 FRANCHISE TERM

This Franchise is and shall remain in full force and effect from the effective date of this Agreement forward, for a period not to exceed twenty-five (25) years from the effective date of this Agreement provided, that this Franchise shall not take effect and the Franchisee shall have no rights under this Franchise unless the Franchisee files a written acceptance of this Franchise with the City pursuant to Section 4 of this Agreement.

SECTION 4 ACCEPTANCES BY GRANTEE OF TERMS AND CONDITIONS
The full acceptance of this Franchise and all of its terms and conditions shall be filed with the City Clerk within forty-five (45) days from the date of this Agreement, by the Franchisee. Full acceptance of this Franchise is a condition precedent to its taking effect, and unless this Franchise is accepted within the time specified, this grant will be null and void and have no force or effect.

SECTION 5 NON-EXCLUSIVE FRANCHISE

This Franchise is not exclusive. It does not prohibit the City from granting franchises for other public or private utilities in, over, along, across, and under any City property, including the Franchise Area. This Franchise does not prevent or prohibit the City from constructing, altering, maintaining or using any of the Franchise Area. The City retains full power to make all changes, relocations; repair, maintenance or other work to or in the Franchise Area as the City deems fit.

SECTION 6 JURISDICTIONS

This Franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which the City has an actual interest. It is not a warranty of title or of interest in City road rights-of-way. None of the rights granted to the Franchisee shall affect the jurisdiction of the City over City road rights-of-way or the City's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating.

SECTION 7 REGULATIONS OF USE AND CONTROL

This Franchise does not deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City road rights-of-way covered by this Franchise. The City reserves the right and power at all times to exercise its police powers with respect to the time, manner and location of the placement of the Franchisee's Facilities.

SECTION 8 EMINENT DOMAIN

This Franchise and the limited rights and interests granted by this Franchise are subject to the exercise of eminent domain. In the event of an exercise of eminent domain by the City, the value to be attributed to all the rights and interests granted under this Franchise shall not exceed the actual amount the Franchisee paid to the City in obtaining this Franchise.

SECTION 9 VACATION

If at any time the City vacates any City rights-of-way covered by this Franchise, the City will not be held liable for any damages or loss to the Franchisee by reason of such vacation. The City may, after giving thirty (30) days written notice to the Franchisee terminate this Franchise with respect to any City road or rights-of-way vacated.

SECTION 10 ENFORCEMENT

The City's failure to enforce any provision of this Franchise does not constitute a waiver of its right to enforce that provision or any other provision of this Franchise.

SECTION 11 INDEMNITIES AND HOLD HARMLESS

11.1 The Franchisee shall defend, indemnify and hold harmless the City, its appointed and elected officials, and its employees and agents from and against liability for all claims, actions, injuries, demands, liabilities, losses, costs, damages and

judgments, including costs of defense thereof, (collectively referred to as "damages") for injury to persons, death or property damage caused by, arising out of, or incidental to the Franchisee's exercise of the rights and privileges granted by this Franchise, except for damages caused by or arising out of the City's sole negligence. In the event that any such claim or demand for damages is presented to or filed with the City, or if any suit or action is initiated against the City based on such claims or demands for damages, the City shall promptly notify the Franchisee of the claim, demand, suit or action and the Franchisee shall have the right, at its election and its sole cost and expense, to settle and compromise such claim, demand, suit or action, or defend the same at the Franchisee's sole cost and expense.

11.2 If it is determined that RCW 4.24.115 applies to this Franchise, the Franchisee agrees to defend, hold harmless and indemnify the City to the maximum extent permitted under that statute, and specifically for the Franchisee's negligence concurrent with that of the City to the full extent of the Franchisee's negligence.

SECTION 12 INSURANCE

- 12.1 The Franchisee shall keep a policy of insurance in force with a minimum limit of five million dollars (\$5,000,000.00). Verification of insurance coverage is a condition precedent to the effectiveness of this Agreement.
- 12.2 The insurance shall be maintained in full force and effect at the Franchisee's sole expense throughout the term of the Franchise, and, should such insurance be terminated, this Agreement shall terminate as of the date of the termination of insurance coverage.
- 12.3 The coverage provided by the Franchisee's insurance policies shall be primary to any insurance maintained by the City except as to losses or damages attributable to the sole negligence of the City. Any insurance maintained by the City that might relate to this Franchise shall be in excess to the Franchisee's insurance and shall not contribute with or to it. The City has no obligation to report occurrences to the insurance companies unless a claim is filed with the City's City Council; and the City has no obligations to pay the Franchisee's premiums.
- 12.4 The Franchisee shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable federal, state, county and city statutes, rules, regulations, Ordinances, orders and codes. The Franchisee's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The Franchisee shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any works therein. The services of the City or City's consultant personnel in conducting construction review of the Franchisee's work relating to the Franchise is not intended to include review of the adequacy of the Franchisee's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such Franchise Area or job site. The Franchisee shall provide safe access for the City and its inspectors to adequately inspect the work and its conformance with applicable statutes, Ordinances, rules, regulations, and the Franchise.

SECTION 13 INSTALLATIONS, REPAIR, REMOVAL OR RELOCATION

- 13.1 The Franchisee shall, at no expense to the City, expeditiously repair all existing Facilities that it owns within the Franchise Area, including any damage caused directly or indirectly by its Facilities, all appurtenant Facilities and service lines connecting its system to users, if the City requires such repair for any reasonable purpose.
- 13.2 The Franchisee shall, at no expense to the City, adjust, remove or relocate existing Facilities within the Franchise Area, including all appurtenant Facilities and service lines connecting its system to users, if the City determines such adjustment, removal or relocation is reasonably necessary to allow for an improvement or alteration planned by the City. The City shall give the Franchisee written notice of such requirement as soon as practicable. The written notice shall include all available information, such as plans and specifications, as is reasonably necessary for the Franchisee to plan for such adjustment, removal or relocation.
- 13.3 Franchisee's Facilities shall be constructed, installed, maintained and repaired within the Franchise Area so as to provide safety of persons and property, and not interfere with the free passage of traffic, all in accordance with the laws of the State of Washington, and the Ordinances, resolutions, rules and regulations of the City.
- 13.4 For projects that are a part of the City's capital improvement program, in addition to any other notice given to the Franchisee, the City shall provide a copy of the capital improvement plan and six (6) year transportation improvement plan when requested. Further the City shall provide a vertical and horizontal profile of the roadway and drainage facilities within it, both existing and as proposed by the City, and the proposed construction schedule. The initial design information shall be given at least one hundred and eighty (180) days before construction is scheduled to begin, except in cases of urgent construction or emergencies. The Franchisee shall respond to this notice, and to any later notices of revised designs, within twenty (20) days of the date of the notice, by providing to the City the Franchisee's best available information as to the location of all the Franchisee's Facilities, including all appurtenant Facilities and service lines connecting its system to users and all Facilities that it has abandoned, within the area proposed for the project.
- 13.5 The City shall offer the Franchisee the opportunity to participate in the preparation of bid documents for the selection of a contractor to perform the public works project as well as all required adjustments, removals or relocations of the Franchisee's Facilities. The City shall have sole authority to choose the contractor to perform such work. Such bid documents shall provide for an appropriate cost allocation between the parties. In addition to the Franchisee's allocation of contractor costs, the Franchisee shall reimburse the City for all costs, to include but not be limited to legal, engineering, inspections, administration and/or soils testing, related to the Franchisee's work and reasonably incurred by the City in the administration of such joint construction contracts. Such costs shall include the direct salary cost of the time of City professional and technical personnel, including the City's consultants, spent productively engaged in such work, plus overhead costs at the standard rate charged by the City on other similar projects.

13.6 It is understood that emergency situations may arise that could threaten public health and/or continued operation of the Franchisee's utility system and the Franchisee may be unable to notify the City in the manner prescribed in Section 14 of this Franchise. In such a situation the Franchisee shall immediately correct the hazardous situation and continue to use best efforts to contact the City staff. The Emergency Phone Number for the City of Auburn is (253) 931-3010, and the City of Pacific is (253) 929-1110. Dialing 911 is advised for emergency situations.

SECTION 14 REQUIREMENTS OF CONSTRUCTION PERMITS

- 14.1 The Franchisee has the right, privilege and authority to enter the City road rights-of-way for the purpose of constructing, installing, operating, maintaining, replacing or repairing its Facilities on the condition that it obtains construction, excavation, and right-of-way use permits issued by the City. Any work performed, whether by Franchisee, its contractors, or third parties, shall include necessary paving, patching, grading and any other reasonably necessary repair or restoration to the City rights-of-way. All work shall be done to the City's satisfaction.
- 14.2 All equipment, pipelines and appurtenances which are used in the construction, installation, operation, maintenance or repair of the Franchisee's Facilities and which are located within the City road rights-of-way and owned by the Franchisee shall be considered to be part of the Franchisee's system and shall be the responsibility of the Franchisee. All permits for the construction, installation, operation, maintenance or repair of the Franchisee's system shall be applied for and given in the name of the Franchisee, who will be responsible for all work done under the permit. The Franchisee remains responsible whether the work is performed by the Franchisee, its contractors, or by third parties.
- 14.3 When required by the Public Works Director, the Franchisee shall post a bond to the City in the amount sufficient for any road repair or restoration. The amount of the bond shall be set by the City and must be filed with the City before a permit will be issued.

SECTION 15 PERFORMANCE OF WORK

- 15.1 Any work performed by the Franchisee in the Franchise Area shall conform to all City Ordinances and requirements including, but not limited to, Auburn City Code and the City's Design and Construction Standards in force when the work is performed. All traffic control shall conform to the current edition of the Uniform Traffic Control Devices in force when the work is performed.
- 15.2 If work performed under this Franchise makes it necessary to turn off or diminish water pressure to any fire hydrant, the Franchisee shall notify the City's Fire Department by telephone and by written notice, that water pressure or fire flow conditions have been affected. Except in the case of an emergency, the notice shall be provided at least 48 hours prior to the water pressure being turned off or diminished.

If more than one fire hydrant will be affected, the Franchisee shall provide a map of the affected area to the Fire Department. Out-of-service fire hydrants must be identified as not operational by covering with a properly secured burlap or plastic bag. Fire hydrants should be returned to full service as soon as reasonably possible or no longer than two working days from the date service was diminished. The Franchisee shall notify the City's Fire Department when the hydrant is returned to full service.

SECTION 16 RESTORATION OF CITY RIGHTS-OF-WAY

After performing work on, under or adjacent to City road rights-of-way, the Franchisee is responsible for and shall leave all City road rights-of-way in the condition of the City roads rights-of-way existing immediately prior to such disturbance. If the Franchisee, its contractors, or third parties working under permit should fail to diligently restore City road rights-of-way to the satisfaction of the City, the City may make such repairs or restorations as are necessary to return the City road rights-of-way to a condition reasonably comparable to the condition of the City roads rights-of-way existing immediately prior to such disturbance. Upon presentation of an itemized bill for repairs or restorations, including all applicable costs, both direct and indirect, to include but not be limited to the cost of labor, tools, materials and equipment, the Franchisee shall pay the bill within sixty-five (65) days.

SECTION 17 GUARANTEES

The Franchisee shall guarantee work and materials furnished and completed by the Franchisee under this Franchise for a period of two (2) years from the date the City accepts the work and/or restoration.

SECTION 18 INFORMATION ON LOCATION OF FACILITIES

Prior to the effective date of this Agreement, the Franchisee shall provide the City with all information requested by the City regarding the location of the Franchisee's current Facilities, including but not limited to copies of all record drawings for such Facilities. If the Franchisee performs any work to install, repair, reconstruct, or replace Facilities in the Franchise Area after this Agreement's effective date, the Franchisee shall provide the City with all information requested by the City regarding the location of those Facilities, including but not limited to copies of record drawings.

SECTION 19 COORDINATION OF WORK IN FRANCHISE AREA

To facilitate the coordination of work in City rights-of-way, if either the Franchisee or the City plans to make excavations in the Franchise Area, the party planning such excavation shall provide written notice to the other of the planned excavation, affording the other party the opportunity to share in the excavation; provided, that (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made, (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties, and (3) either party may deny such request for safety reasons.

SECTION 20 REIMBURSEMENTS OF COSTS

The Franchisee shall reimburse and pay to the City the amount of actual administrative expenses incurred by the City, which are directly or indirectly related to the receipt, review and approval of this Franchise. In the event of non-payment thereafter, the Franchisee shall pay the City's reasonable attorneys' fees and other costs incurred in collecting such amount. Payment must be made within sixty-five (65) days of the Franchisee's receipt of the City's bill/invoice. If payment is not paid in full within the sixty-five (65) days, this Franchise shall become null and void.

SECTION 21 BLASTING REQUIREMENTS

The Franchisee's right to construct, install, operate, maintain and repair Facilities does not preclude the City, its agents or contractors from blasting, grading, or doing other road work contiguous to the Franchisee's Facilities. When practical, the City shall give the Franchisee forty-eight (48) hours notice of blasting or excavating.

SECTION 22 SURVEY MARKERS AND MONUMENTS

Before any work is performed under this Franchise, the Franchisee shall establish two or more reference marks to all monuments and markers of every nature relating to subdivisions, plats, rights-of-way, and all other surveys. The reference points shall be located so that they will not be disturbed during any of Franchisee's operations under this Franchise. The method of referencing monuments or other markers or points shall be approved by the City before placement. The replacement of all markers or monuments disturbed during any construction of the Franchisee shall be made as promptly as conditions permit. The cost of monuments or markers lost, destroyed, or disturbed and the expense or replacement with approved markers or monuments shall be borne by the Franchisee.

SECTION 23 RESERVATIONS OF RIGHTS

The City reserves the right, upon thirty (30) days written notice to the Franchisee, to amend or modify the provisions or conditions of this Franchise to conform to any state, county, federal, or city statute, ordinance, rule or regulation. The City may terminate this Franchise upon thirty (30) days written notice to the Franchisee if the Franchisee fails or refuses to comply with such amendment or modification.

SECTION 24 ASSIGNMENT

The Franchisee shall not have the right to assign this Franchise without the written consent of the City. No assignment shall be effective unless an acceptance by the assignee of all rights, conditions, terms, provisions and responsibilities contained within the Franchise, as well as surety bonds which the City deems necessary to be posted, are received as allowed by law. The City's approval of the assignment may be made subject to the assignee's acceptance of new or modified terms of the Franchise.

SECTION 25 PENALTY FOR VIOLATION OF CONDITIONS

If the Franchisee fails to comply with any material term, condition or responsibility under this Franchise, the City may provide the Franchisee with written notice of the City's intent to revoke the Franchise if the Franchisee's failure is not cured within thirty (30) days of the date of the notice. During the thirty (30) days following the date of the notice, the Franchisee shall have the opportunity to remedy the failure to comply. A public hearing shall be scheduled before the Auburn City Council at least thirty (30) days following the notification on the issue of the revocation. If at the hearing, the City Council finds that grounds exist to revoke the Franchise under this paragraph and that the revocation is in the public interest, the City Council may by ordinance revoke the Franchise. The revocation shall be effective ninety (90) days after the public hearing.

SECTION 26 EXPIRATION AND RENEWAL

- 26.1 If the Franchisee requests a renewal of this Franchise prior to its expiration date, the City may, at the City's sole discretion, extend the term of this Franchise for up to one year beyond the expiration date to allow for processing of the renewal. If the City elects to extend the term of this Franchise, written notice of the extension shall be provided to the Franchisee prior to the Franchise expiration date.
- 26.2 If the Franchisee has not requested a renewal of this Franchise prior to its expiration date, the City has the right, upon thirty (30) day's prior notice to the Franchisee, to remove or relocate any of the Franchisee's Facilities as is reasonably necessary for the public's health, welfare or safety, or for the construction, alteration, or improvement of the Franchise Area, or for the construction or installation of lines or facilities of other franchise holders. The Franchisee shall be liable for costs incurred in any removal or relocation of the Franchisee's Facilities under this section.
- 26.3 Upon the expiration of this Franchise, the Franchisee shall continue to be responsible for the operation and maintenance of the Franchisee's existing facilities in the Franchise Area, but shall not have the right to provide additional services. This Section and Sections 11, 13, 14, 15, 16, 19, and 22 of this Franchise shall continue in force until such time as the Franchisee's Facilities are abandoned to the City in accordance with the terms and conditions of the Annexation Resolution.

SECTION 27 COMPLIANCE WITH LAWS

The Franchisee shall conform to all applicable federal, state and local laws and regulations including, but not limited to, the State Environmental Policy Act and the City's Environmental Standards and Ordinances.

SECTION 28 NON-DISCRIMINATION CLAUSES

In all hiring or employment made possible or resulting from this Franchise, there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupation qualification. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this agreement

on the grounds of sex, sexual orientation, race, color, national origin, age, except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.

SECTION 29 NOTICES

Any notice or information required or permitted under this Franchise may be sent to the following addresses unless otherwise specified:

City of Auburn: City Engineer 25 West Main Street Auburn, WA 98001-4998 253-931-3010

City of Pacific: Community Development Director 100 3rd Avenue S.E. Pacific, WA 98047 253-929-1110

SECTION 30 ATTORNEYS' FEES

If either party commences litigation against the other party relating to the performance or alleged breach of this Franchise, the prevailing party shall be entitled to all costs, including reasonable attorneys' fees incurred, relating to such litigation, including those incurred in any appeal.

SECTION 31 SEVERANCES

If any term, provision, condition or portion of this Franchise is held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect, unless the dominant purpose of the Franchise would be prevented or the public interest would no longer be served, as determined by the City.

SECTION 32 EFFECTIVE DATE

This Agreement having been introduced at least five days prior to its date of passage and submitted to the city attorney, and being approved by at least a majority of the entire city council at a regular city council meeting, shall take effect and be in force five days after its passage, approval and publication as required by law.

SECTION 33 EXISTING UTILITIES

This Franchise shall govern City of Pacific, new utility Facilities within the City of Auburn.

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

CITY OF AUBURN	CITY OF PACIFIC
King County, Washington	King County, Washington
	Howard Elichson
PETER B. LEWIS, MAYOR	HOWARD ERICKSON, MAYOR
Date	Date <u>Cotober 31, 2003</u>
ATTEST:	ATTEST:
Daniel & Daslam	Kandy Stept
Danielle E. Daskam, CMC, City Clerk	Randy Reed, CMC, City Clerk
APPROVED AS TO FORM:	APPROVED AS TO FORM:
Daniel B. Heid, City Attorney	Albert A. Abuan, City Attorney
Deviler D. Fleid, Oity Attorney	Albert A. Abdail, Oily Alterney

ATTACHMENT 1

ANNEXATION LEGAL DESCRIPTION AREA IN VICINITY OF "A" STREET SOUTHEAST (EAST VALLEY HIGHWAY) AND LAKELAND HILLS WAY SOUTHEAST

THAT PORTION OF GOVERNMENT LOTS 3 AND 4 IN THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W. M., AND THE EAST HALF OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3 IN SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., SAID CORNER ALSO BEING AN ANGLE POINT IN THE WEST BOUNDARY OF THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE NORTHWEST CORNER OF THE LANDS DESCRIBED IN CITY OF PACIFIC ANNEXATION ORDINANCE NUMBER 319:

THENCE EAST ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 3, AND THE BOUNDARY COMMON TO SAID LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 319 A DISTANCE OF 1280 FEET MORE OR LESS TO THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 3;

THENCE SOUTH ALONG THE EAST LINE OF SAID GOVERNMENT LOTS 3 AND 4, AND THE BOUNDARY COMMON TO SAID LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 319 TO THE SOUTHEAST CORNER OF SAID CITY OF PACIFIC ORDINANCE 319 AND TO A LINE PARALLEL WITH AND 825 FEET NORTHERLY OF THE SOUTH LINE OF SAID GOVERNMENT LOT 4:

THENCE WEST ALONG THE BOUNDARY COMMON TO SAID LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 319, AND ALONG SAID PARALLEL LINE A DISTANCE OF 1300 FEET, MORE OR LESS, TO THE WEST LINE OF SAID SECTION 31;

THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION 31 AND THE BOUNDARY COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226 TO THE SOUTHWEST CORNER OF SAID SECTION 31;

THENCE WEST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST AND ALONG THE SOUTH LINE OF THE LANDS ANNEXED TO THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226 A DISTANCE OF 70 FEET, MORE OR LESS, TO THE EAST LINE OF THE BURLINGTON NORTHERN SANTA FE (BNSF) RAILROAD RIGHT-OF-WAY (100 FEET IN WIDTH);

THENCE NORTH ALONG SAID EAST LINE OF THE BNSF RAILROAD RIGHT-OF-WAY TO A LINE PARALLEL WITH AND 100 FEET NORTHERLY OF SAID SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36:

THENCE WEST ALONG LAST SAID PARALLEL LINE 100 FEET TO THE WEST LINE OF SAID BURLINGTON NORTHERN SANTA FE (BNSF) RAILROAD RIGHT-OF-WAY;

THENCE NORTH ALONG SAID WEST LINE OF THE BNSF RAILROAD RIGHT-OF-WAY A DISTANCE OF 3280 FEET, MORE OR LESS, TO A LINE PARALLEL WITH AND 1884 FEET SOUTHERLY (WHEN MEASURED ALONG THE WEST LINE OF SAID RAILROAD RIGHT-OF-WAY) FROM THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36;

THENCE EASTERLY ALONG LAST SAID PARALLEL LINE A DISTANCE OF 175 FEET, MORE OR LESS, TO THE EAST RIGHT-OF WAY LINE OF EAST VALLEY HIGHWAY ("A" STREET SE); THENCE SOUTHERLY ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 150 FEET, MORE OR LESS, TO THE NORTH BANK OF THE WHITE RIVER (STUCK RIVER);

THENCE NORTHEASTERLY ALONG SAID NORTH BANK OF THE WHITE RIVER A DISTANCE OF 200 FEET, MORE OR LESS, TO THE LINE COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226, AND THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M.;

THENCE SOUTH ALONG SAID LINE COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226, AND THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 31 A DISTANCE OF 700 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SITUATE IN KING COUNTY, WASHINGTON.

Attachment 2

CITY OF PACIFIC - DESCRIPTION CROSSING EAST VALLEY HIGHWAY

BEGINNING AT INTERSECTION OF THE EAST MARGIN OF THE EAST VALLEY HIGHWAY ("A" STREET SOUTHEAST) AND THE NORTH LINE OF TOWNSHIP 20 NORTH, RANGE 5 EAST, W.M.;

THENCE SOUTHERLY ALONG SAID EAST MARGIN OF THE EAST VALLEY HIGHWAY A DISTANCE OF 50 FEET;

THENCE WEST TO THE EAST LINE OF THE BURLINGTON NORTHERN SANTA FE (BNSF) RAILROAD RIGHT-OF-WAY (100 FEET IN WIDTH);

THENCE NORTHERLY ALONG SAID EAST LINE OF THE BNSF RAILROAD RIGHT-OF-WAY A DISTANCE OF 150 FEET;

THENCE EAST TO SAID EAST MARGIN OF THE EAST VALLEY HIGHWAY; THENCE SOUTHERLY ALONG SAID EAST MARGIN OF THE EAST VALLEY HIGHWAY A DISTANCE OF 100 FEET TO THE POINT OF BEGINNING.

SITUATE IN KING AND PIERCE COUNTIES, WASHINGTON.

EXHIBIT D

CITY OF PACIFIC, WASHINGTON FRANCHISE AGREEMENT WITH THE CITY OF AUBURN

WHEREAS, the City of Auburn (Auburn) and the City of Pacific (Pacific) have agreed to the annexation/de-annexation a portion of property described in Attachment "1" relating to among other things East Valley Highway (EVH) from the north end of the White River bridge to the King-Pierce County line in which, Auburn recognizes and agrees to Pacific's right to access a portion of EVH near the King/Pierce County line for ingress, egress and utilities; and

WHEREAS, Auburn and Pacific have entered into a Water Service Area Agreement, which revised the boundary between their respective water service areas; and

WHEREAS, the City of Auburn and Pacific have entered into an Emergency Water System Intertie Agreement; and

WHEREAS, in order to maintain control over the use of City of Pacific right-of-way by utilities operating within the City of Pacific, it is appropriate to enter into franchise agreements with such utilities; and

WHEREAS, City of Auburn is such a utility, and has negotiated this franchise agreement with the City of Pacific acceptable to both parties; and

WHEREAS, the City of Pacific has determined that it is in the best interests of the public to grant the City of Auburn a franchise on the terms and conditions set forth in this Agreement; now, therefore

THE CITY COUNCIL OF THE CITY OF PACIFIC, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1 DEFINITIONS

Where used in this franchise ("Franchise"), the following definitions shall apply:

- 1.1 "Franchisee" means the City of Auburn, a Washington municipal corporation, and its respective successors and assigns.
 - 1.2 "City" means the City of Pacific, a Washington municipal corporation.
- 1.3 "Franchise Area" means the Right of Way of A Street SE as described in Attachment "2" attached hereto, which is by this reference incorporated, as if fully set forth herein; provided, that the Franchise Area shall not include or convey any right to Franchisee to install facilities on or to otherwise use City owned or leased properties outside the Franchise Area.

Exhibit D Resolution No 3644 Page 1 of 11

- 1.4 "Facilities" means the Franchisee's water system, lines, mains, appurtenances, and all other necessary or convenient facilities for the purpose of providing water service.
- 1.5 "Agreement" means this Agreement setting forth the terms and conditions of the franchise granted to the Franchisee.

SECTION 2 FRANCHISE GRANT

Subject to the terms and conditions set forth in this Agreement, the City grants to the Franchisee the right for the construction and installation of water pipeline, appurtenances and the excavation of trenches on City roads for the purposes of constructing, installing, operating, maintaining, removing, and replacing mains and pipes and making connections between the same to the dwellings and other buildings of the consumers, the Franchisee shall be governed by and conform to the general rules adopted by the Public Works Department of the City of Pacific, and the Franchisee, at no expense to the City, shall complete all such work and shall replace and restore the City roads to a condition reasonably comparable to the condition of the City roads existing immediately prior to such disturbance; PROVIDED, HOWEVER, that no such work shall be done prior to the obtaining of a permit therefor issued by the City's Community Development Director (hereinafter "Director"), which permit shall set forth conditions pertaining to the work to be done and specifications for the restoration of the roads to the same condition as they were prior to such work. If the Franchisee does not repair the City roads to the satisfaction of the Director, the City may, at its sole discretion, repair such City roads, or cause them to be repaired, and the Franchisee hereby agrees to reimburse the City for the cost of such work, including overhead costs.

SECTION 3 FRANCHISE TERM

This Franchise is and shall remain in full force and effect for a period of twenty-five (25) years from the effective date of this Agreement; provided, that this Franchise shall not take effect and the Franchisee shall have no rights under this Franchise unless the Franchisee files a written acceptance of this Franchise with the City pursuant to Section 4 of this Agreement.

SECTION 4 ACCEPTANCE BY GRANTEE OF TERMS AND CONDITIONS

The full acceptance of this Franchise and all of its terms and conditions shall be filed with the City Clerk within forty-five (45) days from the date of this Agreement, by the Franchisee. Full acceptance of this Franchise is a condition precedent to its taking effect, and unless this Franchise is accepted within the time specified, this grant will be null and void and have no force or effect.

SECTION 5 NON-EXCLUSIVE FRANCHISE

This Franchise is not exclusive. It does not prohibit the City from granting franchises for other public or private utilities in, over, along, across, and under any City property,

including the Franchise Area. This Franchise does not prevent or prohibit the City from constructing, altering, maintaining or using any of the Franchise Area. The City retains full power to make all changes, relocations, repair, maintenance or other work to or in the Franchise Area as the City deems fit.

SECTION 6 JURISDICTIONS

This Franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which the City has an actual interest. It is not a warranty of title or of interest in City road rights-of-way. None of the rights granted to the Franchisee shall affect the jurisdiction of the City over City road rights-of-way or the City's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating.

SECTION 7 REGULATION OF USE AND CONTROL

This Franchise does not deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City road rights-of-way covered by this Franchise. The City reserves the right and power at all times to exercise its police powers with respect to the time, manner and location of the placement of the Franchisee's Facilities.

SECTION 8 EMINENT DOMAIN

This Franchise and the limited rights and interests granted by this Franchise are subject to the exercise of eminent domain. In the event of an exercise of eminent domain by the City, the value to be attributed to all the rights and interests granted under this Franchise shall not exceed the actual amount the Franchisee paid to the City in obtaining this Franchise.

SECTION 9 VACATION

If at any time the City vacates any City rights-of-way covered by this Franchise, the City will not be held liable for any damages or loss to the Franchisee by reason of such vacation. The City may, after giving thirty (30) days written notice to the Franchisee terminate this Franchise with respect to any City road or rights-of-way vacated.

SECTION 10 ENFORCEMENT

The City's failure to enforce any provision of this Franchise does not constitute a waiver of its right to enforce that provision or any other provision of this Franchise.

SECTION 11 INDEMNITIES AND HOLD HARMLESS

11.1 The Franchisee shall defend, indemnify and hold harmless the City, its appointed and elected officials, and its employees and agents from and against liability for all claims, actions, injuries, demands, liabilities, losses, costs, damages and judgments, including costs of defense thereof, (collectively referred to as "damages") for injury to persons, death or property damage caused by, arising out of, or incidental

Exhibit D Resolution No 3644 Page 3 of 11 to the Franchisee's exercise of the rights and privileges granted by this Franchise, except for damages caused by or arising out of the City's sole negligence. In the event that any such claim or demand for damages is presented to or filed with the City, or if any suit or action is initiated against the City based on such claims or demands for damages, the City shall promptly notify the Franchisee of the claim, demand, suit or action and the Franchisee shall have the right, at its election and its sole cost and expense, to settle and compromise such claim, demand, suit or action, or defend the same at the Franchisee's sole cost and expense.

11.2 If it is determined that RCW 4.24.115 applies to this Franchise, the Franchisee agrees to defend, hold harmless and indemnify the City to the maximum extent permitted under that statute, and specifically for the Franchisee's negligence concurrent with that of the City to the full extent of the Franchisee's negligence.

SECTION 12 INSURANCE

- 12.1 The Franchisee being a municipality in the State of Washington shall be self-insured through the Washington Cities Insurance Association (WCIA). If required by Pacific, Auburn shall request the WCIA to provide Pacific with a letter sent from the WCIA evidencing such an insurance policy to be in force.
- 12.2 The insurance shall be maintained in full force and effect at the Franchisee's sole expense throughout the term of the Franchise. The City shall be given at least forty-five (45) days written notice that the Franchisee is no longer a member of the WCIA. Such notice to the City shall be by certified mail, sent to City of Pacific; Public Works Dept.; 100 3rd SE; Pacific, Washington 98047
- 12.3 The coverage provided by Auburn's insurance policies shall be primary to any insurance maintained by Pacific except as to losses or damages attributable to the sole negligence of Pacific. Any insurance maintained by Pacific that might relate to this Franchise shall be in excess to Auburn's insurance and shall not contribute with or to it. Pacific has no obligation to report occurrences to the insurance companies unless a claim is filed with Pacific's City Council; and Pacific has no obligations to pay Auburn's premiums.
- 12.4 The Franchisee shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable federal, state, county and city statutes, rules, regulations, ordinances, orders and codes. The Franchisee's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The Franchisee shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any works therein. The services of the City or City's consultant personnel in conducting construction review of the Franchisee's work relating to the Franchise is not intended to include review of the adequacy of the Franchisee's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such Franchise Area or job site. The Franchisee shall provide safe access for the City and its inspectors to

adequately inspect the work and its conformance with applicable statutes, ordinances, rules, regulations, and the Franchise.

SECTION 13 INSTALLATION, REPAIR, REMOVAL OR RELOCATION

- 13.1 The Franchisee shall, at no expense to the City, expeditiously repair all existing Facilities that it owns within the Franchise Area, including any damage caused directly or indirectly by its Facilities, all appurtenant Facilities and service lines connecting its system to users, if the City requires such repair for any reasonable purpose.
- The Franchisee shall, at no expense to the City, adjust, remove or relocate existing Facilities within the Franchise Area, including all appurtenant Facilities and service lines connecting its system to users, if the City determines such adjustment, removal or relocation is reasonably necessary to allow for an improvement or alteration planned by the City. The City shall give the Franchisee written notice of such requirement as soon as practicable. The written notice shall include all available information, such as plans and specifications, as is reasonably necessary for the Franchisee to plan for such adjustment, removal or relocation.
- 13.3 Franchisee's Facilities shall be constructed, installed, maintained and repaired within the Franchise Area so as to provide safety of persons and property, and not interfere with the free passage of traffic, all in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations of the City.
- 13.4 For projects that are a part of the City's capital improvement program, in addition to any other notice given to the Franchisee, the City shall provide a vertical and horizontal profile of the roadway and drainage facilities within it, both existing and as proposed by the City, and the proposed construction schedule. The initial design information shall be given at least thirty (30) days before construction is scheduled to begin, except in cases of urgent construction or emergencies. The Franchisee shall respond to this notice, and to any later notices of revised designs, within twenty (20) days of the date of the notice, by providing to the City the Franchisee's best available information as to the location of all the Franchisee's Facilities, including all appurtenant Facilities and service lines connecting its system to users and all Facilities that it has abandoned, within the area proposed for the project.
- 13.5 The City shall offer the Franchisee the opportunity to participate in the preparation of bid documents for the selection of a contractor to perform the public works project as well as all required adjustments, removals or relocations of the Franchisee's Facilities. The City shall have sole authority to choose the contractor to perform such work. Such bid documents shall provide for an appropriate cost allocation between the parties. In addition to the Franchisee's allocation of contractor costs, the Franchisee shall reimburse the City for all costs, to include but not be limited to legal, engineering, inspections, administration and/or soils testing, related to the Franchisee's work and reasonably incurred by the City in the administration of such joint construction contracts. Such costs shall include the direct salary cost of the time of City professional

and technical personnel, including the City's consultants, spent productively engaged in such work, plus overhead costs at the standard rate charged by the City on other similar projects.

13.6 It is understood that emergency situations may arise that could threaten public health and/or continued operation of the Franchisee's utility system and the Franchisee may be unable to notify the City in the manner prescribed in Section 14 of this Franchise. In such a situation the Franchisee shall immediately correct the hazardous situation and continue to use best efforts to contact the City staff. The Emergency Phone Number for the City of Pacific is 253-929-1110, and the City of Auburn is 253-931-3048. Dialing 911 is advised for emergency situations.

SECTION 14 REQUIREMENT OF CONSTRUCTION PERMITS

- 14.1 The Franchisee has the right, privilege and authority to enter the City road rights-of-way for the purpose of constructing, installing, operating, maintaining, replacing or repairing its Facilities on the condition that it obtains construction, excavation, and right-of-way use permits issued by the City. Any work performed, whether by Franchisee, its contractors, or third parties, shall include necessary paving, patching, grading and any other reasonably necessary repair or restoration to the City rights-of-way. All work shall be done to the City's satisfaction.
- 14.2 All equipment, lines and appurtenances which are used in the construction, installation, operation, maintenance or repair of the Franchisee's Facilities and which are located within the City road rights-of-way and owned by the Franchisee shall be considered to be part of the Franchisee's system and shall be the responsibility of the Franchisee. All permits for the construction, installation, operation, maintenance or repair of the Franchisee's system shall be applied for and given in the name of the Franchisee, who will be responsible for all work done under the permit. The Franchisee remains responsible whether the work is performed by the Franchisee, its contractors, or by third parties.
- 14.3 When required by the Director, the Franchisee shall post a bond to the City in the amount sufficient for any road repair or restoration. The amount of the bond shall be set by the City and must be filed with the City before a permit will be issued.

SECTION 15 PERFORMANCE OF WORK

- 15.1 Any work performed by the Franchisee in the Franchise Area shall conform to all City ordinances and requirements including, but not limited to, Chapter 13.12 PMC and the City's Road Standards in force when the work is performed. All traffic control shall conform to the current edition of the Uniform Traffic Control Devices in force when the work is performed.
- 15.2 If work performed under this Franchise makes it necessary to turn off or diminish water pressure to any fire hydrant, the Franchisee shall notify the City's Fire Department by telephone and by written notice, that water pressure or fire flow conditions have been affected. Except in the case of an emergency, the notice shall be

provided at least 48 hours prior to the water pressure being turned off or diminished. If more than one fire hydrant will be affected, the Franchisee shall provide a map of the affected area to the Fire Department. Out-of-service fire hydrants must be marked to indicate that it is not operational.

SECTION 16 RESTORATION OF CITY RIGHTS-OF-WAY

After performing work on, under or adjacent to City road rights-of-way, the Franchisee is responsible for and shall leave all City road rights-of-way in a condition reasonably comparable to the condition of the City roads rights-of-way existing immediately prior to such disturbance. If the Franchisee, its contractors, or third parties working under permit should fail to diligently restore City road rights-of-way to the satisfaction of the City, the City may make such repairs or restorations as are necessary to return the City road rights-of-way to a condition reasonably comparable to the condition of the City roads rights-of-way existing immediately prior to such disturbance. Upon presentation of an itemized bill for repairs or restorations, including all applicable costs, both direct and indirect, to include but not be limited to the cost of labor, tools, materials and equipment, the Franchisee shall pay the bill within sixty-five (65) days.

SECTION 17 GUARANTEE

The Franchisee shall guarantee work and materials furnished and completed by the Franchisee under this Franchise for a period of two (2) years from the date the City approves the work and/or restoration.

SECTION 18 INFORMATION ON LOCATION OF FACILITIES

Prior to the effective date of this Agreement, the Franchisee shall provide the City with all information requested by the City regarding the location of the Franchisee's current Facilities, including but not limited to copies of all record drawings for such Facilities. If the Franchisee performs any work to install, repair, reconstruct, or replace Facilities in the Franchise Area after this Agreement's effective date, the Franchisee shall provide the City with all information requested by the City regarding the location of those Facilities, including but not limited to copies of record drawings.

SECTION 19 COORDINATION OF WORK IN FRANCHISE AREA

To facilitate the coordination of work in City rights-of-way, if either the Franchisee or the City plans to make excavations in the Franchise Area, the party planning such excavation shall provide written notice to the other of the planned excavation, affording the other party the opportunity to share in the excavation; provided, that (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made, (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties, and (3) either party may deny such request for safety reasons.

SECTION 20 REIMBURSEMENT OF COSTS

The Franchisee shall reimburse and pay to the City the amount of actual administrative expenses incurred by the City which are directly or indirectly related to the receipt, review and approval of this Franchise. In the event of non-payment thereafter, the Franchisee shall pay the City's reasonable attorneys' fees and other costs incurred in collecting such amount. Payment must be made within sixty-five (65) days of the Franchisee's receipt of the City's bill/invoice. If payment is not paid in full within the sixty-five (65) days, this Franchise shall become null and void.

SECTION 21 BLASTING REQUIREMENTS

The Franchisee's right to construct, install, operate, maintain and repair Facilities does not preclude the City, its agents or contractors from blasting, grading, or doing other road work contiguous to the Franchisee's Facilities. When practical, the City shall give the Franchisee forty-eight (48) hours notice of blasting or excavating.

SECTION 22 SURVEY MARKERS AND MONUMENTS

Before any work is performed under this Franchise, the Franchisee shall establish two or more reference marks to all monuments and markers of every nature relating to subdivisions, plats, rights-of-way, and all other surveys. The reference points shall be located so that they will not be disturbed during any of Franchisee's operations under this Franchise. The method of referencing monuments or other markers or points shall be approved by the City before placement. The replacement of all markers or monuments disturbed during any construction of the Franchisee shall be made as promptly as conditions permit. The cost of monuments or markers lost, destroyed, or disturbed and the expense or replacement with approved markers or monuments shall be borne by the Franchisee.

SECTION 23 RESERVATION OF RIGHTS

The City reserves the right, upon thirty (30) days written notice to the Franchisee, to amend or modify the provisions or conditions of this Franchise to conform to any state, county, federal, or city statute, ordinance, rule or regulation. The City may terminate this Franchise upon thirty (30) days written notice to the Franchisee if the Franchisee fails or refuses to comply with such amendment or modification.

SECTION 24 ASSIGNMENT

The Franchisee shall not have the right to assign this Franchise without the written consent of the City. No assignment shall be effective unless an acceptance by the assignee of all rights, conditions, terms, provisions and responsibilities contained within the Franchise, as well as surety bonds which the City deems necessary to be posted, are received. The City's approval of the assignment may be made subject to the assignee's acceptance of new or modified terms of the Franchise.

Exhibit D Resolution No 3644 Page 8 of 11

SECTION 25 PENALTY FOR VIOLATION OF CONDITIONS

If the Franchisee fails to comply with any material term, condition or responsibility under this Franchise, the City may provide the Franchisee with written notice of the City's intent to revoke the Franchise if the Franchisee's failure is not cured within thirty (30) days of the date of the notice. During the thirty (30) days following the date of the notice, the Franchisee shall have the opportunity to remedy the failure to comply. A public hearing shall be scheduled before the Pacific City Council at least thirty (30) days following the notification on the issue of the revocation. If at the hearing, the City Council finds that grounds exist to revoke the Franchise under this paragraph and that the revocation is in the public interest, the City Council may by Agreement revoke the Franchise. The revocation shall be effective ninety (90) days after the public hearing.

SECTION 26 EXPIRATION AND RENEWAL

- 26.1 If the Franchisee requests a renewal of this Franchise prior to its expiration date, the City may, at the City's sole discretion, extend the term of this Franchise for up to one year beyond the expiration date to allow for processing of the renewal. If the City elects to extend the term of this Franchise, written notice of the extension shall be provided to the Franchisee prior to the Franchise expiration date.
- 26.2 If the Franchisee has not requested a renewal of this Franchise prior to its expiration date, the City has the right, upon thirty (30) day's prior notice to the Franchisee, to remove or relocate any of the Franchisee's Facilities as is reasonably necessary for the public's health, welfare or safety, or for the construction, alteration, or improvement of the Franchise Area, or for the construction or installation of lines or facilities of other franchise holders. The Franchisee shall be liable for costs incurred in any removal or relocation of the Franchisee's Facilities under this section.
- 26.3 Upon the expiration of this Franchise, the Franchisee shall continue to be responsible for the operation and maintenance of the Franchisee's existing facilities in the Franchise Area, but shall not have the right to provide additional services. This Section and Sections 11, 13, 14, 15, 16, 19, and 22 of this Franchise shall continue in force until such time as the Franchisee's Facilities are removed from the Franchise Area or abandoned in place with approval of the City.

SECTION 27 COMPLIANCE WITH LAWS

The Franchisee shall conform to all applicable federal, state and local laws and regulations including, but not limited to, the State Environmental Policy Act and the City's Environmental Standards and Ordinances.

SECTION 28 NON-DISCRIMINATION CLAUSES

In all hiring or employment made possible or resulting from this Franchise, there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupation qualification. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this agreement on the grounds of sex, sexual orientation, race, color, national origin, age, except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.

SECTION 29 NOTICES

Any notice or information required or permitted under this Franchise may be sent to the following addresses unless otherwise specified:

City of Pacific:

City Community Development Director 100 - 3rd Avenue S.E. Pacific, Washington 98047 253-929-1110

City of Auburn:

City Engineer 25 West Main Street Auburn, WA 98001-4998 253-931-3010

SECTION 30 ATTORNEYS' FEES

If either party commences litigation against the other party relating to the performance or alleged breach of this Franchise, the prevailing party shall be entitled to all costs, including reasonable attorneys' fees incurred, relating to such litigation, including those incurred in any appeal.

SECTION 31 SEVERANCE

If any term, provision, condition or portion of this Franchise is held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect, unless the dominant purpose of the Franchise would be prevented or the public interest would no longer be served, as determined by the City.

SECTION 32 EFFECTIVE DATE

This Agreement having been introduced at least five days prior to its date of passage and submitted to the city attorney, and being approved by at least a majority of the entire city council at a regular city council meeting, shall take effect and be in force five days after its passage, approval and publication as required by law.

SECTION 33 EXISTING UTILITIES

This Franchise shall govern Franchisee's new and existing Facilities within the City of Pacific.

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

CITY OF AUBURN
King County, Washington

PETER B. LEWIS, MAYOR
Date

OCT 2 0 2003

ATTEST:

Danielle E. Daskam, CMC, City Clerk

Daniel B. Heid, City Attorney

CITY OF PACIFIC
King County, Washington

CITY OF PACIFIC
King County, Washington

HOWARD ERICKSON, MAYOR
Date

Cotology, Washington

HOWARD ERICKSON, MAYOR

Date

Cotology, Washington

HOWARD ERICKSON, MAYOR

Date

Cotology, Washington

HOWARD ERICKSON, MAYOR

Date

Cotology, Washington

HOWARD ERICKSON, MAYOR

Date

Cotology, Washington

HOWARD ERICKSON, MAYOR

Pared, CMC, City Clerk

APPROVED AS TO FORM:

Albert A. Abuan, City Attorney

ATTACHMENT 1

ANNEXATION LEGAL DESCRIPTION AREA IN VICINITY OF "A" STREET SOUTHEAST (EAST VALLEY HIGHWAY) AND LAKELAND HILLS WAY SOUTHEAST

THAT PORTION OF GOVERNMENT LOTS 3 AND 4 IN THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W. M., AND THE EAST HALF OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3 IN SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., SAID CORNER ALSO BEING AN ANGLE POINT IN THE WEST BOUNDARY OF THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE NORTHWEST CORNER OF THE LANDS DESCRIBED IN CITY OF PACIFIC ANNEXATION ORDINANCE NUMBER 319;

THENCE EAST ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 3, AND THE BOUNDARY COMMON TO SAID LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 319 A DISTANCE OF 1280 FEET MORE OR LESS TO THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 3;

THENCE SOUTH ALONG THE EAST LINE OF SAID GOVERNMENT LOTS 3 AND 4, AND THE BOUNDARY COMMON TO SAID LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 319 TO THE SOUTHEAST CORNER OF SAID CITY OF PACIFIC ORDINANCE 319 AND TO A LINE PARALLEL WITH AND 825 FEET NORTHERLY OF THE SOUTH LINE OF SAID GOVERNMENT LOT 4;

THENCE WEST ALONG THE BOUNDARY COMMON TO SAID LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 319, AND ALONG SAID PARALLEL LINE A DISTANCE OF 1300 FEET. MORE OR LESS, TO THE WEST LINE OF SAID SECTION 31;

THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION 31 AND THE BOUNDARY COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226 TO THE SOUTHWEST CORNER OF SAID SECTION 31;

THENCE WEST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST AND ALONG THE SOUTH LINE OF THE LANDS ANNEXED TO THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226 A DISTANCE OF 70 FEET, MORE OR LESS, TO THE EAST LINE OF THE BURLINGTON NORTHERN SANTA FE (BNSF) RAILROAD RIGHT-OF-WAY (100 FEET IN WIDTH);

THENCE NORTH ALONG SAID EAST LINE OF THE BNSF RAILROAD RIGHT-OF-WAY TO A LINE PARALLEL WITH AND 100 FEET NORTHERLY OF SAID SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36;

THENCE WEST ALONG LAST SAID PARALLEL LINE 100 FEET TO THE WEST LINE OF SAID BURLINGTON NORTHERN SANTA FE (BNSF) RAILROAD RIGHT-OF-WAY;

THENCE NORTH ALONG SAID WEST LINE OF THE BNSF RAILROAD RIGHT-OF-WAY A DISTANCE OF 3280 FEET, MORE OR LESS, TO A LINE PARALLEL WITH AND 1884 FEET SOUTHERLY (WHEN MEASURED ALONG THE WEST LINE OF SAID RAILROAD RIGHT-OF-WAY) FROM THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36;

THENCE EASTERLY ALONG LAST SAID PARALLEL LINE A DISTANCE OF 175 FEET, MORE OR LESS, TO THE EAST RIGHT-OF WAY LINE OF EAST VALLEY HIGHWAY ("A" STREET SE); THENCE SOUTHERLY ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 150 FEET, MORE OR LESS, TO THE NORTH BANK OF THE WHITE RIVER (STUCK RIVER);

THENCE NORTHEASTERLY ALONG SAID NORTH BANK OF THE WHITE RIVER A DISTANCE OF 200 FEET, MORE OR LESS, TO THE LINE COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226, AND THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M.; THENCE SOUTH ALONG SAID LINE COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226, AND THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 31 A DISTANCE OF 700 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SITUATE IN KING COUNTY, WASHINGTON.

ATTACHMENT 2

PORTION OF "A" STREET SOUTHEAST WITHIN THE CITY OF PACIFIC (IN THE NE QUARTER OF SECTION 36, TWP 21N, R 4E, W.M.)

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 1171, SAID CORNER BEING ON THE EAST MARGINAL LINE OF THE EAST VALLEY HIGHWAY (ALSO KNOWN AS STATE HIGHWAY NO. 5 AND AS "A" STREET SOUTHEAST);

THENCE SOUTHWESTERLY 600 FEET, MORE OR LESS, ALONG SAID EAST MARGINAL LINE TO A LINE PARALLEL WITH AND 1884 FEET SOUTHERLY (WHEN MEASURED ALONG THE WEST LINE OF THE BURLINGTON NORTHERN SANTA FE RAILROAD RIGHT-OF-WAY) FROM THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36;

THENCE WESTERLY ALONG SAID PARALLEL LINE TO THE WESTERLY RIGHT-OF WAY LINE OF SAID EAST VALLEY HIGHWAY ("A" STREET SE);

THENCE NORTHERLY ALONG SAID WESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 600 FEET, MORE OR LESS, TO THE SOUTH LINE OF SAID LANDS ANNEXED UNDER CITY OF AUBURN ORDINANCE NUMBER 1171;

THENCE EASTERLY ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING.

SITUATE IN KING COUNTY, WASHINGTON.

Exhibit E

INTERLOCAL AGREEMENT regarding the PROPOSED VISTA HEIGHTS DEVELOPMENT AT LAKELAND City of Pacific and City of Auburn

This Agreement is entered into between the City of Pacific, a municipal corporation under the laws of Washington State, hereinafter referred to as "Pacific", and the City of Auburn, a municipal corporation formed under the laws of Washington State, hereinafter referred to as "Auburn".

WHEREAS, Pacific and Auburn have agreed that Auburn will assume SEPA lead agency responsibilities for a proposed residential development known as "Vista Heights at Lakeland," hereinafter referred to as the "Development," that is situated on adjoining parcels, one with tax identification number 312105-9008 (hereinafter referred to as "Site 7"), in Pacific, and one with tax identification number 312105-9006 (hereinafter referred to as "Site 8"), in Auburn; and

WHEREAS, Pacific and Auburn have agreed that Site 7 will be annexed into Auburn; and

WHEREAS, Pacific and Auburn previously executed an Interlocal Agreement dated July 24, 2000 regarding Emergency Fire Flow Protection for Site 7 from Auburn and domestic water service for Site 7 from Pacific; and

WHEREAS, upon completion of the Annexation, Site 7 will be served with water for domestic use and emergency fire flow protection by Auburn;

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

- 1. The Interlocal Agreement regarding Emergency Fire Flow Protection for the Proposed Vista Heights Development At Lakeland, City of Pacific and City of Auburn is superceded by this agreement.
- 2. Pacific shall be responsible for collecting Auburn's traffic mitigation fee of \$677.71 per single family residential lot if building permits are issued by Pacific prior to the completion of the annexation and the funds will be transmitted to Auburn.
- 3. Auburn shall be responsible for collecting Pacific's parks mitigation fee of \$600.00 per single-family residential lot as authorized by applicable Pacific SEPA finding, Ordinance or Resolution if building permits are issued by Auburn subsequent to the completion of the annexation and the funds will be transmitted to Pacific.

- 4. Pacific shall be responsible for assisting Auburn in obtaining clear title to the storm water facilities and the underlying property that store and treat public storm water.
- 5. Each participant to this Agreement shall indemnify and hold the other harmless from and against any liability, loss, cost, damage, or expense of any kind and nature arising out of injury to person or damage to property in any manner, caused by the negligent act or omission of the indemnifying individual participant to this Agreement in the performance of its work or execution of its obligations under the terms of this Agreement. Each participant to this Agreement shall indemnify and hold the other harmless from all damages, which may occur as a result of any failure to comply with the provisions of Chapter 82.02 RCW or other applicable law.
- 6. Should a dispute arise between the parties that cannot be resolved satisfactorily, a mediator mutually acceptable to the parties shall resolve the dispute through the use of mediation at equal cost to each party. Should the Parties not be able to satisfactorily resolve the dispute through mediation, the forum for resolution shall be the King County Superior Court. The prevailing party shall be entitled to attorney fees and costs.

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

CITY OF AUBURN	CITY OF PACIFIC
King County, Washington	King County, Washington
PETER B. LEWIS, MAYOR	HOWARD ERICKSON, MAYOR
Date	Date October 31, 2003
ATTEST:	ATTEST:
Daniel & Dasham	Kanata Kerol
Danielle E. Daskam, CMC, City Clerk	Randy Reed CMC, City Clerk
APPROVED AS TO FORM:	APPROVED AS TO FORM:
(MAX)	(Muit ales
Daniel B. Heid, City Attorney	Albert A. Abuan, City Attorney

Exhibit E Resolution No. 3644 Page 2 of 2 Return Address: City of Auburn City Clerk 25 West Main Auburn, WA 98001



Exhibit F

Above this line reserved for recording information.

BILL OF SALE

Reference # (if applicable):

Grantor/Borrower:

River Contraction

City of Pacific

Grantee/Assignee/Beneficiary:

City of Auburn

SW 1/4, 31-21-05E,

Legal Description/STR:

& E ½, 36-21-04E

Assessor's Tax Parcel ID#:

THE PARTY BY BY THE AL CH

312105-9007, 9008, 9016, 9025, 9026, 9027, 9036, 9041, 9044,

9064, 9065, 9066, 9068.

362104-9018, 9020, 9044, 9045, 9057, 9059, & 9068.

362104-9018 & 9045.

335440-0680.

The second secon KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the relocation of the water system Emergency Intertie Facility, and for the consideration of incorporating the facility into the City system, and other good and sufficient consideration, receipt whereof is hereby acknowledged, the undersigned Grantor, City of Pacific, a Municipal Corporation in King County, Washington does by these presents hereby convey. setover, assign, transfer and warrant to the City of Auburn, a Municipal Corporation in King County, Washington,

STREETS

Lakeland Hills Way Lakeland Hills Way East Valley Highway Oravetz Rd. Oravetz Place SE S 376th ST.

775 LF of 72 foot wide ROW, 725 LF of 60 foot wide ROW, 2,650 LF of 70 foot wide ROW, 744 LF of 60foot wide ROW. 1,030 LF of 10 wide ROW, 120 LF of 30 foot wide ROW.

Exhibit F Resolution No. 3644 Page 1 of 3

STREETLIGHTS

Lakeland Hills Way 7 each 400-watt luminaire, &

4 each 250-watt luminaire 6 each 400-watt luminaire

East Valley Highway

Oravetz Rd. 4 each 250-watt luminaire, &

1 each 150-watt luminaire

WATER MAIN

Lakeland Hills Way East Valley Highway

2,000 LF of 12-inch pipe 900 LF of 12-inch pipe

1,650 LF of 12-inch pipe

Oravetz Rd. Oravetz Place SE

1,250 LF of 12-inch pipe

PRESSURE REDUCING STATION

Lakeland Hills Way One Water Pressure Reducing Station

STORM SEWER

Lakeland Hills Way 920 LF of 24-inch, 740 LF of 18-inch &

380 LF of 12-inch storm pipe

East Valley Highway 141 LF of 24-inch, 1,405 LF of 12-inch, &

37 LF of 8-inch storm pipe

Oravetz Rd. 900 LF of 24-inch, and 156 LF of 12-inch storm pipe

STORM DETENTION PONDS

Lakeland Hills Way Detention Pond #1, Detention Pond #2 and

130 LF of 24-inch storm pipe

BRIDGE

East Valley Highway White "Stuck" River Bridge.

and all appurtenances or any other associated public facility as shown on the public facility extension plans constructed by Public or Private entities associated with the Pacific Annexation. Situated within the following described real property.

See ATTACHMENTS '1' and '2' ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF

and the said Grantor hereby warrants that it is the sole owner of all the property above conveyed; that it has full power to convey the same and that it will defend the title of the said Grantee against any and all persons lawfully making claim thereto, and indemnify the City of Auburn for any costs, including Attorney fees in defending title.

IN WITNESS WHEREOF the Grantor has executed these presents this 31 st day
of October, 2003.
Howard Cuchson October 31, 2003
Mayor Date
APPROVAL AS TO FORM City Clerk City Clerk APPROVAL AS TO FORM City Attorney
STATE OF WASHINGTON) (State of Washing of King)
On this 3 day of October, 2003 before me, the undersigned, a Notary Public in an for the State of Washington, personally appeared Howard Suckson and August A. Alouan, to me known to be the Mayor and City Clerk of the City of Pacific, the municipal corporation of the State of Washington, in the forgoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument on behalf of said municipal corporation. IN WITNESS WHEREOF, I have hereto set my hand and affixed my official seal the date hereinabove set forth.
CATHERINE A ROPO Notary Public in and for the State of Washington residing at

Exhibit F
Resolution No. 3644
Page 3 of 3

ATTACHMENT 1

PROPOSED ANNEXATION LEGAL DESCRIPTION AREA IN VICINITY OF "A" STREET SOUTHEAST (EAST VALLEY ROAD) AND LAKELAND HILLS WAY SOUTHEAST

THAT PORTION OF GOVERNMENT LOTS 3 AND 4 IN THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W. M., AND THE EAST HALF OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3 IN SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., SAID CORNER ALSO BEING AN ANGLE POINT IN THE WEST BOUNDARY OF THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE NORTHWEST CORNER OF THE LANDS DESCRIBED IN CITY OF PACIFIC ANNEXATION ORDINANCE NUMBER 319;

THENCE EAST ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 3, AND THE BOUNDARY COMMON TO SAID LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC ORDINANCE NUMBER 319 A DISTANCE OF 1280 FEET MORE OR LESS TO THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 3:

THENCE SOUTH ALONG THE EAST LINE OF SAID GOVERNMENT LOTS 3 AND 4, AND THE BOUNDARY COMMON TO SAID LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC ORDINANCE NUMBER 319 TO THE SOUTHEAST CORNER OF SAID CITY OF PACIFIC ORDINANCE 319 AND TO A LINE PARALLEL WITH AND 825 FEET NORTHERLY OF THE SOUTH LINE OF SAID GOVERNMENT LOT 4:

THENCE WEST ALONG THE BOUNDARY COMMON TO SAID LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 319, AND ALONG SAID PARALLEL LINE A DISTANCE OF 1300 FEET, MORE OR LESS, TO THE WEST LINE OF SAID SECTION 31:

THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION 31 AND THE BOUNDARY COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226 TO THE SOUTHWEST CORNER OF SAID SECTION 31;

THENCE WEST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST AND ALONG THE SOUTH LINE OF THE LANDS ANNEXED TO THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226 A DISTANCE OF 70 FEET, MORE OR LESS, TO THE EAST LINE OF THE BURLINGTON NORTHERN SANTA FE (BNSF) RAILROAD RIGHT-OF-WAY (100 FEET IN WIDTH);

THENCE NORTH ALONG SAID EAST LINE OF THE BNSF RAILROAD RIGHT-OF-WAY TO A LINE PARALLEL WITH AND 100 FEET NORTHERLY OF SAID SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36;

THENCE WEST ALONG LAST SAID PARALLEL LINE 100 FEET TO THE WEST LINE OF SAID BURLINGTON NORTHERN SANTA FE (BNSF) RAILROAD RIGHT-OF-WAY;

THENCE NORTH ALONG SAID WEST LINE OF THE BNSF RAILROAD RIGHT-OF-WAY A DISTANCE OF 3280 FEET, MORE OR LESS, TO A LINE PARALLEL WITH AND 1884 FEET SOUTHERLY (WHEN MEASURED ALONG THE WEST LINE OF SAID RAILROAD RIGHT-OF-WAY) FROM THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36;

THENCE EASTERLY ALONG LAST SAID PARALLEL LINE A DISTANCE OF 175 FEET, MORE OR LESS, TO THE EAST RIGHT-OF WAY LINE OF EAST VALLEY HIGHWAY ("A" STREET SE);

THENCE SOUTHERLY ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 150 FEET, MORE OR LESS, TO THE NORTH BANK OF THE WHITE RIVER (STUCK RIVER);

THENCE NORTHEASTERLY ALONG SAID NORTH BANK OF THE WHITE RIVER A DISTANCE OF 200 FEET, MORE OR LESS, TO THE LINE COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226, AND THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M.;

THENCE SOUTH ALONG SAID LINE COMMON TO THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 2271 AND THE CITY OF PACIFIC BY CITY OF PACIFIC ORDINANCE NUMBER 226, AND THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 31 A DISTANCE OF 700 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SITUATE IN KING COUNTY, WASHINGTON.

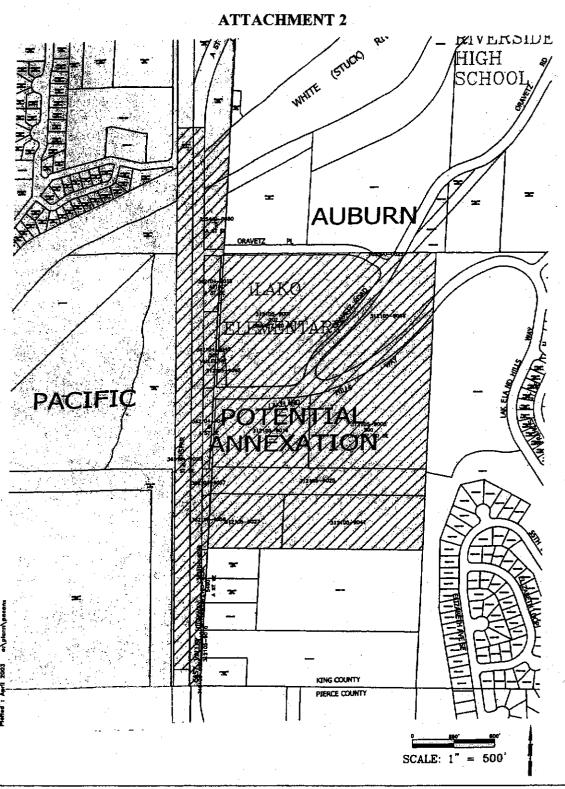


Exhibit F, Attachment 2 Resolution No. 3644 Page 1 of 1

EXHIBIT G

AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF AUBURN AND THE CITY OF PACIFIC FOR MAINTENANCE AND OPERATION SERVICES ON 'A' STREET SE

Pursuant to the Interlocal Cooperation Act codified as RCW 39.34, this

Agreement is made and entered into this day by and between the CITY OF AUBURN,
hereafter called "AUBURN", and the CITY OF PACIFIC, hereafter called "PACIFIC", to
provide Right of Way maintenance and operation services on A Street SE as legally
described on Attachment 1 and shown on Attachment 2.

WHEREAS, PACIFIC will not have the organization and personnel to provide Right of Way maintenance and operation services at the stated location; and

WHEREAS, PACIFIC desires to provide quality maintenance and operation activities for it's Right of Way; and

WHEREAS, AUBURN is able to provide such maintenance and operation services for PACIFIC, and

WHEREAS, it is for the public benefit that AUBURN and PACIFIC cooperate to provide safe and effective maintenance and operation activities; and

NOW THEREFORE, AUBURN and PACIFIC hereby agree:

1. BASIC SERVICES:

AUBURN will provide maintenance and operation activities at the area legal activities described in Attachment 1 and shown on Attachment 2:

- A. Locate underground facilities for utilities or other digging operations except the Pacific waterlines.
- B. Maintain public storm drainage facilities.
- C. Maintain the existing street light system.
- D. Maintain subgrade, pavement and pavement markings.
- E. Maintain signing per the "Manual of Uniform Traffic Control Devices".

2. AUBURN AND PACIFIC COORDINATION:

AUBURN will identify a contact person to handle day-to-day operational problems related to the Basic Services. PACIFIC will identify a contact person for the same purposes. Emergency work to protect the public safety will be handled, as the AUBURN contact person deems necessary.

3. PERSONNEL AND EQUIPMENT:

- A. AUBURN is acting herein as an independent contractor so that:
 - Control of personnel standards of performance, discipline and all other aspects of performance shall be governed entirely by AUBURN
 - 2. Except as described in Sections 3.C. below, all persons rendering services hereunder shall be for all purposes employees of AUBURN
- B. AUBURN shall furnish all personnel, resources, and materials deemed by AUBURN as necessary to provide maintenance services as outlined in Section 1 above.
- C. In the event AUBURN uses contract services to perform one or more of the Basic Services for PACIFIC, the appropriate supervision and inspection of the contractor's work will be performed by AUBURN.

4. PACIFIC'S RESPONSIBLITIES

In support of AUBURN providing services for PACIFIC in Sections 1 and 2, PACIFIC shall:

- A. Authorize AUBURN to perform maintenance services outlined in Section 1 within the City Limits of PACIFIC for the purposes of carrying out this Agreement.
- B. PACIFIC will adopt by reference all AUBURN codes necessary to provide authority for AUBURN to perform service of this Agreement.

5. INDEMNIFICATION:

- A. In executing this Agreement, AUBURN does not assume liability or responsibility for or in any way release PACIFIC's responsibility or liability which arises in part from the existence, validity or effect of PACIFIC's ordinances, rule, or regulations. In any such cause, claim, suit, action and administration proceeding commences, PACIFIC shall defend the same at its sole expense and if judgment is entered or damages are awarded against PACIFIC, AUBURN, or both, PACIFIC shall satisfy the sam3e, including chargeable costs and attorney's fees.
- B. PACIFIC shall indemnify and hold harmless AUBURN and its officers, agents, and employees, from and against any and all claims, actions, suits liability, loss costs and expense, and damages of any nature whatsoever, which are caused by or result from a negligent act or omission of AUBURN, it's officers, agents, and employees in performing services pursuant to this Agreement.

6. NON-DISCRIMINATION:

AUBURN and PACIFIC certify that both agencies are equal opportunity employers.

7. AUDITS AND INSPECTIONS:

All records and documents with respect to this Agreement shall be subjected to inspection, review or audit by AUBURN or PACIFIC for the duration of this Agreement.

8. AMENDMENTS:

The Agreement may be amended in writing at any time by mutual agreement of both parties.

9. ENTIRE AGREEMENT:

The two parties agree that this Agreement is a complete expression of the terms hereto and any oral representations or understandings are not incorporated herein.

10. AGREEMENT ADMINISTRATION:

The parties shall appoint representatives to review Agreement performances and resolve problems, which cannot be dealt with by PACIFIC and AUBURN's contact persons.

11. INVALID PROVISIONS:

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

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

CITY OF AUBURN	CITY OF PACIFIC		
King County, Washington	King County, Washington		
PETER B. LEWIS, MAYOR	HOWARD ERICKSON, MAYOR		
Date	Date <u>Ochber31, 2-003</u>		
ATTEST: Danielle E. Daskam, CMC, City Clerk	Randy Reed, CMC, City Clerk		
APPROVED AS TO FORM:	APPROVED AS TO FORM:		

Albert A. Abuan, City Attorney

Exhibit G Resolution No.3644 Page 4 of 4

Daniel B. Heid, City Attorney

ATTACHMENT 1

PORTION OF "A" STREET SOUTHEAST WITHIN THE CITY OF PACIFIC (IN THE NE QUARTER OF SECTION 36, TWP 21N, R 4E, W.M.)

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE LANDS ANNEXED TO THE CITY OF AUBURN BY CITY OF AUBURN ORDINANCE NUMBER 1171, SAID CORNER BEING ON THE EAST MARGINAL LINE OF THE EAST VALLEY HIGHWAY (ALSO KNOWN AS STATE HIGHWAY NO. 5 AND AS "A" STREET SOUTHEAST);

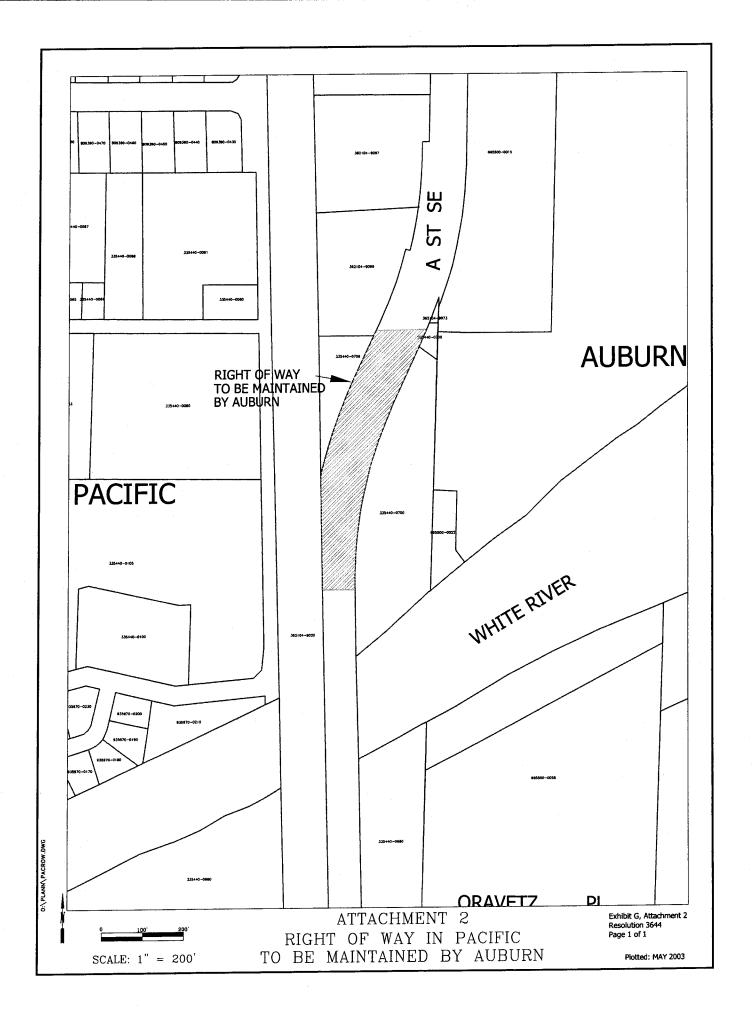
THENCE SOUTHWESTERLY 600 FEET, MORE OR LESS, ALONG SAID EAST MARGINAL LINE TO A LINE PARALLEL WITH AND 1884 FEET SOUTHERLY (WHEN MEASURED ALONG THE WEST LINE OF THE BURLINGTON NORTHERN SANTA FE RAILROAD RIGHT-OF-WAY) FROM THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36;

THENCE WESTERLY ALONG SAID PARALLEL LINE TO THE WESTERLY RIGHT-OF WAY LINE OF SAID EAST VALLEY HIGHWAY ("A" STREET SE);

THENCE NORTHERLY ALONG SAID WESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 600 FEET, MORE OR LESS, TO THE SOUTH LINE OF SAID LANDS ANNEXED UNDER CITY OF AUBURN ORDINANCE NUMBER 1171;

THENCE EASTERLY ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING.

SITUATE IN KING COUNTY, WASHINGTON.



RESOLUTION NO. 3637

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, SUPERCEDING RESOLUTION NO. 3543 AND AUTHORIZING THE MAYOR TO EXECUTE A TURNOUT CONSTRUCTION AGREEMENT BETWEEN THE CITY OF AUBURN AND THE CITY OF TACOMA WATER DIVISION

WHEREAS, Auburn and Tacoma are responsible for operating and maintaining public water systems in accordance with federal, state and local laws and regulations, and

WHEREAS, the parties recognize that water resources are finite and vulnerable, and the prudent use and management of these resources requires cooperation among water utilities, and

WHEREAS, Auburn and Tacoma entered into a Turnout Construction
Agreement authorized by City of Auburn Resolution No. 3543, dated November
18, 2002, for the construction of one turnout, and

WHEREAS, Auburn and Tacoma have determined that it would be beneficial to construct two additional turnouts, and

WHEREAS, Auburn has water facilities in the vicinity of the Tacoma Second Supply Project pipeline, and Auburn will have an agreement with one or more SSP Partner to purchase water that will be delivered via the SSP, and pursuant to this agreement construction of the turnout to the SSP is set forth which turnout will be used for delivering and metering the purchased water, and

WHEREAS, this agreement will supercede the Turnout Construction

Agreement authorized by City of Auburn Resolution No. 3543, dated November

18, 2002.

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

Section 1. This resolution shall supercede Resolution No. 3543, and authorizes the Mayor to execute the Turnout Construction Agreement between the City and the City of Tacoma Water Division, in substantial conformity with the agreement 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. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this 15th day of September 2003.

CITY OF AUBURN

PETER B. LEWIS

MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid,

City Attorney

TURNOUT

CONSTRUCTION AGREEMENT

BETWEEN TACOMA WATER

AND CITY OF AUBURN

This agreement made and entered into this ______ day of ______, 2003, by and between the City of Auburn (hereinafter referred to as "Auburn") and City of Tacoma Water Division (dba Tacoma Water and hereinafter referred to as "Tacoma"), WITNESSETH THAT:

A. RECITALS:

WHEREAS, Auburn and Tacoma are responsible for operating and maintaining public water systems in accordance with federal, state and local laws and regulations, and

WHEREAS, the parties recognize that water resources are finite and vulnerable, and the prudent use and management of these resources requires cooperation among water utilities, and

WHEREAS, Auburn and Tacoma have previously entered into a Turnout Construction Agreement authorized by City of Auburn Resolution No. 3543, dated November 18, 2002, for the construction of one turnout, and

WHEREAS, Auburn and Tacoma have determined that it would be beneficial to construct two additional turnouts, and

WHEREAS, Auburn has water facilities in the vicinity of the Tacoma Second Supply Project (SSP) pipeline, and Auburn will have an agreement with one or more SSP Partner to purchase water that will be delivered via the SSP, and pursuant to this agreement construction of the turnout to the SSP is set forth which turnout will be used for delivering and metering the purchased water.

NOW THEREFORE, IT IS MUTUALLY AGREED as follows:

B. The Turnout Construction Agreement between Tacoma Water and City of Auburn dated November 8, 2002, and adopted by City of Auburn Resolution 3543 dated November 18, 2002, is hereby superceded by this Agreement.

C. DEFINITIONS:

The definition of certain terms, when used in this agreement, are as follows:

TURNOUT means a physical connection between water mains of the two parties to this agreement, at specifically identified points, where water may be transferred

from the supplies of one system to the transmission or distribution facilities of the other.

ISOLATION VALVE means a positive shut-off valve that shall be installed immediately downstream of the water meter vault at the point in each water system that is used to accept or deliver water through the turnout. The isolation valve is defined as part of the system connected to the turnout and not part of the turnout. Each connected system has sole responsibility for providing and operating their isolation valve.

TURNOUT CAPACITY means the maximum flow capacity for water to be delivered through a turnout as agreed upon by the parties to this agreement. Turnout facilities shall be designed so as to be capable of conveying no less than the maximum agreed upon flow.

SSP means the Second Supply Project (to bring water to the SSP Partners)

SSP ISOLATION VALVE means a positive shut-off valve that shall be installed at the point in each water system that is used to accept or deliver water through the turnout. The SSP isolation valve is defined as part of the system connected to the turnout upstream of the meter vault. Each connected system has sole responsibility for providing the SSP isolation valve. Tacoma will be responsible for operating the SSP isolation valve.

SSP PARTNERS refers to the City of Kent, Tacoma Water, Covington Water District and Lakehaven Utility District.

D. <u>PURCHASE OF WATER FOR THIS TURNOUT:</u>

The purchase of water to be delivered via this subject turnout shall be by a separate agreement with one or more of the SSP Partners and Auburn. This Turnout Construction Agreement does not guarantee any rights to use or purchase water from any of the SSP Partners. Tacoma will only allow Auburn, its successors and assigns, to obtain water via the subject turnout after the applicable SSP partner has advised Tacoma in writing that an acceptable agreement for water purchase has been executed. In delivering water via the subject turnouts, Tacoma will be relying on directions and/or confirmation from the SSP partner as to the timing and quantities of water deliveries and all other aspects of providing water via the subject turnouts. In the event of a disagreement between Auburn and the applicable SSP Partner pertaining to entitlement to continued water delivery via the subject turnouts, Tacoma is entitled to rely on the written directions or instructions of the SSP partner. Therefore, Auburn agrees that it shall not file any claim or legal action against Tacoma when Tacoma's actions are consistent with the written directions or instructions from the applicable SSP partner from which Auburn has contractual arrangements to purchase water.

E. CONDITIONS:

- 1. The TURNOUTS described in Exhibits A, B-1, B-2 and B-3 attached to this agreement shall be governed by the terms of this agreement. No future TURNOUTS shall be permissible without a subsequent and separate written agreement between the parties.
- 2. The cost of design and construction of the TURNOUTS and installation of the meters shall be the responsibility of Auburn, and the design and construction shall be subject to Tacoma's review, inspection and approval.
- By this agreement Auburn agrees that the ownership of the SSP 3. ISOLATION VALVES directly off of the SSP Project, piping from the SSP ISOLATION VALVES to the meters or spools, the meters or spools. meter vaults, pipe stubs out from the vaults and telemetry shall be with Tacoma (see Exhibit A for more information), with all capital costs to be paid by Auburn. Maintenance and operation of the SSP ISOLATION VALVES, piping and meters will be performed solely by Tacoma, and Auburn will be invoiced for such costs and shall reimburse Tacoma. Meter vault maintenance costs and any cost for maintaining any equipment such as pumps, buildings and other appurtenances downstream of the meter shall also be the responsibility of Auburn. In addition, in the event any of the facilities require replacement or upgrading, this cost is Auburn's responsibility. In the event that access or other permits are necessary for Tacoma to operate and maintain the subject facilities, Auburn shall provide the necessary permits, which shall also become an exhibit to this agreement. (See Exhibit A for a plan showing the facilities and the responsibility of the parties).
- 4. Upon completion of the construction of the Turnouts, Tacoma will own the meters and associated appurtenances necessary to monitor use of the turnouts.
- 5. Auburn shall comply with all applicable laws and requirements including City of Tacoma ordinances/resolutions and Customer Service Policies and/or other rules applicable to a connection to Tacoma's water system including, but not limited to, the requirements that Tacoma provide written approval of plans and specifications for the connection of turnout facilities prior to construction.
- 6. Auburn agrees that it shall make payment of all invoices for services and charges from Tacoma within 45 days of the invoice date. Late payment shall result in a late payment charge of 1% on the unpaid balance, and failure to pay any invoice or bill related to this agreement within 60 days of mailing may result in Tacoma's termination of water service at the turnout.

7. Notices should be sent to Auburn and to Tacoma at the following addresses:

Water Superintendent Tacoma Water P. O. Box 11007 Tacoma, WA 98411

Public Works Director City of Auburn 25 West Main Auburn, WA 98001-4998

- 8. Neither this Agreement nor any right or privilege herein shall be assigned by any party without the written consent of the other parties.
- 9. Uncontrollable forces or state or federal law changes may occur during the time this Agreement is in place. Neither of the parties hereto shall be considered to be in default in respect to any obligations hereunder if prevented from fulfilling such obligations by reason or uncontrollable forces or material changes in state or federal law or enforcement thereof. Parties rendered unable to fulfill any obligation hereunder by reason of an uncontrollable force or material change in state or federal law shall exercise due diligence to deal with such uncontrollable force with all reasonable dispatch and to take actions consistent with the purpose of this agreement.
- 10. This Agreement describes the entire relationship of the parties with regard to the subject matter herein concerned. Except as maybe explicitly provided otherwise herein, the parties are independent agencies and shall not be deemed to be partners, joint ventures, principals, or agents or each other for any purpose whatsoever. Each party shall have and maintain sole and complete control over all of its employees, agents and operations. Except as may otherwise be explicitly provided herein, or in separate agreement, each and all of the obligations, responsibilities, and liabilities of the parties under and in connection with this Agreement are several, and not joint, and no separate legal or administrative entity will be created to fulfill the purposes of this Agreement.
- 11. Except as expressly set forth in this Agreement, none of the provisions of this Agreement shall inure to the benefit or be enforceable by any third party.

- 12. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 13. No change, amendment or modification or any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by all parties.
- 14. The SSP Partners must approve this Agreement.

IN WITNESS WHEREOF, the following parties have duly executed this agreement on the date written above:

City of Tacoma
Department of Public Utilities
Water Division

By: \(\square \)

City of Auburn

Approved as to form & legality:

Approved as to form & legatity

Approved by the SSP Project Partners at their Project Committee meeting held on September 12, 2003.

EXHIBIT A

TURNOUT DESCRIPTION

A. TURNOUT #1: A turnout between a 60" diameter water line owned by Tacoma and a 16" diameter water line containing Auburn water. The turnout is located at the intersection of 132nd Avenue SE and SE 296th Street extended. The turnout consists of 12" diameter piping with 12" diameter valves to control flow. A 6-inch diameter water meter will be used to measure the volume of water transferred between the two systems. The meter will be contained in a concrete vault buried in the Second Supply Pipeline right-of-way. Second Supply Pipeline construction drawings 15-19-62 and 15-19-69 are attached and show the detail for the turnout vault construction.

The turnout is designed to be capable of conveying at least 3000 gallons per minute from Tacoma owned facilities to Auburn with approximately 125-foot differential in hydrostatic pressure under normal operating conditions.

B. TURNOUT #2: A 12-inch turnout connection located on the east side of B Street NW and approximately 32nd Street NW between Tacoma's 60"diameter Second Supply Pipeline and Auburn's 16" diameter water line in B Street. An 8-inch diameter water meter will be used to measure the volume of water transferred between the two systems. Second Supply Pipeline construction drawings 15-25-29 and 15-21-62 are attached and show the details for the turnout vault construction.

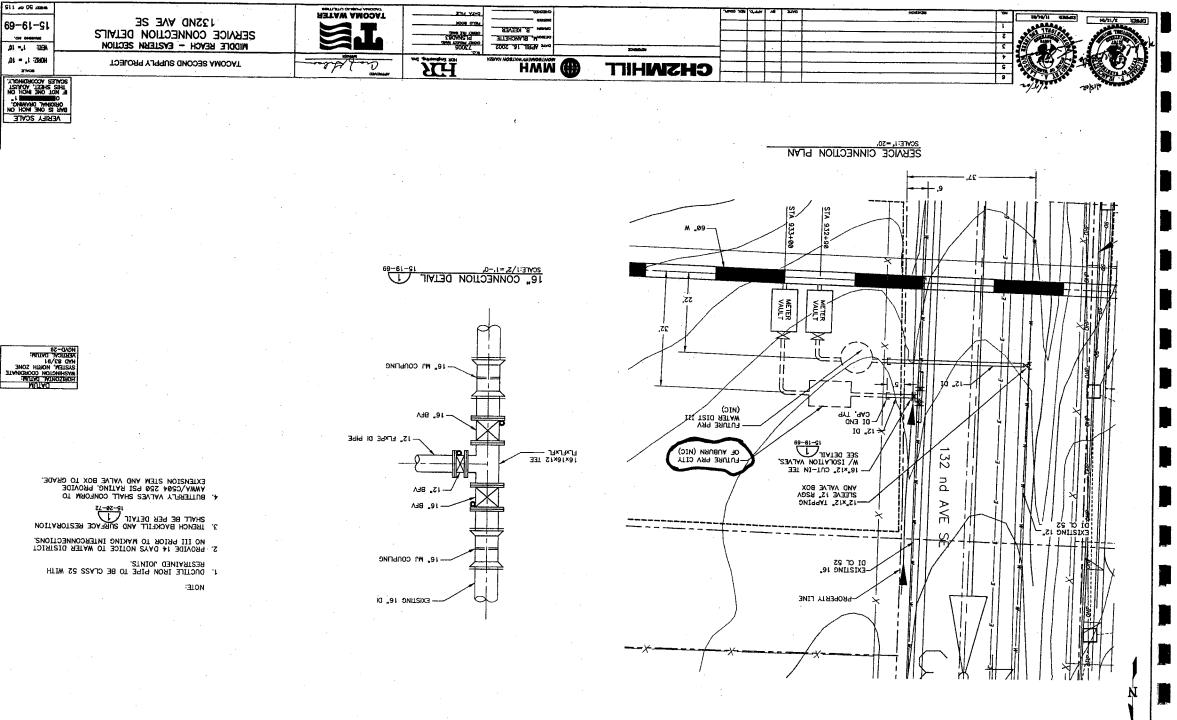
The turnout is designed to be capable of conveying at least 8300 gallons per minute from Tacoma owned facilities to Auburn with approximately 405-foot differential in hydrostatic pressure under normal operating conditions.

C. TURNOUT #3: A 12-inch turnout connection located at approximately K Street NE and approximately 32nd Street NE between Tacoma's 60" diameter Second Supply Pipeline and Auburn's adjacent water line. An 8-inch diameter water meter will be used to measure the volume of water transferred between the two systems. Second Supply Pipeline construction drawings 15-25-29 and 15-21-66 are attached and show the details for the turnout vault construction.

The turnout is designed to be capable of conveying at least 8300 gallons per minute from Tacoma owned facilities to Auburn with approximately 405-foot differential in hydrostatic pressure under normal operating conditions.

Exhibit	I		
Auburn	Resolution	No.	

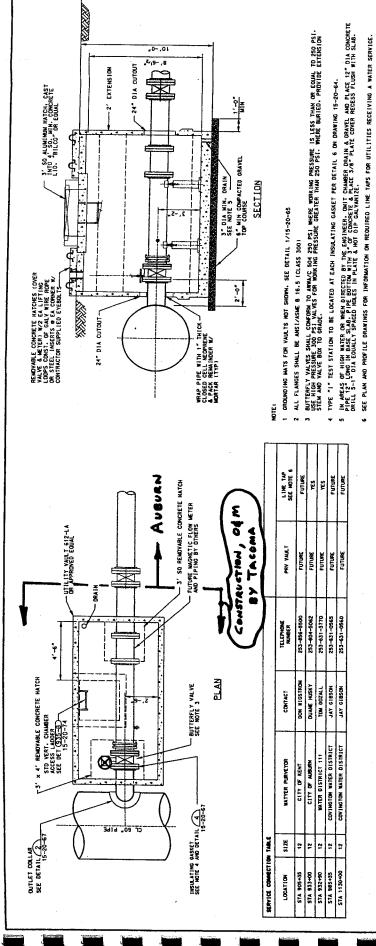
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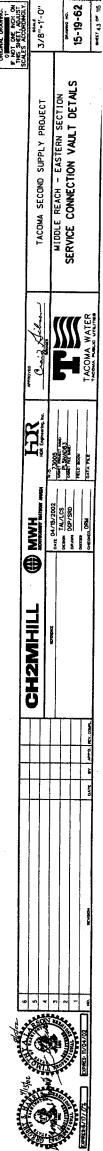
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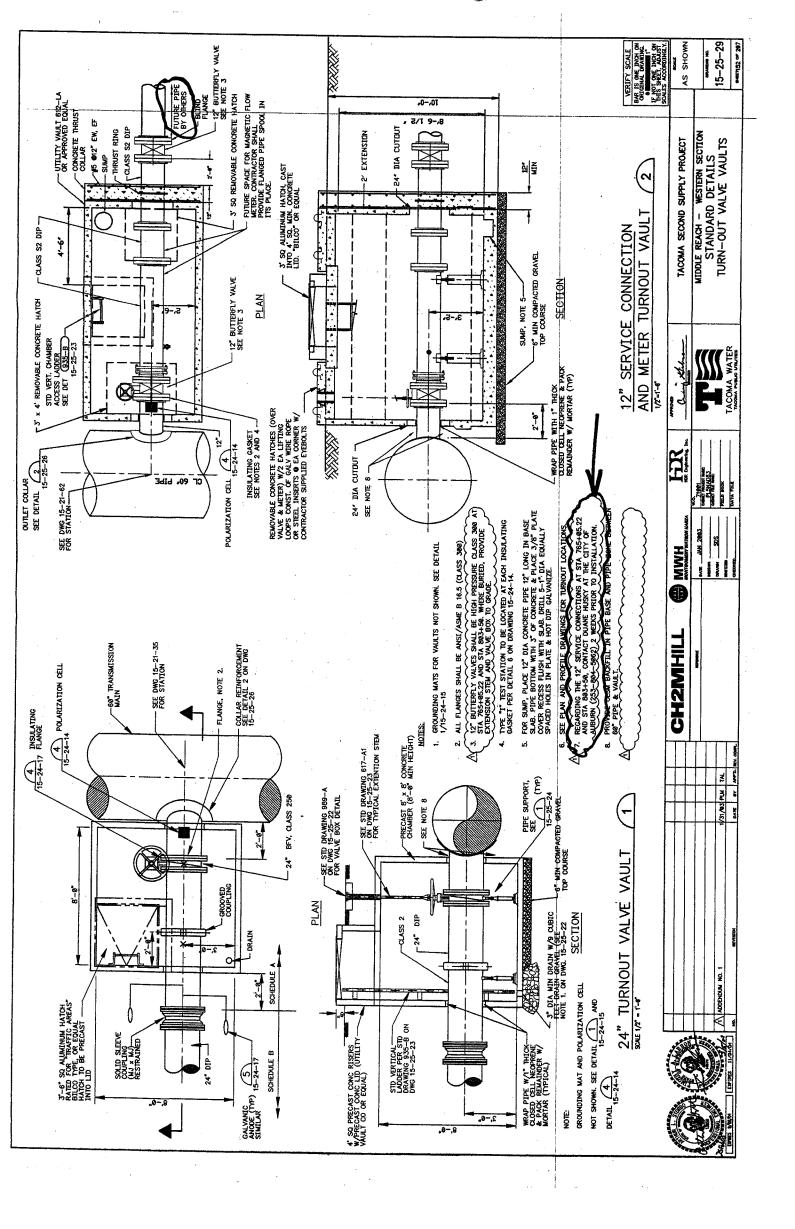


Exhibit B-1

General Vicinity Map of Turnout #1 Facilities

(SSP construction drawing 15-19-23)

Exhibit "1"
Auburn Resolution No.

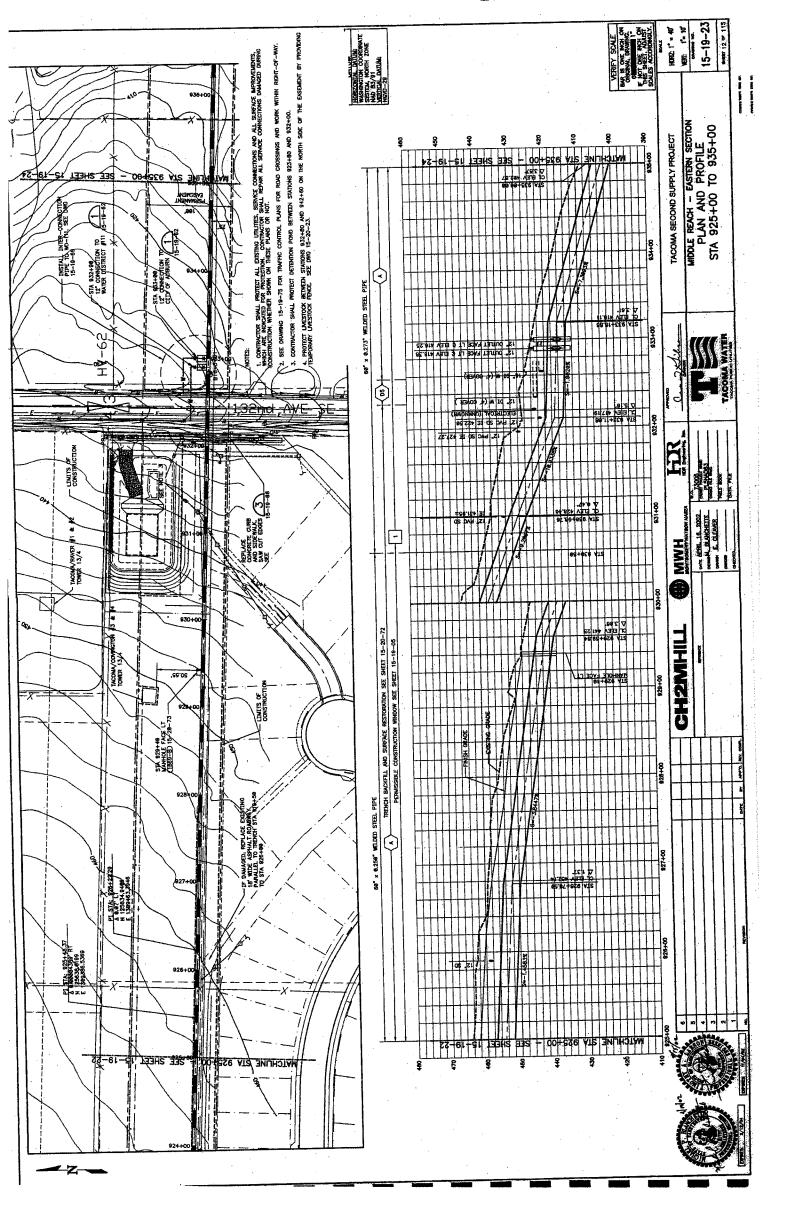


Exhibit B-2

General Vicinity Map of Turnout #2 Facilities

(SSP construction drawing 15-21-62)

Exhibit "1"
Auburn Resolution No.

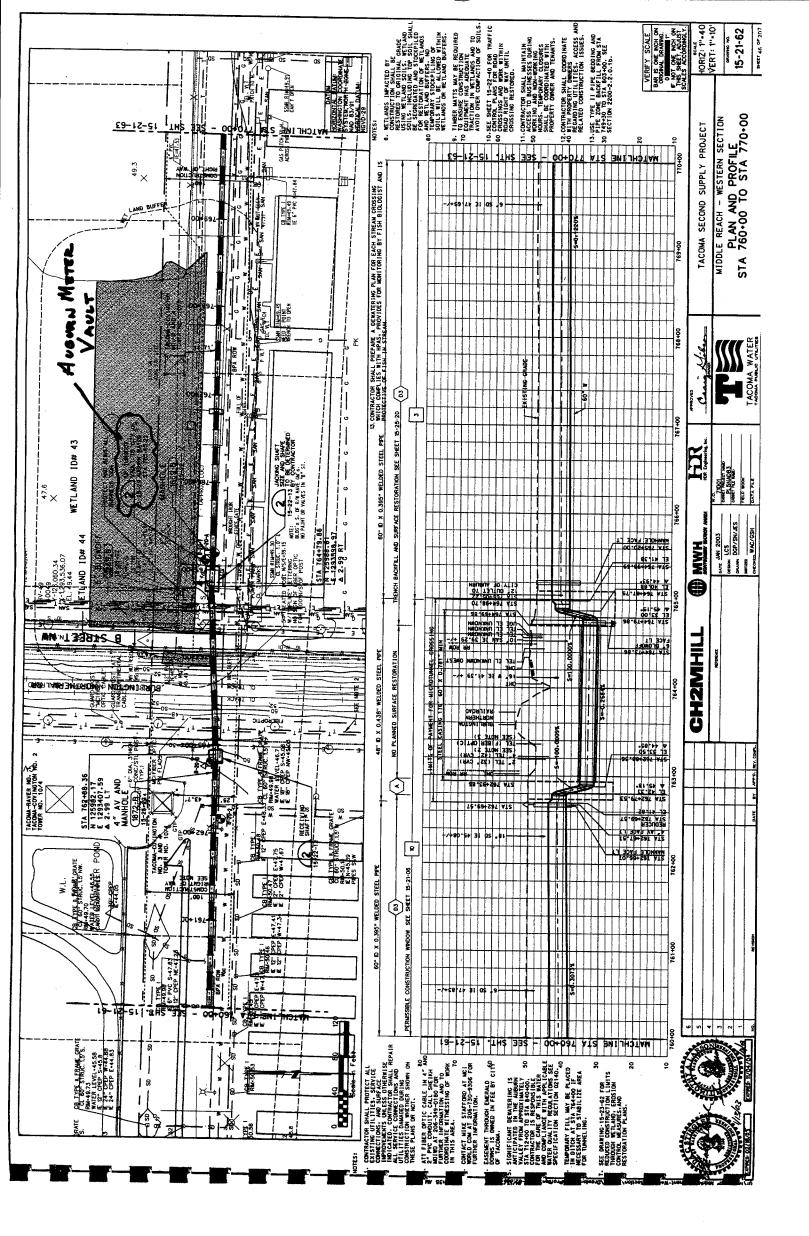
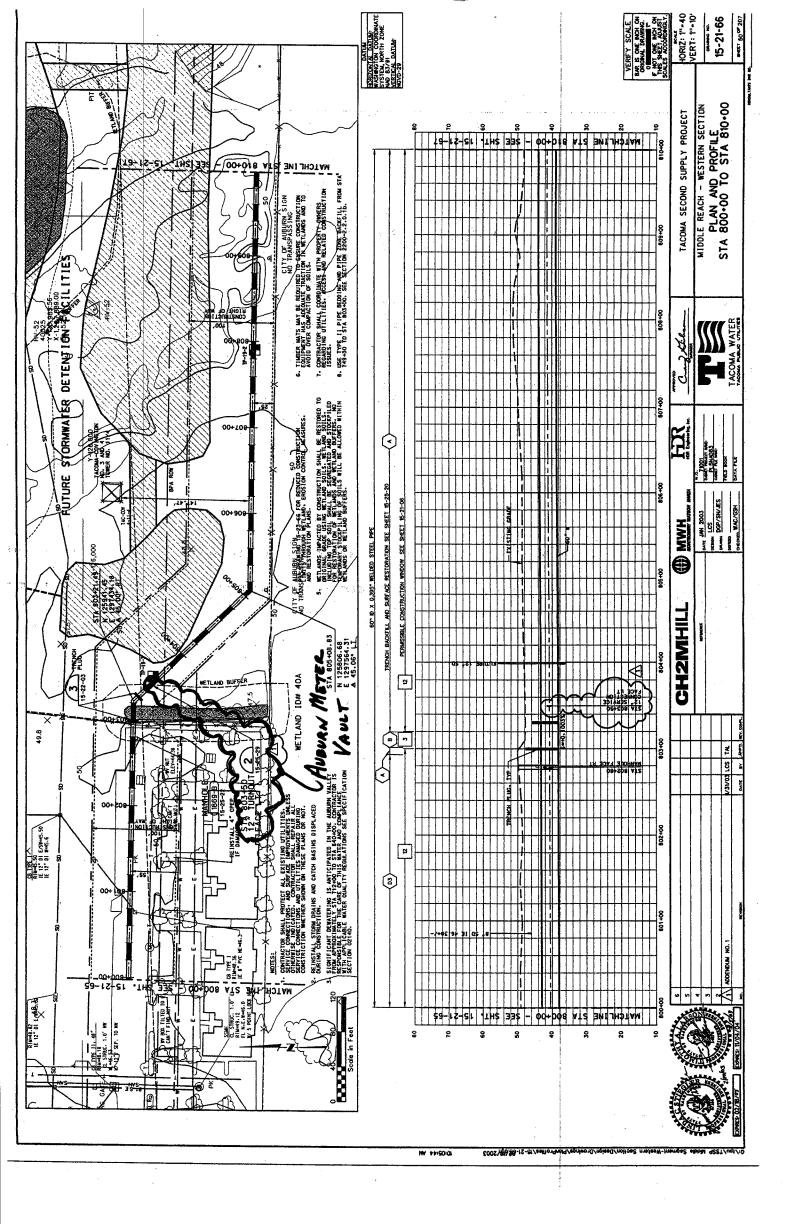


Exhibit B-3

General Vicinity Map of Turnout #3 Facilities

(SSP construction drawing 15-21-66)

Exhibit "1"
Auburn Resolution No.



RESOLUTION NO. 3614

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN EMERGENCY WATER SYSTEM INTERTIE AGREEMENT BETWEEN THE CITY OF AUBURN AND KING COUNTY WATER DISTRICT NO. 111

WHEREAS, Auburn and King County Water District No. 111 have legal authority to exercise their powers and perform any of their functions as set forth in RCW 39.34, the Interlocal Cooperation Act; and

WHEREAS, pursuant to RCW 39.34, Auburn and King County Water District No. 111 have legal authority to cooperate with other localities on the basis of mutual advantage and provision of services; and

WHEREAS, the City of Auburn and King County Water District No. 111 currently have water facilities in the vicinity; and

WHEREAS, both agencies can increase fire protection and emergency water supply reliability for their customers; and

WHEREAS, both agencies are willing to provide the necessary services to increase fire fighting and emergency supply reliability upon the terms and conditions set forth in the Emergency Water System Intertie Agreement.

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

Section 1. Pursuant to RCW 39.34, the Interlocal Cooperation Act, Auburn and King County Water District No. 111 have legal authority to cooperate with other localities on the basis of mutual advantage and provision of services.

Section 2. The Mayor is hereby authorized to execute an Emergency Water System Intertie Agreement between the City and King County Water District No. 111 in the form substantially as the agreement attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

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

Section 4. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

DATED this Znd day of ______, 2003.

CITY OF AUBURN

PETER B. LEWIS MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

EMERGENCY WATER SYSTEM INTERTIE AGREEMENTWater District No. 111/Auburn Intertie Agreement No. 1

THIS AGREEMENT made and entered into by and between the City of Auburn, hereinafter referred to as Auburn, and the Water District No. 111, hereinafter referred to as the District, for the purposes of maintaining and operating emergency system interties between the respective parties.

WITNESSETH:

WHEREAS, Auburn and the District executed an interlocal agreement regarding the Duberry Hill Development Project on July 17, 2000; and

WHEREAS, Section I(b) of that agreement states that a new interlocal agreement shall be adopted for the operation of the emergency interties established under that agreement; and

WHEREAS, both Auburn and the District have water facilities in the vicinity, and

WHEREAS, the District can increase fire protection and emergency water supply reliability for their customers in the Duberry Hill development, and

WHEREAS, Auburn can increase fire protection and emergency water supply reliability for their customers in the vicinity of the Duberry Hill development when the District connects the development to the District water system, and

WHEREAS, Auburn and the District are willing to provide the necessary services to increase fire fighting and emergency supply reliability upon the terms and conditions set forth herein.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

- 1. Interlocal Agreement regarding the Duberry Hill Development Project between the City of Auburn and Water District No. 111, dated July 17, 2000 and adopted by City of Auburn Resolution No. 3237 is hereby superceded by this Agreement.
- 2. The emergency water system interties are to be operated manually as a emergency supply whereby Auburn can supply water to the Duberry Hill development for the District and the District can provide water to the Auburn system once the District connects it's system to the Duberry Hill development. There are two intertie facilities, which are located near the intersection of 124th Avenue SE and SE 300th and the intersection of 127th Place SE and SE 300th at the Water Service Area Boundary between Auburn and the District.

- 3. The emergency water system interties shall be closed during normal operating conditions and will be opened only with prior authorization by Auburn or the District in the event of an emergency. For purposes of this agreement, an emergency shall be defined as resulting from a water shortage (not to exceed seven (7) calendar days), a major water line break, fire demand, contamination to the water supply system, mechanical equipment failure, electrical equipment failure or Puget Sound Energy facility failure, or any other agreed upon emergency within the water supply system.
- 4. The two valves that constitute the emergency water system interties and all piping leading up to the valves from the Auburn distribution system shall be owned and maintained by Auburn. All piping leading up to the valves from the District distribution system shall be owned and operated by the District.
- 5. The procedure for operating the intertie in the event of such emergency shall be as follows:
 - A. Aubum or the District shall determine that an emergency of sufficient magnitude has occurred which warrants the need to request that the intertie be activated.
 - B. Authorized personnel shall provide a verbal request to the system that will be supplying the water. Upon agreement that an emergency exists which shall allow for the intertie to be opened, the intertie will be activated as soon as reasonably possible. Personnel from Auburn and the District shall be present to activate the valve(s).
 - C. The party requesting emergency water shall provide a written confirmation of the request not less than 24 hours after the verbal request, or on the first day of normal business after the verbal request.
 - D. The intertie shall remain activated until the party requesting emergency water determines that the need for activation of the emergency intertie has ceased and shall request in writing that the intertie be closed.
 - E. In case of emergency or whenever the public health, safety, or the equitable distribution of water so demands, either party may change, reduce or limit the time for or temporarily discontinue the supply of water without notice; water service may be temporarily

interrupted, limited for purposes of making repairs, extensions or doing other necessary work; and shall not be responsible for any damage resulting from interruption, change or failure of the water supply, and the receiving party shall save and hold harmless the providing party from any loss, damages or suits to or by customers of the receiving party resulting from interruption, change or failure of water supply provided by this Agreement, except damages arising out of the providing party's negligence. Prior to a planned interruption or limiting of service, the providing party will notify the receiving party of such not less than three days prior to the service disruption. The providing party agrees to use best efforts and reasonable diligence to notify the receiving party as soon after it becomes aware of the need for service disruption and further will, to the extent practical, limit the service disruption to daylight hours.

6. To the extent allowed by law, the District shall defend, indemnify, and hold harmless Auburn, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs, expenses of litigation, attorney's fees, penalties and damages of whatsoever kind or nature arising out of or in connection with or incident to an act or omission of the District, its employees, agents, and contractors in the performance of the District's obligations under this Agreement. This indemnification provision shall include, but is not limited to, all claims against Auburn by an employee or former employee of the District or its contractors and, as to such claims, the District expressly waives all immunity and limitation of liability under Title 51 RCW.

To the extent allowed by law, Auburn shall defend, indemnify and hold harmless the District, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs, expenses of litigation, attorney's fees, penalties, and damages or whatsoever kind or nature arising our of, in connection with or incident to an act or omission of Auburn, its employees, agents, and contractors in the performance of Auburn's obligations under this Agreement. This indemnification obligation shall include, but is not limited to, all claims against the District by an employee or former employee of Auburn or its contractors and, as to such claims, Auburn expressly waives all immunity and limitation of liability under Title 51 RCW.

7. This Agreement shall remain in force until terminated by either party hereto upon 60-days written notice to the other party.

IN WITNESS WHEREOF, we have hereunto set our hands and seals.

CITY OF AUBURN King County, Washington	WATER DISTRICT NO. 111 King County, Washington
By: Jun 2 2003 Mayor Date	By: Ranger Date District Manager Date
Approved as to form:	Approved as to form:
By: City Attorney Date	By: General Counsel Date

H:\WQWATER UTILITY\INTERTIES\WD111\DUBERRY EIA 051403.DOC

RESOLUTION NO. 3649

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 AND VOICESTREAM PCS III CORPORATION, FOR THE PURPOSE OF LEASING SPACE ON THE LAKELAND HILLS WATER TOWER FOR COMMUNICATION EQUIPMENT

WHEREAS, the City of Auburn has facilities from which cellular and telecommunication equipment could be attached; and

WHEREAS, Voicestream PCS III Corporation has sought use of such facilities and has negotiated an agreement for use thereof with terms acceptable to the City.

THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREBY RESOLVES as follows:

<u>Section 1.</u> The Mayor and City Clerk of the City of Auburn are herewith authorized to execute a Lease Agreement between the City and VoiceStream PCS III Corporation, for the purpose of leasing space on the Lakeland Hills water tower for communication equipment, in substantial conformity with the agreement attached hereto, marked as Exhibit "I" and incorporated herein by this reference.

<u>Section 2.</u> That the Mayor is authorized to implement such other administrative procedures as may be necessary to carry out the directives of this legislation.

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

Dated and Signed this 11 day of 100.

CITY OF AUBURN

PETER B. LEWIS

MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid,

City Attorney

Resolution No. 3649 November 7, 2003

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Exhibit "I"

SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT("Lease") is by and between <u>City of Auburn</u>, ("Landlord") and VoiceStream PCS III Corporation, a Delaware corporation (Tenant").

1. Lease Agreement.

- (a) Landlord hereby leases to Tenant a portion of the real property legally described as follows: THE SOUTH 175.00 FEET OF THE EAST 110.00 FEET OF THE WEST 1,393.00 FEET OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., CITY OF AUBURN, RECORDS OF KING COUNTY, WASHINGTON, (collectively referred to hereinafter as the "Property"). The lease includes the right to operate a personal communications service antenna installation on the Landlord's water reservoir, on the terms and conditions set forth herein.
- (b) The Tenant agrees to the lease, subject to the following terms and conditions. Landlord hereby leases to Tenant the use of that portion of the Property as generally described and depicted in the attached Exhibit A, (collectively referred to hereinafter as the "Lease Area"). The Lease Area, located at Lakeland Hills Water Reservoir facility, Auburn, Washington, comprises approximately an area not to exceed 2,740 square feet.
- (c) The lease shall be nonexclusive and shall not preclude the Landlord from granting a similar lease, right, license, franchise, etc., to other carriers or other persons for telecommunications or any other purpose.
- 2. Term. The initial term of this Lease shall be five (5) years commencing on the date of execution of the Agreement (the "Commencement Date"), and terminating at midnight on the last day of the initial term (the "Initial Term").
- 3. Antenna Facilities. Tenant may use the Lease Area for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities necessary for the operation of a telecommunications facility as well as for access and utilities. Tenant may only place its ground based telecommunications equipment within the portion of the Lease Area identified as the "Compound" on Exhibit A. Tenant may install and maintain landscape plantings within the Lease Area. In addition to using the Lease Area, Tenant may utilize the Property to install and use underground conduits that begin at the Lease Area, cross the Property in a generally straight line to the base of the water reservoir (Reservoir) and then extend up the side of the Reservoir to antennas which Tenant will install on the railing of the Reservoir, as shown in Exhibit A (hereinafter referred to as "Antenna Facilities").
- 4. Rent. Tenant shall pay Landlord, as rent, Twelve Thousand and no/100 dollars (\$12,000.00) per year ("Rent"). Rent shall be payable within twenty (20) days following the Commencement Date and thereafter the Rent will be payable yearly, no later than the anniversary of the Commencement Date to City of Auburn Water Utility Fund, Account Number 430.369.900, at Landlord's address specified in Section 12 below. The Rent shall increase annually over the Rent payable the preceding year by not less than three and one half percent (3.5%). If the average increase in the Consumer Price Index Urban for the Seattle Tacoma Bremerton area (CPI) is greater than three and one half percent (3.5%) over the period of the Term, or any Renewal Term, then the rate at which the Rent is increased annually during the following Renewal Term shall be adjusted to that CPI based average percentage rate. If the average increase in the CPI is less than or equal to three and one half percent (3.5%) over the period of the Term, or any Renewal Term, then the rate at which the Rent is increased annually during the following Renewal Term shall be three and one half percent (3.5%). It shall be the responsibility of the Landlord to track the CPI and notify the Tenant of increases or reductions in the Rent. Landlord shall notify Tenant within 90

days of the commencement of the Renewal Term as to the revised rate at which the Rent shall be increased annually thereafter. Landlord will invoice Tenant for back Rent due or refund over payment as necessary to correct the payment received for the first year of the Renewal Term. If at any time the CPI ceases to incorporate a significant number of items, if a substantial change is made in the method of establishing the CPI, or if issuance of the CPI shall be discontinued, then the Landlord and Tenant shall mutually agree upon another standard recognized cost of living index issued by the United States Government, provided that if the parties cannot reach agreement on such other standard cost of living index, then the Landlord shall select the index closest to the CPI. In either case, the substitute index chosen shall result in increases in the Rent similar to those that had been, or would have been, generated by the CPI. If this Lease is terminated at a time other than on the anniversary of the Commencement Date, Rent shall be prorated as of the date of termination for any reason (other than a default by Tenant) and all prepaid Rent shall be refunded to Tenant within sixty (60) days.

- 5. Renewal. Tenant may extend this Lease for (5) additional, five-year terms (each a "Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein, including the Rent increase set forth in Section 4, above. This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew this Lease, at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term. Landlord may, during any Renewal Term, notify Tenant, in writing, of Landlord's intention not to renew this Lease for an additional Renewal Term, which notice shall be provided to Tenant at least one hundred and eighty (180) days prior to the expiration of the then in effect Renewal Term. If Tenant shall remain in possession of the Lease Area at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.
- 6. Interference. Tenant shall not use the Lease Area in any way which interferes with the use of the Property by Landlord. Tenant's Antenna Facilities and the use thereof shall not interfere with the use of any other communication or similar equipment of any kind and nature owned or operated by Landlord or other lessee, licensees, franchisees etc., on the Property except as might be permitted by applicable laws, provided, however that subsequent to the installation by Tenant of the Antenna Facilities, Landlord agrees to exercise reasonable care to assure equipment of subsequent providers leasing space on the Property does not interfere with Tenants Antenna Facilities operations. The Landlord, however, is not in any way responsible or liable for any interference with Tenants use of Landlords Property, which may be caused by the use and operation of any other tenant's equipment, even if caused by new technology. In the event that any other tenant's activities interfere with Tenant's use of Landlord's property, and Tenant cannot work out this interference with other tenant's, Tenant may, upon 30 days notice to Landlord, terminate this lease and restore the Landlord's Property to its original condition, reasonable wear and tear excepted.

7. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Lease Area, improvements, personal property and facilities necessary to operate its communications system, including, equipment shelters and/or cabinets and related cables and utility lines and a location based system, including coaxial cable, base units and other associated equipment as such location based system may be permitted by any county, state or federal agency/department. Tennant shall have the right, at its expense, to erect and maintain on the Property including on Landlord's water reservoir, improvements, personal property and facilities necessary to operate its communications system, including, radio transmitting and receiving antennas and related cables and conduits and other associated equipment as such location based system may be permitted by any county, state or federal agency/department. Tenant shall have the right to alter, replace, and expand within the confines of the Lease Area as defined in Section 1 and without interference to other providers / tenants, enhance and upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. Landlord acknowledges that it shall not interfere with any aspects of construction, including, attempting to direct construction personnel as to the location of or method of installation of the Antenna Facilities. The

Antenna Facilities shall remain the exclusive property of Tenant. Tenant shall have the right to remove the Antenna Facilities at any time during and upon the expiration or termination of this Lease.

- (b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Compound, including, without limitation, the construction of a fence.
- (c) Tenant shall, at Tenant's expense, keep and maintain the Lease Area and Antenna Facilities now or hereafter located on the Property in commercially reasonable condition and repair during the term of this Lease, normal wear and tear excepted. Upon termination or expiration of this Lease, the Lease Area and Antenna Facilities areas shall be returned to Landlord in good, usable condition, normal wear and tear excepted, within ninety (90) days.
- (d) Tenant shall have the right to install utilities, power and telephone, at Tenant's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators). Landlord agrees to cooperate with Tenant in its reasonable efforts to acquire necessary utility service. Tenant shall, wherever practicable, install separate meters for utilities used on the Property by Tenant. Landlord shall diligently correct any variation, interruption or failure of utility service within Landlord's control.
- (e) Prior to installation of equipment, Tenant shall submit for Landlord review and approval, which approval shall not be unreasonably withheld or delayed, an electrical and grounding connection plan that assures no interference with the water tank cathodic protection system. The plan shall include a 3 "minimum diameter common use conduit enclosure for cables from the ground level to top of tank. This conduit may be utilized by other telecommunication providers until such time as it is filled to capacity, at which time new providers will need to pay for upsizing. Upon Landlord approval of the plans, Tenant may proceed to install and operate the Antenna Facilities.
- (f)Tennant shall have the right during the Initial Term and of this Lease and any Renewal Term for ingress and egress to the Property over the south fifteen (15) feet of Lot 6, Lakeland Hills Division Number 3, Extension, according to the plat thereof recorded in Volume 145 of Plats, pages 72 and 73, in King County Washington.
- (g) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Lease Area ("Access") at all times during the Initial Term of this Lease and any Renewal Term. In the event Landlord, its employees or agents unreasonably deny Access to Tenant, its employees or agents, Tenant shall, without waiving any other rights that it may have at law or in equity, deduct from Rent amounts due under this Lease an amount equal to fifty and no/100 dollars per day for each day that Access is impeded or denied. Access to Landlord facilities beyond the Lease Area, including but not limited to the water reservoir site and the water reservoir, require 48 hours notice to the Water Division Supervisor of the City of Auburn Water Utility (phone: 253-931-3066). Access to Landlord facilities will only occur with Landlord supervision. Tenant agrees to reimburse Landlord for Landlord expenses attributed to supervising Tenant while accessing Landlord facilities. The hourly rate for Landlord supervision during City standard office hours will be \$31.50 per hour in calendar year 2003. The hourly rate shall increase annually on January 1st over the hourly rate payable the preceding year by not less than three and one half percent (3.5%) or the CPI Urban for the Seattle / Tacoma area whichever is the greater, unless a different hourly rate amount is negotiated.
- 8. <u>Termination</u>. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:
- (a) upon thirty (30) days' written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within that thirty (30) day period;
- (b) immediately if Tenant notifies Landlord of unacceptable results of any title report, environmental or soil tests prior to Tenant's installation of the Antenna Facilities on the Lease Area, or if Tenant is unable to

obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business:

- (c) upon ninety (90) days' written notice by Tenant if the Lease Area or the Antenna Facilities are, or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;
- (d) immediately upon written notice by Tenant if the Lease Area or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement on a prorated basis of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Lease Area and/or the Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction; or
- (e) at the time title to the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Lease Area unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking.
- (f) Landlord may terminate this Lease if Landlord needs the Lease Area for expansion of Landlord's responsibility to provide its services, and Landlord has no reasonable or economical alternative site available, provided Landlord provides Tenant written notice 12 months in advance of Landlord's need to re establish the Landlord's sole use of the Lease Area. Upon Tenant's receipt of written notice, Tenant shall have six (6) months to submit to Landlord alternative locations for its Antenna Facilities. Such alternative locations may be on the Property or other properties owned or managed by Landlord. Landlord shall evaluate such alternatives and advise Tenant in writing if one or more of the alternatives is suitable to accommodate Tenant's Antenna Facilities. If so requested by the Landlord, Tenant shall submit additional relevant information to assist the Landlord in making such evaluation. Landlord shall give each alternative proposed by Tenant full and fair consideration, within a reasonable time so as to allow for the relocation work to be performed in a timely manner. In the event Landlord ultimately determines not less than ninety (90) days from the termination date that there is no other reasonable alternative, Tenant shall remove its Antenna Facilities as otherwise provided in this Section 7 (c) of this Lease. If an alternative location for Tenant's Antenna Facilities is found, Landlord and Tenant agree to enter into a new Lease Agreement with the same terms and conditions of this Lease.
- (g) If for reasons related to public health, safety or welfare, or for any operational need of the Water Utility, Landlord determines that this Lease must be terminated, then Landlord reserves rights of unilateral termination and will do so by providing Tenant with a six month written notice.
- (h) Tenant shall be entitled to a pro rata refund of its prepaid Rent for any termination of this Lease by Landlord pursuant to Subsection 8(f) or 8(g).
- 9. <u>Default and Right to Cure</u>. Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 12 hereof, to take effect immediately, if the other party (i) fails to perform any covenant for a period of thirty (30) days after receipt of written notice thereof to cure or (ii) commits a material breach of this Lease and fails to diligently pursue such cure to its completion after sixty (60) days' written notice to the defaulting party.
- 10. <u>Taxes</u>. Landlord shall pay when due all real property taxes or other fees and assessments for the Property, including the Lease Area. In the event that Landlord fails to pay any such real property taxes or other fees and assessments, Tenant shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease. Notwithstanding the

foregoing, Tenant shall pay any personal property tax, State leasehold tax, excise tax, real property tax or any other tax or fee which are directly attributable to the presence or installation of the Tenant's Antenna Facilities, only for so long as this Lease has not expired of its own terms or is not terminated by either party. Landlord hereby grants to Tenant the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Landlord and/or Tenant, any personal property or real property tax assessments, State leasehold tax or excise tax that may affect Tenant. If Landlord receives notice of any personal property or real property tax assessment, State leasehold tax or excise tax against the Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment. Further, Landlord shall provide to Tenant any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10.

11. Insurance and Subrogation and Indemnification.

- (a) Tenant shall provide Commercial General Liability Insurance naming Landlord (the City of Auburn) as additional insured in an aggregate amount of Two Million and no/100 dollars (\$2,000,000.00). Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain.
- (b) Tenant shall indemnify, protect, defend and hold Landlord and its employees and agents harmless from and against any and all claims, liabilities, judgments, costs, damages, and expenses, including reasonable attorney's fees, arising out of or in any way related to the Antenna Facilities, including, but not limited to, the installation, maintenance, operation or removal thereof, except to the extent that such claim, liability, judgment, cost, damage or expense arises out of the sole negligent act or omission, or willful misconduct of Landlord or its employees or agents. Landlord shall not be liable to Tenant, its agents, employees and contractors for damage to the Antenna Facilities or any other property belonging to Tenant from any cause, except for any damage caused by the sole negligent act or omission or willful misconduct of Landlord or its employees or agents. Tenant waives all claims against Landlord and its employees and agents for damage to persons or Antenna Facilities or property arising for any reason other than a claim based on the sole negligent act or omission or willful misconduct of Landlord or its employees and agents shall have no liability to Tenant for any interruption of any utility service unless solely caused by the negligent act or omission or willful misconduct of Landlord or its employees or agents.

Should a court of competent jurisdiction determine that this Lease 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 Tenant and the Landlord, its officers, officials, employees and volunteers, the Landlord's liability hereunder shall be only to the extent of the Landlord's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Tenant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Lease.

12. <u>Notices</u>. All notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Tenant, to:

VoiceStream Wireless Corporation Attn: PCS Lease Administrator 12920 SE 38th Street Bellevue, WA 98006

With a copy to:

VoiceStream Wireless Corporation Attn: Legal Department 12920 SE 38th Street Bellevue, WA 98006

If to Landlord, to:

Public Works Director City of Auburn 25 West Main St. Auburn, WA 98001

With a copy to:

VoiceStream PCS III Corporation Attn: Lease Administration Manager 19807 North Creek Parkway Bothell, WA 98011

With a copy to:

City Attorney City of Auburn 25 West Main St. Auburn, WA 98001

- 13. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Tenant and which will not interfere with Tenant's rights to or use of the Lease Area; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord.
- 14. Environmental Laws. Landlord represents that it has no knowledge of any substance, chemical or waste (collectively, "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Property in violation of any applicable law. Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, for all spills or other releases of any Hazardous Substance not caused in whole or in part by Tenant, that have occurred or which may occur on the Property. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Property. Landlord agrees to defend, indemnify and hold Tenant harmless from Claims resulting from Actions on the Property not caused by Landlord or Tenant prior to and during the Initial Term and any Renewal Term of this Lease. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 14 shall survive the termination or expiration of this Lease.
- 15. <u>Assignment and Subleasing</u>. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall not be assigned by Tenant without the express written consent of the Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Any attempted assignment in violation of this Section shall be void. The transfer of the rights and obligations of Tenant to a parent, subsidiary, or other affiliate of Tenant, or to any successor-in-interest or entity

acquiring fifty-one percent (51%) or more of Tenant's stock or assets, shall not be deemed an assignment. Tenant shall give to Landlord thirty (30) days' prior written notice of any such transfer.

Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant or to remove any property of Tenant or Mortgagees located on the Lease Area, except that the cure period for any Mortgagees shall not be less than thirty (30) days after receipt of the default notice, as provided in Section 9 of this Lease. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by Tenant. Failure by Landlord to give Mortgagees such notice shall not diminish Landlord's rights against Tenant, but shall preserve all rights of Mortgagees to cure any default and to remove any property of Tenant or Mortgagees located on the Lease Area.

- 16. <u>Successors and Assigns</u>. This Lease granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns. This Agreement shall not be assigned by Tenant without the express written consent of the Landlord, which consent shall not be unreasonably withheld, delayed or conditioned.
- 17. <u>Removal of Antenna Facilities</u>. The Antenna Facilities are and shall remain the property of the Tenant and upon the expiration or earlier termination of this Lease, Tenant shall, at Tenant's sole cost and expense, remove the Antenna Facilities and restore the Lease Area to its original condition, normal wear and tear excluded.

18. Miscellaneous.

- (a) The substantially prevailing party in any litigation, including any arbitration to which the parties shall submit, arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.
- (b) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties. At such time as the Auburn City Council approves any regulation affecting telecommunications, Tenant agrees to amend this Lease, as determined by the Landlord in order to comply with any future ordinance related to telecommunications provided, however, that in no event shall such regulation (i) materially interfere with or affect Tenant's operation of its Antenna Facilities; or (ii) increase Tenant's financial obligations under the terms of this Lease, except as provided herein, or impose some new financial obligations not already contemplated by this Lease. No amendment, change or modification of this Lease shall be valid, unless in writing and signed by all parties hereto.
- (c) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached hereto as Exhibit B) necessary to protect its rights or use of the Lease Area. The Memorandum of Lease may be recorded in place of this Lease by either party. In the event the Property is encumbered by a mortgage or deed of trust, Landlord agrees, upon request of Tenant, to obtain and furnish to Tenant a non-disturbance and attornment agreement for each such mortgage or deed of trust, in a form reasonably acceptable to Tenant. Tenant may obtain title insurance on its interest in the Lease Area.
- (d) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

- (e) If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. No provision of this Lease will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.
- (f) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.
- (g) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- (h) All Exhibits referred to herein and any Addenda are incorporated herein for all purposes. The parties understand and acknowledge that <u>Exhibit A</u> (the Lease Area, Compound, and Antenna Facilities location within the Property), and <u>Exhibit B</u> (Memorandum of Lease) are attached to this Site Lease Agreement. The terms of all Exhibits are incorporated herein for all purposes.
- (i) If Landlord is represented by any broker or any other leasing agent, Landlord is responsible for all commission fees or other payment to such agent, and agrees to indemnify and hold Tenant harmless from all claims by such broker or anyone claiming through such broker. If Tenant is represented by any broker or any other leasing agent, Tenant is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Landlord harmless from all claims by such broker or anyone claiming through such broker.
- 19. <u>Headings</u>. The caption and paragraph headings used in this Lease are inserted for convenience of reference only and are not intended to define, limit or affect the interpretation or construction of any term or provision hereof.
- 20. <u>Liens.</u> Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on, and for services rendered or material furnished to, the Antenna Facility, and shall keep the Antenna Facility free from all liens.

The effective date of this Lease is the date of execution by the last party to sign (the "Effective Date").

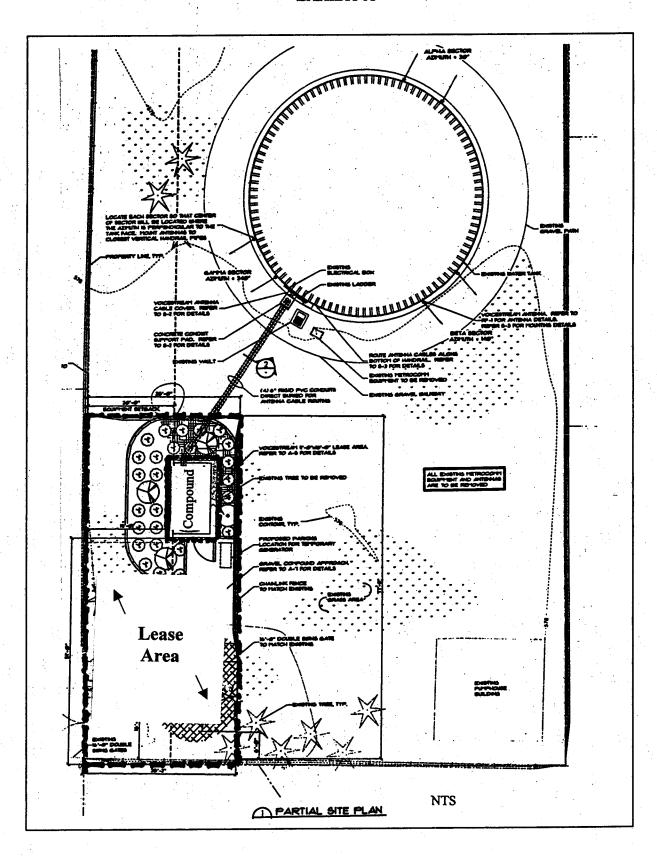
LANDLORD:	City of Ayburn
Ву:	
Printed Name:	Peter B. Lewis
Its:	Mayor
Date:	12-4-03
Taxpayer ID Nu	ımber: <u>91-6001228</u>
TENANT:	VoiceStream PCS III Corporation, a Delaware corporation
Ву:	Det lease
Printed Name:	Ben Pearson Director (1 acril 1 fairs
Its:	Vice President, Western Region Director of Legal Affairs
Date:	12/3/03

M

appeared before me, and said pers) ss.) ss. e satisfactory evidence that Peter B. Lewi S is the person who son acknowledged that he signed this instrument, on oath stated that instrument and acknowledged it as the, of, to be the of for the uses and purposes mentioned in the instrument.
PUBLIC OF WASHINGTON	Notary Public Print Name Tamara A. Bothell residing at King Co. My commission expires 10-9-07
(Use this space for notary stamp/se	eal)
appeared before me, and said pers)) ss. e satisfactory evidence that Bryon Gunnerson is the person who son acknowledged that he signed this instrument, on oath stated that instrument and acknowledged it as the Vice Prosident Western Region, a Delaware corporation, to be the free and voluntary according such as the Vice Prosident.
party for the uses and purposes me	entioned in the instrument.
Dated: 1230	<u>3</u>
ARY RESTAURT	Notary Public Print Name Georgia Lamb May Sesiding at Bellevil, WA My commission expires 4/2007
(Use this space for notary stamp/so	eal)

Exhibit I Resolution No. 3649 Page 10 of 10

EXHIBIT A



RESOLUTION NO. 3650

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE AGREEMENT BETWEEN THE LAKEHAVEN UTILITY DISTRICT AND THE CITY OF AUBURN, ALLOWING THE LAKEHAVEN UTILITY DISTRICT TO CONNECT, INSTALL, OPERATE, MAINTAIN AND REPAIR WATER SYSTEM, FACILITIES, AND APPURTENANCES IN, OVER, ALONG, ACROSS AND UNDER THE FRANCHISE AREA FOR THE PURPOSE OF PROVIDING WATER SERVICE

WHEREAS, the Lakehaven Utility District currently owns, operates, and maintains a water system within Auburn's public right of way located in the franchise area; and

WHEREAS, the Lakehaven Utility District is seeking a new comprehensive franchise with Auburn for public water facilities installed within Auburn's current and future public right of way; and

WHEREAS, in order to maintain control over the use of City of Auburn right-of-ways by utilities operating within the City of Auburn, it is appropriate to enter into franchise agreements with such utilities; and

WHEREAS, Lakehaven Utility District is such a utility, and has negotiated this franchise agreement with the City of Auburn acceptable to both parties; and

WHEREAS, the City of Auburn has determined that it is in the best interests of the public to grant the Lakehaven Utility District a water franchise on the terms and conditions set for in this Agreement.

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

Section 1. The Mayor of the City of Auburn is herewith authorized to execute a Franchise Agreement between the Lakehaven Utility District and the City of Auburn in substantial conformity with the Agreement attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

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

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

Resolution No. 3650 January 20, 2004 Page 2 DATED this 2nd day of February, 2004.

CITY OF AUBURN

PETER B. LEWIS MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid,

City Attorney



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

RECORDER'S	COVER SHEET	
Document Title(s) (or transactions contained	ed therein):	_
Franchise Agreement (Resolution No. 3650)	l	16/34 PNWT
Reference Number(s) of Documents assig ☐Additional reference #'s on page of document	ned or released:	W9249-12
Grantor(s)/Borrower(s) (Last name first, the Auburn, City of	en first name and	initials)
		<u> </u>
Grantee/Assignee/Beneficiary: (Last name 1. Lakehaven Utility District	e first) & at a second	
Legal Description (abbreviated: i.e. lot, blo	ock, plat or section	, township, range)
PER RCW 39.34		
Additional legal is on page of document.		
Assessor's Property Tax Parcel/Account N/A	Number	
☐ Assessor Tax # not yet assigned		
-		

EXHIBIT "A"

CITY OF AUBURN, WASHINGTON WATER FRANCHISE AGREEMENT WITH THE LAKEHAVEN UTILITY DISTRICT

THIS FRANCHISE AGREEMENT, made and entered into this 232 day of September, 2004, by and between the CITY OF AUBURN, Washington and the LAKEHAVEN UTILITY DISTRICT:

WITNESSETH:

WHEREAS, the Lakehaven Utility District currently owns, operates, and maintains a water system within Auburn's public right-of-way located in the franchise area; and

WHEREAS the Lakehaven Utility District is seeking to establish a comprehensive franchise with the City of Auburn for water system lines within Auburn's current and future public right-of-way; and

WHEREAS, in order to maintain control over the use of City of Auburn rights-of-way by utilities operating within the City of Auburn, it is appropriate to enter into franchise agreements with such utilities; and

WHEREAS, Lakehaven Utility District is such a utility, and has negotiated this franchise agreement with the City of Auburn acceptable to both parties; and

WHEREAS, the City of Auburn has determined that it is in the best interests of the public to grant the Lakehaven Utility District a franchise on the terms and conditions set forth in this franchise agreement.

NOW, THEREFORE THE CITY OF AUBURN AND THE LAKEHAVEN UTILITY DISTRICT AGREE AS FOLLOWS:

SECTION 1 DEFINITIONS

Where used in this franchise agreement ("Franchise"), the following definitions shall apply:

- 1.1 "Franchisee" means the Lakehaven Utility District, a Washington municipal corporation, and its respective successors and assigns.
- 1.2 "City" means the City of Auburn, a Washington municipal corporation.
- "Franchise Area" means all of the public roads, streets, avenues, alleys, highways, and other rights-of-way of the City as now laid out, platted, dedicated or improved; and any and all public City roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved within the area in which the City has jurisdiction, as described in Attachment 1 and as depicted in

Attachment 2, both attachments attached hereto, which is by this reference incorporated as if fully set forth herein; provided, that the Franchise Area shall not include or convey any right to the Franchisee to install facilities on, or to otherwise use, City owned or leased properties; and provided that the terms of this franchise (i.e., permitting and enforcement) shall not apply to those public roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved within the area as described in Attachment 1 and depicted in Attachment 2 until such time that the City has assumed jurisdiction thereof.

1.4 "Facilities" means the Franchisee's water system, lines, mains, pump stations, appurtenances, and all other necessary or convenient appurtenances for the purpose of providing water service.

SECTION 2 FRANCHISE GRANT

Subject to the terms and conditions set forth in this Franchise, the City grants to the Franchisee the right to construct, own and maintain its Facilities, including, but not limited to, water pipelines, pump stations, and appurtenances within the City's public right-of-way and the Franchisee's water service area. In exercising authority to construct and install its Facilities and to excavate trenches in City roads for the purposes of constructing, installing, operating, maintaining, removing, and replacing its Facilities, and making connections between the same to the dwellings and other buildings of the consumers, the Franchisee shall be governed by and conform to the general rules adopted by the Public Works Department of the City, and the Franchisee, at no expense to the City, shall complete all work and shall replace and restore the City roads to the condition of the City roads existing immediately prior to such disturbance; PROVIDED, HOWEVER, that no such work shall be done prior to the obtaining of a permit therefor issued by the City's Public Works Director (hereinafter "Director"), which permit shall set forth conditions pertaining to the work to be done and specifications for the restoration of the roads to the same condition as they were immediately prior to such work. If the Franchisee does not repair the City roads to the satisfaction of the Director, the City may, at its sole discretion, repair such City roads, or cause them to be repaired, and the Franchisee hereby agrees to reimburse the City for the cost of such work, including reasonable overhead costs.

SECTION 3 FRANCHISE TERM

This Franchise shall take full force and effect five calendar days after being approved by the City, and shall be valid for a period of 25 years, expiring in 2029; provided, that this Franchise shall not take effect and the Franchisee shall have no rights under this Franchise unless the Franchisee files a written acceptance of this Franchise with the City pursuant to Section 4 of this Franchise.

SECTION 4 ACCEPTANCE BY FRANCHISEE OF TERMS AND CONDITIONS

The full acceptance of this Franchise and all of its terms and conditions shall be filed with the City Clerk within forty-five (45) days from the date of the resolution approving this Franchise by the Franchisee's duly elected Board of Commissioners. Full acceptance of this Franchise is a condition precedent to its taking effect, and unless this Franchise is

accepted within the time specified, this grant will be null and void and have no force or effect.

SECTION 5 NON-EXCLUSIVE FRANCHISE

This Franchise is not exclusive. It does not prohibit the City from granting franchises for other public or private utilities in, over, along, across, and under any City property, including the Franchise Area. This Franchise does not prevent or prohibit the City from constructing, altering, maintaining or using any of the Franchise Area. The City retains full power to make all changes, relocations; repair, maintenance or other work to or in the Franchise Area as the City deems fit.

SECTION 6 JURISDICTION

This Franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which the City has an actual interest within the Franchise Area. It is not a warranty of title or of interest in City road rights-of-way. None of the rights granted to the Franchisee shall affect the jurisdiction of the City over City road rights-of-way or the City's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating. The parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.

SECTION 7 REGULATION OF USE AND CONTROL

This Franchise does not deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City road rights-of-way covered by this Franchise. The City reserves the right and power at all times to exercise its police powers with respect to the time, manner and location of the placement of the Franchisee's Facilities.

SECTION 8 EMINENT DOMAIN

This Franchise and the limited rights and interests granted by this Franchise are subject to the exercise of eminent domain. In the event of an exercise of eminent domain by the City, the value to be attributed to all the rights and interests granted under this Franchise shall not exceed the actual amount the Franchisee paid to the City in obtaining this Franchise.

SECTION 9 VACATION

If at any time the City vacates any City rights-of-way covered by this Franchise, the City will not be held liable for any damages or loss to the Franchisee by reason of such vacation. The City may, after giving thirty (30) days written notice to the Franchisee, terminate this Franchise with respect to any City road or rights-of-way vacated. However, should Franchisee notify the City that an easement is required for existing or proposed facilities within the proposed vacation area, the City shall withhold approval of such vacation until the Franchisee has notified the City that the necessary easement(s) have been secured, or provisions otherwise made to maintain the viability and use of existing Facilities.

SECTION 10 ENFORCEMENT

The City's failure to enforce any provision of this Franchise does not constitute a waiver of its right to enforce that provision or any other provision of this Franchise.

SECTION 11 INDEMNITY AND HOLD HARMLESS

- The Franchisee shall defend, indemnify and hold harmless the City, its appointed and elected officials, and its employees and agents from and against liability for all claims, actions, injuries, demands, liabilities, losses, costs, damages and judgments, including costs of defense thereof, (collectively referred to as "damages") for injury to persons, death or property damage caused by, arising out of, or incidental to the Franchisee's exercise of the rights and privileges granted by this Franchise, except for damages caused by or arising out of the City's sole negligence. In the event that any such claim or demand for damages is presented to or filed with the City, or if any suit or action is initiated against the City based on such claims or demands for damages, the City shall promptly notify the Franchisee of the claim, demand, suit or action and the Franchisee shall have the right, at its election and its sole cost and expense, to settle and compromise such claim, demand, suit or action, or defend the same at the Franchisee's sole cost and expense.
- 11.2 If it is determined that RCW 4.24.115 applies to this Franchise, the Franchisee agrees to defend, hold harmless and indemnify the City to the maximum extent permitted under that statute, and specifically for the Franchisee's negligence concurrent with that of the City to the full extent of the Franchisee's negligence.

SECTION 12 INSURANCE

- 12.1 The Franchisee shall keep a policy of insurance in force with a minimum limit of five million dollars (\$5,000,000.00). Verification of insurance coverage is a condition precedent to the effectiveness of this Franchise.
- The insurance shall be maintained in full force and effect at the Franchisee's sole expense throughout the term of the Franchise, and, should such insurance be terminated, this Franchise shall terminate as of the date of the termination of insurance coverage.
- The coverage provided by the Franchisee's insurance policies shall be primary to any insurance maintained by the City, except as to losses or damages attributable to the sole negligence of the City. Any insurance maintained by the City that might relate to this Franchise shall be in excess to the Franchisee's insurance and shall not contribute with or to it. The City has no obligation to report occurrences to the insurance companies unless a claim is filed with the City's City Council; and the City has no obligations to pay the Franchisee's premiums.
- The Franchisee shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable federal, state, county and city statutes, rules, regulations, ordinances, orders and codes. The Franchisee's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The Franchisee shall be solely and completely responsible for

safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any works therein. The services of the City or City's consultant personnel in conducting construction review of the Franchisee's work relating to the Franchise is not intended to include review of the adequacy of the Franchisee's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such Franchise Area or job site. The Franchisee shall provide safe access for the City and its inspectors to adequately inspect the work and its conformance with applicable statutes, ordinances, rules, regulations, and the Franchise.

SECTION 13 INSTALLATION, REPAIR, REMOVAL OR RELOCATION

- 13.1 The Franchisee shall, at no expense to the City, expeditiously repair all existing Facilities that it owns within the Franchise Area, including any damage caused directly or indirectly by its Facilities, all appurtenant Facilities and service lines connecting its system to users, if the City requires such repair for any reasonable purpose.
- The Franchisee shall, at no expense to the City, adjust, remove or relocate existing Facilities within the Franchise Area, including all appurtenant Facilities and service lines connecting its system to users, if the City determines such adjustment, removal or relocation is reasonably necessary to allow for an improvement or alteration planned by the City. The City shall give the Franchisee written notice of such requirement as soon as practicable. The written notice shall include all available information, such as plans and specifications, as is reasonably necessary for the Franchisee to plan for such adjustment, removal or relocation.
- 13.3 Franchisee's Facilities shall be constructed, installed, maintained and repaired within the Franchise Area so as to provide safety of persons and property, and not interfere with the free passage of traffic, all in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations of the City.
- For projects that are a part of the City's capital improvement program, in addition to any other notice given to the Franchisee, the City shall provide a copy of the capital improvement plan and six (6) year transportation improvement plan when requested. Further, the City shall provide a horizontal plan and vertical profile of the roadway and drainage facilities within it, both existing and as proposed by the City, and the proposed construction schedule. The initial design information shall be given at least one hundred and eighty (180) days before construction is scheduled to begin, except in cases of urgent construction or emergencies. The Franchisee shall respond to this notice, and to any later notices of revised designs, within twenty (20) days of the date of the notice, by providing to the City the Franchisee's best available information as to the location of all the Franchisee's Facilities, including all appurtenant Facilities and service lines connecting its system to users, and all Facilities that it has abandoned, within the area proposed for the project.
- The City shall offer the Franchisee the opportunity to participate in the preparation of bid documents for the selection of a contractor to perform the public works project as well as all required adjustments, removals or relocations of the Franchisee's Facilities. The City shall have sole authority to choose the contractor to perform such

work. Such bid documents shall provide for an appropriate cost allocation between the parties. In addition to the Franchisee's allocation of contractor costs, the Franchisee shall reimburse the City for all costs, to include but not be limited to legal, engineering, inspections, administration and/or soils testing, related to the Franchisee's work and reasonably incurred by the City in the administration of such joint construction contracts. Such costs shall include the direct salary cost of the time of City professional and technical personnel, including the City's consultants, spent productively engaged in such work, plus overhead costs at the standard rate charged by the City on other similar projects. The specific terms of the joint participation on any public work shall be as set forth in a written agreement between the parties.

13.6 It is understood that emergency situations may arise that could threaten public health and/or continued operation of the Franchisee's utility system and the Franchisee may be unable to notify the City in the manner prescribed in Section 14 of this Franchise. In such a situation the Franchisee shall immediately correct the hazardous situation and continue to use best efforts to contact the City staff. The Emergency Phone Number for the City of Auburn is (253) 931-3048, and that for the Lakehaven Utility District is (253) 941-1516. Dialing 911 is advised for emergency situations that may result in imminent threats to life and/or property.

SECTION 14 REQUIREMENT OF CONSTRUCTION PERMITS

- The Franchisee has the right, privilege and authority to enter the City road rights-of-way for the purpose of constructing, installing, operating, maintaining, replacing or repairing its Facilities on the condition that it obtains construction, excavation, and right-of-way use permits issued by the City. Any work performed, whether by Franchisee, its contractors, or third parties, shall include necessary paving, patching, grading and any other reasonably necessary repair or restoration to the City rights-of-way. All work shall be done to the City's satisfaction.
- All equipment, pipelines and appurtenances which are used in the construction, installation, operation, maintenance or repair of the Franchisee's Facilities and which are located within the City road rights-of-way and owned by the Franchisee shall be considered to be part of the Franchisee's system and shall be the responsibility of the Franchisee. All permits for the construction, installation, operation, maintenance or repair of the Franchisee's system shall be applied for and given in the name of the Franchisee, who will be responsible for all work done under the permit. The Franchisee remains responsible whether the work is performed by the Franchisee, its contractors, or by third parties.
- 14.3 When required by the City's Public Works Director, the Franchisee shall post a bond to the City in the amount sufficient for any road repair or restoration. The amount of the bond shall be set by the City and must be filed with the City before a permit will be issued.

SECTION 15 PERFORMANCE OF WORK

- Any work performed by the Franchisee in the Franchise Area shall conform to all City ordinances and requirements including, but not limited to, Auburn City Code and the City's Design and Construction Standards in force when the work is performed. All traffic control shall conform to the current edition of the Manual of Uniform Traffic Control Devices in force when the work is performed.
- If work performed under this Franchise makes it necessary to turn off or diminish water pressure or potential flow to any fire hydrant, the Franchisee shall notify the City's Fire Department by telephone and by written notice, that water pressure or fire flow conditions have been affected. Except in the case of an emergency, the notice shall be provided at least 48 hours prior to the water pressure or potential flow being suspended or diminished. If more than one fire hydrant will be affected, the Franchisee shall provide a map of the affected area to the Fire Department. Out-of-service fire hydrants must be identified as not operational by covering with a properly secured burlap or plastic bag. Fire hydrants should be returned to full service as soon as reasonably possible or no longer than two working days from the date service was suspended or diminished. The Franchisee shall notify the City's Fire Department when the hydrant(s) is/are returned to full service.

SECTION 16 RESTORATION OF CITY RIGHTS-OF-WAY

After performing work on, under or adjacent to City road rights-of-way, the Franchisee is responsible for and shall leave all City road rights-of-way in the condition of the City road rights-of-way existing immediately prior to such disturbance. If the Franchisee, its contractors, or third parties working under permit should fail to diligently restore City road rights-of-way to the satisfaction of the City, the City may make such repairs or restorations as are necessary to return the City road rights-of-way to a condition reasonably comparable to the condition of the City road rights-of-way existing immediately prior to such disturbance. Upon presentation of an itemized invoice for repairs or restorations, including all applicable costs, both direct and indirect, to include, but not be limited to, the cost of labor, tools, materials and equipment, the Franchisee shall pay the invoice within sixty-five (65) days of its receipt and approval.

SECTION 17 INFORMATION ON LOCATION OF FACILITIES

The Franchisee shall provide the City with all information requested by the City regarding the location of the Franchisee's current Facilities, including, but not limited to, copies of all record drawings for such Facilities. If the Franchisee performs any work to install, repair, reconstruct, or replace Facilities in the Franchise Area after this Franchise's effective date, the Franchisee shall provide the City with all information requested by the City regarding the location of those Facilities, including, but not limited to, copies of record drawings.

SECTION 18 COORDINATION OF WORK IN FRANCHISE AREA

To facilitate the coordination of work in City rights-of-way, if either the Franchisee or the City plans to make excavations in the Franchise Area, the party planning such excavation shall provide written notice to the other of the planned excavation, affording the other party the opportunity to share in the excavation; provided, that (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made, (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties, and (3) either party may deny such request for safety reasons.

SECTION 19 BLASTING REQUIREMENTS

The Franchisee's right to construct, install, operate, maintain and repair Facilities does not preclude the City, its agents or contractors from blasting, grading, or doing other road work contiguous to the Franchisee's Facilities. When practical, the City shall give the Franchisee forty-eight (48) hours notice of blasting or excavating.

SECTION 20 SURVEY MARKERS AND MONUMENTS

Before any work is performed under this Franchise, the Franchisee shall establish two or more reference marks to all monuments and markers of every nature relating to subdivisions, plats, rights-of-way, and all other surveys. The reference points shall be located so that they will not be disturbed during any of Franchisee's operations under this Franchise. The method of referencing monuments or other markers or points shall be approved by the City before placement. The replacement of all markers or monuments disturbed during any construction of the Franchisee shall be made as promptly as conditions permit. The cost of monuments or markers lost, destroyed, or disturbed and the expense or replacement with approved markers or monuments shall be borne by the Franchisee.

SECTION 21 RESERVATION OF RIGHTS

- The City reserves the right to impose, to the extent authorized by law, a utility tax on the Franchisee and/or to charge the Franchisee a reasonable fee for services provided or rights granted under this Franchise.
- The Franchisee agrees that it shall be subject to all authority now or later possessed by the City or any other governing body having competent jurisdiction to fix just, reasonable and compensatory rates for services under this Franchise.
- 21.3 The City reserves the right, upon thirty (30) days written notice to the Franchisee, to amend or modify the provisions or conditions of this Franchise to conform to any state, county, federal, or City statute, ordinance, rule or regulation. The City may terminate this Franchise upon thirty (30) days written notice to the Franchisee if the Franchisee fails or refuses to comply with such amendment or modification.

SECTION 22 ASSIGNMENT

The Franchisee shall not have the right to assign this Franchise without the written consent of the City. No assignment shall be effective unless an acceptance by the assignee of all rights, conditions, terms, provisions and responsibilities contained within the Franchise, as well as surety bonds which the City deems necessary to be posted, are received as allowed by law. The City's approval of the assignment may be made subject to the assignee's acceptance of new or modified terms of the Franchise.

SECTION 23 PENALTY FOR VIOLATION OF CONDITIONS

If the Franchisee fails to comply with any material term, condition or responsibility under this Franchise, the City may provide the Franchisee with written notice of the City's intent to revoke the Franchisee if the Franchisee's failure is not cured within thirty (30) days of the date of the notice. During the thirty (30) days following the date of the notice, the Franchisee shall have the opportunity to remedy the failure to comply. A public hearing shall be scheduled before the Auburn City Council at least thirty (30) days following the notification on the issue of the revocation. If at the hearing, the City Council finds that grounds exist to revoke the Franchise under this paragraph and that the revocation is in the public interest, the City Council may by resolution revoke the Franchise. The revocation shall be effective ninety (90) days after the public hearing.

SECTION 24 EXPIRATION AND RENEWAL

- 24.1 If the Franchisee requests a renewal of this Franchise prior to its expiration date, which renewal shall be granted, on terms reasonable to the parties, unless the City can demonstrate, in good faith, that such renewal would be contrary to its operation of the right of way, the City may, at the City's sole discretion, extend the term of this Franchise for up to one year beyond the expiration date to allow for processing of the renewal. If the City elects to extend the term of this Franchise, written notice of the extension shall be provided to the Franchisee prior to the Franchise expiration date.
- 24.2 If the Franchisee has not requested a renewal of this Franchise prior to its expiration date, the City has the right, upon thirty (30) day's prior notice to the Franchisee, to remove or relocate any of the Franchisee's Facilities as is reasonably necessary for the public's health, welfare or safety, or for the construction, alteration, or improvement of the Franchise Area, or for the construction or installation of lines or facilities of other franchise holders. The Franchisee shall be liable for costs incurred in any removal or relocation of the Franchisee's Facilities under this section.
- 24.3 Upon the expiration of this Franchise, the Franchisee shall continue to be responsible for the operation and maintenance of the Franchisee's existing facilities in the Franchise Area, but shall not have the right to provide additional services. This Section and Sections 11, 13, 14, 15, 16, 18, and 20 of this Franchise shall continue in force until such time as the Franchisee's Facilities are abandoned to the City's satisfaction.

SECTION 25 COMPLIANCE WITH LAWS

The Franchisee shall conform to all applicable federal, state and local laws and regulations including, but not limited to, the State Environmental Policy Act and the City's Environmental Standards and Ordinances.

SECTION 26 NON-DISCRIMINATION CLAUSE

In all hiring or employment made possible or resulting from this Franchise, there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupation qualification. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Franchise on the grounds of sex, sexual orientation, race, color, national origin, age, except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.

SECTION 27 NOTICE

All notices between the two agencies hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

City of Auburn: City Engineer 25 West Main Street Auburn, WA 98001-4998

Tel: 253-931-3010

Lakehaven Utility District:

General Manager 31627 1st Ave South

PO Box 4249

Federal Way, WA 98063-4249

Tel: 253-941-1516

or to such other representative addresses as either party may hereafter from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing. If an emergency situation develops, it is recommended that the City or the Franchisee call 911 to solicit an emergency response.

SECTION 28 ATTORNEYS' FEES

If either party shall be required to bring any action to enforce any provision of this Franchise, or shall be required to defend any action brought by the other party with respect to this Franchise, and in the further event that one party shall substantially prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in trial court and in appellate courts.

SECTION 29 SEVERANCE

If any term, provision, condition or portion of this Franchise is held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect, unless the dominant purpose of the Franchise would be prevented or the public interest would no longer be served, as determined by the City.

SECTION 30 EFFECTIVE DATE

The resolution approving the Franchise, having been introduced at least five days prior to its date of passage and submitted to the city attorney, and being approved by at least a majority of the entire city council at a regular city council meeting, shall take effect and be in force five calendar days after its passage and approval by both parties to this Franchise.

SECTION 31 EXISTING UTILITIES

This Franchise shall govern existing and future water system facilities currently owned, operated and maintained by Lakehaven Utility District within the City of Auburn.

SECTION 32 DISPUTE RESOLUTION

In the event that a dispute arises with regard to the terms of this Franchise Agreement, either party may request that the dispute be submitted to non-binding mediation or arbitration prior to court action. Such request for non-binding mediation or arbitration shall be made in writing and mailed by first class, U.S. Mail to the other party. The mediator or arbitrator shall be chosen by agreement of the parties. Either party may refuse to submit to the dispute resolution process. Refusal to engage in the dispute resolution process shall not prejudice the refusing party in any way.

IN WITNESS WHEREOF the parties hereto have executed this Franchise Agreement as of the day and year first above written.

LAKEHAVEN UTILITY DISTRICT

Approved by Resolution No. 2004-1006 of the Lakehaven Utility District, Federal Way, Washington, at its regular meeting held on the ________, 2004.

By:

Donald T. Perry, General Manager

Lakehaven Utility District

Approved as to form:

Steven H. Pritchett, General Counsel

Lakehaven Utility District

CITY OF AUBURN

By:

Peter B. Lewis, Mayor

City of Auburn

Attest:

Danielle Daskam, City Clerk

Approved as to form:

Daniel B. Heid, City Attorney

AUBURN RESOLUTION NO: 3650

LAKEHAVEN REFERENCE NUMBER: 2004 - 1006

Attachment 1

Auburn Ordinance No. 3650

Description of Lakehaven Utility District's Water Franchise Area

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 23, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M.;

THENCE NORTH ALONG THE WEST LINE OF SAID SECTION 23 TO THE NORTHWEST CORNER OF SAID SECTION 23 AND THE SOUTHEAST CORNER OF SECTION 15, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M.;

THENCE WESTERLY ALONG THE SOUTH LINE OF SAID SECTION 15 TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 15;

THENCE NORTHERLY ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 15 TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M.;

THENCE NORTHERLY ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 10 TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M.;

THENCE NORTHERLY ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 3 TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M.;

THENCE NORTHERLY ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 34 TO THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER OF SAID SECTION 34;

THENCE EASTERLY ALONG THE NORTHERLY LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 34 TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M.;

THENCE EASTERLY ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 35 TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M.;

THENCE EASTERLY ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36 TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SAID SECTION 36;

THENCE SOUTHERLY ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 36 TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M.;

THENCE SOUTHERLY ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 1 TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE WESTERLY ALONG THE SOUTH LINE OF SAID SECTION 1 TO THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M.;

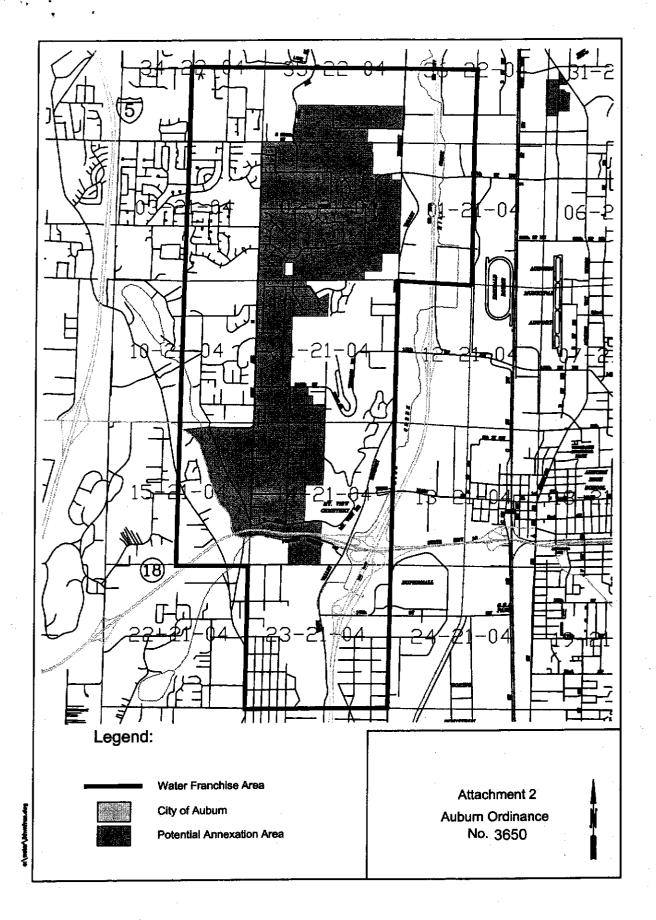
THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SECTION 11 TO THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M.;

THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SECTION 14 TO THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M.;

THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SECTION 23 TO THE SOUTHEAST CORNER OF SAID SECTION 23;

THENCE WESTERLY ALONG THE SOUTH LINE OF SAID SECTION 23 TO THE POINT OF BEGINNING.

SITUATE IN KING COUNTY, WASHINGTON.



RESOLUTION NO. 3652

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT ESTABLISHING WATER SERVICE BOUNDARIES BETWEEN THE LAKEHAVEN UTILITY DISTRICT AND THE CITY OF AUBURN

WHEREAS, pursuant to RCW 35.A.11.040, Auburn has the legal authority to exercise its powers and perform any of its functions as set forth in RCW 39.34; and

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, Auburn has the legal authority to cooperate with other localities and utilities on the basis of mutual advantage and the efficient provision of municipal services; and

WHEREAS, pursuant to RCW 35A.21.150, Auburn has the legal authority to maintain a water system; and

WHEREAS, pursuant to RCW 57.08.044, Lakehaven has the legal authority, whether by contract or otherwise, to provide water service to property owners in areas outside existing district boundaries; and

WHEREAS, the parties recognize the responsibility of public water utilities to provide efficient and reliable service to their customers at reasonable cost; and

WHEREAS, Lakehaven's 1998 Draft Comprehensive Water System Plan

notes a region within Auburn's Potential Annexation Area (hereinafter referred

to as "Auburn's PAA") to which Lakehaven intends to provide water service; and

WHEREAS, Lakehaven is currently providing water service within

Auburn's PAA; and

WHEREAS, portions of the Lakehaven water system have been sized

and are situated so as to be capable of affording water to a portion of Auburn's

PAA; and

WHEREAS, Auburn has evaluated water service issues and determined

that it is not cost feasible to provide direct water service within its PAA adjacent

to Lakehaven's water infrastructure; and

WHEREAS, Lakehaven's delivery of water service to these areas will

provide the maximum efficiency in the use of existing and future facilities and

water planning;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN,

WASHINGTON, HEREBY RESOLVES as follows:

Section 1. The Mayor of the City of Auburn is herewith authorized to

execute a Water Service Boundary Agreement between the Lakehaven Utility

District and the City of Auburn in substantial conformity with the agreement

Resolution No. 3652 January 20, 2004 attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

<u>Section 2.</u> 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 this 2 day of tebruary, 2004.

CITY OF AUBURN

PETER B. LEWIS MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED ASTO FORM:

Daniel B. Heid, City Attorney

Resolution No. 3652 January 20, 2004 Page 3



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

RECORDER'S COVER	SHEET
Document Title(s) (or transactions contained therein	1
Interlocal Agreement (RES 3652)	19/37 PNWT W9278-12
Reference Number(s) of Documents assigned or re	eleased:
Additional reference #'s on page of document	
Grantor(s)/Borrower(s) (Last name first, then first n Auburn, City of	
Grantee/Assignee/Beneficiary: (Last name first) 1. Lakehaven Utility District	The Control of the Co
Legal Description (abbreviated: i.e. lot, block, plat	or section, township, range)
PER RCW 39.34	
Additional legal is on page of document.	
Assessor's Property Tax Parcel/Account Number N/A	т
☐ Assessor Tax # not yet assigned	

EXHIBIT "A"

LAKEHAVEN UTILITY DISTRICT and CITY OF AUBURN INTERLOCAL AGREEMENT ESTABLISHING WATER SERVICE BOUNDARIES

THIS AGREEMENT, made and entered into this 23rd day of September, 2004, by and between LAKEHAVEN UTILITY DISTRICT, a Washington municipal corporation (hereinafter referred to as "Lakehaven"), and the CITY OF AUBURN, a Washington municipal corporation, (hereinafter referred to as "Auburn"), both being duly organized and existing under and by virtue of the laws of the State of Washington,

WITNESSETH:

WHEREAS, pursuant to RCW 35.A.11.040, Auburn has the legal authority to exercise its powers and perform any of its functions as set forth in RCW 39.34; and

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, Auburn has the legal authority to cooperate with other localities and utilities on the basis of mutual advantage and the efficient provision of municipal services; and

WHEREAS, pursuant to RCW 35A.80.010, Auburn has the legal authority to maintain a water system; and

WHEREAS, pursuant to RCW 57.08.005(3) and 57.08.044, Lakehaven, as a special purpose water/sewer district, has the legal authority, whether by contract or otherwise, to provide water service to property owners in areas outside existing district boundaries; and

WHEREAS, the parties recognize the responsibility of public water utilities to provide efficient and reliable service to their customers at reasonable cost; and

WHEREAS, Lakehaven's adopted and approved 1998 Comprehensive Water System Plan notes a region within Auburn's Potential Annexation Area (hereinafter referred to as "Auburn's PAA") to which Lakehaven intends to provide water service; and

WHEREAS, Lakehaven is currently providing water service within Auburn's PAA; and

WHEREAS, portions of the Lakehaven water system have been sized and are situated so as to be capable of affording water service to a portion of Auburn's PAA; and

WHEREAS, Auburn has evaluated water service issues and determined that it is not cost effective to provide direct water service within its PAA adjacent to Lakehaven's water infrastructure; and

WHEREAS, Lakehaven's delivery of water service to these areas will provide the maximum efficiency in the use of existing and future facilities and water planning;

NOW, THEREFORE:

IT IS HEREBY AGREED by and between the parties hereto as follows:

- 1. Water Service Area. The parties have agreed to a mutual water service planning boundary as depicted on the maps attached hereto as Attachment 1 and legally described in Attachment 2, which are by this reference incorporated herein. Both parties further agree that, through this designation of the service boundary, Lakehaven shall provide water service to properties mutually within its water service area and Auburn's PAA, also depicted on Attachment 1, in accordance with and subject to the terms and conditions of this Agreement.
- 2. Management, Regulation and Control of Water System. Lakehaven shall have the sole responsibility and authority to construct, maintain, manage, conduct and operate its water system within the area mutually designated as Lakehaven's water service area and Auburn's PAA as depicted in Attachment 1, together with any additions, extensions and betterments thereto. Lakehaven shall also be responsible for obtaining all necessary governmental franchises, approvals, easements and permits for the installation of the water system and improvements to be located therein.
- 3. Service Rates and Connection Charges.
 - a) Permit Required. No connection shall be made to Lakehaven's water system unless the property owner first pays the associated fees and submits the proper information to obtain a Lakehaven water connection permit, and otherwise meets the requirements for service as provided in duly adopted Resolutions of Lakehaven. The connection shall be subject to inspection for compliance with Lakehaven's standards as adopted at the time the connection is made.
 - b) Rates. The rates charged to the water customer by Lakehaven mutually within Lakehaven's water service area and Auburn's PAA, as depicted on Attachment 1, shall be fixed, altered, regulated and otherwise controlled by Lakehaven pursuant to the limitation on such authority as set forth in Chapter 57 RCW, or other applicable laws.

- **4. Water Availability Certificates.** Lakehaven shall continue to issue water availability certificates for property located both within Auburn's PAA, as depicted in Attachment 1 and Lakehaven's Water Service Area.
- **5. Future Annexations.** Each of the parties agree that Lakehaven shall provide water service to the area depicted in Attachment 1 without regard to the present corporate boundaries of the parties and without regard to future corporate boundaries as they may be periodically altered through annexation.
- 6. Lakehaven Comprehensive Water Planning. The terms of this Agreement will be included as an amendment to Lakehaven's Comprehensive Water System Plan. Lakehaven will submit to Auburn all Comprehensive Water System Plans and amendments thereto involving areas and/or system improvements within Auburn's PAA, as depicted in Attachment 1.
- 7. Auburn Comprehensive Water Planning. The terms of this Agreement will be included as an amendment to Auburn's Comprehensive Water Plan. Auburn will submit to Lakehaven all Comprehensive Water System Plans and amendments thereto involving area and/or system improvements within Auburn's PAA, as depicted in Attachment 1.
- **8. Reliance.** Each party hereto acknowledges that the terms hereof will be relied upon by the other in its comprehensive planning to meet the needs of the service area designated herein.
- **9. Liability.** The parties agree that this Agreement shall not be a source of liability for either party for any failure or interruption of service in the service area of the other party, as designated herein.
- 10. Government Approvals. Auburn will give notice of the adoption of this Agreement to Metropolitan/King County, to the Department of Ecology, to the Department of Health, and to any other agency with jurisdiction over, or other interest in, the terms hereof, and the parties shall cooperate and assist each other in all reasonable manner in procuring any necessary approvals hereof by those agencies.
- 11. Boundary Review Board. In the event that implementation of the terms hereof results in permanent water service to areas that will be outside the respective service boundaries of Lakehaven or Auburn, the parties will, at the time of such service, jointly seek King County Boundary Review Board approval of such service in accordance with RCW 57.08.047.
- 12. Service Amendments. Any changes to the service areas described herein shall be by mutual written agreement. Each party, through Auburn's Director of Public Works and Lakehaven's General Manager respectively, may give written permission to the other, on a case-by-case basis, to provide service to the other party's adjacent or

nearby water service area based upon considerations of economic efficiency. Such written permission(s) shall be filed with this agreement for future reference.

- 13. Alteration, Amendment or Modification. Lakehaven and Auburn hereby reserve the right to alter, amend or modify the terms and conditions of this Agreement only upon written consent of both parties to such alteration, amendment or modification.
- 14. Indemnification and Hold Harmless. Each Party hereto agrees to protect, defend, and indemnify the other Party, its officers, officials, employees and agents from any and all cost, claims judgements and/or awards of damages, arising out of or in any way resulting from the Party's default, failure of performance, or negligent conduct associated with this agreement, by the Party, its employees, subcontractors or agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide each Party with a full and complete indemnity of claims made by the other Party's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.
- 15. Miscellaneous. Auburn and Lakehaven agree that within the area depicted in Attachment 3, existing water customers are currently served by Auburn and that for the purposes of efficiency, water service to these customers shall be transferred to Lakehaven. Service shall be provided by a direct connection with Lakehaven's system at "R" Street NW and Abby Drive, and temporarily by a Booster Pump Station from Auburn's water system on Knickerbocker Drive until such time as a secondary waterline is constructed from Lakehaven's system and paid for pursuant to Attachment 4.
- **16. Integration.** This agreement constitutes the entire agreement of the parties regarding the subject matter hereof, and there are no other representations or oral agreements other than those listed herein, which vary the terms of this agreement. Future agreements may occur between the parties to transfer additional or future service areas by mutual agreement.
- 17. Obligation Intact. Nothing herein shall be construed to alter the rights, responsibilities, liabilities, or obligations of either Lakehaven or Auburn regarding provision of water service, except as specifically set forth herein.

LAKEHAVEN UTILITY DISTRICT

Approved by Resolution No.						
Washington, at its regular me	eeting held on the _	87h	_day of _	.dan	1 20 0	
2004.					7	

By:

Donald T. Perry, General Manager

Lakehaven Utility District

Approved as to form:

Steven H. Pritchett, General Counsel

Lakehaven Utility District

CITY OF AUBURN

Approved by Resolution No. 3652 of the City of Auburn, Washington, at its regular meeting held on the 2^{nd} day of 5004.

Peter B. Lewis, Mayor City of Auburn

Attest:

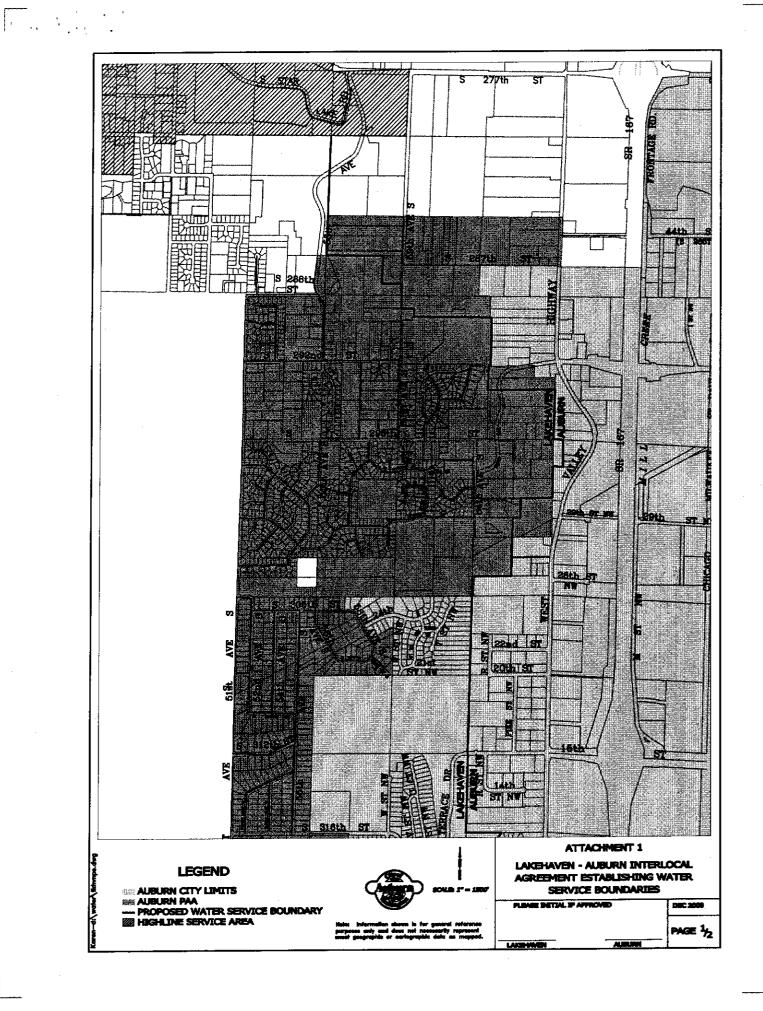
Danielle Daskam, City Clerk

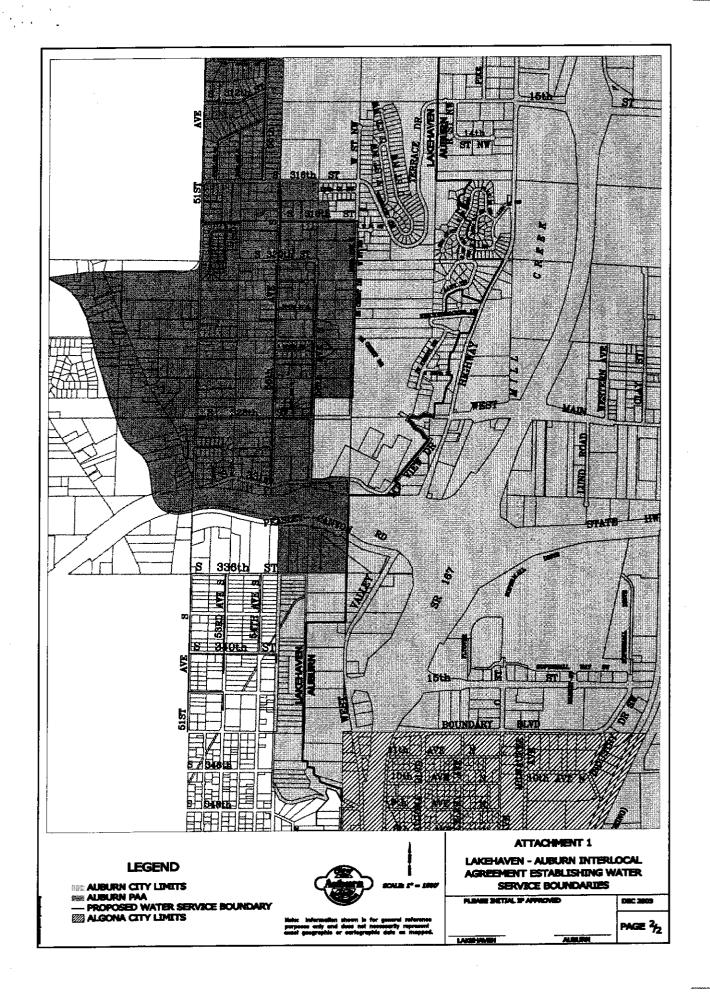
Approved as to form:

Daniel B. Heid, City Attorney

Exhibt "A", Auburn Resolution No. 3652 Lakehaven – Auburn Interlocal Agreement Establishing Water Service Boundaries

Page 5 of 5





Attachment 2

LAKEHAVEN UTILITY DISTRICT and CITY OF AUBURN INTERLOCAL AGREEMENT ESTABLISHING WATER SERVICE BOUNDARIES

BOUNDARY DESCRIPTION

BEGINNING at a point 170 feet east of the Northwest corner of the Northeast quarter of the Southwest quarter of Section 35, Township 22 North, Range 4 East, W.M., in King County, Washington;

THENCE south 1990 feet, more or less, to the North line of the South half of the South half of the Southwest quarter of said Section 35;

THENCE easterly along said North line to a point 300 feet west of the East line of the Southwest quarter of said Section 35;

THENCE south to a point 170 feet north of the South line of the Southwest quarter of said Section 35:

THENCE east 300 feet, more or less, to the East line of the Southwest quarter of said Section 35;

THENCE southerly along said East line to the South line of said Section 35;

THENCE continuing southerly along the West line of the Northeast quarter of Section 2, Township 21 North, Range 4 East, W.M., in King County, Washington, a distance of 221.12 feet;

THENCE easterly, parallel with the North line of said subdivision, 220.20 feet;

THENCE southerly, parallel with the West line of said subdivision, 130 feet;

THENCE easterly along the North line of Lots 1 and 2 of King County Short Plat No. 781092 as recorded under Recording Number 8112210440, records of King County, Washington, a distance of 1306.40 feet, more or less, to the Northeast corner of said Lot 2;

THENCE south along the East line of said Lot 2 a distance of 802.22 feet, more or less, to the Southeast corner of said Lot 2;

THENCE easterly, a distance of 6 feet, more or less to the Northeast corner of Tract A of Eastview Vista according to the plat thereof recorded in Volume 108, Pages 51 through 53, records of King County, Washington;

THENCE south, a distance of 34 feet, more or less, to an angle point in the boundary of said Tract A;

THENCE west, a distance of 34.80 feet, more or less, to an angle point in the boundary of said Tract A;

THENCE south, a distance of 400.44 feet, along the East line of said Tract A to a point 835.56 feet north of the South line of the Northeast quarter of said Section 2;

THENCE east, parallel the South line of the Northeast quarter of said Section 2, a distance of 1140.8 feet, more or less, to the East line of said Section 2;

THENCE south, a distance of 835.56 feet along said East line, to the Northwest corner of the Southwest quarter of Section 1, Township 21 North, Range 4 East, W.M., in King County, Washington;

THENCE east, parallel to the North line of the Southwest quarter of said Section, a distance of 149.18 feet;

THENCE south, parallel to the West line of the Southwest quarter of said Section, a distance of 450 feet;

THENCE west, parallel to the North line of the Southwest quarter of said Section, a distance of 149.18 feet to the East line of Southeast quarter of Section 2, Township 21 North, Range 4 East, W.M., in King County, Washington;

THENCE south, a distance of 532.51 feet along said East line to the North line of the South half of the South half of the North half of said subdivision;

THENCE westerly, along said North line of said subdivision, 518.77 feet;

THENCE southerly, parallel with the East line of said subdivision, 328.01 feet, more or less, to the South line of said subdivision;

THENCE westerly, along the South line of said subdivision, 130.02 feet, more or less to the Northeast corner of the West half of the Southeast quarter of the Southeast quarter of said Section 2;

THENCE southerly, along the East line of said subdivision, 984.40 feet, to the North line of the South half of the South half of last said subdivision;

THENCE westerly, along the North line of said subdivision, 650 feet, more or less, to the East line of the Southwest quarter of the Southeast quarter of said Section 2;

THENCE southerly, along said East line, 328.77 feet, more or less, to the South line of last said subdivision:

THENCE continuing southerly, along the West line of the East half of Section 11 Township 21 North, Range 4 East, W.M., in King County, Washington, a distance of 3950.28 feet, more or less to the Northwest corner of the Southeast quarter of the Southeast quarter of said Section;

THENCE easterly, along the North line of said subdivision, a distance of 588.55 feet to the most Easterly corner of Tract A of Vistara Division 2 according to the plat thereof recorded in Volume 186, Pages 70 through 76, records of King County, Washington;

THENCE southwesterly along the most Easterly line of said Tract A, a distance of 184.6 feet to the Northeast corner of Lot 16 of said plat of Vistara Division 2;

THENCE southerly along the Easterly line of said Lot 16 a distance of 76 feet;

THENCE southwesterly along last said Easterly line 77.96 feet;

THENCE southerly along last said Easterly line 51.73 feet;

THENCE southeasterly along last said Easterly line 78.15 feet;

THENCE southeasterly along said Easterly line and along the Northeast line of tract B of said plat 168 feet to the West Right-of-Way line of "R" Street Northwest as recorded in said plat;

THENCE southerly along said West Right-of Way line, a distance of 40 feet, more or less, to the most Easterly corner of Lot 18 of said plat;

THENCE northwesterly along the Northeast boundary of said Lot 18, a distance of 188.08 feet:

THENCE southeasterly along the Westerly boundary of said Lot 18, a distance of 83.72 feet, more or less, to the most Northerly corner of Lot 19 of said plat;

THENCE southwesterly along the Westerly boundary of said Lot 19, a distance of 64.76 feet:

THENCE southeasterly along the Southwesterly boundary of said Lot 19, a distance of 154.16 feet, to the most Southerly corner of said Lot 19;

THENCE southeasterly along a line crossing said Right-of-Way to the most Northerly corner of Lot 26 of said plat;

THENCE southeasterly along the Northeast boundary of said Lot 26, a distance of 97.69 feet;

THENCE southerly along the Easterly boundaries of Lots 26, 25, 24 of said plat, a distance of 177.26 ft, more or less, to the Northeast corner of Lot 31 of Vistara Division 1 according to the plat thereof recorded in Volume 174, Pages 78 through 83 and according to Alteration Number 1 thereof recorded in Volume 186, Pages 31 through 33, records of King County, Washington;

THENCE southerly and southeasterly along the Eastern boundaries of Lots 31, 32, and 33 of said plat, a distance of 152.14 feet to the Northwest corner of Lot 34 of said plat;

THENCE easterly along the Northerly boundaries of Lots 34 and 35 of said plat, a distance of 80.00 feet to the Northeast corner of Lot 35 of said plat;

THENCE southerly along the Easterly boundary of Lot 35, a distance of 118.02 feet, to the Southeast corner of said lot 35;

THENCE southerly along a line, crossing the 8th Street Northwest Right-of-Way, to the Northeast corner of Lot 14 of said plat;

THENCE continuing southerly along the Eastern boundaries of Lots 14 and 13 of said plat, a distance of 153.10 feet to the North Line of Section 14, Township 21 North, Range 4 East, W.M., in King County, Washington;

THENCE East along said North line, a distance of 501.28 feet, more or less, to the West Right-of-Way line of State Route 181, also known as West Valley Highway;

THENCE southwesterly along said West Right-of-Way line, a distance of 790.91 feet to the Northeast corner of Lot 3 according to the Replat of Lot 4 Block 1 Knickerbocker Heights as recorded in Volume 90, Page 39, records of King County, Washington;

THENCE northwesterly along the Northerly boundary of said Lot 3 a distance of 342.6 feet, more or less, to the Southwest corner of Lot 2 of said Replat;

THENCE north a distance of 100 feet, more or less, along the East line of Lot 1, Auburn Short Plat 0001-89, as recorded under Recording No. 8906271138, records of King County, Washington;

THENCE westerly and southwesterly a distance of 253.5 feet, more or less, along the Northern boundary of said Lot 1 to the most Northerly corner of Lot 2 of said Short Plat:

THENCE southerly a distance of 359.06 feet, more or less, along the Westerly boundaries of Lots 2, 3, and 4 of said Short Plat to the North margin of the Knickerbocker Drive Right-of Way;

THENCE easterly along said North margin of Knickerbocker Drive Right-of Way, a distance of 475 feet, more or less, to the West line of the State Route 181 Right-of-Way which parallels the centerline of State Route 181 Right-of-Way;

THENCE southwesterly along said West line of said State Route 181 Right-of-Way to the Southern terminus of the Northeast corner radius of Lot 2, Block 3, of Knickerbocker Addition, according to the plat thereof, as recorded in Volume 45, Page 93, records of King County, Washington;

THENCE continuing southwesterly along said West line of said State Route 181 Right-of-Way, a distance of 246.18 feet, to the Southeast corner of said Lot 2;

THENCE west along the South line of said Lot 2, a distance of 150 feet;

THENCE southerly and parallel to said Right-of-Way, a distance of 343.66 feet, more or less, to a point on the North line of Lot 3, King County Short Plat No. SP-18-76, as recorded under Recording No. 7611240117, records of King County, Washington;

THENCE westerly along said North line, a distance of 43.82 feet, more or less, to the Northwest corner of said Lot 3;

THENCE southerly along the West line of said Lot 3, a distance of 120.53 feet, to the Southwest corner of said Lot 3;

THENCE westerly along the South line of Lot 2 of last said short plat, a distance of 5 feet more or less to the Northeast corner of Hi-Crest Number 2, according to the Plat thereof recorded in Volume 64, Page 58, records of King County, Washington;

THENCE south along the East line of said plat, a distance of 270 feet, to the Southeast corner of Lot 13 of said plat;

THENCE easterly along the Easterly extension of the South line of said Lot 13, a distance of 58.92 feet:

THENCE southerly, a distance of 94.97 feet to the Northeast corner of Lot B of City of Auburn Lot Line Adjustment 10-87 recorded under Recording Number 8705190464, records of King County, Washington;

THENCE southerly along the easterly boundary of said Lot B a distance of 9.82 feet;

THENCE southwesterly along said Easterly boundary a distance of 127.12 feet;

THENCE southerly parallel with said State Route 181 Right of Way to a line parallel with and 228 feet Northerly of the South line of the Northeast quarter of said Section 14.

THENCE west along said parallel line to a point 80 feet East of the West line of the Southeast quarter of the Northeast quarter of said Section 14;

THENCE south along last said parallel line a distance of 228 feet to the South line of the Northeast quarter of said Section 14 and the centerline of Mountain View Drive;

THENCE westerly along said centerline, a distance of 10 feet, more or less to the point where the centerline of said Mountain View Drive diverges from the South line of said Section 14;

THENCE northwesterly along said centerline, a distance of 154 feet;

THENCE southwesterly along said centerline, a distance of 140 feet;

THENCE northwesterly along said centerline, a distance of 138 feet;

THENCE southwesterly along said centerline, a distance of 80 feet;

THENCE southeasterly along said centerline, a distance of 114 feet;

THENCE southeasterly along said centerline, a distance of 63 feet;

THENCE southeasterly along said centerline, a distance of 140 feet;

THENCE southeasterly along said centerline, a distance of 95 feet;

THENCE southeasterly along said centerline, a distance of 101 feet;

THENCE southwesterly along said centerline, a distance of 910 feet, more or less, to the intersection of the Northwesterly prolongation of the Southwesterly line of the lands described in instrument filed under Recording Number 8512300596, Records of King County, Washington;

THENCE southwesterly along last said line to a point on the West line of the east 470.26 feet of the Northwest quarter of the Southeast quarter of said Section 14 which is 190.27 feet northerly of the South line of said subdivision;

THENCE southerly along the West line of the east 470.26 feet of said Northwest quarter of said Southeast quarter of said Section 14, a distance of 190.27 feet, more or less to the North line of Southwest quarter of the Southeast quarter of said Section 14;

THENCE west along said North line, a distance of 839.29 feet, more or less, to the Northwest corner of said subdivision:

THENCE south along the West line of said subdivision, a distance of 1313.19 feet, more or less, to the Northeast corner of the Northwest quarter of Section 23, Township 21 North, Range 4 East, W.M.;

THENCE south along the East line of said subdivision, a distance of 821.24 feet;

THENCE west, parallel to the North line of the Northwest quarter of said Section 23, a distance of 653.06 feet, more or less, to the Northerly projection of the centerline of 58th Avenue South;

THENCE southerly, along said centerline of 58th Avenue South, to the North line of the Southwest quarter of said Section 23;

THENCE south parallel to the East line of said subsection, a distance of 496 feet, more or less, to the North line of Lot 3, Block 25 of Jovita Heights, according to the plat thereof, as recorded in Volume 20, Page 12, records of King County, Washington;

THENCE east along the North line of said Lot 3, a distance of 80 feet, more or less, to the Northeast corner of said Lot 3;

THENCE southerly along the East line of said Lot 3 and the East line of Lot 4 of said plat to the Northerly margin of Iowa Drive according to said Plat of Jovita Heights, a distance of 92.82 feet;

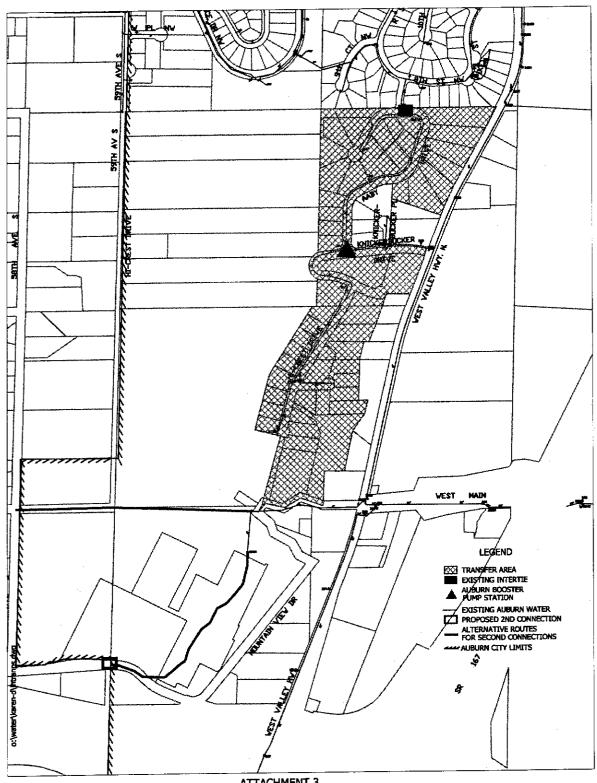
THENCE easterly along said Northerly margin, a distance of 107.89 feet;

THENCE southerly along said Northerly margin, a distance of 114.85 feet;

THENCE southeasterly along said Northerly margin, a distance of 93.86 feet;

THENCE southeasterly along said Northerly margin, a distance of 81.99 feet;

THENCE southeasterly along said Northerly margin, a distance of 390 feet, more or less, to the East line of the Southwest quarter of said Section 23 and the terminus of this boundary description.



ATTACHMENT 3 LAKEHAVEN - AUBURN INTERLOCAL AGREEMENT ESTABLISHING WATER SERVICE BOUNDARIES TRANSFER AREA MAP

Attachment 4

LAKEHAVEN UTILITY DISTRICT and CITY OF AUBURN INTERLOCAL AGREEMENT ESTABLISHING WATER SERVICE BOUNDARIES

TRANSFER AREA CONDITIONS

- Auburn will transfer ownership of the water infrastructure within the area depicted on Attachment 3, including but not limited to, the Booster Pump Station on Knickerbocker Drive, via Bill-of-Sale to Lakehaven. Auburn will also ensure the subject water facilities are in good operational condition and provide all documents and drawings pertaining to as-built information and operational manuals for the facilities.
- 2. Since Lakehaven's existing system alone can not currently provide minimum fire flow requirements, additional water system facility improvements will be required. The facility improvements (hereinafter referred to as the "secondary water line") include approximately 2000 feet of 8-inch water main and a Pressure Reducing Valve (PRV) station. The water main will connect between Lakehaven's water system in its 578-pressure zone, through a PRV station, to the existing water main in Hi-Crest Drive. Two possible routes for the secondary water line are depicted on Attachment 3, but the actual route for the secondary water line shall be the one deemed by both parties to the Agreement to be most beneficial and efficient of all alternatives identified and analyzed at the time design commences, and not necessarily limited to the two routes depicted.
- 3. Auburn shall design the secondary water line in accordance with Lakehaven's standards, and provide permanent easements as necessary.
- 4. Lakehaven shall have the secondary water line constructed and will be reimbursed for funds used to construct the secondary water line, including interest, by a Charge-in-lieu-of-Assessment applied to adjacent benefiting lands (currently Auburn's property) that the secondary water line is intended to serve and by applying a surcharge on Lakehaven's water rates to the transferring customers. The surcharge shall be the difference between Auburn's water rates and Lakehaven's water rates and shall remain in place until all amounts owing from the construction of the secondary water line are paid. When all costs have

been reimbursed, the surcharge will no longer apply and the transferred customers will revert to Lakehaven's then-current rates.

- 5. Auburn shall permanently make available to Lakehaven the current equivalent annual and instantaneous quantity of water necessary to serve the transferring area in exchange for full credit against applicable Capital Facilities Charges of Lakehaven.
- 6. The current equivalent annual quantity of water is approximately 255 gallons/day/Equivalent Residential Unit (transfer area has ~ 42 ERU's). The instantaneous quantities are defined historically by the total existing Booster Pump Station capacity. The existing Booster Pump Station has a 90 gpm pump and a 300 gpm pump. The water shall be used as needed to provide domestic water service or emergency fire flows. The water rate Lakehaven will pay Auburn shall be Auburn's current wholesale water rate it charges the City of Algona, or the Lakehaven emergency water rate as determined in accordance with the Emergency Water Supply Agreement for the Lakehaven/Auburn Intertie No. 1 as adopted by Auburn Resolution 3443, whichever is less.

PHWF W2305-12

200508220499 8 PGS

08-22-2005 10:30am \$0.00 PIERCE COUNTY. WASHINGTON

Return Address:

Asham O'ta Olada
Auburn City Clerk
City of Auburn
25 West Main St.
Auburn, WA 98001
RECORDER'S COVER SHEET
Document Title(s) (or transactions contained therein):
Interlocal Agreement (RES 3760)
Reference Number(s) of Documents assigned or released: Additional reference #'s on page of document
Grantor(s)/Borrower(s) (Last name first, then first name and initials)
Auburn, City of
Grantee/Assignee/Beneficiary: (Last name first)
1. Bonney Lake, City of
Legal Description (abbreviated: i.e. lot, block, plat or section, township, range)
PER RCW 39.34
Additional legal is on page of document.
Assessor's Property Tax Parcel/Account Number
N/A
14/17
☐ Assessor Tax # not yet assigned

RESOLUTION NO. 3760

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN ADDENDUM TO AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF AUBURN AND THE CITY OF BONNEY LAKE FOR THE ESTABLISHMENT OF SANITARY SEWER SERVICE BOUNDARIES

WHEREAS, in March of 1998 the City Council of the City of Auburn adopted Resolution No. 2925 authorizing the Mayor and City Clerk to execute a settlement agreement that was subsequently signed by the City of Auburn and the City of Bonney Lake; and

WHEREAS, among other items, that settlement agreement set forth a water service area boundary between the City of Auburn and the City of Bonney Lake; and

WHEREAS, subsequent to approval of the settlement agreement the Potential Annexation Areas (PAA) for the City of Auburn and City of Bonney Lake were amended to coincide with the water service area boundary; and

WHEREAS, since the time of the agreement it has been found that a parcel was divided by the water service area boundary set forth in said settlement agreement, and by the subsequent PAA boundary established based on the water service area boundary, and said parcel lies partially within and partially outside of the Auburn PAA; and

WHEREAS, part of the Lake Tapps Parkway East extension's right-of-

way also lies partially within and partially outside of the Auburn water service

area boundary established by the settlement agreement, and partially within

and partially outside the subsequent PAA boundary established based on the

water service area boundary; and

WHEREAS, sound growth management and transportation planning

principles are best served by including entire parcels and entire street right-of-

ways entirely within a PAA.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN,

WASHINGTON, HEREBY RESOLVES as follows:

Section 1. The Mayor and City Clerk are hereby authorized to execute

Addendum No. 1 to the Settlement Agreement between the City of Auburn and

the City of Bonney Lake in substantial conformity with the Addendum attached

hereto, marked as Exhibit "A" and incorporated herein by this reference.

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.

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

passage and signatures hereon.

Resolution No. 3760 January 18, 2005

Dated and Signed this _____ day of _____, 2005.

CITY OF AUBURN

PETER B. LEWIS

MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid,

City Attorney

ADDENDUM NO. 1

ADDENDUM TO SETTLEMENT AGREEMENT BETWEEN THE CITY OF BONNEY LAKE AND THE CITY OF AUBURN RELATING TO WATER SERVICE AREA BOUNDARY

WITNESSETH:

WHEREAS, in March 1998 the City Council of the City of Auburn passed Resolution No. 2925 authorizing the Mayor and City Clerk to execute a settlement agreement that was subsequently signed by the City of Auburn and the City of Bonney Lake; and

WHEREAS, among other items, the settlement agreement set forth a water service area boundary between the City of Auburn and the City of Bonney Lake; and

WHEREAS, Exhibit B to the settlement agreement implied that Auburn's Urban Growth Area (UGA) was established to conform with the water service area boundary set forth in the settlement agreement; and

WHEREAS, subsequent to approval of the settlement agreement the Potential Annexation Area (PAA) for the City of Auburn was amended to coincide with the water service area boundary; and

WHEREAS, Exhibit B to the settlement agreement stated that the UGA and water service area boundary was established to follow property lines; and

WHEREAS, since the time of the agreement it has been found that a parcel was divided by the water service area boundary set forth in said settlement agreement, and by the subsequent PAA boundary established based on the water service area boundary, and said parcel lies partially within and partially outside of the Auburn PAA; and

WHEREAS, part of the Lake Tapps Parkway East extension's right-of-way also lies partially within and partially outside of the Auburn water service area boundary established by the settlement agreement, and partially within and partially outside the subsequent PAA boundary established based on the water service area boundary; and

Exhibit "A" Resolution No. 3760 Page 1 of 4 Addendum No. 1 to the March 1998 Auburn – Boney Lake Settlement Agreement Page 1 of 2 WHEREAS, sound growth management and planning principles are best served by including entire parcels within a PAA.

NOW THEREFORE in consideration of their mutual covenants, conditions and promises, the PARTIES DO HEREBY AGREE as follows:

ITEM ONE: ADDITION OF PROPERTY

The Settlement Agreement is revised to include a portion of Pierce County parcel # 052005-4046, a portion of the Lake Tapps Parkway as it extends from the west boundary of 182nd Ave East west to Auburn's existing Urban Growth Area, and a portion of the natural gas pipe line parcel as noted in the attached Exhibit C. Exhibit C, attached hereto and incorporated by reference as if fully set forth herein, shall provide both a graphical representation and a legal description for the parcels that are to be included in Auburn's UGA for urban services and incorporated into the area that Bonney Lake shall be the water purveyor for within Auburn's UGA as defined in the original settlement agreement between Auburn and Bonney Lake.

ITEM TWO: REMAINING TERMS UNCHANGED:

That all other provisions of the Settlement Agreement between the parties executed on the 5th day of March, 1998, shall remain unchanged, and in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF BONNEY LAKE

ROBERT YOUNG, Mayor

Attest:

Harwood Edvalson, City Clerk

Approved as to form:

James Dionne, City Attorney

Exhibit "A" Resolution No. 3760 Page 2 of 4 TTY OF AUBURN

PETER B. LEWIS, Mayor

Attest:

Danielle E. Daskam. City Clerk

Approved as to form:

Daniel B. Held, City Attorney

Addendum No. 1 to the March 1998 Auburn – Boney Lake Settlement Agreement Page 2 of 2

EXHIBIT C

ADDENDUM 1 AUBURN BONNEY LAKE SETTLEMENT AGREEMENT

LEGAL DESCRIPTION OF AREA

THAT PORTION OF SECTION 5, TOWNSHIP 20 NORTH, RANGE 5 EAST, W.M. IN PIERCE COUNTY WASHINGTON. DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5;

THENCE WESTERLY ALONG THE SOUTH LINE OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 5 A DISTANCE OF 1360 FEET, MORE OR LESS, TO THE NORTHWESTERLY LINE OF THE LANDS CONVEYED TO EL PASO NATURAL GAS COMPANY BY DEED RECORDED UNDER PIERCE COUNTY AUDITOR'S NUMBER 2410280:

THENCE NORTHEASTERLY ALONG SAID NORTHWESTERLY LINE A DISTANCE OF 1880 FEET, MORE OR LESS, TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 5:

THENCE EASTERLY ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER A DISTANCE OF 700 FEET, MORE OR LESS, TO THE WEST LINE OF THE LANDS GRANTED TO PIERCE COUNTY FOR 182ND AVENUE EAST DESCRIBED IN DEED RECORDED UNDER PIERCE COUNTY AUDITOR'S NUMBER 2257762;

THENCE SOUTHERLY ALONG THE WEST LINE OF 182ND AVENUE EAST AS DESCRIBED IN SAID INSTRUMENT A DISTANCE OF 40 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE LANDS CONVEYED TO PIERCE COUNTY IN DEED RECORDED UNDER AUDITORS FILE NUMBER 9902110924;

THENCE WESTERLY ALONG LAST SAID SOUTH LINE AND ALONG THE SOUTH LINE OF THE LANDS CONVEYED TO PIERCE COUNTY IN DEED RECORDED UNDER AUDITORS FILE NUMBER 200405180889 AND DEPICTED IN MAP ON FILE IN THE OFFICE OF THE DIRECTOR OF PIERCE COUNTY PUBLIC WORKS AND UTILITIES IN TACOMA, WASHINGTON, ENTITLED "LAKE TAPPS PARKWAY EAST – RIGHT OF WAY PLAN - CRP 5486" AND BEARING APPROVAL DATE OF NOVEMBER 17, 2003, A DISTANCE OF 600 FEET, MORE OR LESS, TO THE EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5:

THENCE SOUTHERLY ALONG THE EAST LINE OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5 A DISTANCE OF 1220 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

H/Stafffiles/WQ/Utility - Sewer/ta/Bonney Lake/Addendum Seltlement Legal Description.DQC

EXHIBIT C

Addendum No. 1 to the March 1998 Auburn – Boney Lake Settlement Agreement Page 1 of 2

Exhibit "A" Resolution No. 3760 Page 3 of 4

EXHIBIT C E. LAKE TAPPS PKWY WATURAL CAS PIPELINE LAKE TAPPS

EXHIBIT A RESOLUTION NO. 3760 PAGE 4 OF 4 EXHIBIT C ADDENDUM NO. 1 TO THE MARCH 98 AUBURN - BONNEY LAKE SETTLEMENT AGREEMENT PAGE 2 OF 2

AGREEMENT FOR THE SALE OF WHOLESALE WATER

BETWEEN THE CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, WATER DIVISION

AND

CASCADE WATER ALLIANCE

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This Agreement for the Sale of Wholesale Water ("Agreement") between the City of Tacoma, Department of Public Utilities, Water Division (Tacoma) and Cascade Water Alliance ("Cascade"), is made and entered into effective this 13-th day of October, 2005 (Effective Date). Tacoma and Cascade are sometimes referred to herein in the singular as "Party" and in the plural as "Parties".

WHEREAS, Tacoma is a municipality organized and operating under the laws of the State of Washington; and

WHEREAS, Cascade is a public nonprofit corporation established by Interlocal Contract under the authority of Chapter 39.34 RCW, the Interlocal Cooperation Act, and incorporated under Chapter 24.03 to further the interests of its members with respect to water supply and to work cooperatively with other water supply entities; and

WHEREAS, Tacoma and Cascade have the responsibility to plan, design, construct and operate water supply facilities to meet the municipal, commercial and industrial water supply needs of their respective customers and member organizations; and

WHEREAS, Tacoma, which has nearly completed the construction of its Second Supply Project, expects to have the supply capacity, together with Tacoma's other water resources, to meet Tacoma's projected water supply needs for the next fifty years, in addition to meeting a portion of the water needs of Tacoma's project partners, Lakehaven Utility District, Covington Water District and the City of Kent; and

WHEREAS, Cascade is contracting for, and has plans to construct additional water supplies to supplement its existing water supplies to meet its immediate and long-term water supply needs; and

WHEREAS, Tacoma and Cascade are each seeking cost effective ways to utilize available regional capacity, and to plan for water resources to meet the full future water supply needs of their respective customers; and

WHEREAS, Cascade could make beneficial use of available supply in Tacoma's Second Supply Project both permanently and in the near term until such time as other water resources are available to meet the needs of Cascade and its member utilities; and

WHEREAS, Cascade wishes to purchase from Tacoma, and Tacoma wishes to sell to Cascade a supply of water both permanently and for a finite period of years.

NOW, THEREFORE, the Parties agree as follows.

1. DEFINITIONS

- 1.1 When used with initial capitalization in this Agreement, the following terms shall have the meanings set forth below.
 - 1.1.1 "Due Date" means the date by which payment of any invoice issued pursuant to section 10 of this Agreement is due to Tacoma, which date shall be the close of business on the thirtieth (30th) day after an invoice is issued, provided, however, that if such thirtieth day falls on a Saturday, Sunday or legal holiday observed by Tacoma, the Due Date shall be extended until the close of business of the next regular business day of Tacoma.
 - 1.1.2 "Effective Date" shall have the meaning given such term in section 3.
 - 1.1.3 "Flow Control Valve" means the valve located in the vicinity of the Point(s) of Delivery for Cascade that controls the volume of water that is delivered to Cascade.
 - 1.1.4 "Howard Hanson Dam Additional Storage Project" or "Storage Project" shall have the meaning given such term in the Project Agreement.
 - 1.1.5 "Implementation Agreement" means a written agreement executed by the Superintendent of Tacoma Water and the General Manager of Cascade setting out the understandings of the Parties regarding the implementation and administration of this Agreement as set forth in section 2.
 - 1.1.6 "Initial Delivery Date" means the date on which Tacoma actually commences delivery of wholesale water pursuant to the terms of this Agreement.
 - 1.1.7 "Interest Rate" means for each day that it is applied a rate equal to one-three hundred and sixty-fifth (1/365) of the prime interest rate for preferred customers established from time to time by the Bank of America, or such other bank as may be designated by the Parties, plus three (3) percentage points.
 - 1.1.8 "Interconnection Facilities" mean the facilities, other than the Wholesale Service Connection, that need to be constructed by Cascade to take delivery of wholesale water through the Wholesale Service Connection and convey such water to Cascade's transmission main.
 - 1.1.9 "Isolation Valve" means a positive shut off valve that shall be

installed at the location in each water system that is used to accept or deliver water through the Wholesale Service Connection.

- 1.1.10 "Minimum Monthly Bill" shall have the meaning given such term in section 9.2.
- 1.1.11 "Operating Year" means any consecutive twelve (12) month period commencing on each July 1st, and ending on the following June 30th.
- 1.1.12 "Pea k Season" means the period starting June 1 and ending September 31 during each year during the Term.
- 1.1.13 "Peaking Factor" means the factor set forth in section 6.3.
- 1.1.14 "Project Agreement" means the Second Supply Project Agreement between the City of Tacoma and the City of Kent, Covington Water District and Lakehaven Utility District.
- 1.1.15 "Project Operator" means Tacoma in its role as the party responsible for the operation and maintenance of the Tacoma Second Supply Project.
- 1.1.16 "Requested Initial Delivery Date" means the date designated by Cascade pursuant to section 5.2 for Tacoma to commence delivery of wholesale water pursuant to section 6 of this Agreement.
- 1.1.17 "Second Diversion Right or Permit and First Diversion Claim" means those water rights that authorize Tacoma to divert and use water from the Green River (together, the Diversion Rights).
- 1.1.18 "Surcharge Rate" means a rate equal to four times the highest wholesale water rate for sales to Cascade for the period of excess use.
- 1.1.19 "TMC" means the City of Tacoma 's Municipal Code.
- 1.1.20 "Uncontrollable Force" means any event or occurrence that is beyond the reasonable control of a Party and which by the exercise of due diligence and reasonable foresight such Party could not have reasonably been expected to avoid or remove, and includes but is not limited to flood, earthquake, storm, accident, fire, lightning and other natural catastrophes, epidemic, war, labor or material shortage, strike or labor dispute, acts of terrorism or sabotage, and also includes restraint by an order of a court of competent jurisdiction or by regulatory authorities against any action taken or not taken by a Party, after a good faith effort by such Party to obtain: (a)

relief from such order; or (b) any necessary authorizations or approvals from any governmental agency or regulatory authority.

- 1.1.21 "Wholesale Service Connection" means a physical connection between water mains of the Parties to this Agreement, at a specifically identified point or points, where water will be transferred from one Party's system to the facilities of the other Party.
- 1.1.22 "Wholesale Water Sales" means sales of water by Tacoma to entities that are not retail customers of Tacoma and which resell to end users the water that they purchase from Tacoma.

2. <u>IMPLEMENTATION AGREEMENTS AND EXHIBITS TO THE</u> AGREEMENT

- 2.1 The Superintendent of Tacoma Water and the General Manager of Cascade may, at their discretion, execute Implementation Agreements regarding the implementation or administration of this Agreement in a manner that does not affect the substantive rights of the parties under this Agreement.
- 2.2 The following exhibits, which are attached to this Agreement, are hereby made a part of and incorporated into this Agreement as if fully set forth herein:

Exhibit A - Map locating the Wholesale Service Connection, delivery meter and related facilities.

Exhibit B - Sample Weekly Operations Report

Exhibit C - Arbitration Procedures

The Superintendent of Tacoma Water and the General Manager of the Cascade are authorized to prepare Exhibits showing the Wholesale Service Connection and the location of the delivery meter upon the installation of those facilities and to adopt such Exhibits for purposes of this Agreement.

2.3 If and to the extent that there is a conflict between the terms set forth in an Implementation Agreement or in any of the foregoing Exhibits and those set forth in the body of this Agreement, the terms set forth in the body of this Agreement shall prevail.

3. EFFECTIVE DATE AND TERM OF THE AGREEMENT

3.1 This Agreement shall take effect when executed by the Parties, and shall remain in full force and effect until the date that Tacoma ceases making Wholesale Water Sales, unless terminated (in whole or in part) earlier in accordance with sections 11, 12 or 24 ("Term"). The Term of this Agreement may be extended by written agreement of the Parties.

3.2 All obligations incurred during the Term shall survive the termination or expiration of this Agreement.

4. SALE AND PURCHASE OF WHOLESALE WATER

- 4.1 For the Term of this Agreement, Tacoma agrees to sell and make available to Cascade, and Cascade agrees to accept delivery of and pay for quantities of wholesale water, all pursuant to the provisions of this Agreement.
- 4.2 The water sold by Tacoma to Cascade pursuant to this Agreement shall be water available from the Diversion Rights. The use made of such wholesale water shall be subject to the restrictions on the place of use applicable to the Diversion Rights, copies of which have been provided to Cascade by Tacoma.

5. COMMENCEMENT OF WHOLESALE WATER DELIVERIES

- 5.1 Tacoma shall stand ready to commence deliveries of the amounts of wholesale water set forth in section 6 not later than October 1, 2008. If the Howard Hanson Storage Project is not operational by October 1, 2012, then Tacoma may, based on Tacoma's forecast of its water supplies without the Howard Hanson Storage Project, reduce its obligation to sell water to Cascade under section 6.2 (including a reduction to zero deliveries) by providing written notice to Cascade of such reduction to its water deliveries not less than ninety (90) days prior to the date the adjusted deliveries will commence.
- 5.2 Except as provided in section 5.1 deliveries of wholesale water by Tacoma to Cascade pursuant to section 6 shall commence on the Requested Initial Delivery Date designated by Cascade by written notice provided to Tacoma not less than ninety (90) days prior to the Requested Initial Delivery Date, which date cannot occur prior to October 1, 2008.

6. WHOLESALE WATER SUPPLY

- 6.1 From the Initial Delivery Date until the date that Tacoma ceases making Wholesale Water Sales, Tacoma shall make available to Cascade at the Wholesale Service Connection wholesale water in the amount of four million gallons per day (4 MGD) at a uniform hourly delivery rate.
- 6.2 In addition to the wholesale water deliveries set forth in section 6.1, on and after the Initial Delivery Date, Tacoma shall make available to Cascade at the Wholesale Service Connection wholesale water in the following amounts:
 - 6.2.1 From the Initial Delivery Date through December 31, 2026, six million gallons per day (6 MGD) at a uniform hourly delivery rate.

- 6.2.2 From January 1, 2027 through December 31, 2027, 4 million gallons per day (4 MGD) at a uniform hourly delivery rate.
- 6.2.3 From January 1, 2028 through December 31, 2028, three million gallons per day (3 MGD) at a uniform hourly delivery rate.
- 6.2.4 From January 1, 2029 through December 31, 2029, two million gallons per day (2 MGD) at a uniform hourly delivery rate.
- 6.2.5 From January 1, 2030 through December 31, 2030, one million gallons per day (1 MGD) at a uniform hourly delivery rate.
- 6.2.6 On and after January 1, 2031, Tacoma shall have no obligation to provide to Cascade and Cascade shall have no right to receive from Tacoma wholesale water deliveries pursuant to this section 6.2.
- 6.3 The wholesale water deliveries set forth in sections 6.1 and 6.2 may, as requested by Cascade, be increased during the Peak Season by a Peaking Factor of 1.33. For example, application of the Peaking Factor to the wholesale water deliveries set forth in section 6.1 would result in deliveries of 5.32 million gallons per day.
- Cascade may request in writing that Tacoma investigate the feasibility of 6.4 providing to Cascade wholesale water on a temporary basis in addition to the amounts set forth in sections 6.1 and 6.2. The written request from Cascade to Tacoma shall state with specificity the wholesale water amounts requested (including Peak Season deliveries), the requested commencement date and termination date of such deliveries. Upon receipt of such written request, Tacoma will review its water demand and supply forecasts expeditiously to determine if, in the sole judgment of Tacoma, it will have sufficient water supplies to fulfill the request for additional deliveries of wholesale water in whole or in part. In the event that Tacoma determines that it can fulfill, in whole or in part, the request of Cascade for additional deliveries of wholesale water, such additional deliveries shall be priced according to Tacoma's wholesale water rate, which additional supply shall be subject to the Surcharge Rate only if Cascade takes such temporary water in excess of the amounts which Tacoma has agreed to supply. Tacoma and Cascade shall, prior to the commencement of such additional deliveries, execute an agreement setting forth all of the terms and conditions applicable to such additional temporary deliveries.

7. WHOLESALE WATER QUALITY, DELIVERY PRESSURE AND METERING

- 7.1 The quality of wholesale water made available to Cascade pursuant to section 6 shall be in compliance with all applicable state and federal drinking water laws, regulations and standards, and at the pressures agreed to by the Parties.
- 7.2 The amounts of wholesale water made available to Cascade will be measured by a delivery meter located at or in the vicinity of the Wholesale Service Connection, as agreed to by the Parties.

8. WHOLESALE SERVICE CONNECTION AND INTERCONNECTION FACILITIES

- 8.1 All costs associated with the design and construction of the Wholesale Service Connection, including the water main, service pipe, automated remote valve shut off, meter(s), appurtenances and vaults, shall be the responsibility of Cascade. Tacoma shall be responsible for preparation of the design of the Wholesale Service Connection and for the cost of repair and maintenance of the Wholesale Service Connection up to and including the outlet of the meter. The meter(s) shall be located as close to the Wholesale Service Connection as possible. Tacoma will coordinate the design and construction of the Wholesale Service Connection with Cascade. All Wholesale Service Connections with Tacoma are required to have automated meter reading (AMR) installed on them. Cascade will be responsible for the costs of installing the phone connection for the AMR and the costs to install the equipment with the meter.
- 8.2 Cascade shall be responsible for designing, engineering, permitting, constructing and financing any and all Interconnection Facilities necessary for Cascade to accept delivery of the wholesale water made available by Tacoma pursuant to section 6.
- 8.3 Cascade will submit to Tacoma for review, revision and approval the designs, specifications and construction schedule for the Interconnection Facilities. Tacoma will not unreasonably delay its review of designs, specifications and construction schedules submitted to it by Cascade, and will not unreasonably withhold its approval of such designs, specifications and construction schedule.
- 8.4 Cascade will not commence construction of the Interconnection Facilities unless and until Cascade has received from Tacoma approved designs, specifications, and construction schedule (as such documents may be revised by Tacoma).
- 8.5 Cascade will construct and operate the Interconnection Facilities in a manner that is consistent with the provisions of all permits, regulatory approvals and agreements governing the construction and operation of the Second Supply Project.

- 8.6 Prior to the submission to Tacoma of designs, specifications and construction schedule for the Interconnection Facilities, Cascade and Tacoma will negotiate a mutually agreeable amount of compensation payable by Cascade to Tacoma for the use of any property, rights of way and for work performed by Tacoma staff and consultants in facilitating the construction of Interconnection Facilities, exclusive of the activities undertaken by Tacoma pursuant to section 8.3.
- 8.7 Cascade agrees that Tacoma owns the Isolation Valve directly off of the Tacoma system, piping from the Tacoma Isolation Valve to the meter, the meter vault and the meter and telemetry equipment, all as will be set forth on Exhibit A. Maintenance and operation costs for this equipment are the responsibility of Tacoma. Any capital costs related to this equipment, including upgrades or replacement and renewal are the responsibility of Cascade.
- 8.8 The Wholesale Service Connection shall be governed by the terms of this Agreement. No future Wholesale Service Connections shall be permissible without a subsequent and separate written agreement between the Parties. Neither Party shall be obligated to agree to or execute any agreement or permit with the other Party to construct additional Wholesale Service Connection(s).

9. PRICING OF WHOLESALE WATER

- 9.1 Commencing with the month in which deliveries of wholesale water to Cascade pursuant to section 6 begin, and for each month thereafter during the Term, Cascade will pay to Tacoma a monthly payment equal to the amount of wholesale water delivered in such month, as measured at the delivery meter, times the wholesale water service rate plus the readiness to serve charge as set forth in TMC Section 12.10.400 of the City of Tacoma Water Rates and Regulations (or the successor TMC Section), subject to Cascade's obligation to pay the Minimum Monthly Bill in accordance with section 9.2
- 9.2 Regardless of whether Cascade has or has not established a Requested Initial Delivery Date, Cascade shall for the period 2009 through 2026 pay not less than the Minimum Monthly Bill. The Minimum Monthly Bill shall be determined by multiplying the Minimum Daily Purchase Amount ("P") set forth below, times the number of days in each month ("D"), times the wholesale water service rate ("R"), ($P \times D \times R = M$) minimum payment).

Calendar Year	Minimum Daily Purchase Amount (in MGD)
2009	2.0
2010	2.0
2011	2.0
2012	3.0
2013.	3.0

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2014	3.0
2015	4.0
2016	4.0
2017	4.0
2018	5.0
2019	5.0
2020	6.0
2021	6.0
2022	7.0
2023	7.0
2024	8.0
2025	8.0

Provided, however, after the Initial Delivery Date, whenever Tacoma declares a supply curtailment or cannot otherwise deliver the minimum water supply Cascade shall be billed only for the water actually delivered.

- 9.3 In the event that the sum of the Minimum Monthly Bills for a calendar year exceeds the sum of the payments made by Cascade during such calendar year pursuant to Section 9.1, then Tacoma will bill Cascade in February of the immediately following calendar year during the period of 2010 through 2026 the amount by which the sum of the Minimum Monthly Bills for such calendar year exceeded the payments made pursuant to Section 9.1 during such calendar year.
- 9.4 The water service rate and the readiness to serve charge may be periodically adjusted and shall be applicable as set forth in the rate schedule as adopted by the Public Utility Board and Tacoma City Council.
- 9.5 Cascade shall pay Tacoma System Development Charges ("SDCs") of \$16,484,000 for water supplied pursuant to section 6.1 as follows:
 - 9.5.1 Within one-hundred and twenty (120) days of the Effective Date, Cascade will pay Tacoma an initial payment of twenty percent (20%) of the SDCs or \$3,296,800.
 - 9.5.2 After such initial payment, the remaining balance of the SDCs will be paid in not more than ten (10) equal annual payments, with the first such payment due on the first anniversary of the Effective Date and thereafter on each successive anniversary until the SDCs are paid in full.
- 9.6. Cascade shall pay Tacoma a Capacity Reservation Fees ("CRFs") of \$9,420,442 for water supplied pursuant to section 6.2 as follows:
 - 9.6.1 Within one-hundred and twenty (120) days of the Effective Date, Cascade will pay Tacoma an initial payment of twenty percent (20%) of

the CRFs or \$1,884,088.

- 9.6.2 After such initial payment, the remaining balance of the CRFs will be paid in not more than ten (10) equal annual payments, with the first such payment due on the first anniversary of the Effective Date and thereafter on each successive anniversary until paid in full.
- 9.7 In addition to the annual payments pursuant to sections 9.5 and 9.6, Cascade will on the same date pay Tacoma interest calculated on a monthly basis (the first day of every month) on the outstanding unpaid balance of the SDCs and CRFs calculated using the prime interest rate, as reported by the Wall Street Journal ten days before the date that the monthly interest calculation is made, minus two percent (2%). Cascade may, at its election, prepay all or any portion of the SDCs and/or CRFs outstanding balance, in which case the interest accrued to the date of such prepayment shall also be paid to Tacoma, and the remaining unpaid balance shall be paid in equal installments.
- 9.8 If Tacoma exercises its option pursuant to section 5.1 to reduce water deliveries under section 6.2, then the CRFs payable under section 9.6 will be reduced proportionately. For example, if the total deliveries under section 6.2 are reduced by Tacoma by twenty percent (20%), then the total amount of CRFs payable under section 9.5 will be reduced by twenty percent (20%). Such reduction will be accomplished by first eliminating any CRFs not yet paid by CWA, and then by Tacoma refunding to Cascade any CRFs (or portions thereof) already paid starting with the most recent CRFs payment made by Cascade until such proportionate reduction is achieved. Any such refunds shall include interest calculated from the date of payment to the date of the refund, at the interest rate described in section 9.7. Any such refund shall be paid by Tacoma to Cascade within ninety (90) days of the notice issued pursuant to section 5.1.
- 9.9 An interest component will be paid by Tacoma to Cascade on the CRF payments eliminated or refunded pursuant to section 9.8. For the CRFs (or portions thereof) that are eliminated or refunded pursuant to section 9.8, the interest component will be calculated from the Effective Date to the date the payment of any refund is due pursuant to section 9.8. Such interest component will be the sum of the annual interest calculated for each of the years that the amount refunded or eliminated was outstanding, using the interest rate for each such year charged Cascade by Tacoma pursuant to section 9.7.

10. PAYMENTS

10.1 Tacoma shall prepare and forward to Cascade in the first week of each month during the Term an invoice for the payment of amounts due pursuant to this Agreement for the preceding month. Each such invoice shall set forth the payment due from Cascade to Tacoma. In addition, during the first week of each February during the

2010 through 2026 period, when required pursuant to section 9.3, Tacoma shall prepare and forward to Cascade an invoice for any amounts due to Tacoma under section 9.3.

- 10.2 Cascade may request from Tacoma, and Tacoma shall promptly provide to Cascade, any documentation or other information that Cascade may reasonably require to understand the nature of the costs contained in any invoice issued pursuant to this section 10.
- 10.3 Payment of any and all invoices forwarded to Cascade by Tacoma pursuant to this section 10 shall be due and payable by Cascade on or before the Due Date, with payment to be made by wire transfer or such other means as agreed to by Tacoma and Cascade.
- 10.4 If full payment of any invoice is not received by Tacoma on or before the Due Date, such payment shall be considered past due, and the unpaid amount of such invoice shall accrue interest at the Interest Rate. Further, if an invoice or any portion thereof remains unpaid for a period of thirty (30) days after the Due Date, Tacoma may elect to suspend deliveries due to Cascade pursuant to section 6 until Cascade has paid all amounts due and owing, and any late payment charges due thereon.
- 10.5 If Cascade disputes all or any portion of an invoice issued by Tacoma pursuant to this section 10, Cascade shall pay such invoice in full, and shall indicate in writing to Tacoma the portions of the invoice that Cascade disputes and the reasons therefore. The Parties shall make a good faith effort to resolve such dispute. If such efforts are unsuccessful, either Cascade or Tacoma may seek resolution of the dispute pursuant to section 21.
- 10.6 If the resolution of any dispute over an invoice, whether by agreement of the Parties or by dispute resolution pursuant to section 21, results in the payment of money from Tacoma to Cascade, such payment shall include an interest payment for the period commencing with the date the disputed invoice was paid, and ending on the date the payment resolving the dispute is made to the Cascade, calculated using the Interest Rate.
- 10.7 Cascade hereby covenants and agrees that it shall establish, maintain and collect rates or charges for water and other services, facilities and commodities sold, furnished or supplied by it to its members which shall be adequate to provide revenues sufficient to enable Cascade to make the payments required to be made pursuant to the terms of this Agreement, and to pay all other charges and obligations payable from or constituting a charge or lien upon such revenues.
- 10.8 Payments by Cascade of SDCs, CRFs or of amounts under each invoice issued pursuant to this section 10 shall constitute an operating expense for water purchased by Cascade.

11. PLANNING AND COORDINATION

- 11.1 Cascade will develop a long-term supply plan and acquire additional water supplies to establish a firm supply for its members. Cascade shall provide to Tacoma a copy of such long-term supply plan, which plan shall also demonstrate that Cascade has planned for and has the ability to develop sufficient water supplies for its members to replace the wholesale water deliveries set forth in section 6.2 upon the expiration of such water delivery obligation under this Agreement. If Cascade cannot demonstrate by December 1, 2015 to the satisfaction of Tacoma that it will develop sufficient replacement water supplies to replace the water sale set forth in section 6.2, then the water delivery obligation set forth in section 6.2 may be terminated in whole or in part by Tacoma no sooner than January 1, 2016 by providing Cascade written notice of such termination six months prior to date of termination established by Tacoma in such written notice. In such event, the water delivery obligation of Tacoma to Cascade under this Agreement shall be limited to the delivery obligation set forth in sections 6.1 and 6.3.
- obligation under section 6.2 pursuant to section 11.1, then Tacoma will make a payment to Cascade not later than sixty (60) days after the effective date of such termination. If such termination occurs in 2016, the payment from Tacoma to Cascade will be the sum of \$4,148,111. If such termination occurs in any year subsequent to 2016, the payment due from Tacoma to Cascade shall be reduced by the amount of \$415,000 for each year after 2016 that such termination occurs. If Tacoma only terminates its delivery obligation under section 6.2 in part, then the payment due from Tacoma to Cascade will be prorated to reflect the percentage of the total water deliveries under section 6.2 that were terminated pursuant to section 11.1. For example, if twenty percent (20%) of the total water delivery obligation under section 6.2 is terminated pursuant to section 11.1, then the payment due by Tacoma to Cascade will equal twenty percent (20%) of \$4,146,111.
- 11.3 The Parties will seek to adopt conservation plans and to coordinate regional supply scheduling and other operational programs that promote efficient use of water supplies, facilities, financial and staff resources.

12. TERMINATION OF THE SECTION 6.2 WATER DELIVERIES

If after October 1, 2008 Tacoma has stood ready to serve water pursuant to Section 6 for a five year period, and during such period Cascade has not established a Requested Initial Delivery Date for the delivery amounts set out in section 6.2, then Tacoma may terminate its water delivery obligations under section 6.2 of this Agreement by providing Cascade written notice of such termination not less than one hundred eighty (180) days prior to the date of termination specified in such notice. In the event of such termination, Cascade shall not be obligated to make any further annual payments under section 9.6. The permanent supply purchased by Cascade under section 6.1 of this Agreement, and all payment obligations associated therewith, shall be unaffected by such termination.

13. WATER MANAGEMENT AND SCHEDULING

13.1 Not later than May 1 of each year during the Term prior to a year in which deliveries will be made pursuant to section 6, Cascade will submit to Tacoma a written draft operating plan for the next Operating Year. Each such draft operating plan will include, but not be limited to, the amount of Diversion Rights water that Cascade expects to receive pursuant to this Agreement in each week during the next Operating Year.

13.2 Scheduling Delivery of Wholesale Water within an Operating Year

- 13.2.1 Prior to 10:00 A.M. on any Thursday during each Operating Year, Cascade may submit to Tacoma, in the manner and in the form established by Tacoma, a schedule for wholesale water deliveries for the following seven (7) days. Such schedule shall contain at a minimum a uniform rate of water deliveries for each day of the schedule, and shall take effect on the day following the Thursday the schedule is submitted. Schedules so submitted shall remain in effect until replaced by a subsequent schedule submitted in accordance with this subsection 13.2.1. Tacoma shall take all reasonable actions required to ensure that the amount of wholesale water scheduled by Cascade is available to it.
- 13.2.2 Tacoma may revise schedules submitted pursuant to subsection 13.2.1, if and to the extent any such schedule calls for deliveries that are in excess of Cascade's rights under this Agreement or is inconsistent with Project operating constraints. Tacoma shall notify Cascade if its schedule is revised pursuant to this subsection 13.2.2. In the event that a change in circumstances necessitates a change to a schedule then in effect, Cascade may request a change to such schedule, and Tacoma shall take all reasonable actions to accommodate such schedule change.
- 13.3 As Project Operator, Tacoma reserves the right to revise schedules submitted by Cascade as Tacoma determines may be necessary to comply with permits, authorizations, regulations or orders applicable to the Project, or to deal with Uncontrollable Forces that affect the ability to fulfill such schedules. Tacoma will provide Cascade with as much notice as is practicable under the circumstances of any such revision, and Tacoma shall treat Cascade the same as other wholesale customers in making such revisions.

14. METER OWNERSHIP, CALIBRATION AND MAINTENANCE

14.1 The cost of installing the initial and any replacement delivery meter shall be borne by Cascade.

- 14.2 Tacoma shall be responsible for the calibration and testing of the delivery meter. No less frequently than once each year the delivery meter shall be tested for accuracy, and the results of such testing shall be made available to Cascade at no charge. The costs of the annual delivery meter test shall be billed to Cascade. In addition to the annual meter test, Cascade may test the delivery meter at any reasonable time and at Cascade's expense. The results of any additional delivery meter test shall be made available to Tacoma at no charge.
- 14.3 Tacoma shall establish the size and the flow range within which the delivery meter must operate. Should Tacoma determine that the delivery meter is operating outside the flow range so established, it shall notify Cascade in writing of such operation, and the size of the replacement meter needed to operate within the flow range. Tacoma shall provide Cascade an opportunity to discuss the problem with the existing delivery meter, and the need for the proposed replacement delivery meter. After providing such written notice, Tacoma may replace the faulty delivery meter and bill Cascade for the costs of procuring and installing such meter, and Cascade shall be obligated to pay such bill.
- 14.4 The Flow Control Valve for Cascade shall be owned by and shall be under the control of Cascade. Cascade shall be responsible for the operation and control of its Flow Control Valve. Upon reasonable notice to Cascade, Tacoma shall have the right to enter the meter and/or valve vault or vaults of Cascade for any reason related to this Agreement or the Project Agreement.
- 14.5 Tacoma shall have access to, but not control of, the control signals from each meter station, and access to the vault in which the delivery meter is located. The costs of equipment necessary to receive any such control signals shall be borne by Cascade.

15. WHOLESALE WATER DELIVERIES IN EXCESS OF SCHEDULES

- 15.1 Nothing in this Agreement shall prohibit Cascade from requesting, or Tacoma from agreeing to deliver, permanent wholesale water in excess of the limits set forth in section 6.
 - 15.1.1 Such agreed upon deliveries will not be subject to the Surcharge Rate.
 - 15.1.2 Unless otherwise agreed to by the Parties, such deliveries shall be priced in accordance with section 9.1; provided that additional permanent water shall be subject to a full SDC offset by a credit in the amount of any Capacity Reservation Fee paid for water supplied pursuant to section 6.2 converted to permanent supply.

- 15.2 Should Tacoma determine that Cascade is receiving deliveries of wholesale water at the Wholesale Service Connection in excess of its scheduled amounts, Tacoma shall notify Cascade of the excess deliveries, and Cascade shall promptly take the steps necessary to reduce its deliveries to amounts equal to its scheduled amounts, or to revise its schedules to reflect the level of deliveries it is receiving.
- 15.3 If Cascade has not taken action to revise its schedules or to reduce its deliveries to a level equal to its scheduled amounts within twenty-four hours of receiving notice from Tacoma pursuant to subsection 15.2, Tacoma may take any action it deems necessary to reduce the deliveries to a level equal to Cascade's scheduled amounts, and charge Cascade the Surcharge Rate for any excess deliveries made after the expiration of the twenty-four hour notice period.

SHARING WATER SHORTAGES

In the event there is a water shortage or drought that requires Tacoma to institute a water rationing or water use restriction program for Tacoma's retail customers, Tacoma will institute reductions to deliveries of wholesale water made pursuant to this Agreement that are comparable in magnitude and duration to those Tacoma imposes on its retail customers.

17. TITLE AND RISK OF LOSS

Title and risk of loss to wholesale water delivered by Tacoma to Cascade pursuant to section 6 of this Agreement will pass from Tacoma to Cascade when such wholesale water reaches that portion of the Interconnection Facilities owned by Cascade.

18. REGULATORY COMPLIANCE

Cascade understands and agrees that the operation of the Project, and the water available from the Diversion Rights is subject to permits, authorization, and the jurisdiction of regulatory agencies and courts with the authority to issue orders and regulations regarding the Project and the Diversion Rights water. Cascade understands and agrees that Tacoma as Project Operator must comply with all such valid permits, authorizations, orders and regulations, and that such valid permits, authorizations, orders and regulations may affect the ability of Tacoma to fulfill its wholesale water deliveries under this Agreement.

19. NO RIGHT OR CLAIM TO WATER

Cascade and each of its members agrees that they have only a contract right to wholesale water as set forth in section 6 of this Agreement, and further agrees they have no claim or right to a supply of water from Tacoma upon the expiration or termination of this Agreement on any basis whatsoever.

20. AUDITS AND ACCESS TO RECORDS

Upon reasonable prior notice to Tacoma, Cascade, or any consultant of Cascade, shall be given access during normal business hours to the books, records and accounts related to this Agreement in the possession of Tacoma at the location where such books, records and accounts are located. Tacoma shall not be obligated to collate, organize or analyze the information sought by Cascade or by Cascade's consultant. Cascade shall pay Tacoma its established rate for any documents reproduced for Cascade or its consultant.

21. <u>DISPUTE RESOLUTION</u>

- 21.1 Any and all disputes arising under this Agreement shall be resolved pursuant to this section 21.
- 21.2 The Parties shall make good faith efforts to resolve by informal discussion any dispute arising under this Agreement.
- 21.3 If at any time during the good faith efforts to resolve any dispute arising under this Agreement either of the Parties determines that such informal discussions will not result in a resolution of the issue(s) in dispute, such Party may initiate the dispute resolution process in accordance with Exhibit C. Any such dispute resolution process shall be conducted pursuant to the provisions of Exhibit C.
- 21.4 In the event that a Party moves to set aside or modify the final report of the referee in court, and that Party is not the prevailing party in the final disposition of the dispute through the judicial proceedings (including any appeals), then the moving Party will be obligated to pay all of the costs incurred by the other Party in the dispute resolution process (including any judicial proceedings), which costs shall include, but not be limited, to attorneys fees.
- 21.5 Pending resolution of any dispute, the Parties shall continue to fulfill their respective duties under this Agreement.

22. UNCONTROLLABLE FORCES

- 22.1 A Party shall not be in breach of this Agreement as a result of such Party's failure to perform its obligations under this Agreement, other than the obligation to pay money when due and owing, when such failure is due to an Uncontrollable Force, to the extent that such Party, despite the exercise of due diligence, is unable to remove such Uncontrollable Force. Nothing in this Agreement shall be construed to require any Party to prevent or settle any strike or labor dispute in order to obtain relief under this section 22.
- 22.2 Any Party subject to an Uncontrollable Force that may impair its performance under this Agreement shall notify the other Party as soon as practicable. Any

Party subject to an Uncontrollable Force shall be excused from performance under this Agreement only for the duration of and to the extent of the Uncontrollable Force. Any Party subject to an Uncontrollable Force shall take all reasonable actions to remove the Uncontrollable Force. Neither the occurrence of an Uncontrollable Force nor the provisions of this section 22 shall relieve any Party of its obligation to pay money when due under the terms of this Agreement.

22.3 Uncontrollable Force shall not relieve Cascade of its payment obligations hereunder, except that Cascade shall not be required to make payments pursuant to section 9.1 for more than 6 months after water deliveries from Tacoma cease, and Cascade's obligation to make payment under section 9.1 shall not be reinstated until monthly water deliveries from Tacoma re-commence.

23. NOTICES

- 23.1 All notices, requests, demands, waivers, consents and other communications required hereunder shall be in writing, and shall be delivered by one or more of the following means: (i) in person, (ii) by overnight delivery service, (iii) by first class mail with postage prepaid, (iv) by facsimile providing confirmation of completed transmission, or (v) by such other means as may be approved by the Parties. Service of any such notice, request, demand, waiver, consent or other communication shall be deemed to have been duly given and to have become effective upon receipt.
- 23.2 Any and all notices, demands, waivers, consents and other communications shall be forwarded to each of the Parties at the following addresses:

To Tacoma:

Water Superintendent

Tacoma Water P. O. Box 11007 Tacoma, WA 98411

To Cascade:

Manager

Cascade Water Alliance

1400 112th Avenue S.E. - Suite 220

Bellevue, WA 98004

23.3 Either Party may change the address to which notices shall be sent by giving notice of such change in accordance with subsection 23.1.

DEFAULT OF OBLIGATION

24.1 If Cascade fails to make any payment in full when due under this Agreement for a period of ninety (90) days or more after the Due Date, Tacoma shall make written demand upon Cascade to make payment in full within ten (10) days of the

date of such written demand. If the failure to pay is not cured with the ten (10) day time period, Cascade shall be deemed to be in default.

24.2 In addition to the remedies provided in section 10, if Cascade has been in default of payment for a period of sixty (60) days or more, then Tacoma may terminate this Agreement by providing Cascade with written notice not less than six (6) months prior to the date of termination set forth in such written notice.

25. REPRESENTATIONS AND WARRANTIES

- 25.1 The Parties hereby represent and warrant to one another the following:
 - 25.1.1 Each Party is duly authorized and validly existing under the laws of, and is authorized to exercise it powers, rights and privileges and is in good standing in, the State of Washington, and has full power and authority to carry on its business as presently conducted and execute this Agreement and perform the transactions on its part contemplated by this Agreement.
 - 25.1.2 The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby have been duly authorized by the appropriate board or council, and no other act or proceeding on the part of any Party is necessary to authorize this Agreement, or the transactions contemplated hereby.
 - 25.1.3 The execution, delivery and performance by each of the Parties of this Agreement does not: (a) contravene any law; or (b) conflict with or result in a breach of or default under any material agreement or instrument to which any Party is a party or by which it is bound.
 - 25.1.4 There are no actions, suits, claims or proceedings pending or, to the best of each Party's knowledge, threatened against either Party that is likely to impair the consummation or the transactions contemplated hereby.
 - 25.1.5 This Agreement, when executed and delivered, will constitute a valid and binding obligation of each Party, and will be enforceable against each such Party in accordance with its terms.

26. ASSIGNMENT AND OTHER ARRANGEMENTS

The rights and obligations of this Agreement may not be sold, assigned or otherwise transferred in whole or in part by Cascade or Tacoma without the prior written consent of the other, which consent shall not be unreasonably withheld; provided that should Cascade dissolve, then Tacoma will extend to any individual member of Cascade,

or any combination thereof, the right to assume Cascade's rights and obligations under this Agreement.

27. WAIVERS

Except as otherwise provided herein or as agreed to by the Parties, no provision of this Agreement may be waived except as documented or confirmed in writing. Any waiver at any time by a Party of its rights with respect to a default under this Agreement or with any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter. Either Party may waive any notice or agree to accept a shorter notice than specified in this Agreement. Such waiver of notice or acceptance of shorter notice by a Party at any time regarding a notice shall not be considered a waiver with respect to any subsequent notice required by this Agreement.

28. AMENDMENTS

No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by the Parties.

29. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement of the Parties, and supersedes any and all prior agreements with respect to the subject matter of this Agreement. The rights and obligations of the Parties hereunder shall be subject to and shall be governed by this Agreement.

30. INTERPRETATION OF THE AGREEMENT

The Parties participated in the drafting of this Agreement. In interpreting this Agreement, no inference shall be drawn against either Party as the drafter of this Agreement. The headings used herein are for convenience of reference only, and shall not affect the meaning or interpretation of this Agreement.

31. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington (regardless of the laws that might otherwise govern under applicable principles of conflicts of law of such state). Except in respect of a lawsuit or judicial action or proceeding commenced by a third party in another jurisdiction, the Parties (i) agree that any lawsuit, judicial action or proceeding arising out of or relating to this Agreement must be heard in the Superior Court of the State of Washington, in and for the County of Snohomish or Thurston, or the United States District Court for the Western District of Washington, (ii) waive any objection to the laying of venue of any such suit, action or proceeding, (iii) irrevocably submit to the jurisdiction of any such

court in any such lawsuit or judicial action or proceeding, and (iv) consent to service of process by mail in respect to any such lawsuit or judicial action or proceeding.

32. <u>DUTY OF GOOD FAITH</u>

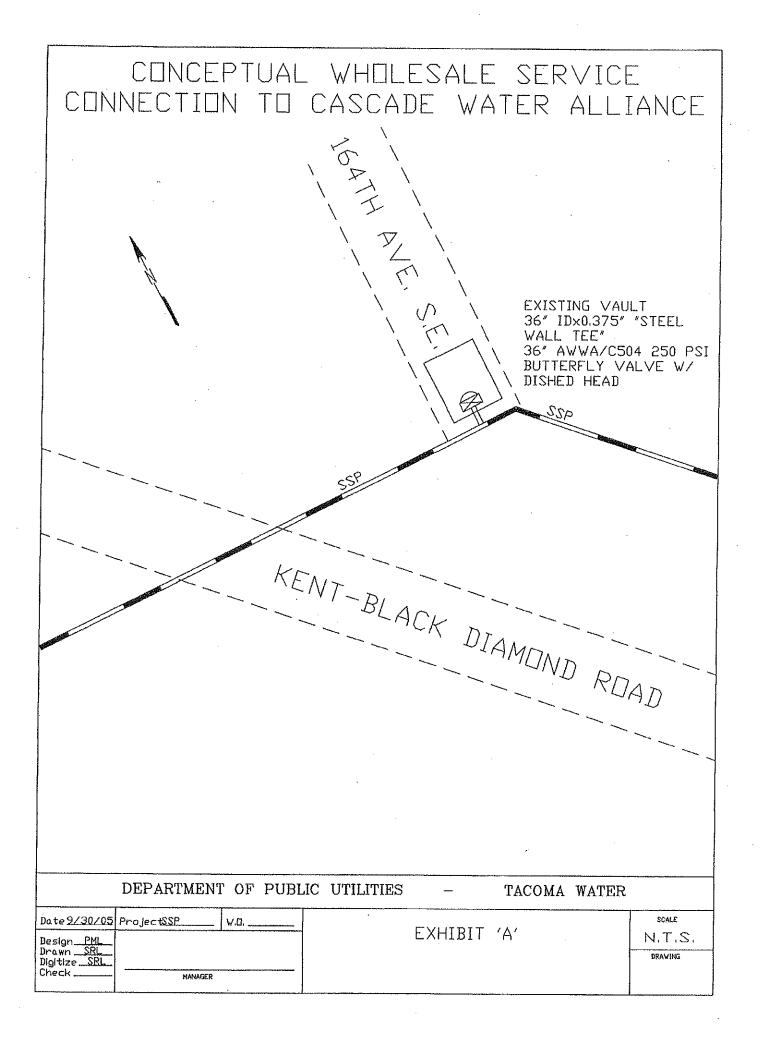
The Parties agree that in taking actions or making determinations required or provided for under this Agreement, each Party shall act in fairness and in good faith.

33. <u>COUNTERPARTS</u>

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the date first above written.

Department of Public Utilities	Cascade Water Alliance:	
By: Much Mirror Title: Director of Utilities	By: Mylyym Title: Chair	
Approved as form: Chief Assistant City Attorney	Approved as form: Michigan Russi	



SAMPLE WEEKLY OPERATIONS REPORT Exhibit 'B'

		.,	Monday 29	Tuesday 30	Wednesday 31	Thursday 1.	Friday 2	Saturday 3	Sunday 4
				INSTANTA	NEOUS SC	DURCE DA	TA		
Howard Hanson F		FEET							
Green River at Pa Limit at Palmer	mer	-CFS		ļ					
Green River at Au	in and	-CFS		<u> </u>	 				
Limit at Aubum	oein	-CFS		ļ				1	· · · · · · · · · · · · · · · · · · ·
Reservoir Inflow		-CFS			 			 	
Aveilable 2nd Wat	er Right Diversion	-Grs			 			 	
	ar right Directoros	-MGU			24 HOUR S	OUDOE D	ATA		
TOTAL DIVERSIO	N	-MG		· · · · · · · · · · · · · · · · · · ·	Z4 HOOK S	OURCE D.	MIM	,	
1ST DIVERSION	.,	-1110							
2ND DIVERSION		ł						 	
HEADWORKS FLO	OWMETER, P-1	-MG						 	
HEADWORKS FLO		-MG						 	
NF WELLS		-MG	·					 	
				WATER Q	JALITY DA	TA (P5 at F	eadworks	1	
TURBIDITY (Max.)	RIVER	-NTU						1	
	FINISHED WATER	·NTU	·				 	 	
WATER TEMP. (M	n.)	-F					····	 	
FLUORIDE (Ave.)		-mg/L						 	
CL RESIDUAL (AV	9.)	-PPM							
JVT		%							······································
PH (Ave.)	·								
				PARTI	CIPANT DE	LIVERY (pi	evious da	iy)	
	METER TOTAL	-MG						I T	
	ADJUSTED TOTAL	-MG							
W 356TH & 15 AV		-MG							
MHOLESALE CUS		-MG							
CASCADE WATER		-MG							
	METER TOTAL	-MG							
	ADJUSTED TOTAL	-MG					· · · · · · · · ·		
17th Ave SE 268th 24TH AVE SE & S		-MG							
20TH AVE SE & S		-MG -MG							
OVINGTON WD									
	ADJUSTED TOTAL	-MG							
ك .2048 SE 288ih St	TOTOGTED TOTAL	-MG							
88TH AVE SE & S	F 304TH ST	-MG			<u>-</u> -	······································			
48TH AVE SE & S		-MG							
AKEHAVEN UD		-MG							
	OJUSTED TOTAL	-MG							
4th AVE. S. & 313t		MG	—— -						
ST WAY S & \$ 332		-MG							
W356TH ST & 15	TH AVE SW	-MG							
OTAL OF ALL DEL	IVERY METERS	-MG							
IFFERENCE PROI		-MG							
	% OF TO	TAL							
ACOMA 2nd Div S		-MG	t						
ACOMA O&M SHA	****	-MG							
ENT 2nd div / O&M		∙MG							 i
	d div / O&M SHAR.	-MG							
KEHAVEN UD 2nd	div / O&M SHARE	-MG							
				PARTIC	IPANT SCH	IEDULES (previous o	lay)	
ACOMA PROJECT		-MG		T					
COMA 1ST DIV		-MG							
NT PROJECT	<u></u>	-MG							
NT 1ST DIV		-MG							
OVINGTON WO PI	KOJECT	-MG							
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KEHAVEN UD PR		-MG	·						
KEHAVEN UD 1S	t D(V	-MG							
				SCHEDU	LE DEVIATI	ONS (prev	lous day)		
2011									
COMA		MG							
COMA NT DVINGTON WD		-MG -MG							

Exhibit C - Dispute Resolution Procedures

The following procedures shall govern the resolution of any dispute arising under the Agreement between the Parties that cannot be resolved by good-faith negotiations between the Parties, unless the Parties mutually agree to use different procedures to resolve a specific dispute by executing a document setting forth such different procedures. The Parties agree that these dispute resolution procedures are intended to be used in conjunction with and governed by R.C.W 4.48, and both Parties hereby waive their right to a trial by jury for any dispute arising under this Agreement.

- 1. The Party that believes that continued good-faith negotiations will not produce a resolution of the issue(s) that is the subject of such negotiations will notify the other Party in writing that they are invoking the dispute resolution procedures of this Exhibit C.
- 2. Within twenty (20) days of the date of such notice invoking the dispute resolution procedures of this Exhibit C, the Parties shall meet and select an individual to recommend to the court as referee of the dispute resolution process in accordance with R.C.W. 4.48.020. The Parties shall select an individual who is qualified as a juror as provided by statute, competent as a juror between the Parties, a duly admitted and practicing attorney, and has experience presiding over civil litigation of contract disputes. The Parties will use the following procedure to select the recommended referee:
 - 2.1 Each Party will make a list of three individuals that are qualified pursuant to section 2 to serve as referee and exchange such list with the other Party. If the Parties agree upon a person from either list, or if both Parties list the same person, that person will be the recommended referee.
 - 2.2 If the Parties are unable to agree upon a referee after exchanging their respective lists, they will make a joint list setting forth all six candidates from the two lists.
- 3. Upon the selection of the recommended referee, or the creation of the joint list pursuant subsection 2.2, the Party that invoked the dispute resolution procedures shall file a complaint in the superior court of the appropriate county as set forth in section 31 of the Agreement, setting forth the issues(s) in dispute, and the other Party shall file an answer to such complaint. Not later than twenty (20) days after the filing of the answer, the Parties shall jointly file a motion, with the Agreement (including Exhibit C) attached, with the court requesting an order of reference that:
 - 3.1 Directs that the issue(s) raised by the complaint and answer be resolved pursuant to R.C.W. 4.48 by reference to a referee;

- 3.2 Appoints pursuant to R.C.W. 4.48.020 either the recommended referee selected by the Parties pursuant to 2.1, or a single referee from the joint list prepared pursuant to subsection 2.2; and
- 3.3 Directs the referee conduct the proceeding in accordance with the procedures set out in sections 4-10 of this Exhibit C.
- 4. In accordance with R.C.W 4.48,060, the Parties hereby waive their rights to discovery and cross-examination, and direct that the proceeding be conducted in the same manner as a motion for summary judgment as follows:
 - 4.1 The Parties shall present their respective positions by written briefs and affidavits, and without testimonial evidence or cross-examination;
 - 4.2 Oral argument will be conducted before the referee; and
 - 4.3 The burdens of proof and persuasion that pertain in a civil trial shall apply, rather than those that apply to motions for summary judgment.
- 5. After appointment of the referee, the Parties shall endeavor in good faith to prepare for the referee a joint statement of facts and the questions to be decided in the proceeding. In the absence of an agreed to joint statement of facts and questions to be decided, each Party may include its own statement of facts and questions to be decided in its initial brief.
- 6. Within ninety (90) days after the submission of the joint statement of facts and questions to be decided, or within ninety (90) days after the appointment of the referee if the Parties cannot agree to a joint submission of facts and questions to be decided, each Party shall submit to the referee a one page statement of the proposed resolution and/or award it seeks for each of the issues in dispute, and its initial brief. The statement and initial brief (excluding any attached affidavits or evidentiary documents) shall not exceed fifty (50) 8 ½ x 11" double spaced pages with 1 ½ inch margins, number 12 point type face. The statement and initial brief shall be filed simultaneously by e-mail and regular mail with the referee and opposing Party.
- 7. Within thirty (30) days after the date the Parties filed their initial briefs, the Parties shall file their respective reply briefs with the referee and the opposing Party. The reply briefs (excluding any attached affidavits or evidentiary documents) shall not exceed twenty-five (25) 8 ½ x 11" double spaced pages with 1½ inch margins, number 12 point type face. The reply briefs shall be filed simultaneously by e-mail and regular mail with the referee and opposing Party.
- 8. After the reply briefs have been filed, if the referee deems that additional responses are needed, then the referee may request the Parties file a

supplemental brief only as to those specific matters or questions raised by the referee. Such supplemental briefs shall be limited to fifteen (15) 8 ½ x 11" double spaced pages with 1 ½ inch margins, number 12 point type face, and filed at such time as requested by the referee. Any such supplemental briefs shall be filed simultaneously by e-mail and regular mail upon the referee and opposing Party.

- 9. When all briefs have been filed, the referee will schedule oral argument on the issue(s) in dispute.
- 10. After the completion of oral argument, the referee will prepare his/her proposed report in accordance with R.C.W. 4.48.70 and shall provide a copy of the proposed report to the Parties, who shall have the right to suggest changes and modifications to the proposed report, all in accordance with R.C.W. 4.48.110. The referee will file the final report with the court within twenty (20) days of the completion of the process under R.C.W.4.48.110.
- 11. Either Party may move the court to modify or set aside, in whole or in part, the final report of the referee. If the court modifies or sets aside, in whole or in part, the final report of the referee and makes another reference, then this Exhibit C shall also apply to such reference.
- 12. Except as provided in section 21 of the Agreement, each Party shall be responsible for its own costs of the dispute resolution process (including any judicial proceedings), and the Parties shall each pay one-half of the other costs of the dispute resolution proceeding, including the fees of the referee. The fees of the referee shall be established in accordance with R.C.W. 4.48.100.



Daily Cash Balance Report - Summarized

Printed: 03 May 2011, 11:00 AM User: tashton

Date From: Wednesday, April 27, 2011

Date To: Wednesday, April 27, 2011

Payment Type	Debit	Credit	Net
Cash		A PARTICIPATION OF THE PROPERTY OF THE PROPERT	
Payment	\$1,621.32	\$133.99	\$1,487.33
Total for Cash	\$1,621.32	\$133.99	\$1,487.33
Check	•		
Payment	\$1,748,549.07	\$40.00	\$1,748,509.07
Total for Check	\$1,748,549.07	\$40.00	\$1,748,509.07
Direct Deposit Payment	\$839,114.35	\$0.00	\$839,114.35
Total for Direct Deposit	\$839,114.35	\$0.00	\$839,114.35
Master Card Payment	\$3,899.84	\$0.00	\$3,899.84
Total for Master Card	\$3,899.84	\$0.00	\$3,899.84
Online Mastercard Payment	\$145.00	\$0.00	\$145.00
Total for Online Mastercard	\$145.00	\$0.00	\$145.00
Online Visa Payment	\$347.00	\$0.00	\$347.00
Total for Online Visa	\$347.00	\$0.00	\$347.00
VISA	A 2.040.50	40.00	#0.040.50
Payment Refund	\$3,349.53 \$0.00	\$0.00 \$300.00	\$3,349.53 (\$300.00)
Total for VISA	\$3,349.53	\$300.00	\$3,049.53
Total	\$2,597,026.11	\$473.99	\$2,596,552.12

RESOLUTION NO. 3886

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 AND NEW CINGULAR WIRELESS PCS, LLC, FOR THE PURPOSE OF LEASING PROPERTY FOR COMMUNICATION EQUIPMENT

THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREBY RESOLVES as follows:

Section 1. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute a Lease Agreement between the City and New Cingular Wireless PCS, LLC, in substantial conformity with the agreement attached hereto, for the purpose of leasing property at 5702 South 316th Street, Auburn, for communication equipment. A copy of said Agreement is attached hereto and denominated Exhibit "A" and incorporated herein by this reference.

<u>Section 2.</u> That the Mayor is authorized to implement such other administrative procedures as may be necessary to carry out the directives of this legislation.

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

Dated and Signed this 19th day of Sept., 2005.

CITY OF AUBURN

PETER B. LEWIS

MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

Resolution No. 3886 August 3, 2005 Page 2

SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT ("Lease") is by and between the <u>City of Auburn</u>, a municipal corporation under the existing laws of the State of Washington, having a mailing address of 25 West Main, Auburn, WA 98001 ("Landlord") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor in interest to AT&T Wireless Services of Washington, LLC, an Oregon limited liability company, dba AT&T Wireless, by AT&T Wireless Services, Inc., a Delaware corporation, its Member, having a mailing address of 6100 Atlantic Boulevard, Norcross, GA 30071 ("Tenant").

1. Lease Agreement.

(a) Landlord hereby leases to Tenant a portion of the real property legally described as follows:

"THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 21 NORTH, RANGE 4 EAST W.M., EXCEPT THE WEST 663 FEET OF THE NORTH 663 FEET OF THE SOUTH 693 FEET THEREOF, AND EXCEPT THE SOUTH 30 FEET THEREOF CONVEYED TO THE CITY OF AUBURN FOR SOUTH 316TH STREET, BY INSTRUMENT RECORDED UNDER RECORDING NO. 8503210865 AS PROVIDED BY RESOLUTION NO. 1565 OF THE CITY OF AUBURN; SITUATE IN THE CITY OF AUBURN, COUNTY OF KING, STATE OF WASHINGTON",

(collectively referred to hereinafter as the "Property").

The Lease includes the right to operate a personal communications service antenna installation on Landlord's property, on the terms and conditions set forth herein.

(b) Tenant agrees to the Lease, subject to the following terms and conditions. Landlord hereby leases to Tenant the use of that portion of the Property as legally described as follows:

"COMMENCING AT THE SOUTHEAST CORNER OF THE WEST 663.0 FEET OF THE NORTH 663.0 FEET OF THE SOUTH 693.0 FEET OF THE NORTHEAST ONE QUARTER OF THE SOUTHWEST ONE QUARTER OF SECTION 11, TOWNSHIP 21 NORTH, RANGE 4 E., W.M.; THENCE NORTH 0° 25' 35" EAST ALONG THE EAST LINE OF SAID PARCEL 249.00 FEET; THENCE SOUTH 89 ° 34' 25" EAST 40.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89 ° 34' 25" EAST 80.00 FEET; THENCE SOUTH 0 ° 25' 35" WEST 75.00 FEET; THENCE NORTH 89 ° 34' 25" WEST 80.00 FEET; THENCE NORTH 0 ° 25' 35" EAST 75.00 FEET TO THE TRUE POINT OF BEGINNING; SITUATED IN THE CITY OF AUBURN, RECORDS OF KING COUNTY, WASHINGTON"

(collectively referred to hereinafter as the "Lease Area").

The Lease Area, located at <u>5702 South 316th Street, Auburn, Washington</u>, comprises approximately an area not to exceed 6,000 square feet.

- (c) The Lease shall be nonexclusive and shall not preclude Landlord from granting a similar lease, right, license, franchise, etc., to other carriers or other persons for telecommunications or any other purpose, so long as the subsequent agreement protects Tenant's rights granted by this Lease.
- (d) Landlord further hereby leases to Tenant the use of that portion of the Property as legally described as follows:

"BEGINNING AT THE SOUTHEAST CORNER OF THE WEST 663.0 FEET OF THE NORTH 663.0 FEET OF THE SOUTH 693.0 FEET OF THE NORTHEAST ONE QUARTER OF THE SOUTHWEST ONE QUARTER OF SECTION 11, TOWNSHIP 21 NORTH RANGE 4 E., W.M.; THENCE NORTH 0 ° 25' 35" EAST 249.00 FEET; THENCE SOUTH 89 ° 34' 25" EAST 40.00 FEET; THENCE SOUTH 0 ° 25' 35" WEST 75.00 FEET THENCE SOUTH 89 ° 34' 25" EAST 80.00 FEET; THENCE SOUTH 0 ° 25' 35" WEST 47.00 FEET; THENCE NORTH 89 ° 34' 25" WEST 90.00 FEET; THENCE SOUTH 0 ° 25' 35" WEST 40.00 FEET; THENCE SOUTH 48 ° 00' 00" EAST 80.00 FEET; THENCE SOUTH 23 ° 30' 00" EAST 33.60 FEET MORE OR LESS TO THE NORTH MARGIN OF SOUTH 316TH STREET; THENCE SOUTH 88 ° 39' 09" WEST ALONG SAID NORTH MARGIN 103.52 TO THE POINT OF BEGINNING; SITUATED IN THE CITY OF AUBURN, RECORDS OF KING COUNTY, WASHINGTON"

(collectively referred to hereinafter as the "Access and Utility Easement").

The Access and Utility Easement comprises approximately an area not to exceed 16,155 square feet.

- 2. Term. The initial term of this Lease shall be five (5) years commencing on September 1, 2005 ("Commencement Date"), and terminating at midnight on the last day of the initial term ("Initial Term").
- 3. Antenna Facilities. Tenant may use the Lease Area for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities necessary for the operation of a telecommunications facility as well as for access and utilities. These facilities include an antenna tower (not to exceed 150 feet in height) and base, together with a supporting outbuilding for housing of electronic equipment related to the antennas and wireless communications system and an emergency generator (collectively, the "Antenna Facilities"), the maintenance of which shall not violate ACC 8.28.010 regarding noise.
- 4. Rent. Tenant shall pay Landlord, as rent, Twelve Thousand and no/100 dollars (\$12,000.00) per year ("Rent"). Rent shall be payable within twenty (20) days following the Commencement Date and thereafter the Rent will be payable yearly, no later than the anniversary of the Commencement Date to City of Auburn Water Utility Fund, Account Number 430.369.900, at Landlord's address specified in Section 12 below. The Rent shall increase annually over the Rent payable the preceding year in proportion to the increase of the "All Items" category of the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics of the U.S. Department of Labor for Seattle-Everett Metropolitan Area (the "Index"). The first adjustment shall be based on the amount, if any, by which the Index for the 12th month of the Lease term has increased over the Index for the month preceding the commencement of the lease term. Subsequent adjustments will be based on the amount, if any, by which the Index for each subsequent 12th month of the Lease term has increased over the Index for the 12th month of the preceding 12-month period. It shall be the responsibility of the Landlord to track the CPI and notify the Tenant of increases or reductions in the Rent. Landlord shall notify Tenant within 90 days of the commencement of the Renewal Term as to the revised

rate at which the Rent shall be increased annually thereafter. Landlord will invoice Tenant for back Rent due or refund over payment as necessary to correct the payment received for the first year of the Renewal Term. If at any time the CPI ceases to incorporate a significant number of items, if a substantial change is made in the method of establishing the CPI, or if issuance of the CPI shall be discontinued, then the Landlord and Tenant shall mutually agree upon another standard recognized cost of living index issued by the United States Government, provided that if the parties cannot reach agreement on such other standard cost of living index, then the Landlord shall select the index closest to the CPI. In either case, the substitute index chosen shall result in increases in the Rent similar to those that had been, or would have been, generated by the CPI. If this Lease is terminated at a time other than on the anniversary of the Commencement Date, Rent shall be prorated as of the date of termination for any reason (other than a default by Tenant) and all prepaid Rent shall be refunded to Tenant within sixty (60) days.

Renewal. Tenant may extend this Lease for (5) additional, five-year terms (each a "Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein, including the Rent increase set forth in Section 4, above. This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew this Lease, at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term. Landlord may, during any Renewal Term, notify Tenant, in writing, of Landlord's intention not to renew this Lease for an additional Renewal Term, which notice shall be provided to Tenant at least one hundred and eighty (180) days prior to the expiration of the then in effect Renewal Term. Landlord may, during the final one hundred and eighty (180) days of the Initial Term or any Renewal Term, conduct a market survey to determine the fair market value of the Lease. The Rent for the next Renewal Term will be established by the results of the market survey with each subsequent years Rent governed by the terms of Section 4, however, under no circumstance will the Rent decrease as a result of the market survey below the amount of the most recently established rate in existence prior to the market survey. If Landlord and Tenant cannot reach agreement on the Rent for the next Renewal Term prior to the end of the initial or any renewal term the Lease will not renew. If Tenant shall remain in possession of the Lease Area at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

6. Interference. Tenant and Landlord shall not operate in a manner which interferes with the other party's operations on the Property. Tenant's Antenna Facilities and the use thereof shall not interfere with the use of any other communication or similar equipment of any kind and nature owned or operated by Landlord or other lessee, licensees, franchisees, etc., existing and operating on the Property prior in time to the commencement of this Lease, and subsequent to the installation by Tenant of the Antenna Facilities, Landlord agrees to exercise reasonable care to assure equipment of subsequent providers leasing space on the Property does not interfere The Landlord, however, is not in any way with Tenant's Antenna Facilities operations. responsible or liable for any interference with Tenant's use of Landlords Property, which may be caused by the use and operation of any other tenant's equipment, even if caused by new technology, so long as such equipment continues to operate within its existing frequencies and in compliance with all applicable laws and FCC rules and regulations. In the event there is interference between Tenant and any third party, such interference will be resolved by and between the parties affected; however, if such interference cannot be resolved to Tenant's satisfaction within forty-eight (48) hours from commencement of such interference, then the parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, to terminate this Lease upon 30 days notice to Landlord and restore the Landlord's Property to its original condition, reasonable wear and tear and loss due to casualty or other causes beyond Tenant's control excepted.

- (a) Tenant shall have the right, at its expense, to erect and maintain on the Lease Area, improvements, personal property and facilities necessary to operate its communications system, including, antenna tower and base, radio transmitting and receiving antennas, and related cables and conduits, equipment shelters and/or cabinets and related cables and utility lines and a location based system, including coaxial cable, base units and other associated equipment as such location based system may be permitted by any county, state or federal agency/department. Tenant shall have the right to alter, replace, and expand within the confines of the Lease Area as defined in Section 1 and without interference to other providers / tenants, enhance and upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. Landlord acknowledges that it shall not interfere with any aspects of construction, including, attempting to direct construction personnel as to the location of or method of installation of the Antenna Facilities. The Antenna Facilities shall remain the exclusive property of Tenant. Tenant shall have the right to remove the Antenna Facilities at any time during and upon the expiration or termination of this Lease.
- (b) Tenant shall, at its sole expense, secure the Lease Area with a perimeter security fence including a gate at the entrance.
- (c) Tenant shall, at Tenant's expense, keep and maintain the Lease Area and Antenna Facilities now or hereafter located on the Property in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and loss due to casualty or other causes beyond Tenant's control excepted. Upon termination or expiration of this Lease, the Lease Area and Antenna Facilities areas shall be returned to Landlord in good, usable condition, normal wear and tear and loss due to casualty or other causes beyond Tenant's control excepted, within ninety (90) days.
- (d) Tenant shall have the right to install utilities, power and telephone, at Tenant's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators). Landlord agrees to cooperate with Tenant in its reasonable efforts to acquire necessary utility service. Tenant shall, wherever practicable, install separate meters for utilities used on the Property by Tenant. Landlord shall diligently correct any variation, interruption or failure of utility service within Landlord's control.
- (e) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Lease Area ("Access") at all times during the Initial Term of this Lease and any Renewal Term. In the event Landlord, its employees or agents unreasonably deny Access to Tenant, its employees or agents, Tenant shall, without waiving any other rights that it may have at law or in equity, deduct from Rent amounts due under this Lease an amount equal to Fifty and no/100 Dollars (\$50.00) per day for each day that Access is impeded or denied.
- <u>8. Termination.</u> Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:
- (a) upon thirty (30) days' written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within that thirty (30) day period;
- (b) immediately if Tenant is unable to obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;
- (c) upon ninety (90) days' written notice by Tenant if the Lease Area or the Antenna Facilities are, or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;

- (e) at the time title to the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Lease Area unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking.
- (f) Landlord may terminate this Lease if Landlord needs the Lease Area for expansion of Landlord's responsibility to provide its services, and Landlord has no reasonable or economical alternative site available, provided Landlord provides Tenant written notice twelve (12) months in advance of Landlord's need to re-establish Landlord's sole use of the Lease Area. Upon Tenant's receipt of written notice, Tenant shall have six (6) months to submit to Landlord alternative locations for its Antenna Facilities. Such alternative locations may be on the Property or other properties owned or managed by Landlord. Landlord shall evaluate such alternatives and advise Tenant in writing if one or more of the alternatives is suitable to accommodate Tenant's Antenna Facilities. To be a suitable alternative location, such location will not unreasonably result in any interruption of the communications service of Tenant on Landlord's Property; nor will it impair, or in any manner alter, the quality of communications service provided by Tenant on and from Landlord's owned or managed properties. Tenant shall submit additional relevant information to assist the Landlord in making such evaluation. Landlord shall give each alternative location proposed by Tenant full and fair consideration, within a reasonable time so as to allow for the relocation work to be performed in a timely manner. If, in Tenant's reasonable judgment, no suitable alternative location can be found, Tenant shall remove its Antenna Facilities as otherwise provided in this Section 7 (c) of this Lease. If an alternative location for Tenant's Antenna Facilities is found. Landlord and Tenant agree to enter into a new Lease Agreement with the same terms and conditions of this Lease.
- (g) If, during the term of this Lease there is a determination made pursuant to an official unappealable order of the Federal Communications Commission or any other applicable law, order, ordinance, regulation, directive, or standard as stated above that use of the Antenna Facilities by the Tenant poses a human health hazard which cannot be remediated, then (a) Tenant shall immediately cease all operations of the Antenna Facilities, and (b) the Lease shall terminate as of the date of such order without further liability. If for reasons related to public health, safety or welfare, Landlord determines that this Lease must be terminated, then Landlord reserves rights of unilateral termination and will do so by providing Tenant with a six (6) month written notice.
- (h) Tenant shall be entitled to a pro rata refund of its prepaid Rent for any termination of this Lease by Landlord pursuant to Subsection 8(f) or 8(g).
- 9. Default and Right to Cure. Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 12 hereof, to take effect immediately, if the other party (i) fails to perform any covenant for a period of thirty (30) days after receipt of written notice thereof to cure or (ii) commits a material breach of this Lease and fails to diligently pursue such cure to its completion after sixty (60) days' written notice to the defaulting party.
- 10. Taxes. Landlord shall pay when due all real property taxes or other fees and assessments for the Property, including the Lease Area. In the event that Landlord fails to pay any such real property taxes or other fees and assessments, Tenant shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease. Notwithstanding the foregoing, Tenant shall pay any personal property tax, State leasehold tax, excise tax, real property tax or any other tax or fee which are directly attributable to the presence or installation of Tenant's Antenna Facilities, only for so long as this Lease has not expired of its own terms or is not terminated by either party. Landlord hereby grants to Tenant the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Landlord and/or Tenant, any personal property or real property tax assessments, State leasehold

- (d) immediately upon written notice by Tenant if the Lease Area or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement on a prorated basis of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Lease Area and/or the Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction; or
- (e) at the time title to the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Lease Area unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking.
- (f) Landlord may terminate this Lease if Landlord needs the Lease Area for expansion of Landlord's responsibility to provide its services, and Landlord has no reasonable or economical alternative site available, provided Landlord provides Tenant written notice twelve (12) months in advance of Landlord's need to re-establish Landlord's sole use of the Lease Area. Upon Tenant's receipt of written notice, Tenant shall have six (6) months to submit to Landlord alternative locations for its Antenna Facilities. Such alternative locations may be on the Property or other properties owned or managed by Landlord. Landlord shall evaluate such alternatives and advise Tenant in writing if one or more of the alternatives is suitable to accommodate Tenant's Antenna Facilities. To be a suitable alternative location, such location will not unreasonably result in any interruption of the communications service of Tenant on Landlord's Property; nor will it impair, or in any manner alter, the quality of communications service provided by Tenant on and from Landlord's owned or managed properties. Tenant shall submit additional relevant information to assist the Landlord in making such evaluation. Landlord shall give each alternative location proposed by Tenant full and fair consideration, within a reasonable time so as to allow for the relocation work to be performed in a timely manner. If, in Tenant's reasonable judgment, no suitable alternative location can be found, Tenant shall remove its Antenna Facilities as otherwise provided in this Section 7 (c) of this Lease. If an alternative location for Tenant's Antenna Facilities is found, Landlord and Tenant agree to enter into a new Lease Agreement with the same terms and conditions of this Lease.
- (g) If, during the term of this Lease there is a determination made pursuant to an official unappealable order of the Federal Communications Commission or any other applicable law, order, ordinance, regulation, directive, or standard as stated above that use of the Antenna Facilities by the Tenant poses a human health hazard which cannot be remediated, then (a) Tenant shall immediately cease all operations of the Antenna Facilities, and (b) the Lease shall terminate as of the date of such order without further liability. If for reasons related to public health, safety or welfare, Landlord determines that this Lease must be terminated, then Landlord reserves rights of unilateral termination and will do so by providing Tenant with a six (6) month written notice.
- (h) Tenant shall be entitled to a pro rata refund of its prepaid Rent for any termination of this Lease by Landlord pursuant to Subsection 8(f) or 8(g).
- 9. Default and Right to Cure. Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 12 hereof, to take effect immediately, if the other party (i) fails to perform any covenant for a period of thirty (30) days after receipt of written notice thereof to cure or (ii) commits a material breach of this Lease and fails to diligently pursue such cure to its completion after sixty (60) days' written notice to the defaulting party.
- 10. Taxes. Landlord shall pay when due all real property taxes or other fees and assessments for the Property, including the Lease Area. In the event that Landlord fails to pay

any such real property taxes or other fees and assessments, Tenant shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease. Notwithstanding the foregoing, Tenant shall pay any personal property tax, State leasehold tax, excise tax, real property tax or any other tax or fee which are directly attributable to the presence or installation of Tenant's Antenna Facilities, only for so long as this Lease has not expired of its own terms or is not terminated by either party. Landlord hereby grants to Tenant the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Landlord and/or Tenant, any personal property or real property tax assessments, State leasehold tax or excise tax that may affect Tenant. If Landlord receives notice of any personal property or real property tax assessment, State leasehold tax or excise tax against the Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment. Further, Landlord shall provide to Tenant any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10.

11. Insurance and Subrogation and Indemnification.

- (a) Tenant shall provide Commercial General Liability Insurance naming Landlord (the City of Auburn) as additional insured in an aggregate amount of Two Million and no/100 dollars (\$2,000,000.00). Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain.
- (b) Tenant shall indemnify, protect, defend and hold Landlord and its employees and agents harmless from and against any and all claims, liabilities, judgments, costs, damages, and expenses, including reasonable attorney's fees, arising out of or in any way related to Tenant's operation of the Antenna Facilities, including, but not limited to, the installation, maintenance, operation or removal thereof, except to the extent that such claim, liability, judgment, cost, damage or expense arises out of the negligent act or omission, or willful misconduct of Landlord or its employees or agents. Landlord shall not be liable to Tenant, its agents, employees and contractors for damage to the Antenna Facilities or any other property belonging to Tenant from any cause, except for any damage caused by the negligent act or omission or willful misconduct of Landlord or its employees or agents. Tenant waives all claims against Landlord and its employees and agents for damage to persons or Antenna Facilities or property arising for any reason other than a claim based on the negligent act or omission or willful misconduct of Landlord or its employees or agents. Landlord and its employees and agents shall have no liability to Tenant for any interruption of any utility service unless caused by the negligent act or omission or willful misconduct of Landlord or its employees or agents.

Should a court of competent jurisdiction determine that this Lease 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 Tenant and the Landlord, its officers, officials, employees and volunteers, the Landlord's liability hereunder shall be only to the extent of the Landlord's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Tenant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Lease.

12. Notices. All notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Tenant, to:

c/o Cingular Wireless LLC

Attn: Network Real Estate Administration

6100 Atlantic Boulevard Norcross, GA 30071 Re: Site – SS02 Aubum

With a copy to:

Cingular Wireless PCS, LLC Attn: Legal Department 15 East Midland Avenue Paramus, NJ 07652 Re: Site – SS02 Auburn

If to Landlord, to:

Public Works Director City of Auburn 25 West Main St. Auburn, WA 98001

With a copy to:

City Attorney City of Auburn 25 West Main St. Auburn, WA 98001

- 13. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Tenant and which will not interfere with Tenant's rights to or use of the Lease Area; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord.
- 14. Environmental Laws. Landlord represents that it has no knowledge of any substance, chemical or waste (collectively, "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Property in violation of Landlord shall be responsible for, and shall promptly conduct any any applicable law. investigation and remediation as required by any applicable environmental laws, for all spills or other releases of any Hazardous Substance not caused in whole or in part by Tenant, that have occurred or which may occur on the Property. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Property. Landlord agrees to defend, indemnify and hold Tenant harmless from Claims resulting from Actions on the Property not caused by Landlord or Tenant prior to and during the Initial Term and any Renewal Term of this Lease. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 14 shall survive the termination or expiration of this Lease.
- 15. Assignment and Subleasing. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall not be assigned by Tenant without the express written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Any attempted assignment in violation of this Section shall be void. The transfer of the rights and obligations of Tenant to a parent, subsidiary, or other affiliate of Tenant, or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of Tenant's stock or assets, shall not be deemed an assignment. Tenant shall give to Landlord thirty (30) days' prior written notice of any such transfer.

Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant or to remove any property of Tenant or Mortgagees located on the Lease Area, except that the cure period for any Mortgagees shall not be less than thirty (30) days after receipt of the default notice, as provided in Section 9 of this Lease. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by Tenant. Failure by Landlord to give Mortgagees such notice shall not diminish Landlord's rights against Tenant, but shall preserve all rights of Mortgagees to cure any default and to remove any property of Tenant or Mortgagees located on the Lease Area.

The Lease Area shall be used exclusively as a site for a wireless telecommunications facility. The Tenant may allow use of all or a portion of the Lease Area or their Antenna Facilities by others, with prior written approval of the Landlord.

16. Removal of Antenna Facilities. The Antenna Facilities are and shall remain the property of the Tenant and upon the expiration or earlier termination of this Lease, Tenant shall, at Tenant's sole cost and expense, remove the Antenna Facilities and restore the Lease Area to its original condition, normal wear and tear and loss due to casualty or other causes beyond Tenant's control excluded.

17. Miscellaneous.

- (a) The substantially prevailing party in any litigation, including any arbitration to which the parties shall submit, arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.
- (b) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties. At such time as the Auburn City Council approves any regulation affecting telecommunications, Tenant agrees to amend this Lease, as determined by the Landlord in order to comply with any future ordinance related to telecommunications provided, however, that in no event shall such regulation (i) materially interfere with or affect Tenant's operation of its Antenna Facilities; or (ii) increase Tenant's financial obligations under the terms of this Lease, except as provided herein, or impose some new financial obligations not already contemplated by this Lease. No amendment, change or modification of this Lease shall be valid, unless in writing and signed by all parties hereto.
- (c) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached hereto as Exhibit A) necessary to protect its rights or use of the Lease Area. The Memorandum of Lease may be recorded in place of this Lease by either party. In the event the Property is encumbered by a mortgage or deed of trust, Landlord agrees, upon request of Tenant, to obtain and furnish to Tenant a non-disturbance and attornment agreement for each such mortgage or deed of trust, in a form reasonably acceptable to Tenant. Tenant may obtain title insurance on its interest in the Lease Area.
- (d) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

- (e) If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. No provision of this Lease will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.
- (f) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.
- (g) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- (h) All Exhibits referred to herein and any Addenda are incorporated herein for all purposes. The parties understand and acknowledge that Exhibit A (Memorandum of Lease) is attached to this Site Lease Agreement. The terms of all Exhibits are incorporated herein for all purposes.
- (i) If Landlord is represented by any broker or any other leasing agent, Landlord is responsible for all commission fees or other payment to such agent, and agrees to indemnify and hold Tenant harmless from all claims by such broker or anyone claiming through such broker. If Tenant is represented by any broker or any other leasing agent, Tenant is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Landlord harmless from all claims by such broker or anyone claiming through such broker.
- 18. Headings. The caption and paragraph headings used in this Lease are inserted for convenience of reference only and are not intended to define, limit or affect the interpretation or construction of any term or provision hereof.
- 19. Liens. Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on, and for services rendered or material furnished to, the Antenna Facility, and shall keep the Antenna Facility free from all liens.

LANDLORD: City of Auburn
By: Peter B. Lewis
Its: Mayor
SEP 1 9 2005
Taxpayer ID Number: 91-600 1228
TENANT:
New Cingular Wireless PCS, LLC a Delaware limited liability company
By: \(\frac{1}{2}\)
Print Name: E. DON MACLEDO
Its: EXECUTIVE DIRECTOR
Date: 5 10 -05
(acknowledgements to follow on next page)

STATE OF WA	_)
COUNTY OF KING) ss. .)
who appeared before me, and said stated that he was authorized to e	e satisfactory evidence that <u>Peter B Lewis</u> s the person deperson acknowledged that he signed this instrument, on oath execute the instrument and acknowledged it as the, of, of, of, such party for the uses and purposes mentioned in the
ONOTAR DES	Notary Public Print Name Danielle & Deskam residing at <u>Gnumelaw</u> My commission expires 10-25-07
(Use this space for notary stamp/s	eal)
STATE OF MASHINGTON COUNTY OF KNG))ss.)
on oath stated that he was authorize of the control	e satisfactory evidence that <u>E DON Mac (SOD)</u> is the and said person acknowledged that he signed this instrument, and to execute the instrument and acknowledged it as the ew Cingular Wireless PCS, LLC, the limited liability company, such party for the uses and purposes mentioned in the
Notary Public State of Washington HEATHER MAREE WRIGHT My Appointment Expires Mar 14, 2009	Notary Public Print Name #EATHER M WRIGHT residing at JEATHER MA My commission expires 3. 14.09
(Use this space for notary stamp/se	eal)

Exhibit A

MEMORANDUM OF LEASE

to the Site Lease Agreement executed on the 19th day of Sept, 2005, by and between the City of Auburn, as Landlord, and New Cingular Wireless PCS, LLC, as Tenant.

(MOL to follow on next page)

Return to:

Graham & Dunn PC/Busch Pier 70 2801 Alaskan Way Suite 300 Seattle, WA 98121

Re: Cell Site #SS02; Cell Site Name: Auburn

State: Washington County: King

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is by and between the <u>City of Auburn</u>, a municipal corporation under the existing laws of the State of Washington, having a mailing address of 25 West Main, Auburn, WA 98001 ("Landlord") and <u>New Cingular Wireless PCS</u>, LLC, a Delaware limited liability company, having a mailing address of 6100 Atlantic Boulevard, Norcross, GA 30071 ("Tenant").

- Landlord is leasing to Tenant a portion of the Property described in Exhibit A annexed hereto.
- 3. The initial term of the five (5) years commences on September 1, 2005. The Lease will automatically renew for five (5) separate consecutive periods of five (5) years each upon the same terms and conditions of the Lease, unless Tenant notifies Landlord in writing of Tenant's intention not to renew the Lease at least ninety (90) days prior to the expiration of the existing term. Unless earlier terminated, the Lease will expire on August 31, 2035.
- 4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall control.

5. The Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Lease.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

By:

Peter B. Lewis

Its: Mayor SEP 1 9 2005

Date:

Taxpayer ID Number: 91-6001228

TENANT:

New Cingular Wireless PC\$, LLC, a Delaware limited liability company

(acknowledgements to follow on next page)

(Use this space for notary stamp/seal)

EXHIBIT A DESCRIPTION OF PROPERTY

to the Memorandum of Lease executed on the 19th day of Sept, 2005 by and between the City of Auburn, as Landlord, and New Cingular Wireless PCS, LLC, as Tenant.

The Property is described and/or depicted as follows:

"THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 21 NORTH, RANGE 4 EAST W.M., EXCEPT THE WEST 663 FEET OF THE NORTH 663 FEET OF THE SOUTH 693 FEET THEREOF, AND EXCEPT THE SOUTH 30 FEET THEREOF CONVEYED TO THE CITY OF AUBURN FOR SOUTH 316TH STREET, BY INSTRUMENT RECORDED UNDER RECORDING NO. 8503210865 AS PROVIDED BY RESOLUTION NO. 1565 OF THE CITY OF AUBURN; SITUATE IN THE CITY OF AUBURN, COUNTY OF KING, STATE OF WASHINGTON".

Return Address: Auburn City Clerk City of Auburn 25 West Main St.



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PACIFIC NU TIT INTERLOCA 44.00
PAGE001 OF 013
02/10/2006 15:46
KING COUNTY, WA

Auburn, WA 98001
RECORDER'S COVER SHEET
Document Title(s) (or transactions contained therein):
Interlocal Agreement (Resolution No. 3817)
Reference Number(s) of Documents assigned or released:
Additional reference #'s on page of document
Grantor(s)/Borrower(s) (Last name first, then first name and initials) Auburn, City of
Grantee/Assignee/Beneficiary: (Last name first)
1. Covington Water District
2. King County Water District No. 111
Legal Description (abbreviated: i.e. lot, block, plat or section, township, range)
PER RCW 39.34
☐ Additional legal is on page of document.
Assessor's Property Tax Parcel/Account Number N/A
Assessor Tax # not yet assigned

Said document(s) were filed for record by Pacific Northwest Title as accommodation only. It has not been examined as to proper execution or as to its affect upon title.

RESOLUTION NO. 3817

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN INTERIM WATER SALES AGREEMENT BETWEEN THE CITY OF AUBURN AND COVINGTON WATER DISTRICT AND WATER DISTRICT NO. 111

WHEREAS, the City Council of the City of Auburn, Washington, adopted Resolution No. 3482 on June 17, 2002, authorizing the execution of an Interim Water Sales Agreement between Covington Water District (Covington), King County Water District No. 111 (WD 111) and the City of Auburn (Auburn) under the authority of their respective enabling legislation and under the authority of Chapter 39.34 RCW, the Interlocal Cooperation Act; and

WHEREAS, the parties desire to continue the intent of the Agreement to avoid unpredictable water sales and create a predictable and reliable cost for wholesale water to be sold by Auburn to Covington and WD 111; and

WHEREAS, it is in the public interest for the parties herein to continue the intent of the interim water sales agreement; and

WHEREAS, this Agreement supersedes and replaces the Interim Water Sales Agreement between Auburn, Covington and WD 111, which was approved by Resolution No. 3482 and executed on June 17, 2002.

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

Section 1. The Mayor is hereby authorized to execute an Interim

Water Sales Agreement between Auburn and Covington and WD 111 in

substantial conformity with the agreement attached hereto, marked as Exhibit

"A" and incorporated herein by this reference.

<u>Section 2.</u> That the Mayor is authorized to implement such other administrative procedures as may be necessary to carry out the directives of this legislation.

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

Dated and Signed this 22 day of February, 2005.

PETER B. LEWIS

MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

Resolution No. 3817 January 28, 2005 Page 2

Exhibit "A"

INTERIM WATER SALES AGREEMENT between COVINGTON WATER DISTRICT, KING COUNTY WATER DISTRICT NO. 111 and the CITY of AUBURN

This Agreement ("Agreement") is made and entered into this 27 nd day of February 2005, by and between Covington Water District (Covington) a Municipal Corporation, King County Water District No. 111 (WD III), a Municipal Corporation (collectively referred to herein as "the Districts") and the City of Auburn (Auburn), a Municipal Corporation.

Recitals:

- A. The parties to this Agreement are also parties to "Interlocal Agreement 2 for the Lea Hill Intertie Project between Covington Water District, King County Water District #111, and the City of Auburn" ("IA2").
- B. The parties desire to avoid unpredictable water sales and create a predictable and reliable cost for wholesale water to be sold by Auburn to the Districts.
- C. By guaranteeing a minimum purchase of water for a given period of time, i.e., a take or pay approach, the cost of water, which to a significant extent is based on peaking factors, can be minimized for all of Auburn's customers.

Exhibit "A" Resolution 3817

- D. This Agreement is intended to establish a rate for a fixed block of water for the mutual benefit of the parties of this Agreement.
- E. It is in the interest of the Districts to have a predictable supply of water available, and in Auburn's interest to have a predictable and consistent source of revenue from the sale of such water.
- F. The parties are authorized to enter into this Agreement under the authority of their respective enabling legislation and under the authority of Chapter 39.34 RCW, the Interlocal Cooperation Act.
- G. The 1.5 million gallons of water per day ("MGD") take or pay water provided for in this Agreement is a portion of and not in addition to the 5 MGD as addressed in IA2.

Now, therefore, in consideration of the mutual covenants and promises

contained herein, and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties hereby agree as follows:

1) TAKE OR PAY: The Districts agree to purchase an average of 1.5

MGD of water from Auburn on a take or pay basis. Take or pay
shall mean that the Districts shall pay for 1.5 MGD whether or not
the water is actually taken by the Districts (the "take or pay" water
also referred to in this Agreement as "the Block" of water; provided

the Block of water may be modified as set forth in Paragraph 5
"Annual Review and Adjustment" herein). If the Districts cannot accept 1.5 mgd due to an emergency, as defined in Paragraph 7, they will be billed for the water they receive at the Block rate.

- 2) CHARGES FOR WATER: The Districts shall pay the rate per one hundred cubic feet of water ("CCF") for the 1.5 MGD Block shown in Exhibit 1, attached hereto, which is by this reference incorporated, except as further addressed in Paragraph 3 herein. Any water taken in excess ("Excess Water") during the summer (June 1 through September 30) shall be billed at the summer overage rate shown in Exhibit 1. Any water taken during an emergency within the Covington and/or WD 111 systems, as defined in Paragraph 7, shall be billed at the 1.5 mgd Block rate. Auburn shall send one monthly bill to WD 111 for all water purchased by the Districts.
- 3) QUANTITY AVAILABLE / DELIVERED: The 1.5 MGD Block of water shall be defined as a block of water to be delivered at an average rate of 1.5 MGD measured over a rolling 3 day period with total quantities delivered within any single day being no more than 10% more or less than 1.5 MGD at the Auburn Intertie Pump Station meter (Master Meter). If the Districts are unable for any reason to accept the Block of water, the minimum monthly payment shall be 1.5 MGD multiplied by the rate then in effect pursuant to Paragraph 2 above. If Auburn is

unable to deliver the amount of water requested by the Districts, up to the Block of water, then Auburn will bill the Districts for the amount of water actually delivered at the block rate pursuant to Paragraph 2 above. For the take or pay water Block provided for herein, the Districts will be served on the same basis and with the same reliability as service is provided to Auburn's retail customers, and any curtailment, restrictions or limitations on delivery shall be on same basis as curtailment, restrictions or limitations on delivery to Auburn's retail customers.

4) ANNUAL TRUE UP OF THE TAKE OR PAY QUANTITY

<u>DELIVERED:</u> The Master Meter is located at the Lea Hill Intertie Pump Station to measure the flow of water.

The Master Meter will be read in January of each year to adjust for differences between the Master Meter and the water calculated to have been sold under this "take or pay" agreement.

Billing for differences between the Master Meter and the calculated quantities will be charged or credited at the "take or pay" rate to the District's accounts.

5) ANNUAL REVIEW AND ADJUSTMENT: The initial Block of 1.5 MGD shall remain in effect through December 31, 2010. Each year, the "take or pay" Block may be increased by mutual agreement. By September 1 of each year the Districts shall notify Auburn of their

Exhibit "A" Resolution 3817 intent to continue without change or request an increase in the Block quantity. Any requested change in the Block quantity would be effective January 1 of the year following the request. In the event that neither party communicates its intent under this provision, the Block shall be deemed to continue unchanged.

- 6) TERM: This Agreement shall remain in full force and effect from the first day of the month following the execution of this Agreement through December 31, 2010; provided that this Agreement shall automatically be renewed for an additional year at the conclusion of the term of this Agreement or any extension thereof unless any party provides the others with notice of an intent not to extend this Agreement, which notice shall be received by the other parties not less than one year prior to the expiration of the term of this Agreement or any extension thereof. The termination of this Agreement shall not affect any rights or obligations under IA2.
- <u>FMERGENCIES:</u> For purposes of this Agreement, an emergency shall be defined as resulting from a water shortage, a major water line break, fire demand, contamination to the water supply system, mechanical equipment failure, electrical equipment failure or Puget Sound Energy facility failure, or any other mutually agreed upon emergency within the water supply system. An emergency period shall be for no more than five (5) working days without written request

by the Districts and approval by Auburn in writing to extend the emergency period. The City may change, reduce or limit the time for or temporarily discontinue any water supplied for an emergency in excess of the Block quantity without notice. Prior to a planned interruption or limiting of emergency service, the City will notify the Districts of such not less than three days prior to the service disruption. The City agrees to use best efforts and reasonable diligence to notify the Districts as soon after it becomes aware of the need for emergency service disruption and further will, to the extent practical, limit the service disruption to daylight hours.

- 8) JOINT AND SEVERAL OBLIGATION: The obligation of the Districts as set forth therein shall be a Joint and Several obligation of the Districts. Allocation of the take or pay Block of water and the payment for such water shall be negotiated between the Districts outside of this Agreement.
- 9) PRIOR AGREEMENT SUPERSEDED: This Agreement supersedes and replaces the Interim Water Sales Agreement between Auburn, Covington and WD 111 executed on June 17, 2002.

In witness whereof the participants hereto have caused this

Agreement to be executed by their proper officers on the

22nd day of <u>February</u>, 2005.

CITY OF AUBURN

PÈTER B. LEWIS

MAYOR

ATTEST:

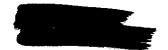
Danielle E. Daskam,

City Clerk

APPROVED AS IC FORM:

Daniel B. Heid, City Attorney

City Attorney



COVINGTON WATER DISTRICT

JUDY NELSON GENERAL MANAGER

ATTEST

APPROVED AS TO FORM:

District Attorney

KING COUNTY WATER DISTRICT NO. 111

WILLIAM C. HALL GENERAL MANAGER

ATTEST

APPROVED AS TO FORM:

District Attorney

Interim Water Sales Agreement Between Covington Water District, King County Water District No. 111 And the City of Auburn

Exhibit 1

	Take or Pay Monthly Rates				
Year	Base Charge*	1.5 MGD and Winter Overage Rate	Summer Overage		
2005	\$175.00	\$0.85	1.5 MGD rate + \$0.25		
2006	\$175.00	\$0.85	1.5 MGD rate + \$0.25	·	
2007	\$175.00	\$0.85	1.5 MGD rate + \$0.25		
2008	\$175.00	0.85 X CPI**	1.5 MGD rate + \$0.25		
2009	\$175.00	2008 Rate X CPI**	1.5 MGD rate + \$0.25		
2010	\$175.00	2009 Rate X CPI**	1.5 MGD rate + \$0.25		

^{*}Covington and WD 111 are each responsible for paying a Base Charge of \$175.00 per month per district.

Example:

CPI for 2008 equals the October 2007 CPI value divided by the October 2006 value.



^{**} CPI means the Consumer Price Index – Urban for the Seattle – Tacoma – Bremerton area for the month of October of the prior year, divided by the October value of the year prior to that (see example below).

RESOLUTION NO. 4018

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 AND CLEARWIRE LLC, FOR THE PURPOSE OF LEASING PROPERTY FOR COMMUNICATION EQUIPMENT

THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREBY RESOLVES as follows:

Section 1. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute a Lease Agreement between the City and Clearwire LLC, for the purpose of leasing space on the Lakeland Hills water reservoir, for communication equipment. A copy of said Agreement is attached hereto and denominated Exhibit "A" and incorporated herein.by this reference.

<u>Section 2.</u> That the Mayor is authorized to implement such other administrative procedures as may be necessary to carry out the directives of this legislation.

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

CITY OF AUBURN

PETER B. LEWIS MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT ("Lease") is by and between the <u>City of Auburn</u>, a municipal corporation under the existing laws of the State of Washington, having a mailing address of 25 West Main, Auburn, WA 98001 ("Landlord") and, Clearwire LLC, a Nevada limited liability company, ("Tenant").

- 1. Lease Agreement. Landlord hereby leases to Tenant the property generally described and depicted in Exhibit A, Memorandum of Lease, attached hereto and incorporated by reference ("Lease Area"), including space on Landlord's water tank located on the Property ("Water Tank Area"), said lease area being a portion of the real property legally described in Exhibit A ("Property"). The Lease shall be nonexclusive and shall not preclude Landlord from granting a similar lease, right, license, franchise, etc., to other carriers or other persons for telecommunications or any other purpose, so long as the subsequent agreement protects Tenant's rights granted by this Lease.
- 2. Term. This Lease shall commence on the date of full execution hereof ("Commencement Date"), and run for a period of five (5) years terminating at midnight on the fifth anniversary of the Commencement Date ("Initial Term").

3. Tenant's Use of the Lease Area - Antenna Facilities.

- (a) Tenant's use of the Lease Area and Property shall be strictly limited to those uses set forth in this Section 3. Tenant may use the Lease Area for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities necessary for the operation of a telecommunications facility as well as for access and utilities. Tenant may place its ground based telecommunications equipment only within the portion of the Lease Area identified as the "Compound" on Exhibit A. Tenant may install antennas within the Water Tank Area.
- (b) Tenant shall have the right, at its expense, to erect and maintain on the Lease Area, improvements, personal property and facilities necessary to operate its communications system, including, radio transmitting and receiving antennas, and related cables and conduits, equipment shelters and/or cabinets and related cables and utility lines and a location based system, including coaxial cable, base units and other associated equipment as such location based system may be permitted by any county, state or federal agency/department. Tenant shall have the right to alter, replace, and expand within the confines of the Lease Area as defined in Section 1 and without interference to other providers / tenants, enhance and upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction and operation to occur lien-free and in compliance with all applicable laws and ordinances. Landlord acknowledges that it shall not interfere with any aspects of construction, including, attempting to direct construction personnel as to the location of or method of installation of the Antenna Facilities. The Antenna Facilities shall remain the exclusive property of Tenant. Tenant shall have the right to remove the Antenna Facilities at any time during and upon the expiration or termination of this Lease.
- (c) Tenant shall, at Tenant's expense, keep and maintain the Lease Area and Antenna Facilities now or hereafter located on the Property in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and loss due to casualty or other causes beyond Tenant's control excepted. Tenant may install and maintain landscape plantings within the Lease Area. Tenant shall replace any existing landscape plantings damaged during the installation or operation of Tenant's Antenna Facilities. Upon termination or expiration of this Lease, the Lease Area shall be returned to Landlord in good, usable condition, normal wear and

tear and loss due to casualty or other causes beyond Tenant's control excepted, within ninety (90) days.

- (d) Tenant shall remove any and all telecommunications equipment and appurtenances installed by Metricom, Inc. on the Water Tank or Property. Rather than removing Metricom, Inc. equipment and appurtenances, Tenant may choose to utilize all or a portion of the equipment and appurtenances if it is in good and safe working order. Any Metricom, Inc. equipment removed by Tenant is to be disposed of legally at Tenant's expense.
- (e) In addition to using the Lease Area, Tenant may utilize the Property to install and use underground conduits running from the Compound in a generally straight line to the base of the Water Tank and then extend up the side of the Water Tank to the Antenna Facilities.
- (f) Tenant shall have the right to install utilities, power and telephone, at Tenant's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators). Landlord agrees to cooperate with Tenant in its reasonable efforts to acquire necessary utility service. Tenant shall, wherever practicable, install separate meters for utilities used on the Property by Tenant. Landlord shall diligently correct any variation, interruption or failure of utility service within Landlord's control.
- (g) Prior to installation of equipment, Tenant shall submit for Landlord review and approval, which approval shall not be unreasonably withheld or delayed, an electrical and grounding connection plan that assures no interference with the Water Tank cathodic protection system. The plan shall include a 3" minimum diameter common use conduit enclosure for cables from the ground level to top of tank. This conduit may be utilized by other telecommunication providers until such time as it is filled to capacity, at which time new providers will need to pay for upsizing. Upon Landlord approval of the plans, Tenant may proceed to install and operate the Antenna Facilities.

4. Rent.

(a) Tenant shall pay Landlord, as rent, \$12,000 Thousand and no/100 dollars (\$12,000.00) per year ("Rent"). Rent shall be payable within twenty (20) days following the Commencement Date and thereafter the Rent will be payable yearly, no later than the anniversary of the Commencement Date to City of Auburn Water Utility Fund, Account Number 430.369.900, at Landlord's address specified in Section 13 below. The Rent shall increase annually over the Rent payable the preceding year in proportion to the increase of the "All Items" category of the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics of the U.S. Department of Labor for Seattle-Everett Metropolitan Area (the "Index"). The first adjustment shall be based on the amount, if any, by which the Index for the 12th month of the Lease term has increased over the Index for the month preceding the commencement of the lease term. Subsequent adjustments will be based on the amount, if any, by which the Index for each subsequent 12th month of the Lease term has increased over the Index for the 12th month of the preceding 12-month period. It shall be the responsibility of the Landlord to track the CPI and notify the Tenant of increases or reductions in the Rent. Landlord shall notify Tenant within 90 days of the commencement of the Renewal Term as to the revised rate at which the Rent shall be increased annually thereafter. Landlord will invoice Tenant for back Rent due or refund over payment as necessary to correct the payment received for the first year of the Renewal Term. If at any time the CPI ceases to incorporate a significant number of items, if a substantial change is made in the method of establishing the CPI, or if issuance of the CPI shall be discontinued, then the Landlord and Tenant shall mutually agree upon another standard recognized cost of living index issued by the United States Government, provided that if the parties cannot reach agreement on such other standard cost of living index, then the Landlord shall select the index closest to the CPI. In either case, the substitute index chosen shall result in increases in the Rent similar to those that had been, or would have been, generated by the CPI. If this Lease is terminated for any reason (other than a default by Tenant) at a time other than on the anniversary of the Commencement Date, Rent shall be prorated as of the date of termination and all prepaid Rent shall be refunded to Tenant within sixty (60) days.

- (b) In addition to the monetary rent described in section 4 (a), Tenant shall provide Landlord with twenty-five (25) Clearwire base data service accounts, or equivalent, for Landlord use. Tenant shall cover any service charges for the accounts provided to Landlord under this Agreement for the duration of the Initial Term and any Renewal Terms. Landlord may require additional service accounts, each additional account requested by Landlord and provided by Tenant, shall reduce the annual rent by Twenty-Five Dollars (\$25.00) per month. Landlord agrees to purchase from Tenant, at Tenant's cost, any communication hardware required to utilize the accounts provided by Tenant under this Agreement.
- 5. Renewal. Tenant may extend this Lease for (5) additional, five-year terms (each a "Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein, including the Rent increase set forth in Section 4, above. This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew this Lease, at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term. Landlord may, during any Renewal Term, notify Tenant, in writing, of Landlord's intention not to renew this Lease for an additional Renewal Term, which notice shall be provided to Tenant at least one hundred and eighty (180) days prior to the expiration of the then in effect Renewal Term. If Tenant shall remain in possession of the Lease Area at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.
- 6. Interference. Tenant and Landlord shall not operate in a manner which interferes with the other party's operations on the Property. Tenant's Antenna Facilities and the use thereof shall not interfere with the use of any other communication or similar equipment of any kind and nature owned or operated by Landlord or other lessee, licensees, franchisees, etc., existing and operating on the Property prior in time to the commencement of this Lease, and subsequent to the installation by Tenant of the Antenna Facilities, Landlord agrees to exercise reasonable care to assure equipment of subsequent providers leasing space on the Property does not interfere The Landlord, however, is not in any way with Tenant's Antenna Facilities operations. responsible or liable for any interference with Tenant's use of Landlords Property, which may be caused by the use and operation of any other tenant's equipment, even if caused by new technology, so long as such equipment continues to operate within its existing frequencies and in compliance with all applicable laws and FCC rules and regulations. In the event there is interference between Tenant and any third party, such interference will be resolved by and between the parties affected; however, if such interference cannot be resolved to Tenant's satisfaction within forty-eight (48) hours from commencement of such interference, then the parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, to terminate this Lease upon 30 days notice to Landlord and restore the Landlord's Property to its original condition, reasonable wear and tear and loss due to casualty or other causes beyond Tenant's control excepted.

7. Access.

- (a) Tenant shall have the right during the Initial Term and of this Lease and any Renewal Term for ingress and egress to the Property over the south fifteen (15) feet of Lot 6, Lakeland Hills Division Number 3, Extension, according to the plat thereof recorded in Volume 145 of Plats, pages 72 and 73, in King County Washington.
- (b) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Lease Area ("Access") at all times during the Initial Term of this Lease and any Renewal Term. In the event Landlord, its employees or agents unreasonably deny Access to Tenant, its employees or agents, Tenant shall, without waiving any other rights that it may have at law or in equity, deduct from Rent

amounts due under this Lease an amount equal to fifty and no/100 dollars per day for each day that Access is impeded or denied. Access to Landlord facilities beyond the Lease Area, including but not limited to the water reservoir site and the water reservoir, require 48 hours notice to the Water Division Supervisor of the City of Auburn Water Utility (phone: 253-931-3066). Access to Landlord facilities will only occur with Landlord supervision. Tenant agrees to reimburse Landlord for Landlord expenses attributed to supervising Tenant while accessing Landlord facilities. The hourly rate for Landlord supervision during City standard office hours will be \$32.50 per hour in calendar year 2006. The hourly rate shall increase annually on January 1st over the hourly rate payable the preceding year by not less than three and one half percent (3.5%) or the CPI – Urban for the Seattle / Tacoma area whichever is the greater, unless a different hourly rate amount is negotiated.

- <u>8. Termination.</u> Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:
- (a) upon thirty (30) days' written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within that thirty (30) day period;
- (b) immediately if Tenant is unable to obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;
- (c) upon ninety (90) days' written notice by Tenant if the Lease Area or the Antenna Facilities are, or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;
- (d) immediately upon written notice by Tenant if the Lease Area or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement on a prorated basis of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Lease Area and/or the Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction; or
- (e) at the time title to the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Lease Area unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking.
- (f) Landlord may terminate this Lease if Landlord needs the Lease Area for expansion of Landlord's responsibility to provide its services, and Landlord has no reasonable or economical alternative site available, provided Landlord provides Tenant written notice twelve (12) months in advance of Landlord's need to re-establish Landlord's sole use of the Lease Area. Upon Tenant's receipt of written notice, Tenant shall have six (6) months to submit to Landlord alternative locations for its Antenna Facilities. Such alternative locations may be on the Property or other properties owned or managed by Landlord. Landlord shall evaluate such alternatives and advise Tenant in writing if one or more of the alternatives is suitable to accommodate Tenant's Antenna Facilities. To be a suitable alternative location, such location will not unreasonably result in any interruption of the communications service of Tenant on Landlord's Property; nor will it impair, or in any manner alter, the quality of communications service provided by Tenant on and from Landlord's owned or managed properties. Tenant shall submit additional relevant information to assist the Landlord in making such evaluation. Landlord shall give each alternative location proposed by Tenant full and fair consideration, within a reasonable time so as to allow for the relocation work to be performed in a timely manner. If, in Tenant's reasonable judgment, no suitable alternative location can be found, Tenant shall remove its Antenna Facilities as otherwise provided in this Section 3 (c) of this Lease. If an alternative location for Tenant's Antenna Facilities is found,

Landlord and Tenant agree to enter into a new Lease Agreement with the same terms and conditions of this Lease.

- (g) If, during the term of this Lease there is a determination made pursuant to an official unappealable order of the Federal Communications Commission or any other applicable law, order, ordinance, regulation, directive, or standard as stated above that use of the Antenna Facilities by the Tenant poses a human health hazard which cannot be remediated, then (a) Tenant shall immediately cease all operations of the Antenna Facilities, and (b) the Lease shall terminate as of the date of such order without further liability. If for reasons related to public health, safety or welfare, Landlord determines that this Lease must be terminated, then Landlord reserves rights of unilateral termination and will do so by providing Tenant with a six (6) month written notice.
- 9. Default and Right to Cure. Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 13 hereof, to take effect immediately, if the other party (i) fails to perform any covenant for a period of thirty (30) days after receipt of written notice thereof to cure or (ii) commits a material breach of this Lease and fails to diligently pursue such cure to its completion after sixty (60) days' written notice to the defaulting party.
- Landlord shall pay when due all real property taxes or other fees and Taxes. assessments for the Property, including the Lease Area. In the event that Landlord fails to pay any such real property taxes or other fees and assessments, Tenant shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease. Notwithstanding the foregoing, Tenant shall pay any personal property tax, State leasehold tax, excise tax, real property tax or any other tax or fee which are directly attributable to the presence or installation of Tenant's Antenna Facilities, only for so long as this Lease has not expired of its own terms or is not terminated by either party. Landlord hereby grants to Tenant the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Landlord and/or Tenant, any personal property or real property tax assessments, State leasehold tax or excise tax that may affect Tenant. If Landlord receives notice of any personal property or real property tax assessment, State leasehold tax or excise tax against the Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment. Further, Landlord shall provide to Tenant any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section.

11. Indemnification.

- (a) Tenant shall defend, indemnify, and hold harmless the Landlord, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Tenant's use of Premises, or from the conduct of Tenant's business, or from any activity, work or thing done, permitted, or suffered by Tenant in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the Landlord.
- (b) Should a court of competent jurisdiction determine that this Lease 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 Tenant and the Landlord, its officers, officials, employees and volunteers, the Landlord's liability hereunder shall be only to the extent of the Landlord's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Tenant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This

waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Lease.

(c) The Tenant and the City waive all rights against each other, any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extend covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Lease or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

12. Insurance.

The Tenant shall procure and maintain for the duration of the Lease, 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 Tenant, its agents, representatives, or employees.

- (a) Minimum Scope of Insurance. Tenant shall obtain insurance of the types described below:
- (1) Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. 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 shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent tenants, products-completed operations, stop gap liability, and personal injury and advertising injury and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The Landlord shall be named as an additional insured under the Tenant's Commercial General Liability insurance policy with respect to the work performed for the Landlord using ISO Additional Insured Endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
- (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 - (b) Minimum Amounts of Insurance. Tenant shall maintain the following insurance limits:
- (1) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- (2) Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
- (c) Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability, and Commercial General Liability insurance:
- (1) The Tenant's insurance coverage shall be primary insurance as respects the Landlord. Any insurance, self-insurance, or insurance pool coverage maintained by the Landlord shall be in excess of the Tenant's insurance and shall not contribute with it.

- (2) The Tenant'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 Landlord.
- (d) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- (e) Verification of Coverage. The Tenant shall furnish the Landlord with documentation of insurer's A.M. Best rating and with original certificates and a copy of amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.
- (f) Subcontractors. The Tenant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractors. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Tenant.
- (g) No Limitation. Tenant's maintenance of insurance as required by the Lease shall not be construed to limit the liability of the Tenant to the coverage provided by such insurance, or otherwise limit the Landlord's recourse to any remedy available at law or in equity.
- 13. Notices. All notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Tenant, to:

Clearwire LLC

Attn: Site Property Manager

5808 Lake Washington Blvd NE, Suite 300

Kirkland, WA 98033 Telephone: 425-216-7600

Fax: 425-216-7900

If to Landlord, to:

Public Works Director City of Auburn 25 West Main St. Auburn, WA 98001

With a copy to:

Clearwire LLC

Attention: Legal Department

5808 Lake Washington Blvd NE, Suite 300

Kirkland, WA 98033

Telephone: 425-216-7600

Fax: 425-216-7900

With a copy to:

City Attorney City of Auburn 25 West Main St. Auburn, WA 98001

- 14. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Tenant and which will not interfere with Tenant's rights to or use of the Lease Area; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord.
- 15. Environmental Laws. Landlord represents that it has no knowledge of any substance, chemical or waste (collectively, "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Property in violation of any

applicable law. Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, for all spills or other releases of any Hazardous Substance not caused in whole or in part by Tenant, that have occurred or which may occur on the Property. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Property. Landlord agrees to defend, indemnify and hold Tenant harmless from Claims resulting from Actions on the Property not caused by Landlord or Tenant prior to and during the Initial Term and any Renewal Term of this Lease. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 15 shall survive the termination or expiration of this Lease.

16. Assignment and Subleasing.

- (a) The Tenant may not sublease any portion of the Lease Area, or grant any rights to the Lease Area to any third parties except as specifically set for in this Lease.
- (b) All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall not be assigned by Tenant without the express written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Any attempted assignment in violation of this Section shall be void. The transfer of the rights and obligations of Tenant to a parent, subsidiary, or other affiliate of Tenant, or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of Tenant's stock or assets, shall not be deemed an assignment. Tenant shall give to Landlord thirty (30) days' prior written notice of any such transfer.
- (c) Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant or to remove any property of Tenant or Mortgagees located on the Lease Area, except that the cure period for any Mortgagees shall not be less than thirty (30) days after receipt of the default notice, as provided in Section 9 of this Lease. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by Tenant. Failure by Landlord to give Mortgagees such notice shall not diminish Landlord's rights against Tenant, but shall preserve all rights of Mortgagees to cure any default and to remove any property of Tenant or Mortgagees located on the Lease Area.
- 17. Removal of Antenna Facilities. The Antenna Facilities are and shall remain the property of the Tenant and upon the expiration or earlier termination of this Lease, Tenant shall, at Tenant's sole cost and expense, remove the Antenna Facilities and restore the Lease Area to its original condition, normal wear and tear and loss due to casualty or other causes beyond Tenant's control excluded.

18. Miscellaneous.

- (a) The substantially prevailing party in any litigation, including any arbitration to which the parties shall submit, arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.
- (b) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties. At such time as the Auburn City Council approves any regulation affecting telecommunications, Tenant agrees to amend this Lease, as determined by the Landlord in order to comply with any future ordinance related to telecommunications provided, however, that in no event shall such regulation (i) materially interfere with or affect Tenant's operation of its Antenna Facilities; or (ii) increase Tenant's financial obligations under the terms of this Lease, except as provided herein, or impose some new financial obligations not already contemplated by this Lease. No amendment, change or modification of this Lease shall be valid, unless in writing and signed by all parties hereto.
- (c) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached hereto as Exhibit A) necessary to protect its rights or use of the Lease Area. The Memorandum of Lease may be recorded in place of this Lease by either party. In the event the Property is encumbered by a mortgage or deed of trust, Landlord agrees, upon request of Tenant, to obtain and furnish to Tenant a non-disturbance and attornment agreement for each such mortgage or deed of trust, in a form reasonably acceptable to Tenant. Tenant may obtain title insurance on its interest in the Lease Area.
- (d) This Lease shall be construed in accordance with the laws of the state in which the Property is located.
- (e) If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. No provision of this Lease will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.
- (f) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.
- (g) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- (h) All Exhibits referred to herein and any Addenda are incorporated herein for all purposes. The parties understand and acknowledge that Exhibit A (Memorandum of Lease) is attached to this Site Lease Agreement. The terms of all Exhibits are incorporated herein for all purposes.
- (i) If Landlord is represented by any broker or any other leasing agent, Landlord is responsible for all commission fees or other payment to such agent, and agrees to indemnify and hold Tenant harmless from all claims by such broker or anyone claiming through such broker. If Tenant is represented by any broker or any other leasing agent, Tenant is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Landlord harmless from all claims by such broker or anyone claiming through such broker.
- 19. Headings. The caption and paragraph headings used in this Lease are inserted for convenience of reference only and are not intended to define, limit or affect the interpretation or construction of any term or provision hereof.

<u>20. Liens.</u> Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on, and for services rendered or material furnished to, the Antenna Facility, and shall keep the Antenna Facility free from all liens.
LANDLORD: City of Auburn
By: Peter B. Lewis, Mayor
Date: MAY 1 2006
Taxpayer ID Number: 91-6001228
TENANT: Clearwire LLC, a Nevada limited liability company
By:
Print Name: John Suw
lts:
Date:(acknowledgements to follow on next page)

STATE OF WA)
STATE OF WA COUNTY OF KING) ss.)
I certify that I know or have	satisfactory evidence that <u>feter B hew</u> is the person person acknowledged that he signed this instrument, on oath ecute the instrument and acknowledged it as the, of, of, and, or, or
	Daniel Enashan
ONNOTAR DE STA	Notary Public Print Name Samcle & Daskam residing at Shumelaw My commission expires 10-2507
OF WASHINGTON	
(Use this space for notary stamp/se	eal)
STATE OF WWW AMOUNTY OF MANAGEMENT OF MANAGE)ss.
I certify that know or have person who appeared before me, a on oath stated that he was authorized, of the voluntary act of such party for the control of th	e satisfactory evidence that is the and said person acknowledged that he signed this instrument, zed to execute the instrument and acknowledged it as the the limited liability company, to be the free and uses and purposes mentioned in the instrument.
West this space for notary stamp/s	Notary Public Print Name Presiding at My commission expires My commission expires
(USE this space for hotally staffice)	our,

Exhibit A

MEMORANDUM OF LEASE

to the Site Lease Agreement executed on the jet day of MAY, 2006, by and between the City of Auburn, as Landlord, and Clearure, as Tenant.

(MOL to follow on next page)

Return to:

Auburn City Clerk 25 West Main Street Auburn, WA 98001

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is by and between the <u>City of Auburn</u>, a municipal corporation under the existing laws of the State of Washington, having a mailing address of 25 West Main, Auburn, WA 98001 ("Landlord") and Clearwire LLC ("Tenant").

- 2. Landlord is leasing to Tenant a portion of the Property described in Exhibit 1 annexed hereto.
- 3. The initial term of the five (5) years commences on September 1, 2005. The Lease will automatically renew for five (5) separate consecutive periods of five (5) years each upon the same terms and conditions of the Lease, unless Tenant notifies Landlord in writing of Tenant's intention not to renew the Lease at least ninety (90) days prior to the expiration of the existing term. Unless earlier terminated, the Lease will expire on August 31, 2035.
- 4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall control.
- 5. The Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Lease.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD: City of Auburn
ву:
Peter B. Lewis
Its: Mayor MAY 1 2006
Taxpayer ID Number: 9/-6001228
TENANT:
By:
Print Name: 1 John Saw
Its:
Date: 5/12/06

(acknowledgements to follow on next page)

	·
STATE OF WA)
. /) ss.
COUNTY OF KING)
who appeared before me, and said	e satisfactory evidence that <u>feter B. Lewis</u> is the person diperson acknowledged that he signed this instrument, on oath secute the instrument, and acknowledged it as the of the feter B. Lewis is the person diperson acknowledged it as the feter B. Lewis is the person diperson acknowledged it as the feter B. Lewis is the person diperson acknowledged it as the feter B. Lewis is the person diperson acknowledged it as the feter B. Lewis is the person diperson acknowledged that he signed this instrument, on oath the person acknowledged it as the person acknowledged that he signed this instrument, on oath the person acknowledged that he signed this instrument, on oath the person acknowledged that he signed this instrument, on oath the person acknowledged that he signed this instrument, on oath the person acknowledged it as the person acknowledged it as the person acknowledged that the signed this instrument, or person acknowledged that the person acknowledged it as the person acknowledged that the person acknowledged it as the person acknowledged that the person acknowledged
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instrument.	2016
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	Wandel Washan
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COUNTY OF WILL	$ \stackrel{\text{i}}{\bigcirc}$
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person who appeared before me.	and said person acknowledged that he signed this instrument,
on oath stated that he was authori	zed to execute the instrument and acknowledged it as the highest the limited liability company, to be the free
and voluntary act of such party for	the uses and purposes mentioned in the instrumation,
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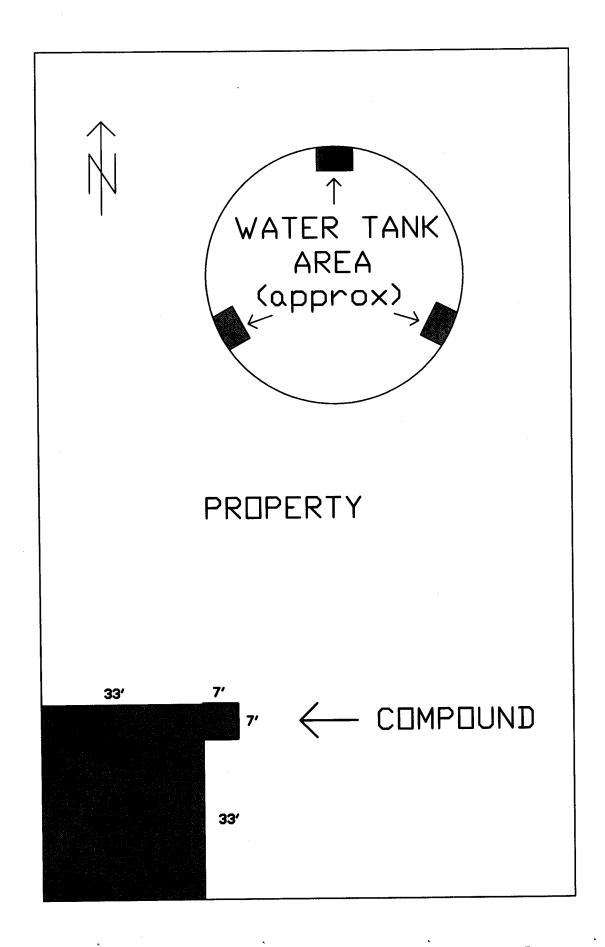


Exhibit 1 - Description of Lease Area



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

RECORDER'S COVER SHEET		
Document Title(s) (or transactions contained therein):		
Memorandum of Lease		
Reference Number(s) of Documents assigned or released: Additional reference #'s on page of document RWW-WY985-12		
Grantor(s)/Borrower(s) (Last name first, then first name and initials)		
City of Auburn		
Grantee/Assignee/Beneficiary: (Last name first) 1. Clearwire LLC		
Legal Description (abbreviated: i.e. lot, block, plat or section, township, range)		
South 175 feet of east 110 feet of the west 1,393 feet of SE ¼ of Section 31, Township 21 North, Range 5 East		
☑ Additional legal is on page <u>5</u> of document.		
A L D L L T L D D L L L T L L D L L L L L		
Assessor's Property Tax Parcel/Account Number 3121059047		
☐ Assessor Tax # not yet assigned		

Said document(s) were filed for record by Pacific Northwest Title as accommodation only. It has not been examined as to proper execution or as to its affect upon title.

Return to:

Auburn City Clerk 25 West Main Street Auburn, WA 98001

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is by and between the <u>City of Auburn</u>, a municipal corporation under the existing laws of the State of Washington, having a mailing address of 25 West Main, Auburn, WA 98001 ("Landlord") and Clearwire LLC ("Tenant").

- 2. Landlord is leasing to Tenant a portion of the Property described in Exhibit 1 annexed hereto.
- 3. The initial term of the five (5) years commences on September 1, 2005. The Lease will automatically renew for five (5) separate consecutive periods of five (5) years each upon the same terms and conditions of the Lease, unless Tenant notifies Landlord in writing of Tenant's intention not to renew the Lease at least ninety (90) days prior to the expiration of the existing term. Unless earlier terminated, the Lease will expire on August 31, 2035.
- 4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall control.
- 5. The Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Lease.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

	FOLS. (Aubuii	<u>.</u>	
Ву:	/1.	51			>
-	Peter	B. Lewis			
lts: Date:	Mayor	•	YAN	1 2006	
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TENA	NT:	Opp			
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Date:		511	2/06		-

(acknowledgements to follow on next page)

1. 0
STATE OF \mathcal{WH}
COUNTY OF KING) ss.
I certify that I know or have satisfactory evidence that Peter B. Lewis is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Mayor, of City of Aubum,
to be the free and voluntary act of such party for the uses and purposes mentioned in the
instrument. Dated: May 1, 2006
Dated:
Wandle Washan
Notary Public
Print Name <u>Namelle & Das Rahn</u> residing at <u>Enumelau</u>
My commission expires 10-25-07
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MOST TUBLIC AS
1/1/25-01
MILLE WASHINGTON
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STATE OF WARMAN)
COUNTY OF () ss.
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person who appeared before me, and said person acknowledged that he signed this instrument,
on oath stated that he was authorized to execute the instrument and acknowledged it as the , of LANN , the limited liability company, to be the free
and voluntary act of such party for the uses and purposes mentioned in the instrument.
Dated: 5/12/06 1 01/1/1 1 000
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Notary Public A TUNS
residing at Start of the control of
Print Name WWW 1969 My commission expires
Wy commission expires
OF WASHINGTON
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EXHIBIT 1

1. DESCRIPTION OF PROPERTY

The Property is described and/or depicted as follows:

THE SOUTH 175.00 FEET OF THE EAST 110.00 FEET OF THE WEST 1,393.00 FEET OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., CITY OF AUBURN, RECORDS OF KING COUNTY, WASHINGTON

2. DESCRIPTION OF LEASE AREA

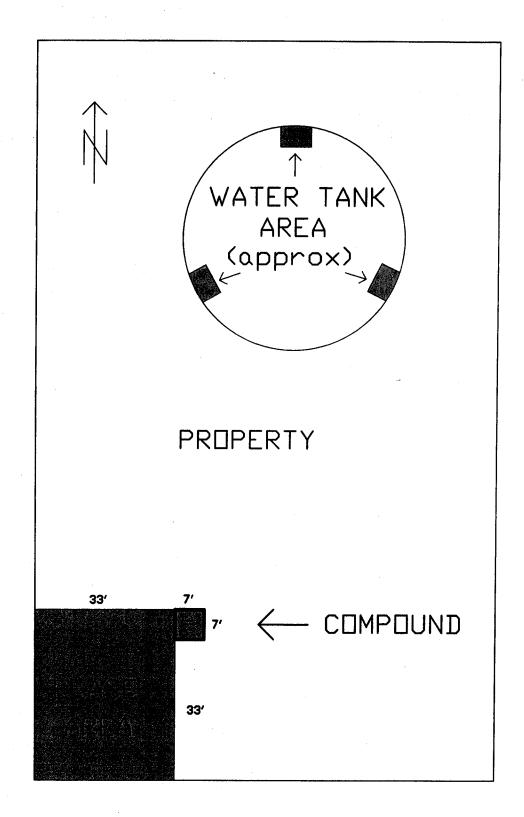


Exhibit 1 - Description of Lease Area

RESOLUTION NO. 4039

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF AUBURN AND THE WASHINGTON STATE DEPARTMENT OF ECOLOGY FOR COST REIMBURSEMENTS RELATING TO THE CITY'S WATER RIGHTS APPLICATION

WHEREAS, The City of Auburn has applied to the Department of Ecology for an additional water right for municipal water supply use; and

WHEREAS, the Department of Ecology will incur costs in processing the City's application, including fees paid to consultants to review certain aspects of the City's application; and

WHEREAS, the costs of processing such applications are born by the applicant; and

WHEREAS, it is in the public interest for the parties to enter into an agreement for the City to reimburse the Department of Ecology for its costs in processing the City's water rights application,

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

<u>Section 1.</u> The Mayor of the City of Auburn and the Auburn City Clerk are hereby authorized to execute an Agreement between the City of Auburn and the Washington State Department of Ecology for cost reimbursements

relating to the city's water rights application, 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.

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

<u>Section 3.</u> This resolution shall be in full force and affect upon passage and signatures hereon.

DATED and SIGNED this start day of ______

و 2006.

PETER B. LEWIS

Mayor

Attest:

Danielle E. Daskam

City Clerk

Approved as to Farm:

Daniel B. Heid

City Attorney

Resolution No. 4039

May 17, 2006

Page 2

Washington State Department of Ecology Cost-Reimbursement Agreement (CRA)

Between the Washington State Department of Ecology and City of Auburn

Water Right Application G1-28404; CRA Project No.9R46

PART A SPECIAL TERMS AND CONDITIONS AND SCOPE OF WORK

Current For: FY 2005-06

Cont	tents:	<u>Page</u>
Ī.	Applicant Information	1
II.	Ecology Information	2
III.	Performance Security	2
IV.	Scope Of Work – Tasks, Budget Detail, Schedule	2
V.	Effective Date	5
VI.	Entire Agreement And Signatures	5

I. Applicant Information

Project Manager/Primary Point of Contact	Billing Address
Name: Duane Huskey, Utility Engineer	Name: Same as Left
Address: 25 West Main Street	Address:
City, State: Auburn, WA	City, State:
Zip Code: 98001-4998	Zip Code:
Telephone: 253-804-5062	Telephone:
E-mail: dhuskey@auburnwa.gov	E-Mail:
Fax: 253-931-3053	Fax:

II. Ecology Information

Project Manager/Primary Point of Contact:

Name:	Jim Roth
Address:	PO Box 47615
City, State, Zip:	Olympia, WA, 98504-7615
Telephone #:	360-407-7036
E-mail:	JROT461@ECY.WA.GOV
Fax:	360-407-7153

III. Performance Security

Performance Security Option Selected, Dollar Amount, And, If Applicable, Holding Institution (Pursuant To Section II.B.6. Of Part B — General Terms And Conditions):

Performance Securit	ty Option of \$10,000 in an interest bearing account.	
	•	

IV. Scope Of Work - Tasks, Budget Detail, Schedule

The City of Auburn is applying for an additional water right for municipal water supply use. The City of Auburn has submitted one application for a new groundwater right, G1-28404, requesting 12,500 gallons per minute (gpm) of instantaneous use, with an annual requested quantity of 13,443 acre-feet per year.

Ecology's consultant, Geomatrix, will be tasked to complete the water-right processing Phase I work establishing senior water right applications that would be considered in the 'same source of supply' as the City's application, thus requiring processing in accordance with RCW 90.03.265. In conducting this determination, Geomatrix will define the source of water that the City of Auburn proposes using for municipal water supply and the universe of applications requiring processing based on the following considerations:

- Hydraulic continuity between points of withdrawal;
- Sharing of a common recharge (catchment) area;
- Sharing of a common flow regime; and
- Isolation from other sources by the presence of effective barriers to hydraulic flow.

Sources of information for the 'same source of supply' determination will include area topography, geologic structures, well log review, area water level measurements, aquifer characteristics, and other information such as available groundwater modeling studies (see Task 1 below).

Consistent with the provisions of Part B — General Terms and Conditions as well as the provisions of RCW 43.21A.690 and RCW 90.03.265, the following describes the specific tasks, budget detail, and schedule for the scope of work to be performed by Ecology and its consultant, Geomatrix, to be subsequently reimbursed by the City of Auburn pursuant to this CRA.

Accordingly, the Parties signatory to this Agreement agree:

Phase I Reimbursable Tasks with Associated Budget Detail and Schedule

Task 1: Water Right Application Review and Data Gap Summary. This task will include:

- Review of hydrologic and hydrogeologic data from the files available through Ecology, the City of Auburn, the City's consultant, and other sources;
- Determination of senior applicants in the same source of water supply, preparation of a technical memorandum summarizing the same source determination, and assembly of a final list of senior applications requiring processing;
- Review of City of Auburn's and senior water right application files to identify intent, available supporting information, and potential data gaps;
- Review conceptual mitigation options proposed by the City of Auburn, and meet with applicant and Ecology to discuss comments. It is assumed that final mitigation plans will not be submitted by the applicant until Phase II processing;
- Initial contact with senior applicants, including confirming the applicants' intent to pursue the water rights in question, and preparation of letters requesting any additional supporting information, including mitigation proposals;
- Attendance at meetings and participation in conference calls with Ecology staff in Bellevue and with the City and its consultant in Auburn, as requested; and
- Preparation of a memorandum Phase I report summarizing data gaps and issues to be resolved prior to completing ROEs for the set of applications requiring processing.

Task 2: Preparation of Scope of Work, Schedule, and Budget for Phase II. This task will include:

- Development of a scope of work to complete processing and preparation of ROEs water right applications submitted by the City of Auburn, as well as senior applicants within the same source of water.
- Development of the estimated schedule and budget for completion of the scope of work for Phase II.

Consultant Phase I Costs-

Phase 1 – Information Review and Associated Tasks:

Estimated Number of Consultant Hours = 363 Hours

Estimated Consultant Cost = \$49,843.00

Estimated Phase I Completion Date = 12 Weeks From Effective Date

Ecology Direct and Backfill Cost-

- Estimated Number of Ecology Hours to be Billed to Applicant for Direct
 Work on Project = 50
 Hours
- Estimated Ecology Costs to be Billed to Applicant for Direct Work on Project = \$ 2,750
- Estimated Backfill Dollars Available for Backfill Consultant Cost = \$4,000 (50 hours x \$135/hr average consultant rate = [\$6,750- \$2,750 (Ecology direct cost)] = \$4,000.

Phase 1 Informational Task, Budget, and Schedule Summary

Tasks A. Phase I	Budget \$ 49,843	Schedule 12 weeks from Ecology Signature of Geomatrix Work Assignment
B. Ecology Direct Costs	\$ 2,750	Ç
C. Ecology Backfill Costs	\$ 4,000	
TOTAL	\$ 56,593	

Washington State Department of Ecology Cost-Reimbursement Agreement (CRA) Part A - Special Terms and Conditions and Scope of Work

Current For: FY 2005
Page 4 of 5

Notes:

- 1. Total Budget Phase I \$ 56,593
- 2. Cost Reimbursement End Date = June 30, 2007
- 3. Informational task, budget, and schedule summary presented here is for informational purposes only. Ecology tracks and manages task, budget, and schedule.
- 4. A formal written and signed amendment to this CRA is required to extend the total project budget amount or final completion date stated herein.

V. Effective Date

The effective date of this CRA, as well as any formal written and signed amendment, is the date of signature by the Washington State Department of Ecology.

VI. Entire Agreement And Signatures

The Parties hereto have agreed to the tasks, budget detail, and schedule described herein Part A. This entire agreement, consisting of Part A — Special Terms and Conditions and Scope of Work, Part B — General Terms and Conditions, and any formal written and signed amendment, can only be modified by a subsequent formal written and signed amendment as described in Section II.E.3. of Part B — General Terms and Conditions.

Applicant's Authorized Official:
By:
Title: Peter B Lewis Mayor
Date: June 5, 2006
Address: 25 W. Main St.
City, State, Zip: Anburn WA 98001
Telephone #: 253-931-3041
E-mail: <u>plewise auburnwa g</u> ov
Fax: 253-288-3132

Ecology's Authorized Official:

By: Kenneth Stattery
Title: Program Maragel Date: 6/16/06
Date: 6/16/06
Address: P.O. Box 47600
City, State, Zip: Olympia, WA. 98504
Telephone #: 360-407-6600
E-mail:
Fax: 360-407-7153



RESOLUTION NO. 3920

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT ESTABLISHING WATER SERVICE BOUNDARIES BETWEEN THE CITY OF KENT, KING COUNTY WATER DISTRICT NO. 111, AND THE CITY OF AUBURN

WHEREAS, pursuant to RCW 35.A.11.040, Auburn has the legal authority to exercise its powers and perform any of its functions as set forth in RCW 39.34; and

WHEREAS, pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act, Auburn has the legal authority to cooperate with other localities and utilities on the basis of mutual advantage and the efficient provision of municipal services; and

WHEREAS, pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act, Kent has the legal authority to cooperate with other localities and utilities on the basis of mutual advantage and the efficient provision of municipal services; and

WHEREAS, pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act, WD #111 has the legal authority to cooperate with other localities and utilities on the basis of mutual advantage and the efficient provision of municipal services; and

WHEREAS, the parties recognize the responsibility of public water utilities to provide efficient and reliable service to their customers at reasonable cost; and

WHEREAS, Kent owns, and desires to be the water service provider for a property currently within the corporate limits of Kent, and within the service areas of Auburn and WD #111; and

WHEREAS, pursuant to Chapter 70.116 RCW, Public Water System Coordination Act, the Parties determined and agreed upon the water service areas between the Parties as set forth in the South King County Coordinated Water System Plan ("Plan") and the Parties now desire to modify their water service area boundaries as agreed in this Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN,

WASHINGTON, HEREBY RESOLVES as follows:

Section 1. The Mayor of the City of Auburn is herewith authorized to

execute a Water Service Boundary Agreement between the City of Kent, King

County Water District No. 111, and the City of Auburn in substantial conformity

with the agreement 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.

Resolution No. 3920 May 25, 2006

DATED this 5 day of September, 2006.

CITY OF AUBURN

PETER B. LEWIS MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney 20060928002399

PACIFIC NU TIT INTERLOCA 41.00
09/28/2006 16:13
05/10 COUNTY, NA

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

RECORDER'S	S COVER SHEET					
Document Title(s) (or transactions contain	ined therein):					
nterlocal Agreement (Resolution No. 3920)						
Reference Number(s) of Documents as Additional reference #'s on page of documents	ssigned or released:					
Grantor(s)/Borrower(s) (Last name first, Auburn, City of	then first name and initials)					
Grantee/Assignee/Beneficiary: (Last na 1. Kent, City of 2. King County Water District No. 111						
Legal Description (abbreviated: i.e. lot,	block, plat or section, township, range)					
PER RCW 39.34						
☐ Additional legal is on page of document.						
Assessor's Property Tax Parcel/Accou N/A	int Number					
☐ Assessor Tax # not yet assigned	Said document(s) were filed for report by Pacific Northwest Title as assommodation only. It has not been examined as to proper execution er as to its affect upon title.					

EXHIBIT "A"

CITY OF KENT, KING COUNTY WATER DISTRICT NO. 111 and CITY OF AUBURN INTERLOCAL AGREEMENT ESTABLISHING WATER SERVICE BOUNDARIES

THIS AGREEMENT ("Agreement"), made and entered into this day of September 1, 2006, by and between the City of Kent, a Washington municipal corporation ("Kent"), King County Water District No. 111, a Washington municipal corporation ("WD #111"), and the CITY OF AUBURN, a Washington municipal corporation, ("Auburn"), all being duly organized and existing under and by virtue of the laws of the State of Washington (individually a "Party" and collectively the "Parties).

WITNESSETH:

WHEREAS, pursuant to RCW 35.A.11.040, Auburn has the legal authority to exercise its powers and perform any of its functions as set forth in RCW 39.34; and

WHEREAS, pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act, Auburn has the legal authority to cooperate with other localities and utilities on the basis of mutual advantage and the efficient provision of municipal services; and

WHEREAS, pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act, Kent has the legal authority to cooperate with other localities and utilities on the basis of mutual advantage and the efficient provision of municipal services; and

WHEREAS, pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act, WD #111 has the legal authority to cooperate with other localities and utilities on the basis of mutual advantage and the efficient provision of municipal services; and

WHEREAS, the parties recognize the responsibility of public water utilities to provide efficient and reliable service to their customers at reasonable cost; and

WHEREAS, Kent owns, and desires to be the water service provider for a property currently within the corporate limits of Kent, and within the service areas of Auburn and WD #111; and

WHEREAS, pursuant to Chapter 70.116 RCW, Public Water System Coordination Act, the Parties determined and agreed upon the water service areas between the Parties as set forth in the South King County Coordinated Water System

Plan ("Plan") and the Parties now desire to modify their water service area boundaries as agreed in this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Parties agree as follows:

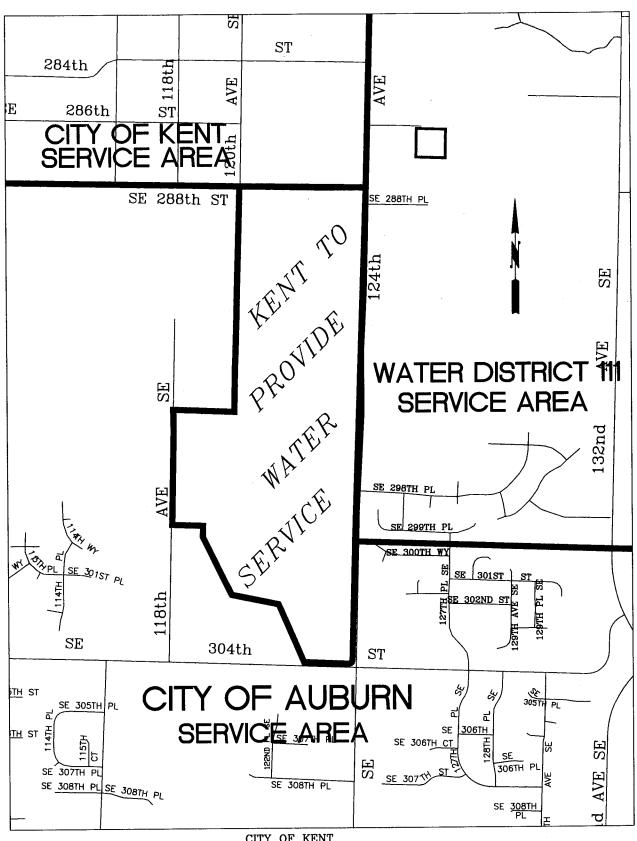
- 1. Water Service Area. WD #111 and Auburn agree to relinquish to Kent the water service area depicted on the map attached hereto as Attachment 1 and legally described in Attachment 2, which are by this reference incorporated herein. The Parties agree that the South King County Coordinated Water System Plan and the water service area boundaries as set forth in the Plan shall be modified to be in accordance with the Parties' water service area boundaries as set forth in Attachment 1.
- 2. Management, Regulation and Control of Water System. Kent, WD #111 and Auburn shall have the sole responsibility and authority to construct, maintain, manage, conduct and operate their water systems within their designated water service areas as depicted in Attachment 1, together with any additions, extensions and betterments thereto.
- **3. Future Annexations.** The Parties agree that Kent shall provide water service to the area depicted in Attachment 1 without regard to the present corporate boundaries of the Parties and without regard to future corporate boundaries as they may be periodically altered through annexation.
- **4. Kent Comprehensive Water Planning.** The terms of this Agreement will be included as an amendment to Kent's Comprehensive Water System Plan. Kent will submit to Auburn and WD #111 its Comprehensive Water System Plans and amendments thereto.
- **5. WD #111 Comprehensive Water Planning.** The terms of this Agreement will be included as an amendment to WD #111's Comprehensive Water Plan. WD #111 will submit to Kent and Auburn its Comprehensive Water System Plans and amendments thereto.
- **6. Auburn Comprehensive Water Planning.** The terms of this Agreement will be included as an amendment to Auburn's Comprehensive Water Plan. Auburn will submit to Kent and WD #111 its Comprehensive Water System Plans and amendments thereto.
- **7. Reliance.** Each Party hereto acknowledges that the terms hereof will be relied upon by the other in its comprehensive planning to meet the needs of the service area designated herein.

- **8. Liability.** Except as set forth in Section 12 regarding default, failure to perform or negligent conduct, the Parties agree that this Agreement shall not be a source of liability between the Parties for any failure or interruption of service in the service area of any Party as designated in this Agreement.
- **9. Government Notifications.** Auburn will give notice of the adoption of this Agreement to Metropolitan/King County, to the Washington State Department of Health, to the South King County Regional Water Association, to the Water Utility Coordinating Committee, and to any other agency with jurisdiction over, or interest in, the terms hereof, and the Parties shall cooperate and assist each other in all reasonable manner in procuring any necessary approvals hereof by those agencies.
- **10. Boundary Review Board.** In the event that implementation of the terms herein result in permanent water service to areas that will be outside the respective service boundaries of Kent, WD #111 or Auburn, the Parties will, at the time of such service, jointly file a notice of intention with the King County Boundary Review Board in accordance with Chapter 36.93.090 RCW and Chapter 57.08.047 RCW.
- **11. Alteration, Amendment or Modification.** Kent, WD #111 and Auburn hereby reserve the right to alter, amend or modify the terms and conditions of this Agreement only upon written agreement of the Parties to such alteration, amendment or modification.
- 12. Indemnification and Hold Harmless. Each Party hereto agrees to protect, defend, and indemnify the other Parties, their officers, officials, employees and agents from any and all cost, claims, judgments and/or awards of damages, arising out of or in any way resulting from the indemnifying Party's, its employees, subcontractors or agents default, failure of performance, or negligent conduct associated with this agreement. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other Parties only, and only to the extent necessary to provide each Party with a full and complete indemnity of claims made by the other Party's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.
- **13. Integration.** This Agreement constitutes the entire agreement of the Parties regarding the subject matter hereof, and there are no other representations or oral agreements other than those listed herein, which vary the terms of this Agreement. Future agreements may occur between the Parties to transfer additional or future service areas by mutual agreement.

- **14. Obligation Intact.** Nothing herein shall be construed to alter the rights, responsibilities, liabilities, or obligations of Kent, WD #111 or Auburn regarding provision of water service, except as specifically set forth herein.
- 15. Duration. This Agreement shall take effect on the last day approved by all of the Parties and shall remain in effect until modified by written agreement of the Parties.
- **16. Recording.** Pursuant to RCW 39.34.040, following the approval and execution of this Agreement by the Parties, this Agreement shall be filed with the King County Auditor.

CITY OF KENT							
Approved by Motion No.							its
regular meeting held on the/ pt	day of		Rug	ust		,	
2006.			I				
Syzette Cooke, Mayor Oity of Kent							
Approved as to form:							
Kristy M. Lawson Asst., City A City of Kent	Attorney						
KING COUNTY WATER DISTRICT NO.							
Approved by Resolution No.			_				11,
Kent, Washington, at its regular meeting	held or	the _	<u>8 m</u>	day of	June		
	_, 2006.						
Patrick Hanis, President King County Water District No. 111							
Approved as to form:							
King County Water District No. 111	eral Cou	nsel					

CITY OF AUBURN Approved by Resolution No. 3920 of the City of Auburn, We regular meeting held on the 5th day of Siglender	/ashington, at its , 2006.
Peter B. Lewis, Mayor City of Auburn	
Attest: Danielle Daskam, City Clerk	
Approved as to form:	



CITY OF KENT
KING COUNTY WATER DISTRICT NO. 111
AND CITY OF AUBURN
INTERLOCAL AGREEMENT ESTABLISHING
WATER SERVICE BOUNDARIES
ATTACHMENT 1

Attachment 2

Legal Description

THAT PORTION OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M. IN KING COUNTY WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF GOVERNMENT LOT 3 IN SAID SECTION 4;

THENCE WEST ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 3 A DISTANCE OF 30 FEET TO THE WEST MARGIN OF 124TH AVENUE SOUTHEAST AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH ALONG SAID WEST MARGIN TO THE NORTHERLY MARGIN OF SOUTHEAST 304TH STREET;

THENCE WESTERLY ALONG SAID NORTHERLY MARGIN OF SE 304TH STREET TO THE SOUTHEAST CORNER OF THE PLAT OF CRYSTAL MEADOWS AS RECORDED IN VOLUME 194 OF PLATS AT PAGES 66 AND 67, RECORDS OF KING COUNTY:

THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY EDGE OF SAID PLAT TO THE MOST NORTHERLY CORNER OF LOT 10 OF SAID PLAT;

THENCE WESTERLY ALONG THE NORTH EDGE OF SAID PLAT TO THE NORTHWEST CORNER OF LOT 15 OF SAID PLAT;

THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT 15 TO A POINT 50 FEET NORTH OF THE SOUTHEAST CORNER OF TRACT 11 OF THE PLAT OF THE SOUND TRUSTEE COMPANY'S THIRD ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 13 OF PLATS AT PAGE 100, RECORDS OF KING COUNTY, WASHINGTON;

THENCE NORTHWESTERLY TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF SAID TRACT 11, SAID POINT LYING 135 FEET WEST OF THE EAST LINE OF SAID TRACT 11;

THENCE CONTINUING NORTHWESTERLY TO A POINT ON THE NORTH LINE OF SAID TRACT 11, SAID POINT LYING 313.36 FEET WEST OF THE NORTHEAST CORNER OF SAID TRACT 11;

THENCE WESTERLY ALONG THE LINE COMMON TO TRACTS 10 AND 11 OF SAID PLAT OF THE SOUND TRUSTEE COMPANY'S THIRD ADDITION TO THE SOUTHWEST CORNER OF THE EAST HALF OF THE SOUTH 120 FEET OF SAID TRACT 10;

THENCE NORTHERLY ALONG THE WEST LINE OF THE EAST HALF OF THE SOUTH 120 FEET OF SAID TRACT 10 TO THE NORTHWEST CORNER OF THE EAST HALF OF THE SOUTH 120 FEET OF SAID TRACT 10;

THENCE WEST ALONG THE NORTH LINE OF THE SOUTH 120 FEET OF SAID TRACT 10 TO THE WEST LINE OF SAID TRACT 10;

THENCE NORTH ALONG SAID WEST LINE OF SAID TRACT 10 AND THE WEST LINE OF TRACT 9 OF SAID PLAT OF THE SOUND TRUSTEE COMPANY'S THIRD ADDITION TO THE NORTHWEST CORNER OF SAID TRACT 9;

THENCE EAST ALONG THE NORTH LINE OF SAID TRACT 9 TO THE NORTHEAST CORNER OF SAID TRACT 9 AND THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 4;

THENCE NORTH ALONG LAST SAID WEST LINE AND THE WEST LINE OF GOVERNMENT LOT 3 OF SAID SECTION 4 TO THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 3;

THENCE EAST ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 3 TO THE TRUE POINT OF BEGINNING.

. , . *1*

RESOLUTION NO. 4008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO TERMINATE EMERGENCY WATER SUPPLY INTERTIE AGREEMENT NO. 2 BETWEEN THE CITY OF AUBURN AND LAKEHAVEN UTILITY DISTRICT

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the City of Auburn and Lakehaven Utility District entered into Emergency Water Supply Intertie Agreement #2 in 1998; and

WHEREAS, Lakehaven Utility District and City of Auburn Interlocal Agreement (Resolution No. 3652) establishing water service boundaries has been executed; and

WHEREAS, portions of the Lakehaven water system have been constructed to supply water to apportion of Auburn's PAA; and

WHEREAS, Auburn has evaluated water service issues and determined that it is not cost feasible to provide direct water service within its PAA above the 160-foot elevation adjacent to Lakehaven's water infrastructure; and

WHEREAS, Lakehaven's delivery of water service to these areas will provide the maximum efficiency in the use of existing and future facilities and water planning; and

WHEREAS, the constructed intertie facility is within the Lakehaven Utility

District water service area and would need to be relocated to serve as an

emergency connection; and

WHEREAS, if an emergency intertie is required one would be constructed

at the location covered under emergency water supply agreement no.1.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH

RESOLVES THAT:

Section 1. The Mayor of the City of Auburn is herewith authorized to

terminate the Emergency Water Supply Intertie Agreement No. 2 between the

City and Lakehaven Utility District attached hereto, marked as Exhibit "A" and

incorporated herein by this reference.

The Mayor is hereby authorized to implement such Section 2.

administrative procedures as may be necessary to carry out the directives of this

legislation.

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

and signatures hereon.

DATED this 17 day of april, 2006.

CITY OF AUBURN

PETER B. LEWIS

MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

EMERGENCY WATER SUPPLY AGREEMENT Lakehaven/Auburn Intertie No. 2

THIS AGREEMENT made and entered into by and between the City of Auburn, hereinafter referred to as City, and Lakehaven Utility District, hereinafter referred to as "District".

WITNESSETH:

WHEREAS, the City has water facilities in the vicinity of a water main of the District, and

WHEREAS, the City can increase fire protection reliability for its customers if water is available from the District, and

WHEREAS, the District is willing to provide to the City service necessary to increase fire fighting reliability upon the terms and conditions set forth herein,

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

- 1. The District hereby grants to the City the right to connect a water meter and appurtenances to the end of the 8-inch water main located in a vault at the intersection of "R" Street NW on Abby Drive in King County, Washington.
- 2. The meter described in Paragraph No. 1 herein is installed to increase fire fighting reliability or emergency water supply. Water shall not be withdrawn from the supply without the prior written approval of the District. At such time the City shall state the requested time of commencement, duration of use and quantity of water to be so used.
- 3. The City shall comply with all District resolutions and rules relating to connection to the District's water system including, but not limited to, the District's written approval of plans and specifications for the connection prior to construction.
- 4. The City shall pay to the District the same connection fee, rates and charges and monthly service charges, except for capital facilities charge, as are established from time to time by District resolution and as are applicable to the use of a six (6)-inch meter. The current monthly service charge for a six (6)-inch meter is \$238.20 per month. The current rate for water use is \$0.48/ccf for winter usage (November June) and \$0.96/ccf for summer usage (July October) and these rates shall be in effect until such time as the District amends its rate resolution or until a meter of different size is utilized.
- 5. This Agreement shall not authorize or permit the City to take water from the connection described herein beyond what is described in paragraph 2.

Exhibit "A", Resolution No. 2954

- 6. The cost of the meter installation pursuant to this Agreement shall be fully reimbursed by the City and shall become the property of the District upon completion of installation.
- 7. (a.) In case of emergency or whenever the public health, safety, or the equitable distribution of water so demands, the District may change, reduce or limit the time for or temporarily discontinue the supply of water without notice; (b.) Water service may be temporarily interrupted, limited for purposes of making repairs, extensions or doing other necessary work; and (c.) The District shall not be responsible for any damage resulting from interruption, change or failure of the water supply, and the City shall save and hold harmless the District from any loss, damages or suites to or by customers of the City resulting from interruption, change or failure of water supply provided by this Agreement, except damages arising out of the District's negligence. Prior to a planned interruption or limiting of service, the District will notify the City of such not less than three days prior to the service disruption. The District agrees to use best efforts and reasonable diligence to notify City as soon after it becomes aware of the need for service disruption and further will, to the extent practical, limit the service disruptions to daylight hours.
- 8. In the event of non-performance of any provision herein by the City, District may shut off water supplied pursuant to this Agreement.
- 9. This Agreement may be terminated by either party hereto upon 60-days written notice to the other party.

IN WITNESS WHEREOF, we have hereunto set our hands and seals.

CITY OF AUBURN King County, Washington

Mayor

red as to form

City Attorney

Date

LAKEHAVEN UTILITY DISTRICT

King County, Washington

Approved as to form:

ORIGINAL

RESOLUTION NO. 4596

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN EMERGENCY WATER SYSTEM INTERTIE AGREEMENT BETWEEN THE CITY OF AUBURN AND THE CITY OF BONNEY LAKE

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, Auburn and Bonney Lake have legal authority to cooperate with other localities on the basis of mutual advantage and provision or services; and

WHEREAS, the Cities have previously entered into an Emergency Water System Intertie Agreement in order to increase fire protection and emergency water supply reliability for their customers; and

WHEREAS, the Cities are willing to continue to provide these necessary services to increase fire fighting and emergency supply reliability; and

WHEREAS, the Cities wish to enter into a new Intertie Agreement.

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

Section 1. The Mayor and City Clerk of the City of Auburn are hereby authorized to execute an Emergency Water System Intertie Agreement with the City of Bonney Lake in substantially the same form as attached hereto as Exhibit "A," which is made a part hereof as though set forth in full herein.

<u>Section 2.</u> Implementation. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this resolution.

<u>Section 3.</u> Effective Date. This Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this 3/2 day of ______, 2010.

CITY OF AUBURN

PETER B. LEWIS MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED AS TO FORM:

Daniel B. Heid,

City Attorney

EMERGENCY WATER SYSTEM INTERTIE AGREEMENT Bonney Lake/Auburn

THIS AGREEMENT made and entered into by and between the City of Auburn, ("Auburn"), and, the City of Bonney Lake, ("Bonney Lake"), for the purposes of planning, designing, constructing, maintaining, and operating an emergency system intertie between the respective parties,

WITNESSETH:

WHEREAS, both Cities have water facilities in the vicinity, and

WHEREAS, both Cities can increase fire protection and emergency water supply reliability for their customers, and

WHEREAS, the Cities are willing to provide the necessary services to increase fire fighting and emergency supply reliability upon the terms and conditions set forth herein,

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1. The emergency water system intertie is designed to be operated manually as a two way emergency supply between the Auburn and Bonney Lake Systems. The facility is located in Evergreen Way SE at the Water Service Area Boundaries between the two cities. The primary purpose of the intertie is to provide water during an emergency. For purposes of this agreement, an emergency shall be defined as resulting from a water shortage, a major water line break, fire demand, contamination to the water supply system, mechanical equipment failure, electrical equipment failure or Puget Sound Energy facility failure, or any other agreed upon emergency within the water supply system. The maximum duration of an emergency is seven (7) days.

However, in certain situations such as prolonged equipment repair, the intertie may need to be open for longer than seven (7) days. The party requesting the extended use of the intertie shall notify the other party of this need forty eight (48) hours before the end of the emergency period, and shall provide the other party a written estimate of how long it intends to take water as soon as practicable.

Tacoma Intertie Operation: At times, in order to meet its own water supply demands as well as Aubum's, Bonney Lake may need to activate its emergency intertie agreement with Tacoma Public Utilities ("TPU"). Aubum agrees that while the TPU Intertie is open that water flowing

through the Aubum/Bonney Lake intertie shall be assumed to be TPU water.

Auburn shall be held to the same conditions as Bonney Lake in its Wholesale Water Agreement with TPU. Water supplied to Bonney Lake by TPU during peak demand periods requires a matching amount of use during the last quarter of the year in order to qualify for wholesale consumption rates versus higher rates used during peak demand periods.

Auburn shall purchase water during the last quarter of the year from Bonney Lake and TPU until this consumption formula is satisfied. For purposes of satisfying the consumption formula, the water supplied to Auburn during the last quarter of the year is not to be used solely for peak demand periods; rather it is to be used for non-recurring maintenance and repair purposes, preferably not during peak demand periods.

- Auburn will own and maintain the piping, interior equipment, meter and interior appurtenances, and all piping up to the Bonney Lake side of the vault for the metering station.
- Bonney Lake will own and maintain the exterior appurtenances and all piping on Bonney Lake's side of the vault.
- 4. Each City will each have unlimited access to the vault via a dual padlock or ownership of keys to the vault.
- 5. Each City will operate its respective normally-locked valve inside of the vault. Auburn will solely unlock and operate the locked valve on Auburn's side of the meter and Bonney Lake will solely unlock and operate the locked valve on Bonney Lake's side of the meter.
- 6. The procedure for operating the intertie in the event of such emergency shall be as follows:
 - A. Each City shall determine that an emergency as defined in this Agreement has occurred which warrants the need to request that the intertie be activated.
 - B. The Public Works Director or designee of the requesting party shall provide a verbal request to the other City's Public Works Director or designee. Upon agreement that an emergency exists which shall allow for the intertie to be opened, the intertie will be activated as soon as reasonably possible. Both Cities' personnel shall be present at the vault to open the valves to activate the facility.

- C. The City requesting the activation shall provide a written confirmation of the request not less than 24 hours after the verbal request, or on the first day of normal business after the verbal request.
- 7. The intertie shall remain activated until the City requesting activation determines that the need for activation of the emergency intertie has ceased and shall request in writing to close the intertie.
- In case of emergency or whenever the public health, safety, or the 8. equitable distribution of water so demands, the City supplying the water may change, reduce or limit the time for or temporarily discontinue the supply of water without notice; water service may be temporarily interrupted, limited for purposes of making repairs, extensions or doing other necessary work. The City supplying the water shall not be responsible for any damage resulting from interruption, change or failure of the water supply, and the City receiving the water (City requesting activation) shall save and hold harmless the City supplying the water from any loss, damages or suits to or by customers of the City receiving the water resulting from interruption, change or failure of water supply provided by this Agreement, except damages arising out of the City supplying the water's negligence. Prior to a planned interruption or limiting of service, the City supplying the water will notify the City receiving the water of such not less than three days prior to the service disruption. The City supplying the water agrees to use best efforts and reasonable diligence to notify the City receiving the water as soon after it becomes aware of the need for service disruption and further will, to the extent practical, limit the service disruption to daylight hours.
- 9. Auburn and Bonney Lake staff shall read the meter upon activation and upon deactivation of the intertie. The city supplying the water shall verify the information and shall then calculate and invoice the other city for the water used during the request. The invoice shall be calculated by the total water used during the event.
- 10. The rate paid for water shall be determined by one of three scenarios under which water is taken through the intertie. The scenarios are described as follows:
 - A. Emergency Water. This is short term water taken over a period not to exceed seven (7) days. This rate relies on locally produced water and does not include TPU intertie water. The rate for this scenario shall be at the lowest current Auburn or Bonney Lake Residential Rate for service outside City boundaries depending on which city is supplying the water. This shall be complete payment for the water, labor, and administration of activating the intertie.

- B. Prolonged Equipment Repair Water. This water is taken over a period exceeding seven (7) days as needed to complete lengthy repairs. The rate for this scenario shall be at the Auburn or Bonney Lake Residential Rate actually charged for service outside City boundaries depending on which city is selling the water plus 10%. This shall be complete payment for the water, labor, and administration of activating the intertie.
- C. TPU Intertie Water. If Bonney Lake needs to open the TPU intertie to meet system demands while Auburn is taking water from Bonney Lake then all water flowing to Auburn as measured by the Auburn/Bonney Lake intertie meter shall be considered TPU water. The rate for TPU water shall be the wholesale rate set forth in Tacoma Municipal Code 12.10.400, as currently adopted by the Tacoma Public Utility (TPU) Board and Tacoma City Council. In this scenario only the TPU rate with an additive wheeling fee shall apply regardless of the time the intertie is activated. When the TPU Intertie is opened or closed to support Auburn, Bonney Lake shall notify Auburn that same day.

Auburn understands that Bonney Lake will incur additional costs when they activate the TPU intertie. The costs include but are not limited to increased system operation costs i.e. pumping treatment and sampling; and administrative costs such as meter reads, and Tacoma and Auburn accounting and billing. Since these costs are not easily separated from normal water system operation costs, Bonney Lake and Auburn agree that these costs be compensated using a "Wheeling" fee. The Wheeling fee shall be calculated as percentage of the total cost of the water taken through the Auburn/Bonney Lake intertie meter. The Wheeling fee rate shall be 15% of the total cost of TPU water taken by Auburn.

Not later than 30 days after the Bonney Lake/TPU intertie is deactivated, Bonney Lake will submit a reconciliation bill for the quantity of water supplied to Auburn during the period the Bonney Lake/Auburn intertie is activated. In addition, Bonney Lake reserves the right to request monthly reimbursement if the intertie remains open for a prolonged period.

- 11. Each City is responsible for associated staff, administration and legal costs associated with the implementation of the agreement.
- 12. To the extent allowed by law, each party shall defend, indemnify, and hold harmless the other party, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs, expenses of litigation, attorney's fees, penalties and damages of whatsoever kind or

nature arising out of or in connection with or incident to an act or omission of the indemnifying party, its employees, agents, and contractors in the performance of the indemnifying party's obligations under the Agreement and this Amendment. This indemnification provision shall include, but is not limited to, all claims against each party by an employee or former employee of the indemnifying party or its contractors and, as to such claims, each party expressly waives all immunity and limitation of liability under Title 51 RCW.

- 13. This Agreement shall remain in force until terminated by either party hereto upon 60-days written notice to the other party. .
- 14. This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties.

IN WITNESS WHEREOF, we have hereunto set our hands and seals.

CITY OF AUBURN King County, Washington By: Peter B Lewis, Mayor Date	CITY OF BONNEY LAKE Pierce County, Washington By: 4046
Peter B Lewis, Mayor Date	Neil Johnson, Jr., Mayor Date
Attest: Danielle Daskam, City Clerk Date	Attest: Statest 4/28/10 Harwood T. Edvalson, City Clerk Date
Approved as to form:	Approved as to form:
By:	By: Kathlen Hagan 5/4/a James J. Dionne, City Attorney Date



Department of Energy

Bonneville Power Administration 28401 Covington Way SE Kent, WA 98042

LAND USE AGREEMENT

June 16, 2010

In reply refer to:

TERR/Covington

Case No.

20100419

Tract No.:

3C-T-10-A-73

Line:

Tacoma-Covington No. 3

Line:

Tacoma-Grand Coulee No. 1 (oper as Tacoma-Covington No. 4)

ADNO:

8242

Location:

btwn towers 10/4 and 10/5

Applicant:

Landowner:

City of Auburn

Stobie & Trussler

Public Works Dept

3240 B Street

25 West Main St

Auburn, WA 98001

Auburn, WA 98001

Bonneville Power Administration (BPA) hereby agrees to the City of Auburn's use of BPA's easement area for construction/installation, use, and maintenance of a Tacoma waterline - B Street NW Intertie Project CP1011. The vaults and pumping facilities are approved in the proposed location.

The location of the City of Auburn's use is partially within the NE1/4 SE1/4 of Section 1, Township 21N, Range 4E, Willamette Meridian, King County, State of Washington, as shown on the attached segment of BPA Drawing No. 106910, marked as Exhibit A.

This Agreement is revocable at will by BPA and does not modify, change or otherwise alter the rights BPA acquired by Deed. BPA may terminate this agreement upon 30 days written notice.

CITY OF AUBURN AGREES THAT FOLLOWING ITEMS ARE MANDATORY.

- 1. A copy of this permit shall be physically located at the project during construction activities.
- 2. Inform BPA once the construction of the approved use is complete.
- 3. Construction equipment shall maintain a minimum distance of <u>20</u> feet between the equipment and transmission line conductors at all times. Do not measure this with measuring tape, pole, or other physical means.
- 4. To ensure the safety of workers and the uninterrupted operation of the BPA transmission facilities, the City of Auburn shall employ a BPA approved safety watcher during any construction activities occurring under the conductors (wires) when operating any equipment that has the potential to reach or come within 20 feet of the conductors (wires). Please contact this office for a current list of BPA approved Safety Watchers.

- 5. It has been determined that the 17'x 8' vault is HS-20 rated and the surface will be at grade. The lid however is not HS-20 rated and therefore requires placement of bollards and the approval of BPA Transmission Line Maintenance to drive around this portion of the right-of-way.
- 6. The pipeline shall be buried with a minimum cover of 36 inches.
- 7. All uses of the right-of-way shall meet local/state/federal/national codes.
- 8. Mark the location of underground water lines with permanent signs, and maintain such signs, where they enter and leave BPA's right-of-way, and at any angle points with the right-of-way. BPA will not be responsible for damage to facilities not visibly marked.
- 9. No grade changes to facilitate construction or disposal of overburden shall be allowed. Any damage to BPA property resulting from the proposed right-of-way or access road use shall be repaired at the applicant's expense.
- 10. Access to BPA transmission line system by BPA and/or its contractors shall not be obstructed at any time.
- 11. No storage of flammable materials or refueling of vehicles or equipment within the easement area.
- 12. No refueling of vehicles or equipment is allowed on the right-of-way.
- 13. Restore BPA's right-of-way to its original condition, or better following construction.

No changes or additions to the use of the right-of-way is allowed without BPA's review and written approval. Any other uses and utilities on the right-of-way must be applied for separately.

The subject use of this easement area has been determined not to be a hazard to, or an interference with, BPA's present use of this easement for electric transmission line purposes. Accordingly, there is no present objection to such use. However, if such use should, at any time, become a hazard to the presently installed electrical facilities of BPA, or any facilities added or constructed in the future, or if such use should interfere with the inspection, maintenance, or repair of the same, or with the access along such easement, the City of Auburn will be required to stop the use or remove such hazard or interference from the right-of-way at no expense to BPA.

The City of Auburn agrees to assume risk of loss, damage, or injury which may result from the use of the easement area, except for such loss, damage, or injury for which BPA may be responsible under the provisions of the Federal Tort Claims Act, 62 Stat. 982, as amended. It is understood that any damage to BPA's property caused by or resulting from use of the easement area may be repaired by BPA, and the actual cost of such repair shall be charged against and be paid by the City of Auburn.

The following items are advisory in nature, but should be given due consideration.

- Nuisance shocks may occur within the right-of-way. Grounding metal objects helps to reduce the level of shock. It is suggested that road building / construction equipment be grounded with a drag chain.
- Construction/installation, use, and maintenance of the waterline intertie shall be at no cost to BPA.
- BPA shall not be liable for damage to City of Auburn's or Stobie & Trussler's property, facilities, or injury to persons that might occur during maintenance, reconstruction, or future construction of BPA facilities as a result of the City of Auburn's facilities being within the right-of-way.
- BPA seeks help maintaining the integrity of the electrical transmission system. Please report any Vandalism or Theft to the BPA Crime Witness program at 1-800-437-2744. Cash rewards of up to

Tract Nos.: 3C-T-10-A-73 Case No. 20100419 \$ 25,000 will be paid should information lead to the arrest and conviction of persons committing a
crime.

Official communication should be directed to, Bonneville Power Administration, Real Estate Field Services-TERR, 28401 Covington Way SE, Kent, WA or by telephoning 1-800-836-6619 with questions or concerns.

Please note that BPA is not the owner of this property. If the City of Aubum is not the owner, permission to use this property must also be obtained from the owner(s). There may also be other uses of the property that might be located within the same area as this project. This agreement is subject to those other rights.

This Land Use Agreement becomes effective upon the signature of all parties. This agreement is entered into with the express understanding that it is not assignable or transferable to other parties without the prior written consent of BPA.

I have read, understand and concur with the terms of this agreement:

Applicant's Name City of Auburn

Peter B. Lewis, Mayor

6/30/10

I HAVE READ, UNDERSTAND AND CONCUR WITH THE TERMS OF THIS AGREEMENT:

Owner's Name

70.4

Stobie & Trussler

THIS AGREEMENT IS HEREBY AUTHORIZED

Michelle E. Doiron

Realty Specialist

Tract Nos.: 3C-T-10-A-73 Case No. 20100419 Bcc:

M. Wolcott – TER-3

N. Meisner – TERR-3

K. Ross – TFCF – Covington

Official File - TR/3 (Case No. 20100419)

**B" Street

**B" Street

**Storage Pond

280 S88° 50'40'E

**IACOMA-CDVINGTON NO 3

**IACOMA-CDVINGTON NO 3

**PRA 280-56'B NO 1 (OPER AS TAC-DV NO 5)

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**PRA 280-56'B NO 1 (OPER AS TAC-DV NO 5)

*

APPROXIMATE LOCATION OF Waterline connection to Tacoma PUD



SEC 01 T21N R4E WM

UNITED STATES DEPARTMENT OF THE INTERIOR
BONNEVILLE POWER ADMINISTRATION
HEADQUARTERS, PORTLAND, OREGON

TACOMA—COVINGTON NO 3

230 KV TRANSMISSION LINE
SHORT MILE 10 FROM TACOMA (5200')

RIGHT OF WAY DESIGN
Drown Drown
The Company Drown Drown
Traced Engineer Date 10-27-60 SHEET OF STATE OF SHEET OF STATE OF STATE OF SHEET OF STATE OF SHEET OF STATE OF

EXHIBIT A CASE 20100419

Tract ID: 3C-T-10-A-73
Lines: Tacoma-Covington #3;
Tacoma-Grand Coulee #1 (Tac-Cov #4)

City of Auburn Waterline connection

RESOLUTION NO. 4 5 6 3

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN THE 2010 LAKE TAPPS AREA WATER RESOURCES AGREEMENT

WHEREAS, Cascade Water Alliance ("Cascade") has entered into an agreement with Puget Sound Energy "PSE" to purchase PSE's interest in Lake Tapps, and associated equipment related to PSE's former power generation operations at Lake Tapps; and

WHEREAS, Cascade has applied to the Washington State Department of Ecology ("Ecology") for a permit to utilize Lake Tapps as a municipal water supply, although said permit has not yet been granted. This application will convert the water right from its current hydropower production purpose, which is a non-consumptive use that keeps water in the basin, to a recreation and municipal water supply purpose, which is a consumptive use that will result in water being taken out of the basin. The cities of Auburn, Bonney Lake, Buckley, and Sumner ("Four Cities") believe that this conversion and removal of water from the watershed of origin, without addressing the needs of communities in the watershed, is inconsistent with the goals and intent of state laws including laws relating to growth management, watershed planning, water resource management and environmental policy; and the Cities intend for this Agreement to, at least partially, address the Cities' concerns about removal of substantial amounts of water from the basin; and

WHEREAS, each of the Four Cities is located in close proximity to Lake Tapps, and Bonney Lake borders on the Lake; and,

Resolution No. 4563 January 13, 2010 Page 1 of 4 WHEREAS, Lake Tapps is an important resource for the Four Cities and

the East Pierce County region, for both recreation and municipal water supply

purposes; and

WHEREAS, each of the Four Cities is located in close proximity to the

White River, and three of the cities (Auburn, Buckley and Sumner) border on the

River; and

WHEREAS, the White River is an important resource for the Four Cities

and the watershed for fisheries, recreation and municipal water supply purposes;

and

WHEREAS, the Four Cities each have a duty and responsibility to provide

water to serve their growing communities, and face significant challenges

securing future water supplies in a basin that is closed to new withdrawals; and

WHEREAS, Cascade also has purchased significant amounts of water

from, and paid system development charges to, Tacoma Public Utilities ("TPU")

for municipal water; and

WHEREAS, the Four Cities each have a present need for additional water,

but Cascade's ownership of the Lake Tapps water right and its operation and

utilization of the Lake as a municipal water supply may impair the Four Cities'

ability to secure future water supplies for their citizens; and

WHEREAS, ensuring that the Four Cities can meet the future water

demands of their growing communities is in the public interest; and

WHEREAS, in recognition of the need to maintain Lake Tapps as a

recreation resource, Cascade has entered into a Definitive Agreement with the

Resolution No. 4563

Lake Tapps Community Council ("LTCC") that obligates Cascade to maintain water levels in the Lake at "normal full pool" during the summer months; and

WHEREAS, the Four Cities seek to mitigate the possible adverse effects of Cascade's operation of Lake Tapps on the Four Cities while cooperating with Cascade's efforts to develop Lake Tapps as a water supply source.

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

Section 1. The Mayor of the City of Auburn and the Auburn City Clerk are hereby authorized to execute the 2010 Lake Tapps Area Water Resources Agreement 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.

<u>Section 2.</u> 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

Dated and Signed this _______, 2010.

or PETER B. LEWIS

MAYOR

Resolution No. 4563 January 13, 2010 Page 3 of 4 ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney



The second second second

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

☐ Assessor Tax # not yet assigned

RECORDER'S COVER SI	HEET ,
Document Title(s) (or transactions contained therein):	13/74
Interlocal Agreement	
Reference Number(s) of Documents assigned or rele	eased: protein the
Grantor(s)/Borrower(s) (Last name first, then first name Cascade Water Alliance	me and initials) Thut (4) 4022-4
	That a fold I
Grantee/Assignee/Beneficiary: (Last name first)	
 Auburn, City of Bonney Lake, City of Buckley, City of Sumner, City of 	
Legal Description (abbreviated: i.e. lot, block, plat or	section, township, range)
PER RCW 39.34	
Additional legal is on page of document.	
Assessor's Property Tax Parcel/Account Number	Said documents) were field for mycery of Padish Hodriwest Title es a consequency of nearest hodr

2010 LAKE TAPPS AREA WATER RESOURCES AGREEMENT AMONG THE CITIES OF AUBURN, BONNEY LAKE, BUCKLEY AND SUMNER, AND CASCADE WATER ALLIANCE

THIS LAKE TAPPS AREA WATER RESOURCES AGREEMENT ("Agreement") made and entered into on the 5th day of February, 2010, by and among the CITY OF AUBURN, ("Auburn"), the CITY OF BONNEY LAKE, ("Bonney Lake") the CITY OF BUCKLEY, ("Buckley") the CITY OF SUMNER, ("Sumner") (all municipal corporations of the State of Washington, collectively, the "Four Cities") and the CASCADE WATER ALLIANCE, a Washington non-profit corporation ("Cascade"). The Four Cities and Cascade together are sometimes collectively referred to as the "Parties."

DEFINITIONS:

"Water Right" shall mean the water right applications submitted to the Department of Ecology ("Ecology") S2-29920, R2-29935, and S2-29934 in their current form or as may be modified and as approved by Ecology.

"Cascade's Tacoma Wholesale Agreement" means the Agreement For The Sale of Wholesale Water Between The City of Tacoma, Department of Public Utilities, Water Division and Cascade Water Alliance, dated October 13, 2005. The terms "Capacity Reservation Fee," "Peaking Factor," and "System Development Charges" are used in this Agreement as defined in Cascade's Tacoma Wholesale Agreement.

"City" means one of the Four Cities individually.

"Other Agreements" means the Agreement Regarding Reservoir Management Between PSE and the Lake Tapps Community, dated March 31, 2004; the White River Management Agreement Between the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe, and Cascade Water Alliance, dated August 6, 2008; the Lake Tapps Water Rights Settlement Agreement, dated August 6, 2008; the Natural Resources Enhancement Agreement with the Puyallup Tribe of Indians, dated August 6, 2008; and the 2009 Agreement Regarding Lake Tapps between Cascade Water Alliance and the Lake Tapps Community, dated May 13, 2009.

TERMS OF AGREEMENT

In consideration of their mutual covenants, conditions and promises, THE PARTIES HERETO AGREE as follows:

EFFECTIVE DATE AND TERM: This Agreement shall take effect when executed by the Parties and shall remain in full force and effect for fifty (50) years, unless terminated (in whole or in part) earlier in accordance with Sections 4 and 10. Provided, that any actions taken to enforce this Agreement before it expires, any conditions contained in permits issued pursuant to or implementing the terms of this Agreement, and any contracts to purchase water shall survive this Agreement. The Term of this Agreement may be extended by written agreement of the Parties.

CASCADE'S RESPONSIBILITIES:

- 1. Lake Tapps Municipal Advisory Group. Cascade agrees to the establishment of the Lake Tapps Municipal Advisory Group as follows:
 - a. The Lake Tapps Municipal Advisory Group shall consist of the elected Mayors of each of the Four Cities and three (3) members of the Cascade Board of Directors (the Cascade Board). If any of the Four Cities becomes a Member of Cascade, the Mayor of that City will not be considered a member of the Lake Tapps Municipal Advisory Group unless appointed as a representative of the Cascade Board.
 - b. The Lake Tapps Municipal Advisory Group will be a non-voting entity with the purpose of: (1) advising the Four Cities of proposed or pending Cascade decisions or actions related to the management of Lake Tapps that may affect the Four Cities; (2) advising Cascade of any issue that the Four Cities may have related to Cascade's management of Lake Tapps; (3) seeking cooperative resolution of any issues raised by Cascade or the Four Cities; and (4) any other matters related to the implementation of provisions of this Agreement.
 - c. The Lake Tapps Municipal Advisory Group will meet at least twice annually, with such meetings to be generally held in early/mid October and early/mid April, or as otherwise agreed by the members. Meetings may include staff of Cascade and the Four Cities as determined by the group. At the regular meeting of the Cascade Board immediately following a meeting of the Lake Tapps Municipal Advisory Group, a representative of the group will report on the issues discussed and present any recommendations for cooperative resolution of any issues discussed.
- 2. Remedies for Negative Impact on Water Supply. In accordance with the terms of this Agreement, if Cascade's Lake Tapps water supply operations result in a negative impact to the water supplies of one of the Four Cities that is not a Cascade member, the City claiming a negative impact must notify Cascade of their claim and give Cascade at least sixty days to resolve the claimed impact. If Cascade fails to resolve the claimed negative impact or disputes that the negative impact exists, the City claiming the negative impact may pursue existing legal remedies in accordance with state and federal law. If a court

determines that a negative impact has occurred, Cascade shall implement a remedy acceptable to the claiming City or, if the affected City or Cities and Cascade can not agree on a remedy, the court shall establish the terms for the remedy.

- 3. Water Supply Assistance. Cascade agrees to assist the Four Cities in their efforts to meet their respective projected 50-year water needs by implementing one or more of the following measures:
 - a. Tacoma Wholesale Water. Through December 31, 2026, Cascade shall make available the following water supply that may be purchased by the Four Cities either individually or jointly: up to six (6) million gallons per day (MGD) under section 6.2 of Cascade's Tacoma Wholesale Agreement (hereinafter referred to as "Cascade's Guaranteed Reserve Capacity") and up to four (4) MGD under section 6.1 of Cascade's Tacoma Wholesale Agreement (hereinafter referred to as "Cascade's Permanent Capacity") under the following conditions:
 - 1) For water supply from Cascade's Guaranteed Reserve Capacity to be available throughout the year, the City agrees to pay to Cascade an amount equal to the Capacity Reservation Fee (CRF) paid to Tacoma multiplied by the amount to be purchased in MGD (\$1,570,074.00 per MGD). It is understood that this Guaranteed Reserve Capacity water includes a peaking factor of 1.33 for the months of June through September and the City agrees to pay this fee.
 - 2) For water supply from Cascade's Guaranteed Reserve Capacity to be available only during the peak season (June through September), the City agrees to pay to Cascade an amount equal to a pro-rated portion of the Capacity Reservation Fee paid to Tacoma multiplied by the amount to be purchased in MGD (1/3 of the CRF or \$523,358.00 per MGD). It is understood that this Guaranteed Reserve Capacity water includes a peaking factor of 1.33 for the months of June through September and the City agrees to pay this fee.
 - 3) For water supply from Cascade's Permanent Capacity to be available either during peak period only or throughout the year, the City agrees to pay to Cascade an amount equal to the System Development Charge (SDC) paid by Cascade to Tacoma multiplied by the amount to be purchased in MGD (\$4,121,000 per MGD) prorated by the number of months the water will be used each year. (For example, if a City purchases 1 MGD only from June through September, it would pay 1/3 of the SDC, or \$1,373,667 per MGD.) It is understood that this Permanent Capacity water includes a peaking factor of 1.33 for the months of June through September and the City agrees to pay this fee.

- 4) Each City that purchases water under this Section 3 of this Agreement will designate a delivery point and either pay Tacoma directly or reimburse Cascade for costs incurred to install necessary service taps, meters or vaults. Any infrastructure beyond the designated delivery point that may be required to deliver the purchased water to retail customers will be solely the responsibility of the City.
- 5) Each City that purchases water under this Section 3 of this Agreement will provide Cascade with the necessary delivery scheduling information required under Cascade's Tacoma Wholesale Agreement, and will reimburse Cascade for all wholesale charges from Tacoma associated with deliveries at the City's delivery point, in accordance with the provisions of Section 9.1 of Cascade's Tacoma Wholesale Agreement, except for Cascade's obligation to pay the Minimum Monthly Bill.
- 6) At any time prior to December 31, 2026, any of the Four Cities that have entered into wholesale water purchase agreements with Cascade under this Section 3 of this Agreement may ask Cascade to request that Tacoma make permanent the amount of water being purchased from Cascade under this Section 3 in accordance with section 15.1 of Cascade's Tacoma Wholesale Agreement. If approved by Tacoma, the requesting City agrees to pay to Cascade any amounts due from Cascade to Tacoma pursuant to section 15.1.2 of Cascade's Tacoma Wholesale Agreement for the duration of Cascade's obligation to Tacoma.
- 7) Cascade shall not terminate, relinquish or amend Cascade's Tacoma Wholesale Agreement in any way that adversely impacts the Four Cities' ability to purchase water as set forth in this Agreement without the prior express written consent of the Four Cities.
- **b.** Regional Reserved Water. Through December 31, 2030, Cascade will provide Lake Tapps Region Reserved Water ("Regional Reserved Water") to assist the Four Cities to secure or apply for alternative water supplies or water rights under the following conditions:
 - 1) Cascade will include Regional Reserved Water, consistent with this Agreement, in its State Environmental Policy Act (SEPA) Draft Environmental Impact Statement (DEIS) regarding the Lake Tapps Water Rights and Supply Project.
 - 2) Subject to the SEPA DEIS process, Cascade will request approval by Ecology of the Lake Tapps municipal water right application as follows:

- (a) Regional Reserved Water in an amount of seven (7) cubic feet per second (cfs) annual average (Qa) and ten (10) cfs maximum instantaneous (Qi) would be reserved for the use by any or all of the Four Cities to mitigate impacts on the White River of new water rights or changes to existing water rights.
- (b) Regional Reserved Water would not be diverted into Lake Tapps, but instead be allowed to flow down the White River for potential use by any of the Four Cities.
- 3) If such Regional Reserved Water is approved by the Department of Ecology as provide in this Agreement, use of such Regional Reserved Water may be included as part of a water right application submitted individually by any of the Four Cities. Ecology approval of water rights utilizing Regional Reserved Water must be secured by the City on or before December 31, 2030. Beneficial use of such Regional Reserved Water will take place consistent with approved development schedules included in those water right approvals. Any Regional Reserved Water not authorized for use in a water right approved by December 31, 2030, shall revert to Cascade.
- 4) Cascade shall have no other obligation or involvement in any water right applications submitted by the Four Cities utilizing the Regional Reserved Water. Any concerns Cascade may have regarding a City's application shall be raised pursuant to the dispute resolution provisions of Section 18 of this Agreement, prior to pursuing any legal action, including administrative appeals.
- 5) Within 90 days of any of the Four Cities receiving final approval of new or changed water rights incorporating use of Regional Reserved Water, that City shall pay Cascade a one-time Regional Water Charge equal to \$743,950.00 per cfs. If the water right includes seasonal limitations on use of Regional Reserved Water, the Regional Water Charge shall be pro-rated to reflect the seasonal availability of such water.
- c. Water from Tailrace. Subject to availability and to supporting findings in a report of examination for one of the Four Cities' new or changed water right applications, Cascade would provide water by releasing water from the Lake Tapps Project tailrace to the White River, on terms to be negotiated by Cascade and the requesting City.
- d. Support. In order to support the efforts made by any of the Four Cities to acquire new water rights or transfer existing water rights, and upon request by any of the Four Cities, Cascade shall provide technical support, in the form of access to existing modeling and any other technical documentation available to Cascade. Upon request of the Four

Cities and so long as consistent with Other Agreements and approvals related to the Lake Tapps Project, Cascade shall also provide letters or other documentation in support of actions taken by the Four Cities to secure new water rights or transfers of water rights, including but not limited to letters of support in establishing a finding of overriding considerations of the public interest by the Department of Ecology pursuant to RCW 90.54.020(3)(a).

- **4. Termination.** Cascade's obligations under Sections 1 through 3 of this Agreement are in force and effect as to each City only so long as that City fulfills its obligations under this Agreement and has not appealed the Water Right.
- 5. Local Franchise and Permit Requirements. When operating in any of the Four Cities' municipal boundaries, Cascade will comply with all of that City's franchise and permitting requirements.

CITIES' RESPONSIBILITIES:

- 6. Purchase of Tacoma Wholesale Water. The Four Cities, collectively or individually, at each City's sole discretion, agree to buy water under Cascade's Tacoma Wholesale Agreement at the rates, including connection and wholesale charges as set forth in this Agreement. The Four Cities shall be responsible for dividing the purchased capacity among themselves, and shall negotiate wheeling or other applicable agreements either with Cascade or directly with Tacoma Water. Except as expressly provided otherwise in this Agreement, the Four Cities agree to be bound by the terms of the Cascade's Tacoma Wholesale Agreement.
- 7. **Dismissal of Litigation.** Within fifteen (15) business days after filing and/or recording of this Agreement, Auburn will withdraw and dismiss its pending lawsuit, with prejudice, against Cascade (King County Case Number 05-2-35788-6).
- 8. Four Cities Support of the Water Right. So long as the EISs are issued by Cascade and the Water Right is approved by Ecology consistent with this Agreement, the Four Cities will support the EISs and the Water Right.
- 9. Municipal Advisory Group. The Four Cities, represented by their duly elected Mayors, will participate in the Lake Tapps Municipal Advisory Group as described in this Agreement.
- 10. Amending Legislation. Within thirty (30) days of issuance of the Water Right consistent with this Agreement, the Four Cities will support legislation amending RCW 39.34.215 by deleting subsections (4) (c) and (5).
- 11. Termination. The Four Cities' obligations under Sections 6 through 10 of this Agreement

are in force and effect only so long as Cascade fulfills its obligations under this Agreement and the ROEs issued by Ecology for the Water Right are consistent with this Agreement regarding the Regional Reserved Water.

GENERAL

- 12. Indemnification. Each Party shall indemnify and hold the other Parties and their agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against that Party arising out of, in connection with, or incident to the execution of this Agreement and/or the Indemnifying Party's performance or failure to perform any aspect of this Agreement; provided, that nothing herein shall require an Indemnifying Party to hold harmless or defend any other Party, its agents, employees and/or officers from any claims arising from the sole negligence of that other Party, its agents, employees, and/or officers. No liability shall attach to any Party by reason of entering into this Agreement except as expressly provided herein.
- 13. Compliance with regulations and laws. The parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.
- 14. Assignment. No Party shall assign this Agreement or any interest, obligation or duty therein without the express written consent of all other parties.
- 15. Attorneys' Fees. If any party shall be required to bring any action to enforce any provision of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and in the further event that one party shall substantially prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.
- **16. Notices.** All notices and payments hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

City of Auburn 25 West Main Auburn, WA 98001-4998 Attn: Public Works Director Phone:(253) 931-3000

Fax: (253) 931-3053

City of Bonney Lake 19306 Bonney Lake Blvd. Bonney Lake, WA 98391 Attn: Public Works Director Phone: (253) 862-8602

Fax: (253) 862-8538

City of Buckley 933 Main St PO Box 1960

Buckley, WA 98321 Attn: City Administrator Phone: (360) 829-1921

Fax: (360) 829-2659

Cascade Water Alliance 11400 SE 8th Street, Suite 440 Bellevue, Washington 98004 Attn: Chief Executive Officer

Phone: (425) 453-0930 Fax: (425) 425-453-0953 City of Sumner 1104 Maple St. Sumner, WA 98390

Attn: Public Works Director Phone: (253) 863-8300

Fax: (253) 299-5509

General Counsel, Cascade Water Alliance GordonDerr, LLP 2025 First Avenue South, Suite 500 Seattle, Washington 98128-3140 Phone: (206) 382-9540

Fax: (206) 625-0675

or to such other respective addresses as any party hereto may hereafter from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the next business day following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

- 17. Enforceability: The Parties intend this Agreement to be certain and enforceable, as well as a mechanism for ongoing collaboration as to any issues that may arise in connection with implementation of the Agreement. Except as necessary for compliance with and enforcement of this Agreement, the parties do not intend this Agreement to modify their respective rights or authorities.
- 18. Dispute Resolution. In the event that any dispute arises between Cascade and the Four Cities, the aggrieved Party shall give a notice of the dispute to the other Party as provided in Section 16. Cascade and the Four Cities shall, within five (5) days of such notice, each nominate a senior officer of its management to meet at a mutually agreed location, to attempt to resolve such dispute. The Parties shall each designate a representative(s) to confer on the best and most cost effective way to resolve the dispute. By mutual agreement, they may choose direct negotiations or mediation. If there is no agreement between the Parties on how to proceed within thirty (30) days, either Party may pursue legal action; provided however, no Party shall be precluded from filing an appeal or action to prevent the expiration of a time period for filing or any statute of limitations.

- 19. Non-Waiver. No delay or failure by a Party to exercise any of its rights, powers or remedies under this Agreement following any breach by another Party shall be construed to be a waiver of any such breach, or any acquiescence therein, or of or in any similar breach thereafter occurring, nor shall any waiver of any single breach be deemed a waiver of any other breach theretofore or thereafter occurring.
- 20. Severability. In the event that any of the terms of this Agreement are in conflict with any rule of law or statutory provision or otherwise unenforceable, such terms will be deemed stricken from this Agreement, but such invalidity or unenforceability will not invalidate any of the other terms of this Agreement, and this Agreement will continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Agreement.
- 21. No Third Party Beneficiary. This Agreement is for the sole and exclusive benefit of the Parties and is not intended to and shall not confer any rights or benefits on any third party not a signatory hereto.
- 22. Amendment. This Agreement only may be amended or supplemented in a writing signed by the Parties.
- 23. Survival of Claims. Any claim that a Party has asserted by raising it under the Dispute Resolution provisions of this Agreement prior to the termination of this Agreement and that may reasonably be interpreted or construed to survive the termination of this Agreement shall survive the termination of this Agreement.
- 24. Signature in Counterpart. This Agreement may be executed in any number of counterparts and all of those counterparts taken together shall constitute one and the same instrument.
- 25. Further Assurances. Each Party covenants and agrees to do all things necessary or advisable in order to confirm and better assure the intent and purposes of this Agreement.
- **26. Authority.** Each party, by executing this Agreement warrants that it has duly approved this Agreement and has the power to enter into this Agreement and to enforce its terms.

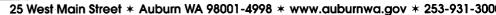
- 27. Good Faith Commitment to Support Agreement. The Parties covenant and agree to act in good faith and to support the terms and validity of this Agreement. Cascade shall, during the term of this Agreement, support and defend the validity of the Agreement and shall not seek, either directly or indirectly, to invalidate the Agreement or undermine or modify its terms and conditions through administrative, legislative, judicial or other means.
- 28. Nondiscrimination. Each of the parties, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or the presence of any sensory, mental or physical handicap be discriminated against or receive discriminatory treatment by reason thereof.
- 29. Applicable Law. This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington jurisdiction and venue for any action arising out of this Agreement shall be in Pierce County, Washington.
- **30.** Captions. The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
- 31. No Additional Entities Created. Unless otherwise specifically provided herein, no separate legal entity is created hereby, as each of the parties is contracting in its capacity as a municipal corporation of the State of Washington; or as a Washington non-profit Corporation. The identity of the parties hereto is as set forth hereinabove.
- 32. Integrated Agreement. This Agreement constitutes the entire agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by all parties.
- 33. Filing. Copies of this Agreement shall be filed with the King County Auditor's Office; the Pierce County Auditor's Office; the Secretary of State of the State of Washington; and the respective Clerks of the parties hereto.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF AUBURN	CITY OF BONNEY LAKE
Peter B. Lewis, Mayor Date	Neil Johnson, Mayor Date
Attest: Danielle Daskam, City Clerk Date	Attest: Stranger 2/5/16 Harwood T. Edvalson, CMC Date
Approved as to Form: Daniel B. Heid, City Attorney Date	Approved as to Form: 2-2-10 James Dionne, City Attorney Date
CITY OF BUCKLEY	CITY OF SUMNER
Pat Johnson, Mayor Date	Dave Enslow, Mayor Date
Attest: Joanne Starr, Deputy City Clerk Date (10-10-10-10-10-10-10-10-10-10-10-10-10-1	Attest: Due Bug 2/10/10 Terri Berry, CMC, City Clerk Date
Approved as to Form: Alfalla alfalling Kathleen Callison, Date Law Office of Kathleen Callison, P.S.	Approved as to Form: Brett Vinson, City Attorney Date
CASCADE WATER ALLIANCE	CASCADE WATER ALLIANCE
Chul Clarke, CEO Date	Perese Richmond, Date General Counsel

Page 11

2010 Lake Tapps Area Water Resources Agreement February 1, 2010





STATE OF WASHINGTON)
)ss
COUNTIES OF KING AND PIERCE)

I, Danielle Daskam, the duly appointed, qualified City Clerk of the City of Auburn, a Municipal Corporation and Code City, situate in the counties of King and Pierce, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of the agreement entitled 2010 Lake Tapps Area Water Resources Agreement Among the Cities of Auburn, Bonney Lake, Buckley and Sumner and Cascade Water Alliance on file with the City Clerk of the City of Auburn.

I certify that said agreement was duly approved by the Council by Resolution No. 4563 on January 19, 2010 and the agreement signed by the Mayor of the said City of Auburn on the 5th day of February, 2010.

Witness my hand and the seal of the City of Auburn this 16th day of February, 2010.

Danielle Daskam, City Clerk

City of Auburn









February 5, 2010

Mr. Chuck Clarke CEO, Cascade Water Alliance 11400 SE 8th Street, Suite 440 Bellevue, WA 98004

Dear Mr. Clarke,

The Cities of Auburn, Bonney Lake, Buckley, and Sumner have completed negotiations with Cascade Water Alliance on the 2010 Lake Tapps Area Water Resources Agreement (Agreement), whereby Cascade agreed to assist the cities in meeting their respective future water supply needs. As the four Mayors representing the Cities of Auburn, Bonney Lake, Buckley, and Sumner we have found it prudent to submit this letter to you on behalf of our cities detailing the projected timing and quantity of our respective water supply needs for the resources being made available to our cities by Cascade. The projected amounts needed and the times at which water will be needed are based on current planning data. We understand that the quantities listed below are subject to the following combined limits in the Agreement: (1) with respect to Regional Reserved Water for mitigation purposes, 7 cfs for average daily demand and 10 cfs for peak demand; and (2) with respect to Tacoma Wholesale Water, 6 million gallons per day (MGD) of Cascade's Guaranteed Reserve Capacity and four 4 MGD of Cascade's Permanent Capacity, plus a peaking factor of 1.33.

The Cities agree among themselves that the sources of supply provided by Cascade Water Alliance will be allocated as outlined below for each source provided, and that these allocations will be needed by approximately the years listed below. Any changes of allocation between the cities from the amounts reflected below will be subject to mutual written agreement of all four cities and a revised notice to Cascade.

City of Auburn Schedule and Allocation:

Mitigation Flows (Regional Reserved Water):

MGD ADD MGD Peak CFS Peak
1.3 2.5 3.88

Temporary Block Water (Guaranteed Reserve Capacity):

Auburn plans to take delivery of not to exceed 5 MGD of this water supply in three (3) increments by year-end 2018.

Permanent Block Water (Cascade's Permanent Capacity):

Auburn plans to take delivery of not to exceed 2MGD ADD, 3.32 MGD Peak of this water supply in two increments by year-end 2018.

City of Bonney Lake Schedule and Allocation:

Mitigation Flows (Regional Reserved Water):

MGD ADD MGD Peak CFS Peak 1.0 2.0 3.1

Temporary Block Water (Guaranteed Reserve Capacity):

Bonney Lake declines to purchase any temporary block water.

Permanent Block Water (Cascade's Permanent Capacity):

Bonney Lake plans to take delivery by year-end 2018 of not to exceed 1.54 MGD ADD, 2 MGD Peak of this supply for the months of June through September only.

City of Buckley Schedule and Allocation:

Mitigation Flows (Regional Reserved Water):

MGD ADD MGD Peak CFS Peak 0.71 1.3 2.0

Temporary Block Water (Guaranteed Reserve Capacity):

Buckley reserves the right to purchase up to one MGD of temporary block water.

Permanent Block Water (Cascade's Permanent Capacity):

Buckley would purchase permanent block water if Regional Reserved Water cannot be utilized.

City of Sumner Schedule and Allocation:

Mitigation Flows (Regional Reserved Water):

MGD ADD

MGD Peak CFS Peak

0.42

0.65

1.0

Subject to permitting decisions to be made by Department of Ecology, Sumner may not need peak flows above the average of 0.42 MGD (0.65 cfs).

Temporary Block Water (Guaranteed Reserve Capacity):

Sumner would not purchase temporary block water.

Permanent Block Water (Cascade's Permanent Capacity):

Sumner would not purchase permanent block water.

CITY OF AUBURN

Peter B. Lewis, Mayor

CITY OF BONNEY LAKE

Neil Johnson, Mayor

CITY OF BUCKLEY

CITY OF SUMNER

Dave Enslow, Mayor









February 5, 2010

Mr. Chuck Clarke CEO, Cascade Water Alliance 11400 SE 8th Street, Suite 440 Bellevue, WA 98004

Dear Mr. Clarke,

The Cities of Auburn, Bonney Lake, Buckley, and Sumner have completed negotiations with Cascade Water Alliance on the 2010 Lake Tapps Area Water Resources Agreement (Agreement), whereby Cascade agreed to assist the cities in meeting their respective future water supply needs. As the four Mayors representing the Cities of Auburn, Bonney Lake, Buckley, and Sumner we have found it prudent to submit this letter to you on behalf of our cities detailing the projected timing and quantity of our respective water supply needs for the resources being made available to our cities by Cascade. The projected amounts needed and the times at which water will be needed are based on current planning data. We understand that the quantities listed below are subject to the following combined limits in the Agreement: (1) with respect to Regional Reserved Water for mitigation purposes, 7 cfs for average daily demand and 10 cfs for peak demand; and (2) with respect to Tacoma Wholesale Water, 6 million gallons per day (MGD) of Cascade's Guaranteed Reserve Capacity and four 4 MGD of Cascade's Permanent Capacity, plus a peaking factor of 1.33.

The Cities agree among themselves that the sources of supply provided by Cascade Water Alliance will be allocated as outlined below for each source provided, and that these allocations will be needed by approximately the years listed below. Any changes of allocation between the cities from the amounts reflected below will be subject to mutual written agreement of all four cities and a revised notice to Cascade.

City of Auburn Schedule and Allocation:

Mitigation Flows (Regional Reserved Water):

MGD ADD MGD Peak CFS Peak 1.3 2.5 3.88

Temporary Block Water (Guaranteed Reserve Capacity):

Auburn plans to take delivery of not to exceed 5 MGD of this water supply in three (3) increments by year-end 2018.

Permanent Block Water (Cascade's Permanent Capacity):

Auburn plans to take delivery of not to exceed 2MGD ADD, 3.32 MGD Peak of this water supply in two increments by year-end 2018.

City of Bonney Lake Schedule and Allocation:

Mitigation Flows (Regional Reserved Water):

MGD ADD MGD Peak CFS Peak 1.0 2.0 3.1

Temporary Block Water (Guaranteed Reserve Capacity):

Bonney Lake declines to purchase any temporary block water.

Permanent Block Water (Cascade's Permanent Capacity):

Bonney Lake plans to take delivery by year-end 2018 of not to exceed 1.54 MGD ADD, 2 MGD Peak of this supply for the months of June through September only.

City of Buckley Schedule and Allocation:

Mitigation Flows (Regional Reserved Water):

MGD ADD MGD Peak CFS Peak 0.71 1.3 2.0

Temporary Block Water (Guaranteed Reserve Capacity):

Buckley reserves the right to purchase up to one MGD of temporary block water.

Permanent Block Water (Cascade's Permanent Capacity):

Buckley would purchase permanent block water if Regional Reserved Water cannot be utilized.

City of Sumner Schedule and Allocation:

Mitigation Flows (Regional Reserved Water):

MGD ADD MGD Peak CFS Peak

0.42

0.65 1.0

Subject to permitting decisions to be made by Department of Ecology, Sumner may not need peak flows above the average of 0.42 MGD (0.65 cfs).

Temporary Block Water (Guaranteed Reserve Capacity):

Sumner would not purchase temporary block water.

Permanent Block Water (Cascade's Permanent Capacity):

Sumner would not purchase permanent block water.

Peter B. Lewis, Mayor

Date

CITY OF BONNEY LAKE

Neil Johrlson, Mayor

Date

CITY OF BUCKLEY

CITY OF SUMNER

Pat Johnson, Mayor

Date

Dave Enslow Mayor

Date

RESOLUTION NO. 4649

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE AN EMERGENCY WATER SYSTEM INTERTIE AGREEMENT BETWEEN THE CITY OF AUBURN AND THE LAKEHAVEN UTILITY DISTRICT

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, Auburn and Lakehaven have legal authority to cooperate with other localities on the basis of mutual advantage and provision or services; and

WHEREAS, the parties wish to enter into an Emergency Water System Intertie Agreement in order to increase fire protection and emergency water supply reliability for their customers;

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

<u>Section 1.</u> That the Mayor and City Clerk are hereby authorized to execute an Emergency Water System Intertie Agreement with the Lakehaven Utility District in substantially the same form as attached hereto as Exhibit "A," which is made a part hereof as though set forth in full herein.

<u>Section 2.</u> That the Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

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

Dated and Signed this 18th day of October, 2009.

CITY OF AUBURN

PÈTER B. LEWIS MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

EMERGENCY WATER AGREEMENT Lakehaven/Auburn Intertie No. 2

THIS AGREEMENT made and entered into by and between the City of Auburn, hereinafter referred to as City, and Lakehaven Utility District, hereinafter referred to as "District".

WITNESSETH:

WHEREAS, the City has water facilities in the vicinity of a water main of the District, and

WHEREAS, the City can increase water system reliability in emergencies for its customers if water is available from the District, and

WHEREAS, the District is willing to provide to the City water service necessary to increase the water system's reliability upon the terms and conditions set forth herein,

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

- 1. The District hereby grants to the City the right to connect a water meter and flow control valve, and appurtenances to the end of the 6-inch water main located in a vault near the intersection of Knickerbocker Road and Abby Drive in King County, Washington.
- 2. The meter and flow control valve described in Paragraph No. 1 is installed to increase the reliability of the City water system to meet demand during emergencies.
- 3. For purposes of this agreement, "emergency " shall mean a water shortage, a major water line break, fire demand, contamination to the water supply system, mechanical equipment failure, electrical equipment failure or Puget Sound Energy facility failure, or any other event agreed upon between the Parties..
- 4. The procedure for operating the intertie in the event of such an emergency shall be as follows:
 - a. The City and District shall each determine that an emergency has occurred that warrants the need to request that the intertie be activated.
 - b. The Public Works Director or designee of the City shall provide a verbal request to the District General Manager or designee stating the requested time of commencement, and estimated duration and quantity of water to be so used. Upon verbal agreement by the District that an emergency exists, the intertie will be

activated as soon as reasonably possible. District and City personnel shall be present at the vault to activate the facility.

- c. The City shall provide a written confirmation of the request not less than 24 hours after the verbal request, or on the first day of normal business after the verbal request.
- d. Subject to condition in paragraph 10, the intertie shall remain activated until the City determines that the need for activation of the emergency intertie has ceased. The Public Works Director or designee of the City shall provide a verbal request to the District General Manager or designee that the intertie be closed. The City shall provide written confirmation within 24 hours after the verbal request, or on the first day of normal business after the verbal request.
- e. This emergency intertie facility is limited to a maximum flow-rate of 800-GPM (gallons-per-minute).
- 5. The City and District staff shall read the meter upon activation and deactivation of the intertie. The District shall then calculate and invoice the City for the water used during the request. The invoice shall be calculated based on the total water used during the event.
- 6. The City shall comply with all District resolutions and rules relating to connection to the District's water system, unless modified by this agreement.
- 7. The City shall pay to the District the same connection fee, rates and charges and monthly service charges, except for capital facilities charge, as are established from time to time by District resolution and as are applicable to the use of a six (6)-inch meter. The current monthly service charge for a six (6)-inch meter is \$287.04 per month. The current rate for water use is \$1.24/ccf for winter usage (November June) and \$2.56/ccf for summer usage (July October) and these rates shall be in effect until such time as the District amends its rate resolution or until a meter of different size is utilized.
- 8. This Agreement shall not authorize or permit the City to take water from the connection described herein beyond what is described in Paragraph No. 4.
- 9. All costs of the meter and flow control installation including, but not limited to, time and materials expended on improvements pursuant to this Agreement, shall be fully reimbursed by the City. Any materials provided shall become the property of the District upon completion of installation.
- 10. (a.) In case of emergency or whenever the public health, safety, or the equitable distribution of water so demands, the District may change, reduce or limit the delivery rate or time, or temporarily discontinue the emergency water connection to the City

without notice; (b.) Water service may be temporarily interrupted, limited for purposes of making repairs, extensions or doing other necessary work; and (c.) The District shall not be responsible for any damage resulting from interruption, change or failure of the emergency water connection, and the City shall save and hold harmless the District from any loss, damages or suits to or by customers of the City resulting from interruption, change or failure of water supply provided by this Agreement, except damages arising out of the District's negligence. Prior to a planned interruption or limiting of service, the District will notify the City of such not less than three days prior to the service disruption. The District agrees to use best efforts and reasonable diligence to notify City as soon after it becomes aware of the need for service disruption.

- 11. To the extent allowed by law, each party shall defend, indemnify, and hold harmless the other party, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs, expenses of litigation, attorney's fees, penalties and damages of whatsoever kind or nature arising out of or in connection with or incident to an act or omission of the indemnifying party, its employees, agents, and contractors in the performance of the indemnifying party's obligations under the Agreement. This indemnification provision shall include, but is not limited to, all claims against each party by an employee or former employee of the indemnifying party or its contractors and, as to such claims, each party expressly waives all immunity and limitation of liability under Title 51 RCW.
- 12. In the event of non-performance of any provision herein by the City, District may shut off water supplied pursuant to this Agreement.
- 13. This Agreement may be terminated by either party hereto upon 60-days written notice to the other party.

IN WITNESS WHEREOF, we have hereunto set our hands and seals.

CITY OF AUBURN

King County, Washington

Mayor

yor Date

LAKEHAVEN UTILITY DISTRICT

King County, Washington

General Manager

Date

October 12, 2010

Page 3 of 4

Approved as to form:

By:

Approved as to form:

General Course

Date

RESOLUTION NO. 4648

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE AN EMERGENCY WATER SYSTEM INTERTIE AGREEMENT BETWEEN THE CITY OF AUBURN AND THE CITY OF TACOMA

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, Auburn and Tacoma have legal authority to cooperate with other localities on the basis of mutual advantage and provision or services; and

WHEREAS, the Cities wish to enter into an Emergency Water System Intertie Agreement in order to increase fire protection and emergency water supply reliability for their customers;

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

<u>Section 1.</u> That the Mayor and City Clerk are hereby authorized to execute an Emergency Water System Intertie Agreement with the City of Tacoma in substantially the same form as attached hereto as Exhibit "A," which is made a part hereof as though set forth in full herein.

<u>Section 2.</u> That the Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

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

Dated and Signed this 18th day of October, 2009.

CITY OF AUBURN

PETER B. LEWIS MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Dániel B. Heid, City Attorney

EMERGENCY INTERTIE AGREEMENT

BETWEEN

CITY OF TACOMA AND CITY OF AUBURN

This emergency intertie agreement ("Agreement") is made by and between the City of Tacoma, Department of Public Utilities, Water Division d/b/a Tacoma Water, a municipal corporation (hereafter "Tacoma"), and the City of Auburn, a municipal corporation (hereafter "Auburn"). Tacoma and Auburn collectively shall be referred to as the "Parties" or either Tacoma or Auburn may be referred to as "Party" when appropriate.

A. <u>RECITALS:</u>

WHEREAS, Auburn and Tacoma are responsible for operating and maintaining their public water systems in accordance with federal, state and local laws and regulations, and

WHEREAS, the Parties recognize the responsibility of public water utilities to provide for the highest quality of water and reliability of service to their customers at reasonable cost, and

WHEREAS, the Parties further recognize that water resources are finite and vulnerable, and the prudent use and management of these resources requires cooperation among water utilities, and

WHEREAS, Auburn has requested that an intertie be established with Tacoma, to be available in case of emergency need, and Auburn does have water system facilities nearby that can be interconnected so as to be mutually beneficial to both utilities during periods of system emergency, and

WHEREAS, the Parties recognize that Auburn intends to use this intertie for wholesale service in the future,

NOW THEREFORE, it is agreed that Auburn and Tacoma may provide for interties of water mains and the terms and conditions contained herein shall apply.

B. <u>DEFINITIONS:</u>

The definition of certain terms, as used later in this Agreement, are as follows:

INTERTIE: A physical connection between water mains of the two Parties to this Agreement, at specifically identified points, where water may be transferred from the supplies of one system to the transmission or distribution facilities of the other.

SURPLUS PRODUCTION CAPACITY: Volumetric rate of available water supply, from the sources of the supplying water system, which can be transferred through an

intertie after all service requirements to the customers of the supplying system have been met.

ISOLATION VALVE: A positive shut off valve which shall be installed at the point in each water system which is used to accept or deliver water through the intertie. Each connected system has sole responsibility for providing and operating their isolation valve.

INTERTIE CAPACITY: The flow capacity for water to be delivered through an intertie as agreed upon by the Parties to this Agreement. Intertie facilities shall be designed so as to be capable of conveying no less than the agreed upon flow.

EMERGENCY: Defined as resulting from a water shortage, a major water line break, fire demand, contamination of the water supply system, mechanical equipment failure, electrical equipment failure, or any other agreed upon emergency affecting the water supply system.

C. CONDITIONS

- 1. <u>GENERAL</u>: The intertie described in exhibits A and B attached to this document shall be governed by the terms of this agreement. No future interties shall be permissible without a subsequent and separate written agreement between the Parties, which agreement may supplement this agreement. Neither Party shall be obligated to agree to or execute any such agreement or permit the other Party to construct additional connections.
- 2. <u>PURPOSE</u>: The intertie described in exhibits A and B attached to this document shall be utilized only in emergency situations unless converted by mutual Agreement to a regular wholesale service. Tacoma will first determine that surplus production capacity is available before providing water for an emergency situation.
- 3. CAPITAL COSTS: The cost of construction of the proposed intertie, to include all facilities and equipment necessary to deliver water, installation of the meter and vault and connection to Tacoma Water's Pipeline 5 (STA 765+05) at "B" Street NW shall be the responsibility of Auburn. As used in this paragraph, "cost of construction" shall include, but not be limited to, all actual costs of labor, materials, permitting, equipment, engineering, legal, publication, SEPA compliance, and any costs customarily incurred in such projects. The meter and vault will be designed, constructed and owned by Tacoma. Auburn has deposited \$ 61,700.00 with Tacoma to cover the estimated costs. If Tacoma determines that the initial deposit is not sufficient to pay for all costs of construction, Auburn shall deposit such additional amounts with Tacoma as Tacoma requires to complete design and construction of the project. If the cost of construction is less than the deposit, Tacoma shall refund the remaining balance.
- 4. MAINTENANCE COSTS: Each utility shall be responsible for operating and maintaining their facilities including isolation and flow control valves as applicable (see Exhibit A). Vault and meter maintenance costs shall be the responsibility of Tacoma.

Should Tacoma ever need Auburn to relocate their infrastructure to accommodate a Tacoma Water project, Auburn will do so at their own cost.

- 5. OPERATING PROTOCOL: The Party requesting water shall submit a written request to the supplying Party and the supplying Party must give written permission prior to the transference of any water to the requesting Party. Should a situation arise necessitating the supply of water immediately a verbal request shall initially be sufficient followed by a written request. Verbal authorization, however, must be obtained from the supplying Party before obtaining any water. Each Party shall designate, in writing, a person or persons who have authority to evaluate such a verbal request and determine whether such a request should be granted.
- 6. <u>NOTICE</u>: All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Tacoma:
Ms. Linda McCrea
Water Superintendent
PO Box 11007
Tacoma, WA 98411
Phone: (253) 502-8245
Fax: (253) 502-8694

If to City of Auburn:
Mr. Dan Repp
Utilities Engineer
1 East Main Street
Auburn, WA 98001
Phone: (253) 804-5062
Fax: (253) 931-3053

7. COMMODITY COST: Tacoma will supply Auburn with water at the wholesale water service rate as identified in TMC Section 12.10.400, City of Tacoma Water Rates and Regulations. Invoices will include a monthly ready to serve charge based on meter size and consumption charges based on water used. Consumption charges will be at the constant use rate for the first 30 days of use. If use exceeds 30 days the Superintendent will have the discretion to reclassify the consumption charge to the summer season peaking rate. These water rates are periodically adjusted and shall be applicable as set forth in the rate schedule as adopted by the Public Utility Board and Tacoma City Council.

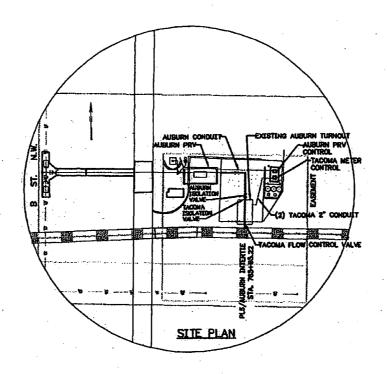
- 8. <u>CONVERSION OF SERVICE</u>: Establishment of an emergency intertie and providing emergency water shall not be considered a commitment of water availability for future retail or wholesale service. Conversion of an emergency intertie to retail or wholesale service will require an assessment of water availability, a decision to serve by the appropriate body, payment of a system development charge, and a commitment to comply with applicable rate and service policies.
- 9. <u>INDEMNITY:</u> Neither Party shall be liable for failure to deliver water to the other Party at any time. If water is provided, it shall be provided only from surplus production and/or storage capacity of the supplying utility as determined at the time of intertie operation. Each Party understands and acknowledges that the other Party makes no warranties or

assurances as to water availability, pressure or volume at any given time relating to the intertie.

10. TERMINATION OF SERVICE: Termination of this intertie agreement by either Party shall be preceded by not less than one (12) calendar months written notice to the other Party.

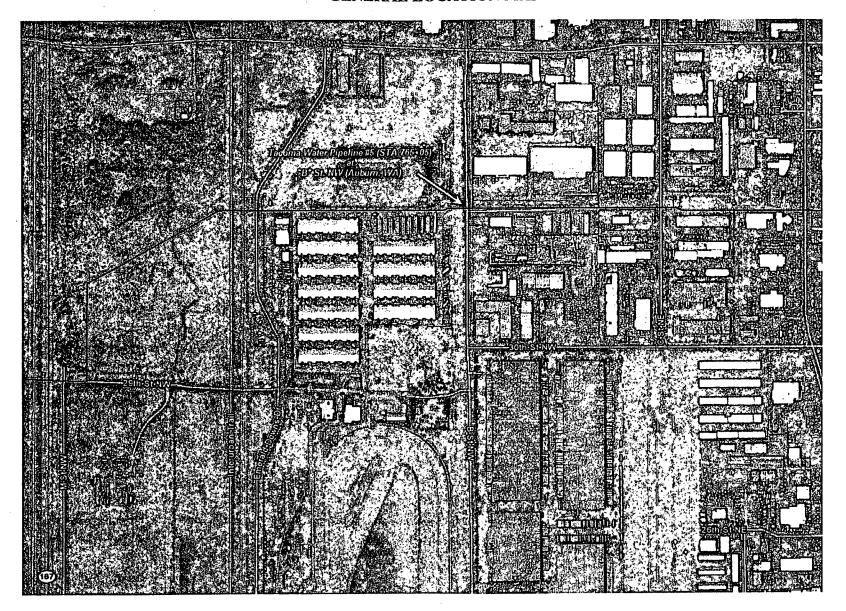
Dated this 18th day of Octob	<u>ey</u> , 2010.
CITY OF TACOMA	CITY OF AUBURN
By: SurdaMc Crea. Linda McCrea, Water Superintendent	By: Mayor
Approved as to form and legality	Approved as to form and legality
By: William Josh Chief Assistant City Attorney	By: Attorney

EXHIBIT A EMERGENCY INTERTIE CONNECTION SPECIFICATIONS



	Connection	tion Meter	Elevation (ft.)		Operating Pressure (psi)		Flow Capacity (gpm)
	Size Size	Size	Tacoma	Auburn	Tacoma	Auburn	To/From Utility
Tacoma Water Pipeline 5 (STA 765+05) At "B" St. NW (Auburn, WA)	12"	6"	44.21	45.24	309	80	2,200

EXHIBIT B GENERAL LOCATION MAP



RESOLUTION NO. 4660

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN INTERIM WATER SALES AGREEMENT BETWEEN THE CITY OF AUBURN AND KING COUNTY WATER DISTRICT NO. 111

WHEREAS, the City adopted Resolution No 2721 executing an Interlocal Agreement No. 2 for the Lea Hill Intertie Project between the Covington Water District, King County Water District No. 111 and the City of Auburn; and

WHEREAS, to avoid unpredictable water sales and to create a predictable and reliable cost for wholesale water to be sold by the City to the Covington and King County Water District, on June 17, 2002, the City adopted Resolution No. 3482, which authorized the execution of an Interim Water Sales Agreement between the parties; and

WHEREAS, on February 22, 2005, the prior Interim Water Sales Agreement was superseded and replaced with a new agreement per Resolution No. 3817; and

WHEREAS, Covington has opted out of the original agreement; and WHEREAS, The City and the King County Water District No. 111 wish to continue their prior arrangement;

WHEREAS, in keeping with the original intent of the parties to create a predictable and reliable cost for wholesale water, it is appropriate for the City to

enter into a new Interim Water Sales Agreement with King County Water District No. 111 which would supersede and replace the prior agreement.

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 and the Auburn City Clerk are hereby authorized to execute an Interim Water Sales Agreement between the City of Auburn and King County Water District No. 111, in substantial conformity with the Agreement attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

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

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

Dated and Signed this 6 day of December, 2010

PETER B. LEWIS, MAYOR

CITY OF AUBURN

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED ASTO FORM:

Daniel B. Heid, City Attorney

INTERIM WATER SALES AGREEMENT between KING COUNTY WATER DISTRICT NO. 111 and the CITY of AUBURN

This Agreement ("Agreement") is made and entered into this _____ day o December, 2010 by and between King County Water District No. 111, a Municipal Corporation ("District") and the City of Auburn, a Municipal Corporation ("Auburn") (individually a "Party" and collectively the "Parties").

Recitals:

- A. The Parties are also parties to "Interlocal Agreement 2 for the Lea Hill Intertie Project between King County Water District #111, and the City of Auburn" ("IA2").
- B. The Parties desire to avoid unpredictable water sales and create a predictable and reliable cost for wholesale water to be sold by Auburn to the District.
- C. By guaranteeing a minimum purchase of water for a given period of time, the cost of water, which to a significant extent is based on peaking factors, can be minimized for all of Auburn's customers.
- D. This Agreement is intended to establish a rate for a fixed block of water for the mutual benefit of the Parties.

Resolution No. 4660 Exhibit "A" December 6, 2010 Page 1 of 8

- E. It is in the interest of the District to have a predictable supply of water available, and in Auburn's interest to have a predictable and consistent source of revenue from the sale of such water.
- F. The Parties are authorized to enter into this Agreement under the authority of their respective enabling legislation and under the authority of Chapter 39.34 RCW, the Interlocal Cooperation Act.
- G. The Parties intend that the take or pay water provided for in this Agreement is a portion of and not in addition to the 2.5 MGD allocated to the District as addressed in IA2.

Now, therefore, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

of water as identified in this Agreement from Auburn on a "take or pay" basis. For purposes of this Agreement, a "Block" shall mean either an average of 0.75 MGD of water between the time period of October 1 and May 31, or an average of 1.0 MGD of water between the time period of June 1 and September 30. "Take or pay" shall mean that, in the absence of an emergency as set forth in Section 7 of this Agreement, the District shall pay for the Block of

water whether or not the water is actually taken by the District, subject to the provisions of Section 2 herein.

- 2) CHARGES FOR WATER: On a monthly basis, the District will pay, as shown on Exhibit 1 attached hereto and incorporated herein by this reference, the Base Charge, plus the Block Rate. In addition to the Base Charge and the Block Rate, any water taken in excess of the Block amount ("Excess Water") during any month shall be billed at the appropriate overage rate shown in Exhibit 1; provided, that: 1) any water taken during an emergency, as defined in Paragraph 7, shall be billed at the Block Rate, and 2) if Auburn is unable to deliver up to the Block quantity of water requested by the District, then Auburn shall only bill the District for the amount of water actually delivered at the Block Rate. Auburn shall send a monthly bill to WD 111 for all water purchased by the District.
- QUANTITY AVAILABLE / DELIVERED: The Block quantity shall be calculated as the amount of water to be delivered at an average rate of either 0.75 MGD or 1.0 MGD (depending on the season) measured over a rolling 3 day period, with total quantities delivered within any single day being within 10%, plus or minus, of the Block quantity in effect at the time as measured at the Auburn Intertie Pump Station meter ("Master Meter"). For the Block quantity, the District will be

served on the same basis and with the same reliability as service is provided to Auburn's retail customers, and any curtailment, restrictions or limitations on delivery shall be on same basis as curtailment, restrictions or limitations on delivery to Auburn's retail customers.

- 4) ANNUAL RECONCILIATION: The Master Meter is located at the Lea Hill Intertie Pump Station to measure the flow of water. The Master Meter will be read in January of each year to adjust for differences between the Master Meter and the water calculated to have been sold under this Agreement. If there is a difference between the Master Meter and the calculated quantities, Auburn will either charge or credit the District's account at the Block Rate.
- 5) ANNUAL REVIEW AND ADJUSTMENT: The initial Block of either 0.75 MGD or 1.0 MGD (depending on the season) shall remain in effect through December 31, 2015. Each year, the Block may be adjusted by mutual agreement. By September 1 of each year the District shall notify Auburn of its intent to continue without change or request an increase or decrease in writing of the Block quantity desired. Auburn will review its ability to approve the change and may approve any requested change in the Block quantity up to but not to exceed 1.5 MGD which would become effective January 1 of the year following the request. If Auburn determines it cannot approve the

request it will communicate this information to the District before

October 1, and continue to provide the same amount as during the
current year. In the event that neither Party communicates its intent to
adjust the Block under this provision, the Block shall be deemed to
continue unchanged.

- 6) TERM: This Agreement shall remain in full force and effect from the first day of the month following the execution of this Agreement through December 31, 2015. The Agreement shall automatically be renewed for an additional year at the conclusion of the term of this Agreement or any extension thereof unless either Party provides the other with notice of an intent not to extend this Agreement, which notice shall be received by the other Party not less than one year prior to the expiration of the term of this Agreement or any extension thereof. The termination of this Agreement shall not affect any rights or obligations under IA2.
- <u>FMERGENCIES:</u> For purposes of this Agreement, an emergency shall be defined as a need for water resulting from a water shortage, a major water line break, fire demand, contamination to the water supply system, mechanical equipment failure, electrical equipment failure or Puget Sound Energy facility failure, or any other mutually agreed upon event within the water supply system. An emergency period shall be

for no more than five (5) working days without written request by the District and approval by Auburn in writing to extend the emergency period. The City may change, reduce or limit the time for or temporarily discontinue any water supplied for an emergency in excess of the Block quantity without notice. Prior to a planned interruption or limiting of emergency service, the City will notify the District of the interruption or limiting not less than three days prior to the service disruption. The City agrees to use best efforts and reasonable diligence to notify the District as soon after it becomes aware of the need for emergency service disruption and further will, to the extent practical, limit the service disruption to daylight hours.

8) PRIOR AGREEMENT SUPERSEDED: This Agreement supersedes and replaces the Interim Water Sales Agreement between Covington Water District, King County Water District No. 111 and the City of Auburn dated February 22, 2005.

CITY OF AUBURN

PETER B. LEWIS

MAYOR

ATTEST:

Danielle E. Daskam,

City Clerk

APPROVED/AS TO FORM

Daniel B. Heid, City Attorney

KING COUNTY WATER DISTRICT NO. 111

WILLIAM C. HALL GENERAL MANAGER

ATTEST:

APPROVED AS TO FORM:

District Attorney

Resolution No. 4660 Exhibit "A"

December 6, 2010

Page 7 of 8

Interim Water Sales Agreement Between King County Water District No. 111 And the City of Auburn

Exhibit 1

	Take	or Pay Monthly	Rates	
Year	Base Charge	Block and	Summer	
	(per month)	Winter Overage	Overage	
		Rate (per ccf)	(per ccf)	e militar
2010	\$175.00	\$0.91	Block rate +	
			\$0.25	• •
2011	\$175.00	0.91 X CPI*	Block rate +	
	l		\$0.25	,
2012	\$175.00	2011 Rate X	Block rate +	
N -		CPI*	\$0.25	,
2013	\$175.00	2012 Rate X	Block rate +	
	:	CPI*	\$0.25	
2014	\$175.00	2013 Rate X	Block rate +	
777	MANAS.	CPI*	\$0.25	
2015	\$175.00	2014 Rate X	Block rate +	
- 2		CPI*	\$0.25	

^{*} CPI means the Consumer Price Index – Urban for the Seattle – Tacoma – Bremerton area for the month of October of the prior year, divided by the October value of the year prior to that (see example below).

Example:

CPI for 2011 equals the October 2010 CPI value divided by the October 2009 CPI value.

Resolution No. 4660 Exhibit "A" December 6, 2010 Page 8 of 8

RESOLUTION NO. 4725

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO NEGOTIATE AND EXECUTE A PURCHASE AGREEMENT WITH COVINGTON WATER DISTRICT AND KING COUNTY WATER DISTRICT #111

WHEREAS, the Covington Water District and King County Water District #111 (the Districts) have surplus infrastructure in the form of a water main on 132nd Ave Southeast; and

WHEREAS, the City has a need for an additional water main on 132nd Ave SE as part of a programmed capital project; and

WHEREAS, the Districts are willing to sell the water main to the City; and WHEREAS, purchase of the water main will avoid various environmental and traffic impacts and the risk associated with construction of a new main; and

WHEREAS, purchase of the water main will eliminate the additional burden on finite staff resources to design and construct a new water main.

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

<u>Section 1.</u> That the Mayor is authorized to negotiate an Agreement with Covington Water District and King County Water District #111, and the Mayor and the City Clerk are authorized to execute such agreement as negotiated within budgetary and scoping parameters.

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

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

Dated and Signed this 5th day of _____, 2011.

PETER B. LEWIS

CITY OF AUBURA

MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

PIPELINE TRANSFER AND ACQUISITION AGREEMENT

This Agreement ("Agreement") is by and between the City of Auburn, a Washington municipal corporation ("City"), Covington Water District, a Washington municipal corporation ("CWD"), and King County Water District No. 111, a Washington municipal corporation ("WD 111") (CWD and WD 111, collectively the "Districts") (the Districts and City, collectively the "Parties") for the purposes set forth below.

RECITALS

- A. The City owns and operates a system of water supply within its corporate and water service area boundaries, and the Districts own and operate systems of water supply within their respective corporate and water service area boundaries.
- B. The Parties previously entered into agreements providing for the construction of certain facilities to provide for the conveyance and sale by the City of wholesale water supply to the Districts. Specifically, the Parties entered into an agreement entitled "Interlocal Agreement No. 1" dated November 7, 1995 ("IA1") which provided for the construction of certain facilities to provide for the conveyance of wholesale water supply by the City to the Districts, the obligations to pay for such facilities, and the allocation of capacity rights among the Parties to such facilities; pursuant to IA1, a 16-inch waterline, among other facilities, was installed from SE 298th Street to SE 288th Street in 132nd Avenue SE and the Districts own such waterline and 95% of the capacity of such waterline in 132nd Avenue SE.
- C. The Parties also entered into an agreement entitled "Interlocal Agreement No. 2" dated October 2, 1996 ("IA2") which also provided for the construction of certain additional facilities to provide for the conveyance of wholesale water supply by the City to the Districts, the obligations to pay for such facilities, and the allocation of capacity rights among the Parties to such facilities; and IA1 was terminated and superseded upon the completion of the construction of the water facilities described in IA2.
- D. The City has been providing water supply to the Districts in accordance with the terms and conditions of IA2 through the water facilities constructed pursuant to IA1 and IA2. However, the City has proposed to the Districts that the City purchase a portion of the 16-inch waterline in 132nd Avenue SE owned by the Districts located between SE 299th Street north to the Regional Water Supply System pipeline managed by the City of Tacoma as depicted on **Exhibit A** attached hereto and incorporated herein by this reference (the "Pipeline").
- E. The Districts have agreed to transfer ownership of the Pipeline and its capacity to the City, and the City has agreed to accept ownership of the Pipeline and its capacity according to the terms and conditions of this Agreement.
- F. After title to the Pipeline is transferred to the City, the City shall have the responsibility to operate, maintain, repair and replace the Pipeline.

AGREEMENT

NOW, THEREFORE, in consideration of the following terms and conditions, the Parties agree as follows:

- 1. <u>City Acquisition of Pipeline</u>. The City shall acquire from the Districts exclusive title to the Pipeline, along with all appurtenances associated with the Pipeline as provided in this Agreement. The Pipeline consists of that portion of the 16-inch waterline in 132nd Avenue SE between SE 299th Street north to the Regional Water Supply System pipeline managed by the City of Tacoma of approximately one thousand two hundred thirty (1,230) lineal feet consisting of water pipeline, valves, fittings, and appurtenances as depicted on **Exhibit A**.
- 2. <u>Transfer of Pipeline and Capacity.</u> Districts shall convey the Pipeline and the Pipeline's capacity to the City as follows:
 - A. Districts shall transfer the Pipeline and its capacity to the City in consideration of the City's payment in the amount of Two Hundred Fifteen Thousand Two Hundred Fifty Dollars (\$215,250.00) together with sales tax at the rate of 9.5% thereon to each District (\$20,448.75).
 - B. In consideration of the Districts' transfer of the Pipeline and its capacity to the City, the City shall accept ownership of the Pipeline and operate, maintain, repair and replace the Pipeline and the City will continue to deliver water through the Pipeline to WD 111 in accordance with IA2 and any other agreements the Parties have or may have. The City shall provide WD 111 with water supply pursuant to IA2 and any other agreements the Parties have or may have at a point of delivery as depicted on Exhibit A such that WD 111 may continue to provide necessary supply to its customers served from the Pipeline.
- 3. <u>Indemnification and Hold Harmless.</u> The City shall indemnify, defend and hold harmless Districts, its elected and appointed officers, employees and agents from and against any and all claims, losses, damages, judgments or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any act, omission or failure of City, its elected and appointed officers, agents or employees in the performance of this Agreement. This shall include, but is not limited to, any liabilities resulting from:
 - A. Construction of upgrades to the Pipeline undertaken by the City.
 - B. Leaks or breaks in the Pipeline after the execution of this Agreement.
 - C. Prior and future actions of City and its agents other than Districts.

- 4. <u>Closing</u>. The Parties shall not be obligated to close the City's acquisition of the Pipeline unless and until each Party has performed its covenants and obligations as follows.
 - A. Closing shall occur on or before the 1 day of September 2011 at the City's offices located at 15 west Main 57. Auburn, Washington, or at such other time and place agreeable to the Parties.
 - B. At closing the Districts shall deliver to the City:
 - 1. A Bill of Sale in the form attached hereto as **Exhibit B** and incorporated herein by this reference transferring to the City all of the Districts' right, title and interest in the Pipeline and its capacity and warranting that Districts have exclusive title to the Pipeline and its full capacity, excepting that portion owned by the City. Other than the above warranties, the Bill of Sale shall indicate that the sale is an "As Is, Where Is" sale, with no other warranties, express or implied.
 - 2. "As Built" Pipeline documents in the possession of Districts.
 - C. At closing, the City shall deliver to the Districts:
 - 1. Funds in the amount of Four Hundred Thirty Thousand Five Hundred Dollars (\$430,500.00) in the form of payments of Two Hundred Fifteen Thousand Two Hundred Fifty Dollars (\$215,250.00) to each District, together with sales tax at the rate of 9.5% thereon (totaling \$40,897.50 or \$20,448.75 to each District).
 - D. When the requirements of Sections 4(B) and 4(C) herein have been fulfilled, this transaction shall be closed without further instruction from the Parties.
 - E. To the extent that there are any taxes, special assessments or utility service fees relating to the Pipeline or its use that are the legal obligation of one Party but are attributable in part to a time period during which that Party did not have possession of the Pipeline, then the Parties will share in the obligation to pay such taxes, assessments or fees on the basis of a proration as of Closing. The City may record the Bill of Sale, assignments and other transfer documents as it desires and shall pay the cost thereof.

5. Transfer of Responsibility.

A. Effective 12:01 a.m. on the day immediately following Closing, the Districts relinquish responsibility for the Pipeline to the City, and the City assumes responsibility for the Pipeline on that date, including the obligation to operate, maintain, repair and replace the Pipeline.

- B. Effective 12:01 a.m. on the day immediately following Closing, the City shall assume and be fully responsible for the Pipeline at the City's sole cost and expense. The Pipeline shall be operated by City to provide water supply to WD 111 and any other lawful purpose.
- 6. <u>Severability</u>. The invalidity or unenforceability of any provisions of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respect as if such invalid or unenforceable provisions were omitted.
- 7. Amendment. No change, amendment or modification of any provisions of the Agreement shall be valid unless set forth in a written amendment to this Agreement signed by the Parties.
- 8. <u>Authorization</u>. By signing this Agreement, each Party certifies that it has the authority to bind its respective governing bodies to all of the terms and conditions of this Agreement.
- 9. <u>Effective Date</u>. This Agreement shall be effective upon the date of the last signature below.

City of Auburn, a Washington municipal comparation

By: Y

Dated: 68/24/204

Attest:

City Cle

Approved as to form:

Auburn City Attorney

King County Water District No. 111, a Washington municipal corporation

By William C. Afall

Its: Governc Maracae
Dated: August 22, 2011

Approved as to form:

By:

District Attorney

Covington Water District, a

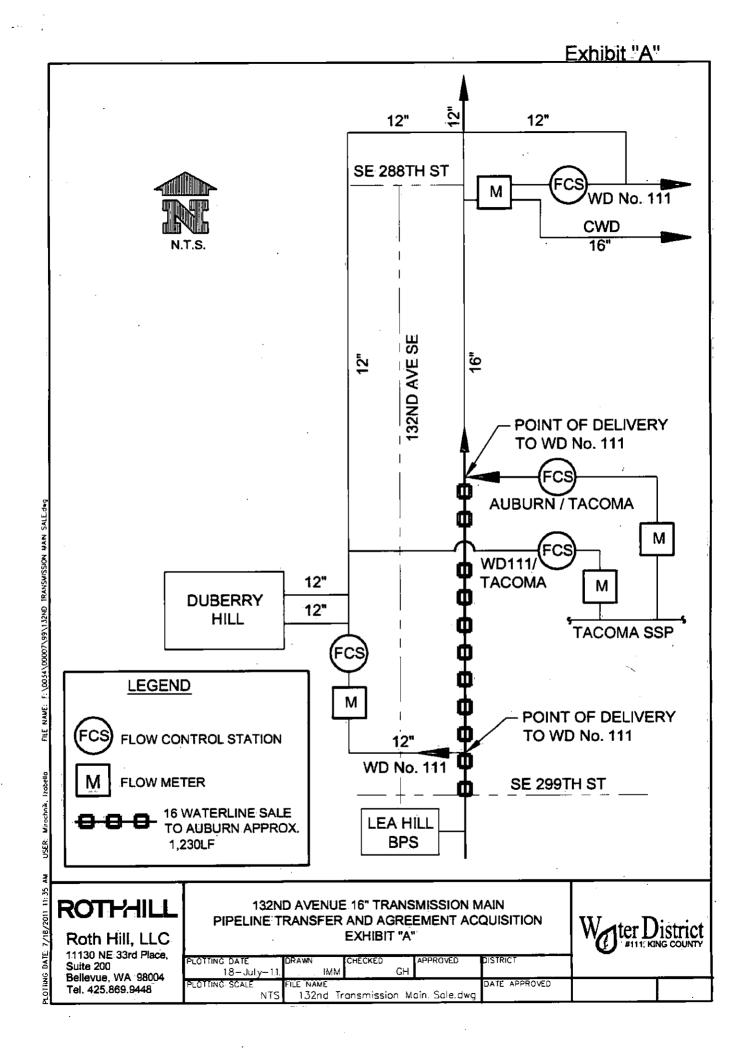
Washington municipal corporation

By:

General Ma

Dated:

Approved as to form:



BILL OF SALE

WATER PIPELINE

Covington Water District, a Washington municipal corporation, and King County Water District No. 111, a Washington municipal corporation (collectively the "Districts"), transfer and convey to the City of Auburn, a Washington municipal corporation ("City"), the following described personal property:

a 16-inch waterline in 132nd Avenue SE between SE 299th Street north to the Regional Water Supply System pipeline managed by the City of Tacoma consisting of approximately one thousand two hundred thirty (1,230) lineal feet of water pipeline, valves, fittings, and appurtenances as depicted on **Exhibit A** attached hereto and incorporated herein by this reference (the "Pipeline").

This transfer and conveyance is made in consideration of the City's payment of Four Hundred Thirty Thousand Five Hundred Dollars (\$430,500.00) in the form of payments of Two Hundred Fifteen Thousand Two Hundred Fifty Dollars (\$215,250.00) to each District, together with sales tax at the rate of 9.5% thereon (totaling \$40,897.50 or \$20,448.75 to each District), and the City's agreement to own and operate the Pipeline as part of the City's water supply. Districts further transfer, convey and assign to the City any and all warranties related to the Pipeline, provided, the Districts make no representations or warranties regarding the existence or status of any warranties related to the Pipeline.

Districts warrants that they have exclusive title to the Pipeline and its full capacity, excepting that portion of the capacity presently owned by the City, and that the Pipeline was accepted for public use as facilities of the Districts. Other than the foregoing warranties, the transfer and conveyance of the Pipeline by the Districts to the City is "As Is", Where Is" with no other warranties, express or implied.

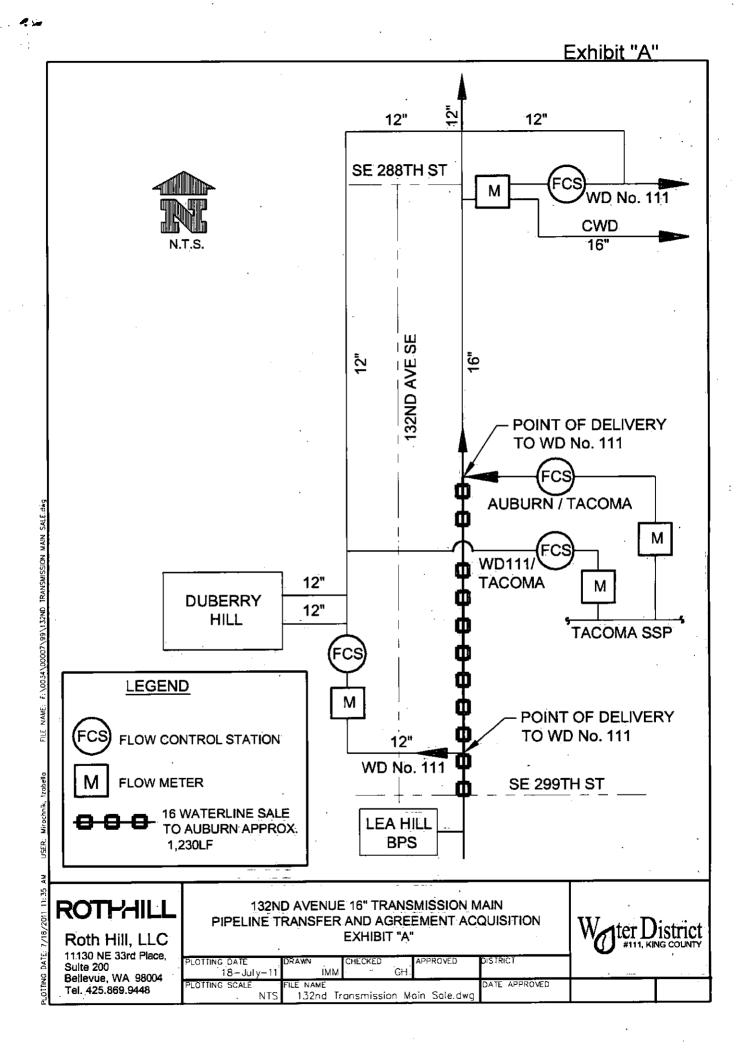
Dated this day of Aubust, 2011. King County Water District No. 111

By William (MOLL MANAGER MANAGER

Dated this 17 day of August, 2011. Covington Water District

By Yeen

Its:





Department of Energy

Bonneville Power Administration 28401 Covington Way Kent, WA 98042

February 7, 2012

In reply to:

TERR/Covington

BPA Case No. 20120039

Tract No.

2C-T-2-A; 3C-T13-85

Line Name:

Tacoma-Raver No. 1 & 2 (operated as same)

Tacoma-Covington No. 3 (operated as same)

Tacoma-Grand Coulee (operated as Tacoma-Covington No. 4)

ADNO

8246, 8247, 8242, 8244;

Structure

13/4 - 13/5

Ms. Leah Dunsdon City of Auburn 25 West Main Street Auburn, WA 98001-3058

LAND USE AGREEMENT

Bonneville Power Administration (BPA) hereby agrees to your use of BPA's easement area for construction/installation, use, and maintenance of a water system intertie - pressure reducing/flow control station/telemetry shelter and improved access road with gate.

The location of your use is partially within the NW1/4 SW1/4 of Section 3, Township 21 North, Range 5 East, Willamette Meridian, King County, State of Washington, as shown on the attached segment of BPA Drawing No. 150023, marked as Exhibit A and City of Auburn drawing marked as Exhibits B, C, D, E and F.

You shall not make any changes or additions to your use of the right-of-way without BPA's review and written approval. Any other uses and utilities on the right-of-way must be applied for separately.

Please note that BPA is not the owner of this property. If you are not the owner, you must obtain the owner's permission to use this property. There may also be other uses of the property that might be located within the same area as your project. This agreement is subject to those other rights.

This agreement is entered into with the express understanding that it is not assignable or transferable to other parties without the prior written consent of BPA. This agreement is

revocable at will by BPA and does not modify, change, or otherwise alter the rights BPA acquired by Deed. BPA may terminate this agreement upon 30 days written notice. The subject use of this easement area has been determined not to be a hazard to, or an interference with, BPA's present use of this easement for electric transmission line purposes. Accordingly, there is no present objection to such use. However, if BPA should determine at any time, that your use has become a hazard to the presently installed electrical facilities of BPA, or any facilities added or constructed in the future, or if such use should interfere with the inspection, maintenance, or repair of the same, or with the access along such easement, you will be required to stop your use or remove such hazard or interference from the right-of-way at no expense to BPA.

BY ACCEPTING THIS LAND USE AGREEMENT YOU ARE AGREEING TO THE FOLLOWING CONDITIONS

- 1. Because of other potential uses in the area of your project, BPA requires that you have a utility locate done prior to construction commencing.
- 2. Maintain a minimum distance of at least 15 feet between your facilities and the transmission line conductors (wires).
- 3. Maintain a minimum distance of at least 50 feet between your facilities and the transmission line structures.
- 4. Construction equipment shall maintain a minimum of 15 feet between the equipment and transmission line conductors at all times. Do not measure this with measuring tape, pole or by other physical means.
- 5. To ensure safety of workers and uninterrupted operation of transmission lines, applicant shall employ a BPA approved safety watcher during construction activities occurring under the conductors (wires) or lifting of equipment that may come in contact with the conductors (wires). Please contact BPA for a current list of BPA approved Safety Watchers.
- 6. Equipment, machinery, and vehicles traveling on BPA's right-of-way shall come no closer than 25 feet to any BPA structure or guy anchor ground attachment point.
- No storage of flammable materials or refueling of vehicles or equipment on BPA property.
- 8. Overburden grade changes to existing ground elevations while excavating on right-of-way is prohibited.
- 9. All use of the right of way shall meet local/state/federal/national codes.
- 10. Design and build the water main intertie, pressure reducing station and access road constructed within the BPA's property to withstand HS-20 loading for BPA's heavy vehicles.
- 11. Bury and maintain the water main, drainage lines, and conduits to a depth of 36 inches or comply with applicable NESC, national, state, and/or local standards, which ever is greater.

- 12. All underground cables/wires shall be placed in conduit.
- 13. Mark the location of the underground water main and conduits with permanent signs and maintain such signs where they enter and leave BPA's right-of-way, and at any angle points within the right-of-way.
- 14. Access to BPA transmission line system by BPA and/or its contractors shall not be obstructed at any time.
- 15. BPA shall have the right to use the access road for access to its structures, both to and along its transmission lie right of way.
- 16. The access road will only be used by the utilities.
- 17. Replace gate with an adequate gate in the fence of not less than 16 feet in width for the passage of BPA vehicles. The approved location of the gate is as shown on attached exhibit B. Gates may be locked provided a BPA lock is also included in the locking mechanism.

IN ADDITION, THE FOLLOWING IS BROUGHT TO YOUR ATTENTION

You agree to assume risk of loss, damage, or injury which may result from your use of the easement area, except for such loss, damage, or injury for which BPA may be responsible under the provisions of the Federal Tort Claims Act, 62 Stat. 982, as amended. It is understood that any damage to BPA's property caused by or resulting from your use of the easement area may be repaired by BPA, and the actual cost of such repair shall be charged against and be paid by you.

Construction/installation, use, and maintenance of the water system intertie - pressure reducing/flow control station/telemetry shelter and improved access road with gate shall be at no cost to BPA.

Nuisance shocks are common on high voltage transmission right of way. Plan your uses taking this into consideration.

BPA seeks your help maintaining the integrity of the electrical transmission system. Please report any Vandalism or Theft to the BPA Crime Witness program at 1-800-437-2744. Cash rewards of up to \$25,000 will be paid should information lead to the arrest and conviction of persons committing a crime.

BPA shall not be liable for damage to your property, facilities, or injury to persons that might occur during maintenance, reconstruction, or future construction of BPA facilities as a result of your facilities being within the right-of-way.

If you have any questions or concerns, please notify this BPA Realty Office. You may direct any communication to Bonneville Power Administration, Real Property Field Services (TERR/Covington) 28401 Covington Way, Kent, WA 98042, or by telephoning Timothy C. Wicks at 253-631-9154.

A copy of this agreement shall be physically located at the project during construction activities.

THIS LAND USE AGREEMENT BECOMES EFFECTIVE UPON THE SIGNATURE OF ALL PARTIES.

I HAVE READ, UNDERSTAND, AND CONCUR WITH THE TERMS OF THIS AGREEMENT:

Applicants Name

Date

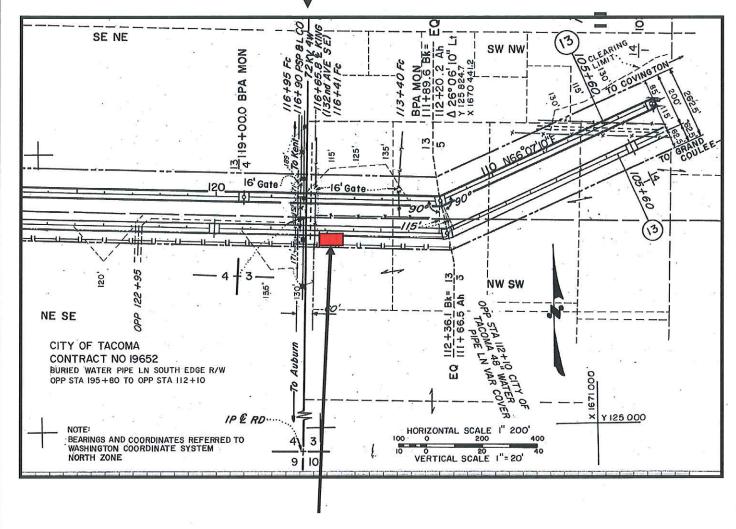
THIS AGREEMENT IS HEREBY AUTHORIZED BY BONNEVILLE POWER ADMINISTRATION:

Timothy C. Wicks

Realty Specialist

Date





APPROXIMATE LOCATION OF pressure reducing/flow control station, telemetry shelter and improved access road with gate

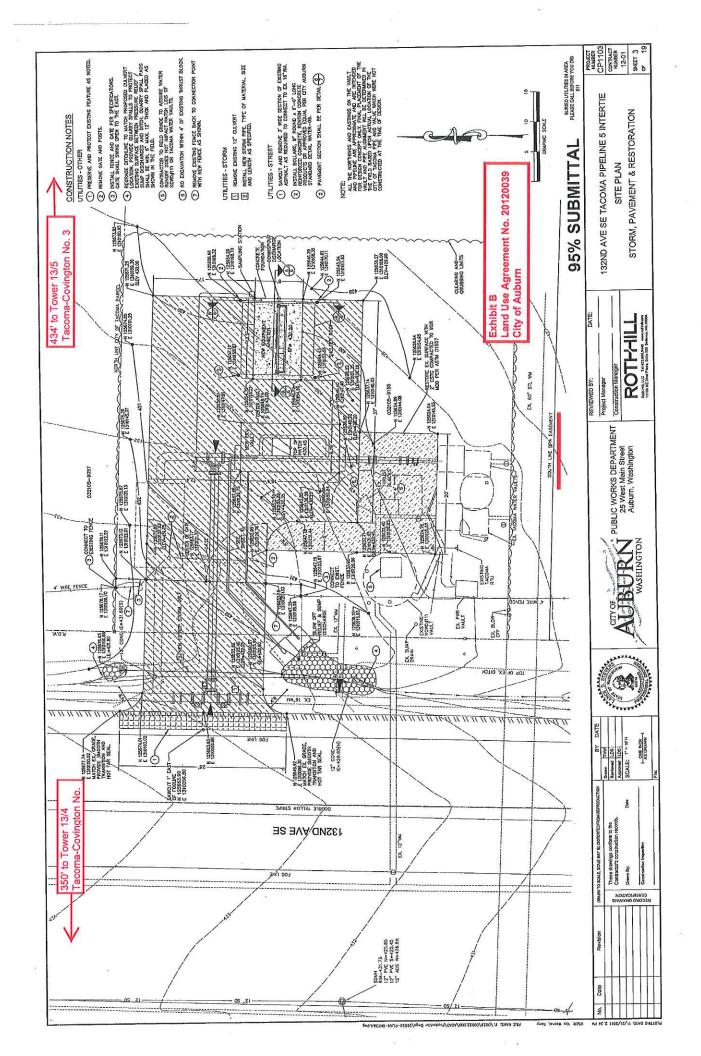
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TACOMA- 500 KV	A-RAVER NO 1 COVINGTON SEC TRANSMISSION LIN 3 OF 24 MII	
Design DLM Regiment CLM Engineer CLM PEWILLIAM Unit Head	RG Date Date Date Drawn Engineer R/V	proved. WW Belefie 10/-7-70 for Chief, Brench of Transmission Destrict W DATE 8-22-68 DES DATE 6-21-69: 50023 DTM-D WO 145-25

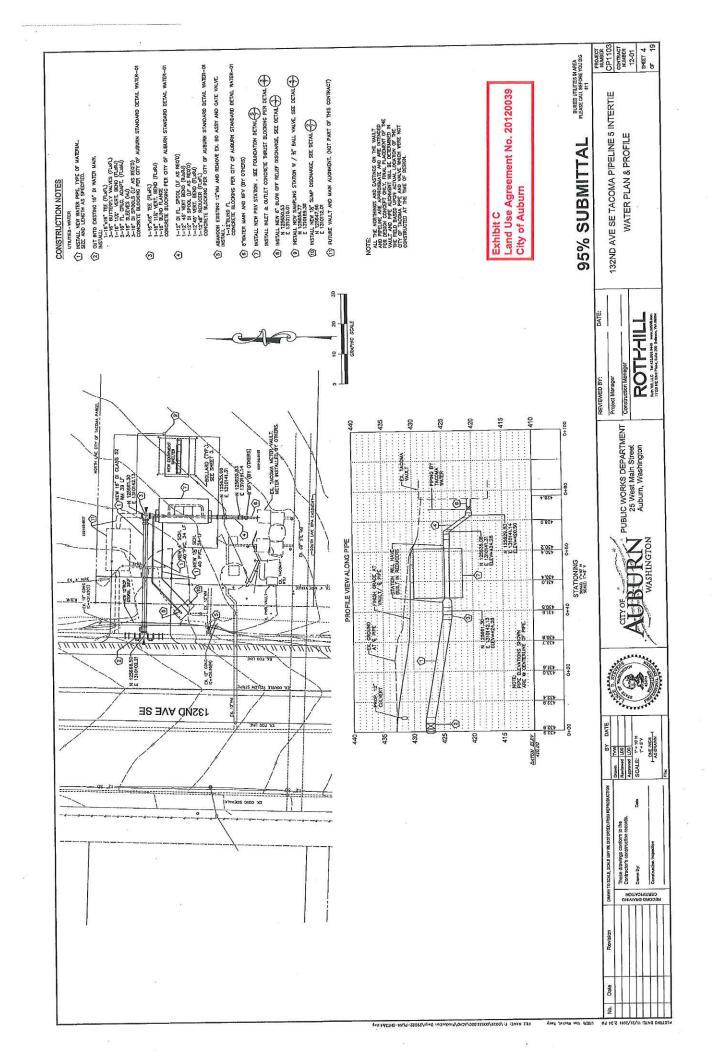
EXHIBIT A CASE 20120039

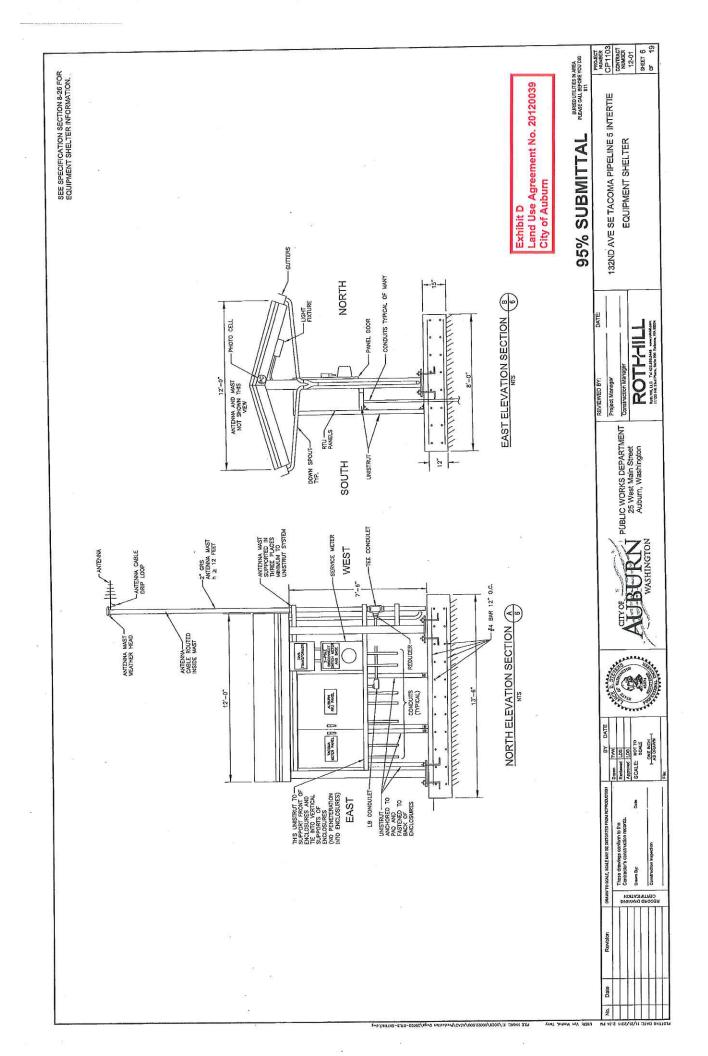
Tract ID: 2C-T-2-A-16; 3C-T-13-A-85 Lines: Tacoma-Raver #1&2; Tac-Cov #3; Tacoma-Grand Coulee (oper as Tac-Cov #4)

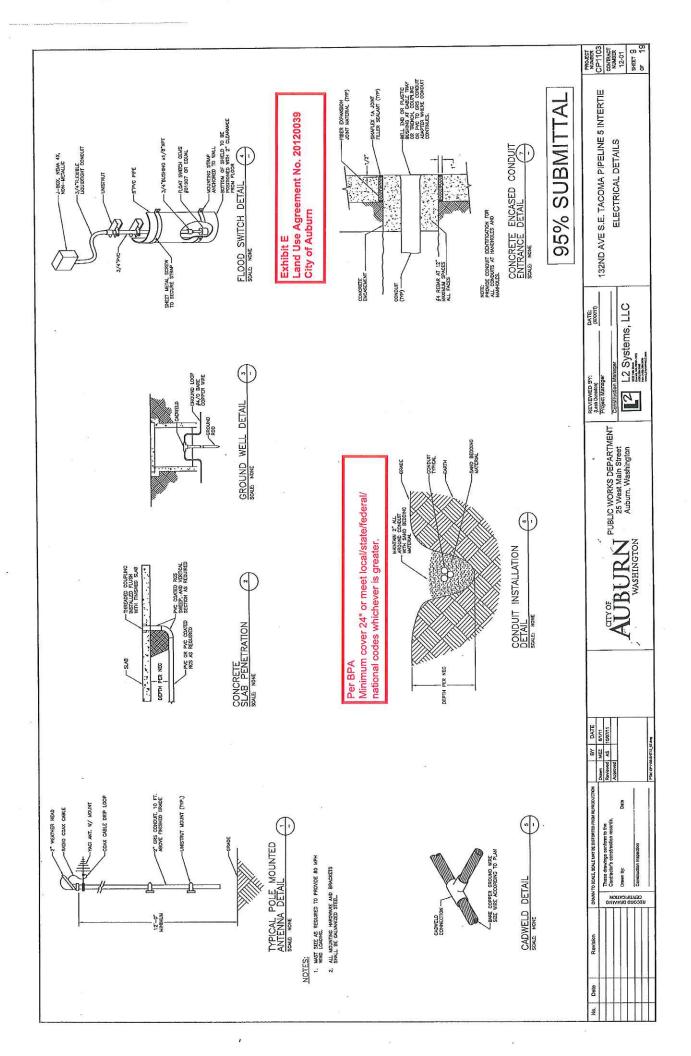
City of Auburn

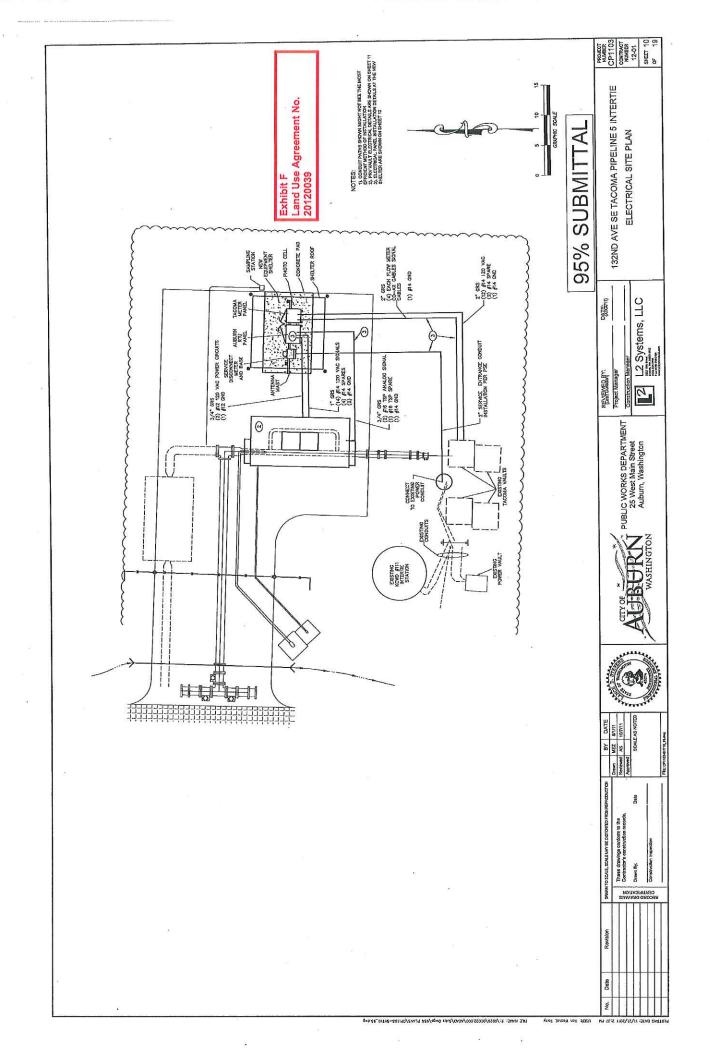
Watermain system Intertie and pressure reducing station













3628 South 35th Street

Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

July 11, 2012

RECEIVED

JUL 1 2 2012

Mr. Dennis Dowdy Public Works Director 25 West Main Street Auburn, WA 98001-4998

City of Auburn
Public Works Department

RE:

City of Auburn - Tacoma Water Wholesale Agreement

Dear Mr. Dowdy:

We are delighted to be transmitting your original copy of the fully executed Wholesale Water Agreement between our two agencies.

Also enclosed with this letter is an invoice for the System Development Charge outlined in the Section C.4 of the agreement. In accordance with your instructions, we have prepared a lump sum invoice.

I understand that the last details of each point of connection are being completed, and that supply is available currently at the B Street location, and will be soon at the 132nd Ave. location.

We look forward to a long-term relationship with the City as we work conjunctively on drinking water issues, and other matters of importance related to the Green River, and will include Auburn as we move forward with a broader initiative of communication and collaboration with all our Wholesale partners. If any question of quality or service arises, please feel free to contact me at (253) 502-8245 anytime or Chris McMeen at (253) 502-8210.

Sincerely,

Linda McCrea Superintendent

cc:

Chris McMeen, Tacoma Water

Sa Mc Crea

Enclosures:

Wholesale Agreement

System Development Charge Invoice



WHOLESALE WATER AGREEMENT BETWEEN TACOMA WATER AND CITY OF AUBURN

This wholesale water agreement ("Agreement") is made by and between the City of Tacoma, Department of Public Utilities, Water Division d/b/a Tacoma Water, a municipal corporation (hereafter "Tacoma"), and the City of Auburn, a municipal corporation (hereafter "Auburn") pursuant to Tacoma Municipal Code 12.10.400 E. Tacoma and Auburn collectively shall be referred to as the "Parties" or either Tacoma or Auburn may be referred to as "Party" when appropriate.

A. RECITALS:

WHEREAS, Tacoma has evaluated its wholesale projections in its demand forecast and has determined that adequate water resources are available to serve those projected demands; and

WHEREAS, the Parties are responsible for operating and maintaining their respective water systems in accordance with federal, state and local laws and regulations; and

WHEREAS, the Parties further recognize that water resources are finite and valuable, and the prudent use and management of these resources requires cooperation among water utilities; and

WHEREAS, Auburn has requested and Tacoma has agreed to provide a wholesale water supply to Auburn, and Tacoma is able and willing to provide the requested quantity of water on the terms and conditions as herein provided, now therefore;

For and in consideration of the mutual covenants, conditions and payments to be made as set forth herein, the Parties hereto agree as follows:

B. DEFINITIONS:

The meaning of certain words or terms, when used in this Agreement, is as follows:

1. "Wholesale Service Connection" means a physical connection between water mains of the two Parties to this Agreement, at a specifically identified point or points, where water may be transferred from one Party's system to the transmission or distribution facilities of the other Party.

- 2. "Isolation Valve" means a positive shut off valve that shall be installed at the location in each water system that is used to accept or deliver water through the Wholesale Service Connection. Each Party has sole responsibility for operating their Isolation Valve.
- 3. "Wholesale Service Connection Capacity" means the maximum flow capacity for water to be delivered through a Wholesale Service Connection as agreed upon by the Parties to this Agreement. Wholesale service connection facilities shall be designed so as to be capable of conveying no less than the agreed upon Wholesale Service Connection Capacity.
- 4. "Tacoma Municipal Code (TMC") means the City of Tacoma's municipal code.
- 5. "Emergency" means an unforeseen event that causes damage or disrupts normal operations and requires immediate action to protect public health and safety including exclusively when water system repairs are necessary due to a water system failure or when there is a water supply shortfall.
- 6. "Wholesale Water Service" means water provided by Tacoma pursuant to TMC 12.10.400 E to community water systems that are in compliance with Washington State Department of Health regulations and who adopt a water conservation program substantially equivalent to Tacoma's program and agree to abide by Tacoma's Water Shortage Response Plan as a condition of service.

C. CONDITIONS:

The responsibilities of the parties to this contract are set forth below:

- 1. <u>General.</u> Tacoma agrees to furnish the Wholesale Service Connection Capacity to Auburn of a quality that will satisfy all requirements of the Federal Safe Drinking Water Act as amended, and shall be in accordance with the terms and conditions of this Agreement.
- Wholesale Water Rates. Tacoma will supply Auburn with water at the Wholesale Water Service rate as identified in TMC Section 12.10.400, and the parties will be bound by the City of Tacoma Water Regulations-Rates as found in Chapter 12.10 TMC. Invoices will include a monthly ready to serve charge based on meter size and consumption charges based on water used. These water rates (and regulations) are periodically adjusted and shall be applicable as set forth in the rate schedule as adopted by the Public Utility Board and Tacoma City Council. The water supplied to Auburn must be used on a year-around basis where the average summer day use divided by the average winter day use results in a summer/winter ratio of 2.5 or less, as set forth in TMC 12.10.400.

- 3. <u>Billing.</u> Tacoma shall utilize regular meter reads secured from SCADA signals that Auburn shall deliver to the Tacoma Water Control Center to calculate a statement of charges for water service. In the event SCADA signals are unavailable, monthly manual reads will be used in lieu until such time that SCADA signals are restored. Tacoma shall strive to provide the statement of charges on a monthly basis, and payment shall be due to Tacoma pursuant to TMC 12.10.060. In accordance with TMC 12.01.030, no late charges shall be applied if payment of the balance due is received within 24 days of the date on the initial billing.
- 4. System Development Charge. Upon Auburn's payment of the full charge or the initial time installment payment to Tacoma for Tacoma's System Development Charge (SDC) of \$5,196,600.00, Tacoma will commit and agrees to supply to Auburn Wholesale Water Service. Auburn agrees to pay the full balance of the SDC Charge within thirty (30) days of execution of this agreement. At its option, Auburn may pay at least 20 percent (20%) of the SDC amount within thirty (30) days of execution of this agreement, and then shall pay the SDC balance with interest over up to ten years as authorized by the Tacoma Municipal Code, as further set forth below.

If paying in installments, Auburn agrees to pay the SDC balance in ten annual installments commencing on the first annual anniversary date of this agreement. In addition to the annual SDC installment, Auburn shall also pay interest, calculated on a monthly basis (the first day of every month) on the outstanding principal SDC balance amount at "prime" minus 2% interest rate, as reported by the Wall Street Journal ten days before the date that the monthly interest calculation is made. The interest amount paid by Auburn shall be paid to Tacoma along with the annual installment payment. Provided however, Auburn may prepay (without penalty) a portion or all of the outstanding SDC amount, in which case the accrued interest to date of such prepayment shall also be paid to Tacoma.

- 5. <u>Water Rights.</u> Tacoma certifies that it holds sufficient water rights to provide the quantities of Wholesale Water Service requirement by the Agreement to Auburn for the duration of the term of this Agreement as described in section 16.
- 6. Quantity of Wholesale Water Service. Tacoma will make available, and upon Auburn's request, supply Wholesale Water Service to Auburn in the quantity of up to 1,000,000 gallons per day (gpd) of water for average day use, up to 1,800,000 gpd for peak day use and up to 1,620,000 gpd for four-day peak use. Tacoma further agrees to supply at Auburn's Option to exercise no later than December 31, 2015, an additional quantity of 1,000,000 gallons per day (gpd) of water for average day use, 1,800,000 gpd for peak day use and 1,620,000 gpd for four-day peak use, under the same terms and SDC rates of this agreement.

- 7. Reliability. The Parties agree that Tacoma will supply Wholesale Water Service pursuant to this Agreement with the same degree of reliability and surety of supply as water provided by Tacoma to its existing customers and as allowed under TMC 12.10.150. In non-emergency situations Tacoma will provide 30 days notice to Auburn before temporarily requiring the changing, reducing, limiting or discontinuance of the use of water.
- 8. Additional Water. Auburn may purchase water for Emergency purposes in excess of the amount set forth in paragraph 6 above on a short term basis from Tacoma if in Tacoma's sole discretion sufficient surplus water is available. Auburn shall be entitled to purchase such water in accordance with the terms of this Agreement at the then current wholesale rate, and the applicable sections of Chapter 12, Tacoma Municipal Code.
- 9. <u>Connections.</u> The Wholesale Service Connections described in Exhibit "A" shall be governed by the terms of this Agreement. No future Wholesale Service Connections shall be permissible without a subsequent and separate written agreement between the Parties, which agreement may supplement this Agreement. Neither Party shall be obligated to agree to or execute any agreement or permit with the other Party to construct additional water Wholesale Service Connection(s).
- 10. Capital and Maintenance Costs. Auburn agrees that Tacoma Water owns the Isolation Valve directly off of the Tacoma Water system, piping from the Tacoma Water Isolation Valve to the meter, the meter vault and the meter, meter isolation valve, and certain telemetry equipment. Maintenance and operation costs for this equipment are Tacoma Water's responsibility. Any capital costs related to this equipment, including upgrades or replacement and renewal are Tacoma's responsibility. Tacoma agrees that Auburn owns the piping and other appurtenances, including certain telemetry components, downstream of the Tacoma Water Meter Vault. Maintenance and operation costs and any capital costs related to upgrades or replacements of this equipment are Auburn's responsibility. Exhibit "B" identifies the location of the two interties, and illustrates the responsible Party for physical infrastructure components (except telemetry components).
- 11. <u>Transferability.</u> The rights and obligations of this Agreement are transferable to heirs, successors and assignees of the Parties.
- 12. <u>Resale.</u> Wholesale water provided under this Agreement by Tacoma to Auburn may be resold by Auburn to another water purveyor.
- 13. <u>Conservation.</u> As a requirement of providing Wholesale Water Service to Auburn under this agreement and pursuant to Chapter 12.10 TMC Auburn shall implement a water conservation program substantially equivalent to Tacoma's program and shall abide by Tacoma's Water Shortage Response Plan ("Plan") as

provided under TMC 12.10.150. If requested Tacoma will invite Auburn to participate in the planning and implementation process for conservation programs as they are developed and will share available conservation resources where beneficial to both Parties. The Parties agree to meet every two years to review and evaluate operational experience with regards to water use and conservation.

- 14. <u>Mutual Aid.</u> Tacoma and Auburn agree to provide water service related mutual aid, to the extent possible, during times of extraordinary need and emergency operations experienced by either Party.
- 15. <u>Indemnification.</u> Neither Party shall be monetarily liable to the other Party or its respective customers for failure to supply and deliver water to the other at any time or for any reason. The Parties shall indemnify and hold each other harmless from any and all third party claims, lawsuits, or proceedings in arbitration resulting from any failure of either Party to supply and deliver water in accordance with the terms and conditions of this Agreement. However, each Party shall have the right to have this Agreement specifically enforced in equity.
- 16. <u>Term.</u> This Agreement shall remain in effect so long as Tacoma remains in the business of providing water, or its successors in interest to its water system remain in the business of providing water, and so long as Auburn meets the terms and conditions of this Agreement.
- 17. <u>Dispute Resolution.</u> In the event of a disagreement over any aspect of this Agreement, except as herein further provided, it is agreed that any dispute shall be submitted to binding arbitration pursuant to Chapter 7.04 RCW. The Parties shall agree upon who will arbitrate the dispute, and upon failure to reach agreement within a reasonable period of time, the presiding judge of the Pierce County Superior Court may be asked to appoint an arbitrator from one of the recognized dispute resolution services. The Party that substantially prevails in the arbitration proceeding shall be awarded its reasonable attorney fees and costs. If neither Party substantially prevails in the arbitration proceeding, the Parties shall each bear their respective costs and divide the mutual costs associated with the arbitration equally.
- 18. <u>Notice.</u> All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Tacoma:
Water Superintendent
PO Box 11007
Tacoma, WA 98411

Phone: (253) 502-8245

If to Auburn:

Public Works Director 1 East Main Street Auburn, WA 98001 Phone: (253) 804-5062 Fax: (253) 502-8694

Fax: (253) 931-3053

Operational communication protocols shall be fully described in the jointly developed Operational Protocols required under item 22 below.

- 19. <u>Invalidity</u>. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect. The parties shall agree that if any provisions are voided by a court or otherwise deemed not enforceable, the parties shall negotiate in good faith to develop replacement provisions that are as close as possible to the intent of the parties expressed in the invalid provisions.
- 20. <u>Counterparts.</u> This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- 21. <u>Authority to Bind.</u> Each of the Parties to this Agreement certifies that the person signing this Agreement has authority to bind the respective governing bodies to all of the terms and conditions of the Agreement herein.
- 22. Operational Coordination. Water supply directly off the Tacoma Water transmission system affects flow, pressure, and treatment, and diurnal consistency of demand is critical. The two Parties agree to jointly develop and maintain Operating Protocols for items including the scheduling of water demand to assure consistent flow control and treatment, routine operational communication, emergency shutdown, emergency contacts, and other items the Parties determine appropriate.
- 23. This agreement replaces the EMERGENCY AGREEMENT BETWEEN CITY OF TACOMA AND CITY OF AUBURN dated October 18, 2010.

Dated this day of	, 2012.
City of Tacoma: Department of Public Utilities Water Division	City of Auburn: Mayor

Linda A. McCrea
Water Superintendent

Approved as to form & legality:

Approved as to form & legality

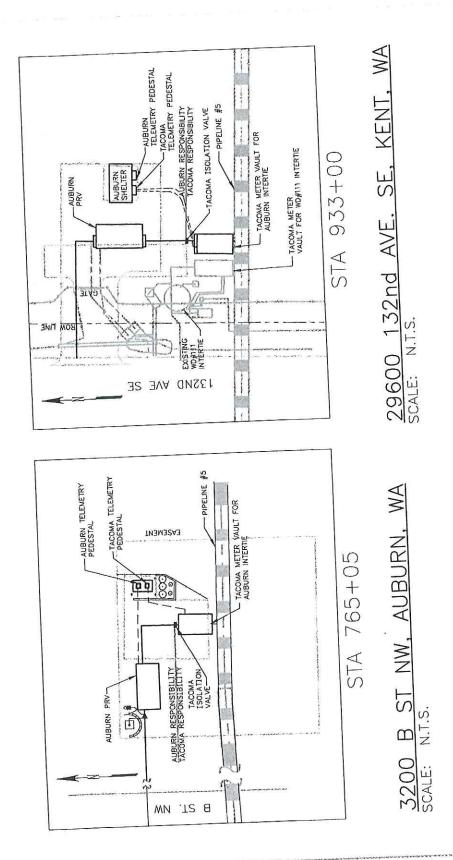
Approved

e 6 of 8 | Finance Direct

WHOLESALE SERVICE CONNECTIONS SPECIFICATIONS

Intertie Location	Connection	Meter	Static Eleva	ution (ft)	Static Elevation (ft) Operating Pressure (psi)	essure	Flow Capacity (gpm)	Flow Capacity (mgd)
	Size	Size	Тасота	Auburn Tacoma	Tacoma	Auburn	To/From Utility	To/From Utility
Tacoma Water Pipeline 5 at 3200 "B" St. NW Auburn, WA .(STA 765+05)	12"	6"	894 (NGVD2 9)	253 (NAVD 88)	309	80	2,200	3.2
Tacoma Water Pipeline 5 at 29600 132 nd Ave SE, Kent, WA (STA 933+00)	12"	83,	894 (NGVD2 9)	579 (NAVD 88)	173	80	4,500 (PRV 2,200)	6.5 (PRV 3.2)

Note: For connection specific elevations remember the NGVD29 (Tacoma) Datum is 3.47 feet higher than the NAVD88 (Auburn) Datum.



RESOLUTION NO. 4986

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AGREEMENTS BETWEEN THE CITY OF AUBURN AND CASCADE WATER ALLIANCE FOR THE PURCHASE AND SALE OF CREDITS RELATING TO PERMANENT AND RESERVE WHOLESALE WATER SUPPLY CAPACITY

WHEREAS, the City of Auburn has a duty and responsibility to provide water to its community; and

WHEREAS, in February 2010, the City of Auburn entered into the 2010 Lake Tapps Area Water Resources Agreement that provided, among other things, for Cascade Water Alliance (Cascade) to assist the City in meeting its projected 50-year water supply needs; and

WHEREAS, in February 2013, Cascade informed the City of the availability of a water supply opportunity; and

WHEREAS, the City confirmed its desire to purchase a System Development Charge Credit from Cascade for both 4 Million Gallon per Day ("MGD") Permanent, and 6 MGD Reserve Wholesale Water Supply.

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

Section 1. That the Mayor and City Clerk are hereby authorized to execute Agreements between the City and Cascade Water Alliance for the Purchase and Sale of Credits Relating to Permanent and Reserve Wholesale Water Supply Capacity, which agreements shall be in substantial conformity with the agreements attached hereto as Exhibits A and B and incorporated herein by this reference.

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

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

Dated and Signed this 3rd day of September, 2013.

CITY OF AUBURN

PETER B. LEWIS, MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

AGREEMENT FOR THE PURCHASE AND SALE OF CREDITS RELATING TO PERMANENT WHOLESALE WATER SUPPLY CAPACITY

THIS AGREEMENT ("Agreement") is made and entered into as of this 10 day of September 2013 ("Effective Date"), by and between the City of Auburn, Washington ("Auburn"), and Cascade Water Alliance, a joint municipal utilities services authority organized under Chapter 39.106 RCW ("Cascade"). The City and Cascade are sometimes referred to collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, in 2005, in order to meet Cascade's immediate and long-term water supply needs, Cascade purchased from Tacoma a supply of water both permanently and for a finite period of years pursuant to an "Agreement for the Sale of Wholesale Water";

WHEREAS, on February 5, 2010, Cascade and the Cities of Bonney Lake, Buckley, Sumner and Auburn entered the 2010 Lake Tapps Area Water Resources Agreement (the "Four Cities Agreement") that provided, among other things, for Cascade to assist the four cities in meeting their projected 50-year water supply needs;

WHEREAS, on December 31, 2012, Cascade and Tacoma entered the Amended and Restated Agreement for the Sale of Wholesale Water (the "Amended and Restated Agreement") that provided, among other things, for Tacoma to make available to the four cities a water supply to be purchased directly from Tacoma as a wholesale customer and to recognize credit for the System Development Charges that Cascade had previously paid to Tacoma;

WHEREAS, Cascade and Tacoma sent a letter, dated February 11, 2013, to inform Auburn of the availability of the "substitute" water supply opportunity and related time limitations and procedures for acting on the opportunity ("Joint Letter");

WHEREAS, Auburn timely approved, signed, and delivered the Confirmation Notice, dated May 21, 2013, to confirm Auburn's election of the substitute supply opportunity and its desire to purchase a System Development Charge Credit from Cascade as to the 4 MGD Wholesale Water Supply ("Confirmation Notice"); and

WHEREAS, the Joint Letter and Confirmation Notice are set forth in Exhibit A hereto and are incorporated by reference in this Agreement;

NOW, THEREFORE, IN CONSIDERATION of the recitals stated above, which are incorporated herein, and the mutual covenants and conditions herein contained, the Parties agree as follows:

AGREEMENT

1. Definitions.

"4 MGD Wholesale Water Supply" means an average annual 4 MGD wholesale water supply from Tacoma, with a Peaking Factor of 1.33, and a maximum peak day of 5.32 MGD, all as provided in the Amended and Restated Agreement.

<u>"Amended and Restated Agreement"</u> means the "Amended and Restated Agreement for the Sale of Wholesale Water" by and among Cascade and the City of Tacoma, Department of Public Utilities, Water Division, dated December 31, 2012.

"Confirmation Notice" means the document, dated May 21, 2013, in which Auburn confirmed its election of the substitute supply opportunity in fulfillment of Cascade's obligation in the Four Cities Agreement to assist with Auburn's projected 50-year water supply needs (attached in Exhibit A).

"Four Cities Agreement" means the "2010 Lake Tapps Area Water Resources Agreement among the Cities of Auburn, Bonney Lake, Buckley and Sumner, and Cascade Water Alliance," dated February 5, 2010.

"MGD" means million gallons per day.

"Joint Letter" means the letter, dated February 11, 2013, from Cascade and Tacoma to Cities of Auburn, Bonney Lake, Buckley and Sumner that is attached hereto in Exhibit A.

"Notice of Confirmation of System Development Charge Credit" means a notice, given by Cascade to Tacoma at the request of Auburn, confirming the amount of the System Development Charge Credit (if any) to be applied to the System Development Charge otherwise due and payable by Auburn to Tacoma in connection with a wholesale water supply agreement.

"System Development Charge" or "SDC" means the system development charge imposed upon wholesale customers by Tacoma in its wholesale water regulations.

"System Development Charge Credit" means a credit to be applied in a wholesale water supply agreement against the System Development Charge otherwise due and payable by Auburn to Tacoma. The System Development Charge Credit is expressed in million gallons per day (MGD) units and in dollars.

"Tacoma" means the City of Tacoma, Department of Public Utilities, Water Division.

2. Term of Agreement.

This Agreement takes effect on the first date that both Parties have duly approved, signed, and delivered the Agreement to the other Party. The term of the Agreement will commence on the effective date and will end on December 31, 2029 or the date that Auburn has fully paid Cascade for the price of the System Development Charge Credit consistent with Sections 3 and 4 of this Agreement.

3. Purchase of 4 MGD System Development Charge Credit & Price.

Auburn agrees to purchase and Cascade agrees to sell a System Development Charge Credit regarding the 4 MGD Wholesale Water Supply in the quantity of 2.5 MGD annual supply capacity (3.32 MGD peak supply capacity).

In consideration for said System Development Charge Credit, Auburn will pay to Cascade a total price of \$7,893,300.00 as of the date that this Agreement takes effect. The parties agree that Auburn will pay interest at an annual rate of 3.2% on the balance due beginning in 2017 and continuing until the balance is fully paid and this Agreement terminates.

Auburn will pay the total price by making an annual payment in 2017-2029 according to the annual payment schedule set forth in Section 4 below. This schedule incorporates interest at a rate of 3.2% on the balance due, beginning in 2017. Under this schedule the total of annual payments including interest is \$10,105,806.00.

4. Annual Payment Schedule.

Auburn will make annual installment payments to Cascade to pay for the System Development Charge Credit as to the 4 MGD Wholesale Water according to the following payment schedule:

Payment Schedule

Year	Amount
2014	0
2015	0
2016	0
2017	\$252,586
2018	\$252,586
2019	\$252,586
2020	\$934,805

Year	Amount
2022	\$934,805
2023	\$934,805
2024	\$934,805
2025	\$934,805
2026	\$934,805
2027	\$934,805
2028	\$934,805

\$934,805

2029	\$934,805
Total	\$10,105,806

Each year the annual payment shall due and payable by Auburn to Cascade on or before June 30 of the year in which such payment is due. If full payment of any annual payment is not received by Cascade on or before the date due, such payment shall be considered past due, and the unpaid amount shall accrue additional interest, from the date due until the date paid, at a rate per day equal to 0.03 percent per day. Upon not less than fifteen (15) days' advance notice to Cascade, the City may in any given year prepay without penalty any one or more of the next successive annual payments. Upon such notice, Cascade will provide Auburn documentation of the amount due for such payment, and adjustments to any remaining payment schedule, net of related interest incorporated into the above payment schedule.

5. Notice of Confirmation of System Development Charge Credit.

Within 30 days after this Agreement takes effect, Cascade will send to the Tacoma Water Superintendent a Notice of Confirmation of System Development Charge Credit regarding the 4 MGD Wholesale Water Supply in the quantity of 2.5 MGD annual supply capacity. Cascade will provide a copy of the Notice to Auburn when it is sent to Tacoma.

6. Wholesale Water Supply Purchase Negotiations with Tacoma.

In order to use the System Development Charge Credit and secure a wholesale water supply from Tacoma, Auburn acknowledges that it must make an offer, complete negotiations, and enter a wholesale water supply agreement with Tacoma consistent with the Joint Letter and Confirmation Notice set forth in Exhibit A and with the Amended and Restated Agreement. Auburn acknowledges and agrees that Cascade makes no representations or warranties as to the outcome of such negotiations, the Tacoma wholesale water supply that Auburn may (or may not) be able to purchase, or otherwise.

7. Effect on Four Cities Agreement.

The Parties agree that this Agreement constitutes full performance by Cascade of its obligations under Section 3(a) of the Four Cities Agreement. Accordingly, Section 3(a) of the Four Cities Agreement shall be of no further force or effect as between Cascade and Auburn. Other provisions of the Four Cities Agreement are unaffected by this Agreement and remain effective according to their terms.

8. Notices.

All notices and payments hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

Cascade Water Alliance: 520 112th Avenue NE, Suite 400 Bellevue, Washington 98004 Attn: Chief Executive Officer

Phone: (425) 453-0930 Fax: (425) 425-453-0953 City of Auburn: Attn: Dennis Dowdy 25 W Main St Auburn WA 98001

Phone: (253)931-3010 Fax: (253)931-3053

A Party may change its address from time to time by providing notice to the other Party. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the next business day following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

9. Dispute Resolution.

In the event that any dispute arises between Cascade and Auburn, the aggrieved Party shall give a notice of the dispute to the other Party. Cascade and Auburn shall, within five (5) days of such notice, each nominate a senior officer of its management to meet at a mutually agreed location, to attempt to resolve such dispute. The Parties shall each designate a representative(s) to confer on the best and most cost effective way to resolve the dispute. By mutual agreement, they may choose direct negotiations or mediation. If there is no agreement between the Parties on how to proceed within thirty (30) days, either Party may pursue legal action; provided, however, no Party shall be precluded from filing an appeal or action to prevent the expiration of a time period for filing or any statute of limitations.

If a Party fails to perform its obligations hereunder, then it shall be in default hereunder unless the defaulting Party cures an event of default, whether monetary or non-monetary, within thirty (30) days after receiving written notice from the other Party of such default.

Subject to the procedures set forth in Section 9 (<u>Dispute Resolution</u>), if a Party is in breach or default of its obligations arising under this Agreement, the other Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity (including the right to specifically enforce this Agreement), all of which remedies shall be cumulative.

11. Attorneys' Fees.

If any Party shall be required to bring any action to enforce any provision of this Agreement, or shall be required to defend any action brought by the other Party with respect to this Agreement, and in the further event that one Party shall substantially prevail in such action, the losing Party shall, in addition to all other payments required therein, pay all of the prevailing Party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.

12. No Assignment.

This Agreement is specific to the Parties and may not be assigned in whole or in part.

13. Non-Waiver.

No delay or failure by a Party to exercise any of its rights, powers or remedies under this Agreement following any breach by another Party shall be construed to be a waiver of any such breach, or any acquiescence therein, or of or in any similar breach thereafter occurring, nor shall any waiver of any single breach be deemed a waiver of any other breach theretofore or thereafter occurring.

14. No Third Party Beneficiary.

This Agreement is for the sole and exclusive benefit of the Parties and is not intended to and shall not confer any rights or benefits on any third party not a signatory hereto.

15. Integrated Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous understandings or agreements with respect thereto; provided, however, that this Agreement shall be interpreted or construed together with the Amended and Restated Agreement, the Joint Letter, and the Confirmation Notice. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by the Parties.

16. Signature in Counterparts.

This Agreement may be executed in counterparts and all of those counterparts taken together shall constitute one and the same instrument.

17. Representations of the Parties.

Each Party represents and warrants that it has duly approved, executed, and delivered this Agreement and that it has all necessary authority to enter into this Agreement and to perform its terms and obligations. Each Party represents and warrants that the approval, execution, and delivery have been duly authorized by the appropriate board or council, and no other act or proceeding on the part of any Party is necessary to authorize entry into or performance of this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

City of Auburn:

Title: MAYOR

SEP 1 0 2013 Date:

ATTEST

APPROVED AS TO FORM

City Attorney

Cascade Water Alliance: Church Clarke

By: Chuck Clarke

Title: Chief Executive Officer

9/18/13 Date:

Exhibit A

[Joint Letter signed by Cascade and Tacoma, dated February 11, 2013, and the Confirmation Notice signed by Auburn, dated May 21, 2013.]





February 11, 2013

The Honorable Pete Lewis City of Auburn 25 West Main Street Auburn, WA 98001

The Honorable Neil Johnson City of Bonney Lake 19306 Bonney Lake Blvd. Bonney Lake, WA 98391 The Honorable Pat Johnson City of Buckley 933 Main Street Buckley, WA 98321

The Honorable Dave Enslow City of Sumner 1104 Maple Street Sumner, WA 98390

Re: Cascade Water Alliance and Tacoma Water Substitute Wholesale Water Supply Availability – Time is of the Essence (Sent by Email and US Mail)

Dear Mayors:

As you may be aware, the Cascade Water Alliance and City of Tacoma have been in ongoing discussions about potential changes to the 2005 Water Supply Agreement. In late 2012 a new agreement was reached and signed which benefits not only Tacoma and Cascade but also the Four Cities of Auburn, Bonney Lake, Buckley and Sumner. This new agreement preserves the right of the four cities under the 2009 Cascade/Four Cities Agreement and allows a new time sensitive supply option to be jointly offered to the four cities from Cascade and Tacoma.

The Cascade Water Alliance (Cascade), in cooperation with Tacoma Water, is offering the availability of a substitute wholesale water supply ("Substitute Supply") and to provide this notice of a limited period of time for your Cities to take action on this unique opportunity. Cascade and Tacoma have entered into a Restated and Amended Agreement for the Sale of Wholesale Water, which replaces the 2005 agreement between the parties for purchase and sale of wholesale water. The 2005 agreement is included as one of the "water supply assistance" measures in the 2010 Lake Tapps Area Water Resources Agreement between Cascade and your cities (the "Four Cities Agreement").

In the Restated and Amended Agreement, Cascade has agreed to relinquish its right to take delivery of the Substitute Supply. This water is now available to the Cities to purchase directly from Tacoma as a wholesale customer. Cascade has, however, previously paid capacity charges for this wholesale water supply. If your City now desires to purchase the Substitute Supply directly from Tacoma and takes action described in this letter, Cascade is willing to sell your City a credit (reflecting the amounts that Cascade has previously paid to Tacoma) that can be

applied against System Development Charges that would otherwise be due to Tacoma ("SDC Credit"). The amount and availability of any SDC Credit will be determined by Cascade in accordance with the terms set forth in the Confirmation Notice that is attached to this letter. You must act promptly, however, in order to secure the opportunity to obtain an SDC Credit from Cascade.

This letter provides Cascade's formal notice of the limited window of time for your City to act, the Confirmation Notice that you must return to Cascade to apply for a SDC Credit, and general guidance as to how Cascade and Tacoma intend to cooperate to facilitate the implementation of the Restated and Amended Agreement.

Limited Time to Act

You must act within 120 days from the first meeting of Tacoma, Cascade and the Four Cities to confirm your interest in this opportunity by delivering a signed "Confirmation Notice" to Cascade in the form attached to this letter. This opportunity expires at the end of 120 days. During this 120-day period, the quantity allocation among and between the Four Cities as stated in the Four Cities letter to Cascade, dated February 5, 2010, shall be recognized by Cascade and shall determine the maximum allocation of the Substitute Supply (and the Residual Wholesale Water Supply) among the Cities (unless the Four Cities jointly agree to reallocation in accordance with the Four Cities Agreement). A City has until the expiration date to deliver an executed Confirmation Notice to Cascade. If you select this opportunity by acting within the 120 days, then you have until March 1, 2018 to purchase (or agree to purchase) an SDC Credit from Cascade. (In anticipation of the required steps with Tacoma described below, it is advisable for your City to complete the SDC purchase agreement with Cascade in advance of March 2018 to allow your City adequate time for the Tacoma steps.) If you select this opportunity by acting within the 120 days, then you will also have until March 1, 2018 to submit a Wholesale Water Agreement with Tacoma that is eligible for the SDC Credit.

If you do not confirm your selection by delivering a Confirmation Notice to Cascade by the deadline, then you decline the Substitute Supply opportunity stated in this letter. In that event, you will still be able to purchase wholesale water supply (if any water supply capacity remains available) from Tacoma on terms consistent with Section 3(a) of the Four Cities Agreement. However, you will not be eligible for an SDC Credit

Next Steps with Cascade

If you deliver the Confirmation Notice within the 120-day deadline stated above and select this Substitute Supply opportunity, then you will need to complete the following steps with Cascade:

- (a) Confirmation to Cascade that your City will proceed with the Substitute Supply opportunity stated herein, and that it fully substitutes for Section 3(a) of the Four Cities Agreement which will have no further force or effect.
- (b) Agree with Cascade for payment terms to Cascade for the SDC credit.

(c) Upon completion of the items in (a) and (b) above, Cascade will send Notice of Confirmation of System Development Charge Credit to Tacoma.

Next Steps with Tacoma Water

If you deliver the Confirmation Notice to Cascade within the deadline stated above and select this opportunity, then you would also need to complete the following steps with Tacoma in order to submit a timely offer to purchase all or a portion of the Substitute Supply. The procedures and requirements that must be followed to submit such an offer are set forth in Section 6 and Section 7 of the Restated and Amended Agreement (attached for reference). It is important to read these procedures and requirements carefully as any offer you make must be in strict compliance with these procedures and requirements. These procedures and requirements are briefly summarized as follows:

- (a) In order to obtain a SDC Credit, Tacoma must be in receipt of a Notice of Confirmation of System Development Charge Credit from Cascade.
- (b) Prior to submitting your offer to purchase water from Tacoma, you must obtain Tacoma's written review and approval of the Wholesale Water Supply Agreement (including any proposed modifications thereof) pursuant to which such offer is to be made to Tacoma.
- (c) Your offer to Tacoma must be submitted in the form of duplicate executed originals of the Wholesale Water Supply Agreement, in strict conformity with the form of the Wholesale Water Supply Agreement approved by Tacoma.
- (d) No later than March 1, 2018, you must deliver your offer to Tacoma, Attention: Water Superintendent, Tacoma Water, 3628 South 35th Street, Tacoma, WA 98409, and obtain Tacoma's acknowledgment of the time and date of Tacoma's receipt of such offer.

Clarifications

While we are pleased to present this opportunity to your City, we want to avoid any confusion as to what this opportunity is and is not. For avoidance of doubt, this letter does not constitute a modification or waiver of any of the procedures or requirements set forth in the Restated and Amended Agreement. This letter does not constitute an offer by Tacoma to sell a wholesale water supply to any person or entity. Any such sale by Tacoma is subject to and contingent upon the negotiation, execution and delivery of a mutually acceptable Wholesale Water Supply Agreement.

Conclusion

Cascade and Tacoma are pleased to provide the availability of Substitute Supply, and look forward to receiving your offer to purchase, should you desire to do so, in accordance with the

guidelines set forth above. We will be contacting your office within the next week to schedule a meeting to present and discuss this opportunity.

Sincerely,

Chuck Clarke

Chief Executive Officer

Chul Clarke

Cascade Water Alliance

Linda A. McCrea

Superintendent Tacoma Water

Confirmation Notice

To Be Delivered to Cascade Water Alliance 120 days From the First Meeting of Tacoma, Cascade and The Four Cities

Casca subst Subst Wate and S	City of ("City") confirms receipt of the letter, dated, from add Water Alliance ("Cascade") and Tacoma Water presenting the availability of a litute wholesale water supply ("Substitute Supply"). The City understands that the titute Supply is an alternative to the provisions of Section 3(a) of the 2010 Lake Tapps Area or Resources Agreement between Cascade and the Cities of Auburn, Bonney Lake, Buckley, Sumner (the "Four Cities Agreement"). The City understands that the Substitute Supply res the City to enter a wholesale water supply agreement with Tacoma Water to be
negot letter. Devel hereto confin	trated and offered to Tacoma Water by March 1, 2018 as described in the above-referenced. The City understands that Cascade Water Alliance is offering to sell a System lopment Charge Credit to the City on the terms and conditions stated on Exhibit 1 attached to, provided that by March 1, 2018 Cascade and the City need to enter an agreement to the purchase and sale and Cascade's provision of a Notice of Confirmation of System lopment Charge ("SDC") Credit to Tacoma Water.
Now,	therefore, the City of hereby confirms and agrees as follows:
(a)	The City the elects the "Substitute Supply" opportunity described herein as an alternative that fully substitutes for section 3(a) of the Four Cities Agreement.
	The City provides this Confirmation Notice with respect to the following portion of the Substitute Supply: 4 MGD wholesale supply: 6 MGD wholesale supply:
(c) l	By selecting the "Substitute Supply" alternative, the City agrees that Cascade has fully performed and satisfied all obligations to the City under 3(a) of the Four Cities agreement.
	The City agrees that section 3(a) of the Four Cities Agreement shall be of no further force or effect as between Cascade and the City.
(e) 7	The City and Cascade shall proceed with diligence to negotiate an agreement for purchase of an SDC Credit consistent with the terms outlined in Exhibit 1.
	FIRMED, ACCEPTED AND AGREED TO BY THE CITY OF on day of, 2013
Зу	
Name	
Asyor	



May 21, 2013

Cascade Water Alliance Attn: Chuck Clarke, Chief Executive Officer 520 112th Avenue NE, Suite 400 Bellevue, Washington 98004

Re: Confirmation Notice – City of Auburn's Response to Cascade's Offer of Substitute Supply

Dear Mr. Clarke,

On May 6th, 2013 the Auburn City Council approved Resolution 4951 authorizing the City of Auburn to begin negotiations with Cascade Water Alliance in response to your February 11, 2013 offer.

Enclosed please find a signed original of the City's confirmation notice

Our Public Works Director will be in touch with you soon to begin discussion of the city's desires to make use of the Substitute Supply.

Sincerely,

Pete Lewis

Mayor

Enclosures

cc. Dennis Dowdy, Director of Public Works

Received

MAY 23 2013

Confirmation Notice

To Be Delivered to Cascade Water Alliance 120 days From the First Meeting of Tacoma, Cascade and The Four Cities

The City of Auburn ("City") confirms receipt of the letter, dated February 11, 2013, from Cascade Water Alliance ("Cascade") and Tacoma Water presenting the availability of a substitute wholesale water supply ("Substitute Supply"). The City understands that the Substitute Supply is an alternative to the provisions of Section 3(a) of the 2010 Lake Tapps Area Water Resources Agreement between Cascade and the Cities of Auburn, Bonney Lake, Buckley, and Sumner (the "Four Cities Agreement"). The City understands that the Substitute Supply requires the City to enter a wholesale water supply agreement with Tacoma Water to be negotiated and offered to Tacoma Water by March 1, 2018 as described in the above-referenced letter. The City understands that Cascade Water Alliance is offering to sell a System Development Charge Credit to the City on the terms and conditions stated on Exhibit 1 attached hereto, provided that by March 1, 2018 Cascade and the City need to enter an agreement to confirm the purchase and sale and Cascade's provision of a Notice of Confirmation of System Development Charge ("SDC") Credit to Tacoma Water.

Now, there fore, the City of Auburn hereby confirms and agrees as follows:

- (a) The City the elects the "Substitute Supply" opportunity described herein as an alternative that fully substitutes for section 3(a) of the Four Cities Agreement provided that the City can negotiate acceptable terms with Cascade to provide and finance the necessary water supply SDC credits.
- (b) The City provides this Confirmation Notice with respect to the following portion of the Substitute Supply.

4 MGD wholesale supply: 4 MGD

6 MGD wholesale supply: Possible option of 3 MGD

- (c) By selecting the "Substitute Supply" alternative, the City agrees that upon execution of a new Substitute Supply agreement with Cascade to provide SDC Credits for 4 MGD of supply, Cascade will have fully performed and satisfied all obligations to the City under 3(a) of the Four Cities agreement.
- (d) The City agrees that section 3(a) of the Four Cities Agreement shall be of no further force or effect as between Cascade and the City when a new substitute supply agreement with Cascade is executed.
- (e) The City and Cascade shall proceed with diligence to negotiate an agreement for purchase of an SDC Credit consistent with the terms outlined in Exhibit 1 (Attached).

CONFIRMED, ACCEPTED AND AGREED TO BY THE CITY OF AUBURN on this 21st day of May, 2013:

Pete Lewis, Mayor

Exhibit 1

TERMS FOR 4 CITIES SUBSTITUTE SUPPLY OFFER

- This offer is structured to fulfill Cascade's obligations to make available Tacoma water as described in the existing "4 Cities Agreement". Availability of the terms of this offer is contingent upon written acceptance of the substitution of this supply offer for the commitment defined in Section 3.a of that 4 Cities Agreement specifically:
 - a. Paragraph 3A, providing options for purchase of Cascade's contracted Tacoma supply capacity, is replaced by the substitute capacity offer defined in this proposal.
 - b. Paragraph 3A is confirmed in writing to be fully satisfied by acceptance of this substitute capacity offer.
 - c. Upon expiration of the substitute capacity offer on December 31, 2017, all Cascade obligations to make Tacoma water available are deemed fulfilled and terminated.
 - d. The substitute capacity offer must be accepted and executed no later than 120 days from the first meeting of Tacoma, Cascade and the Four Cities and the offer is withdrawn after expiration date. [Actual commitment to purchase water under those terms, once accepted, can occur anytime through 2017 as further delineated in section II.c below.]

II. Substitute Capacity Offer

- a. The following capacity is made available:
 - i. 9.3 mgd of average supply and a peak supply of 11.3 mgd. [This is the remaining available capacity of Cascade's purchases from Tacoma.]
 - ii Cascade offers all capacity as firm and permanent. Cascade will be responsible for any transactions needed to convert reserve capacity to permanent capacity.
 - All capacity will be offered as year-round capacity with the following structure: for each 1 mgd of year-round capacity, a peak season ratio of up to 1.33 will be available for purchase. The peak annual ratio of 1.33.1.0 is based on the Tacoma capacity owned by Cascade, which originally totaled 10 mgd annual average and 13.3 mgd peak season. Cities may elect peak ratios ranging from 1.0 to 1.33, subject to total capacity limits defined in the attached table.
 - iv. Tacoma will provide wholesale service contingent on execution of a wholesale supply agreement defining terms for service and related charges. A sample agreement form is provided.
- b. The following price and financial terms are offered:
 - Capacity will be offered at a price of 75% of the SDC (\$3.17 per gallon * 75% = \$2.3775 per gallon) originally paid by Cascade. This charge will apply to annual capacity and to incremental peak season capacity.
 - For example, for a purchase of 1 mgd annual / 1.3 mgd peak season, the cost will be 1 mgd * \$2 3775 million + 0.3 mgd * \$2 3775 million = \$3,090,750. A purchase of 1 mgd annual with no peak season increment would cost \$2,377,500.
 - ii. Payments for capacity purchase will be to Cascade; when the purchase involves conversion of reserve capacity, Cascade may opt to direct all or part of the payment to Tacoma.
 - iii. For each purchase, the following financing terms are available:

- 1. Full payment of purchase price upon execution of purchase; or
- Payment of 20% of purchase price upon execution; remainder financed on a note over 5 years at 3 3% interest with level annual payments due upon each anniversary date. Purchaser would be free to pay off note at any time.
- iv. Wholesale rates for service and delivery are as defined by agreement with Tacoma (see also below).
- c. The following schedule applies to the substitute offer.
 - i. The substitute capacity offer must be accepted and executed no later than 120 days after the first meeting of Tacoma, Cascade and the Four Cities and the offer is withdrawn after expiration date. If not accepted during this period, then the existing terms of paragraph 3.a would remain in effect.
 - ii. During the period from execution of this substitute offer until December 31, 2015, each City may elect to purchase its related share of capacity at any time. Shares of capacity can also be re-assigned upon notice provided to Cascade by both parties of such intent.
 - may offer to purchase any or all capacity remaining available on a first come, first serve basis. Cascade will notify the Cities of available capacity early in 2016.
 - iv. After December 31, 2017, no substitute supply capacity will be available.
 - v. Participants in this substitute capacity offer are free to transfer rights to purchase to other participants, but only to other participants, provided that Cascade receives clear and binding direction to this effect from both parties.
- Special Situation: Bonney Lake previously acquired 2 mgd of peak season (June-September) capacity, with no right of service in the off-peak period. This is equivalent in quantity to 2.0 mgd peak and 0.7 mgd average annual. This leaves related off-peak capacity with no corresponding right of service in the peak period.
 - 1. Bonney Lake is offered revision of this capacity right to 2 mgd peak together with 1.50 mgd annual capacity.
 - 2 This offer to revise the capacity structure is made available for 90 days after the effective date of Bonney Lake's acceptance of the substitute capacity offer.
 - 3 Purchase Price for this revision is the extension of existing payments by one year (to include 2019), a net cost addition of \$391,222.
 - 4 If Bonney Lake does not approve this extension prior to the expiration date, then other parties are free to acquire the related off-peak capacity as a part of a year-round capacity purchase at an incremental price of \$391,222.
- IV. Integration of Cascade and Tacoma obligations under this substitute capacity offer:
 - a. As defined in the revised agreement between Cascade and Tacoma, it is the intent of Cascade and Tacoma that any purchases under this offer are subject to execution of an agreement for wholesale service with Tacoma. Cascade would have no ongoing role in delivering wholesale water after execution of such agreement with Tacoma.

- b. Tacoma will commit to supply water purchased under this agreement, subject to execution of a wholesale water agreement acceptable to Tacoma and generally defined in a draft wholesale agreement.
 - i. Tacoma will work with the purchaser to establish a mutually acceptable delivery point or points, to be defined in the wholesale water agreement
 - ii. No SDCs will be due to Tacoma for water capacity purchased under this agreement.
 - iii. The purchaser will be subject to Tacoma wholesale rates.

	Total	Auburn	Bonney Lake	Buckley	Sumner
Capacity Availability Previously Requested by the 4 Cities	9.2 mgd average / 13.33 mgd peak	7.0 mgd average / 10 0 mgd peak	1.5 mgd average / 2.0 mgd peak	0.7 mgd average / 1.33 mgd peak	0.0 mgd average / 0.0 mgd peak
Additional Capacity in Substitute Offer	0.8 mgd average / 0.00 mgd peak	0.5 mgd average / 0.0 mgd peak	0.0 mgd average / 0.0 mgd peak	0.3 mgd average / 0.0 mgd peak.	0 0 mgd average / 0.0 mgd peak
Previous Purchases			0.7 mgd average / 2.0 mgd peak [2.0 mgd peak season with no off-peak supply requires an annual average of 0.7 mgd to be delivered]		
Remaining Available Capacity for Purchase	10.0 mgd average / 13.33 mgd peak	7.5 mgd average / 10.0 mgd peak	0.8 mgd average / 0.0 mgd peak	1.0 mgd average / 1.33 mgd peak	0.0 mgd average / 0.0 mgd peak

AGREEMENT FOR THE PURCHASE AND SALE OF CREDITS RELATING TO FINITE WHOLESALE WATER SUPPLY CAPACITY

THIS AGREEMENT ("Agreement") is made and entered into as of this 16th day of 5-ptember 2013 ("Effective Date"), by and between the City of Auburn, Washington ("Auburn"), and Cascade Water Alliance, a joint municipal utilities services authority organized under Chapter 39.106 RCW ("Cascade"). The City and Cascade are sometimes referred to collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, in 2005, in order to meet Cascade's immediate and long-term water supply needs, Cascade purchased from Tacoma a supply of water both permanently and for a finite period of years pursuant to an "Agreement for the Sale of Wholesale Water";

WHEREAS, on February 5, 2010, Cascade and the Cities of Bonney Lake, Buckley, Sumner and Auburn entered the 2010 Lake Tapps Area Water Resources Agreement (the "Four Cities Agreement") that provided, among other things, for Cascade to assist the four cities in meeting their projected 50-year water supply needs;

WHEREAS, on December 31, 2012, Cascade and Tacoma entered the Amended and Restated Agreement for the Sale of Wholesale Water (the "Amended and Restated Agreement") that provided, among other things, for Tacoma to make available to the four cities a water supply to be purchased directly from Tacoma as a wholesale customer and to recognize credit for the System Development Charges that Cascade had previously paid to Tacoma;

WHEREAS, Cascade and Tacoma sent a letter, dated February 11, 2013, to inform Auburn of the availability of the "substitute" water supply opportunity and related time limitations and procedures for acting on the opportunity ("Joint Letter");

WHEREAS, Auburn timely approved, signed, and delivered the Confirmation Notice, dated May 21, 2013, to confirm Auburn's election of the substitute supply opportunity and its desire to purchase a System Development Charge Credit from Cascade as to the 6 MGD Wholesale Water Supply ("Confirmation Notice");

WHEREAS, Cascade paid a capacity reservation fee to Tacoma that covers a portion of the System Development Charge for 6 MGD Wholesale Water Supply and Auburn will owe Tacoma the remaining balance of any System Development Charges for Auburn's desired quantity, net of the credit purchased from Cascade under this Agreement;

WHEREAS, the Joint Letter and Confirmation Notice are set forth in Exhibit A hereto and are incorporated by reference in this Agreement; and

WHEREAS, the Parties have addressed the purchase of credits for the permanent, or 4 MGD Wholesale Water Supply, in a separate agreement, and the Parties set forth their agreement for purchase of credits for the 6 MGD Wholesale Water Supply in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the recitals stated above, which are incorporated herein, and the mutual covenants and conditions herein contained, the Parties agree as follows:

AGREEMENT

1. Definitions.

"6 MGD Wholesale Water Supply" means an average annual of 6 MGD wholesale water supply from Tacoma, with a Peaking Factor of 1.33, and a maximum peak day of 7.98 MGD, all as provided in the Amended and Restated Agreement. The 6 MGD Wholesale Water Supply is the Tacoma supply of water for a finite period of years.

"Amended and Restated Agreement" means the "Amended and Restated Agreement for the Sale of Wholesale Water" by and among Cascade and the City of Tacoma, Department of Public Utilities, Water Division, dated December 31, 2012.

"Confirmation Notice" means the document, dated May 21, 2013, in which Auburn confirmed its election of the substitute supply opportunity in fulfillment of Cascade's obligation in the Four Cities Agreement to assist with Auburn's projected 50-year water supply needs (attached in Exhibit A).

"Four Cities Agreement" means the "2010 Lake Tapps Area Water Resources Agreement among the Cities of Auburn, Bonney Lake, Buckley and Sumner, and Cascade Water Alliance," dated February 5, 2010.

"MGD" means million gallons per day.

"Joint Letter" means the letter, dated February 11, 2013, from Cascade and Tacoma to Cities of Auburn, Bonney Lake, Buckley and Sumner that is attached hereto in Exhibit A.

"Notice of Confirmation of System Development Charge Credit" means a notice, given by Cascade to Tacoma at the request of Auburn, confirming the amount of the System Development Charge Credit (if any) to be applied to the System Development Charge otherwise due and payable by Auburn to Tacoma in connection with a wholesale water supply agreement.

"System Development Charge" or "SDC" means the system development charge imposed upon wholesale customers by Tacoma in its wholesale water regulations.

"System Development Charge Credit" means a credit to be applied in a wholesale water supply agreement against the System Development Charge otherwise due and payable by Auburn to Tacoma. The System Development Charge Credit is expressed in million gallons per day (MGD) units and in dollars.

"Tacoma" means the City of Tacoma, Department of Public Utilities, Water Division.

2. Term of Agreement.

This Agreement takes effect on the first date that both Parties have duly approved, signed, and delivered the Agreement to the other Party. The term of the Agreement will commence on the effective date and will end on December 31, 2029 or the date that Auburn has fully paid Cascade for the price of the System Development Charge Credit consistent with Sections 3 and 4 of this Agreement. In the event that Auburn elects not to confirm a quantity consistent with the terms of this Agreement or by notice selects a quantity of zero (0.000 MGD), then this Agreement will terminate.

3. Purchase of 6 MGD System Development Charge Credit & Price.

Subject to <u>Section 5</u> of this Agreement, Auburn agrees to purchase and Cascade agrees to sell a System Development Charge Credit regarding the 6 MGD Wholesale Water Supply in a maximum quantity of up to 2.763 MGD annual supply capacity (3.68 MGD peak supply capacity). Auburn shall confirm the specific quantity of the 6 MGD Wholesale Water Supply it will purchase in accordance with the procedure set forth in <u>Section 5</u> below.

Until Auburn confirms its System Development Charge Credit with Cascade consistent with Section 5 and enters a wholesale water supply agreement with Tacoma as set forth in the Joint Letter, Auburn will not have access to the 6 MGD Wholesale Water Supply. After Auburn has confirmed its System Development Charge Credit with Cascade consistent with Section 5 and entered a wholesale water supply agreement with Tacoma, then Auburn may begin to take delivery of wholesale water from Tacoma.

In consideration for said System Development Charge Credit, Auburn will pay to Cascade a total price of \$1,427,864.00, as of the date that this Agreement takes effect, for the quantity of 2.763 MGD annual supply capacity (3.68 MGD peak supply capacity). The parties agree that Auburn will pay interest at an annual rate of 3.2% on the balance due beginning in 2017 and continuing until the balance is fully paid and this Agreement terminates. Auburn will pay the total price by making an annual payment in 2017-2029 according to the annual payment schedule set forth in Section 4 below. This schedule incorporates interest at a rate of 3.2% on the balance due, beginning in 2017. Under this schedule the total of annual payments including interest is \$1,977,128.00. In the event that Auburn confirms an amount less than the maximum quantity of 2.763 MGD annual supply capacity (3.68 MGD peak supply capacity), the total applicable price and payment schedule will be adjusted downward on a pro rata basis. If Auburn elects not to confirm a quantity, or by notice selects a quantity of zero (0.000 MGD), then no payment shall be due.

4. Annual Payment Schedule.

Auburn will make annual installment payments to Cascade to pay for the System Development Charge Credit as to the 6 MGD Wholesale Water Supply. In the event that Auburn purchases a System Development Charge Credit in the quantity of 2.763 MGD annual supply capacity (3.68 MGD peak supply capacity), then the following payment schedule shall apply:

Payment Schedule

Year	Amount
2014	0
2015	0
2016	0
2017	\$45,692
2018	\$45,692
2019	\$45,692
2020	\$45,692
2021	\$45,692

Year	Amount
2022	\$45,692
2023	\$45,692
2024	\$45,692
2025	\$45,692
2026	\$45,692
2027	\$506,736
2028	\$506,736
2029	\$506,736
Total	\$1,977,128

In the event that Auburn purchases a System Development Charge Credit in a quantity less than 2.763 MGD annual supply capacity, then the Parties shall calculate and determine the applicable total price and payment schedule and the Parties shall agree on an updated payment schedule that will be documented as Exhibit B to this Agreement.

Each year the annual payment shall due and payable by Auburn to Cascade on or before June 30 of the year in which such payment is due. If full payment of any annual payment is not received by Cascade on or before the date due, such payment shall be considered past due, and the unpaid amount shall accrue interest, from the date due until the date paid, at a rate per day equal to 0.03 percent per day. Upon not less than fifteen (15) days' advance notice to Cascade, the City may in any given year prepay without penalty any one or more of the next successive annual payments. Upon such notice, Cascade will provide Auburn documentation of the amount due for such payment, and adjustments to any remaining payment schedule, net of related interest incorporated into the above payment schedule.

5. Auburn Confirmation of Purchase Quantity & Termination Right

On or before June 30, 2017, Auburn shall give notice to Cascade as to the specific quantity of the System Development Charge Credit that it will purchase, up to a maximum of 2.763 MGD annual supply capacity (3.68 MGD peak supply capacity). Auburn's notice must identify and confirm one of the following three courses of action:

- a) Auburn confirms purchase of a System Development Charge Credit in the quantity of 2.763 MGD annual supply capacity (3.68 MGD peak supply capacity).
- b) Auburn confirms purchase of a System Development Charge Credit in a specific quantity less than 2.763 MGD annual supply capacity (peak supply capacity to be determined by Cascade).
- c) Auburn confirms that it will not purchase an SDC Credit as to the 6 MGD Wholesale Water Supply, in which event this Agreement shall terminate and, except for Section 9, be of no further force or effect.

If Auburn fails to give such notice to Cascade by June 30, 2017, or by notice selects a quantity of zero (0.000 MGD), then no payment shall be due and this Agreement will terminate.

In order to facilitate communications, the Parties agree to meet and confer during the month of March 2017, or before, about status of water supply planning and this Agreement.

6. Notice of Confirmation of System Development Charge Credit.

Within 30 days after Auburn gives its notice to Cascade under <u>Section 5</u> of this Agreement, Cascade will send to the Tacoma Water Superintendent a Notice of Confirmation of System Development Charge Credit regarding the 6 MGD Wholesale Water Supply. Cascade will provide a copy of the Notice to Auburn when it is sent to Tacoma.

7. Terms and Conditions of 6 MGD System Development Charge Credit.

Auburn acknowledges that, as stated in the Amended and Restated Agreement, Cascade has paid to Tacoma a capacity reservation fee (*i.e.*, \$1,570,074.00 per MGD) for the 6 MGD Wholesale Water Supply that Tacoma will recognize as an System Development Charge Credit if all requirements of the Amended and Restated Agreement and the Joint Letter are met. However, the capacity reservation fee paid to Tacoma by Cascade covers only a portion of the System Development Charge for the 6 MGD Wholesale Water Supply. Accordingly, Auburn specifically acknowledges and agrees that it will pay Tacoma the remaining balance of any System Development Charges owing for Auburn's desired quantity, net of the SDC Credit obtained from Cascade. Auburn specifically acknowledges and agrees that Tacoma's SDC could increase and that Auburn will bear any increase in Tacoma's SDCs that may take effect before Auburn and Tacoma enter a wholesale water supply agreement.

Auburn understands that additional SDC payments to Tacoma will be required to convert the 6 MGD Wholesale Water Supply to permanent supply, in the event Auburn elects to do so pursuant to a future Auburn-Tacoma agreement. As an example calculation of Auburn's combined costs based on Tacoma's current SDC, the Parties have included an illustrative example in Exhibit C attached hereto. Exhibit C is not binding on any Party or Tacoma, and Exhibit C contains assumptions about Tacoma's SDC and interest rates in the future that may or may not turn out to be accurate. Accordingly, Cascade makes no representations or warranties about the accuracy of Exhibit C.

8. Wholesale Water Supply Purchase Negotiations with Tacoma.

In order to use the System Development Charge Credit and secure a wholesale water supply from Tacoma, Auburn acknowledges that it must make an offer, complete negotiations, and enter a wholesale water supply agreement with Tacoma consistent with the Joint Letter and Confirmation Notice set forth in Exhibit A and with the Amended and Restated Agreement. Auburn acknowledges and agrees that Cascade makes no representations or warranties as to the outcome of such negotiations, the Tacoma wholesale water supply that Auburn may (or may not) be able to purchase, or otherwise.

9. Effect on Four Cities Agreement.

The Parties agree that this Agreement constitutes full performance by Cascade of its obligations under Section 3(a) of the Four Cities Agreement. Accordingly, Section 3(a) of the Four Cities Agreement shall be of no further force or effect as between Cascade and Auburn. Other provisions of the Four Cities Agreement are unaffected by this Agreement and remain effective according to their terms. This section 9 shall survive termination of the Agreement in the event that Auburn elects not to purchase an SDC Credit.

10. Notices.

All notices and payments hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

Cascade Water Alliance:

520 112th Avenue NE, Suite 400

Bellevue, Washington 98004

Attn: Chief Executive Officer

Phone: (425) 453-0930 Fax: (425) 425-453-0953 City of Auburn:

Attn: Dennis Dowdy

25 W Main St

Auburn WA 98001

Phone: (253)931-3010

Fax: (253)931-3053

A Party may change its address from time to time by providing notice to the other Party. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the next business day following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

11. Dispute Resolution.

In the event that any dispute arises between Cascade and Auburn, the aggrieved Party shall give a notice of the dispute to the other Party. Cascade and Auburn shall, within five (5) days of such notice, each nominate a senior officer of its management to meet at a mutually agreed location, to attempt to resolve such dispute. The Parties shall each designate a representative(s) to confer on the best and most cost effective way to resolve the dispute. By

mutual agreement, they may choose direct negotiations or mediation. If there is no agreement between the Parties on how to proceed within thirty (30) days, either Party may pursue legal action; provided, however, no Party shall be precluded from filing an appeal or action to prevent the expiration of a time period for filing or any statute of limitations.

If a Party fails to perform its obligations hereunder, then it shall be in default hereunder unless the defaulting Party cures an event of default, whether monetary or non-monetary, within thirty (30) days after receiving written notice from the other Party of such default.

Subject to the procedures set forth in Section 9 (<u>Dispute Resolution</u>), if a Party is in breach or default of its obligations arising under this Agreement, the other Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity (including the right to specifically enforce this Agreement), all of which remedies shall be cumulative.

12. Attorneys' Fees.

If any Party shall be required to bring any action to enforce any provision of this Agreement, or shall be required to defend any action brought by the other Party with respect to this Agreement, and in the further event that one Party shall substantially prevail in such action, the losing Party shall, in addition to all other payments required therein, pay all of the prevailing Party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.

13. No Assignment.

This Agreement is specific to the Parties and may not be assigned in whole or in part.

14. Non-Waiver.

No delay or failure by a Party to exercise any of its rights, powers or remedies under this Agreement following any breach by another Party shall be construed to be a waiver of any such breach, or any acquiescence therein, or of or in any similar breach thereafter occurring, nor shall any waiver of any single breach be deemed a waiver of any other breach theretofore or thereafter occurring.

15. No Third Party Beneficiary.

This Agreement is for the sole and exclusive benefit of the Parties and is not intended to and shall not confer any rights or benefits on any third party not a signatory hereto.

16. Integrated Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous understandings or agreements with respect thereto; provided, however, that this Agreement shall be interpreted or construed together with the Amended and Restated Agreement, the Joint Letter, and the Confirmation Notice. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by the Parties.

17. Signature in Counterparts.

This Agreement may be executed in counterparts and all of those counterparts taken together shall constitute one and the same instrument.

18. Representations of the Parties.

Each Party represents and warrants that it has duly approved, executed, and delivered this Agreement and that it has all necessary authority to enter into this Agreement and to perform its terms and obligations. Each Party represents and warrants that the approval, execution, and delivery have been duly authorized by the appropriate board or council, and no other act or proceeding on the part of any Party is necessary to authorize entry into or performance of this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

City of Auburna

By:

SEP 1 0 2013 Date:

ATTEST

City Clerk

APPROVED AS TO FORM

City Attorney

Chul Clark Cascade Water Alliance:

Chuck Clarke

Title: Chief Executive Officer

9/18/13 Date:

Exhibit A

[Joint Letter signed by Cascade and Tacoma, dated February 11, 2013, and the Confirmation Notice signed by Auburn, dated May 21, 2013.]





February 11, 2013

The Honorable Pete Lewis City of Auburn 25 West Main Street Auburn, WA 98001

The Honorable Neil Johnson City of Bonney Lake 19306 Bonney Lake Blvd. Bonney Lake, WA 98391 The Honorable Pat Johnson City of Buckley 933 Main Street Buckley, WA 98321

The Honorable Dave Enslow City of Sumner 1104 Maple Street Sumner, WA 98390

Re: Cascade Water Alliance and Tacoma Water Substitute Wholesale Water Supply Availability – Time is of the Essence (Sent by Email and US Mail)

Dear Mayors:

As you may be aware, the Cascade Water Alliance and City of Tacoma have been in ongoing discussions about potential changes to the 2005 Water Supply Agreement. In late 2012 a new agreement was reached and signed which benefits not only Tacoma and Cascade but also the Four Cities of Auburn, Bonney Lake, Buckley and Sumner. This new agreement preserves the right of the four cities under the 2009 Cascade/Four Cities Agreement and allows a new time sensitive supply option to be jointly offered to the four cities from Cascade and Tacoma.

The Cascade Water Alliance (Cascade), in cooperation with Tacoma Water, is offering the availability of a substitute wholesale water supply ("Substitute Supply") and to provide this notice of a limited period of time for your Cities to take action on this unique opportunity. Cascade and Tacoma have entered into a Restated and Amended Agreement for the Sale of Wholesale Water, which replaces the 2005 agreement between the parties for purchase and sale of wholesale water. The 2005 agreement is included as one of the "water supply assistance" measures in the 2010 Lake Tapps Area Water Resources Agreement between Cascade and your cities (the "Four Cities Agreement").

In the Restated and Amended Agreement, Cascade has agreed to relinquish its right to take delivery of the Substitute Supply. This water is now available to the Cities to purchase directly from Tacoma as a wholesale customer. Cascade has, however, previously paid capacity charges for this wholesale water supply. If your City now desires to purchase the Substitute Supply directly from Tacoma and takes action described in this letter, Cascade is willing to sell your City a credit (reflecting the amounts that Cascade has previously paid to Tacoma) that can be

applied against System Development Charges that would otherwise be due to Tacoma ("SDC Credit"). The amount and availability of any SDC Credit will be determined by Cascade in accordance with the terms set forth in the Confirmation Notice that is attached to this letter. You must act promptly, however, in order to secure the opportunity to obtain an SDC Credit from Cascade.

This letter provides Cascade's formal notice of the limited window of time for your City to act, the Confirmation Notice that you must return to Cascade to apply for a SDC Credit, and general guidance as to how Cascade and Tacoma intend to cooperate to facilitate the implementation of the Restated and Amended Agreement.

Limited Time to Act

You must act within 120 days from the first meeting of Tacoma, Cascade and the Four Cities to confirm your interest in this opportunity by delivering a signed "Confirmation Notice" to Cascade in the form attached to this letter. This opportunity expires at the end of 120 days. During this 120-day period, the quantity allocation among and between the Four Cities as stated in the Four Cities letter to Cascade, dated February 5, 2010, shall be recognized by Cascade and shall determine the maximum allocation of the Substitute Supply (and the Residual Wholesale Water Supply) among the Cities (unless the Four Cities jointly agree to reallocation in accordance with the Four Cities Agreement). A City has until the expiration date to deliver an executed Confirmation Notice to Cascade. If you select this opportunity by acting within the 120 days, then you have until March 1, 2018 to purchase (or agree to purchase) an SDC Credit from Cascade. (In anticipation of the required steps with Tacoma described below, it is advisable for your City to complete the SDC purchase agreement with Cascade in advance of March 2018 to allow your City adequate time for the Tacoma steps.) If you select this opportunity by acting within the 120 days, then you will also have until March 1, 2018 to submit a Wholesale Water Agreement with Tacoma that is eligible for the SDC Credit.

If you do not confirm your selection by delivering a Confirmation Notice to Cascade by the deadline, then you decline the Substitute Supply opportunity stated in this letter. In that event, you will still be able to purchase wholesale water supply (if any water supply capacity remains available) from Tacoma on terms consistent with Section 3(a) of the Four Cities Agreement. However, you will not be eligible for an SDC Credit.

Next Steps with Cascade

If you deliver the Confirmation Notice within the 120-day deadline stated above and select this Substitute Supply opportunity, then you will need to complete the following steps with Cascade:

- (a) Confirmation to Cascade that your City will proceed with the Substitute Supply opportunity stated herein, and that it fully substitutes for Section 3(a) of the Four Cities Agreement which will have no further force or effect.
- (b) Agree with Cascade for payment terms to Cascade for the SDC credit.

(c) Upon completion of the items in (a) and (b) above, Cascade will send Notice of Confirmation of System Development Charge Credit to Tacoma.

Next Steps with Tacoma Water

If you deliver the Confirmation Notice to Cascade within the deadline stated above and select this opportunity, then you would also need to complete the following steps with Tacoma in order to submit a timely offer to purchase all or a portion of the Substitute Supply. The procedures and requirements that must be followed to submit such an offer are set forth in Section 6 and Section 7 of the Restated and Amended Agreement (attached for reference). It is important to read these procedures and requirements carefully as any offer you make must be in strict compliance with these procedures and requirements. These procedures and requirements are briefly summarized as follows:

- (a) In order to obtain a SDC Credit, Tacoma must be in receipt of a Notice of Confirmation of System Development Charge Credit from Cascade.
- (b) Prior to submitting your offer to purchase water from Tacoma, you must obtain Tacoma's written review and approval of the Wholesale Water Supply Agreement (including any proposed modifications thereof) pursuant to which such offer is to be made to Tacoma.
- (c) Your offer to Tacoma must be submitted in the form of duplicate executed originals of the Wholesale Water Supply Agreement, in strict conformity with the form of the Wholesale Water Supply Agreement approved by Tacoma.
- (d) No later than March 1, 2018, you must deliver your offer to Tacoma, Attention: Water Superintendent, Tacoma Water, 3628 South 35th Street, Tacoma, WA 98409, and obtain Tacoma's acknowledgment of the time and date of Tacoma's receipt of such offer.

Clarifications

While we are pleased to present this opportunity to your City, we want to avoid any confusion as to what this opportunity is and is not. For avoidance of doubt, this letter does not constitute a modification or waiver of any of the procedures or requirements set forth in the Restated and Amended Agreement. This letter does not constitute an offer by Tacoma to sell a wholesale water supply to any person or entity. Any such sale by Tacoma is subject to and contingent upon the negotiation, execution and delivery of a mutually acceptable Wholesale Water Supply Agreement.

Conclusion

Cascade and Tacoma are pleased to provide the availability of Substitute Supply, and look forward to receiving your offer to purchase, should you desire to do so, in accordance with the

guidelines set forth above. We will be contacting your office within the next week to schedule a meeting to present and discuss this opportunity.

Sincerely,

Chuck Clarke

Chief Executive Officer Cascade Water Alliance

Chul Clarke

Linda A. McCrea Superintendent

Linda Mr. Crea

Tacoma Water

Confirmation Notice

To Be Delivered to Cascade Water Alliance 120 days From the First Meeting of Tacoma, Cascade and The Four Cities

Cascade Water Alliance ("Cascade") and Tacoma Water presenting the availability of a substitute wholesale water supply ("Substitute Supply"). The City understands that the Substitute Supply is an alternative to the provisions of Section 3(a) of the 2010 Lake Tapps Area Water Resources Agreement between Cascade and the Cities of Auburn, Bonney Lake, Buckley, and Sumner (the "Four Cities Agreement"). The City understands that the Substitute Supply requires the City to enter a wholesale water supply agreement with Tacoma Water to be negotiated and offered to Tacoma Water by March 1, 2018 as described in the above-referenced letter. The City understands that Cascade Water Alliance is offering to sell a System Development Charge Credit to the City on the terms and conditions stated on Exhibit 1 attached hereto, provided that by March 1, 2018 Cascade and the City need to enter an agreement to confirm the purchase and sale and Cascade's provision of a Notice of Confirmation of System Development Charge ("SDC") Credit to Tacoma Water.
Now, therefore, the City of hereby confirms and agrees as follows:
(a) The City the elects the "Substitute Supply" opportunity described herein as an alternative that fully substitutes for section 3(a) of the Four Cities Agreement.
(b) The City provides this Confirmation Notice with respect to the following portion of the Substitute Supply: 4 MGD wholesale supply: 6 MGD wholesale supply:
(c) By selecting the "Substitute Supply" alternative, the City agrees that Cascade has fully performed and satisfied all obligations to the City under 3(a) of the Four Cities agreement.
(d) The City agrees that section 3(a) of the Four Cities Agreement shall be of no further force or effect as between Cascade and the City.
(e) The City and Cascade shall proceed with diligence to negotiate an agreement for purchase of an SDC Credit consistent with the terms outlined in Exhibit 1.
CONFIRMED, ACCEPTED AND AGREED TO BY THE CITY OF on his, 2013:
By
Name]
Aavor





May 21, 2013

Cascade Water Alliance Attn. Chuck Clarke, Chief Executive Officer 520 112th Avenue NE, Suite 400 Bellevue, Washington 98004

Re: Confirmation Notice – City of Auburn's Response to Cascade's Offer of Substitute Supply

Dear Mr. Clarke,

On May 6th, 2013 the Auburn City Council approved Resolution 4951 authorizing the City of Auburn to begin negotiations with Cascade Water Alliance in response to your February 11, 2013 offer.

Enclosed please find a signed original of the City's confirmation notice.

Our Public Works Director will be in touch with you soon to begin discussion of the city's desires to make use of the Substitute Supply.

Sincerely

Pete Lewis

Mayor

Enclosures

ce: Dennis Dowdy, Director of Public Works

Received

MAY 23 2013

Confirmation Notice

To Be Delivered to Cascade Water Alliance 120 days From the First Meeting of Tacoma, Cascade and The Four Cities

The City of Auburn ("City") confirms receipt of the letter, dated February 11, 2013, from Cascade Water Alliance ("Cascade") and Tacoma Water presenting the availability of a substitute wholesale water supply ("Substitute Supply") The City understands that the Substitute Supply is an alternative to the provisions of Section 3(a) of the 2010 Lake Tapps Area Water Resources Agreement between Cascade and the Cities of Auburn, Bonney Lake, Buckley, and Sumner (the "Four Cities Agreement"). The City understands that the Substitute Supply requires the City to enter a wholesale water supply agreement with Tacoma Water to be negotiated and offered to Tacoma Water by March 1, 2018 as described in the above-referenced letter. The City understands that Cascade Water Alliance is offering to sell a System Development Charge Credit to the City on the terms and conditions stated on Exhibit 1 attached hereto, provided that by March 1, 2018 Cascade and the City need to enter an agreement to confirm the purchase and sale and Cascade's provision of a Notice of Confirmation of System Development Charge ("SDC") Credit to Tacoma Water.

Now, there fore, the City of Auburn hereby confirms and agrees as follows:

- (a) The City the elects the "Substitute Supply" opportunity described herein as an alternative that fully substitutes for section 3(a) of the Four Cities Agreement provided that the City can negotiate acceptable terms with Cascade to provide and finance the necessary water supply SDC credits.
- (b) The City provides this Confirmation Notice with respect to the following portion of the Substitute Supply:

4 MGD wholesale supply: 4 MGD

6 MGD wholesale supply: Possible option of 3 MGD

- (c) By selecting the "Substitute Supply" alternative, the City agrees that upon execution of a new Substitute Supply agreement with Cascade to provide SDC Credits for 4 MGD of supply, Cascade will have fully performed and satisfied all obligations to the City under 3(a) of the Four Cities agreement.
- (d) The City agrees that section 3(a) of the Four Cities Agreement shall be of no further force or effect as between Cascade and the City when a new substitute supply agreement with Cascade is executed.
- (e) The City and Cascade shall proceed with diligence to negotiate an agreement for purchase of an SDC Credit consistent with the terms outlined in Exhibit 1 (Attached).

CONFIRMED, ACCEPTED AND AGREED TO BY THE CITY OF AUBURN on this 21st day of May, 2013:

Pete Lewis, Mayor

Exhibit 1

TERMS FOR 4 CITIES SUBSTITUTE SUPPLY OFFER

- 1. This offer is structured to fulfill Cascade's obligations to make available Tacoma water as described in the existing "4 Cities Agreement". Availability of the terms of this offer is contingent upon written acceptance of the substitution of this supply offer for the commitment defined in Section 3.a of that 4 Cities Agreement specifically:
 - a. Paragraph 3A, providing options for purchase of Cascade's contracted Tacoma supply capacity, is replaced by the substitute capacity offer defined in this proposal.
 - b. Paragraph 3A is confirmed in writing to be fully satisfied by acceptance of this substitute capacity offer.
 - c. Upon expiration of the substitute capacity offer on December 31, 2017, all Cascade obligations to make Tacoma water available are deemed fulfilled and terminated.
 - d. The substitute capacity offer must be accepted and executed no later than 120 days from the first meeting of Tacoma, Cascade and the Four Cities and the offer is withdrawn after expiration date. [Actual commitment to purchase water under those terms, once accepted, can occur anytime through 2017 as further delineated in section II.c below.]

II. Substitute Capacity Offer

- a. The following capacity is made available:
 - i. 9.3 mgd of average supply and a peak supply of 11.3 mgd. [This is the remaining available capacity of Cascade's purchases from Tacoma]
 - ii. Cascade offers all capacity as firm and permanent. Cascade will be responsible for any transactions needed to convert reserve capacity to permanent capacity.
 - for each 1 mgd of year-round capacity, a peak season ratio of up to 1.33 will be available for purchase. The peak: annual ratio of 1.33:1.0 is based on the Tacoma capacity owned by Cascade, which originally totaled 10 mgd annual average and 13.3 mgd peak season. Cities may elect peak ratios ranging from 1.0 to 1.33, subject to total capacity limits defined in the attached table.
 - iv. Tacoma will provide wholesale service contingent on execution of a wholesale supply agreement defining terms for service and related charges. A sample agreement form is provided.
- b. The following price and financial terms are offered:
 - Capacity will be offered at a price of 75% of the SDC (\$3.17 per gallon * 75% = \$2.3775 per gallon) originally paid by Cascade This charge will apply to annual capacity and to incremental peak season capacity.
 - For example, for a purchase of 1 mgd annual / 1.3 mgd peak season, the cost will be 1 mgd * \$2.3775 million + 0.3 mgd * \$2.3775 million = \$3,090,750. A purchase of 1 mgd annual with no peak season increment would cost \$2,377,500.
 - Payments for capacity purchase will be to Cascade; when the purchase involves conversion of reserve capacity, Cascade may opt to direct all or part of the payment to Tacoma.
 - iii. For each purchase, the following financing terms are available.

- 1. Full payment of purchase price upon execution of purchase; or
- Payment of 20% of purchase price upon execution; remainder financed on a note over 5 years at 3.3% interest with level annual payments due upon each anniversary date. Purchaser would be free to pay off note at any time.
- iv. Wholesale rates for service and delivery are as defined by agreement with Tacoma (see also below).
- c. The following schedule applies to the substitute offer:
 - The substitute capacity offer must be accepted and executed no later than 120 days after the first meeting of Tacoma, Cascade and the Four Cities and the offer is withdrawn after expiration date. If not accepted during this period, then the existing terms of paragraph 3.a would remain in effect.
 - ii. During the period from execution of this substitute offer until December 31, 2015, each City may elect to purchase its related share of capacity at any time. Shares of capacity can also be re-assigned upon notice provided to Cascade by both parties of such intent.
 - iii. Beginning January 1, 2016 and extending through December 31, 2017, any City may offer to purchase any or all capacity remaining available on a first come, first serve basis. Cascade will notify the Cities of available capacity early in 2016.
 - iv. After December 31, 2017, no substitute supply capacity will be available.
 - v. Participants in this substitute capacity offer are free to transfer rights to purchase to other participants, but only to other participants, provided that Cascade receives clear and binding direction to this effect from both parties.
- III. Special Situation. Bonney Lake previously acquired 2 mgd of peak season (June-September) capacity, with no right of service in the off-peak period. This is equivalent in quantity to 2.0 mgd peak and 0.7 mgd average annual. This leaves related off-peak capacity with no corresponding right of service in the peak period.
 - 1. Bonney Lake is offered revision of this capacity right to 2 mgd peak together with 1 50 mgd annual capacity.
 - 2 This offer to revise the capacity structure is made available for 90 days after the effective date of Bonney Lake's acceptance of the substitute capacity offer.
 - 3 Purchase Price for this revision is the extension of existing payments by one year (to include 2019), a net cost addition of \$391,222.
 - 4. If Bonney Lake does not approve this extension prior to the expiration date, then other parties are free to acquire the related off-peak capacity as a part of a year-round capacity purchase at an incremental price of \$391,222.
- IV. Integration of Cascade and Tacoma obligations under this substitute capacity offer:
 - a. As defined in the revised agreement between Cascade and Tacoma, it is the intent of Cascade and Tacoma that any purchases under this offer are subject to execution of an agreement for wholesale service with Tacoma. Cascade would have no ongoing role in delivering wholesale water after execution of such agreement with Tacoma.

- b. Tacoma will commit to supply water purchased under this agreement, subject to execution of a wholesale water agreement acceptable to Tacoma and generally defined in a draft wholesale agreement.
 - i. Tacoma will work with the purchaser to establish a mutually acceptable delivery point or points, to be defined in the wholesale water agreement.
 - ii. No SDCs will be due to Tacoma for water capacity purchased under this agreement.
 - iii. The purchaser will be subject to Tacoma wholesale rates.

Total Auburn Bonney Lake Buckley					
Capacity Availability Previously Requested by the 4 Cities	9 2 mgd average / 13 33 mgd peak	7.0 mgd average / 10.0 mgd peak	1.5 mgd average / 2.0 mgd peak	0.7 mgd average / 1.33 mgd peak	0.0 mgd average / 0.0 mgd peak
Additional Capacity in Substitute Offer	0.8 mgd average / 0.00 mgd peak	0.5 mgd average / 0.0 mgd peak	0.0 mgd average / 0.0 mgd peak	0.3 mgd average / 0.0 mgd peak.	0.0 mgd average / 0.0 mgd peak
Previous Purchases			0.7 mgd average / 2 0 mgd peak [2.0 mgd peak season with no off-peak supply requires an annual average of 0.7 mgd to be delivered]		
Remaining Available Capacity for Purchase	10.0 mgd average / 13.33 mgd peak	7.5 mgd average / 10.0 mgd peak	0.8 mgd average / 0.0 mgd peak	1.0 mgd average / 1.33 mgd peak	0.0 mgd average / 0.0 mgd peak

Exhibit B

Updated Annual Payment Schedule

(To be completed by the Parties in the event Auburn confirms the purchase of an SDC credit in a quantity less than 2.763 MGD annual supply capacity)

Year	Amount
2014	0
2015	0
2016	0
2017	\$
2018	\$
2019	\$
2020	\$
2021	\$
2022	\$
2023	\$
2024	\$
2025	\$
2026	\$
2027	\$
2028	\$
2029	\$
Total	\$

 $\underline{\textbf{Exhibit C}}$ Illustrative Example of Total Auburn SDC Payments for Reserve Capacity

Year	Payment to Cascade	Estimated Payment	Total Estimated
		to Tacoma	SDC Payment
2014	\$0	\$0	\$0
2015	\$0	\$0	\$0
2016	\$0	\$0	\$0
2017	\$45,692	\$234,283	\$279,974
2018	\$45,692	\$234,283	\$279,974
2019	\$45,692	\$234,283	\$279,974
2020	\$45,692	\$1,183,994	\$1,229,686
2021	\$45,692	\$1,183,994	\$1,229,686
2022	\$45,692	\$1,183,994	\$1,229,686
2023	\$45,692	\$1,183,994	\$1,229,686
2024	\$45,692	\$1,183,994	\$1,229,686
2025	\$45,692	\$1,183,994	\$1,229,686
2026	\$45,692	\$1,183,994	\$1,229,686
2027	\$506,736	\$0	\$506,736
2028	\$506,736	\$0	\$506,736
2029	\$506,736	\$0	\$506,736

Notes:

Estimated Payment to Tacoma is based on the following assumptions which are not assured: a) the current SDC; b) an interest rate of 3.2%, and c) a note term of 10 years structured with the first three years bearing only interest payments. Actual payments will be subject to Auburn's completion of a wholesale supply agreement with Tacoma and related terms.

²⁾ Does not include estimates of actual water rates for wholesale service from Tacoma.



STATE OF WASHINGTON

DEPARTMENT OF HEALTH

20435 72nd Ave. S., Suite 200, K17-12 • Kent, Washington 98032-2358

COPY Christ. FYI

July 10, 2002

JUL 12 ZUUZ MAYOR'S OFFICE

PETER B LEWIS, MAYOR CITY OF AUBURN 25 W MAIN ST AUBURN WA 98001

Subject: Auburn Water System (ID# 03350)

King County

Bilateral Compliance Agreement Amendment No. 2 - Revision of Schedule Only

Honorable Mayor Lewis:

We have discussed schedule modifications to our Bilateral Compliance Agreement (BCA) with Duane Huskey of your staff. The Department is in agreement with the proposed modifications. The BCA was last revised on March 6, 2000 with Amendment No. 1. With your permission and by way of this letter, the BCA is hereby modified with Amendment No. 2 as noted below:

8. Schedule for Stage 1.

Complete Construction of Facilities	September 18, 2002
Monitoring Report – 2 Rounds	September 17, 2003
Submit Report to Determine if System is Optimized	December 23, 2003

The City of Auburn agrees to perform the following:

Construct corrosion control treatment facilities. Complete the installation of Stage 1 corrosion control treatment facilities in accordance with Department approved construction documents prior to September 18, 2002.

Monitor water quality parameters. Monitor water quality parameters in accordance with Title 40 CFR Chapter 1 Part 141.87 (c), (d), and (e) beginning on September 19, 2002.

Monitor tap water quality for lead and copper. Monitor tap water quality in accordance with Title 40 CFR Chapter 1 Part 141.86 (d) and complete two sixmonth monitoring compliance periods prior to September 19, 2003.

Auburn Water System July 10, 2002 Page 2

If you have any questions or comments, please call me at (253) 395-6764.

Sincerely,

James Nilson PE Regional Engineer

NW Drinking Water Operations

cc: Public Health - Seattle & King County

Karen Heneghan – DOH Ingrid Salmon – DOH RESOLUTION NO. 2 8 7 3

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A SERVICE AGREEMENT ESTABLISHING WATER UTILITY SERVICE AREA BOUNDARIES BETWEEN THE CITY OF AUBURN AND THE CITY OF AUBURN AND PIERCE COUNTY.

WHEREAS, service area agreements are required by WAC 246-293-250 to help assure that water reserved for public water supply purposes with Pierce County will be utilized in the future in an efficient and planned manner.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HEREWITH RESOLVES AS FOLLOWS:

Section 1. The Mayor and City Clerk of the City of Auburn are herewith authorized to execute a Service Agreement establishing water utility service area boundaries between the City of Auburn and Pierce County. A copy of said Agreement is attached hereto and denominated as Exhibit "A" and incorporated herein by reference.

Resolution No. 2873 September 3, 1997 Page 1

ORIGINAL

STANDARD SERVICE AGREEMENT ESTABLISHING WATER UTILITY SERVICE AREA BOUNDARIES

PREAMBLE

THIS AGREEMENT establishing water utility service area boundaries is entered into this day for purposes of identifying the external boundaries of the service area for which this water purveyor has assumed water service responsibility.

WHEREAS, service area agreements are required by WAC 246-293-250 to help assure that water reserved for public water supply purposes with Pierce County will be utilized in the future in an efficient and planned manner; and

WHEREAS, the designation of retail water service area and future service planning areas, together with the cooperation of other utilities, will help assure efficient planning to accommodate growth, avoid duplication of service, and facilitate the best use of resources:

WHEREAS, the responsibilities applicable to water purveyors are outlined in the Pierce County Coordinated Water System Plan (CWSP) and by the adopted rules and regulations of the Washington State Department of Health (DOH); and

WHEREAS, it is not the intent of this Agreement to give new authority or responsibilities to the water purveyor or to the County or State regulatory agencies, in addition to those requirements imposed by law; and

NOW, THEREFORE, the undersigned party, having entered into this Agreement by its signature, concur with and will abide by the following provisions:

- Section 1. The terms used within the contract shall be as defined in the implementing regulations of Chapter 70.116 RCW, except as identified below.
- A. <u>Lead Agency</u> shall mean the department or organization within Pierce County that has been designated by the Pierce County Executive as being administratively responsible for the coordination and filing of the Pierce County Water Service Area map, Standard Service Agreement Establishing Water Utility Service Area Boundaries, Agreements for Retail Service Areas, Utility Service Policies, and other administrative documents necessary for the implementation of the Pierce County CWSP.
- B. <u>Pierce County Coordinated Water System Plan (CWSP)</u> shall mean the latest plan adopted by the Pierce County Council for public water systems within critical water supply service areas within Pierce County Council which identifies the present and future needs of the systems and sets forth means for meeting those needs in the most efficient manner possible.

EXHIBIT "A"Resolution No. 2873 September 15, 1997

- C. <u>Pierce County Water Service Area Map</u> shall mean the map referenced in this Agreement for the retail service area signed by the water purveyor except as amended in accordance with the CWSP procedures, with the concurrence of the affected water purveyors, or by operation of law.
- D. <u>Retail Service Area</u> shall mean the designated geographical area within Pierce County in which the undersigned water purveyor assumes full responsibility for providing water service to individual customers.
- E. <u>Utility Service Policies</u> shall mean those policies and conditions of service that are attached to the provision of water service for individual customers. The identified policies and conditions of service are those conditions incorporated within the water purveyor's water system improvement and expansion plans required under the provisions of the Public Water Systems Coordination Act and DOH.
- Section 2. <u>Lead Agency</u>. The lead agency for administering the Pierce County Water Utility service area agreements shall be the Pierce County Department of Public Works and Utilities unless otherwise established by the Pierce County Executive. The lead agency shall function only as a coordination center. The lead agency will maintain the original documents and will be responsible for updating the water system map and agreements as provided for in the CWSP.
- Section 3. <u>Authority</u>. The authority for this Agreement is granted by the Public Water Systems Coordination Act of 1977, Chapter 70.116 RCW.
- Section 4. <u>Service Area Boundaries</u>. The undersigned Water Purveyor acknowledges that the Pierce County Water Service Area Maps identifying its retail service area boundaries, dated July 8, 1997 and included as Attachment A to this Agreement, identify the Water purveyor's present and future service area within Pierce County. The undersigned further acknowledges that there are no service area conflicts with an adjacent water utility or purveyor, or, if such a conflict exists, agrees that no new water service will be extended within disputed areas except as stipulated in an adjudication by DOH, a final decision made by a court of competent jurisdiction, or by operation of law.

This agreement shall apply to service area boundaries claimed and identified in the above referenced maps. Revisions may be may require an amendment to the purveyor's or utility's service plans and shall be filed with the lead agency.

Section 5. <u>Boundary Adjustments</u>. If, at some time in the future it is in the best interests of the undersigned parties to make service area boundary adjustments, such modifications must be by: (1) written concurrence of all involved utilities and the proper legislative authority(ies), and must be noted and filed with the designated Pierce County lead agency and DOH; or (2) by operation of law. It is understood by the undersigned

utility that it may decline to provide service within its designated service area boundary, but in that case, an applicant may be referred to other adjacent purveyors or utilities or a new utility may be created and the original service area boundary will be adjusted accordingly.

System Extension Policies. The undersigned utility agrees that in Section 6. order to expand its existing water service area, (other than by addition of retail customers to existing water mains), or to serve in the capacity of a pre-qualified satellite system management agency (SSMA), it shall have adopted design standards and Utility Service extension policies. The design standards shall meet or exceed the Pierce County Water System Minimum Standards and Specifications.

A water utility anticipating expansion of retail service in unincorporated areas of Pierce County, or intending to operate as an SSMA, shall identify utility service policies in its updated water system plan. The undersigned utility agrees to identify, for information, its utility service policies or provide a copy of the updated water system plan to the Lead Agency prior to application for extension of its existing water system into new service areas within the unincorporated areas of Pierce County.

Municipalities further agree that if they identify a service area outside of their existing municipal corporate boundaries, the municipality will assume full responsibility for providing water service equivalent to the level of service provided for their customers inside the city limits with similar service requirements, and must also meet or exceed Pierce County's minimum design standards.

Special Working Agreements. Special working agreements, if they exist Section 7. and are relevant, between this water purveyor and an adjacent water purveyor shall be attached to this Agreement as Attachment B and incorporated herein by this reference.

Section 8. Compliance with the CWSP. Nothing in this Agreement shall waive any requirement of the state, federal or local government regarding the provision of water service. This Agreement shall comply with the interlocal agreement requirement of the CWSP.

ESS WHEREOF, the undersigned party has executed this Agreement as of

Water Purveyor

Charles A Boot

Representative

Approved as to Form

Michael J. Reynolds, City Attorney

Attested to:

Robin Wohlhueter, City Clerk

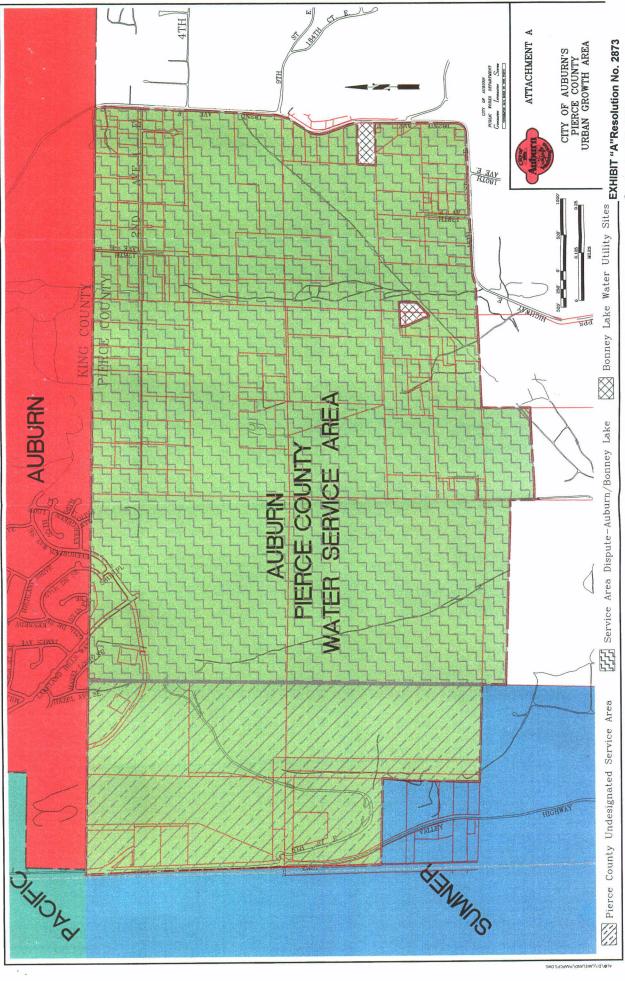
PIERCE COUNTY PUBLIC WORKS & UTILITIES DEPARTMENT

Suran Por Clark

97 Date

Name

Title



September 15, 1997

Attachment B:

SPECIAL WORKING AGREEMENTS:

List of Special Working Agreements Included:

Potential Annexation Agreement between City of Auburn and City of Federal Way Urban Service Area Agreement between City of Auburn and City of Pacific Potential Annexation Agreement between City of Auburn and City of Sumner Potential Annexation Agreement between City of Auburn and City of Kent

KING COUNTY RECORDER

3.16.7 3 4.1.12

AN AGREEMENT BETWEEN THE CITIES OF FEDERAL WAY AND AUBURN RELATING TO POTENTIAL ANNEXATION AREA DESIGNATION

THIS IS AN AGREEMENT between the Cities of Federal Way, a municipal corporation of the State of Washington ("Federal Way"), and Auburn, a municipal corporation of the State of Washington ("Auburn"), hereinafter collectively referred to as the "Cities."

RECITALS

- Pursuant to RCW 36.70A.110(2), the Washington State Growth Management Act of 1990 as A. amended requires each City within the County to propose the location of an urban growth area, and
- B. The Countywide Planning Policies adopted and approved by Ordinance 10450 on July 6, 1992 by the County Council and amended by Ordinance 11446 on July 19, 1994 and ratified by Cities within the County, establishes rules for designating potential annexation areas for cities within the countywide urban growth boundary, and
- Countywide Planning Policy LU-31 states that in collaboration with adjacent counties and cities C. and King County, and in consultation with residential groups in affected areas, each City shall designate a Potential Annexation Area (PAA), and
- It is in the public interest that the jurisdictions cooperate to designate logical and achievable D. PAA boundaries, and

NOW THEREFORE, the Cities hereby agree:

1. PURPOSE.

> The purpose of this agreement is to confirm the decision made between the Cities for the identification of PAA boundaries.

2. DEFINITIONS.

> Potential Annexation Area (PAA): The incorporated urban area adjacent to a City, within which urban growth shall be encouraged and phased, and which is expected to annex to the city. Annexation is expected to occur sometime during the next 20 years at which time the city will provide services and utilities. Potential Annexation Area is another term for a City's Urban Growth Area.

Urban Growth Areas: Areas proposed by the Cities and designated by the County within which urban growth shall be encouraged and phased and outside of which growth can occur only if it is not urban in nature. A City's Urban Growth Area is another term for its Potential Annexation Area.

> **REF: Resolution No. 2873 September 15, 1997**

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Urban Growth Boundary: The boundary marking the limit between the urban growth areas and other areas such as rural and resource area where urban growth is not permitted. The boundary shall be designated by the County in consultation with the appropriate Cities, under the requirement of the Growth Management Act, as amended.

3. PUBLIC PROCESS.

The designation of PAAs in Exhibit A (map) attached hereto and by this reference made a part of this agreement are of interest to a variety of affected parties, including property owners, area residents, the general public, special service districts and the municipalities.

4. RELATIONSHIP TO EXISTING LAWS AND STATUTES.

This Agreement in no way modifies nor supersedes existing laws and statues and is consistent with existing laws and statues. In meeting the commitments encompassed in this Agreement, all parties will comply with the requirements of the annexation Statutes, Open Public Meetings Act, State Environmental Policy Act, Growth Management Act and Countywide Planning Policies for King County.

5. RESPONSIBILITIES.

- A. The Cities acknowledge the PAA boundary described in Exhibit A.
- B. The Cities will only annex territory within their designated PAAs.
- C. The Cities shall conduct a public involvement process that includes, but is not limited to workshops, surveys, or hearings in areas within the PAA, prior to the inclusion of any additional areas within the PAA.

6. AMENDMENTS.

- A. A city which desires to modify the Potential Annexation Area shall contact the other party to this Agreement to begin discussions regarding potential annexation area boundary amendments. The Cities agree to participate in such discussions when called. Either Party is authorized to call a meeting upon 30 days written notice.
- B. The proposed amendments shall be supported by written evidence of a significant change in one of the criteria listed in paragraph 6D. Below. The Cities shall concur that the substantial change warrants an amendment to the original designated PAA.
- C. A public process shall be conducted regarding an amendment to a potential annexation area as described in 5(C) above.
- D. Criteria for Designation of Potential Annexation Areas
- Recognition of resident community identification.
- Financial and technical ability to provide municipal services.

REF: Resolution No. 2873 September 15, 1997 Creation of logical service areas (vehicular accessibility and utility construction).

• Recognition of physical boundaries.

Bodies of water

Topographical features

Watersheds

Freeways

• Protection of critical/resource areas significant to a particular jurisdiction.

Protection of critical areas

Opportunities for urban separators

• Logical boundaries.

Elimination of unincoporated islands

No overlapping potential annexation areas

E. The proposed amended PAA agreement shall be submitted to the respective legislative authorities for approval.

7. DURATION AND TERMINATION.

This Agreement is effective upon signature of both parties and shall continue in effect from year to year unless terminated by a six month written notice by one party to the others.

8. SEVERABILITY CLAUSE.

Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

9. INDEMNIFICATION.

- A. The City of Federal Way shall indemnify and hold harmless the City of Auburn 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, by reason of or arising out of any negligent act or omission of the City of Federal Way, its officers, agents and employees, or any of them, in the performance of this Agreement. In the event that any such suit based upon such a claim, action, loss or damage is brought against the City of Auburn, the City of Federal Way shall defend the same at its sole cost and expense; provided, that the City of Auburn reserves the right to participate in such suit if any principle of governmental or public law is involved. If final judgment be rendered against the City of Auburn and its officers, agents and employees, or any of them, or jointly against the City of Federal Way and the City of Auburn and their respective officers, agents and employees, or any of them, the City of Federal Way shall satisfy the same, including all chargeable costs and attorney's fees.
- B. In executing this Agreement, the City of Auburn does not assume liability or responsibility for or in any way release the City of Federal Way from any liability or responsibility which arises in whole or in part from the existence or affect of Federal Way City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such Federal Way City ordinance, rule or regulation is at issue, the City of Federal

Way shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City of Auburn, the City of Federal Way shall satisfy the same, including all chargeable costs and attorney's fees.

- C. The City of Auburn shall indemnify and hold harmless the City of Federal Way 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, by reason of or arising out of any negligent act or omission of the City of Auburn, its officers, agents and employees, or any of them, in the performance of this Agreement. In the event that any such suit based upon such a claim, action, loss or damage is brought against the City of Federal Way, the City of Auburn shall defend the same at its sole cost and expense; provided, that the City of Federal Way reserves the right to participate in such suit if any principle of governmental or public law is involved. If final judgment be rendered against the City of Federal Way and its officers, agents and employees, or any of them, or jointly against the City of Federal Way and the City of Auburn and their respective officers, agents and employees, or any of them, the City of Auburn shall satisfy the same, including all chargeable costs and attorney's fees.
- D. In executing this Agreement, the City of Federal Way does not assume liability or responsibility for or in any way release the City of Auburn from any liability or responsibility which arises in whole or in part from the existence or affect of Auburn City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such Auburn City ordinance, rule or regulation is at issue, the City of Auburn shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City of Federal Way, the City of Auburn shall satisfy the same, including all chargeable costs and attorney's fees.

10. ADMINISTRATION.

This Agreement shall be administered by:

- A. The Federal Way City Manager or the City Manager's designee, and
- B. The Mayor of Auburn or the Mayor's designee.

CITY OF FEDERAL WAY

Kenneth E. Nyberg

City Manager

Date 11/3/95

CITY OF AUBURN

Charles A. Booth

Mayor

Date <u>0-6-95</u>

REF: Resolution No. 2873 September 15, 1997 CityAttorne

Approved as to Form:

City Attorney

BHS\FWAGRMT

ORIGINAL

· AN AGREEMENT BETWEEN THE CITIES OF PACIFIC AND AUBURN RELATING TO URBAN SERVICE AREA DESIGNATION

THIS IS AN AGREEMENT between the Cities of Pacific, a municipal corporation of the State of Washington ("Pacific"), and Auburn, a municipal corporation of the State of Washington ("Auburn"), hereinafter collectively referred to as the "Cities."

RECITALS

- A. Pursuant to RCW 36.70A.110(2), the Washington State Growth Management Act of 1990 as amended requires each City within the County to propose the location of an urban growth area, and
- B. The Pierce County Countywide Planning Policies adopted and approved by Resolution R92-86 on June 30, 1992 by the County Council and ratified by Cities within the County, establishes rules for designating City urban growth areas within the countywide urban growth boundary, and
- C. The Pierce County Comprehensive Plan adopted and approved by Ordinance 94-82S by the County Council identifies an urban growth area overlap between the Cities of Auburn and Pacific.
- D. It is in the public interest that the jurisdictions cooperate to designate logical and achievable urban growth area boundaries,

NOW THEREFORE, the Cities hereby agree:

1. PURPOSE.

The purpose of this agreement is to resolve the boundary overlap between the Cities of Auburn and Pacific.

2. DEFINITIONS.

Urban Service Area (USA): The incorporated urban area adjacent to a City, within which urban growth shall be encouraged and phased, and which is expected to annex to the city. Annexation is expected to occur sometime during the next 20 years at which time the city will provide services and utilities. Urban Service Area is another term for a City's Urban Growth Area.

Urban Growth Areas (UGA): Areas designated by the County within which urban growth shall be encouraged and phased and outside of which growth can occur only if it is not urban in nature. A City's Urban Growth Area is another term for its Urban Service Area.

Comprehensive Urban Growth Area Boundary (CUGA Boundary): The boundary marking the limit between the urban growth areas and other areas such as rural and resource area where urban growth is not permitted. The boundary shall be designated by the County in

REF: Resolution No. 2873 September 15, 1997 Exhibit "A" Resolution No. 2763 Adopted 12/2/96

consultation with the appropriate Cities, under the requirement of the Growth Management Act, as amended.

3. PUBLIC PROCESS.

The designation of USAs in Exhibit A (map) are of interest to a variety of affected parties, including property owners, area residents, the general public, special service districts and the municipalities.

4. RELATIONSHIP TO EXISTING LAWS AND STATUTES.

This Agreement in no way modifies nor supersedes existing laws and statues and is consistent with existing laws and statues. In meeting the commitments encompassed in this Agreement, all parties will comply with the requirements of the annexation statutes, Open Meetings Act, State Environmental Policy Act, Growth Management Act and the Pierce County Countywide Planning Policies.

5. RESPONSIBILITIES.

- A. The Cities acknowledge the USA boundary as shown in Exhibit A. The City of Pacific urban service area boundary will not include any area shown in exhibit A.
- B. The Cities will only annex territory within their designated USAs.
- C. The Cities shall conduct a public involvement process that includes, but is not limited to workshops, surveys, or hearings in areas within the USA, prior to the inclusion of any additional areas within the USA.

6. AMENDMENTS.

- A. A city which desires to modify the USA shall contact the other party to this Agreement to begin discussions regarding urban service area boundary amendments. The Cities agree to participate in such discussions when called. Either Party is authorized to call a meeting upon 30 days written notice.
- B. The proposed modifications shall be supported by written evidence of a significant change in one of the criteria listed in paragraph 6D. Below. The Cities shall concur that the substantial change warrants an amendment to the original designated urban service area.
- C. A public process shall be conducted regarding an amendment to an urban service area.
- D. Criteria for Designation of Potential Annexation Areas
- Recognition of resident community identification.
- Financial and technical ability to provide municipal services.
- Creation of logical service areas (vehicular accessibility and utility construction).
- Recognition of physical boundaries.

Exhibit "A" Resolution No. 2763 Adopted 12/2/96

Bodies of water Topographical features Watersheds Freeways

• Protection of critical/resource areas significant to a particular jurisdiction.

Protection of critical areas

Opportunities for urban separators

• Logical boundaries.

Elimination of unincoporated islands

No overlapping potential annexation areas

E. The proposed amended USA agreement shall be submitted to the respective legislative authorities for approval.

7. DURATION AND TERMINATION.

This Agreement is effective upon signature of both parties and shall continue in effect from year to year unless terminated by a six month written notice by one party to the others.

8. SEVERABILITY CLAUSE.

Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

9. INDEMNIFICATION.

- A. The City of Pacific shall indemnify and hold harmless the City of Auburn 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, by reason of or arising out of any negligent act or omission of the City of Pacific, its officers, agents and employees, or any of them, in the performance of this Agreement. In the event that any such suit based upon such a claim, action, loss or damage is brought against the City of Auburn, the City of Pacific shall defend the same at its sole cost and expense; provided, that that the City of Auburn reserves the right to participate in such suit if any principle of governmental or public law is involved. If final judgment be rendered against the City of Auburn and its officers, agents and employees, or any of them, the City of Pacific shall satisfy the same, including all chargeable costs and attorney's fees.
- B. In executing this Agreement, the City of Pacific does not assume liability or responsibility for, or in any way release, the City of Auburn from any liability or responsibility which arises in whole or in part from the existence or affect City of Auburn ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceedings is commenced in which the enforceability and/or validity of any such City of Auburn ordinance, rule or regulation is at issue, the City of Auburn shall defend the same at its sole expense and if judgment is entered or damages are

awarded against the City of Pacific, the City of Auburn shall satisfy the same including all chargeable costs and attorney's fees.

- C. The City of Auburn shall indemnify and hold harmless the City of Pacific 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, by reason of our arising out of any negligent act or omission of the City of Auburn, its officers, agents or employees or any of them, relating to or arising out of the performance of this Agreement. In the event that any suit based on such a claim, action, loss or damage is brought against the City of Pacific, the City of Auburn shall defend the same at its sole costs and expense; provided by the City of Auburn retains the right to participate in and suit of any principle of government law is involved; and if final judgment be rendered against the City of Pacific, and its officers, agents and employees, or any of them, the City of Auburn shall satisfy the same, including all chargeable costs and attorney's fees.
- D. In executing this Agreement, the City of Auburn does not assume liability or responsibility for or in any way release the City of Pacific from any liability or responsibility which arises in whole or in part from the existence or affect City of Pacific ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceedings is commenced in which the enforceability and/or validity of any such City of Pacific ordinance, rule or regulation is at issue, the City of Pacific shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City of Auburn, the City of Pacific shall satisfy the same, including all chargeable costs and attorney's fees.

10. ADMINISTRATION.

This Agreement shall be administered by:

- A. The Mayor of Pacific or the Mayor's designee, and
- B. The Mayor of Auburn or the Mayor's designee.

CITY OF PACIFIC

Mayor ProTem

Approved as to Form:

City Attorney

CITY OF AUBURN

Charles A. Booth

Мауог

Approved as to Form:

City Attorney

BHS\AGREEMT1

REF: Resolution No. 2873

September 15, 1997

AN AGREEMENT BETWEEN THE CITIES OF SUMNER AND AUBURN RELATING TO POTENTIAL ANNEXATION AREA DESIGNATION

THIS AGREEMENT is entered into on this 16th day of July, 1996, by and between the City of Sumner, a municipal corporation of the State of Washington (hereinafter referred to as "Sumner") and the City of Auburn, a municipal corporation of the State of Washington (hereinafter referred to as "Auburn").

WHEREAS, pursuant to RCW 36.70A.110(2), the Washington State Growth Management Act of 1990 as amended, requires each city within Pierce County to propose the location of an urban growth area; and

WHEREAS, the King Countywide Planning Policies adopted and approved by Ordinance 10450 on July 6, 1992, by the King County Council and amended by Ordinance 11446 on July 19, 1994 and ratified by cities within King County, establish rules for designating potential annexation areas for cities within the countywide urban growth boundary; and

WHEREAS, King Countywide Planning Policy LU-31 states that each city shall designate a Potential Annexation Area (PAA) in collaboration with adjacent counties and cities and King County, and in consultation with residential groups in affected areas; and

WHEREAS, Pierce Countywide Planning Policies adopted and approved by Resolution No. R92-86 on June 30, 1992 by the Pierce County Council reestablish rules for designating urban growth areas for cities within Pierce County; and

WHEREAS, Pierce Countywide Planning Policy No. 1 on Urban Growth areas states "The County shall designate urban growth areas for the County and each municipality in the County based on consultations between the County and each municipality"; and

WHEREAS, the Pierce County Comprehensive Plan approved November 29, 1994 by the Pierce County Council establishes procedures for the adoption of Urban Service Areas (USA's) as a part of a Comprehensive Urban Growth Area (CUGA). The plan also adopts Urban Service Areas for the jurisdictions within Pierce County. The plan indicates an overlap of the USA's for the Cities of Auburn and Sumner in the general vicinity of an approved private development called Lakeland; and

WHEREAS, it is of mutual interest to Sumner and Auburn to resolve the overlaps between the Potential Annexation Areas in order to allow for continued land use and capital facility planning without threat of litigation or appeals; and

WHEREAS, in the spirit of cooperation and mutual understanding, Sumner and Auburn desire to address mutual interests, work together on issues of mutual benefit, and enter into agreements to work constructively on issues of concern; NOW THEREFORE,

In consideration of the mutual benefits, Sumner and Auburn hereby agree to the terms and conditions as set forth below:

SECTION 1. PURPOSE.

The purpose of this agreement is to confirm the decision made between Sumner and Auburn for the identification of Potential Annexation Area boundaries and Urban Service Areas.

SECTION 2. DEFINITIONS.

- A. <u>Potential Annexation Area (PAA)</u>: is a term used in the King Countywide Planning Polices meaning the incorporated urban area adjacent to a city, within which urban growth shall be encouraged and phased, and which is expected to annex to the city. Annexation is expected to occur sometime during the next twenty (20) years at which time the city will provide services and utilities. For purposes of this agreement, the term Potential Annexation Area is the same as Urban Service Area (USA) as applied in the Pierce County Comprehensive Plan.
- B. <u>Urban Growth Areas</u>: means areas proposed by the Sumner and Auburn and designated by the county within which urban growth shall be encouraged and passed and outside of which growth can occur only if it is not urban in nature.
- C. <u>Urban Growth Boundary</u>: means the boundary marking the limit between the urban growth areas and other areas such as rural and resource area where urban growth is not permitted. The boundary shall be designated by the county in consultation with Sumner and Auburn, under the requirements of the Growth Management Act.

SECTION 3. PUBLIC PROCESS.

The designation of PAAs in Exhibit A (map) attached hereto and by this reference made a part of this agreement are of interest to a variety of affected parties, including property owners, area residents, the general public, special service districts and the municipalities.

SECTION 4. RELATIONSHIP TO EXISTING LAWS AND STATUES.

This Agreement shall in no way modify nor supersede existing laws and statutes and is consistent with existing laws and statutes. In meeting the commitments encompassed in this Agreement, all parties shall comply with the requirements of the annexation statutes, Open Public Meetings Act, State Environmental Policy Act, Growth Management Act and Countywide Planning Policies for King and Pierce Counties.

SECTION 5. RESPONSIBILITIES.

A. Sumner and Auburn acknowledge the PAA boundary described in Exhibit A.

- B. Sumner and Auburn shall only annex territory within their designated PAAs.
- C. Sumner and Auburn shall conduct a public involvement process that includes, but is not limited to, workshops, surveys, or hearings in areas within the PAA prior to the inclusion of any additional areas within the PAA.

SECTION 6. JOINT PLANNING

Sumner and Auburn shall work cooperatively together in the planning and delivery of services to the respective PAA to the extent feasible as described below:

- A. Sumner and Auburn shall initiate discussions between staff to review the feasibility of sharing the costs associated with the construction and operation of a water storage facility. Both cities shall also explore the possibility of shared water resources.
- B. Sumner and Auburn shall work cooperatively on other issues of mutual concern which may arise including:
 - 1. Design, funding, and construction of the 8th Street Corridor from Lake Tapps to SR 167;
 - 2. Railroad traffic and the mitigation of increased rail activity on transportation;
 - 3. Mitigation of stormwater impacts to the valley;
 - 4. Modifications to the Mud Mountain Dam to reduce base flood levels;
 - 5. Joint fire services and operations such as training, hazardous spill response, mutual aide, and special operations;
 - 6. Bicycle and pedestrian trails connecting the Sumner and Auburn;
 - 7. Watershed planning and management related to the Stuck (White) River and its tributaries; and
 - 8. Joint planning and participation with Pierce County.

SECTION 7. AMENDMENTS.

- A. A city which desires to modify the Potential Annexation Area shall contact the other party to this Agreement to begin discussions regarding potential annexation or boundary amendments. Sumner and Auburn agree to participate in such discussions when called. Either city is authorized to call a meeting upon providing the other city has at least a thirty (30) day written notice.
- B. The proposed amendments shall be supported by written evidence of a significant change in one of the criteria listed in paragraph 7D below. Sumner and Auburn shall concur that the substantial change warrants an amendment to the original designated PAA.
- C. A public process shall be conducted regarding an amendment to a potential annexation area as described in 5(c) above.

D. Criteria for Designation of Potential Annexation Areas

- 1. Recognition of resident community identification.
- 2. Financial and technical ability to provide municipal services.
- 3. Creation of logical service areas (vehicular accessibility and availability of utility service).
 - 4. Recognition of physical boundaries.
 - -bodies of water
 - -topographical features
 - -watersheds
 - -freeways
 - 5. Protection of critical/resource areas significant to a particular jurisdiction.
 - -protection of critical areas
 - -opportunities for urban separators
 - 6. Logical boundaries.
 - -elimination of unincorporated islands
 - -no overlapping potential annexation areas
 - E. The proposed amended PAA agreement shall be submitted to the respective legislative authorities for approval.

SECTION 8. DURATION AND TERMINATION.

This Agreement shall be in effect upon signature of both parties and shall continue in effect from year to year unless terminated by a six month written notice by one party to the others.

SECTION 9. SEVERABILITY CLAUSE.

Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

REF: Resolution No. 2873

September 15, 1997

SECTION 10 ADMINISTRATION.

This Agreement shall be administered by the Mayor of the City of Sumner and the City of Auburn, or their designees.

CITY OF SUMNER	CITY OF AUBURN
Cober a. Molitic	Charles A.Booth
Robert A. Moltke, Mayor	Charles A. Booth, Mayor
7-16-96 Date	Charles A. Booth, Mayor August 5, 1996 Date
Attest:	Attest:
Durluru of Nueshes City Clerk	<u>PolisalWhlhuefur</u> City Clerk
Approved as to form:	Approved as to form:
City Attorney Craggin	City Attorney
on, renorme,	City Attorney

REF: Resolution No. 2873

September 15, 1997

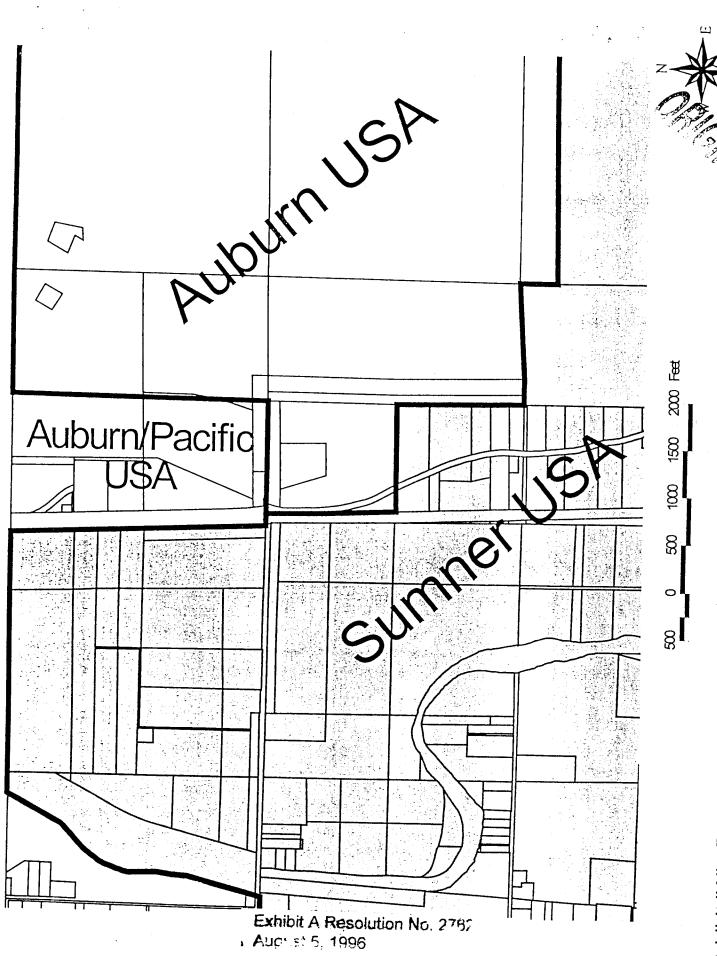


Exhibit "A" - Potential Annexation Areas

AN AGREEMENT BETWEEN THE CITIES OF KENT AND AUBURN RELATING TO POTENTIAL ANNEXATION AREA DESIGNATION

NHS IS AN AGREEMENT between the Cities of Kent, a municipal corporation of the State of Washington ("Kent"), and Auburn, a municipal corporation of the State of Washington ("Auburn"), hereinakier collectively referred to as the "Cities."

RECITALS

- A. Pursuant to RCW 36.70A.110(2), the Washington State Growth Management Act of 1990 as amended requires each City within the County to propose the location of an urban growth area, and
- B. The Countywide Planning Policies adopted and approved by Ordinance 10450 on July 6, 1992 by the County Council and amended by Ordinance 11446 on July 19, 1994 and ratified by Cities within the County, establishes rules for designating potential annexation areas for cities within the countywide urban growth boundary, and
- C. Countywide Planning Policy LU-31 states that in collaboration with adjacent counties and cities and King County, and in consultation with residential groups in affected areas, each City shall designate a Potential Annexation Area (PAA), and
- D. It is in the public interest that the jurisdictions cooperate to designate logical and achievable PAA boundaries, and

NOW THEREFORE, the Cities hereby agree:

1. PURPOSE.

The purpose of this agreement is to confirm the decision made between the Cities for the identification of PAA boundaries.

2. DEFINITIONS.

Potential Annexation Area (PAA): The incorporated urban area adjacent to a City, within which urban growth shall be encouraged and phased, and which is expected to annex to the city. Annexation is expected to occur sometime during the next 20 years at which time the city will provide services and utilities. Potential Annexation Area is another term for a City's Urban Growth Area.

Urban Growth Areas: Areas proposed by the Cities and designated by the County within which urban growth shall be encouraged and phased and outside of which growth can occur only if it is not urban in nature. A City's Urban Growth Area is another term for its Potential Annexation Area.

REF: Resolution No. 2873 September 15, 1997 Urban Growth Boundary: The boundary marking the limit between the urban growth areas and other areas such as rural and resource area where urban growth is not permitted. The boundary shall be designated by the County in consultation with the appropriate Cities, under the requirement of the Growth Management Act, as amended.

3. PUBLIC PROCESS.

The designation of PAAs in Exhibit A (map) attached hereto and by this reference made a part of this agreement are of interest to a variety of affected parties, including property owners, area residents, the general public, special service districts and the municipalities.

4. RELATIONSHIP TO EXISTING LAWS AND STATUTES.

This Agreement in no way modifies nor supersedes existing laws and statues and is consistent with existing laws and statues. In meeting the commitments encompassed in this Agreement, all parties will comply with the requirements of the annexation Statutes, Open Public Meetings Act, State Environmental Policy Act, Growth Management Act and Countywide Planning Policies for King County.

5. RESPONSIBILITIES.

- A. The Cities acknowledge the PAA boundary described in Exhibit A.
- B. The Cities will only annex territory within their designated PAAs.
- C. The Cities shall conduct a public involvement process that includes, but is not limited to workshops, surveys, or hearings in areas within the PAA, prior to the inclusion of any additional areas within the PAA.

6. AMENDMENTS.

- A. A city which desires to modify the Potential Annexation Area shall contact the other party to this Agreement to begin discussions regarding potential annexation area boundary amendments. The Cities agree to participate in such discussions when called. Either Party is authorized to call a meeting upon 30 days written notice.
- B. The proposed amendments shall be supported by written evidence of a significant change in one of the criteria listed in paragraph 6D. Below. The Cities shall concur that the substantial change warrants an amendment to the original designated PAA.
- C. A public process shall be conducted regarding an amendment to a potential annexation area as described in 5(C) above.
- D. Criteria for Designation of Potential Annexation Areas
- Recognition of resident community identification.
- Financial and technical ability to provide municipal services.

REF: Resolution No. 2873 September 15, 1997

- Creation of logical service areas (vehicular accessibility and utility construction).
- Recognition of physical boundaries.

Bodies of water

Topographical features

Watersheds

Freeways

• Protection of critical/resource areas significant to a particular jurisdiction.

Protection of critical areas

Opportunities for urban separators

• Logical boundaries.

Elimination of unincoporated islands

No overlapping potential annexation areas

E. The proposed amended PAA agreement shall be submitted to the respective legislative authorities for approval.

7. DURATION AND TERMINATION.

This Agreement is effective upon signature of both parties and shall continue in effect from year to year unless terminated by a six month written notice by one party to the others.

8. SEVERABILITY CLAUSE.

Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

9. INDEMNIFICATION.

- A. The City of Kent shall indemnify and hold harmless the City of Auburn 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, by reason of or arising out of any negligent act or omission of the City of Kent, its officers, agents and employees, or any of them, in the performance of this Agreement. In the event that any such suit based upon such a claim, action, loss or damage is brought against the City of Auburn, the City of Kent shall defend the same at its sole cost and expense; provided, that the City of Auburn reserves the right to participate in such suit if any principle of governmental or public law is involved. If final judgment be rendered against the City of Auburn and its officers, agents and employees, or any of them, or jointly against the City of Kent and the City of Auburn and their respective officers, agents and employees, or any of them, the City of Kent shall satisfy the same, including all chargeable costs and attorney's fees.
- B. In executing this Agreement, the City of Auburn does not assume liability or responsibility for or in any way release the City of Kent from any liability or responsibility which arises in whole or in part from the existence or affect of Kent City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such Kent City ordinance, rule or regulation is at issue, the City of Kent shall defend the same at its

sole expense and if judgment is entered or damages are awarded against the City of Auburn, the City of Kent shall satisfy the same, including all chargeable costs and attorney's fees.

- C. The City of Auburn shall indemnify and hold harmless the City of Kent 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, by reason of or arising out of any negligent act or omission of the City of Auburn, its officers, agents and employees, or any of them, in the performance of this Agreement. In the event that any such suit based upon such a claim, action, loss or damage is brought against the City of Kent, the City of Auburn shall defend the same at its sole cost and expense; provided, that the City of Kent reserves the right to participate in such suit if any principle of governmental or public law is involved. If final judgment be rendered against the City of Kent and its officers, agents and employees, or any of them, or jointly against the City of Kent and the City of Auburn and their respective officers, agents and employees, or any of them, the City of Auburn shall satisfy the same, including all chargeable costs and attorney's fees.
- D. In executing this Agreement, the City of Kent does not assume liability or responsibility for or in any way release the City of Auburn from any liability or responsibility which arises in whole or in part from the existence or affect of Auburn City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such Auburn City ordinance, rule or regulation is at issue, the City of Auburn shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City of Kent, the City of Auburn shall satisfy the same, including all chargeable costs and attorney's fees.

10. ADMINISTRATION.

This Agreement shall be administered by:

- A. The Mayor of Kent or the Mayor's designee, and
- B. The Mayor of Auburn or the Mayor's designee.

CITY OF KENT

In White

Date 8-3-95

CITY OF AUBURN

Charles A. Booth

Mayor

Date 7-6-95

Approved as to Form:

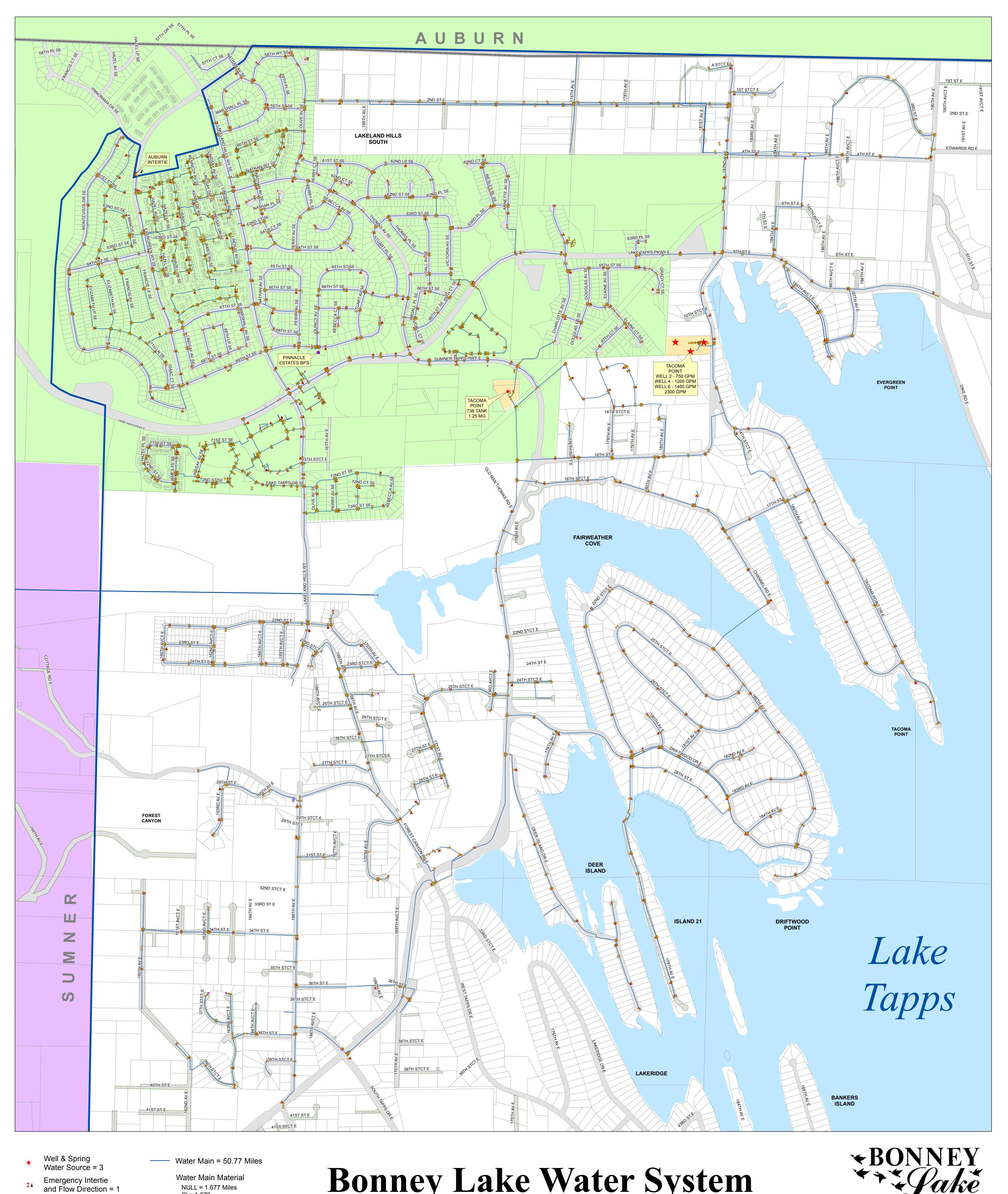
City Attorney

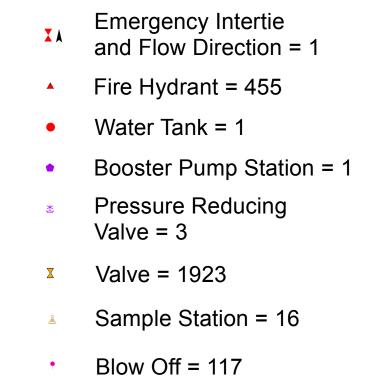
Approved as to Form:

City Attorney

BHS\KENTAGRT

REF: Resolution No. 2873 September 15, 1997





Air Vac = 127

Water Main = 50.77 Miles

Water Main Material

NULL = 1.677 Miles

CI = 1.870

DI = 42.49

GALV = 0

HDPE = 0.108

PVC = 0.647

STL = 3.949

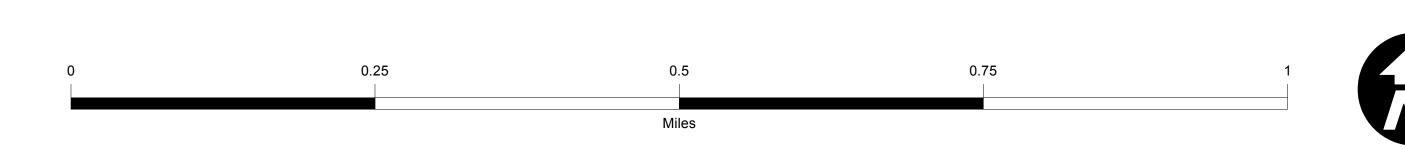
C900 = 0.020

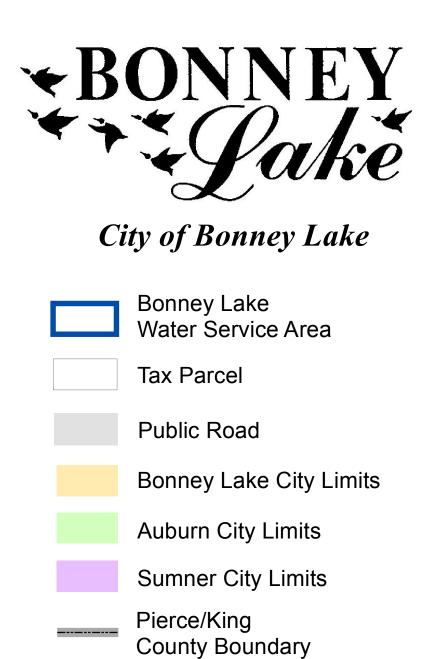
Water Main Diamater (Inches)

NULL = 1.677 Miles
2 = 0.648
4 = 3.108
6 = 5.322
8 = 25.235
10 = 0.101
12 = 13.642
16 = 1.036

Bonney Lake Water System Leak Detection Project

Area 1





Private Road Edge

