



DEVELOPER PUBLIC FACILITY EXTENSION AGREEMENT

For the

PROJECT NAME

FACXX-XXXX

City of Auburn
Public Works Department

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AGREEMENT for DEVELOPER PUBLIC FACILITY EXTENSION

FACILITY EXTENSION NUMBER: **FACXX-XXXX**

The CITY of AUBURN ("City"), and **NAME OF DEVELOPER** ("Developer"), enter into this Developer Public Facility Extension Agreement ("Agreement"), effective on this ____ day of _____, _____. The City and Developer (collectively, the "Parties"), make the following expressed mutual promises and covenants regarding the Developer's proposed Developer Public Facility Extension ("Extension").

The City agrees to accept the public portions of the Extension for operation and maintenance if the Developer, at the Developer's expense, designs, constructs the Extension and conveys and transfers the public portions of the Extension to the City pursuant to the terms and conditions of this Agreement. This Agreement is valid and binding for the Extension designated in the Plans as defined in Section II and as summarized below:

Facility Extension Summary

Public facilities:

- **XX LF of sanitary sewer**
- **XX LF of watermain**
- **XX LF of storm**
- **XX street improvements**
- **1 - traffic signal**
- **1 - sanitary sewer lift station**
- Any other associated proposed or relocated public facilities shown in the Plans

Private facilities:

- **XX LF of private street**
- **XX LF of private street storm**
- Any other associated proposed or relocated private facilities shown in the Plans

The Developer warrants that it is the legal owner of the property legally described below and that the proposed public Extension(s) will be installed in the road, easements or other approved rights-of-way, whether inside or outside of the corporate limits of the City, for the use and benefit of the property legally described as follows:

(Legal Description)

I. EXTENSION FEE

Extension fees are determined based on the City's Fee Schedule in effect at the time this agreement is executed and based on the Scope of Work identified in the final Approved Plans.

The total extension fee in the amount of \$ _____, **will be paid in full by the Developer to the City with the execution of this agreement.**

This fee pays for the permit administration, plan review and coordination, field inspections and other City Administrative costs accrued during this project as described in the City's Fee Schedule. The fee is based on the final approved plans and the Construction Period. The Parties agree that the City may require additional fees if the improvement quantities increase from those shown in the final Approved Plans if the Developer exceeds the Construction Period, if the Developer's work is incomplete or deficient and requires additional or re-inspection, or if the City incurs costs to obtain consulting support services to assist the City in its review, administration, and inspection of the Extension for Extension work that is beyond the City's normal area of expertise or the City's ability to review within a reasonable time.

Furthermore, the Developer is responsible to pay fees associated with the Valley Regional Fire Authority's (VRFA) review of plans as requested by the City. The City will allocate these fees as established by the Auburn Fee Schedule.

II. PLANS

The Plans, as made part of this agreement by reference include the following items:

- Construction Drawing Set Titled: FAC18-XXXX, TITLE ON THE PLAN SET as signed and approved by the City on LIST DATE OF PLAN SIGNATURE
- Stormwater Pollution Prevention Plan (SWPPP) dated LIST DATE
- Stormwater Site Plan (SSP) dated LIST DATE
- City of Auburn Construction Standards Parts 1 and 2
- City of Auburn Design Standards
- Standard Specifications for Road, Bridge, and Municipal Construction, Washington State Department of Transportation Standard Plans

Any inconsistencies in the parts of the Plans will be resolved by the Parties in the order of precedence as listed above. Unless otherwise noted in the Plans, documents and standards incorporated into the Plans by reference will be the versions of said documents and standards that were/are current as of the Effective Date of this Agreement.

The Developer will carefully study and compare all plans and specifications and other documents and will, prior to ordering materials or performing work, report in writing to the City any error, inconsistency, or omission in respect to the plans and specifications, or mode of construction which it discovers. If the Developer, in the course of this study or in the accomplishment of the work, finds any discrepancy between the plans and specifications and the physical condition of the

locality as represented in the plans and specifications, it will be the Developer's sole duty to inform the City immediately in writing, and the Developer will promptly investigate.

Changes or Deviations from the Plans (including the addition of phasing plans) will require the Developer to prepare and submit revised and/or additional Plans for City review. The Developer will pay all fees as indicated on the City Fee Schedule that are applicable to the review and administration of the proposed revisions and additions at the time the revised or additional Plans are submitted to the City for review. Any revised and/or additional Plans are made part of this agreement by reference on approval with signature(s) by the City AND, in cases when the revised and/or additional Plans would modify the Extension parameters used to determine the Extension Fees, an amendment to this agreement is executed that revises the Extension Fees to reflect the Extension Parameters as modified by the revised and/or additional Plans.

If design or construction activities on the extension(s) become inactive on the Developer's part for a period of six months, the City may require the Developer revise the Plans to conform to existing field conditions, or to meet current City design standards and regulations. The City may also require the execution of a new Agreement, in which case, this Agreement will become null and void.

III. PUBLIC RIGHT-OF-WAY AND EASEMENTS

At the Developer's expense, the City may require the Developer to secure and dedicate certain real property to the City as street right-of-way and/or easements. On receipt of a certified legal description(s) and exhibit(s) of street right-of-way and/or easements from the Developer, prepared by a licensed land surveyor or registered professional engineer, the City will prepare the necessary agreements, right-of-way dedication deed, easements, and real estate excise tax affidavit for the Developer's signature. The Developer will provide the City with a title report for the parcel(s) from which easements and/or right-of-way are being dedicated. Dedications will be free from encumbrances, except as approved by the City as noted on a Title Exceptions Report provided by the Developer with City Approval. The Developer will provide the City with title insurance policy(s) for right-of-way dedications in the amount of \$50.00 per square foot of right-of-way area dedicated or other amount as proposed by the Developer and accepted by the City Engineer. The Developer will execute and provide all required documents for street right-of-way dedication and/or easements prior to the start of construction of the Extension.

Where the Extension work includes the construction or use of private access tract(s), roadway(s), and/or private storm facilities on property not owned by the Developer, the Developer is responsible for securing all required property rights needed to construct, maintain, and utilize the private facilities. The Developer will provide documentation to the City to verify all necessary private property access, use, and construction rights.

The street right-of-way dedication and any easements dedicated from someone other than the Developer will be recorded by the City prior to start of construction and the easement documents dedicated by the Developer will be held by the City until construction completion at which time

the Developer will modify the documents as needed to reflect as-built conditions and re-submit to the City for review, approval, and recording by the City.

The Developer will execute and the City will records as applicable, easement and maintenance agreements for stormwater facilities, critical areas, and planting areas as determined to be required by the City.

IV. PAYBACK AGREEMENT

The City will not issue Notice to Proceed until the Developer has acknowledged, in writing, ineligibility, waiver, or proof of application for a Payback Agreement(s) under ACC 3.25.

V. PERFORMANCE GUARANTEE

This section does not apply when the Developer is a public agency.

Before the City issues a Notice to Proceed, the Developer will be required to furnish an approved Performance Guarantee based on one hundred twenty-five percent (125%) of the City-estimated installation costs for the public improvements constructed within the existing and new right-of-way or when the City Engineer deems it to be in the City's best interest to secure a Performance Guarantee.

Two forms of Performance Guarantees are acceptable: 1) a Performance Bond or 2) an Assignment of Funds. The City Engineer may authorize another form of Performance Guarantee if the City Engineer determines that the proposed guarantee will provide an equivalent level of security.

The Developer may designate an Agent to provide the required Performance Guarantee to the City but the Developer will remain responsible for the contractual obligations set forth in this Agreement.

The Performance Bond will be issued in a penal sum equal to a minimum of the amount described above and will be conditioned on the performance by the Developer of all undertakings, covenants, terms, and conditions of the Agreement relating to the Extension. The Developer or Developer's Agent will execute that bond and a corporate bonding company licensed to transact that business in the State of Washington, and who are named on a current list of surety companies acceptable as published by the Insurance Commissioner's office, will act as surety.

The Developer will bear the expense of the bond. If at any time a surety on any bond is declared bankrupt, loses its right to do business in the State of Washington, or is removed from the list of approved surety companies, the Developer will substitute an acceptable bond or bonds in the form and sum and signed by another surety or sureties as may be satisfactory to the City. The Developer will pay the premiums on that bond or bonds.

The Assignment of Funds will be in a required amount held in a Financial Institution acceptable by the City and secured under the use of the City of Auburn Standard Assignment of Funds form.

VI. INSURANCE

The Contractor will procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work by the Developer, the Developer's agents, representatives, employees, and subcontractors. The Developer is responsible for the cost of insurance.

The Developer's maintenance of insurance, its scope of coverage, and limits as required herein, will not be construed to limit the liability of the Developer to the coverage provided by the insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

The Developer's required insurance will be of the types and coverage as stated below:

- A. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage will be at least as broad as Insurance Services Office (ISO) form CA 00 01. Automobile Liability insurance will include a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- B. Commercial General Liability insurance will be at least as broad as ISO occurrence form CG 00 01 and will cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance will be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an equivalent endorsement. There will be no exclusion for liability arising from explosion, collapse, or underground property damage. The City will be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City 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 at least as broad coverage. The limits for the Commercial General Liability insurance policy will be no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, and a \$2,000,000 products- completed operations aggregate limit.
- C. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- D. Builders Risk insurance covering interests of the City, the Developer, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance will be on a special perils policy form and will insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, and collapse. The Builders Risk insurance will include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility

of the Developer. Higher deductibles for flood and earthquake perils may be accepted by the City based on a written request by the Developer and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Developer. The Builders Risk insurance will be maintained until the City has granted substantial completion of the project. Builder's Risk Insurance will be written in the amount of the completed value of the project with no coinsurance provisions.

The Developer's Automobile Liability, Commercial General Liability, and Builders Risk insurance policies will be primary insurance as respect to the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City will be in excess of the Developer's insurance.

The Developer will assume full responsibility for all loss or damage from any cause whatsoever to any tools, Developer's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Developer or the Developer's agents, suppliers, contractors, or subcontractors as well as to any temporary structures, scaffolding, and protective fences.

The Developer 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 extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work.

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

Developer will furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the Automobile Liability and Commercial General Liability insurance before beginning work. Before any exposure to loss may occur, the Developer will file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms, and endorsements related to this project. The City may request that the Developer furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

The Developer will cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Developer-provided insurance, except the Developer will have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Developer will ensure that the City is an additional insured on every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO Additional Insured endorsement CG 20 38 04 13.

The Developer will provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of that notice.

Failure on the part of the Developer to maintain the insurance as required will constitute a material breach of contract and the City may, after giving five business days' notice to the Developer to correct the breach, immediately terminate the contract or, at its discretion, procure or renew that insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Developer from the City.

VII. INDEMNIFICATION

The Developer will defend, indemnify, and hold the City, its elected and appointed officials, employees, and agents harmless from any actions, causes of action, liabilities, claims, suits, judgments, liens, awards, demands, and damages of any kind including, property damage, personal injury, or death (including any claims brought by employees of the Developer or any subcontractor) arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City will be indemnified and held harmless for all expenses, costs of litigation, and reasonable attorney's fees, expert witness fees, and costs of services of engineering and other personnel related to any that action, or incident to establishing the right to indemnification, to the extent that claims arise from any negligent act or omission or willful misconduct of the Developer, Contractor, any subcontractor, or their employees arising out of, or in any way related to, their performance of the Agreement, including without limitation the provision of services, personnel, facilities, equipment, support, supervision, or reviews.

If a court of competent jurisdiction determines that this Agreement is subject to RCW 4.24.115 then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Developer and the City, its officer, officials, employees and volunteers, the Developer's liability hereunder will be only to the extent of the Developer's negligence. The Developer expressly waives any immunity under industrial insurance, whether arising from RCW Title 51 entitled "Industrial Insurance" or any other statute or source solely for the benefit of the City and solely to the extent of the indemnity set forth in this Agreement. This waiver has been mutually negotiated by the Parties. The provisions of this action will survive the expiration or termination of this Agreement.

VIII. CONSTRUCTION WORK

The Developer will not start construction of any Extension(s) prior to the City's written issuance of Notice to Proceed. Notice to Proceed will not be issued prior to the Developer satisfying all of the following:

- A. Extension Fee paid in full in accordance with **Section I**.
- B. All Developer provided plans submitted and approved by the City in accordance with **Section II**.

- C. Provide all street right of way and easement dedication documents in accordance with **Section III**.
- D. Provide Plans to all applicable parties and return the original Plans to the City.
- E. Attend a Pre-Construction Meeting with the City that includes the Developer's General Contractor(s) and Subcontractors performing significant items of work, as determined by the City.
- F. Provide a Performance Bond or Assignment of Funds to the City per **Section V**.
- G. Provide Certificate of Insurance to the City naming the City (and Developer if Contractor supplies insurance) as an additional insured per **Section VI**.
- H. Possess an Active Contractor's Labor & Industry license.
- I. Provide an Emergency Call List for Contractor and Subcontractors.
- J. Obtain a Business License through the Customer Service Center for all contractors and subcontractors when working within the City limits.
- K. Obtain Authorized Construction Period for construction work to be completed within the existing public right-of-way (see additional information in **Section VIII** herein), if applicable.
- L. For work outside of Auburn's City limits, adequate County permits/approvals must be in place. The City will apply for the right-of-way permit(s) once plans are approved.
- M. If sewer extension, King County Waste Water Treatment Division approval is needed. The City will submit for approval, once plans are approved.
- N. Provide Proof of Contract for Private Utility Relocates. The Developer acknowledges the obligation to enter into a separate contract, at the Developer's expense, to relocate private utility facilities as necessary to comply with City Standards where applicable.
- O. Acknowledge, in writing, ineligibility, waiver, or application for Payback Agreement(s) per ACC 3.25.
- P. Obtain all necessary permits from the City of Auburn and other agencies or jurisdictions.
- Q. Obtain and furnish a written copy of all executed private easements, rights of entry, and/or agreements with other property owners related to the work to be performed,

including modification and reconnection of existing utility services and/or property access.

- R. Submit and receive approval from the City on the following: Schedule of Submittals (utilizing City template), Initial Haul Routes, Initial Traffic Control Plans, and Preliminary Schedule (see Item K).

The City may appoint Inspectors to assist in determining that the work and materials meet the Plan requirements and City standards. Inspectors have the authority to reject defective material and suspend work that is being done improperly, subject to the final decisions of the Engineer. Inspectors are not authorized to accept work, to accept materials, to issue instructions, or to give advice that is contrary to the Plans. Work done or material furnished which is not in accordance with the Plans will be at the Developer's risk even if the Inspectors purport to approve the deviation from the Plans. Inspectors may advise the Developer of any faulty work or materials or infringements of the terms of this agreement; however, failure of the Inspectors to advise the Developer does not constitute acceptance or approval.

All construction performed by the Developer will be in compliance with the Plans, and City design and construction standards. The Developer will be responsible for acquiring the City's Construction Standards and having a copy of the Standards and Plans on-site during construction. The Developer agrees to comply with all Federal, State, County, and City regulations.

The Authorized Construction Period is the time frame, in calendar days, in which the Developer will complete all Extension work, including final clean up and all documentation required for extension acceptance as described in Section IX. The City and Developer will determine the Authorized Construction Period at the pre-construction conference. The Authorized Construction Period will start when construction of the Extension begins, which will be within 10 business days of the City's issuance of Notice to Proceed. If the Extension work, including final clean up and all documentation required for extension acceptance, is not completed within the Authorized Construction Period, the City may assess additional extension fees in accordance with the City fee schedule and/or suspend all construction work except the work required to complete the public improvements and work to restore the right of way. If the public improvements and right of way restoration is not completed within the time period defined above or if construction activities become inactive for more than 6-months, the Developer agrees that the City may hire an independent contractor to complete the public improvements and right of way restoration as deemed necessary by the City and bill the Developer for the actual costs incurred or place a claim against the Performance Guarantee.

The City has the authority to decide all questions regarding the quality and acceptability of the materials furnished and of the work performed for the construction of the improvements. The City will also have the authority to suspend construction work, in whole or part, for the failure of the Developer to carry out the work in conformance with the Plans.

IX. ACCEPTANCE OF EXTENSION FOR OPERATION AND OWNERSHIP

The City agrees to accept the Extension for operation and ownership based on approval of the completion of all Extension Work and the Developer has provided the following to the City:

- A. Approved Warranty Guarantee (see **Section XI** herein).
- B. Executed Bill of Sale (see **Section XII** herein).
- C. Certified and Approved Record Drawings received for all facilities and a copy of electronic CAD drawing file(s) (see **Section XIII** herein).
- D. Executed and recorded Public Utility Easements and Right of Way Deeds (see **Section III** herein).
- E. Approved Developer Contribution Document provided for all facilities (see **Section XVII** herein).
- F. Final Storm Water Site Plan (Report) and Cover Letter. This letter will address any changes between the project's original storm water site plan (report) and the final construction of detention/retention and water quality facilities (See **Section XIV** herein).
- G. Payment of applicable system development charges and paybacks.
- H. For complex facilities that have pump stations and traffic signals, additional prerequisites that have testing, training, operation manuals, component extended warranties, etc., will be required.
- I. If one or more payback agreements are applicable: submittal of final cost data and other information as required by ACC 3.25.

On approval and acceptance, the City will send a letter to the Developer accepting the system for ownership and operation and, for subdivision projects, issue a Certificate of Improvements. For subdivision projects, the Developer may request partial acceptance of the Extension work in accordance with **Section X**.

The City will release the Performance Guarantee, if applicable, to the Developer within 30 days of the letter of acceptance.

X. PARTIAL ACCEPTANCE OF EXTENSION FOR SUBDIVISIONS

On written request from the Developer and for subdivision projects only, the City may agree to partial acceptance of the Extension work and issue a Certificate of Improvements allowing the Developer to seek finalization of the subdivision, subject to the following requirements:

- A. Extension work within the existing right-of-way is complete.
- B. All underground utility Extension work is complete.

- C. In the sole opinion of the City Engineer, only minor street construction Extension work remains to be completed, such as the final lift of asphalt, adjustment of utility castings to grade, installation of monuments, planting of street trees, etc.
- D. Developer provides the City with an assignment of funds, irrevocable letter of credit, bond, or other security in lieu of completion for no less than 150% of the costs of the outstanding Extension work as determined by the City, in accordance with Auburn City Code Section 17.14.010.
- E. Conditions of acceptance as listed in **Section IX** (Items A thru H) have been satisfied for the Extension work completed and being accepted.
- F. The ability of the City to maintain and operate the facilities being accepted without any restrictions (access, etc.) as determined by the City.
- G. If one or more payback agreements are applicable: submittal of final cost data and other information as required by ACC 3.25

Final acceptance of the improvements remaining will be in accordance with **Section IX** of this Agreement.

XI. WARRANTY GUARANTEE

The extension work performed under this agreement will be guaranteed by the Developer during the Warranty Period, as defined herein, against defective design elements, materials, equipment, and workmanship and will also include the landscape establishment required in the Construction Standards per Section 8-02.3(13) (Plant Establishment). On receipt of notice from the City of failure of any part of the design, material, equipment, or workmanship during the warranty period, the affected part or parts will be re-designed and/or replaced with new materials or equipment by, and at the expense of, the Developer. Developer agrees to start work to remedy any defect within seven (7) days of written notice by the City and will complete the required work within a reasonable period of time.

The warranty period for this project will be 1-year, except as noted herein, and will begin on the date the City has accepted all extension work as complete and final. When partial acceptance has been granted, the warranty period will not begin until all work is complete and accepted.

The warranty period for the sewer lift station and traffic signal work will be 2-years.

Before Final Acceptance by the City, the Developer will provide a Warranty Guarantee in the amount of two thousand dollars (\$2,000) or ten percent (10%) of the City's estimated replacement costs of the improvements, whichever is greater.

Two forms of Warranty Guarantees are acceptable: 1) a Warranty Bond or 2) an Assignment of Funds. Any request to use other forms of Warranty Guarantee will be determined on a case by case basis by the City Engineer. The City Engineer may authorize another form of Warranty Guarantee if the City Engineer determines that the proposed guarantee will provide an equivalent level of security.

The Developer may designate as an Agent, a contractor or engineer, to provide the required Warranty Guarantee to the City. In that event, the Developer will remain responsible for the contractual obligations set forth in this agreement. If the Agent defaults on the Warranty Bond, this authorization for designation of an Agent does not preclude the City proceeding to foreclosure or demanding forfeiture of the bond against the Developer.

The Developer will bear the full expense of the bond. If at any time a surety on any bond is declared bankrupt, loses its right to do business in the State of Washington, or is removed from the list of Surety companies acceptable on Federal bonds, the Developer will substitute an acceptable bond or bonds in that form and sum and signed by that other surety or sureties as may be satisfactory to the City.

The Assignment of Funds will be in a required amount held in a Financial Institution acceptable by the City and secured under the use of the City of Auburn Standard Assignment of Funds form. During this Warranty Guarantee period, the Developer will warrant that the materials and equipment furnished by the Developer for the Extension are in normal working order and condition except where abused or neglected by the City. The Developer will guarantee that it will repair or replace at its own expense any work or material that proves to be defective during that warranty period.

The Developer will be available approximately 60 calendar days prior to the expiration of the guarantee period to tour the project, with the City, in support of the City's effort to establish a list of corrective work required under the guarantee. Not more than 30-days prior to this inspection, the Developer will have all public sanitary sewer and storm lines cleaned and then inspected with a remote television unit by an approved firm, at the Developer's expense. The video will then be compared to the video made prior to acceptance to ensure that no substantial change has occurred.

If the City determines that there are no defective design elements, materials, equipment, and workmanship the City will release the Warranty Bond. If the re-inspection determines that there are defective design elements, materials, equipment, and workmanship, the Developer will re-design, replace, or repair said Extension and the City, at its option, may extend the warranty period for that replacement or repair for up to 1-year. The City will release the Warranty Bond after the warranty period has expired and all extensions are determined by the City to not have defective design elements, materials, equipment, and workmanship.

XII. BILL OF SALE

Before the City accepts the public portion of the Extension for operation and ownership, the Developer agrees to execute an approved Bill of Sale (the City will prepare this document, once

information is received, for Developer's signature) for the improvements that are to be dedicated to the City. The Bill of Sale will provide for the transfer of title of the public portion of the Extension from the Developer to the City and will further include the following terms:

- A. The Developer is the lawful Owner of the public portion of the Extension and it is free from all encumbrances.
- B. The Developer has paid all bills for all labor and material used during construction of the Extension or has obtained lien waivers from all persons who have not been paid for their labor or material.
- C. The Developer has the right to transfer the public portion of the Extension to the City for the consideration of incorporation into the City system.
- D. The Developer will warrant the public portion of the Extension and defend the same against lawful claims and demands of all persons for one year from the date the Bill of Sale is accepted by the City.

The City will record the executed Bill of Sale. See **Section XV** for additional requirements for recorded documents. The Developer agrees to defend the title of the City against claims of all third parties claiming to own the same or claiming any interest or encumbrance to the public portion of the Extension.

XIII. RECORD CONSTRUCTION DOCUMENTS

Before the City accepts the public portion of the Extension for operation and ownership, the Developer agrees to provide the City with certified record construction drawings and related electronic file information.

The Certified Record Construction Drawing comes in a **two-step process** as follows:

Step 1:

The certified paper (red-line) record drawings for all facilities will be submitted for review and approval using the Engineer of Record as the point of contact. These drawings must accurately reflect all field design revisions made to the Extension during the construction process. The changes will be in conformance with the City's record construction drawing requirements, available on request from the City. The revisions will be noted on the approved paper plan set.

Step 2:

Once the City approves the certified paper (red-line) record drawings, then all required record drawing information will be updated on the original approved drawings and reprinted on poly plans. The electronic record drawing AutoCAD files will also be provided at this time.

XIV. FINAL STORM WATER SITE PLAN/REPORT

The Developer will update the storm water site plan/report to reflect as-built conditions. The Developer will submit the final storm water site plan/report with a cover letter certifying that the final plan/report reflect as-built conditions.

XV. RECORDED DOCUMENT REQUIREMENTS

Documents that are to be recorded will meet the following requirements:

- Documents will be per City standard document templates. Developer requested modifications to these templates may delay the Construction Notice to Proceed and may not be accepted by the City.
- Documents will be provided in both editable format (MS Word for legal descriptions, easements, deeds, and AutoCAD for exhibits) and non-editable format (PDF).
- All documents will be formatted to 8 ½ x 11-inch and 8 ½ x 14-inch paper size and have a minimum margin of 1-inch top, bottom and sides. Use of 8 ½ x 14-inch paper size will be limited to exhibit attachments.
- Any writing or markings, including the notary stamp, which intrudes into the document's margin area, may be cause for the document to be returned. Original documents used for recording **will not** be stapled.
- Documents will meet all other recording requirements as specified the applicable County's Recorder's Office.

XVI. SERVICE CONNECTIONS

For subdivision projects, there will be no water meter installation, connection to, or usage of, the public portion of the Extension before the City accepts the Extension for operation and ownership or the City has granted Partial Acceptance that includes acceptance of the water and sanitary sewer (including side sewer connections) Extensions in accordance with **Section X**. For non-subdivision projects, water meter installation, connection to, and usage may occur after the completion and City acceptance of the water and sanitary sewer (including side sewer connections) Extension work, with approval from the City Engineer.

The Developer will notify the City in writing of any intent to make service connections to the public portion of the Extension or any existing City system. Note that certain other utility permit fees and system development charges may be required prior to service connection. In addition, the City will supervise all service connections.

Connections to and utilization of the public portion of the Extension will not relieve the Developer of the obligation to correct defects in labor or materials as provided in **Section XI** of this Agreement. All City-authorized connections will be subject to the control, use, and operation of the City, which will be subject to all regulations and conditions of service.

XVII. DEVELOPER CONTRIBUTION DOCUMENTATION

As per ACC 13.40.040, a written statement as to the actual cost of the public utility and street extension(s) will be provided by the Developer at the time the public utility extension(s) is turned

over to the City on the City provided Developer Contribution Document form.

XVIII. SEPA REQUIREMENTS

Nothing in this Agreement will be construed as to limit the City of Auburn’s ability to require mitigation of any impacts of Developer’s proposed actions that are identified in the SEPA process or to waive any of the City’s authority to proceed in any way under the SEPA process.

XIX. AGREEMENT ALTERATIONS OR AMENDMENTS

No amendment, modification or waiver of any condition, provision or term of this Agreement will be valid or of any effect unless made in writing, signed by the party or parties to be bound, or that party’s or parties’ duly authorized representative(s) and specifying with particularity the nature and extent of that amendment, modification or waiver. Any waiver by any party of any default of the other party will not affect or impair any right arising from any subsequent default.

Nothing in this section will limit the remedies or rights of the parties under this Agreement.

XX. ASSIGNMENT BINDING ON SUCCESSORS AND ASSIGNS

Neither party to this Agreement will assign any right or obligation under this Agreement in whole or in part, without the prior written consent of the other party. No assignment or transfer of any interest under this Agreement will be deemed to release the assignor from any liability or obligation under this Agreement, or to cause any that liability or obligation to be reduced to a secondary liability or obligation.

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

XXI. NO THIRD PARTY BENEFICIARIES

This Agreement is solely for the benefit of the Parties and no third party will be entitled to claim or enforce any rights here under except as specifically provided herein.

XXII. WAIVER

A failure by either party to exercise its rights under this Agreement will not preclude that party from subsequent exercise of its rights and will not constitute a waiver of any other rights under this Agreement unless stated to be that in writing, signed by an authorized representative of the party, and attached to the original Agreement.

XXIII. GOVERNING LAW

This Agreement and the rights of the Parties will be construed and enforced in accordance with the Auburn City Code and the laws of the State of Washington. Any suit arising from this Agreement will be brought in the county where the project is located. The Parties agree that any applicable statute of limitation will begin to run on the final acceptance date of the Extension or, if the City declines to accept the extension, the date of the letter from the City declining to accept the Extension.

XXIV. SEVERABILITY

If any provisions of this Agreement or any provision of any document incorporated by reference are held invalid, that invalidity will not affect the other provisions of this agreement that can be given effect without the invalid provision, if that remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement. To this end, the provisions of this Agreement are declared to be severable.

XXV. ATTORNEY FEES

In the event of litigation or other legal action to enforce any rights, responsibilities, or obligations under this Agreement, the prevailing party will be entitled to receive its reasonable costs and attorney’s fees.

XXVI. CAPTIONS, HEADINGS AND TITLES

All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and will not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or sections to which they apply. As used herein, where appropriate, the singular will include the plural and vice versa and masculine, feminine, and neuter expressions will be interchangeable. Interpretation or construction of this Agreement will not be affected by any determination as to who is the drafter of this Agreement, this Agreement having been drafted by mutual agreement of the parties.

XXVII. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties hereto in respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to that subject matter.

SIGNATORY CITY OF AUBURN

DATED this _____ day of _____, 2018.

Jacob Sweeting, Assistant Director of Engineering/City Engineer

SIGNATORY – LLC

DATED this _____ day of _____, 2018.

Signature: _____

Printed Name: _____

Title: _____