

ATTACHMENT A:

PURCHASE AND SALE AGREEMENT

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into by and between **KING COUNTY**, a home rule charter county and political subdivision of the State of Washington (the “Seller”) and **THE CITY OF AUBURN**, a municipal corporation and noncharter code city with a council-mayor form of government organized pursuant to RCW Title 35A (the “Buyer”). Buyer and Seller are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Seller is the owner of that certain real property located in the City of Auburn, County of King, State of Washington, commonly identified as a portion of the **AUBURN PARK-AND-RIDE**, also known as Lot “1” of that certain subdivision titled COA SPL21-0008 and to be recorded in the King County Recorder’s Office as a condition to Closing hereunder, the legal description of which is attached hereto as **Exhibit A-1** and depicted in **Exhibit A-2** (the “Real Property”), both incorporated herein by this reference.

B. Seller has for decades owned, operated and maintained a public transportation and mass transit facility at the Auburn Park-and-Ride.

C. Over many years Seller made significant investments in the Property (as defined herein) for the benefit of the Auburn Park-and-Ride, and Seller’s historical and continuing use of the Park-and-Ride for public transportation and mass transit purposes are dependent on those improvements continuing to operate in a good and reliable condition.

D. Buyer operates a municipal airport adjacent to the Auburn Park-and-Ride and wishes to use the Property to provide for runway safety improvements. Buyer has received a federal FAA grant to purchase the Property for those improvements and Buyer has applied to the FAA for a second grant that would provide funding for the improvements to the Property to address runway safety needs.

E. Seller desires to sell the Property and Buyer desires to purchase the Property.

F. As a condition of the real estate transaction between Buyer and Seller regarding the Property, and in partial consideration of the promises, covenants, conditions and restrictions set forth herein, Seller requires a permanent easement over the Property so that Seller may continue to operate certain Stormwater Facilities, defined herein, and a temporary access easement for lighting, irrigation, and drainage use and maintenance prior to the Buyer completing improvements to the property and Buyer is willing to grant the same.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and other valuable consideration, receipt and sufficiency of which are hereby

acknowledged, the Parties hereto covenant and agree as follows:

**ARTICLE 1.
PURCHASE AND TRANSFER OF THE PROPERTY**

1.1. PROPERTY TO BE SOLD. Subject to and upon the terms and conditions set forth in this Agreement, by Bargain and Sale Deed substantially in the form of **Exhibit B-1** attached hereto, Seller shall sell, convey, and assign on the Closing Date (as defined in Section 10.1 of this Agreement) and Buyer shall buy, assume and accept from Seller on the Closing Date the following assets and properties, subject to the permanent easement for storm water and surface water drainage system use, maintenance and access, (the “Stormwater Maintenance Easement and Drainage Agreement”) as set forth in the form provided in Exhibit B-2 attached hereto and incorporated herein by this reference; and the temporary access easement for lighting, irrigation, and drainage use and maintenance (“Temporary Utility Easement”), as set forth in the form provided in Exhibit B-3, and incorporated by this reference:

- (a) All the Seller’s right, title and interest in the Real Property;
- (b) All of Seller’s right, title and interest in improvements and structures located on the Real Property; except those storm and surface water drainage facilities located within the Stormwater Maintenance Easement Area “Stormwater Maintenance Easement Area”) as described and defined in the Stormwater Maintenance Easement and Drainage Agreement in **Exhibit B-2**;
- (c) All of Seller’s right, title and interest in and to tangible personal property, if any, owned by the Seller and attached, appurtenant to or used in connection with the Real Property (“Personal Property”); and
- (d) All of Seller’s tenements, hereditaments, easements and rights appurtenant to the Property including but not limited to, all of the Seller’s right, title, and interest in and to streets, alleys or other public ways adjacent to the Real Property, easements for public utilities, all sewers and service drainage easements, all rights of connection to the sewers, and all rights of ingress and egress, and all leases, licenses, government approvals and permits affecting the Real Property.
- (e) Hereinafter, the items listed in Section 1.1 are collectively referred to as the “Property.”

1.2. EFFECTIVE DATE. The Effective Date of this Agreement shall be the last date of execution of this Agreement by both Parties.

**ARTICLE 2.
PURCHASE PRICE AND OTHER CONSIDERATION**

2.1. PURCHASE PRICE AND PAYMENT. In consideration of the sale, transfer, conveyance, assignment and delivery of the Property, Buyer shall pay to Seller on the Closing Date a total purchase price of TWO HUNDRED THIRTY-FOUR THOUSAND AND NO/100 DOLLARS (\$234,000.00) (the “Purchase Price”).

2.2. ALLOCATION OF PURCHASE PRICE. Seller and Buyer agree that the entire

Purchase Price is allocable to the Real Property, and that the value of the Personal Property, if any, is *de minimis*.

2.3. BUYER'S POST-CLOSING OBLIGATIONS.

2.3.1. Temporary Security Fencing. In further consideration for the sale, transfer, conveyance, assignment and delivery of the Property, Buyer covenants to erect, at its sole expense, a temporary security chain-link fence on the boundary between the Property and Seller's park and ride lot. Provided, that Buyer's security fence shall provide for Seller's right of ingress and egress as set forth in paragraph 2.3.4 below.

2.3.2. Lighting. In further consideration for the sale, transfer, conveyance, assignment and delivery of the Property, Buyer covenants to disconnect, remove, and salvage to the Seller all light poles and fixtures within the Property, according to law and at Buyer's sole expense, at such time as the Buyer either grades the property or receives FAA funding for severance and removal of the lights.

2.3.3. Irrigation. In further consideration for the sale, transfer, conveyance, assignment and delivery of the Property, Buyer covenants to disconnect the portion of the irrigation system that sits within the Property and dispose of the pipes and other irrigation parts. Buyer shall complete the disconnection work at such time as the Buyer either grades the property or receives FAA funding for the disconnection work.

2.3.4. Drainage.

In further consideration for the sale, transfer, conveyance, assignment and delivery of the Property, Buyer, on behalf of itself and its successors and assigns, covenants and agrees as follows:

- (a) After the Buyer has provided notice to the Seller that the buyer has completed demolition and grading of the Property, Buyer shall disconnect the storm water and surface water system that serves the Seller's Park and Ride from all connections upon the Property.
- (b) Upon conveyance of the Property to Buyer, during such time as the Property is connected to the Seller's Stormwater Facilities within the Stormwater Maintenance Easement Area, Buyer shall hold harmless, indemnify, and defend Seller from any and all cost, liability, claims, judgments, administrative actions, litigation, or other obligations arising out of or relating to the discharge of pollutants or Hazardous Substances (as defined in Section 3.1.9 of this Agreement) in any stormwater, surface water, runoff, or any other form of discharge or release from the Property into any of the stormwater facilities that serve the Auburn Park-and-Ride.
- (c) Beginning eighteen (18) months after the Closing Date, and thereafter annually for so long as Buyer both owns the Property and the Property is connected to Seller's storm and surface water system, upon Seller's written demand (including supporting documentation for the annualized cost), Buyer shall pay to Seller a share of Seller's annualized cost to maintain those certain stormwater facilities that serve

both the Auburn Park-and-Ride and a portion of the Property. Buyer's share of Seller's annualized cost shall be determined by multiplying Seller's annualized cost to maintain the system by a fraction, the numerator of which is the square footage of the impervious surface of the Property area served by the Stormwater Facilities, and the denominator of which is the square footage of the Property served by that system.

2.3.5 Remaining Park and Ride Facility. In further consideration for the sale, transfer, conveyance, assignment and delivery of the Property, Buyer agrees, at its sole cost, to make modifications to Seller's remaining Park and Ride facility to allow for the continued operation of the lighting and drainage systems on Seller's property following grading of the Property, as well as restriping, repaving, installation of curb and gutters, and demolition and reconstruction of a landscape island where these improvements were destroyed, substantially damaged, or rendered ineffective by Buyer's work on the Property. Work on the Seller's remaining Park and Ride facility will be done at such time as Buyer either performs grading work on their property or receives FAA funding for this work.

2.3.7. Promises Material. Buyer understands, acknowledges, and agrees that Buyer's promises in Sections 2.3.1, 2.3.2, 2.3.3, 2.3.4, and 2.3.5 are a material consideration for Seller's execution of this Agreement. Buyer further understands, acknowledges, and agrees that Buyer shall be in material breach of this Agreement if Buyer or Buyer's designee fails to perform the duties required under those sections.

2.3.8. Seller Review and Approval of Buyer Work

(a) At least 90 days prior to taking action to satisfy the promises in Sections 2.3.2, 2.3.3, 2.3.4 or 2.3.5, Buyer shall provide to Seller for comment its proposed plans to sever the Property from Seller's lighting, irrigation, or storm water and surface water systems, or work on Seller's remaining Park and Ride facility.

(b) Buyer and Seller agree to cooperate in good faith to complete, review, and inspect the plans for the severance, disconnection, and removal work on Buyer's property and the proposed work on Seller's remaining Park and Ride facility in satisfaction of sections 2.3.2, 2.3.3, 2.3.4 or 2.3.5. Seller agrees to complete review of Buyer's plans within 30 business days of receipt. Seller's acceptance of Buyer's proposed plans shall waive any further requirements under this section.

2.4. SELLER'S POST CLOSING OBLIGATIONS.

2.4.1 Maintenance of Security Fence surrounding the Storm Pond. Seller agrees to maintain the fence that currently surrounds Seller's drainage pond until Buyer shall construct a temporary or permanent airport perimeter fence.

2.4.2 Maintenance and Repair of the Lighting, Storm and Irrigation Facilities. As consideration for the continued use of Buyer's lighting, drainage and irrigation facilities located on the parking lot portion of Buyer's property, upon conveyance of the Property to Buyer, Seller shall continue to maintain and repair these facilities at Seller's sole cost and

expense until such time as the utilities are severed. Seller agrees to maintain these facilities in good working order and make any needed repairs in a timely manner. Requirements for access on to the Property are described in **Exhibit B-3**.

2.4.3 Temporary Use of Seller's Stormwater Facilities. In further consideration for the sale of the Property, Seller covenants to permit Buyer's use of Seller's Stormwater Facilities for the transportation and storage of storm and surface water originating from the Property until that time when the Buyer is no longer paying Seller for its share of the storm and surface water system's maintenance costs, pursuant to section 2.3.4(c), and the Buyer severs the drainage system on the Property from Seller's system.

2.5. SURVIVAL OF RIGHTS, DUTIES, AND OBLIGATIONS. The Parties' rights, duties, covenants, and obligations under Sections 2.3 and 2.4 shall survive Closing and the expiration or earlier termination of this Agreement.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

3.1. WARRANTIES AND REPRESENTATIONS OF SELLER. Seller represents and warrants as follows:

3.1.1. Definition of Seller. The Seller is a home rule charter county and political subdivision of the State of Washington duly organized, validly existing and in good standing under the laws of the State of Washington. Seller has all requisite corporate power and authority to carry on its business as it is now being conducted in the place where such businesses are now conducted.

3.1.2. Execution, Delivery and Performance of Agreement, Authority. The execution, delivery and performance of this Agreement by Seller (i) is within the powers of Seller as a home rule charter county, (ii) has been or will be on or before the Closing Date duly authorized by all necessary action of the Seller's legislative authority, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which the Seller is a party or which is presently in effect and applicable to Seller. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms hereof.

3.1.3. Litigation. There is no pending, or to the best of Seller's knowledge, threatened lawsuit or material claim against or relating to Seller with respect to the Property, which shall impede or materially affect Seller's ability to perform the terms of this Agreement. There is no pending or, to the best of Seller's knowledge, contemplated condemnation or similar proceeding with respect to the Property or any part thereof.

3.1.4. Assessments. There is no pending, or to the best of Seller's knowledge, as defined immediately hereunder, contemplated local improvement district or other special assessment or charge with respect to the Property, except as may be disclosed in the Title Commitment as defined herein.

3.1.5. Full Disclosure. To the extent of Seller’s knowledge, no representation or warranty by Seller in this Agreement or in any instrument, certificate or statement furnished to Buyer pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or fails to state a material fact which is necessary to make the statements set forth therein not false or misleading. As used in this Agreement, the phrase “Seller’s knowledge” or any derivation or variation thereof shall mean the actual knowledge of the following persons, based on their reasonable inquiry in the file locations where the relevant information would normally be filed:

(a) Bryan Hague, Manager, Real Estate Services Section, Facilities Management Division, King County Department of Executive Services;

(b) Steve Rizika, Project Program Manager IV, Real Estate Services Section, Facilities Management Division, King County Department of Executive Services; and

(c) Paul Eng, P.E., Engineer VI, Transit Division, King County Department of Transportation.

3.1.6. No Broker. No broker, finder, agent or similar intermediary has acted for or on behalf of Seller in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent or similar intermediary is entitled to any broker’s, finder’s or similar fee or commission in connection with this Agreement based on an agreement, arrangement or understanding with Seller or any action taken by Seller.

3.1.7. Contracts. To the extent of Seller’s knowledge as defined in Section 3.1.5, there are no contracts or other obligations outstanding for the sale, exchange, transfer, lease, rental or use of the Property or any portion thereof.

3.1.8. Future Agreements. From and after the Effective Date, and unless this Agreement is terminated in accordance with its terms, Seller shall not without the prior written consent of Buyer:

(a) Enter into any agreement, contract, commitment, lease or other transaction that affects the Property in any way; or

(b) Sell, dispose of or encumber any portion of the Property.

3.1.9. Condition of the Property.

(a) Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, contracts or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning, or with respect to the value, nature, quality, or condition of the Property, including, without limitation:

(i) The water, soil and geology;

- (ii) The income to be derived from the Property;
- (iii) The suitability of the Property for any and all activities and uses that Buyer or anyone else may conduct thereon;
- (iv) The compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body;
- (v) The habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property;
- (vi) The manner or quality of the construction or materials, if any, incorporated into the Property; or
- (vii) Any other matter with respect to the Property.

(b) Seller has not made, does not make, and specifically disclaims any representations regarding compliance with any environmental protection, pollution, zoning or land use laws, rules, regulations, orders, or requirements, including the existence in or on the Property of hazardous materials or substances.

(c) Without limitation, Seller does not make and specifically disclaims any warranties, express or implied, any warranties or representations with respect to the structural condition of the Property, the area of land being purchased, the existence or non-existence of any Hazardous Substances or underground storage tanks, or the actual or threatened release, deposit, seepage, migration or escape of Hazardous Substances, from or into the Property, and the compliance or noncompliance of the Property with applicable federal, state, county and local laws and regulations, including, without limitation, environmental laws and regulations and seismic/building codes, laws and regulations. For purposes of this Agreement, the term “Hazardous Substances” shall mean: “hazardous substance” as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”); “hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976 (“RCRA”) as amended; hazardous wastes, hazardous materials, hazardous substances, toxic waste, toxic materials, or toxic substances as defined in state or federal statutes or regulations; asbestos-containing materials, polychlorinated biphenyls; radioactive materials, chemicals known to cause cancer or reproductive toxicity; petroleum products, distillates or fractions; any substance the presence of which is prohibited by statute or regulation; and any substance for which any statute or regulation requires a permit or special handling in its use, collection, storage, treatment or disposal. Buyer agrees to waive its right to receive a completed Disclosure Statement under RCW 64.06.010 with the exception of item 6 “Environmental,” attached as **Exhibit E**, which Seller shall complete and provide to Buyer for review within 10 days of the Effective Date.

(d) All provisions of this Section 3.1.9 shall survive Closing and the expiration or earlier termination of this Agreement.

3.1.10. Risk of Loss. Until the Closing Date, the risk of loss relating to the Property shall rest with the Seller. Risk of Loss shall be deemed to include any property damage

occurring as a result of an “Act of God,” including, but not limited to, earthquakes, tremors, wind, rain or other natural occurrence.

3.1.11. Foreign Person. Seller is not a foreign person and is a “United States Person” as such term is defined in Section 7701 (a) (30) of the Internal Revenue Code of 1986, as amended, and Seller shall deliver to Buyer prior to the Closing an affidavit, as set forth in **Exhibit D**, evidencing such fact, and such other documents as may be required under the Code.

3.2. REPRESENTATIONS AND WARRANTIES OF BUYER. Buyer represents and warrants as follows:

3.2.1. Definition of Buyer. Buyer is a municipal corporation and noncharter code city duly organized, validly existing and in good standing under the laws of the State of Washington. Buyer has all requisite corporate power and authority to carry on its business as it is now being conducted in the place where such businesses are now conducted.

3.2.2. Execution, Delivery and Performance of Agreement, Authority. The execution, delivery and performance of this Agreement by Buyer (i) is within the powers of Buyer as a municipal corporation, (ii) has been or will be on or before the Closing Date, duly authorized by all necessary action of the Buyer’s legislative authority, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which the Buyer is a party or which is presently in effect and applicable to Buyer. This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms hereof.

3.2.3. Litigation. There is no pending or, to the best of Buyer’s knowledge, threatened lawsuit or material claim against or relating to Buyer that shall impede or materially affect Buyer’s ability to perform the terms of this Agreement.

3.2.3.1. Full Disclosure. No representation or warranty by Buyer in this Agreement or in any instrument, document, certificate or statement furnished to Seller pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact.

3.2.4. Condition of Property.

(a) Buyer acknowledges and accepts Seller’s disclaimer of the Property condition in Section 3.1.9 of this Agreement unless Buyer provides Seller notice within the Due Diligence Period, as defined in section 5.1, of its disapproval of the Environmental disclosure or some other condition of the Property.

(b) Buyer further acknowledges and agrees that, having been given the opportunity to inspect the Property, Buyer is relying solely on its own investigation of the Property and not on any information provided or to be provided by Seller. Buyer further acknowledges and agrees that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of

such information and makes no representations as to the accuracy or completeness of such information and no employee or agent of Seller is authorized otherwise. Buyer further acknowledges and agrees that Seller is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, contractor, servant or other person, and, to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an “AS-IS” condition and basis with all faults. It is understood and agreed that the sale price reflects that the Property is sold by Seller to Buyer subject to the foregoing.

(c) Buyer acknowledges that, within the Due Diligence Period, as defined in Section 5.1 of this Agreement, Buyer will have conducted a physical inspection and made all investigations that Buyer deems necessary in connection with its purchase of the Property, and that, as of the Effective Date hereof, Seller has provided Buyer with copies of all reports in Seller’s possession that have been requested by Buyer. Upon waiver or satisfaction by Buyer of its contingencies pursuant to Article 5, Buyer will be deemed to have approved the physical condition of the Property and agrees to accept and purchase the same “AS IS, WHERE IS”, including, without limitation, the existence or non-existence of any pollutants, contaminants, hazardous waste, dangerous waste, toxic waste, underground storage tanks or contaminated soil, or the actual or threatened release, deposit seepage, migration or escape of Hazardous Substances at, from or into the Property and the compliance or noncompliance of the Property with applicable federal, state, county and local laws and regulations including, without limitation, environmental laws and regulations. Buyer acknowledges and agrees that, except to the extent of Seller’s representations and warranties in Section 3.1 of this Agreement, and to the extent of any fraud or deliberate misrepresentation by Seller, Seller shall have no liability for, and that Buyer shall have no recourse against the Seller for, any defect or deficiency of any kind whatsoever in the Property including without limitation those relating to Hazardous Substances, without regard to whether such defect or deficiency was discovered or discoverable by the Buyer or Seller.

3.2.6. No Broker. No broker, finder, agent or similar intermediary has acted for or on behalf of Buyer in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent, or similar intermediary is entitled to any broker’s, finder’s or similar fee or commission in connection with this Agreement based on an agreement, arrangement, or understanding with the Buyer or any action taken by the Buyer.

3.2.7. Indemnification. From and after Closing, Buyer shall indemnify, defend and hold Seller, its officers, agents and employees harmless from and against any and all claims and agency orders or requirements relating to or arising out of, directly or indirectly, the Property. This Section 3.2.7 shall survive Closing and the expiration or earlier termination of this Agreement.

ARTICLE 4. TITLE MATTERS

4.1. TITLE.

4.1.1. Title Commitment. Buyer or its designee shall obtain a current ALTA form of commitment for an owner's policy of title insurance (the "Title Commitment") issued by Chicago Title (the "Title Company"), describing the Property, listing Buyer as the prospective named insured and showing as the policy amount the total Purchase Price for the Property. At such time as the Title Company causes the Title Commitment to be furnished to Buyer, Buyer may in Buyer's sole discretion determine whether to cause the Title Company to furnish to Buyer legible copies of all instruments referred to in the Title Commitment as restrictions or exceptions to title to the Property.

4.1.2 Review of Title Commitment.

(a) Buyer shall have until the expiration of the Due Diligence Period in which to notify Seller of any objections Buyer has to any matters shown or referred to in the Title Commitment and of any title insurance endorsements required by Buyer. Any exceptions or other items that are set forth in the Title Commitment to which Buyer does not object shall be deemed to be permitted exceptions ("Permitted Exceptions"). Rights reserved in federal patents or state deeds, building or use restrictions general to the district, and building or zoning regulations or provisions shall also be deemed Permitted Exceptions.

(b) With regard to items to which Buyer does object, Seller shall notify Buyer within ten (10) days after Seller receives Buyer's notice of objections of any exceptions to title or items on the Survey which Seller is not able to remove or otherwise resolve and any endorsements that Seller is not able to provide following Buyer's request, and Buyer may, at Buyer's option, either waive the objections not cured or Buyer may terminate this Agreement by notice to Seller.

4.2. OWNER'S TITLE INSURANCE POLICY. At Closing, Buyer shall cause an owner's policy of title insurance to be issued by the Title Company in the full amount of the total Purchase Price, effective as of the Closing Date, insuring Buyer that the fee simple title to the Property is vested in Buyer, subject only to the Permitted Exceptions, to the usual printed exceptions contained in such title insurance policy, to the additional matters approved by Buyer as provided in Section 4.1.3, and to any other matters approved in writing by Buyer. The obligation of Buyer to provide the title policy called for herein shall be satisfied if, at the Closing, the Title Company has given a binding commitment, in a form reasonably satisfactory to Buyer, to issue the policies in the form required by this Section 4.2. Buyer shall pay any sum owing to the Title Company for the preparation of the preliminary and binding commitments generated by the Title Company.

4.3. CONVEYANCE. At Closing, Seller shall convey to Buyer the title to the Property by bargain and sale deed in the form attached hereto as **Exhibit B-1**, subject only to the Permitted Exceptions, the further matters identified in Section 4.2, the easements set forth in **Exhibit B-2** and B-3, and such other encumbrances as may be created by Buyer or caused to be created by Buyer from and after the Effective Date.

**ARTICLE 5.
CONTINGENCIES**

5.1. DUE DILIGENCE INSPECTION AND FEASIBILITY. During the Due Diligence Period, which is the ninety (90) day period beginning on the day after the Effective Date, Buyer shall satisfy itself by investigation and inspection, at its sole cost and expense and in its sole and absolute discretion, that the condition of the Property for Buyer's contemplated use meets with Buyer's approval. If Buyer's investigation and inspection reveals conditions that Buyer finds need further examination, the due diligence period shall be extended ninety (90) days (Extended Due Diligence Period) from Buyer's notice to Seller according to Paragraph 12.4 .

If Buyer approves of the condition of the Property, Buyer agrees to notify Seller, in writing, thereby removing this contingency. Buyer shall make such determination within the Due Diligence Period or, as applicable, the Extended Due Diligence Period. In the event Buyer does not waive this contingency or notify Seller that the contingency is satisfied within the Due Diligence Period or the Extended Due Diligence Period, as applicable, then Buyer may terminate this Agreement upon written notice to Seller on or before the expiration of the that Period, and neither Party shall have any further rights or obligations to the other hereunder. If Buyer fails to provide Seller with any written notice regarding this Section 5.1 during the Due Diligence Period or if extended the Extended Due Diligence Period, then Buyer shall be deemed to have waived this contingency for all purposes and this contingency shall be deemed removed.

5.1.1. Inspections. During the Due Diligence Period and Extended Due Diligence Period, Buyer, its designated representatives or agents shall have the right at Buyer's expense to:

- (a) Perform any and all tests, inspections, studies, surveys or appraisals of the Property deemed necessary, on any subject, by the Purchaser (subject to the limitations set forth immediately below and Paragraph 5.1.2 Right of Entry);
- (b) Obtain a Phase I or Phase II Environmental Assessment on the Property and perform any and all tests, inspections and studies deemed necessary therewith; and
- (c) Examine all Due Diligence materials that Buyer may reasonably request from Seller that are not subject to attorney-client privilege or that the Seller is not otherwise prohibited from disclosing by law.

5.1.2. Conditional Right of Entry. Buyer and Buyer's designated representatives or agents shall have and Seller hereby grants to Buyer and Buyer's designated representatives a conditional license to enter the Property and to conduct the tests, investigations and studies set forth in this Article 5 upon three (3) days' advance written notice; provided that such right of entry will be limited to those times and dates that will not substantially disrupt Seller's use of, or Seller's operations and activities on, the Property. Invasive tests of the Property, such as drilling or excavation, shall be subject to Seller's prior written approval. Buyer and Buyer's designated representatives may not undertake activities that would damage the Property or damage or interrupt the use of any other King County-owned property or personalty. In connection with such inspections, Buyer agrees to hold harmless, indemnify and defend Seller, its officers, agents, or employees, from and against all claims, losses, or liability for injuries, sickness, or death of persons, including employees of Buyer, to the extent caused by or arising out of any act, error or omission of Buyer, its officers, agents, contractors, subcontractors or employees in entering the

Property for the above purposes, except to the extent caused by or arising out of any act, error or omission of Seller, its officers, agents, or employees. Buyer shall repair any damage caused by invasive testing and shall restore the Property to its pre-existing condition.

5.2. APPRAISAL. The Purchase Price shall be subject to the completion by a third-party and reasonable acceptance by both Parties an appraisal setting forth the fair market value of the Property, and which shall be completed prior to and as a condition to Closing. The cost of this appraisal shall be paid by Buyer.

5.3. SUBDIVISION CONTINGENCY.

5.3.1. Need for Division of Property. Buyer has represented to Seller that prior to Closing, and at Buyer's sole cost and expense, Buyer shall have received administrative approval of a short plat to divide the Auburn Park-and-Ride into two separate legal parcels and shall have obtained all necessary signatures on the mylar that will be recorded. Buyer will present all short plat documents to Sellers for review and execution which Seller agrees to do in a timely manner as well as provide any reasonable assistance to Buyer in preparing the short plat. Seller's and Buyer's respective duty to Close is contingent on Buyer receiving lawful approval of the short plat of the Auburn Park-and-Ride into two separate legal parcels (upon such approval, the "Short Plat").

5.3.2 No Duty to Close if Property Not Divided. Buyer shall complete the process to lawfully divide the Auburn Park-and-Ride into two separate parcels, receive administrative approval of the division, and perform all other tasks necessary for the division to be recorded with the King County Recorder's Office on or before the Closing Date, including all possible appeals or challenges to the proposed division of the Auburn Park-and-Ride. If Buyer is unable to complete the process to lawfully divide the Auburn Park-and-Ride by recording all necessary documents with the King County Recorder's Office on or before the Closing Date, then unless otherwise extended pursuant to Section 10, Seller and Buyer shall have no duty to proceed with Closing of this Agreement, and this Agreement shall automatically terminate as of the Closing Date, each Party shall bear its own costs and expenses up to and including the Closing Date, and neither Party shall have any further right, duty, or obligation to the other under this Agreement.

ARTICLE 6.

COVENANTS OF SELLER PENDING CLOSING

6.1. CONDUCT, NOTICE OF CHANGE. Seller covenants that between the Effective Date and the Closing, Seller shall take all such actions as may be necessary to assure that Seller's representations and warranties set forth in Article 3 hereof will be true and complete as of the Closing Date (except such representations, warranties and matters which relate solely to an earlier date), and all covenants of Seller set forth in this Agreement which are required to be performed by it at or prior to the Closing shall have been performed at or prior to the Closing as provided for in this Agreement. Seller shall give Buyer prompt written notice of any material change in any of the information contained in the representations and warranties made by Seller in Article 3 or elsewhere in this Agreement which occurs prior to the Closing Date.

**ARTICLE 7.
COVENANTS OF BUYER PENDING CLOSING**

7.1. CONDUCT, NOTICE OF CHANGE. Buyer covenants that between the Effective Date and the Closing, Buyer shall take all such actions as may be necessary to assure that Buyer's representations and warranties set forth in Article 3 hereof will be true and complete as of the Closing Date (except such representations, warranties and matters which relate solely to an earlier date), and that all covenants of Buyer set forth in this Agreement which are required to be performed by it at or prior to the Closing shall have been performed at or prior to the Closing as provided in this Agreement. Buyer shall give Seller prompt written notice of any material change in any of the information contained in Buyer's representations and warranties made in Article 3 or elsewhere in this Agreement which occurs prior to the Closing Date.

**ARTICLE 8.
CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS**

All obligations of Buyer hereunder are subject to Seller's fulfillment of each of the following conditions at or prior to the Closing, and Seller shall exert its best efforts to cause each such condition to be fulfilled:

8.1. DELIVERY OF DOCUMENTS. Seller shall have delivered to Buyer at or prior to closing all documents required by the terms of this Agreement to be delivered to Buyer.

8.2. REPRESENTATIONS AND WARRANTIES. All representations, warranties and covenants of Seller contained herein or in any document delivered pursuant hereto shall be true and correct in all material respects when made and as of the Closing Date.

8.3. OBLIGATIONS. All obligations required by the terms of this Agreement to be performed by Seller at or before the Closing shall have been properly performed in all material respects.

8.4. TITLE. Any and all matters shown or referred to in the Title Commitment to which Buyer has objected within the time specified in Section 4.1, shall have been cured by Seller, unless Seller has notified Buyer that Seller will not cure, and Buyer has waived its objections.

8.5 APPROVAL OF COUNSEL. Seller's legal counsel shall have approved this document as to form as evidenced by such counsel's signature on this Agreement.

8.6. CONDEMNATION. No portion of the Property shall have been taken or damaged by any public or quasi-public body, and Seller shall not have transferred any portion of the Property to any such body in lieu of condemnation except with Buyer's written assent.

8.7. APPROVAL BY THE KING COUNTY COUNCIL. The Metropolitan King County Council shall have taken all legislative action necessary to authorize Seller to enter into the transaction contemplated in this agreement.

**ARTICLE 9.
CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS**

All obligations of Seller to close on the Closing Date are subject to Buyer's fulfillment of each of the following conditions at or prior to the Closing, and Buyer shall exert its best efforts to cause each such condition to be so fulfilled:

9.1. REPRESENTATIONS, WARRANTIES AND COVENANTS. All representations, warranties and covenants of Buyer contained herein or in any document delivered pursuant hereto shall be true and correct in all material respects when made and as of the Closing Date.

9.2. OBLIGATIONS. All obligations required by the terms of this Agreement to be performed by Buyer at or before the Closing shall have been properly performed in all material respects.

9.3. APPROVAL OF COUNSEL. Buyer's legal counsel shall have approved this document as to form as evidenced by such counsel's signature on this Agreement.

9.4. DELIVERY OF DOCUMENTS. Buyer shall have delivered to Seller at or prior to Closing all documents required by the terms of this Agreement to be delivered to Seller.

9.5. TITLE. Buyer shall have caused the Title Company to be committed to issue an owner's policy of title insurance for the full amount of the Purchase Price, effective as of the Closing Date, containing no exceptions other than the Permitted Exceptions and such other matters as Buyer may authorize in writing.

**ARTICLE 10.
CLOSING**

10.1. CLOSING/CLOSING DATE. "Closing" means the consummation of the transaction contemplated in this Agreement. The Closing shall take place thirty (30) days following recording of the Short Plat, approval of King County Council, or expiration or waiver of the Due Diligence Period or if extended the Extended Due Diligence Period, whichever is later, or such other date as may be mutually agreed upon in writing by the Parties. Upon execution of this Agreement, the Parties agree to set up an escrow account with Chicago Title Company (the "Escrow Agent"). The Escrow Agent shall serve as closing agent for the transaction contemplated herein and the Closing shall occur in the offices of Escrow Agent in Seattle, Washington. Subject to the Permitted Exceptions and the easements set forth in **Exhibit B-2** and **B-3** attached hereto, all title, right of possession and interest to the Property shall pass to Buyer upon Closing and thereafter the risk of loss thereof shall be the responsibility of Buyer.

10.2. PRORATIONS. All prorations, unless otherwise specifically provided for herein, shall be made as of the Closing Date.

10.2.1. Closing Costs. Seller shall pay the cost of all of its own attorneys' fees. Buyer shall pay the full escrow fee charged by the Escrow Agent for the sale of the Property to Buyer, all real estate excise or other transfer tax due for the sale of the Property to Buyer, the full

cost of the preliminary and binding title commitments from the Title Company, the full cost of all recording fees, and all of its own attorneys' fees. Except as otherwise provided in this Section 10.2, all other expenses hereunder shall be paid by the Buyer.

10.3. SELLER'S DELIVERY OF DOCUMENTS AT CLOSING. At the Closing, Seller will deliver to Buyer the following properly executed documents:

- (a) A Bargain and Sale Deed conveying the Property and substantially in the form of **Exhibit B-1** attached hereto;
- (b) A Bill of Sale and Assignment duly executed by the Seller and substantially in the form of **Exhibit C**, attached hereto for the Personal Property, if any;
- (c) Seller's Certificate of Non-Foreign status substantially in the form of **Exhibit D**, attached hereto;
- (d) A properly executed and duly authorized Stormwater Maintenance Easement and Drainage Agreement substantially in the form of **Exhibit B-2** attached hereto; and
- (e) A properly executed and duly authorized Temporary Utility Easement for the Repair and Maintenance of Lighting, Drainage and Irrigation facilities substantially in the form of **Exhibit B-3** attached hereto

10.4. BUYER'S DELIVERY OF DOCUMENTS AND PURCHASE PRICE AT CLOSING. At the Closing, Buyer will deliver to Seller the following:

- (a) Cash or immediately available funds in the full amount of the Purchase Price;
- (b) A properly executed and duly authorized Stormwater Maintenance Easement and Drainage Agreement substantially in the form of **Exhibit B-2** attached hereto; and
- (c) A properly executed and duly authorized Temporary Utility Easement for the Repair and Maintenance of Lighting, Drainage and Irrigation facilities substantially in the form of **Exhibit B-3** attached hereto.

ARTICLE 11. TERMINATION

11.1. TERMINATION BY EITHER PARTY. In addition to Buyer's right of termination during the Due Diligence Period, and in addition to termination for failure of any of the contingencies set forth in Sections 5.3 and 5.4 of this Agreement, either Party may also terminate this Agreement effective upon written notice to the other Party if a condition to its obligation to consummate the transactions contemplated by this Agreement as set forth in Articles 8 and 9 has not been satisfied by the Closing Date. In that event, if neither Party is in default under this Agreement, the Parties shall have no further obligations or liabilities to one another, all documents

and funds delivered into escrow shall be returned to the appropriate Party, and each Party shall bear its own costs and expenses up to and including the date of termination.

ARTICLE 12. MISCELLANEOUS PROVISIONS

12.1. NATURE AND SURVIVAL OF REPRESENTATIONS AND WARRANTIES. Subject to amendment pursuant to Section 12.5 of this Agreement, each statement, representation, warranty, indemnity, covenant, and agreement made by Seller and Buyer in this Agreement or in any document, certificate or other instrument delivered by or on behalf of Seller or Buyer pursuant to this Agreement or in connection herewith shall be deemed a representation, warranty, indemnity, covenant and agreement between Seller and Buyer and shall survive the Closing Date unless a different time period is expressly provided for in this Agreement and all such statements are made only to and for the benefit of the Parties hereto, and shall not create any rights in other persons or entities.

12.2. DEFAULT. In the event of default by either Party to this Agreement, the non-defaulting Party shall have the right to bring an action for specific performance or, in the alternative, actual damages, provided that any such cause of action shall be brought within twelve (12) months of the Effective Date, or thereafter be forever waived. The Parties shall have no right, claim, or cause of action for consequential damages or any other form or type of damages arising out of or relating to default under this Agreement, and each Party expressly and specifically waives any claim or cause of action for the same, whether at law or in equity.

12.3. TIME IS OF THE ESSENCE. Time is of the essence in the performance of this Agreement.

12.4. NOTICES. Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given upon receipt when personally delivered or sent by overnight courier; or three (3) days after deposit in the United States mail if by first class, certified or registered mail, return receipt requested. Notice may also be provided by email or other means of electronic transmittal, provided that receipt of the email or transmittal content can be confirmed by the sender, with time of receipt being the uniform time the e-mail or other transmittal enters the information processing system that the recipient has designated or uses for the purpose of receiving email or other form of transmittal. All notices shall be addressed to the Parties at the addresses set forth below or at such other addresses as any Parties may specify by notice to all other Parties and given as provided herein:

If to Buyer: Legal Department
 Attn: Real Estate Manager
 25 W Main
 Auburn, WA 98001
 Jarndt@AuburnWA.gov

If to Seller: Manager's Office
 Transit Division

King County Department of Transportation
201 S King Street
Seattle WA 98104
Email: TransitProperty@kingcounty.gov

With a copy to: Manager
Real Estate Services Section
500 4th Avenue, Room 830
Seattle, WA 98104

With a copy to: Chief Civil Deputy
King County Prosecuting Attorney's Office
516 3rd Avenue, Room W400
Seattle, WA 98104
Attention: Ryan W. Ridings
Email: Rridings@Kingcounty.gov

12.5. ENTIRE AGREEMENT AND AMENDMENT. This writing (including the Exhibits attached hereto) constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior agreement or understanding, whether written or oral. This Agreement may not be modified or amended except by a written agreement specifically referring to this Agreement and signed by all Parties hereto.

12.6 SEVERABILITY. In the event any portion of this Agreement shall be found to be invalid by any court of competent jurisdiction, then such holding shall not impact or affect the remaining provisions of this Agreement unless that court of competent jurisdiction rules that the principal purpose and intent of this contract should and/or must be defeated, invalidated or voided.

12.7 WAIVER. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any prior or subsequent breach or default.

12.8 BINDING EFFECT. Subject to Sections 12.12 and 12.14 below, this Agreement shall be binding upon and inure to the benefit of each Party hereto, its successors and assigns.

12.9 LEGAL RELATIONSHIP. The Parties to this Agreement execute and implement this Agreement solely as Seller and Buyer. No partnership, joint venture or joint undertaking shall be established by or construed from this Agreement. This Agreement creates no right, privilege, duty, obligation, or cause of action in any person or entity not a party to it.

12.10 CAPTIONS. The captions of any articles, paragraphs or sections contained herein are for purposes of convenience only and are not intended to define or limit the contents of said articles, paragraphs or sections.

12.11 COOPERATION. Prior to and after Closing each Party shall cooperate, shall take such further action and shall execute and deliver further documents as may be reasonably requested by the other Party in order to carry out the provisions and purposes of this Agreement.

12.12 GOVERNING LAW; VENUE. This Agreement and all amendments thereof shall be governed by and construed in accordance with the laws of the State of Washington applicable to contracts made and to be performed therein, without giving effect to its conflicts of law provisions. The Superior Court of King County, Washington shall be the sole venue for any litigation between the Parties that arises under or relates to this Agreement or the transaction contemplated herein.

12.13 NON-MERGER. The terms and provisions of this Agreement will not merge in, but will survive, the closing of the transaction contemplated under this Agreement.

12.14 ASSIGNMENT. Buyer shall not assign this Agreement or any rights hereunder without Seller's prior written consent, which may be withheld or conditioned at Seller's sole and absolute discretion.

12.15 NEGOTIATION AND CONSTRUCTION. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the Parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either Party. Both Parties acknowledge and represent, as an express term of this Agreement, that they have had the opportunity to obtain and utilize legal review of the terms and conditions outlined in this Agreement, although each Party must determine if they wish to obtain and pay for such legal review. Each Party shall be and is separately responsible for payment of any legal services rendered on their behalf regarding legal review of this Agreement.

12.16 COUNTERPARTS. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each Party, or that the **signature** of all persons required to bind any Party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each Party hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter may be attached to another counterpart identical thereto except having attached to it additional signature pages.

12.17 EXHIBITS. The following Exhibits described herein and attached hereto are fully incorporated into this Agreement by this reference:

Exhibit A-1	Legal Description of Property being Conveyed
Exhibit A-2	Depiction of Property being Conveyed
Exhibit B-1	Bargain and Sale Deed
Exhibit B-2	Stormwater Maintenance Easement and Drainage Agreement
Exhibit B-3	Temporary Utility Easement
Exhibit C	Bill of Sale and Assignment

Exhibit D	Certificate of Non-Foreign Status
Exhibit E	Seller Environmental Disclosure

No further text. Signature page follows.

SIGNATURE PAGE

BUYER
CITY OF AUBURN

SELLER
KING COUNTY

Nancy Backus
Date:

Title: Mayor

Attest: _____
Shawn P. Campbell, City Clerk

Approved as to Form:

Kendra Comeau, Auburn City Attorney

DocuSigned by:
Anthony Wright
22E0157CCE6B4B8

Anthony Wright
Date: 11/24/2021

Title: Director, Facilities Management
Division

Approved by Custodial Agency

DocuSigned by:
Terry White
03E4693EF97243F...

Terry White
Date: 11/22/2021

Title: General Manager, Metro Transit

Approved as to Form:

DocuSigned by:
RWR
06C32E3C933545F...

Ryan W. Ridings, King County Senior Deputy
Prosecuting Attorney

SIGNATURE PAGE

BUYER
CITY OF AUBURN

SELLER
KING COUNTY

DocuSigned by:
Nancy Backus
AECEBB9537354C0...

Nancy Backus
Date:

Title: Mayor

Anthony Wright
Date:

Title: Director, Facilities Management
Division

Approved by Custodial Agency

DocuSigned by:
Shawn Campbell
AC6A23F1E2C6425...

Attest: Shawn P. Campbell, City Clerk

Terry White
Date:

Title: General Manager, Metro Transit

Approved as to Form:

Approved as to Form:

DocuSigned by:
Kendra Comeau
7B956B02CBD943C...

Kendra Comeau, Auburn City Attorney

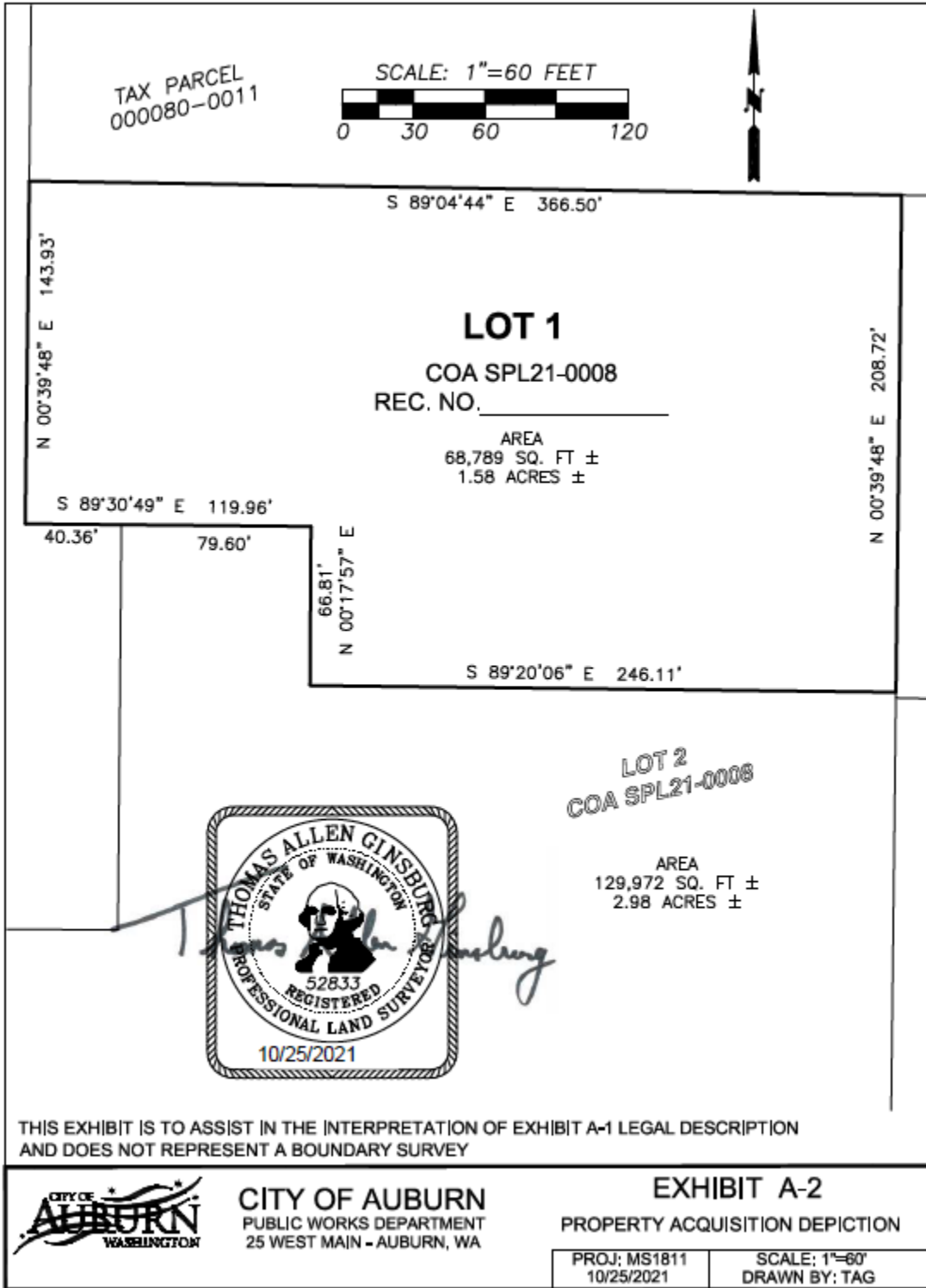
Ryan W. Ridings, King County Senior Deputy
Prosecuting Attorney

Exhibit A-1
Legal Description of the Real Property Conveyed to City of Auburn

LOT 1, CITY OF AUBURN SHORT PLAT NO. SPL21-0008 RECORDED UNDER RECORDING NUMBER _____, RECORDS OF KING COUNTY, WASHINGTON, SITUATED IN A PORTION OF THE J. BRANNON DONATION LAND CLAIM NO. 38 IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN THE CITY OF AUBURN, KING COUNTY, WASHINGTON.



Exhibit A-2 Depiction of Property being Conveyed



O:\SURVEY\PROJECTS\MS1811 AIRPORT RWY ENHANCEMENTS LAND ACQUISITION\4. DWG FILES\2. SHORT PLAT DWG

Exhibit B-1
Bargain and Sale Deed
(COVER SHEET)

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

Above this line reserved for recording information.

BARGAIN AND SALE DEED

Grantor:	King County, Washington
Grantee:	City of Auburn
Legal Description/STR:	LOT 1, CITY OF AUBURN SHORT PLAT NO. SPL21-0008 UNDER KING COUNTY REC. NO XXXX
Assessor's Tax Parcel ID#:	000080-0021

The Grantor, KING COUNTY, a home rule charter county and political subdivision of the State of Washington, for and in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid and other consideration as set forth in that certain Real Estate Purchase and Sale Agreement dated _____, and authorized by King County Ordinance No. _____, does hereby bargain, sell, and convey unto the Grantee, the CITY OF AUBURN, a municipal corporation of the State of Washington, the property legally described in **Exhibit A-1** and depicted in **Exhibit A-2**, attached hereto and incorporated herein by this reference and the Grantee hereby accepts the same.

SUBJECT TO all rights, conditions, covenants, obligations, limitations, and reservations of record for said real estate,

Executed by King County this _____ day of _____, 2022.

Grantor

Grantee

KING COUNTY:

CITY OF AUBURN

BY _____

BY _____

TITLE _____

TITLE _____

DATE _____

ACKNOWLEDGEMENTS APPEAR ON PAGE 2

STATE OF WASHINGTON)

) ss.

COUNTY OF King)

On this _____ day of _____, 20____, I certify that _____ signed this instrument, on oath stated that he was authorized by the King County Executive to execute the instrument, and acknowledged it, as the _____ of King County, Washington, to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of
Washington, residing at _____
My commission expires _____

STATE OF WASHINGTON)

) ss.

COUNTY OF King)

On this _____ day of _____, 20____, before me personally appeared NANCY BACKUS, Mayor of Auburn, Washington, to me known to be the individual described herein and who executed the within instrument, and acknowledged that she signed and sealed the same as the free and voluntary act and deed of the City of Auburn, for the purposes and uses therein mentioned, and on oath stated that she was duly authorized to execute said document.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of
Washington, residing at _____
My commission expires _____

Exhibit A-1
Legal Description of the Real Property Conveyed to City of Auburn

LOT 1, CITY OF AUBURN SHORT PLAT NO. SPL21-0008 RECORDED UNDER RECORDING NUMBER _____, RECORDS OF KING COUNTY, WASHINGTON, SITUATED IN A PORTION OF THE J. BRANNON DONATION LAND CLAIM NO. 38 IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN THE CITY OF AUBURN, KING COUNTY, WASHINGTON.

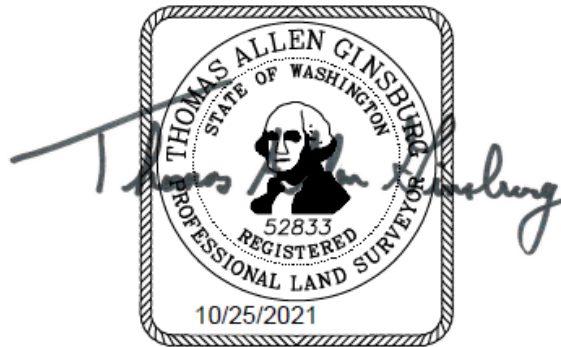
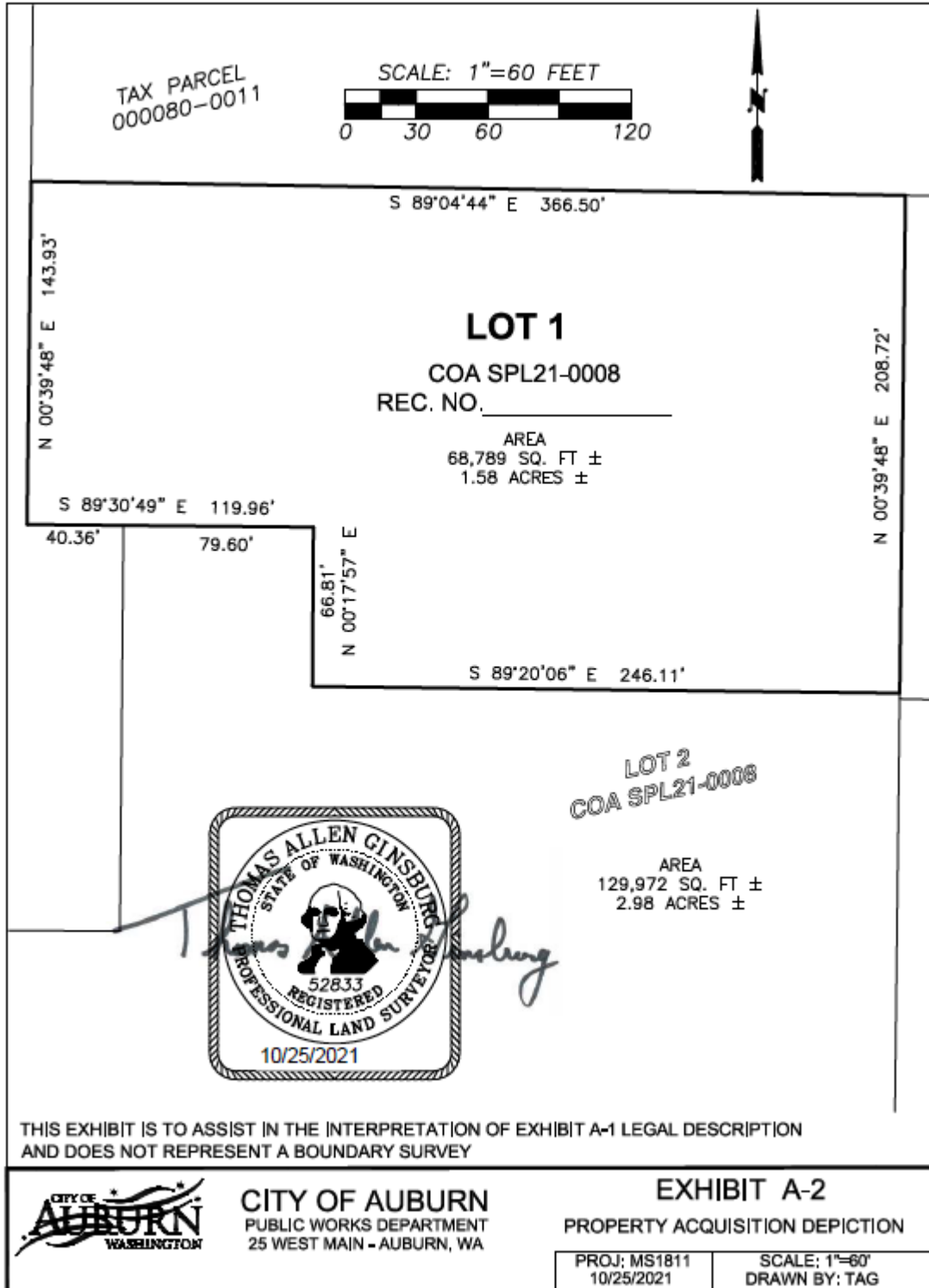


Exhibit A-2
Depiction of Real Property Conveyed to the City of Auburn



O:\SURVEY\PROJECTS\MS1811 AIRPORT RWY ENHANCEMENTS LAND ACQUISITION\4. DWG FILES\2. SHORT PLAT DWG

Exhibit B-2
Stormwater Maintenance Easement and Drainage
Agreement
(COVER SHEET)

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

Above this line reserved for recording information.

STORMWATER MAINTENANCE EASEMENT AND DRAINAGE AGREEMENT

Reference # (if applicable):	
Grantor:	CITY OF AUBURN
Grantee:	KING COUNTY
Legal Description/STR:	LOT 1, CITY OF AUBURN SHORT PLAT NO. SPL21-0008 UNDER KING COUNTY REC. NO. XXXX
Assessor's Tax Parcel ID#(s):	

This Stormwater Maintenance Easement and Drainage Agreement (this "Agreement") is made and entered into this _____ day of _____, _____, by and between the CITY OF AUBURN, a municipal corporation of the State of Washington, (the "City" and the "Grantor") and KING COUNTY, a home rule charter county of the State of Washington (the "County" and the "Grantee"). The City and County are collectively referred to herein as the "Parties".

The City is the owner of that certain real property known as Lot "1", Legally described in **Exhibit A-1** and depicted in **Exhibit A-2** (the "City Property"), and the County is the owner of that certain real property known as Lot "2", Legally described in **Exhibit A-3** and depicted in **Exhibit A-4** (the "County Property") both being part of that certain subdivision; COA SPL21-0008 recorded under King County Recording No. _____, located in the City of Auburn, County of King, State of Washington.

The City and County previously executed that certain Public Transportation Easement Agreement and Restrictive Covenant, dated November 15, 2012, and recorded under King County Recording No. 20130124001777 (the "Previous Park and Ride Easement Agreement"), that among other things established an area of "joint-use facilities", benefitting a portion of certain real property known as "New Parcel A" under City of Auburn boundary line adjustment no. BLA 12-0003, King County Recording No. 20130124900008, said New Parcel A which was subsequently conveyed to Orion Industries and expanded to include additional real property under City of Auburn boundary line adjustment BLA 13-0004, King County Recording No. 20140203900004,

and now currently known as King County Parcel Number 0000800022 (the “Adjacent Benefitted Parcel”).

The City and County now desire to provide for certain rights and obligations affecting the City Property and the County Property on terms and conditions set forth herein.

The foregoing recitals are true and correct and are hereby incorporated into this Agreement.

1. STORM DRAINAGE FACILITIES

The City Property contains County facilities that manage stormwater runoff (“County Stormwater Facilities”) a diagram of which is attached hereto as **Exhibit B** and incorporated herein by this reference. The County Stormwater Facilities serve the County Property and New Parcel A, as illustrated and defined under City of Auburn boundary line adjustment no. BLA 12-0003, King County Recording No. 20130124900008.

2. GRANT OF EASEMENT

The City hereby grants and conveys a non-exclusive permanent easement in, on, over, under, across, and through the area legally described in **Exhibit C-1** and depicted in **Exhibit C-2** (the “Easement Area”) to the County for the purposes of operating, accessing, improving, inspecting, repairing and maintaining the County Stormwater Facilities located on the City Property, and as more specifically set forth in Section 3 of this Agreement. This easement shall be a burden to the City Property and shall be a benefit to the County Property.

3. ACCESS and MAINTENANCE

County’s right of access to the Stormwater Maintenance Easement and Drainage Agreement is subject to the following conditions: Unless an emergency situation exists, which shall entitle the County to immediate entry upon the Stormwater Maintenance Easement and Drainage Agreement to address such emergency situation, County shall coordinate County’s access onto the Easement Area with the Auburn Airport office providing no less than 48 hours advanced notice. Notice can be given by contacting the Auburn Airport office either by phone or email. Along with proposed date of entry, County shall describe the purpose for entering upon the easement area and the intended work. The notice and described work is so that the Airport office can take the necessary precautions for alerting aircraft coming in and out of the Airport.

The County shall have the responsibility to maintain and repair the County Stormwater Facilities. Maintenance and repair must be in accordance with the Auburn City Code, including the City of Auburn Surface Water Management Manual, and Project As-Built Plans.

The County agrees to allow the City to enter the Easement Area for the limited purpose of inspecting, and if necessary repairing of the County Stormwater Facilities, including authorizing the City to utilize any necessary equipment to perform such inspections and repair, provided that in any such instance, prior to commencing any such repairs, the City shall provide the County notice and reasonable opportunity to commence such repairs, subject to the provisions for emergency repairs set forth immediately hereinbelow. The City will notify the

County in writing of any necessary maintenance. If the County fails to maintain the County Stormwater Facilities after being notified by the City, the County agrees the City may enter onto the Easement Area to perform emergency maintenance in the event that failure of the storm management plan elements may result in adverse impacts(s) on public facilities or private facilities of other property owners. At no time will the City have any ownership interest in the County Stormwater Facilities located within Easement Area. The County agrees to reimburse the City for the costs incurred by the City in maintaining and repairing the County Stormwater Facilities, plus an additional 10% for administrative and management fees. Should the City incur attorney's fees and/or costs in enforcing the agreement and/or in maintaining or collecting maintenance fees, the City agrees to pay reasonable attorney's fees and all costs incurred by the City. The City's sole obligation in the event of any damage, relocation, or disruption of the Easement Area by its employees, contractors, or agents shall be to re-establish existing grades and provide for adequate site stabilization.

Whenever County undertakes any work in the Stormwater Drainage Easement, upon completion of such work County shall remove any debris and restore the surface of any disturbed portion of the area and any adjacent area that was disturbed to a condition reasonably comparable to its condition as it existed immediately before entry and/or commencement of the work.

4. POLLUTION

4.1 Hazardous Substances Defined

As used herein, the term "Hazardous Substances" means any hazardous, toxic, chemical, or dangerous substance, pollutant, contaminant, waste or material, including petroleum, which is regulated under any federal, state, or local statute, ordinance, rule, regulation or common law relating to chemical management, environmental protection, contamination, or cleanup including, without limitation, the Comprehensive Environmental Response, Compensation, the Liability Act of 1980 and as later amended, and the Resource Conservation and Recovery Act as amended.

4.2 Clean-up

In the event of the presence of Hazardous Substances in the Easement Area caused by the County or its agents, the County shall, at its own cost, undertake immediate response as required by law, including, but not limited to, reporting to appropriate agencies, and shall notify the City as soon as reasonably possible. The County will pursue all required remediation and cleanup efforts until they are completed and the cleanup and/or remediation has been approved by appropriate governmental agencies. The Parties agree that such clean-up requirements are consistent with 42 U.S.C. § 9607 and Chapter 70.105D RCW.

In the event that Hazardous Substances from the County Stormwater Facilities enters the City Property, the County will, at its own cost, undertake immediate response as required by law, including, but not limited to, reporting to appropriate agencies, and will notify the City as soon as reasonably possible, and will pursue enforcement of all required remediation

and cleanup efforts until they are completed and the cleanup and/or remediation has been approved by appropriate governmental agencies.

If the County does not pursue and complete cleanup and/or remediation, the City may pursue those actions and the County will reimburse the City for all associated costs.

4.3 County Hold Harmless and Indemnity

County shall hold harmless, indemnify, and defend City from any and all cost, liability, claims, judgments, administrative actions, litigation, or other obligations arising out of or relating to the discharge of Hazardous Substances in any stormwater, surface water, runoff, or any other form of discharge or release from the County Stormwater Facilities onto the City Property.

4.4 City Hold Harmless and Indemnity

City shall hold harmless, indemnify and defend County from any and all costs, liability, claims, judgments, administrative actions, litigation, or other obligations arising out of or relating to the discharge of Hazardous Substances in any stormwater, surface water, runoff, or any other form of discharge or release from the City Property into any of the County Stormwater Facilities.

5. COMPLIANCE WITH FAA SAFETY REQUIREMENTS

The County covenants that in exercising its rights and privileges contain in this easement agreement, the County shall comply with applicable FAA safety requirements, including but not limited to vertical height restrictions, horizontal setbacks, and clearance requirements, and mandatory fencing, signage, marking, and lighting limitations and requirements upon notice of same by the City.

6. INSURANCE

The parties shall each maintain commercially reasonable insurance to protect their respective interests. This insurance requirement may be met through a program of self-insurance or participation in a risk-sharing pool. Each party shall provide written proof of commercially reasonable insurance upon demand of the other party.

The parties shall require their contractors and subcontractors of all tiers to name each of the parties as additional insured on any insurance policy that may apply to any work performed on the Easement Area. The parties may each request certificates of insurance or copies of insurance policies from any contractors and subcontractors of all tiers that perform work on the easement area

7. INDEMNIFICATION

7.1 Except as provided in Section 4 Grantor and Grantee each agrees for itself, its successors, and assigns to protect, defend, indemnify and hold harmless the other, and the other's 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 (collectively, "Claims") caused by or arising out of the Grantor's or Grantee's own acts or omissions, respectively, and those of their respective agents, employees or contractors within or about the Easement Area or that is otherwise caused by or arises out of their exercise of the rights and privileges respectively granted by or reserved under this Agreement, including without limitation liability from the products contained in, transferred through, released or escaped from their respective improvements or otherwise introduced by Grantor or Grantee, respectively, or their respective agents, employees or contractors within or about the Easement Area. The Parties' obligations under this Section shall include:

- (a) Indemnification for such Claims whether or not they arise from either Party's own acts or omissions, the concurrent negligence of both Parties or a third party, or the acts or omissions of either Party's own contractors, subcontractors, or the acts or omissions of one or more third parties under the direction or control of Grantor or Grantee, respectively;
- (b) The duty to promptly accept tender of defense and provide defense to the indemnified Party at the indemnifying Party's own expense;
- (c) Indemnification of Claims made by either Party's own employees or agents;
- (d) Waiver of immunity under the industrial insurance provisions of Title 51 RCW, but only to the extent necessary for Grantor and Grantee to indemnify each other against Claims subject to Title 51 RCW, which waiver has been mutually negotiated by the Parties; and
- (e) Indemnification for Claims that are submitted by the indemnified Party's contractor or subcontractors and arise from the indemnifying Party's improvements within or about the Easement Area.

7.2 Notwithstanding Paragraph 7.1 of this Section, Grantee shall have no obligation under this Agreement to indemnify and hold harmless Grantor for Claims arising from the sole negligence or willful misconduct of Grantor, its appointed and elected officials and employees; and Grantor shall have no obligation under this Agreement to indemnify and hold harmless Grantee for Claims arising from the sole negligence or willful misconduct of Grantee, its appointed and elected officials and employees.

7.3. Grantor and Grantee agree that if a court of competent jurisdiction determines that RCW 4.24.115 applies to this Agreement, or to any Claim arising hereunder, then Grantor and Grantee shall each defend, hold harmless and indemnify the other to the maximum extent permitted thereunder, and specifically for their own negligence concurrent with that of the other Party, to the full extent of Grantor's or Grantee's own negligence.

Grantor and Grantee shall give each other 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. If any such Claim arises, then the indemnified Party shall tender the defense thereof to the indemnifying Party, and the indemnifying Party shall have the duty to defend, settle, or compromise any Claims arising hereunder; and the indemnified Party shall cooperate fully therein. The indemnified Party’s failure to timely notify the indemnifying Party of such a Claim or action, however, shall not constitute a defense to the indemnity set out in this Section 7, except to the extent of actual prejudice to the indemnifying Party.

The indemnification, protection, defense and save harmless obligations contained in this Section 7 shall survive the expiration, abandonment or termination of this Agreement and the easement rights and restrictive covenants granted hereunder.

8. NOTICES

Except for the County’s notice under Section 3, any notices required by this Agreement shall be in writing and shall be deemed to have been given and received on the date of service, or one day after deposit with a national overnight delivery service, or two days after deposit with the United States Postal Service, sent by registered or certified mail, return receipt requested, postage prepaid. Notice may also be provided by email provided that receipt of the email can be confirmed by the sender, with time of receipt being the time the email enters the recipient’s email application. In all cases, notice shall be sent to the addresses listed below or as updated by each party by written notice according to the requirements herein.

CITY:

Real Estate Manager
25 West Main Street
Auburn WA 98001
Jarndt@AuburnWA.gov

COUNTY:

King County Metro
Transportation Real Estate & Environmental
201 S. Jackson Street
Seattle, WA 98104
TransitProperty@kingcounty.gov

With a copy to:

Auburn City Attorney
25 West Main Street
Auburn, WA 98001

King County Prosecuting Attorney’s Office
516 Third Avenue, W400
Seattle, WA 98104
Attention: Ryan W. Ridings

9. GENERAL PROVISIONS

9.1 Acknowledgment of Other Enforcement Actions

County acknowledges that there may be liability for violations of codes that could result in additional fines and/or the possibility of incarceration in addition to the fees for maintenance should violations occur.

9.2 Covenant Running with Land

The Storm Drainage Easement is appurtenant to and for the benefit of the County Property and all other land, real property or property interests now owned or hereafter acquired by the County and that constitutes a portion of or is served by the Storm Drainage Easement or the County's public transportation and mass transit system as now configured or hereafter modified until such time as this Agreement is vacated or replaced by mutual agreement of the parties or their respective successors in interest. The parties desire that this Agreement be recorded to advise heirs, successors and assigns of both parties as to the existence of this Agreement.

9.3 Touch and Concern

The parties agree that the benefits of the covenants contained within this Agreement touch and concern County's property adjacent to the City Property in that they perpetuate the existing public transportation and mass transit regime on that adjacent property and ensure County's ability to continue to use its property for public transportation and mass transit purposes. The parties agree that the burdens of the restrictive covenants touch and concern City Property in that they limit the use to which the property may be put and the actions that may be performed on the property.

9.4 Force Majeure

Any delay in the performance of any obligation under this Agreement shall be excused, if and so long as the performance of the obligation is prevented, delayed or otherwise hindered by any act not within the control of a party such as fire, cyber/ransomware attack, earthquake, flood, explosion, pandemics, actions of the elements, war, riots, mob violence, strikes, lockouts, and orders of military authority, and the party claiming to excuse an obligation promptly notifies the other party, according to the notice provisions in section 8, of the existence and nature of the force majeure event and takes all reasonable action to mitigate the impact of the event on the party's performance.

9.5 Entire Agreement

This writing (including the Exhibits attached hereto) constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior agreement or understanding, whether written or oral. This Agreement may not be modified or amended except by a written agreement specifically referring to this Agreement and signed by all Parties hereto.

9.6 Waiver

No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any prior or subsequent breach or default.

9.7 Successors and Assigns; Legal Relations.

- 9.7.1 Grantee may assign its rights under this Agreement, in whole or in part, without approval or consent of Grantor. Grantor shall not convey or assign any right, title, interest, or license in the City Property except by instrument specifically referencing this Agreement by its title and recording number.
- 9.7.2 Nothing in this Agreement shall make, or be deemed to make, Grantor and Grantee a partner of one another. This Agreement shall not be construed as creating a partnership or joint venture. This Agreement shall create no right, privilege, duty, obligation, or cause of action in any person or entity not a party to it.
- 9.7.3 Nothing contained in this Agreement shall diminish or be construed to diminish the governmental or police powers of Grantor or Grantee.

9.8 Construction.

All of the recitals set forth above are incorporated into this Agreement as though fully set forth herein. The headings contained in this Agreement are for convenience of reference purposes only and shall not in any way affect the meaning or interpretation hereof, nor serve as evidence of the intention of the parties hereto. Whenever the context hereof shall so require the singular shall include the plural.

9.9 Severability.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

9.10 Governing Law; Venue for Litigation.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington, without reference to its choice of law rules or conflicts of law provisions. The Superior Court of King County, Washington, shall be the sole venue for any litigation between the Parties that arises under or relates to this Agreement.

9.11 Counterparts.

To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. All counterparts shall collectively constitute a single instrument.

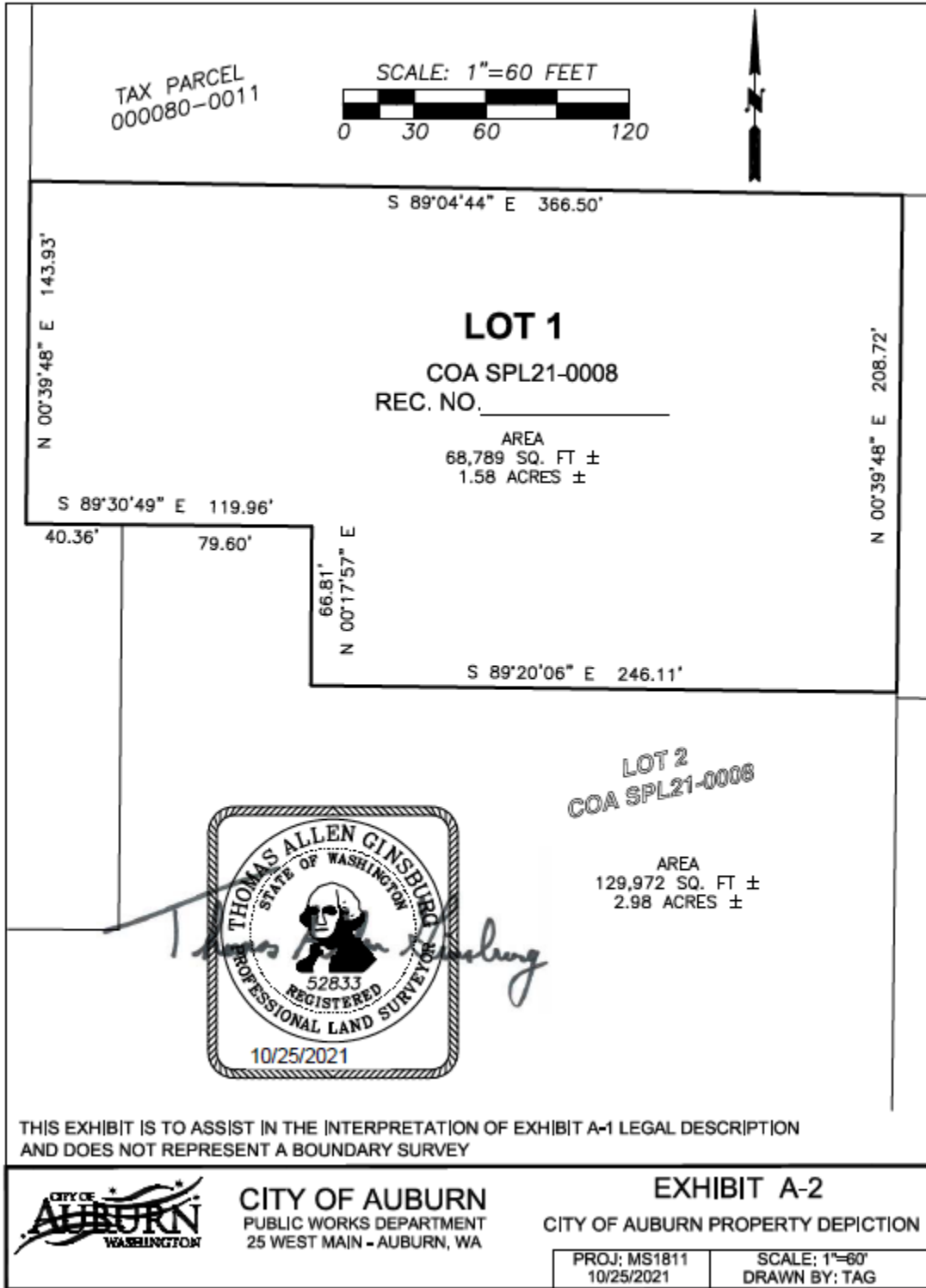
[no further text; signature pages follow]

Exhibit A-1
City of Auburn Property Legal Description

LOT 1, CITY OF AUBURN SHORT PLAT NO. SPL21-0008 RECORDED UNDER RECORDING NUMBER _____, RECORDS OF KING COUNTY, WASHINGTON, SITUATED IN A PORTION OF THE J. BRANNON DONATION LAND CLAIM NO. 38 IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN THE CITY OF AUBURN, KING COUNTY, WASHINGTON.



Exhibit A-2 City of Auburn Property Depiction



O:\SURVEY\PROJECTS\MS1811 AIRPORT RWY ENHANCEMENTS LAND ACQUISITION\4. DWG FILES\2. SHORT PLAT DWG

Exhibit A-3
King County Property Legal Description

LOT 2, CITY OF AUBURN SHORT PLAT NO. SPL21-0008 RECORDED UNDER RECORDING NUMBER _____, RECORDS OF KING COUNTY, WASHINGTON, SITUATED IN A PORTION OF THE J. BRANNON DONATION LAND CLAIM NO. 38 IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN THE CITY OF AUBURN, KING COUNTY, WASHINGTON.

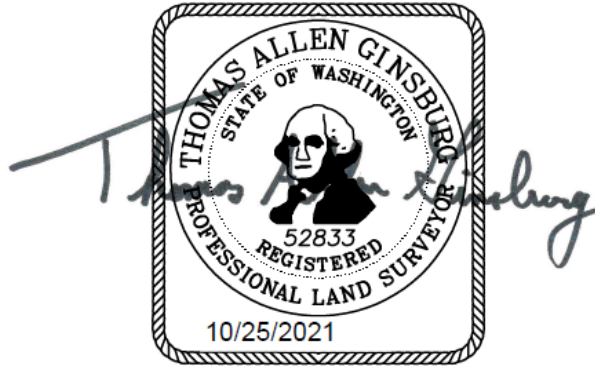
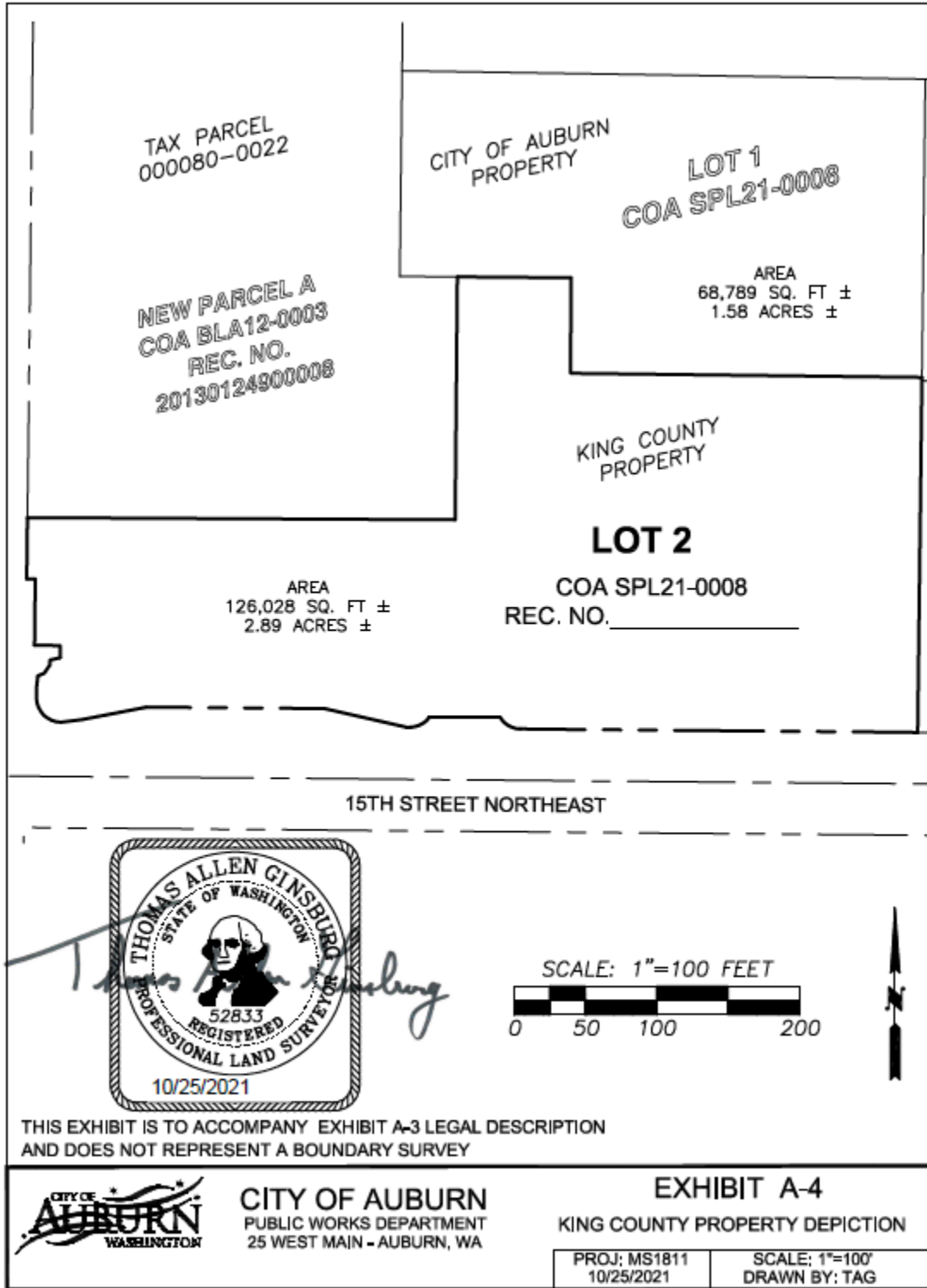
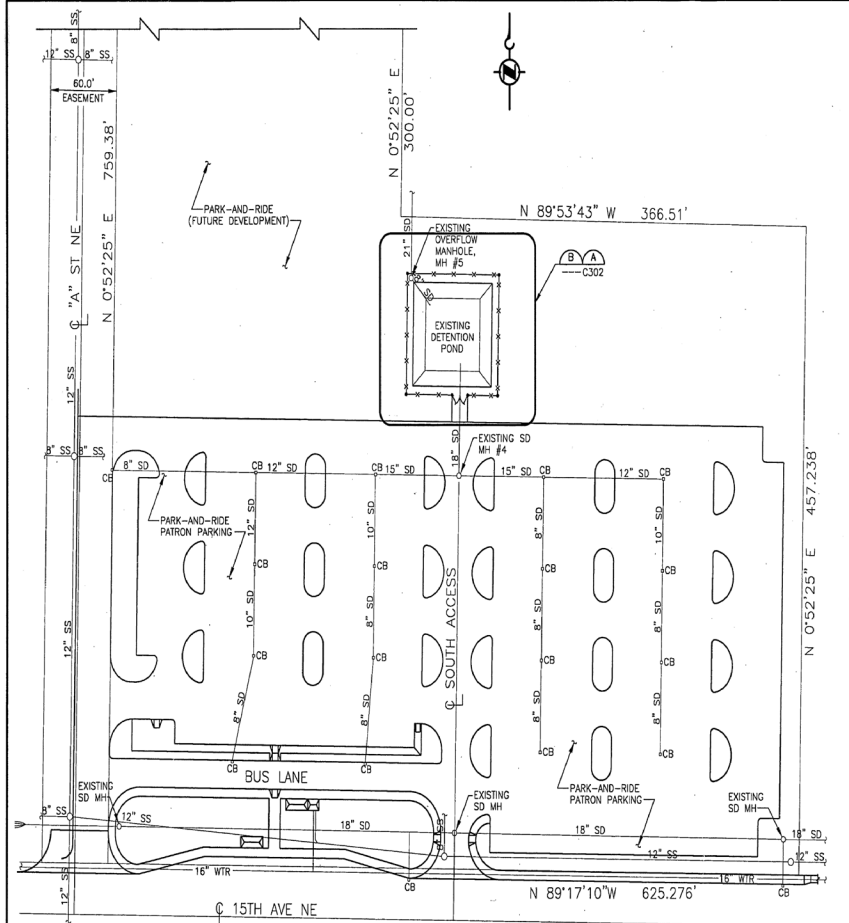


Exhibit A-4 Depiction of King County Property

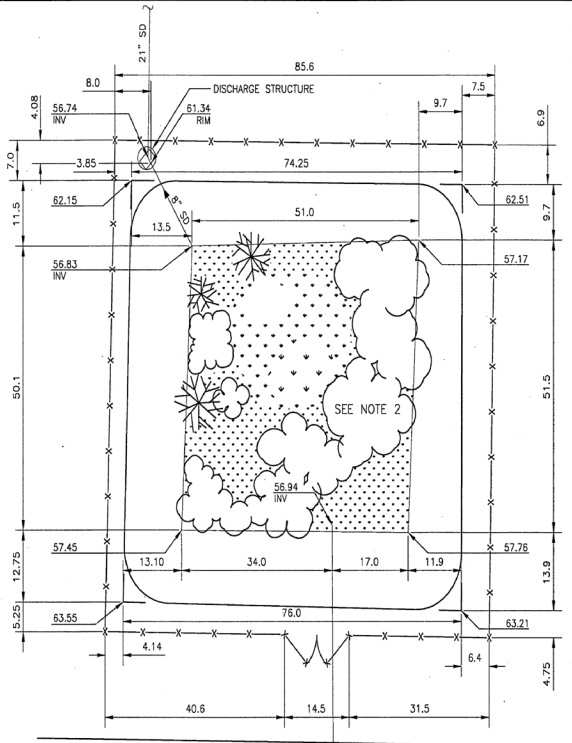


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Exhibit B County Stormwater Facilities



AUBURN PARK & RIDE
SITE PLAN
SCALE: 1"=40'



- NOTES:**
- CONTRACTOR TO VERIFY ELEVATIONS & REPORT TO THE ENGINEER ANY DISCREPANCIES PRIOR TO BEGINNING OF WORK.
 - CONTRACTOR SHALL CLEAR AND CRUB ALL VEGETATION AT THE BOTTOM OF THE POND. MOW VEGETATION ON SIDE SLOPES OF POND AND BANK WITHIN THE FENCED AREA TO 2' IN HEIGHT.

**SPOT ELEVATIONS
DETENTION POND**
PLAN
SCALE: 1"=10'

No.	REVISION	BY	APP'D	DATE

AUBURN PARK & RIDE
SITE PLAN
SCALE: 1"=40'

A

DESIGNED: FYC	CHECKED: FYC
DRAWN: BFB	SCALE: AS NOTED
RECOMMENDED: FYC	CONTRACT NO.:
APPROVED: JHW	C75134C

King County

DEPARTMENT OF TRANSPORTATION
KENT-DES MOINES, AUBURN & STAR LAKE
PARK-AND-RIDE DRAINAGE IMPROVEMENTS
AUBURN PARK & RIDE
SITE PLAN

DATE:	JULY 1997
FILE NO:	E80, E81, E82
DRAWING NO.:	C301
SHEET NO. OF:	7 OF 10

Exhibit C-1
Legal Description of the Stormwater Easement and Maintenance Agreement

A STORMWATER EASEMENT AND MAINTENANCE AGREEMENT OVER, UNDER AND ACROSS THAT PORTION OF LOT 1, CITY OF AUBURN SHORT PLAT NO. SPL21-0008 RECORDED UNDER RECORDING NUMBER _____, RECORDS OF KING COUNTY, WASHINGTON, SITUATED IN A PORTION OF THE J. BRANNON DONATION LAND CLAIM NO. 38 IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN THE CITY OF AUBURN, KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY NORTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE WEST LINE OF SAID LOT 1 SOUTH 00° 39' 48" WEST A DISTANCE OF 143.93 FEET;

THENCE ALONG THE SOUTH LINE OF SAID LOT 1 SOUTH 89° 30' 49" EAST A DISTANCE OF 90.25 FEET;

THENCE PARALLEL WITH SAID WEST LINE NORTH 00° 39' 48" EAST A DISTANCE OF 107.90 FEET;

THENCE NORTH 89° 30' 49" WEST A DISTANCE OF 70.25 FEET;

THENCE PARALLEL WITH SAID WEST LINE NORTH 00° 39' 48" EAST A DISTANCE OF 35.87 FEET TO THE NORTH LINE OF SAID LOT 1;

THENCE ALONG SAID NORTH LINE NORTH 89° 04' 44" WEST A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

THIS EASEMENT DESCRIPTION CONTAINS 10,457 SQUARE FEET, MORE OR LESS.

BASIS OF BEARINGS FOR THIS DESCRIPTION IS SOUTH 89° 30' 04" EAST, THE MONUMENTED CENTERLINE OF 15TH ST NE FROM A ST NE TO D ST NE, PER CITY OF AUBURN BOUNDARY LINE ADJUSTMENT NUMBER BLA12-0003 RECORDED UNDER RECORDING NUMBER 20130124900008, RECORDS OF KING COUNTY, WASHINGTON.

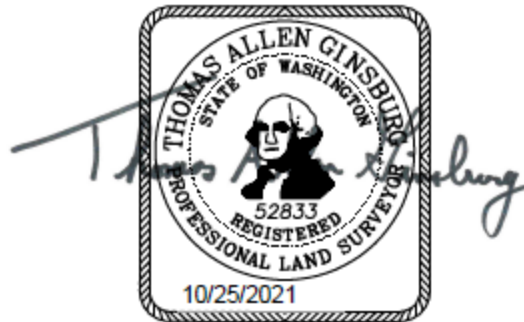
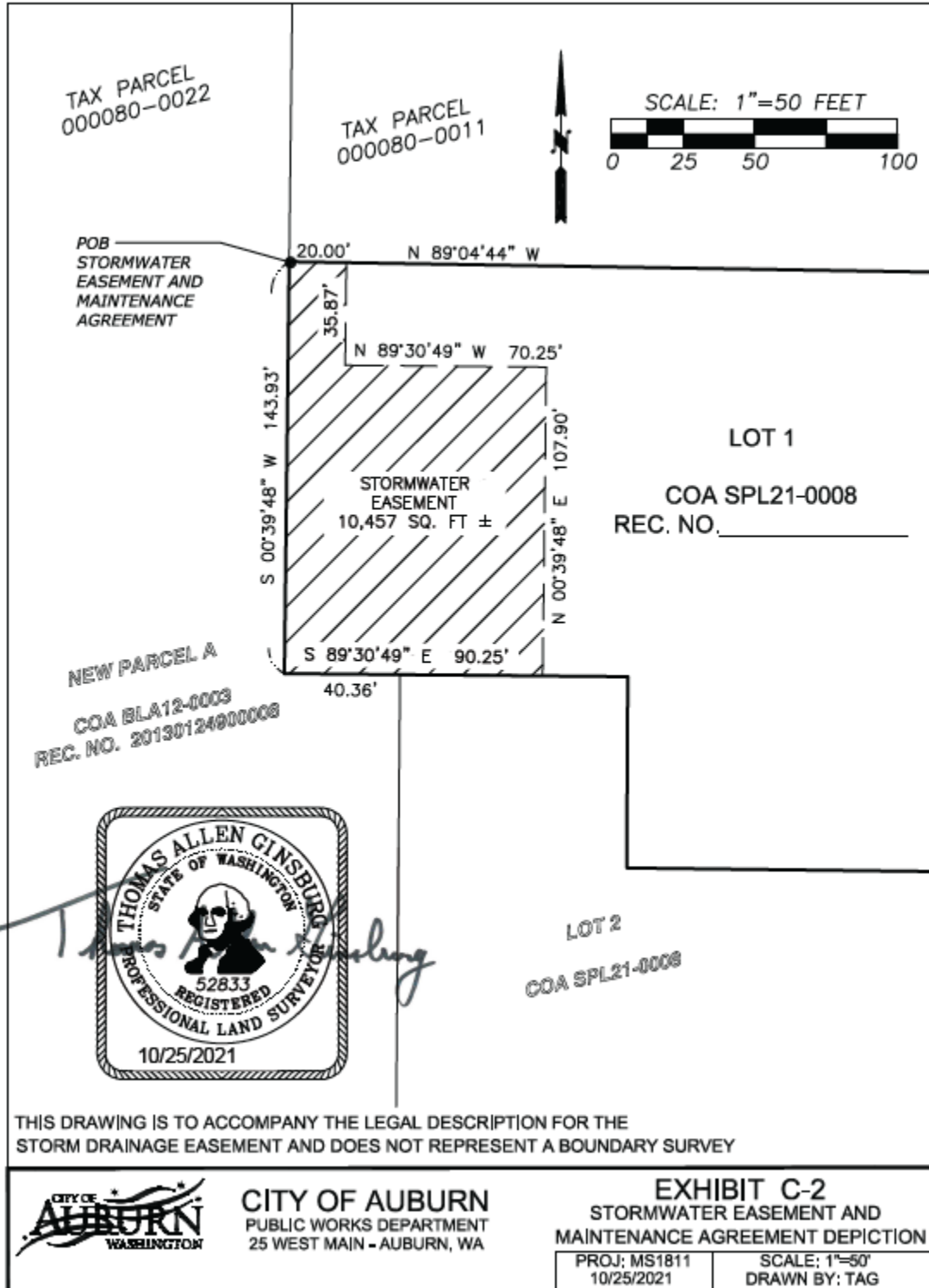


Exhibit C-2 Depiction of Stormwater Easement and Maintenance Agreement



O:\SURVEY\PROJECTS\MS1811 AIRPORT RWY ENHANCEMENTS LAND ACQUISITION\4. DWG FILES\2. SHORT PLAT DWG

Exhibit B-3
Temporary Utility Easement
(COVER SHEET)

**PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION**

25 West Main, Auburn, WA 98001-4998
253-931-3053 Fax

TEMPORARY UTILITY EASEMENT

Reference # (if applicable):	
Grantor:	CITY OF AUBURN a municipal corporation of the State of Washington
Grantee:	KING COUNTY a home rule charter county of the State of Washington
Legal Description/STR:	LOT 1, CITY OF AUBURN SHORT PLAT NO. SPL21-0008 UNDER KING COUNTY RECORDING NO. XXXX
Assessor's Tax Parcel ID#:	

The Grantor, the **CITY OF AUBURN, a municipal corporation of the State of Washington,** , hereby convey(s) and grant(s) unto the **KING COUNTY, a home rule charter county of the State of Washington,** its contractors, employees, agents, successors and assigns, (Grantee) the temporary right to enter upon that portion of Grantor’s property legally described in **Exhibit A** and depicted in **Exhibit B** (“Easement Area”), attached and made part by this reference, for the purpose(s) of accessing, inspecting, maintaining, and repairing lighting, irrigation, and storm drainage facilities (together or separately defined as “Work”). Grantor and Grantee are each generically referred to herein as a “Party” and collectively as the “Parties”.

The Grantor and the Grantee, by accepting and signing this document, mutually covenant and agree as follows:

- Grant of Rights.** Grantor grants to the Grantee the right to enter the above described property for the limited purpose of maintenance, inspection, and repair of the lighting, irrigation, and storm drainage facilities located on the property, which work shall be at Grantee’s sole expense. This grant of right includes Grantee’s authority to utilize any necessary equipment to perform such work. The Grantee shall, on completion of the work, remove all debris and restore the surface of the above described property to a condition equal to or better than that which existed before entering the property.
- Conditions.** Grantee’s right of access to enter the Easement Area is subject to the following conditions: Unless an emergency situation exists, which shall entitle Grantee to immediate entry upon the easement area to address such emergency situation, Grantee shall provide the Auburn Airport office with no less than 48 hours advanced notice of its entry. Notwithstanding this provision, Grantee shall make a good faith effort to provide Grantor with twenty-four (24) hours advance written notice of such emergency work. Notice can be given by contacting the Auburn Airport office either by phone or email. Along with proposed date of entry Grantee shall describe the purpose for entering upon the easement

area and the intended work. The notice and described work is so that the Airport office can take the necessary precautions for alerting aircraft coming in and out of the Airport.

Grantee covenants not to relocate any of the facilities or increase the height of any lights located on the Easement Area without Grantor's prior written approval, which approval may be withheld in Grantor's sole and absolute discretion. Grantee further covenants that so long as this Temporary Utility Easement is in effect, it will not relocate, alter, modify, or change in any manner the facilities located in the Easement Area to be in conflict with FAA safety requirements set forth in Avigation Easement recording numbers 6696709, including but not limited to vertical height restrictions, horizontal setbacks or clearance requirements, including, to the extent applicable, all recorded clear zone (avigation) easements.

Grantee shall have the right, but not the obligation or duty, to propose betterments or upgrades to the facilities in the Easement Area, and to construct and install such betterments or upgrades at its own expense; PROVIDED, that Grantee shall not undertake any such betterment or upgrade of any facility without first submitting Grantee's proposal to Grantor for review and approval, and Grantor shall not unreasonably withhold, condition, or delay its approval.

- 3. Expiration date.** The temporary easement rights granted herein shall commence on the execution date of this temporary utility easement and shall continue until the Grantor has both 1) fully removed impervious surfaces from the above described property and replaced with pervious surfaces; and 2) graded the above described property and modified the stormwater and surface water drainage system located on the property to allow stormwater on the property to infiltrate instead of being conveyed to the existing storm pond on the property.

Further, Grantee's rights and privileges pursuant to this agreement are subject to any Federal Aviation Administration ("FAA") order, directive, or demand requiring Grantor to change the existing lighting system located in the Easement Area. If the FAA makes such an order, directive, or demand, the Grantee's right to enter the Easement Area for the purpose of accessing, inspecting, maintaining, and repairing the lighting located on the Easement Area shall terminate.

- 4. Ownership of Easement Improvements.** The Parties agree that the facilities located in the Easement Area are owned by and belong to Grantor, including without limitation the lighting, irrigation, and drainage systems but Grantor is granting the rights herein for the benefit of Grantee's public transportation and mass transit facility known as the Auburn Park-and-Ride Lot.

The Parties agree that any and all upgrades, improvements, parts, or equipment installed, added to or attached to the facilities located in the Easement Area including but not limited to cabinets, pipes, conduits, bulbs, equipment, mechanical and electrical systems for the purposes of maintenance, inspection, and repair of the lighting, irrigation, and storm

drainage facilities or the purpose of facilitating public transportation or mass transit shall become, and shall thereafter at all times remain, the property of Grantor.

5. **Indemnification.** The Grantee shall defend, indemnify and hold the Grantor, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of this Agreement, arising out of Grantee's failure to provide inspection, maintenance, repair, in accordance with this agreement. or in connection with activities or operations performed by the Grantee, or on the Grantee's behalf, in the Easement Area, except for injuries and damages caused by the negligence of the Grantor

However, should a court of competent jurisdiction determine that RCW 4.24.115 applies, then each Party agrees to defend, indemnify and hold the other Party, together with its officers, officials, employees and volunteers harmless to the maximum extent permitted thereunder. It is further specifically and expressly understood that the indemnification provided herein constitutes each Party'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 Agreement.

Further Grantee shall specifically hold harmless, indemnify, and defend Grantor from any and all cost, liability, claims, judgments, administrative actions, litigation, or other obligations arising out of or relating to the discharge by Grantee or any party under the control of Grantee of pollutants or Hazardous Substances in the Easement Area.

As used herein, the term "Hazardous Substances" means any hazardous, toxic, chemical, or dangerous substance, pollutant, contaminant, waste or material, including petroleum, which is regulated under any federal, state, or local statute, ordinance, rule, regulation or common law relating to chemical management, environmental protection, contamination, or cleanup including, without limitation, the Comprehensive Environmental Response, Compensation, the Liability Act of 1980 and as later amended, and the Resource Conservation and Recovery Act as amended.

6. **Touch, Concern and Running With the Land.** The parties agree that the benefits of the covenants contained within this Agreement touch and concern Grantee's property adjacent to the Easement Area in that they perpetuate the existing public transportation and mass transit regime on that adjacent property and ensure Grantee's ability to continue to use its property for public transportation and mass transit purposes. The parties agree that the burdens of the restrictive covenants touch and concern Grantor's property in that they limit the use to which the Easement Area may be put and the actions that may be performed on the property.

This easements and its covenants shall be a covenant running with the land and shall inure to the benefit of the Grantee, its successors and assigns, and be binding in perpetuity on any recorded owner of the Easement Area until such time as this Agreement is terminated according to this agreement or replaced by mutual agreement of the parties or their

respective successors in interest. The parties desire that this Agreement be recorded to advise heirs, successors and assigns of both parties as to the existence of this easement and agreement.

- 7. **Notice.** Except for Grantee’s notice under Section 2, any notices required by this Agreement shall be in writing and shall be deemed to have been given and received on the date of service, or one day after deposit with a national overnight delivery service, or two days after deposit with the United States Postal Service, sent by registered or certified mail, return receipt requested, postage prepaid. Notice may also be provided by email provided that receipt of the email can be confirmed by the sender, with time of receipt being the time the email enters the recipient’s email application. In all cases, notice shall be sent to the addresses listed below or as updated by each party by written notice according to the requirements herein.

CITY:

COUNTY:

Real Estate Manager
25 West Main Street
Auburn WA 98001
Jarndt@AuburnWA.gov

King County Metro
Transportation Real Estate
201 S. Jackson Street
Seattle, WA 98104
TransitProperty@kingcounty.gov

With copies to:

Auburn City Attorney
25 West Main Street
Auburn, WA 98001

King County Prosecuting
Attorney’s Office
516 Third Avenue, W400
Seattle, WA 98104
rridings@kingcounty.gov

Airport Office
2143 E Street NE Ste 1
Auburn, WA, 98002
253.333.6821
Airport@Auburnwa.gov

8. General Provisions

- a. **Force Majeure** Any delay in the performance of any obligation under this Agreement shall be excused, if and so long as the performance of the obligation is prevented, delayed or otherwise hindered by any act not within the control of a party such as fire, cyber/ransomware attack, earthquake, flood, explosion, pandemics, actions of the elements, war, riots, mob violence, strikes, lockouts, and orders of military authority, and the party claiming to excuse an obligation promptly notifies the other party, according to the notice provisions in section 8, of the existence and nature of the force majeure event and takes all reasonable action to mitigate the impact of the event on the party’s performance.

- b. **Entire Agreement.** This writing (including the Exhibits attached hereto) constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior agreement or understanding, whether written or oral. This Agreement may not be modified or amended except by a written agreement specifically referring to this Agreement and signed by all Parties hereto.
- c. **Waiver.** No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any prior or subsequent breach or default.
- d. **Counterparts** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.
- e. **Governing Law; Venue for Litigation.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington, without reference to its choice of law rules or conflicts of law provisions. The Superior Court of King County, Washington, shall be the sole venue for any litigation between the Parties that arises under or relates to this Agreement.
- f. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- g. **Construction.** All of the recitals set forth above are incorporated into this Agreement as though fully set forth herein. The headings contained in this Agreement are for convenience of reference purposes only and shall not in any way affect the meaning or interpretation hereof, nor serve as evidence of the intention of the parties hereto. Whenever the context hereof shall so require the singular shall include the plural.

EXHIBIT A
TEMPORARY UTILITY EASEMENT
LEGAL DESCRIPTION

THAT PORTION OF LOT 1, CITY OF AUBURN SHORT PLAT NO. SPL21-0008 RECORDED UNDER KING COUNTY RECORDING NUMBER _____, LOCATED IN A PORTION OF THE J. BRANNON DONATION LAND CLAIM NO. 38 IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN, CITY OF AUBURN, KING COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1, THENCE ALONG THE SOUTH LINE OF SAID LOT 1, NORTH 89°20'06" WEST A DISTANCE OF 246.11 FEET TO AN ANGLE POINT OF SAID SOUTH LINE;

THENCE CONTINUING ALONG SAID SOUTH LINE, NORTH 00°17'57" EAST A DISTANCE OF 66.81 FEET TO AN ANGLE POINT OF SAID SOUTH LINE;

THENCE LEAVING SAID SOUTH LINE SOUTH 89°30'49" EAST A DISTANCE OF 246.54 FEET TO THE EAST LINE OF SAID LOT 1;

THENCE ALONG SAID EAST LINE SOUTH 00°39'48" WEST A DISTANCE OF 67.58 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1 AND THE POINT OF BEGINNING.

CONTAINING AN AREA OF 16,551 SQUARE FEET, MORE OR LESS.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE CALCULATED BEARING SOUTH 89°30'04" EAST OF THE MONUMENTED CENTERLINE OF 15TH STREET NORTHEAST AS DETERMINED FROM A ST NE (COA MON 608-006) TO D ST NE (COA MON 609-012).

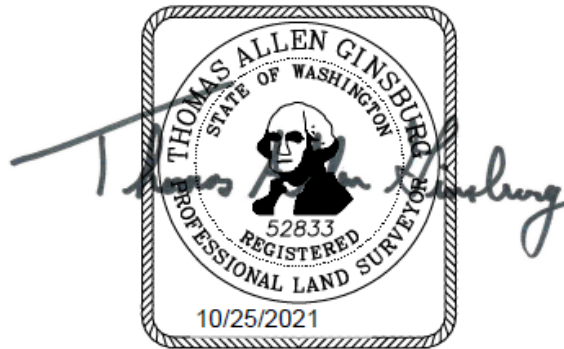


Exhibit B Depiction of Temporary Utility Easement

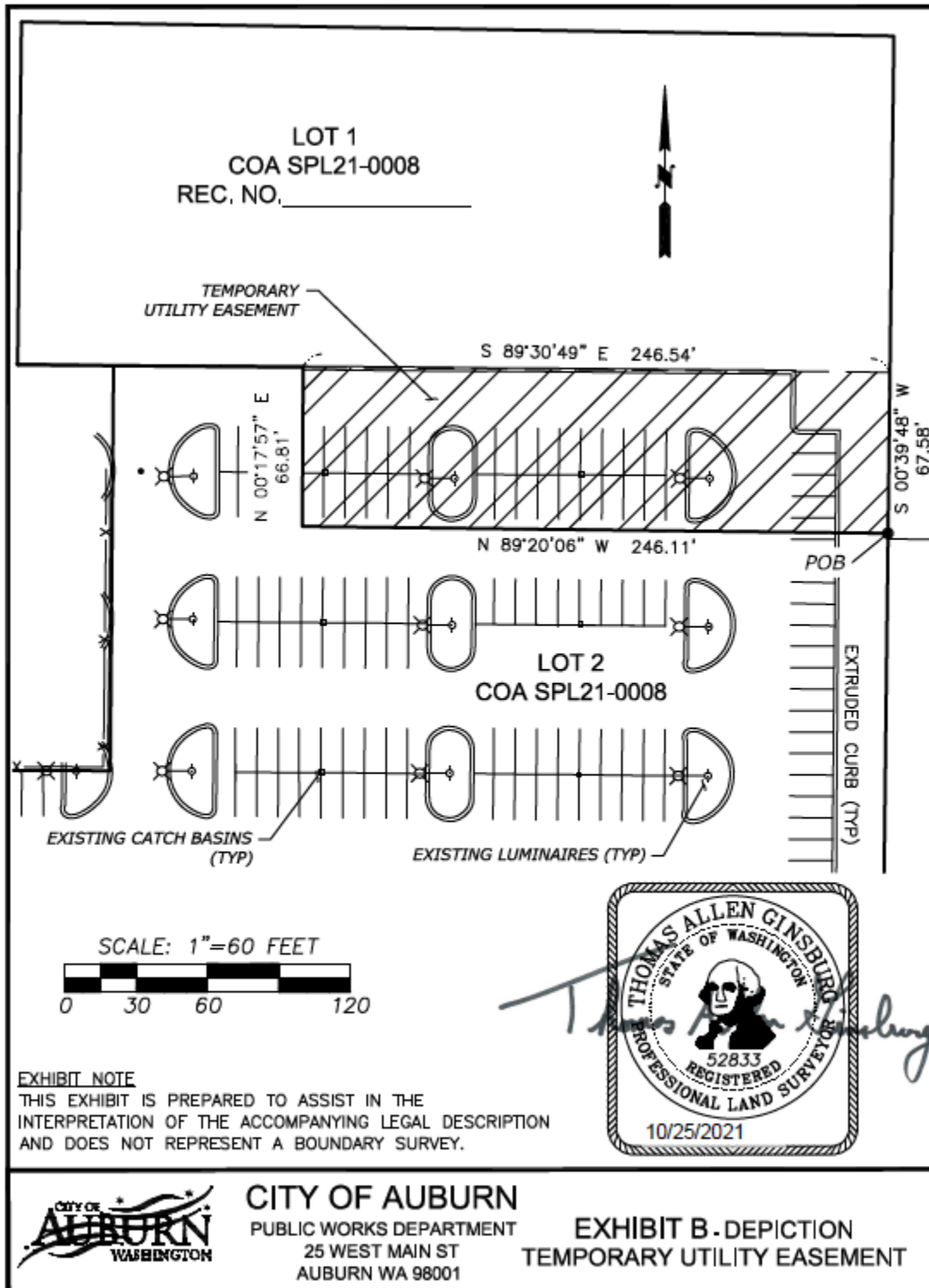


EXHIBIT NOTE
THIS EXHIBIT IS PREPARED TO ASSIST IN THE INTERPRETATION OF THE ACCOMPANYING LEGAL DESCRIPTION AND DOES NOT REPRESENT A BOUNDARY SURVEY.



CITY OF AUBURN
PUBLIC WORKS DEPARTMENT
25 WEST MAIN ST
AUBURN WA 98001

**EXHIBIT B - DEPICTION
TEMPORARY UTILITY EASEMENT**

Exhibit C
Bill of Sale
(COVER SHEET)

BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE is made as of this _____ day of _____, 2022, by KING COUNTY (“**Seller**”), in favor of CITY OF AUBURN, a municipal corporation of the State of Washington (“**Buyer**”), with reference to the following facts.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver to Buyer all of Seller’s right, title and interest in and to any and all equipment, furniture, furnishings, fixtures and other tangible personal property owned by Seller that is attached, appurtenant to or used in connection with the real property conveyed to the City of Auburn, hereby legally described in **Exhibit C-1** and depicted in **Exhibit C-2**, except for those storm drainage facilities located within the real property described in **Exhibit C-3** and depicted in **Exhibit C-4**, all together attached.

Seller represents and warrants that it is the sole owner of, and has good title to, such personal property, and has full right and authority to transfer and deliver the same, and will defend the sale hereby against each and every person claiming otherwise.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the date first above written.

SELLER:

By: _____

Its: _____

Exhibit C-1
Legal Description of the Real Property Conveyed to City of Auburn

LOT 1, CITY OF AUBURN SHORT PLAT NO. SPL21-0008 RECORDED UNDER RECORDING NUMBER _____, RECORDS OF KING COUNTY, WASHINGTON, SITUATED IN A PORTION OF THE J. BRANNON DONATION LAND CLAIM NO. 38 IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN THE CITY OF AUBURN, KING COUNTY, WASHINGTON.

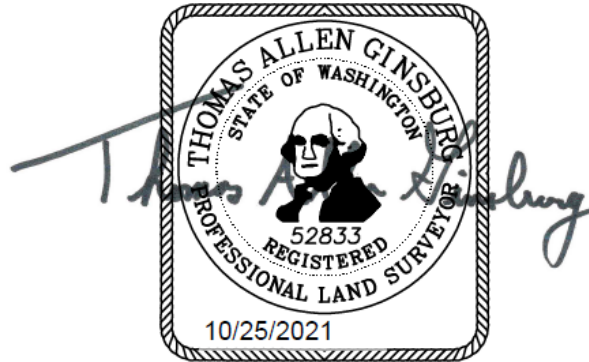
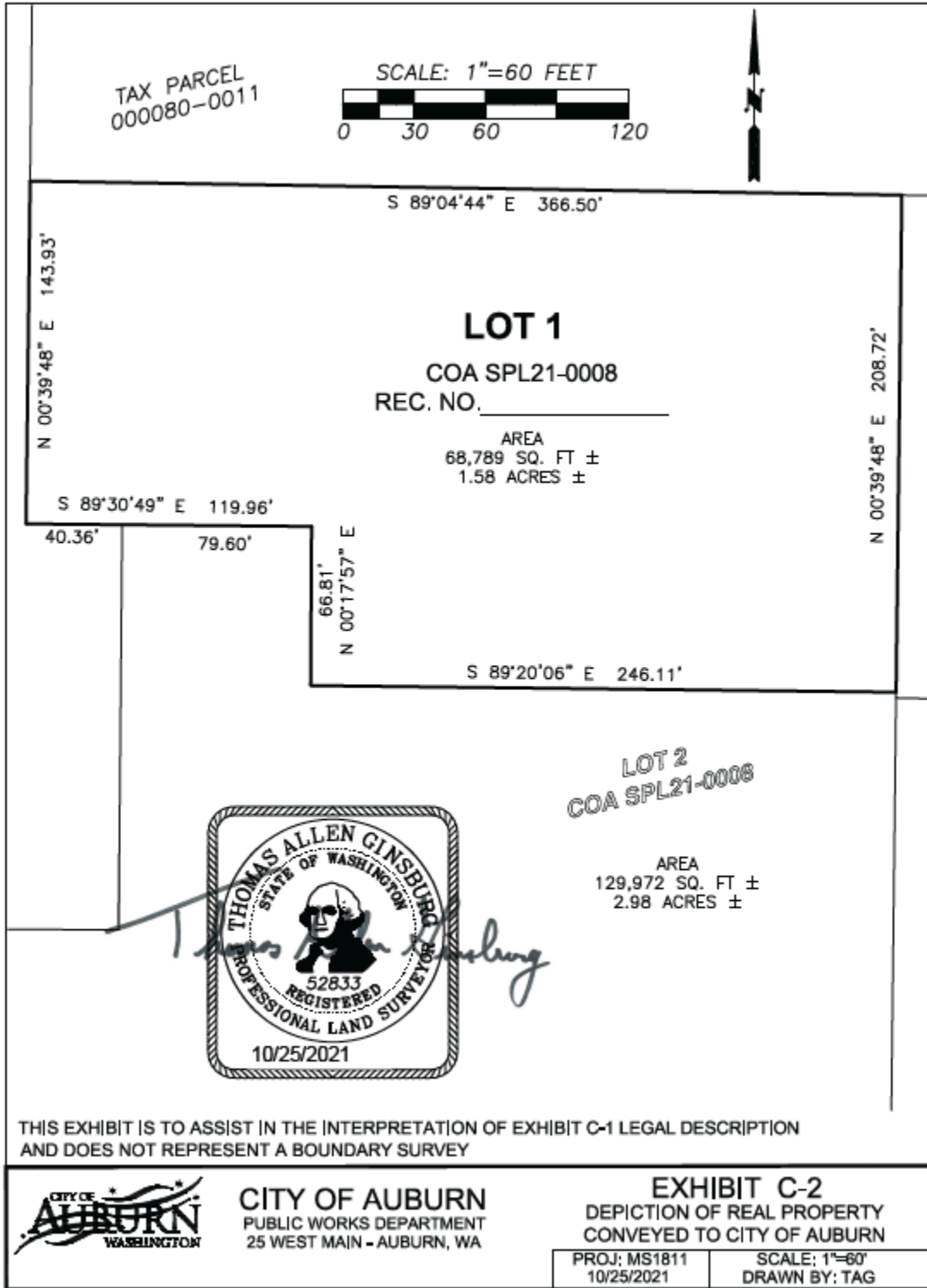


Exhibit C-2 Depiction of Real Property Conveyed to the City of Auburn



O:\SURVEY\PROJECTS\MS1811 AIRPORT RWY ENHANCEMENTS LAND ACQUISITION\4. DWG FILES\2. SHORT PLAT DWG

Exhibit C-3
Facilities located within the following described real property
do not transfer with the property

A STORMWATER EASEMENT AND MAINTENANCE AGREEMENT OVER, UNDER AND ACROSS THAT PORTION OF LOT 1, CITY OF AUBURN SHORT PLAT NO. SPL21-0008 RECORDED UNDER RECORDING NUMBER _____, RECORDS OF KING COUNTY, WASHINGTON, SITUATED IN A PORTION OF THE J. BRANNON DONATION LAND CLAIM NO. 38 IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN THE CITY OF AUBURN, KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY NORTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE WEST LINE OF SAID LOT 1 SOUTH 00° 39' 48" WEST A DISTANCE OF 143.93 FEET;

THENCE ALONG THE SOUTH LINE OF SAID LOT 1 SOUTH 89° 30' 49" EAST A DISTANCE OF 90.25 FEET;

THENCE PARALLEL WITH SAID WEST LINE NORTH 00° 39' 48" EAST A DISTANCE OF 107.90 FEET;

THENCE NORTH 89° 30' 49" WEST A DISTANCE OF 70.25 FEET;

THENCE PARALLEL WITH SAID WEST LINE NORTH 00° 39' 48" EAST A DISTANCE OF 35.87 FEET TO THE NORTH LINE OF SAID LOT 1;

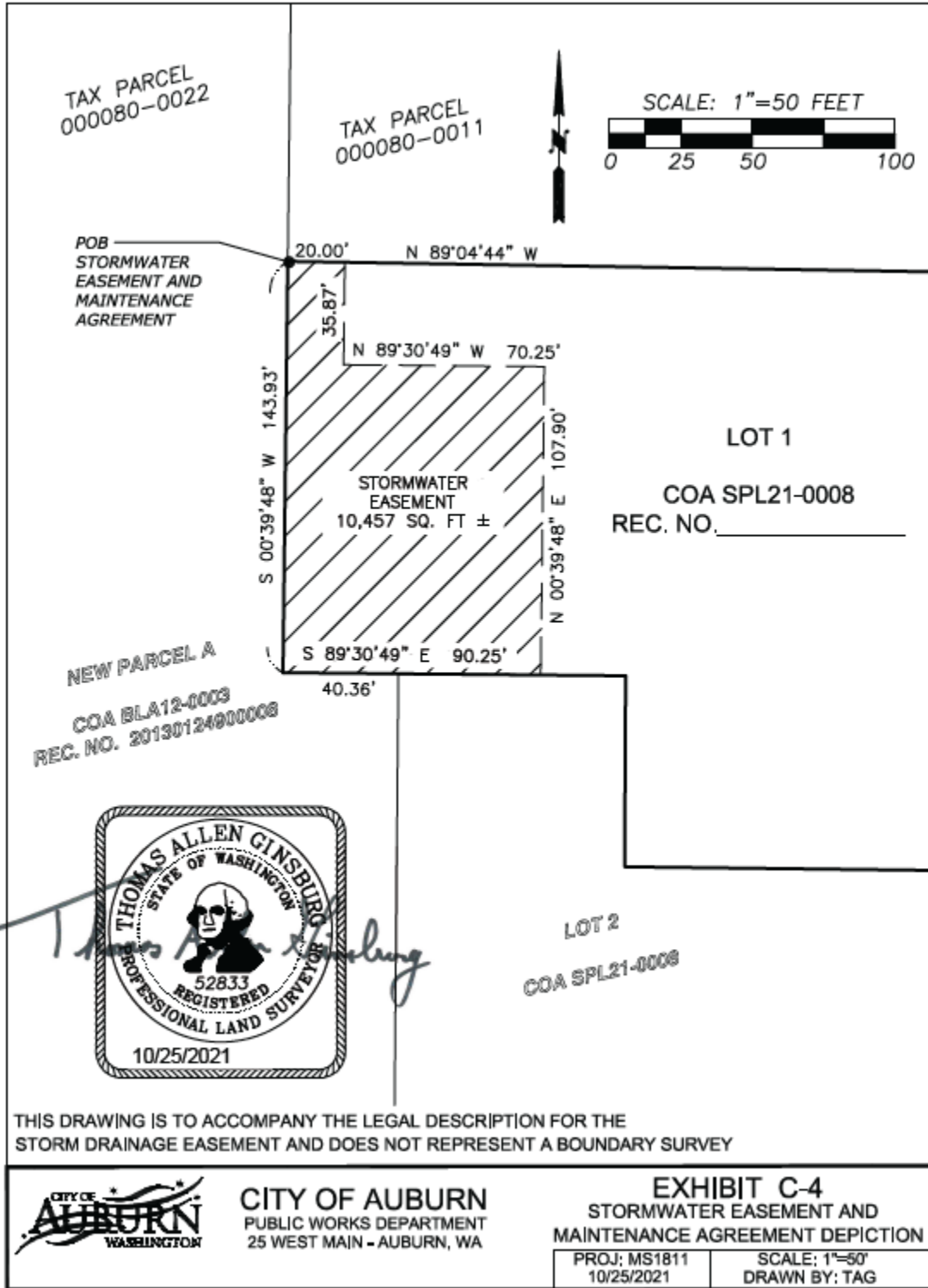
THENCE ALONG SAID NORTH LINE NORTH 89° 04' 44" WEST A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

THIS EASEMENT DESCRIPTION CONTAINS 10,457 SQUARE FEET, MORE OR LESS.

BASIS OF BEARINGS FOR THIS DESCRIPTION IS SOUTH 89° 30' 04" EAST, THE MONUMENTED CENTERLINE OF 15TH ST NE FROM A ST NE TO D ST NE, PER CITY OF AUBURN BOUNDARY LINE ADJUSTMENT NUMBER BLA12-0003 RECORDED UNDER RECORDING NUMBER 20130124900008, RECORDS OF KING COUNTY, WASHINGTON.



Exhibit C-4
Depiction of the Real Property described in Exhibit C-3 above



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Exhibit D
Non Foreign Status
(COVER SHEET)

**Exhibit D
Certificate of Non-Foreign Status.**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a United States real property interest by **KING COUNTY** (“Transferor”), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations); and

Transferor’s United States employer identification number is 91-6001327; and

2. Transferor’s office address is King County Facilities Management Division, Real Estate Services Section, Room 800, King County Administration Building, 500 Fourth Avenue, Seattle, WA 98104

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

DATED this _____ day of _____, 20__.

TRANSFEROR:

KING COUNTY

By _____

Title _____

Print Name: _____

Exhibit E
Seller Disclosure Statement - Environmental
(COVER SHEET)

ENVIRONMENTAL DISCLOSURE		Yes	No	Don't Know	N/A
A	Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?				
B	Does any part of the property contain fill dirt, waste, or other fill materials?				
C	Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?				
D	Are there any shorelines, wetlands, floodplains, or critical areas on the property?				
E	Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?				
F	Has the property been used for commercial or industrial purposes?				
G	Is there any soil or groundwater contamination?				
H	Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?				
I	Has the property been used as a legal or illegal dumping site?				
J	Has the property been used as an illegal drug manufacturing site?				
K	Are there any radio towers in the area that cause interference with cellular telephone reception?				
If you answered yes to any of the following please give further details here.					