

AGREEMENT BETWEEN THE MUCKLESHOOT INDIAN TRIBE AND THE
CITY OF AUBURN FOR DESIGN AND CONSTRUCTION OF PROJECT
NO. CP1119, AUBURN WAY SOUTH CORRIDOR IMPROVEMENTS,
FIR STREET SE TO HEMLOCK STREET SE

This Agreement is made and entered into in King County, Washington, between the City of Auburn, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City", and the Muckleshoot Indian Tribe, a federally recognized Indian Tribe located on the Muckleshoot Indian Reservation, hereinafter referred to as the "MIT".

WITNESSETH:

WHEREAS, the need for corridor improvements on Auburn Way South is recognized in the City's adopted Transportation Improvement Program; and,

WHEREAS, the Muckleshoot Tribe owns property located along Auburn Way South; and,

WHEREAS, both the City and the MIT share a common community interest in providing new corridor improvements on Auburn Way South between Fir Street SE and Hemlock Street SE; and,

WHEREAS, the Washington State Transportation Improvement Board (TIB) is interested in working with the communities of Auburn and the MIT to help provide corridor improvements; and,

WHEREAS, on September 10, 2010, the MIT approved Resolution No. 10-233, authorizing the MIT to sign a joint grant application with the City and to agree to participate by providing 20 percent matching funds equal to Six Hundred and Six Thousand and Six Hundred Dollars (\$606,600); and,

WHEREAS, on August 31, 2010, the City and the MIT submitted a joint grant application to the TIB for the design and construction of corridor improvements along Auburn Way South between Fir Street SE and Hemlock Street SE, including a five lane section of roadway with sidewalks, lighting, transit and storm improvements and a new traffic signal at Hemlock St SE; and,

WHEREAS, on November 19, 2010, the City was notified of award of a grant by the Washington State Transportation Improvement Board (TIB) in the amount of Two Million, Four Hundred and Twenty Six Thousand and Four Hundred Dollars (\$2,426,400) for the TIB contribution to the Auburn Way South Corridor Improvements, Fir Street SE to Hemlock Street SE Project; and,

WHEREAS, the MIT agreed to contribute Six Hundred and Six Thousand Six Hundred Dollars (\$606,600) towards the construction of the Project; and,

WHEREAS, the MIT agreed to provide at no cost public transportation, public utilities and private utilities easements (hereinafter referred to as easements) across MIT owned properties as identified in Exhibit C; and,

WHEREAS, the MIT agreed to execute, at no cost, right-of-entry and construction agreements from MIT owned properties as identified in Exhibit C; and,

WHEREAS, the City and the MIT are entering into this Agreement, on a government to government basis, with the intention of cooperatively and equitably designing and constructing the Project; and,

WHEREAS, should the Bureau of Indian Affairs make a determination that 25 USC 81 applies to this Agreement, MIT will work with the City and the Bureau of Indian Affairs to obtain any necessary approvals.

WHEREAS, the City shall secure such additional funds in excess of the TIB grant and MIT contribution to assure completion of the Project.

NOW THEREFORE in consideration of their mutual covenants, conditions and promises, **THE PARTIES HERETO DO HEREBY AGREE** as follows:

1. SCOPE OF WORK

1.1. Project Title: Auburn Way South Corridor Improvements, Fir Street SE to Hemlock Street SE

1.2. Description: The Project includes design and construction of corridor improvements on Auburn Way South, between Fir Street SE and Hemlock Street SE. The Project includes a five lane section of roadway with sidewalks, lighting, transit and storm improvements and a new traffic signal at Hemlock Street SE. The schematic five lane roadway cross section is illustrated in Exhibit B. The design and location of the sidewalk may vary from what is illustrated in Exhibit B, although the sidewalk width will remain a minimum of 10 feet wide. Easements necessary for the project to be provided by the MIT are identified in Exhibit C. MIT may propose alternative designs for sidewalks along its property within the Project area and those alternative designs shall be incorporated into the Project unless they affect roadway or sidewalk width. Should implementation of MIT's proposals add to the Project costs the MIT shall cover those additional costs.

1.3. Schedule: The preliminary Project schedule has design work occurring in 2011 and 2012, right of way and easement acquisition in 2012, advertisement in early

2013, with construction starting in the Spring of 2013. Construction completion is anticipated to be complete in the 4th Quarter of 2013.

2. TERMS AND CONDITIONS

2.1. Lead Agency: The City shall be the lead agency and shall be responsible for obtaining all necessary permits and/or agreements and for accomplishing all aspects of the Scope of Work set out in paragraph 1 above. The City shall be the contracting agent responsible for managing contracts with design and construction professionals.

2.2. Design: The City shall remain responsible for the proper design of the Project. MIT shall have the opportunity, but not the duty, to review contract plans and special provisions prior to the time that such documents are considered final by the City and prior to the time that such documents are signed by the City. The MIT shall provide its comments, within fifteen (15) calendar days of the date that the documents are submitted for MIT review.

MIT shall convey the easements identified in Exhibit C and now owned by the MIT to the City no later than the date of approval of contract plans and special provisions.

MIT shall execute rights-of-entry and construction agreements for properties identified in Exhibit C and now owned by the MIT to the City prior to or at final plan approval by the City.

The MIT agrees to meet with the Federal Aviation Administration (FAA) as required during design regarding the FAA dedicating right of way or easements needed for the Project.

2.3. Construction: The City shall be responsible for the actual construction of the Project, and assuring that construction of the Project is completed pursuant to the contract terms and consistent with the terms of this Agreement. The City may, without MIT prior concurrence, approve construction contracts and changes thereof.

3. COST REIMBURSEMENT AND FUNDING

3.1. Project Costs and Responsibilities: The responsibility for paying all costs associated with the Project shall be with the City. The MIT agrees to contribute Six Hundred and Six Thousand and Six Hundred Dollars (\$606,600) toward the design, right-of-way and easement acquisition (excluding MIT properties), and construction of the Project.

For purposes of this Agreement, the MIT and City have agreed upon a plan for the corridor improvements to Auburn Way South between Fir Street SE and Hemlock Street SE, to meet the needs of both the City and MIT. Only costs directly attributable to the Auburn Way South Corridor Improvements, Fir Street SE to Hemlock Street SE Project shall be considered as Project Costs. Project Costs include, but are not limited to, the following: design engineering, right-of-way acquisition, easement acquisition, construction, permitting, inspection, contract administration services, and other cost items agreed to by the parties. Project Costs shall include costs incurred by the City prior to execution of this Agreement, but after execution of the TIB Fuel Tax Grant Distribution Agreement.

The MIT shall not be liable for any Project Costs in excess of the agreed upon MIT contribution of Six Hundred and Six Thousand and Six Hundred Dollars (\$606,600).

- 3.2. Invoicing and Fund Distribution: Upon notification by the City that the City has committed funds to meet its payment obligations under this Agreement, the MIT shall deposit its share of the project costs (\$606,600) into a bank account that Auburn can draw from to pay for work related to the project. The parties agree that costs incurred for the project will be paid proportionally by MIT and City as the costs are incurred, except as otherwise set out in this Agreement. Once funds are deposited into this account they will be unavailable for MIT until project completion or if the project is terminated early, upon termination. The account will earn interest for the MIT.

To the extent that the MIT has provided construction funds that remain unexpended when the project is completed or upon termination if terminated early with funds remaining in the MIT's account, those funds, with accrued interest, shall be refunded to the MIT. At the completion of the project or termination of this Agreement the City will provide a final accounting of the funds expended.

4. INDEMNIFICATION

The City shall indemnify and hold the MIT and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the MIT arising out of, in connection with, or incident to the execution of this Agreement and/or the City's performance or failure to perform any aspect of this Agreement or the construction of the Project; provided, however, that if such claims are caused by or result from the concurrent negligence of the MIT, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the City; and provided further, that nothing herein shall require the City to hold harmless or defend the MIT, its agents, employees and/or officers from any claims arising from the sole negligence of the MIT,

its agents, employees, and/or officers. No liability shall attach to the MIT by reason of entering into this Agreement except as expressly provided herein.

5. COMPLIANCE WITH REGULATIONS AND LAWS

The parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.

6. ASSIGNMENT

The parties shall not assign this Agreement or any interest, obligation or duty therein without the express written consent of the other party.

7. WAIVER OF SOVEREIGN IMMUNITY

MIT agrees to a limited waiver of sovereign immunity. The waiver is limited: (1) to actions brought by the Parties to this Agreement (City and MIT); (2) for breach, termination, enforcement of contract provisions, interpretation, validity thereof, including the determination of the scope or applicability of this Agreement; (3) to the extent allowed by law, for actual damages, that is, each Party waives the right to consequential or punitive damages; (4) to determine applicable laws; and, (5) to all actions necessary to enforce judgments entered with respect to the enforcement of this Agreement if not otherwise prohibited by law. This limited waiver is available solely to claims by City and not by any other entity, entities, or any individual or third party, not a Party to this Agreement. The Tribe agrees not to invoke sovereign immunity as a defense up to the limits of the MIT's contributions under this Agreement.

MIT consents to the jurisdiction of the Washington State Superior Court in the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement; the Parties further agree that any such action or proceedings shall be brought in the superior court situated in King County, Washington.

8. ATTORNEY'S FEES

If either party shall be required to bring any action to enforce any provision of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and in the further event that one party shall substantially prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in trial court and in appellate courts.

9. NOTICES

All notices and payments hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

To the CITY: City of Auburn
Public Works Director
25 West Main Street
Auburn, WA 98001
253-931-3010

To the MIT: Muckleshoot Indian Tribe
Assistant Tribal Operations Manager
Community Development
39015 172nd Ave. S.E.
Auburn, WA 98092
253-876-3104

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

10. NONDISCRIMINATION

The City for itself, its heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sexual orientation, sex, age, or the presence of any sensory, mental or physical handicap be discriminated against or receive discriminatory treatment by reason thereof.

11. MISCELLANEOUS

11.1. All of the covenants, conditions and agreements in this Agreement shall extend to and bind the legal successors and assigns of the parties hereto.

11.2. This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington. Jurisdiction and venue for any action arising out of this Agreement shall be in the county of Washington State in which the property or project is located, and if not site specific, then in King County, Washington.

- 11.3. The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
- 11.4. The duration of this Agreement shall be for the period of time it reasonably takes for the performances by the parties as contemplated herein.
- 11.5. No separate legal entity is created hereby. The identity of the parties hereto is as set forth hereinabove.
- 11.6. The performances of the duties of the parties provided hereby shall be done in accordance with standard operating procedures and customary practices of the parties.
- 11.7. Unless a joint oversight and administration board is created as provided herein, the oversight and administration of the Agreement shall be by the respective named representatives identified in Paragraph 9 hereof, or their designees.
- 11.8. No provision of this Agreement shall relieve either party of its obligations and or responsibilities imposed by law.
- 11.9. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a final decision of any court having jurisdiction on the matter, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect, unless such court determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time the City shall have the right to terminate the Agreement.
- 11.10. This Agreement constitutes the entire agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.
- 11.11. Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.
- 11.12. Copies of this Agreement shall be filed with the King County Auditor's Office; Provided that as an alternative, the Agreement may be listed by subject on the City's web site or other electronically retrievable public source.

IN WITNESS TO THE TERMS OF THIS AGREEMENT, the parties hereto have executed this Agreement:

MUCKLESHOOT INDIAN TRIBE

CITY OF AUBURN



Chairperson
Muckleshoot Tribal Council

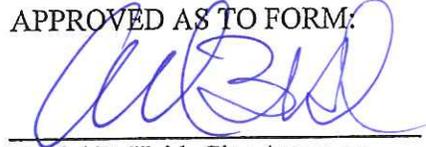


Peter B. Lewis, Mayor

Date: 9/23/11

Date: OCT 20 2011

APPROVED AS TO FORM:

APPROVED AS TO FORM:


Daniel B. Heid, City Attorney

MIT Attorney

Date: _____

Date: 10/20/11

ATTEST:

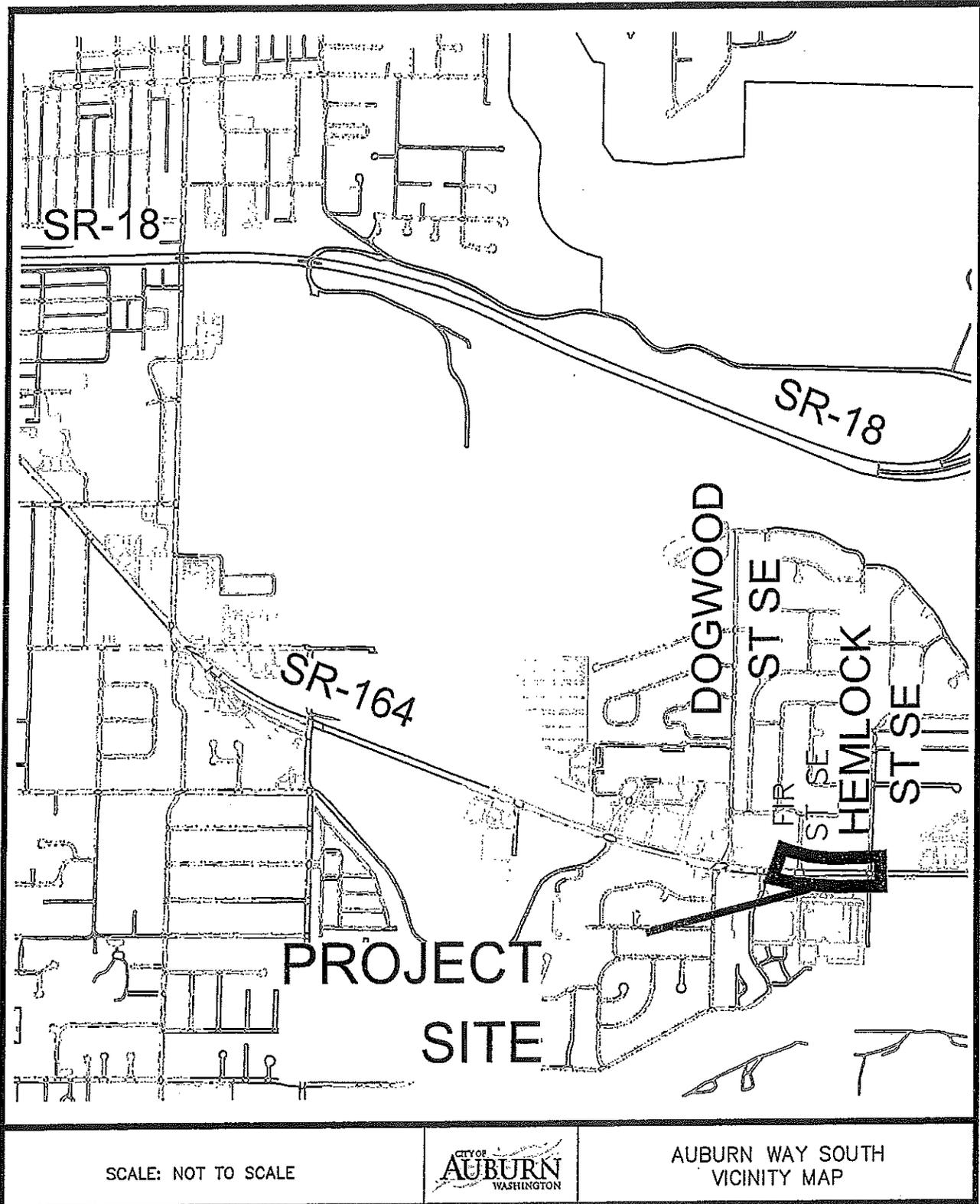
ATTEST:



Danielle Daskam, City Clerk

Date: 10/20/11

Exhibit A - Vicinity Map

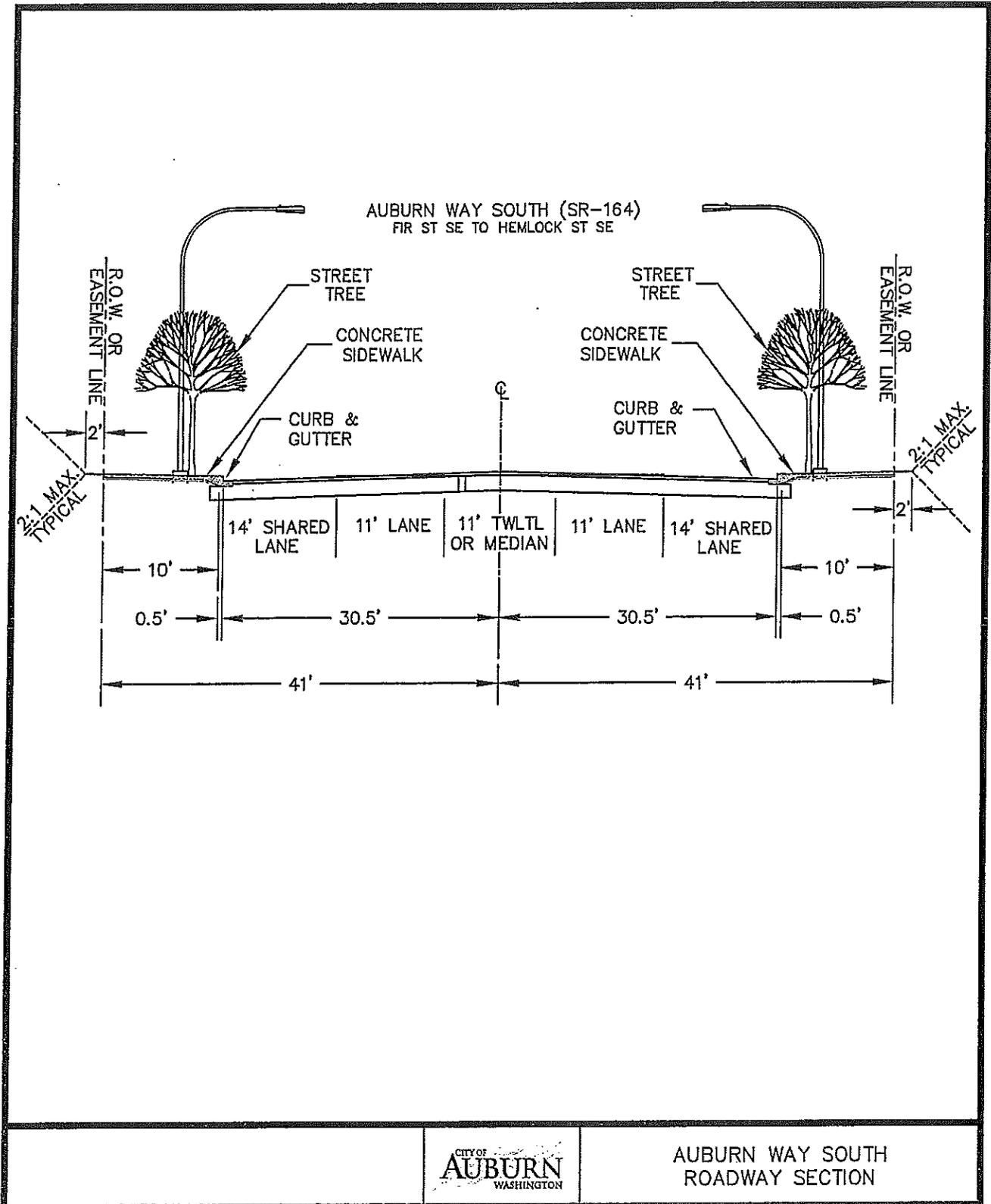


SCALE: NOT TO SCALE



AUBURN WAY SOUTH
VICINITY MAP

Exhibit B - Schematic Road Section



AUBURN WAY SOUTH
ROADWAY SECTION

