

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF KIRKLAND AND
KING COUNTY RELATING TO THE ANNEXATION OF THE JUANITA-FINN
HILL-KINGSGATE ANNEXATION AREA**

THIS AGREEMENT ("Agreement") is made and entered by and between the City of Kirkland a State of Washington municipal corporation ("City"), and King County, a political subdivision of the State of Washington ("County"). Together, the City and the County are referred to herein as "the Parties."

WHEREAS, the City identified the Juanita-Finn Hill-Kingsgate Potential Annexation Area ("PAA") in its comprehensive plan consistent with the requirements of the state Growth Management Act ("GMA") and the Countywide Planning Policies adopted consistent with GMA, which PAA is generally known as the "Juanita-Finn Hill-Kingsgate" which is further described in Exhibit A, (hereinafter collectively referred to as the "Annexation Area"); and

WHEREAS, on an election date in November, 2009 the citizens of the Annexation Area had an opportunity to vote on whether to annex to the City, and the voters approved annexation of the Annexation Area; and

WHEREAS, annexation of the Annexation Area to the City will become effective on June 1, 2011 ("Effective Date"); and

WHEREAS, the City and the County desire to facilitate an orderly transition of services associated with the Annexation Area; and

WHEREAS, the City and the County desire to mutually determine the appropriate timing for the transfer of public records; and

WHEREAS, all local governmental land use authority and jurisdiction with respect to the Annexation Area transfers from the County to the City upon the Effective Date; and

WHEREAS, the County and City agree that having County staff continue to process various vested building and land use permit applications from the Annexation Area on behalf of the City for a transitional period following annexation will assist in an orderly transfer of authority and jurisdiction; and

WHEREAS, it is the parties' intent by virtue of this Agreement that, except as provided for in this Agreement, any and all discretionary decisions with respect to land use and permitting from and after the date of annexation shall be made by the City; and

WHEREAS, as of the Effective Date, pursuant to state law, the City will own, and have the responsibility for the operation, safety and maintenance of all former County roads, bridges and rights-of-way located within the City limits together with all appurtenances located within such rights-of-way, including but not limited to, drainage facilities, storm

water facilities, environmental mitigation sites and monitoring projects, street lights, traffic signals, fiber-optic cable, fiber-optic conduit, and traffic signs; and

WHEREAS, the City and the County want to ensure a smooth transfer of ownership and maintenance of existing County related property interests in the Annexation Area; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by the Interlocal Cooperation Act, codified at Chapter 39.34 RCW, and other Washington law, as amended;

NOW THEREFORE, in consideration of the mutual terms, provisions and obligations contained herein, it is agreed by and between the City and the County as follows:

1. TERM/EFFECTIVE DATE.

a. This Agreement shall be deemed to take effect following the approval of the Agreement by the official action of the legislative bodies of each of the Parties and the signing of the Agreement by the duly authorized representative of each of the Parties, and shall continue in force for a period of five (5) years from the date signed by both parties except as otherwise provided for **Exhibit C** in Section 10 thereto.

b. The effective date of the Juanita-Finn Hill-Kingsgate annexation is June 1, 2011 ("Effective Date").

2. TRANSFER OF JURISDICTION, AUTHORITY AND SERVICES.

a. RECORDS TRANSFER.

- i. The County shall use its best efforts to deliver those records listed in **Exhibit B-1** and **B-2** by the Effective Date.
- ii. If the County fails to deliver those records identified in **Exhibit B-1** by the Effective Date, then the County shall indemnify and hold the City harmless in accordance with Section 6 of this Agreement. If the County fails to deliver all of those records identified in **Exhibit B-2** by September 1, 2011, then the County shall indemnify and hold the City harmless in accordance with Section 6 of this Agreement. Without limiting the foregoing obligations to indemnify, if additional time is needed to produce any of these records, the County shall inform the City of the amount of additional time required to produce each specified. The County shall continue to use its best efforts to provide each specified record within the additional time specified.
- iii. The County shall not be required to provide records that are not reasonably available or to create records or compilations that have not already been created. The County shall provide the City free of charge one set of records meeting the requirements of this section.

- b. DEVELOPMENT SERVICES. As of the date this Agreement is signed by all parties, transfer of development services shall be as set forth in the attached Exhibit C, which is hereby incorporated into this Agreement.
- c. JAIL SERVICES. The City of Kirkland is responsible for the incarceration of adult offenders charged with misdemeanor or gross misdemeanor crimes occurring in the Annexation Area on or after the Effective Date. King County is responsible for the incarceration of adult offenders charged with misdemeanor or gross misdemeanor crimes occurring in the Annexation Area before the Effective Date.
- d. POLICE SERVICES. On and after the Effective Date, police service responsibility within the Annexation Area will be transferred to the City. The County will be responsible for all criminal cases and investigations reported before the Effective Date, including but not limited to all costs associated with these cases and investigations. The City will be responsible for all criminal cases and investigations reported on and after the Effective Date, including but not limited to all costs associated with these cases and investigations. The City's Chief of Police and the King County Sheriff will work together to ensure a smooth transition plan and a continuing partnership. In addition to the provisions of that transition plan, the parties further agree as follows:
- i. Sharing of community information: The County agrees to provide policing-related community contact lists that the County may have regarding the Annexation Area to the City upon request. These lists may include, but are not limited to: members of block watch programs, community groups, and/or homeowner's associations. The lists shall be provided to the City within 90 days of the Effective Date.
 - ii. Annexation of Emergency Response (911) Services: The City and County agree to coordinate the transfer of emergency response (911) services in the Annexation Area.
 - iii. Public Conduct in Parks: The County agrees that public conduct in County-owned parks in the City will be subject to Kirkland Municipal Code (K.M.C) Chapter 11.80. The City acknowledges that the County may administer its own Park Use Rules (King County Code Title 7) as rules of conduct for the use of County-owned parks. The County acknowledges that the City will not enforce K.C.C. Title 7 unless the County separately contracts with the City to do so. The County will replace or update signage in and around its parks in the City to cite K.M.C. Ch. 11.80 as well as K.C.C. Title 7.
- e. COURT AND PROSECUTION SERVICES TRANSITION. The County will be responsible for the court expenses, prosecution and payment of any fees or assessments associated with misdemeanor criminal cases filed by the County prior to the Effective Date. The City will be responsible for the court expenses, prosecution and payment of any fees or assessments associated with misdemeanor criminal cases filed by the City from and after the Effective Date of annexation.

- f. STATUS OF COUNTY EMPLOYEES. Subject to City civil service rules and state law, the City agrees to consider the hiring of County employees whose employment status is affected by the change in governance of the Annexation Area where such County employees make application with the City pursuant to the City's hiring process and meet the minimum qualifications for employment with the City. The City's consideration of hiring affected Sheriff Department employees shall be governed by the provisions set forth in RCW 35.13.360 through 35.13.400 and other applicable law, if any.
- g. ROAD AND FIRE LEVY TAXES. The County's collection and disbursement to the City of the road and fire levy taxes within the Annexation Area(s) shall occur before December 31, 2011.
- h. STRIPING. The County will perform all street striping in the Annexation Area identified on Exhibit I.

3. TRANSFER OF PROPERTIES.

- a. Transfer of Road-Related Properties. The County shall, upon the Effective Date, convey by deed the Road-Related Properties described in Exhibit D attached hereto and incorporated herein by reference, to the City, and the City shall accept the same, subject to all rights, conditions, covenants, obligations, limitations and reservations of record for said properties. The City agrees to abide by and enforce all rights, conditions, covenants, obligations, limitations and reservations for said properties. The City covenants that the Road-Related Properties described in Exhibit D shall continue to be used and maintained in perpetuity for road-related purposes unless other equivalent lands within the City are received in exchange therefor; or if such a property is sold or traded, then the City shall pay to the County an amount equal to the total appraised value (land plus improvements) that the King County Department of Assessments applied to the property as of the Effective Date..
- i. Condition of and Responsibility for Operations, Maintenance, Repairs, and Improvements of Road-Related Properties.
 - 1. The City will have the opportunity to inspect the Road-Related Properties before accepting ownership. However, regardless of such inspection, the City has the duty to accept all facilities as specified in this Agreement. The County will make its records concerning the Road-Related Properties available to the City, and the County personnel most knowledgeable about the Road-Related Properties will be available to jointly inspect the property with City personnel and to provide the City the status of maintenance of such facilities, and to point out known conditions, including any defects or problems, if any, with the Road-Related Properties. The City agrees to accept the Road-Related Properties in AS IS condition, and to assume full and complete responsibility for all

operations, maintenance, repairs, and improvements of the Related Properties.

2. King County does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Road-Related Properties, and no official, employee, representative, or agent of King County is authorized otherwise.
3. The City acknowledges and agrees that the County shall have no liability for, and that the City shall release and have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Road-Related Properties, without regard to whether such defect or deficiency was known or discoverable by the City or the County.

ii. Environmental Liability related to the Road-Related Properties.

- 1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.
2. Nothing in this Agreement shall be deemed to waive any statutory claim for contribution that the City might have against the County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Road-Related Properties by the County during the County's period of ownership. The City may not, however, assert such a claim to the extent that the City creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the City performing construction activities on, changing the configuration of, or changing the use of the Road-Related Properties.
3. If the City discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County it shall notify the County in writing within ninety (90) days of discovery. The Parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.
4. In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.
5. Washington State law shall govern the respective liabilities of the Parties to this Agreement for any loss arising out of or related to the environmental condition of the Road-Related Properties, except as may be modified by this Section 3.a.ii.

- iv. Right of Way Use Agreements. Upon the Effective Date, the City shall become the successor to the County with respect to right of way use agreements and permits and the City shall administer and manage those permits and agreements. To the extent a right of way use permit or agreement requires payment of a periodic fee by the right of way user, the applicable fee shall be pro-rated between the City and the County based on the Effective Date.

- v. Indemnification related to Roads-Related Properties.
 1. King County shall indemnify and hold harmless the City and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, arising from those occurrences related to the Road-Related Properties that occurred prior to the Effective Date, except to the extent that indemnifying or holding the City harmless would be limited by Section 3(a)(ii) of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the City or the City and King County, King County shall defend the same at its sole cost and expense and, if final judgment be rendered against the City and its elected officials, officers, agents and employees or jointly against the City and King County and their respective elected officials, officers, agents and employees, King County shall satisfy the same. The City acknowledges and agree that if such claims, actions, suits, liability, loss, costs, expenses and damages are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers and the County, its agents, employees, and/or officers, this Section 3(a)(v)(1) shall be valid and enforceable only to the extent of the negligence of the County, its agents, employees and/or officers.

 2. The City shall indemnify and hold harmless King County and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, arising from those occurrences related to Road-Related Properties that occur on or after the Effective Date, except to the extent that indemnifying or holding the County harmless would be limited by Section 3(a)(ii) of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against King County or King County and the City, the City shall defend the same at its sole cost and expense and, if final judgment be rendered against King County and its officers, agents and employees or jointly against King County and the City and their respective officers, agents and employees, the City shall satisfy the same. The County acknowledges and agrees that if such claims, actions, suits, liability, loss, costs, expenses and damages are caused by or result from the concurrent negligence of the City, its

agents, employees, and/or officers and the County, its agents, employees, and/or officers, this Section 3(a)(v)(2) shall be valid and enforceable only to the extent of the negligence of the City, its agents, employees and/or officers.

3. For a period of three (3) years following transfer, each party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that Party relating to or pertaining to the Road-Related Properties.
4. Each Party to this Agreement agrees that its obligations under this Section 3(a)(v) extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each Party to this Agreement, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.

b. Transfer of Surface Water Management, Park and Greenbelt Properties

i. Transfer of Drainage Facilities and Drainage Facility Property Interests.

1. Upon the Effective Date for the area in which the "Drainage Facilities" identified in **Exhibit E**, attached hereto and incorporated herein by reference, are located, those Drainage Facilities which are held by the County as specifically identified in **Exhibit E-1** shall automatically be transferred from the County to the City, and the City shall assume ownership and full and complete responsibility for the operation, maintenance, repairs, and any subsequent improvements to the Drainage Facilities. The Drainage Facilities identified in **Exhibit E-2** shall not be transferred but shall remain in private ownership. The City has the right but not the obligation to inspect the facilities identified in **Exhibit E-2** from and after the Effective Date.
2. The County shall upon the Effective Date for the area in which the "Drainage Facility Property Interests" identified in **Exhibit E**, attached hereto and incorporated herein by reference, are located, convey the Drainage Facility Property Interests by quit claim deed to the City; and the City shall accept the Drainage Facility Property Interests, subject to all rights, conditions, covenants, obligations, limitations and reservations of record for such property interests. The City agrees to abide by and enforce all rights, conditions, covenants, obligations, limitations and reservations for the Drainage Facility Property Interests.
3. The County is willing to perform surface water-related management services and maintenance on behalf of the City in the Annexation Area

after the Effective Date via separate written contract between the Parties, which contract is no part of this Agreement.

4. The Parties will make staff available to identify and review any additional County-owned local drainage facilities, easements, and other property interests within the Annexation Areas that should appropriately be conveyed to the City. Such facilities and other property interests include those for which the County's facility acceptance process has not yet been completed, including both projects being constructed by the County as well as projects subject to County approval that are constructed by third parties. Any such additional County-owned drainage properties or other property interests shall be transferred to the City pursuant to this Agreement and upon County approval, including if necessary the adoption of an ordinance authorizing the transfer of King County owned drainage properties and property interests. The transfer of responsibility for drainage facilities shall be documented in writing, including specific facilities transferred and the date of transfer and such documentation signed by the appropriate City representative and the Director of the King County Water and Land Resources Division.
- ii. Transfer of Park and Greenbelt Properties. The County shall upon the Effective Date for the area in which the "Park and Greenbelt Properties" identified in Exhibit F, attached hereto and incorporated herein by reference, are located, convey by deed to the City, and the City shall accept, the Park and Greenbelt Properties, subject to all rights, conditions, covenants, obligations, limitations and reservations of record for such property interests; provided that the County will not convey title to 132nd Square Park from the County to the City until January 1, 2012, and the County shall remain responsible for all operations, maintenance, repairs, improvements of, and provision of recreational services at 132nd Square Park through December 31, 2011. The City shall assume full and complete responsibility for 132nd Square Park effective January 1, 2012.

iii. Deed Covenants Regarding Park and Greenbelt Properties.

1. All deeds for the Parks Properties shall contain the following specific covenants pertaining to use, which covenants shall run with the land for the benefit of the County and the County land that makes up its public park, recreation and open space system:

"The City, as required by K.C.C. 4.56.070.F, covenants that the Property shall be continued to be used for open space, park, or recreation facility purposes or that other equivalent facilities within the County or City shall be received in exchange therefor."

"The City further covenants that it will not limit or restrict access to and use of the Property by non-city residents in any way that does not also apply to city residents. The City covenants that if differential fees for non-city residents are imposed, they will be reasonably related to the cost borne by city taxpayers to maintain, improve or operate the Property for parks and recreation purposes."

2. The deeds for the Parks Properties that comprise 132nd Square Park, Juanita Heights Park, and Kingsgate Park shall also contain the following specific covenants, which covenants shall run with the land for the benefit of the County and the County land that makes up its public park, recreation and open space system:

"The City covenants that it shall abide by and enforce all terms, conditions and restrictions in King County Resolution 34571, including that the City covenants that the Property will continue to be used for the purposes contemplated by Resolution 34571, that the Property shall not be transferred or conveyed except by agreement providing that such lands shall continue to be used for the purposes contemplated by Resolution 34571, and that the Property shall not be converted to a different use unless other equivalent lands and facilities within the County or City shall be received in exchange therefor."

"The City covenants that it shall not use the Property in a manner that would cause the interest on County bonds related to the Property to no longer be exempt from federal income taxation."

3. All deeds for the Parks Properties shall also contain the following covenants, which covenants shall run with the land for the benefit of the County and the County land that makes up its public park, recreation and open space system:

"The City covenants that the County shall have standing to enforce these covenants."

"The City covenants that it shall place the preceding covenants in any deed transferring the Property or a portion of the Property for public park, recreation or open space uses."

4. The City agrees to abide by and enforce all rights, conditions, covenants, obligations, limitations and reservations of record for the Greenbelt Properties. The deeds for the Greenbelt Properties shall contain the restrictions intended to preserve the use of said properties as greenbelts restricted to the uses placed on the properties at the time of their conveyance to King County, all as more specifically described in said deeds. The City covenants that it shall place said restrictions in any deed conveying any or a portion of the Greenbelt Properties.

5. The deeds for the Greenbelt Properties shall contain the following specific covenants pertaining to use, which are intended to be running covenants burdening and benefiting the Parties, and their successors and assigns, and which shall run with the land for the benefit of the County and the County land that makes up its public park, recreation and open space system:

"The City, as required by K.C.C. 4.56.070.F, covenants that the Property shall be continued to be used for open space, park, or recreation facility purposes or that other equivalent facilities within the County or City shall be received in exchange therefor."

"The City further covenants that it will not limit or restrict access to and use of the Property by non-city residents in any way that does not also apply to city residents. The City covenants that any and all user fees charged for the Property, including charges imposed by any lessees, concessionaires, service providers, and/or other assignees shall be at the same rate for non-City residents as for the residents of the City."

"The City covenants that the County shall have standing to enforce these covenants."

"The City covenants that it shall place these covenants in any deed conveying any or a portion of the Property."

6. **Exhibit H** provides a visual representation of the CCRs applicable to Parks Properties.
7. Unless otherwise restricted, the City may convert Greenbelt Properties to Park Properties.
8. If the City acquires real property for open space, greenbelt, park or recreation purposes ("Other Property") after the Effective Date, and

wishes to exchange the Other Property for equivalent Parks and Greenbelt property listed in **Exhibit F** ("Exchange Property"), then it may do so, subject to review and approval by the County; such approval not to be unreasonably withheld. In that event, the County will execute and record a release of the covenants, conditions, and restrictions ("CC&Rs") that the County imposed on the Exchange Property when the County conveyed it to the City, but only after the City executes and records a restrictive covenant applying those same CC&Rs to the Other Property.

- iv. Parks Property—Personal Property. The Parks Property to be conveyed includes certain equipment and improvements listed in **Exhibit G** attached hereto. The City agrees that it will take all equipment and improvements AS IS and WHERE IS and agrees that the County holds no future responsibility with regard to the equipment or improvements or any occurrence related to or resulting from use of the equipment or improvements.
- v. Parks Property—Existing Restrictions, Agreements, Contracts or Permits. The City and the County acknowledge and agree that the portion of the Property known as Edith Moulton Park is currently subject to special use permit number **S-63-09** ("the Permit") granted to **Northshore Utility District** for the **use and maintenance of two (2) sewer lines**. As of the Effective Date, all of the County's rights, privileges and obligations in the Permit shall automatically be transferred to the City; The City hereby agrees to accept and assume all of the County's rights, privileges and obligations in the Permit.
- vi. Condition of and Responsibility for Operations, Maintenance, Repairs, and Improvements of Drainage Facilities, Drainage Facility Property Interests, and Park and Greenbelt Properties.
 1. The City agrees to accept the Drainage Facilities, Drainage Facility Property Interests, Park Properties, and Greenbelt Properties in AS IS condition, and to assume full and complete responsibility for all operations, maintenance, repairs, and improvements of the Drainage Facilities, Drainage Facility Property Interests, Park Properties, and Greenbelt Properties.
 2. King County does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Drainage Facilities, Drainage Facility Property Interests, Greenbelt Properties or Park Properties; and no official, employee, representative or agent of King County is authorized otherwise.
 3. The City acknowledges and agrees that except as indicated in Section 3(b)(vii), the County shall have no liability for, and that the City shall release and have no recourse against the County for, any defect or

deficiency of any kind whatsoever in the Drainage Facilities, Drainage Facility Property Interests, Park Properties, or Greenbelt Properties without regard to whether such defect or deficiency was known or discoverable by the City or the County.

vii. Environmental Liability related to the Drainage Facilities, Drainage Facility Property Interests, Park Properties, and Greenbelt Properties.

1. "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.
2. Nothing in this Agreement shall be deemed to waive any statutory claim for contribution that the City might have against the County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Drainage Facilities, Drainage Facility Property Interests, Park Properties, or Greenbelt Properties by the County during the County's period of ownership. The City may not, however, assert such a claim to the extent that the City creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the City performing construction activities on, changing the configuration of, or changing the use of the Drainage Facilities, Drainage Facility Property Interests, Park Properties, or Greenbelt Properties.
3. If the City discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County it shall notify the County in writing within ninety (90) days of discovery. The parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.
4. In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

viii. Indemnification related to Drainage Facilities, Drainage Facility Property Interests, Park Properties and Greenbelt Properties .

1. King County shall indemnify and hold harmless the City and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, arising from those occurrences related to the Drainage Facilities, Drainage Facility Property Interests, Park Properties and Greenbelt Properties that occurred prior to the Effective Date, except to the extent that indemnifying or holding the City harmless

would be limited by Section 3(b)(vii) of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the City or the City and King County, King County shall defend the same at its sole cost and expense and, if final judgment be rendered against the City and its elected officials, officers, agents and employees or jointly against the City and King County and their respective elected officials, officers, agents and employees, King County shall satisfy the same. The City acknowledges and agree that if such claims, actions, suits, liability, loss, costs, expenses and damages are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers and the County, its agents, employees, and/or officers, this Section 3(b)(viii)(1) shall be valid and enforceable only to the extent of the negligence of the County, its agents, employees and/or officers.

2. The City shall indemnify and hold harmless King County and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, arising from those occurrences related to the Drainage Facilities, Drainage Facility Property Interests, Park Properties and Greenbelt Properties that occur on or after the Effective Date, except to the extent that indemnifying or holding the County harmless would be limited by Section 3(b)(vii) of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against King County or King County and the City, the City shall defend the same at its sole cost and expense and, if final judgment be rendered against King County and its officers, agents and employees or jointly against King County and the City and their respective officers, agents and employees, the City shall satisfy the same. The County acknowledges and agrees that if such claims, actions, suits, liability, loss, costs, expenses and damages are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers and the County, its agents, employees, and/or officers, this Section 3(b)(viii)(2) shall be valid and enforceable only to the extent of the negligence of the City, its agents, employees and/or officers.
3. For a period of three (3) years following transfer, each party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that Party relating to or pertaining to the Drainage Facilities, Drainage Facility Property Interests, Park Properties, or Greenbelt Properties.
4. Each Party to this Agreement agrees that its obligations under this Section 3(b)(viii) extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each Party to this Agreement, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against

such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.

- c. If the parties mutually determine and jointly agree that any of the property covenants, conditions or restrictions ("CC&Rs") newly imposed as a result of this Agreement are not legally required, then the Parties may agree to amend the relevant CC&Rs or waive their requirements, subject to King County Council legislative approval.
- d. The provisions of this Section 3 shall survive the expiration or earlier termination of this Agreement.

4. ADMINISTRATION AND CONTACT PERSONS. The Parties stipulate that the following persons shall be the administrators of this Agreement and shall be the contact person for their respective jurisdiction.

City of Kirkland:

Kurt Triplett
City Manager
123 Fifth Avenue
Kirkland, WA 98033

King County:

Dwight Dively, Director
Performance, Strategy and Budget
401 Fifth Avenue, Suite 810
Seattle, WA 98104

- 5. COMPLIANCE WITH LAWS. Each Party accepts responsibility for compliance with federal, state, and local laws and regulations. Specifically, in meeting the commitments encompassed in this Agreement, all parties will comply with, among other laws and regulations, the requirements of the Open Meetings Act, Public Records Act, Growth Management Act, State Environmental Policy Act, and Annexation Statutes. The Parties retain the ultimate authority for land use and development decisions within their respective jurisdictions as provided herein. By executing this Agreement, the Parties do not purport to abrogate the decision-making responsibility vested in them by law.
- 6. INDEMNIFICATION. The following indemnification provisions shall apply to the entirety of this Agreement except for Section 3 (Transfer of Property) and **Exhibit C** (Development Permit Processing), both of which contain separate indemnification provisions.
 - a. The County shall indemnify and hold harmless the City and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the County, its officers, agents, and employees, or any of them, in performing obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the City, the County shall defend the same at its sole cost and

expense, provided that the City retains the right to participate in said suit if any principle of governmental or public law is involved, and if final judgment be rendered against the City and its officers, agents, and employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same. The City acknowledges and agrees that if such claims, actions, suits, liability, loss, costs, expenses and damages are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers and the County, its agents, employees, and/or officers, this Section 6(a) shall be valid and enforceable only to the extent of the negligence of the County, its agents, employees and/or officers.

- b. The City shall indemnify and hold harmless the County and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the City, its officers, agents, and employees, or any of them, in performing obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the county, the City shall defend the same at its sole cost and expense, provided that the County retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the County and its officers, agents, employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees or any of them, the City shall satisfy the same. The County acknowledges and agrees that if such claims, actions, suits, liability, loss, costs, expenses and damages are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers and the County, its agents, employees, and/or officers, this Section 6(b) shall be valid and enforceable only to the extent of the negligence of the City, its agents, employees and/or officers.
 - c. Each Party to this Agreement agrees that its obligations under this Section 6 extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each Party to this Agreement, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.
 - d. The provisions of this Section 6 shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.
7. KING COUNTY FIRE PROTECTION DISTRICT #41. The County and King County Fire Protection District #41 ("District") are currently negotiating terms of a proposal under which County property would be considered as one of several potential sites for a new fire station. The Parties acknowledge the District will merge into the City as of the Effective Date. If the County-District negotiations are not

completed before the Effective Date, then the County and the City will continue those negotiations, substituting the City for the District.

8. GENERAL PROVISIONS.

- a. Entire Agreement. This Agreement together with all Exhibits hereto contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.
- b. Filing. A copy of this Agreement shall be filed with the City Clerk, and recorded with the King County Recorder's Office or listed by subject on the County's web site or other electronically retrievable public source.
- c. Amendments. No provision of this Agreement may be amended or modified except by written agreement signed by the Parties. Any amendment that modifies a material term of this Agreement must be approved by the King County Council prior to the County executing the amendment.
- d. Severability. If one or more of the clauses of this Agreement is found to be unenforceable, illegal, or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal, or contrary to public policy. The parties will replace the severed provision with one that is closest in meaning to the intent of the original provision that is not unenforceable, illegal or contrary to public policy.
- e. Assignment. Neither the City nor the County shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.
- f. Successors in Interest. Subject to the foregoing subsection, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs, and assigns.
- g. Dispute Resolution. The Parties should attempt if appropriate to use an informal dispute resolution process such as mediation, through an agreed-upon mediator and process, if agreement cannot be reached regarding interpretation or implementation of any provision of this Agreement. All costs for mediation services would be divided equally between the Parties. Each jurisdiction would be responsible for the costs of their own legal representation.
- h. Attorneys' fees. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses.

- i. No waiver. Failure of either the County or the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.
- j. Applicable Law. Washington law shall govern the interpretation of this Agreement. King County shall be the venue of any mediation, arbitration, or lawsuit arising out of this Agreement.
- k. Authority. Each individual executing this Agreement on behalf of the City and the County represents and warrants that such individuals are duly authorized to execute and deliver the Agreement on behalf of the City or the County.
- l. Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth above in Section 4. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the addresses set forth above in Section 4. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.
- m. Performance. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.
- n. Equal Opportunity to Draft. The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.
- o. Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right of action or interest in this Agreement based on any provision set forth herein.

IN WITNESS THEREOF, the Parties have executed this Agreement effective as of the date it has been signed by both of the Parties.

CITY OF KIRKLAND:

KING COUNTY:


Kurt Triplett, City Manager

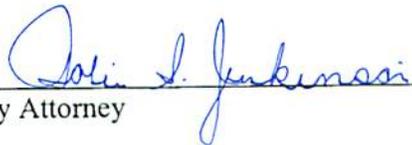

Dow Constantine, Executive

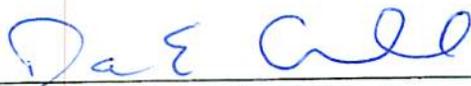
Date: 5/25/11

Date: 5/23/11

Approved as to Form:

Approved as to Form:


City Attorney


Sr. Deputy Prosecuting Attorney
Darren Carnell

