Council Meeting: 11/01/2010
Agenda: Unfinished Business
Item #: 10. e.

CITY OF KIRKLAND
Fire & Building Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3000
www.ci.kirkland.wa.us

MEMORANDUM

To: Kurt Triplett, City Manager

From: J Kevin Nalder, Director Fire and Building

Date: October 21, 2010

Subject: Interlocal Agreement between the City and Woodinville Fire and Rescue

RECOMMENDATION:

City Council approve the attached resolution authorizing the City Manager to execute the Interlocal Agreement between the City of Kirkland and Woodinville Fire & Rescue.

BACKGROUND DISCUSSION:

Pursuant to RCW 52.08.025, upon the effective date of the Finn Hill, Juanita and Kingsgate annexation, the City will assume the responsibility for providing fire protection and emergency medical services from the current providers of these services in that area. Woodinville Fire and Rescue (WFR) is one of the entities currently providing such services there. Under state law, annexation imposes certain obligations on the City and WFR that each must fulfill to accomplish the transition of services from one to the other. In order to reach agreement on how these obligations would be met, the City and WFR began negotiations in May of 2009 and entered into mediation to expedite that process on August 17, 2009, which was concluded on February 8, 2010.

As a result of those negotiations, the attached Interlocal Agreement (ILA) between the City and WFR was drafted by the Kirkland City Attorney's Office. It was then approved by the WFR Commissioners at their September meeting. Subsequently, a resolution was drafted by the Kirkland City Attorney's Office asking Council to approve authorizing the City Manager to execute the ILA between the City of Kirkland and WFR. If approved by the Council, once signed by you, staff of both entities will begin to implement its provisions.

One of the immediate provisions to be implemented is item three of the ILA "District Employees". WFR provided a response to this provision in a cover letter accompanying the signed ILA. The timelines identified in this provision do not commence until the ILA is fully executed which means the City response must occur within thirty days of final signature. This will require staff to draft a response allowing time for City Council approval during the November 16th Council meeting in order to meet the thirty day response timeline identified in the ILA. City staff has notified WFR of the status of execution of the ILA and the concurrent response timeline.

Woodinville Fire and Life Safety District

P.O. Box 2200 • 17718 Woodinville - Snohomish Rd NE
Woodinville, WA 98072
Phone 425-483-2131 • Fax 425-486-0361

September 21, 2010

Kevin Nalder, Fire Chief
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

Dear Chief Nalder:

Attached please find a copy of the signed Interlocal Agreement (ILA) approved by the Board of Fire Commissioners of Woodinville Fire & Rescue on September 7, 2010. Pursuant to the ILA; the following are the plans regarding hires, separations, terminations and any other changes in employment that are a direct consequence of the annexation.

As a direct result of the annexation, on March 15, 2010, the Board of Fire Commissioners elected to close Fire Station #34 as of May 31, 2011. Based on the fact that Fire Station 34 has one (1) on-duty lieutenant position and two (2) on-duty firefighter positions and the current "fill ratio" used to staff response operations in the District, the closure of Fire Station #34 would result in a surplus of **four (4) lieutenant** positions and **ten (10) firefighter** positions. The District will, in its 2011 budget be eliminating these positions. As a result of a new organization structure being implemented in the 2011 budget, the net impact to individuals will be as many as three demotions of current officers and as many as ten layoffs of firefighters.

I look forward the City's reply per the Interlocal, and the opportunity to work in a collaborative fashion towards a situation that continues the strong partnership between our jurisdictions and continues the delivery of service to those affected by the annexation.

Sincerely,

I. David Daniels
Fire Chief/CEO

IDD

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RESOLUTION R-4846

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF KIRKLAND AND WOODINVILLE FIRE AND RESCUE REGARDING THE TRANSITION OF SERVICES DUE TO ANNEXATION.

WHEREAS, pursuant to RCW 52.08.025, upon the effective date of the Finn Hill, Juanita and Kingsgate annexation, the City will assume the responsibility for providing fire protection and emergency medical services from current providers in that area; and

WHEREAS, Woodinville Fire and Rescue (WFR) is one of the entities currently providing such services in that area; and

WHEREAS, under state law, annexation imposes certain obligations on the City and WFR that each must fulfill to accomplish the transition of services from one to the other; and

WHEREAS, in order to reach an agreement on how these obligations would be met, the City and WFR began negotiations in May of 2009 and entered into mediation to expedite that process on August 17, 2009, which was concluded on February 8, 2010; and

WHEREAS, as a result of those negotiations the City and WFR prepared the attached interlocal agreement to govern the transition of services as authorized by Chapter 39.34 of the Revised Code of Washington, and

WHEREAS, the Commissioners of WFR approved the attached interlocal agreement at their September meeting;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Kirkland an interlocal agreement substantially similar to that attached as Exhibit "A", which is entitled "Interlocal Agreement between the City of Kirkland and Woodinville Fire and Rescue."

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2010.

Signed in authentication thereof this ____ day of _____, 2010.

_____
MAYOR

Attest:

_____
City Clerk

INTERLOCAL AGREEMENT BETWEEN THE CITY OF KIRKLAND AND THE WOODINVILLE FIRE & RESCUE REGARDING THE ANNEXATION OF DISTRICT AREA BY THE CITY

THIS INTERLOCAL AGREEMENT is made and entered into, pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, on the _____ day of _____, 2010, by and between The City of Kirkland, a municipal corporation of the State of Washington ("the City") and Woodinville Fire & Rescue (fka Woodinville Fire & Life Safety District), a municipal corporation of the State of Washington ("the District").

WHEREAS, the City has annexed real property contiguous with the current boundaries of the City as described in the attached Exhibit "A" ("the Annexation Area"), which will remove more than 5% but less than 60% of real property from the District by operation of law; and,

WHEREAS, under the Revised Code of Washington, annexation imposes certain obligations on each of the parties that must be met; and,

WHEREAS, in order to reach agreement on how these obligations would be fulfilled the parties began meeting in May of 2009 to negotiate such terms and entered into mediation to expedite that process on August 17, 2009, which was concluded on February 8, 2010; and,

WHEREAS, the City and the District now wish to enter into an Interlocal Agreement to memorialize such terms as authorized by Chapter 39.34 of the Revised Code of Washington,

NOW THEREFORE, in consideration of their mutual promises herein, the parties hereby agree as follows:

1. Fire and Medical Services. Pursuant to RCW 52.08.025, as a result of the annexation, the Annexation Area will be removed from the jurisdiction of the District upon the effective date of the annexation. However, as required by RCW 35A.14.400, the District will continue to provide primary fire and medical services within the Annexation Area as long as it continues to receive the regular property taxes it levied within the Annexation Area or until June 1, 2011, whichever is later. However, in the event the District does not meet the schedule required by Subsection 3(a) herein, the District agrees it will continue to have primary

emergency fire and medical services responsibility in the Annexation Area beyond those dates until the City can provide the staff to assume that responsibility. The City will become responsible to provide primary emergency fire and medical response within the Annexation Area once it begins receiving the property taxes levied in the Annexation Area or until June 1, 2011, whichever is later unless the District has not met the schedule provided in Subsection 3(a) and is therefore continuing to provide primary services. Notwithstanding the foregoing, both parties agree the terms of the King County, Washington Mutual Assistance and Interlocal dated October 3, 2006, will remain in effect both before and after that date.

2. Payment. (a) In accordance with RCW 35A.14.400, the District shall pay in cash a percentage of the value of its assets equal to the percentage of the value of the real property in the entire district lying within the Annexation Area. That amount had been estimated to be $1,572,000 using the jointly approved methodology and values provided in the report prepared by Berk & Associates dated December 15, 2009, which was paid for equally by the City and the District.

(b) The parties agree the final amount due in cash will be determined using the methodology summarized in the Berk & Associates report after making any needed updates to the values based on the financial results for December 31, 2010, which updating process will be paid for equally by the parties. The update will be ordered by the City with instructions to use December 31, 2010 financial data, once the District notifies the City that the data is available. The District shall make the payment within 6 months of the effective date of the annexation. RCW 35A.14.400. The District shall retain all other assets.

3. District Employees.

(a) Pursuant to RCW 35A.14.485 and 35.13.215, the City and the District will jointly inform the employees of the District about hires, separations, terminations and any other changes in employment that are a direct consequence of the annexation. To accomplish this, within 30 days of the execution date of this agreement, the District will send a letter to the City indicating its plans regarding "hires, separations, terminations and any other changes in employment that are a direct consequence of the annexation." The City will provide its input to the District in writing regarding these same topics within 30 days of the receipt of that letter. Within 30 days of the District's receipt of that input, the parties will sign a written notice to the employees of the District informing them of these matters, which though not required by law will be copied to the Executive Board of the City's IAFF local. The District agrees this process will be completed no later than December 31, 2010, and further agrees that if this is not accomplished

by this date, it will remain responsible to provide primary emergency fire and medical service in the Annexation Area as provided in Section 1 herein.

(b) It is the intent of the parties, with the participation of each party's respective union, to negotiate a collective bargaining agreement that will address all matters related to the transfer of employee's from the District to the City. In the event these negotiations do not provide guidance to the City and the District on relevant matters in a timely manner, which determination of timeliness will be made at the sole but reasonably exercised discretion of each, then the parties agree that state law will govern as provided below. If anything recited in this section impermissibly conflicts with state law, state law will govern.

(c) Pursuant to RCW 35A.14.485 and 35.13.215, if at the time of the Annexation any employee of the District was employed exclusively or principally performing the same powers, duties and functions as performed by the City's Fire Department and was terminated because of the Annexation, he or she may transfer employment to the Civil Service system of the City as provided in RCW 35.13.215, 35.13.225 and 35.13.235 so long as the employee can perform the duties and meet the minimum requirements of any position that needs to be filled by City.

(d) To accomplish this, as required by RCW 35A.14.485 and 35.13.225, the employee must file a written request with the City's Civil Service Commission, which should be sent to Commission Secretary Rod Lank in care of the City of Kirkland, whose address is 505 Market Street, Kirkland, WA 98033. The employee must also give written notice to the Commissioners of the District. Upon receipt of the request, so long as all of the aforementioned conditions have been met, the transfer of employment to the Civil Service system will be made.

(e) Thereafter, as required by 35A.14.485, 35.13.225, needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.10.360 and 35.10.370 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the code city fire department when appropriate positions become available. Employees who are not immediately hired by the code city shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

(f) After assuming primary service in the annexation area, as required by 35A.92.050 and for the period of time therein required, the City will maintain fire protection and emergency services response times in the newly annexed areas

consistent with response times recorded prior to the annexation as defined in the previous annual report for the District and as reported in RCW 52.33.040 and as determined by the City. However, if the City is unable to do so, the transfer of firefighters from the annexed fire protection district as a direct result of the annexation must occur as outlined in RCW 35A.14.485.

(g) Upon transfer, the employee is entitled to the rights, benefits and privileges to which he or she was entitled as an employee of the District as provided in 35A.14.485 and 35.13.225 unless upon transfer an agreement for different terms of transfer are reached between the collective bargaining representatives of the transferring employees and the City and District. In the event the transferring employees receive the rights, benefits and privileges provided by those statutes, those rights, benefits and privileges are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred. RCW 35A.14.485(4) and 35.13.225(3).

4. Indebtedness/Liabilities. The real property within the Annexation Area shall not be liable for any of the District's outstanding indebtedness, bonded or otherwise. Though RCW 35A.14.500 would otherwise require the real property to remain liable, that obligation was satisfied by deducting the value of the outstanding liability for the property in the Annexation Area from the payment that will be due under Section 2 above. Further, the District shall remain solely liable for all payments required to be made as a result of such indebtedness and for any other claims arising out of the Annexation Area before the effective date of the annexation.

5. Term. The term of this agreement shall be from the date hereof and shall terminate when all of its obligations have been fulfilled except for the provision regarding indemnification below.

6. Indemnification. The District shall defend, indemnify and hold the City and its agents, employees, and/or officers, harmless from any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the District's, its agents, employees, and/or officers, performance or failure to perform any aspect of this Agreement.

The City shall defend, indemnify and hold the District and its agents, employees, and/or officers, harmless from any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the District arising out of, in connection with, or incident to the execution of this Agreement and/or the City's, its agents, employees, and/or officers, performance or failure to perform any aspect of this Agreement.

If such claims are caused by or result from the concurrent negligence of the City or its agents, employees, and/or officers, and the District or its agents, employees, and/or officers, then these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the indemnifying party; provided that nothing herein shall require either party to hold harmless or defend the other party or the other party's agents, employees and/or officers from any claims arising from the sole negligence of the other party, or its agents, employees, and/or officers.

By virtue of this provision, the parties shall not be deemed to have waived their immunity pursuant to Title 51 RCW, and nothing contained in this agreement shall be construed so as to operate as a waiver.

The provisions of this Indemnification Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

7. Compliance with laws. The parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein. However, to the extent allowed by law, the parties agree the provisions of this Agreement shall supersede such provisions.

8. Assignment. The parties shall not assign this Agreement or any interest, obligation or duty therein without the express written consent of the other party. However, the District agrees its consent is not required if the City assigns the agreement to any regional fire authority created by the City.

9. Attorneys 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 the trial court and in any appellate courts.

10. 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	To the District
Attn:	Attn:

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 third 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.

11. Miscellaneous.

A. All of the terms in this Agreement shall extend to and bind the legal successors and assigns of the parties hereto.

B. This Agreement is made and shall be 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 King County, Washington.

C. No separate legal entity is hereby created.

D. Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto and their successors and assigns to rely upon the terms herein contained nor to give any such third party a cause of action on account of any nonperformance hereunder.

E. No joint oversight and administration board is created hereby.

F. 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 either party determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time either party shall have the right to terminate the Agreement.

G. This Agreement constitutes the final and completely integrated agreement between the parties on its subject matter.

H. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

I. Copies of this Agreement shall be filed with the King County Auditor's Office by the City.

J. Each party has had opportunity to consult with counsel in connection with this Agreement. Each of the provisions of this Agreement represents the combined work product of both parties hereto. Therefore, no presumption or other rules of construction which would interpret the

provisions of this Agreement in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF KIRKLAND

By: _____
Kurt Triplett
City Manager

Approved as to form:

_____
City Attorney

WOODINVILLE FIRE & RESCUE

_____
Clint Olson
Board of Fire Commissioners, Position 1

_____
Robert Miller
Board of Fire Commissioners, Position 2

_____
Timothy Osgood, Board Vice Chair
Board of Fire Commissioners, Position 3

_____
Kevin Coughlin
Board of Fire Commissioners, Position 4

_____
Randy Ransom, Board Chair
Board of Fire Commissioners, Position 5

Approved as to form:

_____
District Counsel